

# Just What is Animal Law?

By David Favre

**F**or almost 20 years, the State Bar of Michigan has had an Animal Law Section. Michigan State University College of Law has a major animal law project with a journal and website (<http://www.animallaw.info/>), both focusing on animal law. Yet many SBM members still are not quite sure what animal law means. This is not unexpected, as different individuals and organizations place all sorts of activities and ideas under that heading.

For lawyers, the field of animal law exists at two distinct levels. The first is the practical level—the problems that clients bring to their lawyers to help solve; some are old issues, some are new. The second level is that of public policy. Many individuals, including some lawyers, are concerned that animals in a variety of situations are not receiving adequate consideration and protection, and therefore become advocates for changing the law. This article briefly explores both levels.

## Practicing Animal Law

The SBM Animal Law Section has a hotline that allows callers to request legal help with animal concerns.<sup>1</sup> Recently, the section received the following inquiry:

Individual's large dog barks a lot. The dog recently knocked the UPS man down and scratched him. Individual is expecting ticket....What is the potential penalty? (No priors.)

Ignoring the possible civil lawsuit, an examination of Michigan's Dangerous Animals Act<sup>2</sup> is required. The threshold is whether the action falls under the statute, which states that a "dangerous animal" means a dog or other animal that bites or attacks a person." But there are also qualifiers that may or may not take a fact pattern out of the statute. The punishments provided under the law range from the extreme—death of the dog and charges of involuntary manslaughter for the dog's owner—to confinement of the dog and misdemeanor charges against the owner. Serious lawyering may be required: detailed understanding of the facts, experience with how local judges think about dog-injury cases, and experience with the law itself.

It should be noted that many of the inquiries received through our hotline come from individuals who cannot pay normal attorney fees, and very few attorneys are familiar enough with animal law to quickly provide advice for free or a modest cost. Also, experience suggests that while the initial question may seem simple, more questions and a request for services will follow. This area of law presents serious legal issues for average citizens who lack the capacity to fully engage the legal system, and outcomes are often poor.

Dogs have always presented concerns for the legal system. The oldest material I have found is an 1888 book published in England—Frederick Upton's *Law Relating to Dogs*—which covers the timeless matters of dog bites, trespassing, and injuries to dogs. Fast forward 125 years and any attorney would be comfortable reading its text.

One issue not covered in the 1888 book has arisen with our changing social-living experience in the United States. Many people now live together without marriage, giving rise to some interesting legal problems which usually arrive with an inquiry like, "My boyfriend just left me and took the dog he bought me a year ago. How do I get my dog back?" Again, a seemingly simple question; however, a complex legal context must be considered within the broader area



### **FAST FACTS**

**Under Michigan law, a trust can be established for an animal's benefit.**

**Michigan has one of the strongest felony criminal laws seeking to eliminate dog fighting.**

**Michigan has not allowed an animal to be a plaintiff.**

of gift law. Likely, facts will be unprovable, nothing is in writing, animosity exists between the parties, and the cost and time of a lawsuit do not make it a useful course of action. There are no statutory laws directly on point. Another type of informal dispute resolution might be the best course of action for the woman seeking to reclaim her dog.

An older question that has received some new statutory help is in the area of estate law. Under common-law concepts, it was not possible to leave money in a will for the care of a beloved pet. But a national uniform law was adopted in the 1990s, allowing pet trusts for the first time.<sup>3</sup> Michigan adopted a variation of this concept in 2000, providing “a trust for the care of a designated domestic or pet animal is valid.”<sup>4</sup>

The Michigan law specifically sets aside the previous pet-trust killer, the Rule Against Perpetuities.<sup>5</sup> Helpful resources are available for Michigan attorneys with clients interested in pet trusts.<sup>6</sup> However, the pet trust with millions of dollars is unlikely, as the court has the power to reduce the corpus of an overfunded pet trust.<sup>7</sup> But this does not solve the practical matter: how much money should be put into a trust for two cats and a dog?

One area in need of statutory clarification is that of lost property. While the lost-property law was changed in 1987, it does not really deal with the lost, found, or stray pet situation.<sup>8</sup> How long must I keep a cat that strayed into my yard and adopted me before I have title to the cat? There is no good answer to this frequently asked question.<sup>9</sup>

Many other areas of law also involve animals; felony criminal charges for dog fighting, and contracts and insurance for horses are two examples. But it is time to turn to the other aspect of animal law, that of social and legal policy development.

## Animal Law as a Social Movement

The general cultural attitude about animals was first fully reflected in the 1867 New York anti-cruelty law.<sup>10</sup> As subsequent relevant cases noted, the law’s focus does not concern loss of property value to an animal owner or public-nuisance issues, but rather that animals can suffer pain and death at the hands of humans, and the law seeks to limit or constrain pain and death when a particular act is judged unnecessary.<sup>11</sup> This remains the current premise for human-animal interactions in the United States; the use of animals by humans is acceptable as long as it does not involve the infliction of unnecessary pain, suffering, or death. In Michigan, the word “unnecessary” has been replaced with the phrase “without just cause,” ending at the same public-policy point.<sup>12</sup>

The concern about animal use reflects the majority view of those who are part of the social movement for animals. These individuals are often given the designation of animal welfare activists. They seek stronger specific protections for animals. While someone could be prosecuted for general animal cruelty when engaging in dog fighting, special laws have been adopted in Michigan and the other 49 states and at the federal level. Michigan’s felony dog-fighting law is among the most extensive in the United States. It is illegal to host a dog fight or knowingly attend a fight



in our state in addition to the obvious fighting of a dog or training a dog to fight.<sup>13</sup>

