We represent Mike Higgins, who owns a farm in Oldham County, Kentucky. Until recently, Higgins had a dog named “Rusty” that looked remarkably like a coyote. The dog was often allowed to roam freely around the farm, and two weeks ago he wandered away onto the nearby farm of Bob Davis. Bob Davis had never seen Rusty before. When he saw the dog near his chicken coop, he thought it was a coyote about to attack his chickens. Davis, therefore, shot and killed Rusty.

When Higgins learned that Davis had killed Rusty, he was very upset at losing his dog. Higgins has come to our office to ask if he can sue Davis over the death of his dog. I am considering filing a claim for intentional infliction of emotional distress. Please review the case, Ammon v. Welty, 113 S.W.3d 185 (Ky. App. 2002) (attached below), assume it states the current law on the topic, and write an analysis of whether Davis’s conduct meets the “intent” element of a claim for intentional infliction of emotional distress. Do not conduct any additional research.
Note to students:

1. This is a discussion section only. Because it is not a complete memo, do not include a statement of facts, question presented, and conclusion.

2. Stay on point: Write only about the issue you are asked to analyze.

3. Do not be concerned about citation format for this exercise. You will learn proper citation formatting later in the course. You need only refer to the precedent case by party name (“In Ammon, the court held . . .”)

4. FORMAT: Use a predictive CREAC for organizing the analysis. In law school essays, you have been asked to apply IRAC to hypothetical facts and to frame the issue in the form of a question. In this course, you will build upon and develop these skills. Using CREAC you will need to state firm predictions and learn to support those predictions through reasoning by analogy. Essentially, that means you will render legal predictions based upon a comparing/contrasting of precedent case facts and reasoning with your hypothetical facts. This analogical reasoning is the heart of the “A” in CREAC. This is not an entirely new concept; you are building upon skills already learned.

CREAC Example

C | Conclusion
A court will likely rule that X breached his duty of care to Y because...

Frame the conclusion in a declaratory sentence—not a question the way an issue would be framed (Did X breach his duty of care to Y?). Make sure you have a “because” in the conclusion to get you into a few facts so the reader has a flavor of what was done.

R | Rule

The test for breach of duty includes the following elements...

The rule of law is derived from the precedent case and usually is paraphrased from the language of the court. Do not rely on a case quote unless it is perfect for your needs. When you use your own words to state the rule, you can tailor make it for the purposes of explanation and application.

E | Explanation of the case

In Hughes, a rancher sold his . . . . The court held . . . . The court reasoned . . . .
Rule explanations show how the rule has operated in the past. When you discuss a precedent case, tell not only what the court did (the holding) but also why it held as it did (the reasoning). Include the critical facts. You will be using them to analogize to the client’s facts in the application section.

A | Application of the facts of the precedent case to the client’s facts

*Similar to the ABC case, where the ranchers did this and that . . . . in our case, X did that and this. Unlike ABC ranchers who did that and this, however, X did not do this and that.*

Here, you apply the rule of law to facts. This is where you engage in analogical reasoning by determining how the facts of a precedent case are like/unlike your client’s facts in order to analyze and support your ultimate prediction/conclusion. Use words of comparison/contrast.

C | Conclusion

*Therefore, a court will probably hold . . . .*

End your discussion with a clear conclusion—come full circle. The best way to frame it is in a declaratory sentence of how a court will likely rule. Avoid terms such as “I feel” or “I believe.” Your conclusion is based on applying the law—not on your personal preferences.

The headings above are only included for your edification. You do not use or display the CREAC/PREEC headings or components in your writing (they form the framework of writing structure like a frame for a building – the frame is hidden from view, but it is the support system of the building).

Your Discussion should not exceed two double-spaced pages. As for all other assignments in this course, please Times New Roman, 12 point font.
Family brought action against county dog warden and others after dog warden shot family dog. The Trimble Circuit Court, Dennis Fritz, J., dismissed the action. Family appealed. The Court of Appeals, Emberton, C.J., held that: (1) family and dog was not type of relationship that supported loss of consortium claim; (2) warden could not be liable for intentional infliction of emotional distress for shooting dog; and (3) court was unable to find county dog warden's practice of destroying impounded dogs by gunshot inhumane.

