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ANIMALS

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Introduction

This chapter contains instructions for cases involving the special common law and statutory liability rules governing physical harm to persons or property caused by animals.

"Wild" or Inherently Dangerous Nondomestic Animals: Common Law Strict Liability

The owner or keeper of an animal which is not commonly domesticated is subject to common law strict liability for injuries caused by that animal. *Restatement (Second) of Torts* §507 (1977). The injury must be caused by a dangerous propensity which is characteristic of such an animal, or of which the possessor has reason to know. *Id*. §507(2).

Although liability is strict, certain defenses are available--for example, the fact that the plaintiff trespassed into the animal's presence (*id*. §511) or assumed the risk (*id*. §515), or when the possessor was required by law to keep or transport the animal (*id*. §517).

In Illinois, it is now unlawful to possess a "dangerous animal," defined as a "lion, tiger, leopard, ocelot, jaguar, cheetah, margay, mountain lion, lynx, bobcat, jaguarundi, bear, hyena, wolf or coyote, or any poisonous or life-threatening reptile," and the fact that an attempt was made to domesticate the animal is no defense. 720 ILCS 585/0.1-585/4 (1994). *See People v. Fabing*, 143 Ill.2d 48, 570 N.E.2d 329, 155 Ill. Dec. 816 (1991).

Domestic Animals: Common Law Strict Liability

Illinois follows the general common law rule that the owner or keeper of a domestic animal (most often dogs, cats, and horses or other livestock) is strictly liable for injuries caused by the animal only if the plaintiff can show that the animal had an uncommon "mischievous" or dangerous propensity to commit such an injury and that the owner had actual knowledge of that propensity. *Domm v. Hollenbeck*, 259 Ill. 382, 385, 102 N.E. 782, 783 (1913); *Forsyth v. Dugger*, 169 Ill. App.3d 362, 523 N.E.2d 704, 707, 119 Ill. Dec. 948, 951 (4th Dist.1988). *Accord*: *Restatement (Second) of Torts* §509 (1977).

Domestic Animals: Statutory Liability

By statute, Illinois has broadened the liability of owners and keepers of animals. Section 16 of the Illinois Animal Control Act (510 ILCS 5/16 (1994)) provides:

> If a dog or other animal,[1] without provocation, attacks or injures any person who is peaceably conducting himself in any place where he may lawfully be, the owner of such dog or other animal is liable in damages to such person for the full amount of the injury sustained.

"Owner" is defined as "any person[2] having a right of property in a dog or other animal, or who keeps or harbors a dog or other animal, or who has it in his care, or acts as its custodian, or who knowingly permits a dog or other domestic animal to remain on or about any premise occupied by him." 510 ILCS 5/2.16 (1994).

The statute thus eliminates the requirement that the "owner" have prior knowledge of the vicious or dangerous propensity of his animal. *Steinberg v. Petta*, 114 Ill.2d 496, 501 N.E.2d 1263, 103 Ill. Dec. 725 (1986). Under section 16, there are only four elements which the plaintiff must prove: (1) injury caused by an animal "owned" by the defendant; (2) lack of provocation; (3) peaceable conduct of the person injured; and (4) the presence of the injured person in a place where he has a right to be. *Robinson v. Meadows*, 203 Ill. App.3d 706, 710, 561 N.E.2d 111, 113; 148 Ill. Dec. 805, 807 (5th Dist.1990).

Common law strict liability and section 16 of the Animal Control Act are concurrent remedies; a plaintiff may seek recovery under either or both. *Steichman v. Hurst*, 2 Ill. App.3d 415, 275 N.E.2d 679 (1971); *Reeves v. Eckles*, 77 Ill. App.2d 408, 222 N.E.2d 530 (1966). While there may be situations in which the plaintiff will need to rely on the common law remedy, in most cases the statutory action will be preferred.

Provocation

Under both common law strict liability and section 16 of the Animal Control Act, plaintiff's provocation of the animal will defeat liability. (At common law, provocation is a defense; under section 16, plaintiff must prove his lack of provocation.) *See* Comment to IPI 110.04, *infra*.

Statutory Liability: Domestic Animals Running At Large

Another cause of action is created by the Domestic Animals Running At Large Act (DARAL) (510 ILCS 55/1-55/5.1 (1994)):

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[1] The statute, which originally applied only to dogs, was amended in 1973 to add the phrase "or other animal." A different section of the Act defines the term "animal" as "any animal, other than man, which may be affected by rabies." 510 ILCS 5/2.02 (1994). However, no court so far has decided whether the term "animal" in section 16 is limited by this definition or whether it is all- inclusive.

[2] "Person" is defined to include any "person, firm, corporation, partnership, society, association or other legal entity, any public or private institution, the State of Illinois, municipal corporation or political subdivision of the State, or any other business unit." 510 ILCS 5/2.17 (1994).

> No person or owner of livestock[3] shall allow livestock to run at large in the State of Illinois. All owners of livestock shall provide the necessary restraints to prevent such livestock from so running at large and shall be liable in civil action for all damages occasioned by such animals running at large; Provided, that no owner or keeper of such animals shall be liable for damages in any civil suit for injury to the person or property of another caused by the running at large thereof, without the knowledge of such owner or keeper, when such owner or keeper can establish that he used reasonable care in restraining such animals from so running at large.

