

**CHICAGO-KENT COLLEGE OF LAW  
ILLINOIS INSTITUTE OF TECHNOLOGY**

**PROPERTY AND CULTURE**

**(Seminar and Course)**

**Fall 2009**

**Wednesday 10:40-12:30**

**Room 547**

**Professor Sarah Harding**

Office 745

(312) 906-5227

sharding@kentlaw.edu

**Required Material:**

Materials will be emailed and posted online.

**Class Website:**

<http://www.kentlaw.edu/faculty/sharding/classes/HardingPropandCultureF2009/index.html>

**Interesting Links:**

Cultural Property Blog

<http://illicit-cultural-property.blogspot.com>

Michael Brown's "Who Owns Native Culture" website:

<http://www.williams.edu/go/native/>

Lawyers Committee for Cultural Heritage:

<http://www.culturalheritagelaw.org/>

U.S. Department of State Cultural Heritage Center:

<http://culturalheritage.state.gov>

Museum Security Network (Museum Security web site that archives articles dealing with museum issues):

<http://www.museum-security.org/artcrime.html>

UNESCO on culture:

<http://portal.unesco.org/culture/en/ev.php->

[URL\\_ID=34603&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=34603&URL_DO=DO_TOPIC&URL_SECTION=201.html)

WIPO Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Traditional Cultural Expression:

<http://www.wipo.int/tk/en/>

NAGPRA website:

<http://www.nps.gov/history/nagpra/>

International Foundation for Art Research

<http://www.ifar.org/>

Geographical Indications:

<http://www.geographicindications.com/>

**Participation:**

This is a small class so there is ample opportunity for discussion and participation. Two or three students will be assigned to start the discussion rolling each class but I expect everyone to participate on a regular basis. Attendance and participation will be accounted for in your final grade. Please do not walk in late and do not leave in the middle of class unless there is an emergency. You may bring beverages into class but please no food.

**Seminar Evaluation:**

Paper Topic/Description (Friday 09/11):	5%
First Draft (Friday 10/23):	10%
Second Draft (Friday 11/20):	10%
Final Draft (Monday 12/21):	50%
Participation:	25%

**Course Evaluation:**

Option 1

Self-Scheduled Take-Home Exam:	75%
Participation:	25%

Option 2

Self-Scheduled Take-Home Exam:	50%
Participation:	25%
Cultural Institution Project	25%

**Office Hours:**

I am available most days in the afternoons. But feel free to call or email to arrange any meeting time.

## **Property and Culture Course Description**

This course focuses on the claims of indigenous peoples and discrete cultural groups to both tangible and intangible forms of property. It covers a range of topics covered in intellectual property, art law, and human rights classes. In particular we will cover geographical indications, traditional knowledge, traditional cultural expression, repatriation and ownership of cultural property, native title and land rights.

### **SYLLABUS**

#### **Week 1 Introduction**

1. Carpenter, Katyal and Riley, *In Defense of Property* 1022-1046
2. Discussion of Current Issues from:

Who Owns Native Culture (range of issues and information most, but not all, focusing on intangible culture): <http://www.williams.edu/go/native/>

and

The Lawyers' Committee for Cultural Heritage Protection (again a range of issues and information but focusing more on tangible culture and traditional art law issues): <http://www.culturalheritagelaw.org/>

#### **Week 2 Art, Culture, Museums and the Law – An Overview**

##### **1. What is Art?**

*United States v. Perry* (Customs Ct. 1892)

Stephanie Giry, *An Odd Bird* (On *Brancusi v. U.S.* 1928)

U.S. Copyright Law, 17 U.S.C. § 101

*Mazer v. Stein* (USSC 1954)

##### **2. Dealers and Merchants**

*Weil v. Murray* (SDNY 2001)

*Greenwood v. Koven* (SDNY 1993)

*In the Matter of the Estate of Mark Rothko* (NY Sur Ct 1978)

