

Contract Details Wag the Dog

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.



Caution: Not Legal Advice

- 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 3 - The Details

Putting It All Together For CKC Breeders & Judges

Contracts, Stud Service & Remedies

Drafting Contracts

- Norwegian Kennel Club
 - Mandatory Standard Contract of Sale
 - Used by all breeders
 - Some terms may vary
 - Specific mandatory terms
- Canadian Kennel Club
 - No standard contract
 - CKC By-Laws: Code of Practice for CKC Member Breeders

Canadian Kennel Club By-Laws

- Code of Practice for CKC Member Breeders - Part V at page 83
- Requires a “written sales agreement” that contains the:
 - Name of the Purchaser
 - Date of Sale
 - A Statement the Dog is Purebred
 - Name of the Breed
 - Microchip #
 - All terms and conditions of sale
 - Return or replacement policy
 - Date of the Agreement
 - Signature of all parties

Who Are the Parties?

- Seller/Breeder:
 - Names must match the Certificate of Registration
 - Kennel names are not party names unless incorporated
 - Must include all co-owners
 - Your current contact information should be stated
 - Agency principles apply
- Buyer:
 - No minors
 - Name(s) must match photo ID
 - Contact information must be current
 - All CKC documents should match photo ID
 - Is the Buyer an undisclosed agent?

Party Names:

- John Doe and Jane Doe
- ABC Kennel Ltd.
- Jane Doe carrying on business as Super Kennel Reg'd.

NOT John and Jane Doe

NOT ABC Kennel Reg'd.

NOT Super Kennel Reg'd.

Why? If file a civil claim, you must name the proper Defendant, or risk your claim being dismissed.

By-Law 28.9 - requires all signatures on application to register

When is the Date of Sale?

- Date of Sale vs Date of Possession
- Sale date: satisfaction of subject to conditions - production of”
 - CKC Championship Certificate
 - OFA hip clearance Certificate
 - Veterinary Spay Certificate citing the dog’s microchip #
 - Birth of X + Y litter and survival of puppy to 10 days
 - Veterinary Certificate confirming two testicles on or before 10 weeks of age
 - “Initiator’s” signature on CKC NON-Breeding Agreement Release form

Purebred

- *Animal Pedigree Act, RSC 1985, c. 8 (4th Supp)*
 - Registry By-laws determine how a dog is defined as purebred s. 30 (1)
 - Must be 7/8ths of its inheritance from the breed's foundation stock s. 30(2)
 - Offence to issue a document that purports to be a pedigree/certificate s 63
 - Falsify a Certificate or registration or identification s. 64
 - Offer to sell as reg'd, or eligible, without Cert. or microchip s.64 e, s. 64 i
 - Except: an express statement regn is from a jurisdiction other than Canada
 - Fail to provide certificate of regn within 6 months s. 64 j (same exception)
 - Offences: fines: up to \$25,000 or \$50,000 (summary vs indictable offences)
- Beware: By-law 24.5 - if you name a breed = deemed representation

Name of the Breed

- Must be eligible for CKC registration or registered
- By-Law 22.1 - requires “full particulars” breeding records
 - More info: country of birth, name and address of breeder and seller, parents
- By-Law 22.2 - must maintain records 7 years
- Beware:
 - Accidental cross mating - MUST give away puppies no \$0 or consideration
-

Microchip

- By-Law 25.4 Must chip or tattoo before leaving breeder
- By-Law 28.6 If you import 2 dogs of the same:
 - colour, breed and gender
 - MUST be chipped before IMPORT
 - Chip must meet Canadian Standards

All terms and conditions of sale

- Majority of disputes:

Vague - Unenforceable - No deadlines

“Fluffy must sleep on a gold pillow”

“Fluffy must eat caviar at all times”

“Fluffy will be kept in good condition”

“Fluffy will go to dog shows”

OR Let's Change the Deal: Buy X, Breed to Y, Replace X with Z, and Keep Q puppy

With or Without Breeding rights

By-Law 30 - CKC Non Breeding Agreement

- MUST form part of the contract - Appendix or Schedule
- SHOULD be signed “at the time of sale”
- NOT signed after the Buyer takes possession By-Law 30.1
- MUST be signed by all parties

By-Law 30.4 - Cancellation

- MUST be signed by all parties - except if returned to original initiator
- Registration Committee has authority to cancel if a party refuses to sign

Consideration

- Total amount \$X - for what??
 - CKC Certificate of Registration MUST BE INCLUDED (Code of Practice s.V a)
 - Fees for transfer of ownership MUST BE INCLUDED (Code of Practice s.V b)
 - Microchip ByLaw (Code of Practice s.V c) By-Law 25.1
 - Vaccines - which ones?
 - Rabies - for export - who pays?
 - Health Certificate - at which age?
 - With or without breeding rights
 - Show prospect - define: use CKC breed standard
 - Companion - define: use CKC breed standard
- Total amount plus ... \$X + a puppy back
 - from which litter
 - deadline date for puppy back
 - who selects the puppy
 - from which puppies do you select (all or some)
 - kennel name for puppy
 - Breeding rights for puppy or not?

