

## **COURSE INFORMATION AND SYLLABUS: ANIMAL LAW AND ETHICS 2017**

Humans and animals have lived in mixed communities for thousands of years. They have shared relationships of affection as well as utility. Yet the dominant human relationship to animals is exploitative and harmful to animals in many contexts, especially farming, entertainment, sporting activities, and research. In about the last thirty or so years many people have come to recognize that human treatment of animals must improve for ethical reasons. This has led to steady law reforms, and this trend continues in exciting, although often frustratingly slow, ways. Much more than in other fairly settled areas of law, *you* can help to move animal law forward!

American and international animal law is evolving often in response to explicit ethical and scientific arguments made to courts and legislatures. Thus it is practically as well as intellectually important to understand the ethical assumptions underlying existing law and to analyze the assumptions critically in preparation for advocacy in the field. Explicit ethical arguments in legal cases have persuaded some courts to modify the law, given the widespread changes in public attitudes toward animals. Also, scientific studies of animal cognition and affective capacities (ethology) have provided empirical data relevant to animal understanding and treatment, and some courts are now referring to this research. The ethics anthology assigned for the course (Armstrong & Botzler, 3<sup>rd</sup> Ed.) contains many of these empirical materials on the cognitive and affective characteristics of primates, farm animals, and the relationships that animals form with each other and humans. Students have responded very positively to former editions of this book.

The organizational approach of the course is to examine animal law cutting across its varied legal contexts, such as criminal, tort, property, constitutional, domestic relations, and, and contract. We will study animals in diverse contexts including pets and companions, domesticated animals on the farm and range, food animals, entertainment and sport animals, those used in laboratory and field research, and animals in the wild.

The course will devote some attention to wildlife law and the protection of species, habitat, and systems. Wildlife law is designed to protect species, populations, and natural systems, and very little of this law considers the interests of individual animals. Students will examine selected environmental laws and their application. We will discuss how this holistically oriented law has diverged from law on individual animals. Animal and environmental law have traditionally developed in different directions, preventing constructive dialogue and integration of the two “fields.” We will explore possibilities for cross-fertilization and strategic unity that could make both areas of law more powerful. We will explore ways for the individual animal welfare/rights approaches to join with ecological approaches to enhance both.

***LEARNING GOALS AND OBJECTIVES:*** The most important aim of the course is to familiarize students with existing American animal law and policy on domesticated individual animals. It will also cover some environmental law and policy on wildlife and species. Because animal law faces pressure to reform in response to developing scientific

understanding of animals and evolving ethical norms, an important goal of the course will be to build creative reasoning skills at the “cusp” of existing law. To this end, students will learn to challenge legal statutes, precedents, and policy using comparative law, empirical research, and ethical concepts. The course emphasizes incorporating empirical studies and ethical arguments into legal advocacy. Such reasoning and advocacy skills will be valuable to lawyers and policy makers in all areas of practice. Indeed, animal issues arise in many legal contexts, so the course is a very good review of principles across the main fields of law, e.g., property, torts, constitutional, etc.) The course will also help to instill habits of critical reflection on legal concepts and refine critical reasoning skills. Besides law, the course will address various non-legal methods to prompt reform, such as shareholder advocacy, consumer movements, media education, and direct action. A practical objective of the course is to expose career possibilities related to animal law and policy.

***PRACTICAL EXERCISES AND PAPER:*** The course outline mentions some thought exercises that everyone will prepare for class discussions. Often I will ask for individual volunteers to take leadership roles. Each student will also produce a significant individual paper of approximately 18-20 pages (excluding bibliography) on a topic of personal interest. Advance Writing Requirement (AWR) papers (JD students only) will be completed in 3 drafts, with the final paper to be about thirty pages. Each student also will be asked to accept primary responsibility for leading the class on assigned readings during the class. This involves a brief summary and a question for the class to initiate discussion. Student leadership on these presentations will be considered part of the grade along with the course paper. Students will conduct at least one in-class oral argument from either the prosecution or defense perspective in an animal cruelty case. As time permits, we may conduct a group facilitation of an animal dispute with students playing different roles. Toward the close of the semester, each student will present some aspect of his or her paper in progress to the class and engage the class in a dialogue.

Every Tuesday will be “Animal Story” day. We will begin the class with a short presentation of a reading, photos, newspaper articles, or videos of some interesting real or fictional animal story. We will take turns presenting the stories. A story can be about some amazing achievement of particular animals, informational material about animal behavior, intra and cross-species relationships, or humorous anecdotes from your experience or the news. These stories are uplifting while studying an area of law with frequently disturbing facts and outcomes. Real animal stories have also resulted in many legal changes because of their potential to arouse the public’s empathy and compassion. They are wonderful reminders that animals are individuals with agency and personality.

