

Sale of works of art

Civil Law Problems

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THE SALE OF WORKS OF ART IS A PECULIAR BUSINESS DUE TO

- The object
- The subjects to the contract
- The market

CONSEQUENCES:

- The general rules of the Civil Code have to be adapted:
 - mistake
 - non-performance
 - interpretation
 - good faith
 - etc.
- Special regulation:
 - Intellectual Property Law
 - Historic Patrimony Law
 - Retail Commerce Law

BASIC PROBLEMS:

- Lack of authenticity
- Repercussions of the Historic Patrimony Law in private sales

APPLICABLE LEGAL REGIME:

- Sales among particulars or among merchants:
 - Civil Code
 - Usages
- Sale at auction or between merchant and consumer:
 - Retail Commerce Law
 - Defence of Consumers Law
- If the work qualifies as Spanish Historic Patrimony:
 - Historic Patrimony Law

LACK OF AUTHENTICITY. POSSIBLE ACTIONS:

- Non-performance:
 - defective performance
 - *aliud pro alio*

- Hidden vices
- Dolus
- Mistake:
 1. substance
 2. essential
 3. excusable

MISTAKE

SUBSTANCE OF A WORK OF ART:

- Authenticity = quality that determines consent (unless a doubt is incorporated to the contract)
- There is a relevant legal mistake when there is lack of authenticity (or there are doubts about the authenticity)

MISTAKE:

ESSENTIAL: The authenticity is the characteristic that determines the execution of the contract of sale

- Things to have into account:
 - price
 - way in which the work is presented
 - place
 - documents provided
 - behaviour of the parties

MISTAKE:

EXCUSABILITY: the mistake should not be attributed to the negligent conduct of the person who suffers it

- Things to have into account:
 - professional condition of the parties: art merchants / laymen
 - behaviour of the parties: active or passive position
 - inspection of the work
 - period of time of possession of the work
 - epoch of the work

MISTAKE:

OBSTACLES TO START THE ACTION

- Proof of authenticity
- Term to start the action: 4 years from the perfection of the contract (cases Murillo / Herrings/ Anglada Camarasa)

SALE AT AUCTION: Retail Commerce Law

INFORMATION OWED BY PROFESSIONALS

- True description
- Degree of certainty about authenticity
- Express disclosure of the lack of authenticity
- Guarantees of authenticity

SALE AT AUCTION: Retail Commerce Law

LIABILITY OF AUCTIONEERS

- With regard to the duty to inform
- With regard to the contract of sale:
 - actuation *alieno nomine*
 - specialty: joint and several liability with the seller

SALE OF WORK QUALIFYING AS SPANISH HISTORIC PATRIMONY:

- Quasi-absolute prohibition to dispose:
 - movable goods of ecclesiastic institutions
 - movable goods of Public Administrations

} inalienables e imprescriptibles
(transmisión nula)
 - Restrictions to the disposition faculty:
 - rights of first refusal and redemption (relevant works and works sold at auction)
 - Limitation to the international traffic:
 - prohibition to export (most relevant works)
 - previous authorisation (Inventory works and works of more than 100 years). If the authorisation is denied the State has a right to acquire because the application turns into an “irrevocable offer of sale”.
- Illegal exportation: the work shall belong to the State