



# AMERICAN HUMANE

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## **Case Law and Statutes involving Damages for Harm to Animals**

Black = no awards

Green= money award given

### **Alaska**

Mitchell v. Heinrichs, 27 P.3d 309 (Alaska 2001)-The superior court here dismissed Mitchell's intentional infliction of emotional distress and punitive damages claims on summary judgment. We AFFIRM these rulings.

Richardson v. Fairbanks N. Star Borough, 705 P.2d 454(Alaska 1985)- Therefore, we are willing to recognize a cause of action for intentional infliction of emotional distress for the intentional or reckless killing of a pet animal in an appropriate case. But not met here.

### **Arkansas**

McDANIEL v. JOHNSON, 278 S.W.2d 657 (Ark.1955).

**Summary:** In this Arkansas case, a neighbor intentionally shot and killed the plaintiff's pointer bird dog. The defendant neighbor admitted to intentionally killing the dog to protect his property (to wit, cattle). In affirming an award of actual and punitive damages, the court held that punitive damages were available where the defendant acted in a willful, malicious, and wanton manner.

### **California**

Katsaris v. Cook, 225 Cal.Rptr. 531 (Cal.App. 1 Dist., 1986) – Left open possibility of intentional infliction of emotional distress when man denied he killed dogs.

California, 2000 – emotional distress for vet malpractice – botched surgery left Rottweiler with broken teeth and infected paws - \$20,000.

[http://www.eastbayexpress.com/gyrobase/the\\_50\\_000\\_mutt/Content?oid=285412&page=2](http://www.eastbayexpress.com/gyrobase/the_50_000_mutt/Content?oid=285412&page=2)

California, 2004 – Jury declared vet had to pay \$39,000 when dog died as a result of misdiagnosis.

[http://www.usatoday.com/news/nation/2005-03-14-pets-malpractice\\_x.htm](http://www.usatoday.com/news/nation/2005-03-14-pets-malpractice_x.htm)

### **Connecticut**

Pantelopoulos v. Pantelopoulos, 2005 Conn. Super. LEXIS 981, (Conn. Super. Ct. 2005) - Connecticut does not recognize claims for intentional infliction of emotional distress based on the loss of a pet.

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## **Delaware**

Naples v. Miller, 2009 Del. Super. LEXIS 173 (Del. Super. Ct. 2009) - No punitive damages or any vet expenses over the market value of dog.

## **Florida**

LaPorte v. Associated Independents, Inc., 163 So.2d 267 (Fla. 1964).

**Summary:** Respondent was a corporation engaged in the garbage collection business. One of its employees maliciously hurled an empty garbage can at plaintiff's pet pedigreed dog, who was tethered at the time, killing it. The issue before the court was the reconsideration not of the issue of liability, but for determination only of compensatory and punitive damages. The court stated that it was obvious from the facts that the act performed by the representative of the respondent was malicious and demonstrated an extreme indifference to the rights of the petitioner. Having this view, there was no prohibition of punitive damages relative to awarding compensation for mental pain, as would be the case if there had been physical injury resulting only from simple negligence. The court went on to say that the restriction of the loss of a pet to its intrinsic value in circumstances such as the ones before us is a principle we cannot accept and that the malicious destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the animal because of its special training.

Knowles Animal Hospital, Inc. v. Wills, 360 So.2d 37 (Fla. Dist. Ct. App. 1978).

**Summary:** Dog owners brought negligence action against veterinarian and animal hospital after their dog suffered injuries while under the veterinarian's and the hospital's care. The Appeals Court held that the trial court did not err by allowing the jury to consider plaintiff-owners' mental pain and suffering, and that the jury could reasonably have viewed defendants' neglectful conduct resulting in the dog's injury to have amounted to great indifference to plaintiffs' property. But see Kennedy v. Byas, 867 So. 2d 1195 (Fla. Dist. Ct. App. 2004) – disagrees with Knowles.

Johnson v. Wander, 16 Fla. L. Weekly D 1240 (Fla. Dist. Ct. App. 1991)– Appears to be saying that court below incorrectly struck punitive damages and emotional distress claims against vet – needed jury resolution.

