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2000

Remedies in Animal-Related Litigation

Joan E. Schaffner

George Washington University Law School, jschaf@law.gwu.edu

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Recommended Citation

Joan E. Schaffner, Remedies in Animal-Related Litigation, in *LITIGATING ANIMAL DISPUTES: A COMPLETE GUIDE FOR LAWYERS* 437 (Joan Schaffner & Julie Fershtman eds., 2009).

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Litigating Animal Law Disputes

A Complete Guide for Lawyers

JOAN SCHAFFNER
AND JULIE FERSHTMAN
EDITORS



CHAPTER 9

Remedies in Animal-Related Litigation

JOAN E. SCHAFFNER

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I. Introduction

Animals are classified as personal property under the law. This classification dictates the remedies available for harm to or loss of an owned animal or pet. Traditionally courts have been reluctant to recognize value of a pet beyond the fair market value of the individual animal. Increasingly, however, as humans' relationships with their pets have changed and their pets have become more like family members, courts are recognizing that their value to their owners may include noneconomic damage. This is a dynamic area of the law as it relates to pets and thus it is important to follow the recent scholarly writings on the subject, newly enacted statutes, and new cases in your jurisdiction and others addressing the availability of noneconomic damages in an animal law case.

The availability of remedies to owners of pets is of great import to lawyers and clients alike. Although clients may wish to file suit against someone who has wrongfully injured or killed their pet as a matter of principle, and/or to publicize the issue, for example in the case of a grossly negligent veterinarian, most clients do not have the resources to bring suit if the available monetary remedy will not at the very least exceed the cost of the suit. The lack of a truly compensable remedy for the loss of one's pet has prevented many people from filing suit. Unless the animal is an economically valuable race horse or show dog, for example, the fair market value of the animal is negligible compared to the costs of suit and thus few suits are filed. As courts recognize that the true value of the animal includes companionship to the owner, and that many owners are as attached to their pets as they are to other human family members, thus warranting emotional distress damages and consequential damages for lost wages and other expenses for caring for an injured pet, more suits will be brought and owners will be more accurately compensated for their losses.

In the most egregious cases, punitive damages may be available and this will provide increased incentive to file suit and hold the wrongdoer accountable. Moreover, specific remedies, such as injunctive relief, may also be available in certain situations, providing another incentive to file suit.

This chapter explores the various remedies potentially available in a suit involving an animal. As the other chapters of this book make clear, there are a variety of animal-related cases. Cases arising in property, tort, contract, wills and trusts, and others will each invoke a particular remedy. The remedy available is dependent upon the substantive claim brought. Each of the substantive chapters address what type of remedy may be

available. This chapter addresses the remedy in more detail and focuses on the valuation and specific issues that arise in seeking the remedy once liability has been established.

This chapter is organized around the function and form of the remedy rather than the substantive basis for relief. Remedies fall into two primary categories: substitutionary and specific relief. Substitutionary relief is monetary relief based upon the factfinder's valuation of the owner's loss. The owner neither gets what she started with nor what she was promised. Thus the money is substitutionary in two ways: (1) the money substitutes for the owner's original entitlement and (2) the factfinder's valuation substitutes for the owner's valuation of her loss. Substitutionary remedies perform one of the following functions: compensation, punishment, or restitution. Specific relief seeks to either avoid harm, undo the harm, or repair the harm in kind. Such remedies include injunctions, specific performance or cancellation under a contract, and return of property. Their functions are either preventive, coercive, declaratory, or ancillary (an aid to enforce the primary remedy). The more common relief is substitutionary, as in the case of an owner seeking monetary compensation for the loss of or injury to her animal. However, specific relief is available in cases of contracts to purchase animals, return of an animal stolen or lost and recovered by another, or judicial orders to prevent the killing of or harm to animals, often in "public" cases such as the enforcement of the Endangered Species Act. Since this book is a resource for the attorney engaged in "private" animal law cases of the type that the typical practitioner will encounter, remedies involving "public" cases to enforce federal statutes or treaties will not be addressed. Finally, although the context of a given animal law case varies, this chapter will focus primarily on relief to the owner of an animal for the harm to or loss of the animal and utilize this terminology. When other contexts arise they will be addressed as appropriate.

II. Damages

A. Compensatory

Compensatory damages are designed to place owners in their "rightful position," the position they would have been in had the wrong not occurred, by "compensating" them as closely as possible for the harm to their animal. The key to achieving an accurate "rightful position" is to provide compensation for all losses proximately caused by the wrong and to value each loss based upon relevant market and/or the reasonable owner's valuation. The following subsections will address each potential

loss involved in the harm to one's animal and discuss the likelihood of recovery and the means for valuing the loss if recoverable.

1. Loss to the Animal

The animal does not have separate standing under the law to seek damages, thus no court has allowed recovery for the animal's pain and suffering. For example, in *Oberschlake v. Veterinary Assoc. Animal Hospital*,¹ Poopi was taken to the vet to have its teeth cleaned; however, while the dog was under anesthesia, the vet tried to spay it although it had already been spayed as a puppy. Poopi's owners sought recovery for Poopi's own emotional distress of being wrongfully "spayed" twice. The court stated succinctly: "Although Poopi was obviously directly involved in the incident, a dog cannot recover for emotional distress—or indeed for any other direct claims of which we are aware. We recognize that animals can and do suffer pain or distress, but the evidentiary problems with such issues are obvious. As a result, the claims on Poopi's behalf were . . . not viable."²

2. Loss to the Owner

A. ECONOMIC PROPERTY LOSS

The owner may recover the property loss of an animal, which traditionally is the fair market value, if any, and "some special or pecuniary [economic] value to the owner, that may be ascertained by reference to the usefulness and services of the dog."³ If the animal is injured, the recovery is the difference between the fair market value before and after the harm⁴ or the costs to repair, for example, veterinary costs. Generally, the recovery for injury to the pet is the costs of veterinary treatment with some courts limiting the amount of such recovery to the animal's fair market value.⁵ Courts have recognized that limiting recovery to fair market value generally provides minimal compensation because most pets have little or no market value. In such cases, some courts allow owners to receive full compensation of their out-of-pocket economic losses.

