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Art Law & Transactions

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- Michelangelo Buonarroti, “The Creation of Adam,” ca. 1510.  
- Georgia O’Keeffe, “Ram's Head, Blue Morning Glory,” 1938.  
Happily, life is not a singular enterprise. I have been helped along the way in the writing of this book with professional insights, endless encouragement, abundant research, and technical assistance. I am enormously grateful to my faculty colleagues, librarians, and administrative assistants at Loyola, my professional colleagues at Reed Smith and elsewhere, my Art Law students, my friends, and my family, who have given generously to me. I thank all of them. A small number of them I must mention by name: Loyola colleagues Robert Araujo, S.J., Julienne Grant, Thomas Haney, Michael Kaufman, and Jeffrey Kwall; my professional colleagues Carolyn Amadon, Candace Fabri, Jonathan Freiman, Scott Hodes, Kim Kamin, Harry Rosenberg, Maria Simon, and Cassie Spencer; my friends and advisors Leslie Africano, Diane Gage, Robert Huitt, Richard Polsky, John Raimo, and Elizabeth Smith; administrative support staff Heather Figus and James Hepplewhite; and wonderful students Amanda Andrews, Caroline Cannizzaro, Sarah Riddell, Tracy Somora, Polina Arsentyeva, Kristina Gordon, Mildred Herrera, Heather Liberman, Elizabeth Magarian, and Emily Timm. I also thank Sotheby's for allowing me to use Sotheby's Conditions of Sale and Terms of Guarantee.

Above all, my husband, David.
Welcome to Art Law & Transactions, a book written for art law students and others interested in understanding how a lawyer’s perspective impacts art transactions.

The flow of the book is along the transactional time line of acquisition, ownership, and disposition. This chronology mimics the time frames within which a transactional lawyer sees the legal issues of the client-collector up close. All the major doctrinal and policy issues confronting an art collector are discussed within this transactional arc. Sometimes those issues will nicely loop around, with the double dipping allowing us to revisit an issue from another angle. Like artistic perspective, what emerges and what recedes can be illuminating.

The book’s primary perspective is that of an individual collector as a client of a transactional lawyer. Collectors are one of the primary players in the art world and art market. The art world is a large one, primarily composed of artists, dealers, auction houses, museums, and collectors. It is supported by an even wider base, including curators, critics, conservators, art historians, art academics, fabricators, framers, installers and handlers, customs brokers, appraisers, authenticators, insurers, consultants, editors and writers, foundations, philanthropists, governmental arts commissions, investment advisors, and yes, lawyers. This array of people parallels another reality for art law. There is no discrete area of law known as art law, rather it is law through the lens of art. Property, contracts, criminal law, civil procedure, torts, trusts and estates, intellectual property, tax, and other areas all have a role to play. Because art is the subject matter, sometimes the normal rules will apply and sometimes not. Art exceptionalism can allow a different, more tailored, rule to apply.

Being aware of art exceptionalism is one goal of this book. Another goal is for you to see and experience what it is that lawyers do. A necessary reminder for lawyers dealing with art is to keep your focus on the law. Do not be seduced by the art. To help develop that focus, there are drafting exercises sprinkled throughout the book. Try some of them.

Cases are edited down and generally presented without footnotes, citations, and concurring and dissenting opinions. Use of footnotes is equally restrained in my notes and citation forms are harmonized, with the hope of making the text easier on the eyes. The CD provided includes the form agreements for you to access in completing the various drafting exercises, if you wish to do so. It also includes the text of the major treaties and regulatory materials discussed in the book. Art law is dynamic, with noteworthy events
or decisions happening seemingly every week. The materials are generally current through 2010, with some early 2011 materials included.

Anne-Marie Rhodes
Chicago, Illinois
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