

Index

- Aderet, O 254
adjudicatory authority 161–4, 219–23
 arbitration *see separate entry*
 jurisdiction 161–4, 220
 1995 UNIDROIT Convention
 168–9
 EU rules on civil and commercial
 167–78, 220
 US courts 162, 168–9, 173, 177–83
 jurisdiction declined 163, 183–4
 common law and civil law systems
 184–7
 US courts 187–8
Nazi spoliated art 164, 211–7, 221
out-of-court settlements 190–1, 284
parallel proceedings 147, 165–7, 174,
 187, 189, 210, 217–9, 221–3,
 269, 271, 287
private international law rules
 ‘out-manoeuvred’ 164–8
res judicata 181, 188–90, 218, 221,
 286–7, 341
 and enforcement of arbitral award
 207–11, 221
 Nazi spoliated art 213
Adler, A 276
Adorno, TW 1
adverse possession 28, 50
Afghanistan 21, 47
Akinsha, K 252
Alberge, D 229
Alder, C 19
Alderman, K 47, 109, 325
Alderton, M 103
alternative dispute resolution 52–6, 70,
 149–52, 160, 216–7, 262–8
 mediation 50–1, 53–4, 149, 151,
 193–4, 216, 262, 264–8, 271–2,
 274, 276–7, 287, 342–3
 Spoliation Advisory Panel (SAP) 65,
 264–5, 267–8, 272–3, 277, 283,
 286
Andrews, N 183, 190
anti-suit injunctions 206–7
Anton, AE 184
Anton, M 34, 36, 310
Appiah, A 3
applicable law 37, 98, 151, 315, 346
 arbitration 153, 156–9
 choice of law 26, 41–5, 49–50, 73,
 83–90, 92–3, 106, 109–10, 127,
 236–7, 340, 342–4, 346
 deter title laundering: structure and
 method of 237–48
 lex causae 38–9, 97
 lex fori 38–9, 43–4, 50, 89, 101
 multilateral choice of law rules
 (conflicts rules) 43–4, 83–4, 86,
 88, 93, 231–2, 346–7
 see also classification
 arbitration 54–5, 58, 72, 151–5, 160,
 163, 191–2, 220–1, 223, 341
 anti-suit injunctions 206–7
 breach of waiver of right to court
 hearing 202–5
 choice of law 156–9, 223, 341
 choice of procedural law 202
 complexities 198–211
 consent 167, 194, 199–201, 205, 222
 default model 201
 European Union 154, 158
 secondary EU law 196
 expertise 198, 220
 global instruments and systems for
 193–5
 investment 335
 jurisdiction 203–5
 Nazi spoliated art 212–5, 261

- non-contractual nature of dispute
 - 193, 196, 198–201
- non-legal factors 196–8
- parallel proceedings: court and
 - 166–7, 217–9, 221–3
- res judicata* and enforcement of
 - award 207–11, 221
- speed and fairness 155
- state immunity 214–5
- Arendt, H 2
- Armbrüster, C 234, 238, 240,
 - 333–4
- armed conflict *see* war
- Arnold, M 3
- Arroyo, DPF 61, 68, 110, 169
- art and antiquities trade 12, 112, 307
 - co-mingling of licit and illicit 21–2,
 - 28–9
- art crime 17, 24, 27, 71–2
 - co-mingling of licit and illicit trade
 - 21–2, 28–9
 - demand, supply and regulation
 - 23–5
 - looting 47, 61, 73, 118, 122–3, 199,
 - 212, 250, 258
 - theft *see separate entry*
 - trafficking in illicitly obtained
 - antiquities 19–21
- art market 9, 11–6
 - co-mingling of licit and illicit trade
 - 21–2, 28–9
- art-napping 18
- ArtResolve 193
- Aryanisation 114, 260, 277, 285
- Atleta di Fano (Getty Bronze) 34, 75,
 - 293, 299, 309, 334
- auctioneers 100, 213, 229
- Aust, A 105
- Australia 81, 162, 165, 185, 297, 320
- Austria 38, 50, 76, 173, 185–6, 191–2,
 - 214
- Nazi spoliated art 259, 266–7
- repatriation 79
- Baade, HW 315
- Bandle, AL 52, 152, 199
- Barboza, D 19
- Barker, I 212, 214
- Basedow, J 42
- Bator, PM 48, 112, 114, 307
- Baudrillard, J 1
- Bazylar, MJ 70, 251, 255
- Belgium 130, 150–1, 242–3, 249,
 - 345
- Bell, A 180, 185–7
- Bell, C 77
- Bennett, TW 91, 93
- Biondi, A 144, 294
- Blanc, S 12
- Bogdanons, M 47
- Bohr, F 257
- bona fide* purchasers *see* good faith
 - purchasers
- bona vacantia* 86, 289, 328
- Borodkin, LJ 4, 259
- Bos, M 189
- Bowman, B 22, 24
- Brekoulakis, S 204
- bribery: customs officials and border
 - patrols 296–7
- Briggs, A 316–7
- Brodie, FN 62, 135, 300
- Brodie, NJ 23, 29
- Brown, MF 60, 74
- Bühning-Uhler, C 197
- Bush, SE 1
- Byrne-Sutton, Q 99
- Cambodia 21, 120
- Campfens, E 215
- Canada 4, 116–7, 297, 320
- Caprio, CA 164, 183
- Carducci, G 18, 27–8, 92, 108, 119, 124,
 - 143, 148, 231, 234–6, 238, 313,
 - 326
- Carey Miller, DL 8–9, 92, 94, 124–5,
 - 144, 230
- Carruthers, JM 41, 69, 80, 94, 133, 148,
 - 228–9, 231, 233, 236–7, 239, 241,
 - 269, 279, 286
- Carty, A 49
- Carvajal, D 252
- Casini, L 6
- Chamberlain, K 117, 122, 130, 164,
 - 256, 301
- Chappell, D 11, 20–1, 23, 319

