

Maryland Lawyer

News and analysis of legal matters in Maryland

Animal law, unleashed

Pit bulls have the spotlight right now, but that's not the only issue on all fours

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The area of animal law goes beyond drafting life-estates for four-legged survivors or defending an owner whose dog has been judicially declared inherently dangerous. The cases deal with serious, wide-ranging areas of the law — including constitutional rights, property law and business law, animal lawyers said.

“Any time there is an animal-type aspect of a case, people look for an animal law attorney, but it can be a business law case, a tort case or a contract dispute,” said Rebekah Damen Lusk, who practices animal law at **Thienel Law Firm LLC** in Columbia. “The underlying law is the law we already know, but they have an aspect that involves animals and there are a lot of attorneys out there not willing to take those types of cases.”

The Animal Law Section of the **Maryland State Bar Association** is always discussing hot-button animal law issues across the country, section chair Stacey Evans said.

The most common issues overall include a steep rise in feral cat populations, puppy mills that breed animals en masse under unsafe conditions, protection of endangered animal species and whether people can keep exotic animals like lions and tigers as pets, Evans said.

In Maryland, there is dog fighting in Baltimore, the Court of Appeals' decisions finding pit bulls inherently dangerous and a legislative ban on pit bulls that Prince George's County enacted in 1996, Evans said.

And, always, there is the issue of stereotypes. Some people, Evans said, tend to look down on animal law attorneys.

“They build a perception that if you are an animal attorney, you are some crazy, whacked-out person with 50 birds and 60 cats at home,” Evans said. “You're just out of your mind and hate people and love animals. There is still a stereotype out there, but I think it's changing.”

Anne Benaroya, founder of the **Maryland Animal Law Center** in Bowie, said the number of animal law cases has increased over the 14 years she has practiced in the field.

Benaroya said she worked a dangerous-dog case in Baltimore in 2000 that involved police searching a home and shooting a dog. The court in that case would not even recognize a dog behavior expert she wanted to use in the case.

“Animal law has changed very, very much,” Benaroya said. “It has made huge strides in 10 to 15 years.”

Lusk, who mainly works from her home in Frederick, takes on clients from all over the animal kingdom, but concentrates mostly on horses.

An attorney for three years, Lusk said animal law makes up 15 to 20 percent of her practice.

She handles many disputes between horse owners and boarding facilities, and has had clients on both sides of the issue, she said. In Maryland, a



MAXIMILIAN FRANZ

Stacey Evans, who chairs the MSBA's animal law section, says hot-button issues across the country include feral cats, puppy mills and whether exotic animals can be kept as pets.

boarding facility operator can sell a horse at auction if its owners have not kept up with their payments, Lusk said. Lusk owns four horses herself, which she said helps her take on cases like these.

Decreased damages

Lusk's biggest case, however, involved a client whose dog was shot and wounded by the **Frederick County Sheriff's Department** when officers entered a family's home. The case, Lusk said, dealt with many different practice areas, including torts and constitutional law.

Lusk's clients, Roger and Sandra Jenkins, were awarded \$620,000 in compensatory damages, including \$20,000 in veterinary bills, \$400,000 in non-economic damages and \$200,000 in non-economic damages for illegal entry.

A circuit court judge left most of the award intact, but reduced the compensatory damages to \$600,000 under a state law that caps damages for veterinary bills at \$7,500.

The police are appealing the decision to the Court of Special Appeals, Lusk said.

She and other animal law attorneys said the cap is outdated.

Lusk said the law was created to protect veterinarians, but does not stand up given the high costs of animal health care today.

“I don't think it's a provision that's at all in line with the costs of caring for animals that are injured,” Lusk said. “At this time, I think it's a pretty archaic law.”

Several lawyers called low damage awards in general one of the biggest issues in animal law in Maryland.

The law's idea of the value of an animal has not evolved to encompass people's attachments to animals as pets, Benaroya said.

“It's hard to say: ‘Gee, that was a family pet they

had for 15 years that was truly a member of the family. It has a net worth of what it costs to replace it with an animal from the animal shelter,” Benaroya said.

A question of property

A related question in the animal law community is whether animals should continue to be viewed, legally, as property.

The General Assembly and the courts “have not caught up to how people view animals,” Lusk said. Evans agreed.

“Animals are not like tables or housing,” she said. “They actually do have emotions and feelings.”

Lusk, who has two Norwegian elkhounds, sometimes handles pet-custody battles between separated couples, as well as dangerous-dog cases.

