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## How Much Will You Receive in Damages From the Negligent or Intentional Killing of Your Pet Dog or Cat?

Peter Barton

Frances Hill

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HOW MUCH WILL YOU RECEIVE IN DAMAGES FROM  
THE NEGLIGENT OR INTENTIONAL KILLING  
OF YOUR PET DOG OR CAT?

PETER BARTON\* and FRANCES HILL\*\*

I. INTRODUCTION

When a person's pet cat or dog is killed, either intentionally or negligently, there is a problem in computing the amount of damages. Frequently, the damages are limited to the market value of the animal, which is usually so low that it is not worthwhile for the owner to sue the offending party. However, some states allow the actual or intrinsic value of the pet to be the measure of damages. This approach includes an amount for the relationship between the owner and his or her pet. Other states award damages based on the emotional distress suffered by the pet owner as a result of the animal's death. Finally, punitive damages are permitted in some jurisdictions, if the pet's death was caused by intentional or malicious conduct. This article will explain and evaluate each of the preceding valuation methods.<sup>1</sup>

II. MARKET VALUE AS THE MEASURE OF DAMAGES

A. Introduction

Most states limit the recovery for the death of a pet cat or dog to the animal's market value at the time of death.<sup>2</sup> All states which have reported cases on damages for a pet's death classify a pet as personal property,<sup>3</sup> which

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\* Assistant Professor of Accounting, University of Wisconsin-Whitewater.

\*\* Associate Professor of Finance and Business Law, University of Wisconsin-Whitewater.

1. Although over 61% (or 52.5 million) of American households have animals as pets, very few articles have been written on this topic. Marcotte, *More Than a Pet Project*, A.B.A. J., Jan. 1989, at 26, 35. No law review articles have been written on damages for the death of pets or veterinarian malpractice in the last 15 years. In addition to the short *American Bar Association* article cited in this note, there was an article in *Trial* in 1982. Lindensmith, *Veterinarian Malpractice: How Much was that Doggy in the Window?*, TRIAL, Jan. 1982, at 48. Yet pets have become more important in people's lives in recent years, especially in households where people live alone or do not have children. Manges, *For Today's Pampered Pets, It's a Dog-Eat-Steak World*, Wall St. J., May 18, 1989, at B1, col. 3. Also during the last 15 years, there have been several important cases. Most of the cases discussed in this article were litigated since 1974.

2. Lindensmith, *supra* note 1, at 50.

3. The common law did not consider pets to be property since they were kept merely

is the underpinning for the market value approach.<sup>4</sup> Personal property is fungible property; one three-year-old beagle in good health is as good as another, just as one three-year-old Sony nineteen-inch television in good condition is as good as another. Therefore, awarding damages equal to market value makes the owner whole, allowing him or her to purchase a replacement. The fact that the item of personal property is a living creature, a pet that has a unique relationship with his or her owner that has developed over a period of time, is irrelevant, according to the market value theory.<sup>5</sup>

### B. Representative Cases

Typical of the market value approach to pet valuation is *Richardson v. Fairbanks North Star Borough*.<sup>6</sup> Unable to find their dog, Wizzard, the Richardsons called the local animal shelter. They were told that the shelter had their dog and that they could reclaim him between 8:00 a.m. and 5:00 p.m. According to their testimony, the Richardsons went to the shelter after work and arrived at 4:50 p.m. They saw their dog chained in the back of the shelter. Stating that the shelter was already closed, the employees refused to admit the Richardsons or to give them their dog. The next day the Richardsons left work early and again went to the shelter. They were told that their dog had been killed.<sup>7</sup> The killing violated an ordinance that required the shelter to keep an animal at least three days before killing it. The director of the shelter admitted that he had not kept adequate records on the animals. Rejecting an offer of \$2000, the Richardsons sued the shelter, which is a government facility.<sup>8</sup>

The trial court awarded the Richardsons \$300 in damages. The

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for pleasure, not for food or work. Therefore, they had no value, and consequently, it was not illegal to steal them. M. RANDOLPH, *DOG LAW*, ch. 1, at 9 (1988). Pets were given the legal status of personal property by statute. Note, *Liability for the Injury and Destruction of Canines*, 26 U. FLA. L. REV. 78, 79 (1973). The language frequently used to refer to pets, "it," reinforces this property conception.

4. Note, *supra* note 3, at 86.

5. Compared to other personal property, animals are clearly unique. They are alive, must be fed, watered, and cared for in order to survive as pets. Also, they move of their own volition. Note, *Animal Law in California*, 12 PEPPERDINE L. REV. 567, 569 (1985). Perhaps the most distinctive quality of pets is their ability to give and receive affection, which makes them very different from inanimate objects. According to an animal rights litigator, pets are "living creatures which feel cold, hunger, pain and joy, and are capable of giving love and affection to their owners, and seek the same in return." Marcotte, *supra* note 1, at 35. The importance of pets to people's mental health is greater than the contribution that inanimate objects make to a person's well-being. M. RANDOLPH, *supra* note 3, ch. 1, at 3-9.

6. 705 P.2d 454 (Alaska 1985).

7. *Id.* at 455.

8. *Id.*

Richardsons appealed, arguing that the jury should have been allowed to consider Wizzard's value as a pet, their emotional pain and suffering, and punitive damages.<sup>9</sup> The Supreme Court of Alaska unanimously affirmed the trial court's decision. The court held that since dogs are legally items of personal property, American courts generally limit damages in cases where a dog has been wrongfully killed to the market value of the dog at the time of death.<sup>10</sup> The punitive damages claim was dismissed because the animal shelter is a municipal facility, and Alaskan law does not allow the recovery of punitive damages from a municipality.<sup>11</sup> The emotional distress claim was rejected because, although the tort of intentional infliction of emotional distress is allowed in Alaska, the trial court determined that the Richardsons' emotional distress was not sufficiently severe.<sup>12</sup>

The market value approach was also used in *Julian v. DeVincent*.<sup>13</sup> DeVincent's large dog went onto Julian's porch and killed his small dog. The trial court awarded damages of \$261.50, consisting of the following: surgery, \$49.00; burial, \$29.70; sentimental value and mental cruelty to the Julian children, \$100; and damage to the upholstery of Julian's car while transporting his dog to the veterinarian, \$75.<sup>14</sup> The court of appeals reversed the trial court's ruling, holding that Julian did not prove the market value of the dog.<sup>15</sup> Also, the court of appeals held that "the general rule is that damages for sentimental value or mental suffering are not recoverable."<sup>16</sup> Therefore, Julian received no damages.

### C. How to Compute Market Value

Finding an accurate method to compute the market value of a pet frequently poses a problem. In *Demeo v. Manville*,<sup>17</sup> Manville negligently killed Demeo's one year old dog with his car. The trial court awarded

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9. *Id.* at 455-56.

10. *Id.* at 456. Since the Richardsons rejected a settlement offer of \$2000 and were awarded only \$300 at trial, the court awarded the defendant costs and attorney's fees totalling \$3763. *Id.* at 455. This case reveals, more than any other in this article, the inadequacies of the market value theory.

11. *Id.* at 456 n.1; see *infra* text accompanying notes 158-92.

12. 705 P.2d at 456-57; see *infra* text accompanying notes 127-36.

13. 155 W. Va. 320, 184 S.E.2d 535 (1971).

14. *Id.* at 321, 184 S.E.2d at 535. An interesting point about this list is that the sentimental value and the mental cruelty combined total only \$25 more than the damage to the upholstery!

15. *Id.* at 322, 184 S.E.2d at 536.

16. *Id.*

17. 68 Ill. App. 3d 843, 386 N.E.2d 917 (1979).

Demeo \$500 in damages. The court of appeals affirmed, holding that "the trier of fact should be allowed to consider the dog's value based on the evidence of its qualities as well as commercial value and loss of services."<sup>18</sup> Demeo testified that she had paid \$200 for the dog when he was a pup, and the dog had won first prize in four dog shows.<sup>19</sup>

Another market value case, *Stettner v. Graubard*,<sup>20</sup> expanded on the factors used in determining market value. Stettner sued for the amount of the veterinary bills and for the care of her dog who was injured due to Graubard's negligence.<sup>21</sup> These bills totaled \$220. Graubard argued that the damages could not exceed the dog's market value, which is the original cost to the owner minus depreciation. The court agreed that market value is the correct measure of damages in New York, but it held that cost is only one of the factors considered in computing the market value of a pet.<sup>22</sup> The court recognized "other relevant factors to be considered, in addition to purchase price, include the dog's age, health, breed, training, usefulness, and any special traits or characteristics of value."<sup>23</sup> The depreciation should not be considered, since "a good dog's value increases rather than falls with age and training."<sup>24</sup> The court awarded Stettner \$200.<sup>25</sup> Thus, the plaintiff can increase his or her recovery by proving the items specified by the court and adding them to the original cost in order to arrive at the market value.

The problem with market value is that the damages are usually too low to justify bringing suit. An exception to this general rule is found in *Quave v. Bardwell*,<sup>26</sup> where the Louisiana Court of Appeals affirmed an award of \$2500 in market value damages. Bardwell killed Quave's dog with a shotgun merely because the dog was barking. The dog had a friendly disposition and did not threaten Bardwell in any way.<sup>27</sup> In addition, Bardwell had maliciously killed two other dogs and had been convicted of

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18. *Id.* at 846, 386 N.E.2d at 918.

19. *Id.* at 846, 386 N.E.2d at 918-19.

20. 82 Misc. 2d 132, 368 N.Y.S.2d 683 (Town Ct. 1975).

