





ANIMAL LAW

By Adam P. Karp

More than 100 million Americans love and rely on animal companions—and are willing to pay for services calculated at bettering the lives of those animals. The veterinary profession has acknowledged that among those inclined to regard animals as close family members, demand for veterinary care remains price-insensitive (e.g., a person willing to spend \$1,000 on a surgery for an ailing cat will likely spend twice or three times that sum without choosing euthanasia or forgoing the procedure). This commitment toward providing *medical* care of nonhuman family members transfers to *legal* care as well.

Masterfile

For the past 14 years I have evaluated more than 3,000 animal law cases, litigated and consulted on animal cases exclusively, tried or arbitrated two dozen, taken more than 100 depositions, argued hundreds of dispositive motions, and lodged close to three dozen appeals, with matters in bankruptcy, federal district, and state courts of limited and general jurisdiction. I have found financial success, spiritual affirmation, emotional satisfaction, intellectual stimulation, and respect among my colleagues by taking the following types of cases, any of which can supplement—or consume—your practice.

OVERVIEW OF ANIMAL CASES

Dogs behaving badly. A dog bites in four-dimensional legal space: civil, criminal, administrative, and temporal. If a dog bites a person or animal, the dog (and dog owner-guardian) will probably face (a) civil suit or demand for compensation; (b) criminal charge related to

situations often leave veterinarians holding the bag. Sometimes, though, they ask for it. Most calls for perceived malpractice go nowhere. Others excite further inquiry with the aid of a forensic expert who takes a hard look at the allegations and medical records. When merited, claims proceed by complaint to the veterinary licensing board and/or a demand for compensation. Opportunities for the animal law practitioner include doing the legwork to build a disciplinary case against a wayward vet and organizing the evidence in a convincing manner that concludes with a legal analysis of the code violations believed to exist.

Family tug-of-war. Families break apart, and when they do, one or more individuals may be deprived of contact with nonhuman family members. Sometimes the custody battle takes place between married spouses or domestic partners. Other times, those in a committed intimate relationship (aka meretricious relationship) seek legal advice.

Lastly, law enforcement may impound and refuse to return animals, much to the despair and anxiety of the owner and distress to the animal.

Cops behaving badly. Most cases falling into this category do so because law enforcement or animal control uses excessive force to impound, collect, or repel an animal. Traditionally, these cases present in the form of lethal discharge of a firearm to neutralize a misperceived canine threat.

Planes, trains, automobiles, mean people, and products hurting animals. Animals, like people, are exposed to daily risks to life in limb:

- the consumption of tainted food or dangerous medications;
- the failure of appliances, devices, and products (e.g., a defective leash or collar or a faulty invisible fence);
- the negligence of guests and business invitees or trespassers (e.g., a painter fails to close the gate to the fenced yard, allowing the dog to escape; a delivery truck runs over the dog while coming up the driveway; a duct cleaning company uses chemical attractant that acts like mustard gas when imbibed by cats; a friend who volunteers at a wildlife sanctuary tracks in parvovirus and other zoonoses after having failed to properly sanitize her clothing);
- accidents while perambulating (e.g., getting hit by a negligent driver or shocked by an energized manhole while being walked down a sidewalk, or walking onto railroad tracks through unfenced openings in an off-leash dog park adjacent to line);
- accidents while flying (e.g., cargo bay depressurization and heat prostration for brachycephalic breeds); or simply
- being the target of an irate neighbor (e.g., literally by being shot or figuratively by being tempted to eat poison).

Service animal access. Disabled Americans rely on nonhumans in housing, at work, in transit, and when visiting places of public accommodation.

Animal law has given me financial success, emotional satisfaction, and respect among my colleagues.



handling of the dog; (c) administrative determination of the dog as dangerous or vicious, imposing restraints on control or outright seizure and euthanasia; (d) civil infraction imposing a fine but also staging the dog as a predicate offense for subsequent civil, administrative, or criminal action. You can represent the interests of the bitee, the biter, or the biter's owner, harbinger, keeper, or possessor of the land where the dog bit, providing a matrix of interlocking legal issues in need of maneuvering with the help of an animal lawyer.

Veterinarians behaving badly. Animals, like people, may die in the presence of a health-care provider. These

More rarely, breeders will terrify buyers by attempting to enforce conditions found in a lengthy co-ownership show/breed contract. When animals get lost, finders may fancy themselves keepers, and losers weepers. And when bills are not or cannot be paid, veterinarians and boarding facilities have been known to lien and foreclose on animals left in their care. Recently, states have afforded protection to animals against domestic violence, but the statutes have infrequently been abused by purported victims of domestic violence who attempt to seize exclusive care and control over an animal by exaggerating claims of violence having nothing to do with the animal.

Some face eviction unless they surrender their animals. Others endure ridicule, hostility, and denial of services (thereby infringing on certain rights to which nondisabled individuals are accustomed). A hot topic currently involves the legality of restrictions placed on service or emotional-support “pit bull”-type dogs, forcing a collision between breed-specific legislation and federal disability protections.

