

Riparian and Littoral Law in New York State

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Introduction

- Riparian Rights are rights of use
 - There is no absolute property interest can be acquired in flowing water
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Introduction

- Riparian Owner has rights incidental to the their ownership of the uplands
- Riparian Rights cannot be impaired or diminished without due process and just compensation

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Definitions

Littoral

- Belonging to the shore, as of the sea and great lakes

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Littoral Rights

- Rights concerning properties abutting an ocean, sea or lake rather than a river or stream; usually concerned with the use and enjoyment of the shore.

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Navigable in Fact

- Streams or lakes are navigable in fact when they are used or susceptible of being used in their natural and ordinary condition as highways for commerce over which trade and travel are or may be.
- Navigable in its natural or unimproved condition affording a channel for useful commerce of a substantial and permanent characters conducted in the customary mode of trade and travel on water. A theoretical potential navigability or one that is temporary, precarious and unprofitable, is not sufficient but to be navigable in fact a lake or stream must have practical usefulness to the public as a highway for transportation.

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Navigable by Law

- Based on English common law definitions of navigable waters; a river or stream in which the tide ebbs and flows; or as far as the tide ebbs and flows

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Riparian

- Belonging to or relating to the bank of a river or stream; of or on the bank. Land lying beyond the watershed of a stream is not riparian.

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Riparian Owner

- One who owns the land on the bank of a river, or one who is the owner of land along, bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with the rivers.

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Riparian Rights

- The rights of the owners of lands on the banks of watercourses relating to the water, its use, ownership of soil under the stream, accretions and relictions.

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Shore

- Lands adjacent to the sea or other tidal waters; lands adjoining navigable waters, where the tide flows and reflows, which at the high tide is submerged and at low tide is bare.

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Shore Line

- Boundary of lands adjoining navigable waters is the line marked by the high tide.

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Thread of a River and Lake

- The thread of a river is the line formed equal distance from the shores, and is not to be confused with the center of the main channel which may be closer to one bank than to the other.
- The thread of the lake is the centerline which passes through the thread of the inlet and the thread of the outlet.
- Where there is no inlet or outlet, the thread passes through the center of the lake on its longest axis.
- The thread of a river or lake is determined at its ordinary and natural stage.

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Outdated distinctions

- While "[a] true riparian owner owns land along a river" and the owner of property along a lake is more accurately described as a littoral owner, the distinction between these terms is outdated. (internal citations omitted)
- *Ford v. Rifenburg*, 94 A.D.3d 1285 (3rd Dept 2012).

Ownership of Lands Under Water

Ownership of Lands Under Water

- Depends on the history and paper interpretation of the chain of conveyance beginning with the source of title
- Title sources are usually either:
 - Original grants from State OR
 - Grants from colonial representatives of the British Crown

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Ownership of Lands Under Water

- New York State derives its ownership in lands underwater based upon what was at the time defined as the state's navigable waters
- Even where the lands underwater are privately owned, if the waters are navigable, the public has an easement to use the watercourse or body of water for travel like other highways generally

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Ownership of Lands Under Water

- Determining ownership of lands lying under water:
 - Determine whether the particular body of water in question is navigable and if navigable:
 - whether the crown granted title to the lands, including the land under water to any private party or entity prior to the date when title to all the lands of the Crown vested in the State of New York

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Ownership of Lands Under Water

- **Depends on Navigability**
- What is or is not navigable depends on purpose of the definition used to define term "navigable"

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Ownership of Lands Under Water

Kinds of Navigability

- **Navigable in Law vs. Navigable in Fact**
 - Navigable in law: English Rule: waters considered navigable were tidal waters
 - Navigable in Fact: Federal Rule: any body of water capable of being used for transportation etc.

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Ownership of Lands Under Water

Kinds of Navigability In New York:

- Navigation Law Section 2(4)
 - "Navigable waters of the state" means "All lakes rivers streams and waters within the boundaries of the State and not privately owned, which are navigable in fact or upon which vessels are operated, except all tidewaters bordering on the boundaries of Nassau and Suffolk Counties"
 - This definition does not define the State's powers. See *Town of North Elba v. Grinditch*, 98 A.D. 3d 183 (3rd Dept 2012).