- Chechi, A 5, 26, 35, 54–6, 60, 71, 75, 82–3, 90, 107, 116, 120–1, 132, 140, 151, 193–4, 225, 227, 232, 236–7, 245, 247, 269, 304–5, 314, 327
- China 11–3, 19, 298
see also Dunhuang
- Chong, A 333, 335
- Church, J 125
- civil law systems 37, 39, 95, 226, 291
 arbitration 204
 choice of law 89
 due diligence 97
 foreign public law 312–4
 jurisdiction 183–4, 186
res judicata 189
 territoriality 102–4
 UNESCO 132
 UNIDROIT 127, 130
- Clarke, A 151
- Clarkson, CMV 162, 174, 184
- classification (categorisation) 26, 33, 37–9, 90–101, 228, 336, 342, 346–7
 conceptual device 100–1, 106
 European Union 172–3, 177
lex originis 147, 234–5, 238, 242
lex situs 40, 42, 44, 56, 93–5, 97, 104, 148, 228, 230–3, 236, 244, 247, 248–9, 278–9, 346–7
 Nazi spoliated art 39, 50, 261–2, 272–7, 287, 342
 substance and procedure 38–9, 50, 96, 272–7
see also public policy exception
- codes of conduct 45, 135, 216, 334, 336
- Coggins, CC 12, 20, 112
- Cohen, L 24
- Collin, RM 243
- Collins, L 94, 228, 308–9, 315, 318, 320
- comity 44, 82, 103, 206, 240, 310–2, 335, 347
- commercial imperative 11–6, 224, 227, 346
- commercial law 11, 29, 64, 73, 129, 225, 236
- common law 39–40, 59, 85, 87, 89, 92–3, 226, 289
 act of state doctrine 102–5
 anti-suit injunctions 206
 foreign public law 291, 314
forum non conveniens 82
 good faith 97
 issue estoppel 209–10
 jurisdiction 162, 164–5, 183–6
nemo dat quod non habet 126, 229, 233, 241
 ownerless property 289
res judicata 189–90
 UNIDROIT 130
- comparative law 61, 127
- compensation 68, 70, 76–7, 104, 306
 arbitration 154, 198, 210
 degenerate art 104
 EU 144–8
 Nazi spoliated art 73, 104, 253, 269–72
 UNESCO 129, 235–6, 259
 UNIDROIT 127, 129, 233
- conciliation 151
- confiscation 10, 17, 26, 32–3, 43, 50, 57, 68, 73, 104, 341, 345
 International Court of Justice (ICJ) 120–1
 Nazi spoliated art *see separate entry*
- conflict *see* war
- connecting factor 38, 56, 81, 83, 93–4, 97, 228, 232, 234, 239–40, 346
- consistency of decisions 83, 154, 269–72, 274
- Contel, R 72, 106, 191
- conversion 58, 67, 91–2, 96, 100, 172, 199, 231, 244, 247–8, 316–7, 322–3, 337
- Cook, WW 39
- Cornu, M 15, 22, 53, 67, 69, 76, 79, 88, 150–1, 198, 234
- Council of Europe 264
- Craddock, P 45
- Crawford, EB 94, 228
- Cremades, BM 186, 189, 218
- crime against humanity 258
- criminal law 28–9, 33–4, 68, 73, 128, 144, 147, 226, 299, 305, 340
 arbitration 199–200
 money laundering 319–20

- theft *see separate entry*
 UNIDROIT 129
 United Kingdom 97, 337
 tainted cultural object offence
 303–4, 327–8
 Theft Act 1968 300–2
 United States 71–2, 199–200, 299,
 320–7, 337
 Crowell, DL 99, 243
 Cuba, S 274, 276
 cultural diplomacy 52, 344–5, 348
 cultural heritage law 5–6, 55–6, 61, 269,
 318
 context: private international law
 meets 16–25
 practical control offered to 36,
 339–43
 choice of law method 41–2
 classification 37–9
 ethics 45–8
 foreign public law 40–1
 global solidarity 48–52
 international dimension 36–7, 340
 public policy exception 42–5
 surmounting greatest obstacles 344–8
 cultural objects 2–5, 129, 225–6
 Cuniberti, G 165, 201
 Curtis, NGW 78
 Cyprus 69
 Czigler, TD 58

 Daly, BW 54, 152, 199
 Davidson, D 276–7
 Davis, M 185
 Davis, T 22
 De Clercq, WCEH 212
 De Ly, F 156, 221
 dealers 9, 12, 18, 20–3, 30, 32, 213, 302,
 334, 344
 Nazi spoliated art 251–2, 253–4, 257,
 281
 Schultz case 325–6
 tainted cultural object offence 303–4
 UNESCO 124
 vesting laws 25
 degenerate art 72–3, 104, 251–2, 258,
 275
 delict 37, 91, 98–9

 demand, supply and regulation 23–5, 72
 Demarsin, B 8, 102, 214, 253, 255
 Denmark 170
 designer theft 18
 Dietzler, J 21, 27, 30, 32
 Dikman, Aydin 69
 dispute settlement 11, 148–9, 221, 345
 alternative dispute resolution *see*
 separate entry
 arbitration *see separate entry*
 out-of-court settlements 190–1, 284
 Dittrich-von Wehring, K 136
 Dodge, WS 315
 Dolinger, J 333
 Douglas, S 100
 Droz, G 174, 315
 due diligence 46, 64, 96–8, 100, 132,
 160, 239, 241, 303–4, 325
 arbitration 154
 EU 146–7
 Iraq 120
 UNESCO 236
 UNIDROIT 126–7, 129, 233
 due process 166–7, 179–80, 247
 Dunhuang
 Mogao caves 11
 Durney, M 17–9, 24, 29, 36

