CIVIL LIABILITY FOR ANIMALS

Working Paper 18

Queensland Law Reform Commission
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QUEENSLAND

LAW REFORM COMMISSION

CONFIDENTIAL

WORKING PAPER ON A BILL TO REMOVE THE ANOMALIES PRESENTLY EXISTING WITH RESPECT TO CIVIL LIABILITY FOR ANIMALS AND TO RATIONALIZE THE EXISTING RULES OF THE COMMON LAW FOR DAMAGE DONE BY ANIMALS

QLRC W.18

Inquiries to: The Secretary,
Law Reform Commissio
Comalco House,
50 Ann Street,
BRISBANE. 4000

(P.O. Box 312,
NORTH QUAY.)

Telephone: 224 7622

PREFACE

The Law Reform Commission has been functioning since 1st March, 1969 and has been constituted by the Law Reform Commission Act 1968 - 1976. The members are:-

The Honourable Mr. Justice D.G. Andrews, Chairman
Mr. B.H. McPherson, Q.C.
Dr. J.M. Morris
Mr. G.N. Williams
Mr. J.J. Rowell
Mr. J.R. Nosworthy

The Secretary of the Commission is Mr. K.J. Dwyer. The office of the Commission is at Comalco House, 50 Ann Street, Brisbane.

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LAW REFORM COMMISSION

WORKING PAPER ON A BILL TO REMOVE THE ANOMALIES PRESENTLY EXISTING WITH RESPECT TO CIVIL LIABILITY FOR ANIMALS AND TO RATIONALIZE THE EXISTING RULES OF THE COMMON LAW FOR DAMAGE DONE BY ANIMALS

The second programme of the Law Reform Commission of Queensland as approved by the Governor in Council includes an examination of the Law relating to civil liability for damage caused by animals.

This working paper contains a commentary and a proposed Bill to remove the anomalies presently existing with respect to civil liability for animals. Neither the proposed Bill nor the commentary represents the final views of the Commission.

The working paper is being circulated to persons and bodies known to be interested in these matters, from whom comment and criticism are invited. It is circulated on a confidential basis and recipients are reminded that any recommendations for the reform of the law must have the approval of the Governor in Council before being laid before Parliament. No inferences should be drawn as to any Government Policy.

It is requested that any observations you may desire to make be forwarded to the Secretary, Law Reform Commission, P.O. Box 312, North Quay, Queensland, 4000, so as to be received no later than Friday, 13th January, 1978.

D.G. Andrews

(The Honourable Mr. Justice
D.G. ANDREWS)
CHAIRMAN

30th September, 1977.

ANIMALS BILL

COMMENTARY

The position in Queensland relating to civil liability for damage caused by animals is predominantly covered by the common law. Whilst there is adequate legislation to protect animals from damage done by humans, there is none to protect man and his property from damage done by animals. The topic has been the subject of numerous investigations, both in England and other jurisdictions. It was first the subject of a report in the United Kingdom in 1951 headed by Lord Simonds, followed by a further report by the Law Commission in 1967 under the chairmanship of Mr. Justice Scarman. Reports were issued by the Law Reform Committee of Scotland in 1963, the Law Reform Commission of New South Wales in 1970, the Law Reform Committees of South Australia, Western Australia and New Zealand in 1969, 1970 and 1975 respectively. For good measure Professor Glanville Williams wrote a whole book on the subject. As could be expected, such a plethora of reviews and academic writings has led to little uniformity of conclusion. It does confirm, however, that liability for damage caused by animals has posed a singularly vexed problem in the law of torts. This is due to the fact that the law governing liability for animals has its own rules, distinct and separate from the general law of negligence.

The central issue, as we see it, is whether these special rules should be allowed to continue their independant existence, or be subsumed under the general law of negligence. We have no doubt, having regard to recent judicial pronouncements, that if these rules are to be abolished, this result can only be achieved by legislation, since they are too firmly entrenched in the common law to be rendered harmless by any other means. Those judicial attempts to "distinguish" these entrenched rules have led to a jungle of single instances, bordering at times on judicial insubordination.

