

**Animal Law Final Exam**  
**Spring 2012**  
**Professor Vietzke**

Congratulations on being one step closer to entering the esteemed field of law! You can show off your newfound animal law expertise by answering each question below as thoroughly as possible. **Consider all relevant issues, arguments, solutions, and potential obstacles that each question presents.** Extra points will be awarded for correctly citing applicable cases where appropriate. Unless stated otherwise, you may assume that the jurisdiction for all questions is Massachusetts. When you are done, put this exam and any scrap paper inside the exam book, and you may leave. Good luck, and have a wonderful summer!

**Question 1** (10 points)

Jennie Finch attended a fundraiser at the Regal Beagle Restaurant to raise money for the Shadow Fund. While there, she won the third game of BINGO, and the fundraiser organizers gave her a hermit crab for a prize, which she named Sebastian. She stopped at the pet supplies store on her way home to purchase a tank and food for Sebastian. While she was waiting in line to pay for her purchase, Buffalo Springfield was in front of her was buying an orange safety vest, camouflage gun wraps, and two boxes of rifle ammunition. Jennie politely tapped Buffalo on the shoulder and said, "Excuse me, but I have to ask you why you think it's OK to kill innocent, defenseless creatures for your amusement? I hope you don't see a single animal. You're a despicable human being." Clearly angered by her comments, Buffalo motioned for the police officer providing security for the store. The officer arrested Jennie for violating the statute which reads:

No person shall (1) Interfere with the lawful taking of wildlife by another person, or acts in preparation for such taking, with intent to prevent such taking; or (2) harass another person who is engaged in the lawful taking of wildlife or acts in preparation for such taking.

After posting bail, Jennie returned to her apartment and promptly set up Sebastian's tank. Three months later, while working on her trial defense, she received a notice from her landlord that she was in violation of a new lease provision, effective with her lease renewal date, prohibiting as pets "cats, dogs, rodents, reptiles, and other animals." The notice further explains that Jennie has two months until her renewal to either comply with the provision or move out of the apartment. What result?

**Question 2** (15 points)

Kitty Dukakis, a 68-year-old widow, lived alone with her beloved canine companion of 11 years, Bolt. Bolt was part beagle, part rat terrier, and part pit bull terrier and the

gentlest dog Kitty had ever owned. She loved him so much, and he provided much comfort after her husband had died in an army tank tragedy. His appearance and bark also served to protect her, scaring away unwanted visitors. Because she had no children and a sizeable estate, Kitty executed a trust that provided for her good friend Michael J. Fox to care for Bolt after Kitty's death, funded with a sum of \$6 million. The trust also included a provision that permitted the MSPCA to euthanize Bolt in the event that Michael could not or did not care for Bolt in a manner consistent with how Kitty had cared for him.

One morning, Bolt woke with a limp. His left hind leg was stiff, and he was unable to put any weight on it. Kitty brought him to the veterinary hospital, where Dr. Tiger Woods examined him. During the examination, which revealed that Bolt would need surgery to repair his anterior cruciate ligament, Dr. Woods asked Kitty if she was aware of the recently enacted town ordinance prohibiting the possession of all pit bull terriers and pit bull terrier mixes, after a five-year-old girl was attacked by a pit bull terrier residing with its owner in the neighboring town, where dog fighting is believed to be occurring. He told Kitty that he would have to report her to the animal control officer—who would likely confiscate and euthanize Bolt—instead of performing the necessary surgery on Bolt.

Kitty took Bolt home and immediately filed for temporary injunctive relief and challenged the ordinance. Her relief was granted, and Bolt was allowed to remain with her while the suit was pending. A week later, Bolt appeared to be in much pain, so she brought him back to Dr. Woods, who could then perform the surgery. Without consulting Bolt's medical records, Dr. Woods operated on the right hind leg. As a result, when Bolt woke up from the anesthesia, he was unable to walk at all. Dr. Woods, realizing his mistake, then repaired the left hind leg. The second dose of anesthesia, however, proved to be too much for Bolt, and he died during the operation. Kitty now seeks to recover damages for the loss of Bolt. What result?

### **Question 3** (10 points)

Larry Bird is a veterinary science student at Eagle Gate College in Layton, Utah who is studying to be a veterinarian. In his animal biology class, Larry is required to participate in laboratory experiments involving rats and mice. They are kept in small cages, sometimes as many as 20-25 of them in a single cage, with no overnight or weekend care. There is not enough water or food to last them for an entire weekend, and sometimes the experiments involve subjecting the rats and mice to arguably cruel procedures. Larry's animal biology class meets three times per week, and each of the mornings of the class, Larry wakes up with a headache and feeling nauseated. On the nights of the class, he suffers insomnia, as he cannot stop thinking about the animals. Midway through the semester, after becoming depressed, he withdrew from the class. Larry asks you if there is anything he can do about the situation. Please advise him, raising all possible arguments and issues involved.

**Question 4** (15 points)

Cat Stevens owned two Border Collies, which had each won national titles for herding.<sup>1</sup> His neighbor, John Cougar Mellencamp, was a local farmer who raised chickens, turkeys, and pigs on his five-acre estate. Cat's yard was enclosed by an electric fence, and his dogs, which he has had for six years, never once left the yard, as they were too afraid of the shock.

One afternoon, as Cat was laying grass seed in his back yard, Eddie Rabbitt, who was selling magazine subscriptions, approached his yard. Cat's dogs, which had been lying in the front yard, basking in the warm San Diego sun, saw Eddie walk up the driveway. The dogs, which loved people, approached Eddie eagerly, wagging their tails. Startled by the quickness of the dogs, Eddie changed direction to move away from them. At the same time, however, one of the dogs started to circle him, bumping the back of his knees, causing Eddie to fall backward over the dog, where he landed on the asphalt driveway, breaking his leg. He yelled angrily at the dogs and waved his arms as if in a motion to possibly strike them. Border collies can sometimes be skittish in nature, and Cat's dogs were no exception. Afraid, they ran away from Eddie and out of the yard, absorbing the shock from the fence. Not wanting to re-enter the yard and suffer another shock, the dogs trotted over to John's yard and started herding his chickens and turkeys. Upon hearing all the clucking and squawking, John raced out of his house with a hunting rifle. Upon seeing the dogs circling around his animals, he fired two shots, missing the dogs. At that point, Cat came running over, and seeing John with the gun, yelled for him to stop. John looked up at Cat, raised his rifle, and fired two more shots, killing both dogs. Cat, who was extremely distraught over losing his beloved prize-winning companions, suffered depression and insomnia and subsequently lost his job.

