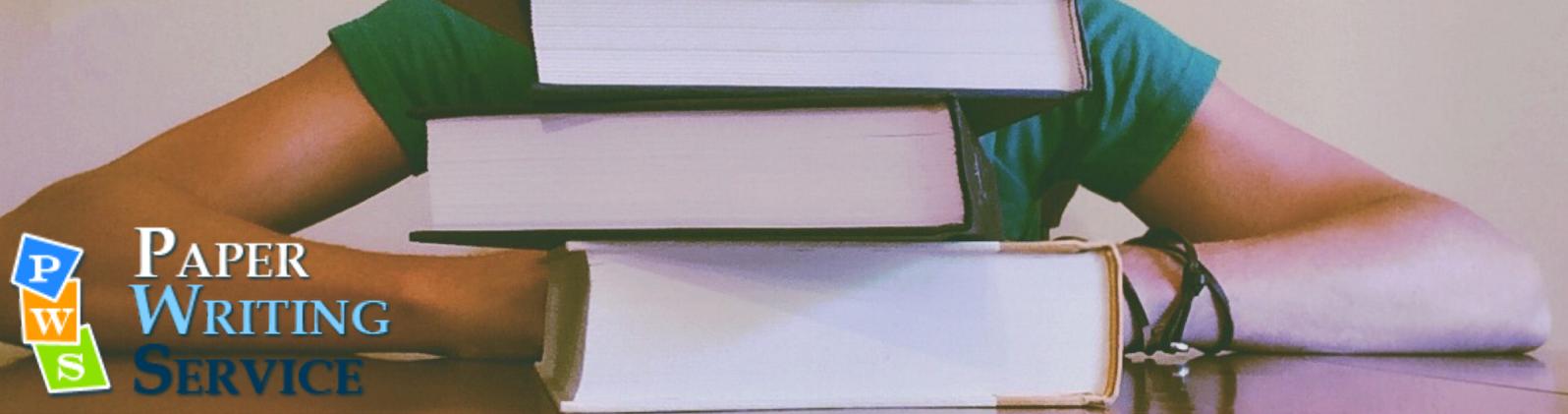


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Introduction

There is no clear definition of the term property. Legally, property is perceived as rights while an ordinary person perceives it as things (Sprankling, 2012). The legal system of the United States of America from 1860's has been trying to determine the best way to deal with animals as the subset of personal property category. Initially, the law began with protective laws for pets at the state level. Based on the existing statistics, there are 69.9 million dogs, 74 million cats, 8.3 million birds and 4.856 million horses held as pets in the United States of America (American Veterinary association, 2012). These pets rely on their owners for sustenance hence, they are held captive and restrained by collars, leashes or fences. This makes pet owners exercise dominion over them as property. However, there is a disconnect between the rules of property and the expectations of the public (Bakke, 2009), since the current stance of the law is that damages caused by a pet is usually measured based on the market value. In this regard, animals are deemed as property. However, the desire of human being to own pets as property is contradicted when these pets have independent interests from those of human beings who own them. This creates conflict between individuals and the society with which the law struggles.

It is the nature of human beings to seek control and ownership of things and in this case, pets. The constitution of the United States of America under the Fifth Amendment has ensured that it protects the property of individuals against the demands of the state unless it is for the public's benefit whereby, consideration is paid as depicted in *Kelo v. City of New London* 545 U.S. 469, (2005). This paper will explore the legal issue of pets as property and its history.

