

Art, Cultural Heritage, and the Law

Art, Cultural Heritage, and the Law

Cases and Materials

FIFTH EDITION

Patty Gerstenblith

DISTINGUISHED RESEARCH PROFESSOR OF LAW &
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 Fifth 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 fifth 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 has increasingly become an area of practice.

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 made valuable suggestions for improvements in each edition. In particular, I want to thank Jane Levine, 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; Joy Naifeh, Alyssa Pullara, Betina Schlossberg, and Lois Wetzel, who assisted with the fourth edition; and Makayla Reynolds, who assisted with the fifth 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. Between the fourth and fifth editions, Professors Francesco Francioni and Patrick Boylan passed away. I and all of us who work in this field owe them our immense gratitude. Finally, I thank my family, and especially my husband, Sam Gordon, for their constant love, patience, and support.

PATTY GERSTENBLITH

March 2025

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

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Figures

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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 12. Pablo Picasso. *Bull’s Head*. © 2024 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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Fig. 1-4, page 18. Jack Ziegler, cartoon. © 2006 Jack Ziegler/The New Yorker Collection/www.cartoonbank.com. All Rights Reserved.

Chapter 2

Fig. 2-1, page 77. Andres Serrano. *Piss Christ*. Copyright © Andres Serrano. Courtesy of the artist and Yvon Lambert New York, Paris.

Chapter 3

Fig. 3-1, page 115. 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

Fig. 4-1, page 251. Jan Martin. *Symphony #1*. Copyright © 1984 Jan Martin. Reproduced by permission of Jan Martin.

Chapter 5

Fig. 5-1, page 316. 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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Fig. 7-1, page 523. Charles Barsotti, cartoon. © 1993 Charles Barsotti/The New Yorker Collection/www.cartoonbank.com. All Rights Reserved.

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Fig. 8-1, page 557. Leo Cullum, cartoon. © Leo Cullum/The New Yorker Collection/www.cartoonbank.com. All Rights Reserved.

Fig. 8-2, page 569. Albrecht Dürer. Portrait of Hans Tucher. 1499. Photo courtesy of Kunstsammlungen zu Weimar. Reprinted with permission of Kunstsammlungen zu Weimar.

Fig. 8-3, page 569. Albrecht Dürer. Portrait of Felicitas Tucher. 1499. Photo courtesy of Kunstsammlungen zu Weimar. Reprinted with permission of Kunstsammlungen zu Weimar.

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Fig. 12-2, page 1215. George Milpurrurru. *Magpie Geese and Water Python*. © George Milpurrurru/Copyright Agency. Licensed by Artists Rights Society (ARS), New York, 2024.

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Plate 3. Mosaic, The Apostle James. Panagia Kanakaria, Lythrankomi, Cyprus. Photo by E. Hawkins, courtesy of Dumbarton Oaks, Byzantine Photograph and Fieldwork Archives, Washington, D.C.

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