

## **Animals Are Not Property and Should be Legally Reclassified©**

By: Catherine L. Wolfe, Attorney and Wildlife Biologist<sup>1</sup>

***"The greatness of a nation and its moral progress can be judged by the way its animals are treated."***

--Ghandi

### **Animals Are Not Property and Should be Given Their Own Legal Category – Separate from Inanimate Objects.**

***"[T]he view equating a living, breathing animal to chattel is archaic and does not withstand the test of critical analysis. Slavish adherence to a worn-out doctrine without serious, critical analysis does the law no good and, indeed, engenders public disrespect for the law."***

- Murray v Bill Wells Kennels, Ltd,  
Wayne County Circuit Court No. 95-  
536479-NO (Mich 1997)

Our *civil* laws classify everything into two categories – “Human” or “Property.” Currently animals are classified as property – or, to be more precise, the sub-category of “personal property.” As such, animals are treated the same as inanimate objects. That classification is unrealistic and no longer accurately reflects our society’s view towards animals and the roles animals play in our lives. A new, third category should be created for animals so that their special qualities may be recognized and more appropriately addressed. That category should be entitled “Animals,” and should be between Humans and Property.

While this may sound like a novel idea it really is not because our *criminal* laws have long recognized the difference between animals and inanimate objects. Specifically, harming an animal is animal cruelty while harming an inanimate object is the completely different crime of malicious destruction of property.

Our *civil* laws should be brought into conformity with

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our *criminal* laws so that animals receive better treatment and care than inanimate objects under our *civil* laws, just as they do under our *criminal* laws. The way to achieve that is by creating a new and separate category, under our civil laws, to be called “Animals.”

### **The Evolving and Increasingly Important Roles Animals Play in Our Lives**

Animals are profound, and treasured elements of many people’s lives. Winston Churchill was one of those people. Churchill was a devout animal lover and shared that love with his grandson when he said:

“A cat will look down on man;  
A dog will look up to man;  
But a pig will look you in the eye and see his equal.”<sup>2</sup>



Churchill held pigs in especially high esteem based upon their intelligence. Hence, his statement was not a denigration of people, but rather a compliment to them.

Today animals are such an integral part of our society that it is difficult to conceive of life without them. They are no longer just “pets”<sup>3</sup> or “livestock,” or “game species.” Instead animals play a broad spectrum of roles in our lives and the lines between those roles are now often blurred.<sup>4</sup>

For example, service-animals who assist people with physical or mental challenges (e.g. “seeing-eye dogs” for people who are visually impaired, or hearing-aid dogs who assist people who are hearing impaired) are also companions and social vectors for the people they assist. They are much, much more than mere tools. As service animals they comfort, love, guide, and protect the people they assist.

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<sup>2</sup> This according to an account by Winston Churchill’s grandson, Winston Churchill, in [The Churchills](#), a documentary produced by WGBH for Public Television in 1996.

<sup>3</sup> The term “companion animals” has begun to replace the term “pets” in the vernacular of those of us who consider animals as “companions” rather than property. For that reason, the author will use the term “companion animals” in this paper, rather than the term “pets.”

<sup>4</sup> The photograph above is of the author’s toy poodle, Vivien, and her friend, Mary Hellen. This photograph was taken after Mary Hellen recovered from open heart surgery. Her recovery was rocky, with many set-backs, and at one point seemed hopeless. However, a number of other people, including some of the intensive care staff, believe that Mary Hellen’s love of Vivien made her recovery possible. You can read their amazing story at [www.wolfepackpress.org](http://www.wolfepackpress.org).

Also, the species of animals used as service animals grows constantly day by day as we discover talents and capabilities in animals that we never knew existed. Just the other day the author received a request for legal assistance for a visually impaired gentleman in connection with his “service parrot.” Miniature horses, pot-bellied pigs, monkeys, and other species have also been recruited into the ranks of service animals.

Animals also guard property, and serve in law enforcement (i.e. “police dogs,” drug detection dogs, horses in mounted units, border patrol dogs and horses, etc). Therapy and “emotional support” animals provide love and comfort to vast numbers of people suffering from innumerable conditions and afflictions, all the way from depression, autism, and epilepsy, to cancer. Search and rescue dogs save people whose lives are in peril and dogs and pigeons have served in the military for centuries. Both dogs and pigeons have carried messages in combat, and dogs have also been used to detect landmines or the presence of “the enemy.” And of course, they have loved and comforted military troopers from time immemorial.

