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BURDEN OF HISTORY: HOLOCAUST-RELATED ART RESTITUTION AND THE ART MARKET IN NEW YORK

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Introduction

The Nazi confiscation of art is recognized as one of the biggest displacements of artworks in history.[1] Between 1933 and 1945, an estimated 150,000 pieces of art were plundered in Western Europe and nearly half a million in Eastern Europe.[2] The Nazi government deemed modern and abstract art, works by Jewish artists or that depict Jewish subjects, or any pieces critical of the government as "degenerate art" that must be taken away.[3] To facilitate the spoliation, the Nazi government passed a law "requiring Jews within the Nazi Reich with more than 5,000 Reichsmarks in property to periodically declare and inventory assets, including art

[1] *See* Hector Feliciano, The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art 23 (Tim Bent & Hector Feliciano trans., BasicBooks 1997) ("In twelve years … as many works of art were displaced, transported, and stolen as during the entire Thirty Years War or all the Napoleonic Wars.").

[2] Benjamin E. Pollock, *Out of the Night and Fog: Permitting Litigation to Prompt an International Resolution to Nazi-Looted Art Claims*, 43 Hous. L. Rev. 193, 196 (2005).

[3] Emily J. Henson, Comment, *The Last Prisoners of War: Returning World War II Art to Its Rightful Owners—Can Moral Obligations Be Translated into Legal Duties?*, 51 DePaul L. Rev. 1103, 1105–6 (2002).

collections."[4] Nazis also systematically put one spouse in a concentration camp and forced the other spouse to liquidate remaining assets by coercing them to exercise a power of attorney.[5] Moreover, deprived of income and access to bank accounts,[6] many Jewish art collectors resorted to selling their collections at discount prices to support their living or raise funds to escape.[7]

While efforts to restitute unlawfully lost art during the Nazi era began soon after the end of WWII, the lack of records rendered many such attempts unsuccessful.[8] In recent years, increasing awareness of the restitution issue and new research resources have given rise to a series of litigations in major art centers such as New York, where the original owner or their heirs challenge the title of the current possessor, usually a good-faith purchaser, for the reemerged lost artwork. However, adjudicating these claims requires courts to delineate legal boundaries within historically complicated contexts. The varying outcomes of Holocaust-related art restitution litigations and the constantly evolving legal landscape have injected significant uncertainties into the art market.

In April 2026, Congress passed the Holocaust Expropriated Art Recovery Act of 2025, amending its 2016 predecessor to better accommodate claimants by eliminating all procedural obstacles, ensuring that Holocaust-related art restitution cases are decided on the merits alone.[9] This amendment is poised to significantly

[4] Jennifer Anglim Kreder, *The New Battleground of Museum Ethics and Holocaust-Era Claims: Technicalities Trumping Justice or Responsible Stewardship for the Public Trust?*, 88 Or. L. Rev. 37, 48–9 (2009).

[5] *Id.* at 49.

[6] *See* Zuckerman v. Metro. Museum of Art, 307 F. Supp. 3d 304, 308 (S.D.N.Y. 2018) ("The Nuremberg Laws formalized a process of exclusion of Jews from Germany's economic and social life. It ushered in a process of eventual total dispossession through what became known as 'Aryanization' or 'Arisierung,' first through takeovers by 'Aryans' of Jewish-owned businesses and then by forcing Jews to surrender virtually all of their assets. Through this process all Jewish workers and managers were dismissed, and businesses and corporations belonging to Jewish owners were forcibly transferred to non-Jewish Germans, who 'bought' them at prices officially fixed and well below market value.").

[7] Kreder, *supra* note 4, at 49–50.

[8] *See* Pollock, *supra* note 2, at 198 (2006) ("In the modern era, the end of the Cold War opened Eastern bloc borders and permitted the release of many previously classified documents. Additionally, it is projected that more art will resurface in the near future as the generation who lived through World War II passes on. Despite numerous attempts to resolve Holocaust-era claims, however, the problem of looted art remains.").

[9] *See* Holocaust Expropriated Art Recovery Act of 2025, S. 1884, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/senate-bill/1884 [https://www.congress.gov/bill/119th-congress/senate-bill/1884] ("the bill limits the defenses that may be asserted against civil claims or causes of action, including

disrupt the existing legal framework and market behavior. To understand the changes it may introduce, it is worth examining the current framework and the market dynamics it has shaped.

This paper examines past Holocaust-related art restitution litigations in New York courts, analyzes their impact on the art market, and evaluates the findings against the changes introduced by the 2025 amendment. Part I of the paper begins by establishing the historical context through an overview of the international and U.S. laws designed to advance the restitution efforts. Part II then details the New York courts' specific approach and evaluates its effectiveness. As part of the evaluation, Part III of this paper contrasts the New York approach with European frameworks to address certain criticisms. Part IV highlights a significant recent development: the criminal system's intervention in Holocaust-related restitution cases. Finally, Part V evaluates how various market constituents—collectors, dealers, auction houses, and museums—have adapted to the evolving legal rules.

Ultimately, this paper argues that the pre-amendment New York framework strikes a balance between justice for victims and art market stability, while creating incentives for parties to facilitate Holocaust-related restitution. However, the framework also has two shortcomings: first, purchasers bear a disproportionate burden and risk while dealers and auction houses bear too little, an imbalance the 2025 amendment is likely to exacerbate; second, the rigid application of the laches defense risks barring legitimate claims by good-faith claimants, a problem the amendment addresses but at the cost of potentially encouraging opportunistic behavior among prospective claimants.

I
Context for Holocaust-Related Art Restitution Laws

A. Non-Binding International Agreements

Starting in 1914, organizations and countries have worked to address the issue of Nazi-plundered art, advocating for the return of these artworks to their original

by prohibiting defenses based on the passage of time, including equitable defenses such as laches (i.e., unreasonable delays); and discretionary bases for dismissal that are unrelated to the merits of the claim, including international comity (i.e., deference to the laws of other countries).").

owners through statements, conferences, and agreements.[10] One of the most influential efforts was the Washington Conference. In 1998, the U.S. assembled the representatives of forty-four nations in Washington, D.C. to "share information and discuss solutions to the continuing problem of restoring lost property to the victims of the Holocaust and their heirs."[11] The participating countries unanimously signed the Washington Conference Principles on Nazi-Confiscated Art ("Washington Principles"), a non-binding set of guidelines urging governments, museums, and other relevant entities to facilitate the identification and return of Nazi-confiscated art.[12]

In 2009, the U.S. State Department's Office of Special Envoy for Holocaust Issues held a series of meetings in Prague to assess the progress made since the Washington Conference and to evaluate the contemporary practices in provenance research and restitution.[13] The declaration resulted from the conference, known as the "Terezin Declaration," encouraged the forty-seven participating nations (many of which had participated in the Washington Conference) to engage in "intensified provenance research" and to "facilitate just and fair solutions with regard to Nazi-confiscated art" within their respective legal systems.[14] Importantly, the Declaration further calls upon both governmental and private actors to resolve disputes "on the facts and merits," rather than through legal technicalities, such as statute of limitations issues.[15] Similar to the Washington Principles, the Terezin Declaration is also non-binding.[16]

[10] *See* Matter of Art Inst. of Chicago, 2025 NY Slip Op 50617(U), 9–19 (Sup. Ct.) (recounting all the international advocacy and legislative efforts for Holocaust-related art restitution from 1941 to 2016).

[11] Office for the Special Envoy of Holocaust Issues, Washington Conference Principles on Nazi-Confiscated Art, U.S. Dep't of State (Dec. 3, 1998), https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art [https://perma.cc/VYN6-EJVE]. [hereinafter Washington Principle]

[12] *Id.* §§ 3, 5–6.

[13] Office for the Special Envoy of Holocaust Issues, 2009 Terezin Declaration on Holocaust Era Assets and Related Issues, U.S. Dep't of State (June 30, 2009), https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration [https://perma.cc/52X2-RHTK] [hereinafter Terezin Declaration].

[14] Jillian E. Meaney, *From Platitudes to the Passage of the HEAR Act: How Procedural Obstacles in U.S. Courts Have Prevented the Restitution of Nazi-Expropriated Art and Congress's Efforts to Provide a Resolution*, 28 U. Fla. J.L. & Pub. Pol'y 371, 377 (2017).

[15] Terezin Declaration, *supra* note 13.

[16] *Id.*

B. Holocaust Expropriated Art Recovery Act

In 2016, the U.S. Congress enacted the Holocaust Expropriated Art Recovery Act ("HEAR Act") to advance the goals set out in the Washington Principles and Terezin Declaration.[17] The Act establishes an operative six-year statute of limitation for claims seeking the recovery of lost cultural properties due to Nazi persecution from 1933 to 1945.[18] The statute of limitations only begins to run after the rightful owner obtains actual knowledge of facts giving rise to the claim.[19] The Act does not repeal or pre-empt existing statute of limitations. Instead, a claimant may rely on either the applicable state or federal statute of limitations or the HEAR Act, whichever offers more time.[20]

In April 2026, Congress passed the HEAR Act of 2025, which expands upon its 2016 predecessor by removing a range of defenses based on passage of time including laches, so that Holocaust-related art restitution claims can be decided solely on the merits.[21] Because each jurisdiction has its own approach to such claims, how courts will implement the 2025 amendments in practice remains to be seen.

II
Washington Principles in the Current New York Framework

Because of the non-binding nature of the Washington Principles, each jurisdiction has integrated the Principles in its legal system differently. This section will evaluate the efficacy of the Washington Principles in New York court decisions from three perspectives: procedural law, substantive law, and equity claims. The analysis reveals that although the courts frequently acknowledge the Washington Principles and the cases' horrific historical context, New York courts have generally refrained from providing special accommodations for the original owners in substantive or equitable rulings. Nonetheless, illuminated by the Washington Principles, New York courts lift certain procedural burdens for the

[17] Holocaust Expropriated Art Recovery (HEAR) Act of 2016, Pub. L. No. 114–308, §§ 3 & 5, 130 Stat. 1524, 1524.

[18] *Id.* § 5.

[19] *Id.*

[20] Herbert I. Lazerow, *Holocaust Art Disputes: The Holocaust Expropriated Art Recovery Act of 2016*, 51, Int'l Law. 195, 232 (2018).

[21] HEAR Act of 2025, *supra* note 9.

original owners. Lastly, this section will also discuss New York courts' remedies for good-faith purchasers who lose their titles to the heirs of original owners.

A. Procedural Law

In addition to applying the HEAR Act, New York courts have established their own unique way to calculate the statute of limitations for replevin—the claims that victims' heirs usually pursue to recover their lost art—in order to better protect the victims. The foundational case for Holocaust-related art restitution litigation in New York, *Solomon R. Guggenheim Found. v. Lubell*, outlines the framework for recovering a stolen artwork under New York law:

> New York case law has long protected the right of the owner whose property has been stolen to recover that property, even if it is in the possession of a good-faith purchaser for value. There is a three-year Statute of Limitations for recovery of a chattel. The rule in this State is that a cause of action for replevin against the good-faith purchaser of a stolen chattel accrues when the true owner makes demand for return of the chattel and the person in possession of the chattel refuses to return it. Until demand is made and refused, possession of the stolen property by the good-faith purchaser for value is not considered wrongful. Although seemingly anomalous, a different rule applies when the stolen object is in the possession of the thief. In that situation, the Statute of Limitations runs from the time of the theft, even if the property owner was unaware of the theft at the time that it occurred.[22]

In other words, the three-year statute of limitations does not start running until the original owner or their heir makes a demand to return the artwork and the current possessor refuses that demand. The demand-and-refusal framework affords effective protection to the true owners without unduly disrupting the market. This is because, first, the demand-and-refusal framework provides the potential claimants a reasonable opportunity to receive notice of the acquisition of the stolen work.[23] Otherwise, a stolen work's title can be automatically legitimized if a buyer

[22] Solomon R. Guggenheim Found. v. Lubell, 569 N.E.2d 426, 429 (N.Y.1991) (internal citations omitted). Note that New York law differentiates the cases of possession by a thief and possession by a good-faith purchasers. This paper only discusses the latter scenario as it is the case of most Holocaust-related artwork title disputes.

[23] *Id.* at 430.

simply waits for the statute of limitations to run out. This way, heirs will never have the opportunity to take action to recover the work before their rights are extinguished. The demand-and-refusal mechanism is particularly useful when the paintings are sold in the private market between private collectors. Navigating the obscure private sales is an impossible task, and requiring claimants to do so would "obscure [New York law's] straightforward protection of true owners."[24]

In addition, the framework affords current possessors a buffer and encourages private resolution. The framework gives the current possessor a fair opportunity to receive notice about the claim and conduct their own research. This is particularly crucial in the context of Holocaust-related art title disputes as the cases often trace back to transactions from decades ago. Allowing both parties to develop their repositories of evidence maximizes the information available to resolve the dispute. Where the evidence strongly favors one side, the parties can reach an efficient resolution without resorting to litigation. Given the high volume of transactions in the New York art market, this also serves to reduce unnecessary strain on the courts.

The New York framework is crafted with the recognition that "New York enjoys a worldwide reputation as a preeminent cultural center."[25] Accordingly, New York has a strong interest in preventing New York from becoming "a haven for cultural property stolen abroad"[26] while avoiding excessive market uncertainty. The demand-and-refusal mechanism accomplishes both.

