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# Buying or Selling a Horse in France: An Introduction to the Legal Context Proposed to the Attention of U.S. Equine Lawyers

Philippe E. Corruble  
*HEC Paris*

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BUYING OR SELLING A HORSE IN FRANCE: AN  
INTRODUCTION TO THE LEGAL CONTEXT PROPOSED TO THE  
ATTENTION OF U.S. EQUINE LAWYERS

Pr. Philippe E. Corruble, HEC Paris  
Lawyer, Rouen (Normandy, France) and Brussels Bar  
Member of the French Institute of Equine Law\*  
(IDE: Institut du droit équin)

CATESBY:

Rescue, my Lord of Norfolk, rescue, rescue!  
The king enacts more wonders than a man,  
Daring an opposite to every danger:  
His horse is slain, and all on foot he fights,  
Seeking for Richmond in the throat of death.  
Rescue, fair lord, or else the day is lost!

KING RICHARD III:

A horse! a horse! my kingdom for a horse!

CATESBY:

Withdraw, my lord; I'll help you to a horse.<sup>1</sup>

INTRODUCTION

Not every American buyer of a horse abroad can count on the promise made by Sir William Catesby to King Richard III: "I'll help you to a horse."<sup>2</sup> Indeed, if the King's adviser happened to be a lawyer before he was appointed Chancellor of the Exchequer, there is no doubt that his background in law was exclusively in the common law of those times. It just so happens that Normandy, France is both the origin of French civil and common law,<sup>3</sup> and also home to France's most famous horse breeding. Pure blood, Trotters, Selle Français and Cobs have survived, but common law is no longer used in Normandy or the rest of France. This is the reason why, with the development of international horse sales, it may be relevant for American lawyers who practice equine law to have some knowledge of the

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<sup>1</sup> WILLIAM SHAKESPEARE, RICHARD THE THIRD act 5, sc. 4.

<sup>2</sup> *Id.*

<sup>3</sup> This refers to those times before the Duke of Normandy became King of England.

laws applicable to an equine transaction in France. This Article contains a presentation of the legal environment for the sale of horses in France. The Article begins with a description of the civil law context for selling a horse, in both the formation and regarding the effects of such a contract. Particular emphasis has been placed on the warranties owed by the seller, which is now influenced by the laws of the European Union and its obligation of conformity. The second part of this Article deals with the specificities of an international contract for the selling a horse from the French perspective. Both parts of this Article focus on the differences of legal prescriptions according to the professional context of the sale and some short remarks have been added with regard to internet sales.

## PART I

### I. GENERALITIES ON THE SALE OF A HORSE IN FRANCE

An American lawyer should not be surprised that this paper, which investigates the legal context of selling a horse in a civil law country, starts with a reference to the Civil Code. Indeed, this law, as well as contract law in general, has been the object of Napoleonic codification. Thus, the legal study of the sale of a horse should begin with the general provisions of the Civil Code on the law of sale. With its usual clarity and brevity of style, the Civil Code contains Article 1583, which states that “[t]he sale is perfect between parties, and property is transferred to the buyer vis a vis the seller, as soon as one agreed on the object and the price, even though the good has not yet been delivered nor the price been paid.”<sup>4</sup>

This general provision, complemented by some provisions of the Rural Code on warranties such as redhibitory defects and, in some situations, by relevant provisions of the Consumer Code (for sales between a professional and a non-professional), need to be somewhat developed in two directions: (1) the formation of the contract, and (2), the effects of the contract.

#### *A. Formation of a Sales Contract for a Horse*

Whatever the context (auction, local fair, internet, etc.), the sale of a horse requires an agreement on the horse for sale and the price. This Article will investigate the concept of agreement, the regulations concerning the sale of some horses, and the price issue.

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<sup>4</sup> CODE CIVIL [C. CIV.] art. 1583 (Fr.).

*i. The Agreement*

Going back to the principles of the Civil Code, in order for the sale to be made, one needs offer and acceptance.<sup>5</sup> With regard to the offer of a good for sale (and this is of course true for a horse), one matter has generated a lot of litigation: as long as the buyer's offer has not been accepted, may the bidder (who works on behalf of the buyer) withdraw the offer at any moment? The answer depends on whether a delay was indicated by the bidder. If the bidder indicated a delay, then he cannot withdraw the offer. If the bidder intends to withdraw an offer which has been accepted with a delay, courts may either consider that the sale was made or condemn the buyer to damages.<sup>6</sup> In the absence of an indication of a delay, courts may impose a reasonable delay on a case by case basis.<sup>7</sup>

Another relevant matter is the obligation of information, which lies on the bidder. It derives from the general principle in the Civil Code, that one must execute agreements with good faith. The occasional bidder must not advise the buyer, but must act in a manner that enables the buyer to make his decision with the relevant information.<sup>8</sup> That is to say, the bidder must inform the buyer on the abilities, character, and health of the horse for sale. In case the bidder does not perform his obligation of information, which includes remaining silent, he faces the risk of annulment of the sale on the basis of deception and bears the additional risk of damages.<sup>9</sup> For example, the sale of a horse was annulled in a case where the bidder failed to inform the buyer that the horse was subject to stomach pain.<sup>10</sup> This rule is applied to professional bidders, such as professional horse sellers, with particular rigor because they are charged with the duty to duly inform a non-professional buyer on the characteristics of the horse. In case of litigation, these professional bidders shall bear the burden of proving that they performed their obligation of information.<sup>11</sup>

The preliminary veterinary examination of the horse for sale is not a legal condition of the sale under French law and thus is not mandatory for the occasional buyer, as the courts have regularly held.<sup>12</sup> However, this is indeed a useful precaution and it is possible for the buyer to include a veterinary examination as a condition of the contract. This condition should be made in writing, for the buyer must prove the condition was

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<sup>5</sup> See CODE CIVIL [C. CIV.] art. 1582 (Fr.).

<sup>6</sup> Cass. 3e civ., May 10, 1968, Bull. civ. III, No. 209 (Fr.).

<sup>7</sup> Cass. 3e civ., May 25, 2005, Appeal No. 03-19411 (Fr.).

<sup>8</sup> See CODE CIVIL [C. CIV.] art. 1641 (Fr.); CODE CONSUMER art. L111-1 (Fr.).

<sup>9</sup> CODE CIVIL [C. CIV.] arts. 1641, 1645 (Fr.).

<sup>10</sup> Cours d'appel [CA] [regional courts of appeal] Dijon, Sept. 6, 2005, Bull. IDE, No. 40.

<sup>11</sup> See CODE CONSUMER art. L 111-1, modified by law No. 2009-526, adopted May 12 2009.

