

The Validity of Technical Work in the Legal Protection Prescribed to an Artist

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The legal protection order for this work depends not only on the validity of the physical characteristics of the work, but is also related to the integrity of the physical integration of the work of art, which is intended to bring the art work in the same position produced by the artist without change, restoration or amputation in the physical construction of this work, considering the integrity of the work. A fundamental element in the validity of that work, and in this context, the Court of Versailles ruled in its decision summarising its summary that someone had bought a painting signed by the artist entitled "Popular Celebration" and after the painting was examined during the exhibition and with the beginning of the auction.

Key words: *Validity, aesthetic sense, Legal Protection, specific criteria*

Introduction

First: The Idea of Research

The human society is natural, so the latter took up space in the thinking and awareness of the human being so he started to invent the arts in a desire to emulate them. Thus the art became a distinct personality with different tasks and, after it became a means of mediating the public culture and guiding society, and a tool expressing the ambition of its members, hence it was that the law had to recognise art in essence, in order for artists to seek protection and organisation in the field of the art market, and the relationship of art market law to copyright law has become a must to complement each other.

In order for the law to take its role in protecting works of art, the health condition of those works must be met with certainty, as they represent an essential element in the artistic value of those works, since without them the value of the work cannot be estimated and cannot even be dealt with or recognised. Before any purchase or the sale of works of art, it is necessary to verify the validity of these works in question with certainty, because of this great impact on the art market and therefore the legal protection of the work is essential.

Second: Research Problem

For every research idea to be successful, it must have a problem that the researcher tries to identify and find solutions to; the problem of our research is that there is a confusion between the standard of validity of the technical work and the standard of paternity or authenticity of this work. This confusion was reflected in the orientation of the legislation as well as jurisprudence, as we believe that each of them has a different function. In addition to that the legislation on intellectual property did not stop at the boundaries between health and authenticity and arrange the effect of protection on them, nor did it establish a concept or a specific criterion for the validity of the work. It has left its definition to experts and professionals, especially since the validity of the work is always characterised by uncertainty and relativism.

Third: Keywords

- **The Work of Art:** - the work that addresses the aesthetic sense of the public and is expressed in lines, colours, movements, sounds, in pictures or in images and images together.
- **The Validity of the Work of Art:** - Verification of the return of the work to the certainty of its author because of the effect on the legal protection of this work as well as its impact on the artistic value in the art market.

Fourth: Research Structural

We try to cover the research vocabulary in two demands, the first of which is devoted to the concept of the validity of works of art while the second is held to present some criteria that can be left in determining the validity of works of art.

The First Requirement

The Concept of the Validity of Works of Art

It is no secret that comparative legislation has provided technical works (Amara, 2017)¹ with legal protection because knowledge and innovation together help support business in industrially developed countries, and it represents an economic revolution linked to technological, scientific and technical inventions by benefiting (at least financially) from all inventions and innovations. Therefore men seek a better level of protection for their

¹ Works of art are referred to those works that simulate the sentimental feeling and in which the aesthetic character, as its effect tends to feelings and feelings other than literary and scientific works that address the mind and thinking and from its pictures musical works and dramas and audio-visual works And cinema, plastic works, applied arts, illustrations, maps, photographic works and the innovations of clothing, costumes and scarves, looks.



innovations and obtain more intellectual property rights in all the countries and regions where their business is run.

In order to achieve that protection of these works, it is necessary to achieve the most important element of the power of these works in the art market, which is the element of health, which is a real guarantee of the artistic and financial value of the work itself, so we find it necessary to give an accurate understanding of this individual aspect by stating its meaning and identifying points. The distinction between them and the authenticity of those works, and the relationship between them and the theory of mistake is as follows:

First: The Meaning of the Validity of Works of Art

The word war did not agree on a specific meaning for the validity of the works of art, and each is seen from a certain angle. There are those who know it as the official or original character or what is attributed to the truth of its author, where it is described as an 'original or correct painting' (Curtis, 2006), and there are those who link it to the idea of the old work itself, saying that the validity of the work is related to the site Geography, or the ratio of the work to religious rituals, or there may be works on which the work can be considered true or real (Serezal, 2002) ².

