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Museum Collections Care Problems and California’s “Old Loan” Legislation†

by

JUDITH L. TEICHMAN*

Introduction

Museum collections care standards have risen significantly in the last twenty years. Numerous factors have contributed to this rise, including increased professionalism in the museum field and the use of computers to manage collections records.1

Museums have improved their ability to account prospectively for objects in their collections. However, many older museums are burdened with the need to store, care, and account for objects of which ownership is uncertain or which are no longer relevant to their collections. Tight

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1. In November 1982, museums and historical societies received a questionnaire in connection with a project supported by the Fine Arts Museum of San Francisco and endorsed by the Board of Directors of the California Association of Museums, and by the Northern and Southern California Registrars’ Associations. The questionnaire asked for their responses regarding collection management practices and problems. The results of the 1982 survey are reported in the Report on Results of Survey of California Museums Concerning Long-Term Loans (Feb. 20, 1983) [hereinafter 1982 Survey], found in “Appendix A” of Teichman, In Support of a Legislative Solution to the Problems of Objects of Uncertain Status in Museum Collections, ALI/ABA LEGAL PROBLEMS OF MUSEUM ADMINISTRATION 293, 303 (1983).

Only three museums responding to the 1982 Survey required their registrars to have specialized training before 1970. By 1982, 28 of the museums required specialized training. 1982 Survey at 306, 312. More than 70% of the institutions responding said that their current recordkeeping procedures had been instituted after 1970. Of 60 institutions responding, only two currently had computerized records. Another 24 institutions expected to computerize within two years. A third of those responding indicated that they would probably never be computerized, because of either a lack of interest or a lack of funds. The 1982 Survey at 318. Despite this response, it seems likely that most museums eventually will computerize their collections records. The cost of computers has decreased significantly while the public’s aptitude for using computers has risen in a variety of areas, including inventory control.

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operating budgets exacerbate the difficulties associated with these objects, as do rising prices for "collectibles" which give those who may have inherited an ownership interest in the objects many years before an incentive to pursue their claims.

This Essay describes the circumstances leading to these collections problems and the results of dealing with the problems of old loans to museums under case law prior to California's 1983 adoption of museum loan legislation. It includes a section-by-section explanation of the California legislation with cross references to the old loan legislation adopted in other states and a brief discussion of potential constitutional issues relating to the limitations on actions to recover old loans which are found in the legislation.

I

Collections Care Problems

A number of older museums have had objects of uncertain ownership in their collections for many years. The exhibition standards and collecting practices of many of these museums have evolved. Often the objects of uncertain ownership do not meet current exhibition quality standards, or the museum no longer displays the type of object involved. For example, what was a general museum may now be a fine arts museum with an emphasis on European paintings and decorative arts. In addition, most objects of uncertain status have relatively little or no monetary value.

Museums are potentially liable if any of the following occur: they transfer objects of uncertain ownership to someone other than the rightful owner; the objects disappear; or the objects deteriorate or are damaged. This potential liability forces museums to apply conservation measures at their own risk. Absent legislation limiting liability under these circumstances, the museum's liability may continue indefinitely into the future even though the objects have modest value in the marketplace. Meanwhile, caring and accounting for these objects is a drain on museum resources.

A. Scope and Examples of Museum Loan Problems Absent Legislation

1. Establishing Status of Objects in the Collection

Frequently, a threshold problem is a museum's inability to establish the status of objects which have been in its collection for many years as loans or gifts. If the status of objects as loans is clear, there may be a

2. Many museums have registration records for loans but are unable to locate the objects in their collections. In the survey, nine museums reported this circumstance for more than
problem in locating the lenders or in tracing and locating their successors in interest.3 People who lend art to museums move or die, just like everyone else.

By far, the most universal factor contributing to the uncertain status of museum objects is incomplete and inadequate past records. This appears to be due primarily to a lack of sophistication in past record-keeping systems, a shortage of staff, or a combination of the two.4

Another factor is the inherent difficulties with object labeling or identification systems. It is awkward to affix a label to tiny items, such as jewelry or parts of mechanical equipment.5 In addition, many identification systems are not permanent. For example, museums often paint an identification number on the object itself, using paint which can be removed without damage to the object. Paint used in the past may have dried out and flaked off after a few years, leaving the museum with no means of associating the object with a record which would establish whether the object was part of the permanent collection or a loan. Similarly, some objects were identified using brass tags and brass wires. After many years, the brass may have suffered from metal fatigue and broken, leaving the object with no identification.

Terse written descriptions of an object, coupled with multiple examples of the type of object involved, make it difficult or impossible to associate a particular collection record with a specific object. To appreciate the difficulty, imagine yourself trying to correlate a loan form for an

<table>
<thead>
<tr>
<th>Category</th>
<th>Museums with 25% or More of Collection in This Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original lender is unknown:</td>
<td>6</td>
</tr>
<tr>
<td>Original lender is known, but the current address is unknown:</td>
<td>17</td>
</tr>
<tr>
<td>Original lender is known, but current owner is unknown:</td>
<td>13</td>
</tr>
<tr>
<td>Current owner is known, but owner's address is unknown:</td>
<td>8</td>
</tr>
</tbody>
</table>

To further complicate matters, two-thirds of the museums responding to the Survey noted that they had lenders who resided more than 100 miles from the institution. Id. at 305, 314-17.

3. The 1982 Survey included a series of questions relating to loaned objects and lenders. About a quarter of the museums responding to the Survey did not answer this series of questions, usually because of the time required to determine the answers. Nevertheless, a large percentage of the collections involved in the museums which did respond confirmed a serious problem with old loans:

4. Id. at 306.

5. Id. at 307.
“Aborigine boomerang” with the right boomerang—in a museum with twenty unlabeled boomerangs!\(^6\)

A majority of the museums responding to an inquiry about current loan procedures in a 1982 California survey indicated that they no longer accept loans for indefinite terms. Rather, they require periodic renewal of loans and lender notification of any address changes.\(^7\) Thus, even without legislation regulating the relationship between museums and their lenders, improved borrowing and lending practices are reducing the likelihood that the types of problems which museums face in dealing with older loans and objects of uncertain status will recur. Nevertheless, legislation is needed to establish minimum standards governing loans for museums which do not have the luxury of large professional staffs and may not be aware of contemporary collections management practices; and to deal fairly with the problems arising from past practices and circumstances.

2. Considerations Relating to the Care of Objects

Many older museums began as general museums established to provide the community with access to all kinds of collections, including everything from natural science specimens to history collections to the fine arts. Over the years, these museums developed more focus, relegating objects once prized by the museums and the communities they serve to storage or loaned to other institutions, which have more use for them. Storing, conserving, and securing these objects consumes resources needed for more relevant collections. The cost of computerizing the records and performing physical inventories is substantial.

It is safe to say that there is no such thing as an older museum which is not short of storage space. The cost of providing storage space includes labor costs and the risk of damage to the objects when they are moved in order to access other objects in the museum’s collection.\(^8\) Not

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\(^6\) This example is based on the author’s personal experience in the 1970s working with museum staff trying to trace objects in collections which had been on loan for more than 50 years.

\(^7\) 1982 Survey, supra note 1, at 317.

\(^8\) George E. Hartman, Jr., museum architect and partner at Hartman & Cox, Architects, Washington, D.C. had the following to say about museum costs:

*[Since the incremental cost of adding one more item to the collection is small, it is perhaps assumed that the average cost is insignificant. A careful analysis of the specific costs of such elements as accessioning, cataloging, periodic inventory, maintaining accessible records, environmental and pest control, storage hardware, security, conservation, insurance, and general overhead including management and building expense, would almost certainly show that the total cost of simply maintaining a single object in a museum over time is quite substantial.]

