



# POLICY BRIEF

 **ANTIQUITIES  
COALITION**

How to Successfully Fight the Illicit Trade in  
Stolen Art and Antiquities in Asia? Remove  
an Antiquated English Law from Hong  
Kong's Legal System

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December 2018 | No. 4







## ABOUT THE AUTHOR



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## ABOUT THE THINK TANK

The Antiquities Coalition unites a diverse group of experts in the global fight against cultural racketeering, the illicit trade in art and antiquities. This plunder for profit funds crime, armed conflict, and violent extremist organizations around the world, erasing our past and threatening our future. Through innovative and practical solutions, we tackle this challenge head on, empowering communities and countries in crisis.

In 2016, as part of this mission, we launched the Antiquities Coalition Think Tank. Joining forces with international experts, including leaders in the fields of preservation, business, law, security, and technology, we are bringing high quality, results-oriented research to the world's decision-makers, especially those in the government and private sectors. Our goal is to strengthen policymakers' understanding of the challenges facing our shared heritage, and more importantly, help them develop better solutions to protect it. However, the views expressed in these policy briefs are the author's own and do not necessarily reflect those of the Antiquities Coalition.

We invite you to learn more at [thinktank.theantiquitiescoalition.org](http://thinktank.theantiquitiescoalition.org).



Under the rule of market overt, looted and trafficked art and antiquities purchased from a shop or market in Hong Kong may be immune to claims for their return; this protection may apply even if the loser is the Chinese state.

## Executive Summary

In a bewildering break from its reputation as one of the world's premier financial and commercial centers, Hong Kong's retention of one medieval-era English law has allowed a thriving illicit art and antiquities market to grow within its borders.

The looting of art and antiquities from Asia is a problem exacerbated by continued demand. This is especially true in China, home to one of the greatest concentrations of millionaires worldwide, where a rapidly growing, newly wealthy class has entered the Asian art and antiquities market, escalating demand in an already thriving sector. Many Asian states that have lost and are continuing to lose cultural patrimony to looting and trafficking have introduced strict laws to combat the removal and unlawful export of art and antiquities from their jurisdiction. Transit and market states, too, have now implemented legal and regulatory frameworks, often based on international law, to deter citizens from dealing in looted art and antiquities or buyers from purchasing such goods when there is any doubt as to their provenance.

However, one of the world's main markets for Asian art and antiquities, as well as a convenient and much-used transit hub, is a notable exception in having almost no laws intended to prevent this illicit trade: Hong Kong. Hong Kong's legal and regulatory framework offers little protection for looted art and antiquities, and it retains one obsolete rule of law from its time as a British colony that may not only encourage buyers to purchase looted or stolen works, but also embolden those trying to construct false provenance to pass them through Hong Kong. This law is the rule of market overt, often referred to as a "thieves' charter," provided in Hong Kong's Sale of Goods Ordinance. According to market overt, if someone purchases goods from a shop or market where they are openly on display and are of a type usually sold in such a shop or market, then the buyer acquires good title to the goods so long as they have bought them in good faith. This means that a buyer of looted art or antiquities from a shop usually selling art or antiquities in Hong Kong may resist any attempt by the losing party to recover their lost heritage, and may sell the pieces on to others who will also be safe from any action for recovery.





To end Hong Kong's notorious reign as a market and transit state for trafficked art and antiquities, the rule of market overt, often described as a "thieves' charter," must be abolished.

Hong Kong has a reputation as one of the world's leading financial and commercial centers, trusted because of rigorous regulation of its efficient financial and banking services, and confidence in its common law system. It is now also considered one of the world's foremost Asian art and antiquities markets; however, the retention of an archaic and anachronistic principle of English medieval market law is baffling, especially when this principle has been abolished in the United Kingdom to prevent the flourishing of a "thief's paradise."

This policy brief explains some of the problems Asia faces with regard to looting of art and antiquities and loss of cultural heritage, and how Hong Kong's legal and regulatory framework does little to prevent Hong Kong from being used as a market and transit state for illicitly obtained cultural patrimony. The brief recommends the simple repeal of section 24 of the Sale of Goods Ordinance to abolish the market overt rule in Hong Kong, as well as standardization of import and export laws between Hong Kong and China, strengthened law enforcement of antiquity-related crimes, and the inclusion of the art market in anti-money laundering and counter-terrorist financing provisions.





