

2017 All-Ohio Legal Forum

Possession of Animals—Property or Something More?

**Animal Law Committee
1.0 General CLE Hours**



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August 23 – August 25, 2017 ♦ Cleveland

Speaker Biographies

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Chapter 1:

Animal Replevin and

Animal Custody:

The Complexities of Considerations of

Animal Law in Other Areas of Law Practice

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2017 OSBA CLE SECTION ON ANIMAL LAW
Cleveland, Ohio, August 24, 2017

Animal Replevin and Animal Custody:
The Complexities of Considerations of Animal Law in other areas of Law Practice
By Mark J. Bamberger, Esq.¹

ABSTRACT

Interdisciplinary planning for the care of pets and other animals can implicate itself in many practices of law other than core animal law. Areas such as estate planning, domestic relations (family law), criminal law, property law, and environmental law must contemplate what happens to animals. Indeed that topic can generate passion and potential controversy in already contentious legal situations.
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- I. Goals of this session
 - a. Provide an overview of the various interdisciplinary implications of animal law; and
 - b. Provide ideas of how best to integrate animal rights and law issues in estate planning, family law (divorce and custody)

- II. The tie between animal law and...
 - a. Estate Planning
 - i. The need to plan for care of the animal in the Estate Plan
 - 1. Either will or trust documents
 - 2. There are several options to planning for your pet
 - a. Think ahead about who should become his, her, or their guardian/s
 - i. Be sure to speak with that person asap to make sure they can and want to take the pet after you are gone
 - ii. Anticipate conflict to be sure to make sure your pet/s do not end up in shelters
 - 1. Especially after becoming part of your family
 - b. Dissolution/Annulment/Divorce
 - i. Can be a very sticky wicket indeed
 - ii. Custody v. Visitation
 - 1. “the best interest test”...loosely applied; meaning that although the pet is concerned, it does have legal standing at this point in our jurisprudence
 - a. therefore the courts will defer to whatever the parties agree is best to do with the animal

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2. consider a “custody to one party/liberal visitation to the other” option
 - a. this is often best for the pet/s since they are very much like children in their bonding with and dependence on the divorcing parties
3. Potential passive aggressive or directly violent actions toward the pet
- iii. Again, the key here is anticipation
 1. I have seen cases where an otherwise non-contested divorce or even a dissolution was held up due to conflict over the pet/s
 - a. Now as touching as it is to see folks who care about their pets so much, often this is done out of spite against the other human, not passion toward the non-human/s
- c. Criminal Law
 - i. Most animal-related crimes are misdemeanors, though there is a push to make the most egregious offenses felonies
 - ii. Domestic Violence
 1. Potential retribution against the pet
 2. The Animals in Protection Orders Law²
 - a. O.R.C. §3113.31
 - b. Allowing pets to be added to protection orders
 - iii. The scary tie between animal abuse and human abuse and serial crimes
 1. Numerous studies done here
 2. Several past CLEs presented by our group in this area as well
 - iv. Violence toward non-humans often goes unprosecuted
 1. Usually no witnesses other than the animal/s and accomplices
 2. Often little or no physical evidence of abuse
 - a. e.g., bestiality
 - i. SB 331, 2016-2017 session
 - v. Cases where “pets” were used as weapons against another
 1. E.g., dogs trained to attack, alligators, poisonous snakes
 - vi. Dog fighting laws

² [R.C. § 3113.31](#) - In 2014, the law was amended to allow a court to grant a protection order that may: (E)(1)(i) require that the respondent not remove, damage, hide, harm, or dispose of any companion animal owned or possessed by the petitioner; and (j) authorize the petitioner to remove a companion animal owned by the petitioner from the possession of the respondent. “Companion animal” has the same meaning as in section 959.131 of the Revised Code, which is defined as any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept. The term “companion animal” does not include livestock or any wild animal.

