

Animals are “Property” Under the Law©

By: Catherine L. Wolfe, Attorney

The laws of most states categorized animals as "property." That is unfortunate for both the animals and the people who love them.

As “property” the animals are legally subjected to “ownership” by people, and “ownership” laws. When property owners sustain damage to their property (including their animals) they are legally obligated to minimize ("mitigate") the damage. That means, for example, that if someone damages a chair that you own, you may choose to repair it but if the repair cost exceeds the fair market value of the chair (what people would pay for it on the open market), then you are only entitled to recover the fair market value of the chair. You are **not** entitled to any repair costs that exceed the fair market value, nor are you entitled to any compensation for emotional distress if the chair was a cherished family heirloom and its damage was emotionally upsetting to you.

As "property," animals are treated the same way under the law. If your pet is injured by another person you are only entitled to the fair market value of your pet. You are legally barred from recovering the cost of veterinary treatment to restore your pet's health if it would be less expensive just to get a new pet. As an example, if your pet is a mix-breed its fair market value is \$0; mixed-breeds are literally “a dime a dozen” since you can get them free on the open market (i.e. out of the newspaper classified advertisements, bulletin boards at many businesses, outside of stores where people literally give away whole litters, free). Since your pet is worth \$0 on the open market, you are not entitled to recover **any** costs or veterinary fees because, under the law, it would be more cost-effective to let your pet die and get a new one for free. Stated another way, after your pet (“property”) is injured (“damaged”) it is a financial liability – it has a negative value because it will cost more to restore its health (often thousands of dollars) and you could simply replace it with a free pet.

Several years ago I had a wonderful black lab as a client. His name was “Squirt.” He was viciously attacked by another dog (an Akita) and critically wounded. Because Squirt was about 7 years old his fair market value was \$0. Seven year old labs are abundant, to say the least, and readily available for free. Furthermore, because their age, they are financial liabilities because they probably have health issues the require (or will require) money/financial expenditure to treat.

The fact that Squirt’s family viewed him as a family member, rather than a piece of “property,” and spent approximately \$4,000 in veterinary costs to save him, was irrelevant. As far as most state laws are concerned, it would have been less expensive for his family just to let him die, and get another 7 year old lab for free, than to spend the money they did to give him a full recovery.

Laws that treat animals as “property” are arcane and should be revised to treat animals as the living, loving, soulful beings that they are, rather than as “property.” There are a number of different theories about the fashion in which this should be done. Some people have suggested that a special sub-category of “property” be created - something called “living property.” That, of course, is an oxymoron; a conflict of terms. Personally, I believe that it is impossible to “own” something that has a soul. We do not own our children, we are their guardians/stewards during the time we are privileged to share their lives. I believe that the same is true of animals. They have souls, and feel pain, love, sorrow, etc. – we do not own them, we are their guardians/stewards.

It would be more realistic to create another independent category called “animals.” As such, “animals” would be subject to their own set of laws that would acknowledge that they are more than inanimate objects (“property”).

Some people oppose this idea arguing that if animals are not treated as property then they will be treated like people. That, they maintain, would open the floodgates of litigation and the courts would be inundated with lawsuits seeking to recover millions of dollars for injured or killed animals.

First of all, in the handful of states that have reclassified animals as something other than “property,” floodgates of litigation have not materialized, nor have any million dollar verdicts been awarded.

Second, just because animals are reclassified as something other than “property” does not automatically mean they will be treated as people. No. They would be treated as “animals,” with laws that treat them realistically – not as “property” and not as “humans,” but as “animals.”

Third, there are some situations, albeit very few, where a jury may feel that a million dollar verdict, or more, is appropriate. Hypothetically, such a case may involve a young girl, say 12 years old, who was born paralyzed and consequently was confined to a wheelchair. For 7 years she had a wonderful service dog who not only served as her personal aide but as her social secretary, a social vector through which she interacted with other people.

If a person intentionally shot and killed her dog, in front of her, and the dog died in her arms, I personally would have no problem awarding a million dollars to the young girl to compensate for the unfathomable pain and suffering that she would have suffered. And I do not believe I am alone. Under those or equally compelling circumstances, I believe juries would render large verdicts – and they should. That, after all, is the role of a jury – to determine what amount a plaintiff is entitled to. And, if circumstances warrant it, a jury should be free to make such an award.

The example I gave in the paragraph above is exceptionally heinous, but cases like it do happen. A number of years ago the fire chief in the county where I reside shot a cat that belonged to a young girl who was in fact paralyzed and confined to a wheelchair. Her cat meant the world to her and when it dragged itself home to her, barely clinging to life, she was understandably distraught. Fortunately her cat lived, but the fire chief was allowed to plead to a misdemeanor and no lawsuit could be filed against him on her behalf and/or the cat's behalf because, being "property," her cat's fair market value was \$0 (because it was older and a mix-breed) so the cost of restoring it to health could not be recovered (thousands of dollars), nor could any award for her pain and suffering or that of her cat.

In the final analysis, animals are animals. They are not "property" and they are not humans. Therefore, they should not be categorized as "property" or "human," but as "animals." Then we could have laws that accurately reflect their true nature as living, breathing, beings who are capable feeling pain, joy, love, sorrow, loss, etc.

Currently, all 50 states have different legal schemes governing, and even defining animals. Some states define animals as "vertebrates" (animals with backbones), and others limit them to specific species such as cats, dogs, horses, birds (other than "poultry"), etc. The time has come for a uniform code to govern animals as a separate, and distinct category. The legal system favors uniformity and has achieved it across the country in a number of areas, such as commercial transactions with the UCC (Uniform Commercial Code), and the Uniform Child Support Act. I submit that a Uniform Animal Protection Act be developed and adopted by all 50 states to implement a uniform legal system for the treatment of animals and those people who care for them.

About the Author: Ms. Wolfe is an attorney in Michigan. She is an expert in animal cruelty investigations. She founded Wolfe Pack Press (a 501(c)(3) public charity, www.wolfepackpress.org) to develop and distribute educational materials to prevent animal cruelty. She wrote the book, Get the Edge in Fighting Animal Cruelty Cases, and is a national speaker, having given presentations at the 2005, 2006, and 2007 NACA national conferences. Ms. Wolfe has also taught the Level II course for cruelty investigation certification for ACCI (the Association of Certified Animal Cruelty Investigators) and been a presenter for numerous other organizations, including the Michigan Humane Society, and the Michigan Association of Animal Control Officers.