<sup>12</sup> Cass. 1e civ., October 27, 1993, Appel No. 91-15-632 (Fr.); Cour d'appel [CA] [regional court of appeal] Caen, May 7, 2002, Bull. IDE (Institut du Droit équin or Institute for equine law), No. 26.

accepted by the bidder in the absence of a document. Although this is not impossible, it is indeed much more difficult in practice.<sup>13</sup> Concerning the professional buyer, a notion which is unfortunately imprecise, courts tend to hold that a veterinary examination is mandatory. It is notable that a professional buyer, who owned some horses already, failed in his judicial attempt to ask for annulment of the sale of a limping horse, on the ground that he had committed a fault by not proceeding to a veterinary inspection of the horse.<sup>14</sup>

The bidder and potential buyer may also agree to grant the buyer the possibility to take the horse for a trial during an agreed upon period, before the agreement on the sale is made binding. It is for the parties to fix the principle, duration, and conditions of this testing period. It is also recommended that the parties do so in writing, for the interested party would otherwise have to establish from various evidence and circumstances that such was their common intention.<sup>15</sup>

The duration of the trial for a usage period is open. In the absence of a clause on duration, an old Jurisprudence has opted for the validation of a usage which is of eight days. This is relevant with regard to transferring the risks to the buyer after expiration of the delay.

Another important issue in this kind of sale is whether the buyer benefits from a total freedom to say "yes" or "no" at the end of the period, or whether his decision may be controlled by the court. What is certain is that he is under the duty to proceed with the trial period in good faith. A buyer that neglects to proceed with the trial could be legally compelled by the seller, after sending of a formal demand to proceed with the test. This sanction would be the accomplishment satisfying of the condition; thus the sale would be definitive. It is also clear that the buyer must take good care of the horse during the period of the trial. However, it seems that despite the general prohibition of so-called "potestative condition" clauses in contracts under French law, the particularities of the individual relationship between horse and rider allow a good faith buyer to refuse to purchase the horse within the agreed delay. It is very doubtful that this decision could be challenged before the court.<sup>16</sup>

In various portions in this Article, references are made to the preference for a written contract for the sale a horse. It does little to say that the practices in the horse industry very often differ from this recommended approach. From a legal point of view, however, the sale of a

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<sup>13</sup> Cass. 1e civ., July 19, 1965, Bull. civ., No. 490 (noting that in absence of writing, the Court admitted the existence of a veterinary inspection condition clause because the seller did not protest and agreed to take the horse back after a negative veterinary check).

<sup>14</sup> See CODE CIVIL [C. CIV.] art. 1642 (Fr.).

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

horse, like any sale, is regarded under French law as a consensual contract. In other words, it is not required that a contract be written to be valid.<sup>17</sup> Contracts exist as soon as the “yes” from the buyer is expressed to the bidder. However, the difficulties start when one of the parties must prove the existence of the contract, most of the time in a later phase of litigation. Nevertheless, it is far easier to prove the existence of the contract with a written document, even though the French Court of Cassation acknowledges the tradition of the oral contract in the horse industry and the subsequent quasi-moral impossibility for a party to the sale to request a written document from the other party to the contract.<sup>18</sup> This exception granted to the equine community is fragile, and its future depends on the evolution of equine contractual practices.

One group of traders in the equine industry escapes the written proof rule: those persons engaged in the commerce of horses as their regular professional practice or because of the commercial form of their organisation. For these persons, the mode of proof is free. However, two remarks need to be made. First, the rule of freedom of proof is not enforceable by the commercial body vis a vis the non-professional engaged in the sale of a horse. Second, the difficulty of proof still remains a problem when no written document is available, even when the law authorizes any other means, as this is the case before a commercial court such as the Tribunal de Commerce.<sup>19</sup>

#### *ii. A Quick Look at the Formation of Internet Sales of Horses*

At the moment, this form of sale is not yet known many parts in France. Regardless, it is good to recall that an internet sale is before anything else, a sale, which calls for application of the law of the traditional sale contract of horse which is examined in Section 1 (Civil Code + Rural Code), plus the applicable rules of the Consumer Code when the sale is between a professional and a consumer.

However, since the internet allows for a contract between two persons who do not meet, formation and execution of the internet sale of a horse is governed by specific regulations. In no way are these specific rules related to the particular nature of the good for sale, or a horse in this case. Rather, the technical context of the exchange has been modified by a new communication technique (the internet), which affects the contractual

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<sup>17</sup> A written contract, signed by the buyer and seller, is the requested mode of proof when the object of contract has a value of more than 1500€. Apart from the written contract signed by both parties, courts will take into account written documents from the defendant, when these writings permit it to infer the existence of the contract.

<sup>18</sup> Cass. 1<sup>e</sup> civ., Jan. 15, 1963, Bull. civ. I, No. 32; CA [regional court of appeal], Caen, April 15, 1980.

<sup>19</sup> Code de Commerce [C. COM.] art. 109 (Fr.).

structure, just as it is affected when distance sales are formed between persons who do not meet and contract by an exchange of letters.

With regard to the formation of the contract, a professional seller's online offer must contain some detailed information on the seller such as his name, phone number, address, or registered office in addition to the description of the horse and the price. The offer must also mention the consumer's right to return the horse in the legal delay of seven days. The idea is that the potential buyer must be in a position to gain all the necessary information before launching the buying process. Once again, these rules apply to internet sales between a professional and a consumer, but not between two professionals or between two non-professionals. Nor do the rules apply in the case of an internet sale from a non-professional to a professional.<sup>20</sup>

The contract is formed, as in classic commerce, by the acceptance of the offer by the buyer. In e-commerce, the buyer fills the electronic files, which equates to filing an order form and confirms through the "double click" of his mouse. This validation confirms that the buyer has accepted the general conditions of sale, which forms the contract, and the professional seller is bound to send a quick electronic confirmation that he has received the order.<sup>21</sup>

A specific difficulty lies in the determination of the very moment when the contract is formed: is the contract formed when the buyer sends his answer (emission theory) or at the moment this answer is received by the seller (reception theory)? This determination may have important consequences because the transfer of risks, under French law, is associated with the transfer of property, which is concomitant to the consent given by the acceptant. The Court of Cassation has opted for the emission theory.<sup>22</sup>

### *iii. A Horse as the Object of the Contract for Sale*

According to the Civil Code, the object of the contract must be determined or at least determinable.<sup>23</sup> Thus, the mandatory dispositions of Decree n° 201-913, October 6, 2001, generalizing the identification of equines, should facilitate possible conflicts.<sup>24</sup>

It is important to note that since January 1, 2002, the identification of horses which were born in France is mandatory. The French Administration ("Haras Nationaux," a department of the Ministry of

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<sup>20</sup> CODE CONSUMER arts. L121-16, L121-18, L121-20 (Fr.).

<sup>21</sup> CODE CONSUMER art. L121-19 (Fr.).

<sup>22</sup> Cass. com., Jan. 7, 1981, Bull. civ. IV, No. 14.

<sup>23</sup> See CODE CIVIL [C. CIV.] art. 1129 (Fr.).

