

DOG LIABILITY

G. L. c. 140, § 155

I. DOG BITE OR INJURY

In this case, the plaintiff alleges that (he / she / they) was (bitten) (injured) by a dog owned or kept by the defendant and, as a result, suffered damages.

The plaintiff's action is based on a statute, G.L. c. 140, § 155. This statute states that the owner or keeper of a dog is strictly liable when the dog (bites) (injures) someone. "Strict Liability" means that the plaintiff does not have to prove that the defendant dog owner or keeper was negligent or knew that the dog was dangerous.

Irwin v. Degtiarov, 85 Mass. App. Ct. 234, 236 (2014) ("The statute is an expansion of the common law in that it eliminates the need to prove that the owner knew of the dangerous character and habits of his dog, or that the dog was in fact accustomed to bite.") Cases outside the scope of this statute are governed by the common law. *Andrews v. Jordan Marsh Co.*, 283 Mass. 158, 162 (1933). For an injury caused by a dog other than a dog bite, see *Curran v. Burkhardt*, 310 Mass. 466, 466 (1941) (dog seized plaintiff's pants leg and got between plaintiff's legs, causing him to fall to the sidewalk with such violence as to fracture his hip); *Nickerson v. Flynn-Morris*, 103 Mass. App. Ct. 703, 706 (2024) ("the statute is indifferent to any question of negligence on the part of the owner...[h]owever, the plaintiff bears the burden of proving that the the dog caused the damages and that she was not 'teasing, tormenting or abusing such dog.'")

For you to find the defendant liable, the plaintiff must prove the following three things by a preponderance of the evidence:

First: that the dog (bit) (injured) the plaintiff and the plaintiff suffered bodily harm;

Second: that, at the time of this (bite) (injury), the defendant was the owner or keeper of the dog; and

Third: that, at the time of this (bite) (injury), the plaintiff was not committing a trespass (or other tort), or the plaintiff was not teasing, tormenting, or abusing the dog.

I will now explain some of these concepts in further detail.

[Explain terms as appropriate for the evidence presented at trial.]

The plaintiff first must show that (he / she / they) suffered a physical injury to some part of (his / her / their) body. An injury is not limited to a bite, but may include other forms of physical injury, such as a laceration, fracture, or concussion.

The plaintiff is entitled to recover if (he / she / they) proves that the injury was caused by a dog owned or kept by the defendant. The plaintiff does not need to prove that the defendant was both the owner and the keeper of the dog.

See Curran v. Burkhardt, 310 Mass. 466, 467-468 (1941).

The term “owner” is well understood and, under the law, means that the defendant had a right to possess the dog. Whether a person is a “keeper” of a dog is question of fact for you to decide. The term “keeper” includes someone who is harboring a dog and assumes custody, management, and control of it. “Harboring” means to house, shelter, or give a place of protection or refuge to a dog. The mere presence of the dog on the defendant’s property, or the defendant’s acceptance of its presence on the property, is not enough, on its own, to show that the defendant was a keeper of the dog.

See *Maillet v. Mininno*, 266 Mass. 86, 89 (1929) (“mere presence of the dog on the premises where the defendants lived, or acquiescence in its presence, was not enough to show ownership ship or keeping, but that harboring with an assumption of custody, management and control of the dog was evidence of keeping even if not of ownership”); *Salisbury v. Ferioli*, 49 Mass. App. Ct. 485, 487 (2000), quoting *Brown v. Bolduc*, 29 Mass. App. Ct. 909, 910 (1990) (casual act of holding the dog while moving it from one place to another did not make the sister of the owner a “keeper”; a veterinary technician was considered a keeper because the owner surrendered the dog to the veterinarian and had a contract that materially benefitted the veterinarian which called for an “intimate” custody of the dog for a clear purpose); *McRae v. Siler*, 1999 Mass. App. Div. 18 (person who walked the dog was not a keeper because that term envisions “more than the mere possession and control of the dog.”). See also *Nutt v. Florio*, 75 Mass. App. Ct. 482, 486 (2009) (landlords were not keepers or owners of tenant’s pit bull under G.L. c. 140, § 155; common-law principles of negligence applied when dog bit another tenant and liability turned on whether landlords knew or reasonably should have known the dog had “dangerous propensities”).

To show that the plaintiff was not “trespassing” upon the defendant’s property, the plaintiff must demonstrate that (he / she /

they) did not enter or remain on the defendant's property without a right to do so.

See G.L. c. 266, § 120. While "the statute evidences a legislative recognition of the right of a possessor of land to keep a dog for protection against trespasser," "one is privileged to enter land in the possession of another if it is, or reasonably appears to be, necessary to prevent serious harm to the actor or his property." *Rossi v. Del Duca*, 344 Mass. 66, 70 (1962).

To show that the plaintiff was not "teasing, annoying or abusing the dog", the plaintiff must demonstrate that (he / she / they) was not engaging in wrongful acts designed to irritate the dog. Friendly playing with the dog is not included in the meaning of "teasing, annoying or abusing" a dog.

