



University  
of Victoria

# Annual Lecture in Animal Rights Law and Policy

## Angela Fernandez

### *The Capture Rule and the Quasi-Property Status of Farmed Fishes*

Monday, October 5

12:30 – 1:20 p.m., PST

Zoom Link Below

There are multiple possible legal statuses for nonhuman animals beyond the traditional distinction between property and persons – no status at all, a full property status, a quasi-property status (based on a recognition of sentience), and a status of persons/beings. This talk explores the quasi-property status of farmed fishes, nonhuman animals that are sentient, and so should not be treated as property, as if they are the same as inanimate property, but have few if any legal protections against unnecessary and cruel treatment.

Farmed animals generally are quasi-property/quasi-persons in the sense that their sentience sets them apart from inanimate property *and* they have rights against unnecessarily cruel treatment, even if those rights are read down in practice to (anemic) industry standards and are regularly under-enforced or not enforced at all. Fishes seem to have no rights at all under animal protection or animal welfare statutes. However, I will argue in this talk that unlike the usual situation in which animal advocates want to argue against any kind of property status for nonhuman animals, the problem of the escaped or feral farmed fish provides an example in which their quasi-property status continues to be important in terms of keeping them and any damage they do connected to the farm that produces them, even if that farm does not own them in the sense of having legal title to them given the common law capture rule.

**Angela Fernandez** is Professor of Law at the Faculty of Law and Department of History at the University of Toronto ([angela.fernandez@utoronto.ca](mailto:angela.fernandez@utoronto.ca)). She is a fellow with the Oxford Centre for Animal Ethics, a member of the Board of Advisors and Board of Directors for Animal Justice Canada, and a member of the Brooks Animal Studies Academic Network (BASAN) with the Brooks Institute for Animal Law and Policy. Her publications include a book on the (in)famous early nineteenth-century first-possession foxhunting case from New York that established the capture rule for wild animals *Pierson v. Post, the Hunt for the Fox: Law and Professionalization in American Legal Culture* (New York; Cambridge: Cambridge University Press, 2018). Her animal law publications include “Not Quite Property, Not Quite Persons: A ‘Quasi’ Approach for Nonhuman Animals,” 5 *Canadian Journal of Comparative and Contemporary Law* (2019): 155-232 in a special issue “Beyond Humanity: New Frontiers in Animal Law.” Her new book project is a co-authored work on a late nineteenth-century overfishing case, *The Frederick Gerring*, in which a fishing boat from Gloucester Massachusetts drifted into Canadian waters, was seized by Canadian authorities, and the decision from the Supreme Court of Canada upholding the seizure became the leading case on the definition of “fishing” under the *Fisheries Act*.

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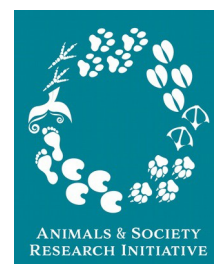
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