ANIMAL WELFARE LAW - 2019

Delcianna J. Winders, Dr. Heather Rally, Donald C. Baur
Vermont Law School, Summer Session Term 3
July 8 – 18, 2019
1:00 pm – 4:00 pm

SYLLABUS

Required Text: Supplemental Materials, available online and by request at the Bookstore
Recommended Reading: On reserve in Library or URLs[1]
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
Volunteer Students: Requested to brief cases marked by an asterisk

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Week One: July 8 - 11

CLASS I:
Monday, July 8: **Course Introduction:** Overview Animal Ethics and the Pursuit of Enhanced Welfare

Required Reading:
_____ Ruth Payne (2002), *Animal Welfare, Animal Rights, and the Path to Social Reform: One Movement's Struggle for Coherency in the Quest for Change*, 9 Va. J. Soc. Pol'y & L. 587.
_____ Gary Francione (2010), *Animal Welfare and the Moral Value of Nonhuman Animals. Law, Culture, and the Humanities,* January 2010, Volume 6, Issue 1, pp 24 – 36.

Recommended Reading:
Peter Singer, *Animal Liberation*, (1975).
Tom Regan, *The Case for Animal Rights*, (1983).

[1] 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 9: **The Captive Animal Condition, Sentience, and Cognition**

Mandatory Hot Topics Lecture/Brown Bag Lunch:
July 9, noon-1 p.m., Confronting America's Captive Tiger Crisis, Oakes Hall, Room 012

Required Reading:

_____ David Fraser, *Animal Ethics and Animal Behavior Science: Bridging the Two Cultures*, Applied Animal Behaviour Science. Vol 65, Issue 3, pp.171–189 (1999).

_____ Carl Safina, *Beyond Words: What Animals Think and Feel*, pp. 1-35 (2016).

Recommended Reading:

Marc Bekoff, *The Emotional Lives of Animals: A Leading Scientist Explores Animal Joy, Sorrow, and Empathy—and Why They Matter*, (2007).
Victoria Braithwaite, *Do Fish Feel Pain?* (2010).
Brown, Culum, (2015), Animal Cognition. January 2015, Volume 18, Issue 1, pp 1–17, (2015).

CLASS III:
Wednesday, July 10: **Federal Conservation Statutes and International Treaties - The Take Prohibition of the MMPA and ESA**

Required Reading:

_____ Marine Mammal Protection Act.

_____* *Strong v. Secretary of Commerce*, 5 F.3d 905 (5th Cir. 1993).

_____* *United States v. Hayashi* 5 F.3d 1278 (9th Cir. 1993).

_____* *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).

_____ Tilikum's Public Display Permit (October 7, 1992).

_____ USFWS, Letter of Authorization, Transfer and Placement of a Female Alaska Polar Bear Cub (May 7, 1992).

_____ Endangered Species Act.

_____ Delcianna J. Winders, Jared Goodman, & Heather Rally, *Captive Wildlife Under the Endangered Species Act*, *in* ENDANGERED SPECIES ACT (Donald C. Baur & Ya-Wei Li eds., 3d ed. forthcoming 2019).

_____ *Babbit v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995).

Recommended Reading:

Delcianna J. Winders, *Captive Wildlife at a Crossroads—Sanctuaries, Accreditation, and Humane-Washing*, 6 Animal Stud. J. 161 (2017), http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1325&context=asj.
Alan Green, *Animal Underworld: Inside America's Black Market for Rare and Exotic Species* (1999).

Norton, Hutchins, Stevens, and Maple, Ethics on the Ark: Zoos, Animal Welfare, and Wildlife Conservation (1995).

CLASS IV:
Thursday, July 11: Federal Conservation Statutes, Continued;

_____ Mark Beckoff, *Compassion in Conservation: Don't Be Cruel to Be Kind*, New Scientist (2014).
_____* *U.S. v. Nguyen*, 916 F.3d 1016 (5h Cir. 1991) (intent)
_____* *Animal Welfare Institute v. Beech Ridge Energy LLC*, 675 F. Supp 2d 540 (D. Md. 2009) (reasonable certainty, citizens suit)
_____* *Aransas Project v. Shaw*, 775 F.3d 641 (5th Cir. 2014) (proximate cause)
_____* *People for Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 879 F.3d 1142 (11th Cir. 2018).
_____* *Kuehl v. Sellner*, 887 F.3d 845 (8th Cir. 2018).

Recommended Reading:

Peter LaFontaine, *The Tragedy of Trade, in Wildlife Law and Ethics: A U.S. Perspective,* 57-86 (2017).
David W. Macdonald. Rough Trade: *Animal Welfare in the Global Wildlife Trade*, BioScience, Volume 63, Issue 12, 1 December 2013, Pages 928–38.
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), https://conservationaction.co.za/wp-content/uploads/2019/01/Missing-the-Mark.pdf.
Anna Frostic & Joan Schaffner, *Evolving Perspectives on Captive Wild Animals*, *in* WILDLIFE LAW AND ETHICS: A U.S. PERSPECTIVE 143-236 (2017).

Week Two: July 15 - 18

CLASS V:
Monday, July 15: The Animal Welfare Act; Guest Lecture: James Gesualdi

Required Reading:

_____ Congressional Research Service, *The Animal Welfare Act: Background and Selected Animal Welfare Legislation* (Jan. 5, 2016), https://fas.org/sgp/crs/misc/RS22493.pdf, pages 1-6.
_____* *Taub v. State*, 296 Md. 439, 463 A.2d 819 (1983).
_____* *ALDF v. Glickman*, 204 F.3d 229 (D.C. Cir. 2001).
_____ James Gesualdi, Excellence Beyond Compliance Reading Packet - available on TWEN site

Recommended Reading:

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

Jessica Eisen, *Beyond Rights and Welfare: Democracy, Dialogue, and the Animal Welfare Act*, 51 U. MICH. J.L. REFORM 469 (2018).

