

# Laws & Paws:

## *The Legal Path to Justice for Animals*

by Marianna J. Burt, J.D.

Twenty years after the birth of the human-animal bond movement, one can see its effects in many areas of American life, including the law. It is no exaggeration to say that new appreciation for the value of companion animals has spawned changes in the institutions which affect them and that this “ripple effect” continues to grow.

**d**uring times of transition, the law sometimes lags behind, and a noticeable gap still exists between what the law books say about animals and what sometimes actually goes on in court. Balancing the weight of legal history against today’s dynamic changes in the social status of companion animals is an ongoing challenge.

### *At the Start — Animals as Property*

During the first few days of law school one encounters the 1805 New York case of *Pierson v. Post*, a dispute over which hunter had the right to kill a fox: the man who had long pursued him or the one who came upon the scene at the end. This classic scenario of dominion and possession is used to set forth the key concepts of personal property law, as students consider what degree of control one has to exert over an animal before one can be deemed his owner.

It also illustrates the traditional view of animals in Anglo-American

law. Historically, animals have been of legal interest simply as objects of ownership. It was important to designate them as wild or domestic because these categories told us how fully they could be possessed and used.



Farm animals provide the paradigm of animal value in American legal history. Because of their clearly defined roles in service to man, it was possible to measure their worth objectively. Size, strength, productiv-

ity, quality of breeding — all these contributed to the development of standards which translated into market value. Even today the measure of damages for destruction of an animal is usually the sum to replace him or her on the open market.

Farm creatures had a certain legal status as “useful animals” and were distinguished from other species, such as companion animals, who had no discernible utility. Not only did this disregard the hunting skills of dogs and cats, who have long been routinely utilized by man, it led to curious reasoning even at the highest levels. Struggling to explain why a dog could not be valuable, the United States Supreme Court wrote in 1897: “They have no intrinsic value, by which we understand a value common to all dogs as such and independent of the particular breed or individual ... While the higher breeds

rank among the noblest representatives of the animal kingdom and are justly esteemed for their intelligence, fidelity, watchfulness, affection, and above all, for their natural companionship with man, others are afflicted

with such serious infirmities of temper as to be little better than a public nuisance.”

**O**f course, this thinking ignored the fact that even categories of “useful” animals can have individuals whose unruly disposition, for example, or inability to be trained for work, might hamper their utility. Curiously too, this opinion turns the accepted philosophic meaning of “intrinsic value” on its head. From the time of Aristotle, the term has been used to mean the value something has in and of itself, not by virtue of its relation to something else. Traditionally, something is said to have “instrumental value” if it exists as a means to an end; if its worth is measured in terms of its utility to another. Clearly this latter form of value is the only one contemplated by the Supreme Court in its discussion of animal worth.

### *Along the Way — Recognition of Value*

Yet this opinion also opened up a positive avenue for future legal development. In conceding that certain dogs are “justly esteemed for their intelligence, fidelity, watchfulness, affection, and above

all, for their natural companionship with man,” the

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acknowledged a sphere of value which could not be

measured in strictly material terms. As America became less agrarian and companion animals grew in importance, a number of significant cases sought to clarify this form of value for the purpose of compensating an owner for his or her loss.

These cases have typically involved the death of a companion animal through the blatant negligence or willful action of another. In such cases, the courts have sometimes awarded small damages for the animal’s market value but balanced this with more substantial punitive damages for the offending conduct. By focusing on the willful or grossly substandard actions of the defendants, these courts have found a way to award greater compensation without actually confronting the question of what the animal was truly worth.

In a handful of states (New York, Florida, and Hawaii) damages have explicitly been awarded for an owner’s emotional distress, but the cases have been so isolated that this cannot be called a trend.

**t**he New York and Florida cases involved tampering with the animal’s body, which is a paradigm of grounds for an emotional distress claim in the case of a human death. The Hawaiian case had a far more common scenario — negligent transport of a dog — but other jurisdictions have not followed the lead of this decision. In part, this is because some states do not acknowledge emotional distress as an independent cause of action, while others set very high hurdles for recognizing it, such as the actual presence of the plaintiff at the traumatic event or psychiatric proof that there has been significant emotional damage. Elsewhere one encounters the position recently expressed by a lower court judge: “This state does not recognize emotional distress for loss of property.”

The courts have also rejected claims for loss of companionship which paralleled standard “loss of consortium” claims in the death of human family members. Yet the story is not altogether bleak. Where the case involves injury to an animal rather than death, courts will routinely require a defendant to pay the entire veterinary bill even though it greatly exceeds the animal’s market value. In doing so, they tacitly recognize the animal as unique and adopt as the measure of damages the sum it will take to restore the companion to his or her condition before the injury, not the amount required to “replace” the animal, as insurance companies do when they “total” a badly damaged car.

### *Moving Forward — A Strong Bond*

Meanwhile, the effort to carve out a special sphere of legal value for companion animals has continued. In the absence of objective measurement of worth, some states base damages for loss of property on the value in which the cherished object or “unique chattel” was held by its owner. Of course, success has been incomplete. “A mongrel dog cannot be a unique chattel,” the Pennsylvania Supreme Court declared as recently as 1988. Yet in 1964, a Florida court had awarded damages based on the “peculiar” value of a pet dog to his owner, and in 1979 a New York court declared:

“...The court must first decide whether a pet such as a dog is only an item of personal property as prior cases have held. This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property ... a pet is not an inanimate thing that just receives affection. It also returns it...”