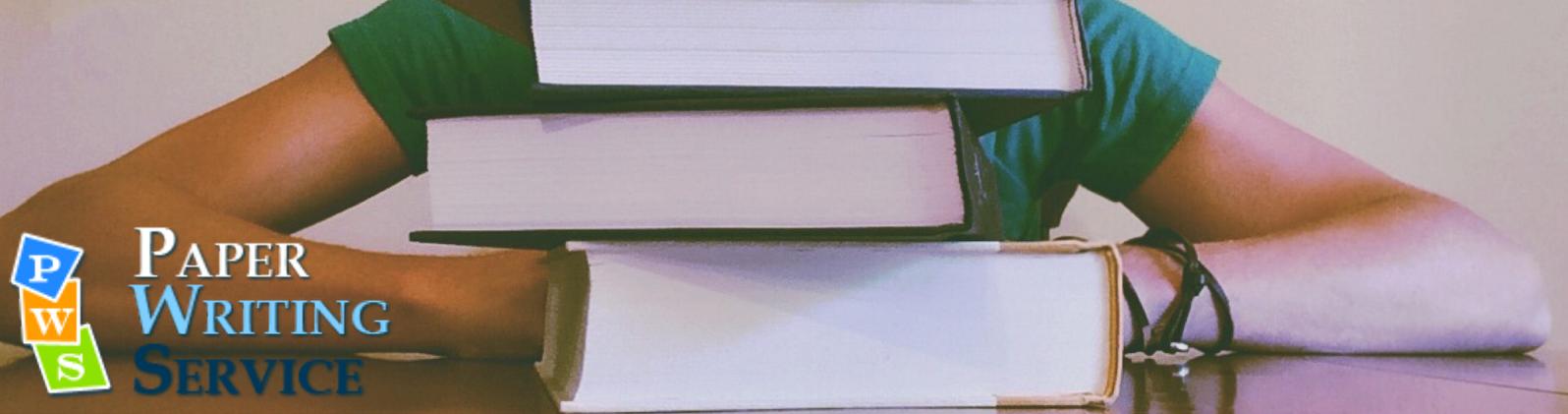


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History

This is because legal aspect of owning pets has existed even before the law was created (Wise, 1996). However, the modern rule of the legality of owning pets as property has been borrowed from ancient laws. That is, from the Roman law era from which the conceptual roots of common law legal system originated. The Roman perception on the ownership of goods was on two broad categories: living things and goods. Nowadays, the discussion of property revolves around three fundamental groups, real, personal and intellectual property. Owning a pet falls under personal property since this form of ownership is characterized by property, which is physical, mobile and a limited physical existence. Some animals are and have always been considered as personal property (Huss, 2002). Nonetheless, as the common law was developed, some animals were not considered as having the same legal status (Childs, 1914). For instance, dogs were not considered as pets until 1900s (Favre & Borchelt, 1999). This implied that the owner of the pet could not seek redress under the law. That is, if the dog gets lost, the owner cannot seek help from the police.

Throughout history, the provisions of the law have reflected the social perception of animals. The law specifically addressed the economic value an animal represented up to the 1860s and legal protection offered to farm animals like cattle, but not extended to pets since they were not considered to have any social value. Conversely, there was a shift in laws from just addressing animals as being the property of the owner to addressing the issues of animals themselves in the beginning of 1860s (Favre & Tsang, 1993). Henry Bergh facilitated this breakthrough through his promotion of the 1867 New York law. This law was later adopted by various states across the U.S. These laws reflected the society's recognition that animals should



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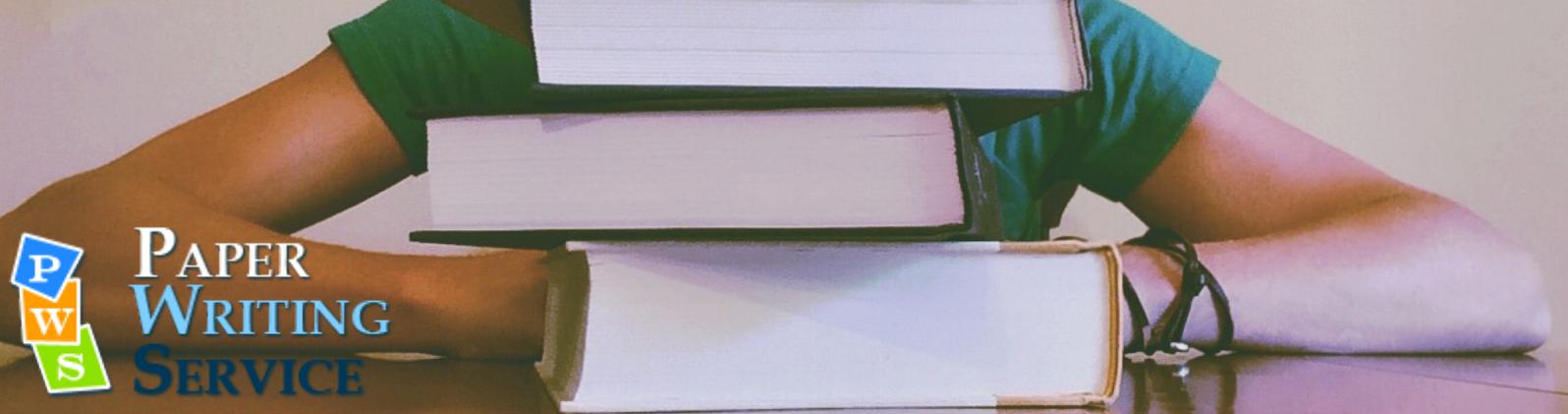
not be mistreated. This shifted the ownership of pets to being trustee from being the owner of the pet. Owning pets can exist in the same sense as for children. That is, parents cannot treat their children as property but they have physical possession over them.

