

IN-DEPTH

# Art Law

ISRAEL

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# Art Law

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*In-Depth: Art Law* (formerly The Art Law Review) is a unique global overview of this dynamic and growing area of legal expertise. With a focus on recent trends and developments in key jurisdictions worldwide, it examines a wide range of topics including art disputes; fakes, forgeries and authentication; art transactions; artist rights; trusts and foundations; and much more.

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# Israel

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NGM Cultural Property Law

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## Introduction

The past year has been marked indelibly, and almost exclusively, by the events of 7 October 2023 and the subsequent war between Israel and Hamas in the south, Hezbollah in the north, and Iran and its other proxies in Yemen, Iraq and Syria. The Hamas offensive on that date left behind carnage unseen in all the years of Israel's existence as a modern state and marked the single most deadly day against Jews since the end of the Holocaust.

The indiscriminate attacks and killings have taken a significant toll on the Israeli artistic community, with members of the community being among those killed or kidnapped. Tens of thousands of Israeli civilians have also been reduced to a state of refugeehood as a consequence of the attacks, including hundreds of artists, who have lost their livelihoods and, in many cases, even the ability to produce their art because of the loss of access to their studios and art materials. Significant damage has also been caused to cultural and religious properties both in Israel and Gaza.

In the past year, only one contemporary Israeli artist was among the 500 best-selling artists internationally at auction: Guy Yanai. Yanai's artworks accounted for 23 of the 25 artworks that had been sold at auction for total sales of almost US\$865,042.<sup>[1]</sup> In each of 2000 and 2023, three Israeli artists were represented in this same list. The trend of significant decreases in revenue generated continued with a spectacular drop from US\$2.18 million in 2023.<sup>[2]</sup> While there is not enough information to ascertain whether the reason for this drop-off is related to the ongoing war and the global spike in antisemitism and anti-Israel sentiment, this is a consideration that should be taken into account.

## Year in review

The previous edition of this publication was sent to press shortly after the Hamas attack on 7 October 2023, when the extent of the offensive and the subsequent war was uncertain. As at the time of writing, one year later, the war still rages, and while an uncertain ceasefire has been implemented on the northern front, its end in Gaza does not yet appear in sight.

Of the 1,163 killed during the 7 October attack, 779 were civilians.<sup>[3]</sup> Of these, at least ten were active artists – Aviv Kotz, Livnat Kotz, Yonat Or, Eviatar (Tari) Moshe Kipnis, Tair Bira, Yahav Winner, Maayan Kalihman, Maya Foder, Tamar Kedem Siman Tov and Roy Edan – and at least one artist serving as an active-duty soldier, Amir Lavi, was killed while trying to defend a military installation in the wake of the attack. Five artists were kidnapped, four of whom were murdered in captivity: Inbar ('Pink') Hayman, Chaim Peri, Aviv Atzili and Amiram Cooper. The fifth, Raz Ben Ami, was released in the exchanges of November 2023. Another artist, Ziva Jelin, who also serves as the director of the Be'eri Gallery, managed to survive the attack in Kibbutz Be'eri, which lost about one-quarter of its members in the attack.

Approximately 143,000 Israeli civilians have been forced into refugeehood in their own country because of the constant shelling and rocket attacks.<sup>[4]</sup> The Union of Visual Artists estimates that these refugees include over 100 artists who are members of the Union and hundreds of other artists who are not.<sup>[5]</sup> These refugee artists have lost access to their studios, their supplies, their students and their customer base, with no prior warning and

almost no ability to return and salvage materials that they could take with them to their new, temporary abodes scattered throughout the country.

## Guidelines from the Registrar of Associations

In response to this new and urgent humanitarian crisis, the Registrar of Associations<sup>[6]</sup> has published guidelines allowing associations whose goals do not usually include certain types of support or activity, to expand their support to include those activities or to function as financial conduits for those activities for the purposes of supporting sectors affected by war, provided that the expansion is a natural extension of their declared goals and is of immediate and critical necessity.<sup>[7]</sup>

Following these guidelines, the Jerusalem-based 'New Spirit' non-profit, dedicated to the support of the visual arts and cultural scene in Jerusalem, was able to serve as a financial conduit for the war-born 'Israel's Art at Dawn' Foundation, which is dedicated to financing schemes for supporting refugee artists, regardless of their location in Israel, and art institutions damaged by the 7 October attack and the ensuing war.<sup>[8]</sup> 'Israel's Art at Dawn', established by leading members of the Israeli art scene, conducted an auction to which works were donated by many leading Israeli artists, including Sigalit Landau, Larry Abramson, Tsibi Geva, Gideon Rubin, Yehudit Sasportas, Chen Shaish, Miriam Cabessa, Michal Chelbin, Zoya Cherkassky-Nnadi, Said Abu Shakra, Shai Azoulay, Angelika Sher and Nir Hod. Through its cooperation with New Spirit, approximately 1 million shekels raised in the auction were distributed to refugee artists and impacted art institutions.

## Damage to cultural property

The Additional Protocol (I) and Additional Protocol (II) to the Geneva Conventions, as well as the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention), provide general provisions against the attack and destruction of cultural property. These conventions have been acceded to, ratified or signed by Israel, Iran, Lebanon, Syria and Iraq. Customary international humanitarian law dictates that Hamas and Hezbollah are also bound to these conventions. Significant damage has, however, been dealt to various cultural and religious properties both in Israel and in Gaza.

