
INTRODUCTION

Cultural property is defined as the tangible and intangible effects of an individual or group of people that define their existence and place them temporally and geographically in relation to their belief systems and their familial and political groups, providing meaning to their lives. Cultural property is so central to personal identity that the International Conference on Cultural Property Rights of the United Nations termed it “ethnocide” to withhold or destroy cultural property.

Cultural property may be held individually or by a group, or may be the inalienable cultural patrimony of a nation. The 1970 UNESCO convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property lists several categories of cultural property and examples of each. It is by no means an exhaustive list. Cultural property fills art museums, but it is also found in private homes, in places of worship, and within the natural landscape of public lands. Cultural property may be subject to preservation in public or private hands, management by a steward of public resources, or traded in the marketplace.

The body of Cultural Property Law has grown from the common law of property to an array of statutes and codes that direct the management, protection, and preservation of cultural property in its many public and private manifestations. In the absence of applicable statutes, general concepts such as the police power of government are still applicable as the basis to build a body of case law in the United States, just as the rules for sovereigns have controlled in other countries.

Cultural property issues are ubiquitous throughout other recognized fields of law such as tort, contract, property, criminal, international, environmental, and Indian law, adding nuances to the legal analysis of each field. The legal domain of Cultural Property Law includes historic preservation, environmental, art, and museum law, but does not end with the treatment of the built environment and art in museums and the marketplace. Rather, the field of Cultural Property Law has grown into a recognizable area of legal practice with broad application, numerous subpractice areas, and a growing body of field-specific statutory and case law, as well as a body of scholarship.

Given the multifaceted nature of Cultural Property Law and its absence or marginal appearance in law school curricula, only a

few dedicated and highly specialized practitioners may recognize how to utilize this body of law to best serve a client. The purpose of this volume is to identify the components of the area of practice and to serve as a practical guide for the application and possible interpretation of the law, in order to support the growing number of cultural property practitioners.

Although this single volume cannot contain a full treatment of each subpractice area in the field of Cultural Property Law, each section does attempt to provide a basic understanding of the mechanics of the pertinent laws. Where space does not allow for a more detailed explanation, the practitioner is directed to the body of scholarship assembled in the annotated bibliography. This bibliography is not an exhaustive list, but is offered to provide a sampling of research materials on a number of topics in the field of Cultural Property Law. It should become readily apparent, even from this modest bibliography, that there is a large and growing body of case law, government cultural property regulations, treaties, and conventions, as well as an abundance of scholarships to draw upon to assist the cultural property lawyer.

The chapters are organized by the practice areas in the field of Cultural Property Law. These areas of practice are: (1) federal management of cultural property; (2) state, local, and private management of cultural property (which includes both civil and criminal law enforcement); (3) tribal management of cultural property; (4) federal management of underwater cultural property; (5) museum administration and collections management; (6) the arts trade; and (7) the international management of cultural property. In each chapter the laws and controlling cases that apply to the practice area are identified as well as some of the issues that can arise. Each chapter concludes with a discussion of frequently asked questions, intended to help further explain the laws. The discussions in this volume are intentionally phrased in a neutral manner. Advocacy is left to the practitioner.

The authors hope this volume will encourage the practice of Cultural Property Law and assist lawyers in serving their clients. We appreciate the American Bar Association's recognition that a substantial body of law in this area exists and its support of a product that will link practitioners to available resources to enhance the practice of Cultural Property Law.

The authors are grateful for the opportunity to compile this second edition. In the last twelve years there have been new cultural property laws enacted, a number of court cases, and a substantial number of informative journal articles, all of which further illuminate the practice of Cultural Property Law in all of its subpractice areas. In this second edition, the authors have incorporated recent cases, regulations, and laws; included discussion of additional legal concepts; expanded treatment of

emerging areas of law; and added issues and frequently asked questions, all to assist practitioners in this interesting and important area of legal practice. Our efforts have been informed by twelve more years in the cultural property field, a most rewarding experience.

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