There has been increasing concern on the welfare of animals and especially pets after the enactment of anti-cruelty laws, over the last fifty years. The owner of the pet was tasked with the responsibility of taking care of his or her animal in all aspects; providing medical care, food, shelter and water. Any mistreatment of the pet is categorized as a felony rather than just a misdemeanour. Laws have been enacted in many states across the US giving people broad property rights, but statutes and common law exists to ensure that there is social order and stability.

Pets as property

Pets fall under the same designation as personal property as per the law of the United States. Property rights, which is one of the strongest laws on rights in the US, shields the owners of property. However, pets are distinct from the ordinary property since they are animate objects. For instance, if you happen to kick a drawer, the drawer will not experience any pain but if you happen to kick a pet, the pet will suffer from injuries. Pets do not communicate as humans do but they still have emotions and can feel or sense. The way pets react around the owner is proof of the reciprocal relationship between them, which distinguishes this “property” from the rest.

The laws of property exists for the convenience of man (Favre, 2000). The

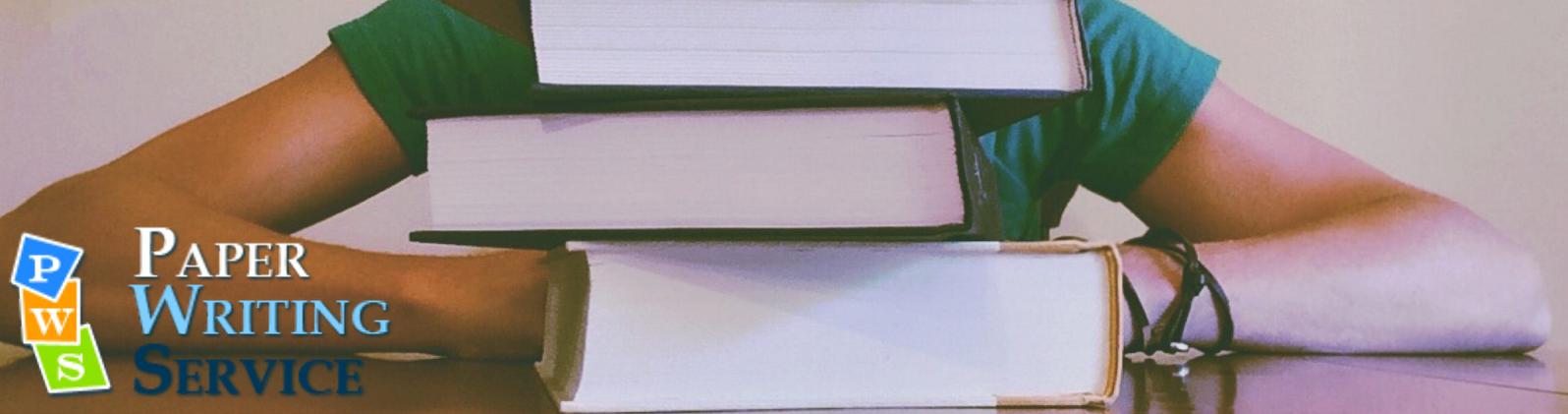


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existence of these laws can be as elements of reality prior to recognition by the laws, or conceived and created by the law. The rights man are accorded by the law to enhance his quality of life (Jenkins, 1973)but at the same time places animals at a position of suppression. That is, the freedom of pets is restrained and are bestowed with far much less rights that human beings. Human beings are at the top of the food chain and they are arguably the most intelligent of all species. However, this does not warrant their dominance over other species as their property. Francione (1995) in his book *Animal, property and the law* advocates for legal protection of animals.

It has been theorized that pets require a new status of independence (Favre, 2000). This implies that the pet will have full access to the legal systems, at least in the realm of equity for protecting and asserting his or her rights. The owner of the pet will hold a legal title as the guardian will accomplish fiduciary responsibility to the owner, who is the pet himself. Furthermore, this position enables the pet to hold equitable interests in property and have extra rights on property in addition to accessing the principles of tort law to protect their own interests. This is evidenced in the *Grise v. State*, 37 Ark. 456, 458 (1881) case whereby, laws are not made to protect the absolute right of people, but rather tends to recognize the attempt to protect the rights of inanimate objects. Individual ownership of pets is in the same nature as that of children. Therefore, the owner of the pet only retains physical possession and control over the pet.

