

“Sleeper” Antiquities: Misattributions in Sales of Ancient Art

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Abstract: “Sleepers” are artworks or collectibles that are undervalued because one or more characteristics go unrecognized. This article discusses 12 sleepers that have been sold at auction on the antiquity market since 2007 whose attribution as antiquities were originally overlooked, either accidentally or deliberately. The objects are presented in the context of a theoretical framework describing both the legal and economic incentives to perform due diligence and to reveal, or “awaken,” a sleeper antiquity. The theory implies that sleepers may arise for several reasons, and the case studies are grouped accordingly. Most pressingly, the analysis identifies two ways in which sellers are disincentivized to be transparent about an object’s identity: when they can exploit legal loopholes to deliberately misattribute an antiquity and mediate export and when they can hide disagreement about an object’s authenticity to mediate its sale. Placing the case studies in the broader market context, we highlight particular areas that should be addressed by policy or regulatory reform. The analysis also has wider applications to other forms of art.

INTRODUCTION

In 2005, a small chalcedony female head, just shy of two inches high, sold at Christie’s in London for \$119,000 (adjusted to 2017 dollars).¹ The catalogue

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¹Unless otherwise noted, for consistency and ease of comparison, all prices throughout this article have been converted to 2017 US dollars. Auction catalogues and sales results should be consulted for prices in the original currency.

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described it as an eighteenth-century A.D. or earlier piece. Three years later, the same item resurfaced in New York where Sotheby's hammered it as a classical antiquity for \$962,500, an increase of almost 10 times the prior sale price. This time, the catalogue described it as a Hellenistic/early Roman Imperial piece originating in the second century. In 2005, the Christie's catalogue did not label it as a genuine antiquity, and, due to that misattribution, it not only suffered potential foregone sales of nearly \$850,000 and reputational harm, but it also exposed itself to liability toward its consignor and kept a rare and important object in the shadow of scholarly knowledge and truth.

Sleepers are works of art whose characterization is revised—for any of several reasons in any of several ways—with a resulting increase in price.² The quintessential notion of a sleeper is an overlooked masterpiece by a famous artist that is at first considered to be by a lesser-known painter but is eventually discovered for what it really is; the price grows by an order of magnitude overnight. For the purpose of this article, a sleeper antiquity is a particular type of sleeper whose characterization changes in a particular way: it is sold first with a non-ancient attribution and subsequently sold as being ancient.³ More generally, when appraising an object, auction house experts identify its attributes such as the creator, period, location of creation, and its provenance.⁴ Any of these elements may have attributions that change and produce a sleeper, or they may also change in a way that reduces price.⁵ This article focuses on a narrow category of objects for which changes in the attributed date re-categorize the piece as an antiquity instead of an antique or a replica.

The subgroup of sleepers studied here has important legal considerations that merit the separation consideration accorded them—they highlight the critical, but fraught, connection between an object's saleability as an antiquity and its market value. The evidence supporting a label of "antiquity" versus "antique" often rests on the object's ownership history (listed in auction catalogues as *provenance* and referred to as such in this article), which in turn links the object's attributed date

²Bandle 2016. Bandle wrote the most comprehensive book about sleepers to date, which explores misattribution issues across art historical periods and continents, but she makes no reference to antiquities. Notwithstanding the latter, Bandle's notion of sleepers and the framework she develops is applicable to the present analysis, especially in connection with the duty to care owed by auction houses to other buyers and consignors. See discussion later in this article.

³For the purposes of this analysis, we follow Brodie (2014b, 1) in defining antiquities as "objects or parts of objects, including parts of buildings and monuments, that were made in ancient times—in antiquity." In the auctions we study, Classical antiquities usually date to prior to the fall of the Roman Empire—that is, the fifth century at the latest. But there are exceptions, including Byzantine antiquities and objects from early Islamic empires.

⁴Brodie 2014b.

⁵For example, a painting may be unattributed and later discovered to have been painted by Rembrandt, which would raise its price. Conversely, the consensus about a painting attributed to Rembrandt may change to the conclusion that the painting is by one of his followers, which would lower its price. Only the former would be a sleeper by the definition used here; the latter is perhaps still of interest, and many of the legal points discussed here may still apply. For more information on art historical definitions of "circle of," "studio of," "follower of," and so on, see Phillips 1997, 98.

to the question of whether it can be traded legally.⁶ To use the example of the chalcedony head described above, the attribution of its date changed from the eighteenth century to the second century thanks to an interim sale by a private dealer who purported to clarify its authenticity once and for all. Thanks to a well-established expert’s opinion, it thereby not only “became” an antiquity in the eyes of the market but also was subject to a different set of laws. Therefore, the attribution of an antiquity as such is intimately linked to the object’s market value and its market liquidity, not to mention its art historical interest.

The connection between provenance and legality is widely studied, and there is growing research on the relationship between provenance and price.⁷ But there has been virtually no scholarly discussion of the implications of an object’s attribution as an antiquity versus an antique. As the analysis shows, there are potentially countervailing effects here, with the “awakening” of a sleeper raising its market value but potentially hindering its ability to be sold. This raises the question of whether the full disclosure of everything known about an object is always in the best interest of consignors and auctioneers. Are there situations in which one party has the incentive to hide evidence that something is an antiquity? Are there situations in which one party may hide disagreement regarding an attribution? What about accidental misattributions; are auction houses or experts liable to consignors in such cases? Should they be? And of all the theoretical scenarios, do any actually occur in reality?

These questions are at the core of this article, which provides a legal and economic analysis of sleeper antiquities as a concept, supported by 12 case studies of real sleepers that have come to market in recent years. The analysis starts from the assumption of sleeper antiquities as a theoretical possibility—namely, a sleeper is an object that is first offered for sale without an ancient attribution and then later is offered for sale with one. The analysis remains agnostic about why sleepers arise on the market and, instead, treats the underlying mechanisms and their implications as the main research focus: why might sleeper antiquities arise and what do those pathways say about the market?

The analysis is divided into two parts: legal and economic theory and evidence from case studies. First, the article outlines the legal and economic incentives to perform due diligence and to publicly reveal information that “awakens” a sleeper. Overall, this analysis uncovers market incentives that have heretofore been left out of research and policy debate. In particular, incentives to perform due diligence may not always work in the direction of producing transparent, full disclosure of an object’s attribution. The legal analysis discusses how combinations of international export laws and contract law may disincentivize all of the concerned parties to

⁶On the international trade of antiquities, see Bator 1982; Nafziger 1982; Merryman 2005; Pearlstein 2005; Merryman, Elsen, and Ulrice 2007; Gerstenblith 2008; Brodie 2014a.

⁷Cannon-Brookes 1994; Borodkin 1995; Gerstenblith 2013a; Brodie 2014b; Beltrametti and Marone 2016.

perform due diligence or to “awaken” a sleeper upon discovery. The analysis focuses on the requirements of UK and US law since all of the case study objects are sold in those jurisdictions. It details the potential courses of action available to consignors when auction houses trade their property without performing the required due diligence, and it also discusses the implications of sleepers in the context of illicit trade. Most antiquities must comply with extensive legal requirements before they are traded on the international art market in order to verify that they are not the product of recent illegal excavations. Such requirements are not applicable if the object is attributed to a later period. Building on the legal analysis, the economic analysis argues that incentives to deliberately misrepresent a sleeper will differ depending on how much an awakened sleeper would be worth.

Second, based on the analysis of market incentives, the article classifies reasons that sleepers may arise in the market based on why they were originally overlooked and why they were awoken. The 12 case studies are grouped and discussed according to how well they appear to fit each category, providing a comparison for why different types of evidence point to different reasons for the awakening of sleepers. In some cases, experts may genuinely disagree on an attribution or they may make mistakes. Sometimes there is insufficient evidence to make a determination until further research provides more information. Yet other cases potentially involve the deliberate lack of disclosure of information. One hypothetical possibility is that an owner hides evidence that an object is an antiquity in order to transit the object out of the country. Possible examples of this phenomenon occur when the first sale of the object as a replica happens in Europe, where the antiquities trade is governed by strict export restrictions, and genuine antiquities are often denied an export license. The identity of the objects as antiquities is “uncovered” once such pieces reach the New York market, where higher prices can be obtained once the objects have left the country of origin. The reverse situation is one where the auction houses may hide disagreement about an antiquity’s authenticity by failing to disclose that it was previously offered for sale as a replica.

The 12 case study objects were identified in a database encompassing all antiquities sold by Sotheby’s, Christie’s, and Bonhams in London and New York from 2007 to 2015. It is important to note that this study only focuses on the antiquities traded through public auctions because their records are published. Even though details on antiquities sold through dealerships or other private entities would enhance the scope of this article, they were not accessible to the authors. Nevertheless, the problems that this article uncovers, including the exploitation of legal loopholes to export ancient objects out of their countries of origin, would be applicable to the private market as well.

To support the broad conclusions regarding market incentives and mechanisms, the case studies are evaluated within the broader context of antiquities sold at auction in recent years. Data from the thousands of auction sales in which the case studies were identified serve to highlight the general fact that better-provenanced objects achieve higher prices and that some of the top auction houses have invested

in performing more and more due diligence over the last decade.⁸ The patterns importantly also indicate that prices for genuine antiquities that can be achieved in New York greatly surpass those obtainable on the London art market, highlighting the incentive to move objects across the Atlantic.⁹

It is important to note that the analysis does not make conclusive claims that any given sleeper was awakened for one reason or another. Rather, it describes the information provided in auction catalogues during the first sale of each sleeper versus the second sale and explains why the evidence could or could not support a particular mechanism being the cause. We do not claim, in particular, that any parties were definitely colluding to export sleepers or to hide disagreement about an attribution. But the legal and economic analysis shows that such actions could be rational and deliberate under particular conditions.

It is also important to note that the analysis focuses on market value since the legal and economic analysis focuses on incentives to perform due diligence and to be transparent about provenance research—activities that are rewarded in the form of price at auction. But there are other forms of value that are affected by provenance research, including art historical knowledge and, in the rare case that an object can be linked to its find-spot, archaeological or scientific value.

In light of the theoretical framework and the case study evidence, an overarching conceptual question of this article is whether the rules of the art market (including antiquities) should resemble the ones of conventional goods. Laws and policies that regulate the latter are straightforward when export or authenticity issues arise. Sellers in most secondary markets can take advantage of clear export requirements and the predictable applicability of tort law. Part of the reason for this is that information about such markets is more transparent overall. The art market has for a long time been treated differently: it lacks clear rules about what records are required for import or export licenses, and this fact, in turn, has produced an outstanding number of objects without sufficient provenance to meet museum collection standards, also known as “orphans.”¹⁰ It has no standards on the licensing of art market professionals, which are mostly self-appointed, and there is no comprehensive database of stolen artworks, which is replaced instead by large

⁸This supports the results of Beltrametti and Marrone 2016. It also shows a departure from the prior work of Lobay (2009) and Brodie (2014b), who presented empirical evidence covering selected auction results before 2011 and concluded that, notwithstanding the passing of laws criminalizing illicit trade, the antiquities market did not consistently reward provenance.

⁹See discussion later in this article.

¹⁰Leventhal and Daniels (2013) provide a description of the many ways in which this term is used, along with a summary of policy approaches to issues posed by orphans. For one estimate of the numbers of orphans of various types, see “Project on Unprovenanced Ancient Objects in Private US Hands,” Cultural Policy Research Institute Research Study no. 1, 10 November 2009, <https://sites.google.com/a/cprinst.org/www/Home/issues/project-on-unprovenanced-ancient-objects-in-private-us-hands> (accessed 13 February 2020)

numbers of somewhat arbitrary sampling efforts.¹¹ This article highlights certain aspects of more conventional markets that may provide a basis for addressing some of the loopholes identified in the legal analysis.

In arguing that the market does not fully incentivize transparency regarding an object's attribution and provenance, the article relates to a broader debate about whether the antiquities market successfully induces due diligence in the form of higher market price. Peter Cannon-Brookes, Lisa Borodkin, and Patty Gerstenblith have suggested that participants in the antiquities market would pay a premium for provenanced objects.¹² Silvia Beltrametti and James Marrone provide empirical support for this hypothesis, arguing that court cases in the early 2000s triggered a market premium for Egyptian and Classical antiquities with good provenances.¹³ James Marrone shows that this pattern, however, is complicated by the tendency to auction antiquities in large groups, or lots, which is how most objects with poor provenances are auctioned.¹⁴ Neil Brodie argues the opposite, using data from selected antiquities auctions to show that buyers did not consistently reward provenance and that the market will therefore not regulate itself.¹⁵ This article does not take a direct stance on the question of so-called "auto-regulation." Rather, it complicates the link between provenance research and market transparency by arguing that full transparency of expert opinion and provenance information is not always incentivized, resulting in actions that could either raise or lower the perceived value of an object, depending on the situation. Therefore, the article indirectly argues that, while the market may reward provenance on average, in particular cases it does not automatically reward full transparency of information that would be relevant to both buyers and the public.¹⁶

The article proceeds as follows. The second section discusses the legal framework, including export issues, repatriations, and liability in tort for failing to recognize a sleeper; the third section presents a model of economic incentives to perform due diligence to uncover sleepers; the fourth section applies the model to 12 sleeper case

¹¹The most widely used is the Art Loss Register, <http://www.artloss.com/en> (accessed 13 February 2020); but see also the Federal Bureau of Investigation's National Stolen Art Files, <https://www.fbi.gov/investigate/violent-crime/art-theft/national-stolen-art-file> (accessed 13 February 2020); Interpol's Works of Art Database, <https://www.interpol.int/en/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database> (accessed 13 February 2020); and International Council of Museum's Red Lists Database, <https://icom.museum/en/resources/red-lists/> (accessed 13 February 2020).

¹²Cannon-Brookes 1994; Borodkin 1995; Gerstenblith 2013a.

¹³Beltrametti and Marrone 2016.

¹⁴Marrone 2018.

¹⁵Brodie 2014b.

¹⁶Provenance has been investigated in other branches of the art market as well. Ginsburgh and Schwed provide evidence that the presence of collector's stamps on old masters' drawings increased the prices obtainable at auction. V. Ginsburgh and N. Schwed, "Price Trends for Old Masters' Drawings 1980–1991," *The Art Newspaper*, 1992, 426–44. On the related question of repatriations and the consequences of acquiring trafficked objects, see Gill and Chippindale 2006; Felch and Frammolino 2011; Beltrametti 2013.

studies of antiquities; the fifth section evaluates the findings in the context of a decades' worth of market data from antiquities sales; and the sixth section concludes with implications of the analysis.

DEFINITIONS AND LEGAL BACKGROUND

As already noted, for these purposes, the definition of a sleeper is somewhat narrow: a sleeper is an object that is reattributed as an antiquity when before it had been offered for sale as an antique or a replica. By “attribution,” we mean the date of the object as characterized at the time of sale, which may or may not be backed up by some evidence. The very concept of a sleeper requires an “awakening.” The awakening is the change in attribution. A key point, and one emphasized throughout the legal analysis, is that attributions are not wholly scientific or objective. Awakening a sleeper does not mean that the object has suddenly been dated with 100 percent certainty, and this lack of certainty is part of what creates a legal gray area.¹⁷ As we describe in more detail below and exemplify through the case studies, provenance research can be critical in supporting the claim that an object is actually an antiquity. The point is that the market behavior we observe is based on the information backing up the attribution and the liabilities associated with making the attribution in the first place.

The elements of an antiquity's attribution can be grouped into two categories: quality descriptors and provenance. Analyzing the quality of an antiquity, including its authenticity as an antiquity, involves examining the techniques used to produce the object and evaluating them in light of art historical references.¹⁸ The operation is usually conducted by trained specialists, and the analysis begins with the assessment of the composition and the iconography of an artwork or antiquity, which are then compared with recognized works from the same period, and results in a determination about whether a work was made in such period.¹⁹ Such eye judgments about the quality of an artwork are in most cases a matter open to debate, and different experts can, and often do, hold different opinions.²⁰ The case of *Hahn v. Duveen* was the first to formally question whether the identification of an artwork should be controlled by the aesthetic judgment of a small group of experts or whether more rigorous methods, including scientific authentication, should be employed.²¹ In this case, the court held that the moral honesty and the methods of attributions of some

¹⁷Although it may be more apt to use the word “re-label” or “re-attribution” rather than “awakening,” we opt for the more metaphoric language to better illustrate the sleeper concept and to highlight the parallels to other types of sleepers in the art market.

¹⁸Hatt and Klonk 2006.

