

ANIMALS, CULTURE AND THE LAW

Law 343-4, Fall 2007

Maneesha Deckha, Assistant Professor

UNIT VALUE: 1.5**CLASS TIMES:** 3:30 pm to 6:30 pm, Mondays**LOCATION:** Room 205, Fraser (Law) Building**OFFICE HOURS:** You are welcome to drop by my office to see me at anytime. If you prefer, you may schedule an appointment.**CONTACT INFO:** Tel.: 250.721.8175; Fax: 250.721.8146
Room 230; Email: mdeckha@uvic.ca
Assistant: Rosemary Garton, Room 225, Tel.: 250.721.8177**1. COURSE DESCRIPTION**

This seminar will explore the relationship between nonhuman and human animals, focusing on the legal and ethical issues raised by the status of animals as property. In particular, we will look at how recent technological and cultural developments have redrawn the human/nonhuman boundary, implicating what it means to be “human”, and resulting in a renewed questioning of the current scope of legal personhood. Specific topics include the examination of: 1) the current law characterizing animals as property, including the nature of a legal right; 2) the various western philosophical positions on animals that have animated the law; 3) the idea of animal rights and other interests and the different types of theories (deontological, utilitarian, feminist ethic of care, postcolonial feminist) that argue for greater legal protection of animals; 4) the types of legal alternatives proposed to animals’ current status as property; and 5) the impact that greater legal protection for animals will have on marginalized human communities and the commitment to cultural pluralism, the politics of animal advocacy movements in this regard, and the possibility of human and animal rights coexisting. With this theoretical foundation, we will then consider the laws and ethics surrounding the use of animals in medical research through various techniques such as vivisection, transgenics and xenotransplantation; as food (factory farming, fast food); as companion animals; and as symbols of meaning in cultural and religious traditions. Issues of difference and hierarchies organized along gender, race, class, culture, ability, religion, and species will be integral to this course.

2. COURSE OBJECTIVES:

- ✚ To engage in critical theoretical analysis about cultural and legal constructions of animals.
- ✚ To actively learn in a cooperative environment.
- ✚ To hone oral, including presentation, and written, including essay writing, skills.

3. EVALUATION

<p>a) Research or Integrative Paper (min. of 5000 words, exclusive of other text)</p> <ul style="list-style-type: none"> • You must submit a written introduction and thesis paragraph to me by the beginning of class on October 1st, 2007. This submission will not be graded, but is nonetheless required. Completion of the thesis paragraph will count toward an automatic 1% of the final grade. Failure to submit the written introduction and thesis paragraph will result in a loss of this 1%. • You must submit a written bibliography of sources read and sources identified that you will read to me by the beginning of class on October 15, 2007. This submission will not be graded, but is nonetheless required. Completion of the bibliography will count toward an automatic 2% of the final grade. Failure to submit the bibliography by this date will result in a loss of this 2%. • You must submit a draft of your paper by November 26, 2007. This submission will not be graded, but is nonetheless required. Submitting a draft will count toward an automatic 2% of the final grade. Failure to submit the draft by this date will result in a loss of this 2%. • Unless I have authorized an extension on any of the above dates, the above submissions will be penalized by -.5% per day or part thereof, including weekends, that they are late. • Due date for final paper: Friday, December 14, 2007. Papers must be submitted in hard copy and by e-mail attachment by this date and have the word count on the cover page. <u>Unless I have authorized an extension, papers submitted after this time will be penalized at the rate of one grade point per day or part thereof, including weekends.</u> The paper will count for 75% or 65% of your final grade.* • You may write your Major Research Paper for this course if you obtain written approval from me by September 17, 2007. The paper will qualify as a Major Research Paper if it is at least 7,500 words in length exclusive of other text such as footnotes, appendices and bibliography and receives a grade of C+ or better. 	<p>1%</p> <p>2%</p> <p>2%</p> <p>75 or 65%*</p>
<p>PLUS</p>	
<p>b) Presentation</p> <ul style="list-style-type: none"> • You must sign up for one class in the term when you will be responsible for presenting your critique of that day’s readings to the class and thus leading the discussion. The presentation is an opportunity for you to present a critical analysis of the readings - the arguments you found weak or convincing, the proposals that resonated, the connections to other readings and issues and/or other thoughts – rather than description. It should include a set of written discussion questions to propose to the class and at least one interactive exercise. You may assume that everyone has done the readings. Your presentation, including time for group interaction and discussion, should be approximately 60 minutes. • You will be assessed on the quality of your clarity, analysis, engagement with the materials, discussion questions and interactive exercise, creativity and overall style and organization. 	<p>25 or 15%*</p>
<p>*If your grade for your presentation is higher than the grade for your paper it will be worth 25%; if it is even or lower it will be worth 15%.</p>	
<p>PLUS</p>	

