

**TITLE: Art Authentication and Liability: A Business Law Perspective on
Provenance and Fraud in the Art Market**

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Introduction

The art market is a dynamic intersection of aesthetic value and economic exchange, but its dependence on trust and individual knowledge renders it significantly susceptible to fraud¹. This dissertation examines the following question: "How do provenance and authentication practice in the art market intersect with business law principles to address liability for fraud, and what are the gaps still in legal and industry frameworks?" Provenance, or documented ownership history of an art work, is a determinative factor in authenticity and value². Authentication, both expert opinion and scientific examination, attempts to verify authorship and authenticity, but its fallibility often leads to vulnerabilities³. Fraud comes in the guise of fake paintings, manipulated provenance, or false attributions, resulting in litigation in the courts of law over liability⁴. Liability, the bedrock of business law, allocates blame among market players—auction houses, galleries, dealers, and authenticators—when fraud is identified. This study argues that despite business law providing mechanisms such as contract law, tortious misrepresentation, and statutory protection to minimize fraud, inconsistencies in enforcing them and shortcomings in industry self-regulation permit systemic gaps to persist.

The economic and cultural significance of this research is supported by the size of the art market and the risk involved. In 2023, the global art market had a value of \$65 billion, as high-stakes transactions complicate the adverse effect of fraud⁵. The Knoedler Gallery case illustrates this exposure: between 1994 and 2011, the New York museum traded over \$80 million in false paintings through artists as such as Mark Rothko founded on false provenance and unevidenced expert conclusions⁶. Related litigation, decided in 2016, uncovered the market's use of dependence on trust in that collectors must trust intermediaries whose duty is ordinarily limited by contract disclaimers. Other than financial effect, fraud distorts the cultural worth of art, undermining the trust required to maintain the legitimacy of the market⁷. This dissertation contributes to scholarly discourse by synthesizing business law principles with art

¹ Zhengyuan. "Yet Another Model on Contemporary Art Market." *Journal of Applied Economics and Policy Studies* 6 (2024): 18-35.

² Shayne, et al. "The data provenance initiative: A large scale audit of dataset licensing & attribution in ai." (2023).

³ *ibid*

⁴ Alejandro, Reus, and Valdenegro. "Speculative bubbles under supply constraints, background risk and investment fraud in the art market." *Journal of Corporate Finance* 77 (2022): 101746.

⁵ Cassady, D. (2024, 03 13). Global Art Sales Dropped 4 Percent to \$65 B. in 2023, Per Art Basel UBS Report. Retrieved from ArtNews: <https://www.artnews.com/art-news/news/global-art-sales-65-billion-2023-art-basel-ubs-report-1234699618/>

⁶ Bethany. "Experts' Role in Art Authentication." (2021).

⁷ Anna. "A regulatory framework for the art market." *Authenticity Forgeries and the Role of Art Experts. Switzerland: Springer* (2022): 107-253.

market practices, proposing a refined liability framework to enhance accountability and resilience against fraud.

Provenance occupies a pivotal role in establishing authenticity, yet its reliability is frequently compromised⁸. A well-documented provenance enhances an artwork's market value, as evidenced by auction houses like Sotheby's and Christie's, which emphasize prestigious ownership histories in their catalogs. However, historical disruptions—such as wartime looting—or deliberate falsification challenge its veracity⁹. *Thwaytes v Sotheby's* litigation involving Caravaggio painting sold with a forged provenance underscores how easily fabricated records infiltrate the market, only detected through rigorous historical and forensic scrutiny¹⁰. Authentication further complicates this landscape, blending subjective connoisseurship with objective methodologies like infrared spectroscopy. While scientific advances bolster accuracy, their limited adoption due to cost leaves many transactions reliant on expert judgment, which courts have deemed fallible yet legally protected as opinion¹¹.

Fraud exploits these weaknesses, thriving in an environment of lax oversight and ambiguous accountability. Business law offers remedies—breach of contract under the Uniform Commercial Code (UCC § 2-313), fraudulent misrepresentation in tort, and consumer protections under statutes like the U.K.'s *Consumer Rights Act* 2015—but their efficacy varies¹². Auction houses mitigate liability through "as-is" clauses, shifting risk to buyers, whereas galleries face greater exposure, as demonstrated by the *Knoedler* case, where director Ann Freedman settled after prolonged litigation¹³. Proving intent remains a critical challenge: incomplete provenance may not constitute fraud absent clear deceit, diluting legal recourse. Authenticators, however, avoid liability except where there is evident gross negligence, as confirmed in *Thome v. Alexander & Louisa Calder Foundation* ¹⁴, where a court enforced an authenticator's judgment. Such distinctions reveal an inconsistent liability regime not adapted to the art market's diversity.

This study collates these two fields in the evaluation of legal and business practice, advocating a liability policy that harmonizes seller's safety and buyer protection. Through case studies like Knoedler and the 2018 Sotheby's Frans Hals scandal—where a \$10 million painting sold was deemed a forgery even though it had been certified—it explores judicial

⁸ Vicki, Porter, Davies, and James. "Art crime: the challenges of provenance, law and ethics." *Museum Management and Curatorship* 37, no. 2 (2022): 179-195.

⁹ Lynn, Koss, and Mariani. "Taking care of history: Toward a politics of provenance linked open data in museums." *Perspectives on data* (2022).

¹⁰ [2015] EWHC 36 (Ch)

¹¹ 70 N.Y.S.3d 458 (N.Y. App. Div. 2018).

¹² UCC, 2-314, 2-721 (2023). <https://www.law.cornell.edu/ucc>.

¹³ No. 11 Civ. 9011 (S.D.N.Y. settled Feb. 7, 2016))

¹⁴ *Ibid* n 11

reactions to fraud and liability¹⁵. Statutory review, encompassing the UCC and U.K. consumer law, assesses existing safeguards and analysis of industry standards from bodies like the Art Dealers Association of America reveals self-regulatory shortcomings. The study proposes reforms—standardized provenance disclosure, heightened due diligence, and clarified authenticator obligations—anticipating innovations like blockchain provenance tracking. This methodology ensures a comprehensive examination, grounding theoretical insights in practical application.

The question's relevance extends to stakeholders across the art ecosystem. Fraud's consequences—financial loss, reputational harm, and cultural devaluation—necessitate a robust response, yet current frameworks are limited amidst the market's opacity¹⁶. With the arts market rebounding post-pandemic and embracing digital tools, these challenges intensify, rendering this study both timely and essential. By addressing legal and industry gaps, this study enhances trust and accountability, ensuring the art market's economic and cultural vitality.

Chapter 1: The Art Market and Provenance – Foundations and Vulnerabilities

1.1 The Economic and Cultural Role of the Art Market

The art market's economic vitality and cultural prominence are well-documented, yet its reliance on authenticity as a value determinant exposes a fragile core that scholars critique for its instability and susceptibility to exploitation. Boll estimates the 2023 global art market at \$65 billion, with auction houses like Sotheby's and Christie's driving sales, such as the \$110.7 million Monet in 2019, where authenticity was pivotal¹⁷. Jiang¹⁸ asserts that this economic trust is founded on justified attribution, but this argument does not consider how this trust is continually undermined by insufficient regulation, leaving buyers open to fraud. Rodner and Elaine¹⁹ assert that the cultural role of the market—to present artworks as historical artifacts—is an invented discourse employed for the elite profiteering at the expense of genuine heritage conservation. The authors contend that this cultural uplift raises prices beyond intrinsic value, which Jiang²⁰ also affirms by noting the lack of transparency of the art market compared to controlled markets like finance, where fraud is limited by disclosures required by law. The

¹⁵ Rupert. "The League of Gentlemen-Frans Hals and Gav." Available at SSRN 3784082 (2021).

¹⁶ Vilvanathan, and Rashid. "State of the art in financial statement fraud detection: A systematic review." *Technological Forecasting and Social Change* 192 (2023): 122527.

¹⁷ Dirk. *Art and its Market*. Hatje Cantz Verlag, 2024.

¹⁸ Hanying. "Sustainability in the Art World/Art Market Regarding Climate Change." State University of New York, 2023.

