

ANIMAL WELFARE LAW - 2020

Delcianna J. Winders, Dr. Heather Rally, Donald C. Baur
Vermont Law School, Summer Session Term 4
July 20 – 30, 2020
1:00 pm – 4:00 PM ET
Virtual Live Synchronous Course

SYLLABUS

Professor Contact information:

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Required Text: Supplemental Materials, available online via TWEN and by request from the Bookshop

Office Hours: By appointment

Exam: Open-book, take-home, anonymous grading, due 3:00 pm, August 2

Grading: Your grade will be based on your exam, with a potential bump up of .33 grade points for class participation (e.g., a bump from a B to a B+, or from a B+ to an A-)

Required Reading: Advance reading required for first class

Volunteer Students: Requested to brief cases marked by an asterisk

Week One: July 20 - 24

CLASS I:

Monday, July 20: **Course Introduction: Overview Animal Ethics and the Pursuit of Enhanced Welfare**

Required Reading:

Ruth Payne, *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 (2002).

Recommended Reading:

Peter Singer, ANIMAL LIBERATION (1975).
Tom Regan, THE CASE FOR ANIMAL RIGHTS (1983).

CLASS II:

Tuesday, July 21: The Captive Animal Condition, Sentience, and Cognition

Mandatory Hot Topics Lecture:

Noon-1 PM ET, Protecting Pigs in an Era of De-regulation, link TBA

Required Reading:

_____ Gary Francione, *Animal Welfare and the Moral Value of Nonhuman Animals*, 6
_____ LAW, CULTURE, & HUMAN. 24 (2010).
_____ Carl Safina, BEYOND WORDS: WHAT ANIMALS THINK AND FEEL 1-35 (2016).

Recommended Reading:

David Fraser, *Animal Ethics and Animal Behavior Science: Bridging the Two Cultures*, 65 APPLIED ANIMAL BEHAVIOUR SCI. 171 (1999).
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).
Culum Brown, *Fish Intelligence, Sentience and Ethics*, 18 ANIMAL COGNITION 1 (2015).

CLASS III:

Wednesday, July 22: Animal Welfare Under Wildlife Conservation Statutes: 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*, No. CV-S-92-759-PMP.LR (D. Nev. 1993).
_____ * *Georgia Aquarium, Inc. v. Pritzker*, 134 F. Supp. 3d 1374 (N.D. Ga. 2014).
_____ Tilikum’s Public Display Permit (October 7, 1992).
_____ *Marino v. Nat’l Oceanic & Atmospheric Admin.*, No. 18-cv-2750 2020 WL 1479515 (D.D.C. Mar. 26, 2020).

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 2020).
_____ *Babbit v. Sweet Home Chapter of Cmty. for a Great Or.*, 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).

ETHICS ON THE ARK: ZOOS, ANIMAL WELFARE, AND WILDLIFE CONSERVATION
(Bryan G. Norton, Michael Hutchins, Elizabeth Stevens, & Terry Maple, eds.,
1995).

CLASS IV:

Thursday, July 23: Federal Conservation Statutes, Continued;

- _____ Mark Beckoff, [*Compassion in Conservation: Don't Be Cruel to Be Kind*](#), NEW SCI. (June 8, 2014).
- _____ * *Animal Welfare Inst. v. Beech Ridge Energy LLC*, 675 F. Supp 2d 540 (D. Md. 2009) (reasonable certainty, citizen suit provision).
- _____ * *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*, 63 BIOSCIENCE 928 (2013).

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 27 - 30

CLASS V:

Monday, July 27: The Animal Welfare Act

Required Reading:

- _____ Congressional Research Service, THE ANIMAL WELFARE ACT: BACKGROUND AND SELECTED ANIMAL WELFARE LEGISLATION 1-6 (Jan. 5, 2016), <https://fas.org/sgp/crs/misc/RS22493.pdf>.
- _____ * *Taub v. State*, 296 Md. 439, 463 A.2d 819 (1983).
- _____ * *Animal Legal Def. Fund v. Glickman*, 204 F.3d 229 (D.C. Cir. 2001).
- _____ Delcianna Winders & Varu Chilakamarri, *Animal Welfare Act: Enforcement*, 25 ANIMAL L. 249 (2019).
- _____ Skim Petition for Rulemaking to Establish Criteria to Promote the Psychological Well-Being of Primates as Required by the Animal Welfare Act (May 7, 2014), available at <https://animallawconference.org/wp-content/uploads/2015/09/ALDF-Petition-for-NHP-Standards-APHIS.pdf>.

Recommended Reading:

- Ani B. Satz & Delcianna Winders, *Animal Welfare Act: Interaction with Other Laws*, 25 ANIMAL L. 185 (2019).
- David Degrazia, *On the Ethics of Animal Research*, in PRINCIPLES OF HEALTHCARE ETHICS 689-95 (2d ed. 2007).
- 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).

CLASS VI:

Tuesday, July 28: 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).
- _____ 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 L. 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 29: Constitutional and Statutory Rights for Animals?

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*, No. 11-cv-2476 (S.D. Cal. 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).

Naruto v. Slater, Complaint.

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

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>.

CLASS VIII:

Thursday, July 30: Common Law Personhood Recognition for Animals? Where to from Here?

Required Reading:

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

Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery, 31 N.Y.3d 1054, 100 N.E.3d 846 (2018).

Article 70 of CPLR for a Writ of Habeas Corpus, *The Nonhuman Rights Project, Inc. ex rel. Hercules & Leo v. Stanley*, 49 Misc. 3d 746, 16 N.Y.S.3d 898 (N.Y. Sup. Ct. 2015).

The NonHuman Rights Project v Breheny, No. 260441/19, 2020 WL 1670735 (N.Y. Sup. Ct. Feb. 18, 2020).

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

Compl., Justice v. Vercher (May 1, 2018 Washington Co., Or., Circuit Court).

Opinion Letter, *Justice v. Vercher* (Sept. 17, 2018), available at

https://www.portlandmercury.com/images/blogimages/2018/09/17/1537229464-documentfragment_66832151.pdf.

Recommended Reading:

Steven M. Wise, *RATTLING THE CAGE* (2011).

Richard A. Posner, *Animal Rights: Legal, Philosophical, and Pragmatic Perspectives*, in *ANIMAL RIGHTS CURRENT DEBATES AND NEW DIRECTIONS* 51-77 (Cass R. Sunstein & Martha C. Nussbaum, eds., 2005).