What is “Museum law?” In order to answer it, let’s start with what it isn’t. Museum law isn’t a single substantive body of law – try as you might, you won’t find any “Restatement on the Law of Museums.” Museum law isn’t quite an area of law either – at least not in the same way as other areas of law. With some exceptions, most areas of law are “umbrellas” that gather related substantive bodies under it that serve to define its scope and its purpose. For example, the area of Environmental law encompasses the substantive bodies of Administrative law, Water law, land use and International law, among others. Likewise, Elder law includes under its “umbrella” such substantive bodies as Trusts, Health law, Insurance law, and Family law. Museum law could function as an umbrella, sure, but with substantive bodies as diverse as Admiralty law and Copyright mingling with nonprofit governance and Federal Indian law, the cohesiveness that normally gives definition to other areas of law is tenuous at best.

Museum law isn’t a substantive body of law nor is it an area of law whose scope and purpose is defined by the substantive bodies of law included within it – its subject matter is much too diverse. So, if Museum law can’t be defined substantively, how do we define what it is? The answer might seem surprisingly simple. Museum law is defined by what is arguably the most essential element to our profession no matter what area of law we practice – the client.

It is the client’s objectives, needs, and philosophy that define the area of Museum law. Because of this, Museum law is an incredibly diverse field. Because of this, Museum law is an incredibly diverse field. Museum law isn’t just NAGPRA. It is not only the law of Finds nor is it strictly about nonprofit governance. Museum law is virtually anything the client needs in order to further the responsible stewardship of objects and collections it holds in trust.

The Museum & Arts committee welcomes all original articles, case commentaries, book reviews, and other publishable work that relate to the arts or museology. Please direct all inquiries and submissions to Barron Oda, Museums & The Arts Committee Editor-in-Chief, at barronoda@gmail.com.
Cache of Valuables Found in Former Russian Mansion
More than one thousand pieces of jewelry, china, and silver were found in a space between floors in a restaurant / former mansion. Intarsia Company, who made the discovery, is restoring the mansion. Many of the pieces were wrapped in newspaper from early 1917, indicating they were most likely hidden just before the Bolshevik Revolution. Intarsia would like the find publicly displayed. A regional Communist organization will apply for ownership. The nearest-living descendant lives in France.
http://tinyurl.com/scitechmac002

Part of Hitler’s Art Collection Discovered in Convent
Czech Historian Jiri Kuchar discovered seven paintings of a collection of sixteen in a small convent near Prague. Previously seized by American forces near the end of World War II before disappearing, it is unclear how the paintings arrived at the convent, though the convent intends to keep them. Of the nine unaccounted for, Kuchar says, “I’ve got a feeling that many places will be reluctant to admit their favourite works of art have this unfortunate historical blemish.”
http://tinyurl.com/scitechmac001
Gallery: http://tinyurl.com/scitechmac002

Brazen Armed Heist at Greek Museum
Seventy-seven artifacts were stolen from the Archaeological Museum of Olympia. Two armed, masked gunmen disabled the museum’s alarm then tied and gagged a security guard during the heist. Sledgehammers were used to break cases. Lamps, vases, pottery, and bronze figures were taken. This robbery comes just a month after a theft at Athens’ National Gallery.
http://tinyurl.com/scitechmac004

Greek Orthodox Frescoes Repatriated
800-year old frescoes looted almost forty years ago and on display in Houston for the past fifteen years were returned to the Church of Cyprus recently. http://tinyurl.com/scitechmac005

California’s Resale Royalties Law Waits For Another Day
California’s 1976 Resale Royalty Act applies to visual art resold in California and entitles the artist to 5% of the sale price if sold for over $1,000. Artist Mark Grotjahn sued collector Dean Valentine over unpaid royalties in California state court. After being removed to federal court then remanded, Grotjahn and Valentine settled. Grotjahn’s lawyer said the settlement “sends a signal to the world” to take California’s law seriously, while Valentine stated he settled because it did make financial sense to continue with the suit.
http://tinyurl.com/scitechmac006

Class-action suits currently filed against auction houses Christie’s, Sotheby’s, and eBay may provide another chance for the court to weigh in on the Resale Royalty Act.