A study prepared by the Institute of Archeology and Anthropology of the University of South Carolina in March 1981 “estimated the initial one-time building and storage costs for ‘one
only is there a price tag attached to storing objects, but maintaining documentation on the objects requires staff, and staff requires office space.

Typically, as the value of property loaned to a museum increases, so does the incentive for its owner to maintain contact with the museum. It is probably for this reason that most of the unclaimed or unidentified property in the custody of museums is of marginal quality, interest, and value. While this is generally the case, it is also true that objects do not come with built-in mechanisms for determining their fair market value at any given moment. Therefore, museums cannot safely make assumptions about object value.

Obtaining the information necessary to establish the fair market value of objects can be expensive and time-consuming. This process is even more difficult when objects are no longer relevant to the museum's present collection, since, as the museum focuses on its newer acquisitions, no one on its staff is familiar with the older objects' subject matter.

In addition to mounting costs incurred in caring for collections, museums face potential liability for the deterioration of collections left in their care. Even with contemporary environmental controls, the condition of most tangible property changes over time. Textiles disintegrate. Colors in works of art, particularly those on paper, fade. The oils in a painting may dry out, and the pigment may begin to flake off. Additionally, the changed condition may present a hazard either to staff or to other objects in the collection. For example, a painting may contain lead or another toxic material, endangering those who handle it. An animal hide which once was a useful natural history specimen may attract insects which threaten other, more valuable, specimens.


9. “The nature of particular collections was often cited as a reason for a museum's inability to keep track of objects on long-term loan. Organic specimens, textiles and artworks on paper tend to disintegrate, making their later identification sometimes impossible. Tiny items . . . are often difficult to label. . . .” (citation omitted). The 1982 Survey, supra note 1, at 307.

10. One natural history museum described efforts made over a period of almost 30 years to trace the owner of a collection of primarily ethnographic materials deposited with the museum in 1926. The institution wrote the lender, his attorney, and others who might know how to locate the lender, including the IRS and the U. S. Department of State, in 1929, 1939, 1940, 1947, 1950, and 1957. The lender was thought to reside in New York City so probate records were searched in all five boroughs. The museum’s incentives to locate the lender including the following:

 [the collection] included some animal hides which served as a breeding ground for insects and which, despite frequent fumigation efforts, constituted a hazard to other materials in the museum's collections. In a memorandum to the Director written over 35 years ago, in 1947, the Curator concluded: “This collection has been a white
3. Ownership Disputes and Their Costs

Even though most of the objects of uncertain status are of modest value and never are the subject of an ownership claim, ownership disputes do arise. Heirs may disagree over who owns an object, or the museum may receive a request for the return of an object from someone with inadequate proof of ownership. If the museum honors a request and delivers the article to an individual claiming title to the piece, the museum runs the risk of a later confrontation with someone possessing better evidence of ownership. The museum could be liable for the value of the property released to the wrong person.

The most notable exception to the general rule that unclaimed property has relatively little market value is a painting by Frederic E. Church, one of two paintings placed by Therese Davis McCagg on indefinite loan to what is now the National Museum of American Art of the Smithsonian Institution ("National Museum") in 1917. Its estimated value when Mrs. McCagg died in 1932 was $250. By the time suit was filed to recover the Church painting in the late 1970s, another of his works had sold for $2.5 million.

Although Mrs. McCagg's will specifically disposed of several other paintings, the paintings on loan to the National Museum were not mentioned and the executor did not collect them as he did the other assets in the estate.

The National Museum tried to locate Mrs. McCagg's heirs in 1942 to obtain permission to clean the paintings. It alleged that because of its inability to locate the heirs, it was forced to bear the cost of conserv-

1982 Survey, supra note 1, at 307-308. A note at the bottom of the documents provided by the museum reads: "We still have this loan collection! 11/17/82." Id.

11. The Church painting was *South American Landscape*. The second painting was Francois Diday's *Mountain Scene*.


13. Brief for Appellant at 22, *McCagg* (No. 81-905). According to the decision, the National Museum's records "contain a newspaper clipping giving notice of Mrs. McCagg's death. This death notice contains the names of the executor and all four of McCagg's siblings, who were the residuary legatees. . . ." *McCagg* 450 A.2d at 418, n.5. The court dismissed the National Museum's ineffective efforts to trace the heirs, pointing out in a footnote that "in all probability the successors could have been contacted with minimal effort." Id. The court's reaction may have assumed a higher level of sophistication in the museum staff in 1942 than was warranted.
ing the paintings, an expense it would not have been willing to incur except on its own property.\textsuperscript{14}

According to the National Museum's pleadings, an art dealer, Mr. James Maroney, inquired about the Church painting in 1979. Thereafter, the National Museum received additional inquiries from persons claiming to be heirs of Mrs. McCagg. It appears that some of the heirs assigned their interests in the painting to Mr. Maroney.\textsuperscript{15}

The National Museum resisted the heirs' efforts to recover the painting because they unreasonably delayed presenting their claim and because the National Museum had been prejudiced, both in its ability to present its own claim to the painting, and because it had to take measures to conserve the painting at its own expense and risk. The court permitted the heirs to recover the paintings even though they had been on loan for almost sixty-five years.\textsuperscript{16}

In the absence of legislation establishing different ground rules, museums must take heed of the \textit{McCagg} decision when dealing with objects on loan, including objects of minimal market value. With a 10,000 percent increase in value of the Church painting in the almost 50 years following the lender's death, the \textit{McCagg} case illustrates the impact that changes in the art market and the boom in collectibles can have on what seem to be mundane collections issues.\textsuperscript{17} That impact is not limited to situations where the value of the work has escalated to the millions of dollars.

If the expense of litigating is not too high, recovery of objects of lesser market value, as low as $5,000 to $10,000, represents a windfall to relatives of more modest means. Even without recovery, however, staff time and legal services may be required to resolve disputes over old loans.

\textsuperscript{14} \textit{McCagg}, 450 A.2d at 417-18.
\textsuperscript{15} Brief for Appellant at 4-5, \textit{McCagg} (No. 81-905). Maroney is also shown as a party or amicus curiae in a certificate of service filed by counsel for the McCagg estate.
\textsuperscript{16} \textit{McCagg}, 450 A.2d at 419. The theories presented in the \textit{McCagg} case will be discussed later. In the meantime, one of the most delightfully naive but apparently effective visions conjured up has to be from the heirs' brief on appeal which provides as follows:
Moreover, the passage of approximately sixty-four years from the date of the loan of the paintings to the date of the demand for their return is not in and of itself evidence of an unreasonable period. Were Mrs. McCagg thirty years old at the time she deposited her paintings with the Museum, at a spry ninety-four years of age, she could visit her Church painting, as it hangs in the Museum's gallery (with the plaque acknowledging her ownership) each Saturday and have no reason to inquire of Museum management whether it is claiming ownership of her paintings.
Brief for Appellee at 8, \textit{McCagg} (No. 81-905).
\textsuperscript{17} The dramatic increase in value also demonstrates one of the inherent difficulties in a system for dealing with old loans which might be based on a \textit{current} fair market value.
To illustrate, the author represented the city of San Francisco in a
suit to recover a collection of weapons loaned in 1930 to the M.H. de
Young Memorial Museum ("de Young"). The suit involved an ambigu-
ous loan receipt which stated "The Wilfred H. Hemingway Collection of
Australian Aborigine Artifacts, delivered to the museum by Wayne M.
Collins." Mr. Hemingway died in the 1950s, and his wife deeded the
collection to the museum. Mr. Collins died in the 1970s, and his son, as
executor of his father's estate, sued to recover it in 1975.

