

# *New York State Common Law Illogically Refers to “Man’s Best Friend” as “Personal Property”*

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## I. INTRODUCTION

Dogs are commonly referred to as “man’s best friend,” the companion animals that for centuries have provided owners with unconditional love, dedication and protection. In the United States today, there are approximately seventy-eight million owned dogs and thirty-nine percent of U.S. households own at least one dog (forty-five million households).<sup>1</sup> Dogs are generally regarded not just as companions, but as family members and best friends. Research shows that dogs experience emotions such as happiness and sadness like their human counterparts.<sup>2</sup> In fact, it is not unusual for some people to choose to care for a dog as an alternative to having children. In addition to companionship, studies demonstrate that humans derive health benefits from their relationship with pets.<sup>3</sup> However, despite a dog’s ability to experience emotion and provide pleasure and health benefits to their owners, New York State common law continues to refer to dogs as “personal property,” no different legally from the recliner in your living room or the lawn mower in your garage. Those cases show the courts struggle with the “property” versus “living being” concepts as they also state that dogs do feel love and pain unlike inanimate objects.

In contrast to case law, New York State has numerous civil and criminal laws protecting pets, or as better stated “companion animals”, from harm and abuse and even permits trusts and dispositions in a will for the benefit of a family pet. These laws provide penalties for animal cruelty, neglect, and abandonment. However, because there is no current distinction between property and living beings with regard to pets, more essential tort protections are not available.

The contradictions between case law (itself struggling to claim pets are “property” while simultaneously stating they are loving beings) and statutes regarding pets can be corrected as a strong argument can be made that pets sold for profit, and presently defined in the law as “property” and/or “goods,” should instead be defined as a “living being,” not an inanimate

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<sup>1</sup>*U.S. Pet Ownership Statistics*, The Human Soc’y of the U.S., [http://www.humanesociety.org/issues/pet\\_overpopulation/facts/pet\\_ownership\\_statistics.html](http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html). (last visited Feb. 21, 2012).

<sup>2</sup> Adam Miklosi, (2007) *Dog Behaviour, Evolution, and Cognition*, Oxford University Press; K.Guo, C Hall, S Hall, K Meints, D Mills (2007) *Left Gaze bias in human infants, rhesus monkeys and domestic dogs*. *Perception* 36 (s) 148.

<sup>3</sup>*The Benefit of Pets*, BEST FRIENDS ANIMAL SOC’Y, available at, <http://www.bestfriends.org/theanimals/pdfs/allpets/benefitsofpets.pdf>. More specifically, some of the research highlights included: “Dr. Karen Allen, a researcher at the State University of New York at Buffalo, showed that people with hypertension who adopted a dog had lower blood pressure readings in stressful situations than did those who did not own a pet.” *Id.* “According to a study published in 1999 in the *Journal of the American Geriatrics Society*, older people who have pets tend to have better physical health and mental well-being than those who don’t.” *Id.* “Dr. James Lynch of the Life Care Foundation conducted a study that showed that heart patients who owned pets had a much better chance of long-term survival than patients who didn’t own pets.” *Id.*

object. Modifying the legal definition will allow for more effective judicial and public cognizance of animal rights, and could include a pet owner's ability to recover damages for past and future pain and suffering, and loss of enjoyment of life when a pet is inhumanely and unlawfully bred, treated, injured, or killed. This article discusses the relevant statutes and NY common law making the case for defining dogs or companion pets as "living beings" as opposed to "personal property."

## **II. NEW YORK STATE LEGISLATION EXISTS FOR THE PROTECTION AND HUMANE TREATMENT OF PETS TO THE EXTENT THEY ARE RECIPIENTS OF ESTATE TRUSTS**

New York State common law currently defines pets as "property". This definition is illogical considering that state law provides for civil remedies and criminal punishment protecting animals. There are several sources of New York State law that collectively strengthen the case for defining pets as "living beings." Some of these include the New York State Lemon Law,<sup>4</sup> Agriculture and Markets Law,<sup>5</sup> General Business Law,<sup>6</sup> General Municipal Law,<sup>7</sup> General Obligations Law,<sup>8</sup> Public Health Law<sup>9</sup> and New York General Business Law regarding pet cemetaries.<sup>10</sup>

