ANIMAL LIABILITY RISKS

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OVERVIEW

With so many people and so many animals (both domestic and wild), interaction and contact amongst us and them is inevitable. This guide is meant to be a discussion about the potential liabilities associated with owning, keeping, or coming into contact with an animal.

ISSUES

This "primer" looks at the issues not only from the perspective of the animal's owner, but also from the perspective of the land or property owner. What are the animal owner's legal responsibilities? What are the potential liabilities for an animal owner? What are the liabilities associated with animals that are on one's property?

Like most legal questions, there is not a simple answer or uniform rule. Rather, it depends on the law in your jurisdiction; on the type of animal involved; on where you are; on what the animal does; and, finally, on who you are.

The laws around the country vary in both what the law says and in the origin of the law. Some states are based on common law, i.e. based on prior case decisions, and other states have statutes. Most states use both common law and a statutory framework.

SOURCES OF LAW

Common law is, in its simplest sense, the body of law that is derived from judicial decisions as opposed to that body of law which emanates from specific statutes or constitutional provisions. The common law uses phraseology in various ways, using both negligence and strict liability terminology.

Negligence is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation. Negligence is any conduct that falls below the legal standard established for protection of others against unreasonable risk of harm. Typically, an individual is liable only for injuries resulting from his or her own negligence in the manner of keeping such animal.

Notwithstanding, an owner who has exercised *due care* is not liable where his or her animal, formerly of

peaceable disposition, suddenly and unexpectantly inflicts injury upon another.[1] The terms "individual" or "owner" can and have been interpreted to include someone who is in possession or control of, keeps, or harbors an animal – including landlords, arena owners, exhibitors, and those conducting fairs, rodeos, festivals, and event sponsors.[2]

Strict Liability[3] will impose liability upon someone if the owner knows or has reason to know that the animal has abnormally dangerous propensities regardless of the amount of care exercised by the owner. In an action against an animal's owner for such a case, an injured or damaged person has the burden of proving 1) vicious propensity and 2) the owner's knowledge (of that propensity).

Statutory law is that body of law which is comprised of statutes and ordinances. As one might imagine, the practice amongst states and even municipalities within a state vary.

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[1] South Carolina formerly shared this interpretation, referred to as the "one free bite" rule.

[2] See e.g. 68 A.L.R. 5th 599 "Liability for injury inflicted by horse, dog or other domestic animal at show;" see also, 3B C.J.S. Animals § 346, "General Considerations."

[3] Usually by statute, but there are some jurisdictions that have interpreted the "common law" as being one of strict liability – (as SC did in expanding the common law).

Typically, most versions of statutes impose some type of strict liability. Some require scienter (prior knowledge) of an animal's abnormally dangerous propensities; some impose strict liability upon the owner where the owner knew or should have known of an animal's vicious tendencies – even though the utmost care has been taken by the owner of the animal; and some condition liability without regard to the knowledge requirement but condition liability upon a failure to take proper precautions. It goes without saying that to determine what laws apply, one must check the state and local statutes and ordinances.

There has been an attempt to try and standardize the "minor discrepancies" in the statutory laws amongst the varying states. In this regard, a few states have utilized a "uniform law" called a Restatement of Law. If an animal's owner has no knowledge of the animal's dangerous propensity, then the owner is liable only if the owner causes the animal to do harm or is negligent in failing to prevent the harm.[4] On the other hand, if the owner of the animal has knowledge of the dangerous propensity, then the owner will be liable to those persons who are injured, even if

[4] Restatement of Torts, 2nd Ed. §518.

owner has exercised the utmost care to prevent harm. It should be noted that the resulting harm must be as a direct result of the animal's specific dangerous propensity. With that said, this potential for liability does not extend to trespassers.[5] Finally, the Restatement proposes that an owner or possessor of livestock or other animals, except for dogs and cats that intrude upon the land of another, is subject to strict liability for physical harm caused by the intrusion.[6]

SPECIFIC TYPES OFANIMALS

Dogs (generally)

