

Law and Veterinary Medicine



Second Hour: Basics of the American Legal System
November 6, 2006

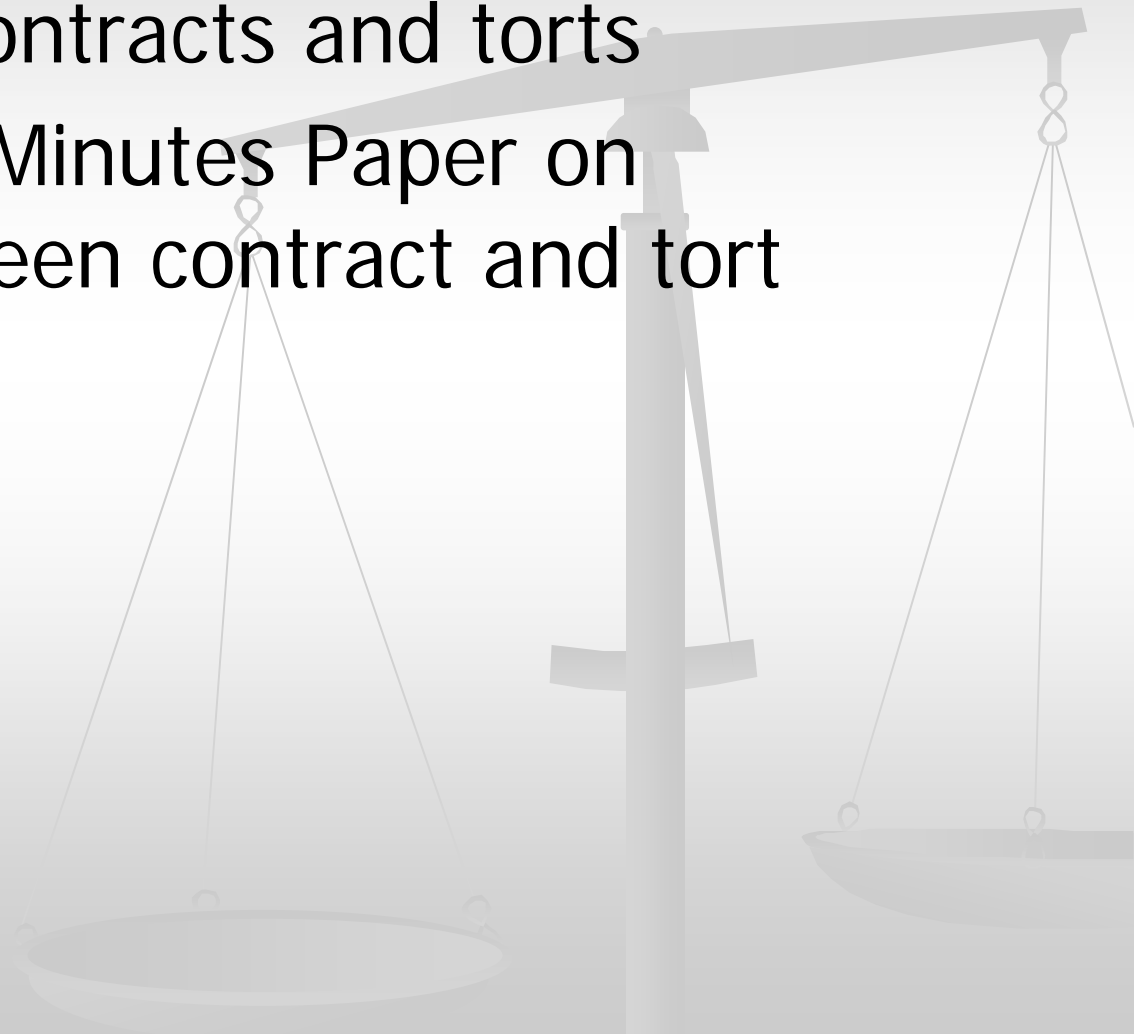
Paul Waldau, D.Phil., J.D.

Importance of the Legal System to the future of Veterinary Medicine

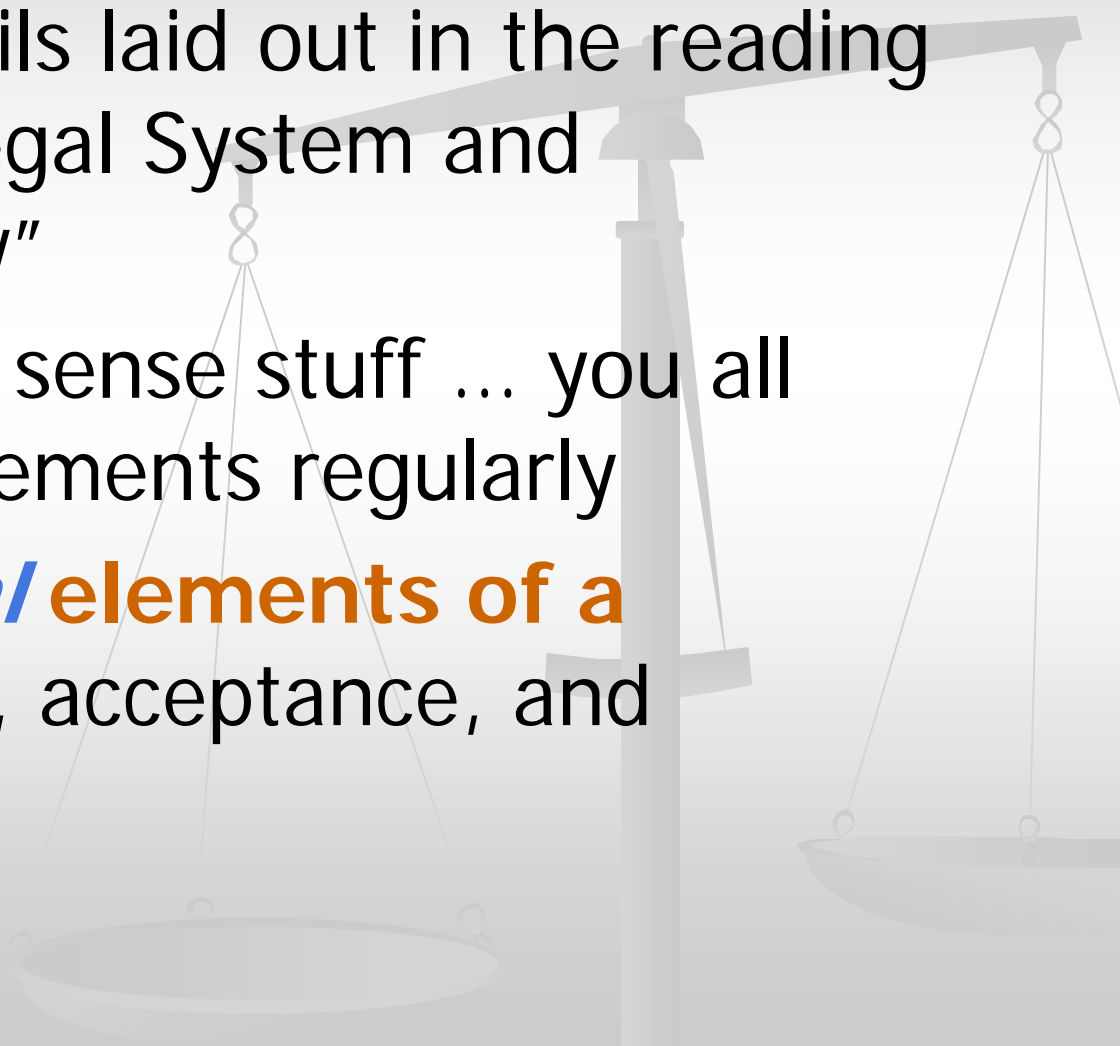
- The recent JAVMA article “Effects of veterinary board disciplinary actions on veterinarians licensed in multiple states” (December 15, 2005: 1906-1909) begins with this Editor’s Note:
 - **“The law has always had a profound effect on the practice of veterinary medicine,**
 - **but recently the relationship between veterinary medicine and the law has become more important than ever.”**

Basics of the American Legal System

- We start with contracts and torts
- November 16—Minutes Paper on difference between contract and tort




A basic difference— contract versus tort

- Contracts—details laid out in the reading “The General Legal System and Substantive Law”
 - Mostly common sense stuff ... you all enter such agreements regularly
 - Three *essential* elements of a **contract**: offer, acceptance, and consideration
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Contracts

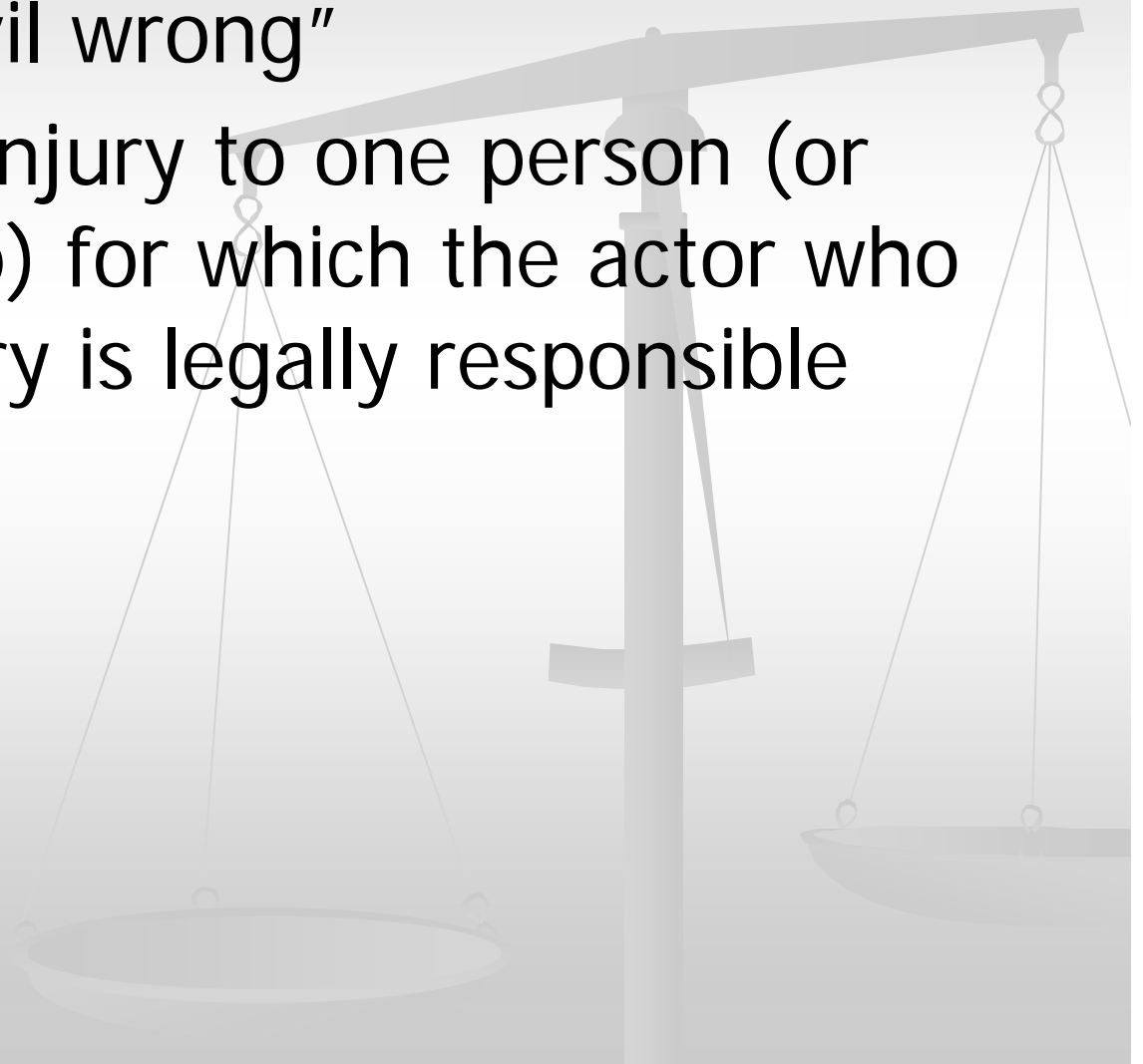
- How lawyers talk—“a plaintiff goes to court on a contract cause of action”
- Translated—the person suing is using a theory that relies on the claim that a valid contract exists and governs the dispute
- If so, the person suing (the “plaintiff”) must prove *each* of the “essential elements” of their ***claim that a valid contract was breached*** → →

