

ALAW launch seminar

Animal protection and the law

A. What is animal protection law?

ALAW has been set up to promote animal protection law. But what is animal protection law?

There has long been a discipline called **animal law**, but this has tended to focus on the liability of people - criminal or civil - when animals under their control misbehave or cause accidents. This is what the **Animals Act 1971** deals with and it has spawned a fair amount of caselaw, most recently the House of Lords case in *Mirvahedy v Henley*¹. The **Dangerous Dogs Act 1991**² is along similar lines and has achieved a degree of notoriety about what happens when Parliament legislates in a knee-jerk reaction.

Animal protection law is different. It deals with how people are allowed to treat animals, in various situations. The focus is on humankind's behaviour, rather than that of animals.

B. The philosophy underlying animal protection law

The philosophy underlying animal protection law in this country³ is that **people should not deliberately cause suffering to animals *unless* there is permissible benefit to be gained from doing so.**

Gratuitous cruelty is usually illegal but otherwise the law strikes a balance between perceived human self-interest and the interests of the animals concerned. Animals are not in a strong bargaining position and not surprisingly their interests are often relegated to those of humankind.

Let me give a few examples:

- **the level of protection can depend on the context in which the animal finds itself.** For example, **section 1(1) of the Protection of**

¹ [2003] UKHL 16 (20 March 2003)

² as amended

³ and indeed in every other country which has animal protection laws

Animals Act 1911⁴ prohibits the doing of all sorts of things to animals. Sometimes an activity as a whole is banned – such as inciting animals to fight against each other – and sometimes an offence is only committed if cruelty and suffering are proved on the particular facts. Under subsection (1), it is also an offence to give an animal a drug or other substance, or to operate on it, when that is not for its own benefit. However **section 1(3)** says:

‘Nothing in this section shall render illegal any act lawfully done under the Animals (Scientific Procedures) Act 1986 ...

That Act allows pain - or ‘pain, suffering, distress or lasting harm’ to use the statutory phrase - to be caused to lab animals, and unwanted substances administered to them, or for operations to be carried out which they do not need – indeed, multiple operations. The pain etc can be substantial and can last for months or even years.

The net effect is this: the 1911 Act protects the pet dog from cruelty but if you take the very same dog and put it in a laboratory, it is legal to cause it to suffer – in the latter case the law has decided there are human interests which must take precedence. Same dog, same suffering, different human interest, therefore a different legislative response.

- second, **the law often only outlaws ‘unnecessary suffering’**. The concept appears in the 1911 Act. And, with respect to farm animals, **section 1 of the Agriculture (Miscellaneous Provisions) Act 1968** says:

(1) Any person who causes *unnecessary* pain or *unnecessary* distress to any livestock for the time being situated on agricultural land and under his control or permits any such livestock to suffer any such pain or distress of which he know or may reasonably be expected to know shall be guilty of an offence

So, by definition, the infliction of *necessary* pain and *necessary* distress are allowed. Which begs the obvious question – what is *necessary* pain or *necessary* distress? Necessary for whom? Not for the individual farm animals concerned, but rather for the economic interests of the food industry and ‘cheap’ meat.

⁴ soon to be repealed if the proposed Animal Welfare Bill becomes law

Under the caselaw⁵ on the meaning of ‘necessary’ in this context, the deliberate or knowing infliction of suffering on animals is outlawed only to the extent that the suffering is greater than is required to serve some human objective thought to be legitimate. Even then, in reality, if a practice is sanctioned by the Government, it is unlikely to be considered unnecessary, even if there is an alternative means of achieving the same ends⁶.

Necessity is, in practice, a very elastic and conveniently subjective concept: you can justify just about any form of animal cruelty on the basis of alleged necessity – medical, economic, cultural, entertainment and so forth – particularly when it is those who stand to benefit who are making the judgement.

- some laws give protection only to **some species of animal**. For example, the **Hunting Act 2004** does not prohibit the use of dogs to hunt rabbits or rats. It is directed mainly at foxes, deer, hares and mink
- finally, the imperatives of **free trade** very often take precedence over animal protection. We see that with the World Trade Organisation, the enormous international trade in wildlife and the fur trade. The result is that animals or their products may be sold in the UK even though the method of rearing or production method might be illegal here. For example, cosmetics can no longer be tested on animals in this country but animal-tested cosmetics are sold here in their millions. Britain has not even banned the import of cat and dog fur (produced under extreme cruelty in the Far East), nor fur and other products from the Canadian seal cull

So, by these various techniques - the use of exceptions, limiting protection to some animals only, the concept of unnecessary suffering and prioritising free trade - the law allows or at least tolerates cruelty to animals on a quiet massive scale.

Views may differ as to whether this philosophy is right but it is important to recognise that this is how animal protection law works. Although

⁵ see, for example, *Ford v Wiley*(1889) 23 QBD 203; *Hall v RSPCA* (DC, unreported, 11 November 1993); *Isaacs v RSPCA* (DC) [1994] Crim.L.R. 517 (12 November 1993); and *Bandeira and another v RSPCA* (CA, unreported, 28 February 2000)

⁶ see *Roberts v Ruggieros* unreported 3 April 1985 (QBD); and *R (Compassion in World Farming) v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWCA Civ 1009 (‘the CIWF case’)

European Community law now recognises that animals are sentient⁷, in many other respects the law, international and domestic, treats animals little different from inanimate objects. It is even possible to **patent** a genetically-engineered animal, such as the oncomouse predisposed to suffer cancer, as an ‘invention’⁸.

The position is very different, of course, with the approach of the law to protecting people. Save for self-defence, causing pain to people, when it is not for their benefit, is nearly always a crime.