 Edsel, R 251, 257
 Edwards, AB 311
 Efrat, A 10, 12, 129, 337
 Egypt 47, 300, 302, 323–4, 326
 Ehrenzweig, AA 85, 315
 Elia, R 21
 Emden, Max 279
 equitable principles 73–4, 153
 estoppel 28, 209–10, 213, 269
 ethics 16, 43, 90, 109, 150–1, 268–9,
 275, 336, 343–4, 346, 348
 arbitration 195–6
 classification and public policy
 exception 278–9
 ethical aspirations 45–8
 forced sales 280, 282–3, 286
 restitution 50–1, 69–71, 74, 79–80,
 260
 value-rationality 29, 48–50, 277, 279,
 287, 342, 345, 347

- Ethiopia 52
- European Union 14, 28, 44, 50–1, 57, 62, 89, 110, 344
- arbitration 154, 158, 196, 217
- anti-suit injunctions 206–7
- cultural priorities 7–8
- Directives 8, 143–8, 160, 176, 196, 225–6, 235, 294–5, 301, 319, 337
- export controls 291
- foreign public law 294–5, 296, 301, 319, 329, 335–7
- free movement 7–8, 135–7, 159, 170
- ‘goods’ 137–8
- restrictions 138–40
- jurisdiction 81–2, 147, 167–9, 206, 220
- Brussels/Lugano regime 170–1, 183–4, 186, 341
- courts of Member States 170–3, 177–8
- new Judgments Regulation (Recast) 173, 176–7, 186–7, 206–7
- prorogated 173–4
- revising Judgments Regulation 174–6
- Nazi spoliated art 50–1, 212, 215
- Regulations 58, 81–2, 119, 141–2, 147, 167, 169, 170–8, 206, 296, 301, 335–6
- repatriation 136–7, 143–8
- Schengen Area 296, 329
- Evans, S 252
- evasion of the law (*fraus legis*) 101, 246
- evidentiary law 29, 39
- export control 6–9, 15, 25, 40, 43, 51, 72, 111–2, 119, 131, 134, 290, 292–3, 337, 343
- civil law systems 313–4
- Commonwealth Scheme 295–6
- connecting factor 240
- EU 137–9, 141–2, 144, 159, 294–6, 319
- international understanding
- Germany 332–5, 337
- public policy 335–6
- validity of contract of sale 334
- internationalists 114
- no general customary law rule 293
- state ownership rules and regulations on 304–8
- UK 139, 142, 294–5, 301, 309–10, 317
- UNESCO 125–6, 128–9, 131, 134, 291, 294, 305–6
- standard of implementation 297–9, 301
- UNIDROIT 113
- expropriation 10–11, 26, 32–3, 43, 68, 73, 102–5, 341
- US courts 181–2, 187–8
- fair trial/hearing 151, 155, 185, 202–3, 215
- Falconer, KA 73, 122, 213, 217, 257, 259
- Falkoff, S 128
- Fauvarque-Cosson, B 43, 61, 62, 108
- Fawcett, JJ 94, 184, 228
- Feliciano, H 250, 253
- Felson, M 31, 226
- Fielder Redman, L 164, 182, 185
- finality of judgments (*res judicata*) 181, 188–90, 218, 221, 286–7, 341
- and enforcement of the arbitral award 207–11, 221
- Nazi spoliated art 213
- Fincham, D 232
- Finland 76, 130, 173
- Fishman, JP 48, 109, 164, 182
- Fishman, R 296
- Flechtheim, Alfred 281–2
- Fleckner, U 251
- Forbes, SO 294
- forced sales 33, 47, 73, 277–88, 343
- definition 277–8
- foreign public law 40–41, 51, 88, 289–93, 336–8, 343, 347–8
- civil law systems 312–4
- equalisation 308–18
- international law and domestic relations 293–308
- no general customary law rule 293
- regional and international instruments 294–7

