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FROM PROPERTY TO FAMILY: PET CUSTODY IN DIVORCE AND THE GLOBAL CASE FOR THE “BEST INTEREST OF THE PET” STANDARD

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Abstract

Divorce law mostly treats pets as personal property and does not recognise the bond they share with their owners. This article argues that the law should change to match how owners see their pets, as members of the family. It compares the laws of Alaska (2016), Illinois (2017) and California (2018), the three US states that have started to move away from the property approach towards the “best interest of the pet” model, each in its own way. The comparison draws on case law and scholarly writing. The article finds that most jurisdictions still follow rigid rules that treat pets as personal property. The three states have brought some change, but their laws differ in wording and are vague on how to judge a pet’s well-being. As a result, judges who want to act in the pet’s interest are sometimes unable to, because they lack the authority to do so. India has no law on pet custody either, and its courts decide such disputes case by case, so it also needs clear statutory rules. The article concludes that other jurisdictions should adopt the “best interest of the pet” model and write it into their laws with clearer provisions.

Keywords: *pet custody, best interest of the pet, companion animals, divorce, animal law*

1. Introduction

When a couple gets divorced, why does the court treat their pet as tangible property? According to a 2015 Harris Poll, more than three in five Americans, about 62%, own at least one pet, and ownership is highest among the two youngest generations, Millennials and Gen Xers.¹ Ninety-five percent of these owners consider their pet a member of the family.² The same poll in 2018 found that a majority of Americans with pets (69%) see them as family members, and 23% see them as children.³

The problem begins with how courts decide pet disputes. They mostly rely on one thing: the pet’s property status.⁴ A dog may be seen as a family member or even a child, but under Florida

law it is personal property. This reasoning appears in *Bennett v. Bennett* (1995). The court held that it had no authority to award custody or visitation of property. It also said that custody would create supervision problems, and that courts are already overloaded with children's custody cases and cannot take the same responsibility for pets. The pet is therefore awarded under the equitable distribution statute.⁵

But this is changing. A 2014 survey found that more than 25% of matrimonial lawyers had seen an increasing shift in pet custody cases, and 22% said courts are now accepting such cases more often.⁶ Three US states have changed their laws: Alaska (2016), Illinois (2017) and California (2018).⁷ Judges there can now consider the pet's wellbeing, and not only who owns it. This is because owners see their pets as more than property and value them like family. All of this brings attention to the concept of the "best interest of the pet." Here the pet's interest is the main priority, and factors like who paid for the pet or who bought it no longer decide the case.

This brings us to the question of whether other countries should adopt the US "best interest of the pet" model instead of treating pets as property. This article argues that pets are more than personal property and should be treated as family. The argument rests on a simple fact: people already treat their pets as family, and the law should reflect this, with clearer provisions than those in the US. The article first examines the current legal position, including the position in India, and then compares how Alaska, Illinois and California handle these disputes. It then considers the objection that courts are overloaded and that existing law is enough, and finally ends with a recommendation for reform.

2. Current Legal Position

In most jurisdictions, pets are treated as personal property, which does not match how their owners feel about them. Dowdakin notes that most jurisdictions view pets as personal property, with no rights of their own in law. A dog or a cat therefore cannot sue or inherit property in its own name.⁸ Pallotta reaches the same finding: animals are legally defined as personal property.⁹ In the eyes of the law, a beloved pet is nothing more than property, and the word "custody" is a misnomer because the case is legally about dividing property.¹⁰ According to Pallotta, courts mostly decide these disputes on the basis of who the more rightful owner is. In practice, this means who bought the pet or who paid the adoption fee.¹¹ Courts usually ignore factors that matter in real life, such as who is more involved in caregiving, who takes the pet to the vet, who shares the closer bond and who spends more time with the pet. Unfortunately, there is no test for working out what is best for the pet.¹²