For example, in *Hyland v. Borrás*,⁶ Borrás's bulldog trespassed onto Hyland's property and attacked her ten-year-old shih tzu, causing serious injuries. The veterinarian costs and other related out-of-pocket expenses were \$2,500, but the "replacement cost" for the shih tzu was \$500. Although the normal rule for loss of personal property where the "repair costs outweigh the replacement costs" is either "the diminution in the value of the property, or its replacement costs,"⁷ the court stated the rule must be flexible to properly compensate plaintiff under the circumstances. The court noted that "animals kept for companionship have no calculable market value beyond the subjective value of the animal to owner, and that value

arises purely as a result of their relationship and the length and strength of the owner's attachment to the animal."⁸ The court here found that Hyland had raised, loved, and devoted time to her dog since it was a puppy and thus Borrás must be held liable for her recovery expenses in order to properly compensate her. Moreover, the court said, awarding the economic losses that defendant caused will deter owners from negligently allowing their dogs to run loose.⁹ This court clearly understood the difference between normal personal property with value to the owner that generally diminishes with time as it becomes used and a pet, whose value to the owner increases with time as their relationship develops. Thus while a ten-year-old Ford car may be worth much less than the current market value for the current model, a ten-year-old shih tzu is worth much more than the current market value of a "new" shih tzu.

There are, of course, cases where the animal is economically valuable. For example, if the animal is pedigreed and/or used to breed, or the animal provides special services to a disabled owner,¹⁰ the economic loss is considerable and recoverable if properly supported with evidence of the economic loss. Often in the case of pedigreed animals, there is a market for the specific animal, and thus the fair market value for loss of the animal is fairly easily established by introducing evidence of the price paid for the animal, offers made by others to purchase the animal, and the price of similar animals. Secondary evidence includes proof of the animal's registration papers, physical characteristics, and prior breeding, as well as awards won by the animal in shows or races.¹¹

Further, a consequential loss may include the lost income likely to have been received by the owner from the animal.¹² It is more difficult to establish potential future earnings from the animal; however, evidence of past income received and demonstration of the likelihood of continued income may suffice. In the case of animals used for breeding, courts generally refuse to compensate for the loss of future progeny as too speculative but may include the animal's breeding potential in the valuation of the lost animal.¹³ Other losses that may be recoverable include reimbursement for money spent on the animal for training, microchipping, or other similar expenses.¹⁴

For example, in *Bueckner v. Hamel*, the defendant shot a Dalmatian and Australian shepherd owned by the Hamels.¹⁵ Both dogs were relatively young, two and three years old respectively, purebred, and registered with reputable clubs. The Hamels introduced evidence that they had purchased the dogs with the intent to breed them, that they had already picked out a male for the Australian shepherd, and that the dogs could be expected to breed once per year and produce six to eight puppies; they

also introduced as evidence the market price for the puppies. In this case the dogs had not yet been bred. The court allowed the introduction of the evidence to assess the value of the two dogs themselves but disallowed recovery for prospective progeny. The court upheld the trial court's damage award of \$1,825 as legally and factually sufficient.¹⁶

In another case, *Petco v. Schuster*, Licorice, a 14-month-old miniature schnauzer, slipped its leash and ran away from a Petco employee who had taken the dog out for a bathroom break during its grooming, and was ultimately killed in traffic. The owner recovered the replacement value (fair market value) of Licorice (\$500), her expenses to send Licorice to training school (\$892), and her expenses for microchip implantation (\$52.40).¹⁷

B. NONECONOMIC PROPERTY LOSS

Generally courts refuse to include noneconomic damage as a component of the animal's "special or intrinsic value." However, scholars and some courts are beginning to recognize the loss of companionship as a noneconomic element of damage from the loss of a pet.¹⁸ Traditionally, courts have recognized the "intrinsic" value of certain types of property, such as heirlooms or trees, generally when the property otherwise has no market value. For example, one's family heirlooms, or family films, while having no real market value, have a special value to the owner and courts may award a reasonable amount for the "intrinsic" value of the item lost.¹⁹ Moreover, the intrinsic value of a tree includes an aesthetic value based on the appearance of the tree and a utilitarian value based on the shade the tree provides.²⁰ Thus the intrinsic value of the animal to the owner is the value of their companionship and may be recoverable.

Additionally, under traditional rules, the owner can often recover lost utility from the property. Thus, the key is to demonstrate to the court the utility the property served to the owner and to compensate the owner for a reasonable valuation of that lost utility.²¹ In the case of a typical family pet, the primary utility of the pet is to provide the owner "companionship." Thus, the owner under traditional property law should be able to recover the loss of companionship resulting from the loss of the pet. However, few courts have awarded loss of companionship, either because they refuse to recognize companionship as the utility of the pet or because they find that the pet has a market value and thus intrinsic value is not recoverable.²²

One reason offered for the reluctance to award noneconomic damages is the difficulty in setting an appropriate amount reflective of the actual value lost. However, there are many instances of courts awarding noneconomic damages where valuation is difficult, such as for emotional pain and suffering. Types of evidence that could be used to both support

the award of loss of companionship and determine a reasonable value for such loss include

- Statistics from studies of the human/animal bond and social and emotional interactions that have shown that some 80 percent of animal owners treat their pets as members of family, 50 percent keep photos of their pet in their wallet or on their desk at work and/or share their bed with their pets, and 25 percent celebrate their pets' birthdays;
- During the Katrina disaster many people risked their life rather than leave their animals behind;
- The benefits of the bond between pets and their owners that include alleviating boredom, preventing loneliness and isolation, helping patients recuperate, and reducing depression, anxiety, and stress in many individuals; and
- Evidence of the money the owner has spent on the pet for food, medical care, entertainment, socializing, and sheltering.²³

C. ECONOMIC CONSEQUENTIAL LOSS

In addition to the direct loss of the animal and the lost income from the animal, the owner may incur additional consequential losses caused by the defendant's wrong. For example, in *Petco* the owner sought reimbursement for lost wages incurred from her time taken off from work searching for Licorice before the dog was found dead.²⁴ In general, consequential damages are limited when too remote, speculative, or avoidable. The Texas court in *Petco* held these damages unrecoverable since the lost property, Licorice, was unrelated to the owner's job.²⁵ The court distinguished claims for lost property from claims for personal injury where lost wages are recoverable in order to make the plaintiff whole. Moreover, under a breach of contract theory, based on the grooming contract with Petco, the court held the lost wages too remote and thus unforeseeable. Such damages were not contemplated by the parties under the contract and were thus not recoverable.²⁶ However, had the owner demonstrated that a reasonable person would search for his or her dog and introduced evidence of the reasonable costs incurred from such a search, she may have been able to recover something for that expense.

