Chapter 1
Discovery
Cases:
Johnson v. M’Intosh - Indians cannot cede title to anyone but the government
During the classical era of discovery prior possession by aboriginal populations was commonly thought not to matter.
OR
Indians did not input enough labor into the land to perfect a property interest.
Under Lockean labor theory (Labor + thing = Property.)
Note: that for a while lawyers and settlers did regard the Indians as owners.

Rule(s):
1) First in time
   Pro
   It is likely how it began
   It is disruptive to change things
   No intuitive alternative
   Little left to discover - as far as real property is concerned
   
   Con
   Might makes right is unjust
   Arbitrary
   Unfair

Capture
Pierson v. Post - pursuit plus mortal wounding is the very least someone must do to claim a right over a wild animal on unowned property.
The conflict in Pierson is that the court wants to use first in time but, Pierson has first possession, Post has first pursuit.

Ghen v. Rich - Courts are willing to substitute local accepted custom for the first in time principle.
To be acceptable Custom must
1) embrace an entire industry
2) be established for a long time
3) have limited application
Conflict first in finding v. first in killing.

Keeble v. Hickeringill - one cannot commit a malicious act against another’s land.
Ratione soli - conventional view of constructive possession which is that wild animals on A’s land are owned by A until they leave his land.

Creation and IP
INS v. AP - News is not owed in claims against the public but it can be in claims against other news companies. INS is directly interfering with AP’s legitimate business.
Property is relational. The news is general knowledge and AP does not have a claim of property against the public but it does have one against their competitors. Economic answer.
Expressive distinction: you can own your expression of the events .... “A day that will live in infamy” but not the idea or the facts that are in common knowledge such as: the Japanese bombing of Pearl Harbor.
Court rules that the news is a quasi property right on the part of the news gatherer. AP has a right to stop others from using their news until the news has been disseminated to the point that it has no economic value.
The court is protecting the business of news gathering not the news itself.

Since INS, commentators have written that granting exclusive rights to information does not necessarily promote a market economy.

Cheney Brothers v. Doris Silk Corp. - silk patterns are not property, case limits INS v. AP claiming the court did not mean to create a common law patent. One cannot own ideas

Smith v. Channel - copyist serve an economic purpose, to lower prices.

Diamond v. Chakrabarty - genetically engineered bacterium can be patented

White v. Samsung - Vanna White cannot protect against a robot dressed like her in front a wheel of fortune board, because it isn’t her likeness, and celebrities cannot collect damages when the public is merely reminded of them.

Grokster - one who distributes a devise with the object of promoting tils use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.

Types of exclusive rights
Patent - novel, useful, and non-obvious processes or products
Copyrights - expression of ideas (not the ideas themselves)
Trademarks - words symbols indicating the source of a product or service

Exclusive right of commercial exploitation.

Pro
It promotes people to spend their time and resources inventing.

Con
Monopolies
Less variety
Higher prices
Less innovation
Does not require sharing of the product with the people

Jacque v. Steenberg - the right to exclude is essential and must be upheld by the court
State v. Shack - owner cannot exclude government workers from his land who have come to help a migrant worker.
The right to exclude is limited when there are others on your land
The difference between Jacque and Shack is that in Shack there are other people on the land. Jacque has complete dominion over the land, while Shack does not. Property rights only go so far. The presence of other people whose lives take place on your land, limit your property rights. At what point should the right exclude be balanced against the public interest.

The bundle of sticks
alienability
include or exclude
modification
....

Chapter 2
Find
General Rule: the law favors the possessor
Rule: the title of the finder is good as against the whole world but the true owner
The meaning of true owner is relative to other claimants. Prior possessor prevails of a subsequent possessor applies in real and personal property - Tapscott v. Cobbs. Because...
   1) There is often never a true owner just people with relatively superior or inferior claim.
   2) Also we don’t want a free for all in lost goods.
Why reward finders:
   1) Possession - a good indicator of ownership
      a. Bailment - bailee: possessors bailor: owners. The rightful possession of chattel by someone who is not the true owner. Ex: dry cleaning or valet parking.
   2) Finders perform a socially useful activity.
   3) Ownership brings about the socially optimal use of resources
   4) Law is good: cheaper means of dispute resolution than self help.

