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Owner's Liability for bodily injury, or property damage caused by their animals

Nobody can imagine that «man's best friend» may cause property damage or injure a visitor or an innocent passer-by. But because accidents happen every day, below you may find all that you need to know about your liability in case your pet causes a property damage or injury to a third party.

What's my liability if my pet causes damage?

According to the Torts Law, Cap 148, and in particular Articles 51, 52 and 54, a person is found to be negligent when he, among other things, **fails to demonstrate such skill or diligence** to a profession, trade or undertaking **as a reasonable prudent person** who is qualified to exercise such profession or trade or undertaking would pay **under the circumstances** and **because of that omission** caused **damage** to a third person or property thereof.

Case law in Cyprus is very rich with cases determining when a conduct is deemed negligent. Indicatively in the following cases **L. P. Fragkeskidis and Co. Ltd v. John Mama (1989)** (E) 1 AAD 70 and **Stratmarko Ltd v. Peter Michael (1989)** (E) 1 AAD 453 it was held that the criterion as to when a conduct is deemed to be negligent is the average prudent man and the steps/actions that he would have taken or would not have taken and the causal link between his negligence and the damage caused in each case.

Furthermore, as regards the possession of animals the aforementioned law more specifically provides (a.54):

«In action arising in relation to damage, where it is found that-

*(a) the damage was **caused by a wild animal**, or other animal that is not wild but which has a **tendency to commit the act** which caused the damage and such tendency was known or should have been known by the defendant*

*(b) the defendant **was the owner** or had the **responsibility of the animal**,*

*the defendant **bears the burden of proof** that he did not act negligently in relation to the animal.»*

In as far as the term «wild animal» is concerned, Torts Law, Cap. 148 art.2 provides:



(2) In this Act - «Wild animal» means an animal that is not usually kept in captivity or under human control in the Republic «, like snakes, shark fishes, spiders etc.

Specifically in relation to dogs, the Dogs Law, N.184 (I) /



2002 classifies certain breeds as dangerous and provides for specific regulations vis a vis their import, possession, breeding, reproduction, sale, barter, advertising, supply and display for sale and exchange.

Therefore, as stated in the book Tort Law Chapter 148, Law & Case Law Volume 2 of Messrs. Artemis & Erotokritou, p.51, in relation to the application of common law:

«Paragraph (a) of Article (2) adopts the common law distinction between wild animals (animals ferae naturae) and other domesticated animals (animals mansuetae naturae). For someone to be held liable for a wild animal it is sufficient to prove that the animal is wild and that the defendant was the owner or was responsible for the animal. Then the defendant must prove that the damage caused was not due to his negligence.»

To demonstrate:

Are you the owner of a wild animal?	Your negligence is presumed and You must prove that you have acted prudently under the circumstances.
Are you the owner of a peaceful animal?	How was the damage caused? <ul style="list-style-type: none"> • If it was caused by a common behavior of your animal or a behavior that could have been predicted (e.g. if a dog or cat is playful or aggressive you can predict the possibility of attacks to third parties) then again your negligence is presumed and You are responsible to prove that you acted prudently under the circumstances • If it was not caused by a normal behavior of the animal or from a behavior that could have been predicted then it is the plaintiff who must prove your negligence.

Responsibility for other animals is based on the "principle of scienter" (knowledge). **If the defendant knew or should have known the tendency of the animal for the perpetration of the**



act giving rise to the damage, then has the burden of proving that it was not negligent.»

In relation to the same matter, the Supreme Court had stated in the judgment in **Gregory Evangelos N. Agatha Charalambous (2005) 1A A.A.D page 602**

«The possession of a domesticated animal implies, depending on its nature, foreseeable safety hazards for the neighbor, as well the owner or holder's of the animal duty to exercise the usual duty of care towards a third party.»

In this case the defendant's dog had been left in the street freely and attacked the plaintiff without provocation leading the latter to fall to the ground and suffer real injuries. The first instance court held that **«the fact that the dog did not cause similar attacks in the past, was just a coincidence»** and **«condemned»** the defendant to pay the plaintiff. The case was overturned on appeal on the grounds that the testimony was erroneously considered.



