

## **Common Legal Disputes Arising in Horse Purchases: ‘Soundness’ and ‘Suitability’**

Article By:

Michael A. Nicodema

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Some disputes in the equine industry involve the buying and selling of horses. The contract governing the transaction often is written and formal. However, such agreements can be more casual, consisting of oral representations, text messages, and other writings that must be pieced together to determine what the buyer and seller agreed to. With the rising prices of horses, there is an increasing number of lawsuits over the promises, representations, and warranties that lead to the contract. Whether the deal is for a \$100,000 hunter, or a million-dollar jumper, litigation primarily arises from failed communications between buyers, sellers, agents, and/or veterinarians. This GT Advisory focuses on two issues that should be thoroughly investigated with the assistance of counsel at the pre-purchase stage to potentially avoid future litigation, and as part and parcel of effective case preparation when litigation has ensued: (1) representations made by or on behalf of the seller concerning the “soundness” of the horse; and (2) representations made by or on behalf of both buyer and seller concerning the horse’s “suitability” for the intended rider.

### **Soundness and Serviceable Soundness**

The “soundness” of a horse refers to the overall health of the animal. A “sound” horse is free of lameness and illness. A horse labeled as “serviceably” sound is capable of regular work for the horse’s class but may have some health issues. In other words, a serviceably sound horse is one that should not go lame from performing his job, absent an accident or serious injury.

When buying a horse, some buyers ask for an equine pre-purchase exam (Exam) to identify any preexisting problems that may hinder a horse’s future performance and reduce buyer risk. The inspection usually consists of four phases in which a veterinarian examines all aspects of the horse’s health. The first part of the exam involves a thorough identification of the horse, including documentation of color, age and any distinguishing characteristics; assessment of vital signs; and a urine sample to ensure the absence of performance-altering medications. The second phase is a general assessment of the horse’s body and skin condition. It is customary for the veterinarian to assign the horse a body condition score ranging from 1 to 9, with 1 being emaciated and 9 being obese. Scores of 4, 5, or 6 are within the acceptable range for performance horses. The third phase is a visual assessment of soundness, where a veterinarian will begin by palpating the horse’s limbs, and then watch the horse perform a variety of movements on different surfaces. Riding the horse may or may not be incorporated into the exam, depending on the intended use. Asking the horse to

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move in straight lines and circles is also a common assessment technique, along with passive/active flexion tests on the legs, and a thorough hoof examination. A basic neurological exam may also be part of this third examination phase. The fourth and final phase of the exam is known as the “diagnostic” phase, and can include radiography, nuclear scans, and ultrasound testing, with special emphasis placed on the examination of the navicular bone and distal phalanx. Higher radiographic grades in these areas are usually indicative of lameness.

Whether the Exam is done domestically or outside the United States, choosing a qualified veterinarian is of critical importance to avoid issues down the line. The quality of the Exam examination and the vet’s report are equally critical. The buyer should investigate the credentials and reputation of the veterinarian performing the Exam. This is especially true in foreign purchase situations, since shipping and quarantine costs are significant, and it is much easier and less expensive to walk away from the deal in the first instance, rather than attempting to void the contract and return or resell the horse after it comes into quarantine lame or otherwise unfit for work. Also, depending on the price of the horse, and the quality of the Exam documents, the buyer may want to get a “second opinion” on the horse’s soundness from another qualified veterinarian to assist the buyer in deciding whether to go through with the purchase.

Collecting and analyzing all the Exam documents, asking the right questions, and fully investigating the vet and horse’s backgrounds are tasks that will help determine the horse’s soundness and serviceable soundness both at the contract stage and in litigation. Following are related considerations for buyers, sellers, and counsel:

