Christie's Bulletin for Professional Advisers

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CHRISTIE'S 250 ANNIVERSARY

CHRISTIE'S

HERITAGE & TAXATION ADVISORY SERVICE

CONTACT
Ruth Cornett
rcornett@christies.com
+44 (0) 20 7389 2102

SIR THOMAS LAWRENCE, P.R.A. (1769–1830)
Portrait of Robert Stewart, Viscount Castlereagh, 2nd Marquess of Londonderry, K.G., G.C.H., M.P. (1769–1822), full-length, in peer's robes with the Garter and Garter collar, as worn at the coronation of George IV

Negotiated by Christie's and accepted in lieu of inheritance tax; permanently allocated to the National Trust for display at Mount Stewart in Northern Ireland.

Negotiated Sales · Heritage Exemptions · Lease of Objects
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CHRISTIE'S

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Frances Wilson
Christie's Heritage &
Taxation Advisory Service

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Cover

JOSEPH MALLORD WILLIAM TURNER, R.A. (1775–1851)
View of the High Street, Oxford (detail)
© Ashmolean Museum, University of Oxford

Negotiated by Christie's and accepted in lieu of inheritance tax and estate duty; permanently allocated to the Ashmolean Museum, Oxford.

Editorial

Those of you who are suffering from E.U. referendum fatigue will be pleased to know that there are no articles in this issue of the *Bulletin* on the subject of Brexit. As interesting as it might be to speculate on the implications of a departure from the E.U. for the world of heritage and taxation, there has already been plenty of conjecture elsewhere, much of which will no doubt prove to be premature.

Another topic we are avoiding in this issue is the anniversary of William Shakespeare's death, which has also been getting plenty of coverage elsewhere. Instead, inspired by the 300th anniversary of the birth of Lancelot 'Capability' Brown, our thoughts have turned to gardens. William Lorimer, one of our general valuers, shares the story of a remarkable rediscovery of an important sculpture which had for many centuries remained hidden in full view, disguised as a garden statue. He also touches on some of the issues faced by owners of garden statuary, particularly in relation to fixtures and fittings.

Turning from gardens to the subject of land more generally, Kate Selway delves into the complex history of Land Tenure in the U.K. Her article contains fascinating background for anyone interested in the U.K. property market (which I suspect is most of us).

Following on from our article in the Spring 2016 issue on Historic England, Lisa Davies contributes an article describing the role of the English Heritage Trust. This registered charity was created last year out of the division of the former English Heritage into two parts. Lisa focuses on the role of the Trust in advising HMRC in relation to the conditional exemption scheme, providing an insight into the process which will be useful to practitioners.

This issue also contains articles by Martin Campbell on the proposed reforms to the current succession rules in Scotland, and Nicola Wallace on the role of mediation in the art and heritage world. Finally, specialist Tim Schmelcher offers a 'primer' to the market for old master prints.

You may have noticed that Andy Grainger, formerly an Associate Director in the Heritage and Taxation Advisory Service, seems to have disappeared from view. I am happy to say that, although now officially retired, he is still here behind the scenes on a consultancy basis, so we will continue to benefit from his knowledge and experience.

Frances Wilson

Comments and Suggestions
If you would prefer to receive future *Bulletins* by email or in PDF format, or if you have any comments or suggestions regarding the publication, please email: bulletin@christies.com

Christie's
8 King Street, London SW1Y 6QT
Tel: +44 (0) 20 7839 9060
Fax: +44 (0) 20 7839 1611

Ruth Cornett
Christie's Heritage
& Taxation Advisory Service

Heritage News

All change?

The summer of 2016 has witnessed an unprecedented wind of change in the E.U., from the result of the referendum to the appointment of a new prime minister, and many of the old certainties have been swept away. The heritage world has not been immune to this. As part of the cabinet reshuffle, a new secretary of state, Karen Bradley, has been appointed at the Department for Culture, Media and Sport. The long-serving minister for the arts, Ed Vaizey, has also been replaced by Matthew Hancock (although at the time of writing, Tracey Crouch, the minister for heritage, remains in post). It is too early to say for certain how the result of the referendum will affect the art and heritage world, but it would be naïve to think that the art market will not be affected in some measure. The only certainty at the moment is that matters are uncertain. In addition to the political and economic developments, other changes affecting the heritage world are covered below.

Amendments to the Estate Duty legislation

On 16 March George Osborne delivered the 2016 Budget, which included announcements of two major changes to the tax treatment of heritage property. The most significant is the change to the tax treatment of Estate Duty- exempt items on a death. Hitherto, on the death of an owner with Estate Duty-exempt items in their estate, the possibility remained of re-exempting those items under the Inheritance Tax regime. Provided that the works of art concerned met the pre-eminence criteria or were historically associated with a building listed Grade I or II*, they could be conditionally exempted from IHT. In that circumstance, the new IHT exemption replaced the Estate Duty exemption, which was thus washed away. On a future sale, rather than recapturing the old Estate Duty liability, which was often at very high rates, the IHT was payable. This treatment differed from that applying to objects exempted from IHT in successive exemptions, as HMRC reserved the right in those circumstances to choose the applicable recapture rate within the last 30 years.

The change announced in the Budget brings the Estate Duty treatment in line with the IHT treatment, so that if an Estate Duty-exempt object is re-exempted for IHT purposes, the Revenue reserves the right to choose which of the two rates, Estate Duty or IHT, they will seek to recover. The changes only affect estates where the date of death is after 16 March; conditional exemption for estates where the date of death is prior to that remain unaffected. The impact statement released by HMRC said they estimated that approximately 2,000 cases would be involved. But this estimate ignores the fact that with this change Estate Duty could continue indefinitely, and therefore affect many more taxpayers in the future.

The second change announced to Estate Duty objects is the recapture of duty where previously-exempt objects are lost or destroyed. Prior to 16 March, in general terms, HMRC would not enforce the Estate Duty recapture charge where an object could not be found if the exemption had been granted between 1930 and 1950. This is because, under the legislation then in force, the Estate Duty charge could only be recovered on a sale. However, the rules will now allow HMRC to recover the Estate Duty on the loss of an exempt object, unless HMRC is satisfied that the loss is beyond the owner's control. The rules will apply to the loss of any object exempted from Estate Duty in connection with any death after 31 August 1930.

There were two other amendments to the law affecting chattels and heritage. The first is that local authority ownership of heritage items has recently passed in some cases to charitable bodies and thereby ceased to be eligible to receive gifts for national purposes; this has been restored. Finally, HM Treasury has again assumed responsibility for considering and adding to the number of bodies eligible for gifts for national purposes, a responsibility which had been transferred to HMRC in 1985.

V&A named Museum of the Year

In July, The Art Fund named the Victoria and Albert Museum, London, the winner of this year's Museum of the Year Award. The museum's director said that the £100,000 prize would be used to reinstate the V&A's practical commitment to national outreach and support for regional museums, through the circulation of objects from the collection across the U.K. The precise details

have not yet been released, but this is a welcome development in support of art and heritage nationally.

Culture White Paper published

In the last edition of the *Bulletin* I reported that the Department for Culture, Media and Sport intended to publish a White Paper on the arts; this was released in March under the auspices of Ed Vaizey. DCMS had trailed this proposal in the autumn of 2015 and the publication of the new White Paper was designed to coincide with the 50th anniversary of the first Minister for the Arts (Jennie Lee) releasing the first White Paper, then hailed as a milestone in government thinking for the arts.

The 2016 White Paper is set out in four sections: opportunity, community, cultural diplomacy and funding. The overriding message is how to tackle the London-centric engagement with, and support for, the arts and how that experience can be shared across the U.K. Most of the measures discussed are pre-existing initiatives; notably there is no cross-departmental impact and no new funding for the arts. Nevertheless, there are a number of positive messages. The Government now has a strategy for the arts and there are two principal initiatives: the Cultural Citizenship Service and the Great Place Fund. Both are attempts to address inequality: for young people in deprived areas and for geographical areas without cultural infrastructure or strategy. Both are key issues for the sector. There is also an announcement that the Arts Council will be measuring its own performance against outcomes and outputs, though how this is to be implemented is not entirely clear.

The White Paper may, of course, be overtaken by political events. But it does indicate a willingness from central government to recognise how important the arts are to the lives of so many people, especially the young.

Courtauld Gallery to have £50 million revamp

In May the director of the Courtauld Institute announced a major redesign and improvement to the galleries at Somerset House. The Courtauld aims to redisplay the collection of its founder in better-designed galleries, and to engage with the wider public outside London. New outreach initiatives will be implemented in four centres where the Courtauld family textile business had links, namely Norwich, Belfast, Preston and Holywell in Wales. As part of the new approach, and while the gallery is closed for refurbishment, it will lend works of art to other institutions, the first being the Ferens Art Gallery in Hull. The Gallery will also digitise its archive of images of art and architecture, and put this online. The Gallery estimates that there are approximately 1.1 million images which will need to be conserved and catalogued, requiring a huge input of volunteer time and additional funds.

U.K. to implement the Hague Convention: Cultural Property Bill

In June 2015, the Government announced its intention to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Convention sets out measures to protect cultural heritage from the consequences of armed conflict and has been ratified by other states across the globe. The Cultural Property (Armed Conflicts) Bill was introduced in the Queen's Speech and received its First Reading in the House of Lords on 19 May 2016, with the draft of the Bill published online by DCMS on 20 May. The Government's intention, as expressed by Ed Vaizey, is to demonstrate that the U.K. is serious about cultural protection and to be a world leader in this area. The measure is part of a wider commitment by the Government to work with partners globally to protect world heritage, and was designed to partner the UNESCO Convention on the Protection of Underwater Cultural Heritage.

Italian museums seek international directors

In previous articles on the appointment of museum directors, I have reported on new appointees in the U.K. This time it is the Italians who are seeking to replace a large number of museum directors, with an ad appearing in the *Economist* magazine for candidates to lead nine institutions, including the well-known villas at Tivoli and the museum at Herculaneum. This is part of a wider shake-up of the Italian museum system. Twenty museums in Italy officially gained autonomy from central government in 2015 and have since reported a rise in visitor numbers and revenue. More importantly for these institutions, they can now fund-raise independently and are no longer required to return funds to central government for redistribution across the sector. The impact of the funding changes is reflected in a new dynamism in the sector, and willingness to bring in innovations such as IT departments and conservators. Approximately 30% of the European sites on UNESCO's cultural heritage list are in Italy, and such richness comes with responsibility and costs for the state; the possible appointment of new and experienced directors across its many famous museums and improvements to visitor experience can only be welcomed.

