

Art Law & Transactions

Art Law & Transactions

SECOND EDITION

Anne-Marie Rhodes

JOHN J. WALDRON PROFESSOR OF LAW
LOYOLA UNIVERSITY CHICAGO
SCHOOL OF LAW



CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2021
Anne-Marie Rhodes
All Rights Reserved

ISBN 978-1-5310-1902-0
eISBN 978-1-5310-1903-7
LCCN 2021931922

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
E-mail: cap@cap-press.com
www.cap-press.com

Printed in the United States of America

David
James, Peter, and Cydney

Contents

| | |
|-----------------|------|
| Table of Cases | xiii |
| Acknowledgments | xix |
| Introduction | xxi |

PART ONE • ACQUISITION

| | |
|---|----|
| Chapter 1 • Acquisition by Purchase from Artist | 3 |
| A. Private Commissioned Works | 3 |
| 1. A Glimpse from History | 3 |
| 2. Private Commissions—Cases | 4 |
| <i>Wolff v. Smith</i> | 5 |
| <i>Brockhurst v. Ryan</i> | 8 |
| Notes and Questions | 11 |
| 3. Private Commission Agreements | 13 |
| Notes and Questions | 15 |
| B. Public Commissions | 20 |
| First Drafting Exercise: Commission Agreement | 23 |
| Chapter 2 • Acquisition by Purchase Involving Dealer or Gallery | 25 |
| A. Proving the Contract | 25 |
| 1. Domestically | 25 |
| <i>Hoffmann v. Boone</i> | 25 |
| <i>Marvin Inc. v. Albstein</i> | 28 |
| Notes and Questions | 32 |
| 2. Internationally | 37 |
| <i>Faggionato v. Lerner</i> | 37 |
| Note and Questions | 42 |
| B. Breach of Written Contract | 44 |
| <i>MAFG Art Fund, LLC v. Gagosian</i> | 44 |
| Notes and Questions | 52 |
| C. Good Faith Buyer | 54 |
| <i>Lindholm v. Brant</i> | 54 |
| Notes and Questions | 62 |
| Sales Agreement | 68 |
| Second Drafting Exercise: Purchase through a Dealer | 70 |

| | |
|---|-----|
| Chapter 3 • Acquisition at Auction | 71 |
| A. Auction Process | 71 |
| Sotheby's Conditions of Sale | 72 |
| Notes and Questions | 77 |
| B. Seller's Anonymity | 85 |
| <i>William J. Jenack Estate Appraisers and Auctioneers,</i> | |
| <i>Inc. v. Rabizadeh</i> | 85 |
| Notes and Questions | 88 |
| C. Seller's Bidding at Auction | 89 |
| <i>Bexwell v. Christie</i> | 89 |
| <i>Veazie v. Williams</i> | 90 |
| Notes and Questions | 93 |
| C. Evolving Duties of Auction House | 96 |
| <i>Cristallina v. Christie, Manson & Woods International Inc.</i> | 96 |
| Notes and Questions | 103 |
| Chapter 4 • Authenticity | 107 |
| A. Forgeries | 107 |
| <i>State of New York v. Wright Hepburn Webster Gallery, Ltd.</i> | 108 |
| Notes and Questions | 111 |
| B. Misattribution: Opinion or Warranty? | 114 |
| 1. Early Cases | 115 |
| <i>Jendwine v. Slade</i> | 115 |
| <i>Power v. Barham</i> | 116 |
| 2. More Recent Cases | 118 |
| <i>Weisz v. Parke-Bernet Galleries, Inc.</i> | 118 |
| <i>Weisz v. Parke-Bernet Galleries, Inc.</i> | 121 |
| Notes and Questions | 122 |
| C. Cases Involving Warranty Statutes | 124 |
| <i>Dawson v. G. Malina Inc.</i> | 124 |
| <i>Balog v. Center Art Gallery—Hawaii, Inc.</i> | 127 |
| <i>De Sole v. Knoedler Gallery, LLC</i> | 132 |
| Notes and Questions | 145 |
| D. Self-Regulation | 147 |
| Sotheby's Terms of Guarantee | 147 |
| <i>Kohler v. Leslie Hindman, Inc.</i> | 148 |
| <i>Christie's Inc. v. SWCA, Inc.</i> | 154 |
| Notes and Questions | 158 |
| E. Liability of Authenticators | 159 |
| <i>Hahn v. Duveen</i> | 159 |
| Notes and Questions | 162 |
| <i>Simon-Whelan v. Andy Warhol Foundation for the Visual Arts, Inc.</i> | 165 |
| Notes and Questions | 172 |

