

Animal Law, a bird's eye view.

By

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Legal news

“Animal law,” said Anna Rose Stern, Co-chair of the Animal Law Section of the State Bar of Michigan and attorney with Loomis Law Firm, “is the interchange between animals and humans. Animal law includes statutory, regulatory and common law...it traverses many other practice areas.”

Animal law “... exists at the local, state, federal and international levels,” Stern continued. “For example, at the international level you have import and export regulation and treaties. The European Union has treaties including conventions for the protection of animals.”

While the field of animal law cuts across many legal areas, the most popular topic is animal rights. Standing to sue, the legal right to bring a judicial action on your own behalf, is at the heart of the matter.

“The case of Animal Legal Defense Fund (ALDF) v Espy,” said Stern, “was a famous case that went up and down (the court ladder) and eventually the federal Animal Welfare Act was amended to include mice, birds and aquatic animals, but the regulations of the Secretary of Agriculture excluded this group from protection in the section on animal research.”

“When the Legal Defense Fund tried—saying we want the USDA (United States Department of Agriculture) to enforce the statute, the court said ‘we are sorry, but you don’t have standing to bring the action because there is no injury to you, no causal connection between you and the damage and this court can’t redress it because who are we going to give damages to? It is the animals that are being treated outside the statutory limits not you.’”

“The bottom line,” said Stern, “is that a law was put into place to protect animals yet who can enforce it since animals and animal welfare groups or humane societies have no standing (to bring legal action.)”

“Estate planning is another perfect example,” she said. “I have a cockatoo, Al, who will most likely live for sixty years. He will survive me. Before the Michigan statute was enacted allowing for pet trusts and standing for the pet through a trustee, I could have found someone to take care of Al after my death and drafted a contract saying ‘I give you \$150,000 to care for my bird.’ However, after I die, the person could receive the \$150,000 and euthanized my pet. Who could enforce the contract? The owner is dead—the bird has no standing.” Many other states still have no pet trust statute.

Welfarism or rights are “two possible theories...” of standing. “The rights camp,” said Stern, “says that animals should have a right, not a human right because they can’t go to court but they should have an inalienable right to be treated humanely...from a practical standpoint, these would be basic rights.”

“Welfarism,” she said, “argues that we keep the status quo, that animals are still property of the owner, however, we want a new class of property... sentient property is the phrase used by legal theorists.”

“People violently disagree on what sentient property is,” said Stern, “generally it means it (the animal as property) is not a chair—it has responses on its own, it is mobile, it responds to people. Under this concept, individual guardians could act on behalf of...” the animal.

The animal rights theorists “...talk about ‘do we give these animals certain inalienable rights and (the reaction is) people roll their eyes, however, it is practical problem that needs to be addressed. How do you enforce (agreements involving animals) if the thing that needs to be protected doesn’t have the right to have its day in court, even if there is a guardian for the benefit of the animal,” she said.

Stern noted that over time the ability of children to sue on their own behalf has changed. Historically, children were considered chattel—without rights—“now children have rights...asserted by a guardian...for their protection. This is a similar situation with animals, particularly companion animals.”

“The law is changing to handle these situations---pet trusts appoint a trustee who can act on behalf of the animal so it has standing,” said Stern. “This is not a hard concept—it is quite simple.”

When asked about the cases that come her way, Stern said, “I get a lot of cases where the neighbor’s dog attacks my client’s dog or cat...” resulting in vet bills to treat the animal. “They want their vet bills paid.... I get calls in the family law area where the couple are not getting along---one person takes the animal to the humane society or threatens to kill or harm the pet.”

Contract cases are another area. “There are a number of contracts involving animals such as purebred dogs or race horses or the animal is used for entertainment,” she said.

Animal law is considered one of the nation’s fastest growing fields of study and practice. More than 80 law schools offer an animal law course. Some provide seminars and clinics. Both Michigan State University (MSU) College of Law and Thomas M. Cooley Law School offer animal law classes. Professor David Favre of MSU is internationally known for his books, articles and an animal legal and historical website. (www.animallaw.info/).

The American Bar Association has an animal law section, as does the State Bar of Michigan. The animal law section of the SBM will host a symposium April 11th at Michigan State University from 1 to 4:30 p.m. Presentations will include practice pointers, case law and statutory updates. Supreme Court Justice Marilyn Kelly will speak on contracts related to purebred dogs. For more information, please contact arstern@loomislaw.com.