

Course- Art & Cultural Heritage Law Proposal

Cross-Listed-Yes

Credit-4 Law

Prerequisites- none

Instructor- Prof. Amalesh Prasad

Art & Cultural Heritage Law elective proposal

This course will deal with a developing jurisprudence that involves international treaties, laws, ethics, and policy considerations relating to the art market, cultural property and heritage. Theft and trafficking of cultural property objects is a major issue, which is a unique feature of debate at national and international level as well. Growing demand and limited supply creates a fertile ground for illegal practices, ranging from counterfeiting, illegal acquisition and clandestine excavation to illegal export, import and transfer of ownership of art and cultural objects. The majority of antiquities in private collections were taken from source nations without documentation and often without export permits. These antiquities were likely derived through clandestine excavation encouraged and supported by an international network of dealers. European museums are filled with artifacts looted from other countries and European governments have long been reluctant to repatriate these objects. This module intends to give an overview of the legal framework of the illicit trade of art at international and national level and investigate the role of private international law in the trade of stolen art especially the legitimization of illicit goods through manipulation of private international law.

This course further aims to define art and cultural property; to discuss great works of art in their historical context, learn about art appreciation and preservation, and to look into the historical, religious or environmental information that surrounds a particular work of art, consider its aesthetic and cultural value to society and to identify the need for national and international regulation of the art trade both in time of peace and in time of war as well as the issue of restitution or repatriation of wrongfully displaced objects. In this context we shall delve into great detail on Nazi looted artworks as well as their return and restitution - returning objects to their 'rightful owners. It will also explore areas of the art trade that need regulation such as dealers (auction houses and private dealers), museums (role and collection management as well as carrying out due diligence and provenance research), the domestic implementation of various conventions among market & source nations; look at countries domestic cultural property laws, patrimonial laws and answer questions on jurisdiction, choice of laws principle as well as the procedure for prosecution for dealing in stolen art and antiquities, process of criminal and civil forfeiture as well as evaluate the model of criminal behavior in this trade .

Finally, the module shall address the essential questions of law, to accommodate the specific needs of protection of cultural heritage and it aims to give coherence to a complex body of rules at the intersection of civil law, property law, criminal law, public law, private international law, public international law & arbitration in settlement of disputes by means of case law study. Concepts such as cultural nationalism & cultural internationalism, sovereignty, jurisdiction, and standing will be considered, as well as the basic rights of both nations and individuals to their art and their cultural property.

Weekly lecture Outline

1-5	<ul style="list-style-type: none"> -Introduction to Art & Heritage Law -Archaeological Context -Art Appreciation & Preservation -Art History -Art Theft; A study of Criminal & Victim Profiles in Art theft -Art Forgery -Art; Perception of Value -Art Business; dynamics -Looting; A Historical Perspective -Subsistence looting -Trade in Cultural Objects: from Market to Regulation -Repatriation, Restitution and Return - Who Owns the Past? -Art Crime -The Nature of the Problem of the Black Market -Tangible&IntangibleCultural Heritage - Heritage management practices -What is Art? -Modern day loot; Indian Perspective 	<p>Module I</p> <p>-We will start by examining important terminology pertaining to the subject and give a general outline of what constitutes looting both from a modern as well as historical context, how looting leads to loss of contextual evidence, look closely at the looting of archeological sites and the sale of looted artifacts in the black market, how looting destroys not only cultural sites but also heritage of cultural groups. What looting results in the irreversible loss of archaeological data which could have been retrieved through controlled archaeological excavations. Look into the aesthetic and cultural value of art and what dictates the value of artwork in the market in the context of antiquities. Further we will discuss the broad contours of archaeology: what constitutes the discipline and why it is important; the emergence of archaeological ethics; and the competing concerns of archaeologists, collectors of artifacts, and other stakeholders, most notably cultural groups, the relevant factors of concern when cultural groups lay claim to ownership rights in archaeological artifacts, including special concerns with respect to human remains. Arguments have been offered advocating the inalienability of certain types of cultural property due to their constitutive nature over the identity of the group that created them we will discuss this view further. This trade in illicit antiquities cannot be studied outside the context of vastly unequal global power relations dividing the nations into the so called 'source nations' and 'market nations'. Further we will discuss the intricate trade in illicit Indian antiquities by international dealers such as Subhash Kapoor & Vaman Ghiya .</p> <p>-Art appreciation & preservation; This will look into great works of art, its physical attributes and formal construction, their cultural connections across historical periods , study of art history ; historical, religious or environmental information that surrounds a particular work of art, consider its aesthetic and cultural value to society , its historical context, race & gender representation in the art world, art forgeries, art business; regulation and art preservation.</p> <p>-This section will provide an introduction to the complex and often confusing web of principles and systems that constitute International law. The following major conventions regarding the protection of art and cultural property will be addressed: the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the UNESCO Convention on the Protection of the Underwater Cultural Heritage, Hague Conventions , the Lieber Code 1863, Convention Concerning the Laws and Customs of War on Land 1899,1907 (Hague IV), The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The categories of international norms and conventions mentioned so far relate to cultural property, movable or immovable, but invariably of a material character. This preference for material heritage is the result of the then prevailing view in Western culture that the expression of human creativity must take a built, monumental and, in any event, tangible character. But this is not true particularly in Asia and</p>
-----	---	---

