

5.60A STATUTORY OWNER - DOG BITE LIABILITY
(N.J.S.A. 4:19-16)¹ (12/09)

Plaintiff, _____, alleges that he/she was injured as a result of a bite from a dog owned by the defendant, _____.

The liability of an owner of a dog is one imposed by statute, namely *N.J.S.A. 4:19-16*, which in its pertinent parts reads as follows:

The owner of any dog which shall bite a person while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of the dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

[The remaining part or parts of the statute should be charged where applicable.]

For the purpose of this section, a person is lawfully upon the private property of such owner when he/she is on the property in the performance of any duty imposed upon him by the laws of this state or the laws or postal regulations of the United States, or when he/she is on such property upon the invitation, express or implied, of the owner thereof.

In order for you to find the defendant, _____ liable, the plaintiff, _____, must establish by a preponderance of the evidence the following elements:

¹ This charge is to be used only in statutory liability situations. As to common law liability, *see* Model Civil Charge 5.75.

1. That the defendant, _____, was the owner of the dog in question;
2. That the plaintiff, _____, was on or in a public place or lawfully on or in a private place, including the property of the defendant, and finally
3. That the dog did bite the plaintiff while in such a place.²

If you find that the plaintiff, _____, has failed to establish any of the foregoing elements, your verdict will be in favor of the defendant,³ _____.

In deciding whether the plaintiff was on or in a public place or lawfully on or in a private place, including the property of the defendant, you should note that anyone whose presence is expressly or impliedly permitted on the property is

² See *DeVivo v. Anderson*, 410 N.J. Super. 175 (Law Div. 2009), where the trial court granted summary judgment to the plaintiff finding that all elements of the cause of action were established even where the skin was not broken by the bite. The court reasoned that there is no explicit requirement in N.J.S.A. 4:19-16 that the injury result in broken skin.

³ Where an issue of fact exists as to whether defendant is the owner of the dog involved or as to whether the plaintiff was unlawfully on or in a private place when the biting occurred, it may be necessary to supplement this charge with additional instructions as to absolute liability of owners and keepers of vicious animals and/or the duty, under ordinary negligence theories, of the owner of premises to invitees, licensees, infant trespassers, and other trespassers who come upon the premises where the dog is kept, see *DeRobertis v. Randazzo*, 94 N.J. 144 (1983); *Mascola v. Mascola*, 168 N.J. Super. 122 (App. Div. 1979); *Nakhla v. Singer-Shoprite*, 205 N.J. Super. 184 (App. Div. 1985), *certif. denied*, 102 N.J. 399 (1986).

entitled to the protection of the statute I have just read; the permission extends to all areas which the plaintiff may reasonably believe to be included within its scope.⁴

If you find that the plaintiff, _____, has established each of the foregoing elements, your verdict will be in favor of the plaintiff,⁵ _____.

NOTE TO JUDGE

You will note that the statute imposes liability on an owner, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

If you conclude in favor of the plaintiff, _____, you must then proceed to the question of damages.

A. Dog Bite Liability — Plaintiff's Comparative Negligence/Burden of Proof

In a case such as this where the defendant has raised the negligence of the

⁴ *DeRobertis v. Randazzo*, 94 N.J. 144 (1983).

⁵ Where there is an issue of comparative negligence, that charge should be inserted. *See Foy v. Dayko*, 82 N.J. Super. 8, 14 (App. Div. 1964) “[T]he Legislature did not intend to abolish the defense of contributory negligence in enacting [the dog bite statute].”

plaintiff as a defense, the defendant has the burden of proof. This means that the defendant has the burden to prove plaintiff's "unreasonable and voluntary exposure to a known risk." This means that the plaintiff "knew" the dog had a propensity to bite either because of the dog's known viciousness or because of the plaintiff's deliberate acts intended to incite the animal. For example, one who beats or torments a dog has no call upon the owner if in self-defense the dog bites back.⁶

⁶ *Budai v. Teague*, 212 N.J. Super. 522 (Law Div. 1986); see also *Dranow v. Kolmar*, 92 N.J.L. 114, 116-17 (1918).