Levine v. Knowles, 228 So. 2d 308 (Fla. Dist. Ct. App. 1969) and Levine v. Knowles, 218 So. 2d 217 (Fla. Dist. Ct. App. 1969). - Permitted punitive damages when veterinarian killed dog and then cremated it before an autopsy could be performed.

## **Hawaii**

Campbell v. Animal Quarantine Station, 632 P.2d 1066 (Haw. 1981).

**Summary:** The plaintiffs' dog died after being left in a hot van during transport from the Hawaii Quarantine Station to the veterinarian's office. The issues on appeal were related solely to the cause of action for emotional distress. The court held that it was not necessary for plaintiffs to witness the dog's death to recover for serious mental distress and that medical testimony was not necessary to substantiate plaintiffs' claims of emotional distress. The court finally addressed defendant's claim that emotional distress damages should not be awarded for personal property (as a dog is viewed under Hawaii

law). In affirming the trial court award to plaintiffs, the court held that the trial "court correctly applied the standards of law . . . and the issues of whether the damages were proximately caused by the defendant and have resulted in serious emotional distress to the plaintiffs are therefore within the discretion of the trier of fact."

### Idaho

[Gill v. Brown](#), 695 P.2d 1276 (Idaho Ct. App. 1985).

**Summary:** Richard and Maren Gill brought suit against Morris Brown, seeking to recover damages sustained when Brown allegedly shot and killed a donkey owned by the Gills. The Gills sought recovery both for property damage and for mental anguish. By alleging that Brown's conduct was reckless and that they thereby suffered extreme mental anguish and trauma, the court held that the Gills have alleged facts that, if proven, could permit recovery under an intentional infliction of emotional distress cause of action. Accordingly, the court held that the district court erred by striking the Gills' claim for damages caused by mental anguish and the cause was remanded.

### Illinois

[Brent v. Kimball](#), 60 Ill. 211 (Ill. 1871).

**Summary:** This was an action of trespass, brought by appellant against appellee, for the alleged wrongful killing, by the latter, of appellant's dog. Plaintiff sought recovery for his dog that was shot and killed when it entered into defendant/neighbor's backyard. The Court held that the plaintiff could recover at least nominal damages, regardless of the fact that the animal had no actual market value.

[Anzalone v. Kragness](#), 826 N.E.2d 472 (Ill. 2005).

**Summary:** A woman's cat was attacked by a dog being boarded at the same animal hospital. The woman brought claims against the veterinarian and animal hospital for breach of bailment, negligence, breach of fiduciary duty, and intentional infliction of emotional distress. The trial court dismissed the intentional infliction of emotional distress claim. The woman appealed and the Court of Appeals reversed holding dismissal was not warranted simply because plaintiff's prayer for damages was deemed "excessive" by defendant.

Illinois, 2007 – Chicago paid man \$27,500 in settlement after police shot his 10 year old Akita when running through his property pursuing a suspect.

### Iowa

[Nichols v. Sukaro Kennels](#), 555 N.W.2d 689 (Iowa 1996) – “The kennel owner's dog tore off the pet's left front leg and shoulder blade. In Iowa, a person could not recover for mental distress unless they witnessed a tortious event, were husband and wife, or were related within the second degree of consanguinity or affinity. Damages for injury to an animal were the difference in value before and after the injury, unless there was evidence that the pet had a special purpose, or intrinsic value other than its value as a family pet. However, the court inferred that damages for mental suffering might be recovered when there was a malicious destruction of a dog, but such was not the case at bar.” Lexis.

## Kentucky

Burgess v. Taylor, 44 S.W.3d 806 (Ky. 2001).

**Summary:** Owner of pet horses sued boarders of horses who sold them for slaughter, asserting tort of outrage, or intentional infliction of emotional distress. The Court held that: (1) element of tort of outrage, or intentional infliction of emotional distress, requiring outrageous and intolerable conduct depends on conduct of wrongdoer, not subject of conduct; (2) boarders' actions constituted tort of outrage; and (3) award of \$50,000 compensatory damages and \$75,000 punitive damages was not excessive.