California's Code provides that

...any person may kill any dog in any of the following cases:

(a) The dog is found in the act of killing, wounding, or persistently pursuing or worrying livestock or poultry on land or premises which are not owned or possessed by the owner of the dog.

(b) The person has such proof as conclusively shows that the dog has been recently engaged in killing or wounding livestock or poultry on land or premises which are not owned or possessed by the dog's owner.

Discuss all issues, causes of actions, rights, and liabilities that this question raises.

**Extra Credit** (5 points)

As an animal lover, you are deeply distressed at the existence of puppy mills in the United States. What is your best (e.g. most effective and comprehensive) course for reducing—and ultimately eliminating—the number of puppy mills? Explain.

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<sup>1</sup> In herding trials, the dogs move sheep or other cattle around fences, fields, gates, or other enclosures on the direction of their handlers.

**Question One**  
(worth 10 points)

Andy was the owner of an eight year old mongrel dog named Cindy, which had been a family pet since it was born. In June of 2009, Andy took his dog to Rawley Animal Hospital for an examination as she had been vomiting her food for two days. Dr. Fox, who is a veterinarian, examined the dog and prescribed medication. The next day the dog's condition worsened and Andy returned to the veterinarian, where the dog was examined and cauterized by Dr. Sawires. Medicine was administered. The dog was returned to the hospital the next day for an x-ray in accordance with Dr. Sawires' instructions. The x-ray was taken and the same day Dr. Sawires told Andy that the x-rays showed a needle was in the dog's intestine and that surgery was essential to save the dog's life. Andy authorized the surgery. After the surgery, Andy was advised that the needle was not found during the operation, but additional x-rays indicated that there was an object referred to as a "bullet" in or near animal's liver. Dr. Sawires admittedly had mixed up the two x-rays of similar dogs and the first x-ray showing the needle was not an x-ray of Cindy. Dr. Sawires told Andy that there had been lead poisoning and that personnel at Rawley Animal Hospital were not qualified to remove the bullet by medical procedures. He advised that only personnel at Angell Animal Hospital were so qualified. Dr. Fox told Andy that his dog was too weak for such a surgical procedure. The dog died on June 29, 2009. Andy commenced an action against Drs. Fox and Sawires, DVM and the Rawley Animal Hospital.

- A). What is the likely outcome?
- B). You are counsel for the plaintiff, write your argument.

**Question Two**  
(worth 10 points)

The U.S. Fish and Wildlife Service list as "endangered" under the Endangered Species Act (ESA) three species of antelope indigenous to North Africa. At the same time, the Service issued a rule authorizing certain otherwise prohibited activities that it claimed would enhance propagation or survival of the species, including trophy hunting of capture bred animals, as well as trade in sport hunted trophies and in the animals themselves. No individualized permit application subject to the requirement of public

notice and comment under the ESA was required. Various individuals and public interest organizations sued the government to block implementation of this exemption.

Plaintiffs claim this rule violates the ESA on its face, and claim the defendant violated the National Environmental Policy Act (NEPA) by failing to prepare a proper environmental impact statement.

One of the Plaintiffs is an American conservationist whose work concerns wild African populations of the three antelope species and alleges that hunting of the species in the U.S. under the services regulatory exemption would lead to more hunting in Africa, the geographical focus of the plaintiff conservationist's work.

Defendant's bring a motion to dismiss.  
What result? Fully discuss all legal issues presented.

**Question Three**  
(worth 10 points)

Gail Golden brought her seven-year-old tabby cat, Trixie to Andover Vets, Inc. for a dental cleaning. As part of the procedure, Trixie was administered anesthesia. Although Gail was scheduled to pick Trixie up that evening, Andover Vets, Inc. called her to inform her that she had not come out of the anesthesia and would need to spend the night and they would call Gail the next morning to arrange a pick up time. Trixie died during the evening – Gail subsequently learned that no overnight personnel were present at Andover Vets, Inc. Gail comes to you for legal advice. Explore any and all issues presented.

**Question Four**  
(worth 10 points)

Holly's trust provides that "I leave my dogs, Steffi and Herbie, the sum of \$75,000, so that they may continue to live in the house with the dog door, giving them access to the yard during the day, and all furniture inside. The rest of my estate should pay off the mortgage on the house and then be divided equally between my two children. If my trustee cannot maintain the house so that Steffi and Herbie can continue to live in the lifestyle they are accustomed to, then I direct that they be euthanized so that they do not know of any suffering or inhumane treatment.

Holly resides in Massachusetts, and she has savings accounts in Massachusetts and New Hampshire. Fully discuss all issues this provision raises.

**Question Five**  
(worth 10 points)

Read the following investigation report from the MSPCA , Lawrence Police Department and Methuen Veterinary Hospital and answer the following:

Is Ms. \_\_\_\_\_ guilty of animal cruelty under c272/77A or c272/77B?  
Fully support your answer.

<b>CRIMINAL COMPLAINT</b> DEFENDANT COPY		DOCKET NUMBER [REDACTED]	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department
DEFENDANT NAME & ADDRESS [REDACTED]			COURT NAME & ADDRESS Lawrence District Court Fenton Judicial Center 2 Appleton Street Lawrence, MA 01840 (978)687-7184	
DEFENDANT DOB [REDACTED]	COMPLAINT ISSUED 2006	DATE OF OFFENSE [REDACTED]	ARREST DATE	
OFFENSE CITY / TOWN Lawrence	OFFENSE ADDRESS [REDACTED]		NEXT EVENT DATE & TIME [REDACTED]	
POLICE DEPARTMENT MSPCA	POLICE INCIDENT NUMBER [REDACTED]		NEXT SCHEDULED EVENT Arraignment	
OBTN	[REDACTED]		ROOM / SESSION Arraignment Session	
The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.				

