WHAT ARE BOUNDARIES?

• Lines demarcating ownership
  – Nations
  – States
  – Counties/local government
  – Private parties
• Lines demarcating possession
• Social constructs
MODERN AND HISTORIC CAUSES OF PRESENT DAY BOUNDARY PROBLEMS

- Erroneous early maps
- Competition for lands
- Poorly written descriptions with ambiguous words
- Lost settlers and surveyors
- Inadequate financing
- Evolution of methods and equipment
- Land becoming scarce

MACRO BOUNDARIES

- Boundaries Between Nations
- Boundaries Between States
- Boundaries Between Large Land Grants (Historic And Modern)

NATION BOUNDARIES ARE FOUGHT

In the air
Under the sea, or .............
Wherever they are located
IN THE AIR

- **Aug 2014**: “Pentagon: China tried to block U.S. military jet in dangerous mid-air intercept”
- **Dec 2014**: “Norwegian F-16 in Near-Miss With Russian Fighter Jet”
- **Sept 2015**: “Chinese jet nearly collides with American spy plane gathering intelligence off China’s coast in dangerous mid-air interception”

UNDER THE SEA

BBC: ARCTIC SEABED “BELONGS TO RUSSIA”

USING LOCAL TALENT
LET'S GET PERSONAL WITH MACROS

• What major country has macro boundaries with two other countries?
  – That are in excess of 10,000 miles; one has no major hindrances, but has some serious issues
  – The second boundary has majority fences and water

What are the three countries?

U.S. AND CANADA

EVEN IN NEVADA
**28 U.S.C. 1251**

- (a) The Supreme Court shall have original and exclusive jurisdiction of all controversies **between two or more States**.
- (b) The Supreme Court shall have original but not exclusive jurisdiction of:
  - (1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;
  - (2) All controversies between the United States and a State;
  - (3) All actions or proceedings by a State against the citizens of another State or against aliens.
MICRO BOUNDARIES

- Boundaries between individuals
- Boundaries between parcels
- Boundaries between lots
- Boundaries between estates of land

Neighborly Behavior

But Why The Anger?
Our Land

But Why The Anger?

Land is Special

TODAY’S CLASS

- List and describe the processes that create national, state, local, and private boundaries
- Understand how the United States was created and list the different countries where the land came from
- Understand the points of conflict in boundary disputes at all levels (macro and micro) and give an example of each
HIERARCHY OF BOUNDARIES

- Nation States
- States
- Local Govt.
- Pvt.

CREATION OF NATION STATES

So How Did They All Get Created?
CREATION OF NATION STATES

196

How Many Countries in the World?

CREATION OF NATION STATES

• War
• Revolution
• Treaty
• Peace Treaty/Surrender
• The Internet

REVOLUTION

www.cnettleman.net
charles.cnettleman@gmail.com
On 29 November 1947, the United Nations General Assembly voted (resolution 181) to partition Palestine between a Jewish and an Arab state, with Jerusalem under an international regime.

OR EVEN AMBIGUITY

HIERARCHY OF BOUNDARIES

Nation States
States
Local Govt.
Pvt.
CREATION OF STATES

1. The particular condition that someone or something is in at a specific time. "the state of the company's finances."

2. A nation or territory considered as an organized political community under one government. "Germany, Italy, and other European states"

WHAT MUST BE CONSIDERED IN STATE BOUNDARIES

- How the original boundaries were created?
- When or how many times the boundaries were changed or defined?
- What words were used in creating them?
- Were they surveyed and described?
- What authorities created them?
- How are they defined today?

CREATION OF STATES

How Did We Get From 13 to 50?
CREATION OF STATES

How Did We Get From 13 to 50?

THE BEST BOOK ABOUT HOW STATE BOUNDARIES WERE CREATED

HIERARCHY OF BOUNDARIES

- Nation States
- States
- Local Govt.
- Pvt.
Counties, in their infancy, were organized to be administrative agencies of the state. Shortly after their creation, counties moved into other areas of government support, including social services, corrections, child protection, library services, public health services, planning and zoning, economic development, parks and recreation, water quality, and solid waste management.

Counties are typically governed by a board of directors known as commissioners. Directors are elected in 2, 3, 4 year terms that are usually staggered. In addition to commissioners, they are county attorney, county auditor, county treasurer, county recorder, and county sheriff.
EVER WONDER?

HIERARCHY OF BOUNDARIES

- Nation States
- States
- Local Govt.
- Pvt.

HOW ARE LAND PARCELS CREATED?

- By Words
- By Actions
- By Law
HOW ABOUT CONVEYANCES?

• Simultaneous

• Sequential

BOUNDARY PROBLEMS BETWEEN STATES

WHAT TWO STATES HAD THE FIRST PROBLEM?