Because of the special demand-and-refusal rule, the HEAR Act of 2016 has minimal utility in Holocaust-related restitution litigations in New York.[27] The framework only starts tolling the limitations period relatively late,[28] and sending the demand to return entails the claimant's actual knowledge of their possessory interest. Therefore, the only scenarios where the HEAR Act can extend the statute of limitations for a claimant in New York is when the claimant brings the lawsuit over three years after the demand is refused but within six years of actual discovery.

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[24] *Id.*

[25] *Id.* at 431.

[26] *Id.* at 430

[27] For a more comprehensive discussion on the impact of HEAR Act in different jurisdictions, *see* Lazerow, *supra* note 20, at 245–7 (explaining differences in the act's practical effects in New York, New Jersey, and California).

[28] *Id.* at 245.

Given that a lawsuit usually follows soon after the refusal, the HEAR Act extension is not used frequently.[29]

It is unclear how New York will adapt its procedural law in response to the HEAR Act of 2025. The demand-and-refusal rule serves an important function: it provides the current possessor with notice and a safe harbor within which to assess and respond to a potential claim. Removing this framework could introduce significant uncertainty into the art market.

Under the old rules, the delay in tolling does not mean a claimant can indefinitely delay making demand for return after discovering the location of the lost work. As discussed later in this section, New York courts uphold the equitable doctrine of laches, a defense eliminated by the 2025 amendment.

B. Substantive Law

In Holocaust-related restitution cases, New York courts strictly adhere to the rule of law in their determination of substantive contract and property claims. The heirs must first show they have a legitimate possessory interest in the disputed painting, which heavily relies on provenance records and sale documents tracing back decades. Because of the passage of time and loss of records in war and emigration, this could be an exceedingly challenging task. For instance, in the 2024 case *Robert Owen Lehman Foundation, Inc. v. Wien*, the court refused to determine whether Dr. Heinrich Reiger's heirs had a possessory interest in the disputed painting, *Portrait of Artist's Wife* by Egon Schiele.[30] Although the records showed that Dr. Reiger's collection catalog included a reference to "Portrait of Edith Schiele, watercolor," the description did not sufficiently establish ownership of the disputed artwork because Schiele had made multiple paintings of the same or similar subjects.[31] Neither could the expert witness, Eyal Dolev, a professional provenance researcher, reach a certain conclusion about whether the disputed

[29] *Id.*

[30] Robert Owen Lehman Found., Inc. v. Wien, 2024 NY Slip Op 51041(U), 29–30 (Sup. Ct.). The claim was dismissed based on laches.

[31] *Id.* at 28 (detailing the expert witness testified that there were at least two paintings depicting the artist's wife that could have been the work in the Rieger collection: D1709, https://nycourts.gov/reporter/webdocs/ROLFvWien_Image12.pdf; D1908, https://nycourts.gov/reporter/webdocs/ROLFvWien_Image1.pdf.).

painting was the one that once belonged to Dr. Reiger's collection.[32] The court refused to make a factual determination because the passage of time had resulted in "deceased witnesses, faded memories, lost documents, and hearsay testimony of questionable value."[33]

Once a possessory interest is established, the plaintiff must show that the work was taken away from their ancestor through illegitimate means, and thereby prove that the current possessor lacks a good title over the artwork. Like most legal systems in the world, New York upholds the fundamental principle of *nemo dat quod non habet*—"one cannot convey greater rights in property than one has."[34] Therefore, the focus of restitution lawsuits is on characterizing the nature of the transfer between the original owner and the alleged illegitimate transferee. There are two main categories for such relationships: direct theft and separation due to duress.

1. Direct Theft

Because a seller can only pass the title they own, a thief cannot transfer good title to subsequent buyers.[35] A subsequent purchaser, however innocent, always loses to the original owner.[36]

This rule has been affirmed in restitution cases.[37] *Menzel v. List* specified that the Nazi government's seizure of artworks is within the meaning of theft and

[32] *Id.* at 28–9 (Dolev testified that in 2014, the heirs first thought that either D1709 or D1719 belonged to Dr. Rieger. Then, Dolev conducted provenance research on D1908 on behalf of the heirs when they were approached by the Christie's and asked if the heirs had claims for the painting.).

[33] *Id.* at 29 (internal citation omitted).

[34] *See* Dan Klerman & Anja Shortland, *The Transformation of the Art Market: Law, Norms, and Institutions*, 23 Theoretical Inquiries L., 219, 221 (2022) (noting that a thief cannot transfer a more secure version of a title than the one they possessed).

[35] Saul Levmore, *Variety and Uniformity in the Treatment of the Good-Faith Purchaser*, 16 J. Legal Studies, 43, 57–58 (1987).

[36] *See* Menzel v. List, 2d 300, 316 (N.Y. Sup. Ct. 1966) ("No title could have been conveyed by [the Nazis] as against the rightful owners. The law stands as a bulwark against the handiwork of evil, to guard to rightful owners the fruits of their labors.").

[37] *See, e.g., Lubell*, 569 N.E.2d at 429 ("New York case law has long protected the right of the owner whose property has been stolen to recover that property, even if it is in the possession of a good-faith purchaser for value."); *Reif v. Nagy*, 175 A.D.3d 107, 129 (1st Dept. 2019) (quoting Bakalar v. Vavra, 619 F.3d 136, 141 (2d Cir. 2010) ("Artwork stolen during World War II still belongs to the original owner, even if there have been several subsequent buyers and even if each of those buyers was completely unaware that she was buying stolen goods.").

pillage, and the Nazi government has acquired no title to such property.[38] In the case, the plaintiff sought to recover a painting by Marc Chagall, which she and her husband left in their apartment when they fled the expanding Nazi power, and was later seized by the Nazi government.[39] The court rejected the argument that the painting was abandoned by the plaintiff. Abandonment is defined as "a voluntary relinquishment of a known right."[40] "The relinquishment here by the Menzels in order to flee for their lives was *no more voluntary* than the relinquishment of property during a holdup."[41] The *Menzel* court accordingly found the original owner to be "the sole and rightful owner of the painting."[42]

Forty years after the *Menzel* decision, *Vineberg v. Bissonnette*, a Rhode Island decision relying heavily on New York precedents, clarified that transfer to a Nazi-affiliated party can also constitute theft.[43] In *Vineberg*, the original owner was ordered by the Nazi government to immediately sell the inventory of his art gallery through a government-approved dealer. The original owner consigned most of his inventory, including the work in dispute, to an approved auction house. The consigned items were sold at far-below-market prices, and the proceeds of the auction were never delivered to the victim.[44] Because the original owner relinquished the property involuntarily and never realized the proceeds from the auction before he fled, the court ruled that the consignment constituted theft.[45]

1.1. *Entrustment Exception*[46]

One exception to the *nemo dat* principle is the entrustment rule. The rule specifies that if the original owner entrusts goods to a merchant who deals in goods

[38] *See Menzel*, 49 Misc. 2d at 307–08 (pointing out that property acquired by Nazi seizure met the standard of pillaged property for which title is not obtained).

[39] *Id.* at 301.

[40] *Id.* at 305.

[41] *Id.* (emphasis added).

[42] *Id.* at 316.

[43] *See generally* Vineberg v. Bissonnette, 529 F. Supp.2d 300 (D.R.I. 2007) (asserting that Nazi authorities forcing the sale of the paintings was the equivalent of theft).

[44] *Id.* at 302–03.

[45] *Id.* at 307 (analogizing the case to *Menzel*).

[46] Another established exception to *nemo dat* principle in New York is that "voidable title" exception, which allows a person with a voidable title to transfer a good title to a good faith purchaser if the original owner of the goods was induced by fraud or deceit to transfer the goods to the person. U.C.C. § 2-403(1). This paper will not discuss this exception because it is irrelevant to art restitution cases.

of the kind, such as consigning an artwork to an art dealer, the merchant has the power to transfer the original owner's title to a buyer in the ordinary course of business.[47] New York courts have upheld this exception for lost artworks of the Nazi-era, finding that the good-faith purchasers have a proper title even when the original transaction between the original owner and the dealer was flawed. For instance, the First Department of New York Supreme Court Appellate Division has barred restitution claims regarding the painting *Strasse in Kragero* by Edvard Munch,[48] which was left by the original owner, Professor Curt Glaser, to his brother Paul Glaser, an art dealer, after Professor Glaser's family escaped Nazi Germany.[49] Paul sold the work within the following years without consulting with Professor Glaser. Despite Professor Glaser's disappointment at his brother for being a "disloyal administrator" for selling the paintings, the court ruled that the entrustment exception applied and Paul Glaser had the authority to transfer good title to the good-faith purchaser.[50]

1.2. *New York Does Not Recognize the* Market Overt *Exception*

One important distinction between New York and Civil Law jurisdictions is that New York does not recognize the *market overt* exception.[51] Under the exception, public markets enjoy "cleansing powers": if a good-faith buyer purchases stolen goods in a public market at fair market price, the buyer can legally possess the goods, and the original owner cannot recover the stolen goods without

[47] *See* U.C.C. § 2-403(2): "Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to *a buyer in ordinary course of business*" (emphasis added); *see also* U.C.C. § 1-201(9), a "buyer in ordinary course of business" is a person, other than a pawnbroker, who buys goods in good faith , lacking the knowledge that the sale violates the rights of a third party, in the business of selling goods of that kind."

[48] *See also* Wertheimer v. Cirker's Hayes Stor. Warehouse, 300 A.D.2d 117 (N.Y. 2002), for another example with similar fact pattern and holding. The court dismissed the claim to recover a painting allegedly misappropriated and sold by an art dealer entrusted by the Wertheimer family when they fled the Nazi occupation of France.

[49] Matter of Peters, 34 A.D.3d 29, 30–31 (1st Dept. 2006); *see also* Wertheimer v. Cirker's Hayes Stor. Warehouse, 300 A.D.2d 117, 117–19 (1st Dept. 2002), for another example with a similar fact pattern and holding. The court dismissed the claim to recover a painting allegedly misappropriated and sold by an art dealer entrusted by the Wertheimer family when they fled the Nazi occupation of France.

[50] *Id.* at 31, 35–36.

[51] For detailed discussions on the distinctions between common law and civil law jurisdictions on the matter, *see* Michelle I. Turner, *The Innocent Buyer of Art Looted During World War II*, 32 VAND. J. TRANSNATIONAL L., 1511, 1534 (1999); *see also* Levmore, *supra* note 35, at 61 & nn.61–62 (noting that the exception existed at common law England, but it does not apply in the United States).

reimbursing the good-faith purchaser with the paid price.[52] Hong Kong law, for instance, recognizes the title of a good-faith purchaser if they acquired the stolen goods without notice of defect in title in an open market in the ordinary course of business.[53] Many common law jurisdictions also recognize good-faith purchasers' good title to stolen goods if the original owner does not find the stolen goods or the thief within a period of time.[54] Hong Kong law requires the original owner to act within six years of identifying the current possessor, if the current possessor is not the first purchaser from the thief.[55]

2. *Duress: Forced Sale or Gift*

Due to the complicated history behind the art lost during the Nazi-era, many original owners sold or left their property to parties not affiliated with the Nazi government, such as dealers, friends, and family members. Those scenarios are not covered by direct theft, and the parties usually invoke duress to void the disputed transactions. Courts have applied economic duress and third-party duress in those cases, and have relied on the original owner's voluntariness and the fairness of the transaction in determining those cases.

2.1. *Third-Party Duress*

Third-party duress allows a party to void a contract if their assent has been induced by the duress of a third person, rather than by the opposing party in the contract.[56] In the context of lost art in the Nazi-era, courts have only recognized third-party duress where the original owner was directly coerced by the Nazis with imminent threat—in particular, where the original owner executed a power of attorney to transfer their property under the coercion of the Nazis.[57] In *Reif v. Nagy*,

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[52] Levmore, *supra* note 35, at 55.

[53] Sale of Goods Ordinance, (2018) Cap. 26, § 24 (H.K.) ("Where goods are openly sold in a shop or market in Hong Kong, in the ordinary course of the business of such shop or market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller."); *see also Steven* Gallagher, *"Purchased in Hong Kong": Is Hong Kong the Best Place to Buy Stolen or Looted Antiquities?*, 24 Int'l J. Cultural Prop., 479 (2017) (explaining the introduction of section 26 of the Sale of Goods Ordinance).

[54] Turner, *supra* note 51, at 1534.

[55] Limitation Ordinance, (2020) Cap. 247, § 5 (H.K.); Gallagher, *supra* note 53, at 491.

[56] Restatement (Second) Of Contracts (2020) § 175 cmt. E (Am. Law Inst. 2020).

