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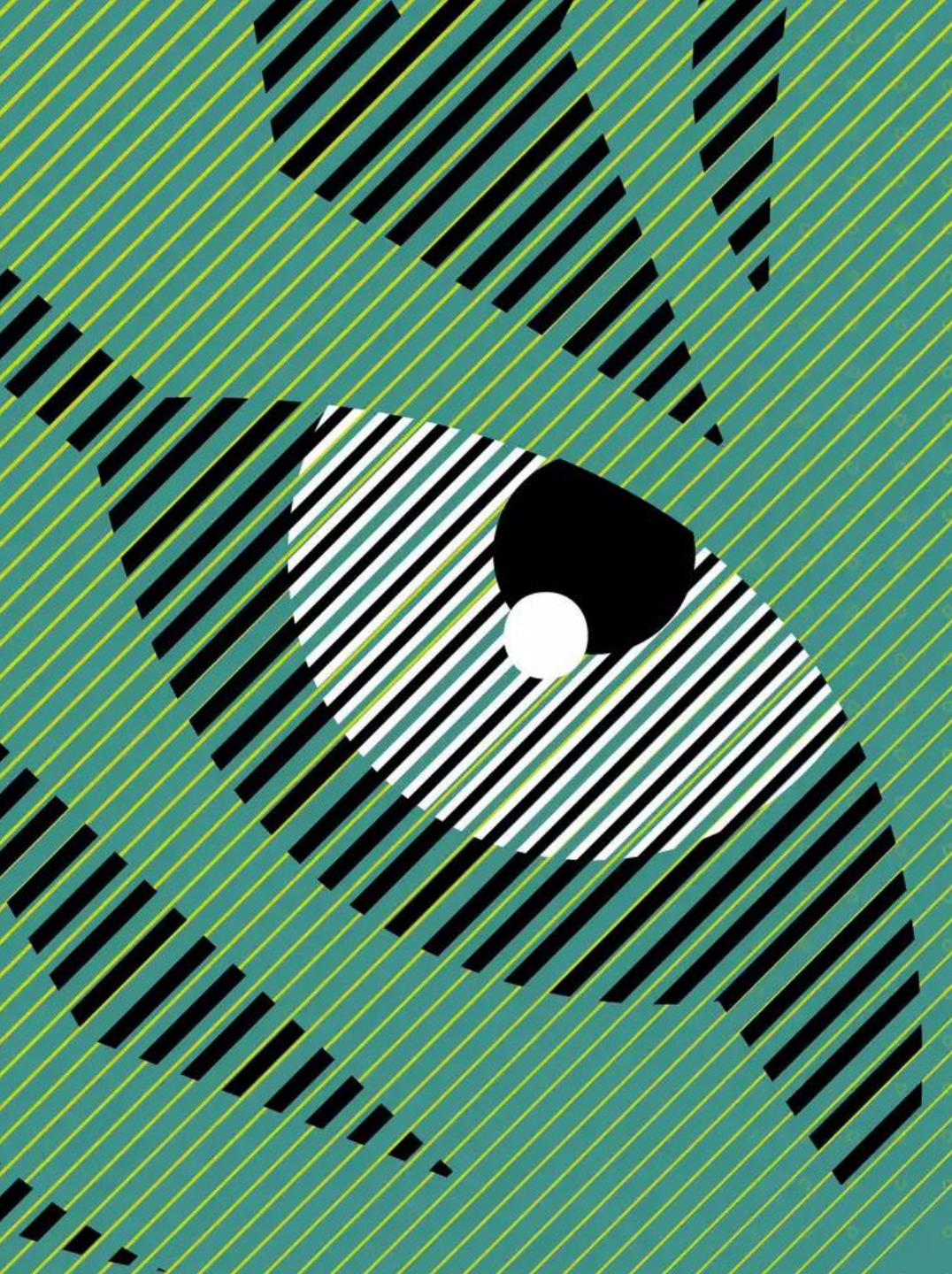


Animal Rights Law

SS 2026

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Unit 5:

Personhood for animals

Overview

- 1) Animals as Persons or Things
 - Abolitionism and its critique (student presentation 4)
 - New welfarism: Things holding rights (student presentation 5)
- 2) The current in-between status of animals as neither things nor persons
 - The dereification of animals
 - Social membership of animals (student presentation 6)
 - Animals as family members
- 3) Avenues to personhood for animals
 - Traditional views of personhood
 - The bundle theory of personhood (student presentation 7)
 - Habeas corpus petitions for animals (student presentations 8 + 9)

