

PROPERTY I § 2 and 3
Winter/Spring Semester 2021
Prof. Freyeremuth
Pre-Class Assignment
Assignment for Module A

Note that the first class meeting will be Wednesday, January 20, 2021.

A. **Assignment prior to first class:** Please write a note (about a page in length) giving me some biographical information about yourself, including: (1) where you're from, (2) your background, (3) why you came to law school, (4) the most important thing you think you learned last semester; (5) what makes you happiest; and (6) any other information that will help me get to know you better. Submit this to me by e-mail at freyermuthr@missouri.edu **no later than 12 noon on Tuesday, January 19.**

B. **Assignment for Module A (Wednesday, January 20, 2021, and Friday, January 22).** Read Casebook pages 1-10, Note 2 on pages 25-26, pages 71-83, and pages 83-89 (through Note 3).

Students "on call" for Module A

§ 2: Andreassen, George, Nguyen

§ 3: Bethel, Harrington, Palmer

Here are the discussion prompts for class discussion:

1. Assume that once last year, Freyeremuth took advantage of the fact that Litton left his office door open while teaching Criminal Law, went into Litton's office, and took ten books from Litton's bookshelf. Litton has now figured out what Freyeremuth did, and has filed a lawsuit seeking to recover possession of the books. Litton is hopelessly disorganized, he can't prove any of the books actually belong to him. He never keeps any receipts; he doesn't even remember how or where he bought some of the books; a couple of the books are actually library books Litton had only borrowed.

Nevertheless, the law will permit Litton to recover ALL of the books from me — even the ones he had only borrowed — as long as he can satisfy a court that the books had been in his "possession" before I took them. Why should the law protect Litton in this way (i.e., why should he only have to demonstrate prior "possession," not "ownership")? As a matter of policy, what are the advantages and disadvantages of such a rule?

2. In *Pierson v. Post*, both parties agreed that the first person to possess the fox was the owner of the fox, but each party claimed that he was "first" to "possess" the fox. Why did Pierson argue that the law should conclude that he was first to possess the fox? Why did Post argue that the law should conclude that he was first to possess the fox? In terms of the policies that the law might advance in resolving this dispute, which arguments are more persuasive to you and why?

3. The dissenting judge (page 73, bottom) suggests that the law should resolve this dispute by reference to the prevailing custom of hunters (it “should have been submitted to the arbitration of sportsmen”). Why might a court use custom as a decision rule (i.e., as a rule of law for resolving the dispute)? If hunting customs in the area at the time in fact dictated that “hot pursuit” gave a hunter the right “to take an unimpeded first possession,” as Professor Richard Epstein has suggested (note 4, page 82), why did the court refuse to use that custom as the rule for deciding the case?

4. The hunt in *Pierson* took place on land that was “wild and uninhabited, unpossessed and waste land.” Imagine that the hunt had instead taken place on land owned by Post. Would that have mattered in terms of the result here? Why or why not? What additional information, if any, do you think would be relevant?

5. What’s the rationale for the “escape” rule described in note 6 on page 83? Assume that Litton has a side business in which he raises minks. What are the implications of the escape rule for Litton in terms of how he carries out his business? If one of his minks escapes and is later trapped by Mitchell, can Litton recover the mink from Mitchell? Why or why not? What additional information do you think would be relevant to this determination?

6. The court in *Popov v. Hayashi* adopts Prof. Gray’s definition of possession, saying that “The first person to pick up a loose ball and secure it becomes its possessor.” Would or should this statement apply in the following contexts?

a. You are attending a basketball game, sitting in the second row, and a poorly advised pass by the point guard lands in your lap. Can you keep the ball? Why should a court apply (or refuse to apply) Prof. Gray’s definition in this situation?

b. You are attending a golf tournament, and you find a golf ball in deep grass just off the 10th fairway. Can you keep it? Why should a court apply (or refuse to apply) Prof. Gray’s definition in this situation?

7. If the applicable law is that the ball belongs to the “first” person to “possess” it, do you think that the judge gets the result in *Popov v. Hayashi* correct? Why or why not?

8. What is the basis of the court’s conclusion that the claims of Popov and Hayashi are of “equal dignity” (p. 87)? Are you persuaded? Why or why not?

a. In considering this question, go back to Problem 1. Assume that after Freyermuth stole the books from Litton, Freyermuth sold the books to Lambert (who had no idea that they were stolen). [For this problem, assume that none of the books are actually library books; they had all belonged to Litton, either by purchase or gift, before Freyermuth stole them.]

Should Litton be able to recover them from Lambert? Are the respective claims of Litton and Lambert of “equal dignity”? Why or why not?