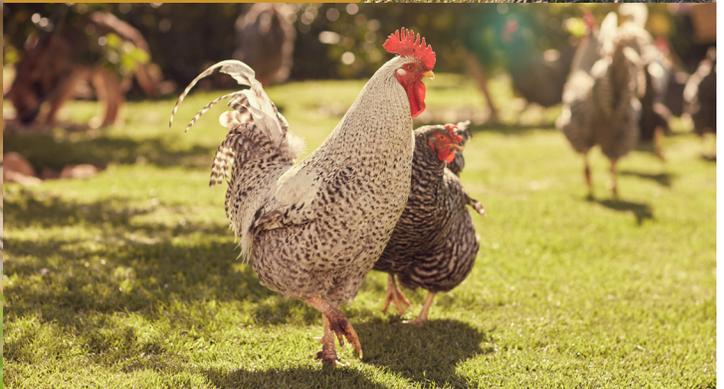


FARMED ANIMAL LAW COURSE GUIDE





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FARMED ANIMAL LAW COURSE GUIDE

This Farmed Animal Law Course Guide was prepared for the Animal Legal Defense Fund (ALDF) in November 2017 by Joyce Tischler and Tom Krepitch. The guide is intended to serve as a resource for instructors interested in teaching a course on the legal and policy issues relevant to farmed animals in the United States.

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Background and Structure of Course Guide

(This section written by Rebecca Huss, adapted from the Animal Legal Defense Fund’s Companion Animal Law Course Guide. Additions to Professor Huss’s text are indicated in italics. Deletion of text is indicated by ellipses.)

Putting together any course syllabus requires the instructor to make difficult choices. A limited amount of time is allocated for every course and inevitably it will be necessary to leave out material. The structure of this course guide is intended to assist instructors in making these challenging decisions. In addition to deciding which materials to include and which to leave out, the instructor must decide whether the course will have a final exam or presentation of papers. An additional instructional tool is the simulation, which is described in more detail, below. This course guide provides a sample of how a farmed animal law course could be structured. It covers 14 weeks of class time, which may differ from the length of the semester at the law school where you are teaching. It includes two simulations and a final exam, which could be replaced by oral presentations of papers. We recognize that each instructor has his or her own style and that syllabi vary, and hope that this guide is helpful.

Course Books and Other Material

There are currently two widely adopted animal law course books on the market. Instructors should contact the publishers to request review copies.

SONIA S. WAISMAN, PAMELA D. FRASCH & BRUCE A. WAGMAN, *ANIMAL LAW CASES AND MATERIALS* (5th Ed. 2014) (published by Carolina Academic Press) [referenced as “*Animal Law*”].

DAVID FAVRE, *ANIMAL LAW WELFARE, INTERESTS, AND RIGHTS* (2nd Ed. 2011) (published by Wolters Kluwer) *This casebook provides relatively little focus on farmed animals, and therefore will not be referenced in this course guide.*

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A third book intended to be used to teach animal law across the law school curriculum is scheduled to be published by Carolina Academic Press in 2017. Although not referenced in this guide, instructors are encouraged to access *ANIMAL LAW: NEW PERSPECTIVES ON TEACHING TRADITIONAL LAW* (Carolina Academic Press) when it is published to determine if parts of it may be useful for the course.

Providing the page numbers for the currently available editions of the course books is intended to provide ideas and options for coverage. ... It may be that an instructor has already adopted one of the course books for another Animal Law course but, depending on the overlap of the courses offered at the law school, does not think it is useful to assign again. Again – the idea is that an instructor can pick and choose materials for any assigned topic. Perhaps it will make sense to assign one of the books and supplement with additional material. Another instructor may choose to put together his or her own “course packet” of documents for the course.

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When considering topics and material for course coverage or for student papers, there are a variety of resources available online. ALDF’s website (Resources – Laws and Cases) <http://aldf.org/resources/laws-cases/> is one example. The Animal Legal and Historical Center also has a plethora of materials on a wide range of topics at www.animallaw.info. *The list of Supplemental Reading and Resources on Farmed Animals, attached to this course guide also provides books, law review articles and other materials for the instructor to consider.*

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Writing Assignments

It may be necessary to design the course to fulfill a law school's writing requirement. Students may be assigned the task of producing a research paper of a specific length. If students are spending a considerable amount of time on such a paper, it is common to allocate class time to have the students present on their individual topics. Although this can be time consuming, it helps hone students' oral presentation skills and exposes the class to a variety of topics. Given many students have cell phones capable of video recording, assuming no technological barriers or the inability of a law school to provide a necessary accommodation, an alternative to spending in-class time on student presentations is to have students video record a short presentation, post it on the course site and have the other students watch the recordings in advance of a class discussion on the topic. Instructors may want to schedule any such presentations close in time to any course material related to the topic.

Some schools also allow for courses with a series of shorter writing assignments to meet a writing requirement.

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Guest Speakers

A good guest speaker can bring a topic to life in any course but especially in a course in an emerging area of the law it is beneficial for the students to interact with someone who is practicing in the field or otherwise is an expert on a topic. Coordinating with the law school's Student Animal Legal Defense Fund chapter on guest speakers can draw in additional students and may be a way to share any travel costs associated with a speaker. However, given the financial constraints at many law schools, finding "local talent" may be an instructor's best option. Bar association animal law sections are a good way to find folks interested or active in the field. Alumni of the school are often willing to speak to students about their experiences.