<p>c) Lifestyle Journals Twice in the term, you are invited to reflect upon how the readings and discussion in this course have caused you to change (or not) your lifestyle in terms of your relationships with nonhuman animals. Here you have an opportunity to write about how the course has changed or confirmed your views on issues and how the course may or may not be having a larger effect on your own lifestyle practices than other courses you have taken in law school. Each journal entry must be a minimum of 300 words. Each complete journal entry will count for an automatic 2.5% and is expected on the following dates: October 15, 2007 and November 12, 2007. You may submit your journals after these dates but no later than the beginning of class on December 3, 2007. Failure to submit the journals by December 3, 2007 will result in the loss of the 2.5% allotted to each. The journal entries will not be graded, although the quality, if high, may be considered to your benefit to raise your overall grade if you are on the border line between grade point values.</p>	<p>5%</p>
<p>PLUS</p>	
<p>d) Response/Critique of Readings</p> <ul style="list-style-type: none"> For each set of readings for which there is no student presentation assigned, you must come to class prepared to share orally at least one point regarding your response/critique of that day’s readings. The comments you share with the class are meant to be vehicles through which you express your response to the week’s readings and any related personal experience you wish to draw from and incorporate. You will be expected to articulate your question/response orally near the beginning of class. The questions/responses will not be graded, although the quality over the term of the questions/responses, if high, may be considered to your benefit to raise your overall grade if you are on the border line between grade point values. 	<p>n/a</p>

Importance of Seminar Attendance

The success of a seminar for everyone depends on everyone’s participation and attendance in class and the classroom community this generates amongst us. If you have to be away from class for a sickness, caregiving or another legitimate personal reason, please make every effort to inform me ahead of time. Unless I authorize otherwise based on your personal circumstances, you will be responsible for submitting a lengthier critical response (at least 600 words in total) for every missed class by the start of the class following the one you have missed. Failure to submit this critical reflection for the class missed by this time will result in a penalty of -2% of the final grade. You should consult the Associate Dean of Academic and Student Affairs (Prof. Kim Hart Wensley at 721-8152) to discuss possible accommodation for any personal reasons that prevent you from completing this or any other course requirement in a timely fashion.

Based on these components, you will be assigned a final letter grade for the seminar. The meanings and numerical equivalencies are:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	
A-	7	80-84%	
B+	6	75-79%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	
B-	4	65-69%	
C+	3	60-64%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 or below	Unsatisfactory performance.

4. TEACHING METHODOLOGIES

This is a seminar that adopts an ACTIVE LEARNING model of pedagogy. One of the main advantages of a seminar with limited enrolment is the increased opportunity to interact and engage with each other's ideas and insights and enjoy the learning benefits that come from this interaction. Accordingly, class time will consist of discussion, small group work and other interactive and reflective exercises, with limited lectures. You are expected to complete your readings and any other preparatory assignments before the start of class and to actively participate in class, including being open to interactive learning.

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READING LIST

September 10

1. What/Who is an "Animal" in Western Culture(s)?

a. Introduction

- i. David Mamet, *Henrietta* (New York: Houghton Mifflin, 1999): about a self-educated pig who strives to attend an institution that looks very much like Harvard Law School. (On Reserve)

b. Western Philosophical Foundations

- i. Martha Nussbaum, "Animals Rights: The Need for a Theoretical Basis" Book Review of *Rattling the Cage: Toward Legal Rights of Animals* by Steven M. Wise, (2001) 114 Harv. L. Rev. 1504 at 1506-26.
- ii. Rene Descartes, "Animals are Machines" in Tom Regan & Peter Singer, eds., *Animal Rights and Human Obligations* (New York: Prentice-Hall, 1976) 60 at 60-66.
- iii. Aristotle, "On the Soul: Book 2.3" in Jonathan Barnes ed., *The Complete Works of Aristotle: The Revised Oxford Translation* (Princeton, N.J.: Princeton University Press, 1984) 659 at 659-660.
- iv. Immanuel Kant, "Duties to Animals" in Tom Regan & Peter Singer, eds., *Animal Rights and Human Obligations* (New York: Prentice-Hall, 1976) 122 at 122-123.