Mona Lisa Copy Discovered
A Mona Lisa painting in Madrid’s Prado museum was long-thought to be one of dozens of surviving replicas made after Leonardo’s death. During conservation work, however, a Tuscan landscape similar to the true Mona Lisa was uncovered. Research indicates Prado’s Mona Lisa was painted right alongside the masterpiece on display at the Louvre in Paris. The newly discovered copy shows a fresher, more youthful subject. Miguel Falomir, the Prado’s Director of Italian Paintings, said the copy gives observers a chance to “admire the Mona Lisa with totally different eyes.”
http://tinyurl.com/scitechmac007

The copy is currently on display alongside the original at the Louvre. Art historians believe Salaì, Leonardo’s pupil, model, and rumored lover, most likely painted the copy. The Louvre has long-held that Salaì inherited the original. If it is proven Salaì did indeed paint the copy, it may disrupt the provenance of the original and “will force the museum to try and retrace the path of the true masterpiece following Leonardo’s death.”
http://tinyurl.com/scitechmac008

Possible Leonardo Fresco Found Behind Existing Fresco
Traces of pigment of the same type used in the Mona Lisa were found behind Giorgio Vasari’s The Battle of Marciano fresco in the Palazzo Vecchio. Preliminary findings are non-conclusive. The discovery was achieved after controversial drilling of the Marciano allowed access behind it. It is believed to be Leonardo’s unfinished 1504 fresco, Battle of Anghiari.
http://tinyurl.com/scitechmac009
Case Update:
Odyssey Marine Exploration, Inc. v. The Unidentified Shipwrecked Vessel et al.

Odyssey Marine Exploration, Inc. is a publicly traded American company that locates shipwrecks and recovers its cargo. In 2007, Odyssey discovered the remains of a ship in international waters west of the Straits of Gibraltar. Approximately 594,000 coins and artifacts were recovered from the shipwreck. At the time of discovery, the identity of the ship was not conclusively known. Odyssey filed a verified admiralty complaint in rem in the U.S. District Court for the Middle District of Florida and sought a warrant of arrest. For the symbolic arrest in rem, Odyssey produced a small bronze block recovered from the remains of the ship.

Some time after Spain, Peru, and twenty-five individuals filed claims against the res, the identity of the shipwreck became known. The district court found the remains were that of the Spanish warship Nuestra Senora de las Mercedes. The Mercedes was built in 1788 in Cuba and was involved in many missions involving actual battle and transporting Spanish treasure. It sank in 1804 during a battle with British warships. It was carrying approximately 900,000 coins and other treasure from the New World when it went down. Approximately 75% of the 17 tons of cargo it was carrying was privately owned.

Upon learning of the remains of the Mercedes’ identity, Spain filed a Rule 12(b)(1) motion to dismiss, arguing that the district court lacked jurisdiction to arrest the shipwreck because as a foreign warship, it was immune under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611. The district court agreed and granted the motion to dismiss.

Odyssey appealed the dismissal, 657 F.3d 1159 (11th Cir. 2011). The appellate court verified the district court’s finding that the res is the remains of the Mercedes, and that the FSIA applied to the Mercedes.

One of the more innovative arguments advanced by Odyssey was that the FSIA does not apply because by carrying most of its cargo for private persons, the Mercedes was engaged in commercial activity, and the FSIA incorporates existing international agreements that exempt commercial vessels from sovereign immunity. The appellate court affirmed the district court’s dismissal. The court noted, “Because Spain was acting like a sovereign, not a private person in the marketplace, we conclude the Mercedes was not conducting commercial activity and is immune from arrest under the FSIA.” 657 F.3d at 1178. The appellate court affirmed the district court’s ruling but said, “We do not hold the recovered res is ultimately Spanish property. Rather, we merely hold the sovereign immunity owed the shipwreck of the Mercedes also applies to any cargo the Mercedes was carrying when it sank. Id. at 1182.

