

HB

3

Arts

## PARIS COPY KING DANIEL DELAMARE MAKES A GOOD IMPRESSION(IST)

**A**rt patrons often gasp in shock when they enter Daniel Delamare's gallery in Paris. Every expanse of wall space in the Avenue Matignon showroom is filled with the signed creations of immortal artists, among them Rousseau, Gauguin, Degas and Cézanne. In an age when modern masterpieces are scattered around the world, in museums, bank vaults and private collections, Delamare's showroom seems truly remarkable.

But wait a minute. Isn't that painting by Renoir, *In the Meadow*, normally found in the S.A. Lewisohn Collection in New York? And doesn't van Gogh's *Olive Trees*, *Blue Sky* hang in a gallery in Holland? If Daniel Delamare isn't an international art thief, then he must be the world's most brazen forger. *Au contraire*, says Delamare, 34, a former textile manufacturer, the paintings are not originals, but he isn't trying to con anyone. And the works, he insists, can stand on their own.

"These are," explains the fast-talking Frenchman, "genuine copies." Obviously connoisseurs agree, since the paintings, thus acknowledged, still sell for between \$5,000 and \$18,000. Created by a stable of 15 skilled painters, they are, says Delamare, copies "of high artistic value completely faithful to the style and spirit of the master. Each painter works with a technique as close as possible to the original. The copy has the same strength and feeling as the original." Not to mention the same signature.

"All the legal questions have been resolved when you buy a Daniel Delamare," the gallery's owner declares. None of the oil-on-canvas copies is exactly the same size as the original, he points out, and he has permission to reproduce the signatures—sometimes from the masters' descendants, who are occasionally rewarded with royal-

Painted by one of the Delamare gallery's anonymous artists, Gustav Klimt's *Black Feather Hat* is available for \$14,000.



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ties. What's more, says Delamare, nobody would really be fooled by his works for long. "The first thing an expert does," he says, grabbing a Degas from the wall and unceremoniously flipping it over, "is look at the back." Sure enough, there for all the world to see is a "Daniel Delamare-Copie" stamp.

"There is no misunderstanding possible," maintains Delamare, who even requires buyers to sign a certificate stating that they have knowingly bought a non-original. But the copies aren't a bad investment either. "Each one is unique," says Delamare proudly. "We're not going to make several copies of the same work. If somebody wants a Delamare that's already been sold, he must deal with the present owner, who can set his own price."

If, indeed, Delamares acquire real value in a secondary art market, much of the credit should go to the gallery owner's hardworking and more silent partner, Belgian art historian Danielle Van Santen, 32. It was Van Santen, a former art cataloger with the Belgian Ministry of Culture, who spent 2½ years meeting nearly 3,000 contemporary European painters in order to select the 15 who now work—anonymously—for the gallery. It was also Van Santen who decided, after viewing the first 60 paintings commissioned, that seven were artistically unworthy and would be destroyed. (They were redone by other artists.)

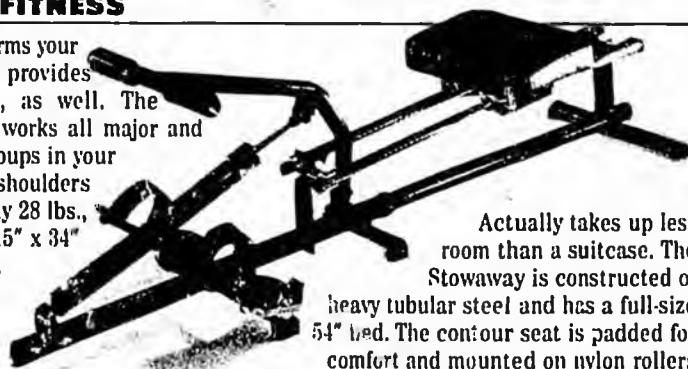
Van Santen met her partner in 1984, while they were standing in front of a friend's reproductions that both she and Delamare considered disappointing. After Van Santen found an artist who was able to duplicate Delamare's own favorite work, Turner's *Fighting Téméraire*, Delamare began planning for his gallery. "I thought it was an interesting idea, but not self-evident," admits Van Santen. "Little by little I was convinced. Lots of people want a copy of a painting they dream of."

Other gallery owners, however, find Delamare's big talk—and bigger success—hard to take. "They're green with rage! There was even a petition going around to get rid of me!" crows the self-described "megalomaniac." Distinguished art dealer Hervé Odermatt, head of his own gallery nearby, admits he is outraged by the respect the press has given the imitations. "It's not the first time that someone is selling copies," observes Oder-

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matt. "It's always been done. But for the press to make people believe that to hang up a copy is the same as hanging up a Renoir is a total lie."

