

Dilemma of ground appeal while rising legal problems

Law



**ASSIGN
BUSTER**

The paper "Dilemma of Ground Appeal While Rising Legal Problems" is a brilliant example of a case study on law. In personal injuries cases due to dog bites, the dog owners are liable for the injuries or damages it inflicted but the problem arises when it concerns stray dogs as it is more difficult to ascertain ownership to establish liability particularly when the victim was negligent as shown in this legal inquiry. The dilemma of Mr. and Mrs. Davis arose from these facts—

On the evening of March 25, they took pity on a stray dog that wandered into their property and fed it. After it was fed, it wandered off immediately but it returned for scraps at an increasing frequency to almost daily. Mr. and Mrs. Davis and their children tolerated the presence of the stray dog by giving food scraps and naming it Edison but they did not provide kennel, bed or any form of shelter.

On April 17, Mr. Fong, a salesman, opened the gate and entered the Davis' property. While he walking up the front path, the stray dog suddenly appeared and bit his left ankle. Mr. Fong filed a complaint about damages against the Davis' as the keeper of the stray dog. The Trial Judge held the Davis' liable for Mr. Fong's injury under the Dogs and Cats Ordinance (4) and (20) but it likewise declared that the Davis' acted out of sympathy only.

The question posited is—on what ground may the appeal be raised?

The decision may be assailed on the ground that it erroneously misapplied the facts and the law.

The presumption that dog ownership lies with the owner of the land or premises upon which the dog is ordinarily kept, however, the presumption may be overcome by contrary evidence.

The actuation of the Davis' is pursuant to the animal welfare law which prohibits cruelty to animals. It provides that no cruelty shall be inflicted on animals and cause them unnecessary pain or suffering.

Cruelty to animals is inflicted in many ways. Cruelty does not entail actual hurting only but also torture by depriving food. If the famished stray dog was sent away, this constitutes cruelty which is punishable under Section (3)(1) (a) of Prevention of Cruelty to Animals Ordinance Cap. 169.

When the Davis' fed the stray dog, they did not do so in the concept of an owner or exercise dominion or control over it and when they tolerated its presence, they did not intend to customarily keep it. These are humane or kind acts expected of a reasonable and thinking person, therefore, no liability against them can be justified.

Assuming that the stray dog returned daily, the Davis' had no physical control over its comings and goings. They did not attempt to restrain and stop it from leaving or look for it while it was away. This reveals that it is not ordinarily kept in the Davis household due to a total lack of control or even the intention to maintain control over it.

Ownership or intent to own may be attributed when the stray dog is brought to a government accredited clinic for vaccination against rabies, or micro-chipped to provide information of ownership or procured a license to lay claim or dominion over it. These are overt acts to show that it is owned and customarily being kept but these options were not exercised by the Davis' which negates liability for the injuries of Mr. Fong.

The shelter is another aspect to show customary keeping and to shelter means to provide adequate space and kennel. As no kennel or space was ever provided to the stray dog, the essential requirement of shelter is not satisfied. This conclusion is supported by the ruling that the Davis' were motivated into giving sustenance out of sympathy only. Logically, therefore, they cannot be held liable for Mr. Fong's injuries.

Providing food or the frequency of the visit or the failure to exclude the stray dog from the Davis property are not requisites of ownership or show that it customarily being kept in the Davis household since driving away a famished animal constitute torture which is punishable under the animal welfare law. On the assumption that the Davis' are the owners of the stray dog, full recovery of damages cannot be had pursuant to Section 21(1) of the Law Amendment and Reform (Consolidation) Ordinance Cap. 23 since the injuries Mr. Fong suffered was the result of his fault. He entered the property of the Davis' without consent thus by doing so he failed to take reasonable care to repel or prevent his injuries, any liability accruing to the Davis' may be mitigated and equitably and justly reduced, if not totally erased.

The most decisive test of ownership or proof that it is customarily kept is the capacity to transfer or transmit such right or possession. Since Mr. and Mrs. Davis cannot transfer or transmit any right pertaining to the stray dog, they cannot be held liable for the injuries sustained by Mr. Fong for the simple reason that the stray dog since does not belong to them.