c. Cultural Constructions

- i. Barbara Herrnstein Smith, "Animal Relatives, Difficult Relations" (2004) 15:1 *Differences* 1 at 1-9.
- ii. Joan Dunayer, "Animal Attributes: The Verbal Dichotomy" in *Animal Equality: Language and Liberation* (Derwood, MD.: Ryce Publishing, 2001) 21 at 21-29.
- iii. Yoram S. Carmeli, "Lion on Display: Culture, Nature, and Totality in a Circus Performance" (2003) 24.1 *Poetics Today* 65 at 65-67, 75-76.
- iv. Cary Wolfe, "Subject to Sacrifice: Ideology, Psychoanalysis, and the Discourse of Species in Jonathan Demme's *The Silence of the Lambs*" in *Animal Rites: American Culture, the Discourse of Species, and Posthumanist Theory* (Chicago: University of Chicago Press, 2003) 97 at 97-107.

Recommended:

- i. Agustin Fuentes, "The Humanity of Animals and the Animality of Humans: A view from Biological Anthropology Inspired by J.M. Coetzee's *Elizabeth Costello*" (2006) 108:1 *American Anthropologist* 124 at 124-126, 128-130.

September 17

d. Blurring Species Boundaries

- i. Raymond Corbey, *The Metaphysics of Apes: Negotiating the Animal-Human Boundary* (Cambridge: Cambridge University Press, 2005) at 160-77.
- ii. Donna Haraway, "Morphing in the Order: Flexible Strategies, Feminist Science Studies, and Primate Revisions" in *The Haraway Reader* (New York: Routledge, 2004) 199 at 199-208.

2. The Legal Recognition/Absence of Animals**a. Emerging Awareness through Race and Gender Parallels**

- i. Jen Kirgen, "The Historical and Contemporary Prosecution and Punishment of Animals" (2003) 9 *Animal L.* 97 at 97-122.

September 24

- ii. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856) at 1-7, 26-38.

- iii. *People v. Hall*, 4 Cal. 399 (1854).
- iv. Alan Watson, “Rights of Slaves and Other Owned-Animals” (1997) 3 *Animal L.* 1 at 1-6.
- v. Patricia Williams, “The Pain of Word Bondage” in *The Alchemy of Race and Rights* (Cambridge, MA: Harvard University Press, 1991) 146 at 146, 156-165.
- vi. Alice Walker, “Am I Blue?” in *Alice Walker Banned* (New York: Aunt Lute Books, 1996). (On Reserve)

Recommended:

- i. David Sztybel, “Can the Treatment of Animals be Compared to the Holocaust” (2006) 11:1 *Ethics & the Environment* 97 at 107-132.

b. Introduction to Animal Theory – Main Theoretical Positions

- i. Angus Taylor, *Animals and Ethics: An Overview of the Philosophical Debate* (Peterborough, ON: Broadview Press, 2003) at 64-74.
- ii. Gary L. Francione, “Taking Sentience Seriously” (2006) 1 *J. Animal L. & Ethics* 1 at 1-18.

October 1

- iii. Paola Cavalieri, “Speciesism” in *The Animal Question: Why Nonhuman Animals Deserve Human Rights* (Oxford: Oxford University Press, 2001) 69 at 69-86.
- iv. Andrew Brennan, “Humanism, Racism and Speciesism” (2003) 7:3 *Worldviews* 274 at 297-300.
- v. Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA.: Harvard University Press, 2006) at 325-346.
- vi. Greta Gaard, “Vegetarian Ecofeminism” (2002) 23:3 *Frontiers* 117 at 117-133.
- vii. Maneesha Deckha, “The Saliency of Species Difference for Feminist Theory” (2006) 17:1 *Hastings Women’s L.J.* 1 at 4-19.

