Acquisition by Discovery and by Capture

- **Johnson v. M’Intosh**
  - Chain of Title
- **Pierson v. Post**
  - First in Time (First in Right)


**Discovery/Conquest Rule**

- First European discoverer’s rights against Native Americans.
- First European discoverer’s rights against other Europeans.
- Other Europeans’ rights against Native Americans.
Johnson v. M’Intosh
con’td

Chain of Title

• What kind of title did the first discovering European nation have?

• What property interest did Native Americans have?

• How could the first discoverer extinguish the claims of the Native Americans?

• What kind of title did the U.S. receive from the European nations through treaties?
  • Monopsony Power
  • “Universally recognized,” “universal,” “the validity has never been questioned”
**Johnson v. M’Intosh cont’d**

- Occupancy v. Possession (positivism)
- First in time, *i.e.*, first in possession
  - Pros and cons
  - Alternatives
- John Locke’s Labor Theory
- Modern Day Claims

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**Johnson v. M’Intosh cont’d**

**The Treaty of Guadalupe Hidalgo**

- February 2, 1848 signed by President Polk’s representative ended war between Mexico and the United States.
- Mexico ceded 55% of its territory (present-day AZ, CA, NM, TX, and parts of CO) in exchange for $15 million for war-related damage to property.
Johnson v. M’Intosh cont’d

The Treaty of Guadalupe Hidalgo cont’d

- Provided for protection of the property and civil rights of Mexican nationals living within the new border (Art. VIII, IX).
- Guaranteed protection of Mexican land grants (Art. X) until the U.S. Senate deleted it in the ratification of the treaty in March 1848.

Pierson v. Post

Supreme Court of New York, 1805
Casebook, p. 19

- What amounts to occupancy of a wild animal?
  - Hot pursuit plus wounding
  - Hot pursuit with reasonable prospect of capture
- Ratione soli
Pierson v. Post cont’d

- Majority’s Concerns
- Dissent’s Concerns
- Ancient Authorities v. Custom of Hunters