## Introduction

In recent years, the rise of Asian economies, in particular that of the People's Republic of China, has led to an increase in demand for Asian art and antiquities and a consequent increase in prices that these pieces may achieve at market. Home to one of the world's greatest concentrations of millionaires, many of whom see art and antiquities as sound investments and useful means to move funds in a jurisdiction with strong currency controls, China has in recent years vied for position with the United States as the world's top art market.<sup>1</sup> Concerned about the ongoing loss of their cultural heritage, throughout the 20th and 21st centuries, most Asian states have adopted laws prohibiting or strictly regulating the export of archaeological and ethnological materials. Export restrictions have further reduced supply to a newly "hot" market, and in turn increased rarity amidst insatiable demand. Unfortunately, this demand drives both the strong legitimate market<sup>2</sup> for Asian antiquities and a robust illicit market. Where there is demand and lack of supply, opportunities arise for those willing to turn a blind eye.

The Hong Kong art and antiquities market remains untouched by anti-money laundering or counter-terrorist financing regimes.

Asian art and antiquities are also being used for money laundering and capital flight. Antiquities are often relatively small in size, of high value, and easily transported past customs officials who generally lack the specialist knowledge required to distinguish precious objects from the many cheap imitations that are purchased by tourists as souvenirs. Likewise, officials are ill-equipped to distinguish between valuable artworks and reproductions. The purchase and sale of art and antiquities are thus useful methods of avoiding monetary controls and moving large sums of money across international borders. In response to this threat, many Asian jurisdictions have placed more restrictions on the auction houses and sales operating within their borders, including subjecting them to specific anti-money laundering and counter-terrorist financing regulations.<sup>3</sup>

Hong Kong, however, proves a notable exception. With the geographical position, logistical framework, financial and political stability, and free port status to render it the number one Asian art market in the region, Hong Kong is also the only jurisdiction in Asia that provides legal protection for purchasers of stolen art and looted antiquities. In Hong Kong, dealers of trafficked art and antiquities find a market and transit place that provides their buyers with confidence that they will neither be subject to criminal prosecution nor lose their coveted artwork should the item's illicit origins be revealed.<sup>4</sup> Often the primary concern of buyers of illicit art and antiquities, if they know the objects are looted or are prepared to not ask too many questions, is whether they will be able to keep these items if their dark past is uncovered. Hong Kong's legal system contains an anachronistic statutory provision left over from British colonial rule that provides just such protection. This is the rule of market overt.

## The Hong Kong Trade Environment

Hong Kong has long been recognized as a major market for Asian art and antiquities. A legacy of British colonial rule, Hong Kong is a free port with little or no duty payable on goods coming into or out of the jurisdiction. The jurisdiction's ease of entry, proximity to mainland China, and established art and antiquities market have made it a target for dealers attempting to secure part of the seemingly





insatiable and immensely lucrative mainland Chinese market. Furthermore, it is very easy for locals and foreigners alike to start a business in Hong Kong.<sup>5</sup> Because of China's restrictions on the establishment of any major non-Chinese auction houses on the mainland, international auction houses such as Christie's and Bonham's have instead maintained a major presence in Hong Kong.

Hong Kong also benefits from its status as one of China's Special Administrative Regions, with the "One Country, Two Systems" commitment until 2047, meaning that it retains its common law jurisdiction and the principle of the rule of law, which encourages faith in commercial transactions and consumer rights. Thus, buyers of art and antiquities feel reassured that the Hong Kong courts will uphold their rights using established common law principles to enforce contracts and protect against fakes, forgeries, and misrepresentations.



The strategic use of Hong Kong as a source state in manufacturing provenance is evidenced by the case of a Kushan-era sculpture of the Seated Buddha. Purchased by the Australian National Gallery from Manhattan antiquities dealer Nancy Wiener in 2007, the Buddha was later revealed to have been plundered from an archaeological site in Mathura, Uttar Pradesh, India. Ms. Wiener generated false provenance for the looted statue by fabricating a letter from a British collector, purporting that he had purchased the piece in Hong Kong in the 1960s. In reality, Ms. Wiener herself traveled to India and acquired the statue from a trafficker in stolen antiquities. In order to cover this illicit origin, Ms. Wiener strategically linked the statue to the Hong Kong art market, thereby establishing its legitimacy under market overt. The museum returned the statue to India in 2015.

