

A GUIDE TO BUYING A HORSE

There are features of a horse's structure, functioning and behaviour, which cannot be detected by the buyer, the advisor or the examining veterinary surgeon. The vendor may know of them and he has a moral and legal obligation to honestly answer pertinent questions concerning the "goods for sale". Conversely, it is the responsibility of the respective purchaser directly or through the adviser to ask about those features not specifically expressed or implied in the description of the horse or vouchsafed in any subsequent negotiation.

This is a three part guide for prospective purchasers, especially novices.

Part 1: What to do before trying the horse and negotiating the sale.

Part 2: A questionnaire for signature by the vendor (the seller) providing certain warranties as to the horse's previous health and behaviour.

Part 3: Condensed legal facts for the horse buyers.

Part 1

So you are thinking of buying a horse –

What sort of horse?

Consult someone with good equine knowledge and experience especially of riding.

Before you go any further, consider very carefully the following –

- Do you really think that you should buy?
- Would it not be better continuing to hire at the local good riding school and further improve your horsemanship and stable management? In time, schools can mount you on something "better" than the safe old plug.
- There is nothing like the experience of riding different horses.
- Have you got the time, money and facilities to ride sufficiently regularly and to look after it satisfactorily for your and your horse's welfare?

If still determined decide –

- What is your capability as rider? Be honest and modest; seek a skilled opinion if in doubt.
- What are your aspirations, now and in the future?
- How much can you afford, remembering that capital cost is by no means the bottom line.

Then with experienced help, "describe" the horse you are seeking –

- Breed or type, sex, age, height; these combined with a horse's conformation and its approximate weight will determine what your weight and kind of riding requires.
- What sort of experience do you require the horse to have?

- Your own temperament as well as ability and aims must be matched with a suitable horse. If you are beginner, do not go for a young, green animal and avoid the “glossy magazine” appeal of the Thoroughbred. Better a cobby schoolmaster who will teach you.

Where do you find this horse? –

- First try your riding school, its owner and your instructor. Your favourite hireling may well be put on the market or the people there could know of something or be commissioned to find one.
- Word of mouth or the “friend of a friend”. Much useful information can be available in such circumstances, lessening the risks often associated with a private purchase.
- Study the advertisements in the press. Local papers often have a ‘Horse and Rider’ section, you never know and you are not looking for a Badminton mount – yet!
- Of course, there is the equestrian press but do not get carried away with such descriptions as “potential” or “could make”, etc. Have an expert read between the lines. Of course, there are good buys but rarely are there bargains. Do not “just try this one” if it does not fit your list of requirements. Have patience.
- Visit local auction yards to get the “feel” of the current trade trends in the first instance. Do not be tempted to buy at an auction as expert advice is essential, buying at auctions is not for the novice.
- The British Horse Society could provide information on the established network of pony clubs and riding clubs within which many good horses and ponies are bought and sold. It may be helpful to ring your vet for a general chat about buying a horse as he may know the local scene.
- Be introduced to local reputable dealers and do not be afraid to use them, their reputation is their living. They are not in the business of selling just one horse to you but hopefully to your friends as well and to you another time. They need your goodwill and most will give you a fair deal often without the need to employ an intermediate expert and most will give you professional advice. They will listen to your requirements and to your estimate of yourself as a horseperson. Do tell them the truth! Very few will deny you help or time then look elsewhere.
- It should be determined if the dealer is selling as the actual owner of the horse or whether he is just selling it through his yard as an agent for another person who is the actual owner. If the latter, he should be willing to disclose who the actual owner is, you have the right to know.
- Since most first contacts will be by telephone, now is the opportunity to find out as much as possible before wasting further time and money in travelling to see a horse which is unlikely to suit you and/or is so defective in other ways as to make it of unacceptable quality, in the wildest sense. First state your gender, age, experience, ability and hopes. You may be told right away that this horse is not for you. If it sounds hopeful ask, unless already advertised, the price, does include VAT and is it negotiable if your capital limit is not quite up to it. Is it open to reasonable trial by yourself and possibly an expert rider with what facilities for cross-country,

show track and road riding? Is it open to veterinary examination, blood tests and other specialised techniques such as X-rays etc?

