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Cwestiwn enghreifftiol SQE2 a thrafodaeth ar yr ateb

Ymchwil gyfreithiol (Ymgyfreitha Troseddol)

Adolygwyd Rhagfyr 2025

Bydd ymgeiswyr yn sefyll 16 o asesiadau yn SQE2. Er mwyn pasio SQE2, rhaid i ymgeiswyr gael y marc pasio cyffredinol ar gyfer SQE2.

Mae'r cwestiwn enghreifftiol hwn, a thrafodaeth ar yr ateb, yn enghraifft o asesiad ymchwil gyfreithiol. Asesiad ar gyfrifiadur yw hwn a bydd gan ymgeiswyr 60 munud i gwblhau'r dasg.

Am ragor o fanylion gweler Manyleb Asesu SQE2.

Sylwer bod y cwestiynau enghreifftiol wedi cael eu darparu er mwyn rhoi syniad o'r math o dasgau y gellid eu gosod i ymgeiswyr. Nid ydynt yn adlewyrchu'r holl ddeunydd sydd wedi'i gynnwys yn SQE2.

Efallai na fydd cwestiynau yn y dyfodol yn dilyn yr un fformat yn union.

Cwestiwn a phapurau ychwanegol i ymgeiswyr

Nodyn i Ymgeiswyr:

Fe welwch fod rhai termau Cymraeg yn yr asesiad hwn yn cael eu dilyn gan y term Saesneg cyfatebol mewn cromfachau. Yn ogystal, mae rhestr eirfa, sydd wedi'i chynnwys, wedi'i ffurfio o'r termau hynny.

E-bost at yr Ymgeisydd

Oddi wrth: Partner
Anfonwyd: 11 Rhagfyr 202#
At: Yr Ymgeisydd
Pwnc: Keith Foster

Cefais drafodaeth ffôn heddiw gyda chleient newydd, Keith Foster.

Mae Keith yn bryderus iawn am rywbeth a ddigwyddodd ddoe yn ymwneud â'i gi, Digger. Eglurodd ei fod wedi ateb drws ei dŷ i'r dyn post a oedd yn dod â pharsel iddo. Pan agorodd Keith y drws, rhedodd Digger allan o'r tŷ ac ymosod ar y dyn post yn yr ardd flaen. Ceisiodd y dyn post gadw'r ci draw, ond cafodd ei glwyfo wrth i'r ci frathu ei fraich.

Ceisiodd Keith alw'r ci i ffwrdd a'i atal, ond parhaodd y ci i ymosod ar y dyn post. Dim ond pan lwyddodd y dyn post i gicio'r ci y llwyddodd Keith i'w roi yn ôl yn y tŷ. Roedd y dyn post yn ddig/grac iawn. Gadawodd gan ddweud bod y ci yn beryglus ac y dylid ei ddinistrio. Dywedodd ef wrth Keith y byddai'n rhoi gwybod i'w gyflogwr am y digwyddiad.

O ganlyniad i'r digwyddiad, dywedodd Keith wrthyf fod swyddog yr heddlu wedi cysylltu ag ef yn gynharach heddiw i ofyn iddo fynd i orsaf yr heddlu yfory. Dywedodd swyddog yr heddlu wrth Keith fod cyflogwr y dyn post wedi cwyno am ymddygiad ymosodol (aggressive) Digger a'i fod yn dymuno i'r heddlu ymchwilio i'r digwyddiad. Mae'n debyg bod y dyn post wedi mynd i'r ysbyty i gael triniaeth am glwyf cnawd arwynebol (superficial flesh wound). Cafodd y clwyf ei lanhau a'i bwytho gan feddyg.

Roedd Keith wedi dychryn ac yn ofidus iawn yn ystod ein sgwrs dros y ffôn. Dywedodd wrthyf fod Digger, sy'n gi defaid yr Almaen (German Shepherd) gwrywaidd, yn gi cyfeillgar sydd wedi ei hyfforddi'n dda ac nid yw erioed wedi ymddwyn yn ymosodol o'r blaen.

Hoffai Keith wybod os yw e wedi cyflawni trosedd mewn perthynas â'r digwyddiad gyda Digger.

Gan ddefnyddio'r wybodaeth uchod a'r ffynonellau a ddarparwyd, hoffwn i ti ymchwilio i'r ateb i'r cwestiwn hwn. Dylet adrodd yn ôl i mi fel y gallaf gynghori'r cleient.

Dylet gynnwys dy resymeg gyfreithiol, fel y gallaf gyfeirio ati, gan sôn am unrhyw ffynonellau neu awdurdodau allweddol.

Diolch yn fawr

Partner

ATODIADAU:

Darparwyd y ffynonellau canlynol i chi (yn Saesneg), wedi'u rhestru yn nhrefn yr wyddor yn ôl enw'r ffynhonnell.

Ni fwriedir i drefn rhestr y dogfennau awgrymu ym mha drefn y dylid cyfeirio atynt.

SYLWER EI BOD HI'N BOSIBL NA FYDD RHAI O'R FFYNONELLAU HYN, NEU'R FFYNONELLAU I GYD, YN BERTHNASOL WRTH ATEB Y CWESTIWN

1. Atkins Court Forms/Animals V4/Practice/ 8 paras 610–611 *(p.5–7)*
2. Blackstone's Criminal Practice B20.5–B20.9 *(p.8–10)*
3. Charlesworth & Percy on Negligence 16th Ed. Part IV, Chp 15, Section 2, paras 15.07–15.13, 15.51–15.59 *(p.11–17)*
4. Dangerous Dogs Act 1991, ss.1–3 *(p.18–24)*
5. Dangerous Dogs Act 1991, s.10 *(p.25–26)*
6. Halsbury's Laws, Animals, V2, para 48-49 *(p.27–28)*
7. Occupiers' Liability Act 1957, ss.1–3 *(p.29–32)*
8. *Rafiq v Folkes* (1997) 161 JP 412 *(p.33–36)*

Nodyn i Ymgeiswyr:

Dylech roi eich ateb yn y templed a ddarparwyd.[1]

Peidiwch â rhoi eich enw ar y templed ateb.

Does dim angen i chi ystyried gorchmynion y gallai llys eu gwneud mewn perthynas â Digger na pha gosbau, os o gwbl, y gallai Keith eu hwynebu.

[1] Nid yw'r templed gwag hwn wedi'i ddarparu. Serch hynny mae'r ateb enghreifftiol wedi'i ysgrifennu yn y templed.

O ystyried cyfyngiadau amser yr asesiad hwn, nid ydym wedi darparu testun llawn rhai o'r ffynonellau gwreiddiol. At ddiben yr asesiad hwn, lle nad yw testun llawn y ffynhonnell gynradd wedi cael ei ddarparu, gall ymgeiswyr nodi'r ffynhonnell gynradd ar y sail y cyfeirir ati mewn un neu ragor o'r ffynonellau eilaidd a ddarperir, a gellir gwirio'r testun llawn yn ddiweddarach.

DIWEDD

Rhestr eirfa ar gyfer Ymgyfreitha troseddol>Ymchwil gyfreithiol

Cymraeg	Saesneg
allan o reolaeth a pheryglus	dangerously out of control
anweithred	omission
atebol yn droseddol	criminally liable
ci defaid yr Almaen	German Shepherd
clwyf cnawd arwynebol	superficial flesh wound
pryder rhesymol	reasonable apprehension
trosedd waethygedig	aggravated offence
ymosodol	aggressive

DIWEDD

Atiodad 1

Atkin's Court Forms/Animals Vol 4/Practice/8. Trespass and injuries caused by dogs.

8. Trespass and injuries caused by dogs.

[608]

The keeper of a dog is strictly liable for damage caused by that dog trespassing onto land where he has no right or permission to allow it to be[1].

Liability for injuries or damage caused by dogs may arise in different ways:

1. although dogs generally are a non-dangerous species, a particular dog may fall into the category of a dangerous animal if it has vicious or marauding characteristics[2]. In such a case, the keeper is strictly liable for damage or injury which the dog was likely to cause unless restrained, provided he knew of the dog's dangerous characteristics[3];
2. liability for harm caused by dogs may also arise at common law under negligence or nuisance[4];
3. the keeper of a dog is strictly liable where that dog causes damage by killing or injuring livestock[5]. It is irrelevant whether the keeper knew of the dog's propensity to chase livestock[6]. However, statutory defences are available in the following cases:
   3.1. where the damage is wholly due to the fault of the person suffering it (ie the person to whom the livestock belongs)[7]; or
   3.2. where the livestock is killed or injured on land onto which it had strayed and either the dog belonged to the occupier, or its presence on the land was authorised by the occupier[8].

Where the damage is caused by two or more dogs acting together, the keeper of each dog can be held liable as though his dog had caused the whole of that damage[9].

1. Ordinarily domesticated dogs and other animals (other than livestock) are, it seems, still subject to the old common law rule that the owner of such an animal is liable for such damage as it is in the

animal's nature ordinarily to commit: see *Cox v Burbidge* (1863) 13 CBNS 430 at 436, per Erle LJ; *Fardon v Harcourt-Rivington* [1932] All ER Rep 81, 76 Sol Jo 81, HL.

2. Animals Act 1971 s 2(2). See Paragraph 2, [602]. For brief details and particulars of claim see Forms 7, 8.
3. All the elements required by Animals Act 1971 s 2(2) have to be proved for the keeper to be liable. See Paragraph 2.
   Note also that where a dog is dangerous, a complaint may be made to the magistrates' court for it to be kept under control or destroyed: see Forms 78, 79.
4. See Paragraphs 10, 11.
5. Animals Act 1971 s 3. For brief details and particulars of claim see Forms 7, 8.
6. For an action alleging a dog to be a dangerous animal, where knowledge on the part of the keeper must be pleaded and proved see Paragraph 2.
7. Animals Act 1971 s 5(1). Thus, this defence may be invoked if the livestock escapes through a fence which it was the livestock owner's obligation to maintain: see Paragraph 5.
8. Animals Act 1971 s 5(4). For a defence see Form 37.
9. *Arneil v Paterson* [1931] AC 560, 100 LJPC 161, [1931] All ER Rep 90, HL.

