



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

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**Private Clients Commission (PCC)**

Working Session on Art Law

**THE ART OF DEALING WITH ART**

National Report of FRANCE

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## **A. Background**

The Private Client Commission's focus this year will be the art market, which has grown at an extraordinarily fast pace in recent years. In January 2015 the world's two largest auction houses Christie's and Sotheby's announced an increase in their quarterly revenue of around 17% year on year, while in February Sotheby's broke the record for the highest sales total at any London auction with a staggering figure of GBP186 million. The art fair Art Basel recently attracted record attendance with 92,000 visitors in 2014. Needless to say, this growing market has led to a growing need for legal advice.

The Private Client session will address some of the most important aspects of the rules governing art assets which we, as private clients lawyers, will need to deal with now and in future. In particular, we will be considering the tax issues which arise in connection with the ownership and acquisition of artworks, and the legal requirements which our clients must consider when buying and selling art (including cultural heritage schemes and the recovery of stolen art). We will also consider succession law and art, bearing in mind that, while artworks can act as a convenient repository for wealth which will appreciate over time, for many families they will have more personal connotations as well, having been passed down through generations or serving as a powerful indicator of individual taste.

## **B. Introduction**

Please return the completed Questionnaire and your answers to the case studies below by **Saturday 28 February 2015**.

Please answer the following questions (including those following the case study), with reference to statute and case law as appropriate. We would be particularly interested in any illustrative examples of case law which may be relevant to the issues raised. Please provide answers which are as detailed as possible, including where relevant explanations of why a particular question or fact pattern does not raise any issues in your country.

### **Introductory questions**

1. In which jurisdiction(s) do you practise art law? Do your answers cover other jurisdictions as well?

**The competent courts in France are civil courts, specifically the “ Tribunal de Grande Instance” – exclusive to contracts, IP and WCC matters.**

2. How long have you been practising in the art law field?

**My practice in art law is focus on intellectual property, digital rights and contracts for the management of copyrights and heritages.**

3. How would you describe the majority of your art law cases:

Inheritance law related

Trade law related

Tax law related

Insurance law related

IP law related

Litigation

Corporate matter of art dealers incl. art dealer/artist relationship

Diligences for family offices

4. Would you describe Art Law as your main area of practise? How much of your working time do you spend on art law related matters (in %)?

**My practice covers the management of copyright for promoting companies (art gallery and investor companies) but also any claim in the area by their owners or by transmission of heritage in France.**

5. What are the major changes and challenges relating to your work on art law related matters in recent years (in a broad sense, eg. acquisition of clients, required expertise, material law questions)?

**Claim concerning artworks despoiled by the French Administration to “jewish” families and of course, the new vision and “new deal” with digital rights.**

### **Taxation**

6. What determines liability to tax of moveable assets for individuals in your country (e.g. habitual residence, domicile)?

**The domicile with the duration of 6 months + 1 day / year.**

7. What determines liability to tax for structures holding moveable assets in your country?

**The head office in France or their effective activities in France**

8. Has your country planned or proposed to introduce any new taxes on individuals who are either non-resident or non-domiciled with moveable assets in your country?

**NO ! The French country is very special with tax, excluded the exception with EU rules.**

9. Has your country planned or proposed to introduce any new taxes on structures holding moveable assets in your country?

**No**

10. Does your country have any favourable tax schemes in life or on death for people who own items of significant cultural value? If so, is an election required to participate in these?

**Yes, the French country has favourable tax schemes but specifically for the family sphere (real estate, family office, fiducial) but not for properties assets management.**

**It's changing by EU directives.**

### **Buying and selling art**

11. Is there any specific legal basis such as statutory codes or laws, or guidelines or regulations applied by market players or dealers which is applicable to art transactions (whether domestic or foreign<sup>1</sup> dealers are involved) in your jurisdiction (please also indicate, if any legislative procedures are currently planned or ongoing):

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<sup>1</sup> Foreign art dealers, who for example sell at an art fair in your country.