Transforming the ownership of pets to a state whereby they have equitable ownership of themselves is elementary to encouraging social justice and concurrently aids the recognition and enhancing the protection of pets' rights.



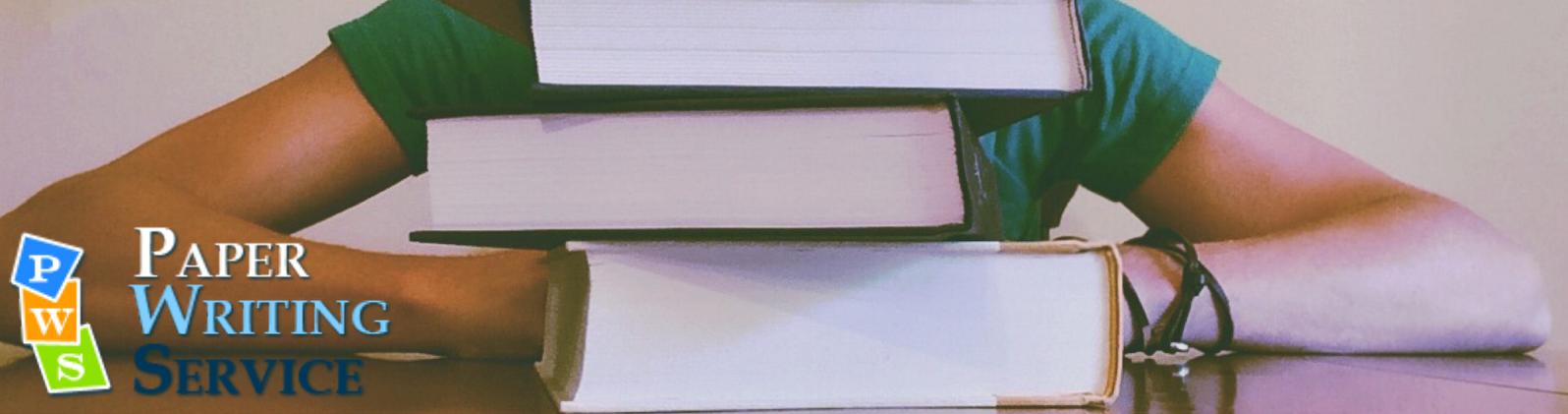
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Rights of pet owners Original title

Animals become property via two basic ways. The first one is through domestication. That is, humans remove them from the wild by capturing them. This is in line with the ruling of *Pierson v. Post*, 3 Cal. 175 (1805) whereby, chasing the fox only is not enough but control and dominion over awards the title of the ownership over it. The second way is by birth. That is, being born by mothers who are already in the property system (Favre & Borchelt, 1999). The traditional common law principle outlines that one gains title of ownership of the wild animal by capturing the animal, while the ownership of the newly born pet is attached to the ownership on the mother. Creating a category of living is not necessary since it does not require these rules to be altered seeing that public policies backing these rules are still pertinent. They symbolize simple enforceable rules that do not require the intervention of the judicial system. However, the title of owning the pet can be stripped on several scenarios. For example, if the owner of the pet is found to be mistreating it, then he can be stripped off the title of ownership since he or she has demonstrated his or her inability to sustain the pet (Cochrane, 2009). Another scenario is if the pet does not have all the required licences and vaccination, which makes it hard for the animal to continue living with the owner since this is in violation of the law.

Transfer of title

Considering that pets are property, the major right the owner has is the ability to transfer his title to another person. In this case, the discussion revolves around the manner in which the title of ownership can be transferred and the limits of the person who can hold the title. The