In another Indian case, in 2009 two maithuna statues were looted from a temple in Rajasthan, trafficked via Hong Kong, and then sold on to dealers in the United States and Europe. The statues were ultimately repatriated in 2014. Investigations into Manhattan art dealer Subhash Kapoor have also revealed that many of the 3,000 artifacts looted from India, Pakistan, Cambodia, and Tibet and sold by Kapoor were transported to Europe and the United States via Hong Kong.

Photograph courtesy of the National Gallery of Australia

Unfortunately, Hong Kong's very success as one of the world's primary markets for legitimately obtained art and antiquities likewise makes it an ideal market for illicit goods obtained from mainland China and beyond.<sup>6</sup> Hong Kong is often used as a source state when trying to legitimize stolen or looted art or antiquities by manufacturing provenance to disguise the checkered past of these items.<sup>7</sup> Furthermore, although mainland Chinese auction houses have been criticized for their possible use in money laundering via art and antiquities, which has in turn led to changes in practices regarding consignment and sale with more questions asked, the Hong Kong market remains largely unregulated and is not specifically targeted by any anti-money laundering or counter-terrorist financing regulations. Indeed, the art market in Hong Kong may have benefitted from the restrictions on the sale of art and antiquities in mainland China and other Asian jurisdictions due to transfer of





demand. Because Hong Kong is a free port and there is no specific law enforcement category recorded for antiquity-related crime, the illicit trade is difficult to categorize within customs and police records, and in turn receives little attention.<sup>8</sup>

## Hong Kong's Lack of Legal and Regulatory Protection for Looted Antiquities

### Hong Kong Theft Ordinance and Antiquities Trafficking

If looted antiquities have been imported into Hong Kong and are discovered there, the possible offenses that might be prosecuted, apart from a failure to declare such imports on an import manifest, are as follows:

If a thief or looter is caught in Hong Kong, then he or she may be prosecuted for theft even if the goods were stolen in another jurisdiction, so long as the taking of the goods would constitute an offense in that jurisdiction. Possibly of more use in the fight against the trafficking of illicitly obtained antiquities would be prosecution for handling stolen goods. This would be possible if an individual was proven to be or have been in possession of goods stolen in another jurisdiction, and it could be proven that the possessor knew or believed that the goods were stolen when he or she obtained them.

The Hong Kong police may search for and confiscate any goods found on the thief, handler, or on the premises where they are detained, if the police believe these goods are relevant to the investigation. If police obtain a warrant, they may search the premises and make relevant confiscations. On conviction of anyone for the theft of the goods or for handling stolen goods, the court may make an order for the return of the goods to the original owner if he or she has been identified, or for a compensation amount to be paid to the legal owner from the funds of the thief.

China is party to both international conventions intended to combat the trafficking of illicitly obtained art and antiquities—the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, ratified by China in 1989, and the 1995 Convention on Stolen or Illegally Exported Cultural Objects, ratified in 1997—but the Special Administrative Region of Hong Kong is not. Whereas China maintains very stringent export laws when it comes to cultural property, Hong Kong does not have any import restrictions apart from the obligation to declare goods on cargo manifests when moving through a commercial port. It has been noted that this creates a “convenient gap” between the laws and regulations of the two jurisdictions, although they are one country.<sup>9</sup> Hong Kong has only one law mentioning cultural heritage,<sup>10</sup> and another intended to protect archaeological sites, antiquities and relics, but this latter law only protects materials discovered in Hong Kong.<sup>11</sup>

Therefore, the only laws Hong Kong may use to prosecute art and antiquities trafficking are customs regulations,<sup>12</sup> the territory’s basic statute on stolen property (see sidebar),<sup>13</sup> or common law offenses.

Even when no criminal prosecutions are brought, if stolen or looted goods are identified in Hong Kong, the original owner may also have a legal claim through a basic rule of the common law. This simple rule of ownership, “*nemo dat quod non habet*” or “no one may give what he does not have,” makes it difficult to sell stolen property. Even if a thief sells stolen goods to a buyer who buys them in good faith<sup>14</sup> and has no knowledge that they are stolen, and even if the buyer pays a fair price, the buyer cannot obtain “good title.” The buyer will not have ownership that defeats the claim of others, including the original owner, as the thief does not have good title to pass on to them.