October 15

c. Postcolonial Cultural Critique - Animals as Other

- i. Ratna Kapur, “New Cosmologies: Mapping the Postcolonial Feminist Legal Project” in *Erotic Justice: Law and the New Politics of Postcolonialism* (London: Glasshouse Press, 2005) 13 at 14-28.
- ii. Cary Wolfe, “Introduction” in *Animal Rites: American Culture, the Discourse of Species, and Posthumanist Theory* (Chicago: University of Chicago Press, 2003) 1 at 1-9.
- iii. Marie Fox, “Rethinking Kinship: Law’s Construction of the Animal Body” (2004) 57 *Current Legal Problems* 469 at 469-93.

Recommended:

- i. Una Chaudhuri & Shonni Enelow, “Animalizing Performance, Becoming-Theatre: Inside Zooësis with The Animal Project at NYU” (2006) 16:1 *Theatre Topics* 1 at 1-4.

d. Intersectionality and Cultural Critique – Species as Difference

- i. Maneesha Deckha, “The Saliency of Species Difference for Feminist Theory” (2006) 17:1 *Hastings Women’s L.J.* 1 at 23-38.

- ii. Glen Elder, Jennifer Wolch & Jody Emel, “Le Pratique Sauvage: Race, Place, and the Human-Animal Divide” in *Animal Geographies: Place, Politics, and Identity in the Nature-Culture Borderlands* (London: Verso, 1998) 72 at 72-90. (On Reserve)

October 22

3. Animal Interests under the Law

a. Introduction

- i. Gary L. Francione, “The Dominion of Humans over Animals, the ‘Defects’ of Animals, and the Common Law” in *Animals, Property, and the Law* (Philadelphia, PA.: Temple University Press, 1995) 33 at 33-46.
- ii. Jim Motavalli, “Rights from Wrongs” *E Magazine* 14:2 (March/April 2003) 26 at 26-33.

b. Difference Between Domestic and Wild Animals

- i. *Criminal Code*, ss. 446 and 447.
- ii. Bill C-50, *An Act to amend the Criminal Code in respect of cruelty to animals*, 1st Sess., 38th Parl., 2005.
- iii. Bill S-24, *An Act to amend the Criminal Code (cruelty to animals)*, 1st Sess., 38th Parl., 2005.
- iv. *Species at Risk Act*, S.C. 2002, c. 29, preamble.

c. Animal Welfarism

- i. *R. v. Ménard* (1978), 43 C.C.C. (2d) 456 (Q.C.A.).
- ii. Lyne Létourneau, “Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals” (2003) 40:4 *Alta. L. Rev.* 1041 at 1041-55.

Recommended:

- i. Elaine Hughes & Christiane Meyer, “Animal Welfare Law in Canada and Europe” (2000) 6 *Animal L.* 23 at 48-76.
- ii. Peter Sankoff, “Five Years of the ‘New’ Animal Welfare Regime: Lessons Learned from New Zealand’s Decision to Modernize its Animal Welfare Legislation” (2005) 11 *Animal L.* 7 at 24-38.

October 29

d. Constitutional Questions (standing; due process; freedom of expression)

- i. *R. v. Watson*, [2005] P.E.I.J. No. 85.

Recommended:

- i. *R. v. Power and Wencker*, Ontario Court of Justice, April 18, 2002.
- ii. *Ward v. Canada (Attorney General)*, 2002 SCC 17, [2002] 1 S.C.R. 569.
- iii. *International Fund for Animal Welfare, Inc. v. Canada*, [1987] 1 F.C. 244 (T.D.)

e. Private Law Questions

- i. **Family** (custody; estate planning)
 - 1. *Gauvin v. Schaeffer*, [2003] S.J. No. 117, 2003 SKQB 78.
 - 2. Barbara Newell, “Animal Custody Disputes: A Growing Crack in the Legal ‘Thinghood’ of Nonhuman Animals” (2000) 6 *Animal L.* 179 at 179-84.

ii. **Torts**

1. Sonia S. Waisman & Barbara R. Newell, "Recovery of 'Non-Economic Damages' for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend" (2001) 7 *Animal L.* 45 at 53-62.

