

Question 3 (40%)

Survivor is a reality competition TV series in which a bunch of people are stranded on a tropical island, where they compete in physical challenges and gradually vote each other out of the game at a recurring ceremony called “Tribal Council.” The last player left standing is the “Sole Survivor” and wins \$1 million.

On recent seasons of *Survivor*, producers hide “hidden immunity idols” around the island. A player who finds a hidden immunity idol can play it at Tribal Council, nullifying any votes cast against that player. (So, for example, if there were three votes to eliminate Aubrey and two votes to eliminate Wendy, but Aubrey played an idol, the three votes cast against Aubrey wouldn’t count and Wendy would be eliminated.) The hidden immunity idols are, well, hidden, but players have typically watched past seasons of the show and can predict that there will be some hidden on the island. They also generally know what the idols look like.

A player who finds an idol usually wants to keep it secret so it will be a surprise when it gets played, since this makes it harder for other players to avoid having their votes nullified. Sometimes, a player will try to keep it secret by hiding it in their clothes or bag; other times, they’ll hide it somewhere else on the island, for instance by burying it next to a distinctive-looking tree. In either case, the goal is to be able to retrieve it before going to Tribal Council.

The *Survivor* producers are debating what the rule should be if a player finds a hidden immunity idol that another player has already found and re-hidden, either in their clothes/bag or elsewhere on the island. (The rule would govern rights and relationships as between different players, not those involving the producers. All hidden immunity idols are originally planted by producers, but producers don’t exist in the “in-game” world of *Survivor*. Within the game, before someone finds an idol, it is akin to abandoned property or unowned property available for capture.)

In general, the producers want to create exciting and compelling television, but they also want to keep the game fair and avoid creating too much drama between players. Drama may seem like a good thing for reality TV, but there are plenty of other chances for it. And the producers like it when someone successfully plays an idol that the other players didn’t anticipate.

The producers ask you for help. You do some research and conclude that the common law of found property provides the closest analogy. Analyze what that legal doctrine tells you about what the *Survivor* rule should be. Specifically, do two things: (a) Propose a rule governing hidden immunity idols based on the common law of found property. Explain how the principles underlying the common law lead to your proposed rule. (b) Assess your proposed rule. What are its advantages and disadvantages? Should the producers adopt it? Or is there a different rule that would better accomplish the producers’ goals?