Delcianna J. Winders, *Administrative Law Enforcement, Warnings, and Transparency*, 79 OHIO ST. L. J. 451 (2018).

Delcianna J. Winders, *Administrative License Renewal and Due Process—A Case Study*, 45 FLA. ST. U. L. REV. 539 (2018).

Justin Marceau, *How the Animal Welfare Act Harms Animals*, 69 HASTINGS L.J. 925 (2018).

Federation of American Societies for Experimental Biology, Reforming Animal Research Regulations: Workshop Recommendations to Reduce Regulatory Burden (2017), http://www.faseb.org/Portals/2/PDFs/opa/2017/FASEB-Animal-Regulatory-Report-October2017.pdf.

People for the Ethical Treatment of Animals, Rebuttal to Federation of American Societies for Experimental Biology's Reforming Animal Research Regulations (2018), https://www.peta.org/wp-content/uploads/2018/02/PETA-Rebuttal-to-the-FASEB-Report-Feb-8-2018.pdf.

CLASS VI:

Tuesday, July 16: The Federal Animal Welfare Act, Continued; Property Status and the Evolution of Rights

Required Reading:

_____ USDA Office of Inspector General, Oversight of Research Facilities, (Dec. 2014), Executive Summary, pages 1-3, 13-27, https://www.usda.gov/oig/webdocs/33601-0001-41.pdf.

_____ Cass R. Sunstein, *What Are Animal Rights?*, *in* ANIMAL RIGHTS CURRENT DEBATES AND NEW DIRECTIONS, Introduction (Cass R. Sunstein & Martha C. Nussbaum, eds., 2005).

_____ Gary L. Francione, *Taking Animal Interests Seriously*, *in* ANIMAL RIGHTS CURRENT DEBATES AND NEW DIRECTIONS, Chapter 5 (Cass R. Sunstein & Martha C. Nussbaum, eds., 2005).

_____ 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).

Gary L. Francione, *Reflections on Animals, Property, and the Law and Rain Without Thunder*, 70 L. & CONTEMP. PROBS. 9 (2007).

Robert Garner, *Political Ideology and the Legal Status of Animals*, 8 ANIMAL L. 77 (2002).

CLASS VII:
Wednesday, July 17: **Legal personhood responses for animals.**

Required Reading:

_____ Steven M. Wise, *Animal Rights, One Step at a Time*, *in* ANIMAL RIGHTS CURRENT DEBATES AND NEW DIRECTIONS, Chapter 1 (Cass R. Sunstein & Martha C. Nussbaum, eds., 2005).

_____ Nonhuman Rights Project, Inc., ex rel. Beulah, Minnie, & Karen (Superior Court, Judicial District of Litchfield Dec. 26, 2017).

_____ Nonhuman Rights Project, Inc. on Behalf of *Tommy v. Lavery*, 998 N.Y.S. 2d 248 (3d Dept. 2014).

_____ Letter Brief of Amicus Curiae Laurence H. Tribe, Nonhuman Rights Project, Inc., on Behalf of *Tommy v. Lavery* (N.Y. Ct. App. May 8, 2015).

_____ Nonhuman Rights Project, Inc., on Behalf of *Tommy v. Lavery* (N.Y. Ct. App. May 8, 2018).

_____ Annotated Decision of the First Department in Nonhuman Rights *Project v. Lavery* and *Nonhuman Rights Project v. Presti* (N.Y. 1st Dept. 2017).

_____ Steven Wise, Proposal for a New Taxonomy of Animal Law (Dec. 12, 2017), https://www.nonhumanrights.org/blog/new-taxonomy-animal-law/.

_____ Steven M. Wise, *Letter from the Front Lines of the Struggle for Nonhuman Rights: The First 50 Months*, Medium (Jan. 19, 2018), https://medium.com/@NonhumanRights/letter-1-from-the-front-lines-of-the-nonhuman-rights-projects-struggle-for-the-rights-of-nonhuman-b053b100af25.

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).

Nonhuman Rights Project, Inc. ex rel Kiko v. Presti, 999 N.Y.S. 2d 652 (4th Dept. 2015).

CLASS VIII:
Thursday, July 18: **Emerging Legal Strategies; Guest Lecture: Jeff Kerr**

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 (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 (S.D. Cal. 2012).

_____ *Compl., Justice v. Vercher*, (May 1, 2018 Washington Co., OR, Circuit Court).

_____ Opinion Letter, *Justice v. Vercher* (Sept. 17, 2018), https://www.portlandmercury.com/images/blogimages/2018/09/17/1537229464-documentfragment_66832151.pdf.

_____ *Naruto v. Slater*, Complaint.

_____* *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).

_____ Jeffry S. Kerr, *Here's Why the 'Monkey Selfie' Case Is Actually a Legal Step Forward for Animal Rights*, ALTERNET (May 1, 2018), https://www.alternet.org/animal-rights/naruto-doesnt-own-selfie-copyright-court-rules-case-advances-animal-rights.

Recommended Reading:

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).

Jessica Eisen, *Animals in the Constitutional State*, 15 ICON 909 (2017), https://academic.oup.com/icon/article/15/4/909/4872588.