

Case Law Shorts

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Case Law Shorts 11/20/13 *New York Court of Appeals*

3000 Year Old Assyrian Tablet That Was Removed from German Museum During WWII Returned After Surrogates Court Reversed on Laches Ruling: Executor/daughter, seeking to finalize her father's estate, listed as one of the assets of the estate, a "gold wafer". Son of the decedent objected to the assigned value and stated that the wafer was undervalued inasmuch as it was believed to have been an ancient Assyrian amulet that belonged to a museum in Germany. It was learned that German archeologists discovered the tablet and it was sent to the museum in 1926. However, the museum was closed during WWII and the tablet was missing at the end of the war. The tablet surfaced in this probate proceeding and the museum filed a claim after the son notified the museum. The Surrogates Court, Nassau County, held a hearing and a representative of the museum testified that the tablet was either taken by Russian troops, German troops, or individuals who took refuge in the museum during the war. The executor argued that the museum was barred by laches. The Court ruled that the museum established ownership of the tablet but that it was barred by laches as the museum failed to notify authorities of the tablet's disappearance and did not list the tablet in international registries as being stolen, thereby prejudicing the estate's ability to defend against the museum's claim. However, the Appellate Division reversed, finding that the estate did not show that the museum failed to exercise reasonable diligence in trying to locate the tablet or that the estate was prejudiced by the museum's inaction. The Court of Appeals sustained stating the estate failed to show that the museum would have discovered that the decedent possessed the tablet had the museum made an effort to locate it. More importantly thought, the estate failed on the essential element of prejudice inasmuch as the heirs, or at least one heir, knew that the tablet belonged to the museum and that the decedent could not possibly have established title. The Court also rejected the executor's "spoils of war" argument... "The Estate's theory rests entirely on conjecture, as the record is bereft of any proof that the Russian government ever had possession of the tablet. Even if there were such proof, we decline to adopt any doctrine that would establish good title based upon the looting and removal of cultural objects during wartime by a conquering military force (see *Menzel v List*, 49 Misc2d 300, 305-308 [Sup Ct New York County 1966], modified as to damages, 28 AD2d 516 [1st Dept 1967], revd as to modification, 24 NY2d 91 [1969]][FN1]. Allowing the Estate to retain the tablet based on a spoils of war doctrine would be fundamentally unjust." [Matter of Flamenbaum, Court of Appeals, 2013 NY Slip Op 07510, November 14, 2013 opinion](#)