

ANIMAL LAW SEMINAR

Law 637 – Fall 2021

George Mason University Law School

Professors Ralph Henry and Laura Fox

Room TBD – Thursday 4:00-6:00 p.m.

Contact Information:

Ralph Henry:

Telephone: (202) 676-2324

E-mail: rhenry@humanesociety.org

Laura Fox:

Telephone: (202) 676-2334

E-mail: lfox@humanesociety.org

Course Materials:

Assigned materials are available via the links below, through Westlaw, TWEN, or will be provided via email in advance of class. Syllabus will indicate whether assigned material is required (i.e., should be read prior to that class session) or suggested (i.e., helpful but not required).

Suggested: C. Sunstein, ANIMAL RIGHTS (2004)

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

Course Description:

This seminar offers a practical survey of litigation and legislative efforts 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 treaties and agreements 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.

Learning Outcomes:

By the end of the course students should have acquired/be able to:

- Understand the interests of animal use industries and animal protection advocates
- Identify historical precedents, current issues, and common causes of action in animal law
- Evaluate and think strategically through the benefits and negative outcomes of a legal action, especially legal action intended to advance public interest causes and/or changes in the law
- Develop an original thesis and produce a written paper supported by legal research and persuasive writing

Evaluation and Attendance:

Students will receive a single final course grade based upon a completed final research paper. Because this is a seminar, class attendance and participation are an important component of a successful course and students are expected to be prepared for substantive discussions of the assigned material. Pursuant to George Mason Law School policy, final grades may be adjusted up or down by a single increment (e.g., from a B+ to an A-) based upon participation.

Paper Extensions: Except for instances described in AR 4-4.1(b)(ii), faculty may not grant deadline extensions for final papers (i.e. any written assignment that accounts for 50% or more of the final course grade); all authority in this matter is delegated to the Assistant Dean, Student Academic Affairs. Excuses and requests for a deadline extension must be presented, with appropriate documentation, to the Assistant Dean, Academic Affairs. Except in emergencies, deadline extensions must be sought in advance of the scheduled deadline.

Final research papers are due on or before December 15, 2021 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. Please put your name at the top of the first page!

Proposed paper topics are due on or before October 28, 2021, and outlines must be submitted on or before November 11, 2021. From our experience teaching this seminar, students who choose a topic and begin work early tend to have the best final papers and we encourage you to check-in with us during the course to ensure that you are working towards a quality end product.

Class Recordings Prohibited: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by both professors Fox and Henry.

Discussion Board:

Questions or hypos may be periodically posted on TWEN for you to respond to and discuss. They may relate to reading(s) assigned for the classes or there may be additional reading(s) provided. These online discussion board posts are designed to facilitate discussion outside of the classroom but may be considered in evaluating your class participation. You may provide an original response to a question or comment on a classmate's response. Remember: always be respectful of your classmates' opinions. Of course, you may disagree, but do so considerately.

Assignments:

This syllabus sets forth the basic reading and multimedia assignments for each class session. The syllabus will likely be supplemented each week with additional materials as animal law is a rapidly evolving subject area and major cases are decided regularly. 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 26

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.

Required Material:

- C. Sunstein, *Intro.: What Are Animal Rights?* ANIMAL RIGHTS (2004)
- 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)
- *Naruto v. David Slater* (Monkey Selfie Case) - Oral Argument - <https://www.ca9.uscourts.gov/media/video/?20170712/16-15469/> (44 min.)

Suggested Material:

- *Knox v. MSPCA*, 425 N.E.2d 393 (Mass.App.Ct. 1981)
- *Lock v. Falkenstine*, 380 P.2d 278 (Okla.Crim.App. 1963)
- *City of Rolling Meadows v. Kyle*, 494 N.E.2d 766 (Ill.App. 1986)

Session 2 – September 2

Animals and the legal system– Part I: Building a case and establishing standing to enforce existing laws

Required Material:

- *Sierra Club v. Morton* - Oral Argument - November 17, 1971
https://apps.oyez.org/player/#/burger3/oral_argument_audio/16979 (1 hr. 9 min.)
- *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)
- *New Eng. Anti-Vivisection Soc'y v. United States Fish & Wildlife Serv.*, 208 F. Supp. 3d 142 (D.D.C. 2016).

