

ART & CULTURAL PROPERTY

Pierre Valentin, Founding Partner of Constantine Cannon's Art & Cultural Property Law Group

Art and cultural property law is well-established across the globe and cases involve varied and complicated legal issues. For an in-depth look at this subject, *Lawyer Monthly* reached out to Pierre Valentin, the founding partner of Constantine Cannon's Art & Cultural Property Law Group, a specialist practice dedicated to providing legal advice to the international art market. The Group consists of Pierre and four associates: Azmina Jasani, Rose Guest, Till Vere-Hodge and Yulia Tosheva.

What kind of art-related disputes do you come across?

Our clients include art collectors, art galleries, art dealers, auction houses, artists, museums, private banks, family offices, private art foundations, insurance companies and art investment funds. The disputes they bring to us often raise issues of ownership. The art may have been stolen, it may be unlawfully excavated, or it may have been looted by the Nazis. The art may have been unlawfully exported, it may be a forgery, or it may have been attributed to the wrong artist. Over the years, I have represented clients in litigation involving art stolen in the USA and recovered in London, art belonging to a Swiss collector lost by a London-based storage company, a tax challenge related to video and light art imported in the UK from the USA, significant commission payments paid over the sale of art, an aborted auction sale and art lost during the Nazi era. We also pro-actively help clients to avoid litigation by negotiating solutions to disputes. This can include mediation which has many advantages over litigation.

Other than disputes, what other legal services do you provide?

We assist clients over a wide range of non-contentious matters. We help them structure, document, negotiate and close high end transactions including sales, purchases, consignments to auction, loans to museums and financing against art. We also give advice on a wide range of issues relevant to art collectors and art market professionals including import and export controls, copyright, resale rights, anti-money laundering, consumer protection, data protection and taxation.

What are the unique challenges involved in resolving disputes where art is concerned?

The key challenges in art litigation tend to revolve around evidence, assessing damages and jurisdictional issues. The paper trail is often lacking. Reliance on oral witness evidence carries significant risks. Expert evidence is often needed, which carries its own risks. Litigation over authenticity can boil down to a 'battle of experts', the outcome of which is hard to predict. Assessing damages can be challenging given that the value of art is eminently subjective and expert opinion can vary significantly. Art travels easily and disputes can involve complex issues of conflicts of law, including trials on jurisdiction and applicable law. Almost all disputes we handle have foreign elements to it and we regularly work with foreign lawyers. Criminal law is also relevant to a variety of art-related disputes, and we often turn to criminal law specialists for guidance. Perhaps one of the most challenging aspects of art-related disputes is the emotional baggage that comes with it. The art market is one of the most emotionally invested

industries and when a dispute arises, clients do not always make the most rational decisions.

What are the complexities involved in assisting with Nazi-restitution claims?

Nazi-restitution claims can be highly complex. First, your perspective will invariably depend on your client. Acting for a claimant, you will want to argue for the widest possible interpretation of what is capable of restitution. Acting for the possessor, you will rely on legal arguments to support a finding that your client has good title, unless the client is looking to achieve an equitable resolution of the claim which may involve giving up reliance on technical arguments such as a limitation. There can be difficult ethical questions involved in resolving these claims. There are also issues associated with inheritance rights requiring identification of the rightful heir(s) of the victim of the Nazi regime. These issues can be equally complex given the period of time that lapsed since the victim's death, and the fact that heirs of victims of the Nazi regime may reside in many different countries around the world. **LM**



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