

**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	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 [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
1 272/771A	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.

2 272/771B	ANIMAL, CRUELTY TO BY CUSTODIAN c272 ?77
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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 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, 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: [REDACTED]/06	DISTRICT: N.E.	OFFICER: [REDACTED]	RECEIVED BY: TEL <input checked="" type="checkbox"/> 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: 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. ~~At approximately 8:00PM I was warned [REDACTED] and warned [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 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 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

Incident #

Wed 11/08/2006 15:00 HRS Animal Complaint
Date of Incident Time of Incident Type of Incident
Ellen E. Bistany
Investigating Officer

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.

Status Last Name First Name M.I. Sex Race D.O.B. Telephone
R [redacted] [redacted] E. [redacted] [redacted] [redacted] (978)794-5900

Address: [redacted]
O [redacted] [redacted] [redacted] [redacted] [redacted] (978)794-5900
Address: [redacted]

O [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
Address: [redacted]

S [redacted] [redacted] P F H [redacted] [redacted]
Address: [redacted]

O PARKHURST Martha [redacted] [redacted] [redacted] [redacted] 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

[Redacted]

Floor or Apartment #

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 9 Elm Street

Date Reported Time Reported

Location of Incident

[Redacted]

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

[Redacted Signature]

Reviewed By



**METHUEN VETERINARY HOSPITAL**

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Donald A. Moore, VMD.  
Melissa L. Foglia, DVM.  
Suzanne Kane, DVM.  
Patricia M. Trzcinski, D.V.M.

15 Larch Street  
Methuen, MA 01844  
Telephone: (978) 686-8831  
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.