

# HARMING COMPANION ANIMALS: LIABILITY AND DAMAGES



**Henry Mark Holzer**

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# **HARMING COMPANION ANIMALS: LIABILITY AND DAMAGES**

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# HENRY MARK HOLZER

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Professor Holzer received his B.A. degree from New York University, where he studied Russian and political science.

He then served in Korea with military intelligence, holding top secret security clearance, and was Chief Order of Battle Analyst (Chinese Communist Forces) for Eighth Army.

Professor Holzer received his Juris Doctor degree from New York University School of Law. For over forty-six years, he has practiced constitutional and appellate law. His legal practice is limited to consulting with other lawyers in constitutional and appellate cases.

In addition to his law practice, for over two decades Professor Holzer was a full-time tenured professor of law at Brooklyn Law School, where he is now professor emeritus. His courses included Constitutional Law; First Amendment; Foreign Affairs, National Security, and the Constitution; and Appellate Advocacy.

Professor Holzer is the author of nearly two hundred articles, essays, and reviews. He has frequently published commentary on current legal and political issues at various Internet websites (e.g., [www.henrymarkholzer.com](http://www.henrymarkholzer.com), [www.front-pagemag.com](http://www.front-pagemag.com), [www.theconservativevoice.com](http://www.theconservativevoice.com)).

Six of Professor Holzer's out-of-print books — *The Gold Clause; Government's Money Monopoly; Sweet Land of Liberty? The Supreme Court and Individual Rights; The Layman's Guide to Tax Evasion; Speaking Freely: The Case Against Speech Codes; and Why Not Call It Treason?: Korea, Vietnam, Afghanistan and Today* — are available from various Internet booksellers, including [www.iUniverse.com](http://www.iUniverse.com) and [www.amazon.com](http://www.amazon.com).

Professor Holzer is co-author — with his wife, lawyer and novelist Erika Holzer — of "*Aid and Comfort*": *Jane Fonda in North Vietnam*, which answers the question of whether Fonda's trip to Hanoi during the Vietnam War, and her activities there, constituted treason. With Erika Holzer, he also co-authored *Fake Warriors: Identifying, Exposing, and Punishing Those Who Falsify Their Military Service*. Henry Mark Holzer's most recent book—*The Keeper of the Flame: The Supreme Court Jurisprudence of Justice Clarence Thomas*—was published in 2006.

Since 1990, Henry Mark Holzer has been a trustee of Institute for Animal Rights Law. ([www.instituteforanimalrightslaw.org](http://www.instituteforanimalrightslaw.org)). Since 1970 he has been a director (now chairman) and general counsel of International Society for Animal Rights. ([www.isaronline.org](http://www.isaronline.org)).

# INSTITUTE FOR ANIMAL RIGHTS LAW

*Providing Legal Information, Analysis,  
and Guidance For The Animal Rights Movement*

{[www.instituteforanimalrightslaw.org](http://www.instituteforanimalrightslaw.org)}

Created over a decade ago, Institute for Animal Rights Law (IARL) (a 501 (c)(3) entity) has been deeply involved in legal efforts on behalf of animals. Among other Institute activities over the years,

- IARL has drafted state and federal animal protection legislation.
- IARL has counseled animal rights organizations on legal topics.
- IARL has developed widely distributed reports on animal legal issues.
- IARL has presented seminars on animal rights subjects.
- IARL has filed amicus curiae legal briefs on behalf of animals.
- IARL has provided lecturers for animal rights symposia.
- IARL has advised public officials on legal issues affecting animals.
- IARL has educated the public about the legal rights of animals.
- IARL has contributed to the creation of animal rights literature.
- IARL has mentored law students interested in the animal rights field.
- IARL has litigated on behalf of animal rights causes.

Among the areas of concern to the Institute over the years has been that of veterinary malpractice and the intentional harming of companion animals. Regrettably, as widespread as veterinary malpractice and intentionally harming of companion animals is, most laypersons and lawyers know little or nothing about the subject.

To remedy that lack of information, the Institute's chairman, Professor Henry Mark Holzer, has researched and written this monograph in furtherance of IARL's mandate to provide legal information, analysis and guidance to the animal rights movement, as well as to others whose companion animals have been victims of veterinary malpractice and intentional harm.

# INTERNATIONAL SOCIETY FOR ANIMAL RIGHTS

*Engaged in humane education aimed at  
reducing the overpopulation of companion animals*

{[www.isaronline.org](http://www.isaronline.org)}

**F**ounded in 1959, ISAR is a District of Columbia not-for-profit corporation, possessing 501 (c) (3) status.

ISAR was the first organization in the United States to use the term “Animal Rights” in its corporate name.

The first federal and the first state court opinion to use the term “animal rights” were in animal rights cases initiated by ISAR.

As long ago as the early 1980s, Harvard University’s Office of Government and Community Affairs sponsored an in-depth study of the animal rights movement, including its goals and strategies. In its published report, Harvard noted that:

[P]hilosophically, animal rights/welfare groups can be classified as abolitionists or regulationists. The abolitionists, such as ISAR . . . constitute a minority within the movement. They are, however, also the most diligent, tactical and clear thinking. They use the law, publications and education to work for their ultimate goal[s] . . . .

ISAR’s principal activities in support of its mission of humane education aimed at reducing the overpopulation of companion animals include, but are not limited to:

- Publication and worldwide distribution of Special Reports dealing with topics such as the American Kennel Club and Dog Overpopulation; Animal Behavior and Animal Rights; Bequests for the Benefit of Animals; Celebrity/Morality and Public Service Announcements; Conservatives and Animal Rights; Dog and Cat Overpopulation; Early Age Spay/Neuter; Elvis, ISAR, and Dog/Cat Overpopulation; Freedom of Information Act; High-Volume, Low-Cost Spay/Neuter Clinics; Mandatory

Identification of Companion Cats and Dogs; Microchips; Model Adoption Sterilization Statute; Model Department of Animal Affairs Statute; Model Euthanasia Statistics Statute; Model Mandatory Spay/Neuter Statute; Model Spay/Neuter Tax Deduction Statute; Organizing a Spay/Neuter Mobile; Pet Overpopulation Survey; Puppy Mills; Suffering vs. Profit.

- Organization and supervision of state ISAR volunteers, who, among other activities, act as ISAR's "eyes and ears" by monitoring the press, distributing ISAR educational material, recruiting radio and television stations to play ISAR public service announcements, and initiating ISAR legislation drafted by Institute for Animal Rights Law.
- Promotion of ISAR's billboard campaign, which places 12' x 25' billboards on the highways of the United States that carry the spay/neuter message.
- Preparation of brochures and "fact sheets" concerning the nationwide problem of dog and cat overpopulation.
- Instigation of letter-to-the-editor campaigns in support of increased awareness of the overpopulation problem in general, and the spay/neuter solution in particular.
- Creation and annual facilitation of "National Homeless Animals' Day/Candlelight Vigils," that memorialize the literally countless puppies and kittens, dogs and cats, euthanized in shelters annually because they are "surplus" in lacking a home. The day is observed with vigils held now in virtually every state and major city in the United States, as well as in foreign countries.
- Promulgation (within the allowable tax regulations) and dissemination of legislation (prepared by Institute for Animal Rights Law) addressing the overpopulation problem.

## DEDICATION

To Helen Jones, one of the original sparks

&

To the lawyers, judges, legislators, and scholars  
who have furthered the noble cause of adapting  
laws for humans to the service of animal rights.

## ACKNOWLEDGEMENTS

The late Helen Jones, a pioneer in the animal rights movement and founder of International Society for Animal Rights, was instrumental in the creation of Institute for Animal Right Law, partner with ISAR in the conception and creation of *Harming Companion Animals: Liability and Damages*. Helen was a visionary about animal rights, especially the impact lawyers could have on behalf of animals. Helen Jones would have been pleased to know how her vision is today being realized throughout the United States in courts, legislatures and academia.

Erika Holzer, a trustee of Institute for Animal Rights Law, edited the manuscript of this monograph with her usual enthusiasm and sense of clarity.

Hanna Gibson, J.D., doggedly researched every source available and from them compiled what is probably the most extensive bibliography extant of contemporary veterinary malpractice and intentional harm to companion animals.

Last, but certainly not least, I want to acknowledge the many lawyers and law students whose professional lives now include legal work on behalf of animals. Whether their work is research, writing, teaching, advising, litigating, drafting, or legislating, these men and women have taken up the cudgels on behalf of those who cannot protect themselves. Many of them have unknowingly contributed to this book.

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## INTRODUCTION

Too often, especially with the advent of the Internet, advice is sought from Institute for Animal Rights Law from the custodians of companion animals about harm done to them by veterinarians through misdiagnosis, prescribing the wrong medicine, operating unnecessarily or not when they should, and committing every other kind of malpractice imaginable. We also receive heartbreaking reports of intentional acts of cruelty perpetrated against companion animals: dogs shot by neighbors, cats stoned by teenagers, horses maimed by sadists.

The media exposure now being given to the harm being visited upon companion animals causes nightmares for their custodians, who live in fear their animals may be the next victims.

Given what is now known about the emotional aspects of the human-animal bond, and how the millions of companion animal caretakers experience that bond, it's not surprising that when harm is caused the custodian seeks some kind of recourse.

Often a complaint is made to prosecutors, the licensing authorities, or the Better Business Bureau. Sometimes newspaper announcements are placed, reporting what the wrongdoer did, or failed to do. Mostly, however, the reaction of choice is a lawsuit—usually not to recover damages for their own sake, but to expose the wrongdoer's conduct, to prevent him from harming any animals in the future, and/or to punish him financially.

Once virtually unheard of, in the past two decades the number of civil lawsuits arising out of harm to companion animals has soared. Various reasons have been given for this phenomenon, among them the information explosion, a more litigious culture, a burgeoning literature on the subject, more lawyers willing to take such cases, the development of new theories on which to sue, a greater awareness of the importance of companion animals to their caretakers' quality of life, and a greater willingness on the part of legislatures and courts to treat seriously the harm done to companion animals.

But to say that “the number of civil lawsuits arising out of harm to companion animals has soared,” is not to say that the litigation is succeeding. In fact, despite the occasional anecdotal story that makes the news-

papers and a sound bite on local TV news, much of the litigation is not succeeding—not if success is measured by achieving the lawsuits' primary goal: *imposing a financial penalty on the wrongdoer so that his conduct will be deterred.*

This is especially true of litigation triggered by veterinary malpractice, *which is without question the source of most harm to companion animals.*

Tactically, suing for veterinary malpractice is a good idea. But even if a veterinarian is found liable in a civil action, the damages are usually inconsequential because of the legal status of companion animals and the judicial system's indifference to the value companion animals have to their custodians. Because of these two disabilities—animals as mere property, and their worth akin to inanimate objects—the cost to those who harm companion animals is virtually nil.

In a malpractice case, if the veterinarian has the usual professional liability coverage, the insurance company, not the veterinarian, will pay the costs of the defense. If the plaintiff proves liability, the insurance company will pay, not the veterinarian.

But even if there is no insurance, or liability is imposed for conduct that the insurance does not cover (e.g., an intentional act), the damages the veterinarian has to pay will be relatively small. And to the extent that damages for harm to companion animals is minimal, there is less an incentive for a veterinarian and his staff to exercise the appropriate level of care.

It is a truism that generally people exercise care in direct proportion to their assessment of, and their willingness to incur, risk.

Most lawyers will be careful and not wait until the last day to file a notice of appeal. They appreciate the risk of disastrous consequences from a malpractice suit, if the notice of appeal is “out of time.” If the lawyer has malpractice insurance that has to pay a claim arising out of failure to timely file a notice of appeal, if he can even get malpractice insurance afterwards the company will likely raise his premium and his deductible.

But this disincentive to sloppy professional work because of either non-renewed coverage, or coverage at a higher cost, does not affect *veterinarians*. If their malpractice policies are not renewed and they are later found liable in another case, the damages will usually be modest.

If veterinarians do have coverage and lose a malpractice case, the insurance company will pay the judgment and the increased premium will be negligible. Indeed, as Christopher Green, Esq., notes in his seminal article “The Future of Veterinary Malpractice Liability in the Care of Companion Animals”:<sup>1</sup>

The price of liability coverage for veterinarians has not risen once in over a decade and premiums actually dropped in each of the two prior years. This means that veterinarians are now paying *less* for their malpractice coverage than they were 14 years ago. If one further adjusts for inflation, the average price of veterinary liability insurance is now 44% *lower* than in 1989—an effect verified by the country’s largest veterinary liability insurer who reports that it collected the same total dollar amount in premiums from the 42,000 veterinarians it insured in 2001, as from the 26,000 it insured ten years earlier.

As to the cost of that insurance, Green reports that “[i]n 2003, basic liability coverage for a companion animal veterinarian still costs only \$147 per year. For a scant \$41 more, small animal veterinarians can boost their policy to the highest coverage tier of \$1,000,000 per claim and \$3,000,000 in total annual claims—a ten-fold increase in protection for a total premium price of only \$188 per year.”<sup>2</sup>

Why is veterinary malpractice insurance so inexpensive?

The answer is obvious: the handful of awards in companion animal veterinary malpractice cases have been nowhere near the available policy liability limits, so, as a practical matter, the insurance companies have little or no risk—especially if the award is within the policy’s deductible, which the insured veterinarian pays himself.

Nor will awards be anywhere near the available policy limits until our culture, legal and social alike, changes its basic attitude toward the nature of companion animals and their value to their human caretakers—an attitude rooted in outdated notions about both.