Opening of extension to Tate Modern and new research institute at the V&A

Tate Modern's Bankside extension opened in June. The extension, which reportedly cost £260 million, is designed to accommodate not only the increased numbers of visitors wishing to see modern art, but also to allow for a rehang of the art historical collection. Known as the 'Switch House', the extension takes its name from the former power station's gearing equipment, and is linked to the main Tate Modern building by a series of corridors.

Finally, the V&A has been awarded a grant of £1.75 million from the Andrew W. Mellon Foundation to launch a new research institute, intended to make the V&A collections more accessible. The museum will use some of the funding to digitise its collection and to fund new staff positions – welcome support for the museum with its planned development in east London.

Lisa Davies
English Heritage

As Conditional Exemption Casework Manager, Lisa manages the advice given to HMRC on objects historically associated with an outstanding building as part of their Conditional Exemption Tax Incentive.

English Heritage and the Conditional Exemption Tax Incentive

An article in the last issue of *Christie's Bulletin for Professional Advisers* saw Guy Braithwaite explain the newly-defined role of Historic England since its separation from English Heritage in April 2015. In this article we explore the role of English Heritage and in particular the service we provide in relation to the Conditional Exemption Tax Incentive scheme run by HM Revenue and Customs (HMRC). English Heritage now operates as a charity, looking after a national collection of over 400 monuments and buildings which house over half a million artefacts. The transfer of care (but not ownership) of these sites and collections was granted under a licence from Historic England which runs, in the first instance, until 2023. While Historic England retains its statutory work in relation to England's historic environment (listing and planning, grant-giving), English Heritage's key objectives are to develop the properties in our care; inspire people to visit; greatly expand our conservation maintenance programme; and become financially self-sufficient by 2023. As well as prehistoric sites, medieval castles and ruined abbeys, English Heritage looks after historic houses such as Chiswick House, Apsley House and Kenwood in London, and country houses such as Queen Victoria's Osborne on the Isle of Wight and Charles Darwin's Down House in Kent. The historic house collections range from the commonplace to the extraordinary and are managed and cared for by a team of curators and conservators.

Now two separate organisations, Historic England and English Heritage, continue to work closely together to provide advice to HMRC on national heritage property qualifying for tax relief, comprising outstanding buildings, amenity land and historically associated objects (HAOs). Outstanding buildings and amenity land are covered by Historic England. Under a newly established shared services agreement with Historic England, specialist advice on objects historically associated with an outstanding building is provided by English Heritage. In turn, Historic England reports to HMRC. This means that HMRC can call on a single advisory agency for historic environment properties but has the benefit of English Heritage's particular expertise in historic house collections. We provide HMRC with two services specific to historically-associated objects. The first is to advise on claims for conditional exemption; occasions when a conditional exemption agreement must be renewed; and applications to establish a maintenance fund. The second is to provide a monitoring service once objects have been designated. This article will focus on the former.

The purpose of this advisory service is to assess the significance of the property put forward and its eligibility for the tax incentive; to consider the current and proposed arrangements for the maintenance, repair and preservation of the property and the provision of public access; and to make recommendations on those subjects and to recommend any practical measures for monitoring, including the necessary standards for documentation. These recommendations will inform HMRC in the preparation of an undertaking and will form the basis of the agreement between HMRC and the owner. They may, in some circumstances, include the requirement to produce a Collections Management Plan.

The assessment is made by a conservator and a curator. It is based on two components: an analysis of the claim documentation and a site visit. When we receive a request for advice from HMRC, the claim documentation is checked to ensure that it includes sufficient information. An application typically includes the following key elements:

- A full and complete inventory of the proposed HAOs, in sortable digital format

- Floor plans of all the rooms containing HAOs with room names consistent with those used on the inventory

- Access proposals for the frequency and schedule of open days over the year including how many hours per day, the visitor route and method of tour. For objects such as silver or a dinner service, a rotational and/or representative display policy may be set out

- Details of how the owner proposes to publicise the access provisions, whether in a national publication, on the house website or at a local tourist information office

- An explanation, with evidence, of the historical associations for each object. An object should 'make a significant contribution, whether individually or as part of a collection or a scheme of furnishing, to the appreciation of that building or its history. If an object has been in or associated with a building for less than 50 years then it is unlikely to qualify as a historically associated object'. Descriptive text may be backed up by past inventory references, sales catalogues, *Country Life* articles and/or other supporting documentation. Further detail on historical association can be found in Appendix 15 of *Capital Taxation and the National Heritage, 2011* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372334/conditionalexemption.pdf.

This screening stage may involve requests for further details from the owner. For example, we might ask for a family tree highlighting the protagonists connected with the collections and the dates they resided at the outstanding building with which the objects are historically associated. When the claim material is ready, the curator will consider several aspects. They will digest and analyse the historical association material, and consider a reasonable level of public access (28, 60, 100 or 156 days per annum) bearing in mind the interest and significance of the objects proposed. Finally, they will reflect on the range of rooms on the proposed visitor route, again taking into consideration the interest of the objects and their contribution to the appreciation of the house. The conservator, by contrast, carries out most of their assessment during the site visit.

Typically, a site visit will be made by one curator and one conservator and last one working day. Emphasis is placed on communication and transparency so that clarity is given as to what we hope to achieve with a site visit and any concerns can be discussed. Broadly speaking, both the curator's and conservator's days are split into three parts. Both include a walk-through of the proposed visitor route (floor plans in hand) along with any other areas where HAOs may be displayed or stored. Then, while the curator carries out a census of objects against the inventory, the conservator will condition-audit a sample of objects. Finally, they will have a discussion with the owner/agent/housekeeper about how the collection is managed and cared for. This discussion will inform the conservator's risk assessment.

The curator's inventory check will be either 100% or a sample, depending on the number of HAOs. They will assess whether the objects are present and as described in the inventory, and in the location stated. The descriptions (and any accompanying photographs) should be sufficiently well-defined to enable the curator to reliably identify each object and distinguish it from other similar objects, without relying on the owner's knowledge alone. The discussion part of the day provides the curator with an opportunity to ask any remaining questions about the historical association, standards of documentation (inventory and floor plans) and provisions for public access and to discuss any likely recommendations. For example, we may recommend that a rotation policy be codified for sets of objects that can only practically be displayed on a cyclical or rotational basis. The conservator's remit is to assess the condition of the objects and to look at risks which might have an impact, in order to establish whether the collections can be maintained, repaired and preserved as part of the claimant's undertakings. A representative sample of each object type from each room on the visitor route is condition-checked. This audit provides the baseline for future monitoring, and will identify if any items are in such a state of deterioration that they cannot be recommended for the tax incentive without treatment or repair. During the discussion with the claimant, the conservator will ask about how the collection is cared for so that a risk assessment can be completed. For example: 'Is a disaster preparedness plan available? What call-out and emergency procedures are in place?' The aim of the risk assessment is to objectively identify the degree of risk of damage to the objects from the conditions within the property, and from the way the objects are used, displayed or stored. This methodology has been developed by English Heritage for managing collections at our own properties, and adapted to take account of factors present where a building is lived in and the objects are in use.

Historic house collections, whether managed by major charities like English Heritage and the National Trust or by private owners, face a range of challenging risks. Reducing the impact of risks through preventive conservation measures can make a significant impact on the rate of damage.[1] English Heritage has drawn on standard approaches in the sector, in-house research and experience to identify the following six principal risks facing historic house collections: dirt, dust and use, light, humidity, pests, display and storage methods and lack of appropriate disaster planning. The threats these risks pose to collections, particularly those on open display, are complex and differ from site to site.

[1] 'Preventive conservation – all measures and actions aimed at avoiding and minimizing future deterioration or loss. They are carried out within the context or on the surroundings of an item, but more often a group of items, whatever their age and condition. These measures and actions are indirect – they do not interfere with the materials and structures of the items. They do not modify their appearance. Examples of preventive conservation are appropriate measures and actions for registration, storage, handling, packing and transportation, security, environmental management (light, humidity, pollution and pest control), emergency planning, education of staff, public awareness, and legal compliance.' International Council of Museums – Committee for Conservation ICOM-CC – http://www.icom-cc.org/242/about-icom-cc/what-is-conservation

Understanding which risks are significant for a collection is essential if long-term effective solutions are to be established. At English Heritage over the past 10 years, we have moved to a risk assessment approach supported by condition-audits and conservation science research to provide evidence for where we need to target resources to prevent damage. This approach has resulted in collections that are better maintained and preserved, and offers value for money in comparison to the expense of remedial work once damage has occurred.

When assessing risk on a site visit, if we find that a significant risk needs specific action to mitigate, we discuss it with the owner and make a recommendation in the report. For example, where there are no salvage plans, salvage training or a priority snatch list, we may recommend that an Emergency Salvage Plan be created, put in place and reviewed periodically. Should the combined risks be great enough, we are likely to recommend a Collections Management Plan (CMP). A CMP is a working document including an inventory and collections care plan. It guides the long-term care of a collection of artefacts in an historic house, much as a Heritage Management Plan (HMP) does for a building and/or land. Due to the complexities of the subject, we recommend that an accredited preventative conservator with relevant experience with historic houses be commissioned to produce the CMP.

Preventative conservators are professionally accredited by the Institute of Conservation (ICON). Whereas traditionally historic houses were served by large household staff led by a housekeeper and butler, nowadays the landscape is much changed. A preventative conservator understands the pressures put on a collection by relying on smaller house teams, opening to the public, running hospitality events and filming, all while accommodating family life. They are able to address and build on the observations within our report and draw together the various people involved with the operation of the house to highlight the risks relevant to the collection. Pragmatic and cost-effective actions to mitigate the risks can then be identified and prioritised.
For a list of such preventative conservators, go to http://www.conservationregister.com/PIcon-CollectionsCarePlan.asp.

The plan is flexible and should be proportionate to the risks identified and the number and variety of HAOs. However, we do see instances when an owner independently commissions a CMP for all the contents of significance and value, not only the HAOs. Naturally, this is an approach we endorse. For example, Clare Baxter, Collections and Archives Manager for the Duke of Northumberland at both Alnwick Castle and Syon House, recently commissioned a CMP from a preventative conservator. 'Development of the CMP for Syon brought together all the people involved with the care, operation and management of the house and resulted in a very useful tool by which to develop effective action plans for collections care and conservation work'. More details on CMPs can be found in the English Heritage leaflet *Historic House Collections: Drawing Up a Collections Management Plan: Guidance Notes* (EH 51667, 2010) http://www.english-heritage.org.uk/learn/conservation/collections/advice-and-guidance/.

