

the De Kock Commission is the view that the Reserve Bank is better equipped to predict the future value of the rand than the exchange market. The Report indicates very clearly how poorly the Reserve Bank predicted the value of the rand between 1972 and 1978. Is there any reason to believe the Reserve Bank will do any better for the South African taxpayer or any better than the market place? My own view is that it will not.

My recommendation for exchange-rate policy

in South Africa is that there should be none. South Africa should instead establish a conservative money and fiscal policy in the form of an announced rule for the growth of the supply of money. The supply of money should grow at about the potential rate of growth of the real economy. As soon as economic agents in South Africa and abroad were convinced that the South African monetary authorities intended to follow such a policy the rate of inflation would fall and the rand rise.

Art: is it really yours?

## Copyright in paintings

***The purchase of a painting is usually a very personal act. Tastes in art differ considerably from person to person; consequently in buying a painting you perform an act of personal identification with a creation of particular style, form and aesthetic quality. Because of the spiritual or emotional element in exercising the desire to acquire the possession and ownership of a painting, you form a stronger attachment to that painting than you would normally to a more impersonal object such as a motor car or a domestic appliance.***

On account of the emotional and intellectual identification with and attachment to a painting that you have purchased, you are often inclined to feel that your ownership of the painting is totally exclusive of others and more intimate than your ownership of other more impersonal articles. After all, you have acquired a unique article with which you have a strong personal relationship, and may feel that you not only have ownership of the painting but that you possess it passionately and completely and that it is yours to savour and to deal with entirely as you please. But it is important to realize that your ownership or possession, in the broad sense of these terms, of the painting is in normal circumstances probably not as complete as you may wish and is in fact probably subject

to important limitations.

It is necessary to distinguish between two items of property comprised in a painting. First, there is the physical object, that is, a piece of canvas or some other material to which paint has been applied, which is probably in a frame. Secondly, there is an immaterial entity — a creation, being the fruits of the labour of the intellect of the artist. In short, the painting is both a physical object and an item of intellectual property.

The physical object is an item of movable material property. Ownership of such an item is transferred by delivery accompanied by the intention to pass ownership. Accordingly, when you buy a painting and obtain possession of the painting in terms of a contract of sale you acquire the ownership of an item of movable property. As the owner, you are free to retain the painting in your possession or, subject to any obligations to the contrary, to transfer the ownership of the painting to another or even to destroy it. Ownership of the physical object does not, however, of itself vest in you ownership of the item of intellectual property. Ownership of the item of intellectual property is not governed by the law of things, which governs the ownership of the physical object, but by the law of copyright.

A painting is classified as an artistic work under the Copyright Act 98 of 1978. In terms of this Act an artistic work will qualify for copyright if certain conditions are met; namely, the artist must be a citizen of or domiciled or resident in South Africa or in any other country to which the operation of the Copyright Act is

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## Copyright in paintings

extended, or the painting must be first published in South Africa or another country to which the operation of the Copyright Act is extended. The ownership of the copyright in a painting that qualifies for copyright in South Africa is vested in the artist.

### Freely transferable

Under the Copyright Act the owner of the copyright in a painting is given the exclusive right to do or to authorize the doing of any of the following acts:

- Reproduce the work in any manner or form.
- Publish the work.
- Include the work in a cinematograph film or a television broadcast.
- Cause a television or other programme including the work to be transmitted in a diffusion service, unless the service transmits a lawful television broadcast, including the work, that is the original broadcast.
- Make an adaptation of the work.
- Do in relation to an adaptation of the work any of the first four of the above acts specified in relation to the work.

The ownership of the copyright in a painting or of any part or constituent right of the copyright in a painting (for example, the right to broadcast it or the right to publish it) is freely transferable. The manner in which the ownership of copyright is transferred is by an assignment of rights, which the Copyright Act specifies must be by means of a written document signed by the copyright owner. In other words, the item of intellectual property comprised in a painting can be transferred from one person to another only by means of a written instrument signed by the owner of that item of property (that is, the copyright owner) and is not transferred by delivery of the physical object with a view to vesting ownership of the physical object in the recipient.

### Limited ownership

In practical terms, when you buy a painting and take delivery of it you obtain the ownership of the physical object but you do not acquire ownership of the copyright in the item of intellectual property unless you arrange for the artist or the copyright owner to assign the copyright to you by means of a written instrument signed by him.

Ownership of a painting without ownership of the copyright in it is, in practice, a limited form of ownership. The owner of a painting in these circumstances cannot, without the authority of the copyright owner, reproduce the painting in any manner or form, such as in a catalogue; he cannot publish the painting or

include it in a cinematograph film or television broadcast, or for that matter perform any of the acts specified above. The owner of the painting can in fact do very little with his property besides hang it on his wall, display it or resell it.

If the buyer of a painting succeeds at the same time in acquiring the ownership of the copyright in the painting, he will be in a very powerful position vis-à-vis that painting and will be able to restrain the artist himself from performing any of the acts specified above in relation to the work. The same restriction will obviously apply towards third persons. The owner of the painting will, in effect, have a complete monopoly in all manner of dealings with the painting. It will therefore be clear that only in this situation will the owner of the painting be able to satisfy his desire for full possession of the painting. In practice, artists are very seldom prepared to dispose of their copyright in their paintings along with the sale of the physical objects.

### Long life

The copyright in a painting endures for a period terminating fifty years after the end of the year in which the artist died. By virtue of the long life of the item of intellectual property comprised in a painting and of the scope and commercial potential of the right, ownership of it amounts to a considerable asset, the value of which is in practical terms perhaps even greater than that of the physical object!

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