

Getting Emotional:

An Exploration of National Caselaw Trends in Pursuit of Noneconomic Damages in Animal Injury and Death Cases

Adam P. Karp, JD, MS

Animal Law Offices

Licensed in Idaho and Washington

www.animal-lawyer.com

888-430-0001



Property Damage

- *Damage or destruction to personalty, realty, chattel, fixtures, accessions*
- *Permitting property value, lost use, lost profits/rents, repair expense*



Personal Injury

- *Human injury or death*
- *Permitting pain and suffering, impairment of earning capacity, medical bills, permanent partial disability, reputational damage and humiliation, loss or reduction in enjoyment of life, interference with quiet use and enjoyment of property, pre-death terror*
- *Impaired plaintiff & deprived plaintiff*

Animal Injury or Death



Property Damage? Parasitic Personal Injury?

What of Animal's Own Suffering?



Animal as Plaintiff

- *If human, would be entitled to every element of damage provided for personal injury.*
- *Empirically real, but noncognizable.*
- *Windfall to tortfeasor.*

Animals as Property

- *Property value*
- *Lost use*
- *Lost profits/rents*
- *Search and veterinary expense*
- *Unique failure to mitigate issue arising from acceptability of euthanasia*



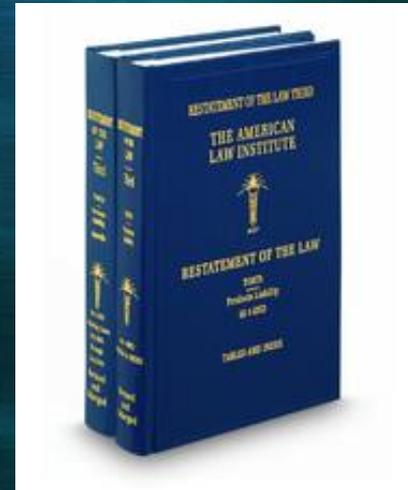
Parasitic PI Claim

- *Seeking grief and distress for fear of harm, or actual harm, to animal*
- *Mental health treatment, wage loss*
- *Loss of quiet use and enjoyment of animal*
- *Impaired animal & deprived owner*

Exception:

- *If service or emotional support animal, tantamount to nonparasitic (direct) personal injury claim where animal is extension of handler*

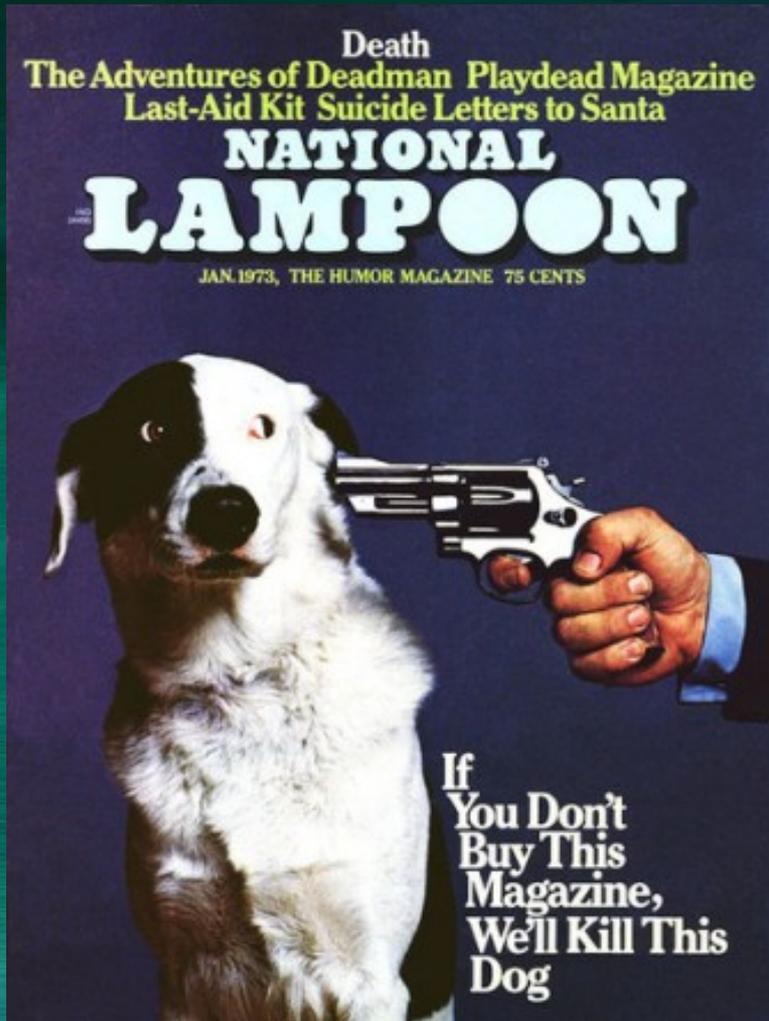
While pets are often quite different from other chattels in terms of emotional attachment, an actor who negligently injures another's pet is not liable for emotional harm suffered by the pet's owner. This rule against liability for emotional harm secondary to injury to a pet limits the liability of veterinarians in the event of malpractice and serves to make veterinary services more readily available for pets. Although harm to pets (and chattels with sentimental value) can cause real and serious emotional harm in some cases, lines—arbitrary at times—that limit recovery for emotional harm are necessary. Indeed, injury to a close personal friend may cause serious emotional harm, but that harm is similarly not recoverable under this Chapter. However, recovery for *intentionally* inflicted emotional harm is not barred when the defendant's method of inflicting harm is by means of causing harm to property, including an animal. See s 46, Comment *d*.
Rest. 3d Torts-PEH s 47 cmt. m.