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Ownership of Lands Under Water

Kinds of Navigability In New York:

- Ownership of lands underwater is determined only by whether the body of water is navigable in law
 - Early English Rule that all waters which are affected by the tide are navigable and all others non-navigable has not been followed by New York Courts: See *Dolphin Lane Associates v. Town of Southampton*, 72 Misc 2d 868 (1971).
 - However as a result most of the lands under NY's tidal waters are owned by the state, while tideless fresh water MAY be privately owned.

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Ownership of Lands Under Water

Kinds of Navigability

In New York:

- Generally if the body of water may be put to public transportation and commercial use it is navigable.
- Navigability in Fact relates to the right to use waterway, not ownership of the fee
- Recreational use is part of the analysis
- See *Adirondack League Club, Inc. v. Sierra Club*, 92 NY2d 168 (1998).

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Ownership of Lands Under Water

- **Kinds of Navigability**
 - In New York:
 - Small non-navigable inland lakes and ponds:
 - Presumption that title is in the adjacent owners and that a grant of land adjacent to such bodies of water conveys title to the center thereof unless the description specifically excludes it
- RESULT: must go back to root title unless have judicial declaration as to ownership but even then your particular chain of title may prove differently

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Ownership of Lands Under Water

Absent an express and unequivocal intent to the contrary, the British Monarch and later the State, retained ownership of the fee to the bed of navigable in law waterways pursuant to the Public Trust Doctrine.

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Ownership of Lands Under Water

- Attempts by early courts to expand the presumption of state ownership to navigable in fact waterways was later limited to the Hudson and Mohawk Rivers

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Ownership of Lands Under Water

In Summary:

the State owns, in its sovereign capacity, the land under:

- Tidal waters,
- boundary waters,
- the Hudson and Mohawk Rivers
- and certain major inland lakes, based on their size, character and history including: Lake George, Cayuga Lake, Canandaigua Lake, Oneida Lake and Keuka Lake

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Ownership of Lands Under Water

- the State's sovereign ownership includes the land under the "marginal sea" to a line three miles from the coast,
- the Great Lakes within the State's territorial jurisdiction,
- Lake Champlain and
- the St. Lawrence and Niagara Rivers

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Ownership of Lands Under Water

- Other Exceptions may include:
 - a. Genesee River at mouth on lake Ontario
 - b. Allegheny River

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Ownership of Lands Underwater

- Case Studies:
- *Adirondack League Club, Inc. v. Sierra Club*, 92 NY 2d 168 (1998),
- *Town of North Elba v. Grinditch*, 98 A.D. 3d 183 (3rd Dept 2012).
- *Douglaston Manor v. Bahrakis*, 89 NY2d 472 (1997)

Ownership of Lands Underwater

- Case Studies:
- *Friends of Thayer Lake v. Brown*, 126 A.D. 3d 22 (3rd Dept 2015)
- *Friends of Thayer Lake v. Brown*, 27 NY3d 1039 (2016)

Water and Watercourse Boundary Lines

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Navigable Tidewater

- Title is in the State (unless root title is in a private person) subject to the reservation and stipulation that such streams shall forever be and remain public highways.
- Subject to the power of the United States to regulate interstate commerce

Land under navigable fresh water streams

- Excepting the boundary rivers and the Mohawk and Hudson Rivers
- The presumption is that ownership is in the State and the burden is on the landowner to rebut the presumption by demonstrating their title by conveyance, grant or by prescription.

Navigable Fresh Water Streams

- Private Land under navigable fresh water streams
- Rule for apportioning the lands underwater to the adjoining upland owner is that each owner takes in proportion to his or her line on the margin in front of his or her upland, according to straight lines drawn at right angles between the side lines of his or her land on the shore and the centerline of the water.