[57] *See, e.g.*, Reif v. Nagy, 175 A.D.3d 107 (1st Dept. 2019) (rejecting the idea that one signing a power of attorney at a death camp was executing the document voluntarily); Bakalar v. Vavra, 619 F.3d 136, 148

the original owner, Fritz Grünbaum, was forced to execute a power of attorney in favor of his wife, Elisabeth Grünbaum, while imprisoned in a concentration camp. The First Department expressly rejects "the notion that a person who signs a power of attorney in a death camp can be said to have executed the document voluntarily," and finds that the power of attorney was "a product of duress," and "any subsequent transfer of the artworks did not convey legal title."[58]

However, courts have been less sympathetic to the original owners when the duress came from a party that does not have direct association with the Nazi government. Five years after the *Reif v. Nagy* decision, *Bennigson v. Solomon R. Guggenheim Foundation* clarified the requirements for a contract to be voidable under third-party duress and explained in detail why the principle did not apply to the case. In *Bennigson*, the original owners, Mr. Karl Adler, sold the disputed painting to a dealer, J. Thannhauser, at a discounted price in order to fund their flight from Nazi occupation.[59] The claimants, heirs of Mr. Adler, argued that the urgency to sell in order to escape allowed the dealer to take advantage of him and deprived Mr. Adler of a fair sale. The claimants alleged that this pressure imposed by the Nazi government constituted third-party duress.

The court rejected this theory and dismissed the case at an early stage, finding that the sale failed to meet all requirements for third-party duress. First, the claimant failed to allege the nexus between Mr. Adler's decision to sell and a direct threatening consequence. The court distinguished the present case from *Sherman v. Sherman*, a precedent the claimants relied on, where the court annulled a marriage under third-party duress. The plaintiff in *Sherman* was "threatened with the loss of his life and with imprisonment in the jail in the city of New York *if he did not then and there marry the defendant.*"[60] In contrast, the claimants did not allege any direct consequences conditioned on the sale to J. Thannhauser.[61] It was insufficient to simply allege "a coercive environment created by Nazi Germany's

(2d Cir. 2010) (Korman, J., concurring) ("The power of attorney, which [the original owner] was forced to execute while in the Dachau concentration camp, divested him of his legal control over the Drawing. Such an involuntary divestiture of possession and legal control rendered any subsequent transfer void.").

[58] *Reif*, 175 A.D.3d at 129.

[59] Bennigson v. Solomon R. Guggenheim Found., 84 Misc. 3d 995, 999 (N.Y. Sup. Ct. 2024).

[60] *Id.* at 1019–20 (citing Sherman v. Sherman, 20 N.Y.S. 414, 414 (Ct. C.P., NY County 1892)).

[61] *Id.* at 1020 ("To wit, the [Amended Complaint] does not contain allegations of a similar nexus between Mr. Adler's decision to sell the Painting to J. Thannhauser at that time or at the price that he sold it, any direct consequence had he chosen not to do so, and/or J. Thannhauser's knowledge of any such consequences.").

appropriation of Mr. Adler's livelihood such that Mr. Adler needed money and that J. Thannhauser, as an opportunistic buyer, took advantage of this situation."[62]

Second, a third-party duress claim to void a contract is barred when the plaintiff's opposing party gives value to the contract in good faith.[63] The court cited federal court precedents[64] and the Second Restatement of Contracts, which provides that:

> There is, however, an important exception [to third-party duress] if the other party has, in good faith and without reason to know of the duress, given value or changed his position materially in reliance on the transaction … so that the other party is protected if he has made the contract in good faith before learning of the duress.[65]

Here, the claimants acknowledged that the J. Thannhauser bought the painting for 6,887 Swiss Francs or approximately $1,552.[66] They also did not allege that the dealer knew of any direct consequences Mr. Adler would have faced had he not sold the paintings to J. Thannhauser.[67] Therefore, having given value in exchange in good faith, the art dealer executed a valid contract with Mr. Adler.

Third, the claimants failed to allege that the dealer knew of or consented to any direct consequences had Mr. Adler not completed the sale. Under New York law, "duress by other than the opposing party to a contract cannot constitute compulsion sufficient to void the contract, although there is an exception *when the promisee had knowledge of or consented to the third party's actions*."[68] Having failed to allege any knowledge, consent, or association that J. Thannhauser had with the Nazis, the claimant cannot meet the requirement for third-party duress even if there was direct threat from the Nazis.[69]

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[62] *Id.*

[63] *Id.* at 1020–21.

[64] *See id.* at 1020–24 (applying *Aylaian v. Town of Huntington*, 459 Fed. Appx. 25 (2d Cir. 2012) and *Oquendo v. CCC Terek*, 111 F. Supp. 3d 389 (S.D.N.Y. 2015), two cases that the claimant relied on in their amended complaint.).

[65] Restatement (Second) Of Contracts (2020) § 175 cmt. e (Am. Law Inst. 2020) (partially quoted in *Bennigson* 84 Misc. 3d at. n.7).

[66] *Bennigson* 84 Misc. 3d at 1021.

[67] *Id.* at 1022–23

[68] *Id.* at 1022 (citing *Oquendo*,111 F. Supp. 3d at 409) (internal citation omitted) (emphasis added).

[69] *Id.* at 1021–23.

Lastly, Mr. Adler did not promptly repudiate the sale. New York law requires that "the person claiming duress must act promptly to repudiate the contract or release or he will be deemed to have waived his right to do so."[70] Mr. Adler accepted the proceeds from the sale. Moreover, when the Guggenheim Foundation inquired Eric Adler, Mr. Adler's son, about the disputed painting's provenance in 1974, Eric did not indicate that the painting had been sold under duress or mention his potential possessory interest in it.[71] Because both Mr. Adler and his heirs failed to repudiate when presented with the opportunity, their ratification implies that they waived the right to assert the voidability of the contract.[72]

Having been discussed in detail only in *Bennigson*, the third-party duress theory is largely untested in Nazi-era art restitution cases. Currently, the rule only permits plaintiffs to void the original transfer in narrowly defined circumstances. Moreover, the prompt repudiation requirement poses an additional hurdle for heirs, many of whom could be genuinely unaware of their potential interest in artworks until after the current possessor inquires.

2.2. *Economic Duress*

Under New York law, "to void a contract on the ground of economic duress," a plaintiff must show that a transaction was "procured by means of (1) a wrongful threat that (2) precluded the exercise of its free will."[73] New York law demands a "wrongful threat" to be a threatening conduct "outside a party's legal rights,"[74] and the threat must come from one of the parties to the transaction.[75] Importantly, "pressure exerted from general economic conditions is not enough to allege duress."[76] Courts have noted that because "an element of economic duress is present when many contracts are formed," a plaintiff seeking to void a contract based on economic duress "bears a heavy burden."[77]

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[70] *Id.* at 1023 (quoting *Oquendo*, 111 F. Supp. 3d at 409).

[71] *Id.* at 1010.

[72] *Id.* at 1010 & 1023-24.

[73] Zuckerman v. Metro. Museum of Art, 307 F. Supp. 3d 304, 318 (S.D.N.Y. 2018), *aff'd*, 928 F.3d 186 (2d Cir. 2019).

[74] *Id.*

[75] *Bennigson*, 214 NYS.3d at 645.

[76] *Zuckerman*, 307 F. Supp. 3d at 319.

[77] *Id.* at 318–19.

Courts have strictly applied these rules in determining title disputes of art lost due to Nazi persecution. In *Zuckerman v. Metropolitan Museum of Art*, 307 F. Supp. 3d 304, 219-20 (S.D.N.Y. 2018), the court rejected the economic duress theory to recover a Picasso painting sold by the original owner, the Leffmanns, in order to fund their escape from Nazi occupation.[78] The Leffmanns started their efforts to liquidate the painting in 1937.[79] After negotiating multiple undesirable offers with the notorious art dealer C. M. de Hauke, who was later identified as a trafficker by the U.S. State Department,[80] the Leffmanns eventually sold the painting in 1938 to the Paris art dealers Käte Perls for US $13,200.[81]

The court dismissed the case because the allegations did not meet the standards for economic duress. First, the claimant was unable to plead a "wrongful threat" by the art dealer in the 1938 transaction. The claimant argued that the Leffmanns "would not have disposed of this seminal work at that time but for the Nazi and Fascist persecution to which [they had] been subjected."[82] This condition was insufficient to prove economic duress because the counterparties, the Perls and Rosenberg, who did not have any association with the Nazis, did not wrongfully threaten the Leffmanns to sell.[83]

Second, the claimant failed to allege that the Leffmanns sold the painting by force that "precluded the exercise of their free will."[84] The Leffmanns spent two years "exploring the possibility of selling [the painting] with dealers in Paris."[85] They negotiated with several potential buyers to "improve their leverage to maximize the sale price before ultimately accepting the offer from Perls and Rosenberg."[86] In the meantime, the painting was stored in Switzerland for safekeeping.[87] The court pointed out that the claimant "conflate[d] the Leffmanns' need 'to raise as much cash as possible' with the Leffmanns having "no other

[78] *Id.*
[79] *Id.* at 311.
[80] *Id.*
[81] *Id.* at 312 (U.S. $12,000 after a standard ten percent selling commission).
[82] *Id.* at 319.
[83] *Id.* at 320.
[84] *Id.* (internal quotation omitted)
[85] *Id.* at 319.
[86] *Id.*
[87] *Id.*

alternative"[88] and found that the Leffmans demonstrated free will in the negotiation process.

Similarly, the *Bennigson* court also refused to find economic duress because J. Thannhauser was "not alleged to have connection to the Nazis as a collaborator or otherwise."[89] In addition, the decision clarified that "[g]eneral economic conditions or even the economic pressure felt during the undeniably horrific circumstances of the Nazi (or Fascist) regime are not sufficient to prove duress where the counterparty played no part in producing the economic pressures."[90]

2.3. *Gift*

Robert Owen Lehman Foundation, Inc. v. Wien presents a peculiar case where the original owner, Karl Mayländer, left his art collection in the possession of a close friend, Etelka Hoffman.[91] Karl and Etelka were allegedly planning to get married, but no evidence could ascertain the nature of the relationship between the two.[92] The plaintiff challenged the legitimacy of the transfer, which the defendant claimed was a gift.[93]

The court rejected the gift theory.[94] Under New York law, to make a valid *inter vivos* gift, three elements must be present: "the intent on the part of the donor to make a present transfer; delivery of the gift, either actual or constructive to the donee; and acceptance by the donee."[95] "The element of donative intent presupposes that the donor possesses the mental capacity to make a gift."[96] That is, the donor must be able to make a voluntary transfer without consideration or compensation.[97] "The proponent of a gift has the burden of proving each of these elements by clear and convincing evidence."[98]

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[88] *Id.* at 320.
[89] *Bennigson*, 214 NYS.3d at 646.
[90] *Id.* at 645.
[91] *Robert Owen Lehman Found., Inc.,* No. E2019008883, 2024 WL 3803311, at *9–10 (NY Sup. Ct. Aug. 1, 2024).
[92] *Id.* at *9.
[93] *Id.* at *35–36.
[94] *Id.*
[95] *Id.* at *36.
[96] *Id.* (citing *Spallina v. Giannoccaro*, 469 N.Y.S.2d 824 (4th Dep't. 1983)).
[97] *Id.*
[98] *Id.*

Here, Karl left his art collection to Etelka without specifying the intent.[99] He was forced to execute a power of attorney on October 21, 1941, which did not include the collection, and was murdered by the Nazis two days after.[100] Due to Karl's silence on the nature of the transfer, the court found that the record was "bereft of clear and convincing evidence that Karl had the intent to make a present transfer to Etelka."[101] The defendant could not prove by a preponderance of evidence "that the gift was voluntary and understandingly made by [Karl], uninfluenced by fraud, duress or coercion."[102] Therefore, Etelka and subsequent possessors of the disputed painting never acquired good title. The court accordingly ordered the restitution to the heirs of Karl.[103]

In short, despite the horrific history of the Holocaust, the New York courts have strictly applied its substantive laws and closely scrutinized the facts of each case. When an original owner could not possibly have made a voluntary transfer, the court protects the victim under theories of direct theft or invalid gift. When the original owner chose to sell a painting without imminent threat, the court recognizes the contract and upholds the sale. In this way, New York provides a level of predictability in the complicated cases of Holocaust-related art restitution, assuring the stability of the art market while upholding justice for the victims.

C. Equity Claims

The HEAR Act of 2025 precludes laches and all other defenses based on the passage of time.[104] Because the 2025 Act has not yet been applied in practice, the following analysis draws on New York court decisions under the 2016 HEAR Act. Although no longer good law, these cases nonetheless remain instructive: it illuminates the incentives New York courts sought to create and reflects how those choices have shaped the dynamics of the New York art market.

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[99] *Id.* at *9 ("The exact circumstances of the transfer from Karl to Etelka are unknown. The record reveals, however, that the transfer to Etelka occurred only after Karl tried unsuccessfully to sell the artworks to finance his departure from Vienna, and the transfer was made in the context of his persecution by the Nazis, even if Karl had alleged additional motives in making the transfer to Etelka.").

[100] *Id.*

[101] *Id.* at *36.

[102] *Id.*

[103] *Id.* at *42.

[104] *See* Holocaust Expropriated Art Recovery Act of 2025, *supra* note 9.