Article 53 of the Additional Protocol (I) prohibits 'acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples', the 'use [of] such objects in support of military effort' and the making of 'such objects the object of reprisals'.<sup>[9]</sup> Article 53 must be understood within the general provisions relating to civilian objects alongside which it appears.<sup>[10]</sup> Article 52(2) of the Protocol provides for the following regarding civilian objects, which includes cultural property:

Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Regarding the cultural and religious properties in Gaza that were damaged by Israeli attacks on Hamas and the Islamic Jihad militant groups, the militant groups had used those properties both to launch attacks against Israel and to hide weaponry and other military assets and personnel. According to these provisions, those actions invalidated the protection of those properties in respect of Israel's military needs.

Further, although the Hague Convention forbids the targeting or attack of cultural property in its Article 4(1), Article 4(2) states that '[t]he obligations mentioned in [Article 4(1)] may be waived only in cases where military necessity imperatively requires such a waiver'.<sup>[11]</sup> The relevant provisions of international humanitarian law, therefore, provide for exceptions to the general prohibitions against the attack and destruction of cultural property if it is militarily necessary.

It is impossible in the context of this chapter to enumerate and evaluate each attack on cultural property throughout the war; however, the author found only one case in which the destruction of a cultural property by Israeli forces was clearly outside the bounds of the relevant conventions: on 18 December 2023, a battalion of the Israel Defence Forces (IDF) took control of Palestine Square, a central plaza in the Shajaiya neighbourhood of Gaza. The battalion pulled down and destroyed a monument dedicated to the destruction of an IDF armoured personnel carrier that killed seven Israeli soldiers from the same battalion during the battle for control of the neighbourhood during the 2014 Gaza War (Operation Protective Edge).<sup>[12]</sup> Although the reasons why the IDF battalion found this monument offensive and unpalatable may be understandable, there does not appear to be any legal justification for the destruction of the monument.

The damage to and destruction of cultural properties in Israel from indiscriminate rocket fire from Gaza and Lebanon over the past year, as well as from the ballistic missile attack on Israel by Iran on 1 October 2024, appear to contravene international humanitarian law. Well-documented examples include:

1. the galleries of Kibbutz Be'eri and Kibbutz Nir Oz, which were ransacked and burnt during the 7 October attack;
2. the Yad Mordechai From Holocaust to Rebirth Museum in Kibbutz Yad Mordechai,<sup>[13]</sup> which was severely damaged by a direct hit from a rocket fired from Gaza on 23 October 2023; and
3. the Beit Shifer building in the Beit Hana'ara compound in Hod Hasharon, a unique early twentieth-century structure under strict conservation, which was destroyed by a direct hit from an Iranian ballistic missile on 1 October 2024.

All of these were strictly civilian cultural objects that had no military use and were struck by indiscriminate attacks on civilian populations. Nevertheless, it is difficult to know the full extent of damage to Israeli cultural property caused by rocket fire from Gaza and Lebanon.<sup>[14]</sup>

## Court closures and litigation

A further consequence of the war on the development of art law in Israel is the fact that, for a substantial period after the 7 October attack, courts throughout Israel were closed owing

to the large number of rocket attacks. Exceptions were made for emergency cases. The court closures added to the extraordinary backlog of cases that already existed in Israel.

Cases in which attorney representatives have been called up for emergency reserve military service have been delayed until the attorneys are released from service. For instance, an appeal to the Supreme Court in the case regarding the document removed from the Jabotinsky Archive and offered for sale by the King David Auction House,<sup>[15]</sup> has been repeatedly deferred owing to the defence counsel's military service and is currently scheduled to be heard in April 2025 – about one-and-a-half years after the initially scheduled hearing.<sup>[16]</sup>

Nevertheless, nine art-related cases filed in previous years made their way through the lower courts in the past year; however, these cases, while significant to the parties involved, did not provide much new direction or understanding of cultural property law in Israel. At least one known case was filed during the past year.

## Proposed budget for 2025

The proposed budget for the Ministry of Culture and Sports for 2025, as adopted by the government on 1 November 2024, is almost 2.5 billion shekels.<sup>[17]</sup> This is slightly higher than the 2024 budget, which was approximately 2.48 billion shekels and which had been radically slashed for the 2023–2024 two-year budget.<sup>[18]</sup> The 2025 proposed budget was passed by the Knesset, although changes are still possible. At the time of writing, it is unclear what proportion of the Ministry's proposed budget will be reserved for mainstream cultural programmes in the arts; however, it has been reported to the author by parties familiar with the negotiations that they anticipate a reduction of approximately 20 per cent of the budget reserved for the cultural sector.

## Draft tests for distribution of support funds

The Ministry of Culture and Sports has published draft tests for the distribution of support funds from the Ministry to public institutions in the field of visual art.<sup>[19]</sup> These draft tests radically change the criteria for the government support of galleries: supported galleries would need to pay artists a minimum of 20 per cent of the gross expenditures on the exhibition, and galleries would need to be a minimum size (65 square metres) and have a minimum annual budget of 300,000 shekels. The criteria also for the first time provide a definition of 'professional artist', which, among various other things, requires autodidacts to have demonstrated professional experience of at least seven years.