Most schools now have the capacity to "bring in" speakers using video conferencing technology. This expands the pool of possible speakers considerably because some potential speakers may be happy to present and interact with a class but do not have the time or resources to travel to the law school. ... In order to make a guest speaker's presentation as meaningful as possible, an instructor can ask the guest speaker whether he or she wants the students to read anything prior to the presentation (cases or relevant statutory materials). An instructor could also require students to prepare written questions in advance or require the students prepare a "reflection paper" due shortly after the guest speaker's visit.

Purpose of References to Number of Pages

Initially the decision is made as to the number of credit hours that will be allocated to the course by the law school. Frequently law school curriculum committees and faculties (if the general faculty approves courses) will provide considerable deference to the opinion of the instructor teaching a course as to the number of credit hours needed for a course. However, given other curricular demands and scheduling issues it may be necessary to adjust credit hours up or down. In addition, at some law schools, a course may be able to be offered for a variable number of credit hours (usually a range such as two or three) at the preference of the instructor.

Law schools accredited by the ABA are subject to the ABA Standards and Rules of Procedure for Approval of Law Schools. Standard 310 Determination of Credit Hours For Coursework sets forth the requirement that law schools have written published policies and procedures for determining the number of credit hours and sets forth how to determine the amount of work that "reasonably approximates" a credit hour. In May 2016 the ABA

issued a Managing Director’s Guidance Memo on Standard 310 (Guidance Memo) (https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_310_guidance_memoauthcheckdam.pdf).

This memorandum provides general guidance on the requirements of Standard 310. For purposes of structuring a doctrinal course the general rule is for every hour spent in the classroom or under direct faculty instruction, students should be spending two hours of time preparing out of class. (Note that this is based on a fifteen-week period, including one week for a final examination and a classroom hour can be only fifty minutes versus a sixty minute hour for out of class preparation time.) The way the time is divided is left to the law school and faculty to determine and the focus is on the combination of classroom and non-classroom time.

The length of each class period is also at the discretion of each law school. Thus, a three-credit hour class may be scheduled for two seventy-five minute sessions per week or three fifty minute sessions per week. So, for each seventy-five minute class session the students would be expected to spend three hours on out of class preparation and for each fifty minute class session the students would be expected to spend two hours on out of class preparation. The Guidance Memo states a law school must demonstrate that it is adhering to its credit hour policy including by reviewing course descriptions and syllabi “to assess whether the work assigned complies with the school’s policy for the amount of work required per credit hour, including out-of-class work that is required.” Guidance Memo p. 2.

The Guidance Memo does not set forth specific requirements as to determine the amount of assigned reading and other work to support the hours of out-of-class student work for each credit hour. However, one approach suggested by the Guidance Memo is for law schools to set parameters or guidelines that might include a presumptive number of pages of reading per class session while allowing for adjustments for other ways students are academically engaged in the course. For example, a law school may set a parameter of assigning twenty-five to forty pages of out of class reading for every fifty minute class session for an upper level elective course.

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This course guide includes references to the number of pages included in the assigned reading. The total number of pages per week appears, in brackets, next to the section title, and the individual assigned reading materials provide a breakdown of the total number. An instructor can add or delete individual reading assignments to ensure that the course is meeting the law school’s standards to support the allocated credit hours.

Obviously the type of material that is assigned will vary considerably in difficulty. Twenty-five pages of a dense and complex case will likely take students longer to read and comprehend compared with a secondary source written for a general legal audience.

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Student Learning Objectives

Many law schools now require instructors to include specific student learning objectives in each course syllabus. Depending on the institution, instructors may need to ensure that the course learning objectives clearly support the learning outcomes established by the law school. (The ABA requires law schools to establish learning outcomes.) Ideas for this type of language can be found on the sample syllabi in the ALDF database.

...

If students will be writing a paper and doing a presentation the following could be used as student learning objectives.

1. Provide an engaging and informative oral presentation on issues relating to a discrete area of animal law.
2. Prepare a properly footnoted short research paper analyzing an animal law issue.

~ R.H.

Simulations

Simulations offer students an active learning experience in which they must integrate the lecture information and make choices about how to apply it in a hypothetical situation.

In a simulation, the students are divided into teams, which meet outside of class time to discuss the topic and organize the presentation. This process requires students to research the subject matter, present an affirmative argument that represents the interests of a given stakeholder, and negotiate effectively with the teams of students who represent a similar or even an opposing stakeholder. The attached list of Options for Simulations and Final Exams contains several suggestions for simulations, as well as ideas for exam essay questions. Simulations can serve as an alternative to writing and presenting a research paper. The drawback to both simulations and the presentation of research papers is that they take away from class lecture time, but it's a trade-off. The instructor may wish to experiment with each of the methods (final exam, simulations and research papers) to find what s/he feels works best.

Week 1 – Introductory Material [69 Pages]

What is a farmed animal?

It is helpful for students to have taken a general animal law course prior to taking this course in farmed animals and the law. The general animal law course provides students with fundamental concepts, such as the property status of animals and standing to sue when an animal has been injured or killed, as well as an overview of torts, contracts, wills and trusts, property law and criminal law relating to animals. Few law schools in the U.S. currently offer a farmed animal law course, and many students, coming from urban backgrounds, have little knowledge or understanding of industrialized agriculture. Therefore, it will be helpful to offer descriptive background materials during the first one or two sessions. The opening cases allow students to familiarize themselves with the conflicting decisions about which species are considered to be farmed animals. Are horses farmed animals or companion animals? Can dogs be considered livestock? Are chickens livestock? What is the impact of these definitions on the animals involved?