Suggested Material:

- *Sierra Club v. Morton*, 405 U.S. 727 (1972)
- *HSUS v. Hodel*, 840 F.2d 45 (D.C. Cir. 1988)
- *ASPCA v. Ringling Bros.*, 317 F. 3d 334 (D.C. Cir. 2003)
- *ASPCA v. Feld Entertainment, Inc.*, 677 F.Supp.2d 55 (D.D.C. 2009)
- *HSUS v. United States Postal Service*, 609 F.Supp.2d 85 (D.D.C. 2009) (organizational/*Havens* standing)
- *Friends of Animals v. Dan Ashe* - Oral Argument - Sept. 24, 2015,
<https://www.courtlistener.com/audio/13592/united-states-v-william-moorehead/> (43 min.) (informational standing)
- *Friends of Animals v. U.S. Fish and Wildlife Service* (9th Cir) - Oral Argument - Dec. 10, 2019, <https://www.courtlistener.com/audio/67418/friends-of-animals-v-us-fish-and-wildlife-service/> (32 min.)

Session 3 – September 9

Animals and the legal system– Part II: Causes of action and judicial review; strategic considerations in advocating on behalf of animals

Required Material:

- *Hammer v. American Kennel Club*, 1 N.Y.3d 294 (N.Y. 2003)
- *ALDF v. Cal. Expo. and State Fairs*, 239 Cal.App. 4th 1286 (Cal.App. 1st Dist. 2015)
- *Seeton v. Pennsylvania Game Com'n*, 594 Pa. 563 (Pa. 2007)
- *ALDF v. Woodley*, 181 N.C.App. 594 (N.C. App. 2007)

Session 4 – September 16

Animals' legal status, animal ownership, and valuation

Required Material:

- *The Nonhuman Rights Project, Inc., on behalf of Happy, v. Breheny*
<https://www.youtube.com/watch?v=vDyN8iaIgYc&t=7300s> (start at 2:01:40 – 15 min.)
- *Justice the Horse v. Gwendolyn Vercher*, No. A169933 (Or. App.),
<https://oregoncourts.mediasite.com/mediasite/Play/e92bf836cddb47a98f73c597194129161d?catalog=7451ecdd054e43ee9f338460558f78fe21> (start at 04:21 end 35:22 – 30 min)
- *Houseman v. Dare*, 405 N.J. Super. 538, 966 A.2d 24 (App. Div. 2009)

Suggested Material:

- *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)
- S. Gay, *Companion Animal Capital*, 17 ANIMAL LAW 77 (2011)

Session 5 – September 23

Laws and regulations concerning animal cruelty

Required Material:

- Justin Marceau, *Beyond Cages: Animal Law and Criminal Punishment*, Yale Law, Ethics and Animals Program Lecture Series (Sept. 23, 2019), available at <https://vimeo.com/363909189> (36 min.)
- *Hernandez-Gotay v. United States* - Oral Argument - <https://www.courtlistener.com/audio/73455/hernandez-gotay-v-united-states/> (36 min.)
- *State of Oregon v. Arnold Weldon Nix* (S060875) - Oral Argument - <https://oregoncourts.mediasite.com/mediasite/Play/963a1dd89e7a4d0caece3ede020f8e661d?catalog=7451ecdd054e43ee9f338460558f78fe21> (31 min.) (whether an animal is a victim pursuant to state anti-merger statute)

Session 6 – September 30

Laws and regulations concerning companion animals; including puppy mills and breeding, sales and adoptions, and hoarding

Required Material:

- *Rosalba Cisneros v. Petland, Inc.* - Oral Argument - <https://www.courtlistener.com/audio/66917/rosalba-cisneros-v-petland-inc/> (44 min.)
- *New York Pet Welfare Ass'n, Inc. v. City of New York*, 850 F.3d 79 (2d Cir. 2017), *cert. denied sub nom.*, 16-1455, 2017 WL 2444677 (U.S. Oct. 2, 2017) - Oral Argument - <https://www.courtlistener.com/audio/24908/new-york-pet-welfare-associati/> (26 min.)
- *Animal Legal Defense Fund v. Thomas Vilsack* (DC Cir.) - Oral Argument - April 4, 2017, <https://www.courtlistener.com/audio/29337/animal-legal-defense-fund-v-thomas-vilsack/> (43 min.)

