

## HOW SHOULD I (OR MY HEIRS) GO ABOUT SELLING MY COLLECTION BY AUCTION?

by Craig D. Bell

One thing I have learned as a collector of antique arms and accoutrements who also spends significant time with like-minded passionate collectors is that we are generally not sellers, unless we seek to upgrade an item in our collection or perhaps acquire that hard to find, “have to own it” key piece. However, the time may come when you decide to sell a significant item, or part of your collection, or your entire collection due to health or financial reasons. Even more likely, it is quite possible your family or the personal representative of your estate, when you die, will have to decide how to dispose of some or all of your collection.

The collector may generally be aware of the sales process having been on the purchase side of many transactions as you build and expand your collection. However your family, the personal representative of your estate, and advisors are not likely to have any such familiarity with how to sell or otherwise dispose of your collection.

The purpose of this article is to provide you with useful information that supplements the commentary and discussion delivered on October 3, 2015, by the auction panel from the American Society of Arms Collectors at the Warwick, Rhode Island, meeting. My remarks are going to primarily focus on the collector who is exploring the possibility of disposing of some or all of their collection by means of an auction as opposed to selling the same pieces or collection through a dealer.

At the end of this article I have put together a due diligence checklist that you and your family might find helpful as a guide on how to select an auctioneer for the disposition of some or all of your collection. This article only scratches the surface of the auction sale from the seller's perspective. If you, your family, or your personal representative and your advisors are considering disposition of a sizeable collection in sheer number of pieces or of substantial size in value, a more detailed investigation of potential auctioneers may be required.

### BASELINE DIFFERENCES BETWEEN SELLING THROUGH A DEALER AND SELLING BY AUCTION

Once the decision is made to sell a piece or a collection, you or your personal representative generally will need to decide whether you should sell through a dealer or sell by an auction. You might even consider making sales through both options if your collection may be allocated between each option without hurting the overall selling results. Many times collectors are disappointed when reviewing an auction catalogue or auction internet site to learn that key pieces of interest from the collection have been “cherry picked” for a particular buyer or dealer, with the remainder of the collection going to an auction. This factor is a preliminary consideration when you decide how you want your collection to be sold.

Collectors know many dealers of antique arms and generally recognize that such dealers are usually knowledgeable about the items they sell. Dealers bring much to the table for the collector. An experienced ethical dealer can add value to an object or collection. First, dealers are usually in regular contact with other dealers and collectors, and museums. They regularly visit militaria and antique stores, and participate in a wide number of gun and militaria shows in different geographical locations. Such broad exposure provides the dealer with far more relevant information from quality sources than a collector may be able to reach on his or her own. Remember, this is a full time occupation for dealers. This is their job.

Dealers also provide collectors with guidance and direction for expanding a collection. They develop relationships with their collector clients and obtain a good sense of what the collector is looking to add to their collection. The dealer who knows the tastes and preferences of his collector client may be able to provide access to pieces that a collector is not able to find on his or her own. Remember, the dealer generally has a vast number of sources and contacts to locate valuable pieces that may not yet be for sale publicly. Dealers provide the collector with

privacy that an auction may not achieve. Dealers also are generally willing to carry a piece for an extended period of time without public exposure should an item not sell, unlike an unsold lot or item at a public auction.

An auction, on the other hand, is popular. Desirable auctions are perceived to reach a far broader market of potential buyers. If the appropriate auctioneer is used, they should bring to the auction an extensive list of buyers who have previously bid and purchased collection items from prior auctions, thus demonstrating the auctioneer's business acumen to conduct a well-advertised auction attended by many qualified bidders. Auctions are perceived by many buyers as transparent when conducted by a knowledgeable and experienced auction house. Ultimately, most collectors believe that an auction, when properly organized, marketed, and conducted bring more potential buyers to the sale opportunity with the goal of a true market value being achieved. On the other hand, auctions are public, so if an item or a number of items do not sell, then this can be perceived as a taint on the unsold items that may cause a negative effect on their value. Also, unless the seller has agreed to a reserve value with the auction house, the seller has no control on the ultimate selling price achieved at auction. Another general thing a seller should keep in mind is that auction houses will seek to ensure they remain free from responsibility if issues of provenance or authenticity arise. This latter concept will be discussed in more depth later in this article.

