SEMINAR ARTICLE

A Legal Perspective on the Protection of Underwater Cultural Heritage Resources in the United States: Is the Abandoned Shipwreck Act Lost at Sea, or is It Worthy of Salvage? ............................................. Jeffrey Cohn  1

CASE SUMMARIES

Phoenix Entertainment Partners v. Rumsey, 829 F.3d 817 (2016). ............................................. Jordan Melvin  41


CASE NOTES

Examining the Seventh Circuit’s Repudiation of the Transformative Fair Use Analysis: Kienitz v. Sconnie Nation, LLC ............................................. Alexandra Navratil  73

Useful Article or Creative Design: Varsity Brands, Inc. v. Star Athletica, LLC ......................... Kristy Diesner  91

Cite as 27 DePaul J. ART, TECH. & INTELL. PROP. L.

Copyright 2016 by DePaul University
All Rights Reserved

Price: $40.00 annual subscription; $20.00 single issue.
Subscriptions are accepted only on a per volume basis, are payable in advance and will be renewed automatically unless notification to the contrary is received in writing.
Change of address should be mailed to the Journal at least thirty days before the next issue is to be distributed. Please send the old and new address, including ZIP codes.
Rates for advertising quoted upon request.

Comments and suggestions regarding the content of this publication are invited.

DePaul Journal of Art, Technology & Intellectual Property Law
DePaul University College of Law
25 East Jackson Boulevard
Chicago, Illinois 60604-2287

E-mail: depaul.jatip@gmail.com

Web Site:
http://law.depaul.edu/student-resources/student-activities/journals/Pages/default.aspx

Printed in U.S.A.

Cover Design by
The 2007-2008 Editorial Board
The moral right of the 2007-2008 Editorial Board has been asserted.
DEPAUL JOURNAL OF ART, TECHNOLOGY & INTELLECTUAL PROPERTY LAW

Volume XXVII  Fall 2016  Number I

BOARD OF EDITORS

MADELAINE THOMAS
Editor in Chief

NATASHA MANGAL
Case Notes And Comments Editor

TOM CALASCIBETTA
Legislative Updates Editor

SUHJPAL KOONER
Lead Articles & Business Editor

DEBA ALAM
Case Summaries Editor

LUMA ZAYAD
Technical Productions & Symposium Director

LAUREN BURSEY
Seminar & Below-The-Line Editor

WRITING STAFF

KRISTY DIESNER
ALEXANDRA NAVRATIL
ERIC GARCIA

SUBARNA BHATTACHARYA
STEPHEN CHOI

MORGAN DRAKE
JORDAN MELVIN
JOSH SHANCER

FACULTY ADVISOR

PROFESSOR MARGIT LIVINGSTON

Member, National Conference of Law Reviews

et al.: Table of Contents

Published by Via Sapientiae, 2019
DEPAUL UNIVERSITY

GENERAL ADMINISTRATION

Rev. Dennis H. Holtschneider, C.M., Ed.D. ............................................. President
Marten L. denBoer, Ph.D. ................................................................. Provost
Jeffrey Bethke ..............................................................Executive Vice President
Rev. Edward R. Udovic, C.M., Ph.D. .............................................. Secretary of the University

Vice President for Teaching & Learning Resources
Senior Executive for University Mission

Jay Braatz ................................................ Vice President for Planning and Presidential Administration
Gene Zdziarski, Ph.d. .............................................................. Vice President for Student Affairs
Erin Minnè ................................................................. Senior Vice President for Advancement
Sherri Sidler ................................................................. Controller
Robert Janis .............................................................. Vice President for Facility Operations
David H. Kalsbeck, Ph.D. .......................................... Sen. V. P. for Enrollment Management & Marketing
Bob McCormick .............................................................. Vice President for Information Services
Elizabeth F. Ortiz, Ed.D. ........................................... Vice President for Institutional Diversity and Equity
José D. Padilla, J.D. .................................................. Vice President and General Counsel
Linda Blakley ........................................................ Vice President of Public Relations and Communications
Stephanie Smith ........................................................ Vice President for Human Resources

COLLEGE OF LAW ADMINISTRATION

Jennifer Rosato Perea ............................................................... Dean
Professor of Law

Allison Brownell Tirres ................................................. Associate Dean for Academic Affairs
Associate Professor of Law