- d. Property Law
 - i. Animals still seen as chattel as in days of old
 - 1. Modern attempt to give family pets higher status
 - a. Still at odds with the classical interpretation of the Federal and Ohio States Constitutions being developed for human, not non-human animals
 - ii. Valuation of a lost pet as hard as lost land
 - 1. Not the same as valuating cattle or chicken for their meat value
 - e. Environmental Law
 - i. Endangered Species Act of 1973 (ESA; 16 U.S.C. § 1531 et seq.)
 - 1. Currently under attack in Washington...again
 - ii. Impact of contamination and facility citing on wildlife and other animal concerns
 - iii. Protection of the animal kingdom as enlightened anthropocentrism
- III. Litigating Other Cases with Animal Law Implications
- a. Put the animal law issues and give them the time and effort they deserve
 - i. Don't underestimate the passion people have for their pet/s
 - b. Be sure to talk to all sides involved to gauge the importance of animal law issues in other topic cases.
- IV. Conclusions
- a. As we have known for decades, animal law can have inter-disciplinary ramifications
 - b. Even a general law practitioner should have as working understanding of the intricacies of animal law in their general practice
 - i. Or at least have a good referral if animal law issues do arise

"When I hear of the destruction of a species, I feel just as if all the works of some great writer have perished."
 – U.S. President Theodore Roosevelt

**APPENDIX:
A NON-EXHAUSTIVE CASE LAW
SUMMARY OF POTENTIAL USEFUL CITATIONS³**

- V. Pets and Divorce
 - a. *Evans-Dorn v. Dorn*, 120715, OHCA12, CA-2015-031
 - b. *Ladman v. Ladman*, 122305, OHCA6, L041355
 - c. *Rees v. Rees*, 060689, OHCA7, 88-B-33
 - d. *Caldwell v. Caldwell*, 051109, OHCA12, CA2008-02-019
 - e. *Schneider v. Schneider*, 897 N.E.2d 706 (OHCA9)
 - f. *Fisher v. Fisher*, 102405, OHCA3, 70502
 - g. *Kandel v. Kandel*, 083004, OHCA5, 04COA014
 - h. *Noe v. Noe*, 030615, OHCA5, 14COA026
 - i. *Michaels v. Michaels*, 032598, OHCA9, 97CA006720
 - j. *Selders v. Selders*, 110895, OHCA9, 2428-M
 - k. *In Re Coone*, 01308, OHCA5, 2007-COA-016
 - l. *In Re H.A.I.*, 082312, OHCA8, 97771
 - m. *In Re Baby Girl Elliot*, 11030, OHCA12, CA200304096
- VI. Pets and Custody Issues
 - a. *In Re Nentwick*, 032602, OHCA7, 00 CO 50
 - b. *Evans-Dorn v. Dorn*, 120715, OHCA12, CA-2015-031
 - c. *In Re Baby Girl Elliot*, 11030, OHCA12, CA200304096
 - d. *Toledo v. Telings*, 030306, OHCA6, L-04-1224
 - e. *State v. Opal Covey*, 051900, OHCA6, L-98-1173
 - f. *In the Matter of Hawkins*, 050688, OHCA6, L-87-182
 - g. *Moskoff nv. City of Akron*, 050494, OHCA9, 16464
 - h. *State v. Ashworth*, 022301, OHCA11, 99-P-0094
 - i. *State v. Vandyke*, 032607, OHCA9, 05CA008723
 - j. *State v. Groves*, 092602, OHCA7, 853
 - k. *Long v. Noah's Lost Ark, Inc.*, 814 N.E.2d 555
 - l. *Wood Cty. Dept. Job & Fam. Svcs v. Pete F.*, 111005, OHCA6, WD05023
 - m. *State v. Ervin*, 091115, OHCA2, 2014-CA-23
- VII. Pets and Domestic Violence
 - a. *In Re A.J.*, 2010-Ohio-4553., 2010-T-0041
 - b. *State v. Drew*, 2008-Ohio-2797, 07AP-467
 - c. *Lavery v. Lavery*, 2001-Ohio-1874, 01-LW-4665, 20616
 - d. *In Re Keylor*, 2005-Ohio-1661, 04 MO 02, 05-LW-1412 (7th)
 - e. *Kandel v. Kandel*, 2004-Ohio-4548, 04COA014, 04-LW-3790 (5th)
 - f. *Butcher v. Stevens*, 911 N.E.2d 928, 182 Ohio App.3d 77, 2009-Ohio-1754
 - g. *Schneider v. Schneider*, 897 N.E.2d 706, 178 Ohio App.3d 264, 2008-Ohio-4495
 - h. *In RE Craig*, 2006-Ohio-2027
 - i. *State v. John*, 2016-Ohio-1125, 103234
 - j. *State v. Maddox*, 2013-Ohio-3140, 99120

³ This bibliography is far from exhaustive, but will provide the practitioner and the researcher with a starting point to further analysis of the interdisciplinary nature of animal law's tie to domestic relations, criminal law, and other areas of concern.

