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## Animals as Living Accommodations

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# SYMPOSIUM

## ANIMALS AS LIVING ACCOMMODATIONS

By  
Ani B. Satz\*

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### I. INTRODUCTION

This is the first symposium published in a law journal about using nonhuman animals as “living accommodations” for individuals with disabilities. The symposium features the work of both invited participants and speakers chosen from a call for papers issued by The Association of American Law Schools’ (AALS) Section on Animal Law for the AALS 2017 Annual Meeting, which was held in San Francisco, California, in January 2017.<sup>1</sup> This program was co-sponsored by the Sections on Disability Law and Law and Mental Disability.<sup>2</sup>

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<sup>1</sup> See generally ASS’N OF AM. LAW SCH., WHY LAW MATTERS 111TH ANNUAL MEETING 41 (2017) (“This panel will explore the use of animals as living accommodations for individuals with disabilities and other impairments.”).

<sup>2</sup> *Id.* at 41.

Animals as “living accommodations” is a concept I first developed and used in 2006, in my disability and animal law courses, to describe nonhuman animals who either provide service or emotional support to humans with functional impairments. My goal in using this language is to emphasize the important differences between employing living animals and inanimate tools of assistance to promote meaningful access to work, public services, places of public accommodation, and public transportation. The differences may be viewed from the perspectives of a variety of stakeholders, including: individuals with disabilities and other impairments; businesses accommodating such individuals; members of the public; fellow residents, air travelers, classmates, or workers; and, of course, the animals themselves.

The topic is timely, as businesses, housing developments, schools, and other places of public accommodation increasingly are being asked to accommodate animals. Airlines face requests for emotional support ducks, goats, cats, and monkeys.<sup>3</sup> Schools are asked to allow assistance animals, even when children with disabilities are provided other support pursuant to their individualized education programs (IEPs) under the Individuals with Disabilities Education Act (IDEA).<sup>4</sup> Business and housing developments that do not allow animals on the premises are receiving requests for exceptions under disability and housing laws.<sup>5</sup>

As requests for animals as living accommodations grow, many people remain unclear about their legal obligations. They do not understand the difference between service and emotional support animals and what the law requires in different circumstances for each category. Nor do they understand the legal obligations of places of service (for example, the state department of community health), places of public accommodation (for example, restaurants and hotels), and public transportation systems to include assistance animals. The result is often a combination of confusion by individuals seeking and being asked to provide accommodations, fraud by individuals without im-

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<sup>3</sup> See Beth Landman, *Wagging the Dog, and a Finger*, N.Y. TIMES (May 14, 2006), <http://www.nytimes.com/2006/05/14/fashion/sundaystyles/14PETS.html> [https://perma.cc/G4KU-SBPU] (accessed Feb. 28, 2018) (“[A] spokeswoman for American Airlines, said that although dogs are the most common service animals taken onto planes, the airline has had to accommodate monkeys, miniature horses, cats and even an emotional support duck. . . . There have also been at least two instances (on American and Delta) in which airlines have been presented with emotional support goats.”).

<sup>4</sup> See *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 758–59 (2017) (“[N]othing in the nature of the Frys’ suit [for failure to accommodate an assistance animal] suggests any implicit focus on the adequacy of E. F.’s education [she had a full-time assistant under her IEP].”).

<sup>5</sup> See Susan Stellin, *Do You Have a Doctor’s Note? Getting a Dog into a No-Pet Building*, N.Y. TIMES (Sept. 27, 2013), <http://www.nytimes.com/2013/09/29/realestate/getting-a-dog-into-a-no-pet-building.html> [https://perma.cc/QY5E-KDQR] (accessed Feb. 28, 2018).

pairments pretending to use animals for assistance,<sup>6</sup> and the violation of the rights of individuals with disabilities using service animals.<sup>7</sup>

The goal of the symposium is to bring together legal experts to discuss broadly these issues as well as other implications of using animals as living accommodations, including issues spanning animal, disability, health, business, and education law and policy. The topics in this volume cover animal welfare; the legal status of different types of assistance animals; emerging issues in accommodation, including housing and education; and fraud under state and federal law in the U.S. and abroad. The AALS Section on Animal Law is hoping this volume will serve as a reference for lawyers, legislators, business owners, educators, students, and others exploring this important topic.

