

Law and Veterinary Medicine

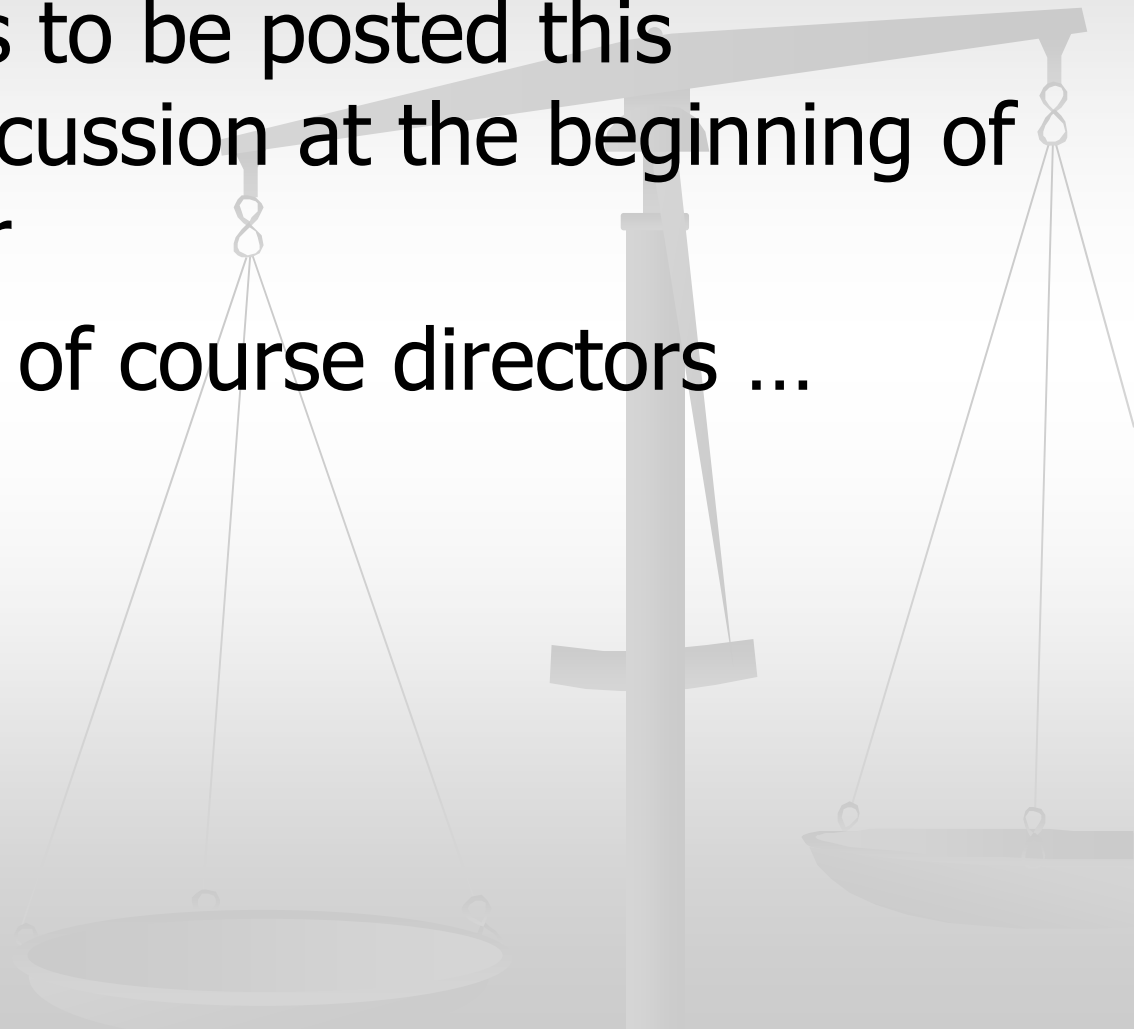


First Hour: Wildlife and Law
December 4, 2006

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Business

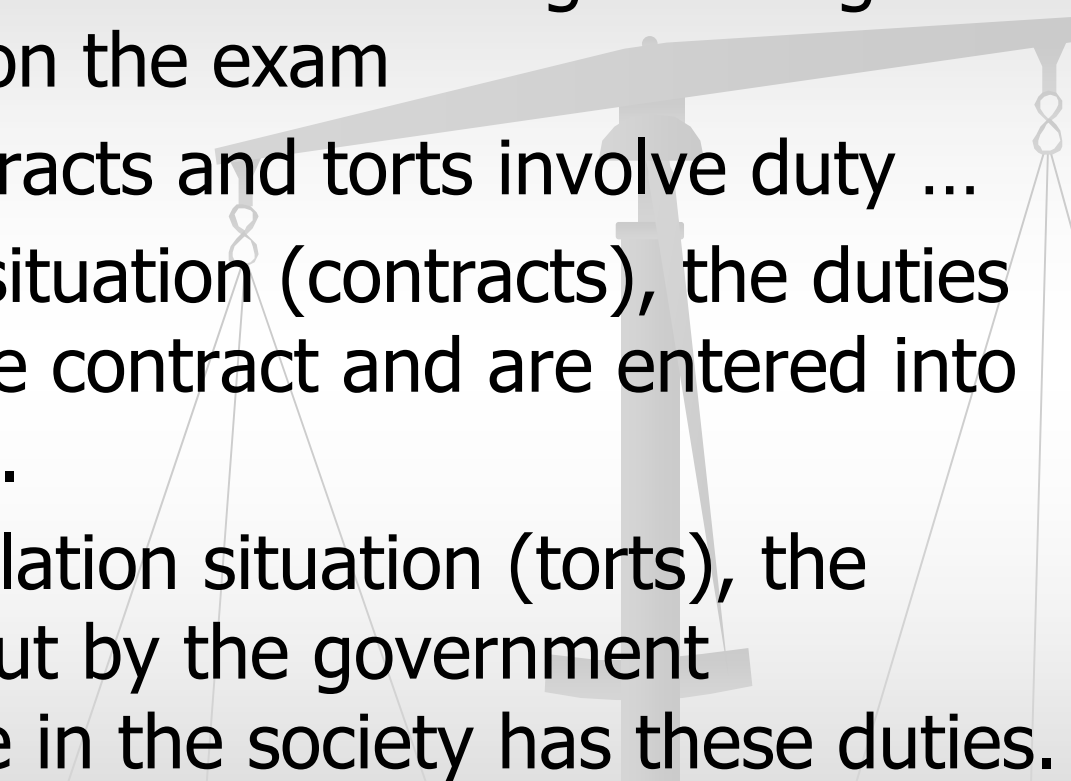
- Exam guidelines to be posted this afternoon ... discussion at the beginning of the second hour
- Recent meeting of course directors ...



Last minutes paper

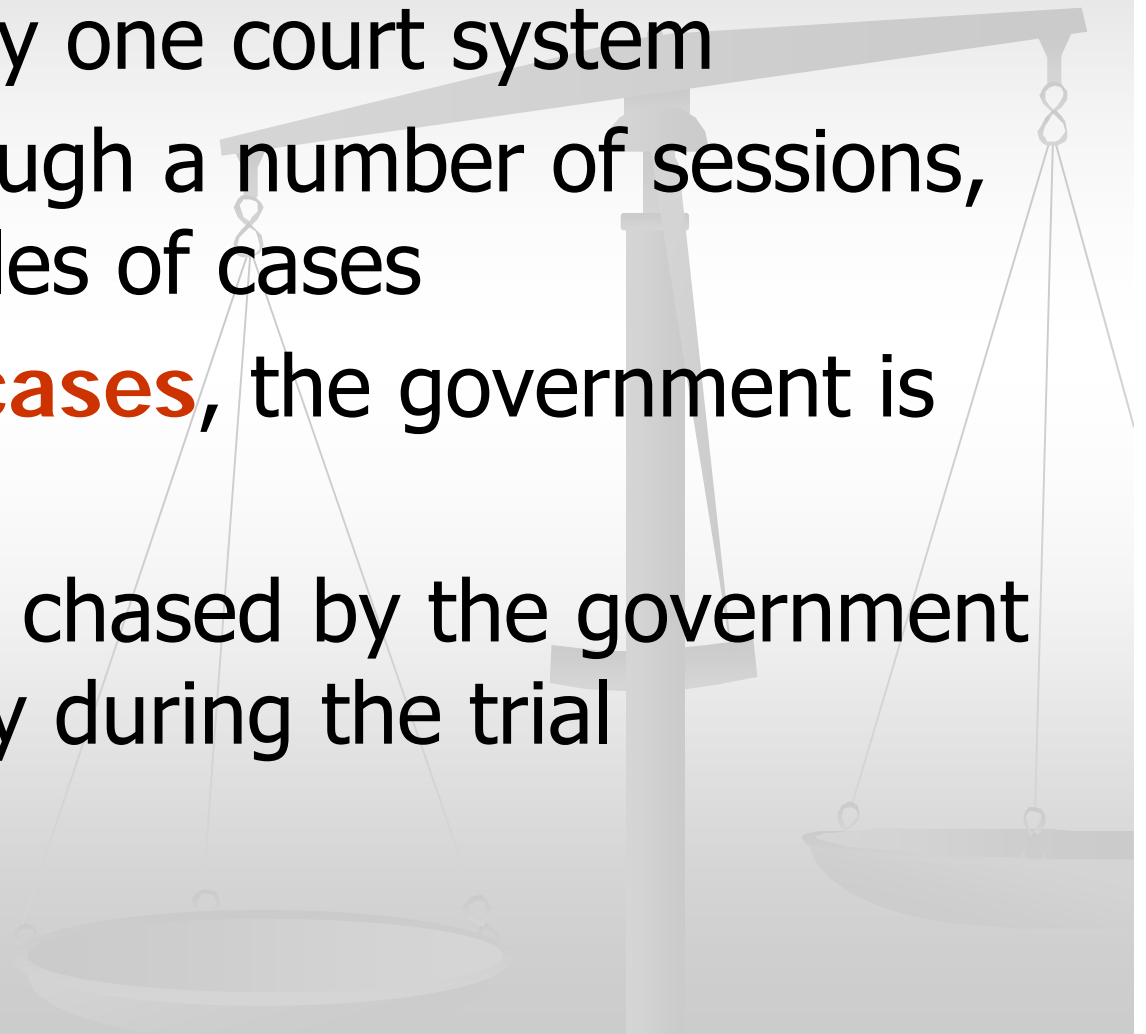
- Minutes Papers on Malpractice—OK
- How I grade—“normally” is OK as a substitution in “A veterinarian *must* exercise **the care and diligence ordinarily exercised by skilled veterinarians**”

