

## STUDIA PODYPLOMOWE ART AND CULTURAL HERITAGE LAW

### Efekty uczenia się i treści programowe dla zajęć:

#### Course (1): The International Art Market: An Introduction

##### Efekty uczenia się dla zajęć / Learning outcomes

Students will learn about art market mechanisms at the global and regional levels and art market participants. Students will learn how art compares to more traditional asset classes, are capable of distinguishing artwork from other asset classes and are able to communicate using professional terminology regarding the international art market.

##### Treści programowe / Teaching contents

- What is meant by the art market (including a historical overview and how the art trade became an international business)?
- Distinguish from other asset classes: tangible, physical, value-driven real assets; include themes: confidentiality vs transparency; lack of single-body regulatory oversight; lack of specific regulatory regime but heavily regulated nonetheless; uniquely identifiable objects (for the most part); typically cross-jurisdictional; who are the main art market participants? Primary and secondary art markets.
- Current state of the market and recent developments (current hubs, digital assets, NFTs, online sales).

#### Course (2): International Cultural Heritage Law: An Introduction. Culture in Emergencies

##### Efekty uczenia się dla zajęć / Learning outcomes

Students will acquire knowledge about the international cultural heritage law. Students will learn about the application of the cultural UNESCO conventions and other international instruments in times of peace and conflicts/emergencies. Students are capable to find the right normative instrument and are able to use the online tools like UNESCO NatLaws database to search for the Students understand the threat emergencies and the role of preparedness.

##### Treści programowe / Teaching contents

- The course covers international public law regarding cultural heritage protection and the protection of cultural rights. All legal instruments shall be presented as part of a global legal framework with a focus on synergies and complementarity. The provisions in UNESCO cultural conventions used in emergencies and recent cases (their practical and symbolic meaning) will be explained.
- Case studies:  
Categories of cultural property under threat from war and Russian invasion and examples thereof in Ukraine:
  - movable tangible cultural property,
  - immovable tangible cultural property,
  - intangible cultural heritage.
- What are the relevant national and international rules applying to the emergency?
- The role of international community and joint efforts in safeguarding cultural heritage.

#### Course (3): Private International Law Principles Affecting the Art Trade: An Introductory General Overview

##### Efekty uczenia się dla zajęć / Learning outcomes

Students will learn about the conflict of law principles applicable to international art transaction. Students are capable to verify the principles applicable regarding jurisdiction, the law of obligations and property law and access the state of art.

##### Treści programowe / Teaching contents

- Preliminary Issues: classification, renvoi, substance and procedure, foreign law.
- Jurisdiction under the Brussels/Lugano system, The Hague Convention of Choice of Court Agreement; The Competence of English Courts; Recognition and Enforcement of Foreign

Judgements; Foreign Arbitral Awards; The Repeal of the European Communities Act 1972: Brexit, post implementation period and the issue of reciprocity in case of the Brussels Regulation (inherently reciprocal).

- The Law of Obligations:
- Contracts: The applicable law in the absence of choice under the Rome I Regulation (fixed rules for specific contracts: sale of goods, provision of services, contracts of carriage and insurance, auction); Limitations: mandatory rules and public policy;
- Non-contractual obligations, the Rome II Regulation; The applicable law for torts/delicts; The exceptions: the autonomous (EU) concept of culpa in contrahendo and the English Law concepts of fraudulent misrepresentation and negligence; The question of interference with property rights: tort of conversion (common law) or part of the law of property (civil law jurisdictions);
- The repeal of the European Communities Act 1972; Brexit, post implementation period: Retained Rome I and Retained Rome II; The issue of reciprocity in case of Rome I and Rome II (no reciprocity).
- The Law of property:
  - The transfer of tangible movables: the law of the situs, alternative connecting factors and the proper law of the transfer, retention of title clauses in international contracts;
  - Goods in Transit;
  - Gifts;
  - Cultural Property;
  - Matrimonial property; Succession and Wills; Cross-border Inheritance under the European regime.

#### **Course (4): International Art Transactions: A Comparative Approach**

##### **Efekty uczenia się dla zajęć / Learning outcomes**

Students will acquire knowledge about the similarities and differences between how continental (European) and common law systems view art transactions. Students will learn about best practices and standards relating to the art trade. Students are capable do distinguish the best practices and able to point the core element of transactions.