Title to the High water mark

- Where adjoining landowners have title to the high water mark of tidal waters, the public has the right to use the land between the high water mark and the low water mark
- When the tide is out they can cross over the foreshore

Title to the Low water mark

- Where a lake or pond is held in public ownership, the boundary line between the public proprietor and the owner of the adjacent upland is usually the low water mark
- Where adjoining landowners have title to the low water mark of tidal waters, they may enjoy trespassers on the foreshore

Specific Bodies of Water

- Ownership in the State:
- The Great Lakes (usually, depends on root title)
- Oneida Lake
- Cayuga Lake
- Lake George
- Canandaigua Lake
- Onondaga Lake
- Otsego Lake
- Keuka Lake

Specific Bodies of Water

- Private Ownership:
- Lake Placid
- Hemlock Lake
- White Lake
- Copake Lake
- Cromwell Lake or Hazard's Pond
- Tripp Pond
- St. Mary's Pond or Silver Lake
- Brandt Lake
- Mill Pond in Guilderland, NY

Apportionment of underwater lands as between littoral owners

- Each littoral owner takes title to the center or thread of the lake or pond in proportion to his or her line on the margin in front of his or her upland in straight lines drawn at right angles between the sidelines and the centerline of the lake.

Surveying Principals to resolve access disputes

- Navigation law section 32 prohibits interference with access to a navigable body of water
- Office of General Services has regulations on how to resolve interference caused by docks, warfs etc. erected by riparian owners

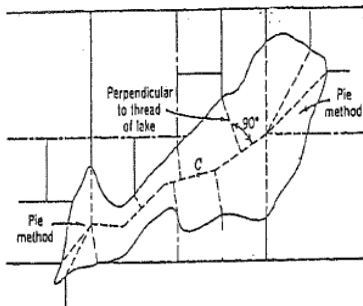
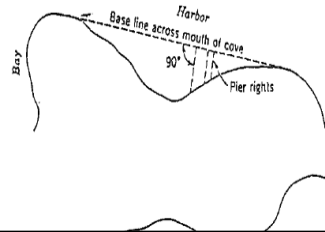
Surveying Principals to resolve disputes

11 NYCRR Part 274

Apportioning out the riparian or littoral rights

PERPENDICULAR METHOD

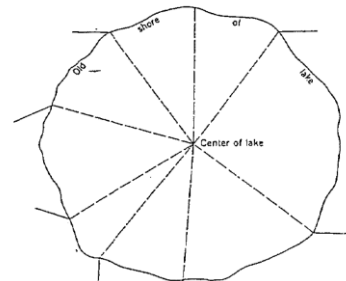
Establishing the outshore lateral lines between the riparian/littoral zones by turning 90 degrees from a base line is referred to as the perpendicular method. This can be done from a baseline established between headlands in a cove and applying the proportionate method. The baseline can also be the thread of a stream, or river and in some cases the general trend of the shore such as along the Long Island Sound. Nevertheless, the riparian/littoral zone is established along a line perpendicular to the baseline and extending the same to intersect the property line at the shoreline.



Long-lake method.

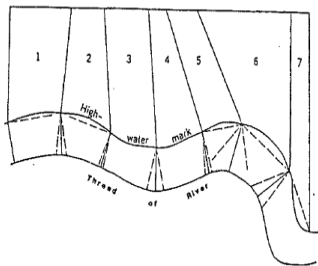
ROUND LAKE (PIE) METHOD

Establishment of the littoral zone for a circular body of water is accomplished in a manner which is called the Round Lake or Pie Method. In this method, a point in the center of the body of water is established and a line drawn from the property corner at the shore is extended outshore to the established point at the center of the body of water.

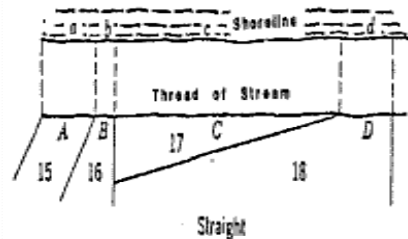


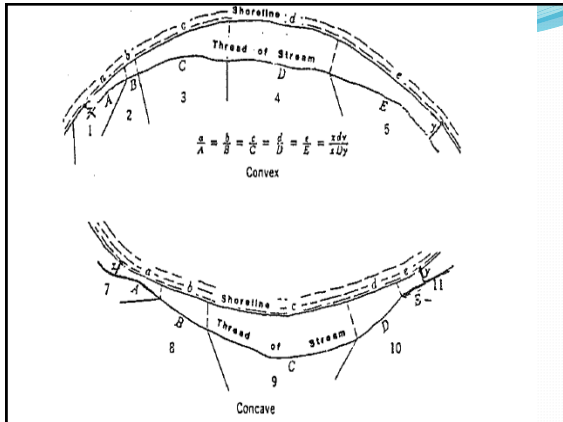
Colonial Method

Right angles to the baseline to the thread of the water body. The angle produced by the two lines established is bisected to establish the lateral outshore riparian/littoral zone.



