

## ANIMAL WELFARE LAW - 2018

Delcianna J. Winders, Dr. Heather Rally, Donald C. Baur  
Vermont Law School, Summer Session Term 3  
July 9 – 19, 2018  
1:00 pm – 4:00 pm

### SYLLABUS

- Required Text:** Animal Rights Current Debates and New Directions (**AR**) (Cass R. Sunstein & Martha C. Nussbaum, eds., 2005)  
Supplemental Materials are available online and by request at the Bookstore
- Recommended Reading:** On reserve in Library or URLs\*
- Office Hours:** 4:30-5:30 p.m., Mondays - Thursdays
- Exam:** Open-book, take-home, anonymous grading, due 3:00 pm, July 21
- Required Reading:** Advance reading required for first class
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### **Week One: July 9 - 12**

**CLASS I:**

**Monday, July 9: Course Introduction: Overview of the “Animal Condition”**

**Required Reading:**

Baker, Sandra, Russ Cain, Freya van Kesteren, Zinta A. Zommers, Neil D’Cruze, Fraser, David. Animal ethics and animal behavior science: bridging the two cultures. *Applied Animal Behaviour Science*. 65(1999). 171–189.

Broom, Donald M. (2016) Considering animals’ feelings: Précis of Sentience and animal welfare (Broom 2014). *Animal Sentience* 5(1).

Rollins, Bernard & Michael D. H. Rollin. Dogmatisms and Catechisms — Ethics and Companion Animals. *Anthrozoos*. 14.1. (2001).

Bekoff, Marc & Daniel Ramp.

Brown, Culum (2015). Fish intelligence, sentience and ethics. *Animal Cognition*. January 2015, Volume 18, Issue 1, pp 1–17.

Degrazia, David. On the ethics of animal research. *Principles of healthcare ethics*, Second Ed. 2007. P. 689 – 695.

**Recommended Reading:**

Donald R. Griffin, *Animal Minds: Beyond Cognition to Consciousness*.

Victoria Braithwaite, *Do Fish Feel Pain?*

Jonathan Balcombe, *Pleasurable Kingdom: Animals and the Nature of Feeling Good*.

Marc Bekoff, *The Emotional Lives of Animals: A Leading Scientist Explores Animal Joy, Sorrow, and Empathy—and Why They Matter*.

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\* RR is not necessary for the class. These materials provide additional information and legal authority for the issues discussed in the corresponding class.

**CLASS II:**

**Tuesday, July 10:      Property Status and the Evolution of Rights**

**Required Reading:**

Cass R. Sunstein, The Rights of Animals, 70 U. Chi. L. Rev. 387 (2003).  
Gary L. Francione, Animal Rights and Animal Welfare, 48 Rutgers L. Rev. 397 (1996).  
Richard A. Epstein, Animals As Objects, or Subjects, of Rights, **AR Chapter 6**.  
Jonathan Lovvorn, Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform, 12 Animal Law 133 (2006).

**Recommended Reading:**

Gary L. Francione & Robert Garner, The Animal Rights Debate Abolition or Regulation? (2010).

**CLASS III:**

**Wednesday, July 11:      International Law, Trafficking, Treaties and Animal Welfare**

**Required Reading:**

David W. Macdonald. Rough Trade: Animal Welfare in the Global Wildlife Trade. BioScience, Volume 63, Issue 12, 1 December 2013, Pages 928–38.  
[Compassion in conservation: Don't be cruel to be kind](#). New Scientist. (2014).  
Bruce A. Wagman & Matthew Liebman, A Worldview of Animal Law 279-336 (2011).  
Peter LaFontaine, The Tragedy of Trade, *in* Wildlife Law and Ethics: A U.S. Perspective 57-86 (2017).