- Next should follow a series of questions concerning the horse's personal details. The following is a suggested list of important questions that you ask the seller to answer. It is important to obtain full and frank answers. Be very wary of answers such as "don't know".
 - a) Name and address of legal owner
 - b) Name and address of dealer acting as agent (if any)
 - c) Address of stables from where horse is sold and can be seen
 - d) Name and address of breeder and/or previous owner
 - e) How long in present ownership?
 - f) Reason for sale?
 - g) What work has it done (e.g. Hunting, Eventing etc.)?
 - h) Is it fit enough to be strongly exercised?
 - i) Has it any BHS Horse Trials point, BSJA winnings etc.?
 - j) Has insurance ever been refused on this horse
 - k) Is it insured now?
 - l) Has a claim for loss of use ever been made against insurance for this horse?

Make a careful note of the answers given and the name of the person who gives you those answers. If it is not the actual owner of the horse, you should ensure that you go through the answers given to you with the owner when you go to see the horse to ensure that you have been given the correct information. Tell the vendor that you are following the recommended BHS guidelines for horse purchase and that you will be using their recommended questionnaire to which the vendor's signature will be required should the horse prove suitable. You should also briefly run through the questions on the questionnaire with the vendor (it is not necessary at this stage to obtain comprehensive answers, the time for that is when you have seen and tried the horse and decided that it is the one for you). Thereafter, all being well, an appointment can be made for you and your adviser to visit and try the horse. Once you have decided to buy, it is advisable to consult your veterinary surgeon to carry out an examination and obtain a certificate; this may also be required for insurance purposes.

Part 2

The purpose of the questionnaire, provided with these notes, is for you to obtain sufficient information about the horse to enable you or your adviser to make a basic judgement as to the suitability of the horse for your purposes. It is not intended to be definitive or conclusive.

Not only are horses sold as "goods" but they are effectively second-hand goods. From birth they are constantly exposed to trauma, infection, wear and tear (degeneration). Incorrect management and use will often exacerbate these natural hazards. Changes in structure and functioning, which can

follow, may reduce use and potential and/or predispose to further damage. Many of these changes do not necessarily show outwardly even at “clinical” veterinary examination let alone to the non-veterinary advisor but their historical presence may be known to the vendor. A private seller is not legally required to disclose these unless he is specifically asked about their possible presence in which case he must obviously answer truthfully. The primary purpose of the questionnaire is to discover as much as you can about the horse’s previous history.

In such private sale the buyer, by “caveat emptor” (let the buyer beware) has the responsibility to ensure that the horse he is buying is suited to his requirements and is in good health. The Sales of Goods Act 1979 states that there is no implied condition or warranty about quality or fitness for any particular purpose. However, this does not apply in the case of a vendor selling in the course of business, e.g. a dealer. In these circumstances, the dealer must ensure that the horse is of “saleable quality”. Very briefly, this means that the onus is upon the dealer to ensure that the horse he is selling to you is suitable for your stated requirements and is fit and in good health (see **PART 3**). Thus a purchaser openly buying from a dealer would expect to be told “this one is not for you” or, more specifically “this one bolts” (perhaps more euphemistically “takes a strong hold”) or “this one rears on occasion if held back” (perhaps “tends to come up front”). Should a dealer tell you these things or point out to you any other defects in the horse, but you still insist on buying, there will be no come back in law on the dealer because he has drawn these defects to you attention. However, if the dealer did not draw these defects to your attention you have recourse to the law. **This is so even when the dealer may not have known that the horse had these defects.**

By completing the questionnaire and obtaining the vendor’s signature thereon, the vendor (whether he dealer or a private seller) is giving you a warranty relating to those matters. It is important that, when completed, the questionnaire is retained by you in case of any later problems.

Many of the suggested questions deal with matters that are not apparent on inspection either by you or your independent adviser and are also outside the scope of a routine veterinary examination. As such, you cannot and must not rely on your independent adviser or veterinary surgeon to find them out for you. Because of “caveat emptor” described earlier, it is even more important to ask and obtain answers to such questions when buying from a private seller.

The completed questionnaire should be discussed with your veterinary surgeon who will wish to inspect it when he carries out his examination. The questionnaire is designed to ascertain a general description of the horse, its medical history and any possible temperament problems.

- **Medical History:** This is to ascertain if the horse has a previous injury or illness, or has any seasonal disease, which may not be present at the time of sale. If you have any doubt about the answers given to these

questions, you should seek explanatory advice from your veterinary surgeon either before or after seeing the horse.