| | |
|---|-----|
| Chapter 5 • Questions of Title: Stolen, Looted, and Encumbered Art | 177 |
| A. Stolen and Looted Art | 177 |
| 1. War-Looted Art | 178 |
| <i>Menzel v. List</i> | 181 |
| Notes and Questions | 188 |
| 2. Classic Theft | 189 |
| <i>O’Keeffe v. Snyder</i> | 191 |
| <i>Solomon R. Guggenheim Foundation v. Lubell</i> | 196 |
| <i>DeWeerth v. Baldinger</i> | 200 |
| Notes and Questions | 203 |
| 3. Federal Statute of Limitations: HEAR Act | 206 |
| <i>Zuckerman v. Metropolitan Museum of Art</i> | 207 |
| <i>Reif v. Nagy</i> | 211 |
| Notes and Questions | 214 |
| 4. Antiquities Looting | 215 |
| <i>Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg</i> | |
| <i>and Feldman Fine Arts, Inc.</i> | 218 |
| Notes and Questions | 226 |
| 5. War-Looted Art—Again | 230 |
| <i>Republic of Austria v. Altmann</i> | 230 |
| <i>Orkin v. Taylor</i> | 239 |
| <i>Von Saher v. Norton Simon Museum of Art at Pasadena</i> | 243 |
| <i>Federal Republic of Germany v. Philipp</i> | 252 |
| Notes and Questions | 258 |
| 6. Antiquities Looting—Again | 260 |
| <i>Barnet v. Ministry of Culture and Sports of the</i> | |
| <i>Hellenic Republic</i> | 260 |
| Notes and Questions | 265 |
| 7. Law in Process | 265 |
| ANNE M. RHODES, <i>On Art Theft, Tax, And Time: Triangulating</i> | |
| <i>Ownership Disputes Through the Tax Code</i> | 270 |
| B. Liens, Claims, and Encumbrances | 275 |
| 1. In General | 275 |
| <i>Whitcraft v. Brown</i> | 275 |
| Notes and Questions | 278 |
| 2. Art-Secured Loans | 280 |

PART TWO • OWNERSHIP

| | |
|-------------------------------------|-----|
| Chapter 6 • Crossing Borders | 285 |
| A. Customs Process | 285 |
| 1. Classification as Art | 285 |
| <i>Brancusi v. United States</i> | 285 |
| Notes and Questions | 288 |

| | |
|---|-----|
| United States Customs Service Department of the Treasury RE: Internal Advice; Sotheby's Inc.'s; Diego Giacometti; Criteria for Sculptures | 294 |
| 2. Regulatory Documentation and Forfeiture | 297 |
| <i>United States v. One Tintoretto Painting</i> | 298 |
| <i>United States v. An Antique Platter of Gold</i> | 301 |
| Notes and Questions | 305 |
| B. Import and Export Restrictions | 308 |
| Notes | 309 |
| <i>Government of Peru v. Johnson</i> | 311 |
| <i>United States v. Schultz</i> | 315 |
| Notes and Questions | 322 |
| Third Drafting Exercise: Customs | 330 |
| Chapter 7 • Moral Rights | 331 |
| A. Background of Moral Rights | 331 |
| 1. Origins of Droit Moral | 331 |
| <i>Whistler versus Eden</i> | 332 |
| 2. Droit Moral and the Berne Convention | 334 |
| B. U.S. Moral Rights: Visual Artists Rights Act of 1990 (VARA) | 338 |
| Notes and Questions | 340 |
| C. Case Law Interpreting Works of Visual Art | 344 |
| <i>Carter v. Helmsley-Spear, Inc.</i> | 344 |
| <i>Massachusetts Museum of Contemporary Art</i> <i>Foundation v. Büchel</i> | 350 |
| <i>Kelley v. Chicago Park District</i> | 352 |
| <i>Cheffins v. Stewart</i> | 358 |
| Notes and Questions | 361 |
| D. Case Law Interpreting Rights of Attribution and Integrity | 364 |
| <i>Massachusetts Museum of Contemporary Art</i> <i>Foundation v. Büchel</i> | 364 |
| <i>Noland v. Janssen</i> | 370 |
| <i>Castillo v. G & M Realty L.P.</i> | 372 |
| Notes and Questions | 378 |
| E. Droit de Suite | 382 |
| <i>Close v. Sotheby's, Inc</i> | 382 |
| Notes and Questions | 386 |
| Chapter 8 • Art Loans | 389 |
| A. Old Loans | 389 |
| <i>In re Escot Church</i> <i>Exeter Consistory Court, 1979</i> | 389 |
| <i>In re Estate of McCagg</i> | 392 |
| Notes and Questions | 395 |
| B. New Loans | 399 |