The New York State Pet Lemon Law is "designed to safeguard the public and to ensure the humane treatment of dogs and cats by requiring pet dealers to guarantee the good health of any such animal sold by a pet dealer to a consumer."<sup>11</sup> Recognizing the value of pets as more than mere property, New York State Attorney General Eric Schneiderman's Pet Lemon Laws brochure affirmatively states "[p]ets are truly members of the American family. It is estimated that approximately 60% of households have at least one pet."<sup>12</sup> and "[p]ets offer unconditional love and their companionship can provide important physical and emotional benefits to us." As a result of the Pet Lemon Law, consumers who purchase an unfit dog or cat may be entitled to a refund, reimbursement for veterinary expenses or a replacement animal.<sup>13</sup> The Pet Lemon Law pitfall, however, is that the consumer must obtain a veterinarian's certification that the animal is unfit a mere 14 days from the date of purchase or receipt of the written notice of the owners' rights under the law, whichever is later. The Pet Lemon Law is insufficient to protect consumers from congenital defects that can go undetected and arise months or even years after the purchase of a new pet. Another potential pitfall is that pets, including dogs and cats, are considered "goods" under the New York Uniform Commercial Code, therefore providing a market value

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<sup>4</sup>*NY Pet Lemon Law*, OFFICE OF THE N.Y. ST. ATT'Y GEN., CONSUMER FRAUDS BUREAU, [http://www.ag.ny.gov/bureaus/consumer\\_frauds/tips/pet\\_lemon\\_law.html](http://www.ag.ny.gov/bureaus/consumer_frauds/tips/pet_lemon_law.html). (last visited Feb. 21, 2012). *See also*, N.Y. GEN. BUS. LAW §§ 753-54 (McKinney 2011).

<sup>5</sup>N.Y. AGRIC. & MKTS. LAW §§ 106 – 127; 331 - 32, 400 - 410 (McKinney 2011).

<sup>6</sup>N.Y. GEN. BUS. LAW §§ 399-aa, 751 – 755 (McKinney 2011).

<sup>7</sup>N.Y. GEN. MUN. LAW § 88, 209cc (McKinney 2011).

<sup>8</sup>N.Y. GEN. OBLIG. LAW § 11-107 (McKinney 2011).

<sup>9</sup>N.Y. PUB. HEALTH LAW § 1310, 505-a, 2140 – 46 (McKinney 2011).

<sup>10</sup> N.Y. GEN. BUS. LAW §750.

<sup>11</sup>*NY Pet Lemon Law*, OFFICE OF THE N.Y. ST. ATT'Y GEN., CONSUMER FRAUDS BUREAU, [http://www.ag.ny.gov/bureaus/consumer\\_frauds/tips/pet\\_lemon\\_law.html](http://www.ag.ny.gov/bureaus/consumer_frauds/tips/pet_lemon_law.html). (last visited Feb. 21, 2012).

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

price tag limitation on each pet sold to consumers.<sup>14</sup> The Pet Lemon Law alone is meager protection for the pet and the consumer, and conflicts with the Attorney General's affirmations that pets are members of our family while simultaneously relegating them to a refund or replacement.

Somewhat more protection for the pet welfare and actually considering them as "living beings" is found in the State of New York's Department of Agriculture and Markets which imposes, enforces and collects monetary fines as a civil penalty against Pet Dealers who do not maintain proper standards of care for pets. Those laws demonstrate that pets, notably dogs, should be defined as "living beings" and not "personal property."

Section 350 of the Agriculture and Markets Laws actually defines certain pets as a "companion animal," i.e., any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal . . . "pet" or "companion animal" shall not include a "farm animal" . . .<sup>15</sup> The statute demonstrates that domesticated animals, such as dogs, are "companion animals," as distinguished from farm animals or wild animals. Further, the statute establishes that a companion animal is a friend, partner, or mate,<sup>16</sup> deserving of greater rights and protection and the title "companion." After defining dogs as companions rather than property, these laws provide further recognition for their well-being as Section 401 of New York's Agriculture and Markets Law provides for the minimum standards of animal care that pet dealers must comply with.<sup>17</sup> The statute specifically addresses housing, sanitation, handling, veterinary care, and humane euthanasia requirements<sup>18</sup> which are many of the basic requirements necessary for any "living being." By contrast, items of "personal property" do not require housing, and provisions for sanitation, handling and medical care. Violations of §§401-406 subject a pet dealer to "denial, revocation, suspension, or refusal of renewal of his or her license," and "violation of any provision . . . is a civil offense."<sup>19</sup>