		<p><i>Africa, cultural heritage is represented to a large extent by oral traditions, practices, performances and representations of an intangible character and hence we shall look further at UNESCO convention for the Safeguarding of the Intangible Cultural Heritage 2003, World Heritage Convention 1972.</i></p> <p><i>-Introduce students to aspects of the histories of collecting art and artifacts as a global phenomenon in the 18th, 19th and early 20th centuries. It is designed to provide students with an historical framework which looks at the interplay of 'demand' and 'source' countries in the formation of collections and the extension of knowledge.</i></p> <p><i>- F. Francioni. 'Controlling Illicit Trade in Art Objects: The 1995 UNIDROIT Convention' (2000)</i></p> <p><i>- 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1995 UNIDROIT Convention</i></p> <p><i>-Neil Brodie, Introduction to Illicit Antiquities: The Theft of Culture And the Extinction of Archaeology</i></p> <p><i>-The 1954 Hague Cultural Property Convention and Its Emergence into Customary International Law, Meyer, David A. 11B.U. Int'l L. J. 349 (1993)</i></p> <p><i>-Bumper Development Corporation v. Commissioner of Police of the Metropolis and Others [1991] 1 WLR 1362</i></p> <p><i>-Autocephalous Greek-Orthodox Church of Cyprus vs. Goldberg, 917 F. 2d 278 (7th Cir., 1990)</i></p> <p><i>--Crimean Museums and Ukraine v. University of Amsterdam, Judgment 14 December 2016</i></p>
5-7	<ul style="list-style-type: none"> <i>-Violation of Umbrella Retention Laws/Patrimony Laws</i> <i>-Bonafide Purchaser laws</i> <i>- Nemo dat quod non habet principle</i> <i>-Internationalist approach and Nationalist approach to cultural property</i> <i>-National Law and International Law in the Settlement of Cultural Property Disputes</i> <i>-United States Courts' Enforcement of Foreign National Patrimony Laws</i> <i>-Antiquities Law:Greece, India, Egypt , Turkey etc.</i> <i>-Sovereign Immunity; Concept</i> <i>-Lex Rei Sitae Rule, Lex Originis rule shifting of burden of proof</i> 	<p>Module II</p> <p><i>-We will look into Patrimony laws prevailing in different countries . These laws generally provide that the government owns all antiquities as of the effective date of the law, even if the artifacts have not been discovered and are not yet excavated. Retention statutes make ownership and export of such artifacts illegal.</i></p> <p><i>-We will look into the background functioning of the art market. And investigates the role of private international law in the trade of stolen art how bonafide purchaser laws in countries like Switzerland, Japan etc. which help in purging of tainted title of illicit antiquities and including its legitimization through manipulation of choice of law principles as well as consider conditions which facilitate transfers of stolen property. London and New York are perhaps the two largest destination markets for antiquities in the world. The consequences that the law now imposes on traders and purchasers of looted antiquities in both the United Kingdom and the United States will be looked into from a legal perspective by help of case laws. We will identify some problems posed in cases where a lawsuit over restitution of</i></p>

