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What is Merchant Status and Why is it Important in Equine Law?

In equine law the determination of whether a person has merchant status will determine how the attorney handles their client's case. Whether or not a person is considered a merchant will give the attorney an understanding to the rights and duties needed in order to properly help their client to succeed when a dispute arises. Merchant status is granted to individuals that meet the requirements of a merchant. In *Prenger v. Baker* the court noted that the requirement for a merchant is that the party "deals in goods of the kind." Generally this is interpreted to mean that one who is engaged in regularly selling goods such as horses is considered a merchant.

The Uniform Commercial Code (UCC) Article 2 governs the sale of goods. Horses are a moveable possession therefore they are considered a good. Not only is the physical body of a horse considered a good, but also the partial interests as well. It is important that a seller of horses be able to successfully match a horse to the buyer's needs especially if the seller has merchant status. Horse sellers that only occasionally sell horses are not considered merchants. Instead they are referred to as hobbyist. Horse sellers that earn a substantial amount of their income from frequently selling horses are more likely to have merchant status (Smith, 2010). An example would be Gene Riegler from *Sessa v. Riegler*. In *Riegler*, the court classified Riegler as a merchant with merchant status because he buys, sells, and races horses for a living.

Merchant equine sellers have to establish a warranty of merchantability and a warranty of fitness for a particular purpose. A warranty of merchantability is the merchant's promise that the goods (the horse) are able to do what the buyer requires it to do and that there is nothing wrong with said goods (the horse). A warranty of fitness for a particular purpose is the merchant's promise that the goods (the horse) being sold is fit for what the buyer needs it to do (Kropp et al., 1991). In *Sessa v. Riegler*, Sessa brought suit against Riegler for breach of express warranty and implied warranties after the horse was found to suffer from tendinitis. The court noted the horse in question was reasonably fit for the purposes of horse racing since the tendinitis is a temporary ailment without long term effects.

A seller that is deemed to have merchant status must be able to satisfy the statute of frauds which requires that contracts for the sale of goods valued at \$500 or more be in writing. An exception to this is the merchant's confirmatory memo. Under this exception the merchant may use their own writing to satisfy the statute of frauds against the other party. However, this only applies if both of the parties are merchants,

the writing states that the parties had a prior oral agreement, and so long as the recipient does not object in writing within ten (10) days (Twomey and Jennings, 2011). In *N.K. Parrish, Inc. v. Navar*, Parrish sued Navar for breach of three (3) contractual agreements. There were multiple telephone conversations regarding the sale of grain to Navar. After a portion of the grain was delivered to Navar he wrote Parrish and cancelled the contracts. The court recognized that prior oral or telephonic agreements may be frequently transmitted throughout the course of a business transaction. In the event of litigation so long as a merchant meets the requirements needed for the merchant's confirmatory memo the court will decide whether or not the confirmatory memo is an acceptable form of a contract in writing.

In order for merchants to have merchant status they must meet the requirements of being a merchant. Therefore, "merchant status" only pertains to those merchants that frequently buy or sell goods of the kind. Within the equine industry they must earn a substantial amount of their income from the frequent buying or selling of horses. In equine law merchant status is important because it helps to dictate to the attorney just how they will proceed with their client's needs if a dispute arises during the process of buying or selling a horse. If the merchant is selling to a non-merchant then they are viewed as having a heavier responsibility towards the buyer and they must provide a warranty of merchantability and a warranty of fitness for a particular purpose. If they are selling to another merchant then there is more leeway between the merchant's rights and duties.

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Prenger v. Baker, 542 N.W.2d 805, (Iowa 1995)

Smith, L. C. (2010). Buying, Selling and the Risks of Litigation. *The Horse Gazette*. Retrieved from <http://lisasmithlaw.com/media/EquineBuyingSelling.pdf>

Sessa v. Riegle, 427 F. Supp. 760, 764 (E.D. Pa. 1977)

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