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Alvin W. L. SEE
Singapore Management University, alvinsee@smu.edu.sg

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ANIMAL PROTECTION LAWS OF SINGAPORE AND MALAYSIA

ALVIN W.-L. SEE*

This article offers an overview and assessment of the laws relating to the protection of animals in Singapore and Malaysia. The focus is on identifying the interpretations of the statutory offences of cruelty that will best promote their objectives and effectiveness.

I. INTRODUCTION

The 19th century saw the beginning of the era of animal protection legislation. But it was only at the turn of the 21st century that animal law started gaining prominence as a legal discipline. Besides the numerous books and articles written on it, it is now taught in more than 100 law schools worldwide.[1] This development, however, is not distributed consistently across the world. The subject's phenomenal growth is seen mostly in North America, Europe and Australasia. In Asia, it receives very little attention and is often perceived as a subject of trivial importance unworthy of true scholarship, a "Mickey Mouse" subject;[2] though it is precisely because reality is far removed from Mickey's fictional paradise that it demands serious attention. There are, however, hopeful signs of change in light of the growing awareness about animal suffering and ethical issues related to the treatment of animals.

In Singapore and Malaysia, which form the context for the discussions in this paper, instances of animal cruelty are frequently reported.[3] However, despite

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* Assistant Professor of Law, Singapore Management University. I am indebted to Amanda Whitfort, Eliza Mik, Deirdre Moss and the anonymous referee for their comments on the earlier drafts of this paper. All errors are my own.

1 See Peter Sankoff, "Charting the Growth of Animal Law in Education" (2008) 4 J. Animal L. 105; Peter Sankoff, "Animal Law: A Subject in Search of Scholarship" in Peter Sankoff & Steven White, eds., *Animal Law in Australasia* (Sydney: The Federation Press, 2009) at 389–400.

2 But see the works of Professor Whitfort: *Halsbury's Laws of Hong Kong*, vol. 1(2) (Hong Kong: LexisNexis, 2008 Reissue) at c. 20 ("Animals"); Amanda S. Whitfort, "Advancing Animal Welfare Laws in Hong Kong" (2009) 2 Australian Animal Protection L.J. 65; Amanda S. Whitfort, "Evaluating China's Draft Animal Protection Law" (2012) 34(2) Sydney L. Rev. 347. See also, Amanda S. Whitfort & Fiona M. Woodhouse, "Review of Animal Welfare Legislation in Hong Kong" (2010), online: University of Hong Kong <http://www.law.hku.hk/faculty/staff/Files/Review%20of%20Animal%20Welfare%20Legisaltion%20in%20HK.pdf>.

3 Much of the following discussion will also be relevant in the context of other Commonwealth countries having similar animal cruelty laws, *e.g.*, India, Hong Kong, Pakistan, Sri Lanka and Brunei.

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increasing public concern and awareness of the problem, very little has been done to examine the legal aspects of it.[4] The main difficulty with the existing cruelty laws is the use of imprecise language (although this has the merit of flexibility), which results in their susceptibility to different interpretations, the choice of which is invariably informed by the personal views and values of persons who interpret them. This in turn affects the extent of protection afforded to animals, both in principle and practice. While each case will necessarily turn on its own facts and the legal meaning of cruelty is not divorced from public opinion, the legal framework within which judgments are reached requires careful consideration. Statistics suggest that the failure to do so contributes to the lack of enforcement of cruelty laws. This paper seeks to address this problem by identifying interpretations of existing cruelty laws that will best promote their objectives and effectiveness. Suggestions will also be made as to how existing laws could be improved to meet modern international standards in the protection of animals from cruelty and in improving animal welfare. As it is impossible to take a strictly legalistic approach to a subject so interdisciplinary in nature, this paper will also identify and discuss some of the philosophical and ethical issues concerning the treatment of animals. It is hoped that this paper will convince readers of the importance of animal law, enhance understanding of it, and attract interest in its study.

II. Taking Animal Cruelty Seriously

Many early philosophers viewed non-human animals (hereinafter 'animals') as being inferior to humankind and as existing for humans' unrestricted use.[5] Thomas Aquinas placed humans at the top of the divine creation on the basis of their capacity for intellectual and rational thought[6] and declared that it is "not wrong for man to make use of [animals], either by killing or in any other way whatever".[7] Samuel Pufendorf also doubted if animals could be the subjects of legal protection due to their inability to reason.[8] Insofar as they suggest that we humans could inflict suffering on animals simply because we possess qualities that animals do not, the supposedly rational minds supply a counter-intuitive answer.[9] The overemphasis on the differences

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4 But see SPCA (Singapore), "Proposal for Legislative Reform: Recommendations to Strengthen Animal Welfare Laws in Singapore" (2011), online: Society for the Prevention of Cruelty to Animals, Singapore <http://www.spca.org.sg/documents/spca_proposalforlegislativereform.pdf> [SPCA (Singapore), "Proposal"].

5 For a brief history of human attitude towards animals, see Peter Singer, *Animal Liberation*, 2nd ed. (London: Pimlico, 1995) at c. 5; Steven M. Wise, *Rattling the Cage: Towards Legal Rights for Animals* (Cambridge, MA: Perseus Books, 2000) at cc. 2–4 [Wise, *Rattling the Cage*]; Margit Livingston, "Desecrating the Ark: Animal Abuse and the Law's Role in Prevention" (2001) 87 Iowa L. Rev. 1 at 7–21.

6 Saint Thomas Aquinas, *Summa Contra Gentiles*, ed. & trans. by Anton C. Pegis in *Basic Writings of Saint Thomas Aquinas*, vol. 2 (New York: Random House, 1945) at 145, 146, 219–225.

7 *Ibid*. at 222.

8 Samuel Pufendorf, *The Law of Nature and Nations* trans. by Basil Kennet (London: 1749) at 118: "it is impossible to conceive how a Creature should be capable of Law, and at the same time incapable of Reason".

9 See Singer, *supra* note 5 at 6: "If possessing a higher degree of intelligence does not entitle one human to use another for his or her own ends, how can it entitle humans to exploit nonhumans for the same purpose?". Whether humans possess better qualities than animals is also open to question. See Henry

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between humans and animals overlooks an important quality that both humans and animals share: sentience. It is argued that the quality of sentience, which includes the capacity for experiencing suffering, should alone form the basis for the ethical treatment of animals.[10] As Jeremy Bentham rightly said, "the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?".[11] Whatever the prevailing views were at the times of Aquinas and Pufendorf, we have certainly moved on from those views.

There is also a practical reason why it is important to take animal cruelty seriously. As Jeremy Bentham expresses, "[c]ruelty towards animals is the road to cruelty towards men".[12] Numerous studies have revealed the connection between animal cruelty and violence against humans.[13] In *Public Prosecutor v. Hooi Yin Wang David*, Reddy D.J. observed: "Studies have found that those with a history of repeated acts of intentional violence towards animals are at a higher risk for exhibiting similar violence against humans in the future".[14] In *Public Prosecutor v. Seah Kian Hock*, Yong C.J., in sentencing the accused to imprisonment for brutally beating up a dog, took into consideration his two previous convictions for voluntarily causing hurt because they "disclose the same propensity to violence he has shown in the present offence".[15] These comments represent judicial recognition that enforcement of animal cruelty laws plays an important role in furthering the broader goal of preventing violence towards humans.

Once it is recognised that animals are worthy of protection, the focus shifts to the extent to which they should be protected. We shall consider briefly the two main approaches to animal protection: welfarism and abolitionism. Although welfarists and abolitionists regularly stand on the same side in tackling animal cruelty, the

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Beston, *The Outermost House* (NY: Penguin Books, 1988) at 25: "the animal shall not be measured by man. In a world older and more complete than ours they move finished and complete, gifted by extensions of the senses we have lost or never attained, living by voices we shall never hear". See also, Gary L. Francione, "Animals—Property or Persons?" in Gary L. Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (New York: Columbia University Press, 2008) at 25, 59: "What makes the ability to recognize oneself in a mirror or use symbolic language better in a moral sense than the ability to fly or breathe underwater? The answer, of course, is that *we* say so" [Francione, "Property or Persons?"].

10 See *e.g.*, Bernard E. Rollin, *The Unheeded Cry: Animal Consciousness, Animal Pain and Science* (Oxford: Oxford University Press, 1989); John Webster, *Animal Welfare: Limping Towards Eden* (Oxford: Blackwell Publishing, 2005) at c. 3.

11 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, vol. 2 (London: W. Pickering, 1823) at 236.

12 Jeremy Bentham, *Principles of Penal Law*, at c. XV in John Bowring, ed., *The Works of Jeremy Bentham*, vol. 1 (Edinburgh: William Tait, 1843) at 560. See also, Immanuel Kant, *Duties to Animals and Spirits*, eds. & trans. by Peter Heath & J.B. Schneewind in *Lectures on Ethics* (Cambridge: Cambridge University Press, 1997) at 212: "a person who already displays… cruelty to animals is also no less hardened towards men".

13 See *e.g.*, Randall Lockwood, "Animal Cruelty and Violence Against Humans: Making the Connection" (1999) 5 Animal L. Rev. 81; Joseph G. Sauder, "Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans" (2000) 6 Animal L. Rev. 1; Livingston, *supra* note 5. See also the works in Andrew Linzey, ed., *The Link Between Animal Abuse and Human Violence* (Brighton; Portland: Sussex Academic Press, 2009); Sharon L. Nelson, "The Connection Between Animal Abuse and Family Violence: A Selected Annotated Bibliography" (2011) 17 Animal L. Rev. 369.

14 [2006] SGDC 204 at para. 19.

15 [1997] 1 S.L.R. (R.) 491 at para. 4 (H.C.) [*Seah Kian Hock*].

two approaches differ in fundamental ways.[16] Welfarists accept the use of animals for human benefit but seek to make it more humane through regulations, *e.g.*, by requiring the animals to be treated decently in terms of food, housing and overall care. Regulations based on this humane treatment principle normally invoke the utilitarian balancing exercise, pitting animal interests against human interests. The former can be overridden, entitling us to inflict suffering on animals, if the result of doing so is sufficiently beneficial to humans.[17] The use of animals in agriculture and scientific research are good examples.

The welfarist approach is often criticised. Welfare regulations may make us feel better by providing excuses to inflict or be comfortable with animal suffering. But they fail to challenge many practices that cause animal suffering, thus limiting their practical effect. The notion of 'necessary suffering' is often construed broadly in favour of humans. For example, many animals are lawfully bred (even genetically modified) and used for research, even those where the expected benefits to humans are very remote.[18] Even more animals are lawfully bred and killed for food although it is not strictly speaking 'necessary' for most contemporary humans to consume meat. We may even be better off in terms of health being vegetarians.[19] The reason why such exploitation continues is because the utilitarian scale is not a balanced one. In the Canadian case of *Menard*, where the court set out a utilitarian balancing test, Lamer J.A. said:[20]

> [A]nimal is inferior to man… It will often be in the interests of man to kill and mutilate… animals, subjugate them and, to this end, to tame them with all the painful consequences this may entail for them… This is why, in setting the standards for the behaviour of men towards animals, we have taken into account our privileged position in nature and have been obliged to take into account at the outset the purpose sought…

The unbalanced scale may be partly attributed to the treatment of animals as property.[21] Any balancing of interests is inevitably human-biased since we are pitting

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[16] See Gary L. Francione & Robert Garner, *The Animal Rights Debate: Abolition or Regulation?* (New York: Columbia University Press, 2010). See also the collection of essays in Cass R. Sunstein & Martha C. Nussbaum, eds., *Animal Rights: Current Debate and New Directions* (Oxford: Oxford University Press, 2004).

[17] See *Ford v. Wiley* (1899) L.R. 23 Q.B.D. 203 at 209: "Men constantly inflict great pain on one another and upon the brute creation, either for reasons of beneficence, as in surgery and medicine, or under sanctions which warrant its infliction, as in war or in punishment" (*per* Lord Coleridge C.J.). See also *R. v. Menard* (1978) 43 C.C.C. (2d.) 458 (Que. C.A.) at 464 [*Menard*]: "Certain experiments, alas, inevitably very painful for the animal, prove necessary to discover or test remedies which will save a great number of human lives" (*per* Lamer J.A.).

[18] See Singer, *supra* note 5 at c. 2; Gary L. Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995) at c. 8 [Francione, *Animals, Property, and the Law*]; Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000) at c. 2 [Francione, *Introduction to Animal Rights*].

[19] Francione, "Property or Persons?", *supra* note 9 at 36: "Nearly all of our animal use can be justified *only* by habit, convention, amusement, convenience, or pleasure. To put the matter another way, most of the suffering that we impose on animals is completely unnecessary".

[20] *Menard*, *supra* note 17 at 464. See also discussion in Part V.B.2 below.