In the month that the draft tests were published and open to public comment, 143 comments and objections were filed, including fierce objection by the Curators Union, which forecasts that the size and budget requirements will force approximately one-third of the public galleries in Israel to close within three years.<sup>[20]</sup> Sources close to the drafting table refute this contention and have stated that the current funding criteria is too broad, leading to funding decisions that provide grants that are too small to too many grantees rather than supporting an increase in quality across the field.<sup>[21]</sup>

The Union of Visual Artists, while supporting the professionalisation of the field, supports a reduction in the professional period to five years and the extension of the status of professional artist to also cover individuals who have participated in at least three

exhibitions curated by a professional curator in which the artist was not required to pay to participate. It joined the Curators Union in opposing the proposed size and budget requirements for galleries.<sup>[22]</sup>

The Union of Visual Artists also supports the broadening of the definition of 'artist's wage', arguing that, in many cases, exhibition expenses are very low and 20 per cent would often leave the artists with almost no compensation for participating in an exhibition. As an alternative criterion, the Union recommends that artists be paid either 2,500 shekels for a solo exhibition or 1,000 shekels for participation in a group exhibition, or the 20 per cent rate, whichever is higher.<sup>[23]</sup>

## Artistic output

The main focus of artistic output in the past year has been largely dedicated to themes relating to the 7 October attack and the ensuing war. With the war extending far beyond its expected length, and especially with hostages remaining with Hamas in Gaza, over time much of this artistic output has turned to focus on the hostages and their plight and has increasingly taken on a political and highly critical bent towards the government and its perceived unwillingness to take the necessary measures to ensure the hostages' return home.

The square in front of the Tel Aviv Museum of Art has been renamed, at least colloquially, as 'Hostages Square' and is replete with art installations dealing with the plight of the hostages. Multiple exhibitions have also been dedicated to these themes, including at the Tel Aviv Museum of Art, ANU – Museum of the Jewish People and the Israel Museum, and in both public and private galleries; however, many museums in the north and the south of Israel remain closed because of the continued rocket attacks, and even in areas that have not been evacuated or turned into closed military areas, the danger inherent in visiting them has caused tourism, both external and internal, to plummet to almost zero, which has had a devastating effect on these institutions. Institutional leaders have expressed their distraught at the relatively low level of government funding to help make up for their funding losses.<sup>[24]</sup>

The impact on art relating to or identified with Israel as a consequence of the 7 October attack and the ensuing war is not limited to the territorial bounds of the Israeli state or even those in which the war is being physically engaged. Over one year after the start of the war, on the 2024 anniversary of the Balfour Declaration of 2 November 1917, masked members of the group Palestine Action vandalised the chemistry building at the University of Manchester and stole two busts of the first president of Israel, Chaim Weizmann.<sup>[25]</sup> Weizmann had served as a lecturer in chemistry at the University of Manchester for some 30 years before his appointment as president of Israel, and his developments in chemical processes were crucial to the allied victory in the First World War. While this incident and similar others do not have implications for art law in Israel per se, they do reflect the impact and implications of the war on the art world in other jurisdictions.

At the same time, the artistic output regarding the war and its consequences has not been without controversy, including in Israel itself. One group of artists opened an outdoor exhibition of works dedicated to the question of the impact of the war on children, including children in Gaza. This exhibition was first displayed at Hostages Square in Tel Aviv and was later brought to Jerusalem, where right-wing activists attempted to damage the



works. After initially being distanced by the police, they returned, and the police ended up demanding the removal of some of some of the works as 'provocative and disturbing to the public'.<sup>[26]</sup>

Another case of artistic controversy related to the war is the refusal to open the Israeli pavilion at the 2024 Venice Biennale until a ceasefire is reached and the hostages released. The decision was taken by the pavilion's curators, Mira Lapidot and Tamar Margalit, and artist Ruth Patir, was not coordinated with the Israeli government and apparently involved a breach of contract with the Ministry of Culture.<sup>[27]</sup>

## Art disputes

### Title in art

Israeli law generally does not regulate title in artworks in a manner that differs from other chattel. While private sales are generally regulated by the Contracts Law<sup>[28]</sup> and the Sale Law,<sup>[29]</sup> auctions sales also trigger the application of consumer protection laws and the market overt clause in the Sale Law. A private sale may take effect upon the execution of a contract whether written or verbal,<sup>[30]</sup> without necessarily the completion of payment,<sup>[31]</sup> and typically upon physical delivery of the chattel.<sup>[32]</sup>

While the Contracts Law prescribes that parties must act in good faith, this is not a requirement for the transfer of title.<sup>[33]</sup> Lack of good faith would not necessarily void a transfer; however, the injured party might be entitled to other remedies. An auction sale would be subject to the market overt clause, which requires that both the payment of a consideration and the transfer of the chattel into the buyer's possession be completed in good faith.<sup>[34]</sup> Good-faith consideration under the market overt clause requires that payment correspond to the objective market value of the object.<sup>[35]</sup>

There is no legislation or case law specifically requiring either buyers or sellers to conduct due diligence to confirm the title and provenance of an artwork; however, the lack of such conduct by a party who is knowledgeable in the specific field might be interpreted by the courts as lack of good faith.<sup>[36]</sup> In addition, and while this has never been tested in court, it might be argued that the Consumer Protection Law<sup>[37]</sup> has provisions that would require such action by the seller.

