

**Syllabus
ANIMAL LAW
SPRING 2008**

University of Houston Law Center
Amy Bures Danna

Text: Animal Law
Third Edition

Sonia S. Waisman, Bruce A. Wagman and Pamela D. Frasch

Class Policy and Procedure

1. University of Houston Law Center policies and procedures are to be followed in the event that this syllabus does not directly address a question.
2. Computers –
 - a. Computers are allowed in class, unless computer usage is a distraction to either the professor or students. Professor reserves the right to restrict or eliminate computer use during class.
 - b. Inappropriate use of computers during class includes, but is not limited to: game-playing (yes, including solitaire), viewing internet web sites (unassociated with class material), viewing adult-content material, instant messaging, and checking email. **Inappropriate computer use during class may directly affect your grade. The professor reserves the right to reduce your final grade by one half of a letter grade in the event of inappropriate computer use.**
3. Attendance – Adhere to ABA and University of Houston Law Center policies (minimum 80% attendance required). Role will be called or a sign-in sheet will be circulated during each class. **Professor reserves the right to record as absences the following:**
 - a. Arriving to class \geq 10 minutes late.
 - b. Leaving class before dismissal time.
 - c. Inappropriate or unprofessional behavior during class.
4. Participation – Class participation is required. **Professor reserves the right to reduce your final grade by one half of a letter grade in the event of poor class participation, including but not limited to:**
 - a. Failure to participate in recitation.
 - b. Failure to contribute to class discussion.
 - c. Failure to answer appropriately when called upon.
 - d. Failure to demonstrate required preparation for class.
5. Audio Taping Classes – By permission of professor.
6. General – Some topics explored in this class may be sensitive subjects for some people. Respectful, professional conduct and comments are required.
7. Contact Information: Amy Bures Danna, Amy.Attorney@yahoo.com, 281-548-1100 (Day), 281/852-4343 (Evening), 713-208-5543 (Emergency ONLY)

Class	Date	Assignment	Pages
1	1/14/2007	What Is an Animal? Defining Animal. Domestic versus Wild Animals	1 to 37
2	16-Jan	Legislative Update, Texas 2007 80th Legislative Update - Animal related bills that passed, and bills that failed.	none
3	21-Jan	MLK Holiday	
4	23-Jan	Property and Beyond - Slaves, Women, Children, Mental Incompetents, Potential Humans.	39-63
5	28-Jan	Torts - Emotional Distress/Loss of Companionship - Non veterinary cases	71-100
6	30-Jan	Torts - Emotional Distress/Loss of Companionship - Non veterinary cases	101-135
7	4-Feb	Torts - Bailment, Veterinary Malpractice, Alternative Causes of Action	135-161
8	6-Feb	Video Presentation by Chris Green, J.D., DVM, - Research on Veterinary Malpractice Statistics and Insurance Costs.	none
9	11-Feb	Torts - Strict Liability and Negligence. Start Constitutional Law - Legal Standing, Justiciability and other Limiting Doctrines	161-187
10	13-Feb	Constitutional Law - Legal Standing, Justiciability and other Limiting Doctrines	187-216
11	18-Feb	Constitutional Law - Legal Standing, Justiciability and other Limiting Doctrines	216-246
12	20-Feb	Constitutional Law - Legal Standing, Justiciability and other Limiting Doctrines, Free exercise of Religion	246-284
13	25-Feb	Constitutional Law - Freedom of Speech/Hunter Harassment Statutes, Due Process/Challenges and Claims	285-306
14	27-Feb	Commercial Uses of Animals - Animals Raised and Slaughtered for Food	307-359
15	3-Mar	Commercial Uses of Animals - Humane Slaughter Acts, Animal Welfare Act	359-386 386-403,
16	5-Mar	Commercial Uses of Animals - Animal Welfare Act, Other Commercial Uses of Animals	416-433
17	10-Mar	Commercial Uses of Animals - Other Commercial Uses	433-468
18	12-Mar	Criminal Law - Overview of State Anti Cruelty Laws, Overview of Texas Laws, Affirmative Acts of Cruelty	469-505
19	17-Mar	Spring Break	none
20	19-Mar	Spring Break	none
21	24-Mar	Presentation by Harris County Assistant District Attorney, OR, Criminal Law - Animal Fighting, Hunting	505-527
22	26-Mar	Presentation by Harris County Assistant District Attorney, OR, Criminal Law - Animal Fighting, Hunting	505-527
23	31-Mar	Criminal Law - Cross protecting	527-540
24	2-Apr	Contracts - Landlord/Tenant and Housing issues, Condominium Law, Marital Dissolution.	541-572
25	7-Apr	Contracts - Sale of Goods and Products, Insurance	572-585
26	9-Apr	Wills & Trusts - Lynch Case example, Validity of Will Provisions, Companion Animal Trusts, Texas Animal Trust Statute OR Guest Speaker	587-618
27	14-Apr	Wills & Trusts - Lynch Case example, Validity of Will Provisions, Companion Animal Trusts, Texas Animal Trust Statute OR Guest Speaker	587-618
28	16-Apr	Federal Statutes - Endangered Species Act	619-642