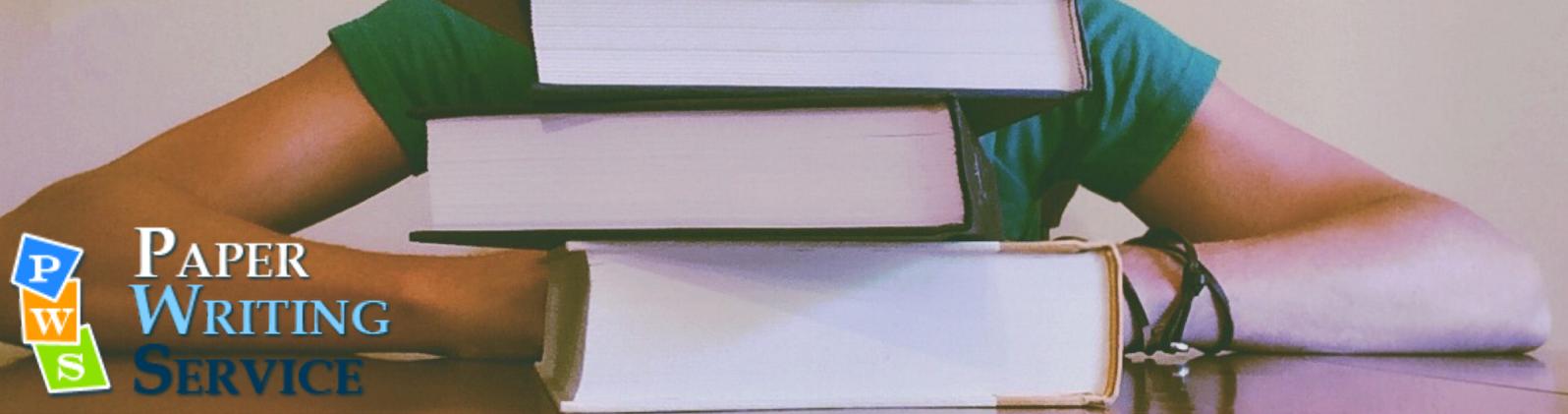


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fundamental rule governing ownership of property is that ownership rules reflects the desire for economic efficiency so that owners may realize the value in their property. The existence of animate category of property ensures that the non-economic values have a more dominant function, which makes economic efficiency less influential.

Transfer of title can occur through several ways: voluntary or involuntary. The voluntary transfer of title occurs through sale, inheritance or as a gift and involuntary transfer can occur via foreclosure, court order or lien. These rules remain intact as a rule to the extent that owning a pet is founded on the desire of the owner to recognize its economic value. That is, the most important legal right of the owner is to buy or sell a pet at his will.

However, the transfer of title cannot occur in particular instances. To begin with, title cannot be transferred to a new person if the alleged owner does not have title of ownership of the pet. This case can occur if the pet was stolen or not legally acquired. Moreover, someone cannot acquire the title of owning the pet if he or she cannot take care of the animal. For instance, if an 18 year old who has not job and has no means of taking care of a horse left as a gift for him, then he will be forced by the law to transfer his title to someone who will be able to take care of the pet. The transfer of title is restricted when it is stipulated that it can only occur via adoption, gift or inheritance and then one goes ahead and sells the pet. Then the title of ownership cannot be transferred since there is a violation of the set rules. A number of organizations deal with these cases whereby, they ensure that homeless pets are assigned to different homes for adoption. However, these homes should meet the set standards by the law for them to qualify to adopt a pet.



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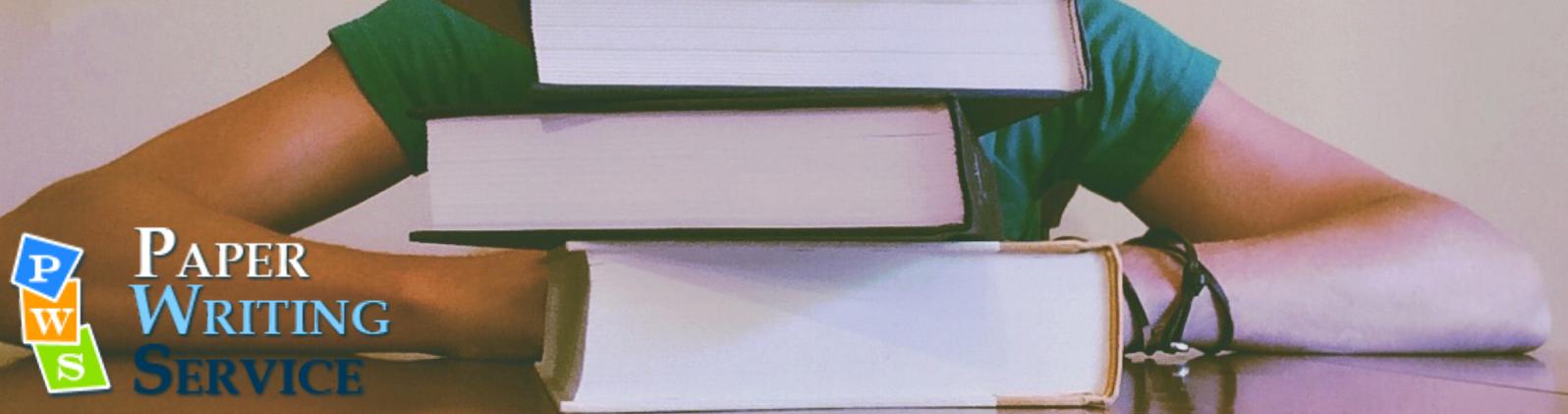
In the scenario where a pet is exchanged for a high monetary value for instance, above \$ 10,000, the US law stipulates that 10 percent of the money should be set aside in a trust to cater for the pets' welfare.