Affirmed.

West

Headnotes

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shot and killed by dog warden, was not one that sup-ported loss of consortium claim, since dog was per-sonal property, and loss of love and affection result-ing from destruction of personal property was not compensable.

43.1

28 Animals
28k43 Injuring or Killing Animals in General
28k43.1 k. In General. Most Cited Cases Although dogs are considered property, the protec-tion afforded them under the law is uniquely limited.

[3] Damages 115 ⇐
57.38

115 Damages
115III Grounds and Subjects of Compensatory Damage
115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses
115III(A)2 Mental Suffering and Emotion-al Distress
115k57.36 Injury to Property or Property Rights
115k57.38 k. Pets and Other Animals. Most Cited Cases (Formerly 115k55)
Warden's shooting of family's dog did not amount to intentional infliction of emotional distress, where warden did not shoot dog in presence of family, had not made positive identification of dog's owner, and there was no evidence that warden intended to inflict emotional harm on family. Restatement

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out restraint. A neighbor, Georgia Nuss, often complained about Hair Bear on her property. Although in response to Nuss's complaints, the Ammons tethered Hair Bear to a clothes line, they did not do so every day, and with only that limited restraint Hair Bear continued to roam. On May 26, 1993, Nuss picked up Hair Bear and delivered him to the residence of the Trimble County Dog Warden, Robert Brewer. Hair Bear was wearing a collar, but nothing to identify him with his owner.

Before expiration of the seven-day waiting period, imposed by Kentucky Revised Statutes (KRS) 258.215, Brewer shot and killed Hair Bear. Brewer testified that he routinely destroyed impounded dogs by shooting them in the head.

The Ammons filed the present action against Brewer and the Trimble County Fiscal Court members alleging judicial powers and functions. KRS 258.215.

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Citing *Franklin County v. Malone*, FN1 the appellees have maintained throughout this action that they are entitled to sovereign immunity. *Malone* held that state officers or employees who act within the scope of the traditional role of government are entitled to immunity regardless of whether those actions are ministerial or discretionary. In *Yanero v. Davis*, FN2 our Supreme Court overruled *Malone* to the extent it held that a public officer or employee is always immune from tort liability for negligent, or otherwise wrongful, conduct in the performance of the employee's official duties. In *Yanero*, the court reinstated the action and we affirm.

In 1992, the Ammons moved to Trimble County where they lived with their three children on a sixty-three acre farm. Shortly before Christmas of that year they adopted Hair Bear, a stray dog. Hair Bear was never licensed and apparently roamed the area with-

historical analysis of immunity questions employing the distinction between ministerial and discretionary functions. The court re-emphasized that the wrongful performance of a ministerial act can subject the officer or employee to liability for damages. Moreover, although discretionary functions performed in good faith will not subject a government employee or officer to liability, those performed in bad faith, such as acts that are objectively unreasonable, willful, or performed maliciously with the intent to harm the plaintiff or with a corrupt motive FN3 are not shielded by immunity.

If we found it necessary to analyze the immunity status of the individual appellees in the present case, it is clear that Yanero, not Malone, is the controlling precedent. However, the threshold issues are: (1) whether the Ammons have stated a claim for the wrongful destruction of Hair Bear, *187 and (2) for outrageous conduct causing severe emotional distress. Since we find that they have not stated a claim, the issue of immunity is moot and a discussion of such issue would be nothing more than obiter dicta.

[1][2] Although dogs are considered property, the protection afforded them under the law is uniquely limited. FN4 The relationship between dogs, humans, and the law was eloquently stated in Shadoan v. Barnett: FN5


FN5. 217 Ky. 205, 211, 289 S.W. 204, 206 (1926).

It is undisputed that Hair Bear, an unregistered mixed breed with no particular training or skill other than as a companion, had no market value. Yet, the Ammons urge this court to permit them to prove Hair Bear's value as a beloved and devoted pet.

