

MORAL AND LEGAL STATUS OF ANIMALS

Tertiary tutorial program
Professionally developed
by legal academics

© October 2019

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ABOUT VOICELESS

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 change-makers.

CONTACT

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This tutorial and assessment program was produced by Voiceless, in collaboration with the Bond University Centre for Professional Legal Education.

Accompanying resources can be accessed on the Voiceless website: www.voiceless.org.au/animal-law

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Voiceless Animal Law Education (ALE) Program



Produced in collaboration with the **Bond University Centre for Professional Legal Education**, our Animal Law Education (ALE) modules provide students and teachers with the information they need to understand and discuss animal law issues and concepts.

ALE Module: Moral and Legal Status of Animals

In this module, students learn about the range of theoretical, philosophical and ideological positions regarding the moral status of animals, and the traditional, contemporary and potential legal status of animals.

INTENDED LEARNING OUTCOMES

Upon completion of this Module, students will:

- Understand each of the theoretical, philosophical and ideological positions regarding the moral and legal status of animals.
- Be able to apply each of the theoretical, philosophical and ideological positions to a specific moral or legal circumstance.
- Demonstrate a reflective awareness of their own preferred position as well as open-mindedness about the positions of others.

MODULE RESOURCES

Podcast

This engaging and informative 30-minute educational podcast is suitable for first year to advanced law students. Students can listen in to hear the arguments for/against granting legal personhood status to nonhuman animals from some of the world's foremost legal experts on the topic.

Interviewees include:

- **Professor Steven Wise:** lead attorney and founder of the Nonhuman Rights Project (USA);
- **Joyce Tischler:** founder of the Animal Legal Defense Fund (USA);
- **Professor Richard Epstein:** New York University (USA);
- **Dr Erin O'Donnell:** Senior Fellow at University of Melbourne (AUS).

Presentation

This presentation provides an overview of the key concepts, debates and theorists exploring the topic. Prepared by legal education expert Professor Nick James of Bond University.

Quiz

An online quiz to help students test their understanding of the key terms.

Useful Resources

Relevant and up-to-date literature and commentary on the topic.

Tutorial & Assessment Program

Professionally developed tutorial and assessment program designed by legal academics for use in the tertiary learning environment.

All resources can be accessed for free at:

www.voiceless.org.au/animal-law

TUTORIAL 1

Class Debate: Should Animals Be Granted Legal Personhood Status In Australia?

The learning sequence for these classes is designed to assist students to think critically about the moral and legal status of animals in Australian society. After listening to an online presentation outlining the current status of animals under the law and exploring potential alternative philosophical, ethical and legal approaches, students debate the legal status of animals in class by evaluating the question: 'Should animals be granted legal personhood status in Australia?'

Learning Area	Animal Law, Legal Theory, Social Justice and the Law
Year Level	First year to advanced
Module	<p>Moral and Legal Status of Animals</p> <p>In this Module, students will learn about the range of theoretical, philosophical and ideological positions regarding the moral status of animals, and about the traditional, contemporary and potential legal status of animals.</p>
Intended Learning Outcomes	<p>Upon completion of this Module, students will:</p> <ul style="list-style-type: none"> • Understand each of the theoretical, philosophical and ideological positions regarding the moral and legal status of animals. • Be able to apply each of the theoretical, philosophical and ideological positions to a specific moral or legal circumstance. • Demonstrate a reflective awareness of their own preferred position as well as open-mindedness about the positions of others.

TIME ALLOCATION

Two 50 minute classes. One class for revision and preparation, and one class for debating and reflection.

STUDENT PREPARATION

It is presumed that students have watched the **online presentation** prior to the first class (see page 3).

KEY INQUIRY QUESTIONS

- What is the moral status of animals in Australia?
- What is the current legal status of animals in Australia?
- What are the arguments for/against altering this status?

CLASS ONE (REVISION AND PREPARATION)

REVISION (10 mins)

Ask the class to discuss the following select revision questions listed at the conclusion of the online presentation:

- How can the view that only human beings have moral status be justified?
- What is animal welfare law? What is animal rights law and how does it differ from animal welfare law?
- How can the view that all individual organisms have moral status be justified?

PREPARATION (40 mins)

Explain that in the next class, you will be running a debate. Explain that the debate is not assessed – it is purely a learning activity.

The topic of the class debate is:

'Should animals be granted legal personhood status in Australia?'

Divide the class into two groups – Group A and Group B.

Group A: Assign Group A to the affirmative position – i.e. 'Animals should be granted legal personhood status in Australia'.

Group B: Assign Group B to the negative position – i.e. 'Animals should NOT be granted legal personhood status in Australia'.