| | |
|---|-----|
| <i>In the Matter of the Grand Jury Subpoena Duces Tecum</i> | |
| <i>Served on the Museum of Modern Art</i> | 400 |
| Notes and Questions | 404 |
| <i>Malewicz v. City of Amsterdam</i> | 407 |
| <i>Malewicz v. City of Amsterdam</i> | 411 |
| Notes and Questions | 415 |
| <i>Rubin v. Islamic Republic of Iran</i> | 416 |
| Notes and Questions | 420 |
| C. Art Loans in Practice | 421 |
| Fourth Drafting Exercise: Art Loan Agreement | 432 |

PART THREE • DISPOSITION

| | |
|--|-----|
| Chapter 9 • Sales and Exchanges | 437 |
| A. Disposition through a Dealer | 437 |
| 1. The Problem of a Dealer's Creditors | 437 |
| <i>In the Matter of Haley & Steele, Inc.</i> | 438 |
| <i>Kraken Investments Limited v. Jacobs</i> | |
| <i>(In re Salander-O'Reilly Galleries, LLC, Debtor)</i> | 441 |
| Notes and Questions | 444 |
| 2. Recovering for Errant Dealer's Actions: Lawsuits and Insurance Claims | 451 |
| <i>Schulhof v. Jacobs</i> | 452 |
| <i>Frigon v. Pacific Indemnity Company</i> | 454 |
| Notes and Questions | 457 |
| B. Disposition at Auction | 459 |
| <i>Cristallina v. Christie, Manson & Woods International, Inc.</i> | 460 |
| C. Consignment Agreements | 460 |
| D. Exchanges | 471 |
| 1. Art for Art Exchanges | 471 |
| 2. Dation en Paiement | 472 |
| Fifth Drafting Exercise: Art Consignment | 473 |
| Chapter 10 • Gratuitous Transfers | 475 |
| A. Gifts and Bequests to Individuals | 475 |
| 1. Lifetime Gifts | 475 |
| <i>Estate of Genecin v. Genecin</i> | 476 |
| <i>Edinburg v. Edinburg</i> | 481 |
| Notes and Questions | 485 |
| 2. Testamentary Bequests | 490 |
| <i>Clark v. Greenhalge</i> | 490 |
| Notes and Questions | 493 |
| B. Gifts and Bequests to Museums and other Charitable Organizations | 497 |
| C. Administering an Estate that Includes Artworks | 507 |
| <i>In re Estate of Rothko, Deceased</i> | 507 |

