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Animal Law Issues

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Common Terms

Animal Pounds
 Comfort Animals
 Compensation for Dog bites
 Disputes Over Custody of Pets
 Domestic Violence
 Emotional Support Pets
 Guide Animals
 Landlord-Tenant
 Nuisances
 Pet Shop Regulation
 Pet trusts
 Service animals
 Splitting couples -- awarding pets
 Therapeutic comfort dogs
 Therapy dogs
 Trusts for Pets,
 Veterinarians – Malpractice
 Vicious propensities
 Wills including care of pets

Use annual updates to treatises, and Shepards and Keycite for cases to find recent articles and cases. Legal periodical indexes and case digests will also list recent articles as well as new topics.

Statutes

New York Statutes Index entry under Animals, Companion Animals, Service Animals WestlawNext
 Agricultural and Markets Law art 26 Animals

Domestic Relations Law § 234 Title to or occupancy and possession of property

General Construction Law § 39 Definitions of Personal Property

EPTL 7-8.1 Honorary Trusts for Pets

Research Animal Retirement Act, L 2016, ch 240

Regulations

1 NYCRR ch II Animal Industry

Jury Instructions

PJI 2:220 Animals – Negligence; Animals, viciousness, definition of a domestic animal, first bite
WestlawNext

Secondary Sources

See chapters in New York Jurisprudence on Animals, Bailment, and Nuisances.

Animal Hoarding

Courtney G. Lee, Never Enough: Animal Hoarding Law (47 U Balt L Rev 23 (2017)).

Comfort and Assistance Animals

Rebecca J. Huss, Canines in the Classroom Revisited: Recent Developments Relating to Students' Utilization of Service Animals at Primary and Secondary Educational Institutions, 9 Alb Gov't L Rev 1 (2016)

Adam P. Karp, Litigation of Assistance Animal Access Cases, 147 Am Jur Trials 181 (2016).

Richard Siegler and Eva Talel, Cooperatives & Condominiums: Restraints on Board's Pet Policies: Emotional Support Pets, NYLJ, Jan 3, 2007 at 31, col 3.

Richard Segler and Eva Talel, Pet Issues Revisited: Questions Raised on Support Pets, NYLJ, Jan 3, 2013 at 3, col.1.

Tammy Smiley and Andrea M. DiGregorio, Comfort Dogs in Court: Balancing Defense Rights and Witnesses' Needs, NYLJ, Oct. 1, 2013 at 4, col 1.

Darryl Verson, Letter to the Editor, Interpreting 'Support Pet Disability Law, NYLJ, June 12, 2013.

Cruelty to Animals

L. 2014, Ch 185 "An act to amend the agricultural and markets law, in relation to penalties for stealing of companion animals."

Buster's Law Agri & Markets Law § 353-a. Frequently amended since enacted in 1999.

[Reporting Suspected Animal Cruelty or Neglect in New York State](#) Published by NYC Bar Association lists contacts for all counties.

[Prosecuting Animal Fighting and Live Animal Cruelty Depictions: Legal Issues Under New York & Federal Law](#). New York Bar Assoc. Animal Law Committee. Jan 2014.

[Providing For Your Pets in the Event of Your Death or Hospitalization](#). NYC Bar Assoc. May 2016

Matter of Pastor, 2017 N.Y. App. Div. LEXIS 7008 * | 2017 NY Slip Op 06729 ** | 2017 WL 4287123, (1st Dept 2017) Attorney killed girlfriend's dog, lost license to practice law.

Flora G. Gonzalez, Animal Crimes as Crimes Involving Moral Turpitude: Why Courts Should Sanction Attorneys Convicted of Animal Crimes, 30 Geo J Legal Ethics 797 (2017).

Custody of Pets -- Bibliographies

Nancy Levit and Robert R.M. Verchick, Unique Property: An Annotated Bibliography, 18 J. Am. Acad. Matrimonial Law. 589 (2006)

Cases -- custody of pets

Boyle, Matter of Application of, Sur Ct, Nassau Cty, Dec 23, 2015, McCarty, Surr, index No. 2015-384972. Link to opinion through Andrew Keshner, LI Man Wins Custody of Deceased Brother's Dog, NYLJ Jan 4, 2016

C. R. S. v. T. K. S., 192 Misc. 2d 547, 746 N.Y.S.2d 568, 2002 N.Y. Misc. LEXIS 1008 (N.Y. Sup. Ct. 2002)

It is undisputed that the dog was an inter-spousal gift and, therefore, that it is marital property.