• New York
• South Carolina
• New Jersey
• North Carolina
• Connecticut
• Rhode Island

• Maryland
• Massachusetts
• Virginia and Delaware
• Pennsylvania
• Georgia
• New Hampshire
THEY ARE...........

RHODE ISLAND & MASSACHUSETTS

WHAT YEAR WAS THIS CASE FINAL?

2010
2000
1990
1980
1970
1960
1950

LET'S TRY SOME MORE...

1940
1930
1920
1900
1890
1880 HELL, NO!!!!!!!!!!
FINALLY!!!!

1870
1860
1850
YOU GOT IT
1841

EXERCISE 2: STATES

• RHODE ISLAND v. MASSACHUSETTS 40 U.S. 233 (1841)
• ALABAMA v. GEORGIA 64 U.S. 505
• NEW JERSEY v. NEW YORK 523 U.S. 767 (1998)
• GEORGIA v. SOUTH CAROLINA 497 U.S. 376 (1990)

EXERCISE 2: STATES

• So What Happened?
"It may come as a surprise that North and South Carolina, two states better known for philandering politicians and restrictive voter ID laws than progressive politics, are quietly collaborating on an enormous undertaking to re-mark their misplaced 334-mile common boundary."
NY Times 2014

HISTORY

• How far back do we go?
  • 280 years!!!!
• Who split NC and SC?
  • The British
• How so?
  • “NW from Atlantic coast to 35th parallel” + “35th due west to south seas”

What happened?

• "The original 1735 survey party (1) didn’t show up, (2) didn’t get paid, and (3) gave up 12 miles too short”
• So what did they do?
  “drove a stake into the ground 1 miles too far south, and went home”
PROCEDURAL POSTURE

- Surveyed in 1735
- Re-surveyed in 1764 (shaving 422,000 acres off of SC)
- 1990's Duke Energy sale
- SC v. GA costs the state $10 million in legal fees
- 1993: signed SC/NC cooperative to re-establish agreement
EVIDENCE

- Centuries-old property maps geo-rectified with GIS
- Stone monument set in 1928
- 1928 plats
- Aerial photos
- What else?

OPINION

- There is no opinion...only mutual cooperation and agreement

RHODE ISLAND v. MASSACHUSETTS 40 U.S. 233 (1841)

This case decided where boundary issues between states would be litigated
RHODE ISLAND v. MASSACHUSETTS

PLEASE DOWNLOAD AND REVIEW THIS CASE AT

http://supreme.justia.com/cases/federal/us/403
33/

This case set the precedent that boundary disputes between states would be heard by the Supreme Court.

WHAT IS ORIGINAL JURISDICTION?

THE POWER TO HEAR A CASE FOR THE FIRST TIME
WHERE DO YOU GO AFTER THE SUPREME COURT?

“Take it to GOD”

THE QUESTION IS “WHO IS GOD?”

Does God look like this?

WRONG RELIGION
OR THIS

“So if you don’t like it, you know where you can go”

THE EVIDENCE

- Grant by King James to the Council of Plymouth in 1621 describing the boundary as “lying within the space of three English miles on the south part of the Charles River, or of any or every part thereof…”
- The accompanying map was described by the Supreme Court as “marvelously inaccurate”

HOW MASSACHUSETTS LOCATED THE BOUNDARY

In 1642:
- Woodward and Saffrey, representing Massachusetts, located the “southernmost point on the Charles River”
- They measured three miles south, establishing Woodward and Saffrey’s station
- And finally established “a line drawn through the latitude at 41 degrees 55 minutes”
HOW RHODE ISLAND LOCATED THE BOUNDARY

SURVEY???
WHAT SURVEY????

THE REHOBOTH AGREEMENT

• Both states appointed boundary commissioners and gave them unlimited power to “run the boundary line” and AGREED ON A BOUNDARY
• But the Massachusetts legislature refused to ratify the agreement in 1848
• Then Massachusetts sued Rhode Island in the Supreme Court

WHEN WAS THE DISPUTE FINALLY RESOLVED?

1862
AND THE LESSON LEARNED

Some boundaries have to be resolved through political means, especially when the evidence is so ambiguous.

NEW JERSEY v. NEW YORK

LET’S TAKE A LOOK AT WHY NEW JERSEY WON

NEW JERSEY v. NEW YORK

PLEASE DOWNLOAD AND REVIEW THIS CASE AT

http://supreme.justia.com/cases/federal/us/523/767
THE BASICS

• There is NO federal law of real property

• There are federal laws for surveys only that apply to the public lands

• The Supreme Court applies the lex loci of the state where the land is located

WHAT WERE THE STATES FIGHTING ABOUT?