More review: Contracts v. Torts

- The division is simple – no need for great lengths if I ask this question on the exam
 - Note that both contracts and torts involve duty ...
 - ... in the voluntary situation (contracts), the duties are called out by the contract and are entered into by conscious choice.
 - ... in the social regulation situation (torts), the duties are spelled out by the government somehow. Everyone in the society has these duties.
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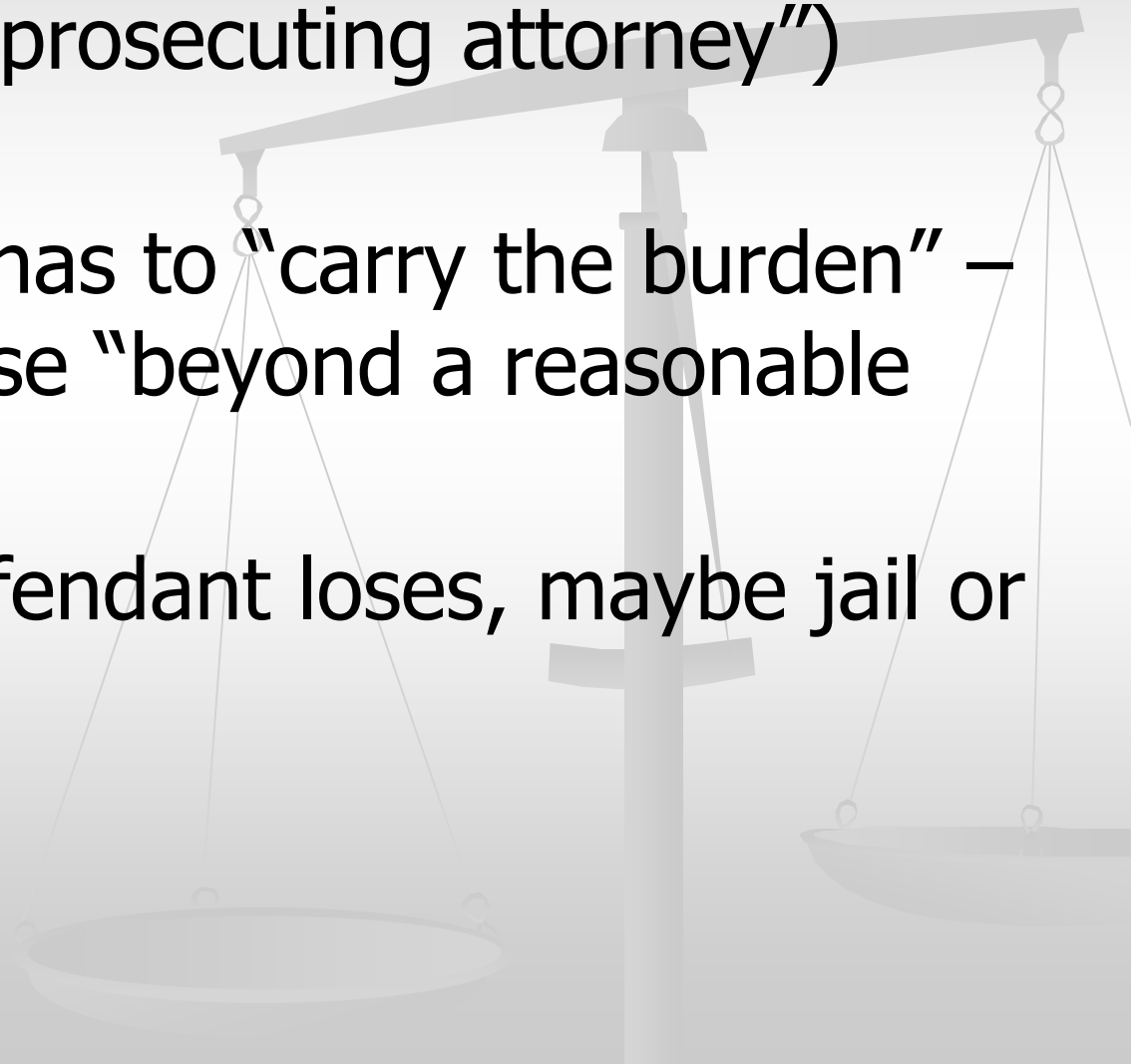
More review: Civil v. Criminal

- When you go into a courthouse, there appears to be only one court system
- But if you sit through a number of sessions, you'll see two styles of cases
- In the **criminal cases**, the government is chasing someone
- The person being chased by the government is often in custody during the trial



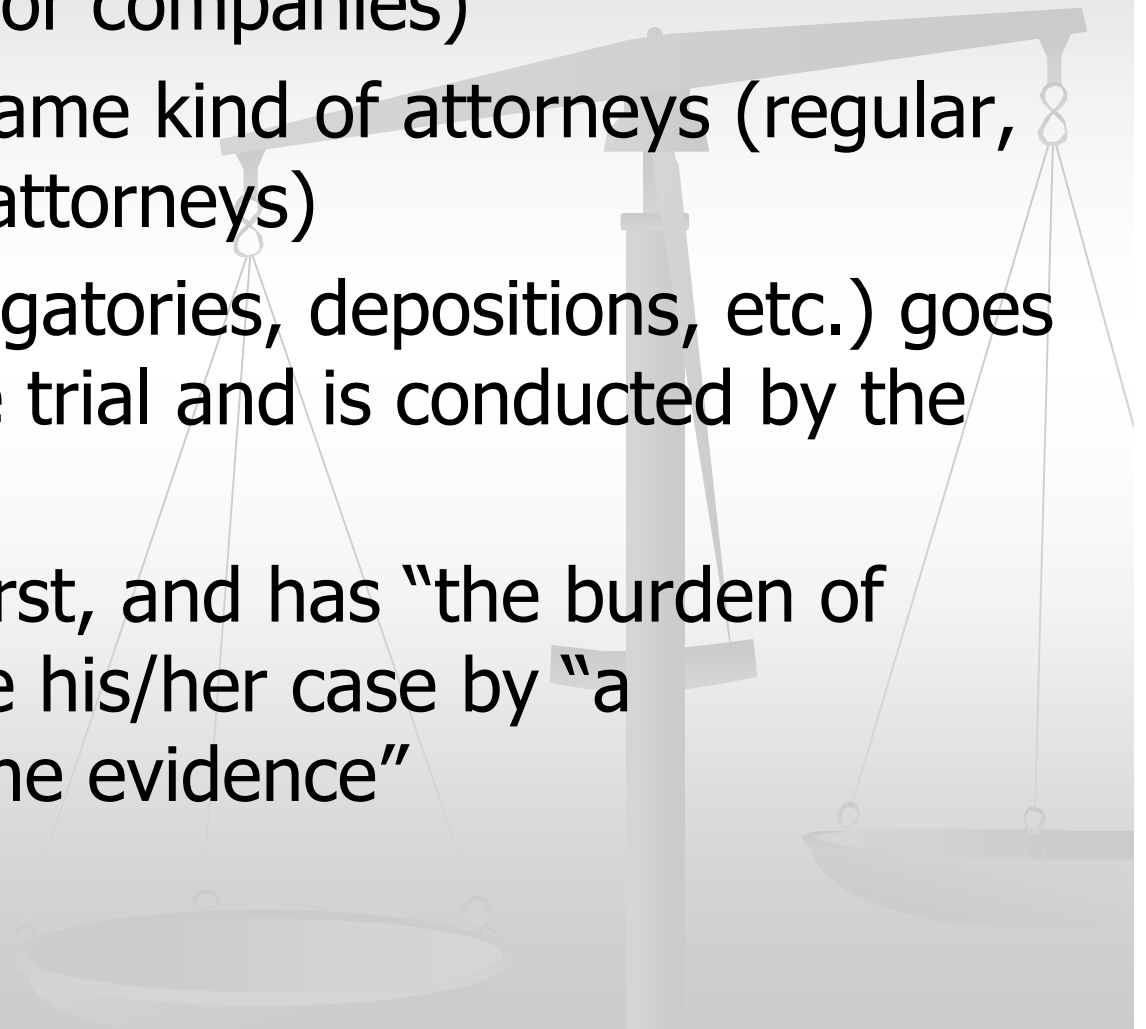
More review: Civil v. Criminal

- The government's attorney (the "district attorney" or "the prosecuting attorney") stands up first
- The government has to "carry the burden" – must prove its case "beyond a reasonable doubt"
- If the criminal defendant loses, maybe jail or a fine



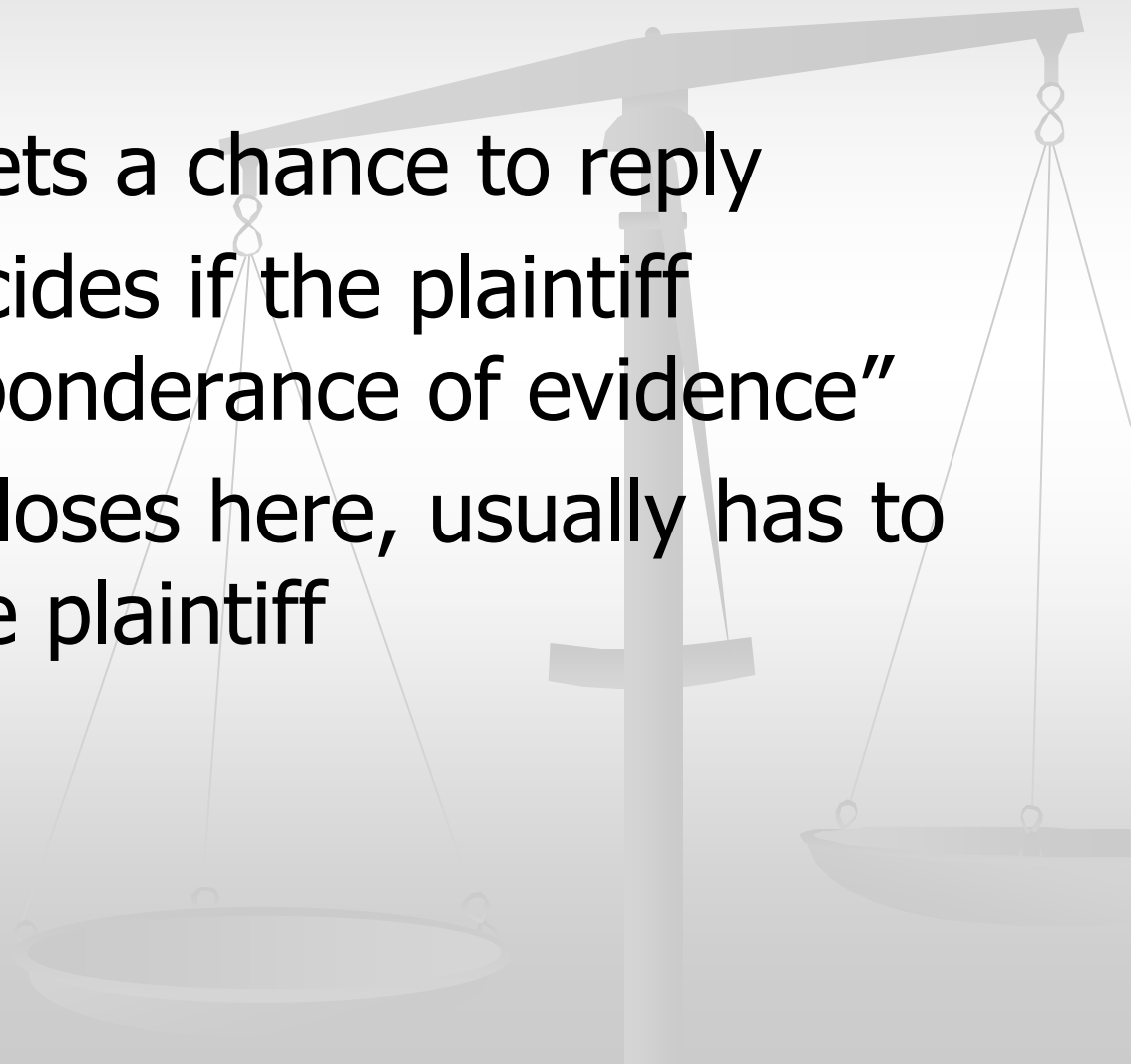
More review: Civil v. Criminal

- In **civil cases**, the dispute is between two parties (usually individuals or companies)
- Each side has the same kind of attorneys (regular, non-governmental attorneys)
- “Discovery” (interrogatories, depositions, etc.) goes forward *before* the trial and is conducted by the parties themselves
- The plaintiff goes first, and has “the burden of proof” – must prove his/her case by “a preponderance of the evidence”