Before the amendment, New York courts have expressly rejected incorporating the HEAR Act and the Washington Principles to equity claims, notably laches.[105] The doctrine of laches is "an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party."[106] Under New York law, a defendant can raise a laches defense if they can show that (1) there is an "unreasonable delay in commencing the suit" that (2) caused prejudice against the defendant.[107]

In the context of restitution cases, laches accrues when a party knew or should have known about the opportunity to make a claim.[108] In *Zuckerman*, the court found that the plaintiffs unreasonably delayed in bringing their claims because the Leffmanns knew to whom they sold their collection and the painting in dispute had later been acquired by "major public institution[s]."[109] Moreover, the Metropolitan Museum of Art, the painting's current possessor, published the provenance of the painting, listing "P. Leffmann" as a prior owner since at least 1967. Yet, none of the Leffmanns' heirs had demanded the return of the painting until 2010.

"A defendant has been prejudiced by a delay when the assertion of a claim available some time ago would be inequitable in light of the delay in bringing that claim."[110] In particular, courts have found prejudice against the defendant in cases where important witnesses died during the plaintiff's delay.[111] Moreover, a long passage of time itself can constitute prejudice because of the inevitable faded memories and disappearance of records.[112]

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[105] *Bennigson*, 214 N.Y.S.3d at 643 ("laches is an available defense to claims revived under the HEAR Act"); Zuckerman v. Metro. Museum of Art, 928 F.3d 186, 190 (2d Cir. 2019).

[106] *Reif v. Nagy*, 175 A.D.3d at 130.

[107] *Zuckerman*, 928 F.3d at 193; *Robert Owen Lehman Found. Inc.*, 2024 WL 380331 at *25.

[108] *Zuckerman*, 928 F.3d at 193; *see also*, *Robert Owen Lehman Found. Inc.*, 2024 WL 380331 at *25 (citing Bakalar v. Vavra, 819 F.Supp.2d 293–94, 304 (S.D.NY 2011), *aff'd*, 500 F.App'x 6 (2d Cir. 2012)).

[109] *Zuckerman*, 928 F.3d at 193–194. The painting was first acquired by the MoMA and then the Met.

[110] *Id.*

[111] *See, e.g.*, *id.* at 194–95. (finding that the defendant has been prejudiced because the plaintiffs waited sixty years to bring their claims. During the lapse of time, first-hand witnesses deceased. There was no available witnesses to testify whether the initial sale between the Leffmanns and the art dealer was voluntary.).

[112] *See, e.g.*, Solomon R. Guggenheim Found. v. Lubell, 550 N.Y.S.2d 618, 621 (App. Div. 1990), *aff'd*, 569 N.E.2d 426 (N.Y. 1991); *Zuckerman.* 928 F.3d at 194.

However, "[t]he mere lapse of time, without a showing of prejudice, is insufficient to sustain a claim of laches."[113] The prejudice requirement is often invoked to bar defenses by bad-faith actors. For example, the *Reif v. Nagy* court rejected the defendant's laches defense because he was already on notice of the plaintiff's claim when he purchased the painting in dispute.[114] Further, "Nagy (the defendant) purchased the Artworks at a substantial discount from the price sought by Sotheby's prior to the claim being publicized, and he obtained insurance for the very purpose of insuring title against plaintiffs' claims."[115] Having suffered no change in position, the court determined that Nagy was not prejudiced despite the death of important witnesses, which happened after the initial sale but prior to Nagy's purchase.[116]

Other than the cases involving opportunistic buyers like Nagy, New York courts are often unsympathetic to dilatory claimants.[117] The *Bennigson* court dismissed the case because the plaintiff "asserts without appropriate explanation that it was only in 2013 that plaintiff Bennigson learned for the first time that his family might have a possessory interest in the painting at issue," 80 years after the initial sale and 47 years after the Guggenheim Foundation reached out to Eric Adler to inquire his family's connection to the painting.[118] The court found that the plaintiff failed to exercise due diligence in ascertaining his potential possessory interest in the work after Guggenheim's inquiry, as well as in pursuing the claim.

Laches deters bad-faith behaviors and urges claimants to pursue their claims in a timely fashion. The latter is particularly significant for Holocaust-related restitution cases given the inherent long lapse of time between the contested transaction and the opportunity to bring a claim. Once a claimant learns of their

[113] *Reif v. Nagy*, 175 A.D.3d at 130.

[114] *Id.* at 130–131.

[115] *Id.*

[116] *Id.* at 131 ("The *Bakalar* court pointed to Mathilde's death as a prejudice. Mathilde, and other witnesses had died well before Nagy purchased the Artworks. In any event, as we already discussed, Mathilde could not have shown she had good title to the Artworks and her testimony would not have been probative … 'although the decedent's testimony may have shed light on how he came into possession of the (artwork), we can perceive of no scenario whereby the decedent could have shown that he held (good) title.' ") (*citing* Matter of Flamenbaum, 1 N.E. 3d 782, 784 (N.Y. 2013)).

[117] *See, e.g., Zuckerman*, 928 F.3d at 196; *Bennigson*, 214 N.Y.S.3d at 644.

[118] *Bennigson*, 214 N.Y.S.3d at 644–45.

potential interest, further delay will only compound an already scarce evidentiary record.

That said, this approach can unduly burden good-faith claimants. When determining "unreasonable delay," New York adopts a rigid standard. The courts are unsympathetic to claimants who lack access to information about their possessory interest until the current possessor publicizes their possession of the contested work. Under this standard, a current possessor who makes an inquiry before the claimant has had a reasonable opportunity to discover their interest can effectively secure broad immunity against future claims. The 2025 amendment resolves this edge case, but in doing so, it also removes the incentive to bring claims promptly. This risks enabling unreasonable delay by claimants with weak cases, who may opportunistically postpone litigation in hopes of obtaining more favorable evidence, even where none is likely to emerge and the prolonged wait will further obscure the historical record.

D. Remedies for Good-Faith Purchasers

Once a plaintiff prevails on their restitution claims, the current possessor must return the artwork, usually without reimbursement.[119] The New York legal framework for art restitution cases between an heir and a good-faith purchaser has been famously characterized as "a classic zero-sum game" and as a "battle[] between two innocent victims of a theft."[120]

One way a good-faith purchaser can mitigate their loss is through a breach of implied warranty of title claim against the party who sold the artwork to them. The Uniform Commercial Code ("U.C.C.") provides that the seller of goods gives an implied warranty that "the title conveyed shall be good, and its transfer rightful,"[121] and a merchant seller who regularly deals in goods of the kind impliedly warrants that "the goods shall be delivered free of the rightful claim of any third person."[122] New York courts have applied this rule in the art restitution context. In *Menzel v.*

[119] *See* Deborah DeMott, *Artful Good Faith: An Essay on Law, Custom, and Intermediaries in Art Markets*, Duke L. J., 607, 611 (2012) ("Prior scholarship characterizes the United States as unusual but not unique among nations in … not requiring that a successful claimant reimburse a good-faith purchaser as a condition of obtaining the return of a stolen object.").

[120] *Id.* at 618.

[121] U.C.C. § 2-312(1)(a).

[122] U.C.C. § 2-312(3).

List, the jury found for the good-faith purchaser, List, on his claim against the Perls Galleries, from which the painting was purchased, in the amount of the restituted painting's current market value plus the cost of List's unsuccessful action against Menzel.[123]

However, the remedy is not always available to good-faith purchasers due to the procedural constraints and unpredictability of the art market. The paper will discuss the potential issues of breach of warranty claims in detail in the last section. In short, a good-faith purchaser who loses their works to a rightful owner is usually left uncompensated.

E. Evaluating the New York Approach

The New York approach advances the objectives set out in the Washington Principles and the HEAR Act in three ways. To begin with, it balances equity with market stability. New York's strict application of substantive law provides market participants with reliable standards for assessing the risk of potential disputes. The demand-and-refusal mechanism further serves as a risk buffer for possessors: it gives fair notice of potential claims that may not have been discoverable at the time of acquisition, and offers an opportunity to resolve disputes privately, allowing for greater flexibility and less reputational harm.

Second, inaccessibility of information is a major obstacle to most Holocaust-related art restitution cases. New York courts address this problem by creating incentives for potential claimants and possessors to preserve or uncover more evidence. Under laches, claimants must pursue claims in a timely manner to minimize the loss of evidence over time. Buyers must conduct reasonable due diligence to avoid acquiring artworks with problematic titles. Moreover, the demand-and-refusal rule encourages current possessors, when contacted by a claimant for restitution, to conduct further research and develop their own account of facts. With evidence developed from both perspectives, it is easier to determine the true ownership of the artwork. If each side's findings point to the same party, the parties can resolve the dispute without resorting to costly litigation.

Lastly, the New York approach offers a reasonable framework to navigate the zero-sum nature of art title disputes. Taken together, the New York legal

[123] Menzel v. List, 246 N.E.2d 742, 743 (N.Y. 1969).

mechanisms implicitly impose negligence-like duties on the litigants, forming a quasi-negligence-based model for Holocaust-related art title disputes.[124] Specifically, a claimant must demonstrate diligent search to prevail, even if the underlying facts support restitution. If the duty is not fulfilled, the current possessor gets to keep the painting to minimize the disruption caused by involuntary dispossession,[125] provided they have not acted in bad faith. Where the claimant does prevail, the resulting burden on the current possessor, while not ideal, is a reasonable compromise. Under the modified annulment theory of corrective justice, a victim's wrongful loss must be remedied, but need not be remedied by the wrongdoer.[126] This view of corrective justice[127] is particularly apt for Holocaust-related art restitution, given that the Washington Principles, the Terezin Declaration, and the HEAR Act all emphasize prioritizing recovery for victims.[128]

In short, the New York approach deters illicit trade while ensuring market stability, creates incentive to maximize available information, and provides a reasonable remedy solution for the zero-sum art title disputes. However, the current law has notable shortcomings. The current laches rule disfavors claimants who genuinely lack access to learn about their possessory interest after the current possessor publicizes their possession of the work, which could bar valid claims for innocent claimants. Moreover, in practice, the New York framework exposes

[124] See Schwarz, *Rethinking the Laws of Good Faith Purchase*, 11 Colum. L. Rev 1332 (2011). The article provides an economic analysis of the incentives that a negligence-based regime for good-faith purchasers creates for each party in a title dispute, in particular the original owner and the good-faith buyer. In most Holocaust-related art title disputes, the original owners already passed away and could not have made a meaningfully different choice given the historical circumstances. It is therefore not useful to consider the incentive for the original owners in this paper's context. Instead, this paper appropriates Schwartz and Scott's model and analyzes the incentives created for the claimants (who are usually not the original owner) and the good-faith art collector under New York framework.

[125] *Id.* at 1354–1356.

[126] *See generally* Jules Coleman, *The Mixed Conception of Corrective Justice*, 77 Iowa L. Rev. 431 (1991-1992).

[127] As opposed to the relational view, which focuses on the duty the wrongdoer owes to the victim and repairing the wrongdoing even if the wrongdoing proximately leads to a better result for the victim. *See id.*

[128] *See, e.g.*, Washington Principle, *supra* note 11 ("Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted."); Terezin Declaration, *supra* note 13 ("Noting the importance of *restituting* communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution…"); HEAR Act of 2016, *supra* note 17 ("To provide the *victims* of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis.").

good-faith purchaser disproportionate risk, which will be addressed in detail in Part V.

Another common criticism of the New York decisions is its inflexibility in the face of the catastrophic history of the Holocaust.[129] As this section demonstrates, New York courts strictly uphold the rules of contract and property laws in Holocaust-related art restitution cases. This approach has been criticized as "evasive"[130] and even "immoral."[131] Commentators often cite European laws and restitution cases as comparison to advocate for more flexible and claimant-favorable reforms.[132] However, given the reasons discussed in the following section, the European frameworks are generally inapplicable to the market reality in the U.S., and do not necessarily generate the most favorable outcomes for the claimants.

III
A Comparative Lens: Washington Principles in European Law

Many European jurisdictions have recently reformed their laws to facilitate the restitution of artworks involuntarily separated from their owners during the Nazi

[129] World Jewish Restitution Organization (WJRO), U.S. Museums Fail to Address Holocaust Stolen Art Claims, https://art.claimscon.org/advocacy/u-s-museums-fail-to-address-nazi-era-stolen-art-claims/ [https://perma.cc/8SSF-RHCK]. ("'It is immoral that seven decades after the fall of the Third Reich, stolen works of art – some from owners who perished in the Holocaust – still hang in museums across the United States,' Ronald Lauder, chairman of WJRO and president of the World Jewish Congress (WJC), said. He has called the artworks 'prisoners of war' that were stolen during the greatest displacement of art in human history. The WJC is a WJRO member-organization.").

[130] *See, e.g.*, Elisabeth K. Pomeroy, *"Unlawfully Lost" Artwork from the Nazi Takeover: Redefining Forced Sales in the Holocaust Expropriated Art Recovery Act of 2016*, 21 Wake Forest J. Bus. & Intell. Prop. L. 468 (2021) (argued that the current New York framework has been criticized for failing to afford enough protection to the heirs and the legislators and courts have failed to do everything to facilitate fair and just compensations for the victims and their heirs.); WJRO, *supra* note 129.

[131] WJRO, *supra* note 129. ("'It is immoral that seven decades after the fall of the Third Reich, stolen works of art—some from owners who perished in the Holocaust—still hang in museums across the United States,' Ronald Lauder, chairman of WJRO and president of the World Jewish Congress (WJC), said. He has called the artworks 'prisoners of war' that were stolen during the greatest displacement of art in human history. The WJC is a WJRO member-organization.").

