

Motor vehicle vs. domestic animal

Whether it's a cow, horse, dog or chicken that crosses the roadway, here are the rules that apply

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Traffic and poor weather conditions are the most common obstacles to a safe and quick commute. As we travel down the highway, we scan the road ahead. We look for slowing traffic, uneven pavement and vehicles merging onto and off the highway. But no one expects they will encounter a large domestic animal such as a horse or cow on a major highway. Unfortunately, it happens. When these domestic animals wander onto the highway, they pose a serious threat to the life and safety of everyone around them. They create a public nuisance and the owner or keeper of the animal is legally responsible for any harm they cause. This article provides a roadmap of the various legal theories to consider when litigating a *motor vehicle versus domestic animal collision*. The legal claims vary depending on the type of animal involved and the location of the incident.

Trespassing animals

Animals that wander away from their property become trespassers. Where they end up and who they harm determines what legal theories apply.

If an animal trespasses onto private property and causes harm to the possessor of that property, strict liability applies. (*Thomas v. Stenberg* (2012) 206 Cal.App.4th 654, 665.) The person in actual possession of the property is a proper party plaintiff in an action for trespass to real property. (*Williams v. Goodwin* (1974) 41 Cal.App.3d 496, 508.) This includes an owner or tenant in possession.



Strict liability would apply in a case where an animal trespassed onto a neighboring property and caused personal injury or property damage to the neighbor in possession. This includes motor vehicle versus domestic animal accidents that occur on private roadways. The key is to determine whether the roadway is public or private. Only an individual with a possessory right over the roadway will be entitled to assert a strict liability claim against the owner or keeper of the animal. If the injured individual does not have a possessory right over the property where the harm occurred, standard negligence principles apply.

Strict liability would not apply to harm caused to a visitor on the property who is not in "possession" of the property. Strict liability would not apply in a situation where an animal trespassed onto a public road or highway and caused a collision. In that scenario, the vehicle occupants are not "possessors" of the public highway and would not have standing to sue for strict liability. California Food and Agricultural Code section 16904, provides that there is no presumption of negligence against the owner or keeper of any domestic animal who is involved in a collision with a vehicle on a public highway. (Food & Agr. Code, § 16904.) This precludes the use of res ipsa loquitur to establish negligence. (*Pepper v. Bishop* (1961) 194 Cal.App.2d 731, 734.)

Notwithstanding, section 16904 does not entitle an owner to maintain animals with a lack of ordinary care. (*Bartlett v. Galleppi Bros.* (N.D. Cal. 1940) 33 F.Supp. 277, affirmed 120 F.2d 208.) In addition, section 16902 specifies: "A person that owns or controls the possession of any livestock shall not willfully or negligently permit any of the livestock to stray upon, or remain unaccompanied by a person in charge or control of the livestock upon, a public highway, if both sides of the highway are adjoined by property which is separated from the highway by a fence, wall, hedge, sidewalk, curb, lawn, or building." (Food & Agr. Code, § 16902.) If you do not get the benefit of pleading strict liability, but the defendant has violated California Food and Agricultural Code section 16904, do not forget to use that violation to plead negligence per se. (see CACI 418 and Evid. Code, § 669.)

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Open Range Exception

In addition to determining whether the injured individual had possessory rights over the property where the harm occurred, you must also determine whether the county in which the property is located is an "Open Range" county. If the harm occurs in a county that has an Open Range Law Exception, the plaintiff has the burden of fencing in his land to prevent harm from trespassing animals. (See *Williams v. Goodwin* (1974) 41 Cal.App.3d 496, 502-503.) Pursuant to California Food and Agricultural Code section 17124, "the board of supervisors of any county may by ordinance declare that such county, or party of such county, is devoted chiefly to grazing." (Food & Agr. Code, § 17124.) The California Food and Agricultural Code specifies that certain portions of Trinity, Shasta, Siskiyou, Lassen and Modoc counties are Open Range counties. (See Food & Agr. Code, §§ 17121-17128.) In these counties, the plaintiff would first have the burden of showing that he maintained a proper fence around his property as a precondition to recovering for harm caused by trespassing animals. (See *Williams v. Goodwin* (1974) 41 Cal.App.3d 496, 502-503.)

