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The "One-Bite" Rule for Dogs

Under this rule, you're liable for injuries your dog causes only if you had reason to know the dog was dangerous.

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Under this rule, a dog's owner is liable for injuries the dog causes only if the owner knew or had reason to know that the dog was likely to cause that kind of injury. So if your dog tries to bite someone, from that moment on you're on notice that the dog is dangerous, and you will be liable if the dog later bites.

The common law rule comes into play only if the state has no dog-bite statute (legal-encyclopedia/dog-bite-statutes.html) or if the statute doesn't apply—for example, if the statute covers only bites, and the dog caused the injury by knocking the person down.

A dog owner may be able to escape liability by proving that the injured person provoked the injury, or voluntarily and knowingly risked being injured by the dog. (See "A Dog's Owner's Legal Defenses (legal-encyclopedia/free-books/book/chapter11-5.html).")

States With the One-Bite Rule

Alaska	Mississippi	Oregon
Arkansas	Nevada	South Dakota
Colorado	New Mexico	Texas
Georgia	New York	Vermont
Idaho	North Carolina	Virginia
Kansas	North Dakota	Wyoming
Maryland		

The logic of this legal doctrine is straightforward, if not unquestionable. This rule allows a person who owns a dog to assume, until there is some concrete indication to the contrary, that the dog isn't dangerous. But an owner who knows a dog poses a particular kind of risk to people must take action to prevent the foreseeable injury—or be prepared to pay for it.

The common law rule is often called the "one-bite" rule, which is a bit of a misnomer. It implies that every dog gets one "free" bite (free for its owner), and from then on the owner is on notice that the dog is dangerous. It's true that if a dog bites someone, its owner is definitely on notice that the dog is dangerous. Less serious behavior, however, is also enough to put an owner on notice. For example, if a dog growls or snaps at people, the owner should know that the dog may injure someone. If the dog does hurt someone, the owner will be liable, even for the first bite.

The test for liability is the same no matter how the injury was caused: Did the owner know of the dog's dangerous tendency? For example, if a dog jumps up and knocks someone down, the question is: Did the owner know of the dog's tendency to knock people down? If so, he's liable for any resulting injury.

If the owner denies responsibility and the dispute ends up in court (most don't), the judge or jury will have to decide whether or not the owner should have known the dog was likely to hurt someone. Here are some factors that courts take into account when deciding.

Previous bites. This one is pretty easy. If a dog bites once, the owner will forevermore be on notice that the dog is dangerous. But even this is not as straightforward as it may appear; for example, at least one court has ruled that if a puppy nips someone, its owners are not necessarily on notice that the dog is dangerous. (Tessiero v. Conrad, 588 N.Y.S.2d 200 (App. Div. 1992).)

Barking at strangers. If a dog, usually kept in the house or a fenced yard, barks at strangers but has never threatened a person, its owner will probably not be liable if it bites someone. (See, for example, Slack v. Vilar, 476 A.2d 227, cert. denied, 482 A.2d 502 (Md. 1984) and Collier v. Zambito, 1 N.Y.3d 444 (2004).)

Threatening people. A dog that often growls and snaps at people who come near it when out in public, but hasn't ever actually bitten someone, is a different case entirely. The dog's actions should put its owner on notice that the dog might bite someone. If the dog does bite, the owner will be liable. (See, for example, Fontecchio v. Esposito, 485 N.Y.S.2d 113 (1985).)

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Yes

Jumping on people. The owner of a friendly, playful, and large dog, which is in the habit of jumping on house guests, will be liable if the embarrased dog knocks over a friend who comes to the door one day. The owner knew that the dog jumped the way and might injure someone because of its size.

Frightening people. If a dog barks or run along the fence that scares the by the sidewalk barking furiously, or chases pedestrians or bicyclists, the owner may be liable if the dog causes an injury. At least one court, however, has ruled that an owner wasn't responsible for foreseeing that a barking dog could frighten someone so much the would run into the street. (*Oliver v. Kilduff*, 123 Cal. App. 3d 502 (1981).)

Fighting with other dogs. If a dog that is gentle with people has a history of fights with other dogs, that's probably not enough to put the owner on notice that the dog might bite a person. Courts usually recognize that canine society has its own rules, and the way a dog behaves under their own a reliable predictor of how it will act toward humans. (In one court put it, the "question was the dog's propensity to attack a human. The canine code speaks is something else. That involves the question of what constitutes a just cause for battle in the dog world, or what justifies a resort to arms, or other to learn, for release." (*Parker v. Heck*, 273 Ky. 261 (1926)).

Fight training. If a dog has been trained to fight, a court will almost certainly conclude that the owner should have known that the dog is dangerous. (This conclusion is disputed by some people experienced with dogs used for fighting, who maintain that there is no connection between a dog's drive to fight other dogs and its aggression toward people. However, a dog that has been agitated and abused when used for fighting may be dangerous.)

Complaints about the dog. If neighbors or others complain to the owner that a dog has threatened or bitten someone, the owner would certainly be on notice that the dog is dangerous. But in one Indiana case, where a dog's owner had been scolded by a neighbor for having a dog that was a "nuisance," the court ruled that the owner didn't have any knowledge that his dog was dangerous. (*Buckner v. Goddson*, 487 So. 2d 491 (Ala. 1986).)

The dog's breed. Generally, courts don't consider dogs of certain breeds to be inherently dangerous. So if you have a German Shepherd, a court probably won't conclude that you should have known, just because of the dog's breed, that it might injure someone. (See, for example, *Roupe v. Conrad*, 207 A.D.2d 937, 731 N.Y.S.2d 545 (2001).) But in some states, pit bulls and a few other breeds have been defined by law as dangerous dogs. (See "*Dangerous Dog Laws*" (<http://www.nolo.com/legal-encyclopedia/dangerous-dogs.html>)).

If a dispute goes to court, however, the result will depend on the facts and the judge or jury's attitude. Large dogs of breeds popularly believed to be dangerous, such as Doberman, German Shepherds, and pit bulls, may be judged more severely than dogs of smaller breeds.

Warning signs. Don't worry that putting up a "Beware of Dog" sign is tantamount to admitting that your dog is a menace, leading you in bigger trouble if the dog does ever hurt someone. First of all, the sign will help avoid bites—which is far preferable than winning a legal battle over a bite later. Second, if you think your dog might hurt someone, there's almost certainly already more evidence of the dog's dangerousness than the fact that you put up a warning sign.

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