

# **ANIMAL RIGHTS LAW**

**Faculty of Law  
University of Cambridge**

**2018–19**

**Course overview**

**Dr Sean Butler, St Edmund's College  
Mr Raffael Fasel, Sidney Sussex College**

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# Lecture 1: Introduction to Animal Rights Law

## Moodle Note

Welcome to the Animal Rights Law course!

The course consists of weekly lectures in Michaelmas and Lent Terms by Mr Raffael N Fasel and Dr Sean Butler on Tuesdays from 5-6 pm in Room G24 in the Law Faculty. Every week we will post an outline of the next lecture together with a couple of items of recommended reading, as well as further reading lists; as always, some prior reading will be helpful.

Students will be offered the opportunity to take part in one or more case study groups on issues relevant to animal rights law, with a view to publication. The topics for 2018-19 are:

- legal definitions of “meat” and “milk” and whether they can only be used for animal-based products;
- advertising regulations for animal products which imply certain welfare standards for animals (eg pictures of chickens in a field on a box of eggs from battery-chickens);
- whether recognising by statute that animals are sentient would have an impact on statutory interpretation of animal welfare regulations;
- legal drafting of any one aspect of animal rights legislation (eg nature of rights, consequences, drafting, implementation, enforcement, penalties).

The course is concerned primarily with animal rights law although we will also cover animal welfare law, partly because animal welfarists regard improved animal welfare as a necessary step towards animal rights, and partly because the legal roots of animal rights lie in the same attitudes and evidence as animal welfare—both are the outcome of recognising animals as sentient.

The course has another objective: at some point in the future animal rights will exist, and perhaps this course (and related work going on at Cambridge and elsewhere) will help to bring that about.

The course is not examined nor a formal part of the BA or LLM (but it is expected to be a half-paper on the BA Law degree in 2019-20). However, a register will be kept and an attendance certificate is available if required provided by Course Organiser Dr Sean Butler.

We will send out a lecture handout each week, as well as a brief reading list for those with limited time:

Steven Wise is well-known for his work in US courts to try and get legal personhood for chimpanzees, which he wrote about in "Unlocking the Cage", later made into a film by documentary filmmakers Chris Hegedus and DA Pennebaker. His brief presentation *Animals as People* is worth looking at <https://readymag.com/66599/>

This is an interesting example of the sort of debate that follows a fairly modest animal

welfare proposal, for the Massachusetts Prevention of Farm Animal Cruelty Act (Ballot Initiative)

[https://ballotpedia.org/Massachusetts\\_Minimum\\_Size\\_Requirements\\_for\\_Farm\\_Animal\\_Containment, Question\\_3\\_\(2016\)](https://ballotpedia.org/Massachusetts_Minimum_Size_Requirements_for_Farm_Animal_Containment, Question_3_(2016))

Peter Singer is a well-known moral philosopher, who has written widely about animals, including his book *Animal Liberation*. *Equality for Animals?* is an interesting chapter from his book on general ethics, *Practical Ethics* (3rd edn, 2011)

<https://www.vle.cam.ac.uk/mod/resource/view.php?id=9378652>

Another brief article is by Charles Siebert, writing in the New York Times, *The Animal Self*, 2006

<http://www.nytimes.com/2006/01/22/magazine/the-animal-self.html>

You may also be interested in some of the pressure groups, including

<http://www.globalanimalnetwork.org/>

We hope you enjoy the course,

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## Lecture 2: The Nature of Animals

### Moodle Note

In this lecture, we deal with some foundational questions about the nature of animals. We will discuss why considering the nature of animals is relevant, what the “nature” of animals is, and what moral and legal consequences we can (and cannot) draw from these insights. We will look at the nature of animals from the point of view of the law, and deal with the following topics:

- Why is the nature of animals relevant to rights?
- The nature of animals
- The consequences for the laws we (should) have

There is a full reading list on the Lecture Handout, but here are a few things worth reading or viewing:

Frans de Waal, ‘What I learned from tickling apes’, *New York Times*, 2016:  
<https://www.nytimes.com/2016/04/10/opinion/sunday/what-i-learned-from-tickling-apes.html>

Frans de Waal, a 15-minute TED talk on animal cognition:  
<https://www.youtube.com/watch?v=GcJxRqTs5nk>.