For example, a couple of years ago one of New York’s intermediate appeals courts decided a case entitled *Lewis v. DiDonna*.<sup>3</sup> A pharmacist mislabeled the dosage on a prescription for plaintiff’s dog, who died as a result of the negligence.

On appeal, the five-judge appellate court considered the trial judge's ruling that allowed plaintiff "to introduce proof of loss of companionship": "Pets," all five appellate judges ruled, "are recognized as personal property . . . and damages for the loss of a pet are limited to the value of the pet at the time it died . . . which are ordinarily proven by establishing the *market value* of the pet, if it has one, or, if there is no market value, by such factors which tend to fairly show its value."<sup>4</sup>

Cited in support of this "animals as property" principle was an 1881 case from the highest court in New York. Ironically, the decision upheld a conviction for stealing "property"—a dog. But while the "animals as property" principle was what upheld the nineteenth-century conviction, the 2002 *Lewis v. DiDonna* court should have read further into the 1881 case, which somewhat tempered that view of companion animals:

The reason generally assigned by common-law writers for this rule as to stealing dogs is the baseness of their nature and the fact that they were kept for the mere whim and pleasure of their owners. When we call to mind the small spaniel that saved the life of William of Orange and thus probably changed the current of modern history . . . and the faithful St. Bernards, which, after a storm has swept over the crests and sides of the Alps, start out in search of lost travelers, the claim that the nature of a dog is essentially base and that he should be left a prey to every vagabond who chooses to steal him will not now receive ready assent.

Still, in 1881 and in most states today, companion animals are considered personal property not the sentient beings that indisputably they are and that, we, their custodians, know them to be.

There are animal rights activists who believe, with some reason, that the solution to the "animals as property" mindset, and its consequence of imparting a negligible value to their wellbeing and lives, is through legislation. Indeed, as we shall see later in this monograph, some legislatures, albeit few, have taken a more modern view and enacted statutes enlarging the kinds of claims that can be brought for harm to companion animals, and by increasing the measure of damages for their injury or death.

Other people believe, equally well intentioned, that the solution lies in the courts, by encouraging them to fashion new remedial rules as to the kinds of claims that can be brought and increasing the measure of damages.

Each camp is correct, but only up to a point. While legislative and judicial reform *can* result in a demise of the “animals as property” principle and accord companion animals and their custodians the legal protection they deserve and so desperately need, the question is: what will cause that reform?

The answer is a simple one: in the long run, only *a cultural and social change in thinking about the nature of companion animals, and their importance to the wellbeing of their human friends.*

In the meantime, because the necessary change in thinking has not yet occurred, Institute for Animal Rights Law almost daily receives reports of veterinary malpractice and intentional harm done to companion animals. Because the requests to us for information about what can be done about these wrongs have so grown in number, it is no longer efficient for the Institute to respond to them individually. That is why, on behalf of Institute for Animal Rights Law, I have written *Harming Companion Animals: Liability and Damages*.

This monograph is intended to be, and should be understood as, only *educational* in nature. *It is not intended to constitute, and should not be considered, legal advice generally or for any individual situation in particular.* When confronted with a legal problem regarding negligent or intentional harm to a companion animal, there is no substitute for face-to-face, fact-specific advice obtained from one’s own attorney. Accordingly, Institute for Animal Rights Law urges anyone with a potential or actual problem of this kind to consult a lawyer.

Moreover, *Harming Companion Animals: Liability and Damages* is not intended to be a comprehensive statement of the law on that subject. Its modest goal is to present merely general statements of the principal legal categories, using a single example to illustrate each.

Specifically, *Harming Companion Animals: Liability and Damages* focuses on the nature and scope of wrongdoers’ liability and the damages that may be recoverable from them. The book’s methodology is to present brief but thorough explanations of the applicable principles of liability and damages, and then to illustrate them by the use of extensive quotations from actual cases.

Although the monograph has not been written primarily for lawyers, the information contained in it should be of considerable value to them,

especially the use of actual cases and the extensive up-to-date bibliography, which includes:

- Law review articles.
- Law review notes.
- Book reviews.
- Books.
- International resources.
- Journals.
- Magazine articles.
- Miscellaneous resources.
- Newspaper articles.
- Online resources.
- Pending legislation.
- Unsuccessful bills.
- Currently existing statutes.
- Recently reported cases.

*Harming Companion Animals: Liability and Damages* has been written for the benefit of the layperson whose companion animal has been harmed by negligent or intentional conduct (or, occasionally, by a breach of contract). Accordingly, the monograph has kept the legal jargon to a minimum, when possible expressing legal concepts mostly in lay terms (except when using quotes from actual court decisions).

*Harming Companion Animals: Liability and Damages* does not deal with criminal conduct. There are currently laws in every state criminalizing certain kinds of illegal behavior toward animals in general, and companion animals in particular. However, because the monograph is intended to arm the layperson in dealing with the *civil* consequences of negligent and intentional acts, it does not cover criminal conduct.

The monograph's analysis consists of two major parts.

Part I deals with "liability" resulting from wrongful conduct. Someone must have done something either negligently or intentionally (or even through breach of contract) to cause harm to a companion animal.

If there is liability, the second question, dealt with in Part II, is: what are the "damages"?

Even though most of the harm to companion animals results from veterinary malpractice, *Harming Companion Animals: Liability and Damages* should not be taken as a criticism (let alone a condemnation) of all veterinarians.

On the contrary.

Although among the thousands and thousands of veterinarians in the United States there are some bad apples—just as in the medical, legal, and all other professions—*the vast majority of veterinarians and their staffs are caring, dedicated, competent, healers who feel deeply about the animals they treat. For them, all of us who share our lives with companion animals are eternally grateful.*

# PART I

## LIABILITY

### Intentional Conduct

The word “tort” will frequently be used in this monograph, so it’s a good idea to have a simple, workable explanation of what it means.

Human beings are engaged in a countless variety of activities, from driving cars to performing brain surgery. It’s probably impossible to list everything that people do in the normal (and sometimes abnormal) course of their lives.

Sometimes things go wrong. A disgruntled employee will smash his computer. An electrician will wire a circuit box backwards. As a result, the employer and the homeowner will suffer financial and other types of losses. Generally speaking, the law of torts is designed to allocate the costs of those losses, sustained by one person as the result of what someone else has done (or failed to do): the commission of a “tort.” (Torts and crimes are quite different. A tort is sometimes referred to as a “civil wrong,” and defined as “a wrongful act for which damages can be sought by the injured party.”)

Essentially, there are two kinds of torts, intentional and negligent. (I’ll deal with negligence in Chapter 2).

Without getting too technical, “intent” is the mental state of wanting something to happen because of something you’re going to do. If Bob Jones points a loaded gun at Dick Smith’s head and pulls the trigger, the law will infer that Bob intended to kill Dick. If you’re Bob, you did it because you intended to kill Dick.

To illustrate the principle of tort in the context of intentional conduct that has harmed (actually killed) companion animals, and to provide the reader with a real-life illustration of the kind of evidence necessary to prove liability, the following is an edited version of a case entitled *Burgess v. Taylor*, decided unanimously by three judges in the Kentucky Court of Appeals on March 9, 2001<sup>5</sup>—a heartbreaking case, that is not easy reading.

The owner of two pet horses sued, for intentional infliction of emotional distress (sometimes in Kentucky called the tort of “outrage”)

because the woman who was supposed to board them instead sold them for slaughter.

The jury found for plaintiff.

On appeal, one of the first statements the court made was that “the conduct of the *offender* [the defendant] rather than the *subject* of the conduct [the horses] determines whether the conduct was outrageous.”<sup>6</sup> In other words—and this is very important—what the defendant *did* was the test of “outrageousness”—*not that the victim of that conduct was an animal.*

Judy Taylor (“Taylor”) was the owner of two registered Appaloosa horses, nicknamed Poco and P.J. Taylor had owned Poco for 14 years (since he was a foal) and P.J. for 13 years (since her birth). Taylor loved Poco and P.J. as if they were her “children.” Taylor and others testified that the horses were gentle and affectionate, and, having spent their entire lives together, were inseparable.

Due to a variety of medical problems . . . it was difficult for Taylor to perform some of the physical tasks necessary to properly care for her horses by herself. Taylor did not want to sell or separate Poco and P.J. Therefore, she decided to try to find someone with a farm who would like to care for both of them in exchange for the enjoyment of having them—a common arrangement in the horse world sometimes referred to as a “free-lease agreement.”

Taylor’s brother suggested that his friends, Lisa and Jeff Burgess, who had a small farm with horses of their own, might be interested in such an arrangement. Taylor subsequently spoke to the Burgesses, explained her situation and the arrangement she was looking for. Taylor testified that she explained to Lisa that she never wanted to lose contact with or control of Poco and P.J., that she wanted to be able to visit them, and if the Burgesses ever didn’t want to keep them anymore, Taylor would take them back or find another place for them to live.

Lisa agreed, assuring Taylor that she loved and was knowledgeable about horses, that she had a nice pasture for them to live in together, that she liked helping people, and that Taylor could come and visit the horses any time she wanted.

Believing that she had found a good place for her horses, Taylor agreed to let Poco and P.J. go live with the Burgesses. Taylor did not transfer ownership of the horses, nor ever indicate to the Burgesses that she no longer wanted them. On August 31, 1994, the Burgesses came to Taylor's residence to pick up Poco and P.J. Later that evening, Lisa called Taylor to tell her that they had led them around their new pasture and that the horses were doing fine.

Within the next few days, Lisa Burgess called Eugene Jackson, a known slaughter-buyer, to say she had two horses for sale. On September 6, 1994, Jackson purchased Poco and P.J. from the Burgesses for a total of \$1,000.00.

Taylor waited a week before planning her first visit in order to give Poco and P.J. time to adjust to their new surroundings. She bought some film and treats for the horses and called Lisa to say that she would like to come and see Poco and P.J. and take some pictures. Lisa told Taylor "they're gone," that she had given them to a man she had met on a trail ride, but she did not know his name. Upset and frightened, Taylor said she needed to know who he was and where her horses were so she would know they were okay and could bring them back to her home. Lisa said she would find out and let Taylor know. The Burgesses then asked their friend, Kenny Randolph, to cover for them by lying and telling Taylor that he had the horses. Randolph never had possession of Poco and P.J. at any time and admitted his role in the events when questioned by a Harrison County, Indiana police detective.

Not hearing from Lisa, and after learning about the dangers of the slaughter market at a humane event over the weekend, Taylor called back and begged Lisa to tell her where Poco and P.J. were. At first, Lisa refused to tell her. Eventually, she lied and said that they were with a Kenny Randolph in the Corydon area of Indiana. Taylor called Randolph and told him she wanted to see her horses. Randolph, lying, told Taylor that he had them, but was not going to let her see them or tell her where they were. Taylor pleaded with him to tell her, and he eventually gave her vague directions to a fictitious location in the Frenchtown, Indiana area where he said they were in a pasture. He refused to give her spe-

cific directions or the name of the “gravel road” the pasture was supposedly on. Frantic, Taylor drove to the area and tried to find the gravel road Randolph spoke of. Taylor tried every road she found, stopping and asking people along the way if they had seen the horses, but was, of course, unsuccessful. Finally, it became dark, and a distraught Taylor had to return home.

With the aid of Victoria Coomber, a humane investigator, and Sharon Mayes, president of a local humane organization, in early October 1994, Taylor learned that Poco and P.J. had been purchased from the Burgesses by Eugene Jackson, a known slaughter-buyer, and then sold to Jason Ryan of the Ryan Horse Company, a business which supplies horses to slaughterhouses. Ryan Horse Company sold them to the Beltex Corporation in Texas where they were slaughtered in late September.

On August 23, 1995, Taylor filed an action in Jefferson Circuit Court

. . . . The jury returned a verdict against the Burgesses, finding that they had breached their agreement with Taylor and that they had intentionally inflicted emotional distress on Judy Taylor.

In 1984, seventeen years before the Burgess decision, the Kentucky Supreme Court had for the first time recognized the tort of intentional infliction of emotional distress (“outrage”) for conduct affecting *humans*, adopting a formulation shared by virtually all other states that have accepted the tort:

One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

Thus, in order to recover in Kentucky and in other states where the tort has been recognized, the plaintiff must prove four elements:

- 1) the wrongdoer’s conduct must be intentional or reckless<sup>7</sup>;
- 2) the conduct must be outrageous and intolerable in that it offends against the generally accepted standards of decency and morality;

- 3) there must be a causal connection between the wrongdoer's conduct and the emotional distress; and
- 4) the emotional distress must be severe.

Said the Kentucky court:

First, it is clear that the Burgesses' conduct was reckless in that they intended their specific conduct and either knew or should have known that emotional distress would result. Lisa Burgess admitted that she never had any intentions of keeping Poco and P.J. She sold P.J. and Poco to Eugene Jackson, a known-slaughter buyer, shortly after she acquired them. Further, the jury heard testimony from Kenny Randolph that the Burgesses told him that they had sold the horses to Eugene Jackson to go to slaughter, and that the Burgesses had asked him to lie for them so Taylor would not find out what they had done. There was significant evidence that the Burgesses were aware of Taylor's feelings for Poco and P.J., and hence, knew or should have known that emotional distress would result from their selling them to a slaughter-buyer.

Second, the Burgesses' conduct clearly rises to the level of being outrageous and intolerable in that it offends generally accepted standards of decency and morality, certainly a situation "in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'."