Four essential elements of a breach of contract *claim*

- There was a **valid contract**
 - The **plaintiff performed** as specified by the contract
 - The **defendant failed to perform** as specified by the contract
 - The plaintiff suffered an **economic loss** as a result of the defendant's breach of contract
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Torts

- “A private or civil wrong”
- Translated: an injury to one person (or corporate group) for which the actor who caused the injury is legally responsible



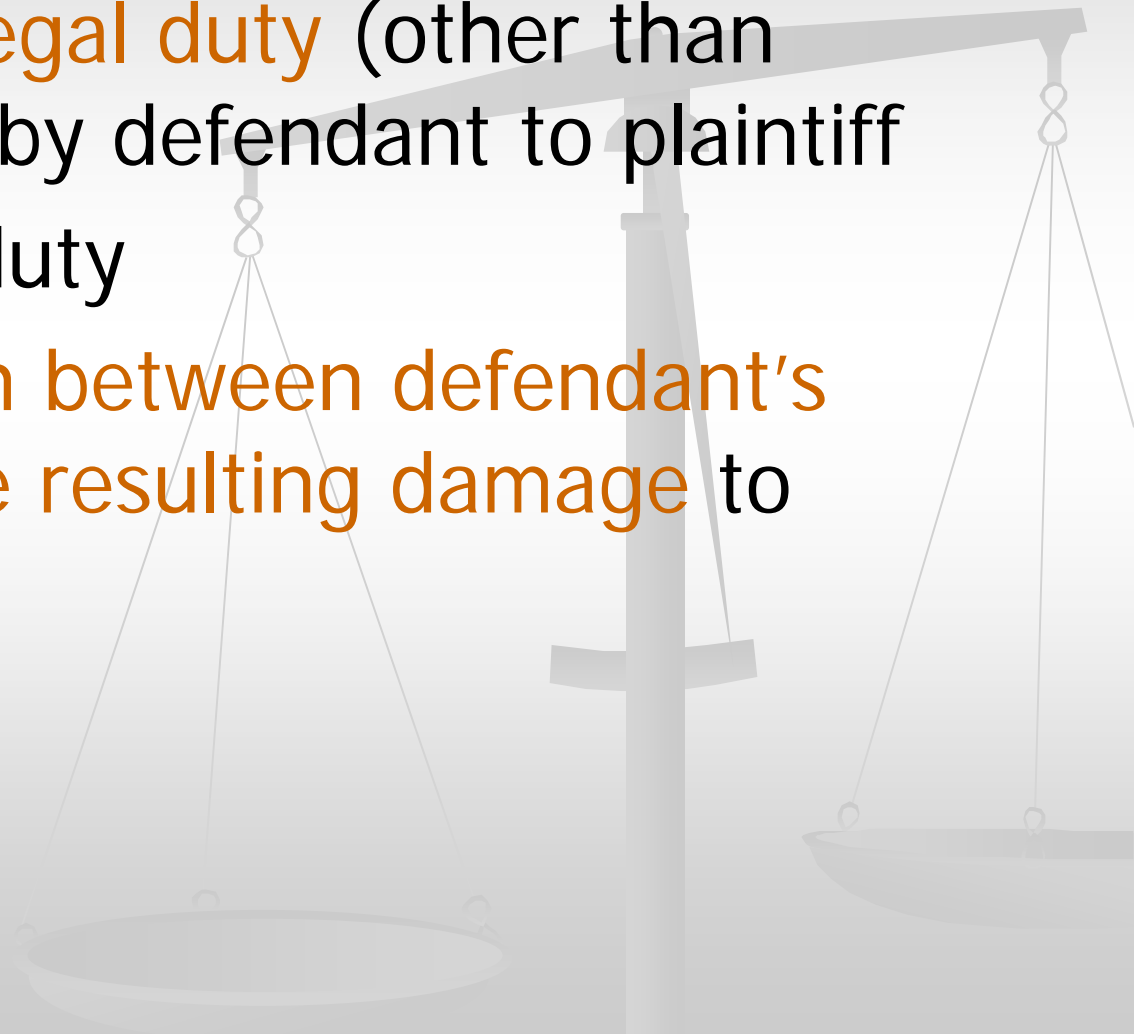
Torts



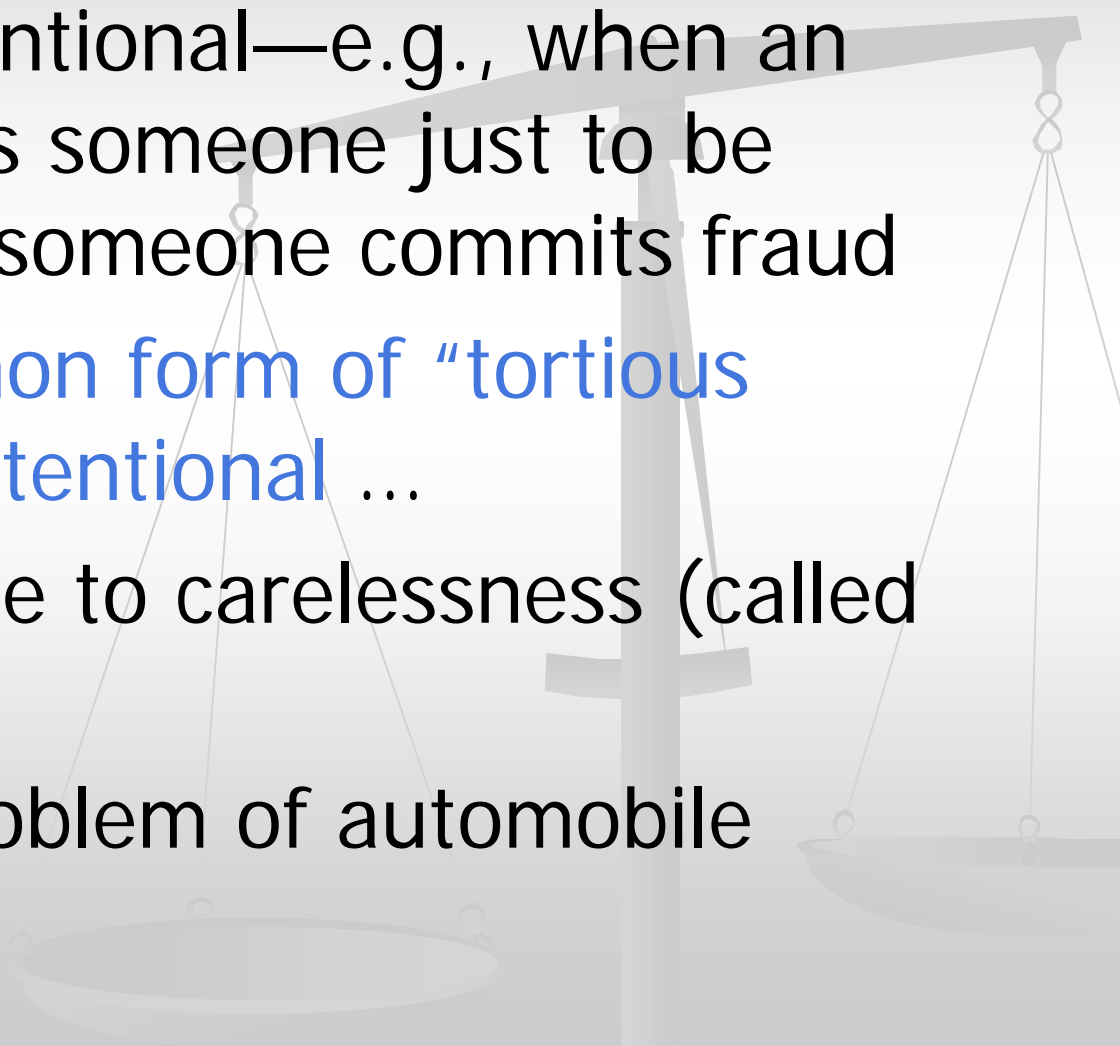
- Torts occur when someone breaches a legal duty that exists **by virtue of society's expectations** regarding interpersonal conduct
- Contrast—**contracts exist from voluntary agreements**, and you can sue on a contract only when someone has breached a duty created by a valid contract

Essential elements of torts

- Existence of a legal duty (other than contract) owed by defendant to plaintiff
- breach of that duty
- a causal relation between defendant's conduct and the resulting damage to plaintiff