Foreign Sales

Special factors:

- Who assumes risk of transport ?
- Who is responsible for arranging transport?
- Who pays import costs?
- What if the dog is refused foreign entry because the vet work is wrong?
- Buyer expectation - includes pedigree for registration - CKC “extra” cost

Return or Replacement Policy

Warranty

A party represents something to be true

The other party relies upon that representation

e.g. Sire and Dam = OFA CHIC

Guarantee

“If X happens, I will do Y”

If no OFA certificate by 2 years, return dog and \$ refunded

If no guarantee, Buyer should acknowledge that term.

Date of the Agreement vs Date of Sale

- Date Buyer emails: “I want your puppy!”
- Date Breeder receives my deposit?
- Date puppy arrives in Buyer’s country?
- Date parties sign the contract?

CONTRACT MUST DEFINE THE DATE OF SALE:

- *Animal Pedigree Act* - 6 month window runs from the *date of sale*
- *Limitations Act* - deadline to file a civil claim runs from the date of breach or the date you should have known of the breach of contract

Signatures

- Methods to obtain signatures: e-signature, Zoom, in person
- Witness to the contract: Not mandatory but useful
- Concurrent or signed at separate times and places?
- Where contract is signed is important:
 - Impacts Court jurisdiction - reasonable connection OR
 - Contract term: stipulate jurisdiction
 - Contract term: stipulate governing law

Consequences:

- Ask yourself
 - Is this term of sale important?
 - How will the Buyer know what must be done to comply?
 - How will the Buyer know the obligation is satisfied?
 - What if the Buyer does not comply?
 - How will I enforce this term?
 - Is it worth it????

Co-Ownership Pitfalls

Pro: Seller gains the best of all worlds

Con: Highly litigious cases - control vs stalement!

Ask yourself:

Is there another way I can get what I need?

A different price?

By-Law 33.1 Lease = automatic reversion of ownership

Question 14

You co-own Fluffy with your best friend. Fluffy lives far away; you've not seen her in years. Fluffy suddenly needs an MRI and emergency surgery. The vet bill is \$15,000. Your best friend is broke. The vet sues and obtains a Judgment. Who must pay the vet, and how much?

1. Your friend - the full \$15,000
2. You - \$7,500 because you co-own
3. You - the full \$15,000

Indemnification Clause

Offers the illusion of financial protection

“If I must pay \$ to a 3rd party, you will pay me back.”

- e.g. Co-owner does not pay debts relating to the dog, license fines, damages for death or destruction of person or property

Puppy Back Pitfalls

Pros: Hold onto your bloodline = extra value

Cons: Risk of non-delivery + cost of acquisition

Ask yourself?

Do I really need to co-own, to obtain the puppy back?

If you lack trust in the buyer, why sell to that person?

Be reasonable: Full price + 4 litters back gives CKC breeders a bad name

Option to Purchase:

buy a puppy for \$X from 1st litter?

Damages clauses

Liquidated Damages: specified sum for a particular breach

General Damages: unspecified sum

Recovery of Legal fees: must be a contractual term

Interest on \$ owed: must be a contractual term & reasonable rate

Action for Replevin

MacLean-Beaudet v. Belanger, Dicks et al 2021 ON SCSM

- Breeder placed Chihuahua with X
- 2 years later, X returned dog to Breeder
- Breeder placed dog with Y, on a temporary basis
- 6 months later, after 3 pups born, Breeder wants dog and pups back
- Y refused.
- Y claims renovated Breeder's home, in return for the dog
- Breeder alleges renos were incomplete, therefore no sale

Question 15

Is the Breeder entitled to return of the dog and her puppies?

1. Yes
2. No

Remedy: Replevin Order

Jardine et al v. Before the Bridge Senior K-9 Rescue Inc. et al
2019 MBQB 120

- Motion for interim possession of dog before trial
- Buyers completed an on line application to adopt Dachshund “X”
- On line application includes a repossession clause:
“The rescue organization reserves the right to repossess if the rescue service has reason to believe the dog is mistreated.”
- 5 months later, Buyers pay \$250 to the rescue organization for Dachshund “N”
- Buyers were not asked to complete a new application for “N” nor sign the adoption application for “X”.
- Dog’s physical condition: urine burns due to belly hands

Question 16

Does the rescue agency have the right to repossess the dog?

1. Yes
2. No

Other remedies:

- Onus is on Plaintiff to show a strong *prima facie* case
- The circumstances justify return even though the contract did not include a right to repossess
- Interim Mandatory Injunction granted to the agency

Self-help (“Reception of Chattels”)

- permits trespass to property so long as done peacefully.
- no intervention by the Court is needed
 - e.g. similar to the right to remove a car, if payments are in arrears
- Requires: a request for return of the chattel, if dog was lawfully taken
- No request is needed if the chattel was unlawfully taken
- Entry to land must be peaceful

Stud Service Contracts

Be clear: Which service or commodity are you providing?