The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know. \* \* \* Compelling evidence was presented at trial establishing Taylor's love for her horses and concern that they were in a good place. Recognizing that love, Lisa Burgess called Judy Taylor the evening she picked up the horses to tell her that she led them around their new pasture and the horses were doing fine. The jury heard evidence of subsequent phone calls by a distraught and frightened

Taylor to Lisa Burgess and Kenny Randolph, *begging* to know where her horses were. \* \* \* The Burgesses knew that Poco and P.J. were heading to slaughter, and that Taylor was, in reality, pleading for their lives. Yet, in the face of Taylor's pleas for the horses she loved like children, the Burgesses continued to lie and refuse to tell her where they were. This Court cannot characterize this emotional torment inflicted by the Burgesses upon Taylor as anything other than "heartless, flagrant, and outrageous."

Third, the sale of Poco and P.J. by the Burgesses to a known slaughter-buyer satisfies the requirement of a causal connection between the Burgesses' conduct and the emotional distress. Further, the Burgesses' subsequent lies precluded Taylor from locating and saving her horses before they were slaughtered. Additionally, contrary to the Burgesses' assertions, we conclude sufficient evidence was presented from which the jury could properly infer that Poco and P.J. were, in fact, slaughtered.

Finally, the evidence indicates that Taylor suffered severe emotional distress. Taylor testified that when she learned what had happened to Poco and P.J., she broke down, knowing that "my babies were dead." Since then she has suffered from many panic attacks, and has had major problems with high blood pressure for which she must receive medical care. She suffers from anxiety and depression, for which she takes medication, and has had many thoughts of suicide. She described overwhelming feelings of loss and failure. She testified she has trouble sleeping and has recurring nightmares in which she hears Poco's scream in her head. Taylor testified that she has sought help from her doctor and social workers but cannot get over what happened.

Having found that the plaintiff satisfied all four criteria for an intentional infliction of emotional distress claim, the appeals court upheld the jury's verdict.

In those criteria, and the facts the plaintiff produced to satisfy them, there exists for others who would bring similar claims for intentional infliction of emotional distress, a veritable "how to do it" checklist.

As in the Burgess case, proof that the alleged wrongdoer acted intentionally can be shown by the existence of a plan, or through the wrongdo-

er's understanding the likely consequences of his conduct. For example, stealing from a parked car a poodle wearing ID tags.

As in the Burgess case, proof that the wrongdoer acted in a manner that offends generally accepted standards of decency and morality will arise from the facts of the case itself, as, for example, where teenagers put a kitten into a clothes dryer or bury a puppy alive. Or do something outrageously similar to what Burgess did to the plaintiff's pet horses.

As in the Burgess case, proof of a causal connection between the wrongdoer's conduct and the emotional distress will usually be easy to establish—for why would the aggrieved custodian of a harmed companion animal sue unless the defendant had somehow directly caused the injury or death? This causality is usually found, for example, where a dog who is allowed to run free is poisoned by a neighbor. Poisoned meat + hungry dog = death.

As in the Burgess case, proof that the emotional distress is severe is perhaps the easiest element to prove, as that case painfully makes apparent. In the hundreds of cases Institute for Animal Rights Law has seen, the emotional distress suffered by the custodian of a companion animal who has been intentionally harmed is usually considerably more than merely "severe"—an emotional state most jurors can relate to because of their own relationships, directly, or even indirectly, with companion animals.

I need to emphasize, however, that *a claim for intentional infliction of emotional distress for harm to a companion animal can only succeed (1) in a state that recognizes the existence of that tort and, (2) like the Kentucky courts, is willing to apply it to distress caused by harm to a companion animal.* A state whose courts (or legislature) understand that it is "the conduct of the *offender* [the defendant] rather than the *subject* [the companion animal] of the conduct that determines whether the conduct was outrageous." In other words, that what the defendant *did* is the test of "outrageousness"—*not that the victim of that conduct was an animal.*

Most states, however, do not recognize that the tort of intentional infliction of emotional distress can apply to harming a companion animal.

For example, take the Connecticut case of *Pantelopoulos v. Pantelopoulos*.<sup>8</sup> The former husband alleged that his ex-wife intentionally allowed his pet dog to starve to death when she moved out of her house,

leaving the dog in the garage without food or water. “While the court is sympathetic to the loss experienced by the plaintiff in losing a beloved pet,” said the judge, “Connecticut [does not recognize a claim] . . . for intentional infliction of emotional distress in connection with the loss of a pet.”

In states like Connecticut, and New Jersey, for example, there are two solutions to this callous and primitive notion that a human can’t be emotionally damaged by the intentional harm to a companion animal with whom he has bonded.

One solution is to get legislation enacted that provides otherwise. Another is to keep hammering the courts until they rule otherwise, using the Burgess case as a model. Until then, in the states that either don’t recognize the tort of intentional infliction of emotional distress or, if they do, don’t apply it to the injury or death of a companion animal, their custodians will have to put up with the following kind of immoral judicial decision represented by *Pantelopoulos v. Pantelopoulos*.

### Negligence

As I said in Chapter 1, “human beings are engaged in a countless variety of activities, from driving cars to performing brain surgery. It’s probably impossible to list everything that people do in the normal (and sometimes abnormal) course of their lives.”

Sometimes things go wrong. A driver runs a red light, hitting someone. A surgeon leaves a sponge in someone’s abdomen. As a result, the injured pedestrian and the harmed patient will suffer financial and other types of losses.

Just as in cases of intentional torts, the law requires an allocation of the cost of those negligently caused losses.

Again without getting too technical, “negligence” is conduct below a standard of care that the law considers adequate to protect someone from the unreasonable risk of harm. To win a negligence case, the plaintiff must prove that a duty of care was owed and breached, that the negligent conduct was foreseeable, and that it was the proximate cause of the injury. (Also, that there were damages.)

To illustrate the principle of tort in the context of negligent conduct that has harmed (actually killed) companion animals, and to provide the reader with a real-life illustration of the kind of evidence necessary to prove liability, the following is an edited version of *Kenny v. Lesser*, an appellate court case from New York.<sup>9</sup>

A New York State jury awarded a horse owner \$100,000 because of the defendant's veterinary malpractice. On appeal, the court ruled that there was enough evidence to support the verdict. Here are the facts of the case, and the court's malpractice (i.e. negligence) analysis:

On October 11, 1993, plaintiff's three-year-old thoroughbred race horse underwent arthroscopic surgery for removal of a chip fracture in his right front fetlock at defendant . . . \* \* \* During the course of the procedure, the horse was anesthetized with a combination of drugs, the bone chip was successfully removed and the horse was transported to a recovery stall. While in recovery, the horse went into cardiac and respiratory arrest and died.

Claiming that the horse was over anesthetized and improperly monitored during the surgery, plaintiff commenced this veterinary malpractice action against the clinic . . . \* \* \*

There was no dispute at trial that plaintiff's horse succumbed to the effects of the anesthesia administered during surgery. The debate was over whether this horse was among the small percentage of equine patients that simply do not survive anesthesia through no fault of the surgeon and/or anesthesiologist, as defendants contended, or whether any act or omission on the part of defendants . . . caused his death, as plaintiff contended. On this disputed point, plaintiff presented the testimony of one expert, Nicholas Dodman. \* \* \*

It was established during Dodman's testimony that he is a veterinarian, board certified in veterinary anesthesiology. He is also a professor at Tufts University School of Veterinary Medicine in Boston, Massachusetts. During his career—which spanned nearly 30 years . . .—he lectured all over the country on veterinary anesthesia and anesthetic drugs and authored hundreds of articles on the subject of veterinary anesthesia. Dodman himself has anesthetized some 2000 horses undergoing surgery.

Defendants contend that Dodman was unqualified to give an expert opinion on the standard of care because he practiced in a “university” setting, as opposed to this Albany County clinical setting. We disagree. Dodman’s testimony, detailing impressive credentials in the very specific area of veterinary anesthesiology, sufficiently established his qualifications as an expert in this case, as well as his familiarity with the standard of care applicable to veterinarians administering anesthesia during surgery. The fact that Dodman did not practice in a clinical setting did not render his testimony inadmissible . . . . \* \* \*

We also disagree with defendants’ contention that the verdict is against the weight of the evidence . . . . \* \* \* Dodman testified that the care and treatment rendered by [the anesthetist and surgeon] included departures from accepted standards of veterinary practice which caused the horse’s death. Specifically, he opined that the dosage of one particular drug administered to the horse . . . over a short period of time, particularly in conjunction with the administration of a large dosage of another drug . . . and an inordinately high level of a gaseous volatile anesthetic . . . constituted a departure from accepted standards of veterinary care. These dosages, according to Dodman, caused the horse to become respiratorily and cardiovascularly depressed, a condition which went undetected . . . . When disconnected from pure oxygen after surgery, Dodman’s testimony continued, the horse could not sustain himself on room air only. Dodman also opined that the monitoring procedures employed . . . during surgery—taking a peripheral pulse and making visual observations of the horse—were substandard. According to Dodman, various devices were available to monitor the horse’s vital signs during and after surgery, including an aneroid gauge to measure blood pressure (blood pressure being the single most important determinate of the depth of anesthesia in a horse), blood gas monitoring equipment and/or an electrocardiogram monitor. He specifically opined that standard practice required that a patient be monitored by these devices when Halothane is being administered. Dodman further noted that no contemporaneous notes were recorded by [one of the veterinarians] during surgery, which might have enabled him to document the developing trend in the respiratory and cardiac depression that ensued while the horse was under anesthesia. Dodman opined that

where, as here, an orthopaedic patient is anesthetized with gaseous Halothane, it is a departure from standard practice not to keep such notes.

In his defense [one of the veterinarians] denied over-anesthetizing the horse and further opined that he properly monitored the horse's vital signs during the surgery by making visual and auditory observations and by taking his pulse every five minutes. Of note, plaintiff, who was present in the operating room, contradicted [the veterinarian] on this latter point, testifying that [the veterinarian] sat two feet away from the horse during surgery and never touched him throughout it. The jury also learned through [the veterinarian's] testimony that he considered aborting the surgery because the horse was not properly responding to the anesthesia. It was further established at trial that *after* the horse died, [the veterinarian] created a chart of the entire procedure. This postoperative record attempts to document, in time and dosage, the various drugs administered during surgery, as well as the horse's vital signs at particular time intervals. The jury further learned that, after creating this chart, [the veterinarian] then made additional changes to it. \* \* \*

To establish a checklist for people who want to sue for veterinary malpractice, let's go back to what I said about the requisite elements of a negligence claim.

We know that Kenny's horse *died*.

We know that as a result Kenny suffered a *loss*.

We know that the law requires an *allocation* of the cost of that loss if there was negligence.

We know that negligence is conduct below a *standard of care* that the law considers adequate to protect someone from the *unreasonable risk of harm*.

We know that to win a negligence case, the plaintiff must prove that the negligent conduct was *foreseeable*, and the *proximate cause* of the injury. (We know also, that there were damages, a subject to be discussed in Part II).

In the *Kenny v. Lesser* decision, we see all of this: conduct below the acceptable standard of care because of the way the anesthesia was handled

and monitored, foreseeable injury or death if it was not handled and monitored correctly, and not having done so being the proximate cause of the horse's death.

This will be the typical analysis in a case where a companion animal has been injured or killed as the result of a veterinarian's negligence.

*Every state recognizes claims for negligence for the injury or death of a companion animal*, which means that it will be the most frequently brought claim, as compared with a lawsuit for breach of contract, which are usually not very useful.

### Breach of Contract

Ordinarily, we don't associate the injury or death of a companion animal with a claim for breach of contract; instead the focus is on a tort lawsuit for either intentional or negligent harm.

But sometimes a breach of contract claim will succeed in establishing the offending veterinarian's *liability*, though the problem of *damages* is a serious one (see Part II). Here is one example, from the case of *Austin v. State of Illinois*<sup>10</sup>:

The owner's dog was diagnosed with malignant lymphoma. The owner took his dog for chemotherapy treatment at the State's university veterinarian hospital. The dog responded positively to the first protocol of treatment. When the dog returned for the second protocol, there was no evidence that the dog was treated. The chemotherapy flow sheet was not initialed by a clinician or administrator. The State called no witnesses to testify that they administered the appropriate chemotherapy drugs to the dog. There were no authorization forms or estimates prepared. The dog was not lethargic as he had been after the first treatment. The dog suffered a relapse. The owner paid to have the oncologist remove a sample of the cancer and to send it to a lab. The test was never done, and the owner was never refunded. The owner established two instances of breach of contract. The owner showed that the dog never received the second treatment. It was presumed that treatment was not provided since there was no documentary evidence of the treatment and no testimony that the treatment was

provided. Also, the test for which the owner paid was never performed, and the owner was never refunded.

Because the owner's claim was not for intentional or negligent tort, but only breach of contract, the damages were almost nothing—as we'll see in Part II. Even the judge who wrote the opinion realized that contract damages were inadequate:

This is a sad and difficult case. No monetary award can bring back Dirty Red to Claimant. No amount of money could satisfy Claimant's loss. There is also no question that Dr. Kitchell is a caring, veterinary oncologist. However, she was not present on April 16, 1997, when the Claimant's dog was not treated properly. It is the Court's desire that this Opinion will cause the Respondent to do a better job of charting and that a constructive end will come from this case.

Nice sentiments, but because the damages are so small in a breach of contract case, there is little or no incentive for wrongdoers to change their ways.<sup>11</sup>

## PART II

# DAMAGES

### Generally

Essentially, there are two kinds of damages for the commission of a tort, “compensatory” and “punitive.”