Even outside divorce, the same rule applies. The property label also lowers the value of a pet when it is wrongfully hurt or killed. In such cases, the court asks the owner one question: what was the market price? The law treats the pet like a broken phone, and the court does not count the owner's grief or the sentimental value of a family member.¹³ Owners think of their pets as family, so putting a price on them feels wrong, and replacing a pet with another animal feels as absurd as replacing a child.¹⁴

The same idea appears in inheritance law, where animals cannot own anything. In *In re Estate of Russell* (California, 1968), discussed by Dowdakin, Thelma Russell left her property to her friend of twenty-five years, Chester Quinn, and to her dog, Roxy. The court held that the gift to the dog was not valid simply because a dog cannot become a beneficiary in a will.¹⁵ The court also considered whether she meant to create a trust for Roxy's care after her death, but rejected this, because the will did not show any intent to place that duty on Mr. Quinn. The case shows that an owner who loved her pet could not leave it money directly, and her wishes for the dog's care were not enforced.

On a brighter note, some courts are moving away from this strict property analysis, though the position is still unclear. Judges have the discretion to consider the best interest of the pet, and some have done so, but the norm remains a strict property approach. Pallotta notes that some have suggested judges are reluctant to apply a "best interest" standard because they do not want to appear as activists.¹⁶ This may be one reason the standard is not applied more widely.

2.1 Position in India

India also has no law that deals with the custody of pet animals. Family and divorce laws do not mention companion animals, so Indian courts decide these disputes case by case, with no rules to guide them.¹⁷ In *Sunil Malhotra & Ors. v. State (NCT of Delhi)* (W.P.(CRL) 581/2026, Delhi High Court, 16 April 2026), Justice Girish Kathpalia dealt with three rescued dogs that a breeder wanted back. The court held that the custody of a pet cannot be treated like the custody of an inanimate object, and that the bond between the dogs and their adopters cannot be ignored.¹⁸ The court let the adopters keep the dogs, and the breeder will get them back only if he is acquitted and it suits their welfare.¹⁹ However, this was a criminal matter and not a divorce, and both sides had agreed to the arrangement. The court did not adopt the "best interest of the pet" standard. A similar dispute, *Mahua Moitra v. Jai Anant Dehadrai*, about visiting access to a pet dog, is still pending in the Delhi High Court.²⁰ Together, these cases show that Indian courts are moving towards the welfare of companion animals without any statute to rely on. This is why clear and firm rules are needed, as discussed above.

Under current law, pets are legally viewed as property, which does not match how owners treat them. This gap has started to shrink, because some US states have changed their laws. These laws are examined in the next section.

3. Comparative Analysis

In 2016, Alaska became the first state to amend its divorce law so that judges consider the “well-being of the animal.” Illinois followed in 2017 with a similar law, directing judges to consider the “well-being of the companion animal.” California came next in 2018, but it took a weaker approach and authorised judges to consider the “care of the pet animal.” Under these provisions, courts can now award sole ownership of a pet to one owner, or joint ownership to both owners. Joint ownership was first explicitly allowed in Alaska.²¹

Pallotta notes that Alaska was the first state to write the “well-being of the animal” standard into its divorce law, and the first to allow joint ownership of a pet.²² The statute provides that the court “may provide . . . if an animal is owned, for the ownership or joint ownership of the animal, considering the well-being of the animal.”²³ Pallotta describes this as a requirement on judges, but Bouwma notes that it is unclear whether “may” makes the consideration mandatory or only a suggestion.²⁴ The law has also been criticised as too broad, because it uses the word “animal” and not “companion animal,” so it covers any owned animal.²⁵ An earlier case, *Juelfs v. Gough*, 41 P.3d 593 (Alaska 2002), shows the same thinking at work. The Alaska Supreme Court held that it was in the best interests of the dog, Coho, to be awarded to Steve Gough alone. The court also examined whether joint visits would work, but did not order them, because it found that the former couple, Julie and Stephen, should have no contact at all.²⁶ This suggests that the relationship between the couple can affect what is best for the animal.