"The rule as to dogs, in the absence of any statute to the contrary, is that where a 'reputable dog' strays upon the land of another of its own volition without the consent of the owner or keeper and not accompanied by him or her, there is no liability for the trespass; and the owner is not rendered liable by the mere fact that while wrongfully on the land of another person, it does damage in following a

[5] Restatement of Torts, 2nd Ed. §509.
[6] Restatement of Torts, 2nd Ed. §504 - restricted to common definition of livestock and excludes bees, pigeons, and the like.

natural propensity of its kind…proof of the owner's knowledge of or duty to know the particular dog's propensity to commit the evil complained of is necessary to a recovery."[7]

If, by the voluntary acts of the owner, the dog is *unlawfully in the place where the injury was inflicted*, as where a person takes his or her dog with him or her when trespassing on the premises of another, his or her liability does not depend on his or her previous knowledge that the dog was vicious.

Dogs (South Carolina)

Until the not too distant past, South Carolina followed the common law, which established the "one free bite" rule. An owner was not charged with knowing the vicious propensity of his dog until after it had bitten someone for the first time.

McQuaig v. Brown[8] was the last recognized appellate case, in SC, that adhered to the "one free bite rule."

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[7] 4 Am. Jur. 2d Animals §91.
[8] 270 S.C. 512, 242 S.E. 2d 688 (1978).

Seven years later, in *Hossenlopp v. Cannon*[9] the S.C. Supreme Court established a *quasi-strict* liability rule for dog bites.[10] Under this theory, an owner would be held strictly liable unless the victim provoked the animal, regardless of owner's knowledge or lack of knowledge of any such viciousness, and regardless of whether or not the owner had been negligent in respect to dog.

In 1986, the current statute was passed and is found in S.C. Code Ann. §47-3-110:

> Whenever a person is bitten or otherwise attacked by a dog while the person is in a public place [or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping], the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked…[when the person bitten or otherwise attacked is on the property by invitation, express or implied, of the owner of the property or of any lawful tenant or resident of the property]. If a

[9] 285 S.C. 367, 329 S.E. 2d 438 (1985).
[10] S.C. Lawyer, "Survey of South Carolina Dog Bite Law", V. Elizabeth Wright (Sept. 2014).

> person provokes a dog into attacking him then the owner of the dog is not liable."[11]

The current statute essentially codified the principle holdings of *Hossenlopp* and is still considered to be *quasi-strict liability* in that a defendant may establish a defense that either 1) the victim provoked the dog, or 2) the victim was on private property and was not invited. The statute did expand *Hossenlopp*, however, in the sense that it now applies to not only the dog's owner, but also to a person *in control of the dog*.

Nesbitt v. Lewis[12] upheld the newly created statute and acknowledged that punitive damages could be awarded for a dog owner's reckless, wanton, or willful conduct.

Harris v. Anderson County Sheriff's Office[13] held that owner of dog could be held liable even if not in control of dog at the time the dog attacked someone.[14]

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[11] S.C. Code Ann. §47-3-110.
[12] 335 S.C. 441, 517 S.E. 2d 11 (Ct. App. 1999).
[13] 381 S.C. 357, 673 S.E. 2d 423 (2009).
[14] But see S.C. Code Ann. §47-3-110 (B), which provides a number of exceptions from strict liability for a police dog in the course of its duty.

Bruce v. Durney[15] found that a landlord is not liable for injuries caused by a dog kept by a tenant on leased premises.

In *Clea v. Odom*[16] the Court expounded on the meaning of the statutory language of "…other person having the dog in his care or keeping." The Court of Appeals remanded the matter back to the trial court and, in *dicta*, espoused that liability may be imposed upon a landlord who cared for or kept the animal or knew of its dangerous propensities and failed to take remedial or protective action.

In *State v. Collins*,[17] Defendant was convicted of involuntary manslaughter when his dogs attacked, killed, and partially devoured a 10-year old neighbor. This case is inserted to demonstrate not only the potential civil liabilities, but the potential *criminal* liabilities.

