

For Your Entertainment: Researching Animal Cruelty Under the Big Top

By Virginia C. Thomas

Most of us have seen animals perform in videos, stage shows, and a number of live performance venues, including traveling circuses. Many people patronize circuses featuring animal acts for the entertainment they provide. However, relatively few are aware of how circus animals are treated behind the scenes.

Unfortunately, animal cruelty offenses under the big top are real. In recent years, a number of challenges brought by individuals and organizations have questioned the treatment of animals used in circuses for entertainment purposes. In 2015, for example, circus trainer Larry Dean Carden and marketing director Benjamin Johnson were cited for animal abuse in Atlanta, Georgia. Carden allegedly inserted a bull hook into an elephant's mouth during a circus performance.¹ In a 2017 case, a district court judge in Lawrence County, Alabama, denied circus owner Hugo Liebel custody of a circus elephant who had suffered abuse and neglect under his watch.²

Those who seek information about the basis for such litigation may be surprised at what they find—or don't find. A number of factors make research in this area challenging.

The law governing the welfare of circus animals is obscure

There is no single comprehensive codification of circus animal law that provides a clear foundation for litigating claims of abuse or neglect. The Animal Welfare Act (AWA)³ and pertinent regulations⁴ govern all animal circuses in the United States. The AWA requires circuses to be licensed and sets a standard of care for the treatment of their show animals. Critics of the AWA claim that too few inspectors are available for the thousands of enterprises covered



by the statute and that oversight is minimal. While other federal statutes such as the Endangered Species Act⁵ may protect select species, they also may exempt circuses from coverage.

In Michigan, the Large Carnivore Act, which, in part, prohibits mistreatment and neglect of large carnivores in traveling circus performances, is silent with respect to other animals typically used in circus performances, such as elephants, camels, and horses.⁶ However, the Michigan Penal Code specifies time limitations and conditions under which animals may be confined on railroad cars without unloading for rest, water, and feeding—definitely pertinent to the handling and transport of most animals used in traveling circuses.⁷ Yet other MCL provisions speak to specific acts of cruelty as well as endangered species considerations with possible applicability to circus animal care and well-being.

In addition to state and federal law, some municipalities have animal abuse ordinances that add another layer to the body of law that may or may not apply to circus animals.⁸

Court cases involving circus animal abuse are not easily discoverable and typically have no precedential value

For the most part, cases involving mistreatment of circus animals are resolved at the trial court level. State and local trial court decisions are not systematically reported or searchable through comprehensive legal databases such as Westlaw, LexisNexis, or Bloomberg Law. Though some trial courts have begun to make rulings accessible online, the rulings themselves may not be indexed by subject or otherwise searchable. Local court judges also may be unaware of earlier decisions in their own jurisdiction, resulting in inconsistent rulings for factually similar cases. Taken together, these factors make it difficult to develop a consistent legal theory for deciding (or researching) circus animal abuse cases.

Currently, courts do not recognize legal standing for animals

Although organizations such as the Non-human Rights Project and the Animal Legal Defense Fund have advocated for the legal rights of nonhuman species, animals do not have standing to assert legal rights in court.⁹

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State and local prosecutors must prioritize their caseloads and determine which animal abuse cases to bring forward.

Circuses are transitory enterprises

A traveling circus may be in one location for a few weeks or even days before moving to another. Some circuses post performance schedules online, while others promote their shows in local venues only shortly before their arrival. This presents challenges for prosecutors when it comes to investigating or pursuing circus animal abuse claims and may result in fewer charges.

Legal research conundrum

Sometimes, researching a legal issue requires more than, well, legal research. We know about the Georgia and Alabama elephant cases primarily because their stories have been followed by animal welfare organizations and the media. Following is a selection of free alternative resources that provide information on legal actions involving circus animal abuse.

Animal law websites

Today, more than 160 U.S. law schools offer at least one animal law course.¹⁰ A number of schools also support animal law centers that sponsor programming and may share resources through their websites. The Animal Legal and Historical Center at Michigan State University College of Law (<https://www.animallaw.info>) maintains a comprehensive repository for legal and law-related information on animal law issues. Included are full-text (current and archived) animal law opinions, federal and state statutes, periodical articles, news reports, and notes on current developments in the field. And,

yes, “circus or entertainment” is offered as a search topic for all resource types.

Animal advocacy organization websites

Websites maintained by organizations promoting the welfare or legal rights of animals, generally, can be an excellent resource for researching circus animal abuse. For example, the Animal Legal Defense Fund (<https://aldf.org>) identifies legal issues in the field of animal law, tracks ongoing litigation, and analyzes changes in statutes and regulations on its website. The Humane Society of the United States (<https://www.humanesociety.org>), American Society for the Prevention of Cruelty to Animals (<https://www.aspc.org>), and American Humane (<https://americanhumane.org>) websites include updates on their specific legal advocacy efforts supplemented by news reports and blog posts. Similarly, the website of People for the Ethical Treatment of Animals (<https://www.peta.org>) provides a window to its litigation and advocacy actions as well as trending news. A bit different in its mission, the Nonhuman Rights Project (<https://www.nonhumanrights.org/>), which seeks to secure “legally recognized fundamental rights for nonhuman animals” including legal standing to sue, provides detailed summaries of its case files.

Let’s not forget Google Scholar

Legal researchers routinely use Google as an effective resource for news and updates on current issues and Google Scholar to access appellate court decisions and scholarly legal periodical articles. However, Scholar can be used to find library research guides (libguides) on a range of subjects,

including circus animal abuse. For example, the simple search “animal abuse circuses libguides” produces a list of relevant legal research guides with links to pertinent resources. Did I mention they are accessible for free? ■



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ENDNOTES

1. Caldwell, *Trial set for alleged elephant abuse during Atlanta circus performance*, Atlanta Business Chronicle (March 2, 2015) <https://www.bizjournals.com/atlanta/morning_call/2015/03/trial-set-for-alleged-elephant-abuse-during.html>. All websites cited in this article were accessed November 10, 2018.
2. *Lawrence County v Liebel*, Final Order of the District Court of Lawrence County, Alabama, issued January 22, 2018 (Case No. DV-2017-000015.00) <https://www.mediapeta.com/peta/PDF/Nosey_Alabama_Final_Order.pdf>.
3. 7 USC 2131.
4. See, for example, Animal and Plant Health Inspection Service, *Thresholds for De Minimis Activity and Exemptions From Licensing Under the Animal Welfare Act*, 83 Fed Reg 25549 (June 4, 2018).
5. 16 USC 1531.
6. MCL 287.1102 and MCL 287.1122.
7. MCL 750.51.
8. For example, see Ann Arbor Code of Ordinances 9.35, Cruelty to Animals (Ord. No. 63-79, 12-17-79) and Grand Rapids Code of Ordinances 9.191: Cruelty to Animals (Ord. No. 2003-06, Sec. 1, 1-28-03).
9. See, for example, the Washington County Circuit Court, Twentieth Judicial District ruling in *Justice v Gwendolyn Vercher*, issued September 17, 2018 (Case No. 18CV17601). The court dismissed an abuse/neglect complaint filed on behalf of Justice, an American Quarter Horse, by his new owner on the basis that “a non-human animal such as Justice lacks the legal status or qualifications necessary for the assertion of legal rights and duties in a court of law.” <https://www.portlandmercury.com/images/blogimages/2018/09/17/1537229464-documentfragment_66832151.pdf>.
10. Animal Legal Defense Fund, *Where Should You Go to Law School?* <<https://aldf.org/article/where-should-you-go-to-law-school/>>.