- state ownership rules and export controls 304–8
- UNESCO Convention: standard of implementation 297–304
- international understanding 326–36
- public law taboo 291–5, 308–9, 327, 333, 337, 343
- challenge to doctrinal obstacle to restitution 314–8
- non-application by default 309–12
- qualifying doctrinal obstacle to restitution and 319–26
- UNIDROIT 113, 127, 294–5, 310, 327, 329, 331
- forfeiture 34, 88, 128, 299, 302, 305, 307–10, 319, 336, 340
- Forrest, C 36, 51, 60, 77, 114, 290, 323, 327
- Forsyth, CF 84
- forum non conveniens* 82, 183–6
- forum-shopping 82, 169, 173, 182–3, 274, 292, 345
- Fox, C 126
- France 33, 71, 130, 173, 252, 290, 342
- arbitration 201, 204
- Nazi spoliated art: mediation 265–6
- repatriation 79
- Francioni, F 2, 5, 62, 113, 119
- Franzina, P 175
- fraus legis* 101, 246
- free movement 13, 292, 336, 344
- in EU *see under* European Union
- Freund, Julius 281
- Frey, L 94, 238, 278
- Frigo, M 10, 114, 240, 329
- Fromm, E 13
- Gaillard, E 158, 204
- Garnett, R 38–9, 245
- Gazzini, IF 14, 48, 54, 58–9, 65, 68, 82, 95, 109, 116, 120, 124–5, 128–9, 133, 142, 148, 151–2, 154–7, 159, 166–8, 190, 193–4, 197–9, 201–3, 207, 210, 214–5, 217–22, 228, 240, 268, 291–2, 305–6, 310, 314
- Gegas, EI 54, 152, 199, 263, 276
- Germany 4, 9, 33, 36–7, 50, 76–7, 130, 342–3
- classification 91, 172–3
- foreign public law 314, 331–5, 337
- good faith 97, 260
- import control 331, 337
- jurisdiction 172–3
- limitation period 245, 254, 271
- Nazi spoliated art *see separate entry res judicata* 189, 286–7
- ‘stolen’ 237
- title laundering 237
- UNESCO 333
- UNIDROIT 130
- Gerstenblith, P 2, 6, 12, 20, 47, 61, 86, 92, 100, 104, 117, 119, 297, 300, 302, 310, 322–3, 326–8, 331
- Ghose, T 47
- Gilkey, LB 1
- Gillies, L 17, 26, 35, 177
- Gillies, P 204
- global justice 281, 283–4, 343
- global solidarity 11, 36, 44, 48–52, 130, 135, 277, 312, 344–5, 347
- Goko, C 79
- Goldberg, A 321
- good faith purchasers 13, 20, 262, 290, 302, 336, 344
- common v civil law 97, 259–60
- due diligence *see separate entry*
- EU 148
- London Declaration of 1943 256
- market overt 229
- Nazi spoliated art 50, 73–4, 256, 260, 269
- parallel proceedings 166
- Swiss law 33, 50, 252
- title laundering *see separate entry*
- UNESCO 132, 235–6
- UNIDROIT 126–7, 129
- Goudstikker, Jacques 102, 278
- governmental interest analysis 42
- Graber, CB 14, 56
- Graham, JL 12
- Grandell, T 18
- Granovsky, M 52, 152
- Greece 74, 75, 97, 150–1
- Grimsted, PK 260
- Grosvenor, B 278
- Grotius, H 116

- Guatemala 131
 Guedj, TG 84
 Gurlitt, Hildebrand 251, 253–4, 257
- Hague Convention on the Laws and Customs of War on Land 117, 122, 256, 258
 Hague Convention for the Protection of Cultural Property 32, 47–8, 117–8, 122, 258–9
- Halperin, J 47
 Hanisch, H 237
 Harris, MJ 70, 114
 Hartley, TC 89
 Hartman, GH 2
 Hartung, H 109, 122, 214, 258, 264, 280
 Hawkins, A 8
 Hay, P 84–5
 Heiskanen, V 156
 Hemer, Thomas 285
 Henckaerts, JM 252, 258
 Hickley, C 272, 276
 Hoffman, BT 142, 310
 Holligan, A 17
 Holocaust 15–7, 65
 Nazi spoliated art *see separate entry*
 Hong Kong 12
 Hopkirk, P 11
 human potential 48, 51, 345
 human remains 59, 77–9
 objects removed from 80
 human rights 14, 29
 fair trial/hearing 151, 155, 185, 202–3, 215
 pre-emption right, exercise of 306
 self-determination 77
- Hungary 173
 Hutt, S 23
- Iceland 170
 illegal export 19–21, 34, 47, 72–3, 135, 226, 291, 293–4, 299, 304, 306–10, 315, 322–3, 326–7, 334
 illicit excavation 19–21, 27, 34, 47, 72–3, 126, 129, 132, 226, 301–4, 330
 import control 15, 40, 43, 51, 69, 88, 119, 134, 336–7
- Commonwealth Scheme 295–6, 299, 301
 EU 138–9, 296
 Germany 331, 337
 Swiss law 313
 UK 301
 UNESCO 124–5, 128, 134, 291, 294
 standard of implementation 297–9, 301–2
 US 298–9, 320, 337
- India 12
 indigenous peoples 13–4, 27, 56–9, 130, 132, 327
 arbitration 197
 human remains 59, 77–9
 objects removed from 80
 Maori material culture 307–8
 Native Americans 78, 80, 86–7, 178–9
- International Chamber of Commerce (ICC) 72, 195, 208
 international co-operation 337, 344
 see also global solidarity
 International Council of Museums (ICOM) 135
 International Court of Justice (ICJ) 120–1
 International Law Association (ILA) 57, 74, 193, 202, 263
- Iran 12, 316–8
 Iraq 47, 118–20, 299, 301
 Ireland 174, 296
 Italy 4, 52, 76, 130, 226, 229, 233, 252, 290
 Atleta di Fano (Getty Bronze) 34, 75, 293, 299, 309, 334
 foreign public law 314
 Medici conspiracy 22, 28, 72, 296
- Jackson Review (2010) 54
 Jakubowski, A 14, 35, 37, 65–6, 225, 236, 242–3, 291, 304, 306, 310, 313, 315
- Japan 130
 Jayme, E 35, 48, 107, 234–5, 237
 Jennings, RY 115
 Jokela, H 115
 Jordans, F 279–80