- Temperament and Behaviour: Horses are living, second hand goods and unpredictable ones to boot. A horse that goes well for one rider, which relates well to one groom, which has settled well in one establishment, may not do so when environment and management change and circumstances such as age, feeding, fitness and work requirements change. Riding, even hacking, can be a dangerous sport and accidents do occur. It must be understood that even when a dealer does his best to match his horse's temperament and ability to a prospective buyer's, the deal may not always "nick". The law takes this into account and will not penalise the vendor in these circumstances. However, it is important to try to find out as much about the horse's temperament as you can. This section also deals with bad manners or vices. The latter word is often unfair and the blame need not originally lie with the horse. Moreover, many problems can be "gentled" out of the horse even by a novice who has time, patience and the "feel" and who is expertly guided. There is, however, no moral or logical excuse for putting a new owner into this situation unawares. There is no such thing in English Law as a "declarable vice" despite what many people may tell you.

Remember, the private seller is responsible only for what he states in his original description or in answer to specific questions. The dealer is at all times implying that his goods are of saleable quality and fit for purpose required and not all so called vices render horses unsatisfactory or unfit. Unusual or peculiar behaviour, especially in the stable have more recently been termed stereotypes; these are thought to be aberrant behaviour patterns associated with psychoneurotic upset particularly in higher performance animals and are OFTEN precipitated by environmental and use changes. Consequently it is difficult without independent evidence to prove that they were active before purchase. Their importance is to some extent debatable. What is even more arguable is whether they are "catching". Whatever that risk may be, many livery yard owners will not have them in their premises. There is also the question of resale value. These stable stereotypes are listed in question 13 and the problem in law is proving that any or all of these make the horse unsatisfactory or unfit. In 1939 a court gave a definition of a vice (or stereotype) as a defect in temperament which makes the horse dangerous or which diminishes its usefulness, or a bad habit which is injurious to its health. It is arguable that some of the behaviour patterns recognised by horsemen as vices do not fall into this legal definition.

Part 3

CONDENSED LEGAL FACTS FOR HORSE BUYERS

CONTRACTS

The sale and purchase of a horse involves the formation of a contract. A contract is a joint agreement between the buyer and seller who each promise certain things. Providing that the legal requirements for the formation of a contract exist then the law will enforce these agreements.

The law treats horses as “goods” and as such is a statutory provision governing the sale of goods – **The Sale of Goods Act 1979** (“the Act”). The Act has several implications for those both buying and selling horses. Firstly it defines a contract of sale of goods as:

“A contract by which the seller transfers or agrees to transfer the property in goods to the buyer for money consideration, called the price”

Quite simply this means that if Mr.X agrees to sell his horse to Miss Y for £2000 then a contract for sale of goods has been created. These contracts for sale may be either verbal, in writing or partly verbal and partly in writing.

The Act then gives different names to two types of transaction:

- a) “Where under a contract of sale the property in goods is transferred from the seller to the buyer, the contract is called a sale”
- b) “Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell”

In the case of transaction (a), the transfer of the horse from Mr. X to Miss Y for £2000 is called a sale. In the event that Mr. X sells his horse to Miss Y for £2000 subject to Miss Y receiving a satisfactory veterinary certificate then this would be transaction (b), and would be called an agreement to sell. If Miss Y’s veterinary surgeon could not issue a satisfactory certificate because the horse was in some way defective, there is no obligation on Miss Y to buy if her veterinary surgeon issues a satisfactory certificate then she must buy the horse or be in breach of contract.

WHAT IF A HORSE IS MISDESCRIBED?

Most people thinking of buying a horse will first scan newspaper and magazine “for sale” columns where sellers will most probably place a description of the horse they are selling.

For example the following descriptive advertisement could appear:

“Bay Tb gelding, 8yr old, 16hh hunter”.

Section 13 of the Act says that where there is a sale of goods by description, there is an implied condition that the goods will correspond with the description. Therefore this advertised horse **must** be a bay, Thoroughbred, properly castrated horse, born 8 years previously and now standing 16hh. It must be able to go hunting i.e. it must transport to the meet, go across country in company and with hounds and have no defects, which would render it unsuitable as a hunter.

In the event of a purchaser buying such a horse unseen (relying upon the description given by the seller) and the horse is subsequently found not to

meet the description i.e. it is only 15hh or it is a 10 year old, then the buyer is entitled to reject it.

A slightly more complicated situation arises if the buyer has seen the horse before he buys it. In this situation the buyer can only reject the horse if the deviation from the description is not apparent upon that inspection, for example the horse is not a gelding but is a rig.