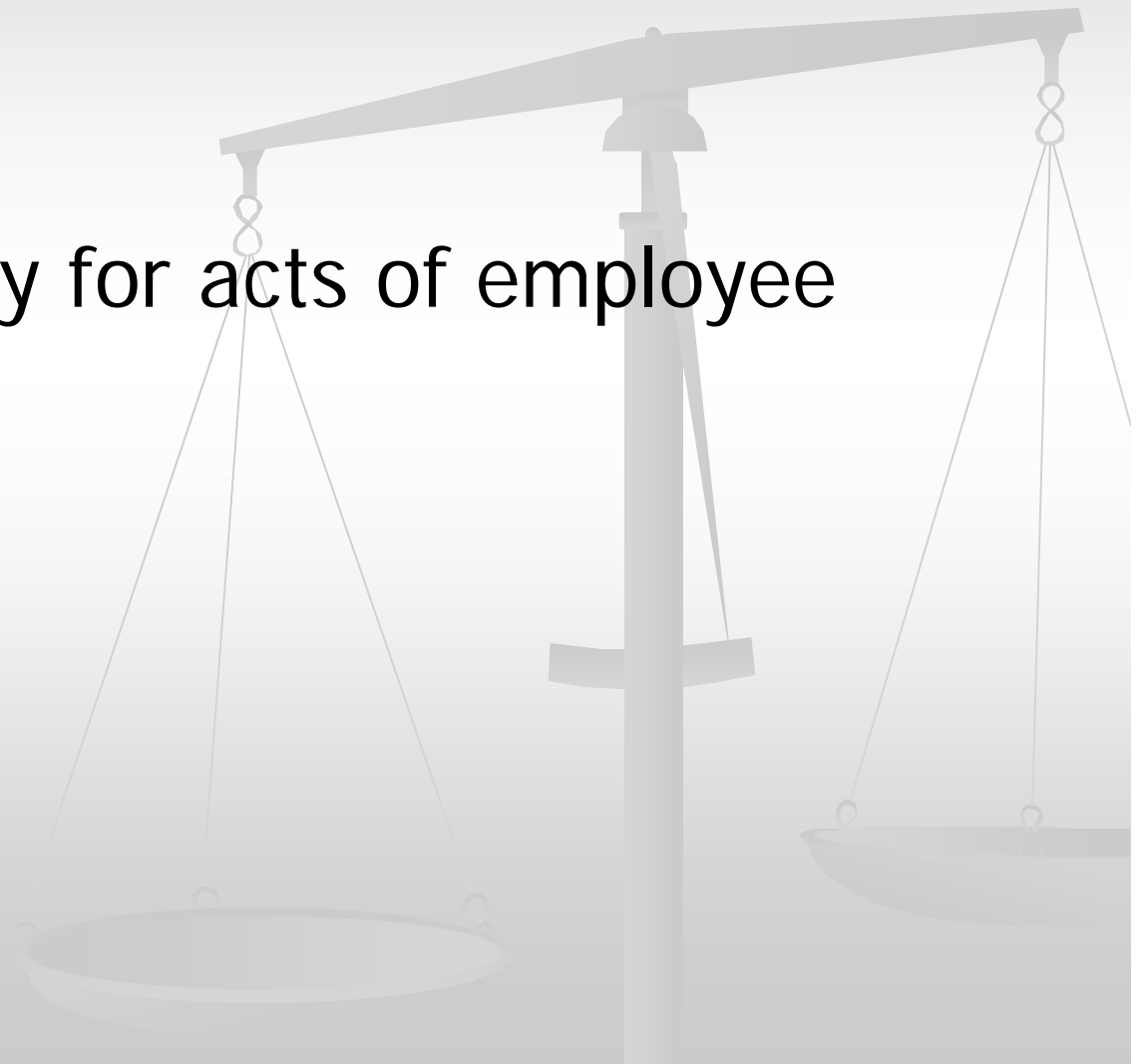


Intentional Acts v. Negligence

- Tort can be intentional—e.g., when an individual strikes someone just to be mean, or when someone commits fraud
 - The most common form of “tortious conduct” is unintentional ...
 - Namely, acts due to carelessness (called “negligence”)
 - E.g., familiar problem of automobile accidents
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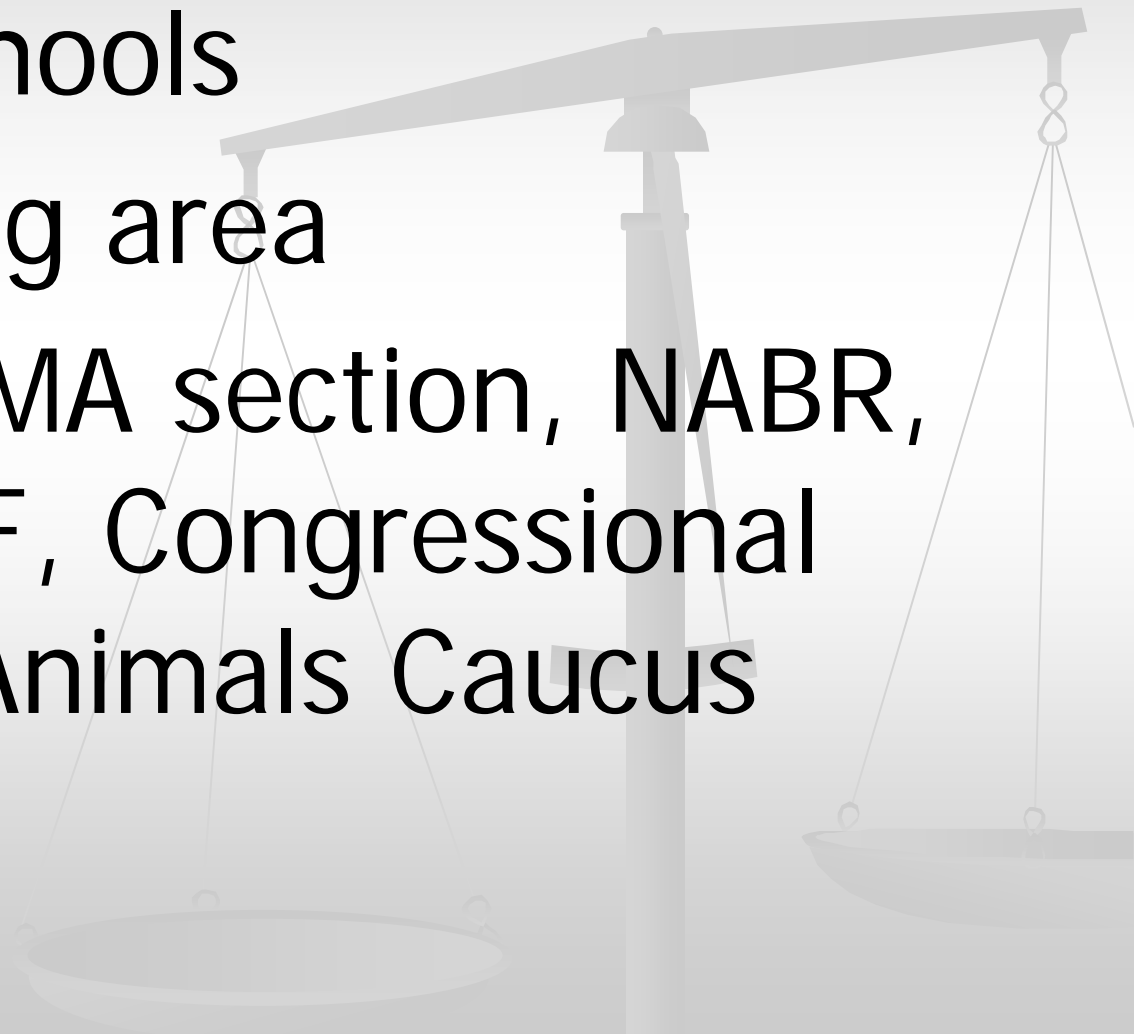
More basics next session

- Jurisdiction
- Discovery
- Employer liability for acts of employee
- Damages
- Wills and Trusts

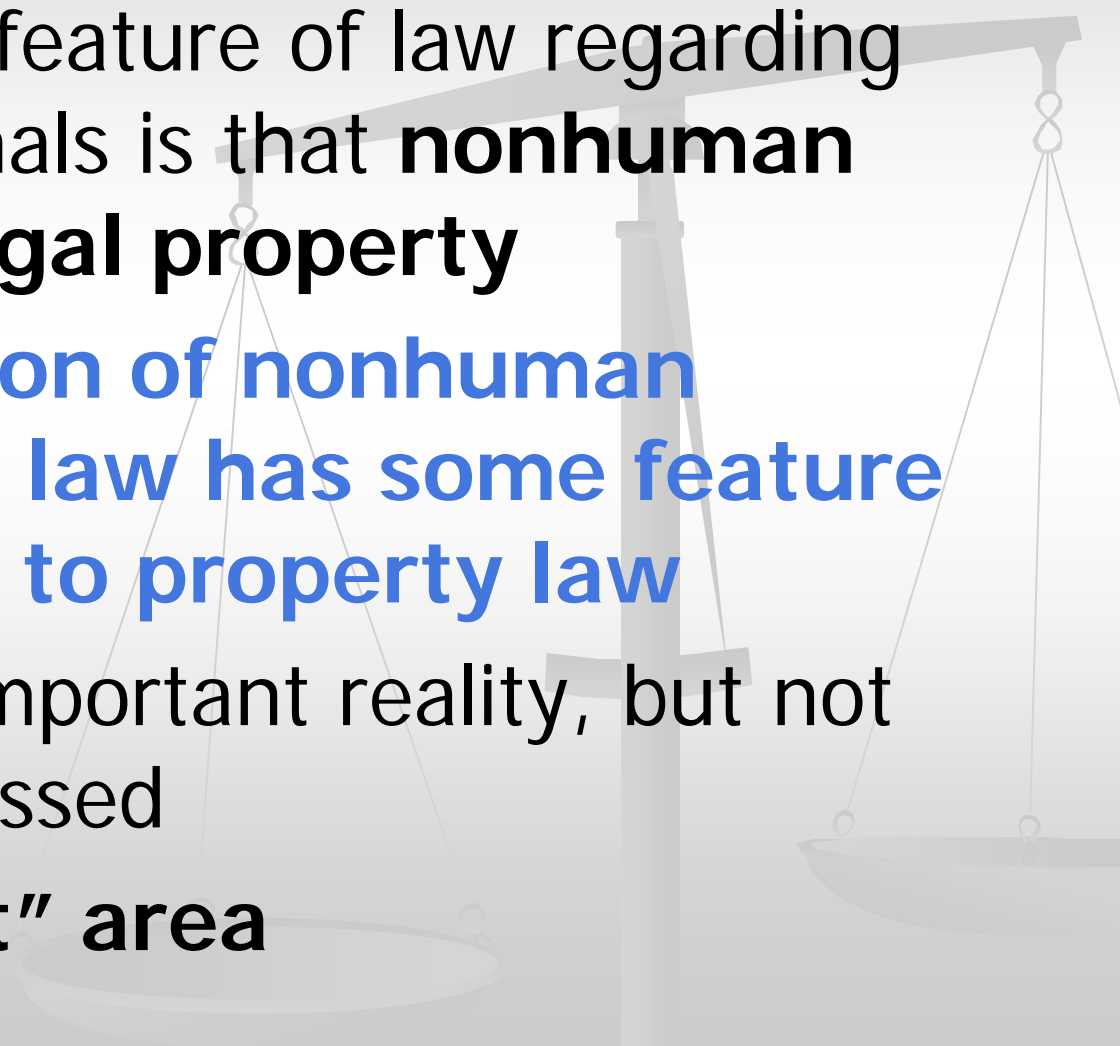


Modern law and “animal law”

