

LAW448

ANIMAL LAW TEXTBOOK NOTES

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Chapter 1: The Protection Paradigm: Making the World a Better Place for Animals?

- In the 17th century, Cartesian logic treated animals as automatons, whose squeals, squeaks and cries in response to various stimuli were regarded as nothing more than the sounds of improperly functioning machines.
- **Utilitarianism:** Jeremy Bentham introduced this idea. It was the idea that the goal of all morals and legislations was to promote pleasure and avoid pain for the greatest possible number.
 - The question is not can they reason or can they talk, but can they suffer?
- Today, this notion of balancing animal pain against the human need or pleasure is central to most legislative systems that regulate the treatment of animals.
- Previously, animals were regarded as property to be dealt with at the owner's discretion, and the rights over these animals were as absolute as in any inanimate beings.
- The legal protection extended to animals, which still exists today, arose by virtue of an animal's status as property, and the rights such status provides for the animal's owner.
- Thus, in an indirect sense, the common law protected animals from being harmed by 3rd parties who might wish to abuse them.
- It was capable of being remedied through the courts in the form of an order for damages in favour of the owner.
- People generally have little incentive to harm their own property.
- However, property protections remain limited in various ways:
 - Animal's property status provides no protection from harms caused by the owner
 - The practical benefits of keeping animals healthy extend only to animals that create value for the owner.
 - This motivation does not stop owners from causing harms of a more transient but still painful nature when the harm imposed has no impact on the animal's worth.
 - Eg bull-baiting.
- The solution to this came from Bentham and his multifunctional utilitarian calculus, which suggested that the law should deter unnecessary harms for the reason that it brought no wider social benefit.
- In Aus and NZ, the 'ill-treatment' of animals is illegal.
 - The animal must suffer in some manner by enduring pain or distress.
 - The suffering must be unreasonable or unnecessary.
- *Towers-Hammon v Burnett* [2007] QDC 282:
 - **Facts:** Burnett decided to use an iron bar to beat 5 cats.
 - All 5 eventually died from their injuries. They were howling through the process, and the vet said the animals were in great pain, as it was virtually decapitated from the beating.
 - He pleaded guilty of s 18 *Animal Care and Protection Act 2001* (Qld) for causing animals to suffer pain that was unjustifiable, unnecessary or unreasonable.
 - It was not necessary to consider why the suffering was unnecessary because of the guilty plea.
 - The benefits gained could have been sadistic pleasure or ridding the owners of unwanted cats, but these are not values valued by society.
 - Thus this clearly constituted ill treatment.

- Dog tail docking still remains legal in NZ, even though it is highly painful for the dog, and probably has no benefit to them or society. Is it necessary pain? Well, it still remains legal in NZ.
- Battery cage hens kept in small cages all their lives in order to mass produce affordable eggs – both this and dog tail docking demonstrate how the law fails to protect some animals from harm.

‘Unreasonable’ or ‘unnecessary’ suffering

- There are few cases which set out how to balance necessity and animal harm.
- Canadian case *R v Menard*:
 - A guy was catching and killing stray dogs and cats by poisoning them with carbon monoxide.
- In attempting to define a clear interpretive path for the term ‘unnecessary’, the judgement concluded that:
 - **Harm is not absolute, but relative:** flexible but sometimes ambiguous.
 - Suffering imposed for unsupportable reasons will be punished.
 - Suffering can be justified if there is a strong enough reason to impose it.
 - **Human demands/needs predominate the needs of animals:** human lives are always valued more over animals since human life is privileged.
- **Test for ill-treatment:**
 - **Legitimacy of purpose:** Despite our privileged position in nature, there are limits that must be imposed to ensure that animals are not subject to every human whim.
 - ‘Rule of civilisation’ allows humans to utilise their superior position to put animals in their service but inhibits them from harming animals gratuitously.
 - Whether an act causes suffering can be sanctioned by human need should be resolved by 2 factors:
 - Purpose of the conduct: one’s purpose must be legitimate.
 - Significant uses of animals – for food, milk, clothing, and even economically efficient production are effective.
 - Is it an accepted institutionalised use of animals? Is it a normal part of that use by that institution? If it is, it is usually legitimate.
 - This is why anti-cruelty laws have been unable to touch hunting etc.
 - It is only purposes that do not conform to accepted human values that run afoul of this test.
 - Cruelty engaged in for sadistic purposes or no reason at all
 - Waste of economic capital
 - Laziness or poor management of owners – *R v Collins* – guy stopped caring and feeding his horses.
 - Court will therefore not recognise the suffering of anything if the purpose is not ‘legitimately’ imposed or valued by humans.
 - Illegitimate purposes are confined to those that have no value in society.
 - **Legitimacy of means:** The need to avoid ill-treatment demands that precautions be taken to reduce suffering. The suffering would not be justified by the means employed, especially if a safer procedure is available at a comparable cost.
 - Methods for achieving those purposes must take into account human priorities which rank higher than animals.