[21] See Francione, *Animals, Property, and the Law*, *supra* note 18; Gary Lawrence Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Philadelphia: Temple University Press, 1996) [Francione, *Rain Without Thunder*]; Francione, *Introduction to Animal Rights*, *supra* note 18. See also,

the interest of what is legally regarded as 'property' (the animal) against that of its owner.[22] As laws based on the welfare model are predicated on animals' status as property, animal interest almost never prevails.[23]

Abolitionists, on the other hand, advocate for an end to *all* animal exploitation.[24] They argue that humans must stop treating animals as property[25] and as means to human ends.[26] Instead, animals should be recognised as possessing an inherent right not to be harmed which is free from issues of utility.[27] Such a right cannot be overridden by the fact that benefit will accrue to humans, not even if animals are treated in a 'humane' manner. By analogy, it is unlawful to kill a person for food even if we could save 20 others from dying of starvation by doing so, or to conduct non-consensual experiments on a person because doing so might result in a cure for some serious illnesses.[28]

Whatever the merits of abolitionism, the idea that humans should give up their dominion over animals will sit uneasily with traditional thinking.[29] The animal

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Wise, *Rattling the Cage*, *supra* note 5; Steven M. Wise, *Drawing the Line: Science and the Case for Animal Rights* (Cambridge, MA: Perseus Books, 2002) [Wise, *Drawing the Line*].

22 Francione, *Introduction to Animal Rights*, *supra* note 18 at xxiv–xxv: "The property status of animals renders completely meaningless any balancing that is supposedly required under the humane treatment principle or animal welfare laws, because what we really balance are the interests of property owners against the interests of their animal property. It does not take much knowledge or property law or economics to recognize that such a balance will rarely, if ever, tip in the animal's favor… Because animals are merely property, we are generally permitted to ignore their interests and to inflict the most horrendous pain and suffering or death on them when it is economically beneficial to us". See also, Francione, *Introduction to Animal Rights*, *supra* note 18 at c. 3.

23 Although the laws may not explicitly say so, they are mostly interpreted against this background. See Francione, *Animals, Property, and the Law*, *supra* note 18 at 5: "These laws are interpreted against a background that effectively obscures the difference between animal property and other forms of property".

24 "[W]e must empty the cages, not make them larger", demanded Professor Regan: Tom Regan, *Empty Cages: Facing the Challenge of Animal Rights* (Lanham, MD: Rowland & Littlefield, 2004) at 61. See also Tom Regan, *The Case for Animal Rights*, 2nd ed. (Berkeley and Los Angeles: University of California Press, 2004) at xiv [Regan, *The Case for Animal Rights*].

25 See particularly, Professor Francione's works: *supra* note 21.

26 Regan, *The Case for Animal Rights*, *supra* note 24 at 286: "We must never harm individuals who have inherent value on the grounds that all those affected by the outcome will thereby secure 'the best' aggregate balance of intrinsic values (e.g., pleasures) over intrinsic disvalues (e.g., pain)".

27 While many scholars regard sentience alone as sufficient to attract entitlement to such a right, there are some who think otherwise. Professor Regan recognises such a right only in animals that satisfy the "subject-of-a-life" criterion, *i.e.* "if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests": *ibid.* at 243. Similarly, for Professor Wise, "a being has practical autonomy and is entitled to personhood and basic liberty rights if she: (1) can desire; (2) can intentionally try to fulfill her desires; and (3) possesses a sense of self sufficiency to allow her to understand, even dimly, that it is she who wants something and it is she who is trying to get it": Wise, *Drawing the Line*, *supra* note 21 at 32. *Cf.* Francione, *Introduction to Animal Rights*, *supra* note 18 at xxxii–xxxiv.

28 See *e.g.*, *R. v. Dudley and Stephens* (1884) 14 Q.B.D. 273.

29 For the various obstacles (physical, economic, political, religious, historical, legal and psychological) that the abolitionists (as well as the welfarists) confront, see Steven M. Wise, "Animal Rights, One Step at a Time" in Sunstein & Nussbaum, *supra* note 16 at 19–50.

cruelty laws of Singapore and Malaysia are based on the welfare model and are unlikely to change in the foreseeable future. However, by understanding some of the problems associated with welfarism, we may be able to optimise animal protection under the existing regime, particularly by casting away traditional biases towards animals in the interpretation of cruelty laws.[30] While this may not achieve the abolitionist ideal of ending all animal exploitation, it will certainly contribute to a reduction in animal suffering.

III. Background

During 2011–12, Singapore's Society for the Prevention of Cruelty to Animals (the "SPCA (Singapore)") received and investigated 1017 alleged cruelty complaints.[31] A significant number of these cases were concerned with neglect by owners, and many were considered to be serious enough to warrant enforcement actions. In the same period, the Agri-Food & Veterinary Authority (the "AVA") investigated 444 alleged cruelty complaints of which only two offenders were prosecuted and two others were imposed with composition fines.[32] The low prosecution rate in Singapore has been a consistent trend over the years. There were only about 45 criminal convictions for animal cruelty between 1985 and 2012.[33] Out of these, five were concerned with neglected animals, which were found in very poor conditions (dead, injured, sick, emaciated, etc). The rest involved blatant acts of cruelty such as abuse and killing. These statistics suggest that there is an enforcement gap, despite frequent statements by the AVA that it takes animal cruelty seriously. The AVA's annual reports appear to shed some light on the matter. In its 2010–11 annual report, for example, it was stated: "In FY 2010, AVA investigated 410 cases of alleged animal cruelty/abuse. The majority of cases did not involve animal cruelty. Instead, they involved welfare issues, for which counseling was provided or warnings issued".[34] We cannot tell for sure how the AVA draws its line between cases involving cruelty and those involving merely 'welfare issues'. An informed guess is that cases falling within the latter category mostly involved neglect or prolonged confinement, especially where the animals do not *appear* to have suffered.[35] But was it because the AVA thought that such cases *could not* amount to cruelty at law, or was it after applying the relevant legal tests to each case that it decides that there was no cruelty?

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30 See *e.g.*, Singer, *supra* note 5. Professor Singer is a utilitarian who rejects "speciesism", *i.e.* "a prejudice or attitude or bias in favor of the interests of members of one's own species and against those of members of other species" (*ibid*. at 6). He argues for the principle of equal consideration, which demands that the interests of every being affected by an action be taken into account and given the same weights as the like interests of any other being regardless of species difference (*ibid*. at 5). Animals, like humans, have the like interest in not suffering. Such interest shall not be regarded as any less important than the equivalent human interest when applying a balancing test (*ibid*. at 220).

31 SPCA (Singapore), *Annual Report: July 2011 to June 2012*, at 10–13.

32 AVA, *Annual Report 2011–2012* at 42.

33 These statistics were derived from the personal record of Deirdre Moss (previously Animal Welfare Director of SPCA (Singapore)), which appears to be more complete than those set out in the AVA's annual reports.

34 AVA, *Annual Report 2010–2011* at 42.

35 Although the AVA has a record of imposing composition fines on owners who keep their animals in "poor living conditions" (AVA, *Annual Report 2008–2009* at 42), it is difficult to know exactly what it regards as 'poor'.

The worry here is that the question of what *may* amount to cruelty at law might not have been properly considered. We shall see later that cruelty and poor welfare are not mutually exclusive.[36] While poor welfare does not necessarily mean that there is cruelty, cruelty always involves poor welfare. The question is, at what point of the welfare spectrum would one regard cruelty to have occurred? Clearly, the AVA takes a narrow view of what amounts (or may amount) to cruelty compared to the SPCA (Singapore) and the complainants. It is important that the AVA aligns its definition of cruelty with public opinion, which (as shall be explained later) informs the meaning of cruelty at law.

The situation in Malaysia is far less encouraging. In 2005, a dog was subjected to such severe and prolonged neglect, resulting in such ill health that it had to be euthanised.[37] Its unremorseful owner was fined a measly RM100.[38] In 2011, a woman who tortured and later stomped three kittens to death was fined RM400.[39] In 2012, a hawker who poured boiling water on a stray dog was fined RM200 and sentenced to one day's imprisonment. In the same year, owners of a cat hotel left 150 cats unattended during the Hari Raya holidays, causing severe starvation and dehydration. Convicted of 30 counts of cruelty by neglect, they were fined RM6,000 and sentenced to three months of imprisonment.[40] This was the first time an animal cruelty case reached the High Court, and also the first time a sentence of imprisonment beyond a few days was imposed. More recently in 2013, a maid was sentenced to one year's imprisonment for killing her employer's dog.[41] These cases more or less sum up the history of animal cruelty prosecution in Malaysia.[42] Countless complaints to the Department of Veterinary Services (the "DVS") were unheeded even when the perpetrators were identified.[43] Neither does the emphasis on wildlife conservation help. In 2012, the Department of Wildlife and National Parks (the "PERHILITAN") ordered six zoos to be closed down for failing to meet legal standards relating to premise safety and cleanliness and animal health. But no person has yet been prosecuted. The dismal record in enforcing cruelty laws and the weak rulings where cases do go to courts have been the subjects of much public criticism.

The situation in Malaysia is also more complicated due to what may be regarded as legally sanctioned cruelty towards stray dogs.[44] Shooting of stray dogs is still

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36 See Part VIII.B below.

37 Sheena, a seven year-old dog, was found tied and lying on her own faeces beside a rusty bowl of dirty water. She had a bloated abdomen, clearly visible ribcage, and was infested with ticks. Post-mortem showed that she had empty bladder and stomach, shrunken kidneys, a brittle ribcage (indicating inadequate nutrition since she was young), and haemorrhage in her lungs (a sign of pneumonia). See "RM100 for dog abuse", *The Star* (18 October 2009) at 3.

38 The owner was reported to have said: "The tick infestation was a small problem and there was enough food and water for the dog, which was already old and sickly anyway" (*ibid.*).

39 See "Woman fined RM400 for abusing three kittens", *The Star* (28 July 2011) at 10.

40 See "Jail term on Petknode owners lauded", *The Star* (25 October 2012) at 22.

41 See "Maid jailed for killing dog", *The Star* (26 January 2013) at 29.

42 According to unofficial statistics from the Department of Veterinary Services, there were only four prosecutions between 2006 and 2010. It is safe to conclude that the total number of prosecutions in the past ten years is below ten.

43 The SPCA (Selangor) alone received more than 700 alleged cruelty complaints in 2011.

44 This may be attributed to certain cultural and religious biases. See *e.g.*, Khaled Abou El Fadl, *The Search for Beauty in Islam: A Conference of the Books* (Lanham, MD: Rowman & Littlefield, 2005) at c. 80; Richard C. Foltz, *Animals in Islamic Tradition and Muslim Cultures* (Oxford: Oneworld Publications, 2006) at c. 7.

carried out in certain parts of Malaysia. Capture and euthanasia, which are now more common, are often carried out cruelly.[45] Dog pounds managed by municipal councils are also frequently reported to have housed the animals in deplorable conditions, many dying from illnesses, hunger or thirst before they are euthanised.[46] The Pulau Ketam incident, which attracted the attention of international media, is also worth mentioning.[47] In 2009, inhabitants of a village, with the encouragement of their local councillor, trapped stray dogs in the hundreds and dumped them on an uninhabitable island of mangrove swamp. Without sources of food, many resorted to cannibalism. Those that managed to return by swimming were thrown back into the sea. The irony is that the perpetrators of cruelty were persons charged with enforcing the cruelty laws. Unsurprisingly, no person has ever been held responsible for such institutionalised cruelty.

IV. Preliminary Matters

A. *Sources*

In Singapore, the main cruelty offences are set out in the *Animals and Birds Act*.[48] The equivalents in Malaysia are found in the *Animals Act 1953*[49] and the *Wildlife Conservation Act 2010*.[50,51] The offences in the *ABA (SG)*, the *AA (MY)* and the *WCA (MY)* (hereinafter the "*Main Statutes*") are largely derived from the now replaced *Protection of Animals Act 1911*.[52] Thus, many of the old English (and Scottish) case law and academic literature[53] continue to afford helpful guidance in their interpretation, especially in light of the dearth of local case law on the subject. Other cruelty offences are also found in Singapore's *Wild Animals and Birds Act*,[54] and

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45 While the DVS issued guidelines on humane stray control, these were routinely ignored by the municipal councils, who do not regard themselves as falling within the jurisdiction of the DVS.

46 See "Strays must be treated right", *The Star* (26 April 2010) at 6.

47 See "The height of animal cruelty", *The Star* (30 May 2009) at 12.

48 Cap. 7, 2002 Rev. Ed. Sing., s. 42 [*ABA (SG)*].

49 Act 647, 2006 Rev. Ed., s. 44 [*AA (MY)*].

50 Act 716, s. 86 [*WCA (MY)*].

51 The *AA (MY)*, *supra* note 49, only applies in Peninsular Malaysia (*i.e.* West Malaysia, which consists of eleven states and two federal territories, and accommodates roughly 80 percent of Malaysia's population). The *WCA (MY)*, *supra* note 50, applies in Peninsular Malaysia and in the Federal Territory of Labuan (the latter is located in East Malaysia, which also consists of the states of Sabah and Sarawak). Due to historical and political reasons, Sabah and Sarawak enact their own sets of laws: see *Cruelty to Animals (Prevention) Ordinance 1925* (Cap. 31) (Sabah), s. 3; *Wildlife Conservation Enactment 1997* (No. 6 of 1997) (Sabah), s. 37; *Veterinary Public Health Ordinance 1999* (Cap. 32) (Sarawak), s. 73; *Wild Life Protection Ordinance 1998* (Cap. 26) (Sarawak), s. 44. With the exception of Sabah's 1997 Enactment (which sets out a simpler offence of killing and causing injury by recklessness), the cruelty offences in the other statutes are similar to those in the *AA (MY)* and the *WCA (MY)*. To keep matters simple, this paper will refer only to the *AA (MY)* and the *WCA (MY)*.

