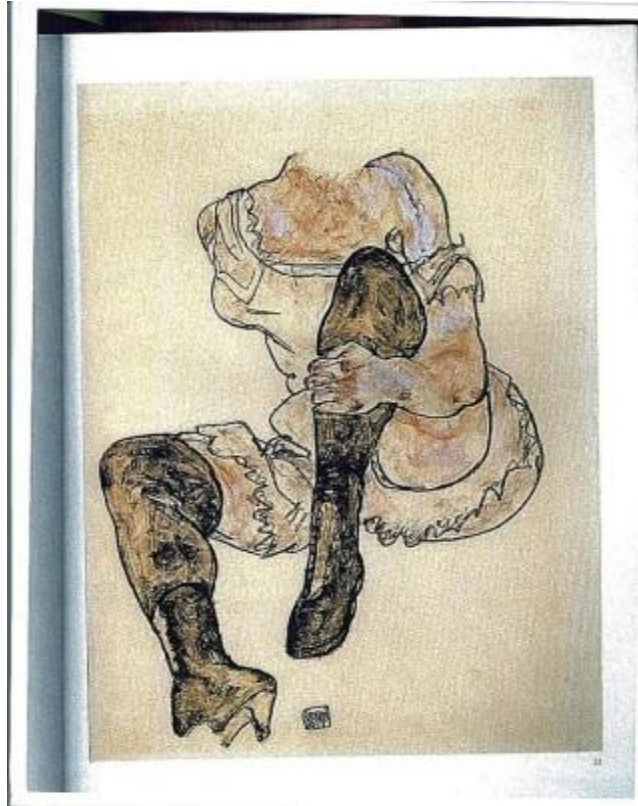


## Reading for Class 1

12-15-2017

Everybody wants...



“Seated Woman with Bent Left Leg”

a 1917 [gouache](#) and crayon drawing by the 20<sup>th</sup> century Austrian artist Egon Schiele

### So what’s the issue?

Was “Seated Woman” stolen by the Nazis from the Grünbaum collection, or did a family member sell it to a Swiss art gallery on the up and up? Sixty years later, should it go to the Grünbaum great-nephews, or to the person who bought it from an art gallery? And why does anyone even want it?

### How do we figure out who should own the drawing?

- How does the American legal system address this question?
- Which facts do we need to know?
- Which law governs this case: Swiss law, or New York law? Which law *should* govern, and why?

- Does “laches” apply here? That is, did the plaintiffs simply wait an unreasonably long time to bring their claim?

### Who’s who

*Egon Schiele* (1890-1918): a major figurative painter of the early 20<sup>th</sup> century; he had a strong influence on Austrian Expressionism. The Nazis considered his art “[degenerate](#)”.

*Fritz Grünbaum*: Franz “Fritz” Friedrich Grünbaum, a celebrated Jewish Austrian cabaret performer and songwriter of the 1930s, who was known for making fun of the Third Reich (Nazi Germany) and who owned 449 artworks, including 81 by Egon Schiele. Fritz’s siblings included:

- a sister *Elise Zozuli*, who died in 1977, and a brother *Paul*, who died in 1942

*Elisabeth Grünbaum*: Fritz’s wife. Elisabeth’s siblings included:

- a sister *Mathilde Lukacs-Herzl*, who died in 1979, and a brother *Max Herzl*, who died in 1946

In 1999, an Austrian court formally declared *Leon Fischer and Milos Vavra* to be the Grünbaums’ heirs

- Leon was Mathilde’s great-nephew (Mathilde’s brother’s grandson)
- Milos was Fritz’s sister’s great-nephew (Elise’s daughter’s nephew)

*Galerie Gutekunst*: a Swiss art gallery

*Galerie St. Etienne*: a NYC art gallery

*David Bakalar*: the purchaser of the drawing from the Galerie St. Etienne in 1963

### What happened

Fritz Grünbaum is arrested by the Nazis in 1938. While imprisoned in the concentration camp at Dachau, he is forced to sign a [power of attorney](#) to his wife, Elisabeth. This power of attorney enables the Nazis to compel Elisabeth to dispose of Fritz’s assets, many of which were auctioned off.