The original owner may then be able to rely on the tort of conversion—the principle that no one may use another’s property as their own unless they have permission to do so—to recover the stolen goods. A successful action in conversion may force even good faith purchasers to return the stolen item. The purchaser’s recourse is to try to get their money back from the thief, depending on whether they can find the thief and if the thief has any money.

In such cases, no one can subsequently sell this item with good title, as ownership will always be traced back to the thief. At times when stolen property is recovered after it passes through the hands of many good faith purchasers, there is a whole chain of nullified sales that may result in litigation to recover purchase monies. The *nemo dat* rule applies in most common law jurisdictions, although it may be subject to time limits for recovery. In Hong Kong, the rule has been incorporated into the Sale of Goods Ordinance s.23 and is not subject to a time limit, although the original owner may be required to bring the action for conversion within six years of the





theft if the present possessor is not the thief.<sup>15</sup>

Any goods stolen or looted in any jurisdictions where such actions are a crime may therefore be subject to an action for recovery under the tort of conversion in Hong Kong regardless of when the theft occurred, subject to the general principles of the common law and certain statutory exceptions in the Sale of Goods Ordinance.

The nemo dat principle is thus arguably the most useful tool in preventing the illicit trade in art and antiquities in Hong Kong, as purchasers may face losing their purchases if they have not undertaken rigorous due diligence procedures, even if they truly have no knowledge of the objects' tainted past. Such a realization would encourage even those whose moral standards may not be high to be careful about their purchases. The threat of loss of purchases is a concern particularly for institutional purchasers such as museums, and subsequent or potential lost sales have changed the practices of many dealing in art and antiquities around the world, including the leading auction houses.

However, the nemo dat principle in Hong Kong is subject to one important exception—market overt—which may be used to safeguard purchasers of stolen art and antiquities or to create a provenance trail to sell them at full market price in other market states.

## Market Overt

According to the rule of market overt, monikered the “thieves’ charter,”<sup>16</sup> anyone buying stolen art or looted antiquities in Hong Kong from a shop or market where they are openly on display and where such goods are usually sold may keep the goods and will not be subject to an action for recovery by the original owner if he or she had no knowledge of defects in the goods’ provenance and acted in good faith.<sup>17</sup> Even if a buyer may not have bothered to ask the simplest and most basic of questions regarding the art or antiquity’s provenance, he or she is still entitled to the protection of market overt. Hong Kong’s incorporation of market overt in its Sale of Goods Ordinance therefore allows purchasers to relax their due diligence and even encourages those who know that an item is illicitly traded to buy it.

Furthermore, market overt permits looters and dealers seeking to establish provenance to use real or illusory sale and purchase in Hong Kong to create a provenance trail that may be recognized in other jurisdictions, perhaps even the jurisdiction from which the art or antiquity was looted. The rule remains effective if the looted or stolen item is taken to another jurisdiction, even if that jurisdiction does not recognize market overt in its own law. Thus, if an item was stolen or looted in the United Kingdom, sold to a shopkeeper or market trader in Hong Kong, purchased from that shop or market trader in Hong Kong by a buyer in good faith and then taken by the buyer back to the United Kingdom, the original owner in the United Kingdom would not be able to reclaim the stolen item. Hong Kong’s market overt rule would have created a good title for the purchaser regardless of the nemo dat rule or international law.

Long recognized as encouraging the trade in stolen goods, the rule of market overt was abolished in the United Kingdom in 1995.





## Policy Recommendations

Despite recommendation by the Law Reform Commission of Hong Kong to abolish the rule of market overt in 2002, the legislative change has now languished under review for over sixteen years.

To end Hong Kong's role as the world's most attractive major market and transit jurisdiction for looted antiquities and stolen art, the market overt rule must be abolished. For a modern financial and commercial center such as Hong Kong, with extensive and rigorous due diligence measures in place for its financial and banking industries, and keen to enhance its reputation as one of the world's leading art and antiquities markets, it is inappropriate to retain this archaic and anachronistic rule from medieval England. This is especially indefensible when the same rule has been abandoned in the United Kingdom because of fears of enabling "a thief's paradise."<sup>18</sup> The rule of market overt was nearly abolished in 2002, when it was reviewed by the Law Reform Commission of Hong Kong, an independent advisory body. Noting that "all major jurisdictions in the common law world have either abolished or rejected at the outset the market overt rule," the Commission saw no reason for its retention and, although not considering its effect on the trade in illicitly obtained art and antiquities, recommended repealing section 24 and so eliminating the rule.<sup>19</sup> However, legislative change in Hong Kong is famously slow and often piecemeal, and this recommendation is one of several that years later is still under consideration by the relevant government department.<sup>20</sup> As such, the law has remained in place, and will indefinitely remain so without significant pressure on the Hong Kong government.

