Veterinarians not only make diagnoses and treat and perform surgery on animals, they provide them with food, water, care, and safe keeping while in their custody. This kind of care does not differ from that provided by a boarding kennel or an agister (one who pastures animals for another). Agreements for this care apply to the keeping of personal property by the bailees when placed in their custody by the bailor. Because animals are personal property, the laws of bailment apply when they are placed with another for care. If one agrees, out of the kindness of one's heart, to care for a neighbor's dog for no pay while the neighbor is on a trip, this is termed a gratuitous bailment. Liability is for loss or injury only for gross negligence. On the other hand, if the bailee is paid for the care, it is a bailment for hire, and ordinary rules of negligence apply. There is a duty of reasonable care.

Early in the history of professional veterinary liability insurance, questions arose about the extent of the coverage under the professional policy. Insurers argued successfully that the escape of an animal, injury during transportation, or any injury or loss not stemming from professional treatment was not covered by the policy. This led professional insurers to add riders to the policy that would cover loss or damage stemming from breach of the veterinarian's duty as a bailee. As might be suspected, this led to the necessity of determining when bailment was no longer applicable and professional treatment applied.

What happens when a client sues the veterinarian under a bailment theory for alleged negligent professional treatment? This was the issue in Price v Brown, 680 A2d 1149, a case decided in 1996 by the Supreme Court of Pennsylvania. The owner of a dog that died after being given to the defendant veterinarian for surgery brought suit against the veterinarian for alleged breach of a bailment agreement. The trial court ruled for the veterinarian. The ruling was reversed on appeal to the superior court. However, the superior court's ruling was reversed and the trial court's opinion was affirmed on appeal to the supreme court. The court said, “The trial court sustained the preliminary objections to the complaint, determining that liability could not be imposed upon a veterinarian for breach of a bailment agreement when an animal is delivered for the particular purpose of a surgical procedure.” This ruling should not be surprising, but the most interesting feature of this case, decided as it was in 1996, was dissents by Chief Justice Nix and Justice Castille, the latter making the rather remarkable statement that, “Because I believe that bailment theories are adequate to address such situations and that professional medical malpractice concepts should not be extended by this court to the field of veterinary medicine, I must respectfully dissent.” He said the reason for this view was that, because unlike medical malpractice actions in physician and surgeon cases, the victim of veterinary malpractice is incapable of bringing a cause of action against the veterinarian. . . . Dogs are recognized as personal property in Pennsylvania. As personal property, a dog or any other animal, unlike a human being, cannot bring a cause of action against the veterinarian who treated it. Rather, the animal's owner must institute the suit, and the owner of the animal is not legally the direct victim of the malpractice.

Two observations can be made about this dissent. First, the Justice uses the term malpractice in saying it cannot be malpractice. Second, the statement does not recognize the fact that many human beings, including babies and incompetent persons, must, if there is alleged malpractice, pursue their rights through the agency of another who is not legally the direct victim of the malpractice.

With respect to insurance, a veterinarian's prime objective is to have coverage for any loss or injury to a client's animal through the veterinarian's negligence—whether it stems from professional or nonprofessional activity. The main concern for a veterinarian is that when policies for professional liability insurance (including the rider to such insurance covering bailee negligence), disaster insurance, and premises liability and vehicle insurance “are construed together,” there is coverage for whatever might happen.

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