Odermatt, moreover, has a low opinion of the quality of Delamare's unoriginals. "They're dead," he complains. "They're like dead cells. How can they pretend to vibrate, give emotion, like the genuine pieces?" Top Paris art auctioneer Guy Loudmer agrees: "I find it depressing. A copy is as much a work of art as a transvestite in the Bois de Boulogne is a high-society lady."

Delamare dismisses such complaints as mere highbrow snootiness. The youngest of four children whose father died when Daniel was 2, Delamare and his brother were raised in a children's home outside Paris. It was

there, he says, that "I learned to love art. Painting became my real family." Textiles, however, became his livelihood after he was trained in photography and served an unhappy stint in a Paris press agency. Following a short apprenticeship in a company owned by friends, he launched his own textile business in 1978, producing, among other things, Lacoste-look-alike shirts for Walt Disney that featured, in place of a little crocodile, a mini-Mickey Mouse holding a tennis racket.

The business brought Delamare prosperity (he owns a dozen antique cars and a seaside house in Deauville) but little satisfaction. These days he loves his work so much that he brings it home, rearranging his copies in the Paris penthouse apartment that he

shares with wife Estelle, 26, a manufacturer of women's ready-to-wear clothing, their son, Alexandre, 3, a maid and a nanny.

Delamare, in fact, seems positively triumphant as he contemplates his role as the ersatz-masterpiece maestro. Since the opening of his gallery last October, all 60 of his original non-originals have been sold, and he displays by appointment only. If critics don't like the copies, "let them buy van Goghs at \$50 million," he says. "The present art market is wrong. You can have Modigliani, Manet, Degas and Rousseau above your head for an affordable price." And yes, you *can* fool some of the people some of the time.

—By Ned Goeslin,  
with Cathy Nolan in Paris

At home, Delamare displays another Klimt copy (*Woman with Hat and Boa*), along with wife Estelle and son Alexandre.



# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4968/4986

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 275-6844

January 20, 1988

MEMORANDUM

TO: Senator Jay Kerttula  
Chair, Senate Judiciary Committee

FROM: Max F. Gruenberg, Jr. *MF*

RE: CSHB 3 (Rules), "An Act relating to the private sale  
and consignment of works of art."

I would appreciate it if you would schedule a hearing on CSHB 3 (Rules) as soon as it is possible.

CSHB 3 (Rules) will help Alaskan artists.

I have enclosed a copy of six amendments that I would like to make to the bill in your committee.

I have asked my staff attorney, Mark Handley, to meet with your staff and answer any questions you might have about the bill or my amendments.

Thank you very much.

*Thanks, Jay*

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 1, lines 9 - 14:

Delete all material.

Page 1, line 15:

Delete "Sec. 2"

Insert "Section 1"

Comment: Some art dealers object to putting up a sign because it will not fit in with the decor of their galleries.

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 1, line 29:

Before "and", insert:

"(4) the art dealer is strictly liable for loss or damage to a work of art while the work of art is in the possession of the art dealer; the value of a lost or damaged work of art is the value established by written agreement between the artist and art dealer before the loss or damage of the work of art; if no written agreement establishing the value of the work of art exists, the value is the fair market value of the work of art less the art dealer's commission or fee;"

Renumber remaining paragraph accordingly.

Comment: Arizona (ARS 44-1772.4), California (Title 1.1, Sec. 738.6), Colorado (Colorado Revised Statutes 6-15-102(4)), Massachusetts (104A, Sec. 3(c) MGLA), Minnesota (Sec. 324.03(3) Minn. Laws), Washington (Sec. 18.110 020(4) Washington Laws Annotated), and Wisconsin (Sec. 120.02(4) Wisconsin Statutes) provide strict liability for any loss or damage to art work in a dealer's possession. The measure of damages, however, should only be the artist's portion of the sale price. The amendment is taken essentially verbatim from the Colorado statute. The Arkansas (ABA 68-1809(d)) and Oregon (ORS 359.210(c)) statutes similarly define the measure of damages.

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 2, line 2:

Delete "the sale of the work of art"

Insert "receipt by the dealer; if the sale is on installment, the money from each installment shall first be applied to pay any balance due the artist on the sale, unless the artist expressly agrees in writing that the proceeds on each installment are to be paid according to a percentage established by the consignment agreement"

Comment: The "sale" technically occurs for a large piece, upon execution of the sale contract, although the dealer may not immediately receive the proceeds (for example the art work may still have to be shipped to the buyer and a check mailed to the dealer). Also, occasionally sales of art are on installment. The amendment covers these contingencies.

