



ANIMALS: PROPERTY OR PERSONS?

This fact sheet provides teachers with the information they need to teach students about the concept of legal personhood

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Voiceless, the animal protection institute, is an independent non-profit think tank working to promote respect and compassion for animals. By encouraging critical-thinking on animal protection issues and growing the field of animal law, Voiceless is equipping today's youth to become tomorrow's decision-makers.

CONTACT

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Thank you to the Nonhuman Rights Project
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LEGAL STATUS OF ANIMALS: PROPERTY OR PERSON?

In countries around the world, most animals are considered property under the law. Property is essentially a 'thing' owned by a person. Houses, cars and phones are all things which people can own.

Once a person has ownership over a thing, **legal rights** and **obligations** are created. A **legal right** means that you have an entitlement to do something. For example, if you own an animal, you usually have the right to sell that animal.

A **legal obligation** is something the law says that you have to do. Owners of animals have special obligations, because laws have been created to make it illegal to cause cruelty to animals in certain circumstances.

Owners of other types of things don't have these obligations. For example, you could destroy your phone by throwing it off a cliff. However, you could not throw your dog or cat off a cliff, because this would cause them pain and suffering. You could be charged under the law for committing a crime if you are cruel to an animal.



Vocabulary stop

LEGAL RIGHTS

The concept of a legal right is complex. However, legal rights can be understood in a basic sense as a legal entitlement to something. For example, a citizen of a country may have a legal right to vote protected under law.

LEGAL OBLIGATIONS

A legal obligation creates a duty to do something you are bound to do. For example, if a citizen has a right to vote, then the government has an obligation to respect and uphold that right by creating a voting system.

FOR EXAMPLE

In relation to animals, a citizen can have a **legal right** to own an animal and also a **legal obligation** to look after the animal.

A COW AND A PHONE
ARE BOTH PROPERTY
UNDER THE LAW

ANIMALS ARE PROPERTY – IS THIS A PROBLEM?

Animals are human property under the law. Some people argue that this can be positive for animal protection, as it gives human owners an incentive to protect animals better as they have a personal interest in their safety and welfare. However, others argue that this is problematic, as classifying animals as property means that they do not have legal rights. They argue that we need to change the legal status of animals in society.

One idea is to change the status of animals from **things** to **persons**. A legal person can be defined as an entity which is 'recognised by law as the subject of rights and duties'.ⁱ

Under the law, human beings are legal persons and animals are not.



Big companies known as corporations are also legal persons under the law.

In some countries, even rivers have been declared to be legal persons as a way of trying to better protect them from pollution.ⁱⁱ



As these examples demonstrate, a legal person does not always refer to a human.



Debating the issues

Can we protect animals properly if they are property?

PERSON A

If animals are property, we can't protect them properly!

PERSON B

That's not true. If we own them, we'll care about them more and be more interested in keeping them safe and happy. We don't own wild animals, so we don't care about them as much.

PERSON A

But, many people own animals and they care more about their own human desires than the animal's needs. For example, I could own a thousand hens and care more that they lay as many eggs as possible and make me lots of money, than I care about giving them a happy life.

PERSON B

What about pets, like dogs and cats? Many people view their pets as members of the family and treat them better than they treat some humans!

PERSON A

But, how they are treated depends entirely on who they have as their owner. Their owner decides where they live, how they live, where/when/what they eat, how much they socialise, exercise, etc... Animals can't make their own choices because they have no rights of any kind!

WHAT IS THE NONHUMAN RIGHTS PROJECT?

A group of lawyers in the USA are trying to convince judges that some animals (like chimps and elephants) are capable of being legal persons.

The Nonhuman Rights Project (NhRP) is a non-profit organisation in the USA established by lawyer and law professor Steven Wise.ⁱⁱⁱ The NhRP is bringing cases in courts across the USA arguing that chimpanzees can be legal persons for the purposes of the legal remedy 'habeas corpus' (see 'Debating the Issues' on page 9).

So far they haven't succeeded in convincing judges to declare that animals can be legal persons. Although, one judge has agreed that a chimpanzee is 'not merely a thing'.^{iv}

SHOULD ANIMALS BE GRANTED RIGHTS?

The NhRP argues that certain animals, such as chimpanzees, possess a variety of capacities that entitle them to rights.^v

For example, chimpanzees are aware of themselves, understand the concept of the 'past', can look forward to future events, and make informed decisions.

The NhRP believe that these capacities should entitle chimpanzees to claim certain rights, such as the right to 'bodily liberty'. This would mean that they would have the legal right not to be unlawfully imprisoned.

If they had this right, lawyers could act on their behalf if they were being held captive in houses, zoos and research facilities. See 'Debating the Issues' on page 9.

CRITICAL THINKING CORNER

The NhRP focus on animals like chimps, dolphins, whales and elephants. Why do you think they focus on these animals? Which animals (if any) do you think should be given rights?



WHY AREN'T ANIMALS LEGAL PERSONS?

Some people argue that animals should not be viewed as legal persons, because legal persons should be able to hold both rights and obligations.

