

up-to-date, reflecting the law as it stands in April 2019. Since this time there have been interesting political developments in the US and relevant academic literature published (Johnna Montgomerie's *Should We Abolish Household Debt* (Cambridge 2019) and Joseph Spooner's *Bankruptcy: The Case for Relief in an Economy of Debt* (Cambridge 2019) spring to mind – although these are both focused more on debt than credit). Fortunately for readers, this opens the door to the possibility of a second edition in the near future. This is not because updating is necessary, but because it could allow the issues covered in the current book to be considered from different perspectives. For example, a second book could focus on the more socio-legal issues of social justice, restriction of wealth and inequality that the author did not have the opportunity to discuss in depth in the current book. In light of the Trump administration's further moves on the CFPB, the impact of COVID-19 in both countries, the re-emergence of "unconscionability" after the Supreme Court of Canada's decision in *Uber Technologies Inc. v Heller* 2020 SCC 16, and Brexit, there is clearly scope (and need) for further research in this important and valuable area.

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Art Law and the Business of Art. By MARTIN WILSON. [Cheltenham, UK: Edward Elgar Publishing, 2019. xxxvi + 456 pp. Hardback £115.00. ISBN 978-1-78897-987-0.]

The art market is no stranger to disputes. Perhaps the most high-profile of recent years is the series of claims brought against the art dealer Yves Bouvier by his former client, Dmitry Rybolovlev, who had amassed a \$2 billion collection of masterpieces (among them the "Last Leonardo" – the *Salvator Mundi* – which later sold at Christie's for \$450 million). Rybolovlev alleges that Bouvier had in each case made a very substantial undeclared profit on the works, which he purchased immediately before selling them on. One legal issue at the core of these disputes concerns Bouvier's role in the sales. In broad terms, if he was an independent dealer, he was entitled to purchase and resell the works at a profit; if he was Rybolovlev's agent and fiduciary, the alleged secret profits would have been unlawful. At the time of writing, proceedings in various jurisdictions remain ongoing.

The courts of England and Wales, meanwhile, have been concerned with an interesting example of an attribution dispute, in a claim brought by Sotheby's against the art dealer Mark Weiss and Fairlight Art Ventures. In 2011, Weiss sold the work *Portrait of a Gentleman*, attributed to the seventeenth-century Dutch master Frans Hals, to Sotheby's, which sold it on (on back-to-back terms) to a collector for a sum in excess of \$11 million. Scientific testing conducted in 2016 concluded that the paint contained modern synthetic pigments inconsistent with its attribution. Sotheby's determined that the work was a counterfeit, and offered to refund the ultimate buyer. It sought, in turn, to rescind its agreement with Weiss. The agreements all contained a standard provision providing for rescission in the event that the work was later determined to be a counterfeit, unless its description at the time of sale "accords with [the] generally accepted views of scholars and experts or indicates that there is a divergence of such views". Weiss and Sotheby's reached a settlement before trial, but the claim proceeded against Fairlight. In *Sotheby's v Mark Weiss Limited & Ors* [2019] EWHC 3416 (Comm), Robin Knowles J.,

with whom the Court of Appeal agreed ([2020] EWCA Civ 1570), held that there was no “generally accepted view” as to the attribution of the work at the time of the sale, the painting having been recently “discovered” (that is, offered up by the suspected counterfeiter), so Fairlight was not able to rely on the exception.

What makes these examples remarkable, besides the sums involved, is the fact that their details have become a matter of public record. In a market that so prizes confidentiality and discretion, the veil that surrounds private art transactions is not frequently lifted. That veil does not go uncriticised. Such criticism has been fuelled, for example, by the long-running claim brought by the descendants of the Parisian Jewish art dealer Oscar Stettiner, seeking to recover a Modigliani portrait which had been looted by the Nazis. The Panama Papers leak revealed a prominent collector to be the beneficial owner of the Panamanian entity which owns the work, a fact which had previously been denied. (The collector insists that the Modigliani he owns is a different work from that looted from Stettiner). Opacity in the art market has also been blamed for the black market in ancient Syrian artefacts looted by ISIL/Da’esh, and for the use of high-end works of art in international money laundering.

It is this feature of the art world that makes Wilson’s *Art Law and the Business of Art* such a welcome contribution. As Wilson makes clear, the art market is a complex and evolving marketplace, in which the law (public, regulatory, and private) is increasingly influential – both adapting, and adapting itself to, established practices. *Art Law and the Business of Art* is the first book to chart this intricate puzzle of overlapping rights and obligations, of quasi-legal institutions and esoteric market practices. Wilson brings to this overdue endeavour an unrivalled experience of auction houses, as Chief General Counsel of the auction house Phillips, having spent more than 20 years at rival house Christie’s.

Art Law and the Business of Art is at once a primer on the art market for lawyers acting or advising on matters of art law, and a primer on the law, for art market participants seeking to understand their legal position. The book is at its strongest describing the practices and legal constructs that shape private art sales. It does so at length, with six chapters devoted to auction sales – including useful discussion of market practices such as catalogue descriptions, the rules of bidding, and third-party guarantees – and two further chapters on private sales.