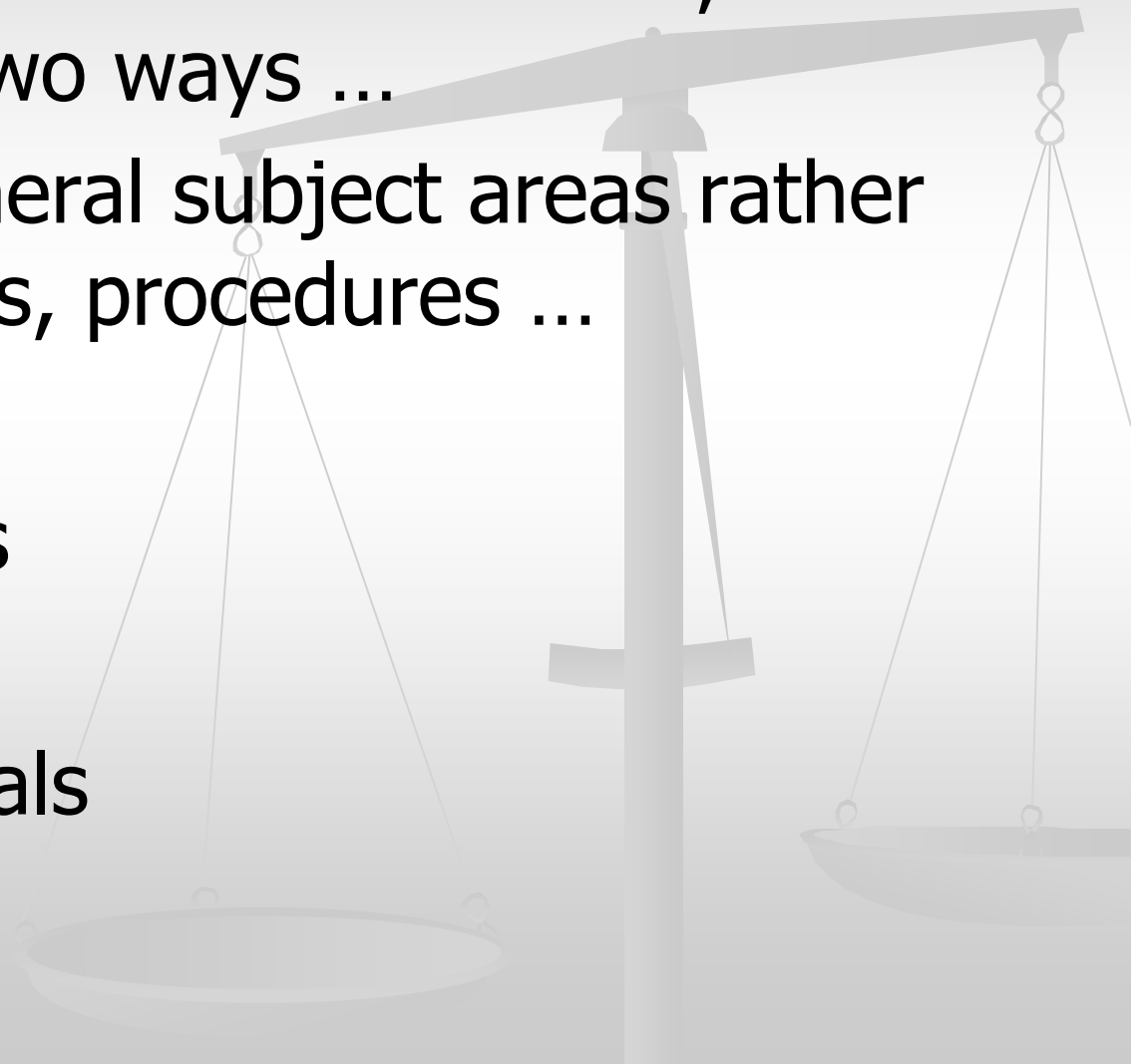
More review: Civil v. Criminal

- $> 50\%$
- $\neq 50\%$
- The defendant gets a chance to reply
- Judge or jury decides if the plaintiff produced “a preponderance of evidence”
- If the defendant loses here, usually has to pay money to the plaintiff



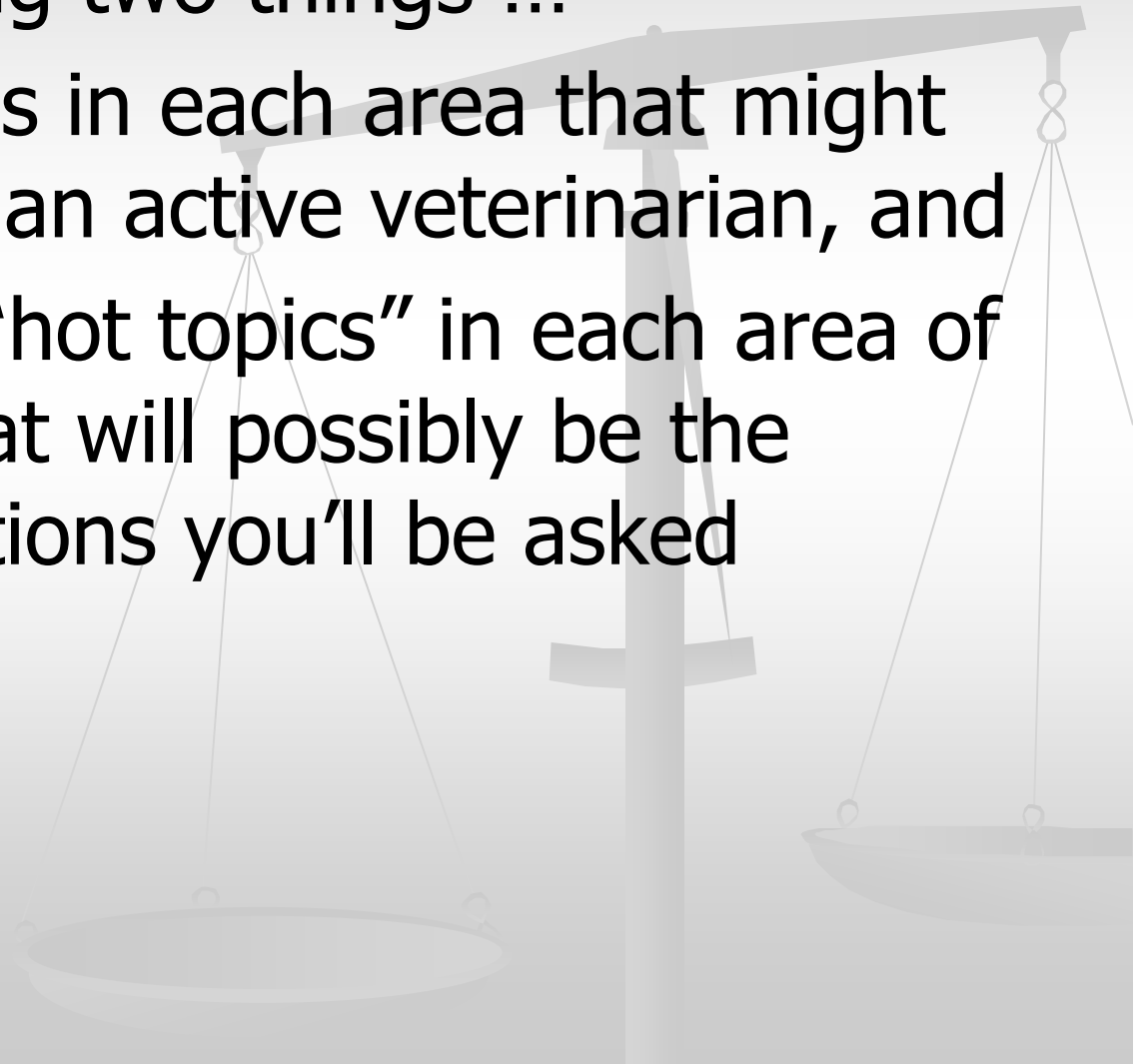
Change of pace

- With the next 4 hours of the course, we change pace in two ways ...
- ... we look at general subject areas rather than specific rules, procedures ...
- Wildlife
- Research animals
- Farmed animals
- Companion animals



Change of pace

- We are assessing two things ...
- ... some specifics in each area that might apply to you as an active veterinarian, and
- ... some of the “hot topics” in each area of “animal law” that will possibly be the subject of questions you’ll be asked



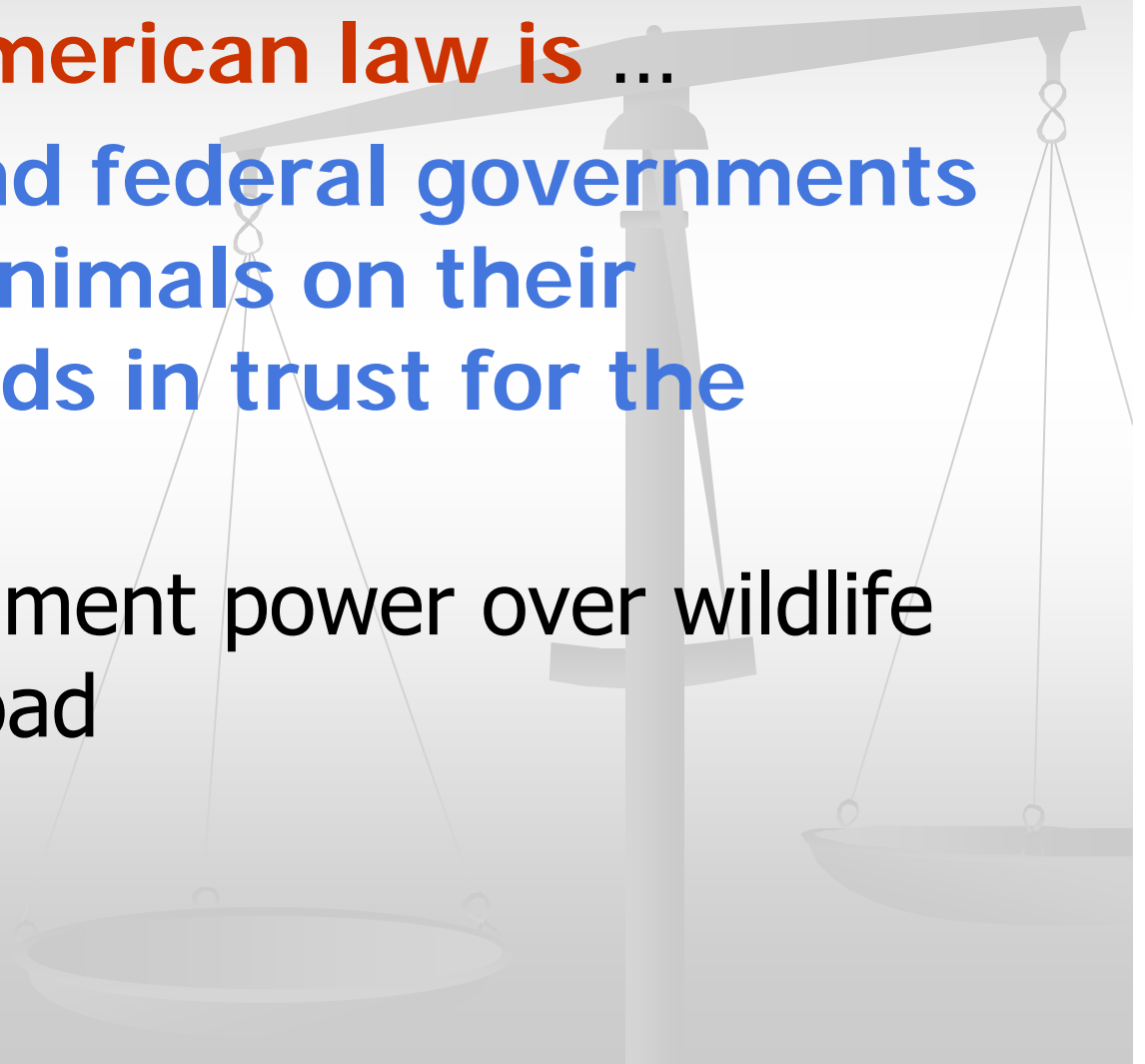
Wildlife and the law



- How many have worked in any way with wildlife?
- How many plan to work with full-time with wildlife?
- How many will work with part-time with wildlife?
- Practically speaking, how are questions about what to do resolved?
- Who are the “owners” of wildlife?

