

AUTHENTICITY IN THE ART MARKET

**A Comparative Study of Swiss,
French and English Contract Law**

Carolyn Olsburgh

TABLE OF CONTENTS

| | |
|--|-----|
| Table of Cases | v |
| Table of Legislation | vii |
| Preface | ix |
| Avant-Propos | xi |
| | |
| Chapter 1: Introduction | 1 |
| I. Definitions | 2 |
| II. Specificities of the Art Market | 3 |
| III. Scope, Structure and Method | 4 |
| A. Scope and Limits of the Book | 4 |
| B. Structure and Method | 6 |
| | |
| Chapter 2: Swiss Law | 7 |
| I. The Seller's Duty to Inform | 7 |
| II. The Guarantee of Authenticity | 8 |
| A. Express Guarantee | 8 |
| B. Tacit Guarantee | 8 |
| III. The Remedies of the Buyer (including the problem of limitation periods) | 9 |
| A. Remedies Regarding the Formation of the Contract | 9 |
| a. Erreur Essentielle | 9 |
| i) Notion and Conditions | 9 |
| ii) Consequences | 12 |
| b. Dol | 14 |
| i) Notion and Conditions | 14 |
| ii) Consequences | 15 |
| B. Remedies Regarding the Performance of the Contract | 16 |
| a. The Seller's Liability for Defects | 17 |
| i) Conditions | 17 |
| ii) Consequences | 20 |
| b. General Liability for Non-Performance? | 21 |
| | |
| Chapter 3: French Law | 22 |
| I. The Seller's Duty to Inform | 22 |
| II. The Guarantee of Authenticity | 23 |
| A. Express Guarantee | 23 |
| B. Tacit Guarantee | 24 |
| III. The Remedies of the Buyer (including the problem of limitation periods) | 25 |
| A. Remedies Regarding the Formation of the Contract | 25 |
| a. Erreur Essentielle | 25 |
| i) Notion and Conditions | 25 |
| ii) Legal Consequences | 31 |
| b. Dol | 33 |
| i) Notion and Conditions | 33 |
| ii) Consequences | 34 |
| B. Remedies Regarding the Performance of the Contract | 34 |
| a. The Seller's Duty of Delivery | 35 |
| b. The Seller's Liability for Defects | 35 |

| | |
|--|-----------|
| Chapter 4: English Law | 37 |
| I. The Seller's Duty to Inform | 38 |
| II. The Guarantee of Authenticity | 39 |
| A. Statement of Opinion | 39 |
| B. Term of the Contract | 39 |
| C. Collateral Contract | 43 |
| D. Representation | 43 |
| III. The Remedies of the Buyer (including the problem of limitation periods) | 43 |
| A. Remedies Regarding the Formation of the Contract | 44 |
| a. Mistake | 44 |
| b. Misrepresentation | 46 |
| B. Remedies Regarding the Performance of the Contract | 49 |
| C. Excursus: the Trade Descriptions Act 1968 | 51 |
| | |
| Chapter 5: Comparison and Evaluation of the Solutions | 52 |
| I. The Seller's Duty to Inform | 52 |
| A. Comparison | 52 |
| B. Evaluation | 52 |
| II. The Guarantee of Authenticity | 53 |
| A. Comparison | 53 |
| B. Evaluation | 54 |
| III. The Remedies of the Buyer | 55 |
| A. Comparison | 55 |
| a. Remedies Regarding the Formation of the Contract | 56 |
| i. Mistake and Innocent/Negligent Misrepresentation | 56 |
| ii. Dol and Fraudulent Misrepresentation | 59 |
| b. Remedies Regarding the Performance of the Contract | 59 |
| B. Evaluation | 60 |
| a. Nullity/Rescission of the Contract | 60 |
| b. Damages | 61 |
| IV. The Problem of Limitation Periods | 62 |
| A. Comparison | 62 |
| B. Evaluation | 63 |
| | |
| Chapter 6: Conclusion | 66 |
| | |
| Appendices | |
| I. Table of Limitation Periods | 69 |
| II. Sotheby's Authenticity Guarantee and UK Conditions of Business | 71 |
| III. Christie's Conditions of Sale | 74 |
| IV. Translation of the Relevant Swiss Provisions | 77 |
| V. Translation of the Relevant Provisions of the French Civil Code | 85 |
| VI. French Decree No. 81-255 | 89 |
| VII. Relevant Provisions of English Law | 93 |