An owner may incur costs related to the care of an injured animal. No cases have addressed this type of recovery. One interesting theory advanced by animal law litigator Adam Karp is that such a loss may be analogized to a repair cost since the owner would otherwise have to hire a vet tech, for example, to care for the injured animal. In the human context courts generally allow the cost of nursing services to care for an injured

or sick child or spouse, and a minority of courts allow the recovery of lost wages if the parent or other spouse remains home from work to care for the injured person.²⁷ However, normally the veterinary costs would be considered the "repair costs" recoverable in an animal case.²⁸

D. NONECONOMIC PERSONAL LOSS TO OWNER

Some states may allow owners to recover for their own emotional injury caused by the loss of their pet under a theory of intentional or negligent infliction of emotional distress. The basic elements of such a claim are (1) defendant's outrageous behavior; (2) intent to cause emotional distress to owner; (3) owner's severe emotional suffering; (4) the owner in proximity to witness the outrageous conduct; and (5) in the case of negligent infliction, physical harm to the owner.²⁹ Most cases fail because either the defendant's conduct is not deemed outrageous enough, the owner's emotional distress was not severe enough, the owner did not witness the conduct, and/or the defendant did not know the owner of the animal killed. However, in the most outrageous case where, for example, a person intentionally and with premeditation shoots a neighbor's dog merely because the dog is on the person's property, and the owner is present, recovery may be available.³⁰

Interestingly, a 1981 case from Hawaii, *Campbell v. Animal Quarantine Station*,³¹ allowed recovery for the emotional distress of an entire family that resulted from the improper and negligent handling and transport of their pet dog resulting in the dog's death from heat prostration. Although the family did not witness the death nor even the dead body and were not themselves physically injured, the court held that Hawaii recognizes a claim for the emotional distress resulting from the negligent destruction of property, citing *Rodrigues v. State*.³² In *Rodrigues*, the state highway department was found negligent for failing to protect an owner's home from severe water damage caused by the failure of the highway culvert to drain surface waters after it became blocked with beach sand and was forced to compensate the homeowners for their resulting emotional distress. Interestingly, the dissent in *Rodrigues* faulted the majority for allowing such recovery, arguing that "the policy behind recognizing the value of an attachment to material possessions [is flawed]. This attachment should neither be encouraged by society nor made a basis for recovery in a court of law in an age when man has surrounded himself with a veritable plethora of material possessions approaching the limits of what even an affluent society needs or can afford."³³ The Hawaii legislature abolished the claim for emotional injury from loss of property unless it also results in "physical injury to or mental illness of" the person.³⁴ While

most courts still refuse to allow such recovery, the loss of one's pet is distinguishable from the loss of "material possessions" and may persuade some courts, today, to allow such recovery for "sentient" property.

There may also be a basis for recovery of emotional distress damage "arising from the breach of duties incident to . . . contracts dealing with intensely emotional noncommercial subjects such as preparing a corpse for burial."³⁵ In *Petco*, the court refused recovery for emotional distress for breach of the grooming contract stating that such a contract does not fall into the narrow class of contracts dealing with intensely emotional noncommercial subjects. "These 'special relationship' cases generally have three common elements: (1) a contractual relationship between the parties; (2) a particular susceptibility to emotional distress on the part of the plaintiff; and (3) the defendant's knowledge of the plaintiff's particular susceptibility to the emotional distress based on the circumstances."³⁶ Arguably, a contract to provide care for one's sick or injured animal might fall within that narrow class, although no cases to date have so held.

Nevertheless, if the owner does have a basis for recovering emotional distress, the valuation is similar to other claims that result in emotional injury to a person. For example, to value the emotional loss from witnessing the killing of a pet, the lawyer should introduce evidence of the owner's loss of appetite, insomnia, depression, anger, withdrawal, inability to concentrate, nightmares, and visits to a counselor or therapist proximately caused by the event. The owner should demonstrate that there was a reasonable need for such counseling. Generally, the more horrific the defendant's conduct, for example the manner of killing the pet, the more value is assigned to the emotional injury. This is appropriate since the level of emotional injury does relate to the nature of the wrong. However, if there is also a claim for punitive damages, the lawyer should be careful to distinguish the valuation of the emotional injury designed to *compensate* the owner from the punitive damage designed to *punish* the defendant, discussed later.

Moreover, it is important to distinguish the direct *emotional injury to the owner* caused by the defendant's actions and the *loss of companionship* to the owner from the loss of their pet. The first loss arises from the claim that the defendant directly harmed the owner in causing the owner's emotional injury, the second loss arises from the defendant destroying the owner's property, their pet, and from the owner's utility loss of that property, the companionship, discussed previously.

E. STATE STATUTES ALLOWING RECOVERY

Since 2000, a few states (e.g., Connecticut, Tennessee, and Illinois) have enacted statutes that expressly allow for damages for the loss of a pet,

including noneconomic damages. The basic elements of these statutes are definition of "pet" or "companion animal"; conduct establishing liability; the damages allowed; and exemptions from liability.

i. Definition of "Pet" The statutes generally define what animal qualifies as a "pet" for purposes of recovery. The primary purpose is to limit recovery of damages to certain species and to those who own the animals for purposes of companionship rather than farming, research, or other commercial purpose. Thus, for example, Connecticut defines "companion animal" as "a domesticated dog or cat that is normally kept in or near the household of its owner or keeper and is dependent on a person for food, shelter, and veterinary care, but does not include a dog or cat kept for farming or biomedical research practices."³⁷ Interestingly, Illinois allows recovery for any "animal" to which a person has a right of ownership, neither limiting the owner's utility of the animal to that of companionship nor the species to dog or cat.³⁸

ii. Conduct Establishing Liability States may hold a person liable for intentional or negligent conduct that harms an animal. Connecticut limits liability to "any person who intentionally kills or injures a companion animal."³⁹ Similarly, Illinois limits liability to a person who engages in "an act of aggravated cruelty" as defined under the criminal code or killed by a person acting in bad faith.⁴⁰ Under Tennessee's statute, a person may recover when a "pet . . . is killed or sustains injuries that result in death caused by the unlawful and intentional, or negligent, act of another or the animal of another."⁴¹ However, in the case of negligence, the animal must have suffered the death or injury while on the property of its owner or under the control and supervision of its owner.

iii. Damages Allowed Each of these states allows economic and non-economic or punitive damages within certain limits. Economic damages allowed include "expenses for veterinary care, the fair monetary value of the companion animal, . . . burial expenses"⁴² and "other expenses incurred by the owner in rectifying the effects of the cruelty, pain and suffering of the animal."⁴³ Noneconomic damages include "emotional distress suffered by the owner."⁴⁴

Tennessee limits noneconomic damages to compensate "for the loss of the reasonably expected society, companionship, love and affection of the pet" to \$5,000.⁴⁵ Punitive damages (discussed more fully in the next section) are expressly provided under statute in Connecticut and Illinois with proscribed limits. For example, Illinois limits such damages to "not less than \$500 but not more than \$25,000 for each act of abuse or neglect

to which the animal was subjected."⁴⁶ These states also allow recovery for reasonable attorneys' fees.⁴⁷

iv. **Exemptions** The state may also exempt certain actors from specific types of damages. Negligent veterinarians are exempt from liability for noneconomic damages in Tennessee. Veterinarians in Connecticut are exempt from punitive damages and attorneys' fees "while following accepted standards of practice of the profession."⁴⁸ Moreover, state actors and animal-related nonprofits are similarly exempt from liability for punitive damages and attorneys' fees.⁴⁹

B. Punitive or Exemplary Damages

Punitive damages are designed to punish the wrongdoer. They do not really "remedy" anything but are sometimes necessary to make it economically feasible for private plaintiffs to enforce important rights. Given the problems with obtaining adequate compensatory damages for the loss of one's animal because of the reasons stated previously, the ability to recover punitive damages in the egregious cases make it more economically feasible for owners to file suit.

