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Art Stolen: A Buyer's Exposure

"Provenance" in the art world means knowing where the art comes from.

The Writer's article on "Provenance and the Art Collector" covers the full extent of the meaning of "Provenance" with a focus on stolen art. Just contact the Writer if you would like a copy of that article.

This article is an extension dealing specifically with the potential legal exposure of a person holding stolen art.

*"Careless shepherd makes
excellent dinner for wolf."
Earl Derr Biggers*





A Refresher

One aspect of provenance is knowing how the art left the artist and who owned the piece from that time onwards until it reached you. It involves tracing the title of the art. Art does not have title if it has been stolen.

Even if you paid good money for it and bought it from an authentic seller, the legal position is that a person cannot give away what he does not have in the first place. Singapore and most Anglo-American, European and Commonwealth countries hold this same position.

Dealing with art with unclear provenance is almost impossible. No one would want to pay fair market value for it in a sale, accept it as collateral for a loan, insure it, hire it or even accept it as donation!

Also a current holder of stolen art is exposed legally. Here's how...

Often the story begins with the rightful owner turning up on your doorstep, armed with concrete proof of his ownership and demanding its return.

Questionable title

This happens if the art is

- ▶ An illegal export – like when the laws of the country of origin do not allow it to leave its shores, even by its rightful owner!
- ▶ An archaeological find prohibited from being traded. Objects dug up from the ground could by law belong to the State or landowner. Finders-keepers does not apply.

Twelve bronze sculptures of the Hindu God Shiva were returned to the temple on whose grounds it was excavated, and then sold. This was pursuant to a judgement of a UK Court against a subsequent buyer.

- ▶ Extorted. Holocaust-related stories provide many examples of these.

The art in the above scenarios may not be considered stolen, but its title/ ownership by a subsequent buyer is questionable nevertheless.

- ▶ Looted by an invader of the country. Many artefacts belonging to the National Museum of Iraq turned up in the black market outside Iraq.
- ▶ Stolen by a thief and later traded.



What can happen to you if you find yourself with stolen art?

A crime committed?

You did not know the art was stolen.

Dishonestly receiving stolen property is a crime in Singapore. Even if the stolen property was converted or exchanged, receiving the converted or exchanged property is a crime (*Section 410 Penal Code*).

What happens if you did not actually know that the property was stolen but any right-minded person should have been suspicious - the art was sold far cheaper than its real worth and under questionable circumstances.

“Dishonesty” can extend to be a situation where a person intentionally closes his eyes where he should have had “*reason to believe*”.

Dishonestly receiving or retaining stolen property in Singapore knowing or having reason to believe that it is stolen is an offence. If found guilty, one may be imprisoned for up to 5 years, fined or both (*Section 411 Penal Code*).

A person who “habitually” receives and deals in property which he knows or has reason to believe to be stolen faces a heftier penalty of imprisonment for up to 20 years and a fine (*Section 413 Penal Code*).

You know now that you have stolen art in your hands, what do you do?

Tell the police.

Assisting its concealment or disposal is an offence too (*Section 414 Penal Code*).

If you are found to be guilty, the art can be confiscated from you and returned to the rightful owner.

There is no deadline for a crime. An offender will remain criminally exposed.

Exposure to being sued

Rightful Owner vs Innocent Buyer

The law in Singapore does not require an art buyer to undertake due diligence to make sure that the art is not stolen.

Where Singapore law applies to the sale and purchase, the *nemo dat quod non habet principle* determines if the title was transferred from an owner to a buyer. This principle, which is contained in the *Sale of Goods Act*, generally means that a person who does not own property, especially a thief, cannot confer ownership on another, except with the owner’s authority. A buyer, whether he is an immediate one from the thief or a subsequent one down the road, cannot obtain title as the thief had none to transfer. The innocence of a subsequent buyer is inconsequential. No one gets a better title than the victim of the theft.





Are there any circumstances when a buyer of stolen art may obtain title?

