

## International Puppy Sales – Contractual Considerations

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It's always exciting to plan a litter; and watch puppies grow! An important part of litter management is planning for placement in suitable homes. Breeders cannot keep every puppy. They need forever companion homes to provide the dog lifetime security; and dedicated show homes to provide kennel promotion. It is especially gratifying when a breeder sells a promising dog to an eminent kennel, in a foreign country. Placements of this nature can enhance genetic diversity in the foreign country; and aid the breeder in achieving broader international recognition.

This article focuses on: 1) reasons why a contract of sale is useful; 2) the basic elements of an enforceable contract; and 3) enforcement aspects of international contracts. To illustrate these points, consider this case study:

Breeder sells a show prospect puppy to a foreign Buyer. It is a key term of the contract that Buyer not do X (insert your most upsetting puppy sale outcome). The contract states: "if Buyer does X, Breeder is entitled to a specified sum in compensatory damages." All goes well for 18 months, the puppy wins considerably, then the dog disappears from the show scene. Buyer contacts Breeder and announces: "good news, I've done X with the puppy". The Breeder is very upset! X cannot be undone. The Buyer's reasons are: "sorry, I forgot about the contract ... don't normally deal with contracts ... X was done to make you happy". The Breeder and the Buyer had a good relationship until this point. The Buyer acknowledges that X was contrary to the contract. Buyer promises twice to make the compensatory payment, but fails to do so.

If you are the Breeder, which option(s) would you select, to resolve this case. Select one or more for survey purposes:

- i) nothing, chalk up the experience to misunderstanding;
- ii) negotiate payout of \$Y in damages;
- iii) post your frustration on social media;
- iv) start an intimidation campaign to harass the Buyer at shows;
- v) contact your Kennel Club, the foreign kennel club, or both;
- vi) file a complaint with a foreign business regulation agency;
- vii) make an animal rights complaint about the Buyer's kennel;
- viii) contact the foreign tax authorities;
- ix) file a civil case at your local court; or
- x) retain a foreign lawyer to act on your behalf.

### **Why Bother - A Contract is Only a Piece of Paper?**

When Breeders and Buyers screen one another, they typically want to interact with a person who is trustworthy, ethical and honest. A good reputation is critical to both parties. If the parties are known for keeping their word, why bother writing a contract? Isn't my word, or a handshake, good enough? One usually hears the phrase, "a contract is only worth the paper it's written on". This is true to some extent; however, there are other important considerations, such as:

- a) Buyer and Seller communication is more likely to be impacted by emotion during the "honeymoon phase" of a transaction. Both parties want to find common ground, reassure one another, and achieve outcome goals. At this stage, it is easy to eagerly give an assurance or oral promise; without thinking about the consequences. It is also typical for one party to interpret an oral response in a manner that is more favorable, or different, than what is intended. Taking time to prepare, read and sign a written contract can help slow down the communication process; it can also provide an opportunity to clarify expectations and obligations.
- b) some Kennel Clubs require a Breeder to provide the Buyer with a written contract. For example, the Norwegian Kennel Club has a standard contract that addresses key terms of sale; it is mandatory. The Canadian Kennel Club requires its members to provide the Buyer with a contract setting out certain basic information; failure to do so can be grounds for disciplinary action. If an individual is a Canadian Kennel Club judge, discipline could include suspension of judging privileges. Each breeder needs to learn and understand the Kennel Club requirements for their jurisdiction, to ensure compliance.
- c) many jurisdictions classify dogs as "personal property". Moveable property can be subject to commercial sales legislation and consumer protection law. In *Pezzente vs McClain, 2005 BCPC 352*, the Judge was faced with the consequence of an oral health warranty being breached. The

Buyer paid \$350 for a puppy, but spent \$10,000 on vet bills over two years. The Judge noted that under the *Sale of Goods Act, Section 56*, a breach of verbal warranty (that the dog was in good health when sold) limits damages to a sum that would be the natural result from an ordinary set of events. In this case, the Breeder could not be expected to pay a sum that far exceeded the value of the “goods”, even though the medical condition was congenital. Despite the Buyer being very emotionally attached to the dog, the Judge reluctantly compared the puppy to a consumer good, a stereo. The Judge concluded that no reasonable person would pay \$10,000 to repair a broken \$350 stereo. The court awarded \$350 to the Buyer; and no award for court costs.

- d) if either party has a memory lapse, a written contract can be a useful tool to tactfully refresh that person’s mind, before a breach of contract occurs.
- e) A contract can serve as evidence of the contractual terms or promises that were important to the parties at the time of sale. The written word is much more reliable than an individual’s vague, or contradictory, recollection of an oral promise.
- f) A contract can set out specific terms regarding the intended use of the dog, so that if it is sold as a companion, the Breeder retains breeding rights. If a dog is sold as a show or breeding dog, reasonable expectations about the dog’s development can be included as key terms, along with appropriate “what if” i.e. compensatory clauses.
- g) A contract can also establish court jurisdiction; and which law applies, if the parties live in different geographic areas. Costly court applications to move the venue from one jurisdiction to another can be avoided.
- h) if either party fails to honor their promise(s), a written contract can be invaluable to enforce legal rights by including terms such as: rights to seize the dog and resume ownership; stipulating a pre-determined amount of money to compensate for a specific type of breach; quantification of economic loss; full recovery of legal fees; applying interest at a higher rate than permitted by court rules, and court costs.

