

CHAPTER 194A
ANIMALS (CIVIL LIABILITY)

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CHAPTER 194A

ANIMALS (CIVIL LIABILITY)

An Act to reform the law respecting civil liability for animals. 1980-64.

[20th November, 1980] Commencement.

1. This Act may be cited as the *Animals (Civil Liability) Act*. Short title.

2. In this Act, "land" includes all things of economic value growing thereon. Definition.

3. (1) Where any damage is caused by an animal which belongs to a dangerous species, any person who is a keeper of the animal is liable for the damage, unless he is exempted by this Act. Liability for dangerous animals.

(2) Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, unless exempted by this Act, if

(a) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and

(b) the likelihood of the damage or of its being severe was due to 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; and

(c) those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and a minor.

(3) The common law rules relating to liability for animals classified as dangerous or *ferae naturae* are hereby abolished.

Interpre-
tation re-
specting
section 3.

4. (1) This section has effect respecting the interpretation of certain expressions used in section 3.

(2) A dangerous species is a species

(a) which is not commonly domesticated in Barbados; and

(b) whose fully grown animals normally have such characteristics that they are likely, unless restrained, to cause severe damage or that any damage they may cause is likely to be severe.

(3) Subject to subsection (4), a person is a keeper of an animal if

(a) he owns the animal or has it in his possession; or

(b) he is the head of a household of which a member, who is a minor, owns the animal or has it in his possession,

and if at any time an animal ceases to be owned by or to be in the possession of a person, any person who immediately before that time was a keeper thereof by virtue of subsection (1) continues to be a keeper of the animal until another person becomes a keeper thereof by virtue of that provision.

(4) Where an animal is taken into and kept in possession for the purpose of preventing it from causing damage or of restoring it to its owner, a person is not a keeper of it by virtue only of that possession.

Trespass by
livestock.

5. (1) Where livestock belonging to any person trespasses on to land in ownership, occupation or control of another and

(a) damage is done by the livestock to the land or to any property on it which is in the ownership, possession or control 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 accordance with section 7, or in ascertaining to whom it belongs,

the person to whom the livestock belongs is liable for the damage or expense thereby incurred.

(2) A person whose land is damaged by livestock shall summon a Justice of the Peace for the purpose of appraising the damage and expense, if any, incurred.

(3) Damage appraised by a Justice of the Peace is of no effect unless it is in writing and signed by that Justice of the Peace.

(4) For the purposes of this section

(a) livestock belongs to the person who has possession thereof;

(b) "livestock" means cattle, horses, asses, mules, sheep, pigs, goats and poultry; and

(c) "poultry" means fowls, turkeys, geese, ducks, guinea-fowls, pigeons and peacocks.

6. (1) A person is not liable under sections 3 or 5 for any damage which is due wholly to the fault of the person suffering it.

Exceptions to liability under sections 3 and 5.

(2) A person is not liable under section 3 for any damage suffered by a person who has voluntarily accepted the risk thereof.

(3) A person is not liable under section 3 for any damage caused by an animal kept on any premises or structure to a person trespassing there, if it is proved either

(a) that the animal was not kept there for the protection of the persons or property; or

(b) if the animal was kept there for the protection of persons or property, that keeping it there for that purpose was not unreasonable.

(4) A person is not liable under section 5 where the livestock strayed from a highway and its presence there was a lawful use of the highway.

(5) In determining whether any liability for damage under section 5 is excluded by subsection (1) the damage must not be treated as being due to the fault of the person suffering it by reason only that he could have prevented it by fencing; but a person is not liable under that subsection where it is proved that the straying of the livestock on to the land would not have occurred but for a breach by any other person, being a person having an interest in the land, of a duty to fence.

7. (1) Where any livestock trespasses on any land and is not then under the control of any person, the occupier of the land may detain it, subject to subsection (2), unless ordered to release it by the court.

Detention and sale of trespassing livestock.

(2) Where any livestock is detained under this section the right to detain it ceases

- (a) at the end of a period of 48 hours, unless within that period written notice of the detention has been given to the officer in charge of the police station in the district 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 5 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.

(3) Where a person specified in section 5(1) is claiming compensation in respect of damage done by livestock and the detention of the livestock exceeds 14 days, he may cause such livestock to be sold in accordance with section 12, unless proceedings are pending for the return of the livestock or for any claim under section 5 in respect thereof.

