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OF MICE AND MEN, AND OF THINGS IN THE LEGAL SENSE[1]

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Summary: This paper aims to describe one part of the issue – the fact that a living animal is not a thing. Does that mean that one could not "own" an animal, or perhaps that an animal as a subject of rights? Will it be liable for damage it causes? The author believe that the provision specifically aims at pets and it is a pity that it is not explicitly mentioned. The different attitude of legislator is also reflected in compensation for damage, which now involves a special material element of compensation for damage caused by and to an animal. These and other aspects are addressed in this paper.

Keywords: Thing in the legal sense – living animal – dereification – pets – damages – divided ownership

1. Introduction

John Steinbeck's 1937 novel deals with the troublesome issues of the Southern USA. One such issue of Czech private law is the concept of a thing in the legal sense. The fact that following the Austrian and Italian models, a wider concept of a thing has been introduced leads to questions about the reinterpretation of the term. This short paper does not have these ambitions. It aims to describe one part of the issue – the fact that a living animal is not a thing. Does that mean that one could not "own" an animal, or perhaps that an animal as a subject of rights? Will it be liable for damage it causes? These and other aspects are addressed in this paper.

2. Things in the legal sense

Unlike the ordinary (layman) understanding of things (*res comercii*), there are certain differences in law. Firstly, a certain value must be declared a thing by law (*res iuris*). Obviously, the concept of a thing in the legal sense is not exactly the same as the concept of a thing in the physical sense.[2] Things are tangible

1 This article constitutes a partial outcome from the GACR project no. 15-08294S "Divided ownership and its Central European connotations and perspectives".

2 Viktor Knapp in Knapp, Viktor., Plank, Karol et al. *Učebnice československého občanského*

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objects of the external world that are spatially definable and identifiable by senses. Furthermore, they must be capable of being controlled and valued in money at the time of valuation (*res in commercio*).[3] The term "thing" (*res*) dates back to Roman law. However, the subdivision into tangible (corporeal) and intangible (incorporeal) things was probably adopted by the Romans from the Greeks.[4] The fragments of Gaius' textbook indicate that corporeal things are those which may be touched[5], while incorporeal are those that cannot be touched.[6]

More precise legal theoretical interpretation can be found in the traditional First-Republic jurisprudence relating to Roman law. *M. Boháček*[7] emphasizes that although the broad concept of a thing in Roman law corresponded to the subject matter of property law, it nevertheless implies a link of ownership right only to tangible things.

The Civil Code of 1964 did not explain the concept of a thing. *K. Eliáš*[8] recalls the reasoning from the 1965 pre-revolution civil law textbook, of why the term "thing" is not defined in law: "*The Civil Code does not include the definition of a thing because a thing is a natural fact not subject to any legal definitions.*"[9]

We unsuccessfully tried to find a legal definition of *a thing* in other private-law regulations. It is therefore necessary to seek the answer in jurisprudence. There is a general agreement within the Czech law that a thing in the legal sense is only a tangible thing (*res corporales*).

Usually[10] a reference was made to the definition of the – now repealed – International Trade Code, whose Section 13 defines a thing as follows: "A legal relationship may concern things, rights or other economic values; *things include tangible objects and controllable natural forces that serve people's needs*." Period commentary[11] to the Code, whose quality was relatively high for its time, states that the law does not require the capability of being controlled for the recognition of a thing. The reason is that it is inseparable from the term "usefulness". It

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práva. Vol. I. Prague: Orbis, 1965. p. 148.

3 Stuna, Stanislav; Švestka, Jiří. K pojmu věc v právním smyslu v návrhu nového občanského zákoníku. *Právní rozhledy*, 2011, No 10, p. 368.

4 Sommer, Otakar. *Učebnice soukromého práva římského*. II. díl. Prague: Všehrd, 1946. p. 179–180. (reprint Wolters Kluwer).

5 Res corporales, quae sua natura tangi possunt.

6 Gaius. *Učebnice práva ve čtyřech knihách*. Plzeň: Aleš Čeněk, 2007. p. 78. Incorporeal things include e.g. usufruct.

7 Boháček, Miroslav. *Nástin přednášek o soukromém právu římském. Úvod – práva věcná*. Prague: own publ, 1945, p. 58.

8 Eliáš, Karel. Věc jako pojem soukromého práva. *Právní rozhledy*, 2007, No 4, p. 119.

9 Kratochvíl, Zdeněk et al. *Nové občanské právo*. Prague: Orbis, 1965, p. 186.

10 For example, Eliáš, Karel. Věc. Pozitivistická studie. *Právník*, 1992, No 8, p. 697; Jan Hurdík in Fiala, Josef et al. Lexikon občanského práva. 2nd ed. Ostrava: Sagit, 2001. p. 368.

