

In 1992 Homer Smith purchased a warehouse in the southwest suburbs of Chicago. Several years earlier the former owner, an art enthusiast, had commissioned a large abstract sculpture of welded metal which was completed in the fall of 1991. The sculpture takes up large portions of the lobby, walls, and ceiling of the warehouse. Smith purchased the warehouse intending to convert it into a restaurant. He thought that the sculpture would play a key role in the interior decorating motif. Unfortunately, Smith's plans to open a restaurant failed to work out, so he then decided to lease the building for use as a warehouse. To use the building profitably for this purpose, however, he must remove the sculpture. In 1991 Congress enacted the Visual Artists Rights Act, which applies to certain works of visual art, including sculpture, commissioned or completed after June, 1991. Under this Act an artist has a right, for the duration of her life, to prevent any intentional distortion, mutilation, or modification of her work. The sculpture in Smith's building has mosaics embedded in the building's concrete floor, and so it cannot be dismantled and removed without suffering partial damage.

Is the Visual Artists' Rights Act, as applied in Homer Smith's case, fair or unfair? In either case explain the reasons for your judgment.

MODERATOR'S ANSWER: The Visual Artists Rights Act is reasonable, and fair as applied to Homer's situation. The law went into effect prior to the sale of the warehouse. Even if Homer had not been aware of the law at the time of his transaction, this would not make it unfair to apply it in his case. If ignorance of the law was viewed as a valid excuse then people would have strong incentives to remain uninformed concerning their legal obligations. There is room for reasonable disagreement about whether the Visual Artists Rights Act benefits society, but the American body politic has decided, through its duly authorized representatives, that it does so. Furthermore, under the law, Homer still has some options available to him, such as attempting to negotiate with the artist to arrive at a mutually acceptable agreement.

Case from the February 24, 1996 Intercollegiate Ethics Bowl. Copyright Robert Ladenson, Center for the Study of Ethics at the Illinois Institute of Technology, 1996.