- Juenger, FK 35, 83, 85
 jurisdiction 17, 26, 80–3, 147, 161–7,
 340, 341
 1995 UNIDROIT Convention 168–9
 arbitral tribunal 203–5
 declined 163, 183–4
 common law and civil law systems
 184–7
 US courts 187–8
 European Union 81–2, 147, 167–9,
 206, 220
 Brussels/Lugano regime 170–1,
 183–4, 186, 341
 courts of Member States 170–3,
 177–8
 new Judgments Regulation
 (Recast) 173, 176–7, 186–7,
 206–7
 prorogated 173–4
 revising Judgments Regulation
 174–6
 exclusive 82, 173
forum non conveniens 82, 183, 184–6
forum originis 235
 parallel 83
 United States 82, 85, 162, 165,
 168–9, 173
 challenges 187–8
 forum non conveniens 184–6
 FSIA and IFSA 181–3, 187–8
 minimum contacts 178–81
 museums: immunity regime 177–8
 recognition and enforcement 181
 jurisdictional trade 190–1, 256, 262–7
 justice 26–7, 69, 154
 conflicts 90, 107, 227, 348
 global 281, 283–4, 343
 just and fair solutions 70, 263, 265,
 280
 material or substantive 90, 107, 110,
 185, 227, 249, 283, 348
 pluralism 43, 62, 90, 256, 269–72,
 348
 systemic 281, 288, 348
- Kaczorowska, A 258
 Kanakariá mosaics 98–9
 Kaye, LM 164, 247, 274, 278
- Keenan, DJ 229
 Kegel, G 90
 Keim, R 211
 Kelly, MJ 131
 Kenyon, A 227, 231, 239, 245
 Kessedjian, C 138
 Keyes, M 161–5
 Knapton, S 52
 König, H 269–70, 279–80
 Koush, A 14, 28, 242, 306
 Kowalski, WW 34, 69, 228–9
 Kreder, JA 73, 213, 261, 273
 Kronke, H 312
 Kropholler, J 62
 Kuprecht, K 13, 52, 59, 151, 197, 264–5
 Kuwait 118
- laches defence 28, 239
 Lalani, S 89
 Lalive, P 95, 127, 130, 232, 246
 Lanciotti, A 34, 75, 225–6, 294, 299,
 309, 334
 Lane, DC 21, 24–5
 Last, K 2, 35, 77–8, 101, 133
 Le Brun, C 9
 Lee, M 35, 232, 247
 Lenzner, NR 123, 133
 Lerner, RE 261–2
 Levontin, AV 39, 84, 91
lex culturalis see cultural heritage law
lex mercatoria 158
 Lipstein, K 315
lis pendens 167, 186–7, 210, 218–9, 341
 loans, art 52–3, 58, 67, 75, 178, 183,
 192, 198, 342
 lock formation 29–33, 148, 226, 243,
 246, 248, 311, 340, 342–3, 345–6
 ‘lock’ jurisdictions 30–3, 36, 142,
 224–49, 252, 281, 343, 347
 London Declaration of 1943 256–7
 looting 47, 61, 73, 118, 122–3, 199, 212,
 250, 258
 Lörcher, T 202
 Lowenfeld, AF 66, 315–6, 318
 Lubina, K 73, 104, 272
 Luxembourg 173

- MacKenzie, S 15–6, 22, 24, 95, 301, 303–4, 319
- McLachlan, C 80, 184, 189, 207
- McVeigh, S 161
- Maher, G 91, 172, 177
- Mann, FA 103, 161
- market reduction approach 24
- market state 10, 16, 25, 28, 51, 132, 159, 289, 290, 336–7, 339–40
- internationalists 114
- Martinek, M 241
- Mealy, N 114, 131, 290, 299, 301, 323, 327
- mediation 50–1, 53–4, 149, 151, 193–4, 216, 262, 264–8, 271–2, 274, 276–7, 287, 342–3
- Medici conspiracy 22, 28, 72, 296
- Merryman, JH 74, 100, 111–2, 131, 238, 292, 307–8
- Mexico 208–9, 321–2
- Michaels, R 85
- Mihan, G 114
- Miles, MM 45
- military necessity 117
- Mills, A 26, 36–7, 43, 60, 62, 110, 115–6, 161, 281, 314
- money laundering 43, 97, 319–20, 329
- Monuments Men 257
- morality *see* ethics
- Morrow, JE 331
- Mostrous, A 18
- Muir Watt, H 49, 311, 315
- Mullery, J 212–3
- Murphy, JD 23, 133, 234
- Murphy, N 70, 190, 213, 217, 255, 261, 263
- Muscarella, OW 22
- Nafziger, JAR 77, 183
- national treasures 9, 234, 304–5
- EU law 7–8, 138–40, 143–6, 225–6, 235, 294–6, 344
- UK 8–9, 139, 329
- Waverley Criteria 8–9, 329
- Nazi spoliated art 33, 58–9, 72–4, 121–3, 221, 250–6, 342, 345
- adjudicatory authority 211–7
- categories 72–3
- claimants' options: jurisdictional trade 262–7
- ethical/moral grounds for restitution 50–1, 69–70, 74, 79–80, 260
- forced sales 33, 73, 277–88, 343
- justice pluralism vs uniform body of law 269–72
- legal basis of restitution claims 69–70, 256–9
- policy-based restitution 50–1, 99, 255–6, 260
- private parties and mediation 267–8
- process and substance 39, 50, 272–7
- public policy exception and sovereign acts 104–5
- restitution in post-war era 259–62
- United States 182, 188, 211, 215, 217, 246
- nemo dat quod non habet* 126, 229, 233, 241
- Netherlands 3, 17, 69, 97, 130, 173, 188–9, 342
- foreign public law 313
- Nazi spoliated art 266–7, 272
- New York Convention (1958) 154–5, 194, 205–8, 211–3
- New Zealand 78–9, 307–8, 315
- Nicholas, LH 253
- Nigeria 51
- non-contractual disputes 37, 91, 98–9, 193, 196, 198–201, 255
- non-contractual obligations 92
- non-legal factors 16, 45, 149, 151, 196–8
- non-retroactivity/non-retrospectivity 132–3, 299, 310, 328
- Norway 130, 170
- Nuremberg Laws 104, 284
- Nuyts, A 170, 173
- O'Connell, A 178, 261
- Odendahl, K 128, 331
- O'Donnell, T 59, 286
- O'Keefe, PJ 4–5, 295, 298
- Oliver, A 18
- O'Neill, M 80
- Orford, T 196
- orphan works 238