Use of property

The main reason people keep animals as property is so that they can use them on one way or another. Their use may be somewhat benign such as keeping a pet companionship or malignant as keeping horses to carry the owner. While the owner may have his own conception on the use of animals and align his practices with that philosophy, the no-use of animals as per the social perspective informs the legal system. However, the manner in which humans use pets is complex and broad making it impractical. For that reason, the use of pets by human beings should be presumed acceptable until it is deemed unlawful. The society can still oppose the conditions the pet is subjected to regardless of whether the law permits it. This aspect is embodied in the traditional cruelty laws of the 1860s and has been extended to the current anti-cruelty laws, which are the first step towards defining acceptable use of pets. However, the nature of these laws is restrained and is subject to extensive exemptions.

Duties of owners of pets

A key distinct feature, which sets apart, pets as property from the other forms is that there is a legal duty of the owner to the animal that can be enforced by the court. The duty of the owner to the pet is of both positive and negative nature. That is, no harm should occur to the pet and it should be accorded with adequate care (Cooke, 2011). However, the law concentrates on only the physical welfare of the pet but not its mental



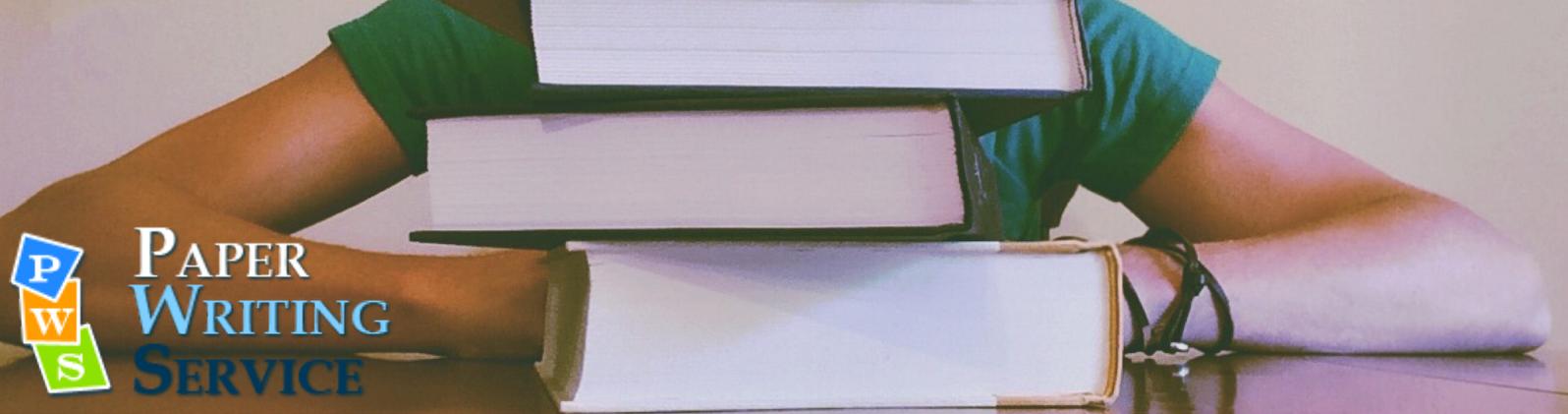
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wellbeing. Confining a pet and justifying that you are preventing it from causing harm to other people, surmounts to abuse but the law does not remedy this situation. The law recognizes that the owner of the pet should ensure that it is well taken care of in a manner he or she deems fit and is in line with the set standards. The owner of the pet should ensure that his lifestyle suits both of them. He should also invest time and money on the pet to ensure that the pet lives comfortably. That includes, providing exercises for the pet, cleaning after him and not allowing the pet to become a stray. In addition, the owner of the pet is responsible for any damages incurred due to harm on the pet or caused by the pet. This is evidenced by *City of Tyler v. Likes* 962 S.W.2d 489 (1997) whereby, pets are of sentimental value to owner and any damage resulting from their harm is irrecoverable.

