

Prosecuting and Defending Dog Bite Claims

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THE BUTTON LAW FIRM

Typical Process



Intake

Background facts
Evidence gathering



Claim

Process
Cause of Action
Defenses



Conclusion

Settle
Lawsuit

Intake

A hand holding a silver pen is writing on a document. In the background, there are a pair of red-rimmed glasses and a white cup. The scene is dimly lit, with a dark overlay on the right side. A solid cyan vertical bar is on the left edge.

Intake

- Background Facts – what happened?
 - Client's contact information
 - Date of Incident/Loss
 - CPRC 16.003(a) Two-Year Limitations Period – must bring suit for personal injury not later than two years after the cause of action accrues
 - Circumstances surrounding incident – *details matter!*
 - Dog owner information
 - Address
 - Home Owner's/Renter's Insurance
 - Incident Location – home, dog park, apartment complex, business
 - Animal Control/Police contacted?
 - Medical Attention Required?

Intake

INJURY FROM:

- Biting
 - Aggressive, Defensive, Warning?
 - American Veterinary Medical Association – 4.7 million people bitten each year
 - Estimated 800,000 require medical attention
 - Almost half of dog bites are provoked
 - Texas Health & Human Services*
- Jumping
 - Scratches
 - Fall/Knocked Down
- *<https://www.dshs.texas.gov/animal-safety-zoonosis/animal-bites/overview-dog-bites>

Canine Bite Levels

Designed by Dr. Sophia Yin, Illustrated by Lili Chin*

Level 1 (Pre-Bite)

Snapping (air bite, no contact)



Get help before it progresses to an actual bite. Do not punish these warning signs or the dog may progress to biting without warning. Instead, learn the signs of fear and anxiety that the dog may show prior to this situation and the common human actions that might contribute.

Level 2 (Near-Bite)

Tooth contact on skin but no puncture



This near-bite is concerning even though it is inhibited and has not yet broken skin. Ask yourself what earlier signs (i.e. of fear/anxiety) you missed.

Level 3

3A. Skin punctures, single bite (all punctures shallower than the length of the canine tooth)



Even though the bite may not be severe it is still reportable. Reporting is mandatory if the victim is treated in a hospital. Once your dog has actually bitten at this level (or higher) he will always be considered a liability, even if, with behavior modification he is 99.9% improved.

3B. Skin punctures, multiple bites (all punctures shallower than the length of the canine tooth)



Multiple bites generally mean the dog is in a higher arousal state. The dog is reacting without thinking in between bites.

Level 4 (Very Serious)

Single bite with punctures deeper than the length of the canine (the dog bit and clamped down) or with slashes in both directions from the puncture (the dog bit and shook his head)



This is a harder bite than a level 3 bite. It's no longer inhibited. Therefore, it represents a much higher liability. This level bite can kill a child.

Level 5 (Very Serious)

Multiple-bite attack with deep punctures, or multiple attack incident



Dogs that bite at this level have generally had practice biting at levels 3 and 4 already. Some dogs are so fearful that a scary event triggers such a high arousal state that they get stuck in a reactive mode and continue to bite.

Level 6 (Death)

Victim killed or flesh consumed



It's important to realize that even little dogs and puppies can kill infants and small children and that death may be due to overly aroused play, rather than viciousness or fear. It's best to seek qualified help before the dog even reaches a level 2 bite.

*These levels are based on the levels developed by Dr. Ian Dunbar

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Dr. Sophia Yin, DVM, MS
The Art and Science of Animal Behavior

For additional free dog bite prevention resources and more dog behavior books and products, visit www.dr.sophiayin.com



Intake

Evidence Gathering – What's important?

- Photos-Videos
 - Incident
 - Injuries
 - Location
 - Bite dog

Animal Control Report – Police Report

- Open Records Request to Responding Agency
 - EX: <https://publichealth.harriscountytexas.gov/About/Contact-Us>

Witness Statements

Medical Discharge Documents



Claim

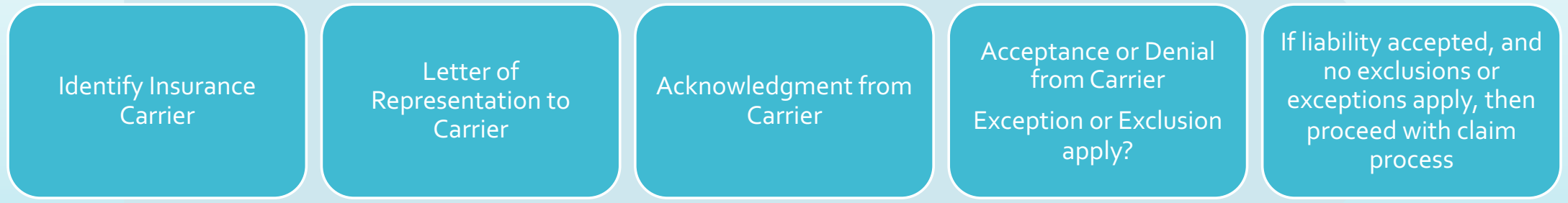
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ผู้จ่ายของ

ผู้ตรวจสอบ



Claim: Typical Process

Claim

Identify the Dog Owner's Homeowner's/Renter's Insurance Carrier

- Provided by Dog Owner
- Private Research Company
 - ML Research Group
 - 4 Pillars
 - Ideal Settlement & Recovery
- Lawsuit

Claim denied or accepted by Insurance Carrier?

