

Invitation to the lecture by
Prof. Dr. Gianmaria Ajani
(Turin/Bonn) on
Tuesday, October 29th,
2019, at 6:00 p.m.

Gianmaria Ajani: From Property to Contract: A Proposal to Govern Some Challenges Brought to Private Law by Contemporary Visual Arts

Prof. Dr. Gianmaria Ajani received his degree in law from the University of Turin in 1979. Subsequently he taught at various universities around the globe. He was a visiting scholar in Moscow and Leiden as well as a visiting professor in Berkeley, Fribourg, Wuhan, Bergen, and most recently in London. From 1987 to 1996, Gianmaria Ajani was Professor at the University of Trento, where he also served as Director of the Department of Law. Since 1996, he is Professor of Law at the University of Turin and holds the chairs of Comparative Legal Systems, Art & Law, and Contracts. In addition, he served as Director of the Legal Department from 1998 to 2004 and as Dean of the Law Faculty from 2009 to 2013. He has been Rector of the University of Turin (2013-2019). Prof. Dr. Gianmaria Ajani has worked as legal expert and consultant for various international organisations such as the IMF, the EU Commission, the Council of Europe, the UNDP, the GIZ and the ILO. Furthermore, he served as an expert on legal reforms in China, Russia, Albania and Vietnam. He was also appointed by the OSCE as an expert to facilitate dialogue between the Ukrainian central government and the Crimean authorities.



Personal details

Since October 2019, Prof. Dr. Gianmaria Ajani is a Fellow at the Käte Hamburger Center "Law as Culture" in Bonn.

In many areas of human activity, we perceive the traditional distinction between ownership and use as already being overcome. This is particularly true in the realm of art, where visual artists' production is more "liquid" than ever. Having blurred the borders between production and fruition, creation and copy, readymade and original work, many have moved beyond a simple "art of appropriation" – which naturally infers an ideology of ownership – gliding instead towards an activity based on a collective ideal: sharing.

Abstract

However, visual arts – be they ancient, modern, or contemporary – are governed by a set of norms and regulations that have remained unmodified over the years. As is well known, property law responds, in any jurisdiction, to one fundamental question: *Who owns what?* This main function assigned to property law is sustained by a set of taxonomies, aimed to deploy the possible "who" (*subject*) and the suitable "what" (*object*). Within this scheme, let us call it "classic property law," contracts play an auxiliary role; in particular, contracts of sale regulate the circulation of goods. For our purposes, a contract of sale governs the transfer of possession of an artwork/object from an owner (*in primis* the subject/artist) to a buyer (such as a collector, an art dealer, a museum, etc.).

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And here is my point: The transformation experienced by both the subject/artist and the artwork/object during the last 100 years has not been assisted by a change in legal taxonomies. This is evidenced, for example, by the increased number of litigations and cases concerning issues related to a functional adjustment of the “who owns what?” paradigm and the reality of contemporary art deals.

Such findings elicit renewed evaluation of the role of property law in managing the circulation of artwork/art actions; the hypothesis is that while property law is not best designed to govern the challenges posed by some artists, a functional, more tailored response could arise from contract law. The contract – as a binding formalization of a process negotiated between fully-informed parties – has received a new, more complex role in the creation of some conceptual artists, who are interested in themes like promises, gifts, and conversation. Within Europe, legal scholars, judicial courts, and EU institutions have played a proactive role in adapting classical private law, particularly the law of contracts, to a profoundly changing setting of market relations. As a result, new spaces of contractual relationships have been established, mostly based on an increase in the duties to inform the contractual partner. Other ways to ease social interactions are also developing, such as through the interesting concept of “postcontract duties” (*nachwirkende Vertragspflichten*).

All of these efforts share a common trait, namely overcoming the “rigidity” of the classical contract of sale, and of its boundaries, which are tightly designed by the law of property.

Prof. Dr. Gianmaria Ajani