

Hobby Lobby Forfeits Thousands of Ancient Iraqi Artifacts, Pays \$3M, and Admits Fault to Settle Civil Forfeiture Action

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The US government's settlement with Hobby Lobby on July 5, 2017 is part of its broader effort to combat trafficking in looted antiquities from the war-torn Middle East and to reduce market demand for such objects by punishing participants in the black market. Having scored this high-profile settlement in an early test case, the US government likely will try to build on this success with additional investigations and enforcement actions.

In this period of increased attention and enforcement activity, it is more important than ever that collectors, dealers, brokers, galleries, museums, universities, and others who deal with cultural property, art, and antiquities understand and respond to a changing legal landscape. The lawyers at WilmerHale have been advising and counseling clients, conducting investigations, ensuring regulatory compliance, litigating cases, and closely tracking developments in this field for many years. We offer below a more detailed description of the Hobby Lobby case and some basic guidelines for those engaged in antiquities trade, collection, or exhibition.

I. The Hobby Lobby Case

A. Factual Allegations in Verified Complaint

On July 5, 2017, the United States filed a civil complaint to forfeit thousands of ancient Iraqi artifacts—including valuable clay tablets with religious significance—that had been purchased by the arts-and-crafts retailer Hobby Lobby for its planned museum on religious history and then smuggled into the United States on Hobby Lobby's behalf.¹

Before making the purchase, Hobby Lobby had consulted with an expert who warned that acquiring any Iraqi cultural property in the current environment would carry “considerable risk” that such objects had been looted from Iraqi archaeological sites. The expert further advised Hobby Lobby to verify the origin of the artifacts and ensure that the actual country of origin is properly declared when imported into the United States.

Despite these warnings, the retailer went ahead with the purchase of more than 5,500

Mesopotamian cuneiform tablets (i.e., tablets featuring ancient cuneiform script) and clay bullae (i.e., clay stamped or pressed with ancient seals) for \$1.6 million in December 2010. In so doing, Hobby Lobby ignored “red flags” such as inconsistent statements regarding the objects’ provenance, misrepresentations about the objects’ country of origin, false statements on invoices, and suspicious instructions to make payments to seven separate personal bank accounts, none of which belonged to the purported owner of the artifacts. Further, company representatives never met or spoke with the dealer who purportedly owned the items, nor the individual who had allegedly stored them in the United States. Nor did they object or express concern when US customs documentation misrepresented the objects’ value and country of origin and falsely stated that the objects were merely tile “samples.”

B. Grounds for Forfeiture

The artifacts were forfeited pursuant to 19 U.S.C. § 1595a(c)(1)(A), which states that “merchandise ... shall be seized and forfeited if it . . . is stolen, smuggled, or clandestinely imported or introduced.” The objects were deemed “smuggled, or clandestinely imported or introduced” because the shipper knowingly made false declarations as to the artifacts’ description, value, and country of origin.

C. Terms of Settlement with Hobby Lobby

Under the stipulation of settlement,² the company admitted fault, consented to the forfeiture of all the artifacts, and paid \$3 million. The company further agreed to adopt internal policies and procedures for the importation and purchase of cultural property, to provide appropriate training to its personnel, to hire qualified outside customs brokers and advisers, and to submit quarterly reports to the government describing any cultural property acquisitions for a period of eighteen months.

II. Guidelines For Those Engaged In Antiquities Trade, Collection, or Exhibition

A. Know the law

Various US, foreign, and international laws and regulations govern the acquisition, transport, and use of cultural property; we touch upon just a few of the key rules below.

- **US Import and Export Laws and Regulations:** Numerous US import and export laws govern the trade and transport of cultural property. For example, all shipments arriving by international mail must include a customs declaration and an invoice or bill of sale that give a full and accurate description of the contents, as well as the purchase price and value of the merchandise.³
- **Forfeiture Provisions:** Forfeiture provisions can be administrative, civil, or criminal.⁴ The civil forfeiture in Hobby Lobby occurred under 19 U.S.C. § 1595a(c)(1)(A), which provides that “[m]erchandise which is introduced or attempted to be introduced into the United States contrary to law . . . shall be seized and forfeited if it . . . is stolen, smuggled, or clandestinely imported or introduced.” Merchandise is deemed “smuggled, or clandestinely imported or introduced” if it was, among other things, imported by means of fraudulent or false statements, or with an intent to defraud.⁵