52 (U.K.), 1 & 2 Geo. V, c. 27 [*PAA (U.K.)*]. The *PAA (U.K.)* was applicable to the whole of the U.K. except Scotland. See also, the *Protection of Animals (Scotland) Act 1912* (U.K.), 2 & 3 Geo. V, c. 14, which was identical in substance to the *PAA (U.K.)*.

53 Much assistance is derived from Professor Radford's comprehensive treatment of the *PAA (U.K.)*: Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford: Oxford University Press, 2001).

54 Cap. 351, 2000 Rev. Ed. Sing., s. 5(1) [*WABA (SG)*].

also in the penal codes of Singapore[55] and Malaysia[56] (hereinafter "*Penal Codes*"). An overview of the offences is set out in Part V.A. below.

B. *Animals*

1. *Definitions*

The *AA (MY)*[57] and the *Penal Codes*[58] define an animal as "any living creature, other than a human being". Sir Stephens criticised this definition as "superfluous" and "of doubtful correctness" since "[i]t would include an angel, frog spawn, and probably a tree".[59] While this definition could certainly include also bacteria and aliens, common sense and the principle of purposive construction would require us to read it to mean any non-human members of the kingdom *Animalia*.[60] The *ABA (SG)* escaped such criticism for it does not define an animal but merely states that it includes: "any beast, bird, fish, reptile or insect".[61]

Although the law purports to extend its protection to all animals, cruelty against certain kinds of animals (such as insects, reptiles and fish) is often taken less seriously.[62] While some say that these animals are small, simple or unintelligent, it is doubtful that such characteristics should have any relevance in deciding whether they should be protected from cruelty. As said earlier, it is their capacity for experiencing pain or suffering that matters. Recent research has shown that some animals that are not normally thought of as capable of feeling pain and suffering are so capable.[63] Thus, Professor Radford said:[64]

> While it may not be possible to prove indisputably that other species [*i.e.* other than man] are able to suffer, the (growing) body of scientific evidence is such that, first, the precautionary principle requires that policy makers should proceed on the assumption that this is indeed so; and, secondly, the onus has passed to those who believe this not to be the case to demonstrate otherwise.

2. *Further distinctions*

(a) *Wild animals and non-wild animals*: Malaysia is one of the most biologically diverse places in the world, with roughly two-third of its land area covered by tropical

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55 Cap. 224, 2008 Rev. Ed. Sing., s. 428 [*PC (SG)*].

56 *Penal Code*, Act 574, 1997 Rev. Ed., ss. 428, 429 [*PC (MY)*].

57 *AA (MY)*, *supra* note 49, s. 43.

58 *PC (MY)*, *supra* note 56, s. 47; *PC (SG)*, *supra* note 55, s. 47.

59 Sir James Fitzjames Stephen, *A History of The Criminal Law of England*, vol. 3 (London: Macmillan and Co., 1883) at 306, referring to the equivalent section in the Indian *Penal Code*.

60 See *e.g.*, *Halsbury's Laws of Hong Kong*, vol. 1(2) (Hong Kong: LexisNexis, 2008 Reissue) at para. 20.001: "'animal' includes all animals not belonging to the human race".

61 *ABA (SG)*, *supra* note 48, s. 41. The *AA (MY)*, *supra* note 49, s. 2 also sets out the same list.

62 In 2011, however, a domestic helper was convicted and fined SG$7,000 for killing 29 fish belonging to her employer. Unable to pay the fine, she was imprisoned for one month. See "Maid jailed for killing employer's 29 fish", *Today* (2 July 2011) at 6.

63 See *e.g.*, Victoria Braithwaite, *Do Fish Feel Pain?* (Oxford: Oxford University Press, 2010).

64 Radford, *supra* note 53 at 271 [emphasis added].

rain forests. The *WCA (MY)* was among a series of legislation enacted to give better effect to the National Policy on Biological Diversity adopted in 1998, roughly four years after Malaysia became a signatory to the Convention on Biological Diversity in 1994. Cruelty to protected wildlife comes under the purview of the *WCA (MY)*. The First and Second Schedules set out the lists of "protected" and "totally protected" wildlife, respectively. Animals that do not fall within either schedule come within the purview of the *AA (MY)*, even if they are commonly regarded as wildlife.[65] The *WCA (MY)* imposes heavier penalties for cruelty than the *AA (MY)*.[66]

Under the *WABA (SG)*, wild animals includes "all species of animals and birds of a wild nature, but does not include domestic dogs and cats, horses, cattle, sheep, goats, domestic pigs, poultry and ducks".[67] Curiously, in contrast with the position in Malaysia, the killing of a wild animal (which is the only cruelty offence set out in the *WABA (SG)*) attracts lesser penalties than the killing of a non-wild animal.[68]

(b) *Categorising animals based on economic worth*: The *PC (MY)* draws a distinction between (i) "animals of the value of [RM5] or upwards"[69] and (ii) "elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of [RM25] or upwards".[70] Cruelty against the latter group of animals attracts heavier penalties.[71] Such distinction is clearly based on the treatment of animals as economic commodities,[72] which the abolitionists strongly oppose.[73] Animals should not be regarded as mere commodities whose value is measured in terms of their economic worth to humans, especially where cruelty is concerned. The *PC (SG)* was rightly amended in 2007 such that the cruelty offence now applies to "any animal".[74]

The now outdated Singaporean case of *Public Prosecutor v. Gracia Michael*[75] will continue to afford guidance on the interpretation of the *PC (MY)*. In this case, the accused kicked the complainant's dog in its stomach, causing its death. He was initially charged under s. 429 as the dog cost $1300, but Yong C.J. amended the charge to one under s. 428 and convicted him. Yong C.J. explained that the phrase "any other animal" under s. 429 "must be interpreted in accordance with the *ejusdem generis* rule and be construed strictly to refer only to like animals, *i.e.* any other animals used in husbandry or for work such as the specific examples given".[76] On the other hand,

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65 The definition of animals in the *AA (MY)*, *supra* note 49, s. 43 explicitly includes wild animals.

66 See Part VII below.

67 *WABA (SG)*, *supra* note 54, s. 2.

68 See Part VII below. This is despite the fact that Singapore is also a signatory to the Convention on Biological Diversity. But see Part VIII.A below for a possible rationale for treating domestic animals more favourably.

69 *PC (MY)*, *supra* note 56, s. 428.

70 *Ibid*., s. 429.

71 See Part VII below.

72 The cruelty offences under the *Penal Codes* fall under the general heading of 'Mischief' alongside other mischiefs of causing loss or damage to property. The property status of animals in the *Penal Codes* is also explicit in s. 430, which uses the phrase "animals which are property".

73 See Part II above.

74 *PC (SG)*, *supra* note 55, s. 428. Section 429 was repealed.

75 [1999] 3 S.L.R.(R.) 249 (H.C.).

76 *Ibid*. at para. 20.

s. 428 is concerned with "mischief involving animals which are of lesser economic significance, including domestic pets".[77]

V. The Offences

A. *Overview*

Each of the *Main Statutes* set out a list of cruelty offences.[78] Most important are the offence of 'cruel ill-treatment' and the offence of 'causing unnecessary suffering' by wanton, unreasonable or wilful conduct (hereinafter "General Offences"), which form the focus of this paper. Despite their disparity in wording, both cover much the same ground, importing a duty not to inflict unnecessary suffering as well as a duty of care to prevent or alleviate unnecessary suffering.[79] The remaining offences are concerned with specific conducts or activities: (i) failure to supply sufficient food or water; (ii) confine, convey, lift or carry an animal in such manner or position which causes it unnecessary pain or suffering; (iii) abandonment; (iv) animal fighting and baiting; (v) using an unfit animal for work or labour; (vi) kill, poison, maim or render useless an animal; and (vii) bestiality (hereinafter "Specific Offences"). It is also an offence to commit cruelty indirectly, by procuring, aiding or permitting an act of cruelty by another person (hereinafter "Secondary Offences"). While the offences differ in the required elements of fault, a consistent theme is the protection of animals from unnecessary suffering.

B. *Cruel Ill-Treatment*

1. *Ill-treatment*

Under the *ABA (SG)* and the *AA (MY)*, a person commits an offence if he "cruelly beats, kicks, ill-treats, overrides, overdrives, overloads, tortures, infuriates or terrifies any animal".[80] While the scope of the offence is necessarily curtailed by the list of specified conducts, the term "ill-treats" has been invoked in reference to a broad range of conducts. It has also been interpreted to refer to an omission. In *R. v. Banjoor*, Murison C.J. in the Straits Settlements Supreme Court said: "I have not the slightest doubt in my mind that ill-treatment can occur by omission as well as by action. If a woman suffers her child to die for want of feeding, who on earth could say she had not

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77 *Ibid.* at para. 22.

78 These were described as "a somewhat odd collection to the contemporary observer, reflecting as they do the nineteenth-century origins of the [statutes]": Radford, *supra* note 53 at 218.

79 Both were derived from the first and second limbs of the *PAA (U.K.)*, *supra* note 52, s. 1(1)(a), which were in turn derived from the *Cruelty to Animals Act 1849* (U.K.), 12 & 13 Vict., c. 92, s. 2 and the *Wild Animals in Captivity Protection Act 1900* (U.K.), 63 & 64 Vict., c. 33, s. 2, respectively. The *PAA (U.K.)*, being merely a consolidating statute, simply took two provisions serving the same purpose (albeit in different contexts) and merged them into one section. See Radford, *supra* note 53 at 200. This awkward union was often criticised: Mike Radford, "Animal Cruelty and the Courts: An Analysis of s.1(1)(a) of the Protection of Animals Act 1911" (1998) 162 Justice of the Peace Reports 656 ("convoluted"); *Bandeira and Brannigan v. R.S.P.C.A.* (2000) 164 Justice of the Peace Reports 307 at 308 ("really rather unwieldy"); *Isted v. C.P.S.* (1998) 162 Justice of the Peace Reports 513 at 519 ("unnecessarily confusing").

80 *ABA (SG)*, *supra* note 48, s. 42(1)(a); *AA (MY)*, *supra* note 49, s. 44(1)(a).

ill-treated the child? And so with the owner of an animal".[81] However, the offence of cruel ill-treatment is rarely invoked for cruelty by omission, and is generally used in circumstances involving positive conduct.[82] The offence of 'causing unnecessary suffering' (see Part V.C below), on the other hand, is commonly invoked in cases of cruelty by omission.

2. *Unnecessary suffering*

The ill-treatment must be committed cruelly. While a layperson may understand "cruelly" to mean 'viciously' or 'brutally', the courts have departed from its ordinary meaning, interpreting it to mean the causing of unnecessary suffering.[83] This is a reason why cruelty in law may fall short of torture, reflecting the sentiments of Yong C.J. in *Seah Kian Hock* that we are "not so inured in apathy" that only torture will arouse our outrage.[84] It follows that there is also no requirement that the suffering be substantial or prolonged. In the Scottish case of *Patchett v. Macdougall*, Lord Hunter explained that the concept of unnecessary suffering "imports the idea of the animal undergoing, for however brief a period, unnecessary pain, distress or tribulation".[85] Mental suffering is also relevant, especially since infuriating or terrifying an animal may amount to an offence.[86] Therefore, the possibility of cruelty must not be too readily dismissed simply because the animal does not appear to have suffered physical harm.

But some suffering, no matter how slight, must be proven for the offence of cruel ill-treatment to be made out. Where an animal is killed instantaneously, for example, the killer cannot be convicted of an offence that requires proof of unnecessary suffering. In *Patchett v. Macdougall*, the accused deliberately and with declared intent shot a dog in its head with a shot gun at point-blank range, killing it.[87] The dead dog was found with a large wound in its forehead between the eyes with what appeared to be brain matter exposed and a pool of clotting blood beneath its head. As the prosecution did not adduce evidence to show that the dog survived for a period or had in any way suffered, the accused was acquitted of a charge of causing unnecessary suffering to the dog. In response to the suggestion that the dog has "suffered loss of life", Wheatley L.J.-C. said: "Metaphysical considerations apart, I do not consider that the structure and purport of the Act opens the door to that view".[88]

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81 [1930] S.S.L.R. 31 [*Banjoor*]. The defendant was charged and convicted under the *Cruelty to Animals Ordinance* (No. 77) of 1902 (Straits Settlement), s. 7, which is *in pari materia* with the *ABA (SG)*, *supra* note 48, s. 42(1)(a) and the *AA (MY)*, *supra* note 49, s. 44(1)(a).

82 But see *Hopson v. D.P.P.* (11 March 1997), unreported (Q.B.) [*Hopson*]. Quotations are taken from the unreported transcript of the judgment.