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- k. *State v. Helmbright*, 990 N.E.2d 154, 2013-Ohio-1143
- l. *In Re Coone*, 2008-Ohio-6, 2007-COA-016
- m. *In Re Jones*, 2006-Ohio-5677, 06 CA 9
- VIII. Ties to Classic Property Law and Litigation
 - a. Animals as chattel: Ohio jurisprudence starting point; not exhaustive list
 - i. *Cox v. Miami County Board of Zoning Appeals*, 2011-Ohio-2820, C.A. 2010-CA-29 (OHCA2)
 - ii. *Funtime, Inc. v. Wilkins*, 2004-Ohio-6890, 105 Ohio St.3d 74, 822 N.E.2d 781 (Ohio 2004)
 - iii. *Goodrich v. Bowers*, 167 Ohio St. 403, 149 N.E.2d 248 (Ohio 1958)
 - iv. *Roseville Pottery v. Board of Revision of Muskingum County*, 149 Ohio St. 89, 77 N.E.2d 608 (Ohio 1948)
 - v. *State v. Weekly*, 146 Ohio St. 277, 65 N.E.2d 856 (Ohio 1946)
 - vi. *Zangerle v. Republic Steel Corp.*, 144 Ohio St. 529, 60 N.E.2d 170 (Ohio 1945)
 - vii. *Cambridge Production Credit Ass'n v. Patrick*, 140 Ohio St. 521, 45 N.E.2d 751 (Ohio 1942)
 - viii. *Cousino v. Huss*, 71 Ohio App. 107, 47 N.E.2d 919 (Ohio App. 6 Dist. 1942)
 - ix. *Sweigart v. Sweigart*, 35 N.E.2d 578 (Ohio App. 2 Dist. 1940)
 - x. *State, Ex Rel., v. Amus. Co.*, 124 Ohio St. 518, 179 N.E. 405 (Ohio 1931)
 - xi. *Pegg v. Columbus*, 80 Ohio St. 367, 89 N.E. 14 (Ohio 1909)
 - xii. *Hickey v. Lake Shore & M. S. Ry. Co.*, 51 Ohio St. 40, 36 N.E. 672 (Ohio 1894)
 - xiii. *Mann v. State*, 47 Ohio St. 556, 26 N.E. 226 (Ohio 1890)
- IX. Ties to Classic Environmental Law and Litigation
 - a. A tough fit
 - i. Legal standing?
 - 1. *Sierra Club v. Morton* (1972), 405 U.S. 727
 - a. Established environmental groups' rights to sue on behalf of animals
 - b. See also Stone, C. (1972), *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, Cal. L. Rev. 450
 - i. Can this be taken too far?
 - ii. Litigation Strategies
 - 1. Bamberger, M.J., 2013, Litigating Animal Law cases, Presentation at the 2013 Ohio State Bar Association Convention, April 30, 2013, Cleveland, Ohio
 - 2. Bamberger, M.J (2008); Fitting Animals Into Environmental Law: A Subversive Litigator's Guide, American Bar Association's Litigation Section, Environmental Litigation Committee Newsletter, The Environmental Litigator, Winter 2009, v. 20, No.1, p.3-5.

