

Overview of Animal Rights

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The legal debate surrounding animal rights is often a contentious one, frequently leaving the non-legal scholar lost in a complex area of the law. Animal rights today are established by an assortment of laws, encompassed within property law, criminal law, and animal law. However, this broad spectrum of rights has not long been recognized. Historically, the rights people have granted animals stems from an old English principal of human property rights. In feudal England animals were seen as a mere extension of the animal’s owner’s property rights. Legally, any harm suffered by an animal was measured as the harm to the owner. Thus, animals did not have rights; the possessor of the animal did. While this old English principle still prevails in most jurisdictions today, further protections for animals have been established at the local, state, and federal level. These protections are modernly referred to as “animal rights.”

Part of the difficulty faced by those that advocate for animal rights, and those that oppose them, is the difficulty of defining animal rights. If animal rights are defined as protection from harm – then many animals already have rights. However, if the concept of animal rights extends beyond the right to be protected from cruelty, then the issue of animal rights is far from being resolved. Does an animal have the absolute right to be from human use and control? Should a domesticated animal have different rights than a farm or wild animal? The conflict lies between the right to be free from harm versus the right of humans to do what they want with their property.

I. Humans Rights Over Animals

In most U.S. jurisdictions, including South Carolina, animals are still thought of as extensions of property owned by their possessors. A person who has control over *domesticated* animals (think pets) and farm animals is considered to own them as property – like any other valuable. The means of legal possession are established in a variety of ways. When an animal is purchased, say a dog from a breeder, the purchaser is providing money to the breeder in exchange for property rights over the animal. Thus, the animal is domesticated as it has property rights established over it, and it becomes the purchaser’s legal property.

This begs the question, what if an animal has no pre-established property rights over it? Animals which have no pre-established property rights over them (“wild” animals) can become legal property in two main ways, through *actual possession* or the principle of *ratione soil*. To acquire actual possession over a wild animal, a person must physically control the

animal with the intent to possess the animal at the exclusion of others. Through *ratione soil*, legal property rights over a wild animal are established by virtue of owning the soil upon which the animal is found (and if taken). The ownership of wild animals is, however, subject to the State's ability to regulate the preservation or the taking of such wildlife. A person in possession of a wild animal that has been unlawfully taken or possessed vests no ownership interests, and therefore can be granted no remedy for property loss.

In 2017 South Carolina enacted [House Bill 3531](#) (S.C. Code Ann. §§47-2-10, et seq.), which provides the framework regarding illegal animal ownership. It is unlawful to import, possess, keep, purchase, have custody or control of, breed, or sell a large wild cat, non-native bear, or a great ape. An individual in violation of this statute will be liable for all costs associated with the escape, capture, care, and disposition of the animal. The statute further allows a city or county to enact a more restrictive ordinance. An individual in violation of House Bill 3531 or any local ordinance is granted no possessory rights over the unlawful animal.

Once property rights are established the owner is entitled to bring an action in the event of damage to, or loss of an animal, and may seek damages. Given the characterization of animals as mere chattel (property), in most jurisdictions one's measure of damages is limited to fair market value – i.e. “replacement” value. Excluded by most jurisdictions are damages for emotional harm, sentimental value, and the like. Only a few states recognize pet-related claims for intentional infliction of emotional distress.

South Carolina falls somewhere in between – which allows for an owner to testify as to the value of his or her own personalty, which may include additional valuation for such things as the training, usefulness, special traits or characteristics, etc. Being the owner of an animal that is female, absent a contract, also entitles one to the offspring of those animals.

II. Animal Rights – Protection from Harm

The connotation of “animal rights” is typically in reference to the legal protections for animals against harm and cruelty. As a surprise to some, these protections are a relatively recent legal development. In 2002, Germany was the first European nation to vote to guarantee animal rights in the constitution. More recently in the United States, the [Preventing Animal Cruelty and Torture Act](#) (PACT) was amended to define and make animal cruelty a felony, and now provides up to 7 years imprisonment. All states currently have laws in place, in varying degrees, that protect animals from being exposed to cruelty.