The dereification of animals



Quebec



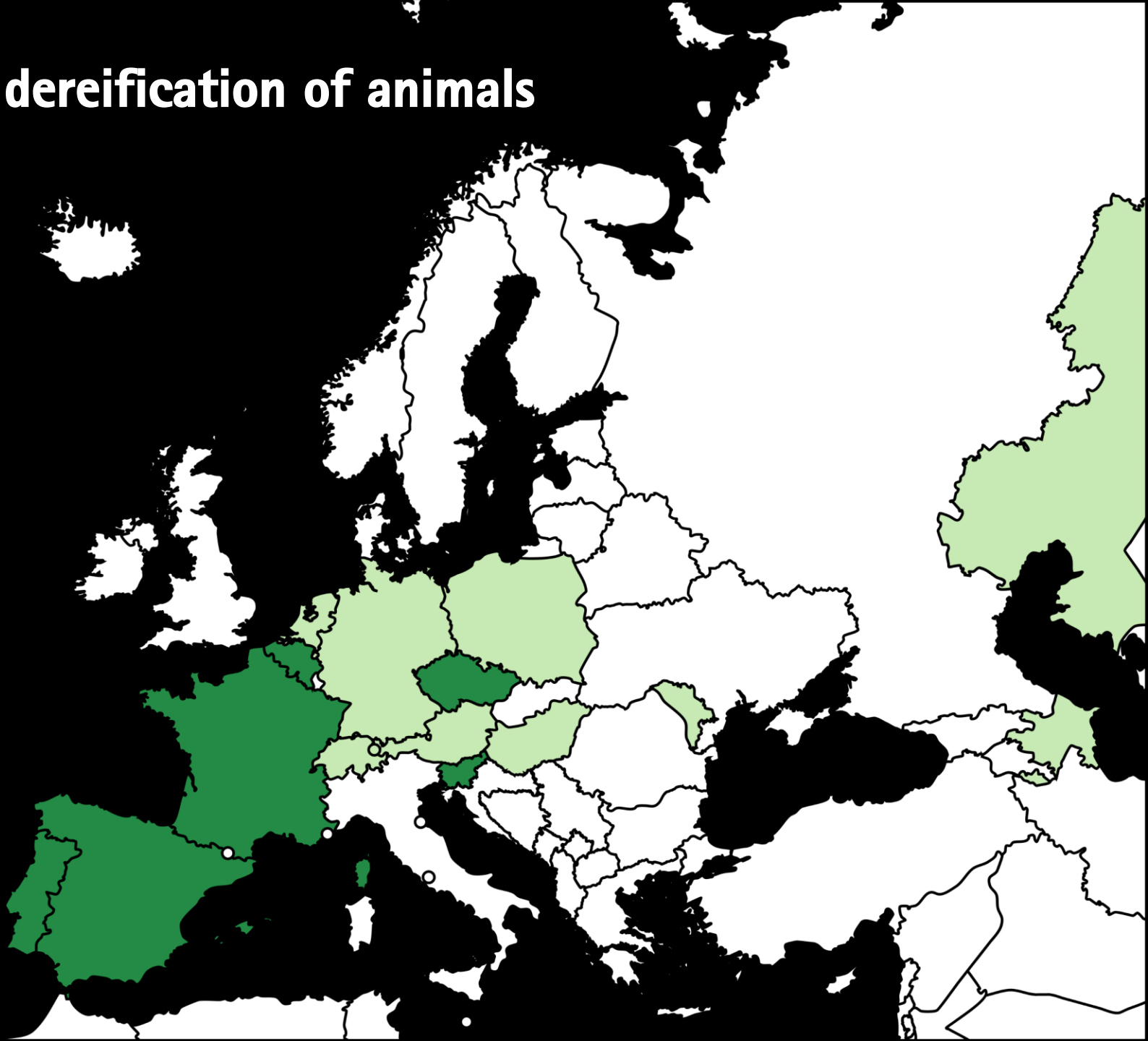
„not things“



*„not things“
+ „sentient being“*



Colombia



The dereification of animals

- 18 states (mostly in Europe) have included a provision in their Civil Codes stating that animals are **not things** (first Austria in 1988, Germany in 1990)

§ 90a Civil Code (Germany), since 1990

Animals are **not things**. They are protected by special statutes. The provisions that apply to things are to be **applied accordingly** to animals, unless otherwise provided.