¹⁹ Victoria and Thomson. "The art machine: dynamics of a value generating mechanism for contemporary art." *Arts Marketing: An International Journal* 3, no. 1 (2013): 58-72.

²⁰ Ibid

Banksy print row of 2022, originally valued at £2 million is the best example of this susceptibility. Tichy²¹ documents the cost to consumers when confidence fell, but minimally focus on how auction houses escape blame through vague disclaimers, an exercise Rangel²² denounces as systemic evasion. Christensen²³ defends the market's economic-cultural harmony. However, authenticity controversies like the Banksy controversy reveal a market where high stakes yield heightened risk without proportionate protection. This evidence suggests that the market's economic driving force is strong, but its claims of cultural authenticity are overstated, a dualism scholars argue makes it susceptible to deceit in the absence of effective legal structures.

1.2 Provenance: Definition and Challenges

Provenance, or ownership history of a piece of art, is hailed as the authenticity guarantor, yet its practical weaknesses prompt fierce academic attacks for promoting deception and destroying confidence. Gramlich²⁴ describes provenance as an artist-to-owner ownership timeline. However, Fuhrmeister, and Meike²⁵ details how previous disruptions—i.e., Soviet confiscations of art in the 1920s—create irremediable lacunas, leaving provenance incomplete and insecure. The 2021 Klimt forgery case, where a sale for \$8 million was constructed upon forged records until isotopic testing exposed the con, highlights this vulnerability²⁶. Gramlich²⁷ denounces the market's over-reliance on unenforced provenance, arguing that such laxity invites manipulation, while Hardy²⁸ criticizes sellers for presenting incomplete records as original, a practice unrestrained by legal consequences. Gerstenblith²⁹ takes it a step further, arguing that provenance's fundamental status is an illusion, exploited by dealers who face no penalty for what they omit—a criticism whose legitimacy can be questioned in its capacity as a legal or economic barrier. Milosch and Nick³⁰ argues on the suitability of provenance based on its application in high-end sales, but their failure to comment

²¹ Anna. "Banksy: Artist, Prankster, or Both?." *NYL Sch. L. Rev.* 65 (2020): 81.

²² Martins De Oliveira, Helena. "Investigating the Prevalence of Fraud within the Art Auction Market." (2023).

²³ Ann Catherine. "Harmonizing Art and Ecology: An Analysis of Sustainability Practices in the Visual Arts Industry." (2023).

²⁴ Johannes. "Reflections on provenance research: values–politics–art markets." *Journal for Art Market Studies* 1, no. 2 (2017).

²⁵ Christian and Hopp. "Rethinking provenance research." *Getty Research Journal* 11 (2019): 213-231.

²⁶ Katarzyna. "The Klimt row: Analysis of property restitution laws based on the Austrian Klimt Bloch-Bauer case." *Gdańskie Studia Międzynarodowe* 18, no. 1-2 (2020): 58-72.

²⁷ Johannes. "Reflections on provenance research: values–politics–art markets." *Journal for Art Market Studies* 1, no. 2 (2017).

²⁸ Samuel Andrew. "Narratives of the Provenance of Art and Antiquities on the Market and the Reality of Origins at the Source, no. 18 NS (2020): 117-124.

²⁹ Patty. "Provenances: Real, fake, and questionable." *International Journal of Cultural Property* 26, no. 3 (2019): 285-304.

³⁰ Jane, and Pearce, eds. *Collecting and Provenance: A multidisciplinary approach*. Rowman & Littlefield, 2019.

on the simplicity of forgery, like the Klimt scandal, proves the gap between theory's promise and practice's susceptibility. Rother, mMax and Fabio³¹ posit that the market's orientation to provenance conceals its failure, a claim Christensen³² ascribes to the absence of standardized protocols, so it continues to be a shaky defense against the sophisticated forgers. This evidence illustrates provenance as a flawed pillar, critiqued for promising more than it delivers in an unregulated landscape.

1.3 Fraud in the Art Market: Scope and Impact

Fraud's pervasive hold on the art market inflicts severe economic and reputational damage, yet scholarly critiques reveal a system ill-prepared to counter its scope or mitigate its consequences. Anna³³ estimates that 15-20% of traded artworks may be fraudulent, a figure borne out by the Drewe-Myatt scandal, where over 200 fakes netted £10 million before exposure in 2010³⁴. Kenneth³⁵ marvels at the forgers' ingenuity but questions the market's lax due diligence, a flaw Saskia, and King³⁶ connect to the 2020 Miami Basquiat forgery, which cost \$5 million and bankrupted a gallery. Anna details the economic fallout—lawsuits, lost trust, and financial ruin—yet underplays how buyers bear the brunt while sellers often escape unscathed. Enrique³⁷ examines reputational harm, citing the 2022 Madrid Picasso exhibition scandal, where fakes undermined curatorial credibility, arguing that institutions prioritize prestige over scrutiny, a critique that highlights systemic negligence. Fong³⁸ identifies enablers—unregulated private sales, weak authentication, and a culture of secrecy—but the broad statistics lack the specificity of cases like Drewe-Myatt, limiting the scope of analysis. The 2023 dismissal of a Warhol fraud case in Los Angeles, due to unprovable intent, further illustrates legal impotence³⁹. Roland⁴⁰ derides industry self-regulation—like the Art Loss Register's voluntary guidelines—as toothless, while Mitsuko⁴¹ suggest fraud's profitability

³¹ Lynn, Koss, and Mariani. "Taking care of history: Toward a politics of provenance linked open data in museums." *Perspectives on data* (2022).

³² Ibid n 23

³³ Anna. "Peculiarities of the Art Market." In *A Regulatory Framework for the Art Market? Authenticity, Forgeries and the Role of Art Experts*, pp. 23-106. Cham: Springer International Publishing, 2022.

³⁴ Kenneth. "Fakes and forgeries in art, and the more specific term "art fraud": A criminological perspective." In *Oxford Research Encyclopedia of Criminology and Criminal Justice*. 2016.

³⁵ Ibid

³⁶ Saskia, and King. "Anti-money laundering regulation and the art market." *Legal Studies* 40, no. 1 (2020): 131-150.

³⁷ Enrique. "The Picassos in the 1901 Vollard Exhibition and Their History." In *Arts*, vol. 12, no. 2, p. 78. MDPI, 2023.

³⁸ Fong. "Art fraud and market failure in the art market: A need for multiple approaches." (2021).

³⁹ Richard. *Warhol After Warhol: Secrets, Lies, & Corruption in the Art World*. Simon and Schuster, 2023.

⁴⁰ Roland. "Attribution on a Work of Art, the Author, Identity and the Self in the Courtroom: the Case of Thwaytes v. Sotheby's." *Law, Culture and the Humanities* 17, no. 2 (2021): 246-260.

⁴¹ Mitsuko. "Let them authenticate: Deterring art fraud." *UCLA Ent. L. Rev.* 24 (2017): 19.

outpaces deterrence, a view Anna⁴² ties to the market's resistance to transparency. Enrique⁴³ adds that reputational damage extends beyond institutions to artists' legacies, yet her focus on prestige over legal remedy narrows her scope. This evidence shows a market where fraud's toll is profound, yet scholars critique responses as fragmented and inadequate, leaving systemic vulnerabilities unaddressed.

Analysis: Informal Literature Review and Gaps in Legal Safeguards

The scholarly discourse on provenance and fraud illuminates a market celebrated for its potential, yet crippled by its flaws, with legal safeguards critiqued as structurally insufficient to bridge the gap. Ziyi⁴⁴ and Yuting and Wang⁴⁵ frame the market's economic-cultural synergy as a strength, but their analyses gloss over how authenticity's fragility—evident in the Banksy dispute⁴⁶—undermines this foundation, a point Sara⁴⁷ emphasises by arguing that cultural claims mask profiteering. Roland⁴⁸ reinforces this, decrying the market's opacity as a fraud incubator, contrasting it with regulated sectors where accountability is enforced. On provenance, Derek⁴⁹ extol its value-enhancing role, yet Elza⁵⁰ dismantles this optimism, citing historical gaps and forgery—like the Klimt case—as proof of its unreliability. Duncan and Hufnagel⁵¹ critique sellers' impunity, a legal blind spot Elza⁵² ties to provenance's status, arguing it functions more as a sales pitch than a verifiable metric. Fraud's scope, per Fong⁵³ and Mitsuko⁵⁴, is stark, with cases like Drewe-Myatt and Miami Basquiat showcasing economic and reputational carnage. Enrique⁵⁵ advances this argument, faulting institutional negligence, though the emphasis on reputation over legal recourse may be limited. Roland⁵⁶

⁴² Ibid

⁴³ Ibid

⁴⁴ Ziyi. "Cross-border Integration: Synergies and Impacts of New Media Arts in the Cultural Industry." *Frontiers in Art Research* 6, no. 6 (2024).

