

ANIMAL LAW SEMINAR

Law 637 – Fall 2009

George Mason University Law School

Professors Ralph Henry and Aaron Green

Hazel Hall 332 – Monday 8:00-9:50 p.m.

Contact Information:

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Course Materials:

Animal Law Seminar Reader (copies to be provided at first session)

S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS (3rd ed., 2006)

Recommended: C. Sunstein, ANIMAL RIGHTS (2004)

Recommended: D. Favre, ANIMAL LAW: WELFARE, INTERESTS, AND RIGHTS (2008)

Course Description:

This seminar offers a practical survey of legislative efforts and litigation 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 animal protection 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 conventions and other laws concerning trade in animals and animal products; and the limitations on implementation and enforcement of laws addressing anti-cruelty, hunting and trapping, and animal fighting. Emerging areas of animal law, such as veterinary malpractice and other animal-related torts; the use of consumer protection statutes to address animal welfare concerns; and the impacts of free speech, religious expression, and other Constitutional provisions on animal protection statutes 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.

Evaluation:

Student grading will be based on completion of a research paper and class participation.

Students will receive two grades – a course grade based on overall performance in the course, and a separate writing grade based on the research paper alone. Class attendance and participation are an important component of a successful seminar and students will be expected to be ready to discuss the assigned reading for each session.

This course meets George Mason Law School's writing requirement (AR 3-3.3). Research papers will be due on Monday, December 14, 2009 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. Proposed paper topics are due on or before October 13, 2009. Outlines must be submitted on or before October 31, 2009. Final papers must be submitted during the examinations period on or before December 14, 2009.

Reading Assignments:

This syllabus sets forth the basic reading assignments for each class session. The syllabus may be supplemented each week with additional materials. 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, 2009:

Introductions, overview, and discussion of course requirements. Outline of major topic areas of the course. Discussion of potential topics and requirements for research papers. Overview and history of state, federal, and international laws and regulations pertaining to wild and captive animals.

- S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS, Chapter 1 (3rd ed., 2006)
- 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)
- W. Pacelle, *Law and Public Policy: Future Directions for the Animal Protection Movement*, 11 ANIMAL L. 1 (2005)
- D. Favre & V. Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 DETROIT L. REV. 1 (1993)

Recommended: C. Sunstein, *Intro.: What Are Animal Rights?*, ANIMAL RIGHTS (2004)
Recommended: H. Cohen, *Brief Summaries of Federal Animal Protection Statutes* (2008), available at: <http://www.ncseonline.org/NLE/CRSreports/08Jun/94-731.pdf>

Session 2 – August 31, 2009:

Animal Litigation in State and Federal Courts – Part I: Building a Case and Establishing Standing

- S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS, Chapter 4, pp. 183-271 (3rd ed., 2006)

ALDF v. Dep't of the Air Force, 44 F.Supp. 2d 295 (D.D.C. 1999)
The Fund for Animals v. Norton (I), 281 F.Supp.2d 209 (D.D.C. 2003)
Cary v. Hall, Civ. No. 05-4363, 2006 WL 6198320 (C.D.Cal. Sept. 30, 2006)
Baur v. Veneman, 352 F.3d 625 (2nd Cir. 2003)
Levine, et al. v. Johanns, Memorandum and Order Granting in Part and Denying in Part Motion to Dismiss, Civ. No. 05-05346 (N.D.Cal. September 5, 2006)
Haven's Realty Corp. v. Coleman, 455 U.S. 363 (1982)
Humane Society v. United States Postal Service, 609 F.Supp.2d 85, 90-93 (D.D.C. 2009) (standing analysis only, full decision assigned for Session 5)
V. Chilakamarri, *Taxpayer Standing: A Step Toward Animal-Centric Litigation*, 10 ANIMAL L. 251 (2004)
W. Reppy, *Citizen Standing to Enforce Anti-Cruelty Laws By Obtaining Injunctions: The North Carolina Experience*, 11 ANIMAL L. 39 (2005)

Recommended: C. Sunstein, Can Animals Sue?, ANIMAL RIGHTS (2004)
Recommended: M. Tushnet, Some Legacies of Brown v. Board of Education, 90 VA. L. REV. 1693 (2004)

Session 3 – September 14, 2009:

Animal Litigation in State and Federal Courts – Part II: Causes of Action and Judicial Review

Hammer v. American Kennel Club, 1 N.Y.3d 294 (N.Y. 2003)
Humane Society of the United States v. HVFG, Complaint, Civ. No. 06-6829 (S.D.N.Y., filed Sept. 6, 2006)
Seeton v. Pennsylvania Game Com'n, 594 Pa. 563 (Pa. 2007)
LePage, et al. v. Wizard of Claws, Inc., et al., Complaint, Civ. No. 0714015 (Broward Co. Cir. Ct., filed June 18, 2007)
Humane Society of the United States v. Glickman, 217 F.3d 882 (D.C. Cir. 2000)
New Jersey SPCA v. New Jersey Dep't of Agriculture, 196 N.J. 366 (N.J. 2008)