- a. Are such requirements applicable to any person trading art? Or does it depend on certain criteria, such as legal entity/private person (i.e. a collector selling one of his pieces of art), size or revenue/profit?

**There are two main types of art dealer in France:**

- Auctioneers – commissaire priseur - who organize public auction or work by private contract. This profession is highly regulated; they must be licensed in law and do a two year degree in art history. Then they have to pass a national exam. The profession will be even more regulated for legal auctioneers who are public officers.

- Art dealers and gallery owners who are not subject to any specific public regulations. They only are required to keep a record book called the police book to fight against the concealment of stolen art and money laundering.

They also have a duty to guarantee the authenticity, the originality of the work and its author.

- b. Are there different requirements for selling, leasing (eg. investment), lending (eg to a museum)?

There are no specific requirements for selling, leasing or lending in France but we have to point out the preemptive right of the French Administration during auctions. The French Administration can substitute the highest bidder. Auctioneers must provide 15 days prior to any sale artworks proposed for sale to the *Ministère de la Culture*.

- c. Are there differences in regard to the type of art (eg. age, origin etc.)? If so, what are the determining factors/definition of such art?

**Definition of art works in France:** Properties with historical, artistic or archaeological particular, in subject to specific legislation, according to their value and seniority.

<b>Biens culturels soumis à l'obligation d'autorisation d'exportation</b>		
<b>Types</b>	<b>Datés de plus de</b>	<b>D'une valeur de plus de</b>
<b>Objets archéologiques (antiquités nationales et objets provenant directement de fouilles)</b>	<b>100 ans</b>	<b>quelle que soit la valeur</b>
<b>Peintures</b>	<b>50 ans</b>	<b>150 000 €</b>
<b>Sculptures</b>	<b>50 ans</b>	<b>50 000 €</b>
<b>Aquarelles, gouaches et pastels</b>	<b>50 ans</b>	<b>30 000 €</b>
<b>Gravures et estampes</b>	<b>50 ans</b>	<b>15 000 €</b>

- d. Are there any other factors that determine the applicability of such requirements/ duties (eg. price, temporary transaction (eg. loan for an exhibition))?

For the net wealth tax - painting, drawing, sculpture, tapestries and ceramics, collections of objects, objects of antiquity of more than 100 years are exempt from tax.

For export: There are different types of permits to export. It's depending on whether the output is in the EU or outside the EU, it will obtain a temporary exit permit or certificate.

The output of national treasures artworks is strict and cannot be only temporally for restoration, expertise, participation in a cultural event.

When artworks are intended for export outside the EU, the Ministère de la Culture give an export license and the owner must make a customs declaration, with the exception if work is carried by its author.

**The final export outside EU of Art work with value from € 5,000 is subject to a flat tax of 6% of the sale price or customs value + social contribution of 0.5% unless the seller is not tax resident in France.**

- e. What, in your jurisdiction, would be defined as a piece of art of national importance? Please provide details, including whether there is legislation in place which governs or imposes restrictions on dealing with art of national importance.

**Rules are providing by the “Ministère de la culture” (Public Administration) in attached with public services like the “conservatoire des musées”.**

**There are different types of regulation by law with notice, directive, and legislation.**

12. What are the consequences if the requirements referred to in question 11 are not met? To what extent may the art dealer be held liable?

**The Administration may sue the sellers to cancel the transaction in the Courts and retain all suspicious transactions by a receiving order.**

13. If an expert makes an error (e.g. attributing a painting incorrectly) under what circumstances would he be liable?

**Yes, he can be suing for civil damages.**

14. From a practice point of view, what are the major legal challenges in relation to trading art in your jurisdiction and what advice do you give clients with respect to art transactions?

**Thoroughly know the origin, its traceability with professionals and appraise its value with judiciary expert and high level “*commissaire priseur*”.**

### Title issues and recovering stolen art

15. How does one establish title to art in your jurisdiction? We would be particularly interested in relevant case examples involving modern forms of art such as graffiti.

In French law, it must demonstrate that it is an intellectual work in declining the novelty, originality and creativity compared to other creations.

