

812.03 ANIMALS - COMMON LAW LIABILITY OF OWNER OF DOMESTIC ANIMALS.

The (*state number*) issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the defendant?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff's [injury] [damage].

Negligence refers to a person's failure to follow a duty of conduct imposed by law. Every person is under a duty to use ordinary care to protect *himself* and others from [injury] [damage]. Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect *himself* and others from [injury] [damage].

The plaintiff must prove that the defendant knew or should have known from the [past conduct of this animal, including acts evidencing a vicious propensity] [the general propensities exhibited by this type of animal] that, unless confined or restrained, injury or damage to others was likely to occur.¹

The breed², size, nature and habits of the (*state type of animal*) that are known or should have been known to the owner are all circumstances to be taken into account in determining whether the defendant used ordinary care regarding the confinement and restraint of the (*state type of animal*).³

[Whether the defendant gave an appropriate warning of the danger is also a circumstance that may be considered in determining whether the defendant used ordinary care].⁴

The plaintiff not only has the burden of proving negligence, but also that such negligence was a proximate cause of the [injury] [damage].

Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [damage], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. *Slade v. Stadler*, 150 N.C. App. 677, 678, 564 S.E.2d 298, 299 (2002), *aff'd.*, 356 N.C. 659, 576 S.E.2d 328 (2003); *Swain v. Tillet*, 269 N.C. 46, 152 S.E.2d 297 (1967); see *Hill v. Williams*, 144 N.C. App. 45, 54, 547 S.E.2d 472, 478 (2001), *disc. rev. denied*, 354 N.C. 217, 557 S.E.2d 531 (2001).

2. The standard requiring that an owner may have to restrain a particular animal

based upon the general tendencies of a particular breed does not apply where evidence shows that the animal in question is a mixed-breed and is only partly a breed known for vicious or aggressive propensities. See *Harris v. Barefoot*, 206 N.C. App. 308, 312, 704 S.E.2d 282, 284 (2010).

3. *Slade*, 150 N.C. App. at 679, 564 S.E.2d at 299.

4. *Id.*