Finally, §410 of New York's Agriculture and Markets Law ("Establishment of Animal Response Teams") provides that "[t]he commissioner is hereby authorized to establish state and county animal response teams to support the prevention of, preparedness for, response to, and recovery from emergencies and disasters affecting animals in New York State."<sup>20</sup> Although the statute does not specify that "companion animals" are to be rescued, a reliable assumption can be made that the government affords animals greater protection and security than "personal property" such as furniture or a personal computer. The conclusion is that animals are "living beings" and deserve to be saved, not destroyed.

Considering that animals and pets do have certain legal rights and protections, their right to be defined as "living beings" becomes more compelling when we consider they are also

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<sup>14</sup>See N.Y. U.C.C. LAW § 2-105 (McKinney 2011). Courts often use the market value of the pet to determine damages to its owner.

<sup>15</sup>N.Y. AGRIC. & MKTS. LAW§ 350 (McKinney 2011).

<sup>16</sup>"Companion" is defined as a mate or a partner, DICTIONARY.COM, <http://dictionary.reference.com/browse/companion>. (last visited Feb. 21, 2012).

<sup>17</sup>N.Y. AGRIC. & MKTS. LAW§ 401 (McKinney 2011).

<sup>18</sup>*Id.*

<sup>19</sup>N.Y. AGRIC. & MKTS. LAW§ 406 (McKinney 2011).

<sup>20</sup>N.Y. AGRIC. & MKTS. LAW § 410 (McKinney 2011).

entitled to estate benefits from willing owners to ensure the animal's well-being. The New York State Estates, Powers and Trusts Law § 7-8.1 ("Honorary Trusts for Pets") provides:

A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when the living animal beneficiary or beneficiaries of such trust are no longer alive.<sup>21</sup>

The significance of §7-8.1 cannot be understated. The statute establishes that a domestic or pet animal is eligible as a trust beneficiary. In contrast, an inanimate object, or items of personal property, such as one's automobile, cellular phone, or flat screen television can never be the beneficiary of a trust, demonstrating that companion animals should be identified as "living beings" that have certain rights and defining them as "personal property" is contrary to their statutory rights and protections, and their treatment under the law. Strengthening the fact that our legislature recognizes pets as more valuable than "property" and that "owners' suffer nothing less than emotional distress from losing their pets is their confirmation of the humane treatment pets demand upon their death in New York General Business Article 35-C §750:

"The legislature hereby finds and declares that the relationships that humans develop with other members of the animal kingdom that are taken into our homes and kept as pets are unique and special. These relationships can enrich our lives and increase our happiness. Even after the death of a pet, human attachment to the memory of the pet often remains very strong and many people feel the need to memorialize their love for their animal by burying their pet in a pet cemetery. Pet cemeteries, their managers and owners have a special responsibility to their customers who have entrusted their pets' remains with them. These pet cemeteries have a duty to act in an ethical and lawful manner to prevent grieving pet owners from experiencing further any emotional pain or financial manipulation. Perpetrations of fraud against grieving pet owners are unconscionable." (emphasis added)

### **III. NEW YORK STATE CASE LAW DEMONSTRATES ITS OWN INTERNAL CONFLICTS AND THE NEED FOR COURTS TO FOLLOW LEGISLATION THAT PROTECTS AND MANDATES HUMANE TREATMENT OF PETS**

"Pets are treated under New York law as personal property, and the loss of a dog by reason of negligence will not support claims by the animal's owners to recover for their resulting emotional injury."<sup>22</sup> This statement by the New York Supreme Court continues to reverberate in many related pet injury lawsuits. In countless cases, courts have held that a pet owner may recover the market value of a deceased pet; however, damages may not be recovered for an owner's emotional distress and loss of companionship, or the pain and suffering of pets. For

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<sup>21</sup>N.Y. EST. POWERS & TRUSTS LAW § 7-8.1 (McKinney 2011).