Cats (generally)[18]

Despite the existence of feral cat colonies and community cat groups, cats are legally a domesticated animal and even feral cats are not considered wildlife. Under common law,

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[15] 341 S.C. 563, 534 S.E. 2d 720 (Ct. App. 2000).
[16] 394 S.C. 175, 714 S.E. 2d 542 (2011).
[17] 409 S.C. 524, 763 S.E. 2d 22 (2014); Rehrng. den. Sept. 24, 2014).
[18] 4 Am. Jur. 2d Animals §83.

a cat's owner would not be held liable for the unforeseeable actions of his or her cat. A cat's owner could only be held liable if the owner of the cat knew or had reason to know that the cat was dangerous. Thus, in order to recover under a theory of strict liability, it would be necessary to prove the cat had vicious propensities and that the owner knew of them. But note: a prior instance when a cat bit or clawed someone *while being provoked* will not support an allegation that the owner knew of the cat's vicious nature.[19]

Bees (generally)

The general rule is that a keeper of bees is liable only for injuries resulting from his or her own negligence in the manner of keeping bees.[20] However, an owner of bees who has notice of the bees' vicious character in attacking animals is liable for the damages resulting when he or she places the bees near where he or she knows animals will be present.[21]

Domestic Animals (South Carolina)

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[19] *Ray v. Young*, 154 N.C. App 492, 572 S.E. 2d 216 (2002).
[20] *Liability for injury or damage caused by bees* 86 A.L.R. 3d 829; *Ferreira v. D'Asaro,* 152 So. 2d 736 (Fla. Dist. Ct. App. 3d Dist. 1963); *Ammons v. Kellogg*, 137 Miss. 551, 102 So. 562, 39 A.L. R. 352 (1925).
[21] *Ammons, Id.*

S.C. Code Ann. §47-7-110 "Permitting Domestic Animals to Run at Large Unlawful"

Applies to the owner or manager of:

-any domestic animal

-to willfully or negligently "permit"

-animal to run at large

-beyond own land

-$25 or ≤ 25 days imprisonment

S.C. Code Ann. §47-7-130 "Liability of Owners of Trespassing Stock"

-owner of any domestic animal shall be liable for all damages sustained

-liable for the expenses of seizure and maintenance of the animal(s)

<u>Wild Animals (generally)</u>

A *possessor* of a wild animal is subject to liability to another for harm done to the other, his person, his land, or chattels, even though the possessor has exercised utmost care to confine the animal or otherwise prevent it from

doing harm.[22] Typically, one who harbors a wild animal does so at his or her peril.[23] The liability for injuries inflicted by such an animal is absolute[24]even if the owner has no prior knowledge of animal's propensity to cause harm,[25] and even if the owner has exercised the utmost care in preventing harm.[26]

Exceptions:

While some states vary, an exception to liability is generally recognized where wild animals are kept for the education and entertainment of the public.[27] Likewise, a possessor of a wild animal indigenous to the locality in which it is kept is not liable for harm done by it after it has gone out of his possession and returned to its natural state as a wild animal.[28]

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[22] Restatement Second, Torts §§507, 508, 511 to 514, 517.
[23] 4 Am. Jur. 2d Animals §62.
[24] *Collins v Otto*, 149 Colo. 489, 369 P.2d 564 (1962).
[25] *Poznanski ex. Rel. Poznanaski v. Horvath,* 788 N.E. 2d 1255 (Ind. 2003); *Tipton v. Town of Tabor,* 1997 SD 96, 567 N.W. 2d 351 (S.D. 1997).
[26] *Poznanski, Id.*
[27] *Guzzi v. New York Zoological Soc.,* 192 A. 2d 263, 182 N.Y. S. 257 (1st Dep't 1920), aff'd 233 N.Y. 511, 135 N.E. 897 (1922). See generally, 92 A.L.R.3d 832**, "**Governmental liability from operation of zoo."
[28] Restatement Second, Torts §508.

A possessor of land is not *strictly liable* to one who intentionally or negligently trespasses upon the land for harm done to him by a wild animal even though the trespasser has no reason to know that the animal is kept there.[29] The rule as to liability is the same as for other artificial conditions or for activities on the land.[30]

Where a wild animal has been domesticated to such an extent as to be classed with tame or domestic animals, liability can only be imposed upon a showing of the owner's knowledge of the animal's vicious and mischievous propensities.[31] A number of cases impose liability upon a person creating a public nuisance by allowing certain wild animals not indigenous to the locality to run at large and failing to abate the nuisance.[32]

Miscellaneous Rules (Special People)

In some cases, it depends on *who* you are when an incident involving an animal happens.

