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For our wives,
Martha Favre and Mildred Loring.
This book could not have been
written without their support and
collaboration.

Preface

Both animals and laws have long existed as an integral part of our society. Indeed, without either, the development of today's society would have been impossible. Over time our use and perception of animals has changed and, with that change, the law and its interpretations have changed. Animals once represented the muscle of society, transportation and agriculture having been dependent upon the backs and legs of animals. With the advent of gasoline and jet engines, the need for animal muscle has greatly diminished. Recently, animals have become more important not only as pets, but also in new areas of human endeavor: sport hunting, scientific experimentation, and chemical testing.

While laws have always existed to control the rights and duties of humans vis-à-vis animals, it is only recently that a distinct area of law has begun to evolve which pulls together all the divergent statutes and cases dealing with animals. It is the purpose of this book to weave the multiple threads of the topic of animal law into a coherent picture. Several areas of the law are in the process of change, and to put these changes in perspective, the book discusses the history of the law as well as the way each change may fit into a larger legal context.

As with all extensive projects, much support and effort by other individuals was necessary for this project's successful completion. Professors Matthew McKinnon and Robert McCormick of the Detroit College of Law both reviewed chapters and provided many helpful suggestions, as did Professor L. Leon Geyer of Virginia Polytechnic Institute in Blacksburg, Virginia. At the Detroit College of Law several students aided in the gathering of information. Chief researcher was Elizabeth Weimer, whose long hours and diligent efforts were a significant contribution to this endeavor. The work of Debra Clancy and Nancy Kamieniecki were also very helpful. The important, but tedious, job of typing the manuscript was performed admirably by Jean McCarthy, Bonnie Dela Cruz, and Peggy Loesch. Finally, beyond providing the normal support of spouses, Marty Favre and Mimi Loring must receive credit as chief editors, whose delicate tasks of making corrections and suggestions were performed most tactfully.

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1

Introduction

§ 1.1 Introduction to the Use of This Book

This book was written for those actively involved with animal issues, both lawyer and non-lawyer, as well as for those individuals seeking an introduction to animal law. The text provides a general introduction on each topic for those not familiar with the area. The footnotes contain detailed information on sources for those individuals who may wish to do further legal research on this subject.

While historical cases are included, our primary focus has been on the period from 1960 to the present. We have attempted to provide a comprehensive listing of cases in each area except for dog bite cases which are extremely numerous. Many of the cases are lower-court opinions, as the nature of the cases seldom justifies full-blown consideration by a state's supreme court. In large measure, these lower-court opinions, while perhaps not the final word in a jurisdiction, are well reasoned and analyzed. Thus, there is no reason not to use them in drawing together the national outlook on a particular issue. (It appears that Louisiana may have the highest number of animal cases on a per capita basis.)

In several areas, such as cruelty to animals and the sale of animals, state statutes play a predominant role in articulating the law. To examine 50 different codes, however, would be burdensome and ultimately unworkable for a single book. Since it is known that states borrow ideas and statutory language from neighbors, eight states were chosen as regional representatives. The states include: California, Mississippi, Michigan, Idaho, Oregon, New York, Texas and Virginia. All issues of a statutory nature are examined through these eight states.

A few final points about footnotes. Each chapter's footnotes are self-contained. The first time a statute, book, or case is footnoted in each chapter, the complete formal citation is given. Subsequent citations to the same material will be abbreviated (i.e. Cal. Health and Safety Code § 10101 which later appears as Cal. Code § 10101). When one section of the text discusses several points from a particular statute or case, it will

be cited only the first time, unlike law review articles which footnote *ad nauseum*.

§ 1.2 Animal Rights

There is a growing body of literature arguing for the recognition of legal rights for animals.¹ Since the legal system at present does not allow for any rights to be held by animals, the "rights" movement has a substantial task ahead of it. They seek to establish that animals, as living beings, have a right of access to the judicial system to protect and further their individual and group interests. The arguments to support such a goal are based upon a mixture of moral and ethical beliefs, as well as scientific information.²

The key issues that animal rights advocates wish to have recognized and decided upon by our society include:

- (1) Do animals have a self-interest?
- (2) If so, is it an interest of which humans can be aware?
- (3) Do these interests merit respect and deference by human beings?
- (4) How could such an interest be integrated into our existing legal system?