### **Basic Requirements for an Enforceable Contract**

There are basic elements to an enforceable contract. In common law countries, an enforceable contract requires:

1. an offer (not to be confused with an advertisement)
2. acceptance
3. consideration (an exchange of mutual promises/value)
4. a mutual clear understanding of the obligations (these must be consistent with the law and with public policy).
5. competency and capacity (e.g. not a minor – not intoxicated)
6. in some cases (see above re commercial sales) the contract must be in writing (not oral)

Regardless if common law or civil law, most legal systems recognize that a contract requires a commitment between two or more parties; their agreement must relate to an exchange of value. The courts may also look to national customs, and similar cases, to decide if a contract is enforceable.

Each country's requirements may be quite specific. For example, In Italy, *Title II of book IV on Obligations, arts 1321 to 1469* sets out Italy's rules and requirements for a valid contract. *Italian Art 1325*, requires that every contract has a purpose; to justify the promise made and the obligation. Italian courts impose a duty that a person will act and perform the contract with good faith (*see arts 1336, 1175 and 1337*) and engage in fair dealing (*arts. 1175 and 1375 CC*).

When it comes to creating mutual understandings, or terms of sale, there is a significant difference in law between praising the attributes of one's dog (*dolus bonus*) vs fraudulently misrepresenting the dog's qualities or its fitness for the use specified by the Buyer. There is also a major difference between remaining silent (Buyer beware) vs fulfilling a duty to disclose information, if that duty arises. To ensure compliance with item 4 above, the dog's identity, registration details and its purpose or use, should be clearly outlined in the agreement. Any special terms should be carefully thought out, to ensure they are reasonable and enforceable.

Italian law regards performance as "the exact fulfillment of the promises made" (*esatto adempimento*). It is essential that the person drafting the contract have legal expertise to ensure that performance terms of the contract are clearly outlined. A poorly drafted contract might save money in the short term, but it may also create unrealistic expectations and costly enforcement problems in the long term.

Dog contracts created by cut and paste methods, or by including undefined concepts that are specific to the dog show world, can be especially difficult for a court to understand and uphold. For example, a Breeder's contract specified that "the Breeder could use the dog for breeding in the future." The Buyer neutered the dog without the Breeder's consent. Dog people understand that rendering a dog infertile makes it impossible for the Breeder to use the dog at stud. However, to a layperson, the contract did not specifically prohibit sterilization. The Buyer argued the contract was vague and unenforceable. The parties settled out of court so it was not possible to learn what a judge thought about the wording of those terms.

Another source of problem is contractual language that attempts to micro-manage a dog's well being; or to prevent the impossible. For example, a contract might state that the dog must be fed a high quality brand of dog food. This type of term is well intentioned but impossible to monitor and even more difficult for a court to quantify damages i.e. harm to the seller. If there is concern about a dog's future well being, a more sensible approach is to include a clause that if the owner is subject to an animal abuse conviction, the Breeder has the right to claim possession and ownership of the dog.

Contracts that “guarantee” a dog will not develop a health problem might be good for marketing purposes; but they create an unrealistic expectation for the Buyer. A breeder cannot predict or prevent a medical outcome. A Breeder can select carefully, and use health tested breeding stock to increase the likelihood of producing a healthy puppy. A well drafted health guarantee requires the Buyer to acknowledge the risk that dogs can develop hereditary conditions; it will carefully set out the type of condition, and the criteria required to confirm the medical problem. It will also set out compensation and limits to protect the Breeder. For example, if the dog must be euthanized due to a hereditary medical condition before a specified age, the Buyer will receive a pre-determined sum to compensate for their loss and enjoyment of the dog.

As Breeders, we must always remember that Judges may be sympathetic to family trauma when a much loved pet has a severe medical condition. Such a case occurred in the Provincial Court of British Columbia, when a buyer sued because their dog required hip dysplasia surgery. Despite a contract that attempted to limit the Breeder’s liability to replacement of the dog, the court ordered the Breeder to provide the family with a 2<sup>nd</sup> puppy, and pay for the first dog’s hip surgery. That case was not appealed; it was a very costly outcome for the Breeder.

### **Enforcement of Your Contract**

Failure to perform exactly as required is a breach that allows the other party to enforce the contract and, if successful, recover damages. Financial compensation can take many forms; the nature of which depends on the type of animal sold and the purpose for which it is purchased. A well written contract can also set out pre-determined amounts for specific types of damage, as well as permit recovery of full legal fees, interest and court costs.

If your contract is enforceable, a Judgment may be granted in a variety of circumstances. For example, in Canada, a Judgment may be granted by Default i.e. the claim was not defended or contested. A claim might also be considered proven if the debtor makes an admission or the court finds sufficient evidence to uphold your contract at trial. Once a Judgment is granted, there are legislative tools, such as the *Reciprocal Enforcements of Judgments Act, RSA 2000,C-R6* that empower a successful Plaintiff to enforce a judgment in other specified jurisdictions or countries.

