

Art Law

Contributing editor
Pierre Valentin



2018

GETTING THE
DEAL THROUGH

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Pierre Valentin

Constantine Cannon LLP

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Preface

Art Law 2018

First edition

Getting the Deal Through is delighted to publish the first edition of *Art Law*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Pierre Valentin of Constantine Cannon LLP, for his assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
April 2018

France

Jean-François Canat, Line-Alexa Glotin, Philippe Hansen and Laure Assumpção

UGGC Avocats

Buying and selling

1 When does ownership of art, antiques and collectibles pass from seller to buyer?

Ownership of art, antiques and collectibles passes from seller to buyer as soon as they have agreed on the artwork to be sold and on its sale price. This is the case even if the art, antique or collectible has not yet been delivered or the price has not yet been paid (article 1583, Civil Code). However, the buyer and the seller can contractually agree to postpone the transfer of ownership, until payment or delivery of the artwork for example.

2 Does the law of your jurisdiction provide that the seller gives the buyer an implied warranty of title?

No, there is no implied warranty of title per se. However, the seller gives the buyer an implied warranty of peaceful possession. In other words, the seller warrants to the buyer that the art, antique or collectible is sold free of any third-party claims. Hence, if the buyer's title is challenged, the seller may have to refund the sale price independent of damages. The implied warranty of peaceful possession may be excluded or limited by contract. An action based on a breach of warranty of peaceful possession is subject to a five-year statute of limitations, which starts to run as of the date of the breach.

3 Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

No, there is no title registry of art, antiques or collectibles.

There is also no public database of stolen works. International databases are typically used, such as the Art Loss Register and the Interpol database. The French Central Office for the Fight against Illicit Traffic in Cultural Goods (OCBC) has a specific database called TREIMA, but it is not available to the public.

However, art, antiques and collectibles that belong to public entities are registered on the Palissy database. This database contains a list of stolen artworks that belong to public entities (www.culture.gouv.fr/culture/inventai/patrimoine).

4 Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

French law tends to prefer the acquirer in good faith of stolen art over the victim of theft for several reasons.

First, each transfer of an artwork creates a new title (independent from the former) that stems from the mere possession of the artwork according to a core principle under French law, which states that possession equals title as far as movable goods are concerned (article 2276, Civil Code). If the possessor of stolen art, antique or collectible acquired it in good faith, ownership in the art, antique or collectible automatically vests in the acquirer.

Secondly, the claim of ownership of the victim of theft is subject to a three-year statute of limitations, which is shorter than the ordinary five-year limitation period.

Thirdly, if the good-faith possessor of a stolen artwork, antique or collectible acquired it in an art fair, at auction or from a professional of the art market, the original owner may only obtain its restitution in

consideration of the reimbursement of the price the possessor paid for it (article 2277, Civil Code).

Finally, good faith is always presumed (article 2274, Civil Code). A possessor is in good faith if he or she regards himself or herself as entitled to the property, and this belief must be reasonable. The burden of proof of the possessor's bad faith thus lies on the victim of theft.

As an exception to the above principles, when the victim of theft is a public entity and the stolen art, antique or collectible belongs to the public domain (in the sense of public property law, not to be confused with the public domain in the sense of intellectual property law – see question 39), the public victim's restitution claim is not subject to any statute of limitations and the good-faith possessor is not entitled to any compensation.

5 If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a certain period?

Ownership in stolen art, antiques or collectibles automatically vests in the possessor who acquired them in good faith. The victim of theft may only claim ownership for a period of three years as of the date of the theft.

6 Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period?

Yes, ownership in art, antiques or collectibles may vest in the acquirer in bad faith after a period of adverse possession. Possession is composed of two elements, namely a physical element (which consists of material acts similar to those that a legitimate owner would perform) and a psychological element (which consists of the intention to hold for oneself).

In order to adversely possess, the possession must be continuous and uninterrupted, peaceful, public and unequivocal (article 2261, Civil Code). If one of these requirements is absent, the possession is vitiated and the possessor is unable to acquire property through the passage of time.

There is controversy surrounding the period of time that is required in order for the ownership of movable property (as opposed to real property), such as art, antiques or collectibles, to vest in the acquirer in bad faith as there is no specific provision in the law. Depending on the interpretation of the provisions of the Civil Code, the period may be five years or 30 years. Authors generally consider that 30 years of adverse possession is more consistent with the legal framework.

