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Copy To Charlie Hales

Oregon Drainage Law

Oregon has adopted the civil law doctrine of drainage. Under this doctrine, adjoining landowners are entitled to have the normal course of natural drainage maintained. The lower owner must accept water which naturally comes to his land from above, but he is entitled not to have the normal drainage changed or substantially increased. The lower landowner may not obstruct the run-off from the upper land, if the upper landowner is properly discharging the water.

For a landowner to drain water onto lands of another in the State of Oregon, two conditions must be satisfied initially: 1) the lands must contain a natural drainage course; and 2) the landowner must have acquired the right of drainage supported by consideration. In addition, because Oregon has adopted the civil law doctrine of drainage, three basic elements must be followed:

1. A landowner may not divert water onto adjoining land that would not otherwise have flowed there. "Divert water" includes but is not necessarily limited to: 1) water diverted from one drainage area to another; and 2) water collected and discharged which normally would infiltrate into the ground, pond, and/or evaporate.
2. The upper landowner may not change the place where the water flows onto the lower owner's land (Most of the diversions not in compliance with this element result from grading and paving work and/or improvements to water collection systems).
3. The upper landowner may not accumulate large quantities of water, then release it, greatly accelerating the flow onto the lower owner's land. This does not mean that the upper landowner can not accelerate the flow of water at all; experience has found drainage to be improper only when acceleration and concentration of the water were substantially increased.

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~~This complaint comes forth due to the illegal drainage situation at 239 S.W. Ter~~

2013 ORS § 221.903¹

Bond and oath of officers

The recorder, treasurer and marshal mentioned in ORS 221.902 (City officers) shall, before entering upon the duties of their respective offices, each execute a bond to the city in such penal sum as the council by ordinance may determine upon, conditioned for the faithful performance of duties, including in the same bond the duties of all offices of which the recorder, treasurer or marshal is ex officio incumbent under ORS 221.901 (Cities organized under 1893 Act) to 221.928 (Record of ordinances). The bond shall be approved by the council before the officer enters upon the discharge of duties. The bonds when approved shall be filed with the recorder, except the bond of the recorder, which shall be filed with the mayor. All the provisions of any law of this state relating to official bonds of officers shall apply to such bonds, except as otherwise provided in ORS 221.901 (Cities organized under 1893 Act) to 221.928 (Record of ordinances). Every officer of the city, before entering upon the duties of office, shall take and file with the recorder an oath to honestly and faithfully discharge the duties of office, and that the officer will support the laws and Constitution of this state and of the United States to the best of the ability of the officer.

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(No annotations for this section.)

¹ Legislative Counsel Committee, *CHAPTER 221—Organization and Government of Cities*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors221.html (2013) (last accessed Apr. 27, 2014).

² OregonLaws.org contains the contents of Volume 21 of the ORS, inserted alongside the pertinent statutes. See the preface to the ORS Annotations for more information.

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

PUBLIC SERVANT QUESTIONNAIRE

Genesis

Bigger text (+) | Smaller text (-)

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes a risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, ... even though the agent himself ... may be unaware of the limitations upon his authority." See *Utah Power & Light Co. v. United States*, 243 U.S. 389, 409; *United States v. Stewart*, 311 U.S. 60, 70, 108, and see, generally, *In re Floyd Acceptances*, 7 Wall. 666. *Federal Crop Insurance v. Merrill*, 332 U.S. 380 (1947)

"Public officers are merely the agents of the public, whose powers and authority are defined and limited by law. Any act without the scope of the authority so defined does not bind the principal, and all persons dealing with such agents are charged with knowledge of the extent of their authority,
Continental Casualty Co. v. United States, 113 F.2d 284, 286 (5th Cir. 1940)

"It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error."
American Communications Association v. Douds, 339 U.S. 382, 442 (1950)

"Jurisdiction, once challenged, cannot be assumed and must be decided."
Maine v. Thiboutot, 100 S. Ct. 250

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection, it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." see, *Norton v. Shelby County*, 118 U.S. 425, Quoting from *Marbury v. Madison* (1803), *Marbury* holds that a void act is void ab initio. "... the Constitution requires the judiciary to refrain from enforcing laws enacted contrary to the Constitution..."

"The state citizen is immune from any and all government attacks and procedure, absent contract." see, *Dred Scott vs. Sanford*, 60 U.S. (19 How.) 393 or as the Supreme Court has stated clearly, "...every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen without his consent."
CRUDEN vs. NEALE, 2 N.C. 338 2 S.E. 70

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no such duty [to submit his books and papers for an examination] to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land [Common Law] long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights."
as per *Hale v. Henkel*, 201 U.S. 43 at 47

McNally v. U.S., 483 U.S. 350, 371-372 (1987), Quoting *U.S. v. Holzer*, 816 F.2d. 304, 307: "Fraud in its elementary common law sense of deceit - and this is one of the meanings that fraud bears in the statute, see *United States v. Dial*, 757 F.2d 163, 168 (7th Cir. 1985) - includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them he is guilty of fraud.