Mr. Hemingway and Mr. Collins had shared offices in the late 1920s
and early 1930s. Since Mr. Collins had performed legal services for Mr.
Hemingway, the collection might have been given or claimed in payment
for these services. The younger Mr. Collins cooperated fully in efforts to
unravel the mystery, even making his father's old legal documents available to an "examiner of questioned documents" to see if the arrange-
ments pertaining to the collection could be deduced based on whose
typewriter had been used to prepare the inventory. After much time and
energy was expended on both sides, the Collins family decided not to
pursue the claim.19

4. Significance and Sources of the Problems

How significant are the problems of older loans to museums in Cali-
fornia? Of sixty-one California museums responding to the 1982 survey,
fifty-seven indicated that they had objects in their custody that has been
loaned to them. Eight of the museums had from 4,000 to 100,000 loaned
objects, while another sixteen reported 500 to 4,000 loaned objects.
More than forty museums reported that they also had property on loan
to other museums; thus they experience both the lender and the borrower
side of the loan problem.20

Several museums attributed their inability to establish the status of
objects to the number of times they had been forced to relocate. Approx-
imately thirty of the museums responding to the survey had been relo-
cated at least once. Some of these relocations occurred during
emergency situations such as floods, the 1906 earthquake and fire in San
Francisco, and the virtual overnight conversion of museums to hospitals
during World War II. Non-emergency conditions causing problems for
some major California museums include the merger of museums, the ad-

18. Wayne M. Collins, Sr., is best known for having defended "Tokyo Rose."
19. Collins v. City and County of San Francisco, No. 690-291 (Super. Ct., San Francisco,
filed May 16, 1975).
dition of collections with similar or overlapping numbering systems, and registration staff turnover.21

II

McCagg and Other Pre-1983 Examples Involving Recovery of Loans to Museums

The recovery of personal property, both stolen or in bailment situations, has generated much litigation, and all states have legislation governing the disposition of unclaimed or abandoned property. A thorough examination of the facts in McCagg22 and the author's experiences with other claims involving loans to museums reveal, however, that claims for recovery of objects on loan to museums are in a category all their own. As the McCagg decision demonstrates, a court is very reluctant to conclude that a lender's or an heir's recovery is barred by the passage of time.

A. National Museum's Argument in Favor of Retaining Possession

A loan to a museum creates a bailment. In the general rule of bailments, the statute of limitations on recovery does not begin to run until a demand for return is made.23 In McCagg, the National Museum argued the following notwithstanding the general rule:

(1) The facts gave rise to an inference that Mrs. McCagg either intended to give the paintings to the Museum or thought that she had already done so; or
(2) the bailment ended with Mrs. McCagg's death and the executor of her estate had a duty to demand return of the paintings at that time; or
(3) where no time is specified for making a demand, the demand must be made within a "reasonable time" and the demand in the McCagg case was not timely.

The National Museum stated the question before the court as follows:

When someone lends valuable property to a museum and dies without having demanded return of the property or otherwise providing for its disposition, and when the loan contract itself is silent as to the term of the loan or the intended ultimate disposition, at what point will the law

21. Id. at 305-06.
22. See supra notes 12-17 and accompanying text.
23. See Irvine v. Gradoville, 221 F.2d 544 (D.C. Cir. 1955). In McCagg, the parties agreed that a gratuitous bailment for an indefinite term was created when the paintings were placed on loan. As the court of appeals summarized, "a cause of action for return of the property does not arise until demand has been made and refused, or the bailee takes some action inconsistent with the bailment." Estate of McCagg v. Indust. Nat'l Bank, N.A. 450 A.2d 414, 416 (D.C. App. 1982).
deem a state of repose to exist such that claims to recover the property are barred.\textsuperscript{24}

The National Museum argued to no avail that the heirs’ delay in demanding the painting had prejudiced the Museum’s ability to establish that Mrs. McCagg intended to give, or thought she had given, the paintings to the National Museum.\textsuperscript{25} The court did not respond to the museum’s concern about establishing actual intent. Rather, the court focused on whether the parties expected that Mrs. McCagg could delay indefinitely requesting return of the painting, and held as follows: “In sum, we decline to adopt a rule that a limited time for making demand must be imposed regardless of the parties’ intent. To put the same conclusion in a somewhat different way, an unlimited period may be reasonable, depending on the circumstances.”\textsuperscript{26}

B. \textit{McCagg} Court’s Reasoning

Without citing any expert or other testimony on the subject, the court observed:

The nature of the loaned property indicates that a loan spanning several decades would not be unreasonable, since, with appropriate storage or display, oil paintings can last for centuries. These circumstances establishing the reasonableness of a very long-term loan distinguish this case from those in which a finite reasonable time standard was applied.\textsuperscript{27}

The court ignored the following considerations cited in the National Museum’s pleadings, which support placing the burden of asserting a claim to property upon its owner:

Many museums, particularly older ones like the National Museum of American Art in this case, possess a large number of items deposited with them several decades or more in the past on terms no more definite than those covering the paintings in issue here. As is the case with the National Museum, most museums had, and still do have, very limited personnel and financial resources and, until recently, they had little sophistication about potential legal problems that could develop from the rather informal arrangements and procedures used in the past.

\textsuperscript{24} Brief for Appellant at 7, \textit{McCagg} (No. 81-905).
\textsuperscript{25} Id. at 22.
\textsuperscript{26} \textit{McCagg}, 450 A.2d at 417. Compare the court's language with the findings of the California legislature relating to the intent of people who leave objects on long term loans to museums: “[T]he unique circumstances of unclaimed loans . . . include the likelihood . . . that often lenders intend eventually to donate property but place it on indefinite or long term loan initially for tax and other reasons . . .” \textit{Cal. Civ. Code} § 1899(c) (West 1983). In this regard, responses from two of the museums to the 1982 Survey reflected a belief, albeit mistaken, that a museum acquires title to loaned property when the lender dies. 1982 Survey, supra note 1, at 307.
\textsuperscript{27} \textit{McCagg}, 450 A.2d at 417. In sharp contrast, the California legislature found that “[t]here is an inherent tendency for the condition of tangible property to change over time.” \textit{Cal. Civ. Code} § 1899(d).
for accepting loan items. As a result, many museums now find themselves possessed of hundreds or thousands of items for which they feel they are required to provide continuous care, security and storage; yet they are unable to make efficient decisions as to their disposition because of doubtful ownership.28

C. Similar Decisions

The reaction of the court of appeals in McCagg is similar to what the author experienced in defending a lawsuit involving a collection of weapons of lesser value loaned to the de Young Museum in 1916.29 For a variety of reasons related to the age of the loan, the de Young was not able to locate or identify all of the objects. Having warehoused this collection for almost seventy years, the de Young faced liability for the value of missing items. In fact, the de Young stopped displaying weapons, other than as part of a decorative arts exhibit in the mid-1960s. The museum really wanted the loan terminated as its change in subject matter took place. The only reason for defending the action was to protect the City of San Francisco from liability for what was missing.

In this instance, the assignee of the lender had died in the 1930s. While files relating to a partial probate of the estate in a U.S. court in China described the collection, it was never distributed to the lender’s heirs, who included his spouse and three children. Over the years different family members asserted inconsistent claims to the collection. Eventually they joined forces and sued to recover it.

