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## E-Newsletter

### PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

### Animal Bites

An owner of a pet may be liable for injuries that are caused when the animal bites another. This area of law commonly concerns dog bites, but in actuality many other types of domesticated animals, such as ferrets and cats, can bite humans, causing injury and potential liability for their masters. This liability will vary greatly from jurisdiction to jurisdiction. Many states have "dog bite" statutes, and many municipalities have their own particular statutes, as well.

At common law, a plaintiff could bring a claim for scienter against the owner of an animal that had bitten them. To succeed on a scienter claim, the plaintiff was required to prove that the animal which caused the injury was owned and kept by the defendant and that the defendant knew, or should have known, that the animal was dangerous, mischievous, vicious, or prone to these behaviors.

The plaintiff, in addition to bringing a claim for scienter at common law, could also assert a negligence claim and, in some cases, a claim for absolute liability under the appropriate statute. Today, in many states, the plaintiff may recover without making a showing of the owner's knowledge of the viciousness of the animal under common law scienter, or of the animal's dangerous propensities.

Owners of domesticated animals must be on their guard. If an animal exhibits vicious or uncontrolled behavior, it may be advisable to take steps to ensure the animal is secured from access to the public. For example, if an individual owns a pit bull terrier dog with a propensity to attack and bite without provocation or just reason, that owner may be wise to keep the animal indoors and, while outside, within a contained yard with a fence the animal cannot scale.



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In some states, animal bite statutes impose liability on an owner when an animal "attacks or injures" another. Statutes of this type do not require actual physical contact on the part of the animal. Therefore, it is not always necessary for the animal to truly bite. For example, a pedestrian who is walking past a yard and who becomes frightened by a Great Dane dog snapping and barking at her, and who in an attempt to get away trips and falls, breaking her ankle, may be able to sue the dog's owner successfully if she can show that the actions of the dog led to the injury.

A plaintiff may be denied recovery for injuries sustained as a result of an animal bite if the plaintiff is found to have provoked the animal. For example, where an owner informs the plaintiff that his pet ferret is not friendly and that it should not be petted, but the plaintiff does not heed this warning and is thereafter bitten, liability may be avoided. However, if the owner merely stated that the ferret was not always friendly, but encouraged the plaintiff to try to pet it, liability for the injury will likely still be found.

A plaintiff's recovery may also be barred in trespasser situations. In many states, the plaintiff must establish as part of the case that he or she had a legal right to be in the place where the injury occurred. A defense may then be asserted that the plaintiff was not lawfully in the area but was instead a trespasser. If it is found that the plaintiff was in fact a trespasser at the time of the injury, liability will be avoidable on that ground.

Neither provocation nor trespasser theories are applied when children are the plaintiffs. Animal owners owe a greater duty of care towards children than they do to adults, and the child's own actions in trespassing on the owner's property or even provoking the animal generally do not erase the owner's liability.

Those who harbor animals that are generally considered to be wild in that geographic area, such as lions, bears, and monkeys are strictly liable for the harm that they cause if they escape, regardless of whether the particular animal is known to be dangerous. Such animals are considered to be wild and are presumed to have a natural tendency to revert to their wild mannerisms no matter how well trained or allegedly domesticated. Strict liability may not apply if the animal injures someone while it is confined or restrained upon its owner's property, but this is a factually dependent



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argument that will not apply in every case. If strict liability does apply, the plaintiff will only need to prove his injuries and that the animal in question is considered wild in that jurisdiction; proof that the owner was negligent in some manner is not required. Of course, the defenses of provocation and trespass may still apply.

In most cases, there is no criminal penalty for the usual animal bite case. However, some states do have special rules regarding dogs (or potentially other types of animals, as well) that have been adjudicated as "vicious." In those situations, the owner of the dog may be prohibited from owning, controlling, or harboring any dog for a period of time. A violation of that prohibition is often a misdemeanor. Some states have also enacted or are considering legislation that would make it a criminal act to train dogs to attack, bite, or fight under certain limited circumstances. For example, California has a statute that allows for a specific cause of action against any person who trains a dog to fight, attack or kill with some exceptions for police or military dogs, or dogs that attack trespassers. Additional legislation has been passed in many states and communities that ban ownership on particular breeds of dogs or require that owners take special measures if they choose to own certain breeds of dogs.

Checklist: Information and Documents to Collect for Your Lawyer

To read and printout the Checklist please click below.

[Information and Documents to Collect for Your Lawyer](#)

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