- b. Classic environmental law is very statutory (e.g., Clean Air Act, Clean Water Act)
 - i. Environmental law began in the common law concept of “nuisance”
 - 1. So early animal law cases revolved around animals as nuisance to others
 - a. *Missouri v. Illinois* (1906), 200 U.S. 496
 - b. *Georgia v. Tennessee Copper Co.*, (1907), 206 U.S. 230
 - 2. Very far from the idea of providing legal standing to animals themselves
 - a. Hardin, G. (1968), *The Tragedy of the Commons*, 168 Science 1243
 - b. Lovelock, J.E. and Epton, S. (1975). *The Quest for Gaia*. New Scientist, pp. 304-309
- X. Recent Developments in the Rights of Animals
 - a. Examples of case law (far from exhaustive)
 - b. We will not go through these cases, but they are provided as an initiating resource for those of you getting into animal law litigation and legal advocacy
 - i. Animal cruelty in agriculture and food production
 - 1. National
 - a. *Deason v. State*, 881 So.2d 58 (FL Ct. App., 4th Dist., 2004)
 - b. *Cotton v. State*, 589, S.E.2d 610 (GA Ct. App., 2003)
 - c. *People v. Sanchez*, 114 Cal. Rptr.2d 437 (CA Ct. Appl., 3rd Dist., 2001)
 - d. *Sirmans v. State*, 534 S.E.2d 862 (GA Ct. App., 2000)
 - e. *State v. Gadreault*, 758 A.2d 781 (VT Sup. Ct., 2000)
 - f. *State v. Larson*, 941 S.W.2d 847 (MO Ct. App., Western Dist., 1997)
 - g. *Com. V. Barnes*, 629 A.2d 123 (PA Sup Ct., 1993)
 - 2. Recent Ohio Case Law
 - a. *State v. Sheets*, 677 N.E.2d 818 (OH Ct. App., 4th Dist., Highland County, 1996)
 - b. *State v. Lapping*, 599 N.E.2d 416 (OH Ct. App., 11th Dist., Trumbull County, 1991)
 - c. *Toledo v. Tellings*, 2006-Ohio-975, No. L-04-1224 (OHCA6)
 - d. *State v. Walker*, 2005-Ohio-5592, 164 Ohio App.3d 114, 841 N.E.2d 376 (Ohio App. 2 Dist. 2005)
 - e. *State v. Walker*, 2005-Ohio-5592, C.A. 2005C (OHCA2)
 - ii. Animal and Domestic Abuse
 - 1. National
 - a. *People v. Garcia*, 29 A.D.3d 255 (NY Superior Ct., App. Div., 1st Dept., 2006)
 - b. *People v. Alvarado*, 23 Cal. Rptr.3d 391 (CA Ct. App., 4th Dist., Div. 1, 2005)
 - c. *State v. Witham*, 876 A.2d 40 (ME Sup. Jud. Ct., 2005)

- d. *Hall v. State of Indiana*, 791 N.E.2d 257 (IN Ct. App., 2003)
- e. *People v. Soliday*, 729 N.E.2d 527 (IL App. Ct., 4th Dist., 2000)
- f. *State of Missouri v. Roberts*, 8 S.W.3d 124 (MO Ct. App., 1999)
- g. *State v. Hill*, 996 S.W.2d 544 (MO Ct. App., Western Dist., 1999)
- 2. Recent Ohio Case Law
 - a. *State v. Vanac*, 2011-Ohio-6338, 2011-L-027 (OHCA11)
 - b. *State ex rel. Ohio Society for Prevention of Cruelty to Animals, Inc. v. Board of Commissioners*, 2011-Ohio-6029, 10 HA 2 (OHCA7)
 - c. *State v. Jones*, 2011-Ohio-5109, 2010-P-0051, 2010-P-0055 (OHCA11)
 - d. *State v. Vess*, 2011-Ohio-3118, OT-10-038 (OHCA6)
 - e. *State v. Mills*, 2011-Ohio-2323, C.A. 10CA0027-M (OHCA9)
 - f. *State v. Davis*, 2011-Ohio-1510, 25439 (OHCA9)
 - g. *State v. Norris*, 2010-Ohio-6007, 2010CA0070 (OHCA5)
 - h. *In re W.S.*, 2009-Ohio-5427, 2009-G-2878 (OHCA11)
 - i. *City of Strongsville v. Eskander*, 2009-Ohio-5370., 92448 (OHCA8)
 - j. *State v. Ham*, 2009-Ohio-3822, 16-09-01 (OHCA3)
 - k. *State v. Dickinson*, 2009-Ohio-2099, 11-08-08 (OHCA3)
 - l. *State v. Coulter*, 2009-Ohio-1348, (OHCA5)
- iii. Animals in Research
 - 1. Federal
 - a. *ALDF v. Glickman*, 204 F.3d 229 (U.S. Ct. App., D.C. Circ., 2000)
 - b. *Altern. Res. & Dev. Found., et al., v. Glickman, et. al.*, 101 F. Supp.2d 7 (U.S. Dist. Ct., D.C. Circ., 2000)
 - 2. Recent Ohio Case Law
 - a. *Wise v. The Ohio State University*, 2011-Ohio-1433, 2007-07973 (OHCOC)
 - b. *Dahlhausen v. Aldred*, 2010-Ohio-2172, 187 Ohio App.3d 536, 932 N.E.2d 949 (Ohio App. 12 Dist. 2010)
 - c. *Blue Heron Nurseries, L.L.C. v. Funk*, 2010-Ohio-876, 186 Ohio App.3d 769, ___ N.E.2d ___ (Ohio App. 2010)
 - d. *Finley v. First Realty Property Mgt., Ltd.*, 2009-Ohio-6797, 185 Ohio App.3d 366, 924 N.E.2d 378 (Ohio App. 9 Dist. 2009)

