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## *ANIMAL LAW – REPLEVIN*

### *“How Do I Get My Dog (or Cat) Back?”*

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Seminar Topic: This program explores replevin cases for companion animals which can arise between non-married partners, families and in cases of theft or accidental loss. It includes practice guidance for when to use replevin with or without notice, demand letters, and prove right the owner/guardianship at hearing. Issues arising in settlement of such disputes are also addressed.

This material is intended to be a guide in general. As always, if you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.





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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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## *About The Author*

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Anna received her J.D., cum laude in 2003 from The John Marshall Law School, Chicago, IL. She received a M.S., Interdepartmental Biological Sciences in 2001 from Northwestern University, Evanston, IL. She received a B.S., cum laude, Microbiology in 1998 from University of Illinois, Urbana-Champaign, IL. She was admitted in Illinois in 2003 and the District of Columbia in 2007.

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# ANIMAL LAW – REPLEVIN

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## Introduction & Background – Animal Law

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The field of animal law encompasses not only companion animals, commonly referred to as “pets,” but also those animals living in the wild and animals used for entertainment, food and in research.

Animal attorneys often seek to protect animals from abuse under existing statutory and case laws and seek to extend animal protection through common law (bringing legal cases) & legislative change.

Although a non-traditional legal field, animal law involves traditional subject matter, such as tort, contract, criminal and constitutional law. Animal law is currently taught in 160 law schools (US and Canada), including Harvard, Stanford, UCLA, and the University of Chicago. Recognizing the growth in this field, most state and local bar associations now have animal law section councils or committees. <http://aldf.org/animal-law-courses/> (updated Jan. 7, 2016)

# Introduction & Background – Animal Law

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## Companion Animal Issues In Court

- Animal Custody Disputes (Divorce & \*Replevin)
- Bites (Prosecuting & Defending)
- Consumer Fraud (Sales of Sick Animals)
- Enforceable Trusts for Animal Beneficiaries (Pet Trusts)
- Housing Disputes (No Pet Policies – FHA/ADA)
- Veterinary Malpractice (Reasonable Standard of Care)
- Wrongful Death & Injury (Negligent & Intentional)

## State Laws & Court Treatment Differs

## What Is Replevin?

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Legal Remedy to Recover Specific Personal Property

Derives from Common Law – Replevin & Detinue

Greater Right to Possession

Compensation for Losses

Statutory Remedies (Note: replevin laws vary by state).

*See, Phineas Pemberton Morris, A Practical Treatise on the Law of Replevin in the United States: With an Appendix of Forms, and a Digest of Statutes, BiblioLife (May 13, 2009).*

# When Can I Use Replevin?

## When Property Is Taken *Wrongfully* or *Unlawfully*

### Civil Remedy – Action at Law, but Court may apply Equities

See, e.g., of *Adams v. Greg Weeks, Inc.*, 327 Ill. App. 3d 380, 384 (5<sup>th</sup> Dist. 2002) (refusing to allow a defendant in replevin action to maintain possession of vehicle where it would essentially result in her receiving a “free car”) *Gunn v. Sobucki*, 216 Ill. 2d 602, 618 (2005) (holding that the purported “sham” sale of a coin collection to the plaintiff collector by the decedent, at a time when decedent was in the midst of a marital difficulties and without evidence of actual payment of the \$30,000.00 amount shown on the notarized bill of sale, was inequitable and merited remand).

Although replevin is an action at law (*General Motors Acceptance Corp. v. Vaughn* 358 Ill. 541, 547, 193 N.E. 483 (1934), equitable principles have been held to apply to replevin proceedings (see *Adams v. Greg Weeks, Inc.*, 327 Ill. App. 3d 380, 384, 763 N.E.2d 413, 261 Ill. Dec. 443 (2002)).

Few principles of equity are more basic than the doctrine that one seeking the aid of the courts is prohibited from taking advantage of his own wrongdoing. See *American National Bank & Trust Co. of Chicago v. Vinson*, 273 Ill. App. 3d 541, 544, 653 N.E.2d 13, 210 Ill. Dec. 426 (1995). Courts will not help those who seek to found their cause of action upon an illegal or immoral act or transaction. See *Mettes v. Quinn*, 89 Ill. App. 3d 77, 80, 411 N.E.2d 549, 44 Ill. Dec. 427 (1980). *Id.* at 618-619 (emphasis added).