Definitions
Trover: Forces the possessor to pay the owner the money value of the property. It is like being forced to buy something. Remedy of law.
Replevin: A lawsuit to obtain return of the goods, not damages. Remedy of equity.

Armory v. Delamirie - chimney sweep finds a jewel (finder has superior title)
Hannah v. Peel - quartered soldier finds brooch (finder has superior title to property owner*)

*New rule: Finders have superior claims to lost items found on private property if the owner of the locus in quo has never taken possession of the land and has no knowledge of the item until the finders honest conduct. Unless the item was found attached to or under the land. The finder must be a lawful occupant - not a trespasser.
3 important cases were examined in the rationale
Bridges v. Hawkesworth - the finder has superior claim because the owner of the house or land cannot be held responsible if he is never told, thus it was never his property, and the finder by giving it to the owner is not waiving title but merely for the purpose of delivering them to the rightful owner if he or she were to return. The judge in this case explicitly states that where the personal property was found does not matter.

South Staffordshire Water Co. V. Sharman. The real property owners have the superior claim to chattel found on or in their property. However, some argue that the best explanation of this case is that Sharman was in the employ of the plaintiff and thus all property found by him rightfully goes to them.

Elwes v. Brigg Gas Co. Fossilized boat found by lessees. The owner of the land has a superior claim. Not controlling because minerals or chattel under the land belongs to the owner of the locus in quo.

*McAvoy v. Medina - money found at the counter in a shop (property owner has superior title)*

*New rule: Property owners have superior title to finders if the property in question was purposely placed and forgotten (misplaced) in the locus in quo instead of accidentally dropped (lost).*

In theory this is because the owner of the locus in quo is better able to return the mislaid property to the true owner

**Adverse Possession**

**Rationale:**

- we don’t want land to go to waste
- after a time no one may no who the true owner really is
- we look at the position of the person who would gain the property right, not the loser who has irresponsibly not looked after what is theirs.
- Holmes’ rationale
  - economic - based on diminishing marginal utility of income
  - psychological - we regard loss of an asset as more significant than forgoing the opportunity to realize an equal gain.
  - moral - it is wrong for the true owner to allow a relationship of dependance to be established and then cut the third party off.

**Rules:**

Adverse possession: there must be (1) an actual entry giving exclusive possession that is (2) open and notorious (3) adverse and under a claim of right and (4) continuous for the statutory period.

Claim of title: a way of expressing the requirement of hostility or claim of right

3 Standards

1) Objective: state of mind is irrelevant
2) Good-faith: “I thought I owned it.”
3) Aggressive: “I thought I didn’t own it, but I intended to make it mine.”

Color of title: claim founded on a written instrument, judgment, or decree that is defective or invalid

Maine Doctrine: That the intention to claim ownership of land not in his title is necessary.

Problems of the Maine Doctrine bottom of pg 132. Encourages purgury, and rewards wrongdoers while punishing good people.

Connecticut Doctrine: The intention of the adverse possessor is unimportant.
simpler

Doctrine of acquiescence: long acquiesences (though perhaps shorter than SOL) is evidence of an agreement between the parties fixing the boundary line.

Typically cannot use adverse possession against the government. But the government can adversely possess your land.

Cases:
Van Valkenburgh v. Lutz - adverse possession of plot in NY, Lutz fail due to lack improvement
Manilo v. Gorski - 15 in encroachment of steps, discussion of Maine/Conn. Doctrines,
*New rule: If the innocent trespasser of a small portion of land adjoining a property line cannot without great expense remove or eliminate the encroachment, or such removal or elimination is impractical or could be accomplished only with great hardship, the true owner may be forced to convey the land at market value without regard to whether the true owner had notice of the encroachment at its inception.
Howard v. Kunto - everyone owns the deed to land to the west of their house on Hood Canal, continuity is the key issue, and equity and public policy are the subtle rationale.