- iv. Constitutional Issues
 - 1. *Bakay v. Yarnes*, 431 F. Supp.2d 1103 (U.S. Dist. Ct., W.D. Washington at Tacoma, 2006)
 - 2. *Doris Day Animal League et. al., v. Veneman, et. al.*, 315 F.3d 297 (U.S. Ct. App., D.C. Circ., 2003)
 - 3. *Brown v. Muhlenberg Township*, 269 F.3d 205 (U.S. Ct. App., 3rd Circ., 2001)
- v. Endangered Species (16 U.S.C. §1531, et. seq.) and its Qualifications
 - 1. Federal
 - a. *TVA v. Hill* (1978), 437 U.S. 153
 - b. *National Assoc. of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir., 1997)
 - c. *Thomas v. Peterson*, 753 F.2d 754 (9th Cir., 1985)
 - d. *Roosevelt Campobello Intern. Park Comm., v. EPA* (684 F.2d 1041 (1st Cir. 1982)
 - e. *Carson-Truckee Water Conserv. Dist., v. Clark*, 741 F.2d 257 (9th Cir. 1984)
 - f. *Center for Biological Diversity v. Lohn*, 483 F.3d 904 (U.S. Ct. App., 9th Circ., 2007)
 - g. *Defenders of Wildlife v. Martin*, 454 F.Supp.2d 1085 (U.S. Dist. Ct., E.D. Washington, 2006)
 - h. *Defenders of Wildlife v. Secretary, U.S. Dept. of Interior*, 354 F.Supp.2d 1156 (U.S. Dist. Ct., D. Oregon, 2005)
 - i. *Fund for Animals, Inc., v. Hogan*, 428 F.3d 1059 (U.S. Dist. Ct. App. D.C. Circ., 2005)
 - 2. State application (O.R.C. §1518)
 - a. *Animal Rights Front, Inc., v. Jacques*, 869 A.2d 679 (Ct App. Ct., 2005)
 - b. *Alaska Center for Environment v. Rue*, 95 P.3d 924 (AK Sup. Ct., 2004)
 - c. *In re Adopted Amendments to N.J.A.C.*, 839 A.2d 60 (NJ Sup. Ct., App. Div., 2003)
 - d. *State v. Sour Mountain Realty, Inc.*, 276 A.D.2d 8 (NY Sup. Ct., App. Div., 2nd Dept., 2000)
 - e. *Barnes v. Dept. of Nat. Res.*, 516 N.W.2d 730 (WI Sup. Ct. 1994)
 - 3. Interesting Ohio Case Law
 - a. *Carrelli v. Division of Wildlife, Dept. of Natural Resources, State of Ohio*, 2010-Ohio-1516, CA2009-11-041 (OHCA12)
 - b. *State v. Brown*, 2003-Ohio-2683, C.A. 19236, 03-LW-1988 (2nd) (OHCA2)
 - c. *Osborne v. Mentor*, 133 Ohio App.3d 22, 726 N.E.2d 1027 (Ohio App. 11 Dist. 1999)
 - d. *State v. Adams*, 105 Ohio App.3d 492, 664 N.E.2d 588 (Ohio App. 2 Dist. 1995)