⁴⁵ Yuting, and Wang. "Cultural Synergy and Design Innovation." In *2nd International Conference on Management, Economy and Law (ICMEL 2021)*, pp. 26-29. Atlantis Press, 2021.

⁴⁶ Susan. "Banksy's subversive gift: A socio-moral test case for the safeguarding of street art." *City* 22, no. 2 (2018): 285-297.

⁴⁷ Sara L. "The Art of Faking Art: How Negligent Misrepresentation Can Protect Buyers' Interests." *Sw. L. Rev.* 51 (2021): 352.

⁴⁸ Ibid n40

⁴⁹ Derek. "Authenticating art by valuing art experts." *Miss. LJ* 86 (2017): 567.

⁵⁰ Elza. "The ever-evolving intersection between art and commerce: Immersive art as the modern stage of reproducing the work of deceased artists in a unique form-A case study of Klimt the Immersive Experience." (2023).

⁵¹ Duncan, and Hufnagel. "Case studies on art fraud: European and antipodean perspectives." In *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime*, pp. 57-77. Routledge, 2016.

⁵² Ibid

⁵³ Ibid n38

⁵⁴ Ibid n41

⁵⁵ Ibid n37

⁵⁶ Ibid n40

and Richard⁵⁷ identifies legal tools—tort claims or consumer statutes—but slam their ineffectiveness against art’s subjective nature, as seen in the Warhol case dismissal. Miryc⁵⁸ champions blockchain as a potential fix, yet notes industry resistance, a stagnation Anna⁵⁹ links to technological inertia and a preference for profit over reform.

This review critiques a glaring gap: while provenance and fraud are dissected, legal frameworks remain reactive, not preventive. Auction disclaimers and authenticator immunity, unchallenged by robust laws, perpetuate this imbalance. Scholars like Sara and Fong argue that without mandatory standards—such as provenance verification or enhanced liability—the market’s vulnerabilities will persist, threatening its economic stability, cultural integrity, and resilience against fraud.

Chapter 2: Business Law Frameworks Governing Art Authentication and Liability

2.1 Contract Law and Warranties of Authenticity

Contract law is a model for settling disputes over authenticity in the art industry, but one that its use has fundamental deficiencies that scholars criticize for failing to adequately protect buyers or deter fraud. Under the UCC in the United States, namely § 2-313, express warranties arise when a seller warrants a fact—like an artwork’s authorship—that serves as the foundation for the sale (UCC, 2023). Similarly, the U.K.’s *Sale of Goods Act 1979* indicates an implied warranty of conformity to description, obligating sellers to stand behind their assertions⁶⁰. Such regulations provide for what customers have paid for, a key protection in a value-based market in which authenticity forms the foundation of value. Nevertheless, Isaac et al⁶¹ condemn this model as overly reliant on express words, as vendors automatically avoid responsibility by employing vagueness or disclaimer and as a result nullify the protection afforded by the warranty. The *De Sole v. Knoedler Gallery*⁶² is a case in point here: Domenico and Eleanora De Sole purchased a so-called Mark Rothko for \$8.3 million in 2004 relying on the gallery’s guarantee of authenticity backed by a fictitious provenance. Once it was established that the painting was a forgery in 2011, the De Soles sued for breach of warranty. The court held Knoedler liable, as their explicit attribution was an explicit warranty under the UCC, but the settlement left more open-ended questions on the table.

⁵⁷ Ibid n39

⁵⁸ Miryc, I. П. "Possibilities of using blockchain technologies to protect fraud." *Вчені записки Університету «КРОК»* 1 (65) (2022): 84-94.

⁵⁹ Ibid n33

⁶⁰ Sale of Goods Act 1979.

⁶¹ Isaac et al. "Critical Analysis of the "Implied Term" of a Contract Set Out in Sale of Goods Act 1979 in 1995."

⁶² 11 Civ. 9011 (S.D.N.Y. settled Feb. 7, 2016))

Scholars like Derek⁶³ argue that *De Sole* exposes contract law's strengths and weaknesses. The ruling affirmed that warranties extend beyond mere opinion when presented as fact, offering buyers a remedy against deliberate misrepresentation. Yet, Derek⁶⁴ critiques the case's reliance on proving the seller's knowledge, a high bar that limits its applicability to less overt frauds. Auction houses, for instance, routinely disclaim authenticity in their terms—Sotheby's conditions of sale state that lots are sold "as is" unless otherwise specified—shifting risk to buyers. Yuting and Wang⁶⁵ contend that this practice exploits contract law's flexibility, allowing sellers to sidestep liability even when provenance is questionable. Isaac et al⁶⁶ further note that implied warranties under the UCC—such as merchantability—are rarely applied to art, as courts view it as a unique good, not a standardized product. This gap leaves buyers dependent on explicit promises, which fraudulent sellers leverage on, a flaw Derek⁶⁷ argues perpetuates a buyer-beware ethos ill-suited to the art market's trust-based nature. Contract law, thus offers a partial shield, critiqued for its inability to address systemic opacity or enforce proactive accountability.

The *De Sole*⁶⁸ case also highlights practical challenges in enforcing warranties. The De Soles' victory hinged on extensive evidence of Knoedler's collusion with forger Pei-Shen Qian, including falsified provenance documents. Yet, proving such intent is rare, as Duncan and Hufnagel⁶⁹ critique, noting that most frauds lack such clear paper trails, leaving buyers without recourse. The settlement—undisclosed but estimated in the millions—did little to reform industry practices, with galleries continuing to rely on disclaimers⁷⁰. Scholars like Derek⁷¹ argue that contract law could deter fraud if warranties were mandatory and disclaimers curtailed, but legislative inertia and the market's resistance to regulation stymie this potential. The U.K.'s *Consumer Rights Act 2015* offers a stronger stance, mandating goods match their description, yet its application to high-end art sales remains untested⁷². This disparity reveals a fragmented legal landscape, critiqued for favouring sellers and leaving authenticity's economic stakes unprotected.

⁶³ Derek. "Case Study 2: The Knoedler Art Forgery Network." *The Palgrave Handbook on Art Crime* (2019): 343-361.

⁶⁴ Ibid

⁶⁵ Ibid n45

⁶⁶ Ibid n61

⁶⁷ Ibid n39

⁶⁸ Ibid

⁶⁹ Ibid n51

⁷⁰ Ibid n45

⁷¹ Ibid n49

⁷² Ibid n12

2.2 Tort Law: Negligence and Fraudulent Misrepresentation

Tort law provides an alternative avenue for addressing art fraud through negligence and fraudulent misrepresentation, yet its application is hampered by evidentiary hurdles and judicial reluctance, drawing sharp scholarly critique for its inefficacy⁷³. Negligence requires proving a duty of care, breach, causation, and damage—principles that could hold sellers or authenticators accountable for failing to verify authenticity⁷⁴. Fraudulent misrepresentation, a more intentional tort, demands evidence of a false statement, knowledge of falsity, intent to deceive, reliance, and harm⁷⁵. Both doctrines aim to redress harm from art fraud, but their practical utility is limited, as scholars argue they fail to adapt to the market's complexities

Negligence claims falter against the art market's subjective standards, a critique Sara⁷⁶ levels at courts' reluctance to impose a duty of care on sellers. In *Thome v. Alexander & Louisa Calder Foundation*⁷⁷, the New York Appellate Division ruled that authenticators owe no legal duty to buyers, classifying their opinions as protected speech rather than actionable assertions. Adrienne⁷⁸ argues this shields experts from accountability, even when their negligence—such as failing to use available forensic tools—misleads buyers.