- Collecting and preserving the Exam report, phase three visual assessment videos, and phase four X-rays, radiographs, films, scans, and other diagnostic testing documents.
- Investigating and documenting the horse’s prior performance record, for both the intended discipline (e.g., hunter, jumper, etc.), and the intended level (e.g., junior rider, amateur owner, 1.2 m, 1.35 m, Grand Prix). For example, a nine-year-old jumper who shows consistently, with ordinary to moderate wear and tear in one joint, may be serviceably sound for an amateur owner at 0.8 or 0.9 meters, but not 1.2 m or higher.
- Investigating the credentials and reputation of the vet. Is the vet known in the community for his or her expertise and reliability? Have any legal or disciplinary proceedings been brought against the vet? Have other trainers or riders had good or bad experiences with the vet?
- Evaluating the Exam report and vetting process. Is the report conclusory? Did the vet just check the boxes on soundness factors without a more fulsome diagnosis of the horse’s condition? Were any obvious tests omitted by the vet, such as a flexion test on each leg, or a Coggins test to determine if the horse has Equine Infectious Anemia?
- If the price of the horse warrants, and especially if the horse is being purchased from outside the United States and the vet is not generally known to the seller, buyer, or buyer’s agent, should the buyer get a second opinion from another qualified vet based on the Exam documents and videos before agreeing to purchase the horse?
- If the dispute is in litigation, should the parties engage expert witnesses to opine on soundness, and whether the Exam vet acted within the reasonable standard of care, based on an independent evaluation of the horse or the Exam documents and videos?

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- If the case is in litigation and the buyer has retained possession of the horse, has the buyer taken reasonable efforts to mitigate damages by caring for the horse in a manner that would avoid exacerbating any existing soundness issues?

## Suitability

The “suitability” of a horse refers to the horse’s fitness for the intended event and level, and whether the horse is a good match for the capabilities of the rider. Thus, suitability overlaps with soundness in terms of the fitness of the horse for the intended event and level, but suitability has the additional requirement that the horse and rider be a good fit for one another.

Suitability issues typically occupy a gray zone: one end of the zone is bounded by the skill and experience of the rider, and the other end is bounded by the propensities and personality of the horse. Innumerable mishaps can occur in the show ring. For example, a jumper may persistently cross-canter, stop or run out at a jump, repeatedly miss long or short, or get tangled in an in-and-out and throw the rider, just to name a few. Are these mishaps caused by the horse’s personality, or are the rider’s inexperience and mistakes in the ring (often called “rider error”) the cause? Sometimes, despite the parties’ best intentions, the horse is simply “too much horse” for the rider.

It is in that gray zone between a horse’s propensities and a rider’s experience level where the suitability disputes typically arise, because the lines of communication between buyer and seller have broken down. For example, it is not uncommon to see a seller, who wants to facilitate the sale and close the deal, telling the buyer (orally, or in texts and/or emails) things like: “This is the horse for you”; or “He’s a packer, he’ll help you out when you miss short or long.” But what if the horse has trouble performing as represented, and the rider is not skilled enough to right the ship? On the other hand, what if the rider represents himself as a sold 1.2 m jumper, but in reality, the rider hasn’t met a horse he couldn’t get to stop or run out on a fence at least once a round? These situations do happen, and if the sale cannot be rescinded amicably, litigation may be the result.

The above-listed considerations for soundness apply equally to investigations of suitability, both during pre-purchase and in litigation. On the question of “fit” between horse and rider, following are some considerations for potentially avoiding a breakdown in communication between buyer and seller at the contract stage; and if litigation does ensue, for preparing the seller or buyer’s case:

- **Sellers and Buyers:** Oral representations, text messages, and emails can result in a binding contract, even without a traditional formal writing. Consider collecting all writings evidencing the representations made on both sides, and insisting on a formal writing that contains the promises, representations, and warranties of the parties, reducing the likelihood of ambiguity regarding the agreement.
- **Sellers:** If you are not familiar with the intended rider of the horse, exercise caution in taking the rider’s word for it (or the word of the rider’s agent) when it comes to the rider’s experience and skill level. Because show records are easily investigated, it is prudent to determine the actual experience level of the rider, so that an appropriate horse (or horses) can be offered. Do not make promises you cannot keep; do not be casual or careless in your writings; and understand that your oral representations and electronic messages can be binding in a litigation.
- **Buyers:** Clearly articulate to the seller exactly what kind of horse you are looking for, and do

not leave things vague or “understood.” Put in writing what you want, and do not oversell your experience level.

## Conclusion

Casualness and informality when it comes to horse purchase agreements, including for horses in the seven-figure range, may result in a deal gone bad for an expensive animal. Keeping in mind the above considerations with respect to obtaining a reliable Exam, formalizing the transaction, and communicating should help both buyer and seller get what they bargained for, and disputes over soundness and suitability should be reduced significantly.

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