	<ul style="list-style-type: none"> - <i>Statutes of limitations</i> 	<p><i>cultural property is filed in a domestic court, and suggests new judicial principles to solve the problems.</i></p> <ul style="list-style-type: none"> - <i>United States Courts' Enforcement of Foreign National Patrimony Laws</i> - <i>United States v. McClain, 551 F.2d 52, (5th Cir. 1977)</i> - <i>United States v. Schultz, 333 F.3d 393 (2d Cir. 2003)</i> - <i>Government of Peru v. Johnson, 720 F. Supp. 810 (C.D. Calif. 1989)</i> - <i>Attorney-General of New Zealand v. Ortiz [1984] AC 1; [1984] 2 WLR 809; [1983] 2 All ER 93; [1983]</i> - <i>Government of the Islamic Republic of Iran v. The Barakat Galleries Ltd [2007] E.W.H.C. 705, Q.B., rev'd, [2007]</i> - <i>Winkworth v. Christie, Manson Woods Ltd [1980] 1 Ch 496, [1980] 1 All E.R. 1121, [1980] 2 W.L.R. 7</i> - <i>O'Keeffe v. Snyder - 83 N.J. 478, 416 A.2d 862 (1980)</i> - <i>Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398</i>
7-10	<ul style="list-style-type: none"> - <i>Museum codes of ethics as a regulatory mechanism</i> - <i>Provenance research & Due Diligence</i> - <i>Modern Repatriation movement</i> - <i>War; International Law Principles in a modern as well as historical context.</i> - <i>The Law of War ; Protection of Cultural Property and taking of "Spoils of war"</i> - <i>International Customary Law</i> - <i>Auctions houses; How do they work</i> - <i>ICOM code of ethics for museums</i> - <i>Art & Taxation</i> 	<p><i>Module III</i></p> <p><i>-Discussion on how a major portions of the collections of the world's great museums are the product of looting during time of war or colonial occupation, such as the Napoleonic occupation of Egypt and Britain's colonial period in India . Some of the world's most well-known museums have also been implicated in the acquisition and display of loot. A number of objects have been located in the possession of museums and private collectors as well as in the catalogues of various dealers and auction houses. The museums where, so far, such objects have been discovered include the Paul Getty Museum in Malibu, the Metropolitan Museum in New York, the Museum of Fine Arts in Boston, the Cleveland Museum of Art and auction houses such as Christie's & Sotheby's to name but a few . A large number of which are objects are sold without original provenance, eventually may acquire a new & authoritative provenance once listed in exhibition or sales catalogs or discussed in scholarly papers or in many cases a fake paper trail is created . Given the reality that many ultimate purchasers, such as museums, acquired looted objects in good faith at some point in the past or under norms and legal circumstances that made such transactions permissible, there are significant legal and factual burdens to surmount in any effort to dispossess such purchasers of these artifacts.</i></p> <p><i>- Modern repatriation movement does favor the return of cultural property to nations of origin, none of these developments has been applied to the return of items taken during the distant past by an occupying power or has it ? So should the Kohinoor be returned to India? Should the Elgin Marbles be returned to Greece? Should the Rosetta Stone be returned to Egypt by the British Museum? What is the legal context? Were they part of so called 'plunder & conquest' the so called 'spoils of war'? Whether the law of war at the time entitled Napoleon to take war booty in the form of objects</i></p>

