

Property I Midterm – Fall 2016

A+ Paper

1. J's strongest argument is the rule of capture in *Pierson v. Post*, which provides mere pursuit of a wild animal is insufficient to vest title in the hunter, and the hunter has to "occupy" it to acquire title. The rule of capture advances the goal of the society to capture wild animals, foster competition and award catching the *ferae naturae*. This rule is also easy to administer because it is easy to determine who captured the wild animal. Therefore, since J was the one that found of the body of the dead Cracken on the beach and occupied it, according to the rule of capture, J could acquire title of the Cracken. J could also argue under Locke's labor theory because J set out from port and chased the monster for a week and hurt the Cracken with his bomb lance. The time and energy he invested in hunting the Cracken should be awarded. However, E could also make the same argument. Therefore, this is not J's strongest argument.

2. E's strongest argument is the custom. In the whale case, the court followed the custom and awarded the whale to the party who killed the whale. We should follow the custom because it has already been accepted by the society to well serve its purpose. This decision also incorporated Locke's labor theory, where a hunter's effort should be awarded in order to create incentives for hunters to maximize the efficiency of hunting. E could argue that she was the one who killed the Cracken, according to the custom, she should be awarded the tile. However, the downside of the custom is that it is difficult to determine where/when hunting begins and to compare the amount of efforts contributed by the parties because J could also argue that he chased the Cracken and invested labor in hunting it.

3. J is likely to prevail on his claim to acquire SL. The court in *M'Intosh* held first in time is first in right and people can acquire land title by discovery. Following this rule, since J was the first one that was on the land and claimed title through discovery, the court should award the title to him. By awarding the title to J, J will have the right to exclude other people exploiting natural resources on this land. Therefore, this finding promotes another goal of property right to prevent tragedy of commence by excluding other people's right on the property.

4. B's strongest argument is finder's keepers rule found in *Armory v. Delamirie*, which provides the finder of lost property has superior title to the rest of the world but the true owner. Since B was the first one who laid hands on the treasure other than the true owner, he should have superior tile against the other two people who came later in time.

J's strongest argument is the prior possessor rule doesn't apply here because this case should be one of the exceptions of the finder's keepers rule. In *Sharman* and *Elwes*, the court held that the possession of land entitles possession of everything attached to the land except the original owner. Accordingly in this case, as the landowner, since the treasure chest was hidden under the ground, the landowner should have a better title than the finder and the thief.

E doesn't really have a strong argument either under the prior possessor rule or any of the exceptions mentioned above because she is not the first finder or the possessor of the land. I guess

if E claims that B lost the treasure chest and abandoned it which makes E the finder of the treasure chest first in time, E might have a chance to prevail under the prior possessor rule.

5. The custom represents fairness, and the rule of capture represents efficiency. The rule of capture is easy to administer because it is easy to determine who captured the wild animal, meanwhile it discourages the hunters who fear their prey would be legally taken by someone else at the last moment before capturing it. The custom awards the hunter's effort to create incentives for hunters to risk their lives to hunt breasts. However, it is difficult to determine where/when hunting begins and to compare the amount of efforts contributed by the parties.

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