Despite heroic efforts, it became clear that some of the objects would not be located. Rather than insisting on a judgment to protect itself against claims from third parties, the City of San Francisco offered to settle the dispute by turning over what the de Young still had in its collection in exchange for the heirs’ agreement to hold San Francisco harmless in the event of later third party claims. It took a trial judge to convince the heirs, who were incensed that not all of the objects could be located, to settle on these terms.

Although at this stage the court would not consider any claim against San Francisco for the value of what was missing, there was a definite lack of sympathy for the institution and its problem—having to deal with hundreds of unclaimed objects or old loans. This was true even though the particular collection had been on loan for almost seventy years, and the fair market value of the entire collection was probably less than $30,000.

28. Brief for Appellant at 7-8, McCagg (No. 81-905).
It was clear to the author, as it is to any attorney who has ever represented a museum in a similar situation, that the museum would not prevail in a contest with the heirs over loaned objects absent legislation regulating some basic aspects of the museum-lender relationship. A recognition of this fact led to the 1982 Survey referenced above and the California legislation dealing with old loans.

III

"Old Loan" Legislation

The term "old loan" legislation refers to legislation which, at a minimum, sets a limitation on the period within which a lender can reclaim property on loan to a museum. It also provides that when a lender's rights are extinguished, title to the property vests in the museum, rather than in the state, as it does under most abandoned property statutes. By providing a mechanism for dealing with old loans, the legislation also provides a somewhat clumsy tool for dealing with other objects of uncertain or undocumented status in the custody of museums. This type of legislation is a relatively new tool for dealing with collections problems. In 1975, Washington addressed the problem of old loans by first adopting a statutes of limitations with very limited applications; Maine adopted a similar statute in 1981.

California adopted the first comprehensive loan legislation in 1983. The California legislature drafted the statute, taking into account the results of the 1982 Survey\(^\text{30}\) regarding the museums' collections management problems and existing laws relating to the recovery of personal property. The legislation reduces the likelihood of similar problems occurring in the future by requiring museums to notify future lenders of their loan conditions and lenders to notify museums of changes in address and ownership.

At last count, eighteen other states have adopted old loan legislation in one form or another. The states are as follows: Arizona, Colorado, Indiana, Iowa, Kansas, Louisiana, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Texas, Utah, and Wyoming.\(^\text{31}\) In addition, Washington en-

\(^{30}\) See note 1, supra.

acted legislation of more general application. Various committees of the Association of the Bar of the City of New York and the Committee on Fine Arts of the New York State Bar are studying the subject.

A. Pre-1983 Legislation and Survey Results Pertaining to Museum Loans

1. Unclaimed Property Laws

The unclaimed property law in some states may be applicable to objects on loan to museums for either indefinite terms or after the expiration of the agreed-upon term. Before 1983, this apparently was the case in California. Since property subject to abandoned or unclaimed property laws generally escheats to the state involved, this result is not desired because property escheating to the state which has little commercial value may be destroyed even though it has significant scientific, historical, or cultural value.

The old loan legislation in California specifically supersedes the state’s Unclaimed Property Law and makes the following pertinent findings:

While the Unclaimed Property Law addresses problems similar to those which arise in the museum context when the parties to loans fail to maintain contact, there is need for an alternative method of dealing with unclaimed property in the hands of museums, one tailored to the unique circumstances of unclaimed loans to museums. These circumstances include the likelihood that the unclaimed property has significant scientific, historical, aesthetic, or cultural value but does not have great monetary value; that the public’s interest in the intangible values of unclaimed property loaned to museums can best be realized if title is transferred to the museums holding the property; that often lenders intend eventually to donate property but place it on indefinite or long term loan initially for tax and other reasons; and that many museums have incurred unreimbursed expenses in caring for and storing unclaimed loaned property.


33. See Teichman, supra note 1, at 299-300.
34. CAL. CIV. CODE § 1899.11(a) (West 1985). Although the old-loan legislation supersedes the Unclaimed Property Law generally, museums have the option of utilizing the Unclaimed Property Law under this provision.
36. Id. § 1899(c). These findings were the result of informal consultations with the California State Controller’s attorneys who were of the opinion that the Unclaimed Property Law’s application to property on loan to museums was unintentional. Based on their experience in dealing with personal property in safety deposit boxes, they also are of the opinion that muse-
2. Pre-1983 Loan Statutes in the State of Washington

In 1975, the State of Washington enacted legislation authorizing the Board of Regents of the University of Washington to adopt rules terminating lender's rights in documents and materials on loan to the Burke Museum, the state museum at the University of Washington. The objects covered would become the property of the university if not claimed within ninety days of the museum having mailed or published notice requesting the owner, or persons having information regarding the owner, to contact the museum. The legislation was utilized only twice, in the mid-1980s. The Burke Museum now relies on new legislation applicable to museums generally.37

3. Pre-1983 Loan Statutes in the State of Maine

Maine adopted legislation in 1981 setting forth conditions under which property held by a museum or historical society for twenty-five years or more could be treated as abandoned and as the property of the institution having physical custody. To acquire title, the institution must publish notice in a newspaper of general circulation in the county in which the institution is located. This notice must contain the name and last known address of the last known owner, a description of the property, and a statement that if a claim is not established within sixty-five days the property will be deemed abandoned and title will vest in the institution.38

B. Survey of California Museums Concerning Long-Term Loans

In anticipation of preparing California's old loan legislation, in November 1982, the author and her law-student team developed a questionnaire regarding collections management practices, with an emphasis on problems associated with old loans, which was sent to more than 150 museums and historical societies in California.39 Of the ninety-one institutions are much better situated to deal with the subject matter of old museum loans than is the State Controller. The State Controller supported the adoption of the California legislation. Assembly Committee on Judiciary, Consultant's Report on SB 603 (May 23, 1983).

Colorado specifically excepts property on loan to museums from provisions in its escheat laws and provides that property on loan to a museum escheats to the museum. COLO. REV. STAT. § 38-14-112 (Supp. 1989).


39. The team consisted of Barbara Finkle, then a second-year student at Golden Gate University Law School, now with the Oakland, Cal., law firm of Wilson, Sher, Marshall & Peterson; and Karen M. Keenan, then a third-year student at Boalt Hall School of Law at the
tutions which responded to the questionnaire, sixty-one completed it. The response from the California State Parks and Recreation Department, covering approximately 100 units around the State, was, of necessity, included as a single response.\(^4^0\)

The responses represented a variety of museums, including art, science, history, anthropological, and encyclopedic institutions. The collections ranged in size from forty-two objects to thirteen million objects. Natural science museums were among those with the largest number of objects because of the multiplicity of species of plants and insects in their collections. Excluding the State Parks and Recreation Department, staff sizes ranged from no paid staff to 244 full-time staff members.

The 1982 Survey results provided a basis for some of the California legislation as well as for much of the information in this essay.\(^4^1\)

C. California Old Loan Legislation

The California old loan legislation was supported by two professional organizations: the California Association of Museums, and the Northern and Southern California branches of the California Registrars Committee of the American Association of Museums.\(^4^2\) The goals, reflected in the legislation, were: to develop a set of standards governing the relationship of museums and lenders which would avoid problems in the future; and to eliminate the problems of the past as efficiently and equitably as possible.