21. *Id.* at 132, 368 N.Y.S.2d at 684. It is not clear from the opinion whether or not the dog died from the injuries; however, the factors specified by the court in computing market value are the same ones that would be used if the dog did die.

22. *Id.* at 133, 368 N.Y.S.2d at 684.

23. *Id.* at 133, 368 N.Y.S.2d at 685.

24. *Id.*

25. *Id.*

26. 449 So. 2d 81 (La. Ct. App. 1984).

27. *Id.* at 82-83.

cruelty to animals.<sup>28</sup> All of these factors may have influenced the court in determining the amount of the award. Quave had paid \$200 for the dog, who was three years old when killed. The court allowed expenses incurred in taking care of the dog during the years Quave owned him, money she could have made with the dog at stud, and the replacement cost of purchasing another dog.<sup>29</sup> Clearly, the court's inclusion of not only past actual costs, but also future speculative costs, is an expansion of the market value approach.

#### D. Evaluation of the Market Value Approach

Usually courts use the market value approach to limit damages. Although judges have allowed various factors to be considered in the computation of damages in these market value cases, damages were nominal in all of them except for *Quave*. In *Quave*, unlike the other cases, an individual with a history of cruelty to animals intentionally killed a pet without justification.<sup>30</sup> Therefore, *Quave* would probably not be a viable precedent for the amount of damages if the killing was due to negligence or gross negligence. Conceptually, market value is unsupportable if one considers the relationship of two living beings, the pet and his or her owner, as unique.<sup>31</sup> One commentator, finding the traditional (market value) view to be "archaic,"<sup>32</sup> reasoned that since pets are frequently an integral part of the family in our present urban society, the market value approach must be abandoned.

What the . . . courts must now recognize is that the loss of a pet can be much more than the loss of a piece of property; that it is often the loss of a child-surrogate, a child's playmate, a companion in old age. It is the value of this relationship that must be measured, not the replacement value of the pet in the market place, for the simple reason that, in many instances, there is no replacement for this unique being.<sup>33</sup>

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28. *Id.* at 83-84.

29. *Id.* at 84. The court appears to be allowing an amount for the cost of the dog twice. The original cost of \$200 and the replacement cost are both included in the \$2500 award. *Id.*

30. See *supra* text accompanying notes 26-29.

31. Note, *supra* note 3, at 86-87.

32. Note, *Veterinarians at Fault: Rare Breed of Malpractitioners*, 7 U.C. DAVIS L. REV. 400, 401 (1974).

33. *Id.* at 408.

## III. ACTUAL OR INTRINSIC VALUE

## A. Introduction

Realizing that many pet cats and dogs have little or no market value and that there is a special quality to the relationship between a pet and his or her owner, some courts have awarded damages based on the actual or intrinsic value of the pet. In *Brousseau v. Rosenthal*,<sup>34</sup> a widow left her healthy eight-year-old dog at a kennel for boarding. When she returned to pick up her dog two weeks later, she was told that the dog had died.<sup>35</sup> The kennel was liable for the death, but the dog had no ascertainable market value since he was eight years old and a mixed breed.<sup>36</sup> The court held that the absence of a market value does not necessarily limit damages to a nominal amount. In addition, the fact that the damages cannot be calculated with precision, regardless of the approach, does not prevent the owner from recovering.<sup>37</sup>

New York law does not allow for the recovery of damages for the emotional value of an animal to his or her owner, but damages can be based on the actual or intrinsic value of the animal to the owner. The actual or intrinsic value *includes loss of companionship*.<sup>38</sup> Thus the court held that the loss of the animal as a companion *can* be an element of the damages, but the emotional value of the animal to his or her owner cannot be used in the computation of damages. Since companionship is an emotional attachment, this appears to be a distinction without a difference. The court found that Brousseau had suffered "a grievous loss" from the death of her pet dog.<sup>39</sup> An amount can also be included for protective value, since the dog was a watchdog.<sup>40</sup> Similar to the market value approach, the actual value increases as the dog grows older. Concluding that "to the meager extent that money can make her whole," the court awarded Brousseau \$550.<sup>41</sup> Clearly, this judge was sympathetic to pet owners. This sympathy, or the lack of it, is itself a factor in determining the amount of damages awarded.<sup>42</sup>

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34. 110 Misc. 2d 1054, 443 N.Y.S.2d 285 (Civ. Ct. 1980). Only one of the commentators discusses actual or intrinsic value. M. RANDOLPH, *supra* note 3, ch. 9, at 10-19. This is because all of the cases applying this approach to pets were litigated too recently for the articles on damages in pet cases, most of which were written from 1973-82.

35. 110 Misc. 2d at 1054, 443 N.Y.S.2d at 285.

36. *Id.* at 1055, 443 N.Y.S.2d at 286.

37. *Id.*

38. *Id.* at 1056, 443 N.Y.S.2d at 286.

39. *Id.* at 1055, 443 N.Y.S.2d at 286.

40. *Id.* at 1056, 443 N.Y.S.2d at 286-87.

41. *Id.* at 1056, 443 N.Y.S.2d at 287.

42. In several of the cases discussed in this article, the judge used language that was

### B. Actual or Intrinsic Value Difficult to Determine

In *Zager v. Dimilia*,<sup>43</sup> the court also used the actual value to the owner or the intrinsic value as the measure of damages. A trial court awarded \$10 in market value damages for injuries sustained by Zager's dog, Tucker, when attacked by Demilia's dog. Tucker, a mixed breed, was old, arthritic, and hearing-impaired.<sup>44</sup> The appellate court reversed and ordered the trial court to use the actual or intrinsic value of the dog.<sup>45</sup>

On remand, Zager testified that the following items should be considered in computing intrinsic value: the veterinarian expenses for treating Tucker, the original cost of the dog, the dog's sterilization, the time Zager's family spent training him, his value as a watchdog, and the "value of the emotional bond between the dog and members of plaintiff's family."<sup>46</sup> Concerning the emotional bond, the court held that although sentiment cannot be considered in calculating damages, the relationship between a pet and his or her owner(s) "does have value separate and distinct from sentiment . . . ."<sup>47</sup>

The problem is determining what this relationship is worth. The court recognized "it is impossible to reduce to monetary terms the bond between man and dog, a relationship which has been more eloquently memorialized in literature and depicted on the motion picture screen."<sup>48</sup> The court expressed frustration at being unable to determine the actual or intrinsic value of Tucker. This frustration is reflected by the court's belief that "cases cited in the appellate term's decision . . . do not offer much guidance in

very understanding and supportive of the relationship between pets and their owners. See *infra* text accompanying notes 85-87 and 119-21. While it is reasonable to expect that the judge's values influence the outcome of the case, these examples suggest that the amount of damages depends on the judge's particular feelings about pets. One would prefer to rely on the law rather than the judge's personality. However, it is important to note that of the four cases with the most dramatic language praising pets, arguably only in one case, *La Porte*, were damages large enough to justify bringing the suit. See *infra* text accompanying notes 75-87. Also, the largest award, occurred in *Knowles*, which contained no such florid language. See *infra* text accompanying notes 88-95.

43. 138 Misc. 2d 448, 524 N.Y.S.2d 968 (Village Ct. 1988).

44. *Id.* at 449, 524 N.Y.S.2d at 969. A mixed breed, older pet has little or no market value, as this case illustrates. This point is also made by one of the commentators. Note, *supra* note 3, at 87 n.95.

45. 138 Misc. 2d at 448, 524 N.Y.S.2d at 969.

46. *Id.*

47. *Id.* The distinction between sentiment and the owner-pet relationship is the same distinction made by the court in *Brousseau*, another New York case, eight years earlier. See *supra* text accompanying notes 34-42. Also, sentiment and the relationship between the owner and his or her pet are elements of *property* damage, not separate causes of action. This distinction is clarified in *Jankoski*. See *infra* notes 54-63 and accompanying text.

48. 138 Misc. 2d at 450, 524 N.Y.S.2d at 969.



estimating Tucker's value to the plaintiff."<sup>49</sup> In addition, "[h]ere, the age, health, and traits of Tucker do not provide an adequate benchmark of Tucker's value, 'intrinsic' or otherwise."<sup>50</sup>

The court concluded that the reasonable veterinary expenses in treating Tucker were the best measure of damages. The actual amount of the veterinarian expenses were not stated in the court's opinion, and the only proof of these expenses submitted by Zager was an unitemized bill indicating a past due amount.<sup>51</sup> The court awarded damages of \$300.<sup>52</sup> Clearly, the court is correct in emphasizing that it is difficult to place a dollar value on an emotional relationship between a pet and his or her owner. However, at a minimum, the award should be sufficient to pay an attorney and leave an amount for the pet owner. Three thousand dollars appears to be a minimal amount in 1989 dollars. One attorney who practices animal law suggested \$10,000 as a reasonable amount.<sup>53</sup>

*C. Actual or Intrinsic Value a Measure of Property Damages,  
Not an Independent Cause of Action*

In *Jankoski v. Preiser Animal Hospital*,<sup>54</sup> the court of appeals held that where property has no market value, the "actual value to the plaintiff" should be used to compute damages. The Jankoski's pet German shepherd died from a negligently administered anesthetic. They sought to recover damages for "the loss of companionship they experienced as a result of the dog's death."<sup>55</sup> The trial court dismissed their complaint for failing to state a cause of action, and the court of appeals affirmed.<sup>56</sup>

The court agreed that loss of companionship can be a cause of action in a wrongful death case or in the case of injured *persons*, but Illinois law does not allow the loss of the companionship of a *dog* to be an independent cause of action.<sup>57</sup> A dog is an item of personal property, and the measure

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49. *Id.* The difficulty in determining the value of the relationship between Tucker and his owner was emphasized fourteen years earlier by one of the commentators, who emphasized the uniqueness of each pet. Note, *supra* note 32, at 408.