##### **Treści programowe / Teaching contents**

- Comparative analysis of specific transactions relating to art:
  - Sale and Purchase; The different concepts of “dealership” and “agency”;
  - Art Loans;
  - Other acquisitions: gift and exchange;
  - Various types of bailment (hire, storage, carriage, art pledge);
  - Other art-backed financial transactions;
  - Immunity from seizure for travelling works of art;
  - Insurance.
- Similarities and differences between common law lawyers and civil law practitioners and how each view these transactions and draft corresponding contracts. The American approach and the applicability of U.C.C.
- Legal obligations, best practices and standards of care in the art market:
  - Client Due Diligence (AML, sanctions, proceeds of crime);
  - Artwork Due Diligence (authenticity, condition, provenance);
  - Art Transaction Due Diligence (ownership and authority to act, legal and security interest in the artwork, trade restrictions, disputes and other limitations).

#### **Course (5): Art-Related Disputes**

##### **Efekty uczenia się dla zajęć / Learning outcomes**

Students will learn about types of disputes typical to the art market and mechanisms governing legal disputes on the art market and its specificities. Students are capable to understand the role of ADR in the art world.

##### **Treści programowe / Teaching contents**

- Types of disputes: Ownership claims and resolutions thereof; Authenticity and attribution disputes; Condition and insurance claims; Interests and loans in artworks.
- Authenticating bodies and their authority; Expert opinions and liabilities.

- Litigation v Alternative Dispute Resolution Mechanisms; specialised arbitration and mediation tribunals: The Venice Chamber of Arbitration; Court of Arbitration for Art, The Hague; Settlement Agreements.

### **Course (6): Art Market Actors: Artist, Dealers, Museums, Collectors**

#### **Efekty uczenia się dla zajęć / Learning outcomes**

Students will learn about art market actors and their legal standing. Students will learn about collection management by public and private entities with focus on museums and private collections. Students are able to analyse the art market actors' status and diagnose the problem to be solved through advising.

#### **Treści programowe / Teaching contents**

- Artists and Dealers:
  - The Primary Market Mechanism; Sale of artworks coming directly from the artist's studio;
  - Representation and Sale Agreement; Consignment;
  - Artists' rights (Copyright, Moral Rights, Droit de Suite); Collecting Societies Dealing with the Administration of the Artists' Rights;
  - Authentication and Authenticating Bodies;
  - Artist's Estates; Archives; Succession Planning;
  - Art and Intellectual Property; Corporations around Artists' Works and IP Rights.
- Museums:
  - Private or public? Specific laws, Statutes, Ethical Guidelines and Codes; Institutional Collections; Public Interest and Cultural Policy;
  - Collection Management; Accessioning: questions of title, illegal export and copyright; Exhibition Loan Agreements: Standard of Care, Shipping and insurance, Lender's identification and the work being loaned (condition report, inspection), Copyright and merchandise, Catalogue, Promotion and Photography, Seizure; Deaccessioning of artworks and Traveling Exhibitions;
  - Restitution and repatriation claims;
  - Charities, philanthropy and sponsorship.
- Collectors:
  - Collection management, succession;
  - Incentives for collectors (support from the States, tax exemptions).

### **Course (7): Cultural Property Protection: Retrieving Stolen Art Across State Boundaries**

#### **Efekty uczenia się dla zajęć / Learning outcomes**

Students will acquire knowledge on international and regional legal instruments relating to procedures on the return and restitution of illegally removed cultural objects. Students will be capable to verify which / if any international legal instrument applies and what are the options for the party.

#### **Treści programowe / Teaching contents**

- Destruction, looting and trafficking of cultural property – longstanding international issue.
- Diversity among legal systems in title on stolen goods; the need for choice of law process (the lex situs principle and exceptions); archaeological antiquities: special considerations.
- International instruments: UNESCO (The Hague) Convention 1954, UNESCO 1970, Unidroit 1995.
- EU Legal instruments, EU policy context and its weaknesses (Return of cultural objects unlawfully removed from the territory of a member state; EU export/import control of cultural objects and EU Regulation 1215/2012); National cultural property protection schemes.
- EU Parliament Legislative Initiative on Cross-Border Restitution of Looted Art (EPRS, November 2017).
- Looted art in armed conflicts and war, war crimes: Iraq, Syria, Timbuktu, War in Ukraine (2014 Crimean crises and the 2022 Russian invasion).

**Course (8): Cultural Property Looted in the Nazi – Era or Otherwise in the Context of World War II**  
**Efekty uczenia się dla zajęć / Learning outcomes**

Students will learn about the difficulties relating to the restitution of cultural objects looted during the WWII. Students will understand the role of normative instruments, private and public law provisions and soft law in addressing cultural wrongs and illegally removed cultural property.

