

SKELETON OUTLINE OF TOPIC I

Pierson v. Post

1. Facts

- a. "Relevant"
- b. "Irrelevant" -- role of the lawyer

2. Process

- a. *Capias*/summons
- b. Appearance before the justice
- c. Declaration -- trespass vs. case
- d. Jury
- e. *Certiorari*
- f. Assignment of error -- 6 -> 1

3. Holding

4. Sources of Law

- a. Statutes
- b. Common law cases
 - i. N.Y.
 - ii. England (*Keeble*)
 - iii. Other common law jurisdictions
- c. Wisdom
- d. Custom
- e. Policy

5. Reasoning Process--Did the court have to reach this result?

- a. No, because Justinian is not binding in N.Y., even in 1805
 - i. There's a common law case that shows another way (*Keeble*)
 - ii. Policy leads the other way, at least a/c the dissent
 - iii. Custom may lead the other way
- b. Even if we look to Justinian
 - i. He doesn't put this case
 - ii. The closest analogue is decided as a matter of imperial fiat rather than natural law
- c. The policy is shaky
 - i. Majority assumes:
 - that people *in this situation* will know the law
 - that the rule it is proposing is more certain
 - that more disputes occur at the capture stage than at the possession stage
 - ii. Dissent assumes
 - that foxes are a bad thing
 - that people *in this situation* will know the law
 - that having the fox will encourage hunters

6. *Agway*

- a. From the point of view of the Pa. Attorney General
- b. Why didn't it work
- c. From the point of view of a legislative committee
- d. The public/private distinction

7. Why did they reach this result? The place where the academic and the practical meet.
 - a. Structure--unconscious
 - b. Interests--conscious
 - c. The pegs theory of jurisprudence--particularism
8. Where does this lead us? The fork in the road
 - a. The high road--occupation as the root of property--*Johnson*
 - b. The middle road--system building with other cases--pp. 18–19
 - c. The low road -- practical implications -- the unceasing abuse of fundamental ideas -- *Agway*

Pierson Penumbra

1. Occupation theory
 - a. What is the occupation theory
 - b. To what extent is it a “justification” of property? normative vs. descriptive -- as descriptive almost certainly wrong:
 - Acquisitiveness should be protected
 - Basic human needs
 - Protecting human will
 - On the ground of efficiency
 - In order to protect the peace
2. *Johnson*
 - a. The facts
 - b. Why not follow the occupation theory here?
 - i. The Indians didn’t occupy
 - ii. Possession doesn’t equal power to convey
 - iii. Lost by conquest
 - iv. Sovereignty + derivative power
3. *Percheman* -- pure race prejudice?
 - a. Permanent vs. non-permanent
 - b. Law of nations vs. the Indians
 - c. The treaty and the treaty clause
 - d. The sovereign has acted (his acts must be manipulated)

Jus Tertii

1. Actions to recover real property, historically
2. *Tapscott*
 - a. What action in 1250?
 - b. Why is this still an issue in the 19th century?
 - c. What does the first sentence of the opinion mean?
 - d. Should Mrs. Cobbs be protected?
3. *Winchester*
 - a. Why is the city allowed to raise the *jus tertii*?
 - b. What happened to the policy of protecting peaceable possession?
 - c. Need the city worry about having to pay twice?

4. Why *Winchester* different from *Tapscott*
 - a. She undertook to prove ownership
 - b. She must prove ownership because she's seeking permanent damages
 - i. How to do this at common law
 - ii. The problem of sovereign immunity
 - c. Policy of protecting peaceable possession
 - d. Policy against double recovery

5. Summary
 - a. Possession/seisin-based notion of ownership
 - b. Why? Policies and principles:
 - i. Proof
 - ii. Peace
 - Criminal
 - Civil
 - iii. Possession worth protecting in itself?

Adverse Possession

1. Adverse Possession -- Stat. 21 Jac. 1 (1623)
 - a. Change in method
 - b. Consequences of the statute for ownership
 - c. Derivation of the 5 essential elements
 - d. Policy of the statute
 - i. Laches |
 - ii. Reward | how related?
 - iii. Clearing titles |
 - e. What length of time?
 - f. Why have disability provisions?
2. *Keeble* in Hohfeldian terms
3. The position of AP in Hohfeldian terms
 - a. right (possession)
 - b. privilege (use)
 - c. power (to run out the statute)
 - d. power (convey) -> *Belotti*
4. Consider the following problems in Hohfeldian terms
 - a. O -> life estate W -> remainder C, W leaves, AP enters
 - i. After statute has run C sues AP
 - ii. AP enters before O conveys
 - b. AP -> life estate W -> remainder C, W dies, C enters, O sues
 - i. Neither W nor C has held for stat period, but together they have
 - ii. After holding for statutory period, W -> T, W dies, C sues T
 - c. O -> life estate W -> remainder C, conveyance is void, W enters and holds for statutory period -> T and dies, C sues

Geragosian and Peters

1. What is the rule of the *Geragosian* case?
2. Does it make sense (see below)?
3. To what extent does *Peters* modify the rule?
 - a. Larger encroachment
 - b. Registered land

Geragosian

1. What the lower court held
2. Why not ejection?
3. How to measure damages
 - a. Loss to plaintiff
 - b. Benefit to defendant
4. Effect of granting injunction
5. Why did the upper court hold as it did?
 - a. Reasons offered
 - b. Ways out
 - i. Relative hardship
 - ii. Laches
 - iii. Estoppel
 - iv. Unclean hands
 - c. Some speculations -- Rugg, Crosby, Pierce, Field, Lummus, Qua and Donahue

Edwards

April, 1928 -- Lee filed suit
Edwards v. Lee, 230 Ky. 370 (1929) -- interlocutory appeal
Edwards v. Sims, 232 Ky. 791 (1929) -- prohibition action
Edwards v. Lee, 250 Ky. 166 (1932) -- fixing the boundaries
Edwards v. Lee's Adm'r, 265 Ky. 418 (1936) -- damages awarded

1. Effect of procedure
2. Theories of cave ownership
 - a. Accession
 - i. Segmented
 - ii. Joint
 - b. *Res nullius*
 - i. Mouth owner
 - ii. Explorer
 - c. Regalian rights
3. What's the majority got going for it?
 - a. Expectations (mineral law)
 - b. The air rights cases distinguished

- c. ?Psychology
- d. Difficulties with the Logan theory

4. The remedy

- a. Waiver of tort and suit in *assumpsit*
- b. How the court got there
 - i. Equitable accounting
 - ii. Assumpsit for use and occupation
 - iii. Passive transmissibility -- *Hambly, Phillips*
 - iv. Trade secrets
- c. What would Lee have gotten if Edwards had done it right?
 - i. Accounting profits does not equal economic rent
 - ii. Variables
 - where the 1/3 lay
 - knowledge
 - bargaining skill
 - iii. Difference between before and after

5. The Value of the Cave

<u>Discount</u>	<u>Amount</u>	<u>Time</u>	<u>Equals</u>	<u>Sum</u>
8%	\$1000	1 yr.	\$926	\$ 926
8%	\$1000	10 yrs.	\$463	\$ 6710
8%	\$1000	50 yrs.	\$ 21	\$12223
8%	\$1000	100 yrs.	\$.45	\$12494

Sum from 0 to 100 of the PV of \$1000 p/a @ 8% = \$12,494

Sum from 0 to infinity of the PV of \$1000 p/a @ 8% = \$12,500