Punitive damages generally are recoverable for the death of an animal under a tort theory if the owner can prove, by clear and convincing evidence, fraud or malice on the part of the defendant.⁵⁰ Punitive damages are not recoverable for breach of contract.

Punitive damage awards are highly sensitive to the specific facts of the case. The more egregious the conduct and malicious the intent, the greater opportunity for a large award. The factors considered in the determination of a punitive damage award include degree of reprehensibility, defendant's wealth, reasonable ratio to compensatory damages, profitability, analogous civil or criminal fines, and the potential for multiple liability.⁵¹ One problem owners may encounter is with the "reasonable ratio to compensatory damages" factor, given the recent Supreme Court cases that have held that a ratio of punitive damages to compensatory damages that exceeds single digits may be unconstitutional under the Due Process Clause.⁵² The Court does allow a larger ratio when compensatory damages are quite low.⁵³ This is the situation in most animal cases.⁵⁴ Thus it is unlikely the Court would find that a ratio in excess of nine in a case where a pet was maliciously killed would be unconstitutional since the fair market value, and hence typical compensatory damages awarded, is generally minimal.⁵⁵

Further, some states impose treble damages on owners whose dogs cause injury after they had been ordered retrained. Thus, for example, in

Massachusetts: "If a dog which the selectmen of a town, chief of police of a city or the county commissioners, or, upon review, a district court, shall have ordered to be restrained shall wound any person, or shall worry, wound or kill any live stock or fowls, the owner or keeper of such dog shall be liable in tort to the person injured thereby in treble the amount of damages sustained by him."⁵⁶

III. Restitution

In the "pure" sense, restitutionary relief is designed to restore to the plaintiff all that the defendant wrongfully gained at the plaintiff's expense. In many cases, the amount of damages to compensate for the plaintiff's loss is equal to the restitutionary relief if the value of the loss to the plaintiff equals the value of the gain to the defendant. However, in certain cases the value of the property to the plaintiff and defendant may differ or the defendant may use the property to realize profits. In these cases restitutionary damages may exceed compensatory damages.

In a criminal case, courts often order the defendant to pay restitution to the owner or third party even though they are not parties to the criminal case. The restitution here is generally for the purpose of compensating the owner or third party but may also be deemed punitive in nature. For example, when a person kills another's pet and is criminally charged for animal cruelty, the court may order the defendant to pay the owner restitution. Thus, in the *Bueckner* case discussed previously, Bueckner, the defendant who killed the Hamels' Dalmatian and Australian shepherd, had been prosecuted criminally and ordered to pay the Hamels \$375 in restitution. Bueckner asserted the defense of accord and satisfaction in the civil case, arguing that the restitution he paid to the Hamels discharged any obligation he might owe them.⁵⁷ The court disagreed but did offset the amount of compensatory damages awarded by the amount of restitution. There is no indication how the criminal court arrived at the \$375 for restitution.

Similarly, restitution is also common in criminal cases where an owner's dog injures or kills another's pet, the court finds that the dog is "dangerous," and orders the owner of the dog to pay restitution to the other pet's owner. In these cases the dog is generally impounded by animal control and the court further orders the owner to pay restitution to animal control for the expenses incurred while the dog was impounded.⁵⁸ The restitution here is clearly designed to compensate animal control.

Restitution is also used to reflect specific relief to remedy in-kind. Thus when a person has wrongful possession of an animal, the owner may sue the person for replevin and seek return of the animal in res-

titution.⁵⁹ If the owner of the animal uses the animal for breeding, racing, or showing, for example, the owner can recover for the lost income he would have realized during the time he was not in possession of the animal under compensatory damages as described previously. Furthermore, the owner may have a claim for disgorgement of profits against the defendant, if the defendant, while in wrongful possession of the animal, gained a profit from the use of the animal.

IV. Other Specific Relief

A. Injunctions

Injunctive relief is an equitable specific remedy designed to avoid future harm. The majority of animal law cases in which injunctive relief is sought arise in the "public" law context under federal statutes or treaties, for example, the Endangered Species Act.⁶⁰ Similarly, injunctive or declaratory relief is a common remedy sought under the Administrative Procedure Act to seek compliance or enforcement of the Animal Welfare Act.⁶¹ Such cases are beyond the scope of this text.⁶²

Injunctive relief is equitable and thus requires a showing that the legal remedy is inadequate. For injunctions involving property, the issue is whether the property is "unique." Thus, in injunctive relief cases involving animals, the primary issue will be whether the court deems the animal "unique."

Parties may frequently seek preliminary injunctive relief to maintain the status quo and avoid irreparable harm during the pendency of the lawsuit. The equitable criteria for granting preliminary relief to a plaintiff are (1) strong likelihood of success on merits; (2) possibility of irreparable injury to plaintiff if the relief is not granted; (3) balance of hardships favoring plaintiff; and (4) advancement of public interest.⁶³ Some courts consider the criteria more as a sliding scale or balancing test weighing the probable success on the merits and the balance of hardships to the parties.⁶⁴ Thus, if the plaintiff can show either a very strong case on the merits or severe irreparable harm, the court is more likely to award the preliminary relief. Irreparable harm involves more than mere substantial harm. Irreparable harm is harm that cannot be adequately compensated with monetary damages either because of the nature of the harm or because of the difficulty in calculating the damage accurately to compensate for the harm.

