



Transactions in the art market – legal pitfalls

AIBL Association of International Business Lawyers
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Anne Laure Bandle, attorney-at-law, PhD in law
annelaure.bandle@borel-barbey.ch

Authenticity disclaimers



"YVES KLEIN

1928-1962

Ohne Titel (Eponge Bleue). 1961.

IKB Pigment und Kunstharz auf
Schwamm. Ca. 6 x 6 x 6 cm auf
Metallständer,

Gesamthöhe 17.5 cm."

General Terms & Conditions

- Description to the best of our knowledge ("*nach bestem Wissen und Gewissen*")
- Waiver of liability for catalogue entries and any default

Yves Klein, Eponge Bleu

Federal Court Ruling, 4A_42/2021, 5 July 2021

Authenticity disclaimers

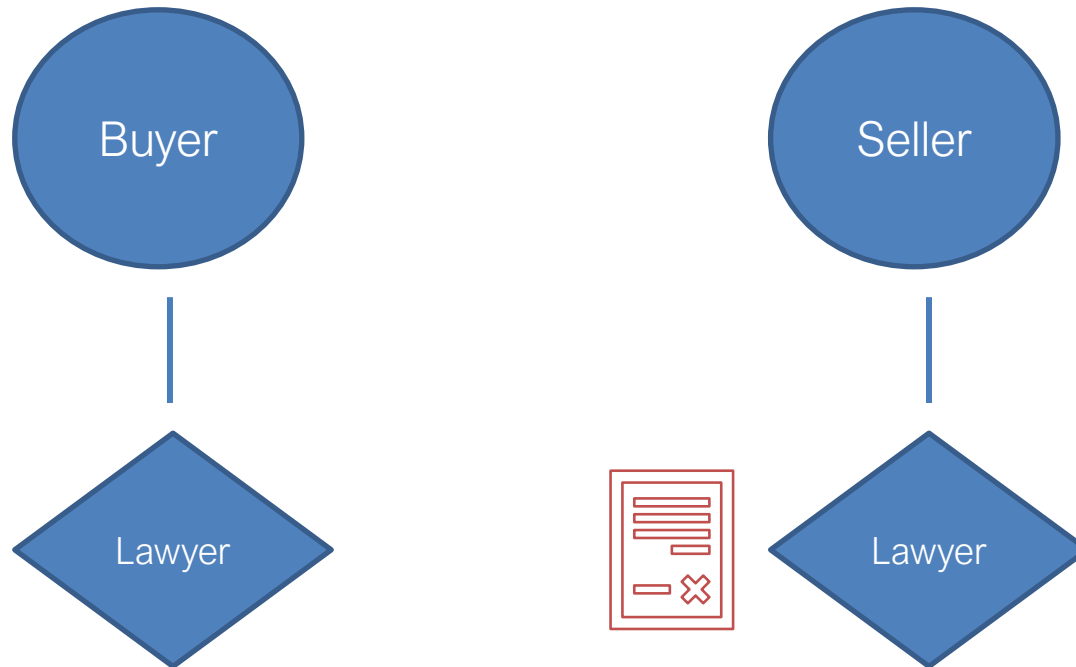
- Guarantee (contract)
- Mistake (art. 23 et seqq. CO)
- Wilful deceit (art. 28 CO; art. 199 CO)
- Warranty of quality and fitness (art. 197 CO)