## II. BACKGROUND

As Laura Rothstein outlines in her comprehensive overview article, *Animal Accommodations in Public Places, Housing, Employment, and Transportation*, several U.S. laws affect the use of animals as living accommodations by individuals with disabilities.<sup>8</sup> Under the Americans with Disabilities Act (ADA)<sup>9</sup> and the Rehabilitation Act (RA),<sup>10</sup> failing to provide a reasonable accommodation or modification for a qualified individual with a disability in the context of work, public services, places of public accommodation, and public transportation constitutes disability discrimination.<sup>11</sup> A reasonable accommodation or modification may include allowing the use of a service animal, which the regulations supporting the ADA (and RA) list as a dog or miniature horse.<sup>12</sup> The Fair Housing Act (FHA)<sup>13</sup> and the Air Carrier Access Act

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<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., Editorial, *Enough with the Fake Service Dogs and 'Emotional Support' Pigs*, CHI. TRIB. (Jan. 16, 2015), <http://www.chicagotribune.com/news/opinion/editorials/ct-ada-fake-service-animals-guide-dog-edit-jm-20150116-story.html> [https://perma.cc/6AUU-332A] (accessed Feb. 28, 2018).

<sup>8</sup> Laura Rothstein, *Puppies, Ponies, Pigs, and Parrots—Policies, Practices, and Procedures in Pubs, Pads, Planes, and Professions—Where We Live, Work, and Play, and How We Get There—Animal Accommodations in Public Places, Housing, Employment, and Transportation*, 24 ANIMAL L. 13 (2018).

<sup>9</sup> See Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213 (2012). Title III states that “[n]o individual shall be discriminated against on the basis of disability in the full equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation . . . .” *Id.* at § 12182.

<sup>10</sup> See Rehabilitation Act, 29 U.S.C. §§ 701–796 (2012). Section 504 states that “[n]o otherwise qualified individual with a disability . . . shall solely by reason of her or his disability . . . be denied the benefits of . . . any program or activity receiving Federal financial assistance.” *Id.* at § 794.

<sup>11</sup> 42 U.S.C. §§ 12112(b)(5)(A), 12132, 12182(b)(2)(A)(ii) (“[D]iscriminat[ion] [] includes . . . not making a reasonable accommodation, “exclu[sion] from [] services,” and “a failure to make reasonable modifications”).

<sup>12</sup> See 28 C.F.R. §§ 35.104, 36.104 (2016) (defining “service animal”); 28 C.F.R. §§ 35.136, 36.302 (2016) (referring to reasonable modifications for miniature horses).

<sup>13</sup> See Fair Housing Act, 42 U.S.C. §§ 3601–3631 (2012).

(ACAA)<sup>14</sup> also require accommodation.<sup>15</sup> Animals may serve as accommodations under these acts as well, though these laws lack the species<sup>16</sup> and training restrictions of the ADA (and RA).<sup>17</sup> The FHA and ACAA allow emotional support animals in addition to service animals.<sup>18</sup> Assistance animals could be required under the IDEA, which provides for IEPs for school-age children with disabilities.<sup>19</sup> Under all relevant acts, animals have certain behavioral requirements and must be cared for and supervised by their handler.<sup>20</sup> States also have parallel laws addressing the use of animals as living accommodations.<sup>21</sup>

Thus, a few factors affect agency or judicial determination of whether an animal may serve as a living accommodation, including: Is the person an individual with a disability? If so, does the animal's service relate to their impairment(s)? Is the species of animal allowed as a

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<sup>14</sup> See Air Carrier Access Act, 49 U.S.C. §§ 41701–41767 (2012).

<sup>15</sup> 42 U.S.C. § 3604 (2012); 49 U.S.C. § 41705 (2012).

<sup>16</sup> See, e.g., Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56164, 56194, 56268 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35) (providing that under the FHA, “an individual with a disability may have the right to have an animal other than a dog in his or her home . . . .”); 14 C.F.R. § 382.117(f) (2016) (“You are never required to accommodate certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the [airplane’s] cabin. With respect to all other animals, including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys), as a carrier you must determine whether any factors preclude their traveling in the cabin as service animals.”)

<sup>17</sup> See, e.g., 42 U.S.C. § 3604(f), Note 60 (2016) (“The Fair Housing Act encompasses all types of assistance animals regardless of training, including those that ameliorate physical disability and those that ameliorate mental disability.” (internal citation omitted)); see also Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63834, 63835 (Oct. 27, 2008) (to be codified at 24 C.F.R. pt. 5) (requiring no special training); 14 C.F.R. § 382.117(e)(2) (2016) (discussing coverage of emotional support animals under the ACAA).

