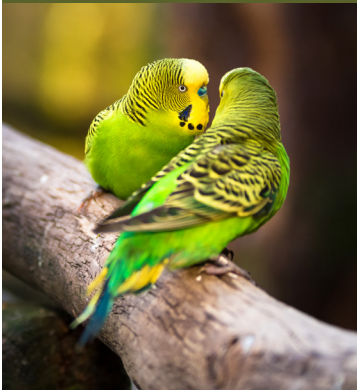




COMPANION ANIMAL LAW COURSE GUIDE



**ANIMAL LEGAL
DEFENSE FUND**





**ANIMAL LEGAL
DEFENSE FUND** EST
1979

COMPANION ANIMAL LAW COURSE GUIDE

This Companion Animal Law Course Guide was prepared for the Animal Legal Defense Fund (ALDF) in June 2017. The purpose is to provide assistance for instructors planning a course dealing with legal issues relating to companion animals. Instructors are reminded ALDF maintains a database of syllabi that are useful for course preparation as well.

**Companion Animal Law
Table of Contents**

Background and Structure of Course Guide 4

- Course Books and Other Material 4
- Writing Assignments 6
- Jurisdictional Focus 6
- Guest Speakers 6
- Purpose of References to Number of Pages 7
- Student Learning Objectives 8

Introductory Material 9

- Property Status 9
- Animal Law/Welfare/Rights 10
- Status of Companion Animals 10
- Owner vs. Guardian 10
- Cross Over Species (Equines & Rabbits) 11

Housing Issues 13

- Rental 13
- Condominium 13
- Ordinances/Zoning 14
 - Breed Discriminatory Legislation 14
 - Other Ordinance Issues 15

Custody 16

Lost-Found 17

Trusts and Estates 188

Working Animals: Service and Assistance Animals 199

- Americans with Disabilities Act 19
- Fair Housing Act 20
- Air Carrier Access Act (Nondiscrimination on the Basis of Disability in Air Travel) 21
- Compare with Therapy Dogs or Facility/Courthouse Dogs 21
- Compare with Military Working Dogs 21

Injuries Caused by Animals/Dangerous Dogs 23

Criminal/Anti-Cruelty 244

- Process (Warrant, Seizure, Forfeiture, Bond, Restitution) 25
- Intentional/Negligent Acts 26

| | |
|--|-----------|
| Hoarding..... | 26 |
| Animal Fighting | 26 |
| Crush Videos | 26 |
| Hot Car Statutes..... | 27 |
| Injuries/Death to Law Enforcement/Service Animals | 27 |
| Link with Violence Against Humans/Domestic Violence Protective Orders..... | 27 |
| Dogs vs. Livestock | 28 |
| Use of Civil Actions..... | 288 |
| Breeders/Suppliers..... | 29 |
| Animal Welfare Act Regulation..... | 29 |
| Retail Pet Store Bans..... | 29 |
| Leasing or Renting of Dogs | 30 |
| Shelters/Rescue Organizations | 31 |
| Mission and Statistics..... | 31 |
| Trap-Neuter-Vaccinate-Return/Community Cats..... | 31 |
| Adoption/Foster Contracts | 32 |
| Other Requirements | 32 |
| Veterinary Issues | 33 |
| Malpractice & Administrative Proceedings | 33 |
| Other Veterinary Issues | 34 |
| Practice of Veterinary Medicine | 34 |
| Alteration and Declawing..... | 34 |
| Prescription Drugs..... | 35 |
| Damages for Injury/Death of Animal and Valuation Issues | 36 |
| Law Enforcement Killing Dogs | 38 |
| Alternative Dispute Resolution | 39 |
| Ethical Issues | 40 |
| Professional Ethical Issues | 40 |
| Philosophical Issues/Companion Animal Ethics | 40 |

BACKGROUND AND STRUCTURE OF COURSE GUIDE

Putting together any course syllabus requires the instructor to make difficult choices. A limited amount of time is allocated for every course and inevitably it will be necessary to leave out material. The structure of this course guide is intended to assist instructors in making these challenging decisions.

Course Books and Other Material

There are currently two widely adopted animal law course books on the market. Instructors should contact the publishers to request review copies.

SONIA S. WAISMAN, PAMELA D. FRASCH & BRUCE A. WAGMAN, *ANIMAL LAW CASES AND MATERIALS* (5th Ed. 2014) (published by Carolina Academic Press) [referenced as WFW]

DAVID FAVRE, *ANIMAL LAW WELFARE, INTERESTS, AND RIGHTS* (2nd Ed. 2011) (published by Wolters Kluwer) [referenced as Favre]

Note that Professor Favre has an additional thirty page chapter on Pets & Housing (Chapter A) available through the course book's website. In order to access that material, instructors will need to obtain a password through their law school's Wolters Kluwer representative. The relevant page numbers from that chapter are referenced as A#-A# in this guide.

It is also strongly recommended instructors obtain the teacher's manual for each of these books. Both manuals include questions and class activities that would be useful to consider when structuring a course. Professor Favre's teacher's manual also includes examples of other scenarios that would be suitable to generate class discussion. Although the book is not referenced in this course guide, another suggestion is for instructors to request a review copy of the Teacher's Manual to accompany *ANIMAL LAW AND THE COURTS: A READER* (Taimie Bryant et al. eds. 2008) (published by Thomson West). That teacher's manual has additional ideas on how topics in this course guide could be covered.

A third book intended to be used to teach animal law across the law school curriculum is scheduled to be published by Carolina Academic Press in 2017. Although not referenced in this guide, instructors are encouraged to access *ANIMAL LAW NEW PERSPECTIVES ON TEACHING TRADITIONAL LAW* when it is published to determine if parts of it may be useful for the course.

Providing the page numbers for the currently available editions of the course books is intended to provide ideas and options for coverage. Either of the course books could be assigned for a companion animal course. It may be that an instructor has already adopted one of the course books for another Animal Law course but, depending on the overlap of the courses offered at the law school, does not think it is useful to assign again. Again – the idea is that an instructor can pick and choose materials for any assigned topic. Perhaps it will make sense to assign one of the books and supplement with additional material. Another instructor may choose to put together his or her own “course packet” of documents for the course.

The course books contain many of the leading cases in the field and to avoid duplication, the supplementary material provided generally does not include the cases already excerpted in either of the books. Instructors are encouraged to consider assigning these cases as well if putting together a course packet. The additional cases and material provided are largely of recent origin. The material was all accessed in June 2017 and was valid when this course guide was written—however instructors should always confirm the current state of the law.

Given the length of some of the cases and the secondary material, instructors often will want to assign only parts of the material.

When considering topics and material for course coverage or for student papers, there are a variety of resources available online. ALDF's website (Resources – Laws and Cases) <http://aldf.org/resources/laws-cases/> is one example. The Animal Legal and Historical Center also has a plethora of materials on wide range of topics at <http://www.animallaw.info>.

Included in the suggested reading assignments are several documents produced by the American Bar Association, Tort, Trial and Insurance Practice Section's Animal Law Committee (ABA TIPS ALC). Instructors may find these documents (Resolutions and Reports and one Model Act) useful to provide background information on a particular topic. Instructors should keep in mind that in drafting these documents, compromises in coverage and language likely would have been made. In order to have the ABA adopt the document, a variety of constituencies must be in agreement. If an instructor assigns an ABA document it can be useful to have a class discussion about the compromises that were likely required and how any recommendation could be strengthened—or if the students believe that the recommendation benefits animals at all.

Instructors who are members of the ABA TIPS ALC can access past ALC newsletters to obtain general background information on a variety of topics. The ALC website provides an index to assist instructors in finding appropriate material. If an instructor teaches at a law school that has a subscription to Hein Online, the ABA TIPS ALC Newsletters are available on that site (in American Bar Association Journals) and students should be able to access them. However, given the relatively less accessible nature of these documents compared with the other materials, only a few are referenced.

Personal Note From Author: Perhaps not surprising, when I teach the course I frequently assign material from my own articles as background information because of my familiarity with their content. I have not listed any of my articles in the list of possible reading assignments, however, multiple instructors have informed me that they have assigned parts of my articles in animal law courses. All of my articles are available to download for free at: <http://ssrn.com/author=330506> and instructors are welcome to use them for class. If I were to assign material for the upcoming academic year for a course focusing on companion animals, I would likely assign pages from the following articles.

Ensuring Effective Tools for a Challenging Task: Amending the Animal Welfare Act's Animal Fighting Venture Civil Asset Forfeiture Provision, 78 U. PITT. L. REV. 399 (2017) (History of Animal Welfare Act's Animal Fighting Venture Provision and Discussion of Civil Asset Forfeiture)

A Conundrum for Animal Activists: Can or Should the Current Legal Classification of Certain Animals Be Utilized to Improve the Lives of All Animals?, 2015 MICH. ST. L. REV. 1561 (2015) (General Theoretical Issues, Description of Breed Discriminatory Legislation, Misrepresentation of Service Animals and Service Animals in Training)

Re-evaluating the Role of Companion Animals in the Era of the Aging Boomer, 47 AKRON L. REV. 497 (2014) (Selected Issues Relating to Abuse, Ethical Issues)

Why Context Matters: Defining Service Animals Under Federal Law, 37 PEPP. L. REV. 1163 (2010) (Air Carrier Access Act – If No New Rule Has Been Announced)

Rescue Me: Legislating Cooperation Between Animal Control Authorities and Rescue Organizations, 39 CONN. L. REV. 2059 (2007) (Shelter and Rescue Organization Issues)

Valuation in Veterinary Malpractice, 35 LOY U. CHI. L. J. 479 (2004) (General Background on Veterinary Issues and Damages)

Writing Assignments

It may be necessary to design the course to fulfill a law school's writing requirement. Students may be assigned the task of producing a research paper of a specific length. If students are spending a considerable amount of time on such a paper, it is common to allocate class time to have the students present on their individual topics. Although this can be time consuming, it helps hone students' oral presentation skills and exposes the class to a variety of topics. Given many students have cell phones capable of video recording, assuming no technological barriers or the inability of a law school to provide a necessary accommodation, an alternative to spending in-class time on student presentations is to have students video record a short presentation, post it on the course site and have the other students watch the recordings in advance of a class discussion on the topic. Instructors may want to schedule any such presentations close in time to any course material related to the topic.

Some schools also allow for courses with a series of shorter writing assignments to meet a writing requirement. This course guide provides some ideas if an instructor is either structuring the course for that purpose or just wants to have his or her students complete additional written assignments.

Jurisdictional Focus

Given the legal issues relating to companion animals are often governed by state law, an instructor needs to decide whether he or she wants to focus on a single jurisdiction's law. There are certain areas of the course (such as criminal law) where it may be especially useful to focus on the law of the state where the law school is located. However, for many law schools, because students may practice in many different states after graduation, it is more appropriate to cover issues more broadly. One way to provide an opportunity for students to learn the law they may use after graduation is to have the students choose a jurisdiction's law to apply in a series of assignments through the semester. For example, during the discussion on service and assistance animals, the student could report on his or her applicable state law. Ideas for these types of assignments are included in the individual topic sections. To assist in an instructor's evaluation of the assignments students could be required to provide the research they used to support their answers (cases, statutory material, etc.). Rather than having the students provide hard copies of the documents, online portals (e.g., Blackboard, TWEN) can be an efficient way to handle this paperwork and track assignments.

Guest Speakers

A good guest speaker can bring a topic to life in any course but especially in a course in an emerging area of the law it is beneficial for the students to interact with someone that is practicing in the field or otherwise is an expert on a topic. Coordinating with the law school's Student Animal Legal Defense Fund chapter on guest speakers can draw in additional students and may be a way to share any travel costs associated with a speaker. However, given the financial constraints at many law schools, finding "local talent" may be an instructor's best option. Bar association animal law sections are a good way to find folks interested or active in the field. Alumni of the school are often willing to speak to students about their experiences.

Most schools now have the capacity to "bring in" speakers using video conferencing technology. This expands the pool of possible speakers considerably because some potential speakers may be happy to present and interact with a class but do not have the time or resources to travel to the law school. Instructors may be able to even trade presentations—perhaps one instructor is a former prosecutor and can cover criminal law issues and an instructor teaching at another school may be writing in the area of service and assistance animals. In order to make a guest speaker's presentation as meaningful as possible, an instructor can ask the guest speaker

whether he or she wants the students to read anything prior to the presentation (cases or relevant statutory materials). An instructor could also require students to prepare written questions in advance or require the students prepare a “reflection paper” due shortly after the guest speaker’s visit.