# When Can I Use Replevin?

## Limits

- Rightful owner must know the whereabouts of the specific property
- Taking would amount to trespass

## Benefits

- Can be a faster process

## NON-marital relationships

## Common situations

- Unmarried Couples
- Roommates
- Family
- Rescue/Adoption
- Theft

## Can Be Brought With Other Claims

- Breach of Contract
- Conversion
- Fraud



# A Prima Facie Case for Replevin



## Initial Hearing To Establish Superior Right to Possession

- For the duration of the case, the animal will reside with someone (in jurisdiction).

## Establishing a Prima Facie Case

### No Set Formula, But Documents Typically Considered Include:

- Purchase/Adoption Papers
- Veterinary Records
- Microchip Registration
- City/County License
- Proof of Living Arrangements or Other Care Provided

# Initial Hearing – Writ of Replevin

## Seeking a Writ of Replevin

Can be With or Without Notice to Opposing Party

### Initial Hearing

- Requesting a hearing to adjudicate the final rights of the parties
- Requesting immediate possession of the disputed property
  - Ex Parte
  - Bond Requirement  
(to protect defending party against wrongful action)



# With Or Without Notice

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## Replevin Without Notice

- Destruction or concealment of disputed property
- Removal of disputed property from state
- Harm resulting from perishable nature of the disputed property
- Sale or transfer of the disputed property to another; or
- Disputed property was obtained by theft.

Often requires sworn affidavit or testimony to Court



# Bond

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Party in Possession Typically Posts Bond

Often 2x Value of "Property"

## Potential Problem

- Valuation
- Actual Value v. Market Value
- May Have Greater Value To One Party





# Hearing

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Even if successful in obtaining possession (initial hearing), the ultimate ownership rights will be determined upon further hearing or trial.

## Proofs – Prima Facie Case or Invalidity of Ownership

- Purchase/Adoption Papers
  - Testimony of Adoption Agency or Breeder
- Veterinary Records
  - Testimony of Record Keeper
- Microchip Registration
  - Authenticated Documents
- City/County License
  - Authenticated Documents
- Proof of Living Arrangements or Other Care Provided
  - Lease (pet policies); Grooming/Boarding; Credit Card Receipts (purchases)



Often Raised – Best Interests of Animal (But May or May Not be Considered)

# Exceptions

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## EXCEPTIONS/OTHER CONSIDERATIONS

- Abandonment
- Co-Ownership
- Contract
- Gift
- Relinquishment
- Other Laws



## Example Cases



### **LOST ANIMALS - ADOPTIONS**

VERMONT - *Morgan v. Kroupa*, 167 Vt. 99 (September 5, 1997) (finder of lost dog was sued under replevin statute, but replevin was denied because finder had diligently attempted to locate owner while sheltering and caring for dog over a year)

WASHINGTON - *Graham v. Notti*, 147 Wn. App. 629 (December 2, 2008) (owner of lost dog challenged validity of adoption to new home by shelter)

## Example Cases



NEW JERSEY – *Arguello v. Behmke*, 2006 N.J. Super. Unpub (Jan. 26, 2006) (owner divested of dog ‘Chopper’ due to Hurricane Katrina granted writ of replevin despite passage of time and adoption by new family)

“For those individuals who may never have owned a pet, in particular a dog, you may not understand the importance of the court’s decision. Having had many pets and dogs my entire life, I do understand why both sides of this matter argue their cause vehemently.” R. Ruggiero Williams, P.J. Ch.

NEW YORK - *Stoddard v. VanZandt*, 2013 N.Y. Misc. LEXIS 3064 (June 4, 2013) (denying replevin of cat with no collar or microchip, where cat had been adopted out by a rescue).

Where the Court was ‘mindful of the public policy purposes of *A & M Section 374(2)*, which affords **companion animals** the benefits of adoption and placement in homes as an alternative to euthanization when found lost or abandoned, the Court declines to allow plaintiffs to have return of the cat and thereby set aside the defendants’ adoption of the cat from the Society’.