An intermediate position advanced by many individuals would not allow animals to have access to the legal system, but would recognize them as a special category of personal property.³ This position expands the basic idea behind the humane laws, by which society has set minimum standards for the care and treatment of animals. The Endangered Species Act is an example of this new attitude, for, without giving any legal rights to animals, they still receive extensive protection.⁴ It should be noted, however, that this approach requires a finding of enough human interest to justify the legislation. The legal position of animals is not unlike that of human slaves at the beginning of the nineteenth century in the United States. Slaves had no legal rights of their own, yet were afforded some special legal protection.

For the foreseeable future any legal advancement will be of the protective nature, as it would require a substantial change of attitude and awareness before the idea of legal rights for animals could be accepted. To obtain such rights, the Constitution of the United States would have to be amended, just as it was necessary to amend the Constitution to give all the human races equal legal rights.

Notes

1. Henry S. Salt, *Animal Rights* (Clarks Summit, Pa.: Society for Animal Rights, 1980) (Containing an extensive bibliography of animal related books and articles); Peter Singer, *Animal Liberation* (New York: Random House, 1975); Charles R. Magel, *A Bibliography on Animal Rights and Related Matters* (Washington D.C.: University Press of America, 1981).

2. Tom Regan and Peter Singer(eds), *Animal Rights and Human Obligations* (Englewood Cliffs, N.J.: Prentice-Hall, 1976); David Favre, "Wildlife Rights: The Ever-Widening Circle," 9 *Env't'l Law* 241 (1979); Stephen Clark, *The Moral Status of Animals* (Oxford: Clarendon Press, 1977); R. G. Frey, *Interest and Rights: The Case Against Animals*, (Oxford: Clarendon Press, 1980); Anita Dichter, *Legal Definitions of Cruelty and Animal Rights*, 7 *Envir. Affairs* 147 (1978).

3. Stephen Burr, *Toward Legal Rights for Animals*, 4 *Envir. Affairs* 205 (1975); Joyce S. Tischler, *Rights for Non-human Animals: A Guardianship Model for Dogs and Cats*, 14 *San Diego Law Rev.* 484 (1977); Lori Zurvalec, *Use of Animals in Medical Research: The Need for Governmental Regulation*, 24 *Wayne Law Rev.* 1733 (1978).

4. See discussion § 12.5 *infra*.

Terms and Categories

§ 2.1 Animals

The term “animal,” because of its broad scope, is seldom used alone in legal writing; rather, animals are referred to by categories. It is therefore important to determine the precise coverage of any term used. The availability of certain legal concepts may depend upon proving the animal falls within a certain classification. The primary classification distinguishes between domestic animals and wildlife. Prior to discussing that distinction, however, the broad scope of the term “animal” must be examined. Subsequently, often-used terms like “pet,” “game,” and even “beast” will be discussed briefly, as well as the species of dogs and bees which historically have been difficult to classify.

The term “animal” has a fairly precise biological meaning, a fuzzy common meaning, and a mixed legal definition. Many individuals and legislatures use the term “animal” when the much more limited category of mammals or quadrupeds is really meant.¹ This is a misuse of the term “animal,” as the term properly refers to all living things other than plants. Over time, the legal system has used an assortment of criteria to determine whether or not a particular entity is an animal. For example, courts have found animals to be:

- (1) those endowed with the power of voluntary motion;²
- (2) every living brute creature;³
- (3) sentient beings other than man;⁴ and
- (4) all irrational beings.⁵

These criteria have been used only to find the obvious, i.e. that a chicken is an animal,⁶ or that a goldfish is an animal.⁷ There is no case that presents a really difficult issue as to whether or not a particular entity is an animal.⁸

The term “animal” clearly subsumes such subcategories as mammals, birds, reptiles, fish, amphibians, and insects. There are other entities