DOG BITE LIABILITY

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BACKGROUND

Every year, the possibility of a dog bite to you or your pet consistently increases because the number of dog owners continually increases. Today, in the U.S., there are over 78 million dogs being owned as pets in 54 million homes. According to the Centers for Disease Control and Prevention, about 4.5 million people are bitten by dogs each year, and of those bitten, 885,000 require medical attention for their injuries. Half of all dog bites occur to children who also sustain the most serious injuries and the most fatalities. Nationally, dog bites are responsible for more than 12 deaths per year.

Dog owners have a legal obligation to prevent their dog from harming another person or damaging another person’s property. In most states, dog owners are liable for injuries their pets cause if the owner knew the dog had a tendency to bite. In some states, strict liability statutes make the owners liable whether or not they knew the dog had a tendency to bite; in others, owners can be held responsible only if they knew or should have known their dogs had a propensity to bite. Some states and municipalities have “breed specific” statutes that identify breeds such as pit bulls as dangerous; in others, individual dogs can be designated as vicious.

In Georgia, for example, owners of dogs that have been classified as “vicious” are required to register the dog as a “classified vicious” dog and to purchase at least $50,000 of liability insurance. Americans spend millions of dollars each year in medical bills, vet bills, and insurance claims to compensate for harm dogs do to individuals and their property.

INSURANCE LIABILITY

Dog bites and other dog-related injuries accounted for more than one-third of all homeowner’s insurance liability claims. An analysis of homeowner’s insurance data by the Insurance Information Institute, (I.I.I.), found that “.... while the number of dog bite claims nationwide decreased 7.2 percent in 2015, the average cost per claim for the year was up 16 percent. The average cost paid out for dog bite claims nationwide was $37,214 in 2015, compared with $32,072 in 2014. The average cost per claim nationally has risen more than 94 percent from 2003 to 2015, due to increased medical costs as well as the size of settlements, judgments and jury awards given to plaintiffs, which are still on the upswing. California continued to have the largest number of claims in the U.S. at 1,684. Illinois had the second highest number of claims at 931. Arizona had the ninth largest number of claims at 393, but it registered the highest average cost per claim of the 10 states with the most claims: a staggering $56,654. The trend in higher costs per claim is attributable not only to dog bites, but also to dogs knocking down children, cyclists, the elderly, etc., which can result in injuries that impact the potential severity of the losses.” In 2015, Georgia ranked tenth in the number of dog bites with 381 people bitten, and the cost averaging around $37,000 to settle each claim. (See http://www.iii.org/issue-update/dog-bite-liability for more info).
THREE TYPES OF DOG BITE LAWS
There are three different kinds of dog bite laws that impose liability on owners: (1) a **strict liability** dog-bite statute where the dog owner is automatically liable for any injury or property damage the dog causes without provocation. Presently, thirty states have strict liability statutes (WA, CA, MT, UT, AZ, CO, NE, OK, LA, MO, IA, MN WI, IL, IN, MI, OH, KY, AL, FL, SC, WV, PA, DE, NJ, CT, RI, MA, NH, ME); (2) the **one-bite rule** where the dog owner is responsible for an injury caused by a dog if the owner knew the dog was likely to cause that type of injury. Under this rule, the victim must prove the owner knew the dog was dangerous. Fourteen states presently have the one-bite rule (AK, NV, ID, WY, ND, SD, KS, NM, TX, AR, MS, VA, MD, VT); and (3) **negligence laws** where the dog owner is liable if the injury occurred because the dog owner was unreasonably careless or negligent in controlling the dog. Currently, six states have negligence laws to cover dog bites (GEORGIA, OR, TN, NC, NY, HI, and District of Columbia). Georgia has incorporated the one-bite rule with the negligence law to result in what is considered to be a “mixed” dog bite statute.

GEORGIA LAW
Dog bite laws are the result of state statutes, county ordinances, city ordinances, case law, and authoritative texts. One must take into consideration state, county and city ordinances when considering a dog bite case. Georgia has one of the most complicated mixed dog-bite statutes in the USA, and its negligence doctrine is in a state of flux. Georgia has also incorporated a “**Responsible Dog Owner Law**” with additional penalties for owners who do not control their dog.

In Georgia, a person has two years after the date of a dog bite to bring a case to court. After that, the case will be thrown out due to lapse of the statute of limitations. In Georgia, all dogs are innocent until proven guilty, but once they bite someone, the owner is on notice that the dog has become “potentially dangerous.” A “potentially dangerous” dog owner has an obligation to take special precautions to protect others such as keeping the dog restrained and posting signs.