Suggested Material:

- *Skim Animal Welfare Act*, 7 U.S.C. § 2131, *et. seq.* and regulations 9 CFR 1.1 *et seq*
- *Doris Day Animal League v. Veneman*, 315 F.3d 297 (3rd Cir. 2003)
- *Associated Dog Clubs of N.Y. State, Inc. v. Vilsack*, 75 F. Supp. 3d 83 (D.D.C. 2014)
- *Budd v. Quinlan*, 19 Misc. 3d 66, 860 N.Y.S.2d 802 (App. Term 2008)
- *Cahill v. Blume*, 8 Misc. 3d 1004(A), 801 N.Y.S.2d 776 (Civ. Ct. 2005)
- *Cavallini v. Pet City & Supply*, 2004 PA Super 141, 848 A.2d 1002 (2004)
- Beyond the Myth: <https://therokuchannel.roku.com/watch/82acbbc2ec3a5a9fa748a44f7d703cb3>
- Dog by Dog: <https://www.imdb.com/tv/watch/tt2937524>

Session 7 – October 7

Laws and regulations concerning farm animals; including laws prohibiting particular forms of confinement, and providing for humane slaughter and transport

Required Material:

- *National Meat Association v. Harris* - Oral Argument - November 09, 2011, https://apps.oyez.org/player/#/roberts6/oral_argument_audio/22414 (1 hr.)
- *McKiver v. Murphy-Brown* (4th Cir.) - Oral Argument - January 31, 2020, <https://www.ca4.uscourts.gov/OAarchive/mp3/19-1019-20200131.mp3> (55 min.)
- *Animal Legal Defense Fund v. Kimberly Reynolds* - Oral Argument - Sept. 22, 2020, <https://www.courtlistener.com/audio/71781/animal-legal-defense-fund-v-kimberly-reynolds/> (35 min.)
- *NJSPCA v. NJDOA*, 196 N.J. 366 (N.J.Sup.Ct. 2008)

Suggested Material:

- *HSR & MCPA v. Lyng*, 633 F.Supp. 480 (W.D.N.Y. 1986)
- *HSUS v. State BOE*, 152 Cal.App.4th 349 (Cal.App. 2007)
- *ALDF v. Provimi Veal*, 626 F.Supp. 278 (D.Mass. 1986)
- *PCRM v. Tyson*, 119 Cal.App.4th 120 (Cal.App. 2004)
- *Levine v. Connor*, 540 F.Supp.2d 1113 (N.D.Cal. 2008)
- *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007)
- *Animal Legal Defense Fund v. Kelly* - Oral Argument - Jan. 19, 2021, <https://www.courtlistener.com/audio/74122/animal-legal-defense-fund-v-kelly/> (44 min.)

Session 8 – October 14

Laws and regulations concerning wildlife; including protection of threatened and endangered species, marine mammals, wild horses and burros, and the national wildlife refuge and national park systems and other wildlife habitats

Required Material:

- *AWI v. Kreps*, 561 F.2d 1002 (D.C. Cir. 1977)
- *Defenders of Wildlife v. Jewell* - Oral Argument - Sept 23, 2016, <https://www.courtlistener.com/audio/25039/defenders-of-wildlife-v-sally-jewell/> (1 hr. 27 min.)
- *Humane Society of the US v. Carlos Gutierrez* (9th Cir) - Oral Argument - Nov. 6, 2009, <https://www.courtlistener.com/audio/46495/humane-society-of-the-united-s-v-carlos-gutierrez/> (35 min.)

Suggested Material:

- *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978)
- *Tennessee Valley Authority v. Hill* - Oral Argument - April 18, 1978, https://apps.oyez.org/player/#/burger6/oral_argument_audio/16166 (1 hr. 9 min.)
- *HSUS v. Zinke*, 865 F.3d 585 (D.C. Cir 2017)
- *HSUS v. Locke*, 626 F.3d 1040 (9th Cir. 2010)
- *API v. Hodel*, 671 F.Supp. 695 (D.Nev. 1987)
- *Handout* on Animal Damage Control Act/Wildlife Services

Session 9 – October 21

Laws and regulations concerning captive animals; including animals used in research and experimentation, performing animals and animals used in other exhibitions

Required Material:

- *Holly Hall v. Seaworld Entertainment* (9th Cir.) - Oral Argument - March 12, 2018, <https://www.courtlistener.com/audio/35332/holly-hall-v-seaworld-entertainment/> (30 min.)
- *PETA v. Miami Seaquarium* (11th Cir.) <https://www.courtlistener.com/audio/38318/people-for-the-ethical-treatment-of-animals-inc-v-miami-seaquarium/> (42 min.)
- *Animal Legal v. Johanns* (9th Cir.) - Oral Argument - Dec. 09, 2005, <https://www.courtlistener.com/audio/53703/animal-legal-v-johanns/> (45 min.)

