



Who let the dogs out?

PRIMER ON THE LAW AND SPECIAL INTERROGATORIES FOR USE IN A DOG-BITE CASE

Dog-bite cases, as simple as they sound, can end up being quite complex. In this article, I will be discussing the ins and outs of “strict liability,” what is actually considered a “dog bite,” and how to address the misleading defense that there was “no bite.”

Having been a dog lover and owner for nearly my entire life, I understand first-hand the dichotomy at play between loving a dog unconditionally while being aware that dog owners have the ultimate responsibility to make sure that their dogs do not hurt others.

The best place to start is California’s strict liability statute, codified in Civil Code section 3342:

(a) The owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owner of the dog, regardless of the former viciousness of the dog or the owner’s knowledge of such viciousness. A person is lawfully upon the private property of

such owner within the meaning of this section when he is on such property in the performance of any duty imposed upon him by the laws of this state or by the laws or postal regulations of the United States, or when he is on such property upon the invitation, express or implied, of the owner.

Under Civil Code section 3342, a plaintiff must prove all of the following in a dog-bite case: (1) that defendant owned a dog; (2) that the dog bit plaintiff while he or she was in a public place or lawfully on private property; (3) that plaintiff was harmed; and (4) that the defendant’s dog was a substantial factor in causing plaintiff’s harm.

Common affirmative defenses in dog-bite cases are assumption of risk and comparative negligence, i.e., if the victim teases or otherwise provokes the dog. (*Smythe v. Schacht* (1949) 93 Cal App.2d 315.)

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First steps and free, informal discovery

If your client is the victim of a dog bite, he or she should seek medical attention immediately and notify Animal Control in the county or city where the bite occurred. It is important to make these reports in the event the animal bites again, to show a dangerous propensity. (See, e.g., Los Angeles Municipal Code section 53.34.2, which gives the Department of Animal Services the power to impound the dog where there is evidence it has attacked, bitten or injured a human being or other animal pending any court or dog license or animal permit revocation proceeding.)

If the dog is a repeat offender, animal control would likely get involved to quarantine the dog and they will conduct a hearing as to the disposition of the dog. This is separate and apart from a civil lawsuit and is essentially an administrative hearing in accordance with Los Angeles Municipal Code section 53.34.2. If the bite happens in the City of Los Angeles, Los Angeles Municipal Code section 53.34.2 controls. If the bite occurs outside the city limits but in the County of Los Angeles, Los Angeles County Code section 10.37.110 is dispositive.

As the plaintiff's lawyer, you and your client have an absolute right to be at this hearing, and I have found that being present can lead to some major pearls – think of it as free, informal discovery!

Dangerous dogs

If, after the hearing, the dog is determined to be dangerous, then it is unlawful for any person to own, possess, harbor or keep the dog under Los Angeles Municipal Code section 53.34. There is also a provision (LAMC § 53.34) that the person who owns or is in charge or controls the dog and allows the dog to run at large is guilty of a misdemeanor if the dog bites, attacks or causes injury to a human being or other animal. Notwithstanding strict liability under Civil Code section 3342, violation of LAMC section 53.34 may give rise to a

negligence per se allegation. Also, this may assist in establishing the actual owner of the dog because animal control will do their own separate investigation of the incident to establish who is the owner of the dog, who paid for the license, and whether the dog has had the requisite rabies shots.

I have repeatedly come across a situation where the residents of the house denied ownership of the dog and claimed that they were only temporarily harboring the dog. If this happens, and liability cannot be established as a matter of law, a lawsuit should be filed immediately in order to conduct the necessary discovery. If your goal in discovery is to establish ownership of the dog, ask for veterinary records, bills, licenses, etc. Inquire about who takes the dog to the vet or for grooming services, or who pays for these things. Think outside the box and ask the purported owner whether he or she has a monthly recurring order for dog food delivery. Lastly, you can hire an investigator to go to the property on various dates to establish that the dog is not just there on a temporary basis, but all the time, therefore leading to an inference of ownership.

The dangerous-propensity argument becomes very important if you cannot establish that the dog being harbored is owned by the person who owns the property where it lives. You would have to establish that homeowner knew or should have known about the dog's dangerous propensities. This becomes critical if the premises are rented and the tenants do not have liability insurance but the landlord does; the landlord, of course, claims not to have known about the dog's dangerous propensities. As discovery progresses, you may have to establish that the homeowner/landlord knew of the dog's dangerous propensities by way of complaints from neighbors or visiting the rental property where it was evident that the dog was aggressive.