- Ask each group to brainstorm the key arguments supporting their position (20 minutes). These arguments should be written in dot points on a large piece of paper by a nominated scribe.
- The paper should be divided into a table, with one column dedicated to 'FOR' arguments and one column for 'AGAINST' arguments. You can access a document outlining some common for/against arguments at the end of this document - see Worksheet 1.
- After 20 minutes, ask the groups to stop brainstorming. The groups should then swap papers so that they can read the arguments outlined by the opposition.
- In the empty column, they should write responses for each dot point (20 minutes).
- Explain to the class that the rationale for this activity is that their arguments will be strengthened if they actively consider and respond to counter arguments advanced by the opposition. This is a crucial element of 'critical thinking'.
- At the conclusion of class, type up both sheets of paper and post the document to the unit's online learning environment.
- Students should be encouraged to reflect on the arguments in preparation for the debate in the next class.

CLASS TWO (DEBATE AND REFLECTION)

PREPARATION (10 mins)

Prior to class, arrange the classroom seating so that half of the chairs are facing the other half.

At the beginning of class, distribute paper handouts of the preparation activity from the previous class, so that every student has a copy of the for/against arguments.

Divide the students into the same groups (Group A/Group B).

Explain to the students how the class will be structured, and how the debate will run:

- They will have 5 minutes to assign one point to each member of the group.
- The debate will then commence, with students from Group A facing students from Group B. Explain that you as the tutor will act as the adjudicator, meaning that you will be guiding the debate but not actively participating yourself.
- Group A (affirmative) will be invited to speak first. They will be asked to lead as many points as they have members (1 point per member). Explain that as a member of the opposition they can not interrupt during this time. Instead, they should write down any points they wish to raise in response to the arguments put forward so that they can raise them during rebuttal.
- Group B (negative) will then be invited to respond by leading as many points as they have members (1 point per member).
- The floor will then be open to rebuttal from both sides. Explain that they must receive your permission as adjudicator before engaging in rebuttal by raising their hand to speak (this prevents students from talking over each other). Explain that although there is no limitation on the extent of participation, time is limited and all team members should have the opportunity to participate as equally as possible.

After explaining the structure, give the students 5 minutes to assign one dot point to each student.

DEBATE (30 mins)

Run the debate. If certain speakers are dominating the rebuttal discussion, actively invite participation from quieter members of the team. Although the time split will differ according to class size, it should generally run as follows:

- Group A leads points (5 mins);
- Group B leads points (5 mins);
- Rebuttal (20 mins).

REFLECTION (10 mins)

Invite students to reflect on the activity. Explain that as this activity is not assessed, there are no 'winners'. The purpose of the activity was to encourage them to engage in critical discussion about the arguments for/against granting legal personhood to animals in Australia. Potential prompts for reflection:

- Did this activity challenge your perspective on the topic?
- What arguments did you find the most persuasive and why?

SUGGESTED ASSESSMENT TASK

Written Reflection***Task description and rationale***

This task aims to assist students to develop their reflective writing and critical thinking skills by asking them to write a reflection on their class debate experience.

Suggested preparation

Students should be familiarised with the concept of reflective thinking and writing.

Task length: 1000 words.

Links to Module Intended Learning Outcome: 1, 2, 3.

Assessment criteria

This assessment requires students to:

- Develop a clear, well-structured piece of writing;
- Demonstrate critical thinking and reflection on the arguments raised in the debate;
- Reflect on their own learning and responses to the activity;
- Reflect on their own preferred position and the positions of others;
- Demonstrate accurate spelling, punctuation and grammar and accurate and comprehensive referencing.

TUTORIAL 2

Case Analysis: Analysing The Nonhuman Rights Project Litigation

The learning sequence for these classes is designed to assist students to critically analyse the US animal legal personhood case concerning the chimpanzee 'Tommy' brought by the Nonhuman Rights Project. After reading and discussing two articles on the topic of legal personhood for animals by key commentators in the field, students analyse the arguments and conclusions made in the 'Tommy' case.

Learning Area	Animal Law, Law and Philosophy
Year Level	Suitable for animal law elective units
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Intended Learning Outcomes	<p>Upon completion of this Module, students will:</p> <ul style="list-style-type: none"> • Understand each of the theoretical, philosophical and ideological positions regarding the moral and legal status of animals. • Be able to apply each of the theoretical, philosophical and ideological positions to a specific moral or legal circumstance. • Demonstrate a reflective awareness of their own preferred position as well as open-mindedness about the positions of others.

TIME ALLOCATION

Two 50 minute classes. One class for comprehension and class discussion, and one for case analysis.

KEY INQUIRY QUESTIONS

- What are the different legal and philosophical perspectives concerning the concept of legal personhood for non-human animals?
- How have courts in the US responded to arguments seeking to extend legal personhood to non-human animals?
- What are the prospects for achieving legal personhood for non-human animals in Australia? How could this be achieved (i.e. common law/legislation)?

