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Animal Law: Doggone Idea or Emerging Practice Area?

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Animal Law: Doggone Idea or Emerging Practice Area?

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Home

Overview

The representation of or on behalf of animals is advocacy at the nexus of law, philosophy and ethics. There have been proponents of animal protection for thousands of years. From the beginning of man's existence he has tamed wolves for his use as hunting companions and protectors. Animals have been the servants of man for centuries. In other cultures they have existed as talismans and objects of suspicions. Companion animals have become increasingly important to quality of life as society has moved from agrarian to urban. Families are now so scattered that in many cases the only contact a person has on a daily basis is their beloved pet.

In the last sixty years there has been percolating a movement to better the conditions of animals, both domestic and wild. This guide is a basic map to the amazing journey the state of Animal Law has taken in the United States. This multi-disciplinary trek (at times, with only small strides) has persevered due to the passion and attention of true pioneers forging, with righteous dignity and determination, a path to increased awareness and justice for the animals with whom we inhabit the planet and share our lives.

The formational basis for Animal Law was to stem the cruel treatment and abuse of animals in such environments as zoos, circuses and performing troupes. These advocates for the better treatment of animals, both wild and domestic, have spread their endeavors to new areas of consideration: standing for certain types of animals such as chimpanzees - a sort of personhood which would recognize their greater sentient and cognitive abilities. Indeed sentience, the ability to "feel", seems to be the root of this movement towards legal status for animals. Similarly, in the area of Family Law and Divorce there is a shift to categorizing our domestic companions, our pets, as more than just chattel to be divided but a being that deserves a different standard for determining custody issues. The new standard calls for a determination "in the best interests of the animal" analysis as opposed to the old, some would say outdated, paradigm of "You take the dining room set, I'll take Fluffy."

It is interesting to note the number of law schools that now have programs in Animal Law. It is emerging as a subject area in many schools. Several of the leaders in the movement are the University of Michigan School of Law, Lewis and Clark University, Rutgers and Harvard. There exist firms which practice Animal Law as their sole area of interest when only a few years ago one would have been hard pressed to find, let alone conceive of such an "animal" as an Animal Law attorney.

This is no doggone idea! Animal Law is ready to take its place as a practice area regarded by those who practice and promote it as a necessary and noble advocacy for those who cannot advocate for themselves.

Disclaimer

This research guide is a starting point for a law student or an attorney to research the area of Animal Law. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

Scope of Topic

This guide provides an overview of Animal Law in the United States over the last sixty years with particular emphasis on companion animals. The resources provide pertinent legislation, representative case law, secondary materials and Internet resources. Further, the guide explores current issues and emerging trends of the discipline. Several of the sources delve into the history, philosophy and development of Animal Law. This guide is intended to assist attorneys and law students with little or no familiarity with this subject matter in gaining a better understanding of the relevant law. People interested in animal welfare and pet lovers alike will also find interesting and useful information.

Although a general guide to Animal Law there are numerous references and links where the avid may obtain more detailed information.

About the Author

Elizabeth B. O'Brien will graduate from Georgia State University College of Law in May, 2011. Not unlike our feline friends, Elizabeth is working on one of her nine lives. In former lives she has been a teacher, a banker and a residential real estate broker and educator. She has a particular interest in Animal Law, Professional Ethics and Wills and Estate Planning. This summer Elizabeth is pursuing an independent study in the field of Admiralty Law.

For more information about this guide, please contact Professor Nancy Johnson via email at njohnson@gsu.edu.

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Primary Sources

Constitutional Provisions

Certain constitutional provisions are often cited in Animal Law litigation: the Commerce Clause, Equal Protection Clause, and the prohibition against search and seizure and taking of property. The Constitution in its entirety with annotations may be found free of charge at the [Cornell Legal Information Institute](#).

U.S. Const. art. 1, §8, cl. 3.

U.S. Const. amend. IV.

U.S. Const. amend, V.

U.S. Const. amend, XIV, §1.

U.S. Code

The foundation legislation for Animal Law is the Animal Welfare Act. Originally enacted in 1966, it has been revised continually since that time. Its original purpose was to combat animal cruelty - particularly in the context of the care and use of laboratory animals. If you are interested in the legislative history of the Animal Welfare Act you can access it, free of charge at [THOMAS. Library of Congress](#).

