

Geological Curators Group

From the shore to the store: the ethics of UK fossil collecting and collections

Disposals and acquisitions: the law

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Acquisitions

Acquisitions and heritage crime

The Law Reform Commission of Ireland,
*Report on the Unidroit Convention on Stolen
or Illegally Exported Objects* (1997) LRC 55,
at [1.4]:

“It is estimated that art smuggling is second only to drug dealing as the most lucrative crime in the world.”

Transparency International UK: “Don’t Look, Won’t Find” November 2015

The arts and heritage sectors are at similar risk to the luxury goods sector of attracting and enabling corrupt individuals to launder money.

They offer similar lifestyle and image attractions, especially to corrupt PEPs, and present relatively easy opportunities to launder large sums of cash ...

Looting heritage objects from Syria, Libya, Iraq, Afghanistan ...

Illegal excavations and theft of art and antiquities

Libya



Iraq



Looting fossils in e.g. Mongolia. e.g. Niuheliang, a Neolithic site in Liaoning province

Tyrannosaurus
bataar
returned to
Mongolia



Police recovered 1,168
cultural relics
Photo provided by
Chinese Ministry
of Public Security

Challenges in deterring heritage crime?

Proof to enable prosecution of both the looter/thief and accessories:

- Identification of the heritage object
- Ownership
- The mental state of the accused

Identification challenges

- Unknown, if buried in the ground
- Damage, alteration
- Many similar items. E.g. cylinder seals
- Availability of expertise
- Fakes

Cylinder seal

Mesopotamia, Uruk Period (4100 BC–3000 BC)

Location: the Louvre



Fake fossils and antiquities

Liaoning, China

National Geographic's

Archaeoraptor (fake)



Ownership: antiquities or fossils

Government of the Islamic Republic of Iran v Barakat Galleries Ltd [2009] Q.B. 22, CA

Court of Appeal
decided:

Iran owned the
antiquities (taking
account of its
patrimonial laws).



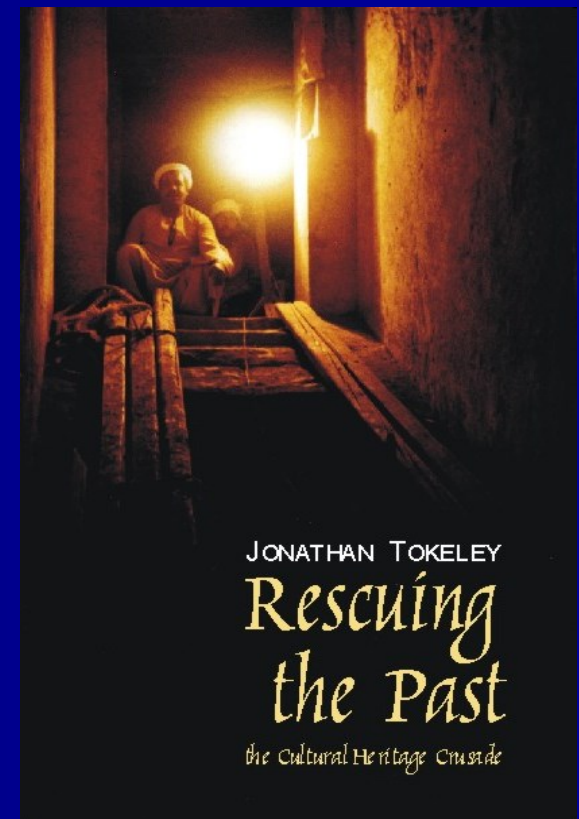
Fake fossils and antiquities

Handling stolen goods: Theft Act 1968, section 24

R v Tokeley-Parry [1999] Crim LR 578, CA



Archaeology Magazine



Northampton Borough Council

Sekhemka statue dating from 2500 BC

Sold in 2014

to a private

Buyer

Smuggled out of

Egypt in the 1850s?



Mental state of the accused

Dishonesty

Theft Act 1968

Dealing in Cultural Objects (Offences) Act 2003

Fraud Act 2006

- Proceeds of Crime Act 2002: **knows or suspects**
- Export Control (Syria Sanctions) Order 2014: **reasonable grounds to suspect**
- Cultural Property (Armed Conflict) Bill: **knowing or having reason to suspect?**
- Iraq (United Nations) Sanctions Order: defendant must prove **“he did not know and had no reason to suppose”** that the item was illegally removed from Iraq

Disposals

Should a museum ever dispose of items from its collections?

Ethics:

1. Curatorially motivated disposal
2. Financially motivated disposal

Should a museum ever dispose of items from its collections? National Museums?

