



# Real Property

## Class 1



# Property Law vs. Other Civil Laws

Other Civil Law	Real Property Law
Developed as a result of <b>centuries of judicial decisions</b>	Developed as a result of the whims of <b>William the Conqueror</b>
Developed to meet the <b>reasonable expectations of reasonable people</b>	<b>Does not care</b> about the reasonable expectations of reasonable people
Developed to protect <b>all the people in society</b>	Developed to protect the <b>ruling class: the property owners</b>
Most <b>historical doctrines still exist</b> in some limited form, because the laws made sense and has reasons behind them (e.g., the Statute of Frauds)	Many historical laws are <b>obsolete</b> because they developed as a result of problems inherent in the system of British aristocracy (e.g., the Rule in Shelley's Case)
Puts <b>little stock in style</b> and a lot of stock in substance	Puts <b>a lot of stock in style</b> (i.e., conveyance language, recording system, etc.)

# Lost Property

- **Rights of the finder with respect to the true owner:**
  - True owner has rights that are **superior** to the rights of the finder
  - Cannot keep it; must make a reasonable attempt to locate the true owner or turn it in the police
  - Failure to do so can be considered **larceny!**
- **Rights of the finder with respect to the rest of the world:**
  - Finder's rights are **superior** to the rest of the World's rights to the lost property
  - Taking property from a finder is an offense against possession since the finder is the rightful possessor
  - Thus, the finder can **sue** the other person for stealing it
  - In many states, keeping lost property is **larceny** because larceny is a crime against possession, not against ownership



# The Rule of Capture

- For property not owned by anybody, **the first person to take possession** of it gains ownership of it
- The rule applies to all "**fugitive resources**" (even underground resources such as oil)
- The rule of *ratione soli*:
  - A trespasser **cannot profit from his or her trespass** to gain title to lost property; instead the property owner gets to keep it



# The Rule of Capture (cont.)

- Application to animals:
  - Chase and even inevitable capture is not enough
    - Examples of what is not good enough:
      - hot pursuit
      - fish in a very large net that can still swim around freely
      - wounded animal not yet in possession
  - Captured animals that escape:
    - If previously domesticated and tamed, it goes to capturer
    - Wild animal ("*ferae naturae*") that returns to its natural habitat no longer belongs to its capturer



# QUIZ TIME!



# Acquisition by Accession

- **Basic Principal:**
  - True owner is entitled to “replevin” of stolen property
  - If the thief’s action decreases its value, owner can recover that difference in a **trespass to chattel suit**
- If wrongful taker **added just labor** and not raw materials:
  - Where thief’s creation has increased the value of the raw material to the extent that it would be unfair to give the final product to the original owner, the thief can keep the product and just pay the value of the original product.



# Acquisition by Accession (cont.)

- [Balancing test between **unjust enrichment** and **punishing the thief**]
  - Some jurisdictions allow the owner to recover the modified property, if it was taken in **bad faith**
- If the thief **added raw materials**:
  - If it was taken in **bad faith**, the refer to previous rule
  - If it was taken in **good faith**, whoever put in more raw materials gets to keep it. But, the keeping party has to compensate the other party for the other's raw materials.