<sup>24</sup> Decree No. 201-913 of Oct. 5, 2001, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Oct. 6, 2001, p. 15757.

Agriculture) delivers a card of identification of the horses which mention the successive owners. The seller must transfer without delay this document to the buyer at the sale. However, the seller is not obliged to do so if the price has not been paid by the buyer.<sup>25</sup> This administrative document, when available, will serve as a presumption of transfer of property to the buyer and as a presumption that the price has been paid.

Identification is one thing, while existence is another. The Civil Code requests that the horse exist at the moment the sale is made. The death of the horse before the sale is thus a cause of annulment. On the contrary, if the horse dies after the sale, but before delivery, the buyer shall be bound to pay the price unless other contrary contractual provisions have been adopted with regard to transfer of risks, which normally is connected to the transfer of property which is immediate under French law.<sup>26</sup> This is contrary to English law, which provides for payment against delivery, and German law, where the transfer of property is conditioned upon payment.

If the existence of the object of the contract is mandatory at the moment of the sale, the Civil Code does not prevent the sale of a future object because this provision allows for the sale of a foal that is not born yet.<sup>27</sup> In case the foetus does not survive, the buyer remains obliged to pay the price, since a contract of this kind is supposed to have been accepted with full knowledge of the risk associated with breeding or foaling. In addition, French law prohibits the sale of contagious horses. The Rural Code, which contains a list of the concerned contagious illnesses, orders the declaration of such illnesses to the Administration and prohibits the sale of such horses. Sales made in violation of this prohibition are void, even if the seller ignored the illness of the horse. Consequently, the buyer is entitled to annul the sale and shall recover the purchase price of the horse. The delay for action is forty-five days after delivery and ten days if the horse has been put down or died.<sup>28</sup>

#### *iv. Price*

With regard to the price, nothing distinguishes the sale of a horse from other sales contracts. The Civil Code simply requires that the price be determined at the conclusion of the sale or that it is determinable,<sup>29</sup> for example, if the parties agree that a third party will fix the price. It is important to note that the judge has no jurisdiction regarding the determination of the price. This is true when the parties have not agreed on

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<sup>25</sup> See CODE CIVIL [C. CIV.] art. 1184 (Fr.).

<sup>26</sup> CODE CIVIL [C. CIV.] arts. 1156, 1234, 1302 (Fr.).

<sup>27</sup> CODE CIVIL [C. CIV.] art. 1130 (Fr.).

<sup>28</sup> See CODE RURAL [C. RURAL] arts. L223-1, L228-1 (Fr.).

<sup>29</sup> CODE CIVIL [C. CIV.] arts. 1583, 1591 (Fr.).



a price or, in a more common case, when one of the parties contests the validity of the contract because the seller or buyer pretends to have committed an error on the price after the sale was made at an agreed price. Error regarding the value of the horse by no means constitutes a legal cause for annulment. Only an error on the substantive qualities of the horse, having consequences on the value of the horse, can be invoked before a court.<sup>30</sup>

### *B. Effects of the Sale of a Horse*

Once the bid is accepted, the sale is validly formed and several legal obligations are implied. For the seller, an obligation arises to deliver the horse and to warrant the buyer against eviction, the defects of the horse, and the new duty of conformity. For the buyer, an obligation arises to take possession of the horse and to pay the purchase price. This being said, one must bear in mind that the transfer of property is operated by the sole agreement of the parties under French law. No formality is required from the parties as it is an automatic legal consequence of the sale. However, this legal principle may be amended by the parties through a clause in the contract stating that a sale is validly formed at the transfer of the horse, at the moment of delivery, or at the moment of payment. This may be an advisable contractual disposition for the seller since it provides him with some protection against the potential insolvency of the buyer. French insolvency law permits the unpaid seller to bring a claim for the horse in such a case.

However, the well advised seller who opts for the contractual report of the transfer will also be mindful of the issue of transferring risks. Normally, absent a clause reporting the transfer of property, the risk of death of the horse is borne by the new owner.<sup>31</sup> Obtaining insurance for the accidental death of the horse is thus recommended.

#### *i. Obligations of the Seller*

The seller has the obligation to deliver the horse and to warrant the buyer against risks associated with the purchased horse. With regard to the delivery obligation, the seller performs his obligation by bringing the horse to the disposition of the buyer within the agreed upon period of time. This can be accomplished through delivery to the new owner, his agent, or a carrier. The place of delivery, unless otherwise provided in the contract, is the place of residence of the horse when the sale is agreed upon. Therefore,

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<sup>30</sup> See CODE CIVIL [C. CIV.] art. 1641 (Fr.).

<sup>31</sup> See CODE CIVIL [C. CIV.] arts. 1138, 1583 (Fr.).

one should not understand the obligation to deliver as a general obligation to physically deliver the horse to the buyer's residence. The price to transport a horse may be expensive and is, in the absence of other provisions in the contract, incurred by the buyer. Additionally, the moment of delivery, unless otherwise stated in the contract, is concomitant to the sale.<sup>32</sup>

The object of the delivery is, of course, the purchased horse and the "fruits." This can encompass a foal in the case of a pregnant mare. A seller that ignores a pregnant mare at the time of the sale may not make a claim for any supplement to the price. The object of the delivery also includes all documents necessary for the use of the horse, notably the administrative documents of identification. Excluding a situation where the buyer has not paid the entire purchase price, the seller incurs a fine for non-delivery of the identification papers.<sup>33</sup> Apart from this incrimination, a failure by the seller to execute his obligation to deliver the horse enables the buyer to ask a judge to assess damages on a daily basis for non completion of the contract against the seller. The buyer may also seek to void the contract and the related damages.<sup>34</sup>

#### *ii. Warranties*

Warranty law in France is complex. Recall that the seller has warranty obligations of four kinds: (1) warranty against eviction, (2) warranty against hidden defects, (3) warranty against redhibitory defects, and (4) warranty against deformity. First, the warranty against eviction protects the buyer's rights as a new owner in contests by a third party. The three other warranties concern possible defects of the horse, which include the famous French warranty against hidden defects, or the "garantie contre les vices caches." But this general provision of the Civil Code<sup>35</sup> is at odds with another warranty, called the warranty against redhibitory defects, since the Rural Code still contains old and specific provisions for the sale of domestic animals. We shall see below the interplay between these two warranties. In addition, but only in contracts between a professional and a non-professional, a third warranty exists called the warranty of conformity. The warranty of conformity has been recently introduced in the Consumer Code after a European Directive was adopted in this domain by the Institutions of the European Union.<sup>36</sup>

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<sup>32</sup> CODE CIVIL [C. CIV.] arts. 1136, 1138 (Fr.).

<sup>33</sup> See CODE CIVIL [C. CIV.] arts. 1142, 1184 (Fr.).

<sup>34</sup> CODE CIVIL [C. CIV.] art. 1184 (Fr.).