Atkin's Court Forms/Animals Vol 4/Practice/10. Liability for negligence in managing animals.

10. Liability for negligence in managing animals.

[610]

Quite apart from the statutory rights of action previously discussed, the particular situation under consideration may give rise to an action in negligence. A person who owns or keeps an animal, whether a dangerous or sufficiently harmless domestic animal, is under the ordinary duty to take care that his animal is not put to such a use as is likely to injure his neighbour[1].

In particular, a person who brings an animal onto a highway must use all reasonable care to prevent it from doing damage to other persons there. In general, taking, driving or walking animals on a highway without having them under sufficient control as to prevent injury or damage to other highway users amounts to negligence[2].

Accordingly, liability for negligence does not arise from keeping an animal insecurely. It forms no part of the cause of action and the absence of such negligence cannot be treated as a defence. The liability arises from allowing it to escape from the keeper's control with the result that it does damage[3].

1. *Fardon v Harcourt-Rivington* [1932] All ER Rep 81, (1932) 48 TLR 215 at 217, HL, per LORD ATKIN. For examples, see *Draper v Hodder* [1972]2 QB 556, [1972] 2 All ER 210, [1972] 2 WLR 992, CA; *Jones v Owen* (1871) 24 LT 587; *Sycamore Ley* [1932] All ER Rep 97, (1932) 147 LT 342, CA. See Forms 36–38.

2. See *Deen v Davies* [1935] 2 KB 282, [1935] All ER Rep 9, CA (inadequate tethering); *Turner v Coates* [1917] 1 KB 670, [1916–17] All ER Rep 264 (unbroken colt driven without halter in the dark); *Turnbull v Wieland* (1916) 33 TLR 143 (insufficient control of cows); *Aldham v United Dairies (London) Ltd* [1940] 1 KB 507, [1939] 4 All ER 522, CA (horse of restive nature left unattended). See Forms 36–41.

3. *Knott v LCC* [1934] 1 KB 126 at 138, CA, per LORD WRIGHT.

Atkin's Court Forms/Animals Vol 4/Practice/11. Nuisance and other actions.

11. Nuisance and other actions arising from the keeping of animals.

[611]

The owner of an animal may be liable for nuisance[1] arising from the keeping of the animal[2]. Where a person can prove material interference with reasonable comfort and convenience, or annoyance (for example by noise[3] or smell[4]), an injunction to restrain the nuisance may be granted at their suit against the owner or keeper of the animal[5]. The claimant must show that the particular nuisance is:

1. not fleeting;
2. suffered by him to a greater degree than others; and
3. direct in its effect and not merely consequential[6].

Where such a claim is made, the particulars must state whether the injunction relates to residential premises and identify the land by reference to a plan, if necessary[7].

The owner may also be liable for trespass[8], or as an occupier[9], or possibly under the rule in *Rylands v Fletcher*[10]. However, actions under these torts are rare to the point of being of academic interest only. If one of these torts apply, it is most likely that there is also liability under the statutory torts[11], negligence or nuisance.

1 See generally ACF VOL 28(2) (2020 ISSUE) NUISANCE. See Forms 42–45.

2 *Pitcher v Martin* [1937] 3 All ER 918.

3 Eg a dog barking late at night. See *Leeman v Montagu* [1936] 2 All ER 1677; *Ball v Ray* (1873) 8 Ch App 467, 37 JP 500; *Broder v Saillard* (1876) 2 Ch D 692, 40 JP 644. See Forms 42–45.

4 *Rapier v London Tramways Co* [1893] 2 Ch 588, CA.

5 *A-G (on the relation of Glamorgan County Council and Pontardawe RDC) v PYA Quarries Ltd* [1957] 2 QB 169, [1957] 1 All ER 894, [1957] 2 WLR 770.

6 *Benjamin v Storr* (1874) LR 9 CP 400.

7 CPR PD 16 para 7.1.

8 Eg if a dog is intentionally set upon a person, or livestock are intentionally driven onto another's land.

9 Ie under the Occupiers' Liability Act 1957.

10 The requirement under the rule that there be a non-natural use of land would seem to limit severely the application of *Rylands v Fletcher* to animals: *Rylands v Fletcher* (1868) LR 3 HL 330.

11 i.e. under the Animals Act 1971.

DIWEDD

Atiodad 2

Offences under the Dangerous Dogs Act 1991

Blackstone's Criminal Practice
Part B - Offences
Chapter B20 - Offences Relating to Dangerous Dogs and Animal Welfare Offences under the Dangerous Dogs Act 1991

Failing to Keep Dogs under Proper Control

B20.5

The offences of failing to keep a dog under proper control were significantly amended by the ABCPA 2014, with effect from 13 May 2014. The principal amendment involved the repeal of s. 3(3) and with it the need for any offence to take place in a public place or in a place where the dog is not permitted to be. Special provision is, however, made for 'householder' cases involving trespassers or supposed trespassers within a dwelling.

Section 3

Dangerous Dogs Act 1991, s. 3

(1) If a dog is dangerously out of control in any place in England or Wales (whether or not a public place)—

(a) the owner; and

(b) if different, the person for the time being in charge of the dog,

is guilty of an offence, or, if the dog while so out of control injures any person or assistance dog, an aggravated offence, under this subsection.

(1A) A person ('D') is not guilty of an offence under subsection (1) in a case which is a householder case. (1B) For the purposes of subsection (1A) 'a householder case' is a case where—

(a) the dog is dangerously out of control while in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both), and

(b) at that time—

(i) the person in relation to whom the dog is dangerously out of control ('V') is in, or is entering, the building or part as a trespasser, or

(ii) D (if present at that time) believed V to be in, or entering, the building or part as a trespasser.

Section 76(8B) to (8F) of the Criminal Justice and Immigration Act 2008 (use of force at place of residence apply for the purposes of this subsection as they apply for the purposes of subsection (8A) of that section (and for those purposes the reference in section 76(8D) to subsection (8A)(d) is to be read as if it were a reference to paragraph (b)(ii) of this subsection).

(2) In proceedings for an offence under subsection (1) above against a person who is the owner of a dog but was not at the material time in charge of it, it shall be a defence for the accused to prove that the dog was at the material time in the charge of a person whom he reasonably believed to be a fit and proper person to be in charge of it

Sentence

B20.6

Section 3

Dangerous Dogs Act 1991, s. 3

(4) A person guilty of an offence under subsection (1) above other than an aggravated offence is liable on summary conviction to imprisonment for a term not exceeding six months or [a fine not exceeding the statutory maximum] or both; and a person guilty of an aggravated offence under that subsection is liable—

(a) on summary conviction, to imprisonment for a term not exceeding [the general limit in a magistrates' court;] or [a fine not exceeding the statutory maximum] or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding the relevant maximum specified in subsection (4A) or a fine or both.

(4A) For the purposes of subsection (4)(b), the relevant maximum is—

(a) 14 years if a person dies as a result of being injured;

(b) 5 years in any other case where a person is injured;

(c) 3 years in any case where an assistance dog is injured (whether or not it dies).

The revised definitive sentencing guideline on Dangerous Dog Offences applies to all offenders aged 18 and over sentenced on or after 1 July 2016. The guidelines apply, inter alia, to the offences under s. 3(1) which attract the different maximum penalties set out in s. 3(4) and (4A).

Alternative Verdict

B20.7

When D is charged on indictment with an aggravated offence it is not open to a jury to convict D of a simple (non-aggravated) offence because, by s.3(4), such an offence is summary only and is not specified for the purposes of the CLA 1967, s.6(3) (*Williams (Anthony John)* [2011] EWCA Crim 1716)

B20.8

Save where s. 3(1A) applies ('householder cases') and provided that the offence is alleged to have occurred after 1 October 2014 (see B20.5), it no longer matters whether a dog is out of control on the owner's property or elsewhere. An aggravated offence may now be committed where, for example, D's dog bites a visitor inside his house, a postman walking up his front path, or somebody stealing strawberries in his garden. See, e.g., *Blake v CPS* [2017] EWHC 1608 (Admin).

The question whether someone other than the owner is 'in charge' of the dog is one of fact and degree and should ordinarily be left to the jury (*Rawlings* [1994] Crim LR 433). More than one person may be in charge of a dog at any given time (*L v CPS* [2010] EWHC 341 (Admin)). As to the scope of the defence under s. 3(2), see *Huddart* [1999] Crim LR 568.

The offences created by s. 3(1) may be committed by both the owner (subject to the s. 3(2) defence) *and* the person in charge of the dog. The owner is not exempt from liability just because someone else is in charge of the dog at the time.

Under s. 3, the type of dog is irrelevant; it is enough to show that it was dangerously out of control. Section 10(3) provides:

> … a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person or assistance dog, whether or not it actually does so, but references to a dog injuring a person or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in the service of the Crown.

It is submitted that references to dogs injuring persons must, in this context, be confined to bites, etc., inflicted by dogs and should not include traffic injuries indirectly caused by dogs running loose on a road, but the point has yet to be decided in the courts.

A dog may be dangerously out of control even when on a lead, if its handler cannot properly control or restrain it (*Gedminintaite* [2008] EWCA Crim 814; *R (Andrew) v Chief Constable of Thames Valley Police* [2022] EWHC 887 (Admin)). By s. 10(3) liability can arise only where the dog behaves in such a way that there are 'reasonable grounds for apprehension that it will injure any person or assistance dog', but in *Rafiq v DPP* (1997) 161 JP 412 it was held that, even if a dog bites without warning, 'this is itself capable of being conduct giving grounds for reasonable apprehension of injury'. Anyone witnessing it is likely to fear it will cause further harm.

