

Research Seminar: Cultural Property
Spring 2009
Professor Gerstenblith

SYLLABUS (Preliminary)

General Description:

This seminar will focus on issues concerning the protection and preservation of cultural heritage. Ethical and legal aspects of the international trade in art objects and antiquities, national and international attempts to control such trade, the management of museums, protection of cultural heritage in armed conflict, preservation of the built environment and historic structures, indigenous cultural appropriation and restitution, issues involved in protection of cultural heritage and cultural resource management, as well as conflicts of law in the recovery of stolen art works, will be considered. While the course Art and the Law is not a prerequisite for this seminar, some students in the seminar will have taken this course. Students who have not taken the course are expected to review the underlying legal materials so that they will be prepared to participate in class discussion at an appropriate level.

Structure of the Seminar:

Approximately the first nine weeks of the seminar will include an introduction to the subject, the requirements of the seminar, and individual class sessions on specialized subject areas. These classes will be led by the professor and guest speakers but will also require discussion by the students of assigned readings. Each student is required to meet at least three times formally with the professor to review written assignments. The last five weeks of the seminar will be devoted to student presentations (approximately three presentations per class session depending on class enrollment).

Requirements:

Grades will be based on a combination of the seminar paper and class participation. Each student will select a presentation topic, which, in turn, will determine the deadline dates for submission of some of the required written materials. Two students will be assigned to critique each presentation and will have primary responsibility for responding to the presenting student. The final grade will be determined as follows: 75% for the seminar paper and quality of other required writings; 25% for class participation and presentation.

Each student will be required to submit the following during the semester:

1. an outline of one of a group of assigned law review articles
2. a topic statement, brief outline and selected bibliography
3. a short draft (approximately three-five pages of the student's paper)
4. an extended outline
5. a complete draft
6. the final paper

No student will be permitted to submit an assignment until all previously due assignments are

completed and considered satisfactory. Students may be required to submit additional drafts if their work is not satisfactory. All written work should be submitted to the professor in electronic format by email attachment. The professor may submit the complete draft and final paper to the electronic database "turnitin." The professor will meet individually with each student at least three times during the semester to discuss the extended outline, the short draft and the complete draft.

A list of suggested paper topic areas is included with this syllabus. Students are welcome to submit other topic ideas. The professor must approve all topics. Students have primary responsibility for the development of their paper topics, a process which also serves to educate the students in broader areas of the seminar's subject matter.

The first class meeting (January 12) will include presentation of introductory materials and discussion of selection of paper topics and organization of the seminar. Attendance at this meeting is an absolute requirement for any student who wishes to remain in the seminar. Any student who does not attend this class must contact the professor before January 12 or will be involuntarily withdrawn from the seminar. A more specific schedule for class meetings, reading assignments, presentations and deadlines will be distributed.

Students are encouraged to stay in close contact with me throughout the semester. My office is Room 1160; phone number is (312) 362-6175; e-mail address: pgersten@depaul.edu. Regular office hours will be Mondays from 10 a.m.-11:45 a.m. and 1:00 p.m. -2:15 p.m. Additional times will be posted during the weeks when written materials are being returned to the students. Students are also welcome to meet with me at other times by appointment.

The Paper

Each student is required to write a major research paper on a topic which will be decided during the first two weeks of the semester. The seminar process includes the development of a specific topic and bibliography by the student with the help of the professor. The topic statement is due the third week of the semester (January 26). The final paper must be a minimum of thirty pages of text (not including notes). Both drafts must be typed and must be in proper "bluebook" style for law review articles. Strict compliance with due dates is required. For every day that any required submission is delayed, the final grade will be lowered a half-grade (for example, from a B+ to a B). Any permission for alteration of deadlines must be granted by the professor in writing.

Preliminary drafts will not be graded; however, it is important that students realize that they should put their best effort into drafts so that the professor's comments will enable them to do a better job on the final paper. The final paper will be graded on grammar, style and organization as well as treatment of substantive and policy issues. Great care should be taken to cite authority properly and to use quotation marks where the language of another author is used. Even when direct quotations are not used, the sources of various arguments must be cited when they are not the original thoughts of the student.