In 1938, a Nazi art appraiser (Franz Kieslinger) inventories Fritz’s collection, including 81 works by Schiele. Only 5 of the 81 were listed by name; “Seated Woman” was not one of the named works. The inventory notes in a summary that the collection included dozens of colored works, drawings and prints. There are records that the Grünbaum collection was moved to a storage depot in Vienna, but it is not clear from the available evidence that the Nazis actually looted (stole) this drawing, or that it was otherwise taken from Grünbaum.

Fritz Grünbaum dies in 1941.

Elisabeth is arrested by the Nazis in October 1942 and dies shortly thereafter in a concentration camp in Minsk.

In 1952, Elise Zozuli makes an inquiry about receiving Fritz Grünbaum’s music royalties but withdraws that inquiry when she learns that those royalties are being paid to Mathilde Lukacs, Elisabeth’s sister.

In 1956, the drawing resurfaces: Mathilde Lukacs sells it with forty-five other Schiele works to Galerie Gutekunst, a Swiss art gallery. The same year, Gutekunst resells it to Galerie St. Etienne in NYC.

1963: David Bakalar buys the Drawing *in good faith* from Galerie St. Etienne for \$4,300.

2004-05: Bakalar sells the Drawing at auction at Sotheby's for about \$675,000. The sale is interrupted/canceled when Grünbaum heirs Vavra and Fischer asserted that the Drawing was stolen from their relative and thus that it is rightfully theirs, and a lawsuit is started in federal court in New York City to determine who owns the Drawing.

For the next eight years, the sale of the Drawing is tied up in litigation; the final court decision is issued in 2012.

### Some relevant legal principles

#### Question:

**If stolen property is resold, does the original owner still have title to it (legally own it), or does the new buyer now own it?**

#### Answer:

It depends on whose law applies.

#### Under Swiss law:

A person who acquires and takes possession of an object in good faith becomes the owner even if the seller was not authorized to transfer ownership. The purchaser has no duty to ask about a seller's authority to sell the object or about its origins unless there are suspicious circumstances.

#### Under New York law:

A thief cannot pass good [title](#), or legal ownership. Thus a good faith purchaser of stolen property can never take good title if the property was once in the hands of a thief.

#### Question:

**Does the right of the original owner to reclaim stolen property continue forever? If not, at what point does the original owner lose that right?**

