

# Animal Law

Third Edition

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# Animal Law

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## Cases and Materials

Third Edition

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# Preface to the First Edition

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For over five years, we have been asked the same question when we inform colleagues and friends that we teach or practice animal law: “What is ‘Animal Law?’” That repeated inquiry made clear the need for this casebook; you are reading our answer. Since it is the first on the subject, we acknowledge and accept the responsibility of introducing this new and developing area to many of our readers. We also recognize the crucial role this book can play in increasing awareness, practice and education of animal law.

Our introductory chapter deals in part with the definition of “animal”—something we thought was obvious before we began studying the area. Even prefatory to that, we must define “animal law”—for our readers as well as for those who will ask them the same question we have been asked. Quickly-phrased definitions are inherently unsatisfactory, but we will provide one as a starting point: Animal law is, in its simplest (and broadest) sense, statutory and decisional law in which the nature—legal, social or biological—of nonhuman animals is an important factor. After reading this book and/or taking a course in animal law, students and practitioners will better understand and be able to articulate their own definition.

Animals appear in cases of all sorts, and we notably do not define animal law to mean “any case with an animal.” A few illustrations may be helpful here. A personal injury lawsuit for damages related to plaintiff’s ingestion of contaminated meat is not animal law, even though the meat involved was part of an animal. Compare the *Provimi Veal* case in which plaintiffs claimed damages because the veal they bought was not properly labeled, allegedly subjecting them to unknown dangers. That case *is* animal law—not because meat was involved but because plaintiffs’ thinly-veiled agenda was to increase protection of veal calves, or perhaps to stop veal production. As another paired example, consider a breach of contract action involving the sale of horses. If the horses are simply the chattel in a dispute over delivery or financial terms, the case is probably not animal law—although their current status as legal property is a fundamental assumption in the case. If, however, the case focuses on the horses’ inability to perform (e.g., to race or breed), or to get along with other horses, it might be an animal law case.

These scenarios are not meant to clarify or confuse (although they may do some of each). Rather, they demonstrate that, while there is no defining hallmark, with time one knows an animal law case when one sees it. What should become apparent from a glimpse at the Table of Contents is that the unique status and qualities of nonhuman animals affect every area of the law. What is not immediately obvious—but should become so—is that each affected area of the law must be adapted to deal with those qualities.

Animal law as a matter of statute is easier to identify and define. Statutes affecting the use and abuse, sale and management, protection and killing of animals are all part of animal law—and we could have produced a four-volume casebook solely on statu-

tory animal law. Instead we have hand-picked a limited sampling of cases and statutes by way of introduction. As with any general survey course, there are many statutes, cases and issues not even considered here that may merit considerable study.

As we publish this book, animal law remains a frontier subject in both courts and law schools. Its underpinnings, however, are ancient. Indeed, the opening chapter includes descriptions of a period when nonhuman animals were defendants punished for their “crimes” against humans. They were even represented by counsel. In one case, the defendants, a group of rats, entered pleas in abatement arguing (through counsel) they could not be prosecuted or compelled to appear because they could not travel to the courthouse safely.

A collective sigh of relief should be breathed here. Our view of animal law includes *only* as a historical footnote the time when nonhuman animals were criminal defendants. This is a course and a legal specialty heading on four legs into the millennium. Much like the nascent environmental law of the late 1950s and 1960s, and the growth in courses under that name in the 1970s and 1980s, animal law is a monolithic, ascending field with a very large wingspan.

One other important note. This is affirmatively *not* a book about animal rights law. Since we take the prerogative of definition, our version of animal law is not synonymous with “animal rights” activism or with any particular political, moral or ethical agenda. Rather, it is an objective and logical specialization of a challenging area—one with a growing number of cases and statutes, increasing public and practical interest, and significantly different historical, legal and philosophical foundations than most other law school courses. We acknowledge some of the cases discussed here were brought by animal protection groups aiming to establish “rights” for nonhuman animals in our society. (*Provimi Veal* might be one example.) Certainly the question of what rights animals should or do have will be raised as a natural consequence of reading the casebook. Our collective personal goal, though, is to survey the field overall and raise awareness and consciousness of challenging and uncommon legal issues. It is our hope the casebook and any corresponding course would be as stimulating and pertinent to the meat-eating hunter as to the ethical vegan or vegetarian.

Each of us has taught one or more Animal Law courses over the past five years; in that short time the number of animal law classes and court cases, as well as public interest in the field, has grown considerably. It appears the trend will continue and animal law as a legal discipline is here to stay.

We believe there has been a reticence in many legal quarters to teach, learn or practice in the area specifically because of the absence of meaningful assistance and coverage. Thus the other great motivator for our “answer” to the question about the nature of animal law: We hope this casebook will serve as a valuable guide to students and professors stepping onto this new frontier and provide more law schools with a template for animal law courses of their own. Our greatest wish is that our readers be stimulated to work in the field and become able advisors to and practitioners in a burgeoning herd of animal law attorneys.