- What is the basis for denial?

Is there an exception or exclusion for animal bites/injuries?

Claim

Cause of Action

- Negligent Handling – Most Common
- Dangerous Domesticated Animal - Strict liability?
- Negligence Per Se – 'Leash Law' violation?

Defenses

Claim


Cause of Action: Negligent Handling of an Animal

To recover on a claim of negligent handling of an animal,
Plaintiff must prove:

1. Defendant **owned** or possessed the dog,
2. The defendant owed a **duty** to exercise reasonable care to prevent the dog from injuring others,
3. The defendant **breached** that duty, and
4. The defendant's breach **proximately caused** Plaintiff's injuries.



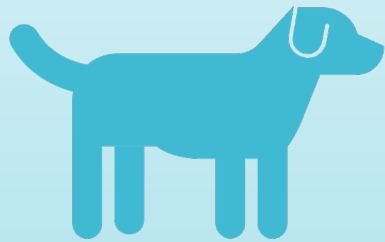
Cause of Action:
Negligent Handling
of an Animal



Cause of Action: Negligent Handling of an Animal

1. Defendant ***owned*** or possessed the dog,
 - Owner: any person that harbors, shelters, keeps, controls, manages, possesses or has part interest in any dog or cat. It is a **rebuttable presumption** that the occupant of any premises on which a dog or cat remains for a period of **seven (7) days** or to which is customarily returns daily for a period of seven (7) days is harboring, sheltering or keeping the aforementioned dog or cat, within this definition
 - See [Harris County Animal Regulations](#)

Cause of Action: Negligent Handling of an Animal



RS 2nd Torts 518:

- One who possesses or harbors a domestic animal, which he does not have reason to know to be abnormally dangerous, but which is likely to do harm unless controlled, is subject to liability for harm done by such animal if, but only if, (a) he intentionally causes the animal to do the harm, **or (b) he is negligent in failing to prevent the harm**
 - The owner is required to know its normal habits and tendencies, he is therefore required to realize that **even ordinarily gentle animals are likely to be dangerous under particular circumstances** and to **exercise reasonable care** to prevent foreseeable harm

Cause of Action: Negligent Handling of an Animal

2. The dog owner owed a ***duty*** to exercise reasonable care to prevent the dog from injuring others.

- As in any negligence case, the ***threshold inquiry*** in a negligent handling case is whether there is a duty. *Muela v. Gomez*, 343 S.W.3d 491, 497, (Tex.App. – El Paso 2011, no pet.)
- Did the dog owners owe the victim a duty to exercise reasonable care to prevent the injury?
- Whether a duty exists depends on some degree of proof that the risk of injury from a dog bite is ***foreseeable*** – the dog owner’s actual or constructive knowledge of the danger presented by his dog. *Labaj*

Cause of Action: Negligent Handling of an Animal

Foreseeability – the dog owner’s actual or constructive knowledge of the danger presented by his dog

- *Gill v. Rosas*, 821 S.W.2d 689, 691 (Tex.App. – El Paso 1991, no pet.)
- *Dunnings v. Castro*, 881 S.W.2d 559 (Tex.App – Houston [1st Dist.], 1994, pet. Denied)

A plaintiff satisfies his burden of proof by establishing that the owner had actual or constructive notice of facts that would put an ordinary person *on notice* that the animal could cause harm and the owner was negligent in preventing such harm

Whether the owner had actual or constructive notice is a question of fact for the jury

- *Labaj v. Vanhouten*, 322 S.W.3d 414 (Tex.App.-Amarillo 2010, no pet.)

Cause of Action: Negligent Handling of an Animal

Proximate cause consists of two elements:

1. Cause in fact: Cause in fact means that the negligent act or omission was a substantial factor in bringing about the injury and without which no harm would have been incurred.
2. Foreseeability: Foreseeability requires that **a person of ordinary intelligence would have anticipated the danger** created by a negligent act or omission, although it is not required that such a person would anticipate the precise manner in which injury will occur one, he as a dangerous situation through his negligence. Foreseeability requires more than someone, viewing the facts in retrospect, theorizing an extraordinary sequence of events whereby the defendant's conduct brings about the injury. Foreseeability cannot be established by mere conjecture, guess, or speculation. Instead, **the question of foreseeability involves a practical inquiry based on common experience applied to human conduct.**

Castrejon v. Horton, (Tex.App.-Houston [14th Dist.] 2017, no pet.)

Cause of Action: Negligent Handling of an Animal

Was the incident leading to the injury foreseeable?

- When in litigation – where do you look for dog owner foreseeability?

Vet Records

- Dog owner prior comments regarding animal to vet?
- Vet treatment inconsistent?