COUNT CODE	DESCRIPTION
1 272J71A	ANIMAL, CRUELTY TO c272 777
<p>On diverse dates from 10/23/2006 to 11/02/2006 did <del>overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance,</del> cruelly beat, mutilate or kill an animal, or did cause or procure such, or did use in a cruel or inhuman manner in a race, game or contest, or in training therefor, as lure or bait a live animal other than an animal used as lure or bait in fishing, in violation of G.L. c.272, 777.</p> <p>PENALTY: state prison not more than 5 years; or house of correction not more than 2? years; or not more than \$2500 fine; or both such fine and imprisonment; and may after hearing be required to surrender custody of such animal to humane society.</p>	
2 272J71B	ANIMAL, CRUELTY TO BY CUSTODIAN c272 777
<p>On diverse dates from 10/23/2006 to 11/02/2006, having the charge or custody of an animal, did <del>inflict unnecessary cruelty upon it, or unnecessarily fail to provide it with proper food, drink, shelter, sanitary environment or protection from the weather, or as owner, possessor, or person having the charge or custody of an animal did cruelly drive or work it when unfit for labor, or willfully abandon it, or carry it or cause it to be carried in an unnecessarily cruel or inhuman manner or in a manner which might endanger the animal, or did knowingly and willfully authorize or permit it to be subjected to unnecessary torture, suffering or cruelty,</del> in violation of G.L. c.272, 777.</p> <p>PENALTY: state prison not more than 5 years; or house of correction not more than 2? years; or not more than \$2500 fine; or both such fine and imprisonment; and may after hearing be required to surrender custody of such animal to humane society.</p>	

SIGNATURE OF COMPLAINANT X	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK X	DATE
NAME OF COMPLAINANT	CLERK-MAGISTRATE/ ASST. CLERK X	DATE

MASSACHUSETTS SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS  
LAW ENFORCEMENT DEPARTMENT  
INVESTIGATION REPORT

DATE: 11/08/06	DISTRICT: N.E.	OFFICER: [REDACTED]	RECEIVED BY: TEL <input checked="" type="checkbox"/> MAIL <input type="checkbox"/> PERSON <input type="checkbox"/>	NO: [REDACTED]
OFFENSE: Cruelty to Animals - Permit unnecessary suffering; Deprive necessary sustenance				
RESPONDENT: [REDACTED]		DOB: [REDACTED]		
ADDRESS: [REDACTED]				
COMPLAINANT: Officer [REDACTED]				
ADDRESS: 50 S. Huntington Ave., Boston, Mass. 02130				
WITNESS & ADDRESS: Officer [REDACTED] - Lawrence Animal Control, 90 Lowell Street, Lawrence, Mass. 01840				
WITNESS & ADDRESS:				
TREATED BY VETERINARIAN: YES NO		DATE TREATED:	NAME OF VETERINARIAN:	
ADDRESS:				

FOR OFFICER'S USE ONLY

11/08/06 - At approximately 3:15PM I responded to a call from the Methuen MSPCA shelter concerning an emaciated dog that had been brought to the shelter dead on arrival on 11/02/06. Miss [REDACTED] informed them her dog "Precious" had died that morning. Miss [REDACTED] was home upon arrival. I informed her I was there concerning "Precious" and asked what had happened. Miss [REDACTED] told me she had given "Precious" some pork rind about three to four weeks ago and the morning after she had become sick - throwing up, diarrhea. A couple of days later she started losing weight and looked really bad. She said she had gotten "Precious" two to three months ago from someone who couldn't care for her and she hadn't had any problems with her.

Miss [REDACTED] also informed me she didn't have any money so she hadn't taken "Precious" to a vet but she had called several. She said they told her to give her Pedialyte and Gatorade. I asked if she knew about the MSPCA shelter in Methuen and she said she had thought about calling them but didn't "because she looked so bad." She was skinny and her ribs were getting more evident. She said "they would think I was being cruel to her." Miss [REDACTED] told me she was embarrassed because "Precious" was so skinny and sick. She said "if you saw her when she was alive you would be embarrassed."

Miss [REDACTED] put "Precious" in the cellar about 1 1/2 weeks before she died because her diarrhea and vomiting was so bad and she was making a mess of the house. She had a crate in the basement for her and she could go in it when she wanted to. Miss [REDACTED] said she checked on her frequently and she would drink water when she went into the cellar to check on her. Miss [REDACTED] also said she was giving her water with a dropper. She said she kept thinking she was going to die but when she went into the cellar "Precious" would get up and walk. At about 0:00PM the night before she died, Miss [REDACTED] said "Precious" was in her crate, she went back about 9:00PM and couldn't find her. She finally heard "Precious" whine and found her under the staircase. She didn't pick up her head or move. Miss [REDACTED] left her there and went upstairs to bed. When she returned around 8:00-9:00AM the following morning (11/02/06) she found her dead in the same spot under the stairs. Miss [REDACTED] informed me she had the tenant on the third floor rip up the landing so she could get "Precious" out from under the stairs. She then took her to the Methuen MSPCA shelter for disposal.

Miss [REDACTED] owns a second dog, a Chihuahua, "Beba" who appears to be healthy at this time. Animal Control removed her due to her not being licensed. She will be held while Miss [REDACTED] decides if she is going to surrender her to Lawrence Animal Control.

11/10/06 - I took "Precious" to Methuen Vet to be examined. (See report.)

Officer [REDACTED]  
MSPCA





Lawrence Police Department

90 Lowell Street
Lawrence, MA 01840
(978) 794-5900

Incident Report

Wed 11/08/2006 15:00 HRS Animal Complaint
Date of Incident Time of Incident Type of Incident
Wed 11/08/2006 14:43 HRS
Date Reported Time Reported Location of Incident Floor or Apartment #

involved Parties (A)rested (C)omplainant (I)nterviewed (H)earing (J)uvenile (M)issing (O)ther (R)eporting officer (S)uspect (V)ictim (W)itness (X) = Warrant

Table with columns: Status, Last Name, First Name, M.I., Sex, Race, D.O.B., Telephone. Includes entries for R, O, O, S, O with names like PARKHURST Martha and address M.S.P.C.A., Boston, Ma.

