

---

## List of Contributors

Lionel Bently	Faculty of Laws, King's College, University of London, Strand, London WC2R 2LS, UK Tel: (071) 836 5454 Fax: (071) 873 2465
Sarah Dromgoole	Faculty of Law, University of Leicester, Leicester LE1 7RH, UK Tel: (0533) 522287 Fax: (0533) 522200
Igor Emetz	Institute of Archaeology, Department of Classical Archaeology, Dm. Ulyanova Street 19, Moscow 117036, Russia
Caroline Forder	Faculteit der Rechtsgeleerdheid, Pivaatrecht, Rijkuniversiteit Limburg Postbus 616, 6200 MD Maastricht, NL Tel: 31 43 88-3206/3097, Fax 0340 258981
Nicholas Gaskell	Faculty of Law, University of Southampton, Southampton SO9 5NH, UK Tel: (0703) 593710 Fax: (0703) 593024
Anatoly Golentsov	Institute of Archaeology, Department of Classical Archaeology, Dm. Ulyanova Street 19, Moscow 117036, Russia
Joanna Goyder	European Co-Ordinator, Baker & McKenzie, Boulevard du Régent 40, 1000 Brussels, Belgium Tel: 010 32 2 5063611 Fax: 010 32 2 5116280
John Murdoch	Assistant Director (Collections), Victoria and Albert Museum, South Kensington, London SW7 2RL, UK Tel: (071) 938 8602 Fax: (071) 938 8477
Norman E. Palmer	Faculty of Laws, University College of London, Bentham House, 4-8 Endsleigh Gardens, London WC1H OEG, UK Tel: (071) 380 7326 Fax: (071) 387 9597

Robert K. Paterson	Faculty of Law, University of British Columbia, Vancouver, Canada V6T 1Z1 Tel: (604) 822 3905 Fax: (604) 822 8108
Benoît Pelletier	Faculty of Law (Fauteux Hall), University of Ottawa, Ottawa, Canada K1N 6N5 Tel: (613) 564 7075 Fax: (613) 564 9889
Marina Schneider	UNIDROIT, Via Parisperna, 28 Rome 00184, Italy Tel: 39 6 684 1372 Fax: 39 6 684 1394
Kurt Siehr	Rechtswissenschaftliches Seminar der Universität Zürich Centrum Für Internationales Privatrecht, Wiesenstraße 9, CH-8008 Zürich Tel: 257 31 11/12 Fax: 382 02 85
Martin P. Wyss	Lägernstraße 28, CH-8037 Zürich Tel: 364 10 32

---

# Index to Volume Two

## Table of Contents

### Articles

- Church, Judith, 'Evolving U.S. Case Law on Cultural Property Disputes' 47–71  
Davenport, Brian and Ross, Anthony, 'Market Overt' 25–45  
Dromgoole, Sarah and Gaskell, Nicholas, 'Who has a Right to Historic Wrecks and Wreckage?' 217–273  
Frigo, Manlio, 'The Proposed EEC Council Directive on the Return of Unlawfully Exported Cultural Objects' 73–80  
Katz, Stephen, 'Penal Protection of Cultural Property: The Canadian Approach' 11–24  
Murdoch, John, 'Attribution and the Claim to Objectivity' 319–334  
Palmer, Norman, 'Treasure Trove and Title to Discovered Antiquities' 275–318

### Book Reviews

- Kleeberg, Rudolf and Eberl, Wolfgang, *Cultural Objects in Private Possession. Handbook on the Law of Monuments and their Taxation* (Kurt Siehr) 185  
Fechner, Frank, *Legal Protection of Archaeological Cultural Property* (Kurt Siehr) 410–411  
Knott, Hermann, *The Right to Claim Restoration of Stolen and Illegally Exported Goods* (Christina Fischhauser) 183–184  
Lewis, Justin, *Art, Culture and Enterprise: The Politics of Art and Cultural Industries* (Lionel Bentley) 401–407  
Moulin, Raymonde, *L'artiste, l'institution, le marché* (Thomas Dreier) 171–175  
Reichelt, Gerte, (ed.) *Internationaler Kulturgüterschutz – Wiener Symposium 18./19. Oktober 1990* (Martin Phillip Wyss) 408–409  
Tait, Simon, *Palaces of Discovery* (Lady Mason) 412–413  
Weyergraff-Serra, C. and Buskirk, M., (eds.) *The Destruction of 'Tilted Arc': Documents* (David Saunders) 176–182  
Wolff, Janet and Seed, John, (eds.) *The Culture of Capital: art power and the nineteenth-century middle class* (Phillip Smith) 186–187