Even where it seems likely that a dog may injure someone, the words 'dangerously out of control' must be given their natural meaning. If, for example, X teases Y's dog in a cruel and

stupid way, it may be apparent to any onlooker that X is likely to be bitten unless he desists, but it does not follow that the dog is out of control.

Where the dog is owned by a person under the age of 16, s. 6 applies.

Strict Liability

B20.9

S.3 imposes strict liability. It was enacted for reasons of public safety, and would become very much harder to enforce if some fault element, such as negligence, had to be proved against the owner or handler of a dog which becomes dangerously out of control. It therefore places the onus squarely upon dog owners, etc., to ensure their dogs are kept under control (*Bezzina [1994] 3 All ER 964*). But, although this provision creates an offence of 'situational liability' and does not specify how or why the dog may have come to be thus out of control, the Court of Appeal in *Robinson-Pierre [2013] EWCA Crim 2396, [2014] 1 WLR 2368* rejected an argument that Parliament intended liability to be absolute, 'in the sense that criminal liability may follow notwithstanding the absence of any act or omission of the defendant contributing to the prohibited state of affairs'. The offence instead requires 'proof of an act or omission by the defendant (with or without fault) that to some more than minimal degree caused or permitted the prohibited state of affairs to come about' (per Pitchford LJ at [42]). It follows that a defendant cannot properly be convicted if the dog in question was allowed to get out of control as a result of third-party acts or omissions that he did not cause and had no power to control or prevent.

DIWEDD

Atiodad 3

Section 2. - Strict Liability for Damage Done by Animals Generally

Charlesworth & Percy on Negligence 16th Ed. Consolidated Mainwork Incorporating Second Supplement Part IV - Absolute or Strict Liability
Chapter 15 - Animals
Section 2. - Strict Liability for Damage Done by Animals Generally

Liability for damage done by dangerous animals[25]

15-07 Section 2 of the 1971 Act was described by Lord Denning MR, who (correctly) anticipated "several difficulties in the future", as "very cumbrously worded."[26] Lord Nicholls remarked:
"The purpose of the Animals Act 1971 was to simplify the law …. Unfortunately the language of section 2(2) is itself opaque.
In this instance the parliamentary draftsman's zeal for brevity has led to obscurity.
Over the years section 2(2) has attracted much judicial obloquy."[27]

15-08 Section 2 of the 1971 Act replaces the rules of the scienter action and provides that:

> Section 2
>
> **"(1)** Where any damage is caused by an animal which belongs to a dangerous species, any person who is a keeper of the animal is liable for the damage, except as otherwise provided by this Act.
>
> **(2)** Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if—
>
> **(a)** the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and
>
> **(b)** the likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species[28] or are not normally so found except at particular times or in particular circumstances; and
>
> **(c)** those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and under the age of 16."

Dangerous species

15-09 It will be seen that a distinction is drawn between animals of a dangerous species and other animals. No attempt is made to define "animal" as such. By s.6(2) of the 1971 Act a *dangerous species* is defined as a species[29]—

> Section 6
>
> **"(a)** which is not commonly domesticated in the British Islands; and
>
> **(b)** whose fully grown animals normally have such characteristics that they are likely, unless restrained, to cause severe damage or that any damage they may cause is likely to be severe."

15-10 Whether or not a particular species of animals is dangerous is purely a question of law[30]:

> "the reason why this is a question of law and not a question of fact is because it is a matter of which judicial notice has to be taken. The doctrine has from its formulation proceeded upon the supposition that the knowledge of what kinds of animals are tame and what are savage is common knowledge. Evidence is receivable, if at all, only on the basis that the judge may wish to inform himself."[31]

15-11 Accordingly, in each case a decision must first be reached about the category, dangerous or non-dangerous, into which the animal falls. The answer is of considerable importance since, should s.2(1) apply, the keeper's state of knowledge of the animal's characteristics is irrelevant and proof of liability on behalf of an injured party ought to be a straightforward exercise. Under s.2(2) the claimant must establish each of the matters set out in subsections (a), (b) and (c).

15-12 Bears,[32] elephants,[33] and lions[34] have all been held to be dangerous species at common law. There was some doubt about bees.[35] Dogs, even a 50kg Rottweiler dog,[36] are not,[37] although the Dangerous Dogs Act 1991 imposes criminal penalties on those who fail to observe certain safeguards in relation to identified breeds known for their aggressive qualities.[38] If the animal is

of a dangerous species it is irrelevant that the keeper either did not know it was dangerous or believed the individual tame.[39] It is no defence that the damage resulted because the animal was suddenly frightened and not from any vicious propensity in its character.[40]

Non-dangerous species[41]

15-13 The effect of s.2(2) of the 1971 Act is that, in order to establish liability, an injured claimant must prove each of the three elements of the subsection as set out above.[42] In *Curtis v Betts*,[43] it was emphasised that each part of the subsection should be examined in turn.

...

The keeper's defences: at common law

15-51 Although at common law liability for damage caused by animals was regarded as similar to liability under *Rylands v Fletcher*, there was some doubt about the extent to which the same defences applied.[153] It was, however always a defence to prove that the injured person had brought the damage upon himself by either meddling with the animal or deliberately or rashly going too near the dangerous animal's cage,[154] well knowing that it was dangerous.[155]

Illustrations

15-52 An owner of zebras was not liable when he kept his animals secure in a stable, but the claimant entered the stable and, in stroking one of the animals, was kicked by it into the next stall where another zebra bit him.[156] Where, upon seeing a smouldering cigarette on some straw, an employee of the defendants, who was not employed to

look after the animals, climbed over a barrier separating a leopard's cage from the part to which the public were admitted and was bitten, liability was not made out.[157] Where a child attempted to play with a dog of known mischievous propensity and was bitten as a result, the claim failed.[158]

The keeper's defences: under the statute

15-53 Section 2 of the Animals Act imposes liability "except as otherwise provided" and the statutory exceptions to liability are set out in s.5: (i) the fault of the claimant; (ii) voluntary acceptance of the risk; (iii) the claimant as trespasser. Other defences, at common law, are no longer available.

The fault and contributory negligence of the claimant

15-54 Under s.5(1), "a person is not liable under section[s] … of this Act for any damage which is due wholly to the fault of the person suffering it." In the light of the provisions of s.10[159] and the definition of fault, as having "the same meaning as in the Law Reform (Contributory Negligence) Act 1945" contained in s.11, the court may apportion damage where the claimant has been held partly to blame for the damage. An individual at an equestrian event who was held to be riding too aggressively and too close to the horse in front, was found wholly to blame when the horse in front kicked out and caused injury.[160]

The claimant voluntarily accepting the risk

15-55 Section 5(2) of the 1971 Act provides that:

> Section 5
>
> **"(2)** A person is not liable under section 2 of this Act for any damage suffered by a person who has voluntarily accepted the risk thereof.[161]"

> "The words of section 5(2) are simple English and must be given their ordinary meaning and not be complicated by fine distinctions or by reference to the old common law doctrine of volenti … what must be proved in order to show that somebody has voluntarily accepted the risk is that (1) they fully appreciated the risk, and (2) they exposed themselves to it."[162]

Accordingly, if a person intervened to separate his dog involved in a fight with another dog, he could well expect to have this defence raised against him.[163] Where a claimant deliberately trespassed in a scrap yard at night, although aware that an Alsatian guard dog patrolled the premises unrestrained, she was held to have

voluntarily accepted the risk of injury.[164] Where an experienced rider said she would continue to ride a horse after being thrown from it when it bucked on going into a canter, a characteristic of which she had been warned, she was to be taken as having accepted the risk of falling off when

the horse behaved in that way again.[165]

…

Presumably a suspect told by a pursuing police dog handler to "stand still or the dog will be sent" would be held to have voluntarily accepted the risk of being bitten if such clear warning was ignored.[169]Where the claimant grabbed a Boxer dog which may have been trying to escape from the premises, he was found to have voluntarily accepted the risk that the animal may thereby feel threatened, and seek to defend itself by biting.[170]An individual who clipped a horse in her care, despite being told not to, voluntarily accepted the risk that the horse might react badly.[171]

> "If the claimant, knowing of the risk which subsequently eventuates, proceeds to engage with the animal, his or her claim under the Act will be defeated. It is not a prerequisite of the section 5 (2) defence that the claimant should foresee the precise degree of energy with which the animal will engage in its characteristic behaviour. Animals may act out of instinct or impulse and their precise behaviour cannot necessarily be predicted."[172]

15-56 An important change was made to the common law by s.6(5) of the 1971 Act which provides that:

> Section 6
>
> "[W]here a person employed as a servant by a keeper of an animal incurs a risk incidental to his employment he shall not be treated as accepting it voluntarily."

The defence of volenti formerly available[173]to an employer is thereby removed, even for a case where the claimant has been employed specifically for a purpose which includes coming into close proximity to a dangerous animal.[174]

The claimant as trespasser

15-57 By s.5(3) of the 1971 Act:

> Section 5
>
> A person is not liable under section 2 of this Act for any damage caused by an animal kept on any premises or structure to a person trespassing there, if it is proved either—
>
> **(a)** that the animal was not kept there for the protection of persons or property; or
>
> **(b)** (if the animal was kept there for the protection of persons or property) that keeping it there for that purpose was not unreasonable."

In *Cummings v Grainger*,[180] Lord Denning MR considered that since the use of guard dogs had long been recognised as reasonable for the protection of property by the common law, it was not unreasonable for the defendants to have protected their scrap yard, which was enclosed by walls and wire fence, at night by an Alsatian guard dog that was allowed to roam around loose within the confines of the premises.[181]

15-58 Although a trespasser cannot, therefore, generally rely upon strict liability under s.2, there may be the option of an action for damages in negligence.[182] Doubtless if the claim succeeds the damages recoverable will be reduced for contributory negligence. If the presence of a trespasser were unforeseeable, the keeper of a tamed animal of a dangerous species, like a chimpanzee or a cheetah, would avoid liability both under the Act and in negligence should the trespasser be injured, as a result of an attack by the animal whilst still on the keeper's land.