[132] *See, e.g.*, Pomeroy, *supra* note 130, at 488 (using a French restitution as comparison to the NY court cases); Catherine Hickley, Did the Nazis Force an Art Sale? The Question Lingers 88 Years Later., N.Y. Times, https://www.nytimes.com/2021/07/06/arts/design/nazis-art-forced-sales.html [https://perma.cc/5LZT-8H3G] (comparing the approaches and decisions in the U.S. jurisdictions and European jurisdictions regarding the restitution of paintings sold in the same auction).

era.[133] To name a few, the French Parliament unanimously passed Law No. 2023-650,[134] which grants authority to the Commission for the Restitution of Property and the Compensation of Victims of Anti-Semitic Spoliation ("CIVS") to return Nazi-looted art in public collections without additional case-by-case parliamentary approval.[135] Germany has announced that starting in 2025, all Nazi-looted art restitution claims against a public museum are to be brought to a dedicated arbitration court, instead of an advisory commission, to overcome the statute of limitations obstacle and ensure the enforceability of the decisions.[136,137]

[133] *See, e.g.*, Justine Chen, *Redefining Restitution: France's Legal Shift on Nazi-Looted Art*, Center for Art Law (July 25, 2025), https://itsartlaw.org/art-law/redefining-restitution-frances-legal-shift-on-nazi-looted-art/ [https://perma.cc/47BH-KWV4] (explaining the effect of a new law in France that allows public institutions to return artwork without parliamentary approval).

[134] Légifrance, LOI n° 2023-650 (2023), https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000047874542 [https://perma.cc/AAV9-REV7].

[135] The Law mainly responds to the legal barrier to restitution "principle of inalienability," which is a constitutional rule that public collections are permanent and cannot be altered or diminished without a legislative change. *See generally* Chen; Dawn Lui, *The Legality of Stolen Cultural Property Reparation: A Case Study of France's New Heritage Code*, St. Andrews L. Rev. (Dec 10, 2023), https://www.standrewslawreview.com/post/the-legality-of-stolen-cultural-property-reparation-a-case-study-of-france-s-new-heritage-code [https://perma.cc/X8DQ-PYN6].

[136] Previously, the title disputes over unlawfully lost artworks during the Nazi era were adjudicated by *Beratende Kommission NS-Raubgut*, an advisory commission that issued non-binding recommendations. Museums have barred claims based on statute of limitations. The new Arbitration Court for Nazi Looted Property will use flexible solutions and issue binding decisions. *See generally*, Matthias Weller, *German 'Advisory Commission' to be Replaced by an Arbitration Framework*, Inst. of Art & Law (Mar. 20, 2024), https://ial.uk.com/german-advisory-commission/ [https://perma.cc/37F6-Q6DR]; Pierre Valentin, *Germany Announces a Major Reform of the Process Aimed at Resolving Claims to Nazi-Looted Art*, Fieldfisher (Oct. 15, 2024), https://www.fieldfisher.com/en/sectors/art-law/art-at-law/germany-announces-a-major-reform-of-the-process-resolving-nazi-looted-art [https://perma.cc/7Y5A-9Y38]; Catherine Hickley, *Germany Approves Tribunal to Decide Nazi-Looted Art Claims*, N.Y. Times (Jan. 9, 2025), https://www.nytimes.com/2025/01/09/arts/germany-nazi-looted-art-restitution-panel.html [https://perma.cc/RRM6-S5R7]

[137] Many European countries have established an arbitration system to address involuntarily lost artworks during the Nazi-era. *See, e.g.*, Riah Pryor, *Art Arbitration Panel in The Hague Steps up a Gear to Tackle Complex Disputes*, Art Newspaper (May 8, 2020), https://www.theartnewspaper.com/2020/05/08/art-arbitration-panel-in-the-hague-steps-up-a-gear-to-tackle-complex-disputes [https://perma.cc/4YRV-JQZ8]; Laura Gilbert, *New Tribunal Aims to Provide Expertise and Impartiality for Art Disputes*, Art Newspaper (May 7, 2018), https://www.theartnewspaper.com/2018/05/07/new-tribunal-aims-to-provide-expertise-and-impartiality-for-art-disputes [https://perma.cc/5FKU-R8S9]; Florian Schidt-Gabain, *The New Swiss Committee for Cultural Heritage with a Burdened Past*, Art Lawyer Associate (Apr. 7, 2025), https://www.artlawyersassociation.com/post/the-new-swiss-committee-for-cultural-heritage-with-a-burdened-past [https://perma.cc/CJ5J-VESN].

Many European laws have broader definitions of "involuntary loss" that support restitution. For instance, the Netherlands assumes "involuntary loss of possession … if the loss of possession occurred in the Netherlands after 10 May 1940, in Germany after 30 January 1933, or in Austria after 13 March 1938" for private individuals belonging to a persecuted group.[138] If the claimant is the heir of an art dealer belonging to a persecuted group, involuntary loss of an artwork in the dealer's inventory is assumed if there are supportive indications, including "involuntary sale," "sale in which a promise to deliver a passport or safe-conduct formed part of the transaction," and "sale at a price significantly lower than the then market value."[139] Moreover, "regardless of the capacity of the original owner and regardless of the country and time of loss – provided it occurred after 30 January 1933 – involuntary loss of possession will also be deemed to have occurred if the involuntariness is sufficiently plausible, for example because the original owner needed the proceeds to finance his escape from the Nazi regime."[140] Because of the broad definition, the Dutch Restitution Committee has ordered returns in cases that would not have been possible in New York.[141]

France similarly has restituted artworks in cases that would not have prevailed in New York. Although French law does not offer a definition of "involuntary loss," CIVS president Michel Jeannoutot has clarified that "[e]ven if a painting was paid for at a normal, market price, if the motive of the sale is to escape anti-Semitic persecution, we consider it an item which should be restituted, because it's a forced sale."[142] CIVS's decisions have been in accordance with Meannoutot's statement.

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[138] Staatscourant van het koninkrijk der nederlanden, *Vereiste van onvrijwillig bezitsverlies* [Assessment Framework § 3.1] (2021), https://zoek.officielebekendmakingen.nl/stcrt-2021-20304.html [https://perma.cc/ZF88-NMGB]; *see also* "*The Netherlands' Restitution Policy*," Cultural Heritage Agency of the Netherlands, https://english.cultureelerfgoed.nl/topics/c/cultural-goods-ww2-1933-1945/restitution-policy-in-the-netherlands [https://perma.cc/NY9R-MXMZ].

[139] Assessment Framework § 3.2.

[140] *Id.* § 3.3.

[141] Hickley, *supra* note 132 ("The Dutch Restitutions Committee, the Prussian Cultural Heritage Foundation in Berlin, the Museum Ludwig in Cologne, and the city of Basel all concluded that Glaser's collection was sold because of Nazi persecution and agreed to return or compensate for the artworks in their collections. However, American museums, such as the Metropolitan Museum of Art and the Museum of Fine Arts, Boston, repeatedly rejected Glaser's heirs' claims, even though the artworks were sold in the same auctions.").

[142] Devorah Lauter, *France's New Restitution Law for Nazi-Looted Art Reveals the Country's Inconsistent Efforts in Dealing with Its Complicated Past*, ARTNews (Oct. 9, 2023), https://www.artnews.com/art-

In 2021, CIVS ordered the restitution of a Gustav Klimt painting to the heirs of its original owner, who was forced to sell the painting to survive the persecution.[143]

However, it is important to note a significant distinction between European jurisdictions and New York, as well as other U.S. jurisdictions. Most publicly available restitution cases in Europe are handled by dedicated government entities, and the claimant-friendly laws and cases all focus on artworks in public collections.[144] For instance, French restitution laws are designed surrounding Musées Nationaux Récupération (MNR), a database of approximately 2,200 artworks recovered and returned from Germany after WWII.[145] Due to the lack of provenance records, these artworks are currently entrusted to the care of the national museums of France.[146] In other words, these works are currently "ownerless." The same distinction between public and private current possessor also exists in the Netherlands. Under Dutch law, a private current possessor can raise a *market overt* defense upon showing good-faith acquisition, but *the State* (*i.e.,* the owner of public collections) is barred from raising the defense.[147] When the disputed work belongs to a public collection, there is no risk of harming an

news/news/new-french-restitution-law-nazi-looted-art-complicated-history-1234681413/ [https://perma.cc/6HJX-6VXY].

[143] *See* "*Return of a Work Looted by the Nazis*," Musée d'Orsay, https://www.musee-orsay.fr/en/articles/return-work-looted-nazis-197815 [https://perma.cc/3BNH-ZS7A] (last visited Nov. 19, 2025); Aurelian Breeden, *France to Return Klimt Painting to Rightful Heirs After Nazi-Era Sale,* N.Y. Times (Mar. 15, 2021), https://www.nytimes.com/2021/03/15/arts/design/france-klimt-painting-restitution.html [https://perma.cc/LM27-NUWK]. Note that the original owner sold it for "far below market price."

[144] Many private disputes in Europe are resolved through arbitration. However, these proceedings are usually confidential, and information is not publicly available. The paper does not discuss these cases because it cannot fairly evaluate their effectiveness or compare their assessment framework with the New York framework.

[145] "*Biens Musées Nationaux Récupération (MNR)*," Ministère de la Culture, https://www.culture.gouv.fr/nous-connaitre/organisation-du-ministere/le-secretariat-general/mission-de-recherche-et-de-restitution-des-biens-culturels-spolies-entre-1933-et-1945/biens-musees-nationaux-recuperation-mnr [https://perma.cc/4V8Y-RCTL] (last visited Nov. 19, 2025). For instance, 2023 reform only concerns artworks in public collection. *See* Loi n° 2023-650, https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000047874542 [https://perma.cc/AAV9-REV7].

[146] "*Biens Musées Nationaux Récupération (MNR)*," *supra* note 145.

[147] Staatscourant van het Koninkrijk der Nederlanden, *supra* note 138, at 7 ("Current owners can invoke acquisition in good faith. However, governments have a significant responsibility to redress injustice, regardless of the method and circumstances of the acquisition. An appeal to good faith by the State is inconsistent with the pursuit of redress. Therefore, the State will never invoke good faith in the acquisition process. The decision does not preclude local governments from invoking good faith. It is up to local governments to decide whether to invoke acquisition in good faith.").

innocent good-faith purchaser. In contrast, most cases in the U.S. are brought against a private party (i.e., non-government entities).[148] A rigorous adversarial process is needed to avoid harming the innocent.

Consequently, these European precedents are fundamentally incompatible with the reality of the U.S. landscape. European restitution frameworks are largely designed to address works in public collections that were directly acquired through looting or duress by the Nazis. In contrast, private American defendants are typically good-faith purchasers who neither participated in the atrocities nor exploited the victims' circumstances. The U.S. government was not a perpetrator of the Holocaust and never obtained artworks through antisemetic confiscation. Therefore, the European model involving a specialized state restitution tribunal for claims against a government-owned collection is inapplicable to the U.S. If a U.S. public institution possesses a work with a defective title—for instance, acquired from an illicit dealer—the claimant may simply pursue a standard civil action under existing legal frameworks.[149]

Notably, European jurisdictions have considered the public interest in accessing art as a factor in determining whether to return a disputed work.[150] As a result, the outcome does not always favor the claimants. For instance, the Restitutions Committee of the Netherlands rejected the application to return a Wassily Kandinsky painting despite finding that the loss was not proven to be "voluntary" or not linked to the Nazi regime.[151] The current possessor, the Amsterdam City Council, argued that "the work has important art historical value

[148] Although museums such as The Met or The Guggenheim serve a public purpose and receive government funding, they are private non-profit organizations and should be distinguished from the national museums in the French example and the State in the Dutch example.

[149] Catherine Hickley, *What Constitutes Art Sales Under Duress? A Dispute Reignites the Question*., N.Y. Times (Mar. 15, 2021) (Gary Timterow, the director of the Museums of Fine Arts, Houston, responded to the discrepancy between the American and European approaches to Holocaust-related art restitution: "a private American institution … is not bound by the same moral criteria as the German government …. European governments which participated in the atrocities against the Jews have different standards …. The museum, by contrast, is guided by centuries of property law.").

[150] *See, e.g.*, Tabitha Oost, *From "Leader to Pariah"? On the Dutch Restitutions Committee and the inclusion of the public interest in assessing Nazi-spoliated art claims*, Int'l J. Cultural Prop. 2021;28(1):55-85.