- ▶ Some countries allow title to stolen objects to pass to the buyer, if he is innocent. If the law of such a country applies to the title dispute, the owner-victim of the theft may not succeed.

Under some circumstances, in a title dispute involving cross-border transactions, it is not inconceivable for the Courts in Singapore to consider the application of a foreign law as being the “lex situs”; ie. the applicable law based on where the art was situated at the time of the sale and purchase transaction.

Art pieces being mobile, it can be transacted several times after the theft in a number of different countries, one of which allows title to pass to an innocent buyer. That buyer then has obtained title under the law of that country. He is able to transfer title to a subsequent buyer from him, and thus title is passed via all transactions after that.

This is what happened in *Winkworth v Christie's Ltd*, an English case.

Art was stolen from Winkworth in the UK. It was then taken to Italy where it was sold under a contract governed by the laws of Italy. Italian laws allow title to be conferred on an innocent buyer. The buyer therefore had title to the art, although it was a stolen piece. Subsequent sales transferred title to subsequent buyers. Eventually the art found its way to the UK. The victim of the theft, Winkworth, sought a declaration from the English Courts that the art was his. His application failed.

The law to be applied to the contract where the buyer bought the art is important.

- ▶ By statute, some countries, including Singapore, place a deadline beyond which a suit cannot be brought. This is the Limitation Act.

6 years is the deadline placed in Singapore. Any suit brought 6 years after a cause of action accrued can be defeated by the party being sued because it has crossed the limitation period deadline. This is the general position. There are exceptions like if there was fraud involved.

There is no limitation period for criminal proceedings, as mentioned before.

Being sued (by the rightful owner) in the Tort of Conversion

When art is stolen from its owner, he is deprived of his immediate possession and use of it. The right of immediate possession has been infringed, thus allowing him to seek his remedy under the civil law claim of Conversion.

Each and every person in the chain of events that wrongfully interfered with his right of possession can be sued. This begins with the thief and includes



each and every purchaser after that. Conversion is a strict liability tort; that the buyer did not know that he was depriving the owner of possession is irrelevant and cannot be a defence for the buyer.

The onus is on the owner to prove that all the elements of the tort exist.

Generally, they are

- ▶ That the defendant's (ie. the person to be sued by the owner) conduct was such that it deprived the owner of his right to possess the art
- ▶ That the defendant's conduct was deliberate and not accidental; for example the buyer intentionally carried the art that he had purchased with him to his home and hung it on his wall.
- ▶ That the defendant's conduct was so extensive an encroachment of the rights of the owner as to exclude the owner from the use and immediate possession of his art. In the example just given, with the art tucked away from the eyes of the world, hanging on the wall of the defendant in his home, the owner was totally unaware of its whereabouts and certainly could not enjoy his art for that duration.

A successful claim may not necessarily result in the return of the art. An award for damages is usually the remedy the Courts would grant.

Cultural property and its exposure to repatriation

At an international level, "cultural property" is treated differently from art objects. By definition, cultural property is linked to the cultural identity, history and heritage of a nation or group.

Some countries, like the UK, have enacted specific domestic laws for the unlawful removal of the cultural property. An example would be the Dealing in Cultural Objects (Offences) Act 2003.

Singapore has no such specific legislation.

Several International Conventions too have been set in place. An example is the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import and Export and Transfer of Ownership of Cultural Property.

They provide an owner with another avenue for a remedy. And a return of the art is conceivable.

Many countries are signatories. Singapore is not a signatory to any of them.

For cultural property and stolen art that ends up in Singapore, the options open to a claimant is to report its theft and provide details of its whereabouts to the police and/or sue the buyer.



About Amita

Founding member of and Consultant at RHTLaw Taylor Wessing LLP, Amita has more than 2½ decades of experience as a practicing lawyer. She started off in the areas of Property, Banking and Finance and continues to provide valuable counsel in these areas. To support the push by the Singapore government towards building a Private Wealth industry, Amita subsequently carved out and developed the Private Client practice. Her journey to build an ecosystem connecting her professional life of law, her passion for art and returning back to society is a continuous one.

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