In Illinois, section 503(n) of the divorce law (750 ILCS 5/503(n)) provides that if the court finds a companion animal to be a marital asset, it “shall allocate the sole or joint ownership of and responsibility for” the animal, and “shall take into consideration the well-being of the companion animal.”²⁷ The word “shall” makes this mandatory, and Bouwma treats it as the most important wording in the law, since the analysis must be made in every divorce case involving a pet.²⁸ The law carries a condition: the pet must be a marital asset. It also applies only to a “companion animal,” a term that does not include service animals.²⁹ It follows the definition in the Humane Care for Animals Act, which covers an animal commonly considered a pet, such as dogs, cats and horses. On this basis, Bouwma thinks that pets like fish and mice would likely be excluded.³⁰ The statute also speaks of “ownership and responsibility,” and not

“custody.” The weakness is that Illinois courts have not created a specific test for “well-being,” so each judge could define it differently, which could lead to inconsistent results.³¹ The sponsor of the law, Senator Linda Holmes, said that it starts treating pets more like children and less like property.³²

California followed in 2018 with section 2605 of its Family Code (Cal. Fam. Code 2605), which has two parts. Under the first part, the court “may” order a party to care for the pet during the divorce case, and this order does not affect the final decision on who gets the pet. The main rule is in the second part: the court “may assign sole or joint ownership of a pet animal taking into consideration the care of the pet animal.”³³ The law has some weaknesses. The word “may” makes the consideration optional. The early draft of the law (AB 2274) said “shall,” but the final version changed it to “may,” which gives judges discretion.³⁴ California also uses the word “care” instead of “well-being.” Care is narrower, as it covers the prevention of harm or cruelty and the provision of food, water, veterinary care and shelter, and it may leave out the pet’s bond with the owner. In addition, “pet animal” is defined as any animal that is community property and kept as a household pet, which is very broad and could include fish and rats.³⁵ Even so, Pallotta argues that the law still gives judges guidance in treating pets differently from other property, where before there was none.³⁶

All three states have moved away from asking only “who owns it” and now allow sole or joint ownership. However, their wording differs. Illinois uses “shall,” California uses “may,” and Alaska remains unclear. Alaska and Illinois use the broader concept of “well-being,” while California uses the narrower concept of “care.” California also adds a temporary care order for the period of the case, while both laws apply only to animals that are marital or community property.

The law has moved on from treating the pet as personal property, and now gives it recognition as a “companion animal.” Yet this progress faces a criticism: none of the three laws explains how a judge should decide what an animal’s well-being actually means. To fix this, Bouwma proposes a list of factors for judges. These include elements such as who spends more time with the pet, who feeds, walks and grooms it, and, most importantly, the kind of bond the pet shares with each caregiver. The animal’s psychological well-being should be given due importance, along with which caregiver has more time, whether the home is suitable and the caregiver’s resources. She adds that this standard should fall slightly short of the child custody standard, because animals are not persons and cannot say what they want.³⁷ This list shows that pet custody involves much more than dividing property, and it shows why a country adopting this model should write clearer provisions than the US has.

4. Counter-Argument

Not everyone agrees with the “best interest of the pet” model, and several objections have been raised against it.

The first objection is that courts are already overwhelmed, and that pet custody cases would be difficult to supervise. In *Bennett v. Bennett* (Florida, 1995), the court stated that custody and visitation lead to enforcement and supervision problems, and that courts are already overloaded with matters involving children.³⁸ In *Travis v. Murray* (New York, 2013), the court stated that “[w]hile children are important enough to merit endless litigation, as unfortunate as that litigation may be, dogs, as wonderful as they are, simply do not rise to the same level of importance.”³⁹ However, this objection can be answered with Bouwma’s suggestions. She proposes that pet custody orders should be non-modifiable, so that they cannot be reopened, which would prevent never-ending conflicts. She also refers to a one-day trial without an appeal, and her proposed law allows joint ownership only in rare instances.⁴⁰

The second objection is that courts already decide these cases fairly under current law, so no change is needed. This is Gregory’s view. He points to *Houseman v. Dare* (New Jersey), where the trial court, after the case was sent back by the appellate court, ordered shared possession of the dog while still calling it property.⁴¹ Pallotta, however, shows the other side. Where trial judges ordered joint custody or visitation, higher courts have sometimes overturned these decisions because animals are property and the judges had no authority to make such orders, as in *Bennett*.⁴² So a fair result depends on the judge, and the law does not require anyone to consider the animal’s welfare. A clearer approach like “best interest” would give judges the authority they currently lack.