29	21-Apr	Federal Statutes - Marine Mammal Protection Act OR Guest Speaker	643-667
30	23-Apr	Federal Statutes - Marine Mammal Protection Act OR Guest Speaker	643-667
31	28-Apr	Federal Statutes - Wild Horses & Burros Act (30 min), Exam Review (1h)	667-679

Additional Information:

Read: *Definitions of "Domestic Animal" in Selected State Anti-Cruelty Statutes Texas Penal Code §38.151, §42.09

Look Up - Petco Animal Supplies, Inc. v. Schuster, 2004 WL 903930 (Tex. App. – Austin, April 29, 2004) no writ. History: Dog-owner brought action against pet store to recover damages allegedly incurred when dog was killed in traffic after escaping from pet groomer. The 200th Judicial District Court, Travis County, Darlene Byrne, J., entered default judgment in favor of dog-owner and awarded damages. Pet store appealed. Court held for Pet store, reversing an award of damages. Court holds there can be no recovery for emotional distress suffered when pet dog dies due to negligence of the defendant.

Look Up - Priebe v. Nelson, 14 Cal.Rptr.2d 173 (App. 2004), where a dog bit an employee at a boarding kennel held that the dog owner could argue to the jury the defense of “occupational assumption of the risk,” – not in text book

Constitutional Law

Professor Note: This is an important concept in Animal Law, however, the tenants of Constitutional Law are covered in other courses. Please read these cases, with an eye toward the barriers that exist in Animal-related cases, and the requirements for Standing. Do not spend hours and hours on detailed briefs of these cases but be able to make intelligent observations regarding the same.

Look this case up, and please read it! We will try to have a Guest Speaker to cover this case.

Cetacean Community v. Bush, 386 F.3d 1169 (9th Cir. 2004)

The CETACEAN COMMUNITY, Plaintiff-Appellant, v. George W. BUSH, President of the United States of America; Donald H. Rumsfeld, United States of America Secretary of Defense, Defendants-Appellees. No. 03-15866.

WILLIAM A. FLETCHER, Circuit Judge:

We are asked to decide whether the world's cetaceans have standing to bring suit in their own name under the Endangered Species Act, the Marine Mammal Protection Act, the National Environmental Protection Act, and the Administrative Procedure Act. We hold that cetaceans do not have standing under these statutes.

I. Background

The sole plaintiff in this case is the Cetacean Community ("Cetaceans"). The Cetacean Community is the name chosen by the Cetaceans' self-appointed attorney for all of the world's whales, porpoises, and dolphins. The Cetaceans challenge the United States Navy's use of Surveillance Towed Array Sensor System Low Frequency Active Sonar ("SURTASS LFAS") during wartime or heightened threat conditions. The Cetaceans allege that the Navy has violated, or will violate, the Endangered Species Act ("ESA"), 16 U.S.C. § § 1531-1544, the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. § § 1371-1421h, and the National Environmental Policy Act ("NEPA"), 16 U.S.C. § § 4321-4347.

The Navy has developed SURTASS LFAS to assist in detecting quiet submarines at long range. This sonar has both active and passive components. The active component consists of low frequency underwater transmitters. These transmitters emit loud sonar pulses, or "pings," that can travel hundreds of miles through the water. The passive listening component consists of hydrophones that detect pings returning as echoes. See 67 Fed.Reg. 46,712- 16 (explaining SURTASS LFAS in more detail); 67 Fed.Reg. 48,145-48 (same). Through their attorney, the Cetaceans contend that SURTASS LFAS harms them by causing tissue damage and other serious injuries, and by disrupting biologically important behaviors including feeding and mating.