And if the dog doesn't actually bite plaintiff?

I had a case where the dog got out from the fenced yard and ran after my

client, who was on a motorcycle. The dog knocked the motorcycle down and my client suffered serious injuries. The homeowner claimed that the dog never chased anyone and therefore did not cause the motorcycle to crash. In that situation, I hired an animal behaviorist to approach the dog that was behind the fence and then run away. Sure enough, the dog went charging at him. That was enough to establish that the dog had a tendency to chase people or things.

What about the bite itself? What if the dog attempts to bite someone, but the injury is not from the bite, but secondarily, such as the person falls and breaks a bone or suffers a spinal injury? The leading case in this scenario is (*Johnson v. McMahan* (1998), 68 Cal.App.4th 173.) In *Johnson*, the plaintiff was attempting to repair the owner's swamp cooler when the owner's dog grabbed onto his leg through his jeans, causing him to fall from the ladder. The court held that even though the plaintiff did not suffer a bite wound there was a "bite" even though the skin was not broken or an actual wound inflicted. The court reasoned that the word "bite" does not require a puncture or tearing away of the skin in order to comply with Civil Code section 3342.

By contrast, the plaintiff still has to establish that the "bite" was a substantial factor in causing the plaintiff's harm. It is not uncommon for defense counsel to argue that the wound was not a bite wound, but a wound from the dog's paws. If so, then the bite will have to be established by expert testimony, such as a veterinarian or other experts to establish that the pattern of the wound is consistent with a dog bite.

In terms of injuries and damages, one must analyze not just the dog-bite wound, but how the wound heals, whether there is residual scarring, future plastic-surgery recommendations, etc. In some circumstances, the focus may shift to a nerve-damage injury where the scar

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itself is not significant, but the bite occurred near a peripheral nerve.

Dog bites may also lead to the condition known as complex regional pain syndrome (CRPS), which is difficult to diagnose and even more difficult to treat. For this malady, a pain-management specialist or neurologist would be the doctor of choice to diagnose and treat this unfortunate condition. The obvious severity of this condition dictates a much higher demand or jury verdict than the dog bite that has left scarring but no other residual effects.

Here are some sample special interrogatories, although not exhaustive, which will assist you in establishing strict liability, dangerous propensities and ownership.

Special interrogatory No. 1:

Are YOU the owner of the DOG (dog refers to the subject dog that is alleged to have caused the injury to plaintiff(s) in the complaint) which bit the plaintiff on the date and place as alleged in the Complaint? For purposes of these special interrogatories YOU and YOUR refers to and includes you, your agents and your employees.

Special interrogatory No. 2:

Please state the breed of the DOG.

Special interrogatory No. 3:

Please state the color and any descriptive markings of the DOG.

Special interrogatory No. 4:

Has the DOG bitten any other PERSON(S) during said dog's lifetime up until the present? (For purposes of these special interrogatories, PERSON refers to and includes a natural PERSON.)

Special interrogatory No. 5:

If the DOG bit any other PERSON(S) please state the name of said PERSON(S).

Special interrogatory No. 6:

If the DOG bit any other PERSON(S), please state the date of the attack on each PERSON(S).

Special interrogatory No. 7:

If the DOG bit any other PERSON(S), please state the place and circumstances of each attack by the DOG on any PERSON(S).

Special interrogatory No. 8:

Were YOU ever sued for any attacks by the DOG other than the one alleged in the Complaint?

Special interrogatory No. 9:

If YOU were ever sued for any attacks by the DOG, please state the name of said plaintiff(s).

Special interrogatory No. 10:

If YOU were ever sued for any attacks by the DOG, please state the address of the plaintiff(s) and defendant(s) of each lawsuit.

Special interrogatory No. 11:

If YOU were ever sued for any attacks by the DOG, please state the date of filing of said lawsuit(s).

Special interrogatory No. 12:

If YOU were ever sued for any attacks by the DOG, please state the case number of said lawsuit(s).

Special interrogatory No. 13:

If YOU were ever sued for any attacks by the DOG please state the disposition of said lawsuit(s).

Special interrogatory No. 14:

Please state the names all veterinarians which have treated the DOG.

