

Animal Law

Cases and Materials

FOURTH EDITION

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Preface to the First Edition

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 statutory an-

imal 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

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.

We are grateful for the response the book received from the academic and legal communities, and for the opportunity to present this Second Edition to you.

Preface to the Third Edition

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 practices of present and future animal lawyers; but, mostly, in the lives of animals.

Preface to the Fourth Edition

Ten years on from this text's first publication, the hopeful promise that animal law would grow as a field is reality, and the expansion has been huge. Still young in the shadow of legal history, animal law now attracts constant academic, judicial and popular attention. Thousands of students have taken an animal law course, and major law firms participate and assist with litigation in all areas of the field. The American Association of Law Schools has a section dedicated to animal law, and the American Bar Association has an active animal law committee. The continued upswing in courses, books and practitioners establishes its importance and the need for an update of doctrine and the current state of the law. The constant development is reflected in the fact that even as we go to press, cases that could add significantly to the discussion are pending in courts in virtually every jurisdiction, including the United States Supreme Court. It is because of a combination of the steady development and redefinition of important animal law theories, and the growing interest in a near-current treatise, that this fourth edition has been prepared.

The three editors collectively have now taught more than forty law school classes and over 100 law schools have offered the course. Student Animal Legal Defense Funds and other student animal law groups exist at even more schools. In trying to continue to make *Animal Law* both user-friendly and an asset to students and practitioners alike, we have discussed the book, the different approaches to the course, and the field in general with professors, students, law school administrators and practitioners. This latest publication is generated principally out of our readers' collective desire to stay abreast of the range of issues that arise, and the number of cases that are of increasing value to the discussion of those topics.

When we first met to discuss this edition, we believed that our primary purpose was to provide an update and to respond to comments and requests from others. We anticipated a limited set of additions and a reduction of surplus materials. But after our first meeting, we decided that in order to serve the cause and the field, a more substantial rewrite would be done. Much of the prior editions' text still remains, but this effort includes a reorganization of the chapter order, presenting the topics in what we feel is a more natural flow, so that the Table of Contents can serve as a syllabus to that ordering. We have also redesigned the torts chapter in a manner that we think better presents the animal law focus for professors, students and those using the book as a reference. The chapter on commercial uses has been expanded, due in large part to the increased attention to those matters in the courts and legislatures. Additionally, in virtually every chapter we add new precedent, discuss new legislation, and address new ideas that have become more relevant or more commonly raised.

The charge of summarizing the expanded scope of work that animal law attorneys now cover is daunting. With our eyes on course structure, the length of the book, and the multifaceted approaches taken by practitioners, many tough decisions had to be made

about which cases, issues and areas would be included, and which omitted. We adhered in large part to the original definition of animal law stated in the Preface to the first edition, and believe that the current edition presents the opportunity to discuss virtually every issue pertinent to the field as it now exists.

While the job of preparing this edition surpassed our expectations in terms of the time it would take, the process provided us with an added appreciation of our involvement in this area of law, which is now clearly established. We hope this edition provides practitioners and scholars the tools they need to immerse themselves in this fascinating and intellectually challenging field. We once again thank everyone who has offered us comments and criticism, who has learned or taught from the book, and who has used it to further the development of animal law. Onward.

Acknowledgments

The editors express their gratitude for all who have contributed to, assisted with, commented on, and learned from the first three editions of *Animal Law*. We pay tribute to the Animal Legal Defense Fund, as well as the countless other individuals and organizations who have worked, and continue to work to improve the lives of nonhumans over the years. We are grateful to be partners in this community which has stimulated the growth of animal law around the country and the world.

Sonia Waisman dedicates this book to Pablo, Wilma and Fred, and in loving memory of Mooki.

Pamela Frasch thanks the student researchers at Lewis & Clark for their able assistance and, in particular, Hollie Lund, Ph.D., for putting it all together. She also thanks Victor and Elizabeth Kisch for their continuing support, love and faith in the work that we do. She dedicates this book in loving memory to Beverly Frasch who, by example, taught her the true meaning of altruism, dedication and service to others.

Bruce Wagman thanks Deborah and his human and nonhuman family, for faith; and all the animals living and dying every day, for inspiring him to carry on.

This book is dedicated to all animals.

Editors' Note

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.

The editors gratefully acknowledge permission to reprint the following secondary sources:

Derek W. St. Pierre, *The Transition from Property to People: The Road to the Recognition of Rights for Non-human Animals*, 9 HASTINGS WOMEN'S L. J. 255 (Summer 1998).

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