

Fall, 2024

# AEI CLAIMS LAW QUIZ

## DOG BITE LIABILITY

[*Ref. Tort Theories and Defenses Paras. 3.01 and 3.02*]

**FACTS:** On February 4, 2019, Ceelo, a large mixed-breed dog, was found roaming Wilmington, Delaware and was brought to the Brandywine Valley SPCA (BVSPCA), a non-profit animal welfare organization. Ceelo initially showed signs of aggression when a staff veterinarian administered a vaccination. Nonetheless, he was made available for adoption shortly thereafter. On February 27, Miles, the mother of a BVSPCA staff member, adopted Ceelo, but brought him back five days later because he was chasing her cats. That same day, while Miles was filling out the return papers in the BVSPCA reception area, Joseph Riad arrived with the intention of adopting a dog. He observed Ceelo in the reception area and inquired about his availability for adoption. Ford, a BVSPCA staff member, took Ceelo by his leash and led the dog and Riad to a fenced-in area so they could interact for 10 minutes. During that time, the dog was kept on a leash 10 to 15 feet away from Riad, although Riad said he was able to pet the dog. They then returned to the reception area where Riad expressed his intention to adopt Ceelo and was given an application to fill out. Riad went to his car to retrieve his driver's license. When he returned, Ceelo, still on the leash held by Ford, lunged at Riad and bit his right hand. BVSPCA called emergency medical services and while waiting for emergency services to arrive Miles completed and submitted the Return Contract, which indicated her intention to surrender ownership of the dog to the BVSPCA.

Riad filed suit against the BVSPCA under two theories of liability. Riad claimed that the BVSPCA was liable under Delaware's Dog Bite Statute, 16 Del. Code § 3053F, which, like most dog bite statutes, makes dog owners strictly liable for harm caused by their dogs. In the alternative, Riad alleged that the BVSPCA was negligent because it knew of Ceelo's dangerous propensities and failed to warn Riad or otherwise exercise reasonable care for his protection.

The BVSPCA moved for summary judgement seeking dismissal of the lawsuit. As to the statute, the BVSPCA claimed that it didn't apply because the BVSPCA was not "the owner...keeper, harbinger, or custodian of Ceelo at the time of the incident" as required by the statute. The BVSPCA also argued that holding it strictly liable would violate Delaware public policy because the intent of the Dog Bite Statute was to "rein in irresponsible dog owners who were keeping vicious dogs as pets" and that an animal welfare organization such as the BVSPCA was not within the group targeted by the statute. As to the negligence claim, the BVSPCA argued that the plaintiff couldn't prevail without expert testimony because the standard of care applicable to animal shelters like the BVSPCA was outside the common knowledge of a juror. Therefore, the plaintiff's failure to provide expert testimony meant that he couldn't prove the BVSPCA was negligent.

The trial court ruled in favor of the BVSPCA and dismissed the plaintiff's case. The court held

that the Dog Bite Statute wasn't intended to apply to the BVSPCA because it was not a pet owner and therefore fell outside the scope of the statute. The court also held that the negligence claim couldn't succeed without expert testimony.

Riad appealed to the Delaware Supreme Court.

**QUESTION:** Was the court correct that: (1) the Delaware Dog Bite Statute didn't apply to the animal welfare organization, and (2) the negligence claim couldn't succeed without expert testimony?

**ANSWER:** In *Riad v. Brandywine Valley SPCA, INC.*, 2024 Del. LEXIS 197 (Del. 2024), the Delaware Supreme Court ruled that: (1) Delaware's Dog Bite Statute unambiguously defined an "owner" as "any person who owns, keeps, harbors, or is the custodian of a dog." Since there was no exception made for animal welfare organizations, the statute applied to the BVSPCA.

The court also held that Riad was entitled to bring an alternative claim based on negligence, and could prevail on that claim without having to produce expert testimony because a jury is capable of determining whether the BVSPCA acted with reasonable care in its handling of a dog with vicious propensities.

Regarding the plaintiff's strict liability claim, the Delaware Supreme Court recognized that the key issue was the language of Delaware's Dog Bite Statute and, in particular, how the statute defined who could be held strictly liable for damages caused by a dog:

The owner of a dog is liable in damages for any injury, death, or loss to person or property that is caused by such dog, unless the injury, death, or loss was caused to the body or property of a person who, at the time, was committing or attempting to commit a trespass or other criminal offense on the property of the owner, or was committing or attempting to commit a criminal offense against any person, or was teasing, tormenting, or abusing the dog.

The term "owner" is defined in the subchapter's definitional section as "any person who owns, keeps, harbors, or is the custodian of a dog."

The BVSPCA argued that the statute only applied to dog owners and that it defined the terms "owner" and "animal shelter" separately. According to the BVSPCA, the fact that animal shelters weren't included within the definition of an "owner" indicated that Delaware's legislature did not intend for the statute to apply to organizations like the BVSPCA. The Delaware Supreme Court, however, disagreed and focused instead on the ordinary meaning of the statutory language:

At any rate, we discern no disharmony in § 3041F's definitions. For one thing, the BVSPCA's conclusion – that the separate definition of "animal shelter" effectively excludes it from the definition of "owner" – does not necessarily follow from its premise; it does not explain why an animal shelter cannot be encompassed within the unambiguous – and expansive – definition of owner. Indeed, the other definitions found in § 3041F recognize that, as written, an entity might fall within more than one definition. The definition of "Retail dog outlet," for instance, explicitly excludes animal shelters. The drafters apparently recognized that, but for this exclusion, an animal shelter could fall within the definition of a "Retail dog outlet." Stated differently, Section 3041F's definitions themselves appear to recognize that more than one definition could be, absent an explicit exclusion, applicable to a single person. Moreover, we cannot ignore the General Assembly's exclusion of animal shelters from the "Retail dog outlet" definition while choosing not to exclude animal shelters from the definition of "owner." Thus, we conclude that the BVSPCA's status as an animal shelter does not mean that it could not, at the same time, be an owner.

