

Abstract

Men and animals have been living together since the ancient times. Men have gained benefits from animals in many aspects. There are many kinds of animal, some are tame, some are fierce and some are dangerous. Besides the characteristics that may vary depending on the kinds of animals, the ways the animals are raised also matter. When an animal acts by following its instinct, it may cause the damage to the other person. Such damage can not be recovered from the animal, which is the cause of the damage. The law thus requires a person who is the owner or the person who undertakes to keep the animal on behalf of the owner to be responsible for the damage caused by the animal under his care, even though such person is not at fault, wilfully nor negligently, because it is a liability from a failure to look after such animal.

The provision of the liability for damage caused by animal under Thai laws is section 433 of the Civil and Commercial Code. This provision is based on a rebuttable presumption of fault and applies to all animals that have owners. The person who is liable for the damage is the owner or the person who undertakes to keep the animal on behalf of the owner. There is an exception only when such person can prove that he has exercised proper care in keeping the animal suitable to its kind and nature or other circumstances or that the damage would have been occasioned notwithstanding the exercise of such care. In addition, the owner or the person who undertakes to keep the animal on behalf of the owner may exercise a right of recourse against the person who has wrongfully excited or provoked the animal or against the owner of another animal which has caused the excitement or provocation.

However, such provision has been in force for 83 years since B.E. 2468 and has never been revised or amended. In order to improve the Thai law to be more consistent with the present economic, social and behaviour of the animal keepers, after considering the

application and the interpretation of law in several countries, the author has several suggestions to the amendment of section 433 as follow:

First, the classification of the animals and the liability the owner shall undertake is based on different liability principles according to the kinds of the animal, in order to be clear and for the benefit of the injured person as follow:

1. For a dangerous animal, the liability of the owner is based on the strict liability principle because this kind of animal can usually cause damage and such damage is severe. Besides, the owner or the person who undertakes to keep the animal on behalf of the owner should know the ferocity or danger by its nature since the time of adoption or is presumed to know or should have known the evolution or behaviour of the animal in his care well. Thus, he should exercise more care when keeping the animal and should bear the risk of the damage that such animal may cause as if he has a dangerous thing in possession. Dangerous animals are such as tigers, lions, bears, crocodiles, snakes, Tarantula spiders etc. Having dangerous animal is based on the strict liability principle as same as having dangerous thing in possession under section 437.

2. For other kinds of animals, the liability is based on the presumption of fault according to section 433.

Second, there should be an extension in the scope of persons who will be liable for damage in order to prevent the denial of responsibility of the owner and to prevent the abandonment of the animals to be the ownerless animals. The author suggests that even if the animal is away from the care of its owner, a person shall be liable for damage caused by the animal which he used to be its owner until there is another person comes to take possession of it. The author also proposes the establishment of a system to handle the animal when the owner no longer wants to keep it by providing the opportunity for the owner to give notice and deliver it to the organization responsible by charging fees from the owners.

In addition, the author supports the opinion that the vicarious liability principle should be applied to more cases of liability for the damage caused by animals such as in the case of an employer – an employee under section 425 or a principal – an agent under section 427. In this way, the injured person can be recovered from a person with better financial status who, in some cases, is a person who directly gains benefit from such animal. This application is consistent with the court decision no. 591/2510 and the court decision no. 1006/2510 etc.

Third, as for the right of recourse against the person who has excited or provoked the animal or against the owner of another animal which has caused the excitement or provocation, the author is of the opinion that the phrase “wrongfully” in section 433 should be substituted with the phrase “having no right” in order to clarify and settle the disagreements among the academics whether the excitement or the provocation has to be wrongfully done under section 420.

In addition, in order to remove doubts whether the right of recourse can be fully exercised, the author suggests that the provision stating that the owner or the person who undertakes to keep the animal on behalf of the owner may exercise the right of recourse against the person who has excited or provoked the animal or against the owner of another animal which has caused the excitement or provocation “proportionately to his fault” should be added by having the court to determine the amount of the compensation.

Fourth, for the claim, if the injured person is certain that the animal that causes the damage has an owner, rather than filing a claim under section 420, he should be encouraged to file a claim under section 433 in which he has the favourable presumption or file a claim under both sections. The owner only has the burden to prove the fact that such damage is caused by the animal and the status of such person liable that he is the owner or the person who undertakes to keep the animal on behalf of the owner.

Fifth, the author has an opinion that the registration of animals should be established throughout the country, starting from dogs. This measure can create discipline

for the society and the responsibility for the owners since it can reduce the problem that the owners deny ownership. Besides, in order to ensure that the law enforcement is effective, the organization, full of staffs to manage and enforce the law regarding animals, should be established. The staffs should have functions to enforce the law for dogs as pets as well as to control stray dogs.

Sixth, Thailand should adopt the insurance system for liability for damage caused by animal. The Office of Insurance Commission or other related organizations should aware of the importance and support the establishment of this insurance system since it will benefit the injured person by ensuring that he will receive the compensation and benefit owners or animal keepers by acting as risk management in case when there is damage caused by animals.