

POLICY

Freedom of K	Capture	Bundle of Rights	Labor / Investment
<ul style="list-style-type: none"> • Javins – some things are non-waivable. Can't K out rt to livable housing • Vasquez – adhesion K = no choice. OR aren't poor people better off being able to make K for goods 	<ul style="list-style-type: none"> • Pierson v. Post – brightline rule protecting costs, ct can increase efficiency by assigning entitlement to parties who would purchase them in absence of costs. • Elliff Oil – law of capture but cannot waste • Theories of Acquisition - want max utilization of property, quieting title, reliance and security on investment/prop 	<ul style="list-style-type: none"> • McIntosh – Indians have rt to possess. Whites hold ultimate title as conquerors • Charrier v. Bell – burial artifacts not abandoned • Loretto – obsession w/ physical invasion of space • Ascribing Value – ascribing property rts to somethings creates value, circular argument do you protect cause valuable or is valuable bc protected (INS v. AP) 	<ul style="list-style-type: none"> • INS v. AP – need to incentive news gathering >> needs protection. • Moore v. UC – Drs efforts to make valuable cell line should be protected and incentivized. • Pierson Dissent – should give to guy who =labored for the fox. Incentivize hunting
Judicial Activism	Economic Analysis	Social Justice / Equality	Fairness
<ul style="list-style-type: none"> • Dred Scott - power of accepted norms in framing legal issue. Judicial moderation and adherence to CL = immoral (See Also State v. Mann) • Karl Llewellyn Bramble Bush – unskillful judge will be bound by precedent. Skillful judge will use knife to set him free from binding precedent • Friendswood Dissent – (subjacent support) MAJ bound by precedent of capture. Dissent says this is an issue of subjacent support not groundwater >> can apply Reasonable Use test, and say can't take out water in negligent fashion • Javins – applying consumer law to tenancy. Society changes >> need legal changes. 	<ul style="list-style-type: none"> • Coase – in the absence of transaction costs, ct can increase efficiency by assigning entitlement to parties who would purchase them in absence of costs. • PROBLEMS: disjoint between what someone would pay vs. what someone would charge. >\$ = > Social Utility. Leads to incremental change vs. radical restructuring. Winner gets windfall benefit. Commodification of things can't put \$ value • Prah v. Maretti – econ utility in lite and air • Fontainebleu – F's use of land will give greatest \$\$ therefore ct gives rt to F • Somerville DISSENT – should protect owners so they can feel secure in investment • Serio – allow builders to have restrictions so they can secure return on investment • Brooks v. Chicago Downs – market will protect against irrational discrimination • Friendswood – No retroactive change bc people should be able to rely on precedent when investing. Stability and Certainty 	<ul style="list-style-type: none"> • Starrett City – integration of many vs. housing rights of individual. • Boy Scouts – org not required to allow in person who is against core values • Jaycees – women must be allowed in men's club bc not really private, open membership • Shelley v. Kraemer – ct enforcement of racially restrictive covenant = "state action" and would violate 14th A • Wright - • Evans v. Abney – ct neutral interpretation of will to comport w/ grantor's racist intent ≠ "state action" • Familystyle v. St Paul – if purpose of statute is beneficial not discriminatory not violation of FHA • State v. Shack – ct recognized migrant workers rt to privacy and dignity. Owner could not use his rt to exclude to harm others • Embryo Cases – women as breeding container vs Men and women have shared control over reproduction 	<ul style="list-style-type: none"> • State v. Shack – can't use property rights to harm others • Rase v. Castle Mtn – recognizing CT to promote equity. Owner should not be unjustly enriched • Pierson Dissent - fair to give to guy who hunted the fox for so long • INS AP not to reap what they haven't sewn • Francis corp – Land should be developed for the greater good, doesn't mean developer who is getting \$ benefit should be able to skirt costs imposed on neighbors. Reasonable Use balances interests. Internalize the Externalities • Takings – considerations of forcing people to bear alone which in all fairness should be borne by the public as a whole.
Relativity of Title	Paternalism	New Ideas of Property	Moral
<ul style="list-style-type: none"> • State v. Shack – more you open land to public, more circumscribed ability to exclude becomes (See also NJ Coalition) • Johnson v. McIntosh • Moore v. UC – Dr who labored has property rts not person from whom resource taken • Tapscott v. Lessee – Don't have to prove that you have absolute best title, just superior title to person claiming title. • Charrier v. Bell – Indians didn't intend to relinquish, intended to leave w/ dead >> not abandoned property • Blackstone – "sole despotic dominion" 	<ul style="list-style-type: none"> • Betsy Run-Away Slave • Embryo Cases • Searles – maintaining gender bias and dependence. Saying women can't be independent w/o men, and if she gets married causing her to forfeit \$ increasing dependence on husband. • Selling Kidneys – it happens now, you should atleast let people be compensated. Protecting people from themselves. 	<ul style="list-style-type: none"> • Baby M – quasi-property rts in embryos, useful rubric in dealing w/ conflicts. • Moore v. UC – property interest in cell line but not cells because product of human labor • INS v. AP – Dissent says determining that it has value is a direct result of ct giving property rts. • Johnson v. McIntosh – Property through conquest. Whites have "ultimate title" and Indians have permission to use property. 	<ul style="list-style-type: none"> • Selling Kidneys – wrong to commodify human body • Embryos – shouldn't commodify life • Moore v. UC – shouldn't give property rts to Moore bc would be commodification of human body parts. • Titmuss – gift relationship is superior bc reaffirms a shared relationship of humanity

