

Washington Law Review

Volume 20 | Number 1

1-1-1945

Lateral Boundaries—Second Class Tidelands; Limitation of Actions—Limitations Applicable—Written Contracts—Implied Liability;

E. B. M.

W. A. Z.

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>

Recommended Citation

E. B. M. & W. A. Z., Recent Cases, *Lateral Boundaries—Second Class Tidelands; Limitation of Actions—Limitations Applicable—Written Contracts—Implied Liability*, 20 Wash. L. Rev. & St. B.J. 67 (1945).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol20/iss1/4>

This Recent Cases is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

WASHINGTON LAW REVIEW

and

STATE BAR JOURNAL

Published Quarterly, in January, April, July and November of Each Year
by the Washington Law Review Association, at the Law School
of the University of Washington. Founded by John T.
Condon, First Dean of the Law School.

SUBSCRIPTION PRICE: \$1.20 PER ANNUM.

CURRENT COPIES 50c

ROBERT L. TAYLOR *Editor-in-Chief
and Business Manager*

R. H. NOTTELMANN *Associate Editor*

STUDENT EDITORIAL BOARD OF THE LAW SCHOOL

Clyde R. Maxwell, Jr., *President*

James D. McCutcheon, Jr., *Vice-President*

E. B. McGovern, *Contributions Editor*

William C. Klein, *Make-up Editor*

Max Byers Klein Donald Colvin Helen Mae Nelson P. J. French
Jane Dowdle Willard A. Zellmer Elmer Douglas Leader

CONTRIBUTORS TO THIS ISSUE

LARSON, LENNART V., B.S., J.D., University of Washington. S.J.D., University of Michigan. Attorney, National War Labor Board, Washington, D. C. Professor of law on leave, Baylor University. Member of Michigan, Texas, and Washington state bars. Contributor to various law journals.

AMBLER, JOHN, L.L.B., University of Virginia, 1923. Member of law firm of Grosscup, Morrow & Ambler, Seattle, Washington.

LATCHAM, FRANKLIN C., B.S., University of Washington, 1943; L.L.B., University of Washington, 1944; appointed clerk for Justice Bone of the Ninth Circuit Court of Appeals for term November, 1944-November, 1945.

RECENT CASES

LATERAL BOUNDARIES—SECOND CLASS TIDELANDS. Through deeds from the State of Washington which do not declare the lateral boundaries of the subject-matter, plaintiffs and defendants, coterminous upland owners, are adjacent owners of second class tidelands which lie in a cove and abut on their upland properties. Plaintiffs instituted action to quiet title to an area of these flats contending that the lateral boundary separating their tidelands from the defendants' should be a line perpendicular to the government meander line, at the point of its intersection with the joint upland boundary of plaintiffs and defendants, projected to the line of extreme low tide. Such a boundary would deprive defendants of direct access to navigable water over a portion of their tidelands. After a

finding in favor of plaintiffs' contention, defendants appeal. *Held*: The lateral boundary is to be drawn according to the following formula: the tidelands should be apportioned between the respective owners so that as the whole length of the water boundary of the land within the concave shore is to the whole length of the low water line, so is each landowner's proportion of the shore line to each owner's share of tidelands along the line of low water. *Spath v. Larsen*, 20 Wn.(2d) 500, 148 P.(2d) 834 (1944).

As the court indicated, a variety of formulas for determining the lateral boundaries of tidelands has arisen out of the interpretation of a 1641 ordinance of the Colony of Massachusetts, Body of Liberties, Article 16, as amended in 1647, 28 MASS. HISTORICAL COLLECTIONS, p. 219; MASS. COLONIAL LAWS (ed. 1660), p. 50; ed. 1672, pp. 90-1. By the pertinent portion of the ordinance, title, "Liberties Common," § 2, upland owners are given property in adjacent tidelands. Realizing that the chief value of tidelands usually rests in the right of access to navigable water, the Massachusetts court has interpreted the ordinance as meaning to give each upland owner an area on the tidelands at low water mark equal in width to his upland shore boundary. See *Gray v. Deluce*, 5 Cush. 9, 12 (Mass. 1849). If such a division is impracticable, the upland owner is to be given a low water boundary proportionate in length to his shore boundary. *Wonson v. Wonson*, 14 Allen 71 (Mass., 1867). So, where the shore boundary is straight, lateral tideland boundaries would be parallel lines projected at right angles to the low water line from the point of intersection of the upland lateral boundary and the shore boundary.

However, where the shoreline is concave, forming a cove or bay, the courts have differed as to the course of the lateral boundaries. There have developed three main formulas for their determination. First, the Massachusetts rule as enunciated in *Wonson v. Wonson*, *supra*, requires a ratable distribution of distance along the low water line in proportion to the length of the tideland owner's upland water boundary. Since the shoreline is concave, the shore boundary will be longer than the corresponding low water line. Thus, the lateral boundary lines drawn from each end of the shore boundary to the corresponding ends of the proportionate frontage on low tide line will converge. *Rust v. Boston Mill Corp.*, 6 Pick. 158 (Mass., 1828). The second is the Maine rule announced in *Emerson v. Taylor*, 9 Green. 42, 23 Am. Dec. 531 (Maine, 1832). Here a base line is drawn connecting the corners of the tideland owner's corresponding upland lot at the intersection of the upland property lines with the shore boundary. From the points of intersection, lines perpendicular to the base line are projected to the line of low tide. Since the shore is not straight, ownership of angular pieces of flats will, by this division, be unresolved. These portions are then divided equally between the adjacent owners. Whether the area, the angle, or the low water frontage, of the angular piece, is to be the basis of division, the Maine court does not say. The third is the formula already referred to as being adopted by the lower court in the principal case. Lines perpendicular to the shore boundary are projected from the points of intersection of shore and upland lateral boundary lines to the low tide line.

Since the Massachusetts rule most adequately protects second class tideland owners in their basic right of access to navigable water, and, at the same time, is easier of application than the Maine rule, it seems that the Washington court in following the *Wonson* case not only adopted the most logical formula for its decision, but also the most workable.

Washington has a large area of second class tidelands. Since the principal case, one of first impression in this state, thus affects ownership of so much land, the Washington court is to be commended for its very exhaustive consideration of the principles involved in the case at hand.

E. B. M.

LIMITATION OF ACTIONS—LIMITATIONS APPLICABLE—WRITTEN CONTRACTS—IMPLIED LIABILITY. A and B leased hotel property from X. One month later A agreed to sell his interest to B for \$600, of which \$550 remained unpaid at the time of trial. B entered into negotiations with C, and C agreed to purchase the lease for \$1,300, including \$550 to be paid to A. A signed an option agreement giving C the right to purchase the lease for \$550. C took possession, paid B \$750 and assumed complete management of the property. A brings this action for the \$550 due under the option. C contends that the contract, if actually entered into, was within the three year statute of limitations and outlawed. *Held:* C became bound by an implied unilateral contract when he took control of the premises thereby accepting the option offer. The resulting contract is deemed to have arisen out of a written instrument and is, therefore, not barred until after six years. *De Britz v. Sylvia*, 121 Wash. Dec. 295, 150 P.(2d) 978 (1944).

The above case involves an interpretation of the Washington statute of limitations. REM. REV. STAT. § 157(2), provides that "an action upon a contract in writing, or liability express or implied arising out of a written agreement" shall be brought within six years. Sec. 159(3) provides that "an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument" shall be brought within three years.

In enacting the above quoted provisions, the legislature seemingly intended to include within the six year statute any liability that can be implied arising out of a written instrument. The cases upon the subject indicate that the Washington Supreme Court has adopted this point of view. The court has found the six-year statute applicable to implied liabilities arising from written agreements under various factual situations. That result was reached in *De Britz v. Sylvia*, *supra*, where the court found an implied liability arising out of an option agreement. Similar results have been recorded under the following diversified situations of fact: a co-suretyship agreement arising from a note, *Caldwell v. Hurley*, 41 Wash. 296, 83 Pac. 318 (1906); an account stated, *Vorhees v. Nabob Silver-Lead Co.*, 174 Wash. 5, 24 P.(2d) 114 (1933); a reorganization agreement, *Behneman v. Schoemer*, 141 Wash. 560, 252 Pac. 133 (1927); a bill of lading, *Warren v. Rickles*, 129 Wash. 443, 225 Pac. 422 (1924); a joint guarantor agreement, *Pioneer Mining & Ditch Co. v. Davidson*, 111 Wash. 262, 190 Pac. 242 (1920); a bill of lading, *Ore.-Wash. R. & N. Co. v. Seattle Grain Co.*, 106 Wash. 1, 178 Pac. 648, 185 Pac. 583 (1919); and a bond, *Lindblom v. Johnson*, 92 Wash. 171, 158 Pac. 972 (1916). See also, *Seattle Lodge v. Goodwin*, 143 Wash. 210, 255 Pac. 96 (1927). These cases illustrate a liberal construction which may encompass a variety of fact situations.

The court, however, has declined to extend the Washington six-year limitation statute to quasi-contractual obligations implied from written agreements. In *Bicknell v. Garrett*, 1 Wn.(2d) 564, 96 P.(2d) 592, 126 A. L. R. 258 (1939), the court said:

"We are inclined to the opinion that this statute (REM. REV. STAT. § 157(2), *supra*) does not contemplate quasi-contracts or

liabilities merely contractual in nature, but liabilities which are either expressly stated in a written agreement or which follow by natural and reasonable implication from the promissory language of the agreement from some external source."

A search of the limitation of action statutes of other states has revealed none with wording like that employed by § 157(2), quoted above. They can be divided generally into three classes:

(1) Contracts unwritten or implied from either written or unwritten contracts are assigned a shorter period, while completely written contracts are assigned a longer period. The Illinois statute which comes within this class most nearly approaches the wording of the Washington statute of any of the state statutes investigated. ILL. REV. STAT. (1943) tit. 18, §§ 16, 17. A recent case will illustrate a typical interpretation of the Illinois statute: *Elec. Contr's Ass'n v. Schulman Elec. Co.*, 324 Ill. App. 28, 57 N.E. (2d) 220 (1944). See also CIV. PRO. & PROB. CODE OF CALIF. (1941) §§ 337, 339; IDAHO CODE ANN. (1932) §§ 5-216, 5-217.

(2) All contract actions for written or unwritten contracts are assigned the same limitation period. ANN. LAWS OF MASS. (1938) Vol. 9, c. 260, § 2. THOMPSON'S LAWS OF N. Y. (1939) Civ. Pro. Act, § 48. ORE. COMP. LAWS ANN. (1940) Vol. 1, § 1-204(1).

(3) Limitation periods are fixed for each kind of contract on basis of subject matter; the form of the contract is immaterial. N. J. STAT. ANN. (1939) § 2:24-1. REV. CODE OF DEL. (1939) c. 146.

It is thus apparent that REM. REV. STAT. § 157(2) is unique when compared with the statutes of other states and that in Washington the court gives this statute a liberal interpretation.

W. A. Z.