<sup>35</sup> CODE CIVIL [C. CIV.] arts. 1641-49 (Fr.).

<sup>36</sup> CODE RURAL [C. RURAL] arts. L213-2, L213-7 (Fr.); Council and Parliament Directive 1999/44/EC, 1999 O.J. (L 171) 12 (EC).

The warranty against eviction does not often find application in the sale of horses since horses have the qualification of a “movable asset” under French law. Thus, the buyer is protected by Article 2279 of the Civil Code, which states that “with regard to movable assets, possession amounts to title deed.”<sup>37</sup> In reality this is restricted to good faith possession, that is to say if the buyer may presume from the circumstances that he bought the horse from the true owner. This means that even if the true owner of the horse happens to be someone other than the seller, the buyer in good faith is not obliged to abandon his right to the horse. The warranty obligations in case of defects of the sold horse have given rise to much larger developments in jurisprudence.

### C. Rural Code on Warranty Against Redhibitory Defects

Historically as first adopted by the French legislature,<sup>38</sup> the warranty against redhibitory defects has since been codified in the Rural Code.<sup>39</sup> It consists of a specific regime, rigid in form (limited list of redhibitory defects of the animal, short delays for action, and automatic effects), and derogatory to the more general warranty against hidden defects codified in the Civil Code.<sup>40</sup> The Rural Code warranty regime is exclusively applicable to the sale of horses unless the parties expressly mentioned their intent to refer also to the Civil Code warranty against hidden defects.<sup>41</sup> This is severely controlled by the Court of Cassation.<sup>42</sup> On the contrary, the more recent provisions of the Consumer Code (warranty of conformity) apply *de jure* in addition to those of the Rural Code when one party to the sale is a non-professional.<sup>43</sup>

Only seven redhibitory defects are listed in the Rural Code: (1) immobility, (2) lung emphysema, (3) chronic wheezing, (4) crib-biting, (5) ancient and periodic limp, (6) isolated uveite, and (7) pernicious equine anaemia.<sup>44</sup> Another limitation of the Rural Code is the delay for an action. More specifically, the delay for an action of the buyer is only ten days for the five first defects and thirty days for the last two, starting from the date of delivery of the horse to the buyer. Note that these delays are particularly short in comparison with those in the warranty for hidden defects in the Civil Code. It seems that this regime was adopted in a time where

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<sup>37</sup> CODE CIVIL [C. CIV.] art. 2279 (Fr.).

<sup>38</sup> In a law adopted on August 2<sup>nd</sup> 1884, regarding defects which void certain cattle sales.

<sup>39</sup> CODE RURAL [C. RURAL] art. L213 (Fr.).

<sup>40</sup> *Id.*

<sup>41</sup> CODE RURAL [C. RURAL] art. L213-1 (Fr.).

<sup>42</sup> Cass. Civ., March 6, 2001, Bull. Civ. I, No. 65 ; Cass. civ., Jan. 29, 2002, Contrats Concurrency Consumption, 74; Cass civ., Jan. 25, 2005, Gaz. Pal. 2005, 12.

<sup>43</sup> 1999 O.J. (L 171) 12.

<sup>44</sup> See CODE RURAL [C. RURAL] art. L213-2 (Fr.).

protection of the seller's interests from the rural world prevailed over defence of the buyer. Regardless, this regime applies in a straightforward manner because the buyer does not need to prove that the defect is anterior to the sale, or that the defect renders the horse improper for his intended purpose.

#### *D. Civil Code Warranty Against Hidden Defects*

Parties may expressly exclude the limited warranty system of the Rural Code presented above and refer to the general warranty against hidden defects of the Civil Code, which shall then apply in addition to the old warranty system which is valid for only the limited cases listed in the Rural Code. This reference to the Civil Code must be express according to the Jurisprudence of the Court of Cassation<sup>45</sup>, although in some very recent cases, Judges seem to admit a tacit exclusion of the Rural Code, when the objective of the buyer, known by the seller, imposes such conclusion.<sup>46</sup>

The provisions of Article 1641 of the Civil Code shall apply to defects other than those listed in the Rural Code in this situation. According to these provisions, the relevant defect has to be hidden (non-apparent), must render the horse improper to its convened use, and must be anterior to the sale.<sup>47</sup> Note that at this stage, the seller's knowledge or ignorance of the defect is irrelevant.

##### *i. Non-Apparent Defects*

The seller is not liable for apparent defects according to Article 1642 of the Civil Code.<sup>48</sup> But what is an apparent defect? Can a defect be apparent for the professional and non-detectable by an amateur? We shall bear in mind that a non-professional is not legally obliged to recourse to the assistance of a veterinarian at the moment of the sale. Even when the non-professional buyer requests the assistance of a veterinarian, the latter may be unable to detect the defect. This is a domain of particular complexity as seen in the following examples. The courts have acknowledged that articular lesions, which are visible through an X-ray examination, are hidden defects.<sup>49</sup> The same goes for the sterility of a mare where the

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<sup>45</sup> Cass. civ. I March 6, 2001, Bull. civ. I, no. 65; Cass. civ., Cass. civ. I 29 January 2002, commented by M. Leveneur in *Contracts. Conc. Consom Rev.* 2002, at 74.

<sup>46</sup> For two interesting applications, see CA Angers, 13, October 2009, file No. 08/01427, and Cass. civ. November 2009, I 19, Appeal No. 08-17.797.

<sup>47</sup> CODE CIVIL [C. CIV.] art. 1641 (Fr.).

<sup>48</sup> CODE CIVIL [C. CIV.] art. 1642 (Fr.).

<sup>49</sup> Tribunal de grande instance [T.G.I.] [ordinary court of original jurisdiction] Paris, June 21, 2002, Bull., No. 26.

veterinarian had attested to its ability to reproduce.<sup>50</sup> A throat tumour and blindness in one eye have been qualified as hidden defects by courts, and a limp is not systematically regarded as visible.<sup>51</sup> Thus, it is prudent to conclude that apparent defects are rare and that anything that is not obviously apparent may be regarded as a hidden defect.

As mentioned above, the seller is bound by the warranty even if he ignored the existence of the defect.<sup>52</sup> It is important to note that if the buyer argues that the seller knew that the horse was affected by a defect and did not inform him about this situation, the seller will be regarded as a bad faith seller and will be condemned to damages in addition to the normal warranty regime.<sup>53</sup> In a worse-case scenario, the professional seller will be presumed to have known about the defect, and this presumption cannot be rebutted by any evidence to the contrary. In a sense, the seller's bad faith is presumed.

If the seller is aware of any apparent or non-apparent defects, the seller should inform the buyer. In this case, the warranty shall not apply because the buyer was informed. Needless to say, it is preferable that this information is in writing.