4. Specific Animal Controversies

November 5

a. Vivisection and Medical Research

- i. Charlotte Montgomery, "Research: Keeping Humans Alive" in *Blood Relations: Animals, Humans and Politics* (Toronto: Between the Lines, 2000) 80 at 80-91.
- ii. Angus Taylor, *Animals and Ethics* (Peterborough, ON: Broadview Press, 2003) at 119-36.

b. Patents, Chimeras and Xenotransplantation

- i. Wendy A. Adams, "The Myth of Ethical Neutrality" (2003) 39 *Can. Bus. L.J.* 181 at 181-83, 194-213.
- ii. Marie Fox, "Reconfiguring the Animal/Human Boundary: The Impact of Xenotechnologies" (2005) 26:2 *Liverpool L. Rev.* 149 at 149-67.

Recommended:

- i. *Harvard College v. Canada (Commissioner of Patents)* 2002 SCC 76.
- ii. Jamie Shreeve, "I, Chimera" *New Scientist* 186:2505 (June 25, 2005) 39 at 39-43.
- iii. Nicole Kopinski, "Human-Nonhuman Chimeras: A Regulatory Proposal on the Blurring of Species Lines" (2004) 45 *B.C. L. Rev.* 619 at 619-28, 645-666.
- iv. Jay Ingram, "Human-ape Mind Meld Tests Morals" *Toronto Star* (16 July 2005).

November 12

c. Eating Animals

- i. Eric Scholsser, *Fast Food Nation* (New York: Harper Perennial, 2001) at 169-72.
- ii. Charlie LeDuff, "At a Slaughterhouse, Some Things Never Die" in Cary Wolfe, ed., *Zoontologies: The Question of the Animal* (Minneapolis, MN.: University of Minnesota Press, 2003) 183 at 183-86.
- iii. Michael Pollan, "An Animal's Place" *New York Times Magazine* (10 November 2002) 58.
- iv. Carol J. Adams, "The Rape of Animals, the Butchering of Women" in *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* (New York: Continuum, 2003) 50 at 50-73.

Recommended:

- i. David Wolfson, "McLibel" (1999) 5 *Animal L.* 21 at 21-24, 35-47.
- ii. Katherine Paxton George, "Should Feminists Be Vegetarians?" (1994) 19:2 *Signs* 405 at 413-34.

d. Human/Cultural Rights to use animals

- i. Paula Casal, "Is Multiculturalism Bad for Animals?" (2003)11:1 Journal of Political Philosophy 1 at 1-22.
- ii. Edmund Searles, "Anthropology in an Era of Inuit Empowerment" in Pamela Stern & Lisa Stevenson, eds., *Critical Inuit Studies: An Anthology of Contemporary Arctic Ethnography* (Lincoln, NB: University of Nebraska Press, 2006) 89 at 89-101.

Recommended:

- i. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520.
- ii. Maneesha Deckha, "Animal Justice/Cultural Justice: A Post-Humanist Response to Cultural Rights in Animals" (2007) 2 *Journal of Animal Law & Ethics* 183.

e. Intimacy with Animals

- i. Piers Beirne, "Peter Singer's 'Heavy Petting' and the Politics of Animal Sexual Assault" (2001) 10 *Critical Criminology* 43 at 43-55.

November 19

5. A New Vision: Personhood, Rights or Another Legal Interest/Status for Animals?

- a. John Borrows, "Creating An Indigenous Legal Community" (2005) 50 McGill L.J. 153 at 171.
- b. Tom Regan, "The Day May Come: Legal Rights for Animals" (2004) 10 *Animal L.* 11 at 11-24.
- c. Cass Sunstein, "The Rights of Animals" (2003) 70 U. Chi. L. Rev. 387 at 387-401.
- d. Robert Garner, "Liberalism, Property and the Representation of Animals in the Legal System" in *The Political Theory of Animal Rights* (Manchester: Manchester University Press, 2005) 39 at 39-53.
- e. Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA.: Harvard University Press, 2006) at 392-407.

November 26

- f. Josephine Donovan, "Feminism and the Treatment of Animals: From Care to Dialogue" (2006) 31:2 *Signs* 305 at 305-29.
- g. Pamela Frasch et. al., eds., *Animal Law: Cases and Materials*, 2d ed. (Durham, NC: Carolina Academic Press, 2002) at 191-96.
- h. Robert Garner, "Feminism and Animals" in *The Political Theory of Animal Rights* (Manchester: Manchester University Press, 2005) 140 at 147-156. (On Reserve)

Recommended:

- a. David Favre, "Integrating Animal Interests into our Legal System" (2004) 10 *Animal L.* 87 at 87-97.