

Acquisition of Property¹

I. FIRST POSSESSION

A. Rule of Discovery²

1. General Rule: First in time (possession) = title
 - a. Policy: Encourage discovery and acquisition of property for nation.
 - b. Johnson v M'Intosh (if Indians could have been assimilated, i.e. Law of Conquest = retain property rights, instead Law of Discovery applied).
 - (1) Ultimate owner is country of discoverer.
 - c. Counterargument: Encourages theft of land from indigenous peoples.

B. THE RULE OF CAPTURE: The first person to take possession of a thing owns it (Actual possession³ always precludes constructive possession⁴, constructive possession is valid only when no prior actual possession exists)

1. General Rule: Whoever is prior in time wins.
2. Capture of Wild Animals (Fugitive resource)
 - a. Pierson v Post
 - (1) Possession or occupancy is only satisfied when the animal is deprived of its natural liberties through mortal wounding (+ continued pursuit), or inescapable traps.
 - (2) Policy: To promote efficiency of fox hunting/ productive use/ reward labor
 - (3) Counterargument: Doesn't promote fox hunting, prod. use is bad, want conservation.

Note: A competitor can interfere w/another person's attempt to capture only if he intends to capture the animal absent custom to the contrary. (i.e. not malicious)

- b. Ghen v Rich
 - (1) Rule of custom: If following trade custom is necessary for the survival of the industry then we use it.
 - (2) Policy: Reward labors of whale hunters, industry won't survive if any chance finder can appropriate fruits of labor.
 - (3) Counterargument: Doesn't allow industry to progress/doesn't promote efficiency.
- c. Keeble v Hickeringill
 - (1) Malicious interference: Obstruction or hindrance w/ intent to harm.

¹ The right to possess, use, and enjoy a determinate thing (either chattel or land)

² The act or process of finding or learning something that was previously unknown.

³ Physical occupancy or control over property.

⁴ Control or dominion over a property w/o actual possession or custody of it.