Again without getting too technical, compensatory damages, as the name suggests, are those which make the injured party whole for the loss he has suffered. If your brand new Jaguar is totaled in your driveway by a drunk driver, you’re entitled to a brand new Jaguar. If it happened while you were driving and you were hurt, you’re entitled to medical expenses, loss of income, etc.—and you’re also entitled to damages for what’s called “pain and suffering,” which can be awarded by a jury in almost any amount.

Punitive damages (sometimes called “exemplary damages”) are those over and above compensatory damages, where the tort committed was maliciously, violently, oppressively, or done in a similar manner. The idea behind punitive damages is to punish the wrongdoer and send a message of deterrence to others who might be inclined to the same behavior.

To illustrate both kinds of damages, we can take another look at the case of *Burgess v. Taylor*, which arose in the context of an intentional tort.

### Intentional Torts

Because of what the defendant had done to the plaintiff’s pet horses, the manner in which it was done, and the consequences to the plaintiff and her horses, the jury awarded Taylor \$51,000 in compensatory damages for outrageous conduct; and \$75,000 in punitive damages, for a total of \$126,000.

Burgess had claimed that under Kentucky law, “the proper award of damages for the loss or damage to an animal is the value of that animal, not emotional damages for that loss.” The court disagreed, saying that “there are no cases in Kentucky holding that a finding of intentional infliction of emotional distress or punitive damages is precluded simply because the facts giving rise to the claim involve an animal. \* \* \* ”

Then Burgess argued that the \$51,000 in compensatory damages and \$75,000 of punitive damages for emotional distress was “excessive.”

The appeals court noted that the trial judge had considered that issue “and found that when viewed in relation to all of the evidence submitted to the jury, the jury’s award was not excessive” because that evidence had painted an horrendous picture of Burgess’ callous conduct and its emotionally devastating impact on Taylor.

Lastly, Burgess argued that the award of punitive damages for intentional infliction of emotional distress resulted in double recovery for Taylor.

The appeals court disagreed with this, too. Said the court:

The \$50,000.00 award for compensatory damages for the tort of outrageous conduct is calculated to make whole, or compensate, Judy Taylor for her actual . . . loss. \* \* \* This includes damages for emotional distress for intentional acts regardless of whether accompanied by physical injury. \* \* \* Punitive or exemplary damages, on the other hand, are not intended to compensate a victim for his or her loss, but are designed to punish or deter a person, and others, from committing such acts in the future. \* \* \* Therefore, a victim of outrageous conduct can recover both compensatory and punitive damages.

Under the facts of that case, the appellate court believed that a total damage award of \$126,000 was appropriate. But remember, the tort was the *intentional* infliction of emotional distress.

### Negligent Torts

You’ll recall the dead horse case, *Kenny v. Lesser*. The jury found that the fair market value of the horse killed by veterinary malpractice was \$100,000. The appeals court found that:

this figure is fully supported by competent and credible evidence. In addition to his own testimony that the horse showed a tremendous amount of talent, had a “fantastic” disposition with an ability to learn quickly and had made significant racing accomplishments

in a relatively short period of time with minimal training, plaintiff also presented evidence that a licensed horse trainer familiar with the horse was ready and willing to purchase him for \$75,000 in August 1993 and that this offer remained viable even after the trainer learned about the . . . bone chip. A licensed thoroughbred trainer and horse breeder, who was also very familiar with this specific horse having ridden him on numerous occasions and who had experience buying, selling and evaluating horses, described the horse as “very nice”, “very well balanced”, “very fast and sound” and healthy. This expert opined that the horse was worth \$125,000 in October 1993. Touting their expert on damages to be the only competent and qualified witness on this issue, defendants urge that the horse’s value was considerably less than the \$100,000 figure arrived at by the jury, namely, \$20,000. The jury heard from this expert and obviously chose to either totally disregard his opinions or simply factor same into its ultimate conclusion on fair market value. This Court finds no reason to interfere with this discretionary, fact-finding function on its part . . . .

Because *Kenny v. Lesser* involved a horse instead of a dog or a cat, there was no claim made for pain and suffering, or what are called “non-economic” losses. An example of the latter in the context of a negligence case concerning a companion animal is *McAdams v. Faulk*, in the State of Arkansas.<sup>12</sup>

Mr. McAdams’ dog died as the result of the defendant’s negligence. He sued, and the trial court dismissed his complaint. On appeal, the defendant argued the dismissal was correct because McAdams had failed to allege the market value of his dog, which was important because “Arkansas law is clear that dogs are personal property and the measure of damages is the market value of the dog at the time of its death.”

The appeals court disagreed, because

{d}amages on a negligence claim are not limited to economic loss damages, and include compensation for mental anguish. \* \* \* An award for mental anguish may cover not only the mental suffering prior to trial, but also the suffering which is reasonably probable to occur in the future. \* \* \* The allegations include reference to [McAdams’] mental suffering from which he will never recover. We also note that punitive damages are recoverable on a

malpractice claim. Second, [the defendants] assert that the complaint fails to allege any facts that would support an award of \$50,000 or any such greater amount as may be determined to be necessary to deter Dr. Faulk and others . . . \* \* \*

Unfortunately, states and cases are rare that recognize the right to recover more than “market value” for the negligent injury or death of a companion animal.

### Breach of Contract

An 1854 English case, *Hadley v. Baxendale*, established the measure of damages recoverable for breach of contract, a precedent that continues to be applied in American courts even today: damages within the contemplation of the parties at the time the contract was made.

We saw this rule at work in the case of *Austin v. State of Illinois*, where:

The owner paid to have the oncologist remove a sample of the cancer and to send it to a lab. The test was never done, and the owner was never refunded. The owner established two instances of breach of contract. The owner showed that the dog never received the second treatment. It was presumed that treatment was not provided since there was no documentary evidence of the treatment and no testimony that the treatment was provided. Also, the test for which the owner paid was never performed, and the owner was never refunded.

What was Dirty Red’s custodian’s recovery? The grand sum of \$2,212.

The defendant walked away with no judgment against it for the custodian’s emotional distress, his pain and suffering, his mental anguish, and for the loss of his companion. Let alone a judgment against the defendant for punitive damages.

## CONCLUSION

This brief discussion of the liability and damages aspects of harming companion animals underscores the greatest problem today facing themselves and those of us who care for them: that through intentionally and negligently wrongful conduct they can be harmed with virtual impunity. As Christopher Green has said:

{T}he overwhelming refusal of American civil courts to allow more than market value damages in cases of veterinary malfeasance [or in cases of intentional harm] presents two main problems. First, there is the *equity*, or *fairness*, issue: whereby human victims of veterinary negligence are not fully compensated for the emotional and financial investments made in their companion animals. Second, there is the *efficiency* issue: whereby the inability to recover more than nominal damages financially precludes owners actually harmed by veterinary malpractice from even seeking civil redress in the courts. This preclusion in turn prevents any meaningful judicial oversight to ensure that veterinarians are adequately conforming to the level of care expected by pet owners and the rest of American society.<sup>13</sup>

Happily, there are some few states that have seen the light.

Arkansas: Ark. Code. Ann. §16-114-201(2) & §16-114-208(2) (1987). Section 201 includes veterinarians in the list of health care practitioners subject to the medical malpractice statutes. Section 208 provides for non-economic damages, pain and suffering.

California: Cal. Civ. Code § 3340 allows punitive damages for wrongful injury to animals for willful or gross negligence.

Connecticut: Conn. Pub. Act No. 22-351 & 22-351a (2004). Section 351 creates a civil cause of action for stealing, confining, concealing or unlawfully injuring or killing a companion animal. Section 351a allows punitive damages.

Illinois: 510 Ill. C.S. 70/1 et seq. (Ill. 2002), the recent Humane Care for Animals Act allows emotional distress damages to a guardian whose pet is intentionally injured and provides for punitive damages and attorney's fees.

Montana: Mont. Code Ann. § 27-1- 222 (2001) allows punitive damages for injuring an animal intentionally, or by gross negligence.

Rhode Island: Section 4-1-50 allows non-economic damages for the loss of the reasonably expected society, companionship, love, and affection of the pet. Veterinarians, however, for the present, are exempt.

Tennessee: Tenn. Code. Ann., Section 44-17-403 (2000) allows non-economic damages for negligently or intentionally causing fatal injuries or death of a pet.

In other states, ameliorative legislation is pending.

Hawaii: H.B. 648/ S.B. 757 was introduced in January 2005. It authorizes non-economic damage awards up to \$250,000. Punitive damages up to the same amount of \$250,000 would also be authorized. Both bills amend the definition of "health care provider" to include many additional medical practitioners, including veterinarians licensed in the state.

New Jersey: A.B. 2411 was introduced on February 24, 2004 and S.B. 2012 was introduced in November 8, 2004. The house bill was reported out of committee with amendments in September 2004. The Senate version is still in committee. They provide for a civil action against a person committing an act of cruelty against a domestic companion animal. Damages may include, but need not be limited to, the monetary value of the animal, veterinary expenses, burial expenses, reimbursement of animal training expenses, loss of companionship, and emotional distress suffered by the custodian. Damages awarded for loss of companionship cannot exceed \$20,000.

New York: A.B. 3585 and S.B. 1789 establishes a tort cause of action for the wrongful injury or death of a companion animal, and provides for compensatory and punitive damages and injunctive relief and a three year statute of limitations on commencement of such an action.

Oregon: S.B. 442 was introduced February 1, 2005. It would allow aggrieved pet owners to sue for non-economic damages up to \$500,000, for loss of a pet, including but not limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss of care, comfort, companionship and society, loss of consortium, inconvenience and interference with normal and usual activities apart from gainful employment. Veterinarians are not exempt.

These statutes—the ones already enacted, and the ones now on the table—point the way to what must be done: every state in the Union must, either by legislation or court decision, recognize that the custodians of companion animals can suffer if they are intentionally or negligently harmed, and that to vindicate that anguish and the rights of the injured or killed, the laws have to change. Christopher Green has talked of “fairness” and “efficiency,” and justifiably so.

But there is another, more basic, aspect to the proper recompense for the harming of companion animals: morality!

## FOOTNOTES

<sup>1</sup> 10 *Animal Law* 163, 174-175 (2004):

<sup>2</sup> Green at 175.

<sup>3</sup> 294 A.D.2d 799, 743 N.Y.S.2d 186 (2002).

<sup>4</sup> Italics added.

<sup>5</sup> The case can be found in the West Publishing Co. system of reported judicial opinions at 44 S.W.3d 806. In the remainder of this monograph, three or four periods (dots) signify that at least one word but not a complete sentence has been omitted. Asterisks (\*) signify that at least one sentence has been omitted. Bracketed ([ ]) material has been added by the author. The indented paragraphs are portions of the courts' opinions.

<sup>6</sup> Italics added.

<sup>7</sup> Reckless conduct lies between intentional and negligent conduct, and is often explained as perceiving a known risk but engaging in the conduct anyhow. An example would be deliberately driving the wrong way on a one-way street. If the driver didn't know it was a one way street, it would be negligence. If he did, and wanted to hit someone, it would be the intentional tort of battery.

<sup>8</sup> 869 A.2d 280 (Conn. Super., 2005).

<sup>9</sup> 281 A.D.2d 853, 722 N.Y.S.2d 302 (2001).

<sup>10</sup> 54 Ill. Ct. Cl. 375 (2000).

<sup>11</sup> Increasingly, other theories of liability are tried. Among them are bailment, breach of fiduciary duty, deceptive or fraudulent trade practices, common law fraud and misrepresentation, unfair trade practices, conversion, breach of warranty, strict liability. But they don't work even on a trial level, let alone on appeal.

<sup>12</sup> 2002 WL 700956.

<sup>13</sup> Green at 192.

## BIBLIOGRAPHY

Compiled By: Hanna Gibson, J.D.

### Law Review Articles

Cheryl M. Bailey, M.A., J.D., *Veterinarian's Liability for Malpractice*, 71 A.L.R.4th 811, (1989-2004).

Christopher Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 Animal L. 163 (2004).

Elaine t. Byszewski, *Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and a Suggestion for Valuing Pecuniary Loss of Companionship*, 9 Animal L. 215 (2003).

Elizabeth Paek, *Fido Seeks Full Membership in the Family: Dismantling the Property Classification of Companion Animals by Statute*, 25 Hawaii L. Rev. 481 (2003).

Enger McCartney-Smith, *Can Nonhuman Animals Find Tort Protection in a Human-Centered Common Law?*, 4 Animal L. 173 (1998).

Geordie Duckler, *The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation*, 8 Animal L.199 (2002).

Harold W. Hannah, *Animals as Property Changing Concepts*, 25 S. Ill. U. L. J. 571 (2001).

Janice M. Pintar, *Negligent Infliction of Emotional Distress and the Fair Market Value Approach in Wisconsin: The Case for Extending Tort Protection to Companion Animals and Their Owners*, 2002 Wis. L. Rev. 735 (2002).

Jay M. Zitter, J.D., *Measure, Elements, and Amount of Damages for Killing or Injuring Cat*, 8 A.L.R.4th 1287 (1981).

Jay M. Zitter, J.D., *Recovery of Damages for Emotional Distress Due to Treatment of Pets and Animals*, 91 A.L.R.5th 545 (2001-2005).

Jayne De Young, *Toward a More Equitable Approach to Causation in Veterinary Malpractice Actions*, 16 Hastings Women's L.J. 201 (2005).

Joseph H. King, Jr., *The Standard of Care for Veterinarians in Medical Malpractice Claims*, 58 Tenn. L. Rev. 1 (1990).