Incident Details

On Wednesday, November 8th, 2006 I assisted Officer Martha Parkhurst to investigate the death of a dog that was turned in to the M.S.P.C.A. shelter in Methuen, Ma. The deceased dog was brought to the shelter by a woman named [redacted] who gave the address of [redacted]. The deceased dog was brought to the shelter on November 2nd, 2006, I viewed the dogs body with officer Parkhurst and pictures were taken. The dog was a female American Staffordshire terrier, white in color and extremely underweight. Through my training and experience it appeared as though the dog may have died by means of starvation. At approximately 15:15hrs we arrived at [redacted] and met with [redacted] who stated that she was the owner of the dog that was brought to the shelter. Officer Parkhurst read Ms. [redacted] the Miranda warning at this time. Ms. [redacted] stated that the dog named "Precious" had been sick for three to four weeks prior to her death. Ms. [redacted] stated that she could not afford to take the dog to a veterinarian for treatment, she stated that she had called some local veterinarians for advice. Ms. [redacted] said that she did not want to bring the dog anywhere because of the way she looked, she said she was embarrassed, what people would think. Ms. [redacted] stated that she had given the dog some kind of pork hind and thought that was what caused the dog to be sick. She said that the dog would not eat or drink anything for days. She said that she gave the dog pedialite and ground some liver for her. She said she was trying to feed her with a syringe. The dog looked better for a couple of days and then was sick again. At



Lawrence Police Department

90 Lowell Street  
Lawrence, MA 01840  
(978) 794-5900

Incident Report

Wed 11/08/2006	15:00 HRS	Animal Complaint	[REDACTED]
Date of Incident	Time of Incident	Type of Incident	Incident #
Wed 11/08/2006	14:43 HRS	9 Elm Street	Ellen E. Bristany
Date Reported	Time Reported	Location of Incident	Investigating Officer
			Floor or Apartment #

this time the dog had severe diarrhea so Ms. [REDACTED] put Precious in the basement because of the mess she was making. Ms. [REDACTED] stated that she went to the basement the night before she died to check on Precious at approximately 6:00 p.m. and Precious was in her cage. At 9:00p.m. Ms. [REDACTED] stated that she checked on Precious again and at this time the dog was under the stair well whimpering, the dog would not move or did not lift her head. Ms. [REDACTED] at this time went to bed. The next morning Ms. [REDACTED] checked on Precious and she was dead. Ms. [REDACTED] brought the dog to the shelter later on that day. Ms. [REDACTED] also has a female Chihuahua named Be'Ba. I asked Ms. [REDACTED] if the Chihuahua was up to date with rabies vaccination and a city license for the dog, she stated that she was not. Ms. [REDACTED] was advised that she was in violation and she would be issued a citation. I also advised Ms. [REDACTED] that she could surrender the dog to the city of Lawrence. Ms. [REDACTED] said she would think about surrendering the dog and would let me know on Monday, November 13th, 2006. The dog was taken to the city pound and is being held pending the investigation.

- NEVER  
TOLD  
HER  
OF  
FEE



METHUEN VETERINARY HOSPITAL

Donald A. Mearns, VMD  
Michelle L. Fogarty, DVM  
Suzanne Kane, DVM  
Patricia M. Trzcinski, DVM

15 Lovell Street  
Methuen, MA 01844  
Telephone: (978) 686-8881  
Fax: (978) 686-6607

November 14, 2006

To Whom It May Concern,

On November 10, 2006 I examined "Precious," a deceased female pitbull. On examination I found her to be severely emaciated. She had no periorbital fat pads causing severe enophthalmos (sunken eyes), and no palpable fat layer on the rest of her body. The dog also had severe muscle wasting all over her body. I would expect a dog of this size to have a minimum healthy body weight of about 45-50 pounds, and she weighed only 27.5 pounds. From my exam and the history given, the dog appears to have died of starvation/malnutrition due to protracted vomiting and diarrhea. In my opinion the lack of treatment constituted serious neglect on the part of the owner.

Sincerely,

Annika Gerow, DVM

Professor Sullivan &  
Professor Vietzke  
Animal Law  
Final Exam – Spring 2009

“The greatness of a Nation and its moral progress  
can be judged by the way its animals are treated.”  
Mahatma Gandhi (1869-1948)

**Question One**  
(worth 15 points)

Plaintiffs were the guardian and owner of two cats: Jellicle and Obi. Jellicle and Obi lived with the plaintiffs as members of their family. Both cats suffered from hypertension which defendant veterinarians treated through the prescription of 1.25 mg amlodipine chew tabs. On December 2<sup>nd</sup>, the plaintiffs purchased a refill of the medication at Valley Veterinary Services, prescribed by Dr. Paula Yanka, and dispensed from a stock bottle purchased from The Veterinary Pharmacy (“TVP”). Although the tablets were specifically warranted to carry a dose of 1.25 mg, they actually carried a higher dose of at least twenty times that amount; and thus the medication was toxic. On December 4<sup>th</sup>, the plaintiffs gave Jellicle and Obi tablets from the new batch of medicine. Both cats resisted taking the medication, but the plaintiffs followed the veterinarian’s order and gave the cats the prescribed tablets. The next day, both cats were anorexic, cold to the touch, and lethargic. The plaintiffs brought Obi to Dr. Cynthia on December 6<sup>th</sup>. Dr. Cynthia diagnosed Obi with an upper respiratory illness and released him. The next day the plaintiffs called Dr. Vallerie, also at Valley Veterinary Services because the cat’s condition was worsening. The plaintiffs once again expressed concern that the cats resisted taking their medication, which they had not resisted in the past. Dr. Vallerie told the plaintiff to continue to administer the tablets. On December 8<sup>th</sup>, Jellicle’s condition was much worse, so the plaintiffs rushed her to the Valley Veterinary Services where Dr. Charles determined the cat was severely hyperglycemic and azotemic. Realizing Obi had the same symptoms, the plaintiff rushed home to get Obi. Within a few hours of being admitted, Jellicle died. Obi died three days later.