Limitation of action

15-59 It has been held at first instance that the limitation period for a claim under s.2(2) of the 1971 Act is six years, though the decision must be treated with some caution in relation to claims for personal injury.[183]

Footnotes

25. See *Begley, "Who let the dogs out?" 2002 H. & S.L., 2(2), 10*; *Regan, "Mad dogs and English law" 155 S.J. (10) 12*.
26 *Cummings v Grainger [1977] Q.B. 397* at 404. Ormrod LJ described s.2(2)(b) as "remarkably opaque" at 407 and similar criticism can be found in *Curtis v Betts [1990] 1 W.L.R. 459, CA*, para.15-14 and *Gloster v Chief Constable of Greater Manchester Police [2000] P.I.Q.R. P114, CA*, where Pill LJ noted, at 117, that the Law Commission's draft, Law Com. No.13, had not been followed. See further para.15-14.
27 *Mirvahedy v Henley [2003] 2 A.C. 491* at 517, para.[9]. Maurice Kay LJ described the drafting as "grotesque": *Turnbull v Warrener [2012] EWCA Civ 412; [2012] P.I.Q.R. P16* at [4].
28 See *Hunt v Wallis [1994] P.I.Q.R. P128*, see para.15-14.
29 s.11 of the 1971 Act defines *species* as including "sub-species and variety."
30 *Filburn v People's Palace and Aquarium Co (1890) 25 Q.B.D. 258*; *Mason v Keeling (1699) 12 Mod. 332* at 355; *Besozzi v Harris (1858) 1 F. & F. 92*.
31 per Devlin J in *Behrens v Bertram Mills Circus Ltd [1957] 2 Q.B. 1* at 15, 16. cf. the approach of Scrutton LJ in *Glanville v Sutton [1928] 1 K.B. 571, 575*.
32 *Besozzi v Harris (1858) 1 F. & F. 92*. See also *Wyatt v Rosherville Gardens (1886) 2 T.L.R. 282*; *Pearson v Coleman Brothers [1948] 2 K.B. 359*.
33 *Filburn v People's Palace and Aquarium Co (1890) 25 Q.B.D. 258*. See also, *Behrens v Bertram Mills Circus Ltd [1957] 2 Q.B. 1*; per Lord Simonds in *Read v J. Lyons & Co Ltd [1947] A.C. 156*.
34 *Murphy v Zoological Society of London, Times, 14 November 1962*.

35At common law the responsibilities of an owner of hived bees were not entirely clear. The Irish case of *O'Gorman v O'Gorman [1903] 2 I.R. 573*, where a man was injured as a result of angered bees stinging his horse, was decided on a finding of negligence and is some authority for the proposition that bees are not per se "dangerous animals," but in a later Canadian case, *Lucas v Pettitt (1906) 12 O.L.R. 448* where the beekeeper was also held liable, it was decided that the doctrine of scienter had no application. See also *Robins v Kennedy [1931] N.Z.L.R. 1134*. Bees are not included in the statutory definition of livestock in s.11 of the Act.

36 *Chauhan v Paul [1998] C.L.Y. 3990, CA*.

37 See, e.g. *Curtis v Betts [1990] 1 W.L.R. 459*; *Peachey, "Dogs—Civil Liability for Damage and Injuries", 133 S.J. 1614*. See also *Hunt v Wallis [1994] P.I.Q.R. P128* and *Gloster v Chief Constable of Greater Manchester Police [2000] P.I.Q.R. P114, CA*, at P116.

38 It is not as yet clear whether, in spite of the criminal sanctions contained in the Act, a civil remedy will also arise at the suit of someone injured as a result of a failure to heed the restrictions imposed.

39 *Besozzi v Harris (1858) 1 F. & F. 92*.

40 *Behrens v Bertram Mills Circus Ltd [1957] 2 Q.B. 1* (the defendants were liable even though their Burmese elephants were normally obedient and well-behaved when on the way to the ring, being frightened by a small dog, they knocked over a booth in which two performers were on show).

41 *Species* is defined as including "sub-species and variety": s.11. of the 1971 Act

42 *Turnbull v Warrener [2012] P.I.Q.R. P16, CA* at [4].

43 *Curtis v Betts [1990] 1 W.L.R. 459*, applying *Cummings v Grainger [1977] Q.B. 397*. See also *Smith v Ainger (Times 5 June 1990)* per Neill LJ at [7]. See also *Dennis v Voute Sales Ltd [2022] EWHC 2117 (QB)*.

...

153 See Bramwell B in *Nichols v Marsland (1875) L.R. 10 Ex. 255* at 260 (act of God); see also *Rands v McNeil [1955] 1 Q.B. 253* at 257, per Denning LJ (no escape from control); *Fleeming v Orr (1855) 2 Macq. 14*; Charlesworth on Negligence, 4th edn (London: Sweet & Maxwell, 1962), p.744, *Baker v Snell [1908] 2 K.B. 825* and Devlin J in *Behrens v Bertram Mills Circus Ltd [1957] 2 Q.B. 1* (independent act of third party).

154 *Murphy v Zoological Society of London, Times, 14 November 1962* (a boy aged 10 who was a cub member of a scout group, visited a lion's cage, climbed between two fences, was mauled by the lion and died later. The deceased was held to be a trespasser at that place and as no animal had "escaped" the Zoological Society were not in breach of any duty owed him).

155 In *Behrens v Bertram Mills Circus Ltd [1957] 2 Q.B. 1* at 19, Devlin J said of the defence (of the claimant's own fault): "I see no reason why the same sort of defence should not prevail where the fault of the plaintiff does not amount to recklessness … but is failure of due diligence to look after his own safety." See also *James v Wellington City [1972] N.Z.L.R. 70* and para.15-56.

156 *Marlor v Ball (1900) 16 T.L.R. 239*.

157 *Sylvester v Chapman Ltd (1935) 79 S.J. 777*.

158 *Lee v Walkers (1939) 162 L.T. 89*; see also *Sycamore v Ley (1932) 147 L.T. 342*.

159 Which provides: "For the purposes of the Fatal Accidents Acts 1846 to 1959, [1976] the Law Reform (Contributory Negligence) Act 1945 and the Limitation Act[s] [1980] any damage for which a person is liable under ss.2 to 4 of this Act shall be treated as due to his fault."

160 *Jones v Baldwin LTL 16/11/2011*. See also *Bodey v Hall [2012] P.I.Q.R. P1*, para.15-27, (observed that it would not have been contributory negligence to fail to wear a riding hat when riding in a pony and trap as a passenger: there were different schools of thought as to whether riding hats needed to be worn whilst carriage driving and no rules or guidance had been produced recommending that hats needed to be worn).

161 In *Cummings v Grainger [1977] Q.B. 397* at 408, Ormrod LJ urged that the words of s.5(2) should be given their ordinary English meaning not complicated with the old doctrine of volenti non fit injuria and the defence should not be whittled down by too fine distinctions of what they meant.

162 per Etheron LJ in *Freeman v Higher Park Farm [2009] P.I.Q.R. P6, CA* at [48], quoted in *Turnbull v Warrener [2012] P.I.Q.R. P16* at [30].

163 *Smith v Shields (1964) 108 S.J. 501*.

164 *Cummings v Grainger [1977] Q.B. 397*.

165 *Freeman v Higher Park Farm [2009] P.I.Q.R. P6, CA*, para.15-25. See also *Bodey v Hall [2012] P.I.Q.R. P1*, para.15-27 (the claim of an experienced horsewoman, who was thrown from a pony and trap in which she was carried as a passenger failed where she knew of the risk that a trap could tilt or tip through the unpredictable behaviour of the horse whilst being driven). See also generally *Goldsmith v Patchcott [2012] P.I.Q.R. P11, CA* (the claimant, an experienced horsewoman, who knew of the characteristic of horses to buck and rear when alarmed, voluntarily accepted the risk of a horse so acting when she rode it on a trial with a view to purchase: the submission that she had not accepted the risk of the horse bucking and rearing as violently as it did, was rejected as more violent bucking than anticipated did

not take the case outside s.5(2) of the Act. See also *Turnbull v Warrener [2012] P.I.Q.R. P16, CA* (the s.5(2) defence

was made out where the claimant, again an experienced horsewoman, rode a horse using a bitless bridle, where she knew that the horse had not previous experienced such a bridle, and its reaction was therefore unknown: in the event she had problems restraining the horse and ultimately fell off sustaining injury).

…

169 *Roberts v Chief Constable of Kent [2008] EWCA Civ 1588; [2009] Po. L.R. 8*.

170 *Preskey v Sutcliffe LTL 25/3/2013*.

171 *Smith v Harding LTL 10/12/2013*.

172 per Jackson LJ in *Goldsmith v Patchcott [2012] P.I.Q.R. P11, CA* at [50].

173 *Rands v McNeil [1955] 1 Q.B. 253*.

174 See, e.g. the circumstances in *James v Wellington City [1972] N.Z.L.R. 70* (zookeeper bitten by chimpanzee).

175 *Dennis v Voute Sales Ltd [2022] EWHC 2117 (QB)*. See para.15-17 for a full exposition of the facts.

176 *[1995] P.I.Q.R. P417.*

177 HHJ Howells considered cases such as *Cornwall CC v Prater [2006] EWCA Civ 102* (a serious of short-term engagements in which there was a mutuality of obligation); *Carmichael v National Power [1999] UKHL 47* (guides working on a casual basis); *Pimlico Plumbers Ltd v Smith [2018] UKSC 29*; and *Uber BV v Aslam [2021] UKSC 5*.