### Nazi-looted art and cultural property

The lawsuit against the Israel Museum for the restitution of the Birds' Head Haggadah<sup>[38]</sup> was dismissed in the first instance by the Supreme Court of New York on grounds of *forum non conveniens*.<sup>[39]</sup> On appeal to the first district of the appellate division, the dismissal was upheld.<sup>[40]</sup>

The proposed draft law to establish a formal mechanism for the resolution of claims for Nazi-looted art (the Draft Law on Nazi-Looted Art), the result of the Interoffice Team for Regulation of Provenance Research for Cultural Property Looted During the Holocaust and Found in Israel, and promulgated in 2023 by the Office of the Custodian General in the Ministry of Justice, remains a draft and has not been raised by the government to be

brought before the Knesset. Although this may be understandable given the government's preoccupation with the war, the government continues to push forward various laws dealing with unpopular judicial reform, which is particularly unfortunate as the draft law would likely be easily passed and well-received.

The necessity for the draft law is perhaps demonstrated by the fact that despite pressure from the Inter-Office Team of the Israel Museum during its period of operation and the formulation of the draft law, the last restitution by the Israel Museum from its Jewish Restitution Successor Organisation (JRSO) collection – which numbers over 400 artworks and over 1,000 items of Judaica known to be looted by the Nazis and held in trust for future claims by heirs – was in 2021, when the museum returned five works from a single collection and one additional work to another set of heirs. In the intervening three years, not a single work has been returned.<sup>[41]</sup> Over the 72 years in which this collection has been held in trust for heirs by the Israel Museum, only 46 items from the JRSO collection – and a handful of others – have been returned, most of them through the work of heirs rather than through the initiative of the museum.

One case relating to Nazi-looted art drew interest in Israel in the past year. A sculpture by the French-Jewish sculptor Chana Orloff, whose Paris studio was ransacked by the Nazis and 144 of her works were looted, was delivered by a foreign consigner, Judita Hirsch of London, to the Tiroche Auction House in Israel for evaluation before a potential sale. In performing its due diligence regarding the sculpture, known as *Femme 39* or *Nu dans un Fauteuil*, the auction house referred to Orloff's heirs to confirm the attribution. The heirs responded that the work was among those looted from Orloff's studio and demanded that the sculpture be returned to them as the rightful heirs. The consigner refused contact, and the heirs filed a complaint with the French police as the piece had originally been looted from the Paris studio. Upon intervention by the French embassy in Tel Aviv and the Israeli Ministry of Justice, the auction house did not accede to the consigner's demand to return the sculpture to her.<sup>[42]</sup>

In an attempt to amicably resolve the issue, the heirs suggested that the sculpture be donated to an Israeli museum through a foreign 'friends-of' organisation, which would have provided the consigner with some tax benefits. This proposal went unanswered. Eventually, the heirs decided not to file a complaint with the local police or pursue the matter in the Israeli courts. This is likely related to the high cost and uncertainty of pursuing claims for Nazi-looted art in the Israeli courts, which, until such time as special legislation such as the Draft Law on Nazi-Looted Art is adopted, would treat such cases under the standard, heir-unfriendly rules of civil procedure. The auction house ultimately returned the sculpture to the consigner in London.<sup>[43]</sup>

On 7 October 2023, a grand-niece of the Orloff's who lived in Kibbutz Be'eri, Dr Shoshan Haran, was kidnapped by Hamas to Gaza. After being released in the second exchange, she discovered that her house had been ransacked by Hamas, and a sculpture of her great aunt Orloff had been looted.<sup>[44]</sup>

There has been a growing academic interest in Israel in Nazi-looted art and cultural property. In the past year, the faculties of law of Tel Aviv University and the University of Bonn conducted their final joint course in this field, and Tel Aviv University's law faculty introduced a course in genealogy and law, which includes a window into Nazi-looted art and provenance research. Conflicting doctrines regarding intellectual property rights in

Holocaust Art have also been formatively developed, both by Reichmann University's law faculty and independently by unaffiliated practitioners in the field.<sup>[45]</sup>

## Limitation periods

There is no specific limitation period for art-related claims. The general limitation period for bringing civil claims is seven years from the date the cause of action arose.<sup>[46]</sup> The date at which the limitation period starts accruing may be delayed to the date on which the claimant had, or ought to have had, specific knowledge of the cause of action.<sup>[47]</sup> The parties may contractually agree to a longer or shorter limitation period, provided the period agreed is at least six months.<sup>[48]</sup>

If the Draft Law on Nazi-Looted Art were to become law, claims for the restitution of such property would be exempt from all limitation periods.

## Alternative dispute resolution

The Draft Law on Nazi-Looted Art, if legislated, would create a new multi-level alternative dispute resolution mechanism for the pursuit of restitution claims.

One significant contribution to the development of alternative dispute resolution in Israel is the passage in February 2024 of the International Commercial Arbitration Law,<sup>[49]</sup> which adopts the UNCITRAL Model Law on International Commercial Arbitration and brings Israel in line with the community of countries that are bound to common rules of international commercial arbitration and which recognise each other's rulings. While the Law is general in its application, it serves to make Israel available – and even perhaps advantageous – as a seat for international arbitration, including in the field of art and cultural property law, as well as for disputes regarding Holocaust claims.