Dogs are also being used to locate cancers not yet detectable by even the most sophisticated and advanced medical equipment. And they are trained as service animals for people who suffer from epilepsy because they can actually sense when a person is about to suffer a seizure – before the person him or herself is aware that a seizure is imminent. Consequently the dog can alert the person that he or she is about to suffer a seizure, and they can then assist the person in getting to a safe location and position before the onset of the seizure. During the seizure the dog remains with the person, and as the seizure subsides, the dog is there to comfort the person as he or she recovers.

### **The Problem: Our Legal System’s Failure to Change to Accommodate the Evolving and Increasingly Important Roles Animals Play in Our Society**

Legally animals are categorized as property for purposes of determining cause of actions, liability, and damages. As discussed below, this is unfortunate for both the animals and the people who love them.

As property animals are legally subjected to “ownership” by people, and “ownership” laws. When property owners sustain damage to their property (including animals) they are legally obligated to minimize ("**mitigate**") the damage. That means, for example, if someone damages a chair that you own, and you choose to repair it, but the repair cost exceeds the fair market value of the chair (what people would have paid for it on the open market before it was damaged), then you are only entitled to recover the monetary difference between fair market value of the chair **before** the damage, and its fair market value **after** the damage (referred to as economic damages). You are not entitled to any repair costs that exceed the fair market value **before** the damage, nor are you entitled to any compensation for emotional distress (referred

to as non-economic damages) if the chair was a cherished family heirloom and its damage was emotionally upsetting to you.

As property, animals are treated the same way under the law. If your companion animal is injured by another person you are only entitled to the economic difference between the fair market value of your companion animal **before** its injury and **after** its injury. You are limited to recovery of your economic damages only. You are legally barred from recovering the cost of veterinary treatment to restore your pet's health if it would be less expensive just to get a new pet. As an example, if you own a dog or cat that is a mixed-breed or over the age of 1 year, its fair market value is probably \$0 because so many of them are available for free on the open market (i.e. out of the newspaper classified advertisements, bulletin boards at many businesses, outside of stores where people literally give away whole litters, free).

Since your companion animal is worth \$0, you are not entitled to recover any costs for veterinary treatment since, under the law, it would be more cost-effective to let your companion animal die and get a new one for free. Stated another way, after your companion animal (property) is injured ("damaged" as the law views it) it is a financial liability – it has a negative value because it will cost more to restore its health (often thousands of dollars) than it will cost you to simply replace it with a free companion animal.

Several years ago the author had as clients a family with a wonderful black lab. His name was "Squirt." He was viciously attacked by another dog, and critically wounded. Because Squirt was about 7 years old his fair market value was \$0. Seven year old labs are abundant, to say the least, and readily available for free. Furthermore, as with all older dogs, they are financial liabilities because they are prone to health issues that require (or will require) monetary expenditure to treat.

Because Squirt's fair market value (replacement value) was \$0 before his injuries, his family was unable to recover any damages. The fact that Squirt's family viewed him as a family member, rather than a piece of Property, and spent approximately \$4,000 in veterinary costs to save him, was irrelevant. As far as most state laws are concerned, it would have been less expensive for his family just to let him die, and get another 7 year old lab for free, than to spend the money they did to give him a full recovery.

Consequently Squirt's family was entitled to no damages.



© Photograph of Squirt (right) with some of his "family," by Penny McBride



© Photograph of Squirt after the attack, by Penny McBride

Squirt died several years ago. Although he did recover from his injuries, his family believes that the trauma shortened his life by a couple of years – years they would dearly have loved to have spent with him. He was such an integral part of the family’s life that the mother still cannot speak of his death without crying. The fact that his family was not entitled to economic or non-economic damages is untenable.

Another example was a fire chief who shot a cat that he knew belonged to a young girl who was disabled and confined to a wheelchair (People of the State of Michigan v John Edward Hanmer, File No. 02-256-SM; 85<sup>th</sup> District Court, Benzie County, Mich 2002). Her cat meant the world to her. At the defendant’s sentencing, the girl’s mother had this to say:

“I cannot begin to describe to you the horror on my child’s face to find her pet limping and covered with blood when he came to our home.”

Fortunately the young girl’s cat lived. However, the defendant was not charged with animal cruelty and was allowed to plead to a misdemeanor (discharge of a firearm). No civil lawsuit could be filed against him to recover for the emotional distress the young girl suffered because her cat was merely Property for which there could be no such recovery.

