**ANIMAL LIABILITY**

Generally, an animal is any creature, fish, reptile, crustacean or other creature excluding a human being. In simple words, an animal is any living creature other than a human being. The ‘keeper of an animal’ includes the owner of an animal since owning an animal usually includes keeping it, even if such keeping is by a proxy, such as by a paid agent, whether on a long term or on a temporary basis. While a person may be free to keep animals, insects, birds and so forth as he pleases, sometimes the presence of certain animal in a neighborhood may be a nuisance, threat to life or property. The keeper of an animal may be liable for the mere bringing of an animal into a country, failure to immunize, or treat the animal as required by law, e.g. to prevent the spread of an animal borne disease, or for any injury or damage occasioned by the animal to a person or property. In ***Draper v Hodder (1972) 2 QB 556,*** the plaintiff infant was savaged by a pack of Jack Russell terriers which had rushed out from the defendant’s adjacent premises. The dogs had not previously misbehaved so they had no dangerous propensity for the purposes of strict liability. But the owner was held liable in negligence foe allowing the dogs to escape. Jack Russells in a pack have a tendency to attack moving persons or objects. The defendant as an experienced breeder should have known this and, given the dogs’ tendency to dash next door, some damage (although not the extent or precise manner of its infliction) was foreseeable to the plaintiff. The failure to secure the dogs was a breach of duty.

The general rule is that, a person keeps an animal at his own risk, and is liable for any injury or damage done by it. In England, a person may be liable under common law or under the **Animal Act 1971.** The examples of liability for animals and their acts are many. For instance, in ***Rapler v London Tramways Co (1893) 2 Ch. 588,*** an owner horses which were emitting foul odors to the disturbance of the public was held liable for the tort of nuisance.

**CLASSES OF ANIMALS**

For the purpose of liability in torts, animals may be classifies as follows:

* Livestock, commonly called cattle
* Dangerous animals
* Non-Dangerous animals

**Trespassing Livestock**

Generally, the word “livestock” means any animal reared or kept for food, wool, skin, and use for farming or any agricultural activity. **Section 11 of the Animals Act 1971** defines live stock to include cattle, horses, asses, mules, hikkies, sheep, goats, poultry and deer not in a wild state. Others may include pigs, donkey and camel.

As a general rule, a deeper of livestock which strays onto another person’s land and damages any property or injures any person is liable for such damage or injury. The liability is also strict. In ***Matthews v Wicks (1987) Times, 25 May,*** the defendant’s sheep were left to graze on common land and were also left free to wander on the highway. The sheep entered the plaintiff’s garden and caused damage. The Court of Appeal held the defendant liable.

The basis and principle of liability for livestock trespass was clearly stated by **William J,** in 1863 in the case of ***Cox v Burbidge (1863) 143 ER 171 at 174*** as follows:

*“I apprehend the general rule of law to be perfectly plain. If I am the owner of the animal..., I am bound to take care that it does not stray on to the land of my neighbor; and I am liable for any trespass it may commit, and for the ordinary consequences of that trespass; whether or not the escape of the animal is due to my negligence is altogether immaterial”*

The above quote shows that the liability for a trespassing livestock is strict. In ***Aldham v United Dairies Ltd (1939) 4 All ER 522,*** an unattended pony was restive and jabbed at the plaintiff pedestrian who was passing by and dragged her down. The plaintiff brought an action for damages. The court held that the defendant was liable for the injury caused by his pony.

Liability for livestock may arise in various ways such as: failure to vaccinate the animal or give such medical care as prescribed by law, driving it intentionally on to another person’s land, straying independently on its own to a plaintiff’s land, carelessly leaving it on the highway to the disturbance of the public, and so on. In ***Leeman v Montaju (1936) 2 All ER 1677,*** the defendant had a poultry farm in a partly rural but largely residential area. The chickens made a lot of noise in the early morning homes to the disturbance of neighbors. The plaintiff sued. It was held that the poultry constituted a nuisance and an injunction would be granted but suspended for one month to allow the defendant to take remedial measures. Similarly, in ***Cunningham v Wheelan (1917) 52I LT67 (Iceland),*** the plaintiff was driving a horse drawn cart when he saw a herd of 24 cattle, the property of the defendant on the highway in front of him. There was no one in charge of the animals. Although the plaintiff stopped his l the cattle pressed on the cart and overturned it, causing injury to the plaintiff and damaging the cart. The court held that the plaintiff was entitled to damages and that the defendant owner was bound to use care to prevent his animals from straying and tendering the highway unsafe and dangerous to people who use it.

**DANGEROUS ANIMALS**

Dangerous animal is defined in **Section 6(2) of the Animals Act** as species whose fully grown animals normally have such characteristics that they are likely, unless restrained, to cause severe damage or that any damage that they may cause is likely to be severe. Dangerous animals include wild dog, wolf, baboon, crocodile, snake, lion, tiger, leopard, panther and other wild cats, gorilla, chimpanzee, warthog and so forth.

