

Introduction to Legal Issues in Collections Management

John E. Simmons

Museologica

Bellefonte, Pennsylvania

The Legal Issues in Museums series

- Introduction to legal issues
- The law is complex
- Suggestions for future webinars
- This webinar is not legal advice
- Consult legal counsel

Cherry County Historical
Society (Valentine, Nebraska)



The Legal Issues in Museums series

“Our laws are too complex, and the consequences of misunderstanding them too grave, to make it thinkable that the legal aspects of museum management should be based on anything less than the best available professional advice.”

—Stephen E. Weil (1983)

Legal issues in museums

- *Museum Ethics*
 - April 19th
 - Sally Yerkovich
- *Why Do We Have This? Insight on Hindsight of Deaccessioning Decisions*
 - May 17th
 - Leslie Jones
- *Deaccessioning* (archived)

Sources of law

- Constitutional law (federal and state)
- Statutory law
- Case law (common law)
- Administrative rules and regulations
- International treaties and accords

The Code of Hammurabi



Constitutional law

- Compact or agreement
- Guarantee of basic rights
- Defines government authority
- Framework for the three branches of government



Quiz

- What are the three branches of the federal government of the United States?

Quiz

- What are the three branches of the federal government of the United States?
 - Legislative
 - Judicial
 - Executive

United States Constitution

- Sets minimal standards
- State constitutions can expand rights
- State constitutions cannot restrict rights
- 10th Amendment delegates powers

Statutory law

- Federal, state, and local ordinances
- Federal law usually preempts state law
- United States Code (USC)
 - 43 U.S.C. §§ 2101-06

Case law (common law)

- Court cases determine how laws are to be interpreted
- Federal, state, local
- Common law

Administrative rules and regulations

- Federal and state agencies
- *Code of Federal Regulations (CFR)*
- Similar state publications



International laws and regulations

- Treaties and accords
- Acquisition
- Export
- Import
- International trade



What museum law affects

- Organization and governance
- Care of collections
- Acquisition, accession, deaccession
- Use of collection objects
- Health and safety

Natural History Museum, London



Areas of museum law

- Governance
- Administration
- Personnel and workplace issues
- Museum collections and collections management
- Intellectual property issues

Governance

What is a Museum?

A public or private nonprofit agency or institution organized on a permanent basis for essentially educational or aesthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis

—Museum Services Act (1996), 20 USC § 968(4)

Governance

What is a Museum?

A museum is a non-profit making, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates, and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environments.

—ICOM (International Council of Museums, 1989)

US museums

1. For-profit museums
 - Managed as a business
2. Private, non-profit museums
 - Tax-exempt
3. Public museums
 - Owned by a government



The Field Museum is a private, non-profit museum

Quiz

1. Non-profit means funded by the government.

- True?
- False?

Quiz

1. Non-profit means funded by the government. True or false?

- False
- Some are government funded, others are not.
- Many are entirely self-funded.

Quiz

2. A non-profit museum cannot charge admission.

- True?
- False?

Quiz

2. A non-profit museum cannot charge admission.

- False
- Non-profit status has nothing to do with admission charges.

Quiz

3. A non-profit museum must have a board of directors.

- True?
- False?

Quiz

3. A non-profit institution must have a board of directors.

- True
- Board organization varies, but all must have some sort of governing board.

Quiz

4. How much is a non-profit museum allowed to pay its employees?

- a. Minimum wage.
- b. Less than for-profits.
- c. Depends on institution budget.
- d. Can pay as much as they want.

Quiz

4. How much is a non-profit allowed to pay its employees?

- a. Minimum wage.
- b. Less than for-profits.
- c. Depends on institution budget.
- d. Can pay as much as they want.

Quiz

5. How much income is a non-profit allowed to earn each year?
- a. None, non-profits must operate at a loss
 - b. None, because they receive government funding
 - c. There is no limit to how much a non-profit can earn

Quiz

5. How much income is a non-profit allowed to earn each year?
- a. None, non-profits must operate at a loss
 - b. None, because they receive government funding
 - c. There are no limits on how much a non-profit can earn as long as the income is used to fulfill its mission
 - Must spend income to fulfill mission
 - NFL was a non-profit until 2015

Non-profit vs. for-profit

- 501(c)(3)
- Greater good of society
- Income used to fulfill mission
- For-profit museum income is paid to owners
- For-profit collection objects are financial assets
- Non-profit collections held in public trust

Administration

- Same laws as for other public or non-profit institutions
- Articles of incorporation, legal name, tax status

Personnel and workplace issues

- OSHA
- Occupational Safety and Health Administration
- State-level OSHA equivalents