| | |
|---|-----|
| Notes and Questions | 513 |
| D. Donor Intent and Changing Circumstances | 519 |
| 1. Cy Pres and Deviation | 519 |
| <i>The Barnes Foundation, a Corporation</i> | 520 |
| Notes and Questions | 530 |
| 2. Deaccession | 533 |
| <i>Rockwell v. Trustees of the Berkshire Museum</i> | 533 |
| Notes and Questions | 545 |
| Sixth Drafting Exercise: Art Bequest | 552 |
| Chapter 11 · Valuation | 553 |
| A. Fair Market Value | 553 |
| 1. General Framework | 553 |
| <i>Biagiotti v. Commissioner</i> | 554 |
| <i>Ferrari v. Commissioner</i> | 559 |
| Notes and Questions | 561 |
| <i>Doherty v. Commissioner</i> | 565 |
| <i>Doherty v. Commissioner</i> | 568 |
| Notes and Questions | 569 |
| 2. Discounts from Fair Market Value | 571 |
| <i>Estate of Smith v. Commissioner</i> | 572 |
| <i>Estate of O’Keeffe v. Commissioner</i> | 574 |
| Notes and Questions | 576 |
| <i>Scull v. Commissioner</i> | 579 |
| <i>Estate of Elkins v. Commissioner</i> | 581 |
| Notes and Questions | 586 |
| B. Qualified Appraisal by a Qualified Appraiser | 588 |
| 1. Valuation Abuses—Case Law Background | 588 |
| <i>Weil v. Commissioner</i> | 589 |
| <i>Vander Hook v. Commissioner</i> | 590 |
| <i>Rose v. Commissioner</i> | 592 |
| Notes and Questions | 601 |
| 2. Statutory and Regulatory Framework | 604 |
| 3. Enforcement and Penalty Provisions | 606 |
| 4. Art Advisory Panel | 607 |
| <i>Bernardo v. Commissioner</i> | 609 |
| <i>Proctor & Gamble Co. v. United States</i> | 612 |
| Index of Artists | 615 |
| Index of Authors | 617 |
| Subject Index | 621 |

Table of Cases

Boldface denotes principal cases.

- Abrams v. Maryland Historical Society, 532
- Agudas Chasidei Chabad v. Russian Federation, 415
- Argentine Republic v. Amerada Hess Shipping Corp., 236
- Arnold Herstand & Co. v. Gallery: Gertrude Stein, Inc., 164
- Auction Houses Antitrust Litigation, *In re*, 105
- Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg**, 218
- Bakalar v. Vavra, 227
- Balog v. Center Art Gallery — Hawaii Inc.**, 127
- Banco Nacional de Cuba v. Sabbatino, 182, 184, 251, 254
- Bank Markazi, 419, 420
- Barnes Foundation — Estate of Violette de Mazia, 523
- Barnes Foundation, The, 519, 520, 526, 530–532
- Barnet v. Ministry of Culture and Sports of the Hellenic Republic**, 260
- Bell Atlantic Corp. v. Twombly, 168
- Bennis v. Michigan, 305
- Bernardo v. Comm’r**, 609, 612
- Bexwell v. Christie**, 89, 91, 114
- Biagiotti v. Comm’r**, 554
- Biddles, Inc. v. Enright, 102
- Bleistein v. Donaldson Lithographing Co., 363
- Board of Managers of Soho Int’n Arts Condo. v. N.Y., 337, 380
- Bobbs-Merrill Co. v. Straus, 384
- Boothe v. Comm’r, 272
- Botello v. Shell Oil Co., 380
- Boule v. Hutton, 171
- Brancusi v. United States**, 285
- Brockhurst v. Ryan**, 8, 82
- Brown v. Mitchell-Innes & Nash Inc., 63
- Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 170
- Bunch v. Com., State Board of Auctioneer Examiners, 83
- Calder v. Comm’r, 487, 563, 577
- Calero-Toledo v. Pearson Yacht Leasing Co., 300, 305
- Callimanopulos v. Christie’s, 78
- Cantor v. Anderson, 60
- Carter v. Helmsley-Spear, Inc.**, 344, 359
- Castillo v. G&M Realty, L.P.**, 341, 372
- Cheffins v. Stewart**, 358
- Christie Manson & Woods International Inc. v. Brown, 81
- Christie’s Inc. v. SWCA, Inc.**, 154
- Christie’s Inc. v. Dominica Holding Corp., 81
- Clark v. Greenhalge**, 490, 502
- Close v. Sotheby’s**, 337, 382
- Colin McK. Grant Home v. Medlock, 523, 528
- Comm’r v. Estate of Bosch, 27

