

系 所 組 別	考 試 科 目
法律學系	英文

考生請於答案卷內作答

English Test for
the Entrance Examination of
Graduate Program of SHU Law School

Rules of the Test :

1. Please find the attached case Pierson v. Post. This case is an old but famous 19th century litigation which has still vividly influenced the current legal thinkings. You are required to read the case and answer the questions as follows. The scores will be marked based on how you express your reasonings. No legal terminology or knowledge is required. There will be the correct answers in the part of comprehension. But, no right or wrong position you should or should not take in the query. It's all up to how you are arguing and the limit of your imagination.
2. The court in the case is the appellate court, which means there is a judgment made by a court in the New York State and has been contested by one of the litigants, and the case then been brought up to this court for review. The majority opinion stands for the judgment of this court. The dissenting opinion is the personal expression of the judge whose view has not binding on the case.

Now, based on what I have stated above, please answer the following questions.

Questions:

1. Comprehension:
 - a. What is the judgment of the court over the belonging of the fox ? And what is the reasoning of the court for the judgment (25%)
 - b. What the difference between the reasoning of the court and of the dissenting opinions ? (25%)
2. Query:
 - a. What if the fox was one of the animals which had escaped form the Central Park Zoo in the stormy night two years ago before the catch after they saw the movie Madagascar, do you think the court would change the outcome of the judgment ? Why ? (25%)
 - b. What if it was the hare rather than the fox in the case, do you think the dissenting

judge would change his position in this case ? Why ? (25%)

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Pierson v. Post
(Supreme Court of New York, 1805)

“...Post, being in possession of certain dogs and hounds under his command, did, ‘ upon a certain wild and uninhabited, unpossessed and waste land, called the beach, find and start one of those noxious beasts called a fox, ’ and whilst there hunting, chasing and pursuing the same with his dogs and hounds, and when in view thereof, Pierson, well knowing the fox was so hunted and pursued, did, in the sight of Post, to prevent his catching the same, kill and carry it off. A verdict having been rendered for [Post, who was]the plaintiff blow. [Pierson appealed]...

TOMPKINS, J...[majority opinion]The question submitted by the counsel in this cause for our determination is, whether Lodowick Post, by the Pursuit with his hounds in the manner alleged in his declaration, acquired such a right to, or property in, the fox, as will sustain an action against Pierson for killing and taking him away ? ...It is admitted that a fox is a *ferae naturae* (“ nature[wild]animals, ”), and that property in such animals is acquired by occupancy only. These admissions narrow the discussion to the simple question of what acts amount to occupancy, applied to acquiring rights to wild animals ? ...

If the first seeing, starting, or pursuing such animals, without having so wounded, circumvented or ensnared the animal, so as to deprive them of their natural liberty, and subject them to the control of their pursuer, should afford the basis of actions against others for intercepting and killing them, it would prove a fertile course of quarrels and litigation.

However uncourteous or unkind the conduct of Pierson towards Post, in this instance, may have been, yet his act was productive of no injury or damage for which a legal remedy can be applied. We are of opinion the judgment below was erroneous, and ought to be reversed.

[Justice Livingston now gives his dissenting opinion.]

LIVINGSTON, J., My opinion differs from that of the court. ... By the pleading it is admitted that a fox is a ' wild and noxious beast. ' ...His depredations on farmers and on barn yards have not been forgotten: and to put him to death wherever found, is allowed to be meritorious, and of public benefit. Hence, it follows, that our decision should have in view the greatest possible encouragement to the destruction of an animal, so cunning and ruthless in his career. But who would keep a pack of hounds; or what gentleman, at the sound of the horn, and at peep of day, would mount his steed, and for hours together, *sub jove frigido*, or a vertical sun, pursue the windings of his wily quadruped, if, just as night came on, and his stratagems and strength were nearly exhausted, a saucy intruder, who had not shared in the honours or labours of the chase, were permitted to come in at the death, and bear away in triumph the object of pursuit?

[W]e are at liberty to adopt one of the provisions just cited... that property in animals *ferae naturae* may be acquired without bodily touch or manucaption, provided the pursuer be within reach, or have a *reasonable* prospect (which certainly existed here) of taking, what he has thus discovered an intention of converting to his own use.