From these two trends it is clear to us that the meaning of the validity of the work can be determined by looking at the source of this work or the art work, and the extent to which it relates to its true author. Or, looking at the history of the work refers to the time period to which that work belongs and with which the relationship to this is impossible. The work could be credited to an author outside this geographical area or that time period.

Second: The Distinction between the Validity of the Artistic Work and its Authenticity

It has already been said that the validity of the work is a technical process that can be viewed through the source of the artwork or by relying on the idea of the old age and the time period to which that work belongs, which requires the research to disengage between the concepts of health and authenticity of the work of art, as each has its own meaning and function and as follows:

² Where French jurisprudence hits the example known as the Egyptian statue or the thing that descends from the African rituals and which has been implemented for centuries so that it is impossible to attribute this work to an author, this characteristic of the oldest is one of the qualities that determine the consideration of the work of art true and true, considers

Difference in Concept

The jurisprudence defines the authenticity³ of the work as ‘that mental effort made by the author which results in the creation of an idea characterised by a special personal character in which the imprint of his personality appears clear and prominent on the work’ (Khater, 1994). It was said in its definition ‘the original character that would highlight the personality of the author either in the elements of the idea presented or in the way that he took to present this idea’ (Abdel, 1972).

Difference in Terms of Function

There is no doubt that both the validity of the work and its authenticity have a legal function, the effect of which is reflected in the legal protection of the work itself. If the function of the originality of the work is limited to the adaptation of the relationship between the author and his work, if there is this association or the so-called right of parenthood, we find the law has bestowed the necessary protection for it and arranged for it. The necessary rights, either the function or the health of the work, relate to the problem of evaluating the work of art (work) or, in other words, it is the cultural characteristic that generates the artistic value of the work in the art market. This is done through looking at several factors related to the physical condition of the archived artwork and whether there have been changes from restoration or other work such as the presence of a replica, or interference from an external hand or the original nature of the copy (Edelman, 2003). The market value of the work depends on the availability of the health given those factors associated with the status of the work.

Third: The Relationship between the Validity of the Artwork and the Theory of Error

The relationship between the validity of the work of art and the theory of error is highlighted as one of the defects in the circle of conflicts that arise around the validity of the works of art, as in most cases the parties resort to challenging the validity of works of art based on the theory of error, and specifically, in the form of the error in the material of the object. Therefore, it is necessary to explore the depths of this theory in a way that highlights its relationship to the validity of works of art and as follows:

The Concept of the Mistake in the Material of the thing and its Relation to the Health of the Artwork

³ The arabic jurisprudence used to consider the word innovation as synonymous with the term authenticity, although there is a linguistic difference between them, so we will align with the jurisprudence in the use of both terms.

It is clear in jurisprudence that a mistake means a state of mind that carries a false perception of reality that leads the person to conclude a legal act that would not have been established if the truth of the matter became clear, such as who buys a statue and thinks he is rich but is not (Abdul et al., 1986). The mistake has to have an effect of making the act 'suspended or invalid according to the laws' i.e. it must be substantial and that means to reach a level of gravity so that the contractor refrains from concluding the act if it does not fall into this error⁴. Article 118 of the Iraqi Civil Code referred in its paragraphs to the circumstances in which the error is essential, and one of these cases is the error in the character of the object (article of the object) and the place of the contract. This is essential in the consideration of the contractors; it must be considered because of the circumstances of the contract and what should be done in the transaction of good faith.