83 See *Budge v. Parsons* (1863) 122 E.R. 145; *Bowyer v. Morgan* (1906) 70 Justice of the Peace Reports 253 [*Bowyer*]; *Barnard v. Evans* [1925] 2 K.B. 794 [*Barnard*]; *Ford v. Wiley*, *supra* note 17.

84 *Seah Kian Hock*, *supra* note 15 at para. 2.

85 1983 Justiciary Cases 63 at 67 [*Patchett*]. See also *Murphy v. Manning* (1876–77) L.R. 2 Ex.D. 307 at 312: "The fact that it is done quickly does not make any difference. Let any one try to hold his hand over a flame for two seconds, and I think he would say that half a minute, not to say a minute, was a long time for an operation of this kind" (*per* Kelly C.B.).

86 Radford, *supra* note 53 at 198, 243. See also SPCA (Singapore), "Proposal", *supra* note 4 at paras. 13–44, which recommended the express recognition of the relevance of mental suffering.

87 *Patchett*, *supra* note at 85.

88 *Ibid*. at 64. But see Part V.D.6 below on the offence of killing.

The prosecution, therefore, should always tender evidence of suffering, especially when it is not apparent from ordinary observation.[89]

The suffering of the animal must also be 'unnecessary'. In *Ford v. Wiley*, the court explained that the infliction of suffering is not unnecessary if it was carried out in pursuant to an adequate and reasonable object, and the amount of suffering inflicted is not disproportionate to the benefit attainable from the fulfillment of such object (hereinafter the "*Ford v. Wiley* test").[90] This is a two-stage test.

The court must first determine the legitimacy of the object, *i.e.* whether it is adequate and reasonable. If the court decides that there is no legitimate object, it may conclude right away that the suffering is unnecessary. As Professor Sankoff observes, the law regards an object to be illegitimate only if it is contrary to "accepted human values", such as for the fulfillment of one's sadistic desire or for no reason at all.[91] On the other hand, the list of 'legitimate' uses of animals is "virtually endless", extending beyond essential uses (*e.g.*, for consumption) to non-essential uses (*e.g.*, for entertainment).[92] It is important that the legitimacy of many 'accepted' uses of animals be reevaluated.[93]

Where the court finds an object to be legitimate, it would proceed to balance the interest of the animal in not suffering against the interest of humans in having the object fulfilled. Factors to be taken into account include the benefits attainable and the amount of suffering caused to the animal. Each case is necessarily fact-specific. As Hawkins J. explained in *Ford v. Wiley*: "[t]o attain one object the infliction of more pain may be justified than would be ever tolerated to secure another".[94]

A straightforward example is *Barnard v. Evans*, where the court convicted the defendant for shooting a trespassing dog.[95] Although there was a legitimate object of chasing the dog away, it was "not reasonably necessary" to resort to such an extreme measure of shooting it.[96]

In *Ford v. Wiley*, the defendant farmer was charged for cruelly ill-treating, abusing and torturing his oxen by sawing off their horns. Expert witnesses gave evidence that the operation caused extreme and prolonged pain to the animals. But the defendant contended, among other things, that it would enable more of them to be stowed in the straw yard and would increase their market price. In finding against the defendant,

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89 See *e.g.*, *R. v. L* [2009] EWCA Crim 2028, where the prosecution proved 'suffering' by tendering veterinary evidence to show that the pony that was shot would have taken five minutes to die.

90 *Ford v. Wiley*, *supra* note 17 at 215 (*per* Lord Coleridge C.J.) and 220 (*per* Hawkins J.).

91 Peter Sankoff, "The Welfare Paradigm: Making the World a Better Place for Animals?" in Sankoff & White, *supra* note 1 at 7, 23.

92 *Ibid*. at 23. See also, Francione, *Introduction to Animal Rights*, *supra* note 18 at 55: "we have decided—before we even start our balancing process—that it is morally acceptable to use animals for food, hunting, entertainment, clothing, experiments, product testing, and so forth".

93 Where an object is expressly or impliedly sanctioned by legislation, however, it would be beyond the court's power to impose an outright ban. For example, where the law imposes licensing requirement for a certain use of animals, it is implied that the object of such use is legitimate, for it could be lawfully carried out with a licence.

94 *Ford v. Wiley*, *supra* note 17 at 218. See also *Menard*, *supra* note 17 at 464: "Everything is therefore according to the circumstances, the quantification of the suffering being only one of the factors in the appreciation of what is, in the final analysis, necessary" (*per* Lamer J.A.).

95 *Barnard*, *supra* note 83.

96 For a contemporary Malaysian example, see "Hawker admits to scalding dog to chase it away" *The Star* (16 March 2012) at 26.

Lord Coleridge C.J. said: "[T]o put thousands of cows and oxen to the hideous torments… in order to put a few pounds into the pockets of their owners is an instance of such utter disproportion between means and object, as to render the practice as described here not only barbarous and inhuman, but I think clearly unlawful also".[97] *Ford v. Wiley* confirms that profitability, although relevant, does not always trump the animal interest even in the case of farm animals.[98] Similar conclusions are likely to be reached in cases involving other painful operations (such as castration, tail docking, debeaking, disbudding, branding, etc.) especially if carried out improperly, *e.g.*, without using anaesthetic.

However, where the infliction of suffering is part of an established practice of the relevant industry and is not explicitly prohibited by the law, courts may be less inclined to find it unacceptable. The defendant in *Roberts v. Ruggiero*, who wanted to produce white veal, raised calves by keeping them continuously tethered in individual crates so tight in space that they were unable to turn around, and fed them exclusively on liquid.[99] The charge of cruelty against the defendant was dismissed because the infliction of suffering was "[not] beyond that which was general in animal husbandry". The court refused to consider other systems of husbandry that may cause less suffering while achieving the same result. This approach is problematic for it allows a section of the industry to define what is acceptable, although others in the industry or persons outside the industry may think otherwise.[100] The practice in *Roberts v. Ruggiero* attracted considerable criticism resulting in its ban by legislation two years later.[101] The point is that the court was in a perfectly appropriate position to have done the same. At the very least, the court should be prepared to find a practice to be unacceptable if similar result could be achieved by other practices that may cause less suffering and do not involve significant increase in cost. Also, even if a particular practice confirms with guidelines or regulations laid down by the law or relevant authorities, the courts should not regard them as conclusive of the

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97 *Ford v. Wiley*, *supra* note 17 at 215.

98 Farm animals, however, are treated very different from companion animals. Cows and sheep are likely to make as good and loving companion animals as cats and dogs. We do not keep them only because they are too large for the very limited spaces that we have. But because the law is predicated on a model that focuses on utility, equal protection is very difficult to achieve. Also, the interests of farm animals are generally under-represented since most people do not actually see what happens to them. Greater protection is likely to be more actively sought if the farming practices are more widely known. See Siobhan O'Sullivan, "Australasian Animal Protection Laws and the Challenge of Equal Consideration" in Sankoff & White, *supra* note 1 at 108–127.

99 (3 April 1985), unreported (Q.B.). Quotations are taken from the unreported transcript of the judgment.

100 See Francione, *Introduction to Animal Rights*, *supra* note 18 at 59: "Such framework will accept the standard of "necessity" defined by animal property owners". See also Francione, *Rain Without Thunder*, *supra* note 21 at 130: "The question whether the conduct is "necessary" is decided not by reference to some moral ideal but by reference to norms of exploitation already deemed legitimate".

101 *Welfare of Calves Regulations 1987* (U.K.) (S.I. 1987/2021) (later replaced by the *Welfare of Livestock Regulations 1994* (U.K.) (S.I. 2004/2126)). Two decades earlier, the Brambell Committee recommended: "In principle we disapprove of a degree of confinement of an animal which necessarily frustrates most of the major activities which make up its natural behaviour… An animal should at least have sufficient freedom of movement to be able without difficult to turn around, groom itself, get up, lie down and stretch its limbs". See Brambell Committee, *Report of the Technical Committee to Enquire into the Welfare of Animals Kept Under Intensive Husbandry Systems* (London: Her Majesty's Statutory Office, 1965) at para. 37. This report was in response to concerns raised in Ruth Harrison, *Animal Machines: The New Factory Farming Industry* (London: Vincent Stuart Publishers, 1964).

reasonableness of the practice but should merely regard them as relevant factors to be taken into account.

While the *Ford v. Wiley* test is capable of wide application, it appears to be less easy to apply in cases involving suffering caused by omission, particularly those arising from carelessness or ignorance. For example, it makes no sense to say that a person who frequently forgets to feed his pet causes it unnecessary suffering because the omission fulfilled no legitimate purpose. Instead, it is more appropriate to ask whether a reasonable person in the defendant's position would have done something to prevent the suffering of the animal. This imports a duty of care to protect the animal from suffering, the standard of which is to be decided objectively by reference to that of a reasonable person.[102] In essence, the *Ford v. Wiley* test is merely one method of determining whether the defendant's conduct has or has not fallen below what a reasonable person would consider to be acceptable.[103] In appropriate cases, the courts should be prepared to address the requirement of unnecessary suffering by direct reference to the standard of a reasonable person, unencumbered by the *Ford v. Wiley* test.[104]

It was once suggested that the offence requires proof of either intention to cause suffering or knowledge that suffering has been caused.[105] But this would allow too many cases to fall through the gap. Animals often suffer not from intentional cruelty but from their owners' negligence or indifference. Although this may not be as morally culpable as to callously abuse an animal, it is important that liability be extended to such cases so that enforcement action could be taken to help the animals. Fortunately, the traditional view has been discarded since the end of the nineteenth century. In *Duncan v. Pope*, Lawrence J. clarified that the only question is whether there was "cruelty in fact" and "the intention of the [defendant] in doing this does not matter".[106] The reasons for rejecting the requirement of intention were explained by Cooper L.J.G. in the Scottish case of *Easton v. Anderson*: "[It] would… unwarrantably impede the administration of a beneficial statute by requiring the prosecution to assume a very difficult and often impossible onus and by perhaps penalising the intelligent and sensitive, while allowing the callous, indifferent or ignorant to escape".[107] Similarly, in *Ford v. Wiley*, the court rejected the view that a defendant could escape liability by pleading ignorance, for to allow so will render many animals "suffering victims of gross ignorance and cupidity".[108]

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[102] See Part V.C.2 below.

[103] *Ford v. Wiley*, *supra* note 17 at 220: "Where a desirable and legitimate object is sought to be attained, the magnitude of the operation and the pain caused thereby must not so far outbalance the importance of the end as to make it clear to any reasonable person that it is preferable the object should be abandoned rather than that disproportionate suffering should be inflicted" (*per* Hawkins J.).

[104] This finds support from the case of *Hopson*, *supra* note 82, where a bird the accused kept in a wire aviary, for no less than six weeks, repeatedly flew into the wire mash and thereby seriously injuring itself. In convicting the accused for cruelly ill-treating the bird, Simon Brown L.J. said: "The one thing that should not have been allowed to happen which in my view *objectively constituted the offence of cruel ill-treatment* was to allow this bird, for six weeks, to traumatise itself by repeatedly flying into the netting and thus creating this open wound" [emphasis added].

[105] See Radford, *supra* note 53 at 224–27.

[106] (1899) 63 Justice of the Peace Reports 217. See also *Bowyer*, *supra* note 83 at 255.

[107] 1949 Justiciary Cases 1 at 6.

[108] *Ford v. Wiley*, *supra* note 17 at 225 (*per* Hawkins J.).

3. *WCA (MY)*

Under the *WCA (MY)*, a person commits an offence if he "beats, kicks, infuriates, terrifies, tortures, declaws or defangs any wildlife".[109] Curiously, the terms 'ill-treats', 'overrides', 'overdrives' and 'overloads' were omitted, resulting in a reduced scope compared to its *AA (MY)* equivalent. However, the offence is rendered easier to establish since the adverb 'cruelly' was omitted, meaning that there is no need to establish unnecessary suffering.

C. *Causing Unnecessary Suffering by Wanton, Unreasonable or Wilful Conduct*

1. *General*

It is an offence under the *ABA (SG)* and the *AA (MY)* to cause unnecessary suffering to an animal by wantonly or unreasonably doing or omitting to do anything.[110] The *WCA (MY)* differs only in that it replaces the adverbs 'wantonly or unreasonably' with 'wilfully'.[111] This offence is potentially wider than the offence of cruel ill-treatment since it refers to any act or omission without the constraints of a catalogue of specific conducts.[112] Consider the example of a person who, out of affection, over-indulges his companion animal with food and thereby causes it to fall ill. While it would be strange to say that he has ill-treated the animal, it makes sense to say that he has acted unreasonably by failing to control the diet of the animal as a reasonable owner would have.[113] The explicit mention of omission is also important since a substantial portion of cruelty cases are caused by neglect, and it may not be clear to law enforcement personnel that the term 'ill-treats' includes omission.[114] This may explain why most instances of cruelty by neglect were brought under this offence.

It is also important to clarify here a limitation to finding a person guilty of cruelty by omission. The law is generally reluctant to impose legal responsibility based on pure omission in the absence of some relationship between the defendant and the victim.[115] Clearly, a passerby is under no duty to aid a person in distress, let alone an animal. Therefore, borrowing from the law of tort, a duty to prevent or alleviate unnecessary suffering arises only where a person voluntarily assumes responsibility

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[109] *WCA (MY)*, *supra* note 50, s. 86(1)(a).