Once a collection has been designated for tax exemption following a successful application, HMRC sets a timetable for Periodic Monitoring Visits (PMVs). An inventory with up to date locations, floor plans with current visitor routes, annual reports, and the CMP (where there is one) are gathered. A conservator and curator carry out a site visit to monitor the management of the HAOs and the provision of public access in line with the undertakings. The format of the site visit is largely similar to that for a new claim. Using the same risk and condition methodology, a review of the state of the collection against the baseline established at the time of designation enables the conservator to measure how far the undertaking to preserve, maintain and repair the objects is being implemented. Likewise, the curator is able to monitor the access undertakings by way of checking objects against the inventory and discussing provisions

Victorian dresses belonging to members of the Fursdon family
© Fursdon

with the owner. Our reports are sent to Historic England who are able to consider the findings alongside those relating to the building before finally being sent on to HMRC.

Ultimately the aim of the tax incentive scheme is to help keep historic collections together, in good condition, in their historic setting. English Heritage is proud to contribute to the scheme and to work with owners, Historic England and HMRC to this end. We hope this article has provided a useful window into the scheme and how a preventative and risk-based approach delivers practical and value-for-money solutions which aid a collection's maintenance, preservation and repair.

Fursdon House, Cadbury, Devon
© Fursdon

Case study

Fursdon House, Cadbury, Devon

Steeped in the tradition of land ownership and farming, the Fursdon family not only provide guided tours of their house, collections and gardens but also offer accommodation and the opportunity to host wedding receptions. English Heritage recently carried out a Periodic Monitoring Visit of the historically associated objects (HAOs) at Fursdon House. The collections reflect the tastes and traditions of the Fursdon family, emphasising the exceptional 750-year continuity of ownership by one family. The HAOs run into the thousands, comprising books, furniture, paintings, drawings, silver, ceramics, glass and a rich and fascinating collection of textiles. The textiles include those worn and used by members of the Fursdon family over the generations, such as military uniforms, lace, patchwork quilts, damask table linen and christening gowns. We found Fursdon House and its collections well cared for, with good collections care practices. The owners use accredited conservators and have a good relationship with a local National Trust property manager upon whom they can call for advice.

At the Periodic Monitoring Visit, we identified evidence of insect pest activity in one of the textile boxes in the form of a 'woolly bear', the larvae of the carpet beetle *Anthrenus verbasci*. Woolly bears, like the clothes moth (of which the owners had also noted an increase), are a major British textile pest. We recommended that insect pest monitoring be set up and the results interpreted and used to create an 'insect pest management plan'. This approach highlights the long-term need for prevention. After all, outward signs of damage are often only noticed once damage is well established, leaving the owner with the significant cost of treatment and conservation. An insect pest management plan will help better target the investment already used at Fursdon House, such as the sweeping of chimneys and rodent and bird control.

Every house and collection is unique. Websites like www.whatseatingyourcollection.com can help an owner create a plan to suit their needs, providing information on where the pests are likely to be, how to set up inexpensive traps and suggestions for IPM (Insect Pest Management) kits. A handy insect identification poster is also available in hard copy or online from English Heritage at http://www.english-heritage.org.uk/learn/conservation/collections/advice-and-guidance/ or Customer Services (customers@english-heritage.org.uk or 0370 333 1181).

Martin Campbell
Anderson Strathern LLP

Martin is the director of tax services at Anderson Strathern Solicitors, specialising in providing tax and succession planning and asset protection advice. A senior associate and qualified chartered tax adviser, he is accredited by the Law Society of Scotland as a specialist in both Private Client Tax Law and Trusts Law.

Succession in Scotland – Future Law Reform

Introduction

In my previous article on 'Succession in Scotland' in the Winter 2013 edition of *Christie's Bulletin for Professional Advisors*, I covered the existing rules governing the distribution of an individual's personal estate when they are either domiciled in Scotland or own heritable property situated in Scotland at the time of their death. I will now focus on the reforms being proposed to the current rules and how they could affect an individual's future testamentary freedom.

Over half a century has passed since the Succession (Scotland) Act 1964 (SSA 1964) set down the statutory default rules to be applied where a Scottish domiciled individual dies without a valid will.
The deceased's surviving spouse and any children currently rely upon the common law to provide them with some form of protection against disinheritance. Our society has undergone a dramatic transformation since the 1960s, both in terms of family life and social values, with divorces, second marriages and extended families all becoming more commonplace as family relationships grow increasingly complex. The question now being asked is whether the current rules of succession are still fit for purpose, or whether reform is required to ensure that the rules meet expectations and produce fair results.

N.B. References in this article to spouses also include registered civil partners under the Civil Partnership Act 2004.

Reform

In 2009 the Scottish Law Commission (SLC) 'Report on Succession' (No. 215) included recommendations which, if adopted, would fundamentally change the Scottish law of succession. The Scottish Government picked up the mantle with the publication of its 'Consultation on the Law of Succession' in June 2015 (2015 Consultation), which covered some of the SLC's more far-reaching recommendations in relation to intestacy, disinheritance and the rights of cohabitants. In addition, the Succession (Scotland) Act 2016 (SSA 2016) was passed in early 2016 and implements some of the more technical and less controversial SLC recommendations. Scotland's succession rules are now well and truly under the spotlight.

Intestate succession

Current law

According to research carried out in the last decade, only 37% of Scots had prepared a will. A substantial number of Scots still die intestate, with the distribution of their estates ultimately governed by the statutory rules set in the SSA 1964. An individual's estate on intestacy is distributed in the following order:

(i) Prior rights

- Once debts have been settled, the surviving spouse has 'prior rights' over:
- The deceased's interest in the family home up to a value of £473,000.
- Furniture and plenishings up to a value of £29,000.
- A financial provision of £50,000 where there are surviving children, increasing to £89,000 if there are no issue.

(ii) Legal rights

- Once any prior rights have been satisfied, both the surviving spouse and any children (legitimate, illegitimate and/or formally adopted) whom failing other issue are entitled to claim 'legal rights' from the remainder of the deceased's net moveable property.
- The surviving spouse has a legal right to one-third of the deceased's net moveable estate if there are surviving issue. This will increase to one-half if there are no issue. The deceased's children also have

a legal right to claim amongst them one-third of the deceased's net moveable assets; this share will increase to one-half if there is no surviving spouse.

(iii) Free estate

- The remainder of the estate is then distributed amongst the deceased's relatives in accordance with a hierarchical system set down in SSA 1964. It will come as an unwelcome surprise to many surviving spouses that they currently rank not just behind their children, but also their spouse's parents and siblings.

Recommendation

The SLC's headline-grabbing recommendation was for the distinction between moveable estate (cash, investments and chattels) and heritable estate (land and property interests) to be abolished. This would bring Scotland more in line with the rules applied in England and Wales.

Scotland is almost unique in restricting legal rights claims to an individual's moveable estate. This may be traced back to a time when, under Scots law, the eldest son would inherit all of the heritable property. The law of primogeniture was abolished by SSA 1964, but the distinction for legal rights remains. Many see the distinction as an unhelpful anachronism, which can produce inequitable and arbitrary results in practice. A common example given to support this claim is a case in which land is held in a family company or partnership. The value of the land reflected in the individual's shareholding or partnership interest would be treated as moveable property for the purposes of legal rights (unless, in the case of partnerships, there is a declaration that the land remains heritable for legal rights), but the value of the very same piece of land would not be taken into account if it was simply held in personal ownership. The succession rules for Scottish domiciled individuals therefore enable land and property to be passed by will without challenge.

The SLC's recommendations reproduced in the Scottish Government's 2015 Consultation aim to both simplify the current rules and produce a more equitable distribution on intestacy:

- The surviving spouse would inherit the whole of the net estate (moveable and heritable) if the deceased dies intestate leaving no issue, with a similar provision for children who are not survived by any parents.
- Where there is both a surviving spouse and issue, the surviving spouse would receive a threshold sum (set at £300,000 for the purposes of the consultation) with any remaining balance divided evenly between the surviving spouse and issue. The threshold sum would be subject to an annual review.
- The threshold sum payable to the surviving spouse would be reduced by the value of any interest in the family home passing automatically to the surviving spouse under a survivorship destination in the property title.

The SLC's recommendations have raised serious concerns amongst landowners and their representative bodies, who foresee a time when heritable property interests held in the family for generations with high capital values but generating relatively low levels of income are unable to support multiple owners. In the worst case scenario this could lead to estates ultimately being broken into smaller units and potentially sold to enable claims to be settled. The case for a specific exclusion from future claims for farming and landed estate businesses has so far been rejected on the basis that these forms of property interests already potentially benefit from tax relief (e.g. agricultural property relief and business property relief from inheritance tax) and subsidies, together with rates and planning exemptions. The SLC felt that families would be able to consider undertaking lifetime planning to manage or even remove the potential impact of heritable property being included in future claims (please see next section). It would be hoped that SLC's recommendation for claims in certain circumstances to be settled in instalments would be incorporated in any changes to the law to help provide some degree of protection for estates which might be vulnerable to claims.

Testate succession

Current law

A Scottish domiciled individual does not currently enjoy absolute testamentary freedom, with Scots law providing a degree of protection to surviving spouses and children in the form of an automatic entitlement to legal rights (see previous section). A legal rights claim will override the terms of the will, but it is not possible to benefit twice. A surviving spouse and/or children will therefore have to decide whether to make a claim.

Until recently, unlike in England and Wales, the terms of a Scottish will were not revoked by separation, divorce or even a subsequent marriage. This historical anomaly has at least now been addressed in the SSA 2016, which changes the law so that any will or codicil that makes provision for a spouse will be treated as revoked when the relationship comes to an end, unless expressly stated otherwise. The appointment of the former spouse as a trustee, executor or guardian will also fall on divorce, subject to an express provision to the contrary. Finally, survivorship destinations in property titles in favour of former spouses will also now be automatically revoked on divorce. The SSA 2016 was given Royal Assent at the start of March 2016, but these provisions will only come into force for deaths on or after 1 November 2016.

Recommendation

The SLC felt that the current system of legal rights is flawed in that it is the nature of an individual's estate, rather than its value, which determines the level of the claim. An individual could in theory convert moveable assets into heritable property during his lifetime in order to manage or even eliminate claims.

The SLC recommended that a surviving spouse disinherited under a will should be entitled to a 'legal share' amounting to 25% of what they would have inherited (both moveable and heritable) if the deceased had

died intestate. In addition, the SLC asked the Scottish Government to consider the following alternative approaches when making provision for disinherited children:

(i) The children would be entitled to a 25% legal share of what they would have received on intestacy. Children would therefore only be in a position to make a claim if the value of their parent's estate on the first death was in excess of the threshold sum of, say, £300,000; or

(ii) Dependent children (until 18 or 25 if in education or training) would be entitled to a capital sum based on what is required to provide them with reasonable financial support.

