

LEGAL TIPS

THE “BLOOD RULE” FROM THE LEGAL PERSPECTIVE

by Nicol Dominiuk and Piotr Wawrzyniak

IN LIGHT OF THE RECENT DISCUSSIONS REGARDING THE DISQUALIFICATIONS IN RELATION TO THE “BLOOD RULE” AS WELL AS THE RECENTLY PROPOSED AMENDMENTS TO THIS RULE IN THE JUMPING RULES FOR 2018, WE BELIEVE IT IS IMPORTANT TO COMMENT ON THE MATTER FROM A LEGAL PERSPECTIVE.

As many are familiar with by now, article 242 (3.1) and (3.3) of the FEI Jumping Rules, also known as the “**blood rule**”, applies to spur marks as well as to blood in the mouth or nose of the horse. Further, sub 3.2 relates to marks indicating excessive use of spurs or of the whip anywhere on the horse. These rules have led to several disqualifications within the jumping sport and are now subject to change in the latest proposal from the FEI for the coming 2018 Jumping Rules. The most disputed incidents have been in relation to spur marks, where discussions were raised in connection to the disqualifications of several respected riders, including *Bertram Allen and Scott Brash in distinctive 5* shows and Stephan de Freitas Barcha and Nicola Philippaerts in the 2016 Olympic Games*.

Many riders agree that causing a bleeding spur mark on a horse's side does not occur often or regularly. Further, no animal devotee would accept nor speak in favor of a different application of the rule when believed that the wound was inflicted **intentionally** in abuse of the horses well being.

However when riding a cold-blooded horse or when approaching a fence with a slightly long distance, adding leg is only natural. This can, in certain situations, result in a small rub on the horses flank. The severity of the rub may also depend on the sensitive skin type of the horse or an earlier scratch in the same area. However, no matter the

magnitude of the rub, the FEI has applied a strict approach to the blood rule and disqualified riders on this basis, with no exceptions in relation to size or amount of blood.

The FEI recently sent out a proposed amendment to the above mentioned rule for the coming 2018 **FEI Jumping Rules**. The Jumping Rules have undergone a full revision and there has been a significant change to the “blood rule”. The proposed rules are the following: blood on the horses flank caused by the athlete's leg may lead to elimination (instead of disqualification) and (NB) minor cases of blood on the flank(s), as described in the Jumping Stewards Manual, will not incur elimination. This rule would be included under article 241 of the FEI Jumping Rules, which is the elimination rule. Although this new paragraph refers to the Jumping Stewards Manual, the Jumping Stewards Manual does not currently define “minor cases of blood” in relation to blood on the flank(s). At this moment the Jumping Stewards Manual only refers to minor cases of blood in the mouth where a horse appears to have bitten its tongue or lip. Secondly, the proposal slightly amends the article on mandatory disqualification, which in the proposal states that cases of marks and/or blood on the horse's flank as a result of an excessive use of the spur(s) will be penalized with disqualification. The difference between elimination and disqualification appears to be the “excessive use of spur”, however, what defines “excessive use of spur” is also not further clarified. This is unlike the similar rule of





“excessive use of whip” which is clearly defined in the FEI Jumping Manual for Stewards as well as in **Article 243** of the FEI Jumping Rules. *Further it is not clear what kind of mark the FEI is referring to in these articles. It could be interpreted as anything from a swelling to bald spots to raw skin to rub to bleeding.*

New initiatives by the FEI to update the FEI Jumping Rules, striving to keep up with the Zeitgeist, are always welcome. Moreover, asking the National Federations for input on the proposed changes will surely lead to valuable contribution. *We trust that the National Federations will approach this request with due care.* Despite the fact that the FEI’s initiative is appreciated, there are serious legal concerns regarding the proposed changes. It appears in the proposal that the FEI will allow some discretion to the stewards in regard to the “blood rule” in 2018. The effort in trying to improve this rule is welcomed however, in order to obtain certainty, a clear understanding and equal, objective, application of these rules, further clarification to how and when they are intended to apply must be provided. This is particularly important when it comes to the vague and undefined terms “mark”, “excessive use of spur” and “minor cases of blood”. **If not, it runs the risk of diverse, arbitrary, application of the rules and unfair, deviating outcomes or no consequences, elimination or disqualification in similar situations.** These differences may have detrimental consequences on the riders results, ranking, earnings and reputation and should therefore be studied and improved with due diligence. Unlike the dressage sport in which especially judging as such was causing controversy due to risk of subjectivity, showjumping has in its core been objective. This can however change if the “blood rule” will be multi-interpretable, flexible and vague.

Further, vague rules as such would put the stewards and/or Ground Jury in a judging position without any clear guidelines. This may consequently lead to a very political approach and dealing with the issue, which is unwelcomed in an otherwise very objectively scored sport. In the past, FEI’s unclear provisions have caused issues and led to legal debates. *An example of this is for instance the vague term “nationalistic judging” in the dressage sport, which, especially during the Olympic year 2016, raised a lot of controversy.*


The rules of the FEI seem to lack one of the most basic, international legal principles required for the rule of law; the **principle of legal certainty**. This common principle requires that all law be sufficiently precise to allow a person, if need be, with appropriate advice, to foresee (to a degree which is reasonable in those circumstances) the consequences which a given action may entail. On the basis of the new proposed rules, equestrians are left with very vague, open and undefined terms, which may lead to various outcomes. This clearly does not correspond with the principle.

The deadline for the National Federations to revert to the FEI on all regulations is Monday 18th of September 2017. We therefore call on the FEI and the National Federations to reconsider the current proposal and produce a final, clearer version of the applicable rules in order to assure legal certainty within the equestrian sport.

CHANGES TO BLOOD RULE REJECTED

On 21 November 2017, the FEI published Pt 15.3 bis following the FEI General Assembly in Montevideo, Uruguay. As it appears, *the NF’s rejected the proposed changes of the “blood rule”. The NF’s were afraid that the rule itself in the amended form could become a tool of arbitration.*

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