In the context of defining the concept of 'the substance of the thing', there are two concepts in the jurisprudence: one looks at the material of the object by an objective material criterion and the other is seen by a personal criterion. The objective material criterion means that the error in the material of the object is the error in the material that makes up the object i.e. the physical material (chemical). In this regard, the doctrine infers the famous proverb that the jurist (Butte) has struck, that if he buys a candlestick of silver-plated copper and believes that it is pure silver, it means that if the mistake occurs in a fundamental characteristic that is not related to its material, it is not reliable (Sur Cette Notion, 2006). This criterion was moderated by introducing a subjective factor or special qualities in determining this type of error, where the owners of this trend found that the material of the object consists not only of the material elements that make up it but also the characteristics that determine its special nature that distinguishes it according to the common concepts of things of any other type (Charles, 1942).⁵

In the light of the sale of works of art and referring to the above criterion, there are elements that are of the nature of things, and if any of the material of the object where it is essentially considered part of each element that, in its absence would lead to the distortion of something to the point of becoming something else, or the object becomes unfit for normal use, it is up to the trial judge to assess this MALINVA.⁶

As for the personal standard of the article of the object, this means that we look for the intention of the contractor who made the mistake, to know the importance attached to this matter, which was based on the error, and in this sense the understanding in the article of how

⁴ Consider article (118) of the Iraqi Civil Code.

⁵ The government's support for the government's work in the areas of education and employment, education and employment is a very good way to provide a good quality of education.

⁶ It should be noted that the French judiciary adopted this standard between 1845 and 1875, where the Court of Seine went in this sense on January 2, 1848 ("The name of the artist at the bottom of the painting is not considered an essential characteristic." S.LEQUETTE-DEKERVENOAEL. these prec-n315.

the object moved from the place of the contract (according to the material criterion) to the persons of the contract i.e. in view of the intention of the will of the contractors. At the time of concluding the contract to that essential character and considering it the essence of the thing, the contractor is prevented from concluding the contract if it does not have that essential characteristic. In application and in the field of the health of the works of art, if a person buys a picture he thinks is created by the artist Picasso, for example, and it turns out that it is just a tradition, and on it there is a false signature, which is the main mistake, that is the motive for contracting, which is to spoil that satisfaction (Sur Cette Notion, 2006; Mahmoud, 1964; Suleiman, 1961).

From all of this we conclude that this shift in the concept of error in the material of the object from material to materialism helped us to introduce the subject of the validity of works of art within the qualities of the essential thing that can apply the error, in other words the disputes concerning the sale of works of art are the ones that matter. In this sense, the Court of Appeal of Paris ruled in a ruling on March 29, 1978 where the validity of the artwork of the artist Odilon Redon was clearly in the minds of both parties and validity was the essential characteristic of the thing sold (Serezal, 2002).

The Second Requirement

Criteria for Determining the Validity of Works of Art

The validity of works of art is an essential characteristic in the field of the sale of works of art because they represent the characteristics of the object in question in the contract, which was taken into account by the contracting parties, because in their absence, the joint will cannot be implemented. It corresponds to the idea of the validity of the work of art created by the artist or the work carried out in a specific period of time, or the physical characteristics of the artwork that distinguishes it and gives it real value, hence we find the need to identify the criteria that can be relied upon to assess the validity of the work and thus to provide legal protection to it ⁷as following:

Verifying the Ratio of the Work to its Author

The WIPO dictionary of copyright terms defines the author as "the person who creates a work"⁸, but the follower of successive international conventions in the field of copyright as well as intellectual property laws in different countries of the world has not taken a unified approach. Each is based on its definition of the author, but it is possible to conclude an understanding that is not different to the two that touches the true meaning of the author's

⁷. It is worth noting that these standards are to name a few.

⁸. Dictionary of copyright terms and similar rights issued by the World Intellectual Property Organization No. 17-p17.



vocabulary that 'each author of an innovative mind, whatever the type of mental production and whatever the way it is expressed or its importance, and thus falls within the concept of the author of the story or Poet, composer, painter, sculptor or computer software developer... Etc.' (Abdul and Mohammed, 2008).