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[29] Restatement Second, Torts §511.
[30] Restatement Second, Torts §512.
[31] *Congress & Empire Spring Co. v. Edgar,* 99 U.S. 645, 25 L. Ed. 487, 1878 WL 18307 (1878); see also *Singleton v. Sherer*, 377 S.C. 185, 659 S.E. 2d 196 (Ct. App. 2008).
[32] *King v. Blue Mountain Forest Ass'n,* 100 N.H. 212, 123 A. 2d 151, 57 A.L.R. 2d 234 (1956).

Police

Law enforcement is generally protected under the principles of sovereign immunity and afforded qualified protections under the Tort Claims Act when acting in the ordinary course of duty. A police dog *can* bite a person without liability.[33] Likewise, a police horse can knock down a person without liability.[34] Even so, a police dog or horse *cannot itself violate, or be used in such a manner by law enforcement, so as to violate, a person's civil rights*.[35] Use of excessive force may constitute a constitutional deprivation.[36] This protection, however, is seemingly qualified in that a police dog can be found to be liable under negligence principles[37] when not acting in course of duty. At least one case, in one state, has found the owner of the police dog strictly liable.[38]

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[33] *Robinette v. Barnes* (1988, CA6 Tenn), 854 F2d 909, 102 ALR Fed 605.
[34] *Winfield v. Cleveland*, 2014 WL 2932780 (Ohio App. 8 D, 2014).
[35] 42 U.S.C.A. §1983.
[36] *Luce v. Hayden*, (1984, DC Me) 598 F. Supp 1101; *Ruiz v. Estelle*, 503 F. Supp 1265 (SD Texas, 1980).
[37] *Bernadine v. City of New York*, 294 N.Y. 361, 62 N.E. 2d 604 (1945) - city liable in negligence action for runaway police horse.
[38] *Harris v. Anderson County Sheriff's Office,* 381 S.C. 357, 673 S.E. 2d 423 (2009).

RECENT S.C. AMENDMENTS & CASES

Lions, and Tigers, & Bears (and Apes): 2017 SC House Bill 3531, Signed by the Governor on May 11, 2017; S.C. Code Ann. §47-5-20 (added)

It is unlawful to import, possess, keep, purchase, have custody or control of, breed, or sell:

-large wild cat

-non-native bear; or

-great ape.

The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of the animal. The law permits a local city or county to adopt a more restrictive ordinance

Exclusions – animal protection organizations, zoos, vets, Class R registrants (univ., colleges, research facilities), Class A, B or C USDA license (breeder, broker, exhibitor), travelers ≤ 72 hrs

Effective Jan. 1, 2018

• *See Mungo v. Bennett, 238 S.C. 79, 119 S.E.2d 522 (1961); Henry v. Lewis*, 327 S.C. 336, 489 S.E.2d 639 (Ct. App. 1997) (to recover damages for personal injuries, a person kicked by a horse was required to prove the horse owners knew or should have known their horse had a dangerous or vicious nature; holding dog owners liable for dog bites regardless of owner's knowledge of the dangerous propensities did not apply to horses).

Jury Charge

Liability for Injuries Caused by Domestic Animals Other than Dogs

Domestic animals, whether horses, mules, cattle, cats, or others, are not presumed to be dangerous to persons. Before the plaintiff may recover damages from the owner, the plaintiff must prove the particular animal was of a dangerous or vicious nature and that this dangerous propensity was either known or should have been known to the owner. § 7-5 Animals - Anderson's South Carolina Requests to Charge – Civil, Ralph King Anderson, Jr., 2016 Rev. & Updated 2nd Edition

CONCLUSION

An owner’s duties and liabilities regarding animals in his or her care or possession are subject to a myriad of factors and variabilities. Knowledgeable legal counsel should be consulted to determine the parameters of either before proceeding in a legal matter, either as an injured party or as the caretaker or possessor of animals.