- e. *Columbus & Franklin Cty. Metro. Park Dist. v. Shank*, 65 Ohio St.3d 86, 600 N.E.2d 1042 (Ohio 1992)
- f. *State v. Thomas*, 63 Ohio App.3d 501, 579 N.E.2d 290 (Ohio App. 10 Dist. 1991)
- g. *State ex rel. Hyter v. Teater*, 52 Ohio App.2d 150, 368 N.E.2d 854 (Ohio App. 6 Dist. 1977)
- h. See also *Carrelli v. Division of Wildlife, Dept. of Natural Resources, State of Ohio*, 2010-Ohio-1516, CA2009-11-041 (OHCA12)
- i. *Long v. Noah's Lost Ark, Inc.*, 2004-Ohio-4155, 158 Ohio App.3d 206, 814 N.E.2d 555 (Ohio App. 7 Dist. 2004)
- j. *State ex rel. Ohio Society for Prevention of Cruelty to Animals, Inc. v. Board of Commissioners*, 2011-Ohio-6029, 10 HA 2 (Ohio App. 7 Dist. 2011)
- k. *Oberschlake v. Veterinary Assoc. Animal Hosp.*, 785 N.E.2d 811, 151 Ohio App.3d 741, 2003-Ohio-917 (Ohio App. 2 Dist. 2003)

Chapter 2: Animal Replevin and Animal Custody

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The purpose of this program is to provide general information about basic laws relating to replevin and animal custody statutes for Ohio attorneys. As such, it is not intended to be comprehensive. No summary can take the place of reading the statutes, understanding the caselaw, and seeking advice from your attorney or prosecutor to determine how these laws might apply to any given situation. "ORC" is a reference to the Ohio Revised Code.

Chapter 2:

Animal Replevin and Animal Custody

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I. Statutory Animal Liens

A. *Lien for board and care (agister's lien); ORC § 1311.48, 1311.49.*

1. § 1311.48 Lien for care of animals.

As used in §§ 1311.48 and 1311.49 of the Revised Code “animal” means any animal other than man and includes fowl, birds, fish, and reptiles, and “owner” means and includes the person who holds legal title to an animal, or any other person, having lawful custody of an animal, who contracts for food, board, or professional services for such animal.

Any person who feeds or boards an animal under contract with the owner shall have a lien on such animal to secure payment for food and board furnished.

- a. Must maintain physical possession to maintain the lien. *Defiance Prod. Credit Ass’n v. Hake*, 70 Ohio App. 2d 185, 185, 435 N.E.2d 692 (6th Dist.1980).
- b. “Owner” is not only the owner. Also anyone with “lawful custody.”
- c. Applies to one who “contracts” for food, board, or professional services.
- d. But the lien is for the amount for food and board—not for “professional services.”
- e. A contract for food and board *could* arise after a criminal seizure of animals. *See State v. Stevenson*, 9th Dist. Wayne No. 2855-W, 1994 Ohio App. LEXIS 3919 (Aug. 31, 1994).

- f. Possible to use in conjunction with ORC § 1717.13, which provides a cause of action for “necessary expenses for food and attention” and notes “the animal shall not be exempt from levy and sale upon execution issued upon a judgment for such expenses.”

2. § 1311.49 Sale of animal to satisfy claim.

If the owner of an animal, upon written demand by the lienholder, fails to satisfy a lien acquired under § 1311.48 of the Revised Code the lienholder may sell the animal at public sale to satisfy such lien, provided that before the animal is offered for sale the lienholder shall give 10 days’ notice of the time and place of sale in a newspaper of general circulation in the county where food or board was furnished. The lienholder, on the day following publication, shall mail a copy of the public notice to the owner by registered mail at the last known address of such owner. If the animal is sold for a price which exceeds the amount of the lien, plus costs incurred by the lienholder, the remaining balance shall be paid by the lienholder to the owner or to such other person as may be legally entitled to receive same. If the lienholder sells or otherwise disposes of any animal without first giving the notice required by this section he shall not pursue any deficiency upon such obligation.