Therefore, in the context of the validity of the works of art, the judiciary does not hesitate to rule null and or suspend the contract 'according to the direction of the comparative laws' until it became clear to him that the author of that art work was not the same as the one in the sales document (e.g. The Catalan), or identical to the material given by the seller to the buyer. In this sense, the Paris court ruled that it was stable in the judiciary that when a painting is sold as a painting attributed to a particular artist, the buyer can claim that the contract is revoked for a mistake in the article, when it is found that the painting sold is not by the artist referred to.⁹

The knowledge of the person of the author can be determined by the placement of his signature, since the signature is a sign of identity and validation, and there is no doubt that the issue of a signature in the field of copyright means the relationship of the work to the author. It is used to advertise fatherhood, for signing is the crucial role in contemporary art, where the author believes that the signature allows for scarcity without which there can be no market for art, and by preserving it (scarcity), and intellectual property will also be affected. In other words, whenever the works are unknown the lower the degree of market value due to their proportion to unknown authors (Suhail, 2010).

In accordance with this, the Paris Court of First Instance ruled that the signature was a sign placed by the artist at the bottom of the painting to prove that he was the author and the signature would then be a recognition of the authenticity of his right of expression.¹⁰

Senior Standard

The market value of the work of art depends mainly on the standard of represents a moral value for the connoisseur or even the merchant in the field of works of art, so the validity of the work of art requires proof of its return for the period of time in which the author was alive, and once it is verified that the art work is actually from that contemporary time period of his life, the validity of that work can be ruled and therefore be reflected in the market value of this work. In application, a case was presented to the Court of Paris of First Instance in 2001 summarising its facts that a couple bought an Egyptian statue of pharaoh Seussturis 3 from the Paris auction. It was presented in the awareness of The Catalans as a medieval work, and dated in the reign of Seusstis 1878-1851 B.C. There was a debate among art historians about this statue, but the Catalans did not mention it, and after the couple acquired this statue,

⁹ . -T.civ, seine, 2ch, 23 juill. 1948, Ga, Pal. 17 de'c, 1948. P.256.

¹⁰ . TGI. paris, mai, RIDA janv, p.282, cite'par B

they later learned of this dispute, and asked for the opinion of Egyptian experts and scholars who gathered to discuss it. They surmised that a statue dating back to ancient Egypt is by no means considered a statue dated during the reign of Sisustris 3, but it was executed after the death of Seusstris between 1850 and 1720 B.C. Because the criteria of history can only be estimated to be in the antique, the inaccuracy rate must be accepted when it has no effect on the historical and artistic value of the work in dispute on the one hand, and on the other hand the couple could not prove the authenticity of this work of art (statue). The perceived fact that it dated back to the reign of the king Seusstris was a crucial element in their choice.

The Paris Court of Appeal shared this view and ruled that the specified date was necessarily accompanied by a certain possibility, but the Court of Cassation did not uphold the decision of the Paris Court of Appeal and ruled on February 27, 2007 'the name of the artwork when it is followed only and directly by reference to a period of historical century or era, guarantees to the buyer that this work was actually produced during the period referred to, and since this reference to the historical period in The Catalogue came without explicit reservation, it lacks accuracy and this is sufficient to generate error.'¹¹

Standard Physical Characteristics of the Work of Art

It is no secret that the validity of the work is related to the quality of the material used in the execution of the work, as it represents an essential characteristic in this work and therefore reflects on the legal protection of this work, since the error in the physical characteristics of the work of art represents a mistake in a fundamental character that requires the cancellation of the contract or its suspension. In view of the view of the laws therefore, and in accordance with the law, the Court of Appeal of Paris ruled on the sale of a painting entitled "The Dream" by Julian Schnabel 1951, which was offered as an oil on velvet, but in fact it was a painting executed on a pillar engraved on velvet, which led to the belief of the auctioneer company that they had acquired a drawing work. In fact they bought a work of a nature or a derivative nature that included an engraved part and another part executed by hand by the artist so that it could not be exhibited directly, and the court decided that the company was the victim of a fundamental error even if the victim (the company) was a professional in the art market.¹²

The sale was based on this buyer for \$450,378, but shortly after the sale the buyer found that the painted painting was partly amputated from the right side and was extensively restored and on top of that the signature was not identical to the signature of the artist, so the buyer demanded that the sale be nullified for the error, and indeed the court ruled him to do so making its ruling: 'as a work of art, safety is an essential element of satisfaction, as the buyer

¹¹ . TGI, paris, 1resect, 31 Janv, 2001, pinault cl coutau-Begarie, slitine, Eckert, RG noo-08403, ine'dit .