Caputo v Assante, 42 Misc 3d 133(A) [App Term 2014], 984 N.Y.S.2d 631 (Table), 2014 WL 274533 (N.Y.Sup.App.Term), 2014 N.Y. Slip Op. 50054(U)

Here, plaintiff's submission of veterinarian's bills all addressed to plaintiff and listing plaintiff as client; an American Kennel Club registration certificate listing plaintiff as the owner of the dog; and a microchip proof of ownership card listing plaintiff's name; as well as plaintiff's testimony, credited by the Civil Court, that she, rather than defendant, was the owner, constituted sufficient evidence to support the finding that plaintiff proved a superior possessory right to the dog

Gellenbeck v Whitton, 2015 N.Y. Misc. LEXIS 637, 2015 WL 888119 (N.Y.Sup.), 2015 NY Slip Op 30289(U) (N.Y. Sup. Ct. Mar. 2, 2015)

While the Court is sensitive to the emotional strain caused by the end of what appears to have been a once happy and loving relationship, the legal issues presented are neither novel nor complicated, the relevant facts as to plaintiff's entitlement to partition are undisputed, and the reasons for the end of the parties' relationship are irrelevant to determine the remaining issues of distribution of the proceeds of sale of the parties' apartment and ownership of Stevie.

Hennet v. Allan, 43 Misc. 3d 542, 981 N.Y.S.2d 293, 2014 N.Y. Misc. LEXIS 668, 2014 NY Slip Op 24040, 2014 WL 657826 (N.Y. Sup. Ct. 2014)

Today, we should take the next step in recognizing that pets are more than just "personal property" when it comes to resolving a dispute between owners. In such disputes, to adopt the

characterization of the Second Department in Feger, pets should be recognized as a “special category of property.”

LeConte v Lee, 35 Misc. 3d 286, 935 N.Y.S.2d 842, 2011 N.Y. Misc. LEXIS 6083, 2011 NY Slip Op 21452 (N.Y. Civ. Ct. 2011)

In this replevin action pursuant to CPLR 7101, filed August 31, 2011, plaintiff Adam LeConte seeks return of his Maltese *287 dog, Bubkas, from defendant, Kyungmi Lee, his ex-girlfriend, who refused to surrender Bubkas after a two-week stint of dog-sitting in August 2011 while plaintiff was traveling

Mitchell v Snider, 2016 N.Y. Misc. LEXIS 2078, 2016 NY Slip Op 50877(U), 51 Misc. 3d 1229(A) (N.Y. Civ. Ct. 2016)

Plaintiff, Christopher Mitchell (“Plaintiff”), brought this action against his ex-girlfriend, Defendant Madeline Snider (“Defendant”), seeking to recover possession of a five year old male black Labrador Retriever named “Django.” Plaintiff alleged that he was the sole owner of the dog, valued at \$200, and he sought to recover monetary damages in the amount of \$5,055.00 for Defendant's wrongful possession and detention of his dog. Defendant alleged that they were joint owners and counterclaimed for a judgment declaring that it is best for all concerned for *2 Django to remain in Defendant's sole possession.

Nero v Fiore, 2016 N.Y. Misc. LEXIS 627, 2016 NY Slip Op 30332(U) (N.Y. Sup. Ct. Feb. 25, 2016)

The plaintiff's application seeking immediate return of the chattel must be denied as a matter of law

Szubski v Conrad 151930/15 (Sup Ct, NY Cty July 13, 2015).

Unpublished decision. Papers not available in e-courts.

Ramseur v. Askins, 44 Misc. 3d 1209(A), 997 N.Y.S.2d 101, 2014 N.Y. Misc. LEXIS 3108, 2014 NY Slip Op 51068(U), 2014 WL 3510218 (N.Y. Civ. Ct. 2014)

This Court finds given that companion animals fall within a “special category of property,” the “best interest for all concerned” standard is the appropriate analysis when determining competing claims of ownership of a pet. Moreover, the straightforward factors that should be considered when applying this standard set out by the court in Travis gives parties and courts clear direction when deciding with whom a treasured pet should reside. Accordingly, the Court will now consider which party bore the major responsibility for meeting Deva's needs and which spent more time with Deva on a regular basis

Raymond v. Lachmann, 264 A.D.2d 340, 695 N.Y.S.2d 308, 1999 N.Y. App. Div. LEXIS 8779 (N.Y. App. Div. 1st Dep't 1999)

Cognizant of the cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily, on the record presented, we think it best for all concerned that, given his limited life expectancy, Lovey, who is now almost ten years old, remain where he has lived, prospered, loved and been loved for the past four years.