- a. Written demand with deadline;
- b. Lienholder “may” hold public sale;
- c. 10 days’ notice in local newspaper;
- d. Registered mail copy to owner;
- e. If the sales price exceeds amounts owed, the excess is paid to the owner;
- f. If the animal is sold or disposed of without public sale, the lienholder may not pursue any deficiency.
- g. Also applies to farm animals found at-large. (ORC § 951.11.)
- h. (Does the statute authorize transfer of ownership without public sale?)

B. Breeder’s Lien; ORC § 1311.50, 1311.51.

1. § 1311.50 Lien upon get for service.

The keeper of any stallion, jack, or registered pure-bred bull, has a lien upon its get for the period of twelve months after birth thereof, for the payment of the service of such stallion, jack, or bull.

2. § 1311.51 Enforcement of lien.

A keeper or owner of any stallion, jack, or registered pure-bred bull may enforce his lien for service by replevin of the property before any county or municipal court having territorial jurisdiction where it is found. Upon

gaining possession thereof, on first giving ten days' notice to the reputed owner of his intention to do so, he may sell it at public sale after two weeks' notice of the time and place of sale by notices posted in five conspicuous and public places in the township or municipal corporation where proceedings in replevin are had.

Out of the proceeds of sale such keeper or owner may retain the amount due him for such service, with the costs by him incurred in the replevin suit. He must account to the owner of the get for any surplus realized by the sale. When payment is made to him, or his agent, for any such get, the owner of any such stallion, jack, or bull shall deliver to the payee a receipt in full for the amount thereof, and stating for what paid.

- a. **Statutorily** entitled to replevin to regain possession;
- b. Lienholder "may" hold public sale;
- c. 10 days' notice in local newspaper;
- d. Registered mail copy to owner;
- e. If the sales price exceeds amounts owed, the excess is paid to the owner;
- f. If the animal is sold or disposed of without public sale, the lienholder may not pursue any deficiency.

C. *Veterinarian/Kennel Lien; ORC § 4741.30.*

§ 4741.30 Abandoned animal left in care of licensed veterinarian or registered kennel owner.

Upon the failure of any person to reclaim an animal left in the care of a licensed veterinarian or registered kennel owner, the veterinarian or kennel owner, at the end of a 10-day period starting with the day he gives notice as required under this section, shall be considered the legal owner of the animal and may send it to an animal shelter or pound. The veterinarian or kennel owner shall give written notice, either personally to the person who had left the animal, or sent by certified mail to his last known address. The notice shall specify the amount that shall be due for the care and treatment of the animal, the date on which the veterinarian or kennel owner will be considered to be the owner, and the location of the animal shelter or pound to which it will be sent for disposal. The person who had left the animal may redeem it prior to the expiration of the 10-day period by paying to the veterinarian or kennel owner the amount set forth in the notice for the care and treatment of the animal.

Upon receiving the animal, the animal shelter or pound shall keep, house, and feed it for a period of not less than three days. During this period, any person may purchase the animal by paying an amount equal to the sum of the expense incurred by the shelter or pound in maintaining the animal, the cost of any necessary registration tag, and the amount of money expended by the veterinarian or kennel owner in his care and treatment of the animal. Upon the

redemption of the animal, the shelter or pound shall remit to the veterinarian or kennel owner the amount of money equal to that which he had expended in the care and treatment of the animal. If at the end of the three-day period no one has redeemed the animal, the shelter or pound may humanely destroy it.

- a. Failure to reclaim an animal at vet or registered kennel owner;
- b. Notice in person or by certified mail, which includes:
- c. Amount due for care and treatment;
- d. The date the animal will be considered forfeited to the vet/kennel;
- e. Location of the pound or shelter where the animal will be “sent for disposal.”
- f. If the client pays in full, the animal may be retrieved. If not, ownership reverts to the vet/kennel automatically.
- g. “Disposal” of the animal at a pound appears to be **optional**.