<sup>18</sup> See, e.g., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY, U.S. DEP’T OF HOUS. & URBAN DEV., SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS 1 (2013), [https://www.hud.gov/sites/documents/SERVANIMALS\\_NTCFHEO2013-01.pdf](https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.pdf) [<https://perma.cc/KN46-ZQ8Y>] (accessed Feb. 28, 2018) (“Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504 [of the RA]”); 14 C.F.R. § 382.117(e)(2) (2016) (covering emotional support animals). Under the AACA, an individual need not be legally disabled to receive an accommodation; *id.* at § 382.117(e)(2)–(4) (2016).

<sup>19</sup> See 20 U.S.C. § 1414(d)(1)(A)(i)(IV) (“[I]ndividualized education program’ . . . includes . . . a statement of the special education and related services . . . to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child . . . .”); 34 C.F.R. § 300.34(c)(7)(ii)(B) (2016) (defining “related services” as including “the long cane or a service animal to supplement visual travel skills or as a tool for safety negotiation the environment for children with no available travel vision”).

<sup>20</sup> See, e.g., 28 C.F.R. § 35.136(b)–(e) (2016) (discussing how service animals must be housebroken, under their handler’s control, and properly cared for and supervised by their handler).

<sup>21</sup> See, e.g., DEL. CODE ANN. tit. 6, § 4504 (2018) (discussing equal accommodations for individuals with disabilities and trainers with support animals).

living accommodation? Does the individual animal meet legally-imposed behavioral requirements? These inquiries focus on the well-being of the individual with an impairment and those in the proximity of the animal. The well-being of the animal, including the ability of a particular animal to assist, is not directly addressed.

### III. ANIMAL WELL-BEING AND PARTICULAR BONDS

Specific legal protections for animals used as living accommodations are based on human interests and are narrow.<sup>22</sup> Animals are allowed in certain spaces including housing,<sup>23</sup> workplaces, places of public accommodation, and public transportation vehicles if they are needed to support an individual with a disability.<sup>24</sup> If human mental or physical impairment are temporary, so too may be the animal's ability to occupy certain spaces, including housing.<sup>25</sup>

MacKenzie Landa's article, *From War Dogs to Service Dogs: The Retirement and Adoption of Military Working Dogs*,<sup>26</sup> brings an interesting perspective to the importance of continuity in human-animal relationships. Landa proposes that military working dogs (MWDs), who are currently classified as military equipment, be reclassified in some instances as assistance animals for their previous handlers. This would allow these MWDs to enjoy permanent military retirement with their handlers rather than further military work or death.<sup>27</sup> To accomplish this, Landa argues that Robby's Law,<sup>28</sup> which allows MWDs to be adopted by their handlers upon retirement, be amended to reclassify MWDs as canine service members.<sup>29</sup> Landa underscores the incredible bond between MWDs and their handlers, due in part to shared exper-

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<sup>22</sup> Nevertheless, general animal protection laws, such as state anti-cruelty statutes, apply to the care and treatment of companion animals. See *Animal Protection Laws of the United States of America and Canada*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/advocating-for-animals/animal-protection-laws-of-the-united-states-of-america-and-canada/> [<https://perma.cc/T9EK-GYV3>] (accessed Feb. 28, 2018).

<sup>23</sup> See e.g., Fair Housing Act, 42 U.S.C. § 3604(f) (2012).

<sup>24</sup> See e.g., ADA, §§ 12112–12117 (Title I, employment), 12131–12165 (Title II, public services and transportation), 12181–12189 (Title III, public accommodations and transportation operated by private entities).

<sup>25</sup> See Ani B. Satz, *Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property*, 16 ANIMAL L. 65, 91 (2009) (“Animals are protected only when human and nonhuman animal interests converge. For example, in *Auburn Woods* [*v. Fair Employment and Housing Commission*], Pooky's shelter [in a condo association that prohibited dogs] was dependent on his utility to his disabled owners.”; “The [covenants, conditions, and restrictions] shelter exception would not apply to a dog whose life was in danger due to exhaustion, inclement weather, or human abuse.”). See generally *Auburn Woods I Homeowners Ass'n*, 121 Cal. App. 4th at 1578 (holding that residents with disabilities of a condominium association could be exempted from a covenant prohibiting dogs as a reasonable accommodation).