STUDENT PREPARATION

Prior to the first class, students are required to read the following:

- Richard A. Epstein, *'Animals as Objects, or Subjects, of Rights'* (2002) *U Chicago Law & Economics*, Olin Working Paper No. 171.
- Steven M. Wise, *'Legal Personhood and the Nonhuman Rights Project'* (2010) *17 Animal Law* 1.

Students are also required to listen to the podcast (Voiceless Animal Law Talk, Ep 1), featuring both Wise and Epstein.

Prior to the second class, students are required to read the following:

- *The Nonhuman Rights Project, Inc., on behalf of Tommy, v. Patrick C. Lavery* (2014).
- *Brief for Petitioner-Appellant, The Nonhuman Rights Project, Inc., on behalf of Tommy, v. Patrick C. Lavery* (2016).
- *Judgment of Fahey J in The Nonhuman Rights Project, Inc., on behalf of Tommy, v. Patrick C. Lavery* (Decided May 8 2018).

CLASS ONE (COMPREHENSION AND CLASS DISCUSSION)

As a class, work through the following questions.

Discussion of the Steven Wise article (20 mins)

1. The article opens with the story of James Somerset, a slave born in the 18th century. Why does Wise commence his discussion of the rights of nonhuman animals with the story of a human slave? (p. 1)
2. Wise defines legal personhood as 'the capacity to possess at least one legal right'. Do you agree with this? Why/why not? (p. 1)
3. What is the 'Animal Rights Pyramid' Wise refers to? (p. 2)
4. What is 'standing' and what is its relationship to legal personhood, according to Wise? (p. 3)
5. Why does Wise discuss the cases of Cetacean Community v. Bush and Citizens to End Animal Suffering and Exploitation v. The New England Aquarium?
6. What is the goal of the Nonhuman Rights Project (NhRP), as explained by Wise? (p. 5)
7. Wise explains that a key question for the Legal Working Group at the NhRP is 'what quality, or qualities, might be sufficient (though not necessary) to generate immunity-rights that protect a being's fundamental interests'. What do you think of Wise's argument that humans, great apes and cetaceans all share fundamental interests in 'bodily integrity' and 'bodily liberty'? (p. 6)
8. What do you think of Wise's thought experiment, based on the case of a comatose infant (Beth)? (p. 6)
9. What is the common law writ of habeas corpus, and why has the NhRP chosen to focus on this writ? (p. 8)

Note: Alternatively or additionally, these questions could be set as comprehension questions as part of preparation.

Discussion of the Richard Epstein article (20 mins)

1. Epstein outlines the historical view of 'animals as objects'. Do you agree that animals should be viewed as legal things? (pp. 2-7)
2. Epstein asks the question: 'Why is it that anyone assumes the human ownership of animals necessarily leads to their suffering, let alone their destruction?' Do you agree with his assertion that 'often, quite the opposite is true'? (p. 10)
3. How does Epstein respond to Wise's comparison between the status of nonhuman animals in contemporary society and the legal status of slaves throughout history? (p. 11)
4. Epstein argues that '...the natural cognitive and emotional limitations of animals, even the higher animals, preclude any creation of full parity [with humans]' To support

this, he questions: 'What animal can be given the right to contract? To testify in court? To vote? To participate in political deliberation? To worship?' How do you think Wise would respond to this argument (thinking back to his Animal Rights Pyramid)? (p. 16)

5. Epstein explores two possible grounds for according 'partial parity' with humans (i.e. animal rights) – sensation and cognition. What do you think of his conclusions with respect to sensation? (pp. 16-20)
6. In regards to cognition, he outlines Wise's claim that 'limited cognitive capacity supports the claims for negative rights'. Do you agree with Epstein's argument against this claim? (pp. 20-23)
7. What does Epstein mean when he says that '[i]n the end, even the proponents of animal rights must adopt an explicit speciesist approach, complete with arbitrary distinctions'? (p. 22)
8. What do you think of Epstein's arguments relating to animal experimentation? In particular, his argument that granting animals the right to bodily integrity would interfere with their use in medical experimentation, and this should therefore 'not happen'. (p. 25)
9. How would you characterise Epstein's overall argument? How do you think Wise might characterise it?

Discussion of the Podcast (10 mins)

In light of the discussion of the two articles, invite students to discuss their thoughts on the podcast featuring both authors.

Preparation for the Next Class

At the conclusion of the class, remind students that they will need to read the three required readings before the next class. Explain that they may need to research outside of the readings in order to fully appreciate their context. Encourage them to bring printed copies of the readings to class (or have them accessible on a device).

CLASS TWO (CASE ANALYSIS)

THINK/PAIR/SHARE (15 mins)

Divide the class into pairs. Ask them to discuss their thoughts on the case. Did they find the brief interesting? Were they persuaded by any of the arguments? Did they agree with the judgments?