7 When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

Absent any contrary stipulations of the contract on the issue, and similar to the transfer of ownership, risk of loss or damage automatically passes from seller to buyer as soon as both have agreed on the artwork to be sold and on its sale price, even if the buyer is not in possession of the art, antique or collectible (article 1196, Civil Code).

The parties may contractually agree that the risk will pass at a different time, notably upon delivery of the artwork to the buyer. This clause is commonly negotiated by the buyer to protect himself or herself against the hazards that may notably occur during transportation of the artwork.

8 **Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?**

There is no formal legal obligation for the buyer to conduct due diligence enquiries when buying art, antiques or collectibles. However, in the event the buyer wishes to have the sale voided on the basis of an error committed on the substantial qualities of the artwork bought – such as an error on the correct attribution of the work, on its dating or on its condition – the courts may take into account the due diligence enquiries carried out by the buyer. Absent such enquiries, the courts may find the professional buyer to have been reckless in his or her purchasing of the art, antique or collectible (particularly when the buyer is a professional of the art market). However, a non-professional buyer may reasonably rely on the description of the artwork when buying from a professional seller.

Typically, when conducting due diligence enquiries the buyer should do the following:

- request documents confirming the validity of the seller's title (free of any third-party claims);
- request documents evidencing the provenance of the art, antique or collectible;
- search available databases of stolen works – and notably the Art Loss Register – if any doubt arises as to the provenance of the art, antique or collectible;
- confirm the authenticity of the art, antique or collectible and possibly request an expert opinion; and
- establish whether the art, antique or collectible was legally imported into the country or, if it is to be exported, whether an export certificate or licence has been obtained or if he or she must obtain it.

9 **Must the seller conduct due diligence enquiries?**

There is also no formal legal obligation for the seller to conduct due diligence enquiries when selling art, antiques or collectibles. However, similarly to the buyer, in the event the seller purports to have the sale of an artwork, antique or collectible voided based on an error, the courts will take into account the due diligence enquiries carried out by the seller and, absent such enquiries, the courts may find the seller to have been reckless in his or her purchasing of the art, antique or collectible.

Professionals of the art market have adopted codes of ethics in which they provide for a certain number of due diligence enquiries to be conducted. Most codes of ethics are soft laws (ie, not binding) but courts usually rely on these sets of non-binding rules to assess the potential liability of art market professionals. These due diligence enquiries mostly concern the authenticity and the provenance of the art, antique or collectible. Professional intermediaries, such as dealers and auctions houses that sell on behalf of a seller, must check the identity and the title of the seller, and also inform the authorities if there is any suspicion of money laundering.

10 **Does the law provide that the seller gives the buyer implied warranties other than an implied warranty of title?**

There are three general implied warranties that the seller gives to the buyer in a sales contract:

- a warranty of peaceful possession (see question 2);
- a warranty of conformity, under which the seller warrants to the buyer that the sold asset conforms to its description (article 1603, Civil Code). This warranty is seldom used in the art market. An action based on the warranty of conformity is subject to the ordinary five-year statute of limitations, which starts to run from the day the buyer discovers the breach of the warranty. It may not be excluded when the buyer is not a professional in the same field; and
- a warranty against hidden defects, by which the seller warrants the buyer against defects in the asset sold that make it unfit for its intended use (article 1641 et seq., Civil Code). This warranty is almost never used in the art market – an artwork normally does not have a 'use' in the sense of this warranty. The action of the buyer based on this warranty is subject to a two-year statute of limitations, which starts to run from the discovery of the defect (article 1648 Civil Code). It may not be excluded when the buyer is not a professional in the same field.

There is also a specific warranty that the seller gives the buyer in the art market that relates to the accuracy of the description of the artwork. The wording used to describe the art, antique or collectible put up for sale gives rise to warranties. For instance, the title or denomination of a work directly followed by a reference to a historical period, century or era warrants to the buyer that the work or item was actually produced during the period of reference; the use of the term 'attributed to' followed by the artist's name indicates that the work or the object was executed during the period of production of the artist mentioned and that serious assumptions indicate that this artist is the likely author; the use of the term 'school of' followed by the artist's name warrants that the author of the work has been the pupil of the master cited or has been known to have been influenced or to have benefited from his or her technique, etc (Decree No. 81-255 of 3 March 1981 on the prevention of fraud in art and collectible sales, commonly known as the Marcus Decree).