## Fakes, forgeries and authentication

While there is no specific relief for art transactions in which questions of fakery, forgery or inauthenticity arise, the general rules for chattel apply. Where a contract has been breached, the injured party may seek enforcement, or termination and restitution. In either case, damages can be sought. In the case where a contract is illegal or contravenes public policy, the court will typically void the contract.

The sale of an artwork through a seller's misrepresentation, or by mutual mistake, where the artwork is later determined to have been faked or forged, may be dealt with through rescission. Such circumstances may be considered a gross error and, therefore, be treated as a mistake of fact, permitting the annulment of the contract.<sup>[50]</sup> Additionally, in cases where the chattel is represented fraudulently or negligently, the injured party may try to recover damages through torts.<sup>[51]</sup> In negligence cases, defendants are generally held to the standard of 'reasonable and intelligent person'.<sup>[52]</sup> The actions of defendants who engage professionally in a field (e.g., art dealers and curators) are compared to those expected from a reasonable and intelligent professional with the same level of expertise.<sup>[53]</sup> It is a criminal offence to sell a fake or a forgery with the intent to deceive.<sup>[54]</sup> The Penal

Law also forbids the making and use of forged documents; therefore, the use of forged provenance documents is a criminal offence.<sup>[55]</sup>

## Rules and regulations governing warranties

The Consumer Protection Law requires that merchandise sold in commercial transactions must be represented accurately by the seller.<sup>[56]</sup> Art dealers fall into this category and must accurately represent, among other things:

1. the identity of the maker,<sup>[57]</sup>
2. the place the item was made,<sup>[58]</sup>
3. the date on which the item was made,<sup>[59]</sup>
4. the item's regular or accepted price, or the price demanded in the past,<sup>[60]</sup>
5. expert opinions or results of examinations conducted regarding the quality of the item,<sup>[61]</sup> and
6. any previous use of the item.<sup>[62]</sup>

Any substantial misrepresentation of the item may offer grounds, within a reasonable time after the misrepresentation is discovered, for the purchaser to cancel the transaction.<sup>[63]</sup> In those circumstances, the purchaser may also pursue a remedy through torts.<sup>[64]</sup>

It is also a criminal offence to conspire to defraud.<sup>[65]</sup>

## Role of experts, artist foundations and catalogue raisonnées

While the Sale Law permits a buyer to cancel a transaction based on misrepresentation of the item, this does not apply when the buyer has inspected the item before purchase, either personally or by proxy, and does not immediately bring any defect to the seller's attention.<sup>[66]</sup> There has only been one case involving the reliability and importance of a catalogue raisonnée.<sup>[67]</sup> In that case, the author of the artist's catalogue raisonnée was deemed to be an expert witness and her testimony deemed as reliable, primarily because of her work on the catalogue raisonnée. The expert witness' testimony led to a ruling that the artwork was not authentic.

## Art transactions

### Private sales and auctions

There are no laws or regulations that specifically regulate the sale of works of art either in private sales or at auction. This being the case, the Contracts Law and the Sale Law apply as they do to any other chattel, and the Consumer Protection Law applies to artworks sold in a commercial setting.

The Museum Regulations qualify which items from a museum's collection may be sold and under what circumstances,<sup>[68]</sup> therefore, the sale of an item from a museum's collection

must be approved by the museum's management, the sale must be in writing, and the sale proceeds must be used for the purchase of other items for the collection unless the museum's management documents a decision otherwise, including its rationale. If the item is an antiquity, the Antiquities Law will further regulate the conditions for its sale.<sup>[69]</sup> In this case, the museum, in addition to the requirements of the Museum Regulations, must inform the Antiquities Authority of its decision to sell the item.

The conventional rule that a sale is finalised 'when the hammer falls' has been nuanced by judicial recognition that good-faith considerations may permit buyers to rescind purchases in certain circumstances. Specifically, courts have acknowledged that a buyer retains the right to return an item if it deviates from its presentation at auction.<sup>[70]</sup> This imposes a duty on sellers to provide buyers with a reasonable opportunity to inspect the item upon receipt and to expeditiously notify the seller of any discrepancies.<sup>[71]</sup> Under Israeli law, 'non-conformity' is defined broadly, encompassing any divergence from the agreed specifications or representations. It includes cases where the delivered property deviates from the agreed terms in type, description, quality or features, or otherwise fails to conform to the specifications or representations made to the buyer as part of the agreement.<sup>[72]</sup>

A buyer, on identification of a non-conformity, has the right to cancel the transaction. This includes a hidden non-conformity, which is one that is undetectable by reasonable examination. Where a non-conformity is undisclosed, and the seller knew or ought to have known of it, the buyer may invoke this right regardless of whether they inspected the item or even if the parties had agreed otherwise. The seller's responsibility is, therefore, enhanced by these provisions, particularly in the context of auction houses, which are presumed to possess greater knowledge of the true nature of the items they sell.

As in other jurisdictions, Israeli auction houses often rely on detailed terms and conditions (T&Cs) to limit their liability for representations made about the items offered for sale. While certain provisions of the Sale Law may be waived, the Sale Law's protections against undisclosed non-conformities remain mandatory and cannot be waived through contractual terms.