Julian Lee, *Woof, Woof: A Call for Legislative Action to Help Companion Animals and Those Who Care for Them*, 32 W. St. U.L. Rev. 141 (2004).

Lynn A. Epstein, *Resolving Confusion in Pet Owner Tort Cases: Recognizing Pets' Anthropomorphic Qualities Under a Property Classification*, 26 S. Ill. U. L. J. 31 (2001).

Margit Livingston, *The Calculus of Animal Valuation: Crafting a Viable Remedy*, 82 Neb. L. Rev. 783 (2004).

Mark Sadler, *Can the Injured Pet Owner Look To Liability Insurance for Satisfaction of a Judgment? The Coverage Implications of Damages for the Injury or Death of a Companion Animal*, 11 Animal L. 283 (2005).

Mary Margaret McEachern Nunalee & G. Robert Weedon, *Modern Trends in Veterinary Malpractice: How Our Evolving Attitudes Toward Non-human Animals Will Change Veterinary Medicine*, 10 *Animal L.* 125 (2004).

Patricia V. Russo, *Malicious, Intentional and Negligent Mental Distress in Florida*, 11 *Fla. St. U.L. Rev.* 339 (1983).

Peter Barton & Francis Hill, *How Much Will You Receive in Damages from the Negligent or Intentional Killing of Your Pet Dog or Cat?*, 34 *N.Y.L. Sch. L. Rev.* 411 (1989).

Rebecca J. Huss, *Recent Developments in Animal Law*, 40 *Tort & Ins. L.J.* 233 (2005).

Rebecca J. Huss, *Valuation in Veterinary Malpractice*, 35 *Loy. U. Chi. L.J.* 479 (2004).

Rebecca J. Huss, *Valuing Man's and Woman's Best Friend: The Moral and Legal Status of Companion Animals*, 86 *Marq. L. Rev.* 47 (2002).

Robin Cheryl Miller, J.D., *Damages for Killing or Injuring Dog*, 61 *A.L.R.5th* 635 (1998, 2004).

Sam A. Mackie, J.D., *Veterinary Malpractice*, 32 *AMJUR POF* 3d 351 (2005).

Sonia S. Waisman & Barbara R. Newell, *Recovery of 'Non-Economic' Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend*, 7 *Animal L.* 45 (2001).

Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 *Animal L.* 33 (1998).

Thomas G. Kelch, *Toward a Non-Property Status for Animals*, 6 *N.Y.U. ENVTL. L.J.* 531 (1998).

### Law Review Notes

Debra Squires-Lee, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 *N.Y.U.L. Rev.* 1059 (1995).

Gregg A. Scoggins, D.V.M., *Legislation Without Representation: How Veterinary Medicine Has Slipped Through the Cracks of Tort Reform*, 1990 *U. Ill. L. Rev.* 953 (1990).

Katie J.L. Scott, *Bailment and Veterinary Malpractice: Doctrinal Exclusivity, or Not?*, 55 *Hastings L.J.* 1009 (2004).

S. Joseph Piazza, Note, *Liability for the Injury and Destruction of Canines*, 26 *U. Fla. L. Rev.* 78, 85-89 (1973).

William C. Root, "Man's Best Friend": Property or Family Member? An Examination of the Legal Classification of Companion Animals and Its Impact on Damages Recoverable for Their Wrongful Death or Injury, 47 *Vill. L. Rev.* 423 (2002).

## Book Reviews

Diana C. Jaque and Lee Neugebauer, *Kistler, John M. Animal Rights: A Subject Guide, Bibliography, and Internet Companion & Soave, Orland A. Animals, the Law and Veterinary Medicine: A Guide to Veterinary Law. 4th ed.*, 93 Law Libr. J. 505 (2001).

Elinor Molbegott, *Soave, Orland A., Animals, the Law and Veterinary Medicine: Guide to Veterinary Law*, New York Law Journal, June 16, 2000 at 2.

Sheila Collins, *Soave, Orland A., Animals, The Law, and Veterinary Medicine: A Guide to Veterinary Law*, 90 Law Libr. J. 370 (1998).

## Books

Favre, David & Peter L. Borchelt, *Animal Law and Dog Behavior* 53 (1999).

Francione, Gary, *Animals, Property, and the Law* (1995).

Gannon, Deidre E., *The Complete Guide to Dog Law* (Howell Book House Macmillan Pub. Co. 1994).

Geyer, L. Leon, *Malpractice and Liability, Legal Issues Affecting Veterinary Practice* (W.B. Saunders 1993).

Hannah, H.W. & Donald F. Storm, *Law for the Veterinarian and Livestock Owner* (3d ed., Interstate, 1974).

Hemenway, Henry Bixby, *Essentials of Veterinary Law* (T.H. Flood & Co. 1916).

Kistler, John M., *Animal Rights: A Subject Guide, Bibliography, and Internet Companion* (Westport, Conn.: Greenwood Press, 2000).

Leavitt, Emily Stewart, *Animals and their legal rights; a survey of American laws from 1641 to 1970.* (2<sup>nd</sup> ed. Animal Welfare Institute, New York, 1970).

Morris, William Otis, *Veterinarian in Litigation* (VM Publ. Inc. 1976).

Randolph, Mary, *Dog Law: A Legal Guide for Dog Owners and Their Neighbors* (5th ed. Nolo Press 2005). (2<sup>nd</sup> ed only)

Soave, Orland A., *Animals, the Law and Veterinary Medicine: A Guide to Veterinary Law* (4th ed., Austin & Winfield, 2000).

Soave, Orland A., *Veterinary Law: Laws Governing Veterinarians and Animals* (Iowa State University Press, 2003).

Watts, Tim J., *Veterinary Law and Malpractice: A Bibliography* (Vance Bibliographies, 1989).

Wilson, James F., et al., *Law and Ethics of the Veterinary Profession* (Priority Press, 1988).

## International Resources

*Lawsuits May Be Allowed When Pets are Abused*, Saigon Times Daily (Feb. 13, 2003).

Philip Sherwell, *Now Pets Really are Part of the Family Thanks to US 'Paw Laws'*, News Telegraph, June 26, 2005, at <http://www.money.telegraph.co.uk/news/main.jhtml?xml=/news/2005/06/26/wpet26.xml&Sheet=/news/2005/06/26/ixworld.html>. Tim Wilbur, *Will Canadian Courts Go To Cats and Dogs?*, The Lawyers Weekly, Vol. 25 No. 8, June 24, 2005.

## Journals

Carol L. Gatz, *Animal "Rights" and Emotional Distress for Loss of a Pet*, 43 Orange County Lawyer 16, March 2001.

*Case Notes: Veterinary Malpractice*, Medical Malpractice Law & Strategy March, 1996 at 2.

Douglas C. Jack, *Lawsuits, the Human-Animal Bond and Veterinarians*, Veterinary Prac. News 12 (Apr. 2001).

Gina Valeri, *Changing Attitudes Toward Pets: Should It Change Your Liability?*, APPMA Advisor, Issue 6, May 2005, available at <http://www.appma.org/newsletter/may2005/LegalBriefs.html>.

Harold W. Hannah, *Common Law and Statutory Defenses to a Veterinary Medical Malpractice Action*, 206 J. Am. Veterinary Med. Assoc. 1703 (June 1, 1995).

Harold W. Hannah, *Emotional Distress, Punitive Damages, and the Veterinarian—Some Judicial Responses*, 216 J. Am. Veterinary Med. Assoc. 25 (January 1, 2000) (recognizing that recovery for emotional distress has only been allowed in cases where claims are based on more than ordinary negligence).

Harold W. Hannah, *Loss of Companionship and Emotional Distress—Who Determines Liability?*, 220 J. Am. Veterinary Med. Assoc. 26 (Jan. 1, 2002).

Harold W. Hannah, *When Can Failure to Inform Support a Malpractice Claim?*, 218 J. Am. Veterinary Med. Assoc. 1419 (May 1, 2001).

Jack R. Dinsmore, *Veterinary Lawsuits: Trends and Defense Strategies*, 23 Veterinary Clinics N.Am. 1019 (1993).

Jeannie M. Perron, *The Law of Veterinary Liability and the Human-Animal Bond*, 210 J. Am. Veterinary Med. Assoc. 184 (January 15, 1997).

L. Leon Geyer, *Malpractice and Liability*, 23 Veterinary Clinics N. Am: Small Animal Prac. 1027 (1993).

Paul Marcotte, *More than a Pet Project*, 75 A.B.A.J. 26 (January, 1989).

R. Scott Nolen, *California Dog Owner Awarded \$39,000 in Veterinary Malpractice Suit: Jurors Find Dog's Special Value Far Exceeds \$10 Market Value*, JAVMA News, April 15, 2004, at <http://www.avma.org/onlnews/javma/apr04/040415e.asp>.

R. Scott Nolen, *The Human-Animal Bond: A Legal Liability for Veterinarians?* 221, No. 6 JAVMA 762, Sept. 15, 2002.

Randall Duke, *Is the Price Right?*, Texas Lawyer, December 1, 1997 at 42.

Richard L. Cupp Jr. & Amber E. Dean, *Veterinarians in the Doghouse: Are Pet Suits Economically Viable?*, The Brief, Volume 31, No. 3, Spring 2003.

Robert G. Seidenstein, *Vet Malpractice: Distress Award Denied in Pet's Death*, New Jersey Lawyer, Volume 13, Number 37, September 13, 2004.

*Several Factors at Play When Determining Compensatory Value of Animals, AVMA Says: Profession Must be Proactive in Developing Alternatives to Market Value as a Basis for Compensation*, JAVMA News, July 1, 2003, at <http://www.avma.org/onlnews/javma/jul03/030701j.asp>.

*Superior Court; Torts: Veterinary Malpractice \* Implied Bailment*, Pennsylvania Law Weekly January 9, 1995 at 14.

*The Value of a Pet...Exactly What is It?*, Inforum, Vol 8, No. 2, May 2004.

William Pritchard, *Changing Environments and External Factors that May Impact Veterinary Medicine*, 194 J. Am. Veterinary Med. Assoc. 1694 (June 15, 1989).

### Magazine Articles

Anita Hamilton, *Woof, Woof, Your Honor; It's No Joke. Animal Lawsuits are Gaining Respect as Pet Owners Seek Justice for the Ones They Love*, Time Magazine, December 13, 2004 at 46.

Jennifer Fiala, *Court Rulings Could Up Ante on DVM Malpractice*, DVM Newsmagazine 1, 32 (May 2001), available at <http://www.cybersure.com/about.asp?DocId=1795>.

Jennifer Fiala, *Courts Sway Regarding Pets as Property*, 32 DVM 1, 1 (Sept. 2001).

Jennifer Fiala, *CVMA Covets Heightened Legal Status for Pets*, DVM Newsmagazine, No. 2, Vol. 35, February 1, 2004 at 36.

Jennifer Fiala, *Dissention Abounds Concerning Pet Worth*, DVM Newsmagazine, May 1, 2004.

Jennifer Fiala, *Drug Industry Lobbies Against Raising Pets Worth*, DVM Newsmagazine, March 1, 2004.

Jennifer Fiala, *Florida Ruling Challenges Pet Status Precedent*, DVM Newsmagazine, No. 5, Vol. 35, May 1, 2004 at 9.

Jennifer Fiala, *New Jersey Crafts New Legal Status for Pets*, DVM Newsmagazine, August 1, 2003.

Jennifer Fiala, *Press Overstates Florida Pet Status Decision*, DVM Newsmagazine, No. 8, Vol. 34, August 1, 2003 at 8.

Jennifer Fiala, *Profession Grapples with Evolving Pet Status*, DVM Newsmagazine, April 1, 2003.

Mary Battiata, *Whose Life is It, Anyway?; The Good News: New Trends in Veterinary Medicine Can Help Extend the Lives of Pets. The Bad News: The Costs, Risks and Complications Increasingly Resemble Human Medicine*, *The Washington Post*, August 29, 2004 at W16.

*On The Docket*, *DVM Newsmagazine*, No. 2, Vol. 35, February 1, 2004 at 37.

Richard Willing, *Under Law, Pets are Becoming Almost Human*, *USA Today*, Sept. 13, 2000, at 1A.

### Miscellaneous Resources

American Animal Hospital Association, *Move Over Cindy Crawford- Fido Has More Clout*, at <http://www.cyberpet.com/cyberdog/articles/general/crawford.htm>.

Animal Legal Defense Fund, *Strong Language in Support of Emotional Distress*, 7 A.L.D.F. Update 1, 2-3 (Spring/Summer 2003) (discussing *Lunas v. Stockton* No. PF 261.90 (Alameda County, California Apr. 2, 2003) (unpublished opinion)).

Carolyn B. Matlack, *Sentient Property: Unleashing Legal Respect for Companion Animals*, 7 A.L.D.F. Update (newsletter of the A.L.D.F.) (Spring/Summer 2003).

Catherine L. Wolfe, *The Annual Report of the Animal Law Section of the State Bar of Michigan*, 79 *MI Bar Jnl.* 1340 (2000).

*Companion Animal Wrongful Death or Injury Cases*, ALDF Memo, July 20, 2005 at <http://www.aldf.org/packets.asp?sect=resources>. (last viewed July 20, 2005).

*Court Allows Family to Pursue Arguments That View Animals as Having Value Beyond That of Mere Property and Commodities*, IDA News Release, January 26, 2001, available at [http://www.idausa.org/news/newsarchives/news\\_brock012601.html](http://www.idausa.org/news/newsarchives/news_brock012601.html).