178 *Dennis v Voute Sales Ltd [2022] EWHC 2117 (QB)* at [58] per HHJ Howells.

179 *Dennis v Voute Sales Ltd [2022] EWHC 2117 (QB)* at [161] per HHJ Howells.

180 *Cummings v Grainger [1977] Q.B. 397*.

181 See now the Guard Dogs Act 1975, where a person commits an offence by keeping a guard dog on premises, unless there is a handler with it or unless it is securely chained. These provisions do not affect civil liability and, so far as reasonableness is concerned, the Act has no application. See *Harper, "Guard Dogs to Legal Heel", 125 New L.J. 243*; Although not strictly trespass, see, e.g. *Lowery v Walker [1911] A.C. 10* (the occupier of a field who had given a tacit permission for it to be used as a short cut was held liable in negligence for injury caused by a savage horse). *Roy, "Guard Dog Act 1975", 126 New L.J. 1001*; *Spencer, [1977] C.L.J. 39 at 42–43*.

182 See further Ch.9, generally.

183 *Clarke v Barber [2002] C.L.Y. 464* (an action based upon personal injury caused by the defendant's dog) applying the reasoning in *Stubbings v Webbs [1993] A.C. 498* now overruled in *A v Hoare [2008] 2 W.L.R. 311, HL*, Ch.4, para.4-213.

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DIWEDD

Atiodad 4

UK Parliament Acts/D/DA-DG/Dangerous Dogs Act 1991 (1991 c 65)

1 Dogs bred for fighting

(1) This section applies to—

(a) any dog of the type known as the pit bull terrier;

(b) any dog of the type known as the Japanese tosa; and

(c) any dog of any type designated for the purposes of this section by an order of the Secretary of State, being a type appearing to him to be bred for fighting or to have the characteristics of a type bred for that purpose.

(2) No person shall—

(a) breed, or breed from, a dog to which this section applies;

(b) sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;

(c) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift;

(d) allow such a dog of which he is the owner or of which he is for the time being in charge to be in a public place without being muzzled and kept on a lead; or

(e) abandon such a dog of which he is the owner or, being the owner or for the time being in charge of such a dog, allow it to stray.

(3) After such day as the Secretary of State may by order appoint for the purposes of this subsection no person shall have any dog to which this section applies in his possession or custody except—

(a) in pursuance of the power of seizure conferred by the subsequent provisions of this Act; or

(b) in accordance with an order for its destruction made under those provisions;

but the Secretary of State shall by order make a scheme for the payment to the owners of such dogs who arrange for them to be destroyed before that day of sums specified in or determined under the scheme in respect of those dogs and the cost of their destruction.

(4) Subsection (2)(b) and (c) above shall not make unlawful anything done with a view to the dog in question being removed from the United Kingdom before the day appointed under subsection (3) above.

The Secretary of State may by order provide that the prohibition in subsection (3) above shall not apply in such cases and subject to compliance with such conditions as are specified in the order and any such provision may take the form of a scheme of exemption containing such arrangements (including pro- vision for the payment of charges or fees) as he thinks appropriate.

(5) A scheme under subsection (3) or (5) above may provide for specified functions under the scheme to be discharged by such persons or bodies as the Secretary of State thinks appropriate.

[(6A) A scheme under subsection (3) or (5) may in particular include provision requiring a court to con- sider whether a person is a fit and proper person to be in charge of a dog.]

(6) Any person who contravenes this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both except that a person who publishes an advertisement in contravention of subsection (2)(b) or (c)—

(a) shall not on being convicted be liable to imprisonment if he shows that he published the adver- tisement to the order of someone else and did not himself devise it; and

(b) shall not be convicted if, in addition, he shows that he did not know and had no reasonable cause to suspect that it related to a dog to which this section applies.

(7) An order under subsection (1)(c) above adding dogs of any type to those to which this section ap- plies may provide that subsections (3) and (4) above shall apply in relation to those dogs with the substitu- tion for the day appointed under subsection (3) of a later day specified in the order.

(8) The power to make orders under this section shall be exercisable by statutory instrument which, in the case of an order under subsection (1) or (5) or an order containing a scheme under subsection (3), shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(4).

Appointment

Sub-ss (1), (2), (4)–(9): Appointment: 12 August 1991: see SI 1991/1742, art 3.
Sub-s (3): Appointment: 30 November 1991: see SI 1991/1742, art 2.

Amendment

Sub-s (6A): inserted by the Anti-social Behaviour, Crime and Policing Act 2014, s 107(1), (2).

2 Other specially dangerous dogs

(1) If it appears to the Secretary of State that dogs of any type to which section 1 above does not apply present a serious danger to the public he may by order impose in relation to dogs of that type restrictions corresponding, with such modifications, if any, as he thinks appropriate, to all or any of those in subsection (2)(d) and (e) of that section.

(2) An order under this section may provide for exceptions from any restriction imposed by the order in such cases and subject to compliance with such conditions as are specified in the order.

(3) An order under this section may contain such supplementary or transitional provisions as the Secretary of State thinks necessary or expedient and may create offences punishable on summary conviction with imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(4) In determining whether to make an order under this section in relation to dogs of any type and, if so, what the provisions of the order should be, the Secretary of State shall consult with such persons or bodies as appear to him to have relevant knowledge or experience, including a body concerned with animal welfare, a body concerned with veterinary science and practice and a body concerned with breeds of dogs.

(5) The power to make an order under this section shall be exercisable by statutory instrument and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

3 Keeping dogs under proper control

(1) If a dog is dangerously out of control in [any place in England or Wales (whether or not a public place)]—

(a) the owner; and

(b) if different, the person for the time being in charge of the dog,

is guilty of an offence, or, if the dog while so out of control injures any person [or assistance dog], an aggravated offence, under this subsection.

[(1A) A person (“D”) is not guilty of an offence under subsection (1) in a case which is a householder case.

(1B) For the purposes of subsection (1A) “a householder case” is a case where—

(a) the dog is dangerously out of control while in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both), and

(b) at that time—

(i) the person in relation to whom the dog is dangerously out of control (“V”) is in, or is entering, the building or part as a trespasser, or

(ii) D (if present at that time) believed V to be in, or entering, the building or part as a trespasser.

Section 76(8B) to (8F) of the Criminal Justice and Immigration Act 2008 (use of force at place of residence) apply for the purposes of this subsection as they apply for the purposes of subsection (8A) of that section (and for those purposes the reference in section 76(8D) to subsection (8A)(d) is to be read as if it were a reference to paragraph (b)(ii) of this subsection).]

(2) In proceedings for an offence under subsection (1) above against a person who is the owner of a dog but was not at the material time in charge of it, it shall be a defence for the accused to prove that the dog was at the material time in the charge of a person whom he reasonably believed to be a fit and proper person to be in charge of it.

(3) . . .

(4) A person guilty of an offence under subsection (1) . . . above other than an aggravated offence is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both; and a person guilty of an aggravated offence under [that subsection] is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not ex- ceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding *two years* [the relevant maximum specified in subsection (4A)] or a fine or both.

[(4A) For the purposes of subsection (4)(b), the relevant maximum is—

(a) 14 years if a person dies as a result of being injured;

(b) 5 years in any other case where a person is injured;

(c) 3 years in any case where an assistance dog is injured (whether or not it dies).]

(5) *It is hereby declared for the avoidance of doubt that an order under section 2 of the Dogs Act 1871 (order on complaint that dog is dangerous and not kept under proper control)—*

(a) may be made whether or not the dog is shown to have injured any person; and

(b) may specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping on a lead, excluding it from specified places or otherwise.

(6) *If it appears to a court on a complaint under section 2 of the said Act of 1871 that the dog to which the complaint relates is a male and would be less dangerous if neutered the court may under that section make an order requiring it to be neutered.*

(7) *The reference in section 1(3) of the Dangerous Dogs Act 1989 (penalties) to failing to comply with an order under section 2 of the said Act of 1871 to keep a dog under proper control shall include a refer- ence to failing to comply with any other order made under that section; but no order shall be made under that section by virtue of subsection (6) above where the matters complained of arose before the coming into force of that subsection.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(4).

Appointment

Appointment: 12 August 1991: see SI 1991/1742, art 3.

Amendment

Sub-s (1): words “any place (whether or not a public place)” in square brackets substituted in relation to England and Wales by Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (2)(a)(i); a corre- sponding amendment has been made in relation to Scotland by the Control of Dogs (Scotland) Act 2010, s 10.

Date in force (in relation to Scotland): 26 February 2011: see the Control of Dogs (Scotland) Act 2010, s 18(2); for savings see s 16 thereof.
Date in force (in relation to England and Wales): 13 May 2014: see SI 2014/949, art 3, Sched- ule, para 6; for transitional provision see art 9.

Sub-s (1): words “or assistance dog” in square brackets inserted by the Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (2)(a)(ii).

Date in force: 13 May 2014: see SI 2014/949, art 3, Schedule, para 6; for transitional provisions see art 9.

Sub-ss (1A), (1B): inserted, in relation to England and Wales, by the Anti-social Behaviour, Crime and Po- licing Act 2014, s 106(1), (2)(b).

Date in force: 13 May 2014: see SI 2014/949, art 3, Schedule, para 6; for transitional provisions see art 9.

Sub-s (3): repealed in relation to England and Wales by the Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (2)(c) and in relation to Scotland by the Control of Dogs (Scotland) Act 2010, s 14, Sch 1, para 2(1)(a).

Date in force (in relation to Scotland): 26 February 2011: see the Control of Dogs (Scotland) Act 2010, s 18(2); for savings see s 16 thereof.
Date in force (in relation to England and Wales): 13 May 2014: see SI 2014/949, art 3, Schedule, para 6; for transitional provision see art 9.