Travis v. Murray, 308310/13, NYLJ 1202631512607, at *1 (Sup., NY, Decided November 29, 2013) 42 Misc 3d 447, 2013 N.Y. Misc. LEXIS 5508, 2013 NY Slip Op 23405, 104 A.L.R.6th 641, 2013 WL 6246374 (N.Y. Sup. Ct. 2013)

The changes in the way society regards dogs and other household pets all but insure that cases involving the type of dispute seen here will only increase in frequency. In Raymond, the First Department referred to “the limited ability of the courts to resolve” such cases (264 AD2d at 341). It is my hope that the analysis engaged in here, including the survey of cases from both New York and other states, will help other courts more successfully deal with the conflict that ensues when a couple separates, a marriage ends, and a Joey, an Otis, a Bubkas, or a Lovey is left in the wake.

Webb v. Papaspiridakos, 23 Misc. 3d 1136(A), 889 N.Y.S.2d 884, 2009 N.Y. Misc. LEXIS 1435, 2009 NY Slip Op 51152(U) (N.Y. Sup. Ct. 2009)

As an initial matter, this action for replevin is proper. Although the reported cases for replevin of a pet dog are few, in part because of the legal expense involved in maintaining such an action, the precedents are sufficient to sustain the present action for replevin

Chimpanzee Cases

Nonhuman Rights Project, Inc. ex rel Tommy v Lavery, 2017 WL 2471600, 2017 NY Slip Op 04574 (1st Dept)

Custody of Pets – Practice Materials

Action in Replevin for Recovery of Dog or Cat, 85 A.L.R.6th 429 WestlawNext/LexisAdvance

Proof in Animal Custody Disputes, 141 Am. Jur. Proof of Facts 3d 349, WestlawNext

144 Am. Jur. Trials 173, Litigation of Pet or Animal Custody in Divorce Proceedings WestlawNext

Divorce and Separation: Custody Disputes Concerning Pets, 104 A.L.R.6th 181 WestlawNext/Lexis Advance

Custody of Pets – Law Review Articles

Selective list.

L. Morgan Eason. A Bone to Pick: Applying a Best Interest of the Family Standard in Pet Custody Disputes. 62 S.D. L Rev 79-104 (2017).

Jessica Foxx. Comment. The use of agreements in the resolution of pet custody disputes. 85 UMKC L. Rev. 455-476 (2017)

John Dewitt Gregory, Pet Custody: Distorting Language and The Law, 44 Fam. L.Q. 35, 35-36

Christopher G. Rhodes, Comment. Who Gets the Dog When the Marriage Gets ‘Ruff’: Complications Arising from the Classification of Family Pets as Traditional Property, 9 Est. Plan & Community Prop. L.J. 293 (2017) Westlaw.

Heidi Stroh, *Puppy Love: Providing For The Legal Protection Of Animals When Their Owners Get Divorced*, 2 J. Animal L. & Ethics 231 (2007).

Custody of Pets – Legal Newspapers

Ben Bedell, *Judge Changes Mind on Pet Ownership, Finds Dog is Property*, NYLJ, Nov 10, 2015 at 1, col 3.

Mary Pat Gallagher, *Raining Cats and Dogs at Courthouses: More Couples suing Over Custody of Pets in Breakup*, NYLJ, March 12, 2009.

George M. Heymann, *Pet Law, Waiver and Prevailing Party*, NYLJ, Jan. 5, 2012 at 4, col 1.

Tania Karas, *Divorce Judge Considers Pet to be 'More than Property,'* NYLJ, Dec 10, 2013 at 2, col 1.

Marc J. Luxemburg. *Letter to the Editor, Response to Darryl Verson, Legal Fees in Pet Law Case*, NYLJ, Jan 20 2012,

Victor M. Metsch and Eliot H. Zuckerman, *Outside counsel. Pet Litigation: A Real Dogfight*, NYLJ, March 25, 201.

Damages for Loss of Pet

John H. Wilson, *Every Dog Will Have Its Day: Damages for Loss of a Pet*, NYLJ, July 9, 2012

Domestic Violence

2 NY Law of Domestic Violence § 6:11 (3d ed.) Terms in uniform orders of protection—Protection of pets WestlawNext

Joan Hemingway, Patricia Lenaghan. *Safe Haven Conundrum: The Use of Special Bailments to Keep Pets Out of Violent Households*. 12 Tenn JL & Pol'y 79-150 (2017).