[110] *ABA (SG)*, *supra* note 48, s. 42(1)(d); *AA (MY)*, *supra* note 49, s. 44(1)(d).

[111] *WCA (MY)*, *supra* note 50, s. 86(1)(f).

[112] This is particularly important in the context of the *WCA (MY)*, *supra* note 50, since the term 'ill-treats' is omitted.

[113] See *e.g.*, *R.S.P.C.A. v. David and Derek Benton* (12 January 2007), unreported (Mag. Ct.) [*David and Derek Benton*], where the defendants were convicted for causing unnecessary suffering to their pet Labrador, Rusty, by overfeeding it. The vet described Rusty, which weighed almost 70 kilograms, as looking like a walrus.

[114] But see *Banjoor*, *supra* note 81; *Hopson*, *supra* note 82.

[115] See Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*, 2nd ed. (Singapore: Lexis Nexis, 2012) at paras. 3.8–3.19; A.P. Simester *et al.*, *Simester and Sullivan's Criminal Law: Theory and Doctrine*, 4th ed. (Oxford; Portland, Oregon: Hart Publishing, 2010) at 68–70.

for the care of an animal.[116] In other words, only neglect by a person who is responsible for the care of an animal may amount to cruelty.[117]

2. *Wantonly or unreasonably*

The term 'wantonly' is virtually extinct from modern statutes and textbooks.[118] One suggestion is that to act wantonly means to act without a reasonable object.[119] In the Scottish case of *Jack v. Campbell*, the accused shot a trespassing dog, causing it severe pain and suffering.[120] The defendant was acquitted of a charge of wanton cruelty[121] although the court found his action to be neither justified nor proper in the circumstances.[122] The only possible explanation is that his action was in pursuant to a reasonable object, *i.e.* to chase the dog away. Such definition of 'wantonly' is clearly unsatisfactory for it does not take into account the reasonableness of the means of achieving the object and it is often easy for a defendant to show a legitimate object and thereby, escaping liability. The courts, it seems, have decided to avoid any attempt to interpret this difficult term. The focus, instead, has been on the term 'unreasonably', since proving either 'wantonly' or 'unreasonably' is sufficient.

When dealing with cruelty by positive conduct, it is submitted that the *Ford v. Wiley* test should apply.[123] That test, as said earlier, is an accepted method for determining reasonableness. For cruelty by omission, the appropriate test is whether a reasonable person in the defendant's position would have prevented or alleviated the suffering of the animal. The courts, however, could not seem to agree on an interpretation.

In *Peterssen v. R.S.P.C.A.*, the defendant kept dogs in his two caravans, one of which had a faulty door.[124] It was therefore his practice to place a wooden pallet against that door to secure it. One day he left the caravans without doing so. The dogs escaped, killing and injuring a number of sheep. The court explained that the offence required the defendant to have 'guilty knowledge', *i.e.* knowledge or foresight that unnecessary suffering would be caused to the animals in consequence of his omission. As the defendant was found to have such knowledge, he was convicted. While the result of the case is unlikely to be disputed, its reasoning has been criticised for it rendered the adverb 'unreasonably' redundant. Rather than

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116 W.V.H. Rogers, *Winfield & Jolowicz on Tort*, 18th ed. (London: Sweet & Maxwell, 2010) at paras. 5–28, 5–29. See also Yeo, Morgan & Chan, *supra* note 115 at para. 3.15.

117 See *Banjoor*, *supra* note 81, where Murison C.J. referred to "the owner of an animal".

118 See Yeo, Morgan & Chan, *supra* note 115 at para. 38.8, who described the term as one likely to cause "puzzlement".

119 See *e.g.*, *Clarke v. Hoggins* (1862) C.B.(N.S.) 545 at 551: ""wantonly" means, not having a reasonable cause" (*per* Willes J.); *R. v. Lee (Adam Matthew)* [2005] EWCA Crim 62 at para. 9: "a wanton act of cruelty, perpetrated without any justification".

120 (1880) 8 R.(J.) 1 [*Campbell*].

121 The phrase 'wanton cruelty' was derived from the preamble of the *Cruelty to Animals (Scotland) Act 1850* (U.K.), 13 & 14 Vict., c. 59, s. 1 of which set out the same offence as the *ABA (SG)*, *supra* note 48 s. 42(1)(a) and the *AA (MY)*, *supra* note 49, s. 44(1)(a).

122 *Campbell*, *supra* note 120 at 1: "I am far from saying that what the accused did was justifiable or proper in the circumstances. If he had wished to scare the dog away he might have done so by throwing stones at it, or in a like way" (*per* Lord Adam). But note that the case preceded *Ford v. Wiley*, *supra* note 17, and *Barnard*, *supra* note 83.

123 See Part V.B.2 above.

124 (23 March 1993), unreported (Q.B.) [*Peterssen*]. Quotations are taken from the unreported transcript of the judgment.

imposing a requirement of guilty knowledge that the statutory wording does not provide for, it would make more sense to read 'unreasonably' as imposing a duty of care to not cause unnecessary suffering. This finds support from Professor Smith's comment on the case: "[The offence] required proof only that, by unreasonably omitting to do any act, the [defendant] caused unnecessary suffering. The offence is one of negligence. Talk of *mens rea* and "guilty knowledge" is confusing and misleading".[125]

The objective test was applied in two later cases. In *Hall v. R.S.P.C.A.*, the defendant pig farmers were convicted for causing unnecessary suffering to pigs that had septic arthritis in their joints together with associated lesions by unreasonably omitting to seek veterinary advice, preferring to treat the pigs themselves for three weeks until they reach optimum weight for slaughter.[126] Holland J. explained that the term 'unreasonably' connotes a "purely objective test" and judged the reasonableness of the defendants' conduct based on the standard of "the reasonably competent, reasonably humane, modern pig farmer". In *R.S.P.C.A. v. Isaacs*, which was decided the next day by the same court, the defendant was charged for causing unnecessary suffering to a sick and elderly dog by unreasonably omitting to provide it with the necessary veterinary care and attention.[127] Holland J. explained that the omission would be unreasonable if, "viewed objectively… no reasonably caring, reasonably competent owner would be guilty of a similar omission". The defendant was found guilty, as the state of the dog "was plainly inconsistent with objectively reasonable care".

In *Hussey v. R.S.P.C.A.*, however, the court expressed its preference for an intermediate interpretation.[128] Here, a dog in the defendant's care was suffering from substantial weight loss. She was charged for unreasonably omitting, as a result of her failure to obtain professional advice on the matter, to provide the dog with an adequate diet suitable for its breed, age and condition, thereby causing it unnecessary suffering. On the issue of unreasonableness, the court was attracted to the suggestion that the defendant must have knowledge of the condition of the dog, *i.e.* the substantial weight loss, but not of its suffering or the possibility.[129] Latham L.J. went further to suggest that thereafter an objective test would apply,[130] *i.e.* whether a reasonable person with such knowledge would have acted as the defendant did. However, the court refrained from forming any conclusive view on the matter since the defendant was found to have the "necessary knowledge and foresight" of the kind required in *Peterssen* such that she would have been guilty on any interpretation.

The significance of adopting an objective test as compared to one that requires some form of subjective mental element has already been explained.[131] It is for the same reasons that the interpretation taken in *Hall* and *Isaacs* should be adopted.

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125 "Protection of Animals Act 1911, s.1(1)—Causing Any Unnecessary Suffering to an Animal by Wantonly or Unreasonably Doing Any Act" [1993] Crim. L. Rev 852 at 853 (editorial comment by Professor J.C. Smith).

126 (11 November 1993), unreported (Q.B.) [*Hall*]. Quotations are taken from the unreported transcript of the judgment.

127 (12 November 1993), unreported (Q.B.) [*Isaacs*]. Quotations are taken from the unreported transcript of the judgment.

128 [2007] EWHC 1083 (Admin.) [*Hussey*].

129 *Ibid.* at para. 15 (*per* Davis J.), para. 22 (*per* Latham LJ).

130 *Ibid.* at para. 22.

131 See Part V.B.2 above.

Under the objective test, the defendant must be judged by the standard of a reasonable person occupying the same position.[132] To what extent, however, should the attribute or plight of the defendant be taken into account? In *R.S.P.C.A. v. C*, a 15 year-old girl, who had failed to convince her father that the family cat required veterinary attention for a tail injury, was charged for unreasonably omitting to take steps herself to alleviate its suffering, *e.g.*, by bringing the cat to the vet.[133] The court acquitted her because it was not unreasonable for a person of her age and position in the household to accept her father's decision. This seems to be at odds with *Isaacs* where the court referred to a "reasonably caring, reasonably competent owner". Surely, most young animal owners would fall short of this attribute. The preferable approach is to ignore entirely the defendant's attribute and plight. As Professor Radford said, "factors such as a lack of appreciation of the animal's needs, the defendant's domestic or financial situation, or his health or mental state, may be relevant in deciding whether to prosecute or the severity of the punishment, but they should not be taken into account in determining guilt".[134]

3. *Wilfully*

The use of the term 'wilfully' under the *WCA (MY)* is particularly curious, as are many of its other deviations from the *AA (MY)*.[135] As Professor Andrews said three decades ago, "much would have been gained if it had been struck out of the Parliamentary draftsman's dictionary many years ago".[136] It is unfortunate that we are forced to revisit in a 21st century statute, an outdated term that is susceptible to so many interpretations.

First, 'wilfully' may be interpreted as requiring proof of intention to commit the offence. In *Willmott v. Atack*, the defendant was charged for having wilfully obstructed a prosecutor in the execution of his duty by interfering in the arrest of another person.[137] As the defendant only intended to help and not to obstruct the prosecutor, the requisite *mens rea* was not established.

The second interpretation is that of *R. v. Sheppard*,[138] where the defendants were charged under s. 1(1) of the *Children and Young Persons Act 1933*[139] for wilfully omitting to seek medical aid for their sick child, resulting in his death. The House of Lords (by a bare majority) refused to interpret 'wilfully' to mean 'voluntarily'.[140] Lord Diplock thought that such an interpretation would render the word otiose, for even absolute or strict liability offences require voluntariness. Instead, it must be

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[132] Radford, *supra* note 53 at 253: "A veterinary surgeon will be judged by the standards of that profession; a farmer by those common in the industry; and the owner of a companion animal would be expected to meet the standards of the responsible amateur".

[133] [2006] EWHC 1069 (Admin.). The father, who decided that the cat should not receive medical attention unless its condition worsens, was earlier found guilty of a charge of identical terms.

[134] Radford, *supra* note 53 at 240.

[135] *WCA (MY)*, *supra* note 50, s. 86(1)(f).

[136] J.A. Andrews, "Wilfulness: A Lesson in Ambiguity" (1981) 1 L.S. 303.

[137] [1977] Q.B. 498.

[138] [1981] A.C. 394 [*Sheppard*].

[139] (U.K.), 23 & 24 Geo. V, c. 133.

[140] This interpretation found favour with the Crown Court and the Court of Appeal: (1980) 70 Cr. App. R. 210, citing *R. v. Senior* [1899] 1 Q.B. 283 at 290, 291 and *R. v. Lowe* [1973] Q.B. 702 at 707.

shown "either that the parent was aware at that time that the child's health might be at risk if it were not provided with medical aid, or that the parent's unawareness of this fact was due to his not caring whether his child's health were at risk or not".[141] A defendant who is genuinely unaware that the child's health may be at risk could escape liability.[142] Here, the defendants' convictions were quashed because their failure to realise that the child was ill enough to require medical attention was due to their low intelligence. The concept of a reasonable parent has no relevance.

The third interpretation relates to the now repealed *Larceny Act 1861*,[143] which made it an offence to "unlawfully and wilfully kill, wound, or take any house dove or pigeon" (s. 21). In *Hamps v. Darby*, the defendant was convicted for killing and wounding house pigeons although he "never directed his mind at all to the question whether the pigeons were tame or wild".[144] Similarly in *Cotterill v. Penn*, the defendant was convicted for killing a house pigeon, although he had mistaken it for a wild pigeon.[145] Lord Hewart C.J. explained that the offence "does not require the element of mens rea beyond the point that the facts must show an intention on the part of the person accused to do the act forbidden, which was here that of shooting".[146] In other words, it is sufficient that the defendant has made a conscious decision with regards to his act or omission; he need not have intended its consequences.[147] Wilfulness here refers to the voluntariness of the conduct.

Between these choices, the third interpretation based on voluntariness should be adopted.[148] Guidance may be derived from the minority judgments in *Sheppard*, which justified such interpretation based on the policy need to protect children who are vulnerable to incompetent parents.[149] The analogy between this and the need to protect animals from harm caused by incompetent owners and caretakers is not difficult to draw.[150] Moreover, it would be illogical to adopt an interpretation that would make this offence more difficult to establish than its *AA (MY)* equivalent in light of the emphasis on wildlife conservation.

4. *Unnecessary suffering*

For this offence, proof of unnecessary suffering is explicitly required in addition to the requirements of unreasonableness, wantonness or wilfulness.[151] In *Hall* and

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141 *Sheppard*, *supra* note 138 at 408.