11 Kopáč, Ladislav. *Zákoník mezinárodního obchodu*. Komentář. Prague: Panorama, 1984. p. 38.

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also uses the term "other economic values" (e.g. know-how, technical and manufacturing knowledge, etc.). These are certainly values that cannot be subsumed under the legal term "thing" or "right". Also interesting is the provision of the following paragraph of the above section, which declares things in the legal sense as *goods* where ownership right is transferred at the same time. The purpose of this regulation was to simplify the handling of ideologically twisted Czechoslovak law in international relations.

Using a regulation that has been revoked more than twenty years ago as an argument puts custom above law[12]; moreover, it is not very convincing.[13] All in all, the only reliable reference can be made to the agreement of the majority of authors that the traditional concept of a thing in Czech law means a tangible thing. In addition to the above-mentioned reference to the International Trade Code, other fragments can also be found in the Czech legal past. Above all, it is the Middle Civil Code of the 1950s, which, unlike the ABGB (see below), stipulated *expressis verbis* that things are only controllable *tangible* objects and natural forces that serve human needs.[14]

3. Narrower and wider approach to a thing

In European legal systems, there are two approaches to things in the legal sense. On the one hand, an extensive concept represented by Austrian, French and Czech law, and, on the other hand, a restrictive concept of the German and Polish codes.

Polish law defines things narrowly. More specifically, Section 45 of the Polish Civil Code[15] (PCC) lays down so-called *przedmioty materialne*[16], which corresponds to the Czech term *věci hmotné* (*res corporales*). Polish doctrine[17] then defines things *as tangible parts of nature in the original or processed state, which are sufficiently extracted (naturally or artificially) so that they are capable of being treated separately in legal relations*. This restrictive concept does not recognize certain material objects (e.g. mineral deposits[18], surface water) which cannot be

12 Cf. the decision of the Supreme Court of the Czech Republic dated 22 October 1999, File No 2 Cdon 1010/97.

13 Identically, for example Selucká, Markéta. Res iuris a instrumentum v rámci OZ a návrhu OZ. Časopis pro právní vědu a praxi, 2007, No 4, p. 296.

14 Cf. Section 23 of Act No 141/1950.

15 Polish Civil Code; Dz. U. No 16 of 1964.

16 Rzeczami w rozumieniu niniejszego kodeksu są tylko przedmioty materialne.

17 Wasilkowski, Jacek. *Zarys prawa rzeczowego*. Warzsawa: PWN, 1963. p. 8–9.

18 According to the natural state of things, mineral deposits should belong to the owner of the land, but since the Middle Ages there has been an opinion that some minerals do not belong to the owners (the so-called "upper shelf"), see RANDA, Antonín. *Právo vlastnické dle rakouského práva v pořádku systematickém*. Prague: Česká akademie pro vědy, slovesnost a umění, 1922. pp. 112–113. (Reprint Aspi).

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handled separately (*dobro samoistne*).[19] Regardless of the fact that special laws refer to "mineral deposit ownership"[20] or the "ownership of water"[21].

Another restrictive approach can be found in the German civil law, where Paragraph 90 of the BGB clearly states that things are only those that are corporeal. The distinction is consistent and goes further. It is connected with the broad concept of the purchase contract (Section 433 BGB) and the provisions on the sale of a right (Section 437 BGB).[22]

On the other hand, Austrian law has a wider definition of a thing in the legal sense.[23] Paragraph 285 of the ABGB[24] provides as follows: *all that is different from persons and serves the need of people is a thing*.[25] This definition indicates conceptual elements of things[26]: 1. difference from persons, 2. economic usefulness[27] and 3. independent existence.[28] Austrian legislators consider things in the legal sense to also include receivables or other property values (know-how, receivables, trademarks, securities, etc.), which are considered movable things. Immovable things are considered to include not only plots of land and buildings, but also superficiary right of building (Baurecht)[29]. Immovable things also include rights that are associated with the possession or ownership thereof.[30] Despite this positive-law regulation, the First Republic doctrine inclined towards the material concept of things.[31] The reasons is also the lack of an unequivocal declaration

19 For separate values, cf. Edvard Gniewek in Gnieweek, Edvard. et al. *Kodeks cywilny. Komentarz*. 4th ed. Warzsawa: C.H.Beck, 2011. p. 111.