C. The role of lawyers

Lawyers with an interest in animal protection law can get involved at a number of stages:

- first, at the **philosophical** level. Ethical judgements are ultimately for society as a whole but lawyers are nevertheless well-placed to discuss the basis on which laws are framed
- second, they can help ensure that the debate is an **informed** one. Much cruelty to animals takes place behind the screen of commercial confidentiality. We now have a **Freedom of Information Act**⁹. There are many exemptions to the principle that public authorities must, on request, disclose information they hold but nevertheless creative use of the Act should lead more information than hitherto being disclosed.

In the EU, **Regulation 1049/2001** has opened up the workings of the various institutions.

- ALAW aims to **disseminate information** about animal protection, via its website, articles, seminars such as this and so forth. The **training** of those charged with enforcing animal protection legislation – such as local authorities – is often patchy and needs to be improved
- similarly, lawyers can use a variety of ‘**soft law**’ fora – the Advertising Standards Authority, the Market Research Society (which regulates opinion polls), the Press Complaints Commission and the

⁷ Protocol to the Treaty of Amsterdam

⁸ see the decision of the Technical Board of Appeal of the European Patent Office in March 2005

⁹ 2000, although it was only brought fully into force on 1 January 2005

parliamentary ombudsman – to ensure that public debate about animal issues is conducted fairly

- next, they can get involved in the process of **law reform**, for example, by responding to governmental consultations
- they can help **draft legislation**, whether in this country or abroad
- lawyers can ensure that animal protection legislation is **interpreted** as intended. Very often it isn't. Simon will talk about the recent Court of Appeal decision in the *CIWF* case.
- they can help ensure that laws, however inadequate they may be, are **enforced**. Again, very often they are not. The international trade in live food animals is a notorious example.

Let me give an example from the field of animal experiments. Under the Animals (Scientific Procedures) Act 1986 ('the 1986 Act'), animal suffering should at all times be kept to the minimum consistent with the experiment in question (although the suffering can still be very great). As part of this duty, animals should receive the veterinary care they need and should be *immediately* euthanased if they are suffering beyond a certain level¹⁰. In addition, the Home Office, the responsible Government department, has approved guidance issued by the Royal College of Veterinary Surgeons requiring vets serving animal research establishments in very clear terms to ensure that emergency 24-hour care can be provided at all times.

The practice is very different. An undercover investigation carried out by the BUAV at Cambridge University a few years ago showed that marmosets which had been deliberately brain-damaged, sometimes in multiple operations, were left unattended for up to 15-16 hours, longer at weekends and holidays. There was no emergency cover and not surprisingly, some were found dead or had to be euthanased in the morning when staff arrived. But the Home Office still defended this regime.

- finally, lawyers have a key role in protecting the right to **peaceful protest**, which has been increasingly under threat in recent years across a range of issues. One example: **sections 145 to 149 of the Serious Organised Crime and Police Act 2005** are specifically

¹⁰ see, for example, ss 6(6) and 10(2) of the 1986 Act and guidance issued under s21

targeted at anti-vivisection protesters and there is a concern that it will make more difficult peaceful campaigning designed to exert economic protest – for centuries regarded as a legitimate method of protest¹¹.

The BUAV was able to persuade the Joint Human Rights Committee that the provision as originally drafted was contrary to the European Convention on Human Rights and the committee in turn persuaded the Government to water down their proposals¹², though they are still worrying.

Most of the potential role of lawyers applies in international fora as much as the UK. A great deal of law relevant to animal protection comes under the auspices of the European Union, the WTO, CITES (regulating the trade in endangered species), the International Whaling Commission, the OIE (which covers animal health issues) and others. Other than purely domestic cruelty, it is not really possible to understand animal protection law without also understanding how these important fora work.

Let me give you an example from the WTO. The received wisdom for many years has been that animal protection is not a legitimate exception to the free trade principle – the fact that a product has been manufactured cruelly did not justify banning its import and sale, it was said. However, there is nothing in the WTO agreements which dictates this and this was pointed out forcefully in the recent discussions as to whether the import into the EU of cosmetics tested on animals should eventually be banned.

In the recent unsuccessful challenge brought by France to the resulting directive including such a ban¹³, it was very gratifying to see accepted - by the European Parliament, the Council of Ministers, the Advocate-General and the French Government itself¹⁴ - that animal protection *can* be a reason for banning trade. This is hugely significant.

¹¹ see, for example, the campaigns against Barclays Bank over its investment in apartheid South Africa, Nestlé over its promotion of baby milk in developing countries and companies such as Total investing in Burma

¹² by excepting from the definition of ‘tortious act’ behaviour designed to induce the breaching of a contract

¹³ Directive 2003/35

¹⁴ *French Republic v European Parliament and Council of the European Union* (Case C-244/03) (24 May 2005). The ECJ itself decided the case on a different basis.

D. Conclusion

Most people would accept that the first duty of the law, and therefore of lawyers, is to protect the vulnerable. Animals are every bit as vulnerable to cruel exploitation as children, the mentally ill and other groups.

Test cases have always played an important part in social reform movements – whether the slave trade, suffragettes, civil rights in the US, the anti-apartheid movement, securing welfare benefits for disadvantaged groups. There has to date been comparatively little test casework on animal protection – in this country the costs rules and at the ECJ the very restrictive standing rules are significant barriers. But it is an area ALAW is keen to develop, as well as the other ways in which the law can play its part in protecting animals.

We believe that animal protection law is both a serious intellectual discipline – some of the international aspects, in particular, are exceptionally taxing – and also very important for all those concerned to see animals protected.

David Thomas
27 June 2005