- out-of-court settlements 190–1, 284
 ownership claims 9, 113–4
 market overt exception 229
 nemo dat quod non habet 126, 229, 233, 241
 transfer of ownership 30, 37–8, 40, 230, 232, 234, 342
 Nazi spoliated art 255, 268, 280
 UNIDROIT 127, 233, 330
 undiscovered objects 25, 40, 114, 128, 240, 245, 306–7, 316, 321, 329–31, 334, 343
- Palestine 47
 Palmer, N 18, 54, 95, 148, 152–3, 192, 196, 199, 232, 251, 263, 284
 Panagopoulos, G 92–3, 239–40, 282
 Pannikar, R 3
 Papa-Sokal, M 7, 74, 113, 115, 133–4, 290, 298, 304–5, 308, 323
 Papua New Guinea 74
 parallel proceedings 147, 165–7, 174, 187, 189, 210, 217–9, 221–3, 269, 271, 287
 Parker, J 278
 Parkhouse, A 132
 Passas, N 30
 Paterson, RK 149, 194, 197, 278, 291–2, 327, 335
 peace-time solutions: UNESCO and UNIDROIT Treaties 123–35
 Pearce, N 22
 Pearlstein, WG 112, 134–5, 149, 304, 320, 330
 Pecoraro, TW 99, 238, 240, 293, 311
 Pell, OC 211–3, 258, 261
 Permanent Court of Arbitration (PCA) 157–8, 195, 201, 211, 213
 Petrus, CH 204
 Piers, M 156–9, 221
 Platoni, K 250
 pluralism, justice 43, 62, 90, 256, 269–72, 348
 Poland 173
 Portugal 130, 173, 313
 pre-emption right, exercise of 306
 Preston, A 23
 Pretelli, I 174
- private international law 15–6, 311, 318
 context: cultural heritage law meets 16–25
 control of cross-border movement and trade 25–36
 domestic law interacts with 111–5
 practical control offered by 36, 339–43
 choice of law method 41–2
 classification 37–9
 ethics 45–8
 foreign public law 40–1
 global solidarity 48–52
 international dimension 36–7, 340
 public policy exception 42–5
 public international law meets 115–6
 surmounting greatest obstacles 344–8
 procedure 38–9, 50, 80–3, 88–90, 96, 155, 272–7
 arbitration 202, 214, 220, 223
 property law 29, 59, 70–1, 110, 224–5, 254–5, 271, 278
 Prott, LV 4–5, 9, 28, 35, 61, 94, 110, 227, 232, 236, 240, 295, 311, 327, 336
 provenance/provenience 13, 20–1, 23–4, 30–1, 45, 88, 224, 228, 241, 247
 choice of law rules and context 236–7
 due diligence *see separate entry*
 fact-finding establishing 70–1
 museum displays: description of 283
 Nazi spoliated art 251
 purchaser: opportunity to ascertain 247, 346
 tainted cultural object offence: unawareness of 303–4
 Prowda, JB 57
 public international law 15, 29–30, 41, 43, 73, 77, 102–5, 340
 adjudicatory authority 161, 187–8
 customary law 117–8, 132, 257, 293
 foreign public law 314
 jus cogens 122
 Nazi spoliated art 213–4, 257, 261
 private international law meets 115–6
 state immunity *see separate entry*
 UNESCO 133

- public policy exception 26, 42–5, 50,
62, 73, 85, 107, 218, 342, 346–7
criminal conduct 101
Nazi spoliated art 261–2, 278–9, 287
safety valve 43, 90, 106
sovereign acts 102–5
- Raape, L 241
Rabel, E 60, 93, 289, 318
Rabinbach, A 250
Radicati di Brozolo, LG 188, 207, 221
Range, D 264, 268
Rassool, C 79
Raue, D 285
Rayner, G 18
recognition and enforcement
of arbitral awards 207–11, 213
of judgments 83, 177, 181, 213
reconciliation 55–6, 79, 160
Redman, LF 255
Reed, A 81
Reichelt, G 28, 224, 232, 237
Reimann, M 62
religious law systems 190
Renold, MA 40, 134, 239
reparation 77–80, 132, 136–7, 143–8,
299, 320–1, 335
res judicata 181, 188–90, 218, 221,
286–7, 341
and enforcement of the arbitral award
207–11, 221
Nazi spoliated art 213
restitution 14–5, 26–7, 32–3, 40–1,
67–7, 305–6, 310
doctrinal obstacles to 74–7, 314–26
legal grounds for 68–71, 256–9
moral grounds for/ethics-driven
50–1, 69–71, 74, 79–80, 260
Nazi spoliated art *see separate entry*
policy-based 50–1, 99, 255–6, 260
trophy art 252
UNESCO 129, 133
UNIDROIT 125–6, 129–30
retrospectivity/retroactivity 119, 132–3,
209
Rising, D 271
Ritchie, AM 69
Robertson, I 12
- Rödl, F 36
Romania 173
Roodt, C 13, 22, 60, 95, 108, 167, 191,
208, 210, 217–8, 224, 256, 284–5
routine activity theory 24
Rowe, DW 232
Rowland, DJ 274
Russia 32–3, 76–7, 130, 187–8
- Sancho Villa, D 82
Sargent, AB 33, 76–7, 182, 188, 252
Saville, A 289
Sawka, JF 214–5, 217, 264
Schechter, R 298
Schick, J 11
Schönenberger, B 8, 12, 22, 32–3, 50,
61, 70, 72, 80, 92, 96, 102–4, 118,
120, 129, 144, 148, 150, 153, 182,
262, 282, 284, 314, 317, 320–1,
327, 331
Schultz, T 155, 205
Schuz, R 312–3
Scoles, EF 320
Scotland 8, 40, 59, 81–2, 296, 328–9
arbitration 205
bona vacantia 86, 328
classification 91, 97, 172
jurisdiction 169, 172–3, 184
Law Commission 148, 230
Nazi spoliated art 265, 273
vitium reale 230–1
Scovazzi, T 60
sector vulnerability 24
Seelye, KQ 71
self-determination 77
Shapiro, D 37, 91
Shapiro, S 255
Shine, P 207
Shiu-Hing Lo, S 19
Shore, L 209
Short, KA 142
Sidorsky, E 54, 129, 152, 193, 195, 199,
222
Siehr, K 35, 47, 61, 81, 95, 101, 143,
152, 164, 191, 237–8, 240, 314,
333–4
Silk Road 11
Sinai, Y 189–90, 286–7