“Black letter law”

- Tannenbaum (1995, 529), “**The basic principle of American law is ...**”
- ... **the state and federal governments own all wild animals on their respective lands in trust for the people.”**
- Upshot—government power over wildlife is extremely broad



More “black letter law”

- In American law, a wild species is a species that is not domesticated, that has not been tamed for economic uses, or typically does not live in association with people
 - So the inquiry about which animals are “wild” is at the level of species, *not* at the level of the individual animal
 - Legally, “feral” ≠ “wild”
- 

Tannenbaum 1995

- “[There] appears to be virtually universal enthusiasm among veterinarians about the profession’s growing involvement in the treatment and protection of wildlife.” [p.527]
- Is this true in your experience?
- If so, what does this signal?
- On same page, Tannenbaum notes “**many difficult ethical issues**” arise with wildlife
- We discuss in the third-year course
- Here we ask, *what about legal issues?*

Other general features of “law and wild animals”

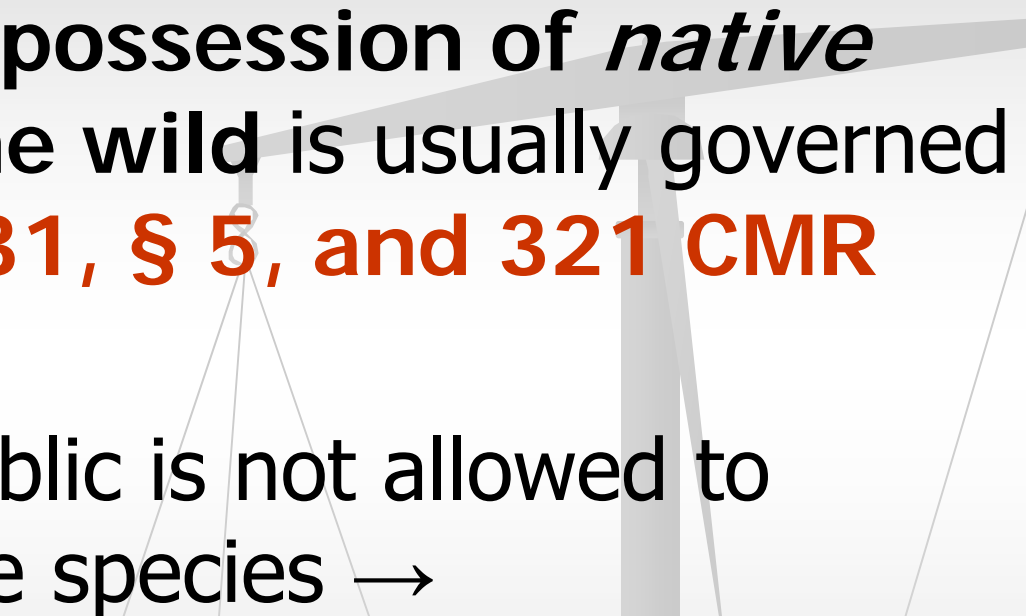
- **State law controls generally ...**
 - **... but federal law can override**
 - recall “preemption” concept already discussed
 - Governments give permission either in blanket form (as with state rules allowing exotic birds and aquarium fish to be kept as pets), **or through licenses**
- 

Other general features of “law and wild animals”

- **Requirements vary from state to state**
- Upshot—you must know
 - **local laws**
 - **state laws**
 - **federal laws**



More general “stuff”

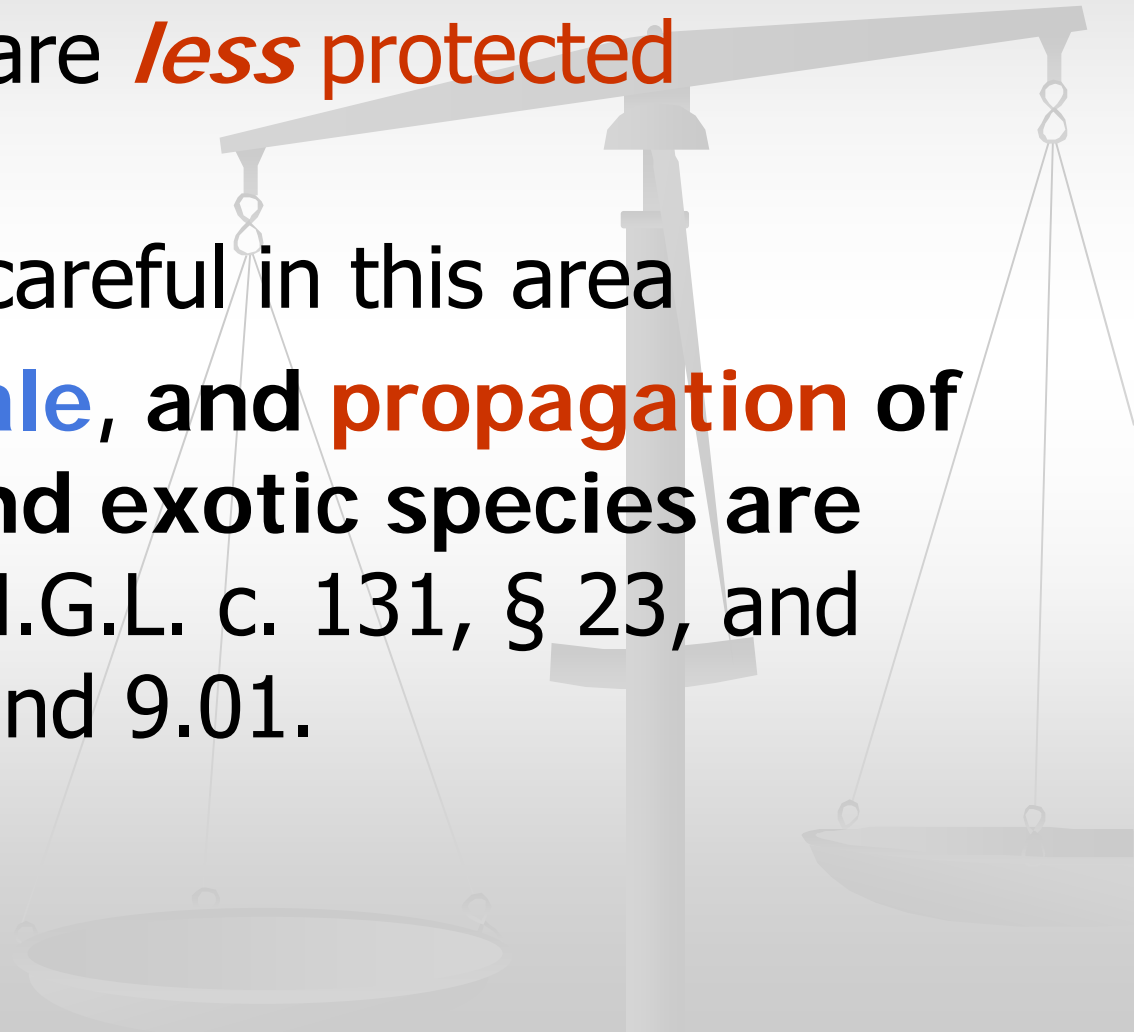
- The taking and possession of *native species from the wild* is usually governed (**M.G.L. c. 131, § 5, and 321 CMR 3.05**) 
- Generally, the public is not allowed to rehabilitate native species →

More general “stuff”

- Raccoons, *not* legal in Massachusetts absent special permission, are legal as pets in some neighboring states (such as New Hampshire)...
- ... can mean that clients of MA-licensed veterinarians might bring in technically illegal animals

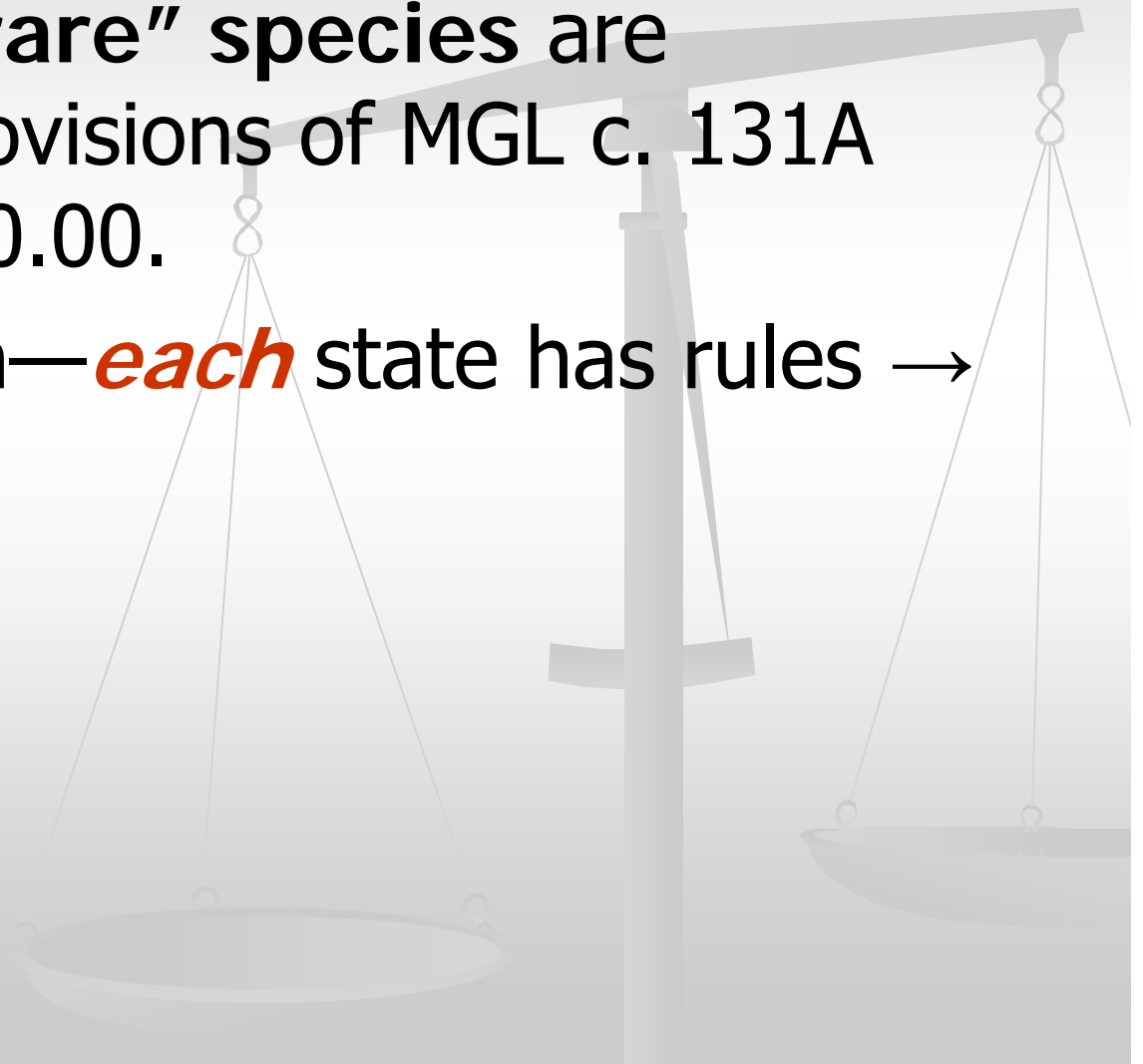
Non-native species

- Non-native species, often considered “pest” species, are *less* protected generally ...
- ... *but* be very careful in this area
- **Possession, sale, and propagation of both native and exotic species are governed by M.G.L. c. 131, § 23, and 321 CMR 2.12 and 9.01.**