## THE AUCTION PROCESS

The law of auctions has evolved over the years through a combination of auction house rules, practices, standards of conduct, and the Uniform Commercial Code adopted by all of the 50 states. Additionally, laws adopted in certain key locations, such as the States of New York and California, seek to address concerns over title, authenticity, value of the artifact or piece being sold, as well as attempting to define the rights and obligations of the parties.

### What is the Relationship Among the Parties to an Auction?

There are three major relationships that relate to the three parties to an auction. The auction parties are (1) the consignor (seller), (2) the auction house (agent), and (3) the buyer. The relationship of these three parties to an auction and sale are varied, and each will be briefly described.

### 1. The Consignor-Auction House Relationship.

The relationship between the consignor and the auction house is characterized by its fiduciary nature. The auction house is required to act in total good faith and in the best interests of the consignor. In legal terms, the consignor-seller is the principal with the auction house as the principal's agent. A breach of fiduciary duty could give rise to liability on the part of the auction house as agent for the consignor as principal under a legal theory of breach in contract or negligence.<sup>1</sup>

The consignor relies on the auctioneer for the following:

- (a) A determination of whether the artwork, antique, or artifact is auctionable;
- (b) The decision as to whether the artwork, antique, or artifact, if auctionable, should be placed in a major or minor auction and in the company of which other artwork, antiques, or artifacts;
- (c) The suggestion of an estimated price;
- (d) The suggested reserve price;
- (e) Safekeeping of the artwork, antique, or artifact delivered for sale;
- (f) The collection or sales proceeds; and
- (g) Standing, as an expert, behind the authenticity of the artwork, antique, or artifact, in the event the authenticity is questioned.

The auctioneer, on the other hand, relies on the consignor to support the consignor's ownership of title to the work if its provenance is ever questioned.

The auction house, in a responsible manner, is required to attract consignments and to conduct the sale. This is why the auction house must determine if a piece is "auctionable," that is, whether an item should be sold in a public auction or in a "private treaty sale," or sold through a private dealer or gallery. Once the item is deemed to be auctionable and the consignor decides to go forward with the sale, the parties will enter into a written consignment agreement. Best practices require the agreement to specify all fees, commissions, and charges to be paid by the consignor to the auctioneer.<sup>2</sup> Generally, these expenses

are simply deducted from the proceeds of the sale when the consignor is paid. However, sometimes the consignor is required to pay a “bought in” fee when an item is not sold at the auction.

The auction house is required to use its best efforts to promote the pieces consigned. Also subject of negotiation between the consignor and the auction house are decisions such as whether the sale should occur in a day or evening sale, major or minor sale, and in the company of what other items. How will the consignor’s items be featured in a catalog? Will it be accompanied with an essay or a large image? All of the foregoing is subject to negotiation between the auction house and the consignor.

The auction house must set a realistic estimate and reserve price for the consigned item in order to fulfill its fiduciary duty to the consignor. To arrive at an estimate, the auction house generally will use a multitude of factors, such as past auction results for similar pieces, look at current market conditions, examine and consider the rarity of the piece, size, subject matter, provenance, and condition of the piece. When the auction house completes its analysis, the consignor and auction house will reach a specific agreement on the reserve for the items to be auctioned. In practice, most well-regarded auction houses will include in their written consignment agreement a default provision requiring that, absent an agreement to the contrary, the reserve will be set at a certain percentage of the low estimate.<sup>3</sup>