*Autocephalous Greek-Orthodox Church v. Goldberg and Feldman* (SD Ind. 1989)

##### **3. Museums**

AAMD Guidelines on the Acquisition of Archaeological Material 2008

### **Week 3 Artists Rights: Expressive, Economic and Moral Rights**

#### **1. Art and the First Amendment**

*Bery v. New York* (2<sup>nd</sup> Cir. 1996)

*Piarowski v. Illinois Community College* (7<sup>th</sup> Cir 1985)

*Brooklyn Institute of Arts and Sciences v. City of New York* (EDNY 1999)

#### **2. Copyright**

Introduction: Copyrightable Subject Matter, Fixation and Originality

*Bridgeman v. Corel* (SDNY 1999)

*Lee v. A.R.T. Company* (7<sup>th</sup> cir. 1997)

Infringement § 106

*Rogers v. Koon* (2<sup>nd</sup> cir 1992)

*Leigh v. Warner Bros.* (11<sup>th</sup> cir. 2000)

Fair Use § 107

*Leibovitz v. Paramount* (2<sup>nd</sup> cir 1998)

#### **3. Moral Rights**

Visual Artists Rights Act 1990

*Martin v. City of Indianapolis* (7<sup>th</sup> cir 1999)

*Phillips v. Pembroke Real Estate* (1<sup>st</sup> cir. 2006)

### **Week 4 Looting and the Illicit Movement of Cultural Property and Antiquities**

John Henry Merryman, *The Free International Movement of Cultural Property* (1998)

Simon Mackenzie, *Dig a Bit Deeper: Law, Regulation and the Illicit Antiquities Market* (2005)

UNESCO Convention

Cultural Property Implementation Act 1982

*Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg* (1990)

UNIDROIT Convention

Illegal Import: *U.S. v. An Antique Platter of Gold* (1999)

Theft: *United States v. Schultz* (2003)

### **Week 5 Cultural Heritage During times of War: Iraq and Kosovo**

*The Marquis de Somerueles* (Vice Admiralty Court of Halifax, 1813)

The Lieber Code 1863

The Hague Convention Respecting the Laws and Customs of War on Land 1907

Roerich Pact 1935

The Hague Convention on the Protection of Cultural Property in the Event of  
Armed Conflict 1954  
Hague Convention 1954 First Protocol  
Hague Convention 1954 Second Protocol  
Jane Perlez, Ruins of Sarajevo Library is a Symbol of a Shattered Culture, New  
York Times, August 12, 1996  
UNESCO Declaration concerning the intentional destruction of Cultural Heritage  
(2003)  
UN Security Council Resolution 1483 (on Iraq)  
Emergency Protection for Iraqi Cultural Antiquities Act of 2004  
Zainab Bahrani Desecrating history, The Guardian, Wednesday 9 April 2008

### **Week 6 Art and the Holocaust**

Menzel v. List (1966)  
Vineberg v. Bissonette (Dis.Ct. RI, 2007)  
U.S. v. Portrait of Wally, A Painting by Egon Schiele (SDNY 2002)  
Washington Conference Principles on Nazi-Confiscated Art, Released in connection  
with The Washington Conference on Holocaust Era Assets, Washington,  
DC, December 3, 1998  
Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War  
II Era (1933-1945) June 4, 1998  
Toledo Museum of Art v. Ullin (ND Ohio 2006)

### **Week 7 Cultural Property and Indigenous Peoples: U.S. Approach**

### **Week 8 Cultural Property and Indigenous Peoples: International and Foreign Approaches**

### **Week 9 Historic Preservation**

### **Week 10 Cultural Rights in Land and Sacred Sites**

### **Week 11 Ethnobotany, Biopiracy and the Fate of Traditional Knowledge**

### **Week 12 Folklore, Rituals and the Fate of Traditional Cultural Expression**

### **Week 13 Geographical Indications: Champagne, Feta and Agri-cultural Rights**

### **Week 14 Summary & Review**