Students should attempt to understand both the historical development of their selected topics and the current changes in the law that have already occurred or are the subject of contemporary

scholarly controversy. They should also demonstrate the ability to utilize different types of sources, both legal and non-legal, and to be able to use both primary and secondary source materials effectively. Each paper should pose a thesis concerning a particular problem and propose a solution or direction in which the law should develop. There may be little case law for some of the topics to be considered; however, students will be expected to examine secondary legal and non-legal literature and commentary as well as case law from other legal areas which will provide appropriate analogies to help in resolving the problems raised by the particular topic.

The Presentation

Each student will be allocated 20 minutes of class time to give a presentation on the topic of the seminar paper. Occasionally students may be asked to collaborate on their class presentations. At least a week before a student is scheduled to present, he or she must submit to the professor for posting on Blackboard a reading assignment for the other students. This assignment may be a section of the student's paper, a case, or an excerpt from a law review article. The assignment should be no more than 10-15 pages in length.

Students may not have finished their papers at the time of the presentation, but this should not present a problem because students should not read finished papers for the presentations. Students should present only the thesis or solution posed by their paper and should view the class presentation as an opportunity to improve the quality of their papers. Students should therefore plan their presentations with the goal of having a dialogue with the rest of the class, utilizing questions and hypothetical situations to involve the other students. The presenter should expect to answer questions from the two students specifically assigned to critique the particular presentation, other members of the class, and the professor.

Class Participation

Students are expected to attend class regularly, to read the assigned materials and to participate in class discussions in a thoughtful and informed manner. The book *Art, Cultural Heritage and the Law* (2d edition) is listed as an *optional* purchase. Most of the reading assignments may be found in this book and are indicated on the class assignment list as "ACHL". However, the individual readings are also listed and students may go directly to these sources if they do not choose to purchase the book.

The 25% of the final grade allocated to participation will be based on both quality and quantity of participation during both the student's own presentation and other classes. Any student who does not attend class and participate in class discussions will have her or his final grade lowered or, in more extreme situations, will be involuntarily withdrawn or receive a grade of Fx for the semester.

Resources: General works that students may wish to consult

Books:

- Roger Atwood, *Stealing History* (2004)
- Neil Brodie, Jennifer Doole and Coliln Renfrew (eds), *Trade in illicit antiquities* (2001)
- Neil Brodie, Morag M. Kersel, Christina Luke & Kathryn Walker Tubb (eds), *Archaeology, Cultural Heritage, and the Antiquities Trade* (2006)
- Ronald Bush and Elazar Barkan (eds), *Claiming the Stones, Naming the Bones* (2002)
- James Cuno, *Who Owns Antiquity?* (2008)
- Geoff Emberling & Katharyn Hanson (eds.), *Catastrophe! The Looting and Destruction of Iraq's Past* (2008)
- Kate Fitz Gibbon (ed.), *Who Owns the Past?* (2005)
- Benjamin Foster, Karen Polinger Foster, and Patty Gerstenblith, *Iraq Beyond the Headlines: History, Archaeology and War* (2005)
- Patty Gerstenblith, *Art, Cultural Heritage and the Law* (2d ed., 2008)
- Sherry Hutt, Caroline M. Blanco, Walter E. Stern, Stan N. Harris, *Cultural Property Law* (2004)
- Sherry Hutt, Marion P. Forsyth, and David Tarler (eds), *Presenting Archaeology in Court* (2006)
- Sherry Hutt and David Tarler (eds), *Yearbook of Cultural Property Law* (2006, 2007 and 2008)
- Thomas F. King, *Cultural Resource Laws & Practice* (2d ed. 2004)
- Simon Mackenzie, *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (2005)
- John Henry Merryman and Albert Elsen, *Law, Ethics, and the Visual Arts* (4th ed. 2002)
- Margaret M. Miles, *Art as Plunder: The Ancient Origins of Debate about Cultural Property* (2008)
- Lynn H. Nicholas, *The Rape of Europa* (1994)
- Patrick J. O'Keefe, *Trade in Antiquities: Reducing Destruction and Theft* (1997)
- Patrick J. O'Keefe, *Commentary on the UNESCO 1970 Convention on Illicit Traffic* (2d ed. 2008)
- Patrick J. O'Keefe, *Shipwrecked Heritage: A Commentary on the UNESCO Convention on Underwater Cultural Heritage* (2002)
- Roger O'Keefe, *The Protection of Cultural Property in Armed Conflict* (2006); Kevin Chamberlain, *War and Cultural Heritage* (2004)
- Norman Palmer (ed), *The Recovery of Stolen Art* (1998)
- Norman Palmer, *Museums and the Holocaust* (2000)
- Lyndel V. Prott, *Commentary on the Unidroit Convention on Cultural Property* (1997)
- Lawrence Rothfield (ed.), *Antiquities under Siege: Cultural Heritage Protection after the Iraq War*
- Yorke Rowan & Uzi Baram, *Marketing Heritage* (2004)
- Elizabeth Simpson (ed.), *The Spoils of War* (1997)
- Peter G. Stone & Joanne Farchakh Bajjaly (eds.), *The Destruction of Cultural Heritage in Iraq* (2008)
- Jirí Toman, *The Protection of Cultural Property in the Event of Armed Conflict* (1996)
- Howard J. Trienens, *Landscape with Smokestacks* (2000)
- Kathryn Tubb (ed.), *Antiquities: Trade or Betrayed: Legal, Ethical and Conservation Issues* (1995)
- Peter Watson and Cecilia Todeschini, *The Medici Conspiracy* (2005)