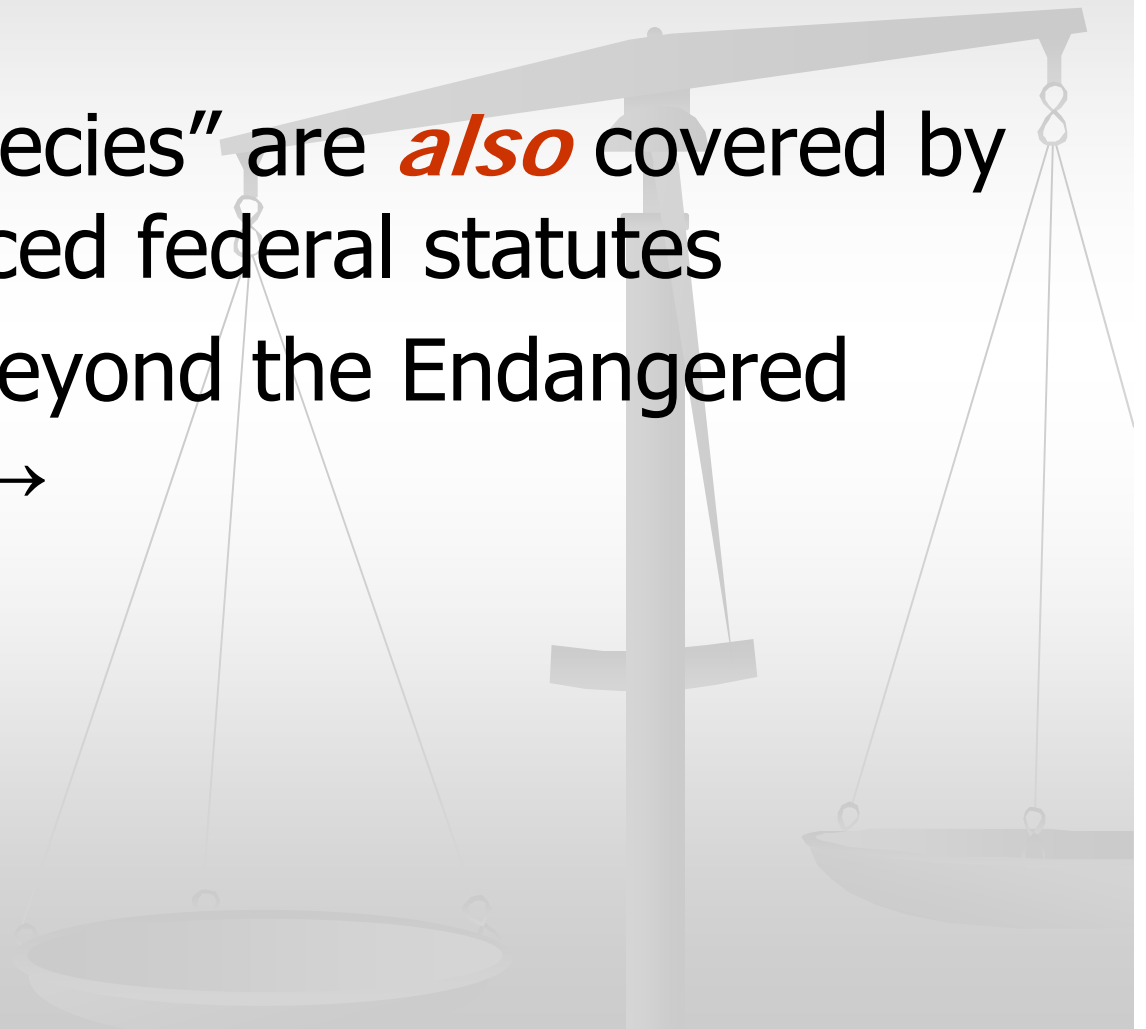
Rare species

- **State-listed “rare” species** are governed by provisions of MGL c. 131A and 321 CMR 10.00.
- Note implication—*each* state has rules →
→



Rare species

- **Strict penalties** may be applied to violations
- “Endangered species” are *also* covered by powerful, enforced federal statutes
- These go well beyond the Endangered Species Act → →

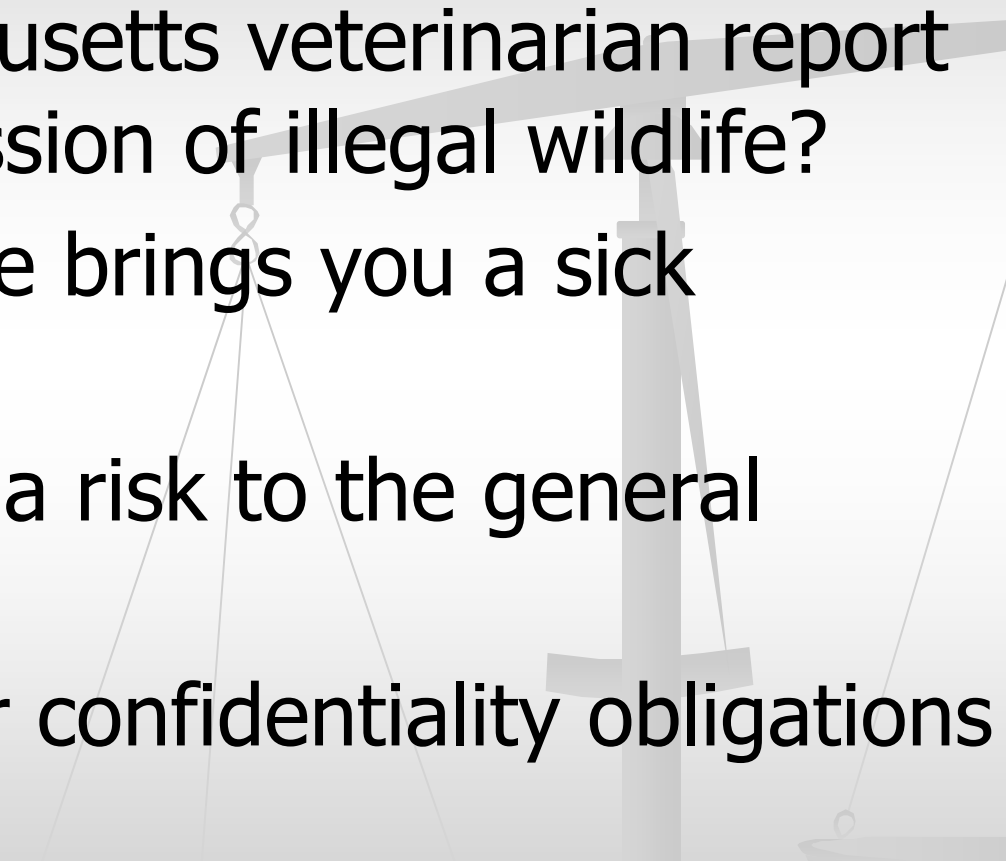


Relevant Federal laws

- E.g., Migratory Bird Treaty Act covers geese
- E.g., Marine Mammal Protection Act
- E.g., Bald Eagle Protection Act



Consider this question

- Must a Massachusetts veterinarian report a client's possession of illegal wildlife?
 - What if someone brings you a sick primate?
 - What if there is a risk to the general public's health?
 - How would your confidentiality obligations play out here?
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Good Samaritan exemption

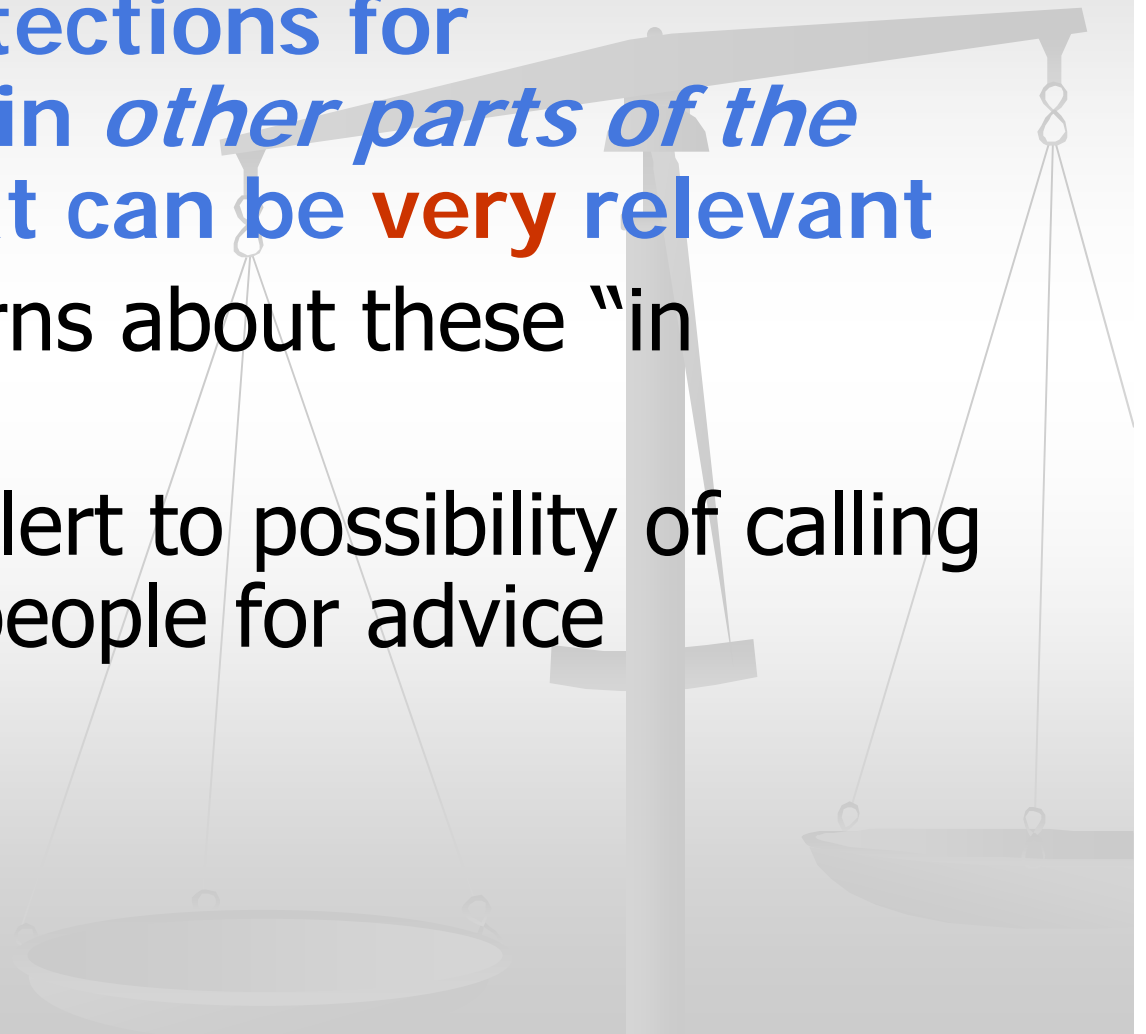
- States often have a regulation allowing veterinarians to temporarily treat sick and injured wild animals →
- Massachusetts 321 CMR Section 2.12(12) – much like Section 58A of the MA practice act
- Source: **a law other than MA practice act that governs** veterinarians → → →

