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Property

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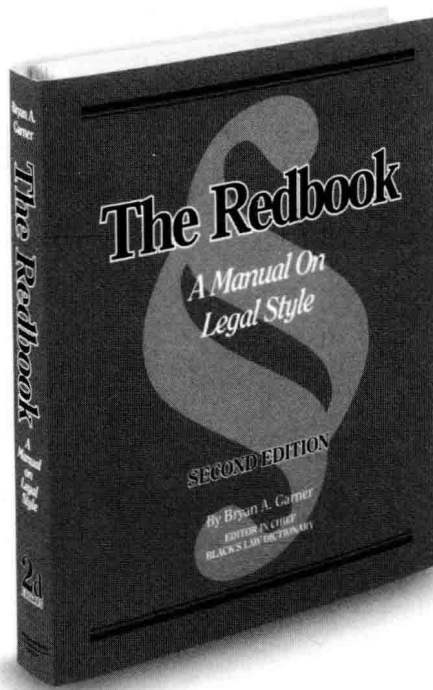
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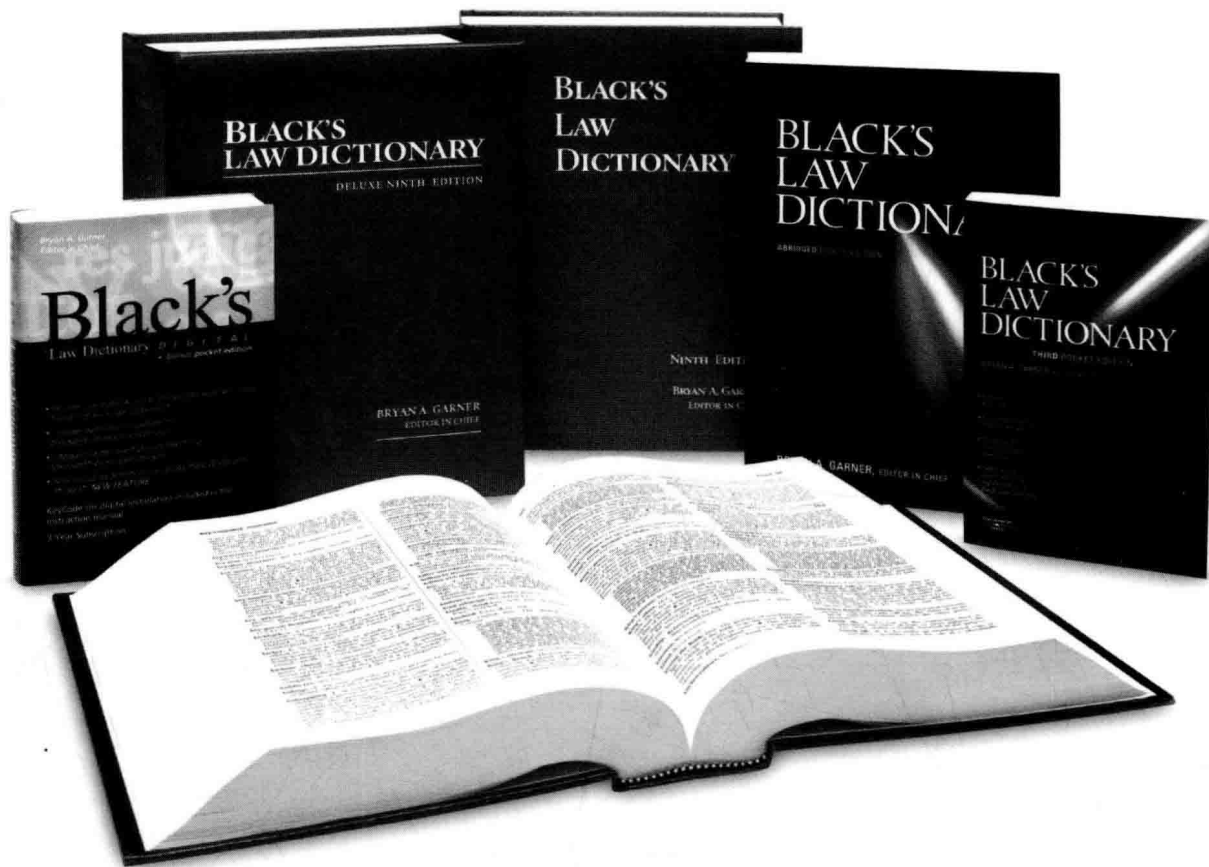
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CHAPTER ONE

First Possession: Acquisition of Property by Discovery, Capture, and Creation

Johnson v. M'Intosh

Instant Facts: M'Intosh (D) acquired title to land under grant from the United States; Johnson (P) acquired title to the same land by purchase from the Painkeshaw Indians.