Typical cases involve Thoroughbred horses or purebred dogs for their return or to prevent their sale by another. In *Kinderhill Select Bloodstock, Inc. v. United States*,⁶⁵ the Internal Revenue Service seized Thoroughbred

horses from the owner as a levy for back taxes owed. The IRS had scheduled the sale of the horses and the owner sought a preliminary injunction preventing their sale until ownership of the horses had been determined. The owner successfully argued that the horses were unique because of the difficulty in assessing their fair market value and that, in fact, these specific horses were the horses he wanted and other horses would not adequately compensate him. The court agreed and held that the horses were indeed unique and thus the harm to the owner would be irreparable if they were sold. The court relied on cases where certain property such as works of art and historical artifacts were deemed unique.⁶⁶ The court nevertheless denied the preliminary injunction due to the owner's failure to demonstrate likelihood of success on the merits.⁶⁷

Similarly, in *Saunders v. Regeer*,⁶⁸ the court found that Misty, a pedigreed, registered, female Irish setter was unique and issued a preliminary injunction against the sale or removal of Misty pending trial. In a rather eloquent description of the value of dogs, the court stated:

There is no need to dwell upon the value of dogs to mankind, the seeing-eye dog to the blind, the dogs used in warfare, to carry food and messages under fire and through most hazardous conditions, those canines used to detect criminals, lost persons and to protect our property and, most importantly, the companionship they afford human beings, whether sick or well, young or old. Lord Byron in his "Inscription on the Monument of a Newfoundland Dog" attests to the undisputed value of a dog when he says,

"The poor dog, in life the firmest friend,
The first to welcome, foremost to defend."⁶⁹

In contrast, the court in *Wortz v. Patterson*⁷⁰ concluded that the controversy over the sale of Muffin, a trotting horse, was essentially financial. The court was persuaded by the facts here. Muffin's owner could have resolved the controversy by paying defendant some \$5,000 to avoid the horse's sale by the defendant. The court held that plaintiff was not entitled to an injunction here where she could regain title to Muffin "by settling her financial problems with the defendant."⁷¹

An interesting case involving wolf dog owners' request for a preliminary injunction is *Michigan Wolfdog Assoc., Inc. v. St. Clair County*.⁷² The owners of wolf dogs challenged the constitutionality of the Michigan Wolf-Dog Cross Act that defined all wolf dogs as dangerous; imposed limitations on ownership of wolf dogs, including sterilization, micro-

chipping, prohibition of transfer, and special enclosures for the dogs; and allowed officers to enter private property without a search warrant to seize such dogs, and kill them if the dog potentially exposed a human or other animal to rabies or injured a human or other animal.⁷³ The owners challenged the Act on the following grounds: void for vagueness and depriving plaintiff of adequate notice and opportunity for hearing in violation of due process, unreasonable search and seizure in violation of the Fourth Amendment, and discriminating against them in violation of equal protection under the law.⁷⁴ The issue of irreparable harm here did not turn on the uniqueness of the animal but rather on whether the owners or their dogs would suffer irreparable harm if the preliminary injunction enjoining enforcement of the Act was not issued. The owners here argued irreparable harm to their dogs arising from (1) forced sexual sterilization of the dog, (2) microchipping, and (3) harm from their economic inability to construct adequate facilities or transfer their dog to one who can. The court admitted that sterilization would cause irreparable harm to the dogs but that this harm was not outweighed by the threat of harm to the public from enjoining the statute along with the court's finding that the plaintiffs were unlikely to win on the merits.⁷⁵

Nuisance cases are the other classic cases for injunctive relief involving animals. Owners that allow their dogs to bark incessantly and at odd hours of the night, or fail to maintain their premises adequately, thus causing injury to their neighbors' well-being, may be found liable of creating a private nuisance.⁷⁶ The court will issue an injunction in such cases where the nuisance and resulting injury is proven. However, "equity will not interfere where the apprehended nuisance or injury is doubtful, contingent, conjectural, or merely problematic."⁷⁷

B. Specific Performance

Many animal cases involve contracts that address, for example, the purchase and sale, breeding, care, training, or burial of an animal. Basic contract principles apply. Specific performance is an equitable remedy and requires a showing that the legal remedy is inadequate; in other words, when the contract involves property deemed "unique chattel." As in the cases for injunctive relief, the primary issue in specific performance cases involving animals is whether the court deems the animal to be "unique chattel."

In *Harris v. Barcroft*,⁷⁸ defendant purchased Dobra, a Doberman pinscher, and "agreed that plaintiff would have the first pick and one half of the puppies from the first two litters and the right to select the stud for these breedings."⁷⁹ After problems arose with the breeding efforts,

plaintiff brought suit for specific performance and defendant countered requesting rescission of the contract. The appellate court disagreed with the trial court's finding that Dobra, of championship caliber, was not unique.⁸⁰ However, the court found that plaintiff came to equity with unclean hands after attempting to take Dobra illegally from defendant, and denied specific performance.

Similarly, the court in *Morris v. Sparrow*⁸¹ held that a certain horse, Keno, was unique. Sparrow filed suit for specific performance under a contract in which Morris had agreed to deliver Keno to Sparrow in consideration for Sparrow's work at Morris's cattle ranch. While Sparrow worked at the ranch, he broke and trained Keno in his spare time. The court found that "when one has made a roping horse out of a green, unbroken pony, such a horse would have a peculiar and unique value."⁸²

An interesting case involving a contract to train a race horse is *Finnegan v. Foraker*.⁸³ Finnegan owned a farm where he trained standard-bred racehorses. Foraker contracted with Finnegan to have full control over the horse for six months to train the horse; they would split the costs and prize winnings realized; and if the horse improved the agreement could be extended another year. Handsome Count, a trotter, was in poor shape when Finnegan took it. Finnegan cared for and trained Handsome Count, which won its third and sixth starts under Finnegan's guidance. Eventually, Finnegan turned the horse out for several weeks to rest and when it returned to racing it did not do well. Foraker demanded the horse's return and Finnegan refused. Foraker's wife then took Handsome Count in the predawn hours from Finnegan, and the Forakers gave the horse to another trainer. Finnegan filed suit for the return of the horse and an injunction forbidding anyone else to train it for at least one year pursuant to the contract.⁸⁴

The court first noted that the proper theory of the case was for specific performance under the contract together with incidental injunctive relief necessary for enforcement.⁸⁵ Foraker argued that equitable relief was improper as Finnegan had an adequate remedy at law, replevin, if he established legal right to his possession and that specific performance was inappropriate because the contract was for Finnegan's personal services. The court determined that "Finnegan bargained for a chance to realize his gain based upon the purse winnings of the horse[] under his control. . . . If the horse has been wrongfully taken from his control, then he is either deprived of the opportunity to establish the potential value of his services or, at best, his share of the winnings will be made to depend upon the abilities of another trainer. In neither event can the true value of his services be ascertained."⁸⁶ Quoting *Elliott v. Jones*, the court stated:

"[A] particular horse with unique or peculiar traits and qualities different from horses in general, and which has promises of development by training so as to become valuable for speed in racing contests, has a prospective but now unascertainable value, and, therefore, a contract respecting it is properly a subject for a decree for specific performance, because of the inadequacy of the legal remedies."⁸⁷ The court further stated that replevin was inadequate because the right to possession during the action requires the posting of a bond equivalent to the value of the property and "since a bond for the value of Handsome Count would have no relation to his potential purse-winnings, and . . . his potential monetary realization from the horse cannot be accurately determined while the animal is out of his possession,"⁸⁸ it is inadequate.