¹⁹Hatt and Klonk 2006.

²⁰Hatt and Klonk 2006. See Aminateddoleh (2015, 430), who argues that, despite the availability of high-level expertise, there may be uncertainty regarding the attribution of some artwork.

²¹*Hahn v. Duveen*, 133 Misc. 871 (NY Misc. 1929). See Aminateddoleh (2015, 421–22) for an analysis of the case.

experts were too subjective and therefore unsound, and also that in some instances the finding of an overarching truth would not be possible.²²

The use of forensic methods can help overcome subjectivity and corroborate attributions by testing the materials used to make the artwork.²³ In the context of antiquities, radiocarbon dating can help determine the age of organic material, and isotope analysis can match marble objects to specific geographical locations.²⁴ Dendrochronology can do the same with wood.²⁵ Thermoluminescence is helpful to date pottery, and paints can be tested by sophisticated pigment analysis.²⁶ Scientific tests are helpful at determining whether an artwork's materials come from a certain time and place. However, such tests are not foolproof. For example, the surface of stone, as well as other materials, can be weathered artificially to simulate the effects of long-term wear and deterioration, leading modern replicas to be confused for ancient objects.²⁷ The fact that even scientific evidence may prove inconclusive is best illustrated by the statue of a Kouros owned by the J. Paul Getty museum, an imposing marble statue of a youth whose attribution and identification remains a mystery to this day.²⁸ The Getty's website states that the statue is carved from marble that originates from Thasos, but it also notes that the use of such marble is unusual for the time the piece was purportedly sculpted.²⁹ The object details read: "Kouros, Greek about 530 B.C. or modern forgery."³⁰

When quality judgments are debatable, and scientific evidence proves inconclusive, information tracking an object's ownership history can be of crucial importance to finding out whether the objects at issue are genuine antiquities or belong to a different period.³¹ Verifying provenance involves researching the ownership history of a given artwork, including records documenting its past whereabouts and possessors.³² Even though the importance of researching provenance has been extensively recognized, and the work of many art historians includes references to the prior ownership of specific artworks, there have been relatively few efforts that

²² Amineddoleh 2015; Hahn v. Duveen, 874–77.

²³ Leona 2009; Casadio and Van Duyne 2013.

²⁴ For isotope analysis on marble sculpture, see Institute 1988; for the application of radiocarbon dating on archaeological material, Taylor and Bar-Yosef 2014.

²⁵ Kuniholm 2002.

²⁶ For details on thermoluminescence analysis in this context, see Aitken and Fleming 1968; on the examination of ancient paint pigments, see Cuní 2016; Siddall 2018.

²⁷ Feller 1994.

²⁸ J. Paul Getty Museum, Goulandré, and Technes 1993; Lapatin 2000.

²⁹ J. Paul Getty Museum, "Kouros, Object Details," <http://www.getty.edu/art/collection/objects/10930/unknown-maker-kouros-greek-about-530-bc-or-modern-forgery/> (accessed 13 February 2020).

³⁰ J. Paul Getty Museum, "Kouros."

³¹ A. Bamberger, "Art Provenance: What It Is and How to Verify It," *Art Business*, 2007, <https://www.artbusiness.com/provwarn.html> (accessed 13 February 2020).

³² Nancy Yeide and Akinsha 2001.

engage in the systematic and methodical study of provenance.³³ The case studies in this article provide examples of how provenance research has been used to support the reattribution of an object as an antiquity. Provenance research is not only a useful way to enhance scholarly knowledge by confirming attributions and verifying the authenticity of antiquities, but it has also become an essential legal requirement that enables legitimate sales.³⁴ A more elaborate discussion of the legal principles underlying the international trade of ancient art follows below and shows that efforts to uncover solid ownership chains are often rewarded with the acquisition of objects that carry clear title.

Export Issues and Repatriations

This section discusses the legal environment in which the antiquities market operates and addresses specific legal issues associated with the illicit trade of such objects. This will help clarify why sellers may want to turn a blind eye as to whether an object is a genuine antiquity in order to bypass export rules and compliance schemes that apply to the trade of ancient pieces. One of the main issues that arises in the context of the antiquities trade is the possibility that an object is the product of an illicit excavation and that it has been stolen from its country of origin.³⁵ If a country has passed national ownership laws providing that the ruling government owns antiquities found in its territory, and if such antiquities are traded across borders without official authorization, they amount to stolen property and can become subject to a restitution claim.³⁶ If the object at issue is a later imitation of an antiquity, it faces fewer constraints when crossing borders as most of the laws discussed below apply only to genuine archaeological material.

The trade of ancient art triggers the applicability of numerous national as well as international laws. At the international level, the illicit trade of archaeological material infringes on the standards set out in the 1970 UNESCO Convention.³⁷ The latter commits its 140 signatories to enact national laws to seize illegally exported

³³Publications focusing on the critical examination of provenance issues are rare. One example is Feigenbaum and Reist (2013), which assesses provenance issues in different art historical periods. Some museums, notably the J. Paul Getty Museum in Los Angeles, have set up an impressive Provenance Index Database, <http://www.getty.edu/research/tools/provenance/search.html> (accessed 13 February 2020). See also Reynolds 2008.

³⁴Beltrametti and Marrone 2016.

³⁵See Vadi and Schneider (2014) for an overview of the legal matters raised by the illegal trade in ancient artifacts, including public law questions, state immunity, export laws, the law of war, private law aspects ownership rights as well as procedural elements and statutes of limitations.

³⁶For more details on national laws and case law regulating such claims, see Prott and O’Keefe 1988; see also the International Foundation of Art Research Database, <https://www.ifar.org/> (accessed 13 February 2020).

³⁷Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231. See also Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.

objects found on their territory and repatriate them to their respective countries of origin.³⁸ Importantly for the context of the present study, the United States and the United Kingdom, the countries where the most important antiquity auctions take place, as well as Italy and other source countries from which the sleeper antiquities we have identified originate, are all subscribers to the UNESCO Convention, and have passed national laws that condemn the theft and illicit trade of cultural heritage.³⁹

Regulation of the US Antiquities Market

The United States, which hosts the world's largest market for high-end antiquities, implemented the principles contained in the 1970 UNESCO Convention through the passage of the Cultural Property Implementation Act (CPIA) in 1983.⁴⁰ The CPIA sets up a system of import controls for ancient material regulated by bilateral agreements entered into with individual source countries.⁴¹ For instance, in 2001, the United States entered into a bilateral agreement with Italy that restricted the import of broad categories of ancient objects.⁴² In practice, the presence of such agreement allows US customs to seize archaeological artifacts that are being imported without documentation verifying that the object can legitimately be traded.⁴³ As a consequence of the bilateral agreement with Italy, auction houses wishing to sell classical antiquities in the United States had to formally declare that the consignments had been outside of Italy before the bilateral agreement came into force in 2001 or otherwise submit valid export documentation.⁴⁴

³⁸See O'Keefe 2000; Merryman, Elsen, and Ulrice 2007. For a compilation of the state parties to the 1970 UNESCO Convention, see UNESCO, "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property," 14 November 1970, <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha> (accessed 13 February 2020).

³⁹UNESCO, "Convention on the Means"; UNSECO, "List of Cultural Heritage Laws," 2020, <https://en.unesco.org/cultnatlaws/list> (accessed 13 February 2020). For a discussion of the inefficacy of such laws, see Lobay 2009; Brodie 2014b.

⁴⁰Cultural Property Implementation Act, 19 USC §14, paras. 300–15 (CPIA). For a discussion of the background of the CPIA, including the lobbying efforts of archaeologists, see Efrat 2009.

⁴¹The United States has entered into similar bilateral agreements with 22 other source countries, see Bureau of Educational and Cultural Affairs, "Current Import Restrictions," 2020, <https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions> (accessed 13 February 2020).

⁴²Import Restrictions Imposed on Archaeological Material Originating in Italy and Representing the Pre-Classical, Classical, and Imperial Roman Periods, 66 Fed. Reg. 7399, 7401 (23 January 2001), codified at 12 CFR, pt. 12.

⁴³Bureau of Educational and Cultural Affairs, "Current Import Restrictions." See also details of Customs Boarder Protection Export Form no. 3461.

⁴⁴Note that, according to the agreement, all material referred to as Classical had to abide by Italian standards, unless it could be shown that it originated in another country.

The requirements became stricter with the passage of time, especially since the 2005 decision in *Italy v. Medici*, which required antiquities to showcase a verifiable pre-1970 provenance in order to be traded.⁴⁵ This was meant to discourage the sale of recently looted objects. The case of *Medici*, which ultimately condemned an Italian antiquities dealer to a 10-year prison sentence and a €10 million fine for trafficking looted objects, also uncovered evidence that enabled the Italian government to track hundreds of objects that Medici had sold to prominent US collectors and claim their return.⁴⁶ By choosing to pursue the return of objects that left its grounds illegally after 1970, Italy endorsed the threshold date set by the UNESCO initiative instead of relying on the date in the bilateral agreement or other laws.⁴⁷ By establishing a new legal standard for the trade of classical antiquities, the *Medici* decision affected prices paid for well-provenanced objects on the antiquities market, and, in its aftermath, many museums worldwide adopted acquisition policies recognizing 1970 as the applicable reference date.⁴⁸

Another legal route to punish traffickers once the object in question has entered the United States is through the applicability of the National Stolen Property Act (NSPA).⁴⁹ The case of *US v. Schultz*, which was successfully pursued in the New York Federal Court in 2003, clarified the rules applicable to the trade of looted Egyptian material.⁵⁰ The court supported Egypt's claim to the trafficked objects by holding that an Egyptian law passed in 1983 had successfully vested its government with their ownership before Frederick Schultz took them out of the country in the 1990s. Instead of referring to the CPIA or bilateral agreements, the court ruled that US theft laws could be applied to property stolen abroad if the foreign country had previously asserted its ownership rights to its cultural patrimony. The *Schultz* decision bound all state and federal courts in the United States to apply the 1983 threshold date in connection with recovering illicitly traded Egyptian antiquities located on US territory and affected the practices of antiquities departments of auction houses in a major way. Whereas prior to this decision the provenance of Egyptian antiquities was of little relevance, after the *Schultz* decision active steps were taken to corroborate the pre-1983 ownership history of such consignments.⁵¹

To summarize, in order to import and sell ancient art in the United States an auction house must comply with strict import requirements, including filling in detailed customs forms, providing details as to the country of origin of the piece, and

⁴⁵*Italy v. Giacomo Medici*, Trib. Roma no. 5359 (2005).

⁴⁶*Italy v. Giacomo Medici*. See also Beltrametti 2013.

⁴⁷Following the Italian strategy, Greece also claimed objects that left the country without authorization after 1970. See Gill 2009.

⁴⁸Levine 2009; Beltrametti 2013; Gerstenblith 2013b. See also the debate about 1970 as a threshold date by Brodie and Renfrew 2005. USC § 2311–2315.

⁴⁹National Stolen Property Act, 18 USC § 211.

⁵⁰*United States of America v. Frederick Schultz*, 333 F3d 393 (2d Cir. 2003).

⁵¹Beltrametti and Marrone 2016.

obtaining notarized statements from the consignors in relation to its ownership history.⁵² Failure to do so can result in the seizure and forfeiture of the object.⁵³ Starting in 2012, consignors were further required to submit supporting evidence to verify the origin of the object, such as publications, photographs, prior sale receipts, and insurance or inheritance records.⁵⁴ Since clearing ownership of antiquities became an increasingly difficult task, auction sizes in New York have drastically decreased over time, and auction houses are known to have to regularly pull objects out of upcoming auctions as a result of potential repatriation claims.⁵⁵

Regulation of the UK Antiquities Market

A considerable number of classical antiquities sold in the United States were previously traded through the UK art market. In fact, 10 out of 12 of the sampled case studies discussed in detail in this article were first sold in the United Kingdom as Roman-style or eighteenth-century objects and subsequently traded as genuine antiquities in New York. The presence of antiquities in the United Kingdom can be explained in several ways. First, the United Kingdom is itself the find-spot of a number of classical antiquities from former Anglo Saxon Roman colonies, which can be legitimately traded internationally if local museums are not interested in acquiring them at their market value.⁵⁶ Besides being a source country, the United Kingdom is also a market country and has endeavored to create a favorable market environment for the trade of artwork, including antiquities, which we elaborate on below.⁵⁷

Another category of antiquities available in the United Kingdom consists of acquisitions made by the English nobility during extended journeys throughout Europe known as the “Grand Tour.”⁵⁸ These trips, which were in vogue from the late seventeenth century until the early nineteenth century, were mostly motivated by exposure to classical culture and the study of the legacy of the ancient world; Italy

⁵² Customs Boarder Protection Export Form no. 3461 and instructions in connection with country of origin requirements, <https://www.cbp.gov/sites/default/files/assets/documents/2016-Jun/CBP%20Form%203461%20-%20ACE%20Fillable.pdf> (accessed 13 February 2020).

⁵³ *United States v. An Antique Platter of Gold*, 184 F3d 131 (2d Cir. 1999).

⁵⁴ Author’s conversation with Molly Morse Limmer, 11 February 2020.

⁵⁵ V. Silver, ‘If You Steal It, the Art Vigilante Will Find You,’ *Bloomberg Businessweek*, 26 June 2018, <https://www.bloomberg.com/news/features/2018-06-26/if-you-steal-it-the-art-vigilante-will-find-you> (accessed 13 February 2020). See also Brodie 2014b; Beltrametti and Marrone 2016; see also Figure 2.

⁵⁶ See Salway (1982) for an account on Roman colonies in the United Kingdom. The Treasure Act 1996 (UK), c. 24, regulates the trade of archaeological material found on UK soil. If a find is determined to be a “treasure” according to the act, it must be offered for sale to a UK museum at a price set by an independent board of antiquities experts, also known as the Treasure Valuation Committee. Not all archeological material is classified as “treasure.” See the “Crosby Garrett Helmet,” which sold for \$3.6 million dollars to US buyers. M. Kennedy, “Roman Helmet Sold for £2m,” *The Guardian*, 7 October 2010.

⁵⁷ C. McAndrew, “Why Brexit Is a Golden Opportunity for the UK Art Market,” *Artsy*, 30 August 2018. For the trade of artwork within the European Union, see Goyder 1992.

⁵⁸ See the work of Jeremy Black, including Black 1991, 1996, 2011.

and Greece were popular destinations, and visitors who wished to buy ancient objects were able to do so with the help of local dealers that arranged for export licenses and transportation.⁵⁹ Busts and marble statues from the Imperial Roman period were particularly popular and would be prominently displayed on the estates of their collectors.⁶⁰ Of particular interest is the fact that these objects were sometimes restored to please the taste of their owners or integrated into furniture and other decorative components, and, as we will see later in this article, they are sometimes still traded in that form, which partly explains their “sleeper” status. Either way, objects collected during this period are some of the safest antiquities on the market because they were documented to belong to established collections outside their country of origin long before national patrimony laws became applicable.

UK import and export regulations differ according to whether the object is categorized as archaeological material or merely as an antique. The latter is defined as a decorative object 100 years or older that is not the product of an archaeological excavation.⁶¹ According to such regulations, archaeological material can only be exported by means of a formal license, and the application to export must include information about the object’s country of origin, its provenance, and, at times, a statement by the art loss registry acknowledging that the object was not stolen.⁶² On the other hand, if the object is categorized as an antique, and it is valued at less than €50,000, it can be exported and traded without a license.⁶³ It follows that if antiquities are misidentified as antiques and their value does not reach the €50,000 threshold, they can be freely exported to venues where they can be resold for higher prices. In New York, for instance, prices for antiquities are particularly high because demand is strong and supply is low.⁶⁴ Several of the cases we observe below involved items that were first traded at auction in London as relatively low-priced decorative antique objects and, once they reached the New York market, were offered for sale as genuine antiquities.

⁵⁹Thompson 2016, 35–40; see also Ridley and Ridley 1992.

⁶⁰Ridley and Ridley 1992.

⁶¹Arts Council of England, *UK Export Licensing for Cultural Goods, Procedures and Guidance for Exporters of Works of Art and Other Cultural Goods*, 2018; Council Regulation (EEC) no. 3911/92 on the Export of Cultural Goods, [1992] OJ L395.