Holding (I) summer occupancy does not destroy the continuity of possession required by the statute.
To hold otherwise would be to ignore the nature and condition of the property.

Holding (II): An occupant may tack on the adverse possession of his predecessors. Tacking is allowed when someone is taking more land then given in the title why would it not be given to someone who believes in good faith that they are only occupying the land given to them in their title. What should the purchaser have done? Paid for their own surveying team before purchase.
This is expensive and not customary.

Do Problems on pg 142.
1.a) H wins, and has until 2013 before the statute runs
b) H wins, and has until 2013 before the statute runs (note: disabilities cannot be tacked)
?????????are these right????????

Adverse Possession of Chattels
O’Keeffe v. Snyder - O’Keeffe claims paintings were stolen but she never reported it. When does the statute begin to run.

Discovery rule - “a cause of action will not accrue until the injured party discovers, or by excise or reasonable diligence and intelligence should have discovered, facts which form the basis of a cause of action.”

the difference between the discovery rule and notice is the burden of proof is with the true owner in the former.

Gift
Gift types:
inter vivos - given between to people who are alive
causa mortis - made in expectation of the donors death, on the condition that the donor dies. Gift is void if donor does not in fact die.
Requirements:
1. Intent - can be shown by oral evidence
2. Delivery
   a) manual delivery - actual/manual handing over of the gift (always good in all courts, traditional rule that if something could be manually delivered it must be, this rule is being eroded)
   b) constructive delivery - key or object that gives access to the gift
   c) symbolic delivery - paper with writing on it that says the property is gifted
3. Acceptance - rarely an issue, but the donee has to accept to make the gift valid, the law presumes acceptance of valuable gifts if there is no contrary evidence.

Rationale of Delivery requirement:
1. It is clear evidence of the gift to the witness -> connected to possession because we believe possession to be the best evidence of ownership
2. It makes clear to the donor the “wrench of delivery.”
3. It gives the donee clear evidence that it was intended as a gift.

Intestate is a person who dies without a will
Died without issue - without descendants

Cases:
Newman v. Bost - Van Pelt takes young woman in as lover allegedly gifts to her everything on his death bed.
Court does not allow symbolic delivery in gifts causa mortis. Richards said a few more things that we must remember from this case.

Gruen v. Gruen - Painting given inter vivos but life-estate was retained so no manual delivery.
Delivery: “must be tailored to suit the circumstances of the case” in order to “avoid mistakes by donors and fraudulent claims by donees.” We only have symbolic delivery, because Victor’s goal is to maintain possession - so it would be ridiculous to expect manual delivery.

Chapter 3 Possesory Estate
Issue: descendants, if A is a child of O has children and then dies before O, A’s descendants take per stirpes. Old rule was primogeniture - oldest son takes all.
Ancestors: by statute ancestors typically take as heirs if decedent leaves no issue
Collaterals: All persons related by blood to the decedent who are neither descendants nor ancestors are collateral kin (siblings, aunts, uncles, nephew, nieces, and cousins).
Escheat: Person dies without heirs their property escheats to the state.
Heirs: one cannot have heirs until one is dead

A. Fee Simple:
magic words: “to A and his heirs.”

B. Fee tail: dates back to feudal law when land was the primary form of wealth. Interest of a family to keep the land in the family, by making sure that the family would inherit the land - no matter what.
“To A and the heirs of his body, and if A dies without issue then to B and the heirs of his body..”
None of O’s heirs have fee simple’s just life estate, a series of life estates ordered by O’s will. Thus, each inheritor can only alienate the land for their lifetime.