- Community for Creative Non-Violence v. Reid, 348
- Cort v. Ash, 240
- Crimi v. Rutgers Presbyterian Church, 336
- Cristallina v. Christie, Manson & Woods International Inc.**, 80, 96, 460
- DF Activities Corp. v. Brown, 26, 34
- D’Arcangelo v. Comm’r, 497
- DAE Assoc. v. AXA Art Ins. Co., 458
- Dawson v. G. Malina Inc., 124, 128, 158, 570
- De Sole v. Knoedler Gallery, LLC**, 132
- Detroit Institute of Arts v. Ullin, 268
- DeWeerth v. Baldinger**, 197, 198, 200
- Doherty v. Comm’r**, 505, 565, 568
- Downing v. U.S., 295
- Ebben v. Comm’r, 569
- Edinburg v. Edinburg**, 481
- Eisen v. Eisen, 397
- Elkins, Estate of, v. Commissioner**, 581
- Erie Railroad Co. v. Tompkins, 201
- Escot Church, In re**, 389
- Estate of Genecin v. Genecin**, 476
- Estate of Giselman v. Comm’r**, 560
- Estate of Kollsman v. Commissioner**, 570
- Estate of McCagg, In re**, 392
- Estate of Mitchell v. Commissioner**, 608
- Estate of O’Keeffe v. Comm’r**, 562, 574
- Estate of Newberger v. Commissioner**, 571
- Estate of Rothko, Deceased, In re**, 507
- Estate of Smith v. Comm’r**, 570, 572
- Estate of True v. Comm’r**, 605
- Faggionato v. Lerner**, 37, 329
- Faircloth v. Finesod, 601
- Federal Republic of Germany v. Philipp**, 252
- Ferrari v. Comm’r**, 559, 563
- First National City Bank v. Banco Para El Comercio Exterior de Cuba, 418
- Fink v. DeClassis, 33
- Firestone & Parson, Inc. v. Union League of Philadelphia, 130
- Flamenbaum, In re, 205
- Flaum v. Great Northern Insurance Co., 458
- Fletcher v. Doig, 164
- Frigon v. Pacific Indemnity Comp.**, 267
- Gangel v. Comm’r, 602
- Georgia O’Keeffe Foundation (Museum) v. Fisk University, 279, 549
- Gilliam v. American Broadcasting Comp., 335
- Gmurzynska v. Hutton, 172
- Goodman v. Searle, 271
- Goss v. Morgansen’s Ltd. (In re Morgansen’s), 440
- Government of Peru v. Johnson**, 311
- Government of Peru v. Wendt**, 322
- Graffman v. Espel, 63
- Grand Jury Subpoena Duces Tecum Served on the Museum of Modern Art (Portrait of Wally), In the Matter of the**, 400
- Greece v. Ward, 270
- Greek Orthodox Patriarchate of Jerusalem v. Christie’s, Inc., 205
- Greenberg Gallery Inc. v. Bauman, 112
- Greenwood v. Koven, 152, 155, 156, 158
- Grosz v. Museum of Modern Art, 188
- Grosz v. Serge Sabarsky, Inc., 579
- Gruen v. Gruen, 480
- Hahn v. Duveen**, 113, 159
- Haley & Steele, Inc., In the Matter of**, 438

- Hessel v. Christie's, 80
 Hoffman v. L & M Arts, 279
Hoffmann v. Boone, 25, 30
 Holm v. Malmberg International Art, 62
 Howley v. Sotheby's, Inc., 60
 Hubbard Manufacturing Co., Inc. v. Greeson, 222

 Interested Lloyd's Underwriters v. Ross, 63, 66
 International News Service v. Associated Press, 110

 Jafari v. Wally Findlay Galleries, 36
 Janis v. Comm'r, 579
 Jeanneret v. Vichy, 311
Jendwine v. Slade, 115–117, 128, 161
 Johnson v. Comm'r, 600
 Jolly v. Eli Lilly & Co., 242

 Kalisch-Jarcho, Inc. v. City of New York, 168
Kelley v. Chicago Park District, 352
 King v. Trustees of Boston University, 441
Kohler v. Leslie Hindman, Inc., 148, 470
 Konowaloff v. Metropolitan Museum of Art, 268
 Krahmer v. U.S., 273
Kraken Investments Limited v. Jacobs, 441
 Kramer v. Pollock-Krasner Foundation, 169

 L.B. Research & Education Foundation v. U.C.L.A. Foundation, 546
 Lackawanna Chapter of Railway & Locomotive Historical Society, Inc. v. St. Louis County, 397
 Landgraf v. USI Film Products, 235
 Lariviere v. Thaw, 162, 173