Plaintiffs file a suit alleging, inter alia, negligence, and negligent infliction of emotional distress. They specifically claimed non-economic damages, including loss of companionship, and emotional distress.

The veterinarians filed a motion for summary judgment with regard to the plaintiff’s claims.

- A). What result?
- B). Make the plaintiffs’ argument.
- C). Make the defendant’s argument.

**Question Two**  
(worth 5 points)

Massachusetts enacts legislation that provides that:

No person shall (1) interfere with the lawful taking of wildlife by another, or acts in preparation for such taking with intent to prevent such taking, or (2) harass another person who is engaged in the lawful taking of wildlife, or acts in preparation of such taking.

Is this act constitutional? Fully support your answer.

**Question Three**  
(worth 5 points)

Of the three animal acts – AWA, ESA, & MMPA – which is the strongest & why?

**Question Four**  
(worth 15 points)

Quincy, a 29 year old horse, had severe arthritis and weak legs, and frequently collapsed. She leaned against a wall to hold herself up. Elliot S. Saffron is Quincy's owner. Saffron has been accused of using "rough methods" to get Quincy up, including throwing cold water in her face and pulling her aggressively. Saffron claims that Quincy is not suffering. The MSPCA visited Quincy at the farm she is kept at and told Saffron that the horse should be euthanized. Saffron refused because he couldn't bear to lose Quincy. Ultimately, Saffron was charged for "willfully allowing the animal to suffer" as he refused to euthanize.

- A. Make the arguments that you would make if you were prosecuting this case.
- B. What arguments would you make if you were defending Saffron?
- C. How would you rule if you were the judge? Why?

**Question Five**  
(worth 10 points)

Holly and Diane are married. For Diane's birthday four years ago, Holly adopted a Chow, Diane's favorite breed, and gave it to her. Diane named him Big Papi, after her favorite Red Sox player. In the beginning, both Diane and Holly would share the responsibilities equally. Diane would take Big Papi for a long walk every morning before work, and Holly would do the same when she got home in the afternoon. Whichever one wasn't teaching would bring

the dog to the vet or groomer's when needed. Whenever they traveled, they always brought Big Papi, or else Diane's family members would dogsit. They adored the dog and incorporated him into their leisure activities whenever they could.

Earlier this year, Diane and Holly filed for divorce. Holly moved out, and Big Papi stayed with Diane. For the first month after moving out, Holly continued to take Big Papi for his afternoon walks when her classes ended. But because of the impending divorce, Holly decided to seek new employment, and she took a job two hours away. This distance meant she could no longer walk Big Papi, and she couldn't easily bring him to the vet unless the appointment was made in advance and she was in the area. At the divorce hearing, the only matter in dispute was who should have custody of Big Papi, and whether the losing party can have visitation rights.

How should the court decide? Fully support your answer.

Professor Sullivan &  
Professor Vietzke  
Animal Law  
Final Exam – Spring 2008

“The greatness of a Nation and its moral progress  
can be judged by the way its animals are treated.”  
Mahatma Ghandi (1869-1948)

**Question One**  
(worth 10 points)

Theresa Leahy’s dog died last year as a result of Leahy’s veterinarian administering four times too much anesthesia as was necessary during a routine teeth cleaning surgery. Leahy’s dog Riley was an MSPCA rescue and adoption 2 years earlier that Leahy had paid \$380.00 to acquire. Riley was treated like a family member in the Leahy household. Ms. Leahy consults with you on three matters:

- A. Filing suit for negligence. Fully advise.
- B. Filing suit against her veterinarian for recovery of emotional distress damages. What would you advise? Fully support.
- C. She wishes to draft a petition to hold humans financially liable for wrongful injury or deaths of a pet - - whether it be a result of cruelty, an error in surgery, or reckless negligence. Ms. Leahy asks you to evaluate the following proposed act and asks your opinion on the likelihood it will be approved as written.

**\*\* SEE ATTACHED BILL SENATE, NO. 789 \*\***

# SENATE, No. 789

By Mr. Baddour (by request), a petition (accompanied by bill, Senate, No. 789) of Debra Campinale for legislation relative to the wrongful injury or death of animal-companions. The Judiciary.

Version with line numbers

## The Commonwealth of Massachusetts



In the Year Two Thousand and Seven.

### AN ACT RELATIVE TO THE WRONGFUL INJURY OR DEATH OF ANIMAL-COMPANIONS

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. . Section 85A of chapter 272 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out the first sentence.

SECTION 2. Said chapter 272, as so appearing, is hereby amended by inserting after section 85A the following section:-

Section 85B. (a) As used in this section, the term "animal-companion" shall mean a dog, cat or any warm-blooded, domesticated non-human animal dependent on one or more human persons for food, shelter, veterinary care, or companionship. It does not include animals that are the subjects of legal, humane farming practices; legal, humane biomedical research practices; or activities regulated by the federal Animal Welfare Act.

(b) A person who by willful, wanton, reckless or negligent act or omission kills or causes or procures the death of an animal-companion shall be liable in damages for



the fair monetary value of the deceased animal to his or her human companions, including damages for the loss of the reasonably expected society, companionship, comfort, protection and services of the deceased animal to his or her human companions; reasonable burial expenses of the deceased animal; court costs and attorney's fees; and other reasonable damages resulting from the willful, wanton, reckless or negligent act or omission.

(c) A person who by willful, wanton, reckless or negligent act or omission injures, or causes or procures to be injured, an animal-companion shall be liable in damages for the expenses of veterinary and other special medical care required; the loss of reasonably expected society, companionship, comfort, protection and services of the injured animal to his or her human companions; pain, suffering, emotional distress and consequential damages sustained by the animal's human companion; pain, suffering and loss of faculties sustained by the animal; court costs and attorney's fees; and other reasonable damages resulting from the willful, wanton, reckless or negligent act or omission.