“Parasitic” Harm:

Where actor’s tortious conduct in fact results in the invasion of another legally protected interest ... emotional distress caused ... by the resulting invasion or by the conduct may be a matter to be taken into account in determining the damages recoverable. In many instances there may be recovery for emotional distress as an additional, or “parasitic” element of damages in an action for such a tort. ***Rest. 2d Torts s 47 cmt. b.***



A, who knows that B is pregnant, intentionally shoots before the eyes of B a pet dog, to which A knows that B is greatly attached. B suffers severe emotional distress, which results in a miscarriage. A is subject to liability to B for the distress and for the miscarriage.

Rest. 2d Torts s 46 Ill. 11.

A, who is annoyed by the barking of B's pet dog, shoots at the dog intending to kill it. He misses the dog. B suffers severe emotional distress. A is not liable to B. ***Rest. 2d Torts s 47 cmt. a Ill. 2.***

Gradients of Distress-Causing Claims



- *Malicious Injury to an Animal*
- *Intentional Torts*
 - *Conversion*
 - *Trespass to Chattels*
 - *Fraud*
 - *Outrage/IIED*
- *Gross Negligence/Recklessness*
- *NIED*
- *Section 1983*
- *Certain Contract Breaches*

Malicious Injury to a Pet:

Womack v. von Rardon, 133 Wash.App. 254 (2006)



- Abducted and set afire.
- Felony cruelty charges result in “local sanctions.”
- Though outrage, statutory waste, NIED dismissed ...
- ... court created new cause of action not requiring:
 - Severe emotional distress.
 - Intent to cause distress.

Malicious Injury to a Pet:

Other States

- *Scheele v. Dustin*, 188 Vt. 36, 44 fn. 3 (2010)
 - Intentional shooting of trespassing dog.
 - Rejects general damages.
 - “With little analysis or coherence, and citing no authority supporting their spontaneous creation of this unique cause of action, *Womack* provides us with little legal reasoning to follow.”
- *LaPorte v. Assoc. Independents*, 163 So.2d 267 (Fla.1967)
 - Garbage collector intentionally throws can at dog.

Intentional Infliction of Emotional Distress: **Gill v. Brown, 107 Idaho 1137 (Idaho App.1985)**



- Brown shot Gills' donkey
- Fair market value
- NIED available with physical injury
- *Restatement (2nd) Torts s 46* adopted (i.e., outrage)
- Reversing dismissal of IIED given allegations of reckless conduct and extreme mental anguish and trauma

Intentional Infliction of Emotional Distress:

Other States

- *Burgess v. Taylor*, 44 S.W.3d 806 (Ky.App.2001)
 - Defrauding equine care lessors – generals permitted
- *Brown v. Crocker*, 139 So.2d 779 (La.App.1962)
 - . Intentionally shooting mare – generals permitted
- *Kaufman v. Langhofer*, 223 Ariz. 249, 249 (Ariz.App.2009)
 - Avian vet mal – rejects NIED, leaves open question of fraud, intentional misconduct, willful fiduciary breach
- *Richardson v. Fairbanks North Star Borough*, 705 P.2d 454, 456 (Ak.1985)
 - Shelter killing – allows IIED
- *Plotnik v. Meihaus*, 208 Cal.App.4th 1590, 1611 (2012)
 - Beating of dog with baseball bat – allows IIED

Negligent Infliction of Emotional Distress:

Pickford v. Masion, 124 Wash.App. 257 (2004)



- Rottweilers trespass on plaintiff's porch and maul Pekingese/Chihuahua
- Body-casted owner futilely tries to save dog, who lives
- Malicious Infliction claim rejected
- NIED rejected though "Pickford, with good reason, maintains that Buddy is much more than a piece of property; we agree."

Negligent Infliction of Emotional Distress:

Other States

- *Fackler v. Genetzky*, 595 N.W.2d 884, 892 (Neb.1999)
 - Equine vet mal –rejects generals for negligent death of animal
- *Kondaurov v. Kerdasha*, 271 Va. 646, 658 (Va.2006)
 - Motorist witnesses death of dog – NIED denied
- *McDougall v. Lamm*, 211 N.J. 203, 221 (2012)
 - Dog on dog attack – NIED denied
- Basically, no State allows NIED except, perhaps, Idaho.

Negligent Infliction of Emotional Distress:

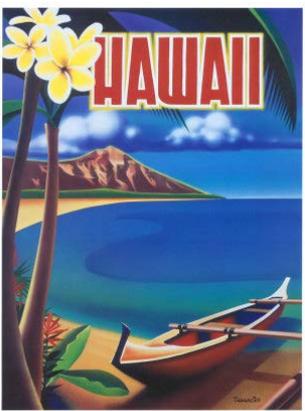
Idaho

“In order for the tort of [NIED] to lie, the actions of the defendant must have caused some physical injury to the plaintiff which accompanies the emotional distress. ... In this case the Gills have not alleged they suffered any physical injury. Thus their claim cannot be considered as one for recovery of damages for the negligent infliction of emotional distress.”

□ *Gill v. Brown*, 107 Idaho 1137, 1138 (1985)

“This Court has recognized physical manifestations of emotional distress as including sleep disorders, headaches, stomach pains, suicidal thoughts, fatigue, loss of appetite, irritability, anxiety, reduced libido and being ‘shaky-voiced.’ ... Under our precedent, these physical manifestations are sufficient to support recovery for [NIED].”

Carrillo v. Boise Tire Co., Inc., 152 Idaho 741, 750 (2012)

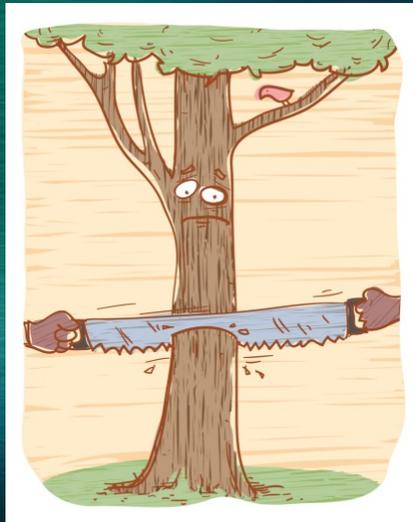


NIED – Island Style

Hawaiian Justice

- ❑ *Campbell v. Animal Quarantine Station, 63 Haw. 557 (1981)*
 - ❑ Dog overheats at rabies quarantine center
 - ❑ No objective symptoms
 - ❑ Not present when death occurred
 - ❑ NIED allowed
- ❑ **Repealed for property, but not human remains, by legislative act.**

BATTERIES



Conversion

Intentional Interference



- ❑ An unauthorized, intentional exercise of dominion and control over another's property serious enough to warrant payment of full value.
- ❑ A complete interference with right of possession (of living animal).
- ❑ Examples: wrongful acquisition, transfer, detention; substantially changing; severely damaging or destroying; misusing.
- ❑ ***Sherman v. Kissinger*, 146 Wash.App. 855, 873 fn. 8 (2008)**