Rights of pets

Currently, there is a growing social acceptance of keeping while the law is catching up to ensure that their rights are protected. However, under most federal laws pets are still regarded as property and still have little or no rights. Animals are unable to bring a civil suit for themselves if they are abused since they require to have a legal standing before they lodge a case (Bjorkenstam, 2001). For instance in the case of *Citizens to End Animal Suffering and Exploitation, Inc. v. New England Aquarium*, 836 F. Supp. 45 (1993) the dolphin was transferred to Hawaii for research studies by the U.S. navy from an aquarium in Boston and it was ruled that both kama and the plaintiffs had no legal standing to bring a suit. Regardless of these situation, there are some basic requirements that a pet owner should accord a pet if he or she intends to keep it.

The pets should not subject the pet to prohibited uses



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Seeing that the society is becoming more protective of the animal rights, the pet should not be kept for using it for blood sports (Humphreys, 2014) for instance, dogfights.

Pets should not be harmed

Pets have the right not be subjected to pain or suffering which is undoubtedly one of the oldest and most apparent legal rights of animals.

Pets should be cared for

This is the basic right of a pet, which initially was restricted to only providing food but this has expanded to several other aspects (Albright, 2002).

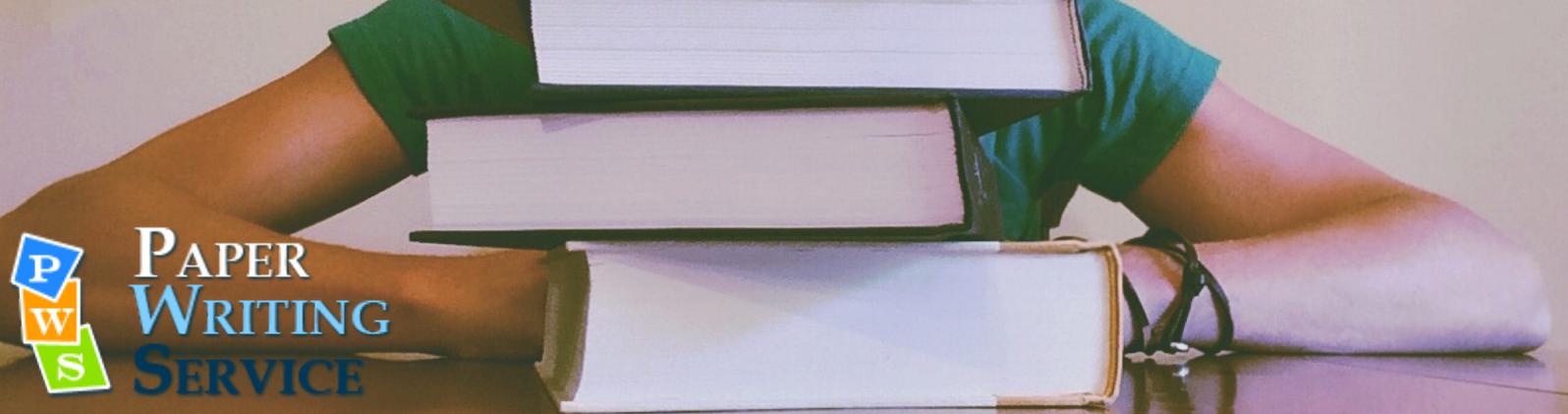
Pets are entitled to living space

Since pets are property and are in possession and control of the owners, they are entitled to be provided with living space.

Pets have the right to own property

There is a legal personality that comes with pets being living property. As such, they have the legal capacity to own other property. One practical example of this case is when attempting to compensate the pet for their labour.

The pets has the right to enter into contracts



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Generally, there are two forms of contract, which the pet can enter into. The first is when the owner lends his pet to another person to perform a service at a fee while the other involves transferring the pet to another to care for him.