One need only look at the rule, compendiously known as the rule in Searle v. Wallbank [1947] A.C. 341, which determined that an owner of land adjoining a public highway owes no duty to users of the highway to prevent grazing animals from straying on to the highway, to see the confusion in this area of the law. Thus, in, Reyn v. Scott (1968) 2 D.C.R. (N.S.W.) 13, a decision of a District Court Judge, of the New South Wales District Court, he simply refused to follow Searle v. Wallbank (supra) - a decision of the House of Lords. In a more recent decision Kelly v. Sweeny [1975] 2 N.S.W.L.R. 720, the New South Wales Court of Appeal highlighted the utter confusion in the existing state of the law. The dissenting Judge Mahoney J.A. felt himself bound by the House of Lords, whilst Samuels J.A. was able to discern "special circumstances" which, he felt, enabled him to "distinguish" Searle v. Wallbank (supra), and the third Judge, Jutley J.A. confined the decision of the House of Lords to "narrow limits", on the basis that it was inapplicable to the conditions of traffic applying in New South Wales. We feel that this method of "distinguishing" leading cases in order to accommodate them to modern concepts of jurisprudence has little to recommend it.

We have therefore concluded that -

(i) the existing law is in confusion;

(ii) the liability for animals should be left to the general law of negligence;

(iii) such anachronisms, as the rule in Searle v. Wallbank (supra) should be removed by legislation;

(iv) it may be necessary to introduce some additional legislation governing dogs.

It may be appropriate if we briefly set out the history and development of this special area of the law.

English law has hitherto divided animals into two classes -

ferae naturae; and

mansuetae naturae.

The former, consisting of "wild" animals were held to create absolute liability in their keeper (subject to some exceptions, such as Act of God, voluntary assumption of risk, and (semble) the relationship of master and servant - cf. James v. Wellington City [1972]N.Z.L.R70,75; and see the critical comment by one of the contributers to this commentary in 47A.L.J.266). The latter class, regarded as "domestic" animals, created no liability apart from negligence - unless the owner had previous knowledge of the animal's peculiar propensities to create the harm in suit. This is commonly known as the "scienter" rule. It led to such peculiar rules as the "one bite" rule in the case of dogs, where every dog was allowed one bite, after which its owner or keeper was deemed to be "sciens", that is, aware of the animal's vicious propensities. The categorization of animals into one or other category was quite arbitrary, and left to the vagaries of the common law. Thus the law has decreed that elephants, even if tamed, are "wild"; Behrens v. Bertram Mills Circus Limited [1957] 1 Q.B.1; whilst camels and horses have been held to be "domestic" even if they bite (McQuaker v. Goddard [1940]1K.B.687; Lowry v. Walker [1911] A.C.10). We can see little rhyme or reason to retain so arbitrary a distinction, a distinction which arose at a time when the law of negligence itself was only slowly developing.

We have concluded that it is in the area of damage done by escaping animals that the greatest need for reform is seen. One need only refer to the frequent actions brought against owners of animals which have strayed on to the highways and caused collisions involving injury to persons or property to recognize an urgency for clear legal guidelines. It is in this area that the law is at its most outdated, as was pointed out over thirty years ago by Lord Greene M.R. in Hughes v. Williams [1943] K.B.574, who stated:-

> "The rule appears to be ill adapted to modern conditions. A farmer who allows his cow to stray through a gap in his hedge onto his neighbour's land, where it consumes a few cauliflowers, is liable in damages to his neighbour, but if, through a similar gap in the hedge, it strays on the road and causes the overturning of a motor omnibus, with death or injury to thirty or forty people, he is under no liability at all. I scarcely think that that is a satisfactory state of affairs in the twentieth century. If it should prove not to be open to the House of Lords to deal with the rule, the attention of the legislature might be directed to considering the whole position with a view to ensuring the safety of His Majesty's subjects when they are lawfully using the highway". (p.576).