Marc Bekoff, ‘Animals are conscious and should be treated as such’ (19 September 2012), *New Scientist*  
<https://www.newscientist.com/article/mg21528836-200-animals-are-conscious-and-should-be-treated-as-such/>

The Economist, ‘Animal Minds’, 2015  
<http://www.economist.com/news/essays/21676961-inner-lives-animals-are-hard-study-there-evidence-they-may-be-lot-richer-science-once-thought>

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## Lecture 3: History of the Legal Status of Animals

### Moodle Note

In this lecture we will look at the history of the legal status of animals, mostly animal welfare laws from the 19th century and early 20th century, bringing us up to date in the UK and EU (we will cover current law in more detail in Lectures 4 and 5). We then explore how the laws have developed, what progress has been made, and build an overview of animal welfare law (we will cover gaps in Lecture 7).

As usual, there is a full reading list on the Lecture Handout, but here are two things you could read beforehand:

Thomas G. Kelch, A Short History of (Mostly) Western Animal Law: Part I (2012)  
19 *Animal Law* 23-62, (read pp 27-54)  
[http://heinonline.org/HOL/Page?handle=hein.journals/anim19&start\\_page=23&collection=journals&id=31](http://heinonline.org/HOL/Page?handle=hein.journals/anim19&start_page=23&collection=journals&id=31)

Thomas G. Kelch, A Short History of (Mostly) Western Animal Law: Part II (2012)  
19 *Animal Law* 347-390, (read pp 350-367)  
[http://heinonline.org/HOL/Page?handle=hein.journals/anim19&start\\_page=347&collection=journals&id=363](http://heinonline.org/HOL/Page?handle=hein.journals/anim19&start_page=347&collection=journals&id=363)

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## Lecture 4: Current Animal Laws in the UK and EU (Part I)

### Moodle Note

In the first of two lectures we look in detail at current statutes and regulations to build the overall picture of relevant laws in the UK and EU. The key legislation in the UK is the Animal Welfare Act, which moved the law plainly beyond cruelty as a benchmark and into the world of welfare generally (by giving in effect under Section 9 legal recognition to the Five Freedoms). Many situations are covered by licensing; a system of licensing for businesses that keep animals as part of their business, such as pet shops, riding schools, and boarding kennels/cateries, is a standard form of regulation, although it depends on effective monitoring to be worthwhile—there needs to be enough inspectors carrying out enough inspections—and the regulations usually involve considerable notice of an inspection, which may limit effectiveness.

Here is some recommended reading. As usual, a full reading list is available in the Lecture Handout section:

Defra website on animal testing

<https://www.gov.uk/guidance/research-and-testing-using-animals>

Defra website on farmed animals

<https://www.gov.uk/guidance/animal-welfare>

Fish farming

<https://www.ciwf.org.uk/media/3818689/in-too-deep-summary.pdf>

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## Lecture 5: Current Animal Laws in the UK and EU (Part II)

### Moodle Note

In this lecture we look at EU-wide laws applicable to the UK, both EU Treaties and Directives, covering general approaches to animals, the recognition of sentience, the role of scientific evidence, and the nature of lawmaking in animal welfare. The lecture will look at EU Directives in some detail, but no previous knowledge of them is necessary to understand and enjoy the lecture.

Here is some recommended reading. As usual a full reading list is available in the Lecture Handout section.

Defra animal welfare website,

<https://www.gov.uk/topic/keeping-farmed-animals/animal-welfare>

EU website on use of animals for scientific purposes,

[http://ec.europa.eu/environment/chemicals/lab\\_animals/index\\_en.htm](http://ec.europa.eu/environment/chemicals/lab_animals/index_en.htm)

Overview of EU legislation and activity,

[https://ec.europa.eu/food/animals/welfare\\_en](https://ec.europa.eu/food/animals/welfare_en)

European Commission, 40 Years of Animal Welfare, Europa 2013

[https://ec.europa.eu/food/sites/food/files/animals/docs/aw\\_infograph\\_40-years-of-aw.pdf](https://ec.europa.eu/food/sites/food/files/animals/docs/aw_infograph_40-years-of-aw.pdf)

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## Lecture 6: Comparative Animal Law

### Moodle Note

In this lecture, we will look at the state of animal law in the US and Switzerland. In the first part, we will examine the legal situation in the US, where protection for animals differs significantly from state to state, as federal welfare laws only have very limited scopes of application. In the second part, we will focus on Switzerland, the first country to recognise the inherent value of animals in a constitutional provision guaranteeing their dignity.

