

**5.60B ANIMAL WITH VICIOUS OR DANGEROUS TRAIT OR PROPENSITY<sup>1</sup> (OTHER THAN AN OWNER DOG BITE CASE<sup>2</sup>) (Approved 9/80)**

If you find that the plaintiff, \_\_\_\_\_, was injured by the (animal) owned or kept by the defendant, \_\_\_\_\_, you will then proceed to determine the following:

1. That the (animal) had a vicious or dangerous trait or propensity;
2. That the defendant, \_\_\_\_\_, knew or, in the exercise of reasonable care, should have known of the particular vicious or dangerous trait or propensity in the (animal) which caused the plaintiff's injuries.

Vicious or dangerous trait or propensity means a natural inclination or habitual tendency to do and act endangering a person/property. You may consider the attack on the plaintiff; the results of that attack; the (animal's) disposition when people approached it; its mischievousness, playfulness or over-demonstrated affection; and whether it had attacked any other person/ property.

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<sup>1</sup> Negligence charge should be used where applicable for injuries by animals other than with vicious propensities.

<sup>2</sup> See Strict Liability statute, *N.J.S.A. 4:19-16*.

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To find a vicious or dangerous trait or propensity, it is not necessary to find the (animal) had previously bitten/attacked/did the same act to someone/something.

On the other hand, the mere barking of a dog or other articulations of an animal or an isolated straining of a leash, would not necessarily demonstrate vicious or dangerous trait or propensity of the animal. You may find that the (animal) had vicious or dangerous propensities only if the nature and frequency of its acts furnished reasonable ground to believe that it might cause an injury by biting/overzealousness/mischievousness/playfulness/ over-demonstrated affection.

You must also conclude that the defendant, \_\_\_\_\_, knew or had reason to know of the vicious or dangerous trait or propensity of the (animal).

If you find that the plaintiff has failed to sustain his/her burden of establishing any of the foregoing elements, you will then find in favor of the defendant. However, if you find that the plaintiff has sustained his/her burden of establishing each of the foregoing elements, you will find in favor of the plaintiff and then proceed to the question of damages.

The plaintiff has the burden of establishing by the preponderance of the evidence that the injuries he/she suffered proximately resulted from such vicious or dangerous trait or propensity.

**Cases:**

*Mascola v. Mascola*, 168 N.J. Super. 122 (App. Div. 1979) (dog bite statute does not include temporary keepers of dogs, knowledge of viciousness needed).

*Jannuzzelli v. Wilkens*, 158 N.J. Super. 36 (App. Div. 1978) (propensity of dog to jump up on people).

*Barber v. Hochstrasser*, 136 N.J.L. 76, 79 (Sup. Ct. 1947) (a person can be liable as a joint owner or keeper if he/she has knowledge of the dog's vicious propensities).