(The reference to liability for consuming "a few cauliflowers" arises from an even more ancient rule which created absolute liability for a tort known as "cattle trespass" which will be dealt with later in this commentary.)

Notwithstanding Lord Greene's pronouncement, neither the legislature nor the House of Lords were fast to move. Thus in Searle v. Wallbank (supra) the House of Lords was asked whether an owner of land adjoining an highway was under any duty to fence his property. The answer the House of Lords gave was emphatic: The owner of a field abbutting onto a highway is under no prima facie

duty to users of the highway so to keep and maintain his hedges, fences and gates along the highway as to prevent his animals from straying onto it, and that he is under no duty as between himself and users of the highway to take reasonable care to prevent any of his animals not known to be dangerous from straying onto the highway. This rule was based on historical considerations relating to conditions of the English countryside where it was customary for herds to be driven along the roads and users were expected to accept the risks flowing from this practice.

It is difficult, in our opinion, to sustain, in this day and age, a proposition of law in these terms. We have concluded that the more recent developments in the common law are able to accommodate this problem adequately without recourse to special rules creating immunity for owners of land, irrespectively of the particular circumstances in which the injury or damage occurred.

One need only to refer to the fons et origo of the modern conception of negligence - Donoghue v. Stevenson [1932] A.C. 562. In that monumental decision, Lord Atkin stated -

> "At present I content myself with pointing out that in English law there must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances. The liability for negligence, whether you style it such or treat it as in other systems as a species of "culpa" is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question". (p. 580).

Lord Macmillan said in like vein -

> "The law takes no cognizance of carelessness in the abstract. It concerns itself with carelessness only where there is a duty to take care and where failure in that duty has caused damage. In such circumstances carelessness assumes the legal quality of negligence and entails the consequences in law of negligence. What, then, are the circumstances which give rise to this duty to take care? In the daily contacts of social and business life human beings are thrown into, or place themselves in, an infinite variety of relations with their fellows; and the law can refer only to the standards of the reasonable man in order to determine whether any particular relation gives rise to a duty to take care as between those who stand in that relation to each other. The grounds of action may be as various and manifold as human errancy; and the conception of legal responsibility may develop in adaptation to altering social conditions and standards. The criterion of judgment must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed. The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care,

> and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty. Where there is room for diversity of view, it is in determining what circumstances will establish such a relationship between the parties as to give rise, on the one side, to a duty to take care, and on the other side to a right to have care taken." (p. 618-619).

In short, tort liability was henceforth seen to depend predominantly on the risk principle, as is illustrated by Bolton v. Stone [1951] A.C. 850. In that case, an elderly spinster, being on a side road of residential houses, was injured by a cricket ball from a cricket club abutting on that highway. The evidence disclosed that on only about six occasions had a cricket ball hit the road. On that evidence five Law Lords, in separate speeches, held that although the possibility of the ball being hit on to the highway might reasonably have been foreseen, nevertheless since the risk of injury to anyone in such a place was so remote that a reasonable person would not anticipate it, the plaintiff must fail. As Lord Radcliffe put it -

> "If the test whether there has been a breach of duty were to depend merely on the answer to the question whether this accident was a reasonably foreseeable risk, I think that there would have been a breach of duty, for that such an accident might take place some time or other might very reasonably have been present to the minds of the appellants. It was quite foreseeable, and there would have been nothing unreasonable in allowing the imagination to dwell on the possibility of its occurring. But there was only a remote perhaps I ought to say only a very remote, chance of the accident taking place at any particular time." (p. 868).