Proportional Thread of Stream Method





Practical Location

- When the parties have made improvements and there seems to have been long acquiescence to their location and placement into the water.

Natural Changes in Boundaries

- **Accretion**
- Definition: the increase of riparian land by the gradual or imperceptible deposit by water of solid material whether mud, sand or deiment so as to cause that to become dry land which was before covered by water.
- Change so gradual as not to be perceveied in any one moment, only after a long lapse of time.

Natural Changes in Boundaries

- Alluvion: the result of accretion

Natural Changes in Boundaries

- Reliction or Dereliction
- Definition: is an increase of the land by graduale an imperceptible withdrawal of any body of water or previously submerged lands which becomes exposed by the gradual recession of water.

Natural Changes in Boundaries

- Erosion
- The gradual and imperceptible wearing away of the soil by natural caues, such as current or tide.

Natural Changes in Boundaries

- Submergence
- The gradual disappearance of soil under the water and the formation of a more or less navigable body of water over it.

Natural Changes in Boundaries

- Where the location of the margin or bed of a stream or other body of water is imperceptibly changed or shifted by accretion, reliction or erosion, the margin or bed of the stream or body as so changed remains the boundary of the tract, which is extended or restricted accordingly.
- The Landowner gains or loses ground accordingly

Natural Changes in Boundaries

- Where the land is submerged, the riparian owner can reclaim the land when it re-emerges by natural or man made means.
- However, land lawfully reclaimed loses its character as foreshore and the easements and servitudes to use it are extinguished. See *Tiffany v. Town of Oyster Bay*, 234 NY 15 (1922)

Natural Changes in Boundaries

- Apportionment of Accretions:
- Generally the frontage will be conserved so that each has the same amount as they used to have, proportionally
- A riparian owner cannot claim accreted lands beyond the point where such accession began to be made adjacent to the property of adjoining owners.

Natural Changes in Boundaries

- Apportionment of Accretions:
- A riparian owner who influences and creates an artificial condition on purpose to cause the accretion or reliction will not benefit from the rule
- However a good faith improvement that changes the normal pattern of accretion would allow the landowner to claim the accretions due to man made structures.

Natural Changes in Boundaries

- Accretions as appurtenances:
- Title to the Accretions will pass to subsequent owners by virtue of the appurtenance clause even if not specifically referenced in the deed.

Boundaries that are Fixed

- Where the deed or other muniment of title permanently fixes the boundary line of land conveyed to a certain point, so it is not changeable by the high water mark, accretions outside the boundary do not belong to the grantee

Natural Changes in Boundaries

- Avulsion:
 - The sudden pushing back of the shoreline by violent action of the elements which is perceptible at the time it occurs.
 - Title is not lost by avulsion, and may be reclaimed
 - Party asserting it has to prove it was Avulsion, and not erosion which lead to the loss of land

Reclaiming Land

- Land filled by Riparian Owner
- Generally allowed so long as it doesn't interfere with navigation or commerce.
- If the filling is authorized under the law, the newly created land belongs to the Riparian Owner
- If the filling occurs without authorization, the upland owner who filled has no rights to the newly created land, although their riparian rights would remain intact

Reclaiming Land

- Examples:
 - Filling up a bay on a navigable river by cutting down the banks and filling beyond the high water mark does not give rise to title by accretion. *Saunders v. NY Cent. & H.R.R. Co.*, 144 NY 75 (1894)
 - Boat house and pier built on soil deposited after dredging a navigable river were expressly permitted by the US gov. and impliedly permitted by NYS gov. the structures were legal and the owner was entitled to compensation for their taking. *Moyer v. State*, 56 Misc. 2d 549 (Ct. of Claims 1968)

Reclaiming Land

- Filling by the municipality or State
- The filled in area belongs to the State or municipality if the fill is to aid in navigation or commerce
- If the filling is wrongful, the fill belongs to the abutting riparian owner, *Steers v. Brooklyn*, 101 N.Y. 51 (1885)

Reclaiming Land

- Access over the filled land:
 - Riparian owner's rights are not impaired by the filling in of the shores of a navigable river, they still have a right of access to the water as a highway abutting their property, subject to the right of the state to improve navigation and commerce, *Sage v. City of New York*, 154 NY 61 (1897).