Bring the class together, and invite them to share some of their discussions.

CASE ANALYSIS (45 mins)

2014 Ruling

1. Do you think that the court appropriately weights the significance of the lack of precedent for a claim of habeas corpus relief on behalf of an animal? (p. 3)
2. The court states that 'the ascription of rights has historically been connected with the imposition of societal obligations and duties'. This is an important starting point for their overall analysis leading to the conclusion that chimpanzees can not claim habeas corpus relief as they cannot uphold societal obligations and duties. Do you agree with this starting point? (p. 4)
3. Do you agree with their conclusion that the legislature is a more appropriate forum for seeking further protections for animals? (p. 6)

Nonhuman Rights Project Brief

1. What are the facts of the case and the history of the litigation? (pp. 2-7)
2. In their Statement of Facts, the NhRP seeks to demonstrate that chimpanzees are capable of upholding duties and obligations – did you find this argument persuasive? (pp. 7-22)
3. The NhRP Brief argues that Tommy the chimpanzee is a 'person' under the common law of habeas corpus and Art 70 of the CPLR. The first step in their argument is that 'Person is not synonymous with "human being"'. Do you agree with this statement, and their support for it? (pp. 31-35)
4. A further step in their argument is that 'Tommy is entitled to common law personhood and the right to bodily liberty as a matter of common law equality'. How do they support this argument? (pp. 23-50)
5. On what grounds do they argue that the ruling in Lavery 'erroneously held that the capacity to bear duties and responsibilities "collectively" at the level of species is necessary for being a legal "person"'? (pp. 50-61)

6. They conclude their argument by stating that Tommy's detention is unlawful – do you agree with this conclusion? (pp. 61-65)

Judgment of Fahey J

1. What does Fahey J mean when he says 'I write to underscore that denial of leave to appeal is not a decision on the merits of petitioner's claims'? (p. 2)
2. Do you agree with Fahey's assessment that 'The Appellate Division's conclusion that a chimpanzee cannot be considered a "person" and is not entitled to habeas relief is in fact based on nothing more than the premise that a chimpanzee is not a member of the human species'? (p. 4)
3. Fahey explains that in his opinion a preferable approach to the issue before the court would be to focus on 'whether he or she has the right to liberty protected by habeas corpus', rather than whether 'a chimpanzee can fit the definition of a person'. Is this a preferable approach in your opinion? (p. 4)
4. Is it significant that this judge has stated that 'we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect'? Does this statement surprise you at all? (p. 5)
5. Fahey alleges that the Appellate Division was mistaken in denying habeas relief on the basis that the NhRP were proposing transfer from one form of captivity to another. On what basis does he make this argument? (p. 6)
6. What are the potential implications of Fahey concluding his judgment by stating that '[w]hile it may be arguable that a chimpanzee is not a "person", there is no doubt that it is not merely a thing?' (p. 7)

SUGGESTED ASSESSMENT TASK

Mock Judgment

Task description and rationale

This task requires students to construct their own judgment in the Tommy case. By building their own judgment, students are given the opportunity to critically evaluate the arguments and conclusions discussed in class.

Suggested preparation

Expectations regarding style and tone should be made clear in advance. In particular, explain how a written judgment differs in style from an evaluative essay or reflective writing piece.

Task length: 1500 words.

Links to Module Intended Learning Outcomes: 1, 2, 3.

Assessment criteria

This assessment requires students to:

- Develop a clear, well-structured and persuasive piece of writing adopting an appropriate judicial style and tone;
- Demonstrate critical thinking and reflection on the arguments discussed in class;
- Articulate their adopted position, with adequate consideration of counter arguments;
- Demonstrate accurate spelling, punctuation and grammar and accurate and comprehensive referencing.

TUTORIAL 3

Factual Scenarios: Considering The Legal Consequences Of Recognising Animal Legal Personhood

The learning sequence for this tutorial is designed to assist students to apply their learning from Tutorial 1 and/or Tutorial 2. Students are presented with various factual scenarios and asked to consider how these factual scenarios would be dealt with under the current state of the law, and how this may be altered if legal personhood for animals was recognised in Australia.

Learning Area	Animal Law, Law and Philosophy
Year Level	Suitable for animal law elective units
Module	<p>Moral and Legal Status of Animals</p> <p>In this Module, students will learn about the range of theoretical, philosophical and ideological positions regarding the moral status of animals, and about the traditional, contemporary and potential legal status of animals.</p>
Intended Learning Outcomes	<p>Upon completion of this Module, students will:</p> <ul style="list-style-type: none"> • Understand each of the theoretical, philosophical and ideological positions regarding the moral and legal status of animals. • Be able to apply each of the theoretical, philosophical and ideological positions to a specific moral or legal circumstance. • Demonstrate a reflective awareness of their own preferred position as well as open-mindedness about the positions of others.

