

ANIMAL LAW SEMINAR

Law 637 – Fall 2022

**George Mason University Law School
Professors Ralph Henry and Margie Robinson**

Room TBD - Thursday 4:00-6:00 p.m.

Contact Information:

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Office Hours: by appointment

Course Materials:

Assigned cases/articles are available through the links below, Westlaw, TWEN, or will be provided via email in advance of class.

Suggested: C. Sunstein, ANIMAL RIGHTS (2005)

Suggested: D. Favre, ANIMAL LAW: WELFARE, INTERESTS, AND RIGHTS (2008)

Course Description:

This seminar offers a practical survey of litigation and legislative efforts on behalf of animals at the local, state, and national level. The course will address the historical status of animals in the law; the current application of animal protection laws to captive animals, wildlife, and farm and other domesticated animals; legislative efforts and citizen initiatives to strengthen animal protection laws; the role of international treaties and agreements concerning trade in animals and animal products; and the limitations on implementation and enforcement of laws addressing anti-cruelty, hunting and trapping, and animal fighting. Emerging areas of animal law, such as veterinary malpractice and other animal-related torts; the use of consumer protection statutes to address animal welfare concerns; and the impacts of free speech, religious expression, and other constitutional provisions on animal protection statutes will be explored. The course will also address legal constraints on animal advocacy, and the movement to obtain legal recognition of the rights of animals.

Learning Outcomes:

By the end of the course students should have acquired/be able to:

- Understand the interests of animal use industries and animal protection advocates
- Identify historical precedents, current issues, and common causes of action in animal law
- Evaluate and think strategically through the benefits and negative outcomes of a legal action, especially legal action intended to advance public interest causes and/or changes in the law
- Develop an original thesis and support it with legal research and persuasive writing

Evaluation and Attendance:

Students will receive a single final course grade based upon a completed final research paper. Because this is a seminar, class attendance and participation are an important component of a successful course and students are expected to be prepared for substantive discussions of the assigned material. Pursuant to George Mason Law School policy, final grades may be adjusted up or down by a single increment (e.g., from a B+ to an A-) based upon participation.

Paper Extensions: Except for instances described in AR 4-4.1(b)(ii), faculty may not grant deadline extensions for final papers (i.e. any written assignment that accounts for 50% or more of the final course grade); all authority in this matter is delegated to the Assistant Dean, Student Academic Affairs. Requests and reasons for needing a deadline extension must be presented, with appropriate documentation, to the Assistant Dean, Academic Affairs. Except in emergencies, deadline extensions must be sought in advance of the scheduled deadline.

Final research papers are due on or before December 14, 2022 and should be at least 20 pages of typed, double-spaced text, with one-inch margins and no less than 12-point type. All papers must be paginated at the bottom of each page, and sources must be cited in footnotes rather than end notes. Please put your name at the top of the first page!

Proposed paper topics are due on or before October 27, 2022, and outlines must be submitted on or before November 10, 2022. We encourage you to check-in with us during the course to ensure that you are working towards a quality end product.

Class Recordings Prohibited: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by both Professors Henry and Robinson.

Discussion Board:

Questions or hypos may be periodically posted on TWEN for you to respond to and discuss. They may relate to reading(s) assigned for the classes or there may be additional reading(s) provided. These online discussion board posts are designed to facilitate discussion outside of the classroom but may be considered in evaluating your class participation. You may provide an original response to a question or comment on a classmate's response. Remember: always be respectful of your classmates' opinions. Of course, you may disagree, but do so considerately.

Reading Assignments:

This syllabus sets forth the basic reading assignments for each class session. The syllabus will likely be supplemented each week with additional materials as animal law is a rapidly evolving subject area and major cases are decided regularly. Every effort will be made to discuss the topics and assignments as indicated in the syllabus. However, exact dates for discussion of particular assignments may change as the semester progresses, and there may be occasions where the subject from one class will carry over to the next. Students will receive advance notice of any variance from the schedule in the syllabus.

Schedule and Assignments

Session 1 – August 25

Introductions and overview of course requirements. Outline of major topic areas of the course. Discussion of potential topics and structure for research papers. Overview of historical treatment of animals in the law and animal rights theory.

