

COMMENTS ON THE ART MARKET

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Normally I begin my newsletters with a 'story' of interest, however this month I am starting off with my series --- what you need to think about when purchasing a work of art. After, this month's 'story' will beautifully illustrate why people need to concern themselves with whom they do business and about a work's:

Title

Title is an interesting legal term used to describe, in our case, the ownership of a work of art. Questions often asked are: Do you have 'title' to the work? Are you the owner of the work? Does the work have 'clear title'?

Determining if the person you are purchasing a work from has clear title, or the legal right to sell the work, is extremely difficult. Unlike other items one may purchase – cars, stocks or real estate – works of art (and for that matter jewelry, furniture, porcelain, and most collectibles) are not items that are registered in some database where one can see who the real owner is; nor, at this point, can one buy insurance to cover this risk. Most works of art have changed hands many times and the real chain of ownership (a work's provenance – which I will discuss next month) is often very vague. In many cases it is nearly impossible to verify who the actual owner is.

We have all read stories, in recent years, about all the Nazi's looted art, or about soldiers who 'took' works that they found during the Second World War, and how many of these works ended up in major public and private collections. When a stolen work is discovered and proof is shown that the work never had clear title, the current owner is usually forced to return the work, to either the true owner or their heirs, and is out the money they spent.

So, what is a buyer to do? Well, your best option is to deal with reputable and well established firms who will stand behind the work they sell. This means that should an issue ever arise concerning the title of a work purchased, that gallery will take the piece back and refund your purchase price.

Keep in mind that this risk is even more present in the Internet auction world. Most people trading on the Internet know nothing about each other. Besides the obvious risk that you may pay for something and never receive it, how do you know that the work that is being offered is actually owned by the seller, or that the seller has the legal right to offer it? And what if the work turns out to be stolen; will you ever be able to find the person who sold it? Will you ever get your money back? In the faceless Internet world, the answers to these questions are pretty obvious.

If this unfortunate turn of events should happen it is usually the last person holding the work that is "out the money". Again, to help protect yourself from being the last one, it is advisable to deal with well established firms (dealers, galleries, auctions, etc.). Those firms that are leaders in their field, have developed great reputations, and have been, and will most likely be, in business for many years to come.

On a final note, most reputable galleries do their 'due diligence'. They want to be as sure as possible that the individuals they are buying from are the actual owners, have clear title, and the legal right to sell. There is nothing more embarrassing then having to call a client, years after they bought something, and inform that that a particular work in their collection was stolen and must be returned.

An Interesting Story About Title

Back in November the Maine Antique Digest reported that an out-of-court settlement was made between Butterfields, the California auction house that is now owned by eBay, and several individuals that *ended an episode that could have forced the firm to make changes in the rules under which it does business.*

While there is a lot to this story, the short version is as follows. A group of individuals stole a large collection of rare Eskimo/Inuit objects and over a period of 5 years had sold them through Butterfields. The works were originally collected by a Mr. Joseph Chilberg, during the early 20th century, and had been stored in the basement of the family's home for many years. In 1998 Chilberg's grandson paid a visit to the home and discovered that many of the items were missing. It turns out that the grandson had rented out the house to a friend whose daughter was involved in the theft --- so much for trusting friends!

In October of 2000 the grandson brought suit against Butterfields and 30 of their clients (the buyers of the stolen material); an out-of-court settlement was made. Then Robert Fellmeth, a San Diego attorney, acting as a representative for himself and a small group of buyers, filed a counterclaim against Butterfields --- they were seeking recovery of all damages resulting from the purchases and the striking of any disclaimer of responsibility of passing title on the part of Butterfields in the future.

Well, as you can guess, this suit was also settled and there was no legal ruling on the matter...however, it is now clearly stated by Butterfields that: **Except as expressly provided above, all property is sold 'as is' and neither Butterfields Auctioneers Corp., nor the consignor makes any representation or warranty, expressed or implied, as to the title, merchantability, fitness or condition of the property or as to the correctness of description, genuineness, attribution, provenance or period of the property...**

WOW! Not only was that a mouthful, but they sure take the phrase *caveat emptor* (buyer beware) to a new level! Not only do they not guarantee **title**, but also, it appears from this statement the only thing they do guarantee is that the item physically exists!! Or do they?

Howard L. Rehs

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Gallery Updates: We have made a few interesting changes to our site. This month we added a FAQ's page (Frequently Asked Questions). While there are only a few questions there now, we will be expanding this feature in the months to come. We have also added a page that discusses the gallery's Authentication Services. To reach these new features please click on the 'Contact Us/Newsletters' button on our site.

The gallery has also acquired new works by Louis Aston Knight, Edouard Cortès, Antoine Blanchard and Sally Swatland – some of which have been added to our site.

Virtual Exhibitions: This month we have added a small exhibition featuring the work of the American still life artist George C. Lambdin (1830-1896) to our web site. The exhibit features a biography, photo of the artist and color images of his work; the direct URL is:

[George Cochran Lambdin – The Vintage Rose](#)

We have also expanded the following Virtual Exhibitions: George Armfield, John F. Herring, Jr. & Henry John Yeend King - please take a look.

Among the new 'sold' works that have been added to our Virtual Exhibitions are: Henry John Yeend King's *Milking Time*; Antoine Blanchard's *Place Vendôme* (a very interesting and unusual work by the artist); Edouard Cortes' *Sacre Coeur* (this particular work is featured in the Klein book on page 185), *Place de la Republique (Clichy)*, *Les Grands Boulevards*, *Theatre des Varietes*, and a number of works by Sally Swatland, including *Sunday at the Shore* and *Along the Connecticut Shore*.

Next Month: I will be discussing a work's Provenance - what is it and does it really matter?