

Insurance & Personal Injury

Would I Be Able to Get Compensation for a Dog Bite?

Introduction

Dogs are regarded as humans' best friends. It is because of the close association of dogs and humans in daily life, dog bites causing injuries are extremely common. Dog bites can happen for a lot of reasons, for example, an attack by a friend's dog or by a strange dog on the street but only in some circumstances the victims can seek redress. This article aims to discuss whether a victim is able to get damages if he / she is attacked by a dog and sustains personal injuries.

The general principal

The owner / keeper of a domestic animal is liable for damage caused by the animal if:-

1. either the specie of the animal is classified as dangerous or the specie of the animal is classified as tame but the individual animal has a mischievous propensity known to the owner / keeper and damage is caused by such propensity (the doctrine of scienter); or
2. there are particular circumstances which in themselves imposed on the owner / keeper a duty to take care. In other words, the particular circumstances of the cases were such that it could be inferred that the biting of the plaintiff by the dog was reasonably foreseeable (the doctrine of negligence).

Scienter

Under the doctrine of scienter, the owner / keeper of a dog is strictly liable for injury the dog caused. In saying that the owner's / keeper's liability is strict, it means that the owner / keeper is liable even if there is no intention or negligence on his part.

In claiming damages against the dog's owner / keeper under the doctrine of scienter, the victim has to prove that the dog is classified as dangerous. This is a question of law and is decided by the court. Courts might well conclude that fighting dogs such as pit bull terriers are classified as dangerous.

Alternatively, the victim must prove that though the specie of the dog is classified as tame, it has mischievous propensity to attack and its owner / keeper knew about this. This is a question of fact and the victim must give supporting evidence. In *Mujiati v Chong Wai Kwan*

DCPI 424/2003, the plaintiff established scienter by proving that the defendant knew that there were previous incidents of attack done by the dog.

Negligence

Under the law of negligence, a dog owner / keeper is liable if there are particular circumstances which in themselves impose a duty to take care upon the owner / keeper. In other words, the dog owner / keeper is liable if the attack by his dog is reasonably foreseeable and is actually caused by the owner's / keeper's failure to take reasonable care in that particular circumstances. The Hong Kong Courts are more ready to find particular circumstances when children are involved.

In Draper and Another v Hodder [1972] 2 Q.B. 556, the defendant's dog suddenly dashed off from the defendant's premises to the plaintiff's premises and attacked the infant plaintiff who lived together with his parents in premises adjacent to those of the defendant. There was no gate or fence between their respective premises. The court held that the defendant ought reasonably to have foreseen that by failing to confine his dog, it might inflict substantial physical harm on the infant plaintiff and accordingly, he was liable in negligence for the injuries sustained by the infant plaintiff.

In Chiang Ki Chun Ian v Li Yin Sze CACV 26/2011, the plaintiff was a nine-year-old boy. He was bitten by the defendant's dog, a tame mongrel, leashed in the corner of the living room. There were altogether six boys aged around nine visiting the defendant's home. All the boys were excited to see the mongrel and had played continuously with it over a considerable period of time. When the plaintiff was feeding the mongrel with a biscuit, it rushed towards him and bit him on the cheek.

In holding the defendant liable, the court found that the mongrel had become stimulated and excited after the lengthy period of continuous play with a group of lively boys. The stimulation was further amplified by the fact that the mongrel was restrained and unable to interact freely with the boys. It was incumbent on the defendant and her agent (the domestic helpers) to ensure that there was periodic supervision of the children and of the dog, to ensure that the mongrel did not get over-excited by the playful children, some of whom were strangers to the mongrel. There was a real risk of harm to the plaintiff and such harm was reasonably foreseeable in the circumstances.

It is important to note that even if a defendant's omission to control or secure a dog is negligent, nothing done by the dog which is contrary to its ordinary nature can be regarded, in the absence of particular circumstances, as being directly caused by such negligence. The following 2 cases illustrate this rule of exception to negligence.

In Li Yuk-lan v Lau Kit-ling CACV 133/1988, the plaintiff was bitten by two large Labrador dogs which were being walked by the defendant without a lead on a public road. Neither of the two dogs was kept on a leash. At the time, the plaintiff was inside her house in Fairview Park. She heard a commotion and rushed out to find that her small dog was in the jaws of a large Labrador. While the plaintiff attempted to save her dog, she was attacked by the Labrador and the second Labrador joined in the attack. Subsequent to the attack, the defendant pleaded guilty to the charge of an offence contrary to regulation 19(1) of the Dogs and Cats Regulations which provides “*no dog shall be allowed to go abroad on a public thoroughfareunless it is on the lead or is otherwise under control*”.

In spite of the conviction in the criminal proceedings, the defendant was found not liable because the court held that all that the defendant was doing was taking normally well-behaved Labrador dogs for a walk. The plaintiff failed to discharge the burden of showing “particular circumstances” together with a real likelihood of danger to human beings.

In the recent case of Lo Ka Yue v Leung Chun Kit DCPI 1562/2012, the plaintiff was bitten by a golden retriever in the premises. It was the second time that the plaintiff was invited to party in the premises. In both visits, the golden retriever was not leashed or muzzled. The plaintiff saw it appropriate to touch it on both visits. The parties were hilarious, people were drinking alcohols and playing games. There was lot of fun, laughter and noise. Before the accident, there were village people setting off firecrackers and fireworks. In the early hours of the day in question, the plaintiff was squatting on the floor and watching television by herself. The golden retriever was on her left side less than a foot away lying on the floor. All of a sudden, the dog turned her head and bit the plaintiff on her face.

The court found that there was no particular circumstances which made the biting of the plaintiff by the dog reasonably foreseeable. Thus, the court concluded that there was no breach of duty of care on the part of the defendant.

Conclusion

In summary, if the specie of dog is not classified as dangerous or if it cannot be proved that the owner / keeper does have any knowledge about the dog’s mischievous propensity, it is unlikely that the victim is able to succeed under scienter. The victim may consider pursuing his claim under negligence.

To succeed in the claim under negligence, the victim must show that not only the owner / keeper is negligent (such as the dog is not leashed or muzzled, or there is a breach of the statutory provision of the Dogs and Cats Regulations), but also there are particular circumstances which in themselves impose a duty to take care upon the owner / keeper of the dog.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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