Readings:

Animal Law, Pages 16-18

United States v. Park [2]

“Livestock” lacks a uniform definition.

Animal Law, Pages 18-20, Notes 1-5 [2]

Animal Law, Pages 20-21

Holcomb v. Van Zyl [2]

“Animal” lacks a uniform definition.

Understanding Concentrated Animal Feeding Operations

Currently, most animals raised for food are kept in large industrial facilities that the federal Environmental Protection Agency (EPA) refers to as “concentrated animal feeding operations” or “CAFOs.” The EPA categorizes CAFOs as small, medium or large, depending on the number of each species that is confined in a given facility. https://www.epa.gov/sites/production/files/2015-08/documents/sector_table.pdf.

As yet, there is no casebook on farmed animal law or CAFOs. However, there are comprehensive online materials which explain what industrialized agriculture is, and describe the consequences for the animals, farm workers, nearby communities and the environment. The two recommended readings, below, offer somewhat opposing views on the value, side effects and costs of CAFOs, and will provide students with a balance of perspectives. The instructor may advise students to scan these reports, rather than do a deep reading or memorize facts and statistics. The goal here is to provide students with an understanding of how CAFOs came into being, along with analyses of their impacts and sustainability.

Additionally, two reports are included as alternatives, in the event that the instructor would prefer to use those resources. Reference is made to the book, CAFO, by Daniel Imhoff, as the instructor should be aware of this valuable print and online resource. Videos showing farmed animals in CAFOs are readily available on the Internet, offering differing perspectives on common practices. Instructors are advised to exercise caution when showing certain of the videos, as the graphic content may be overwhelming for some students.

Readings:

CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations [27]

Doug Gurian-Sherman, Union of Concerned Scientists

Executive Summary, Introduction, Chapter 1

http://www.ucsusa.org/sites/default/files/legacy/assets/documents/food_and_agriculture/cafos-uncovered.pdf

The Transformation of US Livestock Agriculture: Scale, Efficiency, and Risks [36]

James M. MacDonald and William D. McBride, U.S. Department of Agriculture

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1354028

Additional or Alternative Reading Options:

Putting Meat on the Table: Industrial Farm Animal Production in America [10]

Pew Commission on Industrial Farm Animal Production

How the Current System Developed (x, 1-9)

<http://www.pewtrusts.org/~media/legacy/uploadedfiles/peg/publications/report/pcifapfinalpdf.pdf>

Factory Farming: Assessing Investment Risks [11]

FAIRR | Farm Animal Investment Risk & Return | 2016 Report

Foreword, Executive Summary, Chapter 1 (1-7, 10-13)

http://www.fairr.org/wp-content/uploads/FAIRR_Report_Factory_Farming_Assessing_Investment_Risks.pdf

CAFO, Concentrated Animal Feeding Operations: The Tragedy of Industrial Animal Factories

Daniel Imhoff, Watershed Press. This coffee table sized book is considered by some to be the definitive work on the problems posed by CAFOs. It is too lengthy to assign for this course, but the instructor may wish to access some of the chapters, or the online materials, for background information.

<http://www.cafothebook.org/index.htm>

Week 2 – Laws Governing American Animal Agriculture [63 Pages]

Federal Laws:

There is a dearth of statutory law setting minimum standards of care for farmed animals. No federal law addresses the 99% of time farmed animals are alive, i.e., living in the CAFO. The federal Animal Welfare Act specifically excludes farmed animals raised for food; the 28 Hour Law applies only to animals in transport, and the Humane Slaughter Act applies solely to slaughter. This section covers the existing federal laws, and the Farm Bill. Approximately every five years, Congress passes a comprehensive Farm Bill, which covers a wide variety of subjects, from subsidies for agricultural producers to food stamps for consumers. Introducing the students to the Farm Bill will enable them to have a deeper understanding of how politics informs the conditions under which farmed animals are raised. Included with these materials is the 2014 Farm Bill, which will expire in 2018. The instructor may prefer to locate materials that analyze the Farm Bill expected to be passed in 2018.

Finally, while not included in the readings, below, the instructor may wish to assign readings from the website of Dr. Temple Grandin, an excellent source on how to increase the welfare of animals during the slaughter process, <http://www.grandin.com/>.

Readings:

Animal Welfare Act [1]

7 USC § 2132(g), (Definition of “animal” at Page 4). AWA does not apply to farmed animals raised for food.

https://www.aphis.usda.gov/animal_welfare/downloads/awa/awa.pdf

Twenty-Eight Hour Law [2]

49 USC § 80502, Transportation of animals.

<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title49/pdf/USCODE-2011-title49-subtitleX-chap805-sec80502.pdf>

2014 U.S. Farm Bill – Agricultural Act of 2014

What is the Farm Bill? [16]

Renee Johnson and Jim Monke, Congressional Research Service, 2017

<https://fas.org/sgp/crs/misc/RS22131.pdf>

Environmental Working Group: [2]

<https://farm.ewg.org/subsidyprimer.php>

<https://www.ewg.org/release/ewg-mega-farms-reap-billions-taxpayers-farm-subsidies#.WhJxblWnH3g>

Animal Law, Pages 377-379 [3]

Animals Raised and Slaughtered for Food

Humane Methods of Livestock Slaughter Act [3]

7 USC § 1901-1907

<https://www.gpo.gov/fdsys/pkg/USCODE-2014-title7/pdf/USCODE-2014-title7-chap48.pdf>

Animal Law, Pages 443-445 [3]

Slaughter Laws and Related Issues

Animal Law, Pages 446-452

Jones v. Butz [7]

First Amendment is not violated by the ritual slaughter provisions of the Act.