The opposite result was obtained in Overseas Tankship v. Morts Dock etc. [1967] 1 A.C. 617. In that case substantial damage was caused by fire from a remote risk which could have been avoided by the simple expedient by turning off a stop cock. In practice, courts weigh up the likelihood of damage against the precautions necessary to avoid it. In other words, each depends on its own peculiar facts, including gravity of harm and frequency of occurrence, and liability should, in our view, be ultimately determined by the tribunal trying the issue whether, in all the circumstances, the precautions (if any), taken by the occupier of land, given his state of knowledge, the locale (whether the area is suburban, rural etc.) was reasonable or not. We can see no reason why this general rule should not apply to animals, and we quote with approval paragraphs 18 and 19 of the New South Wales Law Reform Commission Report on Civil Liability of Animals :-

> "18. This decision (i.e. Searle v. Wallbank) of the House of Lords has been the subject of much criticism both by judges and legal scholars. In 1953 the Goddard Committee recommended substantial change. In 1959 the Supreme Court of Canada (in Fleming v. Atkinson (1959) 18 D.L.R. (2d) 81) refused to be bound by any principle of law said to be found in the decision of the House of Lords. In 1963 the Law Reform Committee for Scotland did not, in its report, recommend that the decision should form part of the law of Scotland. In New South Wales the sub-committee presided over by Mr. Justice Allen reported in November, 1966 that it considered that the exception to liability established by that case should be abolished. In 1967 the Law Commission recommended, for England and Wales, that the decision be abrogated. We also recommend its abrogation.
>
> 19. The Supreme Court of Canada when refusing, in 1959, to apply the decision of the House of Lords in

Searle v. Wallbank, made some observations which we consider to be entirely pertinent for New South Wales. The Supreme Court pointed out that the House of Lords had rejected any duty upon an adjoining owner of reasonable care to users of the highway in respect of injury which they might sustain from the straying onto the highway of domestic animals not known to be dangerous. It continued -

> "There were two reasons implicit in the judgment in Searle v. Wallbank for the rejection of the duty. The first is based upon the history of the highways of England, which came into being largely as a result of dedication by adjoining owners, who gave to the public no more than a right of passage which had to be exercised subject to the risk of straying animals. The second is based upon the facts as they existed until the advent of fast-moving traffic ....
>
> The historical basis for the rule in Searle v. Wallbank dependent as it is upon peculiarities of highway dedication in England, has never existed in Ontario ....
>
> The other foundation for the principle of immunity in favour of the adjoining owner was that until the advent of fast-moving traffic no cause of action could possibly have existed. There was in fact no real risk worthy of judicial consideration from the mere presence of straying animals on the highway. There was nothing that called for the interference of the law in this situation. But does it follow as a consequence of this that there can be no cause of action today when the facts are entirely different and when there has been a developing law of negligence for the last 150 years? As was pointed out by the learned editor in 66 L.Q. Rev. 456, the real objection to the decision in Searle v. Wallbank is that a conclusion of fact has hardened into a rule of law when the facts upon which original conclusion was based no longer exist ....
>
> A rule of law has, therefore, been stated in Searle v. Wallbank .... which has little or no relation to the facts or needs of the situation and which ignores any theory of responsibility to the public for conduct which involves foreseeable consequences of harm. I can think of no logical basis for this immunity and it can only be based upon a rigid determination to adhere to the rules of the past in spite of changed conditions which call for the application of rules of responsibility which have been worked out to meet modern needs." (Fleming v. Atkinson (1959) 18 D.L.R. (2d) 81 per Judson J. at pp. 97-99. Fauteux and Abbott J.J. concurring.)

It follows that we wholeheartedly agree that the rule in Searle v. Wallbank should be abrogated.

It is of course, essential to consider the consequences of such legislation in a State of vast dimensions, with a substantial population of grazing animals, and an immense network of roadways. We do not anticipate that judges, faced with this problem will ineluctably hold that in all circumstances, owners of properties abbutting any sort of roadway, must construct fences, and ensure that such fences are at all times properly maintained. This would impose an impossible strain upon an already economically threatened industry We are confident that in case to case decisions, courts will seek to strike a balance between safeguarding users of highways on the one hand, wihtout imposing undue burdens on those engaged in agricultural pursuits. On the other hand we can see no reason

why land owners should, in all circumstances, be exempt from liability particularly, as the burden may be cushioned by public risk insurance.