“This decision is not to be construed to include an award for the

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loss of a family heirloom which would also cause great mental anguish. An heirloom, while it might be the source of good feelings, is merely an inanimate object and is not capable of receiving love and affection. It does not respond to human stimulation; it has no brain capable of displaying emotion which in turn causes a human response. Losing the right to memorialize a pet rock, or a pet tree, or losing a family picture album is not actionable. But a dog — that is something else.

To say it is a piece of property and nothing more is a repudiation of our humanness. This I cannot accept.”

What is the “special place” occupied by a pet? The New York Court is saying that it is not a matter of mere sentimental value, which cannot legally be compensated, but rather of something more definite. The reciprocal relationship it mentions provides a sketch of what we now refer to as the human-animal bond.

**t**wo years before this New York Court opinion was written, the first major steps were taken to launch a modern movement which would investigate and objectify the relationship between people and companion animals. The People-Pet Partnership at Washington State University School of Veterinary Medicine was the first university-based human-animal bond program in this country and provided a unique opportunity to combine scientific research with community service. In 1977, the Delta Foundation was founded in Portland, Oregon; in 1981 it became the Delta Society and presented the

first of many international conferences on the human-animal bond.

Two important research findings from these early years received wide publicity — the discovery that one’s blood pressure slows down when one pets an animal, and the fact that coronary survival was shown to be greater for pet owners than for those



who did not have companion animals. The slogan “pets are good for your health” became almost a truism.

In the intervening years, human-animal bond research and its practical applications have branched out in many directions, mirroring the complexity of the relationships between people and animals in modern society. A new field of scientific inquiry has been carved out and its data accepted as legitimate.

This new information has found its way into the legal setting, and pre-

dictions which would have been resisted in the past now qualify as expert testimony. In a 1985 landmark New Jersey case, a landlord who had recently purchased five units of housing sought to force tenants to give up longtime pets they had kept with the tacit consent of the former landlord. A key witness was psychiatrist Aaron H. Katcher of the University of Pennsylvania, a lead researcher on the health benefits of the human-animal bond. Describing him as “a specialist concerning the influence of companion animals on the mental and physical health of their owners,” the Court wrote:

“...His testimony established that the loss of their pets to people such as [the] defendants would cause significant health problems, especially if the loss is due to a defendant being forced to give up his or her pet as opposed to the pets dying a natural death.

Defendants could be expected to suffer grief and depression as great as that suffered at the loss of a family member and, in addition, suffer from a sense of guilt and loss of self-esteem. On a positive note, the witness testified to studies showing that the presence of a pet lowers blood pressure, decreases anxiety, combats depression, and generally improves the owner’s health. In fact, the presence of pets generally lowers the rate of mortality. As to [defendant] Mrs. Savignon, and defendants Possumato and Brosonski, Dr. Katcher testified that one would be increasingly unwilling to leave her home, another would suffer a worsening in her cardiovascular system and increased hypertension, and the third would experience severe grief, especially

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since this woman would not only grieve for the loss of her dog but suffer a reawakened grief for the loss of her sister, the dog's former owner..."

Needless to say, the tenants prevailed.

## *Where Will the Journey Lead?*

The early 1980's witnessed a major effort to extend the benefits of pet ownership to elderly and/or persons with disabilities living in federally subsidized housing specifically designated for their use. Pilot projects were developed to demonstrate that such living arrangements could work if proper guidelines and good support systems were put in place. In November, 1983, President Ronald Reagan signed the measure into law.

As a result of persistence and hard work by the Pets in Housing Coalition, of which the Doris Day Animal League is a member, Congress approved legislation that expands pet ownership privileges to residents in almost all types of federally subsidized housing. President Clinton signed this measure into law

on September 21, 1998. The Department of Housing and Urban Development is currently revising its regulations pertaining to animals in housing to accom-

modate this expanded coverage and ensure that animals are cared for humanely and responsibly.

**A**s data continues to grow concerning the positive effects of pets upon human health and emotional well-being, they will become more fully recognized in law as highly 'useful' creatures whose loss or impairment should be amply compensated. This represents a giant step forward from the agrarian model which disregarded such qualities as affection and companionship.

Yet some still worry that the human-animal bond movement views animals primarily in terms of their usefulness to man and thus presents a newer form of exploitation. They raise a legitimate question, because whenever something is viewed as an instrumental good, one tends to lose sight of its intrinsic value. Yet the concept of the human-animal bond represents such a softening of the traditional view of man as dominant over other creatures that it must be regarded as a highly positive development.

In our culture, some deeply entrenched uses of animals, such as those within agriculture and scientific research, use the individual animal as a form of raw material, and his or her consumption or destruction is an integral part of the process. This clearly is not true of the bonding relationship between people and their companion animals, even though the humans in question are termed the animals' owners.

Here a bonding process occurs

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between individuals, fully recognized and appreciated as such. A truly beloved pet is not valued for his fur, his flesh, or other features from which he could be separated, but for the special configuration of qualities he brings to the association. He is valued in himself, and the properly functioning human-companion animal bond does not damage or exploit the animal. It is above all symbiotic, both mutually dependent and mutually beneficial. Companion animals require food, shelter, and veterinary care,

but they also need the attention and affection of their owners. In seeking this they elicit far more — a quickened capacity for humor and feeling, renewed enjoyment of simple things, and at times the lessening of loneliness.

As recent legal developments show, we need not worry that the human-animal bond is a new term for the bondage of animals. What remains is to use its growing legal and social recognition as a bridge to call attention to the plight of the countless animals who have no homes or bonds — and to their inherent worth. 🐾

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