⁶²Council Regulation (EEC) no. 3911/92. See also Arts Council of England, “Guidance to Exporters of Archaeological Objects,” https://www.artscouncil.org.uk/sites/default/files/download-file/Export_guidance_archaeological.pdf (accessed 13 February 2020); Arts Council of England, “Guidance to Exporters of Archaeological Objects of UK Origin,” https://www.artscouncil.org.uk/sites/default/files/download-file/Export_guidance_archaeological_UK_origin.pdf (accessed 13 February 2020). These rules are partly based on Council Regulation (EEC) no. 3911/92, of which the United Kingdom is a member; therefore, the thresholds are noted in the European currency.

⁶³Council Regulation (EEC) no. 3911/92.

⁶⁴The discussion later in this article elaborates on the difference in prices that can be obtained for similar material in the United States and the United Kingdom. Although focused on other types of art, McAndrew (2019) also provides a comparison for prices in New York versus other cities.

This section has shown that, in order to be legitimately traded, most antiquities must comply with extensive legal requirements and that the latter are not applicable if the object is traded as a later imitation. The fourth section of this article will distinguish situations in which sleepers are purposefully created to escape the tight regulations from those wrongful attributions that result from innocent errors. Regardless of whether there is malice at play, the above discussion has exposed a legal loophole, which allows sleeper antiquities to bypass regulation that would otherwise inhibit their trade. Such circumvention of legal standards may raise questions of legitimacy at future sales. The following section will illustrate that undertaking provenance research is the most effective way to prove that a piece was not recently looted and that there are no relevant export issues.

Liability for Failing to Recognize a Sleeper

Recently, some courts have recognized the importance of performing due diligence, including provenance research, in order not only to make determinations about the authenticity and attribution of an artwork but also to prevent claims for illicit traffic.⁶⁵ However, it is not necessarily clear to what extent experts can be liable for wrongful identifications. This section of the article provides an examination of the current case law in the United States and the United Kingdom concerning misattributions made by auction house specialists since the case studies discussed in the next section are sold through auctions in these locations.

Before inspecting the relevant law, it is important to clarify the role of the various stakeholders involved in the auction process. Auction houses are agents for consignors who wish to sell their property at auction, and, by entering into a consignment contract, the auction house agrees to act in the consignors' best interest and sell the artwork to the highest bidder.⁶⁶ Even though they are often in possession of the property in order to showcase it to potential clients before a sale, auction houses do not own the object themselves.⁶⁷ In short, they have the authority to bind the consignor and the purchaser to a sale without being themselves party to it.⁶⁸ Auction houses generally have wide discretion as to how to market the objects in question, including deciding on attribution and quality. In case the object is misattributed or otherwise found not to correspond to the descriptions outlined in the sales catalogue, a buyer is entitled to rescind the sale.⁶⁹ This is unlikely to happen, however, in

⁶⁵Museum of Fine Arts, Boston v. Seger Thomschitz, 623 F3d 1 (1st Cir. 2010); Levin v. Gallery 63 Antiques Corp., 2006 US Dist. Lexis 70184 (SDNY 2006).

⁶⁶See Bandle 2016, 113, 162, 284.

⁶⁷See DiMatteo and Hogg 2016, "Defining Agency and Its Scope."

⁶⁸DiMatteo and Hogg 2016.

⁶⁹Buyers buy "as is," meaning that an artwork is bought without any express guarantee as to its authenticity, but usually subject to the "generally accepted opinion of scholars and experts at the date of the sale or fairly indicated that there was a conflict of opinions." See Sotheby's Authenticity Guaranty, (i); Christie's Conditions of Sale, 5; Bonhams Conditions of Sale, 9.3.1. Sotheby's, Christie's and

the case of a sleeper because the object will often be revealed to be more valuable than advertised and the buyer will be incentivized to keep it or resell it at a higher price. The likelier outcome of a sleeper sale is that the consignor will sue the auction house to seek redress for the undervaluation of the consigned property.

In the United States as well as in the United Kingdom, a duty of care arises in the context of an agency relationship when a professional is hired to perform a task in which he is purportedly an expert.⁷⁰ The present scenario arises when an auction house appraises the goods of a consignor.⁷¹ What the relevant standard of care comprises has been addressed in a multitude of cases, and even though every case is different, it appears in principle that consignors are entitled to expect a transparent and competent service and the exercise of skill and care when evaluating consigned property.⁷² This includes an accurate description of the item in the sales catalogue and the disclosure of other relevant information that may affect the sale.⁷³ Compliance with the above duties is assessed according to what a comparable auction house of similar size and expertise would have done in that same position, without the benefit of hindsight; provincial auctioneers do not have to meet the more rigorous standards of care of specialists at major international auction houses, where the expectation is that an artwork will be assessed by highly qualified staff.⁷⁴ In short, if a competent professional at a similar auction house would have reached the same conclusion under the same circumstances, the standard of care will generally be met.

A typical claim for breach of fiduciary duty involves a claimant arguing that the auction house negligently misrepresented the subject matter of the sale, thereby failing to comply with its duty to care.⁷⁵ To successfully bring such a claim, the consignor needs to show that he trusted the skill of the expert, that he did act based on the expert's advice, and, as a result, that he suffered financial loss. He also has to

Bonhams terms and conditions also include a clause that entitles buyers to rescind a sale in certain cases if the work is found to be a forgery. This was confirmed in *De Balkany v. Christie Mason & Woods*, [1997] 16 Trading Law Reports 163.

⁷⁰For the United States, see *Kimmell v. Schaefer*, 89 NY2d 257, 653 (1996); *Ravenna v. Christie's Inc.*, 289 AD2d 15 (NY App. Div. 2001), negating that such relationship arose between a visitor and an auction house. For UK law, see *Hedley Byrne v. Heller*, AC 465 (1964).

⁷¹*Hedley Byrne v. Heller*; *Ravenna v. Christie's*.

⁷²For the United States, see *Cristallina S.A. v. Christie, Mason & Woods Int'l, Inc.*, 117 AD2d 284 (1986); *Reale v. Sotheby's, Inc.* 278 AD2d 119–21 (2000); *Alta T. Clay v. Sotheby's Chicago Inc.*, 257 FSupp2d 973 (2003). For the United Kingdom, see *Luxmoore-May v. Messenger May Baverstock*, 1 WLR 1009 (1990); *Thomson v. Christie Manson and Woods Ltd and Another QBD*, EWHC 1101 (QB 2004).

⁷³*Thomson v. Christie Manson and Woods*; *Cristallina v. Christie, Mason & Woods*.

⁷⁴*Cristallina v. Christie, Manson & Woods*. In *Luxmoore-May v. Messenger May Baverstock*, the court held that a small local auction house was not liable for failing to recognize that the consigned paintings were by sporting painter George Stubbs because it was outside the scope of their practice. See also *McKendrick* 1992.

⁷⁵For the United Kingdom, see *Hoos v. Weber*; *Aurora Fine Arts Investment Ltd v. Christie Manson & Woods Ltd*, EWHC 2198 (2012).

file the claim in a timely manner.⁷⁶ In *Cristallina v. Christie's*, the New York State Appeals Court held that acting negligently in providing estimates can give rise to a claim and that consignors have the right to see their property promoted to its full potential.⁷⁷ The latter would be applicable in the case of a sleeper, given that the undervaluation will lead to lower estimates, incorrect sale placements, and missed opportunities for better promoting the sale of the object. In the UK case of *Coleridge v. Sotheby's*, the court decided that the wrongful dating of a gold necklace that resulted in a lower sale price, albeit not *per se* negligent, allowed the claimant to request damages for the amount of the undervaluation as determined by an external expert appraiser.⁷⁸ Sometimes, however, there may be genuine disagreement about the true nature of an artwork and insufficient evidence to make a determination, in which case the auction house will not be held liable. In *Thwaytes v. Sotheby's*, the court held that the Sotheby's specialist was not at fault for attributing a painting to a follower of Caravaggio, instead of Caravaggio himself, because there was genuine disagreement between experts as to the actual attribution.⁷⁹ In summary, auction houses may be found liable for negligence if they make erroneous attributions that another auction house of similar competence would not have made.⁸⁰

One important caveat concerns warranty disclaimers contained in consignment contracts, as they can limit the above negligence claims.⁸¹ In short, disclaimers contained in consignment contracts release auction houses of liability in connection with the “correctness of descriptions” of the consigned properties.⁸² In their standard form, they provide that auction houses have complete discretion as to decisions pertaining to the sale, including attribution, pricing, and all details about the object contained in the sales catalogue.⁸³ In order for a claim to be successful, consignors need to overcome the barriers imposed by such disclaimers, which is not always an easy task, as most common law courts have construed the scope of

⁷⁶See *Marchig v. Christie's Inc.*, 762 F. Supp. 2d 667 (SDNY 2011), where Christie's was not held liable for failing to recognize a consignor's £100 million Leonardo da Vinci in 1998, instead selling it for \$20,000, because the action was time-barred and should have been filed within three years of the original sale according to the New York Civil Practice Law and Rules, s. 214. In the United Kingdom, the time limitation to file a misrepresentation claim is six years after the consignment agreement is entered into. See Limitation Act 1980 (UK), c. 58, paras. 9, 14.

⁷⁷*Cristallina v. Christie, Manson & Woods*.

⁷⁸*Coleridge v. Sotheby's*, EWHC 379 (2012).

⁷⁹*Lancelot Thwaytes v. Sotheby's*, EWHC 36 (2015).

⁸⁰Note that, in light of the Christie's–Sotheby's duopoly, sometimes it may seem unfair toward the consignor to make the standards of care dependable on that comparison, without admitting that both auction houses may be acting negligently. See McKendrick 1992. *Thome v. Alexander & Luisa Calder Foundation*, 70 AD3d (2009) held that courts are not in the best position to make a determination on the authenticity and attribution of art objects.

⁸¹Bandle 2016, 270–73. See also sample Sotheby's Consignment Contract (on file with the author).

⁸²Bandle 2016.

⁸³Bandle 2016.

fiduciary duties to fall within the boundaries of the substance contained in the consignment contract.⁸⁴

Notwithstanding the presence of a disclaimer excluding liability for artwork misattribution, an action for fraud or reckless disregard as to the attribution remains available. This type of claim becomes actionable when the incorrect statements are material and were made with knowledge or reckless disregard of the inaccuracy.⁸⁵ Materiality (in the legal sense) ensues from the difference in value of the sleeper before and after its “awakening”: usually the price difference is such that the seller will be deprived of the very substance of the transaction if the attribution is not fulfilled. Proving that the auction house knew that the attribution was wrong or that it had no basis for making the representations is possible but rare, as auction houses can argue that they were themselves deceived about the true identification of the object.⁸⁶ This raises the question about what a reasonable auction house specialist is entitled to believe and where reckless disregard begins. New York courts have determined in some instances that dealers can be liable for selling misattributed work because the attribution is presumed to be the basis of the transaction and an express warranty of authenticity, according to the New York Art and Cultural Affairs Law.⁸⁷

Alternatively, the consignor can claim that the sale should be void because both parties were mistaken about the object’s true identity. Under US as well as UK law, a mistake must generally concern a material term of the contract, and it must be mutual in order to render a contract void.⁸⁸ In the case of a sleeper, the consignor has entrusted the auction house with the sale of an object that is much more valuable

⁸⁴For the United States, see *Greenwood v. Koven*, 880 F Supp 186 (SDNY 1995); *Kohler v. Leslie Hindman, Inc.*, 80 F3d 1181 (1996); *Sveas v. Christie’s Inc.*, no. 10 Civ. 4263 (LTS), Official Transcript (SDNY, 20 April 2011). For the United Kingdom, see *Elidor Investments SA v. Christie’s Mason & Woods*, EWHR 3600 (QB 2009). An exception was made by the court in *E.S.T Inc. v. Christie’s Inc.*, where the auction house had not explicitly referenced attribution in the disclaimer, and the court held that it was therefore not applicable to the attribution error in question. See *E.S.T., Inc. v. Christie’s, Inc.*, No. 112793/00 (NY Sup. Ct., 22 June 2001).

⁸⁵For US law, see *Cristallina v. Christie, Mason & Woods; Tony Shafrazi Gallery Inc. and Guido Orsi, Plaintiffs v. Christie’s Inc.*, NY Slip Op 09184 (2012); for UK law, see the Fraud Act 2006 (UK), c 35; Peel and Treitel 2015.

⁸⁶For the United Kingdom, see *Jendwine v. Slade*, 170 Eng. Rep. 459 NP 1797; for the United States, see *Krehmer v. Christie’s Inc.*, 911 A2d 399 (Del. Ch. 2006); see also *Lagrange v. Knoedler*, No. 11-cv-8757 (SDNY 2011).

⁸⁷See *Dawson v. G. Malina Inc.*, 463 F. Supp. 461 (SDNY 1978), in connection with the New York General Business Law § 291-C, predecessor of the New York Art and Cultural Affairs Law § 1301. For the United States, see Restatement (Second) on Contracts § 152 (1981): “Where a mistake of both parties at the time of contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake under the rule stated in 154.” For the United Kingdom, see *Cartwright* 2005; *Bell v. Lever Brothers*, AC 161 (1932); *Leaf v. International Galleries*, 2 KB 86 (1950), explaining that a mistake as to the quality of the subject matter is different from a mistake as to the subject matter itself and will not entitle the consignor to any remedies.

⁸⁸*Leaf v. International Galleries*. See also *Rasmusen and Ayres* 1993, 311.

than he thinks, and, given such difference in value, the mistake is likely to have a sufficiently material effect. Given that both parties would gain from the uncovering of the sleeper, the mistake is presumed to be mutual. Even though such doctrine has limited applicability, mostly because contractual terms often require performance of the sale despite a mistake, this cause of action was successful in *Richard Feigen & Co v. Weil*, where both parties intended to transact a Matisse drawing, but the fact that they were both mistaken about the true nature of the drawing made performance of the contract impossible.⁸⁹

Last, statutory consumer protection laws can be helpful for some consignors. Under UK law, a disclaimer clause for attributions may be challengeable if an inexperienced seller enters into a standard consignment agreement containing a preformulated broad disclaimer. The disclaimer would likely be held to be unfair because it would go against the auctioneer's fiduciary obligations and would therefore fail to comply with the reasonableness test set out in the Unfair Contract Terms Act 1997 as well as the requirements contained in the 2013 European Union Directive on Unfair Terms and Consumer Contracts.⁹⁰ Even if there is ample scope for arguing that consumer protection laws will apply in sleeper situations, no case law has verified whether that is the case in connection with auction house disclaimers to this date.⁹¹ The situation is different in the United States, where it is authenticators that usually need protection from claims. In 2016, following a wave of lawsuits that resulted in an overall silencing effect of appraisers for fear of being sued, the New York Senate passed a bill to protect good faith authenticators from liability for making attributions.⁹² The bill provides that only "valid, verifiable claims" against authenticators will be allowed to proceed in court and that authenticators will obtain financial compensation for their legal expenses if they win, but it still needs to be approved by the New York State Assembly before it becomes law.⁹³ It is unlikely that such a bill will interfere with claims based on misrepresentation or other breaches of fiduciary duties; however, it highlights that the market needs a functioning mechanism to address authenticity in order to stay alive.

⁸⁹See *Richard Feigen & Co v. Weil*, No. 13935/90 (NY Sup. Ct., 18 February 1992). In *Estate of Nelson v. Rice*, 12 P3d 238 (Ariz. Ct. App. 2000), the court held that the consignor had not dedicated sufficient attention to the object, thereby consciously ignoring its true nature. The doctrine of mistake will also not apply if the mistake was not detectable using state of the art technology or by applying currently accepted opinions of art experts, according to Spencer 2010, 159.

⁹⁰Unfair Contract Terms Act 1997; Council Directive (EEC) 93/13 on Unfair Terms and Consumer Contracts, [1993] OJ L95.

⁹¹Harvey and Meisel 2006, 104; Meisel 2010, 1039–46.

⁹²Senate Bill S1229A extending the Arts and Cultural Affairs Law, 2006. See also Maloney, who states that the Andy Warhol Foundation, the Basquiat Authentication Committee and the Roy Liechtenstein Foundation, among others, have stopped providing authentication services as the result of lawsuits claiming they failed to acknowledge that a given art work was made by the artist in question. J. Maloney, "The Deep Freeze in Art Authentication," *Wall Street Journal*, 24 April 2014.

⁹³Maloney, "Deep Freeze." Senate Bill S1229A.

This section has examined the courses of action available to consignors in the event of a sleeper sale. They may proceed in several ways depending on where and when the transaction took place and may be awarded a remedy if the attribution was made without performing proper due diligence.