Particularly interesting, for relative outsiders, are the insights that the book gives into the functioning of the art world. These include various references to the standard terms of auction houses on sales, agency agreements and guarantees, as well as indications as to which of these terms might be negotiable, for which types of client. Wilson also offers valuable commentary on the fit between the law and market practice. An interesting example is his discussion of *Accidia Foundation v Simon C. Dickinson Ltd.* [2010] EWHC 3058 (Ch), which is unfortunately relegated to the section on the different forms of dispute resolution. In that case, the Court heard expert evidence that it was common practice for dealers to be instructed on a “net return” basis – that is, that the dealer could keep any proceeds of sale in excess of the agreed net return to the seller. Vos J. (as he then was) nonetheless found that whilst “[s]uch arrangements may exceptionally have occurred . . . they cannot be described on the evidence I have heard as usual practice or the way in which valuable paintings are usually sold” – a finding which came as a surprise to the market.

Beyond these central chapters, the book is broad in its scope, containing clear and succinct introductions to the relevant law concerning copyright (including the important “artist’s resale right”), tax, insurance, anti-money laundering (the art market having been brought within the scope of the Fifth Money Laundering Directive), bribery and data protection. A particular highlight is the chapter on “Ethics, public policy and art”, which contains a comprehensive summary of each of the disputes

referred to the UK Spoliation Advisory Panel (the body established to consider claims by people (or their heirs) who lost possession during the Nazi era of cultural property which is now held in UK national collections), as well as a concise summary of the various international conventions on cultural property. In bringing together these various areas of law, the book assures itself a future as a standard point of reference for lawyers working in the art market.

The consequence of the impressive scope of Wilson's text is that its treatment of each topic is likely to disappoint those with specialist knowledge of that topic. Art professionals will skip over the sections detailing the auction process, just as lawyers will skip the introduction to the sale of goods. The book contains a small number of errors that will irk private lawyers, such as the reference to "the law of [contract] mistake in common law and equity" (p. 153) in the chapter on ownership and authenticity (the doctrine of mistake in equity having been authoritatively abandoned in *The Great Peace* [2002] EWCA Civ 1407, [2003] Q.B. 679), and the suggestion in the chapter on auction houses that the test of reasonableness in section 11 of the Unfair Contract Terms Act 1977 is a subjective one (p. 110). Such errors are, however, very few for a work of such breadth and which is not primarily intended as a legal textbook.

Perhaps more significantly, the book may be criticised for insufficiently interrogating the functioning of the art market from the perspective of participants other than auction houses. By way of example, the section entitled "The auction house and the buyer" includes the following description of the pre-auction process (p. 94):

Auction house specialists regularly visit important collectors to discuss their collections and make curatorial suggestions. Auction house presale viewings are staffed by specialists ready to escort potential buyers around the exhibition discussing the merits of the artworks. At the auction, auction house staff guide their telephone bidders through the bidding process, relaying information about the bidding in the saleroom. All of this can leave the bidder with the impression that the auction house is acting as his or her adviser. However, while there is no doubt that auction houses are seeking to provide the best information and client care possible to the buyer, the legal reality is that they are doing so as the agent for the seller.

These practices, and their potential tension with the "legal reality", are presented without further analysis. One might usefully ask whether, in providing those services, auction houses have any responsibility for any misconceptions created as to their role – and whether purchasers have any potential causes of action in respect of such misconceptions. Such discussion, and the author's insights into potential law reform in this area, would be welcome additions in a second edition of this work.

There is also scope for further discussion of authenticity and attribution disputes. Wilson is no doubt correct to say that, despite their high profile, such disputes are relatively uncommon compared to disputes about title and condition. Nonetheless, when they do arise, such claims require a careful analysis of the complex web of rights and obligations that can arise between seller, buyer, dealer, agent, art adviser, restorer, art fair and expert. This fascinating topic is dealt with rather shortly, divided between the chapter on "Ownership and authenticity" and that on "Art disputes". The former contains a thorough summary of *Thwaytes v Sotheby's* [2015] EWHC 36 (Ch.), [2016] All E.R. 423, the leading case on "sleepers" (that is, un-attributed or *under*-attributed works by masters), though without much further commentary. Wilson overlooks a notable quirk of that case – that the owner of the work in question (a Caravaggio *Cardsharps* painting), Sir Denis Mahon (who had bought the piece at auction after recognising its potential "sleeper" value), was a leading Caravaggio scholar, whose own later authentication of the work

was highly influential on the market. There is similarly room for a more detailed analysis of the law regarding *over*-attributed or forged works. There are several unanswered questions in this area, such as the potential liability of experts (art historians, connoisseurs and the compilers of *catalogues raisonnés*, for example) for negligently expressed opinions or conflicts of interest.

As to the future of art law, Wilson's conclusion is clear: the art world is changing, rapidly. He notes in the Preface that when he joined Christie's in 1998, "transactions in the art world were largely conducted on the basis of a handshake or an invoice" (p. xvii). The intervening two decades have seen the market become more firmly regulated, more closely scrutinised and subject to ever more complex and high-value disputes. That trend is certain to continue. For those involved in that process, whether as art professionals, legal advisers, or commentators, *Art Law and the Business of Art* provides an invaluable guide.

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