1. Section-by-Section Discussion of the California Civil Code Provisions Relating to Old Loans

The following section-by-section discussion of the California Civil Code provisions relating to old loans describes and comments on some noteworthy provisions, their purposes, the relationships among them, and the supporting findings. Some references are also made to comparable or contrasting provisions included in recent legislation of other states.

a. Section 1899 Findings

Section 1899 contains legislative findings which define the scope of existing collections problems among California museums. They also state the public policy considerations which justify placing the responsi-
bility on lenders for maintaining future museum contact and extinguishing stale claims to property already in the custody of museums. Particular findings are highlighted in the discussion of the other provisions in the legislation to which they relate.

Focused as they must be on the facts of the individual case, the courts are not in a position to investigate the problems or the scope of the problems of loans to museums generally. For this reason, it is not surprising that the court in the McCagg case ignored the National Museum's recital of factual considerations which supported placing the burden of asserting a claim to loaned property on its owner.43 Because of limitations on the role of the courts, under California law, legislative findings, "if not contrary to facts that are of common knowledge, will be deemed conclusive by the courts."44 Since a constitutional challenge to the California legislation will turn on whether it is a reasonable solution to the problem, the findings of the California legislature in the old loan legislation could play a critical role in any such challenge.45

b. Section 1899.1 Definitions

The scope of the California legislation is limited to "museums," and the term "museum" is defined to include only institutions "operated by a nonprofit corporation or public agency."46

43. See supra text accompanying note 28.
45. Colorado included the following declaration in a preamble to its old loan legislation: "The general assembly hereby finds and declares that the growth and maintenance of the museum collections, both public and private, is a matter of public interest to the citizens of Colorado. Because museums of all kinds depend on loans of various articles of property to augment their collections and because uncertainty regarding title to and responsibility for loaned property is a hindrance to museums in their efforts to maintain, repair, and dispose of property in their possession, it is the purpose of this article to fairly and reasonably allocate responsibilities and to provide rules for the determination of title and financial responsibilities in certain cases."


The legislation applies to "property" on loan to museums, but the term "property" is defined specifically to exclude "botanical or zoological specimens loaned to a museum for scientific research purposes." This exclusion was included in response to a concern expressed by scientists from the California Academy of Sciences to the effect that the legislation would inhibit the institution's ability to borrow collections of botanical or zoological specimens which frequently are made available for the life of a researcher. Of the states which have adopted old loan legislation, only California and Oregon have made this accommodation.\footnote{The author was personally involved in the discussions that prompted inclusion of the cited language in the California legislation.}

c. Section 1899.2: When Notice by Museum Deemed Given; Contents of Notices by Lenders and Museums; Location Defined

Under the California statute, museums are not required to go beyond their records to trace lenders for notice purposes. Additionally, when a museum is required to give "notice," notice is deemed given if the museum mails a request to the most recent address shown for the lender on the museum's records\footnote{"Lender's address" is defined as "the most recent address as shown on the museum's records. . . ." \textsc{Cal. CIV. Code} § 1899.1(b). A number of other states have incorporated this language. See, for example, \textsc{Ariz. Rev. Stat.} §§ 44-351.2, 353A.1; \textsc{Iowa Code} § 305B.3; \textsc{Kan. Stat. Ann.} §§ 58-4002(d), -4003(b); \textsc{N.H. Rev. Stat. Ann.} § 201-E.5 (1989); and \textsc{Or. Rev. Stat.} § 358.430.} and the museum receives proof of receipt by mail within thirty days. If the museum has no address for the lender or does not receive proof of receipt by mail, the museum can give notice by publication. To ensure that the lender's response is properly received and recorded, the statute provides that the museum's notice must include "the name, address, and telephone number of the appropriate office or official to be contacted at the museum. . . ."\footnote{\textsc{Cal. CIV. Code} § 1899.2(b). This, too, is a common provision. For example, see \textsc{Colo. Rev. Stat.} § 38-14-104 (1988); \textsc{Ind. Code Ann.} § 32-9-10-11 (6); \textsc{Mont. Code Ann.} § 22-3-509 (1985); and \textsc{N.M. Stat. Ann.} § 18-10-4.A (1989).}

d. Section 1899.3: Obligations of Museums; Section 1899.7: Notice By Publication of Injury to or Loss of Property

The legislation went into effect January 1, 1984. California Civil Code section 1899.3 requires that museums give notice of the legislation to all persons who loan property to them for an indefinite term after the effective date or who lend for a term in excess of seven years. By adopting a seven-year minimum period, the California legislation parallels the California Unclaimed Property Law which contains a seven-year limitation period relating to personal property. In order to avoid compliance
disputes, the legislation provides that either citing to the legislation or providing a copy of the form notice contained in section 1899.5 constitutes adequate notice.\textsuperscript{50}

Unlike California, some states that have adopted old loan legislation require museums to give notice of the legislation to all of their lenders after the effective date, regardless of the length of the loan.\textsuperscript{51} The drawback of such sweeping statutes is that a museum which borrows for temporary exhibitions may find providing such notice confuses international lenders, thereby inhibiting the museum's ability to borrow for short terms.

In California, a lender may protect an interest in property on loan to a museum by filing a "notice of intent to preserve an interest in the property. . . ."\textsuperscript{52} Unless the property is returned to the lender sooner, section 1899.3 requires the museum to retain such notices for at least twenty-five years.\textsuperscript{53}

If a lender uses the form prescribed in the legislation, the museum must provide the lender with proof of the museum's receipt of the form.\textsuperscript{54} If a museum disposes of the property improperly during the twenty-five-year life of the notice, the lender can recover either the property or its value at the time of disposition, plus interest.\textsuperscript{55} The proof of receipt is, of course, the best evidence that the lender filed the notice with the museum.

Museums also are required to give notice of any injury to or loss of loaned property.\textsuperscript{56} If a museum is unable to give notice by mail, Califor-
nia Civil Code section 1899.7(a) provides for notice by publication of the following statement:

The records of [name of museum] indicate that you have property on loan to it. Your failure to notify it in writing of a change of address or ownership of property on loan or to contact it in writing regarding the loan may result in the loss of rights in the loaned property. See California Civil Code Sections 1899, et seq.\(^5\)

If the lender contacts the museum within the three-year limitations period established by section 1899.8, the museum must respond to the lender's notification with a written description of the injury or loss.\(^5\)

Allowing notice to be effected by publication represents a pragmatic solution to the problem created by a lender's failure to notify the museum of address changes. Since the damage or loss already has occurred, no legitimate interest is served by having the published notice include the details of the injury or loss. Such details can be given if the lender responds.

e. Section 1899.4: Lenders' Notices

Lenders are responsible for keeping museums informed of any change of address or change in the ownership of the loaned property.\(^5\)

The following legislative finding supports this requirement: Since museums rarely relocate, it is easier for lenders, and those who claim through them, to notify museums of address or ownership changes so that museums can readily contact lenders when decisions must be made regarding conservation or disposition of loaned property.\(^6\)

California Civil Code section 1899.4 also puts lenders on notice of their right to file a notice of intent to preserve an interest in property on loan to museums, but warns that the notice does not give validity to any claim which would have been invalid in the absence of such notice.\(^6\)

f. Section 1899.5: Form Notice of Intent to Preserve an Interest in Property

Under the California legislation, a notice of intent to preserve an interest in property is effective only if:

1. it is in writing;
2. it includes a description of the property adequate to enable the museum to identify the property;
3. it is accompanied by documentation sufficient to establish the claimant as owner of the property; and