Purpose of References to Number of Pages

Initially the decision is made as to the number of credit hours that will be allocated to the course by the law school. Frequently law school curriculum committees and faculties (if the general faculty approves courses) will provide considerable deference to the opinion of the instructor teaching a course as to the number of credit hours needed for a course. However, given other curricular demands and scheduling issues it may be necessary to adjust credit hours up or down. In addition, at some law schools, a course may be able to be offered for a variable number of credit hours (usually a range such as two or three) at the preference of the instructor.

Law schools accredited by the ABA are subject to the ABA Standards and Rules of Procedure for Approval of Law Schools. Standard 310 Determination of Credit Hours For Coursework sets forth the requirement that law schools have written published policies and procedures for determining the number of credit hours and sets forth how to determine the amount of work that “reasonably approximates” a credit hour. In May 2016 the ABA issued a Managing Director’s Guidance Memo on Standard 310 (Guidance Memo).

https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_310_guidance_memorandum.authcheckdam.pdf

This memorandum provides general guidance on the requirements of Standard 310. For purposes of structuring a doctrinal course the general rule is for every hour spent in the classroom or under direct faculty instruction, students should be spending two hours of time preparing out of class. (Note that this is based on a fifteen-week period, including one week for a final examination and a classroom hour can be only fifty minutes versus a sixty minute hour for out of class preparation time.) The way the time is divided is left to the law school and faculty to determine and the focus is on the combination of classroom and non-classroom time.

The length of each class period is also at the discretion of each law school. Thus, a three-credit hour class may be scheduled for two seventy-five minute sessions per week or three fifty minute sessions per week. So, for each seventy-five minute class session the students would be expected to spend three hours on out of class preparation and for each fifty minute class session the students would be expected to spend two hours on out of class preparation. The Guidance Memo states a law school must demonstrate that it is adhering to its credit hour policy including by reviewing course descriptions and syllabi “to assess whether the work assigned complies with the school’s policy for the amount of work required per credit hour, including out-of-class work that is required.” Guidance Memo p. 2.

The Guidance Memo does not set forth specific requirements as to determine the amount of assigned reading and other work to support the hours of out of class student work for each credit hour. However, one approach suggested by the Guidance Memo is for law schools to set parameters or guidelines that might include a presumptive number of pages of reading per class session while allowing for adjustments for other ways students are academically engaged in the course. For example, a law school may set a parameter of assigning twenty-five to forty pages of out of class reading for every fifty minute class session for an upper level elective course. Given that law schools may set a presumptive number of pages per credit hour, this guide and the accompanying Suggested Reading Assignments List provide the number of pages for each possible reading assignment. An instructor can then add or delete individual reading assignments to ensure that the course is meeting the law school’s standards to support the allocated credit hours.

Obviously the type of material that is assigned will vary considerably in difficulty. Twenty-five pages of a dense and complex case will likely take students longer to read and comprehend compared with a secondary source written for a general legal audience. The number of pages is denoted as bracketed material and allocated as follows. For the course books, and secondary materials the number of pages include all pages containing any of the material. For cases the number of pages will be the number of pages in a standard dual column format (reporter or Westlaw/Lexis). If a website is provided it is denoted as such and instructors can consider whether the material available through the various links might be appropriate to assign.

Student Learning Objectives

Many law schools now require instructors to include specific student learning objectives in each course syllabus. Depending on the institution, instructors may need to ensure that the course learning objectives clearly support the learning outcomes established by the law school. (The ABA requires law schools to establish learning outcomes.) Ideas for this type of language can be found on the sample syllabi in the ALDF database. Examples of some student learning objectives are below.

1. Demonstrate an understanding of basic issues in animal law (assistance animals, veterinary malpractice, animal cruelty, rescue organizations, estate planning).
2. Compare and contrast the variety of approaches states take in dealing with conflicts regarding the ownership of animals.
3. Identify the applicable damages that may be available to a plaintiff if a companion animal has been injured or killed.
4. Differentiate between the concepts of animal law, animal welfare and animal rights.

If students will be writing a paper and doing a presentation the following could be used as student learning objectives.

1. Provide an engaging and informative oral presentation on issues relating to a discrete area of animal law.
2. Prepare a properly footnoted short research paper analyzing an animal law issue.

INTRODUCTORY MATERIAL

Even though it is always challenging to have a limited amount of time in a course and instructors' want to maximize coverage, it can be helpful to allocate a class period or two for introductory material to allow students to get a sense of the coverage of the course (both what will be and what will not be covered). In addition, law schools generally have a short period at the beginning of each semester or quarter for students to add or drop courses and instructors might want to cover topics that may be easier for students who miss a few sessions to easily make up the material (either through obtaining notes from a colleague or watching any recordings of the class session).

Because standing issues rarely arise involving disputes over companion animals, standing is not covered in this course guide. However, if students would not have been exposed to that issue in another course, now may be a good time to discuss the issue. Both course books have extensive material on the issue of standing (using cases not involving companion animals).

Property Status

For any animal law course it is logical to begin with the current status of animals as property, defining what is an animal, and the traditional classifications of animals. For many students at least some of this information is likely to have been covered in their 1L Property Law course. Both course books have material discussing the property status of animals and theories proposed to alter the current status of animals. Professor Favre has written extensively on this topic and his work can be very useful to structure a discussion around possible changes to the system. It is possible to devote an entire course on the philosophical issues surrounding the property (and lack of legal personhood) status of animals so instructors are cautioned to consider how much depth they want to delve into on this topic for the course. This material also could be included in a section discussing ethical and philosophical issues. If only using supplementary material, the often cited Sentell case (discussed in the Favre course book) could be used to introduce the nature of companion animals as property.

WFW pp. 3-34 (What is an Animal, Defining Animal and Classifications) [31]

WFW pp. 35-63 (Animals as Property – Includes Discussion of Development of Legal Protection of Humans) [29]

Favre pp. 30-36, 87-94 (New Issues in the Property Arena Including Genetic Ownership and Theories) [15]

Smith v. City of Detroit, 2017 WL 3279170 (E.D. Mich. 2017) (No Legitimate Possessory Interest in Unlicensed Dogs for Purposes of Fourth Amendment Protection – Could Also Be Covered in Section on Law Enforcement Killing Dogs) [12]

Sentell v. New Orleans & Carrollton R.R. Co., 166 U.S. 698 (1897) (Dogs as Qualified Property) [4]

David Favre, *Living Property: A New Status for Animals Within the Legal System*, 93 MARQ. L. REV. 1021 (2010) (Proposing a New Category of Property – “Living Property”) [37]

David Favre, *Equitable Self-Ownership for Animals*, 50 DUKE L.J. 473 (2000) (Proposing Dividing Living Property Into Legal and Equitable Components Allowing for a Limited Form of Self-Ownership for Animals) [22]

Animal Law/Welfare/Rights

It may also be useful early in the term to distinguish between animal law, animal welfare and animal rights and talk about what the focus will be in the course. Instructors may choose to delay some of the perhaps more challenging discussion on this issue to later in the course in favor of merely distinguishing the concepts at this point. For instructors who wish to go into more depth at this point, please see the section of this course guide discussing companion animal ethics. Otherwise it can be effective to, at a minimum, have a class discussion about what the students believe the terms mean and agree on a common definition for use in the course.

Status of Companion Animals

Depending on whether the students in the course have taken a general animal law course or have otherwise been exposed to these issues, it can also be useful early in the course to emphasize the enhanced treatment and protection afforded to companion animals compared with other classifications of animals (farm, wild etc.). Although this will become accentuated when students read materials later in the course, it may be useful to highlight some of the laws that differentiate companion animals because of the views of the dominant culture in the United States. Two examples would be prohibitions on the sale of dog and cat fur and flesh. States have passed legislation prohibiting the sale of both cat and dog fur and flesh. Note states that prohibit the sale of dog and cat flesh for food may still allow for personal consumption. There is also a prohibition on the importation of dog and cat fur products at the federal level. Federal legislation was introduced in March 2017 that would prohibit the slaughter of dogs or cats for human consumption.

WFW pp. 462-463 (Note on Dog and Cat Consumption) [2]

Favre pp. 2-4 (Dog and Cat Fur) [3]

OR. REV. STAT. § 167.390 (Commerce in Fur of Domestic Cats and Dogs) [1]

11 DEL. C. § 1325A (Unlawful Trade in Dog or Cat Byproducts – Fur and Flesh) [2]

NY AGRIC. & MKTS. LAW § 379 (Prohibition on the Selling of Fur and Flesh of a Dog or Cat) [3]

NY AGRIC. & MKTS. LAW §§ 96-d & 96-h (Prohibition on Commercial Slaughter and Sale of Dog or Cat Flesh as Food/Meat) [2]

19 U.S.C. § 1308 (Prohibition on Importation of Dog and Cat Fur Products – Including Useful Historical and Statutory Notes) [6]

Dog and Cat Meat Trade Prohibition Act of 2017, H.R. 1406, 115th Cong. (2017) (Amending the Animal Welfare Act to Prohibit the Slaughter (Sale, Transport Etc.) Dogs and Cats for Human Consumption) [2]

Stacey Cohen, *Man Bites Dog? It's Legal to Eat Dogs and Cats in 44 States*, CONSUMER AFFAIRS, Oct. 17, 2014, <https://www.consumeraffairs.com/news/man-bites-dog-its-legal-to-eat-dogs-and-cats-in-44-states-101714.html> [3]

Owner vs. Guardian

Although the status of animals as property has not changed, a few jurisdictions have revised their laws to allow for the designation of the human owners as guardians of animals. Boulder, Colorado and Rhode Island are examples. However, there has been considerable opposition to such changes by both people opposed to

changing the status of animals and those who believe that without a true alteration in the property status of animals this type of change in terminology does not benefit animals. The American Veterinary Medical Association (AVMA) opposes the adoption of new terminology. This material also could be covered when discussing philosophical issues or, given the concerns raised by veterinary associations, when discussing veterinary issues.

During class it can be useful to divide the students into groups to represent the sides of the debate and ask them to make arguments regarding the positives and negatives of merely changing the language used in describing humans' relationship with animals. Do the students agree with the concerns raised by the veterinary associations as to the possible negative consequences to animals if this type of change occurred in more jurisdictions?

R.I. GEN. LAWS § 4-1-1 (Allowing Owner and Guardian to be Used Interchangeably) [1]

BOULDER, COLO. §§ 6-1-1, 6-1-2 (Defining Guardian as Owner) [5]

MO. REV. STAT. § 67.140 (Prohibiting the Description of the Relationship as Anything Other Than Ownership) [1]

Susan J. Hankin, *Making Decisions About Our Animals' Health Care: Does it Matter Whether We Are Owners or Guardians?*, 2 STAN. J. ANIMAL L. & POL'Y 1 (2009) (Analyzing Arguments Over Impact of Changing Terminology from Owner to Guardian) [45]

American Veterinary Medical Association, *Ownership v. Guardianship, State Advocacy Issue*, <https://www.avma.org/Advocacy/StateAndLocal/Pages/ownership-vs-guardianship.aspx> (Setting Forth Policy Opposing Change in Terminology and Listing Possible Legal Ramifications of Change in Status) [4]

American Veterinary Medical Law Association, *Ownership of Animals vs. Guardianship of Animals: The Effect of a Change in the Law on Veterinarians in California*, Mar. 14, 2002, CAL. VET. May/June 2002 at 10, http://www.theanimalcouncil.com/files/FLEMMING_ARTICLE_GUARDIAN_VS_OWNER.pdf (White Paper Raising Possible Issues if Guardianship Law Applied to Animals) [5]

The Guardian Campaign, <http://guardiancampaign.net/index.html> (Website Sponsored by In Defense of Animals Supporting the Change in Terminology – Includes a List of Jurisdictions and Argues Benefits of Change) [Website]

Cross-Over Species (Equines & Rabbits)

This companion animal course guide has been written to focus on companion animals in their role as companion animals, thus the use of these animals in areas such as research and entertainment is not covered. However, it may be worthwhile early in the course to recognize that some species of animals are likely to be viewed as “cross-over” species. For example, many owners of equines consider them companion animals. Certainly in the area of criminal law (abuse) and valuation, equines may be more protected or have a higher economic value compared to some other domesticated animals. However, equines are also slaughtered (for rendering and at times for human consumption) and used for entertainment. There are also continuing legal issues regarding the treatment of wild horses.

