In the fall of 2018 we were in court for a dog custody battle for Max Max the Golden doodle and here is his story.

“What a fascinating case this is,” I said to opposing counsel. He disagreed, finding nothing fun in hearing that my client would not settle this custody dispute over her dog Max, a 3-year-old Golden doodle. Max’s pet parent allowed her nephew to bring him to New York City during his first venture away from home. It would last for at most two years, and she gave him money for vet care. Max came home on the holidays and every summer. Our client needed some time to focus on a family health issue, so having Max taken care of was a great relief. In exchange, the nephew and his roommates loved having a pet and brought him all around the city for fun. All were aware that this was a *temporary* housing plan.

Problems arose when a roommate developed a bond with Max. It’s understandable because that’s what dogs and people do: they fall for each other. The roommate grew to love him as her own and would present Max to others as *her* dog. After Max helped her through some rough times, she declared him her emotional support animal. She took great care of Max, and we agreed in court that they probably had a very loving relationship. When my client said it was time for Max to stay home with her, the roommate filed for custody.

Since the law looks at Max as property, we relied on the nuances of the law to win this case. First, the roommate said Max was a gift from my client to her and her roommates. To be a gift, the roommate has to show that there was ‘donative intent’, meaning that my client wanted to give her the dog.  Since they never even had a conversation about Max, the gifting of Max was a losing route for her. In addition, there has to be clear evidence that the person giving the gift no longer wants any control over the gift. In this case, our client often checked in on Max, came to pick him up sometimes, and sent money for his care. We won on the gift argument, so then the roommate claimed that not letting her have Max was a breach of contract.

It is possible to have a contract that is not in writing, but this was not one of those times. Surrender paperwork or ownership transfer documents do not exist here. Equally important is that for two people to enter a contract there has to be an exchange and meeting of the minds. Nothing was given to our client to compensate her for the value of the dog. That was strike two for the roommate. What we really have is something that all pet parents engage in-- a *bailment*.

A bailment occurs whenever we place the care of our pet in the hands of someone else, trusting them to exercise the utmost care for them and return them as planned. A bailment does not have to be for pay. Here, we had a mutually beneficial bailment where the owner got time to deal with her personal issue, and the roommates got to have fun with the dog. Bailments have an end point, and that is usually at the will of the property owner. You enter into a bailment with the groomer or vet or boarding facility when you temporarily entrust your dog to them for a stated purpose. The law prevents those we entrust from claiming ownership of what he handed over. If the law allowed people to make a claim to property simply because they cared for it, then auto mechanics could insist on keeping cars that they repair and covet.

The judge has to rule in our favor as a matter of public policy, which is a law-school-way of saying that to rule any differently would be illogical and lead to community chaos. Property owners, which we pet parents are, have to know that when we entrust or share our property to others, we have a reasonable and enforceable expectations that we get them back in good or better condition than when we last had them. We thanked the roommate for the great care she provided for Max, but all good bailments must come to an end.

After trial, before a judge named Max, We Won!