50. 138 Misc. 2d at 450, 524 N.Y.S.2d at 969.

51. *Id.* at 450, 524 N.Y.S.2d at 970.

52. *Id.* at 450, 524 N.Y.S.2d at 971.

53. Marcotte, *supra* note 1, at 35.

54. 157 Ill. App. 3d 818, 510 N.E.2d 1084 (1987).

55. *Id.* at 818, 510 N.E.2d at 1085.

56. *Id.* at 821, 510 N.E.2d at 1087.

57. *Id.* at 820, 510 N.E.2d at 1085-86. One commentator has suggested that courts should extend the scope of wrongful death statutes by awarding pet owners damages for the mental suffering experienced by the pet owner. Note, *supra* note 32, at 411. "Since, psychologically, a pet represents an emotional investment by the owner similar to that by

of damages is its fair market value. If personal property has no fair market value, the plaintiff is allowed to prove the actual or intrinsic value of the property in order to avoid nominal damages. Heirlooms, photographs, trophies, and pets are items of personal property with little or no market value, but with a greater actual or intrinsic value to the owner.<sup>58</sup> Analogously, the court held that "an element of sentimental value" of the property (the pet) to the owner could be part of the actual value.<sup>59</sup> Therefore, the Jankoskis could amend their complaint to state a cause of action for *property damage* instead of the loss of the companionship of their pet dog.<sup>60</sup> The recovery would be limited, but asking for damages for a personal property loss would be an acceptable cause of action.<sup>61</sup>

The Jankoskis "expressly rejected any sort of limited recovery for property damage," and lost the case.<sup>62</sup> Realizing that their recovery would probably be in the \$400-\$700 range, they apparently decided that trying to change the law was more important than receiving such a nominal amount for "damage to personal property."<sup>63</sup> The Jankoskis may have believed that the relationship between two living creatures, person and pet, is the crucial loss when a pet is killed and that they should have been compensated for that loss.

#### D. The Rationale for the Actual or Intrinsic Value Approach

Since the actual or intrinsic value gives some recognition to the importance of the relationship between a pet and his or her owner, it is worthwhile to examine a case which helps to clarify this valuation approach, even though the case does not involve pets. In *Mieske v. Bartell Drug Company*,<sup>64</sup> the defendant negligently lost thirty-two rolls of Mieske's

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a parent in a child, courts could conceivably bring a pet within the ambit of the words 'child' and 'ward' usually found in these statutes." *Id.* at 411-12. The Jankoskis are essentially asking the Illinois courts to include the death of their dog under the Illinois Wrongful Death Act. *Jankoski*, 157 Ill App. 3d at 820, 510 N.E.2d at 1085-87.

58. *Id.* at 820-21, 510 N.E.2d at 1086.

59. *Id.* at 821, 510 N.E.2d at 1087. The court is following the New York cases here. *See supra* text accompanying notes 34-52. An *apparent* difference is that the New York courts did not allow sentimental value, whereas the court in *Jankoski* allowed it. However, this is merely a semantic difference. The courts in both states are allowing the owner's loss of companionship of the pet as an element of a cause of action for property damage. 157 Ill. App. 3d at 820-21, 510 N.E.2d at 1087.

60. *Id.* at 819, 510 N.E.2d at 1085.

61. *Id.* at 821, 510 N.E.2d at 1087. The court does not state *why* the award would be limited. *Id.*

62. *Id.*

63. *See supra* text accompanying notes 34-52.

64. 92 Wash. 2d 40, 593 P.2d 1308 (1979).

movie film that contained pictures of his family and friends covering several decades. No duplicates existed.<sup>65</sup> Bartell wanted to limit damages to the cost of thirty-two rolls of blank film.<sup>66</sup> The trial court jury awarded damages of \$7500, and the Supreme Court of Washington affirmed.<sup>67</sup>

Evaluating the offer of blank film as a remedy, the supreme court determined that blank film "is not what plaintiffs lost."<sup>68</sup> Instead, they lost a visual record of their lives and the lives of their friends and relatives.<sup>69</sup> There is *no* market value because the lost films cannot be replaced. Therefore, *the plaintiffs cannot be made whole*.<sup>70</sup> In these circumstances, damages should be awarded based on "the value to the owner, often referred to as the intrinsic value of the property."<sup>71</sup>

Since such damages contain a subjective element, they are difficult to measure. This subjective element is sentiment. The court's explanation of sentimental value, which is the key to establishing actual or intrinsic value, is clearer than the explanations contained in the pet cases. "Sentimental value" meaning "feeling" or "emotion" is considered in computing actual or intrinsic value, but value based on "indulging in feeling to an unwarranted extent" is not.<sup>72</sup> Applying this distinction to the instant case allows the damage award to include anger and sadness at the loss of the film, since a reasonable person of normal sensibility would experience such an emotional reaction. However, regarding the loss of the film as the most serious event in one's life would not be compensable.

The relationship between a person and his or her pet cat or dog is, like the movies of one's life, unique and irreplaceable. A new pet, even if of the same breed, color, and age, does not replace the deceased one. Therefore, the actual or intrinsic value should include feelings of sadness and anger at the loss of the companionship of the pet, but the law should not compensate unusual or extreme feelings or sentiment.

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65. *Id.* at 41, 593 P.2d at 1309.

66. *Id.* at 41, 593 P.2d at 1310.

67. *Id.* at 42, 593 P.2d at 1309.

68. *Id.* at 44, 593 P.2d at 1310.

69. *Id.*

70. *Id.* at 45, 593 P.2d at 1311 (emphasis added).

71. *Id.* at 44, 593 P.2d at 1311.

72. *Id.* at 45, 593 P.2d at 1311. As the Court notes, "the rule has been established that sentimental or fanciful values will not be allowed." *Id.* This, of course, is excessive sentiment, and it is this degree of sentiment or emotion that is not allowed according to New York law. However, normal feelings of loss, as an element of property damage, are allowed in both New York and Illinois (the two states that have applied the actual or intrinsic value approach to pet cases), regardless of the name that is used to describe these feelings. See *supra* text accompanying notes 34-63.

### *E. Evaluation of the Actual or Intrinsic Value Method*

This approach provides an alternative when the pet has little or no market value. Even though the actual or intrinsic value method recognizes the relationship of the pet to the owner as an element of the value of the pet, the damages have been as low as the damages awarded using the market value method and are therefore inadequate. The award for lost film was several times larger than the damages for the lives of the pets, and the film is an inanimate object! As with the market value method, the actual or intrinsic value does not award sufficient damages to pay attorney's fees. None of the courts have clarified why the damages are so low. Perhaps the fact that the damages are *property* damages keeps the amount small. Another possibility is that it reflects the courts' valuation of the pet-owner relationship.<sup>73</sup> Since most aggrieved pet owners probably will not bring suit for these nominal amounts,<sup>74</sup> the value the law is placing on the relationship is zero.

## IV. EMOTIONAL DISTRESS OF THE OWNER RESULTING FROM THE PET'S DEATH

### *A. Introduction*

Another way the plaintiff can recover more than market value for the death of a pet is to sue for the emotional distress of the owner as a consequence of the pet's death. Although several states recognize a cause of action for emotional distress, usually the act causing the emotional distress must be intentional or, if due to negligence, the act must be accompanied by physical harm to the plaintiff. However, a small but growing number of states have abolished the physical harm requirement for the tort of negligent infliction of emotional distress. There have been successful cases involving pets where the act causing the emotional distress has been intentional and where it has been due to negligence.

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73. As one commentator noted, much needs to be done about educating law-makers about animal rights. Robinson, *Preface* to D. MORETTI, *ANIMAL RIGHTS AND THE LAW*, at VII (1984).

74. One of the commentators makes this point succinctly: "Civil actions for the destruction of dogs have largely been ignored by the legal profession. This inaction is understandable, since most jurisdictions so limit recovery that it is normally economically impossible to justify incurring the cost of litigation." Note, *supra* note 3, at 88.

*B. Damages for Emotional Distress in Florida Where the Killing of the Pet Was Intentional*

There are two cases where the plaintiffs were awarded damages for emotional distress caused by the killing of a pet. In *La Porte v. Associated Independents*,<sup>75</sup> a garbage collector deliberately threw a trash can at La Porte's small dog, Heidi, a two-year-old miniature dachshund, who was tethered just outside her house.<sup>76</sup> The garbage collector laughed. Heidi died from injuries sustained by this attack.<sup>77</sup> The trial court awarded \$2000 compensatory damages and \$1000 punitive damages. The compensatory damages included damages for La Porte's mental suffering caused by Heidi's death. The court of appeals reversed on the issue of compensatory and punitive damages.<sup>78</sup> The Florida Supreme Court unanimously reversed the court of appeals, reinstating the decision of the trial court and allowing the recovery for mental suffering.<sup>79</sup> The supreme court pointed out that the Florida law on mental suffering requires physical harm to be present if the mental suffering is due to negligence on the part of the defendant, but not if it is due to an intentional or malicious act.<sup>80</sup> An act is malicious if it indicates "great indifference to the persons, property, or rights of others."<sup>81</sup> Clearly, the court recognized the defendant's killing of Heidi as malicious.<sup>82</sup> Therefore, La Porte need not have suffered physical harm. A physician testified that after the incident, La Porte "was upset to the point of marked hysteria and in such a plight that she could not recount the experience coherently."<sup>83</sup> The court of appeals limited the compensatory

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75. 163 So. 2d 267 (Fla. 1964). *La Porte* is the most important case ever litigated on the topic of damages for the death of a pet because it awarded a significant amount of money, especially when the effect of inflation since 1964 is considered, for the mental anguish suffered by a dog's owner upon the brutal killing of the dog. Also, *La Porte* contains strong language that leaves no doubt about the reality and importance of the feelings between a pet and his or her owner. See *infra* text accompanying note 85. One commentator has characterized the court's description of this bond as "the most realistic assessment of the relationship between owner and pet to be found in American case law." Note, *supra* note 32, at 410.