To summarize, an animal will be deemed unique property under many circumstances but it does depend upon the type of animal, its characteristics, and the owner's use of the animal. Generally, when the specific relief involves Thoroughbred horses or pedigreed dogs to be used for racing or breeding, the court will find the animal is unique. Moreover, if the person has a unique relationship with the animal, as for example Sparrow's relationship to Keno, or Finnegan's agreement relating to Handsome Count, the court will find the animal is unique and award specific equitable relief if otherwise warranted.

V. Attorneys' Fees and Ancillary Remedies

A. Attorneys' Fees

The American Rule is that each party bears the costs of their attorneys' fees. However, many state and federal statutes allow the prevailing party recovery of attorneys' fees and/or costs under certain circumstances, and certain contracts also allow for recovery of fees. Cases involving animals brought pursuant to these statutes are no different. Thus the availability of attorneys' fees is a function of the basis for the claim. For example, a prevailing dog owner's claim against a society for the prevention of cruelty to animals for wrongfully killing her dog filed under the civil rights statutes may recover attorneys' fees,⁸⁹ the prevailing dog owner in *Petco* whose dog escaped from the groomer and was found dead could recover reasonable attorneys' fees under breach of contract,⁹⁰ and a condominium owner's personal injury action against a dog owner whose dog injured her would have been entitled to the recovery of attorneys' fees in action to enforce governing documents of common interest development had she prevailed.⁹¹

The recovery is limited to reasonable attorneys' fees.⁹² The courts consider several factors to determine the reasonableness of the fees requested: (1) number of hours; (2) result obtained, (3) importance of the case, (4) amount involved, (5) intricacies of the facts or law, (6) expertise of counsel, (7) the contingent nature of the fee, and (8) the typical rate for similar counsel in the legal area and geographical region.⁹³ A typical case involving one's pet will likely not warrant a large attorneys' fee award as the importance of the case will be relatively slight, the amount at issue will be relatively small, as discussed previously, and the law and facts will be relatively simple.

However, there are cases where the fees awarded are quite substantial. For example, in *Petco*, the court found 45 hours at \$150 per hour a reasonable attorneys' fee even though the case was decided by default judgment. The attorney did have to draft pleadings, file motions, and conduct factual investigation and legal research into the availability of damages for the wrongful killing of a dog.⁹⁴ In *Vanier v. Ponsoldt*,⁹⁵ the court determined that \$88,814 was a reasonable amount for attorneys' fees and expenses for the vendor of an Arabian horse who sued the vendee for failure to make payments as agreed in the amount of \$155,555. The court found that the litigation was complicated, the witnesses and evidence were scattered throughout the country, and the record was voluminous. Similarly, in *Albritton v. McDonald*,⁹⁶ the court awarded \$2,000 in attorneys' fees against a seller who knowingly sold the purchaser a horse infected with equine infectious anemia ("swamp fever"), which then infected two other horses owned by the purchaser. The court awarded \$1,985 in compensatory damages but noted that there were six hearings, a trial that lasted two days, and numerous pleadings and briefs filed on appeal.

B. Ancillary Remedies

Ancillary remedies are remedies designed to enforce the primary remedy granted by the court. Thus, a contempt sanction is ancillary relief to enforce an injunction and garnishment or attachment of property is ancillary relief to enforce a damages award. There are no special considerations involved in animal cases. Of course since animals are property, an animal may be the target of attachment or levy to satisfy the owner's liability for damages. Thus in *Kinderhill Select Bloodstock, Inc.*,⁹⁷ discussed previously, the IRS seized the owner's Thoroughbred horses as levy on back taxes. In some situations, the animal may be considered exempt property pursuant to the state statute.

APPENDIX A

Selected Secondary Sources on Remedies in Animal Law Cases

Damages in General

- Bruce Wagman & Jayne DeYoung, *Actions Involving Injuries to Animals*, 90 AM. JUR. PROOF OF FACTS 3d 1, ch. II.B (Damages and Other Remedies).
- Robin Miller, *Damages for Killing or Injuring Dog*, 61 A.L.R.5th 635.
- Jay Zitter, *Measure, Elements and Amount of Damages for Killing or Injuring Cat*, 8 A.L.R.4th 1287.
- Jay Zitter, *Recovery for Damages for Emotional Distress Due to Treatment of Pets and Animals*, 91 A.L.R.5th 545.
- Susan Hankin, *Not a Living Room Sofa: Changing the Legal Status of Companion Animals*, RUTGERS J.L. & PUB. POL'Y 314, pt. III (Changes in Damage Awards) (Winter 2007).
- Margit Livingston, *The Calculus of Animal Valuation: Crafting a Viable Remedy*, 82 NEB. L. REV. 783 (2004).
- Debra Squires-Lee, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U.L. REV. 1059 (1995).

Noneconomic Damages for Loss of Animal

- Adam Karp, *Interference with Human-Companion Animal Relationship: Where "Use" = "Companionship" and "Loss of Use" = "Loss of Companionship,"* ABA-TIPS ANIMAL LAW COMM. NEWSL. 1 (Fall 2006).
- Victor Schwartz & Emily Laird, *Non-Economic Damages in Pet Litigation: The Serious Need to Preserve a Rational Rule*, 33 PEPP. L. REV. 227 (Jan. 2006).
- Elaine Byszewski, *Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and a Suggestion for Valuing Pecuniary Loss of Companionship*, 9 ANIMAL L. 215 (2003).
- William C. Root, *Man's Best Friend: Property or Family Member? An Examination of the Legal Classification of Companion Animals and Its Impact on Damages Recoverable for Their Wrongful Death or Injury*, 47 VILL. L. REV. 423 (2002).

- Geordie Duckler, *The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation*, 8 ANIMAL L. 199 (2002).
- Sonia Waisman & Barbara Newell, *Recovery of "Non-Economic" Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend*, 7 ANIMAL L. 45 (2001).
- Steven Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 ANIMAL L. 33 (1998).

Veterinary Malpractice

- Rebecca Huss, *Valuation in Veterinary Malpractice*, 35 LOY. U. CHI. L.J. 479 (Winter 2004).