510 ILCS 55/1 (1994). This statute applies only when grazing livestock escape from confinement. *Moore v. Roberts*, 193 Ill. App.3d 541, 549 N.E.2d 1277, 140 Ill. Dec. 405 (4th Dist.1990). Plaintiff must prove that (1) the owner had knowledge of the animal's escape, and (2) the owner was negligent in constructing or maintaining the enclosure. *O'Gara v. Kane*, 38 Ill. App.3d 641, 348 N.E.2d 503 (5th Dist.1976); *Guay v. Neel*, 340 Ill. App. 111, 91 N.E.2d.151 (1st Dist.1950); *but see*, Corona v. Malm, 315 Ill. App. 3d 692, 697, 735 N.E.2d 138, 142 (2d Dist. 2000) (holding "plaintiff need plead and prove only that he or she was injured by an animal running at large that was owned or kept by the defendant. The defendant must then affirmatively plead and prove (1) that he or she exercised due care in restraining the livestock, and (2) that he or she lacked knowledge that it had escaped.").

A typical case under this statute involves a horse or bovine that wanders onto a highway and is struck by the plaintiff's vehicle.

This statute is construed as an exception to section 16 of the Animal Control Act. If the DARAL applies, it is the exclusive remedy. *Abadie v. Royer*, 215 Ill. App.3d 444, 574 N.E.2d 1306, 158 Ill. Dec. 913 (2d Dist.1991) (*rev'd on other grounds, Corona v. Malm*, 315 Ill. App. 3d 692, 735 N.E.2d 138 (2d Dist. 2000); *Zears v. Davison*, 154 Ill. App.3d 408, 506 N.E.2d 1041,107 Ill. Dec. 150 (3d Dist.1987); *McQueen v. Erickson*, 61 Ill. App.3d 859, 378 N.E.2d 614, 19 Ill. Dec. 113 (2d Dist.1978).

Strict Liability: Animals Entering Fenced Enclosure

A provision of the Fences Act (765 ILCS 130/1-130/21 (1994)) makes the owner of certain animals ("horse, mule, ass, or any neat cattle, hogs or sheep, or other domestic animals") strictly liable for all damages caused when the animals break into plaintiff's "inclosure, the fence being good and sufficient." 765 ILCS 130/20 (1994).

Common Law Negligence Liability

Although it has been suggested that the foregoing remedies replace common law negligence liability for injuries caused by a domestic animal (*Forsyth v. Dugger*, 169 Ill. App.3d 362, 523 N.E.2d 704, 707, 119 Ill. Dec. 948, 951 (4th Dist.1988), *citing Beckert v. Risberg*, 50 Ill. App.2d 100, 199 N.E.2d 811 (1st Dist.1964), *rev'd on other grounds*, 33 Ill.2d 44, 210 N.E.2d

[3] "Livestock" is defined as "bison, cattle, swine, sheep, goats, equidae, or geese." 510 ILCS 55/1.1 (1994). This provision has been interpreted literally; thus, turkeys *(McPherson v. James*, 69 Ill. App. 337 (3d Dist.1897)) and ducks (*Hamilton v. Green*, 44 Ill. App.3d 987, 358 N.E.2d 1250, 3 Ill. Dec. 565 (2d Dist.1976)) are not included.

207 (1965)), such an assertion is probably too broad. *Forsyth* and *Beckert* merely hold that a common-law negligence action requires an allegation that the owner had knowledge of the animal's vicious propensity. *Accord Abadie v. Royer*, 215 Ill. App.3d 444, 574 N.E.2d 1306, 158 Ill. Dec. 913 (2d Dist.1991) (*rev'd on other grounds, Corona v. Malm*, 315 Ill. App. 3d 692, 735 N.E.2d 138 (2d Dist. 2000); *see Domm v. Hollenbeck*, 259 Ill. 382, 385, 102 N.E. 782, 783 (1913). Given the presumption that domestic animals are inherently harmless to humans, this allegation will be essential to any negligence claim arising out of an animal's attack. *Lucas v. Kriska*, 168 Ill. App.3d 317, 522 N.E.2d 736, 119 Ill. Dec. 74 (1st Dist.1988). Therefore, with the addition of this limitation, one should be able to assert a negligence cause of action in addition to, or in lieu of, common law or statutory strict liability claims for violence by domestic animals. *Id.*

In addition, there is no apparent reason why a negligence claim could not be made with respect to other types of injuries that happen to involve animals. *See Ward v. Ondrejka*, 5 Ill. App.3d 1068, 284 N.E.2d 470 (1st Dist.1972) (plaintiffs injured when auto struck steer on highway; common law liability assumed, but no negligence proved); *Abadie v. Royer*, 215 Ill. App.3d 444, 574 N.E.2d 1306, 158 Ill. Dec. 913 (2d Dist.1991) (auto struck horse on highway; plaintiff failed to show dangerous disposition of which defendant was aware); *Hamilton v. Green*, 44 Ill. App.3d 987, 990. 358 N.E.2d 1250, 1252, 3 Ill. Dec. 565, 567 (2d Dist.1976) (plaintiff injured chasing stray ducks; no liability).

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