Conclusion

As depicted in this article, animals are a special category of property, which can have legal rights. Pets are in all aspects treated as property since the owner has to take care of the pet, protect it, provide shelter and take it to the vet just as one looks after his other property. However, since pets are living things and have their own interests, they require to be treated as living property and not as the rest of the inanimate objects in one's possession.

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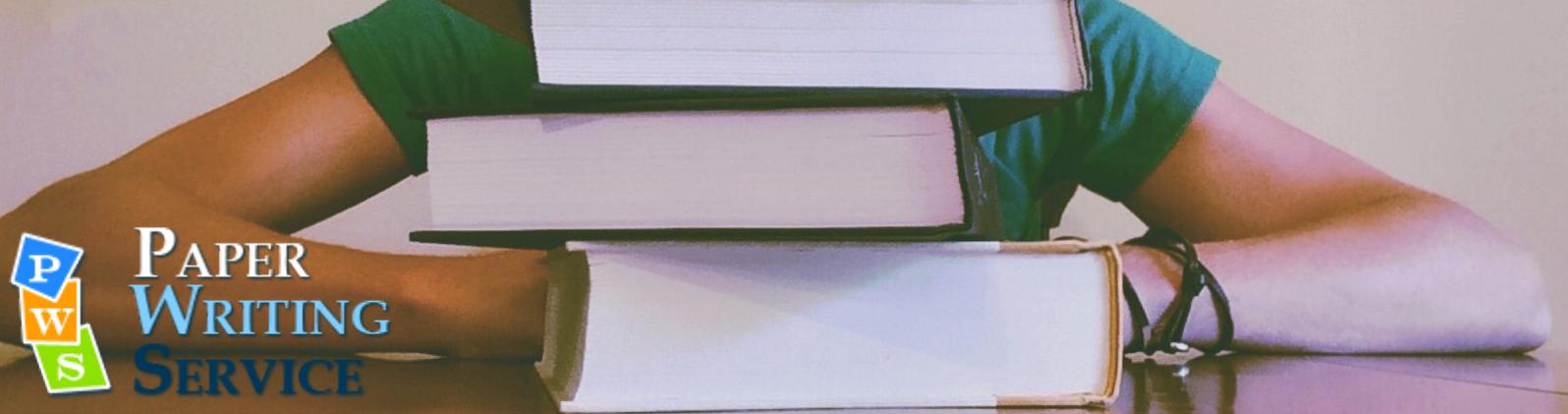
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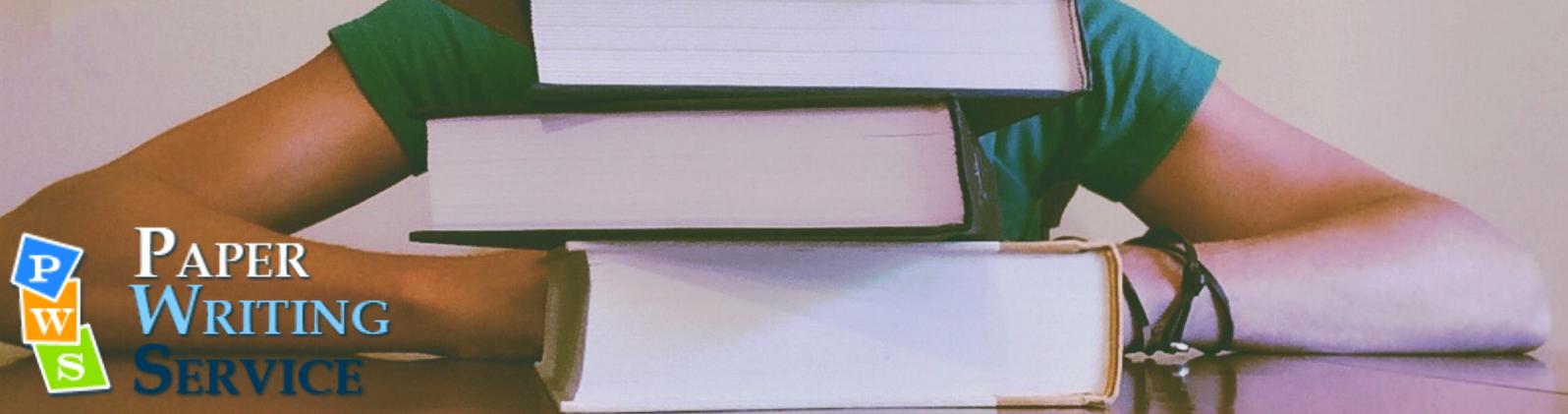
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