

AMERICAN JURISPRUDENCE 2D IN PRINT

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Where to look for information about dog bites

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Check here for dog bites

not caused by the trespass but by destructive rains which destroyed the crop, and the crop was therefore a complete loss before the trespass.⁷⁰

2. PARTICULAR KINDS OF ANIMALS [§§ 107-117]

a. DOGS [§§ 107-112]

§ 107. Generally

Dogs are presumed to be harmless unless they show a propensity otherwise.⁷¹ Thus, apart from statute,⁷² liability for bodily injuries caused by dogs falls within the general principles governing the liability for injuries caused by animals ordinarily harmless.⁷³ Although the view has been expressed that the owner of a dog with a known propensity to attack people must have it destroyed,⁷⁴ most authorities clearly recognize a right in the owner of a vicious dog to keep it for the necessary protection of life and property,⁷⁵ provided that the owner takes proper precautions to preclude that viciousness from exhibiting itself.⁷⁶

Observation: The Restatement view is that a possessor of land or chattels is privileged to use a dog or other animal for the purpose of protecting his possession of land or chattels from intrusion, to the same extent that he is privileged to use a mechanical protective device for such purposes.⁷⁷ Even an owner or keeper of a dog is not liable for bodily injuries inflicted by it unless he knew, or at least should have known, its dangerous propensities, or unless there is some fault of such owner or keeper.⁷⁸ However, the owner or keeper of a dog of known viciousness is

70. *Harris v Roy* (La App 2d Cir) 108 So 2d 7.

71. *Burgin v Tolle* (Ind App) 500 NR2d 763.

72. § 111.

73. *Splaine v Eastern Dog Club, Inc.*, 306 Mass 391, 28 NK2d 450, 129 ALR 327; *Andrews v Jordan Marsh Co.*, 283 Mass 198, 146 NE 71, 92 ALR 730.

Annotations: Liability of owner or operator of business premises for injury to patron by dog or cat, 67 ALR4th 976.

What "harbors" or "keeps" dog under animal liability statute, 81 ALR4th 963.

Modern status of rule of absolute or strict liability for dogbite, 51 ALR4th 446.

Liability of dog owner for injuries sustained by person frightened by dog, 36 ALR4th 936.

Liability of owner of dog for dog's biting veterinarian or veterinarian's employee, 4 ALR4th 349.

Liability of owner or occupant of premises for injuries sustained by mail carrier, 21 ALR3d 1099 § 6.

Practice References: Pa bulldog attack litigation, 35 Am Jur Trak 149.

74. *Clunkentzel v Reiser*, 294 Mo. 369, 225 SW 607, 15 ALR 485.

75. *Montgomery v Kosmer*, 35 La Ann 1091; *Kittredge v Elliott*, 16 NH 72; *Kiler v Clarkson*, 27 NJ Eq 469, 78 A 676; *Carroll v Staten Island R. Co.*, 53 NY 126; *Tabbs v Shears*, 52 OMs 610, 158 P 549.

76. *Deardorff v Burger*, 414 Pa Super 45, 566 A2d 489, app den 552 Pa 685, 615 A2d 1312 (holding that there is no absolute liability of a dog owner, who is aware of his dog's vicious propensities, for injuries sustained by one bitten by the dog).

77. Restatement 2d, Torts § 516.

78. *Andrews v Jordan Marsh Co.*, 283 Mass 158, 186 NE 71, 92 ALR 720; *Hrnie v De Benedetti* (Mo App) 261 SW 950; *Hosmer v Carney*, 228 NY 73, 126 NE 650; *Hillier v Noble*, 142 Va 532, 458 A2d 1101 (wherein a judgment in favor of a bite victim was reversed because there was no showing that the owner had knowledge that dog is dangerous or that he did not exercise reasonable control); *Butler v Frieden*, 208 Va 802, 158 SE2d 121 (owner of dog unattended and unleashed in violation of ordinance breached common-law duty to child injured by dog).

§ 107

2. Particular Kinds of Animals

[§§ 107-117]

a. Dogs [§§ 107-112]

§ 107 Generally

Research References

Complaint, petition, or declaration—Personal injuries.—By dog, 1C Am Jur Pleading and Practice Forms, Animals § 73.

Answer.—Defense.—Assumption of risk.—Attempt to separate fighting dogs, 1C Am Jur Pleading and Practice Forms, Animals § 216.

Plaintiff's Negligence, Provocation, or Assumption of Risk as Defense in Dog Bite Case, 39 Am Jur Proof of Facts 3d 183.

Cases

Dog owner was entitled to economic damages in the amount of \$2500 for veterinary treatment, supplemental dietary pills, and travel which were required to restore her ten year old shih tsu to the condition it was in prior to attack by bulldog, who trespassed onto owner's property and attacked her shih tsu, despite fact that these expenses were five times greater than the \$500 cost of a new shih tsu; imposing these economic losses on bulldog's owners had salutary effect of making shih tsu's owner whole. *Hyland v. Borraa*, 316 N.J. Super. 22, 719 A.2d 662 (App. Div. 1998).

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assumption of Risk as Defense in Dog Bite Case, 39 Am Jur Proof of Facts 3d 183.

Cases

In action under strict liability dog bite statute, where plaintiff was suing dog's legal owners for damages resulting from dog bite she suffered while employed at dog kennel, summary judgment should have been granted to defendants because plaintiff failed to establish genuine issue of material fact that defendants were negligent, where brief in opposition to summary judgment offered no evidence to support assertions that dog had displayed vicious tendencies by unpredictably growling, barking and jumping at other employees of kennel, that defendants did not warn anyone of dog's tendencies or propensity to attack and bite before time of attack, and that defendants should have known of these vicious tendencies and warned of dog's propensity to attack and bite people, since, in order to impose strict liability on legal owner, statute required evidence of mischievous trait or propensity, and where plaintiff failed to allege essential element of common-law negligence in dog bite claim by failing to offer any evidence to support assertion that defendants had or should have had knowledge of any behavior by dog that would have formed basis for them to have had any concerns, or to have given any warnings, that she was of vicious or mischievous nature. Furthermore, statement by kennel