76. 163 So. 2d at 267-68.

77. *Id.* at 268.

78. *Id.* at 267.

79. *Id.* at 269.

80. *Id.* at 268.

81. *Id.* "Malicious" appears to be the same as "reckless," which is the term used in some states, such as Idaho and Alaska. See *infra* text accompanying notes 96-99 and 127-30.

82. 163 So. 2d at 268. Arguably, the act was intentional. The court is simply indicating that the minimum standard for a mental suffering claim without proving physical harm has been met.

83. *Id.* The court did not state the standards for mental suffering that must be satisfied

damages to market value, holding that “[i]t is improper to include an allowance for sentimental value of the dog to its owner.”<sup>84</sup> The supreme court rejected this position with the following persuasive language:

Without indulging in a discussion of the affinity between “sentimental value” and “mental suffering,” we feel that the affection of master for his dog is a very real thing and that the malicious destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the animal . . . .<sup>85</sup>

Finally, the defendant tried to distinguish the instant case from a case where damages for mental suffering were awarded to the parents of a child whose body was wrongfully held by an undertaker until fees were paid.<sup>86</sup> The supreme court recognized that the grief from the death of a pet is not the same as the anguish from the mishandling of the body of the child. However, the court concluded, this difference in the two tragic events “does not imply that mental suffering from the loss of a pet dog, even one less an aristocrat than Heide, is nothing at all.”<sup>87</sup>

Thus, *La Porte* establishes that if someone either intentionally or maliciously kills a person’s pet, the damages will include compensation for the mental suffering (or emotional distress) of the pet’s owner, if such

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in order to recover under the tort of intentional or malicious infliction of mental suffering. It only noted that Mrs. La Porte was extremely upset. *Id.*

84. 158 So. 2d 557, 558 (Fla. Dist. Ct. App. 1963).

85. 163 So. 2d at 269. The Florida Supreme Court does not explain what is meant by “sentimental value.” It may mean the feelings between the pet and his or her owner that are part of the actual or intrinsic value approach in Illinois. *See supra* text accompanying notes 54-63. Also, New York allows these feelings under the name of “loss of companionship.” *See supra* text accompanying notes 34-53. In both Illinois and New York these feelings are an element of *property* damage (the property is the pet).

On the other hand, “sentimental value” may mean “mental suffering” or “emotional distress,” which appears to be a separate cause of action in Florida. Thus it is not part of *property* damages. The language in *La Porte* is an example of the tort of the intentional infliction of emotional distress. Note, *supra* 32, at 409. Of course, the infliction of the emotional distress is caused by the killing of the pet, but the compensation for the pet’s death is separate from the compensation for the emotional distress.

The distinction is important because the tort of the infliction of emotional distress has resulted in some large awards in pet cases, but the actual or intrinsic value has not. Also, the elements of the two causes of action are different. It is easy to confuse them, as the court in *La Porte* appears to have done, because both involve the relationship and feelings between the pet and his or her owner.

86. 163 So. 2d at 268-69.

87. *Id.* at 269. Apparently the judge who wrote this opinion was a dog owner.

mental suffering is present.

*C. Damages for Emotional Distress in Florida Where the Killing of the Pet was Due to Gross Negligence*

*Knowles Animal Hospital v. Wills*<sup>88</sup> is important for the significant amount of damages awarded. The jury awarded \$13,000, and the court of appeals affirmed. The Wills left their dog at the animal hospital for an operation. After the operation, hospital employees placed the dog on a heating pad. They kept him on the heating pad for a day and a half, and he suffered a severe burn. Shortly thereafter, the dog died.<sup>89</sup> The Wills, alleging that the hospital was guilty of gross negligence, sued for the injury to the dog and for their own physical and mental pain and suffering resulting from the dog's injury and death. They also sought punitive damages. The court of appeals did not indicate which specific claims the \$13,000 satisfied.<sup>90</sup>

The issue on appeal was the correctness of the jury instruction asking for the recovery for the Wills' mental pain and suffering.<sup>91</sup> The court, citing *La Porte*, held that the instruction was correct.<sup>92</sup> The jury found that the hospital's negligence indicated a "great indifference to the property of the plaintiff."<sup>93</sup> The court concluded that such conduct satisfied the standard for malicious conduct in *La Porte*.<sup>94</sup>

Perhaps the award was so large, in part, because the animal hospital is a medical facility, offering the service of healing sick animals, and it should be held to a higher standard of care than any other defendant when it kills an animal due to its gross negligence. Also, Florida is apparently more sympathetic to a pet owner's mental suffering caused by the tortious death of a pet since *La Porte*.<sup>95</sup> In any event, the large amount

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88. 360 So. 2d 37 (Fla. Dist. Ct. App. 1978).

89. *Id.* at 38. The Wills alleged that the hospital was guilty of gross negligence. The court did not indicate the relationship between "gross negligence" and "maliciousness," which was the term used in *La Porte*. See *supra* text accompanying notes 77-87. These concepts appear to be synonymous since the court in *Knowles* found that the hospital's conduct indicated "a great indifference to the property of the plaintiffs." *Knowles*, 360 So. 2d at 38-39. The court in *La Porte* used similar language to define malice. See *supra* text accompanying notes 80-81.

90. 360 So. 2d at 38.

91. There is no indication that the issue of punitive damages was raised on appeal. *Knowles*, 360 So. 2d at 38. Therefore, it is reasonable to believe that most of the jury's \$13,000 award was for the Wills' mental pain and suffering.

92. *Id.*

93. *Id.* at 38-39.

94. See *supra* text accompanying note 81.

95. See *supra* text accompanying note 81.

of the award provides a helpful precedent for the grossly negligent or intentional death of any pet that causes the owner mental distress.

*D. Damages for Emotional Distress Due to the Intentional or Reckless Killing of a Pet in Other Jurisdictions*

In *Gill v. Brown*,<sup>96</sup> the trial court struck down the plaintiffs' claim for mental anguish suffered as a result of the death of their pet donkey. The Idaho Court of Appeals reinstated the claim. The Gills alleged that Brown "negligently and recklessly" killed their pet donkey, and that, as a consequence, they "suffered extreme mental anguish and trauma."<sup>97</sup> The court of appeals held that the general rule for the measure of damages for the death of a pet, an item of personal property, is market value, and that mental anguish cannot be included as part of market value. However, the negligent or intentional infliction of emotional distress can be asserted as an independent cause of action. The requirements for the intentional infliction of emotional distress seem to be the same as in Florida, namely extreme or outrageous conduct that intentionally or recklessly causes severe emotional distress in another person.<sup>98</sup> The Gills' allegation that Brown "recklessly" killed their donkey is sufficient, if proven, to satisfy the "intentional" requirement.<sup>99</sup>

In *City of Garland v. White*,<sup>100</sup> the Texas Court of Appeals affirmed the \$500 award for the unlawful shooting of White's boxer dog. The award consisted of \$300 for the market value of the dog and \$200 for mental anguish and physical pain suffered by the dog's owner as a consequence of his pet dog's death.<sup>101</sup> The police had received a complaint from a neighbor of White, alleging that the dog had lunged at her. The dog, who was three years old and weighed approximately fifty pounds, growled at the policemen but did not charge at them. One of the policemen

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96. 107 Idaho 1137, 695 P.2d 1276 (Idaho Ct. App. 1985).

97. *Id.* at 1139, 695 P.2d at 1278.

98. *Id.* at 1138, 695 P.2d at 1278. The fact that the court clearly indicates that the intentional infliction of emotional distress is an independent cause of action and the elements of this tort are similar to the mental suffering tort in Florida is evidence for mental suffering being a separate cause of action, rather than an element of property damages, in *La Porte*. See *supra* note 85. Also, the "recklessness" in *Gill* appears to be the same as the "maliciousness" in *La Porte*. However, the court in *Gill* did not define "recklessness."

99. 107 Idaho at 1139, 695 P.2d at 1278.

100. 368 S.W.2d 12 (Tex. Civ. App. 1963).

