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## Litigating Animal Disputes: A Complete Guide for Lawyers (Introduction)

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# Litigating Animal Disputes: A Complete Guide for Lawyers (Introduction)

Joan E. Schaffner and Julie L. Fershtman

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# Litigating Animal Law Disputes

## *A Complete Guide for Lawyers*

JOAN SCHAFFNER  
AND JULIE FERSHTMAN  
EDITORS



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# CHAPTER I

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## Introduction

JOAN E. SCHAFFNER

JULIE I. FERSHTMAN

### *I. Overview*

Issues surrounding animals and the law have gained widespread interest in the past few years. In 2005, when Hurricane Katrina struck the Gulf Coast, thousands of people were forced to flee without their companion animals or risk death by remaining at home to protect them. Many animals, left homeless, were rescued and shipped throughout the country to await reunification with their owners or to find new homes. Myriad legal issues followed, including questions of proper holding periods, transfer of ownership, and liability of rescuers. Congress passed legislation requiring that states include animals in their emergency evacuation plans in order to receive federal funding to support such plans.

Early in 2007, contaminated pet food affecting many of the most popular brands led to the death of hundreds of animals and the recall of thousands of bags and cans of pet food sold over a period of several weeks. Numerous legal issues following this episode have raised questions of liability and proper remedy for the loss of one's companion animal. Later in the year, NFL quarterback Michael Vick was charged with animal fighting, a felony under federal law and in many states, and the huge underground enterprise in animal fighting was exposed to a horrified public. Hotelier Leona Helmsley passed away in 2007 and gained notoriety by leaving \$12 million in trust to her beloved white Maltese, Trouble. Late in the year, a large puppy mill enterprise was exposed in which over a thousand dogs were rescued from deplorable

circumstances of alleged cruelty and neglect. These highly publicized events and tragedies reflect only a small part of the policy and law that governs our relationship with animals.

A 2007–2008 study by the American Pet Products Manufacturers Association (APPMA) estimates there are 153.7 million pet dogs and cats in U.S. households,<sup>1</sup> and almost nine in ten pet owners consider their pets members of the family.<sup>2</sup> The average annual veterinary expense per pet was \$366.<sup>3</sup> We use animals not only for companionship and service, but for food and clothing, for research and entertainment. Nearly 10 billion animals are raised and killed for food annually in the United States,<sup>4</sup> and in 2004 more than a million reportable warm-blooded animals were used by American labs.<sup>5</sup> In the U.S. equine industry alone, there are 9.2 million horses, according to the American Horse Council. The Council reports that the equine industry has a \$39 billion direct economic effect on the U.S. economy.<sup>6</sup> The law regulates our use of and relationship with these animals and is developing dramatically as human society alters its views of its relationship to nonhumans.

## II. “Animal Law”

Animal law is gaining widespread interest within law schools and among practicing lawyers. More than 95 law schools have a class on animal law.<sup>7</sup> Over 130 law schools have a student chapter of the Animal Legal Defense Fund.<sup>8</sup> In June 2008, the American Association of Law Schools approved the establishment of a Section on Animal Law. There are now five journals that are devoted to animal law—*Animal Law Review* (Lewis & Clark), *Journal of Animal Law* (Michigan State), *Journal of International Wildlife Law and Policy* (Whittier), *Journal of Animal Law & Ethics* (University of Pennsylvania), and *Stanford Journal of Animal Law & Policy*. In 2006, Carolina Academic Press published the third edition of the casebook *Animal Law*, by Sonia Waisman, Pamela Frasch, and Bruce Wagman; a new casebook, *Animal Law, Welfare, Interests and Rights*, by David Favre, was just released in 2008 by Wolters Kluwer.

The practicing bar has embraced this area of the law as a legitimate and growing area of practice by creating committees or sections devoted to animal law. Currently 16 state bars and the Bar of the District of Columbia have sections or committees devoted to animal law.<sup>9</sup> Another 12 regional bar sections or committees of animal law exist.<sup>10</sup> Perhaps most significant, the American Bar Association’s Tort Trial and Insurance Practice Section established an Animal Law Committee in 2005, which has been extremely active since its inception.

So, what exactly is “animal law”? All law is animal law. Animal law cuts across virtually every substantive area of the law, including tort, contract, property, family, taxation, trust and estates, insurance, criminal, administrative, international, and environmental. On the one hand, because companion animals are now so common in the United States and they are often considered family members, lawyers are now finding themselves confronted with “animal law” cases more frequently and require guidance. On the other hand, because of the continued growth in business industries involving animals, such as the dog show and horse show industries, the demand is greater than ever for lawyers to serve these businesses on the many legal issues they confront. This book is designed to provide such guidance.