TIME ALLOCATION

One 50-minute class.

STUDENT PREPARATION

It is expected that students would have already completed the readings for either/both Tutorial 1 and Tutorial 2.

KEY INQUIRY QUESTIONS

- How does the current state of the law represent an 'animal welfarist' approach to animal protection?
- How could altering the legal status of animals to 'legal persons' impact on how the interests of animals are represented in different circumstances?
- Would the legal consequences of recognising legal personhood for animals be beneficial for animal protection?

CLASS PREPARATION

Prior to class, print out the 'Legal Personhood Factual Scenarios' document - see Worksheet 2.

Write the questions listed on the handout on the board (or project them onto a screen at the front of the classroom from a computer).

INTRODUCTION (5 MINS)

Explain to the students that in today's class you will be asking them to apply their learning from previous tutorials to a number of factual scenarios. Emphasise the importance of understanding the potential real-world application of changes to the moral and legal status of non-human animals in Australian society.

Split the students into pairs/groups (depending on the class size).

Give each group one factual scenario handout.

Explain that they need to read the scenario as a group, and then discuss and write down their answers to the questions on the other side of the handout.

Note: The factual scenarios naturally raise issues of law that may go beyond the course content/the module content. Accordingly, you will need to direct students as you see fit re whether these other elements should be explored or disregarded.

SMALL GROUP DISCUSSION (10 MINS)

In groups, ask students to read out the scenario and then discuss and write down their answers to the questions on the other side of the handout.

Walk around the room and check in on each group as they complete the task.

CLASS DISCUSSION (30 MINS)

Bring the students together. Invite each group to read out their factual scenario and discuss their responses to the questions with the class. Invite the class to comment on their conclusions and contribute their own thoughts.

As each group shares their responses, note their general conclusions under each question written up on the board.

REFLECTION (10 MINS)

After each group has spoken, invite the class to reflect on the key inquiry questions for this activity:

- How does the current state of the law represent an 'animal welfarist' approach to animal protection?
- How could altering the legal status of animals to 'legal persons' impact on how the interests of animals are represented in different circumstances?
- Would the legal consequences of recognising legal personhood for animals be beneficial for animal protection?

SUGGESTED ASSESSMENT TASK

Law Reform Submission

Rights of Cats Bill 2018

An Act to recognise the legal rights of cats in New South Wales.

Explanatory note

Overview of Bill

The objects of this Bill are as follows:

- a. to recognise that cats (*Felis catus*) have the status of 'legal persons' in the state of New South Wales;
- b. to abolish any rule of common law that is inconsistent with the status of cats as legal persons;
- c. to provide that cats are entitled to protections against violations of their bodily integrity and liberty, and that such violations constitute offences under the Act;
- d. to provide for the establishment of a statutory guardian tasked with representing the interests of cats in New South Wales.

- How the proposed legislation may operate in practice, and any practical issues that may arise;
- How the proposed legislation would impact on relevant stakeholders in the community.

Students may write the submission in their own capacity. However, students are encouraged to consider writing from the perspective of a particular stakeholder (government, animal welfare group, cat breeder, etc...)

Suggested preparation

Expectations regarding style and tone should be made clear in advance. In particular, explain how a law reform submission differs in style from an evaluative essay or reflective writing piece. Guidance on how to write an animal law reform submission can be accessed on the Voiceless website here, and an example of a written submission can be accessed here.

Task length: 1500 words.

Links to Module Intended Learning Outcomes: 1, 2, 3.

Assessment criteria

This assessment requires students to:

- Develop a clear, well-structured and persuasive piece of writing adopting an appropriate style and tone;
- Demonstrate critical thinking and reflection on the proposed piece of legislation and the issues raised;
- Articulate their adopted position, with adequate consideration of counter arguments;
- Demonstrate accurate spelling, punctuation and grammar and accurate and comprehensive referencing.

Task description and rationale

This task requires students to construct their own law reform submission, in response to a fictitious law reform proposal. The aim of the activity is to assist students to appreciate the real-world implications of altering the legal status of animals in Australia.

Task instructions

A minor political party ('Rights for Animals') have proposed legislation (Rights of Cats Bill 2018) in the NSW Parliament, seeking to alter the legal status of cats in NSW.

Students must consider the potential policy and legal implications of this proposed legislation. This consideration includes (but is not limited to):

- How the proposed legislation could impact on existing legislation applying to cats (would it create inconsistencies/require their repeal/amendment, etc...);

TUTORIAL 4

Podcast Discussion: Voiceless Animal Law Talk Episode 1

The learning sequence for this tutorial is designed to assist students to critically discuss the concept of granting legal personhood to non-human animals. After listening to the podcast on the topic featuring key commentators in the field, students discuss the concepts and arguments raised in the podcast with a view to forming their own views on the issue.