The auction house will require the consignor to make certain representations and warranties as a condition to accepting property for sale. The most important of these representations and warranties concern legal title. The consignor must represent and warrant ownership and clear title to the piece being consigned, free of all liens, claims, and encumbrances, and to support the provenance of the work if it is questioned. Upon sale, the consignor warrants that good title and right to possession of the artifact, antique, or artwork will pass to the buyer free and clear of any liens, claims, or encumbrances.<sup>4</sup> The consignor is also required to represent and warrant that he or she will indemnify the auction house if there is a defect in title.<sup>5</sup>

## 2. The Buyer-Auctioneer Relationship.

The purchaser or successful bidder at auction depends on the auctioneer for a determination that the artifact, antique, or artwork purchased is authentic and that the

estimated purchase price is reasonable. All bidders at an auction are entitled to assume the auction process has integrity and to base their bids on that assumption. If the auctioneer engages in the practice, unbeknownst to the bidders, of knowingly receiving a bid on the *seller’s behalf* or if the seller makes or procures such a bid, the buyer may choose either to void the sale or to take the goods at the price of the last good-faith bid before the completion of the sale.<sup>6</sup> In addition, the buyer relies on the auctioneer for some assurance that the auctioneer will grant the purchaser clear title to the artwork.

## 3. The Buyer-Consignor Relationship.

To whom does the buyer look for recourse when either the title to the work or piece or the authenticity of the work or piece is questioned? If the issue is one of authenticity, the buyer may claim against the auctioneer, regardless of whether the identity of the consignor (principal) is known by the buyer. The purchaser of the work has presumably relied on the credibility and the expertise of the auctioneer and the representations contained in the auctioneer’s catalog. If the issue is one of title, the purchaser looks to the auctioneer when the identity of the consignor (principal) is undisclosed. If, however, the principal is known, the buyer should be able to seek recourse from both the principal (seller) and the auctioneer.

## The Consignment Agreement: Typical Terms of the Agreement.

### 1. Seller’s Commission.

The auction process is a principal-agent relationship. A seller typically compensates the auction house by way of a commission, a percentage of the final selling price. This price can differ between auction houses and vary among sellers. It is important to note that the seller’s commission may be negotiable. Bidders want to compete for well-known works or items, and consequently, auction houses want to sell them. Therefore, a seller who possesses such items may well have leverage to negotiate a lower-than-usual commission. The sale of an entire collection also could warrant a decrease in, or even the elimination of, the seller’s commission.

### 2. Buyer’s Premium.

Beginning around 1975 in London and in 1979 in the United States, several of the major international auction

houses began a new practice called the buyer's premium. The buyer's premium is a percentage of the final bid price for an auctioned item that is imposed or added on top of the final bid price payable by the purchaser. For example, Christie's buyer's premium policy is to charge 25% of the first \$100,000 of the final bid price and 20% of the excess of the hammer price above \$100,001, and up to and including \$2,000,000, and 12% of the excess of the hammer price above \$2,000,001. This practice has been adopted by most of the regional and local auction houses as well. You might now be thinking how an auctioneer can charge a buyer a premium on top of the final bid price when the auctioneer works for the consignor, not the buyer. In essence, the buyer, for whom the auctioneer renders no service, is charged an additional fee. Despite many buyers' and professional dealers' concerns about this practice, the buyer's premium remains in place at most auction houses.

### **3. Guaranteed Price.**

Under the guaranteed price arrangement, the auction house and the seller agree on a minimum price for an individual piece, a lot or group of lots, or an entire consignment. The auction house must pay the seller the minimum price, whether or not the item or lot(s) or consignment is sold. If it is not sold, the auction house becomes the owner. If it is sold for a price in excess of the guarantee, the excess is either paid to the seller or divided between the seller and the auction house, depending on the terms of the written consignment agreement.

### **4. Irrevocable Bids.**

The irrevocable bid (a form of third-party guarantee) started to show up in the mid-1990s. The irrevocable bid is a variation of the guarantee price discussed above. Both function as an insurance that the consignor will be paid regardless of whether the item is sold. The irrevocable bid passes the risk of sale to a third party and is considered, in essence, a sale of the piece before the auction begins.<sup>7</sup> This is a controversial practice in the industry and calls into question the risk of the auction house breaching its duty to the consignor.

