Acquisition by Discovery, Capture, and Creation

Recap: Discovery (or Conquest)?

- **Johnson v. M’Intosh**
  - Quieting Title/Chain of Title
  - First in time, i.e., first in possession

Acquisition by Capture

- **Pierson v. Post**
  - First in Time (First in Right)
- **Ghen v. Rich**
  - The Role of Custom
**Pierson v. Post**  
Supreme Court of New York, 1805  
Casebook, p. 18

**Acquisition by Capture: First in Time**

- What amounts to **occupancy** or **possession** of a wild animal?
- First in what?
- Ancient authorities v. custom of hunters

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**Pierson v. Post Cont’d**  
Supreme Court of New York, 1805  
Casebook, p. 18

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
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<tbody>
<tr>
<td>Certainty</td>
<td>Free rider</td>
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<tr>
<td>Peace and order</td>
<td>Lack of flexibility</td>
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<tr>
<td>Administrative ease</td>
<td>Lesser utility</td>
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When Should Courts Follow Custom?

- According to the court?
- According to Professor Robert Ellickson?

Ghen v. Rich Cont’d

Pierson v. Post Revisited

- What did the whaler do compared to Post?
- Is this ruling consistent with Pierson v. Post?
- Labor theory?