- C. Sunstein, *Intro.: What Are Animal Rights?* ANIMAL RIGHTS (2005)
J. Lovvorn, *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform*, 12 ANIMAL L. 133 (2006)
Knox v. MSPCA, 425 N.E.2d 393 (Mass.App.Ct. 1981)
Lock v. Falkenstine, 380 P.2d 278 (Okla.Crim.App. 1963)
City of Rolling Meadows v. Kyle, 494 N.E.2d 766 (Ill.App. 1986)

Session 2 – September 1

Animals and the legal system – Foundations of animal law, anti-cruelty provisions in criminal codes, and criticisms of criminal justice-based animal advocacy.

- People v. Voelker*, 658 N.Y.S.2d 180 (N.Y.City Crim.Ct. 1997)
People v. Thomason, 84 Cal.App.4th 1064 (Cal.App.2.Dist. 2000)
Oliver v. City of Anaheim, 490 Fed. App'x. 890 (9th Cir. 2012)
State v. Kuenzi, 332 Wis. 2d 297 (Wis. Ct. App. 2011)
Martinez v. State, 48 S.W.3d 273 (Tx.App.4d. 2001)
State v. Nix, 355 Or 777 (Or. 2014)
Justin Marceau, *Beyond Cages: Animal Law and Criminal Punishment*, Yale Law, Ethics and Animals Program Lecture Series (Sept. 23, 2019), available at <https://vimeo.com/363909189>

Session 3 – September 8

Animals and the legal system – Private causes of action: Exploration of various causes of action available to animal advocates, and the limitations of judicial review of civil claims and remedies to protect animals.

- Hammer v. American Kennel Club*, 1 N.Y.3d 294 (N.Y. 2003)
ALDF v. Cal. Expo. and State Fairs, 239 Cal.App. 4th 1286 (Cal.App. 1st Dist. 2015)
Seeton v. Pennsylvania Game Com'n, 594 Pa. 563 (Pa. 2007)
ALDF v. Woodley, 181 N.C.App. 594 (N.C. App. 2007)

Session 4 – September 15

Animals and the legal system – Standing: Review of animals' status as legal objects and lack of legal personhood. How animal advocates build a case and overcome hurdles to establish legal standing.

- C. Sunstein, *Can Animals Sue?*, ANIMAL RIGHTS (2004) 251-261
Sierra Club v. Morton, 405 U.S. 727 (1972)
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
HSUS v. United States Postal Service, 609 F.Supp.2d 85 (D.D.C. 2009)
New Eng. Anti-Vivisection Soc'y v. United States Fish & Wildlife Serv., 208 F. Supp. 3d 142 (D.D.C. 2016)

Session 5 – September 22

Animals and the legal system – Valuation: How much is an animal, or a human relationship with an animal, worth? Discussion of monetary recovery and other judicial remedies for harms to humans relating to abuses of animals, with a focus on emotional distress torts.

Plotnick v. Meihaus, 208 Cal.App. 4th 1590 (Cal.App. 4th 2012)

Rabideau v. City of Racine, 243 Wis.2d 486 (Wisc. Sup.Ct. 2001)

Strickland v. Medlen, 397 S.W.3d 184 (Tex. 2013)

S. Gay, *Companion Animal Capital*, 17 ANIMAL LAW 77 (2011)

Burgess v. Taylor, 44 S.W.3d 806 (Ky. Ct.App. 2001)

Barrios v. Safeway, 97 So.3d 1019 (La. Ct.App., 2012)

Session 6 – September 29

Laws and regulations concerning companion animals; including puppy mills and breeding, sales and adoptions

Skim Animal Welfare Act, 7 U.S.C. § 2131, *et. seq.* and regulations 9 CFR 1.1 *et seq*

Doris Day Animal League v. Veneman, 315 F.3d 297 (3rd Cir. 2003)

Associated Dog Clubs of N.Y. State, Inc. v. Vilsack, 75 F. Supp. 3d 83 (D.D.C. 2014)

Budd v. Quinlan, 19 Misc. 3d 66, 860 N.Y.S.2d 802 (App. Term 2008)

Cahill v. Blume, 8 Misc. 3d 1004(A), 801 N.Y.S.2d 776 (Civ. Ct. 2005)

Cavallini v. Pet City & Supply, 2004 PA Super 141, 848 A.2d 1002 (2004)

Session 7 – October 6

Laws and regulations concerning wildlife; including protection of threatened and endangered species, marine mammals, and wild horses and burros

