

Variations in dog bite statutes

Before the advent of state statutes imposing liability on an owner whose dog bit a person, a widely used rule was established by state courts. It was sometimes humorously referred to as the one-bite theory. Under this theory, an owner of a dog could not be held liable until it had come to his or her knowledge that the dog would bite a person. Thus it was said that the dog was entitled to one bite before the owner could be held liable. This rule was developed at a time when dogs and cats were permitted to roam more freely than they are today. One was not expected to confine his or her animal because it might bite someone. But, with the greater number and proximity of people and companion animals there came a growth in state control laws and in municipal leash laws. Attacks by companion animals came to be viewed more seriously. This led to the growth of state statutes imposing liability on the owner of a dog regardless of whether he or she had any prior knowledge that the dog would bite people. Many of these statutes apply only to dog bites and all of them provide some defenses for the dog owner, the principal ones being trespass, creation of a disturbance, and provocation.

The Illinois legislature introduced a broader and, in the writer's opinion, an unintended application of the dog bite statute when it was amended to say that the owner of a dog or other animal was liable when the dog or other animal attacked or injured a person (510 ILCS 5/16). Enterprising lawyers seized on this modification to claim damages for their clients when an animal other than a dog, such as when a horse or livestock

animal on the highway caused injury. They could allege that there was no provocation, no creation of a disturbance, and no trespass, therefore making the owners of these animals liable.

Fortunately, the Illinois Appellate Court came in with two important defenses. One of these, *Vanderlei v Heideman* (403 NE 2d 756; Illinois Appellate, 1980), was assumption of risk. In that case a horseshoer who was injured shoeing a horse attempted to recover damages under the modified dog bite statute, but the court held that a professional such as a horseshoer assumed the risk of injury. Therefore the statute did not apply.

The other defense was used by the Illinois Appellate Court in *McQueen v Erickson* (378 NE2d 614, 1978). In that case a farmer's horse had escaped and was struck by a motorist. The motorist sued for damages under the dog bite statute. The Illinois Appellate Court held that the Illinois running-at-large statute preempted the dog bite statute and that therefore there was no liability. The running-at-large statute provides that if a farmer uses reasonable means to contain his or her animals and does not know they have escaped, he or she is not liable for injury caused to others.

To the writer's knowledge, no other state has modified its dog bite statute to include other animals and to include attacks and injures in addition to bites. Nevertheless, it behooves attorneys on both sides of the issue to make a careful search of the case law and statutory interpretation that has been made in their own states when they are confronted with a case involving a person bitten by a dog or other animal.

The Minnesota Statutes Sec. 347.22 applies only to dogs that

attack or injure a person. The Minnesota Supreme Court in *Seim v Garavalia* (306 NW2d 806, 1981) held that a girl who was visiting with a friend next door was entitled to recover damages when she petted a dog tied in the backyard and was knocked down and bitten. The Supreme Court rejected a trial court finding that applied the comparative negligence doctrine and attributed half of the negligence to each party. The Supreme Court said that under the dog bite statute a strict liability test should apply and hence contributory negligence, which would be considered under the comparative negligence rule, did not apply.

The Montana Supreme Court in *Stroop v Day* (896 P2d 439, 1995) reached a conclusion similar to that in the Minnesota case where the plaintiff, while talking to a neighbor at a boundary fence, let his hand fall over the fence on the neighbor's side and the neighbor's dog came up and bit the plaintiff's hand. The trial court found this amounted to provocation, but the Supreme Court of Montana reversed the decision, saying that it was insufficient evidence to show that this was provocation under the dog bite statute. The Montana statute, like that of Minnesota, applies only to dogs and applies to bites by dogs. There was no reference to attacking or injuring. The Montana statute also makes clear that the statute applies although the injured person is on the property of the dog owner. In this connection, mail carriers are mentioned (Montana Code, Section 27-1-715).

Courts have not uniformly held that the comparative negligence doctrine does not apply to dog bite statutes. In *S H v Bistryski* (923 P2d 1376, 1996) the Supreme Court of Utah held that the comparative negligence doctrine does

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apply to the dog bite statute when it held that a 3-year-old child who wandered onto the neighbor's property and was bitten by a dog chained to a car in the driveway was at fault. The court affirmed a finding of 88% negligence on the part of the child and 12% negligence on the part of the defendant. The Utah

statute, like the others discussed thus far, applies only to dogs.

This article illustrates that even though dog bite statutes may be worded similarly in differing jurisdictions, courts may not take a uniform view of the principles that apply, the comparative negligence doctrine, for example, or of how

the circumstances in a particular case may apply to the language in the statutes. As with most issues where state law applies, both the statutory and case law in that state must be examined to form an accurate picture of the rights of both the dog or animal owner and the injured person.