Therefore, sellers and intermediaries of the art market must pay particular attention to the terminology they use when describing the art, antique or collectible put up for sale as such terminology may imply certain warranties.

11 **If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?**

The buyer of an artwork that transpires to be a forgery may bring an action to void the sale on the basis that his or her consent was vitiated by an error on the authenticity of the artwork. If the buyer successfully demonstrates that his or her consent was vitiated, the contract is voided *ab initio* (ie, the sale is treated as having never been concluded). Hence the parties must be returned to the situation they were in prior to contracting the sale: the buyer must return the artwork to the seller and the seller must refund the price to the buyer. The action to void a sales contract is subject to a five-year limitation period, which starts to run from the discovery of the error; it being specified that no action on a contract may be brought once 20 years have elapsed after the date the contract was entered into.

If the seller is in bad faith (ie, he or she sold the artwork, antique or collectible knowing it was a forgery), the buyer may also claim for damages on the basis of a contractual liability action. The act of knowingly selling a forgery as an original is also subject to criminal sanctions.

12 **Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?**

This depends on the seller's understanding at the time of the sale and on the wording used to describe the artwork. If the artwork is sold as 'copy of', 'studio of' or 'circle of' and the seller can show that he or she contracted the sale in the erroneous belief that the artwork could not be an autograph work, he or she will have an action to void the sale.

On the other hand, if the artwork is sold as 'attributed to', the seller does not have an action to void the sale as he or she accepts the risk that the work might be an autograph (as it also might not be).

Export and import controls

13 **Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?**

Yes, there are export controls for cultural property of major interest for national heritage from a historical, artistic or archaeological point of view. The export of this cultural property is contingent upon the issuance of an export certificate (and an export licence if the item is exported outside of the European Union) if they fall within the 15 categories listed by the French Heritage Code. The major interest for national heritage is defined in this list according to two criteria: age and value. The following are subject to the prior issuance of an export certificate: paintings, sculptures and drawings that are over 50 years old and worth more than €15,000; photographs that are over 50 years old and worth more than €50,000; and archaeological objects that are over 100 years old and worth more than €1,500.

The procedure of issuance of an export certificate is designed to give the French administration time to review the cultural value of the property and decide whether to classify it as a national treasure (ie, to ensure that the item will permanently remain in France).

The owner of an asset intended for export must file an application in person or through an agent with the Ministry of Culture including a photograph of the item. The Ministry of Culture has four months to review the application. When this period has expired, the Minister must issue or deny the certificate.

When granted, the certificate permanently attests that the cultural property is not a national treasure, which therefore means that the certificate is granted on a permanent basis (except for property that is less than 100 years old).

If the Minister of Culture refuses to grant an export certificate, a 30-month period commences during which the cultural property may not leave France. The applicant may not claim for any compensation for the refusal of his or her export certificate (but he or she can challenge the decision before the administrative tribunal). Upon the expiration of the 30 months, a new application for the issuance of an export certificate can be made, except if the cultural property has either been classified as a historic monument or if the state has made an offer to purchase it (see question 39). If the owner refuses the state's purchase offer, the refusal to deliver the certificate is renewed with no compensation (ie, the item continues to be restricted to France).

Penalties in the event of failure to apply for an export certificate or to comply with refusal are the same: €450,000 fine, three years' imprisonment and confiscation of the item.

14 Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

Tax treatment of international transfers of art, antiques or collectible assets depends of the legal or tax qualification of the assets transferred and of the transaction itself (export, import, sale, gift, etc). Exports are exempt from value added tax (VAT), while imports and transactions realised within the European Union are subject to a 5.5 per cent VAT rate, unless carried out by national or public museums or certain foundations.

Direct and indirect taxation

15 Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

Buyers of art, antiques or collectibles are subject to 5.5 per cent, 10 per cent or 20 per cent VAT when they import, export or acquire within the European market, or from an artist or an art gallery and intermediary.

During the period of ownership, art, antiques or collectibles, defined as such by the Common Customs Tariff, are not subject to wealth tax. Their sale or export outside the European Union by a French resident (unless for a limited period of time) exposes the owner to a specific 6.5 per cent tax rate (including additional social charges) on the sale price or customs valuation.

Gift and inheritance taxes are due upon transfer, in consideration of the market value of the art, antique or collectible transferred and kinship between the donor or the deceased and the beneficiary. Those taxes can be paid by donating works of art of a high artistic and historical value to the state.