101. *Id.* at 13-14. Although the damages for mental anguish are small in *White*, these are 1963 dollars. Also *White* was apparently the first case in the United States to award damages for mental suffering (emotional distress). Note, *supra* note 3, at 86.



shot at the dog, who ran home.<sup>102</sup> The police followed the dog into the owner's garage and killed the dog with a shotgun. They did not attempt to contact the owner, who was at home, before killing the dog. Nor did they attempt to trap the dog in the garage, which they could easily have done by simply closing the garage door.<sup>103</sup>

The court of appeals found the killing to be without legal justification since the dog was not causing any danger to people or property. The police could have impounded the animal. Also, they were trespassers on White's property.<sup>104</sup> Affirming the damages for the physical and mental harm suffered by White, the court pointed out that the evidence indicated White was "nervous and upset"<sup>105</sup> due to the death of his pet. In addition, he was temporarily unable to work. The court did not specify the criteria for mental pain and suffering.<sup>106</sup>

#### *E. Damages for Emotional Distress for the Conversion of an Animal*

In an unusual case, *Fredeen v. Stride*,<sup>107</sup> the jury awarded the plaintiff, Marjorie Fredeen, \$4000 in damages for mental anguish caused by the loss of her dog. The Supreme Court of Oregon unanimously affirmed. Fredeen's dog, Prince, required surgery, but Fredeen could not afford it. Fredeen left Prince with her veterinarian, Dr. Stride, on a Saturday, instructing him to destroy the dog. Before the scheduled destruction, which was to take place on Monday, Stride's employees became fond of Prince. Upon their request, Dr. Stride allowed them to try to help Prince regain his health. Dr. Stride did not inform Fredeen that Prince was still alive. The dog recovered, and Dr. Stride gave him to a third party.<sup>108</sup> About six months later, Fredeen saw Prince in her neighborhood with his new owner. She called Dr. Stride, who told her that she should contact the new owner about her claim to the dog.<sup>109</sup>

The Oregon Supreme Court held that, although the conversion of property does not normally result in damages for mental anguish, such damages were appropriate in the instant case. The court reasoned that "if mental suffering is the direct and natural result of the conversion, the

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102. 368 S.W.2d at 14.

103. *Id.* at 15.

104. *Id.* at 16.

105. *Id.* at 17.

106. *Id.* Of course, the tort is clearly intentional. The court did not raise the issue of the severity of Mr. White's physical and mental harm. *Id.* at 15-17.

107. 269 Or. 369, 525 P.2d 166 (1974).

108. *Id.* at 371-72, 525 P.2d at 168.

109. *Id.* at 374-75, 525 P.2d at 169.

jury may properly consider mental distress as an element of damages."<sup>110</sup> Malice is not required, but "mental suffering is a proper element of damages where evidence of genuine emotional damage is supplied by aggravated conduct on the part of the defendant."<sup>111</sup> Dr. Stride knew that he had improperly given away Fredeen's dog. Also, the court noted Dr. Stride's unhelpful response when Freeden called him to report that she had seen Prince. Dr. Stride's behavior seemingly constituted aggravated conduct.<sup>112</sup> As for the "genuine emotional damage" requirement, there is little in the supreme court's opinion to indicate that Freeden had suffered such damage. The court quoted her testimony indicating that she did not know what to do after seeing Prince and then phoning Dr. Stride. Also, she was worried about her children's reaction if they discovered that the dog was alive and living nearby. The court concluded that there was evidence to support the jury's verdict awarding \$4000 in damages for mental anguish to Freeden.<sup>113</sup>

*Fredeen* is an important case because the damages were relatively large, the dog did not die,<sup>114</sup> and arguably, the conduct of Dr. Stride was not "aggravated." Freeden was willing to have Prince destroyed; thus, she would not have had him if Dr. Stride had followed her instructions. In addition, the evidence of mental anguish is meager. The large amount of damages combined with the weakness of the case make *Fredeen* a valuable precedent for mental suffering claims arising from the tortious death of a pet.

#### F. Damages for Emotional Distress for the Loss of the Dog's Body

In another unusual case, *Corso v. Crawford Dog and Cat Hospital*,<sup>115</sup> a New York court awarded \$700 in damages for mental distress and anguish due to the wrongful destruction and loss of the dog's body where the owner wanted to give her pet an elaborate funeral.<sup>116</sup> The owner,

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110. *Id.* at 372-73, 525 P.2d at 168.

111. *Id.* It is not clear what distinction the court is drawing between "malice" and "aggravated conduct." Presumably, the latter is less serious than the former, and both require more than ordinary negligence.

112. *Id.* at 375, 525 P.2d at 169.

113. *Id.* In another case involving the illegal separation of the pet and his or her owner, a landlord settled an emotional distress claim for \$5000 in California. The landlord had evicted a family in violation of a local rent control ordinance and their new apartment did not allow dogs. The family could not keep the dog they had owned in their old apartment, and a 10-year-old boy in the family suffered emotional distress as a result. M. RANDOLPH, *supra* note 3, ch. 9, at 16.

114. The opinion does not indicate if the court awarded possession of Prince to Freeden.

115. 97 Misc. 2d 530, 415 N.Y.S.2d 182 (Civ. Ct. 1979).

116. *Id.* at 530, 415 N.Y.S.2d at 182-83.

Corso, decided to have her fifteen-year-old poodle put to death because of his poor health.<sup>117</sup> Crawford Dog and Cat Hospital agreed to give the dog's body to an organization that arranges funerals for pets. Corso had planned a funeral that included a headstone, epitaph, and attendance by her friends and relatives. When the casket arrived, she found a cat's body in it! The hospital had wrongfully destroyed her poodle's body. Corso understandably experienced great mental distress and anguish.<sup>118</sup>

The trial court held that a pet is not personal property: "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."<sup>119</sup> Moreover, the judge stated that "[t]o say that [a pet dog] is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept."<sup>120</sup> The court reasoned that this special status entitled Corso to damages in excess of the market value of the dog. The court also found it significant that a pet gives, as well as receives, affection.<sup>121</sup> Clearly, this case contains elaborate language that elevates the legal status of animals. *Corso* is the only case that has held that an animal is not an item of personal property. Even though *Corso* is only a trial court opinion, it provides persuasive authority that can be used in any case about the wrongful death of a pet.

### G. Damages for Emotional Distress Rejected

In another New York case, *Fowler v. Ticonderoga*,<sup>122</sup> the Supreme Court, Appellate Division did not allow damages for mental distress due to the death of a pet. Fowler claimed that the town of Ticonderoga's animal control officer "negligently and maliciously" killed his dog. Fowler sued for the value of the dog and for the mental suffering that the dog's death caused him.<sup>123</sup> The court of appeals rejected the mental suffering claim, holding that "a dog is personal property and damages may not be recovered for mental distress caused by its malicious or negligent

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117. *Id.* at 531, 415 N.Y.S.2d at 183.

118. *Id.* The court did not discuss the standards for the tort of infliction of mental anguish. Neither the degree of negligence nor the level of mental anguish required were explained in *Corso*. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* The court distinguished heirloom cases since an heirloom "is not capable of returning love and affection." *Id.* Cases where damages in excess of market value are awarded for the loss of heirlooms are used to support the actual or intrinsic value theory. See *supra* text accompanying notes 55-63.

122. 131 A.D.2d 919, 516 N.Y.S.2d 368 (App. Div. 1987).

123. *Id.* at 920, 516 N.Y.S.2d at 369.

destruction."<sup>124</sup> This result conflicts with *Corso v. Crawford*,<sup>125</sup> which Fowler cited but did not discuss or reverse.<sup>126</sup>

#### H. Emotional Distress Not Sufficiently Severe

A recent case, *Richardson v. Fairbanks North Star Borough*,<sup>127</sup> limited the emotional distress approach by a finding that the plaintiff's emotional distress was not sufficiently severe. The local animal shelter had mistakenly killed the Richardson's dog, Wizzard, in violation of a local ordinance. The shelter had not maintained adequate records on its animals, and this poor recordkeeping caused the error.<sup>128</sup> The Supreme Court of Alaska allowed a cause of action for the intentional infliction of emotional distress, recognizing that "the loss of a beloved pet can be especially distressing in egregious situations."<sup>129</sup> The court held that this tort requires that the defendant "through extreme or outrageous conduct, must intentionally or recklessly cause severe emotional distress or bodily harm to another."<sup>130</sup> The conduct must be "very similar" to that required to prove a claim for punitive damages. The Alaska Supreme Court affirmed the trial court's determination that the Richardsons' emotional suffering was not great enough to warrant giving this issue to a jury.<sup>131</sup> The supreme court should have reversed the trial court in *Richardson*. Other states have not, in fact, insisted on an extraordinarily high level of emotional distress, regardless of the standards they were applying.<sup>132</sup> Also, the Richardsons were sufficiently angry to reject the original \$2000 settlement offer.<sup>133</sup> Most of the emotional distress

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124. *Id.* at 921, 516 N.Y.S.2d at 370.

125. *See supra* text accompanying notes 115-21.

126. 131 A.D.2d at 921, 516 N.Y.S.2d at 370.

127. *See supra* text accompanying notes 6-12.

128. 705 P.2d 454, 455 (Alaska 1985).

129. *Id.* at 456.

130. *Id.*

131. *Id.* The trial court did not allow the Richardsons to present evidence of their emotional distress because they did not provide expert testimony to substantiate their claim. The Alaska Supreme Court pointed out that this was an error on the part of the lower court. *Id.* at 457 n.6. Therefore, arguably the reason the Richardsons' emotional distress did not reach the threshold for an intentional infliction of emotional distress claim was that they were not allowed to present evidence of their emotional distress. It is accepted practice in all jurisdictions reporting emotional distress cases on the death of a pet to allow the pet owner to testify. Expert testimony is not necessary. *See supra* text accompanying notes 88-121 and *infra* text accompanying notes 137-46. As one commentator explained, "the person suing can testify about how he felt at the death of the pet, and how the loss disrupted his life." M. RANDOLPH, *supra* note 3, ch. 9, at 16.

132. *See supra* text accompanying notes 88-121.

133. *See supra* text accompanying notes 6-12.

cases involving animals have focused on the conduct of the defendant.<sup>134</sup> Arguably, the animal shelter was, at a minimum, grossly negligent.<sup>135</sup> The shelter employees should have given Wizzard to the Richardsons the first time they went to retrieve him. Since the employees did not do so, they were on notice that Wizzard should be held for the Richardsons, who would return the next day. In less than twenty-four hours, the shelter staff killed Wizzard. By their own admission, they maintained inadequate records on the animals kept there.<sup>136</sup> Despite its sympathetic language, the Alaska Supreme Court did *not* recognize that the death of a beloved pet can be "especially distressing."