142 *Ibid.* at 408, 418.

143 (U.K.), 24 & 25 Vict., c. 96.

144 [1948] 2 K.B. 311 at 324 (*per* Lord Greene M.R. and Evershed L.J.).

145 [1936] 1 K.B. 53.

146 *Ibid*. at 61. See also *Horton v. Gwynne* [1921] 2 K.B. 661.

147 See *e.g.*, Yeo, Morgan & Chan, *supra* note 115 at paras. 3.25–3.27, who suggest that 'voluntary omission' means "controlled or willed inactivity".

148 See also, Professor Radford's interpretation of the term "wilfully" for the purpose of the *PAA (U.K.)*, *supra* note 52, s. 1(1)(d) (administration of poisonous drug or substance to an animal): Radford, *supra* note 53 at 203.

149 *Sheppard*, *supra* note 138 at 423 (*per* Lord Fraser), 416, 417 (*per* Lord Scarman).

150 *David and Derek Benton*, *supra* note 113, for example, triggered a debate as to whether parents of obese children should be guilty of an offence. See Kelly Banham, "Is the Law a Fat Ass?" (2007) 157 New L.J. 269, *cf.* Tracey Elliott, "No Need For the Fat Police" (2007) 157 New L.J. 427.

151 *ABA (SG)*, *supra* note 48, s. 42(1)(d); *AA (MY)*, *supra* note 49, s. 44(1)(d); *WCA (MY) supra* note 50, s. 86(1)(f).

Isaacs, the courts held that 'unnecessary', for the purpose of this offence, means "not inevitable", in the sense that the suffering of the animal can be avoided, terminated or alleviated by some reasonably practicable measure.[152] This sets a very low threshold for proving unnecessary suffering since there will almost always be some reasonably practicable ways by which the animal's suffering can be avoided, terminated or alleviated. In *Hall*, the pigs could have been slaughtered sooner. In *Isaacs*, veterinary advice could have been sought for the dog. The reason for this departure from the usual test of objective reasonableness (*i.e.* the *Ford v. Wiley* test for positive conduct and the reasonable person test for omission) is that it was already applied in determining if the defendant has acted unreasonably. It would be superfluous to repeat the exact same exercise in determining the issue of unnecessary suffering.[153] However, since unreasonableness and unnecessary suffering must both be established to find a defendant guilty, the lenient interpretation of unnecessary suffering does not make a practical difference. For an offence requiring proof of unnecessary suffering but not prefaced by the adverb 'unreasonably', the usual test of objective reasonableness should apply. Otherwise, the offence will become overly easy to establish.[154]

D. *Specific Offences*

1. *Failure to supply sufficient food or water*

It is an offence for a person who is in charge of an animal in confinement or in the course of transportation, to neglect to supply it with sufficient food or water.[155] The word 'neglect' does not import an objective test, but merely refers to an omission or failure, for whatever reason, to supply sufficient food or water. The question of sufficiency is one of fact and the animal's physical condition will normally be a good indicator. The only drawback of this offence is that it makes no reference to the adequacy of the food and water, although this could be addressed under the general offence of causing unnecessary suffering by unreasonable or wilful omission.[156]

2. *Causing unnecessary suffering by confinement, conveyance, etc*

Under the *ABA (SG)* and *AA (MY)*, it is an offence to confine, convey, lift or carry any animal in such manner or position which causes it unnecessary pain or suffering.[157] 'Confinement' should be interpreted broadly to also include confinement by chaining or tethering. The equivalent under the *WCA (MY)* omits any reference to the acts of conveying, lifting and carrying, but adds to the list the breeding of any wildlife

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[152] See also, *Hussey, supra* note 128.

[153] Radford, *supra* note 53 at 251.

[154] Mike Radford, " 'Unnecessary Suffering': The Cornerstone of Animal Protection Legislation Considered" [1999] Criminal L. Rev. 702 at 707: "While this might be welcomed by some animal welfare campaigners, it is clearly not the intention underlying the legislation".

[155] *ABA (SG)*, *supra* note 48, s. 42(1)(c); *AA (MY)*, *supra* note 49, s. 44(1)(c); *WCA (MY)*, *supra* note 50, s. 86(1)(b).

[156] See *e.g.*, *Hussey*, *supra* note 128, discussed in Part V.C.2 above.

[157] *ABA (SG)*, *supra* note 48, s. 42(1)(e); *AA (MY)*, *supra* note 49, s. 44(1)(e).

in such manner so as to cause it unnecessary pain or suffering, which includes "the housing, confining or breeding of any wildlife in any premises which is not suitable for or conducive to the comfort or health of the wildlife".[158]

This offence addresses the prevalent problem of animals being confined for unnecessarily long duration and in tight spaces. Statistics from the SPCA (Singapore) show that such cases form a substantial portion of cruelty complaints. While most such cases involve companion animals, the same concern arises in the case of wild animals in captivity.[159] This offence also regulates the transportation of animals, especially in the case of livestock. Long journeys with animals standing (usually cattle) or cramped in cages (usually fowls) will be unlawful despite the profitability of doing so.[160]

3. *Abandonment*

In 2011 alone, the SPCA (Singapore) took in some 3,500 unwanted or abandoned animals. While there is no equivalent statistics for Malaysia, the situation is no less serious. Abandonment is a significant cause for the alarming number of stray dogs in Malaysia, which ultimately become the subjects of institutionalised cruelty.[161] Unfortunately, the *AA (MY)* does not set out a specific offence of abandonment, although the general offences could apply to address the problem. The *ABA (SG)*, on the other hand, specifically makes it an offence for an owner of an animal to abandon it without reasonable cause or excuse, whether permanently or not, in circumstances likely to cause it unnecessary suffering or distress.[162]

While the offence of abandonment also relies on the concept of unnecessary suffering, it is the only one that does not require proof of actual (unnecessary) suffering but only its likelihood. This can be established, for example, by showing that the place at which the animal is abandoned is dangerous or has no proper supply of food or water. Therefore, while abandonment may also be dealt with under the general offences, only this offence could apply where there is no proof of actual unnecessary suffering. As Professor Radford commented, "this prospective test meets the principle which underlies the legislation, namely the *protection* of animals" and that "policy makers and politicians should be looking to introduce a similar provision wherever it is presently an offence to cause unnecessary suffering".[163]

The concept of abandonment, unfortunately, has not been an easy one. In *Hunt v. Duckering*, the court held that abandonment means leaving an animal unattended "in circumstances where… the defendant has relinquished, or wholly disregarded, or given up his duty to care for [it]".[164] Whether this is the case will depend on the

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158 *WCA (MY)*, *supra* note 50, s. 86(1)(c).

159 See *e.g.*, the SPCA (Singapore)'s criticism regarding the housing of dolphins in small concrete swimming pools in marine parks: "Dolphin Lagoon is too small: SPCA", *The Straits Times* (10 September 2010) at C6.

160 The person who procures the transportation may also commit a secondary offence. See Part V.E below.

161 See Part III above.

162 *ABA (SG)*, *supra* note 48, s. 42(1)(f). The offence does not apply to a person who, although having responsibility for the care of an animal, is not its owner. *Cf. Abandonment of Animals Act 1960* (U.K.), 8 & 9 Eliz.II, c. 43, s. 1, which applies to "any person… having charge or control of any animal".

163 Radford, *supra* note 53 at 245.

164 (15 March 1993), unreported (Q.B.). Quotations are taken from the unreported transcript of the judgment.

intention of the defendant, which could be inferred from the kind of arrangement (if any) that has been made for the animal's welfare during the period it was left unattended. Where some arrangement has been made, albeit inadequate or insufficient to prevent the animal from suffering, it is merely neglected, not abandoned. The defendant has not relinquished his duty of care towards the animal.

To define abandonment in this way, while consistent with its ordinary meaning, is problematic for a number of reasons. First, to import the requirement of intention is inconsistent with the other offences based on the concept of unnecessary suffering, which import only an objective test.[165] This would raise the threshold for finding liability. Second, the requirement that the defendant must have relinquished his duty of care is incompatible with the concept of temporary abandonment since relinquishment indicates a degree of finality.[166] If the defendant has relinquished his duty of care, the abandonment is clearly permanent, not temporary. The offence is therefore rendered incapable of dealing with situations where the owner had merely left his animal unattended for a limited duration. An example is where a dog is left in a hot car for longer than necessary. The restrictive interpretation of abandonment in *Hunt v. Duckering* therefore risks frustrating "the clear purpose of the provision, which is to prevent animals suffering when they are left unattended, either temporarily or permanently".[167] Professor Radford therefore suggests: "Instead of focusing exclusively on intention, it would be more appropriate to ask, first, whether the defendant had disregarded his duty to care for the animal by leaving it unattended in circumstances where it was likely to be caused unnecessary suffering; and if so, to consider whether he had any reasonable cause or excuse for doing so".[168]

4. *Animal fighting and baiting*

Animal fighting and baiting are absolutely prohibited under the *Main Statutes*.[169] Although the animals would usually have suffered, the bare fact of fighting or baiting is sufficient to give rise to the offence.[170] It is also an offence to use or manage a place for the purpose of fighting or baiting any animal, or to receive money for the admission of any person to such place.[171] It is not unlawful, however, for a person to be present at an occasion where animal fighting or baiting takes place. The present offence should be extended to cover this situation.[172]

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165 Radford, *supra* note 53 at 207, 233, 234.

166 *Ibid*. In *R.S.P.C.A. v. O'Sullivan*, (15 April 1985), unreported (Q.B.), Schiemann J. described temporary abandonment as "an unusual concept". See also "Protection of Animals Act 1911, s.1(1)—Meaning of Abandonment" [1993] Crim. L. Rev. 678 at 679: "The concept of temporary abandonment is a difficult and perhaps inappropriate one. The court probably does the best that can be done with it by the requirement that the defendant should have relinquished, or wholly disregarded, his duty to care for the dog" (editorial comment by Professor J.C. Smith).

167 Mike Radford, ""Unnecessary Suffering": The Cornerstone of Animal Protection Legislation Considered" [1999] Crim. L. Rev. 702 at 709.

168 *Ibid*. at 710.

169 *ABA (SG)*, *supra* note 48, s. 42(1)(h); *AA (MY)*, *supra* note 49, s. 44(1)(g); *WCA (MY)*, *supra* note 50, s. 86(1)(e).

170 See *D.P.P. v. Barry*, (24 April 1989), unreported (Q.B.).

171 The latter is omitted from the *WCA (MY)*, *supra* note 50, s. 86(1)(e).

172 See *e.g.*, *PAA (U.K.)*, *supra* note 52, s. 5, which made it an offence for being present at such an occasion without reasonable cause.

5. *Using an unfit animal for work or labour*

Although technological advancements have significantly reduced the use of animals in the production industries, they are still widely used for human entertainment, *e.g.*, animal performances in zoos and amusement parks. It is an offence under the *Main Statutes* to employ in any work or labour any animal, which due to any disease, infirmity, wound or sore, or otherwise, is unfit to be so employed.[173] Whether an animal is unfit to be so employed will necessarily depend on its condition and the kind of work or labour involved. While the latter normally refers to the physical demands of the work or labour, whether the work or labour is of a kind that is unnatural to the animal in question should also be relevant.

6. *Kill, poison, maim or render useless*

It is an offence under the *Penal Codes* to kill, poison, maim or render useless an animal.[174] The word 'maim' should be interpreted widely to include tail docking, ear cropping, declawing, debeaking, and similar operations.[175] It is also an offence under the *WABA (SG)* to kill a wild animal without licence,[176] and under the *WCA (MY)*, to kill protected wildlife without licence or permit.[177] These are strict liability offences, which require no proof of unnecessary suffering. Thus, a person who kills an animal is guilty even if no pain or suffering has been inflicted on the animal, *e.g.*, because the animal died instantaneously or was given anaesthetic.

7. *Bestiality*

The *PC (SG)* makes it an offence to "penetrate, with one's penis, the vagina, anus or orifice of any animal" or "cause one's vagina, anus or mouth to be penetrated by the penis of an animal".[178] The *PC (MY)* prohibits generally any voluntary carnal intercourse with an animal.[179] While 'bestiality', as such conduct is commonly called, may be seen as interspecies sexual assault, it has been pointed out that not all forms of bestiality involve cruelty.[180] It may therefore be that the law, in criminalising bestiality, has taken no account of any harm that may be caused to the animal.[181] Instead, the offence is concerned with upholding

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173 *ABA (SG)*, *supra* note 48, s. 44(1)(g); *AA (MY)*, *supra* note 49, s. 44(1)(f); *WCA (MY)*, *supra* note 50, s. 86(1)(d).

174 *PC (SG)*, *supra* note 54, s. 428; *PC (MY)*, *supra* note 55, ss. 428, 429.

175 The Oxford English Dictionary defines 'maim' to mean "wound or injure (a person or animal) so that part of the body is permanently damaged". See also *Hammer v. American Kennel Club*, 758 N.Y.S.(2d) 276 (2003) (NY S.C.) where the court held that mutilation includes tail docking.

