

Contract Details Wag the Dog

animal law

About the Author

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Dr. Forsythe has bred Best in Show and #1 ranked Chow Chows, Pekingese and Japanese Chin since 1975. Her “Lionheart” dogs won Best of Breed and awards at World Dog Shows and National Specialties in the USA and Canada. Lionheart dogs have over 140 championship titles in 10 countries. She is a recipient of AKC’s Outstanding Sportsmanship award. Dr. Forsythe is a Canadian Kennel Club all breed judge, who has officiated at FCI international shows in many countries.

Dr. Forsythe completed her Doctorate in mediation law at Duke University, one of America’s top law schools. She was called to the Alberta Bar in 1987; and the BC Bar in 1993. She has appeared before various levels of court and administrative tribunals; and mediated hundreds of cases. She was the first lawyer in North America to serve as Ombudsperson for a Law Society. Her litigation practice with Aarbo Fuldauer LLP includes animal law, dog contracts, CKC hearings, family law, general litigation, workplace harassment investigations and mediation.



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- This presentation is for legal educational purposes only.
- It is not intended as legal advice, nor should it be relied upon in place of obtaining legal advice.
- If you have a problem, do not delay - consult a lawyer.
- Contact the nearest branch of the Canadian Bar Association for a referrals to a lawyer with expertise in contract law.

Seminar Overview

Part 1 - The Foundation

- “Property” vs “Sentient Being”
- The Legal Consequences of Either classification

Part 2 - The Building Blocks

- Advertisement vs Contract vs Bailment
- Essential Contractual Elements

Part 3 - The Details

- Putting it All Together for CKC Breeders & Judges
- Contracts, Stud Service & Remedies

Part 1 - The Foundation

Property

- A cold, harsh concept?

Sentient Being

- But, we love our dogs and they have souls ...

Question 1

You are driving your car at high speed. Suddenly, a dog appears on the road. Another car is coming toward you, also at high speed.

Your choice is to:

1. Swerve, avoid the dog, hit the oncoming car and injure humans
2. Hit the dog, avoid the oncoming car, and spare human injury

Answer:

Moral choice

Societal value of animals in relation to humans

Human life has the highest hierarchical status

Animals are for the benefit of humans

Law

Human life is sacred - thou shall not kill

Acceptable to end an animal's life, for human benefit

Duty to prevent suffering

Animals Benefit Humans

Traditional Anglo Saxon Law:

The animal benefits humankind - it benefits me

It is my animal - legal issue:

Who has the better legal right to the animal?

Who can sell, keep, care for, destroy (for profit)?

Feudal Lords, then the Courts, looked to the law of property

Moral Values Change - The Law Changes:

BC Legislation:

- Winter Olympics sled dog case - 2012
- *Prevention of Cruelty to Animals Act, Sled Dog Standards of Care Regulation Part 4*: Cannot kill unless owner believes: critical distress or rehome efforts

Future changes in the law:

- How far should animal protection be extended?
e.g. owner - dogs are elderly, require costly vet care?
- Who decides what is reasonable: owner's budget or social monitor?

Moral and Legal Dilemma:

How to achieve consensus?

Which animals have the same legal status as humans?

Current Law:

Animals are the property of their owners

Animal value is limited to replacement value, while alive

Animal value does not include owner's emotional value

Question 2

You arrive at the dog show, and park in a very muddy lot. It's pouring rain. Your dog is impeccably groomed. You must get the dog into the building.

Your choices are to:

1. Walk the dog across the muddy parking lot; OR
2. Put protective rain gear, such as leggings, on the dog

Animal's have feelings answer:

Animal Federal Animal Welfare Act, Switzerland

“The dignity of an animal will be violated if the animal’s burden cannot be justified by overriding interests. An animal is considered to be burdened, in particular, if pain, suffering, harm, anguish or humiliation is caused to the animal, if his or her appearance or abilities are profoundly interfered with ...”

Rationale: Dogs are NOT “Things”

*Schweizerische Zivilgesetzbuch {ZGB} Swiss Civil Code 10
December 1907, SR 201: "Animals are not things".*

German Bürgerlichesgesetzbuch [BGB]

“Animals are not things. They are protected by special statutes”.

- *Civil Code of Quebec, Article 898.1* “Animals are not things. They are sentient beings”
- *Article 13, EU Lisbon Treaty* -“Animals are sentient beings”
- Trigeros del Valle, a Spanish town council that voted overwhelmingly to define pets as “non human residents” of the town, July 22, 2015

How Does Canadian Society Define “Animal Rights”?

Protection against cruelty:

Criminal Code - Part X1 - Amended 2008 - Indictable and Summary Offences

- dogs or cattle: kill, maim, wound, poison or injure
up to 5 years in prison OR \$10,000 or 18 months or both
- any animal or bird: suffering, including fighting or baiting
up to 5 years in prison OR \$10,000 or 18 months or both
- wilful neglect during transport or provide proper care
up to 2 years in prison OR \$5,000 or 6 months or both

Provincial animal rights legislation

Classifying Animals - Changing “Property” to “Personhood”

Outcome: enshrine animal rights as with human rights

Moral issues - who decides which rights:

Publicly funded health care?