The degree of responsibility auction houses assume in their T&Cs varies significantly. Some provide comprehensive guarantees, allowing for the cancellation of a sale and a full refund if any information provided proves inaccurate. Others adopt a more restrictive approach, offering limited liability or conducting sales strictly on an 'as is' basis. Nevertheless, most auction houses commit to refunding buyers if an item is discovered to be inauthentic, reflecting the tension between private contractual autonomy and statutory consumer protections in the auction context.

Auction houses commonly assert in their T&Cs that they act solely as agents for sellers, disclaiming responsibility for inaccuracies in the information provided. Such disclaimers, however, do not exempt auction houses from the requirements of the Consumer Protection Law, which are mandatory and impose on sellers a significant duty of disclosure. This duty obliges the seller, or their agent, to inform buyers of any defects, aspects regarding inferior quality or other characteristics known to them that materially diminish the value of the item.<sup>[73]</sup>

In practice, auction houses often limit the time allotted for buyers to inspect purchased items and notify the seller of non-conformities to 30 days, as specified in their T&Cs. This time frame aligns with court rulings regarding the fall of the auctioneer's hammer as

initiating a conditional sale, granting the buyer a subsequent inspection period to confirm the property's conformity with its description.<sup>[74]</sup>

Online transactions are subject to additional protections under the Consumer Protection Law, including the buyer's right to cancel a transaction without cause within 14 days of receiving the purchased item;<sup>[75]</sup> however, these distance-selling regulations do not explicitly extend to auctions or art sales. Accordingly, most auction houses stipulate in their T&Cs that the right to cancel a sale resides exclusively with the auction house, underscoring their attempt to distinguish themselves from regulatory treatment of traditional and online sales.

The years preceding the ongoing war have seen a significant rise in cases in which sellers have been identified selling materials found to be stolen from public entities – often related to early Zionist history or the Holocaust. While some of these have advanced to trial,<sup>[76]</sup> most have been resolved either through the use of temporary restraining orders that have led to the forfeit of the items<sup>[77]</sup> or through negotiations.<sup>[78]</sup>

## Art loans

Incoming international loans of cultural objects regularly take advantage of the Loans of Cultural Objects Law, which allows the Minister of Justice to decree that a loan is protected against legal action in Israel. The attendant regulations allow for the requesting museum to publish a web page with the loan items for which the decree is requested; however, a review of the 20 published decrees found in Yalkut HaPirsumim (the Israeli government's official gazette), which include links to the corresponding museum websites, indicates that many of the links are broken or that the web pages no longer exist.<sup>[79]</sup> It also appears that some of the decrees were approved contrary to the letter of the law, which requires that the foreign loaning party be a 'cultural institution' (a body dedicated to education, culture, science, art or a similar purpose),<sup>[80]</sup> as some of the approved decrees were apparently given for loans originating from foreign private collections. Further, not all decrees issued have been consistently published in the manner required in the gazette.

An intriguing local case that does not involve cross-border considerations revolves around the monumental marble sculpture *Bereshit*, measuring 2 x 3 x 2.5 metres. It is on long-term loan by the artist Belu-Simion Fainaru to the Hebrew University, Jerusalem, and was installed in the interior court at the entrance to the university's synagogue. The artwork was discovered missing by an art historian who had come from abroad in October 2024 specifically to research the sculpture. At the time of writing, the sculpture's whereabouts and fate remain unknown.

## Cross-border transactions

Following the situation regarding the export of a large part of the collection of the Museum of Islamic Art for intended sale at Sotheby's London, and the Hashava Foundation's petition to the High Court of Justice that managed to stop the auction and engender the return of the items to the museum's collection, the Antiquities Authority revamped some of the export regulations for cultural property that comes under the Authority's province.<sup>[81]</sup> The conditions for export and re-export of antiquities were dramatically tightened. Among other controls that were introduced, only recognised museums and the National Library

of Israel can now import and re-export antiquities that were not originally imported for commercial purposes.

Despite this, in a highly publicised faux pas, the Antiquities Authority blatantly did not follow its own regulations when exporting highly valuable antiquities intended for temporary display at the White House, which, in the end, never occurred and were later found to have been removed to Donald Trump's Mar-a-Lago property.<sup>[82]</sup>

#### Tax considerations

In its efforts to clamp down on the issuance of fictitious receipts as a method of tax avoidance, the VAT Law was amended so that as of 1 May 2024, receipts including VAT for goods and services valued at over 25,000 shekels require pre-authorisation by the Tax Authority.<sup>[83]</sup> As of that date, receipts issued without pre-authorisation will not be eligible for submission for VAT refunds by eligible consumers. Every proceeding year, on 1 January, the value of goods for which pre-authorisation of a VAT receipt is necessary will be reduced by 5,000 shekels until, in 2028, the sum will stand at 5,000 shekels.<sup>[84]</sup>

While the primary intention of this legislation is to crack down on tax avoidance, the centralised registration of all such transactions, especially in almost real time, could lead to concerns regarding the confidentiality of art-world transactions. While there are calls for, and gradual movement towards, transparency in the art world generally, the collection of this information by the Tax Authority for only those transactions involving VAT raises questions regarding both the potential misuse of the information and its incompleteness (e.g., in the case of a foreign purchaser who is not liable for VAT).