176 *WABA (SG)*, *supra* note 54, s. 5(1); *WCA (MY)*, *supra* note 50, ss. 60–62, 68–70.

177 *WCA (MY)*, *supra* note 50, ss. 60–62, 68–70.

178 *PC (SG)*, *supra* note 54, s. 377B.

179 *PC (MY)*, *supra* note 55, s. 377.

180 See generally, Piers Beirne, "Rethinking Bestiality: Towards a Concept of Interspecies Sexual Assault" (1997) 1 Theoretical Criminology 317.

181 Michael Roberts, "The Unjustified Prohibition Against Bestiality: Why the Laws in Opposition Can Find No Support in the Harm Principle" (2010) 1 J. Animal & Environmental L. 176.

morality.[182] As Professor Posner and Professor Silbaugh observed, "anticruelty statutes are concerned both with the treatment of the animal and with the offence to community standards, while antibestiality provisions… are aimed only at offences to community standards".[183]

E. *Secondary Offences*

A person who does not himself commit cruelty on an animal but causes it *indirectly* may also be held legally responsible. The *Main Statutes* make it an offence for any person to cause, procure or assist another person to commit cruelty, or for an owner to permit his animal to be subjected to cruelty.[184] While the statutory language is silent, the case laws require the defendant to have knowledge of the cruelty.[185] In the case of animal owners, they are deemed to have permitted cruelty if they fail to exercise reasonable care and supervision to protect their animal from the cruelty,[186] entitling the court to find such owners liable based on negligence alone.[187] It is suggested that this should also extend to any person who is responsible for the care of the animal.

The *Penal Codes* also set out the inchoate offence of abetment by aiding the commission of an offence.[188] While the relevant section explicitly stipulates that the aiding must be performed "intentionally", the case law indicates that it requires only proof of knowledge of the circumstances constituting the crime.[189] This interpretation, while at odds with the statutory wording, finds academic support[190] and also brings the offence in line with the secondary offences under the *Main Statutes*.

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182 The *PC (MY)*, *supra* note 55, places the offence under the general heading of "Unnatural Offences". Similarly, the *PC (SG)*, *supra* note 54, grouped the offence with similarly unnatural offences, such as sexual intercourse with a corpse (s. 377).

183 Richard A. Posner & Katharine B. Silbaugh, *A Guide to America's Sex Laws* (Chicago: University of Chicago Press, 1996) at 207.

184 See *ABA (SG)*, *supra* note 48, ss. 42(1)(a), (b), (d)–(h); *AA (MY)*, *supra* note 49, ss. 44(1)(a), (b), (d)–(g). Although the *WCA (MY)*, *supra* note 50, makes no reference to causing cruelty by indirect means, it could come under the general offence of causing unnecessary suffering by wilfully doing or omitting to do *anything* (s. 86(1)(f)).

185 *Crane v. Paglar* [1888] 1 Straits Law Journal 72. See also *Elliott v. Osborn* (1891) 56 Justice of the Peace Reports 38; *Small v. Warr* (1882) 47 Justice of the Peace Reports 20; *Greenwood v. Backhouse* (1902) 66 Justice of the Peace Reports 519.

186 *ABA (SG)*, *supra* note 48, s. 42(2); *AA (MY)*, *supra* note 49, s. 44(2).

187 Radford, *supra* note 53 at 221–24.

188 *PC (SG)*, *supra* note 54, s. 107; *PC (MY)*, *supra* note 55, s. 107. The other forms of abetment recognised under s. 107 are instigation and conspiracy.

189 *Roy S. Selvarajah v Public Prosecutor* [1998] 3 S.L.R.(R.) 119 at para. 55 (H.C.): "The Prosecution must prove that he knew the circumstances constituting the crime when he voluntarily did an act of positive assistance" (*per* Yong C.J.), citing *Public Prosecutor v. Datuk Tan Cheng Swee* [1979] 1 M.L.J. 166. See also *Public Prosecutor v. Hendricks Glen Conleth* [2003] 1 S.L.R. 426 (H.C.), where the court went further to suggest that an objective test may be sufficient.

190 Wing-Cheong Chan, "Abetment, Criminal Conspiracy and Attempt" in Wing-Cheong Chan, Barry Wright & Stanley Yeo, eds., *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform* (Singapore: Ashgate, 2011) 129 at 133, 134.

VI. Exceptions

A. *Exemptions*

1. *Killing animals for food*

It is clear that animals may be lawfully killed for food.[191] The *ABA (SG)* and the *AA (MY)* explicitly exclude the application of the cruelty offences to the commission or omission of any act which occurs in the course of preparing or destroying any animal as food, "unless such destruction or such preparation was accompanied by the infliction of unnecessary suffering".[192] The exemption is therefore qualified, not absolute, since the protection against unnecessary suffering is preserved.[193]

2. *Hunting*

The *WCA (MY)* excludes the application of the cruelty offences to "any person who wounds any wildlife in the course of lawfully hunting it".[194] However, the methods in which animals are hunted raise serious concerns. For example, the use of certain kinds of traps may cause great pain and suffering to the animals. Animals may also be left to a slow and painful death before being retrieved.[195] The *WCA (MY)* empowers the Director General of PERHILITAN to prescribe "the methods or means by which any wildlife may be hunted, including the type of arm or trap to be used".[196] Any person who hunts using impermissible methods would do so unlawfully and thus falls outside the exemption. However, it remains difficult to understand why the protection of animals from unnecessary suffering does not also apply to lawful hunting, as hunting may cause animal suffering whether or not carried out lawfully.

B. *Defences*

The *ABA (SG)* and the *AA (MY)* do not provide defences to the offence of cruelty. However, a defendant may avail himself of certain defences set out in Part IV of the

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[191] In Singapore, the slaughter of animals for food must be carried out at a licensed slaughterhouse: *Wholesome Meat and Fish Act* (Cap. 349A, 2000 Rev. Ed. Sing.) The position in Malaysia is generally the same: *Animals (Control of Slaughter) Rules 2009* (P.U.(A.) 213/2009) [*Control of Slaughter Rules*]; *Abattoirs (Privatization) Act 1993* (Act 507) [*Abattoirs (Privatization) Act*]. Under the *Control of Slaughter Rules*, however, the veterinary authority may permit the slaughter of animals for religious or customary purposes to be carried out outside the approved or licensed slaughterhouses (r. 13). The *WCA (MY)*, *supra* note 50, also allows an aborigine to hunt certain wildlife (see Sixth Schedule) for sustenance (s. 51).

[192] *ABA (SG)*, *supra* note 48, s. 42(3); *AA (MY)*, *supra* note 49, s. 44(3).

[193] Certain customary or religious practices, however, are unlikely to be challenged. An example is the 'halal' slaughter method, which has raised concerns in many Western countries (it is banned in Sweden). Any challenge is also likely to raise issues concerning the right to religious freedom, which is enshrined in the constitutions of Singapore (*Constitution of the Republic of Singapore* (1999 Rev. Ed. Sing.), art. 15) and Malaysia (*Federal Constitution*, art. 11).

[194] *WCA (MY)*, *supra* note 50, s. 86(2). The *WABA (SG), supra* note 54, does not provide for such exemption.

[195] *Cf. Wildlife and Countryside Act 1981* (U.K.), 1981, c. 69, which regulates how wild animals may be hunted (see particularly, ss. 5, 11) and also imposes a duty on hunters to inspect their traps at reasonable intervals (s. 11B).

[196] *WCA (MY)*, *supra* note 50, s. 35.

Penal Codes, which apply equally to offences outside the codes.[197] Of particular interest is s. 81, which provides the defence of 'necessity': "Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property".[198] Essentially, this imposes a requirement of proportionality between the harm to be avoided and the defendant's response.[199] As the concept of unnecessary suffering already entails a balancing exercise, the defence of necessity will only play a meaningful role in relation to those offences that do not require proof of unnecessary suffering. However, the balancing exercise entailed by the defence is narrower than the *Ford v. Wiley* test, since it does not apply where the object is anything other than the prevention of harm to person or property. Similar defences are also set out in the *WABA (SG)* and the *WCA (MY)*.[200]

VII. Penalties

Under the *ABA (SG)*, a person who commits an offence of cruelty is liable to a fine not exceeding SG$10,000 or imprisonment not exceeding 12 months or to both.[201] For the same offence, the *AA (MY)* has until recently imposed a fine of RM200 or imprisonment for a term of six months or both.[202] The RM200 fine, which has been the subject of much criticism, is plainly inadequate as a punishment or deterrent to animal cruelty. In 2013, the penalties were finally increased to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding one year or both.[203] This will bring it in line with the *WCA (MY)*, which for an offence of cruelty imposes a fine not less than RM5,000 and not more than RM50,000 or to imprisonment for a term not exceeding one year or to both.[204]

For the mischiefs of killing, poisoning, maiming and rendering useless an animal, the *Penal Codes* impose up to five years of imprisonment or to a fine or to both.[205] In the case of bestiality, the defendant shall be punished with imprisonment for a term not exceeding 20 years, and shall also be liable to fine or to caning.[206]

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197 *PC (SG)*, *supra* note 54, s. 40; *PC (MY)*, *supra* note 55, s. 40.

198 The references to 'knowledge' and 'intention' merely reflect the generality of the defence.

199 Yeo, Morgan & Chan, *supra* note 115 at paras. 23.18, 23.21, 23.24.

200 See *WABA (SG)*, *supra* note 54, s. 6; *WCA (MY)*, *supra* note 50, ss. 52–55.

201 *ABA (SG)*, *supra* note 48, s. 42(1). The SPCA (Singapore) recommended that the maximum penalties be doubled: SPCA (Singapore), "Proposal", *supra* note 4 at paras. 81–93.

202 *AA (MY)*, *supra* note 49, s. 44(1). This shall be read as imposing a fine not exceeding RM200 or imprisonment for a term not exceeding six months or both: *Interpretation Acts 1948 and 1967* (Act 388), s. 60. In the case of an owner who has permitted cruelty by failing to exercise reasonable care and supervision to protect his animal, he shall not be liable to imprisonment without the option of a fine: *AA (MY)*, s. 44(2).

203 *Animal (Amendment) Act 2013* (Act A1452), s. 38.

204 Under the *WCA (MY)*, *supra* note 50, s. 126, the Director General may, with the consent of the Attorney General, offer to compound the offence for a sum not exceeding fifty per cent of the maximum fine.

205 The maximum term of imprisonment is five years under the *PC (SG)*, *supra* note 54, s. 428 and *PC (MY)*, *supra* note 55, s. 429, and two years under the *PC (MY)*, *supra* note 55, s. 428.

206 *PC (SG)*, *supra* note 54, s. 377B(4); *PC (MY)*, *supra* note 55, s. 377.

There is no limit to the amount of fine the courts could impose, but it must not be excessive.[207]

A person who unlawfully hunts a protected wildlife is liable under the *WCA (MY)* to a fine that may extend to RM200,000 or to imprisonment for up to ten years or to both, depending on the kind of wildlife hunted.[208] The penalties are heavier for hunting a wildlife that is immature (see Third Schedule), female or totally protected. The *WABA (SG)*, in sharp contrast, imposes only a fine not exceeding SG$1,000 for the unlawful killing of a wild animal.[209]

In Singapore, the courts rarely sentence an offender to more than six months of imprisonment even in very serious cases. The only instance where a court has done so was in the case of a repeated offender.[210] However, the courts are generally willing to impose substantial penalties especially in the form of fines. In sharp contrast, there were instances where Malaysian courts imposed fines below RM200 even for very serious cases.[211] A way of addressing the courts' reluctance to impose substantial penalties is to impose by legislation a minimum penalty (see *e.g.*, *WCA (MY)*), which should be a penalty appropriate for "an offender who exhibits the least degree of culpability".[212] Increasing the maximum penalty could also play an indirect role in influencing the courts' sentencing decisions. As Professor Wise explains:[213]

> The maximum penalty that a criminal statute allows is an important benchmark. It signals to a judge how opposed legislators think a society actually is to a particular wrong, for it sets the stiffest penalty that a wrongdoer who commits a crime in the most unimaginably horrific way—or who commits it repeatedly—can suffer. Because a judge usually will not impose a penalty near the maximum for a first or "run-of-the-mill" offense, the typical penalty for cruelty will remain low so long as the maximum penalty remains low.

The sentencing process could also be aided by the use of appropriate guidelines based on different degrees of cruelty, taking into account factors such as the amount of harm caused to the animal, the manner in which the harm was inflicted, the mental state of the offender, etc.

The conventional responses of fine and imprisonment, however, are not always the most effective means of dealing with cruelty. Most modern jurisdictions now allow the courts to also impose an order disqualifying a person convicted of cruelty from dealing with animals. A power to issue such an order, which may be more effective

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[207] *Criminal Procedure Code* (Cap 68, 2012 Rev. Ed. Sing.), s. 319(1)(a); *Criminal Procedure Code* (Act 593) s. 283(1)(a).

[208] *WCA (MY)*, *supra* note 50, ss. 60–62, 68–70.

[209] *WABA (SG)*, *supra* note 54, ss. 5(1), 8(c).