(d) A person who by willful, wanton, or reckless act or omission injures, kills, causes or procures the injury or death of an animal-companion shall be liable in punitive damages of not less than \$2,500.

(e) Damages under this section for injuries sustained by an animal's human companion shall be recovered in an action of tort, commenced within three years from the date of injury or death or from the date when the human companion knew, or in the exercise of reasonable diligence should have known, of the factual basis for a cause of action, or within such time thereafter under section 4, 4B, 9 or 10 of chapter 260.

(f) Damages under this section for injuries sustained by an animal shall be recovered in an action of tort by a guardian ad litem or next friend, commenced within three

years from the date of injury or from the date when the guardian ad litem or next friend knew, or in the exercise of reasonable diligence should have known, of the factual basis for a cause of action, or within such time thereafter under section 4, 4B, or 9 of chapter 260. Damages so recovered shall be payable into a trust for the care of the animal, which trust shall be enforceable for the life of the animal by a person appointed by the court. Any remainder of trust funds existing at the death of the animal shall be distributed to a non-profit organization dedicated to the protection of animals.

(g) Restraining orders and other injunctive relief from wrongful injury or killing of animals may be issued by a


court of competent jurisdiction as appropriate.

**Question Two**

(worth 10 points)

Read the following investigation report from the MSPCA , Lawrence Police Department and Methuen Veterinary Hospital and answer the following:

Is Ms. \_\_\_\_\_ guilty of animal cruelty under c272/77A or c272/77B?  
Fully support your answer.

<b>CRIMINAL COMPLAINT</b> DEFENDANT COPY		DOCKET NUMBER [REDACTED]	NO. OF COUNTS 2	<b>Trial Court of Massachusetts</b> <b>District Court Department</b>	
DEFENDANT NAME & ADDRESS [REDACTED]			COURT NAME & ADDRESS Lawrence District Court Fenton Judicial Center 2 Appleton Street Lawrence, MA 01840 (978)687-7184		
DEFENDANT DOB [REDACTED]	COMPLAINT ISSUED [REDACTED] 2006	DATE OF OFFENSE [REDACTED]	ARREST DATE		
OFFENSE CITY / TOWN Lawrence		OFFENSE ADDRESS		NEXT EVENT DATE & TIME [REDACTED]	
POLICE DEPARTMENT MSPCA		POLICE INCIDENT NUMBER [REDACTED]		NEXT SCHEDULED EVENT Arraignment	
OBTN		[REDACTED]		ROOM / SESSION Arraignment Session	
The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.					

**COUNT CODE      DESCRIPTION**  
**1    272/77/A    ANIMAL, CRUELTY TO c272 ?77**

On diverse dates from 10/23/2006 to 11/02/2006 did ~~overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance,~~ cruelty beat, mutilate or kill an animal, or did cause or procure such, or did use in a cruel or inhuman manner in a race, game or contest, or in training therefor, as lure or bait a live animal other than an animal used as lure or bait in fishing, in violation of G.L. c.272, ?77.

PENALTY: state prison not more than 5 years; or house of correction not more than 2? years; or not more than \$2500 fine; or both such fine and imprisonment; and may after hearing be required to surrender custody of such animal to humane society.

**2    272/77/B    ANIMAL, CRUELTY TO BY CUSTODIAN c272 ?77**

On diverse dates from 10/23/2006 to 11/02/2006, having the charge or custody of an animal, did inflict unnecessary cruelty upon it, or unnecessarily fail to provide it with proper food, drink, shelter, sanitary environment or protection from the weather, or as owner, possessor, or person having the charge or custody of an animal did cruelty drive or work it when unfit for labor, or willfully abandon it, or carry it or cause it to be carried in an unnecessarily cruel or inhuman manner or in a manner which might endanger the animal, or did knowingly and willfully authorize or permit it to be subjected to unnecessary torture, suffering or cruelty, in violation of G.L. c.272, ?77.

PENALTY: state prison not more than 5 years; or house of correction not more than 2? years; or not more than \$2500 fine; or both such fine and imprisonment; and may after hearing be required to surrender custody of such animal to humane society.

SIGNATURE OF COMPLAINANT X	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK X	DATE
NAME OF COMPLAINANT	CLERK-MAGISTRATE/ ASST. CLERK X	DATE

MASSACHUSETTS SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS  
LAW ENFORCEMENT DEPARTMENT  
INVESTIGATION REPORT

DATE: 11/06	DISTRICT: N.E.	OFFICER: [REDACTED]	RECEIVED BY: TELY MAIL <input type="checkbox"/> PERSON <input type="checkbox"/>
OFFENSE: Cruelty to Animals – Permit unnecessary suffering; Deprive necessary sustenance			
RESPONDENT: [REDACTED]	DOB: [REDACTED]	[REDACTED]	
ADDRESS: [REDACTED]			
COMPLAINANT: Officer [REDACTED]			
ADDRESS: 950 S. Huntington Ave., Boston, Mass. 02130			
WITNESS & ADDRESS: Officer [REDACTED] – Lawrence Animal Control, 90 Lowell Street, Lawrence, Mass. 01840			
WITNESS & ADDRESS:			
TREATED BY VETERINARIAN: YES NO	DATE TREATED:	NAME OF VETERINARIAN:	
ADDRESS:			

FOR OFFICER'S USE ONLY

11/08/06 – At approximately 3:15PM I responded to a call from the Methuen MSPCA shelter concerning an emaciated dog that had been brought to the shelter dead on arrival on 11/06/06. Miss [REDACTED] informed them her dog "Precious" had died that morning. Miss [REDACTED] was home upon arrival. I informed her I was there concerning "Precious" and asked what had happened. Miss [REDACTED] told me she had given "Precious" some pork rind about three to four weeks ago and the morning after she had become sick – throwing up, diarrhea. A couple of days later she started losing weight and looked really bad. [REDACTED] She said she had gotten "Precious" two to three months ago from someone who couldn't care for her and she hadn't had any problems with her.

