

Legal Notes: September 2013

“Dog Bites Man” is the most unexceptional headline ever written. In law and life, a dog bite is nothing to yawn about. Some areas of the law have developed special rules peculiar to them, railroads and horses come to mind. Dog bites are another area.

The old saw that each dog gets “one bite” has some validity. Any owner or keeper of a dog that causes injury to a person or thing is strictly liable for such damage. So, even with one bite, there is still liability. Where the old saying comes into play is on the second bite. For an owner that has “notice” that a dog has caused prior injury, such owner is now liable for double the damages.

Whether it be the first or second bite, an owner or keeper is “strictly liable” for damages. Strict liability is rare under the law. With strict liability, the burden of proof is on the dog owner to show that he is not liable (under “non-strict” liability, the injured party must show liability).

Who is the owner or keeper is also open to debate. A recent case clarified who is and who is not liable for dogs kept away from a persons’ own home. In that case, a parent owned a second home and let his adult daughter stay there with her family and her dogs; the parent did not live at this second home. The daughter’s dog attacked someone. The question is whether the parent who owned the home was also on the hook for damages resulting from the attack. The Court of Appeals ruled that the parent was liable even though he neither owned the dogs nor had control over them. The parent was a “harborer” under the law because he owned the home and allowed his daughter’s dogs to stay there.

Now there are limits to dog liability. Another old saw applies here: “Let sleeping dogs lie.” There are a few cases that discuss what happens when someone trips on a sleeping dog, do these ideas of strict liability still apply? The courts have ruled they do not. In these circumstances the dog is more like a rock or footstool, an inanimate object, rather than an animal on attack.

A few thoughts on dog liability now that the dog days of summer have passed.