

Introduction

**“Be who you are and say what you feel,
because in the end those who matter don’t
mind and those who mind don’t matter.”**

—*Dr. Seuss*

A groundbreaking book on pet law and custody, this text is a wonderful resource for a wide-ranging audience. The area of pet law and custody has grown exponentially over the years, with a variety of individuals now involved, including family lawyers, animal lawyers, alternative dispute resolution (ADR) professionals, animal advocates and owners, and those who are interested in animals. While the book discusses the law, it is accessible, useful, and interesting to nonlawyers as well. This book has something for everybody and is designed to provide practical real-world advice along with a progressive understanding of the developing area of pet law and custody as a foundation for advancing the law for the common good of all animals.

This book explores two themes that are central to a modern understanding of pet law and custody. The first is the unique position our pets hold in our culture as well as under our law. Traditionally, the law classifies entities into two categories, persons and property. Under the law, animals, including our pets, generally are classified as property. This book examines how the traditional binary classification has become obsolete and instead a continuum has developed that allows for a nuanced understanding of the role pets play in our lives and under the law. Our pets are no longer mere objects but rather are beneficiaries of trusts, companions, and family members. The book helps us see how, in the contours of a single decision, the animal’s position on the continuum between classification of property and person appears malleable and can have a decisive impact on the outcome of the case. Recognizing this continuum, and capitalizing upon it, is critical to enhancing our ability to seek a just outcome for human and nonhuman animals in a variety of pet law contexts.

The second theme relates to conceptualizing animal law cases as a series of vertical and horizontal intersections. This book helps us think outside the box and

develop lines of argument in one doctrinal area—for example, pet custody—from a wide variety of other doctrinal areas, such as tort, contract, criminal, and constitutional law. We learn to appreciate that these areas are not independent silos but rather a tapestry of views that can affect doctrinal outcomes across substantive areas. The author identifies how decisions across disciplines and state borders influence each other in the animal law practice area and how advocates may utilize these influences in the best interests of their human and nonhuman clients.

These two themes are evidence of changing times in our jurisprudence. While some judges are still old school, more are becoming aware that laws prohibiting animal cruelty and abuse and promoting welfare standards are the new normal and that our pets, in particular, deserve consideration. A dizzying flurry of dicta about love, affection, and friendship endorse the reality that the companion animal has entered the family unit.

In addition to exploring the changing paradigm of the companion animal within our legal system, this book provides the practical nuts and bolts necessary to advocate your case. Presented throughout the chapters and in helpful appendices are extensive case analyses and practice pointers, checklists, questions, agreements, and pleading critiques, each designed to give you the tools you need to be an effective advocate.

To accomplish these twin goals, the book is divided primarily along substantive doctrinal lines. Most chapters are devoted to a specific area of law. Each substantive chapter analyzes the basic elements of the law as they relate to pet law and custody and then summarizes and dissects the leading cases. Provided are helpful practical pointers extracted from each case explaining the key relevance of the case to the area of pet custody. In addition, there are chapters devoted to a variety of related topics, including the use of alternative dispute resolution, science and technology, law office basics, and an exploration of the Katrina catastrophe as a case study into how a natural disaster can transform law and policy. Finally, the book contains a series of appendices that provide the toolkit necessary to address pet custody cases. The following briefly summarizes each chapter to help you navigate the text.

Chapter 1 (“Companion Animals and the Law”) lays the foundation for this book on pet law and custody. The chapter explores how a companion animal is defined and conceptualized under the law and includes a list of useful criteria for distinguishing companion animals from other animals. In addition, it explains how the role of the pet as a family member has evolved in our culture and how that may be reflected in the law with regard to companion animals being on a continuum between property and persons.

Chapter 2 (“Family Law and Replevin Actions”) analyzes the progression of replevin cases central to the development of pet custody jurisprudence. This chapter identifies the different types of “value” humans assign to their pets, including moral, relational, sentimental, and economic. It explains animal/human and animal/animal bonds, equitable principles, and “best-interest” factors and their significance in pet custody determinations. The reader will gain appreciation as to how some jurists embrace the opportunity to render a decision with a just result in a companion animal ownership or custody dispute, while others are offended that they were assigned such a lowly case in the first place. In a way, this chapter is about the elephant in the room that is not spoken of, but it is an aspect of one’s journey through this book to understand the elephant’s significance.

Recognizing that, especially in the context of family law and custody, where the human and nonhuman animal “parties” may retain a relationship long after custody is determined, Chapter 3 (“Alternative Dispute Resolution”) discusses how mediation, negotiation, and arbitration apply in the context of pet custody and ownership disputes. This chapter provides a primer on the various types of mediation—facilitative, evaluative, animal-centered, and transformative—and how to choose which type will best serve your goals. Further, it utilizes the Model Standards of Practice for Family and Divorce Mediation as a template for how to consider the application of these standards to pet custody disputes. The chapter then changes focus to discuss collaborative processes and the objectives of collaborative law under the Uniform Collaborative Law Rules/Act (UCLRA). It ends with a discussion of arbitration practice. At each stage, this chapter provides a variety of practical tools to facilitate the advocate’s use of these ADR methods.

The passage of laws permitting pet trusts in all 50 states was a watershed event for the development of companion animal laws in the United States. While historically, property could not inherit property, the laws now allow animals to be trust beneficiaries. This development lends support to the argument advanced in this book that companion animals are something more than mere property on the continuum. Chapter 4 (“Estate Planning, Wills, and Trusts”) surveys the traditional estate planning methods used to provide for pets, identifies their weaknesses, and then explores the basics of setting up a pet trust. The chapter closes with a useful checklist to share with future caregivers of a companion animal.