Learning Area	Animal Law, Law and Philosophy
Year Level	Suitable for animal law elective units
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TIME ALLOCATION

One 50-minute class. It is expected that students will have listened to the podcast prior to class.

STUDENT PREPARATION

Prior to the class, students are required to listen to 'Voiceless Animal Law Talk Episode 1 – Legal Personhood for Animals'.

KEY INQUIRY QUESTIONS

- What are the different legal and philosophical perspectives concerning the concept of legal personhood for non-human animals?
- What are the goals of the Nonhuman Rights Project, and are these goals achievable and desirable?

WORK IN PAIRS (20 MINS)

Split the class into pairs and ask them to work through the following questions (taking notes as they discuss):

1. What was your overall response to the podcast?
2. From listening to the podcast, what is your understanding of the main arguments 'against' granting personhood status to animals? Which do you think is the strongest argument? Which do you think is the weakest?
3. From listening to the podcast, what is your understanding of the main arguments 'for' granting personhood status to animals? Which do you think is the strongest argument? Which do you think is the weakest?
4. Do you think that the arguments 'for' or 'against' granting personhood status to animals were more persuasive? Why?

2. CLASS DISCUSSION (30 MINS)

Bring the class together. Ask them to share with the group their responses to each of the four questions.

If discussion is limited, play some selected passages from the podcast to the class and ask for their responses.

Suggested question prompts:

- Why do Wise and Tischler insist that the property status of animals is problematic for achieving adequate protection of their interests? Do you agree?
- Can you describe the Nonhuman Rights Project's approach (i.e. using the common law)? Do you agree with it?
- Why does Epstein claim that rights are not the appropriate mechanism for achieving improved protection? Do you agree?
- How does Wise explain the rationale for the NhRP's selection of clients? What do you think of this?
- What are Epstein's views on the connection between rights and duties? Do you agree?
- How was the discussion on the rights of natural entities in jurisdictions around the world relevant to the question of animal legal personhood?
- Did you find Wise's response to the argument that granting rights to animals may threaten or detract from the rights of humans persuasive?
- What does Epstein mean when he says that we have to draw a line with rights, between human beings and animals? Do you agree with his argument?

- Do you agree with Wise that the fact that a New York Court of Appeals judge stated that a chimpanzee is 'not merely a thing' is an important development for the movement to achieve recognition of personhood status for animals?

SUGGESTED ASSESSMENT TASK

Student Podcast

Task description and rationale

This task requires students to construct their own podcast on the topic of legal personhood for animals. By creating their own podcast, students are given the opportunity to critically discuss the arguments discussed in the Voiceless Animal Law Talk episode.

Suggested preparation

Expectations regarding style and tone should be made clear in advance. As this is a podcast, students are not expected to adopt an overly formal or academic tone.

Provide students with guidance regarding how to construct appropriate interview questions.

Task length: 10-minute podcast.

Links to Module Intended Learning Outcomes: 1, 2, 3.

Assessment criteria

This assessment requires students to:

- Develop a clear, well-structured and engaging educational podcast;
- Demonstrate critical thinking and reflection on the arguments discussed in the Voiceless Animal Law Talk podcast.

WORKSHEET 1

For	Against	Rebuttal
<p>Animals should be granted legal personhood, because it is unjust that they are currently classified as human property under the law.</p>	<p>Their legal status as property is appropriate, given that they do not meet the criteria of the alternative – a legal person. If animals were not human property, what would happen to animal agriculture? Animal entertainment industries? Companion animals? Etc... It is not practical to give animals legal personhood.</p>	<p>Pragmatic human convenience can not be used as an argument against the extension of rights on the grounds of justice. Similar arguments were advanced to maintain the practice of human slavery. If animals are entitled to rights, it is unjust to classify them as human property.</p>
<p>Animals should be granted legal personhood, because other entities such as rivers and corporations and ships have been granted this status, so it is not unreasonable to suggest that it could also be applied to non-human animals.</p>	<p>Corporations and ships are human proxies, so granting legal personhood to these entities does not support the extension of personhood to non-human entities. The fact that rivers and other natural entities have been granted personhood rights in jurisdictions around the world doesn't mean that it makes sense to grant legal personhood to animals in Australia. Rivers and animals are of a fundamentally different nature.</p>	<p>The fact that personhood status has been conferred on entities other than individual human beings indicates that the classification of 'legal person' is not limited to human beings. If it is not limited to human beings, then there must be other criteria for claiming personhood status. If a river is capable of meeting the criteria, then why can't an animal? Like a river, an animal's interests could be represented through human guardians.</p>
<p>Animal should be granted legal personhood because it will enable them to have legal rights which can be defended in court by human guardians.</p>	<p>If we give legal rights to animals, we also need to confer legal duties. Animals are incapable of upholding legal duties and obligations. For example, we could not hold an animal accountable for a crime. Accordingly, they should be excluded from the category of legal persons.</p>	<p>Infant human children and cognitively impaired adult humans are also often incapable of upholding such duties, but they are included within the category of legal persons. Therefore, the capacity to uphold duties is clearly not a pre-requisite for claiming personhood status. Accordingly, it should not be raised as a bar to claiming legal personhood status for animals.</p>



