

ANSWER TO QUESTION NO. 3

Michigan recognizes a strict liability cause of action against dog owners for damages resulting from dog bites. If a dog bites a person, without provocation while the person is on public property, or lawfully on private property, including the property of the owner of the dog, the owner of the dog shall be liable for any damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness. MCL 287.351.

Here, the facts indicate that Peter was out jogging on a sidewalk, presumably on public property. The facts do not indicate that Peter did anything to provoke the dog. In fact, Peter followed the officer's commands precisely and immediately stopped and put his hands up when ordered to do so. Peter was nonetheless bitten by the dog and suffered numerous injuries.

In a strict liability tort action, liability is not fault-based. It is not dependent, for example, on whether negligent, intentional, or accidental conduct caused the harm; rather, civil liability is imposed for the wrongful conduct irrespective of fault. *Tate v City of Grand Rapids*, 256 Mich App 656, 660 (2003). As such, in this case it would not matter that the officer was mistaken in his belief that Peter was the assailant.

Pursuant to this statute alone, the Police Department would be liable for Peter's injuries. However, Michigan's Governmental Tort Liability Act (GTLA), MCL 691.1407(1) provides in pertinent part:

"Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function."

The statute grants broad immunity to governmental agencies, extending immunity "to all governmental agencies for all tort liability whenever they are engaged in the exercise or discharge of a governmental function." *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 156 (2000) (emphasis in original). The police activity of investigating a felony certainly constitutes the exercise or discharge of a governmental function. None of the exceptions to immunity apply. Thus the city would be immune from suit. *Tate, supra*.

With respect to the liability of the police officer, an

officer or employee of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer or employee if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. MCL 691.1407(2).

Here, the facts are clear that the officer was responding to a dispatch call in an attempt to apprehend a suspect of a felonious assault. The officer reasonably believed he was acting within the scope of his employment when he released his dog on the subject. "Police officers, especially when faced with a potentially dangerous situation, must be given a wide degree of discretion in determining what type of action will best ensure the safety of the individuals involved and the general public, the cessation of unlawful conduct, and the apprehension of wrongdoers. *The determination of what type of action to take, e.g., make an immediate arrest, pursue a suspect, issue a warning, await backup assistance, etc., is a discretionary-decisional act entitled to immunity.*" *Brown v Shavers*, 210 Mich App 272, 277 (1995) (emphasis in original).

The officer was clearly engaged in the exercise of a government function when he was attempting to apprehend the suspected criminal. Gross negligence is defined in MCL 691.1407(7) as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." There is nothing in the facts that suggest that the police officer's actions rose to the level of gross negligence. Thus, there is no likelihood that Peter would be successful in his suit against the police officer.