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## Dog bites dog, dog bites guest: Who pays?

This week we have a double dose of questions related to dog-owner liability.

Dear Dale: My husband was walking our dog when two of our neighbors' dogs came off their property and started jumping at and nipping our dog. Our dog bit one of the neighbor's dogs and now they're suing us in small claims court for the vet bills. If their dogs had been under control this never would have happened. Do we have any financial responsibility?

Answer: This is one of those situations where common sense would seem to say that you have no responsibility, but the way I'm reading Ohio's dog-liability statute, I think you could be liable for the vet bills incurred by your neighbors.

This situation seems to spin on a plain language reading of a state law that addresses liability for dog owners, keepers, or harborers. The statute says that owners, keepers, or harborers are liable for damages for injuries or property damage caused by a dog. There are a few exceptions, however. The dog owner is not liable if the injury or property damage was caused to an individual who was committing or attempting to commit criminal trespass or another criminal offense other than a minor misdemeanor on the property of the dog owner, or that the person sustaining injury or loss to property was teasing, tormenting, or abusing the dog on the owner's property.

In this situation, it doesn't appear that any exception applies. Yes, you can argue that your neighbors' dogs were teasing or tormenting your dog, but the exception spelled out under the statute says that teasing had to take place on your property. And your neighbors weren't committing a criminal trespass or another criminal offense on your property, so that exception doesn't seem to apply either. While your neighbors could be cited by the dog warden for failing to properly confine or restrain their dogs, that doesn't help you here.

Courts have ruled that the statute must be applied as written, and that if there's a problem with the language of the statute, it's up to the state legislature to fix it. I suppose you could try to fight this and hope that the magistrate or judge hearing the case reads the law differently, but you might want to consider approaching your neighbors and reaching some mutually agreeable resolution. Settling the issue might also patch up the relationship with your neighbors.

Dear Dale: My dog bit a guest in my home without me knowing it. When I found out, I told this person not to engage the dog as she had done previously, but she did anyway. The dog bit her a second time, again when I wasn't home. Please note that the person who was bitten was not trespassing. Am I responsible for her injuries?

Answer: Dog owners are liable for the damage caused by their dogs, barring the limited exceptions that I discussed in the response above.

You pointed out specifically that the woman who was bitten was not trespassing, so that exception is not met. So, we'd have to look at what you meant when you said you told her not to "engage" your dog. If by that you meant she was teasing, tormenting, or abusing your dog, you have a defense. If you mean you asked her to ignore your dog or to avoid petting your dog, then I think you're liable under the statute because you don't meet any of the exceptions.

Maybe I'm reading too much into your question, but you also seem to be broaching the subject of whether you could avoid liability because you essentially warned her to stay away from your dog. When someone assumes the risk of engaging in certain dangerous behaviors, that can serve as a defense in some negligence cases. In this situation, however, judges have held that the assumption-of-risk defense is not available in cases based on the state law. The reasoning is that the law spells out dog owners' liability, as well as the defenses available to them, and the defense of assumption of the risk was not made part of the statute.

Therefore, based on the limited information you've presented, it looks like you're liable for any injuries your guest sustained. If she has indicated she's going to make a claim, I'd advise you to immediately contact the company that provides you with homeowner's insurance and let them defend you.

Dale Emch practices law at the Charles E. Boyk Law Offices, LLC, in Toledo. In his column, he will discuss general legal principles and answer readers' questions. Neither Mr. Emch nor The Blade present or intend his column to be taken as legal advice. Readers seeking legal advice should consult with an attorney. Readers should send their questions to Mr. Emch at [demch@charlesboyk-law.com](mailto:demch@charlesboyk-law.com) or Dale Emch, 405 Madison Ave., Suite 1200, Toledo, OH 43604. His blog is at [www.toledocaraccidentlawyerblog.com](http://www.toledocaraccidentlawyerblog.com)

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