Miss [REDACTED] also informed me she didn't have any money so she hadn't taken "Precious" to a vet but she had called several. She said they told her to give her Pedialyte and Gatorade. I asked if she knew about the MSPCA shelter in Methuen and she said she had thought about calling them but didn't "because she looked so bad." She was skinny and her ribs were getting more evident. She said "they would think I was being cruel to her." Miss [REDACTED] told me she was embarrassed because "Precious" was so skinny and sick. She said "if you saw her when she was alive you would be embarrassed."

Miss [REDACTED] put "Precious" in the cellar about 1 ½ weeks before she died because her diarrhea and vomiting was so bad and she was making a mess of the house. She had a crate in the basement for her and she could go in it when she wanted to. Miss [REDACTED] said she checked on her frequently and she would drink water when she went into the cellar to check on her. Miss [REDACTED] also said she was giving her water with a dropper. She said she kept thinking she was going to die but when she went into the cellar "Precious" would get up and walk. At about 6:00PM the night before she died, Miss [REDACTED] said "Precious" was in her crate, she went back about 9:00PM and couldn't find her. She finally heard "Precious" whine and found her under the staircase. She didn't pick up her head or move. Miss [REDACTED] left her there and went upstairs to bed. When she returned around 8:00-9:00AM the following morning (11/02/06) she found her dead in the same spot under the stairs. Miss [REDACTED] informed me she had the tenant on the third floor rip up the landing so she could get "Precious" out from under the stairs. She then took her to the Methuen MSPCA shelter for disposal.

Miss [REDACTED] owns a second dog, a Chihuahua, "Beba" who appears to be healthy at this time. Animal Control removed her due to her not being licensed. She will be held while Miss [REDACTED] decides if she is going to surrender her to Lawrence Animal Control.

11/10/06 – I took "Precious" to Methuen Vet to be examined. (See report.)

[Signature]  
Officer Martha [REDACTED]  
MSPCA



# Lawrence Police Department

90 Lowell Street  
Lawrence, MA 01840  
(978) 794-5900

## Incident Report

[Redacted] Incident #

Wed 11/08/2006	15:00 HRS	Animal Complaint	Ellen E. Bistany
Date of Incident	Time of Incident	Type of Incident	Investigating Officer
Wed 11/08/2006	14:43 HRS	[Redacted]	
Date Reported	Time Reported	Location of Incident	Floor or Apartment #

### Involved Parties

Status	Last Name	First Name	M.I.	Sex	Race	D.O.B.	Telephone
<input checked="" type="checkbox"/> R	[Redacted]	[Redacted]	E.				(978)794-5900
Address: [Redacted]							
<input type="checkbox"/> O							(978)794-5900
Address: [Redacted]							
<input type="checkbox"/> O							[Redacted]
Address: [Redacted]							
<input checked="" type="checkbox"/> S	[Redacted]	[Redacted]	P	F	H	[Redacted]	[Redacted]
Address: [Redacted]							
<input type="checkbox"/> O	PARKHURST	Martha					508-726-6126
Address: M.S.P.C.A., Boston, Ma.							

### Incident Details

On Wednesday, November 8th, 2006 I assisted Officer Martha Parkhurst to investigate the death of a dog that was turned in to the M.S.P.C.A. shelter in Methuen, Ma. The deceased dog was brought to the shelter by a woman named [Redacted] who gave the address of [Redacted]. The deceased dog was bought to the shelter on November 2nd, 2006, I viewed the dogs body with officer Parkhurst and pictures were taken. The dog was a female American Staffordshire terrier, white in color and extremely underweight. Through my training and experience it appeared as though the dog may have died by means of starvation. At approximately 15:15hrs we arrived at [Redacted] and met with [Redacted] who stated that she was the owner of the dog that was brought to the shelter. Officer Parkhurst read Ms. [Redacted] the Miranda warning at this time. Ms. [Redacted] stated that the dog named "Precious" had been sick for three to four weeks prior to her death. Ms. [Redacted] stated that she could not afford to take the dog to a veterinarian for treatment, she stated that she had called some local veterinarians for advice. Ms. [Redacted] said that she did not want to bring the dog anywhere because of the way she looked, she said she was embarrassed, what people would think. Ms. [Redacted] stated that she had given the dog some kind of pork Rhind and thought that was what caused the dog to be sick. She said that the dog would not eat or drink anything for days. She said that she gave the dog pedialite and ground some liver for her. She said she was trying to feed her with a syringe. The dog looked better for a couple of days and then was sick again. At



Lawrence Police Department

90 Lowell Street
Lawrence, MA 01840
(978) 794-5900

Incident Report

[Redacted]

Incident #

Ellen E. Bistany

Investigating Officer

Form with fields: Date of Incident, Time of Incident, Type of Incident, Date Reported, Time Reported, Location of Incident, Floor or Apartment #

this time the dog had severe diarrhea so Ms. [Redacted] put Precious in the basement because of the mess she was making. Ms. [Redacted] stated that she went to the basement the night before she died to check on Precious at approximately 6:00 p.m. and Precious was in her cage. At 9:00p.m. Ms. [Redacted] stated that she checked on Precious again and at this time the dog was under the stair well whimpering, the dog would not move or did not lift her head. Ms. [Redacted] at this time went to bed. The next morning Ms. [Redacted] checked on Precious and she was dead. Ms. [Redacted] brought the dog to the shelter later on that day. Ms. [Redacted] also has a female Chihuahua named Be'Ba. I asked Ms. [Redacted] if the Chihuahua was up to date with rabies vaccination and a city license for the dog, she stated that she was not. Ms. [Redacted] was advised that she was in violation and she would be issued a citation. I also advised Ms. [Redacted] that she could surrender the dog to the city of Lawrence. Ms. [Redacted] said she would think about surrendering the dog and would let me know on Monday, November 13th, 2006. The dog was taken to the city pound and is being held pending the investigation.

NEVER TOLD HER OF FEE

Investigating Officer's Signature

Reviewed By



**METHUEN VETERINARY HOSPITAL**

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Donald A. Moore, VMD.  
Melissa L. Fogarty, DVM.  
Suzanne Katz, DVM.  
Patricia M. Trzcinski, DVM.