Black Letter Rule: Discovery of land in America by a European power gives absolute title subject only to the Indian right of occupancy.

Pierson v. Post

Instant Facts: While Post (P) was pursuing a fox, Pierson (D) killed the fox and took possession it.

Black Letter Rule: A hunter must either trap or mortally wound a wild animal in order to acquire title to it.

Ghen v. Rich

Instant Facts: Ghen (P) shot and killed a whale, which sank to the bottom of the sea. Three days later, Ellis found the whale on the shore and sold it to Rich (D).

Black Letter Rule: Title to a wild animal is acquired when a hunter apprehends the beast in accordance with custom.

Keeble v. Hickeringill

Instant Facts: When Keeble (P) lured wildfowl to his land with decoys, Hickeringill (D) frightened the wildfowl away by firing a gun.

Black Letter Rule: A person may not maliciously prevent another from capturing wild animals in the pursuit of his trade.

International News Service v. Associated Press

Instant Facts: International News Service (D) copied news that Associated Press (P) gathered.

Black Letter Rule: Where a company has expended resources in creating news and information, the creator can exclude others from copying it until its commercial value as news has passed away.

Cheney Brothers v. Doris Silk Corp.

Instant Facts: Doris Silk Corp. (D) copied a fashion design from Cheney Brothers (P). All such designs have a short life.

Black Letter Rule: Unless the common law or the patent or copyright statutes give protection from appropriation, a person's property interest is limited to the chattels which embody his creations.

White v. Samsung Electronics America, Inc.

Instant Facts: Samsung (D) printed advertisements containing a robot wearing a blond wig and a dress while turning letters on a set resembling the "Wheel of Fortune" game show set, and Vanna White (P) sued for privacy violations.

Black Letter Rule: The common law right of privacy prohibits the appropriation of one's identity, regardless of the means employed.

Moore v. Regents of the University of California

Instant Facts: The Regents (D) removed Moore's (P) spleen and retained it for research purposes. As a result of this research, the Regents (D) established a cell line from Moore's (P) cells and obtained a patent for it.

Black Letter Rule: A doctor has a duty to disclose the extent of his research and economic interests in a patient's body parts. Human body parts are not property such that they may be converted.

Johnson v. M'Intosh

(Successor to Indian Title) v. (Successor to United States Title)

21 U.S. (8 Wheat) 543 (1823)

COURT DECLARES THAT CONQUEST HAS VESTED TITLE IN THE UNITED STATES THAT IS SUPERIOR TO THE TITLE OF THE INDIANS



■ **INSTANT FACTS** M'Intosh (D) acquired title to land under grant from the United States; Johnson (P) acquired title to the same land by purchase from the Piankeshaw Indians.

■ **BLACK LETTER RULE** Discovery of land in America by a European power gives absolute title subject only to the Indian right of occupancy.

■ PROCEDURAL BASIS

Appeal from judgment in action to eject.

■ FACTS

Johnson (P) purchased land from the Chiefs of the Piankeshaw Indians. The Chiefs were duly vested by the tribe to represent those rights that the Indians had. M'Intosh (D) acquired title to this same piece of land by grant from the United States. The United States obtained this land by grant from Virginia.

■ ISSUE

Is title by grant from a discovering nation superior to title obtained by purchase from those that the nation conquered?