It is worth noting that in the criminal case, the judge did order restitution that included the veterinary expenses the family incurred to restore the cat to health. However, in these lean economic times, with governmental agencies and their budgets being downsized or eliminated, animal cruelty prosecutions are the exception rather than the rule. Therefore, creating an Animal category with laws tailored to animals, could allow for the recovery of an owner’s emotional distress, such as the young girl experienced, as well as the cost of veterinary treatment, and even punitive damages. Proponents of punitive damages argue that not only will such damages be additional redress for the animal owners, but will also constitute a significant deterrent to potential animal abusers that is currently absent or only minimally present because of the low number of animal cruelty prosecutions.

Cases such as these demonstrate the antiquated and unjust nature of our civil laws in classifying animals as property. Although a growing number of courts have broken with this tradition and allowed for recovery of veterinary treatment and costs, and even sometimes non-economic damages, they are in the minority. Such decisions are still the rare exception rather than the rule.

## **The Solution: Animals Should Be Given Their Own Legal Category entitled “Animals**

Animals would be better classified as Animals than Property. If animals are given their own legal category, they will not be treated the same as inanimate objects. Instead, they will be subject to laws specifically designed for them as living, feeling, sentient, beings.

As stated previously the difference between animals and inanimate objects has long been recognized by our criminal laws. *The criminal code of every state recognizes that breaking the leg of an animal is different from breaking the leg of a table. Breaking the leg of an animal is the crime of “animal cruelty” while breaking the leg of a table is the crime of “malicious destruction of property.”* That is a powerful legal precedent that begs the question why civil laws have not done the same.

*Reclassifying animals as Animals rather than Property would merely bring the civil codes into conformity with the criminal codes.*

Increasingly (albeit slowly) courts in civil cases have been recognizing the injustice of the civil laws are following the lead of the criminal laws and treating animals as more than mere Property, and even allowing recovery of non-economic damages in some cases.

One of the first civil cases in the United States to recognize and accept the uniqueness of animals apart from Property was in New York, Corso v Crawford Dog and Cat Hospital, Inc, 415 NYS2d 182, 183 (NY Civ. Ct, 1979). Even today, 30 years later, it remains a profound proclamation of reality and a sterling example of the judiciary’s flexibility.

In Corso, the Plaintiff had her dearly beloved 15 year old poodle euthanized by Defendant-veterinary hospital. Plaintiff arranged for Defendant to give her poodle’s body to an organization through which she had arranged an “elaborate funeral . . . including a head stone, an epitaph, and attendance by Plaintiff’s two sisters and a friend.” Plaintiff planned to visit her pet’s grave in the future.

***“This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.”***

***-Corso v Crawford Dog and Cat Hospital, 415 N.Y.S.2d 182 (NY Civ. Ct, 1979)***

Much to Plaintiff's distress, she discovered not her beloved pet's body in the casket that was delivered to the funeral, but the body of a dead cat. During the bench trial Plaintiff testified as to her "mental distress and anguish, in detail, and indicated that she still feels distress and anguish."

In its decision the Court stated:

"This court now overrules prior precedent and holds that a pet is not just a thing, but occupies a special place somewhere in between a person and a piece of personal property."

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"In ruling that a pet such as a dog is not just a thing I believe the Plaintiff is entitled to damages beyond the market value of the dog. A pet is not an inanimate thing that just receives affection, it also returns it. I find that Plaintiff Ms. Corso did suffer shock, mental anguish and despondency due to the wrongful destruction and loss of the dog's body."

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"This decision is not to be construed to include an award for the loss of a family heirloom which would also cause great mental anguish. An heirloom while it might be the source of good feelings is merely an inanimate object and is not capable of returning love and affection. It does not respond to human stimulation; it has no brain capable of displaying emotion which in turn causes a human response. Losing the right to memorialize a pet rock, or a pet tree or losing a family picture album is not actionable. But a dog, that is something else. To say it is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept."