# Preface to the Second Edition

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The first edition of *Animal Law* was published two years ago, and most of our substantive work on that volume was completed a year before that. In this developing area which is routinely referenced in the media, three years is a long time. For example, the fallout from the challenges made in the *Espy* case (regarding the lack of protection for birds, rats and mice used in research) continued to occupy the halls of Congress and the courts virtually up to publication of this volume. At the same time, state courts are facing more frequent public attention in cases of alleged injuries inflicted both on and by animals. Animal law is being talked about, often when people do not even realize it. When they do recognize they have entered a new area, the media regularly contacts human “animal lawyers” for comments on the issues raised in the news.

In the two years since publication, the casebook has been used to teach many more law students about a field they otherwise may never have considered. In light of all of the foregoing, it appeared to be time for a revised text.

While the general layout and much of the book is the same, there are some notable differences that make this edition more user-friendly and current. We have considered feedback from students and instructors of animal law. Based on this feedback, as well as our own evaluation, we have modified certain chapters, reorganized materials, removed surplus and included more relevant cases. For example, Chapter Two, addressing the property status of animals, is substantially changed. Our intention always has been to describe the obvious intellectual comparisons of rights development in different areas of human history, with the hope that students can see the potential for increased protections (and/or the development of certain rights) for animals in these histories. We hope that chapter now provides an easier path to that exercise and discussion. Likewise the chapter on Torts, besides having a new spot in the book, is substantially reorganized, with the hope that this version will better focus and define the concepts we are trying to convey.

We also reaffirm our considered decision to make this book about animal *law*, and not animal *rights*. With many more students and professors having been through the book and corresponding courses, virtually every respondent agrees that you cannot possibly read and discuss *Animal Law* without thinking and talking about animal rights. At the same time, we repeatedly get feedback in which students and professors express appreciation that the book does not speak from the foregone conclusion that animals should have rights, but rather suggests that result in a nonconfrontational, objective way—a way that allows open discussion and encourages conflicting viewpoints. How to define what protections animals have now, what protections or rights they may have in the future, and how to determine the path to change, are all logical consequences of the materials here.



# Preface to the Third Edition

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When *Animal Law* was first published in 2000, there were less than ten animal law courses in American law schools. Today there are roughly sixty. The number of student-run groups dedicated to the field has also risen dramatically, and popular interest in the several diverse subspecialties that have developed in the area has led to regular media coverage. While it remains a frontier area, the borders of animal law are widening quickly, and new issues on the subject are being debated in the legislatures and argued in the courts routinely. It has been four years since we published the Second Edition, a short time in most substantive areas of the law. For animal law, it has been a period of especially rapid growth. In an effort to stay as current as possible, and to best serve our readers, we bring you this Third Edition.

While the book still retains its same general format and philosophy, we have again made significant changes. Perhaps the most notable is Chapter 6. This new chapter addresses the multitude of legal issues raised by the myriad commercial uses of animals - from agribusiness to biomedical research to entertainment, and more. Once again we have revised the Property chapter, in an ongoing fluid analysis of the nature of, reasons for, and ramifications of animals' status as property under American law. This important discussion remains not as the central focus in animal law, but as a basic consideration necessary to an understanding of the field.

This latest iteration of the casebook also was stimulated by the increase in animal law litigation. There are always a large number of cases percolating through the courts in any field when a new edition of a casebook is being published. For animal law, though, these cases are changing the practice. Lawyers are venturing out onto that virgin frontier on a more regular basis. Some of them are developing new theories and creative uses of the common law. Others are identifying previously under-utilized laws that have the potential to benefit animals and change the way they are treated in society. In this fast-moving field, many of those new cases are still making their way through the trial courts. In order to keep our readers aware of those new advances, we have decided to break with the tradition of presenting only reported decisions, and you will see multiple references to cases still pending when this edition went to press. Because of animal law's mounting profile and presence as a substantive and serious field of law, it seems that we are destined to a more regular review and more frequent set of future editions. In this way, we can continue to keep students and practitioners abreast of the theories presented by animal lawyers, the decisions of the courts, and the considerations of legislatures, in the extensive and expanding subject areas addressed by this book.

The three of us thank our readers, students and colleagues for the valuable feedback, critiques and support the first two editions have received. Even more than that, we are grateful for the opportunity to present this text and hopefully make a difference in the





# Acknowledgments

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This book is dedicated to all animals.



# Editors' Note

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Most of the cases and other materials appearing in these pages have been edited. The deletion of sentences is indicated by ellipses; the deletion of full paragraphs is indicated by asterisks; the deletion of citations is not indicated. Most footnotes have been excised. The remaining footnotes retain their original numbering. Editors' footnotes are lettered.

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