The coins and other artifacts were turned over and are now in Spanish custody. Odyssey filed a petition for writ of certiorari on February 27, 2012. Spain sought an extension of time to respond, which was granted. The deadline to file a response was April 17, 2012.

ALI-ABA Hosts 40th Annual Legal Issues in Museum Administration

ALI-ABA hosted its annual Legal Issues in Museum Administration at the Marriott Renaissance Stanford Court in San Francisco on March 19-21, 2012. This year focused on three themes:
(1) virtual and intellectual property (social media, digital content, and intellectual property issues);
(2) physical and financial issues (facilities, assets, and taxes); and
(3) global and international issues (collections, donations, foreign scholars, and performers).

The Smithsonian Institution, with the cooperation of the American Association of Museums, cosponsored this year’s three-day long seminar. SFMOMA and the California Academy of Sciences hosted receptions for attendees.

Next year’s Legal Issues in Museum Administration will be held at the Millennium Knickerbocker in Chicago on April 10-12, 2013.
Importing Cultural Objects

By Richard L. Field

An April 19 panel at the NYC Spring Meeting of the ABA Section of International Law reviewed U.S. laws relating to the movement of important art and cultural objects into the U.S.

Patty Gerstenblith, Director of the Center for Art, Museum & Cultural Heritage Law at DePaul University and chair of the President's Cultural Property Advisory Committee, laid out the framework, including the 1970 UNESCO Convention and its primary domestic implementation, the Convention on Cultural Property Implementation Act (CPIA). The CPIA, at 19 U.S.C. § 2607, prohibits the import into the U.S. of cultural property that has been stolen from a museum, religious, or secular public institution or monument, while the Convention allows the President to impose import restrictions by means of bilateral agreements or emergency actions. The U.S. regards as stolen those objects that are removed in violation of local national ownership laws. Extensive background information, including a country-specific import restriction chart, is available at: http://exchanges.state.gov/heritage/culprop.html


DOJ speaker Sharon Levin addressed the civil in rem Customs forfeiture laws, such as failure to declare (19 U.S.C. § 1497(a)), merchandise imported contrary to law (19 U.S.C. § 1595(a)(C)), and others. Defense attorney Peter Neiman talked of managing the substantial legal and reputational risk that accompanies these cases. All agreed that the increasing focus on these rules has led museums to adopt ethical guidelines that are often more strict than the laws require.

106th AAM Annual Meeting & “MuseumExpo”
April 29 – May 2
Minneapolis-Saint Paul, MN
http://www.aam-us.org/am12/

American Bar Association Annual Meeting
August 2-August 7, 2012
Chicago, IL
Featured CLE Program:

T Rex, Presidential Portraits, Virtual Museums: The Impact of Digital Technology on Museums and the Art World

What do fossils, classic paintings and new digital art have in common? All now can be digitized to allow for broad sharing in research and exhibitions, and for the creation of new art works. Indeed, the very nature of scientific research, art and art ownership are being reexamined. Why should lawyers care? Such use may solve some problems, such as ease of sharing unique artifacts, but create new ones, such as copyright disputes and financing. Learn how digitization is changing the worlds of research and art in museums, and the new legal challenges this may pose, not only for major museums but also smaller local museums which many ABA members assist. http://www.americanbar.org/calendar/annual.html

About Us

The Museum and Arts Committee is within the Section of Science & Technology Law, one of 22 sections within the American Bar Association.

http://tinyurl.com/scitechmac010

Our committee undertakes a variety of projects related to all types of museums and all types of art that are being affected by new developments. Naturally, this requires an appreciation for how those institutions and communities function in general. The Committee thus welcomes active participation from those involved in museums or the arts. In addition to attorneys and law students, membership is also open to non-attorneys who may join as Associates at: http://tinyurl.com/scitechmac011

Current projects the Committee is exploring include authenticating artwork, collecting digital forms of art, digitization for archival and commercial purposes, and copyright issues in ownership, derivative use, and online distribution.

Upcoming Events