II. Replevin

A. *Elements.*

1. Plaintiff is the owner (or has a specific interest?).
2. Plaintiff is entitled to possession.
3. Property is unlawfully or wrongfully detained by defendant.

B. *Ownership.*

1. No formal “title” for animals.
2. Evidence of ownership *could include*:
 - a. Proof of purchase.
 - b. Breed registration.
 - c. Receipts for vet care, food, and supplies.
 - d. Photographs.
 - e. Texts, email, and social media.
 - f. License
3. Dogs are personal property. ORC § 955.03.
4. Dog license does not necessarily mean ownership. Owner, *keeper or harbinger* are required to license a dog. ORC § 955.01.
5. Upon the transfer of ownership of any dog, the seller of the dog shall give the buyer a transfer of ownership certificate that shall be signed by the seller. The certificate shall contain the registration number of the dog, the name of the seller, and a brief description of the dog. Blank forms of

the certificate may be obtained from the county auditor. A transfer of ownership shall be recorded by the auditor upon presentation of a transfer of ownership certificate that is signed by the former owner of a dog and that is accompanied by a fee of five dollars. ORC § 955.11(B).

6. In animal cases, whether the animal was a gift to another is often at issue.
 - a. Proof of a gift must be by clear and convincing evidence.
 - b. More than a preponderance, but not beyond a reasonable doubt. Clear and convincing “does not mean clear and unequivocal.” *In re Estate of Fife*, 164 Ohio St. 449, 456, 132 N.E.2d 185 (1956).

C. *Motion for Pretrial Possession. ORC Chapter 2737.*

1. File motion with the complaint.
2. Checklist for motion:
 - a. Affidavit:
 - i. Description of item;
 - ii. Approximate value;
 - iii. Interest of movant (with copy of written instrument, if any);
 - iv. How respondent gained possession;
 - v. Why possession is wrongful;
 - vi. Why respondent may claim possession is not wrongful;
 - vii. Use respondent is making of the property;
 - viii. Extent to which movant will be harmed;
 - ix. Location of the property; and
 - x. “The property was not taken for a tax, assessment, or fine pursuant to statute, or seized under execution of judgment against the property of the movant or, if so seized, that it is statutorily exempt from seizure.” ORC § 2737.03(G).
 - b. Praecipe to clerk to serve respondent.
 - c. Copy of the statutory notice for service with hearing date and time. (Call the court in advance.)
 - d. Copy of Request for Hearing for respondent to use.
 - e. Self-addressed, postage paid envelope for the request for hearing.
3. Hearing to be set within 20 days of filing. ORC § 2737.07(A).
4. Hearing will be cancelled if Movant fails to file a request for hearing within five days of receipt of the motion.

5. Issue for the hearing: whether there is probable cause to support the motion.
6. Respondent's failure to respond or raise defenses is not a waiver to raising any defense in the underlying case.
7. Movant must file bond or cash equal to double the value of the property before the order is effective.
8. Respondent can block pretrial possession by filing double the value.
9. Judge can reduce or eliminate the bond if the party is indigent. ORC §§ 2737.10, 2737.11.

D. Animal Possession After Seizure. ORC § 959.132.

1. Often a civil proceeding, prior to filing of criminal charges.
2. Applies to companion animals and dog fighting cases only.
3. Procedure:
 - a. Animal is seized as a subject of animal cruelty or neglect;
 - b. Officer must post notice to the "owner, keeper or harbored" in person or at the place of seizure;
 - c. Hearing must be held within 10 days of seizure "or at the next available court date";
 - d. State must show probable cause that the animal was the subject of an offense;
 - e. If probable cause is shown, the court must determine the amount of money it would reasonable take to care for the animal for at least 30 days, and will order the owner to deposit that money, pending resolution of the case;
 - f. If probable cause is not shown, the animal is returned.
 - g. If the animal cannot be returned, pay the owner fair market value at the time of seizure, unless it was an unlicensed dog.
 - h. Animal may be euthanized if a veterinarian deems it necessary because the animal is suffering.

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*I am fond of pigs. Dogs look up to us. Cats look down on us.  
 Pigs treat us as equals.  
 -- Winston Churchill*