***EVALUATION AND GRADING:*** Students are expected to prepare carefully for each class, and to participate actively and thoughtfully. Student participation will include readings, exercises, and other class activities and will comprise 30% of the grade. The individual paper will be 50% of the grade. The oral presentation of work in progress is worth 20%. (I will provide guidelines for the paper in class.) I urge you to choose a topic related to your experience, passion, curiosity, and perhaps career aspirations. I look forward to many interesting discussions of the “cutting edge” issues we will address!

## OUTLINE SUMMARY OF COURSE TOPICS

### I. INTRODUCTION AND FOUNDATIONS

- A. About the Course
- B. What is “Animal”?
- C. Ethical Foundations of Animal Law
- D. Animals as Property and Beyond

### II. CRIMINAL LAW AND ANIMALS

- A. Historical Background
- B. Animal Welfare Acts (Animal Cruelty): State and Federal
- C. Sciences and Animal Suffering
- D. Procedural and Substantive Barriers (Barriers to Prosecution; What Animals are Excluded?)
- E. Affirmative Cruelty
- F. Neglect
- G. Applications to various contexts (e.g., agriculture, sports, acting, fighting)
- H. Links between Animal Cruelty and Crimes against Humans

### III. TORT LAW

- A. Negligent Infliction of Emotional Distress
- B. Intentional Torts; Constitutional Torts
- C. Product Liability
- D. Veterinary Malpractice; Bailments
- E. Value of Companion Animals
- F. Strict Liability and Wild Animals
- G. Dog Bites; Breed Specific Legislation

### IV. CONSTITUTIONAL LAW

- A. Standing (Individuals and Organizations)
- B. Due Process
- C. First Amendment (Free Exercise, Speech)

V. COMMERCIAL USES OF ANIMALS

- A. Livestock and Farming (Raising, Slaughtering, Branding, Labeling, and Other Practices)
- B. Consumer Protection (Labeling, Advertising)
- C. Animal Research (Medicine, Biotechnology)

VI. CONTRACTS REGARDING ANIMALS

- A. Landlords and Tenants
- B. Condominiums (as time permits)
- C. Custody Agreements on Dissolution of Marriage

VII. WILLS AND TRUSTS

- A. Will Enforcement and Testator Intent
- B. Honorary Trusts
- C. Statutory Pet Trusts

VIII. WILDLIFE: FEDERAL STATUTES AND ISSUES

- A. Endangered Species Act
- B. Species Restoration Ethics
- C. Marine Mammal Protection Act

COURSE BOOKS

-Waisman, Frasch, Wagman [WF&W], ANIMAL LAW, 5<sup>th</sup> Edition (2014)

Note: Used copies should be available.

-Armstrong & Botzler [A & B], THE ANIMAL ETHICS READER, 3<sup>rd</sup> Ed. (2017)

Note: New edition

## SYLLABUS 2017

### ANIMAL LAW & ETHICS 2016 OUTLINE AND READINGS (Tues., Thurs., 2:10-3:25)

*Note:* Expect that I may adjust assignments periodically based on our progress.

- I. INTRODUCTION AND FOUNDATIONS
  - A. About the Course
  - B. What is “Animal”?
  - C. Ethical Foundations of Animal Law
  - D. Animals as Property and Beyond

Tues. 8/29: Introduction:

TWEN: Course Information and Syllabus; Sample paper topics

*What is an animal?*

WAISMAN, & FRASCH & WAGMAN [hereinafter WF&W], pp. 3-15 (*Knox, Lock, Cleve, etc.*); 677-679 (Appendix A definitions)

Thurs. 8/31: Three Fundamental Ethical approaches:

ARMSTRONG & BOTZLER [hereinafter A&B], 15-21 (Regan, rights); 33-41 (Singer, welfare); 42-49 (Donovan, relationship and care)

WF&W: Begin discussing case of Howard Brand’s Farm Animals: pp. 568-574 (*In re Howard Brand*)

*Exercise:* Be ready to discuss how the above ethical approaches inform the Brand case and idea of animals as property (discussion extends into next class).

Tues. 9/5: Extending the law to protect animals:

Finish discussion of *Howard Brand*.

