

TAKING IT PERSONALLY

THE INDIVIDUAL LIABILITY OF MUSEUM PERSONNEL

A Collection of Essays

Edited by

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Institute of Art and Law



Art litigation is an inventive field, and nowhere are its claimants more resourceful than in the search for new defendants and heads of claim. This collection of essays explores an initiative that has begun to occupy increasing attention in modern claims against museums: the visiting of personal liability upon individual members of museum staff for acts and omissions related to their employment.

Courts in common law jurisdictions are increasingly willing to perceive and enforce both national and individual rights to recover looted art, with the result that the range of potential defendants is correspondingly widened. Trustees, directors and curators may all now be targeted by claimants – particularly where there is concern as to the financial resources of the employing museum. Moreover, modern legislation creating offences related to cultural property has shown an increasing tendency to expose senior officers of cultural institutions to the threat of criminal prosecution.

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PREFACE

Norman Palmer and Ruth Redmond-Cooper

Art litigation is an inventive field, and nowhere are its proponents more resourceful than in the search for new defendants. This collection of essays explores an initiative that has begun to occupy increasing attention in modern claims against museums: the visiting of personal liability upon individual members of a museum staff for acts done pursuant to their employment. The theme of personal liability recurs in two decisions handed down on the day that this book went to press, in each of which the employee was held not to be personally liable.¹ Whilst these decisions do not involve museums, they are testament to a growing trend to seek direct remedies against individual employees and not merely against the employing institution alone.

We have become convinced of the desirability of a book on this subject for several reasons: the mounting willingness of courts to perceive and enforce both national and individual rights to recover looted art, thus widening the range of potential defendants; the ancient (if not cobwebbed) character of some of the leading authorities in this field and their need to be reappraised; the impression in some quarters that so long as an employee is attempting to do his or her job that employee incurs no personal liability to outsiders; the rising concern of modern museum managers that the demands of their office include the development of expertise to anticipate and avoid legal problems; the infliction of a form of criminal liability on employees that is triggered by individual neglect rather than bad faith or dishonesty; and the conviction that an appreciation of the risks to which employees are exposed must be balanced by an understanding of the effect of an employee's liability to third parties on the relations between employer and employee. We are also mindful that claims against impoverished museums can appear more tempting if paired with claims against affluent trustees, directors or curators; and that if a prosecuting authority seeks a defendant who can be imprisoned, it is not the museum itself but its workforce who present the obvious target.

“The great historian” said Lord Acton “takes his meals in the kitchen.” So should the law student, great or otherwise. In this book we try to relate the law of conversion, bailment, negligence, breach of contract and breach of copyright to those individuals who pull the levers of museum administration and are pitched into the firing line when things miscarry. This means catching in the glare of the spotlight those who are accustomed to operate away from the public gaze. We trust that this attempt to shine a lantern below stairs will cast light upon every storey of our cultural institutions.

¹ *NHS Manchester v. Fecitt* [2011] EWCA Civ. 1190 (tort – no vicarious liability for victimisation of whistleblower) and *UK Independence Party Ltd v. Hardy* [2011] EWCA Civ. 1204 (contract – no personal liability for exclusion of party member from meetings through acts of chairman of local branch of political party).