Daniel Putman, *Tragedy and Nonhumans*, *Environmental Ethics* 11 (1989): 345-53.

*Dead Dog Standing. (Dead Dog Listed as Plaintiff in Veterinary Malpractice Suit)*, *Arkansas Business and Economic Review*, Volume 18, Issue 28, July 9, 2001.

*Dog Death Prompts Malpractice Suit*, *CBS News*, June 25, 2003, available at <http://www.cbsnews.com/stories/2003/06/25/eveningnews/main560405.shtml>.

Geordie L. Duckler & Dana M. Campbell, *Nature of the Beast: Is Animal Law Nipping at Your Heels?*, 61 *Or. St. B. Bull.* 15 (June 2001) (reporting that the loss of companionship "tort was given its first official imprimatur of approval" by Washington County Circuit Court in Oregon in a pending civil case when Judge Marco Hernandez allowed the claim to go forward to trial for the first time anywhere in the nation).

James F. Wilson, Presentation, *\$250,000 in Emotional Distress Damages for the Loss of a Pet? What's This Bond Coming To?* (AVMLA Annual Meeting Denver, Colo., July 20, 2003).

Julie Scelfo, *Good Dogs, Bad Medicine? More Pet Owners Sue for Malpractice—And Win*, *Newsweek.com*, May 21, 2001, available at <http://allcarelawsuits.ctyme.com/gooddogs.htm>.

Kate Schott, *Dog Is Slain By Police Officer; Woman Wins Civil Rights Claim*, Chic. Daily L. Bull. 3 (Feb. 27, 2002).

*The Local Take: Pennsylvania Lawyers and Judges are Well-Acquainted with the Dog-Eat-Dog (and Dog-Bite-Man) World of Pet Law*, The Legal Intelligencer May 27, 1997 at 6.

*Man Can't Sue Vet for Pain, Suffering in Pet's Death*, Broward Daily Business Review, Vol. 45; No. 65, March 12, 2004 at 12.

Mark S. Lindensmith, *Veterinary Malpractice: How Much Was That Doggy in the Window*, Trial, Jan. 1982, at 49-51.

National Conference of State Legislators, *Canine Loss Spurs New Law*, State Legislatures Magazine, October/November 2000, available at <http://www.ncsl.org/programs/pubs/1011DOG.HTM>.

*NJ Resolution on Animal Guardianship and Liability Legislation*, The Council of State Governments, CGS Governing Board, CSG Annual Meeting, September 29, 2004. \*

Noreen Marcus, *950,000 Verdict in Suit over Treatment of Race Horse*, Broward Daily Business Review, December 13, 1996 at B1.

P. Kennedy Page, *The Potential Cost of Losing Fido's Company; Aggrieved Pet Owners are Seeking Compensation for the Loss of Their Loved Ones*, Nat'l L.J., January 8, 2001, at A15.

P. Kennedy Page, *Tort Law Gone To the Dogs? Suing For Loss of A Pet*, The Recorder, January 18, 2001.

*Precedent-Setting Ruling Recognizes Animals' Value: Jury Finds All-Care Vet Guilty of Malpractice*, IDA News Release, February 24, 2004, available at <http://www.idausa.org/news/currentnews/rookssuit.html>.

Ralph Johnson, Presentation, *Legislation Regarding Recovery of Non-Economic Damages in Veterinary Malpractice Suits* (AVMLA Annual Meeting Denver, Colo., July 20, 2003).

Robert G. Seidenstein, *Vet Malpractice: Distress Award Denied In Pet's Death*, 13 New Jersey Lawyer, September 13, 2004, at 4.

Sarah A. Moser, *Michigan Debates Monetary Value of Pets*, 43 Veterinary Economics 6 (2002).

Steven P. Garmisa, *Court Sees More Than One Way to Set Damages In Lawsuit for Dead Cat*, Chicago Daily Law Bulletin, April 21, 2005.

*Torts; Professional Malpractice: Williamson v. Prida: Supreme Court Case No. S084257*, California Supreme Court Service, December 17, 1999.

Wendy S. Meyers, *The Changing Status of Pets*, Veterinary Practice News 1, 8 (Apr. 2003) (providing a brief overview of several of the state legislative proposals attempted to date).

William W. Krueger and Christian J. Von Wupperfeld, *The Truth About Cats and Dogs; No Mental Anguish Recovery for Loss of a Pet*, Texas Lawyer February 23, 2004.

## Newspaper Articles

*\$45,000 Awarded in Mauling; Neighbor's Dog Had Killed Woman's Cat*, Columbian (Vancouver, WA) May 10, 2005 at C2.

Alisa Bralove, *Dog Breeder Files Veterinary Malpractice Suit*, The Daily Record (Baltimore, MD) November 12, 2003.

Alisa Bralove, *Dog Breeder's Suit Survives*, The Daily Record (Baltimore, MD) March 24, 2004.

Bill Alden, *Dog-Death Damages Expanded to "Intrinsic Value"*, New York Law Journal, August 28, 1996.

Cassio Furtado, *Lawsuits Blame Vets for Harm to Pets*, Tampa Tribune (Florida) May 24, 2003.

Chris Richard, *Number of Malpractice Cases Spikes ... for Pets*, Christian Science Monitor (Boston, MA) July 28, 2003 at 02.

Claire Booth, *Lawsuit Determines Pets Are Not Just Property*, Contra Costa Times A29 (Nov. 2, 2003).

Claire Osborn, *High Price Put on Dog's Life*, Austin American-Statesman B1 (Nov. 16, 2003).

Correy E. Stephenson, *Veterinary Malpractice Suits Gaining Prominence Despite Award Limitations*, Kansas City Daily Record (Kansas City, MO) April 28, 2005.

*Courts Faced With Pets As Plaintiffs In Lawsuits*, Messenger-Inquirer (Louisville, KY) July 19, 2005.

David Hasemyer & David Washburn, *Man Sues Over Dog's Death in Animal Shelter*, San Diego Union-Tribune B1 (May 11, 2001).

David T. Roen, *Malpractice Suits Change How Veterinarians Do Business*, Lewiston Morning Tribune (Idaho) April 14, 2003.

Dawn Fallik, *Vets Fear Costly Lawsuits in Future Liability in Pa. And N.J. is Limited to Replacing the Pet, but Some States Now Award Money for Emotional Damage*, Philadelphia Inquirer (PA) July 26, 2004 at B1.

*Dead Racehorse Finishes in the Money in Texas*, The National Law Journal, February 5, 2001 at A13.

Emily Laird, *See Spot Sue*, The New York Times, May 8, 2005 at 14LI.

Erik Neely, *Vet Exemption Raises Questions*, The Post and Courier (Charleston, SC) B1 (Aug. 18, 2000) (discussing South Carolina magistrate's ruling that state law prevents veterinarians from being charged with animal abuse that occurs during treatment).

*Evidence: Court Analyzes Expert Testimony Regarding Standard Practice in Veterinary Care; Kenny, respondent v. Lesser, appellants*, New York Law Journal, April 5, 2001 at 17.

Gail Diane Cox, *Pet Suits Yielding Larger Damages for the Owners*, The National Law Journal, August 10, 1998 at A1.

Janice Neumann, *Veterinarian Faces Malpractice Lawsuit in Cat's Death*, Chicago Tribune, April 10, 2003.

Jason Riley, *Man Sues Vet over Dog's Death: Jefferson Case Part of a Growing Trend*, The Courier-Journal (Louisville, KY) July 18, 2005.

Jean-Paul Renaud, *Jury Awards Dog Owner \$39,000 in Malpractice Suit*, Los Angeles Times (Feb. 24, 2004) at B5.

Jerry Gleeson, *Dog-gone Expensive*, J. News (Westchester Co., N.Y.), Dec. 26, 2001, at 1D (reporting on a survey by the American Animal Hospital Association that found more than one third of respondents would be willing to pay almost any amount of money to save the lives of their pets).

Jessica Blanchard, *Woman Awarded \$45,000 in Cat Death Damages for Dog Mauling May be Feline Record*, The Seattle Post-Intelligencer, May 9, 2005 at B1.

John J. Goldman, *Chasing Justice: More and More Attorneys are Pursuing Animals-Rights Cases in Growing Recognition of the Bond between Pets and Their Owners*, Los Angeles Times, October 2, 1998 at E1.

Julia C. Martinez, *Pet Bill Killed by House Sponsor, Move Outrages Senate Backer*, Denver Post, Feb. 16, 2003, at B1.

Kate Coscarelli, *Pets, Owners Get Their Day in Court*, Pioneer Press (St. Paul, MN) July 24, 2005, available at <http://www.twincities.com/mld/pioneerpress/12190664.htm>.

Kathleen Burge, *Appeals Court Weighs the Value of Family Pets*, Boston Globe, Nov. 25, 2001, at B1.

Kay Lazar, *Courting a Pet Cause-Owners Push for Legal Rights of Furry Friends*, Boston Herald, Jan. 28, 2001, at 3 (describing one pet owner's fight for compensation for pain and emotional distress she suffered when her two-year-old dog was killed by utility truck).

Kristen Convery, *Dog's Owners Sue About Spaying Attempt; Pet was Already Fixed; Vet Was to Clean Teeth*, Dayton Daily News (Ohio) July 19, 2001 at 1B.

Larry Welborn, *Dog Owner Gets \$39,000 in Vet Suit: Jury Finds Negligence in Care of Pet Who Died, Awards 'Special' Value to Plaintiff*, The Orange County Register, February 21, 2004.

Larry King, *Accused Of Beatings, Vet Gets Probation*, The Philadelphia Inquirer, July 12, 2005, available at <http://www.philly.com/mld/inquirer/news/local/12109734.htm>.

Laura Parker, *When Pets Die at the Vet, Grieving Owners Call Lawyers*, USA Today, March 15, 2005 at 1A.

Lisa L. Colangelo, Thomas Zambito, *The Vets From Hell*, New York Daily News, May 29th, 2005 at <http://www.nydailynews.com/front/story/314164p-268587c.html>.

Lisa J. Huriash, *Dog Owners Entitled to Sue Veterinarian for Pet's Death in Potential Landmark Case*, Sun Sentinel (South Florida) July 1, 2003, available at <http://lists.envirolink.org/pipermail/ar-news/Week-of-Mon-20030630/002892.html>.

Lisa Sink, *Man Ordered to Pay \$7,500 for Poisoning Neighbors' Dogs*, Milwaukee J. Sentinel, Oct. 13, 2000, at 15B (describing jury verdict where man was ordered to pay \$7,500 in punitive damages for killing his neighbors' dogs with antifreeze-soaked meat).

Margaret Zack, *Horse Owners Finish Out of the Money After Trial Involving Sick Stallion*, Star Tribune (Minneapolis, MN) July 24, 1993 at 1B.

Monica Collins, *Family Matters: For Many, Pets are Like Kids, and the Animals' Love is Priceless. So When They Die In an Accident, It's Tough to Answer the Question "What Are They Worth?"*, The Boston Globe, May 8, 2005, at [http://www.boston.com/news/globe/magazine/articles/2005/05/08/family\\_matters](http://www.boston.com/news/globe/magazine/articles/2005/05/08/family_matters).

*No Need to Change the Status of Pets*, News Trib. (Tacoma, Wash.), Apr. 8, 2001, at B6 (discussing tendency of some courts to characterize pets as more than just property).

*Ownership, Bailment Issue Exists In Counterclaim for Vet Malpractice; Senk v. Zipern*, District Court, Judge Phelan, New York Law Journal, April 17, 1995 at 25.

Peggy Lowe, *Pet Bill Goes Out With Whimper; 'Companion' Idea's Death Leaves Author with Hangdog Look*, Rocky Mountain News (Denver, CO) February 15, 2003 at 4A.

Peter Huck, *This Man is a Lawyer. On His Desk is Pepe, His Next Client: American Lawyers-Tired of Fleecing Humans-Have Turned Their Attention to Animals. Peter Hucks Visits LA's "Dog Court"*, The Evening Standard (London) November 1, 2001.

*Ratusch v. Attas: Uncertainty as to 'Medical' Nature of Veterinary Services Leads to Malpractice Claim's Dismissal; Torts*, New York Law Journal, April 19, 2004 at 17.

Richard L. Cupp, Jr., *Barking Up the Wrong Tree Justice: Awarding Emotional Distress Damages to Pet Owners Whose Animals Are Harmed Is a Dog of an Idea*, Los Angeles Times, June 22, 1998, at B5.

Richard Marosi, *Every Dog Has His Day in Court*, Los Angeles Times, May 24, 2000, at A1 (discussing growing concern over the property status of animals and efforts by lawyers to include emotional distress damages in veterinary malpractice suits).

Richard Willing, *Under Law, Pets Are Becoming Almost Human*, USA Today, Sept. 13, 2000, at 1A (citing to the American Veterinary Medical Association statistics that "Americans spent \$11.1 billion on pet health care in 1998, up 61% from 1991").

Ruth Sheehan, *Sisters Decry Vet Board*, The News & Observer (Raleigh, North Carolina) April 12, 2003.

Ryan Frank, *Judge in Pet Death Suit Allows Companionship*, The Oregonian, January 26, 2001, available at [http://www.oregonlive.com/news/oregonian/index.ssf?/news/oregonian/01/01/metrosouthwest/o6\\_brock26.frame](http://www.oregonlive.com/news/oregonian/index.ssf?/news/oregonian/01/01/metrosouthwest/o6_brock26.frame).

Sandra Block, *Pet Insurance Can Save Owners from Wrenching Decisions*, USA Today, Feb. 19, 2002, at B3 (citing to survey that found that 78% of people “think of their pets as their children”).

