

Introduction to and History of Public Land Law

- ***Johnson v. M'Intosh***
 - Chain of Title of the Public Domain
- ***United States v. Gratiot***
 - Congress' Power under the Property Clause
- ***Pollard v. Hagan***
 - Statehood and Equal Footing
 - Chain of Title for Submerged Lands (beds of navigable waters)



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Introduction to and History of Public Land Law Cont'd

- ***Illinois Central Railroad Co. v. Illinois***
 - The Public Trust Doctrine



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Johnson v. M'Intosh,
21 U.S. 543 (1823), p. 40.

Chain of Title of the Public Domain

- What kind of title did the European nations have?
- What kind of title did the U.S. receive from the European nations through treaties?
- What interests did Native Americans have?



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Johnson v. M'Intosh cont'd

The Treaty of Guadalupe Hidalgo

- February 2, 1848 signed by President Polk's representative ended war between Mexico and the United States.
- Mexico ceded 55% of its territory (present-day AZ, CA, NM, TX, and parts of CO) in exchange for \$15 million for war-related damage to property.



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***Johnson v. M'Intosh* cont'd**

The Treaty of Guadalupe Hidalgo **cont'd**

- Provided for protection of the property and civil rights of Mexican nationals living within the new border (Art. VIII, IX).
- Guaranteed protection of Mexican land grants (Art. X) *until* the U.S. Senate deleted it in the ratification of the treaty in March 1848.



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United States v. Gratiot,

39 U.S. 536 (1840), p. 49.

The “Property Clause”

U.S. Const. art. IV, § 3, cl. 2

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or any other Property belonging to the United States.



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United States v. Gratiot cont'd

Limits to the Property Clause?

- Read broadly.
- Temporally – law of 1807 limited the President’s authority.
- Constitutionally – the First Amendment.



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Pollard v. Hagan, **44 U.S. 212 (1845), p. 52.**

Equal Footing Doctrine

- It only applies to inland waters, not waters offshore.
- It only applies to waters that are navigable at the moment of statehood.
- The U.S. can “reserve” before statehood beds of navigable water for federal purposes.



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History of Public Land Cont'd

- *Illinois Central Railroad Co. v. Illinois*
 - The Public Trust Doctrine
- *Andrus v. Utah*
 - Grants
- *Stewart v. Penny*
 - Homesteads



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Illinois Central Railroad Co. v. Illinois, 146 U.S. 387 (1892), p. 58

Illinois Central Round House



1866



Age of Steam



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Illinois Central Railroad Co. v. Illinois,
146 U.S. 387 (1892), p. 58

What Does it Mean?!?!

- **Could the state revoke the grant?**
- **Could the state make the grant?**
- **Special sort of eminent domain?**



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Illinois Central Railroad Co. v. Illinois
cont'd

What Does it Mean?!?!

- **Immense value and size?**
- **Applying to federal land?**
- **Retention of police power?**



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The Public Trust Doctrine

Restraint on alienation by the government

1. What assets are covered by the doctrine?
2. To what uses can the assets be put?
3. Who can alienate (convey) a public trust asset and according to what procedures?



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Public Trust Assets

1. Great bodies of water
2. Parklands, wetlands, and wildlife (court additions/expansion of the doctrine)
3. Air, water, and natural resources (statutes and state constitutions)



Chicago around 1833



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Acceptable Alienation No Degradation

- 1. Public (not private) uses**
- 2. Consistent with protecting asset**
- 3. Enhancement or minimal diminution of asset**
- 4. No public use destroyed or greatly impaired**



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Who Can Alienate and How?

- 1. Minor alienation by agency, pursuant to rigorous procedures**
- 2. Major alienation by agency or “remand to legislature”**
- 3. Legislature**



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Background Principles of Law: Public Trust Doctrine

- 1. Public rights predate all private rights.**
- 2. Thus, there can never be a successful claim of superior private rights over public rights.**



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