Welsh v Brady

Case Report: 2008 SLT 363; [2009] CSIH 60
Scottish Courts Service ref: Outer House decision, Inner House decision.

The facts: The claimant was knocked over, but not attacked, by a ‘high-spirited’ black Labrador dog.

Decision: A judge in the Outer House of the Court of Session had described it as ‘an unfortunate and unforeseen collision’....’a pure accident’ and held that the defender was not liable on the basis that reasonable care did not require a dog of this kind and general characteristics to be kept on a lead even if it did not always respond to commands. Mrs Welsh appealed to the Inner House of the Court of Session.

The appeal, heard by Lord Nimmo Smith, Lady Dorrian and Sir David Edward QC, considered possible liability of the keeper of an animal under the Animals (Scotland) Act 1987. The Act provides that a person will be liable for injury or damage caused if the animal belongs to a species that is generally likely to seriously injure or kill or cause damage to property. Sir David said the question for the appeal judges became: "Are fully grown black Labradors, by virtue of their physical attributes or habits, likely, unless controlled or restrained, to injure severely or kill persons or animals?"

The dog involved in the incident was a Labrador bitch, weighing 25kg. She was described as large, lively and boisterous. She was considered excitable but not aggressive, although she did not always respond to commands to return to her owner.

Sir David said that Mrs Welsh's counsel, Colin MacAulay QC, had "sought valiantly" to persuade them that there was evidence to show that Labradors could be dangerous, but he said the appeal judges considered it "fell far short" of what was required to meet the legal test of strict liability and his arguments went no distance at all towards demonstrating that black Labradors are, by virtue of their physical attributes or habits, likely to injure severely or kill persons or animals. The appeal was therefore rejected.

Comment: An earlier case (**Fairlie v Carruthers** 1996 SLT (Sh Ct) 56) also involved someone being knocked over by a black Labrador in almost identical circumstances. The pursuer argued

that the defender was strictly liable under the 1987 Act specifically because the dog had attacked or harried her. This was rejected by the Sheriff and her case dismissed because (as was also the case in Welsh v Brady) the dog had accidentally collided with the pursuer without the intention of attacking or harrying her.