- 70+ law schools
- Fast growing area
- AVMLA, AVMA section, NABR, HSUS, ALDF, Congressional Friends of Animals Caucus

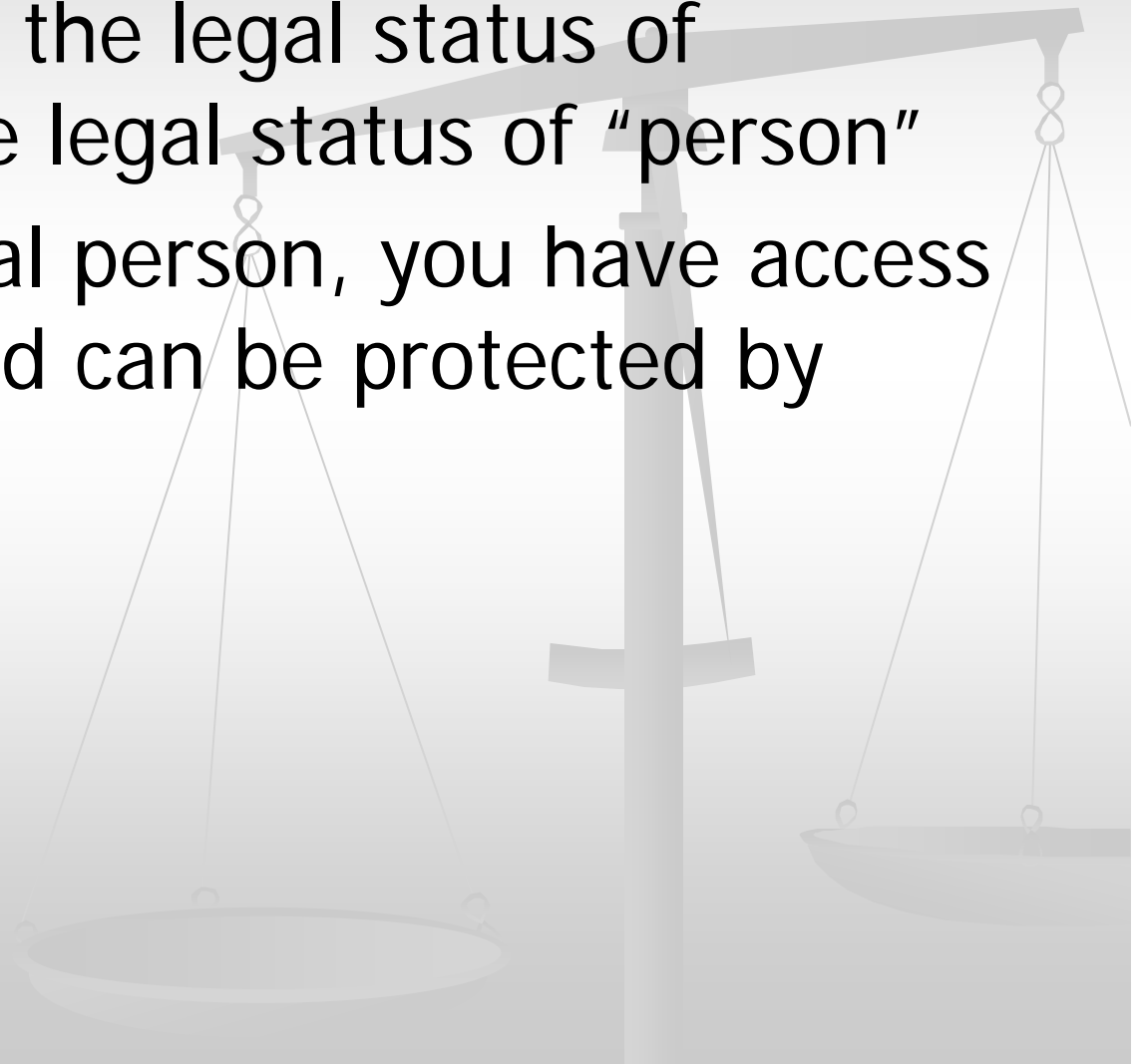


“Animal law”

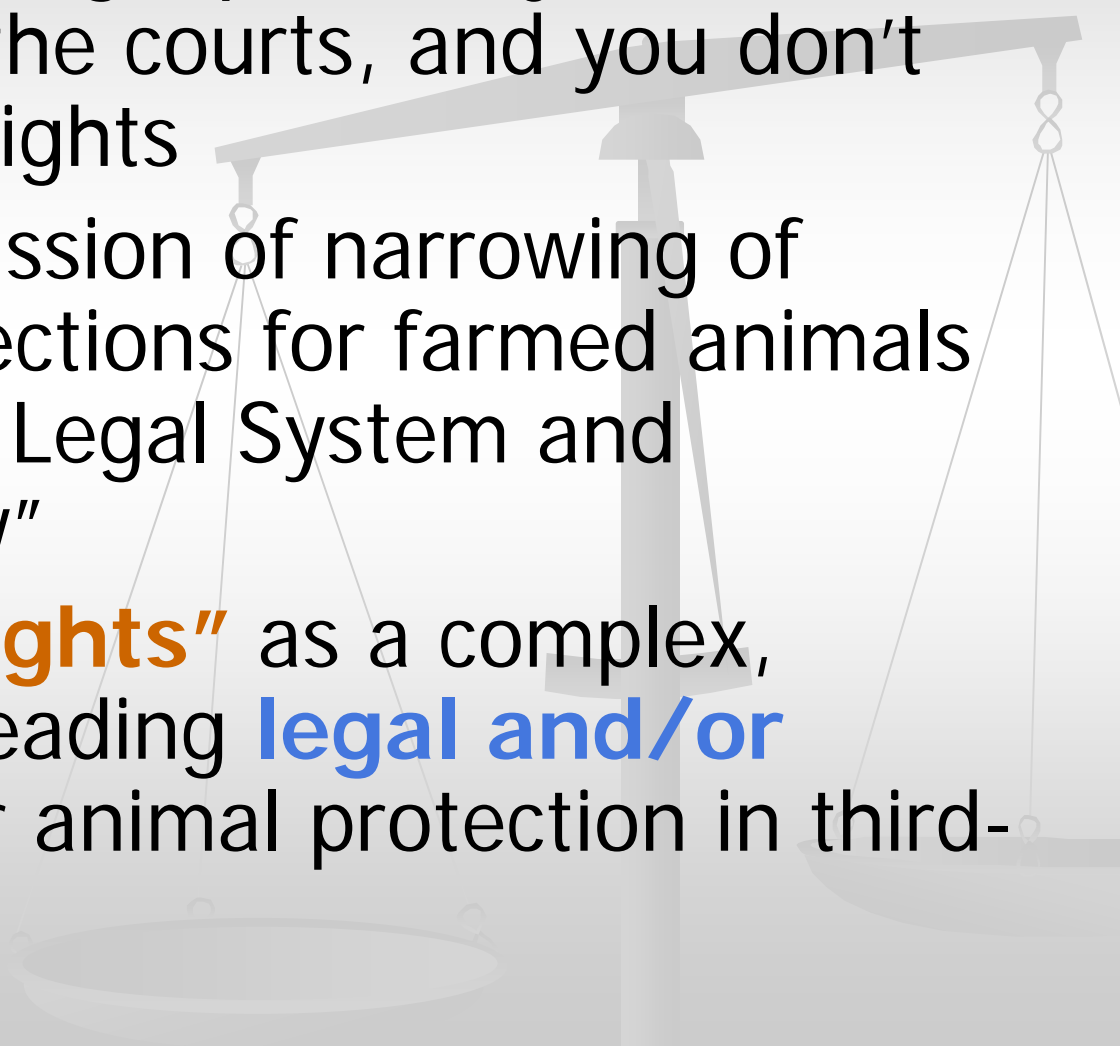
- The most basic feature of law regarding nonhuman animals is that **nonhuman animals are legal property**
 - **Every discussion of nonhuman animals in the law has some feature that is related to property law**
 - Contract law—important reality, but not very often discussed
 - **Tort law—“hot” area**
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Why “property” status matters

- Contrasted with the legal status of “property” is the legal status of “person”
- If you are a legal person, you have access to the courts and can be protected by legal rights

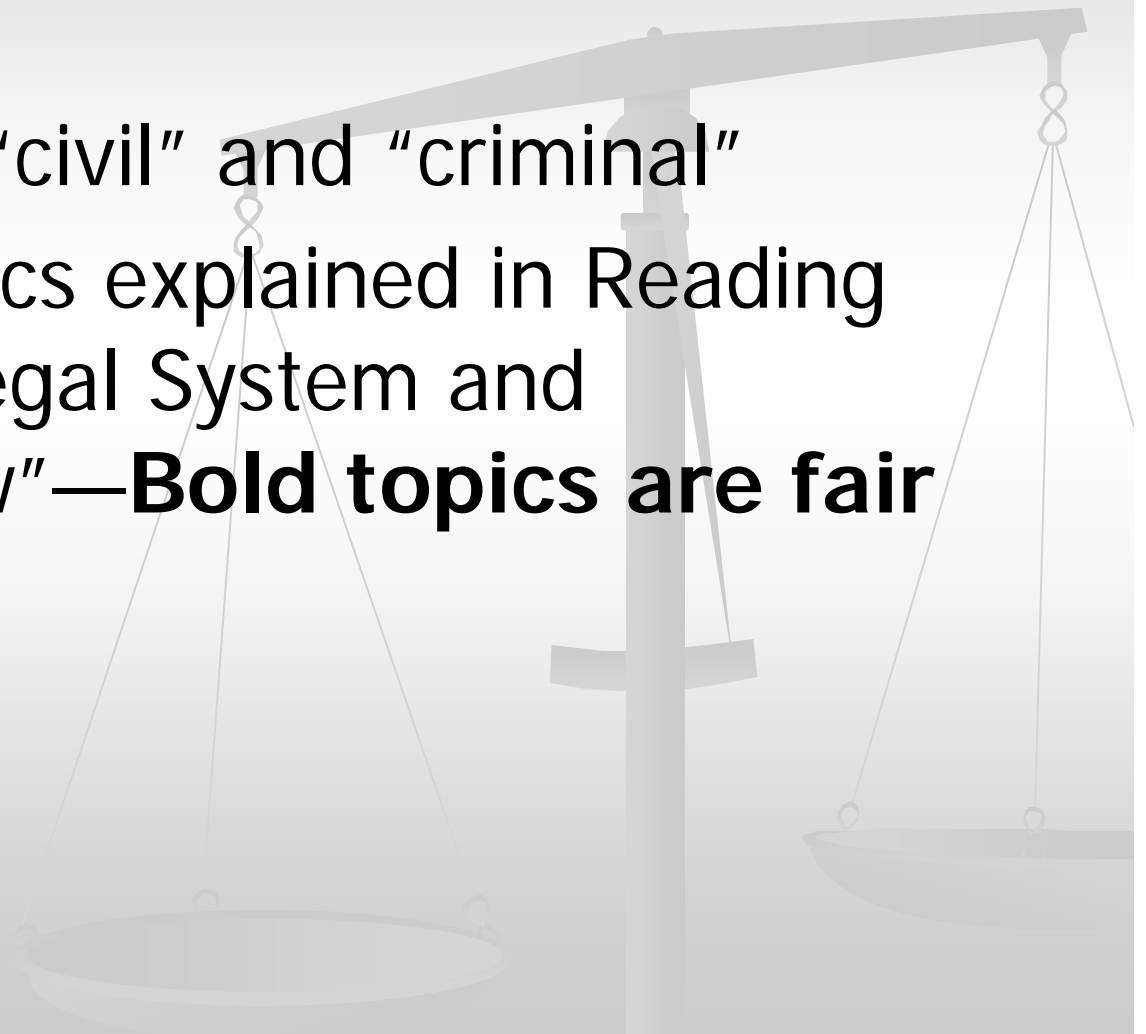


Why “property” status matters

- If you are *not* a legal person, you don't have access to the courts, and you don't have any legal rights
 - Pertinent—discussion of narrowing of anticruelty protections for farmed animals in “The General Legal System and Substantive Law”
 - We'll discuss **“rights”** as a complex, sometimes misleading **legal and/or ethical tool** for animal protection in third-year course
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System basics