**Case Notes**

- Bragg, Richard, 'Trade Descriptions and the Art World' 127–131  
Forder, Caroline, 'The Bredius Museum Case: Public Interest and Private International Law' 117–125  
Kohler, Paul, 'Colonel Sanders, Finding and Possessory Title' 133–145  
Montgomery, Jonathan, 'The Responsibility of Church and State for Preserving Cultural Property' 105–110  
Paterson, Robert, 'Bolivian Textiles in Canada' 359–370  
Pelletier, Benoît, 'The Case of the Treasure of L'Ange Gardien: An Overview' 371–382  
Polzer, Anna-Maria, 'A Clock in Court: East German Export of Cultural Property Considered by West German Courts' 111–115

**Chronicles and Events**

- April 1992 – September 1992 87–103  
October 1992 – March 1993 339–358

**Conference Reports**

- 'International Conference on the Theme 'Eredità Contestata?' Rome 29–30 April 1991 (Brian Cook) 189–195  
'The Legal Aspects of International Trade in Art' Madrid 12–14 February 1992 (Astrid-Maria Muller) 196–201  
'The Penal Protection of Cultural Property. A Seminar held by the International Institute of Higher Studies in Criminal Sciences' Siracusa 22–26 March 1992 (Marina Schneider) 393–400  
'Sixth Annual Conference of the Institute of Field Archaeologists' Birmingham 6–8 April 1992 (Brian Cook) 202  
'The Second International Art, Antique and Architectural Theft Conference held by Trace Magazine and the Georgian Group' London 8–11 June 1992 (Ben Ward) 203–207

**Documents**

- Draft License for Landowners Wishing to allow Metal Detecting on their Land 160  
German Archaeology Institute – The Berlin Declaration 157–158  
The National Council for Metal Detecting Code of Conduct 159

**Essays**

- Cumming, Valerie, 'Some Observations on a Recent Acquisition' 81–85  
Emetz, Igor and Golentzov, Anatoly, 'The Pillage of the Ancient Tombs in the Crimea' 335–337

**Opinion**

- Jenkins, Simon, 'Dead and Dismembered on the Nile'  
Extract from *The Times* 383–385

**Projects in Progress**

- Egoumenidou, Frosso, 'The Cyprus Department of Antiquities and the Protection of Monuments of the Recent Past' 163–169

**Treaties and EC Matters**

- Goyder, Joanna, 'European Community Free Movement of Cultural Goods and European Community Law'  
Part III: 'Two New Legislative Proposals' 147–155  
Part IV: 'Progress of Legislative Proposals' 387–392

**Table of Statutes****Europe**

- Cyprus  
1964 Antiquities Law 163–169
- Denmark  
1963 Law Concerning the Protection of Historic Wreckage 230
- Finland  
1963 Act on Historic Relics 230
- France  
1962 'Loi Malraux' 165
- Germany (East)  
1976 International Commercial Transactions Act 113
- Germany  
1971 Monuments Act (Baden-Württemberg) 410
- Italy  
1909 Regulation for the Execution of Law No 364 57  
1913 Royal Decree No 363 57 ff.,  
1939 Statute for the Protection of Items of Artistic of Historical Interest, Law No 1089 58–60, 78  
1990 Criminal Code 397–398

Netherlands	
1925 Museum Act	117–122
Spain	
1962 Estato nr. 60/62	229
Switzerland	
1989 Federal Statute on International Private Law	183
United Kingdom	
1275 Statute of Westminster I	241–242
1588 Sale of Horses Act	29
1 Jac. I. cap. 21	33
5 Geo. IV cap.cix	37
1858 Government of India Act	227
1871 Lloyd's Act	237–238
1893 Sale of Goods Act	36, 37, 39–40
1894 Merchant Shipping Act	218, 222 ff., 243 ff., 256
1906 Marine Insurance Act	235 ff., 239–240
1906 Merchant Shipping Act	243
1925 Law of Property Act	284
1947 Indian Independence Act	227
1968 Theft Act	37, 288
1973 Protection of Wrecks Act	218, 223, 256
1977 Torts (Interference with Goods) Act	277, 288
1979 Ancient Monuments and Archaeological Areas Act	289
1979 Sale of Goods Act	25, 29, 30, 34, 39, 105, 277
1985 Food and Environment Protection Act	230
1986 Protection of Military Remains Act	219, 231–232, 256
1987 Consumer Protection Act	129