Why don’t we have it anymore. Thomas Jefferson hated the fee tail because it established perpetual wealth. He convinced a Virginia and most states to abolish them.

Theory:
1. we should not restrain alienation
2. Rule against perpetuities
   a) requires that the land must vest in fee simple within 21 years after the death of life in being at the creation of the interest
   b) one of many rules promoting the easy alienation of property

Today we read fee tail wills as fee simples.

C. Life estate:
Easiest was to ensure that your property goes to the people you want it to go to. Magic words: “to A for life”
You create a future interest always, even if you don’t mention it. If it is not mentioned then it is retained by the original giver (called a REVERSION).
In ambiguous cases:
   - Life estate v. Fee simple - courts assume fee simple
     a) reverse of the historical doctrine to create a life estate in ambiguities

I. Life estate pur autre vie:
   If A has a life estate and sells to B, then be has right to the land as long as A is alive. If B dies then it goes to B’s heirs or it reverts to A. If A had sold it to B “for life” then it can never go to B’s heirs.

II. Problems with creating a life estate
   A. Sale: life tenant cannot sell unless all other persons having interest agree
   B. Lease: How can you lease when you don’t know when you are going to die
   C. Mortgage: Banks typically do not lend money if the security is a life estate
   D. Waste: Life tenants actions may constitute a waste
   E. Insurance: Life tenant is under no duty to insure, but if they do they get the whole proceeds.

III. Legal life estates of personalty (life estate in chattels)
   A. Waste doctrine doesn’t really apply
   B. States have cumbersome statutory solutions.

IV. Trusts - a better solution
   A. Trustee holds the legal fee simple and as “manager” of the property may be directed to pay all the income to the life tenant or to let the life tenant into possession.
      1. Trustee’s powers:
         a) sale
         b) lease
         c) mortgage
         d) removal of natural resources
2. Trustee’s duty to remaindermen

After the death of the life tenant - the assets of the trust are given to the remaindermen.

V. Seisin (pronounced: season) take more notes Richards like this pg 205
possession of a particular kind with peculiar consequences
rental is a non-freehold estate - mere possession
owner has a freehold estate

Seisin was conveyed through a ceremony called enfeifment

A key point: THE HEIRS OF A LIFE ESTATE CANNOT INHERIT.

Cases:
White v. Brown - will ambiguous whether it creates a life estate or fee simple with a Restraint Upon Alienation. Court rules the later, but hates RUA so it is just a fee simple.
Why do courts hate RUA
1. Anti-market
2. Concentrates wealth
3. Discourages improvements on land
4. Prevents the owners creditors from reaching the property

Baker v. Weedon: waste doctrine, old woman needs money can she sell the land that she merely has a life estate in. NO.
New rule: Court can only order the sale of land if it is “necessary for the best interest of all parties.”
Richards argues that the court is considering that Weedon should not have the subsidize the risk of Bakers speculation.

I. Waste Doctrine
when both A and B have simultaneous or consecutive rights to property.
Reasoning: A should not be able to use the property in a manner that unreasonably interferes with the expectations of B.
1. Application (multiple factors to consider)
   a) nature of the property
   b) interests of the parties - the greater the interest the more freedom the party has, the longer a life tenant will likely live, or the more certain a remaindemen’s right the greater their rights under waste doctrine.
   c) conduct in question
   d) remedy sought
2. Types
   a) affirmative - arising from voluntary acts
      1. Liability results from acts that substantially reduce the value of the property.
      2. Melms v. Pabst established that life tenants can make substantial alterations or even demolish a structure when conditions change, provided the value of the
remainder is not diminished by these actions.
3. Open mine doctrine: as long as grantor opened the mine then rightful possessor (renter, life tenant, etc.) can mine the land.
4. English rule - If the grantor intended to give the exact thing, then changes that are made even if the economic value has increased can be waste.
5. American rule - all economics, no charge of waste for changes that improve the land.

b) permissive - arising for a failure to act.
1. liability based on negligence - failure to take reasonable care of the property.
2. tenant is only forced to spend in upkeep as much as they get in income from the property

IN AMBIGUOUS CASES - rules to read wills
1. Testator’s intent - in light of surrounding circumstances
2. In close cases, assume a fee simple
3. Avoid cases of partial intestacy and restraints upon alienation

D. Defeasible Estates (typically a modification of a Fee Simple, but any estate could be defeasible): One that may last forever or may come to an end upon the happening of an event.