The loophole between China and Hong Kong's cultural property import and export laws should be eliminated.

Other measures that could be undertaken to safeguard the many honest dealers who conduct business to high standards and customers wishing to purchase licit art and antiquities include eliminating the gap between China and Hong Kong's cultural property import and export laws. Whereas China maintains very stringent export laws in regard to cultural property, Hong Kong does not have any import restrictions other than those relating to cargo manifestation. As such, an object illegally exported from China can be legally imported into Hong Kong and then legally exported, effectively laundering it. In order to eliminate this loophole, Hong Kong should thus restrict the import of that which China restricts the export, or in the least require documentation that Chinese cultural property entering Hong Kong legally left the mainland.

Art and antique dealers and auction houses should be included in anti-money laundering and counter-terrorist financing regimes.

Relatedly, although mainland Chinese auction houses are subject to strict regulation in order to combat money laundering and capital flight via art and antiquities, the Hong Kong market remains largely unregulated and is not specifically targeted by any anti-money laundering or counter-terrorist financing regulations. In March 2018, changes were made to the coverage of Hong Kong's Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), such that designated non-financial businesses and professions (DNFBPs) would be subject to the same reporting and record keeping requirements as financial institutions. However, the designation of DNFBP does not yet include "high value dealers," such as the art and antiquities sector, and as such these businesses are not subject to any special anti-money laundering legislation.<sup>21</sup> Hong Kong should thus amend the Anti-Money Laundering and Counter-Terrorist Financing Ordinance to include the concept of high-value dealers as used in other jurisdictions, such as the United Kingdom,<sup>22</sup> and subject art and antiquities dealers to mandatory customer due diligence and



Legislation should provide for the seizure and return of illicit traded art and antiquities, and be enforced by a dedicated, cross-agency art crime team.

suspicious transaction recording requirements, and enhanced record keeping requirements.

Furthermore, because Hong Kong is a free port and there is no specific law enforcement category recorded for art and antiquity-related crime, the illicit trade is difficult to categorize within customs and police records, and in turn receives little attention. As such, a law enforcement category should be created for art and antiquity-related crime, and dedicated provisions in customs and other criminal and civil legislation added to provide for the seizure and return of illicitly obtained or transited art and antiquities. These provisions could be enforced by a dedicated art and antiques cross-agency force composed of police, customs, and other officials working with experts in the fields of art and archaeology, and tasked with identifying, recording, and handling issues involving art and antiquities in Hong Kong.

## Conclusion

Sadly, Hong Kong's reputation as an international art and antiquities market is not matched by its legal framework, and the jurisdiction is presently being used as a market and transit state for stolen art and looted antiquities. In order to remove doubts over Hong Kong's reputation as a legitimate art and antiquities market:

- Section 24 of the Sale of Goods Ordinance should be repealed, thereby abolishing the rule of market overt.
- Hong Kong and China should standardize import and export laws pertaining to cultural property, such that Hong Kong restricts the import of that which China restricts the export. At the very least, Hong Kong should require documentation that Chinese cultural property entering the jurisdiction legally left the mainland.
- Anti-money laundering and counter-terrorist financing regimes should subject "high value dealers" such as art and antiquity dealers and auction houses to the same reporting and record-keeping requirements as financial institutions, drawing upon the British model.
- A law enforcement category should be created for art and antiquity-related crime.
- Customs and other criminal and civil legislation should be expanded to provide for the seizure and return of illicitly obtained or transited art and antiquities.
- A dedicated art and antiques cross-agency force, composed of police, customs, and other officials working with experts in the fields of art and archaeology, should be established and tasked with identifying, recording, and handling issues involving art and antiquities in Hong Kong.

It has become commonplace to see provenance statements in auction and sales catalogues that include "purchased from a shop in Hong Kong" with or without details of the shop. By implementing these recommendations, the provenance "purchased in Hong Kong" may yet become a sign of good practice rather than an indication that those who are unconcerned with provenance may buy with impunity.