Sharon L. Nelson, *Bibliography: The Connection Between Animal Abuse and Family Violence: A Selected Annotated Bibliography*, 17 Animal L. 369 (2011)

Susan L. Pollet, *The Link Between Animal Abuse and Family Violence*, NYLJ Jan 8, 208 at 4, col 4.

Estate Planning – Animals

Bender's Forms for the Civil Practice, EPTL Sec. 7-81. Et seq. LexisAdvance

Bogert's Trusts and Trustee § 165 – Trusts for the care of animals or inanimate objects

Frances Carlise, *Remember the Family Pet in Estate Planning; Outside Counsel*, NYLJ, July 12, 2004

Carmody-Wait 2d § 164:11 Animals as Beneficiaries.

1 Durable Powers of Attorney and Health Care Directives Checklist 1 (4th ed.) WestlawNext

Harris 5th NY Estates: Probate Admin & Litigation § 14:47-49 Honorary Trusts for Pets WestlawNext

Rachel Hirschfeld, *The Perfect Pet Trust: Saving Your Dog From The Unexpected*, 9 Alb. Gov't L. Rev. 107 (2016)

Murphy's Will Clauses: Annotations and Forms with Tax Effects, Ch 11A Estate Planning for an Individual's Pets, LexisNexisAdvance

McKinney's Forms, Estates & Surrogate Practice § 10:253.50 Pet Trusts

New York Civil Practice: EPTL Sec. 7-81. Trusts for Pets LexisAdvance

106 N.Y. Jur. 2d Trusts § 60 Beneficiary; pet animal as beneficiary (WestlawNext and LexisAdvance)

Terence E. Smolev and Christina Jonatha, Protecting Pets with Estate Planning, NYLJ, Jan 19, 2016 at 11, col 1.

Terence E. Smolev, Providing for Care of Pets: Trusts Specify Feeding, Shelter and Management of Money, NYLJ, Sept. 13, 2004, at 17, col 2.

12-209 Warren's Heaton on Surrogate's Court Practice § 209.13 (2015) Honorary Trusts for Pets LexisAdvance

Landlord-Tenant

11 Am. Jur. Legal Forms 2d § 161:52 Lease of apartment—Rider—Pets WestlawNext

Adam Leitman Bailey and John M. Desiderio, The Rules for Allowing Pets in 'No-Pet' Buildings; Anti-Discrimination, NYLJ, April 13, 2016

Warren A. Estis and Alexander Lycoyannis, A Landlord's Obligation to Permit 'Support' Pets, NYLJ, June 5, 2013.

Residential Landlord-Tenant Law in New York Index entry under Pets WestLawNext

Richard Siegler and Eva Talei, Cooperatives and Condominiums, Restraints on Boards' Pet Policies Emotional Support Pets, NYLJ, Jan. 3, 2007.

Richard Siegler and Eva Talei, Pet Issues Revisited: Questions Raised on Support Pets, NYLJ, Jan. 3, 2013 at 3, col 1.

Richard Siegler and Eva Talei, Cooperatives and Condominiums: Reasonable Accommodations for Disabled Residents, NYLJ at March 7, 2007 at 6, col 4.

Mediation

Kathy Hessler, Mediating Animal Law Matters, 2 J. Animal L. & Ethics 21 (2007).

Negligence

Doerr v Goldsmith 2013 NY Slip Op 06442 (NYAD 1 Dept)

While cows may be expected to be kept on the farm, the Court of Appeals has thus far declined to impose liability where an owner permits a dog to be unleashed in a public place based on a theory of common-law negligence

Gervai v Laino 201 112 A.D.3d 545, 978 N.Y.S.2d 34, 2013 NY Slip Op 08819 (NYAD 1 Dept)

Here, the evidence, which establishes only that defendant's dog growled at two other dogs, one of whom had bitten her, and never growled or bared her teeth at any people, is insufficient to raise an issue of fact as to the dog's vicious propensities.

John Caher, Shopkeeper Held Not to Blame For Assault by Ferocious Feline, NYLJ, Aug. 13, 2014, at 1, col 3.

George M. Heymann, Pet Law, Waiver and Prevailing Party, NYLJ, Jan. 5, 2012 at 4, col 1.