#### *ii. Defect That Makes the Horse Improper for the Intended Use*

A defect which makes the horse improper for use is easier to apply. This means that the defect of the horse is such that the buyer cannot use the horse for the normal purpose associated with sales of this kind (such as an auction for race horses or auctions for jumping horses for example) or for the specific use that the buyer indicated to the seller.<sup>54</sup>

#### *iii. Anteriority of the Defect*

The buyer must also present evidence that the origin of the defect is anterior to the sale. This implies recourse to veterinary expertise, and sophisticated techniques are now commonly used for this purpose.<sup>55</sup>

#### *iv. Delay for Action*

According to the ordinance of February 17<sup>th</sup> 2005, the former "short delay" rule, which had given birth to many legal comments, has been

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<sup>50</sup> Cour d'appel [CA] [regional court of appeal] Versailles, May 7, 2004, Bull. IDE, No. 35.

<sup>51</sup> Cour d'appel [CA] [regional court of appeal] Lyon, June 6, 1974, Jurisdata No. 046780.

<sup>52</sup> See CODE CIVIL [C. CIV.] arts. 1641, 1643 (Fr.).

<sup>53</sup> See CODE CIVIL [C. CIV.] art. 1645 (Fr.).

<sup>54</sup> See CODE CIVIL [C. CIV.] art. 1641 (Fr.).

<sup>55</sup> Cour d'appel [CA] [regional court of appeal] Caen, Oct. 3, 1995, Jurisdate No. 044451 (involving sophisticated investigations ordered by the judge for the detection of hypo fertility).

replaced with two-year delay.<sup>56</sup> However, the delay begins to run when the defect is discovered as opposed to the date of the sales contract.<sup>57</sup> Undoubtedly, this delay is particularly long when compared to the very short delay of the Rural Code.

*v. Effects of the Warranty*

The seller of the horse that is affected with a hidden defect shall be bound to reimburse the price paid by the buyer for the horse. However, no other expense may be claimed against the seller<sup>58</sup> unless the buyer brings evidence that the seller knew the defect of the horse. In this case, the seller is liable for damages. Remember that a presumption of knowledge of the defect lies on the professional.

*E. Consumer Code Warranty of Conformity*

Through an ordinance adopted on February 17, 2005, France modified the Consumer Code in order to harmonize its laws with a European Directive relating to some aspects of sales and warranties of consumer goods. After this change, the new provisions were codified in Article L 211.1 and the Consumer Code.<sup>59</sup>

The Rural Code expressly refers to the Consumer Code provisions, which apply in addition to the traditional warranty for redhibitory defects when the seller is a professional and the buyer is a non-professional.<sup>60</sup> This is because the legal basis of the relevant European Directive is in consumer law. Consequently, the occasional seller is not concerned with whether the buyer is a professional or not.

However, the notion of a consumer may lead to some confusion in the equine context. According to three cases, two of which were decided by an appeals court, it seems that a consumer is a person whose main source of revenue is not derived from equine activities.<sup>61</sup> This should not be confused with the expertise of the buyer. In this sense, a professional (an investment banker, for example) who has owned a horse for several years that he trains for jumping competitions will be regarded as a consumer. This is true even if the professional rides the horse himself because the horse was not purchased for the buyer's professional use. The same rules apply if the horse is purchased for his son, even if the son is a

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<sup>56</sup> CODE CIVIL [C. CIV.] art. 1648 (Fr.).

<sup>57</sup> *Id.*

<sup>58</sup> Cass. civ., Mar. 21, 2006, BRDA July 2006, No. 11 and 9.

<sup>59</sup> CODE CONSUMER art. L211-1 – 218-7 (Fr.).

<sup>60</sup> CODE CONSUMER art. L211-3 (Fr.).

<sup>61</sup> Cour d'appel [CA] [regional court of appeal] Limoges, Aug. 9, 2006, Bull. IDE, No. 45.

young professional rider in the jumping circuit. On the contrary, a person who derives his income from teaching children to ride in a small city will be qualified as a non-consumer when buying a horse because this person has its source of revenues in a profession related to the equine industry.

It is notable that the parties to this type of sales contract, to which the provisions of the Consumer Code are applicable, are not permitted to exclude its application by a clause that would either prevent or limit the applicability of these rules.<sup>62</sup>

The warranty regime that is introduced in the Consumer Code is characterised by an obligation of conformity. In other words, the horse must conform to the expectations derived from the contract. Article L 211-5 envisions two different definitions of the conformity. In order to conform, the good, or horse in this situation, must:

(1) be proper for the use usually expected from such good and, if the case arises, correspond to the description given by the seller and possess the qualities which the seller presented to the buyer under the form of sample or model and present the qualities which a buyer may legitimately expect according to the public declarations made by the seller, the producer or its agent, notably in advertising or labelling;

(2) or present the characteristics commonly defined by the parties, or be proper to any specific use sought after by the buyer, which has been communicated to the seller and which the latter has accepted.<sup>63</sup>

This passage shows that the Consumer Code, as well as the European Directive, does not specifically target animals in the least. The legislation concerns all movable assets that are purchased by consumers, such as personal computers and microwave ovens. Domestic animals, which include horses, are qualified as movable assets even if for those who are familiar with horses know that a part of the equine mystery will always escape the borders of appropriation by man. Whatever one thinks about the adequacy of this legislative approach, it is unquestionable that the warranty of conformity now applies to the sale of horses.

One measures the importance of the delimitation of the destination of the horse in the sale contract. This does not correspond well with the oral practices so often observed in the sale of horses.

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<sup>62</sup> CODE CONSUMER art. L211-17 (Fr.).

<sup>63</sup> CODE CONSUMER art. L211-5 (Fr.).

The additional warranty introduced by the Consumer Code creates a presumption that the defects which become apparent within a six month delay from delivery were pre-existent to the sale.<sup>64</sup> This is undoubtedly a major difference from the regime of the Civil Code, where the buyer bears the burden of proving that the defects have their origin before the date of the sale. We should not forget that the horse is a living animal and that the capacities of the sold horse may be modified in the delay of six months. The seller may try to rebut the presumption. The debate between seller and buyer will then probably lead to veterinary expertise.

Once the six month period is over, action by the buyer is still possible, but he then bears the burden of proving the anteriority of the defect. The action of the buyer is possible during two years after delivery of the horse because action under the Civil Code is prescribed two years after discovery of the defect and possibly longer.<sup>65</sup>

The buyer may request either reparations or a replacement.<sup>66</sup> It is obvious that reparation of a horse seems difficult to envision and implies the risk of surgery, which the new owner might not want to take. Replacement is by far the favourite option for a buyer who has a better chance to find a horse compatible with his aspirations from a professional seller. In addition, damages can also be claimed on the basis of the Consumer Code.<sup>67</sup>

Litigation in the equine domain has developed since the application of the new provisions of the Consumer Code. In 2006, only three cases were registered, followed by ten cases in 2007 and fifteen in 2008.<sup>68</sup> Importantly, almost all litigations have been introduced by the buyer before the expiration of the six month delay, some just before that date.

