A Dog Owner's Legal Defenses

A dog owner isn't always legally responsible for injuries caused by the dog.

When someone is injured by a dog, the dog's owner may not be legally responsible if the injured person:

- provoked the injury from the dog
- knowingly took the risk of being injured by the dog
- was trespassing
- was breaking the law, or
- was unreasonably careless, and that carelessness contributed to the injury.

Not all these defenses can be used in all states. Sometimes, the defenses that can be used depend on what the dog owner is being sued for. For example, some defenses may be available if the dog owner's liability is based on the one-bite rule (/legal-encyclopedia/the-one-bite-rule-dogs.html), but not under a dog-bite statute (/legal-encyclopedia/dog-bite-statutes.html).

Was the Dog Provoked?

A dog owner may be able to successfully defend a lawsuit by showing that the injured person provoked the dog.

Some clearly provocative acts—for example, hitting or teasing a dog—will get a dog owner off the hook. (See Von Behren v. Bradley, 266 Ill. App. 3d 446 (1994), petition for leave to appeal denied (1995).) A person may unintentionally provoke a dog, too. If, for example, you accidentally step on a dog's tail, that's provocation. (*Brans v. Extrom*, 266 Mich. App. 216 (2005).) Or if a toddler tries to hug a strange dog, and the dog turns and bites, the dog's owner will probably not be liable for the injury, regardless of the dog's prior behavior. (See, for example, *Reed v. Bowen*, 503 So.2d 1265 (Fla. App. 1986); *Toney v. Bouthillier*, 631 P.2d 557 (Ariz. App. 1981).)

A general word of warning: Unique circumstances may always affect the legal outcome. If, for example, a dog were known to have a hair trigger around children, the legal result could be different.

There are many ways a person, especially one unfamiliar with dogs, can unknowingly provoke a dog. Petting a dog when it's eating, going near its special territory, or intervening in a dog fight can provoke a hostile response. And dogs in strange surroundings are often nervous and may bite out of fear if approached.

In two states (Massachusetts and Connecticut), if the injured person is a child younger than seven, the law presumes the child didn't provoke the dog. In those states, an owner who wants to assert provocation as a defense bears the burden of proving it.

Did the Injured Person Know the Risk of Injury?

A dog owner may also avoid liability by proving that the injured person knew there was a risk of injury from the dog, but voluntarily took that risk. The theory is that someone who knowingly took the risk and was injured can't later hold the dog's owner responsible for such foolhardiness.

For example, a jury decided that a house guest, severely bitten by a 95-pound Akita, had put himself at risk. The man, who had taken care of the dog several times over the years, had gone into a room where the dog was closed off from the rest of the house. He sued the dog's owner for negligence (in Tennessee, which had no dog-bite statute at the time), but the jury decided that the owner hadn't done anything wrong and rejected the $375,000 claim. ("Retired doctor not at fault for dog's attack, jury says," *Memphis Commercial Appeal*, Dec. 7, 1990.)

The same goes for warning signs. Someone who ignores a prominent "Beware of Dog" sign is probably not going to be able to blame the dog's owner for any injuries. For example, a Maryland delivery man ignored a "Guard Dog on Duty" sign at a warehouse and was bitten by a German shepherd that most definitely was on duty. He sued but lost. A court concluded that he knowingly risked injury. (*Benton v. Aquarium, Inc.*, 489 A.2d 549 (Md. App. 1985).)

People who make a living working with dogs—as groomers, pet sitters, veterinarians, or kennel operators, for example—are generally presumed to voluntarily take the risk of a dog bite. (See "If a Dog Injures a Veterinarian (/legal-encyclopedia/free-books/dog-book/chapter5-4.html).")

For example, the owners of a dog that bit a Georgia kennel attendant were not held liable. The court ruled that the attendant knew the risk—the owners had told the kennel that the dog might bite, and a sign on the dog's cage said "will bite." (*Lundy v. Stuhr*, 363 S.E.2d 343 (Ga. App. 1987). Another reason that professionals cannot sue owners is that they accept responsibility for controlling a dog. A Minnesota court ruled that a groomer had control over a dog and so was a "keeper" under the state's dog-bite law—and unable to collect for damages. (*Carlson v. Friday*, 694 N.W.2d 828 (Minn. App. 2005).)

Similarly, someone who has agreed to look after a dog may not be able to sue if injured by the dog. For example, a Connecticut man who took care of a friend's dog for a week sued after the dog bit him. The court ruled that the man

had assumed responsibility for the dog and could not sue the owner. The dog-bite statute, the court said, was intended to protect people who are *not* in a position to control a dog. (*Murphy v. Buonato*, 696 A.2d 320 (Conn. 1997).)

This rule applies only if the worker has taken control over the dog and can presumably take measures to reduce the risk of injury. In one case, for example, a dog bit a groomer before the groomer had decided whether or not to accept custody of the dog (which was growling at her). The court ruled that she had not taken the risk of injury. (*Prays v. Perryman*, 213 Cal. App. 3d 1133 (1989).)

In some states with dog-bite statutes, this defense can't be used. (For example, see *Pulley v. Malek*, 495 N.E.2d 402 (Ohio 1986).) In other words, the owner is liable even if the injured person knowingly risked the injury. For example, in an Iowa case, the owners of a dog that bit a groomer were not allowed to argue that the groomer had taken on the risk of injury. The Iowa Supreme Court ruled that under the dog-bite statute, the only defense available to a dog owner is that the injured person was "doing an unlawful act" when injured. (*Collins v. Kenealy*, 492 N.W.2d 679 (Iowa 1992).)