[151] "Binding Opinion Regarding Painting with Houses by Wassily Kandinsky," Restitutions Committee, (Oct. 22, 2018), https://www.restitutiecommissie.nl/en/recommendation/bild-mit-hausern-by-wassily-kandinsky/ [https://perma.cc/2XU8-K9D6].

and is an essential link in the limited overview of Kandinsky's work in the [Stedelijk] Museum's collection."[152] Finding that the applicants have insufficiently contested the City Council's point, the Committee ruled that the interest in restitution does not outweigh the public interest in retaining the work in the Stedelijk Museum.[153]

IV
New Path for Claimants? Antiquity Tracking Unit at the Manhattan District Attorney's Office

A recent decision from the Criminal Term of the Supreme Court of New York offered an important development for Holocaust-related art restitution.[154] The Antiquity Tracking Unit ("ATU") of the Manhattan District Attorney's Office ("DANY") brought a case against the Art Institute of Chicago ("AIC") for criminal possession of stolen property and conspiracy to launder stolen art.[155] The case involves an Egon Schiele painting, *Russian War Prisoner*, which once belonged to the collection of the Austrian cabaret artist Fritz Grünbaum.[156] Finding that "there is no documentary evidence whatsoever that Grünbaum dispossessed himself of any of his Schiele artworks,"[157] the criminal court granted the prosecution's application for a turnover order and ordered that the drawing be relinquished to the heirs of Grünbaum.[158]

The case also developed new factual findings after *Reif v. Nagy*, the Grünbaum heirs' first attempt to recover the Schiele collection. In AIC's Memorandum of Law in Opposition to the People's Application for Turnover Over, the museum included new findings and research by the Austrian government, which supported the theory that Grünbaum's Schiele collection was never seized by the Nazis, and remained in the possession and disposal of the family.[159] Depending on the court or jury's

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[152] *Id.*
[153] *Id.*
[154] *See generally Art Inst. of Chi*, N.Y.S.3d 816 (Crim. Term 2025).
[155] *Id.* at *34.
[156] *Id.* at *1.
[157] *Id.* at *2.
[158] *Id.* at *38. The court ordered return in a civil forfeiture proceeding.
[159] Resp't's Mem. Opp'n to Appl. For Turnover Order 70–75, https://artlawpodcast.com/wp-content/uploads/2025/07/The-Art-Institute-of-Chicago-Response-Filing-Part-1.pdf [https://perma.cc/7Z4S-S2CW]; https://artlawpodcast.com/wp-content/uploads/2025/07/The-Art-Institute-of-Chicago-Response-Filing-Part-2.pdf [https://perma.cc/RBL7-28CK].

finding of the theory's truthfulness, this fact could legitimize all the subsequent sales of Grünbaum's Schiele paintings.

ATU's intervention is significant in several respects. First, this marks the Unit's initial entry into the realm of Holocaust-related art restitution. Outside the present case, the ATU has primarily focused on investigating and prosecuting illegally excavated antiquities smuggled into the U.S. markets, with most recovered works slated for repatriation to their countries of origin.[160] The Grünbaum case thus presents a rare instance in which the Unit restitutes recovered artworks to a private party rather than to a state government.

Second and relatedly, ATU effectively adopts the European approach where the government handles restitution claims on behalf of the victims' heirs. This alleviates the litigation cost on the heirs, and provides them with a second chance to pursue recovery in addition to bringing the civil claims on their own. By taking on the Grünbaum case, the New York City government assumes responsibility in restoring the injustice that happened in a different place and time.

Lastly, the ATU's theory of the case helped overcome the procedural barriers in a civil litigation. The title dispute over *Russian War Prisoner* was originally litigated as a civil case in the Southern District of New York. The district court dismissed the plaintiff's claims for replevin and conversion on the grounds that the statute of limitations had expired in 2009—three years after AIC refused the plaintiff's demand to return in 2006.[161] The HEAR Act also did not revive the

[160] *See, e.g.*, "*D.A. Bragg Announces Return Of Nine Antiquities To Poland And Italy*," Manhattan Dist. Att'y's off: Press Releases (Oct. 22, 2025), https://manhattanda.org/d-a-bragg-announces-return-of-nine-antiquities-to-poland-and-italy/ [https://perma.cc/PB44-3UCY]; "D.A. Bragg Announces Return Of Two Paintings To Peru," Manhattan Dist. Att'y's off: Press Releases (Feb. 16, 2024), https://manhattanda.org/d-a-bragg-announces-return-of-two-paintings-to-peru/ [https://perma.cc/NKH3-QYB4]; "D.A. Bragg Returns Two 7th Century Antiquities to China," Manhattan Dist. Att'y's off: Press Releases (May 9, 2023), https://manhattanda.org/d-a-bragg-returns-two-7th-century-antiquities-to-china/ [https://perma.cc/U4TD-4P65].

[161] *Reif v. Art Inst. of Chi.*, 2024 US Dist LEXIS 34493, at 5 (S.D.N.Y. 2024) ("The relevant New York law is N.Y. C.P.L.R. § 202, which provides that, where a cause of action accrued outside New York, the shorter of the statute of limitations of either New York or the state where the cause of action accrued must apply. In this case, the cause of action accrued in Illinois, which has a five-year statute of limitations. Thus, New York's shorter, three-year statute of limitations applies.") (internal citation omitted).

claims because "the plaintiffs knew of their claims after 1999 and failed to bring their claims during the three years that their claims were timely."[162]

By contrast, criminal possession of stolen property is considered a "continuous offense." For such offenses, the statute of limitations only begins to run when the offense terminates, not when it starts.[163] Here, AIC continuously possessed *Russian War Prisoner*, which is still considered stolen property to date.[164] The statute of limitations "had not even begun to toll until the artwork was seized by this Court on September 12, 2023."[165] The court further emphasized that the recovery of stolen property is not constrained by the statute of limitations even if it runs out.[166] Although an expired limitation period "may provide relief from prosecution for a thief, the lapsing of a criminal statute of limitations does not clear title to a stolen item. The statute of limitations applies to the person, not the property."[167]

Similarly, the conspiracy charge is also deemed as a continuing offense because the "consistent failure to investigate *Russian War Prisoner*'s provenance files in the face of art industry standards" demonstrates a "community of purpose amongst the co-conspirators that sustains the theory of a continuing conspiracy beginning when Russian War Prisoner was taken by the Nazis and continuing until the present day."[168] The criminal court explicitly addressed the discrepancies between the civil and criminal determination of statute of limitations and concluded that "any argument to impose a civil statute of limitations upon this application [for a turnover order] is unavailing."[169]

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[162] *Id.* at 5.
[163] *Matter of Art Inst. of Chicago*, 2025 NY Slip Op 50617(U) at 31.
[164] *Id.* at 32.
[165] *Id.*
[166] *Id.*
[167] *Id.* at 32.
[168] *Id.*
[169] *Id.* at 33.

Although controversial,[170] ATU's intervention has been proven effective so far. The Grünbaum heirs have recovered eleven Schiele drawings from their possessors with the help of ATU.[171] AIC is the only remaining possessor resisting restitution and has filed an appeal regarding the seizure of *Russian War Prisoner*.

V
Market Impact and the Roles of Art Market Constituents

The New York restitution cases, discussed in the previous sections, have profoundly reshaped the practices in the art market. Since the 1990 *Lubell* decision, the market has become increasingly aware and mindful of the historical background and legal issues behind Holocaust-related art loss. The law has in many ways changed the industry norms. For instance, the *Menzel v. List* court specifically rejected Klaus Perls' argument that he complied with the art trade customs when he bought the painting from a reputable Parisian gallery without inquiring whether the gallery had good title.[172] The court recognized that Perls might have accurately described the secretive customary practice in the art trade, but a dealer's compliance with customs trumped neither the rule of property law nor the dealer's implied warranty to the buyer.[173] The *Menzel* case effectively heightened the standard for acceptable due diligence in the art trade and compelled a change in industry norms.

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[170] *See, e.g.*, Thomas Kline, "New York Court Validates District Attorney's Seizure of Schiele Work from Art Institute of Chicago," Art Lawyers Ass'n (Jun. 27, 2025) https://www.artlawyersassociation.com/post/new-york-court-validates-district-attorney-s-seizure-of-schiele-work-from-art-institute-of-chicago [https://perma.cc/7ZHL-43H8] (criticized that the ATU improperly intrudes into the civil-law domain despite operating within the criminal justice system, and that the Unit has abused its authority to "coax or coerce agreements with museums and private collectors across the U.S. to turn over objects of cultural property.").

[171] *See* "D.A. Bragg: Eleventh Piece Of Nazi-Looted Art Returned To Relatives Of Fritz Grünbaum," DANY Press Releases (July 26, 2024) https://manhattanda.org/d-a-bragg-eleventh-piece-of-nazi-looted-art-returned-to-relatives-of-fritz-grunbaum/ [https://perma.cc/U37A-Y76Y].

[172] *See* Menzel v. List, 49 Misc. 2d 300, 303 (Sup. Ct. NY1966) ("Perls testified that he bought the painting in July 1955 from Galerie Art Moderne in Paris for $ 2,800 in French francs. He further stated that title was not warranted in writing or orally to third-party defendants; that Galerie Art Moderne is one of the leading, most representative, reputable galleries in Paris, as is Perls Galleries in New York; and amongst such galleries the offer of sale of any painting is in and of itself, in the custom of the trade as between galleries, warranty of title. Art galleries of such standing assume, without the necessity of inquiry, that an offer of sale constitutes a representation of authenticity and good title.").

[173] *See id.*; *see also* DeMott, *supra* note 119, at 620.

Additionally, the establishment of Art Lost Registry ("ALR"), a centralized database of potential claims of unlawfully lost artworks, has fundamentally altered the dynamics in the art market. The ALR was founded in 1990 by a group of major auction houses, art dealers, and specialist insurers in response to the rise of stolen art title disputes and scandals in the 1980s.[174] The foundation of ALR aims to prevent the "circulation of stolen art and antiques in the open market and encourage the amicable resolution of disputed titles with original owners or their insurers."[175] With the advent of this centralized registry, the trade is no longer an exclusive domain where information is shared only among insiders. Any potential claimant or a prospective buyer can register or look up the provenance issues of an artwork.[176] ALR searches provide a much cheaper and faster means of conducting due diligence than prior methods. Before, one must commission a professional provenance researcher to access historical records and other professional platforms.[177] Because more and more potential claimants and researchers have registered with the database, ALR search has been incorporated into the standard art market due diligence process as a minimum requirement.[178]

As perhaps the most important art market and cultural center, New York's legal framework affects not only parties within its geographical boundaries. For instance, particularly in the high-end art market, buyers from around the world flock to New York. Art collectors and investors outside of New York and the U.S. often seek to exhibit their collections in the City to enhance the value of their works and, ultimately, sell them in New York—the market with the most well-capitalized buyers, constantly setting record-breaking prices.[179] The evolving legal framework in New York affects the norms and decisions of all constituents in the global art market.

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[174] Klerman and Shortland, *supra* note 34, at 230.

[175] *Id.*

[176] *Id.* Moreover, the ALR also represents victims' heirs in locating lost works and negotiating their return, typically on a contingent-fee basis. *See id.* ("Third, if the ALR locates a missing object and the registrant recovers the registered work themselves, the registrant is contractually required to pay the ALR a location fee equal to a small percentage of the work's value (usually 5%). Fourth, for a somewhat larger percentage (usually 10% but negotiable on high-value art) the ALR will negotiate and/or litigate on behalf of a registrant either for the return of the stolen object or for monetary compensation in return for removing the object from the database.").

[177] Klerman & Shortland, *supra* note 34, at 234.

[178] *Id.* at 233.

[179] *See id.* at 226–29, for more detailed discussion on the global effect of New York art market and law.

The following subsections outline how the pre-amendment New York framework has affected the behavior of different types of art market participants, including private collectors, art dealers, auction houses, and museums. The discussion finds that in practice, buyers are exposed to significant risks, whereas dealers and auction houses, as seasoned repeat players and gatekeepers of information, often find ways to insulate themselves from risks of subsequent title disputes.

A. Private Collectors

Because New York does not recognize good-faith purchaser defense, a private collector cannot protect themself from title disputes if a piece in their collection later turns out to have tainted provenance, even if the collector exercised due diligence at purchase. Nonetheless, there are several ways that a collector can mitigate the risk of potential litigation: provenance and lost art registry research, implied and expressed warranties, and insurance.[180]

1. Provenance and Lost Art Registry

Before purchasing a piece of work, a collector should perform provenance research to determine the risk to the purchase. Although professional provenance research might be too time consuming, lost art registries, with the most well-known one being ALR, are useful and convenient resources for collectors to attain basic knowledge of the risk associated with their purchases. Although passing a registry search does not guarantee a good title, the registries help screen off a good amount of works with tainted history.

2. Implied and Express Warranties

As discussed above in Part II.D, a buyer of a work with problematic title can seek damages from the seller for breach of implied warranty of title under U.C.C.[181] However, there are several obstacles in a good-faith purchase's way for successfully establishing a breach of implied warranty claim.

The first obstacle is the statute of limitations. Under U.C.C., the statute of limitations of a breach of warranty claim is four years,[182] and this period cannot

[180] *See generally* Lazerow, *supra* note 20.
[181] *See supra* note 121; Lazerow, *supra* note 20, at 216–217.
[182] See U.C.C. § 2-725; N.Y. U.C.C. § 2-725 (2024).

be extended by the parties through contract.[183] However, most title issues are only discovered long after the purchase,[184] and almost always past the four-year limitation period.[185] Second, because artworks are highly volatile assets, the value of a piece of work at the purchase and at the time that a title dispute arises might vary drastically. Therefore, collectors likely will not be able to recover the fair market value of the work at the time they lose the work in a title dispute.[186] In other words, even if a good-faith purchaser gets compensated through breach of warranty, they can still suffer economic injury from the loss of the profit they would have collected between their purchase and the time of dispute.