After much reflection, we have therefore concluded that the law of negligence is now sufficiently flexible to be able to cope with the problems relating to animals as they arise, in so far as they involve damage or injury to person or property, without the aid of special rules imposing strict liability, depending on the kind of animal involved. Again, we find it difficult to appreciate why landowners should be automatically exempt from liability by the application of the rule of Searle v. Wallbank. We are confident that the statement by Lord Atkin in Donoghue v. Stevenson (supra) has stood the test of time and may be usefully prayed in aid in all instances where damage has been caused by animals.

The difficulty we anticipate is when a plaintiff, henceforth deprived of his action in nuisance on mere proof that the defendant had failed to fence his property, and therefore being left to his remedy in his negligence, may well fail on the onus of proof. It may be difficult, for example, to prove ownership of an animal, or indeed how such animal strayed on to the highway. We have sought to overcome these evidentiary difficulties by relevant provisions in the Bill.

The above observation, should, we feel, be supplemented by the peculiar position occupied by dogs. There are many dogs, both in cities country towns and on highways remote from rural centres. It is in the nature of the species that they tend to stray. Queensland has no Dog Act; some States do, and provide that owners of dogs shall be liable for any damage that they do. In a New Zealand Supreme Court decision - Chittenden v. Hale [1933] N.Z.L.R. 836, in interpreting the ambit of such legislation, the Court concluded that its scope should be confined to the "canine characteristics" of the species, that is, biting. This view found some qualified approval in the report of the Law Reform Commission of New South Wales, where the Commissioners stated:-

> "37. We have come to the conclusion that the circumstances which attract the statutory liability without fault must relate to those canine characteristics which, in conjunction with the freedom of dogs to roam, put dogs in a special position. These are the characteristics of attacking, worrying and chasing other animals thereby causing injury to them. It would be unreasonable to impose upon the owner of a dog the statutory liability in respect of any harm of which the presence or conduct of the dog has been a cause. The canine characteristics would be irrelevant where, for example, a person suffers injury from falling in consequence of tripping over a dog which is asleep."

In our view this introduces too subtle a distinction into tort liability done by dogs. Distinction between species of causation and resort to latin tags such as causa causans and causa sine qua non have almost invariably led the law into confusion One need only to refer to Martignoni v. Harris [1971] (2) N.S.W L.R. 102, a case of collision between dog and car, to illustrate the consequence that can arise from such subtle refinements. At first instance, the plaintiff succeeded on application of Section 20 of the Dog Act N.S.W. which provides that :-

> "The owner of a dog shall be liable for damages for injury done to property, a person or animal by his dog, and it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in the dog, or the owner's knowledge of that previous mischievous propensity, or that the injury was attributable to neglect on the part of the owner."

On appeal, it was argued that the section has no application to situations where the plaintiff himself is tainted by the negligence, and, as no finding was made on this aspect, the defendant contended that a new trial should be ordered. The "canine characteristic argument" was advanced.

Without deciding the issue, Asprey J.A. held that the fact that dogs stray across roadways was a "well recognized and mischievous characteristic" (at p. 196); whilst Moffatt J.A. stated : "If these are the habits of dogs generally, and it may be that this is so, then no absolute liability could have arisen at common law". (at p. 196). Taylor A.J.A held :-

> "That on the facts proved in the instant case this dog was not doing anything other than pursuing the natural instincts of its kind and for this damage inflicted on the car at common law the owner would not have been liable." (at p. 111).

In the result, the plaintiff succeeded, but only in reliance on the relevant statutory provision for which there is no equivalent in Queensland.