Miscellany. Lastly one finds a grab bag of cases, collectively referred to under the heading “impact litigation” or “cause lawyering,” grappling with issues such as:

- Wrongful denial of a dog adoption owing to retaliation for whistleblowing or racial discrimination;
- Public records law challenge to force private animal control contractors to disclose euthanasia logs and other information;
- Petitions to seek leave on behalf of a private party to file a criminal misdemeanor charge of animal cruelty;
- Taxpayer suits to challenge the religious exemption contained in the state humane slaughter act, the customary animal husbandry and veterinary practice exemptions found in the animal cruelty act, and disparate treatment of cats and dogs as found in municipal stray hold and euthanasia codes;
- Negotiating access for protestors;
- Criminal defense for those who emancipate or rescue animals from deplorable conditions;
- Drafting adoption contracts for rescues and enforcing repossession clauses that may include liquidated damages for declaws, ear crops, tail docks, and refusal to spay or neuter; and
- Petitions for rule making to end cruel euthanasia technique by animal control entities and to compel state agencies to comply with their statutory mandates regarding animal welfare, such as requiring police officer training to accurately perceive canine threats and deploy non- or less-lethal methods to neutralize *bona fide* ones.

Animal lawyers also handle estate planning/trusts; puppy lemon law cases, equine law disputes, and insurance claims for animals under modalities of harm and losses; and cases stemming from federal animal and environmental protection laws such as the Endangered Species Act, Animal Welfare Act, Marine Mammal Protection Act, Clean Water Act, and Clean Air Act.

ADVICE FOR NEW PRACTITIONERS

Are you looking to supplement your practice to include animal law—or make it the exclusive focus of your firm?



Below is my top-11 list for those considering the field (animal law is simply too all-encompassing to limit it to the top ten).

1. Location, location, location. Although the human-animal bond remains a common denominator most everywhere in our diverse country—rural or urban, Red or Blue—sustaining an animal law practice requires a critical mass of clients. Further, full-time animal lawyering can quickly reach a market saturation point.

Seek to headquarter your firm in the largest metropolitan area of the state in which you choose to practice, or be prepared to span distance through virtual technologies such remote officing, always-on WiFi accessibility, e-faxes, and toll-free numbers to compensate for lack of in-person availability.

Ultimately, you will probably have to commit to the entire state, or regions of the state that may be accessed within a few hours’ travel. Expanding your reach too far, however, may visit upon you the fate of Romulus Augustulus and the Roman Empire as a whole.

2. Let their fingers do the walking. I used to recommend advertising in the Yellow Pages, but paper has become passé. Digital presence on Avvo.com, in search engines, and through web page development are nonnegotiable.

3. Make a name for yourself—in the bar. If you have not done so already, create professional institutional memory by founding a state or municipal bar association animal law section or committee. In the process of soliciting members and petitioning for section creation, you will increase face time with bar leaders and plant seeds for referrals. Then, once the

Sustaining an animal law practice requires a critical mass of clients in your area.

committee or section is formed, install yourself as an executive committee member and get to work!

4. Make a name for yourself—in the school. If no course exists, offer yourself as an adjunct professor of animal law at the law school(s) in your area. In addition to creating an academic institutional memory, you will be establishing “street/court cred,” giving back to future generations of students (and animals), and keeping your finger on the pulse of animal law jurisprudence. But do not stop at law schools. Offer a seminar at community college paralegal, criminal justice, veterinary assistant, and technician programs, or offer entire courses on jurisprudence for DVM, MA, and PhD candidates.

5. Pen that prose. Make a splash in the state bar bulletin or magazine by authoring an article on animal law and invite readers to join the new section or committee you are forming. Cross-pollinate by illuminating the interstices of animal and non-animal law. Consider writing for the periodicals of nonlegal professionals and groups, such as animal

control officers, shelters, veterinarians, groomers, walkers, and trainers.

6. Speak the truth. Get on the speaker circuit. Literally dozens of legal issues pertaining to animals exist, with more emerging as attorneys and judges turn their attention to the “unsolved mysteries” that afflict our area of practice. Sometimes being invited (or inviting yourself—but do so with finesse!) to a club, class, committee, agency, or organization will provide the opportunity to conceive of cutting-edge issues worthy of research and discussion, whether proactively or in response to incisive questions from your audience.

7. Keep enemies closer. When you have mustered adequate resources and knowledge, sell or donate your services to the “usual suspects,” such as itchy-fingered cops, disorganized euthanasia

we animal lawyers are an endearingly quirky bunch. Exasperated counsel and cranky jurists may facilely dismiss your passion and intellect by succumbing to the temptation to disparage and condescend. Resist such unprofessional conduct by calmly and politely informing the court of your or others’ successes, giving due regard to the modernizing pleas for reconsideration of the no-longer-conventional wisdom and that the common law encourages, indeed demands, such thoughtful efforts. The key to succeeding in animal law practice is to vigilantly and unapologetically live your creed. Indeed, when you wear the proverbial scarlet letter on your briefcase, certain formalities are excused, assumptions made (not all bad), and it becomes easier to forge ahead without any recrimination. The reason is simple.

