

## **To prepare your legal argument/presentation for 12-19-2017:**

Consider the issues below, as well as any others that seem relevant to you. For each question, consider:

- What evidence do you have on each side of the issue?
- Is there enough evidence to know the answer for sure?
- If the evidence is inconclusive, how do you best argue your side?

Lay out the specific bases for your answers. Be prepared to explain why the opposing position is wrong, in case you are asked a question about the opposing side. You should be able to respond to relevant questions about your issue even if you do not address them in your presentation.

### **Factual questions**

- Did the Grünbaums own “Seated Woman”?
  - Do you need to prove this to “win” your argument?
  - What happens to your position if they did not own it?
- If the Drawing was in the Grünbaums’ collection, did the Nazis steal it?
  - Can you prove whether the Nazis stole it or not?
  - Do you need to prove this?
- Did Mathilde sell the Drawing to Galerie Gutekunst fair and square?
  - Does your answer change if the records and the gallery owner’s present recollection of the sale are not entirely clear and consistent? Why or why not?
  - If Matilde did not sell the drawing to the gallery, how did the gallery acquire it, or how could it have acquired it? Are any of those scenarios plausible?
    - Does the answer to this question help you decide whether the Nazis stole the Drawing from the Grünbaums?

### **Legal questions**

If your team is assigned to show what you would have to prove if Swiss law applies or if New York law applies, and why it would be preferable for that law to apply:

- Remind us who the buyer(s) and seller(s) are.
- In preparation for your presentation, answer the following questions. If you think your side has no obligation to provide proof of the answer to any question, be prepared to justify that.
  - Did the Grünbaums own the Drawing?
  - Did the Nazis stole the Drawing from the Grünbaums?
  - Was Matilde was entitled to transfer ownership of (sell) the Drawing?
  - Was Galerie Gutekunst was entitled to transfer ownership of (sell) the Drawing?
  - Was Galerie St. Etienne was entitled to transfer ownership of (sell) the Drawing?
  - Did Bakalar acquire the Drawing in good faith?
- Did Bakalar have an obligation to investigate whether Galerie St. Etienne had good title to the Drawing?

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- Why or why not? (*Hint: were there suspicious circumstances? Why or why not?*)
- Is the answer the same whether you apply Swiss or New York law?
- Would the answer be the same if Bakalar were an art dealer and not just an ordinary buyer? Does it matter how knowledgeable he was about art or art sales?
- Under New York law, why might Bakalar have to disprove that the Nazis stole the Drawing?
- What evidence (factual information) would support the argument that Swiss law applies? What about NY law?
- What societal benefits might support an argument that Swiss law applies? What about NY law? How can you use these considerations persuasively in making your point?

If you're arguing whether laches applies:

- What factual arguments can you make to support or oppose a claim that the Grünbaum family waited too long to claim the Drawing?
  - When do you think the heirs knew or should have known about the Grünbaum art collection?
  - Is it relevant if the parents or grandparents (or great-aunts/uncles) of the heirs knew about the art collection?
  - Does it matter if any of them knew about the collection but not about this Drawing specifically?
- What policy considerations support allowing the Grünbaum family to get the Drawing back now?
  - What impact would there be on the heirs if they lose?
  - What broader impact might there be if the Drawing is not awarded to the heirs?
- What policy considerations support allowing Bakalar to auction the Drawing now?
  - What impact would there be on Bakalar if he loses
  - What broader impact might there be if the Drawing is not awarded to Bakalar?