In the European Union, if a claim is uncontested and the Plaintiff has met all notice requirements, to ensure an opportunity to file a defence, *European Enforcement Order (EEO) EC Regulation No 805/2004*, allows for easy and economical enforcement. If an EEO Certificate is obtained, the successful party does not need a declaration of enforceability in the member state where enforcement is sought. This regulation applies in all member states except Denmark. Also see the *European Order for Payment Procedure introduced by Regulation No 1896/2006 of the European Parliament and Council*,

Presuming your contract is enforceable; you can expect different time lines, costs and levels of satisfaction, depending on the country where you file your claim. Below are excerpts from The World Bank, Doing Business, Measuring Business Regulations, Data, Enforcing Contracts Indicator (measures the time and cost for resolving a commercial dispute through a local first instance court based on data collection completed in May 2018)

<http://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts> as at January 13, 2019 @ 10:51 MST

Is there a fast track for small claims? Are self-represented litigants permitted?

Belarus: yes, no self-representation  
Canada: yes & yes  
Italy: yes & yes  
Japan: yes & yes  
Norway: yes & yes  
Russian Federation: no & no  
UK: yes & yes  
USA: yes & yes

Number of Days to Litigate, File & Serve, Obtain Judgment, & Enforce a Claim

Canada: 910, 30, 730, 150  
Belarus: 275, 50, 135, 90  
Italy: 1120, 10, 840, 270  
Japan: 360, 20, 280, 60  
Norway: 400, 40, 300, 60  
Russian Federation (Moscow): 340, 60, 140, 120  
UK: 437, 30, 345, 62  
USA (Los Angeles): 495, 30, 365, 100  
USA (New York): 370, 30, 240, 100

Cost: Total % of the claim, % for legal fees, % for court fees, % for enforcement fees

Canada: 22.3%, 15%, 5.3%, 2%  
Belarus: 23.4%, 12%, 11%, 4%  
Italy: 23.1%, 15%, 2.9, 5.2%  
Japan (Tokyo): 23.4%, 18.5%, 4.5%, 0.4%  
Norway: 9.9%, 8%, 1.3%, 0.6%  
Russian Federation (Moscow): 15%, 10%, 5%, 0%  
USA New York: 22.9%, 14.4%, 5%, 3.5%  
USA Los Angeles: 42%, 30%, 5%, 3.5%

Enforcing contracts score (highest score is best ease of enforcement) Singapore #1

Canada 57.13

Belarus 69.44  
Italy 54.79  
Japan (Tokyo) 65.26  
Norway 81.27  
UK 68.69  
Russian Federation (Moscow) 72.66  
USA (LA) 62.93  
USA (NY) 79.06

Quality of judicial process on a 1-18 scale (higher number is better quality)

Canada 11  
Italy 13  
Japan (Tokyo) 7.5  
Norway 14  
Russian Federation (Moscow) 9.5  
UK 15.0  
USA (LA) 12  
USA (NY) 15

Highest score: 2 countries scored 16 – China - Beijing, Kazakhstan  
Lowest score: Iraq 1.5, Bahrain 2.5

**Conclusion:**

Although showing, breeding and selling dogs is a hobby for most dedicated fanciers, the legal implications of a sale can be as complex for a breeder, as the sale of any other type of personal property or commercial goods. Breeders who invest in a well drafted contract enhance their compliance with local laws, benefit from clarity of terms, reduce opportunities for costly misunderstandings, and in the rare case when a breach occurs, increase the chances of obtaining a judgment and financial recovery.

Money (court ordered damages) does not restore trust. Money does not replace a damaged dog or undo harm. Money is a symbolic tool that speaks in every language. Its purpose is to vindicate and compensate people for harm done; while sending a strong signal that promissory breaches have consequences. From a societal point of view, we learn from contractual enforcement principles that there is a cost to breaking one's word; once made, commitments are taken seriously. Sometimes, contracts must be reluctantly enforced, to ensure that others do not try to overstep boundaries, to seek advantage at the expense of others.

In the case study above, the Breeder's contractual term prohibiting X, and providing for compensatory damages, was very clear. The contract gave the local court exclusive jurisdiction to hear the case. The contract also stipulated the Buyer must pay the Breeder's full legal costs to litigate and enforce the contract.

Given the Breeder's clear, well drafted contract, the Breeder's best option is to retain legal counsel, instruct filing and service of a civil claim in the local court, then wait the required time and proceed to Default Judgment. If the Buyer appears in court to defend the action, a trial may occur. Once a Judgment is granted, the Breeder can send the Judgment to the foreign court for execution (typically by seizure and sale of the Buyer's personal property – remember dogs are property - or garnishment); the expense for which the Buyer must also pay, according to the contract.

The cost of a well-drafted contract can far be less than the cost of a show weekend; and certainly far less than the expense, valuable time and emotional stress of litigation going wrong. Take action now and consult a legal expert to review your contract before a problem arises. A well-written contract can help a Breeder sell puppies with confidence and long-term satisfaction. Peace of mind is your best investment.