Furthermore, in the case **Fardon v. Harcourt - Rivington [19M.E.32]** All E.R. Rep. 81 the Court determined the limits of the duty of care of a dog owner for the safety of the neighbor from the risks that can arise from having the animal.

The below abstract from Lord Atkin's judgment is of relevance:

«But it is also true that, quite apart from the liability imposed upon the owner of animals or the person having control of them by reason of knowledge of their propensities, there is the ordinary duty of a person to take care



either that the animal or his chattel is not put to such a use as is likely to injure his neighbor - the ordinary duty to take care in the cases put upon negligence. »

In the same decision, **Fardon v. Harcourt - Rivington** (above) Lord Dunedin pointed out that the duty of care results from the knowledge of the movements of the dog, including its where about and jumps.

In **Ellis v. Johnstone [196M.E.3]** 1 All E.R. 286 the Court explained the differences between the strict liability imposed to a dog sitter/owner who, owns a domesticated animal which is however **well-known to have aggressive tendencies akin to a wild animal**. In such cases the owner's liability is equivalent to that of an owner of a wild animal. On the other hand the owner of a domesticated animal, whose actions are such that the animal's action can cause damage to a man, can be found liable for negligence.

The above is illustrated in the indicative case **Polymetal Ltd etc. L. Constantine (1998)** 1 AAD M.E.39M.E.3. In this case, a dog was allowed to wonder free within the premises of a factory. The dog was playful and lively. At the time in question, the dog saw the plaintiff swooped in on him with aggressive dispositions as could be seen from the dog's behavior and the plaintiff in his anxious attempt to avoid the dog, slipped, fell and his leg was crushed by a pile of sheet metal that was crammed into an adjacent machine. **The Court here sentenced the defendant to pay compensations which amounted to a rather large scale.**

How can I protect myself from the above liability?

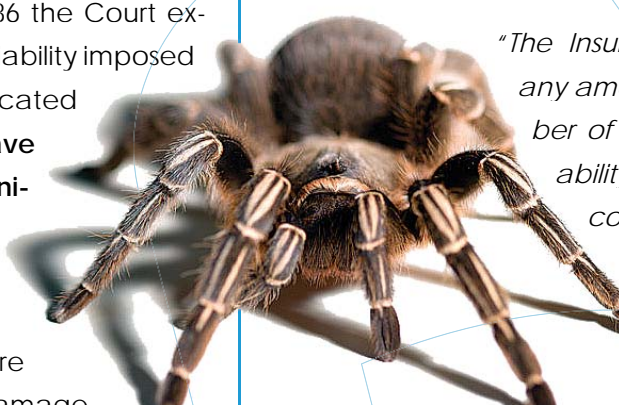
The best way of protection is the home owner's insurance coverage for third party liability under the residence/house insurance (in the event that the damage is caused within your home's premises)

This insurance covers the insured and his family members from liability for bodily injury to third parties within the boundaries of their residence and it includes lawyer's fees and

costs in the case legal proceedings are brought against them. This coverage can be expanded with additional premium to cover the owner and outside the premises of his residence.

A typical insurance policy may be formulated as follows:

The legal liability



"The Insurance Company will pay any amount that you or any member of your family has a legal liability to pay ... in relation to compensation to others resulting from an upcoming event taking place within the term of insurance which may result in:

- (a) *The accidental death, illness, disease or physical injury from any accident or*
- (b) *The damage by an accident in physical property.*

The maximum amount we will pay in any period of insurance is € XXXXXX plus defense costs.

Additionally this cover can be extended to cover the personal liability of the insured in anywhere outside the boundaries of the house, for example anywhere in Cyprus.

If you want any clarification or have any questions , please feel free to contact me at 22 26 96 46 or drop me an e-mail at savvas@insurancelinkcyprus.com, or fill out the enquiry form below and I will be more than happy to answer you and give you a quotation if you are interested.

Savvas P. Christoforou is a Chartered Insurer and managing director of Insurancelink Cyprus

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