



## Animal Law Update

By: *Jonathan G. Schopf, Esq.*  
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What is animal law, and more importantly, what is an animal lawyer? For the most part the practice of an animal lawyer is no different than that of the average general practitioner -- with a twist. Animal law is expansive and covers almost every aspect of the law. It is a rapidly emerging practice area, which confronts our conventional thinking and presents ethical and morally complex issues that must be carefully considered by clients, lawyers and the judiciary.

Although animal law has been practiced in one form or another for decades it was legitimized in the eyes of practitioners in 2002 when the New York State Bar Association formed the Special Committee on Animals and the Law<sup>1</sup> and further legitimized in 2004 when the first Tort Trial and Insurance Practice Section Animal Law Committee was established by the American Bar Association. One of the most exciting things about the practice of animal law is that it is fresh, new and allows a practitioner to be creative within the existing legal structure to advocate for animals and their owners<sup>2</sup>.

Over the last year, in New York State important cases affecting animals and

the role animals play in our society were decided in practice areas ranging from bankruptcy<sup>3</sup>, food safety<sup>4</sup>, appellate interpretation of the NYS Dangerous Dog Law<sup>5</sup>, and environmental conservation<sup>6</sup>. In recent years nationally recognized legal issues implicating animals brought new levels of public scrutiny with the conviction of football star Michael Vick surrounding his operation of an underground dog fighting ring and the Menu Foods, Inc. class action law suit, which sought damages for chemically tainted pet food<sup>7</sup>. The public's interest in celebrity overlapped with the legal issues involved in the administration of the estate of Leona Helmsley who, upon her passing in 2007, bequeathed a \$12 million trust to her beloved Maltese, "Trouble". Upon reflection it should come as no surprise to a practitioner that all law encompasses animal law. Attorneys who do not consider themselves animal lawyers will, undoubtedly, face a legal issue involving animals over the course of their careers

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<sup>3</sup> Rossi v. Mohawk and Hudson River Humane Society, 2009 WL 960204 (NDNY)

<sup>4</sup> Humane Society of United States v. Brennan, 881 NYS2d 533 (3<sup>rd</sup> Dept. 2009)

<sup>5</sup> People v. Jorinov, 881 NYS2d 776 (4<sup>th</sup> Dept. 2009) and see NYS Agriculture and Markets Law §121

<sup>6</sup> Save the Pine Bush, Inc. v. Common Council of City of Albany, 865 NYS2d 365 (3<sup>rd</sup> Dept. 2008)

<sup>7</sup> Pet owners in 19 states and Ontario filed dozens of lawsuits against Menu Foods in the weeks that followed the March 16, 2007, nationwide recall of approximately 60 million containers of chemically tainted dog and cat food. The consolidated class action settled in 2008 for an unspecified amount. The estimated costs to Menu Foods in recalling the tainted food alone was approximately \$55 Million.

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<sup>1</sup> Now referred to as The Committee on Animals in the Law after being granted Standing Committee status by NYSBA in November of 2008.

<sup>2</sup> Although animals are still legally considered property in NY, some who advocate for animal rights refer to owners as guardians or custodians.

A brief review of judicial decisions across the nation reveals the grayness of this legal area as judges struggle with following centuries old decisional case law while making concessions for a modern view of animals and their owners. The purpose of this quarterly column will be to report these decisions which effect animals and their owners as well as to explore national trends in the way the legal status of animals are perceived.

For example, on February 5, 2010 the Commonwealth Court of Pennsylvania handed down a decision in the matter of *Douris v. Department of Public Welfare, No. 1377 C.D. 2009 (Pa Cmwltth, Feb. 5, 2010)*. Mr. Douris brought his action *pro se* in an attempt to overturn an administrative decision of the department that denied him additional food stamp benefits to provide sustenance for his service dog. Mr. Douris also argued that the department discriminated against him in violation of the Americans with Disabilities Act due to the department's determination, after a hearing, that Mr. Douris' service dog was not a human being or a member of Mr. Douris' household within the meaning of the USDA's food stamp regulations and applicable federal law<sup>8</sup>.

The Court, while strongly sympathizing with Mr. Douris' plight in an eleven page decision which discusses the interplay between federal benefit regulations and the legal classification of service animals, denied his petition and held that the service dog was not a dependent member of his family. The court also held that petitioner's argument regarding discrimination in violation of the Americans

with Disabilities Act was without merit. An appeal is pending.

As in the Douris case cited above, decisions in animal law cases time and time again implicitly acknowledge the inherent conflicts created by a modern view of animals relationship and value to society and the conflicting centuries old case law which in most instances denies animals or their owners' recovery in most actions involving torts<sup>9</sup>, breaches of contracts<sup>10</sup> and products liability<sup>11</sup>. Such decisions by their very nature tend to bring an element of unpredictability and procedural danger into this practice area. The realities of the practice of animal law require that an attorney carefully consider the legal and procedural elements of a potential animal law case and at the same time "think outside the box" about how to best accomplish a client's goals.

-About the author-

*Jonathan Schopf is an associate attorney with the Troy, New York firm of Pattison, Sampson, Ginsberg & Griffin, PC. His primary practice involves advising educational institutions and technology companies in developing successful strategies for risk management and proactive liability protection. He represents such clients in both state and federal courts in litigation involving insurance coverage, commercial transactions, technology-transfer, and labor and employment disputes. He also has a general practice and frequently represents individual and municipal clients in transactional matters as-well-as tax certiorari litigation, employment discrimination, business law, Article 81 guardianships and constitutional law.*

*Mr. Schopf maintains an ever expanding niche practice in the area of animal law and animal rights litigation which focuses on advocating for clients and the welfare of their companion animals in a variety of legal contexts. He is an attorney-member of the Animal Legal Defense Fund and the author of "Animal Law Update", which is published quarterly in the Albany County Bar Association's newsletter.*

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<sup>8</sup> Mr. Douris is a disabled [veteran](#) confined to a wheelchair. His service dog moves, pushes and pulls his wheelchair as Mr. Douris is unable to do so due to his disability.

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<sup>9</sup> *Hoffa v. Bimes*, 954 A.2d 1241 (Pa.Super., 2008).

<sup>10</sup> *Id.*

<sup>11</sup> *Rule v. Fort Dodge Animal Hosp., Inc.*, 604 F.Supp.2d 288 (D.Mass., 2009).