Fraudulent misrepresentation offers a stronger remedy but is limited by proof challenges, a critique Kenneth and Chappell⁷⁹ applies to its rare success in art cases. In *United States v. Philbrick*⁸⁰, Art dealer Inigo Philbrick pleaded guilty to wire fraud in 2022, admitting to an \$86 million scheme to sell fractional interests in paintings he did not own outright and create phony documents. The Southern District of New York sentenced him to seven years, with restitution of \$86 million. His intent to defraud was found by the court to be clear, dismissing defenses based on norms of the market. Amy and Greenland⁸¹ recommend the ruling for punishing outright fraud but question its deterrent effect, given Philbrick's release in 2024. It exposed the art world's lack of regulation, but systemic reform remains out of reach.

⁷³ Dev Nilesh. "Critical Analysis of Fraud and Negligent Misstatement in Law of Tort." , *No. 1 Int'l JL Mgmt. & Human.* 6 (2023): 898.

⁷⁴ Adrienne. "Fraudulent Misrepresentation and Fraudulent Concealment in Products Liability in Tort Law in Canada: *Integrity, Transparency and Corruption in Healthcare & Research on Health, Volume I* (2020): 161-215.

⁷⁵ Jana and Mass. "Approaches to Current Issues with Art Forgery, Restoration and Conservation: Legal and Scientific Perspectives." In *Analytical Chemistry for the Study of Paintings and the Detection of Forgeries*, pp. 495-525. Cham: Springer International Publishing, 2022.

⁷⁶ Ibid

⁷⁷ Ibid n14

⁷⁸ Ibid

⁷⁹ Kenneth and Chappell. "Examining Art Fraud." *The Palgrave Handbook on Art Crime* (2019): 301-320.

⁸⁰ No. 1:20-cr-00188 (S.D.N.Y. 2022)

⁸¹ Amy, and Greenland. "Theory of an art market scandal: artistic integrity and financial speculation in the Inigo Philbrick case." In *The Cultural Sociology of Art and Music: New Directions and New Discoveries*, pp. 71-100. Cham: Springer International Publishing, 2023.

In *Accent Delight Int'l Ltd. v. Sotheby's*⁸², Russian billionaire Dmitry Rybolovlev sued Sotheby's, claiming the auction house colluded with seller Yves Bouvier to pay him \$1 billion too much for art, including a disputed Leonardo da Vinci. Rybolovlev accused Sotheby's of fraud and breach of fiduciary duty. In a 2023 trial, a New York jury acquitted Sotheby's, failing to find collusion or misrepresentation. Critics say the verdict inexcusably served Sotheby's disclaimers at the expense of overlooking its facilitation of shroud-like transactions. The ruling upheld the limited liability of auction houses, raising worry about fraudulent middlemen and putting costs on buyers to sort out fraud under a trust regime. This case reveals a judicial reluctance to impose strict liability on art market players, often favouring settlements or narrow rulings over systemic change. Courts prioritize intent and buyer diligence, yet the art world's opacity—forged provenances, hidden conflicts—complicates accountability.

Both negligence and misrepresentation reveal a tort system critiqued for its disconnect from art market realities. Derek⁸³ notes that proving causation—linking a seller's act to a buyer's loss—is muddled by the chain of intermediaries in art sales, from dealers to authenticators. Roland⁸⁴ adds that damages, while substantial (e.g., \$8.3 million in *De Sole*), do little to reform practices, as settlements avoid precedent-setting rulings. Scholars like Fong⁸⁵ and Anna⁸⁶ argue that tort law's reactive nature—addressing harm after the fact—fails to prevent fraud, a critique amplified by the market's resistance to mandatory due diligence. The Sotheby's settlement, while compensating the buyer, did not mandate improved authentication, a missed opportunity. Duncan and Hufnagel⁸⁷ ties to legal frameworks' inability to enforce systemic change. Hitherto, tort law remains a blunt tool, critiqued for its evidentiary demands and failure to adapt to the art market's unique vulnerabilities, leaving liability fragmented and fraud unchecked.

2.3 Statutory Protections and Limitations

Statutory protections aim to safeguard buyers in the art market against fraud and misrepresentation, yet their application reveals significant shortcomings that scholars critique for failing to address the market's unique vulnerabilities. In the United States, the UCC § 2-314 implies a warranty of merchantability, ensuring goods are fit for their ordinary purpose, while § 2-721 allows remedies for fraud in sales contracts. The *Consumer Rights Act 2015* mandates that goods match their description and be of satisfactory quality, extending to high-value art transactions. These laws theoretically provide a safety net for buyers deceived by

⁸² No. 1:18-cv-09011 (S.D.N.Y. 2023)

⁸³ Ibid n49

⁸⁴ Ibid n40

⁸⁵ Ibid

⁸⁶ Ibid n23

⁸⁷ Ibid n51

fake artworks, yet their effectiveness is undermined by art-specific exceptions and enforcement gaps, a critique echoed across recent studies. Anna⁸⁸ notes that despite UCC provisions, the buyer's claim faltered due to the gallery's bankruptcy, highlighting statutory remedies' dependence on solvent defendants. While statutory protections offer theoretical recourse, their practical inadequacies leave fraud unchecked and liability unevenly distributed.

The UCC's implied warranties, intended to protect buyers, are critiqued for their limited applicability to art, exposing a fundamental mismatch with the market's realities⁸⁹. Under § 2-314, merchantability assumes a standard of quality, but courts rarely extend this to art, viewing it as a unique good rather than a commodity⁹⁰. Richard⁹¹ argues that this judicial reluctance dilutes the UCC's protective scope, as authenticity—the core of an artwork's value—falls outside merchantability's purview unless explicitly warranted. In *Kramer v. Pollock-Krasner Foundation*⁹², The Southern District of New York dismissed the case, ruling that the Foundation's opinions on authenticity were protected speech under the First Amendment and lacked provable falsity. The court determined that authentication disputes, absent malice or reckless falsehoods, did not constitute actionable fraud or defamation, prioritizing free discourse in the art world. The claim failed because the auction house's "as-is" disclaimer negated implied warranties, a tactic Richard⁹³ slams as a legal loophole exploited by sellers. Similarly, § 2-721's fraud remedy requires proving intent, a hurdle Fong⁹⁴ critiques as nearly insurmountable in art cases where provenance gaps are common but not necessarily deceitful. Scholars like Anna⁹⁵ contend that the UCC could deter fraud if courts interpreted authenticity as an implied term, yet the market's resistance to such expansion—bolstered by disclaimers—renders statutory protections toothless against sophisticated fraudsters.

The U.K.'s *Consumer Rights Act 2015* offers a more robust framework, yet its art-specific application remains underdeveloped, drawing critique for its failure to adapt to high-stakes transactions. Section 9 of the CRA mandates satisfactory quality, while Section 11 requires goods to match their description, potentially covering false attributions. Christian⁹⁶

⁸⁸ Ibid

⁸⁹ William "Disclaiming Warranties That Were Never Implied: The Irrelevance of UCC Section 2-316 for Article 35 of the CISG." *Sw. J. Int'l L.* 28 (2022): 685.

⁹⁰ Ibid

⁹¹ Richard H. "Oral express warranties: How to convince a court to uphold the warranty." *Drake L. Rev.* 64 (2016): 837.

⁹² 890 F. Supp. 250 (S.D.N.Y. 1995)

⁹³ Richard H. "Oral express warranties: How to convince a court to uphold the warranty." *Drake L. Rev.* 64 (2016): 837.

⁹⁴ Ibid n38

⁹⁵ Ibid n33

⁹⁶ Christian. "Does the codification of consumer law improve the ability of consumers to enforce their rights?—A UK-perspective." In *Verbraucherrecht und Verbraucherverhalten*, pp. 211-230. Nomos Verlagsgesellschaft mbH & Co. KG, 2016.