- Charts
- The distinction “civil” and “criminal”
- Many more basics explained in Reading “The General Legal System and Substantive Law”—**Bold topics are fair game for final**



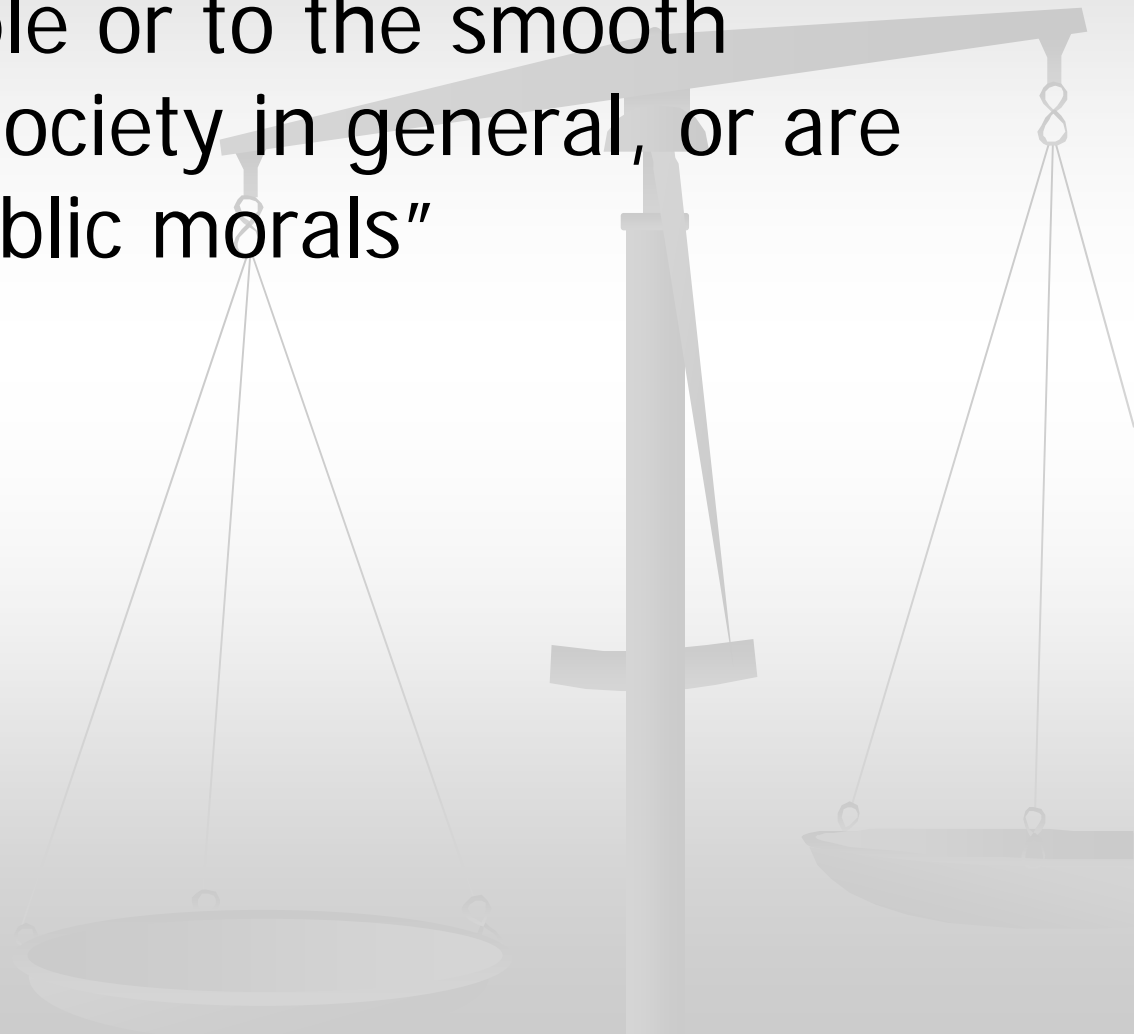
Criminal versus Civil



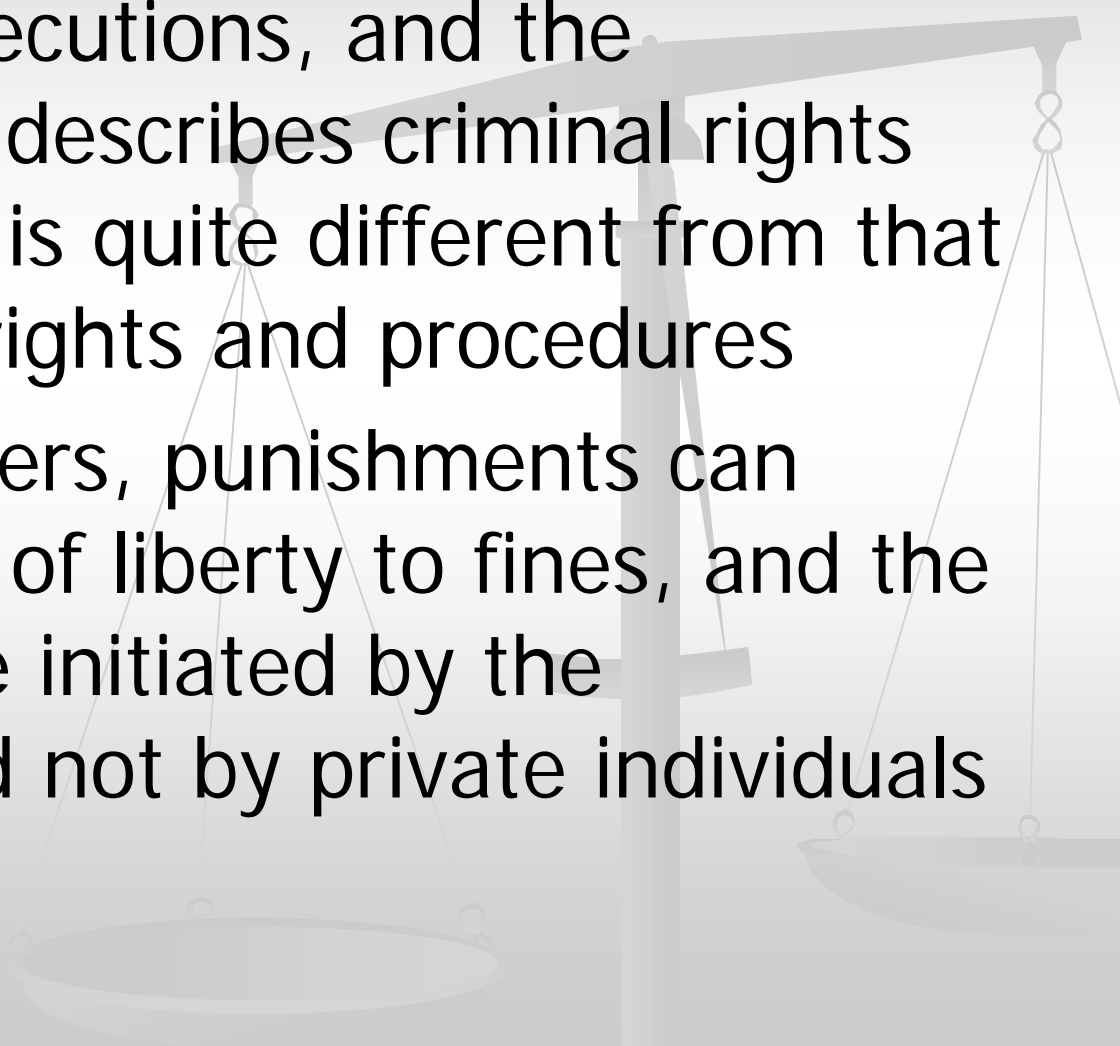
- **Criminal law** is special area—it deals with the boundaries of our relationships as a single individual (or group or corporation) with the larger society
- Criminal law is important to veterinarians (consider the area of controlled substances), but **civil law impacts daily life much more**

Criminal Law

- “Crimes” are, generally, acts that are harmful to people or to the smooth running of the society in general, or are offensive to “public morals”