They point out that animals such as chimpanzees don't have legal obligations, as they can't be held accountable for their actions.

The NhRP notes that there are a number of examples where certain humans hold rights even when they might not be capable of complying with legal duties.

Very young children and people who are severely incapacitated have the same rights as every other human. However, they do not have all of the same obligations, because the law recognises that they have different capacities.

**For example,
a chimpanzee could
not be sued in court.**



**Neither could a
human infant, but
unlike chimpanzees,
infants have legal rights.**

DID YOU KNOW?

A judge in Argentina ruled that a chimpanzee called Cecilia living in a zoo was a 'non-human legal person' with 'inherent rights' and ordered her transfer to a sanctuary.^{vi}

WHAT IS SPECIESISM?

Speciesism is a form of discrimination.

Discrimination involves treating people differently, without a good reason.



Unacceptable reasons include treating someone differently purely because of their race, skin colour, ethnicity, gender or sexual identity.

For example, employers should consider the qualifications of people applying for a job, rather than their gender. It is okay to give a man a job over a woman if he is more qualified.



However, it is not acceptable to do this simply because he is male, the other applicant is female and the employer prefers males.

The presumption that males are in some way superior to females is neither fair nor accurate, and is a type of discrimination.



Speciesism refers to discrimination against animals by humans, stemming from the presumption that human beings are superior to all other species on earth.^{vii} It involves treating non-human animals differently to human beings purely because they are not human.



Professor Wise and the NhRP lawyers argue that it is speciesist not to allow certain animals such as chimpanzees, dolphins and elephants to be persons under the law.

They argue that it is unfair and discriminatory to exclude non-human animals from the category of legal persons simply because they are not human beings.

The basis of their argument is that if these animals have the same capacities that entitle humans to be legal persons, then they should also be included within that category.

Debating the issues

PERSON 1

Why should we grant animals legal personhood?
How can that lead to better protection?

PERSON 2

Let's take an example. An innocent person is unfairly imprisoned. But since they are a legal person they can ask for the court to have them released. They can do this by using a special legal remedy with a latin name, called '**habeas corpus**'.

PERSON 1

What is 'habeas corpus'?

PERSON 2

It's a powerful court order requiring a court to determine whether their imprisonment is lawful.

PERSON 1

How is that relevant to animals?

PERSON 2

Well, if animals were held to be legal persons, then they could also (through a human acting as their legal advocate) claim habeas corpus. That means, for example, that if a chimpanzee was being held in an amusement park, a court could potentially order the person detaining the chimpanzee to come to court to try to justify that detainment.

Should animals be granted legal personhood?

PERSON 1

So you're saying that if animals were declared to be legal persons then they might be able to claim some of the rights that humans enjoy?

PERSON 2

Exactly! However, because they are different to humans, legal personhood for animals would look a little different.

PERSON 1

What do you mean?

PERSON 2

Usually, legal personhood refers to both rights and responsibilities. For instance, you can generally bring a legal action against human legal persons for failing to uphold legal obligations. You couldn't do this with animals. However, that doesn't mean that they shouldn't be given legal personhood.

PERSON 1

Why not?

PERSON 2

Because there are also certain humans who do not have this capacity (such as infants), but they are still allowed to be legal persons. Not being able to be held responsible for your actions doesn't mean you can't be a legal person.

What do you think?

DO YOU THINK ANIMALS SHOULD BE GRANTED LEGAL PERSONHOOD STATUS?

QUESTION, CONSIDER AND DISCUSS.



QUESTION whether animals should be considered human property under the law.



CONSIDER the different views on this issue, and decide for yourself where you stand.



DISCUSS with your friends, family, classmates and teachers. Debating complex issues is healthy and helpful.



REFERENCES

ⁱ See, for example: 'Person', Merriam Webster <www.merriam-webster.com/dictionary/person>.

ⁱⁱ ABC News, 'New Zealand's Whanganui River granted legal status as a person after 170-year battle' (16 March 2017) <www.abc.net.au/news/2017-03-16/nz-whanganui-river-gets-legal-status-as-person-after-170-years/8358434>.

ⁱⁱⁱ See the Nonhuman Rights Project website: <www.nonhumanrights.org/>.

^{iv} See the opinion of Justice Fahey in *In re: Nonhuman Rights Project Inc on behalf of Tommy v Lavery et al*, and *In re: Nonhuman Rights Project Inc on behalf of Kiko v Presti et al*, New York Court of Appeals, Motion No. 2018-268 <www.nycourts.gov/ctapps/Decisions/2018/May18/M2018-268opn18-Decision.pdf>.

^v Nonhuman Rights Project, 'Litigation' <www.nonhumanrights.org/litigation/>.

^{vi} Lauren Choplin, 'Chimpanzee Cecilia Finds Sanctuary: An Interview with GAP Brazil' (20 April 2017) <www.nonhumanrights.org/blog/chimpanzee-cecilia/>.

^{vii} See Brian Duignan, 'Speciesism' Encyclopaedia Britannica <www.britannica.com/topic/speciesism>.



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