Other matters that animal welfare activists focus on are feral cats, spay and neuter programs, outlawing puppy mills, and concern for farm animals. Under the threat of a statewide referendum in 2009, the legislature passed a compromise bill providing for better living conditions for egg-laying chickens, veal calves, and pregnant sows.<sup>14</sup>

This concern for animal welfare in Michigan has extended recently to wolves. On opposite sides of the issue are those seeking to kill wolves and those who believe wolves should be left alone unless a specific incident occurs. The question of whether a general wolf hunt is necessary may end up going before the citizens of the state by a ballot initiative.<sup>15</sup>

The social movement for animal issues includes another group seeking a more complex and complicated outcome for animals. While these individuals are concerned about animal welfare, they also believe the legal status of animals needs to be changed. On an ethical basis, the claim is that animals, like humans, have personal interests such as the avoidance of pain and death and, as

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such, should have legal personality so they may directly assert these interests in the legal system.

One focus of those concerned with the status of animals is that, presently and historically, animals are placed by the legal system into the category of personal property along with chairs and coffee mugs. Of course, these items have no inherent personal interest like animals do. The long existence of anti-cruelty laws makes clear that animals are different from coffee mugs, but those laws do not give any legal personality to the animals themselves. As an example, if animals had legal personality, a dog that was beaten or deliberately burned could sue in civil court as if the crime had happened to a child.

One modest movement in this direction in Michigan law is the previously mentioned animal trust provisions. Under this law, companion animals have moved from the category of corpus of a trust to beneficiary of a trust, making them at least a quasi-legal person in this limited context. Another area that might see animals move out of the category of strict personal property is in divorce law. Isn't the placement of a companion animal as the result of divorce more similar to the placement of a child than a dinner plate? Shouldn't the court take into account what would be the best outcome for the animal?

Other activists cluster around the heading of animal abolitionists. They seek the removal of domestic animals from property status and usually promote veganism as the preferred cultural context for animals. The PETA lawsuit against Sea World represents this attitude. The suit sought to free a particular wild-caught killer whale the group likened to a human slave (kept against his will) under the legal theory that the Fourteenth Amendment to the U.S. Constitution, which outlaws human slavery, also outlaws whale slavery. The suit was unsuccessful.<sup>16</sup>

I have suggested in a series of law review articles an alternative course of action. Rather than removing animals from the status of property, a new category of property—living property—should be created and developed.<sup>17</sup> There could still be animal ownership, but similar to the relationship of parent to child, the owner would have obligations to the animal along the lines of the extensive duties set out in the Duty to Provide Care criminal law statutes.<sup>18</sup> This concept would create a space for public discussion that accepts as a premise that animals are different from other property and seeks to establish the scope of human obligations toward domestic animals.

Readers might notice I did not use the phrase “animal rights” in this article. Because people use the phrase in many different contexts, it is not useful. In the legal world, the phrase suggests promoting legal rights to be held by the animals themselves, giving animals legal personhood. But this is a difficult legal concept

not normally accessible to nonlawyers; many speakers use the phrase when simply promoting enhanced welfare for animals. So when discussing animal law, language other than “animal rights” is most helpful.

### Conclusion

Animal law can touch on all aspects of civil and criminal law. However, it is more than that; there is usually a passion for the well-being of animals that drives human interests. For many, this passion ripens into a belief that animals deserve more respect than is reflected in the present legal system. The law currently does not fulfill what many of us believe is an obligation to the animals sharing our lives and our world—this is the true animal-rights movement. ■



*David Favre, a professor at Michigan State University College of Law, was one of the initial members of the SBM Animal Law Section and is presently in a leadership position on the Animal Law Committee of the ABA TIPS Section. He is editor-in-chief and creator of the web-based Animal Legal and Historical Center and has written and presented worldwide on animal issues for more than 30 years.*

### ENDNOTES

1. See State Bar of Michigan, Animal Law Section <<http://www.michbar.org/animal/lifeline.cfm>> (accessed November 10, 2013).
2. MCL 287.321 *et seq.*
3. Unif Trust Code § 408.
4. MCL 700.2722(2).
5. MCLA 700.2722(3)(h).
6. See Kass & Carrie, *Who Will Care When You're Not There?* (Detroit: Carob Tree Press, 2011).
7. MCL 700.2722(f).
8. MCL 434.21 *et seq.*
9. See *Morgan v Kroupa*, 167 Vt 99; 702 A2d 630 (1997).
10. NY Rev Stat § 375.2 *et seq.* (1867).
11. See *Grise v State*, 37 Ark 456 (1881).
12. See MCL 750.50b(2).
13. MCL 750.49.
14. MCL 287.746.
15. Eggert, *Wolf hunt foes raise most in Michigan ballot drives*, Detroit Free Press, July 25, 2013, available at <<http://www.freep.com/article/20130725/NEWS06/307250178/Michigan-gray-wolf>> (accessed November 10, 2013).
16. *Tilikum v Sea World Parks & Entertainment, Inc.*, 842 F Supp 2d 1259 (SD Cal, 2012).
17. Favre, *Living property: A new status for animals within the legal system*, 93 Marquette L R 1021 (2010).
18. MCL 750.50.