## Sources and Further Reading

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## Endnotes

<sup>1</sup> In 2018, ArtPrice rated China second to the United States due to a huge upturn in American sales. See: “H1 2018 – Global Art Market Report.” ArtPrice.com. <https://www.artprice.com/artprice-reports/global-art-market-in-h1-2018-by-artprice-com> (accessed November 26, 2018).

<sup>2</sup> The legitimate market is that which deals in art and antiquities that have been legally and ethically sourced.

<sup>3</sup> For example, in Indonesia, suspicious transaction reports (STRs) are required of dealers of art, antiquities, precious stones, jewelry, and precious metals, as well as auction houses. See U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, *2016 International Narcotics Control Strategy Report, Volume II: Money Laundering and Financial Crimes* (Washington, DC, 2016), 135, <http://www.state.gov/j/inl/rls/nrcrpt/2016/vol2/253406.htm> (accessed November 30, 2018).

<sup>4</sup> Applying recognized conflicts of laws principles, the market overt exception in Hong Kong would protect purchasers from recovery actions in most jurisdictions, whether civil or common law. Several examples of this exist, where objects have been stolen from one jurisdiction and sold in another that has a bona fide purchaser exception. For example, in *Winkworth v Christie Manson & Woods, Ltd.* [1980] Ch. 496, the owner of artworks stolen in the United Kingdom could not recover them when they were offered for sale in a London auction house because the consignor had purchased the items in good faith in Italy, and Italian law gave good title to the purchaser. Similarly, in *Iran v Berend* [2007] EWHC 132, the English High Court found Iran’s claim to recover an antiquity, a fragment of a public monument, to be failed as it had been sold in France to a good faith purchaser whose title was not defeated by Iran’s claim to prior ownership. However, there have been exceptional cases where courts declined to follow conflicts of laws principles or found exceptions to them. For example, in *Autocephalous Greek-Orthodox Church of Cyprus v Goldberg and Feldman Fine Arts, Inc.* 717 F Supp. 1374 (S.D. Ind. 1989; Affirmed by: 917 F.2d 278 (7th Cir. 1990)), the Indiana Courts declined to accept that a sale of the antiquity in Switzerland gave the purchaser good title, finding that there was insufficient connection with Switzerland and preferring to apply Indiana state law. Therefore, it may be open to courts to decline to follow usual conflicts of law principles, though this would be unusual, as in the Indiana decision, and often has a similar political background.

<sup>5</sup> Hong Kong is the world’s fourth easiest jurisdiction for financial regulation and tax compliance, and consistently ranks within the top ten places to do business. See “Hong Kong remains the easiest jurisdiction in Asia Pacific for accounting and tax compliance.” TMF Group. <https://www.tmf-group.com/en/news-insights/articles/2018/june/hong-kong-financial-complexity-index-2018/> (accessed November 26, 2018); “Best Countries for Business 2018 Ranking.” Forbes. <https://www.forbes.com/best-countries-for-business/list/#tab:overall> (accessed November 26, 2018).

<sup>6</sup> Notable cases include that of a Song Dynasty gilded Buddha statue, lent to the Hungarian Natural History Museum in Budapest by a Dutch antiquities collector in 2015 that, once X-rayed, was revealed to contain human remains. Consequent publicity led to claims that the statue and the mummified monk inside belonged to a temple in the village of Yangchun in Fujian, China. Villagers claimed that the statue was stolen in 1995 and have requested its return. The collector who purchased the statue claims that he bought it in 1995 in Amsterdam after a businessman “purchased it at a market in Hong Kong.” In another case, in 2002, a Xi’an antiquities dealer, Wang Cangyan, was arrested after arranging the transport to Hong Kong of dozens of figurines looted from the tomb of Han Dynasty Empress Dou, smuggled across the border in a consignment of modern porcelain. Some of these pieces were later discovered on sale at Sotheby’s, New York. See Phillips, Jack. “Villagers Take Collector to Court over ‘Mummified’ Buddha Statue.” *The Epoch Times*. July 18, 2017. [https://www.theepochtimes.com/villagers-take-collector-to-court-over-mummified-buddha-statue\\_2269544.html](https://www.theepochtimes.com/villagers-take-collector-to-court-over-mummified-buddha-statue_2269544.html) (accessed October 25, 2018); Beech, Hannah. “Spirited Away.” *Time*, October 13, 2003. <https://www.content.time.com/time/world/article/0,8599,2056101,00.html> (accessed October 25, 2018)