Criminal Law

- Special procedures (and protections) apply to criminal prosecutions, and the vocabulary that describes criminal rights and procedures is quite different from that describing civil rights and procedures
 - In criminal matters, punishments can range from loss of liberty to fines, and the legal actions are initiated by the government and not by private individuals
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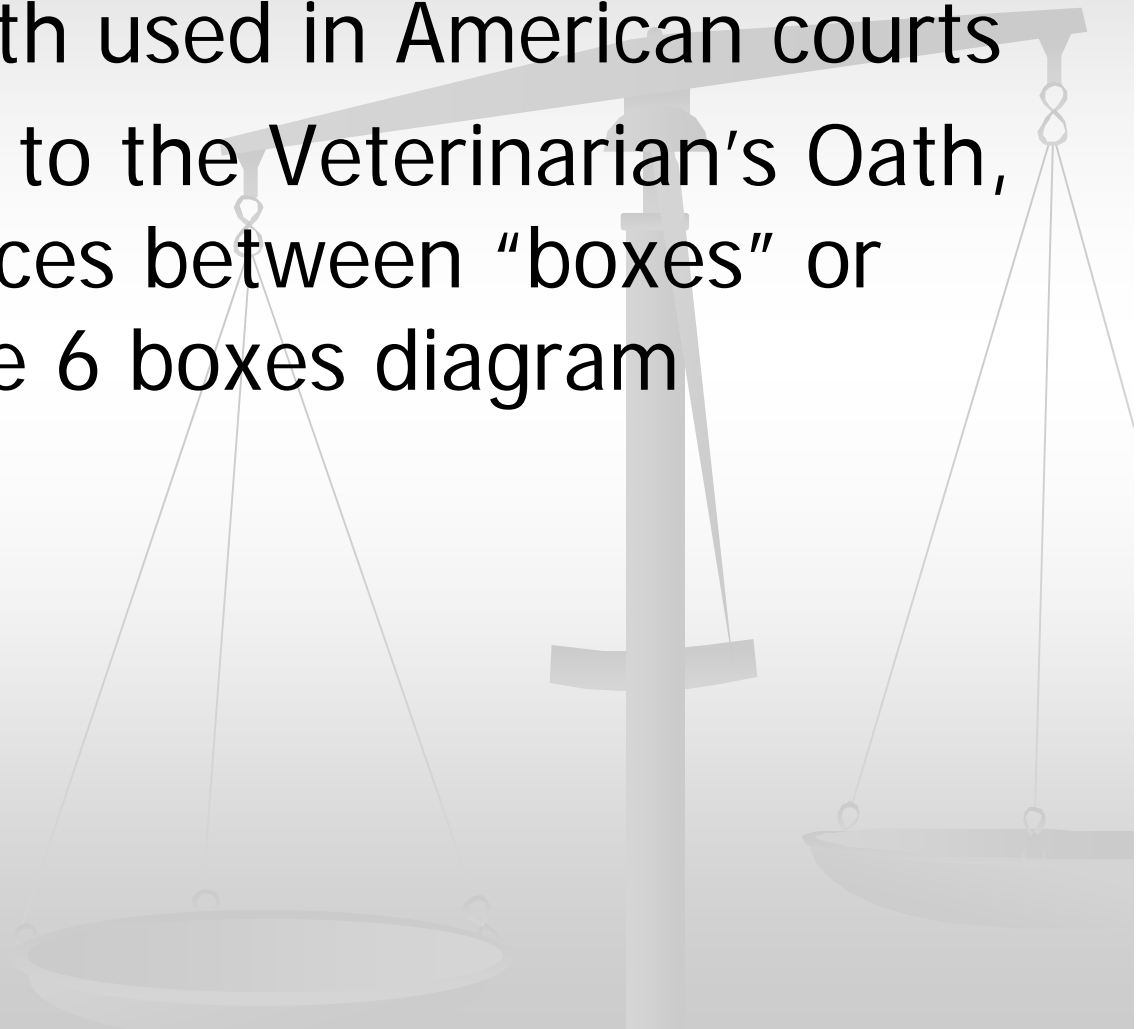
Civil Law



- Governs the general, normal relationships between individuals (although the government could be one of the “individuals” in, say, a dispute over performance under a contract)
- Penalties are usually money-related, and do *not* include imprisonment or loss of other civil liberties
- Relevant to malpractice, business operations, client relations

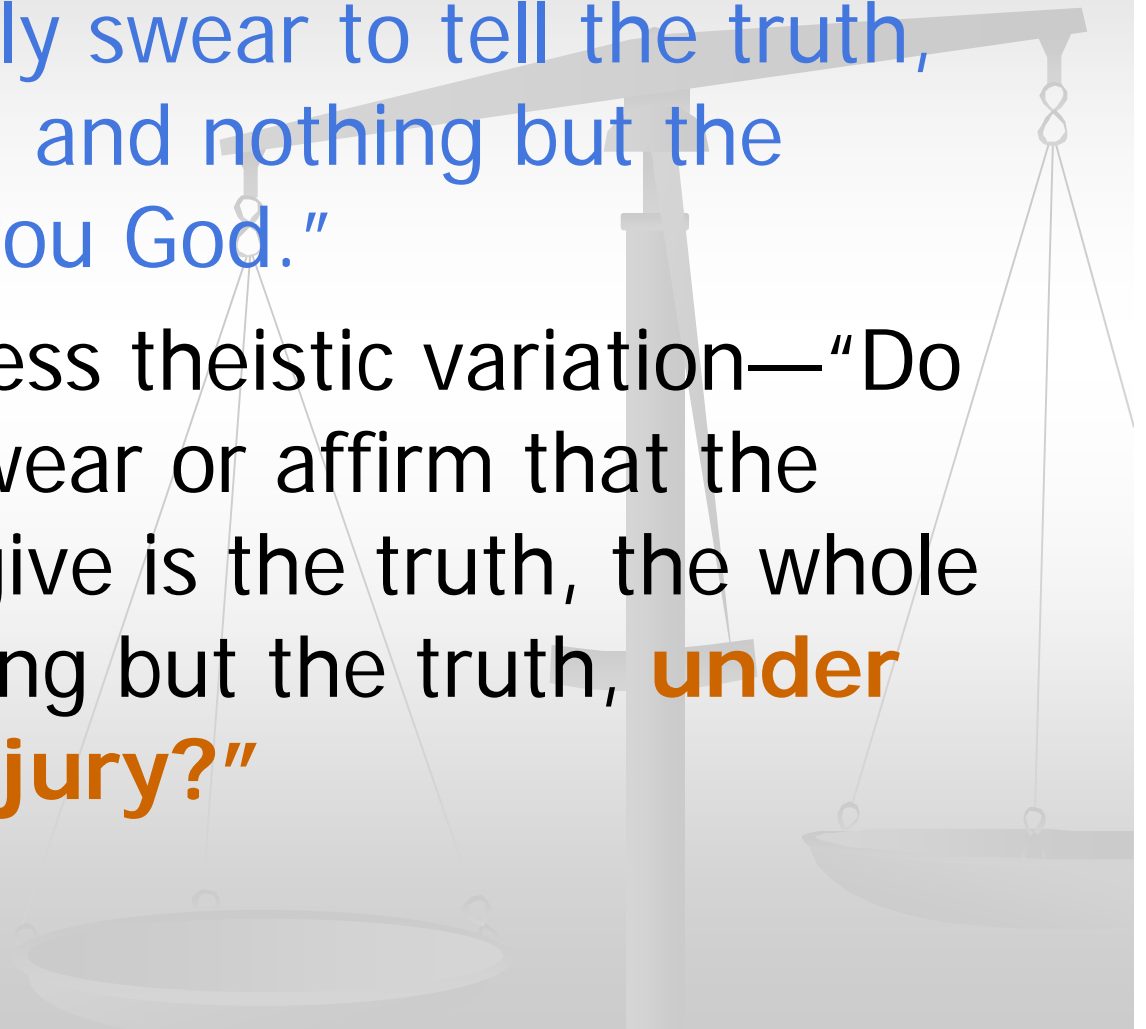
How powerful “law” is

- Consider the oath used in American courts
- By comparing it to the Veterinarian’s Oath, see the differences between “boxes” or categories in the 6 boxes diagram



Oath in a court of law, for legal papers, for US government purposes

- “Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth? So help you God.”
- Occasionally a less theistic variation—“Do you solemnly swear or affirm that the testimony you give is the truth, the whole truth, and nothing but the truth, **under penalty of perjury?**”

