



PETS IN DIVORCE



Katherine Archer & Charmaine Clubb

Blue Cross Research Shows

- Four pets are taken in by Blue Cross every week following relationship breakdowns.
- Dogs and cats are the most fought over pets, followed by horses, rabbits and guinea pigs.
- When Brits split it is usually the wife or girlfriend who keeps the pet (56%), whereas just under a third of men retain full ownership (29%).
- For those who could not decide who should keep the pet, 15% decided to give them to a family friend, 12% to family members and 6% to pet charities such as Blue Cross.

Pets as Chattels

- Pets are treated as personal property
- No different in principle to a car or painting

Pet Ownership

- In determining pet ownership, the court is likely to have regard to:
 - Who bought the pet (including whose name is on the contract made with the rescue centre/breeder)?
 - Was the pet bought during the relationship?
 - Were the parties cohabiting at the time of purchase?
 - Who is registered on the microchip database?
 - Whose name is recorded at the vet's practice?
 - Who is registered on the insurance certificate?
 - Who usually takes care of the pet?
 - Who pays the day to day expenses for the pet?
 - Was the pet bought as a gift?

MCA 1973 – distributive powers

- S.24(1) gives the court jurisdiction to make property adjustment orders in respect of 'property' one or both of the parties is entitled to
- S.24A gives the court jurisdiction (when making an order under s.22ZA, 23 or 24 MCA 1973) to make an order for the sale of 'property' in which one or both of the parties is entitled

s.25 MCA 1973

- First consideration is given to the welfare while a minor of any child of the family who has not attained the age of eighteen (s25(1)).
- Other matters listed at s.25(2) – no mandatory consideration of an animal’s welfare when deciding what order to make in respect of a pet

Court's general approach to chattels

■ K v K (Financial Relief: Management of Difficult Cases) [2005] 2 FLR 1137

32. ...In my experience the division of chattels can often be problematic, particularly where items of sentimental value are concerned....Solicitors must not forget chattels. As a matter of practice, ***the division of chattels must be accomplished prior to trial*** (with a clear schedule denoting the destination of items). If the parties cannot agree, then a Scott schedule must be completed with the items marked as agreed or remaining in dispute...

Examples

■ RK v RK [2011] EWHC 3910 (Fam)

85. There are a few subsidiary issues I must determine, including the wife's claim to a painting and to one of the family dogs. On the latter issue, I do not consider it appropriate to make any order in respect of one of the dogs because, on the evidence I have heard, they would seem to have been looked after principally by the husband.

Examples

■ IX v IY [2018] EWHC 3053 (Fam)

I have heard almost nothing on this issue although I believe that one dog is currently in France and one dog is in England. That seems to me to be fair. If the parties wish to argue over their access to the other dog I would suggest that they place the dispute before a mediator or arbitrator; perhaps one with experience of dogs.

Examples

■ **S v S [2008] EWHC 519 (Fam)**

15. ...In any event, the wife does not want a 9-5 job, because this would not give her enough time with her horses. I am not qualified to say whether or not it is because she has no children that she is so devoted to her horses, but it is clear that she is devoted to them. She said: "Horses are my family. I see them everyday. When the older ones see me they whinny at me. You form a very close bond with horses". The husband very fairly said: "I agree that her major activity outside work is her horses".

Out of Court Options

- Mediation
- Arbitration
- 'Pet-Nups'

Mediation and Arbitration

- If it has not been possible to resolve the dispute directly, then a client may wish to approach an independent third party or family mediator with particular expertise in disputes involving pets.
- Arbitration is another alternative to court proceedings. This will still produce a binding outcome, but the process will be quicker and more streamlined than court proceedings.

Pet-Nups

- A pet-nup is an agreement between the parties setting out the rights of ownership as well as the arrangements for the pet's ongoing care.
- This may include:
 - Who will have 'sole care' of the pet.
 - Contact arrangements.
 - Who will meet the pet's expenses, e.g. food, vet bills, grooming and pet insurance.

Pet-Nup Templates

- Blue Cross Pet-Nup and Deed of Agreement template documents: <https://www.bluecross.org.uk/pet-nup#download>.
- Maguire Family Law Pet-Nup template document: https://family-law.co.uk/app/uploads/2018/08/MFL_Pet_Nuptial_Agreement.pdf.
- Clients should obtain bespoke legal advice and assistance with drafting a pet-nup.

Are Pet-Nups Legally Binding?

- The law does not currently recognise pet-nups as being legally binding.
- It is ultimately the decision of the court as to whether any pre- or post-nuptial agreements should be enforced.
- That said, the court is placing increasing weight on such agreements where both parties knew what agreement they were entering into and did so of their own free will.

A Welfare-Based Approach

- Some jurisdictions are increasingly recognising the welfare of an animal when determining its ownership.
- Welfare/best interests may encompass the following considerations:
 - Which party has sufficient time and resources to attend to the animal's needs?
 - Whose accommodation/surroundings will be most suitable for the animal?
 - Who has the strongest bond with the animal?
 - Will the animal be kept with the children of the family?

Alaskan Divorce Statute

- In 2017, Alaska became the first state in the US to empower judges to take into account the 'wellbeing of the animal' post-separation.
- The statute now provides: *'in a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide ... if an animal is owned, for the ownership or joint ownership of the animal, considering the wellbeing of the animal'.*

Juelfs v Gough [2002] 41 P.3d 593

- The Alaskan Supreme Court upheld the award of sole custody of the family dog to the husband.
- The dog was at risk of serious physical injury at the wife's residence because she had other dogs living with her which were deemed a threat.
- The interest of the dog in avoiding physical injury prevailed over the application of property law principles.

Ploni v Plonit [2004] FC 32405/01

- Israeli case where the court adopted a 'good of the animal' test.
- An unmarried man petitioned for joint custody of the family pets.
- Evidence was heard from an expert in animal psychology and behaviour to assist the court in determining what would be for the good of the animals.

Scope for Reform?

■ Pros:

- Animal welfare will be better promoted.
- Outdated law will be modernised.

■ Cons:

- Proportionality considerations – additional cost and expense of instructing an animal expert.
- Opens the door for parties to return to court if pet custody arrangements do not work out.