

Sibylla, si ergo, fortibus en ero.

Nobili, Deus trux.

Vates enim? Causa en dux.

## Outline – Class 01

1. What was Post's reaction when Pierson shot the fox?
2. What was Post angry about?
3. What happened next?
  - a. Initial trip to the lawyer's office.
  - b. Trip to see the justice or his clerk.
  - c. Issuance of the summons (possibly *capias* in some places, but here it's just a summons).
  - d. Statement of the declaration.
  - e. What the declaration said. Why is it a declaration in 'trespass on the case' and not 'trespass'?
  - f. Jury trial.
  - g. Verdict for plaintiff. 75 cents damages, \$5 costs.
  - h. Filing of certiorari.
  - i. Six assigned errors boiled down to one. Livingston (p. S5) "Of six exceptions, taken to the proceedings below, all are abandoned except the third, which reduces the controversy to a single question."
  - j. Two versions of what that one was: Tomkins (p. S6): "Whether LP by the pursuit with his hounds in the manner alleged in his declaration acquired such a right to, or property in, the fox as will sustain an action against Pierson for killing and taking him away." Vs. Livingston (p. S8): "Whether a person who, with his own hounds, starts and hunts a fox on waste and uninhabited ground, and is on the point of seizing his prey, acquires such an interest in the animal, as to have a right of action against another, who in view of the huntsman and his dogs in full pursuit, and with knowledge of the chase, shall kill and carry him away."
4. Is what actually happened on the beach relevant?
5. Holding?
6. Use of the holding to decide other cases (p. S26)
  - a. Post kills the fox, skins it, goes to round up his dogs, and Pierson comes along and takes the skin and refuses to return it.
  - b. Post captures the fox and puts it in a cage. Pierson comes along and lets it out.
  - c. Post captures the fox and is about to put it in a cage when it bites him on the hand and takes off, Post in pursuit. Pierson comes along and shoots it.
  - d. No fox:
    - i. A lamb straying from Post's flock
    - ii. A deer
    - iii. Bees swarming from Post's hive.
7. The doctrine of precedent vs. the doctrine that may be derived from the case for predictive purposes.

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### 8. Sources of law arranged in a hierarchy.

- a. “Now, as we are without any municipal regulations of our own.” (Livingston, p. S9). Were they? Don’t make up your mind about this until you read the next assignment. Priority of statutes over cases.
- b. English cases: the common law. “Little satisfactory aid can . . . be derived from the English reporters” (Tompkins, p. S7). Again, don’t make up your mind about this until you have read the next assignment.
- c. General wisdom. (“If we have recourse to the ancient writers upon general principles of law” (Tompkins, p. S6).) How does the court get to Justinian (6th century Byzantine emperor)? Lacking binding authority, they turn to English treatise-writers:
  - i. Blackstone (18th century) (Sanford, argument, p. S5: “2 *Black. Com.* 403”)
  - ii. Bracton and Fleta (13th century). These two, in turn, lead the court back to:
  - iii. Justinian.Assuming, without deciding, that the court is going to decide the case on the basis of Justinian, does Justinian’s text compel the result? We’ll come back to this in the next class.
- d. Custom. “This is a knotty point, and should have been submitted to the arbitration of sportsmen.” (Livingston, p. S8)
- e. Policy, in both the dissent and the majority. It’s easy enough to see in Livingston’s opinion. Does Livingston’s policy make sense? It’s harder to see in Tomkins’s opinion. Once you find it, ask if it is convincing.