*State Veterinarian Is Liable For Either Malpractice or Taking; Matter of Restrepo (State of New York)*, *Court of Claims, Judge Weisberg. Summary New York State*, New York Law Journal, January 25, 1990 at 21.

Steve Irsay, *Dead Dog's Owner Sues Vicious Animal's Master*, *Gazette Newspapers (California)*, July 14, 2005, available at <http://www.gazettes.com/maulcaset07142005.html>.

Thao Hua, *Attorney Lets the Fur Fly and Tips Tails of Justice; Courts: Lawyer is One of a Few Legal Eagles with an Emphasis on Animal Issues. His First Four-Legged Client? His Cat, Shredder.*, Los Angeles Times, August 3, 1998 at B1.

Tim Wilbur, *Will Canadian Courts Go to Cats and Dogs?*, *The Lawyers Weekly*, Vol. 25, No. 8, June 24, 2005.

Valerie Richardson, *Bill Targets Excess Vaccination of Pets*, *Wash. Times*, February 19, 2003 at A13.

Will Harper, *The \$50,000 Mutt: Under Laws that Treat Pets as Property, Vets are Largely Unaccountable for Malpractice. That's Something a Pair of Rookie Lawyers from Alameda Hope to Change*, *East Bay Express (California)* June 11, 2003.

William Glaberson, *Legal Pioneers Seek to Raise Lowly Status of Animals*, *The New York Times* August 18, 1999 at A1.

William Hageman, *Paw Law; Is Your Pet Entitled to His Day in Court? The Answer: Maybe.*, *Chicago Tribune*, June 5, 2005 at C1.

William Hageman, *Growing Trend of Pet Law Gives Animals Their Day in Court*, *Chicago Tribune*, June 29, 2005, at <http://www.fortwayne.com/mld/newssentinel/living/12012483.htm>.

### Online Resources

Erin Harty, *Veterinary Malpractice*, *VetCentric*, January 31 2005, at <http://www.vetcentric.com/magazine/magazineArticle.cfm?ARTICLEID=1339>.

*Pets or Furpeople? Owners or Guardians?*, *The Cat Fancier's Association, Inc.*, at <http://www.cfa.org/articles/legislative/owner-or-guardian.html>.

*Woman Gets \$45K for Cat Killed by Dog: Washington State Woman Awarded More Than \$45,000 for Cat Killed by Neighbor's Dog*, *The Associated Press, ABC News*, May 9, 2005, at <http://abcnews.go.com/US/wireStory?id=740793>.

### Pending Legislation

Hawaii: H.B. 648/ S.B. 757 introduced in January 2005. Authorizes non-economic damage awards up to \$250,000. Punitive damages up to the same \$250,000 would also be authorized. Both bills amend the definition of “health care provider” to include many additional medical practitioners, including veterinarians licensed in the state.

New Jersey: A.B. 2411 introduced on February 24, 2004 and S.B. 2012 introduced in November 8, 2004. The house bill was reported out of committee with amendments in September 2004. The Senate version is still in committee. Provides for civil action against a person committing an act of cruelty against a domestic companion animal. Damages may include, but need not be limited to, the monetary value of the animal, veterinary expenses, burial expenses, reimbursement of animal training expenses, loss of companionship, and emotional distress suffered by the owner. Damages awarded for loss of companionship cannot exceed \$20,000.

New York: A.B. 3585 and S.B. 1789 Establishes a tort cause of action for the wrongful injury or death of a companion animal; provides for compensatory and punitive damages and injunctive relief and three year statute of limitations on commencement of such an action.

Oregon: S.B. 442 introduced February 1, 2005. Would allow aggrieved pet owners to sue for non-economic damages up to \$500,000, for loss of pet, including but not limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss of care, comfort, companionship and society, loss of consortium, inconvenience and interference with normal and usual activities apart from gainful employment. Veterinarians are not exempt.

### Unsuccessful Bills

California: S.B. 225, 2003-2004 Leg., Reg. Sess. (Cal. Feb. 13, 2003) (non-economic damages).

Colorado: H.B. 1260, 64th Gen. Assembly, 1st Reg. Sess. (Colo. Jan. 31, 2003) (damages for loss of companionship).

Connecticut: H.B. 5571, 2002 Gen. Assem., Reg. Sess. (Conn. 2002) (punitive damages).

Maryland: H.B. 221, 416th Gen. Assembly, 2002 Reg. Sess. (Md. Jan. 18, 2002) (non-economic damages).

Maryland: H.B. 907, § 1 11-110(C)(1), 415th Gen. Assembly, 2001 Reg. Sess. (Md. Feb. 9, 2001) (non-economic damages).

Massachusetts: S.B. 932 §2(b), 183rd Gen. Ct., Reg. Sess. (Mass. 2003) (proposing to allow human companions to recover damages for “loss of reasonably expected society, companionship, comfort, protection and services of the deceased animal to his or her human companions” when their animal-companion is killed by a “willful, wanton, reckless or negligent act”).

Massachusetts: S.B. 462, 183rd Gen. Ct., 2001 Reg. Sess. (Mass. July 12, 2001).

Massachusetts: S.B. 2000, 182d Gen. Ct., 2001 Reg. Sess. (Mass. 2001) (proposed statute providing for punitive damages, attorney's fees, and consequential damages in suits for wrongful death of companion animal).

Michigan: S.B. 1379, 91st Leg., 2002 Reg. Sess. § 1 (Mich. June 18, 2002) (non-economic damages).

Mississippi: H.B. 84, 2003 Leg., Reg. Sess. (Miss. 2003) (died in committee) (proposing to allow pet "owner" to recover "an amount not to exceed Five Thousand Dollars (\$5,000.00) for the owner's loss of companionship and affection of the pet" for the intentional or negligent killing of their "canine, feline, bird, horse or other domesticated pet").

Mississippi: H.B. 220, 2002 Leg., Reg. Sess. (Miss. Jan. 8, 2002).

New Jersey: A.B. 3339, 210th Leg., 2d Reg. Sess. (N.J. Feb. 13, 2003) (damages for loss of companionship).

New Jersey: S.B. 61, 210th Leg., Reg. Sess. § 3 (N.J. Jan. 8, 2002). (proposed making the killing or injuring of a companion animal a separate offense: "punishable by a term of imprisonment of three to five years, a fine of up to \$15,000 or both").

New York: A.B. 4545, 2003-2004 Reg. Sess. (N.Y. Feb. 19, 2003).

Oregon: H.B. 3298 § 1(7) (b), 71st Leg. Assembly, 2001 Reg. Sess. (Or. Jan. 8, 2001) (non-economic damages).

Rhode Island: H.B. 5817, 2003-2004 Leg., Reg. Sess. (R.I. Feb. 11, 2003) (allows recovery for pain and suffering of the animal, emotional distress and any loss of companionship suffered by the guardian 4-23-28).

Rhode Island: S.B. 159, 2003-2004 Leg., Jan. Sess. (R.I. 2003). (non-economic damages for compensation for the loss of the reasonably expected society, companionship, love, and affection of a pet).

Rhode Island: H.B. 7020, 2001-2002 Leg., Reg. Sess. (R.I. Jan. 29, 2002) (originally introduced as R.I. H. 6056 on Feb. 6, 2001; non-economic damages for compensation for the loss of the reasonably expected society, companionship, love, and affection of a pet).

Rhode Island: S.B. 2357, 2001- 2002 Leg., Reg. Sess. (R.I. Jan. 30, 2002) (non-economic damages for compensation for the loss of the reasonably expected society, companionship, love, and affection of a pet).

### Currently Existing Statutes

Arkansas: Ark. Code. Ann. §16-114-201(2) & §16-114-208(2) (1987). (§201 includes veterinarians in the list of health care practitioners subject to the medical malpractice statutes; §208 provides for non-economic damages, pain and suffering).

California: Cal. Civ. Code § 3340. (allows exemplary damages for wrongful injury to animals for willful or gross negligence).

Connecticut: Conn. Pub. Act No. 22-351 & 22-351a (2004). (351 creates civil cause of action for stealing, confining, concealing or unlawfully injuring or killing a companion animal; 351a allows punitive damages).

Illinois: 510 Ill. C.S. 70/1 et seq. (Ill. 2002) Humane Care for Animals Act (allows emotional distress damages to a guardian whose pet is intentionally injured and mandating punitive damages and attorney's fees).

Maryland: H.B. 941/S.B. 347 introduced February 10, 2005. Enrolled April 9, 2005. Chaptered April 26, 2005. Chapter 250, 2005 Regular Session. (Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 11-110 (2005)). (establishes that a person who tortuously causes injury to or the death of a pet is liable to the owner for certain compensatory damages. Compensatory damages are defined as the fair market value of the pet and the cost of veterinary care in the case of the death of a pet. If the pet is injured, but not killed, compensatory damages are defined as the cost of veterinary care provided. Damage awards up to \$7,500 are authorized. "Pet" is defined as a domesticated animal. "Pet" does not include livestock).

Montana: Mont. Code Ann. § 27-1- 222 (2001) (allows exemplary damages for injuring an animal intentionally or by gross negligence).

Rhode Island § 4-1-50. (allows non-economic damages for the loss of the reasonably expected society, companionship, love, and affection of the pet. Veterinarians are exempt).

Tennessee: Tenn. Code. Ann. § 44-17-403 (2000) (allows non-economic damages for negligently or intentionally causing fatal injuries or death of a pet).

### Recently Reported Cases

Ammon v. Welty, 113 S.W.3d 185, 186-88 (Ky. App. 2002). (Relationship between family and dog, which was shot and killed by dog warden, was not one that supported loss of consortium claim, since dog was personal property, and loss of love and affection resulting from destruction of personal property was not compensable).

Anzalone v. Kragness, 356 Ill.App.3d 365, 826 N.E.2d 472, 2005 WL 525432 (Ill. App. Ct. 1st Dist. 2005). (It is not necessary for the maintenance of an action for killing a pet that it should be shown to be of any pecuniary value; it is for the jury to be the judge of the value. Claims for bailment, negligence, breach of fiduciary duty and intentional infliction of emotional distress).

Austin v. State, 54 Ill. Ct. Cl. 375 (2002 Ill. Ct. Cl.). (Claimant dog owner filed a claim against respondent State of Illinois alleging veterinary malpractice and breach of contract and seeking damages of \$ 15,869. The owner established two instances of breach of contract and was awarded \$2,212).

Brown v. Muhlenberg Tp., 269 F.3d 205 (3d Cir. 2001), (As predicted by federal Court of Appeals, Pennsylvania courts would recognize claim for intentional infliction of emotional distress based upon the killing of a pet).

Burgess v. Taylor, 44 S.W.3d 806, 91 A.L.R.5th 749 (Ky. Ct. App. 2001) (Recovery allowable for intentional infliction of emotional distress).

Carbasha v. Musulin, 2005 W. Va. LEXIS 78. (Dogs are personal property and damages for sentimental value, mental suffering, and emotional distress are not recoverable for the negligently inflicted death of a dog).

DeJoy v. Niagara Mohawk Power Corp., 13 A.D.3d 1108, 786 N.Y.S.2d 873 (N.Y.A.D. 4 Dept., 2004). (An animal owner may not recover damages for loss of companionship, which can be viewed as legally equivalent to emotional distress, resulting from the death of the animal).

Downing v. Gully, P.C., 915 S.W.2d 181 (1996 Tex. App.). (Plaintiff dog owner brought a negligence and Texas Deceptive Trade Practices Act (DTPA) claim against defendant veterinarian. The veterinarian provided affidavits that were sufficiently factually specific, describing experience, qualifications, and a detailed account of the treatment, so as to negate the element of the breach of the standard of care, and Deceptive Trade Practice Act claims did not apply to state licensed veterinarians).

Gabriel v. Lovewell, 2005 Tex. App. LEXIS 4060 (2005 Tex. App.). (Horse owners brought successful claim based on allegations of negligence and breach of implied warranty in connection with the death of their filly. The jury awarded damages of \$ 10,075.00 plus prejudgment interest of \$ 4,372.27, court costs of \$ 4,446.22, and attorney's fees of \$ 40,000.00, totaling \$ 58,893.49 plus post judgment interest. Although plaintiff also alleged conversion and use of false, misleading, or deceptive trade practices, the jury limited his recovery to the allegations of negligence and breach of implied warranty).

George v. Leopold, 1996 Conn. Super. LEXIS 2859 (1996 Conn. Super.). (Four-count complaint of: veterinary malpractice, intentional infliction of emotional distress, and a violation of the Connecticut Unfair Trade and Practice Act (CUPTA). The court held: (1) bystander emotional distress resulting from veterinarian malpractice was not a cause of action under Connecticut law; (2) the pet owner-pet relationship was not as close as the parent-child or husband-wife relationship; (3) the cat owner failed to allege that she had suffered a severe and debilitating injury; (4) the cat owner's argument about the veterinarian's reckless regard for her emotional well being was just another way of stating a bystander emotional distress claim, and there was no showing of recklessness; and (5) the cat owner did not allege facts sufficient to support her contention of immoral practices by the veterinarian to support a claim under CUPTA).

Gilreath v. Ohio State Univ. Veterinary Hosp., 2002 WL 31953788 (Ohio Ct.Cl., 2002). (Plaintiff unsuccessfully brought claims for medical malpractice, breach of warranty, fraud).

