Values in legal case-based reasoning

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What if the previous schemes do not apply?

- Which decisions are allowed by a body of precedents?
  - Precedential constraint
- Where do preferences then come from?
Basic scheme for value-based reasoning with precedents

Deciding *case pro* when it contains *P promotes value V*

Deciding *current pro* promotes set of values *V1*
Deciding *current con* promotes set of values *V2*
*V1 is preferred over V2*
Therefore, *current* should be decided *pro*

Deciding *precedent* pro promotes set of values $V_1$
Deciding *precedent* con promotes set of values $V_2$

*precedent* was decided pro

Therefore, $V_1$ is preferred over $V_2$
Wild animals example

- **Pierson v Post**: Plaintiff is hunting a fox on open land. Defendant kills the fox.

- **Keeble v Hickersgill**: Plaintiff is a professional hunter. Lures ducks to his pond. Defendant scares the ducks away

- **Young v Hitchens**: Plaintiff is a professional fisherman. Spreads his nets. Defendant gets inside the nets and catches the fish.

Slide by Trevor Bench-Capon
Factors in the wild animals cases

- **Pierson** – defendant
  - NotDefLiv: Defendant not pursuing livelihood (p)
  - NotPILiv: Plaintiff not pursuing livelihood (d)
  - NotOwnLand: Plaintiff not on own land (d)
  - NotCaught: Plaintiff had not caught animal (d)

- **Keeble** – plaintiff
  - NotDefLiv: Defendant not pursuing livelihood (p)
  - PILiv: Plaintiff pursuing livelihood (p)
  - OwnLand: Plaintiff on own land (p)
  - NotCaught: Plaintiff had not caught animal (d)

- **Young** – (defendant)
  - DefLiv: Defendant pursuing livelihood (d)
  - PILiv: Plaintiff pursuing livelihood (p)
  - NotOwnLand: Plaintiff not on own land (d)
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{NotDefLiv} < {NotPILiv, NotOwnLand, NotCaught}

{NotDefLiv, PILiv, OwnLand} > {NotCaught}

Pro = {PILiv} > {NotOwnLand, NotCaught, DefLiv}

Con = {PILiv} < {NotOwnLand, NotCaught, DefLiv}
Values in the wild animals cases

- **Values**
  - Cval: Certainty and avoidance of litigation
  - Eval: Economic benefit for society
  - Pval: respecting Property

- **From factors to values:**
  - Deciding pro when case contains PILiv promotes Eval
  - Deciding pro when case contains OwnLand promotes Pval
  - Deciding pro when case contains Caught promotes Pval
  - Deciding con when case contains NotCaught promotes Cval
  - Deciding con when case contains DefLiv promotes Eval
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\[{} < \{Cval\}\]
\[\{Eval,Pval\} > \{Cval\}\]
\[Pro = \{Eval\} > \{Eval,Cval\}\]
\[Con = \{Eval\} < \{Eval,Cval\}\]
Further refinements

- Promotion and demotion of values
- Degrees of promotion or demotion
  - Absolute or marginal
- Probability of promotion or demotion