The Delaware Supreme Court recognized that under the plain language of the Dog Bite Statute any organization, such as the BVSPCA, that owned, kept, harbored or was the custodian of a dog at the time it injured someone could be held strictly liable for damages caused by the dog. Furthermore, the court noted that the statute did not explicitly or implicitly exempt an “animal welfare organization” from the definition of owner. As a result, the court concluded that the statute was unambiguous and applied to animal shelters.

The Delaware Supreme Court also rejected the BVSPCA’s public policy argument. The court was critical of the lower court’s decision to consider public policy when it concluded that applying the Dog Bite Statute to animal shelters like the BVSPCA would make it be impossible for these nonprofit organizations to carry out their work. The Delaware Supreme Court explained:

But as with its analysis of the legislature’s intent, the Superior Court’s public policy analysis was ill advised. The statute itself unambiguously proclaims the public policy of our State. Dog owners, a class that is defined and that does not exclude animal welfare organizations, are to be held strictly liable for injuries caused by their dogs. Where a statute is unambiguous, our courts’ own sense of appropriate public policy should not “usurp the General Assembly’s legislative powers by ignoring plain statutory text.”

Finally, on the negligence claim, the Delaware Supreme Court recognized that the plaintiff has the burden of proving that the defendant breached the standard of care required of a reasonable person under the same or similar circumstances. When the facts are overly complex or technical, expert testimony is often a required element of the plaintiff’s case. Expert testimony is typically not required, however, when the facts are within a layperson’s common knowledge or experience.

The lower court had held that expert testimony was indispensable because the BVSPCA was required to apply tests “curated by a licensed veterinarian” to determine Ceelo’s violent propensities, and that this was something that was not within the common knowledge of a layperson. The plaintiff, however, argued that expert testimony was unnecessary because the BVSPCA already had knowledge of Ceelo’s vicious propensities based on its prior interactions with the dog. The Delaware Supreme Court agreed with the plaintiff and explained:

We disagree with the Superior Court’s framing of the issue. As the court acknowledged, Riad’s negligence claim rests on the BVSPCA’s alleged knowledge of Ceelo’s vicious propensities. Riad contends that this knowledge stemmed from the BVSPCA’s prior interactions with Ceelo, as documented in its “Animal View Report,” which described Ceelo’s history of lunging and aggression. Whether the BVSPCA failed to warn Riad of these propensities and whether Ford was negligent in her control over Ceelo is grounded, in Riad’s view, on that knowledge. Thus, Riad’s negligence claim as stated requires the jury to determine whether the BVSPCA acted with reasonable prudence in its handling of a domestic animal with known vicious propensities. That standard is not outside the ken of the average layperson.

It’s important to note that the Delaware Supreme Court did not rule that expert testimony is never appropriate in dog bite cases. Rather, the supreme court concluded that the lower court was wrong to hold that the plaintiff was required to produce expert testimony to prove this case. The supreme court said that the BVSPCA could have used expert testimony to undermine Riad’s case by establishing that it had properly screened the dog before allowing its adoption by Miles and, therefore, it was reasonable to believe that to its knowledge the dog had no vicious propensities. Similarly, Riad could have used expert testimony to support his case by establishing that the BVSPCA’s screening process was inadequate or improperly administered. Allowing expert testimony, however, is not the same as requiring it. The negligence claim was based on Riad’s allegation that the BVSPCA knew that Ceelo had vicious propensities which stemmed from its prior interactions with the dog. Whether Riad can prove that knowledge is a question of fact for a jury. And if knowledge of vicious propensities is proved, whether the

BVSPCA acted reasonably in light of that knowledge is also a decision that a jury is typically competent to make without the need for expert testimony.

The Supreme Court of Delaware reversed the judgment of the lower court and remanded the case so that a jury could determine: (1) as to the statutory claim, whether in light of the fact that Miles hadn't submitted the Return Contract to it at the time of the incident the BVSPCA was, in fact, the owner of the dog, and (2) as to the negligence claim, whether the BVSPCA failed to exercise reasonable care for Riad's protection.

**CONCLUSION:** Most states have dog bite statutes that impose strict liability. The language of the statutes differs from state to state. Most states will also allow a plaintiff to plead negligence in the alternative. In any dog bite claim, the starting point is to determine whether the state has a dog bite statute and how the language of that statute applies to the facts of the claim.

Some dog bite statutes apply only to owners. Others, like the Delaware statute, apply to owners, keepers, harborers, and custodians. In addition, the statutes may define their terms differently or have exceptions that could allow a dog owner to escape liability under certain circumstances. These exceptions can be very specific. Suffice it to say that the statutory language and case law interpreting it must be carefully considered.

Dog injury claims based on common law negligence require proof that the owner or some other person or entity in control of the dog at the time of the injury knew or should have known about the dog's vicious propensities. In negligence claims of this type, knowledge of the dog's vicious or aggressive history establishes the owner's duty to act in accordance with that knowledge and exercise care for the protection of others who might come in contact with the animal. The knowledge requirement is known as the "one bite rule" because without knowledge of any previous vicious or aggressive behavior exhibited by the dog, the owner won't be liable. It's only after the first bite, or other aggressive behavior of which the owner has knowledge, that the owner can be found legally liable for its negligence.

# Congratulations SCLA's

The following individuals earned their SCLA's in the months of July, August, and September 2024:

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Richmond, VA

**Nathan J. Berger**  
USAA  
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**Stephanie Boice**  
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