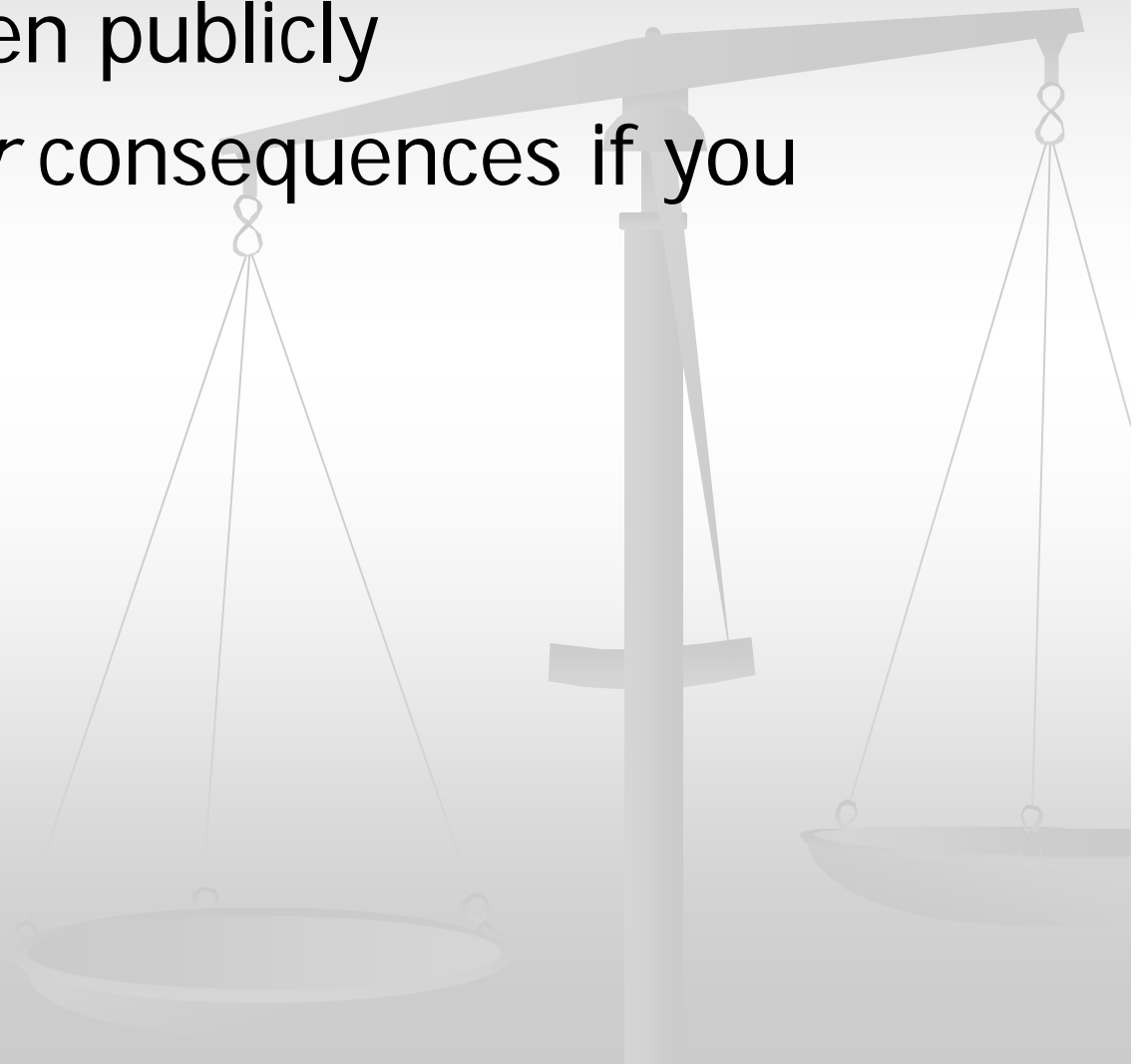


MA on perjury

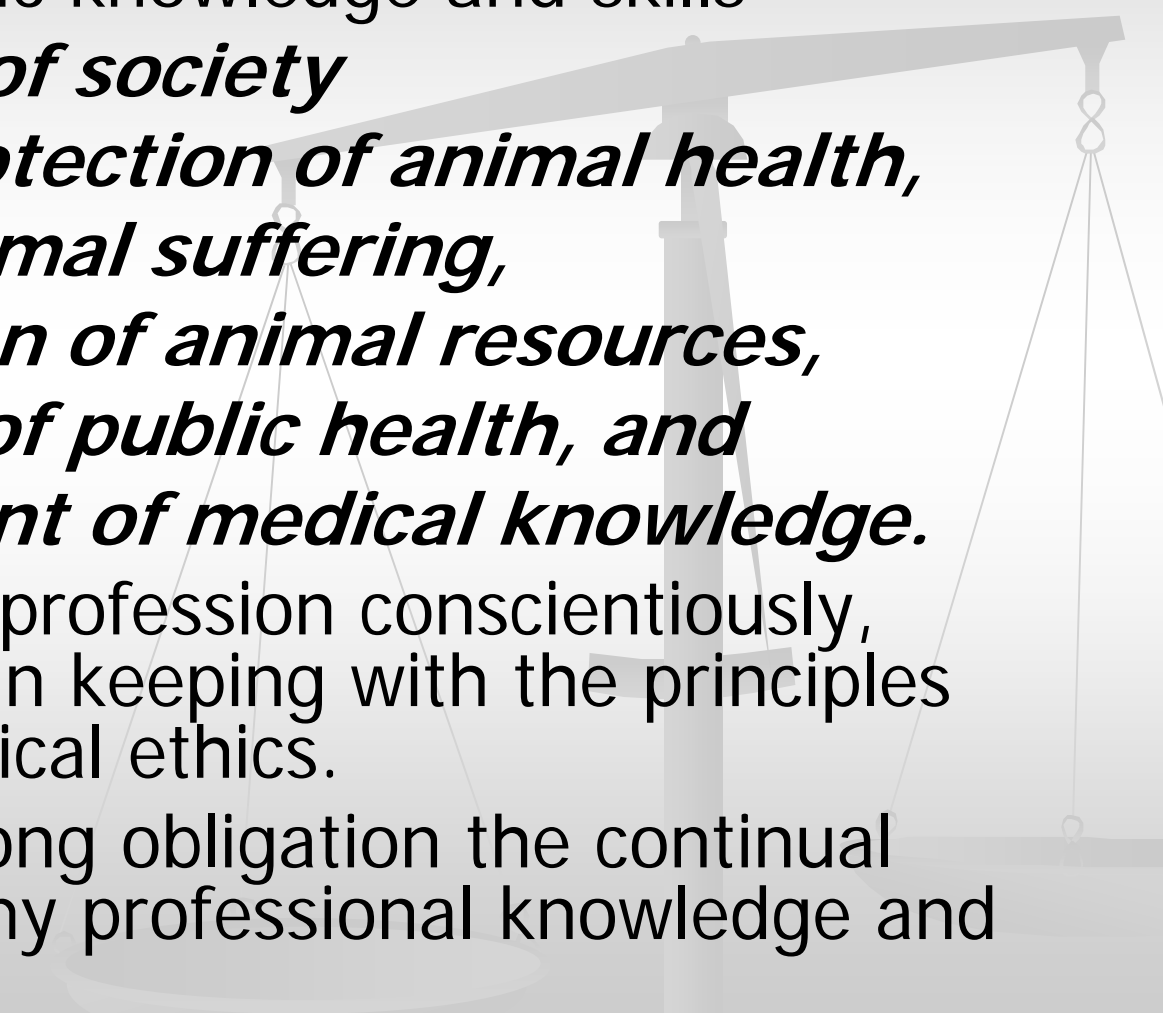
- Chapter 268: Section 1. Perjury
- Whoever, being lawfully required to [tell] the truth in a judicial proceeding ... willfully swears or affirms falsely ... shall be guilty of perjury.
- Whoever commits perjury ... shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars or by imprisonment in jail for not more than two and one half years, or by both such fine and imprisonment in jail.

Summary

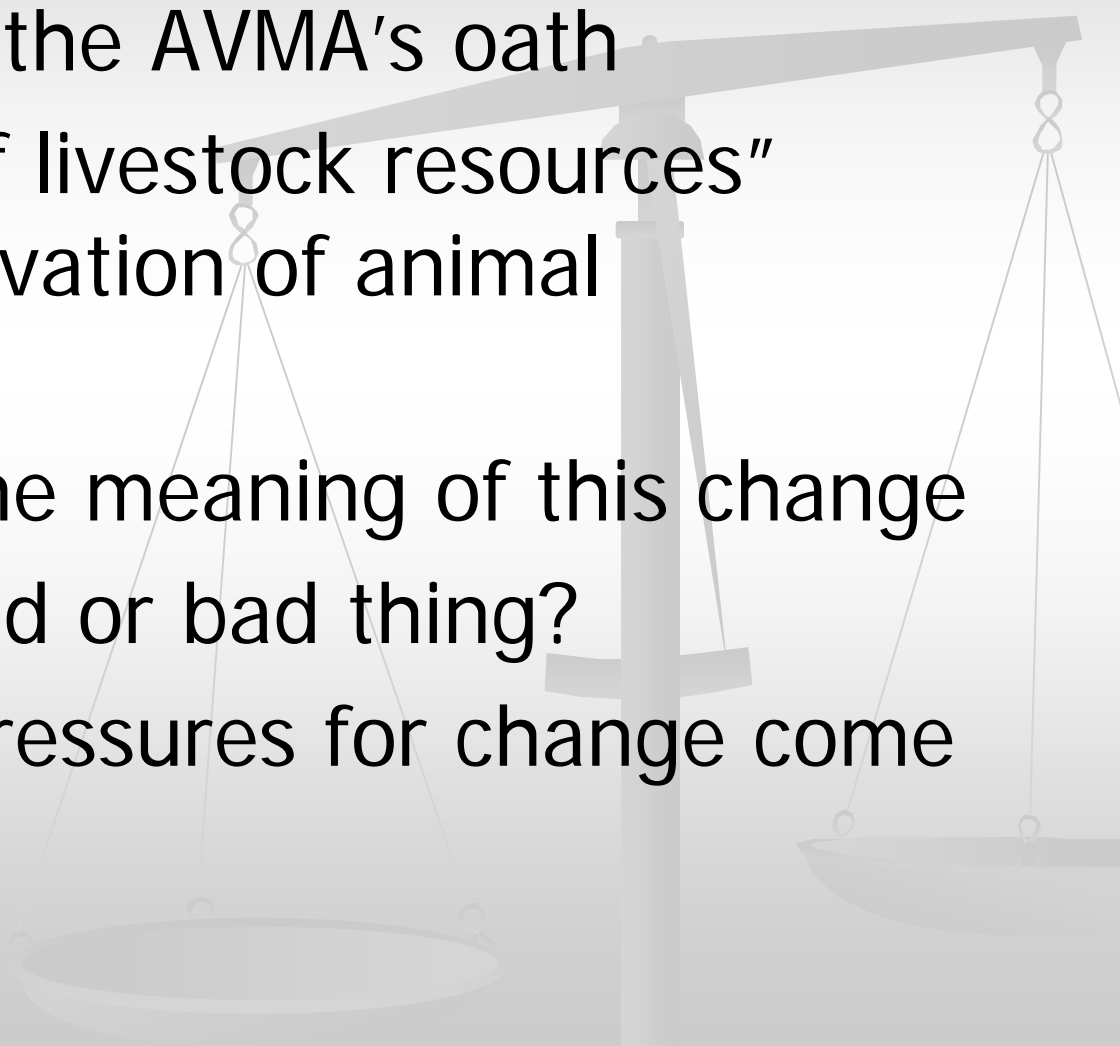
- This oath is taken publicly
- There are *major* consequences if you violate it



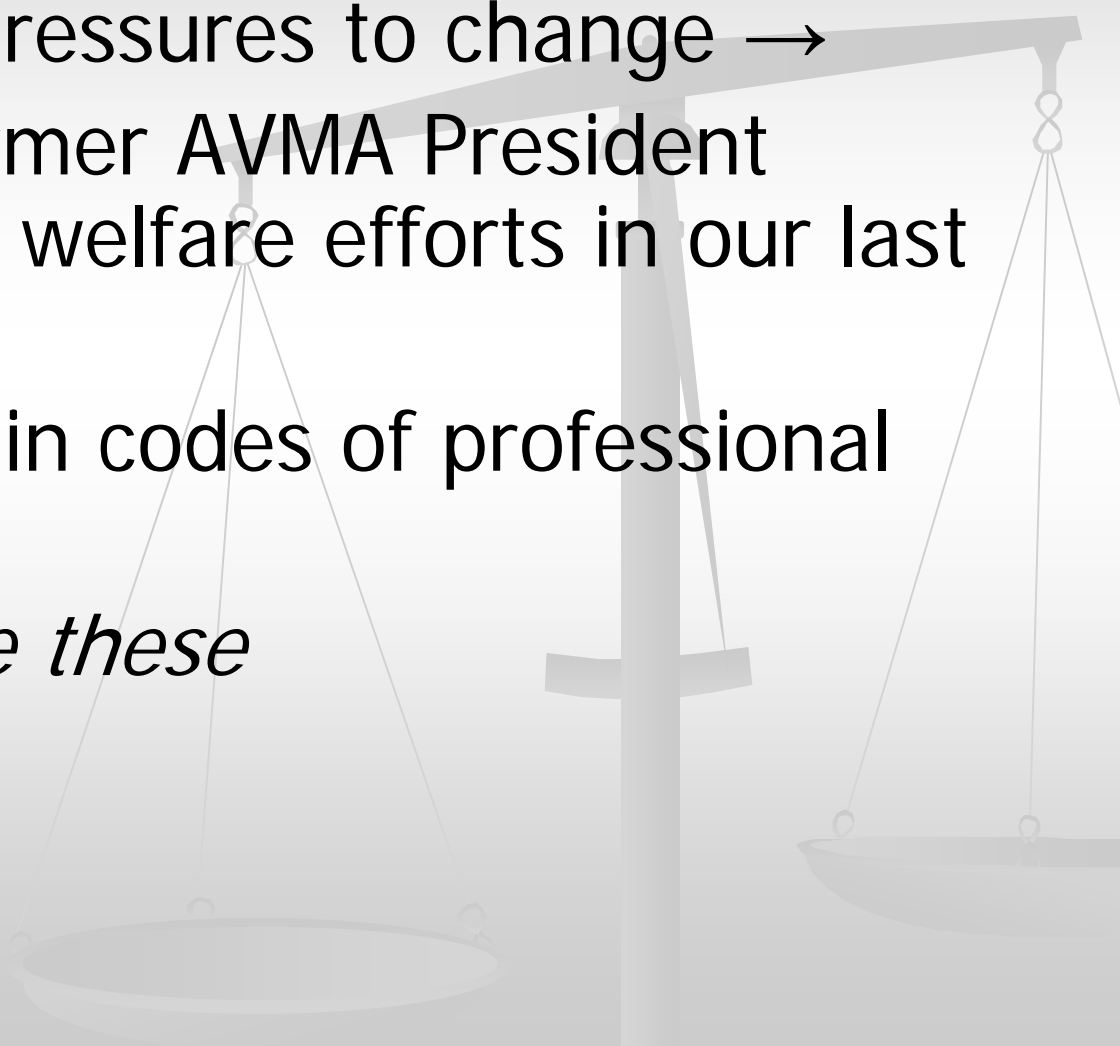
The AVMA's Veterinary oath

- I solemnly swear
 - to use my scientific knowledge and skills
 - ***for the benefit of society***
 - ***through the protection of animal health,***
 - ***the relief of animal suffering,***
 - ***the conservation of animal resources,***
 - ***the promotion of public health, and***
 - ***the advancement of medical knowledge.***
 - I will practice my profession conscientiously, with dignity, and in keeping with the principles of veterinary medical ethics.
 - I accept as a lifelong obligation the continual improvement of my professional knowledge and competence.
- 

