



## DUTCH MASTERS DEN BOSCH

# THE INTERNATIONAL EQUINE LAW CONGRESS 2019

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IN THIS EDITION OF HORSE TIMES, WE WOULD LIKE TO LOOK BACK ON THE INTERNATIONAL EQUINE LAW CONGRESS ORGANIZED BY THE EUROPEAN US ASIAN EQUINE LAWYERS (THE "EU AEL") DURING THE ROLEX GRAND SLAM - THE DUTCH MASTERS – INDOOR BRABANT HORSE SHOW IN DEN BOSCH IN MARCH OF THIS YEAR.

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The EUAEL is an international alliance of law firms active in the field of equine business and equine law from all over the world. For the first time in its history the EUAEL organized an international equine law congress (with a public part). More than 140 participants (veterinarians, lawyers and people from the business) from various parts of the world enrolled for the congress. The main topic of the congress was the question: “Does your horse survive a pre-purchase examination?”.

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) moderated the congress and the discussion.

#### International horse deals

Piotr Wawrzyniak of Schelstraete Equine Lawyers focused on tricks of the trade when contracting in the equine business. It goes without saying that the equine business is truly international: competent court, applicable law and limitation of liability are important elements of any contract and are often overlooked. FEI protocols for blood sampling were discussed too. The doping test was discussed as a condition to the contract in two possible variants either as a condition precedent or a condition subsequent. Which to choose depends, of course, on the contract to be drafted. It remains rather exceptional in the equine business that these matters are correctly arranged in writing.

Dr. Burkart Fischer of Berner, Fischer und Partner in Verden, Germany discussed the commissionaire’s position and commissions under German law as well as recent case law. According to this case, 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 two masters (both the seller and the buyer) without disclosing such to the buyer (the family of his trainee).

#### VAT is a hot topic

Rudolf Kaarsemaker of TAXetera, a tax lawyer in the Netherlands associated with Schelstraete Equine Lawyers, discussed the VAT issues. The VAT remains a difficult matter and in the daily practice in The Netherlands and in Belgium. Structuring the equestrian business through The Netherlands can be very beneficial for foreign riders, investors and owners and can lead to significant savings.

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

Luc Schelstraete 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. It was well noted that there are hardly ever cases involving professional riders regarding non-conformity. In other words, a correlation can be observed between the notion of non-conformity and a lack of horsemanship.

#### Cross-border litigation

The following block of presentations covered cross border litigation in the horse business. Agnieszka Kalinowska and Anita Garnuszek of Lex Hippica, from Warsaw, Poland, zoomed in on 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 international private law based on the 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 regard 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 discussed 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 ways 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.

#### 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”) discussed the pre-purchase examination and how to protocol them. Standardising the pre-purchase examination across Europe seems at this moment rather not feasible considering the mentioned differences, etc.

#### “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. 🐾