Barbara B. Bressler ............................................................. Associate Dean for Experiential Education
Associate Professor of Law

Sumi Cho ................................................................. Associate Dean for Non-JD Programs
Professor of Law

Margit Livingston .................................................. Associate Dean for Faculty Development
Professor of Law

Allen Moye .......................................................... Associate Dean for Information Technology and Library Services
Director, Rinn Law Library
Associate Professor of Law

Michael S. Burns .................................................. Associate Dean for Student Affairs

William Chamberlain ........................................ Assistant Dean for Law Career Services

Deborah Howard ........................................ Director of Business Administration and Operations

Erika Roditis ............................................................ Director of Communications

Kortney Moore ............................................................ Director of Communications
COLLEGE OF LAW FACULTY

Benjamin E. Alba ............................................... Director, Academic Support, Student Advising & Bar Passage
B.S., DePaul University | J.D., Loyola University of Chicago

Sioban Albiol .................................................................. Clinical Instructor
B.A., University of Texas at Austin | J.D., Loyola University of Chicago

Susan A. Bandes ....................................................... Centennial Distinguished Research Professor of Law
B.A., State University of New York (Buffalo) | J.D., University of Michigan

M. Cherif Bassiouni .................................................. Distinguished Research Professor of Law

President Emeritus, International Human Rights Law Institute

J.D., Indiana University | LL.M., John Marshall Law School
S.J.D., George Washington University | LL.B., University of Cairo

Monu Bedi........................................................................... Assistant Professor of Law
A.B., Dartmouth University | J.D., Harvard University
M.Phil., University of Cambridge

Barbara B. Bressler ....................................................... Associate Dean for Experiential Education
Associate Professor of Law

Director Emeritus, Center for Intellectual Property and Information Technology
B.S., University of Minnesota | J.D., DePaul University

Patrick F. Cassidy .......................................................... Clinical Instructor
B.A., University of Illinois | J.D., Chicago-Kent College of Law

Emily Cauble .................................................................. Assistant Professor of Law
B.A., University of Notre Dame | J.D., University of Michigan Law School

Leonard F. Cavise .......................................................... Emeritus Professor of Law

Founding Director, Center for Public Interest Law
B.A., Hamilton College | J.D., Georgetown University

Sumi K. Cho ................................................................ Professor of Law
B.A., University of California-Berkeley | J.D., University of California-Berkeley
Ph.D., University of California-Berkeley

Alberto R. Coll............................................................... Professor of Law
Director, European and Latin American Legal Studies Program
Director, International Law LL.M. Program
Director, International Human Rights Law & Policy
B.A., Princeton University | J.D., University of Virginia
Ph.D., University of Virginia

Michelle Cue ................................................................. Legal Writing Instructor
B.A., University of Illinois | J.D., University of Illinois

John F. Decker ................................................................ Emeritus Professor of Law
B.A., University of Iowa | J.D., Creighton University
LL.M., New York University | J.S.D., New York University

Katheryn M. Dutenhaver ............................................ Associate Professor of Law
Director, Center for Dispute Resolution
B.A., North Central College | J.D., DePaul University
M.A., University of Chicago

Wendy Netter Epstein .................................................. Assistant Professor of Law
B.A., University of Illinois | J.D., Harvard Law School

Rebecca Feinberg .......................................................... Lecturer in Law
B.A., Yeshiva University | J.D., University of Pennsylvania Law School
M.B.E., University of Pennsylvania Medical School | M.S., Johns Hopkins University

David L. Franklin ......................................................... Associate Dean for Institutional Compliance
Associate Professor of Law
B.A., Yale College | J.D., University of Chicago

Jerold A. Friedland ...................................................... Professor of Law
Director, Master of Laws in International Law-International Business, Commercial &Trade law
Director, Master of Laws in Taxation
Director, Vienna University of Economics Exchange Program
J.D., Brooklyn Law School | LL.M., Georgetown University
Stefania Fusco ................................................................. Visiting Assistant Professor of Law
Visiting Faculty & Fellows
J.S.D. & J.S.M., Stanford Law School | LL.M., Chicago-Kent College of Law
M.B.A., University of Illinois at Chicago
Dottore in Giurisprudenza (J.D.), Universita degli Studi di Torino
Sarah Gelsominno ............................................................. Clinical Instructor

