

**ADVANCED READING ASSIGNMENT: II, III (a) and (b)(1)**

**"ANIMAL RIGHTS JURISPRUDENCE"**

Lewis and Clark Law School

SUMMER, 2013

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**SYLLABUS AND READING LIST**

I. SHOULD HARVARD LAW SCHOOL REJECT A PORCINE APPLICANT?

David Mamet, *Henrietta* (Houghton Mifflin 1999)

II. INTRODUCTION TO THE FOUR LEVELS OF RIGHTS JURISPRUDENCE

Steven M. Wise, "Legal Personhood and the Nonhuman Rights Project," 17 *Animal Law* 1 (2011) 1

III. LEVEL ONE - THE CAPACITY TO POSSESS LEGAL RIGHTS

a). Obstacles to Legal Personhood for Nonhuman Animals

Steven M. Wise, *Drawing the Line - Science and Animal Rights* 9-23 (Perseus Publishing 2002) 13

b). Nonhuman Animals Are Not Entitled to Legal Personhood – Are These Views Wrong?

1). Carol Hoff, "Immoral and Moral Uses of Animals," 29 302 *New England Journal of Medicine* 115-118 (1980)

2). Carl Cohen, "The Case for the Use of Animals in Biomedical Research," 315 *New England Journal of Medicine* 865-877 (1986). 33

3). Richard Epstein, "Animals as objects, or subjects, of rights," in *Animal Rights – Current Debates and New Directions* 143 (Oxford University Press 2004)

- c). Legal personhood for human slaves: A model for nonhuman animals?

Steven M. Wise, *Though the Heavens May Fall – The Landmark Trial that Lead to the End of Human Slavery* (2005)

- d). Liberty and Equality

Steven M. Wise, Chapter 6, "Liberty and Equality," in *Rattling the Cage, supra*

- e). The Common Law

- 1). Common law as a source of rightlessness for nonhuman animals

Steven M. Wise, Chapters 1-4, in *Rattling the Cage, supra*

- 2). How the Common Law Changes

Steven M. Wise, Chapter 7, "The Common Law," in *Rattling the Cage, supra*

- f). A Demur and a Defense

- 1). Richard L. Cupp, Jr., "A dubious Grail: Seeking tort law expansion and limited personhood as stepping stones toward abolishing animals' property status," 60 *SMU Law Review* 3-34 (2007) 43

- 2). Steven M. Wise, "Rattling the Cage defended," 43 *Boston College Law Review* 623 (2002) 95

- g). David Favre's Proposals For Nonhuman Animal as Property with Rights

- 1). Equitable self-ownership and another demur

- a). David S. Favre, "A new property status for animals – Equitable self-ownership," in *Animal Rights – Current Debates and New Directions* 234 (Oxford University Press 2004)

b). Richard L. Cupp, Jr., *supra* at 34.

2). Living Property

David Favre, “Living property: A New Status  
for Animals within the Legal System,” 169  
93 *Marquette Law Review* 1021 -1060 (2010)

IV. LEVEL TWO – WHAT LEGAL RIGHTS FOR NONHUMAN ANIMALS?

a). What is a Legal Right?

Steven M. Wise, Chapter 5, *Rattling the Cage – Toward  
Legal Rights for Animals* (Perseus Books 2000)

b). What are the Sources of Legal Rights?

1). Cicero, *De Re Publica* 3.22.33 (Clinton Walker  
Keyes, *trans.*, Loeb Classical Library 1928) in  
Lloyd L. Weinreb, *Natural Law and Justice* 40-41  
(Harvard University Press 1987) 219

2). *Declaration of Independence* 221

3). Alaska Const. Art. I, sec. 1 223

4). *Griswold v. Connecticut*, 381 U.S. 479 (1965) 225

5). *Meachem v. Fano*, 427 U.S. 215 (1976) 231

6). *Smith v. Organization of Foster Families for  
Equality and Reform*, 431 U.S. 816, 839-846  
(1977) 243

c). All Humans Have Not Been Entitled To Basic Legal Rights –  
Are These Views Wrong?

1). *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393, 396-413  
(1856) (black slaves) 249

2). *People v. Hall*, 4 Cal. 399 (1854)(Chinese), in  
*Animal Law* 91-95. 261

3). *Motion to Admit Miss Lavinia Goodell to the Bar  
of this Court*, 39 Wis. 232 (1875)(women). 265

- d). Steven M. Wise, Chapters 8-11, in *Rattling the Cage*,  
*supra*
- e). David Favre, *supra* at 1060-1070
- f). 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 Law* 1  
(2001) 273
- g). Richard A. Posner, "Animal Rights – Legal,  
philosophical and pragmatic perspectives," in  
"*Animal Rights – Current Debates and New  
Directions* 143 (Oxford University Press 2004)
- h). *Habeas corpus* and *de homine replegiando*
  - 1). Steven M. Wise, "The entitlement of  
chimpanzees to the common law writs  
of *habeas corpus* and *de homine replegiando*,"  
37 *Golden Gate University Law Review* 219  
(2007) 281
  - 2). *In Favor of Suica*, Habeas Corpus –  
833085-3/2005 (9th Criminal Jurisdiction,  
Bahia, Brazil, September 26, 2005) 343
- i). The Thirteenth Amendment to the United States Constitution 346.1  
*Tillikim v. SeaWorld Parks and Entertainment, Inc.*,  
11CV -2476 (JM WMC)(Feb. 8. 2012 S.D. Cal.)  
(Complaint and Decision on Motion to Dismiss)

V. LEVELS THREE AND FOUR – PRIVATE RIGHTS OF ACTION  
AND STANDING FOR NONHUMAN ANIMALS AND OTHER  
PERSONS

- a). *Sierra Club v. Morton*, 405 U.S. 727 (1972) 347
- b). *Japan Whaling Association v. American Cetacean  
Society*, 478 U.S. 221, 224-230 (1986) 367

c).	<i>Lujan v. National Wildlife Federation</i> , 407 U.S. 871 (1990)	373
d).	<i>Lujan v. Defenders. of Wildlife</i> , 504 U.S. 555 (1992)	383
e).	<i>Animal Lovers Volunteer Assoc. v. Weinberger</i> , 765 F. 2d 937 (9th Cir. 1985)	431
f).	<i>Palila v. Hawaii Department of Land and Natural Resources</i> , 852 F 2d 1106, 1107 (9th Cir. 1988)	435
g).	<i>Citizens to End Animal Suffering &amp; Exploitation v. New England Aquarium</i> , 836 F. Supp. 45 (D. Mass. 1993)	437
h).	<i>Cetacean Community v. Bush</i> , 386 F. 3d 1169 (9th Cir. 2004)	443
i).	<i>Animal Legal Defense Fund, Inc. v. Glickman</i> , 154 F. 3d 426 (D.C. Cir. 1998) ( <i>in banc</i> ), <i>cert den.</i> - U.S. - (1999)	453
j).	<i>ASPCA v. Feld Entertainment</i> , 677 F. Supp. 2d. 55 (D.D.C. 2009), <i>aff.</i> 659 F. 3d 13 (D.C. Cir. 2011)	485

## VII. IS NONHUMAN ANIMAL PERSONHOOD A STEP IN THE WRONG DIRECTION?

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(2) <i>Animal Law</i> 133 (2006)	599
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There will be an open-book take-home examination. 30% of the final grade will be based on classroom participation.