Witness Statements

- Neighbors
- Pet sitters, groomers, trainers
- Landscapers
- Maids

Prior Animal Control Reports

Deposition

- Owner Conditioning – how do you treat your dog?

A close-up, dark photograph of a dog's collar with a metal chain and a tag, set against a black background. The text is overlaid on the image in a white, outlined font.

Cause of Action: Dangerous Domesticated Animal

Cause of Action: Dangerous Domesticated Animal

To recover on a claim of strict liability for injury by a dangerous domesticated animal, a plaintiff must prove:

- The defendant was the owner or possessor of the animal,
- The animal had dangerous propensities abnormal to its class;
- The defendant knew or had reason to know the animal had dangerous propensities; and
- Those propensities were a producing cause of the plaintiff's injury.
- Foreseeability is not an element of producing cause

Cause of Action: Dangerous Domesticated Animal

- A possessor of a domestic animal which the owner has reason to know has dangerous propensities abnormal to its class, is subject to liability for harm caused thereby to others, although he has exercised the utmost care to prevent it from doing the harm
- Whether a dog has a vicious nature and whether the owner is aware of that nature is a question for the finder of fact.
- Guest ignored multiple warnings regarding dog's tendencies led to bite

Bowman v. Davidson, 2015 Tex. App. LEXIS 6706, 2015 WL 3988675

Cause of
Action:
Dangerous
Domesticated
Animal

Osburn v. Baker, 2020 Tex. App. LEXIS 3916

Lassie bit the pool guy

Summary judgment evidence shows Bady [bite dog], unlike a typical herding dog, refused to take command, was “too playful” to serve as a working dog, and was known to be particularly possessive of his family.

Court found pool guy produced more than a scintilla of evidence that Bady **had dangerous propensities abnormal to his breed** and that the owners knew or had reason to know about such propensities



Cause of Action: Dangerous Domesticated Animal

3. The defendant knew or had *reason to know* the animal had dangerous propensities

- “Reason to Know” means the actor has information from which a person of reasonable intelligence would infer that the fact in question exists, or that such person would govern his conduct under the assumption that such fact exists
- *Bowman*

Cause of Action: Dangerous Domesticated Animal

4. Those dangerous propensities were a *producing cause* of plaintiff's injuries

- Fritz needs Prozac – A Doberman known to run through the house knocked the caregiver down causing injuries
- RS 2nd Torts 509 cmt i:
 - If the possessor knows that his dog has the playful habit of jumping on a visitor, he will be liable without negligence when the dog jumps on a visitor, knocks him down and breaks his hip
- A “producing cause” is a contributing cause that, in a natural sequence, produces the plaintiff's injury.
- *Edmonds v. Cailloux*, 2006 Tex. App. LEXIS 1396



Cause of Action: Premises Liability

Cause of Action: Premises Liability

If a landlord has actual knowledge of an animal's dangerous propensities and presence on the leased property, and has the ability to control the premises, he owes a duty of ordinary care to third parties who are injured by this animal.

Evidence of a landlord's actual knowledge of a dog's dangerous propensities is required in order for a duty to exist to protect other from a lessee's dog. Actual knowledge is what a person actually knows, as distinguished from constructive knowledge, or what a person should have known. [775]

Bolton v. Fisher, 528 S.W.3d 770, 2017 Tex. App. LEXIS 6917, 2017 WL 3197924



Cause of Action:
Negligence Per Se

Cause of Action: Negligence Per Se

Negligence Per Se is not a separate cause of action independent of a common-law negligence cause of action. Rather, negligence per se is merely one method of proving a breach of duty, a requisite element of any negligence cause of action.

- [Johnson v. Enriquez, 460 S.W.3d 669 \(Tex.App.-El Paso 2015, no pet.\)](#)

A plaintiff asserting negligence per se is not required to prove that the defendant failed to act as a reasonably prudent person would have acted under the same or similar circumstances. Instead, the plaintiff must prove that:

- The defendant violated a statute or ordinance setting an applicable standard of care,
- The breach was the proximate cause of the plaintiff's damages, and
- The statute was designed to prevent an injury to that class of persons to which the plaintiff belongs

Example: All dogs and cats must be kept under restraint while in the unincorporated areas of Harris Co.

- Restraint – the control of a dog or cat under the following circumstances:
 - (1) when it is controlled by a line or leash not more than six (6) feet in length, if the line or leash is held by a human being who is capable of controlling or governing the dog or cat in question
- Harris County Animal Regulations



Claim: Dog Bite
Defenses

Claim: Dog Bite Defenses

CPRC 33

- Proportionate Liability
- 33.002(a)(1) this chapter applies to ***any*** cause of action based on tort in which a defendant, or responsible third party is found responsible for a percentage of the harm for which relief is sought

Provocation:

- Did the dog bite victim provoke the dog in any way?

SOL – 2 years

Trespass

Conclusion



Send the Insurance Company a Settlement Demand

Stowers

- ACR
- Photos – at time of incident, current
- Medical Records
 - Wound treatment
 - Mental Health
- Vet Records
- Anything else to include?

Accept Offer?

- Settle
- Lawsuit