Public Trust Doctrine

1. Restraints on alienation by the government
   
   *Illinois Central Railroad Co. v. Illinois* (p. 35)

2. Basis for government regulation of private property
   
   *Just v. Marinette County* (p. 38)

Public Trust Issues

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?
Public Trust Assets

1. Great bodies of water (*Illinois Central Railroad Co. v. Illinois*)

2. Parklands, wetlands, and wildlife (court additions/expansion of the doctrine)

3. Air, water, and natural resources (statutes and state constitutions)

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
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

Background Principles of Law: Public Trust Doctrine

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


1. The character of the regulation,

2. The economic impact of the regulation upon the private property owner, and

3. The extent to which the regulation interferes with the distinct investment-backed expectations of the property owner.

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- Compensation is required when government action deprives the property owner of “all economically beneficial use” of the property.

- Landowner is constrained by those “restrictions that background principles of the State’s law of property and nuisance already place upon land ownership.”