For

Against

Rebuttal

Animals should be granted legal personhood because it will prevent human beings from treating them however they want, with only weak animal welfare laws to protect the interests of animals.	Animal welfare laws are sufficient and appropriate for protecting the interests of animals. They generally prohibit cruelty and impose a duty of care. What additional protection could be offered through gaining personhood status that could not be achieved through improving animal welfare laws?	Animal welfare laws in Australia have not operated to prevent or adequately address numerous animal protection issues. In fact, many cruel practices have been legalised, and do not fall within the ambit of animal welfare laws. Granting animals legal personhood status would mean that they had rights protected under law.
Animals should be granted legal personhood because many animals possess the same capacities that entitle humans to claim the status of 'legal person' (such as self-awareness and autonomy).	Just because some cognitively advanced animals (such as chimpanzees and elephants) possess some capacities in common with humans, it does not qualify them for personhood status. Humans do not have legal personhood status because they possess these capacities – they have the status simply because they are human. They don't need to have these capacities in order to be legal persons.	The fact that personhood status has been conferred on entities other than individual human beings indicates that the classification of 'legal person' is not limited to human beings. If it is not limited to human beings, then there must be other criteria for claiming personhood status. Even if the existence of capacities such as self-awareness and autonomy are not pre-requisites for claiming personhood status, they are arguably sufficient for establishing an entitlement to the status.
Animals are part of the human community, and should not be excluded from this community by being deemed mere property under the law.	Animals are not part of the human community – only humans and their proxies are part of the human community. Animals are outside of the human community, appropriately in the realm of 'things'/property.	Most Australian households have domestic pets, and many Australians are dependent on animal services or products in their everyday lives. Animals are well and truly part of the human community in Australia.



WORKSHEET 2

FACTUAL SCENARIO 1

Justine bought Rocky the dog 5 years ago from a breeder.

A year later she moved in with her partner Angela.

They both love Rocky and consider him part of their family.

Unfortunately, as Angela has to move overseas for work, they have decided to separate. Both Justine and Angela would like to have full custody of Rocky.

Justine argues that as she purchased Rocky, she is his sole owner. Angela argues that as she has helped look after Rocky for the past 4 years, including contributing to veterinary, food and other costs, she is an equal owner of Rocky.

Angela wants to take Rocky overseas with her to her new apartment in New York. She has landed a prestigious job working (probably long hours) in an advertising agency a few blocks from her apartment. Justine wants to keep Rocky in her suburban Melbourne home, which she also uses as a workspace during the day.

Rocky has a health condition, which means that he shouldn't be exposed to excess stress. Angela believes that it would cause stress to Rocky to be separated from her, as she is Rocky's 'favourite' (Justine concedes that this is the case).

Questions

1. How do you think the situation would be resolved under the current state of the law? What relevant interests would be taken into account?
2. How do you think the situation would be resolved if animals were recognised as legal persons? What interests would be taken into account, and how would different interests be prioritised?
3. Are the interests of the animal better represented and protected under the current state of the law, or with the legal status of 'person'?

FACTUAL SCENARIO 2

Sam the elephant was purchased from a circus by the 'State Zoo' 3 years ago. In the circus Sam was trained to perform numerous 'tricks' to entertain people. Due to an appearance on a popular TV show, Sam became quite a famous national celebrity.

His transfer to the Zoo was widely publicised, and resulted in a significant increase in Zoo attendance. He now lives in an enclosure with 10 other elephants. The facilities are said to be some of the best in the world, with 'heated sleeping quarters' in the winter months, and a 'large swimming area with beautiful foliage surrounds'.

However, recently a group of animal activists have started a campaign to 'Free Sam and Friends'. They argue that intelligent animals like elephants should not be held captive in artificial environments for human entertainment. In response to their complaints, animal welfare inspectors investigated the Zoo, and concluded that Sam and the other elephants are being held in conditions that exceed required standards. They noted that the elephants have access to 24-hour veterinary care and a constant supply of fresh food and water.

The activists are asking the government to intervene to ban elephant captivity for entertainment purposes, including exhibition in zoos. They want all captive elephants to be transferred into large sanctuaries free from human spectators, where they will be able to express their natural behaviours.