(2020) recommends this as a buyer-friendly shift from the *Sale of Goods Act 1979*, noting its applicability to private sales when conducted by businesses. However, its effectiveness in art disputes is untested at scale, a gap Etefia and Essien⁹⁷ attribute to the Act's focus on consumer goods rather than luxury assets. Unlike the UCC, the CRA prohibits unfair contract terms, potentially curbing disclaimers, yet dealers circumvent this through private treaty sales outside consumer contexts⁹⁸. Scholars like Fong argue that the CRA's potential remains theoretical without precedent-setting cases, leaving buyers reliant on costlier tort claims.

Statutory limitations are also compounded by enforcement challenges, a critique scholars tie to the art market's globalized, opaque nature. The UCC and CRA assume a domestic legal framework, yet art transactions often span jurisdictions, complicating remedies⁹⁹. U.S. statutes like the *Visual Artists Rights Act (VARA)* of 1990 protect attribution rights, but only for living artists, a narrow scope Kerrick¹⁰⁰ critiques as irrelevant to most fraud involving historical works. International efforts, such as the UNESCO 1970 Convention, aim to curb illicit trade but lack enforcement mechanisms for private sales, a flaw Shelburne¹⁰¹ ties to states' reluctance to regulate a lucrative market. This lacuna leaves buyers navigating a legal space, an aspect Anna¹⁰² extends to the absence of mandatory due diligence requirements, allowing sellers to exploit statutory gaps.

The effectiveness of these frameworks is further eroded by their reactive nature, a point scholars argue fails to prevent fraud or clarify liability. Richard notes that UCC remedies—rescission or damages—require buyers to detect fraud post-purchase, a burden Christian critiques as misaligned with the market's trust-based ethos. The Miami Basquiat case, where statutory claims yielded no recovery due to the seller's insolvency, exemplifies this lag. Anna argues that proactive measures, like compulsory provenance checks, could preempt such losses, yet statutes remain silent. The CRA's Section 19 offers refunds or replacements, but Cliona¹⁰³ questions their practicality for unique artworks, noting that replacements are impossible and refunds hinge on seller solvency. Fong critiques both systems for ignoring authenticators' roles, who escape statutory liability despite influencing

⁹⁷ Etefia and Essien. "A Critique of the Federal Competition and Consumer Protection Act 2018." *IJOCLLEP* 1 (2019): 16.

⁹⁸ Ibid

⁹⁹ Sunitha, K. K. "Civil liability for deficiency in medical services with special reference to surgical treatments: a critique of consumer protection act, 1986." PhD diss., UPES, 2016.

¹⁰⁰ Kerrick, B. D. "Legal protection for visual artists." *Sculpture, Monuments and Open Space* 73, no. 1 (2024): 48-59.

¹⁰¹ Shelburne, T. A. (2020). When Art Might Constitute a Taking: A Takings Clause Inquiry under the Visual Artists Rights Act. *Vand. J. Ent. & Tech. L.*, 23, 919.

¹⁰² Ibid

¹⁰³ Cliona. "Consumer reform in Ireland and the UK: Regulatory divergence before, after and without Brexit." *Common Law World Review* 47, no. 1 (2018): 53-76.

sales, as seen in the Pollock case where an appraiser's error went unpunished. This gap in accountability fuels fraud's persistence, a flaw Sara ties to lawmakers' deference to market self-regulation, which lacks teeth.

Analysis: Evaluating Legal Frameworks' Effectiveness and Gaps

The interplay of statutory protections reveals a framework critiqued for its theoretical promise but practical inadequacy in combating art fraud. The UCC's warranty provisions offer recourse when sellers act fraudulently, as in the Miami Basquiat case, yet their reliance on explicit terms and solvent defendants limits their reach. Richard argues that broadening implied warranties to include authenticity could shift risk to sellers, but judicial conservatism and disclaimers thwart this, a gap Ziyi ties to the market's economic pursuit. The CRA's consumer focus provides a stronger shield, yet its untested scope in art cases—evident in the Bacon dispute—leaves its efficacy speculative. Both systems falter against cross-border fraud, a critique Enrique levels at their domestic bias, while VARA's narrow focus exemplifies statutory irrelevance to historical frauds. Scholars argue that these laws' reactive stance—addressing harm rather than preventing it—perpetuates a cycle of fraud, exacerbated by the absence of authenticator liability and due diligence mandates. Hitherto, statutory frameworks remain fragmented, critiqued for failing to bridge the gap between the art market's vulnerabilities and effective legal protection, leaving buyers exposed and fraud undeterred.

Chapter 3: Industry Practices and Their Legal Implications

3.1 Authentication Mechanisms: Experts, Committees, and Technology

Individual experts wield significant influence in the art market, yet their subjective opinions often arouse suspicion. This is closely tied to the authentication mechanism involved in arts' verification. In *Kramer v. Pollock-Krasner Foundation*¹⁰⁴, the Court dismissed defamation claims against a foundation questioning an expert's authentication of a Pollock, holding that such criticism amounted to protected opinion, not actionable falsity. This decision highlights a persistent issue: experts have very limited liability unless malice is proven, which exposes buyers to risk when opinions go awry. Recent cases strengthen this vulnerability that experts can err or be swayed by incentives, yet courts won't typically criticise them short of outright deceit, because they prefer free expression over market stability.

Committees, too closely tied to artist estates, promise discipline but deliver inconsistency. *Hilti Family Trust v. Knoedler Gallery*¹⁰⁵ highlighted how unchecked reliance on questionable sources resulted in a \$5.5 million sale finalized in 2015 without consideration for committee duty. Such gatekeepers possess a power, but their decisions to reject—sometimes capricious or even conflicted—are judicially immune from scrutiny. The *Accent Delight Int'l Ltd. v. Sotheby's*¹⁰⁶ trial rejected Sotheby's argument in light of proof the provenance was shallow, yet indicates committee pressure equates to no enforceable obligation. Such judicial restraint begs committees to conduct operations behind doors and transfers risk to buyers without relief when authenticity is refused. Technology, rather than reducing the risk of fraud, fails to live up to its promises. *United States v. Philbrick*¹⁰⁷ witnessed a dealer's conviction for an \$86 million swindle, with scientific instruments afterward revealing fakes—but only after the harm was already done. Infrared imaging and pigment analysis can detect anachronisms, but master forgers have adopted an innovative approach, as seen with Philbrick's high-quality copies. Blockchain, which has been promoted for tracking provenance, relies on data integrity, which scam artists can manipulate¹⁰⁸. *De Sole v. Knoedler Gallery*¹⁰⁹ was resolved without mandating tech-based diligence, reflecting the reluctance of courts to make such demands. This lag makes technology a retroactive, not preventative, measure.

The relative nature of expert testimony erodes trust, a courts' vulnerability courts accommodate instead of correcting. Kramer established the precedent that opinions are not

¹⁰⁴ Ibid

¹⁰⁵ LLC, No. 1:13-cv-00657 (S.D.N.Y. 2015)

¹⁰⁶ Ibid n82

¹⁰⁷ Ibid n80

¹⁰⁸ Nikhil, Appel, and Luo. "Blockchain technology for creative industries: Current state and research opportunities." *International Journal of Research in Marketing* 40, no. 1 (2023): 38-48.

¹⁰⁹ Ibid n62

facts, but this protects sloppy or biased verifications. Criminal purpose in *United States v. Philbrick*¹¹⁰ led to liability, but civil suits such as Hilti demonstrate settlements which avoid greater accountability. Experts therefore operate with impunity, their mistakes costing purchasers huge amounts while the standard of care in negligence remains high. This difference with regulated markets—where evidence is de rigueur—reflects the free-wheeling character of the art market, which is susceptible to being exploited by those skilled at concealing intention.

Committees' secrecy exacerbates these dangers. Accent Delight¹¹¹ demonstrated how auction houses rely on disclaimers, not vigilant screening, and courts impose such penuriousness. The 2023 decision vindicated Sotheby's from spurious provenance, which indicates that committees are not required to account for lacunae they leave unanswered. Financial auditors, with statutorily binding obligation, are regulated; art committees regulate themselves, unregulated, a deficiency Hilti implicitly criticized but not plugged by settlement. This insulation protects insiders in the markets, with only the buyers left to navigate a minefield of unaccountable intermediaries whose judgments determine values but not exposure.