Here is the recommended reading for this week. A full reading list is available on the Lecture Handout.

Gieri Bolliger, 'Legal Protection of Animal Dignity in Switzerland: Status Quo and Future Perspectives' (2016) 22 *Animal Law* 311-396 (read pp 311–353)  
[http://heinonline.org/HOL/Page?handle=hein.journals/anim22&start\\_page=311&collection=journals&id=325](http://heinonline.org/HOL/Page?handle=hein.journals/anim22&start_page=311&collection=journals&id=325)

David J. Wolfson and Mariann Sullivan, 'Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable' in Martha Nussbaum and Cass Sunstein (eds) *Animal Rights: Current Debates and New Directions* (Oxford University Press 2004) Chapter 9 (read pp 205-219)  
<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780195305104.001.001/acprof-9780195305104-chapter-9>

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## Lecture 7: Animal Law: Gaps, Issues, and Opportunities

### Moodle Note

This lecture focuses on the discrepancy between law on the books and law in action, and analyses the effectiveness of the current system, using a traditional SWOT analysis—strengths, weaknesses, opportunities, and threats.

The strengths include the widely-accepted position of animal welfare laws in many countries, while among the weaknesses are some important gaps in these animal welfare laws, including deficiencies in practical enforcement. We will use these issues as a springboard for a discussion of the opportunities that present themselves to improve the lives of animals, and the threats if we do not take those opportunities.

When reading the material below ask yourself what the nature of the gaps and issues is that exist in animal law. Try also to imagine what the causes of these problems could be and in what way they could be overcome.

Here is some recommended reading. As usual a full reading list is available in the Lecture Handout section.

Sonia S. Waisman, Pamela D. Frasch and Bruce A. Wagman, *Animal Law: Cases and Materials* (5<sup>th</sup> edn, Carolina Academic Press 2014) Chapter 3, Section 2, C ‘Common Exemptions’, p 74, and D ‘Issues and Challenges Facing Prosecutors and Law Enforcement’, p 75

<https://www.vle.cam.ac.uk/mod/resource/view.php?id=7553711>

Zak Franklin, ‘Giving Slaughterhouses Glass Walls: A New Direction in Food Labelling and Animal Welfare’ (2015) 21 *Animal Law* 285-328

[http://heinonline.org/HOL/Page?handle=hein.journals/anim21&start\\_page=285&collection=journals&id=299](http://heinonline.org/HOL/Page?handle=hein.journals/anim21&start_page=285&collection=journals&id=299)

RSPCA, Prosecutions: Annual Report 2017

<https://view.pagetiger.com/RSPCA2017PR/RSPCA2017prosecutionreport>

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## Lecture 8: The Great Debate: Welfarism v. Abolitionism

### Moodle Note

In this lecture, we analyse the debate between the so-called (new) welfarists and the abolitionists which has had a significant impact on the field. We look at how new welfarism (which could be summarised with the slogan “first bigger cages, then no cages!”) has replaced classic welfarism (“bigger cages!”) and shed light on abolitionism (“no cages!”) as an alternative approach. We will discuss some of the main arguments presented in favour and against abolitionism and new welfarism.

Here is the recommended reading for this week. As usual, a full reading list is available on the Lecture Handout.

Gary L Francione, ‘Animal Rights and Animal Welfare’ (1996) 48 *Rutgers Law Review* 397- 470 (read pp 397-400 (section 1) and 422-446 (section 4))

<http://heinonline.org/HOL/Page?public=false&handle=hein.journals/rutlr48&collection=journals&id=407>

Gary L Francione and Robert Garner, *The Animal Rights Debate: Abolition or Regulation?* (Columbia University Press 2010) read pp 120-146 in Garner’s ‘A Defense of a Broad Animal Protectionism’

<https://www.vle.cam.ac.uk/mod/resource/view.php?id=7513121>

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## Lecture 9: Animal Rights: Philosophical Foundations

### Moodle Note

In this lecture, we explore the philosophical foundations of animal rights by focusing on three main philosophical approaches to animal rights and by considering one central objection to them. The first part of the lecture discusses Peter Singer's utilitarian approach. In the second part, we analyse Tom Regan's deontological approach before we turn to Martha Nussbaum's capabilities approach in the third part. In the final part, we will consider Bernard Williams's defence of speciesism.

The following is a list of recommended reading for this week. The full reading list is available on the Lecture Handout.