		<p>of Egyptian cultural Heritage? Were they war reparations or contributions as France described them? Whether the law of war entitled Britain to subsequently seize such items from the French or whether Britain was required under international law to repatriate the objects to Egypt? Do occupying powers merely have the right of usufruct? Does the seizure of "trophies of war" violated principles of international customary law as then construed? Can subsequent developments in international law pertaining to war booty, which provide unambiguous protections for cultural property in time of war, have retroactive application and further bolster a claim for the repatriation of cultural property? What body of International law should apply? The International legal principles shall be looked upon from a modern as well as historical context.</p> <p>- Can cultural property, part of a national collection, which had been removed from the national patrimony of another state, may by virtue of its incorporation into that collection be deemed to have been integrated into the national patrimony of the second state? Could most of the colonial power claim the same?</p> <p>-Whether Museums & Auction houses are following a more consistent due diligence and provenance study while dealing in antiquities and the ethical boundaries that should regulate museums and their procurement of historical artefacts and works of art. It shall highlight the importance of verifying provenance prior to trading in art and cultural objects. It explores the links between provenance research (i.e. provenance is the history of ownership of a valued object, such as a work of art), the aspiration of society to guard against the illicit trade and trafficking of culture, and the highest standard of due diligence which is required in the trade.</p>
10-13	<ul style="list-style-type: none"> -Restitution of Nazi Looted Art -Cultural Genocide -Crimes against Cultural Heritage - Cornelius Gurlitt collection/hoard - Intertemporal law; A discussion - Art and Vandalism -The Monuments Men and the Post-World War II Legal Perspective on Looted Art - Who owns burial sites and human remains? -The Monuments, Fine Arts, and Archives program - Repatriation of sacred objects -Postwar Cultural Restitution and Reparation -Supremacism; A study -Race and Art -Who owns culture and who decides? 	<p>Module IV</p> <p>-The Nazi program for the confiscation of highly valuable art, often referred to as "Nazi plunder," from within Germany, from virtually all of the conquered European territories, and from their Jewish inhabitants, in particular, has accurately been recognized as the greatest systematic displacement of art, if not the largest property crime, in human history. Under the Nazi regime, modern art was disparaged as "entartete Kunst" ("degenerate art"). Nazi governmental policy was to have their soldiers' and/or their civilian sycophants loot and plunder art and to destroy any "alternative" culture. Indeed the Nazis unabashedly referred to the need to eradicate all forms of Jewish culture in a form of 'cultural genocide' in Europe. The confiscation of cultural property by the Axis Powers during the war exceeded any previous wartime seizures. The Allied Powers, which had enjoined their own forces to respect and protect cultural property, flatly refused to acknowledge the legality of the plunder. We shall look at various Conventions, Statutes which are being used to return the loot to the rightful heirs and the legal issues pertaining therein. One of the difficulties is tracing these thefts is the varying ultimate destinations of the looted art.</p> <p>- Republic of Austria v. Altmann, 541 U.S. 677 (2004) will be discussed and the movie 'Woman in Gold' which is based on this case shall be shown in class.</p>

		<p><i>-A discussion on the huge scale protection and repatriation work carried out by the so called 'Monuments men' under the banner of 'Monuments Fine Arts and Archives program' set up by the civil affairs and military government sections of the Allied armies. Their discovery of the hidden repositories of artworks, many of which were a result of looting by the Nazis, is considered by many as the 'greatest treasure hunt in history'. The movie 'The Monuments Men' based on these heroic acts shall be viewed in class.</i></p> <p><i>- In recent decades, the public debate in Germany has often focused on restitution by public museums and other public bodies. The recent case of Cornelius Gurlitt has raised the issue of restitution of Nazi-looted art by private individuals and private entities. Does it constitute Raubkunst or looted art in its entirety?</i></p> <p><i>- Washington Principles on Nazi-Confiscated Art , 1998</i></p> <p><i>-Holocaust Expropriated Art Recovery (HEAR) Act of 2016</i></p>
--	--	---