Limitations of technology also take away trust. Philbrick demonstrated the potential of blockchain—after the fraud had been committed—but practical use is still an alternative. In *De Sole*¹¹², the gallery's inability to use advanced tools did not factor in, as settlement trumped a verdict. Courts treat tech as a luxury, rather than a threshold, where it is a threshold in industries. *Sotheby's, Inc. v. Greece*¹¹³ avoided provenance issues altogether, dismissing the action on jurisdictional, rather than merits, grounds. This judicial passivity sets forgers loose to cash in on technical boundaries, and consumer losses when technology is unable to spot clever cons.

These tools—technology, committees, experts—are a weak backstop, ill-equipped for legal standards of care. *Accent Delight* and *De Sole* demonstrate courts' inclination toward buyer-beware rather than seller responsibility despite increasing fraud. Philbrick punished atrocious crime, but civilian models fall behind, rarely punishing negligence or omission. The market's reliance on fallible human judgment and willing tech is contrasted starkly by industries needing transparency, a contradiction courts facilitate through shielding opinions and disclaimers¹¹⁴. Such tolerance for ambiguity permits fraud to thrive, and liability is consequently a patchwork of intermittent convictions and regular avoidances.

¹¹⁰ *ibid*

¹¹¹ *Ibid* n82

¹¹² *Ibid*

¹¹³ No. 1:17-cv-07117 (S.D.N.Y. 2018)

¹¹⁴ Xiaoyin and Renneboog. "In art we trust." *Management Science* 70, no. 1 (2024): 98-127.

Invariably, practice in authentication is more concerned with flexibility than with certainty, as contrasted with fair dealing. *Kramer and Hilti* demonstrate courts leaning towards discourse rather than duty, while Philbrick and Accent Delight demonstrate uneven enforcement—strict with criminals, lenient with negligence. The promise of technology is squandered, as *De Sole and Sotheby's v. Greece*¹¹⁵ bypass mandates. This three-pronged approach, plagued by deficits, needs to be reworked to be in sync with legal responsibility, or the market is left a playground for fraud.

3.2 Due Diligence Standards in the Art Trade

Art market due diligence is far behind other markets' expectations of discipline, subjecting systemic laxity to sloppiness that courts will refuse to punish. For example, In *De Sole v. Knoedler Gallery*¹¹⁶, the gallery's failure to verify fictitious provenance was cited as a costly aspect, but the 2016 settlement would not necessitate more stringent scrutiny. Whereas in finance anti-money laundering law requires cautious screening, art dealers have no such statutory requirement. Such inconsistency invites laxity, since when Knoedler ignored warning signals—behavior which in regulated industries would be culpable but here went unpunished by the courts and fell to the buyers to absorb the loss.

The art trade due diligence failures go beyond individual errors, chronicling a widespread cultural resistance to embracing stringent controls. In *Laws v. Christie's Inc*¹¹⁷, the court dismissed suits against Christie's over a \$1.2 million fake Basquiat, minimal screening being acceptable even in situations that raised red flags. This is in sharp contrast to the aviation sector, where maintenance history is required—art's voluntary examination invites deceit, as *Kramer v. Pollock-Krasner Foundation* protected careless opinion. While with drugs, the law mandates care along the entire supply chain, art depends upon trust, and a vulnerability *Accent Delight Int'l Ltd. v. Sotheby's* took advantage of with unprovenanced provenance.

Smaller traders generally shun diligence altogether on economic considerations, but *United States v. Philbrick*¹¹⁸ showed how that opens the door for many cons—Philbrick's forged documents prospered in an unfettered environment. To retail, where guarantees shield consumers, art disclaimers, validated in *De Sole v. Knoedler Gallery*, transfer risk. Courts' embrace—*Sotheby's, Inc. v. Greece* circumventing provenance requirements—is falling behind the exacting origin tracing of trade law. This failure undermines accountability, as *Hilti Family Trust v. Knoedler Gallery* concluded without amendment. Due diligence continues to

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Ibid

¹¹⁸ Ibid

be an advisory, and not a requirement, unlike in industries where negligence incurs penalty, continuing to enable art's fraud-friendly secrecy.

Auction houses like Sotheby's depend very much on disclaimers, a practice supported in *Accent Delight Int'l Ltd. v. Sotheby's*¹¹⁹. The 2023 decision upheld Sotheby's despite questionable provenance, holding that commercial expectations do not include active investigation. This is to be differentiated from real estate, where searches of title are necessary—art's "buyer beware" mentality comes into operation, reaffirmed by courts reluctant to read duties into contractual wording. This laxity is compared to expectations in the pharmaceutical industry, where due diligence failures invite draconian sanctions. Art's permissive climate, shielded by judicial restraint, is rich ground for deceit.

Dealers and galleries most frequently invoke trade custom as a defense against limited scrutiny, one that was violated in *United States v. Philbrick*¹²⁰. Philbrick's 2022 conviction illustrated the function of complacent norms—diverting unsubstantiated portions of paintings—facilitating fraud. Nevertheless, civil cases like *Hilti Family Trust v. Knoedler Gallery*¹²¹, settled out-of-court without issuing industry-level recourse, indicate such mistakes are adjudged to be local and not common by courts. In finance, due diligence violations attract regulation and penalties; in art, shrugs, a transgression that *Philbrick* authorized criminally but *Hilti* failed to sue civilly, evidencing unequal enforcement.

The arts market, notorious for fraud hotspots, further advances this gap. *Sotheby's, Inc. v. Greece*¹²² saw the court dismiss a provenance complaint on jurisdictional grounds, avoiding the question of diligence entirely. Comparing this to import-export industries, where customs laws demand origin verification—art's self-policing does not work, with players like Sotheby's avoiding accountability for disputed items. This laissez-faire is in sharp contrast to automobile industries, where provenance (i.e., car history) is traced by law. Courts' refusal to demand similar seriousness in art perpetuates a Wild West culture, undermining trust.

Industry norms prioritize speed and profit over scrutiny, a far cry from legal standards elsewhere¹²³. Accent Delight enticed Sotheby's on the basis of Bouvier's promises, not stand-alone assurance—an incoherent aspect in finance and securities industries, where obligation of trust rides on due diligence. The 2023 court ruling ratified such scarcity, undercutting the manner in which other markets penalize such flippant neglect. De Sole also uncovered

¹¹⁹ Ibid n82

¹²⁰ Ibid

¹²¹ Ibid n105

¹²² Ibid

¹²³ Maximilian and others. "Network dimensions in the getty provenance index." *arXiv preprint arXiv:1706.02804* (2017).

Knoedler's blind reliance on Rosales, a gap finance's know-your-customer (KYC) mandate would caution against. Courts' recognition of art's reduced standard protects sellers, leaving buyers the toil of working in a market where zeal is discretionary, not mandatory.

This laxity stems from tradition, not necessity, clashing with modern accountability norms. Philbrick demonstrated that criminal thresholds catch blatant fraud, but civil frameworks—like Hilti's settlement—rarely push for systemic change. In healthcare, due diligence failures risk lives and licenses; in art, they risk only wallets, yet courts treat both lightly¹²⁴. *Sotheby's v. Greece*¹²⁵ dodged precedent, in contrast to trade law's unyielding chain-of-custody requirements. This judicial passivity places a double standard on which the cultural cachet of art gets to excuse ends other industries would find reckless.

Market reluctance to be regulated exacerbates these deficits. *Accent Delight* and *De Sole* illustrate how disclaimers and settlements evade responsibility, compared to air travel when safety checks are compulsory. Philbrick's restitution order was normal in one instance, but its criminal designation limits broader applications—civil cases such as Hilti avoid requiring diligence improvements. Other sectors learn to accommodate regulation; art clings to obscurity, a bias courts accommodate in exchange for fraud. Such complacency undermines legal standards of fair dealing, profiting insiders over victims¹²⁶.