Patty Gerstenblith .......................................................... Distinguished Research Professor of Law
Director, Center for Art, Museum & Cultural Heritage Law
A.B., Bryn Mawr College | Ph.D., Harvard University
J.D., Northwestern University
Robert Gevirtz ........................................................................ Clinical Instructor

Andrew Gold ........................................................................... Professor of Law
B.A., Dartmouth College | J.D., Duke University
Steven R. Greenberger ......................................................... Associate Professor of Law
B.A., University of Illinois | J.D., Yale University
Michael Grynberg .................................................................. Associate Professor of Law
B.A., Carleton College | J.D., University of Virginia Law School
Susan C. Haddad ..................................................................... Clinical Instructor
M.A., University of Chicago | J.D., John Marshall Law School
Maria Harrigan ..................................................................... Clinical Instructor
Director, Family Law Clinic
J.D. Loyola University of Chicago

Brian F. Havel ..................................................................... Distinguished Research Professor of Law
Associate Dean for International Affairs
Director, International Aviation Law Institute

B.C.L., National University of Ireland | LL.M., National University of Ireland
Dip. Eur. L., National University of Ireland | B. Mod., University of Dublin
M.A., University of Dublin | LL.M., Columbia University
J.S.D., Columbia University
Max N. Helveston .................................................................. Assistant Professor of Law
B.A., University of Michigan | J.D., Yale University
Donald H. J. Hermann ......................................................... Professor of Law and Philosophy
A.B., Stanford University | M.A., Northwestern University
J.D., Columbia University | LL.M, Harvard University
Ph.D., Northwestern University | M.A.A.H., Art Institute of Chicago
M.L.A., University of Chicago

Michael Jacobs ..................................................................... Distinguished Research Professor of Law
Co-Director, International Aviation Law Institute
B.A., Dartmouth College | J.D., Yale University
M.P.H., Johns Hopkins University
Barry Kellman ........................................................................ Professor of Law
Director, International Weapons Control Center
B.A., University of Chicago | J.D., Yale University
Robert A. Kwai ................................................................. Raymond P. Niro Professor of Intellectual Property Law
Founding Director, Center for Intellectual Property Law & Information Technology
A.B., Brown University | J.D., University of Pennsylvania
Julie D. Lawton ........................................................................ Assistant Professor of Law
Director, Housing & Community Development Legal Clinic
B.A., Florida A&M University | J.D., Howard University
L.L.M., Georgetown University
Wayne K. Lewis ...................................................................... Emeritus Professor of Law
B.A., Rutgers University | J.D., Cornell University
Margit Livingston .................................................. Associate Dean for Faculty Development
Professor of Law
Director, Center for Intellectual Property Law & Information Technology
B.A., Augsburg College | M.A., University of Minnesota
J.D., University of Minnesota | LL.M., University of Illinois

Angelica Lopez .................................................. Clinical Instructor
B.W.S. & B.S. Missouri State University | M.S.W., University of Kansas
J.D., Northwestern University

Scott F. Main .................................................. Clinical Instructor
A.B., University of Chicago | J.D., Loyola University of Chicago

Jody Marcucci .................................................. Legal Writing Instructor
B.A., University of Wisconsin | J.D., DePaul University

Gregory Mark .................................................. Professor of Law
B.A., Butler University | M.A., Harvard University
J.D., University of Chicago

Cary Martin Shelby ........................................... Assistant Professor of Law
B.S., University of Illinois | J.D., Northwestern University

Joey L. Mogul .................................................. Director, Civil Rights Clinic
B.S., Oberlin College | J.D., City University of New York School of Law

Mark Moller .................................................. Assistant Professor of Law
B.A., Duke University | J.D., University of Chicago
L.L.M., University of Cambridge

Daniel I. Morales ........................................... Assistant Professor of Law
B.A., Williams College | J.D., Yale Law School

Allen Moye .................................................. Associate Dean for Information Technology and Library Services
Associate Professor of Law
Director, Rinn Library

B.A., Howard University | J.D., University of Richmond
M.L.S., Catholic University

John Q. Mulligan .............................................. FedEx/United Airlines Resident Research Fellow
B.A., University of Wisconsin-Madison | J.D., College of William & Mary

Marlene Nicholson ........................................ Emeritus Professor of Law
B.A., University of California, Los Angeles | J.D., University of California, Los Angeles

Allison I. Orefile ............................................. Legal Writing Instructor
B.A., University of Chicago | J.D., University of Chicago