**By rejecting as inhumane the established legal premise that animals are "personal property," and stating that a companion animal ". . . occupies a special place somewhere in between a person and a piece of person property, the Corso Court acknowledged that animals do not belong in the Human category nor do they belong in the Property category – they in the middle. It is now time to give that "special space" that animals occupy its own category which is best called "Animals." Animals would then be subject to their own set of laws – independent of those that apply to Humans or Property.**



Another case to recognize the difference between Animals and Property is Murray v Bill Wells Kennels, Ltd., Wayne County Circuit Court No. 95-536479-NO (Michigan, 1997). In that case a dog named Brandy, died an agonizing death after being deprived of her diabetes medication while being boarded. The young lady who owned Brandy returned from out of town just as Brandy expired. In fact, she testified that she believed that Brandy had struggled to stay alive as long as she did in order to see her beloved mistress one last time – to say goodbye. Brandy’s owner was devastated by Brandy’s death. She sued the boarding facility to recover her “damages,” including her own emotional pain and suffering. Legal precedent mandated that Brandy be treated as property and that such damages be denied.

However, the judge in that case, the Honorable Kaye Tertzag, realized that the law is not always just and refused to be bound by a rule of law he recognized as unfair. In holding that the issue of the owner’s emotional pain and suffering would go to the jury, he stated:

“[T]he view equating a living, breathing animal to chattel is archaic and does not withstand the test of critical analysis. Slavish adherence to a worn-out doctrine without serious, critical analysis does the law no good and, indeed, engenders public disrespect for the law.”

Judge Tertzag was correct – blindly adhering to the rule of law that treats animals as property is a disservice to the public and promotes public scorn.

The founders of our great nation designed a government that is flexible so that it could change with the times and the needs of our society. Their design was so wonderful that it has held for over 200 years. Its flexibility has been magnificent and allowed it to remain sturdy through its ability to change. For the most part, the government they created has stood our country in good stead and produced astonishingly fair and just laws. However, animals are one area where our government and laws have failed to keep pace with the changes in our society, and the time is long overdue for significant changes - changes that are imperative to achieve “justice,” both for the people who “own” of animals,<sup>5</sup> and for the animals themselves.

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<sup>5</sup> As property animals are subject to “ownership.” However, there is an increasing trend towards viewing the relationship between animals and their care-givers as one of “guardianship” or “stewardship.” The author prefers this newer view because it comports with re-classification of animals as Animals and recognition that they are more than just Property. Nevertheless, for purposes of this article, the author uses the terms of ownership because that is the current state of the law.

In Murray, supra, Judge Tertzag expressly recognized the artificiality of limiting damages to the market value of an animal, and rejected it as unrealistic. In ruling that “damages should be left to the jury to decide” Judge Tertzag stated:

“Arguing that the Plaintiff’s damages are limited to the value of the animal, the Defendants seek this Court’s stamp of approval on the doctrine that a dog is equated to chattel for purposes of determining and limiting damages. This Court refuses to do that.

Why should a jury be deprived of making the decision on this type of important case? After all, are not the jurors best positioned to determine damages? Why adhere to an arbitrary and outdated doctrine to limit damages under [the] circumstances in this case? Why limit damages to the value of the dog? Why not permit the fact finders to actually determine whether an owner suffered additional damages? Isn’t that what the jury system is all about? Isn’t that what jurors are supposed to do?

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The doctrine that damages are limited to the value of the dog (the chattel) has worn out its welcome in many states where it was once recognized. It is an outmoded doctrine deserving neither respect nor devotion. Blind adherence to such a doctrine is unbecoming for an enlightened people.

**The common sense of jurors should hold sway on this issue. Referral to the innate wisdom of the community is preferable [to] fidelity to a doctrine which no longer mirrors reality and unfortunately provides sanctuary to the negligent.**

Owners of kennels and veterinarians can be negligent just like anyone else. Just as other professionals have to face the full measure of responsibility for their negligent acts, so should kennel owners and veterinarians. The defendant suggests the existence of an arbitrary, artificial cap, i.e., the value of

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the chattel, as the full measure of damages. This view just does not recognize the hurt one undergoes as the result of losing a pet through the negligent acts of another.” (Emphasis added)

Judge Tertzag’s opinion is remarkable not only for its compassion, and eloquence, but for its inordinate wisdom as well. Judge Tertzag succinctly identified the solution – animals should not be treated as Property and juries should be allowed to determine the issue of damages. After all, that is the purpose of a jury and they should not be limited by “. . . an arbitrary and artificial cap . . . .”

Furthermore, there are some situations in which a jury may actually feel that a million dollar verdict, or more, is appropriate for injuring or killing an animal. Consider a case involving a 12 year old boy who was born paralyzed and was confined to a wheelchair for life. For 6 years he had a wonderful service dog who not only served as his personal aide but as his social secretary, a social vector through which he interacted with other people.

