

The following document is AN EXAMPLE ONLY, intended to help you better understand the kind of provisions typically included in this type of agreement. It is not intended as a substitute for consulting with an experienced attorney and receiving legal advice based on the facts and circumstances of a particular case. It also does not necessarily represent the only possible way to structure the business relationship or the range of deal terms that might be available in a particular situation.

It is important to remember that just as every transaction is unique, so is the proper structure of the agreement documenting that transaction. Rarely does a so-called “standard” or “boilerplate” legal form fit the particular needs of the parties to a transaction. When a party says their contract is “standard” what they usually mean is that it is in a format that they are accustomed to using. There is some value in starting from a common ground, but never assume that a “standard” contract is not negotiable. It is all too common for parties to employ a “standard” form agreement without carefully considering the implications of its terms or its failure to address critical issues until a dispute arises. There are those who believe that the process of negotiating the terms of agreements is tedious and is a waste of time and money – they often try to cut corners by employing “standard” forms. However, in our experience the process of careful drafting and thorough negotiation is as valuable (or more so) than the final product. Those who take the time to clearly discuss their expectations, and to memorialize those expectations in a written agreement, forge stronger relationships and are much less likely to find themselves in a dispute later on.

ESTABLISHING LICIT MARKETS IN ANTIQUITIES: THEORY AND STRUCTURE



**MSTD 297.11 SPECIAL TOPICS: CULTURAL
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INTRODUCTION



- What is a “licit” market and what does it look like?
- Review scholarly literature regarding licit markets.
- Look at variety of policy approaches which encourage the establishment of licit markets.

INTRODUCTION



- Licit markets are a compromise between absolute prohibition and unregulated trade.
- Some of the more promising approaches emphasize creating incentives rather than imposing consequences.
- A universal commitment to transparency, authenticity and education will foster development of a licit trade in antiquities.

THE CASE FOR LICIT MARKETS



- The debate over the trade in antiquities is highly emotional and contentious.
- Scholarship splits down predictable value-based lines.

THE CASE FOR LICIT MARKETS



- The focus has been on controlling the movement of antiquities through use of export controls and import restrictions.
- There is near universal agreement among scholars that unduly restrictive export controls are counter-productive and may even encourage illicit trade.
- The best reason for establishing licit markets is that they provide an alternative to the black market.

THE CASE FOR LICIT MARKETS



- Recent scholarship is rethinking the debate in terms of mutually shared interest in preserving archaeological record.
- Complicating factors:
 - Free markets
 - Ownership
 - Sovereignty
 - Transparency

THE CASE FOR LICIT MARKETS



- Need for a comprehensive approach.
- Address values:
 - “A legal trade in properly documented materials, under the auspices of the nations whose objects they are, can in fact serve the interests of many of the groups concerned with cultural property, and at the same time aid the fight against looting and illicit trade.” -- Alexander Bauer
- Create incentives:
 - “There is a paucity of heritage scholarship on the function and effectiveness of ... rewards systems.” – Derek Fincham

APPROACHES TO CREATING LICIT MARKETS



- The legal framework regulating the trade in antiquities is a patchwork of international laws and treaties, national patrimony laws, export controls, import restrictions, and criminal prosecutions, forfeiture proceedings and repatriation claims.
- Other tools include discovery and reporting laws, national and international registries, tax incentives, partage and modified partage schemes, the sale of duplicates, and suggestions for the management of archaeological sites.

APPROACHES TO CREATING LICIT MARKETS



- Lack of empirical research on the effectiveness of alternative approaches.
- Complexity and variety of individual national laws.
- International Cultural Property Ownership and Export Legislation (ICPOEL) Database --
www.ifar.org/icpoel.php

APPROACHES TO CREATING LICIT MARKETS



- International laws and treaties
- National patrimony laws
- Export controls
- Import restrictions
- Criminal enforcement, forfeitures and repatriation claims
- Discovery and reporting laws
- Tax incentives
- Partage
- Sale of Duplicates
- National and international registries
- Management of archaeological sites

CONCLUSION



- The international market for antiquities continues to grow.
- Each country has a unique approach to cultural property policy.
- The central issue is whether the regulatory scheme of a particular country functions in a way that best promotes the preservation of the archaeological record and encourages the legitimate trade in antiquities.
- Comprehensive schemes which provide a combination of consequences, incentives, transparency, and education can promote the establishment of licit markets.