Descriptions are not confined to advertisements they may be verbal or in some document handed to the buyer by the seller. Provided that the buyer has relied upon this description in his decision to buy the horse, then any mis-description may entitle the purchaser to reject it.

BUYING FROM A DEALER OR PRIVATE INDIVIDUAL – ARE MY LEGAL RIGHTS DIFFERENT?

The answer is yes and the difference is set out in the Act.

a) PRIVATE INDIVIDUAL

Section 14(1) of the Act states:

“There is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract of sale”.

Therefore, the onus is placed on the purchaser to ensure that what he is buying is what he wants and expects. This is known in law as “Caveat emptor” – ***let the buyer beware***. If the buyer does not get what he wants or expects because he has failed to make the proper enquires, then that is his bad luck and the law will not assist him, unless of course he has been relying upon a mis-description (see above). There is no duty on the seller to tell the purchaser about any defects or problems with the goods he is selling or whether those goods will be satisfactory for the buyer’s requirements unless he is specifically asked about their possible presence. There is no special protection for foolish or un-knowlegeable buyers. Therefore, if a horse is purchased as a show-jumper in response to an advertisement merely saying “Horse for sale”, and the buyer asks no questions as regards to the horse’s suitability as a show-jumper, there is no come back on the seller if the horse will not subsequently transport to the venue, enter the arena or jump coloured poles.

Buyers must be careful to ensure when buying horses from private individuals that they find out as much about the horse as possible before they buy.

Remember – BUYER BEWARE!

b) DEALERS

Section 14(2) of the Act states:

“Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality...”

Section 14(3) of the Act states:

“Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known...to the seller...any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose...”

In a nutshell, this means that a horse sold to you by a dealer (or anyone else who sells in the course of a business – see below) must be competent, capable and fit to do what you want it to do provided that you have made it clear to the seller exactly what you want the horse to do. The horse must have no defects which render it unsuitable, whether you have specifically asked about them or not. **This is so even if the dealer did not know that the horse had these defects.**

If, however, a dealer brings a horse to your attention prior to sale, you cannot rely upon those defects later to say that the horse was not of satisfactory quality. However, you may be able to claim that those defects render the horse not fit for the purpose for which you required it, provided that the dealer knew for what purpose you were buying the horse in the first place. As an example, should a dealer tell you that a horse has bowed tendons but that this will not affect its ability to perform as the show-jumper you require, then subsequently goes lame after competitions because of those tendons. You can claim that the horse was not fit for the stated purpose, despite the dealer having drawn them to your attention.

However, the situation can be complicated by the fact that the law says that even a dealer will not be liable for unsatisfactory goods if the buyer inspects the horse (either by himself or with his advisor – veterinary or otherwise) for specific defects and fails to see any which should have revealed by that inspection. Quite simply the rule must be – **if you do not know what you are looking for, do not look at all.** Tell the dealer that you are putting yourself in his hands completely.

It can therefore be seen that the law affords a buyer more protection if he buys from a dealer than if he buys from a private seller because the maxim becomes “caveat venditor” – **let the seller beware.** The law places the onus upon the seller to provide the buyers with what he (the buyer) wants.

c) AUCTION SALES

Buying at auction is dangerous for the beginner and expert help must be sought. Sales are conducted under differing “condition of sales” which are printed in the sale catalogue. These must be studied carefully because when you bid for a horse you are agreeing to those conditions. A beginner who bids and buys at auction without expert help will probably only have himself to blame if a mistake is made.

WHAT IS THE DIFFERENCE BETWEEN A DEALER AND A PRIVATE INDIVIDUAL?

A dealer, as referred to by these notes, is someone who sells horses as the whole or part of his business. Therefore, for example, a riding school owner who occasionally sells horses that have been used in the riding school, would be a dealer for the purpose of these notes.

A private seller is someone who is selling a horse not in connection with any business. For example a person who keeps one or two horses for their own pleasure and decides to sell one of those horses would be a private seller.

WHAT IF THE HORSE I HAVE BOUGHT TURNS OUT TO HAVE BEEN STOLEN?

This can be a very complicated situation legally. As a very basic rule, if a buyer innocently purchases a stolen horse either from a dealer or from a private individual, that buyer does not have the right to keep the horse and it must be returned to the rightful owner. The buyer would then have a remedy against the seller of the horse.

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