### III. *Litigating Animal Law Disputes*

Entitled *Litigating Animal Law Disputes*, this book focuses on the numerous legal issues that arise for people with animals and people affected by animals that may result in litigation. Whether it be the divorcing couple with a dispute over who should have “custody” of the family cat, the owner who boards a dog at a kennel and returns to find the dog ill, the elderly woman who wants to provide for her pet parrot after her death, the owner of a horse in a dispute with a boarding stable, the prosecutor confronted with a person arrested for cruelly beating an animal, or the veterinarian who is sued by the owners of a dog under his care, the legal issues are varied and numerous.

The authors assume that the reader has a basic understanding of the relevant substantive area of the law—for example, contracts, wills, and malpractice—and address the unique questions that arise when an animal is involved in the case. The following questions, which cross several substantive legal areas, are typical:

- What losses are compensable for the death of one’s pet, and how should those losses be valued?
- What types of evidence must be secured at the scene of an animal neglect incident?
- How may a prosecutor most effectively utilize veterinary forensics in proving a case?
- How does the law define “service animal,” and what protections are available to the disabled person with a dog guide?
- What is the potential liability for equine activity sponsors should a rider fall from a horse?

- How do animal insurance policies differ from the traditional human insurance policies?

These are but a very few of the many questions that may confront the lawyer with a client who owns an animal or a prosecutor who is assigned an “animal” case.

Each chapter of this book is designed to provide a basic understanding of the animal-related issues that arise within that area of the law. The bulk of the legal issues derive from state law. While each state’s law cannot be addressed specifically, or in great detail, the authors discuss the law most common throughout the states and provide suggestions on what to look for in determining the unique characteristics in your state. Many of the chapters also include appendices with sample documents typical of those an attorney may need to draft in the area of interest. Thus, for example, sample pleadings, discovery documents, jury instructions, and trust agreements are provided so that the reader need not reinvent the wheel. The goal is to provide an easily accessible text for busy practitioners to quickly identify the unique issues that may arise in their animal law case and how they might address them.

This book does not address the law that is unique to animals because such cases are typically handled by animal law attorneys with highly specialized expertise in the area. Thus, for example, cases arising under the Endangered Species Act or the Marine Mammal Protection Act, or administrative law cases involving the Animal Welfare Act, are not within the scope of this text.

One final note: The area of animal law is not only a newly emerging field of law, it also raises many controversial issues concerning how animals should be treated by humans. For example, the range of philosophical views on humans’ relation to animals is broad—from Descartes’s belief that “man is the master of all and has the right to subject animals to his will” to Tom Regan’s and Peter Singer’s beliefs that animals have rights in their own right. Even within the animal advocacy community, advocates debate “animal welfare” versus “animal rights” and whether animals should be deemed “property” under the law. Furthermore, the terminology to refer to animals and their human counterparts also can be controversial. For example, advocates debate whether “pets” should be referred to as “companion animals” or whether their owners should consider themselves “guardians.” This book does not address these debates nor take sides within the debates. Rather, the goal of this text is to provide an “objective” (to the extent possible) discussion of the current legal land-

scape as it concerns animal-related legal issues and to use terminology that reflects the current state of the law.

The editors hope you find this text useful.

### Notes

1. AMERICAN PET PRODS. MFRS. ASS'N, 2007–2008 APPMA NAT'L PET OWNERS SURVEY 7 (2007) (72 million dogs and 81.7 million cats).
2. HarrisInteractive, The Harris Poll, Pets Are “Members of the Family” and Two-Thirds of Pet Owners Buy Their Pets Holiday Presents (Dec. 4, 2007), *available at* [http://www.harrisinteractive.com/harris\\_poll/index.asp?PID=840](http://www.harrisinteractive.com/harris_poll/index.asp?PID=840).
3. AMERICAN VETERINARY MEDICAL ASSOCIATION, 2007 U.S. PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK (2007), *available at* <http://www.avma.org/reference/marketstats/sourcebook.asp>.
4. ERIN WILLIAMS & MARGO DEMELLO, WHY ANIMALS MATTER 22 (2007).
5. *Id.* at 180. The Animal Welfare Act excludes mice, rats, birds, reptiles, and amphibians from protection, although they compose approximately 90 percent of all animals used in labs, and thus they are not reportable to the USDA. Consequently, the number of all animals used in labs is likely over 10 million. *Id.*
6. American Horse Council, National Impact of the Horse Industry (2005), *available at* <http://www.horsecouncil.org>.
7. Animal Legal Defense Fund, Animal Law Courses, *available at* <http://aldf.org/article.php?id=445> (last visited Jan. 1, 2009).
8. Animal Legal Defense Fund, SALDF Chapters, *available at* <http://aldf.org/article.php?id=446> (last visited Jan. 1, 2009).
9. Animal Legal Defense Fund, Bar Association Animal Law Sections and Committees, *available at* <http://aldf.org/article.php?id=277> (last visited Jan. 1, 2009).
10. *Id.*