Access to public spaces?

Political representation?

Social advocate for your dog's wellbeing?

Significant Legal Consequences:

Your right to ...

Own, sell or dispose of an animal

Canadian Charter of Rights and Freedoms
does not include a right to own property

Make decisions regarding your animal's well being and care

Canadian Charter of Rights & Freedoms, s.7:

- life, liberty and security of the person
- freedom from unreasonable search and seizure

Question 3

You sell a puppy that died at 1 year of age. The normal life span 10 years. The buyer paid \$15,000 in vet bills, during the first year. The dog was a family member.

Your options are to reimburse the:

1. Purchase price of the puppy;
2. \$10,000 in vet bills;
3. Compensation for 9 lost years of the dog's "companionship"; OR
4. All the above.

Basic Legal Principle:

Animal is personal property - a chattel. Not human.

The owner can recover the:

- value of a chattel that is wrongfully destroyed OR
- reasonable cost of repair.

An owner's emotional bond is NOT relevant to assessing damages.

Damages for loss of human companionship is recognized for certain family members; NOT for the loss of a pet

Ireland v. Ireland 2010 SKQB 454 at para. 12

“A dog is a dog.”

“Any application of principles that the court might normally apply to the termination of custody of children are [sic] completely inapplicable to the disposition of a pet as family property. Any temptation to draw parallels between the courts approach in this case to the principles applied to settle child custody disputes must be rejected.”

Question 4

You and your partner separate. You both want “Fluffy”. Custody will be awarded to the person who can provide Fluffy with the most:

1. Love and affection?
2. Care?
3. Job security?

Savoie v. Dowell, 2019 NSSM 5 at para. 8

- At law, dogs are property.
- The “best interests of the dog” is not a concept any more relevant to the law, than would be the best interest of a motorcycle in a dispute over a “Harley-Davidson.”
- Ownership of Fluffy should go to the person who can ensure that her value, as property, best remains intact.

Rogers v. Rogers

“Beyond question that a dog is personal property”

Not what is in the best interest of the dog,
but the preservation of the dog as personal property
having regard to its breed, character, training, its traits and
the use that each spouse made of the dog to enjoy their property.

Relationship breakdown ...

Family law principles:

- Regardless of registered ownership, a dog is “family” property*
- The animal’s value is a family asset, subject to division
- *exemption rules may apply, if there is no co-mingling of assets

Question 5

My puppy dies from heart disease. Your breeder contract does not include a “health guarantee”. I paid \$2,000 for the puppy plus \$1,000 in vet bills. Normal life span is 10 years. Due to the high demand for puppies during covid, a replacement puppy will cost \$4,000. What do you owe me?

- a) \$2,000 - purchase price
- b) \$3,000 - purchase price plus vet bills
- c) \$4,000 - replacement price
- d) \$5,000 - replacement price plus vet bills

Contract Damages - *Sale of Goods Act*

- Applies to the sale of chattels - a dog is property, a chattel
- Statute includes an implied warranty - fit for function
- Court can only award fair market value for the property (animal)
- Plus damages for foreseeable losses that result from the breached warranty

BC s.56(1) Sale of Goods Act

- Court can award the estimated loss directly and naturally resulting from the breach of warranty

Damages in Tort - Negligence

General Damages - the value of the good (animal) destroyed +

Actual economic loss cause by the destruction

- Vet is careless during c-section. Bitch and puppies die.
 - Replacement value of the bitch +
 - Economic loss from puppy sales - must prove.

Damages for Emotional Distress

Contract Claim vs Tort Claim

- Canadian courts adopt UK approach requiring strict criteria to qualify for mental distress damages in tort claims
- Requires: Intentional infliction of nervous shock
- An act, calculated, to produce harm
- Harm was reasonably foreseeable
- The harm must be a recognizable psychiatrist illness

Somerville v. Malloy

- Unique fact situation
- \$20,000 awarded for emotional trauma and mental distress
- Dog attack - killed the Plaintiff's dog
- Ontario statute required strict liability for the offending dog owner

Brown v. Edward [2005] OJ NO 1800

(Sub. Ct. Small Claims)

- Emotional distress claim
- Held: dog is more than a chattel, but a loved companion
- \$3,500 in damages for mental distress due to loss of family dog

Ferguson v. Birchmount Boarding Kennels (2006)

- Law of bailment applied
- Higher duty of care because Bailee was paid a fee
- Awarded damages for pain and suffering loss of 7.5 year old dog - Plaintiff could not work, nightmares, insomnia, upheld on appeal
- \$1,417 for pain and suffering

Thank you!

Breeders, exhibitors and owners who submitted questions to focus this seminar's content. Your input was much appreciated!

Sponsors:

- Canadian Kennel Club & Purina

My assistant, Ms. Rachel Son, for her diligent work and support

My dogs, for always being full of joy, regardless of the contract!