1. Types
   A. Fee Simple Absolute
      a) non-conditional, forever, non-defeasible
      b) even if statements of how the property is to be used are included it is still a FSA
      1. This statement has no legal affect simply morally binding
      c) typically, fully alienable inter vivos and post mortem.
   B. Fee Simple Determinable: ends automatically when the particular event occurs
      a) Ex: O conveys Blackacre to School Board, so long as the premises are used for school.
      b) Magic words: so long as, until, while used for, during the continuance of
      c) always has a future interest in O or O’s heirs called possibility of reverter.
      d) Cal. and Kent. Have abolished and replaced with fee simple subject to condition
      e) SOL begins running at the moment of the event
      f) typically, fully alienable inter vivos and post mortem.
   C. Fee Simple Subject to Condition Subsequent: does not automatically terminate,
      grantor/grantor’s heirs has the right to end the fee simple if the conditional occurs.
      a) Ex: O conveys Whiteacre to school district, but if premises are not used for school purposes the grantor has the right to re-enter and retake the premises.
      b) O has the right to cut short the fee simple, but it is not automatically terminated
         1. Do this through re-entry OR
         2. A lawsuit - safest option to avoid SOL
         3. Otherwise give notice
      c) Magic words: but if, provided, however, on conditions that if
         1. If right of re-entry language is not present it is likely FS Determinable
         d) Future interest: with O or O’s heir called right of entry or power of termination.
         e) SOL does not begin running until after right of entry has been attempted and rebuffed.
      f) typically, fully alienable inter vivos and post mortem.
   D. Mesne (mean) Profits
a) the damages given due to wrongful possession
   1. Determinable: time between event and retaking by grantor
   2. Condition Subsequent: time between notice/failed reentry and retaking.

b) damages = reasonable rental value of the land

Cases
Mahrenholz v. County Board of School Trustees - complicated case where a property was given as long as it was used for school purposes. Grantor gave a fee simple determinable, thus grantor’s heirs had a fee simple when they transferred the interest to the plaintiffs. Issue is screwy Ill. statutes that restrict transfers of some future interests.

Mountain Brow Lodge No. 82, Independent Order of Odd Fellows v. Toscano - RUA are bad but a “use” clause is not necessarily a RUA. Richards says: We want to promote charitable giving, thus we allow use restrictions when we normally wouldn’t.

Tension between the rule against restraints on alienation and the very nature of defeasible fees.

Chapter 4: Future interests
A. Future Interests in the Transferor
   Reversion
   Possibility of Reverter - fee simple determinable
   Right of entry - fee simple subject to condition subsequent

B. Future Interest in the Transferee
   1. Vested remainder
      a) given to a ascertained person AND
      b) not subject to a condition precedent
         A. Indefeasibly - certain and cannot be divested
         B. Vested subject to open - remainder created in a class of persons when one member of the class is ascertained and there is no condition
   2. Contingent remainder
      1) it is given to an un-ascertained person OR
      2) it is made contingent upon some event occurring other than the termination of preceding estates.

C. Rules Destroying Contingent Future Interest
   1. Shelley’s
   2. Worhier Title
   3. Rule Against Perpetuities
      Problems pg 248
      *It is unimportant when it is possessory it is when the interest VESTS.