Sub-s (4): words omitted repealed in relation to England and Wales by the Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (2)(d)(i) and in relation to Scotland by the Control of Dogs (Scotland) Act 2010, s 14, Sch 1, para 2(1), (2)(b)(i).

Date in force (in relation to Scotland): 26 February 2011: see the Control of Dogs (Scotland) Act 2010, s 18(2); for savings see s 16 thereof.
Date in force (in relation to England and Wales): 13 May 2014: see SI 2014/949, art 3, Schedule, para 6; for transitional provisions see art 9.

Sub-s (4): words “that subsection” in square brackets substituted in relation to England and Wales by the Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (2)(d)(ii) and in relation to Scotland by the Control of Dogs (Scotland) Act 2010, s 14, Sch 1, para 2(1), (2)(b)(ii).

Date in force (in relation to Scotland): 26 February 2011: see the Control of Dogs (Scotland) Act 2010, s 18(2); for savings see s 16 thereof.
Date in force (in relation to England and Wales): 13 May 2014: see SI 2014/949, art 3, Schedule, para 6; for transitional provisions see art 9.

Sub-s (4): in para (b) words “two years” in italics repealed and subsequent words in square brackets substituted, in relation to England and Wales, by the Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (2)(d)((iii).

Date in force: 13 May 2014: see SI 2014/949, Schedule, para 6; for transitional provisions see art 9.

Sub-s (4A): inserted, in relation to England and Wales, by the Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (2)(e).

Date in force: 13 May 2014: see SI 2014/949, art 3, Schedule, para 6; for transitional provisions see art 9.

Sub-ss (5)–(7): repealed, in relation to Scotland, by the Control of Dogs (Scotland) Act 2010, s 14, Sch 1, para 2(1), (2)(c).

Date in force: 26 February 2011: see the Control of Dogs (Scotland) Act 2010, s 18(2); for savings see s 16 thereof.

DIWEDD

Atiodad 5

Wedi ei gyrchu o LexisLibrary.

Mae'n cynnwys gwybodaeth sector cyhoeddus sydd wedi ei thrwyddedu o dan y Drwydded Llywodraeth Agored.

Mae'r wybodaeth a ddangosir fel y mae wedi ei chael ar y dyddiad chwilio, at ddiben enghreifftiol yn unig. Ni ddylid dibynnu ar wybodaeth sydd wedi ei chynnwys yma y tu hwnt i ddiben y cwestiwn enghreifftiol hwn.

UK Parliament Acts/D/DA-DG/Dangerous Dogs Act 1991 (1991 c 65)

10 Short title, interpretation, commencement and extent

(1) This Act may be cited as the Dangerous Dogs Act 1991.

(2) In this Act—

"advertisement" includes any means of bringing a matter to the attention of the public and "advertise" shall be construed accordingly;

["assistance dog" has the meaning given by section 173(1) of the Equality Act 2010;]

"public place" means any street, road or other place (whether or not enclosed) to which the public have or are permitted to have access whether for payment or otherwise and includes the common parts of a building containing two or more separate dwellings.

(3) For the purposes of this Act a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person [or assistance dog], whether or not it actually does so, but references to a dog injuring a person [or assistance dog] or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in the service of the Crown.

(4) Except for section 8, this Act shall not come into force until such day as the Secretary of State may appoint by an order made by statutory instrument and different days may be appointed for different provisions or different purposes.

(5) Except for section 8, this Act does not extend to Northern Ireland.

Initial Commencement

To be appointed

To be appointed: see sub-s (4) above.

Appointment

Appointment: 12 August 1991: see SI 1991/1742, art 3.

Amendment

Sub-s (2): definition “assistance dog” inserted by the Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (6)(a).

Date in force: 13 May 2014: see SI 2014/949, art 3, Schedule, para 6.

Sub-s (3): words “or assistance dog” in square brackets in each place they occur inserted by the Anti-social Behaviour, Crime and Policing Act 2014, s 106(1), (6)(b).

Date in force: 13 May 2014: see SI 2014/949, art 3, Schedule, para 6.

DIWEDD

Atiodad 6

Halsbury's Laws of England/Animals (Volume 2 (2023))/3. Liability of Owners and Keepers of Animals/(1) Injuries Caused by Animals

LIABILITY OF OWNERS AND KEEPERS OF ANIMALS

48 Keepers

…
A person is a keeper of an animal if:

(1) he owns the animal or has it in their possession[6];
(2) he is the head of a household of which a member under the age of 16 owns the animal or has it in their possession[7],

and if at any time an animal ceases to be owned by or to be in the possession of a person, any person who immediately before that time was a keeper thereof by virtue of these provisions continues to be a keeper of the animal until another person becomes a keeper thereof[8].

A person does not, however, become a keeper of an animal for this purpose merely by reason of them taking it and keeping it in their possession to prevent its causing damage or to restore it to its owner[9].

6 Animals Act 1971 s 6(3)(a).

7 Animals Act 1971 s 6(3)(b).

8 Animals Act 1971 s 6(3). This follows the common law rule that responsibility for an animal's acts depended upon ownership or possession and control: see *M'Kone v Wood* (1831) 5 C & P 1; *Knott v LCC* [1934] 1 KB 126, CA. However, it is submitted that *Smith v Great Eastern Rly Co* (1866) LR 2 CP 4 (stray dog on premises but nothing done to encourage it or exercise control over it: no liability) would still be good law. See also *Flack v Hudson* [2001] QB 698, [2001] 2 WLR 982, [2000] All ER (D) 1701, CA

9 Animals Act 1971 s 6(4).

49. Liability for dangerous animals.

Where any damage[1] is caused by an animal belonging to a dangerous species[2], any person who is keeper[3] of the animal is liable for the damage, except as otherwise provided by the Animals Act 1971[4].

A dangerous species is one which is not commonly domesticated in the British Islands, and whose fully-grown animals normally have such characteristics that they are likely, unless restrained, to cause severe damage, or that any damage they may cause is likely to be severe[5].

Footnotes

1 'Damage' includes the death of, or injury to, any person, including any disease and any impairment of physical or mental condition: Animals Act 1971 s 11.

2 'Species' includes sub-species and variety: Animals Act 1971 s 11.

3 As to the meaning of 'keeper' see para 48.

4 See the Animals Act 1971 s 2(1). This provision replaces the former common law rules based on the principle of ferae naturae: see s 1(1)(a); and para 47. As to liability for non-dangerous animals see s 2(2); and paras 50–53. As to exceptions from liability see para 54.

5 Animals Act 1971 s 6(1), (2). The Act now draws a distinction between 'commonly domesticated' (see *McQuaker v Goddard* [1940] 1 KB 687, [1940] 1 All ER 471, CA (a pre-Animals Act 1971 case which found that camels were domestic rather than wild animals)) and 'commonly domesticated in the British islands' (see *Tutin v Mary Chipperfield Promotions Ltd* (1980) 130 NLJ 807, QBD, an Animals Act 1971 case where the judge found that camels were dangerous animals because they were not commonly domesticated in the British Islands, although they may be commonly domesticated abroad). 'British Islands' means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland; the United Kingdom means Great Britain (ie England, Scotland and Wales) and Northern Ireland: see the Interpretation Act 1978 ss 5, 22, Sch 1.

DIWEDD

Atiodad 7

UK Parliament Acts/O/OA-OG/Occupiers' Liability Act 1957 (1957 c 31)

Liability in tort

1 Preliminary

(1) The rules enacted by the two next following sections shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them.

(2) The rules so enacted shall regulate the nature of the duty imposed by law in consequence of a per- son's occupation or control of premises and of any invitation or permission he gives (or is to be treated as giving) to another to enter or use the premises, but they shall not alter the rules of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the rules so enacted the persons who are to be treated as an occupier and as his visitors are the same (sub- ject to subsection (4) of this section) as the persons who would at common law be treated as an occupier and as his invitees or licensees.

(3) The rules so enacted in relation to an occupier of premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate—

(a) the obligations of a person occupying or having control over any fixed or moveable structure, in- cluding any vessel, vehicle or aircraft; and

(b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

[(4) A person entering any premises in exercise of rights conferred by virtue of—

(a) section 2(1) of the Countryside and Rights of Way Act 2000, or
(b) an access agreement or order under the National Parks and Access to the

(c) Countryside Act 1949, is not, for the purposes of this Act, a visitor of the occupier of the premises.]

2 Extent of occupier's ordinary duty

(1) An occupier of premises owes the same duty, the “common duty of care”, to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is rea- sonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—

(a) an occupier must be prepared for children to be less careful than adults; and

(b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—

(a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and

(b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

3 Effect of contract on occupier's liability to third party

(1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but (subject to any provision of the contract to the contrary) shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, in so far as those obligations go beyond the obligations otherwise involved in that duty.

(2) A contract shall not by virtue of this section have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like operation by persons other than himself, his servants and persons acting under his direction and control.

(3) In this section “stranger to the contract” means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled.

(4) Where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is the occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant.

(5) This section, in so far as it prevents the common duty of care from being restricted or excluded, applies to contracts entered into and tenancies created before the commencement of this Act, as well as to those entered into or created after its commencement; but, in so far as it enlarges the duty owed by an occupier beyond the common duty of care, it shall have effect only in relation to obligations which are undertaken after that commencement or which are renewed by agreement (whether express or implied) after that commencement.

NOTES

Initial Commencement

Specified date

Specified date: 1 January 1958: see s 8(3).

DIWEDD

Atiodad 8

Justice of the Peace Law Reports/1997/Rafiq v Folkes - (1997) 161 JP 412

(1997) 161 JP 412

Rafiq v Folkes

QUEEN'S BENCH DIVISION (CROWN OFFICE

LIST) AULD LJ, POPPLEWELL J

22 APRIL 1997

POPPLEWELL J

This is an appeal by way of case stated from the Crown Court sitting at Luton in respect of a decision on an appeal itself from the justices for Bedford.