Animal Law, Notes, Pages 452-455 [4]

Animal Law, Pages 456-460

Cavel International, Inc. v. Madigan [5]

Illinois prohibition of slaughter/import/export of horsemeat for human consumption does not violate Commerce Clause.

Animal Law, Notes, Pages 460-463 [4]

Animal Law, Pages 464-470

National Meat Association v. Harris [7]

The Federal Meat Inspection Act preempts the application of additional or different state requirements.

Animal Law, Notes, Pages 470-475 [6]

Week 3 – Laws Governing American Animal Agriculture (Continued) [62 Pages]

State Laws: [39]

State anti-cruelty laws make it a crime to act or fail to act in a manner that causes unnecessary suffering to animals. However, the majority of state anti-cruelty laws specifically exempt standard and customary farming practices from their coverage. As these readings show, standard and customary practices may cause a good deal of suffering. The interests of the producers generally override concerns about animal welfare.

Readings:

Kansas Cruelty to Animals Statute [1]

KAN. STAT. ANN. § 21-6412 (c)(6) (2012)

http://kslegislature.org/li_2012/b2011_12/statute/021_000_0000_chapter/021_064_0000_article/021_064_0012_section/021_064_0012_k/

Typical language exempting farmed animals from state anti-cruelty law.

Animal Law, Pages 100-103

State v. Schott [3]

Conviction for cruelty to livestock upheld.

Animal Law, Pages 380-400

New Jersey SPCA v. New Jersey Department of Agriculture [21]

Overview of how a court determines what is “humane,” in light of “routine husbandry practices.”

Animal Law, Notes, Pages 400-403 [4]

Animal Law, Pages 404-408

Humane Society of Rochester and Monroe County for Prevention of Cruelty to Animals v. Lyng [5]

Use of state anti-cruelty law to bar federal program that ordered hot-iron branding of cows.

Animal Law, Notes, Pages 408-411 [4]

State Ballot Initiatives: [23]

Animal protectionists have traditionally not fared well in efforts to protect farmed animals through state legislatures. That is because the animal agriculture industry exerts a broad influence over legislators in the state capital. Starting in 1999, animal advocates tried a new approach: the state ballot initiative or referendum process, which allows them to go directly to the citizens of the state to pass new law. That tactic proved to be highly effective in the states that allow ballot initiatives.

Note: Some instructors may prefer to place this topic with the later section on efforts by consumers and animal protectionists. However, that section is already heavy with reading assignments, and adding this topic may require extending that section by an additional week.

Readings:

Confinement rearing – state ballot initiatives, legislation and court activity [1]

American Veterinary Medical Association (2013)

<https://www.avma.org/Advocacy/StateAndLocal/Pages/sr-confinement-rearing.aspx>

California Proposition 2 (2008) (Text) [1]

<https://www.animallaw.info/statute/ca-initiatives-proposition-2-farm-cruelty>

Missouri ex rel. Koster v. Harris [19]

United States Court of Appeals for the Ninth Circuit, 2016

D.C. No. 2:14-cv-00341-KJM-KJN

<https://cdn.ca9.uscourts.gov/datastore/opinions/2016/11/17/14-17111.pdf>

Upholding Constitutionality of Prop 2.

Prevention of Cruelty to Farm Animals Act (Prop. 2+) [2]

<http://www.lao.ca.gov/BallotAnalysis/Initiative/2017-026>

<http://www.sfchronicle.com/food/article/New-ballot-initiative-could-increase-California-12159349.php>

2017 farmed animal ballot initiative in California.

Week 4 – State Legislative/Lobbying Simulation (Written and Oral Presentation)

Below is a handout to provide to the students in the first or second week of classes. It will enable them to plan ahead for this simulation.

Each student is assigned to represent one of the three stakeholder groups listed below. For this simulation, you are part of a team of state level legislative lobbyists and, as a team, you will draft and promote a bill for introduction in the Iowa Legislature. The focus of your proposed legislation is the establishment of standards for the care and treatment of laying hens (i.e., hens who lay eggs sold to the general public). Your proposed bill should be drafted to serve the best interests of your stakeholder/clients. Your goal is to convince an Iowa legislator (see below) to sponsor your bill.

Your proposed bill should be presented to the legislator in writing at the start of the simulation class session. Be prepared to argue in favor of your bill and against the bills offered by your perceived opponents. You may wish to offer amendments to any of the other bills and develop alliances with representatives of the other stakeholders (this can happen before or during the simulation class session).

Representing the Animal Protection Movement

Names of students: _____

Representing Small Organic Family Farmers Whose Hens are Free Range

Names of students: _____

Representing CAFOs and Large Commercial Egg Production Companies

Names of students: _____

Your professor will serve as the Iowa legislator hearing your arguments, and you will be graded on your written and oral presentations.