Kentucky, 1997 – Jury awarded \$15,000 to owner of German shepherd when it bled to death after surgery.

[http://www.editorandpublisher.com/eandp/news/article\\_display.jsp?vnu\\_content\\_id=1000980485](http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1000980485)

## Louisiana

Brown v. Crocker, 139 So.2d 779 (La. 1962).

**Summary:** This action in tort was instituted by plaintiff, as the administrator of the estate of his minor son, against the defendant to recover the value of a quarter-horse mare and a stillborn colt, and for damages occasioned by shock and mental anguish suffered by the son, as well as for services of a veterinarian and medicines used in treatment of the mare following her wounding by a shotgun blast intentionally inflicted by the defendant. The Court of Appeal in upheld an award of \$250 for shock and mental anguish experienced by the child who could not stop crying about the loss of his horse and the colt that never was. As the court stated, "Under the facts and circumstances, an award of \$250 for shock and mental anguish suffered by the minor would, in our opinion, do justice between the parties."

Peloquin v. Calcasieu Parish Police Jury, 367 So. 2d 1246, 1249 (La.App. 3 Cir. 1979)

We conclude that a possessor has the same rights as an owner of a movable to sue for damages for conversion thereof by the defendant, and those damages may include awards for mental anguish, humiliation, etc. as well as special and/or actual damages. Lincecum, supra; Brown v. Crocker, 139 So. 2d 779 (La.App. 2 Cir. 1962). Lincecum involved a puppy and Brown involved a mare. Both of these cases awarded damages for mental anguish, etc. as a result of injury to the animals involved. Admittedly these two cases involved owners of the animals, but we view the legal principle as the same. If plaintiffs can prove possession, and that they suffered provable and compensable damages [\*\*14] as a result of the conversion of the cat involved, we are of the opinion that they are entitled to recover for these damages.

Whether plaintiffs in this case owned the cat in question, whether they possessed the cat in question as owner, and proving all other facets of their case, if they can prove damages, they are entitled to recover, unless defendant has a valid defense that would justify denial of recovery to the plaintiffs. 13 All of these factors are properly questions for the trier of fact, be it judge or jury, and the case should be remanded for trial in accordance with the views above expressed.

Accordingly, we reverse the judgment of the trial court, and overrule the exceptions of no right of action and no cause of action, and remand the case for further proceedings.

Lincecum v. Smith, 287 So. 2d 625, 629 (La.App. 3 Cir. 1973) Found dog and had it put to sleep. In regard to the other damages claimed we agree that when it is found that a taking is "wrongful and without the consent of the plaintiff, some humiliation, embarrassment and inconvenience follows." Steadman v. Action Finance Corp., 197 So.2d 424 (La.App. 2nd Cir. 1967). Our examination of the circumstances surrounding this conversion indicates that the award of \$100.00 for mental anguish and humiliation would be adequate and proper.

### Minnesota

Wilson v. Eagan, 297 N.W.2d 146 (Minn. 1980). Punitive damages are appropriate against an animal warden who intentionally killed plaintiff's pet cat in violation of a city ordinance and Minn. Stat. § 35.71, subd. 3 (1978).

### Missouri

Propes v. Griffith, 25 S.W.3d 544 (Mo. Ct. App. 2000).