Consider further the fact that a person intentionally shot and killed his dog, in front of him, and the dog died in his arms. The author personally would have no problem awarding a million dollars (or more, depending upon the circumstances) to him to compensate for the unfathomable pain and suffering that he would have experienced. Under those or equally compelling circumstances, the author believes that juries should have the freedom to render large verdicts if they deem it appropriate. That, after all, is the role of a jury – to determine the amount to which a plaintiff is entitled. If circumstances warrant it, a jury should be free to make such an award.<sup>6</sup>

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<sup>6</sup>Judge Tertzag died several years ago. As can be seen from his Opinion in Murray, we lost an extraordinary jurist. He inspired the Animal Law Section of the State Bar of Michigan to create an award named after the dog in that case – the Brandy Award. I had the honor of presenting Judge Tertzag with the first Brandy Award for outstanding achievement in the area of animal law. That was about a decade ago.

At that time I asked Judge Tertzag why he devoted so much time and thought to writing an opinion in an animal case – especially since he sat in the City of Detroit where dockets are overflowing with cases - many of the most grievous and heinous nature. He said that years before, when he was a young lawyer, new to the practice of law, a couple consulted him about the wrongful death of their beloved pet dog. He felt deep sadness for the couple’s loss and was appalled when his research revealed that they had no legal recourse because their beloved pet was merely “personal property.” He detested having to inform them of the unjust state of the law and he felt powerless to do anything to change the law. He was haunted by the case for years because he felt that he should have done something to at least try to change the law because it was so unrealistic and hurtful to those who love their animals.

**Juries are Capable of Understanding the Intrinsic Value of Animals and Should be Permitted to Award the Amount of Damages They Deem Appropriate**

The Minnesota case Moshe Bukrinsky v Cedar Trails Condominium Association, Inc., Case No: CT 98-003074, Hennepin County District Court, 4<sup>th</sup> Judicial District, 2000 is one of the most dramatic and heart-wrenching illustrations of the intrinsic value of an animal and a jury’s ability to recognize it.<sup>7</sup> The Plaintiff in that case was Moshe Bukrinsky. Mr. Bukrinsky was a single father, devoted to raising his son Gil (pictured below).

For his 16<sup>th</sup> birthday, Mr. Bukrinsky gave Gil a Rottweiler named Alec. Several months before his



21<sup>st</sup> birthday, Gil was murdered. During the following year, a friend of Gil’s cared for Alec as Mr. Bukrinsky struggled emotionally to deal with Gil’s untimely death. During that year, Mr. Bukrinsky descended into a severe depression, causing him to withdraw from the outside world – even forsaking his job and social contacts. As his attorney (Gerald Laurie) put it, the day Gil

©Photograph of Gil by Moshe Bukrinsky

was shot and killed, “[Mr.] Bukrinsky stopped functioning.” A psychiatrist diagnosed him as suffering from post-traumatic syndrome.

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When the Murray case came along Judge Tertzag saw it as his opportunity to right an old wrong. He hoped that it would help change the unfair laws governing animals. Although he was ahead of his time, his effort was not wasted. His words and their wisdom live on and I hope they inspire others as they have inspired me.

Judge Tertzag is a sterling example of Winston Churchill’s belief that there is no such thing as “history,” – only “biography.” One person *can* make a difference and Judge Tertzag was one such person.

<sup>7</sup> “Condo Must Waive No-Dogs Rule for Grieving Man,” 2000 LWUSA 754 (August 21, 2000); Minnesota Law & Politics, December-January 2001, No. 123



©Photograph of Moshe, Gil, and Alec, by Moshe Bukrinsky  
Bukrinsky to get out and engage in life again.

After Gil died, Mr. Bukrinsky (pictured left with Gil and Alec) moved from the family home into a condominium. A year after Gil's murder, his friend who had been caring for Alec gave Alec to Mr. Bukrinsky. Mr. Bukrinsky was initially reticent to take Alec. However, Alec soon became his reason for living. According to Mr. Bukrinsky, "[Alec] saved my life."

Mr. Bukrinsky was unable to sleep so he began walking Alec at night as well as during the day. In fact, he would walk Alec "for hours every night." When the weather grew cold, Mr. Bukrinsky put olive oil on Alec's nose, boots on his feet, and a coat on his body to keep him warm during their walks. Alec's love, comfort, and companionship enabled Mr. Bukrinsky to slowly begin recovering from his depression. The responsibility of caring for Alec forced Mr.