- soft law 61, 63, 70, 115, 137, 157, 159, 216, 263–4
- source state 10, 25, 28, 51, 72, 291, 307, 315, 322, 327, 336–40, 345–6
- economic benefits of cultural objects 24
 - export control 293, 337–8
 - historical record 20–1
 - nationalists and internationalists 111–5, 289–90
 - restitution: interests 27
 - undiscovered cultural objects: Model provisions 25, 329–31
- South Africa 79
- sovereign act 26, 32–3, 50, 102–5, 183
- Soviet Union 15, 188, 252
- Spain 130, 173
- Spiegler, HN 253
- Staker, C 104, 239, 278, 315
- Stamatoudi, I 137, 140, 144, 168, 217, 232, 255, 311
- state immunity 26, 103, 105, 107, 122–3, 214–5, 310
- US courts 181–3
- state ownership, declaration of (vesting law) 25, 40–1, 112–5, 120, 245, 289, 291, 322–5, 348
- export control regulations and 304–8
 - Germany 331–2, 334, 337
 - Model Provisions: undiscovered cultural objects 25, 329–31
 - UNIDROIT 294, 329–31
- statutory limitations/prescription 25, 27–9, 33–4, 39, 50, 74, 95–8, 101, 192, 221, 228, 336
- Belgium 242–3
 - EU 146
 - Germany 245, 254, 271
 - lex originis* 238
 - Nazi spoliated art 211, 254–5, 261–2, 265–6, 271, 273–7, 342
 - public policy exception 346
 - public policy status 244–5, 262
 - repatriation 78
 - UNESCO 129
 - UNIDROIT 126, 211, 259
 - United Kingdom 96–7, 231, 244–5, 262, 265, 273
 - United States 96–7, 192, 247–8, 274–6
- Stein, P 224
- Steindorff, Georg 284–5
- Steiner, HJ 70, 104
- Stengle, J 251
- Sternlight, JR 201
- Stewart, DP 181
- Stipanovic, TJ 191, 216
- supply, demand and regulation 23–5
- Sweden 173
- Switzerland 20, 33, 38, 50, 130, 170, 208, 218–9, 252, 281
- foreign public law 313
 - implementation of UNESCO treaty obligations 297
- Sykes, K 148
- Symeonides, S 35, 42, 85, 97, 232, 234, 237, 247
- Syria 47
- Taiwan 218–9
- theft 17–9, 27, 29, 33, 47, 71–2, 100–1, 128, 147, 306–7, 315, 330–1, 346–8
- arbitration 199–200
 - Scotland 328–9
 - title laundering 230–1, 235–7, 241, 244–8
 - UK: Theft Act 1968 300–2
 - UNIDROIT 126–8
 - US: National Stolen Property Act (NSPA) 320–7
- Theurich, S 60, 154, 255, 262
- Tijhuis, AJG 10, 15, 18–9, 21–2, 27–30, 50, 226, 246
- time limits 25, 27–9, 33–4, 39, 50, 74, 95–8, 101, 192, 221, 228, 336
- Belgium 242–3
 - EU 146
 - Germany 245, 254, 271
 - ILA draft principles (2004) 193
 - lex originis* 238
 - Nazi spoliated art 211, 254–5, 261–2, 265–6, 271, 273–7, 342
 - public policy exception 346
 - public policy status 244–5, 262
 - repatriation 78

- UNESCO 129
- UNIDROIT 126, 211, 259
- United Kingdom 96–7, 231, 244–5, 262, 265, 273
- United States 96–7, 192, 247–8, 274–6
- title 260, 269
- title laundering 20, 27–33, 72, 95, 99, 106, 148, 224–49, 336, 347
 - choice of law rules and context 236–7
 - detrerring 237–48
 - Belgium 242–3, 345
 - English courts 244–5
 - New York courts 246–8
 - menace of 227–36
- Tolstoy, L I, 48, 51
- Tompkins, A 261
- Torsen, MA 250
- tort 37, 91, 98–9, 199
 - conversion 58, 67, 91–2, 96, 100, 172, 199, 231, 244, 247–8, 316–7, 322–3, 337
 - detinue 92
 - replevin 92
- trafficking in cultural objects 9–10, 19–21
- transfer of ownership 30, 37–8, 40, 230, 232, 234, 342
 - Nazi spoliated art 255, 268, 280
 - UNIDROIT 127, 233, 330
- transit state/intermediary state 28, 95, 142, 233, 236, 339–40
- trophy art 15, 73, 252
- Turkey 4
- Tyler, BJ 127

