

Civil Procedure – Law 505 Winter 2016 - Fact Pattern for Assignments

Fred and Ginger Green own a dog breeding facility as well as a dog training and play facility in the city of Lloydminster through two companies they own and control. One interesting fact about the city of Lloydminster is that it straddles the border between Alberta and Saskatchewan. As luck would have it, the Green's breeding facility is situated such that the Green's residence and breeding facilities are on the Saskatchewan side of the border while the dog training and play facilities are on the Alberta side of the border. They operate as separate businesses, but are both owned and run by the Greens. The Green's breeding facility is incorporated in Saskatchewan under the name Green's Great Dogs Ltd. Mr. and Mrs. Green are the sole directors and shareholders of Green's Great Dogs Ltd. (**GGD**)

GGD's breeding operations focus on 2 breeds: the Shiba Inu and the Akita. Both breeds originate in Japan. The Shiba Inu was originally bred to hunt and it is generally considered to be an independent and intelligent dog. It is small in stature, with adults weighing in at about 17 – 23 pounds. The breed is known to be occasionally aggressive, especially towards other dogs, as a result of their strong prey instinct. The Akita is a larger dog, typically weighing in at about 70-130 pounds. It can be very territorial and, in many countries it is designated as a dangerous dog.

GGD's breeding facility is located on 2 acres of property. There is a large fenced dog run where the breeding pairs of Shiba Inus are kept with any puppies they may have at a given time. The run includes a heated indoor shelter as well as a large grassy outdoor space. The indoor space is accessible through a locking door and the green space is accessible via a gate which is typically closed but unlocked during the day and chained at night. The Akitas have a similar set up with indoor and outdoor areas with the same type of access as the Shiba Inu enclosures. These enclosures are on the Saskatchewan side of the border.

In addition to the enclosures described above, the Greens operate their other business on the Alberta side of the border through a corporation, Green Acres Dog Training and Day Care Inc. (**GADT**). GADT is incorporated in Alberta and Mr. and Mrs. Green are the sole shareholders and directors. GADT's facility includes a large outdoor play and training area. It is fenced and accessible through an unlocked gate. Inside the play area is a jungle gym setup that can be used for agility training as well as a small pond and open field.

The buildings and enclosures of both GGD and GADT are cleaned and maintained by a business called Waste Away, a sole proprietorship run by Harold Brown, a long-time resident of Saskatchewan. Mr. Brown's duties including feeding and watering the dogs, cleaning out the runs and removing dog waste from the kennels and generally ensuring the safety and security of the kennels run by GGD. He also is responsible for the cleaning, maintenance, safety and security of the GADT facilities. There is no written contract, Waste Away invoices GGD and GADT monthly and is paid for its services.

It is not uncommon for GGD to ship puppies from their prize winning litters to Japan where the dogs are highly sought after. GGD and GADT offer tours of their impressive facilities; these tours must be prearranged. When they are, tickets are sold for \$20 per person in exchange for a tour of both GGD and GADT's facilities.

As part of the ticket purchase process, GGD and GADT have visitors read and sign a waiver form. If participants will not sign the waiver or do not appear to understand it, they cannot take the tour.

In addition, there are signs at the front gate and the entrance to the buildings and kennels warning people of the presence of dogs and the potential risks. There is also a sign at the front desk, with the same warning and indicating that "All tour participants must sign a waiver of liability and accept the risks of the tour of the facilities."

On Wednesday May 14, 2015 a Japanese tour bus stopped at the facility for a tour. The tour had been prearranged.

One of the tourists got separated from the tour group and wandered over to GGD's kennels. Passing through an unlocked door, the tourist found herself inside the Akita kennel where a mother dog had recently given birth to a litter of 5 puppies. Wanting to get a better look at the puppies, the tourist opened the kennel door; the lock on the door was closed, but not latched. Fiercely protective of her litter, the mother Akita charged at the woman. She ran from the kennel but the dog gave chase. The tourist ran across a field and ended up in the outdoor training area of GADT where the mother Akita finally caught up with her and attacked. The tourist was badly mauled. Fortunately Mr. Green was nearby and he was able to call the dog off and administer some first aid until the ambulance arrived and took the tourist to the hospital.

The tourist in question signed a waiver. She understood, and is fluent in, English.

ASSIGNMENT #1 – Due February 23, 2016 – 15% of Final Grade

Last week Mr. Green was working in the kennels (owned by Green's Great Dogs Ltd., on the Saskatchewan side of the border) when he was approached by a man who handed him the attached Statement of Claim. You have been retained by Green's Great Dogs Ltd. to give the Greens some advice in respect of the claim against their company.