An express warranty can cure some of the uncertainties of implied warranty of title, but usually not to the collector's advantage. For example, the parties could include an express warranty that provides a future promise to compensate the buyer at the work's fair market value at the time the buyer loses the work due to a title dispute. Yet, such a clause imposes high transactional cost and is unlikely to be agreed upon by sellers.[187] In addition, a seller may use an express warranty to disclaim their responsibility for any potential title disputes. U.C.C. permits a seller to preclude such a warranty of merchantability claim by informing the buyer "that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have."[188] Art dealers and auction houses often adopt this approach.[189]

There are other complications that will affect the viability of a breach of warranty claim. To begin with, both implied and express warranties are vulnerable to the bankruptcy of the seller.[190] At the time a collector loses title to an artwork

[183] *Id.* This rule applies to both implied and express warranty.

[184] *See, e.g.*, Doss, Inc. v. Christie's, Inc., 2009 U.S. Dist. LEXIS 88882 (S.D.N.Y. 2009) ("According to N.Y. U.C.C. § 2-725 (Statute of Limitations in Contracts for Sale) a claim for breach of warranty must be commenced within four years of tender of delivery of the goods."). Note that the statute of limitation claim was not raised in Menzel, "perhaps because the case predated New York's adoption of the [U.C.C]." *See also* DeMott, *supra* note 119.

[185] Lazerow, *supra* note 20, at 216 (The author claimed that he "[has] found no case in which a purchaser of art that was allegedly stolen during the Holocaust discovered that possibility within four years of purchase.").

[186] *Id.* at 217.

[187] *Id.*

[188] U.C.C. § 2-312(2).

[189] See *infra* Part V.A.

[190] Lazerow, *supra* note 20, at 215.

to its rightful owner, the seller may simply no longer be in business.[191] Moreover, enforcing the rights under express or implied warranties will require the collectors unreimbursable legal fees, even if they prevail.[192] Lastly, it is not uncommon for collectors to buy from foreign sellers.[193] The international and multi-jurisdictional aspect further complicates the case.[194]

3. Insurance

In general, insurance does not cover the loss of artwork due to someone else's superior title.[195] Moreover, as noted in the *Reif v. Nagy* opinion, if a title dispute does take place, the court deems insurance as an unfavorable factor to the purchaser, because it suggests bad-faith or opportunistic behaviors.[196]

4. What Happens if a Title Dispute Arises

When a potential title issue arises, the collector will face tremendous difficulty selling the work in major markets.[197] Reputable auction houses would withdraw a

[191] DeMott, *supra* note 119, at 621.

[192] Lazerow, *supra* note 20, at 217.

[193] *Id.*

[194] It is worth noting that the Holocaust Claims Processing Office ("HCPO") of the New York State Banking Department helps connect U.S. claimants with European jurisdictions. Originally established to assist Holocaust victims in reclaiming deposits from Swiss banks, the HCPO now also assists claimants in recovering unlawfully lost artworks that remained in Europe. Most of the artworks recovered by HCPO, unlike the ones in lawsuits, are of modest financial value but of great emotional and/or spiritual meaning to the original owner. *See* Holocaust Claims Process, N.Y. Dep't of Fin. Servs., https://www.dfs.ny.gov/consumers/holocaust_claims [https://perma.cc/EXF2-LKVD].

[195] Lazerow, *supra* note 20, at 217–18. In addition, the author discussed that although it is possible to insure a piece of work against loss due to title dispute, the insurance is expensive and does not offer sufficient reimbursement for the collector's loss. "It is now possible to buy ownership insurance from at least one company, but it is not cheap. The one-time premium varies from 1.75% to 6.75% of the amount insured if the company is willing to insure you. The face amount does not change with inflation." See also DeMott at 626 ("One insurer, Aris Title Insur Co., has been selling art-title insurance since 2006.... Aris has sold only around a thousand policies [between 2006 and 2012], however. Art title insurance has not displaced custom transactional practice, through which dealers and auction houses rely, as discussed above, on consignors' warranties.").

[196] *Reif v. Nagy*, 175 A.D.3d 107 (N.Y. App. Div. 2019).

[197] Klerman and Shortland, *supra* note 34, at 234.

piece found to have tainted provenance,[198] and sophisticated buyers would tend to avoid risking their money and reputation on the work.

The changes in norms and attitudes in the art trade and in the society at large have encouraged current possessors of works with tainted history to make settlements with original owners.[199] The aforementioned Fritz Grünbaum Schiele Collection illustrates this trend: eleven out of the twelve works that the heirs of Grünbaum demanded were returned voluntarily by their possessors.[200] One reason for current possessors to compromise is to avoid the time- and money-consuming litigation that offers no guarantee of a favorable ruling. Various cases have shown that current owners can mitigate their economic losses by settling with claimants. For instance, the Allentown Art Museum and the heirs of Henry and Hertha Bromberg, the original owners of the painting *Portrait of George the Bearded, Duke of Saxony*, who fled Germany in 1938, agreed to sell the painting at Christie's and share the proceeds of the auction sale.[201] This model has become a customary practice. The ALR, which also offers services to negotiate on behalf of the claimants once a lost artwork is found, usually resolves title disputes with private collectors by suggesting sharing the sale proceeds between the current possessor and the claimants.[202]

Another consideration is the risk of reputational harm, especially in cases involving famous artworks and celebrity collectors. The case of Marilynn Alsdorf offers a great example. Known as "the queen of the Chicago arts community," Alsdorf initially intended to defend her ownership of Picasso's *Femme en Blanc* when faced with a lawsuit alleging that the work had been stolen by the Nazis and challenging her good title.[203] However, due to the prominent status of both the painting and herself, the case drew extensive domestic and international attention, with media coverage encompassing her acquisition history and the FBI's seizure of

[198] *Id.* ("Reputable auction houses tend to immediately withdraw artworks if the ALR highlights a concern and only proceed with a sale after its resolution. This puts pressure on possessors to settle even when legal claims are weak or debatable.").

[199] *See generally id.* at 235–241.

[200] *See supra* note 171.

[201] Graham Bowley, *Museum to Part with Cranach Portrait Sold as Owner Fled the Nazis*, N.Y. Times (Aug. 26, 2024), https://www.nytimes.com/2024/08/26/arts/design/cranach-portrait-nazis-allentown-museum.html [https://perma.cc/3DXB-CDZS].

[202] Klerman and Shortland, *supra* note 34, at 234.

[203] *Id.* at 235.

the painting at her apartment.[204] Facing mounting negative publicity and seeking to protect her standing as a "generous philanthropist and discerning and scrupulous art collector," Alsdorf ultimately abandoned her defense despite her confidence in the validity of her title.[205] She eventually settled with the heir of the original owner for $6.5 million, the market value of the painting.[206]

Ultimately, the New York legal framework offers limited recourse to a good-faith purchaser once a rightful owner establishes title. Collectors can control the risk of title dispute through rigorous pre-purchase due diligence and, when claims arise, mitigate the economic loss by pursuing flexible private settlements rather than litigation.

B. Art Dealers

Art dealers serve as the primary gatekeepers of information in the art trade, functioning as the critical 'lock and sluice' that controls the flow of artworks, legitimate and illegitimate, into the open market.[207] As intermediaries, they create a buffer between buyers and sellers who often remain anonymous.[208] Dealers are also often the most knowledgeable participants in this opaque system: they leverage specialized expertise and exclusive connections to access information unavailable to outsiders, while shaping the terms of the sale.[209] Prestigious dealers have immense bargaining power in deals, and the buyers often have to blindly rely on the dealer in order to proceed.[210]

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[204] *Id.*

[205] *Id.*

[206] Martha Lufkin, *$6.5 Million Settlement to Heir for Stolen Picasso*, Art Newspaper (Sept. 1, 2025), https://www.theartnewspaper.com/2005/09/01/dollar65-million-settlement-to-heir-for-stolen-picasso [https://perma.cc/LA34-4TDE].

[207] DeMott, *supra* note 119, at 623 ("An actor performing a "lock" function deals with illegitimate as well as legitimate actors, and by operating the lock enables an object, like a ship, to pass "upward" as water enters the closed lock, emerging at a higher level of value and market reputability.").

[208] *Id.*

[209] *Id.*

[210] See *Menzel v. List*, *supra* note 172, at *303. Even after the *Menzel* decision, art dealers continue to dominate the trade. The legal battle between the Russian Oligarch Dmitry Rybolovlev and the Swiss art dealer Yves Bouvier illustrate the enormous bargaining power a dealer has in the often opaque art transactions. *See* Vincent Noce, *Dmitry Rybolovlev and Yves Bouvier Settle Nine-Year Legal Feud*, Art Newspaper (Dec. 8, 2023), https://www.theartnewspaper.com/2023/12/08/dmitry-rybolovlev-and-yves-bouvier-settle-nine-year-feud [https://perma.cc/R3AT-FHKX] ("Rybolovlev, who is the owner of the Monaco football club, had accused Bouvier of swindling him out of €1.1bn from the €2bn sale of 38 works of art between 2003 and

Because of their critical role in the art market, the New York courts hold art dealers to a higher standard. Instead of simply performing the duty to facilitate sales between parties, they are legally bound to ask the hard questions about the legitimacy of a seller's title and reject pieces that raise red flags.[211] New York courts reaffirmed the *Menzel* dictum on the insufficiency of dealer's trade customs on various occasions. In a later case, the Appellate Division found that a dealer demonstrated bad faith for failing to inquire into a seller's good title while purporting to act as the seller's agent,[212] even though the failure to inquire was consistent with the trade customs.

In theory and by default, art dealers are held liable for any title defects when selling to a good-faith purchaser. However, as noted previously, a dealer can disclaim the implied warranty of title if they use specific language indicating that they are selling only the rights they or the consignor possesses. In such cases, the dealer is absolved of liability, and the risk of a title defect shifts back to the purchaser.

C. Auction Houses

Unlike art dealers who facilitate private sales, auction houses are more transparent forums focusing on public sales.[213] New York used to have special regulations on auction houses that imposed mandatory warranty of title and required them to reimburse the buyer if the title turns out to be defective.[214] The regulations were repealed in 2022 to stimulate the post-Covid economy.[215] As a result, auction houses have adopted the same strategy as art dealers. For example, Christie's October 2023 Conditions of Sale provides:

2014. Bouvier has always denied any wrongdoing, claiming he acted as a dealer, free to set his own profit margins, and not as an agent.").

[211] *See supra* note 172 (rejecting art dealer Klaus Perls' defense that he complied with the art trade customs assuming good title when he bought the disputed painting from a reputable Parisian gallery.).

[212] *See* Porter v. Wertz, 416 N.Y.S.2d 254, 256, 259 (1st Dep't 1979), *aff'd,* 421 N.E.2d 500 (N.Y. 1981).

[213] DeMott, *supra* note 119, at 624–25.

[214] *See* N.Y.C., N.Y., Admin. Code § 2-124 (repealed 2022).

[215] *See* Rules of the City of N.Y § 2-123 (repealed), https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-16336 [https://perma.cc/ES8J-DS3N]; Anny Shaw, *New York City Removes Rules Governing Auction Houses in Bid to Stimulate Business*, Art Newspaper (May 4, 2022), https://www.theartnewspaper.com/2022/05/04/new-york-city-removes-rules-governing-auction-houses-in-bid-to-stimulate-business [https://perma.cc/3XYF-Y6L6].

> Except as set forth in paragraphs E1 [Seller's Warranties] and E2 [Authenticity Warranties] above, neither the seller nor the Christie's group make *any other warranty, express or implied, oral or written*, with respect to the lot.[216]

In addition, auction houses require consignors to provide warranty of title.[217] Although consignment agreements are generally not publicly available and might vary from consignor to consignor, auction houses usually include a section of "seller's warranties" in their conditions of sale:

> For each lot, the seller gives a warranty that the seller:
>
> (a) is the owner of the lot or a joint owner of the lot acting with the permission of the other co-owners or, if the seller is not the owner or a joint owner of the lot, has the permission of the owner to sell the lot, or the right to do so in law; and
>
> (b) *has the right to transfer ownership of the lot to the buyer without any restrictions or claims by anyone else.*[218]

Importantly, the conditions also limit the amount of damages the buyer can recover if the warranty of title is breached:

> (c) If either of the above warranties are incorrect, the seller *shall not have to pay more than the purchase price* (as defined in paragraph F1(a) below) *paid by you to us*. The seller will not be responsible to you for any reason for loss of profits or business, expected savings, loss of opportunity or interest, costs, damages, other damages or expenses.[219]

Free from the mandatory warranty and the obligation to reimburse, auction houses insulate themselves from the risk of defective titles. Should a claim arise

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[216] Christie's New York Conditions of Sale, ¶ E3 "No Implied Warranties," https://share.google/YvXOH6XDNYBRwe1vZ [https://perma.cc/S5QM-GMZK]; *see also* Sotheby's Retails Conditions https://www.sothebys.com/en/retail-terms-conditions [https://perma.cc/VEA9-F83D], Sotheby's Private Sale Conditions, https://www.sothebys.com/en/sothebys-private-sale-conditions-of-business-for-buyers [https://perma.cc/NFA4-3NFH] (containing similar language).

[217] *See* DeMott, *supra* note 119, at 626.