We note that recently Judge Given considered this problem in the District Court at Brisbane. On 26th July, 1977 he delivered judgment in Stevens v. Nudd Plaint No. 3401 of 1976. In that case he found that the Defendant left his property accompanied by his dog and then both proceeded to cross a road to the footpath on the opposite side. After reaching that footpath the dog, as was its propensity, ran back on to the road where it came into collision with a motor cyclist. The motor cyclist sued the Defendant for damages for personal injuries, alleging that the Defendant had been negligent in controlling the dog. The Judge found that the Defendant failed to take reasonable care to prevent its causing damage to users of the highway. It is interesting to note that His Honour in his judgment adverted to the possible distinction where the dog had 'escaped' onto the roadway and had not been accompanying his owner at the relevant time.

CATTLE TRESPASS

We deal with this matter only for the sake of completeness. It is an ancient tort and has almost fallen by the wayside through desuetude. The elements of this tort are made out if the defendant's cattle stray on to someone else's land and do damage. The word "trespass" is misleading since no intent need be proved. Liability is strict, yet, anomalously, cattle trespass does not lie on proof that the animal strayed on to the plaintiff's land after being lawfully upon a highway, as distinct from getting there under its own steam. This is merely one of the anomalies to be found in this area of the law. Damage recognized by law for this tort includes not only the consumption of "a few cauliflowers", but includes infection of live stock and possible miscegenation (Halstead v. Mathieson [1919] V.L.R. 362) or train derailment (Cooper v. Rly. Exec. [1953] 1W.L.R. 223.)

CONCLUSION

We feel that in principle liability for damage or injury caused by animals should be made to depend on whether in all the circumstances there has been a failure to exercise reasonable care to prevent the animal from causing the damage in suit. This enables courts to look at all the circumstances, including the kind of animal involved, its known disposition or nature, the knowledge of the defendant as well as plaintiff, the locale where the injury occured, the usual practice adopted in the area or in the circumstances, the status of the plaintiff, e.g. was he on private land, if so whether with the permission and/or knowledge of the occupier, was he on a public highway, what steps did he take to prevent the mischief.

It may be argued that the above is merely a sophisticated re-capitulation of the old law. We do not share this view. We are confident that, armed with sufficient discretion, our judiciary is able to apply the same practical considerations to problems involving animals which they have applied to the modern conception of liability arising from, say, the relation of master and servant, or the use of motor vehicles on busy public highways. We feel confident that the same good sense will prevail to update the confused field of liability for animals, provided the courts are given a freer hand - as is envisaged by the proposed Bill - together with statutory guidelines provided in the proposed legislation in special cases.

It is these considerations which have persuaded us that statutory intervention is indicated and we commend the enclosed draft Bill for your consideration.

Since the issue of "fencing" may be politically delicate, we would recommend that any action in respect of damage caused by an animal should be determined by a judge without a jury, and have included s. 12 accordingly.

DRAFT BILL

In outline, the Draft Bill follows closely and is modelled on the Animals Act 1971 (U.K.) save that we have adapted the relevant English provisions to the existing statutory laws of this State and have provided that any action or suit governed by the proposed Bill be tried by a judge without a jury.

1. Short title and commencement and

2. Repeals. These are formal.

3. Interpretation. The clause follows the equivalent provision of the English Act (s.6).

4 & 5. New provisions as to strict liability for damage done by animals and Liability for damage done by dangerous animals. These clauses adopt the effect of the English provisions (ss. 1 and 2) relating to absolute liability for animals with known dangerous propensities.

6. Liability for damage done by animals other than dangerous animals. This clause has its counterpart in s.2(2) of the English Act.

7. Liability for damage done by dogs to livestock. Taken from s.3 of the English Act.

8 & 9. Liability for damage and expenses due to trespassing livestock and Detention and sale of trespassing livestock. Relate to detention and sale of trespassing livestock and are adapted from s.7 of the English Act.

