



Who gets the pets?

Animals are often considered as truly part of the family and special bonds develop between them, their owners and the owners' children. So, when it comes to the end of a relationship or separation of a family, it can be very important to take into consideration what happens to the family pet.

In most cases separating parties are able to resolve this issue amicably, as it may be understood from the start which person owns, or is the main caregiver for a particular pet. For others however, a disagreement may arise as to whom certain pets will live with, and even whether the other party can visit to spend time with the pets.

Animals as Property

Although the Family Law Act does not have a provision dealing specifically with animals, the Courts have deemed them as a person's property under the Act. In the 2017 case of *Downey v Beale* Justice Harman came to the determination that the family pet had to be treated as a 'chattel'. This meant that the issue of who kept the family pet fell within the realms of property under the Family Law Act. As a result, the court was only required to make an order about what is 'just and equitable' rather than the 'best interest' principle (as is applied when dealing with children's matters).

Determining a Pet's Value

While pets can have a substantial intrinsic value, it can be extremely difficult to assign a value to the family pet from a property distribution perspective, unless the pet is used for racing or breeding purposes. In the case of *Walmsley v Walmsley*, the Court placed a value of \$3,000 for the breeding dog and ordered that the dogs stay with the wife and that she pay the husband \$3,000 as consideration.

What if the Animal has no Monetary Value?

In *Jarvis & Weston*, the Court found that the family dog had no monetary value. The Court ordered that the dog live under the care of Ms Jarvis. This was because the child of the marriage lived with the wife, and the child shared an emotional bond with the dog.

Factors Usually Considered by the Court

Currently, the Courts generally consider these factors when deciding who keeps the family pet:

- Who was the primary caregiver of the pet?
- Who feeds, walks and baths the pet, and takes it to the vet?
- Under whose name is the pet registered (if it is registered)?



- Who paid for the pet if it was bought?
- Who pays for the pet insurance, vet bills, food and other needs?
- Does the pet share an emotional bond with any children under the parent's care?
- Which parent has the financial means and lifestyle necessary to properly care for the pet?

While these factors consider the interests of the pet, they largely focus on ownership of the pet, costs of maintaining the pet and the effect the pet's living arrangements will have on parents and their children.

At Bateman Battersby we have a number of experienced Lawyers that specialise in Family Law and the many issues arising when a marriage or relationship breaks down. If you require further information or assistance in any family law issues, please call [Oliver Hagen](#) or [Ken Gray](#) on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au.