Semen is property - ownership can change - CKC & AKC rules

Expectations: Multiple sire litter?

Stud Owner Duty:

Warrant the semen is viable & free of infectious disease

Warrant the semen is from the correct stud dog - DNA

Bitch Owner Duty: Use semen with specified female at optimum time

Stud Service Contracts

Consideration:

- \$X per breeding unit - understand what this term means
- \$X per semen collection - Buyer owns all of the semen produced
- \$X per puppy born - more incentive for bitch owner, but risk for stud owner
- \$X + puppy back - more potential for conflict (Better: \$XX + option to buy puppy)

Terms: Stud owner pays: vet fees to test the male

Bitch owner pays: progesterone tests, semen collection, shipping, import permit, taxes or duty on semen value, storage costs for frozen semen, if owner of semen.

Stud Service Contracts

Guarantee:

- What is the mutual intent?

- Put it in writing:

 - Repeat shipment for \$0?

 - Repeat shipment if bitch owner pays vet and shipping?

 - Same female only?

 - If the stud dog is incapacitated?

 - When does stud owner's obligation end?

Judge Contracts

Covid Related risks - who bears the cost?

- Medical insurance for covid related medical expenses
- Flight disruption due to covid cancellations
- Refusal of entry to a country, due to new covid travel restrictions

Foreign Visa Entry costs - who pays?

Judge Contracts

Foreign Country Entry Requirements

- Issue: purpose of visit - holiday vs work
- Issue: when does reimbursement of costs become “work”
- Issue: who bears the costs and consequences, if denied entry?

USA experience - judges denied entry for AKC shows

Option: B-1 Temporary Business Visitor vs B-2 Pleasure

Bonus Material

Damage awards for breach of contract involving dogs:

- Dog Training School Tuition
- Pet Insurance

Damage awards for negligence cases involving dogs:

- Airline Transport
- Veterinary Negligence

Shaver v. Logan (2016 NSSM) - Other Claims:

- Dog was donated to a student, to complete a training program
- Dog was approved for training, later not suitable temperament
- Dog was taken back by the donor
- Student was unable to complete 2 lessons before the 40 lesson course was finished.
- Claimed a refund of the course fee

Question 17

- Does the training school owe the student for lost income and tuition costs, because the dog was unsuitable?
1. Yes
 2. No

Ruigrok v. Vetinsurance Brokers Canada Inc. (Trupanion)

2015 ABPC278

- Dog examined at 11 weeks
- Lameness noted, no evidence of anything out of the ordinary
- Applicant applied for pet insurance
- Next vet exam: possible hip dysplasia at 6 months
- Insurer denied coverage: pre-existing condition

Contra Preferentum Rule:

If two interpretations are possible, select the one that gives the most fair result as per the intent of the parties

- \$8,171.31 plus \$687 in court costs

Kepa v. Air Transat

- 13 year old dog did not arrive with passenger's baggage.
- Airline took the dog to a vet clinic for overnight boarding
- Next day, dog arrived, wet and limping
- Owner missed a business meeting to pick up the dog, the next day
- Owner angry and depressed after incident, cancelled holiday
- No medical evidence of owner's stress

Question 18

Is the airline liable for passenger's emotional distress?

1. Yes
2. No

Newell et al v. Canada Pacific Airlines Ltd. (1997) 14 OR 2d 752 ON County Court

- 2 two year old Bichons - flight with passengers Toronto to MX City
- 1 dog died, 1 dog survived
- Vet exam 10 days prior to travel
- Dogs purchased for \$350 each
- Cause of Death: Carbon dioxide poisoning - dry ice in the same compartment
- Owners were in fragile state of health, concerned for welfare of their pets
- Dogs were denied in cabin space for transport
- Owners paid excess baggage fees
- *Warsaw Convention* limits damages: 250 francs per kilo or \$560 per bag
- *Warsaw Convention Art 22* liability is \$0, if airline took all necessary measures

Question 19

Is the airline liable for damages for emotional distress?

1. Yes
2. No

Priest v. Williams Lake Veterinary Hospital Ltd. 2011 BCPC 0063

- Horse steps on 13 year old Belgian Tervuren foot
- Leg fractured
- Treatment: dog leg splinted and antibiotics given
- Vet #1 wraps and splints the leg
- Vet #2 finds no circulation in the foot
- Foot amputated
- Evidence: loss of blood supply during transport from Vet #1 to Vet #2
- Expert opinion: cannot state cause of compromised blood vessels

Question 20

Was Vet #1 negligent, and liable?

1. Yes
2. No

Question 21

Before this seminar, my awareness of contract principles was:

1. Needing improvement
2. About average
3. Really good

Question 22

After participating in this seminar, my awareness of this subject is:

1. Less clear
2. About the same
3. Much Improved

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!