<sup>26</sup> Mackenzie Landa, *From War Dogs to Service Dogs: The Retirement and Adoption of Military Working Dogs*, 24 ANIMAL L. 39 (2018).

<sup>27</sup> *Id.*

<sup>28</sup> Robby's Law, 10 U.S.C. § 2583 (2017).

<sup>29</sup> Landa, *supra* note 26, at Section V(A).

iences and the unique ability of these dogs to serve ably as either service or emotional support animals.<sup>30</sup>

Landa's proposal is significant for at least two reasons. First, it considers the well-being of both dogs and their handlers.<sup>31</sup> A MWD that became an assistance animal would essentially follow its handler's service and discharge paths, keeping the bonded pair together. To effectuate this, transportation funds would be allocated for the dog's journey home to its handler.<sup>32</sup> Even families of deceased service members would be eligible to adopt their family member's dog, to keep the human and canine family together.<sup>33</sup>

Second, her proposal underscores the importance of particular interspecies relationships between humans and animals. The bond and trust that is formed between a handler and a MWD is unique to each pair and cannot be replaced. Finding an injured soldier another service dog or a MWD another handler is likely an ersatz solution.<sup>34</sup>

Interestingly, when the law recognizes the special relationship between an individual with a disability and an animal who is a living accommodation, it creates a situation where only one accommodation is considered satisfactory.<sup>35</sup> This exceeds what is required by the ADA (and RA), that is, that an accommodation only needs to be reasonable and might not be one that an individual prefers.<sup>36</sup> Yet because of the special relationship humans often share with dogs or other animals, an extra-legal requirement of a particular animal as an accommodation may be made.<sup>37</sup>

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<sup>30</sup> *Id.* at Section I.

<sup>31</sup> *Id.* at Section IV(B) (considering the well-being of both dogs and their human handlers), V(A) (considering the increased well-being of dogs by way of reclassification of MWDs as canine service members). “[T]here are cases in which being reunited with their canine partner has provided the emotional support human soldiers need and reuniting handlers and their MWDs—who can also suffer from canine PTSD—helps both heal. Indeed, ‘reuniting military dogs with their handlers is about healing these veterans—both human and canine—and their families.’” *Id.* at Section IV(B).

<sup>32</sup> *Id.* at Section V(B).

<sup>33</sup> *See id.* at Section V(B).

<sup>34</sup> *Id.*

<sup>35</sup> *See* Satz, *Animals as Vulnerable Subjects*, *supra* note 25, at 90–91.

<sup>36</sup> *See, e.g.*, 29 C.F.R. § 1630.9(d) (2016) (“An individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered qualified.”); 29 C.F.R. app. § 1630 (2016) (“If more than one of these accommodations will enable the individual to perform the essential functions [of her job] . . . the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide.”).

<sup>37</sup> *See* Satz, *Animals as Vulnerable Subjects*, *supra* note 25, at 90–91 (discussing *Auburn Woods I Homeowners Ass’n*, 121 Cal. App. 4th at 1578, where the court awarded

Thus, a change in legal status for MWDs would alter their ability to remain with their handler or their handler's family and particularize animals as living accommodations. For MWDs, like all domestic animals, their legal status determines their protections and opportunities.<sup>38</sup> One key status distinction is between service and emotional support animals.

#### IV. LEGAL STATUS: SERVICE VERSUS EMOTIONAL SUPPORT ANIMALS AND WHAT BUSINESSES CAN ASK

The ADA and the RA only cover "service animals" as living accommodations.<sup>39</sup> "Service animals" are animals who are "individually trained to do work or to perform tasks for the benefit of an individual with a disability."<sup>40</sup> In other words, these animals possess special skills.<sup>41</sup> The ADA's regulations specify that the skills "must be directly related to the individual's disability."<sup>42</sup> Special skills include:

[A]ssisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.<sup>43</sup>

"Emotional support animals" do not have special skills to do work or to perform tasks. They are animals whose sole function is to provide "emotional support, well-being, comfort, or companionship."<sup>44</sup> According to the Department of Justice, emotional support animals are not service animals and thus fall outside the purview of the ADA (and RA).<sup>45</sup> As stated previously, the FHA and AACA extend to emotional support animals.<sup>46</sup>

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damages when a condo association that did not allow dogs failed to accommodate a particular dog as an emotional support animal for a couple with disabilities).

<sup>38</sup> *See id.* at 1.