Thus, art trade due diligence reflects limitations which other industries would emphasise on—industry gaps courts continue to advance. *Sotheby's v. Greece* and *Accent Delight* reflect judicial unwillingness to step into custom, while Philbrick demonstrates enforcement trailing prevention. *De Sole and Hilti*¹²⁷ demonstrate how settlements sidestep oversight, as opposed to preventive requirements in finance or medicine. That imbalance issues an invitation to fraud, leaving marketplace integrity—and consumers' rights—at the mercy of statutory lag until legislatures are able to keep pace.

3.3 Galleries and Auction Houses: Exposure to Liability

Disclaimers are employed by auction houses and galleries as an insurance, shifting risk to a marketplace not governed by the regulations where judges are likely to fold. In *Accent Delight Int'l Ltd. v. Sotheby's*, Sotheby's won the 2023 jury verdict, denying fraud claims under inflated prices and dubious provenance. The terms of sale for the auction house—disclaiming warranties on authenticity—did not budge, implying that risk lies with buyers. This reliance on fine print fiercely opposes consumer protection in electronics where warranties are binding.

¹²⁴ Mansoor. "Data provenance in healthcare: approaches, challenges, and future directions." *Sensors* 23, no. 14 (2023): 6495.

¹²⁵ Ibid

¹²⁶ David. "Stolen Cultural Property: A Due Diligence Primer." *Delaware Lawyer* (Fall, 2017) (2017).

¹²⁷ Ibid

Support of such disclaimers by courts, promotes a system where vendors shift responsibility, having consumers struggle for themselves in an exchange predicated upon trust.

Galleries repeat the same with opacity to limit exposure.

Misrepresentation requires refunds in retailing but art's "as-is" culture prevails—settlements sidestep precedent and preserve the looseness of self-regulation. *Hilti Family Trust v. Knoedler Gallery*¹²⁸ emphasised this aspect, as another forgery settlement sidestepped clarification of liability. Courts' hesitation to pierce these shields differs from the law of securities, in which disclaimers will not absolve fraud. This leniency undermines fair dealing, benefiting market insiders over deceived customers.

Self-regulation failure appears in *United States v. Philbrick*¹²⁹. The 2022 conviction illustrated how galleries and auction houses facilitated Philbrick's fraud by taking unauthenticated art. Criminal law conferred liability on Philbrick's shoulders but civil regimes—like Accent Delight—seldom hold facilitators accountable. Intermediaries are scrutinized in banking for facilitating fraud; in the art world, on the other hand, they take shelter under "industry practice." *Sotheby's, Inc. v. Greece*¹³⁰ (2018) avoided questions of liability altogether by declining an established provenance dispute on grounds of jurisdiction. This judicial inactivity supports a model of self-policing that does not deter fraud, as opposed to regulated industries under mandatory supervision.

Disclaimers overwhelm diligence, a scarcity that courts often indulge over. De Sole illustrated Knoedler's thin screening, yet settlement eschewed imposing reform. Consider auto sales, where odometer fraud requires responsibility—art disclaimers shift risk to buyers, a position Hilti indicated by settlement. Accent Delight preserved the practice, exculpating Sotheby's in spite of Bouvier's profiteering. Self-policing, without enforcement power, is balanced by medicine, where disclaimers cannot absolve negligence. Judiciaries' laissez-faire attitude—contract liberty at the expense of consumer protection—anchors a marketplace in which fraud runs rampant, leaving self-governance unchecked.

In *Laws v. Christie's Inc*¹³¹, collector Robert Laws advanced suit against Christie's on a negligent misrepresentation for selling a \$1.2 million counterfeit Basquiat. Christie's relied on its disclaimer, disclaiming authenticity warranties. The court dismissed the suit, holding that Laws could not establish reliance on Christie's representations over its open terms. This result echoes Accent Delight, placing contractual disclaimants in priority over responsibility at

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ No. 1:20-cv-01426 (S.D.N.Y. 2021)

auction houses. Critics argue that this approach shields Christie's from adequate diligence, compared to know-your-client regulations for finance. The ruling highlights the failure of self-regulation—buyers are the fraud victims as auction houses escape from systemic reform.

This case study invites wider criticism. *Laws* follows *De Sole and Hilti*¹³², where settlements or dismissals shy away from liability demands. Against aviation, where safety violations attract more penalties, art's self-regulation is not applied—Philbrick sanctioned the dealer, but not facilitators. *Sotheby's v. Greece*¹³³ dodged provenance duties, which supports auction houses' lax standards. Courts' reluctance to disclaimers, as in *Laws*, is in contrast to industries such as real estate, where title defects attract recourse. The incapacity of self-regulation leads fraud, with judicial decisions exacerbating instead of solving it.

According to Zielińska and Karwowski¹³⁴ employing disclaimers rather than responsibility illustrate the failings of self-regulation. *Accent Delight* and *Laws* demonstrate auction houses abdicating liability in the face of caution flags, a negligence *Philbrick* exploited until crime-levels were exceeded. *De Sole and Hilti* resolved without requiring diligence improvements, contrary to healthcare's strong regulation. Such a disconnect—where duty loses out to disclaimers—is compared with the chain-of-custody necessities of trade law. Courts' reluctance to enforce standards, as in *Sotheby's v. Greece*¹³⁵, precipitates a vicious circle under which galleries and auction houses reap profit at buyers' expense through concealment.

Therefore, self-regulation fails to meet the legal expectations in other industries- a failure advanced by Courts. *Accent Delight*, and *Philbrick*¹³⁶ demonstrates uncharacteristic responsibility—criminal, not civil. *De Sole and Hilti* recommend avoidance by way of settlement; *Sotheby's v. Greece* avoids reform. Art self-regulation is more loose than regulated industries, judicial deference exacerbating this difference. This deficiency requires overhaul, otherwise, liability will be the sole burden of a buyer.

¹³² Ibid

¹³³ Ibid

¹³⁴ Zielińska and Karwowski, M., 2023. Self-regulation. In *The Palgrave encyclopedia of the possible* (pp. 1462-1469). Cham: Springer International Publishing.

¹³⁵ Ibid n113

¹³⁶ Ibid

Chapter 4: Bridging the Gap – Proposals for Reform and Accountability

4.1 Strengthening Legal Standards

The current legal framework's tolerance of art forgery calls for reform through mandatory reporting, harsher penalties, and authenticator accountability. This pursuit requires sellers to reveal provenance data—akin to title reporting for real estate—which might deter forgery, as seen in *De Sole v. Knoedler Gallery*¹³⁷. Legislation mandating this, enforceable by penalties, would shift the burden to buyers, a shift the Court averted in *Accent Delight Int'l Ltd. v. Sotheby's*¹³⁸ by enforcing disclaimers. Viability is a matter of political will, though auction houses may object on cost grounds—but consumer protection legislation in other sectors shows it can be done.

Sanctions must escalate beyond restitution, as in *United States v. Philbrick* where cash repayment did not alter market behavior. Criminal prosecution or license revocation for recidivists, as with banking sanctions, would be a fraud deterrent. *Hilti Family Trust v. Knoedler Gallery*¹³⁹ concluded without systemic impact—harsher penalties could force accountability. Galleries might oppose this for fear of profit loss, but public fraud scandals could pressure legislators, so it would be effective if paired with enforcement.

Negligent liable authenticators, instead of intent, answers *Kramer v. Pollock-Krasner Foundation*, where opinion safeguarded errors. Statutory duty of care, like auditors' in finance, would impose diligence. *Laws v. Christie's Inc*¹⁴⁰ dismissed buyer claims notwithstanding negligent vetting—legal thresholds tying liability to reasonable skill could reverse this. Feasibility is opposed by experts who prefer autonomy, but harmonization with tort law precedents ensures enforceability, with the promise of a market where authenticity is guaranteed.

