

## ANIMAL WELFARE LAW SYLLABUS

(updated July 25, 2021)

Delcianna J. Winders, Donald C. Baur, & Dr. Heather Rally

Vermont Law School, Summer Session Term 4

July 26 – August 5, 2021

1:00 – 4:00 PM ET

Hybrid Synchronous Course

In Person: Oakes 208

Virtual:

[https://us02web.zoom.us/j/88648003052?  
pwd=ckJkSWl0ZFh0aVdoVEtnK04yZzVQdz09](https://us02web.zoom.us/j/88648003052?pwd=ckJkSWl0ZFh0aVdoVEtnK04yZzVQdz09)

Meeting ID: 886 4800 3052

Passcode: 417445

One tap mobile: +16465588656,,88648003052#,,, \*417445#

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**Required Text:** Supplemental Materials (SM) Reader available at <https://bit.ly/AnimalWelfareLawReader2021> (Because this is a large file, we recommend that you download and save the document for ready access.)

**Office Hours:** Immediately after class, and by appointment

**Exam:** Open-book, take-home, anonymous grading, posted on TWEN 8:00AM, Friday, August 6, due 3:00PM, Sunday, August 8

**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-)

In addition to extra credit for in-class participation you can earn extra participation credit by emailing Prof. Winders 1-2 paragraphs reflecting on the day's reading no later than one hour before class.

**Required Reading:** Advance reading required for first class

**Volunteer Students:** Requested to brief cases marked by an asterisk

## Week One: July 26 – 29

### CLASS I:

**Monday, July 26:**      **Course Introduction: Overview Animal Ethics and the Pursuit of Enhanced Welfare**

#### Required Reading:

SM00002      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 27:**      **The Captive Animal Condition, Sentience, and Cognition**

#### Required Reading:

SM00050      Gary Francione, *Animal Welfare and the Moral Value of Nonhuman Animals*, 6 LAW, CULTURE, & HUMAN. 24 (2010).  
SM00063      Carl Safina, *BEYOND WORDS: WHAT ANIMALS THINK AND FEEL* 1-35 (2016).

#### Required Viewing:

Online      Lori Marino, Bob Jacobs, Heather Rally, & Syd Johnson, *BIG BRAINS IN SMALL PLACES: THE IMPACT OF CONFINED, IMPOVERISHED ENVIRONMENTS ON LARGE, COMPLEX BRAINS*, 30th Int'l Soc'y for Anthrozoology Conference (June 22-24, 2021), <https://bit.ly/BigBrainsSmallPlaces> (55 minutes).

#### 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 28:**

**Animal Welfare Under Wildlife Conservation Statutes:  
The Take Prohibition of the MMPA and ESA, and  
Standing**

**Guest Speaker: Elizabeth L. Lewis, Associate, Eubanks & Associates, PLLC**

**Required Reading:**

Marine Mammal Protection Act:

- SM00099\* *Strong v. Secretary of Commerce*, 5 F.3d 905 (5th Cir. 1993). (John K.)  
SM00101\* *United States v. Hayashi*, 5 F.3d 1278 (9th Cir. 1993).  
SM00108\* *Mirage Resorts v. Franklin*, No. CV-S-92-759-PMP.LR (D. Nev. 1993).  
SM00124\* *Georgia Aquarium, Inc. v. Pritzker*, 134 F. Supp. 3d 1374 (N.D. Ga. 2014).  
SM00138 Tilikum's Public Display Permit (October 7, 1992).  
SM00147\* *Marino v. Nat'l Oceanic & Atmospheric Admin.*, No. 18-cv-2750, 2020 WL 1479515 (D.D.C. Mar. 26, 2020).

Endangered Species Act:

- SM00176 *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687 (1995).  
SM00202 Mark Beckoff, [Compassion in Conservation: Don't Be Cruel to Be Kind](#), NEW SCI. (June 8, 2014).  
SM00206\* *Animal Welfare Inst. v. Beech Ridge Energy LLC*, 675 F. Supp 2d 540 (D. Md. 2009) (reasonable certainty, citizen suit provision).