*I. Emotional Distress Damages Awarded Where Physical Harm Requirement Abolished*

1. *Campbell v. Animal Quarantine Station*

Most of the states having reported cases on emotional distress damages for the death of a pet require that the defendant's killing of the pet be intentional or malicious (reckless) in order for the defendant to be liable for the owner's emotional distress.<sup>137</sup> If the death is due to ordinary negligence, the owner must have physical symptoms that accompany the emotional distress. However, two states have abandoned this strict standard and have allowed emotional distress damages without requiring physical symptoms, even if the death of the pet is caused by ordinary negligence.<sup>138</sup>

One example of this rather recent development is *Campbell v. Animal Quarantine Station*.<sup>139</sup> The Supreme Court of Hawaii affirmed a \$1000

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134. See *supra* text accompanying notes 88-121.

135. The supreme court did not indicate whether the shelter was guilty of ordinary or gross negligence. Presumably the trial court did not make this determination, since the ruling on the Richardsons' lack of sufficient mental distress terminated their claim. *Richardson*, 750 P.2d at 456-57.

136. See *supra* text accompanying notes 6-12.

137. See *supra* text accompanying notes 75-136. Not all of these cases specified the requirements for the emotional distress of a pet owner, but of those that did, the defendant's ordinary negligence does not allow the plaintiff to recover, absent physical harm. Also, in the cases where the requirements were not specified, the defendant's actions were due to gross negligence or intentional conduct. See *supra* text accompanying notes 75-136.

138. Hawaii and California are the only two states that have abandoned the physical injury requirement when the defendant's conduct is due to ordinary negligence. See *infra* text accompanying notes 139-53. Also, one commentator has noted that courts have been reluctant to recognize an interest in peace of mind or mental tranquility, even when the violation of it is intentional. This reluctance is greater when mere negligence is the cause of the mental distress. W. KEETON, D. DOBBS & R. KEETON, PROSSER AND KEETON ON TORTS, ch. 9, § 54, at 360 (5th ed. 1984).

139. 63 Haw. 557, 632 P.2d 1066 (Haw. 1981).

award for serious mental distress caused by the negligent killing of the Campbells' dog. The Campbells' healthy nine-year-old boxer dog, Princess, was put into a van to transport her to a pet hospital for a routine medical procedure. There was no ventilation in the area of the van where Princess and six other animals were located. After spending at least one hour in the hot van, she died of heat prostration. The trial court found that the Campbell family was preoccupied with the death for over two weeks, and that they suffered severe emotional distress. The defendant appealed the \$1000 damage award.<sup>140</sup>

The Supreme Court of Hawaii affirmed, holding that serious mental harm caused by negligently inflicted property damage is a legitimate cause of action in Hawaii.<sup>141</sup> The property in question is, of course, Princess. The plaintiff need not experience any physical harm. The court used an objective standard to determine the existence of serious mental harm. If a "reasonable person, normally constituted, would be unable to adequately cope with the mental stress," then it is serious.<sup>142</sup> Also, the serious mental stress must be "reasonably foreseeable."<sup>143</sup> That is, the defendant, as a reasonable person, must have been able to foresee that his or her conduct would cause the stress in the plaintiff. Expert witnesses are not necessary; the jury determines if the emotional distress is serious using its own experience and reason after hearing all of the evidence.<sup>144</sup> Once the seriousness has been established, the jury considers the symptoms and duration of the emotional distress in calculating damages.<sup>145</sup> The Supreme Court of Hawaii also noted that eliminating the requirement of physical symptoms for negligently inflicted emotional distress had not led to an increase in the number of mental distress cases.<sup>146</sup>

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140. *Id.* at 558-59, 632 P.2d at 1067.

141. *Id.* at 559, 632 P.2d at 1068.

142. *Id.* The court did not require the Campbells to witness the death of the dog in order to recover. Nor did the court require them to seek medical assistance for their emotional distress. *Id.* at 558-59, 564, 632 P.2d at 1067, 1070-71.

143. *Id.* at 561-62, 632 P.2d at 1069. One commentator has stated that the causality and foreseeability requirements should be sufficient limitations on liability. Note, *Campbell v. Animal Quarantine Station: Negligent Infliction of Mental Distress*, 4 U. HAW. L. REV. 207, 216 (1982). Where the defendant is a veterinarian, another commentator, discussing foreseeability stated, "[I]t should be possible to argue that a veterinarian, whose livelihood is based upon the love and affection an owner feels for his or her pet, should reasonably foresee the owner's emotional distress where there is negligent injury to the pet." Note, *supra* note 32, at 411.

144. 63 Haw. at 563-64, 632 P.2d at 1070-71.

145. *Id.* at 564, 632 P.2d at 1071. The fact that the award was only \$1000 for five people indicated that the Campbells' emotional distress was limited in duration and severity. *Id.*

146. *Id.*

It can be argued that the defendant's conduct was reckless and outrageous, and thus the stricter standards for emotional distress were satisfied. Under those standards, physical harm to the plaintiff is not required, if the defendant's conduct is malicious or outrageous. People in the business of operating a van for the transportation of animals in a tropical climate should know that extreme heat and poor ventilation will be harmful to the animals. To put seven animals in a small, hot, unventilated space for more than one hour is arguably outrageous conduct. However, *Campbell* provides an advance in the law for pet owners whose pets are killed due to ordinary negligence. Removing the necessity of proving physical harm allows the distraught plaintiff a possibility of recovering for his or her mental distress in these instances.

## 2. The Rationale for Eliminating the Physical Harm Requirement

The rationale for abandoning the physical harm requirement in emotional distress actions due to negligence was provided in *Molien v. Kaiser Foundation Hospitals*,<sup>147</sup> a case which did not involve pets. In this case, a doctor mistakenly told Ms. Molien that she had syphilis. The mistake was allegedly the result of negligence.<sup>148</sup> This misinformation caused her husband to experience extreme emotional distress.<sup>149</sup> Examining previous cases on emotional distress, the California Supreme Court concluded that the justification for the physical injury requirement was to reduce the risk of false claims.<sup>150</sup> However, it resulted in some plaintiffs recovering who had trivial physical injuries. Other plaintiffs without physical injuries were unable to have their cases tried even though they had valid emotional distress claims. This situation produced extravagant pleadings and distorted testimony. For example, plaintiffs claimed such symptoms as headaches, nausea, and insomnia to cross the physical injury threshold and then asserted the more serious claim of emotional distress. Another problem with the physical injury requirement is that the border between physical and emotional injury is not clear. For all these reasons, the California Supreme Court abandoned the physical injury requirement.<sup>151</sup> As for the problem of false emotional distress claims, the court held that "the jurors are best situated to determine whether and to what extent the

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147. 27 Cal. 3d 916, 616 P.2d 813, 167 Cal. Rptr. 831 (1980).

148. *Id.* at 919-20, 616 P.2d at 814, 167 Cal. Rptr. at 832.

149. *Id.* at 920, 616 P.2d at 815, 167 Cal. Rptr. at 833.

150. *Id.* at 925, 616 P.2d at 818, 167 Cal. Rptr. at 836. Other reasons for the physical injury requirement are "the fear of unlimited and indefinite liability, the imposition of burdensome and disproportionate liability on the tortfeasor in relation to his culpability, and the possibility of a deluge of suits." Note, *supra* note 143, at 209.

151. 27 Cal. 3d at 928-29, 616 P.2d at 820, 167 Cal. Rptr. at 838.

defendant's conduct caused emotional distress, by referring to their own experience."<sup>152</sup>

Another reason for rejecting the physical injury requirement is to put ordinary negligence and intentional torts on the same footing. States having the physical injury requirement for ordinary negligence have no such requirement for intentional or reckless conduct. The standards should be the same because the defendant arguably feels the same emotional distress whether his pet died as a result of ordinary negligence or from an intentional act.<sup>153</sup> Clearly, the result is the same: the pet is dead. Also, in both cases death was preventable. The owner may feel more anger at the commission of the intentional act, but the grief, sadness, and sense of loss are the same. Therefore, the law should provide the same standards for obtaining emotional distress damages.

### *J. Evaluation of the Emotional Distress Approach*

The emotional distress approach is arguably the best method of recovering damages for the death of a pet based on the dollar amount of damages awarded. The fact that there are some cases where courts have awarded emotional distress damages in the thousands of dollars is encouraging. Also, the emotional distress approach recognizes that the owner's pet is unique since the owner would not experience the distress if another, similar dog or cat could adequately replace the dead one. This uniqueness is the key factor in the topic of pet damages. In addition, only emotional distress damages allow the injured party to be compensated for the full loss sustained, which is the fundamental principle of tort recovery.<sup>154</sup>

In most of the cases, the courts do not require any greater amount of emotional distress than the typical, caring pet owner would feel at the death of his or her pet. The main issue is the conduct of the defendant, with recklessness or intentional behavior present in most of the cases. The problem with this requirement is that it bars recovery against the defendant guilty of simple negligence. Most veterinary malpractice cases are in this category.<sup>155</sup> The alternative route to receiving emotional distress damages by proving physical injury is more difficult.<sup>156</sup> Therefore, it is important that all states eliminate this physical injury requirement. This change would allow

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152. *Id.* at 930, 616 P.2d at 821, 167 Cal. Rptr. at 839.

153. One of the commentators has made the same point: "there is no reason why the affection between owner and pet should be seen as any less real or any less compensable where the tortious activity is merely negligent." Lindensmith, *supra* note 1, at 50.