A&B: Donaldson & Kymlicka, pp. 53-64

History of animal welfare pp. 1-11 (Western traditions)

WF&W: Parallel Movements: pp. 35-42(top) (slaves); 42-43 (women); 44-48(top) (children); 48-51 (mental incompetence, disability, and dignity)

- II. CRIMINAL LAW AND ANIMALS
  - I. Historical Background
  - J. Animal Welfare Acts (Animal Cruelty): State and Federal
  - K. Sciences and Animal Suffering
  - L. Procedural and Substantive Barriers (Barriers to Prosecution; What Animals are Excluded?)
  - M. Affirmative Cruelty
  - N. Neglect
  - O. Applications to various contexts (e.g., agriculture, sports, acting, fighting)
  - P. Links between Animal Cruelty and Crimes against Humans

Thurs. 9/7: Criminal Anti-Cruelty Laws and Policies:  
WF&W: pp. 65- 72(top) (background); 72-80 (anti-cruelty state statutes)  
Affirmative Acts: pp. 80-96(top) (*Bunt, Oliver, Voelker, Dunn, Garcia*)

Tues. 9/12: Failures to Act; Animal Science and Law:  
Failures to Act: WF&W: pp. 100-102 (*Schott*); pp. 103-118(top) (*Martinez, Brian, Woodley, Youngblood, hoarding, etc.*)  
Animal Science and Law:  
A&B: pp. 65; 140-146 (Griffin & Speck, consciousness); 111-115 (Rollin, pain)

Thurs. 9/14: Abuses of Humans and Animals:  
WF&W: pp. 155-163 (background, *Schambon, Thompson, etc.*)  
A&B: 635-638 (Brantley)  
TWEN: Susan Glaspell, "A Jury of Her Peers"

Tues. 9/19: ORAL ARGUMENTS IN STATE v. CANFIELD  
Instructions and Facts TBA  
Be ready to argue the case from the perspective that will be assigned to you. Be sure to integrate some scientific and sociological concepts from the last two classes into your argument. (Discussion may continue into the next class.)

Thurs. 9/21: Sport and Entertainment:  
WF&W: pp. 118-127(top) (*Boushehry, hunting, rodeos, racing*); 136-137 (TV, movies)  
A&B: pp. 491-493 (Leopold); 514-521 (Gunn); 573-574 (Scheff)

Tues. 9/26: Zoos:  
WF&W: pp. 479-481; 507-512 (Animal Welfare Act); 136-142 *Culp, etc.*)  
A&B: pp. 576-581 (Jamieson); 582-590 (Hutchins, Smith & Allard)

**Thurs. 9/28: PAPER PROPOSAL DUE IN CLASS;** Animal fighting:  
WF&W: commercial videos, pp. 142-146 (*Thomason, etc.*); pp. 147-154 (*Ash, Hargrove, etc.*); 356-365 (*U.S. v. Stevens, Note 1*)

- III. TORT LAW
  - H. Negligent Infliction of Emotional Distress
  - I. Intentional Torts; Constitutional Torts
  - J. Veterinary Malpractice; Bailments
  - K. Value of Companion Animals
  - L. Strict Liability and Wild Animals
  - M. Dog Bites; Breed Specific Legislation

Tues. 10/3: Negligent infliction emotional distress:  
WF&W: pp. 165-176 (*McDougall, Rabideau, etc.*)  
Intentional torts: WF&W, pp. 176-186 (*Burgess, Plotnik, etc.*); 228-232 (*Rabideau continued, Note 9*); 685-686 (Appendix C)

Thurs. 10/5: “Constitutional” Torts (civil rights actions against police):

WF&W: pp. 186-193 (top) (Fourth Amendment seizures; *Carroll*)

TWEN: *Viilo v. Eyre*

Veterinarian Malpractice; Damages and Valuation of Animals:

WF&W: pp. 200-207 (*Price*); 210-217 (*LaPorte, etc., damages*)

NO CLASS Tues. 10/10 (FALL BREAK)

Thurs. 10/12: Wild Animals; Dog Bites and Injuries:

Injuries by Captive Wild Animals: WF&W: pp. 262-279 (through Note 6) (*Baugh, Drake, etc.*)

Breed Specific Legislation (BSL): WF&W: pp. 330 (bottom)–341 (*Yakima, Garcia*)

#### IV. CONSTITUTIONAL LAW

D. Standing (Individuals and Organizations) and Animal Law

E. Due Process and Animal Law (covered above under Constitutionals Torts and BSL)

F. First Amendment (Free Exercise, Speech) and Animal Law

Tues. 10/17: Standing:

Handout on Standing and Animals (Loder)

Handout on International Constitutional Provisions on Animals (Loder)

WF&W: pp. 285-286; 295-300 (Administrative Procedure Act); 304-309 (*HSUS v. US Postal*); 314-326 (*Glickman*)

Thurs. 10/19: First Amendment Free Exercise:

WF&W: pp. 342-356 (*Hialeah, etc.*)

A&B: pp. 690-694 (Jamison et al, animal movement as functional religion)

First Amendment Speech:

WF&W: p. 376 (Notes)