Rabbits also are an interesting cross-over species. Although many people consider rabbits as their beloved companions, rabbits are frequently used for research and rabbits are slaughtered for human consumption. Rabbits also can be considered a “pest” species. Instructors can certainly delve into these issues in greater detail

but for a class focused on animals as companion animals, it is likely there will be limited time for a class discussion acknowledging the role these animals plays in the lives of humans is central to the treatment of these animals under the law.

WFW pp. 456-463 (Horse Slaughtering Case – Includes Note Discussing Dog and Cat Consumption) [8]

WFW pp. 662-676 (Wild Free Roaming Horses and Burros Act) [15]

Favre pp. 6-7 (Horses as Food) [2]

Rebecca Quinn Dolan, *The Evolution of Consumption Horse Slaughter in the United States: An Analysis of the Safeguard American Food Export Act*, 12 J. ANIMAL & NAT. RESOURCE L. 81 (2016) (Providing History of Horse Slaughter Legislation) [15]

Taylor Budnick, *A 'Hare' Raising Lapse in Meat Industry Regulation: How Regulatory Reform Will Pull the Meat Rabbit Out From Welfare Neglect*, 21 ANIMAL L. 329 (2015) (Discussing the Companion Animal Status of Rabbits and Proposing Mandatory USDA Inspection of Rabbit Producers and Processors) [36]

HOUSING ISSUES

A possible research and/or writing assignment in the area of housing issues is to provide students with a basic fact pattern and ask them to determine the rights of the homeowner or tenant to keep a particular animal or animals with him or her in the particular type of housing or in the jurisdiction itself. The work product could be a memorandum to the partner of a law firm or a letter to a condominium board setting out the rights of the individual. A similar exercise could be used when covering service and assistance animal issues.

Rental

In the absence of right to have an animal on the premises due to the application of another law such as the Fair Housing Act, landlords can prohibit or restrict tenants from keeping pets on the premises. Instructors can discuss the issue generally and use examples of situations where because of general theories (such as selective enforcement or waiver), a renter may have an argument that he or she should be able to keep an animal in the housing. In addition, this would be a good time in the course to discuss the two federal laws that allow for pets in particular types of housing—Pet Ownership in Assisted Rental Housing for the Elderly and Handicapped (“POEH”) and Pets in Public Housing. The regulations governing POEH are comprehensive and can be the basis for a lively discussion over the types of minimum standards that could be implemented relating to companion animals in housing in other circumstances as well.

WFW pp. 513-518 (Landlord-Tenant and Note on Pets in Public Housing) [6]

Favre pp. A2-A8 (Pets Within a Lease) [7]

Anderson Housing Assoc. v. Gonzalez, 20 N.Y.S. 3d 291 (Civ. Ct. City of N.Y. 2015) (Visiting Dog) [4]

Bartale v. Cantos, 2013 WL 691906 (N.J. Super. Ct. App. Div. 2013) (unpublished) (Landlord Waived No-Pets Policy) [3]

NEW YORK CITY ADMIN. CODE § 27.2009.1 (Rights and Responsibilities of Owners and Tenants in Relation to Pets) [1]

CAL. CIV. CODE § 1942.7 (If Allow Animal on the Premises Shall Not Require Declawing or Devocalization as a Condition) [2]

12 U.S.C. § 1701r-1 (Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped) [2]

24 C.F.R. § 5.300 *et. seq.* (Regulations for Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped) [12]

42 U.S.C. § 1437z-3 (Pet Ownership in Public Housing) [2]

Condominium

The California case of Nahrstedt v. Lakeside Village Condominium Ass’n, 878 P.2d 1275 (Ca. 1994) is often used to illustrate issues relating to companion animals in common interest developments. It is in the WFW course book and although the real estate concepts can be a bit daunting, Justice Arabian’s dissent is well worth reading. It is also noteworthy because it led to the passage of a California statute providing common interest

development documents entered into after the effective date shall not prohibit owners in these developments from keeping at least one pet.

WFW pp. 526-539 (Condominium Law) [14]

Favre pp. A13-A18 (Condominiums) [6]

Geraci v. Union Square Condominium Ass'n, 2017 WL 372303 (N.D. Ill. 2017) & Robert Channick, *Holly Geraci Loses Lawsuit, Must Share Elevator with Dogs*, CHI. TRIB., APR. 25, 2017, <http://www.chicagotribune.com/business/ct-geraci-dog-condo-lawsuit-0425-biz-20170424-story.html> (FHA Condominium Case But Facts are Interesting and Can Generate Class Discussion Over Balancing Interests – Appeal Was Filed in May 2017) [11]

Villas de las Palmas Homeowners Ass'n v. Terifaj, 90 P.3d 1223 (Cal. 2004) (Upholding Pet Restriction and Interpreting Statute) [13]

CAL. CIV. CODE § 4715 (Formerly Cited as § 1360.5) (Condominium Provision) [1]

Ordinances/Zoning

The course books include material on state and local laws generally, breed discriminatory legislation, and the keeping of wild or exotic animals. Breed discriminatory legislation is a common topic for law review articles. There are a plethora of cases that have held breed discriminatory legislation is constitutional. It is likely of more interest to cover recent cases that reflect arguments that have been successful. Best Friends Animal Society maintains a list of states with provisions restricting or prohibiting breed discriminatory legislation (twenty-one states as of June 2017). This would be a good point in the course to determine whether students know what the law is where they currently live (likely with their animals). Is there a pet limit law in their city? Does the ordinance limit the types of animals that are allowed within the jurisdiction? (See the idea for a research/writing assignment at the beginning of this section.)

WFW pp. 330-341 (Due Process, BDL, Dangerous Dog Ordinances) [12]

WFW p. 500 (Note on Wild Animal Ordinance) [1]

Favre pp. 78-80 (Insurance and BDL) [3]

Favre pp. 154-169 (Police Power, BDL, Wild Animals, Dangerous Dog Ordinance) [16]

Favre pp. 177-181 (Nuisance and Zoning) [4]

Favre pp. 385-387 (Animal Welfare Act and Exotic Animals) [3]

Favre pp. A18-A30 (Subdivision Covenants and Cougar Case) [13]

Breed Discriminatory Legislation

Russ v. City of Reynoldsburg, 2017 Ohio 1471, 2017 WL 1422887 (Ct. App. Ohio 2017) (City Ordinance Prohibiting Ownership of Pit Bulls, Conflicted with State Law and Exceeded City's Authority) [Note – Ohio State Law Does Not Have a Provision Specifically Restricting BDL – However Ohio Law was Amended in 2012 to Repeal the Language that Included Pit Bull Dogs in the Definition of Vicious Dogs] [6]

State v. Blatt, 774 S.E.2d. 570 (2015) (In the Absence of a Legislative Breed-Specific Presumption, Courts May Not, Upon Judicial Notice Rely Solely Upon a Breed-Specific Presumption in Ordering the Destruction of a Dog) [24]

American Bar Association, Resolution and Report #100 (Adopted August 2012), <https://www.americanbar.org/content/dam/aba/administrative/tips/alc/ABADueProcessAdoptedAug62012.athcheckdam.pdf> (Urging Jurisdictions to Enact Breed Neutral Dangerous Dog/Reckless Owner Laws) [16]

Best Friends Animal Society, *Anti-Breed-Specific Legislation by State: States with Provisions Against Breed-Discriminatory Legislation*, <http://bestfriends.org/resources/pit-bull-terriers/anti-breed-specific-legislation-state-states-provisions-against-breed-discriminatory> (Providing State Provisions) [6]

Ann L. Schiavone, *Barking Up the Wrong Tree: Regulating Fear, Not Risk*, (Discussing History of BDL, Including Court Challenges and Analyzing the Science Behind Canine Aggression) [64]

Other Ordinance Issues

City of Hays v. Angle, 2016 WL 3659789 (Ct. App. Kan. 2016) (unpublished) (Prohibition on Keeping Geese) [3]

Kohl v. New Sewickley Township, 108 A.3d 961 (Pa. Cmwlth. 2015) (Nonprofit Dog Rescue Not Kennel Under Zoning Ordinance) [13]

City of Columbia v. Henderson, 399 S.W.3d 493 (Mo. App. W.D. 2013) (Alligator Not Exotic Animal but Fact Issue Whether Dangerous or Venomous Reptile) [5]

Brant v. City of Indianapolis, 974 N.E.2d 376 (Ct. App. Ind. 2012) (Noise Ordinance Required More Than One Person to Be Bothered By Barking) [7]

American Bar Association, Resolution and Report #105 (Adopted February 2015), https://www.americanbar.org/news/reporter_resources/midyear-meeting-2015/house-of-delegates-resolutions/105.html (Urging Jurisdictions to Enact Laws to Prohibit the Private Ownership of Dangerous Wild Animals) [20]

CUSTODY

This is an area where relevant cases are published on a regular basis so suggestions on possible cases are likely to become dated relatively quickly. The recent adoption of legislation addressing this issue at the state level is also of particular interest. Either by class discussion or as a writing project, the students can be asked what, if any, language should be added to the state statute regarding the disposition of animals upon dissolution of marriage or if there are other disputes over ownership. Should an animal acting as an emotional support animal for one or both of the parties be treated differently compared with a companion animal? Should the expected future income of the parties be a factor considered by the court?

WFW pp. 539-556 (Custody Disputes) [18]

Favre pp. 59-64 (Custody Disputes) [6]

Moore v. Knowler 213 So.3d 165 (La. Ct. App. 2017) (Unmarried Parties, Co-Ownership and Civil Code Provisions) [8]

Mitchell v. Snider, 41 N.Y.S.3d 450 (Civ. Ct. City of N.Y. 2016) (unreported) (Applying Best for All Concerned Analysis) [6]

Hamet v. Baker, 97 A.3d 461 (Vt. 2014) (May Consider Welfare of Animal and Emotional Connection Between the Animal and Each Spouse But Remains Property and is Not Subject to Modification and Sharing Custody Not Enforceable) [5]

Lawler v. Kueffer, 812 N.W.2d 540 (Ct. App. Wis. 2012) (unpublished) (Gift Analysis) [3]

ALASKA STAT. § 25.24.160(a)(5) (Including “if an animal is owned, for the ownership or joint ownership of the animals, taking into consideration the well-being of the animal” in the Section Setting Forth What the Court May Provide in a Judgment for Divorce) [3]

LOST-FOUND

The Favre course book provides the lost-found cases from Vermont (*Morgan v. Kroupa*, 702 A.2d 630 (Vt. 1997) and *Lamare v. North County Animal League*, 743 A.2d 598 (Vt. 1999)). Of special interest is the role of shelters in transferring legal title in lost companion animals. Due to that issue, this concept could also be discussed in connection with shelters and rescue organizations.

Because of the lack of clear legislative standards regarding this issue, it is a good exercise for students to draft a model lost-found statute. What obligations should finders of animals have to try to ensure reunification with the original owner? What are the obligations of original owners to try to locate a lost pet? Given the role of ordinances to assign responsibility for disposition of lost and stray animals, what type of language would students recommend be included to balance the interests of everyone (original owner, shelter, new owner, animal and the public) involved? Due to the significant risk of pets becoming lost during disasters this would be a good point in the course to discuss legal issues relating to that topic.