OSHA regulates workplace safety



Personnel and workplace issues

- Americans with Disabilities Act (ADA)
- Public access behind-the-scenes access
- Does collection storage have to be ADA compliant?
- Accommodations possible

Intellectual property

- Copyright of original work
- Creator's life + 70 years
- Right to reproduce, distribute, display
- May own a work but not the right to reproduce it
- Loans do not transfer copyright

Fair use

- Fair use
- “...criticism, comment, news reporting, teaching, scholarship, or research”
- Purpose and character of use
- Nature of the work
- Amount and substantiality of portion of the work
- Effect of use on the market

Intellectual Property

- Visual Artists Rights Act (VARA), 1990
- Protects artists rights no matter who owns copyright
- Paintings, drawings, prints, sculptures, photographic images
- Right of attribution
- Maintain without alteration
- Protection from destruction
- VARA rights can be waived but not transferred

Museum collections

- Antiquities Act (1906)
 - Protects historic ruins on public lands
- Historic Sites Act (1935)
 - Preserves historic sites, buildings, and objects
- Archaeological Resources Protection Act (1979)
 - Protects archaeological resources on public and Indian land

Museum collections

- Pre-Columbian Act (1972)
 - Prohibits importation of pre-Columbian material without a permit

Illegally excavated pre-Colombian artifacts, Museo Inka (Cuzco, Peru)



Lacey Act

- 1900
- Covers most animals and plants
- Prohibits import, export, transport, sale, receipt, acquisition, or purchase of specimens collected illegally
- Enforces foreign laws
- All recipients of illegal material are held responsible
- Includes objects containing animal or plant parts

CITES

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)
- Regulates international commercial trade
- Protected species listed as Appendix I, II, or III
- Permits are required to move a specimen of a CITES listed species
- Natural history specimens, ivory objects

Endangered Species Act (ESA)

- List of protected species
- CITES = international
- ESA = domestic
- CITES and ESA lists are not identical
- CITES regulates species threatened by trade
- ESA protects species threatened in the wild

Quiz

According to the US Fish & Wildlife Service, what is a specimen?

- a. A whole animal or plant
- b. A preserved animal or plant
- c. Any part of an animal or plant
- d. A scientific preparation of an animal or plant

The Grant Museum, University College, London



Quiz

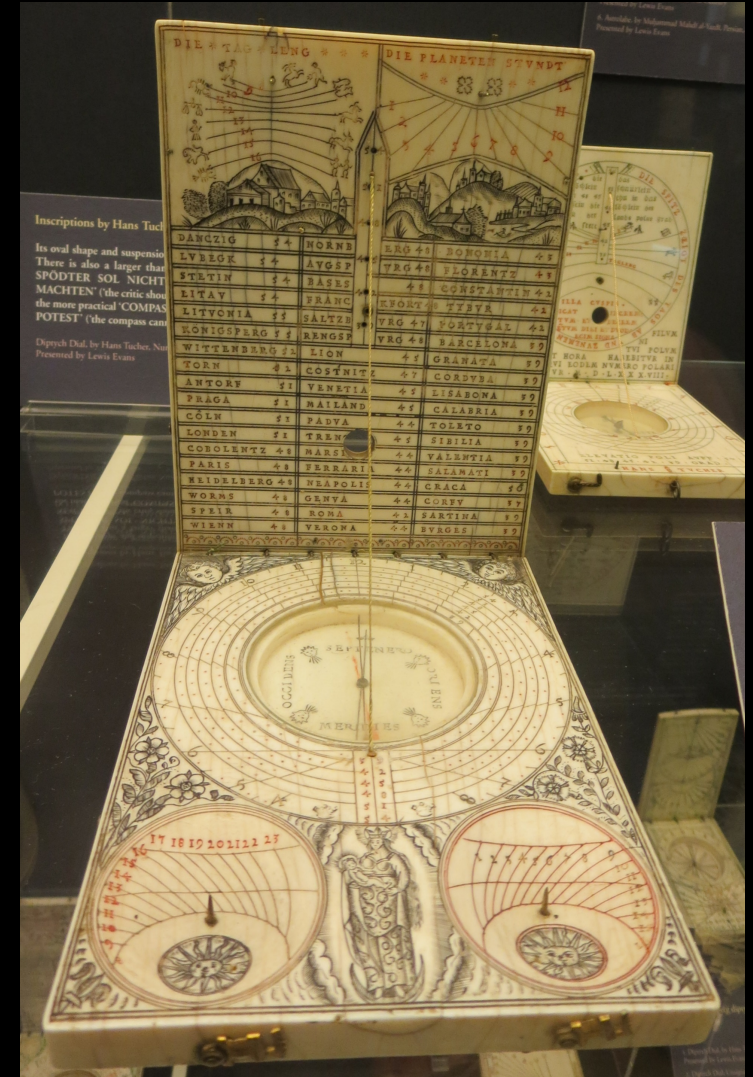
According to the US Fish & Wildlife Service, what is a specimen?