[210] See *Public Prosecutor v. Hooi Yin Wang David* [2006] SGDC 204, where the accused was sentenced to one year of imprisonment.

[211] See Part III above.

[212] *Public Prosecutor v. UI* [2008] 4 S.L.R.(R.) 500 at para. 76 (C.A.).

[213] Steven M. Wise, "The Evolution of Animal Law Since 1950" in Deborah J. Salem & Andrew N. Rowan, eds., *The State of the Animals II* (Washington, D.C.: Humane Society Press, 2003) at 99.

in preventing repeated cruelty, should be incorporated into the laws of Singapore and Malaysia.[214]

VIII. Reform

There is a clear need for legal reform of existing cruelty laws in Singapore and Malaysia. For this purpose, the *Animal Welfare Act 2006* (U.K.),[215] which is drafted in a clear, simple and yet effective manner, serves as a good reference.

A. *Clarity, Simplicity and Coherence*

The offences under the *AWA (U.K.)* apply to "protected animals", *i.e.* animals that are "commonly domesticated", "under the control of man whether on a permanent or temporary basis", or "not living in a wild state".[216] Wild animals will continue to be protected under the *Wild Mammals (Protection) Act 1996*.[217] The penalties for cruelty are harsher under the *AWA (U.K.)*. The likely reasoning is that once an animal comes within close proximity to humans, or is under the control of a human, there is a greater duty not to cause it unnecessary suffering.

The main cruelty offences are set out in s. 4.[218] Under s. 4(1), it is an offence for any person to cause, through any act or omission, unnecessary suffering to a protected animal while knowing, or *ought reasonably to have known*, that his act or omission has or is likely to have such effect. It is also an offence, under s. 4(2), for a person responsible for an animal to permit, or to fail to take *reasonable steps* to prevent, the causing of unnecessary suffering to the animal by another person. It is therefore made plain that criminal liability could be found on negligence alone. This is important because, as demonstrated by cases such as *Peterssen* and *Hussey*, we cannot be certain that judges will adopt an objective test in the absence of clear statutory language.[219] Section 4(3) also sets out a non-exhaustive list of factors to be considered when determining whether the animal's suffering is unnecessary:

(a) whether the suffering could reasonably have been avoided or reduced;
(b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;
(c) whether the conduct which caused the suffering was for a legitimate purpose, such as—
  (i) the purpose of benefiting the animal, or
  (ii) the purpose of protecting a person, property or another animal;

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[214] SPCA (Singapore), "Proposal", *supra* note 4 at paras. 118–133.
[215] 2006, c. 45 [*AWA (U.K.)*].
[216] *Ibid.,* s. 2.
[217] (U.K.), 1996, c. 3.
[218] The *AWA (U.K.)*, *supra* note 215, also continues to set out specific offences: mutilation (s. 5), docking of dogs' tails (s. 6), administration of poisons (s. 7) and animal fighting and baiting (s. 8).
[219] See Part V.C.2 above.

(d) whether the suffering was proportionate to the purpose of the conduct concerned;
(e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

The influence of past case law is clearly noticeable. Paragraph (a) captures the meaning of unnecessary suffering explained in *Hall* and *Isaacs*.[220] Paragraph (e) adopts the test of objective reasonableness expounded in the same cases,[221] while paragraphs (c) and (d) codify the *Ford v. Wiley* test.[222]

B. *Improving Animal Welfare*

Professor Broom defines the welfare of an animal as "its state as regards its attempts to cope with its environment".[223] The success (or failure) of the animal in so coping is to be measured in terms of degree. As Professor Radford expresses, "at any given time, the state of its welfare will be located on a point somewhere along a spectrum between very good at one end, indicating an excellent quality of life, and, at the other, so poor that it ultimately proves to be fatal".[224] Numerous studies have been conducted to identify the measures of welfare, focusing on the animal's physiological and behavioural responses to the environment.[225] In practical terms, one may say that the extent of an animal's success in coping with the environment depends largely on the fulfillment of its needs.[226]

Where an animal is brought into human possession or control, it is not unreasonable to require the person responsible for its care to maintain its welfare at an appropriate level by ensuring that its needs are fulfilled. As Professor Whitfort said, imposing a duty to this effect is "not unnecessarily burdensome" since "[t]he choice to keep animals is voluntarily assumed".[227] The real breakthrough of the *AWA (U.K.)* lies in its imposition of such a duty. Section 9(1) of the *AWA (U.K.)* imposes a positive duty on a person responsible for an animal to "take such steps as are reasonable in all the circumstances to ensure that the needs of [the] animal… are met to the extent required by good practice". Such "needs" would, according to s. 9(2), include: "(a) its need for a suitable environment, (b) its need for a suitable diet,[228] (c) its need to

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[220] See Part V.C.4 above.
[221] See Part V.C.2 above.
[222] See Part V.B.2 above.
[223] D.M. Broom, "Animal Welfare: Concepts and Measurements" (1991) 69 J. Animal Science 4167 at 4168.
[224] Radford, *supra* note 53 at 216.
[225] D.M. Broom & A.F. Fraser, *Domestic Animal Behaviour and Welfare*, 4th ed. (Wallingford: CABI Publishing, 2007) at c. 6; D.M. Broom & K.G. Johnson, *Stress and Animal Welfare* (Netherlands: Kluwer, 1993) at cc. 5, 6; John Webster, *Animal Welfare: Limping Towards Eden* (Oxford: Blackwell Publishing, 2005); David Fraser, *Understanding Animal Welfare: The Science in its Cultural Context* (Oxford: Wiley-Blackwell, 2008) at cc. 5–10.
[226] See Donald M. Broom, "Animal Welfare: The Concept of the Issues" in Francine L. Dolins, ed., *Attitudes To Animals: Views in Animal Welfare* (Cambridge: Cambridge University Press, 1999) 129 at 135, 136.
[227] Whitfort, *supra* note 2 at 360.
[228] This goes beyond the duty to supply sufficient food and water under the main statutes. See Part V.D.1 above.

be able to exhibit normal behaviour patterns, (d) any need it has to be housed with, or apart from, other animals, and (e) its need to be protected from pain, suffering, injury and disease". Experts may be called to give evidence on other needs, especially of a particular animal or type of animal, and whether or not they have been met in accordance to good practice. As Professor Broom said, "[w]e need to know what animals prefer if we are to treat them in a humane way".[229] In many cases, however, the courts would be well qualified to determine the matter based on common knowledge. Good air, water, shelter, food and exercise (in the case of mammals) are obvious basic requirements. If a person who wishes to acquire an animal is unsure of what amounts to good practice, the onus is on him to seek professional advice before the acquisition.

The most important difference between ss. 9 and 4 is that the former does not require proof of (unnecessary) suffering. Traditional cruelty laws only apply when an animal has (unnecessarily) suffered, *i.e.* the welfare of the animal has become very poor. Animal welfare laws, on the other hand, seek to improve the lives of animals by ordering persons responsible for them on how they ought to be properly cared for. This will have a considerable impact on the lives of many animals, particularly those that spend substantial portion of their lives confined. In practical terms, s. 9 would allow enforcement action to be taken to assist an animal without having to wait until it has actually suffered. While suffering is the clearest indicator of poor welfare, an animal need not have suffered for its welfare to be poor. The animal may have yet to experience the effects of its poor welfare. For instance, the welfare of an animal may be poor, leading to increased risk of harm, although the harm has yet to occur. Professor Broom provides an example:[230]

> If the housing conditions or management procedures result in impaired immune system function and consequently increase susceptibility to disease, then the state of the animal is clearly affected and welfare is poor. This poor welfare occurs before any suffering, although it may well become worse as disease and associated suffering develop.

Likewise, the welfare of an abandoned animal may be poor because of the increased risk of it experiencing starvation, falling ill, being run down by vehicles, etc., even if none of these has yet to occur when the animal is found. Thus, cases of abandonment are now mostly dealt with under s. 9. Other examples of poor welfare without suffering include reduced fitness (physical or biological) and frustration.[231]

In Singapore and Malaysia, there are presently piecemeal efforts (mainly through the requirement of licensing)[232] to improve the welfare of animals in specific

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[229] Broom, *supra* note 223 at 4173.
[230] *Ibid.* at 4169.
[231] *Ibid.* at 4169, 4170.
[232] However, it is important to recognise that the requirement of licensing does not necessarily safeguard the welfare of animals. In Malaysia, whether the conditions for granting licenses contain welfare safeguards are largely unknown.

contexts: zoos,[233] laboratories,[234] farms,[235] slaughterhouses,[236] pet shops and exhibitions.[237] It is illogical not to extend the same to all animals under human care and control. A general welfare law will go some way towards addressing the AVA's tendency to classify alleged cruelty cases as concerned with welfare issues.[238] Like the cruelty laws, however, the welfare standards are susceptible to restrictive interpretations, often influenced by factors such as human benefits and established industry practices. Ensuring a minimum standard of welfare, while undeniably a step forward, is unlikely to do very much. It is therefore important that the courts and law enforcement personnel align their definition of good welfare with expert and public opinions, uninfluenced by industry biases.

IX. Conclusion

It is essential that animal protection laws be drafted in a way that is clear and intelligible to all persons having a role to play in their interpretation and enforcement. At the same time, such laws must remain flexible enough to reflect changes in public opinion. As society progresses and moral values change, what was previously regarded as lawful infliction of suffering may now be regarded as cruelty.[239] One way to achieve such balance is through the concept of unnecessary suffering, which has the obvious merit of flexibility. It is important, however, to not leave such a wide concept undefined. It is suggested in this paper that unnecessary suffering is best interpreted as imposing a test of objective reasonableness, relying on the hypothetical

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[233] Under Malaysia's *Wildlife Conservation (Operation of Zoo) Regulations 2012* (P.U.(A.) 36/2012), zoo operators must ensure that animal enclosures are clean (reg. 10), and be of certain sizes (reg. 6(1) and Schedule) and design appropriate for the animals' natural behaviour and basic needs (reg. 6(2)). The animals must also be provided with suitable diet (reg. 8) and sufficient veterinary care (reg. 9). There is no equivalent regulation in Singapore. But the use of premises for exhibition of animals must be licensed: *Animals and Birds (Pet Shops and Exhibition) Rules* (Cap. 7, R. 2, 2004 Rev. Ed. Sing.) [*Pet Shops and Exhibition Rules*].

[234] In Singapore, any research facility that uses animals for scientific purposes must be licensed: *Animals and Birds (Care and Use of Animals for Scientific Purposes) Rules* (Cap. 7, R. 10, 2004 Rev. Ed. Sing.). As part of the licensing requirements, the facility must comply with guidelines issued by the National Advisory Committee for Laboratory Animal Research (NACLAR): see NACLAR, "Guidelines on the Care and Use of Animals for Scientific Purposes" (2004) (see especially cc. 2–6 for the welfare requirements). In Malaysia, a person who intends to kill any animal for the purpose of research or education must first obtain a permit from the veterinary authority: *Control of Slaughter Rules*, *supra* note 191, r. 13.

[235] Animal farms in Singapore must be licensed: *Animals and Birds (Licensing of Farms) Rules* (Cap. 7, R. 3, 2004 Rev. Ed. Sing.). The welfare of farm animals is to some extent safeguarded by the licensing conditions: see AVA, "New Dog Farm Licence Conditions Safeguard Animal Welfare and Prevent Cruelty", *AVA Vision* (March Issue, 2009) at 8. In Malaysia, the licensing of farms is required under various state legislations.

[236] Slaughterhouses in Singapore must be licensed: *Wholesome Meat and Fish Act* (Cap. 349A, 2000 Rev. Ed. Sing.). See also, the *Wholesome Meat and Fish (Slaughter-Houses) Rules* (Cap. 349A, R. 4, 2001 Rev. Ed. Sing.), r. 8, which requires animals to be given sufficient rest and water before slaughter. Slaughterhouses in Malaysia must also be approved or licensed: *Control of Slaughter Rules*, *supra* note 191; *Abattoirs (Privatization) Act*, *supra* note 191.

[237] In Singapore, no animals can be sold, distributed or exhibited except under a licence: *Pet Shops and Exhibition Rules*, *supra* note 233. In Malaysia, the licensing of pet shop is required under various municipal by-laws.

[238] See Part III above.

[239] *Halsbury's Laws of England*, 4th ed. Reissue, vol. 2 (London: Butterworths, 1991) at para. 407.

reasonable person to supply the acceptable standard of conduct. The attributes of this person will to some extent depend upon society's attitude towards animal suffering and exploitation. Of course, such attitudes are not always collectively held. Industries that exploit animals for profit may not have the same attitude towards animal suffering as others, and may resist regulations which increase the costs of animal care. It is important that we give careful consideration to what best represents the moral values of our society and determine whether certain activities, although profitable and advantageous to humans, should nonetheless be outlawed. The extent to which we extend legal protection to animals may be seen as an indicator of our society's moral progress towards a world of more kindness and respect, and less suffering.[240]

[240] *Stephens v. State*, 65 Mississippi Reports 329 (1888): "Laws and enforcement or observance of laws for the protection of dumb brutes from cruelty are… among the best evidences of justice and benevolence of men" (*per* Arnold J.).