### **5. Loans and Advances to Consignors.**

For the past 20 years or so, some auction houses began to offer financial incentives to consignors in the form of non-refundable advances and non-recourse loans. These

arrangements bar the auction house from attaching the bank accounts or other financial assets of the consignor. If the consigned property fails to sell under a non-refundable advance, the consignor is required to pledge additional collateral to the auction house. Under a non-recourse loan, the actual item of work is the only collateral. Thus, if the item does not sell at auction, the auction house's only recourse is to re-offer the piece or lot for auction later. Unlike the guarantee price discussed above, the auction house does not take title at any point in the unsold item under a non-refundable advance or a non-recourse loan. Some states, such as New York, require auction houses to disclose in their catalogues if they have a financial interest or guarantee in any particular lot, but not if they have only made advances.<sup>8</sup>

### **6. Warranty of Authenticity.**

Auction houses generally provide a warranty on the items they offer for sale, but this is only available to the buyer (not subsequent purchasers, heirs, or assigns) for a limited duration, and extends only to a piece's authorship, not provenance or physical condition. Also, the warranty usually extends only to the descriptive material that is set off from the general description of the item in the catalogue — usually by the use of bold or all capital letters.<sup>9</sup>

It is very important that you carefully read and review the auction house's "Conditions of Sale and Terms of Warranty or Guarantee." The buyer's sole remedy under the warranty is recession of the sale and refund of the purchase price.

### **7. Conditions of Sale and Disclaimers.**

By participating in an action, a bidder agrees to be bound by the terms and Conditions of Sale, which are typically included in the auction catalog and on the auction house's website. Also, under the Uniform Commercial Code, a sale is complete when the auctioneer so announces by the fall of the hammer.<sup>10</sup> Thus, when a buyer fails to make a payment due on or before delivery, the aggrieved seller may resell and recover damages<sup>11</sup> or cancel the sale.<sup>12</sup>

### **8. Recession.**

The auction house may rescind the sale of any property if, in its sole judgment, it determines that the sale offering subjects or may subject either the auction house or the consignor to any liability.

## 9. Withdrawal.

Once the consignment agreement is executed, a consignor may not withdraw property from a sale, unless the auction house consents. If this occurs, the consignment agreement generally requires the consignor to pay the auction house 20% of the mean of the presale estimates or sometimes, 20% of the reserve price, plus all out-of-pocket expenses incurred by the auction house related to the sale of the withdrawn property. The auction house, however, usually always reserves the right to withdraw any property at any time before the sale if, in its sole judgment, there is doubt as to the property's authenticity or attribution; any of the consignor's representations or warranties, such as relating to title, are inaccurate, and where the consignor has breached any provision of the consignment agreement.

## 10. Private Sales.

Many auction houses also reserve the right for a certain specified number of days after the auction (e.g., 60 days) to sell privately as the seller's exclusive agent any bought in property, provided the seller would realize an amount at least equal to what he or she would have received had the property sold at auction at the reserve price.

### **QUESTIONABLE CONDUCT AND PRACTICES DURING AN AUCTION.**

The job of the auctioneer is to create excitement and promote active bidding on the items and lots. Given this goal, is it ever proper for the auctioneer at the start of the auction to announce first bids for a piece that are sometimes fictional?<sup>13</sup> Isn't this practice forbidden by state laws or regulations? After all, the auction house has already promoted and marketed the auction to its customers and prospects heavily in the weeks and months leading up to the sale. Isn't this pre-sale promotion sufficient? Why should an auctioneer be able to add a level of excitement by means of fictional bids? An auction house compliance director has said the practice of fictional bidding to start off bidding on an item is "harmless, fully disclosed and widely understood" and that it protects the seller by preserving the drama that draws a buyer to a sale.<sup>14</sup>