\(^5\) Id. § 1899.7(a).
\(^5\) Id. § 1899.7(b).
\(^5\) Id. § 1899.4(a).
\(^6\) Id. § 1899(f).
\(^6\) Id. § 1899.4(b). This limitation appears in the legislation in the four other states which have adopted the notice option. These states are listed in note 52, supra.
(4) it has been executed under penalty of perjury.\textsuperscript{62}

California museums are required to retain only those notices which satisfy the foregoing requirements. If a museum believes the notice is defective and the museum does not intend to retain the notice of intent in its records, the museum must notify the claimant as to the defective elements of the document.\textsuperscript{63}

In order to protect those who lend property to public museums in California from any unauthorized disclosure of information pertaining to such loans, the legislation provides that notices of intent to preserve an interest in property are exempt from disclosure under the California Public Records Act.\textsuperscript{64}

g. Section 1899.6: Conservation or Disposal of Loaned Property; Lien; Liability

California Civil Code section 1899.6 sets forth the circumstances under which, in the absence of a written loan agreement to the contrary, museums may apply conservation measures or dispose of property on loan.\textsuperscript{65}

Museums are permitted to take conservation measures or to dispose of property on loan without the lender's permission when "immediate action" is required or in instances where the museum has been unable to contact the lender in person, but has published a prescribed notice and has allowed a 120-day period to elapse. "Immediate action" is action which is necessary to protect either the property which is the subject of the loan, other property in the collection, or the health and safety of the museum's staff or the public. The museum may proceed to conserve or dispose of the property if the museum has not been able to contact the lender at the last address of record or if, after receiving notice, the lender does not retrieve the property.\textsuperscript{66}

Museums which comply with the foregoing requirements, have a reasonable belief that the action taken was necessary, and exercise reasonable care in connection with conservation measures are not liable for injury to or loss of the property. In addition, such museums have a lien

\textsuperscript{62} \textit{Id.} § 1899.5(a). Similarly, see \textit{IOWA CODE} § 305B.8.1 (1989); and \textit{KAN. STAT. ANN.} § 58-4007 (1989).

\textsuperscript{63} \textit{CAL. CIV. CODE} § 1899.5(b) (West 1985). Similarly, see \textit{IOWA CODE} § 305B.8.2; \textit{KAN. STAT. ANN.} § 58-4007(b); and \textit{WYO. STAT.} § 34-23-104(e) (1989).

\textsuperscript{64} \textit{CAL. CIV. CODE} § 1899.5(d). No other state has incorporated a similar exemption.

\textsuperscript{65} Similar provisions have been adopted in seven other states.

\textsuperscript{66} \textit{CAL. CIV. CODE} § 1899.6(a).
on the property or the proceeds from its disposition for the costs incurred.\textsuperscript{67}

The following legislative finding explains various concerns relating to conservation:

There is an inherent tendency for the condition of tangible property to change over time. Loaned property often requires conservation work and conservation measures may be expensive or potentially detrimental to the property. Organic materials and specimens may serve as breeding grounds for insects, fungi, or diseases which threaten other more valuable property.\textsuperscript{68}

The museum's liability is limited because "[m]useums cannot reasonably be expected to make decisions regarding conservation or disposition of loaned property at their own risk and expense. . . ."\textsuperscript{69}

h. Section 1899.8: Limitations on Actions Because of Injury or Loss of Property

California Civil Code section 1899.8 provides that no action may be brought against a museum more than three years from the date the lender receives notice of injury to or loss of the property; or ten years from the date of injury or loss, whichever occurs earlier.\textsuperscript{70}

The California legislature mandated a one-year period between the effective date of the legislation (January 1, 1984) and the effective date of this section (January 1, 1985) to give lenders who might otherwise have valid claims an opportunity to present them. As will be discussed below, constitutional standards of fairness probably require such a grace period.

i. Section 1899.9: Termination of Loans; Expiration of Specified Term

Section 1899.9 of the California Civil Code provides that museums may give notice of their intent to terminate a loan which meets one of the following tests: 1) the loan was made for an indefinite term; or 2) was made on or after January 1, 1984, for a term in excess of seven years;\textsuperscript{71} or 3) was made for a specified term, the term has expired, and the property remains in the museum's custody.\textsuperscript{72} The section also prescribes the language for the notice, which includes the warning that the lender may be

\textsuperscript{67} Id. § 1899.6(b). Colorado does not specifically authorize conservation measures, but does provide that a museum shall have a lien "for expenses reasonably necessary to protect the loaned property from ordinary decay and deterioration due to natural causes, from theft, or from vandalism" if the lender is unknown. \textit{Colo. Rev. Stat.} § 38-14-108 (1988).

\textsuperscript{68} \textit{Cal. Civ. Code} § 1899(d) (West 1985).

\textsuperscript{69} Id. § 1899(e).


\textsuperscript{71} See \textit{Cal. Civ. Code} § 1899.9(a).

\textsuperscript{72} See id. § 1899.9(b).
deemed to have donated the property to the institution if she does not contact the museum promptly.\textsuperscript{73} A museum which utilizes the prescribed language is assured of having given adequate notice.

j. Section 1899.10: Limitation on Actions for Recovery of Loaned Property

By reference to the provisions of the California Code of Civil Procedure section 338.3 which apply generally to the recovery of tangible personal property, the old loan legislation limits the period for recovery of property to three years from the date a notice of intent to terminate a loan is given.\textsuperscript{74}

Section 1899.10(b) provides for an automatic termination of rights when a period of at least twenty-five years has passed without any written contact between the lender and the museum, as evidenced in the museum's records. As in the case of injury to or loss of property, this section includes a one-year grace period from the effective date of the legislation (January 1, 1984) to the effective date of this section (January 1, 1985) in order to give lenders who might have valid claims an opportunity to present them.\textsuperscript{75}

Several findings support the legislature's decision to provide a statute of limitations on recovery of property loaned for twenty-five years or more without written evidence of contact. The first relates to the State's interest in eliminating stale claims:

The best evidence of ownership of property on loan to a museum is generally the original loan receipt. The longer property remains on loan, the less likely it is that the original lender will claim it, and the more likely it is that any claim which is made will be made by someone who does not have the original loan receipt or other clear evidence of ownership. \textit{The state has a substantial interest in cutting off stale and uncertain claims to tangible personal property loaned to nonprofit and public museums.}\textsuperscript{76}

The second finding relates to the likelihood that tangible personal property left with a museum for a substantial period of time ever will be reclaimed. In this regard, the legislature found that less than one percent of the tangible personal property placed in safe deposit boxes which escheats to the state is ever claimed despite the fact that the state controller is required to give notice of the escheat to the last known owner.\textsuperscript{77}

\textsuperscript{73} See \textit{id.} § 1899.9(a).

\textsuperscript{74} See \textit{id.} § 1899.10(a). In contrast, Iowa extinguishes the lender's rights one year after notice in the case of property on loan for an indefinite or expired term. \textit{IOWA CODE} § 305.B.6.

\textsuperscript{75} CAL. CIV. CODE § 1899.10(b) (West 1985). Other states with automatic termination provisions including a grace period are Iowa (adopted in 1988, termination clause effective on July 1, 1989) and Kansas (adopted in 1989, termination clause effective on Jan. 1, 1990).

\textsuperscript{76} CAL. CIV. CODE § 1899(g) (emphasis added).

\textsuperscript{77} \textit{Id.} § 1899(h).
is no reason to believe that the recovery rate would be significantly higher for property left unclaimed with a museum for an equivalent length of time.\textsuperscript{78}

In light of the state's interest in voiding stale claims and efficiently using the scarce resources of nonprofit and public museums, combined with the small likelihood that lenders or their heirs will claim the property more than twenty-five years after the last written contact, the legislature's decision to provide for the automatic termination of a lender's rights after a substantial period without contact with the borrowing museum appears to be a reasonable and fair solution to the problems of old, unclaimed loans to museums.