7 U.S.C.A. §2131 et seq.

Regulations

The Animal Welfare Act is administered by the Department of Agriculture. The regulations are contained in the Code of Federal Regulations which can be found in Westlaw and LexisNexis.

7 C.F.R. §2.2 (2009) (providing broad authority to Secretary of Agriculture).

9 C.F.R. §3 (2009) (Animal and Plant Health Inspection Service standards for humane handling, care, treatment and transportation of cats and dogs; standards for operating animal facilities.)

Legislation

STATE STATUTES:

Pursuant to the Animal Welfare Act all fifty states have adopted anti-cruelty laws. New concepts of companion animals have resulted in a minority of states enacting legislation which permits an owner to create an honorary trust for the care of a pet after the owner's death. Although Georgia is not among them at this time Alaska, Montana, Florida and Kansas have such statutes in place.

Pertinent Georgia Code Sections:

Cruelty to Animals

O.C.G.A. §4-8-5

O.C.G.A. §4-11-9, 10, 17

O.C.G.A. §4-13-3

Cruelty to Animals (Criminal)

O.C.G.A. §16-12-4

Subjects of Charity in Wills (as in contributions for animal welfare)

O.C.G.A. §53-12-110

MUNICIPAL STATUTES:

Most counties, cities and municipalities have enacted their laws and local ordinances regarding licensing of pets, leash laws, fence laws and the management of stray animals.

An excellent free website for these local animal control laws (as well as other local ordinances) is www.municode.com.

Case Law - Unites States Supreme Court

Although most cases regarding Animal Law and precedents have not reached above the district court level this case presents a notable exception and could not be more current. It was decided today (April 20, 2010) thus only the Westlaw citation is available.

[U.S. v. Stevens](#), 2010 WL 1540082

The court with a vote of 8 to 1 ruled 18 U.S.C. §48 unconstitutional ruling it overbroad on First Amendment grounds. This statute outlawed the possession, manufacture, or distribution of a certain animal cruelty videos of a pernicious nature. In his dissent Justice Alito opined that the intent of the statute was not to suppress free speech but to prevent horrific depictions of animal cruelty.

Case Law - Federal

These cases are arrange by Circuit Court of Appeal and then Federal District Courts of various states. They represent a sampling of litigation issues and decisions in this area of law.

Federal Circuit Courts of Appeal:

[Brown v. Muhlenberg Township](#), 269 F.3d. 205 (3rd Cir., 2001)

Case involved the killing of a pet dog by a police officer and the issue turned on whether the officer could use his immunity as a law enforcement officer to avoid liability for intentional infliction of emotional distress claim brought by the family. The court ruled he would be liable for such a claim (recognized in Pennsylvania as an actionable tort.)

[Dias v. City and County of Denver](#), 567 F.3d. 1169 (10th Cir., 2009)

Many local jurisdictions have breed specific bans for residential areas. Here the plaintiff claimed the ban of pit bulls was contitutionally vague on its face and challenged its purpose. In this appeal, the court states that the pit bull statute was not "rationally related to a proper government purpose" and thus was unconstitutional on its face.

[Kollman Ramos v. U.S. Dept of Agr.](#), 322 Fed. Appx. 814 (11th Cir., 2009)

Owner of two lions used in a travelling exhibit was cited by the Department of Agriculture; admitted he violated the Animal Welfare Act and was fined over \$13,000. On appeal the plaintiff sought to overturn the trial court's decision based on the argument that his due process rights were violated. His argument was not successful and the 11th Circuit Court of Appeals affirmed the lower court's decision.

[Doris Day Animal League v. Veneman](#), USDA, 315 F.3d. 297 (D.C. Cir., 2003)

Challenging not only the Animal Welfare Act regarding the definition of "retail stores" as it pertained to the sale of animals but challenged the Department of Agriculture to modify the regulation to include residential sellers of animals falling under the term "retail store." The court upheld the regulation stating a change would be unnecessary as under the Animal Welfare Act a retail store applied to wholesale activities and specifically excluded a residentially based seller earning less than \$500.00 a year in animal sales.

Federal District Courts:

[Bakay v. Yarnes](#), 431 F.Supp.2d. 1103 (W.D., WA, 2000)

Interesting case involving a panoply of issues for the court to decipher in relation to the search of plaintiff's premises and subsequent seizure and euthanization of sixty-eight cats. The plaintiff sought adjudication in re: constitutional rights against unnecessary search and seizure, negligence of town personnel, violations of his civil rights, conversion, trespass to chattel, statutory waste, outrage, and last but not least tortious interference with a business expectancy. The district court found for the defendants upon each of the charges.