TAXES

THE SYMBOL OF AMERICA
THE FACTS

• New York has title to Ellis Island through a 1834 “compact” between New York and New Jersey
• Compact states that New York shall retain its present jurisdiction over the island while New Jersey got the surrounding waters and submerged lands
• Ellis Island was later expanded by dumping large amounts of dirt to create a much larger area (about 90% of the island is fill)

THE DISPUTE

• A law professor was appointed by the two states as a “special master” to decide the boundary
• This “law professor” ignored the 1834 compact and drew “new boundaries”
• New York then took it to the Supreme Court, which stated that the special master had no right to “re-draw” existing boundary lines, as set by the Compact
THE LAW

• Supreme Court, by 6-3, decided that the 1834 Compact set the boundary line

• Specifically, New York got the original Ellis land and New Jersey got all the surrounding waters, including the filled-in land

GEORGIA v. SOUTH CAROLINA
497 U.S. 376 (1990)

• One of the longest running boundary disputes in US history!

• Basically, a dispute over the boundary along the Savannah River

PLEASE DOWNLOAD AND REVIEW THIS CASE AT

http://supreme.justia.com/cases/federal/us/497/376/
THE HISTORY

- In 1787, the two states agreed in the Treaty of Beaufort that the boundary along the Savannah River was the river’s "most northern branch or stream," "reserving all islands in [the river] to Georgia".
- Treaty language clarified in a 1922 Supreme Court case, which held the border should be in the middle of the river between the two shores, with the border half way between any island and the South Carolina shore.

THE PROBLEM

- New islands were created from natural processes, and some of those islands were inside South Carolina’s ownership area.
- So what happens when new islands are created? According to SCOTUS, the boundary between Georgia and South Carolina is redrawn.
- South Carolina disagreed and claimed the new islands were property of South Carolina.

THE OPINION

- SCOTUS decided that both new islands were the property of Georgia.
- But the Court also set a compromise seaward boundary drawing it perpendicular to a line between Tybee Island and Hilton Head Island.
- One history text described the case, "In 1990 the United States Supreme Court awarded South Carolina 7,000 acres of water and 3,000 acres of land along the Savannah River, increasing the size of the state by four and a half square miles."
THE STORY

- 1733: Georgia boundaries created in writing
- 1802: Georgia ceded lands west of the Chattahoochee to the U.S. which then created Alabama
- 1835 Georgia boundaries run on ground 1803 and Alabama boundaries created in writing
THE BOUNDARY WAS DESCRIBED AS..

"West of a line beginning on the western bank of the Chattahoochee River where the same crosses the boundary between the United States and Spain, running up the said river and along the western bank thereof"
THE PROBLEM

- Georgia claimed the boundary should be located along the western edge of the river at the high-water mark.
- Alabama claimed the boundary should be located along the western edge of the river at the “usual or common low-water mark.”

RUNNING THE BOUNDARY

The Supreme Court decided that:

- “Said line commences at a point where the 31st degree of north latitude crosses the Chattahoochee River.”
- The same line “runs upon the western bank at the usual or common low-water mark.”
- The line ends at Nickajack.

THE OPINION

- The Court held that the language of the contract implied that there was ownership of soil and jurisdiction in Georgia in the bed of the river.
- Since substantial lands were inundated and then left dry throughout the year and Georgia owned the river bed, the Compact should be interpreted in favor of Georgia.
“It seems that the old maps (those ex. Gr. Prior to A.D. 1800), indicative of the physics and hydraulics of the Mississippi, are not greatly to be relied upon.”

PLEASE DOWNLOAD AND REVIEW THIS CASE AT

http://supreme.justia.com/cases/federal/us/78/395/
THE STORY

• 1763: The boundary was established as the middle of the River Mississippi in a treaty signed by France, Spain, and England
• 1859: Missouri sued Kentucky to “ascertain and establish...the boundary between the two States at a point on the Mississippi River known as Wolf Island”
• Missouri claimed Wolf Island was on her side of the channel when the boundary was established
• Kentucky begged to differ

THE PROBLEM

Who owns Wolf Island???
When the Missouri/Kentucky boundary was established, was Wolf Island to the east or west of the main channel?

THE EVIDENCE: MISSOURI

• Missouri’s witnesses “stated that from the present time back to 1830 the main channel of the river was on the east side of the island, and that from 1830 as far back as 1794, both channels were navigable”
• Other evidence included several military maps that showed “the island as nearly in the middle of the river, but the larger portion of it west of the middle line”
• The military maps were relied on, stating the channel to be on both sides, but best on the east side
THE EVIDENCE: KENTUCKY

• The island was entered in the Virginia land office during the Revolutionary War; the State now known as Kentucky being then part of Virginia
• In 1828, one of the courts of Kentucky exercised jurisdiction over the island in a matter of apprenticeship
• More than a score of witnesses, many of them ancient, including boatmen, navigators, and several persons, testified that the main channel of the river was to be regarded on the east side of the island