Session 4 – September 21, 2009:

Animal Litigation in State and Federal Courts – Part III: Strategic Considerations in Animal Law Litigation (Intended & Unintended Consequences of Pursuing Litigation in an Emerging Area of the Law)

Fund for Animals v. Clark, 27 F.Supp.2d 8 (D.D.C. 1998)
Fund for Animals v. Clark, Civ. No. 98-02355, Stipulation of Dismissal (D.D.C. Aug. 22, 2007)
La Jolla Friends of Seals v. NOAA NMFS, 2009 WL 1862424 (S.D.Cal., 2009)
T. Perry, *Judge Orders Seals Away from La Jolla Beach*, L.A. TIMES (July 20, 2009), available at <http://latimesblogs.latimes.com/lanow/2009/07/la-jolla-seals.html>
D. Baker and S. Shroder, *La Jolla Seals Get Another Break*, SAN DIEGO UNION-TRIBUNE (July 23, 2009), available at <http://www3.signonsandiego.com/stories/2009/jul/23/bn23seals091232/>

PETA v. California Milk Advisory Board, 125 Cal.App.4th 871 (Cal.App. 1 Dist., 2005)
Winter v. NRDC, 129 S.Ct. 365 (2008)
The Fund for Animals v. Norton (II), 374 F.Supp.2d 91 (D.D.C. 2005)
In re: United Egg Producers, Inc. (Animal Care Certified Eggs), NAD CASE REPORTS
(Oct. 2003)

Session 5 – September 28, 2009:

Part I: Legal Protections for Companion Animals

S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS, Chapter 6, pp. 472-493, 505-514 (3rd ed., 2006)
Martinelli, et al. v. Petland, Inc., et al., Complaint, Civ. No. 09-06131 (D. Ariz., filed Mar. 16, 2009)
Humane Society v. United States Postal Service, 609 F.Supp.2d 85 (D.D.C. 2009)
Federal Depictions of Animal Cruelty Statute, 18 U.S.C. § 48 (2007)
United States v. Stevens, 533 F.3d 218 (3rd Cir. 2008)
Federal Animal Fighting Prohibition Enforcement Act, § 7 U.S.C. 2156 (2002)
United Gamefowl Breeders Ass'n, et al. v. Veneman, Ruling, Civ. No. 03-00970 (W.D. La. May 27, 2005)
Humane Society of the United States v. Amazon.com, et al., Complaint, Civ. No. 07-00723 (D.D.C. Feb. 8, 2007)

Part II: Veterinary Malpractice and Other Tort Actions Concerning Companion Animals

S. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 ANIMAL L. 33 (1998)
C. Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 ANIMAL L. 163 (2004)

Session 6 – October 5, 2009:

Laws and regulations concerning farm animals; including federal laws (Humane Slaughter Act, Twenty-Eight Hour Law, Federal Meat Inspection Act).

S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS, Chapter 5, pp. 307-374 (3rd ed., 2006)
D. Wolfson, *Foxes in the Henhouse: Animals, Agribusiness, and the Law*, ANIMAL RIGHTS (2004)
In re: The HSUS: Petition to Apply 28 Hour Law to Truck Transport of Farm Animals (Oct. 4, 2005) (excerpt)
In re: D'Artagnan, Inc. (Foie Gras), NAD CASE REPORTS (Jan. 2009)
Levine v. Conner, 540 F.Supp.2d 1113 (N.D.Cal. 2008)
People of the State of California v. Navarro, et al., Felony Complaint and Supporting

Documents (2008)

United States of America ex rel. The Humane Society of the United States v. Hallmark Meat Packing Company, Westland Meat Company, Inc., Civ. No. 08-0221 (C.D.Cal., seal lifted April 18, 2009)

In re: Processed Egg Products Antitrust Litigation, Civ. No. 2:08-md-02002-GP (E.D. Pa., filed Jan. 30, 2009)

Session 7 – October 13, 2009 (TUESDAY):

*****Research paper topics are to be submitted prior to class by email**

Laws and regulations concerning animal experimentation, performing animals, and other captive animals, including the federal Animal Welfare Act.

S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS, Chapter 5, pp. 374-403, 410-433, 445-468 (3rd ed., 2006)

ASPCA v. Ringling Bros. Barnum & Bailey Circus, 502 F.Supp.2d 103 (D.D.C. 2007)

ALDF v. Woodley, Civ. No. 04-1248 (N.C. April 12, 2005)

ALDF v. Yost, Civ. No. 05-1066 (C.D. Cal, Nov. 18, 2005)

Chimps Inc. v. Primarily Primates, Civ. No. 08-6097 (D.Or., Filed Mar. 25, 2008)

American Zoological Association, *Joining Forces for the “Suarez Six”* (2003)

Session 8 – October 19, 2009:

Domestic and international laws and regulations concerning wildlife protection and trade in wildlife specimens; litigation under federal wildlife laws.