A MODEL OF INCENTIVES TO PERFORM DUE DILIGENCE

This section builds on the legal analysis to model the economic incentives for market participants to respond to the risks of misattributions. It presents a model in which auction houses, in order to avoid legal claims based on negligence or the lack of compliance with export regulation, can protect themselves from unwanted outcomes by performing due diligence. Due diligence will help uncover sleepers and result in higher prices for the consignor and agent. But, depending on the location and circumstances of a potential sale, there may be incentives to deliberately cover up the true attribution in order to more easily transfer the object abroad and to resell it under the true attribution. Conversely, there could be incentives to bolster an attribution’s claim by hiding evidence of expert disagreement.

To illustrate the basic incentives underpinning the model, Figure 1 provides a conceptual visualization of the role of due diligence in the antiquities market. For the purpose of this model, we have relied on the two components of value outlined above: quality (which encompasses technical art historical as well as scientific aspects) and provenance research. Figure 1 relates quality and due diligence to

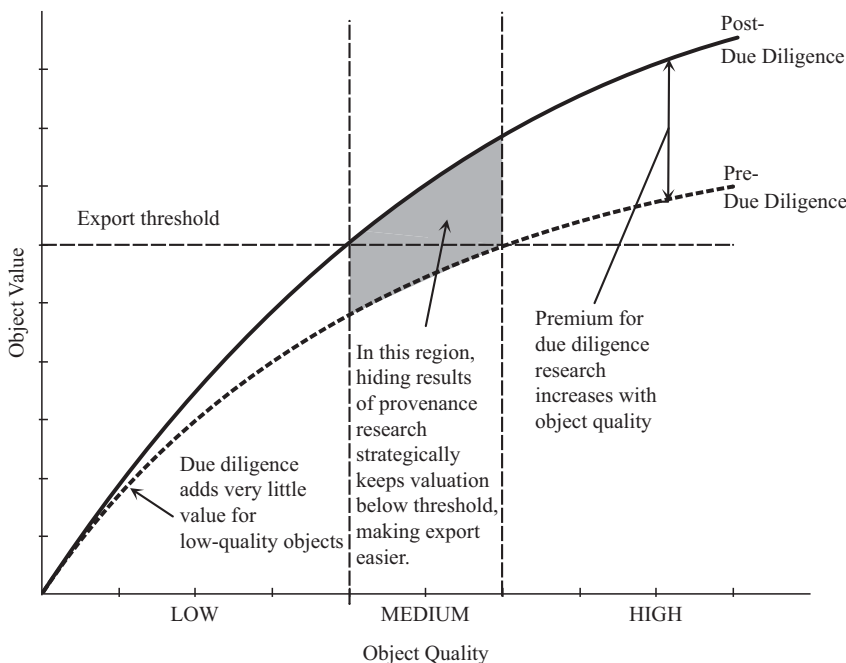


FIGURE 1. Conceptual model of the returns to due diligence.

price. The horizontal axis characterizes an object's intrinsic quality—both physical condition and art historical or archaeological value. The vertical axis characterizes the value or price that the object would receive at auction. The dotted line shows the relationship between these two when there is no due diligence—in other words, it is the value of the object itself without any backstory, ownership records, or demonstrable legality. The solid line shows the maximal increase in value that would occur if the auction house (or seller) invested in due diligence. The price of an object depends on both: higher quality and better provenance both increase price, and the premium for due diligence (that is, the gap between lines) increases with quality.⁹⁴

But auction houses face conflicting incentives. While it can be profitable to perform due diligence, it is costly and not worthwhile or practical for every single object. Given threshold dates and prices laid out in national and international laws, as well as the practical constraints on the costs of pursuing lawsuits, it is relatively unlikely that a government would pursue the return of objects on the lower end of the price/quality spectrum, and it is unlikely that a consignors would sue if a sleeper of relatively low value were found to have slipped through an auction house's authentication process. This is the market segment at the lower left of [Figure 1](#), and this segment is not just hypothetical: as discussed in later in this article, about 15 percent of objects sold in London actually have no ownership date attached to them, meaning that they came to the market with very little, if any, due diligence having been performed.

Performing due diligence to uncover information that helps avoid such claims becomes relevant when the sale of more valuable objects is at issue. Earlier, this article outlined that looting and export issues have caused sales to be prevented and objects to be repatriated.⁹⁵ We have also seen that, in some cases, consignors have a more malign incentive to deliberately create a sleeper by undervaluing an object, moving it to a higher-end market, and “uncovering” its true attribution to earn a higher profit. For example, a seller may wish to transport an object outside of London or continental Europe in order to sell it at a higher price in New York. By selling it first as a replica (rather than moving it to New York directly), it can essentially corroborate the fake attribution and corresponding low valuation (and also the true provenance) on paper, expediting its transfer abroad. In other words, malign intent to misattribute a work is possible if, by revealing the true attribution (that is, the results of due diligence work), the object's value would have fallen above the threshold requiring export paperwork but, in the absence of such attribution, the object's value would fall below the threshold. This defines the gray sector in [Figure 1](#). The incentives to do so are present when the potential profit is sufficiently high, but the falsification is still feasible. Even though we should be more concerned about

⁹⁴For documentation of these facts across large numbers of sales, see Beltrametti and Marrone 2016; Marrone 2018.

⁹⁵See Brodie 2014b.

collusive behavior, it is important to note that even the trade of innocently mis-attributed objects infringes international laws and poses trouble for future sales.

For objects with very high quality, falling to the right of the gray sector in [Figure 1](#), falsifying the results of due diligence work would not feasibly provide cover for exporting an item under false pretenses. Thus, we would not expect the very highest quality items to be susceptible to such maneuvering. However, they are susceptible to a different sort of maneuvering: when high valuations are at stake but due diligence is not conclusive, there is an incentive to hide any disagreement in order to prop up the object’s market value. In theory, this could occur at any quality level, but the benefits are greatest when the valuation differential is largest. So long as the risks are sufficiently low, selling an object’s attribution as more airtight than is true could be very beneficial.

This analysis implies three different due diligence scenarios, which are detailed below. These scenarios are not necessarily mutually exclusive but, rather, serve to highlight how incentives change depending on the physical quality of an object and show that for different types of objects an auction house is likely to make different decisions on due diligence. The descriptions also highlight the approximate alignment with the 12 case study sleepers that are discussed in the next section. The model is meant to provide a conceptual benchmark for the case studies, and so the sectors should be considered relative to each other, not as well-defined market segments with concrete value thresholds. However, for reference, the case studies imply that objects with a low, medium, and high value correspond roughly to the low thousands of dollars, tens to hundreds of thousands of dollars, and millions of dollars.

Due Diligence That Is Not Worth the Cost

Due diligence that is not worth the cost corresponds to the low-quality sector of [Figure 1](#). Objects of unexceptional quality do not merit much due diligence in the first place because a better provenance would not appreciably raise their price, and it is unlikely that such objects would become the subject of a repatriation or private legal claim. As we saw in earlier in this article, in order for a negligence claim to be successful, a consignee needs to show that the consignee suffered a loss as a result of the misattribution. Incentives to perform due diligence or to lie about the ancient attribution in this category are limited because the increased profit is likely to be comparatively lower than for higher-quality items, and the auction house will prefer spending resources on researching the latter. Low-quality objects will be sold without much, if any, provenance research, and previous research shows that cheaper objects tend to have shorter provenance listings in auction catalogues.⁹⁶

⁹⁶This is a correlational, not causal pattern, documented in [Marrone \(2018\)](#), among other studies.

This group may yield some sleepers, but since the lack of incentive to study these objects means that authenticity, or lack thereof, may go unnoticed, they will be limited in number. Examples of sleepers in this category include Bonhams krater (Table 1, Item no. 4); Hellenistic head (Table 1, Item no. 5); bust of a poet (Table 1, Item no. 9).

Due Diligence to Increase Value

Due diligence to increase value corresponds to the medium-quality sector of Figure 1. For objects in this sector, due diligence can generate enough value to make it worthwhile. Because of this, sleepers are more likely to be discovered in this range, and because there is greater profit at stake (compared to the previous scenario), missing a sleeper would more likely be grounds for a negligence lawsuit. As an example of a large profit forgone from missing a sleeper, see the Bonhams Satyr (Table 1, Item no. 7). In this price range, the information uncovered through due diligence often serves the primary purpose of increasing value by providing a more compelling backstory. Among our case study sleepers, this backstory includes links to the Grand Tour (see Table 1, Items no. 9–12) and to famous collections (see the marble head sold at Sotheby's in 2007, Table 1, Item no. 6). Due diligence could also resolve expert disputes, where a consensus has not yet been reached as to authenticity (see the head of a satyr, Table 1, Item no. 3; head of a bull, Table 1, Item no. 10).

As the gray area of Figure 1 highlights, it may also happen that when due diligence information is not revealed, objects may be transported out of a country without the proper paperwork because the paperwork was not deemed necessary. This could be due to an innocent mistake—for example, due diligence just was not performed. Among our case studies, a herm and satyr (Table 1, Items no. 2 and 3) achieved nearly 10 times the original price after they were “awakened,” but it does not appear from the evidence that this lack of due diligence was a deliberate effort to deceive anyone about the true attribution.

However, a more malignant intent to deceive or to manipulate the law could also occur. Just as due diligence may uncover valuable information about an object, hiding that information may decrease value. The incentive to hide such information is strongest when moving an object to a different market would drastically change the price, but export issues do impede such movement. When the incentives are in place, a sleeper can be generated deliberately by selling the object under a false attribution to move it to another country, where it will be presented as a newly discovered authentic antiquity. Thus, we predict that such sleepers should have large differences in price and should fall in the upper half of the price distribution. The most egregious example of such cover concerns the chalcedony head (Table 1, Item no. 1).

Table 1. Case Study Sleeper Antiquities

	1 st Attribution	1 st Sale	1 st Price	2 nd Attribution	2 nd Sale	2 nd Price	Notes
1	Chalcedony female Portrait bust 18 th Century	Christie’s London Antiquities April 2005	Appraised \$9,652 Sold \$118,725	Hellenistic/Imperial Chalcedony Portrait Head 2 nd C. BC-1 st C. AD	Sotheby’s NY Antiquities June 2008	Appraised: \$559,634 Sold: \$1,077,297	1 st sale notes debate about date. 2 nd sale does not note prior attribution.
2	Antique style marble pedestal	Christie’s Paris Estate Sale July 2008	Appraised \$824 Sold \$5,153	Roman herm pillar 1 st C. AD	Sotheby’s NY Antiquities December 2008	Appraised \$75,871 Sold \$58,362	Plinth on top of head removed in 2 nd sale but prior attribution not noted.
3	Italian head of a satyr Late 15 th /early 16 th C.	Sotheby’s London European Sculpture July 2008	Appraised \$12,141 Sold \$12,417	Roman marble satyr mask Late 1 st /2 nd C. AD	Sotheby’s NY Antiquities June 2013	Appraised \$41,900 Sold \$39,282	2 nd sale notes prior attribution and describes restoration as 18 th /19 th C.
4	Grand tour krater 19 th C.	Bonhams San Francisco European Furniture & Decorative Arts October 2012	Sold \$3,979	Etruscan red-figure krater 340-300 BC	Sotheby’s NY Antiquities December 2013	Appraised \$10,525 Sold \$9,867	2 nd sale adds provenance information dating to 1987, but does not note prior attribution.
5	Hellenistic style marble head Probably 19 th C.	Christie’s Paris Estate Sale October 2008	Appraised \$1,697 Sold \$2,700	Hellenistic marble head 3 rd /2 nd C. BC	Sotheby’s NY Antiquities June 2009	Appraised \$7,377 Sold \$7,093	2 nd sale has no additional provenance and does not note prior attribution.
6	Roman-style Augustus-type portrait bust	Christie’s London Antiquities April 2005	Appraised \$11,462 Sold \$275,095	Roman portrait head of Emperor Claudius AD 41-54	Sotheby’s NY Antiquities December 2007	Appraised \$466,895 Sold \$734,193	Sold 2 nd time with extra provenance of 1911 auction but without column/socle and without noting prior attribution.
7	Marble satyr head After the antique	Bonhams Knightsbridge Antiquities May 2003	Sold \$10,626	Roman marble satyr head 2 nd half of 1 st C. AD	Sotheby’s NY Antiquities June 2011	Appraised \$135,576 Sold \$132,864	2 nd sale lists additional auction at Christie’s 1975 but does not note prior attribution.

Table 1. Continued

	1 st Attribution	1 st Sale	1 st Price	2 nd Attribution	2 nd Sale	2 nd Price	Notes
8	Italian Baroque alabaster vase and lid	Sotheby's NY French Furniture & Carpets May 2009	Appraised \$7,445 Sold \$6,443	Roman alabaster cinerary urn 1 st C. AD	Sotheby's London Ancient Marbles June 2016	Appraised \$58,343 Sold \$51,050	2 nd sale notes prior attribution, explains new dating based on gold ring found in a similar vase.
9	1 of 4 fragmentary 18 th C. busts	Christie's South Kensington European Furniture & Decorative Arts November 2005	Appraised \$18,034 Sold \$17,822 (for lot of four)	Roman marble head of a poet 1 st C. AD (with 18 th C. restoration)	Sotheby's NY Antiquities June 2014	Appraised \$12,874 Sold \$10,299	2 nd sale dates ownership to Earl of Bristol 1760s but does not note prior attribution.
10	Marble bull's head Italian 19 th C.	Sotheby's London Estate Sale September 2006	Appraised \$14,777 Sold \$54,563	Roman marble bull's head 2 nd C. AD	Sotheby's NY Antiquities December 2008	Appraised \$145,893 Did not sell	2 nd sale does not note prior attribution.
11	Italian porphyry vase 17 th C.	Sotheby's London Estate Sale December 2008	Appraised \$101,072 Sold \$95,269	Roman porphyry cinerary urn 2 nd -3 rd C. AD	Christie's NY Antiquities June 2011	Appraised \$271,128 Did not sell	2 nd sale adds additional provenance, dating to 1950s. Does not note prior attribution.
12	Stone copy of an Egyptian queen Late 19 th /early 20 th C.	Christie's South Kensington Estate Sale May 2000	Appraised \$1,926 Sold \$8,750	Roman basanite statue of an Egyptian queen 2 nd C. AD	Christie's NY Antiquities December 2011	Appraised \$4.4 million Did not sell	2 nd sale provides extensive documentation and publication history to claim statue came from Hadrian's villa. Statue was exhibited between sales.

Due Diligence to Shore Up Legality

At the high end of the market are objects that have exceptional quality and are rarely misconstrued as replicas because their unique features would prevent them from being misidentified in the first place. It is unlikely for sleepers to be found in this bracket, and, indeed, we do not have any examples of sleepers whose value after “awakening” exceeded \$1 million, apart from an Egyptian queen (Table 1, Item no. 12), which failed to sell at the asking price. The primary issue in this bracket is not authenticity but, rather, legality: unless these objects were known to reside outside their countries of origin before patrimony laws became applicable, or otherwise left with the necessary paperwork, they would become likely subjects of repatriation claims. Extremely rare objects can be ideal candidates for repatriation claims not just because of their high value but also because they may have distinctive features—which is part of the reason for their high value—that link them to a particular archaeological site. Thus, the incentives to perform due diligence in this market segment are primarily motivated by the need to verify the legality of the object in terms of its sale.⁹⁷

INDIVIDUAL SLEEPER CASES

This section examines 12 sleeper case studies sold at Sotheby’s, Christie’s, and Bonhams’s regularly scheduled antiquities auctions. As the top-end auction houses, these three auction houses have the greatest resources and incentives to perform due diligence and therefore are most likely to uncover accidentally misattributed sleepers. As with other categories of art, a catalogue is released prior to each sale at an antiquities auction, and this catalogue records information about each lot, including the description of the object, the provenance (where known), and the estimated sale prices (provided as a low/high range in the local currency).⁹⁸

These case studies were discovered in the process of conducting provenance research in a large database comprising all antiquities sales at Sotheby’s, Christie’s, and Bonhams between 2007 and 2015. As part of the research, the objects’ provenance listings were used to identify which objects had previously been offered at auction. Those previous sale catalogues were consulted, even if they were not antiquities auctions, and the prior sale prices were recorded. The 12 sleepers discussed here were identified when the first catalogue did not list the object as an antiquity but, rather, as a later replica or an original piece from a later period (such as

⁹⁷In the United States, no matter whether the object is bought by a good faith purchaser without knowledge of the theft, the risk of legal action stays, because such purchaser does not acquire good title if an item is looted from its source country. Merryman (2007) explains how US law protects the original owner of a stolen good and courts will order the return of such item, whereas in Europe a *bona fide* purchaser will be entitled to keep the object. See also Merryman, Elsen, and Ulrice 2007, chs. 3, 4.