Chapter 5 (“Contract Law and the Uniform Commercial Code”) introduces another level of complexity to pet law and custody, as our pets may be subject to, or affected by, a variety of contracts. Whether the owner adopted the animal from a rescue organization or purchased the animal from a breeder, expect a contract was involved. Moreover, prenuptial and antenuptial agreements that address

pet ownership are becoming more common and raise a variety of issues for pet custody. Ideas about what could be contained in the pet custody agreement are shared, including the subjects of pet visitation and access rights. This chapter discusses the basics of contract law and equitable principles relevant to the variety of contracts involving our pets.

Chapter 6 (“Property Law and the Meaning of Things”) explores the legal implications of lost and found animals and analyzes several cases that address a variety of issues, including the definition of “owner,” pet restrictions in housing, and the notion of “horizontal” property rights, an important consideration in pet custody proceedings. Interestingly, cases involving animals as property evoke strong views all around and seem to represent, on one end of the spectrum, the legal fiction that pets are inanimate objects while, on the other side of the continuum, the idea that they are in a category akin to children.

Chapter 7 (“Tort Law Affects Pet Law”) explores how the evolving jurisprudence of tort law affects pet law and custody. Compensatory damages awarded in tort cases could be a function of the value we place on our companion animals. For decades, advocates, the courts, and legislatures have grappled with whether to recognize and compensate for noneconomic value—the companionship value—of companion animals to their owners. This chapter details this debate and notes a common element between tort cases, where an animal dies, and a pet custody case, where companionship is lost. Both types of actions involve emotion that the legal system is ill-equipped to handle. We will see that in tort cases, the suffering of an animal is modestly addressed, if at all, whereas in family law cases, courts may at least take their maltreatment into account.

Chapter 8 (“Animal Cruelty, Crimes, and the Constitution”) reminds the reader that civil law is not the only law that governs interactions with our pets. Criminal and constitutional law doctrines are significant to animal protection and have been instrumental in moving our pets along the continuum from property toward persons. This chapter notes the link between animal cruelty and abuse of human victims, which has significantly impacted the enforcement of animal cruelty laws in this country. All 50 states now have felony and misdemeanor animal cruelty laws that are independently tracked under the FBI crime reporting database. These crimes, along with arson and homicide, are tracked under Group A, as a crime against society—not property. This classification is instrumental in shifting animals along the continuum from property toward persons. Additionally, this chapter surveys a variety of criminal and constitutional topics ranging from the unique history of Pit Bulls in the legal system and the abuse directed toward them, to animal hoarding, to the 1st, 4th, 5th, and 14th Amendments of the Constitution and how these amendments apply to animal law cases, to the role of animal control

officers, and to how title to an animal may be lost through criminal and civil forfeiture. Horizontal intersections among doctrinal areas of pet law are identified.

In the wake of Hurricane Katrina, humans became separated from their companion animals along the Gulf Coast. Some chose to risk their lives rather than leave their companion animals behind. In Chapter 9 (“Katrina, Katrina”), the sequence of events and plight of the animals following this hurricane are explored along with how this tragedy helped to transform pet custody dispute case law in that the courts now find this subject worthy of their time and best efforts.

Pet custody may involve the dog traveling between homes, and a pertinent question becomes whether the dog is at risk for a future dangerous dog declaration. For even a responsible owner, all it takes is one careless moment for a dog to become loose and charge another animal, or the mail carrier, passing by. Chapter 10 (“Dangerous Dogs and Police Powers”) describes the laws governing dangerous dog proceedings, potential constitutional challenges to them, and the ramifications of a dangerous dog declaration. Also discussed are breed discriminatory laws that turn dogs into outlaws based solely on their breed and how these conceptions may impact a pet custody determination or agreement. This chapter emphasizes why, in pet custody disputes, the subject of who is a responsible owner deserves serious consideration.

The law is impacted by, and must respond to, advances in science and technology. For example, issues concerning cloning and artificial reproductive technology raise not only ethical issues but also important legal issues, not to mention the controversy involving conformation standards and the problems they pose for our pets. Chapter 11 (“Science and Technology”) explores these topics and further addresses how patent law, copyright law, and tech transfer agreements could impact a variety of rights associated with a companion animal.

Focusing more directly on the continuum, and how our companion animals are shifting away from property and toward persons, Chapter 12 (“Potpourri of the Predicates of Change”) briefly addresses animal emotions and sentience. It also surveys a few of the scientific, theoretical, and moral views espoused by key visionaries that have helped to uncover biases and transform our views of animals over time.

Chapter 13 (“Law Office Basics, Anatomy of a Case, and Expert Testimony”) returns to the practical, with essential pointers on effective client advocacy. Specifically, there is useful advice on finding, interviewing, and evaluating potential clients, identifying potential experts, role-playing, problem solving, and financial considerations.

The concluding sections offer interesting insights. In the Conclusion, heroes in animal welfare are introduced, the themes of the book are revisited, and the

elephant in the room is revealed. And in the Epilogue (“Life with Dogs”), the author shares her history with and love for dogs, along with her point of view. Although the reader’s journey into pet law and custody is complete, significant resources for the advocate are presented in the appendices, including a pet custody questionnaire; a values clarification exercise; and sample statutes, pleadings, discovery, orders, and contracts addressing a variety of pet law and custody topics.

This pioneering book, filled with big ideas and practical real-world advice, is essential to effective advocacy in pet law and custody cases. More importantly, this book reimagines, through a creative vision guided not only by the mind but also with heart and soul, a world in which our companion animals are recognized as members of our families and given a special status in our system of justice. Enjoy!

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