- 8 of these states add a **positive definition** of animals as sentient beings or similar (Belgium, Colombia, Czech Republic, France, Portugal, Quebec, Slovenia, Spain)
- The other 10 states merely provide for a **negative definition** (Azerbaijan, Austria, Germany, Hungary, Kazakhstan, Liechtenstein, Moldavia, Netherlands, Poland, Switzerland)
- Typically, these changes have been accompanied by ancillary private law adjustments:
 - The **compensation for damage** inflicted on an animal may exceed its market price (*GER*: § 251 (2) Civil Code) and may include damages for **emotional distress** (France, Italy, Portugal, Spain, USA)
 - Reference to **animal protection law** (*GER*: § 903 Civil Code, § 765a (1) Code of Civil Procedure)
 - Exemption from **attachment by creditors** (*GER*: § 811 (1) No. 8 Code of Civil Procedure)
- In some states, courts have relied on the "non-thinghood" of animals to take into account or strengthen animal interests in the interpretation of other provisions.
⇔ ECJ, Felicísima v Iberia (2025): **animal = luggage** (limited liability for loss under Montreal Convention)

Case 6: Emotional distress from the killing of an animal

Seven years ago, A and B adopted the dog D from an animal shelter and have been living with him ever since as if he were a member of the family: D plays with A and B's child C, goes on holiday with them and often sleeps in A and B's bed.

One day, A is walking with D along a field path. Suddenly, farmer X turns his tractor from the adjacent road onto the path. In the blink of an eye, D is run over by B's tractor. The seriously injured dog has to be put down by a vet. As a result of her shock, A suffers from a severe adjustment disorder and a severe depressive episode, leading to long-term medication.



AI generated image

Is A entitled to compensation for her emotional distress if German law is applicable?

Case 6: Emotional distress from the killing of an animal

(adapted from BGHZ 193, 34)

Legal bases of claim: § 823 (1) Civil Code / § 7 (1) Road Traffic Act

A. Injury to A's health?

⇒ Restrictive conditions in case of shock:

- **Severity** of the shock (pathological level) (+)
- Primary injury to **close relatives**
⇒ animals as family members? ≈ here (+)
- **Reasonable** reaction (severity of the primary injury) (+)

But: legislator **explicitly excluded** compensation for injury of killing of animals in 1990 reform

Today: **Art. 20a Basic Law** requires different interpretation

B. Result (*Federal Court of Justice*): no compensation for A

Convincing alternative view in scholarly literature: compensation (+)

§ 333 bis Civil Code (Spain), since 2021

In the event that the **injury to a companion animal** has caused its death or a serious impairment of his physical or mental health, both his owner and those who live with the animal have the right to compensation **including reparation for the moral damage caused**.

Case 7: Who gets the dog?

X and Y are married. During their marriage, they decide to 'adopt' the dog D from the animal shelter. In the period that follows, it is mostly X who looks after the dog, takes him for walks or to the vet. After the marriage breaks down, they initially separate and are eventually granted a final divorce. In the meantime, D had remained with X. Y is now demanding that D be handed over to him, arguing that the running costs for D were paid by him, which is true.

Will Y be successful if German law is applicable?



§ 1568b Civil Code (Germany)

(1) Each spouse may demand that, on the occasion of the divorce, the other spouse make available to them the jointly-owned household objects and make them the owner if they depend to a greater degree than the other spouse on using them, taking into consideration the best interests of the children living in the household and of the circumstances of the spouses, or if this is equitable for other reasons.

(2) Household objects which were acquired during the marriage for the joint household for purposes of distribution are deemed joint assets of the spouses unless the sole ownership of the spouse is established.

Case 7: Who gets the dog?

(see, eg, [*Higher Regional Court Nuremberg, 7 December 2016 – 10 UF 1249/16*](#))

Legal basis of claim: § 1568b (1) Civil Code

A. Requirements of § 1568b (1) Civil Code

I. Household object

§ 90a Civil Code: not things, but provisions on things to be applied accordingly

II. Joint ownership

§ 1568b (2) Civil Code: presumption of joint ownership

- "adoption" = acquisition
- During marriage for joint household (+)

III. Greater dependence on using D (-)

IV. Considerations of equity

- § 90a Civil Code requires the **animal's own interest** to be taken into account
- Criteria comparable to interests of children (**home environment, quality of care, stability**)
- Ascertainable through **expert evidence** or **behaviour in the courtroom**
- Here: D is accustomed to X as caregiver, change would negatively affect him

B. Result: D's interests require that he stays with X. Y will not be successful.

Case 8: Inheritance for a cat

In his formally valid will, fashion designer L bequeaths a house and a bank account to his cat C. Following his death, L's descendants view themselves as his heirs and demand that the house and the bank account be included in the estate.

What is C's legal status if German law is applicable?