### **Is Puffing a Legitimate Practice by an Auctioneer?**

Although the issue of fictional bids at the start of bidding on an item apparently is accepted practice by many auction houses, puffing up the sale price by sellers or their agents is not proper and is prohibited by most state Uniform Commercial Code statutes and common law created by the courts. An auctioneer may not knowingly receive a bid on the seller's behalf, nor may the seller make or procure such a bid without prior notice to the buyer that the buyer has retained the right to do so. Many courts hold such fictional bids to be fraudulent and illegal.<sup>15</sup> When such bidding occurs, the Uniform Commercial Code provides the buyer with several options, including either rescinding the sale or taking the goods at the price of the last good faith bid prior to the completion of the sale.<sup>16</sup> A better result might be that the purchase price be determined to be the last good-faith bid before the first fraudulent overbid.<sup>17</sup>

### **Is Chill Bidding Permitted?**

First, what is chill bidding? The practice of chill bidding is when there is an agreement between two or more persons to refrain from competitive bidding in order to depress the sale price. Chill bidding is generally illegal under court-made common law.<sup>18</sup> The rationale for finding the practice to be illegal is that it amounts to an agreement to prevent a fair price from being determined by fair competition and it distorts, to the detriment of the consignor and the auction house, the actual extent of competition among willing buyers. Many courts would find the practice to be fraudulent.<sup>19</sup>

When the practice of chill bidding is discovered and proved to have occurred, the seller has several possible remedies. First, the seller has the right to withdraw his or her goods from any party involved in the chill, even when the auction was conducted without reserve prices. Second, the seller has the right, predicated on recession for fraud, to recover the goods sold to the chill bidder.<sup>20</sup>

## Conclusion

The purpose of this paper is to provide you with an introduction to the auction process. Your work is not done by simply reading this article and heading out to the auction house with your collection. The decision on whether to sell an item or your entire collection through a dealer or at auction presents you with numerous advantages and disadvantages for each alternative disposition process. The best choice for you and your family is likely to be tailored to fit your situation. How large is your collection? Is the quality of your collection or individual items in your collection of a national or international nature? Does your family have the time, effort, and savviness to make these decisions about your collection in the event you are incapacitated or deceased? A large collection may be best sold at auction, or maybe several key items out of the entire collection will do better if placed with a dealer, while the rest of the collection is sold together at auction.

The type of auctioneer selected is critical. Is a national or regional auction house best suited for your collection?

Should you use an auction house that possesses expertise, experience, and has the reputation for selling the types of pieces in your collection? There is no iron-clad answer to these questions. You, as the owner and most knowledgeable person about the quality and assessment of the value of your collection, should make the inquiry and research now, so your family will have the benefit of your expertise and experience while you are in a position to provide your thoughts on the collection and its ultimate disposition while you still have the capacity to do so.

I have included as an appendix to this primer on auctions a checklist I developed to help a collector and their family make an informed decision should they decide to dispose of their collection by means of an auction. This "Seller's Due Diligence Checklist" is still a work in progress that I will continue to refine in the future so I may provide my family with a useful guide should it be needed in the event of my incapacity or death while I am still possessed with a quality collection.

## APPENDIX

### Due Diligence Checklist From the Perspective of the Consignor-Seller

The collector or other seller who desires to sell part or all of a collection needs to identify which auction house to use. The options range from internationally known auction houses to more regional and local auction houses. When it comes to deciding how to dispose of an arms and armor collection composed of muskets, rifles, carbines, pistols, swords, and other edged weapons, cannons, and similar items from around the world, there is also a need to explore auction houses that have the experience and reputation for handling similar specialized collections. The amount of due diligence required by a seller should be commensurate with the value of the consignment. The question then becomes, how do you undertake this important task? The checklist below attempts to provide you with some structure about how you might seek to evaluate your options.