**Summary:** Defendants appeal the order of punitive damages stemming from a judgment in a court-tried case in favor of respondents David and Cindy Propes, assessing actual damages against appellants Mark and Sarah Griffith, and punitive damages against appellant Sarah Griffith individually. At issue, is whether defendant's conduct in shooting her neighbors' two dogs was privileged under a Missouri statute that allows a livestock owner to kill dogs that are in the act of chasing sheep. The court held that there was absolutely no evidence indicating the Propes' dogs, or for that matter that any dog, was the cause of the previous attack on the Griffiths' sheep and more sheep were attacked after the dogs had been euthanized. Further, defendant did not immediately kill the dogs, but rather took them to two different veterinarians over a three hour time span to have them euthanized. The court observed that Missouri's common law holds that dogs are property and no one has the right to kill or harm them except for just cause. Thus, "it would be logical to conclude that the legislature did not intend for § 273.030 to allow a sheep owner to have an unlimited time frame in which to kill a dog found on his property, but rather, the purpose of the statute was to allow the landowner to kill the dog immediately while in the act of chasing so as to protect his or her sheep from the immediate danger the dog presented." With regard to the award of punitive damages, the defendant here makes no claim the punitive award was excessive, but only that there was no justification for the award. Upon review, the court held that the punishment and deterrence of Mrs. Griffith's conduct is the precise reason for assessing punitive damages and the award of punitive damages was not arbitrary.

### Nebraska

Fackler v. Genetzky, 595 N.W.2d 884 (Neb. 1999) - We hold that damages for mental suffering or emotional distress may not be recovered for the negligently inflicted death of an animal.

### New Jersey

Hyland v. Borrás, 719 A.2d 662 (N.J. Super. Ct. App. Div. 1998).

**Summary:** Plaintiff Heather Hyland brought this action for damages after defendants' dog, an American bulldog, trespassed onto plaintiff's property and attacked her ten year

old shih tzu, causing serious injuries to the dog. Defendants appeal the award of "repair costs" (\$2,500) in excess of the dog's market value or "replacement cost" (\$500). The court distinguished companion animals from other personal property, finding that market value fails to take into account the owner's relationship to the animal. In upholding the award, the court stated that, "[i]mposing these economic losses on defendants not only has the salutary effect of making plaintiff whole, but it deters an owner of an aggressive dog from negligently allowing it to run loose, such as occurred here." Notably, the court observed that the issue of when, if ever, a plaintiff should be awarded non-economic damages was not presented or considered. But see Harabes v. Barkery, 348 N.J. Super. 366, 369 (Law Div. 2001). "Nevertheless, there is no authority in this state for allowing plaintiffs to recover non-economic damages resulting from defendants' alleged negligence. Furthermore, various public policy concerns mitigate against permitting such claims. Most significantly, there is no reason to believe that emotional distress and loss of companionship damages, which are unavailable for the loss of a child or spouse, should be recoverable for the loss of a pet dog."

### New York

Corso v. Crawford Dog and Cat Hospital, Inc., 415 N.Y.S.2d 182 (N.Y. Civ. Ct. 1979).

**Summary:** Plaintiff sued for mental suffering after she discovered a dead cat in the casket that was meant for her dead dog in an elaborate funeral for the dog. In ruling that the plaintiff was entitled to damages beyond market value for this actionable tort, the court found that plaintiff Ms. Corso did suffer shock, mental anguish and despondency due to the wrongful destruction and loss of the dog's body. The court specifically distinguished a pet from other sentimental inanimate objects as they are not capable of returning love and affection - "To say it [the dog] is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept."

Brousseau v. Rosenthal, 443 N.Y.S.2d 285 (N.Y. Civ. Ct. 1980).

**Summary:** This small claims action presents the question of how to make plaintiff whole in dollars for the defendant bailee's (a boarding kennel) negligence in causing the death of plaintiff's dog. The court began by recognizing the fact that while Ms. Brousseau's dog was a gift and a mixed breed and thus had no ascertainable market value, this need not limit plaintiff's recovery to a merely nominal award. While the court noted the common law's reluctance to award damages for the emotional value of the dog, it assessed the dog's actual value to the owner in order to make the owner whole. The court found that the plaintiff suffered a "grievous loss," as the dog was given to her when it was a puppy in August, 1970 shortly after plaintiff lost her husband and was her sole and constant companion. Plaintiff must also be made whole for the protective value to her of this part-German Shepherd. While resisting the temptation to romanticize the virtues of a "human's best friend," the court stated it would be wrong not to acknowledge the companionship and protection that Ms. Brousseau lost with the death of her canine companion of eight years. The difficulty of pecuniarily measuring this loss does not absolve defendant of his obligation to compensate plaintiff for that loss, at least to the meager extent that money can make her whole.