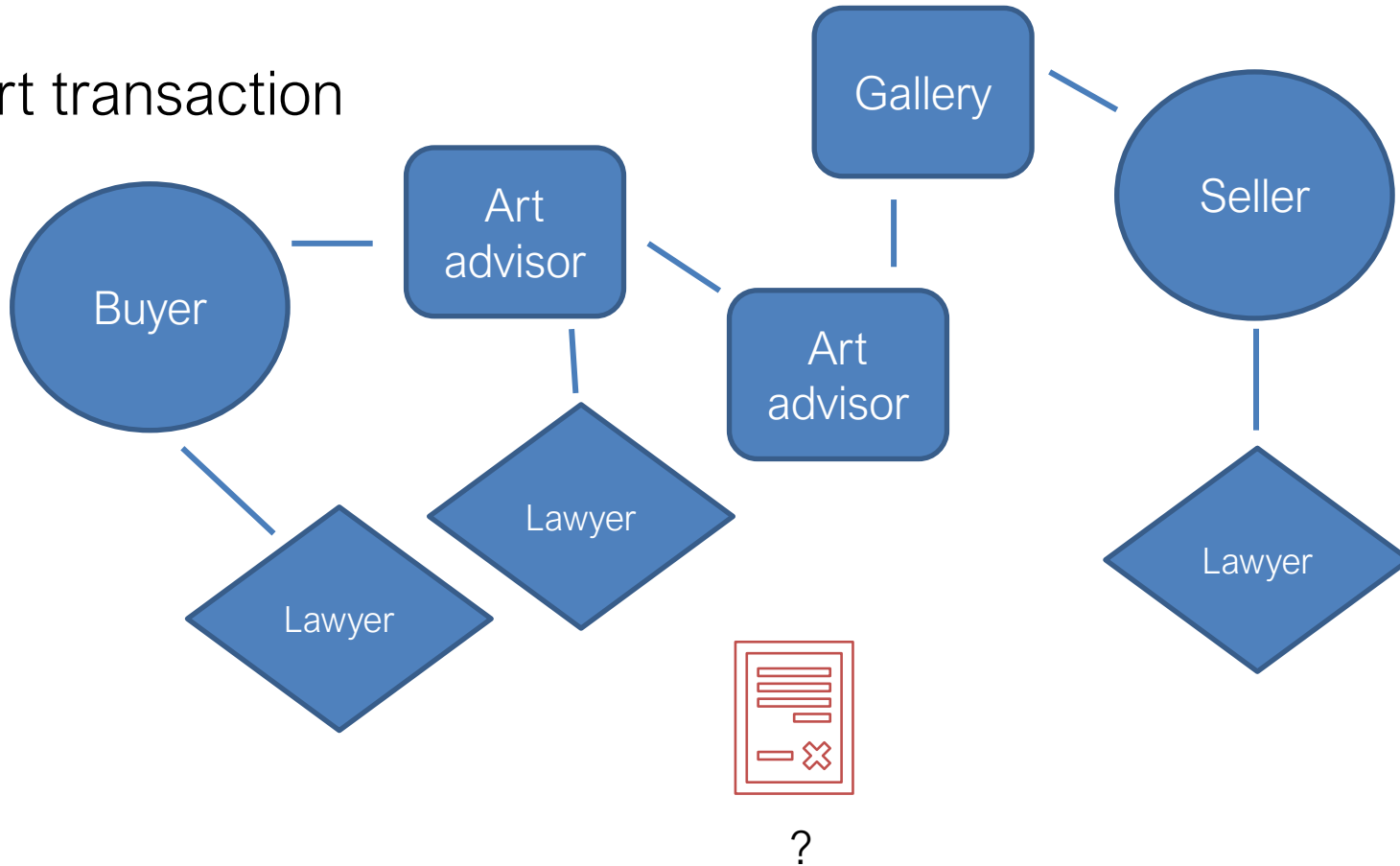
Due diligence and stolen art

- Art work entrusted to a third party (art. 933 CO)
- Art work stolen from/lost by its owner (art. 934^{bis} CO)
- Good faith requires due diligence

Art transaction



Art transaction



- Jurisdiction
- Financial health
- Reputation

Liability and due diligence

Party to the sale contract	Intermediary
<ul style="list-style-type: none"> - Authenticity - Condition - Title <p>-> express, implied, excluded guarantees</p>	<ul style="list-style-type: none"> - Duty of care - Fiduciary duty

Party to the sale contract	Intermediary
<ul style="list-style-type: none"> - Original documents, insurance, access, accounts - Remuneration: resale price margin 	<ul style="list-style-type: none"> - Advice on the sale/purchase (quality, price, condition) - Remuneration: commission (% of the sale price), lump sum

Responsible Art Market | Due Diligence Toolkit, www.responsibleartmarket.org

Sale 1



Art transaction