The affection an owner has for, and receives from, a beloved dog is undeniable. It remains, however, that a dog is property, not a family member. The Ammons request damages for loss of consortium, a common law remedy limited, until recently, to the marital relationship. FN7 the court rea-...
as a companion is most affectionately regarded by all persons who truly estimate loyalty and friendship as factors in smoothing the path of this world's existence. For those reasons, some of the provisions of the statute, whereby the innocent dog forfeits his life because of derelictions of an unappreciative master, are to be regretted. But, notwithstanding his many virtues, he also has faults, on account of which the law, as we have seen, does not accord to him the full measure of

reasoned that it was time for the common law to recognize that the loss suffered by a child as a result of the wrongful death of a parent should be no different from the claim of parents for the loss of a child's consortium recognized in KRS 411.135. The action remains one, however, dependent on the familial relationship. The loss of love and affection resulting from the loss or destruction of personal property is not compensable.


[3] The Ammons allege that the shooting of Hair Bear caused them severe emotional distress. In Craft v. Rice, FN9 Kentucky adopted from Section 46 of the Restatement (Second) of Torts the tort of “Outrageous Conduct Causing Severe Emotional Distress,” the elements of which are:

One, the wrongdoer's conduct was intentional or reckless. This element is satisfied where the wrongdoer had the specific purpose of inflicting emotional distress or where he intended his specific conduct and knew or should have known that emotional distress would likely result. Two, the conduct was outrageous and intolerable in that it offends against the generally accepted standards of decency and morality. This requirement is aimed at limiting frivolous suits and avoiding litigation in situations where only bad manners and mere hurt feelings are involved. Three, there was a causal connection between the wrongdoer's conduct and the emotional distress. Four, the emotional distress was severe. \[4\]

\[\text{FN10 Id. at 249.}\]

The actor's conduct must be more than merely offensive.

It has not been enough that the defendant has acted with an intent which is tortious..., or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,'...\[\text{Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.} \text{FN11 (Emphasis original)}\]

\[\text{FN11 Humana of Kentucky v. Seitz, Ky., 796 S.W.2d 1, 3 (1990).}\]

In \[\text{Burgess v. Taylor,} \text{FN12}\] the court held that the tort depends on the actor's conduct, not on the subject of the conduct. Simply because a claim involves an animal does not preclude a claim for intentional infliction of emotional distress. Here, however, Brewer did not shoot Hair Bear in the presence of the Ammons. As a matter of fact, Brewer had not made positive identification of the dog's owner. There is no evidence that Brewer intended to inflict emotional harm on the Ammon family.\[\text{FN12 Ky.App., 44 S.W.3d 806 (2001).}\]
tual damages can be awarded precludes them from seeking punitive damages.\footnote{13}{\textit{Lawrence v. Risen}, Ky.App., 598 S.W.2d 474, 476 (1980).}

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\footnote{5}{In addition to their damage claim, the Ammons also seek to have this court declare that destruction of impounded dogs by a gunshot to the head is inhumane and, thus, enjoin the Trimble County Dog Warden from using such method. Although KRS \textcolor{red}{258.215} states that dogs are to be destroyed in a humane manner, it does not provide further directives as to the method of destruction.}

We note that in many rural areas of the Commonwealth, dog pounds established by the fiscal court may be little more than wire enclosures that serve as holding pens until the dogs are either adopted or destroyed. If the latter is their fate, in many counties it is accomplished by gunshot. In counties such as Trimble County the dog warden has neither the expertise nor the instruments to kill the dogs by methods thought by some to be more humane than shooting them. Although the conditions of these pounds and the method of destroying the dogs may be morally offensive to some, it is the legislature's prerogative, not that of this court, to abolish the practice. Whether dogs should be killed by gunshot is a public policy question to be resolved only by the legislature.\footnote{14}{\textit{Giuliani, supra}, at 321.}

\footnote{14}{Giuliani, supra, at 321.}

The judgment of the Trimble Circuit Court is affirmed.

ALL
CONCUR.

\textcolor{red}{113 S.W.3d 185}