Week 5 – Environmental and Other Impacts of Factory Farming [60 Pages]

Proponents of factory farming argue that it is the most efficient way to offer cheap meat. Critics of factory farming argue that, in addition to the obvious animal suffering, CAFOs harm the environment and the people who work to raise and slaughter the animals, contribute significantly to climate change, and negatively impact the health of humans. The materials selected for weeks 5 and 6 will provide the students with an overview of these problems.

There is a plethora of information about the negative environmental and other impacts of CAFOs, making it difficult to select one resource over the others. Because of the time restrictions inherent in the teaching of any law course, much of this information is not included in this guide. The instructor may wish to review the Supplemental Readings list, to determine whether there are materials there that s/he wishes to add or use as alternatives.

Finally, while this course guide is aimed at teaching farmed animal law as part of an animal law curriculum, it is not difficult to envisage a joint animal law/environmental law version of this course.

Readings:

Putting Meat on the Table: Industrial Farm Animal Production in America [4, Excluding Photos]

Pew Commission on Industrial Farm Animal Production

Environmental Risks, Pages 22-29

<http://www.pewtrusts.org/~media/legacy/uploadedfiles/peg/publications/report/pcifapfinalpdf.pdf>

Nuisance:

State v. Quality Egg Farm, Inc. [10]

Supreme Court of Wisconsin, 1981

104 Wis. 2d 506, 311 N.W.2d 650

Chicken factory farm constituted a public nuisance for neighboring residents.

Water Pollution:

Alt v. U.S. Env'tl. Prot. Agency [26]

N.D.W. Va. Civil Action No. 2:12-CV-42, Oct. 23, 2013

<https://law.justia.com/cases/federal/district-courts/west-virginia/wvndce/2:2012cv00042/30266/144/>

Christopher D. Heaney, et al., Source tracking swine fecal waste in surface water proximal to swine concentrated animal feeding operations,

Christopher D. Heaney Abstract, Introduction, Conclusions [2]

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4514616/>

Air Pollution:

Water Keeper Alliance v. EPA [18]

United States Court of Appeals, D.C. Circuit, 2017

853 F.3d 527

[https://www.cadc.uscourts.gov/internet/opinions.nsf/2E91F70B0AF28BBE852580FF004E33FF/\\$file/09-1017-1670473.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/2E91F70B0AF28BBE852580FF004E33FF/$file/09-1017-1670473.pdf)

Successful challenge to EPA's 2008 final rule exempting CAFOs from federal reporting statutes.

Week 6 – Environmental and Other Impacts of Factory Farming [44 Pages plus Webinar]

The negative impacts of CAFOs go beyond the harms to the animals, and raise issues of environmental justice, health concerns related to consuming meat and dairy, and climate change. These overlapping concerns provide an opportunity for students who are interested in practicing environmental law, food policy, or animal law, to consider how they might work cooperatively with other movements.

Readings:

Resource Conservation and Recovery Act (RCRA):

Community Association for Restoration of the Environment, Inc. v. Cow Palace, LLC [33]

United States District Court, Eastern District of Washington

80 F. Supp. 3d 1180

Defendants are responsible parties under RCRA.

Climate Change:

New research shows the industrial livestock industry is creating a climate crisis (2017)

Livestock and the Climate Crisis [2]

<https://www.iatp.org/new-research-shows-industrial-livestock-industry-creating-climate-crisis>

<https://www.iatp.org/supersized-climate-footprint>

Food Safety Concerns:

America's Secret Animal Drug Problem/ How Lack of Transparency is Endangering Human Health and Animal Welfare

America's Secret Animal Drug Problem: Executive Summary (2015) [9]

Center for Food Safety, https://www.centerforfoodsafety.org/files/animal_drug_es_10_26_77814.pdf

Impacts on Small Farmers and Farm Workers:

Contracted Lives:

The Experience of Farmers in the Meat Chain in Brazil, India and the U.S. (Webinar)

The Institute for Agriculture and Trade Policy (IATP), <https://www.iatp.org/video/contracted-lives-the-experience-of-farmers-in-the-meat-chain-in-brazil-india-and-the-us>

Week 7 – Legal Efforts by Animal Protection Organizations and Others to Challenge Factory Farming Practices [53 Pages]

Due to the lack of federal and state law offering protections to farmed animals, those who object to CAFOs have utilized other laws, such as laws related to consumer protection, or false and misleading advertising. Weeks 7 and 8 introduce the students to these creative legal approaches. Classroom discussion may include a discussion in which the students express their perceptions about the value and effectiveness of such lawsuits.

Readings:

Carter Dillard

False Advertising, Animals, and Ethical Consumption [37]

10 *Animal L.* 25 (2004)

Animal Law, Pages 418-425

Animal Legal Defense Fund Boston, Inc. v. Provimi Veal Corp. [8]

Producing iron-deficient meat from anemic calves challenged as violative of state consumer protection law.

Animal Law, Notes, Pages 425-432 [8]

Week 8 – Legal Efforts by Animal Protection Organizations and Others to Challenge Factory Farming Practices (Continued) [75 Pages]

Readings:

Animal Law, Pages 433-434

Physicians Committee for Responsible Medicine v. Tyson Foods, Inc. [2]

Tyson accused of disseminating false and deceptive statements about its chicken products.

Animal Law, Notes, Pages 434-443 [10]

Animal Law, Pages 411-416

Humane Society of the United States v. State Board of Equalization [6]

Seeking to block tax exemptions for battery cages.

