

# International equine law congress 2019

## “Does your horse survive a pre-purchase examination”

In this edition of Horse International we would like to review the international equine law congress organized by the European US Asian Equine Lawyers (the “EUAEL”) which was held on 15 March 2019 during the Rolex Grand Slam - The Dutch Masters - Indoor Brabant Horse Show in Den Bosch, the Netherlands. The EUAEL is an international alliance of law firms active in the field of equine business and equine law from all over the world. The EUAEL organized the international equine law congress (with a public part) for the first time in its history. The congress was a huge success as more than 140 participants (veterinarians, lawyers and people from the business) from various parts of the world enrolled for it. The main topic of the congress was the question: “Does your horse survive a pre-purchase examination?”. This question was subject to an open discussion in the afternoon moderated by **Luc Schelstraete**, the managing partner of **Schelstraete Equine Lawyers** in the

Netherlands and the President of the EUAEL and Dirk Willem Rosie (the editor in chief of De Paardenkrant and www.horses.nl). The open discussion was preceded by presentations of various lawyers and veterinarians exchanging views on the matters they cope with in their work and discussing them from their national perspectives. The congress started with a welcoming speech of Luc Schelstraete thanking all the participants for their presence in Den Bosch.

### Do's and don'ts in international horse deals

The first block of presentations started with **Piotr Wawrzyniak of Schelstraete Equine Lawyers** who zoomed in on tricks of the trade when contracting in the equine business. As the equine business is truly international arranging things in writing like the competent court, the applicable law and limitation of liability is the minimum to be taken care of. Using FEI protocols for sampling was discussed as well as the manner to formulate the doping test as a condition to the contract in two possible flavours either as a condition precedent or a condition subsequent depending on whose behalf the contract is drafted. Yet, in the equine business it is rather

exceptional that these matters are correctly arranged in writing. The second speaker was **Dr. Burkart Fischer of Berner, Fischer und Partner** in Verden, Germany who discussed the commissionaire's position and commissions under German law as well as the recent case law in horse cases in Germany pursuant to which a very well-known trainer from Scandinavia was held liable for the entire purchase price of almost EUR 2.000.000,-. The reason for this was that he was serving both the seller and the buyer and he had not disclosed such to the buyer (the family of his trainee). Dr. Fischer was pleading for more transparency in the equine deals.

### VAT is a hot topic

The third speaker was the tax advisor, **Rudolf Kaarsemaker of TAXetera**, a boutique tax advisory firm in the Netherlands, discussing the VAT issues in the international equine business. The VAT remains a difficult matter and in the daily practice in the Netherlands and in Belgium it can be observed that the tax authorities are turning their attention to the VAT in the equine business. In the last year many tax investigations had taken place in the Netherlands.

### Non-conformity and (a lack of) horsemanship

The fourth speaker was again **Luc Schelstraete** who talked about the non-conformity in horse deals, the lack of horsemanship (as a frequent reason for that) and the growing number of litigation cases under consumer protection in which animals are treated as consumer goods. At the same time it was well noted that there are hardly ever cases involving professional riders regarding non-conformity. In other words there appears to be a correlation between the notion of non-conformity and a lack of





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horsemanship. In addition, Luc Schelstraete informed the audience about discussions going on in the European Parliament about the question whether animals shall be excluded from the consumer protection or not. The majority of the audience was indeed of the view that the animals shall be excluded. Even though this sounds like common sense there is still a long way to go regarding this matter.

### Cross-border litigation

The following block of presentations covered cross boarder litigation in the horse business. **Agnieszka Kalinowska** and **Anita Garnuszek** of **Lex Hippica**, from Warsaw, Poland, discussed international private law issues from the EU perspective focusing on the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I recast). **Dr. Monika Gattiker** of **Lanter Rechtsanwälte** from Zürich, Switzerland, discussed the Swiss approach of the international private law based on the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the so-called "**Lugano Convention**") as well as material law in Switzerland regarding the sale and purchase of animals that is entirely different than the laws of the EU Member States. For instance, with regards to the sale of animals Swiss law clearly stipulates that there is no warranty unless the seller explicitly gives such in writing and that the notice of any defects is limited to nine (9) days after the hand-over.

**Vincent Zitman** of **Schelstraete Equine Lawyers** explained the regulatory framework on the recognition and enforcement of foreign judgments (from outside the EU) within the EU and the Netherlands. He explained the technicalities of this process and outlined manners to defend in case a Dutch citizen is confronted with court proceedings in which the counterpart seeks the enforcement and recognition of the foreign judgement. Vincent Zitman discussed also the case law of the Dutch Supreme Court on this matter as well as a recent case in which an American party sought enforcement of an American Court verdict against a European trainer in the EU containing also punitive damages.

### Doping and vetting

**Lisa Lazarus** and **Emma Waters** of **Morgan Sports Law** discussed doping in the equestrian sport as well as the notions of the FEI Equine Prohibited Substance List. They also gave tricks of the trade on how to approach the matter of reclassification of prohibited substances from prohibited to controlled.

**Mette Uldahl** and **Malcom Morley** both members of the board of the **Federation of European Equine Veterinary Associations** (the "**FEEVA**") zoomed in on the pre-purchase examination and how to protocol them. Mette Uldahl practices in Denmark and Malcom Morley in the UK. The FEEVA reported on enormous differences in protocols of the pre-purchase vetting in Europe as well as the role of the veterinarian during the pre-purchase examination. Standardising the pre-purchase examination across Europe seems at this moment rather not feasible considering the mentioned differences etc. The veterinary profession depends on the regulatory framework of the individual countries and as long as the national legislations differ it will remain difficult to come to one European standard.

### Open discussion: "Does your horse survive a pre-purchase examination?"

The congress ended with an open discussion on the question "**Does your horse survive a pre-purchase examination?**" which also included topics mentioned hereabove. This question seems to be relevant as in practice many top sport horses do not pass the pre-purchase vetting. With new diagnostics that are becoming widely available potential buyers have access to huge amounts of veterinary data from which it is always possible that something may be identified as a potential problem. Because of this it is very likely that buyers know much more about the horse in question than sellers. In this context one needs to ask oneself what the use of this all is. Do all the possible findings have any clinical relevance? If they did not have any for the seller, why would they for the buyer? Gathering veterinary data is of course good and shall be encouraged but more importantly the data must be correctly assessed and analysed. This is where the vet plays a very important role for the buyer in advising him on the pros and cons of a potential purchase. Common sense must be applied here as well. Luc Schelstraete asked also the question whether the pre-purchase vetting shall not be only limited to the clinical



part and a mandatory doping test. Some participants agreed, some disagreed, and some did not have an opinion on that. Participants of the congress represented various views not always agreeing with one another. The congress was however a great opportunity for vets, lawyers and people involved in the equine business to meet, to discuss things with each other and to exchange views. In future the EUAEL will organise similar events. ■



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If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us via [info@europeanequinelawyers.com](mailto:info@europeanequinelawyers.com) or by telephone +31-(0)135114420.