20 Prawo geologiczne i górnizce, Dz. U. No 228 of 2005 – equivalent of the Czech Mining Act.

21 Prawo wodne, Dz. U. No 239 of 2005 – equivalent of the Czech Water Act.

22 Pelikánová, Irena. Úvaha o věcech v právním smyslu. *Právní praxe v podnikání*, 1995, No 11, p. 5.

23 The dualism of law in the Austro-Hungarian monarchy allowed the situation in Slovakia to be opposite, i.e. that a thing was understood only as a physical object. Rights, although subject-matter of ownership, was not regarded as an intangible thing, see Rouček, František, Sedláček, Jan et al. *Komentář k československému obecnému zákoníku občanskému a občanské právo platné na Slovensku a v Podkarpatské Rusi*. Vol. II. 1st edition. Prague: V. Linhart, 1935. (reprint of the original edition, ASPI, 2002) p. 8.

24 Alles, was von der Person unterschieden ist, und zum Gebrauche der Menschen dient, wird im rechtlichen Sinne eine Sache genannt.

25 Translation by Krčmář, Jan *Právo občanské*. 4th edition, Prague: Knihovna sborníku věd právních a státních, 1946. p. 174.

26 It must therefore meet an objective teleological point of view, see Selucká, Markéta. Res iuris a instrumentum v rámci OZ a návrhu OZ. Časopis pro právní vědu a praxi, 2007, No 4, p. 297.

27 Usefulness is judged according to the usual economic purpose, rather than according to marginal cases, see ELIÁŠ, K. Součást věci a příslušenství věci. Ad notam, 2007, No 4, p. 104.

28 Franz Bydlinski in Rummel, Peter et al. *Kommentar zum Allgemeinem bürgerlichen Gesetzbuch in zwei Bänden*. 3. neub. Auf. Wien: Manz Verlag, 2002, p. 440 et seq.

29 Cf. § 6 Baurechtgesetz.

30 Cf. § 1 Wohnungseigentum Gesetz (Austrian Apartment Ownership Act).

31 Under the strong influence of Randa, cf. Randa, Antonín. *Právo vlastnické dle rakouského práva v pořádku systematickém*. Prague: Česká akademie pro vědy, slovesnost a umění,

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(see above) throughout the text of the legal regulation, legitimizing the legislators' interpretation to be narrowed.[32]

A similar conclusion can be drawn in connection with the French Civil Code of 1804 and the French concept of a thing (*les biens*). As noted by *I. Pelikánová*[33], the situation in the *Code Civil* is more complicated (ambiguous definition, linguistic complexity); however, one can say that even the French concept is broader. This is more likely to be evident from jurisprudence rather than the Code itself, because it also does not contain a definition of a thing.

The above-mentioned "Austrian" concept of a thing eventually influenced the wording of the new Czech Civil Code, despite some objections raised by legal experts[34]. The Civil Code adopts ABGB's wording, providing in Section 489 that a *thing in the legal sense is everything that is different from a person and serves the needs of people.*[35] Furthermore, in the field of *in rem* rights[36], Section 979 regulates the application of the *in rem* part of the Code to intangible things, providing that it may be so applied only to the extent permitted by their nature and unless otherwise provided by law.

4. Animal – a non-thing?

In the previous paragraphs, I have outlined the theoretical postulates which constitute the basis for the legal concept of a thing within the scope of Czech private law. Furthermore, attention is paid to concrete changes and their possible impacts.

The Civil Code defines a thing in the broader sense (see above), which implies that things include those which are tangible, as well as those which are intangible, i.e. rights. This approach requires a higher level of abstraction, in order to avoid confusion of the terms. *Things in the legal sense* are thus not only tangible *things*. By contrast, a living animal is not a thing, although this been the case so far. Following the German model (Section 90a of the BGB) and Austrian law (Section 285a of the ABGB), Czech law has seen a significant shift in values, embodied in Section 494 of the Civil Code. Unlike man, however, animals have no natural rights because they are not endowed with reason (cf. Section 19 of the

1922. p. 10. (Reprint Aspi). It is similarly expressed by Krčmář, cf. Krčmář, Jan. *Právo občanské II. Práva věcná.* 3rd edition, Prague: Sborník věd právních a státních, 1946. p. 95.