Journals (not available on Lexis or Westlaw):

International Journal of Cultural Property

Art, Antiquity and Law

International Foundation for Art Research (IFAR) Journal

Internet Resources:

U.S. Department of State Cultural Heritage Center: <http://culturalheritage.state.gov>

F.B.I. Art Theft Program: <http://www.fbi.gov/hq/cid/arttheft/arttheft.htm>

IraqCrisis: <https://lists.uchicago.edu/web/info/iraqcrisis>

Museum Security Network: <http://groups.google.com/group/museum-security-network>;
<http://www.museum-security.org/artcrime.html> (Museum Security web site that archives articles dealing with museum issues)

Lawyers Committee for Cultural Heritage Preservation: culturalheritagelaw.org

UNESCO: unesco.org (UNESCO web site and source for texts of primary relevant international conventions)

U.S. Committee of the Blue Shield: uscbs.org

Suggested Paper Topic Areas (Students are not limited to the following topics; these are intended only to be examples of possible topics)

International Law

1970 UNESCO Convention and its Implementation in the United States and other Market Nations (United Kingdom, Japan and Switzerland)
 Comparative study of national regulation of cultural heritage
 National Ownership laws: the *McClain* Doctrine and *United States v. Schultz*; *Iran v. Barakat*
 Unidroit Convention: adoption, effect on national laws

Holocaust art recovery cases

Sales under duress, forced sales
 Choice of law; interpretation of foreign law: *Bakalar*

Destruction of Cultural Heritage during Time of War

Hague Convention of 1954
 Ratification and Implementation in U.S., U.K., New Zealand
 Cultural Heritage in Iraq
 War crimes prosecutions for the former Yugoslavia

Art Market

Good faith and due diligence in art market transactions
 Conflict of Laws

Underwater Cultural Heritage

United States
 2001 UNESCO Convention on the Underwater Cultural Heritage

Native American/Indigenous Cultural Heritage

Reburial, sacred and cultural property: United States, Canada, Australia, New Zealand
 The Meaning of “Native American” post-Kennewick decision (*Bonnichsen v. United States*)
 Museum and Government Compliance

Foreign Sovereign Immunity

Immunity from Seizure: *Malevich v. City of Amsterdam*
 Loans: Iran/University of Chicago litigation
 2008 FSIA amendments

Museums

Acquisition Policies for ancient art: new AAM and AAMD Guidelines

Archaeological Resources Protection Act

Prosecutions
 Amendments
 International applications

Historic Preservation

National Historic Preservation Act
 International application: Dugong decision