In South Carolina, (see Title 47) a person who knowingly or intentionally overloads, overdrives, ill-treats, deprives an animal of necessary sustenance or shelter, inflicts

unnecessary pain or suffering upon an animal, or by omission or commission knowingly or intentionally causes these acts to be done is guilty of a misdemeanor and can be sentenced up to 90 days or fined up to \$1,000 for a first offense, and may be sentenced up to two years or fined up to \$2,000 for any subsequent offense. A person who tortures, torments, needlessly mutilates, cruelly kills, or inflicts excessive or repeated unnecessary pain or suffering upon an animal is guilty of a felony and can be fined \$5,000 and imprisoned for not less than 180 days and up to 5 years.

Beyond animal cruelty laws, South Carolina has emplaced additional protections for animals:

- [*Farm Animal, Crop, Operation, and Research Facilities Act*](#) makes it illegal to exercise control over or deprive the owner of an animal facility, an animal from the facility, or property from an animal facility. Further, disruption or damage to the enterprise conducted at the animal facility is unlawful.
- [*Malicious Injury to Animals*](#) makes it unlawful to willfully and maliciously cut, shoot, maim, wound or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another. Those found guilty may be convicted of a felony, up to ten years imprisonment and/or fined depending on the value of the injury to the property.
- [*Title 47, Animals, Livestock, & Poultry*](#) in addition to the protections mentioned above, also protects animals from abandonment, improper transport, coloring or dying, and the use of live animals as prizes.
- [*S.C. Animal Fighting & Baiting Act*](#) defines and prohibits animal fighting and baiting. Those in violation may face a felony charge, up to \$5,000.00 fine, and/or 5 years imprisonment.
- [*Family Court Order Protection*](#) allows courts to provide order of protection for pets.
- Some local jurisdictions (municipalities) in South Carolina have also passed various ordinances that prohibit “tethering”, or are breed specific, or limit the number of animals a person may own.

In addition to legal protections instituted by a state, federal statutory protections provide an additional layer of animal rights. The key federal animal rights provisions are the [*Endangered Species Act*](#), [*Animal Welfare Act*](#), [*Marine Mammal Protection Act*](#), [*Animal Enterprise Protection Act*](#), [*Migratory Bird Treaty Act*](#), [*Lacey Act*](#), [*Captive Wildlife Safety Act*](#), [*Humane Methods of Slaughter Act of 1978*](#), [*African Elephant Conservation Act*](#), [*Horse Protection Act*](#), and the [*Wild Free-Roaming Horses & Burros Act*](#).

III. Human Rights – Protection from Animals

After discussing the rights of animal owners and the rights of animals themselves, one key consideration lingers: what laws exist to protect humans from animal attacks? These protections vary by state, traditionally falling into two camps. The first is strict liability, meaning liability without fault. In a strict liability state, the owner of an animal is liable for an attack regardless of whether the owner had prior knowledge of the dangerous tendencies of the animal. This differs from a state which does not impose strict liability for animal attacks. If strict liability is not imposed, the owner is liable only if the owner had knowledge of the dangerous tendencies of the animal. This is more commonly referred to as the “one bite rule,” typically meaning the owner would not be charged with knowing the animal is dangerous until after it has (once) attacked.

South Carolina, formerly a “one-bite” state, now imposes strict liability over animals. Title 47 of the South Carolina Code of Laws contains [the dog bite statute](#) which states a dog may not bite or attack a person while the person is in a public place, lawfully in a private place (including on the owner’s property), or while performing their lawful duties. These protections extend to those on the property with invitation from an owner or tenant. However, if a person provokes or harasses a dog at the time of the attack, and the provocation was the proximate cause of the attack, then no liability is imposed. Additionally, no liability is imposed if a person was unlawfully trespassing at the time of the attack.

In South Carolina, as in many other states, law enforcement dogs are excluded under liability for attacks. Generally, police animals are protected under sovereign immunity and afforded qualified protection under the Tort Claims Act while acting in their ordinary course of duty. Thus, if one is attacked or injured by a police animal, there is typically no liability imposed. Liability does exist if the actions of the animal violate a civil right, or may exist in the presence of negligence, or when the animal is not acting in the course of duty.

IV. Summary

Animal rights is a complex and ever-evolving system of laws which typically vary from state-to-state. Differing state laws and more stringent local ordinances prevent a uniform meaning of animal rights. What is certain is that the law heavily depends on location of the animal. Animal owners, those who have suffered an animal attack, or those with an interest in animal law should check local, state, and federal laws to ensure a complete understanding of the law.

V. Further Research

[South Carolina Local Ordinance Code by Municipality](#)
[South Carolina Code of Laws Title 47 – Animals, Livestock and Poultry](#)