⁹⁸For more information on the typical structure and conventions of art auctions, see Ashenfelter and Graddy 2010.

Baroque or Renaissance). These 12 items were all sleepers identified in the data. It is possible that there were other sleepers sold on the market during this time since the catalogued provenance may be incomplete and since antiquities are also sold at other auctions that did not enter the database. There may also be sleepers on the market that have not yet been awakened. Nevertheless, it is also clear that, with only 12 sleepers identified out of thousands of auction sales, this is not a common phenomenon.

We group the 12 sleeper cases into categories based on the three scenarios listed above. In addition to the three scenarios is the possibility mentioned above that an attribution is marketed as more airtight than it really is—namely, some disagreements regarding the attribution are omitted in an auction catalogue. The groupings are meant to provide a framework for understanding the conflicting incentives giving rise to sleepers and for the evaluation of future sleepers in the antiquities market. The categories are not necessarily mutually exclusive, but they do further verify the conceptual model by illustrating the incentive to perform due diligence or to deliberately cover up an attribution.

There is, of course, more to due diligence than just avoiding lawsuits. It is also profitable to gather information on an object for the purposes of raising its value in its own right—and not to necessarily to avoid a claim. Besides being an indicator of an object's legitimacy, provenance information can directly raise an object's desirability: museum exhibitions as well as previous ownership by renowned collectors give an object a more prestigious backstory.⁹⁹ Since provenance can affect prices through multiple channels, it is important to characterize both its qualitative aspects as well as its direct evidence of legality. In our case studies, we therefore examine both the lot's pedigree in terms of exhibits and publications listed in the catalogue as well as the earliest provenance year. More of the former indicate higher-quality provenance overall, whereas the provenance year can be compared to relevant legal benchmark dates and help determine whether an object could be subject to a legal claim. The objects are summarized in [Table 1](#) in the order in which they are discussed.

Overall Lessons from Case Studies

Despite their small number, the case studies show some broad patterns. The average increase in sale price (adjusted to inflation) before versus after the awakening was 336 percent (ignoring those that failed to sell the second time, the increase was 482 percent). This is roughly the market premium for owning an antiquity versus an antique or replica.

The average pre-sale estimate increased by 250 percent before versus after the awakening, indicating that the appraisers were also pricing in the reattribution the second time around. However, the premium (the percentage by which the sale price

⁹⁹Ashenfelter and Graddy 2010.

exceeds the estimate) went down. This is because, during the first sale, some objects sold for much more than the estimate. High premiums are evidence of bidding wars since at least two bidders are required to drive up the price. The high premiums here are evidence of an arbitrage effect at work: discerning buyers may recognize an object as an antiquity, even when it is not labeled as such, and be willing to engage in a bidding war to get a good deal. The buyer could then earn a profit by reselling the object with the new, presumably (in his or her eyes) correct attribution. The average time between sales is 4.3 years, with half of the sleepers being awakened in less than three years. In many but not all cases, those objects that came to market very quickly (in two years or less) do appear to have had bidding wars the first time around, indicating that they may have been identified as potentially mislabeled and purchased for a profit-making opportunity.

The majority of second sales occur at Sotheby's New York (only two are at Christie's and one is at Sotheby's London). Perhaps surprisingly, in the majority of cases, the second auction house omits reference to the prior attribution, even if it references the sale. There is, however, no relationship between the auction house and the tendency to disclose the different attribution from the first auction. Whether or not this omission is deliberate, the upshot in such cases is that the object benefits from having been previously sold by a prestigious auction house, while avoiding a potentially negative appearance of having a controversial attribution. Of course, potential buyers could discover such omissions for themselves if they were to refer to the historical catalogues (after all, that is how these case studies were identified), but the auction houses are effectively placing the burden of due diligence on the buyer.

Given the much higher sale prices associated with the attribution of antiquity versus antique or replica, it is possible that disclosing prior attributions may risk quite a bit of profit if it causes an object to fail at auction. But, even still, only two objects had sale prices that exceeded their estimates the second time around. This is unusual; on average, artworks that find buyers have sale prices that exceed their estimates (see [Table 2](#)). The observed patterns in the 12 case studies could be random (especially considering the small sample), but it does suggest that appraisers are overpricing sleepers' attributions relative to buyers' tastes. Assuming it is a real pattern, any of several explanations are possible: buyers may be discerning enough to doubt the attribution on their own, or they may have researched the object and discovered the prior attribution. At any rate, they still appear to be paying much more than they would if the object were not attributed as an antiquity.

Misattributions of Low-Quality Objects and Losses Due to Inconclusive Information

As the above model points out, it is rarely worth spending due diligence efforts on low quality objects, as such efforts will only yield low returns and are unlikely to prevent a claim. Misattributions on the lower end of the spectrum are often the result of innocent mistakes made by auction house specialists and do not have a large

Table 2. Summary of antiquities market data: 2007–15

	New York	London
Total Items	7,682	25,612
Auction house		
Bonhams	0	21,809
Christie's	5,735	3,706
Sotheby's	1,878	0
Percentage of lots sold (%)	80	78
Provenance year listed		
All Items (%)	98.9	84.7
Bonhams (%)	–	86.1
Christie's (%)	99.3	94.0
Sotheby's (%)	98.0	–
Median earliest provenance year (if any)		
All Items	1977	1979
Bonhams	–	1979
Christie's	1979	1978
Sotheby's	1969	–
Provenance prior to legal threshold (%)^a	46	27
Mean estimate ^b		
All lots	\$33,639	\$9,000
Single-Item Lots with Provenance Year	\$35,511	\$11,867
Single-Item Lots with Year Prior to Threshold	\$43,023	\$15,919
Mean sale price (if sold)		
All lots	\$41,240	\$10,386
Single-item lots with provenance year	\$44,670	\$13,886
Single-item lots with year prior to threshold	\$54,735	\$18,392
Mean sale price by type of object		
Marble Heads	\$81,410	\$23,741
Attic/red- or black-figure vases	\$38,936	\$11,922
Alabaster vases	\$39,453	\$22,530

Notes: Prices are in 2017 US dollars.

^aThe threshold is 1970 in London and for Classical antiquities in New York and 1983 for Egyptian antiquities in New York.

^bThe overall estimate for each object is calculated as the geometric mean of the low and high estimated price.

impact on the subsequent discovery of the true identity of a piece, which means that the consignee will not have much ground for a claim. This happens, for instance, when auction houses offer a sleeper antiquity as part of an estate or decorative art sale, and the experts evaluating the property would not be expected to have expertise in antiquities (nor would they be looking out for such pieces—that is, in a collection of Baroque or Renaissance objects).

One such example includes the sale of a small marble head in Hellenistic style at Christie's in Paris in 2008, which purportedly dated to the nineteenth century and sold for the unremarkable sum of \$2,700 (Table 1, Item no. 5).¹⁰⁰ It was said to belong to the collection of the Comte and the Comtesse de Paris, a well-known

¹⁰⁰Christie's, Paris, Succession de Feus Monseigneur Le Comte de Paris et Madame la Comtesse de Paris, Auction no. 5547, 14 October 2008, Lot 189.

aristocratic family. In June 2009, the object surfaced at Sotheby's New York with the same provenance, where it sold for 2.6 times the first price.¹⁰¹ The head was a minor object, small and not particularly noteworthy to start off with, and this is reflected by the pricing at both sales, notwithstanding the change in identification. A claim by the consignor would not have been worth the price difference that the object achieved on the New York art market the first time around, when it was listed in an estate sale that did not include other antiquities, and the specialists that would have dealt with the sale would not have had much knowledge about them in the first place, nor would the appearance of the object have motivated them to make further inquiries.

Whereas most misattributions in this sector happen by error, this is not always the case, and there are instances pointing to negligent behavior. The sale of an attic red figure krater from the collection of Joseph Klein (Table 1, Item no. 4) is a useful example and shows the boundaries between the two. The Bonhams's office in San Francisco sold the vase as part of Klein's collection of Grand Tour objects in a 2012 sale of furniture and decorative arts.¹⁰² Even though the vase was part of a sale that included almost exclusively decorative objects, the catalogue specifically stated that Klein also owned an important antiquities collection that would be sold through Bonhams's London branch. This implies that specialists at Bonhams looked at the Klein collection and decided what was an antiquity and what was not before allocating them to their respective sales. A negligence claim could have been appropriate in this scenario because the auction house failed to differentiate between archaeological material and more recent antiques coming from the same collection, which it knew contained a sizable portion of true antiquities. It would have been unlikely, however, because notwithstanding the change in attribution, the loss suffered by the consignor was quite modest: the krater fetched \$3,979 at the first sale and \$9,867 at the subsequent sale at Sotheby's in New York.¹⁰³

Another issue that frequently comes up in this sector involves the lack of incentives to spend time on provenance research, which leads to the information being inconclusive. If provenance statements cannot be corroborated, objects lose appeal, even after changing status to authentic antiquities. This happened with a Roman marble head that sold at Christie's London in 2005 as part of a lot including four busts, all identified as eighteenth-century pieces complemented by later additions (Table 1, Item no. 9).¹⁰⁴ The lot sold for \$17,822. In 2014, one of these heads resurfaced at Sotheby's antiquities auction in New York as a Roman antiquity with eighteenth-century additions and with a deceptively more robust provenance history: it did not include new facts but elaborated on information that was already available.¹⁰⁵ Whereas the prior sale only made reference to the ownership of the

¹⁰¹Sotheby's New York, Antiquities, Sale no. N08560, 4 June 2009, Lot 144.

¹⁰²Bonhams San Francisco, Fine European Furniture and Decorative Arts including the Estate of Gloria Lowengart, Sale no. 20063, 29 October 2012, Lot 1394.

¹⁰³Sotheby's New York, Antiquities, Sale no. N09056, 12 December 2013, Lot 26.

¹⁰⁴Christie's South Kensington, European Furniture and Works of Art, Sale no. 5781, 22 November 2005, Lot 423 (part).

McElderay family in Ireland, Sotheby's elaborated on such prior ownership by explaining that it could have been part of the collection of Frederick Augustus Hervey (1730–1803), the fourth Earl of Bristol, a devoted collector of antiquities who bought several pieces during his trips to Italy. References to his collecting are included in a general book on the antiquities trade in eighteenth-century Rome, but details tying this specific piece to his ownership were missing. The speculative nature of this explanation may have contributed to the relatively low price; appraised at between \$10,000 and \$15,000, the head was hammered at \$10,299. To the contrary, when provenance research reveals verifiable novel information that corroborates the true identification of a piece, the piece will rise to a higher quality rank, and this will be reflected in the sale price. This is the subject of the next subsection.

Returns on Due Diligence Investments for Medium-Quality Objects

Next, we address instances where due diligence is performed to increase the value of the artwork. Such efforts yield a higher payoff if the information is traceable and can be validated externally. According to [Figure 1](#), auction houses are incentivized to perform due diligence and uncover new information when objects are at least of medium quality since market participants are willing to bid higher sums for items that come with a prestigious backstory or more context in general. The performance of due diligence on such objects will also uncover their status as sleepers and that is the reason why most of the sleepers we detected in our database happen to fall in this medium-quality range.

One particularly good example includes a marble portrait bust of a Roman emperor that was sold by Christie's in London in 2005 ([Table 1](#), Item no. 6) and was described to have been crafted "in Roman Style," thereby implying that it was not ancient or at least that there was some doubt about it.¹⁰⁶ Estimated at around \$11,500, the object was hammered for just over \$275,000. Due to the way art auctions are conducted, such a high price is only obtainable if at least two potential buyers engage in a bidding war; the hammer price is fixed only when the second-to-last bidder drops out. Thus, at least two people in this auction felt the bust was worth much more than its estimate, likely implying that it was an authentic piece. In a way, Christie's was letting the market decide on authenticity. The provenance descriptors in the 2005 Christie's catalogue read "Acquired circa 1928 by the owner's father-in-law in Berlin" without providing any detail on the latter individual.

In 2007, the same lot reappeared at Sotheby's antiquities auction in New York as a Roman Imperial marble head¹⁰⁷ and sold for \$629,000 (an increase of 2,700 percent), with a much enhanced catalogued provenance. The head was listed as

¹⁰⁵Sotheby's New York, Antiquities, Sale no. N09163, 4 June 2014, Lot 33.

¹⁰⁶Christie's London, Antiquities, Sale no. 7161, 20 April 2005, Lot 345.

¹⁰⁷Sotheby's New York, Antiquities, Sale no. N08373, 5 December 2007, Lot 79.

having been auctioned in Munich in 1911 and having been part of the collection of numismatic expert Dr Philipp Lederer around 1938. That same year, the head was published by German archaeologist Anton Hekler and then again in 1942, 1962, 1977, 1981, 1982 by other European archaeologists, and it was also listed in the German ancient objects database Arachne. All of the above information can be fact-checked, and we verified some of the entries. It is clear that, in the two intervening years, Sotheby's dedicated a great amount of resources to research the provenance of the object in order to confirm its identification, and, as our model predicted, it paid off.

In another instance, the antiquities team at Sotheby's was able to uncover an early prior sale that had been omitted in the previous listing. In 2003, Bonhams's European Sculpture Department sold the head of a satyr “after the antique” for \$10,626 (Table 1, Item no. 7).¹⁰⁸ No provenance information was reported in the catalogue. In 2011, the same piece sold at Sotheby's antiquities auction in New York for 12.5 times the prior price after specialists were able to match the object with a 1975 Christie's sale.¹⁰⁹ It appeared in that sale without later touch-ups, and it was the highest-selling piece in that auction (for over \$3,600).¹¹⁰ The prior sale rules out bad faith or implications of illicit trade by providing evidence that the object was outside its country of origin before 1975. Even if it could be argued that experts from a European Sculpture Department should be able to distinguish between antiquities and later imitations, the fact that the head was restored in various points could have been the reason for Bonhams's misattribution. Ultimately, even if the consignor suffered a substantial loss, a legal claim would not have been available because more than six years had passed between the two sales (the time limitation to start a claim in the United Kingdom). Sotheby's was rewarded for the remarkable job its team did at retrieving the earlier sale record.

A further example involves an Italian Baroque alabaster vase sold by Sotheby's at their New York Important French Furniture and Carpets auction in 2009 (Table 1, Item no. 8).¹¹¹ The attractive vase sold for \$6,443, and the catalogue did not include any provenance information. It was again consigned with Sotheby's in 2016 and sold at their antiquities auction in London for £43,750 (7.9 times the first price after inflation) as a first-century Roman alabaster cinerary urn.¹¹² In the second sale, the lid and the pedestal had been removed, indicating that the auction house felt that these were later additions and that the ancient attribution applied only to the urn itself. Adding decorative elements to an antiquity was a typical eighteenth-century

¹⁰⁸Bonhams Knightsbridge, Antiquities, Sale no. 10187, 13 May 2003, Lot 489.

¹⁰⁹Sotheby's New York, Antiquities, Sale no. N08762, 8 June 2011, Lot 37.

¹¹⁰The 1975 catalogue provides an image showing a missing chin, which had been filled in by the time of the 2003 sale.

¹¹¹Sotheby's New York, French Furniture and Carpets, Sale no. N08548, 8 May 2009, Lot 100.

¹¹²Sotheby's London, Ancient Classical Sculpture and Works of Art, Sale no. L16260, 13 June 2016, Lot 68.

strategy. If Sotheby's had suspected that the object was ancient in 2009, it could have marketed it as such the first time around; it was already in New York, so export licenses were not an issue. It follows that the initial misattribution was likely an innocent one, where appraisers in the decorative arts team were unable to distinguish the separate provenances of the components of the objects and thought that, in its togetherness, it was a genuine eighteenth-century piece. Subsequent research unveiled the true identification of the piece, which then sold for almost 10 times the prior sale price.

In contrast to the above examples, and similarly to the bust of the poet discussed above (Table 1, Item no. 9), when the information uncovered by subsequent research cannot be corroborated, the market will likely recognize it and penalize the seller. An example that illustrates this is the sale of a porphyry vase sold by Sotheby's London in 2008 as part of the estate of industrialist Luigi Koelliker (Table 1, Item no. 11).¹¹³ It was described as an Italian seventeenth-century object, with no allusion to the fact that it may have been ancient; in fact, the catalogue cites literature discussing similar art from seventeenth-century Florence. It sold for £66,050 (\$95,269 in 2017 dollars). In 2011, Christie's New York listed it as part of its antiquities sale with an estimate of \$271,000.¹¹⁴ The catalogue made reference to the Koelliker collection but not to its seventeenth-century status, instead explaining that the stone was likely quarried in eastern Egypt and then transported to Rome for sculpting. Provenance entries include new reference to the prior ownership of Madame Petit Cor in Paris in the 1950s, but no information corroborates the ownership or the existence of Madame Petit Cor. The vase did not sell.