Bruce L. Ottley .............................................. Professor of Law
Director, DePaul University/University College Dublin Cooperative Program
Co-Director, International Aviation Law Institute
B.A., University of Missouri-Kansas City | M.A., University of Iowa
J.D., University of Iowa | L.L.M., Columbia University

Martha Pagliari .............................................. Associate Director of Legal Analysis, Research & Communication
B.A., University of Notre Dame | J.D., DePaul University

Jody Raphael .................................................. Visiting Professor of Law
Senior Research Fellow
Schiller DuCanto & Fleck Family Law Center

A.B., Bryn Mawr College | J.D., University of Chicago

Steven Resnicoff ............................................ Professor of Law
Co-Director, Center for Jewish Law and Judaic Studies
B.A., Princeton University | J.D., Yale University
Rabinick, Beth Medrash Govoha

John C. Roberts ............................................... Dean Emeritus
Professor of Law

B.S., Northwestern University | LL.B., Yale University

Zoe Robinson ............................................... Assistant Professor of Law
B.Mus., Griffith University | B.A., Australian National University
LL.B., Australian National University | J.D., University of Chicago

David Rodriguez ........................................... Director, Third year in Practice
Visiting Professor of Law
B.S., University of Illinois | J.D., University of Michigan

vii
Jennifer Rosato Perea ................................................................. Dean Professor of Law
B.S., Cornell University | J.D., University of Pennsylvania

Howard M. Rubin ................................................................. Associate Dean for Lawyering Skills
Associate Professor of Law
Director, Field Placement Program

B.S., University of Illinois | J.D., DePaul University

Jane Rutherford ................................................................. Professor of Law
A.B., University of Chicago | J.D., University of Michigan

Joshua D. Sarnoff ............................................................... Professor of Law
B.S., Massachusetts Institute of Technology | J.D., Stanford University

Jeffrey M. Shaman ......................................................... St. Vincent de Paul Professor of Law
Associate Dean for Lawyering Skills
Director, Field Placement Program

B.A., Pennsylvania State University | J.D., University of Southern California
LL.M., Georgetown University

Stephen A. Siegel .......................................................... Distinguished Research Professor of Law
B.A., Columbia University | J.D., Harvard University
LL.M., Harvard University

Terry Smith ........................................................................ Distinguished Research Professor of Law
B.A., Brown University | J.D., New York University

Raia Stoicheva .................................................................. Clinical Instructor

Susan Thrower .................................................................. Associate Professor of Law
Director, Legal Analysis, Research and Communication

B.A., University of Virginia | J.D., Wake Forest University

Allison Browneil Tirres .................................................. Associate Dean for Academic Affairs
Associate Professor of Law

B.A., Princeton University | M.A., Harvard University
J.D., Harvard University | Ph.D., Harvard University

Vincent Vitullo ............................................................... Emeritus Professor of Law
A.B., Loyola University of Chicago | J.D., Loyola University of Chicago
LL.M., Yale University

Anthony G. Volini ......................................................... Senior Legal Writing Instructor
B.S., Benedictine University | J.D., Loyola University of Chicago

Mark C. Weber ........................................................................ St. Vincent de Paul Professor of Law
B.A., Columbia University | J.D., Yale University

Judge Warren D. Wolfson .................................................. Distinguished Visiting Professor of Law
B.S. University of Illinois at Chicago | LL.B., University of Illinois
RINN LAW LIBRARY STAFF

Allen Moye .................................................. Associate Dean for Information Technology & Library Services
B.A., Howard University | J.D., University of Richmond
Associate Professor
M.L.S., Catholic University

Michael Schiffer .......................................................... Associate Director for Computer Services
B.A., University of Chicago | J.D., University of Michigan
M.L.S., Rosary College

James Brownridge .......................................................... Stacks Manager/Circulation Assistant
B.S., Northwestern University | J.D., IIT Chicago-Kent College of Law
M.L.S., University of Texas

Kim Gainey .......................................................... Interlibrary Loan, Circulation Assistant

Mark Giangrande .......................................................... Faculty Services, Reference Librarian
B.A., University of Chicago | J.D., University of Michigan

Heather Hummons .......................................................... Head of Access Services

Maria Willmer .......................................................... Librarian, Legal Research Specialist
B.A., University of Michigan | A.M.L.S., University of Michigan