It is envisaged that the level of 'reasonable financial support' for a dependent child under the latter option would be determined in a similar manner to aliment (maintenance), with the family's lifestyle and position together with the child's needs and resources all being taken into account. It would not be possible for the capital sum to be paid out of any part of the estate inherited by a person who owes the child an obligation of aliment. It would therefore be very rare in practice for a claim to be made on the basis that in the vast majority of cases the children will either be owed an obligation of aliment by the main beneficiary of the estate (e.g. surviving parent) or will no longer be treated as dependent.

Cohabitants

Current law

Cohabitants currently have no entitlement to any part of each other's estates on death if there are valid wills in place. On an intestate succession, however, the cohabitant may make an application to the Sheriff court within six months of their partner's death for the grant of financial provision (s 29 Family Law (Scotland) Act 2006). The Scottish position therefore compares unfavourably to England and Wales, where a cohabitant may make a claim whether or not their cohabiting partner left a will.

Recommendation

It has been recommended that protection for cohabitants be extended to both testate and intestate succession, with the court being given the discretion to award the cohabitant a fixed percentage of the estate. This would be a two step process, with the court first determining if the person making a claim was a cohabitant before fixing an 'appropriate percentage' based upon a number of factors, including the length of cohabitation, nature of the cohabitants' interdependence, current financial arrangements and the contribution made by the surviving cohabitant. There would be an upper 'appropriate percentage' limit equal to the maximum entitlement that a surviving spouse could claim.

This approach would be similar to the rules of succession for England and Wales, where certain family members or other dependents of the deceased may make a claim through the courts under the Inheritance (Provision for Family and Dependents) Act 1975 to benefit from the estate on both intestate and testate succession. The ability of cohabitants to go to court to make a claim would inevitably lead to additional time and costs arising on the administration of estates.

Will and lifetime planning

Scottish domiciled individuals and individuals holding heritable property in Scotland should at the very least ensure that they have a valid, updated will in place that reflects their current personal circumstances, assets and wishes for the distribution of their estate. This should hopefully minimise the impact of any claim under the existing or any new succession rules. The terms of an outdated will can sometimes be even more problematic in practice than a potential legal rights claim.

The ability of the estate to bear the cost of meeting claims by disinherited family members will depend upon the nature of the assets in the individual's estate, their liquidity and whether the main beneficiaries of the estate are able to borrow against the assets. It may well be the case where an individual's estate is asset rich (i.e. land and chattels) but cash poor (i.e. low income yields and liquidity) that valuable family assets may ultimately have to be sold to pay legal shares. It may be possible for individuals to take out insurance to cover all or part of the value of any claim. The viability of this in practice will very much depend upon the age, health and gender of the insured persons.

If the SLC's recommendations to abolish the distinction between heritable and moveable property became law, it would no longer be possible for an individual to effectively disinherit family members under the terms of the will by converting moveable property into heritable property. Individuals could still, however, consider the lifetime gifting of both moveable and heritable assets to individual family members or family trusts to defeat future claims. The tax, financial and practical implications of any lifetime gift would need to be established. It is important that any lifetime planning does not come at the cost of jeopardising future financial security.

It is currently possible for a family member, having taken independent legal advice, to formally discharge their future legal rights. The opportunity for a family member to renounce their interests is covered in the 2015 Consultation. Hopefully this option will remain available both during lifetime and following death under any new succession regime.

Conclusion

Reform of the Scots law of succession now seems inevitable, with the focus now being how and when. The Scottish Government appear to favour the future extension of legal rights claims to both moveable and heritable property. The timing of any further change will depend on where the Scottish Government currently see it ranking on their programme of wider law reform.

Individuals must not rush into any lifetime planning designed to defeat the proposed reforms without first establishing all the potential financial, tax and practical implications. Proactively updating wills and communicating your wishes for the devolution of your estate should hopefully minimise the risk of future claims and bring peace of mind.

Tim Schmelcher
Christie's Prints Department

Tim Schmelcher joined Christie's in 2004 and specialises in Old Master and German Expressionist prints. In his capacity as International Specialist for Old Master Prints, Tim has helped Christie's achieve many record prices for works by Dürer, Rembrandt, Goya and many other printmakers of the 15th to the 19th centuries. Tim studied in France, Canada and Germany and holds an M.A. in Art History and American Studies from Frankfurt University.

The Importance of Being Early: An Old Master Prints Primer

Albrecht Dürer's engraving *Adam and Eve* is one of the best-known images in the history of art, surpassed in fame by only a handful of works. In July 2011, Christie's Prints Department in London – the department in which I have been working for over 13 years – sold an impression of *Adam and Eve* (fig. 1) for £409,000. At the time, this was the highest price ever paid at auction for an engraving by the great German Renaissance painter, draftsman and printmaker. Three years later, in December 2014, another example was offered by the same department (fig. 2). It was sold for £23,000. Why was one almost 20 times more expensive than the other?

Such vastly contrasting auction results make old master prints a particularly perplexing field of the art market and leave the heirs of collections, their tax and financial advisors – and even art professionals unfamiliar with the subject – puzzled as to how to judge their importance and value. A thorough look at an online art price database might give you a fairly good idea as to whether your lithograph by Picasso or screenprint by Warhol could be worth £10,000 or £100,000. But it will not tell you whether the Dürer engraving or Rembrandt etching you have inherited is worth a small fortune – or not much at all.

So what is it that determines the value of old master prints and why do auction results vary so drastically? In order to answer this question, we will have to establish what we mean when we talk of 'old master prints': what they are, and when and how they were made.

The term refers to any printed image, irrespective of the actual printing technique employed, created during a period of over 600 years, from the beginning of printmaking in Europe to the end of the 18th century or early 19th century. The works of the great graphic visionary Francisco de Goya (1746–1828), who has been described as 'the last old master

fig. 1
ALBRECHT DÜRER (1471–1528)
Adam and Eve, 1504
Sold for: £409,000
Christie's, London, 7 July 2011

fig. 2
ALBRECHT DÜRER (1471–1528)
Adam and Eve, 1504
Sold for: £23,000
Christie's, London, 3 December 2014

and the first modern artist', may serve as a useful if somewhat arbitrary end point.

The earliest printed images in Europe were created in the late 14th century. By this time, China was already looking back at a thousand-year-old printmaking tradition – but this should not concern us here. In the West, the idea of creating images by printing rather than painting or drawing emerged probably out of the production of textiles and the practice of stamping pieces of fabric with repeat patterns. An abstract, floral or perhaps even simple figurative ornament would be carved into a wooden block. By pressing the inked or painted block onto a textile while the pigments were still moist, very much like a rubber stamp, the design would be transferred onto it. From this method it was only a small step to cutting a stand-alone image into the block, which could then be printed onto a cloth, onto vellum or, with the establishment of the first paper mills in Europe around this time, onto paper. Of these earliest prints created by anonymous craftsmen, only very few examples have survived. Most appear to have been images for private devotion, such as the Man of Sorrows, the Virgin or a Saint, depicted in relatively simple outlines and meant to be hand-coloured. A good although slightly later example is the *Pietà* from mid-15th-century Germany, which was sold at Christie's in 2001 (fig. 3). It is still a matter of research and academic debate whether the very first woodcuts in Europe were made in Italy or north of the Alps.

Some decades later, another printmaking technique emerged slowly and quite independently: engraving. This happened, possibly simultaneously, in central Italy and around the Upper Rhine, in present-day Alsace, southwest Germany and Switzerland, in the workshops of gold- and silversmiths. It is no coincidence that Martin Schongauer (c. 1448–1491), the very first Northern engraver known to us by name, came from precisely this area, in Colmar, and was born into a family of goldsmiths. Albrecht Dürer, the towering figure of the next generation, was also the son of a goldsmith. Perhaps in order to keep a record of the engraved decorations on their metalworks (such as boxes, plates or armour), the surfaces of these objects could be rubbed with ink and, by pressing a piece of paper against it, an impression of the incised ornaments could be obtained. This

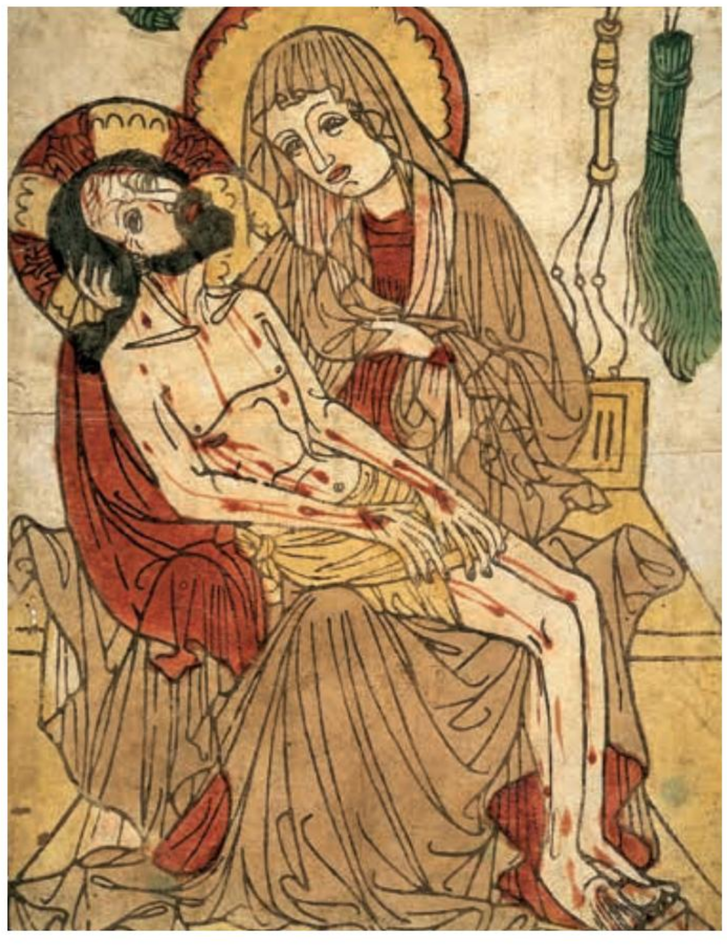

fig. 3
ANONYMOUS, 15TH CENTURY (GERMAN SCHOOL)
The Pietà, c. 1450
Sold for: £223,000
Christie's, London, 3 July 2001

fig. 4
THE MASTER OF THE PLAYING CARDS (C. 1435–1455)
The Queen of Flowers B, c. 1435–40
Sold for: £243,000
Christie's, London, 20 September 2006

could be shown to potential customers as a demonstration of one's skill or for training and inspiration to apprentices. It took only a change of perspective to realise that metal plates could be engraved specifically for the creation of images, and that multiple impressions of these images could be printed.