10. Duty to take care to prevent damage from animals straying on to the highway. Again constitutes an adaptation of the English Act (s.8) relating to the abolition of the rule in Searle v. Wallbank (supra) previously referred to.

11. Killing of or injury to dogs worrying livestock. Relates to the killing of dogs worrying livestock and is taken from s.9 of the English Act.

12. Mode of Trial. Actions to be heard and determined by a judge without a jury.

A Bill to remove the anomalies presently existing with respect to civil liability for animals and to rationalize the existing rules of the common law for damage done by animals.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

1. Short title and commencement. This Act may be cited as "The Animals Act 1977", and shall commence and take effect on and from the

2. Repeal. Schedule 1. The Acts mentioned in the first Schedule to this Act are repealed to the extent therein indicated.

3. Interpretation. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say:-

"Damage" includes the death of or injury to any person, including any disease and any impairment of any physical or mental condition.

"Dangerous Species" in relation to any animal means -

(a) any animal not commonly domesticated; and

(b) possessing such characteristics that, unless restrained is likely to cause severe damage.

"Fault" has the same meaning as in Law Reform (Tortfeasors Contribution Contributory Negligence and Division of Chattels) Act, 1952, which Act shall be deemed to apply to this Act.

"Fencing" includes the construction of any obstacle designed to prevent animals from straying.

"Highway" includes any road or street open to the public.

"Keeper" includes any person who owns the animal or has it in his possession; or is the head of a household of which an infant under his control owns the animal or has it in his possession, but does not include a person who has taken into and kept in possession such animal for the purpose of merely preventing it from causing damage and/or restoring it to its owner.

"Livestock" includes cattle, horses, asses, mules, sheep, pigs, goats, poultry (including fowls, turkeys, geese, ducks and pigeons) and any other animal lawfully domesticated.

"Species" includes sub-species and variety whether produced by mutation or otherwise.

4. After the commencement of this Act the following shall be replaced:-

(i) the principles of absolute liability for failure to restrain or confine an animal with known dangerous propensities;

(ii) the legal distinction between animals ferae naturae and mansuetae naturae;

(iii) the common law rule imposing strict liability for cattle trespass.

(iv) the common law rules which deemed as volens any servant of a keeper of an animal who as such servant incurring a risk incidental to his employment.

5. Liability for damage done by dangerous animals. Where any damage is caused by an animal which belongs to a dangerous species, the keeper of such animal is liable for the damage unless:-

(a) the damage is due wholly to the fault of the person suffering it; or

(b) the person injured has voluntarily accepted the risk thereof; or

(c) the damage is caused by an animal kept on the premises (which shall be deemed to include for purposes of this section any house, office room, tent, vessel or other place (in or out of an enclosed building) whether upon land or water and whether private property or otherwise) to a person trespassing thereon if it is proved that the animal was kept there for the protection of person or property, and the keeping of the animal thereon for that purpose was reasonable in the circumstances.

6. Liability for damage done by animals other than dangerous animals. A keeper of animals other than dangerous animals shall not be liable for any damage caused by such animal unless:-

(a) the damage is of a kind which the animal, unless restrained was likely to cause; and

(b) the likelihood of the damage was due to the characteristics of the animal which are not normally found in animals of the same species, or are not normally so found except at particular times or in particular circumstances.

7. Liability for damage done by dogs to livestock. Where a dog damages by killing or injuring livestock, the keeper of such dog shall be liable for the damage except as otherwise provided by this Act.

8. Liability for damage and expenses due to trespassing livestock.

(1) Where livestock belonging to any person strays on to land in the ownership or occupation of another and -

(a) damage is done by the livestock to the land or to any property on it which is in the ownership or possession of the other person; or

(b) any expenses are reasonably incurred by that other person in keeping the livestock while it cannot be restored to the person to whom it belongs or while it is detained in pursuance of section 9 of this Act, or in ascertaining to whom it belongs;

the person to whom the livestock belongs is liable for the damage or expenses, except as otherwise provided by this Act.