Kristy Lueshen .......................................................... Reservers Coordinator/Circulation Assistant
B.S., Northern Illinois University | M.L.S., Rosary College

Lenore Boehm .......................................................... Acquisitions Manager

Denise Glynn .......................................................... Associate Director for Technical Services & Processing
B.S., Northern Illinois University | M.L.S., Rosary College

Jack Gorman .......................................................... Government Documents & Information Librarian

David Labno .......................................................... Cataloging Assistant

Elizabeth Shivers .......................................................... Serials Assistant

Daniel Ursini .......................................................... Acquisitions Assistant

B.A., University of Michigan | A.M.L.S., University of Michigan

ix
<table>
<thead>
<tr>
<th>Name</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeff Becker</td>
<td>Robert Loeb</td>
</tr>
<tr>
<td>Shawn Bersson</td>
<td>Angelica Lopez</td>
</tr>
<tr>
<td>Steve Brandstedt</td>
<td>Terrence MacCarthy</td>
</tr>
<tr>
<td>Mary M. Broshanan</td>
<td>Anne MacMillan</td>
</tr>
<tr>
<td>Vince Browne</td>
<td>Scott Main</td>
</tr>
<tr>
<td>Natalia Carlomango</td>
<td>Timothy M. McCarthy</td>
</tr>
<tr>
<td>Carrie Chapman</td>
<td>VY'Shaey Mitchell</td>
</tr>
<tr>
<td>James Clark</td>
<td>Joey Mogul</td>
</tr>
<tr>
<td>Joseph Comer</td>
<td>Ralph Morris</td>
</tr>
<tr>
<td>Karen Conti</td>
<td>Brian Nach</td>
</tr>
<tr>
<td>Emily Czerniejewski</td>
<td>Jack O'Malley</td>
</tr>
<tr>
<td>David D'Amato</td>
<td>Christina Pannos</td>
</tr>
<tr>
<td>Kelli Dudley</td>
<td>Todd Pugh</td>
</tr>
<tr>
<td>Colin Dunn</td>
<td>Shankar Ramamurthy</td>
</tr>
<tr>
<td>Katheryn Dutenhaver</td>
<td>Martin Robins</td>
</tr>
<tr>
<td>Maureen Egan</td>
<td>Kari Rollins</td>
</tr>
<tr>
<td>David Ganfield</td>
<td>Ana Santos Rutschman</td>
</tr>
<tr>
<td>Sara Garber</td>
<td>Katherine Schostok</td>
</tr>
<tr>
<td>Robert Gevirtz</td>
<td>Sang Shim</td>
</tr>
<tr>
<td>Christopher Grohman</td>
<td>Raya Stoicheva</td>
</tr>
<tr>
<td>Ellen Gutiontov</td>
<td>Theodore Thomas</td>
</tr>
<tr>
<td>Valerie Gutmann Koch</td>
<td>Claudia Valenzuela Rivas</td>
</tr>
<tr>
<td>Susan Haddad</td>
<td>Elisabeth Ward</td>
</tr>
<tr>
<td>Kay Hanlon</td>
<td>Torrick Ward</td>
</tr>
<tr>
<td>Maria Harrigan</td>
<td>Paul Winters</td>
</tr>
<tr>
<td>Keith Hebeisen</td>
<td>Destiny Woods</td>
</tr>
<tr>
<td>Thomas Hennelly</td>
<td></td>
</tr>
<tr>
<td>Richard Hutt</td>
<td></td>
</tr>
<tr>
<td>John Hynes</td>
<td></td>
</tr>
<tr>
<td>Patrick Jones</td>
<td></td>
</tr>
<tr>
<td>Brent Kidwell</td>
<td></td>
</tr>
<tr>
<td>Sarah King</td>
<td></td>
</tr>
<tr>
<td>Claire Kossman</td>
<td></td>
</tr>
<tr>
<td>John Kirby</td>
<td></td>
</tr>
<tr>
<td>Leslie Landis</td>
<td></td>
</tr>
<tr>
<td>Valerie Leopold</td>
<td></td>
</tr>
<tr>
<td>Steven Levy</td>
<td></td>
</tr>
<tr>
<td>Lisa Lilly</td>
<td></td>
</tr>
<tr>
<td>Daniel Lindsey</td>
<td></td>
</tr>
</tbody>
</table>

X