It is risky to read too much into an object failing to sell, but it is suggestive that the trustworthiness of the information forms the dividing line between examples of provenance research that made a profit (Table 1, Items nos. 6, 7, and 8) versus research that did not (Table 1, Item no. 11). Read in conjunction with the other examples, the latter one illustrates the difference in public perception between verifiable and shaky provenance information, showing that prospective buyers in the antiquities market are quite discerning and are more likely to pay a premium for well-founded information. This analysis has also shown that properly conducted due diligence has been successful at uncovering sleepers and has yielded substantial rewards to sellers and auction houses, especially when the sale displaying higher returns happened after 2005. The year 2005 marked a key year in the antiquities trade; it is the year that Medici was sentenced to jail and heavily fined for illicitly trading antiquities, following which museums from all over the world who bought from him were forced to return those pieces.¹¹⁵ The repatriation wave was

¹¹³Sotheby's London, Old Master Paintings and Art from the Estate of Luigi Koelliker, Sale no. L08315, 3 December 2008, Lot 139.

¹¹⁴Christie's New York, Antiquities, Sale no. 2450, 9 June 2011, Lot 201.

¹¹⁵Beltrametti and Marrone 2016.

considerable and propelled auction houses and other actors in the industry to be much more careful about the provenance of antiquities.¹¹⁶

Export Issues

This subsection examines objects that would have encountered export issues if they had been listed as antiquities the first time around. In other words, their sleeper status enabled them to be traded without meeting the import and export criteria set out in national and international legislation. As discussed earlier in this article, it sometimes appears that antiquities are listed as replicas when they are sold in Europe, presumably so that they can bypass the strict export regime that governs their trade in source countries before reaching the New York market, where prices are higher as the supply is limited. Increasing due diligence on these types of objects will lead to more transparency and honesty in the market.

A marble pedestal with the head of Bacchus “in the style of the antique” (Table 1, Item no. 2) sold at Christie’s in Paris as part of an unnamed estate sale for an unexceptional price of just over \$5,000.¹¹⁷ The sale took place in July 2008. No provenance information was included in the sales catalogue. A mere five months after that sale, the item emerged at a Sotheby’s antiquities auction in New York as a “Blue-Gray Marble Trapezophoros, Roman Imperial, circa 1st Century A.D.”¹¹⁸ The reference to Bacchus was dropped, and the Sotheby’s team marketed it as a genuine antiquity without mentioning that it was previously sold as an imitation.¹¹⁹ It sold for more than 10 times as much as earlier that year in Paris. The provenance section of the Sotheby’s catalogue asserts that it had belonged to a French collector since the 1920s.

In 2008, the antiquities market was well aware of issues relating to illicit trafficking and import restrictions. Whereas it appears unlikely that the above piece was the product of recent looting, because by that time Sotheby’s New York had implemented fairly strict provenance control mechanisms and had probably verified the 1920s ownership reference, the fact that the object was first sold as a replica enabled it to bypass the strict export requirements to leave Europe. At a minimum, it would have required an export license to be traded. However, utilizing the first sale to validate its wrongful identification, a shrewd buyer was able to flip it (very quickly) so that it could become part of the world’s most exclusive biannual antiquities sale in New York, where only a handful of selected superior quality objects are sold.

In another instance, Sotheby’s London offered a marble head of a satyr from the late fifteenth/early sixteenth centuries as part of its European Sculpture and Works

¹¹⁶Beltrametti 2013.

¹¹⁷Christie’s Paris, Collection d’un Amateur Provenant d’un Hotel Particulier de la Rive Gauche, Sale no. 5543, 2 July 2008, Lot 97.

¹¹⁸Sotheby’s New York, Antiquities, Sale no. N08500, 10 December 2008, Lot 47.

¹¹⁹Interestingly, the details of the prior sale are listed in the provenance section of the Sotheby’s Catalogue, but not the attribution as a replica.

of Art auction in 2008 (Table 1, Item no. 3).¹²⁰ No provenance information was included. It sold for over \$12,000. Five years later, Sotheby's New York offered the same object, but this time identified it as originating in Imperial Rome and including a reference to the prior sale.¹²¹ The 2013 catalogue explained that the head must have belonged to a European private collection during the eighteenth/nineteenth centuries and grounds this observation in arguments on restoration techniques and patina. It then suggests that the piece made its way to an English private collection in the 1990s. The new attribution and justifications as well as the change in the location of the sale resulted in a mark up: the head sold for 3.2 times the first price.

Both examples suggest that a buyer recognized the true nature of the object and bought it to sell it at a venue where the price would be enhanced, but they also call into question the applicability of export regulations. As noted in earlier in this article, archaeological material located in Europe almost always requires a permit to be traded internationally, whereas later copies valued below a certain threshold do not. The first sales of the above pieces would not have triggered the need to obtain a license if they were indeed later imitations of antiquities, but the later revelation of their true identification would have made this necessary. However, there is also an important difference between these two examples: the long time frame for the resale of the satyr makes malfeasance seem unlikely, whereas the fast turnaround of the Bacchus head points to potential collusive behavior. Even though export crimes can be committed regardless of the state of mind of the tortfeasor, intent to defraud can add depth to a legal claim. The next subsection explores the latter scenario.

Collusive Behavior

The model outlined earlier predicts that incentives to perform due diligence are the highest when the objects are at risk of being the subject of a repatriation claim, thereby requiring the owner to relinquish it to the country of origin without being provided with compensation. As we saw above when objects fall in a higher-value category, buyers become very concerned that the item in question has a solid enough provenance that would help rebut any claim of prior owners. The job of the auction house is therefore to provide as much information as they can to reinforce the object's history to disprove potential looting issues. The below example illustrates the tensions between uncovering verifiable provenance information, the applicability of export control laws, and the deliberate falsification of attribution by the consignor.

The chalcedony female portrait mentioned at the beginning of this article (Table 1, Item no. 1) was estimated to sell for between £3,000 and £5,000; it sold for almost £50,000 at Christie's Antiquities auction in London in 2005.¹²² The piece

¹²⁰Sotheby's London, European Sculpture and Works of Art, Sale no. L08213, 9 July 2008, Lot 71.

¹²¹Sotheby's New York, Antiquities, Sale no. N09005, 5 June 2013, Lot 56.

¹²²Christie's London, Antiquities, Sale no. 7161, 20 April 2005, Lot 277.

was advertised as having been acquired in the 1950s from a London-based antiquities dealer. The catalogue explains that the dating of this bust is problematic and has divided the opinion of scholars for decades. Three years later, the same object was sold at auction by Sotheby's New York for just short of \$1 million.¹²³ The catalogue describes it as an undisputed antiquity, and the provenance details remain the same, suggesting that the item was acquired by a prominent London-based antiquities dealer in the 1950s but without backing it up.¹²⁴ No reference to the debate over the date is included since the catalogue lists an additional piece of information: a 2007 publication by Phoenix Ancient Art, an art dealership specializing in Greek and Roman Art, which firmly identifies it as a first-century portrait of Livia, the wife of Augustus, thereby implying that any debate had been settled in favor of the antiquity being genuine.

The reference to the publication by Phoenix Ancient Art is problematic as this dealership has had a troubled history in connection with the antiquities trade.¹²⁵ In 2001, its Geneva outlet was targeted by an international investigation on the illegitimate trade in antiquities, which enabled Italian investigators to seize and repatriate a large number of illicitly exported pieces.¹²⁶ Furthermore, in 2003, an Immigration and Customs's Enforcement unit uncovered the fact that Phoenix was smuggling illegally obtained antiquities into the United States: the dealer was arrested, pleading guilty to falsifying a customs declaration and was released upon the payment of a fine.¹²⁷ In 2004, an Egyptian court sentenced the head of the Geneva gallery *in absentia* to 15 years in prison after he was accused of smuggling artifacts from Egypt to Switzerland.¹²⁸ More recently, following an investigation in Switzerland in 2017, the gallery was accused of trading in antiquities looted by the Islamic State of Iraq and Syria, after a driver working for them as well as the dealer's wife were caught transporting looted objects.¹²⁹ Belgium and France are also investigating the activity of the dealership following the seizure of additional looted objects.¹³⁰ Phoenix Ancient Art was also involved in trading controversial antiquities to prominent collectors, including a supposedly stolen Egyptian mummy mask

¹²³Sotheby's New York, Antiquities, Sale no. N08452, 5 June 2008, Lot 38.

¹²⁴KJ Hewett, biographical details, "British Museum Database," 2020, https://research.britishmuseum.org/research/search_the_collection_database/term_details.aspx?bioId=85613 (accessed 13 February 2020). It is not without controversy, see Neil Brodie, "Sotheby's Carries on Where It Left Off?," *Market of Mass Destruction*, 11 June 2017, <http://www.marketmassdestruction.com/sothebys-becchina/> (accessed 13 February 2020).

¹²⁵B. Faucon and G. Kantchev, "Prominent Art Family Entangled in ISIS Antiquities-Looting Investigations," *Wall Street Journal*, 31 May 2017.

¹²⁶Watson and Todeschini 2006, 14–15.

¹²⁷US Immigration and Customs Enforcement, "Cultural Property, Art and Antiquities Investigations," 2011, <http://www.ice.gov/factsheets/cultural-artifacts> (accessed 13 February 2020).

¹²⁸Craig Childs, *Finders Keeper*, 2003, 108–11.

¹²⁹Faucon and Kantchev, "Prominent Art Family."

¹³⁰Faucon and Kantchev, "Prominent Art Family."

sold to the St Louis Museum, a Sumerian statue to the Kimball Art Museum, and a statue of Apollo now at the Cleveland Art Museum.¹³¹

In fact, another object that was published in the same 2007 publication as the above chalcedony portrait was repatriated to Italy by the Cleveland Art Museum after allegations of looting were established. Cleveland had purchased the ancient Roman marble head from Phoenix Ancient Art in 2012 for an undisclosed sum.¹³² The ownership history of the object can be reconstructed as follows: after being excavated in 1925, it became part of the collection of the Civic Museum of Sessa Aurunca, in Southern Italy, which is close to the excavation spot.¹³³ In the late part of the twentieth century, it was said to be part of an Algerian collection, also known as the Sintes collection, until it sold at auction at Hotel Drouot-Richelieu Paris in 2004 for €324,000.¹³⁴ The purchaser was Phoenix Ancient Art, which embellished its pedigree by including it in the *Imago* publication and then sold it to the Cleveland Art Museum. Eventually, photographic evidence taken in the 1920s in Italy, showing the statue in its country of origin, left the museum little choice but to return it.¹³⁵ It is unclear whether the Cleveland Art Museum was able to recover funds from Phoenix.¹³⁶

The sale of the chalcedony head has several legal implications. First, the original consignor who entrusted Christie's with the sale of the piece may have a claim for breach of fiduciary duty. The specialist department at the auction house failed to establish the object's true identity, which resulted in a substantial loss for the consignor. Given that the sale took place in London, UK law applies, and the consignor could rely on the precedent set by *Coleridge v. Sotheby's* and argue that it is entitled to damages for the undervaluation of the property and rely on consumer protection laws to circumvent the potential applicability of disclaimers.¹³⁷ The case could also have illicit trade implications if Phoenix imported the object into the

¹³¹See Gill 2014; S. Litt, "God of Mystery: Gaps in Apollo Statue's History Make It a Focus of Debate." *The Plain Dealer*, 16 February 2008.

¹³²"Cleveland Museum of Art Returns Ancient Roman Portrait of Drusus after Learning It Was Stolen from Italy in WWII," press release, https://www.cleveland.com/arts/index.ssf/2017/04/cleveland_museum_of_art_return_2.html (accessed 13 February 2020).

¹³³Lynda Albertson, "Repatriation: The Cleveland Museum of Art Returns WWII Looted Bust of Drusus Minor to Italy," *Art Crime blog*, 20 2017, <http://art-crime.blogspot.com/2017/04/repatriation-cleveland-museum-of-art.html> (accessed 13 February 2020).

¹³⁴Albertson, "Repatriation."

¹³⁵Albertson, "Repatriation."

¹³⁶Another object included in the *Imago* publication can be traced through auction records: the marble bust of a Roman Lady purchased at Sotheby's New York in 2001 for \$92,750 (unadjusted), then sold on by Phoenix to the Toledo Museum in 2015. See Toledo Museum of Art, "Annual Report," 2017, 33, https://www.toledomuseum.org/sites/default/files/2017_toledo_museum_of_art_annual_report.pdf (accessed 13 February 2020). Also, a Roman head purchased in 2001 for \$58,250 (unadjusted) at Sotheby's New York failed to sell at a June 2008 auction, where it appeared with an estimate of \$120,000–180,000. See Sotheby's New York, "Antiquities," 5 June 2008, <http://www.sothebys.com/en/auctions/ecatalogue/lot.40.html/2008/antiquities-n08452> (accessed 13 February 2020)

¹³⁷*Coleridge v. Sotheby*.

United States under false attribution and without the proper documentation. This may well have been the case as the presence of export licenses tends to be mentioned in auction catalogues and Phoenix may have taken advantage of the disputed identification when shipping it to the United States. Finally, such results do not exclude a formal repatriation request if Italy can prove the object came from one of its sites, as it was able to do with the head purchased by the Cleveland Art Museum that was published in the same catalogue.

Losses Due to Auction Effects

Sometimes, notwithstanding the performance of high-level due diligence, uncovering sleepers, and providing very convincing information about objects' rediscovered identity as antiquities, objects fail to sell. This is to be expected at times since the auction process is inherently random and depends on the attendance of bidders and their willingness to pay more than the reserve price: as Table 2 shows, roughly 20 percent of lots in our data failed to sell, which means that the auction house overestimated the private values of the bidders who actually attended that day. The sale of the contents of a prestigious Suffolk estate held in 2006 at Sotheby's London included the head of a bull dating to the nineteenth century (Table 1, Item no. 10).¹³⁸ Appraised at between £5,000 and £8,000, the object sold for £24,000. Two years later, in 2008, the object resurfaced at the Sotheby's New York Antiquities auction as a Roman Imperial piece estimated to fetch around \$146,000.¹³⁹ In the latter listing, the object appears differently: it is not mounted, and a large part of the bull's head has been removed. The catalogue explains that the ancient portion of the object was integrated into a larger sculpture that was probably assembled in the eighteenth century. It also included a photograph of how it looked before the eighteenth-century additions were removed. The catalogue further elaborates on its initial owner, landed aristocrat Sir William Fowle Middleton (died 1830) and adds that it was obtained during a grand tour sojourn in Italy. Even though it appears plausible that the piece originated from a Grand Tour trip and has stayed in England since that time, and that the conservation work revealed a true ancient piece, the object failed to sell. It may be that the overall quality was simply insufficient to justify the reserve price.

Another good example involves the case of the statue of an Egyptian queen first sold in 2000 by Christie's London as part of the Harrington House estate sale, also likely a Grand Tour find (Table 1, Item no. 12).¹⁴⁰ It was listed as a nineteenth- or twentieth-century copy of an ancient Ptolemaic queen and sold for £6,815. It reappeared in the 2011 Christie's New York Antiquities auction: four pages of the

¹³⁸Sotheby's London, Property from the Shrubland Park Residence in Suffolk, Sale no. L06501, 19 September 2006, Lot 988.

¹³⁹Sotheby's New York, Antiquities, Sale no. N08500, 10 December 2008, Lot 46.

¹⁴⁰Christie's South Kensington, Contents of Harrington House, Sale no. 8476, 4 May 2000, Lot 460.