 Lawson v. London Arts Group, 132
 Lemberg v. Perris, 603
Lindholm v. Brant, 33, 54, 279, 398, 451, 580
 Lindholm v. Proskauer Rose LLP, 62
 Lopez v. Medford Community Center, Inc., 536
 Luxmoore-May v. Messenger May Baverstock, 162

 Mac'Avoy v. Smithsonian Institution, 396
 Mackela v. Bentley, 447
MAFG Art Fund LLC v. Gagosian, 19, 44, 103, 388
 Malanga v. Chamberlain, 176
Malewicz v. City of Amsterdam, 407, 411
 Marc Jancou Fine Art Ltd. v. Sotheby's, 380
 Martin v. City of Indianapolis, 341
Marvin Inc. v. Albstein, 28
 Marx v. Sotheby Parke-Bernet, 79
Massachusetts Museum of Contemporary Art Foundation v. Buchel, 350, 364, 429
 Meinhard v. Salmon, 511, 515
Menzel v. List, 181, 188, 193, 213, 272, 509, 512
 Messing v. Comm'r, 566
 Metalexpert Co. v. Gen-O-Ral Processing Corp., 456
 Mittasch v. Seal Lock Burial Vault, Inc., 131
 Moore v. Puget Sound Plywood, Inc., 131
 Morgold, Inc. v. Keeler, 60, 63
 Mueller v. Janssen, 380
 Mueller v. Michael Janssen Gallery, 457
 Music City RV, LLC, In re, 447

 Nash v. Lang, 441
 Nass v. Sotheby's Inc., 80

- National Endowment for the Arts v. Finley, 22
- National Historic Shrines Foundation Inc. v. Dali, 34
- Night Cafe, The v. Konowaloff, 267
- Noland v. Janssen**, 19, 342, 370
- O’Keeffe v. Snyder**, 191, 198, 224, 394
- Orkin v. Taylor**, 180, 239, 267
- P.T. & L. Construction Co. v. Comm’r, 609
- Pagliari v. Del Re, 397
- Paycom Billing Services, Inc. v. Mastercard Intern, Inc., 170
- Peters v. Sotheby’s, Inc., 205
- Philadelphia Museum of Art v. AXA Art Insurance Company, 458
- Phillips v. Pembroke Real Estate, Inc., 337, 363
- Phoenix Ancient Art S.A. v. Kimball Art Foundation, 36
- Pollara v. Pembroke Seymour, 340, 359
- Porter v. Wertz, 60, 63
- Power v. Barham**, 116, 128
- Prince v. Alabama State Fair, 398
- Proctor & Gamble Co. v. U.S.**, 612
- Proskauer Rose LLP v. Lindholm, 62
- Publicker v. Commissioner, 572, 574
- Reale v. Sotheby’s, 468
- Redmond v. N.J. Historical Society, 194, 195, 396
- Reif v. Nagy**, 180, 211
- Republic of Austria v. Altmann**, 230, 254, 406
- Republic of Turkey v. Metropolitan Museum of Art, 230
- Robert Rauschenberg Foundation v. Grutman, 514
- Rockwell v. Trustees of Berkshire Museum**, 533
- Rose v. Comm’r**, 592
- Rosen v. Spanierman, 130
- Rubin v. Iran, 416, 421
- Rubin v. Islamic Republic of Iran**, 416, 421
- Sammons v. Comm’r, 569
- Sanchez v. Trustees of the University of Pennsylvania, 205
- Scheidelman v. Comm’r, 497
- Schooner Exchange v. McFaddon, 233
- Schulhof v. Jacobs**, 452
- Scott v. Dixon, 341
- Scull v. Comm’r**, 579
- SEC v. Amerifirst Funding, Inc., 276
- Seltzer v. Morton, 163
- Serra v. U.S. General Services Administration, 21
- Silsbury v. McCoon, 187
- Simon-Whelan v. Andy Warhol Foundation for the Visual Arts, Inc.**, 165
- Smithers v. St. Luke’s – Roosevelt Hospital Center, 546
- Solomon R. Guggenheim Foundation v. Lubell**, 88, 196, 200
- Sotheby’s Inc. v. Minor, 82, 95
- Sotheby’s Inc. v. Shene, 205
- Staechelín & Ors v. ACLBDD Holdings Ltd. & Ors, 562
- State of New York v. Wright Hepburn Webster Gallery, Ltd.**, 108
- Steadfast v. T.C. Nugent, 343
- Stone v. U.S., 587
- Stuart & Sons v. Curtis Publishing Inc., 205
- Swerdloff v. Mobil Oil Corp., 28
- The Night Cafe v. Konowaloff, 267
- Thome v. Alexander and Louisa Calder Foundation, 174
- Toledo Museum of Art v. Ullin, 267–268
- TSAWD Holdings, In re, 446
- Travis v. Sotheby Parke Bernet, Inc., 162