154. Note, *supra* note 32, at 407.

155. *Id.* at 410.

156. There have been no ordinary negligence cases involving the death of a pet where the plaintiff has claimed emotional distress and physical injury.



every pet owner whose pet is wrongfully killed to recover for any emotional distress that he or she experiences. Therefore, the *Campbell* ruling that emotional distress damages can be recovered from the negligent defendant without the owner having any physical symptoms would allow every pet owner the opportunity to recover for the killing of his or her pet if the owner experiences emotional distress.

Another issue is, as always, the amount of damages. The meritorious plaintiff should have the opportunity to bring his or her case to trial, which requires damages sufficient to pay an attorney and have some money as compensation for the emotional distress. In *Campbell*, which is the most carefully reasoned opinion in this area of the law, the court awarded \$1000 in 1980 dollars. The exact amount of damages necessary to make going to trial a viable alternative varies with attorneys' fees and the complexity of the case. However, none of the cases have addressed the need for the damages to meet this standard except for the punitive damages cases.<sup>157</sup>

## V. PUNITIVE DAMAGES FOR THE INTENTIONAL OR MALICIOUS KILLING OF A PET

### A. Representative Cases

Courts in some states have awarded punitive damages where defendants have intentionally or maliciously killed a pet. *Wilson v. City of Eagan*<sup>158</sup> clarifies the need for such damages. The city's animal warden, Larson, instead of impounding the plaintiff's cat, as required by state and local statutes, instructed a policeman to shoot it. The Minnesota statutes require that an impounded animal must be held for five business days before it can be destroyed.<sup>159</sup> Larson received a call that a cat was being a nuisance in someone's yard. When Larson arrived, the cat had returned to the patio of his owner. Nevertheless, Larson took the cat to the city hall since Eagan had no facilities for impounding animals. Larson asked several city workers if they could keep the cat for the required five days. No one volunteered. Larson and the deputy police chief then agreed to kill the cat. After unsuccessfully attempting to asphyxiate the cat, they took it to a shooting range and killed it with three shots from a shotgun.<sup>160</sup> The trial court jury awarded \$2000 in punitive damages against Larson and \$2500 against the deputy police chief in addition to \$40 in compensatory damages. The judge dismissed the latter from the suit since he was improperly joined. Also,

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157. See *infra* text accompanying notes 158-92.

158. 297 N.W.2d 146 (Minn. 1980).

159. *Id.* at 147.

160. *Id.* at 150.

the court reduced Larson's punitive damages to \$500.<sup>161</sup>

The Minnesota Supreme Court affirmed the \$500 in punitive damages.<sup>162</sup> The court reasoned that punitive damages are necessary when "compensatory damages are likely to be small and will not function to deter similar conduct."<sup>163</sup> Compensatory damages are usually small in most pet cases.<sup>164</sup> Also, the court added that due to the small amount of compensatory damages, the plaintiff may not sue if punitive damages are unavailable. Thus, his or her loss will not be redressed.<sup>165</sup> Ironically, despite giving this justification for punitive damages, the Minnesota Supreme Court did not reverse the trial court's reduction in the amount of punitive damages. Clearly, \$500 does not justify the cost of the lawsuit, and therefore will not deter others from actions similar to Larson's.

The Wilson court specified the criteria that should be used in determining whether punitive damages are unreasonably excessive. They are "the degree of malice, intent, or willful disregard [of the plaintiff's rights], the type of interest invaded, the amount needed to truly deter such conduct in the future, and the cost of bringing the suit."<sup>166</sup> Applying these factors, it would be reasonable to find a reduction to \$500 in punitive damages to be erroneous. The conduct, an animal warden killing a cat with a shotgun, is outrageous. The interest invaded, the relationship between a person and a pet, is an important emotional relationship for most pet owners or they would not have acquired the pet. Clearly, such conduct should be strongly discouraged. An award of \$500 will not provide such a deterrent, nor does it cover the cost of bringing the suit. However, the Minnesota Supreme Court concluded the section of the opinion on punitive damages by holding that there was no error in the trial court's ruling.<sup>167</sup>

*Levine v. Knowles*<sup>168</sup> also considered the issue of punitive damages. Levine's dog, Tiki, died while undergoing routine treatment for a skin problem. Levine told the veterinarian, Knowles, to save the dog's body for an autopsy, but it was cremated. Knowles claimed that the cremation was inadvertently performed by unknown employees. Levine sued Knowles for malpractice in treating Tiki and for intentionally cremating his dog's body in order to avoid the consequences of an autopsy. For the latter claim, Levine sought punitive damages.<sup>169</sup> The trial court granted summary

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161. *Id.* at 148.

162. *Id.* at 151.

163. *Id.* at 150.

164. *See supra* text accompanying notes 6-63.

165. 297 N.W. 2d at 151.

166. *Id.*

167. *Id.*

168. 197 So. 2d 329 (Fla. Dist. Ct. App. 1967).

169. *Id.* at 330.

judgment for Knowles on the punitive damages claim. Levine appealed, and the Florida District Court of Appeals reversed.<sup>170</sup>

The district court of appeals held that a dog is an item of personal property, and the owner has a right to its body. The court ruled that if the dog's body was maliciously destroyed, punitive damages are possible. The court explained that the function of punitive damages, to discourage certain behavior, is especially important where the compensatory damages are too small to have such an effect.<sup>171</sup> The court concluded that if only compensatory damages were awarded in such a case, then the defendant would be in as good, or better, position after committing the tort than he or she was prior to doing so.<sup>172</sup> The court noted that punitive damages have been awarded for the malicious killing of dogs since the nineteenth century and that the Florida "Supreme Court has recognized that the anguish suffered from the loss of a pet may be substantial."<sup>173</sup> The district court of appeals extended this protection of the owner's rights to include the malicious destruction of a dog's dead body.<sup>174</sup>

An early case that awarded punitive damages for a very serious injury to a dog is *Rimbaud v. Beiermeister*.<sup>175</sup> Rimbaud and his French poodle were on Beiermeister's property. The dog was playing with a ball and Rimbaud was sitting under a tree. The dog did not harm the property, nor was it vicious. Beiermeister told Rimbaud to remove the dog from his lawn. Rimbaud then called the dog, who approached Beiermeister playfully with the ball in her mouth. He took a stone out of his pocket, and threw it at the dog, hitting her in the head. She suffered a concussion, and never fully recovered.<sup>176</sup> The trial court judge instructed the jury that punitive, as well as compensatory, damages could be awarded. The jury set damages at \$155, but it did not specify how much was compensatory

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170. *Id.*

171. *Id.* at 331.

172. *Id.* at 332.

173. *Id.* at 331-32. In the leading Florida case on damages for the death of a pet, *La Porte v. Associated Independents*, the Supreme Court of Florida affirmed a \$1000 punitive damages award for the killing of La Porte's dog. *See supra* text accompanying notes 75-87.

174. 197 So. 2d at 332. Also, the court of appeals raised the issue of mental anguish even though it was not introduced at trial or on appeal by the plaintiff. The court held that if Levine could prove the allegations about the cremation, he would be entitled to damages for mental anguish as well as punitive damages. *Id.* In the subsequent trial, the jury awarded compensatory damages of \$1,000, but the court reduced this amount to \$200. The court of appeals affirmed. 218 So. 2d 217, 218 (Fla. Dist. Ct. App. 1969). The trial court did not award any punitive damages. *Id.* Levine again appealed, and the court of appeals ordered a new trial to consider the issue of punitive damages. 228 So. 2d 308, 309 (Fla. Dist. Ct. App. 1969).

175. 168 A.D. 596, 154 N.Y.S. 333 (App. Div. 1915).

176. *Id.* at 597, 154 N.Y.S. at 334.

and how much was punitive.<sup>177</sup>

The New York Court of Appeals affirmed, rejecting Beiermeister's contention that punitive damages should not be allowed because he was removing trespassers from his property.<sup>178</sup> The court found that

the injury in the case at bar was so sudden and severe that we think the jury might consider it rather in the nature of a malicious attack upon a harmless and unoffending animal than merely the exercise of more force than was necessary in the course of the removal of this dog from the premises.<sup>179</sup>

Also, the court held that the entire amount of the award could have been for punitive damages: "even if the animal had almost no market value, it was evidently a pet, and the jury may have assigned by far the greater part of the damages allowed to the punitive part of their verdict."<sup>180</sup>

In *Schade v. Cedar Rapids Animal Shelter*,<sup>181</sup> a recent, unpublished Iowa case, punitive damages were awarded by the trial court, but the Iowa Court of Appeals reversed. Cedar Rapids Animal Shelter employees captured a dog that was wearing a collar attached to a broken chain. Within a day, the dog was transferred to the University of Iowa for medical experimentation. The dog's owner, Schade, called the shelter the morning after the dog escaped, to inquire about her dog, but she was already too late to rescue him.<sup>182</sup> An Iowa statute requires that an animal shelter keep a dog for three days before transferring the animal to a research facility for experimentation.<sup>183</sup> The shelter employees stated that there had been a "mix-up" that resulted in Schade's dog being sent for experimentation in violation of the statute.<sup>184</sup> Also, the shelter admitted that it did not always observe the statutory three-day requirement.<sup>185</sup> The trial court awarded Schade compensatory damages of \$500 and punitive damages of \$5000.<sup>186</sup>

The court of appeals reversed the trial court on the punitive damages

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177. *Id.* Of course, \$155 in 1915 would be a very large sum today.

178. *Id.* at 599, 154 N.Y.S. at 335.