■ DECISION AND RATIONALE

(Marshall, J.) Yes. Upon the discovery of America, the nations of Europe agreed that discovery would vest title in the discovering nation against all other powers of Europe. The discoverer governed its relations with the natives as it deemed fit. In the establishment of these relations, the Indians were given the right to occupancy. However, their right to absolute title was divested and taken by the discoverer. This principle, that title vests in the European nation that discovers the land, was especially recognized by England. As early as 1496 the King of England commissioned an explorer to take title to all land discovered by the explorer, except land previously discovered by Christian people. After the revolution, title to all land passed from Great Britain to the colonies. As mentioned, this title was absolute subject only to the Indian right of occupancy. The colonies affirmed the principle that title traced to a discovery is superior to Indian title. Virginia, for example, declared the "exclusive right of pre-emption from the Indians." The land which is at controversy in this case was granted from Virginia to the United States. The United States has also affirmed the principle that title traced to a discovery is superior to Indian title. The title which discovery has given is as follows: Discovery gives an exclusive right to extinguish an Indian right of occupancy either by purchase or by conquest. This court will not decide whether it is just to expel the Indians. "Conquest gives a title which the courts of the conqueror cannot deny, whatever the private and speculative opinions of individuals may be." Usually the principles of human relations dictate that conquered peoples be allowed to assimilate with the conqueror. However, since the Indians were fierce savages, they could not be assimilated. In consequence, the Indians were driven out by the sword. Those that were not warlike retained the right

to occupancy. However they did not have the right to grant land. Consequently, the Piankeshaw Indians did not have the right to sell the land to Johnson (P). Judgment affirmed.

Analysis:

Conquest is the taking of land by force. In actuality, this is how the Europeans came to own much of the Americas. Though this doctrine may disturb many, it has very relevant doctrinal underpinnings. The reasoning comes from John Locke's labor theory. According to this theory, when a man mixes his labor with a parcel of land, by cultivating it for example, he owns that piece of land. The Europeans owned the land because they worked it. Whether the reasoning is faulty or not, the idea is important. One of the goals of property law is to encourage the efficient and productive use of land. This principle appears, for example, in the law of adverse possession, nuisance, and eminent domain.

■ CASE VOCABULARY

ABSOLUTE TITLE: Perfect title; unencumbered title.

CEDE: To transfer, usually from one government to another.

CONVEY: To transfer realty to another person.

CONVEYANCE: The transfer of land from one person to another.

EJECTMENT: An action to recover the possession of land.

OCCUPANCE: Same as possession.

PATENT: A grant of public property by the United States.

REGAL GOVERNMENT: The state.

SOVEREIGN: A state which has supreme authority.

VEST: To give a right to.

Pierson v. Post

(Killer of Fox) v. (Pursuer of Fox)

3 Cal. R. 175, 2 Am. Dec. 264 (1805)

COURT DECLARES THAT A HUNTER MUST EITHER TRAP OR MORTALLY WOUND A WILD ANIMAL BEFORE HE ACQUIRES TITLE TO IT



■ **INSTANT FACTS** While Post (P) was pursuing a fox, Pierson (D) killed the fox and took possession it.

■ **BLACK LETTER RULE** A hunter must either trap or mortally wound a wild animal in order to acquire title to it.

■ PROCEDURAL BASIS

Writ of Certiorari after judgment in action for damages for trespass on the case.

■ FACTS

Post (P) discovered a fox on wild and uninhabited land. In an attempt to capture the fox Post (P) began to hunt and pursue the fox with his dogs. Even though Pierson (D) knew that Post (P) was hunting the fox, he killed the fox and took possession of it. Post (P) contends that he acquired title to the fox because he was the first to hunt it. Pierson (D) maintains that he acquired title to the fox because he killed the fox.

■ ISSUE

Does mere pursuit of a wild animal vest title in the pursuer?

■ DECISION AND RATIONALE

(Tompkins, J.) No. Since a fox is a wild animal, a property right can be acquired in it only if the hunter "occupies" it. Some authorities feel that a hunter can occupy a wild animal only if he traps it. Other authorities feel that a hunter can occupy a wild animal if he mortally wounds it and remains in pursuit. This is because a hunter in pursuit of a mortally wounded animal has effectively captured the animal. But all authorities agree that mere pursuit of a wild animal is insufficient to vest title in the hunter. This is to prevent litigation. If mere pursuit were to vest title, it would be very difficult to determine who was the first to pursue. Since Post (P) was in mere pursuit of the fox, he acquired no title to it. Judgment reversed.

■ DISSENT

(Livingston, J.) Since foxes are a public nuisance, the killing of foxes is in the public interest. Therefore, the rule that this court should adopt would encourage the destruction of these animals. The following rule accomplishes this: A pursuer acquires title to a wild animal if he is in reach of the animal or if he has a reasonable prospect of capturing the animal. Since it is nearly certain that Post (P) would have captured the fox, the judgment below should be affirmed.