- U.S. v. An Antique Platter of Gold (Steinhardt)**, 290, 301, 319
U.S. v. An Original Manuscript Dated November 19, 1778, 310
U.S. v. Approximately Four Hundred Fifty Ancient Cuneiform Tablets, 324
U.S. v. Bajakajian, 302, 305
U.S. v. Baumgarten, 295
U.S. v. Eighteenth Century Peruvian Oil on Canvas Painting of the “Doble Trinidad,” 307
U. S. v. Goering, 187
U.S. v. Hollinshead, 323
U.S. v. Jacobsen, 403
U.S. v. Lizarraga-Lizarraga, 321
U.S. v. Mardirosian, 190
U.S. v. McClain, 302, 304, 314, 318, 322
U.S. v. Meador, 565
U.S. v. Olivotti, 294
U.S. v. One Cuneiform Tablet Known as the “Gilgamesh Dream Tablet,” 324
U.S. v. One Tintoretto Painting, 298, 305
U.S. v. Inigo Philbrick, 281
U.S. v. Portrait of Wally, 404
U.S. v. Schultz, 112, 311, 315

Vander Hook v. Comm’r, 590
Various Items of Personal Property, In re, 299

Veazie v. Williams, 82, 90
Verlinden B.V. v. Central Bank of Nigeria, 234
Vineberg v. Bissonnette, 205
Vitale v. Marlborough Gallery, 169, 171, 173
Von Saher v. Norton Simon Museum of Art at Pasadena, 243

Warhol, In re, 579
Weil v. Comm’r, 589
Weisz v. Parke-Bernet Galleries, 118, 121, 128
Wertheimer v. Cirkor’s Hayes Storage Warehouse, 205
Whistler v. Eden, 332, 378, 388
Whitcraft v. Brown, 275
Wildenstein & Co. v. Wallis, 281
William J. Jenack Estate Appraisers and Auctioneers Inc. v. Rabizadeh, 85
Wilson v. Hammer Holdings Inc., 130
Winkworth v. Christie Manson and Woods Ltd., 227
Winokur v. Comm’r, 499
Wolff v. Smith, 5, 158
Wood v. Carpenter, 193

Zaleski v. Clark, 7
Zuckerman v. Metropolitan Museum of Art, 207, 259

Acknowledgments

Updating a book is a different undertaking than writing the original, but it is no less a task. Again, I was helped along the way with professional insights, endless encouragement, and research and technical assistance. I am enormously grateful to my professional colleagues at Loyola and elsewhere, my students, friends, and family, who gave generously to me. I thank all of them. I also thank Sotheby's for allowing me to use Sotheby's Conditions of Sale and Terms of Guarantee. A special note of thanks to the wonderful team at Carolina Academic Press for persevering with me on this second edition.

Above all, my husband, David.

Introduction

Welcome to *Art Law & Transactions*, a book written for law students and others interested in understanding how the law impacts art transactions.

This second edition continues to follow a transactional timeline, that is, the acquisition, ownership, and disposition of an artwork. 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 remains that of an individual collector. 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, provenance researchers, 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 play a role. Because art is the subject matter, sometimes the normal legal rules will apply and sometimes not. Art exceptionalism can allow or require 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, with the hope of making the text easier on the eyes. Art law is dynamic, with noteworthy events and decisions happening seemingly every week. The materials are generally current through fall 2020.

Anne-Marie Rhodes
Chicago, Illinois
January 2021