Similarly, an Oklahoma appeals court ruled that the owners of a dog could be liable, under the state's dog-bite law, for the injury the dog caused to an animal clinic employee who was bitten by the dog while walking it. In its discussion, the court did not mention the injured person's assumption of the risk; a dissenting judge opined that this defense should have applied. (*Hass v. Money*, 849 P.2d 1106 (Okla. Civ. App. 1993).)

Some other states (California and Illinois, for example) do allow this defense in lawsuits based on the state's dog-bite statute. Some state courts have yet to consider the question. (*Nelson v. Hall*, 211 Cal. Rptr. 668 (Cal. App.1985); *Vanderlei v. Heideman*, 403 N.E.2d 756 (Ill. App 1980).

Was the Injured Person Trespassing?

In most states, dog owners aren't liable to trespassers who are injured by a dog. But the rules are convoluted and vary significantly from state to state.

In general, a trespasser is someone who wasn't invited on the property. Unless you warn people off your property with signs or locked gates, you are considered to have given an "implied invitation" to members of the public to approach your door on common errands—for example, to try to sell you something or ask directions.

need to have signs to reduce risks.

Without at least some such implied invitation, someone who ventures onto private property is a trespasser. In a Nebraska case, a child visiting relatives stuck her hand through a fence to pet the neighbor's dog; she was found to be a trespasser. (*Kenney v. Barna*, 341 N.W.2d 901 (Neb. 1983).) Similarly, a court ruled that a ten-year-old who climbed over a fence to retrieve a ball and was bitten by a dog was a trespasser, and could not sue the dog's owners for his injury. (*Alvin v. Simpson*, 491 N.W.2d 604 (Mich. App. 1992).)

A general rule is that a dog owner who could reasonably expect someone to be on the property is probably going to be liable for any injury that person suffers. This rule is particularly important when it comes to children. Even a dog owner who does not explicitly invite a neighborhood child onto the property will probably be held liable if it's reasonable to know the child is likely to wander in—and dogs are a big attraction to children. In other words, there is a legal responsibility either to prevent the child from coming on the property or to keep the dog from injuring the child.

Specific legal rules that determine whether or not a dog owner is liable to an injured trespasser vary from state to state. Here are the basics.

Dog-bite statutes. Most dog-bite statutes do not allow trespassers to sue for an injury. The owner is liable only if the person injured by a dog was in a public place or "lawfully in a private place." That means that the injured person must have a good reason for being where he was. Mail carriers, for example, are always covered. Police officers performing their official duties are not considered trespassers, either. [41] Neither is anyone else who has an invitation, express or implied, to be on the dog owner's property.

EXAMPLE: A woman going door to door to take a survey was let into a house, where she was knocked down and bitten by a dog. The front yard of the house wasn't fenced, although a cartoon-like "Trespassers Will Be Eaten" sign was displayed in the window. An Arizona appeals court ruled that the survey-taker entered the property with the implied consent of the residents, so she could sue under Arizona's dog-bite statute, which applies only if the person injured is "lawfully" in a private place. (*Jones v. Manhart*, 585 P.2d 1250 (Ariz. 1978).)

Common law rule. If the state follows the common law rule—which imposes liability on a dog owner who knew a dog was dangerous—technically, the fact that the injured person was trespassing doesn't matter. So if the common law rule were applied strictly, if you know your dog is dangerous, and it bites a burglar who breaks into your house, you're liable. In practice, however, courts and juries are reluctant to hold a dog owner liable to a trespasser. Some courts have modified the rule to say that a dog owner, even one who knows a dog is dangerous, isn't liable if the dog hurts a trespasser. Some say that the common law rule doesn't apply to trespassers if the dog is a guard dog. (*Mech v. Hearst Corp.*, 64 Md. App. 422 (1985).)

Negligence. The states don't agree on whether or not an injured trespasser who sues a dog owner for negligence (unreasonable carelessness) can win.

In some states, an injured trespasser can sue and win if the dog owner acted unreasonably under the circumstances. Other states still use an old legal rule that landowners are liable to injured trespassers only if the landowner, after knowing the trespasser was on the land, intentionally harmed the trespasser or failed to warn of the danger. There is an important exception to this rule: generally, a landowner has a duty to protect trespassing children, who don't have the judgment to avoid dangerous situations. (*DeRobertis v. Randazzo*, 94 N.J. 144 (1983).)

Reminder. Injured people can and do sue on more than one legal theory. So someone might raise two claims in a lawsuit, one under a state's dog-bite statute and one based on the common law theory.

Was the Injured Person Breaking the Law?

Some dog-bite statutes apply only if the victim can prove he wasn't at fault. The victim may have to show he was "peaceably conducting himself," for example. Iowa's law applies only if the injured person can show he or she wasn't doing something illegal that contributed to the injury. The dog owner doesn't have to prove that the injured person *was* doing something illegal.

Was the Injured Person Careless?

In most states, a victim whose own carelessness contributed to the injury is entitled to less money from the dog owner. The amount is reduced in proportion to the victim's fault. So a victim who is 20% at fault receives 20% less than if the dog owner were completely responsible for the injury. This doctrine is called "comparative fault."

EXAMPLE: When Phyllis visits her new neighbors, she sees a "Beware of Dog" sign on the fence around their front yard, but opens the gate and goes in anyway. Their dog rushes out and bites her ankle, leading to $300 in medical bills. When Phyllis sues the dog's owners in small claims court, the judge gives her only $150, ruling that Phyllis, by ignoring the sign, was half at fault for the injury. The owners were half at fault, too, because they kept an aggressive dog in an unlocked yard where visitors might be expected to enter.

Exceptions to the rule. In a few states, a victim who contributed to the injury even the least bit may recover nothing from the dog owner. (Learn about "contributory negligence (/legal-encyclopedia/free-books/injured-books/chapter9-4.html)")

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