Reclaiming Land

- Street that originally reached the water will extend over newly created lands to reach the water. *City of New York v. Mazzella*, 50 AD3d 578 (1st Dept 2008).
- However, where a street only ran to the high water mark, it will not be extended to the water. *In re City of Yonkers*, 117 NY 564 (1890).

Canal Lands

Chapter 199 of the Laws of 1910

- An Act to provide for the mapping of certain canal lands and the lands adjacent thereto belonging to the state, and making appropriation therefor.
- Section 1. The state engineer and surveyor is hereby directed to make the necessary surveys, field notes and manuscript maps of all such portions of the Erie, Oswego and Champlain canals that are not within the lines of the improved Erie, Oswego and Champlain canals, and of all the lands belonging to the state adjacent thereto or connected therewith on which the boundary line or "blue line" of any parcel of such land to which the state shall have a separate title shall be designated, together with the names of adjoining landowners.

Canal Law Article 1: Short title and definitions

- 8. "Canal Lands" shall mean all lands and waters forming a part of the canal system title to which was originally vested in the state, acquired by the state or which may in the future be acquired by the state for canal purposes.
- 9. "Blue Line" shall mean the boundary of canal lands owned by the state previous to the approval of chapter one hundred forty-seven, laws of nineteen hundred three.
- 10. "Old Canal Lands" shall mean canal lands lying within the blue line.

Blue Line Maps

- The Blue Line Maps basically show the State Lands that are associated with the Old Canal independent of the state lands appropriated for the Barge Canal. The Blue Line Maps are deemed presumptive evidence of the state's title to lands within the blue line

Blue Line Maps



NYS Constitution Today

- The Legislature is still Prohibited from selling, abandoning or otherwise disposing of canal lands
 - Article 15 Section 1 of the NYS Constitution
- EXCEPT those lands which were no longer useful or necessary for canal purposes
 - Article 15 Section 2 of the NYS Constitution

Canal Law Section 50

- In 1992 the Canal Corporation was given authority to abandon Canal Lands
- § 50. Authority to abandon canal lands
 - 1. Authority is hereby conferred upon the corporation to abandon any portion of barge canal lands, barge canal terminal lands, or old canal lands and appertaining structures constituting the canal system prior to the barge canal improvement, which have or may become no longer necessary or useful as a part of the barge canal system, as an aid to navigation thereon, or for barge canal terminal purposes.

Effect of Abandonment

- *Montfort v. Benedict*, 199 A.D.2d 923 (3d Dept. 1993).
- "...in 1981 the lands were declared to have been abandoned for canal purposes (L 1981, ch 741). Without any other sovereign or public purpose (see, *State of New York v Case*, 86 Misc 2d 43, 381 N.Y.S.2d 210), such abandoned property would be held in a proprietary capacity.
- When the Blue Line land in question was abandoned, there no longer existed a statutory prohibition to alienability; a prescriptive easement by adverse use became legally possible at that time.

Centerline Presumption

Knapp v. Hughes, 19 N.Y.3d 672 (2012)

Knapp v. Hughes

- RULE:
- "It has long been established New York law that a conveyance of land on a pond or stream includes the land under the pond or stream, to the center of the water, unless a contrary intention is made clear. We reaffirm that principle in this case, and hold that its application does not depend on minor variations in the language of the conveyance."

Knapp v. Hughes

- FACTS:
- Defendants own land on the shore of Perch Pond.
- Both plaintiffs and defendants claim to be the owners of the land under the pond that is adjacent to defendants' waterfront land.
- Both thus claim to have the exclusive right to use that part of the pond for swimming, fishing and other purposes.