16 Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

French law provides for several specific tax breaks to the benefit of public institutions and private charities, notably:

- VAT exemption on all imports of art, antiques and collectibles made to the benefit of public institutions;
- lifetime gifts made to charities situated in an EU member state, Norway, Iceland and Liechtenstein give rise to tax credits of either 60 per cent offset against corporate income tax due by the corporation that made the gift within a limit of five per thousand of its annual turnover, or 66 per cent of the asset value given by an individual, within a limit of 20 per cent of the donor's annual income; and
- inheritance tax exemption on transfers made through a lifetime gift or death to the benefit of the state, public institutions and charities as defined by the legislation.

Borrowing against art

17 In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

The usual type of security interest taken against art, antiques and collectibles is the pledge, which is an agreement by which the pledger gives to a creditor the right to be paid in preference to his or her other creditors out of a corporeal movable asset or a set of corporeal movable assets, present or future (article 2333, Civil Code). A pledge is perfected by a written document that contains the description of the debt secured, the quantity of assets pledged, and their kind or nature. It may be with or without dispossession. The pledge without dispossession confers a fictitious lien to the lender insofar as the collateral is not handed over by the borrower to the lender.

18 If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

French law is silent on this issue.

There is only one type of credit institution, the Crédit Municipal, which may grant loans secured against art, antiques or collectibles. The Crédit Municipal has a monopoly over pledged loans.

19 Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

There is no specific public register where security interests over art, antiques or collectibles are registered. However, the pledge without dispossession must be published on a registry held at the commercial court register in order to be enforceable against third parties.

20 If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

French law makes a distinction between civil and commercial pledges based on the civil or commercial nature of the debt that is secured. If the pledge is civil, the lender is not allowed to sell the collateral under the loan agreement without the prior permission of the courts. However, if the pledge is commercial, the lender may sell the collateral without seeking permission from the courts eight days after sending a simple notice to the defaulting borrower.

In the event of a pledged loan, the Crédit Municipal sells the art, antiques or collectibles used as collateral at auctions that are organised by the institution.

21 Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

In general, a creditor with a valid and perfected first-priority security interest takes precedence over creditors with no security interest. Generally, the privilege of the tax authority and of employees ranks higher than a credit, even with a first-priority security interest.

Intellectual property rights

22 Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

The author of a work of the mind automatically enjoys in this work, by the mere fact of its creation, exclusive intellectual property rights, which are enforceable against all persons (article L111-1 of the Intellectual Property Code). There is, therefore, no formality required, such as registration, for an author to benefit from intellectual property right protection.

23 What is the duration of copyright protection?

An author enjoys two types of intellectual property rights: moral rights and economic rights. Moral rights are perpetual; economic rights last for the duration of the author's lifetime plus 70 years after his or her death, after which time his or her works fall into the public domain (in the sense of intellectual property law) and may be used freely.

24 Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

No, the right of exhibition is exclusively held by the author of the artwork (it is one of the attributes of his or her economic rights with the reproduction right). Hence, all public exhibition of the author's work require his or her prior consent. This is an application of a core principle under French intellectual property law according to which the ownership of the intellectual property right is independent from any ownership right in the physical object (ie, in the artwork itself (article L.111-3 of the Intellectual Property Code)).

25 Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

In theory, no. Each reproduction of an artwork must be authorised by the author. However, the law provides for an exception to the right of reproduction when the reproduction is made by libraries, museums or archival services for conservation purposes only. Another exception is the reproduction in catalogues of auction sales after seizure; voluntary auction sales are not covered by this exception.

26 Are public artworks protected by copyright?

An artwork is protected if it is an original work of the mind of the author irrespective of the place where it is displayed. However, copyright protection may be attenuated based on public order considerations (and notably public security) when an artwork is displayed in public space.

It has been disputed whether street art should be protected by copyright insofar as the creation in itself is illicit; however, with the growing fame of street artists, there is less contention and courts tend to grant intellectual property protection to the artists.

27 Does the artist's resale right apply?

Yes. The royalty is levied on sales involving art market professionals as sellers, buyers or intermediaries (ie, art galleries, art dealers and auction houses). The royalty right benefits the artist during his or her lifetime and benefits his or her heirs and legatees for 70 years after his or her death. The possibility for an author to bequeath his or her royalty right only became available in July 2016.