32 Pelikánová, Irena. Úvaha o věcech v právním smyslu. *Právní praxe v podnikání*, 1995, No 11, p. 5.

33 Ibid, p. 3.

34 Spáčil, Jiří. Současné problémy vlastnického práva. Právní rozhledy, 2006, No 2., p. 66.

35 However, a living animal is not a thing in the legal sense (Section 494 of the Civil Code). This applies by analogy to the human body / its parts (cf. Section 493 of the Civil Code). However, this issue goes beyond the scope of this chapter, therefore it is not elaborated further.

36 Tégl. Petr. Nad novým kodexem soukromého práva. *Obchodní právo*, 2012, No 3, p. 84.

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Civil Code). The *dereification* of an animal brings about the question of whether it is possible to acquire the ownership right to a living creature endowed with reason, which is not a thing in the legal sense. The answer is yes. The law allows analogous application of the provisions on things to a living animal to the extent in which they are not contrary to its nature. It means that a dog will not be eligible for enforcement of a decision by the sale of a movable thing, but it can be bought on the basis of a purchase contract from the breeder. The owner's rights are essentially the same as those relating to a normal thing that belongs to him (book, receivable), but *ius abutendi* is not one of them.

However, the *dereification* of an animal has another dimension in tort law; therefore, legislators adopted the regulation of damage caused by an animal (cf. Section 2933 et seq. of the Civil Code). This liability primarily concerns the owner or, jointly and severally, the person to whom the owner has entrusted the animal. The owner is liable even if the animal becomes stray or escapes and causes damage. Is the owner of the animal actually its owner? Isn't this quasi-ownership?

The new Civil Code has brought about a change in the concept of a thing in the legal sense. As part of the preparatory work, thorough discussions were held on the question of the broader/narrower concept of a thing, as well as a way of acquiring ownership of a thing (consensual vs. intabulation principle). One of the issues in these discussions was the question of *dereification* of an animal. Inspiration was found in the teachings of St. Augustine[37], but also in German law (cf. § 90a BGB / § 285a ABGB). A living animal is not a thing in the legal sense. It is a creature endowed with senses that has a special meaning and value. This does not mean, however, that there would be special regulation in the law for the acquisition of ownership right to animals, etc. On the contrary, the law calls for *analogous*[38] application of provisions on things to animals to the extent that it does not contradict their nature. This is primarily a shift in values. The fact that an animal is endowed with senses must also be reflected in legal regulation of tort law. This has two aspects. On the one hand, it separately regulates damage caused by an animal. On the other hand, it specifically provides for compensation for injury to an animal.

5. Damage caused by an animal and compensation for injury to an animal

Although animals have a special position among the objects of legal relationships, it is necessary to find a reasonable balance between the respect to value (emotional, financial) that an animal represents to its owner, and the fact that

37 TÉGL, Petr. Stručný nástin úpravy věcných práv v návrhu nového občanského zákoníku, 1. část – obecné výklady, veřejné seznamy, držba, vlastnické právo. *Obchodní právo,* 2012, No 3., p. 91.

38 Cf. MELZER, Filip. *Metodologie nalézání práva. Úvod do právní argumentace.* 2nd ed. Prague: C. H. Beck, 2011. p. 116.

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animals cause damage to another. Animals represent a certain source of danger to their surroundings. This is due to their unpredictable behaviour, which may not even be prevented by proper training. Although the Civil Code of 1964 did not regulate the specific elements, case law treated breeder's liability very strictly. Although the owner did everything that was reasonable at the time, he was liable for any damage. This feature of strict liability partly survived in the new legislation, but there are some exceptions (see below). It is completely irrelevant whether an animal is tame or aggressive. At the same time – in the words of pre-war case-law[39] – it is not decisive whether damage is caused by an animal with its claws or teeth, whether it is large or small, whether it has been bred for hunting or luxury. The owner is liable for any damage caused by the animal at the time and place. Here too, a strict liability for the result can be seen.

The general rule of compensation for damage caused by an animal is the obligation of the owner to compensate it. This is also true if the animal strays or escapes.