Punitive Damages

- William Reppy, *Punitive Damage Awards in Pet-Death Cases: How do the Ratio Rules of State Farm v. Campbell Apply?*, 1 J. ANIMAL L & ETHICS 19 (May 2006).

APPENDIX B

List of Available Remedial Forms

- Motions for Preliminary Injunction*, 4A WEST'S FED. FORMS, DIST. COURTS-CIVIL § 5284, § 5285 (3d ed.).
- Affidavit in Support of Order to Show Cause (Containing Temporary Restraining Order) for Preliminary Injunction in Relation to Unique Chattel*, 4 WEST'S MCKINNEY'S FORMS CIVIL PRACTICE LAW AND RULES § 10:326 (N.Y.C.P.L.R. 7109).
- Complaint to Enjoin Destruction of Unique Property*, 21B AM. JUR. PL. & PR. FORMS REPLEVIN § 18.
- Complaint for Prejudgment Seizure & Restraining Order for Property in Immediate Danger of Destruction*, 21B AM. JUR. PL. & PR. FORMS REPLEVIN § 242.
- Counterclaim for Injunctive Relief for Return of Pedigreed Dog*, 7A ILL. CIV. PRAC. FORMS § 172:22.

Judgment Granting Specific Performance of Contract to Sell Personality, 22B AM. JUR. PL. & PR. FORMS SPECIFIC PERFORMANCE § 109.

Complaint under Americans with Disabilities Act Seeking Injunction to Admit Service Animal, 8 ILL. CIV. PRAC. FORMS § 189:4.

Notes

1. 151 Ohio App. 3d 741 (Oh. Ct. App. 2003).
2. *Id.* at 745, para. 18; *see also* Gluckman v. Am. Airlines, Inc. 844 F. Supp. 151 (S.D.N.Y. 1994).
3. Bueckner v. Hamel, 886 S.W.2d 368, 375 (Tex. App. 1994).
4. Nichols v. Sukaro Kennels, 555 N.W.2d 689, 692 (Iowa 1996).
5. Robin Miller, *Damages for Killing or Injuring Dog*, 61 A.L.R.5th 635 para. 11[a], [b] (citing cases including Nichols v. Sukaro Kennels, 555 N.W.2d 689 (Iowa 1996); Zager v. Dimilia, 524 N.Y.S.2d 968 (Village Ct. 1988); Burgess v. Shampooch Pet Indust., Inc. 131 P.3d 1248 (Kan. Ct. App. 2006)).
6. 719 A.2d 662 (N.J. Sup. Ct 1998).
7. *Id.* at 663.
8. *Id.* at 664.
9. *Id.*
10. Carbasho v. Musulin, 217 W. Va. 359, 361 n.3 (W. Va. 2005).
11. *See* Miller, *supra* note 5, ch. III.
12. *See, e.g.,* Quave v. Bardwell, 449 So. 2d 81, 84 (La. App. 1st Cir. 1984).
13. *See* Bueckner, 886 S.W.2d at 370-71.
14. *See* Petco Animal Supplies, Inc. v. Schuster, 144 S.W.3d 554, 568 (Tex. App. 2004).
15. Bueckner, 886 S.W.2d at 370.
16. *Id.* at 372; *see also* Mitchell v. Heinrichs, 27 P.3d 309 (Alaska 2001).
17. Petco, 144 S.W.3d at 558-59.
18. *See, e.g.,* LaPorte v. Assoc. Indep., Inc. 163 So. 2d 267 (Fla. 1964); Jankowski v. Preiser Animal Hosp., Ltd., 157 Ill. App. 3d 818 (1st Dist.), *appeal denied*, 117 Ill. 2d 544 (1987); Brousseau v. Rosenthal, 443 N.Y.S.2d 285 (NYC Civ. Ct. 1980); Stephens v. Target Corp., 482 F. Supp. 2d 1234, 1236 (W.D. Wash. 2007).
19. *See, e.g.,* Mieske v. Bartell Drug Co., 92 Wash. 2d 40 (Wash. 1979); Brown v. Frontier Theaters, 369 S.W.2d 299 (Tex. 1963).
20. *See* Petco, 144 S.W.3d at 563.
21. *See* Adam Karp, *Interference with Human-Companion Animal Relationship: Where "Use" = "Companionship" and "Loss of Use" = "Loss of Companionship,"* ABA-TIPS ANIMAL LAW COMM. NEWSL. 1 (Fall 2006).
22. *See, e.g.,* Stettner v. Graubard, 368 N.Y.S.2d 683 (Town Ct. 1975); Pickford v. Masion, 98 P.3d 1232 (Wash. Ct. App. Div. 2 2004); Carbasho v. Musulin, 618 S.E.2d 368 (W. Va. 2005).
23. *See generally* Debra Squires-Lee, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U.L. REV. 1059 (1995).

24. *Petco*, 144 S.W.3d at 565–66.
25. *Id.* at 566.
26. *Id.*
27. See *Depouw v. Bichette*, 833 N.E.2d 744, 747–48 (Ohio App. 2d Dist. 2005) (citing *Kerns v. Lewis*, 249 Mich. 27, 227 N.W. 727 (1929); *Keeth v. State*, 618 So. 2d 1154 (La. App. 1993)).
28. See, e.g., *Kaiser v. US*, 761 F. Supp. 150, 156 (D.D.C. 1991).
29. See RESTATEMENT (SECOND) OF TORTS § 46(1).
30. *Burgess v. Taylor*, 44 S.W.3d 806 (Ky. Ct. App. 2001); *Richardson v. Fairbanks N. Star Borough*, 705 P.2d 454 (Ala. 1985); *Knowles Animal Hosp. v. Wills*, 360 So. 2d 267 (Fla. App. 3d Dist. 1978); *La Porte v. Assoc. Indep. Inc.*, 163 So. 2d 267 (Fla. 1964); see also William Reppy, *Punitive Damage Awards in Pet-Death Cases: How Do the Ratio Rules of State Farm v. Campbell Apply?*, 1 J. ANIMAL L & ETHICS 19, pt. II (May 2006); Elaine Byszewski, *Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and a Suggestion for Valuing Pecuniary Loss of Companionship*, 9 ANIMAL L. 215 (2003).
31. 63 Haw. 557 (1981).
32. *Rodrigues v. State*, 472 P.2d 509 (1970).
33. *Id.* at 523 (dissent).
34. HAW. REV. STAT. § 663–8.9 (1986).
35. *Petco*, 144 S.W.3d at 562; *Corso v. Crawford Dog and Cat Hosp., Inc.* 415 N.Y.S.2d 182 (NYC Civ. Ct. 1979). *But see Langford v. Emergency Pet Clinic*, 96 Ohio App. 3d 174 (8th Dist. Cuyahoga County), *dismissed, appeal not allowed*, 71 Ohio St. 3d 1405 (Ohio 1994).
36. See *Gilmore v. SCI Tex. Funeral Servs. Inc.*, 234 S.W.3d 251, 256–57 (Tex. 2007) (citing *Freeman*, 183 S.W.3d at 890).
37. CONN. GEN. STAT. § 22-351a(a); see also TENN. CODE ANN. 44-17-403(b).
38. 510 ILL. COMP. STAT. § 70/16.3.
39. CONN. GEN. STAT. § 22-351a(b).
40. 510 ILL. COMP. STAT. § 70/16.3.
41. TENN. CODE ANN. § 44-17-403(a)(1).
42. CONN. GEN. STAT. § 22-351a(b).
43. 510 ILL. COMP. STAT. § 70/16.3.
44. *Id.*
45. TENN. CODE ANN. § 44-17-403(a)(1), (d).
46. 510 ILL. COMP. STAT. § 70/16.3.
47. CONN. GEN. STAT. § 22-351a(c); 510 ILL. COMP. STAT. § 70/16.3.
48. CONN. GEN. STAT. § 22-351a(d).
49. CONN. GEN. STAT. § 22-351a(d); TENN. CODE ANN. § 44-17-403(e).
50. *Petco*, 144 S.W.3d at 566, *LaPorte*, 163 So. 2d at 267.
51. *Grimshaw v. Ford Motor Co.*, 174 Cal. Rptr. 348 (Cal. App. 4th Dist. 1981).
52. *BMW v. Gore*, 517 U.S. 559 (1996); *State Farm v. Campbell*, 538 U.S. 408 (2003).

