

Should animals be more than just 'property'?

By Natalie Lombardo

If animals were treated as more than just "property," than animal abuse laws might have more bite.

That's according to some animal rights experts.

Enhanced legal status of animals would give attorneys and guardians more opportunity to more effectively litigate animal abuse, said Kenneth Shapiro, executive director of the Ann Arbor-based Animals & Society Institute, a nonprofit organization that pushes animal issues in public policy discussion.

Shapiro, a psychologist, recently spoke at Thomas M. Cooley Law School on the legal policy implications of animal abuse.

Currently, most state laws treat animals as "property" and, thus, afford animals no more right to be free from abuse than that afforded a chair or any other inanimate object.

Shapiro said elevating an animal's legal status could bolster the protections provided for in animal abuse laws by giving animals' owners a meaningful civil remedy when a pet is injured, abused or killed.

Under existing law, the measure of damages awarded in a civil action are typically the market value of the pet, which is often considered by the family far less than the beloved animal's true worth, said Anna Rose Stern, a Lansing attorney and chair-elect of the State Bar of Michigan's Animal Law Section.

However, Shapiro said, if animals' legal status were elevated, owners might be able to sue for noneconomic damages like mental anguish or loss of companionship.

He mentioned a 2004 Oregon case in which a judge ordered Robert Weaver, who ran over his neighbor's dog, to pay \$56,400 to the family; \$50,000 for punitive damages, \$6,000 for the family's suffering and \$400 for the dog.

Shapiro listed several elevated legal statuses for animals, mostly developed in animal law journals, and applied when opportunities arise in particular cases.

For example, he said, the notion of "sentient property" covers any warm-blooded, domesticated animal that's dependent on humans for food, shelter, veterinary care and compassion.

Under the classification, damages available for injury or death of a pet would include costs of medical care and the value of the loss of enjoyment to the pet owner, Stern said.

After the "sentient property" theory was introduced by North Carolina attorney Carolyn B. Matlack in 2004 at an American Veterinary Medical Law Association meeting, Shapiro said a Texas appeals court relied on the concept to uphold a ruling against PETCO.

The case involved a woman who sued PETCO when her dog ran away from the store during its grooming appointment and was hit by a car, he said.

Additionally, Shapiro said, some lawyers have used the notion of "special property" in class action cases across the country to sue Menu Foods, Inc., for poisoning cats and dogs during the April 2007 pet food recall, arguing that pets have an intrinsic value beyond market worth.

Finally, Shapiro said there were the notions of "animal as plaintiff," which attributes to animals certain legal "interests," and "personhood," which opens the judicial process to grievances of animals, who would be allowed to have a spokesperson in court.

Some criticize the concept of non-economic damages in animal cases, as it could lead to flooding of the courts and exorbitant awards, Stern said, noting that Tennessee and Illinois have recently enacted statutes setting dollar thresholds on damage categories in cases where animals are intentionally injured or killed.

Still, the law as it currently stands does not adequately compensate owners for the loss of their pet or its particular value, she said.

"The market value of a pet does not account for the value of its companionship,"

Stern said. "Pets become more valuable to their owners over time; they do not depreciate like an inanimate object."

Some scholars suggest the law will naturally evolve on a case-by-case basis, consistent with public opinion, she said.

"A judge could theoretically use his or her discretion to award special damages to owners to compensate them for the loss of their pet," Stern said. "A court could theoretically use discretion to grant a hu-

mane society standing as a guardian for a pet in their custody."

Nevertheless, Stern said, "a statutory approach to the evolution of the law is superior because the law would be applied in a more uniform and predictable manner."

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Elevated legal status could warrant civil remedies for animal abuse