Peter Singer, *Animal Liberation* (2<sup>nd</sup> edn, Pimlico 1995) 1-23 (Chapter 1)  
<https://www.vle.cam.ac.uk/mod/resource/view.php?id=7532121>

Tom Regan, 'The Case for Animal Rights' in Peter Singer (ed) *In Defence of Animals* (Basil Blackwell 1985) 13-26  
<https://www.vle.cam.ac.uk/mod/resource/view.php?id=7532151>

Martha C Nussbaum, 'Beyond "Compassion and Humanity": Justice for Nonhuman Animals' in Cass R Sunstein and Martha C Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press 2005) 299-319  
<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780195305104.001.0001/acprof-9780195305104-chapter-14>

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## Lecture 10: Animal Rights: Legal Theory

### Moodle Note

This lecture approaches animal rights from the perspective of legal theory. We start with the problem that there is little agreement on what legal rights for animals are and how we can conceive of animals as right-holders. To get some clarity on these issues, we will discuss Wesley Hohfeld's famous analysis of legal rights. We will then move to questions about the functions of rights and will compare the two main theories in this debate: the interest-based theory of rights and the will (or choice) theory of rights. We will conclude by discussing the relevance of these theoretical questions for animal activists.

Here is a list of recommended reading for this week. A full reading list can be found in the Lecture Handout section.

Lawrence Solum, 'Legal Theory Lexicon: Hohfeld' (24 July 2016) *Legal Theory Blog*  
<http://lsolum.typepad.com/legaltheory/2016/07/legal-theory-lexicon-hohfeld.html>

Steven Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Da Capo Press 2000) 49-61 (Chapter 5)  
<https://www.vle.cam.ac.uk/mod/resource/view.php?id=7551071>

William A Edmundson, *An Introduction to Rights* (2<sup>nd</sup> end, Cambridge University Press 2012) 96-107 (Chapter 7)  
<https://doi.org/10.1017/CBO9780511820670.012>

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## Lecture 11: Animal Rights, Human Rights, and Human Dignity

### Moodle Note

This lecture addresses the relationship between human rights and animal rights. We analyse whether the two concepts are compatible, and perhaps even mutually reinforcing, or whether they are conflicting, mutually exclusive concepts. To shed light on these issues, we will have a closer look at human dignity and equality, which are often invoked in the same breath as human rights.

Here is a list of recommended reading for this week. A full reading list can be found in the Lecture Handout section.

Alasdair Cochrane, 'From Human Rights to Sentient Rights' (2013) 16 *Critical Review of International Social and Political Philosophy* 5, 655-675  
<http://dx.doi.org/10.1080/13698230.2012.691235>

Jeremy Waldron, 'Lecture 1: Dignity and Rank' in Jeremy Waldron and Meir Dan-Cohen (eds) *Dignity, Rank, and Rights* (Oxford University Press 2012) 13-36 (read pp 13-19 (sections 1-2), 21-22 (section 4), and 34-36 (section 9) only)  
<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199915439.001.0001/acprof-9780199915439-chapter-2>

Jeremy Waldron, 'Lecture 2: Law, Dignity, and Self-Control' in Jeremy Waldron and Meir Dan-Cohen (eds) *Dignity, Rank, and Rights* (Oxford University Press 2012) 47-70 (read pp 49-51 (section 2), and 55-61 (section 5-6) only)  
<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199915439.001.0001/acprof-9780199915439-chapter-3>

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## Lecture 12: Implications of Animal Rights

### Moodle Note

In this lecture, we will turn to more practical questions by discussing some of the concrete implications of animal rights. We will focus on two issues in particular: ownership of animals and the rights of wild animals. In the first part of the lecture, we will look at the question whether it would still be possible for humans to own animals if animals had rights. In the second part, we will turn to the question whether wild animals would have rights, too, and whether humans would have to intervene in nature to enforce these rights.

Here is a list of recommended reading for this week. A full reading list can be found in the Lecture Handout section.