Most of the earliest engravings were quite small. Often hand-coloured, they were pasted into books, thus serving as cheap substitutes for book illuminations. Another practical application of this new technique was the printing of playing cards (in fact, the very first recognisable, although anonymous, artist of this new medium is known as the 'Master of the Playing Cards'). A wonderfully elegant example, the so-called *Queen of Flowers B*, known only from this one impression, was sold at Christie's in London in 2006 (fig. 4).

Such survivors of the early days of printmaking as the large *Pietà* and the small *Queen of Flowers* (figs. 3 & 4) are so scarce as to be almost irrelevant for the wider print market, despite their very substantial value. They illustrate, however, what early woodcuts and engravings look like and, for our purposes, may serve to illustrate the fundamental difference between the two techniques. Woodcuts are relief prints, meaning that the lines and surfaces standing proud on the printing block constitute the image, while all the blank areas have to be carved down. For engravings, the opposite is true: they are *intaglio* prints, which means that the image is created by grooves cut into the metal plate, while the surface remains blank. (Etchings, aquatints and dry-points all belong to the latter category. Etchings and aquatints are made by using acid to bite the recesses into the plate, while for drypoints, the lines are scratched directly into the plate.)

In the early days, the woodblock or engraved plate would simply be pressed onto or rubbed against the paper by hand, processes which were quite quickly replaced by the use of printing presses. With improved technology and increased demand, not just dozens but hundreds of impressions could be printed. Often, especially in the case of famous printmakers such as Dürer and Rembrandt, the blocks or plates continued to be printed long after the artist's demise, sometimes well into the 19th or even 20th century. It is the durability of the printing 'matrix' (the block or plate), which raises a fundamental question every collector or print specialist tries to answer when looking at a print: When was it printed? This question, above all, determines the value of an old master print.

This is not a question of snobbery or authenticity – the sense that a sheet was handled by the artist and printed in his workshop – but a matter of quality and aesthetic pleasure. The pressure in the press is enormous, and with each run through the press, the printing block or plate 'wears'. Little by little, the fine ridges of a woodblock are flattened or break, the block may even crack; later impressions of woodcuts show gaps, the lines become broader, the image coarse and uneven. The engraved lines in a metal plate lose their depth and sharpness; later impressions of engravings become grey and weak as the grooves hold less ink and the finest lines begin to disappear. While fine early impressions of both techniques give the beholder a sense of depth and atmosphere, very late impressions appear one-dimensional and lifeless.

How many good impressions of any one print could be pulled? There is no clear answer to this, and it very much depended on the quality and depth of the cutting or engraving. Lucas van Leyden (1494–1533), Dürer's great Netherlandish contemporary, engraved very lightly; fine, strong impressions of his prints are hence very rare. Dürer himself, on the other hand, in 1523 engraved a portrait of Cardinal Albrecht of Brandenburg and supplied the sitter with 500 impressions, as we know from a letter from the artist to the cardinal. This provides some evidence as to the possible size of a print run at the time. Dürer may have printed even more impressions of this portrait – the idea of a limited edition only arose in the second half of the 19th century.

As the time of printing is so important for the value of a print, how is this determined? First and foremost it is a question of quality: of how strong, clear and rich the image appears. A comparison of the two impressions of *Adam and Eve* (figs. 1 & 2) is instructive in this respect. Printing quality, however, is a matter of judgment and experience, and therefore subjective. In many instances, however, there is hard evidence concerning the chronology of printing, as prints often exist in different 'states'. For example, when Rembrandt first created the portrait etching of *Jan Lutma, Goldsmith* in 1656, he left the background mostly blank and printed a few impressions of it. Shortly thereafter, he decided to add a window to the background of the plate, and printed some additional impressions. The illustrations show a very rare impression of the first state, without the window (fig. 5), and a fine impression of the slightly more frequent second state, with the window (fig. 6). *Catalogues raisonnés* of many of the most important printmakers describe such 'states', i.e. deliberate or sometimes accidental changes (such as scratches or cracks) to the printing plates or blocks, which help to distinguish early from later or very late impressions.

Another factor to consider is the paper. Much research has been done to determine the types of papers used by different printmakers over the course of their career. From early on, paper mills have marked their papers with watermarks. It is well documented, for example, that until about 1520 Dürer frequently used paper with a watermark in the shape of a Bull's Head, and that early impressions of certain prints etched by Rembrandt during the 1640s appear on paper with a Fool's Cap watermark. Impressions printed decades or even centuries later would be printed on different papers with other watermarks. Unfortunately, the image may have been printed on part of a sheet that does not have a watermark, in which case we have to rely on the paper structure alone to determine its approximate date of production. Generally speaking, the finer the 'grid' of the paper, the earlier it is.

Of course, besides the time of printing and quality of impression, other factors must be considered when valuing old master prints: the state of conservation; the rarity, importance and desirability of the subject; knowledge of who was active in the market at that moment; general changes of taste; and provenance. Since the 17th century, print collectors and dealers tended to mark their holdings with inscriptions and little stamps, usually on the reverse of the sheets. Some historical collections are famous among the cognoscenti for their quality and size. To be able to trace a print back to one or perhaps several of such celebrated collections 'ennobles' the print and raises its value, giving the owner or potential buyer the confidence that it is indeed a fine and important example.

Assessing old master prints, as I have tried to explain in some detail, is a highly complex matter. As with finest wines, the differences in quality can be so subtle as to be indiscernible to the untrained eye (or palate), yet make an exponential difference in price.

The current market is also changing: while the big names like Albrecht Dürer and Rembrandt van Rijn still dominate the market with the number of prints offered and prices achieved, fine, early impressions of their prints have become quite scarce. At the same time, shifts in taste mean that unusual, quirky and dramatic images by lesser-known printmakers have become increasingly sought after. As an example, in our Old Master Prints sale on 3 December 2014, *The Great Executioner with the head of Saint John the Baptist* by Prince Rupert of the Rhine (fig. 7) climbed from a rather speculative estimate of £100,000–150,000, with the hammer finally falling at £270,000.

Prints, and in particular old master prints, inhabit a niche of the art market and can easily be overlooked as part of a larger collection or estate. They can, however, represent substantial value and should be inspected by an experienced specialist in this field (of which there are few), in order to obtain a fair and realistic valuation. What happens in the saleroom is yet another matter.

fig. 5
REMBRANDT HARMENSZ VAN RIJN (1606–1669)
Jan Lutma, Goldsmith, 1656
Sold for: £122,000
Christie's, London, 19 March 2014

fig. 6
REMBRANDT HARMENSZ VAN RIJN (1606–1669)
Jan Lutma, Goldsmith, 1656
Sold for: £30,000
Christie's, London, 5 July 2016

fig. 7
PRINCE RUPERT OF THE RHINE (1619–1682)
The Great Executioner with the head of Saint John the Baptist, 1658
Sold for: £326,000
Christie's, London, 3 December 2014

Mediation:
Meeting the Needs of the Arts and Heritage Sectors

Nicola Wallace
Barrister
Founder of Art ADR Global
Member of Art Resolve

Nicola is a fully accredited civil and commercial mediator for the Royal Institute of Chartered Surveyors (RICS), and a commercial mediator, panel member and mediation trainer for ADR Group, London. Nicola was awarded distinction in her MSc in Art, Law & Business (Christie's Education, accredited by the University of Glasgow) and holds a certificate for Advanced Mediation from Harvard Law School.

When the latest CEDR report confirms that approximately 86% of mediated disputes are resolved within a day, or shortly afterwards, and that mediations account for £10.5 billion worth of commercial claims, why is it that mediation is still considered by some to be a soft option that weakens a litigation strategy?[1]

Rather, there may be force in the argument that it is the litigation process that has weaknesses. After all, litigation limits a tribunal to assessing the cogency of disputed facts and weighing those facts against statutory criteria and legal principle. That tribunal then makes findings, based upon the balance of probabilities. In percentage terms, a tribunal need only be persuaded 51% of a position. This leaves room for some issues, which might be important to the parties, to be rendered unnecessary or irrelevant for the satisfactory delivery of the judgment process.

The cry goes up, of course, that tribunals are careful to only make findings based on cogent evidence. Therein lies a further potential weakness. The evidence before a tribunal is dependent on the diligence and skill of the presenting party or legal team. The effect of evidence presented badly or omitted at trial can rarely be satisfactorily rectified. It is not suggested for one moment that it is not essential to have an independent unbiased decision-making process to decide disputed matters, but the limitations are clear. Whilst a trial brings conclusion to a matter, the judgment is imposed upon the parties and is often an outcome that pleases neither entirely. Self-determination and responsibility for decision-making are abandoned by each party at the critical point. In addition, whilst positions are stated clearly, interests and needs are often both unexpressed and unacknowledged. Consequently, the underlying drivers fuelling a dispute subsist post-judgment. In family matters this can be disastrous in terms of relationships going forward. In commercial matters it is less than ideal.

The statutory position

From 1998 the clear mandate from the civil courts in England and Wales has been that litigation should be avoided all costs.[2] Alternative Dispute Resolution (ADR) was recommended as a preliminary step.[3] Lord Justice Jackson ran on with the judicial baton in 2010 when charged with reforms aimed at reducing litigation costs.[4] The current Civil Procedure Rules 1998 (as amended) (CPR) require consideration of ADR as a primary step from the first assertion of a claim.[5] The Pre-action Protocol defines this as:

(a) mediation: a third party facilitating a resolution;
(b) arbitration: a third party deciding the dispute;
(c) early neutral evaluation: a third party giving an informed opinion on the dispute; and
(d) Ombudsmen schemes.[6]

The overriding message is clear: parties should continue to consider the possibility of settlement *at all times* [emphasis added].[7] The court expects compliance with the rules. Parties are likely to be asked to demonstrate the steps of compliance taken, and if none, an explanation is likely to be sought.[8] These provisions are reinforced by cost sanctions for non-compliance. A specifically stated example of non-compliance is a failure to unreasonably refuse ADR.

