

une

University of
New England

First Year Law Intensive June 2015

Exercise
Applying law to facts

Problem Facts

Woofles is a large male desexed bulldog owned by Gloria. Woofles is very friendly to humans but responds to other dogs in an unpredictable way. Woofles can be aggressive towards other male dogs, especially if they are large dogs. In meeting other male dogs he sometimes barks, snaps and even lunges at or bites them. He has gotten into a couple of fights with a pair of pit-bull terriers that live on his street.

The pit-bulls, called Biggles and Fang, are owned by Evan. Evan keeps his dogs in his yard, which has a secure fence, but occasionally they escape and wander the street. They often approach Woofles' yard and bark and snarl at him through the fence, which sends him into a fury. On one or two occasions, the dogs have met in the street and have fought quite savagely until their owners separated them. No human has ever been hurt in these fights, though all three dogs have received minor injuries.

One day Gloria is taking Woofles for a walk. Gloria sees Max and Fang wandering up the street about 500 metres away, so she tightens her grip on Woofles' leash. However, the leash snaps and Woofles bolts towards Max and Fang, barking furiously. As Woofles gets close to Fang, Alex runs up to catch his dogs. He runs between Woofles and Fang, just as Fang starts to snarl and bare his teeth at Woofles. Woofles lunges at Alex and bites him savagely on the leg, causing a serious injury to him. A passing Ranger sees the attack and rushes to the spot, catching Woofles and putting him in the council van. The Ranger issues a fine to Gloria, alleging a breach of s16 of the *Companion Animals Act 1998* (NSW).

Problem Questions

- Gloria wants to defend the claim for the following reasons:
 - Woofles' escape from her control was not her fault. She cannot be liable for the incident, as it was an accident that the leash snapped. The lease was quite new, but had a hidden defect.
 - Under s16 (2)(a) Woofles was teased, attacked and provoked by Max and Fang on many previous occasions and the Council failed to prove that Woofles was not teased, attacked or provoked, either previously or on this occasion.
 - The incident was Alex's fault for running between the dogs when the fight was imminent.
- Alex claims that the defences under s 16(2)(a) only apply to human conduct, not to other animals.
 - In other words, he argues that those defences are only relevant where the person who has been attacked is the one who has teased, attacked or provoked the dog.
- **Are any or all of these arguments correct?**

Case summary

- Use your case brief to analyse this set of questions
- Now that you have the ratio or ratios, you can apply them to a new set of facts or circumstances

Questions as legal issues

- Break down the questions into legal issues.
- Question:
 - ‘Gloria wants to defend the claim because Woofles’ escape from her control was not her fault. She cannot be liable for the incident, as it was an accident that the leash snapped. The lease was quite new, but had a hidden defect.’
- Can we restate this as a legal issue?
 - Does s16 create an offence of strict liability? Does it require intention in order for a person to be guilty of an offence?
- Does the Act say anything about this?
- Does the Case say anything about this?

Questions as legal issues

- Question
 - Gloria wants to defend the claim because under s16 (2)(a) Woofles was teased, attacked and provoked by Max and Fang on many previous occasions **and** the Council failed to prove that Woofles was not teased, attacked or provoked, either previously or on this occasion.
- Can we restate this as a legal issue?
- Two legal issues here
 - Does provocation extend to behaviour prior to the incident?
 - Does the council have to positively prove that none of the in s16(2) arise?
- Does the Act say anything about this issue?
- Does the case say anything about this issue?

Questions as legal issues

- Question
 - Gloria wants to defend the claim because the incident was Alex's fault for running between the dogs when the fight was imminent.
- Can we restate this as a legal issue?
 - Is contributory negligence of another person a defence under s16(2)?
 - Is this provocation?
- Does the Act say anything about this?
- Does the case say anything about this?

Questions as legal issues

- Question
 - Alex claims that the defences under s 16(2)(a) only apply to human conduct, not to other animals. In other words, he argues that those defences are only relevant where the person who has been attacked is the one who has teased, attacked or provoked the dog.
- Can we restate this as a legal issue?
 - Is provocation confined to the actions of a human being who is also the victim of the attack?
- Does the Act say anything about this?
- Does the case say anything about this?

IRAC

- Issue – we restate the question as a legal issue
- Rule – we identify the relevant rule
- Analysis – we apply that rule to these facts
- Conclusion – we decide the issue one way or another

Reading Legislation

1. Read the statute looking for relevant sections.
2. For each relevant section, break it down into its components or 'elements'.
3. Look for 'elements' or terms defined in the Act.
4. Look for terms defined in cases.
5. Where terms are not defined – the 'ordinary' or dictionary meaning will be used.

Relevant Sections

- Section 3A: Principal object of Act
- Section 5: Definitions
- Section 16: Offences where dog attacks person or animal.
- Part 5 – special provisions relating to control of dogs:
 - Section 32A: ‘nuisance dogs’?
 - Section 33: meaning of ‘dangerous’?
 - Section 33A Meaning of ‘menacing’?

Section 16

- Dog
- Attacks, bites, harasses or chases
- Any person
- Whether or not injury is caused
- (1): 'strict liability'
- (1AA): 'reckless act or omission'
- (1AB): 'dangerous or menacing
- (2) not an offence if:
- (a) teased, mistreated or otherwise provoked.