Good Samaritan exemption

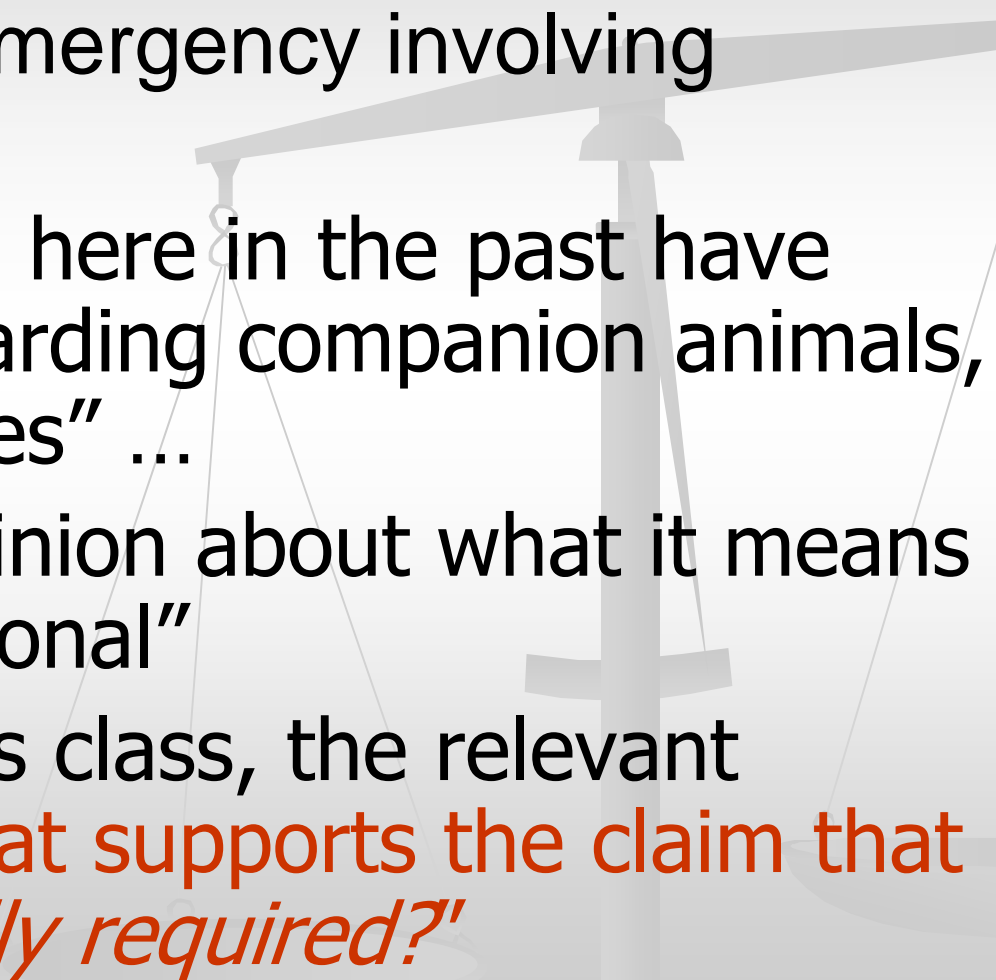
- “(12) Exemption. Licensed veterinarians temporarily treating sick and injured animals are exempt from the licensing requirements provided that: (a) accurate records are kept on forms provided by the Director and submitted annually not later than January 31; and (b) the Director is notified immediately of the presence of any endangered, threatened or special concern species listed pursuant to the U.S. Endangered Species Act or to 321 CMR 10.60.”
- **Administratively technical, paperwork-intensive**

Important lesson

- There are protections for veterinarians in *other parts of the state laws* that can be **very** relevant
- One usually learns about these “in context”
- But always be alert to possibility of calling state’s wildlife people for advice



... a practical problem ...

- ***Must a vet stop*** when he or she encounters an emergency involving wildlife?
 - Some professors here in the past have taught that, regarding companion animals, the answer is “yes” ...
 - An important opinion about what it means to be a “professional”
 - But, for us in this class, the relevant question is, “**What supports the claim that stopping is *legally required?***”
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Does law require this?

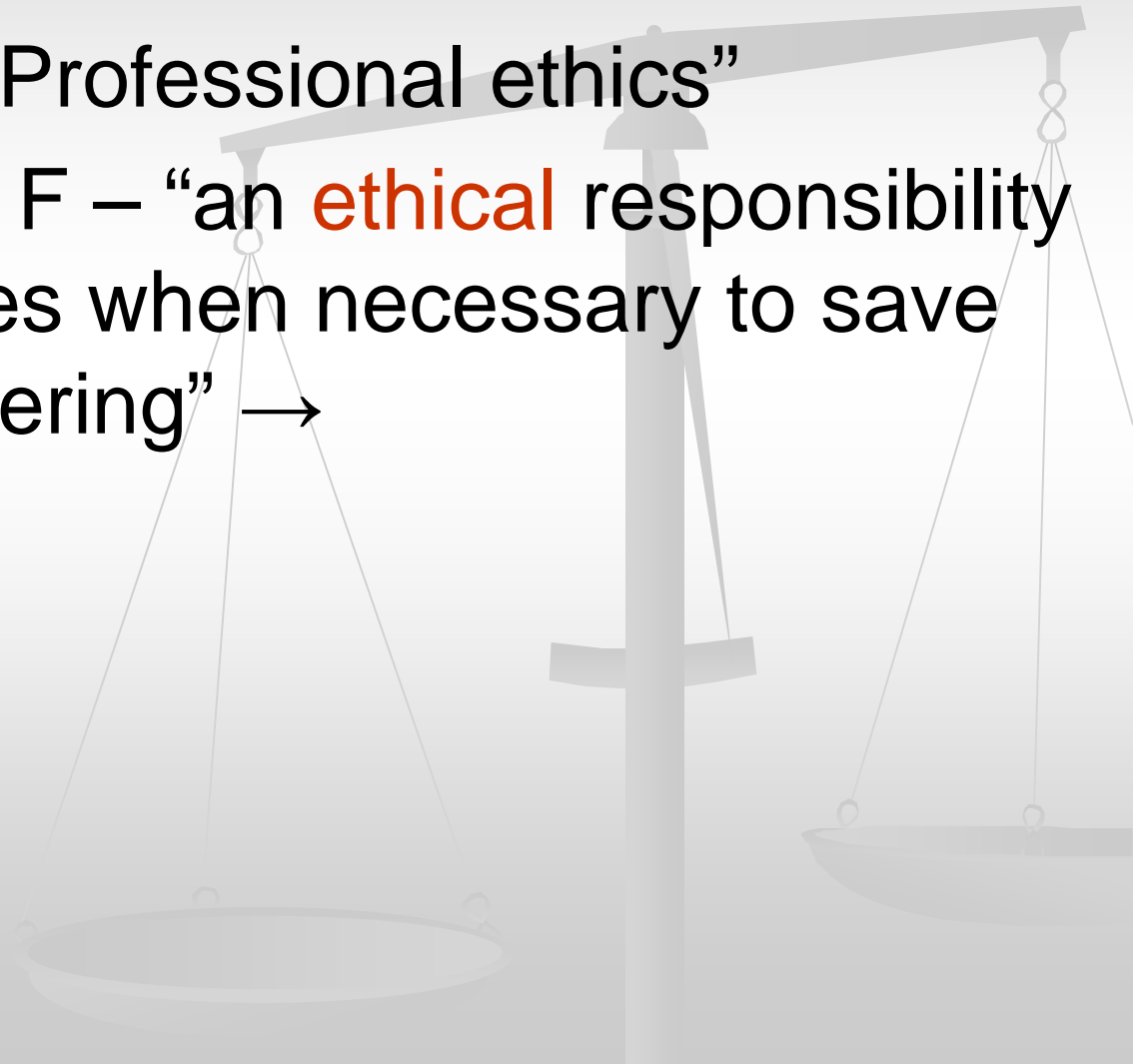
- Using criteria found in the “Law” box
- “Code of Professional Conduct” in MA Regs (7.01) doesn’t establish this obligation
- Why? ... an obvious possibility ...
- Practical problems of requiring veterinarians to treat injured wildlife
- MA practice act, Section 58A exempts the treating veterinarian from liability – it does NOT say you MUST stop

Does law require this?

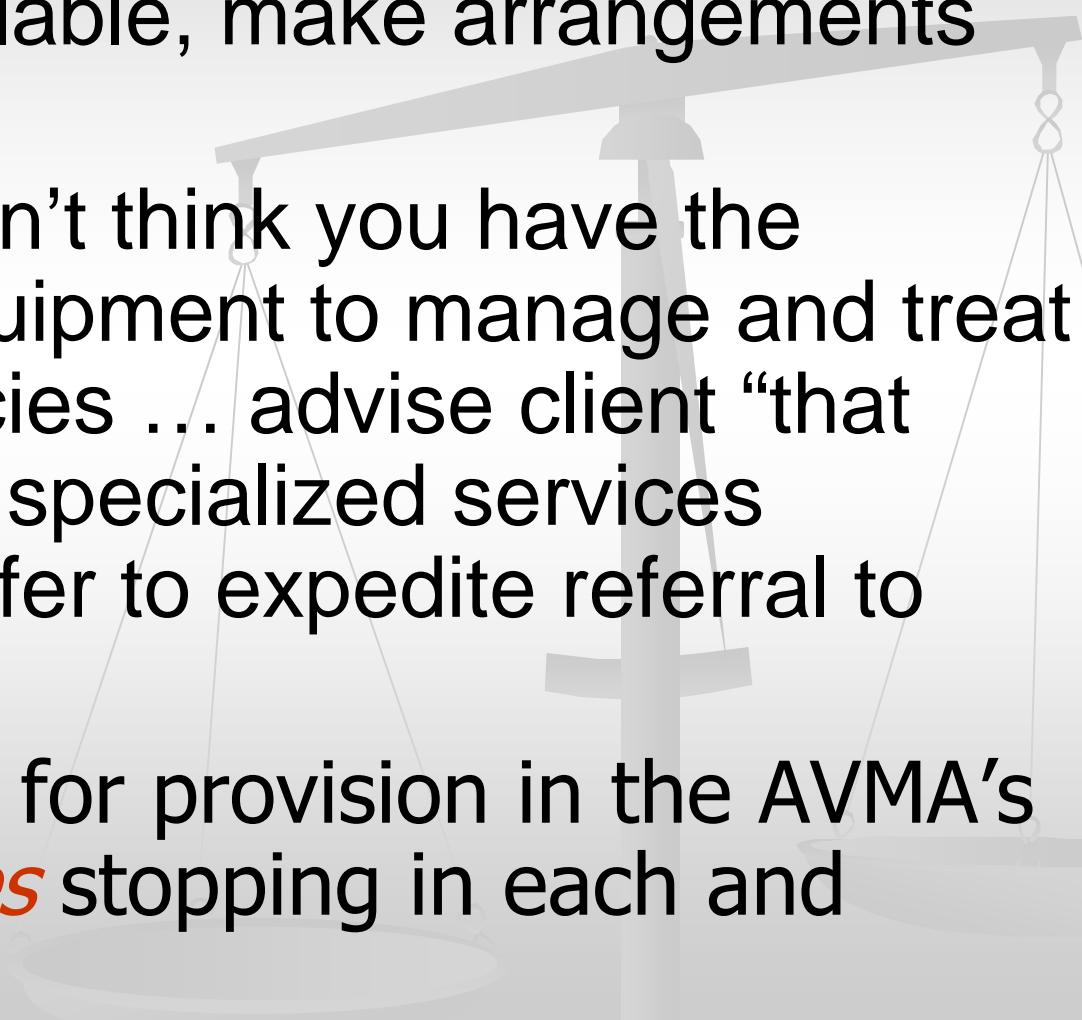
- Regs 7.01 (22), right to refuse to provide treatment due to “inadequacy of the facilities then available”
- Note the qualification “animal already on premises” of (22) (page 36 of Syllabus)
- 7.01 (30) right to set your own policy on emergency coverage – implication is that YOU make the decision

Does “professionalism” *require* this?