Dog bites

Strict liability applies to trespassing dogs that bite. Pursuant to California Civil Code section 3342, the owner of a dog is strictly liable for the damages suffered by any person who is bitten by a dog while in a public place or lawfully in a private place. It is not material whether the dog was on leash or running loose. (*Davis v. Gaschler* (1992) 11 Cal.App.4th 1392, 1399.) There are immunities that apply to military and police dogs that bite individuals while being used for military or police purposes (Civ. Code, § 3342(b)) as long as the individuals are involved in the acts that prompted use of the dog (Civ. Code § 3342(c)). These code sections are limited to dog bites. They do not change the analysis regarding a motor vehicle versus dog collision. There would not be strict liability for a motor vehicle versus dog collision, unless the injury occurred to an individual in possession of the property on which the incident occurred.

Inherently dangerous animals

The owner or keeper of a wild animal or dangerous species is strictly liable for any harm caused by the animal. (*Baugh v. Beatty* (1949) 91 Cal.App.2d 786, 791-792.) There is no need to show prior dangerous propensities. Instead, there is a presumption that wild animals are vicious. (*Ibid.*) Case law has specifically identified the following animals as inherently dangerous: human-eating shark (*Rosenbloom v. Hanour Corp.* (1998) 66 Cal.App.4th 1744); chimpanzee (*Baugh v. Beatty* (1949) 91 Cal.App.2d 786); leopard (*Opelt v. Al G. Barnes Co.* (1919) 41 Cal.App. 776).

Based on the language in the *Baugh* case, "strictly liable for any harm," it appears that an individual involved in a motor vehicle versus inherently dangerous animal collision would be entitled to assert a claim for strict liability and the location of the accident is immaterial.

Animals with dangerous propensities

If an owner or keeper of an animal knows, or has reason to know, of the animal's dangerous or vicious propensities, the owner or keeper is strictly liable for any damage to others resulting from such propensity. (*Hillman v. Garcia-Ruby* (1955) 44 Cal.2d 625, 626.) The key in these cases is to show knowledge of the dangerous propensities. There is no requirement that the animal have previously injured someone for the owner to appreciate the dangerous propensities. Although, a prior attack will be sufficient to show dangerous propensities.

An owner was not charged with having knowledge of a horse's dangerous propensity where, before the plaintiff's accident, the horse had not shown any disposition to pitch, run away, kick, or bite. (*O'Brien v. Gateway Stables* (1951) 104 Cal.App.2d 317, 329 – owner not liable for plaintiff's injuries when he invited her to go horseback riding and she was thrown from the horse). An owner was not liable for injuries caused when their horse bolted, circled and reared while getting into formation for a parade, because the horse was not known to be vicious prior to the parade. (*Barnett v. LaMesa Post No. 282 American Legion Dep't* (1940) 15 Cal.2d 191, 1994.)

Although there is no case authority on point, it could be argued that an animal that frequently escapes its enclosure and wanders onto public roadways has "dangerous propensities" since harm to passing motorists who strike the animal is a foreseeable risk. This argument may not survive summary judgment, so always include a general negligence claim.

Public nuisance

A public nuisance is "anything which is injurious to health, including, but not limited to, . . . an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any . . . highway." (Civ. Code, § 3479.) A private person may maintain an action for public nuisance "if it is specially injurious to himself, but not otherwise." (Civ. Code, § 3493.)

In a case involving a motor vehicle versus animal collision on a public highway, consider pleading a claim for public nuisance. A nuisance does not have to be intentional. (See *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 920.) In addition, there is no language in section 3479 that requires a finding of negligence, so arguably it is an easier cause of action to prove.

Local ordinances

Many counties require owners of large livestock such as cattle, sheep and horses to obtain a confined animal permit. Counties vary in terms of the

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additional duties and responsibilities they impose on owners and keepers of permitted livestock. Some county ordinances specify required fencing standards. Others simply provide great language requiring owners to take proper and reasonable care and management of their animals. The ordinances provide local industry standards of care and can be used to argue negligence per se (see CACI 418 and Evid. Code, § 669). This information is easily accessible on county Web sites.

Conclusion

Domestic animals and wild animals kept domestically are not supposed to be on our roads. Motor vehicle versus animal collisions can result in serious injuries. If you have a motor vehicle versus domestic animal collision case, first determine if the collision took place on property possessed by your client. If it did, you may have a strict liability claim. Next check to see if the county in which the collision occurred is an Open Range county. If it is, confirm your plaintiff had a proper fence to keep trespassing animals out.

If the collision did not occur on property possessed by your plaintiff, determine if the animal had prior dangerous propensities or is an inherently dangerous animal so you can still argue strict liability principles. If your case involves a collision on a public highway, plead public nuisance and general negligence causes of action.


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