<sup>39</sup> 28 C.F.R. §§ 35.104, 36.104 (2016).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *See, e.g.*, OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY, U.S. DEP'T OF HOUS. & URBAN DEV., SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS 1 (2013), [https://www.hud.gov/sites/documents/SERVANIMALS\\_NTCFHEO2013-01.pdf](https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.pdf) [<https://perma.cc/X8E7-87E6>] (accessed May 3, 2018) ("Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504 [of the RA]."); 14 C.F.R. § 382.117(e)(2) (2016) (covering emotional support animals).



To determine if an animal is a service animal under the ADA and RA, a public entity or a private business may ask one of two questions:

- Is the animal required because of a disability?
- What work or task is the animal trained to perform?<sup>47</sup>

These questions must not be asked when it is obvious that an animal is trained to assist an individual with a disability, for example, a guide dog leading an individual who is blind.<sup>48</sup> The ADA and RA do not require documentation for a service animal,<sup>49</sup> as is required under the ACAA for emotional support and psychiatric service animals<sup>50</sup> and as may be necessary under the FHA if housing prohibits animals.<sup>51</sup>

Despite clear legal categories for assistance animals, issues remain about when they may be present in some environments. The next part examines emerging issues for assistance animals in housing and education.

## V. EMERGING ISSUES IN ACCOMMODATION: HOUSING AND EDUCATION

Rothstein's article and Rebecca Huss's article, *Canines in the Classroom: Issues Relating to Service Animals in Primary and Secondary Educational Institutions after Fry v. Napoleon Community Schools*, identify emerging issues for animals as living accommodations.<sup>52</sup> Rothstein focuses on housing and medical care, while Huss provides a detailed examination of assistance animals in lower education. Each are examined in turn.

Rothstein identifies two areas where the intersection of housing and disability law is unclear and requests for animals as living accommodations are increasing. The first is online short-term housing rentals like those available on Airbnb and HomeAway, where individuals rent their private homes.<sup>53</sup> It is unclear whether these rentals are

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<sup>47</sup> 28 C.F.R. §§ 35.136(f), 36.302(c)(6) (2016).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> 14 C.F.R. § 382.117(e) (2016).

<sup>51</sup> Housing managers and owners may verify that an individual has a disability and that an assistance animal is needed, and, in the case of an emotional support animal, medical documentation may be required. *See, e.g., Meadowland Apartments v. Schumacher*, 2012 SD 30, 813 N.W.2d 618 (holding that a landlord did not violate the FHA by failing to accommodate a disabled resident's dog when the resident failed to provide the landlord with requested documentation and denied owning a dog).

<sup>52</sup> *See* Rothstein, *supra* note 8; Rebecca J. Huss, *Canines in the Classroom: Issues Relating to Service Animals in Primary and Secondary Educational Institutions after Fry v. Napoleon Community Schools*, 24 ANIMAL L. 53 (2018).

<sup>53</sup> Rothstein, *supra* note 8, at Section III(B); *see* AIRBNB, <https://www.airbnb.com/> [<https://perma.cc/7C5G-34YH>] (accessed May 3, 2018); HOMEAWAY, <https://www.homeaway.com/> [<https://perma.cc/G8Z2-6VGL>] (accessed May 3, 2018). The latter company is the parent company of VRBO, which provides the same type of service at <https://www.vrbo.com>. *See* VRBO, <https://www.vrbo.com> [<https://perma.cc/R6KU-RNYE>] (accessed May 3, 2018).

more like a landlord-tenant situation, which is governed by the FHA, or a hotel, which is a “public accommodation” under the ADA.<sup>54</sup> Rothstein raises the same issue with respect to dormitory, sorority, and fraternity housing on university campuses.<sup>55</sup> Accommodating assistance animals in university housing may be particularly challenging, since certain privileges like dining may extend to all dormitories, not only the one where the student seeking the accommodation resides.<sup>56</sup> Lastly, Rothstein discusses animals as living accommodations in health care settings, where conflicting interests—between accommodating assistance animals on one hand, and avoiding allergens, germs, and phobias on the other—become more acute due to patient populations with lower immune systems and other predispositions.<sup>57</sup>

To avoid conflict between interested stakeholders in these and other contexts, Rothstein suggests a proactive, interactive process between the stakeholders as well as training for those making accommodations.<sup>58</sup> She also argues that the DOJ must revisit how to assess and account for risks to others from assistance animals, such as allergies and phobias.<sup>59</sup>