#### CHECKLIST

##### *A. How do you go about identifying the proper auctioneer for your sale?*

1. Seek first-person recommendations from someone you trust who has or had a similar collection and a successful auction. It is important for the seller to be part of the interviewing process of auctioneer candidates. Possible sources may include people from the following backgrounds:

- Antique Dealers
- Lawyers who do “Estate or Estate Administration” work
- Trust Officers from Trust Companies or Banks
- Other knowledgeable collectors who have participated in auctions as sellers or who may be able to identify additional collectors by means of first-hand knowledge
- Internet research on auction houses and similar sources that document auction results of comparable collection items

After you complete your initial background research, you are then ready to schedule a meeting with the auctioneers or firm representative from the auction house to begin the interview process.

##### *B. The Interview Process of the Auctioneers/Auction Houses*

The goal of the auctioneer interview process is to determine whether the auctioneer/auction house candidate actually wants your business. It is very important for you to prepare for this meeting and listen carefully to the auctioneer’s answers to your questions. You should be looking and examining the auctioneer candidate in the following manner and areas:

##### **1. Personal Observation**

- personality/trustworthiness
- demeanor
- body language
- analysis
- reasoning
- communication skills
- credibility

##### **2. Depth and Breadth of Experience**

- How long have you been an auctioneer?
- Are you a part-time or full-time auctioneer?
- Where are you licensed?
- How many auctions do you conduct annually?
- How often have you auctioned items like mine?
- What were the best results you realized and to what do you attribute these results?
- What were the worst results you realized and to what do you attribute these results?

### 3. Marketing Approach

- What is the buyer profile for my goods?
- What is the best strategy to market my goods?
- What are the details and cost for the marketing plan you recommend?
- Why should you not do more marketing?
- Why should you not do less marketing?
- Is the marketing campaign you recommend comparable in scope and cost to what you normally do?
- Do I receive progress reports?
  - If so, when and how often?

### 4. Market Conditions

- Is the market currently a good one for my type of goods and financial objectives?
- When was the peak of the market?
- Where does the market stand now in relation to the market peak?
- What are the primary challenges you see for the sale of my goods at this time?
- Is the market improving or declining, and how fast?
- Should I go to auction now or wait?
  - Why?

### 5. Consignment Process

- What are your practices and procedures in handling consignments?
- What do you think of my goods?
- Where would my goods be stored and under what conditions?
- What types and amounts of insurance would cover my consignment and against what risks?
- Who has risk of loss after a sale is made and when does it pass?
- Do you have a surety bond or do you participate in a statutory recovery fund?
  - If so, how much protection is afforded to me for a loss?

### 6. Consignor Goals

- How do you view my financial goals for an auction?
- What do you see as the likely results I will realize at auction?
- Describe your view of my worst-case scenario?

### 7. The Auction

- What is the venue?
- What is your proposed staffing for my auction?
- What types of auction do you conduct?
- Do you recommend an auction with and/or without a reserve?
  - Why/explain in relation to my goods.
  - What are the advantages and disadvantages of each?
- What type of auction do you recommend for my goods and why?
- What are the advantages and disadvantages of each?
- What kind of bidder turnout do you expect?
- What are the procedures and charges, if any, if I decide to cancel or postpone the auction?
- What would you do about the auction if there is bad weather, an emergency situation, etc.?
- What is your view on shills and phantom bids and do you use them, or would you use them for me?
  - (If answer is yes, leave promptly.)

### 8. Charges/Expenses

- What will be the cost to market my goods for auction?
- How much is the selling commission?
- How much is the buyer's premium and who keeps it?
- Is there a no-sale fee for lots that do not sell?
- What other costs would I incur?

### 9. Settlement

- Who collects bad funds from buyers, how, and is there any charge to me?
- Who holds the auction proceeds and in what kind of account? (bank escrow or trust account should be required).



- What if I want to use a commercial escrow agent or attorney escrow account to hold the sales proceeds in escrow?
- When and how do you handle settlement?
- Show me a sample statement depicting the settlement format of what I would receive from you at settlement.