Special interrogatory No. 15:

Please state the addresses of all veterinarians which have treated the DOG.

Special interrogatory No. 16:

Please state the names of all grooming facilities which have groomed the DOG.

Special interrogatory No. 17:

Please state the addresses of all grooming facilities which have groomed the DOG.

Special interrogatory No. 18:

Do YOU own the residence as referred to in the Complaint?

Special interrogatory No. 19:

If YOU are not the owner of the said residence as referred to in the Complaint, please state the name of the owner of said property.

Special interrogatory No. 20:

If YOU are not the owner of the said residence as referred to in the Complaint, please state the address of the owner of said property.

Special interrogatory No. 21:

Please state the name of YOUR homeowner's liability carrier, including the policy number and the policy limits for an occurrence such as the one alleged in the Complaint.

Special interrogatory No. 22:

Please identify by name all PERSON(S) present on the property of the subject residence at the time of the incident as alleged in the Complaint.

Special interrogatory No. 23:

Please identify by the address all PERSON(S) present on the property of the subject residence at the time of the incident as alleged in the Complaint.

Special interrogatory No. 24:

Please identify the phone number(s) all PERSON(S) present on the property of the subject residence at the time of the incident as alleged in the Complaint.

Special interrogatory No. 25:

State the name of the PERSON(S) who was/were responsible for the direct supervision, care and control of the DOG for a twenty-four (24) hour period prior in time to when the plaintiff was bitten.

Special interrogatory No. 26:

At the time of the incident, state whether the DOG was RESTRAINED. For purposes of these special interrogatories RESTRAINED includes chained, locked up, caged or in any other way controlled.

Special interrogatory No. 27:

If said DOG was RESTRAINED, please state the exact nature as to how the DOG was RESTRAINED

Special interrogatory No. 28:

State whether there were any warning signs such as Beware of Dog placed on the premises of the residence as referred to in the Complaint at the time when the plaintiff was bitten.

Special interrogatory No. 29:

If warning signs were placed on YOUR premises of the residence as referred to in the Complaint, please describe the exact nature and location of any such signs.

Special interrogatory No. 30:

Please state whether the DOG had ever displayed any prior vicious propensities.

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Special interrogatory No. 31:

If the DOG displayed prior vicious propensities, please state each and every prior vicious propensity.

Special interrogatory No. 32:

If the DOG displayed prior vicious propensities, please provide all general knowledge which YOU possessed regarding the DOG's prior vicious propensities.

Special interrogatory No. 33:

State whether the DOG had ever ATTACKED another PERSON. For purposes of these special interrogatories ATTACKED shall include mauled, bitten, chased or growled at any other PERSON.

Special interrogatory No. 34:

Please state whether YOU or any other PERSON on the premises of the residence as referred to in the Complaint immediately after said dog bite, rendered medical care, treatment or assistance to the plaintiff.

Special interrogatory No. 35:

If a PERSON on the premises of the residence as referred to in the Complaint, immediately after said dog bite, rendered

medical care, treatment or assistance to the plaintiff, please identify the name of such PERSON.

Special interrogatory No. 36:

If a PERSON on the premises of the residence as referred to in the Complaint, immediately after said dog-bite, rendered medical care, treatment or assistance to the plaintiff, please identify the telephone number of such PERSON.

Special interrogatory No. 37:

If a PERSON on the premises of the residence as referred to in the Complaint, immediately after said dog bite, rendered medical care, treatment or assistance to the plaintiff, please identify the address of such PERSON.

Special interrogatory No. 38:

If a PERSON on the premises of the residence as referred to in the Complaint, immediately after said dog bite rendered medical care, treatment or assistance to the plaintiff, please describe all care and treatment rendered.

Special interrogatory No. 39:

Have YOU owned the DOG since its birth?

Special interrogatory No. 40:

If you did not own the DOG since its birth, please provide the name of the previous owner(s).

Special interrogatory No. 41:

If YOU did not own the DOG since its birth, please provide the previous owner's contact information.

Special interrogatory No. 42:

Did YOU ever license the DOG with any city or county animal control agency?

Special interrogatory No. 43:

If YOU did license the DOG, please identify the name of such agency.

Special interrogatory No. 44:

Has such agency ever issued a citation regarding the DOG?

Special interrogatory No. 45:

If such agency has issued a citation please set forth the date(s) of such citation(s).

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