### The Americas

Canada	
1977 Cultural Property Export and Import Act	7, 11–24, 360ff.
1986 Customs Act	364, 366
Cayman Islands	
1977 Abandoned Wreck Law	229
Guatemala	
1965 Constitution	49
1966 Decree Law No 437	49
Mexico	
1897 Law on Archaeological Monuments	51–53
1917 Constitution	52
1930 Law on the Protection and Conservation of Monuments and Natural Beauty	51
1934 Law for the Protection and Preservation of Archaeological and Historic Monuments, Typical Towns and Places of Scenic Beauty	51–52

1970 Law Concerning Cultural Patrimony of the Nation	51—52
1972 Law on Archaeological, Artistic and Historic Monuments and Zones	52—54
Peru	
1929 Law No 6634	55—56
1985 Law No 24047	55
1985 Supreme Decree and Statute	55—56
United States	
1919 National Motor Vehicle Theft Act	49
1934 National Stolen Property Act	48 ff.
1983 Cultural Property Implementation Act	54, 56, 61
1983 New York State Artists' Authorship Rights Act	177
1987 Abandoned Shipwreck Act	218 ff., 230, 235, 256
1988 Berne Convention Implementation Act	177
Australasia	
Australia	
1976 Historic Shipwrecks Act	228—229
New Zealand	
1952 Shipping and Seamen Act	218

## Table of Cases

Australia	
Byrne v Hoare (1965)	298
Robinson v Western Australian Museum (1977)	234
Canada	
Kowal v Ellis (1977)	299
Musées nationaux du Canada c. Fabrique de la paroisse de l'Ange-Gardien (Qué.) (1987)	371—382
R v Heller, Zango and Kassam (1983)	17—20, 360—361, 366, 367
R v Yorke (1992)	361—367
Germany	
Kammergericht Berlin (17 U 492/87) (1987)	111—115
Ireland	
Webb v Ireland and the Attorney General (1988)	294—297

Netherlands	
Alnati (1966)	119
The Bredius Case (1990)	117–124
New Zealand	
Tamworth Industries v A-G (1991)	133–145
United Kingdom	
Ardath Tobacco v Ocker (1930)	39
Armory v Delamirie (1721)	298
Association and The Romney, The	249
A-G v Trustees of the British Museum (1903)	280
A-G of the Duchy of Lancaster v G E Overton (Farms) Ltd (1982)	278, 280, 285, 293
A-G of New Zealand v Ortiz (1984)	7, 21, 60, 183, 367
Bailiffs of Tewkesbury v Diston, The (1805)	34, 35
Bishopsgate Motor Finance Corporation Ltd v Transport Brakes Ltd (1949)	37 ff.
Case of the Crown Jewels (1457)	27, 35
Case of Market Overt (1596)	27, 29, 32, 36
Chaddock, In re (1992)	281(n.53), 283(n.66)
Clayton v Le Roy (1911)	28, 31, 36
Cossman v West (1887)	246–247
Crane v London Dock Company (1864)	35, 38
Eastern Trust Co Ltd v National Trust Co Ltd (1914)	296–297
Elwes v Brigg Gas Company (1886)	219, 299
Hamilton v Davis (1771)	242–243
Hannah v Peel (1945)	284
Hargreave v Spink (1892)	31, 37–38
Hartop v Hoare (1743)	33
Hill v Smith (1812)	35
Kerby v Wichelow (1502)	34
Lang v Jones and Skinner (1990)	32
Lee v Bayes (1856)	32–33, 37
London Corp v Appleyard (1963)	298, 300–301
Lusitania, The (1986)	233, 239, 244, 252, 256
Lyons v De Pass (1840)	30–31
McDowell v Ulster Bank Ltd (1899)	298
May v Vincent (1990)	127–131
Mayor of London v Joint Stock Bank (1881)	27–28
Moffat v Kazana (1969)	284
Moyce v Newington (1878)	37
Parker v British Airways Board (1982)	252, 281 ff., 296, 299
Pryor of Lantony's Case, The (1472)	28
R v Forty-nine Casks of Brandy (1836)	241
R v Hancock (1990)	204, 276, 280, 288–289
R v Property Derelict (1835)	244
Reid v The Metropolitan Police Commissioner and Cocks (1973)	35–36