Eden Gray

Changing the Tax System to Effect Humane Treatment of Farm Animals [14]

3 J. Animal L. 159 (2007)

Environmental Racism:

North Carolina Swine Farm Nuisance Litigation [33 Pages]

In Re: NC Swine Farm Nuisance Litigation, Master Case No. 5:15-CV-00013-BR, Document 476 (E.D.N.C. Nov. 8, 2017), <https://cases.justia.com/federal/district-courts/north-carolina/ncedce/5:2015cv00013/140873/476/0.pdf?ts=1510540763>.

Week 9 – Efforts by Agricultural Producers to Protect Their Interests [46 Pages]

Weeks 9 and 10 introduce students to some of the legal responses of the agriculture sector to federal oversight, as well as animal advocates, neighboring farmers, and even a talk show host who have challenged or criticized factory farming practices. The focus on industry's ongoing efforts provide an opportunity to engage students in a discussion of how social movements may (or may not) create societal change, and whether the industry's responses will prove to be effective over the long term.

Readings:

Defamation:

Texas Beef Group v. Winfrey [15]

United States Court of Appeals, Fifth Circuit, 2000

201 F.3d 680

Cattle producers accused talk show host of disparaging beef.

Right to Farm Legislation:

Indiana Right to Farm Act [2]

<http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/indiana.pdf>

Parker v. Obert's Legacy Dairy, LLC [8]

Court of Appeals of Indiana, 2013

988 N.E.2d 319

Regulatory Challenges:

National Pork Producers Council v. United States Environmental Protection Agency [21]

United States Court of Appeals, Fifth Circuit, 2011

635 F.3d 738

Clean Water Act/EPA regulations.

Week 10 – Efforts by Agricultural Producers to Protect Their Interests (Continued) [51 Pages]

One tactic of the agricultural industry has been to foster the passage of legislation aimed at silencing its critics. Such laws raise interesting constitutional and other legal issues.

Readings:

Animal Enterprise Terrorism Act (AETA):

AETA Text [5]

18 USC § 43

<https://www.congress.gov/109/plaws/publ374/PLAW-109publ374.pdf>

Blum v. Holder [14]

United States Court of Appeals, First Circuit, 2014

744 F.3d 790

“Ag-Gag” Laws:

UTAH CODE ANN. § 76-6-112 (2012) [1]

<https://le.utah.gov/xcode/Title76/Chapter6/76-6-S112.html>

Animal Legal Defense Fund, et al. v. Herbert [31]

United States District Court, District of Utah, Central Division, 2017

Case No. 2:13-cv-00679-RJS

<https://law.justia.com/cases/federal/district-courts/utah/utdce/2:2013cv00679/89943/205/>

Utah ag-gag law declared unconstitutional.

Week 11 – Second Simulation

Please review the accompanying section entitled *Options for Simulations and Final Exams*. This document includes multiple options for simulation projects and instructors may select any one of them as it is, modify any one of them to meet their needs, or use a simulation that they draft independently.

Week 12 – Comparing Farmed Animal Protections in the United States to Those in Other Countries/Regions [36 Pages plus Webinar]

Factory farming is not limited to the U.S. While a course on farmed animal law could be taught without including a comparison between the U.S. and other countries, it would ignore the global implications of the current system of meat, dairy and egg production. For example, in 2013, Smithfield Foods, the largest pork producer in the U.S. was purchased by Shuanghui International Holdings, the largest meat processor in China. The stated reason for the purchase was to provide a reliable source of pork to feed the growing demand in China. We include this section, so that the instructor can offer insights into both the international dimensions of factory farming, and how the U.S. rates against other countries in offering protections to farmed animals.

However, if the instructor prefers to eliminate this section, it will allow time for a deeper focus on the U.S. statutory law and decisions covered in other sections.

Readings:

European Union (EU): [30]

Eur. Conv. for the Prot. of Animals Kept for Farming Purposes, Chapter I, Articles 1-7 [2]

https://ec.europa.eu/food/sites/food/files/animals/docs/aw_european_convention_protection_animals_en.pdf

EU Coun. Dir. 98/58/EC of 20 July 1998 Concerning the Prot. of Animals Kept for Farming Purposes [5]

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0058&from=EN>

Peter Stevenson, European Union Legislation on the Welfare of Farm Animals [23]

<https://www.ciwf.org.uk/media/3818623/eu-law-on-the-welfare-of-farm-animals.pdf>

Other Countries:

Australia:

Jordan M. Sosnowski, Detailed Discussion of Australian Live Export Laws, 2013 [6]

<https://www.animallaw.info/article/detailed-discussion-australian-live-export-laws>

Brazil:

Webinar Series

The Rise of Big Meat: Brazil's Extractive Industry

<https://www.iatp.org/event/webinar-series-rise-big-meat-brazils-extractive-industry>

Week 13 – Comparing Farmed Animal Protections in the United States to Those in Other Countries/Regions (Continued) [44 Pages]

Readings:

Israel:

Verdict of the Supreme Court of Israel – Foie Gras, August 2003 [39]

<http://www.chai-online.org/en/compassion/foiegras/foiegras.pdf>

China:

IATP, Global Meat Complex: The China Series [1]

<https://www.iatp.org/blog/201705/chinas-dominance-global-meat-market-chinese-translation-global-meat-complex>

Fair or Fowl? Industrialization of Poultry Production in China

Fair or Fowl? Executive Summary [1]