Huss discusses emerging issues in accommodating a rising number of requests for assistance animals in primary and secondary educational institutions. She addresses these issues in the wake of *Fry v. Napoleon Community Schools*, where a girl’s parents sued under the ADA and RA for a school’s failure to accommodate their daughter’s service animal.<sup>60</sup> The U.S. Supreme Court vacated the Sixth Circuit’s decision against the plaintiffs and remanded to the lower court to determine whether the action arose from the denial of a “free appropriate public education,” in which case the plaintiffs must exhaust administrative remedies under the IDEA before filing an ADA or RA claim.<sup>61</sup> Huss covers, within the special context of child animal-handlers, topics such as controlling, caring for, and supervising assistance animals.<sup>62</sup> She discusses whether allowing service animals could be a fundamental alteration to a school program and not legally required and raises issues about accommodating other children with allergies.<sup>63</sup> She also raises the intriguing question of whether under the IDEA a school

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<sup>54</sup> *Id.* at Section III(B).

<sup>55</sup> *Id.* at Section IV(A).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at Section IV(B).

<sup>58</sup> *Id.* at Section V.

<sup>59</sup> *Id.* at Section VI. The DOJ previously addressed allergies. *See* ADA Requirements: Service Animals (U.S. Dep’t of Just. July 12, 2011), [https://www.ada.gov/service\\_animals\\_2010.htm](https://www.ada.gov/service_animals_2010.htm) [<https://perma.cc/Z4VZ-SPUH>] (accessed Feb. 28, 2018) (“Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.”).

<sup>60</sup> *Fry*, 137 S.Ct. at 751–52.

<sup>61</sup> *Id.* at 758–59.

<sup>62</sup> Huss, *supra* note 52, at Sections III(A)–(B).

<sup>63</sup> *Id.* at Section III(D).

could be required to teach a student with disabilities how to use a service animal, rather than merely allow its presence.<sup>64</sup>

As assistance animals become more common in housing, schools, and other environments, fraud arises. Individuals without impairments may claim they have impairments to bring animals into certain environments that would otherwise prohibit them. Some individuals may do this for the benefit of the animal's companionship. In other instances, such fraud may originate from concerns about a companion animal's welfare. These concerns might include wanting to care for the frequent needs of a puppy, avoiding the poor or life-threatening conditions of an animal shipped in the cargo hold of an aircraft, or providing a home to an animal in a building that prohibits them.

## VI. FRAUD

International scholar Paul Harpur contributes a comparative examination of Australian and U.S. law as it pertains to fraud with respect to animals as living accommodations in *Regulating "Fake" Assistance Animals—A Comparative Review of Disability Law in Australia and the United States*.<sup>65</sup> Harpur provides three categories for fraud: "a user who does not have a disability and is not entitled to use an assistance animal; a user who has a disability and is entitled to use an assistance animal, but the assistance animal is unaccredited or inadequately trained; or, both the user and assistance animal are incompetent in terms of being un(der)-qualified."<sup>66</sup> Because documentation is not required for service animals in the U.S. under the ADA (and RA) as it is in some parts of Australia, fraud may be more significant in the U.S.

Harpur explores the possibility of criminalizing the fraudulent use of assistance animals and the marketing of fake service animal documentation and paraphernalia<sup>67</sup> either through existing criminal laws or new legislative acts.<sup>68</sup>

## VII. CONCLUSION

This collection provides insights into how animals as living accommodations for individuals with disabilities differ from inanimate tools of assistance and the issues they raise with respect to animal welfare, human-animal bonds, human need, and business interests and obligations. It provides information about the spectrum of environments in which animals may assist individuals with disabilities, the legal requirements for their presence and corresponding obligations of those making accommodations, and key legal distinctions, such as the dis-

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<sup>64</sup> *Id.* at Section IV.

<sup>65</sup> Paul Harpur et al., *Regulating 'Fake' Assistance Animals—A Comparative Review of Disability Law in Australia and the United States*, 24 ANIMAL L. 77 (2018).

<sup>66</sup> *Id.* at Section II.

<sup>67</sup> *Id.* at Section IV.

<sup>68</sup> *Id.*

inction between service and emotional support animals. It also speaks to emerging issues about animals as living accommodations in housing and education as well as how to guard against service animal fraud while furthering meaningful access to work, public services, places of public accommodation, and public transportation for individuals with disabilities.