**Recommended Reading:**

U.S. House of Representatives, House Committee on Natural Resources, Democratic Staff Report, Missing the Mark: African Trophy Hunting Fails to Show Consistent Conservation Benefits (June 13, 2016).  
Anna Frostic & Joan Schaffner, Evolving Perspectives on Captive Wild Animals, *in* Wildlife Law and Ethics: A U.S. Perspective 143-236 (2017).

**CLASS IV:**

**Thursday, July 12:      The Federal Animal Welfare Act**

**Required Reading:**

Congressional Research Service, The Animal Welfare Act: Background and Selected Animal Welfare Legislation (Jan. 5, 2016).  
Taub v. State, 296 Md. 439, 463 A.2d 819 (1983).  
USDA Office of Inspector General, Oversight of Research Facilities (Dec. 2014).  
USDA Office of Inspector General, Inspections of Problematic Dealers (May 2010).  
Delcianna J. Winders, Administrative Law Enforcement, Warnings, and Transparency Warnings Article, 78 Ohio State L. J. \_\_ (forthcoming 2018).  
Animal Legal Def. Fund, Inc. v. Perdue, 872 F.3d 602, 605 (D.C. Cir. 2017).  
Report of the Committee on Legal Issues Pertaining to Animals of the Association of the Bar of the City of New York Regarding Its Recommendation to Amend the Animal Welfare Act, 9 Animal L. 345 (2003).

Delcianna J. Winders, USDA Blackout: Scrutinizing the Deletion of Thousands of Animal Welfare Act-Related Records, ABA Animal Law Committee News, pp. 1, 18-20 (Summer 2017).

**Recommended Reading:**

Jessica Eisen, Beyond Rights and Welfare: Democracy, Dialogue, and the Animal Welfare Act, 51 U. Mich. J. L. Reform (forthcoming, 2018).

Delcianna J. Winders, Administrative License Renewal and Due Process—A Case Study, 47 Fla. State Univ. Law. R. \_\_ (forthcoming 2018).

Delcianna J. Winders, Transparency in the Blackout Era: Revisiting the E-FOIA's Proactive Disclosure Mandates, 95 Denver L. Rev. \_\_ (forthcoming 2018).

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**Week Two: July 16 - 19**

**CLASS V:**

**Monday, July 16:                    Federal Wildlife Laws and Animal Welfare**

**Required Reading:**

Committee for Humane Legislation v. Richardson, 540 F.2d 1141 (D.C.Cir.1976).

Mirage Resorts v. Franklin, Civil No. CV-S-92-759-PMP.LR (D. Nev. 1993).

Georgia Aquarium, Inc. v. Pritzker, 134 F. Supp. 3d 1374, 1378 (N.D. Ga. 2014).

Jared Goodman & Delcianna Winders, Captive Wildlife Under the Endangered Species Act, in Endangered Species Act (Donald C. Baur & Ya-Wei Li eds., 3d ed. forthcoming 2018).

Am. Soc'y For Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus, 317 F.3d 334 (D.C. Cir. 2003).

People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium, 189 F. Supp. 3d 1327 (S.D. Fla. 2016).

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

Kuehl v. Sellner, 161 F. Supp. 3d 678 (N.D. Iowa 2016)

New England Anti-Vivisection Soc'y v. U.S. Fish & Wildlife Serv., No. 16-CV-149 (KBJ), 2016 WL 4919871 (D.D.C. Sept. 14, 2016).

Compl., PETA v. U.S. Fish & Wildlife Service, No. 15-600 (May 8, 2015).

**Recommended Reading:**

Delcianna J. Winders, Captive Wildlife at a Crossroads—Sanctuaries, Accreditation, and Humane-Washing, 6 Animal Stud. J. \_\_ (forthcoming 2018).

Alan Green, Animal Underworld: Inside America's Black Market for Rare and Exotic Species (1999).