TVA v. Hill, 437 U.S. 153 (1978)

HSUS v. Zinke, 865 F.3d 585, 2017 WL 3254932 (D.C. Cir Aug. 1, 2017)

AWI v. Kreps, 561 F.2d 1002 (D.C. Cir. 1977)

HSUS v. Locke, 626 F.3d 1040 (9th Cir. 2010)

Colo. Wild Horse & Burro Coal., Inc. v. Salazar, 639 F. Supp. 2d 87 (D.D.C. 2009)

Handout on Animal Damage Control Act/Wildlife Services

Session 8 – October 13

Laws and regulations concerning farm animals; including laws prohibiting particular forms of confinement, and providing for humane slaughter and transport

NJSPCA v. NJDOA, 196 N.J. 366 (N.J.Sup.Ct. 2008)

HSR & MCPCA v. Lyng, 633 F.Supp. 480 (W.D.N.Y. 1986)

ALDF v. Provimi Veal, 626 F.Supp. 278 (D.Mass. 1986)

PCRM v. Tyson, 119 Cal.App.4th 120 (Cal.App. 2004)

Levine v. Connor, 540 F.Supp.2d 1113 (N.D.Cal. 2008)

Session 9 – October 20

Laws and regulations concerning animals used in research and experimentation, performing animals and animals used in other exhibitions

Taub v. State, 296 Md. 439 (Md.Ct.App. 1983)

Francis Collins, *NIH Will No Longer Support Biomedical Research on Chimpanzees* (Nov. 17, 2015), <https://www.nih.gov/about-nih/who-we-are/nih-director/statements/nih-will-no-longer-support-biomedical-research-chimpanzees>

ALDF v. Glickman, 204 F.3d 229 (D.C. Cir. 2001)

Hagan v. Feld Entertainment, Inc., 365 F.Supp.2d 700 (E.D.Va. 2005)

Hill v. Coggins, 867 F.3d 499 (4th Cir. 2017)

Handout on rodeos, bull running, animal racing, zoos and circuses, and uses of animals in television and movies

*****Research paper topics are to be submitted on or before October 27, 2022 by email**

Session 10 – October 27

State and federal legislative processes for enacting animal protection laws – issues in legislative drafting, lobbying, citizen initiatives and referenda and grass roots activities

California Prop 2: A Watershed Moment for Animal Law 15 ANIMAL L. 149 (2009)

Commonwealth v. Looper, Civ. No. 00850, 2009 WL 1272625 (Ky.App. May 8, 2009)

Nat'l Pork Producers Council v. Ross, 6 F.4th 1021 (9th Cir. 2021), *cert. granted*, 142 S. Ct. 1413, 212 L. Ed. 2d 402 (2022)

Federal Meat Inspection Act preemption provision: 21 U.S.C.A. § 678

Watch: oral argument in *Assoc Des Eleveurs De Canards, Et Al v. Kamala Harris*, No. 15-55192 (9th Cir. 2015) https://www.youtube.com/watch?v=WJerm_vEbE0

Session 11 – November 3

Constitutional protections of, and limitations on, animal protection advocacy – First Amendment freedoms of speech and religion, libel and defamation, invasion of privacy, and the Animal Enterprise Terrorism Act

Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993)

United States v. Stevens, 559 U.S. 460, 130 S.Ct. 1577 (2010)

Ouderkirk v. PETA, 2007 U.S. Dist. LEXIS 29451 (E.D.Mich. 2007)

Dorman v. Satti, 678 F.Supp. 375 (D.Conn. 1988)

State v. Miner, 556 N.W.2d 578 (Minn.Ct.App. 1996)

Animal Legal Def. Fund v. Herbert, 263 F.Supp.3d 1193 (D. Utah 2017)

*****Research paper outlines are to be submitted on or before November 10, 2022 by email**

Session 12 – November 10

Current developments in animal law. Guest speakers are frequently invited to participate in this session. [*reading may be assigned in advance of class*]

Session 13 – November 17

Brief presentations of research paper topics by students; discussion of issues and ideas, review and feedback

Session 13 may also be used for discussion of materials and information that we were unable to cover in prior sessions, or for any animal law issues or topics not otherwise covered in this course that students would like to discuss.

*****Final research papers are to be submitted on or before December 14, 2022**