## 10. Dispute Resolution

- If we have a dispute, how and where will it be resolved? **NOTE: Disputes with out-of-state auctioneers carry significant disadvantages.**

## 11. References

- Do you have reference lists of recent individuals and commercial sellers whom I may contact? **NOTE:** You need to contact those references to learn how well the seller knows the auctioneer, whether the seller liked/disliked the auctioneer, whether seller's goals were met, whether seller was paid on time, and ask if you would sell again, would you use the auctioneer again?
- Do you have a letter of reference from your bank regarding your accounts and dealings there? (This is not an improper request.)
- Contact the state regulatory board to determine if any complaints have been filed against them or any of their licensees.

**NOTE: Auctioneers should possess the financial controls, responsibility, and strength to properly conduct the auction business and protect their clients. You should be looking to determine if the auctioneer is under or thinly capitalized. An auctioneer's debt can expose an auction business to creditors' claims. Consulting the auctioneer's bank references and obtaining a Dun & Bradstreet financial report will assist you to make this determination.**

It is important that you measure all aspects of the interview meeting responses, together with checking out references, prior consignor sales customers, auctioneer's bank references, and similar third party sources of information. Overall, you will need to include an examination of your own "gut feel" now that you are more fully informed about all of the salient issues pertaining to your particular consignment with each auctioneer/auction house. In closing, ask yourself after completing your due diligence investigation as to whether your auctioneer is just doing the job or is he or she doing the job at the highest level of competence, skill, and accountability.

## NOTES:

- 1 Christallina, S.A. v. Christie's, Manson & Woods International, Inc., 117 A.D.2d 284, 291, 502 N.Y.2d 165 (1986).
- 2 See, e.g., Rules of the City of New York (R.C.N.Y.), Title 6, Chapter 2, subchapter M (Auctioneers) § 2-122(b)(1) (2013).
- 3 Interview with Barbara Strongin, Sotheby's Institute of Art and former Chief Operating Officer of Christie's (April 24, 2013). See "Visual Arts and the Law" by Judith B. Prowda, at pg. 185 (footnote 14), published by Lund Humphries in association with Sotheby's Institute of Art (2013).
- 4 R.C.N.Y. § 2-122(b)(c) (2013).
- 5 Id. See also U.C.C. § 2-312 (2012).
- 6 U.C.C. § 2-328 (4). See also Nevada Leasing Co. v. Hereford, 36 Cal.3d 146, 680 P.2d 1077, 203 Cal. Rptr. 118 (1984).
- 7 See footnote 3.
- 8 R.C.N.Y. § 2-122(h) (2012).
- 9 Foxley v. Sotheby's, Inc., 893 F. Supp. 1224, 1230-1231 (S.D.N.Y. 1995).
- 10 Hessel v. Christie's, 399 F. Supp. 506, 517 (citing UCC § 2-238 (2005)).
- 11 UCC § 2-706 (2012).
- 12 UCC § 2-703(f) (2012).
- 13 Kevin Flynn & Robin Pogrebin, "As Art Values Rise, So Do Concerns About Market's Oversight." New York Times (Jan. 27, 2013).
- 14 Id.
- 15 See, e.g., Nevada Nat'l Leasing Co. v. Hereford, 36 Cal.3d 146, 680 P.2d 1077, 203 Cal. Rptr. 118 (1984); Berg v. Hogan, 322 N.W.2d 448 (N.D. 1982); Feaster Trucking Serv. Inc. v. Parks-Davis Auctioneers, Inc., 211 Kan. 78, 505 P.2d 612 (1973).
- 16 U.C.C. § 2-328(4).
- 17 See 1 W. Hawkland, A Transactional Guide to the Uniform Commercial Code 54 (1983).
- 18 Id. at pp. 54-55.
- 19 See, e.g., Preske v. Carroll, 178 Md. 543, 116 A.2d 291 (1940); Konen v. Konen, 165 La. 288, 115 So. 490 (1928); and Stewart v. Severance, 43 Mo. 322 (1869).
- 20 1 W. Hawkland, A transactional Guide to the Uniform Commercial Code at pp. 54-65 (1983).