**CLASS VI:**

**Tuesday, July 17:                    Federal Avian Protection Laws and Animal Welfare**

**Required Reading:**

Defenders of Wildlife v. EPA, 882 F. 2d 1294 (8th Cir.1989)

United States v. Apollo Energies, Inc., 611 F. 3d 679 (10th Cir. 2010)

United States v. Moon Lake, 45 F. Supp. 2d 1070 (D. Colo. 1999)

United States v. CITGO Petroleum Corp., 801 F. 3d 477 (5th Cir. 2015)  
HSUS v. Glickman, 217 F.3d 882 (D.C.Cir. 2000)  
United States v. Richards, 583 F. 2d 491 (10th Cir. 1978)  
United States v. Dion, 476 U.S. 734 (1986)  
United States v. Abeyta, 632 F. Supp. 1031 (D. N.M. 1986)  
Should the Hopi People Continue to Have the Right to Kill Eagles? Denver Post (May 23, 2013)  
The Hopi and Eagle Share a Long Relationship, High Country News (April 16, 2013)  
PETA v. USDA, 797 F.3d 1087 (D.C. Cir 2015)  
United States v. Cullen, 499 F.3d 157 (2nd Circuit 2007)

**Recommended Reading:**

Solicitor Opinion M-37041 Incidental Take Prohibited Under the Migratory Bird Treaty Act (Jan. 10, 1987)

**CLASS VII:**

**Wednesday, July 18:**     **Legal personhood responses for animals.**

**Required Reading:**

Nonhuman Rights Project, on behalf of Beulah, Minnie, and Karen, Petition (Nov. 13, 2017).  
The NonHuman Rights Project, on behalf of Tommy v. Patrick Lavery, Petition.  
The NonHuman Rights Project, on behalf of Tommy v. Patrick Lavery, Memorandum of Law.  
The NonHuman Rights Project, on behalf of Tommy v. Patrick Lavery (Opinion and Order, State of New York, Supreme Court, Appellate Division, Third Judicial Department 2014).  
Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery, 152 A.D.3d 73, 54 N.Y.S.3d 392 (N.Y. App. Div. 2017).  
Decision in Legal Action by AFADA Regarding Chimpanzee Cecilia, (3d Guarantee Court, Judicial Power, Mendoza 2016) (translation).  
Richard Posner, “Animal Rights: Legal, Philosophical, and Pragmatic Perspectives,” **AR Chapter 2.**

**Recommended Reading:**

Steven M. Wise, Rattling the Cage (2011).  
Steven M. Wise, Elizabeth Stein, Monica Miller, Sarah Stone, The Power of Municipalities to Enact Legislation Granting Legal Rights to Nonhuman Animals Pursuant to Home Rule, 67 Syracuse L. Rev. 31 (2017).

**CLASS VIII:**

**Thursday, July 19:**     **Emerging Legal Strategies**

**Required Reading:**

Laurence H. Tribe, Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Work of Steven M. Wise, 7 Animal L. 1, 1 (2001).  
Complaint, *Tilikum v. SeaWorld Parks & Ent'mt* (Oct. 26, 2011).  
*Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. Sea World Parks*

& Entm't, Inc., 842 F. Supp. 2d 1259, 1260 (S.D. Cal. 2012).  
Jeffrey S. Kerr, et al., A Slave by Any Other Name Is Still a Slave: The Tilikum Case and Application of the Thirteenth Amendment to Nonhuman Animals, 19 Animal L. 221 (2013).  
Naruto v. Slater, Complaint.  
Naruto v. Slater, No. 15-CV-04324-WHO, 2016 WL 362231 (N.D. Cal. Jan. 28, 2016).  
Naruto v. Slater, Settlement Agreement.

**Recommended Reading:**

Jessica Eisen, Animals in the Constitutional State, ICON (forthcoming 2018).  
Jessica Eisen & Kristen Stilt, Protection and Status of Animals, in The Max Planck Encyclopedia of Comparative Constitutional (Rainer Grote, Frauke Lachenmann & Rüdiger Wolfrum eds., 2016).