S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS, Chapter 9, pp. 619-690 (3rd ed., 2006)

Humane Society of the United States v. Gutierrez, 523 F.3d 990 (9th Cir. 2008)

The Fund for Animals v. Hall, 448 F.Supp.2d 127 (D.D.C. 2006)

Friends of Animals v. Salazar, 2009 WL 1743501 (D.D.C. 2009)

Humane Society of the United States v. Kempthorne, 579 F.Supp.2d 7 (D.D.C. 2008)

Humane Society of the United States v. Dep’t of Commerce, 432 F.Supp.2d 4 (D.D.C. 2006)

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

Anderson v. Evans, 314 F.3d 1006 (9th Cir. 2002)

Peter Stevenson, *The World Trade Organization Rules: A Legal Analysis of Their Adverse Impact on Animal Welfare*, 8 ANIMAL L. 107 (2002)

Session 9 – October 26, 2009:

State & Federal Enforcement of Wildlife Protection Laws – Guest Speakers

S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS, Chapter 6, pp. 493-505, 514-527 (3rd ed., 2006)

*****Research paper outlines are to be submitted on or before October 31, 2009 by email**

Session 10 – November 2, 2009:

Brief presentations of research paper topics by students; discussion of issues and ideas, review and feedback

Session 10 may also be used for discussion of materials and information that we were unable to cover in prior sessions. If there is an animal law issue or topic that students would like to discuss in class, please make such suggestions prior to Session 8 on October 19, as we may be able to cover it in Session 10.

Session 11 – November 9, 2009:

State and Federal Legislative Process for Enacting Animal Protection Laws – Part I: Lobbying and Grass Roots Activities – Guest Speakers

Session 12 – November 16, 2009:

State and Federal Legislative Process for Enacting Animal Protection Laws – Part II: Citizen Initiatives and Referenda; and Issues in Legislative Drafting

Dane Waters, INITIATIVE AND REFERENDUM IN THE UNITED STATES (2002)
California Proposition 2: A Watershed Moment for Animal Law, 15 ANIMAL L. 149 (2009)
Californians for Humane Farms v. Schafer, Civ. No. 08-03843, 2008 WL 4449583 (N.D. Cal. Sept. 29, 2008)
Commonwealth v. Looper, Civ. No. 00850, 2009 WL 1272625 (Ky.App. May 8, 2009)
Illinois Restaurant Assn. v. City of Chicago, 492 F.Supp.2d 891 (N.D. Ill. 2007)

Session 13 – November 23, 2009:

Constitutional Limitations on Animal Protection Laws – Interaction Between Freedoms of Speech and Religion and Protection of Animals. Other Legal Constraints on Animal Advocacy (including libel and defamation, invasion of privacy, and the Animal Enterprise Terrorism Act).

S. Waisman, *et al.*, ANIMAL LAW: CASES AND MATERIALS, Chapter 4, pp. 272-306 (3rd ed., 2006)
United States v. Stevens, No. 08-769, Brief for the United States of America (June 9, 2009), *before the U.S. Supreme Court on writ of certiorari to the 3rd Circuit*
International Dairy Foods Association v. Amestoy, 92 F.3d 67 (2nd Cir. 1996)
United Gamefowl Breeders Association v. Veneman, No. 03-970 (W.D. La. May 31,

2005)

Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry, No. 02-804, 2005 WL 2074884 (Aug. 25, 2005)

Viva v. Adidas, 36 Cal.Rptr.3d 19 (Cal. App. 1 Dist. 2005)

PETA v. Bobby Berosini, 111 Nev. 615, 895 P.2d 1269 (Nev. 1995)

Ethan Carson Eddy, *Privatizing The Patriot Act: The Criminalization of Environmental and Animal Protectionists as Terrorists*, 22 PACE ENVTL. L. REV. 261 (2005)

Session 14 – November 30, 2009:

The movement to obtain legal recognition of the rights of animal; the question of animal “rights” vs. animal “welfare;” rhetorical choices in advocating on behalf of animals; and the future of animal protection in the United States.

Patricia Roberts-Miller, *John Quincy Adam’s Amistad Argument: The Problem of Outrage, the Constraints of Decorum*, 32 RHETORICAL SOC’Y QUARTERLY 5 (2002)

Laurence H. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Works of Steven M. Wise*, 7 ANIMAL L. 1 (2001)

Recommended: C. Sunstein, ANIMAL RIGHTS (2004), pgs. 19-90.

*****Final research papers are to be submitted on or before December 14, 2009**