**Recommended Reading:**

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 29:**

**Federal Conservation Statutes, Continued**

**Mandatory Hot Topics Lecture:**

Noon-1 PM ET, Bird Brains? Our Evolving Understanding of Chickens—and Their Lagging Legal Status, <https://vermontlaw.edu/live>

**Required Reading:**

- SM00153 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. 2021).  
SM00226\* *People for Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 879 F.3d 1142 (11th Cir. 2018).  
SM00233\* *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).

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### Week Two: August 2 - 5

#### CLASS V:

Monday, August 2:

The Animal Welfare Act

#### Required Reading:

SM00242 Congressional Research Service, THE ANIMAL WELFARE ACT: BACKGROUND AND SELECTED ANIMAL WELFARE LEGISLATION 1-6 (Jan. 5, 2016).

SM00256\* *Taub v. State*, 296 Md. 439, 463 A.2d 819 (1983).

SM00260\* *Animal Legal Def. Fund v. Glickman*, 204 F.3d 229 (D.C. Cir. 2001).

SM00285 **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).

#### 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).

**CLASS VI:**

**Tuesday, August 3:     The Animal Welfare Act, Continued: Accreditation**

**Guest Speaker:** Ron L. Kagan, Executive Director & Chief Executive Officer, Detroit Zoological Society

**Required Reading:**

- Online       USDA OFFICE OF INSPECTOR GENERAL, ANIMAL CARE PROGRAM OVERSIGHT OF DOG BREEDERS (June 2021), Executive Summary, and pages 1-8. [https://www.usda.gov/sites/default/files/audit-reports/33601-0002-31\\_final\\_distribution.pdf](https://www.usda.gov/sites/default/files/audit-reports/33601-0002-31_final_distribution.pdf).
- SM00345     USDA Office of Inspector General, OVERSIGHT OF RESEARCH FACILITIES (Dec. 2014), Executive Summary, and pages 1-3, 13-27.
- SM00266     Delcianna Winders & Varu Chilakamarri, *Animal Welfare Act: Enforcement*, 25 ANIMAL L. 249 (2019).
- Online       Harvard Animal Law & Policy Program, *Secret Policy Uncovered by the Freedom of Information Act Shows USDA Does Not Inspect Research Labs as Required by the Animal Welfare Act* (May 5, 2021), <https://animal.law.harvard.edu/news-article/secret-policy-uncovered/>.
- Online       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>.

**Recommended Reading:**

- Delcianna J. Winders, *Administrative Law Enforcement, Warnings, and Transparency*, 79 OHIO ST. L. J. 451 (2018).
- Justin Marceau, *How the Animal Welfare Act Harms Animals*, 69 HASTINGS L.J. 925 (2018).

**CLASS VII:**

**Wednesday, August 4:     Common Law Personhood Recognition for Animals?**

**Guest Speakers:** Sasha Petrova, Associate, & Julia Markley, Partner, Perkins Coie

**Required Reading:**

- SM00470     Nonhuman Rights Project, Inc. on Behalf of *Tommy v. Lavery*, 998 N.Y.S. 2d 248 (3d Dept. 2014).
- SM00474     *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 100 N.E.3d 846 (2018).
- SM00493     *The Nonhuman Rights Project v Breheny*, No. 260441/19, 2020 WL 1670735 (N.Y. Sup. Ct. Feb. 18, 2020).
- SM00515     *Compl., Justice v. Vercher* (May 1, 2018, Washington Co., Or., Circuit Court).
- SM00529     Opinion Letter, *Justice v. Vercher* (Sept. 17, 2018).
- Online       Brief of Amici Curiae Foster et al., *Justice v. Vercher* (July 15, 2019), <https://bit.ly/JusticeAmici>.

**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).

**CLASS VIII:**

**Thursday, August 5:**      **Statutory or Constitutional Personhood for Animals?;  
Where to from Here?**

**Guest Speaker: Carole Baskin, Founder & Chief Executive Officer, Big Cat Rescue**

**Required Reading:**

- SM00421\*    *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).
- SM00451\*    *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).
- SM00364    Cass R. Sunstein, *What Are Animal Rights?*, in *ANIMAL RIGHTS CURRENT DEBATES AND NEW DIRECTIONS*, Introduction (Cass R. Sunstein & Martha C. Nussbaum, eds., 2005).
- SM00375    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:**

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>.

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).