Interpretation of the rules to consider ADR

The case of *Halsey v Milton Keynes General NHS Trust* is authority that a court cannot force parties to mediate.[9] However, Lord Justice Dyson set out non-exhaustive criteria for the consideration of costs sanctions for a party so refusing:

1 The Seventh Mediation Audit – CEDR, May 2016.
2 Lord Woolf, *Access to Justice Interim Report & Final Report*, 1995 & 1996.
3 Pre-Action Conduct and Protocols, para 8.
4 LJ Jackson, *Review of Civil Litigation Costs: Final Report,* 2010.
5 Pre-Action Conduct and Protocols, paras 3 (d) and 8.
6 Ibid, para 10.
7 Ibid, para 9.
8 Ibid, para 11.
9 [2004] EWCA Civ 576, at para 16.

(a) the nature of the dispute;
(b) the merits of the case;
(c) the extent to which other settlement methods have been attempted;
(d) whether the costs of the ADR would be disproportionately high;
(e) whether any delay in setting up and attending the ADR would have been prejudicial; and
(f) whether the ADR had a reasonable prospect of success.

Later decisions support this approach. Silence in the face of an invitation is as a general rule unreasonable.[10] Similarly, an outright refusal to attend ADR based upon confidence of a watertight case and an open disparaging of the threat of cost penalties may result in cost sanctions.[11] In February 2015, the Metropolitan Police was criticized for the failure to attend mediation, and cost penalties ensued.[12] In October 2015, it was Buckingham Healthcare NHS Trust in the frame, and a month later, the Princess Alexandra Hospital NHS Trust was penalized for refusing to mediate.[13] [14] Almost simultaneously, across the water, the Irish Court of Appeal acknowledged the important role of mediation: 'Whilst it is not a panacea, it has proven to be very beneficial and it has succeeded in bringing about settlements of seemingly intractable disputes. Experience teaches that even if the mediation itself is unsuccessful, it frequently succeeds in dealing with some of the issues in dispute or creates a climate for continuing negotiation'.[15] The start of 2016 saw Sir Henry Brook, former Vice President of the Court of Appeal, Civil Division calling upon government lawyers to mediate, even if they may risk losing business.[16]

[10] *PGF II SA v OMFS Co 1 Ltd* [2013] Civ 1288, at para 34.

[11] *Garritt-Critchley v Ronnan, Solarpower PV Ltd* [2014] EWHC 1774 (Ch), at para 17.

[12] *Laporte & Christian v Commissioner of the Police of the Metropolis* [2015] EWHC 371.

[13] *Reid v Buckinghamshire Healthcare NHS Trust* [2015] EWHC 821.

[14] *Bristol v The Princess Alexander Hospital NHS Trust* HQ12X02176.

[15] *Ryan v Walls Construction Ltd* [2015] IECA 214, at para 53.

[16] N. Hilborne, 'Brooke: government lawyers must take part in mediation even if it means "losing business"', www.litigationfutures.com (12 January 2016). http://www.litigationfutures.com/news/brooke-government-lawyers-must-take-part-mediation-even-means-losing-business.

[17] F. Glasl, 'The process of conflict escalation and roles of third parties,' in *Conflict management and industrial relations*, eds. G. B. J. Bomers and R. B. Peterson (The Hague: Kluwer Nijhoff Publishing, 1982), pp. 119–140. Further analysis by Thomas Jordan at www.mediate.com/articles/ jordan.cfm.

[18] D. Carvajal and G. Bowley, 'The Billionaire, the Picassos and a $30 Million Gift to Shame a Middleman', www.newyorktimes.com (24 September 2015).

[19] Theurich, *Alternative Dispute Resolution in Art & Cultural Heritage – Explored in the Context of the World Intellectual Property Organisation's work*, Schriften von Kunst- und Kulturrecht, 2010 Vol 8, 569 at p. 574/575.

[20] Source: ArThemis: plone.unige.ch/art-adr.

[21] See: plone.unige.ch/art-adr/cases-affaires/17-tasmanian-human-remains-2013-tasmanian-aboriginal-centre-and-natural-history-museum-london.

Why mediation works

A commercial mediation has a set structure, with a certain degree of flexibility. There will usually be an initial short joint meeting where both parties may set out their positions. The mediator then meets with the parties in separate sessions. All communications in those separate sessions will be entirely confidential. It is in these sessions that there is room to explore all the non-legal issues that have arisen. The mediator may convene further joint sessions if it is felt that to do so would help move matters forward.

Whilst most disputes present as primarily breaches of contract, breaches of duties of care, money owed, a promise not kept etc., the expressed positions of the parties often conceal underlying issues that 'drive' the dispute. Glasl's insightful analysis of conflict escalation highlights how the failure of 'benign' attempts to resolve issues drives disputes forward.[17] Parties move from discussion to unilateral action and then to a variety of self-serving declarations and posturing, designed to 'cower' the other party into 'submission'. These actions serve only to provoke defensive responses and to cement positions. Polarisation intensifies the impetus to have demands met; positions entrench, perpetuating the perceived need for escalation of threat. It is this underlying dynamic in a dispute which court procedures cannot and, given the remit, arguably should not, address. Mediation, however, allows such interests and needs to be stated, considered and discussed. This often has value in terms of moving the parties forward, even if dismissed by the other party. The better the understanding of the drivers behind a dispute, the greater the opportunity for a sweeping compass of points for consideration and possible agreement.

Other important elements of the mediation process

Keeping control

Parties jointly select their Mediator. They also elect the time and venue and are free to convene as many mediation sessions as they feel appropriate. There is no such opportunity to elect a judge or guarantee court time. Further, and arguably most importantly, the parties control the outcome of the mediation. The mediator remains neutral and controls only the process, with a focus on assisting the parties toward resolution and not perpetuating the dispute. An outcome is never imposed.

Binding and enforceable agreement

The mediation process remains entirely non-binding until the point of agreement.

Upon reaching that point, the signing of the agreement makes the terms both binding and enforceable. This means parties are free to negotiate in the widest of terms. The possibility of an enforceable agreement permanently on the skyline both strengthens and gives impetus to the process.

Confidentiality and without prejudice

A key and fundamental feature of the mediation process is confidentiality – not just in relation to the outside world but, most importantly, between the parties themselves as each session with the Mediator is entirely private. With that understanding and reassurance, parties can speak freely on any subject. The parties decide what information may be passed to the other party. Equally importantly, that party can control when and how the information is conveyed. This is often information not hitherto known or discernible from the papers or discussions to date. Contrast this with the CPR, where disclosure is prescribed and any material a court deems irrelevant may be ordered to be removed from the court file.

All offers, concessions and general discussion during mediation are inadmissible in later proceedings. This again permits freedom of discussion and negotiation. An argument often advanced is that parties compromise any future litigation by 'showing their hand' in mediation, if matters do not settle. This assertion fails to recognise the fact that what is disclosed/conceded during mediation remains in each party's gift. Accordingly, it is rare for either party to expose itself in a way that would damage its position going forward. In addition, if legal teams are on board, each generally has a shrewd idea of what a court may order and they communicate their respective positions in the light of this knowledge. Parties are well aware that many points made to advance a position have merit for both sides.

For most parties, and indeed in the Art, Antique and Heritage sectors, the need to keep all matters private is a paramount concern. Equally for museums – particularly those benefitting from state funds – the confidentiality of proceedings protects them from public judgment of any dispute. Most galleries and auction houses are anxious for disputes to remain confidential and wish to retain business relationships going forward. Saving face is everything. It is no coincidence, therefore, that all the major auction houses require contracting parties (worldwide) to agree to attend mediation in the event that any dispute cannot be resolved in-house within a specified time limit.

Flexibility and creativity in settlement terms

Whilst the above elements support dispute resolution in any context, the flexibility of the mediation process comes into its own in respect of disputed matters of art and heritage. For art dealers and their collectors, relationships are built very largely upon trust. If this trust is lost, the ensuing argument, whilst masquerading as primarily a dispute over a contract, is highly charged and often driven by feelings of betrayal. The recent high profile case of Yves Bouvier illustrates.[18]

In assessing the use of mediation for art and heritage, Theurich reiterates the importance of flexibility: 'Art and cultural heritage disputes are often cross-border and cross-regional involving parties from different cultural and linguistic backgrounds. Hence access to a neutral platform that all the involved parties can trust seems crucial.' [19]

A striking example highlighting the flexibility of the mediation process is that involving the Cantons of Zurich and Saint Gall.[20] During the religious wars of 1712 a number of manuscripts and a globe that had previously belonged to the Abbey Library of Saint Gall were transferred to Zurich. In 2006, after seven years of unsuccessful negotiation (both parties asserting legal title) the parties invited the Swiss Confederation to act as mediator. It was only in the mediation process that the parties set aside their legal positions and focused on interests. The agreement reached was innovative:

i) Saint Gall acknowledged the property rights of Zurich and Zurich acknowledged the importance of the objects to Saint Gall;
ii) Long-term loans of manuscripts and short-term loans of the globe were agreed;
iii) Zurich paid for a replica globe to be given to Saint Gall; and
iv) the agreement term was 38 years with express prohibition against modification or termination. At that time any such change has to be jointly requested by the highest official of each party.

The return of Tasmanian human remains by the National History Museum (NHM) in London in 2007 came about finally after years of dispute, following a mediated settlement.[21] Since the 1980s the Tasmanian Aboriginal Centre (TAC) had been requesting the return of the human remains of 17 Tasmanian Aboriginals. NHM would initially only agree to their return once they had had the opportunity to undertake some invasive tests and analysis. NHM wanted to use the remains for what they believed to be invaluable and unique scientific research; TAC vehemently opposed such tests on the basis that they would violate customary rights and sought urgent injunctive relief at court to prevent this from happening. Contested injunction proceedings followed. Finally, following three days of mediation, there was agreement that the remains be returned to TAC once NHM had had the opportunity to undertake agreed non-invasive analysis. This case led to the establishment of the Ministerial Working Group on Human Remains, an amendment of the Human Tissue Act 2004 permitting the voluntary return of human remains in U.K. museums and the establishment of 'Guidance for the Care of Human Remains in Museums' (2005). Such delicate and sensitive cultural matters could not be fully addressed by the blunt instrument of statutory rights.

In straightforward commercial disputes, the mediation process can produce creative and bespoke results that would not fall within a court's powers. For example, when faced with a dispute, a framer may offer additional framing at no cost to settle a matter, a

gallery owner may agree to a solo exhibition for an unhappy artist who is threatening to leave/sue, or an auction house may waive or lower consignment fees to appease a party unhappy with their service. A gallery may offer a companion piece to a disgruntled collector. In addition, the power of a sincere apology offered in mediation cannot be underestimated. These are all very sensible options which resolve issues and avoid the costs, risks and emotional stresses of litigation. This flexibility of thinking and approach can only be secured outside the courtroom. Creative thinking during mediation often also brings the opportunity to try to repair relations. Both parties are fully involved in and have responsibility for reaching the agreement. The more involved the parties, the more likely they are to support the outcome.[22] Until the parties meet to mediate, however, there is much finger-pointing, insistence on statutory rights and clinging to positions.