#### *F. Effects of an Internet Sale*

As in a classic sale, the seller must deliver the horse and owes warranty obligations to the buyer.

##### *i. Obligations of the Seller*

With regard to the seller's delivery to the buyer, the Consumer Code provides an obligation for the seller to communicate a maximum delay for delivery of the horse.<sup>69</sup> It is only for sales of a value inferior to

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<sup>64</sup> CODE CONSUMER art. L211-7 (Fr.).

<sup>65</sup> CODE CIVIL [C. CIV.] art. 1648 (Fr.).

<sup>66</sup> CODE CONSUMER art. L211-9 (Fr.).

<sup>67</sup> CODE CONSUMER art. L211-11 (Fr.).

<sup>68</sup> See 2006, Bull. IDE; 2007, Bull. IDE; 2008, Bull. IDE.

<sup>69</sup> CODE CONSUMER art. L114-1 (Fr.).



500€, thus inapplicable in the sale of a horse, that the Consumer Code imposes a maximum delay of thirty days from acceptance by the buyer via a “double click” of the mouse.<sup>70</sup>

As previously mentioned, the non-professional internet buyer is entitled to return the horse to the seller within seven days of delivery. This right is an absolute and it may be exercised without justification. This delay is even extended to three months if the mandatory information set forth in Article L 121.19 of the Consumer Code has not been provided by the professional internet seller.<sup>71</sup> If the horse is returned within the legal delay, the seller is granted thirty days to reimburse the purchase price. In addition to this specific provision, the warranties which benefit the buyer in non-internet sales also apply to internet sales.

### *ii. Obligations of the Buyer*

Here again, the obligations of the buyer are subject to the principles present in an ordinary sale contract. The buyer must take possession of the horse and pay the price. Payment may be made at the moment of the sale through electronic means or at the moment of the delivery.

Let us recall that the internet buyer, like any buyer under French law, automatically becomes owner of the horse from the moment of his acceptance. That is to say that there is no obligation of the buyer to transfer the property under French law. Since risks and ownership are linked, this also means that the risks are transferred to the buyer from the moment of the “double click”, unless a provision of the contract indicates the contrary. It is indeed recommended that he is insured in case the horse dies before delivery.

## II. CONCLUSIONS ON THE GENERALITIES REGARDING THE SALE OF HORSES IN FRANCE

This synthesis of the legal context of the sale of a horse under French law illustrates the evolution of the tension between the equine world and the rest of society. By and large, the sale of a horse is subject to general contract law. However, the specificities of the equine community have been more or less acknowledged by courts: among others, the moral impossibility to obtain a written contract and the consecutive adaptation of the regime of proof, the attempt to avoid the application of the general warranty on hidden defects of the Civil Code to the benefit of the restricted list of redhibitory defects of the Rural Code.

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<sup>70</sup> CODE CONSUMER art. L121-20-3 (Fr.); CODE CONSUMER Reg. R114-1 (Fr.).

<sup>71</sup> CODE CONSUMER art. L121-19 –L121-20-1 (Fr.).

It seems that the last years of the 20<sup>th</sup> century have seen a progressive reduction of the specificities with the introduction of a transversal concept in the debate over equine law: the classical distinction between professional actors and non-professionals. This concept of “professional” remains unclear in its delimitation: who is a professional in the equine community? A professional seller of horses who has no other lucrative activity? No doubt. A professional rider who regularly sells some of the horses that he takes into jumping contests? For sure. The situation is less clear with a non-professional competitor in jumping, or other equine contests, who happens to have owned some horses for many years and has a regular practice of sales contract. Is he not between the previous situation and that of an occasional practitioner who buys his first horse? If this debate is still to be clarified by the courts, the rules that are applicable to professional sellers have been progressively influenced by the evolution of contract law and consumer law. The professional has extended obligations of information, bears a presumption of liability through the Civil Code, and is now concerned by the obligation of conformity deriving from European Union legislation. The simple fact that the sale of a horse is indirectly affected by European legislation seeking a greater protection of consumers clearly illustrates the new situation created by the tendency to develop more professional practices in equine business.

## PART II

### I. INTERNATIONAL CONTRACT FOR THE SALE OF A HORSE

The horse industry is characterised by the very frequent practice of the sale of horses between parties established in different countries. Therefore, an important issue is to determine what law is applicable to an international sale of a horse. The answer to that question is found in the Convention of the United Nations on the contracts of international sale of goods, or Convention of Vienna of April 11, 1980.<sup>72</sup> However, the Vienna Convention is applicable only to international sales between professionals or sales involving a professional buyer.<sup>73</sup> An international sale of a horse for familial use shall not be governed by the Vienna Convention.<sup>74</sup> This latter operation will be governed by other international conventions, but this domain has been less explored and raises some greater difficulties. We shall examine first international sales of a horse between professionals or to

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<sup>72</sup> See generally United Nations: Conference on Contracts for the International Sale of Goods, April 10, 1980, 19 I.L.M. 668 [hereinafter Conference].

<sup>73</sup> See U.S. Ratification of U.N. Convention on Contracts for the International Sale of Goods art. 1(1), Mar. 2, 1987, 52 FR 6262-02 [hereinafter U.S. Ratification].

<sup>74</sup> U.S. Ratification, *supra*, note 73, at art. 2(a).

a professional. We will then investigate the difficulties of an international sale of a horse for familial use in the second portion.

*A. International Sale of a Horse Between Professionals or to a Professional under the Vienna Convention*

The Vienna Convention has been signed and ratified by many countries, among which are the United States of America and France (but not the United Kingdom). Because of this ratification, this international treaty is now a part of these countries' legal systems. More importantly, the Vienna Convention is not a traditional convention adopted to resolve the classic problem of conflict of laws between two states. On the contrary, the Vienna Convention defines the obligations of seller and buyer and creates rules regarding the transfer of risks and remedies in case one party fails to perform its contractual obligations.<sup>75</sup> The analysis presented hereunder shall be limited to a presentation of the fundamental principles of the Vienna Convention in the perspective of the international sale of a horse.

*i. Principles of the Vienna Convention in relation to the sale of horse*

According to Article 1 of the Vienna Convention, the text is applicable to a contract for the sale of goods between parties from different states when the states are contracting states, or when the rules of international private law of a state lead to the application of the law of a contracting state.<sup>76</sup> With regard to the sale of a horse, the question is to determine whether, as a matter of international law, a horse constitutes a good.<sup>77</sup> It happens that the Vienna Convention has excluded some goods from its scope of application, such as transferable securities, bills of exchange, currencies, ships, vessels, hovercraft, aircraft, and electricity. However, animals are not listed in the exclusions.<sup>78</sup> Thus, it seems clear that horses fall within the scope of the Vienna Convention. In addition, the Vienna Convention is applicable also to the sale of semen of horse or to a future horse, since Article 3 envisions the supply of future goods to be produced.<sup>79</sup>

An important element in the cultural context still prevailing in the horse industry in some countries is the free form of the contract. It can be

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<sup>75</sup> See U.S. Ratification, *supra*, note 73, at pmb1.