## North Dakota

Kautzman v. McDonald, 621 N.W.2d 871 (N.D. 2001). – Court remanded to determine if there was negligence when police shot dog.

## Ohio

Pacher v. Invisible Fence of Dayton, 798 N.E.2d 1121 (Ohio Ct. App. 2003).

After a bench trial, the court awarded a judgment of \$1,714.85 against IFD for negligence and breach of contract. Having reviewed the record and applicable law, we find no error in the award against IFD on grounds of negligence and breach of contract. Accordingly, the cross-assignment of error is without merit and is overruled. Because Appellants' assignment of error and Appellee's cross-assignment of error have both been overruled, the judgment of the trial court is affirmed. But no emotional distress.

## Oregon

Fredeen v. Stride, 525 P.2d 166 (Or. 1974) – Vet gave dog away after saying he would put it to sleep – punitive damages.

Weaver v. Greenup – Oregon – \$56,000 for killing dog with car.

Oregon, 2002 – jury awarded \$136,000 to family after neighbor poisoned their four dogs because they were barking.

## Pennsylvania

Banasczek v. Kowalski, 10 Pa. D. & C. 3d 94 (Pa. C.P. 1979).

**Summary:** Edward Banasczek (plaintiff) instituted an action in trespass against William Kowalski (defendant) for money damages resulting from the alleged shooting of two of plaintiff's dogs. The court held the following: “[T]he claim for emotional distress arising out of the malicious destruction of a pet should not be confused with a claim for the sentimental value of a pet, the latter claim being unrecognized in most jurisdictions.

Secondly we do not think, as defendant argues, that the owner of the maliciously destroyed pet must have witnessed the death of his or her pet in order to make a claim for emotional distress.” Pennsylvania has summarily rejected a claim for loss of companionship for the death of a dog.

**But see** Daughen v. Fox, 539 A.2d 858 (Pa. Super. Ct. 1988) – Seemed to undermine that case to some extent, implied they didn't agree but didn't explicitly overrule it. “In Banasczek v. Kowalski, supra, the complaint for emotional distress alleged that the defendant intentionally shot two of the plaintiff's dogs. The court dismissed the defendant's preliminary objections in the nature of a demurrer “. . . since we think the more enlightened view is to allow [\*417] recovery for emotional distress in the instance of malicious destruction of a pet . . .” 10 Pa.D. & C. 3rd at 97. Even if we were to agree [\*\*864] with this expression of the law, it does not compel the conclusion that the complaint in this case has set forth a cause of action.”

## Texas

Garland v. White, 368 S.W.2d 12 (Tex. Civ. App. Eastland 1963) – Punitive damages for mental pain and suffering when police shot dog. Questioned by Petco Animal Supplies,

Inc. v. Schuster, 144 S.W.3d 554 (Tex. App. 2004). "Because there is no support in Texas law for awarding mental anguish damages for the loss of a dog, we reverse the trial court's award of mental anguish damages"

### **Vermont**

Nelson v. Percy, 540 A.2d 1035 (Vt. 1987).

This case involves a suit by a dog owner against a farm owner and his manager for the unjustified shooting and disposal of her two dogs. The plaintiff sought actual damages for the value of the dogs and for the emotional distress she suffered, as well as punitive damages. The jury found that the killing was justified,[149 Vt. 169] but awarded the plaintiff actual and punitive damages against the manager for the emotional distress that plaintiff suffered. The jury returned a verdict in favor of the farm owner on all counts. The plaintiff claims several errors in the trial court's charge and in its refusal to admit certain rebuttal evidence. Defendant Walker cross-appeals the trial court's denial of his motions for directed verdict and for judgment notwithstanding the verdict on the issue of intentional infliction of emotional distress. We affirm.

### **Virginia**

Kondaurov v. Kerdasha, 629 S.E.2d 181(Va. 2006) - No emotional distress damages for dogs.