In respect of taxation matters arising for the Art and Heritage sectors, here too there is focus on resolving disputes via mediation or other forms of ADR. This is set out in HMRC's Litigation and Settlement Strategy and Guidance: 'Alternative Dispute Resolution (ADR), *and more specifically mediation*, is a flexible dispute resolution tool available to HMRC which – in appropriate cases– can help HMRC and its customers resolve disputes (or reach key decision points) in a cost effective and efficient manner [emphasis added].' [23]

Conclusion

Increasingly, organisations, be they governments, international corporations, galleries, museums, heritage sector entities, small businesses or private individuals, are waking up to the value of mediation as an intelligent way of trying to settle disputes. There is widespread recognition that the complex nuances of many disputes are not best addressed by the blunt instruments available to the justice system. The exploration of settlement options made possible by the sophisticated and discreet mediation process is producing pragmatic and innovative solutions. Relationships are often maintained and there are significant savings in time and money. To use a colloquialism – what's not to like?

[22] R. Fisher and W. Ury, *Getting to Yes: Negotiating an agreement without giving in*, London 2012.

[23] www.gov.uk/government/publications/litigation-and-settlement-strategy-lss

Kate Selway
Radcliffe Chambers

Kate Selway is a barrister at Radcliffe Chambers, specialising in trust, tax and property work. She has a DPhil in late Medieval English history.

Landscape, Land Tenure and Ways of Seeing the Past

My son recently returned from a culturally enriching school trip to Normandy where he ate frogs' legs, visited a chocolate factory and spent time at the Thiepval Memorial to the Missing of the Somme looking for the marker of his great-grandfather's cousin who was killed on 1 July 1916, the first day of the Battle of the Somme. The group leader tweeted various photos during the trip, the most arresting of which showed a dozen laughing boys playing tag in the huge grassy crater at Lochnagar. I was immediately and viscerally struck by the effect of the camera's clicking shutter reducing the distance of the intervening century to a mere hair's breadth so that, for a moment, the deafening sound of the exploding shell was the sole, horrifying accompaniment to the boys' happy faces.

Another, less disturbing photograph accompanies this article. A small boy is running toward a ruined stone edifice many times his size. Again, the past is waiting for the future to catch up with it. What might they have to say to each other when they meet?

How can we travel to the past and what are we supposed to do when we get there? Most of us have probably heard or read the opening lines of L. P. Hartley's 1953 novel, *The Go-Between*: 'The past is a foreign country: they do things differently there', but I have always felt the past to be a proximate companion, albeit sometimes an annoyingly indistinct one lurking in the shadows, just out of reach, no matter how acute our vision. As children, we harness the power of the imagination to enable us to journey to vanished places and communities. The talismanic properties of a Neolithic flint axe-head or a Roman coin or a medieval arrowhead should never be underestimated. I am, after several decades, still (a little bit) cross with my grandmother who found a gold sovereign on top of the door frame inside the coal cellar of her Georgian terraced house in West Street, Newbury, which she promptly sold before I'd had the chance to see it for myself.

As adults we can add different, intellectual skills to the task of trying to make the past a less faraway place, and in so doing enrich our cultural experience and find greater meaning in our shared heritage. The archaeologist learns to read and interpret the landscape through training in a wide variety of scientific disciplines: carbon-dating, dendrochronology, geology, thermal imaging and aerial photography to name but a handful. The historian analyses human endeavour from an enormous variety of primary and secondary source materials, often the written word. The lawyer, too, has an important role to play. Even the topic of land tenure, which some would say is a dry and dusty one, can make a field or a building intrinsically more interesting. Who controlled, owned or possessed land, the reasons why, and the means by which they did so, are all facets of human behaviour that have required law and legal rules to make our societies work. As we have evolved as individuals within societies, so our land law has of necessity responded to those changes; to unshackle relationships that have become outmoded, for example, or to accommodate the effects of profound social change.

Customary laws were the fundamental source of rules governing society in the early Saxon period after the departure of the Romans in the 5th century. At that time, the Church was keen to help augment royal power in order to reinforce Christianity in a land that might conceivably return to paganism. From the point of view of the Saxon kings, the Church offered legitimacy through ceremonies of anointing and coronation. There was therefore a strong impetus for kings to grant charters (or books) containing rights in respect of land to

churchmen. These were not grants of the land itself, but rather the right to revenues from those who actually occupied and farmed the land. This jurisdiction was called 'soc'. The farmer, or 'socman', could be evicted by the abbot if he did not pay his feorm. The law of bookland, as it came to be known, was soon adapted to govern the relationship between the Saxon kings and laymen, too. Given that there was more land available than people to cultivate it, ownership of the land per se was less important than jurisdiction over the people who used and cultivated it.

The concept of tenure (from the Latin or the French, 'to hold') was developed after the Norman conquest from methods of securing defence. William I needed to control what he had taken by conquest. The doctrine of tenure was used to provide his followers with a lawful basis for control of the land. In essence, in return for an obligation to serve the king in war, the king granted his barons the right to hold rights over certain land, known as a fief or fee. In turn, the barons granted parts of their fief to their own followers and so on (a process known as subinfeudation), so that in theory there was no limit to the number of intervening tenures between the king and the tenant in occupation of the land. At first, the follower was enfeoffed by kneeling before his lord and doing homage for the land, sometimes receiving a symbolic clod of earth in the process. Later, a document changed hands. This was known as feoffment by livery of seisin; the process by which the person promising service became entitled to peaceful possession (seisin) of the land. In this way all land came to be held in tenure from the king, save for that which the king retained as part of the royal demesne. In this period, the tenures held from the king were largely military tenures. A knight's fee became a standard unit, sufficient to pay for a fully armed knight with a small number of his own men. At first the land was granted to the knight only for his lifetime (known as a tenancy for life) but it soon became a permanent possession, the fee simple, which could be inherited by his oldest son. Over time, albeit only with consent, the rights could be sold or split up. There also came to be a fee tail which passed down the family.

In time, of course, military service became less important. The statute of Quia Emptores passed by Edward I in 1290 forms the basis of our modern law of freeholds. (Believe it or not, it is still in force today, ensuring that all land is ultimately held in tenure of the Crown.) Under the original rules of tenure, holders of land did not have unrestricted rights to acquire and sell interests in land. Where the identity of the holder and his relationship with his lord was paramount (primarily because of the need to perform military service) the relationship of homage and fealty was more important than the land itself. But with peace, prosperity and population growth, the position changed. In 1290 the statute of Quia Emptores introduced much greater levels of freedom to sell, buy, divide or aggregate land, and provided rules against subinfeudation which saw the gradual disappearance of mesne (intermediate) lordships. The statute did not, however, apply to the entail (which was a fee tail and not a fee simple). These had been established by the statute De Donis of 1285, and eventually found their fullest expression in the strict settlement.

During the English Civil War, Parliament abolished seigniorial dues, an act confirmed on the Restoration by the Tenures Abolition Act of 1660. This converted almost all freehold tenures to socage and abolished wardship and other feudal dues (although not escheat and forfeiture). Until 1 January 1926, therefore, almost all land was either socage (often called freehold) or copyhold. The methods of conveying these two types of tenure were, however, very different. Land held in socage had to be proved by investigating earlier transactions, whilst for copyhold tenure, the books of the manor acted as a register of title.

Virtually all ancient rights and procedures were finally swept away by the 1925 Legislation (notably the Law of Property Act,

Castle Acre Priory, Norfolk
© Kate Selway

the Land Registration Act and the Settled Land Act). Tenants for life acquired the fee simple, the Statute of Uses and feoffment by livery of seisin were abolished, and copyholders acquired the freehold from the lord of the manor.

There is thus only one feudal tenure left today: socage, now called freehold. Tenure is to be distinguished from the term 'estate', a word derived from status. Whatever the tenure, land could be held for different periods of time: for life, in tail (so long as the tenant or any of his descendants lived; reduced to an equitable interest only after 1925 and finally abolished in 1996) or in fee simple (so long as the tenant, or any of his successors in title, lived). By contrast, the term of years – that is, the lease – evolved outside the system of estates, because leases were regarded not as property but as mere personal contracts, albeit connected with the land. It was only by the late 15th century that the law had come to give leases full protection as proprietary interests.

Since 1925, there have therefore been only two legal estates in land: the fee simple (from the old feudal tenure of socage) and the term of years, or lease.

Let us return to the photograph, which shows the impressive remains of Castle Acre Priory near King's Lynn in Norfolk, now in the custodianship of English Heritage. Castle Acre was once what is known as an 'alien priory', but that is probably the last thing on most current visitors' minds. Alien priories were a prevalent phenomenon of English ecclesiastical and religious life from the Norman Conquest at least down to the Act of Suppression passed by Henry V in 1414. Following his seizure of the English Crown in 1066, William I and later his sons offered Norman monasteries the opportunity to extend their network of 'cells' or daughter houses across the Channel. For centuries, most of these cells retained very close links with their mother houses, staffed with their brethren and paying them annual fees, known as 'apports'. For their part, the Norman houses regarded their English estates as extensions of their domain and, because they were valuable to them, the mother houses always intended their cells to remain fully subordinate to them. Over the course of time, however, these cross-Channel links became weaker, and in many cases the annual apport became mere tokens of former dependency. The result was twofold: many of the larger English cells began to seek and obtain denizen status, formally breaking the ties with their French mother houses. This is what happened to Castle Acre in the middle of the 14th century. Secondly, during periods of hostility between England and France,

the mother houses began to find that the apports due to them had been appropriated by the English king. In time, and as hostilities increased, this led to a number of French houses attempting to cut their losses by selling off their English possessions. William of Wykeham's alien priory acquisitions, which he used to endow his double foundations of Winchester and New College, were obtained in this way in the late 14th century.

It should come as no real surprise that alien priory revenues attracted the attention of the English Crown. The grasping King John first seized them all in 1204, but it was not until the time of Edward III, over 130 years later, that the alien priories came under truly sustained attack. Hundreds of priories were seized in the summer of 1337, at the onset of the Hundred Years' War. The king found a valuable use for their revenues; they were often assigned to his creditors, or granted as annuities to royal servants. Finally, under Henry V, the Act of Suppression was passed in 1414, the provisions of which make clear that this time a permanent dissolution was intended. Laymen benefitted from the alien priory resources for several decades after the Suppression. In particular, Henry V's stepmother, Queen Joan of Navarre, and his brother Humphrey, Duke of Gloucester, received substantial annuities. Eager royal servants and members of the king's household received grants for life or terms of years.