The third objection is that a pet is not a child. Bouwma explains that pet custody and child custody are not “virtually identical,” and that a court cannot easily evaluate an animal’s mental well-being, because animals cannot say how they feel.⁴³ To tackle this, she suggests that the standard should fall slightly below the child custody standard. Courts should instead look at practical factors that are more appropriate to apply, such as the bond with each caregiver, who spends more time with the pet, who feeds and walks it or takes it to the vet, and who provides a better home environment and what resources each caregiver can offer.⁴⁴

These objections are mainly about how difficult it would be to apply the “best interest of the pet” model, and not about whether pets deserve consideration. The answer, therefore, is to write clearer rules and provisions, and not to reject the model.

5. Conclusion and Recommendations

Other countries should adopt the “best interest of the pet” model instead of treating pets as mere property. Pets are not just possessions. For many people they are family members who bring love, trust and companionship, and some people see them as their own children. If the law ignores this, it lags behind how people actually live, and it needs to reflect the bond people share with their pets.

This article showed that current law treats pets as property, and that this affects divorce, wills and compensation for a wrongfully killed pet. It also showed that Alaska, Illinois and California have started to change this, but their laws differ from each other and are unclear on how to judge “well-being.” The objections discussed earlier can be answered with clearer and more flexible rules that suit the needs of today’s world.

The model can also work across different countries, because other legal systems have already started to treat animals differently. In 2007, the European Union recognised animals as “sentient beings” through an amendment to the Lisbon Treaty, and the term “sentient” refers to the ability to feel pain, joy or fear. In 2015, the same was done in places like France, New Zealand and the Canadian province of Quebec. In 2018, Slovakia changed the definition of “animals” in its civil code to say they are living beings and not things.⁴⁵ Pallotta notes that even laws that are mainly symbolic can help change how society thinks, so a change in law is a step in the right direction.⁴⁶

Bouwma suggests several changes to make pet custody fairer. First, the law should use the words “best interest of the companion animal” and not only “well-being,” because this covers the pet’s emotional and mental well-being and its bond with an owner. Second, the consideration should be mandatory, using the word “shall” as Illinois did, and not the optional “may” used in Alaska and California. Third, courts should look at clear factors, such as who spends the most time with the pet, who walks and feeds it, and who takes it to the vet. Finally, joint ownership should be allowed only in rare instances, and custody orders should be non-modifiable, to prevent endless conflicts.⁴⁷

The law should recognise pets as members of their owners’ families, deserving protection more like children than like property. It is time to move beyond treating pets as mere property and to give them the recognition they deserve.

¹Nicole R. Pallotta, *Chattel or Child: The Liminal Status of Companion Animals in Society and Law*, 8 Soc. Scis. 158, 1–2 (2019) (reporting the 2015 Harris Poll).

²*Id.* at 2.

³*Id.* at 2 (reporting the 2018 Harris Poll).

⁴*Id.* at 10.

⁵*Bennett v. Bennett*, 655 So. 2d 109 (Fla. Dist. Ct. App. 1995), quoted in Pallotta, *supra* note 1, at 11.

⁶Pallotta, *supra* note 1, at 10 (reporting the 2014 survey of the American Academy of Matrimonial Lawyers).

⁷Alaska Stat. § 25.24.160(a)(5); 750 Ill. Comp. Stat. 5/503(n); Cal. Fam. Code § 2605. The years follow Pallotta. The Illinois law took effect on January 1, 2018, and the California law on January 1, 2019.