- Using criteria of “Professional ethics”
- AVMA’s PVME II F – “an **ethical** responsibility to provide services when necessary to save life or relieve suffering” →



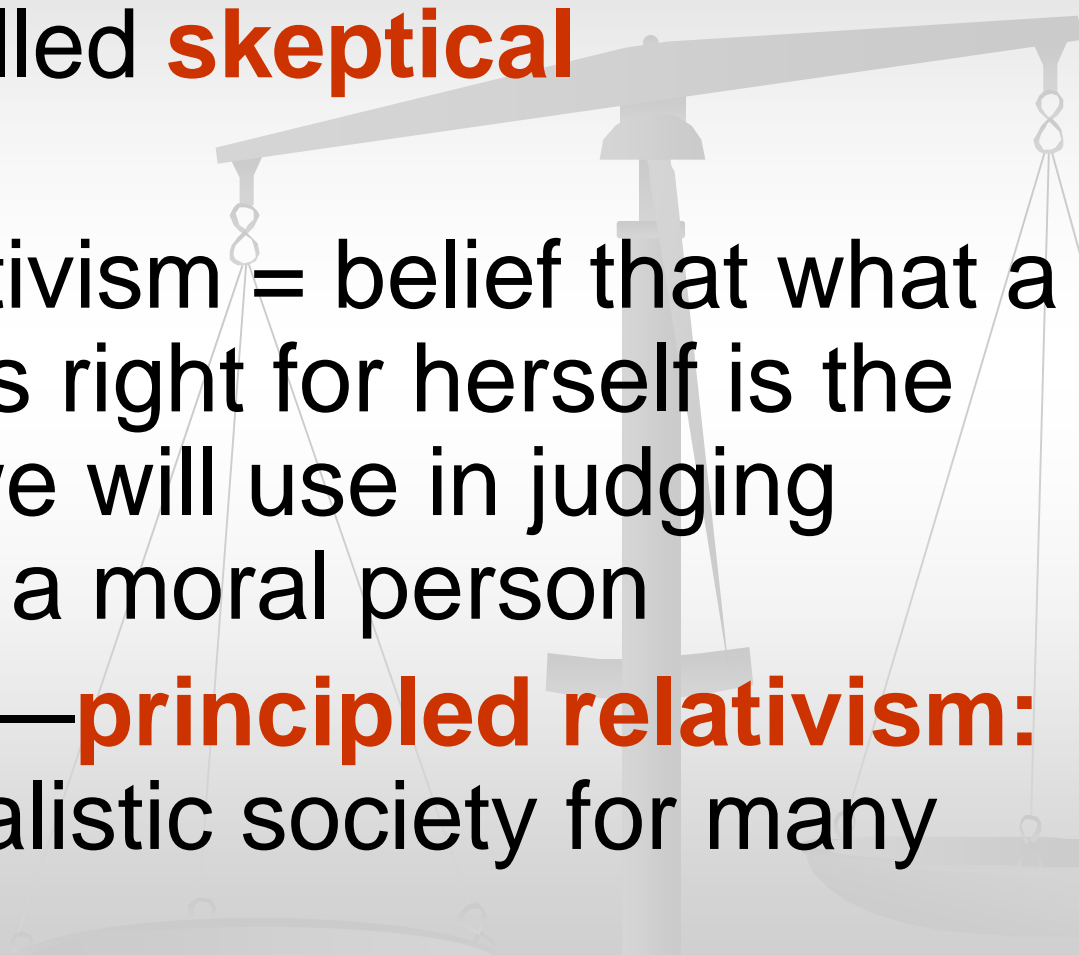
Does “professionalism” *require* this?

- II F.1 ... if unavailable, make arrangements with colleagues
 - II F.2 ... if you don't think you have the experience or equipment to manage and treat certain emergencies ... advise client “that more qualified or specialized services elsewhere and offer to expedite referral to those services.”
 - Searching in vain for provision in the AVMA's code that *requires* stopping in each and every emergency
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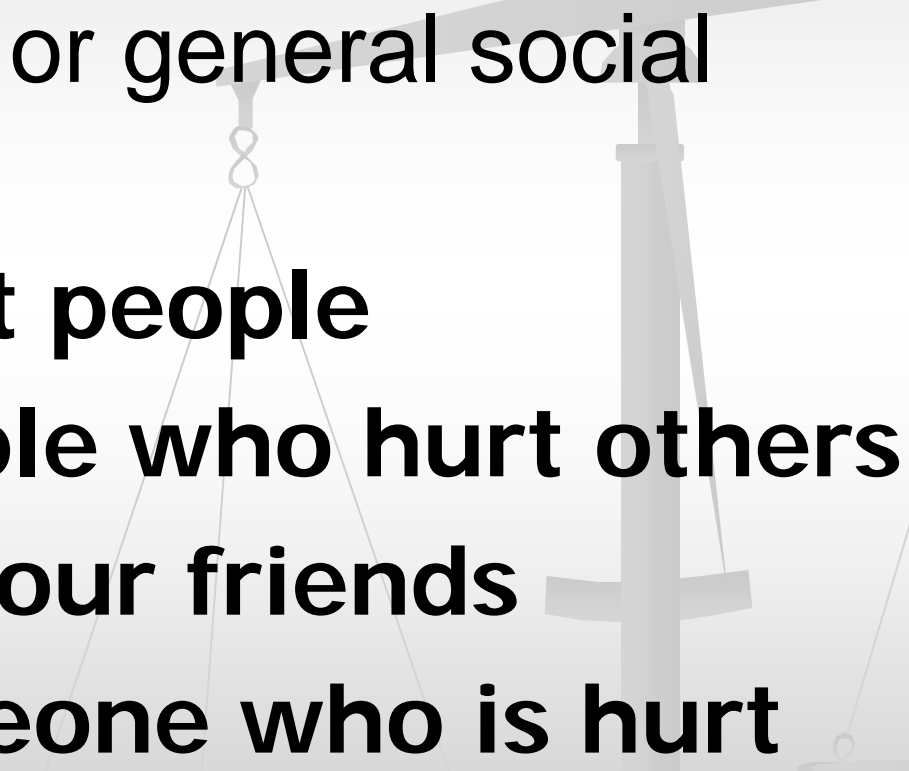
How about personal ethics?

- Personal ethics or personal values and conscience might dictate that you stop
- An aside on “personal ethics” ... this is *your* realm ... but consider there are some limits ...
- **None** of us holds that, in matters of personal ethics, “anything goes” ... →

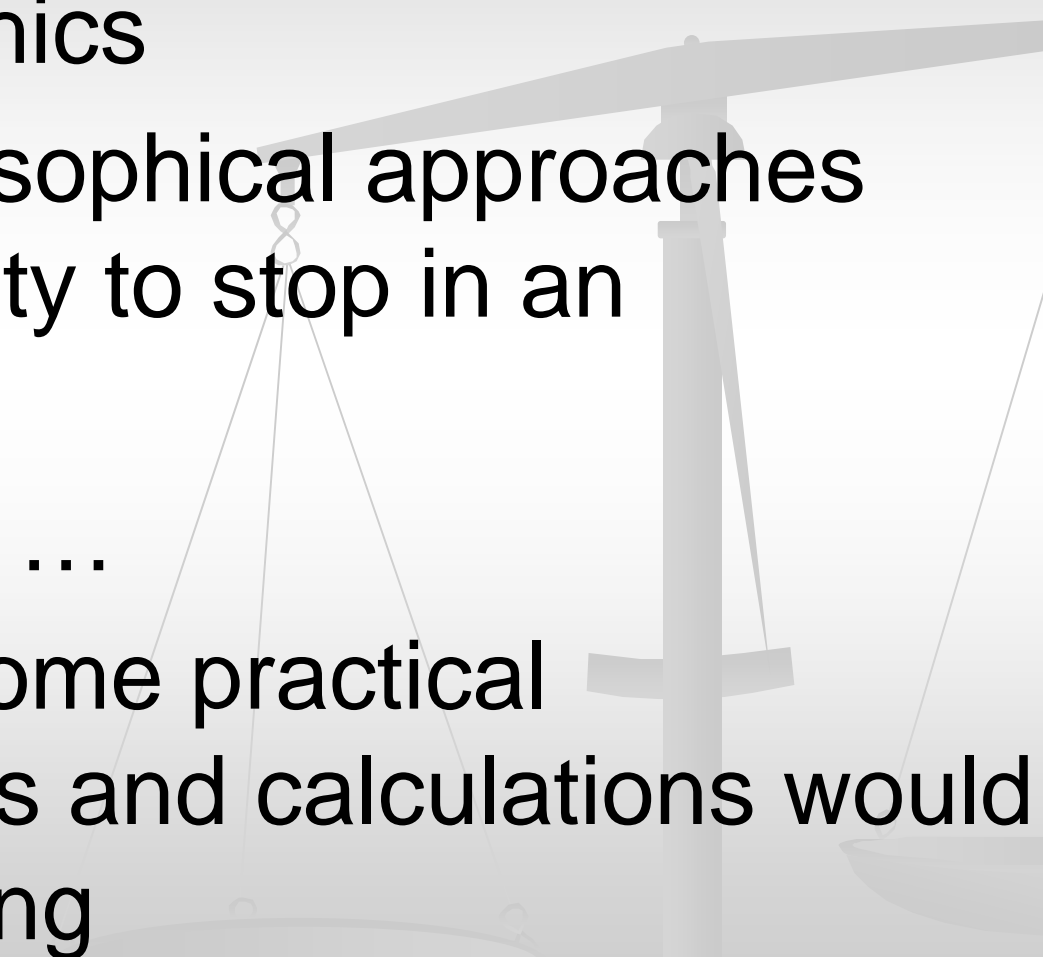
... aside on personal ethics ...

- E.g., we *all* reject complete relativism (sometimes called **skeptical relativism**) ...
 - Skeptical Relativism = belief that what a person thinks is right for herself is the *sole* criterion we will use in judging whether she is a moral person
 - Different issue—**principled relativism**: needed in pluralistic society for many reasons
- 

... the other boxes on issue of emergency involving wildlife ...

- Social ethics or general social expectations
 - **Don't hurt people**
 - **Stop people who hurt others**
 - **Stick by your friends**
 - **Help someone who is hurt**
- 

... the other boxes on issue of emergency involving wildlife ...

- Normative Ethics
 - Some philosophical approaches dictate a duty to stop in an emergency
 - Some don't ...
 - Prudence—some practical considerations and calculations would dictate stopping
- 

Hypothetical



- A vet happens upon an injured wild animal, and decides to help
- Section 58A – MA law provides immunity if “under such emergency conditions he orders an animal hospitalized or causes his admission to such hospital”
- What would happen in the real world?