## Example Cases

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### **FORMERLY MARRIED PARTIES**

*NEW YORK - Walsh v. Kilgour*, 32 Misc. 3d 1244(A) (September 6, 2011) (unpublished) (ex-husband brought replevin action against ex-wife for the dog Mo where ex-wife sought to relinquish/adopt Mo out to third party).

(\*)*NEW YORK - Travis v Murray*, 2013 N.Y. Misc. LEXIS 5508 (Nov. 29, 2013) (divorce action concerning with whom Joey, a miniature dachshund, should live determined that the most appropriate standard to apply when deciding with whom a pet should reside is the one found in the First Department case, *Raymond v Lachmann*, the **'best for all concerned'** standard).



## Example Cases

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### **FORMER ROOMMATES**

*NEW YORK – LeConte v. Lee*, 2011 N.Y. Misc. LEXIS 6083 (Nov. 28, 2011) (plaintiff entitled to superior right of possession as the initial dog owner and because the dog was not conveyed to defendant by contract or gift, the dog was not abandoned, the dog was not in danger, and despite defendant caring for dog for two months after the parties separated).

### **FAMILY MEMBERS**

*NEW YORK - Ramseur v. Askins*, 2014 N.Y. Misc. LEXIS 3108 (July 15, 2014) (dismissing plaintiff's replevin case using **'best for all concerned'** standard where defendant and her family have been meeting the dog Deva's needs for nearly her entire life, are closely bonded with Deva and Deva is thriving with defendant, and where plaintiff had left care of Deva to others).



## Example Cases

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### **CONTRACT/SALE**

*OHIO - Timeoni v. Ciancibelli*, 2007 Ohio App. LEXIS 2134 (May 11, 2007) (replevin of companion horse, *dissent*)

Fundamentally, the outcome of the case might well have been different for appellants had they been represented by counsel. The court has already found the actions of appellees to be wrongful. Appellants may well be entitled to punitive damages and attorney fees for the deceptive acts of Spinning Wheel Farm and Ciancibelli. Due to Appellee Ciancibelli's deceptive acts, appellants have to return a horse their daughter has been riding for a year and that they believed they purchased under a lawful sale. This situation is not only wrong, it is outrageous. If appellants were successful in being awarded attorney fees and punitive damages, the difficult and emotional search for a new **animal companion** would at least be monetarily compensated. In short, justice would be served in this sordid affair. I would remand for retrial so that appellants could have the case fairly heard on its merits.



## Example Cases

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*RHODE ISLAND – Dubin v. Pelletier*, 2012 R.I. Super LEXIS 175 (Nov. 21, 2012) (dispute between owner and handler of 'Mr. Big' – a now retired show dog – awarding possession to plaintiff owner and certain damages for unjust enrichment/stud fees but also awarding defendant counterclaim for unjust enrichment for handler services).



## Example Cases

### GOVERNMENT AUTHORITIES

ILLINOIS - *Wormely v. Ponce*, 2007 U.S. Dist. LEXIS 85709 (N.D.IL, Nov. 19, 2007) (federal [1983] civil suit against city of Chicago and officer)

The unauthorized intentional deprivation of an individual's property by a person acting under color of law does not give rise to a due process violation so long as a meaningful post deprivation remedy for the loss is available. *Hudson v. Palmer*, 468 U.S. 517, 533, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984); see *Gable v. City of Chicago*, 296 F.3d 531, 539-40 (7th Cir. 2002).

Illinois law provides actions for **replevin** and conversion that are sufficient to redress claims like the Wormelys'. See *Gable*, 296 F.3d at 540 (stating that Illinois cause of action for **replevin** provides adequate post deprivation remedy); *Greco v. Guss*, 775 F.2d 161, 169 (7th Cir. 1985) (stating that Illinois cause of action for conversion provides adequate post deprivation remedy). The Wormelys therefore must pursue these claims in state court.

## Alternatives

Both parties have contributed equally.

Both named on relevant paperwork.

Settlement

Mediation

Agreed Binding Arbitration



# Settlement

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Parties would like to avoid adjudication: OPTIONS

SHARED CUSTODY

- ENFORCEABILITY – FEASIBILITY?

PAYMENT BY ONE PARTY

AGREEMENT TO LATER RELINQUISH (ON CONDITIONS)