⁸Paige J. Dowdakin, *Revisiting Roxy Russell: How Current Companion Animal Trust and Custody Laws Affect Elderly Pet “Guardians” in the Event of Death or Incapacity*, 20 Elder L.J. 411, 414 (2013).

⁹Pallotta, *supra* note 1, at 10.

¹⁰*Id.* at 10.

¹¹*Id.* at 10.

¹²Rachael Bouwma, *How to Apply the “Best Interest of the Pet” Standard in Divorce Proceedings in Accordance with Newly Enacted Laws*, at 11 (Mich. State Univ. Coll. of L., Animal Legal & Hist. Ctr. 2019). ¹³Pallotta, *supra* note 1, at 11–12.

¹⁴*Id.* at 12.

¹⁵*In re Estate of Russell*, 444 P.2d 353 (Cal. 1968); Dowdakin, *supra* note 8, at 413.

¹⁶Pallotta, *supra* note 1, at 11.

¹⁷Vedang Khera, *Paw-per Legislation: Re-thinking Pet Custody in Matrimonial Disputes*, Bar & Bench (Sept. 17, 2026), <https://www.barandbench.com/columns/paw-per-legislation-re-thinking-pet-custody-in-matrimonial-disputes>.

¹⁸*Sunil Malhotra & Ors. v. State (NCT of Delhi) & Ors.*, W.P.(CRL) 581/2026, ¶ 4 (Delhi H.C. Apr. 16, 2026) (India).

¹⁹*Id.* ¶¶ 5–6.

²⁰*Delhi High Court Says It Will Decide Whether Mahua Moitra Can Visit Pet Rottweiler Henry*, Bar & Bench, <https://www.barandbench.com/news/delhi-high-court-says-it-will-decide-whether-mahua-moitra-can-visit-pet-rottweiler-henry>; Khera, *supra* note 17.

²¹Alaska Stat. § 25.24.160(a)(5); 750 Ill. Comp. Stat. 5/503(n); Cal. Fam. Code § 2605; Bouwma, *supra* note 12, at 10–17 (general discussion).

²²Pallotta, *supra* note 1, at 11.

²³Alaska Stat. § 25.24.160(a)(5).

²⁴Bouwma, *supra* note 12, at 14.

²⁵*Id.* at 14.

²⁶*Juelfs v. Gough*, 41 P.3d 593, 597 (Alaska 2002); Bouwma, *supra* note 12, at 13–14.

²⁷750 Ill. Comp. Stat. 5/503(n).

²⁸Bouwma, *supra* note 12, at 13.

²⁹*Id.* at 12.

³⁰*Id.* at 12.

³¹*Id.* at 11.

³²*Id.* at 11 (quoting Senator Linda Holmes).

³³Cal. Fam. Code § 2605.

³⁴Bouwma, *supra* note 12, at 16–17.

³⁵Cal. Fam. Code § 2605; Bouwma, *supra* note 12, at 15.

³⁶Pallotta, *supra* note 1, at 11.

³⁷Bouwma, *supra* note 12, at 21.

³⁸*Bennett*, *supra* note 5, quoted in Pallotta, *supra* note 1, at 11.

³⁹*Travis v. Murray*, 977 N.Y.S.2d 621, 632 (Sup. Ct. 2013), quoted in Bouwma, *supra* note 12, at 26.

⁴⁰Bouwma, *supra* note 12, at 26–27.

⁴¹*Houseman v. Dare*, 966 A.2d 24 (N.J. Super. Ct. App. Div. 2009), discussed in John DeWitt Gregory, *Pet Custody: Distorting Language and the Law*, 44 Fam. L.Q. 35, 63–64 (2010).

⁴²Pallotta, *supra* note 1, at 11.

⁴³Bouwma, *supra* note 12, at 20.

⁴⁴*Id.* at 21.

⁴⁵Pallotta, *supra* note 1, at 24.

⁴⁶*Id.* at 24 (discussing the expressive function of law).

⁴⁷Bouwma, *supra* note 12, at 26–27.