

ADVANCED READING ASSIGNMENT : II (A) THROUGH some of III (D)

"ANIMAL RIGHTS JURISPRUDENCE"

LEWIS AND CLARK LAW SCHOOL
SUMMER, 2009

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SYLLABUS AND READING LIST

I. INTRODUCTION

David Mamet, *Henrietta* (Houghton Mifflin 1999)

II. IMPLICATIONS FOR ANIMAL RIGHTS JURISPRUDENCE FROM PATENT CASES

- A) *Application of Bergy*, 596 F. 2d 952-959, 985 (U.S. Ct. of Customs and Pat. App. 1979). 63
- B) *Diamond v. Chakrabarty*, 447 U.S. 303 (1980). 66
- C) *Ex Parte Allen*, 2 USPQ 2d 1425 (BPAI 1987). 88
- D) U.S. Patent and Trademark Office publication (April 7, 1987) 92
- E) *Harvard College v. Canada (Commissioner of Patents)*, 2002 SCC 76 (Canada Supreme Ct. 2002) 100.1

III. STANDING - THE PRESENT PROBLEM OF LITIGATING IN THE INTEREST OF NONHUMAN ANIMALS

- A). *Sierra Club v. Morton*, 405 U.S. 727 (1972) 171.33
- B). *Japan Whaling Association v. American Cetacean Society*, 478 U.S. 221, 224-230 (1986) 172
- C). *Lujan v. National Wildlife Federation*, 407 U.S. 871 (1990). 177
- D). *Lujan v. Defenders. of Wildlife*, 504 U.S. 555 (1992) 185.1

E).	<i>Massachusetts v. EPA</i> , 549 U.S. - (2007)	185.30
F).	<i>Summers v. Earth Island Institute</i> , - U.S. – (March 3, 2009)	185.891
G).	<i>Animal Lovers Volunteer Assoc. v. Weinberger</i> , 765 F. 2d 937 (9th Cir. 1985)	185.91
H).	<i>Palila v. Hawaii Department of Land and Natural Resources</i> , 852 F 2d 1106, 1107 (9th Cir. 1988). 186	
I).	<i>Citizens to End Animal Suffering & Exploitation v. New England Aquarium</i> , 836 F. Supp. 45(D. Mass. 1993)	187
J).	<i>Cetacean Community v. Bush</i> , 386 F. 3d 1169 (9th Cir. 2004)	193
K).	<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)	207

IV. ARE NONHUMAN ANIMALS ENTITLED TO JUSTICE?

A). ALL HUMANS HAVE NOT BEEN ENTITLED TO JUSTICE - WHY ARE THESE VIEWS WRONG?

1).	Aristotle, <i>Politics</i> , Books 1.1-1.8 (natural slaves).	226
2).	<i>Dred Scott v. Sanford</i> , 60 U.S. (19 How.) 393, 396-413 (1856) (black slaves)	230.1
3).	<i>People v. Hall</i> , 4 Cal. 399 (1854)(Chinese), in <i>Animal Law</i> 91-95.	230.10
4).	<i>Motion to Admit Miss Lavinia Goodell to the Bar of this Court</i> , 39 Wis. 232 (1875)(women).	230.14

B). ARE NONHUMAN ANIMALS ENTITLED TO MORAL RIGHTS?

1).	Steven M. Wise, Chapters 10 and 11, “The Genesis disaster for animals,” in <i>An American Trilogy – Death, Slavery, and Dominion on the Banks of the Cape Fear River</i> (Da Capo Press 2009)	237
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2).	Carl Cohen, "The Case for the Use of Animals in Biomedical Research," 315 <i>New England Journal of Medicine</i> 865-877 (1986).	268
3).	Carol Hoff, "Immoral and Moral Uses of Animals," 302 <i>New England Journal of Medicine</i> 115-118 (1980).	274
C).	TOWARD LEGAL RIGHTS FOR NONHUMAN ANIMALS?	
1).	OBSTACLES TO OBTAINING LEGAL RIGHTS FOR NONHUMAN ANIMALS	
	Steven M. Wise, <i>Drawing the Line - Science and Animal Rights</i> 9-23 (Perseus Publishing 2002)	278
2).	WHAT IS A LEGAL RIGHT?	
	Steven M. Wise, Chapter 5, <i>Rattling the Cage - Toward Legal Rights for Animals</i> (Perseus Books 2000)	
3).	WHAT ARE THE SOURCES OF LEGAL RIGHTS?	
a)	Cicero, <i>De Re Publica</i> 3.22.33 (Clinton Walker Keyes, trans., Loeb Classical Library 1928) in Lloyd L. Weinreb, <i>Natural Law and Justice</i> 40-41 (Harvard University Press 1987).	285
b)	<i>Declaration of Independence.</i>	286
c)	Alaska Const. Art. I, sec. 1.	287
d)	<i>Griswold v. Connecticut</i> , 381 U.S. 479 (1965).	288
e)	<i>Meachem v. Fano</i> , 427 U.S. 215 (1976).	303
f)	<i>Smith v. Organization of Foster Families for Equality and Reform</i> , 431 U.S. 816, 839-846 (1977).	309

4) LIBERTY AND EQUALITY

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

5) THE COMMON LAW

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

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

- b) Common Law Change

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

6) SUBSTANTIVE LEGAL RIGHTS FOR NONHUMAN ANIMALS?

- a) Steven M. Wise, Chapters 8-11, in *Rattling the Cage, supra*

- b). Steven M. Wise, Chapters 4-12, in *Drawing the Line* at 49 - 241

- c). 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)

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- d). Richard A. Posner, "Animal Rights – Legal, philosophical and pragmatic perspectives," in *Animal Rights – Current Debates and New Directions* 143 (Oxford University Press 2004)

- e). Richard Epstein, "Animals as objects, or subjects, of rights," in *Animal Rights – Current Debates and New Directions* 143 (Oxford University Press 2004)
- f). 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 (2007) 447
- g). Steven M. Wise, "Rattling the Cage defended," 43 *Boston College Law Review* 623 (2002) 377
- 7) CAUSES OF ACTION FOR NONHUMAN ANIMALS?
- a). *Habeus 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) 416
- 2). *In Favor of Suica*, Habeas Corpus - 833085-3/2005 (9th Criminal Jurisdiction, Bahia, Brazil, September 26, 2005) 478
- b). Equitable self-ownership
- 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)
- c). Private causes of action for humans to sue on behalf of nonhuman animals
- Cass Sunstein, "Can animals sue?," in *Animal Rights – Current Debates and New Directions* 251 (Oxford University Press 2004)

8). ARE "ANIMAL RIGHTS" 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) *Animal Law* 133 (2006).

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V. LIMITS OF JURISPRUDENCE ON JUDICIAL DECISION-MAKING

Richard A. Posner, *How Judges Think* (Harvard University Press 2008)

There will be no examination. Each student will be required to write a paper. While the topic of this paper is the student's choice, the paper should integrate important issues we discuss in class and read about, and the more the better. Papers that accomplish this in a thoughtful and creative manner will receive an "A" on his or her paper. Papers that summarize everything we discussed in class will receive a "B." 30% of the final grade will be based on classroom participation.