Favre pp. 36-48 (Lost-Found) [11]

Lira v. Greater Houston German Shepherd Dog Rescue, Inc., 488 S.W.3d 300 (Tx. 2016) (Owners Who Diligently Searched For and Immediately Requested the Return of Dog Did Not Abandon Dog and City Ordinances Did Not Divest Owners of Their Ownership) [6]

Augillard v. Madura, 247 S.W.3d 494 (Ct. App. Tex. 2008) (Conversion Claim – Dispute Over Hurricane Katrina Dog) [11]

Francesca Ortiz, *Looking for a Good Home: Balancing Interests in the Disposition of Impounded Animals to Owners and Rescues*, 67 SYRACUSE L. REV. 115 (2017) (Discussing Cases Involving Shelters and Rescue Organizations and Transfer of Title) [49]

American Bar Association, Model Act (Approved February 2010), <https://www.americanbar.org/content/dam/aba/administrative/tips/alc/ABAHoldingPeriodFebruary2010.authcheckdam.pdf> (Recommending State Legislative Bodies to Adopt Model Act Governing Standards for the Care and Disposition of Disaster Animals) [12]

Cynthia Hodges, Detailed Discussion of State Emergency Planning Laws for Pets and Service Animals (2011), ANIMAL LEGAL & HISTORICAL CENTER, <https://www.animallaw.info/article/detailed-discussion-state-emergency-planning-laws-pets> (Discussing the federal Pet Evacuation and Transportation Standards Act and State Laws) [9]

TRUSTS AND ESTATES

The WFW course book includes several of the “classic” cases on wills and trusts (e.g., *In re Estate of Russell*, 444 P.2d 353 (Cal. 1968), *In re Estate of Searight*, 95 N.E.2d 779 (1950)) and it is recommended that instructors consider assigning a few of those cases if they want to have students read substantial case law on the topic. Alternatively, an instructor could have students read secondary material on the topic focusing on the options available for the care and disposition of animals after the death of the owner. Professor Gerry Beyer’s materials are quite accessible for students and he maintains a website on the topic. One discussion idea is to ask the students what would happen to their companion animals if they were no longer able to care for them.

This is a topic in which it can be especially useful for the students to do some roleplaying to illustrate their knowledge of the area and practice their client counseling skills. Students can be divided into pairs—with one designated as the attorney and the other the client. (If necessary you can have a partner, associate, multiple client situations.) The “client/s” are provided with basic facts about their background and animals and the “attorney” needs to elicit the relevant information and educate the client on his or her options. For example, Client A is sixty-five years old, in poor health and has a parrot who is two years old. Client A could have sufficient resources to set up a trust, has Niece A that will care for the parrot but is not good with money. Niece B is good with money but is allergic to birds. Client X is thirty-five years old and regularly participates in extreme sports. Client X has ten cats all adopted from a local rescue organization. The cats are all in good health and Client X is in compliance with all local laws. Only an instructor’s imagination limits the possibilities, however it is recommended that at least one scenario includes a client wanting his or her animal/s euthanized after their death. Having a “post-game” discussion with the class can help elicit other options for the clients. Given many rescue organization adoption agreements require the return of any animals if the adopter can no longer care for an animal—this issue should be raised as well.

WFW pp. 563-604 (Wills and Trusts) [42]

Favre pp. 64-68 (Wills and Trusts) [5]

Favre pp. 345-346 (Appointment of Guardian Ad Litem in Contested Estate Case) [2]

In re Copeland, 988 N.Y.S.2d 458 (Sur. Ct. Westchester Co., N.Y. 2014) (Reduction of Money to Trustees of Testamentary Pet Trust Not Appropriate) [4]

The Website of Professor Gerry W. Beyer, <http://www.professorbeyer.com/Articles/Animals.html> (Links to Articles Including *Estate Planning for Non-Human Family Members* Which Contains Links to State Statutory Material) [Website]

WORKING ANIMALS: SERVICE AND ASSISTANCE ANIMALS

Although this course guide focuses on topics relating to companion animals in their role as companion animals, one area that instructors should consider covering, given the nature of the relationship these animals often have with the humans partnered with them, is the issue of service and assistance animals. At a minimum, students should be able to distinguish among the protection granted by the major federal laws (e.g., Americans with Disabilities Act (ADA), Fair Housing Act (FHA), and Air Carrier Access Act (ACAA)). Instructors can also highlight areas that state laws cover including statutes that provide rights for persons accompanied by service animals in training as well as criminal laws relating to injury to service animals or the misrepresentation of an animal as a service animal.

In the past few years this area of the law has been quite active at the state legislative level. State legislatures are grappling with concerns over misrepresentation and what are perceived as abuses of the laws. An instructor can have his or her students analyze a current or former proposed state bill to see if the students believe that it is consistent with the rights set out in federal law. (It is not uncommon that legislation initially proposed at the state level conflicts with protections set out in federal law.)

WFW pp. 518-526 (Notes on ADA and FHA) [9]

Favre pp. A8-A12 (FHA Case) [5]

ACCESS Advisory Committee, Service Animal Working Group, *Service Animal Definitional Matrix – Air Carrier Access Act v. Americans with Disabilities Act*, July 1, 2016, https://www.transportation.gov/sites/dot.gov/files/docs/P3.SA_HUD_Matrix.6-28-6.pdf (Comparing Various Definitions of Service and Assistance Animals) [13]

Brandi Browning, *At Your Service: An Analysis of the Remedies for Service-Animal Providers and a Suggestion for More Effective Recovery Under Existing Tort Laws*, 42 *TOL. L. REV.* 493 (2011) (Includes a Section Discussing the Contracts Between Service Animal Providers and Recipients and State Service Animal Protection Statutes) [31]

Rebecca F. Wisch, *Table of State Assistance Animal Laws*, 2016, <https://www.animallaw.info/topic/table-state-assistance-animal-laws> (Useful Table of State Laws Covering Service and Assistance Animals) [Website]

Americans with Disabilities Act

The relatively concise service animal regulations (parallel language with different numbering) in Title II (public entities) and Title III (public accommodations) of the ADA provide an excellent opportunity for instructors to have students analyze this primary source material. Title I (employment) of the ADA does not contain a definition of service animal and the accommodation process is more complex so instructors may want to have a more general discussion of that issue using secondary material. The Department of Transportation's (DOT) definition of service animal does not include the species restriction found in Title II and Title III.

Alboniga v. School Board of Broward Co. Florida, 87 F. Supp. 3d 1319 (S.D. Fla. 2015) (Illustrates Some of the ADA Issues Relating to Service Animals in Schools) [27]

Cordoves v. Miami-Dade Co., 92 F. Supp. 3d 1221 (S.D. Fla. 2015) (Issue of Whether Dog Was a Trained Service Animal) [18]

Anderson v. City of Blue Ash, 798 F.3d 338 (6th Cir. 2014) (ADA and FHA Issues Relating to Keeping a Miniature Horse) [28]

Tamara v. El Camino Hospital, 964 F. Supp. 2d 1077 (N.D. Cal. 2013) (Service Dog in a Hospital's Psychiatric Ward) [12]

Sak v. City of Aurelia, Iowa, 832 F. Supp. 2d 1026 (N.D. Iowa. 2011) (Preliminary Injunction Granted – ADA Likely to Trump City's BDL Ordinance – Includes ADA Service Animal Regulations) [24]

28 C.F.R. 36.104 (Title III Definitions Including Definition of Service Animal) [6]

28 C.F.R. 36.302 (Title III Modifications in Policies, Including Service Animals) [8]

49 C.F.R. 37.3 (DOT Definition Section) [6]

American Bar Association, Resolution and Report #303 (Adopted February 2012), <https://www.americanbar.org/content/dam/aba/administrative/tips/alc/ABAALCServiceAnimalResolutionAdoptedFeb62012.authcheckdam.pdf> (Urging Compliance with ADA Service Animal Regulations) [8]

Department of Labor's Office of Disability Employment Policy, Job Accommodation Network, *Service Animals in the Workplace*, <https://askjan.org/media/downloads/ServiceAnimalsintheWorkplace.pdf> (Discussing Accommodation of Service Animals in Employment and Providing Scenarios) [12]

Fair Housing Act

Instructors will likely want to emphasize the broader definition of assistance animal (service animals and emotional support animals) and lack of a species restriction under the FHA. If time permits additional coverage, there have been recent disputes on the applicability of the FHA in campus housing.

Kennedy House, Inc. v. Philadelphia Comm. on Human Relations, 143 A.3d 476 (Commw. Ct. Pa. 2016) (FHA Case – Did Not Show Nexus Between Disability and Assistance Provided by Dog) [18]

Warren v. Delvista Towers Condo Ass'n, 49 F. Supp. 3d 1082 (S.D. Fla. 2014) (Motion for Summary Judgment Denied Discussing Emotional Support Animals and FHA Preemption of Local BDL Ordinance) [8]

Bhogaita v. Altamonte Heights Condominium Ass'n, 765 F.3d 1277 (11th Cir. 2014) (Illustrates Issues Relating to Failure to Accommodate Claim for Emotional Support Animal Under the FHA and Information Housing Providers Can and Cannot Request) [15]

Sabal Palm Condominiums of Pine Island Ridge Ass'n v. Fischer, 6 F. Supp. 3d 1272 (S.D. Fla. 2014) (Dispute Regarding Accommodation of Service Dog Trained to Perform Physical Tasks) [21]

United States v. Kent State University, et al., 2016 WL 5107207 (N.D. Ohio 2016) (Motion to Approve a Consent Decree Granted – Judge Raising Issues Regarding Welfare of Animals) [2]

United States v. Kent State University, <https://www.justice.gov/crt/file/894751/download> (Consent Decree in September 2016 With the University Paying \$130,000) [29]

United States v. University of Nebraska at Kearney, 940 F. Supp. 2d. 974 (D. Neb. 2013) (Student Housing Facilities are Dwellings subject to the FHA) [10]

United States v. University of Nebraska at Kearney, <https://www.justice.gov/crt/file/777186/download> (Consent Decree in September 2015 With the University Paying \$140,000) [29]

Air Carrier Access Act (Nondiscrimination on the Basis of Disability in Air Travel)

The DOT established a negotiated rulemaking committee in 2016 to consider revision to the ACAA regulations. The ACCESS Advisory Committee made recommendations on lavatories and in-flight entertainment but was unable to come to a consensus regarding service animals. An instructor could have the students represent various constituencies interested in these regulations and have the students try to negotiate a resolution. Instructors are cautioned that the DOT announced that it intends to draft its own rules on service animals so if this issue is to be covered, the current status of such rulemaking should be checked.

Department of Transportation, *ACCESS Advisory Committee*, <https://www.transportation.gov/access-advisory-committee> (Provides Links to Negotiated Rulemaking Process) [Website]

Kevin Crowell v. American Airlines, Consent Order and Order of Dismissal (January 11, 2017), <https://www.transportation.gov/sites/dot.gov/files/docs/eo-2017-1-11.pdf> (Based on Issue in August 0214 – Includes Discussion of Seating Rules) [6]

14 C.F.R. § 382.117 (ACAA Regulations Regarding Service Animals) [3]

Compare with Therapy Dogs or Facility/Courthouse Dogs

It is important for the students to understand that “therapy dogs” are not generally afforded similar measures of access compared with service animals under the ADA and assistance animals under the FHA. There are a few states that have provided exceptions under specific conditions. A growing number of jurisdictions allow facility dogs to assist victims testifying in court. Legislation as well as common law has been used to support this practice. The Courthouse Dogs organization provides some background references at <https://courhousedogs.org/legal/legal-references/>. An instructor would likely want to consider including both a statutory provision and a case if he or she wants to cover that topic in a substantive way.

55 NY SOC SERV. § 459-b (Allowing Therapy Dog in Domestic Violence Residential Programs) [1]

KAN. STAT. §§ 39-39-1110 & 1113 (Professional Therapy Dog Access) [2]

R.I. GEN. LAWS § 40-9.1-5 (Family Therapy Pet Access) [1]

State of Arizona v. Millis, 391 P.3d 1225 (Ct. App. Ariz. 2017) (Facility Dog Allowed in Court - Includes Citations to Other Cases) [11]

12 OKL. ST. § 2611.12 (Therapeutic Dog for Child Witnesses) [2]

Compare with Military Working Dogs

The use and disposition of Military Working Dogs is a hot topic at the time of the writing of this course guide with the release of the *Megan Levy* film in June 2017 (<http://www.bleeckerstreetmedia.com/meganleavey>). PBS also broadcast the documentary *Canine Soldiers: The Militarization of Love* (<http://caninesoldiersfilm.com>) in the summer of 2017. Because of amendments in 2016 that now provide a preference for adoption to former handlers it is important to pull the most recent version of the United States Code for this issue if it will be discussed in class.