Chapter 5: Concurrent Ownership
A. Tenancy in Common
   a. Each owns and undivided share of the whole
   b. Freely alienable
   c. Descendible, Conveyed by deed or will
d. No survivorship rights  
e. Assumed in ambiguous cases  
f. **Ex: T devises Blackacre to A and B. A and B are tenants in common. A conveys his interest to C. Now B and C are tenants in common. If B dies then B’s heir is a tenant in common with C.**

B. Joint Tenants  
1. **Survivorship**  
   a. avoids probate*  
2. Regarded as a single owner  
3. Four Unities* - when even one fails the joint tenancy is severed  
   1. Time: must be vested at the same time  
   2. Title: must acquire title by the same instrument/joint adverse possession. Cannot arise by intestate succession or other act of law  
   3. Interest: equal, undivided shares for identical duration (if the shares are unequal then we have tenants in common).  
      a. Lately courts have cared less and less about the equal requirement  
   4. Possession: must have a right to possession of the whole.  
5. **Magic words must be explicit to create a Joint Tenancy.**  
**Ex: A+B+C are Joint Tenants C transfers to D. Now, A+B are Joint Tenants and D is a Tenant in Common with each.**

C. Tenancy by the Entirety  
a. Same as a JT plus…  
b. Fifth unity: Marriage  
c. Neither party can sever their tenancy by conveying to a 3rd party  
d. Husband and wife must convey together.  
e. Neither acting alone has the right to judicial patrician of the property  
f. Exists in few states

D. Presumptions  
a. Courts favor TinC  
b. Must be explicit to create a joint tenancy

E. Relations  
a. Partition  
   i. Available to JT and TinC.  
   ii. Delfino v. Vealencis  
b. Sharing Benefits and Burdens of Coownership  
   i. Spiller v. Mackereth: lockout  
   ii. Swatzbaugh v. Sampson: boxing ring

Cases:  
Harms v. Sprague pg 285  
Delfino v. Vealencis 292  
Spiller v. Mackereth 300  
Swartzbaugh v. Sampson 303

**Chapter 6: Leaseholds**
A. Common characteristics
   a. estate in the tenant
   b. reversion in the landlord
   c. exclusive control and possession by tenant
   d. lease – written contract between landlord and tenant

B. Term of Years
   a. Fixed period of time
   b. Once the term is created it becomes possessory
   c. No limit to the period of time
   d. Can be terminated earlier upon an event or condition
   e. Notice not necessary
   f. Death of either party has no effect on duration
   g. Can be an oral agreement
      i. A lease of more than a year must be in writing – statute of frauds
      ii. If statute of frauds fails then it becomes a Tenancy at Will.
      iii. Subsequent actions can turn the T@W into a Periodic Tenancy

C. Periodic
   a. Fixed and repeating periods
   b. Terminates: if either party gives reasonable notice,
   c. Automatically extends for another period if no notice is given.
   d. Half years notice; if tenancy <1 year then than notice = 1 period but not longer to than 6 months.
   e. Death of either party has no effect on duration

D. Tenancy at Will
   a. No fixed period
   b. Ends upon termination or the death of one of the parties
   c. Bilateral power of termination – if it is unilateral it must be something else
   d. Require a period of notice of 30 days
   e. Disfavored – so in ambiguities T@W fails
   f. Ex: lease until either party decides to terminate

E. Tenancy of Suffrage (hold over)
   a. creation of a new tenancy (can be expressed or implied) which is periodic
      i. original terms were a year or more then -> year to year
      ii. original terms were less than a year --> month to month
   b. eviction
      i. damages = rent; sometimes lessor gets double rent against holdover tenants

Cases:
Garner v. Gerrish: if a lease allows only one tenant the right to terminate at will it is still valid.
Crechale & Polles, Inc. v. Smith: when a landlord elects to treat holdover tenant as a trespasser but fails to pursue eviction, and instead accepts rents checks, he has agreed to an extension of the lease on a periodic basis (period = rental due dates). Under facts at bar: month to month.