(2) For the purposes of this section any livestock is deemed to belong to the person in whose possession it is.

9. Detention and sale of trespassing livestock. (1) The right to seize and detain any animal by way of distress damage feasant is hereby abolished.

(2) Where any livestock strays on to any land and is not then under the control of any person, the occupier of the land may detain

it, subject to sub-section (3) of this section, unless ordered to return it by a court.

(3) Where any livestock is detained in pursuance of this section the right to detain it ceases -

(a) at the end of a period of seven days, unless within that period notice of the detention has been given to the officer in charge of a police station and also, if the person detaining the livestock knows to whom it belongs, to that person; or

(b) when such amount is tendered to the person detaining the livestock as is sufficient to satisfy any claim he may have under section 8 of this Act in respect of the livestock; or

(c) if he has no such claim, when the livestock is claimed by a person entitled to its possession.

(4) Where livestock has been detained in pursuance of this section for a period of not less than fourteen days the person detaining it may sell it at a market or by public auction, unless proceedings are then pending for the return of the livestock or for any claim under section 8 of this Act in respect of it.

(5) Where any livestock is sold in the exercise of the right conferred by this section and the proceeds of the sale, less the costs thereof and any costs incurred in connection with it, exceed the amount of any claim under section 8 of this Act which the vendor had in respect of the livestock, the excess shall be recoverable from him by the person who would be entitled to the possession of the livestock but for the sale.

(6) A person detaining any livestock in pursuance of this section is liable for any damage caused to it by a failure to treat it with reasonable care and supply it with adequate food and water while it is so detained.

(7) Reference in this section to a claim under section 8 of this Act in respect of any livestock does not include any claim under that section for damage done by or expenses incurred in respect of the livestock before the straying in connection with which it is detained under this section.

10. Duty to take care to prevent damage from animals straying on to the highway. (1) The common law rule known as the rule in Searle v. Wallbank which excludes or restricts the duty which a person might otherwise owe to others to take such care as is reasonable to ensure that damage is not caused by animals straying on to a highway is hereby abolished.

(2) Where damage is caused by animals straying from unfenced land on to a highway, the owner or any other person who placed them on the land shall not be regarded as having committed a breach of the duty to take care by reason of placing them there if the land is situated in an area where fencing is not customary or where fencing would be unreasonable.

(3) In any action for damages the burden of proving that the area was one where fencing is customary or reasonable shall lie upon the party seeking such damages.

11. Killing of or injury to dogs worrying livestock. (1) In any civil proceedings against a person (in this section referred to as the defendant) for killing or causing injury to a dog it shall be

a defence to prove -

(a) that the defendant acted for the protection of any livestock and was a person entitled to act for the protection of that livestock; and

(b) that within seven days of the killing or injury notice thereof was given by the defendant to the officer in charge of a police station.

(2) For the purposes of this section a person is entitled to act for the protection of any livestock if the livestock or the land on which it is belongs to him or to any person under whose express or implied authority he is acting; and

(3) Subject to subsection (4) of this section, a person killing or causing injury to a dog shall be deemed for the purposes of this section to act for the protection of any livestock if, either -

(a) the dog is worrying or is about to worry the livestock and there are no other reasonable means of ending or preventing the worrying; or

(b) the dog has been worrying livestock, has not left the vicinity and is not under the control of any person and there are no practicable means of ascertaining to whom it belongs.

(4) For the purposes of this section the condition stated in either of the paragraphs of the preceding subsection shall be deemed to have been satisfied if the defendant believed that it was satisfied and had reasonable ground for that belief.

(5) For the purposes of this section -

(a) an animal belongs to any person if he owns it or has it in his possession; and

(b) land belongs to any person if he is the occupier thereof.

12. Mode of Trial. An action in respect of or arising out of personal injury or damage to property caused by any animal shall be heard and determined by a judge without a jury.

FIRST SCHEDULE

Number of Act	Title of Act	Extent of Repeal