

A man's dog ran into the street in front of his home and began chasing cars. The man had seen the dog behave similarly on several prior occasions. A ride-share driver, who was driving a car on the street, swerved to avoid hitting the dog, struck a telephone pole, and was injured.

There is no statute or ordinance requiring dogs to be leashed on a public street.

If the driver asserts a claim against the man, will the driver prevail?

- A. No, because a dog is a domestic animal.
- B. No, because no statute or ordinance made it unlawful for the owner to allow a dog to be unleashed on a public street.
- C. Yes, because the man is strictly liable for injuries caused by his dog.
- D. Yes, because the man knew his dog had a propensity to chase cars and did not restrain it.

Explanation:

Elements of negligence

Duty – defendant owed duty of reasonable care because his/her conduct created foreseeable risk of harm to others

Breach – defendant breached duty by failing to use reasonable care

Causation – defendant's breach actually & proximately caused plaintiff's harm

Damages – plaintiff suffered physical harm (ie, bodily injury or property damage)

Negligence is the typical tort claim for unintentional harms (eg, car-accident injuries). To prevail on a negligence claim, the plaintiff must prove all of the following elements by a preponderance of the evidence:

Duty – the defendant owed a duty of reasonable care because his/her conduct created a foreseeable risk of harm to others

Breach – the defendant breached that duty by **failing to use reasonable care**

Causation – the defendant's breach actually and proximately **caused** the plaintiff's harm

Damages – the plaintiff suffered physical harm (ie, bodily injury or property damage)

A defendant fails to use reasonable care when he/she **does not take reasonable steps** to **reduce the risk** posed by his/her conduct.

Here, the man had a duty to use reasonable care since he knew that his dog had a propensity to chase cars. But he breached that duty when he failed to take reasonable steps to prevent the dog from running into the street (eg, by restraining it). And since this caused the driver to crash and sustain injuries, the driver will likely prevail.

(Choices A & C) The owner of a domestic animal is not **strictly liable** for injuries caused by that animal unless the owner knew, or should have known, that the animal had propensities that are *more dangerous than normal* for the species. So here, the dog's mere propensity to chase cars would not subject the man to strict liability. But the man is still subject to negligence liability for injuries caused by his dog.

(Choice B) Had the man violated a statute or ordinance requiring dogs to be leashed on public streets, his negligent conduct could be presumed under the doctrine of **negligence per se**. But the man's negligent conduct can still be proved since he knew of his dog's propensity to chase cars and did not restrain it.

Educational objective:

Persons owe a duty of reasonable care when their conduct poses a foreseeable risk of harm to others. Therefore, persons who fail to take reasonable steps to mitigate that risk and cause another physical harm are liable for negligence.

References

Restatement (Second) of Torts § 281 cmt. e (Am. Law Inst. 1965) (explaining that conduct is negligent when it tends to subject another to an unreasonable risk of harm).

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