15 Lovell Street  
Methuen, MA 01844  
Telephone (978) 686-6601  
Fax: (978) 686-6607

November 14, 2006

To Whom It May Concern,

On November 10, 2006 I examined "Precious," a deceased female pitbull. On examination I found her to be severely emaciated. She had no periorbital fat pads causing severe enophthalmos (sunken eyes), and no palpable fat layer on the rest of her body. The dog also had severe muscle wasting all over her body. I would expect a dog of this size to have a minimum healthy body weight of about 45-50 pounds, and she weighed only 27.5 pounds. From my exam and the history given, the dog appears to have died of starvation/malnutrition due to protracted vomiting and diarrhea. In my opinion the lack of treatment constituted serious neglect on the part of the owner.

Sincerely,

Annika Gerow, DVM



**Question Three**  
(worth 10 points)

Muhammad slaughters sheep, goats, and cows in accordance with Islamic religious law in Massachusetts on his mother's 23 acre property. He slaughters these animals in an open field, and he disposes of parts not used. Members of his religion come to him and pay for a religious service with a ritual slaughter. The person employing Muhammad participates in the slaughter.

For example: 21 days after birth of a child, Muslim religion requires a new father to slaughter a goat. So the new father goes to Muhammad – selects a goat and slaughters it.

Discuss whether:

Muhammad is guilty of animal cruelty? See anti-cruelty statute below:

**Citation: M.G.L.A. 272§ 77 – 95**

§ 77 is the operative anti-cruelty statute and provides that whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, and whoever uses in a cruel or inhuman manner in a race, game, or contest, or in training as lure or bait a live animal (except as bait in fishing), or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind shall be punished by imprisonment in the state prison for not more than 5 years or imprisonment for not 2 ½ years or by a fine of not more than \$2,500, or by both such fine and imprisonment. Also, prohibitions include the dying of baby chicks, the docking of horse tails, and both felony and misdemeanor penalties for animal fighting, depending on contact.

**Question Four**  
(worth 10 points)

As you know, Heather Mills McCartney, ex-wife of Paul McCartney, campaigned for a ban on cat and dog fur. Such a ban is now in place in the United States. Assume Andy Activist becomes aware that the ban is being ignored and coats with false labels are being imported from China (fur coats are made from alsatian puppies). Andy files suit. What Result? Fully support your answer.

**Question Five**  
(worth 10 points)

Thomas, Joseph, and Claudia are tenants in Andover Village, an apartment building consisting of 24 units (they each occupy one unit). All three currently own pets: Thomas has a six-year-old dachshund that he has had since the dog was a puppy, Joseph has a 12-year-old Golden Retriever that he adopted five years ago, and Claudia has a three-year-old indoor Siamese cat that was her mother's cat before she died two years ago. Their current leases, which expire in September, allow each tenant to possess one pet. They are the only tenants in the building that have pets. Thomas and Joseph walk their dogs off premises and always clean up after them. Neither dog barks when inside the apartment, and neighbors have never complained about their presence.

Last month, Jeff Stone bought the building and became the new landlord. He was aware of the three units containing pets. At the expiration of each current tenant's lease—and for any new tenants—he provides the tenant with a new lease that expressly prohibits all pets except for fish and birds weighing less than five pounds. He gives tenants 30 days upon the expiration of their leases to get rid of their pets, or else they will be evicted. Thomas, Joseph, and Claudia have brought an action against Mr. Stone seeking to enjoin the pet restriction in the new lease. What result? Fully support your answer.

Final Exam  
Animal Law - Spring 2005  
Professor Sullivan

"The greatness of a Nation and its moral progress  
can be judged by the way its animals are treated."  
Mahatma Ghandi (1869-1948)

### **QUESTION 1**

As you know, Heather Mills McCartney, wife of Paul McCartney, campaigned for a ban on cat and dog fur. Such a ban is now in place in the United States. Assume Andy Activist becomes aware that the ban is being ignored and coats with false labels are being imported from China (fur coats are made from alsatian puppies). Andy files suit. What Result?

Fully support your answer.

### **QUESTION 2**

On December of 2004, Howard Horrible contacted Attorney Fuller for the purpose of requesting a codicil to his last Will and Testament. The purpose of the amendment was to provide for the destruction of Mr. Horrible's animals owned by him at the time of his death. The codicil was signed on December 8, 2004 and he died on January 8, 2005. Attorney Fuller was appointed as executor of Howard Horrible's estate. A coalition to save Howard's animals formed, including a neighbor, Mary, who had spent significant time with the animals in question; The Massachusetts Society for the Prevention of Cruelty to Animals, The Humane Society of The United States; and The Student Animal Defense Fund, a Massachusetts-based affiliate of the National Organization located at the Massachusetts School of Law.

You are the Attorney for the coalition to save Horrible's animals. Please make your argument at the hearing for allowance of the last Will and Testament. Horrible's animals include a horse, dog, and cat.

### **QUESTION 3**

I write this as my last Will. "I leave everything I own real and personal to my companion George Bourque and my dogs Akuna Sullivan and Whitey Sullivan, except for my piano and golf clubs which I leave to my only sister, Nancy."

- A. Will the Court uphold this Will? Fully support.
- B. How would you assist a client in the client's desire to provide for his/her companion animal(s) after death?

#### **QUESTION 4**

Betty Boyle's 2 year old dog, a shepherd-collie mix, was struck and killed by a Massachusetts Electric truck when the driver pulled into Boyle's front yard to read her meter at 123 Sadville Street, Andover, MA. Boyle still cries aloud when she talks about cradling her dog as he lied in her arms dying. Boyle is suing the utility company seeking compensation for pain and emotional distress she suffered from losing "Buddy."

- A. What result? Fully support your answer.
- B. You are counsel for Betty Boyle. Make your argument.

#### **QUESTION 5**

Is the Marine Mammal Protection Act ("MMPA") effective?  
Why or why not?

"We must be the change we wish to see." Mohatma Gandhi