No royalty is levied on first direct sales by the artist or his or her heirs or on the resale by a seller who has acquired the artwork directly from the artist less than three years before that resale and where the resale price does not exceed €10,000 or on any resales for a price lower than €750.

The rates of the royalty applicable are regressive:

- 4 per cent for a sale price between €750 and €50,000;
- 3 per cent for a sale price between €50,000 and €200,000;
- 1 per cent for a sale price between €200,000 and €350,000;
- 0.5 per cent for a sale price between €350,000 and €500,000; and
- 0.25 per cent for a sale price over €500,000.

The total amount of the royalty may not exceed €12,500. In other words, all artworks sold for €2 million will be subject to a flat royalty of €12,500.

The seller of the artwork is normally responsible for the payment of the royalty, although there is a pending dispute before the courts over the transfer of the burden of the royalty to the buyer. The art market professional that acts as an intermediary in the sale (eg, an auction house) is responsible for collecting the royalty from the seller and passing it to the relevant collecting agency.

28 What are the moral rights for visual artists? Can they be waived or assigned?

French law grants authors moral prerogatives on their work. These rights are directly attached to the author as a person; they are perpetual, inalienable and imprescriptible.

There are four types of moral prerogative:

- the right to paternity, allowing the author to command that his or her name be associated with his or her work;
- the right of integrity of the work, which allows the author to oppose any alteration of his or her work and any misuse of the work;
- the right of disclosure, which allows the author to decide when and how his or her work will be communicated to the public and

to oppose the exploitation of a work that he or she has not made public; and

- the right of withdrawal or to reconsider, which allows the author to decide either to discontinue the exploitation (right of withdrawal) or to alter the work (right to reconsider).

Agency

29 Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

Yes, the agent is bound by law to report and account to the principal for his or her management, which may include any commission or compensation received while conducting the principal's business. The agent must also return to the principal all that he or she received by virtue of his or her mandate, even if what he or she received was not owed to the principal (article 1993, Civil Code).

30 Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

Yes, the agent may keep a commission received from a third party if he or she discloses this information to the principal and the principal agrees to the commission being received by the agent. Such disclosure must be sufficiently clear so as to comply with the agent's legal obligation to report and account to the principal for his or her management (see question 29).

31 If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

Yes; the agent cannot do anything beyond his or her mandate. This obligation is tied to the agent's obligation to report and account to the principal for his or her management (see question 29).

Consigning items

32 How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

A consignment agreement does not transfer ownership from the consignor to the consignee. A dealer who holds artworks on consignment does not own the artworks.

Creditors may only exercise their privilege over the debtor's assets and not on assets that belong to third parties. Therefore, should the dealer go bankrupt his or her creditors cannot reach the artworks that are held on consignment. In order to avoid any confusion between the dealer's assets and the consigned assets, the consignor should be mindful to have his or her artwork registered in the dealer's book as the consignor's property.

If a consigned artwork were to be erroneously apprehended as one of the dealer's assets, the consignor may file a claim in the dealer's bankruptcy proceedings.

There is no register under which consignors may register their interest in consigned artworks.

Auctions

33 Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

Yes, auctions are strictly regulated. The law defines what types of goods may be sold at auction, who may sell at auction, who may conduct the auctions and the modalities of the auction sales. There is a regulatory authority of auction sales, the Council of Voluntary Sales, to which all auction houses must declare their activity and that has disciplinary powers.

Online auctions are subject to the same rules (article L.321-3 of the Commercial Code).

34 May auctioneers in your jurisdiction sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

Auctioneers may conduct private sales either independently from an auction or after an item failed to sell at auction.

An auctioneer may offer an advance to the seller on the sale of the art, antique or collectible (article L.321-13). Auctioneers may not, however, offer loans against art, antiques or collectibles.

An auctioneer may guarantee to the seller a minimum auction price for the art, antique or collectible offered for sale. In the event the item has been valued, the guaranteed price may not be inferior to the low estimate. If the guaranteed price is not reached, auctioneers are authorised to declare themselves the successful bidders of the artwork at this price. Otherwise, they must pay the seller the difference between the guaranteed minimum price and the auction price (article L.321-12 of the Commercial Code).

Spoliation during the Nazi era

35 In your jurisdiction, in what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court accepts jurisdiction and applied the local law to a claim to art lost during the Nazi era?

