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The worlds of art and law seem far apart, but in the international, digital age they are inevitably linked. The experts at LALIVE provide insight into the key legal issues affecting the industry

THE LEGAL PICTURE

With international dealing, online sales, complex restitution cases and issues of provenance shaking up the art market, a collector may require a good lawyer more than ever.

So what are the main legal issues affecting the art world at the moment? Sandrine Giroud, an art lawyer and litigator at LALIVE, has dealt with many cases of provenance, authenticity and title issues. “Restitution claims continue to get traction”, she tells us, “as the new generation of heirs of art collectors whose assets were looted during World War II want to recover what belonged to their families. In addition, we also see new claims raised by former colonies, in particular African states, for the return of artefacts in their countries of origin.

“The increased use of art as a financial investment and art-secured lending have also given rise to positive new expectations from art collectors and investors regarding the regulation of art market conduct and in particular price manipulation, anti-competitive behaviours and undisclosed conflicts of interest.

“And events in recent years have given rise to new legal risks impacting art transactions, such as money laundering or terrorist financing, as highlighted by the UN Security Council banning all trade with Syrian antiquities considered a major source of income of the Islamic State.”

REGULATION

So is the art market likely to become more regulated in response to questions around transparency and authenticity? Sandrine Giroud believes that “Maintaining trust and credibility in a market which has discretion at its core without undermining the commercial interest of the industry and promoting fair and efficient remains a challenge.

“The Fifth EU Money Laundering Directive has brought art dealers and auction houses into the regulated sector for anti-money laundering purposes, and the industry’s own Responsible Art Market Initiative helps art market players identify risks and address them practically and adequately.”

As to the question of whether new technologies such as blockchain can change legal

approaches to provenance and ownership, art law and arbitration specialist Teresa Giovannini says: “New models for art and risk management are emerging as a result of technological innovation including blockchain, tagging technology or the development of title registers. Several art start-ups are already building applications based on blockchain. The challenge will however be to establish and use similar standards to ensure the widespread use of such tools.”

“Art work as part of an estate can be an important source of potential conflicts”

- Werner Jahnel, LALIVE

PLANNING

This question may assume more significance when put in the context of estate planning. In the words of estate planning lawyer Werner Jahnel: “Experience has shown that art work as part of an estate can be an important source of potential conflicts and endless and costly litigation.”

Problems can arise, he explains, when the potentially diverging interests of heirs, their lack of knowledge of the specific collection and the world of art in general, clash with delicate issues of legal, administrative, fiscal and logistic nature.

“In this respect”, Werner Jahnel explains, “the collector’s vision and objectives are the

core of any decision regarding the structuring of a collection. They may include preserving the collections’ unity, ensuring a regular income for surviving family members, contributing to an artist’s legacy or pursuing an exclusive philanthropic goal.

“From a legal standpoint, depending on where the collection and the collector are located, different legal options might be available. In that regard, the law under which the estate falls is determining to identify the best suited legal structure to host the collector’s needs.

“The applicable law and tax implications will form the basis for the decision of whether the collection should be transferred to heirs during the collector’s lifetime, whether the transfer should be in a will or whether the collection should be held through a legal vehicle such as a company, trust or foundation, or even to give it away to a charity or a museum.”

Thorough inventory and regular appraisal, he suggests, is key in limiting disputes.

BREXIT

And, for the UK, there is the inevitable question of the legal position of art collectors regarding Brexit. Teresa Giovannini believes that “Despite the insecurity surrounding Brexit, recent reports have shown that the UK has regained its position as the second largest art market (around 21 percent) after the US (approximately 44 percent) and before China (around 19 percent). It is far ahead of other European art market centres such as France and Switzerland. Art transactions to and from the UK are largely extra-EU trade, minimising the impact of post-Brexit trade policies; but such policies will impact those businesses in Europe which rely on supply (and sales) from the UK”.

So, some uncertainty remains, but there’s good news on art world relations between the UK and Switzerland, as Teresa Giovannini explains: “Switzerland, as a non-EU member, wishes to ensure that existing mutual rights and obligations will continue to apply post-Brexit and has put in place a “Mind the Gap” strategy providing for the smooth continuation of Switzerland and the UK’s bilateral relationships.”

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