#### Laches:

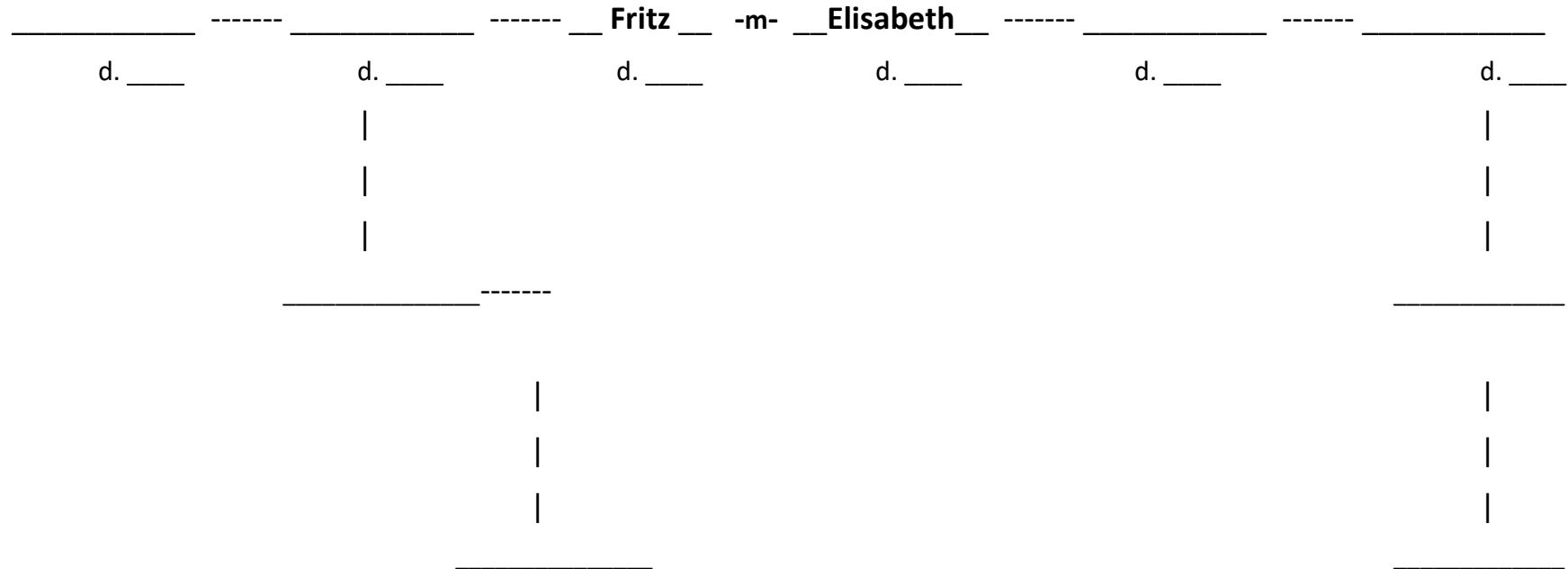
The legal doctrine of laches provides relief when there has been an unreasonable delay by a plaintiff in bringing a claim, and the delay has significantly harmed the defendant's ability to defend against the lawsuit, for example, by rendering potential witnesses and evidence unavailable due to the passage of time.

# Human Reasoning | Legal Reasoning | Ms. Hutner – Dec-2017

Name: \_\_\_\_\_ Period: \_\_\_\_\_

Fill in the rest of this partial Grünbaum family tree, with death dates below the names, so you end up with the declared heirs in the two bottom-most blanks. Fritz's siblings go on his side of the "m" (which means "married"), and Elisabeth's siblings go on her side.

## Grünbaum Family Tree



# Human Reasoning | Legal Reasoning | Ms. Hutner – Dec-2017

Name: \_\_\_\_\_ Period: \_\_\_\_\_

## Summary Timeline

Fill in this chart from the information in this handout.

date	event
1938	
_____	Fritz dies.
1942	
_____	Elise Zozuli, _____'s sister, makes a claim on _____ and learns that they are being paid to _____, who is Elisabeth's _____.
1956	The Drawing is sold by _____ to _____.  The Drawing is sold by _____ to _____.
1963	
_____	An Austrian court declares _____ and _____ to be the Grünbaum heirs.
2004-05	
2005-2012	

Name: \_\_\_\_\_ Period: \_\_\_\_\_

**Answer the questions below**

1. Explain the following in your own words:
  - a. Swiss law relating to the sale of stolen property:
  - b. New York law relating to the sale of stolen property:
  - c. Laches:
2. In this case, who is/are the buyer(s) and seller(s)?
3. Who has to prove ownership and why? In other words, who has the “burden of proof”?
4. Does the burden of proof vary by the law (for example, Swiss law vs New York law)?
5. Who might benefit by following Swiss law? Who would be hurt or disadvantaged?
6. Similarly, under NY law, who might benefit? Who would be hurt or disadvantaged?
7. Which law do you think is better for society: Swiss or NY law? Why?
8. How could delay have a negative impact on a defendant in a court case? Give an example, real or hypothetical.
9. How long a delay do you think would warrant a court’s applying laches? How did you arrive at that answer?