On 24 January 1996 there was an information preferred by the respondent against the appellant that he was the owner of a certain dog named Venom, which, on 23 December 1995, at Souldrop in Bedford, was dangerously out of control in a public place and caused injury to Jane Rusen contrary to s.3(1) of the Dangerous Dogs Act 1991.

On 27 June 1996 the justices heard the information, convicted the appellant of the said offence and conditionally discharged him in respect thereof for 12 months, but under the Act ordered that the dog should be destroyed and the appellant should pay some costs.

The appeal by the Crown Court was heard on 19 August 1996 and the following facts were found. On 23 December 1995 the appellant was the owner of a German Shepherd dog named Venom. He was the proprietor of a petrol filling station and shop known as Souldrop Garage at Souldrop in the county of Bedford. At all material times the filling station and shop were in the sole charge of the appellant's daughter.

At about 5 o'clock in the evening on 23 December 1995 Ms Rusen parked her car in the forecourt and entered the shop with a view to purchasing one of the Christmas trees displayed for sale on the forecourt. She found Venom loose on the forecourt and with the oral permission of the appellant's daughter let him into the shop. She then purchased and paid for a number of items and returned to the shop in order to return a knife that she had borrowed. As she was passing it over the counter, Venom, who was on the side of the counter to which the public had access, jumped up and bit her on the thigh causing a small puncture wound thereto. The Crown Court found, most particularly, that prior to jumping up and biting Jane Rusen, Venom had given no indication at all of his intention to do so.

There were two arguments then put forward on behalf of the appellant: first, that under s.10(2) the dog would not have been in a public place and secondly, under s.10(3) the dog was not dangerously out of control. The Crown Court found that the dog was in a public place and that argument has not been pursued before us.
The Crown Court said:

We were of opinion that the said passage [referred to by Kennedy LJ in the case of R v Bezzina [1994] 1 WLR 1057 at p.1061] was not, as contended by the appellant, obiter dicta but embodied the ratio decidendi of the case and that we were accordingly bound thereby to hold that the said dog was dangerously out of control in a public place notwithstanding that he had shown no sign of aggression prior to inflicting the said injury."

The statutory provisions governing this case can be shortly stated. The Dangerous Dogs Act 1991 was, as is well-known, introduced in great haste by Parliament to deal with a number of unpleasant incidents in which a number of fierce dogs had seriously injured small children. It is a piece of Delphic legislation which is even worse than some of the directives coming out of Europe. Section 3(1) reads:

If a dog is dangerously out of control in a public place:

(a)the owner; and

(b)if different, the person for the time being in charge of the dog, is guilty of an offence, or, if the dog whilst so out of control injures any person, an aggravated offence, under this subsection."

Subsection (3) reads:

If the owner or, if different, the person for the time being in charge of a dog allows it to enter a place which is not a public place but where it is not permitted to be and whilst it is there:

(a)it injures any person; or

(b)there are grounds for reasonable apprehension that it will do so, he is guilty of an offence, or, if the dog injures any person, an aggravated offence, under this subsection."

The phrase "dangerously out of control" is subject to interpretation by s.10(3):
For the purposes of this Act a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person, whether or not it actually does so . . ."

It is the appellant's submission, well presented to this Court by Miss Panagiotopoulo, that absent any finding that there was reasonable apprehension it was not open to the Crown Court to find this dog was dangerously out of control. That submission is based on a construction of s.3(1) and of s.10(3). It is pointed out that it would be very simple in s.3(1) to say that a dog is "out of control" if it injures any person. Further s.3(1)(b) would not read, as it does, if injury to a person constituted a dog "being out of control" per se. She drew our attention to s.3(3) where there is a separate distinction made between injury to a person and grounds of reasonable apprehension. She observes that the wording in s.1(b) is different. More particularly in s.10(3) it is clear, she says, on a true construction that there have to be grounds for reasonable apprehension, and that injury is irrelevant. If it had been intended that injury should result in a finding of "dangerously out of control" nothing would have been easier than in the interpretation section, so to say.

She accepted, I think under some pressure from the Court, that the argument is totally devoid of logic for this reason: there may be cases when a dog behaves in such a way as to cause reasonable apprehension without doing an injury. She accepts that if the dog does that, without any forewarning, the owner will be guilty of an offence. Secondly, that if there is reasonable ground for apprehension and somebody is then bitten and there is no prior warning, again the owner will be guilty of an offence. However, if the dog, without any prior warning and without the injured person, or anyone, having a reasonable apprehension that the dog will injure somebody, does in fact injure somebody, the owner is not guilty of an offence. Therefore, in the absence of forewarning in one sense the more dangerous the dog, in the sense that he has bitten, the less responsibility, it is said, there is on the owner. That flies in the face of all logic.

The prosecution put their case really in two ways. They submit the words "on any occasion" in s.10(3) mean that if somebody is bitten without there being reasonable apprehension on any previous occasion it follows that an offence has occurred because it is dangerously out of control on that particular occasion. The biting will constitute "dangerously out of control" because on that occasion it gives grounds for reasonable apprehension thereafter.

Secondly, it is submitted that having regard to the decision of the Court of Criminal Appeal in Bezzina there was immediately before the injury a reasonable apprehension. Mr Jupp submitted, on the facts of the instant case, that that was implicit in the finding of the Court. I, for my part, do not take that view. The finding of the Court was that the dog jumped up and bit her and that the dog had shown no sign of aggression prior to inflicting the said injury. If the Court had been minded to make a finding of prior reasonable apprehension it would have said so.

The case of Bezzina in the Court of Criminal Appeal, presided over by Kennedy LJ, reported in [1994] 3 All ER at p.964, was dealing with three separate appeals against

conviction where on the evidence it looks as though there probably was reasonable grounds for apprehension prior to the actual injury. However, the passage to which Mr Jupp drew our attention, and on which he relied, is at page 968 just below letter I where Kennedy LJ said this:

Clearly the terms of s.3(1), if read as imposing strict liability, are liable to have that effect. Accordingly, we come to the conclusion that the terms of the statute in s.3(1) do have to be read in the way that we indicated at the start of this judgment. In other words, when one encounters the words in section 3(1)-'dangerously out of control'- one applies the meaning which is set out in s.10(3) and that means, in effect, that if a dog is in a public place, if the person accused is shown to be the owner of the dog, if the dog is dangerously out of control in the sense that the dog is shown to be acting in a way that gives grounds for reasonable apprehension that it would injure anyone, liability follows. Of course, if injury does result then, on the face of it, there must have been, immediately before the injury resulted, grounds for reasonable apprehension that injury would occur."

It is accepted by Mr Jupp that that is obiter, although Judge Hickman took a contrary view. For my part, I would not go down that particular line. It seems to me that in order to impose some logic in this case the proper way to approach these cases is to take the view that if there is a bite without a reasonable apprehension immediately before that, the use of the word "any occasion" is sufficient to impose a liability because there are grounds thereafter for reasonable apprehension that it will injure some other person. The question that was posed by the Crown Court involved reference to the passage to which I have just referred from the decision of the Court of Criminal Appeal. As I have indicated, for my part I do not approach it in that way.

However, I come clearly to the conclusion that this conviction was a correct one and that the answer to the question, "Whether they were correct in holding that the appellant was guilty of an offence?" is "Yes", but for reasons somewhat different from that set out by the Crown Court. I would uphold the conviction..

AULD LJ

I agree and add only a few words. I have some difficulty with Kennedy LJ's proposition in Bezzina, at page 969(a), that if there is injury there must have been immediately before it grounds for reasonable apprehension of it. Depending on the circumstances, the time for apprehension, even by the notional reasonable bystander, may be so minimal as for practical purposes to be non-existent. The notion of reasonable apprehension of injury before it occurs in such circumstances, is artificial and the Court should strain against adding that unhappy element to an already difficult statutory formulation. It seems to me that Kennedy LJ in that passage was unnecessarily focusing on the injury as if it were a necessary culmination and demonstration of anterior reasonable apprehension of injury. In my view there is no need for such an approach. The act of a dog causing injury, a bite or otherwise, is itself capable of being conduct giving grounds for reasonable apprehension of injury.

Accordingly I would answer the question either with a qualified "Yes" or "No" upholding the conviction because, on the Crown Court's view of the evidence before it, the bite itself was in law a ground for apprehending that the dog would injure again. The conviction is therefore upheld.

Appeal dismissed.

DIWEDD

Trafodaeth ar yr ateb

Ymchwil gyfreithiol

PWYNTIAU CYFREITHIOL ALLWEDDOL

Sylwer: yn yr asesiad hwn, mae rhai, neu bob un, o'r ffynonellau canlynol yn berthnasol i'r cwestiwn:

- Blackstone's Criminal Practice B20.5 – B20.9
- Dangerous Dogs Act 1991, aa.1–3
- Dangerous Dogs Act 1991, a.10
- *Rafiq v Folkes* (1997) 161 JP 412

Nid yw'r ffynonellau canlynol yn berthnasol i'r cwestiwn:

- Atkins Court Forms/Animals V4/Practice/[608, 610–611]
- Charlesworth & Percy on Negligence 15th Ed. Part IV, Chp 15, Section 2, paras 15.07–15.13, 15.47–15.56
- Halsbury's Laws, Animals, V2, para 48–49
- Deddf Atebolrwydd Meddianwyr 1957, aa.1–3

Mae'n debygol bod Keith wedi cyflawni'r drosedd waethygedig (aggravated offence) o dan a.3(1) o Ddeddf Cŵn Peryglus 1991.

Dangerous Dogs Act 1991, s.3:

(1) If a dog is dangerously out of control in [any place in England or Wales (whether or not a public place)]—

(a) the owner; and

(b) if different, the person for the time being in charge of the dog, is guilty of an offence, or, if the dog while so out of control injures any person [or assistance dog], an aggravated offence, under this subsection.