Evolution in AVMA's oath and general positions

- 1999 change in the AVMA's oath
 - "conservation of livestock resources" became "conservation of animal resources"
 - Disputes over the meaning of this change
 - Is change a good or bad thing?
 - Where do the pressures for change come from?
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The Veterinary oath

- Contemporary pressures to change →
 - We'll discuss former AVMA President Bonnie Beaver's welfare efforts in our last ethics session
 - Future changes in codes of professional ethics ...
 - ... *you will guide these*
- 

Recall this question

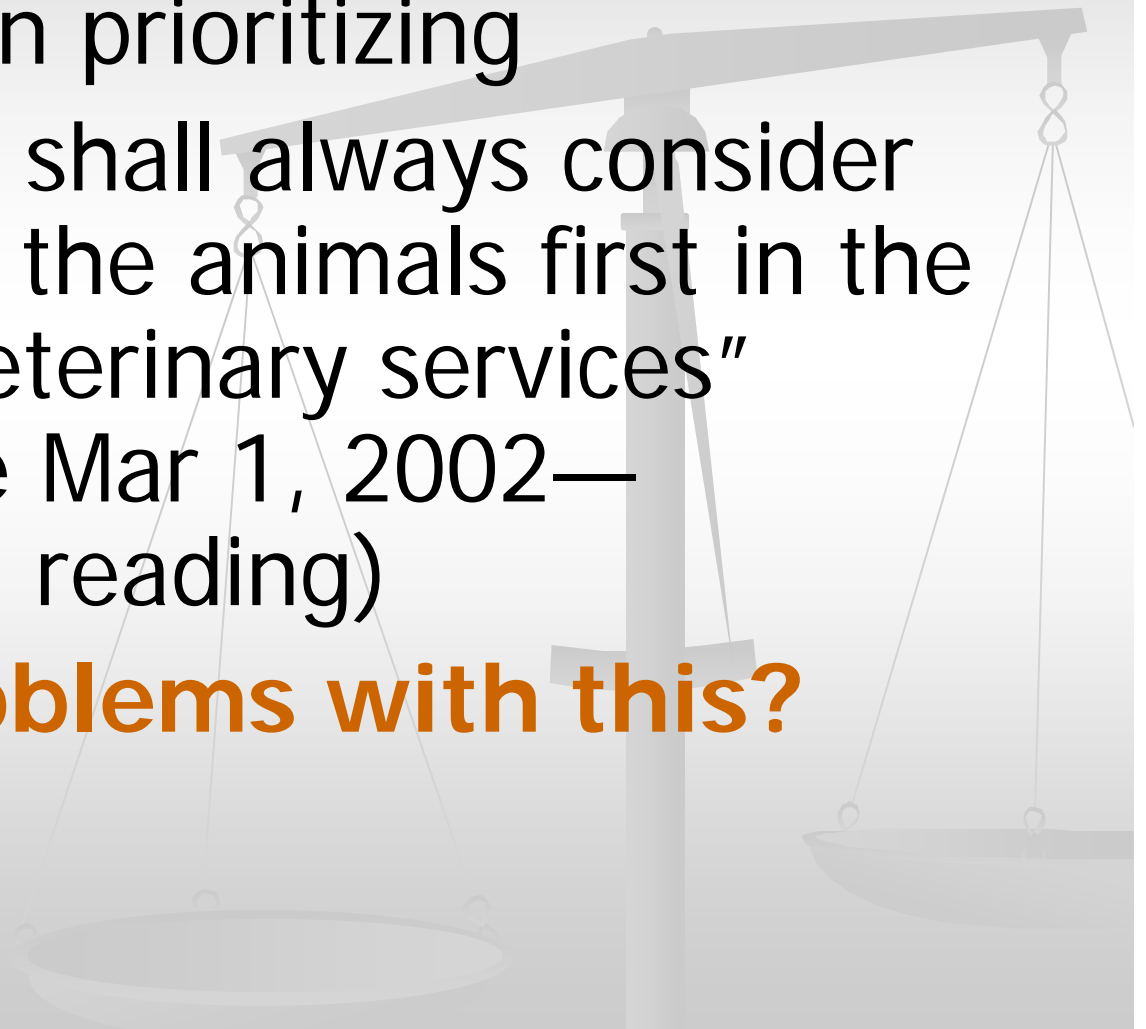
- **How does an individual veterinarian sort out competing priorities?**
 - **(1) protection of animal health,**
 - **(2) relief of animal suffering,**
 - (3) conservation of animal resources,
 - (4) public health, and
 - (5) advancement of medical knowledge

E.g. of possible conflict

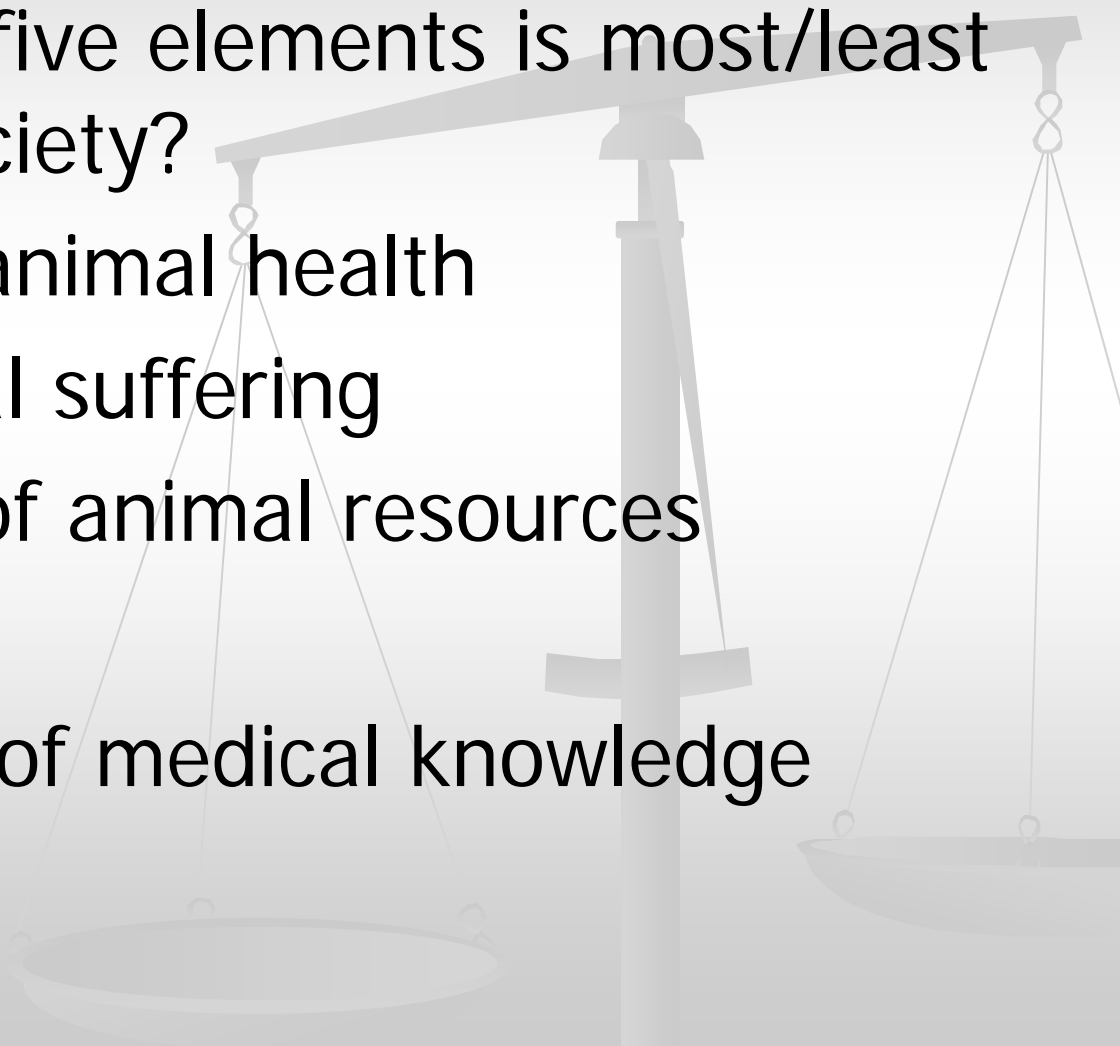
- Suppose you find yourself in a situation where
- (1) you can use your “scientific knowledge and skills for the benefit of society” to promote public health (#4 in the list) ... **but**
- ... ***not*** the protection of animal health (#1), the relief of animal suffering (#2), conservation of animal resources (#3) or the advancement of medical knowledge (#5).
- **Will you uphold or violate the AVMA oath if you prioritize #4 over all the others?**

Prioritizing Australian-style

- Note Australian prioritizing
- “Veterinarians shall always consider the welfare of the animals first in the provision of veterinary services” (JAVMA article Mar 1, 2002—recommended reading)
- **Practical problems with this?**



Social ethics and the AVMA's oath

- Which of these five elements is most/least important to society?
 - (1) protection of animal health
 - (2) relief of animal suffering
 - (3) conservation of animal resources
 - (4) public health
 - (5) advancement of medical knowledge
- 

Next Session

- We'll have a minutes paper on **“what's the difference between a tort and a contract”**
- **Continue with basic legal issues**