Whatever the form and support: graffiti, digital art work also. In the French Jurisdiction, it depend the proof and analyses of comparison and also the judge acuity.

16. What principles or rules apply to the recovery of stolen, illicitly exported or looted art?

To have a judgment or any order to make the seizure with the French Customers Administration which have a special service with coercion – service des DOUANES

17. Does your jurisdiction participate in any international restitution schemes to assist in the recovery of stolen, illicitly exported or looted art?

Yes the judiciary court as civil or criminal court linked with the *ministère de la culture*.

### Succession

18. What determines succession to moveable assets in your country?

In France, for any active succession before August 17, 2015, the applicable law is that of the last domicile of the deceased and that of the ground law for buildings.

After it is the EU Regulation n°650/2012 of 4 July 2012 will apply and will allow any EU citizen except the UK and Ireland Denmark to choose the law apply to their succession between the law of their last residence and the law of nationality.



19. Are there any restrictions as to who can inherit artworks of national importance?

**There are no restrictions of a work of art in France that it has national significance or not. However, the heir (french or foreign resident or not resident in France) that would bring out a artworks of the country will solicit an exit planning permission from the**

**Ministère de la Culture (which could be refused if the work is of national interest. => Temporary exit permit (AST), or export license).**

20. How would an individual donate artworks to an institution or charity during his/her lifetime or on death?

**It is possible to donate artwork to a charitable organization. It must be by authenticated deed (exclusive deed by notary in France). Only the public utilities association, cultic, charitable, medical or scientific research can receive donations and legacies.**

**In France, such donations and legacies are profitable because they are partially (up to 60% of the value of the work) deductible from the taxable income of the donor; Finally, taking account the heirs have a reserved part of the estate, the donor or legatee is not free to dispose of all of the property as well even it would be an institution or charity association**

### **Case study**

You are very pleased to receive a referral of two new clients from one of the many charming AIJA members you met at the London Congress 2015. Suzanne is Argentinian and Frederick is English, and they married in a lavish ceremony in Venice in 2011, attended by many celebrities and paparazzi. The couple have two children: Alberto (born in 2012) and Victoria (born in 2014).

Frederick comes from a wealthy family and has inherited many artworks which are kept at his family's rural mansion. Last time Frederick visited his family home, he decided to give Alberto

a painting for his third birthday so he put a label reading "For Alberto" on the back of his favourite Rembrandt.

Suzanne also has a keen interest in art, and has built up her own extensive collection. Suzanne and Frederick currently travel the world, going to galleries and attending auctions to find pieces to add to Suzanne's collection. They are considering moving to your country and living there until the children go to university. Suzanne would like to bring her collection with her, initially to hang in their new home but she is also considering selling some pieces through auction houses.

21. What pre-arrival tax planning opportunities in relation to Suzanne's artworks would you advise?

**VAT and profit**

**It should be better for them not to be non-resident tax payers in Paris.**

22. Once they have moved to your country, what estate and tax planning opportunities should Frederick and Suzanne consider in relation to their artworks?

23. Who will have a financial claim to the artworks if either Frederick or Suzanne dies without leaving a Will?

**In terms of the French rules being his last residence in Paris and without a will in circumstance, the two children and husband are heirs. No specific rules of inheritance rights for artworks.**

**In France two possibilities: A complete inventory of personal property for an estimation of the tax asset or 5% rate in tax applies.**

24. In relation to question 23, would the position be different if Frederick and Suzanne were not married?

**If the isn't a will, the heirs are only the children.**

25. When either Suzanne or Frederick dies, what estate tax will be payable on the artworks?

The surviving spouse is exempt from inheritance tax with the surviving spouse and the children on their share respectively benefit from abatement of 100,000 €

In France we can pay the estate tax by a donation of artwork in compensation to the administration ( "dation"– french legal word - as Anne Sinclair with the Picasso estate).

26. Has Frederick made an effective gift of the Rembrandt to Alberto for succession and for tax purposes?

In France, the maximum donation is the sum of 100 000 € per children every 15 years. Beyond, with a Rembrandt artworks, the donation will be taxed at almost 45% of the value of the table.