

ANIMAL LAW: Legislation, Lobbying, Litigation
Syllabus
Lewis & Clark Law School
Professors Jonathan R. Lovvorn and Nancy V. Perry
July 21 – August 3, 2009
9am - 12pm

Course Materials:

Animal Law Reader

C. Sunstein, ANIMAL RIGHTS (2004)

C. Kush, THE ONE HOUR ACTIVIST (2004)

J. Curnutt, ANIMALS AND THE LAW (2001) (suggested)

M. Bean, THE EVOLUTION OF NATIONAL WILDLIFE LAW (1997) (suggested)

Course Description:

Practical survey of lobbying 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; legislative drafting and lobbying; application and enforcement of federal statutes such as the Animal Welfare Act, the Humane Slaughter Act, the Endangered Species Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act, Wild Horses and Burros Act, and the Animal Damage Control Act; international conventions concerning trade in animals and animal products, free trade, and comparative animal protection laws; state laws and citizen initiatives concerning anti-cruelty, hunting, trapping, animal fighting, performing animals, and farm animals; veterinary malpractice and consumer protection actions; free speech, religious expression, and other Constitutional limitations on animals protection statutes.

Evaluation:

Student grading will be based on completion of a final examination (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, July 21

Introductions, overview, and discussion of course requirements. Overview and history of state, federal, and international laws and regulations pertaining to wild and captive

animals, the application and limits of anti-cruelty codes.

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)

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

B. Unti & A. Rowan, *A Social History of Postwar Animal Protection* (2001)

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

M. Bean, *The Legal Framework for the Development of Federal Wildlife Law*, THE EVOLUTION OF NATIONAL WILDLIFE LAW (1997) (suggested, not in reader)

Session 2:

Wednesday, July 22

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)

Mark Tushnet, *Some Legacies of Brown v. Board of Education*, 90 Va. L. Rev. 1693 (2004)

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

Public Citizen, *The Freedom of Information Act: A User's Guide* (2004)

ALDF v. Dep't of the Air Force, 44 F. Supp. 2d 295 (D.D.C. 1999)

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

Animal Legal Defense Fund, Inc. v. Glickman, 154 F.3d 426 (D.C. Cir. 1998)

Baur v. Veneman, 352 F.3d 625 (2nd Cir. 2003)

Friends of Animals v. Salazar, --F.Supp.2d --, 2009 WL 1743501 (D.D.C., 2009)

HSUS vs. U.S. Postal Service, 609 F.Supp.2d 85 (D.D.C. 2009)

Session 3:

Thursday, July 23

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

Complaint, *Humane Soc'y of the United States, et al. v. HVFG, et al.*, (S.D.N.Y. filed Sept. 6, 2006).

Hammer v. American Kennel Club, 1 N.Y.3d 294 (N.Y. 2003)

Seeton v. Pennsylvania Game Com'n, 594 Pa. 563 (Pa. 2007)

ALDF v. Provimi Veal Corp., 626 F. Supp. 278 (D. Mass. 1986)

LePage et al. v. Wizard of Claws, Inc. et al., No. 0714015 (Broward Co. Cir. Ct., filed June 18, 2007)

Humane Soc. of the U.S. v. Glickman, 217 F.3d 882 (D.C. Cir. 2000)

Doris Day Animal League v. Veneman, 315 F.3d 297 (D.C. Cir. 2003)

New Jersey Soc. for Prevention of Cruelty to Animals v. N.J. Department of Agriculture, 196 N.J. 366 (N.J. 2008)

Friday, July 24
(split session)

Part I: 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) (suggested, not in reader)

Part II: Limits on animal advocacy (libel and defamation, invasion of privacy, Animal Enterprise Terrorism Act, ethical constraints on lawyers).

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

Reporters Committee for Freedom of the Press, “*Can We Tape?*” (2005)

Animal Enterprise Terrorism Act, S. 3880, 109th Cong., Pub. L. No. 109-374, 120 Stat. 2652 (2006) (enacting 18 U.S.C. § 43).

Ethan Carson Eddy, *Privatizing The Patriot Act: The Criminalization Of Environmental And Animal Protectionists As Terrorists*, 22 PACE ENVTL. L. REV. 261 (2005) (suggested, not in reader)

Session 5:

Monday, July 27

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

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)

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 Cal. 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 28, 2009)

In Re: Processed Egg Products Antitrust Litigation, No. 2:08-md-02002-GP (E.D. Penn., filed January 30, 2009)

Session 6:

Tuesday, July 28

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

Taub v. State, 463 A.2d 819 (Md. 1983)
ALDF v. Glickman, 204 F.3d 229 (D.C. Cir. 2000)
ALDF v. Woodley, No. 04-1248 (N.C. April 12, 2005)
ALDF v. Yost, No. 05-1066 (C.D. Cal., filed Nov. 18, 2005)
Chimps Inc. v. Primarily Primates, No. 08-6097 (D. Or., filed Mar. 25, 2008)
ASPCA v. Ringling Bros. Barnum & Bailey Circus, 502 F.Supp.2d 103 (D.D.C. 2007)
America Zoo Association, Joining Forces for the “Suarez Six” (2003)

Session 7:

Wednesday, July 29

Laws and regulations concerning wildlife and trade; including federal laws (Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Wild Horses and Burros Act, Animal Damage Control Act, CITES, International Convention for the Regulation of Whaling, Migratory Bird Conventions).

Animal Welfare Institute v. Kreps, 561 F.2d 1002 (D.C. Cir. 1977)
Humane Society of U.S. v. Gutierrez, 523 F.3d 990 (9th Cir. 2008)
The Fund For Animals v. Norton, 281 F.Supp.2d 209 (D.D.C. 2003)
Fund For Animals v. Hall, 448 F.Supp.2d 127 (D.D.C. 2006)
Humane Soc. of the U.S. v. Dep’t of Com., 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)

Session 8:

Thursday, July 30

State and Federal legislative process for enacting animal protection laws: Part I - Lobbying

C. Kush, *THE ONE HOUR ACTIVIST* (2004)

Session 9:

Friday, July 31

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

Dane Waters, *INITIATIVE AND REFERENDUM IN THE UNITED STATES* (2002)
California Proposition 2: A Watershed Moment For Animal Law, -- Animal L. -- (2009) (with Nancy V. Perry)
Church Of The Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993)
United States v. Stevens, 533 F.3d 218 (3rd Cir 2008)
International Dairy Foods Association v. Amestoy, 92 F.3d 67 (2nd Cir. 1996)

Cavel v. Madigan, 500 F.3d 551 (8th Cir. 2007)
Illinois Restaurant Assoc. v. City of Chicago, 492 F.Supp.2d 891 (N.D. Ill. 2007)
Viva v. Adidas, 41 Cal.4th 929 (Ca. 2007)