<https://www.iatp.org/documents/fair-or-fowl-industrialization-poultry-production-china>

The Need for Feed: China’s Demand for Industrialized Meat and Its Impacts

The Need for Feed: Executive Summary [1]

<https://www.iatp.org/documents/need-feed-chinas-demand-industrialized-meat-and-its-impacts>

China’s Pork Miracle? Agribusiness and Development in China’s Pork Industry

China’s Pork Miracle? Executive Summary [1]

<https://www.iatp.org/documents/chinas-pork-miracle-agribusiness-and-development-chinas-pork-industry>

China’s Dairy Dilemma: The Evolution and Future Trends of China’s Dairy Industry

China’s Dairy Dilemma: Executive Summary [1]

<https://www.iatp.org/documents/chinas-dairy-dilemma-evolution-and-future-trends-chinas-dairy-industry>

Week 14 – Final Exam or Presentation of Papers

If the instructor elects to use presentation of papers, this will require two to three classes to complete the process of students delivering their papers orally to the class.

Options for Simulations and Final Exams

This section includes ideas for simulation exercises and final exam essay topics. Instructors are encouraged to modify and expand on these ideas to best fit their needs.

In a simulation, the students are divided into teams, which meet outside of class time to discuss the topic and organize the presentation. This process requires students to research the subject matter, present an affirmative argument that represents the interests of a given stakeholder, and negotiate effectively with the teams of students who represent similar or even opposing stakeholders. Students should be advised in advance that they will be expected to submit a written work product, as well as to participate in the oral presentation in class. One of the benefits of simulations is that they introduce students to negotiation processes that they are often not taught about in law school.

Each simulation is written as a set of instructions to the students. Once the instructor has broken the class into teams, it is advisable to provide the simulation instructions to the students as early in the semester as possible, to enable them to plan ahead.

State Legislative/Lobbying Simulation (Instructions for Students)

Note to Instructors: *This simulation appears in the course guide on Week 4. You may choose to use this simulation, or any of the others described below, and you may prefer to schedule it for a later date in the semester. Iowa was selected because it is the largest egg producing state in the U.S.*

Each student is assigned to represent one of the three stakeholder groups listed below. For this simulation, you are part of a team of state level legislative lobbyists and, as a team, you will draft and promote a bill for introduction in the Iowa Legislature. The focus of your proposed legislation is the establishment of standards for the care and treatment of laying hens (i.e., hens who lay eggs sold to the general public). Your proposed bill should be drafted to serve the best interests of your stakeholder/clients. Your goal is to convince an Iowa legislator (see below) to sponsor your bill.

Your proposed bill should be presented to the legislator in writing at the start of the simulation class session. Be prepared to argue in favor of your bill and against the bills offered by your perceived opponents. You may wish to offer amendments to any of the other bills and develop alliances with representatives of the other stakeholders (this can happen before or during the simulation class session).

Representing the Animal Protection Movement

Names of students:

Representing Small Organic Family Farmers Whose Hens are Free Range

Names of students:

Representing CAFOs and Large Commercial Egg Production Companies

Names of students:

Your professor will serve as the Iowa legislator hearing your arguments, and you will be graded on your written and oral presentations.

Meat Industry Labeling Simulation (Instructions for Students)

You work as in-house counsel for a large commercial food producer and your assignment is to work with your legal and communications team to draft the text for a label to be placed on packages of the product. Your team is expected to describe the contents in a way that meets the mandates of federal law and also appeals to the consumer. Explain each term you use, or decide not to use, and why, e.g., natural, organic, antibiotic free, free range, vegetarian, vegan, cruelty free, other. Bring the label text to class. Present it to the class and defend your choices.

The class will be divided into six teams, representing the following products.

CAFO Chicken

CAFO Milk

Beef from Free Range Steer

Foie Gras

Soy Milk (Non-Organic, Contains GMO Soy from Mass Producers)

“Beefless Hamburger” Patties Made from Pea Protein and Other Plant-Based Ingredients

Pro-Industry Tactical Simulation (Instructions for Students)

(Note to instructor: Divide the class into 4-6 teams).

You are part of the top-tier of management of a massive pork producer. On behalf of your company, you are attending a private (hush-hush, invitation only) round table of the largest pork producing companies in the world. The goal of this meeting is to develop a well-funded, multi-year tactical campaign that will silence and defeat the efforts of the animal protection industry. The winning team will receive \$20 billion to carry out its campaign. Your team must develop a 2-5 page written memo, summarizing and explaining its recommendations, which will be presented orally in class. You must defend your ideas against the challenges of other teams, and prove that your recommendations should receive the funding.

Team 1

Team 2

Team 3

Team 4

Team 5

Team 6

Farm Bill Proposal Simulation Option 1 (Instructions for Students)

The class has been divided into five teams. Your team is assigned to represent one of the five stakeholder groups listed below. For this simulation, each team is a firm of federal level lobbyists that will draft a proposal (memo) summarizing and explaining the benefits of their key demands for inclusion in the Farm Bill. Your team's proposal should be drafted to serve the best interests of your stakeholder/clients. The goal of your team is to convince a member of Congress to sponsor a version of the Farm Bill that contains as many of your demands as possible.

Each Farm Bill proposal should be presented in writing. Your team should be prepared to argue in favor of your proposal and against the proposals offered by your perceived opponents. You may wish to offer amendments to any of the other proposals and develop alliances with representatives of the other stakeholders (this can happen before and/or during the class session).