A decision by the District Court in Nof-Haglili-Nazareth may have broad repercussions regarding property taxes for holders and operators of historical monuments or sites. The decision, handed down on 20 November 2024, overturned an administrative decision by the Commissioner for the Northern District in the Ministry of Interior, who declined to permit an exception to the full property tax payment on a historical site in Akko (Acre), despite the fact that the owner and operator was a government company operating as a non-profit organisation.<sup>[85]</sup> Under the Municipal Taxes and Government Taxes Ordinance (Exemptions) 1938, an exception applies to the holder of a historical site recognised in accordance with the Antiquities Ordinance and who, in the opinion of the Commissioner, operates it in accordance with the restrictions imposed by that same ordinance in respect of the use of the site for profit. The property tax liability under such an exemption is for one-third of the property tax.<sup>[86]</sup>

However, with the legislation of the Antiquities Law in 1978,<sup>[87]</sup> the Antiquities Ordinance was repealed, and all references in other legislation to the Ordinance were redirected to the Law. Contrary to the Antiquities Ordinance,<sup>[88]</sup> the Antiquities Law does not have specific provisions restricting the use of historic sites for profit; therefore, the Commissioner, not having found specific restrictions regarding the use of historic sites for profit in the Antiquities Law, ruled that the holder/operator was not operating the site in accordance with such (non-existent) restrictions. The court disagreed, holding that the Commissioner's decision, if upheld, would make Article 5(a) of the Municipal Taxes and Government Taxes Ordinance a dead letter. The court, therefore, ruled that where it is clear that the holder is operating the historic site on a non-commercial basis, the rule would apply, and the holder would be eligible for the reduced property tax.



Given Israel's almost unparalleled religious, cultural and archaeological history, there are an overwhelming number of declared historical sites and monuments, running into the tens of thousands – most of which are undeveloped, and significant quantities of which are situated beneath contemporary (often residential) construction. Given the non-specificity of what using a historical site for non-commercial purposes might mean, and given the ruling's newness, it is hard to forecast its impact on property taxes in Israel. The implications, if the case is not appealed to the Supreme Court and overturned, might be highly significant.

## Art finance

Over the past few years, new rules regarding the use of cash for purchases have been rolled in as part of Israel's efforts against money laundering. The Law to Reduce the Use of Cash progressively introduced increasingly restrictive measures and, as of 2022, purchases of goods over 6,000 shekels from businesses and over 15,000 shekels from private individuals cannot be made in cash.<sup>[89]</sup> If one of the parties to the transaction is a tourist, cash can be used for a transaction of up to 40,000 shekels.<sup>[90]</sup> The Law provides no exemptions for art businesses or goods.

## Artist rights

### Moral rights

The Copyright Law contains provisions regarding the moral rights of artists. The moral rights of artists include the right to be attributed as the author of the work and the right to preservation of the integrity of the work against distortion, mutilation or any other modification.<sup>[91]</sup> The works falling under these protections include any form of original literary, artistic, dramatic or musical work.<sup>[92]</sup> Moral rights are personal and non-transferable<sup>[93]</sup> and subsist during the artist's lifetime, expiring 70 years after the death of the artist.<sup>[94]</sup>

Israel is also a signatory state to the Berne Convention for the Protection of Literary and Artistic Works.

The Tel Aviv Magistrates Court approved a settlement between the artist Motti Mizrahi and the operator of Tel Aviv's Opera Tower Hotel, in which the latter compensated the artist 275,000 shekels for allowing, without receiving the artist's prior permission, the dismantling and removal of his sculpture *Eastern Kiss*, the parts of which were then left neglected in the hotel's parking garage. The settlement also requires the hotel to store the parts at its expense for the next five years, providing the artist unlimited access to those parts, and, at the conclusion of the period, to transfer the parts to a location of the artist's choice, at the hotel's expense.<sup>[95]</sup>

In August 2024, the artist Sarah Meital Benjamin sued the photographer Anne Simin Shitrit for 259,000 shekels for violating her intellectual property rights, breach of contract and defamation. The two had previously worked on a joint film project, which was stopped in 2022 owing to differences between the two. Early in 2024, Simin Shitrit displayed several



photographs at a group exhibition at the Bezalel Gallery in Tel Aviv, two of which were later purchased by the Tel Aviv Museum of Art, which recognised Simin Shitrit's photographic body of work with the Lauren and Mitchell Presser Photography Award for a Young Israeli Artist for 2024. When Benjamin discovered that these works were being displayed – and afterwards purchased by the museum – she sued Shitrit for breach of a contract allegedly signed at the termination of their joint project and that regulated the intellectual property rights in their joint work. Benjamin alleges that some of the photographs on display were taken during and for the film project and were submitted to the exhibition and the prize contest without her prior knowledge or permission. She, therefore, alleged a violation of her moral right to be jointly credited for the photographs, and that under the contract, she is owed a share of the sale price to the museum and the prize money. Consequently, the Tel Aviv Museum of Art asked to replace one of the purchased photographs, which was related to the film project, with another unrelated one.<sup>[96]</sup> In the meantime, the case remains in its initial stages and, as at the time of writing, a first hearing has not yet been set.<sup>[97]</sup>

## Resale rights

This is not applicable in Israeli law per se, but there is also no apparent limitation on the formulation of contractual terms that would allow artists to demand such rights as part of a sale contract.