10 U.S.C.A. § 2583 (Adoption of Military Working Animals) [3]

Sarah D. Cruse, *Military Working Dogs: Classification and Treatment in the U.S. Armed Forces*, 21 ANIMAL L. 249 (2015) (Overview of Issues Prior to Revision of United States Code) [33]

United States Government Accountability Office, Report to the Committee on Armed Services, House of Representatives, Department of Defense, *Medical Conditions and Care for End of Service Military Working Dogs* (March 2017), <http://www.gao.gov/assets/690/683308.pdf> (Provides Context About the Issue) [20]

INJURIES CAUSED BY ANIMALS/DANGEROUS DOGS

The National Canine Research Council has a research library of materials relating to bites and breed issues at https://www.nationalcanineresearchcouncil.com/browse/research_library/. If an instructor plans to spend significant time on dangerous dog or bite cases it makes sense to pull cases focusing on the law of the jurisdiction or jurisdictions where students are planning to practice. If an instructor wants to spend minimal time on the topic, the very basic issues such as who may be potentially liable (owners, keepers, possibly landlords) and the applicable standard (strict liability or negligence) could be covered. The possible liability of a shelter or rescue organization that adopts out an animal who later causes an injury could be covered here or in the section of the course discussing shelters and rescue organizations.

WFW pp. 262-284 (Injuries Caused by Animals – Includes Wild Animal and Equine Material) [23]

Favre pp. 80-86 (Injuries Caused by Animals Including Criminal Liability) [7]

Favre pp. 170-177 (Dangerous Dog Cases) [8]

Favre p. A12 (Note on Landlord Liability for Injury by Tenant's Dog) [1]

Steagold v. Eason, 797 S.E.2d 838 (Ga. 2017) (Focusing on Knowledge of Vicious or Dangerous Nature Element) [6]

Ducote v. Boleware, 216 So.3d 934 (La. App. 4th Cir. 2016) (Cat Bite Case) [15]

Tighe v. North Shore Animal League America, 142 A.D. 3d 607 (Sup. Ct. App. Div. N.Y. 2016) (Proximate Cause Issue – Also Note Discussion Regarding Possible Application of Uniform Commercial Code's Warranty of Merchantability) [4]

Boswell v. Steele, 348 P.3d 497 (Ct. App. Idaho 2015) (Discussing Status of Person Bitten and Negligence) [15]

Sanders v. Johnson, 2014 WL 5800363 (Sup. Ct. N.J. 2014) (Application of Strict Liability Statute) [4]

Martin v. Christman, 99 A.3d 1008 (Vt. 2014) (No Strict Liability for Dog Bite) [5]

Bruce Wagman & Lisa McCurdy, *Running the Gauntlet of Dangerous Dog Litigation – A Guide to Getting Good Dogs Off of Death Row: Part I*, American Bar Association, Tort, Trial and Insurance Practice Section, Animal Law Committee, Summer 2010 at 7 (Discussing the Challenges of Dangerous Dog Litigation and Process) [3]

Bruce Wagman & Lisa McCurdy, *Running the Gauntlet of Dangerous Dog Litigation – A Guide to Getting Good Dogs Off of Death Row: Part II*, American Bar Association, Tort, Trial and Insurance Practice Section, Animal Law Committee, Winter 2011 at 6 (Discussing Process and Resolution of Dangerous Dog Litigation) [3]

Insurance Information Institute, *Dog Bite Liability* (April 2017), 2002 WL 1339865 (Providing Statistics and Basic Information About Dog Bites) [5]

Bonnie L. Lutz, *Liability "Hysteria,"*

http://www.animalfarmfoundation.org/files/Liability_Hysteria_Viewpoint_7.pdf (Discussing Importance of Disclosure for Shelters to Avoid Dog Bite Liability) [1]

CRIMINAL/ANTI-CRUELTY

An entire semester could be spent on issues relating to cruelty to animals. ALDF's website is especially helpful in providing materials and highlighting hot topics relating to this area of the law. The National District Attorneys Association, Community Oriented Policing Services of the U.S. Department of Justice and the Association of Prosecuting Attorneys also produce resources that can provide useful background information.

This is another section of the course where it may be effective to utilize cases from the jurisdiction where the law school is located. It is unfortunately generally easy to find examples of cases in every jurisdiction to illustrate the basic ideas (intentional acts, negligence, hoarding). ALDF maintains comprehensive information on Animal Protection Laws of the United States of America and Canada by jurisdiction in addition to publishing rankings of the laws on an annual basis. An instructor can compare and contrast state laws to illustrate aspects of the protection provided. For example, does a state law or local ordinance restrict the tethering of dogs? Does a state law (like Illinois, Hawaii and Wyoming) have any language to specifically address hoarding? To encourage students to consider policy issues, instructors could ask students to analyze a state law and make recommendations for improvements.

Instructors can organize the material in a chronological fashion (take the students through the process of a prosecution) or cover the general concept of abuse first and then discuss some procedural or other aspects of the law.

Because of the interest many animal advocacy organizations have in the passage of improved anti-cruelty laws, this would be a good time to have the students draft a "legislative update" analyzing proposed changes in the law. Depending on the timing of the course, current or past legislation can be used to support this project.

WFW pp. 65-72 (Historical Perspective) [7]

Favre pp. 188-198 (Historical Perspective) [11]

ALLIE PHILLIPS & RANDALL LOCKWOOD (National District Attorneys Association), INVESTIGATING & PROSECUTING ANIMAL ABUSE, https://ia801006.us.archive.org/5/items/InvestigatingAndProsecutingAnimalAbuse2013/Investigating_and_Prosecuting_Animal_Abuse_2013.pdf (Discussing Abuse, Including the Link, Investigation and Prosecution) [88]

KELLY DEDEL (Community Oriented Policing Services U.S. Dep't of Justice #65), ANIMAL CRUELTY (2012), <https://ric-zai-inc.com/Publications/cops-p245-pub.pdf> (Defining Animal Cruelty and Discussing Options for Responses) [60]

Rebecca F. Wisch, *Table of State Dog Tether Laws* (2016), <https://www.animallaw.info/topic/table-state-dog-tether-laws> (Providing List of State Laws) [15]

Animal Legal Defense Fund, *Animal Protection Laws of the United States of America and Canada*, <http://aldf.org/resources/advocating-for-animals/animal-protection-laws-of-the-united-states-of-america-and-canada/> (Providing State Laws Relating to Animal Protection) [Website]

Association of Prosecuting Attorneys, Animal Abuse Prosecution Project, <http://www.apainc.org/animal-cruelty/> (Providing State Law Summaries and Publications) [Website]

Process (Warrant, Seizure, Forfeiture, Bond, Restitution)

There are several interesting issues relating to the process involved in seizing an animal and prosecuting a cruelty case. The procedural cases often provide sufficient background on the state cruelty statute to discuss general issues regarding cruelty as well. Note the State of Oregon v. Nix decision in the WFW course book (relating to each animal being considered a victim for purpose of merging statute) and 2014 Oregon Supreme Court decision on the same case, 334 P.3d 437 (Or. 2014), were vacated and the state's appeal was dismissed because of a lack of jurisdiction in State of Oregon v. Nix, 345 P.3d 416 (Or. 2015). However, in State v. Hess, 359 P.3d 288 (2015) (listed under the Hoarding subsection below) the Oregon Court of Appeals adopted the reasoning in Nix allowing for multiple counts of animal neglect (no merger required).

WFW pp. 72-80 (Provisions, Exceptions, Issues Facing Prosecutors and Procedural Issues – Including State of Oregon v. Nix Case) [9]

Comm. of Massachusetts v. Duncan, 7 N.E.3d 469 (Mass. 2014) (Emergency Aid Exception to Constitutional Warrant Requirement Extends to Police Action Rendering Emergency Assistance to Animals) [8]

Amos v. State of Texas, 478 S.W.3d 764 (Ct. App. Tex. 2015) (Relinquishing Dog to Veterinarian and Requesting Communal Cremation Meant Appellant Relinquished His Interest in Body and Thus Lacked Standing to Contest the Reasonableness of Search) [10]

Oregon v. Newcomb, 375 P.3d 434 (Or. 2016) (Veterinarian's Warrantless Withdrawal and Testing of Dog's Blood Not a "Search" Under State Constitution and Fourth Amendment) [13]

Christensen v. Quinn, 45 F. Supp. 3d 1043 (D. S.D. 2014) (Issues with Seizure – Discussion of Due Process) (57)

State of Vermont v. Goodell, 2016 WL 7341683 (Vt. 2016) (Restitution Under Animal Cruelty Statute) [3]

Bickford v. State of Indiana, 25 N.E. 3d 1275 (Ct. App. Ind. 2015) (Equine Case But Shelter Was Victim for Purposes of General Restitution Statute) [5]

Blevins v. Kentucky, 435 S.W.3d 637 (Ct. App. Ky. 2014) (ASPCA Not Victim Under General Restitution Statute) [6]

Rich v. State of Alaska, 2014 WL 4384255 (Ct. App. Alaska 2014) (Restitution – Probation Restriction on Possessing Animals) [5]

CONN. GEN. STAT. § 54-86n (Allowing Court to Order an Advocate to Represent the Interest of Justice in Cases Relating to Welfare or Custody of Cat or Dog in Criminal Cases) [1]

Alexis C. Fox, *Using Special Masters to Advance the Goals of Animal Protection Laws*, 15 ANIMAL L. 87 (2008) (Discussing the Appointment of Special Masters in Large-Scale Animal Abuse Cases) [23]

American Bar Association, Resolution and Report #108B (February 2011), <https://www.americanbar.org/content/dam/aba/administrative/tips/alc/ABASEIZEDANIMALSRECOMMENDATIONANDREPORTADOPTEDFEB201.AUTHCHECKDAM.PDF> (Urging Jurisdictions to Implement Laws and Policies to Ensure the Humane Treatment and Disposition of Seized Animals in a Timely Manner) [7]

Intentional/Negligent Acts

WFW pp. 88-99 (Affirmative Acts) [20]

WFW pp. 100-110 (Failure to Act) [11]

Favre pp. 198-217 (Intentional Acts Including Constitutional Issues) [20]

Favre pp. 226-234 (Intentional Acts, Defenses, Exceptions – Including Agricultural Animals, and Abandonment) [9]

Favre pp. 242-262 (Duty to Provide Care Including Veterinary Care and Puppy Mills) [21]

Commonwealth of Massachusetts v. Daly, 56 N.E.3d 841 (Mass. App. Ct. 2016) (Case Where Small Dog Allegedly Killed By Throwing Over Deck) [11]

Brown v. State of Florida, 166 So.3d 817 (Fla. Dist. Ct. App. 2015), *Rev. Denied*, 192 So. 3d 35 (Fla. 2015) (Failure to Provide Adequate Food, Water and Needed Medical Care) [7]

State of Maine v. Peck, 93 A.3d 256 (Me. 2014) (Necessary Medical Care and Restitution) [6]

Hoarding

WFW pp. 110-118 (Hoarding) [9]

Favre pp. 262-271 (Hoarding) [10]

State of Oregon v. Hess, 359 P.3d 288 (Ct. App. Or. 2015) (Testimony from Psychologist Not Admissible) [7]

510 ILL COMP. STAT. §§ 70/2.10 & 70.3.01 (Defining Companion Animal Hoarder and Allowing Court to Order a Psychological Evaluation) [1]

Animal Fighting

WFW pp. 147-154 (Animal Fighting) [8]

Favre pp. 234-240 (Animal Fighting) [7]

Favre pp. 346-347 (Appointment of Guardian/Special Master in Bad Newz Kennels Case) [2]

Johnson v. State of Indiana, 9 N.E. 3d 186 (Ct. App. In. 2014) (Possession of Animals for Fighting Contents) [10]

United States v. Gibert, 677 F.3d 613 (4th Cir. 2012) (Animal Fighting Prohibition in Federal Animal Welfare Act Not Unconstitutional) [17]

7 U.S.C. § 2156 (Federal Animal Welfare Act's Animal Fighting Prohibition) [4]

Crush Videos

In 2010, a previous version of 18 U.S.C. § 48 was deemed substantially overbroad and thus invalid under the First Amendment. Although the U.S. v. Stevens case is lengthy, if an instructor wants to devote time to discussing the First Amendment issues it is a good starting point. Instructors may choose to only have students read the U.S. v. Richards case where the Fifth Circuit held that the revised version of the statute is constitutional. Note that a general anti-cruelty law may also apply to a crush video case.