"The law creates a presumption, where the burden is on a party to prove a material fact peculiarly within his knowledge and he fails without excuse to testify, that his testimony, if introduced, would be

adverse to his interests." citing Meier v. CIR, 199 F 2d 392, 396 (8th Cir. 1952)
quoting 20 Am Jur, Evidence, Sec 190, page 193

Notification of legal responsibility is "the first essential of due process of law". See also: U.S. v. Tweel, 550 F.2d.297. **"Silence can only be equated with fraud where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading."**

"Sovereign immunity does not apply where (as here) government is a lawbreaker
or jurisdiction is the issue."
Arthur v. Fry, 300 F.Supp. 622

"Knowing failure to disclose material information necessary to prevent statement from being misleading, or making representation despite knowledge that it has no reasonable basis in fact, are actionable as fraud under law."
Rubinstein v. Collins, 20 F.3d 160, 1990

[a] "Party in interest may become liable for fraud by mere silent acquiescence
and partaking of benefits of fraud."
Bransom v. Standard Hardware, Inc., 874 S.W.2d 919, 1994

Ex dolo malo non oritur actio. Out of fraud no action arises; fraud never gives a right of action. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. As found in Black's Law Dictionary, Fifth Edition, page 509.

"Fraud destroys the validity of everything into which it enters,"
Nudd v. Burrows, 91 U.S 426.

"Fraud vitiates everything."
Boyce v. Grundy, 3 Pet. 210

"Fraud vitiates the most solemn contracts, documents and even judgments."
U.S. v. Throckmorton, 98 US 61

When a Citizen challenges the acts of a federal or state official as being illegal, that official cannot just simply avoid liability based upon the fact that he is a public official. In United States v. Lee, 106 U.S. 196, 220, 221, 1 S.Ct. 240, 261, the United States claimed title to Arlington, Lee's estate, via a tax sale some years earlier, held to be void by the Court. In so voiding the title of the United States, the Court declared:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

"Shall it be said... that the courts cannot give remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the government without any lawful authority, without any process of law, and without any compensation, because the president has ordered it and his officers are in possession? If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights."

See Pierce v. United States ("The Floyd Acceptances"), 7 Wall. (74 U.S.) 666, 677 ("We have no officers in this government from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority"); Cunningham v. Macon, 109 U.S. 446, 452, 456, 3 S.Ct. 292, 297 ("In these cases he is not sued as, or because he is, the officer of the government, but as an individual, and the court is not ousted of jurisdiction because

he asserts authority as such officer. To make out his defense he must show that his authority was sufficient in law to protect him... It is no answer for the defendant to say I am an officer of the government and acted under its authority unless he shows the sufficiency of that authority..."); and *Poindexter v. Greenhow*, 114 U.S. 270, 287, 5 S.Ct. 903, 912

WHEREAS, officials and even judges have no immunity (See, *Owen vs. City of Independence*, 100 S.Ct. 1398; *Maine vs. Thiboutot*, 100 S.Ct. 2502; and *Hafer vs. Melo*, 502 U.S. 21; officials and judges are deemed to know the law and sworn to uphold the law; officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, even the Citizen cannot plead ignorance of the law, the courts have ruled there is no such thing as ignorance of the law, it is ludicrous for learned officials and judges to plead ignorance of the law therefore there is no immunity, judicial or otherwise, in matters of rights secured by the Constitution for the United States of America. See: Title 42 U.S.C. Sec. 1983.

"When lawsuits are brought against federal officials, they must be brought against them in their "individual" capacity not their official capacity. When federal officials perpetrate constitutional torts, they do so ultra vires (beyond the powers) and lose the shield of immunity." *Williamson v. U.S. Department of Agriculture*, 815 F.2d. 369, *ACLU Foundation v. Barr*, 952 F.2d. 457, 293 U.S. App. DC 101, (CA DC 1991).

"Personal involvement in deprivation of constitutional rights is prerequisite to award of damages, but defendant may be personally involved in constitutional deprivation by direct participation, failure to remedy wrongs after learning about it, creation of a policy or custom under which unconstitutional practices occur or gross negligence in managing subordinates who cause violation." (*Gallegos v. Haggerty*, N.D. of New York, 689 F. Supp. 93 (1988)).

"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings."
Hagans v. Lavine, 415 U. S. 533

"If you've relied on prior decisions of the Supreme Court you have a perfect defense for willfulness."
U.S. v. Bishop, 412 U.S. 346

Water Falling Above House 3339

[p22_WaterFallAboveHouse3339.jpg]



**PORTLAND CITY COUNCIL
COMMUNICATION REQUEST
Wednesday Council Meeting 9:30 AM**

Council Meeting Date: DECEMBER 17, 2014

Today's Date OCTOBER 16, 14

Name David Murphy

Address c/o General Delivery Boring Ore. [97009]

Telephone 503-431-0589 Email _____

Reason for the request:

Oregon Drainage Doctrine

David A. Murphy
(signed)

- Give your request in writing to the Council Clerk's office to schedule a date for your Communication. Use this form or email the information to the Council Clerk at the email address below.
- You will be placed on the Wednesday official Council Agenda as a "Communication." Communications are the first item on the Agenda and are taken at 9:30 a.m. A total of five Communications may be scheduled. Individuals must schedule their own Communication.
- You will have 3 minutes to speak and may also submit written testimony before or at the meeting. Communications allow the Council to hear issues that interest our citizens, but do not allow an opportunity for dialogue.

Thank you for being an active participant in your City government.

Contact Information:

Karla Moore-Love, City Council Clerk
1221 SW 4th Ave, Room 140
Portland, OR 97204-1900
(503) 823-4086

email:

Karla.Moore-Love@portlandoregon.gov

Sue Parsons, Assistant Council Clerk
1221 SW 4th Ave., Room 140
Portland, OR 97204-1900
(503) 823-4085

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Susan.Parsons@portlandoregon.gov

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Request of David Murphy to address Council regarding Oregon drainage doctrine
(Communication)

DEC 17 2014

PLACED ON FILE

Filed DEC 12 2014

LaVonne Griffin-Valade
Auditor of the City of Portland

By 

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Novick		
Hales		