- a. A whole animal or plant
- b. A preserved animal or plant
- c. Any part of an animal or plant
- d. A scientific preparation of an animal or plant

Other wildlife legislation

- African Elephant Conservation Act
- Bald and Golden Eagle Protection Act
- Marine Mammal Protection Act
- Migratory Bird Treaty Act

Importation of most ivory objects requires special permits (Museum of the History of Science, Oxford)



Native American Graves Protection and Repatriation Act (NAGPRA), 1990

- Native Americans and Native Hawaiians
- Human remains, funerary objects, sacred objects, objects of cultural patrimony
- Effective 1990
- Compliance required if museum receives federal funds
- Includes new acquisitions

Immunity from Seizure Under Judicial Process of Cultural Objects Imported for Temporary Exhibition or Display

- Foreign-owned works of art and objects
- Protects from seizure if imported to US on loan
- Borrower must apply in advance for protection

International Laws and Regulations

“The law of this country has steadily evolved in the direction of enforcing foreign claims regarding antiquities and other objects protected by cultural patrimony laws... A healthy respect for the breadth of foreign law, coupled with an eye for spotting gaps in the provenance of antiquities under consideration for acquisition, can generally provide important protection against future legal claims.”

—Evan Barr, *Museum* (2006)

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1945)

- Protects property during wartime
- Looting



National Museum, Baghdad, after looting

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)

- Ratified 1972, effective in US 1983
- Protects cultural property
- Bilateral agreements
- Peacetime looting and destruction of property

UNIDROIT Convention on Stolen or Illegally Exported Cultural Property (1995)

- Correct loopholes in the UNESCO Convention
- Easier to identify location and recover property
- Took effect 1998
- Not ratified by US government

Nazi Era Objects

- 1933-1945
- Theft, confiscation, looting
- Property was sold, stored, or given to Nazi officials
- Recovered by Allies
- Identify and return stolen objects
- Nazi-era Internet Portal

When Good Museums go Bad...

- Accountability and transparency are important for museums

The Petrie Egyptian Museum,
University College, London



When Good Museums go Bad...

1. Collection documentation
2. Know your collection
3. Be legal
 - Report crimes
4. Be ethical
5. Be transparent
6. Don't try to be a lawyer (or judge, jury, or police officer)

Recommended resources

A Legal Primer on Managing Museum Collections

Marie C. Malaro and Ildiko DeAngelis

2012 (3rd edition)

Museum Law: A Guide for Officers, Directors, and Counsel

Marilyn Phelan

2014 (4th edition)

Recommended resources

A Legal Dictionary for Museum Professionals

Heather Hope Kuruvilla

2016

The Legal Guide for Museum Professionals

Julia Courtney

2015

Recommended resources

American Law Institute Continuing Legal Education series
www.ali-cle.org

Museum

American Alliance of Museums

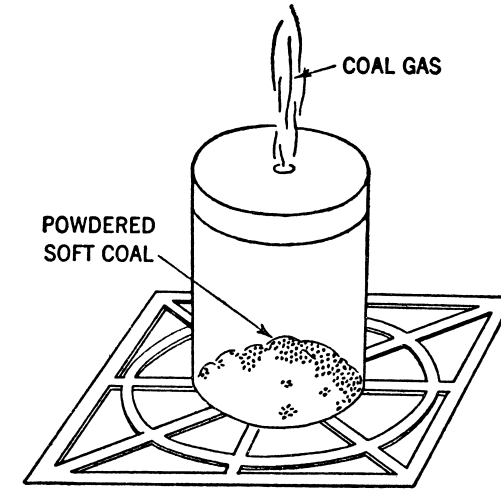
Copyright Center

Cornell University

<http://copyright.cornell.edu>

Questions?

Do not try this at home



186. To Make Coal Gas, Coal Tar and Coke

Put four heaping teaspoonfuls of broken *soft* coal into the coffee can and heat the can *over the fire* in a range.

After a time light the coal gas which issues from the hole in the cover.

After the gas has all burned, let the can cool and examine the coke left in the can.

Notice the black liquid on the inside of the cover, and smell it.

Upcoming webinars

- *Ethical Issues in Collections Management*
 - April 19th
 - Sally Yerkovich
- *Why Do We Have This? Insight on Hindsight of Deaccessioning Decisions*
 - May 17th
 - Leslie Jones