It would be wrong, however, to draw too close a comparison between the fate of the alien priories and Henry VIII's suppression of the monasteries in the later 1530s, which filled the royal coffers with a wealth that was largely squandered by a futile war with France only a few years later. An image of the proceeds of the Dissolution burning a hole in the king's pocket springs easily to mind. Not so with the alien priories. A considerable proportion of the alien priory wealth was used to endow religious and educational establishments. In the 1390s Richard II had suggested that the Pope might sponsor the conversion of the alien priories into secular colleges. Henry V had applied for permission from Pope Martin V to convert the alien priories to the endowment of monasteries, churches and other pious purposes and then went on to found Sheen Charterhouse and Syon Abbey, those twin Lancastrian powerhouses of prayer for the successful prosecution of his martial aims in France.

When Henry V died, in 1422, he entrusted the government of the realm and the upbringing of his infant son to those who had served him in peace and war; to men like his two surviving brothers, John, Duke of Bedford and Humphrey, Duke of Gloucester, who wished to preserve and extend the successful Lancastrian identity Henry V had created. It was these men and their aims and outlook which explains why the remaining alien priory resources were not squandered but were put to an avowedly political use: the founding of Eton College and King's College, Cambridge, in 1441, that would promote the monarchical and Lancastrian image both at home and abroad. But that is a much longer story.

In the photograph, the small boy relishes the freedom of the grassy space. The parent follows on, anticipating the return of summer showers. The photographer enjoys the visual juxtaposition of the looming western façade of the ruined priory and the ant-like presence of the child. The historian contemplates the fate of the alien priories and the monasteries, Henry VIII, Thomas Cromwell and the many scars of the Dissolution that remain on our landscape. The lawyer, meticulous and watchful, considers the words, ink and vellum that created the feoffments, uses, copyholds, deeds, grants, conveyances and indentures of ownership at Castle Acre, from the time of the dispossessed Saxon ealdorman in the 11th century to the lawyer and politician Sir Edward Coke in the 17th.

We cannot escape the landscape; it surrounds us in all its varied forms. There will always be secrets present in it, waiting to be discovered, not least the secrets of the past, perpetually suspended in animation by the multitudinous threads of human endeavour, legal and otherwise, that bind it across time.

Garden Statuary: A Story of a Discovery

William Lorimer
Christie's Estates, Appraisals and Valuations Department

William read Modern History at Oxford and obtained a PGCE at Cambridge. He joined Christie's in September 1981 and moved to the Estates, Appraisals and Valuations Department from the Furniture Department a decade later. He has been involved with Christie's Education since 1985.

In June 2010 I was part of a team sent from the Estates, Appraisals and Valuations Department to value the contents of a large schloss in Austria. We were housed in the stable block, which had for a brief time in the 1970s been turned into a hotel. The decoration was bright and unsettling, with a lot of orange and green paint. As we walked to the schloss I thought that it was a pity that the billet was a bit deficient, but at least it was nearby. We skirted a magnificent chestnut tree in full leaf and saw the considerable scale of our four-day task, for the schloss had about 30 bays! As we turned left into the Hall, I spotted from about 100 feet away a small bronze figure (109 cm. / 43 in. high) of a crouching man with a globe, on a pillar in a basin at the centre of the courtyard beyond. Turning to my three colleagues, I said, 'Better look at that closely, it could be a de Vries'.

We worked flat out, for there were about 100 rooms, and we were starting from scratch. For the first time, we were using digital recorders, which caused the odd problem and an agonised call to the computer department in London when mine froze on day two. The schloss had passages on all three floors which looked into the courtyard. They were about 200 feet long with plenty of good furniture and interesting tapestries and amusing *objets d'art* for me to list and value. Every now and again I paused and looked down into the courtyard; the statue seemed in some curious way to wave at me – certainly something passed between us. On day four just before lunch, having finished the last silver cupboard and counted a large service of flatware, we got into the courtyard. After looking at the cannon and a few other things, we turned to the bronze on the pedestal in a central basin. My colleague Tjabel Klok, who is taller and fitter than me, spotted the signature and date first – it was signed and dated on the edge of the plinth 'ADRIANVS FRIES 1626'. Earlier in the week I had noted a late-17th-century print of the courtyard with the very same statue in place! This ravishingly beautiful thing had presided over that courtyard, incognito, for over 300 years.

Readers may imagine the electric reaction on Monday when I nonchalantly sauntered into the Sculpture Department with some images, telling my colleagues that they might want to have a glance at a statue that appeared to be by de Vries. The attribution was confirmed. A few years later, in December 2014, the Bacchic figure went under the hammer at Christie's New York, selling for US$27,802,500 (including buyer's premium).

Happily, the statue was acquired by the Rijksmuseum and stands in the Gallery of Honour there, not far from Rembrandt's marvellous *The Night Watch*, surely one of the greatest pictures painted in Europe!

In his lifetime, de Vries was considered the most important sculptor of his day. Born in The Hague in 1555, he studied under Giambologna in Florence before a meteoric rise. He became the principal assistant to Pompeo Leoni, and collaborated on the bronzes for the High Altar at El Escorial for Philip II of Spain. In 1589 he moved to Prague and worked for the most illustrious patron of the day, Emperor Rudolf II. Apart from a significant sojourn in Italy in the later 1590s, where he studied Antiquities, de Vries worked for the Emperor until his death in 1612 and then for private patrons, the most important of whom was Albrecht von Wallenstein, the great Imperial General of the Thirty Years' War. Our statue was cast in Prague, and by around 1700 was ensconced serenely and happily in the aforementioned courtyard. It is possible that it formed part of the dowry of an ancestor of the vendors who married Margarethe, Grafin Colonna von

Fels, a Bohemian heiress, in 1693. De Vries is one of the greatest modellers of all time; the details of the present statue were almost all modelled by him in the wax. His influence upon Rodin, among others, was profound and powerful.

I happened to have seen and much admired those wonderful bronzes at El Escorial, and in 2009 had been fortunate to study the superb and moving life-size de Vries bronzes in the Liechtenstein Collection in Vienna in some detail. On that afternoon I was the right person in the right place at the right time. The crucial thing to stress is that it was a discovery that any of my much-esteemed colleagues could have made. All of us who work as specialists at Christie's hope that we will make a discovery or two. As this little account illustrates, it does happen.

In the Estates, Appraisals and Valuations Department, as we go about our work in a castle or a cottage, there is always some object that sings out to us, whether a plain, much used and loved Louis XV silver vin-de-tasse, a great Van Dyck portrait, a dining chair by Thomas Chippendale or a battered fragment of a Roman altar dug up near Hadrian's wall and sitting, unseen by most, in the Conservatory. In one house, a biscuit on a silver waiter was pressed on me insistently by my host at coffee time. It was off-white and misshapen, and I was rather suspicious when he refused to have one himself. I solemnly chewed it; it tasted rather floury and stuck to the roof of my mouth. The host then told me that he had discovered the packet among his great-grandfather's things – dating from the Crimean War – and had wondered what they were like!

One is unlikely to come across unknown and unrecorded garden statuary of the rarity and significance of the de Vries in English gardens – though I would be more than happy to make such a discovery! I am not certain that Capability Brown, baptised 300 years ago on 30 August at Kirkharle in Northumberland, approved of garden statuary as much as André Le Nôtre whose *jardins à la française* are the antithesis of Brown's with their straight lines and formal parterres (compare and contrast the gardens at Versailles to those created by Brown for Stowe or Blenheim!). Certainly we should be celebrating the extraordinary and brilliant contribution to the English landscape made by Capability Brown (so-called because of his charming habit of telling his clients that their demesne had the 'capability' of being transformed). It is astonishing to think that he designed more than 170 landscape parks, many of which survive 300 years after his birth! His touch was so light and his skill so unerring that one of his obituary writers noted: 'So closely did he copy nature that his works will be mistaken'. Many believed that he had perfected nature and, through judicious adjustments to stands of timber, the odd tree, water courses, streams and lakes, he created ideal and idyllic landscapes. Has any landscape architect who came after Brown understood and exploited the potential of each landscape with so much skill and sensitivity? The claim that he was England's greatest gardener is difficult to dispute.

In Fife, where I was brought up, statues were wrapped in winter and sometimes boxed with straw to keep out the depredations of frost, which can damage stone, marble and bronze very severely; the day of unwrapping supposedly heralded late Spring. With our unpredictable weather it is not as easy to set the dates of wrapping and unwrapping as it used to be! It is good housekeeping to look after garden statuary, for weathered surfaces are not often an improvement and value is directly related to condition. All statues, even those in more benign climes, should be wrapped in winter.

Another hazard is burglary, and it is no longer uncommon to alarm statues. Some years ago I arrived at a house in Wiltshire and was slightly puzzled to see a full-size limestone statue of Flora in the middle of the lawn, some 30 yards from her plinth. The owners had been considerably more surprised a couple of days earlier upon pulling up the blinds to see that Flora had gone for a nocturnal stroll and not returned to her rightful place. Heavy tyre marks and an open gate with a forced padlock proved the intent of the burglars, but Flora had been too heavy for her thieves!

The removal of objects from listed buildings can be complicated and depends in part upon the grade of the building and the significance of the object. Charles Perry, who was Christie's chief furniture restorer for some 30 years and whose firm, Charles Perry Restorations, still works closely with Christie's, lived in a Grade II* Hall near St. Albans. He rented it from an Oxford college for about half a century, and after many years acquired and placed in the orchard a fine George III stone sundial. The next time the inspectors came round they listed it specifically, which came as rather a surprise to him! The stone sundial was put on a concrete base and cemented to it for safety, and had become a fixture. Had Perry put a statue into the orchard that was not fixed to the base, the inspectors might not have listed it. The laws governing fixtures and fittings are complex: the method and degree of annexation and the object and purpose of the annexation (in other words, how and why the object in question is fixed or fastened) are crucial factors and in some cases planning (listed building) consent may be needed to remove it. Section 54 (9) of the Town and Country Planning Act of 1971 notes that a listed building includes 'any object or structure fixed to a building, or forming part of the land'. In all such circumstances it is absolutely crucial to check the specifics of the listing, to take proper advice and to approach the Local Authority if there is any doubt, thus avoiding potential pitfalls and the consequent angst and expense that may arise.

ADRIAEN DE VRIES (1556–1626)
A bronze Bacchic figure supporting the globe
Sold for: US$27,885,000
Christie's, New York, 11 December 2014

Sold prices include buyer's premium; for full details see christies.com

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