See *Malchanoff v. Truehart*, 354 Mass. 118, 123-124 (1968) (does not include friendly playing with dog); *Koller v. Duggan*, 346 Mass. 270, 273 (1963) (covers "the entire gamut of wrongful acts against dogs"); *Audette v. Commonwealth*, 63 Mass. App. Ct. 727, 734 (2005); *Burgoyne v. Owen*, 1991 Mass. App. Div. 192 (striking a dog while terminating a dog fight does not constitute abusing it).

***If case involves injury to minor under age 7.* The plaintiff is bringing this case on behalf of (his / her / their) minor child who was under seven years of age at the time of the alleged injury. In this kind of case, the law presumes that the child was not committing a trespass or other tort, or teasing, tormenting, or abusing the dog. Accordingly, the burden of proof is upon the defendant to prove to you by a preponderance of the evidence that the child was**

**committing a trespass or other tort, or teasing, tormenting,
or abusing the dog.**

See Rossi v. Del Duca, 344 Mass. 66, 69-70 (1962).

DOG BITE OR INJURY DAMAGES

If you find that the plaintiff has proven the three elements in support of the dog (bite) (injury) claim, then you must further determine whether the plaintiff has proven, by a preponderance of the evidence, that (he / she / they) suffered a compensable injury and determine the fair and reasonable amount of damages that compensates the plaintiff for the injury.

By instructing you on damages, I am not suggesting how you ought to decide this case. That is your responsibility. I am only informing you as to what the law is with regard to the calculation of damages in the event you get to that point.

The purpose of the law in awarding damages in a dog (bite) (injury) case is to compensate an injured person for the losses incurred due to the dog (bite) (injury). It is not to reward the plaintiff or to punish the defendant. The goal is to try to restore the person to

the position (he / she / they) would have been in had the (bite) (injury) not occurred. You must put aside your personal feelings during your deliberations and decide this case as the evidence and law dictate.

In determining the dollar amount of damages which the plaintiff is entitled to recover, you may take the following into consideration:

Medical Expenses. These damages include medical, hospital and nursing expenses incurred by the plaintiff due to [(his / her / their) injuries] [injuries to (his / her / their) minor child]. The plaintiff is entitled to compensation for those expenses which were reasonable in amount, and which were reasonably necessary. You should only include in your award those expenses you find were reasonable and necessary and directly related to injuries caused by the defendant's dog.

You may also consider and award the plaintiff a fair and reasonable sum for medical expenses expected in the future as a result of the injury.

Pain and Suffering. You may also consider plaintiff's claim for pain and suffering. Pain and suffering are of two types: physical pain and suffering, and mental pain and suffering.

For physical pain and suffering, you may consider the areas of the body in which you find the plaintiff was physically injured. You may also consider the past pain and suffering endured by the plaintiff since the date of the injuries, the present pain and suffering caused by the injuries, and any future pain and suffering which were proved with reasonable medical probability.

Mental pain and suffering include any and all nervous shock, anxiety, embarrassment, or mental anguish resulting from the injury. You may also consider past, present, and probable future mental suffering.

To arrive at a monetary figure for the plaintiff's pain and suffering, you must use your own common sense and good judgment in determining what would be fair and reasonable figure to compensate for past, present, and future suffering.

Marks / Disfigurement / Loss of Bodily Function. You may also consider and allow a fair and reasonable sum for any permanent condition caused or resulting to the plaintiff as a result of the injury. This could include any permanent marks or permanent loss of bodily function. You must determine what amount will fairly and reasonably compensate for that loss.

Loss of Earning Capacity. The plaintiff has also made a claim for loss of earning capacity. You may consider whether the plaintiff's ability to earn money in the past or future has been diminished. [Even when a person does not lose wages because (his / her / their) pay is continued by (his / her / their) employer as a gratuity or as compensation for disability, this person may nevertheless recover damages for impairment of earning capacity.]

For more expansive instruction on loss of earning capacity, see Instruction 3.03.

Loss of Enjoyment. Finally, you may consider the extent to which the plaintiff's injuries have caused (him / her / them) a loss of pleasures which (he / she / they) otherwise probably would have had in the form of work or play or family life or any other activities the plaintiff

enjoyed. The plaintiff is entitled to full compensation for any reduction in the enjoyment of life which you conclude has resulted or probably will result from the alleged injury.

II. DOG OR ANIMAL BITTEN OR INJURED BY ANOTHER DOG

In this case, the plaintiff alleges that (his / her / their) dog (animal) was injured by a dog owned or kept by the defendant and, as a result, (he / she / they) suffered compensable damages. The law provides for what is called strict liability against the owner or keeper of a dog when the dog (bites) (injures) another (dog) (animal). “Strict Liability” means that the plaintiff does not have to prove that the defendant dog owner or keeper was negligent or knew that the dog was dangerous.

For you to find the defendant liable, the plaintiff must prove by a preponderance of the evidence that:

First: that the dog (bit) (injured) the plaintiff’s (dog) (animal) and the plaintiff’s (dog) (animal) suffered an injury;

Second: that, at the time of this (bite) (injury), the defendant was the owner or keeper of that dog; and,

***Third:* at the time of this (bite) (injury), the plaintiff was not committing a trespass (or other tort), or the plaintiff was not teasing, tormenting, or abusing the defendant's dog.**

See above for instructions concerning the definitions of "keeper", trespass and teasing tormenting or abusing the dog.