Questions

1. How do you think the situation would be resolved under the current state of the law? What relevant interests would be taken into account?
2. How do you think the situation would be resolved if animals were recognised as legal persons? What interests would be taken into account, and how would different interests be prioritised?
3. Are the interests of the animal better represented and protected under the current state of the law, or with the legal status of 'person'?

FACTUAL SCENARIO 3

Stallion is a greyhound, bred and raised to race in the greyhound racing industry. After a promising start, Stallion's race times have started to fall, and his owner Karen is now considering whether to keep him or give him away.

She sees little point in keeping Stallion, given that he's not going to bring in much money from racing and she doesn't think he'd make a very good pet dog. To get an idea of interest, Karen has posted an advertisement on an online forum to give away Stallion free to a good home (she doesn't think anyone would pay).

A number of people have contacted her offering to take him. She hasn't met with any of them, and they all sound a bit 'shady' in their brief text messages. However, she doesn't perceive any alternative options as she knows the local dog rescue shelter is a kill shelter and it's hard for them to re-home retired greyhounds. As she's very busy with work, she doesn't have time to properly assess all of the potential new owners.

At this stage, she's probably just going to pick one at random. She's given away plenty of greyhounds in the past, but hasn't kept in touch or heard from any of their new owners about how the dogs are doing. A local dog rescue group has complained about the number of dogs Karen has 'bred and discarded in the name of racing'. They have offered to take Stallion until they can find him an adequate home.

As this group have regularly caused 'trouble' for Karen (and in her opinion 'publicly defamed her good name'), she has refused to let them have him.

Questions

1. How do you think the situation would be resolved under the current state of the law? What relevant interests would be taken into account?
2. How do you think the situation would be resolved if animals were recognised as legal persons? What interests would be taken into account, and how would different interests be prioritised?
3. Are the interests of the animal better represented and protected under the current state of the law, or with the legal status of 'person'?

FACTUAL SCENARIO 4

ALE | ANIMAL LAW
EDUCATION



Asha is a wildlife rescue volunteer. She regularly drives along a local road renowned for road kill, checking to see if any of the hit animals are still alive and suffering.

One night, she came across a young kangaroo who had been hit and left to suffer by the side of the road. She took the kangaroo to a local vet, who explained that unless Asha could afford to pay for an expensive surgery, the kangaroo would have to be euthanised.

As a wildlife volunteer and part-time student, Asha wasn't in a position to afford the surgery. Accordingly, although she was very distraught about the decision, the kangaroo had to be euthanised. A few weeks later, Asha came across an injured rare endangered parrot sitting underneath a tree. She took the parrot to the same vet, who explained again that significant money would be required to adequately address the parrot's injuries.

Again, Asha explained her situation. However, this time the vet exercised their discretion to operate free of charge. They said that it was more worthwhile expending the resources on such a beautiful and special animal.

Asha argued that the vet should have helped the kangaroo as well. This comment annoyed the vet who replied that they weren't a public hospital and couldn't be expected to help every animal that came through their door.

Questions

1. How do you think the situation would be resolved under the current state of the law? What relevant interests would be taken into account?
2. How do you think the situation would be resolved if animals were recognised as legal persons? What interests would be taken into account, and how would different interests be prioritised?
3. Are the interests of the animal better represented and protected under the current state of the law, or with the legal status of 'person'?

FACTUAL SCENARIO 5

Maria is an animal activist who regularly breaks into intensive animal agriculture facilities to film the 'suffering of the sentient animals inside'. On one occasion she broke into a duck farm and couldn't help but 'rescue' one of the small ducklings.

She became very attached to the duckling who she named 'Liberty'. On the one-year anniversary of Liberty's rescue, Maria posted photos of the rescue contrasted with Liberty's new life to an Instagram account. The account was called 'Free the Ducks' and encouraged people to engage in animal liberation actions to release ducks and other birds from intensive agricultural facilities.

In an emotional moment, Maria decided to name the duck farm where Liberty was raised to 'shame them' for breeding and killing sentient ducks. The owners of the farm reported Maria to the police for trespass and also claimed that she had stolen Liberty who remained the legal property of the farm.

The police seized Liberty and returned her into the possession of the farm owners. Maria was extremely upset by this turn of events and hired a lawyer to argue that she was Liberty's guardian.

The duck farm owners refused to take this argument seriously, maintaining that Liberty was stolen property. Since the seizure, Maria has not been able to secure any guarantees that Liberty won't be killed.

Questions

1. How do you think the situation would be resolved under the current state of the law? What relevant interests would be taken into account?
2. How do you think the situation would be resolved if animals were recognised as legal persons? What interests would be taken into account, and how would different interests be prioritised?
3. Are the interests of the animal better represented and protected under the current state of the law, or with the legal status of 'person'?

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