### **Washington**

Womack v. Von Rardon, 135 P.3d 542 (Wash. 2006).

**Summary:** In this Washington case, a cat owner sued a minor and his parents after the minor set her cat on fire. While this Court found that the trial court correctly granted summary judgment with respect to Ms. Womack's private nuisance, tort outrage, and statutory waste claims, it held that the lower court incorrectly calculated the measure of damages. Noting that the Division 2 Appellate Court left open the question of emotional distress damages where a pet has been *maliciously* injured in Pickford v. Masion, 124 Wash.App. 257, 262-63, 98 P.3d 1232 (2004), this Court held that the general allegations include sufficient facts to find both malicious conduct toward Ms. Womack's pet and her resulting emotional distress. Thus, "[f]or the first time in Washington, we hold malicious injury to a pet can support a claim for, and be considered a factor in measuring a person's emotional distress damages."

Washington, 2008 – Civil suit -man who shot Chihuahua for barking had to pay \$30,000.

Washington, 2005 – Neighbor had to pay \$45,000 when their dog went into neighbor's yard and killed her car.

### **West Virginia**

Carbasha v. Musulin, 618 S.E.2d 368 (W. Va. 2005) – We now hold that dogs are personal property and damages for sentimental value, mental suffering, and emotional distress are not recoverable for the negligently inflicted death of a dog.

## Federal

Brown v. Muhlenberg Township, 269 F.3d 205 (3rd Cir. 2001). This is not so in the case at bar, where the Browns have produced evidence from which a reasonable trier of fact could conclude that Officer Eberly shot Immi either intending to cause Kim Brown severe emotional distress or with the knowledge that the infliction of such distress on her would be virtually certain. Officer Eberly is not entitled to sovereign immunity under state law with respect to the intentional infliction of emotional distress claim because the record will support a conclusion that he acted intentionally.

Gluckman v. American Airlines, 844 F. Supp. 151 (S.D.N.Y. 1994)

Dog died in airplane – awful. “The claims for negligent and intentional infliction of emotional distress, loss of Floyd's companionship and Floyd's pain and suffering are dismissed.”

*Stephens v. Target Corp.*, 482 F. Supp. 2d 1234 (W.D. Wash. 2007)

For the foregoing reasons, the court concludes that Plaintiffs are not entitled to recover damages for emotional distress associated with the loss of personal items or injury to their family dog.

## Statutes

### Tennessee

#### **44-17-403. Death of pet caused by negligent act of another — Damages. —**

(a) (1) If a person's pet is killed or sustains injuries that result in death caused by the unlawful and intentional, or negligent, act of another or the animal of another, the trier of fact may find the individual causing the death or the owner of the animal causing the death liable for up to five thousand dollars (\$5,000) in noneconomic damages; provided, that if the death is caused by the negligent act of another, the death or fatal injury must occur on the property of the deceased pet's owner or caretaker, or while under the control and supervision of the deceased pet's owner or caretaker.

(2) If an unlawful act resulted in the death or permanent disability of a person's guide dog, then the value of the guide dog shall include, but shall not necessarily be limited to, both the cost of the guide dog as well as the cost of any specialized training the guide dog received.

(b) As used in this section, “pet” means any domesticated dog or cat normally maintained in or near the household of its owner.

(c) Limits for noneconomic damages set out in subsection (a) shall not apply to causes of action for intentional infliction of emotional distress or any other civil action other than the direct and sole loss of a pet.

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(d) Noneconomic damages awarded pursuant to this section shall be limited to compensation for the loss of the reasonably expected society, companionship, love and affection of the pet.

(e) This section shall not apply to any not-for-profit entity or governmental agency, or its employees, negligently causing the death of a pet while acting on the behalf of public health or animal welfare; to any killing of a dog that has been or was killing or worrying livestock as in § 44-17-203; nor shall this section be construed to authorize any award of noneconomic damages in an action for professional negligence against a licensed veterinarian. [Acts 2000, ch. 762, § 1; 2004, ch. 940, § 4; 2004, ch. 957, §§ 5, 6, 7.]