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# LAW LETTER

## Texas Landowners

### Liability for Domestic Animals

Owning land entails liabilities beyond the land itself. Property owners have incurred liability even for animals they do not own. In the past, both the responsibility and liability for an animal rested solely on the owner. A recent Texas case departs from the rule.

A Harlingen man was injured when a dog darted in front of his bicycle. The man thought the dog was attacking, lost control and crashed. His knee required complete replacement. The facts revealed that the dog was friendly and had neither attacked nor bitten the man.

The jury awarded the plaintiff \$1.8 million. The liability was split between the dog owner and the homeowners association. By not enforcing their leash laws, the homeowners association contributed to the plaintiff's injuries, according to the court.

As a general rule, a dog owner's knowledge of the animal's viciousness (vicious propensity) is a prerequisite for liability. Without a local ordinance to the contrary, dogs may run at large. As commonly stated, "Every dog has a free bite."

The law divides animals into two classes: wild and domestic. The owners of wild animals, such as lions, tigers or wolves, are presumed to know of the animals' vicious propensity. They have no free bites. The owner is strictly liable for the animal's behavior.

Owners of domestic animals, such as horses, cattle or dogs, are not presumed to know of the animals' vicious propensity. Only after the owner obtains actual or constructive knowledge of the propensity does strict liability arise.

Precedent on the issue was set by the Texas Supreme Court in 1974 in the case of *Marshall v. Ranne*, 511 S.W. 2d 255. The case involved a farmer attacked by a neighbor's boar.

The key issue was whether liability for the domestic animal rested upon *negligence* or *strict liability*.

If negligence is the standard, then any contributory negligence by the plaintiff must be considered in awarding damages. If strict liability is the standard (sometimes referred to as liability without fault), any contributory negligence by the plaintiff is irrelevant. The only factor affecting the defendant's liability is the plaintiff's assumption of the risk.

To raise the assumption-of-the-risk defense, the defendant must prove that the plaintiff:

- knew of the domestic animal's vicious propensity and
- provoked the domestic animal or voluntarily and unnecessarily placed himself or herself in danger.

To place the public on notice of an animal's vicious propensity and

to be able to raise the assumption-of-risk defense, signs generally are posted such as "Beware of Dog" or "Beware of Bull."

Following the *Ranne* decision in 1974, strict liability became the only grounds for recovery against dog owners. The plaintiff had to prove that the:

- animal has a vicious or dangerous propensity,
- owner or keeper had either actual or constructive knowledge of the propensity and
- injury or damage resulted from the animal's propensities.

In May 1994, a case of first impression introduced new grounds of recovery for a dog's behavior based on negligence where the animal had no history of a vicious propensity.

A mail carrier, while making a delivery, was startled by a large dog. The alarmed carrier stepped back, tripped and hit his head. The dog never attacked and had no history of a vicious propensity.

The carrier sued the owner, seeking recovery under both negligence and strict liability. Recovery was denied based on strict liability but considered for negligence.

The Houston Court of Appeals, after reviewing Restatement (Second) of Torts Section 518, various cases and other authorities, ruled that "an owner of a dog may be liable for injuries caused by a dog even if the animal is not vicious, if the plaintiff can prove that the owner's *negligent* handling of the animal caused the animal to injure the plaintiff" (*Dunnings v. Castro*, No. 01-93-00091-CV [Houston], 5/26/94). The case was remanded for

trial. This decision appears to both depart and expand *Marshall v. Ranne* (the hog case) discussed earlier.

Apart from the liabilities faced by dog owners for personal injuries, liabilities also exist for injury to property. Here, the liability is based on the animal's being a trespasser, not on its vicious propensity. Once the plaintiff (landowner) proves the dog (or domestic animal) has trespassed, the plaintiff may recover for all injuries incurred thereafter. For instance, Texas case law has permitted recoveries for:

- high-grade cows that were bred by a common-stock bull,
- dogs killing and injuring a neighbor's sheep and
- intruding cattle causing weight loss to a landowner's livestock by eating their grass and feed.

However, the case law distinguishes between the force the landowner may use to repel trespassing livestock and trespassing dogs. A landowner has the right to drive off

intruding livestock but has no legal right to destroy them. A landowner may destroy dogs when it appears reasonably necessary to protect the landowner's livestock.

Texas statutory law has added new rules for the treatment of dogs and the liability of dog owners. The statute is found in Chapter 822 of the Texas Health and Safety Code. Here is a synopsis of the law.

Subchapter A authorizes the sheriff to seize and destroy a dog that has caused a person's death, even though the deceased provoked the attack on the owner's property.

Subchapter B prohibits anyone from letting a dog run at large if the owner or keeper knows it has harassed or killed other animals. The owner may be fined \$100 for each violation.

Subchapter C authorizes a county-by-county vote for the registration and regulation of dogs. If the referendum passes, an annual registration fee of \$1 per dog is used

to defray costs and to reimburse owners of animals killed by unregistered dogs.

Subchapter D regulates owners of dogs that have made unprovoked attacks on persons outside the dog's enclosure. An owner must:

- register the dog,
- restrain the dog at all times and
- obtain at least \$100,000 of liability insurance to cover future damages caused by the dog. (This could be in the form of homeowner's insurance.)

Thereafter, if the dog makes an unprovoked attack on a person outside the secure enclosure, the owner may be charged with a class C misdemeanor. However, if the dog causes serious bodily harm, the charge may be a class A misdemeanor. Also, the court may order the dog destroyed. And finally, the court may impose a civil penalty of not more than \$10,000. Of course, the owner is liable to the person injured in the attack.

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