**DOG OR ANIMAL BITTEN OR INJURED BY ANOTHER DOG:
DAMAGES**

If you find that the plaintiff has proven the three elements in support of the dog (bite) (injury) claim, then you must further determine whether the plaintiff has proven, by a preponderance of the evidence, that (he / she / they) suffered compensable damages and determine the fair and reasonable amount of those damages.

By instructing you on damages, I am not suggesting how you ought to decide this case. That is your responsibility. I am only informing you as to what the law is with regard to the calculation of damages in the event you get to that point.

The plaintiff may recover reasonable veterinary costs that are reasonably incurred, even if they exceed the market value or replacement cost of the plaintiff's (dog) (animal). Among the factors

you may consider in this determination are the type of animal involved, the severity of its injuries, the purchase and/or replacement price of the animal, its age and special traits or skills, its income-earning potential, whether it was maintained as part of the owner's household, the likelihood of success of the medical procedures employed, whether the medical procedures involved are typical and customary to treat the injuries at issue, and whether the medical services were performed as emergency services.

A plaintiff may recover reasonable expenses where the efforts in treating the dog's injuries are unsuccessful. In other words, reasonable expenses reasonably incurred when a proper effort was made to diminish the injury, are to be paid when the effort was unsuccessful as when it was successful.

Irwin v. Degtiarov, 85 Mass. App. Ct. 234, 238-39 (2014) (where unprovoked attack by defendants' unleashed German shepherd caused the plaintiffs' Bichon Frisé severe internal injuries, external bruising, and wounds to the head, neck, abdomen, and chest, and emergency surgery was successful but expensive, evidence supported trial court's finding that \$8,000 in veterinary costs were reasonable).

You may consider the plaintiff's affection for (his / her / their) injured dog (animal) in assessing the reasonableness of the decision to treat it but you may not award damages for the plaintiff's hurt

feelings, emotions, or pain, as a result of the injury to (his / her / their) dog (animal), nor can you award damages for the plaintiff's loss of the dog's (animal's) companionship.

Irwin v. Degtiarov, 85 Mass. App. Ct. 234, 239 (2014); *Krasnecky v. Meffen*, 56 Mass. App. Ct. 418, 423 (2002).

[If the dog died without treatment]. **Where a dog is killed as a result of some fault of the defendant's dog, but veterinary or other treatment expenses are not involved, the plaintiff may recover damages based on market value or replacement cost.**

See *Irwin v. Degtiarov*, 85 Mass. App. Ct. 234, 237 & n.10 (2014).

III. DAMAGE TO PROPERTY BY DOG

In this case, the plaintiff alleges that a dog owned or kept by the defendant damaged (his / her / their) property and, as a result, the plaintiff suffered damages.

The law provides for what is called strict liability against the owner or keeper of a dog when the dog damages someone else's property. "Strict Liability" means that the plaintiff does not have to

prove that the defendant dog owner or keeper was negligent or knew that the dog was dangerous.

For you to find the defendant liable, the plaintiff must prove by a preponderance of the evidence that:

***First:* the dog damaged the plaintiff's property;**

***Second:* at the time of this damage, the defendant was the owner or keeper of the dog; and,**

***Third:* at the time of this damage, the plaintiff was not committing a trespass (or other tort), or the plaintiff was not teasing, tormenting, or abusing the defendant's dog.**

See above for instructions concerning the definitions of "keeper", trespass and teasing tormenting or abusing the dog.

DAMAGE TO PROPERTY: DAMAGES

If you find that the plaintiff has proven the three elements to support (his / her / their) claim that the defendant's dog damaged (his / her / their) property, then you must further determine whether the plaintiff has proven, by a preponderance of the evidence, that (he / she / they) suffered compensable damages and determine the fair and reasonable amount of those damages.

By instructing you on damages, I am not suggesting how you ought to decide this case. That is your responsibility. I am only informing you as to what the law is with regard to the calculation of damages in the event you get to that point.

If the defendant's dog caused damage to the plaintiff's property, the plaintiff is entitled to be compensated by any reduction in its value - that is, for any decrease in the fair market value of the property that resulted from the incident. The cost or estimated cost of repairs may be some evidence of the decrease in market value, but it is not conclusive, and you must consider all the evidence on that issue.

The plaintiff is also entitled to be reimbursed for any additional expenses, other than repair costs, that (he / she / they) paid as a direct result of the incident.

Finally, the plaintiff is entitled to be compensated for the time when (he / she / they) was deprived of the use of the damaged property until it was repaired or replaced. This loss can be measured, for example, by the cost of renting a replacement _____.

Damages must be limited to the period of time that was reasonably needed to make the repairs or to obtain a replacement _____.

In calculating the award of damages, you must be guided by your own common sense. Computing damages may be difficult, and you must not engage in guesswork. On the other hand, the law does not require the plaintiff to prove the amount of the losses with mathematical exactness, only with as much definiteness and accuracy as the circumstances permit.