- **Transfer to other national museums:** British Museum Act 1963, sec. 9; Museums and Galleries Act 1992, sec. 6.
- **Transfer, sell or otherwise dispose if:**
 - it is a duplicate, or
 - if the item is unfit/unsuitable to remain in the collection and there is no detriment to the public in disposing of it.British Museum Act 1963, sec. 5; Museums and Galleries Act 1992, sec. 4.

Should a museum ever dispose of items from its collections?

The Law: Charities?

“Museums and Art Galleries” Report

[http://http://www.charitycommission.](http://http://www.charitycommission.gov.uk/media/95113/rr10text.pdf)

[gov.uk/media/95113/rr10text.pdf](http://http://www.charitycommission.gov.uk/media/95113/rr10text.pdf)

- No hoarding!

Charities Act 2011, section 105

- Permission to sell.
- Royal Academy of Arts (Leonardo cartoon).

Code of Ethics 2015, Principle 2.8

Acknowledge that responsible disposal takes place as part of a museum's long-term collections development policy and starts with a **curatorial** review.

Ensure transparency and carry out any disposal openly, according to unambiguous, **generally accepted procedures**.

Note: **Disposal Toolkit**

Are there answers in the Code of 2015 to every ethical problem?

Introduction: “This code cannot contain all the answers to the ethical issues that museums face. Some actions that constitute a breach of the code will be more clearly distinguishable than others.”

Dig it: Museums and archaeology. March 2015. Focus: archaeological material and storage issues.

Sale of a fossil in a museum shop?

Curatorially motivated disposal

- Strong presumption in favour of retention of objects within the **public domain**;
- Demonstrate how the long-term **public interest** is served by the disposal;
- Maintain **public trust**.

Museum criticised for selling donated medals on Ebay for £32

“The grandmother-of-five had been told by the museum the medals would either be put on display or put into the artefacts.”



Problems? Anonymously deposited items?

For example, there is a record that they were left on a museum desk



Anonymously deposited items?

Intention to give:

R (Rickets)

v Basildon

Magistrates' Court

[2011] 1 Cr. App. R. 15



Objects on Loan

Can a lender lose his/her legal title?

I am a member of the “Friends of the Museum of ****.”

- What if I lent an item to the museum 20 years ago?
- Does it matter whether I have anything in writing?

Loans: risk of disposal

If the museum does not own it, the true owner sue in **conversion** (Torts (Interference with Goods) Act 1977).

Basis:

- “I own it”
- “You are treating it as if it belongs to you”

Proposed sale of “Draped Seated Woman” by the London Borough of Tower Hamlets

“Old Flo” by Henry Moore – believed to be worth
£20 million

Who owned it?

Bromley LBC v

Tower Hamlets

LBC

[2015] EWHC

1954



History of “Draped Seated Woman”

- Purchased by the London C.C.
- Passed to the GLC
- And then?



(arts)



Bromley

v

(housing legislation)



Tower Hamlets

Bromley LBC v Tower Hamlets LBC [2015] EWHC 1954

1. **Bromley** owned it
2. **Tower Hamlets** converted it
(conversion = treating another's property as your own)
3. Bromley lost its legal title due to inaction (Limitation Act 1980). Result?
Tower Hamlets owned it.



Financially motivated
disposal

Definition of a “financially motivated disposal”?

Disposal Toolkit:

“A sale is financially motivated if **a** primary reason for disposing is to raise funds.”

A museum has 10 duplicate items. It has decided to keep 4 and has offered 6 to other museums. Only 3 museums want an object. If it sells the other 3 objects, are these financially motivated sales?

Code of Ethics 2015, Principle 2.9

Financially motivated? Principle 2.9.

Demonstrate that:

- ... outside the museum's established **core collection** ...
- extensive prior **consultation** ...
- it is **not to generate short-term revenue**
- it is as a **last resort** after other sources of funding have been thoroughly explored.”

Remember also:

- Strong presumption in favour of retention of objects within the **public domain**;
- Demonstrate how the long-term **public interest** is served by the disposal;
- Maintain **public trust**.

Guidance in relation to a “financially motivated disposal”?

Disposal Toolkit: Appendix 4.

- Follow stages, starting with the collections review
- Consult the Museum Association’s Ethics Committee and the Arts Council
- Consult stakeholders, other museums, and the public

Example of unethical conduct?

Sekhemka statue dating from 2500 BC

- Sale
By Northampton
B.C.
- Loss of
accreditation



Staffordshire University: sale of a Ming cup from a collection of ceramics (currently in store)

Proceeds to be spent upon exhibition space



The Times: “University is defying donor with £2m sale”

“Of course, with one piece being worth £2 million, you wouldn’t ever let a student touch it anyway.”

Rosy Crehan,
Deputy Vice-Chancellor