The claimant in a Nazi-looted art claim must first establish the ownership of his or her ancestor over the item, which becomes more difficult with the passage of time. The claimant must also show that his or her ancestor was wrongly dispossessed during the Nazi occupation. The wrongful dispossession may be presumed on the basis of contextual elements, such as the date of the transaction (during Nazi occupation in France), the identities of the parties to the transaction (such as parties known for their implication in the Nazi regime) and the conditions of the sale (if the sale was made under threat of violence, for instance). Finally the claimant must show that he or she was unable to launch an action before 31 December 1949.

36 Is there an ad hoc body set up to hear claims to Nazi-looted art?

No. Nazi-looted art claims are heard by the ordinary national courts.

However, an administrative body, the Commission for the Compensation of Victims of Spoliation, was set up in France in 1999 to examine individual claims presented by the victim or his or her heirs for damage resulting from spoliation of property that occurred as a result of anti-Semitic laws passed during the Nazi occupation, both by the occupant and by the Vichy authorities. The Commission, which is not a jurisdiction, is responsible for conceiving and recommending appropriate reparations or compensation. It is empowered to make any useful recommendation, particularly regarding compensation (www.civs.gouv.fr/home).

A number of artworks were recuperated at the end of the war by the French authorities. Those whose owners were not identified were placed in custody in national museums pending their restitution to their rightful owners; they are classified as 'national museum recoveries'. The inventory of these is freely available online: www.culture.gouv.fr/public/mistral/mnrbis_en?ACTION=RETOUR&USRNAME=nobody&USRPWD=4%24%2534P.

Lending to museums

37 Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

The state may insure art, antiques or collectibles that are loaned to a public museum for a temporary exhibition. Typically, private insurance is subscribed on a case-by-case basis to cover the transportation of the items on loan from the lending institution to the borrowing public institution.

38 Are artworks, antiques or collectibles loaned to a public museum in your jurisdiction immune from seizure?

Art, antiques or collectibles that are loaned to a public museum in France may be protected against seizure for the period of the loan if the lender is a foreign country, public body or cultural institution. In this case, a request must be filed with the Ministry of Culture to obtain an anti-seizure order made jointly by the Minister of Culture and the Minister of Foreign Affairs. The request must describe, in detail, the art, antiques or collectibles for which the anti-seizure order is requested and provide pictures of the item.

This process is not applicable to foreign private individuals or foreign private for-profit organisations.

Cultural patrimony

39 Is there a list of national treasures?

Art, antiques and collectibles may be categorised as national treasures depending on their legal status. Not all of them are listed.

The following are considered national treasures:

- The items that form part of the collections of the museums labelled Musée de France. These collections are exhaustively listed on the Joconde database (www.culture.gouv.fr/documentation/joconde/fr/pres.htm).
- Public and historic archives. A number of these archives are available online listed in various inventories.
- Artworks that have been classified as historical monuments. These artworks are listed on the Palissy database (www.culture.gouv.fr/culture/inventai/patrimoine).

The unilateral classification of an item belonging to a private individual as a historical monument may give rise to compensation because the item may no longer be exported outside France. The compensation is generally equivalent to the loss of profit for the owner owing to the impossibility to sell the work on the international market, which explains why this unilateral classification rarely happens.

- All other items that belong to the public domain. The classification of an item as belonging to the public domain is not the result of an administrative decision (although some artworks belong to the public domain because of their legal status, for instance items classified as historical monuments). Items may be recognised as belonging to the public domain if they belong to a public institution and if they are of particular interest from a historical, artistic, archaeological, scientific or technical point of view. Items belonging to the public domain may not be sold, unless an administrative decision has been taken on the basis that the item has lost its interest (which hardly ever happens). Most of these items are listed on the Palissy database.
- All other items of major interest for national heritage from a historical, artistic or archaeological point of view. These items are those mentioned in question 13, for which an export certificate is required when they meet the age and value thresholds provided for in the law.

A list of the national treasures that have been refused an export certificate is available online (www.culture.gouv.fr/Thematiques/Circulation-des-biens-culturels/Informations-pratiques/Procedures-d-exportation).

The refusal of an export certificate does not give rise to any compensation.

40 If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

Yes, the state has a right of pre-emption on all auction sales or private sales of items unsold at auction. In practice, the pre-emption right is exercised by an administrative agent who makes an announcement after the auctioneer's hammer falls for the artwork that the state wishes to pre-empt.