Knapp v. Hughes

- **FACTS:**
- the 1973 deeds [to Defendants] conveyed land "along the waters [sic] edge of Perch Pond" and "along the edge of Perch Pond."
- Plaintiffs, claiming under a 1993 deed by which the Furlanos conveyed their remaining waterfront property and "all remaining lands of Grantors," assert that the 1973 deeds conveyed only the land next to the water, not the land under it, and that all the submerged land once owned by the Furlanos passed by the 1993 deed to plaintiffs' predecessors in title.

Knapp v. Hughes

- **DISCUSSION:**
- Thus in *Gouverneur* [v National Ice Co., 134 NY 355, 364 (1892)], in which we interpreted deeds conveying land "along Hinckley pond" and "along said pond" to include land to the pond's center, we said that "a boundary line described as 'along the shore' of a fresh-water stream does not extend the grant to its center"

Knapp v. Hughes

- **DISCUSSION:**
- And in *White* [v Knickerbocker Ice Co.], where we held that a conveyance "along the south side of the Rockland Lake" conveyed land to the center, we said that a conveyance of land "by the shore" or "to the bank" (254 NY at 156) or "to the edge or margin of the lake" (id. at 158) would convey only shore land.

Knapp v. Hughes

- **HOLDING:**
- We conclude, however, that this and similar dictums were mistaken and should not be followed. The effect of a grant should not turn on such fine distinctions as that between "side" and "edge." To make a plain and express reservation of rights to underwater land, a grantor must do more than use the word "edge" or "shore" in a deed. He or she must say that land under water is not conveyed, in those words or in words equally clear in meaning. In the absence of an explicit reservation, a grant of land on the shore of a pond or stream will be held to include the adjoining underwater land, except in unusual cases where the nature of the grant itself shows a contrary intention.

Knapp v. Hughes

- **RESULT:**
- Defendants were the owners of the land underwater of Perch Pond as it adjoins their upland property.

Case Studies

- *Ludinton v. Marsden*, 181 A.D.2d 176 (4th Dept 1992)
- *Mulry v. Norton*, 100 N.Y. 424 (1885)
- *Steers v. Brooklyn*, 101 N.Y. 51 (1885)
- *Cramer v. Perine*, 251 N.Y. 177 (1929)

Surface Water

The common enemy

Rule

- "It is well established that although an upland owner is not generally liable to a lowland owner for an increased flow of surface water resulting from re-grading or general improvements to his property, he may be liable if he collects storm water by means of pipes or ditches and discharges it upon neighboring property causing damage."
- *Zutt v. State*, 19 Misc. 3d 1131(A) (Ct. of Claims, 2006)

Liability for Divergence

- A landowner is liable for damages to an abutting owner when they intentionally divert surface waters by artificial means, such as by ditches, pipes and berms, onto another's real property. See *Tremblay v. The Harmony Mills*, 9 Bedell 598 (1902) *Osgood v. Buckingham-Reddy*, 202 A.D.2d 920 (3d Dept 1994); *Cottrell v. Hermon*, 170 A.D. 2d 910 (3d Dept 1991); *Long v. Sage Estate Homeowners Association, Inc.* 16 A.D.3d 963 (3d Dept 2005).

Liability for Divergence

- A party seeking to recover must demonstrate that the improvements caused the surface water to be diverted, "that damages resulted and either that artificial means were used to effect the diversion or that the improvements were not made in a good faith effort to enhance the usefulness of the defendant's property." *Cottrell v. Hermon*, 170 A.D. 2d 910, (3d Dept 1991).

Liability for Divergence

- If the party performed the improvement in good faith, in a proper manner they are not liable.
- See *Cottrell supra* at 911. [where defendant was not found liable for patio built on her property which cast the water towards plaintiffs property].

Liability for Divergence

- The rule applies between municipalities and private owners as well as between two private owners.
- *Zutt v. State*, 19 Misc. 3d 1131(A) (Ct. of Claims, 2006)

Case Studies

- *Tremblay v. The Harmony Mills*, 9 Bedell 598 (1902)
- *Osgood v. Bucking-Reddy*, 202 A.D.2d 920 (3d Dept 1994)
- *Cottrell v. Hermon*, 170 A.D. 2d 910 (3d Dept 1991)
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- *Zutt v. State*, 19 Misc. 3d 1131(A) (Ct. of Claims, 2006)

The End

Questions?

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