Caiff 'dangerously out of control' ei ddiffinio yn a.10 o'r Ddeddf:

(2) For the purposes of this Act a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person [or assistance dog], whether or not it actually does so, but references to a dog injuring a person [or assistance dog] or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in the service of the Crown.

Mae cyfraith achosion berthnasol yn cynnwys Rafiq v Folkes (1997) 161 JP 412; a hefyd (fel y dyfynnwyd yn Blackstone's) Bezzina [1994] 3 All ER 964 a *Robinson-Pierre* [2013] EWCA Crim 2396, [2014] 1 WLR 2368.

ENGHRAIFFT O ATEB

Mae ateb enghreifftiol wedi'i roi isod. Enghraifft yw hyn o ateb ymgeisydd a fyddai'n cael ei asesu fel un sy'n amlwg yn cyflawni gofynion cymhwysedd yr asesiad ymchwil gyfreithiol. Nid ateb perffaith na model mo hwn ac mae pwyntiau pellach y gellid eu gwneud.

Enghraifft o ateb

E–bost at y Partner

Oddi wrth:	Yr Ymgeisydd
Anfonwyd:	*[dyddiad yr arholiad]*
At:	Partner
Pwnc:	**Keith Foster**

Mae disgwyl i Keith Foster fynd i orsaf yr heddlu mewn cysylltiad â digwyddiad yn ymwneud â'i gi anwes, Digger. Deallaf i'r ci ruthro allan o dŷ Keith i'r ardd flaen a brathu'r dyn post ar ei fraich wrth iddo geisio dod â pharsel i'w gyfeiriad.

Mae'r heddlu wedi dweud wrth Keith bod cyflogwr y dyn post yn dymuno i'r heddlu ymchwilio i'r digwyddiad, a bod Keith, wrth reswm, yn poeni y gallai fod wedi cyflawni trosedd oherwydd ymddygiad ei gi.

Rwyf wedi ymchwilio i weld a yw Keith yn atebol yn droseddol (criminally liable) ac wedi dod i'r casgliad ei bod hi'n debygol ei fod wedi cyflawni trosedd, gan fod ei gi 'allan o reolaeth a pheryglus' (dangerously out of control).

Caiff y drosedd ei disgrifio yn Neddf Cŵn Peryglus 1991 (DDA), a.3 (1). Mae adran 3(1) o DDA yn datgan ei bod yn drosedd bod â chi sydd 'allan o reolaeth a pheryglus' mewn unrhyw fan (boed mewn man cyhoeddus ai peidio). Yn *Blake v CPS* [2017] EWHC 1608 (admin) (fel y dyfynnwyd yn Blackstone's Criminal Practice), barnodd y llys y gellir cyflawni'r drosedd mewn man preifat yn ogystal â lle cyhoeddus, a bod hyn yn cynnwys ymwelwyr â'r cartref megis dynion post.

Yn yr achos hwn, digwyddodd hyn yng ngardd flaen Keith ac nid mewn man cyhoeddus. Y mater i'w ystyried yw a oedd y ci 'allan o reolaeth a pheryglus'.

Diffinnir 'allan o reolaeth a pheryglus' yn a.10 o DDA ac mae'n cynnwys sefyllfa lle mae sail dros bryder rhesymol (reasonable apprehension) y bydd y ci yn achosi anaf i unrhyw berson. At ddiben y DDA, ystyrir bod ci allan o reolaeth ac yn beryglus mewn unrhyw sefyllfa lle mae sail dros bryder rhesymol y bydd yn anafu unrhyw berson [neu gi cymorth], p'un a yw'n gwneud hynny ai peidio. Fodd bynnag, nid yw cyfeiriadau at gi yn anafu person [neu gi cymorth], neu fod sail dros

bryder rhesymol y bydd yn gwneud hynny, yn cynnwys cyfeiriadau at unrhyw achos lle mae'r ci yn cael ei ddefnyddio at ddiben cyfreithlon gan gwnstabl neu berson yng ngwasanaeth y Goron.

Yn *Rafik v Folkes* (1997) 161 JP 412, yn ôl Auld LJ, '*the act of causing injury, a bite or otherwise, is in itself capable of being conduct giving grounds for reasonable apprehension of injury*'.

Mae Keith wedi dweud wrthym, pan agorodd ei ddrws i'r dyn post, rhedodd ei gi allan o'r tŷ a brathu'r dyn post ar ei fraich gan achosi clwyf yr oedd angen pwythau ar ei gyfer.

Felly, byddai gan y dyn post sail dros bryder rhesymol y byddai Digger wedi ei anafu. Bydd y ci yn cael ei ystyried yn un sydd 'allan o reolaeth a pheryglus'.

Mae'r drosedd o dan DDA, a.3 yn un ag atebolrwydd llym ac nid oes angen bod unrhyw fai ar ran y cleient. Fodd bynnag, mae'r Ddeddf yn ei gwneud hi'n ofynnol bod rhywfaint o weithred neu anweithred (omission) y cleient (gyda bai neu hebddo) wedi cyfrannu mewn ffordd fwy na sylfaenol at y ffaith fod ci allan o reolaeth.

Yn Blackstone's Criminal Practice (B20.9) dyfynnir Robinson-Pierre [2013] EWCA Crim 2396, [2014] 1 WLR 2368: the offence requires '*proof of an act or omission by the defendant (with or without fault) that to some more than minimal degree caused or permitted the prohibited state of affairs to come about*' (yn ôl Pitchford LJ yn [42]).

Fe ellid dweud, wrth i Keith agor y drws gan ganiatáu i'w gi redeg allan, ei bod hi'n glir bod yr elfen honwedi'i bodloni.

Yn ogystal, mae Digger, o fod allan o reolaeth ac yn beryglus, wedi brathu'r dyn post. Dylid rhoi gwybod i Keith felly ei bod hi'n debygol y bydd hefyd yn atebol am y drosedd waethygedig o dan DDA, a. 3(1).

DADANSODDIAD

Pam ei bod hi'n glir bod yr ateb enghreifftiol wedi pasio'r asesiad?

Ni fwriedir i'r canllawiau canlynol awgrymu mai dyma'r unig ffordd bosibl o ateb ond bydd yn eich helpu i ddeall pam y byddai'r ateb enghreifftiol yn cael ei ystyried fel un y mae'n glir ei fod wedi pasio yn unol â'r meini prawf asesu ar gyfer yr asesiad.

Meini prawf yr asesiad

Mae'r meini prawf asesu ar gyfer ymchwil gyfreithiol fel a ganlyn:

Sgiliau

1. Canfod a defnyddio ffynonellau a gwybodaeth berthnasol.
2. Darparu cyngor sy'n canolbwyntio ar y cleient ac sy'n mynd i'r afael â phroblem y cleient.
3. Defnyddio iaith glir, fanwl, gryno a derbyniol.

Cymhwyso'r gyfraith

4. Cymhwyso'r gyfraith yn gywir at sefyllfa'r cleient.
5. Defnyddio'r gyfraith mewn modd cynhwysfawr yn sefyllfa'r cleient, gan nodi unrhyw faterion sy'n ymwneud ag ymddygiad moesegol a phroffesiynol, a defnyddio crebwyll i'w datrys yn onest ac yn ddidwyll.

Roedd hi'n glir o edrych ar y meini prawf uchod bod yr ateb enghreifftiol yn gymwys am y rhesymau canlynol:

MEINI PRAWF SGILIAU	
Nodi a defnyddio ffynonellau perthnasol a gwybodaeth berthnasol	Mae'r ymgeisydd wedi nodi a dyfynu deunydd perthnasol o'r ffynonellau a ddarperir. Er enghraifft, mae'r ymgeisydd wedi cyfeirio at Ddeddf Cŵn Peryglus 1991, a.3 ac a.10 i gefnogi ei ateb i'r cwestiwn.
Darparu cyngor sy'n canolbwyntio ar y cleient ac sy'n mynd i'r afael â phroblem y cleient	Mae'r ymgeisydd wedi dangos dealltwriaeth o broblem y cleient o safbwynt y cleient. Er enghraifft, cydnabod bod y cleient yn poeni am atebolrwydd troseddol posibl mewn perthynas â'r digwyddiad.

Defnyddio iaith glir, fanwl, gryno a derbyniol	Mae'r ymgeisydd yn defnyddio iaith ddealladwy i gyfleu ffeithiau a gwybodaeth yn effeithiol.
MEINI PRAWF CYFREITHIOL	
Cymhwyso'r gyfraith yn gywir i sefyllfa'r cleient	Mae'r ymgeisydd wedi nodi'r egwyddorion cyfreithiol sylfaenol perthnasol ac yn eu defnyddio'n gywir yng nghyd-destun ffeithiau achos y cleient. Er enghraifft, mae'r ymgeisydd wedi egluro pam mae'r cleient yn debygol o fod wedi cyflawni trosedd o dan a.3 o Ddeddf Cŵn Peryglus 1991.
Defnyddio'r gyfraith mewn modd cynhwysfawr yn sefyllfa'r cleient, gan nodi unrhyw faterion sy'n ymwneud ag ymddygiad moesegol a phroffesiynol, a defnyddio crebwyll i'w datrys yn onest ac yn ddidwyll	Mae dadansoddiad cyfreithiol yr ymgeisydd yn ddigon manwl yng nghyd-destun achos y cleient: mae'r ymgeisydd wedi egluro pam y gellir ystyried bod ci'r cleient 'allan o reolaeth a pheryglus' a pham ei bod hi'n ymddangos bod y drosedd waethygedig wedi'i chyflawni, yn seiliedig ar y ffeithiau. Nododd yr ymgeisydd fod trosedd o dan a.3 o Ddeddf Cŵn Peryglus 1991 yn gosod atebolrwydd llym gyda rhywfaint o ddadansoddiad o'r gyfraith achosion.