The owner is obliged to provide compensation for damage not only when the damage is incurred under his supervision, but also when the animal is entrusted to another person. It does not matter what disposition the owner has over the animal (whether partial or none at all). Foreign jurisprudence provides the case of a veterinarian who was bitten during the operation of a dog entrusted to him for treatment. The owner of the animal was liable for this damage.[40] The injured person is procedurally favoured because the law establishes joint and several liability of the animal owner and the person to whom the animal was entrusted, or the person who breeds or otherwise uses the animal. In a situation where a horse that belongs to Mr. A bites a visitor of stables where the animal is trained by Mr. B, then the injured person may claim damages from both Mr. A and Mr. B.

As Dohnal correctly points out[41], if damage is caused by an animal that has been set on someone, then the liability lies with the person who set the animal in accordance with Section 2910 et seq. of the Civil Code. The elements of Section 2933 will not be fulfilled because the animal is used as a weapon. Possible defence of the injured will be seen as a necessary defence, not as necessity. The source of the intervention here is attack, not threat.

From the general regime, which does not allow liberation, the law excludes situations in which the damage caused by a domestic animal, which is used for the pursuit of a profession, gainful activity, livelihood or as an assisting animal. In such cases, it is decisive whether or not the supervisor neglected the supervision of the animal. If causality has been breached (the damage would have been incurred even if due care was taken), then the owner will not be liable either.

39 Vážný 681.

40 Cf. Decision of Oberlandsgericht Celle of 11 June 2012, File No 20 U 38/11.

41 DOHNAL, Jakub. Škoda způsobená zvířetem. *Právní rozhledy,* 2015, No 4, p. 124.

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In order for the owner to use the privileged elements and become *exculpated* (the elements presume his guilt), he must prove (the burden of proof is on his side) that the domestic animal is used either:

a) to exercise a profession, i.e. that he is employed, for example, as a guard at a security service and that the dog is necessary for the pursuit of his employment;
b) for gainful activity, he needs the animal for his own business, such as a farmer who breeds cattle or pig, or a magician who uses pigeons or rabbits for his shows (if the tortfeasor is a lion tamer, then he cannot become exculpated);
c) for livelihood, i.e. that pigs or poultry are used to feed him or his family (egg, meat), not to do business with them.
d) as an assistant for people with disabilities (typically dogs, but also small horses).

Domestic animals must be considered as animals that are domesticated. It will typically be a dog, a cat, poultry or a pig. Additional examples can be found on comment pages.[42] In the above case of a racing horse trainer, it would be possible to consider exculpation in the case of a professional trainer who has an animal in paid training and did everything required by due care. Due care[43] must be taken as a summary of measures and steps that would be made by the prudent owner at a given time and place.[44] In order for a tortfeasor to become exculpated, the animal must be a domestic animal that is predominantly used for "commercial" purposes. It cannot be a dog that is used once by guards at a small-town show.[45] The tortfeasor will also have to prove that the animal has training (including assisting animals) for the intended activity. Only claiming that it is a guard dog will in itself be useless.[46] It is essential to show that the animal is intended to perform specific tasks and typically has the appropriate training.

The question is why more liability lies with the person that breeds the animal for non-commercial purposes, purely for his own pleasure (for example, a hunter dog that goes hunting with an amateur hunter), while the person who has the

42 Esp. Bezouška Petr In HULMÁK, Milan et al. *Občanský zákoník VI. Závazkové právo. Zvláštní část (§ 2055–3014).* Prague: C. H. Beck, 2014, p. 1631. Or MELZER, Filip, TÉGL, Petr. *Občanský zákoník. Velký komentář. § 419–654. Velký komentář.* Prague: Leges, 2014, pp. 234–235.

43 The first-republic case law required that even where the breeder of the animal was the State (a military riding horse), the breeder had to take appropriate measures equivalent to the degree of attention and diligence that can be required of a natural person with normal (average) abilities. Cf. the decision of the Supreme Court of the Czech Socialist Republic, File No (Rc) Rv I 976/36.

44 Bezouška Petr In HULMÁK, Milan et al. *Občanský zákoník VI. Závazkové právo. Zvláštní část (§ 2055–3014).* Prague: C. H. Beck, 2014, p. 1632.