George M. Heymann, Outside Counsel: Is the 'Vicious Propensities' Rule Losing Its Bite?, NYLJ, Feb 18, 2015

Roy L. Reardon and William T. Russell, Jr., Injuries by Household Pets; Choice-of-Law Provision; New York Court of Appeals Roundup, NYLJ, July 15, 2015

New York Law of Torts, Ch 6 Negligence WestlawNext

Warren's Negligence in the New York Courts, Ch A-24 Animals LexisAdvance

Nuisances

People ex rel. Renshaw v Gillespie, 25 AD 91, 91 [3d Dept 1898]

While it is now settled law that a dog is property, it is still true that some dogs, because of their viciousness, are nuisances. The statute in question seeks the summary abatement of such nuisances. It was the policy of the law in colonial times, and has been ever since, to make a summary disposition of vicious dogs. 2 Col. Laws N. Y. 1732 (Statutory Revisers' Ed.) 735; 4 Laws N. Y. 1764, 830; Laws N. Y. 1768, 1070. These colonial laws were continued in force by the state constitution (article 1, § 16). Since the colony became a state, numerous statutes for the like purpose have been enacted. See compilation of these statutes in 1 Birdseye's Rev. St. 762. The statute here under review is in furtherance of the same purpose. See Fox v. Society (herewith decided) 48 N. Y. Supp. 625; same case, upon this point, 20 Misc. Rep. 461, 46 N. Y. Supp. 232.

Standing – Animal Rights

The chimpanzee cases

Animals do not have legal personhood and are treated as property under the law. While such a legal classification may not comport with people's common interactions with animals, it is nonetheless the prevailing law. Due to their status as property, animals have no standing to bring suit themselves, and individuals and organizations that bring legal actions on behalf of mistreated animals regularly find their suits dismissed due to lack of standing. Courts view the abuse of animals as [456] peripheral to the "real injury" of the person bringing suit, creating a fallacy in these cases whereby an injury to a person is often fabricated so that the real case to protect the animals may ensue

Lauren Magnotti, Note: Pawing Open The Courthouse Door: Why Animals' Interests Should Matter When Courts Grant Standing, 80 St. John's L. Rev. 455, 455-456 (2006)

Ken Strutin, Animal Rights on the Road to Personhood, llrx.com, Sept 23, 2015 [accessed Nov 15, 2016] <http://www.llrx.com/2015/09/animal-rights-on-the-road-to-personhood/>

Theft/Destruction of Animals

Mullaly v People, 86 NY 365, 367 [1881]

In nearly every household in the land can be found chattels kept for the mere whim and pleasure of the owner, a source of solace after serious labor, exercising a refining and elevating influence, and yet they are as much under the protection of the law as chattels purely useful and absolutely essential

People v Christy, 20 NYS 278 [NY Gen Term 1892]

In the first count of the indictment the defendant is accused “of the crime of unlawfully and willfully destroying personal property of another,” and it is specified that on the 10th July, 1889, at a place named, the defendant did willfully, unlawfully, feloniously, and maliciously kill, destroy, and poison unto death three horses, the personal property of the firm of Gilboy Bros., and of the value of \$175. In the second count the defendant is accused “of the crime of willfully and unlawfully destroying personal property of another, contrary to and in violation of section 654 of the Penal Code,” and the specification is substantially as in the first count, except the date is laid on 15th July, 1889. Upon the trial the defendant was found guilty as charged in the indictment.

Veterinarians

Am Jur Pleading and Practice Forms > Veterinarians > Malpractice, Negligence or Breach of Duty of Case. WestlawNext

Jason v. Parks, 224 A.D.2d 494, 638 N.Y.S.2d 170, 1996 N.Y. App. Div. LEXIS 1164 (N.Y. App. Div. 2d Dep't 1996)

It is well established that a pet owner in New York cannot recover damages for emotional distress caused by the negligent destruction of a dog

Digests/Case Finders

West's ALR Digest Animals

West Key Number Topic 28 Animals

NY Official Reports Digest Topic Animals; Animals > Disputed Ownership

NY Official Reports Digest Topic Husband and Wife and Other Domestic Relationships > Divorce > Pet Custody

NY Official Reports Digest Topic Husband and Wife and Other Domestic Relationships > Equitable Distribution > Possession of Dog

NY Official Reports Digest Topic Husband and Wife and Other Domestic Relationships > Equitable Distribution—Pet

NY Official Reports Digest Topic Replevin—Right to Possession—Pets

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Legal Advice

NY State Court System staff are pleased to provide you with basic legal information of relevance to New York State courts, caselaw, statutory and regulatory materials from standard legal reference sources. Our court employees, however, may not provide legal advice, interpret the law or assist with the processing of specific motions or cases.

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