TWEN: material on undercover employment and filming: *ALDF v. OTTER*

#### V. COMMERCIAL USES OF ANIMALS

A. Livestock and Farming (Raising, Slaughtering, Branding, Labeling, and Other Practices)

B. Consumer Protection (Labeling, Advertising)

C. Animal Research (Medicine, Biotechnology)

D. Animal Patenting

Tues. 10/25: Farm Animals:

TWEN: Robert Louis Stevenson, “The Friendly Cow”

Raising Farm Animals:

WF&W: pp. 377-403 (humane treatment; *NJSPCA, etc.*)

A&B: pp. 463-474 (Harfeld, animal *telos*)

**Thurs. 10/26: AWR 1<sup>ST</sup> DRAFTS DUE IN CLASS;** Farm Animals Continued;  
Labeling; Preemption; Advertising:  
Battery Cages: WF&W: pp. 411-416 (*State Bd. Equalization*, etc.)  
Consumer Protection; Labeling; Preemption; Advertising:  
WF&W: pp. 418-443(top) (*Provimi Veal*, etc., *Tyson Foods*, etc.)

Tues. 10/31: Humane Slaughter Acts:  
WF&W: pp. 443-455 (transport and slaughter; *Butz*, etc.)  
A&B: pp. 251-253, 254-257 (Temple Grandin)

Thurs. 11/2:  
Research on Animals: WF&W: pp. 475-490 (Animal Welfare Act and research, *Glickman II*, etc.)  
A&B: pp. 309-320 (Engel); 321-329 (Degrazia)

Tues. 11/7: Animal Biotechnology  
TWEN: biotechnology, patents in animals  
Ethics: Animal Research and Biotechnology  
A&B: pp. 397-401 (Morton); 449-455 (Rollin); 456-462 (Brom & Van Den Bergh)

- VI. CONTRACTS REGARDING ANIMALS
- A. Landlords and Tenants
  - B. Condominiums
  - B. Custody Agreements on Dissolution of Marriage

Thurs. 11/9: Landlord/Tenant; Condos; Custody and Divorce:  
LL/T; support animals: WF&W: pp. 513-526 (*Young*, etc.); 526-539 (condos, *Nahrstedt*)  
Pet Custody and Divorce:  
WF&W: pp. 539-546 (*Travis*, etc.)  
TWEN: "Dogs Are People, Too," NY Times  
A&B: 619-621 (Mathews)

- VII. WILLS AND TRUSTS
- D. Will Enforcement and Testator Intent
  - E. Honorary Trusts
  - F. Statutory Pet Trusts

Tues. 11/14: Testator Intent, Honorary Trusts, and Statutory Pet Trusts:  
WF&W: pp. 579 (bottom)-586(top) (*Searight*, etc.); 594-604 (special attention to question 4, p. 602; statutory animal trust laws)

- VIII. WILDLIFE: FEDERAL STATUTES AND ISSUES
- D. Endangered Species Act
  - E. Ethics of Species Restoration



F. Marine Mammal Protection Act

Thurs. 11/16: Endangered Species Act:

WF&W: pp. 605-610 (top) (the statute); 623-625 (Notes)

A&B: pp. 387-394 (Minteer & Collins)

TWEN: Fox & Bekoff

ESA Problem for Discussion: Restoration of Wolves into Northeast (Loder Power Point presentation)

Tues. 11/21: Marine Mammal Protection Act (MMPA):

WF&W: pp. 644-654(top) (*Richardson*, background on statute); Makah cultural whaling: 654-656

A&B: pp. 205-212 (Whitehead et al) 234-241 (Cavalieri)

Thurs. 11/23: *NO CLASS, THANKSGIVING*

**Tues. 11/28: AWR 2<sup>nd</sup> DRAFTS DUE IN CLASS**

Animal Advocacy:

TWEN: Direct Action (Hettinger)

A&B: pp. 705-710 (Singer)

Thurs. 11/30: Student Presentations on Papers

Tues. 12/5: Student Presentations on Papers

**Thurs. 12/7: FINAL PAPERS DUE IN CLASS (NON-AWR)**: Student Presentations on Papers

***DUE DATES SUMMARY:***

***Paper Proposals Due in class (all students): Thurs. Sept. 28, 2017***

***Final Papers (non-AWRs) Due in class Thursday 12/7/17, Hard Copies: My Mailbox Debevoise 316; E-copies in WORD sent to [rloder@vermontlaw.edu](mailto:rloder@vermontlaw.edu)***

***AWRs (only) Due Dates:***

***-First Draft Due in class: Thurs. Oct. 26, 2017***

***-Second Draft Due in class: Tues. Nov. 28, 2017***

***-AWR Final Papers due Dec. 13, 2017 (first day of exam period); my third floor Debevoise mailbox and E-copy in WORD to [rloder@vermontlaw.edu](mailto:rloder@vermontlaw.edu)***

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