<sup>76</sup> See U.S. Ratification, *supra*, note 73.

<sup>77</sup> See U.S. Ratification, *supra*, note 73, at art. 1 (providing European Union law regarding the qualification of a horse as a good).

<sup>78</sup> See U.S. Ratification, *supra*, note 73, at art.2.

<sup>79</sup> Conference, *supra* note 72, art. 3(1); U.S. Ratification, *supra* note 73, art. 3(1).

oral or written, and the proof of the existence of the contract may be brought by any means.

As mentioned above, the Vienna Convention is restricted to international sales between professionals or to a professional. The international purchase of a horse for familial use is not governed by the Convention. The case of the international purchase of a horse by a professional but for personal use is more problematic. The Convention contains a provision announcing that it has no vocation to apply in such cases, unless the seller ignored or was not aware before the conclusion of the contract that the concerned professional buyer was buying the horse for his personal use.<sup>80</sup>

*ii. Obligations of the Seller*

The seller must deliver the horse, transfer the property, and deliver the documents. Concerning the delivery, the obligation of the seller shall be limited to delivery of the horse to the first carrier for transmission to the buyer. If the seller has been assigned the mission to organise the transport of the horse, he shall be bound to conclude all necessary contracts of transport of the horse until the agreed place of delivery by the appropriate means and in accordance with the usual conditions for such transport.<sup>81</sup>

The seller also has an obligation to warrant the conformity of the horse under Article 35 of the Convention. The Article, in pertinent part, states that:

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) *Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:*

(a) are fit for the purposes for which goods of the same description would ordinarily be used;

(b) *are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances*

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<sup>80</sup> See Conference, *supra* note 72, art. 2(a); See U.S. Ratification, *supra* note 73, art. 2(a).

<sup>81</sup> Conference, *supra* note 72, arts. 30, 31(a), 32(2); U.S. Ratification, *supra* note 73, arts. 30, 31(a), 32(2).

*show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment.*<sup>82</sup>

It is easy to understand from this passage that it is in the best interest of the buyer to inform the seller on the use he intends to make of the horse. The clearer the intentions of the buyer, the greater the possibility of an action against the seller for non-conformity of the horse. With regard to delay, Article 39 articulates a two-tier rule. First, the buyer must act in a "reasonable time" after the lack of conformity has been discovered. Article 39(1) states that:

The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.<sup>83</sup>

The Convention then fixes a limit of two years after delivery of the horse in Article 39(2):

In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.<sup>84</sup>

One can infer from these portions of the Vienna Convention that the final decision regarding the period that the buyer has to bring an action against the seller for lack of conformity of the horse is for the national judge to decide, as long as it falls under a maximum of two years after delivery. The seller, who will not execute his obligations, can be constrained by the buyer to pay damages or replace the horse. It is worth noting that the possibility for nullification of the sale is limited by the Vienna Convention.

### *iii. Obligations of the Buyer*

The main obligations of the buyer are to pay the purchase price and take possession of the horse. Article 58.3 of the Vienna Convention

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<sup>82</sup> Conference, *supra* note 72, art. 35 (emphasis added); U.S. Ratification, *supra* note 73, art. 35 (emphasis added).

<sup>83</sup> Conference, *supra* note 72, art. 39(1); U.S. Ratification, *supra* note 73, art. 39(1).

<sup>84</sup> Conference, *supra* note 72, art. 39(2); U.S. Ratification, *supra* note 73, art. 39(2).

provides the buyer with the opportunity to have the horse examined by a veterinarian before paying the purchase price.<sup>85</sup>

Regarding the court that is invested with the authority to decide the merits of an international horse sale, between two professional parties, as is the case when the Vienna Convention applies and absent a specific clause in the contract that designates a specific court, jurisdiction is proper where the defendant resides.<sup>86</sup> For litigation between non EU parties, this matter is decided by international private law.<sup>87</sup> However, two professionals may designate the court in advance in their contract and this election is generally held to be valid.<sup>88</sup>

## II. INTERNATIONAL CONTRACTS WITHOUT APPLICATION OF THE VIENNA CONVENTION: INTERNATIONAL SALE OF A HORSE FOR PERSONAL USE OF THE BUYER

The internationalization of relations in all jurisdictions makes it highly probable that the sale of horses in which one or both parties to the contract have a non-business purpose may have an increasingly international character. Since the Vienna Convention is not applicable in such a case, the contract may be governed by either an international convention, such as the Hague Convention, or a new European Regulation, such as Rome I.<sup>89</sup> The Hague Convention, adopted on June 15, 1955, has been ratified by only eight countries, which include France but not the United States.<sup>90</sup> The Hague Convention will not be discussed in this Article because it is of little practical interest.

On the other hand, Rome I, or Regulation (CE) n° 593/2008 on the law applicable to contractual obligations was jointly adopted on June 17, 2008 by the European Parliament and the Council of Ministers of the European Union. This Regulation replaced the Convention of Rome that

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<sup>85</sup> See Conference, *supra* note 72, arts. 53, 54, 60, 58(3); U.S. Ratification, *supra* note 73, arts. 53, 54, 60, 58(3).

<sup>86</sup> Council Regulation 44/2001, On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, art. 16(2), 2001 O.J. (L 12) 1, 7 (EC) (Official Journal of the European Union CD-ROM, European Communities, Jan. 16, 2001), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:012:0001:0023:EN:PDF> [hereinafter Regulation].

<sup>87</sup> Regulation, *supra* note 86, art. 2(2).

<sup>88</sup> See Regulation, *supra* note 86, art. 17.

<sup>89</sup> See Generally Parliament and Council Regulation 593/2008, On the Law Applicable to Contractual Obligations (Rome I), 2008 O.J. (L 177) 6 (EC), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:EN:PDF> (last visited Oct. 31, 2009) [hereinafter Rome I]; Convention Relating to the Settlement of the Conflicts Between the Law of Nationality and the Law of Domicile, June 15, 1955, [http://www.hcch.net/index\\_en.php?act=conventions.pdf&cid=35](http://www.hcch.net/index_en.php?act=conventions.pdf&cid=35) (last visited Oct. 31, 2009).

