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# Deaccessioning Legal Headaches

# Definitions

## DEACCESSIONING

- Process of removing accessioned objects from the museum's collection legally and permanently or to document the reasons for an involuntary removal

## DISPOSAL

- The permanent removal of an item, through a variety of methods, from a museum collection

# Definitions

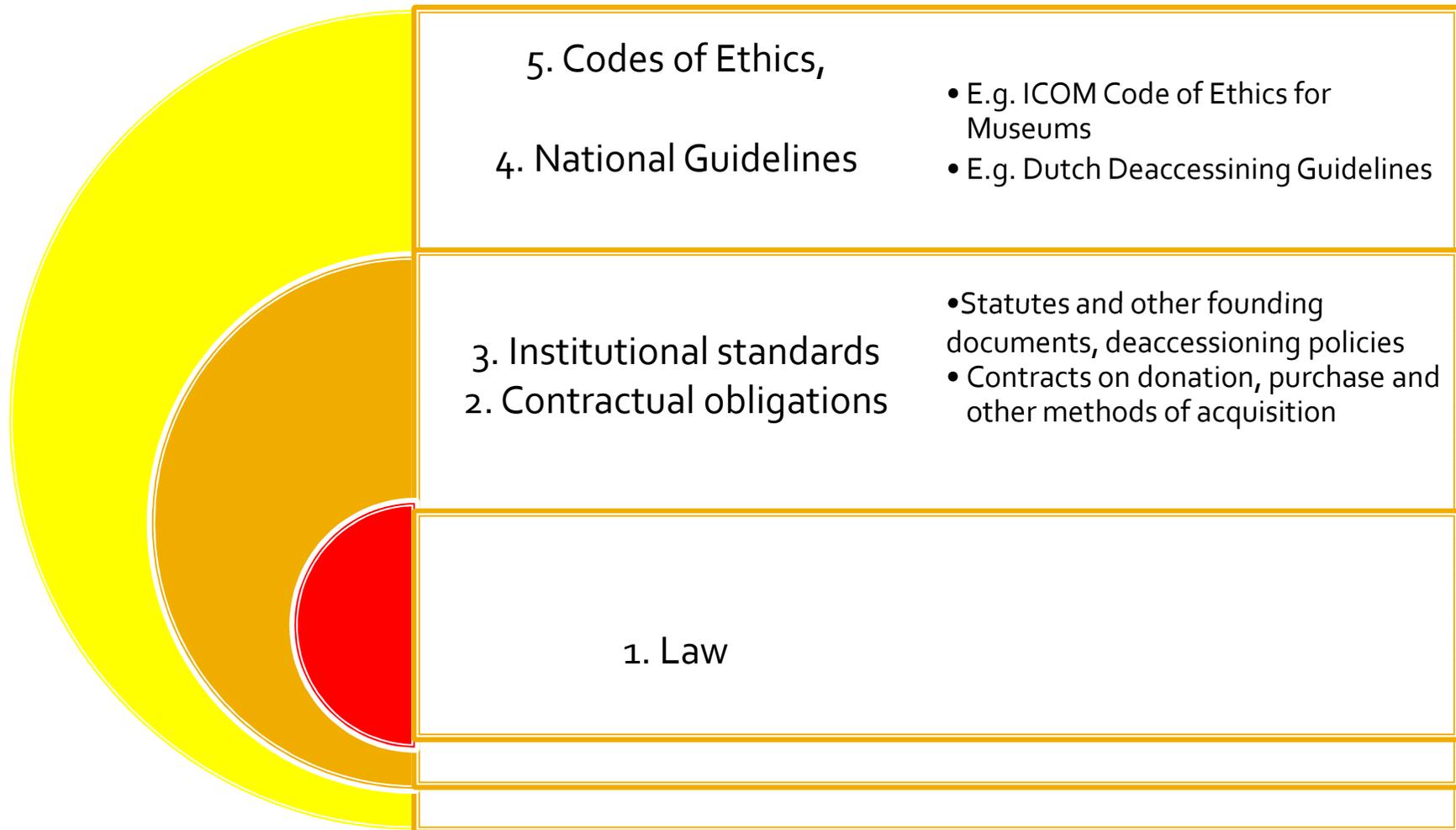
## ACCESSION

- Formally include the item in the permanent collection and recording it in the register of the permanent collection.

## ACQUISITION

- The process of obtaining legal title to an item with the intention of using it for museum purposes.

# Law and Ethics



# Report of the French 'Senat', 2008

- **1. In some cases even if this is specifically recognized by the law, the principle of inalienability concerning public collections is not an absolute one.**
- **2. Although deaccessioning is not specifically prohibited by law, whenever it takes place it must stay limited and happen in a strict legal framework.**

# Disposal policy

## Key legal points

1. Delegation of Authority
2. Provenance Research
  - donation
  - testamentary disposition and legacies
  - subsidies
3. Justification of the Deaccessioning
4. Methods and Procedures for Disposal
5. Deaccessioning Documentation

# Justification of deaccessioning

The Museum Association lists the following as categories of items that could be considered for disposal:

- Items fall outside the scope of the museum's mission/collections policy
- Duplicate items
- Underused items
- Items for which the museum is unable to provide adequate care or curation
- Items that are damaged or deteriorated beyond the museum's ability to repair
- Uncontextualised or unprovenanced items
- Items that pose a threat to health and safety

# Methods for disposal

- Free gift or transfer to another accredited Museum
- Exchange of items between museums
- Free gift or transfer to another institution/organisation within the public domain
- Return to donor
- Sale of item to an accredited museum
- Transfer outside the public domain
- Sale outside the public domain
- Recycling of item
- Destruction of item

(Source: The museum Association, Disposal Toolkit)

# International Council of Museums (ICOM) Code of Ethics

- **2.16 Income from Disposal of Collections**

Museum collections are held in public trust and may not be treated as a realizable asset. Money or compensation received from the deaccessioning and disposal of objects and specimens from a museum collection should be used solely for the benefit of the collection and usually for acquisitions to that same collection.

- **2.17 Purchase of Deaccessioned Collections**

Museum personnel, the governing body, or their families or close associates, should not be permitted to purchase objects that have been deaccessioned from a collection for which they are responsible.

**Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art**

Preamble (18)

The scope of the resale right should be extended to all acts of resale, with the exception of those effected directly **between persons acting in their private capacity** without the participation of an art market professional. This right should not extend to acts of resale **by persons acting in their private capacity to museums** which are not for profit and which are open to the public.

# Disposal

## PROS

- National assets should be properly used
- Costs money to look after collections
- Collections are more accessible, better used
- Better care and curation to the item elsewhere
- Creation or optimising of space

## CONS

- Negative effect that it can have on donors and other stakeholders
- Other generation's tastes and attitudes cannot be retained
- Changes in understanding, attitudes, tastes are not foreseeable

# Conclusions

1. Have a written policy on deaccessioning.
2. Deaccessioning is not a problem you must treat separately, it goes hands in hands with a responsible acquisition policy.
3. As with accessioning, deaccessioning should be a thoughtful process, if not handled properly, deaccessioning can endanger the museum's reputation and public trust.

**Thank you for your attention!**