41 In what circumstances does ownership in cultural property automatically vest in the state?

Ownership in cultural property automatically vests in the state when a 'treasure' is found on grounds that belong to the state or its regional or local authorities; conversely if the treasure is found on private grounds the state has no claim except if the findings are immovable and, since 2016, movable archaeological remains.

Ownership also automatically vests in the state over the estate of a deceased with no heirs, which may comprise cultural items.

42 How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

Directive 2014/60/EU dated 15 May 2014, transposed into French law, provides a legal framework for the return of cultural objects unlawfully removed from the territory of a member state. The courts will order the return of the cultural object when it is found to have been removed unlawfully from the requesting member state. The possessor is entitled

to fair compensation provided that he or she demonstrates that he or she exercised due care and attention in acquiring the object.

It is, however, highly difficult for non-member states of the European Union to successfully claim the restitution of cultural property illegally exported from their territory. French courts apply French law to these types of claims (ie, the law where the object is located) and notably the principle according to which possession is equal to title as far as movable goods are concerned. In other words, the good-faith possessor will prevail over the requesting state. Foreign states may, however, avail themselves of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property for illicit exports after 1997 – the year that France ratified the Convention.

France is not a party to the UNIDROIT Convention on stolen or illegally exported cultural objects of 24 June 1995.

Anti-money laundering

43 What are the anti-money laundering compliance obligations placed on the art trade?

Professionals of the art market (auction houses, art dealers, gallerists, etc) are subject to anti-money laundering obligations. Notably, art market professionals must carry out anti-money laundering checks, such as on the identity, domicile and profession of their clients, and gather all relevant elements on the client's estate and provenance of the sums. The art market professionals must declare to Tracfin, the French anti-money laundering unit, any sums they suspect may be the product of a criminal offence punishable by a prison sentence of more than one year, or that may be connected to the financing of terrorism.

Endangered species

44 Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

Yes, France is a party to the CITES Convention. Regulation (EC) No. 338-97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein ensures the application of the CITES Convention within the European Union (the EU Wildlife Trade Regulation).

The management authority of the CITES Convention in France is the Directorate-General for Planning of the Ministry of Ecology. The CITES documents (import and export permits and re-export certificates) are issued by the Regional Directorates of Environment, Planning and Housing.

45 Is the sale, import or export of pre-CITES endangered species subject to a licence?

In principle, intra-EU trade of specimens of the most endangered species (listed in Annex A to the EU Wildlife Trade Regulation) is subject to

obtaining a CITES certificate from the competent authority. However, worked specimens that were acquired prior to 1947 are exempt from the certificate requirement if an expert or a specialist has certified in writing, among other things, the age of the specimen. The import and export of the specimen is similarly not subject to a licence.

46 Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

The sale, import or export of post-CITES worked endangered species is normally subject to the EU Wildlife Trade Regulation. The owner of a worked endangered species must comply with the requirement to obtain CITES documents (import or export permits, or trade or re-export certificates).

47 Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

Yes. France has adopted several decrees to specifically regulate the trade of elephant ivory and rhino horn. Under the most recent decree adopted on the matter (Decree of 4 May 2017 amending the Decree of 16 August 2016 on the prohibition of trade in elephant ivory and rhinoceros horn in the national territory), the trade of post-1975 worked items made of ivory or rhino horn is strictly prohibited, while the trade of worked items made between 2 March 1947 and 1 July 1975 of an amount of ivory or rhino horn below 200 grams and the worked items made prior to 1 March 1947 with less than 20 per cent volume of ivory or rhino horn may be traded subject to a prior declaration. The possessor of such items must be able to prove the date by any expert means and, if necessary, by carbon dating.

Consumer protection

48 In what circumstances may consumers cancel the sale of art, antiques or collectibles?

Consumers may void the sale of art if their consent is vitiated by an error on the authenticity of the art (see question 11) or if his or her consent was given in circumstances of deceit.

In distance sales, consumers have the right to cancel the sale within a period of 14 working days, which starts running from the date of receipt of the item purchased. This right to cancel the sale does not apply to auction sales, including phone or online bids.

49 Are there any other obligations for art businesses selling to consumers?

Yes, professionals are bound by a duty to provide information to consumers, in a clear and comprehensible manner, on the main features of the item sold, its price and the delivery deadlines.



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