Building on the legislature's finding that lenders often intend eventually to donate property which they have left on long-term or indefinite loan,\textsuperscript{79} section 1899.10(c) provides that a lender is deemed to have donated property if she does not file an action to recover property within the three-year or twenty-five-year limitation periods.\textsuperscript{80} A museum can pass good title to property which it represents as donated, pursuant to this section.\textsuperscript{81}

\textbf{k. Section 1899.11: Unclaimed Property Law}

The California old loan legislation supersedes the California Unclaimed Property Act as it relates to tangible property left in the custody of a museum. Museums, however, have the option of reporting abandoned property to the state controller for disposition under California's Unclaimed Property Law if the property has been unclaimed for seven years or more and the museum mails the prescribed notice to the lender's last address, if known.\textsuperscript{82} The state controller's legal staff has expertise in dealing with claims to personal property; for example, this provision could have been very helpful to the museum in \textit{Miller v. City and County of San Francisco} \textsuperscript{83} when it faced competing claims to property it did not wish to retain.

\textsuperscript{78} In fact, it might even be lower since "heir hunters" do not typically trace persons who have loaned property to museums.

\textsuperscript{79} \textit{CAL. CIV. CODE} § 1899(c).

\textsuperscript{80} \textit{Id.} § 1899.10 (c). Examples of other states' statutes which have incorporated the "deemed donated" provision include: \textit{IOWA CODE} § 305B.9.4 (1989); \textit{OR. REV. STAT.} § 358.420(2) (1985); and \textit{S.C. CODE ANN.} § 27-45-90(B) (Law. Co-op. 1987) ("considered to have donated").

\textsuperscript{81} \textit{CAL. CIV. CODE} § 1899.10(d) (West 1985). For examples of other states which have incorporated the protection of a purchaser provision, see \textit{COLO. REV. STAT.} § 38-14-111 (1988); \textit{N.H. REV. STAT. ANN.} § 201-E:6 (1989); and \textit{MONT. CODE ANN.} § 22-3-521 (1985).

\textsuperscript{82} \textit{CAL. CIV. CODE} § 1899.11. Montana is the only state which has picked up on this alternative. \textit{MONT. CODE ANN.} § 22-3-522.

D. Summary of Old Loan Legislation Adopted Since 1983

Old loan legislation adopted since the passage of California’s law in 1983 runs the gamut from what Tennessee entitles the “Abandoned Cultural Property Act,” that is, legislation concerned primarily with settling issues relating to property loaned to museums, to California’s detailed provisions governing a number of aspects of the lender-museum relationship. In three of the states with abandoned property type statutes, the legislation applies only to state museums.

As mentioned above, under all versions of the old loan legislation, when the lender’s rights are terminated, title to the property involved vests in the museum rather than in the state as it does under escheat statutes. Two states with the abandoned property type legislation adopted since 1983 also authorize museums to take conservation measures without the lender’s approval when necessary. Eleven of the states adopting old loan legislation since 1983 require museums to notify the lenders of the legislation prospectively. Ten of these states also require lenders to keep the museums informed of changes in address or ownership of the property. Only New Mexico requires museums holding property on loan at the time the state’s act was adopted to extend notice of the law to its existing lenders, “if known.”

84. Tenn. Code Ann. § 66-29-201 (1984). The legislation in both Tennessee and South Carolina includes a definition of “abandoned cultural property.” Tenn. Code Ann. § 66-29-202; and S.C. Code Ann. § 27-45-10(G). The North Dakota legislation marginally qualifies as “old loan” legislation. It requires museums which accept loans to keep a record of loans, to file a copy of these records with the county in which the museum is located, and to return the property to the lender if the museum closes. Any property remaining unclaimed two years after a museum closes “may be disposed of at the discretion of the board of directors or person in charge of the museum.” N.D. Cent. Code § 47-07-14 (1987).

85. The states which have adopted legislation most similar to that in California are Iowa, Kansas, and Montana. Wyoming’s legislation is similar in many respects, but the notice-to-lender requirements apply only to loans which are not the subject of a written loan agreement. Wyo. Stat. § 34-23-102(a), (b) (1989). The impact this might have on the operation of other provisions in the legislation is not entirely clear.

86. Louisiana, Nevada, and North Carolina.


Of the states which require lenders to notify museums of the legislation, five include authorization to take conservation measures\(^{90}\) and all but one of these states require museums to notify lenders of loss or damage to objects.\(^{91}\)

The Utah legislation is concerned solely with issues related to title. However, it includes provisions which may reflect a new trend in old loan legislation: By creating a rebuttable presumption that materials on deposit with an historical society, museum, archive, or library are the property of the collecting institution these provisions address directly the problems museums face with conflicting claims or a lack of clear proof of ownership.\(^{92}\) Anyone who seeks to claim such materials must comply with the provisions of the legislation. Compliance includes demonstrating "to the reasonable satisfaction of the collecting institution" that the person has all rights or represents all persons who have all rights to the materials.\(^{93}\)

The trend reflected in the Utah legislation began in 1988 with the old loan legislation in the states of Colorado and Iowa. The Colorado legislation requires, that, upon request, persons claiming property "provide evidence of ownership satisfactory to the museum." This is coupled with a declaration that "no museum shall be prejudiced by reason of any failure to deal with the true owner who has failed to comply with the requirements of this section."\(^{94}\)

The Iowa legislation is broader than Colorado's legislation. It provides that, absent a court order, a museum is not liable for returning property to the original lender; that, in the event of competing interests in property, the burden is on the claimants to initiate an action in equity to resolve the claims; and that the museum is not liable for returning property to an "uncontested claimant who produced reasonable proof of ownership. . . ."\(^{95}\) Kansas adopted the same provisions as Iowa in 1989.\(^{96}\)

E. Constitutional Issues Relating to Termination of Interests in Property

In addition to a museum's option of disposing in accordance with the California Unclaimed Property Law, the California legislation con-


\(^{91}\) The State of Kansas is the exception.

\(^{92}\) Utah Code Ann. § 63-77-3 (1990). The Utah legislation, chapter #302, was signed by the governor of Utah on March 13, 1990, and went into effect on April 23, 1990.

\(^{93}\) Id. § 6-77-6(a).


tains two other avenues which can lead to the termination of a lender's rights in property loaned to a museum. Under one of these avenues, a museum may give notice of its intent to terminate a loan, thereby triggering the running of the three-year statute of limitations on the recovery of personal property provided for in California Code of Civil Procedure section 338.3. Under the second avenue, the law itself operates to terminate the lender's rights when, according to the museum's records, a period of twenty-five years or more has passed without written contact between the lender and the museum.

Both avenues to terminating a lender's rights raise constitutional issues. Since a property right is involved, a statute requiring museums to give notice in order to trigger the running of a limitations period is subject to examination under the due process clause of the fourteenth amendment to the United States Constitution. Since loans are a form of contractual obligation, a statute automatically extinguishing a lender's right to recover property after a period of time is subject to judicial review to determine whether they impair the obligations of contracts in violation of U.S. Const. art. I, section X, cl. 1.

Considering the constitutionality of the legislation, the courts ultimately will consider the need for the particular provision, the importance of the rights affected, and whether the legislative solution is fair and reasonable in light of the circumstances and problems addressed.

