

ANIMAL LAW LITIGATION
Syllabus (sessions 1-9)
Lewis & Clark Law School
Professor Peter Brandt
June 11 – June 24, 2013
9am - 12pm

Course Materials:

Animal Law Reader (will be provided first day of class)
C. Sunstein, *ANIMAL RIGHTS* (2004)

Course Description:

This course emphasizes theoretical and practical aspects of civil litigation in federal and state animal law cases, and administrative matters. With an emphasis on farm animal protection, the course examines all aspects of an animal law case, including jurisdictional prerequisites, complaints, discovery, dispositive motions, hearings, and fees. The course will also address protecting animals' interests through litigation related to enacting and defending citizen initiatives; the use of state and federal environmental, false advertising and unlawful business practice laws; and specific federal statutes such as the Humane Methods of Slaughter Act, the Federal Meat Inspection Act and the Administrative Procedure Act.

Evaluation:

Student grading will be based on A final exam (66%) and class participation (34%). 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.

The syllabus sets forth the basic reading assignments for class sessions, which may be supplemented each week with additional materials. Exact dates and assignments may change as the course progresses, and there will likely be occasions where the subject from one class will carry over to the next. All reading assignments are mandatory unless otherwise indicated.

Schedule and Reading

Session 1:

Tuesday, June 11

Introductions, overview, and discussion of course requirements. Overview and history of state and federal laws pertaining to animals, the application and limits of anti-cruelty codes and tactical and theoretical considerations for animal protection litigators.

Jonathan R. 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)

R. Posner, *Animal Rights: Legal, Philosophical, and Pragmatic Perspectives*, only pages 51-59 ANIMAL RIGHTS (2004)

C. Sunstein, *Introduction: What Are Animal Rights*, ANIMAL RIGHTS (2004)

D. Favre & V. Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 DETROIT L. REV. 1 (1993)

Session 2:

Wednesday, June 12

State and federal legislative process for enacting animal protection laws: Part II - citizen initiatives and referenda; drafting; Constitutional limitations on animal protection laws.

California Proposition 2: A Watershed Moment For Animal Law

15 Animal L. 149 (2009)

Edited Amicus' 9th Cir. Opposition brief, *Association Des Eleveurs de Canards et D'Oies du Quebec et al. v. Harris*

California proposed bill AB-711 Hunting: nonlead ammunition. (2013-2014) and *California AB 711 - The Anti's Are At it Again...And Winning*, SoCal Bowhunter (May 17, 2013).

Dismissal Order in *Cramer -v- Edmund G. Brown, et al.*, 2:12-cv-03130-JFW-JEM (Sept. 2012).

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)

Cavel International, Inc v. Madigan, 500 F.3d 551 (7th Cir. 2007)

California S.B. No. 1520 (California force feeding prohibition) and statements of sponsor and governor.

Session 3:

Thursday, June 13

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

B. Meier, *Bringing Lawsuits to Do What Congress Won't* (2000)

C. Sunstein, *Can Animals Sue?*, ANIMAL RIGHTS (2004)

Sierra Club v. Morton, 405 U.S. 727 (1972)

Edited Motion to Dismiss Order, *Levine v. Johans*, 3:05-cv-04764-MHP(N.D. Cal. 2006)

Edited *Avila v. Olivera* Complaint, 2:08-cv-02488-JAM-KJN (E.D. Cal. 2008) look in particular at HSUS's standing allegations starting at paragraph 32.

Edited Ruling on Dispositive Motions *Avila v. Olivera*, 2:08-cv-02488-JAM-KJN (2010)

Perdue Farms, Inc., USDA Agricultural Marketing Service FOIA Administrative Appeal

Edited motion to intervene (filed by Perdue) in *HSUS v. USDA*, 1:12-cv-

01405-RWR (D.C. Dist. 2012).

Session 4:

Friday, June 14

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

Perdue's Opposition to Filing Supplemental Information, and Plaintiffs' Reply thereto. *Hemy et al. v. Perdue Farms, Inc.* 3:11-cv-00888-MAS-LHG (2012, 2013)

Memorandum Opinion (deny Perdue's motion to dismiss) *Hemy et al. v. Perdue Farms, Inc.* 3:11-cv-00888-MAS-LHG (2013)

Complaint *HSUS et. al v. Cal. State Bd. of Equalization*, (San Francisco Superior Court 2006)

HSUS Complaint submitted to the SEC re: Seaboard Foods dissemination of false or deceptive information in violation of the Securities Exchange Act

Session 5:

Monday, June 17

Guest professor— Vandhana Bala, General Counsel, Mercy For Animals

Reading to be announced.

Session 6:

Tuesday, June 18

A History and Overview of Federal Regulation of the Treatment of Farm Animals and Related Litigation

National Meat Ass'n v. Harris, 132 S.Ct. 965 (U.S. 2012)

Comments on Non-Ambulatory Disabled Veal Calves and Other Non-Ambulatory Disabled Livestock at Slaughter; Petitions for Rulemaking (April 2011).

Session 7:

Wednesday, June 19

Animal Protection Litigation Involving Use of Anti-Fraud, False Advertising, Anti-trust Laws

People for the Ethical Treatment of Animals, Inc. v. California, 125 Cal.App.4th 871 (Cal.App. 1 Dist.,2005)
edited *In Re: Processed Egg Products Antitrust Litigation*, Case no. 2:08-md-02002-GP (Third Amended Complaint)
Hemy et al v. Perdue Farms, Inc. et al., (Third Amended Class Action Complaint)

Session 8:

Thursday, June 20

Strategic Considerations in Litigation

Californians for Humane Farms v. Schafer, 2008 WL 4449583 (N.D.Cal.)
Opposition Brief, *HSUS et al. v. Vilsack*, Case no. 1:12-CV-1582 ABJ
Supplemental Standing Brief *HSUS et al. v. Vilsack*, Case no. 1:12-CV-1582-ABJ
FLAG, Inc. Petition to USDA regarding Pork Checkoff funds for EPA Consent Agreement (2005)

Session 9:

Friday, June 21

Wildlife Protection Litigation

Guest Professor: Kristin Monsell, Staff Attorney HSUS APL

- Excerpt from *City of Rolling Meadows v. Kyle*, 145 Ill. App. 3d 168 (Ill. App. 3rd Dist.1986) (case that discusses what is a wild vs domestic animal).
- Excerpt of *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, (1978) (ESA case)
- Excerpt from *Committee for Humane Legislation v. Richardson*, 540 F.2d 1141 (D.C. Cir. 1976) (MMPA case)
- Excerpt from *Animal Welfare Institute v. Kreps*, 561 F.2d 1002 (D.C. Cir. 1977) (MMPA case)
- Excerpt from our complaint in *Humane Soc'y v. U.S. Dept. of Commerce*, 432 F.Supp.2d 4 (D.D.C. 2006) (NEPA case)
- Excerpt from Ninth Circuit Opinion, *Humane Soc'y v. Locke*, 626 F.3d 1040 (9th Cir. 2010)
- *HSUS et al v. Bryson et al.*, Case No. 3:12-cv-00642-SI Excerpt from plaintiffs' memo in support of plaintiffs' motion for a preliminary injunction
- *HSUS et al v. Bryson et al.* Excerpt from the federal defendants brief in opposition to motion for a preliminary injunction
- *HSUS et al v. Bryson et al.* Excerpt from plaintiffs' reply brief