<sup>22</sup>See *Generally* Schrage v. Hatzlacha Cab Corp., 788 N.Y.S.2d 4 (App. Div. 2004). Where Plaintiff, dog owner, sued a cab company owner for the death of his dog attributable to the driver's negligent operation of a vehicle. Although Plaintiff demonstrated prima facie that the dog's death was due to the driver's negligence, the court found that the "loss of a dog by reason of negligence will not support claims by the animals owners to recover for their resulting emotional injury."

instance, where an airline passenger sued American Airlines for damages arising from the death of his dog after it suffered heat stroke in the cargo hold of an airplane, the court held that “under New York law, there is no independent cause of action for loss of companionship of a pet,” and no cause of action is recognized for the pain and suffering of animals.”<sup>23</sup> Additionally, in *Fowler v. Ticonderoga*, the New York Supreme Court held that plaintiff’s claim for damages for psychic drama resulting from the shooting of his dog by a Town Dog Control Officer unrecoverable.<sup>24</sup> The Court explained that “although plaintiff may have observed the killing of his dog, he was not in the zone of danger, was not himself physically injured, and the alleged tort ‘involved personal property, not a family member’.”<sup>25</sup> However, the New York Agriculture and Markets Law § 350 defines a domesticated pet, such as a dog, as a “companion animal.” The plain language of the statute clearly identifies dogs, as “companions”, yet courts nonetheless treat pets as “goods,” “personal property” or “inanimate objects” and have not expanded legal interpretations to make any further and obvious distinctions.

Significantly, not all courts uniformly believe that a pet is “personal property.” Some courts have held that “a pet is not an inanimate thing that just receives affection, it also returns it.”<sup>26</sup> In a 1979 Civil Court case in New York, the plaintiff Kay Corso, owner of a pet poodle, sought damages for mental anguish against a funeral arranger for pets when she found the remains of a cat in the casket that was supposed to be holding the remains of her deceased pet poodle.<sup>27</sup> One legal issue faced by the court was whether the plaintiff was entitled to damages beyond the market value of the dog.<sup>28</sup> In its decision the court first held that a pet “is not simply an item of personal property, but occupies a special place somewhere in between a person and a piece of personal property.”<sup>29</sup> Additionally, the court believed that “in ruling that a pet such as a dog is not just a thing . . . the plaintiff is entitled to damages beyond the market value of the dog . . . A pet is ‘not an inanimate thing’ that just receives affection, it also returns it.”<sup>30</sup> One year later, in a 1980 Civil Court tort lawsuit in New York, plaintiff’s eight-year-old trained watchdog died while boarding in the defendants kennel.<sup>31</sup> Plaintiff received the pet as a gift and therefore it had no ascertainable market value. The court held that “to this retired woman, who lived alone, this pet was her sole and constant companion,” and plaintiff “is not limited to a nominal award merely because the mixed breed dog was a gift and had no ascertainable market value, but instead entitled to damages for loss of companionship and protection since such factors are elements of the dog’s actual value to her.”<sup>32</sup> The courts in these cases recognized that regardless of “market value,” a pet is a living being that offers invaluable companionship, protection, love and support, the loss of which causes an owner grief and emotional distress.

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<sup>23</sup> *Gluckman v. American Airlines, Inc.*, 844 F. Supp. 151 (S.D.N.Y. 1994).

<sup>24</sup> *Fowler v. Town of Ticonderoga*, 516 N.Y.S.2d 368 (App. Div. 1987).

<sup>25</sup> *Id.* at 919-20.

<sup>26</sup> *Corso v. Crawford Dog & Cat Hospital* 415 N.Y.S.2d 182 (N.Y. Civ. Ct. 1979).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 183.

<sup>30</sup> *Id.*

<sup>31</sup> *See generally Brousseau v. Rosenthal*, 443 N.Y.S.2d 285 (N.Y. Civ. Ct. 1980).

