

# Thirty Years of the Law on Obligations – *de lege lata* and *de lege ferenda* –

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## LIABILITY FOR DAMAGE CAUSED BY AN ANIMAL

Co-habitation of man and animal is a part of human existence. In the sharing of common space it is not uncommon that an animal should cause damage to man, whether it is material or non-material damage. It is not only wild animals that are unpredictable and dangerous in their behavior; this is also true of the usually "well-behaved" dogs, cats and horses. Even a steady horse may suddenly tread on someone or break loose, an obedient dog may unexpectedly bite, and a domesticated cat may run into the street and cause a car crash. The essence of the issue of liability for the damage caused by an animal lies in the estimation that the social liability relating to risks arising from animals should be ascribed to what the source of this liability is. Liability for animals, at that, is not a "modern" problem. There was a peasant in Babylon who had filed a claim because a billy and a nanny goat trampled on his freshly sown grain field. The judge found that the keeper of the nanny should retribute two-thirds and the keeper of the billy goat one-third of the damage, since the billy trod over the field with only hind legs.<sup>1</sup>

### I. The German Civil Code

The liability for animals is regulated by paragraph 833 of the German Civil Code (also known as BGB). The Civil Code differentiates between "luxurious" and "domestic" animals. The former are used for entertainment and pleasure, and the latter serve to the profession, commercial activity or to the support of the keeper of the animal.<sup>2</sup> The former are governed by the regime of objective liability, and the latter are under liability on the grounds of guilt that is relatively presumed. It is widely accepted that, for instance, horses used for sporting purposes are "luxurious animals".<sup>3</sup> Exceptionally, when the issue is of professional sports, a horse may be used exclusively for commercial purposes. In those cases, its keeper is liable based on his/her guilt.<sup>4</sup> Indisputably, for instance, cows and hens are domestic animals. What is problematic, however, are those animals with a "potential double function". The dog (a guardian dog or a pet dog) and the horse are animals with such properties. The status of these animals is governed by the purpose that a particular animal objectively serves and what is its conclusive use. If an animal serves to more than one use, the estimation of the general use of an animal is primarily made based on what the prevalent function to which it serves is (the main characteristic of its use). When it comes to dogs, there is no typical factual status of

<sup>1</sup> Ulrich de Groote, Haftung des Tierhalters von Babylon bis heute, [www.wiesemann-degroote.de/Haftung\\_des\\_Tierhalters.doc](http://www.wiesemann-degroote.de/Haftung_des_Tierhalters.doc)

<sup>2</sup> See paragraph 833. BGB.

<sup>3</sup> See Joachim Boerner, Sportstaeten – Haftungsrecht, Berlin, 1985, p. 444.

<sup>4</sup> Jochen Fritzweiler, Haftung bei Sportunfaellen, Muenchen, 1978, p. 71. and 72.





























