[Animal Welfare Institute v. Martin](#), 588 F.Supp. 110 (D. ME., 2008)

The animal welfare group filed for an emergency temporary restraining order to stop the use of a specific type of bear trap until the end of the hunting season. One of the traps killed a lynx, an endangered species. The court citing no causal connection between the regulation of hunting in the state and violations resulting from the Endangered Species Act refused to grant the order.

Case Law - State

Alaska

Richardson v. Fairbanks North Star Borough, 705 P.2d 454 (Alaska, 1985)

This older case can be contrasted with the Brown case, *supra*. Here, owners of a dog mistakenly killed at the local animal shelter sought recompense for the dog. The Supreme Court affirmed the lower court ruling stating the measure of damages for a dog is the market value at the time of death. The owners sought damages for the value to them of their pet and companion. In addition the court ruled that the level of emotional distress alleged by the plaintiffs was not sufficient to allow a claim for intentional affliction of emotional distress.

Georgia

Huff v. Dyer, 678 S.E.2d 206 (Ga.App. 2009)

Dog bite case that meets at the intersection of Georgia's strict liability statute and a local county animal control ordinance.

Kringle v. Elliott, 686 S.E.2d 665 (Ga.App. 2009)

Dog bite case involving a golden retriever: the plaintiff, on behalf of her seven year old son, brought an action for damages resulting from the defendant's dog biting the child. The plaintiff is appealing the lower court's grant of a motion in limine to exclude evidence that the dog was vicious. The evidence withheld: the golden retriever once brought his owner a dead kitten. The owner could not determine if the kitten was killed by the dog or it was acting on natural instinct to retrieve.

Indiana

Price v. State, 911 N.E.2d 716 (Ind. App. 2009)

The defendant appeals from conviction for animal cruelty. On appeal he argues that the statute regarding cruelty is vague as to what constitutes reasonable discipline and training. The defendant admitted to beating his pup with a belt; in reply the court noted that a reasonable person would be able to determine that such treatment of the dog was not reasonable training.

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Secondary Resources

American Law Reports

This American Law Report was originally published in 1978 and has been continuously updated; the ALR databases are updated weekly to include new relevant cases. ALR reports are indepth studies of a discrete area of law - this is an excellent treatment of the Animal Welfare Act annotated with relevant cases, laws and rules. The second entry, originally published in 1992, is a comprehensive treatment of animal cruelty.

D. Richard Joslyn, Annotation, *Validity, Construction, and Application of the Animal Welfare Act (7 U.S.C.A. §§2131 et seq.)*, 36 A.L.R. Fed. 627

Sonja A. Soehnel, Annotation, *What Constitutes Offense of Animal Cruelty - Modern Cases*, 6 A.L.R. 733

Legal Encyclopedia

American Jurisprudence is a vast legal encyclopedia covering a wide range of subjects. It is an excellent resource with which to begin a research project. It can be found on WestLaw and LexisNexis and in print in the Georgia State University Law Library.

This entry provides a thorough overview but also delves into the issues of standing for domestic animals and standards for determining custody arrangements. Also discussed: owner liability for injuries caused by animals and for injuries to animals, defenses and damages.

4 Am.Jur. 2d *Animals* §§1 - 120 (2009)

Of particular interest are Sections 4,5,9,10 dealing with property rights in animals and §§30-34 covering high points of the Animal Welfare Act and penalties for violations thereunder.

Corpus Juris Secundum is also a legal encyclopedia with first rate treatments of particular subjects. Here the subject is Animal Cruelty.

3B C.J.S. *Animals* §§194-200 (June 2009)

Journal and Law Review Articles

The following Journal and Law Review articles are listed by category and date for easy reference.

CUSTODY AND ESTATE PLANNING

Rebecca J. Huss, Article, *Separation, Custody, and Estate Planning Issues Relating to Companion Animals*, 74 U. Colo. L. Rev. 181 (2002)

Discussion of Separation, voluntary and involuntary transfers of animals, using a "child custody" type standard for animals and death of the human and death of the animal companion in re: estate planning.