By clarifying the case law, you will (a) make a name for yourself (hopefully good, so pick cases carefully!) and (b) set precedents that will help other litigants and your colleagues and, most importantly, the animals. Your pen slices a path through the legal wilderness. Tread softly but carry a big machete, and if at first you cannot hack a path through to justice, keep whacking away, find new passages, and work with other animal lawyers to engineer an argument that will carry the day.

11. Charge for your services. Yes, you love animals. So do your clients. So what? Although money cannot buy you love, you cannot live on love alone. If clients want you to work for free because you have devoted your career to helping animals, then tell them to hire someone else. You will only be able to stay in business and, therefore, fulfill your mission, by billing and collecting. If you charge next to nothing, what does that say about your talent or the seriousness of the area in which you practice? Are animals and their causes worth nothing? If not, then why should you, advocating for them, make nothing? Offer an hourly rate, hybrid hourly/contingency, capped hourly minimum/contingency maximum, or some other fair arrangement.

The key to succeeding in animal law? Vigilantly and unapologetically live your creed.



technicians, ill-mannered veterinarians, store proprietors clueless about the Americans with Disabilities Act, and overzealous animal control officers. In so doing, you will build bridges, increase the standard of care, and educate those who unnecessarily increase liability exposure. Most importantly, you will protect animals.

8. Share the intellectual wealth. Write for law reviews, either by preparing a formal article or practitioner’s note. Then, when you have been published, shop it around to various CLE departments for oral presentation and update. Doing so will expand your reputation beyond your state’s boundaries and provide invaluable guidance to colleagues facing identical challenges. In the process, you will also advance the state of jurisprudence.

9. Embrace the epithet. Face it,

Historically, when those in power affixed words intended to be derogatory upon those not in power, one way the powerless overcame the name-calling was to re-appropriate the term for self-identification. Become the wild-eyed radical, the “pit bull” litigator, the one who thinks outside the box so frequently that traditional boundaries blur and resistance becomes futile. Doing so means you never have to act chagrined as you ply your trade. After all, they cannot expect you to be anyone other than who you are. Dogs will be dogs, and animal lawyers will be animal lawyers.

10. Be appealing. Comport yourself in a way that attracts clientele, yes. But I mean gain audience of the appellate courts. Part of creating a viable animal law practice involves priming the jurisprudential pump so that case values and outcome predictability will rise.

MOMENTS OF CLARITY

If asked to share the moments in my life where perfect clarity and joyful endeavor align, I would describe a bay in western Washington into which I routinely cold-plunged, wading out to waist depth. Once, from the corner of my eye, I sensed almost imperceptible movement disrupting the smoothness of the water. Adrift what must have seemed like miles from shore was a completely unexpected creature clinging to flotsam, water droplets beading on his wings, his legs and antennae curled into a ball, and the current slowly pulling him out to certain death in the sound—a *malacosoma constrictum*, or a Pacific tent caterpillar moth (a much-scorned defoliator of deciduous trees). Cupping my palms around him, I withdrew from the bay and set him down on a dry log. Slowly his antennae poked at the air, his legs got under him, and the beautiful wings started to vibrate—a

happy, preflight systems check before he took to the safety of the sky.

Since the *malacosoma* experience, I have found like satisfaction in rescuing beach spiders carried away by the tide, relocating yellow jacket nests from places my family frequents, trapping flies with jar and paper and releasing them outside, and escorting slugs from our gardens to areas that will not affect our food supply (and then only in the salt-free embrace of a leaf, instead of toxic bare-handed approach). I do this without casualty to myself or the subject of my compassion. I do so in spite of the inevitable eye-rolling and harrumphing of those less evolved and who fail to approach life in more principled, humane, karmic, and respectful fashion, refusing to stretch Thomas Hobbes' social compact theory (see his comments in *Leviathan* on the prudent beast) to encompass all species great and small. And being sanguinely vegan for 13 years illustrates this commitment, no less solemn than taking a marital vow.

These same impulses that motivate rescue of the voiceless, sacrifices made while rendering aid to the derelict, and rejuvenation that follows the consummated endeavor—exemplified above—translate to the practice of animal law save one fundamental difference: scale matters. As lawyers, we have the ability and privilege to turn each individual plight into a precedential miracle, what I call the *malacosoma* principle in honor of the little moth who saved me. ■

Adam P. Karp of Animal Law Offices (www.animal-lawyer.com) founded animal law sections of the Washington and Idaho State Bar Associations, taught animal law at the University of Washington and Seattle University, and received the ABA/TIPS Excellence in the Advancement of Animal Law Award in 2012.

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