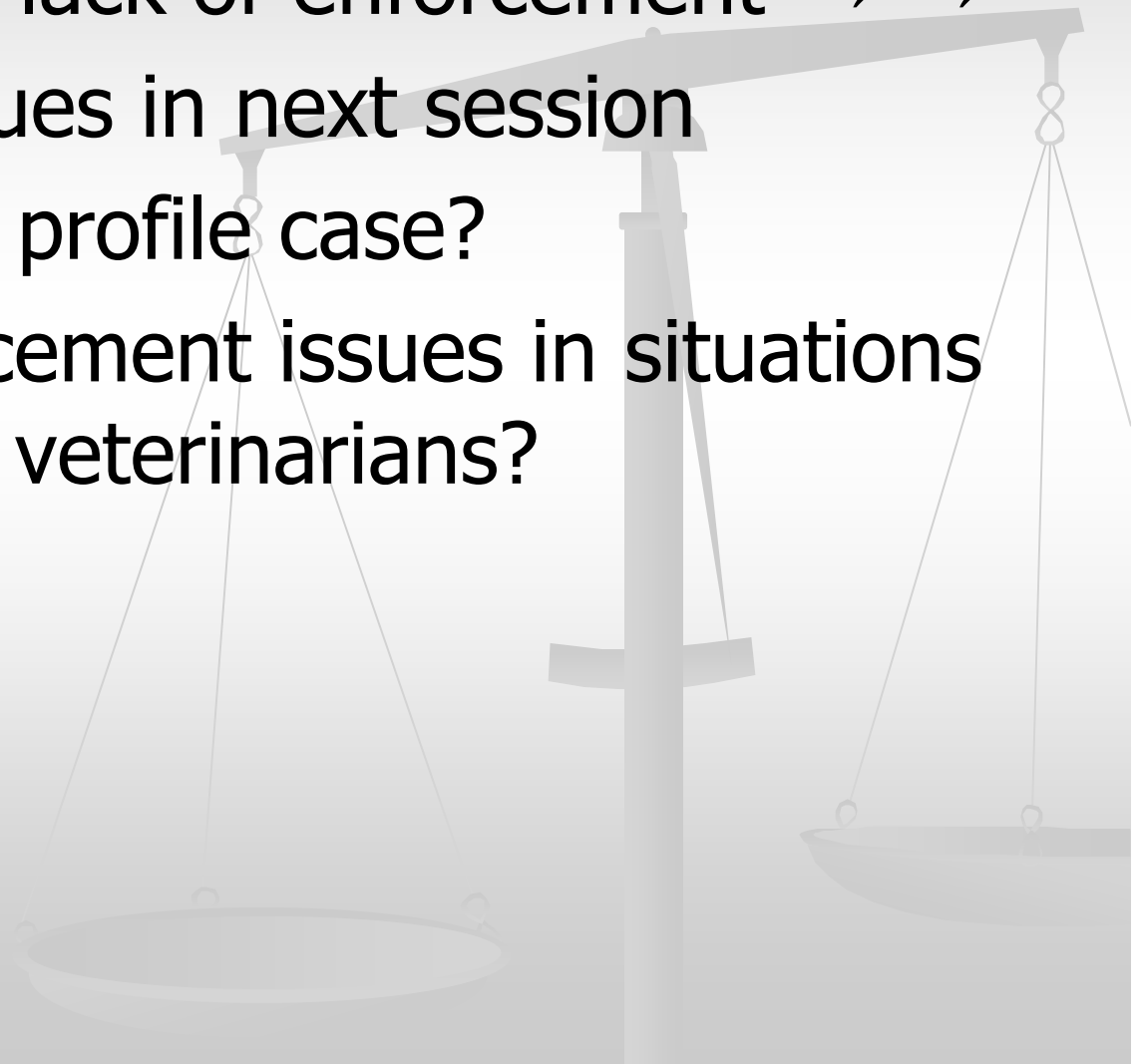
General observations

- Lots of laws deal with wildlife ...
- ... but some areas remain **unregulated** ...
- ... but even those that are regulated may at times be **unenforced** → →
- E.g., humane regulations are supposed to apply

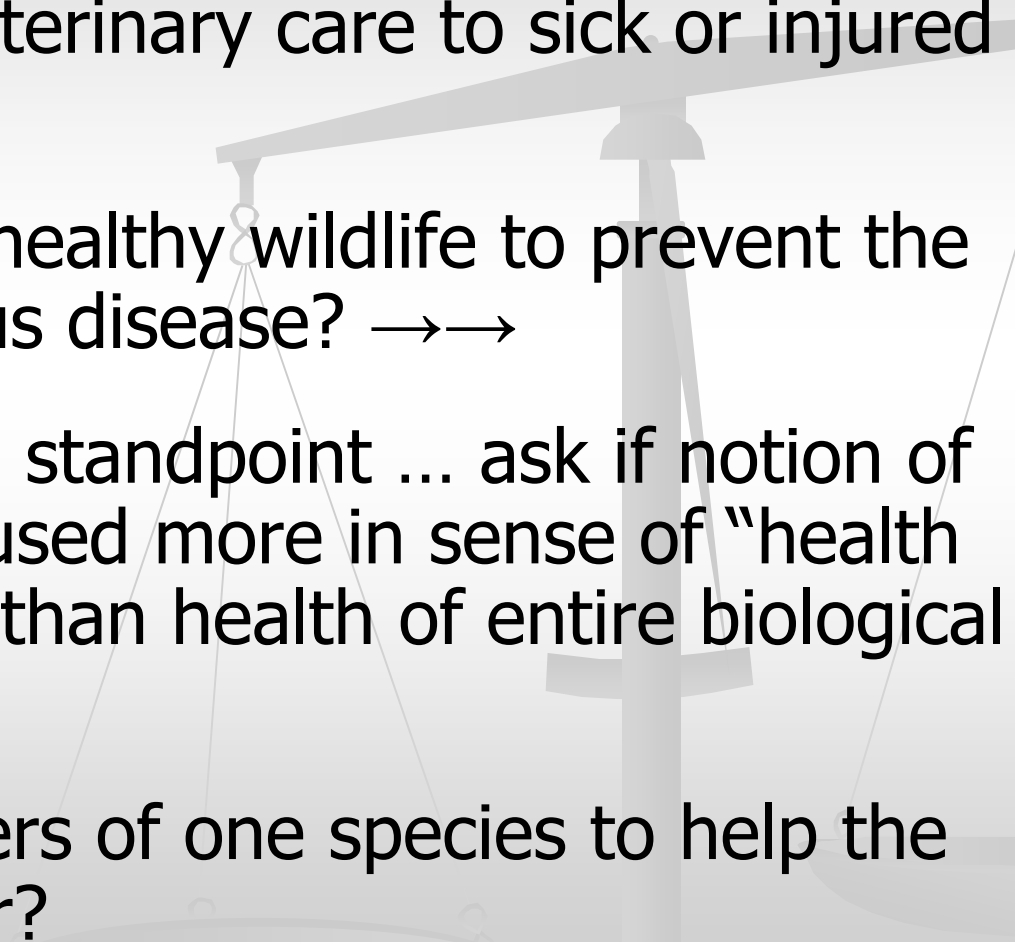


General observations

- But realities are lack of enforcement → →
- Food animal issues in next session
- Occasional high profile case?
- ... special enforcement issues in situations encountered by veterinarians?

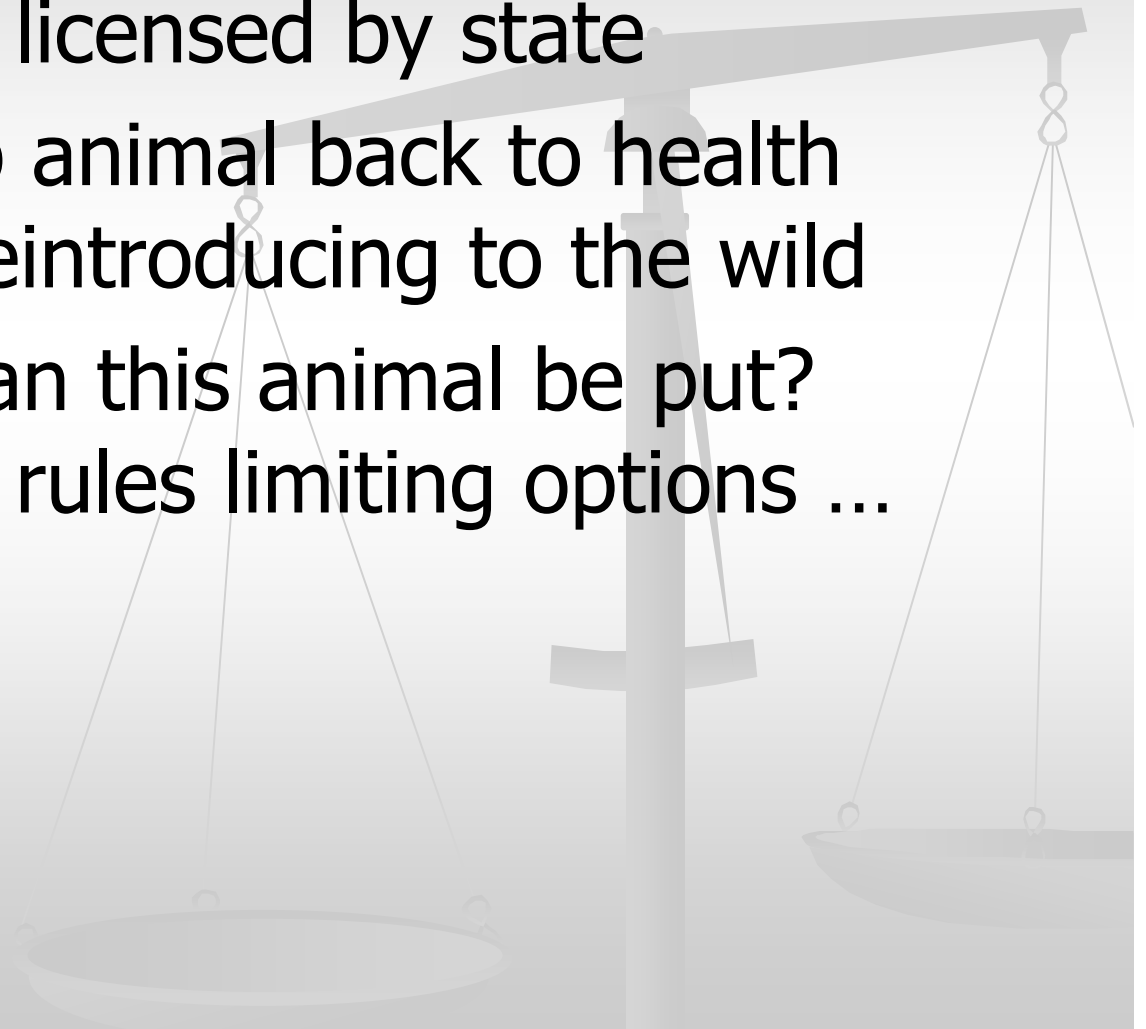


Wildlife dilemmas— distinguishing law from ethics

- Do you provide veterinary care to sick or injured wild animals?
 - Do you slaughter healthy wildlife to prevent the spread of infectious disease? →→→
 - From an analytical standpoint ... ask if notion of “public health” is used more in sense of “health of humans alone” than health of entire biological community
 - Do you kill members of one species to help the survival of another?
- 

Problem areas

- Rehabilitators – licensed by state
- Scenario ... help animal back to health with a goal of reintroducing to the wild
- Issue—where can this animal be put?
There are often rules limiting options ...



Problem areas

- Student story – North Carolina bird hit by car
- ... driver picks bird up, drives to NH ...
- but nutritional deficiencies ... bird can't be put back into the wild in NH
- Bear cub handled by people – so socialized that can't go back into the wild ...

Next session

- Research Animals