Harabes v. Barkery, Inc., 348 N.J. Super. 366, 791 A.2d 1142 (Law Div. 2001). (Public policy considerations prevented dog owners from recovering negligent infliction of emotional distress and loss of companionship damages in connection with the loss of their dog, who allegedly died of medical complications after she was negligently subjected to extreme heat for an extended period of

time at dog grooming business; emotional distress and loss of companionship damages, which were unavailable for the loss of a child or spouse, should not be recoverable for the loss of a pet dog). Johnson v. Douglas, 723 N.Y.S.2d 627 (Sup 2001). (Pet owners could not recover for emotional distress based upon an alleged negligent or malicious destruction of a dog, which was deemed to be personal property) (Zone of danger rule is only applicable to the observance of the death or serious injury of an immediate family member who is a person.).

Kenny v. Lesser, 281 A.D.2d 853, 722 N.Y.S.2d 302, 2001 N.Y. Slip Op. 2570, 2001 WL 279237. (Defendants had departed from reasonable standards of veterinary care regarding their treatment of plaintiff's horse; this departure proximately caused his death and his fair market value in October 1993 was \$100,000).

Kennedy v. Byas, 867 So. 2d 1195 (Fla. Dist. Ct. App. 1st Dist. 2004). (Impact rule precluded dog owner from recovering damages for emotional distress arising out of alleged veterinary malpractice in treatment of dog; animals were personal property, not family members).

Koester v. VCA Animal Hosp., 244 Mich. App. 173, 624 N.W.2d 209 (2000). (Owner could not properly plead and recover for emotional injuries allegedly suffered as consequence of dog being killed, in light of characterization of dog as personal property).

Krasnecky v. Meffen, 56 Mass. App. Ct. 418 (2002 Mass. App.). (Plaintiff sheep owners sued defendant dog owners, whose dogs killed plaintiff's sheep, seeking damages for emotional distress and loss of companionship and society, as well as strict liability, trespass to real estate, and negligence/recklessness. The Superior Court Department, Hampshire (Massachusetts), found for the sheep owners on the claim of emotional distress, in the amount of one dollar, and for the dog owners on all remaining claims).

Lachenman v. Stice, 838 N.E.2d 451 (Ind. App. 2005). (Dog owner's witnessing the death of his dog, which was fatally attacked by neighbor's dog, was not sufficient direct involvement to allow a claim of negligent infliction of emotional distress under bystander rule. The loss of a pet dog is only an economic loss which does not support a claim of negligent infliction of emotional distress).

Lewis v. Di Donna, 294 A.D.2d 799, 743 N.Y.S.2d 186 (3d Dep't 2002). (Pets are recognized as personal property and damages for the loss of a pet are limited to the value of the pet at the time it died, which are ordinarily proven by establishing the market value of the pet, if it has one, or, if there is no market value, by such factors which tend to fairly show its value./ Loss of companionship of pet is not a cognizable cause of action./ Dog owner would not be allowed the opportunity to present proof of loss of companionship of her dog at the time of trial with respect to the issue of damages).

Lewis v. Hendrickson, 2003 Ohio 3756 (2003 Ohio App.). (Veterinary malpractice claim where veterinarian misdiagnosed a tumor- small claims court).

Liotta v. Segur, 2004 Conn. Super. LEXIS 737 (2004 Conn. Super.). (No recovery for negligent infliction of emotional distress, but court leaves open the possibility of recovery for intentional infliction of emotional distress in wrongful death/injury of pet).

Lockett v. Hill, 182 Or.App. 377, 51 P.3d 5 (Or.App., 2002). (Plaintiffs, owners of cat mauled by Defendants pit bulls, successfully brought claim of negligence, but were barred from recovery of emotional distress damages and damages for the loss of a pet's companionship).

Mathew v. Klinger, D.V.M., P.C., 179 Misc. 2d 609 (1998 N.Y. Misc.). (Plaintiff dog owner filed an action against defendant veterinarian after her dog died from complications of a perforated esophagus caused by a chicken bone. The veterinarian's failure to take steps to see if the dog had swallowed something was a departure from accepted veterinary practices; no expert was necessary to explain that an x-ray should have been taken. The lower court awarded plaintiff the sum paid for the veterinary treatment as well as the sum for the necropsy to determine the dog's cause of death. Upon appeal, the court determined that the dog was not healthy as it already was in a life-threatening situation when brought to defendant. As such, plaintiff was not entitled to recover the cost of the necropsy and the award was modified accordingly).

McAdams v. Faulk, 2002 WL 700956. (Plaintiff's complaint of negligence and malpractice was improperly dismissed for failure to state a claim... Plaintiff need not make an allegation regarding the market value of the dog. Damages on a negligence claim are not limited to economic loss damages, and include compensation for mental anguish. An award for mental anguish may cover not only the mental suffering prior to trial, but also the suffering which is reasonably probable to occur in the future... punitive damages are recoverable on a malpractice claim).

McGee v. Smith, 107 S.W. 3d 725. (Tex. App. 2003). (Veterinarians' failure to provide food and water to a foal and mare over a hot Texas, three-day weekend—who both then died as a result—was not ordinary negligence but a matter of professional care that required expert testimony. The appellate court subsequently overturned a \$45,000 lower court judgment obtained by the plaintiff. In a sharp dissent, one judge protested that this was the equivalent of turning every civil action happening to involve a physician as a defendant into a medical malpractice case.) (Dauphinot, J., dissenting).

Mercurio v. Weber et al, 2003 WL 21497325. (Dog owner was entitled to damages of \$2,095.46 from negligent dog groomer; recoverable damages consisted of veterinary costs and compensation for loss of companionship of dog that died as measured by cost of replacing him. The plaintiff was not entitled to damages for emotional distress).

Mitchell v. Heinrichs, 27 P.3d 309 (Alaska 2001). (Plaintiff sought recovery for shot dog on theories: conversion, intentional infliction of emotional distress, and punitive damages. The court recognized a cause of action for intentional infliction of emotional distress for the intentional or reckless killing of a pet animal. The trial court must "make a threshold determination whether the severity of the emotional distress and the conduct of the offending party warrant a claim of intentional infliction of emotional distress." The challenged conduct must have been "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community./A pet's actual value to the owner may exceed its fair market value and include the original cost to the owner or full reasonable replacement costs).

Oberschlake v. Veterinary Assoc. Animal Hosp., 151 Ohio App. 3d 741, 2003 -Ohio- 917, 785 N.E.2d 811 (2d Dist. Greene County 2003). (Owner could not recover damages for their emotional distress and loss of companionship arising from a veterinarian's improper attempt to spay already-spayed dog/ Dog was personal property for which non-economic damages were not available. A dog cannot recover for emotional distress).

Pacher v. Invisible Fence of Dayton, 154 Ohio App. 3d 744, 2003 -Ohio- 5333, 798 N.E.2d 1121 (2d Dist. Montgomery County 2003). (Family could not recover for negligent infliction of emotional distress they suffered when family dog was injured by invisible fence; family were not bystanders to the injury, dog was personal property and state did not recognize a claim for emotional distress caused by injury to property, and family's reaction was not the type of serious emotional distress for which recovery was permitted./ Family dog did not have a direct claim for emotional distress; dog's legal status as personalty deprived him of legal capacity to sue./ Burn injuries to family dog would not have occurred if ordinary care had been exercised by invisible fence company, and thus trial court appropriately applied *res ipsa loquitur* to find company liable in negligence in amount of \$187.05, which constituted the amount family paid to treat injuries).

Pantelopoulos v. Pantelopoulos, 49 Conn.Supp. 209, 869 A.2d 280 (Conn.Super.,2005). (Former husband, who brought action against former wife, after former wife moved out of parties' former marital residence, to which former husband was prohibited entry by way of court order, and former husband's dog that was left in garage of residence died from starvation and dehydration, failed to state legally sufficient cause of action for intentional infliction of emotional distress; there was no authority in state or in New Jersey, the state in which residence was located, that permitted recovery of non-economic damages in connection with negligent or intentional acts resulting in death of pet).

Petco Animal Supplies, Inc. v. Schuster, 144 S.W.3d 554, 2004 WL 903930 (Tex. App. Austin 2004). (Dogs are personal property for damages purposes, not persons, extensions of their owners, or any other legal entity whose loss would ordinarily give rise to personal injury damages./ Only two elements can be awarded under the "true rule" of damages for loss of a dog: (1) market value, if any, and (2) some special or pecuniary value to the owner, that may be ascertained by reference to the usefulness and services of the dog./ Special or pecuniary value of a dog to its owner refers solely to economic value derived from the dog's usefulness and services, not value attributed to companionship or other sentimental considerations./ Dog owner was not entitled to recover counseling expenses./ Dog owner was not entitled to intrinsic value damages. Intrinsic value damages are recoverable only where the property is shown to have neither market value nor replacement value).

Pickford v. Mason, 124 Wash.App. 257, 98 P.3d 1232 (Wash.App. Div. 2,2004). (Dog owner whose pet was mauled by other dogs could not recover for negligent or malicious infliction of emotional distress against owners of other dogs; owners of other dogs did not maliciously inflict severe emotional distress, and at most, they were negligent for failing to keep their dogs contained./ Cause of action for destruction of companionship relationship did not extend to dog owner's loss suffered; damages were recoverable for the actual or intrinsic value of lost property but not for sentimental value).

Price v. Brown, 545 Pa. 216 (1996 Pa.). (Breach of Bailment and professional negligence claims brought against a veterinarian where plaintiffs dog died post surgery).

Rabideau v. City of Racine, 627 N.W.2d 795, 807 (Wis. 2001). (Plaintiff, who observed city police officer shoot and kill her dog, was not related to the victim as spouse, parent-child, grandparent-grandchild, or sibling, as was required to bring a claim for damages based upon the tort of negligent infliction of emotional distress./ To maintain a cause of action for the intentional infliction of emotional distress, there must be something more than a showing that the defendant intentionally engaged in the conduct that gave rise to emotional distress in the plaintiff; the plaintiff must show that the conduct was engaged in for the purpose of causing emotional distress./ Complaint of dog owner against city, alleging that city police officer shot and killed dog, encompassed a claim for damages for property loss).

Rees v. Flaherty, 2003 WL 462868 (Conn. Super. Feb. 6, 2003). (Plaintiff sued Defendant boarding facility that lost her dog, for negligence (Count 1), breach of contract (Count 2), bailment (Count 3), negligent infliction of emotional distress (Count 4) and violation of the Connecticut Unfair Trade Practices Act (Count 5)).

Schrage v. Hatzlacha Cab Corp., 13 A.D.3d 150, 788 N.Y.S.2d 4 (N.Y.A.D. 1 Dept., 2004). (Pets are treated under New York law as personal property, and the loss of a dog by reason of negligence will not support claims by the animal's owners to recover for their resulting emotional injury).

Tarpy v. County of San Diego, 1 Cal. Rptr. 3d 607 (Cal. App. 4th 2003). (County not liable for damages for dog that died after being neutered at county animal facility because dog's owner signed release of liability form).

Ullmann v. Duffus, 2005 WL 3047433 (2005 Ohio App. 10th). (Cockatiel owner could not recover against veterinarian on theory of negligent infliction of emotional distress based on veterinarian's prescription of medication for treatment of cockatiels that proved toxic and resulted in their deaths).

Williamson v. Prida, 75 Cal. App. 4th 1417 (1999 Cal. App.). (Appellate court overturned a jury award of \$600,000 against veterinarians because of a lack of evidence to show that their actions fell below the standard of care as necessary for a veterinary malpractice claim).

Zeid v. Pearce, 953 S.W.2d 368 (1997 Tex. App.). (Negligence action seeking damages for mental anguish of plaintiff dog-owners was dismissed because in Texas, the recovery for the death of a dog is the dog's market value, if any, or some special or pecuniary value to the owner that may be ascertained by reference to the dog's usefulness or services which the court found to be inconsistent with a claim for pain and suffering and mental anguish. One may not recover damages for bystander recovery for mental anguish in medical malpractice cases; the court applies the same rule to the case involving death due to veterinary malpractice).

## FINANCIAL SUPPORT NEEDED

Pages ii and iii contain summaries of the two organizations that have made this monograph possible: Institute For Animal Rights Law (IARL) and International Society For Animal Rights (ISAR). Given that ISAR's primary focus is on companion animal overpopulation, one might wonder why ISAR is involved in the distribution of a legal publication dealing with harm to companion animals.

There are three reasons.

First, ISAR provides the principal financial support for IARL's legal efforts on behalf of Animal Rights.

Second, because the information provided in this monograph is of the utmost importance to the caretakers of companion animals and to the animals themselves, and because IARL is a legal "think tank" not, like ISAR, a frontline humane educational organization, ISAR is better able logistically to provide national distribution for *Harming Companion Animals: Liability and Damages*.

Third, there is a connection between the legal aspects of harm to companion animals and the overpopulation problem. As this monograph makes clear, the law of intentional and negligent harm to companion animals reflects a devaluing of them—the same devaluing that makes possible today's horrendous problem of millions of unwanted companion animals being put down annually.

Both IARL and ISAR hope that *Harming Companion Animals* will help alleviate these problems. It may be ordered from ISAR either by mail or online.

Both organizations realize that today there are various organizations devoted to furthering Animal Rights—though there is no legal "think tank" like IARL, and no national organization devoted exclusively to the overpopulation problem like ISAR—and that all the Animal Rights organizations compete for the same contributions. Thus, ISAR asks those who find *Harming Companion Animals* to be useful to make a contribution to ISAR so that we can continue our work on behalf of Animal Rights.

International Society For Animal Rights is located at  
965 Griffin Pond Road, Clarks Summit, PA, 18411.

# NOTES:

