



# Overview of the Public Trust Doctrine

## The Public Trust

The Public Trust Doctrine grants public rights in the submerged lands of navigable waterways to protect public uses. States are generally responsible for application of the Public Trust Doctrine. Therefore, the protection of public rights varies by state.

### Public Trust Terminology

**Public Use:** Traditionally, public uses included navigation, commerce, and fishing. Some states have expanded public uses to include recreation, wildlife habitat, or other uses.

**Navigable Waterway:** Navigable waterways differ depending on the State's definition, but generally include waters that were naturally navigable at the date of statehood. The State owns the submerged lands and banks of the navigable waterway.

**Submerged Lands:** The lands lying beneath waterways.

## Origins of the Public Trust Doctrine

Some scholars trace the origins of the Public Trust Doctrine back to Roman civil law or English common law. The landmark U.S. Supreme Court case *Illinois Central Railway Co. v. Illinois*, 146 U.S. 386 (1892) defined the contours of the trust.

### ***Illinois Central Railway Co. v. Illinois*, 146 U.S. 386 (1892).**

In this case, the State of Illinois originally granted title to large tracks of submerged lands in the Chicago Harbor to a railroad company. Later the State repealed the grant of land, and the Court had to decide whether the State or the company had control over the submerged lands. The Supreme Court found ownership over land covered by tidal waters belongs to the respective State, and the title to this land is "held in trust for the people of the State." Therefore, the Supreme Court concluded that Illinois had title to the submerged lands in the Chicago Harbor and holds them in trust for the public benefit. The Court also recognized that the State can convey use of submerged lands when the conveyance furthers the purpose of the public trust, such as commerce, navigation, or fishing.

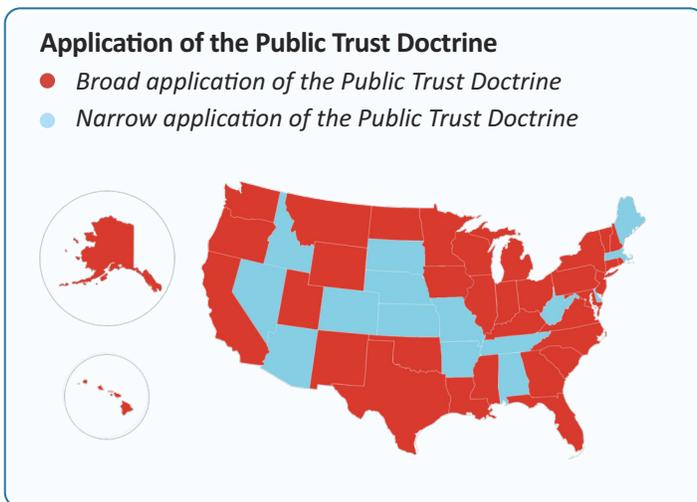
Even though the Court in *Illinois Central* was somewhat vague about where the legal origins of the Public Trust Doctrine arose from, state and federal court decisions have continued to hold that states have title to submerged lands that are held in trust for the public benefit.

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The Public Trust Doctrine does not apply to all water – only navigable waters. Federal law determines what waters were considered navigable at statehood. Following statehood, state definitions of “navigability” may be amended to include additional waters, so the scope of the Public Trust Doctrine varies by state.

State Public Trust Doctrines have continued to evolve after the *Illinois Central* case. States have expanded the definition of public uses and the definition of navigable waters that the public trust applies to. Many states now include recreation activities as a public use that must be considered by the State. Some states, such as Hawaii, Illinois, and Florida, have amended portions of their state Constitution to include the Public Trust Doctrine.

As the Court noted in *Illinois Central*, a state may convey title to submerged lands if the conveyance is consistent with the Public Trust Doctrine. Often times such conveyances apply to the construction of docks, piers, or other structures because the construction supports the public benefit of water access and commerce. In other cases, a state may be prohibited from permitting a new structure when it does not further a public use. For example, in *Friends of the Parks v. Chicago Park District*, 160 F. Supp. 3d 1060 (N.D. Ill. 2016), an organization argued that a proposed George Lucas Museum on Chicago’s lakefront was a violation of the public trust because it did not further a public use.



In a more recent Supreme Court case decision, *PPL Montana, LLC v. Montana*, 132 S. Ct. 1215 (2012), the Supreme Court held that states have the authority to determine the scope of the public trust over waters within state borders. States must still meet the minimum federal standards.

Some states interpret the Public Trust Doctrine narrowly, while other states interpret it broadly. For example, Maine utilizes a narrow application of the public trust and only includes fishing, fowling, and navigation as public uses. Many other states utilize a much broader application of the public trust. Alaska, for instance, has expanded the public trust to include the use of water for seaplanes as a public use.