Unfortunately, the condominium association where they lived had a no-pets policy. The condominium association was inflexible and refused to allow Mr. Bukrinsky to keep Alec, despite the heart-breaking circumstances. The condominium association even imposed a \$200 per month fine on Mr. Bukrinsky and finally went so far as to commence eviction/foreclosure proceedings against him.

For a year and 3 months Mr. Bukrinsky attempted to reason with the condominium association. To demonstrate his emotional need for Alec, Mr. Bukrinsky submitted a psychologist's report stating that Alec "was essential to helping him overcome his depression." The condominium association was unmoved.

Mr. Bukrinsky then submitted a detailed psychiatric statement attesting to “the importance of [Alec] in helping him deal with his ‘major depression.’” According to his attorney, when Mr. Bukrinsky attempted to read the psychiatrist’s statement at a Board meeting, the Board “summarily cut him off,” denied his request to keep Alec, and commenced the eviction/foreclosure proceedings on his condominium



unit.

©Photograph of Alec by Moshe Bukrinsky

Thereafter, Mr. Bukrinsky sued the condominium association under the federal Fair Housing Amendments Act which mandates that landlords and condominium associations provide “reasonable accommodations” for people with physical or mental disabilities. He also filed a state claim under the Minnesota Human Rights Act.

At trial Mr. Bukrinsky testified how the condominium association’s conduct aggravated the pain and suffering he experienced because of his son’s murder. As an example he stated that when the sheriff’s deputy came to serve him eviction/foreclosure documents, it painfully reminded him of the official who notified him of his son’s murder.

The federal Fair Housing Amendments Act claim was tried before a jury and resulted in a verdict for Mr. Bukrinsky of \$110,000.00. The jury concluded that the condominium’s failure to make reasonable accommodations for Mr. Bukrinsky caused him emotional distress.

Subsequently, a judge awarded Bukrinsky almost \$88,000.00 in attorney fees, costs, and interest on his claim under the Minnesota Human Rights Act. All totaled, after 3 years in litigation, Mr. Bukrinsky was awarded nearly \$198,000.00.

As can be seen from this case, judges and juries do understand and value the special relationship/bond that can develop between people and their animals. Judges and juries do comprehend the critical, and often times therapeutic, role animals play in their lives, and judges and juries are willing to award significant verdicts for interference or destruction of that relationship.

Categorizing animals as property unrealistically minimizes and sometimes even obliterates their intrinsic value. In the case of Mr. Bukrinsky and Alec, Alec's economic value was completely irrelevant to Mr. Bukrinsky's recovery. What mattered was the intrinsic (non-economic) value Alec had for Mr. Bukrinsky, in the form of unconditional love and companionship.

Had Mr. Bukrinsky placed no emotional/intrinsic value on Alec, he could easily have "gotten rid" of Alec, in one form or another. And, Mr. Bukrinsky would have suffered for it. He would have deprived himself of the only "thing" that brought him true solace and comfort in the wake of his unfathomable loss and grief; the only "thing" that relieved his depression. No medicine, no therapy could do what Alec did for Mr. Bukrinsky, and Mr. Bukrinsky is the first to say that.<sup>8</sup>

***"[Alec] saved my life."***

-Mr. Bukrinsky speaking about the importance of Alec to his recovery from severe depression after his son's murder.

In fact, by the time Alec died 3 years ago, he had shepherded Mr. Bukrinsky back to mental health. So much so, that when Mr. Bukrinsky called his attorney to tell him that Alec had died,<sup>9</sup> his attorney feared for Mr. Bukrinsky's welfare.<sup>10</sup> So, with great trepidation, his attorney asked

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<sup>8</sup> The author interviewed Mr. Bukrinsky on January 29, 2010, for this article and he could not stress this point enough.

<sup>9</sup> Alec died of old age. He was 15 years old which is incredibly old for a Rottweiler. They generally die much younger. However, Mr. Bukrinsky told the author that during the entire time he had Alec, "he never drank tap water" – Mr. Bukrinsky always gave him bottled water and he also cooked for Alec. Both of those factors as well as all the exercise he got walking with Mr. Bukrinsky, surely contributed to Alec's longevity, as well as Mr. Bukrinsky's own love and devotion.

<sup>10</sup> The author also interviewed Mr. Bukrinsky's attorney, Gerald Laurie, on January 29, 2010 for this article, and he vouched for the importance of Alec in Mr. Bukrinsky's recovery from depression.

him how he felt about that. To his attorney's utter amazement and relief, Mr. Bukrinsky said "I feel fine because now I know he is with Gil."

