

LIABILITY FOR YOUR DOG *(Originally Published in Dogs in Canada)*

There are various ways in which an owner can be held legally responsible for the actions of his dog. Some of these may fall under statutory law, since many provinces have some form of animal control legislation and/or occupiers liability law. In such cases, the rights and obligations of the owner by and large will be set out in the legislation. In other cases, the actions of both dog and owner will be scrutinized according to "common law", that is, judge-made law as opposed to statutory law.

Generally speaking, for the purposes of liability at common law, animals are divided into two categories. The first category encompasses animals which are considered inherently dangerous, such as bears and cougars. Lawmakers in some jurisdictions have, by statute, included certain breeds of dogs in this category as well. So far as the law is concerned, animals of this category are never regarded as safe, and if such animal causes harm, liability will attach to the owner without proof that the particular animal was vicious or mischievous. This is known as strict liability. The second category covers such animals as domestic cats, cows, horses and most breeds of dogs, all of which are normally tame, although individuals within the group may harbour a nasty or mischievous disposition. In order for an owner to be liable for the actions of a dog within this second class, it must be shown not only that the dog had a propensity to do damage or harm, but also that the owner knew of such propensity. The necessity for such knowledge on the owner's part gave rise to the old adage that every dog is entitled to one free bite – in other words, until the dog bit, how would the owner know it had the tendency to do so. As with many sayings, this one is true in a broad sense only. If an owner knows that his dog habitually rushes at a fence to bark and snarl at neighbours, then if on one occasion the dog breaks through the fence and actually bites a neighbour, it will be no defence that the dog has never bitten before. The threat, or propensity to bite was there, and the owner will be liable.

Even if an injured person cannot bring himself within the foregoing parameters, he may still have a claim against the dog's owner on the basis of negligence, again a "common law" (i.e. not statute based) claim. To succeed in an action based on negligence, the claimant must establish that the dog's owner know or ought to have known that the dog could injure someone, but he then failed to take reasonable care to prevent such injury. Therefore, in this type of claim, the actions of the owner will be looked at, in terms of steps taken to prevent a reasonably foreseeable event.

See if you agree with the results in the following cases:

- a large breed dog is running loose on a public beach (contrary to by law) and, in passing, knocks down a person walking along the water's edge. No liability since the incident was not reasonably foreseeable – the court found that it was a true "accident"
- a dog escapes from his yard by climbing onto the roof of his doghouse and leaping the fence. He runs out onto a road and a motor vehicle collision and injuries occur when the drivers are trying to avoid the loose dog. The dog's owner is liable since he should have foreseen that the dog could escape and get onto a roadway
- a male dog is allowed to roam at large and he digs under a fence and impregnates a bitch otherwise secured in her yard. The owner of the male is liable for resulting damages
- a child gets bitten in the face while petting a friend's dog, who had never shown aggression before. No liability
- an unsecured dog jumps out of the back of a truck and causes an accident. The dog's owner is liable
- a dog on a long leash gets tangled with a pedestrian and causes her to fall and sustain injury. The owner is liable
- a customer at a yard sale trips over a dog half lying under a display table. No liability was assessed on the basis that there was no breach of care in having a dog present
- a large breed dog playfully jumps up on a visitor knocking him over. No liability was found since the dog was not in the habit of jumping on people
- dog A who is known to be dog aggressive attacks dog B. The owner of dog B tries to separate them and gets bitten. Owner of dog A is liable but the owner of dog B is contributorily negligent to the extent of 50% for being foolhardy
- a dog which is known to be aggressive is chained to a doghouse where he is unable to reach either the sidewalk or the front door. A person entering the yard and crossing the lawn not on the sidewalk gets bitten. The

owner is not liable since reasonable precautions were taken to protect people entering the yard in the normal manner

- an unrestrained dog within a motor vehicle becomes a projectile as a result of an accident, and injures a passenger. The driver would be liable because it is reasonably foreseeable that an unrestrained animal could cause injury

One last note. Under Occupiers' Liability legislation in many provinces, a property owner may be held liable for the actions of others on his property. In other words, he could be responsible if someone else's dog, on the property with his consent, causes an injury which he could reasonably have foreseen.

The common theme in all of the foregoing is that any dog, large or small, naughty or nice, can get his owner into legal hot water if not properly controlled in any given situation.