Georgia is considered a "**negligence**" state that incorporates the one-bite rule into a mixed dog bite statute when it comes to dog bites and other animal-related injuries. Georgia's dog bite statute **O.C.G.A. §51-2-7** provides: “A person who owns or keeps a vicious or dangerous animal of any kind and who, by careless management or by allowing the animal to go at liberty, causes injury to another person who does not provoke the injury by his own act may be liable in damages to the person so injured. In proving vicious propensity, it shall be sufficient to show that the animal was required to be at heel or on a leash by an ordinance of a city, county, or consolidated government, and the said animal was at the time of the occurrence not at heel or on a leash.” To prove liability under this statute, the claim can be based on either a violation of a leash law or the dog owner's knowledge that the dog had the temperament or propensity to bite people.

Once the case goes to court, proving that an animal's owner is liable under the dog bite statute is difficult. The injured person must show that: (1) the owner knew that the animal was vicious or dangerous, (2) the owner acted without reasonable care to restrain the animal or protect other
people from injury, was careless with the animal, or let it "go at liberty," which caused the injury, and (3) the injured person did not provoke the animal. The Georgia statute specifies that a leash ordinance, or the dog being off leash, may be used to prove that a dog has "vicious propensities."

Georgia also recently passed the **Responsible Dog Owner Law** (RDOL, O.C.G.A. §4-8-20), to force owner’s to be more responsible for a dangerous or vicious dog attack. “Dangerous” includes dogs that puncture a person’s skin or kills another owner’s pet. If the attack is considered to be “serious,” or there is a second attack, the owner could be charged with a felony under the RDOL, and punished with up to 10 years in prison and a fine up to $10,000.

**DEFENSES TO GEORGIA DOG BITE INJURY CLAIM**

An animal owner who faces an injury claim has several possible defenses under Georgia law. An owner may claim “lack of knowledge,” or that he did not know the dog had dangerous or vicious tendencies because the dog never showed aggressive tendencies or bite anyone in the past. An owner may not be liable if the owner used **reasonable care** and did not negligently allow the dog to go “at liberty” or off leash when the bite occurred. If the victim **provoked** the dog in any way which caused the dog to attack, the owner may not be held liable. If the victim was **breaking the law**, for example, trespassing at the time of the bite, or was extremely **reckless** **in his/her conduct**, the owner may not be liable.

If the dog owner adequately warned other people that the animal was dangerous, and took measures to keep the animal away from people, a person who ignored the owner's warnings and was injured by the animal might not successfully sue the owner. In legal terms, the injured person's behavior in such a situation is known as "contributory negligence" or "**assumption of the risk.**" An injured person is contributorily negligent when he or she fails to exercise the degree of care for his or her safety that a reasonable person would exercise under similar circumstances. Georgia law allows people to recover contributory damages even if they were partially at fault, but parties who are 50 percent or more at fault cannot recover any damages.

**CRIMINAL PENALTIES**  
http://www.dogsbite.org/blog-posts-criminal-trials.php

**Georgia:** 01/13/15: Landmark Civil Verdict - A DeKalb County jury has awarded $72 million dollars, believed to be the largest verdict in the nation for a dog attack, to a pit bull mauling victim and her family. On March 9, 2010, Erin Ingram, then 8-years old, came home from school and asked her dad if she could shoot hoops in her own driveway. Two pit bulls suddenly appeared and violently attacked her. Erin suffered horrific injuries, including the partial amputation of her left arm and the severe disfiguring of her right arm.

Several hours after the $72 million dollar jury award was announced publicly, Judge Mathew Robins, pursuant to state law, limited the amount of punitive damages to $250,000 in the case of Erin Ingram. The judge ordered Twyann Vaughn, the owner of the dogs -- who did not appear at the civil trial held
on January 12, 2015 -- to pay the plaintiff $36,691,278 in compensatory damages and $250,000 in punitive damages, for a total amount of $36,941,278.

The jury returned a guilty verdict after the defense called two witnesses who testified that the pit bulls were "extremely nice." Jurors deliberated just over 90 minutes. Vaughn was charged with two counts of reckless conduct, two violations of the county's vicious dog ordinance and two counts of failing to immunize her pit bulls for rabies. Six "misdemeanors" in total for a life-altering, catastrophic dog attack. Judge Dax Lopez then sentenced Vaughn to 16 months in jail and 36 months on probation. Prosecutors had asked for four years in jail. The maximum penalty was five years, for six misdemeanors -- A "felony" provision after a life-threatening dog attack in the State of Georgia is likely light years away.

California: On January 26, 2001, two Presa Canario dogs attacked and killed Diane Whipple in the doorway of her San Francisco, California, apartment. Marjorie Knoller, the owner of the dogs, was convicted of involuntary manslaughter for keeping a mischievous dog that killed a person. She was sentenced to four years in prison for involuntary manslaughter and was ordered to pay $6,800 in restitution. Her husband, Robert Noel, was convicted on lesser charges but also received a four-year prison sentence. Knoller became the first Californian convicted of murder for a dog’s actions. This was only the third time such charges have been upheld in the United States, the first coming in Kansas in 1997.