<sup>90</sup> Hague Conference on Private International Law, Denmark, Finland, France, Italy, Norway, Sweden, Switzerland, and Niger, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=31](http://www.hcch.net/index_en.php?act=conventions.status&cid=31) (last visited Oct. 31, 2009).

was adopted on June 19, 1980 and applies to contracts concluded after December 17, 2009.<sup>91</sup> Contrary to the Vienna Convention, the object of Rome I is not to define the obligations of the parties to an international contract. Instead, it is intended only to designate the law applicable to the contract. Since the Regulation is by definition directly applicable, the twenty-seven member states of the European Union have agreed on a common method of reasoning in order to designate the law applicable to an international contract. Even more remarkable, the Regulation has a universal scope since the law that is designated at the end of the process may also apply to non-member states.<sup>92</sup>

Rome I allows the parties to choose the law that they want to apply to their contract.<sup>93</sup> For example, in a contract for the sale of a horse involving a French seller and an American buyer, the parties may choose to be bound by the law of France, Kentucky, or Germany or even Switzerland. The only limit to this freedom of choice is found in Article 3.3 and occurs when the parties designate the law of a country which is different from the country in which the elements of the contractual relation are situated. In such case, the choice of the parties shall not prevent the application of the mandatory provisions of the law of this country, when the law of this country does not permit any derogation to its application.<sup>94</sup>

If the parties have not designated a law to govern the contract, Rome I provides the following for an international sale contract in Article 4.1: “a contract for the sale of goods shall be governed by the law of the country where the seller has its habitual residence.”<sup>95</sup> Let us assume the seller resides in France and no choice of law has been expressed by the parties. Under Rome I, French law applies to the contract, which means that French warranties apply.<sup>96</sup> Thus, it is well advised for his attorney to suggest to him that he designate another law, such as the law of the buyer, if it is more favourable to his own interests. On the contrary, the buyer’s well-informed American or German lawyer might concede the choice of French law if it is in the best interests of his client. In addition, Article 4.1.g of Rome I provides that “a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined.”<sup>97</sup> Certainly, this provision is in the best interest of foreign buyers coming to an auction in a place such as Deauville in Normandy, France, for the reasons mentioned above.

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<sup>91</sup> Rome I, *supra* note 89, arts. 24, 28.

<sup>92</sup> Rome I, *supra* note 89, art. 2.

<sup>93</sup> Rome I, *supra* note 89, art. 3(1).

<sup>94</sup> Rome I, *supra* note 89, art. 3(3).

<sup>95</sup> Rome I, *supra* note 89, art. 4(1)(a).

<sup>96</sup> See Rome I, *supra* note 89, art. 4(1)(a).

<sup>97</sup> Rome I, *supra* note 89, art. 4(1)(g).

As explained above, these provisions apply to an international sale between two non-professionals or for the familial, or non-professional, use of a professional buyer. We must now examine the not so exceptional case of the international sale of a horse from a professional seller to a non-professional buyer. Rome I envisions this situation and provides additional protection to the non-professional buyer under this circumstance.

According to Article 6.1, the contract is:

governed by the law of the country where the consumer has his habitual residence, provided that the professional:

- (a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
- (b) by any means, directs such activities to the country or to several countries including that country and the contract falls within the scope of such activities, and the consent falls within the scope of such activities.<sup>98</sup>

Thus, this provision reserves the application of the law of the country where the buyer has its habitual residence. This is an inversion of the principle discussed above, when both parties are non-professional (law of the seller). Note that this benefit granted to the non-professional buyer of the horse vis a vis a foreign professional is limited to the condition that the professional has conducted business in the consumer's country and the contract falls within the scope of such activities.<sup>99</sup> This rule may be explained by the consideration of a non-professional or consumer getting in touch, at his own initiative, with a foreign professional located abroad who would no longer deserve the protection of his legal system. One may regret this provision because it is difficult to determine how one can establish, with certainty, who initiated the business relation. In the same direction, the professional's website regarding the sale of horse is, by its nature, accessible from all over the world. Is this a sufficient condition for 6.1.b to find application? Could a Kentucky professional horse seller be bound by the laws of France simply because his website with a French version developed to the attention of francophone prospects, draw the attention of a French consumer who happened to buy a horse? This does not appear to be excluded by the European Regulation.

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<sup>98</sup> Rome I, *supra* note 89, art. 6(1).

<sup>99</sup> *Id.*



However, Rome 1 grants the parties, even in a contractual relationship between a professional seller and a non-professional or consumer, the possibility to designate a law applicable to the contract. But if they so decide, this option may not deprive the consumer of the protection to which he is warranted by the provisions of the law which would have been applicable in the absence of choice. With this regard, we must bear in mind, in the case of a French consumer-buyer, that the provisions of the French Consumer Code may not be set aside by contract, which is in contrast to the Civil Code warranty which may be contractually excluded. This would be the case even if, for example, the laws of Kentucky had been designated by common agreement of both parties.

#### *A. Short Look at International the Internet Sale of Horses*

There is no international regulation specific to an internet sale. One should apply the provisions of the conventions and European regulations quoted above to the international internet sale of a horse. In particular, although the French law on internet commerce provides for the application of the law of the country where the seller has its habitual residence or implemented its head office, provisions of art 6.1 of Rome 1 shall apply to an internet sale between a professional and a consumer situated in a European country.<sup>100</sup> In such a case, the contract is governed “by the law of the country where the consumer has its habitual residence.”<sup>101</sup> This will be the case even if the contract contains a provision in favour of the law of the seller. The application of the laws of the seller will thus apply to professionals only. It must be noted that they may decide in the contract to designate the law of another country.

With regard to the designation of a court, it must be recalled that only professionals may designate a court by contract. If such designation were made in a contract between a professional and a non-professional, the clause would not be enforceable against the non-professional party. If the contract does not contain a provision for the designation of a court, Article 16.1 of Reg.44/2001 provides that the consumer may bring proceedings against the professional party in the courts of the country in which this party is domiciled, or in the courts of the country where the consumer is domiciled.<sup>102</sup> However, Article 16.2 of the same regulation provides that proceedings against the consumer may be brought only in the courts of the country where such consumer is domiciled.<sup>103</sup>

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<sup>100</sup> *See Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Regulation, *supra* note 86, art. 16(1).

<sup>103</sup> Regulation, *supra* note 86, art. 16(2).

### III. CONCLUSION OF PART II ON INTERNATIONAL CONTRACTS FOR HORSE SALES

It is remarkable that the evolution noted in Part I about French equine law can apply to international contracts. The applicable international conventions contain rules which apply mainly according to the professional or non-professional character of the parties, with applicable rules or designation for the laws of a different country. Some uncertainty prevails in these domains and is characterised by a great degree of complexity.

One may advance an argument in this complicated area: abandoning the benefit of one's law in a negotiation with the other party may be a tactical move in the best interest of the party. Even if the laws are protective of the other party's interest, the other party may prefer the supposed protection of its own national laws, which he knows. This paper did not develop in detail the related issue of the designation of the court or arbitration authority invested with the task of deciding the case on its merits. In this domain, much should be added, ranging from the degree of knowledge or experience in equine law, to the readiness or reluctance of local judges to enter into the study of foreign law, costs of foreign litigation, translation, etc. This point is especially relevant for non professionals engaged in the international purchase of horses.