(Source: (Oregon ORS 359.225), (Washington WRS 18.110.020(3))).

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 1, line 29:

Before "and", insert:

"(4) the art dealer shall return an unsold work of art on demand of the artist:"

Renumber remaining paragraph accordingly.

Page 2, lines 20 - 22:

Delete all material.

Page 2, line 23:

Delete "45.67.040"

Insert "45.67.030"

Delete ", "

Insert "and"

Page 2, line 24:

Delete ", and 45.67.030"

Comment: This technical amendment simply includes AS 45.67.030 in AS 45.67.010, which governs artist-art dealer relationships, including return of unsold works of art. Waivers are already covered in AS 45.67.020.

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 2, lines 23 - 27:

Delete all material.

Page 2, line 28:

Delete "45.67.050"

Insert "45.67.040"

Page 4, after line 2:

Insert a new bill section to read:

"\* Sec. 3. APPLICABILITY. The provisions of AS 45.67.010, 45.67.020, and 45.67.030 may not be construed to have an effect upon a written or oral contract or arrangement in existence on the effective date of this section, except by the mutual written consent of the parties."

AS 45.67.040 is put in a separate section and thus be printed in the special acts volume of the Michie statutes. It would appear as an editor's note to AS 45.67.010, .020, and .030.

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 4, lines 1 - 2:

Delete "a painting, sculpture, drawing, work of graphic art, photograph, or craft work, in any medium"

Insert "an original or multiple original art work including:

(A) visual art such as a painting, sculpture, drawing, mosaic, or photograph;

(B) calligraphy;

(C) graphic art such as an etching, lithograph, offset print, or silk screen;

(D) craft work in clay, textile, fiber, wood, metal, plastic, or glass materials;

(E) mixed media such as a collage or any combination of art media in this subparagraph"

Comment: Refines the original definition of "work of art" to include "mixed media." Taken from Arizona (ARS 44-1771(4)), Colorado (Colorado Statutes 6-15-101(4)), Connecticut (Connecticut Statute 42-116K(c)), and Oregon (ORS 359.200(e)), all of which are substantially identical to this amendment.

FISCAL NOTE

REQUEST:

Revision Date: March 25, 1988.  
Title: "An Act relating to the private sale ... of works of art."  
Sponsor: House Rules  
Requestor: Senate Judiciary

Agency Affected: Department of Law  
BRU: Legal Services  
Component: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
Division: Administrative Services Date: March 25, 1988  
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: March 25, 1988  
Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 3 (Rules)

The committee substitute for HB 3 sets out the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

No. 1

REQUEST: \_\_\_\_\_

Bill Version: HB 3  
Publish Date: HOUSE 2/13/87

Revision Date: \_\_\_\_\_

Agency Affected: Department of Law  
BRU: Legal Services

Title: "An Act relating to the private sale and consignment of works of art."

Sponsor: Repr. Gruenberg

Components: Operations

Requestor: House Labor and Commerce

EXPENDITURE/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: 1/21/87

*Ronald W. Lorensen*

Approved by Commissioner: Acting Attorney General

Date: 1/21/87

Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 3

2/13/87

This bill sets out some of the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1988

SUBJECT: Private sale and consignment of works of art -  
SCS CSHB 3(Jud)

TO: Representative Max Gruenberg

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

You have asked if AS 45.67.030 would be applicable to a sale or transfer that occurred prior to the effective date of SCS CSHB 3(Jud). The applicability language in section 2 of the bill and the general prohibition against retrospective application of statutes contained in AS 01.10.090, would preclude AS 45.67.030 from being applied to a sale or transfer that occurs prior to the effective date of the bill.

You have also asked how AS 45.67.030 affects a museum's right to reproduce a work of art. Under this section the right of reproduction is reserved to the grantor, unless expressly transferred in writing. Therefore, until the right of reproduction passes into the public domain, the museum would need written permission from the owner of the right of reproduction in order to reproduce the art work.

Please contact me if you have further questions.