St Bartholomew's Aldborough, Re (1990)	105–109
St Gregory's Tredington, Re (1971)	105–106
St Mary's Broadwater, Re (1976)	106, 109
St Stephen, Walbrook, Re (1987)	106, 108
Simon v Taylor (1975)	234
South Staffordshire Water Co v Sharman (1896)	299
Title of the Finder, The. See McDowell v Ulster Bank Ltd	
Tubantia, The (1924)	233, 248–249
Winkfield, The (1902)	287, 297
Winkworth v Christie, Manson and Woods (1980)	205
<b>USA</b>	
Autocephalous Greek Orthodox Church of Cyprus v Goldberg (1990)	205
Boston Corporation v France, Fenwick & Co (1923)	236
Columbus America Discovery Group v The Unidentified, Wrecked and Abandoned	
Sailing Vessel (1992)	214, 237, 249–250, 252–256
Jeanneret v Vichey (1982)	47, 56–60
Peru v Johnson (1989)	47, 53, 54–56, 61
Treasure Salvors Inc v The Unidentified, Wrecked and Abandoned Sailing Vessel (1978)	252 ff.
United States v Hollinshead (1973)	47 ff., 60
United States v McClain (1977)	47, 50 ff., 60, 205
United States v Steinmetz (1991)	234
United States v Swetnam (1988)	48, 54–56

## Table of Conventions and Treaties

1886 Berne Convention for the Protection of Literary and Artistic Works	177
1910 Salvage Convention	251
1950 European Convention on Human Rights and Fundamental Freedoms	366
1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict	205, 215
1957 EEC Treaty of Rome	74 ff., 147 ff., 199, 387 ff., 395 ff., 410
1958 Geneva Convention on the Continental Shelf	220 ff.
1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property	16, 19, 50, 76 ff., 183–4, 189 ff., 197, 202, 205, 360 ff., 383, 397, 411

1970 Treaty of Cooperation Between the United States and Mexico Providing for the Recovery of Stolen Archaeological, Historical and Cultural Properties	54
1973 Washington Convention on International Trade in Endangered Species of Wild Flora and Fauna	411
1982 UN Convention on the Law of the Sea	221
1986 EC Single European Act	395
1988 Hague Convention on Succession	121–4
1989 Salvage Convention	251, 252
1992 EC Maastricht Treaty on European Union	79, 395

## Subject Index

- Alabama*, CSS 227, 234  
*Aldborough helmet* 105–109  
*Amiot, Laurent* 376  
*Art market* 171–175, 186–187  
  legal aspects of 196–201,  
  203 ff.,  
*Arts funding* in UK 401–407  
*Baillairgé, Francois* 376  
*Birkenhead*, HMS 228–229  
*Bode, Wilhelm* 331–333  
*Canova, Antonio*, 408  
*Central America*, SS 214,  
  253–256, 357–358  
*Chagall, Marc* 320  
*Coke, Sir Edward* 27  
  interpretation of market overt  
  29 ff.,  
  interpretation of treasure  
  trove 277  
*Cultural property, illegal trade in*  
  *Canada* 11–24, 359–371,  
  398–399  
  *EC* 73–80, 147–155, 189 ff.,  
  203 ff., 387–392, 393 ff.  
  *Germany* 111–115, 348,  
  410–411  
  *Guatemala* 49–50, 51  
  *Italy* 58–60, 393ff.  
  *Mexico* 50–54  
*Peru* 54–56, 361 ff.  
*Russia* 205–206, 335–337,  
  347, 348  
*Switzerland* 397  
*USA* 47–71, 183, 348, 350,  
  361 ff., 396  
*Church of England* 105 ff.,  
*Crimea* 335–337  
*Cy-près doctrine* 123  
*Derrynaflan hoard* 294–297  
*Gariépy, Joseph-Henry* 371,  
  373 ff.  
*German Archaeology Institute*  
  157–158  
*Grace Dieu* 224  
*Grosvenor*, HMS 227  
*Lang, Jack* 174  
*Lex situs rule* 112, 183, 204, 213  
*Lippi, Fra Filippo* 329–330  
*Lloyd's of London* 223, 229,  
  237–238  
*Long, Basil* 326–227  
*Lusitania* 223, 239, 243–244  
*Lutine* 224, 229, 236  
*Machaquila Stela* 2, 49  
*Market overt* 8, 25–45, 105, 213  
  *Coke's Rule* of 29–30  
  exceptions to 30–37  
  history of 25–27