Alasdair Cochrane, 'Ownership and Justice for Animals' (2009) 21 *Utilitas* 4, 424-442

<https://www.cambridge.org/core/journals/utilitas/article/ownership-and-justice-for-animals/49480610FA370CF3BD43128380C330F0>

Jozef Keulartz, 'Should the Lion Eat Straw Like the Ox? Animal Ethics and the Predation Problem' (2016) 29 *Journal of Agricultural and Environmental Ethics* 5, 813-834

<https://doi.org/10.1007/s10806-016-9637-4>

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## Lecture 13: Model Animal Rights Laws

### Moodle Note

This lecture looks at measure and laws to introduce animal rights. In many ways, the legal aspects of animal rights may be quite straightforward:

- the essential paradigm is that animals are no longer property and cannot be owned, they are *sui iuris*;
- rights should be such that in principle we *should not* treat animals in ways that we *would not* treat humans including (or especially) eg babies and people in a coma;
- rights will include basic rights, right to life, liberty, etc—similar in many ways to some human rights (but excluding regulating behaviour between animals);
- fundamentally, however, *animal rights are only exercisable against humans, not against non-human animals*—their rights are not absolute, only in relation to humans.

The challenge for animal rights will be to deal with situations where the interests of non-human animals come into potential conflict with humans: animal rights will need to regulate relationships between humans and non-human animals, and we will need to develop concepts such as “greater need”, “fair exchange”, “least harmful outcome” (some of these concepts exist in other legal fields). It is possible that in formulating the detail animal rights will come up against its biggest challenges.

Here is some recommended reading. As usual a full reading list is available in the Lecture Handout.

Universal Charter of the Rights of Other Species

<http://www.all-creatures.org/articles/ar-universal-charter-rights-species.html>

Declaration of Animal Rights

<http://www.declarationofar.org/textSign.php#>

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## Lecture 14: Animal Rights Cases

### Moodle Note

In this lecture we look at some of the cases that have furthered the cause of animal rights, either by attempting to extend the boundaries of rights or by raising awareness for the plight of animals more generally. The US has seen a significant number of cases based on legal personhood for animals trying to bring chimpanzees and elephants within the ambit of habeas corpus (as with Steven Wise's Nonhuman Rights Project (NhRP) or orcas within the ambit of constitutional law (as in the case *Tilikum et al. v. SeaWorld*). In Europe, there have been some cases (including the *Hiasl* case in Austria), and in the UK, the *McLibel* case a few years ago highlighted animal welfare in a case brought by McDonalds. The last two years have also seen actions for habeas corpus in Argentina and Colombia, for a chimpanzee and a bear; Cecilia was rehomed, Chucho is still awaiting the outcome of an appeal.

Here is some recommended reading. As usual a full reading list is available in the Lecture Handout.

Steven M. Wise, 'Legal Personhood and the Nonhuman Rights Project' (2010) 17 *Animal Law* 1

<http://heinonline.org/HOL/P?h=hein.journals/anim17&i=7>

Habeas corpus in Argentina for Cecilia the chimpanzee: Saskia Stucki, "Toward Hominid and Other Humanoid Rights: Are We Witnessing a Legal Revolution?" (2016),

<https://verfassungsblog.de/toward-hominid-and-other-humanoid-rights-are-we-witnessing-a-legal-revolution/>

Habeas corpus in Colombia for Chucho the bear (2017):

<https://www.nonhumanrights.org/content/uploads/Chucho-Semana-news-translation-Carmen-Mandel.pdf>

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## **Lecture 15: Animal Rights as a Social Justice Movement**

### **Moodle Note**

In this lecture, we discuss animal rights as a social justice movement. We will start by considering the obstacles to seeing animal rights as a matter of social justice: why is it that what goes on in our kitchens is often thought to be a purely personal choice? We will then explore the implications of seeing animal rights as a social justice movement. How does this perspective affect our tactics and relationships with other movements for equality? Can we, and should we, advance animal rights to the detriment of human rights? Or are animal rights and human rights part of the same struggle? We will finally turn our attention to tactical lessons we can learn from other movements, including Black feminism, the disability rights movement, and the movement for the rights of refugees. This inquiry will shift our focus from how the animal rights cause can win in court, to how it can win in the court of public opinion.

In preparation for this lecture, consider the following questions:

- Which tactics have been effective for changing your behaviour? Which have you used to change others' behaviour?
- Are tactics intrinsically “good” or “bad”?
- Should we frame animal rights as a matter of equality or compassion?
- What are some of the dangers and some of the advantages of comparing animal rights to other social justice movements?

**This lecture is given by Suzanne Zaccour, DPhil student at the University of Oxford**

## Lecture 16: Discussion

### **Moodle Note**

We conclude our course by revisiting some of the main themes of the course in a freewheeling discussion.