Specifically they want you to give them some advice on whether there are any potential steps they could take to gain some procedural advantage or dispense with the claim before defending it.

Using the law covered in the syllabus up to the Lecture 3, please prepare a short memorandum setting out any potential procedural steps that may be available to Green's Great Dogs prior to defending, and suggesting a proposed course of action. The memorandum should not exceed 5 pages (minimum 1.5 line spacing).

Do not read ahead or utilize materials from the other assignments; take the facts as they currently are.

As set out in the Course Outline, this assignment must be completed as an individual effort. Do not discuss your approach, or the contents of your memo, with your classmates.

ASSIGNMENT #2 – Due March 10, 2016 – 20% of Final Grade

Assume the Statement of Claim in assignment #1 is validly filed and served and brought in the appropriate jurisdiction.

In addition to the facts above, the Green's have now provided you with a copy of the waiver signed by the Plaintiff. It is attached.

They have also told you that:

- At the time the plaintiff signed the waiver, she told Joe Fresh, the witness "Oh! I have signed these before; I know that I am accepting liability for the risks."
- Joe Fresh gave the plaintiff time to read the waiver and asked if she had questions or concerns, and the Plaintiff said "No, but I really want to do this tour, I'm so excited."
- It appeared to Joe Fresh that the plaintiff read the waiver.
- Joe Fresh saw the plaintiff sign the waiver.

The Greens have instructed you to prepare a statement of defence on behalf of Green's Great Dogs as well as any other commencement pleadings that may be necessary to properly define the issues between the existing parties, and any other potential parties to the litigation.

Draft and deliver those pleadings by the due date.

As set out in the Course Outline, this assignment must be completed as an individual effort. Do not discuss your approach, or the nature and content of your pleadings with your classmates. The pleadings must be your own work.

ASSIGNMENT #3 - Due March 31, 2016 – 20% of Final Grade

The Green's have asked you whether there are any dispositive motions, or other procedural applications, that you could bring to have the claim struck or dismissed, or to discourage the plaintiff from proceeding.

Prepare an application for summary judgment, and any additional or alternative relief you believe is appropriate in the circumstances, and prepare any affidavit evidence you may need for such an application, using the appropriate forms and drafting methods.

Use procedural law and cases covered in class. Also the law set out below will assist you with respect to the substantive issues you should raise in your application.

As set out in the Course Outline, this assignment must be completed as an individual effort. Do not discuss your approach, or the contents of your application materials, with your classmates.

Law:

Occupiers' Liability Act RSA 2000, c O-4

Ocsko v. Cypress Bowl Recreations Ltd., (1992) 74 BCLR (2d) 159 (BCCA)

Karroll v. Silver Star Mountain Resort Ltd., BCLR (2d) 160 (BCSC)

Tilden Rent-A-Car Co. v. Clendenning (1978), 18 OR (2d) 601 (CA)

L'Estrange v F. Graucob., [1934] 2 KB 394 (CA)

Delaney v. Cascade River Holidays Ltd. (1983), 44 BCLR 24 (CA)

Mayer v. Big White GGD Ltd., 1997 CarswellBC 836 (BCSC); (1998 CarswellBC 2005) (BCCA)

Ochoa v. Canadian Mountain Holidays Inc., 1996 CarswellBC 2034 (BCSC)

Crocker v. Sundance Northwest Resorts Ltd., [1988] 1 SCR 1186

Scurfield v Cariboo Helicopter Skiing Ltd., [1993] 74 BCLR (2d) 224

Brown v. Blue Mountain Resorts Ltd., 2002 CarswellOnt 3095

Wilson v. Blue Mountain Resorts Ltd., (1974) 4 OR (2d) 713 (ONSC)

Knowles v. Whistler Ski Corp., [1991] BCJ No. 61 (BCSC)

Dyck v Manitoba Snowmobile Assn. Inc., [1985] 1 SCR 589

ASSIGNMENT #4 – Due April 15, 2016 – 25% of Final Grade

Assume the Application you prepared for assignment #3 is going to be heard as a special chambers application. Please prepare a Brief of Argument, not to exceed 12 pages (not including authorities) in support of that application. Comply with all applicable rules and practice notes. Use the law set out your syllabus and in Assignment #3 as you see fit; **do not** do any additional research. Argue by analogy as required.

Attached is the cross examination transcript and affidavit of the Plaintiff in response to your application. Assume that your client's affidavit from Assignment #3 was not cross examined on.

As set out in the Course Outline, this assignment must be completed as an individual effort. Do not discuss your approach, or the contents of your brief of argument, with your classmates.