WFW pp. 89-90 (Note on Crush Videos, Cases and Statute) [2]
WFW pp. 142-146 (Crush Video Case Under State Anti-Cruelty Law) [5]
WFW pp. 356-366 (U.S. v. Stevens Case) [11]

Favre pp. 218-228 (Statute, U.S. v. Stevens Case) [9]

U.S. v. Stevens, 559 U.S. 460, 130 S. Ct. 1577 (2010) (Prior Statute Invalid Under the First Amendment) [29]

U.S. v. Richards, 755 F.3d 269 (5th Cir. 2014) (Revised Statute Constitutional) [11]

18 U.S.C. § 48 (Crush Video Statute) [2]

Preventing Animal Cruelty and Torture Act, S. 654, 115th Cong. (2017) (Legislation Revising Statute) [3]

Federal Bureau of Investigation, *Animal Cruelty: Houston ‘Crush’ Cases Were First Under Federal Statute*, <https://www.fbi.gov/news/stories/houston-animal-crush-cases-were-first-under-federal-statute> (Reporting on Results of Prosecution of Richards) [2]

Hot Car Statutes

There has been recent legislative activity addressing the issue of leaving animals in hot cars. ALDF maintains a list of hot car laws. Students could be asked to compare and contrast some of those laws. An instructor could also have the students draft a model law to be enacted.

Animal Legal Defense Fund, *Overview of State Laws: Leaving Unattended Animals in Vehicles*, <http://aldf.org/cases-campaigns/action-alerts/dogs-in-hot-cars/overview-of-state-laws-leaving-unattended-animals-in-vehicles/> (Providing Information and Links on State Statutes Regarding Leaving Animals in Hot Cars) [Website]

Injuries/Death to Law Enforcement/Service Animals

Many states have laws that provide it is a misdemeanor offense to interfere or injure a service animal or law enforcement animal. In addition there is a federal law that protects law enforcement animals. Students could be asked to consider the theory behind the adoption of specific laws addressing injuries to these animals.

State of Minnesota v. Rod, 2016 WL 363435 (Ct. App. Minn. 2016) (Conviction of Causing Bodily Harm to a Public Safety Dog Upheld) [4]

18 U.S.C. § 1368 (Harming Animals Employed by Federal Agencies Used in Law Enforcement) [1]

Link with Violence Against Humans/Domestic Violence Protective Orders

Instructors may wish to discuss the link between violence towards animals and other types of violence. Legislation providing domestic violence protection orders may include language specifically protecting animals kept by the applicants has been enacted in several states. Students could be asked to find out whether a particular jurisdiction has such language—and if not, make arguments for and against passage of such language. If there is existing legislation is there any way to strengthen the law to protect animals and their people?

WFW pp. 155-162 (Link, Cross-Reporting) [9]

ALLIE PHILLIPS (National District Attorneys Association), UNDERSTANDING THE LINK BETWEEN VIOLENCE TO ANIMALS AND PEOPLE (2014) <http://www.ndaa.org/pdf/The Link Monograph-2014.pdf> (Discussing the Link, Investigation and Prosecution of Crimes) [84]

National Link Coalition, *Pets in Protection Orders by State*, <http://nationallinkcoalition.org/wp-content/uploads/2013/02/PPO-Summary-by-State-2-2013.pdf> (Providing Legislation from States –With Specific Language) [13]

Dogs vs. Livestock

It is common for state statutes to include language to provide it is lawful to kill any dog found to be injuring or attempting to injure livestock. This issue can be used to discuss the balancing of interests between owners of different species of animals. It could also be covered in the section of the course on tort issues.

WFW 254-262 (Companion Dogs and Farm Animals – Includes Civil Case) [9]

KANSAS STAT. § 47-646 (Lawful to Kill Dog Found Injuring or Attempting to Injure Livestock) [1]

Use of Civil Actions

North Carolina has a unique statutory provision allowing for a civil remedy for the protection of animals. ALDF has utilized the statute multiple times on behalf of animals. An instructor can assign material from the ALDF website to cover the material if not using one of the course books. Oregon amended its civil abatement law in 2015 to include activities on property that would support animal cruelty prosecutions as nuisances for purposes of the civil abatement law. The class discussion could focus on the merits and concerns over the use of such statutes.

WFW pp. 111-114 (Animal Legal Defense Fund v. Woodley Case) [4]

Favre pp. 342-244 (Animal Legal Defense Fund v. Woodley Case) [3]

N.C. GEN. STAT. CHAPTER § 19a-1 et. seq. (Civil Remedy for Protection of Animals) [5]

OR. REV. STAT. § 105.597 (Nuisance Properties – If Going to Cover Substantively Will Need to Provide Statute Beginning at § 105.550 et. seq.)

Letter from Lora Dunn, Staff Attorney for the Animal Legal Defense Fund to the Senate Committee on Judiciary (May 5, 2015), <https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/69819> (Setting Out ALDF’s Support for Amendment to Oregon Civil Abatement Law) [6]

BREEDERS/SUPPLIERS

Issues relating to breeders and suppliers range from contractual disputes to regulation at the federal and state level. Instructors may want to spend some class time discussing the Animal Welfare Act's coverage of commercial breeders. Local ordinances, including bans on the sale of dogs and cats, have also been the subject of litigation. Instructors can also discuss the possibility of a dog being leased or rented and whether states should prohibit that practice.

In 2017, the removal of information tracking puppy mills and other Animal Welfare Act licenses from the U.S. Department of Agriculture's website led to litigation. Given the recent nature of that litigation no possible source material on the issue is provided, however instructors should consider if they wish to raise the issue in class given the importance of that information to animal advocates.

WFW pp. 556-562 (Sale of Goods, Products and Insurance) [7]

WFW pp. 479-481 (AWA History and Overview) [3]

WFW pp. 490-497 (Breeders, Dealers and Puppy Mills) [8]

Favre pp. 48-55 (Sale of Goods, Lemon Laws) [8]

Favre pp. 251-254 (Puppy Mills) [4]

Favre pp. 350-374, 387-389 (Animal Welfare Act, Class A & B Dealers) [28]

Rebecca Wisch, Pet Purchaser Protection/Puppy "Lemon Laws" (Updated 2010), <https://www.animallaw.info/intro/pet-purchaser-protectionpuppy-lemon-laws> (Discussing Issues Regarding the Sale of Pets Including the Application of the Uniform Commercial Code – Additional Material on Website Includes Table of State Puppy Lemon Laws) [Website]

Animal Welfare Act Regulation

United States Department of Agriculture, Animal and Plant Health Service, *Regulated Businesses (Licensing and Regulation)* (March 2017), https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA_Regulated_Businesses (Providing Information on Licensing and Links to Inspection and Enforcement Information) [Website]

United States Department of Agriculture, Animal and Plant Health Service, *Retail Pet Store Regulation* (October 2016), https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/ct_retail_pet_rule (Providing Information About Who Is and Is Not a Retail Pet Store) [Website]

Retail Pet Store Bans

New York Pet Welfare Assoc., Inc. v. City of New York, (2nd Cir. 2017) (Law Regulating Pet Shops Upheld – Petition for Writ of Certiorari to the U.S. Supreme Court Filed) [16]

Perfect Puppy, Inc. v. City of East Providence Rhode Island, 807 F.3d 415 (1st Cir. 2015) & 98 F. Supp. 3d 408 (1st Cir. 2015) (Takings and Other Claims Relating to Restrictions on Pet Store Sales Ordinance) [27]

Missouri Pet Breeders Assoc. v. County of Cook, 119 F. Supp. 3d 865 (N.D. Ill. 2015) & 106 F. Supp. 3d 908 (2015) (Issues With Standing and Other Claims Relating to Restriction on Pet Store Sale Ordinance) [35]

A.B. 485, 2017-2018 (Cal. 2017) (Legislation Would Prohibit Sale of Dogs, Cats or Rabbits Unless Obtained From Shelter or Rescue Organization – Bill Analysis is Useful to Provide Background Information) [3]

Editorial, *Stop This Illinois Puppy Mill Scam: An Attempted End-Run Around Chicago and Cook County Rules*, CHI. TRIB., Mar. 10, 2017 <http://www.chicagotribune.com/news/opinion/editorials/ct-puppy-mill-ban-chicago-cook-legis-edit-0312-jm-20170310-story.html> (Discussing Legislation That Would Prevent Local Regulation and State Legislation in Ohio and Arizona) [3]

Best Friends Animal Society, *Jurisdictions with Retail Pet Sale Bans*, <http://bestfriends.org/resources/jurisdictions-retail-pet-sale-bans> (Listing Ordinances and Providing Language of Retail Pet Sale Bans) [Website]

Leasing or Renting of Dogs

MASS. GEN LAWS ch. 272, § 80I (Prohibiting the Leasing or Renting of Dogs) [2]

NEV. S.B. 185, §3 (2017) to be codified in NEV. REV. STAT. Title 52, ch. 597 (Prohibiting Lease of Pet if Expected to Have Not More Than Minimal Residual Financial Value at the End of the Contract and Subjecting Any Such Lease to Federal Truth in Lending Act – Effective July 1, 2017) [1]

Patricia Clark, *I'm Renting a Dog? Can Purebreds on Leases Democratize Credit? The Nevadan Behind Wags Lending Thinks So*, BLOOMBERG, March 1, 2017, <https://www.bloomberg.com/news/features/2017-03-01/i-m-renting-a-dog> (Discussing a Business Providing Financing for the Purchase of Pets – the Company Retains Ownership in the Pets – Note Wags Lending Filed for Bankruptcy in April 2017 But Pet Stores and Others May Still Provide Financing That Could Result in a Dog Having to Be Returned) [12]

SHELTERS/RESCUE ORGANIZATIONS

As with some of the other topics in this course guide, an entire semester could be spent discussing the theoretical and practical issues surrounding shelters and rescue organizations.

Mission and Statistics

From a theoretical side, what is the mission of an organization? Does an entity subscribe to a “no kill” or “adoption guaranteed” policy? An exercise that students can do in or outside of class is identify a shelter or other organization and report to the class on what that organization’s website indicates are its policies. Is the organization “open admission” or selective in which animals it accepts? Under what circumstances will an animal be euthanized? What constitutes a “successful” organization can be based on many factors and statistics matter. The Shelter Animals Count organization provides basis for the maintenance of minimum data. Students can compare that focus with the No Kill Advocacy’s Center’s No Kill Declaration.

WFW pp. 135-136 (Notes Discussing Laws Regarding Sheltering Including California’s Hayden Act) [2]

Favre pp. 55-59 (Adoption, Spay-Neuter) [5]

Stacy A. Nowicki, *Lies, Damned Lies, and Michigan Animal Shelter Statistics: Problems and Solutions*, 12 J. ANIMAL & NATURAL RESOURCE L. 101 (2016) (Discussing Issues With Shelter Statistics and Recordkeeping) [24]

16 DEL. C. § 3007F (Requiring Recordkeeping and Posting of Information on Shelter’s Website) [2]

Shelter Animals Count, History, <https://www.shelteranimalscount.org/who-we-are/history> (Discussing Coalition of Organizations that Have Agreed to a National Database for Minimum Shelter Data, Includes Links to Asilomar Accords and Basic Animal Data Matrix) [Website]

No Kill Advocacy Center, No Kill Declaration, <http://www.nokilladvocacycenter.org/no-kill-declaration.html> (No Kill Declaration – Other Materials on Website Likely of Interest) [4]

Trap-Neuter-Vaccinate-Return/Community Cats

How jurisdictions should humanely and effectively deal with community cats can be covered in this section of the course or when discussing local ordinances relating to housing (because of the possible application of pet limit laws, etc.). There is opposition to TNVR programs, usually from organizations raising concerns about the impact community cats may have on other species, however, most of the major animal advocacy organizations in the U.S. endorse the use of such programs. Students can be asked to determine whether their local laws have any provisions that would prevent or support such a program.