- **Course Aims:** - At the end of the course student should be able to :-
- Have the knowledge and expertise to apply legal principles to issues that frequently arise in the art world
- Be familiar with the ethical issues that arise when acquiring art by private buyers, as well as by museums and galleries
- Have an understanding of the patrimonial laws in this regard, as well as the larger international rules that exist to protect cultural heritage and prohibit its illicit trade.
- Have a methodological approach to provenance research and the use of this process as an integral component of due diligence within the art market.
- To contribute to the debate about the relationship between the social construction of the cultural heritage in the professional field and the social construction of cultural heritage as it actually exists.
- Construct and defend coherent and persuasive arguments about the legal and ethical implications of decisions involving cultural heritage, have a newfound appreciation for art & antiquities and work diligently towards cultural heritage protection.
- Undertake and present interdisciplinary research in a critical and thoughtful manner.
- Demonstrate an ability to enter into informed and critical debate through written work, oral presentations and group discussions.
- Critically evaluate the implications of provenance research for cultural history.
- Identify and engage in an informed analysis of contemporary themes, current debates and trends in art & cultural Heritage protection through law and policy tools in a comparative context.

3. Teaching Methodology: - A combination of essential and recommended readings, videos, application-based group exercises, site visit and guest lecture would be deployed as part of a shared learning approach. Prior reading of course materials and interaction in the class and beyond the class would be highly encouraged and valued. This combination of lectures, class presentations, and class discussions aims to inculcate close reading of foundational texts and analytical habits as well as cooperative learning.

Readings- Neil Brodie., M. Kersel, C. Luke, and K. W. Tubb (eds.). 2008. Archaeology, Cultural Heritage, and the Antiquities Trade, University Press of Florida: Gainesville.

- Republic of Turkey v. OKS Partners, 1994 U.S. Dist. LEXIS 17032, *3 (D. Mass. 1994)
- Peter Watson, 'The Investigation of Frederick Schultz', 10 Culture Without Context 21 (2002)
- City of Gotha v. Sotheby's, [1998] 1 W.L.R. 114 (Q.B. 1998)
- Sotheby's: The Inside Story By Peter Watson
- Neil Brodie and Colin Renfrew 'Looting and the World's Archaeological Heritage. The Inadequate Response' (2005) 34 Annual Review of Anthropology
- John Alan Cohan, An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part One).
- Noah Charney et al., Protecting Cultural Heritage from Art Theft: International Challenge, Local Opportunio, fBI law enforcement bull. (u.s. dep't of justice, d.c.), Mar. 2012, <https://leb.fbi.gov/2012/march/protecting-culturalheritage-from-art-theft-international-challenge-local-opportunity>.
- Noah Chamey, How did the Modigliani Forgeries Make it into an Exhibition? (January 2018); <http://observer.com/2018/01/how-did-the-modigliani-forgeries-make-it-into-the-palazzo-ducaleshow>
- Bonnie Burnham, The Protection Of Cultural Property: Handbook Of National Legislations (1974)
- Andrew Lawler, Afghani Restoration Lags: Looting Proceeds Apace, Sci., Sept. 26, 2003, at 1825.
- R. Hauptman, The Art of the Con: The Most Notorious Fakes, Frauds, and Forgeries in the Art World, (2017), Journal of Information Ethics
- Patty Gerstenblith, Getting Real: Cultural, Aesthetic and Legal Perspectives on the Meaning on Authenticity of Art Works (2011-2012), Colum. J.L. & Arts 321
- Gael M. Graham, *Protection and Reversion of Cultural Property: Issues of Definition and Justification*, 21 int'l law
- Emeric De Vattel, *the Law of Nations or the Principles of Natural Law* bk. 3, ch. 13, § 200 (J. Chitty ed., 1844) (1758).