THE OPINION

• Dismissing the suit, the court ruled that if the island, in 1763, or in 1820, or at any intermediate period, was east of this line, the jurisdiction of Kentucky rightfully attached to it
• If the river subsequently turned its course, and now ran east of the island, the status of the parties was not altered, because the channel which the river abandoned remained, as before, the boundary between the states

NORTH CAROLINA v. TENNESSEE

235 U.S. 1

Both states having in 1821 created a joint commission and having agreed to abide by its judgment, the question in this case is what the agreement meant
NORTH CAROLINA v. TENNESSEE
235 U.S. 1

PLEASE DOWNLOAD AND REVIEW THIS CASE AT

WHAT THE SUPREME COURT DID NOT KNOW (OR FORGOT)

• Original line run by George Struthers in 1799
• Field notes were sent to Tennessee and “lost” until 1917
• Sent to Raleigh “lost again”
• Adopted by Tennessee as “line”, rejected by North Carolina
• “Found” in 1982 and showed errors in law description

SUPREME COURT DIAGRAM
WHERE IS THE HIGHEST POINT BETWEEN THE STATES?

Thunderhead is the highest point between North Carolina and Tennessee.

BOUNDARY PROBLEMS BETWEEN COUNTIES

Exercise 3: Counties

- Tarrant County v. Denton County, 139 S.W. 3d 22
- City of Newport News v. Warwick County, 191 Va. 591 (1950)
- Bibb County v. Monroe County Nos. S13A1395, S13A1396 (March 10, 2014)
- State v. Garden County No. 19387 (1916)
EXERCISE 3: COUNTIES

• So What Happened?

TARRANT COUNTY v. DENTON COUNTY
139 S.W. 3D 22

Tarrant County v. Denton County is another great example of a boundary dispute. You are not required to brief this case, just take special note of the parties involved.
The major question was "Where is Tarrant County's North Boundary?"

- Had to do with taxes
- Tarrant County used three college professors using GPS units
- Denton County did a "retracement" and found three original corners
- **Tarrant WON!!!!!!**

**WHY??**

Tarrant County v. Denton County

139 S.W. 3D 22 (Texas 2004)

Bibb County v. Monroe County (2014)
FACTS

• “These appeals involve a long-running boundary line dispute between Monroe County and Bibb County”
• Imagine that!
• “In 2005, Governor Sonny Perdue appointed land surveyor Terry Scarborough to identify the boundary between the counties, pursuant to a statutory process for settling boundary disputes first established in the 1880s”
• What is a statutory process?

FACTS

• “In 2008, after receiving formal authorization to proceed..., Scarborough conducted his survey work and submitted his survey to the Secretary...in 2009, delineating what he concluded was the true boundary line...”
• Now’s Who’s Decision Is It?

PROCEDURAL POSTURE

• Went to State Admin Hearing & Sec OK’d survey
• Why?
• Then Went to Superior Court. Dismissed.
• Why?
• Then Writ on Mandamus Accepted?
• By Who, To Who, and So What?
WHAT DOES SCO-GA SAY?

- Actions of officials under statute governing resolution of boundary disputes between counties may properly be subject of a petition for mandamus
- Mandamus would not lie to compel secretary of state to record survey and plat submitted by governor’s appointed surveyor
- Trial court abused its discretion in denying no petitioning county’s emergency motion to intervene

LESSONS

- You Tell Me
FACTS

- “Proceeding by the County of Warwick to establish true boundary line between that county and York County”
- We’ve heard this before
- “The General Assembly has power to increase or diminish the territorial limits of a county and to prescribe the procedure for settling disputed boundary lines between counties”
- By what authority?

PROCEDURAL POSTURE

- “Warwick county filed a petition in the circuit court of that county alleging that a doubt existed as to the true boundary line between Warwick and York counties and requested that the exact location of the boundaries be established”
- By What Method?
- “circuit court adjudicated that doubt did exist and appointed five commissioners”
- Why 5 commissioners?

PROCEDURAL POSTURE

- “The city of Newport News filed a petition in which it sought to be made a party defendant to the proceeding”...Denied!
- Why?
THE DISPUTE

THE BLIZZARDS OF WINTER DESCEND
When Friend Measures Frontage With Friend
A Snowy December
When Sheeler’s Remember Exactly Where Lot Boundaries End

IN CLOSING

A.C. MULFORD IN 1912 WROTE:
For after all, when it comes to a question of stability of property and the peace of the community (and the world) it is far more important to have a somewhat faulty measurement if the spot where the line truly exists than it is to have an extremely accurate measurement of the place where the line does not exist at all

AND FINALLY……..

LET US USE OUR KNOWLEDGE WISELY, THE LAW WITH COMPASSION AND TECHNOLOGY SPARINGLY