- **The National Stolen Property Act:** The National Stolen Property Act (“NSPA”), 18 U.S.C. §§ 2314-15, makes it a felony to knowingly transport, in interstate or foreign commerce, or to knowingly purchase for resale, any stolen goods worth \$5,000 or more. The property need not be stolen in the United States, and neither the defendant nor property owner need be a US national;⁶ rather, it is enough that the transaction or stolen goods in question have a connection to the United States.⁷ Violating the NSPA can result in jail time or high fines.
- **US Regulations Barring Importation of Certain Iraqi Cultural Property:** Certain regulations address cultural property originating from specific countries of origin. For example, 31 CFR § 576.208 prohibits the unauthorized “trade in or transfer of ownership or possession of Iraqi cultural property or other items of archeological, historical, cultural, rare scientific, and religious importance that were illegally removed, or for which a reasonable suspicion exists that they were illegally removed, from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990.” The regulation provides for criminal and civil penalties.
- **The 1970 UNESCO Convention:** The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the US statute that implemented it, the Cultural Property Implementation Act (“CPIA”), 19 U.S.C. §§ 2601-13, together prohibit the import of stolen cultural property and “ethnological material” without the consent of the country of origin.⁸ They also provide for customs enforcement actions—including seizure and forfeiture—in the absence of proper documentation.⁹
- **Foreign Cultural Patrimony Laws as Incorporated in US Law:** Many nations have cultural patrimony laws that assert national ownership of cultural property. For example, Iraq's 1936 Antiquities Law No. 59 and 2002 Antiquities and Heritage Law assert national ownership over all antiquities discovered in Iraqi territory, even on private property. Any object taken to the United States in violation of such cultural patrimony laws is treated as “stolen” for purposes of the NSPA.¹⁰

B. Know the parties

- **Work only with reputable sellers, dealers, brokers, and auction houses.** Conduct due diligence to know whether counterparties, intermediaries, and agents can be trusted to comply with applicable law and accurately represent and warrant an object's origins, provenance, authenticity, and value.
- **Check databases run by national governments, Interpol, the United Nations, and private entities.** Interpol, for example, posts red notices for the arrest of accused or convicted smugglers of illicit goods.

C. Know the objects

- **Examine the objects and investigate the provenance.** Mitigate risk by carefully examining the objects, reviewing paperwork, and speaking directly to individuals who know the objects and their provenance. Ask hard questions and request photographs and other evidence in the face of suspicious assertions. Inadequate due diligence may be perceived

as willful blindness or neglect. In the Hobby Lobby case, the US government noted that the conflicting provenance statements and the informal presentation and poor storage of the objects were “red flags” that Hobby Lobby ignored.

- **Avoid objects from suspect jurisdictions, markets, and sources.** For example, there is considerable risk in dealing with objects from conflict zones such as Iraq, Syria, Libya, and Afghanistan. Such risks often extend to neighboring countries and transit markets, such as Lebanon, Turkey, Egypt, and Bulgaria.
- **Check reports and databases on looting and smuggling of objects and consult with experts.** Interpol maintains a “Stolen Works of Art” database and the International Council of Museums also maintains the “Emergency Red List of Iraqi Cultural Objects at Risk.” As the case against Hobby Lobby demonstrates, it is not only important to consult with experts, but also to heed their counsel.

D. Follow the letter and spirit of the law

- **Abide by and promote a culture of compliance.** Adopt good policies and procedures and insist that employees and agents learn and follow them.
- **Consider notifying and consulting with relevant government officials.** The Investigation unit of the US Department of Homeland Security investigates crimes involving the illicit importation of cultural property, and may be a helpful US government contact.
- **Ensure compliance with export/import, customs, tax, disclosure, cultural property, and other controls, rules, and regulations.** Hire professionals with relevant expertise to advise, educate, and train staff.
- **Insist on complete and accurate documentation.** Be sure to both insist on and maintain careful records of dealings.

¹ Complaint, *In re Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets*, No. 17-3980 (E.D.N.Y. July 5, 2017), available at www.justice.gov/usao-edny/press-release/file/978096/download. See also Press Release, U.S. Attorney's Office, Eastern District of New York, *United States Files Civil Action To Forfeit Thousands of Ancient Iraqi Artifacts Imported By Hobby Lobby* (July 5, 2017), available at www.justice.gov/usao-edny/pr/united-states-files-civil-action-forfeit-thousands-ancient-iraqi-artifacts-imported.

² Stipulation of Settlement, *In re Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets*, No. 17-3980 (E.D.N.Y. July 5, 2017) (Dkt. 3-3).

³ See, e.g., 19 CFR § 145.11; 19 CFR 143.21; 18 U.S.C. §§ 542 and 545.

⁴ Stefan D. Casella, *Using the Forfeiture Laws to Protect Cultural Heritage*, United States Attorneys' Bulletin, Vol. 64 No. 2 (March 2016), p. 31.

⁵ See 18 U.S.C. §§ 542, 545.

⁶ See, e.g., *United States v. Frederick Schultz*, 333 F.2d 393, 402 (2d Circuit 2003) (“Just as the

property need not be stolen in the United States to bring the NSPA into play, the fact that the rightful owner of the stolen property is foreign has no impact on a prosecution under the NSPA”); *United States v. Herbage*, 850 F.2d 1463, 1464 (11th Cir. 1988) (prosecuting a British citizen under the NSPA); *United States v. Aleskerova*, 300 F.3d 286, 286 (2d Cir. 2001) (upholding the conviction of an Azerbaijan national for possession and conspiracy to sell stolen artworks in the United States, which were originally misappropriated during World War II).

⁷ *Id.*

⁸ 19 U.S.C. § 2607.

⁹ 19 U.S.C. §§ 2606(b), 2609.

¹⁰ For instance, in *United States v. Schultz*, 333 F.3d 393 (2d Cir. 2003), the Second Circuit concluded that Egyptian antiquities possessed in the United States in violation of an Egyptian patrimony law establishing Egyptian ownership of antiquities found in the country after 1983 constituted stolen property within the meaning of the NSPA.

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