

# LAW NOTES

## A PET-TRESPASSING PRIMER FROM HSUS

Owners of companion animals that have been killed or injured while trespassing on neighboring land frequently contact the HSUS general counsel's office to ask for information about their rights.

A trespasser is one who goes onto the land of another without permission or privilege. Under common law, there was no duty to restrain a dog or cat from trespassing. However, most states have enacted statutes that modify or reverse common law.

A landowner is generally entitled to the exclusive use of his/her property. That right, however, does not extend to the unjustified killing or injuring of trespassing animals. For example, if a dog is simply wandering in a neighbor's yard, the neighbor may not kill it or use excessive force to drive it away. A "justified killing," in the eyes of the law, is one whose purpose is to protect persons or property.

In most states, the killing of a trespassing dog in defense of persons or property is considered justified only if the danger posed by the dog is imminent and there is no other way to remove the animal from the property or to eliminate or control the danger. In some states, a property owner has the legal right to kill an animal if doing so appears to be necessary to protect livestock.

Generally, a dog that is worrying or attacking livestock while trespassing may be killed only on the property on which it is trespassing. For example, if a trespassing dog kills a chicken, the owner of the chicken may not chase the dog home and kill it in front of its

owner's house out of vengeance. In addition, the necessity of such a killing or injury must exist at the time it takes place. If a livestock owner kills a trespassing animal later, he/she may be held responsible in most states.

Courts often rule in favor of a landowner whose livestock has been worried or attacked. A dog's owner may even be held financially responsible for any damage to livestock that the dog could have caused. The burden of proving that a dog was not chasing or threatening livestock is placed on its owner.

An animal has no legal standing to bring an action. If an animal has been wrongfully injured or killed while trespassing, the right to bring a civil action is available to its owner. He/she may seek the fair market value of the pet as well as consequential and punitive damages. The fair market value of the animal is its value at the time of its death or the difference between its market value before its injury and its market value thereafter. An animal's special abilities and its breed may be considered by the court. If an animal is not a purebred, its fair market value may be minimal.

Consequential damages may be awarded for normal, foreseeable costs that arise from an animal's injury, which may include reasonable veterinary bills, the loss of the use of the animal, and the loss of profits. Although courts are beginning to recognize that veterinary bills are a normal and foreseeable result of a pet's being injured, many remain reluctant to award damages for the care of animals that have a low value.

Most courts will not award consequential damages to a pet owner for his/her pain and suf-

fering or loss of companionship. Punitive damages may be awarded to him/her if the property owner's actions are considered wanton or malicious.

In a trespass action, contributory negligence—less-than-ordinary care—on the part of a pet owner may be raised as a defense. The owner of a wandering dog is considered negligent if he/she has not taken normal precautions to keep the dog where it belongs. A pet owner's negligence may bar recovery for the pet's death or injury.

In addition to civil remedies, which a pet owner may pursue directly, criminal charges may be brought by a state prosecutor. Wrongful killing, cruelty to animals, and discharging a firearm near a dwelling are additional charges that may be brought against a landowner who kills or injures a trespassing animal.

The laws of trespass vary from state to state. In order to have a clear understanding of the laws protecting your companion animal, it is best to consult an attorney. In any event, legalities will offer limited comfort if your pet has been killed or injured. Responsible stewardship of your pet—never letting it run loose off your property—is the best protection.

## PRYOR RANGE ROUNDUP HALTED

In March The HSUS joined the American Horse Protection Association (AHPA) in suing in a U.S. district court to stop the roundup and removal of horses on the Pryor Mountain Wild Horse Range in Montana. The Pryor Mountain range was specifically set aside for the protection of wild horses

even before the Wild, Free-Roaming Horse and Burro Act was passed in 1971. The horses on the range are genetically unique and may be descendants of horses brought to North America by the Spanish.

The Bureau of Land Management (BLM) had claimed that the herd of 121 horses was too large and needed to be thinned, but The HSUS and AHPA challenged the accuracy and adequacy of that claim. The BLM had provided no opportunity for public comment on the roundup, which was to occur at a time when the horses were particularly vulnerable. Foaling season was imminent, and some foals might have already been born. Such foals would be too young to go through the stress of a roundup, and the mares that had not yet foaled could abort if they were rounded up. In addition, the roundup was to be conducted by helicopter, which would subject the horses to even more stress and danger.

The HSUS and AHPA asked the court to prevent the BLM from rounding up and removing horses until it had drafted a formal plan for doing so, including an environmental analysis, and allowed the public to comment on and challenge its proposal. The court agreed and issued an injunction against the BLM's making any effort to reduce the herd to fewer than 121 horses without having taken those steps. We hope that the decision will set a precedent for requiring the BLM to allow public input and conduct better examinations of the potential impact of roundups. ■

*The Law Notes are written by HSUS General Counsel Roger Kindler and Senior Counsel Murdaugh Stuart Madden.*