179. *Id.* at 599-600, 154 N.Y.S. at 335-36.

180. *Id.* at 600, 154 N.Y.S. at 336.

181. *Schade v. Cedar Rapids Animal Shelter*, No. 86-261, slip op. at 172 (Iowa Ct. App. Feb. 25, 1987).

182. *Id.* at 173.

183. *Id.* at 176.

184. *Id.* at 175.

185. *Id.* at 173-74.

186. *Id.* at 173.

award and affirmed the compensatory damages.<sup>187</sup> Punitive damages are appropriate where a defendant acts maliciously. The court explained that the malice "may be expressed, such as personal spite, or implied, as where the defendant acts illegally or improperly with willful or reckless disregard for another's rights."<sup>188</sup> The shelter did not act maliciously because "the evidence revealed no more than a negligent mix up of the dogs."<sup>189</sup> Furthermore, the court added, this was an isolated incident, not a general policy, according to the evidence presented at trial. Therefore, the trial court's award was an abuse of discretion, which means that it was unreasonable.<sup>190</sup>

The difficulty with the court of appeals' analysis is that it overlooks the fact that a person's pet is not fungible but is unique. A pet owner's right not to have his or her pet killed in violation of state statutes is therefore an important right. Thus, the shelter has a special responsibility to observe the statutory waiting period in order that a person can claim his or her pet if the animal has strayed. Since the waiting period is only three days, the owner does not have much time to obtain the pet even if the statute is followed. Also, there was an indication in the court of appeals' opinion that the shelter *did not* always observe the statutory three-day waiting period before disposing of animals,<sup>191</sup> even though the court of appeals found that the killing of Schade's pet in violation of the statute was an isolated incident. Therefore, even if the court believed that \$5000 was too large an award in these circumstances, it could have allowed a smaller amount of punitive damages in light of all of these reasons. In doing so, it would have found that the shelter's conduct manifested a reckless disregard for Schade's rights, which was the ruling of the trial court.<sup>192</sup>

### B. Evaluation of Punitive Damages

The general difficulty with punitive damages is that they are not awarded in cases of ordinary negligence.<sup>193</sup> The special difficulty with

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187. *Id.* at 178.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 173-74.

192. *Id.* at 178.

193. One commentator suggests that punitive damages should be awarded where a pet is negligently killed by a car and the driver does not stop. Note, *supra* note 3, at 87. Even if a court were willing to award punitive damages in such a case, which is unlikely, it would be difficult to determine whether the driver was negligent.

punitive damages for the death of a pet is that the amount of damages is too small. The jury award in *Wilson v. City of Eagan* was adequate, but the judge reduced it to a nominal amount. Similarly, the trial court in *Schade* awarded a reasonable amount of punitive damages, but the court of appeals reversed. In cases where the compensatory damages are low, high punitive damages are needed to encourage aggrieved pet owners to bring their cases to trial and to deter people from recklessly or intentionally killing pets. In addition to not being available in ordinary negligence cases, the awarding of punitive damages tends to be unpredictable since they are based on the facts and circumstances of each case.<sup>194</sup> This unpredictability, combined with the small amount of damages awarded in the above cases, makes punitive damages an unreliable element in cases involving the killing of pets.

## VI. CONCLUSION

Progress has occurred in the law of damages for the negligent or intentional death of a pet. In recent years, more states have adopted approaches that have, in some instances, produced large awards. Most notable is emotional distress damages, which have resulted in several awards of \$1000 or more for the distress suffered from the death of a pet.<sup>195</sup> Also, the actual or intrinsic value is a theoretically valid approach because it provides compensation for the relationship between the pet and his or her owner. In addition, trial courts have awarded significant amounts of money for punitive damages in a small number of cases. It is encouraging that courts have adopted these approaches in spite of their efforts to treat pets as property.<sup>196</sup>

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194. *Id.*

195. As one commentator has remarked about dogs (and the same could be said of cats):

Because the dog is a unique member of the family unit, it might be assumed that substantial damage awards would be justified when the animal is wantonly or maliciously destroyed. With the exception of two states, however, courts limit damages for destruction of dogs to market value and punitive damages, as if the dog [was] inanimate property.

Note, *supra* note 3, at 85-86. This was written in 1973. Since then more states have allowed emotional distress damages in pet cases. Some courts have used the actual or intrinsic value approach, and punitive damages have been awarded more frequently. However, pets are still classified as inanimate property, and there is no indication that legislatures or courts will change this status.

196. It is unlikely that pets will be put into a different legal category by courts or legislatures. However, one commentator has suggested that cats and dogs should be removed from the property category in order to provide them with the right to life, and freedom from unwarranted pain and suffering. "They are a higher form of life, having the ability to feel and express their pain and pleasure, and the ability to reason and to desire. In recognition

Nevertheless, there is much that needs to be done before every pet owner whose dog or cat is negligently or intentionally killed can find an attorney willing to take the case.<sup>197</sup> Damages in excess of \$1000 are still the exception, which means that attorneys will not find it worthwhile to try most pet cases.

The market value approach should be abandoned. It treats pets as fungible, which is simply false. The actual or intrinsic value approach has produced only nominal damages (less than \$1000). The awards should match the rhetoric.<sup>198</sup> Courts should adopt the loss of the companionship

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of these abilities, the law should afford them legal rights." Note, *Rights for Nonhuman Animals: A Guardianship Model for Dogs and Cats*, 14 SAN DIEGO L. REV. 484, 500 (1977). The present legal categorization of these animals as property reveals the preoccupation with the use of these animals for human benefit. The interest and protection of the animal is ignored. For example, the anti-cruelty statutes do not prevent cruelty, but are only operative after the fact. *Id.* at 500-01. Also, these statutes are, for the most part, not enforced due to a lack of resources. D. MORETTI, *supra* note 73, at xi-xii.

197. One commentator has summarized the role of attorneys in cases where there is veterinary malpractice: "Few pet owners turn to lawyers when their pets are injured or die from veterinary treatment. And there are, perhaps, a few lawyers who are willing to represent a pet owner in such a suit." Note, *supra* note 32, at 404-05. The commentator explained that the greatest obstacle to bringing such a suit is "the substantive law on damages for pets." *Id.* at 406. These comments were made in a 1974 article. In another article written about the same time, the author made the same point: "Civil actions for the destruction of dogs have largely been ignored by the legal profession. This inaction is understandable, since most jurisdictions so limit recovery that it is normally economically impossible to justify incurring the cost of litigation." Note, *supra* note 3, at 88. In 1982, another commentator, writing about the mental anguish of the owner that is caused by the negligent killing of a pet, stated: "Until more jurisdictions recognize this element of damages in injuries to animals, however, attorneys for plaintiffs usually will find themselves facing the wholly inadequate 'market value' standard in cases concerning negligent veterinarians." Lindensmith, *supra* note 1, at 51. The author of a 1989 article wrote the following: "While Americans may be preoccupied by their pets, most courts still view them as merely personal property with little extrinsic value except for their commercial worth." Marcotte, *supra* note 1, at 35. Against this bleak backdrop, it should be noted that a dramatic improvement could occur soon in the number of states awarding a significant amount in damages for a pet's death. The law is in place (the actual or intrinsic value, emotional distress, and punitive damages), and there have been a sufficient number of large awards to serve as precedent. As one commentator has concluded, attorneys must creatively use the law that is available and develop new approaches to assist clients and to benefit pets. Note, *supra* note 32, at 412. With an increasing number of attorneys specializing in animal rights, hopefully the law will change more rapidly in the next 15 years, with large awards the rule rather than the exception. Marcotte, *supra* note 1, at 26, 35.

198. Recently, a small number of jurisdictions have awarded "hedonic damages." These damages place a dollar value on the diminished ability to enjoy life due to the negligently caused death or injury of a person. These damages are in the hundreds of thousands of dollars. For example, a 63-year-old woman was awarded \$800,000 because she could no longer enjoy such pleasures as walking five miles a day and taking her grandchild to high school band practice. A doctor's negligence caused the woman to lose

of a pet as a cause of action, but no court has done so. More states should allow emotional distress damages for the negligent or intentional killing of a pet, and the damages should be higher. The physical injury requirement should be eliminated. Awards large enough to encourage attorneys to bring suit should be the norm and not the exception. Finally, appellate courts should not overturn or reduce reasonable punitive damages for the intentional or reckless killing of a pet. In addition to properly compensating pet owners, these changes would reduce the intentional and negligent killing of pets since those responsible would know that such conduct would result in significant damage awards.<sup>199</sup>

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her ability to walk. Geyelin, *Hedonic Damages Awarded In Personal-Injury Lawsuit*, Wall St. J., Mar. 23, 1989, at B1, col. 3. Hedonic damages could be extended to include the pleasure an owner experiences from his or her relationship with a pet dog or cat that is killed intentionally or negligently.

199. It should be noted that if the pet is harmed by a negligent or reckless veterinarian, a remedy may be provided by bringing an administrative action against the license of the veterinarian. For example, in *Massa v. Department of Registration and Educ.*, 116 Ill. 2d 376, 507 N.E.2d 814 (1987), the Illinois Supreme Court affirmed the revocation of Massa's license for gross malpractice by the Department. The Department had proved that Massa had removed a dog's uterus in a manner that caused the dog to die. *Id.* at 376, 507 N.E.2d at 815. Moreover, the dog's uterus was normal and her illness was due to a respiratory problem. *Id.* at 376, 507 N.E.2d at 817. Of course, the plaintiff received no damages from this proceeding. Also, there is some question of how effective administrative bodies are in controlling veterinary malpractice. Note, *supra* note 32, at 401-04.