## Economic rights

The Copyright Law provides for fair use exceptions to the artists' exclusive economic rights, including the fair use exception for journalistic reporting.<sup>[98]</sup>

The exception for journalistic reporting was limited in a recent case in which *Yediot Aharonot*, a news publisher that prints a daily newspaper and has an online news website, used uncredited and unlicensed photographs to supplement its reporting in three articles.<sup>[99]</sup> Two of the articles were published online on the news website, which derives advertising revenue, and the third article was published in a holiday edition of the print newspaper. The court held that the fair use exception did not hold because of the commercial nature of the publications and the use of the photographs to promote the publisher's commercial interests.

In another recent case, the court dealt with copyright infringement through the commercial use of a derivative work of a 2D photograph of a 3D ceramic.<sup>[100]</sup> In ruling against the infringing company, the court, in addition to finding a primary infringement in the copying from a 3D to a 2D work, raised the question of whether the photograph was itself a work of art in which the photographer had independent intellectual property rights. It answered in the negative. Although this was a secondary finding and not the primary thrust of the ruling, the photographer was not a party to the lawsuit, and the ruling was given at the lowest instance (a magistrate's court), the ruling raises the question of whether Israeli courts will move to adopt the principle raised in the *Bridgeman* case in the United States,<sup>[101]</sup> whereby exact photographic copies of images would not, in and of themselves, be eligible for copyright protection because they lack originality. If so, this would signal a serious reversal in Israeli copyright protection, as to date, independent copyright in photographic reproductions has been recognised.

As a consequence of the ongoing war and the rockets targeted at Israel's major population centres, many of Israel's museums took emergency action and moved important artworks on display into protected storage facilities. Among those, the Israel Museum in Jerusalem removed Itzhak Danziger's 1939 sculpture *Nimrod*, one of Israel's most important and formative sculptures. Hearing of this, the photographer Michal BarOr requested permission to photograph the sculpture's removal. The museum referred her to the artist's heirs, with whom she signed an agreement allowing her to photograph the sculpture in its packed state. The agreement apparently included a royalty-sharing clause if the photograph were to be sold.

During the photo session, BarOr took another photograph of the sculpture in a position that was not specifically included in the agreement. When the heirs discovered this, along with the fact that a prominent collector had expressed interest in purchasing the photographs, they forbade use of the second photograph and the sale of either, and requested BarOr to donate the photograph to the Israel Museum.<sup>[102]</sup> At the time of writing, it is not clear whether this case, which juxtaposes the issue of the photographer's artist freedom with the heirs' seemingly novel interpretation of intellectual property rights, will find its way to the courts.

## Trusts, foundations and estates

The lack of estate tax does not incentivise the use of trusts or foundations for economic purposes; however, there is a budding interest in the use of public or mixed trusts to maintain and care for deceased artists' legacies. Among other factors, while the number of museums per capita in Israel is the highest in the world, most of these are private museums dedicated to single artists or very narrow subject matter.

Public museums in Israel are generally very selective in accessioning artworks, and there is an increasing quantity of artworks residual to the estates of deceased professional artists, the appropriate disposition of which is difficult. This practice is, however, still uncommon: there are only five such public trusts dedicated to the preservation and exhibition of an artist's estate in Israel at the time of writing.<sup>[103]</sup> Additionally, estate planning for artists is not a well-developed field in Israel, occasionally leading to significant issues in the effective fulfilment of what are actually the artists' substantive wishes.<sup>[104]</sup>

## Outlook and conclusions

Of late, Israel has been and continues to be in a state of great flux and turmoil. The Hamas attack of 7 October 2023 and the ensuing war have only added to this chaos. While the first month or two of the war was notable for the waves of unity in Israeli society as a response to the external threat, over time this has dissipated, with significant disagreements between sections of civil society and between civil society and the government regarding the need for action, including concluding the war, to return the hostages.

This polarisation of society is clearly seen in the arts, among artists and institutions, and continues to be evident in the public and legal discourse about the arts. The government's

attempts to reignite judicial reform is likely to only exacerbate this contentious state of affairs in the foreseeable future.

*"The author would like to thank Adv. Nurit Asher Fenig, Director of the Wilfrid Israel Museum, Kibbutz HaZore'a, for her insights and input."*

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- 6 Associations ('amutot' in Hebrew) are the equivalent of non-profits in the United States and charities in the United Kingdom. ^ [Back to section](#)
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- 8 For more information about New Spirit, see the [New Spirit website](#). ^ [Back to section](#)
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- 31 Gabriela Shalev and Efi Zemach, *The Law of Contracts* (4th edn., 2019), pp. 28, 147. ^ [Back to section](#)
- 32 Sale Law, Article 33. ^ [Back to section](#)
- 33 Contracts Law 1973, Articles 12 and 39; Sale Law, Article 6. ^ [Back to section](#)
- 34 Sale Law, Article 34: 'Where any moveable property is sold by a person who carries on the sale of property of the kind of the thing sold, and the sale is made in the ordinary course of his business, ownership passes to the buyer free of every charge, attachment or other right in the things sold even if the seller is not the owner thereof or is not entitled to transfer it as aforesaid, provided that the buyer buys and takes possession of it in good faith.' ^ [Back to section](#)
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