Trespass to Chattels

Conversion “lite”



- ❑ An unauthorized, though minor, intentional intermeddling or dispossession of property.
- ❑ Similar acts of interference but of a less destructive or serious nature.
- ❑ Examples: injury to plaintiff's dog, denting a car, temporarily withholding item.
- ❑ ***Plotnik v. Meihaus, supra***

Breach of Contract “Involving Matters of Sentimental Value”:

**Smith v. University Animal Clinic, 30 So.3d 1154 (La.App.2010)
Cert. Denied 5-2, 36 So.3d 247 (2010)**



- ❑ Cat boarded at vet hospital
- ❑ Released to wrong client
- ❑ Cat then lost
- ❑ General damages upheld for breach of “contract of deposit” intended “to gratify a nonpecuniary interest” and knew failure to perform would cause such loss. La.Civ. Code 1998
- ❑ Noted Clinic said “pets are like our children.”



Wrongful Invasion

Body Snatchers, Beware!

- ❑ *Corso v. Crawford Dog and Cat Hospital, 97 Misc.2d 530 (City Civ.Ct.1979)*
 - ❑ Wrongful disposal of poodle's body.
 - ❑ Plaintiff opened casket to find cat's corpse.
 - ❑ \$700 emotional distress.
- ❑ **In Washington, emotional distress permitted for this tort-contract claim (human corpses).**

Breach of Contract:

Washington and Idaho

- *Restatement (2nd) Contracts*, s 353
- Generals allowed where the emotional disturbance accompanies a bodily injury or the contract or breach is of such kind that serious emotional disturbance was a particularly likely result (such as contracts of carriers, innkeepers, disposition of dead bodies, delivering messages of death)
- *Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426 (1991)
- Reckless or wanton breach of contract that, at creation, put obligor on notice that such breach would cause distress for nonpecuniary reasons.
- *Brown v. Fritz*, 108 Idaho 357, 366 (1985)
- Appears to reject *Restatement* while recharacterizing as punitive
- *See also Brown v. Mathews Mortuary, Inc.*, 118 Idaho 830, 838 (1990)

Hendrickson v. Tender Care (Pending Wash.App.II)



- Application of **Economic Loss Rule** to veterinary claims (i.e., contractual bar to noneconomic and noncontracted losses)
- **Emotional Distress** damages for reckless breach of animal care or control contract

In re Lababit

(Zauper v. Lababit)

2011 WL 674748 (9th Cir.2011)



- Dogs raised to fight escape and kill unintended animals as a **willful and malicious injury**
- Repeated failure to comply with affirmative duty of care (leash, confine, muzzle) resulting in escape and death as a **willful and malicious injury**
- **\$1 award** for cat value vacated
- **\$0 award** for emotional distress remanded

Public Utility – Contact Voltage: McKibbin et al. v. City of Seattle



- Pinched wire during relamping energized pole, handhole plate.
- *Thanksgiving Day* contact voltage death.
- Current flowed into Ms. McKibbin during rescue.
- Public utility duty of care?
- Strict liability?
- Section 1983 liability?
- Generals permitted based on personal injury, conversion, other theory?

The Case of Maxwell, the “Ghost Dog”

- ❑ Injured dog brought to vet after prostrate, convulsing.
- ❑ Client cannot afford surgery but offers payments (single mom, going to school).
- ❑ Payment plan rejected. Vet counsels euthanasia, and client “consents.”



- ❑ Client asks to see dog one last time but vet says “it is too late” and tells her she did the right thing.

A few months later ...

- ❑ In Safeway parking lot, sees her dog very much alive.
- ❑ Injury healed and licks her hand.
- ❑ Vet admits that his intern wanted to operate on dog free of charge, adopt him, and move to Texas.
- ❑ Vet claims dog was “his to give” because client signed dog over.
- ❑ Intern never took dog. Another client of hospital adopted.

“The Most Significant Factor”

- Vet tells client that he lied to client because she was heavily inebriated, very emotional, and perceived by him generally to be a poor caretaker.

Is this Fraud?

Conversion? Something else?

Is it Ethical?

**Was this the Right Thing to Do,
although He Had No Right to Do It?**

- *See Fredeen v. Stride, 269 Or. 369 (1974)*