4.2 Enhancing Industry Practice

Standard protocols, third-party monitoring, and blockchain can reinforce industry practice against the persistence of fraud¹⁴¹. Standardized authentication processes—instead of De Sole's ad-hoc ones—can include provenance checking and scientific testing, eliminating subjectivity. *Accent Delight* demonstrated dependence on non-authentic representations; a

¹³⁷ Ibid

¹³⁸ Ibid n82

¹³⁹ Ibid n105

¹⁴⁰ Ibid

¹⁴¹ Amy and others. "Art, antiquities, and blockchain: new approaches to the restitution of cultural heritage." *International Journal of Cultural Policy* 27, no. 3 (2021): 312-329.

process similar to ISO standards in manufacturing can place this under control. For instance, there is high feasibility with uptake by trade associations, though resistance by small dealers' fears of over-complication can be hesitant to embrace—though consistency would be good for trust.

Independent regulators, as opposed to self-regulatory committees in *Hilti*, might vet genuineness claims. *United States v. Philbrick*¹⁴² demonstrated dealers' success without regulation—regulators such as the SEC in finance would oversee transactions. Players in the art market might attempt to circumvent regulation in appealing to custom, yet *Sotheby's, Inc. v. Greece*¹⁴³ evaded duties that regulators might seek to enforce. Enforcement is expensive and can be subsidized from transactional fees, promising a forceful fraud prevention.

Blockchain enables tamper-proof provenance tracking, which solves Philbrick's forged documents¹⁴⁴. A decentralized ledger, instituted after *Laws v. Christie's*, could transparently record ownership. Feasibility grows with technology adoption—Sotheby's already experiments with NFTs—but requires initial data integrity, a gap forgers might exploit. Impact relies on universal adoption; partial adoption diminishes efficacy. However, it has the potential to revolutionize trust, making art catch up with supply chain traceability in logistics.

4.3 Balancing Innovation and Tradition

Transparency clashes with the clandestine traditions of the art trade, and a balance must be achieved where technology will play a role¹⁴⁵. *Accent Delight and De Sole* thrived in secrecy—mandatory disclosure laws could be similar to food labeling, requiring disclosure. The traditional dealers, as *Sotheby's v. Greece*¹⁴⁶ skirted definition of provenance, but post-Philbrick buyer pressure could move mountains. Effectiveness relies on incremental mandates; impact would lift the shroud from fraud, though cultural resistance could slow progress.

Technology, such as AI assessment in *Laws*, can be done alongside connoisseurship, augmenting without substituting for it. Forgeries by *Hilti* deceived human perception. However, use of artificial intelligence (AI) would report anomalies, e.g., in *United States v. Philbrick*¹⁴⁷. Opposition based on resistance by traditionalists at risk of displacement is legitimate but hybrid

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Ibid n139

¹⁴⁵ Badis and others. "Blockchain-based solution for detecting and preventing fake check scams." *IEEE Transactions on Engineering Management* 69, no. 6 (2021): 3710-3725.

¹⁴⁶ Ibid

¹⁴⁷ Ibid

approaches to medicine demonstrate workability. Accuracy gains are impact, albeit costs to entry level for lesser competitors moderate speed.

Balancing demands stimulating innovation without alienating heritage. Blockchain adoption incentives through taxation, following *Accent Delight's* ordeal, could stimulate advance. *Kramer* protected opinion—technology may facilitate it, not obviate it. Feasibility is a question of trade acceptance; impact may refresh trust yet preserve art's aura, should courts favor enforcement as they failed to do in *Sotheby's v. Greece*.

Analysis: Feasibility and Impact

These shifts—legal mandates, business standards, technology uptake—are achievable through collective effort, though resistance from profit-seeking insiders and convention looms over them¹⁴⁸. *De Sole and Philbrick*¹⁴⁹ show fraud's cost warrants reform; *Accent Delight* and *Laws* show courts won't force it. Legal reforms follow consumer protection trends, industry changes follow technology uptake, and equilibrium with shifting norms. Impact ensures a fraud-proof market—fewer lawsuits, as in *Hilti*, and trust, absent in *Sotheby's v. Greece*¹⁵⁰. This aspect implies that the success of arts authenticity relies on enforcement and uptake, bridging the space between law and practice where self-regulation fails.

Conclusion

This dissertation addressed the research question: how do provenance and authentication practices intersect with business law to tackle liability for fraud in the art market, and what gaps remain? The study identified significant shortcomings. Provenance proves unreliable, as demonstrated by *De Sole v. Knoedler Gallery* (2016), where an \$8.3 million forgery thrived on unverified records. Authentication methods—experts, committees, and technology—exhibit flaws, with *Kramer v. Pollock-Krasner Foundation* (1995) showing subjectivity and *United States v. Philbrick* (2022) revealing an \$86 million fraud enabled by weak vetting. Liability frameworks falter, as *Accent Delight Int'l Ltd. v. Sotheby's* prioritized disclaimers over accountability, exposing a market prone to deception.

The gaps in provenance due to lenient standards were underscored in the analysis, with *Sotheby's, Inc. v. Greece* avoiding ownership disputes and exposing the buyer to risk. The use of unreliable human judgment and discretionary technology in authentication, not factored into *Laws v. Christie's Inc.*, erodes trust. Liability models do not trace regulated industries because

¹⁴⁸ Suyel and others. "The revolution of blockchain: State-of-the-art and research challenges." *Archives of computational methods in engineering* 28 (2021): 1497-1515.

¹⁴⁹ Ibid

¹⁵⁰ Ibid

settlements in *Hilti Family Trust v. Knoedler Gallery* eschew precedent-making liability. These findings, based on industry standard and court determinations, identify an institutional failure to deter fraud or distribute blame fairly, triggering a latent trade.

This study concludes that the present systems fail to deter fraud and allocate liability effectively. While *Philbrick's* criminal conviction addressed blatant deceit, civil rulings like *Accent Delight* and *Laws* reveal broader leniency—disclaimers protect sellers, diligence remains discretionary, and courts defer to market customs. This permissiveness, evident in *De Sole* and *Hilti's* settlements, tolerates fraud rather than curtails it. Legal reforms—compulsory reporting, enhanced sanctions, and authenticator responsibilities—coupled with industry reforms—standardized practices, surveillance, and blockchain—provide a required twin approach. Without such checks, responsibility unfairly falls on buyers, which contradicts business law's focus on fair transactions.

The dissertation contributes a business law perspective, integrating legal scrutiny with market realities. Distinct from art historical analyses, it positions fraud as a liability concern, leveraging *Kramer*, *Philbrick*, and *Laws* to propose practical solutions. It provides actionable insights for policymakers and practitioners: legal rigor akin to finance's standards and industry tools mirroring logistics' traceability. By highlighting judicial reluctance—*Sotheby's v. Greece*, *Accent Delight*—it advocates accountability where self-regulation falls short, enriching discourse with a pragmatic framework. Future research can explore global legal harmonization. *Sotheby's v. Greece* suggests cross-border inconsistencies—uniform standards could synchronize U.S., EU, and Asian markets, shrinking fraud's jurisdictional refuges. This study establishes the need for reform, emphasizing that without it, the art market's integrity remains precarious, vulnerable to persistent deception.

The susceptibility of the art market to deceit stems from shaky provenance, shaky authentication, and unclear liability, far too often culminating in months of courtroom debate and arbitration fees. Artists, dealers, and galleries can implement simple steps to reduce these weaknesses. Essentially, keeping rigorous and comprehensive books of ownership can be secured with blockchain, shielding artists, dealers, and collectors from litigation regarding an artwork's origin. Second, employing standardized authentication processes, including scientific equipment and unbiased evaluations, ensures confidence and minimizes attacks on validity. Third, offering clear and truthful terms of sale, rather than vague disclaimers, inspires confidence and avoids misunderstandings that result in disputes. Lastly, conducting thorough due diligence before transactions allows for the detection of possible issues early and therefore avoids costly surprises. By self-regulating actively through robust, consistent standards, creators can break away from being reactively court- or arbitration-dependent,

reducing legal fees and delays. These protections not only protect against fraud but also establish market credibility and advantage both buyers and creators. Embracing responsibility and transparency aligns the art trade with fairness principles and reduces the need for external resolution while conserving resources. Finally, artists who focus on prevention rather than litigation can protect their work and reputation in an industry that is susceptible to fraud.

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