45 DOHNAL, Jakub. Škoda způsobená zvířetem. *Právní rozhledy,* 2015, No 4, p. 126.

46 Decision of OLG Frankfurt of 9 September 2004, file no. 26 U 15/04.

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animal for strictly commercial purposes (e.g. a draught animal the woodcutter uses daily to take logs down from the forest) will only be liable if he neglects the due care? Justice is seen in the fact that the person who exposes others to increased risk purely for his own pleasure (pet breeding) is to have stricter liability than the person who has an animal mainly for another generally beneficial activity (business, etc.).[47]

The owner is in principle liable for damage caused by a living animal. In the case of a dead animal (e.g. an infection from a dead animal), other elements may be considered (Section 2910, Section 2936 et seq.). If the damage is caused, for example, by a rendering plant, then it will also be a different case (Section 2924).[48]

Regarding the damage caused by wild animals, it is usually the liability of the hunting participant in the territory in which the damage was incurred in accordance with the Game Management Act, i.e. completely outside the scope of the Civil Code. In the case of protected animals (lynx, wolf, bear, beaver), the damages are paid by the State.

If an animal is wilfully removed (typically stolen) from the owner, then the possessor of the animal is liable for the damage caused by that animal. In order for the owner or detentor to be relieved of the obligation to pay compensation for damage, he must prove that he could not have reasonably prevented the removal. This means that for example the animal was tied to the guide rail while waiting in front of the supermarket, etc. The person who wilfully removes the animal cannot be relieved of the liability.

The second aspect, which is given by the specific nature of animals, is the different legal regulation of compensation for injury to the animal (Section 2970). It is clear that damage to a vase and injury to a dog have different consequences for the owner. While in the case of a vase it is "only" a thing that can be repaired or replaced with money, in the case of injury to a beloved animal it is an intervention in the personal sphere of the owner, which can have far-reaching consequences. For this reason, the legislators differentiate between damage to an animal and to an ordinary thing.

It is not excluded that an animal be treated as a thing of sentimental value (cf. Section 2969(2)). However, this would only be possible if the tortfeasor caused damage from malice or wilfulness. However, Section 2970 provides an approach that totally corresponds to the *dereification* of an animal. This means that, compared to damage to "mere" things, animals are given a different value, which is reflected in the amount of possible compensation. In the case of an animal injury, the cost of its treatment can be considerable, not only in the case of a racing thoroughbred, but also in domestic pets whose financial value is insignificant

47 MELZER, Filip. Co působí problémy při náhradě škody. *Právní rádce,* 2015, No 2, p. 42.
48 DOHNAL, Jakub. Škoda způsobená zvířetem. *Právní rozhledy,* 2015, No 4, p. 124.

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but to which the owner has a strong emotional bond. The criterion for assessing the adequacy of compensation is given by the legal term "reasonable breeder in the position of the injured party". The tortfeasor shall pay the costs reasonably incurred on the health of the wounded animal. The criterion is modified by a rule that says cost-effectiveness cannot be judged solely by the cost of the animal. Even where the costs of animal health care exceed its price, costs are not incurred ineffectively. A reasonable breeder would be willing to spend at most the cost of the farm animal at a given place and time. In the case of a pet, a reasonable breeder would accept significantly higher costs. The injured person has the right to request a deposit, which, however, he has to account.

If there is a collision between an animal and vehicle, the question arises as to how to assess the damage that is incurred. The rationale behind this is that both injuries (the damaged vehicle and the injured (killed) animal) originate in the same damage event (the collision of the animal with the vehicle). However, the legal assessment of the two cases will be different.[49] While in the case of the damaged vehicle the breeder will be liable in accordance with Section 2933 / Section 2934 of the Civil Code, in the case of the injured animal, the vehicle operator will be liable in accordance with Section 2927 (either as a transport operator or as another operator of the vehicle). Vehicle drivers may be considered liable in accordance with Section 2910 of the Civil Code.

6. Conclusion

The fact that the legislators have excluded living animals from things in the legal sense has its purpose. However, it should not be overestimated. The provision primarily focuses on values and excludes a living animal from things in the legal sense as a companion of man, acknowledges the existence of an emotional bond between them and protects the elementary principles of humanity. In agreement with Klein[50], I believe that the provision specifically aims at pets and it is a pity that it is not explicitly mentioned. This is also reflected in compensation for damage, which now involves a special material element of compensation for damage caused by and to an animal.

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GAIUS. *Učebnice práva ve čtyřech knihách*. Plzeň: Aleš Čeněk, 2007. p. 78. Incorporeal things include e.g. ususfruct.

49 Cf. decision of the Supreme Court of the Czech Republic, File No (Rc) 23 Co 465/97.

50 Klein, Š. Zvíře není věc, aneb co přináší § 494 NOZ? *Ad notam*, 2013, No 5, p. 18.

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