

Dog owners beware: litigation bites too

Having a dog in your house brings not only enjoyment but also security for your home. In South Africa, due to high crime rate, many if not most, have guard dogs such as Pitbull's and Rottweiler's, ensuring peacefully sleep for some. Sadly, over the recent years there has been several dog attacks which has left victims in critical condition, and other attacks leading to death. The obvious recourse in law would be for such a victim to claim damages against the owner of the dog.

In terms of South African law (law of delict), a dog owner may be held delictually liable for the injuries suffered by the victim. However, liability and fault would arise where there is negligence or intent on the part of the dog owner. The damages a victim would be entitled to claim against a dog owner include but not limited to; (i) *past and future loss of income*, (ii) *medical expenses*, (iii) *general damages* and, (iv) *pain and suffering* etc. In the ultimate end, victims would require the services of a personal injury lawyer to sue the dog owner, and which can be very costly for a dog owner in defending the matter.

The scope of 'dog bites matters' is broad thus this newsletter confines itself the requirements for a possible successful claim against a dog owner and possible defences available to dog owners and a brief discussion on *Green v Naidoo* 2006 ZAGPHC 56 (*Green case*).

In the *Green case*, a four-year-old girl playing in the backyard garden of her sister's boyfriend house ended up being bitten on her face by a dog. The father of the four-year-old then proceeded to institute action against the owners. In their defence, the Naidoo's alleged that the four-year-old pulled a scab off the dog's nose while it was eating and the dog was responding to such "attack" and "antagonism" and was therefore not acting contrary to its nature. On the other hand, the father alleged that a four-year-old is incapable of performing an act,

wrongful or unlawful. The Court thereafter concluded that, provocation of a dog does not require legal capacity to be established by the Naidoo's in raising a defence of provocation. The underlying issue is that an act was performed. When provoked a dog does not distinguish between whether the actor is legally competent or not. Having analysed the evidence, the court accepted the version of provocation presented by the Naidoo's.

It becomes evident from Green case that defences such a provocation can be utilised in order to curb liability on the party of a dog owner. Furthermore, Green provides us with a clear understanding an examination of the history of the dog and its conduct around people (guests) has to be examined also for purposes of establishing liability. If, however, it is proved that the dog had previous conduct of attacking 'guest' or acting out of the ordinary, an owner's liability scale will be lifted to his detriment. The reasonable conclusion would be that it could have been foreseeable on the part of the dog owner that by not taking the dog away from guest would result in injury in one of the guest.

Insofar as the requirements for a potential successful claim and the defences afforded to dog owners, the list is not exhaustive.

Requirements for a successful claim

- a) The person being sued must be the dog owner.
- b) The animal must be a domesticated animal (this by implication excludes wild animals)
- c) The animal must have acted contrary to its nature (than what would be expected from it).
- d) The victim must have had the right to enter into such property. If a person did not have permission to enter such said premises, the claim might not be

successful. However, there are exceptions to this requirement.

Defences available to a dog owner

- a) Guilty conduct on the part of the victim (provocation, teasing animal and throwing stones etc.)
- b) Guilty conduct on the part of a third party (for instance, where another person but the victim provoked a dog which led to the attack).
- c) Provocation by another animal.
- d) Consent to prejudice (for example, where a person is bitten by a dog but was pre-warned against the dog and indicates that he is not afraid of dogs – “the dog won’t bite me” – a court should find that the injured person tacitly consented to the prejudice and would the person not able to claim damages from the owner.)

In light of the abovementioned discussion it is clear that dog owners should take precautionary measures prior to receiving visitors at their homes. A visitor who would opt to provoking a dog would only do so at their peril. Through a plethora of case law of this nature, our courts have emphasised the importance of dog owners having adequate and appropriate dog warning signs at visible site of their homes and alert their visitors of the presence of a dog at their homes. Insofar as dog owners would want to prevent such incidents from tapping into their financial pockets, it is advisable that they have personal liability insurance to cover any unfortunate circumstances such as dog bite and damages to property caused by their dogs. A failure to do so would undoubtedly leave one with empty pockets.

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