This is just one of the many instances in which an animal's love and devotion heals in a way that nothing else could. The jury's award of \$110,000 unequivocally demonstrates that when given the chance, juries understand the special relationships that can develop between people and animals and are capable of appropriately redressing interference with that relationship.

### **Arguments Raised in Opposition to a New Category for Animals**

There are a number of arguments that have been raised opposing the creation of a new category for animals. All of the arguments are without merit.

1. **Sub-Categorization:** Some people claim that there is no need for a new category for Animals. They argue that the same results may be achieved by simply leaving animals in the Property category, but *sub*-categorizing them and creating a different set of laws for them *within* the Property category.

This argument is counter-productive and counter-intuitive. As discussed above, the Property category is entirely inappropriate for animals. Creating a sub-category of Property will only compound the problem by further in-graining the idea of animals as property. As previously discussed, treating animals as any kind of property is unrealistic.

2. **Semantics:** Some people oppose the idea of re-categorizing animals arguing that if animals are not treated as Property then they will be treated as Humans. That is a non-sequitur. The point of creating a third and distinct category called Animals is to acknowledge that animals are *neither* Property *nor* Human. Hence the need for and appropriateness of a third, distinct category of Animals.

3. **Ownership Promotes the Love and Care of Animals**

Some people contend that classification of animals outside the Property category would diminish the care that people would give their animals because people value what they "own." They assert that if people "own" animals as property they will be more inclined to protect and care for their animals.

Realistically, relating ownership and the monetary value of an animal to the care, love, and protection that one gives it is a non-sequitur. As an example, it never ceases to amaze the author how people will pay hundreds or thousands of dollars for a "pure bred" animal, and then fail to care for, much less love it. And frequently the purchase price is well more than they can afford. Yet, despite their financial investment, they do not really value the animal. The fact that the property is alive (an animal), and needs



food, water, love, and attention in order to live, often transforms it from a status symbol or valued piece of property, to an inconvenience, and then a burden. Too often the animal is then neglected. This point is illustrated by the following photographs.

Below is a “pure bred” Bassett Hound who probably had a market value of hundreds of dollars –in a normal state of health. Nevertheless, the dog was nearly starved to death because his “owner” lost interest in him.

© Two Photographs below by Teresa Morton



Below are photographs of another dog, “Ladybug,” whose owner lost interest in her. He chained her to a fence and failed to loosen the rope around her neck, causing the rope to become embedded in her neck. In such cases, the animal’s body actually grows around the collar, chain, or rope and in severe cases the animal dies a slow, agonizing death by strangulation. Unfortunately, these “embedded collar” cases are common.



©Photographs above and below of Ladybug by Tracy Heape



Fortunately, Ladybug made a full recovery and was adopted to a loving family. Unfortunately, too many of these cases go unrecognized because the animals are kept out of sight or their injuries are concealed by their fur. Below is the initial photograph taken of Ladybug as her rescuer approached.

©Photograph of Ladybug by Tracy Heape



As you can see, from a distance this does not appear to be a serious situation – just a poor dog subjected to the insensitivity of an “owner” who did not care enough about her to keep her indoors or at least find her a good home. Had it not been for the neighbor who reported the situation to animal control, Ladybug’s fate would have inevitably been a slow, agonizing death from strangulation, infection, or both.

Continuing to classify animals as property will only perpetuate this problem of neglected and abused animals, as illustrated by the foregoing cases. Elevating animals to their own category with more stringent laws than apply to inanimate property will more likely discourage people from simply discarding animals that no longer interest them.

The ultimate example of the irrelevance of economic value to the love and protection we bestow on other living beings, is our children. Our children are not our property – they have no monetary or fair market value. To the contrary, they are enormous financial liabilities. The cost of their care, feeding, housing, education, etc. is staggering. And yet, we love them despite the costs, and even enjoy spending money on them (often vast amounts). The fact that they have no fair market value is entirely irrelevant to our love for them. We provide them with all of life’s necessities, and lavish them with all of the luxuries we can afford because we love them with all our hearts, in spite of their negative economic value.

Many people feel the same about animals – they love them **despite** their lack of monetary value or even a negative monetary value since they, like children, require monetary expenditures to feed them, shelter them, maintain their health, etc. To many people the value of an animal does not lie in its fair market value, but rather in its love, companionship, and devotion. All qualities that you cannot put a price on - they are quite literally, priceless.