Suggested Material:

- *Taub v. State*, 296 Md. 439 (Md.Ct.App. 1983)
- Unnecessary Fuss, PETA (1984) https://www.youtube.com/watch?v=EdnYpJ9b_NY
- *ALDF v. Glickman*, 204 F.3d 229 (D.C. Cir. 2001)
- *Hagan v. Feld Entertainment, Inc.*, 365 F.Supp.2d 700 (E.D.Va. 2005)
- *Handout* on rodeos, bull running, animal racing, zoos and circuses, and uses of animals in television and movies
- *Support Working Animals, Inc. v. Governor of Florida* (11th Cir.) - Oral Argument - July 2, 2021, <https://www.courtlistener.com/audio/77209/support-working->

[animals-inc-v-governor-of-florida/](#) (24 min.)

*****Research paper topics are to be submitted on or before October 28, 2021 by email**

Session 10 – October 28

State and federal legislative processes for enacting animal protection laws – issues in legislative drafting, lobbying, citizen initiatives and referenda and grass roots activities

Required Material:

- *Commonwealth v. Looper*, Civ. No. 00850, 2009 WL 1272625 (Ky.App. May 8, 2009)
- *California Prop 2: A Watershed Moment for Animal Law* 15 ANIMAL L. 149 (2009)
- *N. Am. Meat Inst. v. Becerra*, 420 F. Supp. 3d 1014 (C.D. Cal. 2019) (Sections I, II, and IV(B)(1)(b)(1-3))
- *N. Am. Meat Inst. v. Becerra* – Oral Argument – June 5, 2020 <https://www.courtlistener.com/audio/70494/north-american-meat-institute-v-xavier-becerra/> (32 min.)
- *Assoc Des Eleveurs De Canards, et al v. Kamala Harris*, No. 15-55192 (9th Cir. 2015) - Oral Argument - https://www.youtube.com/watch?v=WJerm_vEbEO (40 min.)

Suggested Material:

- *Illinois Restaurant Assn. v. City of Chicago*, 492 F.Supp.2d 891 (N.D. Ill. 2007)
- *New York Pet Welfare Ass'n v. City of New York*, 850 F.3d 79 (2d Cir. 2017)

Session 11 – November 4

Constitutional limitations on animal protection advocacy – First Amendment freedoms of speech and religion, and other legal constraints on animal advocacy, including libel and defamation, invasion of privacy, and the Animal Enterprise Terrorism Act

Required Material:

- *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah* - Oral Argument - November 04, 1992, https://apps.oyez.org/player/#/rehnquist7/oral_argument_audio/21021 (58 min.)
- *United States v. Stevens* - Oral Argument - October 06, 2009, https://apps.oyez.org/player/#/roberts4/oral_argument_audio/22541 (1 hr. 2 min.)

Suggested Material:

- *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993)
- *United States v. Stevens*, 559 U.S. 460, 130 S.Ct. 1577 (2010)
- *Ouderkirk v. PETA*, 2007 U.S. Dist. LEXIS 29451 (E.D.Mich. 2007)
- *Dorman v. Satti*, 678 F.Supp. 375 (D.Conn. 1988)
- *State v. Miner*, 556 N.W.2d 578 (Minn.Ct.App. 1996)
- *Humane Society West v. Snohomish County* - Oral Argument - Feb. 5, 2009, <https://www.courtlistener.com/audio/47983/humane-society-west-v-snohomish-county/> (30 min.)

*****Research paper outlines are to be submitted on or before November 11, 2021 by email**

Session 12 – November 11

Current developments in animal law. Guest speakers are frequently invited to participate in this session.

[materials may be assigned in advance of class]

Session 13 – November 18

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

Session 13 may also be used for discussion of materials and information that we were unable to cover in prior sessions, or for any animal law issues or topics not otherwise covered in this course that students would like to discuss.

*****Final research papers are to be submitted on or before December 15, 2021**