<sup>7</sup> Notable cases detailed in sidebar. See Matthews, Adam. “The Man Who Sold the World,” *GQ India*, December 5, 2013. <https://www.gqindia.com/content/man-who-sold-world/>; Mashberg, Tom and Max Bearak. “The Ultimate Temple Raider? Inside an Antiquities-Smuggling Operation.” *New York Times*. July 23, 2015. <https://www.nyti.ms/1LFEyIJ>; Felch, Jason. “The End of the Beginning: NGA Returns Kushan Buddha and Two Kapoor Objects,” *Chasing Aphrodite*. September 18, 2016. <https://www.chasingaphrodite.com/2016/09/18/the-end-of-the-beginning-nga-returns-kushan-buddha-and-two-kapoor-objects>; Yates, Donna. “Maithuna from Atru.” *Trafficking Culture*. October 18, 2018. <https://www.traffickingculture.org/encyclopedia/case-studies/maithuna-from-atru/> (all accessed October 25, 2018).

<sup>8</sup> In 2010, in response to an inquiry for statistical data on seizure of Chinese antiquities, the Customs and Excise Department could only provide details of one seizure in 2006 of 638 pieces of “Arts & Craft (antique),” with an estimated value of HK\$2.3 million. In 2016, the reply to a similar inquiry was that the Customs and Excise “did not keep such figures.” See Bull 2013.





<sup>12</sup> Murphy 1993; Theft Ordinance, Cap. 210

<sup>13</sup> Theft Ordinance s. 24, 28, 30; Police Force Ordinance, Cap. 232, s. 50(6); Criminal Procedure Ordinance, Cap. 221, s. 83X

<sup>14</sup> “Good faith” being something done honestly even though it may have been done negligently.

<sup>15</sup> Limitation Ordinance, Cap. 21, s. 5

<sup>16</sup> Sale of Goods (Amendment) Act 1994, c. 32.

<sup>17</sup> Hong Kong has a common law legal system that was expressly retained in its Basic Law (Article 8) when the colony was returned from the United Kingdom to China in 1997. Many aspects of British law remain Hong Kong’s legislation and common law. One such transplant is the statutory provision of “market overt.” This notorious concept aimed to provide confidence for buyers at medieval English markets, as it granted them good title to property purchased if they had acted in good faith and subject to the practices of the market, which usually included purchase during daylight hours for a reasonable price.

<sup>18</sup> Howells 1995, 31.

<sup>19</sup> See Law Reform Commission of Hong Kong, “Contracts for the Supply of Goods,” February 2002, 239, par. 9.115.

<sup>20</sup> In the Panel on Administration of Justice and Legal Services 2018 Annual Report on the “Implementation of the recommendations made by the Law Reform Commission,” the Panel noted the reply from the Commerce and Economic Development Bureau, the government department responsible for considering and carrying out these recommendations. The Bureau stated that there had been changes to the referenced legislation in other jurisdictions referenced in the 2002 Law Reform Commission Report, notably Australia and New Zealand; therefore, further examination of the updated overseas legislation and implementation was being conducted. The 2018 Report stated: “The examination is ongoing. As this is taking longer than expected, it is hoped that the examination could be completed as soon as practicable. Based on such examination and research, and subject to other prevailing competing policy priorities, the Bureau will further consider how legislative proposals should be formulated and the timing of public consultation.”

<sup>21</sup> The Financial Action Task Force (FATF) is presently conducting mutual evaluation of Hong Kong’s anti-money laundering regime in June/July 2018, reporting in February 2019; however, this report is expected to focus on the effectiveness of existing laws and regulations.

<sup>22</sup> In the United Kingdom, a high-value dealer is any business or sole trader that accepts or makes payments of €10,000 or more (or equivalent in any currency) in exchange for goods, including payment by deposit directly into a bank account or cash paid to a third party for the business’s benefit. A high-value payment may be a single cash payment of €10,000 or more for goods; several cash payments for a single transaction totaling €10,000 or more, including a series of payments and payments on account; or cash payments totaling €10,000 or more that appear to have been broken down into smaller amounts so that they come below the high-value payment limit. The British system requires high-value dealers to register with Her Majesty’s Revenue and Customs and subjects them to customer due diligence and reporting requirements if they accept or make high-value payments for wholesale or retail transactions, a large quantity of low-value goods, or a single transaction made in installments or on account.