A legal action brought to make an owner, keeper controller or custodian of a dangerous animal liable for it, or for its conduct is known as “a scienter action” i.e. an action for a *farae naturae.* Ferae naturae means ‘wild nature’ i.e. an animal of wild nature. It is action brought in respect of an animal that is normally dangerous. In ***Behrens v Berteam Mills Cirens Ltd (1957) 2 QB 1,*** it was stated the general rule of common law with respect to dangerous animals, is that a keeper of a dangerous animal must keep it securely from causing damage, where he knows or ought to know of its mischievous propensity or dispositions, and in default he is liable for any damage caused by it. Thus, a keeper of an animal must keep it at his own peril.

The liability is strict. The general rule of law is that a defendant is liable for damage done by a dangerous animal, without having to establish that the particular animal was a savage animal. It is irrelevant where the injury took place, and no interest in land is necessary to be able to sue. In ***May v Burdeth (1846) All ER 136 at 187,*** it was stated that a person keeping a mischievous animal with knowledge of its propensities, is bound to secure at his peril. In ***Smith v Ainger (1990) QB 397,*** the defendant had a dog named Sam on a leash. As they went along, the dog lunged at the plaintiff’s dog in a dog on dog attack. The dog knocked down the plaintiff and he fell and suffered a broken leg. The plaintiff’s injury was incidental to the dog on dog attack. The English Court of Appeal held that the plaintiff was entitled to recover damages, and it was irrelevant that the plaintiff’s injury was not a bite, but an injury from a fall.

Also, in ***Wallace v Newton (1982) 1 WLR 375,*** the plaintiff was employed by the defendant to care for several horses. One of the horses was known to have unpredictable temperament and restive. One day, as the plaintiff attempted to load the horse into a horse box, it became violent, uncontrollable and jumped forward and crushed the plaintiff’s arm against a bar. It was held that the plaintiff was entitled to damages.

It should be noted that in order to establish liability, it is not necessary to establish that the animal had done such kind of damage in the past. It is enough that the animal has a tendency to do that kind of harm; also, knowledge of the fact that the animal has an aggressive tendency is usually imputed to the defendant owner or keeper, even if such knowledge was that of someone to whom custody of the animal was temporarily given. Liability for a damage done by an animal lies with the person who has custody or control of the animal.

However, mere temporary care by a person who is not its usual keeper, does not usually attach him with liability

**NON-DANGEROUS ANIMAL**

A non-dangerous animal is an animal that is tamed by nature. It is an animal that is *mansuetae naturae* i.e. tame by nature or an animal that is not normally dangerous, though they have a savage disposition. Examples include camel, dog, cat, goat and so forth. For the owner of a non-dangerous animal to be liable, it must be established that there was damage and that the particular animal had a savage disposition. In ***Daryani v Njoku (1965) 2 All NLR 53,*** the defendant’s dog beat the plaintiff. Evidence was given that the dog had on a previous occasion bit a housemaid and the incident was reported to the wife of the defendant. The court held that the defendant was liable. The knowledge of the vicious propensity of the dog by the wife was imputed to the husband, as the wife was expected to tell him as a matter of course, that being the purpose of lodging the report with her. In ***Cunnings v Granger (1977) 1 All ER 104,*** the plaintiff was bitten by the defendant’s Alsatian which was used as a guard dog in a scrap yard occupied by the defendant. The dog was allowed to run loose in the yard. The plaintiff had entered the yard with a friend who had a license to be there. A notice on the gates stated “Beware of the Dog”. The court held the defendant not liable as the plaintiff was aware of the risk and still went into the premises.

The acts of an animal may commonly give rise to a number of torts, such as:

* Trespass to land
* Trespass to Chattel
* Trespass to person
* Nuisance
* Negligence

**DEFENCES FOR ACTS OF ANIMALS.**

The common defences to Scienter action are the plaintiff’s default and *violenti non fit injuria.*

In the case of *Sarch vs. Blackburn* 1830 172 ER, it was held that a person who trespasses into another man’s land and is attacked by the guard dog would have no claim due to the defence of plaintiff’s default. Also, in the case of *Sycamore vs. Ley* (1932) 147 LT 342*,*it was held that the act of the plaintiff in teasing the dog serves as a defence since it was through the plaintiff’s default that he was injured by the animal.

The defence of *violenti non fit injuria*would apply in a situation in which a person, by the nature of his work or some other purpose, has voluntarily acknowledged to exposing himself to the risk of being attacked by animals. In the case of *Rands vs. McNeill* (1955) 1 QB 253*,*it was held that zoo keepers and animal trainers had no remedy in scienter action if they were attacked by the animals with which they were dealing.

The defences to cattle trespass are the same as the defences for the rule in Rylands vs. Fletcher. In the case of Singleton vs. Williamson (*1861) 158 E.R 533*, it was held that the defence of plaintiff’s default would apply in a situation in which the plaintiff neglected to build a fence round his property, thus allowing for cattle to stray there and cause damage.

In the case of Smith vs. Stone (*1647) 82 ER 344*, it was held that the defence of the act of a stranger would apply in a situation in which a third party drove the cattle onto the plaintiff’s land.

The defence of act of God would also apply if lightning strikes terror into the cattle that they end up stampeding into the land belonging to the plaintiff.