REFERENCES
http://www.iii.org/issue-update/dog-bite-liability
http://www.injuryclaimcoach.com/dog-on-dog-aggression.html#

GEORGIA CASE LAW – DOG BITES

Swanson v. Tackling, 335 Ga.App. 810, 783 S.E.2d 167 (Ga. App., 2016)
Tackling has identified no evidence that Willow had ever bitten or attempted to bite anyone before, that she had a tendency to attack humans, or that the Swansons otherwise had knowledge about her temperament that would have placed them on notice that she would bite someone. Thus, while we have the greatest sympathy for the injuries suffered by J.R., the trial court nevertheless erred in denying the Swansons' motion for summary judgment. For all of the foregoing reasons, we reverse the trial court's denial of summary judgment to the Swansons. Judgment reversed.
Pamela Green appeals from the grant of summary judgment to Robert Wilson in this personal injury action against him individually and in his capacity as executor of the estate of his wife, Audie Wilson. In the action, Green alleged that she was injured while trying to get away from the Wilsons' dog. Because there is evidence that Mrs. Wilson knew that the dog had the propensity to do the type of act that caused Green's injury, summary judgment is not appropriate. Accordingly, we reverse.

We conclude that Rocks's prior behavior, snapping at Cheryl Eason and Gary Steagald, was merely menacing behavior that “alone is not sufficient to place its owner on notice of a propensity to bite. We conclude that, as a matter of law, the first-day snapping incidents did not put the Easons “on notice that the dog would launch an unprovoked attack on a stranger coming into the yard.” The record is devoid of evidence of previous attacks on people or animals,” and the evidence the Steagalds presented was insufficient to show that the Easons had notice that Rocks had the propensity to attack. The trial court properly granted the Easons summary judgment. Judgment affirmed.

Edward Stolte sued Andrew Hammack for injuries received when a dog attacked him inside a townhouse owned by Hammack. Stolte sought recovery under the vicious animal statute (OCGA § 51–2–7) and the premises liability statute (OCGA § 51–3–1). The trial court granted summary judgment to Hammack as to both theories, concluding that Hammack did not have superior knowledge of the dog's viciousness. Stolte filed suit, and Hammack moved for summary judgment, contending that Stolte was equally aware of the dog’s vicious propensity. Hammack also argued that Stolte assumed the risk of attack when he opened the door to the bedroom where they were keeping the dog. The trial court granted the motion, and this appeal followed. A plaintiff in a dog bite case who asserts a cause of action under this statute is also required to produce evidence that the premises owner had superior knowledge of the dog's viciousness. Stolte cannot show Hammock's superior knowledge of the dog's temperament, Hammack is not liable for Stolte's damages under OCGA § 51–3–1. Judgment affirmed.

This personal injury case was brought to recover damages in connection with a dog bite. Nothing in those pleadings alleges that the Jahangards still owned the dog at the time of the incident. The trial court did not err in granting summary judgment to the Jahangards. Google's complaint is not based on OCGA § 51-2-7 (the dog bite statute) or OCGA § 51-3-1 (the premises liability statute), but on a theory of negligent failure to warn Green about a prior incident. Google's position has been that the Jahangards were negligent because that they did not warn Green of the dog's alleged dangerous propensity. The Jahangards moved for summary judgment, arguing that they no longer owned, possessed or controlled the dog at the time of the incident, and that they had no legal duty to inform Green of a prior biting incident (which they deny even occurred). The trial court granted the Jahangards' motion for summary judgment. Judgment affirmed.
Tracey Raith sued Grady and Jennifer Blanchard for damages she allegedly sustained when the Blanchards' dog bit her. The Blanchards subsequently moved for summary judgment. The trial court granted the motion, finding that the Blanchards lacked superior knowledge of the dog's temperament and that Raith assumed the risk of her injuries. The Blanchards argue that Raith assumed the risk as a matter of law by ignoring Satchel's growl and approaching him at his level. Under Georgia law, however, "barking and growling amount, at most, to what has been characterized as menacing behavior." Standing alone, such behavior does not demonstrate a vicious propensity or put a dog owner on notice that the dog will bite. We thus fail to see how Satchel's growl gave Raith actual notice, as a matter of law, that he might bite if she approached him. Because a dog's growl does not put the dog owner on notice of the dog's propensity to bite, it can hardly be viewed as plain and palpable evidence that a third party actually knew about and appreciated the danger that the dog might bite. Accordingly, the trial court erred in granting summary judgment to the Blanchards on their assumption of the risk defense.
Judgment reversed.

Credit to Kaye Klapper