Christie's catalogue were dedicated to the queen, which was estimated to sell for over \$4 million.¹⁴¹ Extensive, reliable art historical references were included in the lot description, which trace the queen's origins back to Hadrian's Villa. The lot entry lists 12 scholarly publications, the earliest of which was published by its former owner, Justine Wynne, who describes the statue at Alticchiero (her house in northern Italy) in 1787. The publication includes a drawing of the statue that matches the scale and idiosyncrasies of the one on sale at Christie's. In 2004, the statue was exhibited as part of a show titled *Roman Egyptomania* at the Fitzwilliam Museum in Cambridge, and the catalogue of the show describes the queen as a second-century AD "Hard Stone Roman copy of a statue of a Ptolemaic Queen."¹⁴² The accompanying text elaborates on the typically Roman features of the statue and parallels in terms of material and form. The author also explains that the statue is a copy of larger ones that were possibly brought to Rome by Hadrian (now at the Vatican Museum) and that several other statues formerly in Hadrian's possession are made of the same stone and with similar stylistic attributes.¹⁴³

Notwithstanding the comprehensive documentation, the queen did not sell and went back to its consignors in London. There are several reasons that the queen may have failed to sell. One possibility is that it belonged to a collecting category that is not particularly popular. As a Roman copy of an Egyptian composition, it would not appeal to expert collectors who focus entirely on Egyptian art, nor would it appeal to those who collect only Roman antiquities. Because of its hybrid status, it was unable to find a placement in a collection where it was valued for what it was. Another likely reason is that the estimate was just too high and that it turned off potential bidders who would have been ready to pay a somewhat lower price. When setting such a high starting bid, the auction house usually has a buyer in mind already, as, otherwise, they would likely opt for a private sale. But if that buyer changes their mind or faces impediments to complete the purchase by the time of the sale, then bidding may collapse completely without any other similarly high-value bidders in the room.¹⁴⁴

ANTIQUITIES AUCTION SALES IN CONTEXT

The case studies discussed above are the product of a market that has seen shifts in due diligence and provenance quality over the last decade. Twenty years ago, it was not the norm to list provenance information for each auction lot; now, the provision of at least some information about provenance is expected.¹⁴⁵ [Table 2](#) and

¹⁴¹Christie's New York, Antiquities, Sale no. 2490, 7 December 2011, Lot 207.

¹⁴²Ashton 2004, 181. Note that this means the queen is indeed a copy, but an ancient Roman copy of an even more ancient Egyptian statue. Thus, it is in fact an antiquity. The ancient custom of copying older artworks is not unusual (138).

¹⁴³Ashton 2004.

¹⁴⁴While such impediments usually refer to the lack of funding, they could include a museum failing to get permission from its board of trustees to go ahead with the purchase.

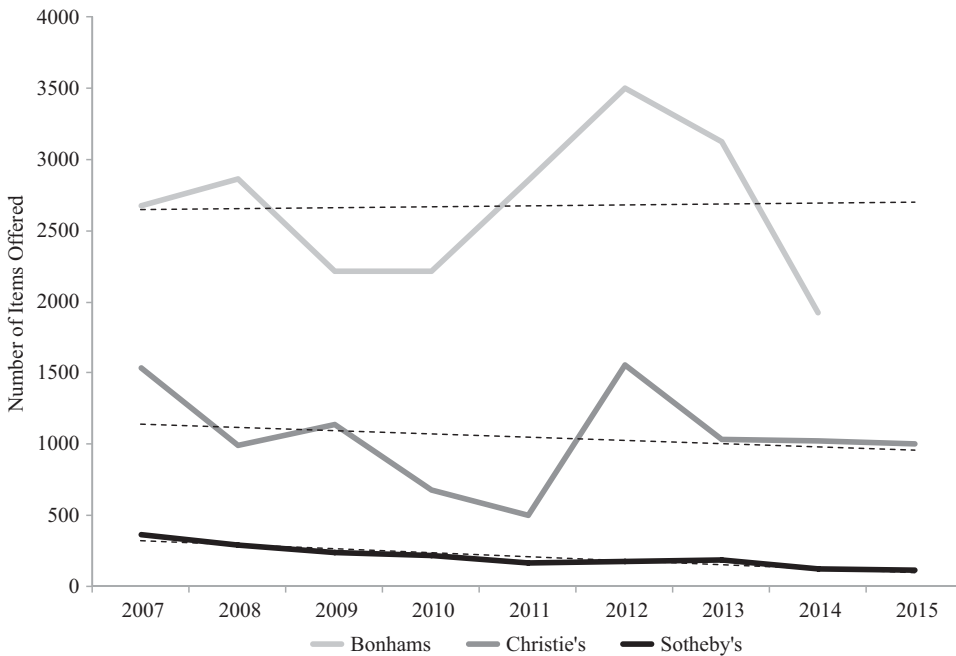


FIGURE 2. Items sold in antiquities auctions.

Figures 2–4 summarize these patterns in market data for antiquities sold by Bonhams, Christie’s, and Sotheby’s from 2007 to 2015—the data that was used to identify these sleepers. The data backs up and provides context to some of the patterns discussed above, such as the fact that New York obtains higher prices than London. All prices are adjusted for inflation and converted into 2017 US dollars. Table 2 shows that, as predicted by the legal analysis explored earlier in this article, New York provides a price advantage over London. On average, auction lots in New York sell for four times the price of lots in London. However, this hides a great deal of disparity in terms of quality of the lots. For example, while far more objects are sold in London than in New York (that is, because Bonhams sells large quantities of antiquities at its two London locations), these objects are of lesser quality than the ones traded in New York. Overall, Bonhams has the lowest-quality provenance: they offer fewer items with provenance information (compared to almost 100 percent of such items at Christie’s and Sotheby’s), and they also have far fewer items listing a provenance year (that is, information that could indicate compliance with a threshold date set in a statute). Further, when looking at the median provenance year among all items with a date, Bonhams’s items are dated to the late 1970s (compared to 1969 for Sotheby’s).¹⁴⁶

¹⁴⁵Brodie 2014b; Beltrametti and Marrone 2016.

¹⁴⁶The earliest provenance date provided in the catalogue does not necessarily mean the date is verifiable. But the median date is a proxy for the general level of effort spent by the auction house to source items with strong provenance or to research the provenance on items being consigned.

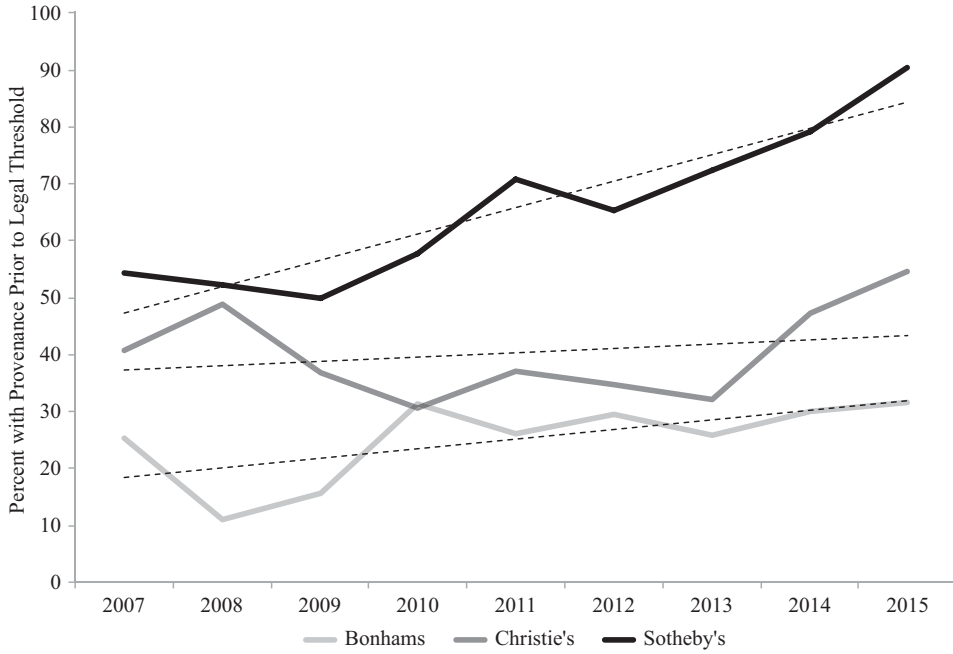


FIGURE 3. Items with provenance pre-dating the legal threshold.

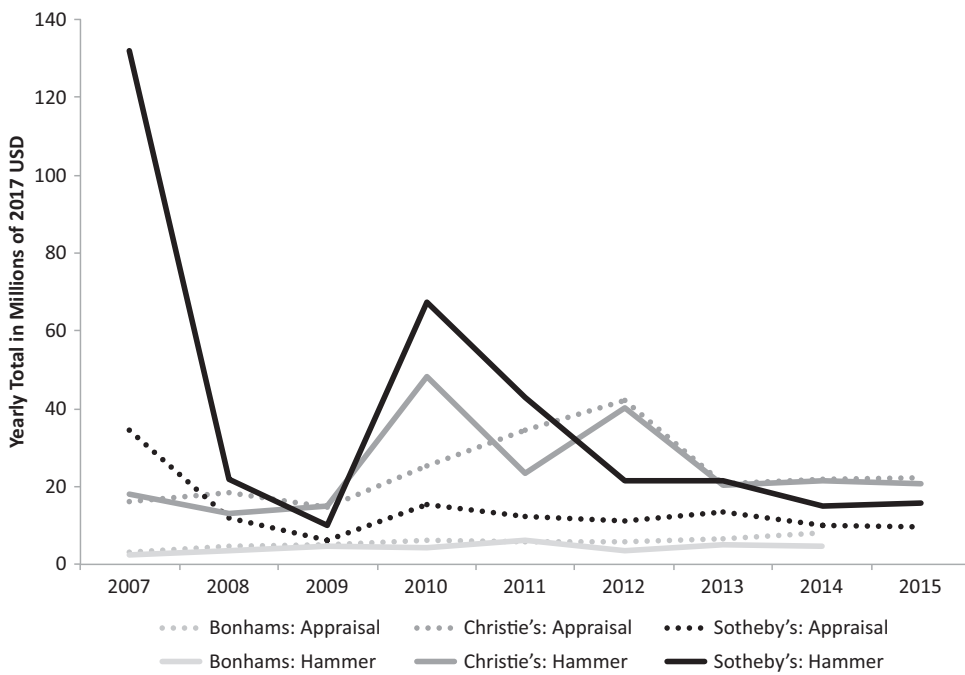


FIGURE 4. Total annual appraisal and sale value of antiquities auctions.

Table 2 focuses on provenance indicators to get a better comparison of similar items sold by different auction houses in the two top art market locations (New York and London). The provenance indicators are telling because people pay for stories connected to objects. Auction houses that provide provenance information more often and with lengthier histories (nearly one extra decade for the median object at Sotheby’s compared to Bonhams) are offering a greater legal justification for selling their objects, not to mention more backstories to intrigue prospective buyers. Stronger backstories enable a consignor to make a return on investment by ensuring both authenticity and legality.¹⁴⁷ Among higher-quality items, in both New York and London, more and better provenance information corresponds to a higher average price, but, given the same amount of provenance information, objects always sell better in New York by a factor of at least three.

Table 2 further shows average prices for objects that are similar to the sleepers: marble heads (also sold as portrait heads or portrait busts), Attic or red-figure/black-figure vases (also described as kraters or any of several vessel names such as lekythoi), and alabaster vases. Comparing these average prices to the sale results of the sleepers, it is clear that some sleepers were below average in their category, while others were far above average (Table 1). The context of these figures is outlined in Table 2. Figure 2 shows how auction sizes have changed over time; dotted lines show average trends. Christie’s and Sotheby’s have slightly reduced the size of their auctions over the decade studied here, while Bonhams has slightly increased the size of their auctions.¹⁴⁸ Figure 3 shows the fraction of items that have a provenance meeting the legal threshold. This threshold is defined by Silvia Beltrametti and James Marrone: 1970 for all antiquities, except 1983 for Egyptian antiquities sold in New York, according to the *Schultz* decision.¹⁴⁹ For these purposes, the provenance date does not necessarily mean the information is verifiable or reliable, only that some sort of information was provided.¹⁵⁰ While all auction houses have been increasing the fraction of items with “good” provenance, Sotheby’s has been the most aggressive in adopting a strategy of selling pieces with a lot of provenance information. And, despite its upward trend, Bonhams lags behind the other two

¹⁴⁷While legality is not as much of an issue for other types of art markets, authenticity is, but the market has not really taken steps to systematically handle such risks, and, according to Switzerland’s Fine Art Expert Institute, 50 percent of the art it examines is fake. See Artnet, “Over 50 Percent of Art Is Fake,” *Artnet News*, 13 October 2014, <https://news.artnet.com/market/over-50-percent-of-art-is-fake-130821> (accessed 13 February 2020); S. Cascone, “50 Percent Art Forgery Estimate May Be Exaggerated...Duh,” *Artnet News*, 20 October 2014, <https://news.artnet.com/art-world/50-percent-art-forgery-estimate-may-be-exaggerated-duh-137444> 2014 (accessed 13 February 2020). This is further exacerbated by the fact that the art authentication industry is being silenced by lawsuits, as outlined by Maloney, “Deep Freeze.”

¹⁴⁸In 2015, Bonhams ceased its regularly held antiquities sales at the Knightsbridge location, so the 2015 data is dropped from the graph because it implies an artificial decrease in quantity.

¹⁴⁹Beltrametti and Marrone 2016. United States of America v. Frederick Schultz.

¹⁵⁰If a stricter definition of “verifiable” provenance were used, the figure would have similar upward-sloping lines, but the percentages would be lower.

houses, and still less than one-third of its objects have a provenance predating 1970 or 1983.

From this outline, we can observe that Bonhams has opted for the strategy of investing in quantity over quality (as measured by provenance research); Sotheby's and, to a lesser extent, Christie's have opted for the strategy of investing time in procuring fewer, but higher-quality and better-researched, antiquities. [Figure 4](#) shows the resulting revenues produced by these strategies.¹⁵¹ The dotted lines show the total appraisal price for all lots auctioned each year, while the solid lines show the total hammer price paid. The hammer prices can fluctuate quite a bit due to unexpectedly high or low prices for individual lots.¹⁵² However, one pattern stands out: Sotheby's consistently out-earns its pre-auction appraisal, while Bonhams (although it is difficult to see) consistently under-earns it. Christie's is somewhere in-between. It is not possible to attribute these patterns solely to buyers' tastes for provenance, but the patterns are suggestive. Our case study sleepers show that Bonhams, in particular, has failed to recognize several high-value antiquities that were subsequently sold at high prices by the other firms.

DISCUSSION

The legal and economic analysis in this article shows that sleepers in the antiquities market are of interest for several reasons. They highlight potential conflicts of interest and adverse incentives in the market that can result in a lack of disclosure of relevant information to interested parties. Some of the issues raised apply to the art market in general (regardless of the object's age or value) as well as the market for collectibles and memorabilia. The authentication process is a key part of appraising and selling all such objects, and the due diligence spent on this process—including provenance research—produces knowledge and art historical information that benefits the public good. Simple economic theory implies that, in order to incentivize such due diligence, the market needs to provide rewards in the form of higher prices. This is, in fact, what happens most of the time: sleepers, including our case studies, obtain a premium (even after accounting for inflation) once evidence is brought forward supporting an alternative attribution that makes the object more valuable. The incentive mechanism therefore works well overall.

However, as our legal analysis indicates, these price incentives can fail if certain parties have too much or too little liability in the authentication process. In the end, attribution and the consensus surrounding authenticity rely on a small group of experts, but who counts as an expert? They are recognized by the art market, but the title of "authenticator" is as-yet unregulated and uncertified according to any legal or

¹⁵¹Once again, Bonhams's 2015 values are not plotted because the lack of auctions at Knightsbridge artificially decreases the totals.

¹⁵²For example, the Guennol Lionness that sold at Sotheby's in 2007 accounts for nearly half of the very high revenues in that year.

codified standard. In short, an expert is someone who has spent considerable time studying a certain category of artwork. They can be, but need not be, art historians; people in the industry such as professional art dealers and specialists at auction houses can also gain recognition as experts in a given field. This is problematic because the wrong incentives may induce expert sellers to make determinations about the authenticity of an object if financial interests are involved.¹⁵³ Museum curators cannot provide authentication services in exchange for a fee, and the role lies primarily in the hands of private foundations, but many of the latter have stopped authentication to avoid lawsuits.¹⁵⁴ Others hold a monopoly on the authenticity of certain artists, which is also troublesome.¹⁵⁵ The fewer “experts” there are and the more interested they are, the less transparent the outcome.

A further hindrance to transparency is that “art malpractice” protection does not exist for authenticators or even for artists, as shown by a 2016 case in which artist Peter Doig was sued because he rejected the authorship of a painting that had been attributed to him.¹⁵⁶ On the other hand, lawmakers have debated whether to allow expert opinion as the basis for a warranty, which occurred, for example, in a proposed amendment to New York’s Arts and Cultural Affairs Law in 2016.¹⁵⁷ Overall, improving the regulation of the market for authentication may solve many adverse incentive problems for all parties involved.