Guest Speaker to discuss Cetacean Comm. – Brett Cooke, J.D. Brett Cooke is a Patent Attorney with Andrews Kurth LLP in Houston, Texas. He is a 2006 graduate from the U of H Law Center, and earned a B.S. in Electrical Engineering from Texas A&M (1991). Before practicing law, Brett worked as an Area Sales Manager for a Fortune 500 materials science company and later as a Product Manager for a wire and cable manufacturer. Brett has served 15 years in the U.S. Navy Reserve, with 7 years active duty as a nuclear power qualified surface warfare officer, and he holds the rank of Lieutenant Commander. Brett and his wife, Nicola, are involved with several animal rescue groups and provide foster care for cats.

Criminal Law

Texas - House Bill 653 and Senate Bill 1724, commonly known as "Loco's Law," went into effect September 1, 2001, making animal cruelty a felony and punishable by a \$10,000 fine and up to two years in jail. Prior to Loco's Law, animal cruelty was not considered a felony under Texas law. Today, animal cruelty convictions are classified as either a felony or misdemeanor. – not in text book

Texas - NEW Anti-Cruelty Laws went into effect on September 1, 2007. Read them, and understand them.

The State of Texas, Appellant, v. Patrick Scott KINGSBURY, Appellee. The State of Texas, Appellant, v. Inocente Morales Dominguez, Appellee. Feb. 19, 2004. 129 S.W.3d 202 (Tex. App. – Corpus Christi) - Interpreting felony offense of "torture" to include failing to provide necessary food, care, or shelter defeated statute's categorization of "torture" as a more serious crime. – not in text book

In the Matter of J.A.M. Court of Appeals of Texas, Austin. Oct. 9, 2003. – Unpublished Opinion. 2003 WL 22303115.

Evidence that juvenile's actions caused unnecessary or unjustifiable pain or suffering to an animal was sufficient to support juvenile's adjudication as delinquent based upon charge of cruelty to an animal by torture – not in text book

.Robert MEDINA, Appellant, v. The State of Texas, Appellee. Jan. 24, 2002 2002 WL 87335 (Tex.App.-Hous. (14 Dist.)) Appellant was arrested by police who observed him and his co-defendant holding a cock fight. The fight occurred on property owned by Quintero. Over a plea of not guilty, the trial court convicted appellant of cruelty to animals. Punishment was assessed at six months' confinement in the Brazos County Jail, probated for one year. A \$2,000.00 fine was imposed, \$1,250.00 of which was probated. Appellate court affirmed the judgment of the trial court

Companion Animal Trusts Under Modern Statutes

Texas - Governor Perry just signed into law HB 1190 which, among other things, adds a new Section 112.037 to the Texas Property Code which allows for the creation of a trust for the care of an animal. HB 1190 became effective January 1, 2006

Wild Horses and Burros Act

April 2005 (Washington, DC) - A recent amendment to the Wild Free-Roaming Horses and Burros Act . Last year, Senator Conrad Burns (R-MT) slipped language into the Consolidated Appropriations bill that undermined the 1971 Act by permitting "excess" horses and burros to be sold at auction "without limitation." Two bills have been introduced in the House of Representatives in response to public demand to protect America's wild horses from slaughter. Representative Nick Rahall (D-WV), and Representative Ed Whitfield (R-KY) introduced H.R. 297 to repeal the rider and restore the Wild Free-Roaming Horses and Burros Act to its original language. Senator Robert C. Byrd (D-WV) is sponsoring a companion bill, S. 576, in the Senate.

Other Reading, Optional:
Articles

1. Livingston, The Calculus of Animal Valuation: Crafting a Viable Remedy, 82 Neb. L. Rev. 783 (2004) surveys the caselaw suggesting a pet owner can recover more than market value (usually zero) for the tortious death of a pet including the “value to the owner” approach, an award for loss of societal benefits, and emotional damages. The author urges that the pet owner should be able to recover both the latter two types of damages but that the defendant who killed the pet can reduce damages essentially on theory of failure to mitigate damages if the plaintiff did not soon after the loss acquire a new pet to provide societal companionship and to reduce grief.
2. Jonathan Krieger, Emotions and Standing for Animal Advocates after ASPCA v. Ringling Bros. & Barnum & Bailey Circus, 22 Law & Ineq. 385 (2004) (an analysis of standing based on emotional attachment, supporting the holding in the above case).
3. Note, Bailment and Veterinary Malpractice: Doctrinal Exclusivity, or Not? 55 Hastings L. J. 1009 (2004), argues that if the courts insist that pets are mere property, owners should get the benefit of bailment law when the pet is not returned from the veterinary hospital because it died and should not have to prove negligence in the manner of a case of malpractice by a physician treating a human being.