**Treści programowe / Teaching contents**

- From Inter-allied declaration in 1943 to Washington Principles in 1998.
- “Technical” legal obstacles: *Nemo dat* vs acquisitive prescription; legal difficulties in achieving solution by litigation: Principles, recommendations, alternative dispute resolution - non legal instruments and avenues; US: different approach: standardized application of limitation period for such claims.
- Importance of applicable law.
- Market “self-regulation”, registrations on databases, unmarketable works, legal claims and moral claims.
- Ad-hoc panels: UK, Germany, Austria, France and Netherlands.
- Precedents and controversies.
- Problematic areas:
  - identification of heirs and heirless art;
  - disputes among heirs;
  - lack of reliable provenance;
  - what is “Nazi-confiscated art”: Raubgut, Fluchtgut, Trophy Art; how about Bolshevik looted art, GDR-looted art?;
  - public or private current possessor?.
- Need for more legislation? Guarantees under the European Convention on Human Rights, the EU Charter of Human Rights and national constitutional guarantees.
- Suitable as blue print for other categories of looted objects?

**Course (9): Artworks Ownership, Intellectual Property Rights, Ownership of Digital Works**  
**Efekty uczenia się dla zajęć / Learning outcomes**

Students will learn about challenges relating to the digital assets offered on the art market. Students will be capable to discuss the differences of this part of the art market specificity and the different object of transaction.

**Treści programowe / Teaching contents**

- Digital Assets, NFTs, blockchain technology and smart contracts.
- Copyright considerations and artists’ intellectual property rights in the virtual space.
- The online art marketplace:
  - online platforms and galleries;
  - online-only auctions;
  - NFT marketplaces;
  - e-commerce.

**Course (10): Art Crime**

**Efekty uczenia się dla zajęć / Learning outcomes**

Students will learn about illicit traffic, fakes and forgeries and financial crimes in the art market. Students will be capable to distinguish the international legal instruments and the importance of its implementation as well as joint international cooperation.

**Treści programowe / Teaching contents**

- Illicit Trafficking of Cultural Property – Illicit trade through complex cross-border distribution channels.
- East-West transition and illicit traffic before the fall of the iron curtain in Europe – The socialist centralised state systems and the market countries.
- War Crimes and Crimes against Humanity – the criminalisation of the intentional destruction of cultural property; Sentencing practices of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Court (ICC).
- Money Laundering and Terrorist Financing through the Trade of Works of Art: Examples of money laundering through the high-value art market; Art market participants and sectors presenting ML and TF risks; The problem of online marketplaces.

- Fakes, Forgeries, Theft and Frauds.

#### **Course (11): Competition Issues in the Art Market**

##### **Efekty uczenia się dla zajęć / Learning outcomes**

Students will learn about market power, competitive pressures and anti-competitive practices in the art market. Students will understand the non-standard competition issues in the Art Market and the variety of public and private law instruments to respond to them. Students will be capable to qualify certain market practices as ethical or unethical.

##### **Treści programowe / Teaching contents**

- Peculiarities of the art market: Primary and secondary markets and the dual distribution system.
- Lack of regulation; Legal but unethical practices; The problem of insider trading and information asymmetries; Susceptibility to manipulation and exploitation of market power; Exclusionary conducts that favours insiders.
- Competitive pressures and high barriers to entry; The relationship between supply and demand on the art market.
- The role of art authentication bodies and conflict of interests.
- Auction market: concerted practices and market power; Controversial auction practices.
- Exclusionary and restrictive pricing practices in respect of online sales.
- Competition law v private law instruments against market manipulation practices: The question of Competition law enforcement in the art market.

#### **Course (12): Art as Financial Asset**

##### **Efekty uczenia się dla zajęć / Learning outcomes**

Students will learn about art as an asset class and how it compares to more traditional assets. Students will be capable to provide argumentation for the pros and cons of art as financial asset and well as the mechanisms on the market devoted to this sort of investments

##### **Treści programowe / Teaching contents**

- Art as an asset class and how it compares to more traditional assets; Art investment related services.
- Price appreciation in the art market; The role of investment funds; Contemporary art and speculative financial mechanisms.
- The downsides of investing in art.
- Wealth management and estate planning – a comparative approach: The preservation and protection of private art collections; Financial and managerial aspects of collecting art; Cross-border succession plans; Value transfer: gift v inheritance.
- Art as collateral for unrelated transactions.

#### **Course (13): Art Market – Law and Beyond**

##### **Efekty uczenia się dla zajęć / Learning outcomes**

Students will learn about the risks and pitfalls while entering transactions. Students will be capable of understanding the role of involving advisors/experts and in some cases necessity to work in a team while conducting projects on the art market.

##### **Treści programowe / Teaching contents**

The board game Art market – Law and Beyond constitutes a final part of the course. All acquired knowledge shall be used by the course participants. The cases including the specificity and pitfalls in the art market and the role of soft law will appear in the game. Both public and private law issues are to be analysed and arising in the role play problems solved by the students:

- Art as an investment asset
- Public and private interest in cultural property protection
- Legal pitfalls for cultural property transactions
- Challenges for the cultural objects' possessors