¹² . CA paris, 1rech B, 7 juin, 1996 . Ga pil. 6-8 oct.1996, p.23.



wanted to acquire a painting as it was designed and executed by the artist. The artwork cannot be divided if the author does not want to do so, which leads to the loss of the vision that the author had.¹³

The Conclusion

The conclusion of each scientific research must be the most important results and recommendations:

First: Results

1. Works of art are listed in the law as a category of protected works as intellectual works representing the rights of the author such as works of drawing in calligraphy, colours, sculpture, printing on stone or on fabrics or any similar works in the field of fine arts as well as works of architecture and Photography and works of applied and plastic arts.
2. The concept of the validity of the work differs from the concept of the authenticity of this work in that the first means verifying the certainty of the relationship of the work to its author by basing it on an evaluation of that work by relying on specific criteria that give it the cultural character that generates its artistic value in the art market, while the right of fatherhood (authenticity of the work) is a concept that adapts the relationship between the artist and his work in terms of the rights granted by the law to the author on his original work.
3. There are no specific criteria that can be relied upon to verify the validity of the work, as it is not limited to the idea of fatherhood and the proportion of the work for its author, but it is possible to rely on the idea of the oldest work and the status of the archived work in terms of the existence of indications that indicate the relationship of the work to the author, such as the presence of the author's signature and fame. The author and everything related to the identification of the author, as well as the criterion of the integrity of the work of art and verification of the physical characteristics of the work, and the need to achieve the physical integration of the work of art, which is considered a fundamental characteristic, so that it can claim the nullity of sale when they fail, and other criteria that leave its appreciation to the people of experience in the field of works of art through which the validation of works of art are verified.
4. We have noted that the disputes that have been raised around works of art have contributed to the development of the judicial view in the field of error in the article of the thing by developing objective interpretations of the term article of the object commensurate with the characteristics and considerations of the validity of the works of art and the nature of the works of art in general. This view conveyed the concept in the article of the thing from the place of the contract to the persons of the contract based on the self-criterion or personal information obtained from the intention and will of the contractors, i.e. more accurately consider the validity of the work of art is an essential characteristic that represents the

¹³ CA Versailles , 3^ech . 17 Janv . 1997 . p.13 ets .



essence of the thing so that the contractor refrains from concluding the contract if that essential attribute is not available.

Second: Recommendations

1. The need for the Iraqi legislator to adopt in author law no. 3 in 1971 the idea of the validity of works of art by amending the text of article II of the law above to be in the form of the following 'this protection includes works expressed in the manner of writing, sound, drawing, photography or movement after verifying their validity and in a manner.

2. We propose adding a second paragraph to the text of article II above to be as follows 'the estimation of the validity of works of art depends on the standard of seniority, the time period in which the work was born, the integrity of the physical integration of the work of art and any other criterion decided by specialists in the field of technical works.

3. Due to the specificity of the works of art, whose market value depends on the idea of its introduction and the identity of its author, which greatly affects the satisfaction of the contractor as essential qualities of an ageing character that makes its price always high in the sales of those works' we propose to add an amendment to the text of article 118 of the Law.

The first paragraph should be in the form of the following, played out in the opinion of the obvious error, 'The Iraqi civilian does not implement the contract:

1. If there is a mistake in the character of the object that is essential in the eyes of the contractors or should be considered as such for the circumstances in which the contract was concluded and 2. What should be done in dealing with good faith and excluding the bay of works of art? Every mistake in the essential character of these works invalidates the contract.'



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