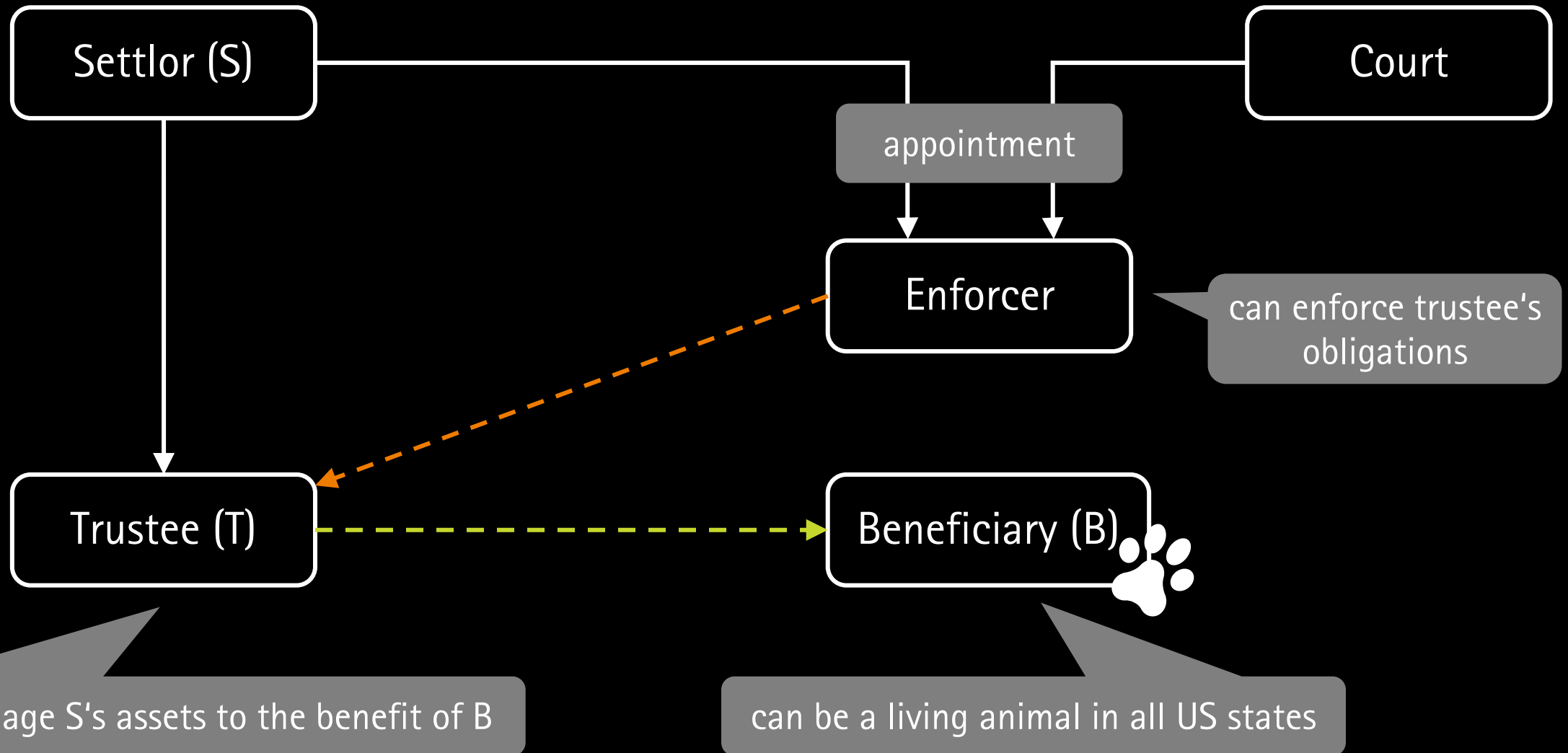


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§ 1940 Civil Code (Germany)

The deceased may by will oblige their heir or a legatee to perform an act without giving another person a right to the performance (testamentary burden).

„Pet trusts“ in the US



The dereification of animals

- The distinction between **persons and things** as principle categories of law is rooted in classical **Roman law** (lat. *persona/res*), albeit with slightly different meaning
 - **Slaves** had a hybrid status as persons (due their human nature) and things (being owned, subject to the absolute power of their master)
 - Animals as (moveable) things; some animals belonging to a **special category of things (*res mancipi*)** requiring special rituals for transfer of ownership also used for adoption and emancipating children
- In line with the modern dereification of animals, alternative positive classifications have been proposed for the legal status of animals:
- Living Property (*David Favre*):
 - Inclusion of **non-economic values** limiting ownership
 - Parallels to **parent-child-relationship** ⇒ animal **adoption** instead of sale; **guardianship** for animals
 - Funds held on **trust** for animals; animals as **beneficiaries** of contracts; "**equitable self-ownership**"
- Quasi-personhood/quasi-property (*Angela Fernandez*):
 - Personhood heavily linked to human beings
 - Quasi-property: animals can be owned, but with **specific protections**
 - Quasi-personhood: animals have rights like persons, but limited to **specific types of rights**⇒ **Continuum** between persons and things instead of rigid dichotomy



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