In the short term, enhancing codes of conduct for auction houses specifically would be a welcome first step in that direction. Auction houses, especially the ones considered in this study, wield an enormous power in the art market by setting prices and determining attributions. The opinion of specialists assessing consignors’ properties is often taken as truth (consignors seldom hire experts to provide second opinions), and they rarely disclose that there is a problem with dating the object. Only one of the sales referenced above—the sale of the chalcedony head (Table 1, Item no. 1) by Christie’s London—openly acknowledged the difficulty of dating the piece and the division of scholarly opinion concerning that issue. One may think that the wrongdoing stays with Sotheby’s New York, who resold the same piece three years later without acknowledging any uncertainty, but, based on our case studies, the practice of keeping questionable attributions under the radar appears common. And even though buyers purchase at their own risk, whether or not uncertainty is acknowledged, there is a public good at stake when there is no consensus regarding

¹⁵³J. Halperin and J. Pes, “Can Museum Curators Ever Moonlight As Art Advisors without Corrupting Themselves?” *ArtNews*, 4 December 2017.

¹⁵⁴Halperin and Pes, “Can Museum Curators”; Maloney 2014.

¹⁵⁵Lacy 2011.

¹⁵⁶Artnet, “Art Law Experts Weigh in on Peter Doig Authentication Case,” *Artnet News*, 29 August 2016, <https://news.artnet.com/art-world/peter-doig-lawsuit-art-experts-599489> (accessed 13 February 2020).

¹⁵⁷For an analysis of this amendment in the context of the broader legal issues discussed here, see J. Wallace, “Art Law on Protecting Expert Opinion,” *Artnet News*, 14 February 2016, <https://news.artnet.com/market/art-law-on-protecting-experts-opinion-419132> (accessed 13 February 2020).

attribution. The above could be avoided if auction houses were required to disclose all information about an object prior to its sale, including differences of opinion about attributions, and be held liable if they did not mention a prior reference casting doubts on the current object identification.

Codes of conduct regulating authentication practices have been developed by existing organizations that certify fine art appraisers, including the American Society of Appraisers, the Art Dealers Association of America (ADAA), and the International Society of Appraisers. At their core, all such entities promote high standards of connoisseurship and ethical practice within the profession. The ADAA's Code of Ethics, for instance, not only requires all of its members to comply with all of the applicable laws and regulations at a minimum, but also states that its members are expected to conduct business professionally, fairly, and with integrity, which includes exercising due diligence in verifying the authenticity of works of art and refraining from dealing in works when attributions cannot be corroborated.¹⁵⁸ The problem with such standards is that they are not binding, which creates problems with their enforcement. Non-binding standards were also developed by dealer and museum associations to address specific issues relating to the illegitimate trade in antiquities.¹⁵⁹ Such standards are helpful at formalizing concern about the effects of looting of archaeological material and attest to the fact that market participants in the antiquities market are alerted about such dangers, but they cannot be brought to bear in disputes as they are not codified in laws that set out sanctions for violators.¹⁶⁰

This leads us to another problem identified by our case studies, pertaining to antiquities in particular and highlighting another possible failure of price incentives to perform due diligence: loopholes in export regulations can be used in nefarious ways, including to bend the law so as to essentially smuggle a country's cultural heritage and make a higher profit in another country. Whereas only one of our case studies more explicitly points to fraudulent behavior, where export regulation was used in a way to enable the trafficking of ancient pieces, a number of other examples expose the same problem without showing an intent to defraud. The present analysis is limited to objects traded through auctions because the latter make their data public, thereby enabling the present systematic treatment of the issue, but this does not mean that the same loopholes are not being exploited by dealers and other private parties. Whether or not these legal loopholes are purposefully utilized, they certainly exist, and solutions need to be identified.

¹⁵⁸See "Code of Ethics and Professional Practices of the Art Dealers Association of America," vol. 1, A.2–3, <https://artdealers.org/about/code-of-ethics-and-professional-practices> (accessed 13 February 2020).

¹⁵⁹See International Association of Dealers of Ancient Art, "Code of Ethics and Practice," 2, <https://iadaa.org/about-us/> (accessed 13 February 2020); International Council of Museums, "Code of Ethics," 8.8, <https://icom.museum/en/activities/standards-guidelines/code-of-ethics/> (accessed 13 February 2020).

¹⁶⁰See Amineddoleh 2013.

Any solution should address the incentive to arbitrage international markets by buying “replicas” for a lower price in Europe and selling “antiquities” for a higher price in New York. One option would be the elimination of threshold valuations in order to remove any incentives to sell an object below the threshold and forego export verifications. Another alternative is that cultural property laws may be strengthened by including the stipulation that, once an object is granted an export license, the license would be invalidated upon the discovery of any new information indicating that the object was misclassified in a country’s cultural property framework. There would then need to be new export negotiations with the government in the country of origin. Such regulation, in practice, would require cooperation between the export and import countries. Such efforts could build on the platforms of cooperation put forward by the bilateral agreements between the United States and 16 source countries referred to earlier in this article.

It is possible that laws and regulations will be amended or strengthened as a result of the increased attention being paid to provenance at high-end auctions and the apparent rise in concern for the ethical issues surrounding the antiquities trade. Sleepers are like the tip of the iceberg when it comes to the thorny dilemmas posed by this market. Our analysis speaks to the need for any new regulations to consider the incentives of all market participants—auctioneers, consignors, buyers, and governments—in order to develop a strong legal framework that aligns all parties’ incentives in the same way and promotes a more ethical trade.

BIBLIOGRAPHY

- Aitken, M. J., and S. J. Fleming. 1968. “Thermoluminescent Dating of Ancient Pottery.” *Nature* 219: 442–45.
- Amineddoleh, L. 2013. “The Role Of Museums in the Trade of Black Market Cultural Heritage Property.” *Art, Antiquity and Law* 18: 227–54.
- Amineddoleh, L. 2015. “Purchasing Art in a Market Full of Forgeries: Risks and Legal Remedies for Buyers.” *International Journal of Cultural Property* 22: 419–35.
- Ashenfelter, O., and K. Graddy. 2010. “Art Auctions,” CEPS Working Paper no. 203.
- Ashton, S.-A. 2004. *Roman Egyptomania*. London: Golden House.
- Bandle, A.-L. 2016. *The Sales of Misattributed Works at Auction*. Cheltenham, UK: Edward Elgar.
- Bator, P. 1982. “An Essay on the International Trade in Art.” *Stanford Law Review* 34: 275–384.
- Beltrametti, S. 2013. “Museum Strategies: Leasing Antiquities.” *Columbia Journal of Law and the Arts* 36, no. 2: 203–60.

- Beltrametti, S., and J. V. Marrone. 2016. "Market Responses to Court Rulings: Evidence from Antiquities Auctions." *Journal of Law and Economics* 59, no. 4: 913–44.
- Black, J. 1991. "On the Grand Tour in 1771–1773." *Yale University Library Gazette* 66, no. 1–2: 33–46.
- Black, J. 1996. "Italy and the Grand Tour: The British Experience in the Eighteenth Century." *Annali d'Italianistica* 14: 532–41.
- Black, J. 2011. *The British and the Grand Tour*. New York: Routledge.
- Borodkin, L. 1995. "The Economics of Antiquities Looting and a Proposed Legal Alternative." *Columbia Law Review* 95: 377–417.
- Brodie, N. 2014a. "Auction Houses and the Antiquities Trade." In *International Conference of Experts on the Return of Cultural Property*, edited by S. Choulia-Kapeloni, 71–82. Athens: Archaeological Receipts Fund.
- Brodie, N. 2014b. "Provenance and Price: Autoregulation of the Antiquities Market?" *European Journal on Criminal Policy and Research* 20: 426–44.
- Brodie, N., and C. Renfrew. 2005. "Looting and the World's Archaeological Heritage: The Inadequate Response." *Annual Review Anthropology* 34: 343–61.
- Cannon-Brookes, P. 1994. "Antiquities in the Market-Place: Placing a Price on Documentation." *Antiquity* 68: 349–50.
- Cartwright, J. 2005. "The Rise and Fall of Mistake in the English Law of Contract." In *Mistake, Fraud and Duties to Inform in European Contract Law: The Common Core of European Private Law*, edited by R. Sefton-Green, 65–86. Cambridge, UK: Cambridge University Press.
- Casadio, F., and R. P. Van Duyn. 2013. "Molecular Analysis for Art, Archaeometry and Conservation." *The Analyst* 138, no. 24: 7276–78.
- Cuní, J. 2016. "What Do We Know of Roman Wall Painting Technique? Potential Confounding Factors in Ancient Paint Media Analysis." *Heritage Science* 4, no. 1: 44–56.
- DiMatteo, L., and M. Hogg. 2016. *Comparative Contract Law: British and American Perspectives*. Oxford: Oxford University Press.
- Efrat, A. 2009. "Protecting against Plunder: The United States and the International Efforts against Looting of Antiquities," Cornell Law Faculty Working Paper no. 2-19-2009.
- Feigenbaum, G., and I. Reist. 2013. *Provenance: An Alternate History of Art*. Los Angeles: Getty Research Institute.
- Felch, J., and R. Frammolino. 2011. *Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum*. Boston: Houghton Mifflin Harcourt.
- Feller, R. L. 1994. *Accelerated Aging: Photochemical and Thermal Aspects*. Los Angeles: Getty Conservation Institute.
- Gerstenblith, P. 2008. *Art, Cultural Heritage, and the Law*. Durham, NC: Carolina Academic Press.
- Gerstenblith, P. 2013a. "Has the Market in Antiquities Changed in Light of Recent Legal Developments?" In *The Futures of Our Pasts: Ethical Implications of Collecting Antiquities in the Twenty-first*

Century, edited by M. A. Adler and S. B. Bruning, 67–84. Santa Fe, NM: School for Advanced Research Press.

Gerstenblith, P. 2013b. “The Meaning of 1970 for the Acquisition of Archaeological Objects.” *Journal of Field Archaeology* 38, no. 4: 364–73.

Gill, D. 2009. “Looting Matters for Classical Antiquities: Contemporary Issues in Archaeological Ethics.” *Present Pasts* 1: 77–104.

Gill, D. 2014. “The Case of the Ka Nefer Nefer Mummy Mask.” *Journal of Art Crime* 12: 13–25.

Gill, D., and C. Chippindale 2006. “From Malibu to Rome: Reflections on Returning Antiquities.” *International Journal of Cultural Property* 13, no. 3: 311–31.

Goyder, J. 1992. “Free Movement of Cultural Goods and European Community Law.” *International Journal of Cultural Property* 1: 219–26.

Harvey, B., and F. Meisel 2006. *Auctions Law and Practice*. Oxford: Oxford University Press.

Hatt, M., and C. Klonk. 2006. *Art History: A Critical Introduction to Its Methods*. Manchester: Manchester University Press.

Institute, T. G. C. 1988. *MARBLE: Art Historical and Scientific Perspectives on Ancient Sculpture*. Malibu, CA: J. Paul Getty Museum.

J. Paul Getty Museum, H. N. P. Goulandré, and M. K. Technés. 1993. *The Getty Kouros Colloquium: Athens, 25–27 May 1992*. Athens: Kapon Editions.

Kuniholm, P. I. 2002. “Archaeological Dendrochronology.” *Dendrochronologia* 20, no. 1–2: 62–68.

Lacy, G. S. 2011. “Standardizing Warhol: Antitrust Liability for Denying the Authenticity of Artwork.” *Washington Journal of Law, Technology and Arts* 6: 185–216.

Lapatin, K. D. S. 2000. “Proof?: The Case of the Getty Kouros.” *Source: Notes in the History of Art, Special Issue on Forgeries of Ancient Art* 20, no. 1: 43–53.

Leona, M. 2009. “The Materiality of Art: Scientific Research in Art History and Art Conservation at the Metropolitan Museum.” *Metropolitan Museum of Art Bulletin* 67, no. 1: 4–11.

Leventhal, R. M., and B. I. Daniels. 2013. “Orphaned Objects, Ethical Standards, and the Acquisition of Antiquities.” *DePaul Journal of Art, Technology and Intellectual Property Law* 23: 339–61.

Levine, J. A. 2009. “The Importance of Provenance Documentation in the Market for Ancient Art and Artifacts: The Future of the Market May Depend on Documenting the Past.” *DePaul Journal of Art, Technology and Intellectual Property Law* 19, no. 2: 219–33.

Lobay, G. 2009. “Border Controls in Market Countries As Disincentives to Antiquities Looting at Source? The US–Italy Bilateral Agreement 2001.” In *Criminology and Archaeology: Studies in Looted Antiquities*, edited by S. Mackenzie and P. Green, 59–80. Oxford: Hart.

Marrone, J. V. 2018. “Quantifying the Supply Chain for Near Eastern Antiquities in Times of War and Conflict.” *Journal of Cultural Heritage* 33: 278–84.

McAndrew, C. 2019. *The Art Market 2019*. Basel: Art Basel and UBS.

- McKendrick, E. 1992. "Auctioneers, 'Sleepers' and Actions in Negligence." *International Journal of Cultural Property* 1, no. 1: 207–14.
- Meisel, F. 2010. "Auctioneers and Misdescription: Between Scylla and Charybdis." *Modern Law Review* 73, no. 6: 1036–47.
- Merryman, J. H. 2005. "Cultural Property Internationalism." *International Journal of Cultural Property* 12: 11–39.
- Merryman, J. H. 2007. "The Good Faith Acquisition of Stolen Art." *Olin Working Paper* no. 364.
- Merryman, J., A. Elsen, and S. Ulrice. 2007. *Law, Ethics and the Visual Arts*. Alphen aan den Rijn: Kluwer Law International.
- Nafziger, J. 1982. "The New International Legal Framework for the Return, Restitution or Forfeiture of Cultural Property." *New York University Journal of International Law and Policy* 15: 789–812.
- Nancy Yeide, A. W., and K. Akinsha 2001. *The AAM Guide to Provenance Research*. Washington, DC: American Alliance of Museums.
- O'Keefe, P. J. 2000. *Commentary on the UNESCO 1970 Convention on Illicit Traffic*. Builth Wells, UK: Institute of Art and Law.
- Pearlstein, W. G. 2005. "Cultural Property, Congress, the Courts, and Customs: The Decline and Fall of the Antiquities Market? In *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*, edited by K. Fitz-Gibbon, 9–32. New Brunswick, NJ: Rutgers University Press.
- Peel, E., and G. H. Treitel. 2015. *The Law of Contract*. Toronto: Carswell.
- Phillips, D. 1997. *Exhibiting Authenticity*. Manchester: Manchester University Press.
- Prott, L. V., and P. J. O'Keefe 1988. *Handbook of National Regulations Concerning the Export of Cultural Property*. Paris: United Nations Educational, Scientific and Cultural Organization.
- Rasmusen, E., and I. Ayres 1993. "Mutual and Unilateral Mistake in Contract Law." *Journal of Legal Studies* 22: 309–43.
- Reynolds, L. 2008. *An Art Provenance Research Guide for the Researcher and Librarian: A List of Resources* (unpublished).
- Ridley, R. T., and R. T. Ridley 1992. *The Eagle and the Spade: Archaeology in Rome during the Napoleonic Era*. Cambridge, UK: Cambridge University Press.
- Salway, P. 1982. *Roman Britain*. Oxford: Clarendon Press.
- Siddall, R. 2018. "Mineral Pigments in Archaeology: Their Analysis and the Range of Available Materials." *Minerals* 8, no. 5: 201–35.
- Spencer, R. D. 2010. "Buyers' Rescission Rights for High Value Art Purchases: Spreading the Risk." *Spencer's Art Law Journal* 1, no. 3, <http://www.artnet.com/magazineus/news/spencer/spencers-art-law-journal-3-11-11.asp#rspencer> (accessed 14 February 2020).
- Taylor, R., and O. Bar-Yosef. 2014. *Radiocarbon Dating: An Archaeological Perspective*. New York: Routledge.

Thompson, E. L. 2016. *Possession: The Curious History of Private Collectors from Antiquity to the Present*. New Haven, CT: Yale University Press.

Vadi, V., and H. E. Schneider. 2014. *Art, Cultural Heritage and the Market: Ethical and Legal Issues*. New York: Springer.

Watson, P., and C. Todeschini. 2006. *The Medici Conspiracy: The Illicit Journey of Looted Antiquities—From Italy’s Tomb Raiders to the World’s Greatest Museums*. New York: Public Affairs.