#### 4. **Classifying Animals as Property Gives Owners Greater Control Over Their Animals**

The argument has been posed that re-classification of animals as Animals would dilute or even eliminate the “property rights” owners currently have in their companion animals. The concern expressed was that re-classification could give owners less control over the welfare of their companion animals. The beauty of creating a new legal category called Animals is that it would allow us to actually strengthen the legal bonds between owners and their companion animals by changing the owners’ rights from “property rights” to rights more akin to custody rights in our children. Custody rights of such a nature are much stronger, and more difficult to break, than “property rights.”

Animals are not children/humans, and the author does not suggest creating a legal bond equivalent to that of the parent-child relationship. However, as our society has changed to the point that many people view their companion animals as family members, our legal system should evolve to accommodate that societal change. That should be done by creating a legal bond between owners and their companion animals that is significantly stronger than an owner's relationship to his or her property.

#### **5. Reclassifying Animals Would Open a Flood Gate of Litigation**

Some people claim that oppose the idea of re-categorizing animals will cause them to be treated as property then they will be treated as Humans. That, they maintain, would open the floodgates of litigation and the courts would be inundated with lawsuits seeking to recover millions of dollars for injured or killed animals.

First, just because animals are reclassified as something other than Property does not mean that they will be treated as Humans. To the contrary, they are not Humans which is precisely why they should have their own category, with laws specifically tailored to them.

Second, in the handful of states that have formally recognized the special characteristics of animals, and allowed for the recovery of veterinary costs (economic damages) and/or pain and suffering (non-economic damages) by the animals' owners, multitudes of lawsuits have not materialized, nor have any million dollar verdicts been awarded.

One of the landmark cases in awarding non-economic damages was Rodrigues v State, 472 P2d 509 (Haw 1970). The Rodrigues Court awarded emotional/mental distress damages to a family whose companion animal allegedly died as the result of the defendant's negligence. Eleven years later in Campbell v Animal Quarantine Station, 632 P2d 1066, 1071 (Ha. 1981) the Supreme Court of Hawaii observed:

“Since our holding in Rodrigues there has been no ‘plethora of similar cases’: the fears of unlimited liability have not proved true. Rather, other states have begun to allow damages for mental distress suffered under similar circumstances.”

The argument that a separate category for animals will result in a flood of litigation is simply an argument from those who fear change and have nothing else to argue. In this circumstance, change is possible, it is correct, and it is necessary.

#### **6. Reclassifying Animals as Animals Will Lead to Outrageous Verdicts**

As discussed above, although the author is not aware of any jury verdicts of a million dollars, she can easily conceive of cases where such awards (or more) would be justified.

It is up to the jury to determine damages and they should be free to award whatever they believe is fair on a case-by-case basis.

## **Conclusion**

The *criminal* laws of our states recognize the difference between animals and inanimate objects. Our *criminal* laws treat injury to an animal as animal cruelty, while damaging an inanimate object is the completely separate crime of malicious destruction of property. Unfortunately our *civil* laws have failed to acknowledge the same difference and continue to categorize animals as property, just like inanimate objects.

Our *civil* laws have failed to recognize the emotional attachment that people develop to animals (and vice versa) and the non-economic rewards that are derived from such relationships. Instead of changing to accommodate the explosion of knowledge concerning animals, our typically flexible legal system has yielded little. For the most part it still retains the traditional Property classification of animals which merely perpetuates the artificial and unrealistic treatment of animals as inanimate objects rather than treating them as the living, breathing, loving creatures that they are.

Currently, all 50 states have different legal schemes governing, and even defining animals. Some states define animals as “vertebrates” (animals with backbones), and others limit them to specific species such as cats, dogs, horses, birds (other than “poultry”), etc. The time has come for a uniform code to govern animals as a separate and distinct category. The legal system favors uniformity and has achieved it across the country in a number of areas, such as commercial transactions with the UCC (Uniform Commercial Code), and the Uniform Child Support Act. The author proposes that a nationwide code/act be developed and adopted by all 50 states to implement a uniform legal categorization of animals as Animals for purposes of determining cause of actions, liability, and damages.

Categorizing animals as Animals rather than Property will more likely result in the allowance of both economic and non-economic damages for their owners, and hopefully promote more respect for animals as living creatures. Hopefully, that in turn would engender kinder, more compassionate treatment for animals of all kinds.

**“You can judge a man’s true character by the way he treats his fellow animals.”**

**--Sir Paul McCartney**