Team 1 - Representing the Animal Protection Movement

Team 2 - Representing Food Policy and Nutrition Advocates

Team 3 - Representing Farmers Who Grow Crops Used to Feed Animals

Team 4 - Representing CAFOs/Large Commercial Meat Production Companies

Team 5 - Representing the Pharmaceutical Industry

Your professor will serve as the federal legislator reading the proposals and hearing the oral arguments. You will be graded on your written and oral presentations.

Farm Bill Simulation Option 2 (Instructions for Students)

The class has been divided into five teams. For this simulation, your team is a firm of federal level lobbyists working on the next federal Farm Bill, and you represent one of the five stakeholder groups listed below. Your team will draft a memo that designates the amount of money to be allocated to each of the four largest Titles (I, II, IV and XI) and explains how the money should be used within each Title, and why.

For example, Team 1 might take the position that \$60 billion (of the overall total of \$98 billion) should be allocated to Title IV, specifying that the money be spent primarily on plant-based foods instead of meat, dairy, and eggs, and providing evidence to support its proposal. Team 4 might make the opposite argument and set forth its evidence.

For the purpose of the simulation, ignore the remaining Titles; allocate the estimated total direct spending outlays of \$98 billion in a manner that serves the best interests of your stakeholders/clients, while also convincing a member of Congress to sponsor your bill. This member of Congress is adamant that a Farm Bill will be passed in the current legislative session, and expects compromises from all teams in order to assure passage of the bill.

Your professor will serve as the Congress member, reading the proposals and hearing the oral arguments. After each team has presented its proposal, the Congress member will advise all teams about what recommendations s/he can and/or cannot support, and your team will then have an opportunity to negotiate with other teams to come up with a proposal acceptable to the legislator. You will be graded on your written and oral presentations.

Team 1 - Representing the Animal Protection Movement

Team 2 - Representing Anti-Poverty Advocates

Team 3 - Representing Farmers Who Grow Crops Used to Feed Animals

Team 4 - Representing Large Scale Meat and Dairy Producers

Team 5 - Representing Environmental Advocates

Farm Bill Titles

Title I – Commodities

The Commodities Title covers price and income supports for the farmers who raise widely-produced and traded crops like corn, soybeans, wheat, and rice, as well as dairy and sugar.

Title II – Conservation

The Conservation Title covers programs that help farmers implement natural resource conservation efforts on working lands like pasture and cropland, land retirement programs, and easement programs. The title also includes resource conservation requirements for participation in commodity and crop insurance programs and helps institutions and community organizations provide farmers with conservation technical assistance.

Title IV – Nutrition

The Nutrition Title covers the Supplemental Nutrition Assistance Program (SNAP), also known as food stamps, as well as a variety of smaller nutrition programs to help low income Americans afford food for their families.

Title XI – Crop Insurance

The Crop Insurance Title provides premium subsidies to farmers and subsidies to the private crop insurance companies who provide federal crop insurance to farmers, and provides the USDA's Risk Management Agency (RMA) with the authority to research, develop, and modify a variety of crop- and revenue-based insurance policies.

Final Exam - Suggestions for Essay Questions

1. Final Exam Essay

You are in-house counsel for a chain of slaughterhouses, and you have been asked to draft a policy that will mandate the use of video cameras in all facilities. Draft the policy and explain your reasoning for including or excluding certain policy points.

2. Final Exam Essay

Draft a petition for rulemaking to USDA, asking it to draft a federal regulation that mandates the placement of video cameras into slaughterhouses. State all reasons why this regulation is necessary. Or, choose to represent the opposition and send comments to the USDA outlining why such a regulation is harmful and unnecessary. (This does not need to be formatted as a formal petition for rulemaking; simply draft the arguments you will use).

3. Final Exam Essay

Draft legislative language to amend the 28 Hour Law, 49 U.S. Code §80502 - Transportation of animals. For each change that you offer, explain your reasoning.

4. Final Exam Essay

Most state anti-cruelty laws exclude farmed animals from their coverage. Argue why this is a sound practice legally and politically, or take the opposite side and argue why such laws should be amended to eliminate that exclusion.

Supplemental Reading and Resources on Farmed Animals

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- Boomershine, Jr., Michael J., *The Battle Over America's Farmlands: Corporate Farming Practices and Legislative Attempts at Preserving the Family Farm*, 21 DRAKE J. AGRIC. L. 361 (2016).
- Bucher Murphy, Laura, *CAFO Grief: Using Tax Grieving Procedures to Protest Industrial Animal Factories*, 23 J. ENVTL. L. & LITIG. 357 (2008),
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- Cassuto, David N., *Bred Meat: The Cultural Foundation of the Factory Farm*, 70 L. & CONTEMP. PROBS. 59 (2007),
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- Erb, Karl-Heinz, Haberl, Helmut, Krausmann, Fridolin, Lauk, Christian, Plutzer, Christoph, Steinberger, Julia K., Müller, Christoph, Bondeau, Alberte, Waha, Katharina, Pollack, Gudrun, *Eating the Planet: Feeding and Fuelling the World Sustainably, Fairly and Humanely – A Scoping Study*, (Institute of Social Ecology, Working Paper 116, 2009),
http://www.ciwf.org.uk/includes/documents/cm_docs/2009/e/eating_the_planet_full_report_nov_2009.pdf.
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