MFF:bb  
b4/081

5-0117X  
Ford  
3/30/88

Original sponsors: Gruenberg, Goll,  
Larson, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 3 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the private sale and consignment  
7 of works of art."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 45 is amended by adding a new chapter to read:

10 CHAPTER 67. ARTISTS AND WORKS OF ART.

11 Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When  
12 an artist delivers or causes to be delivered a work of art of the  
13 artist's own creation to an art dealer for the purpose of sale, or  
14 exhibition and sale, on a commission, fee, or other basis of compen-  
15 sation, the acceptance of the work of art by the art dealer is a  
16 consignment, and

17 (1) the art dealer is, with respect to the work of art, the  
18 agent of the artist;

19 (2) the work of art is trust property in the hands of the  
20 art dealer for the benefit of the artist;

21 (3) proceeds from the sale of the work of art are trust  
22 funds in the hands of the art dealer for the benefit of the artist;

23 (4) the art dealer shall return an unsold work of art on  
24 demand of the artist;

25 (5) the art dealer is strictly liable for loss or damage to  
26 a work of art while the work of art is in the possession of the art  
27 dealer; the value of a lost or damaged work of art is the value estab-  
28 lished by written agreement between the artist and art dealer before  
29 the loss or damage of the work of art; if no written agreement

1 establishing the value of the work of art exists, the value is the  
2 fair market value of the work of art less the art dealer's commission  
3 or fee; and

4 (6) the dealer shall transmit the proceeds to the artist  
5 within 30 days of receipt by the dealer; if the sale is on install-  
6 ment, the money from each installment shall first be applied to pay  
7 any balance due the artist on the sale, unless the artist expressly  
8 agrees in writing that the proceeds on each installment are to be paid  
9 according to a percentage established by the consignment agreement.

10 (b) A work of art initially received as a consignment remains  
11 trust property notwithstanding the subsequent purchase of the artwork  
12 by the art dealer directly or indirectly for the art dealer's own  
13 account until the consignment price due to the artist is paid in full.  
14 The trusteeship continues until the fiduciary obligation of the art  
15 dealer with respect to the transaction is discharged in full.

16 Sec. 45.67.020. WAIVER. (a) A provision of a contract or  
17 agreement whereby the artist waives a provision of AS 45.67.010 is  
18 void except as provided in this subsection. An artist may waive the  
19 provisions of AS 45.67.010 if the waiver is clear, conspicuous, and  
20 agreed to in writing by the artist. A waiver under this subsection is  
21 not valid with respect to the proceeds of a work of art initially  
22 received as a consignment but subsequently purchased by the art dealer  
23 directly or indirectly for the art dealer's own account.

24 (b) A waiver under (a) of this section may not inure to the  
25 benefit of the art dealer's creditors in a manner that is inconsis-  
26 tent with the artist's rights under AS 45.67.010.

27 Sec. 45.67.030. RIGHT TO REPRODUCE WORKS OF ART. (a) When a  
28 work of art is sold or otherwise transferred by or on behalf of the  
29 artist who created it, or the heirs or personal representatives of the

1 artist, the right of reproduction is reserved to the grantor until it  
2 passes into the public domain by act or operation of law, unless the  
3 right is sooner expressly transferred by an instrument, note, or  
4 memorandum in writing signed by the owner of the right or an author-  
5 ized agent of the owner.

6 (b) When an exclusive or nonexclusive conveyance of a right of  
7 reproduction or right to public display is made by the holder of the  
8 right, or the holder's authorized agent, ownership of the physical art  
9 work is presumed to remain with and be reserved to the grantor unless  
10 expressly transferred in writing signed by the grantor or the  
11 grantor's authorized agent.

12 (c) This section may not be construed to prohibit the fair use  
13 of a work of art or to conflict with federal copyright law.

14 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-  
15 text otherwise requires,

16 (1) "art dealer" means a person engaged in the business of  
17 selling works of art, other than a person exclusively engaged in the  
18 business of selling goods at public auction;

19 (2) "artist" means the creator of a work of art or, if  
20 deceased, the heirs or personal representatives of the creator;

21 (3) "consignment" means that no title to or estate in the  
22 goods or right to possession superior to that of the consignor vests  
23 in the consignee, notwithstanding the consignee's power or authority  
24 to transfer and convey, to third person, all of the right, title and  
25 interest of the consignor, in and to the goods;

26 (4) "creditor" has the meaning given in AS 45.01.201;

27 (5) "right of reproduction" means a right to reproduce,  
28 prepare derivative works of, or distribute copies of a work of art;

29 (6) "work of art" means an original or multiple original

1 art work including:

2 (A) visual art such as a painting, sculpture, drawing,  
3 mosaic, or photograph;

4 (B) calligraphy;

5 (C) graphic art such as an etching, lithograph, offset  
6 print, or silk screen;

7 (D) craft work in clay, textile, fiber, wood, metal,  
8 plastic, or glass materials;

9 (E) mixed media such as a collage or any combination  
10 of art media in this subparagraph.

11 \* Sec. 2. APPLICABILITY. The provisions of AS 45.67.010, 45.67.020,  
12 and 45.67.030 may not be construed to have an effect upon a written or oral  
13 contract or arrangement in existence on the effective date of this section,  
14 except by the mutual written consent of the parties.