

ANIMAL LAW SEMINAR

Law 637 – Fall 2023

**George Mason University Law School
Professors Ralph Henry and Rebecca Cary**

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

Contact Information:

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Course Materials:

Assigned cases/articles are available through the links below, Westlaw/Lexis, 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 an examination of litigation, legislation and regulatory 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 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 animal protection laws. Emerging areas of animal law, and the impacts of free speech, religious expression, and other constitutional protections for animal protection advocates and animal use industries 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 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, 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.

Final Paper Content and Deadline:

The final paper may be written on any topic in animal law. Law student papers typically identify a specific, unresolved legal problem and offer a solution, but they can also present ideas for new doctrinal frameworks, approaches, or developments. This is a scholarly writing—the student’s own analysis and conclusions should be thoroughly developed in the paper. The paper should be well-researched, enough to substantiate the student’s arguments, but the paper should present the student’s own perspective. No generative AI product is permitted to be used. A successful paper thoroughly defines the issue to be analyzed, recognizes structural, policy, political and other implications of the matter, and persuasively argues the author’s perspective while addressing any obvious contrary arguments.

Proposed paper topics are due on or before October 26, 2023, and outlines must be submitted on or before November 9, 2023. We encourage you to check-in with us during the course to ensure that you are working towards a quality end product.

Final research papers are due on or before December 13, 2023 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.

Faculty may not grant extensions of the deadline for final papers beyond the last date of the exam period, and 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.

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 any an audio or video recording device. Any exceptions to this policy must be expressly permitted in writing by both Professors Henry and Cary.

Class Prep 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 24

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 – August 31

Animals and the legal system – Foundations of animal law, anti-cruelty provisions in criminal codes as a reflection of community norms, 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 & Animals Program (Sept. 23, 2019), at <https://vimeo.com/363909189>

Session 3 – September 7

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)
The Nonhuman Rights Project, Inc., on behalf of Happy, v. Breheny
<https://www.youtube.com/watch?v=vDyN8iaIgYc&t=7300s> (start at 2:01:40)

Session 4 – September 14

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

- C. Sunstein, *Can Animals Sue?*, ANIMAL RIGHTS (2004) 251-261
Sierra Club v. Morton - Oral Argument - November 17, 1971
https://apps.oyez.org/player/#/burger3/oral_argument_audio/16979
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)

Session 5 – September 21

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 28

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.*
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 5

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 fighting, animal racing, zoos and circuses, and uses of animals in television and movies

Session 8 – October 12

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)
Levine v. Connor, 540 F.Supp.2d 1113 (N.D.Cal. 2008)
McKiver v. Murphy-Brown, 980 F.3d 937 (4th Cir. 2020) (concurrence only)

Session 9 – October 19

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. 2017)

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

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

Born Free USA v. Norton, 278 F. Supp. 2d 5 (D.D.C. 2003)

Handout on Animal Damage Control Act/Wildlife Services

*****Research paper topics are to be submitted on or before October 26, 2023 by email**

Session 10 – October 26

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

Session 11 – November 2

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)

Triumph Foods, LLC v. Campell, Civ. No. 23-11671, Am. Complaint (July 31, 2023)

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

*****Research paper outlines are to be submitted on or before November 9, 2023 by email**

Session 12 – November 9

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)

Handout on the Animal Enterprise Terrorism Act

Session 13 – November 16

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.

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