(4) A person detaining any livestock under this section is liable for any damage caused to it by a failure to treat it with reasonable care and supplying it with adequate food and water while it is so detained.

(5) References in this section to a claim under section 5 in respect of any livestock do not include any claim under that section for damage done by or expenses incurred in respect of the livestock before the trespass in connection with which it is detained under this section.

(6) The common law remedy of distress damage feasant is hereby abolished.

Liability
for damage.
by dogs.

8. (1) Subject to section 9, the owner of a dog is liable for any damage caused by that dog.

(2) In an action under subsection (1), it shall not be necessary for the aggrieved party to prove

- (a) a previous mischievous propensity in the dog;
- (b) that the owner knew of the dog's vicious or mischievous propensity; or

(c) that the damage was attributable to neglect on the part of the owner.

9. An owner is not liable under section 8 if

Exceptions
to liability
under
section 8.

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

(b) the court is satisfied that he took reasonable care to prevent the dog from causing damage; or

(c) in the case of livestock

(i) he proves that at the material time the livestock was trespassing on land in his possession and he in no way caused the dog to attack the livestock, or

(ii) he proves that at the material time the dog was in the custody or control of a person whom he reasonably believed to be a fit and proper person to have such custody or control, or

(iii) he proves that the livestock was killed or injured on the land on to which it had trespassed and either the dog belonged to the occupier or its presence on the land was authorised by the occupier.

10. (1) A person is entitled to act for the protection of any livestock if the livestock or the land on which it has trespassed belongs to him or to any person under whose expressed or implied authority he is acting.

Protection
of livestock
against
dogs.

(2) Subject to subsection (3), a person killing or causing injury to a dog shall be deemed to have acted for the protection of any livestock if

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

(b) the dog has been molesting the 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.

(3) For the purposes of this section the condition stated in paragraph (a) or (b) of subsection (2) shall be deemed to have been satisfied if the person against whom proceedings are brought (in

this section referred to as "the defendant") believed that it was satisfied and had reasonable grounds for that belief.

(4) In any civil proceedings against a defendant for killing or causing injury to a dog it is 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 48 hours of the killing or injury notice thereof was given by the defendant to the officer in charge of the police station in the district within which the killing or injury took place.

(5) For the purposes of this section

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

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

Disposal of carcass.

11. (1) Where any dog is killed under section 10, the carcass of that dog shall, subject to subsection (2), be disposed of in such manner as is reasonable in the circumstances.

(2) Where the person to whom a dog killed under section 10 is known, he shall, upon being requested to do so, immediately thereafter remove that carcass from the place where it is killed.

Method of sale etc.

12. (1) Where

(a) a person is entitled to sell livestock under section 7; or

(b) the owner of the livestock detained under section 7 is unknown,

the person detaining the livestock may cause such livestock to be sold by public auction, by the Government Auctioneer at the police station of the district within which the detention takes place.

(2) Where the Government Auctioneer is required to sell livestock under subsection (1), he shall cause the sale to be advertised, in a newspaper published in Barbados, at least 2 days before the proposed sale.

(3) Where the Government Auctioneer makes a sale under subsection (1), he shall

- (a) retain for his use the sum of \$50 or a sum equivalent to 10% of, the proceeds of the sale, which ever is the greater together with any reasonable expenses incurred including the expenses incurred in advertising the sale and in conducting or transporting the livestock to the police station;
- (b) pay to the person who caused the sale to be made, the damages as appraised by a Justice of the Peace together with the reasonable cost, not exceeding \$5 per day, for feeding the livestock pending the sale; and
- (c) pay the balance of the proceeds of the sale to the Accountant-General within 7 days of that sale.

(4) A person whose livestock is sold under subsection (1) may, within 2 months of the date of the sale, apply to the Accountant-General, in such form as he approves, for a refund of the balance of the proceeds of the sale and the Accountant-General may make such refund.

13. Nothing in this Act prevents a person from claiming compensation for damage under this Act before a magistrate by way of complaint. Savings.

14. This Act binds the Crown.

Application
to the
Crown.

15. The Minister responsible for Agriculture may make regulations generally for the purpose of giving effect to this Act. Regulations.