- Ulph, J 16, 20, 47, 51, 58, 91, 95, 100, 114, 126, 136, 139, 305, 309, 317, 319–20, 323, 328
- Ulpian 224
- UNCITRAL Rules 157–8, 193, 195
- UNESCO 7, 123–4, 131–6, 160, 196, 333, 335
 - good faith 97
 - mediation and arbitral panels 193–4
 - Nazi spoliated art 259
 - Parthenon Marbles 74
 - prevention and control 124–5
 - export controls 125–6, 128–9, 131, 134, 291, 294, 305–6
 - standard of implementation 297–304
 - sanctions 128
 - status 130
 - title laundering 28, 235–6
 - undiscovered cultural objects 25, 329–31, 338
- UNIDROIT 26–7, 123–4, 131–2, 160, 211, 295, 310, 327
 - arbitration 153, 156–7, 158–9, 193
 - burden of proof 127
 - foreign public law 113, 127, 294–5, 310, 327, 329, 331
 - jurisdiction (signatory states of 1995 Convention) 168–9
 - Nazi spoliated art 259
 - prevention and control 125–8
 - sanctions 128–9
 - state ownership (vesting laws) 25, 294
 - status 130
 - title laundering 232–3
 - undiscovered cultural objects 25, 329–31, 338
- United Kingdom 4, 12, 21, 59, 115, 130, 199–200, 287, 342–3
- ADR 151–2
 - Spoilation Advisory Panel 65, 264–5, 267–8, 272–3, 277, 283, 286
- arbitration and courts 200–1, 204–5
 - anti-suit injunctions 206
 - choice of law 88–9, 244–5, 273
 - buried ownerless property 86
 - classification 38, 91–2, 96–7, 100, 172
 - public policy exception 103, 105, 262, 286
- Common Travel Area 296
- criminal law 97, 337
 - tainted cultural object offence 303–4, 327–8
 - Theft Act 1968 300–2
- cultural priorities 8–9
- EU: free movement 139

- export control 139, 142, 294–5, 301, 334
- foreign public law 292, 294–5, 299–304, 320, 327–8, 334, 337, 343
 - challenge to doctrinal obstacle to restitution 314–8
 - non-application by default 309–12
- Iraq 119
- jurisdiction 81, 85, 162, 165, 169–72, 174
 - forum non conveniens* 184–6
- limitation periods 96–7, 231, 244–5, 262, 265, 273
- looter cannot pass good title 212
- Museums Association 135
- repatriation 78, 80
- Spoliation Advisory Panel 65, 264–5, 267–8, 272–3, 277, 283, 286
- title laundering 227, 229–33, 235, 244–5, 249
- UNESCO 299, 300–1, 303
- United Nations
 - General Assembly 113, 120
 - Security Council 118–9
- United States 12, 34, 41–2, 44, 59, 115
 - ADR agreement 151
 - arbitration 151, 154
 - anti-suit injunctions 206–7
 - mandatory 201
 - res judicata* 208–9
 - choice of law 89, 246–8
 - archaeological sites 86–7
 - classification 92, 99
 - public policy exception 102, 105
 - criminal law 71–2, 199–200, 299, 320–7, 337
 - cultural priorities 6–7
 - discovery 97
 - foreign public law 292–5, 297–9, 320–7, 331, 334, 337, 343
 - import control 296, 298–9, 337
 - Iraq 118–9
 - jurisdiction 82, 85, 162, 165, 168–9, 173
 - challenges 187–8
 - forum non conveniens* 184–6
 - FSIA and IFSA 181–3, 187–8
 - minimum contacts 178–81
 - museums: immunity regime 177–8
 - recognition and enforcement 181
 - limitation periods 96–7, 192, 247–8, 274–6
 - looter cannot pass good title 212
 - mediation 151
 - Native Americans 78, 80, 86–7, 178–9
 - Nazi spoliated art 182, 188, 211, 215, 217, 246, 255–7, 260, 273–7
 - mediation 267, 274, 276–7
 - res judicata* 190
 - title laundering 227, 241, 246–9
 - UNESCO 131, 133–5, 297–9
 - UNIDROIT 130, 294
 - unjust enrichment 91–2, 199, 240, 272
 - Vadi, V 5, 14
 - Valentin, P 127, 131
 - value-rationality 29, 48–50, 277, 279, 287, 342, 345, 347
 - Van Apeldoorn, LJ 224
 - Van Haersolte-van Hof, J 120, 195
 - Van Vliet, LPW 37–8
 - Van Woudenberg, N 2, 26, 118, 136
 - Varner, E 55, 153, 195, 198–9
 - Venice Court of National and International Arbitration (VENCA) 193
 - Veraart, W 50, 59, 69, 74, 254, 260–1, 280, 284
 - Verhagen, HLE 94
 - Vincent, A 18
 - Vitale, C 112, 140, 144
 - vitium reale* 227, 230–1, 233, 236–7, 248–9, 346
 - Voet, P 311
 - Von Hoffmann, B 333
 - Von Savigny, FK 83, 85
 - Von Stockhausen, T 251
 - waivers 209, 218, 267
 - access to court 201–5, 341
 - state immunity 214–5
 - Wantuch, MO 152, 275
 - war/armed conflict 21, 27, 47–8, 69, 76–7, 112, 116–8, 345

- ad hoc* measures adopted in modern
conflicts 118–20
Gulf Conflict 47, 118–20
war crimes 257–8
- Ward, P 268
- Warren, KJ 125
- Watson, P 12, 15, 20, 22, 296, 300
- Weil, S 2
- Weller, M 271, 282–3, 312–3, 317,
320–1, 326, 331–3
- Whincop, M 35, 89, 95, 190, 217
- Wichard, JC 53
- Wilde, L 13, 48, 52, 277, 312
- Wilson, MJ 89–90
- Wilson, S 274
- Woodhead, C 264–5, 269, 271–3, 283,
286
- World Customs Organization (WCO)
142
- World Trade Organization (WTO)
14
- Yasaitis, KE 112, 307, 321
- Yeide, NH 251–2