Analysis:

There are two justifications advanced for the rule that capture is required to vest title. First, this rule advances society's goal of capturing wild animals (the desire to make "efficient use" of property). Society rewards the captor only because this rule fosters competition. More competition means more hunters. More hunters results in the more efficient capturing of wild animals. The second reason for this rule is that it is easy to administer. While it is easy to determine who has captured a wild animal, it would be very difficult to determine who was the first to pursue a wild animal. Alternatively, one may use the principle of first in time to understand this case: "He who first occupies a wild animal owns it." Of course, the fight is over whether one must be the first to chase a wild animal or the first to capture it. The majority rules that one must be the first to capture it. Interestingly, the majority went against the established custom, which recognized hot pursuit as vesting a right of ownership in the pursuer.

■ CASE VOCABULARY

BODILY SEISIN: Actual physical possession of some body, e.g., a wild animal.

CERTIORARI: A writ issued by a superior court ordering an inferior court to produce a record of a case tried in the inferior court; the writ is a process by which the superior court may review the proceedings below.

CONSTRUCTIVE POSSESSION: Dominion and control over an object, though not physical possession.

FERAE NATURAE: A wild animal.

HOSTEM HUMANI GENERIS: Enemies of the human race.

INSTITUTE: A textbook containing principles of law.

PANDECTS: A compilation of Roman law, consisting of the chief ideas of the most authoritative jurists.

PURSUER: One who attempts to capture property.

RATIONE SOLI: Because of the land; in the context of title to animals this refers to ownership because of the presence of the wild animal on the claimant's land.

Ghen v. Rich

(Hunter) v. (Finder)

8 F. 159 (D. Mass. 1881)

COURT DECLARES THAT TITLE TO A WILD ANIMAL IS ACQUIRED WHEN THE HUNTER APPREHENDS THE BEAST IN ACCORD WITH CUSTOM



■ **INSTANT FACTS** Ghen (P) shot and killed a whale, which sank to the bottom of the sea. Three days later, Ellis found the whale on the shore and sold it to Rich (D).

■ **BLACK LETTER RULE** Title to a wild animal is acquired when a hunter apprehends the beast in accordance with custom.

■ PROCEDURAL BASIS

Suit in trial court for damages for conversion of property.

■ FACTS

Ghen (P) shot and killed a whale in Cape Cod, which sank to the bottom of the sea. Three days later Ellis found the whale on the shore and sold it to Rich (D). In killing the whale, Ghen (P) followed the local custom of Cape Cod. The custom is as follows: Fishermen kill the whales with bomb-lances. Each fisherman's lance leaves a unique brand so that the killer of the whale can be known. When the whales are killed, they sink to the bottom, but rise again to the surface in two to three days. The whales then float out to sea or float ashore. When a whale floats ashore, the finder usually sends word to the killer. The killer retrieves the whale and usually pays a small fee to the finder. This business and custom is practiced by few people since it requires great skill, experience, and capital. Ghen (P) contends that title may be acquired when the hunter apprehends a beast in accordance with custom. Rich (D) contends that custom does not govern the acquisition of title.

■ ISSUE

Is title to a wild animal acquired when a hunter apprehends the beast in accordance with custom?

■ DECISION AND RATIONALE

(Nelson, J.) Yes. Other cases have held that title may be acquired by a hunter if he apprehends the beast in accordance with custom. This is because a custom usually embraces an entire industry. When a custom embraces an entire industry, there is no need for the court to fashion a judge-made rule. Rather, the custom is good enough. Custom is compelling in this case for several reasons: the custom affects few people; it has been relied upon for many years; it requires the hunter to perform all that is possible given the circumstances of whale hunting in Cape Cod; it gives a reasonable fee to the finder; without this custom, this industry would die, since no person would engage in the industry if his labor could be appropriated by a chance finder. Since Ghen (P) captured the whale in accordance with the custom of Cape Cod, title has vested in him. Judgment for Plaintiff.

Analysis:

One of the ways to understand this case is to recall one of the goals of property law. Property law should promote the efficient capture of wild animals. The custom of a local hunting trade is often more