[218] Christie's New York Conditions of Sale, *supra* note 216, ¶ E1.

[219] *Id.*

within the four-year statute of limitations, the buyer can seek remedy from the consigner; once that period lapses, the risk falls squarely on the buyer.

D. Museums

Although both museums and private collectors have been involved in restitution cases as defendants, the former play a more complicated role in the art world. A key distinction is the museum's public mandate: to provide access to art, offer educational resources, and act as stewards of cultural heritage.[220] Consequently, a museum's response to New York's evolving legal framework and shifting societal attitudes is uniquely propelled and constrained by these competing public obligations.

1. Association of Art Museum Directors (AAMD) and American Alliance of Museums (AAM) Guidelines

Building on the Washington Principles and the Terezin Declaration, the AAMD and AAM, two of the most influential museum associations,[221] have established specific guidelines to help member institutions operationalize these goals. These guidelines assist museums in resolving claims by reconciling the interests of claimants with the museum's fiduciary responsibilities to the public.[222] Emphasizing the role of museums as cultural and ethical stewards,[223]

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[220] *See e.g.*, Ass'n of Art Museum Dirs., *Professional Practices in Art Museums* (2011 ed.), https://cms.aamd.org/sites/default/files/document/Professional%20Practices%202011%20rev%202.2.23_0.pdf [https://perma.cc/2ZZM-262A].

[221] For instance, both the Met and Guggenheim Museum are affiliated with both AAMD and AAM. The Associations facilitate the circulation of artworks between member museums, usually through loaning, and set guidelines that member museums have to follow. If a member museum fails to comply, the Associations can impose sanctions, including requiring all other member museums to cut off collaborations with the sanctioned museum.

[222] Ass'n of Art Museum Dirs., *Report of the AAMD Task Force on the Spoliation of Art During the Nazi/World War II Era (1933–1945)* (June 4, 1998), https://www.obs-traffic.museum/sites/default/files/ressources/files/AAMD_report_spoliation.pdf [https://perma.cc/QB4B-WUJ8] (accessed November 26, 2025); Am. All. of Museums, *Unlawful Appropriation of Objects During the Nazi Era* (Nov. 1999, amended Apr. 2001), https://www.aam-us.org/programs/ethics-standards-and-professional-practices/unlawful-appropriation-of-objects-during-the-nazi-era/ [https://perma.cc/CVJ2-N6V4].

[223] *See e.g.*, *id.* ("When faced with the possibility that an object in a museum's custody might have been unlawfully appropriated as part of the abhorrent practices of the Nazi regime, the museum's responsibility to practice ethical stewardship is paramount"; "Their stewardship duties and their responsibilities to the public they serve require that any decision to acquire, borrow, or dispose of objects be taken only after the completion of appropriate steps and careful consideration.").

the guidelines mandate enhanced provenance research to ascertain clear title, heightened due diligence for future acquisitions and loans,[224] and increased public accessibility to museum records.[225] In particular, both the AAMD and AAM require members to alert the public upon discovering credible evidence of unlawful appropriation.[226] Furthermore, to ensure equitable and appropriate outcomes, the guidelines explicitly suggest that museums should be willing to waive available legal defenses when facing valid claims.[227]

The Guidelines present a different vision of the "public interest" served by museums than the one articulated in the Dutch court decision.[228] Rather than focusing solely on public access to specific works of art, the AAM and AAMD position museums as ethical role models that help shape public sentiments surrounding Holocaust-related art restitution. In this view, a museum's function derives not only from its collections, but also from its actions.

2. *Loaning Art and Government Immunity*

Museums rely on loans from collectors and other museums to ensure the diversity and quality of their programs. Despite the broad reach of New York courts,[229] both federal and New York local laws afford immunity to loaned objects, and lenders should not be deterred from loaning their artworks to New York museums for exhibition.

The federal Immunity from Judicial Seizure Statute provides that no state or federal court or government in the U.S. shall seize any art or cultural property imported from a foreign country for temporary custody of a U.S. cultural, educational, or religious institution for related non-profit purpose.[230] The New

[224] Museums can face litigation if a gift has gained title: *see, e.g.*, *Rosenberg v. Seattle Art Museum*, 124 F. Supp. 2d 1207 (9th Cir. 2000).

[225] *See* Ass'n of Art Museum Dirs, *supra* note 222; *see also* Am. All. of Museums, *supra* note 222.

[226] *Id.*

[227] *See* Am. All. of Museums, *supra* note 220.

[228] *See supra* note 150.

[229] For instance, New York asserts jurisdiction over *Russian War Prisoner*, which has been in the custody of AIC in Chicago, because the drawing briefly passed through New York 70 years ago. *See* Alexander Herman, *Why New York Can Be a Risky Place for Dealers and Museums to Hold Art*, Art Newspaper (Sept. 4, 2025), https://www.theartnewspaper.com/2025/09/04/why-new-york-can-be-a-risky-place-for-dealers-and-museums-to-hold-art [https://perma.cc/N6B5-DTG5].

[230] *See* 22 U.S.C § 2459. https://www.state.gov/immunity-from-judicial-seizure-statute-22-u-s-c-2459 [https://perma.cc/JUW9-L83H].

York Art and Cultural Affairs Law extends protection for both international and domestic non-New-York lenders, providing that "[n]o process of … any kind of seizure shall be served or levied upon any work of fine art" that entered New York to be held under the supervision of a museum, university, or other nonprofit institution for the purpose of cultural, educational, or charitable purposes.[231] The government immunity laws protect cultural exchanges and ensure the vitality of New York's cultural scene.

3. New York Labeling Law

In 2022, New York State enacted legislation requiring museums to display placards acknowledging any artworks known to have been stolen during the Nazi era.[232] This law reinforces the museum's public function: beyond serving as a cultural repository, museums also act as ethical stewards. By institutionalizing these disclosures in the display rooms, the law enhances transparency, marking a critical step toward ethical curation where historical injustices are openly recognized.

E. Looking Forward: New Practices in the Art Market

In short, New York's Holocaust-related restitution decisions have drawn the market's attention to the issue of unlawful art loss and prompted practice changes among market participants to address the complicated historical aftermath of Nazi plundering. Besides the heightened market awareness itself being a meaningful success, the framework has also urged the market to develop ultra-legal means to repair the historical wrongs suffered by the victims and their heirs.

At the same time, the market response presents a notable limitation of the current New York framework: art dealers and auction houses possess the greatest knowledge of a work's provenance information, yet the current law allows these key intermediaries to easily insulate themselves from liabilities, exposing innocent good-faith purchasers to disproportionate risks. Therefore, regulation targeting market intermediaries is needed to alleviate the risks and burdens of good-faith purchasers.

[231] N.Y. Arts & Cult. Aff. Law § 12.03 (2024).
[232] S. 117, 2021–2022 Leg., Reg. Sess. (N.Y. 2021).

Conclusion

New York courts frequently note in their opinions that their decisions are influenced by the recognition that "New York enjoys a worldwide reputation as a preeminent cultural center"[233] and prompted by the interest of New York in "preventing the state from becoming a marketplace for stolen goods."[234] Indeed, New York has developed a framework that ensures justice for the victims without unduly discouraging legitimate market activities. The framework has also spurred changes in real world practices in the art market: having become increasingly aware of the Holocaust-related title issues, the market has created more accessible platforms for information exchange and more flexible means to resolve title disputes.

However, there are two major drawbacks of the pre-amendment legal framework. First, the current law and the market practice expose art buyers to heavy burden and disproportionate risk. Not only are they expected to conduct independent provenance research before purchasing a piece of art, since the dealers and auction houses are proven to be unreliable sometimes, but they also will bear the full risk of losing the piece without compensation if a claimant successfully establishes their case. Imposing such burdens and risks can undermine the vitality of the art market in the long run.[235] The art trade "depends upon a measure, in fact in a high dosage, of security surrounding … purchasers' acquisitions."[236] Due to the sheer volume of artworks unlawfully acquired during the Nazi era,[237] buyers are highly likely to encounter them when collecting art. Resources such as ALR are useful but not comprehensive, and most of the works in the market do not have complete provenance.[238] Given the power imbalance and information asymmetry

[233] *Lubell*, 569 N.E.2d at 431.

[234] *See, e.g.*, *Bakalar v. Vavra*, 2010 U.S. App. LEXIS 18343, *145 (2d Cir. 2010).

[235] Patricia Youngblood Reyhan, *A Chaotic Palette: Conflict of Laws in Litigation between Original Owners and Good-Faith Purchasers of Stolen Art*, Duke L. J. 955, 1028 (2001).

[236] *Id.*

[237] *See* Pollock, *supra* note 2 (noting that Nazi forces plundered more than 150,000 artworks from Western Europe and more than 500,000 from Eastern Europe).

[238] *See, e.g.*, Provenance and Collections Research, Princeton Univ. Art Museum, https://artmuseum.princeton.edu/art/our-collections/provenance-and-collections-research [https://perma.cc/8BVF-BHHG] ("It can be difficult to determine the complete provenance of many works of art. Objects are often bought and sold anonymously before arriving at a museum; past owners may die without disclosing where they obtained the works in their collections; dealers do not always make known the sources of their holdings; and the records

between buyers and intermediaries, it is inequitable to place the burden and risk solely on the former. Over time, the current framework may produce a chilling effect on collecting. The 2025 amendment will likely exacerbate this trend by removing time-based defense for current possessors.

Moreover, uncertainties incentivize owners to keep the artworks out of the public sight. Despite the immunity laws, owners might still hesitate to loan their collections for exhibition because of potential reputational damage.[239] Because immunity laws do not extend to for-profit activities,[240] uncertainties can drive the art market to rely more on private sales.[241] A shift towards the private realm will make it even more difficult for the victims and their heirs to locate their lost art.[242]

To better protect the interests of good-faith art collectors, the legislature should enact regulations targeting intermediaries in the art market. For one, New York should reinstate the mandatory warranty of title for auction sales and require auction houses to reimburse buyers where title proves defective.[243]

Second, the New York court's rigid application of laches can be harsh on good-faith claimants who simply lacked information about their potential

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of dealers and auction houses are often incomplete. For all these reasons, gaps in provenance are common, especially for works whose acquisition can date back decades or even centuries.").

[239] *See supra* note 203 (noting that renowned collectors are willing to abandon strong cases to avoid potential reputational damage).

[240] *See supra* note 230–31(noting that Government Immunity only covers objects loaned for non-profit purposes).

[241] In private sales, artworks are not subject to third-party scrutiny. With only the seller, buyer, and dealer involved, there is no independent party to identify and flag potential title issues. Problematic works are therefore less likely to be discovered by potential claimants, and parties may proceed with a sale even with knowledge of provenance issues; *see also* Reyhan, *supra* note 235, at 1041 ("The diligence required of the purchaser presumably makes the sake of stolen art on the open market more difficult and the discovery of defects more likely.").

[242] *Id.*

[243] *See supra* note 213. In addition, U.S. Congress is currently pushing for more regulations in the art trade. *See* Art Market Integrity Act, S. 2400, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/senate-bill/2400/text/is [https://perma.cc/36C9-UEM2]. However, enacting meaningful regulation on dealers and auction houses has proven enormously difficult. These intermediaries have repeatedly and successfully lobbied against legislative efforts to impose greater oversight on the art market. *See, e.g.*, Graham Bowley and Zachary Small, *U.S. Study Finds Further Regulation of the Art Market Not Needed Now*, N.Y. Times (Feb. 4, 2022), https://www.nytimes.com/2022/02/04/arts/design/art-market-regulation.html [https://perma.cc/D63B-G9LQ]; Tim Schneider, *Who Knew the Art Industry Spends Millions of Dollars on Washington Lobbyists? (and Other Insights)*, ArtNet (Feb. 4, 2022), https://news.artnet.com/market/gray-market-art-lobbying-millions-2073386 [https://perma.cc/6UMK-S3UM].

claim, and may bar otherwise legitimate claims. As occurred in *Bennigson*, the court dismissed the case simply because substantial time had passed or because key witnesses were no longer available, without giving the claimant a chance to further develop their evidence through other sources. Given the chaotic circumstances the victims faced during the Nazi era, heirs often face extraordinary obstacles in discovering the location of their family's lost art, and even confirming whether they hold a valid possessory interest.[244] In light of these challenges, laches should not apply where a claimant can demonstrate that they uncovered previously unavailable material evidence during the period of delay, and have brought the lawsuit promptly after the discovery. Such evidence may include newly discovered information establishing a possessory interest, or provenance evidence that significantly strengthens a restitution claim. The AIC cases demonstrate that the defendant is not necessarily disadvantaged simply because more time has passed—the Museum found favorable evidence through further archival research, which was unavailable when *Reif v. Nagy* was litigated.[245]

The HEAR Act of 2025 addresses this obstacle by eliminating laches and all time-related defenses entirely. While this will benefit good-faith claimants who discover their claims late, it also risks encouraging opportunistic behavior: claimants with weak cases may strategically delay litigation in search of more favorable evidence, even when further evidence is unlikely. Such delays would further obscure an already complicated case.

[244] *See* Lazerow, *supra* note 20, at 202 ("Because so many people were displaced after the war, a question remains over who might be the current heir of someone who owned artwork that was expropriated.").

[245] *See supra* note 159.