The problem with cases like these, Lusk said, is that they are expensive to litigate, something many animal owners do not realize. She said she receives many calls from low-income people who can't afford an attorney, and pro bono organizations rarely take on animal cases, Lusk said.

“I just can't take every case, and it's hard,” Lusk said. “I hope over time we will have more resources available for those people.”

The pit-bull pickle

In the pit-bull cases, the Court of Appeals ruled in April that all owners of pit bulls and pit-bull mixes and landlords who knew of the dogs' presence on their property would be strictly liable in the case of an attack. The court amended its decision in August to include only purebred pit bulls.

The case, *Tracey v. Solesky*, stemmed from a pit-bull attack on a 10-year-old boy. Dominic Solesky's parents sued the landlord after the pit

bull’s owner declared bankruptcy.

Richard E. Schimel, an attorney for **Budow and Noble** P.C. in Bethesda, represented the landlord when the case went to the Court of Appeals. Schimel disagreed with the court’s decision and said he did not think a breed could be used to determine viciousness.

“You punish the deed not the breed,” Schimel said.

Schimel said the court’s decision will create a ripple effect, with landlords banning tenants from owning pit bulls. A case was already filed in the **U.S. District Court** in Baltimore last month by a tenant at Baltimore housing cooperative Armistead Gardens.

The housing complex sent a letter in August telling tenants to get rid of their pit bulls or face possible eviction. Joseph Weigel, a tenant in the low-income co-op, said in court filings that the law violated his constitutional and property rights.

“Landlords who clearly are paranoid as a result of the decision are basically throwing the baby out with the bathwater,” Schimel said.

Lusk said she has worked a number of dog-bite cases, but has found the court to be much less sympathetic to pit-bull cases. She said in light of the Court of Appeals ruling, she is now reluctant to take dog-bite cases.

“I know it is hard to win dangerous-dog cases unless there are really good facts,” Lusk said. “You are probably going to spend a lot of money and not going to win.”

Lusk has represented both landlords and pet



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owners in dangerous-dog cases. She said she is telling landlord clients to be very careful about accepting tenants with pit bulls, though she disagrees with the strict liability decision.

“If a dog looks in its face like a pit bull, I am telling my landlord clients to be much more careful as to whether they accept the dogs,” Lusk said. “I think the way court is looking at this is problematic. I don’t think applying strict liability is the way to go.”

The future

Discussion on the pit-bull issue will likely continue into next year when the General Assembly convenes for its 2013 session.



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‘Animals are not like tables or housing,’ attorney Rebekah Damen Lusk says.

The General Assembly discussed the Court of Appeals decision in a special session this summer, but lawmakers failed to pass legislation that would have made the law breed-neutral.

Animal law attorneys said they are already planning lobbying efforts to tweak the law, but had different approaches.

“The value of litigation in animal law is huge and often underestimated,” Benaroya said.

“There is an awful lot of law out there that hasn’t been made,” she said. “There is not a developed body of law on dangerous dogs.”

Lusk said laws should focus on teaching and training people how to deal with animals and read their behavior.

“I think that, in general, our society needs to look more at teaching kids and police officers how to not go running up to an animal and how to interact with strange animals instead of putting a strict liability standard on the dog owner,” Lusk said.

Lusk and Evans, along with other attorneys in the MSBA’s Animal Law Section, oppose the Court of Appeals’ decision to impose strict liability on landlords. They support a breed-neutral approach to liability.


Evans said she and other members plan to be very involved talking to lawmakers about the issue in the coming legislative session.

“We do not believe the current law that says pit bulls are inherently dangerous is a good one,” Evans said. “We think it’s a very bad one and won’t do anything to reduce dog bites in Maryland.”

Schimel, however, said a breed-neutral law would not be enough. He instead advocated for more specific laws to prevent dog bites in the first place.

He said there should be laws requiring dogs to pass a training course, enclosure requirements to make sure they stay on their owners’ property, and an age limit on people who can walk dogs over a certain weight.

Schimel also favors a neutering requirement for male dogs to decrease their aggression, and said female dogs should be spayed to decrease the stray-dog population. He also said dog owners should be required to buy liability insurance and



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there should be escalating penalties for people who train dogs to fight.

“Strict liability, when I went to law school, was for ultra-hazardous activity,” Schimel said. “I’d like to know when dog ownership became an ultra-hazardous activity.”