<sup>32</sup> *Id.*

Most recently, in November 3, 2011, the Texas Court of Appeals sharply found dogs are “man’s best friend” and did its best to protect dogs by holding dogs have sentimental value when considering damages. In 2009, the Medlen family’s dog Avery escaped from their backyard in Texas and was picked up by animal control. When the Medlens went to pick up Avery from the shelter, they were notified that Avery was accidentally euthanized.<sup>33</sup> The sole issue in the case was whether a party can recover intrinsic or sentimental damages for the loss of a dog.<sup>34</sup> The Texas Court of Appeals overruled a 120-year-old case,<sup>35</sup> and held that “an owner may be awarded damages based on the sentimental value of lost personal property, and because dogs are personal property, the sentimental value of a dog is considered damages.”<sup>36</sup> In her opinion, Justice Lee Gabriel injected humanity into what is usually limited to property and said “[d]ogs are unconditionally devoted to their owners. Today, we interpret time sworn Supreme Court law in light of subsequent Supreme Court law to acknowledge that the special value of 'man's best friend' should be protected," and "[b]ecause an owner may be awarded damages based on the sentimental value of lost personal property, and because dogs are personal property, the trial court erred in dismissing the Medlens' action against Strickland.”<sup>37</sup>

Even the Internal Revenue Service is involved in the issue. During June of 2011, Jan Elizabeth Van Dusen successfully petitioned the Internal Revenue Service for the redetermination of an income tax deficiency arising from the disallowance of charitable-contribution deduction for her unreimbursed volunteer expenses while caring for about seventy foster cats in her private residence.<sup>38</sup> The Tax Court had to determine whether Van Dusen had provided services to a particular charitable organization for which she may deduct expenses.<sup>39</sup> The Tax Court ultimately held that Van Dusen may take charitable deductions for the expenses she incurred while caring for the cats in her home. According to the Wall Street Journal, “the decision . . . paves the way for volunteers of animal-rescue groups like the ASPCA and Humane Society of the U.S. to deduct unreimbursed expenses that further the groups' missions, such as fostering stray animals. It also clarifies rules for anybody deducting unreimbursed charitable expenses of \$250 or more, especially if they involve use of a home.”<sup>40</sup> The outcome of Van Dusen’s case is enormously significant for organizations dedicated to the protection of animals, prospective and current pet foster parents, as well as for establishing the

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<sup>33</sup> Medlen v. Strickland, 353 S.W.3d 576 (Tex. Ct. App. 2011).

<sup>34</sup> *Id.* at 577.

<sup>35</sup> See *Generally* Heiligmann v. Rose, 16 S.W. 931 (1891). The Supreme Court of Texas held that plaintiffs can only recover for the market value of their pets, “a damage award for the loss of a canine may be determined by either a market value, if the dog has any, or some special or pecuniary value to the owner, that may be ascertained by reference to usefulness and services of the dogs, and that they were of special value to the owner.”

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* note 31, at 580-81.

<sup>38</sup> See *generally* Van Dusen v. C.I.R., 136 T.C. 515 (2011).

<sup>39</sup> Internal Revenue Code, 26 U.S.C.A. § 170(c) (2006). The Tax Court considers the strength of the taxpayer's affiliation with the organization, the organization's ability to initiate or request services from the taxpayer, the organization's supervision over the taxpayer's work, and the taxpayer's accountability to the organization.

<sup>40</sup> Laura Saunders, *Stray Cat Strut: Woman Beats IRS*, THE WALL STREET JOURNAL, <http://online.wsj.com/article/SB10001424052702304778304576377744105236346.html>. (last visited Feb. 21, 2012).

concept that pets are actual living beings subject to a tax break similar to a child or any other dependant.

#### **IV. Conclusion**

The legal rights of animals, pets and pet owners in the United States are a work in progress. Improved legislation is necessary both on the federal and local levels. New York State statutes afford an abundance of protections for animals including civil and criminal penalties for violators, however courts have been reluctant to recognize the pain and suffering of a pet and consequently, its owner, yet within their own decisions they recognize that pets are not inanimate objects. As this article demonstrates, there exists a pressing issue requiring legislative reform concerning pets sold for profit. Presently defined as “property” and/or “goods,” legislation is needed to define pets or companion animals as “living beings,” and not inanimate objects. Modifying the definition in the law will allow for expanded rights including the recovery of damages for past and future pain and suffering, and loss of enjoyment of life when a pet is inhumanely and unlawfully treated, injured, or killed.

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