- time of day and 35–37  
 proposals for abolition of 39–40  
 sales in 38–39  
 statutory markets and 37–38  
*Mary Rose* 224, 226  
 Metal detecting 160–161, 336  
   National Council for 159  
 Middleham jewel 276, 280–281  
 Monkton Deverill (torc) 276,  
   283  
 Montague, Samuel, 81 ff.,  
 Moore, Sir Henry 106  
 Morelli, Giovanni 327–333  
 Munter, Gabrielle 127 ff.,  
 Museum of London 81–85  
*Nemo dat* rule 8, 25 ff., 60, 204,  
   213, 277, 396  
 Nok culture 18–20, 360  
*Nuestra Señora de Atocha* 229,  
   253  
 Pentney (Anglo-Saxon  
   Brooches) 283–284 ff., 302  
 Possessory title 134–136 ff.,  
   214, 298 ff.  
 Priority rules 118–120  
 Quebec  
   civil law of and ‘sacred’ ob-  
   jects 371–382  
 Ranvoizé, Francois 375–376  
 Reynolds, Graham 325 ff.  
 Royal Armouries 105–109  
 Salvage 245–256  
   and finding 252–256  
 Saserville, Francois 375–376  
 Serra, Richard 176–181  
 Snettisham Hoard 276, 279, 305  
 Stonham Aspel (hoard) 284  
 Thetford Hoard 285 ff., 301, 303  
*Titanic* 217, 238, 347  
 Treasure trove 8, 141–142, 159,  
   161, 214, 275–318  
                 *animus recuperandi* and 276,  
                 279–281  
                 civil law of finders and  
                 297–301  
                 ingredients of 277–281  
                 procedure in cases of  
                 281–282  
                 protection of in criminal law  
                 288–290  
                 reform initiatives and  
                 290–294  
                 rewards and 282–288  
                 rights of landowners and  
                 294–297  
 Turner, JMW 127–129 ff., 342,  
   348, 353  
 UNIDROIT 7  
   draft convention of 74,  
   183–184, 196 ff., 394 ff.  
 Van Mander, Karel 324  
 Virtue, George 324  
 Victoria and Albert Museum  
   82 ff., 319–334, 340, 343, 352  
 Winter, Carl 326 ff.  
 Wreck 217–273  
   abandonment of rights in  
   232–235  
   Crown rights in 240–245  
   human remains and 230–232  
   insurers’ interests in 235–240  
   international law and  
   218–222  
   ownership of 224–230  
   personal possessions and  
   230–232  
   receiver of wreck service  
   222–224  
   salvors’ rights in 245–256  
 Wren, Sir Christopher 106, 108  
 Zenonos, tower of 335



---

Contents

---

- 408 Gerte Reichelt (ed.)  
*Internationaler  
Kulturgüterschutz –  
Wiener Symposium 18./19.  
Oktober 1990*  
Martin Philipp Wyss
- 410 Frank Fechner  
*Rechtlicher Schutz  
archäologischen  
Kulturguts [Legal  
Protection of*
- Archaeological Cultural  
Property]  
Kurt Siehr
- 412 Simon Tait  
*Palaces of Discovery*  
Lady Mason
- 415 List of Contributors
- 417 Index

# Contents

No. 2 · Vol. 2 · 1993

- 213 Editorial  
Norman Palmer

## Articles

- 217 Who has a Right to  
Historic Wrecks and  
Wreckage?  
Sarah Dromgoole and  
Nicholas Gaskell
- 275 Treasure Trove and Title  
to Discovered Antiquities  
Norman E. Palmer
- 319 Attribution and the Claim  
to Objectivity  
John Murdoch

## Essay

- 335 The Pillage of the Ancient  
Tombs in the Crimea  
Igor Emetz and  
Anatoly Golentsov

## Chronicles

- 359 Bolivian Textiles in  
Canada  
Robert K. Paterson

- 371 The Case of the Treasure  
of L'Ange Gardien:  
An Overview  
Benoît Pelletier

## Opinion

- 383 'Dead and Dismembered  
on the Nile': Extract  
from *The Times*  
Simon Jenkins

## Treaties and EC Matters

- 387 European Community  
Free Movement of  
Cultural Goods and  
European Community  
Law  
Part IV: Progress of  
Legislative Proposals  
Joanna Goyder

## Conference Reports

- 393 The Penal Protection of  
Cultural Property: A  
Seminar held by the  
International Institute of  
Higher Studies in  
Criminal Sciences  
(ISIS), Siracusa (Italy),  
22–26 March 1992  
Marina Schneider

## Book Reviews

- 401 Justin Lewis *Art, Culture  
and Enterprise: The  
Politics of Art and the  
Cultural Industries*  
Lionel Bently