Joan Schaffner, *Community Cats: Changing the Legal Paradigm for the Management of So-Called “Pests,”* 67 SYRACUSE L. REV. 71 (2017) (Advocating for TNVR and Providing Elements of Successful Community Cat Ordinance) [35]

American Bar Association, Resolution and Report #102B, https://www.americanbar.org/news/reporter_resources/annual-meeting-2017/house-of-delegates-resolutions/102b.html (Adopted by the ABA House of Delegates in August 2017), (Urging Jurisdictions to Interpret and Adopt Laws and Policies To Allow for the Implementation of Trap-Neuter-Vaccination-Return Programs for Community Cats) [16]

Adoption/Foster Contracts

It is not unusual for a rescue organization to include language in its adoption contracts relating to the possession and repossession of animals. Occasionally, issues regarding the enforceability of these provisions are litigated.

Patterson v. Rough Road Rescue, Inc., 2017 WL 3138002 (Mo. Ct. App. 2017) (Ambiguities in Adoption Contract Construed Against Drafter Rescue Organization Leading to Return of Lost Dog to Adopters – Lower Court Decision Focused on Whether the Uniform Commercial Code Provision Was Applicable to the Dispute) [13]

Maxam v. Kucharczyk, 29 N.Y.S. 3d 683 (Sup. Ct. App. Div. 3d Dept. N.Y. 2016) (Contract Relinquishing Dog to Rescue Organization Enforceable) [2]

Take Me Home Rescue v. Luri, 208 Cal. App. 4th 1342 (Ct. App. Cal. 2012) (Enforceability of Foster Contract and Oral Agreement to Spay Dog) [8]

Slodov v. Animal Protective League, 628 N.E.2d 117 (Ohio App. 8 Dist. 1993) (Contrast With the Patterson Case – Adoption Contract Not Governed by the Uniform Commercial Code) [3]

Other Requirements

Other legal issues relating to shelters and rescue organizations include whether there is any legal requirement for shelters to transfer animals to rescue organizations before euthanization, mandatory microchipping, mandatory spay-neuter and licensing issues.

Concerned Dog Owners of California v. City of Los Angeles, 194 Cal. App. 4th 1219 (2011) (Los Angeles City Spay-Neuter Ordinance Valid) [16]

American Canine Foundation v. Sun, 2007 WL 4208358 (N.D. Cal. 2007) (Upholding County of Los Angeles, California Spay-Neuter and Microchipping Statute – Good Case to Cover the Variety of Arguments Made Relating to Ordinances) [11]

16 DEL. C. §§ 3003F & 3004F (Setting Out Conditions Before an Animal is Euthanized Including Maintaining Registry of Organizations Willing to Accept Animals) [4]

510 IL. COMP. STAT. § 5/11 (Microchipping and Sterilization Requirements – Transfers to Rescue Organizations) [2]

Phyllis Coleman et al., *It's Raining Cats and Dogs . . . Government Lawyers Take Note: Differential Licensing Laws Generate Revenue, Reduce Costs, Protect Citizens, and Save Lives*, 40 STETSON L. REV. 393 (2011) (Promoting Differential Licensing and Spay-Neuter Laws) [32]

VETERINARY ISSUES

Instructors could limit their coverage of veterinary issues to a discussion on veterinary malpractice. Instructors can also raise additional issues connected with the veterinary profession given the unique nature of the Veterinary-Client-Patient relationship and the role veterinarians play in animal welfare issues.

Malpractice & Administrative Proceedings

Because of the limitation on damages for the death of a companion animal in most states it is common for veterinary malpractice cases to be brought in small claims court (thus there are a limited number of reported decisions). If an instructor wants to use a recent appellate veterinary malpractice case discussing the elements of the action he or she may need to utilize one involving an equine. Instructors could also focus on the process and possible outcome of a complaint to the relevant veterinary practice board.

WFW pp. 199-210 (Veterinary Malpractice) [11]

Favre pp. 96-122 (Veterinary Malpractice) [27]

Astarita v. Croton Animal Hosp., Decision & Order, Index No. SC-313-16 (City Ct. of N.Y. Sept. 19, 2016) 2016 WL 5235190 (Discussing Need for Expert Testimony and Limits on Damages in Order Dismissing Small Claims Court Complaint) [12]

Hayes v. Lisbon Road Animal Hosp., Trial Order, Docket No. CV-13-168 (Me. Sup. Ct. Apr. 7, 2015), 2015 WL 1757012 (Granting Summary Judgment Motion Dismissing Complaint Discussing Expert Testimony and Fiduciary Duty Claim) [7]

Hayes v. Lisbon Road Animal Hosp., Trial Order, Docket No. CV-13-168 (Me. Sup. Ct. Dec. 19, 2014) 2014 WL 7913297 (Order Dismissing Negligent Inflection of Emotional Distress and Loss of Companionship Claims) [10]

Harper v. Bruecker DVM, Minute Order, 56-2016-00485797 (Sup. Ct. Cal. Feb. 1, 2017) 2017 WL 1247539 (Applying Standard Used for Medical Malpractice to Veterinary Malpractice and Ruling on Other Causes of Action) [3]

Bureau of Health Care Services v. Pol, 2016 WL 3452174 (Ct. App. Mich.) (unpublished) (Discussing Standard of Care in Case Remanding Complaint in Disciplinary Action) [7]

In re Chambers, 330 P.3d 441 (Ct. App. Kan. 2014) (unpublished) (Affirmed Finding that Veterinarian Violated Veterinary Practice Act) [9]

Cerimele v. Van Buren, D.V.M., 2013 Ohio 1277, 2013 WL 1289400 (Ct. App. Ohio 2013) (Issues with Expert's Affidavit – Sets Out Elements of Veterinary Malpractice Action) [5]

English v. Metropolitan Veterinary Specialists, 2013 WL 3388881 (Ct. App. Ky. 2013) (unpublished) (Veterinarian Operated on Wrong Knee – Summary Judgment Dismissing Professional Negligence Claim Affirmed) [3]

Milke v. Ratcliff Animal Hosp. Inc., 120 So.3d 343 (La. App. 2 Cir. 2013) (Allegation of Negligent Post Operative Care – Trial Court Summary Judgment Dismissing Claim Affirmed) [13]

McMahon v. Craig, 176 Cal. App. 4th 222 (Ct. App. 4th 2009) (Illustrates Variety of Claims – But is More a Limitation of Damages Case Than a Veterinary Malpractice Case) [13]

Other Veterinary Issues

Practice of Veterinary Medicine

Hines v. Alldredge, 783 F.3d 197 (5th Cir. 2015) (Texas Statute Requiring Veterinarian to Conduct Physical Examination of Animal Before Practicing Veterinary Medicine is Valid) [7]

Gomez v. Innocent, 330 Ga. App. 260 (Ct. App. Ga. 2014) (Discussing Validity of Veterinary Lien) [3]

San Diego Co. Veterinary Medical Ass'n v. County of San Diego, 116 Cal. App. 4th 1129 (2004) (County May Provide Wellness Vaccinations – Provides Good Coverage of Police Power of Counties) [8]

Alteration and Declawing

The AVMA tracks state laws regulating tail docking and ear cropping. The AVMA's current policy opposes ear cropping and tail docking of dogs if done solely for cosmetic purposes. The AVMA's policies on these issues can be useful to generate class discussion on the alteration of companion animals for cosmetic reasons.

The United States is "unique" in the routine declawing of cats. Because veterinary associations generally oppose legislation regulating the practice, it can be discussed in this part of the course. The California Veterinary Medical Ass'n v. City of West Hollywood case (included in the WFW course book) provides good background on the rationale for the ban in West Hollywood, California. This case also can lead to a discussion about the extent that local jurisdictions should be able to regulate welfare issues. The Paw Project (pawproject.org) tracks legislation relating to this issue. Note that California enacted legislation effective on January 1, 2010, amending Section 460 of the Business and Professions Code to make it unlawful for cities and counties to prohibit a healing arts licensee from "performing any procedure that falls within the professionally recognized scope of practice of the licensee." CAL. BUS. & PROF. CODE § 460(b). That provision grandfathered in the cities in California that previously had enacted declaw bans. New Jersey proposed legislation (passed by the Assembly) would have banned declawing of cats unless a veterinarian deemed the procedure necessary for a therapeutic purpose (which excluded aesthetics or reasons of convenience). New York also has proposed legislation.

WFW pp. 127-136 (Providing Cases on Docking and Declawing) [10]

California Veterinary Medical Ass'n v. City of West Hollywood, 152 Cal. App.4th 536 (2007) (West Hollywood Ordinance Not Expressly Preempted by the California Veterinary Medical Practice Act and Ordinance Was Upheld) [23]

A3899, 2016-2017 Sess. (NJ 2016) (Prohibiting Declawing of Cats Except if by Veterinarian for a Therapeutic Purpose – Violation Would Be a Disorderly Person Offense and Subject to a Civil Penalty) [7]

A00595, 2017-2018 Reg. Sess. (NY 2017) (Prohibiting the Declawing of Cats Except if Necessary for a Therapeutic Purpose – Provides a Civil Penalty) [1]

American Veterinary Medical Ass'n, *State Laws Governing Elective Surgical Procedures, State Summary Report*, <https://www.avma.org/Advocacy/StateAndLocal/Pages/sr-elective-procedures.aspx> (Summarizing State Laws and Providing Links to AVMA Policies) [3]

Prescription Drugs

One of the issues relating to the business of veterinary medicine is how prescriptions for medications are generally handled within a veterinary office. The growth of alternatives for the supply of medications, such as sources on the Internet, raises issues of fairness to consumers when veterinarians are hesitant to issue a prescription or charge a fee to clients for the prescription. This topic can be part of a class discussion about other legal aspects of the veterinary profession. Federal legislation has been introduced to address this issue. The AVMA maintains a chart of state laws relating to the issue and has other information on its website regarding its opposition to federal legislation. A class activity could be to compare any relevant language from your jurisdiction to the federal legislation or other state laws. What are the arguments that veterinarians or consumers may raise regarding such legislation?

Fairness to Pet Owners Act of 2017, H.R. 623, 115th Cong. (2017) (Would Require Prescribers of Animal Drugs to Verify and Provide Copies of Prescriptions Without an Additional Fee) [5]

American Veterinary Medical Association, Client Request for Prescriptions, State Summary Report (Feb. 2017), <https://www.avma.org/Advocacy/StateAndLocal/Pages/veterinary-prescription-orders.aspx> (Listing State Laws Relating to Providing Prescriptions) [7]

DAMAGES FOR INJURY/DEATH OF ANIMAL AND VALUATION ISSUES

It is helpful to break down the types of damages that may be available if a companion animal is injured or killed and then discuss whether case law or legislation has allowed for such damages. The Strickland v. Medlen case (discussed in the WFW course book) focuses on Texas law but cites to many other cases that have dealt with the issue.

The class discussion could revolve around the current limitations on damages and whether the students believe such limitations are appropriate. Do the students believe that the best way to try to change the system is through litigation or legislation? Instructors could have students review the legislative initiatives and draft (at least bullet point) their “ideal” state statute. What constituencies would be supportive or opposed to such a statute? Although the 2008 litigation relating to pet food products containing contaminated wheat gluten or rice protein concentrate is interesting, the opinions focus more on issues relating to class actions rather than the damages available to consumers so instructors are cautioned to consider carefully whether the time involved to cover that material is warranted.

