



BEWARE OF BAD DOGS!

By Sanya Goffe

It is quite common to see the sign "BEWARE OF BAD DOGS" posted on the front gate or wall of someone's house. However, the placing of a warning sign, regardless of how conspicuous, may not always be a defence in the event a third party suffers injury from the dog.

The Dogs (Liability for Injuries by) Act provides that the owner of every dog will be liable in damages for injury done to any person by his dog. It is not necessary for the person seeking such damages to show that the injury was due to neglect on the part of the owner.

Interestingly, under the Act the "owner" of a dog is defined to include any occupier of any house or premises where any dog is kept, or permitted to live at the time of the injury unless the occupier can prove that the dog was kept or permitted to live in the said house or premises without his sanction or knowledge. Where there is more than one occupier in any house or there are premises let in separate apartments, or lodgings, the occupier of that particular part of the premises in which the dog was kept or permitted to live at the time of the injury, shall be deemed to be the owner of such dog. Therefore, persons who allow stray dogs to remain on their premises will not be able to rely on a defence against liability on the ground that they do not "own" the dog that caused injury.

Acts of Strangers and Trespassers

The issue of the distinction between a trespasser and a person who lawfully entering premises with the implied permission of the occupier has been the subject of judicial consideration in a number of cases. It has been held that the "owner" of a dog that bites a mere trespasser is not liable for the injury to the trespasser. If, however, the injured party is deemed to have had tacit permission to enter then the occupier of the premises would be liable for the injury caused by the dog.

In determining whether a person is entitled to enter premises, the courts have held that no one is deemed a trespasser if he enters in any manner of communication with the occupier or any other person on the premises unless he knows or ought to know that his entry is prohibited. For example, entry on to premises by persons who visit neighbourhoods distributing religious or political tracts or ordinary beggars has been considered to be sanctioned in the absence of a sign expressly prohibiting such visits.

However, a sign may not always be sufficient. There is an interesting English case in which a watchman was employed in a neighbourhood where the defendant carried on a milk processing business on premises where a dog was kept chained near a cowshed on the property. The defendant had posted a sign which said 'Beware of the dog' but the watchman could not read. The watchman entered the defendant's property and, in walking along the path where the dog was chained, was bitten by the dog. The Court held that a man has a right to keep a fierce dog for the protection of his property, but he has no right to put the dog in the way of access to his house and that a person innocently coming for a lawful purpose may be injured by it. Further, he has no right to place a dog so near to the door of his house that any person coming to ask for money or on other business might be bitten. The Court went on to say that a party, who has no means of knowing the danger in entering someone's land, may recover damages even though the owner has attempted to give notice; and it is no answer to such an action that a printed notice was put up, if it appears that the injured party could not read.

Although this case may well be decided differently by a Jamaican court, it highlights a common thread that is woven through many of the cases and legal principles that deal with the liability for injury caused by dogs, namely that significant protection may be available for persons who suffer injuries from such attacks. This is because it is

accepted that dogs are allowed to roam and that generally the owner of a dog does not act negligently or unreasonably in allowing it to do so.

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