Anne Hartwell Britton, Article, *Bones of Contention: Custody of Family Pets*, 20 J. Am. Acad. Matrim. Law. 1 (2006)

"This article addresses the determination of pet custody after the dissolution of a relationship. The circumstances present conflicts analogous to child custody cases: physical placement, visitation, and financial support (which has come to be called petimony) are all at issue."

Heidi Stroh, Article, *Puppy Love: Providing for the Legal Protection of Animals When Their Owners Get Divorced*, 2 J. Animal L. & Ethics 231 (2007)

T. Christopher Wharton, Note, *Fighting Like Cats and Dogs: The Rising Number of Custody Battles Over the Family Pet*, 10 J.L. & Fam. Stud. 433 (2008)

"For some, this may seem surprising or even a bit waggish, but the elevated status of pets is increasingly evident; think family portraits that feature Fido, the dog, and specially made Christmas stockings for Sox, the cat. Local "dog parks" are gaining ground in the nation's metropolitan and suburban areas. "Cat condos and other cat furniture can be custom-made and designed "not only for the cat but also for the discriminating homeowner."

Breahn Vokolek, Comments, *America Gets What It Wants: Pet Trusts and a Future For Its Companion Animals*, 76 UMKC L. Rev. 1109 (2008)

Very good discussion of trusts, trust history and the status of pet trusts.

STANDING/STATUS

Joseph Mendelson III, Article, *Should Animals Have Standing? A Review of Standing Under The Animal Welfare Act*, 24 B.C. Env'tl. Aff. L. Rev. 795 (1996-1997)

"This article explores the current state of third-party standing under the AWA. While the analysis reveals the considerable difficulty in achieving third-party standing under the AWA, it also dispels the prevalent notion that the statute necessarily prevents third parties from having their day in court." The author presents an overview of the legislative history of the AWA, discusses standing requirements and case law, discusses the "potential for pet consumers to be granted standing under the AWA."

Steven M. Wise, Article, *Rattling the Cage Defended*, 43 B.C.L. Rev. 623 (2002)

"In [Rattling the Cage: Toward Legal Rights for Animals](#), the author advocated basic legal rights—specifically common law rights—for chimpanzees, bonobos, and other nonhuman animals. In this Article, the author responds to many of the major criticisms of [Rattling the Cage](#)."

Rebecca J. Huss, Article, *Valuing Man's and Woman's Best Friend: The Moral and Legal Status of Companion Animals*, 86 Marq. L. Rev. (2002-2003)

Ms. Huss discusses the philosophical basis for the moral status of animals highlighting current legal statutes for animals: she includes an interesting section on valuation of animals for various purposes, i.e., Actual Value vs. Sentimental Value.

Elizabeth Pack, Recent Developments, *Fido Seeks Full Membership in the Family: Dismantling the Property Classification of Companion Animals by Statute*, 25 U. Haw. L. Rev. 481 (2003)

Interesting inclusion of Switzerland's efforts to elevate the standing of companion animals and use of "a best interest" of the animal standard in custody disputes.

Lauren Magnotti, Notes, *Pawing Open the Courthouse Door: Why Animals' Interests Should Matter When Courts Grant Standing*, 80 St. John's L. Rev. 455 (2006)

"The issue of standing is of serious import to the protection of animals as it is the threshold issue before the merits of the case can even be considered. Courts faced with the standing issue should become more progressive by viewing animals as beings with independent interests. This would not require an abandonment of the legal classification of animals as property; rather, courts could recognize that animals are a special type of property entitled to certain legal protections not afforded to typical inanimate objects."

Richard L. Cupp, Jr., Article, *A Dubious Grail: Seeking Tort Law Expansion and Limited Personhood as Stepping Stones Toward Abolishing Animals' Property Status*, 60 SMU L. Rev. 3, (2007)

"Some grails are sought one piece at a time. The holy grail for many animal rights activists is abolishing animals' property status. This is an ambition befitting mythical grail status in its level of difficulty given current societal mores and values." This article critiques the stepping stones approach and concludes "Our legal system is intrinsically human, and the protection and humane treatment of animals is a basic human responsibility, not a basic animal right."

Susan J. Hankin, Article, *Not a Living Room Sofa: Changing the Legal Status of Companion Animals*, 4 Rutgers J.L. & Pub. Pol'y 314 (2007)

This is a comprehensive article moving from the traditional view of animal as property, recognizing the changes occurring, i.e., the language shift from "owner" to "guardian" and that the changes should be recognized with a new legal standard.