WFW pp. 165-186 (Theories of Liability) [22]

WFW pp. 196-200 (Pet Food Litigation) [4]

WFW pp. 210-254 (Damages and Valuation)

Favre pp. 68-74 (Bailment – Includes Equine Case) [7]

Favre pp. 124-126 (Rights of Owners and Types of Injuries) [3]

Favre pp. 126-151 (Damages and Valuation Including Statutory Provisions) [26]

Repin v. State of Washington (Washington State University), 392 P.3d 1174 (Ct. App. Wa. 2017) (No Noneconomic Damages in Veterinary Malpractice Etc. Case) [24]

Barking Hound Village, LLC v. Monyak, 787 S.E.2d 191 (Ga. 2016) (Fair Market Value and Reasonable Medical Costs for Death of Dog – But No Sentimental Value) [9]

Smith v. Wisconsin Mut. Ins. Co., 369 Wis 2d 224 (Ct. App. Wis. 2016) (unpublished) (Fair Market Value But Because of State Dangerous Dog Provision Damages Doubled – Rejected Applying Keepsake Rule to Pets) [4]

Strickland v. Medlen, 397 S.W.3d 184 (Tex. 2013) (Dog’s “Actual” Value/Economic Value Appropriate Measure of Damages – Did Not Allow for Noneconomic Damages) [15]

Leith v. Frost, 899 N.E.2d 635 (Ct. App. Il 2008) (Reasonable Veterinary Costs Recoverable) [7]

In re Pet Food Product Liability Litigation, (Reaffirming Settlement in Entirety) [4]

In re Pet Food Products Liability Litigation, 629 F.3d 333 (3rd. Cir. 2010) (Dealing with Objections to Settlement) [32]

In re Pet Food Products Liability Litigation, 2008 WL 4937632 (D. N.J. 2008) (Certifying Class and Describing Pet Food Products Liability Litigation Settlement) [23]

CONN. GEN. STAT. § 22-351(a) (Liability for Intentionally Killing or Injuring Companion Animal – Economic Damages With Capped Punitive Damages) [1]

510 ILL. COMP. STAT. § 70/16.3 (Civil Actions if Animal Subject to Act of Aggravated Cruelty or Torture)

MD. CODE ANN. CTS & JUD. PROC. § 11-110 (Cap on Compensatory Damages for Death or Injury to Pet – Lost Economic Value and Veterinary Costs – Increased to \$10,000 Effective October 2017) [1]

NEV. REV. STAT. § 41.740 (Capped Damages for Killing or Injuring of Pet – No Punitive or Noneconomic Damages) [2]

TENN. CODE. § 44-17-403 (Potential Liability of Up to \$5,000 in Noneconomic Damages for Negligent Acts) [1]

Zachary Paterick et al., *A Stepping Stone Towards Companion Animal Protection Through Compensation*, 22 ANIMAL L. 79 (2016) (Advocating a Loss of Investment Approach Using Qualitative Criteria) [22]

Lauren M. Sirois, *Recovering for the Loss of a Beloved Pet: Rethinking the Legal Classification of Companion Animals and the Requirement for Loss of Companionship Tort Damages*, 163 U. PA. L. REV. 1199 (2015) (Arguing for the Expansion of Loss of Companionship Damages Through Legislation) [34]

Phil Goldberg, *Courts and Legislature Have Kept the Proper Leash on Pet Injury Lawsuits Why Rejecting Emotion-Based Damages Promotes the Rule of Law, Modern Values, and Animal Welfare*, 6 STAN. J. ANIMAL L. & POL'Y 30 (2013) (Arguing Against Emotion-Based Damages For Loss of Pet) [42]

American Veterinary Medical Association, State Advocacy Issue, *Non-economic Damages: Animal Health Institute Paper* (Nov. 2005), <https://www.avma.org/Advocacy/StateAndLocal/Pages/noneconomic-ahi.aspx> (Opposing Noneconomic Damages) [3]

LAW ENFORCEMENT KILLING DOGS

The killing or injury of a dog by a law enforcement officer can result in claims against the officer and department based on Fourth Amendment grounds through a Section 1983 claim. An instructor can address this issue by discussing case law on the issue and/or focusing on efforts to require law enforcement to undergo training to prevent the shooting of dogs by law enforcement.

WFW pp. 186-196 (Fourth Amendment Claims) [11]

Favre pp. 75-76 (Police Shooting Pets) [2]

Favre pp. 181-185 (Actions of State Agents) [5]

Brown v. Battle Creek Police Dep't, 844 F.3d 556 (6th Cir. 2016) (Although There is a Constitutional Right Under the Fourth Amendment Not to Have One's Dog Unreasonably Seized – Officers Acted Reasonably and Did Not Make an Unlawful Seizure When They Killed Two Dogs While Executing a Search Warrant) [21]

Patino v. Las Vegas Metropolitan Police Dep't, 207 F. Supp. 3d 1158 (2016) (Nevada Statute Governing Recovery for Death of a Pet Preempted State Law Claim for Intentional Infliction of Emotional Distress) [10]

Brooks v. Jenkins, 104 A.3d 899 (Ct. App. Md. 2014) (Maryland Statute Capping Recovery for Tortious Injuries to Pet Not Applicable in Constitutional Tort – Jury Verdict of \$200,000 for Mental Anguish Damages Upheld) (23)

COLO. REV. STAT. § 29-5-112 (Requiring Minimum Training of Law Enforcement Officers and Local Law Enforcement Agencies Must Establish Policies to Address Encounters with Dogs) [7]

Elizabeth Olsen, *Paws Up, Don't Shoot: Preventing Officer-Involved Shootings of Companion Canines*, 23 ANIMAL L. 65 (2016) (Evaluating the Efficacy of Potential Civil Claims) [32]

ALTERNATIVE DISPUTE RESOLUTION

Instructors with sufficient time and interest (or who have a good guest speaker or faculty colleague who is an expert on the topic) may want to spend some class time discussing whether disputes relating to companion animals can be effectively resolved using methods of alternative dispute resolution. Instructors can ask whether the students are convinced by the arguments promoting the use of alternative dispute resolution for these disputes.

Michael Ploudre Kaiser, *“Cut the Dog in Half”*: *Resolving Animal Disputes Through Alternative Dispute Resolution*, 15 CARDOZO J. CONFLICT RESOL. 515 (2014) (Advocating for Using Alternative Disputes Resolution in Animal Law Disputes) (23)

Emily Franklin, *How to Give the Dog a Home: Using Mediation to Solve Companion Animal Custody Disputes*, 12 PEPP. DISP. RESOL. L.J. 351 (2012) (Advocating for the Use of Mediation in Custody Disputes) [18]

Kathy Hessler, *Mediating Animal Law Matters*, 2 J. ANIMAL L. & ETHICS 21 (2007) (Analyzing Mediation in Animal Law Context) [39]

ETHICAL ISSUES

Professional Ethical Issues

If an instructor is comfortable discussing the professional ethical issues lawyers practicing in the area of animal law confront, the topic can be good way to end the semester. One way to approach the issue is to have a set of scenarios and ask the students to identify and discuss the various professional ethical rules that may be applicable. This works best if the students have already taken the law school's professional responsibility course (and such course has at least some focus on the rules of professional conduct). It may be easier to have the students pull the applicable rules of professional conduct for the jurisdiction where the law school is located rather than use the ABA Model Rules of Professional Conduct.

Fortunately for instructors looking for ideas for scenarios, Russ Mead regularly leads sessions on this topic at conferences and some of his materials are available online. Instructors may find it easier to keep the class discussion going if briefer scenarios are used focusing on just one or two possible issues. Competence, when an attorney-client relationship arises, who is being represented (human not animal, organization not individual) and the role of the attorney as advisor are all rules that can be covered. The rules relating to declining or terminating representation frequently arise when an attorney's personal morals may conflict with his or her professional ethical obligations.

Russ Mead, *21st Annual Animal Law Conference, Stanford Law School, Ethics CLE Presentation*, <http://aldf.org/wp-content/uploads/ALC/2013/Mead-Ethics-Materials.pdf> (Selected Model Rules of Professional Conduct and Ethical Scenarios) [19]

Note – A recording of this session of the 2013 Animal Law Conference is available on YouTube at <https://www.youtube.com/watch?v=tALZAQT7JgY> (Some of the Discussion is Difficult to Hear) [39 Minutes]

Joel Hailey, *Legal Ethics in Animal Law*, June 18, 2015, http://files.eventsential.org/ce342f66-b6b8-459b-a3cd-6f6c4b1040a3/event-390/73251075-Animal_LegalEthics_Hailey.pdf (Provides Ethical Scenarios Focusing on Estate Planning and Animals) [4]

Jeffery Jones & Russ Mead, *The 20th Annual Animal Law Conference at Lewis and Clark, October 19-21, 2012, Animal Law Ethics Presentation*, <http://law.lclark.edu/live/files/12598-mead--ethics-materials-2012> (Selected Model Rules of Professional Conduct and Ethical Scenarios) [13]

Gregory Fleck, *Ethical Considerations in the Prosecution of Animal Cruelty Cases*, (National Center for Prosecution of Animal Abuse) 2 TALES OF JUSTICE (2012), <http://www.ndaa.org/pdf/TalesJustice-vol2-no1.pdf> (Discussing Ethical Dilemmas Faced By Animal Cruelty Prosecutors) [6]

Steve Johansen & Russ Mead, *Ethical Dilemmas for Lawyers Working in Animal Welfare 2011*, <http://aldf.org/wp-content/uploads/ALC/2011/mead---ethical-dilemmas-for-lawyers-working-in.pdf> (Selected Model Rules of Professional Conduct and Ethical Scenarios) [15]

Philosophical Issues/Companion Animal Ethics

Especially if students have had exposure to “general” theories regarding ethical issues relating to animals in a previous course, instructors may want to focus their attention on specific issues relating to companion animal ethics for the course. Because of copyright restrictions books are difficult to assign for multiple students to read

in preparation for class, however a few recent books are included on the list to aid instructors who may want some additional background material.

Students could be assigned different readings and asked to report on the material in class. Another discussion idea is to consider the care and concern some people have regarding companion animals compared with their interest over the treatment of farmed animals. How do vegetarians and vegans deal with this issue if their companion animals consume animal products?

Favre pp. 10-15 (Big Thinkers) [6]

Favre pp. 392-430 (Philosophy, Religion, Legal Personhood, Rights, Property Status) [39]

Favre pp. 431-473 (Animal Rights – Social Movement – General – Not Focused on Companion Animals) [42]

James Yeates & Julian Savulescu, *Companion Animal Ethics: A Special Area of Theory and Practice?*, 20 ETHIC THEORY MORAL PRAC. 347 (2017) (Discussing Framework for Consideration of Companion Animal Ethics – Using the Term “Pethics”) [13]

Kyle Fruh & Wolodymyr Wirchnianski, *Neither Owners Nor Guardians: In Search of a Morally Appropriate Model for the Keeping of Companion Animals*, 30 J. AGRIC. ENVIRON. ETHICS 55 (2017) (Discussing Dilemmas of Current Models Relating to the Keeping of Companion Animals) [12]

Hank Rothgerber, *A Meaty Matter. Pet Diet and the Vegetarian’s Dilemma*, 68 APPETITE 76 (2013) (Focusing on Conflict Vegetarians Have Over Feeding Animal Products to Pets) [7]

David Favre, *The Integration of the Ethic of the Respectful Use of Animals into the Law*, 16 BETWEEN THE SPECIES 166 (2012) (Develops Theory of “Respectful Use” for All Animals) [20]

Steve Cooke, *Duties to Companion Animals*, 17 RES PUBLICA 261 (2011) (Analyzing Duties To and Regarding Companion Animals Because of Their Special Moral Status) [14]

Kristien Hens, *Ethical Responsibilities Towards Dogs: An Inquiry into the Dog-Human Relationship*, 22 J. AGRIC. ENVIRON. ETHICS 3 (2009) (Discussing Responsibilities Towards Dogs and Breeds of Dogs) [12]

Jessica Greenebaum, *“I’m Not an Activist!”: Animal Rights v. Animal Welfare in the Purebreed Dog Rescue Movement*, 17 SOC’Y & ANIMALS 289 (2009) (Discussing Study of Volunteers and Finding They Do Generally Not Associate Their Work With Activism and the Animal Rights Movement) [17]

Stuart Spencer et al., *History and Ethics of Keeping Pets: Comparison with Farm Animals*, 19 J. AGRIC. ENVIRON. ETHICS 17 (2006) (Concluding it is Unethical to Keep Pets Utilizing a Standard Animal Rights Philosophy) [9]

PETS AND PEOPLE: THE ETHICS OF OUR RELATIONSHIPS WITH COMPANION ANIMALS (Christine Overall ed., 2017) (Anthology of Work Examining the Foundation of Humans’ Moral Responsibilities Towards Companion Animals and Exploring Specific Ethical Issues Relating to Aspects of Their Lives) [Book]

PETER SANDØE, SANDRA CORR & CLARE PALMER, COMPANION ANIMAL ETHICS (2016) (Exploring Ethical Questions and Problems Connected with Humans’ Keeping of Companion Animals) [Book]

JESSICA PIERCE, RUN SPOT RUN: THE ETHICS OF KEEPING PETS (2016) (Conversational in Tone – Briefly Covers Background for Some of the Topics in This Course Guide) [Book]

DILEMMAS IN ANIMAL WELFARE (Michael C. Appleby, Daniel M. Weary & Peter Sandøe eds., 2015) (Multiple Chapters Focusing on Companion Animals) [Book]