Competing Rights
to our Natural Resources
and
Privileges to the Shore
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Prof. Dennis Esposito
Director
Environmental and Land Use Clinical Externship Program;
Adjunct Prof.
Marine Affairs Institute  Rhode Island Legal Sea Grant Program;
Roger Williams University School of Law
PUBLIC TRUST DOCTRINE

A USE DOCTRINE
Not a
LEGAL TITLE DOCTRINE
Public Trust Doctrine is not grounded in Property Law

Think: Not Exclusive Ownership

Rather a Right of Resource Use

Think: Many People Use the Resource
Public Trust Doctrine:

1) A Legal Interest;
2) In lands and waters;
3) Held by the State;
4) For the Benefit of the Public
Roots of the public trust doctrine

• Roman Law: Institutes of Justinian
  • "By the law of nature these things are common to all mankind; the air, running water, the sea, and consequently the shores of the sea."

• The Magna Carta

• English version of changed concept from being *res communis* to be owned by the sovereign in trust for the people

• Sir Matthew Hale’s, De Jure Maris

• Reception of English law in the United States
What are public trust lands?

Nature of Public Trust

- Presumption against private ownership
- Shively v. Bowlby (US S.Ct. 1894)
  - Interpretation of deeds or grants that could involve public trust lands different from the normal rule interpreting ambiguity in deeds against the grantor.
  - Grants of public trust lands must expressly show intent to transfer.
- What is nature of public trust?
- Can public trust lands be alienated?
- If so, under what circumstances?
Alienation of Public Trust Lands

- People v. Chicago Park District
- Facts
  - Is the court bound to protection of only the traditional public trust interests?
  - If transfer of public trust lands serves general public purposes, does that fulfill the state’s obligation?
- Consider this example of a state constitutional provision. Can public trust (or sovereignty) lands be transferred for non-public trust purposes under this provision?

CONSTITUTION OF THE STATE OF FLORIDA, ART. X, Section 11.

Sovereignty lands. - The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.
Rhode Island Management of Public Trust Land

Coastal Resource Management Council

Administrative Agency Created by Legislation

To oversee and manage the State’s Coastal Resources (includes by definition Public Trust Lands)

Aquaculture CRMP 300.11
Something to think about:

• The exercise of public trust rights is certainly subject to regulation. As public trust rights as expand, there is increased potential for conflicting uses and the need for regulation. But the public trust doctrine does not prioritize public trust interests. Are some interests more important than others? Should the determination be more “place-based” than “activity-based”? What other questions are relevant?
Littoral & Riparian Rights

• Is there a difference?

• Key: Bounded by a water body – must be part of deed or grant description. If metes and bounds description in the grant- not riparian or littoral.

• Why do these lands have a special character?
Farnham’s List of riparian rights*

1. The right to have the water remain in place and to retain, as nearly as possible, its natural character.

2. The right of access, which included:
   a. The right to maintain contact with the body of water;
   b. The right to accretions;
   c. The first right to purchase adjacent submerged land if it is sold by the state;
   d. If filling of submerged land is permitted by the state, the preferential right to fill adjacent submerged land.

3. Subject to reasonable restrictions, the right to wharf out to the navigable portion of a body of water.

4. The right of free use of the water immediately adjoining the property for the transaction of such business associated with his wharves or other such structures.

CENTRAL THEME: ACCESS

*List subject to substantial variations from state to state.
Nature of tides

• Daily /Monthly/Yearly – longer changes?

• Period of all of the phases of the moon?
  • 18.6 years!!
  • But extensive tidal data make determination of MHW level relatively easy and accurate
    • Methodologies

• Important: That determination is the vertical height of the mean high tide. Where is the boundary line on the ground?
Tidal range is the vertical distance between the high tide level and the low tide level. The distance visible on the beach between the high and low tide is known as the “reach” of the tide. The tidal range is primarily affected by the moon, but the reach is most affected by the profile of the beach.
Note: The range of the tide is the same in Figure 2 and Figure 3. The landward reach of the intersection of the tide line with the beach, can move greatly, however, depending on the profile of the beach at different times. The more dynamic the beach, the greater the difference in the location of the MHWL from day to day.
Ambulatory Boundaries

- Accretion
- Reliction
- Erosion
- Avulsion
  - Common law rule
  - Texas rule
- Subsidence
- Sea level rise
Right to Accretions

- Exceptions –
  - Upland Owner causes accretions – tantamount to taking state public trust lands
- Examples?
- Artificial accretions?
  - Caused by upland owner
  - Caused by someone off-site
    - Majority rule
    - California rule

What happens if . . . .

- Erosion moves boundary landward onto property that was formerly non-littoral, but eventually the land accretes to near its original bounds.
  - What are alternative arguments?

- Land is avulsively lost in a storm that moves the high water line to non-littoral property.
  - What is the right to reclaim?
Riparian Access

• Riparian right of access extends “only as far as necessary to provide access to the ‘navigable parts’ of the waterway”

• Question of fact and local conditions

• Once the riparian owner has entered the ‘navigable parts’ of the waterway, riparian owners no longer have any individual rights – only rights in common with other members of the public in the use of the navigable waters.

• Rights in common with the public . . . . . .?
• Why has beach access become so controversial?
Beach Access

- Why has public access to beaches become so controversial?
- How can members of the public reach the public trust beach and waters (vertical access)? Is there a right to cross private land to access the beach?
- What part of the beach is open to use by the public?
- Can rights extend to the dry sand portion of the beach?
- What happens to the public’s rights when the beach moves?
- What is the scope of the public’s right to use the beach?
- To what extent can the public’s use be regulated or limited?
Questions?

Discussion

Thank You!