



Animals, Lawyers, and the Law

BY YOLANDA EISENSTEIN

When people learn that I practice animal law, the first question many of them ask is “What is animal law?” My answer is simply that it’s the law related to animals and I go on to talk about dog bites and animal cruelty. But the answer is hardly that simple. Animal law is a complex field that incorporates almost every area of the law — administrative, constitutional, contracts, criminal, environmental, estate planning, international, and property, to name a few. It is a practice that is unique and challenging.



animal law

Animal law is old, binding lawyers to 19th century precedent in 21st century cases. It is also new, with the U.S. Supreme Court hearing arguments involving animal cruelty and free speech issues in *U.S. v. Stevens*.¹ Animal law is often perceived as “dogs and cats” law, which occupies the work of some lawyers, but it involves all animals — farm animals, ocean life, and wildlife. While empirical evidence exists that certain species, such as great apes, dolphins, and whales are highly intelligent with elaborate social structures, all animals (except humans) remain property under the law. Some animals, such as birds and mice, are not animals at all under the Animal Welfare Act.

It is within this legal — as well as political and social — environment that animal lawyers practice what I refer to as “today’s animal law.” It is a field that is still relatively young compared to other areas of the law, although it has matured over the past 30 years.

Today’s animal law is generally considered animal protection law, an approach that seeks to use laws to improve the lives of animals. Similar to the development of environmental law, animal law is the outgrowth of a social justice movement, one that began in California in the late 1970s. A small group

of lawyers believed that animals deserved greater protection under the law and combined their talents to use the legal system to achieve their goals. These lawyers forged new territory, litigating cases with little statutory law, antiquated precedent, and no experienced lawyers to mentor them.² Times have changed. Through litigation, greater public awareness, and activism, the need for greater protection for animals entered the mainstream public conscience and animal law gained traction.

The laws governing our treatment of animals are found at the local, state, and federal levels. The United States is also a party to numerous international treaties related to animal protection, trade, and commerce. More than 100 federal laws exist affecting animals, ranging from laws protecting endangered species to the establishment of legal rights for disabled Americans with service animals. Federal patents are granted for genetically altered animals. The U.S. Constitution protects the free speech of animal welfare activists. State laws regulate hunting, criminalize animal cruelty, and allow animals to be included in protective orders in domestic violence cases. At the local level, cities require residents to register and vaccinate their animals and often dictate how many they may own. Animals and the

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animal law

law intersect almost everywhere, and it is clear that animal law is about much more than companion animals, although they are high on the list of animal protection issues.

So who are the animal lawyers and what do they do? They are the same as other lawyers, except they consider the impact on the client *and* the animal (if alive) when analyzing cases. Just as family lawyers consider the impact of litigation on family members and environmental lawyers consider the impact on the environment, animal lawyers do the same with the animal in mind.

In actual practice, prosecutors are focusing their efforts on animal cruelty and dog fighting, and the related criminal activity — drug trafficking, prostitution, and possession of illegal property — that often accompany it. Lawyers with organizations such as the Animal Legal Defense Fund (ALDF) are filing lawsuits to compel enforcement of federal animal welfare laws and assisting states with animal cruelty prosecutions. Numerous federal agencies are involved in animal-related litigation. For example, government lawyers in special divisions of the U.S. Department of Justice are prosecuting cases involving violations of the Endangered Species Act and defending against its challengers. At the local level, Texas lawyers are regularly in the courts representing clients in animal cases.

Outside of the courtroom, the work continues. Staff attorneys, such as those at the Humane Society of the United States, are negotiating agreements with various agricultural entities for more humane treatment of farm animals. Lawyers collaborate with the scientific community to develop symposia to educate on superior alternatives to animal testing while federal government policy advisors, such as those in the U.S. Department of Homeland Security, assess the effectiveness of federal legislation governing disaster and emergency planning involving animals.

On the legislative front, volunteer lawyers throughout the country assist local, state, and national animal welfare organizations with researching and drafting pro-animal legislation. Lobbyists roam the halls of state legislatures working to get bills passed. Concerned citizens are gathering signatures and passing ballot initiatives for more humane treatment of animals when legislatures fail to act.

In academia, professors speak regularly on animal issues and publish articles that deepen and expand the legal scholarship. In Texas, law students at five Texas law schools are enrolling in animal law classes with the intent to practice animal law when they graduate.

Finally, in the legal community, the American Bar Association (ABA) Tort Trial and Insurance Practice (TIPS) Animal Law Committee is active in a number of areas. The lawyers who lead the organization are presenting educational programs at major ABA conferences; organizing public service events; collaborating with other sections on common interest projects; and drafting animal-protection resolutions that are garnering broad-based support. State and local bar associations across the country are adding animal law sections and committees. The State Bar of Texas Animal Law Section is in its 15th year with almost 400 members. The section hosts an annual all-day conference that is nationally recognized. Bar journals and magazines are regularly covering animal law topics.

This is today's animal law. Since the pioneering work of the California lawyers in the late 1970s, the field has developed and matured as a legal discipline. Bolstered by growing public concern and awareness regarding animal cruelty, there has been an increase in animal protection laws and in the number of lawyers who have found animal law to be a meaningful and challenging endeavor. Litigation has increased at every level, as individual owners are willing to file suit for wrongful death or injury regardless of the damages. Law schools continue to add animal law classes, along with moot court competitions, writing contests, and symposia. Lewis & Clark Law School in Portland, Ore., offers a specialty in animal law, a comprehensive program for law students interested in pursuing a practice. The school also runs an animal law "think tank," the Center for Animal Law Studies, in collaboration with ALDF. Legal scholarship continues to expand as schools establish animal law journals.

Much has been accomplished, but there is more to do in order to bring animal law to the level of other areas of the law. The momentum exists and must continue on its current path to ensure animal law's place in the legal world.

Notes

1. 130 S.Ct. 1577 (2010).
2. Joyce Tischler was one of those original lawyers. She co-founded the Animal Legal Defense Fund and now serves as general counsel. For a history of animal law, see Joyce Tischler, *The History of Animal Law, Part I* (1972–1987), Stan. J. Animal L. & Pol'y 3–12 (2008), available at <http://sjalp.stanford.edu>, click on Past Issues, Vol. I (2008). Part II is currently in the works and will be published soon.

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YOLANDA EISENSTEIN

of the Eisenstein Law Office in Dallas, is an adjunct professor at Southern Methodist University Dedman School of Law and vice chair of the ABA TIPS Animal Law Committee. She is the author of *Careers in Animal Law*, published by the ABA Law Practice Management Section and ABA Law Student Division.