

Art, Cultural Heritage, and the Law

Art, Cultural Heritage, and the Law

Cases and Materials

FOURTH EDITION

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DIRECTOR OF THE CENTER FOR ART, MUSEUM, & CULTURAL HERITAGE LAW
DEPAUL UNIVERSITY COLLEGE OF LAW



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To Sam

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Preface to the Fourth Edition

The intersection of law with art and cultural heritage has become ever more vital, in part due to the exponential growth in the value of the art market and in part due to the tragic ongoing conflicts in much of the world. Cultural heritage now plays a central role in many of the world's most significant events. The continuing vibrancy and excitement of this area are demonstrated by the need for the fourth edition of this casebook. Particularly striking are the pace at which new developments have occurred and the extent of current litigation.

The discipline of art and cultural heritage law has become part of the mainstream of the American law school curriculum. This casebook aims 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 only because the monetary value of artworks continues to grow while the national and international legal regimes 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, practitioners and policy makers 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 including images of many of the art works that were at stake in the legal disputes in which they figure.

Many individuals have contributed to the publication of this book. Several colleagues have contributed valuable suggestions for improvements in each edition. In particular, I want to thank Jane Levine, Jennifer Richman, Lucille Roussin, Leila Amineddoleh, Stephen Cribari, Lolly Gasaway, Morag Kersel, Claire Lyons, Christina Pannos and Carla Shapreau. The students in my classes at DePaul have provided valuable feedback. I owe a particular debt of gratitude to my research assistants over the years: Kelly Kuglitsch, 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; Heather Hope Stephens, who worked on the third edition, and Joy Naifeh, Alyssa Pullara, Betina Schlossberg and Lois Wetzel who assisted with the fourth edition.

I am grateful to the many teachers from whom I have learned. Between the publication of the third and fourth editions, three founders of the field of cultural heritage law passed away: Professors David Lowenthal, John Henry Merryman and Norman Palmer. I and all of us who work in this field owe them our immense gratitude. Finally, I thank my family for their constant love, patience, and support.

Patty Gerstenblith

March 2019

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

Acknowledgments

Books & Articles

- Alexander, Isabella, *White Law, Black Art*, 10 *Int'l J. Cultural Prop.* 185, 194–95 (2001). Copyright © 2001 Isabella Alexander. Reprinted by permission of Isabella Alexander.
- Bell, Catherine E. & Robert K. Paterson, *Aboriginal Rights to Cultural Property in Canada, Box of Treasures or Empty Box: Two Decades of Section 35*. Copyright © 2003 Theytus Books. Reprinted by permission of Theytus Books Ltd.
- Coggins, Clemency C. *Illicit Traffic of Pre-Columbian Antiquities*, *Art Journal* (1969). Copyright © 1969 *Art Journal*. Reprinted by permission of Clemency C. Coggins.
- Coombe, Rosemary J., *The Properties of Culture and the Politics of Identity: Native Claims in the Cultural Appropriation Controversy*, 6 *Canadian J. of L. & Juris.* 249, 259–65 (1993). Copyright © 1993 Rosemary Coombe. Reprinted by permission of Rosemary Coombe.
- Giry, Stephanie, *An Odd Bird*, *Legal Affairs Magazine* Sep./Oct. 2002. Copyright © 2002 *Legal Affairs Magazine*. Reprinted by permission of *Legal Affairs Magazine*, New Haven, CT.
- Kersel, Morag M., *From the Ground to the Buyer: A Market Analysis of the Illegal Trade in Antiquities*, *Archaeology, Cultural Heritage and the Antiquities Trade* 188–205 (N. Brodie, M.M. Kersel, C. Luke and K. Walker Tubb eds eds. 2006). © N. Brodie, M.M. Kersel, C. Luke and K. Walker Tubb. Reprinted by permission of N. Brodie, M.M. Kersel, C. Luke and K. Walker Tubb.
- Lyons, Claire L., *Thinking about Antiquities: Museums and Internationalism*, 21 *International Journal of Cultural Property* 251–265 (2014). © Claire L. Lyons. Reprinted by permission of Claire L. Lyons.
- Merryman, John Henry, *The Free International Movement of Cultural Property*, 31 *N.Y.U. J. Int'l L. & Pol.* 1, 4–14 (1998). Copyright © 1998 New York University School of Law. Reprinted by permission of John Henry Merryman.
- Meyer, Karl E. *The Art Museum: Power, Money, Ethics* (1979). Copyright © 1979 the Twentieth Century Fund, Inc. Reprinted by permission of HarperCollins Publishers, Inc.
- Prott, Lyndel V. and Patrick J. O'Keefe, *Cultural Heritage or Cultural Property*, 1 *Int'l J. Cultural Prop.* 307, 309–12 (1992). Copyright © 1992 Lyndel V. Prott and Patrick J. O'Keefe. Reprinted by permission of Lyndel V. Prott and Patrick J. O'Keefe.

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- Fig. 1-1, page 10. Benvenuto Cellini. *Saliera* (Saltcellar). 1540–1543. Gold, niello work, and ebony base, height 26 cm. Kunsthistorisches Museum, Vienna. Photo © Erich Lessing/Art Resource, N.Y.
- Fig. 1-2, page 11. Pablo Picasso. *Bull's Head*. © 2012 Estate of Pablo Picasso/Artists Rights Society (ARS), New York. Photo: Beatrice Hatala. Photo credit: Réunion des Musées Nationaux/Art Resource, NY. Musée Picasso, Paris, France.
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Chapter 2

- Fig. 2-1, page 71. Andres Serrano. *Piss Christ*. Copyright © Andres Serrano. Courtesy of the artist and Yvon Lambert New York, Paris.

Chapter 3

- Fig. 3-1, page 109. Statue of Liberty in Las Vegas (left) and the original in New York (right) with the USPS Lady Liberty stamp in the middle. Images courtesy Meredith P's Flickrstream and Celso Flores' Flickrstream, stamp courtesy USPS.
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Chapter 4

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Fig. 5-1, page 289. George F. Harding Jr's Treasure House Castle on Lake Park Ave., "Old Gallery" with a Row of Armor. Reproduced by permission of the Art Institute of Chicago, Chicago, IL.

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Plate 4. Mosaic, The Apostle James, Panagia Kanakaria Mosaics, post-removal, Lythrankomi, Cyprus. Photo by Catherine Sease. Reproduced by permission of Catherine Sease.

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Plate 12. Relief Panel from the Tomb of Wang Chuzi, Fifth Dynasty (906–990 C.E.), located in Hebei Province of the People's Republic of China. Photo courtesy of U.S. Customs.