53. *State Farm*, 538 U.S. at 425.
54. Geordie Duckler, *The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation*, 8 ANIMAL L. 199, 213 (2002).
55. See generally Reppy, *supra* note 30, at 47–48.
56. MASS. GEN. LAWS ANN. ch. 140, § 159.
57. *Bueckner*, 886 S.W.2d at 372–73.
58. See Chapter 10, Criminal Law.
59. See, e.g., *Long v. Noah's Lost Ark, Inc.*, 158 Ohio App. 3d 206 (Ohio App. 7th Dist. 2004); *Buczkwicz v. Lubin*, 80 Ill. App. 3d 200 (Ill. App. 3d Dist., 1980).
60. See, e.g., *Natural Res. Def. Council v. Winter*, 502 F.3d 859 (9th Cir.), *stay vacated by* 508 F.3d 885 (9th Cir. 2007). The Supreme Court ultimately reversed in *Winter v. Natural Res. Def. Council*, 128 S. Ct. 365 (2008).
61. See, e.g., *Animal League Def. Fund v. Veneman*, 496 F.3d 826 (9th Cir. 2006) (seeking declaration that the U.S. Department of Agriculture's decision not to adopt a policy providing guidance to entities regulated under the Animal Welfare Act in how to ensure the psychological well-being of primates under their care was arbitrary and capricious).
62. These cases also raise difficult standing issues, also beyond the scope of this text.
63. Judge Posner describes the test as follows: Issue a preliminary injunction when $P \times H_p > [(1-P) \times H_d] (+/-) H_{pi}$ where: P = probability of success, H_p = irreparable injury to P if injunction denied, H_d = irreparable injury to D if injunction granted, and H_{pi} = injury to public or third parties. See Barbara Ann White, *Risk-Utility Analysis and the Learned Hand Formula: A Hand That Helps or a Hand That Hides?*, 32 ARIZ. L. REV. 77, 121 n.236 (1990) (citing *Am. Hosp. Supply Corp. v. Hosp. Products Ltd.*, 780 F.2d 589, 593 (7th Cir. 1986)).
64. See generally Charles Wright, Arthur Miller, & Mary Kay Kane, *Grounds for Granting or Denying a Preliminary Injunction*, 11A FED. PRAC. & PROC. CIV. 2D § 2948.
65. 835 F. Supp. 699 (N.D.N.Y. 1993).
66. *Id.* at 700.
67. *Id.* at 701.
68. 271 N.Y.S. 2d 788 (N.Y. 1st Dist. 1966).
69. *Id.* at 791.
70. 1981 WL 15139 (Del. Ch. 1981).
71. *Id.* at *1.
72. 122 F. Supp. 2d 794 (E.D. Mich. 2000).
73. MICH. COMP. LAWS § 287.1001–.1023 (2000).
74. *Michigan Wolfdog*, 122 F. Supp. 2d at 797–98.
75. *Id.* at 808–09. See also *Walsh v. St. Mary's Church*, 670 N.Y.S.2d 220 (Sup. Ct. App. Div. 3rd Dept. 1998) (the threat of removal of the remains of family pets constitutes irreparable harm).

76. See generally Phillip White, Jr., *Keeping of Domestic Animal As Constituting Public or Private Nuisance*, 90 A.L.R.5th 619.
77. See Ann Melley, 58 AM. JUR. 2D *Nuisances* § 342 (citing *Missouri v. Illinois*, 180 U.S. 208 (1901)).
78. 543 P.2d 656 (Or. 1975) (*en banc*).
79. *Id.* at 656.
80. *Id.* at 657.
81. 287 S.W.2d 583 (Ark. 1956).
82. *Id.* at 585.
83. 1977 WJ..5178 (Del. Ch. 1977).
84. *Id.* at *3.
85. *Id.*
86. *Id.* at *4.
87. *Id.* (quoting *Elliott v. Jones*, 101 A. 872, 873 (1917)).
88. *Id.*
89. *Snead v. Soc'y for Prevention of Cruelty to Animals of Pa.*, 929 A.2d 1169 (Pa. Super. 2007).
90. *Petco*, 144 S.W.3d at 567.
91. *Chee v. Amanda Goldt Prop. Mgmt.*, 50 Cal. Rptr. 3d 40, 50–56 (Cal. App. 1st Dist. 2006) (pursuant to CAL. CIV. CODE § 1354(f)(2003)).
92. See generally Jane Draper, *Excessiveness or Inadequacy of Attorney's Fees in Matters Involving Commercial and General Business Activities*, 23 A.L.R.5th 241 (originally published in 1994).
93. *Id.* 2[b]; see also *Petco*, 144 S.W.3d at 567.
94. *Petco*, 144 S.W.3d at 567.
95. 251 Kan. 88 (Kan. 1992) (applying Kentucky law).
96. 363 So. 2d 925 (La. App. 2d Cir. 1978).
97. 835 F. Supp. 699 (N.D.N.Y. 1993).