The findings of the California legislature establish the scope and nature of the problems with old loans and objects of uncertain status in the collections of California's museums. There is support for these findings in the results of the 1982 Survey. In addition, the California legislation is a comprehensive and precise scheme for dealing with the problems of such objects and includes measures to prevent similar problems from occurring in the future. The findings and the comprehensiveness of the legislation are factors which support the conclusion that California's solutions to museum collections problems are reasonable and meet constitutional requirements.

1. Termination After Notice

With respect to legislation which terminates property rights after notice, the courts still adhere to the standard enunciated by the U.S. Supreme Court in 1950 in Mullane v. Central Hanover Bank & Trust Co. which states:

97. The fourteenth amendment provides in part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

98. "No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ."
An elementary and fundamental requirement of due process in any proceeding which is accorded finality is notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections (emphasis added). [Citations omitted.] The notice must be of such nature as reasonably to convey the required information, [citation omitted] and it must afford a reasonable time for those interested to make their appearance [citations omitted]. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied. "The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deal." American Land Co. v. Zeiss (1910) 219 U.S. 47, 67. (Emphasis added).99

How does the California legislation measure up to this standard? First, the contents of the notice include all of the information a lender needs to take action to protect her interest. All notices must include the name, address, and telephone number of the official to be contacted for information regarding the loan.100 The specific language prescribed for giving notice of intent to terminate a loan states the essential facts:

The records of [name of museum] indicate that you have property on loan to it. The institution wishes to terminate the loan. You must contact the institution, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so promptly, you will be deemed to have donated the property to the institution. See California Civil Code Sections 1899, et seq.101

Second, the efforts to communicate the notice are sufficient given the "practicalities and peculiarities" of loans to museums. It is rare for lenders of valuable property to lose contact with the borrowing museum. It should be even rarer now that the legislation requires museums to put lenders on notice that they are obligated to notify museums of any address or ownership changes. It is eminently fair and reasonable, given the small value of most of the objects affected and the potential difficulty and expense of a search, for a lender's rights to be terminable both through notice by mail to the lender's address of record, if one exists, and by publication if mailing is unsuccessful, followed by a three-year waiting period.

Superficially, there would appear to be some merit in requiring museums to expend efforts in tracing lenders and their heirs in proportion to the value of the property involved.102 In reality, this is impractical for

100. CAL. CIV. CODE § 1899.2(b) (West 1985).
101. Id. § 1899.9(a).
102. For example, Montana's legislation establishes an automatic termination clause for all loans made after the effective date of the legislation and for loans made before the effective date if the loaned property has "a market value of $1000 or less at the time of disposal."
museums with large collections for a variety of reasons, including the difficulty and expense of appraising loaned objects and documenting their values in order to be in a position to defend a claim made several years after the museum has disposed of the objects.

2. Twenty-Five Year Statute of Limitations

The primary function of legislation limiting the right to bring actions is to cut off stale claims. In addition, by extinguishing the right of the lender or her successor to recover property on loan for more than twenty-five years without contact, California's old loan legislation eliminates potential claims for old loans so that decisions can be made regarding disposition of objects which represent a liability because of such things as the storage space they occupy, the conservation work required to maintain them, and the hazard they represent to other objects in the collection.

Other factors considered in determining the need for the twenty-five-year limitation period were the state's interest in eliminating claims not based on the original loan receipt or other clear evidence of ownership; society's interest in not having the resources of its public and nonprofit museums expended on objects which may become a liability to the museums; and the remoteness of the possibility that efforts to trace lenders or their successors in the case of very old loans will be successful.103

In adopting its museum loan legislation, the California legislature balanced the interests of lenders in enforcing otherwise valid claims with the interests of museums and society in the benefits of extinguishing the right of lenders to pursue such claims. If the courts determine that the balance struck by the California legislature in the museum loan legislation is not unreasonable, the twenty-five-year limitation will be upheld.104

It is unlikely that there will be a serious challenge to the validity of the twenty-five-year limitation as applied to loans made after the effective date of the legislation. What may be challenged is applying the limitation period to loans made before the passage of the legislation.

Retrospective application of a twenty-year limitations period in the Indiana Dormant Minerals Interest Act was upheld in Texaco, Inc. v. Short.105 The Minerals Interest Act is strikingly similar to California's old loan legislation: it provides that interests in minerals in land which are not used for twenty years automatically lapse and revert to the current surface owner unless the owner of the mineral interests files a claim

103. See the findings, Cal. Civ. Code § 1899.
within the twenty-year period. Owners of existing interests had two years to learn of the legislation and comply with its terms.

In *Texaco*, the mineral interest owners argued that the act was unconstitutional because they were not given adequate notice of it. The Supreme Court responded:

The first question raised is simply how a legislature must go about advising its citizens of actions that must be taken to avoid a valid rule of law... The answer to this question is no different from that posed for any legislative enactment affecting substantial rights. Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply. In this case, the two-year grace period included in the Indiana statute is invalid because mineral owners may not have had an opportunity to become familiar with its terms. It is well established that persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property. 106

The California old loan legislation contained a one-year grace period. 107 The courts are unlikely to take exception to the reasonableness of the one-year grace period. As the Supreme Court explained in *Wilson v. Iseminger*, "what [is] considered a reasonable time must be settled by the judgment of the Legislature, and the courts will not inquire into the wisdom of its decision in establishing the period of legal bar, unless the time allowed is manifestly so insufficient this statute becomes a denial of justice." 108

In view of the fact that less than one percent of the tangible personal property which escheats to the state under California's Unclaimed Property Law is ever claimed, the one-year limitation period in California should be found sufficient. 109

106. Id. at 531-32.
107. The California legislation was adopted in 1983 with a January 1, 1984, effective date. The effective date of the 25-year limitation period was January 1, 1985. [CAL. CIV. CODE § 1899.10(b) (West 1985).]
108. 185 U.S. 55, 62-63 (1902) (emphasis added). The courts continue to give great deference to the judgment of state legislatures on the reasonableness of a statutory grace period. See 454 U.S. at 532.
109. [CAL. CIV. CODE. § 1899.10(h).] Perhaps "heir hunters" are less likely to search for the owners of tangible personal property, even such potentially valuable property as jewelry left in safety deposit boxes and administered through the state controller's office, a central source. This may be because the value of the property is not apparent on its face or from its description, or that the property may have to be sold for the heir to realize cash with which to reward the heir hunter. The only claim for property loaned to a museum involving an "heir hunter" of which the author is aware was the claim for the Church painting in the *McCagg* case. Estate of McCagg v. Indust. Nat'l Bank, N.A. 450 A.2d 414 (D.C.App. 1982). The only case under the California old loan legislation which has surfaced to date arose in a suit brought by the museum to obtain a declaration of its rights as against the claimant whose identity was known to the museum at the time the legislation was adopted and who the museum attempted to contact in 1983 before the legislation was introduced. The case was recently
III

Conclusion

A number of older museums in California have had serious problems dealing with old loans and undocumented property in their collections. Legislation establishing minimum standards for the lender-museum relationship reduces the likelihood that the situations giving rise to these problems will occur again. Additionally, the provisions for terminating a lender's rights to property loaned to a museum under California law are a fair solution to the problems created by the loss of contact with the original lender and the difficulty of ascertaining the validity of claims by persons other than the original lender.

On a prospective and constructive note, several states have adopted legislation dealing with abandoned property in museums, and more states need, and are considering, such legislation. Since lenders and objects travel freely and frequently around this country, perhaps it is time to propose a uniform law for adoption by the remaining states.