MEDIATION

Kathy Hessler, Article, *Mediating Animal Law Matters*, 2 J. Animal L. & Ethics 21 (2007)

This article is of particular interest to me as a student of Alternative Dispute Resolution methods. The author discusses the role of mediation as a "tool to address the evolving role of animals in society."

Books

There are many books on the subject of Animal Rights and Animal Law. I note here two books by eminent authors in the field whose ideas and approaches will cause you to stop, think and appraise your stand on the position of animals in our society and the world. I have included two compilations which should prove of interest to those who desire an overview of Animal Law.

- **Rattling the Cage: Toward Legal Rights for Animals**
Call Number: HV4708.W57
ISBN: 0738204374 Fascinating, sometimes appalling look at chimpanzees their treatment in captivity and the author's quest to elevate their status. Stephen Wise is one of the leading proponents of a status change for animals.
- **Animals, Property and The Law**
Call Number: KF3841.F73
ISBN: 1566392837 A different approach to the plight of animal cruelty. Gary L. Francione is associated with the Rutgers School of Law and its advocacy program. He advocates an "abolitionist" approach to animal rights - eliminate all cruel treatment - even advocating veganism as the ultimate method of preventing animal cruelty.
- **Animal Rights: Current Debates and New Directions**
Call Number: HV4708.A56
ISBN: 0195305108 Excellent collection of essays by the leading advocates in the animal rights movement.
- **Animal Law and the Courts: A Reader**
Call Number: KF3841.B79
ISBN: 0314190252 Very good reader to acquaint you with the basic issues and supporting case law.

Blogs

Many animal rights and law blogs are available on the Internet. Many of the sites included in the final section have links to other blogs of interest.

[Pace Law School Blog](#)

This blog, founded by Pace Law School professors, is principally maintained by David Cassuto. "This blog focuses on animal law, ethics and policy. It provides a forum for ...debate and the exchange of ideas." You can subscribe to the blog by entering your email - there is no fee. This site provides a very helpful "BlogRoll" with links to several dozen related blogs. Excellent, well-organized source of research avenues.

[Animal Law Online Blog](#)

This blog was founded by Amy A. Breyer, a journalist turned attorney, who opened the first animal law practice in the state of Illinois. "One practitioner's observations and analysis of animal law news, litigation.." She has links to pending legislation, animal law attorneys by state and links to state bar associations with animal law sections or committees. She also posts links to educational and advocacy resources.

Computer Research

The search terms for both Westlaw and LexisNexis were:

animal rights, domestic animals, animals-custody disputes, animal-cruelty

In addition to the professional websites I found both Google and Bing.com to be helpful in searching for prominent authors and contributors in the field of Animal Law and generally developing a broad overview to begin my research.

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Associations and Interest Groups

Professional Associations

American Bar Association Animal Law Committee (under the auspices of the Tort Trial and Insurance Practice Section)

I highly recommend this site - it is easy to navigate. The committee provides a podcast series; they oversee a Pro Bono project providing education on the humane treatment of animals for elementary school children. It addresses animal law litigation, CLE (continuing legal education) and an animal law links section. All in all - a very good site.

Interest Groups

[Animal Legal and Historical Center. The University of Michigan](#)

This is an excellent website for finding statutes (with state maps), cases and a link to International materials.

[Animal Law Coalition](#)

Free website but they do request a donation. Extensive list of current legal issues, breaking news items, forum topics and pending legislation. Mission: "work to stop animal cruelty and suffering through legislation, administrative agency action and litigation."

[International Institute for Animal Law](#)

"Clearinghouse for animal-related information from pending legislation through relevant case law digests." Highlight of this site is the Model Laws section.

[Animal Plant Health Inspection Service, Department of Agriculture](#)

Comprehensive site for browsing rules and regulations by subject and/or related topics.

[Animal Legal Defense Fund](#)

[Estate Planning for Pets](#)

Resource for pet owners and their attorneys.

[In Defense of Animals](#)

International organization that defends the rights and habitat of animals and advocates for raising the status of animals.

[The Humane Society of the United States](#)

[The American Society for the Prevention of Cruelty to Animals](#)

[National Center of Animal Law](#)

[National Institute for Animal Advocacy](#)

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