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Art, Cultural Heritage, and the Law

Cases and Materials

THIRD EDITION

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CAROLINA ACADEMIC PRESS
Durham, North Carolina
To Sam
Jennifer, Shira, and Theo
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Preface to the Third Edition

The intersection of law with art and cultural heritage has come into its own only in the past few years. But the vibrancy and excitement of this area are demonstrated by the need for a new edition of this casebook. Particularly striking are the pace at which new developments have occurred and the extent of current litigation.

The purpose of this book is to draw this discipline into the mainstream of the American law school curriculum and to present coherent legal doctrines in a fashion that binds together what often appear to be disparate areas of the law. This subject is increasingly important, not just because the amounts of money at stake continue to grow even as the national and international legal regimes have become more complex, but because we increasingly realize how important cultural heritage is to us as individuals, as communities, as a nation, and as part of our place in the international arena. Law students are attracted to the subject because it resonates with their sense of who they are and it will increasingly become an area of practice in the future.

Art and cultural heritage law is an inherently interdisciplinary topic drawing on history, art history, anthropology, archaeology, economics and international relations, to name just a few. This casebook brings in that interdisciplinary flavor, particularly by showing the students illustrations of many of the art works that were at stake in the legal disputes they study.

There are many individuals who contributed in important ways to the publication of this book. Several colleagues used early versions of the casebook. They and those who used the earlier editions contributed valuable suggestions for improvements in this edition. In particular, I want to thank Jane Levine, Jennifer Richman, Lucille Roussin, Leila Amineddoleh, Stephen Cribari, Lolly Gasaway, Morag Kersel and Carla Shapreau for their valuable contributions and suggestions. The students in my classes at DePaul have also provided valuable feedback. I owe a particular debt of gratitude to my research assistants, Kelly Kuglisich, Rebecca Martel, Elizabeth Marie Lally, and Dana Duffield, who worked on the first edition, Jennifer Marie Wegmann and Jo Ann G. Lim, who assisted with the second edition, and Heather Hope Stephens, who worked on the third edition. Vadim Shifrin, the assistant director of the Center for Art, Museum, and Cultural Heritage Law, provided significant assistance in preparation of the third edition. I am grateful, as well, to the many teachers from whom I have learned. Finally, I thank my family for their constant love, patience, and support.

Patty Gerstenblith
June 2012

Author’s note: Footnotes to the text, opinions, and other quoted materials are numbered consecutively within each chapter. Some footnotes in opinions and secondary materials are omitted. The format for citations has been harmonized.
Acknowledgments

Books & Articles


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