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STUDENT NOTE

THE LAW OF NAVIGABLE STREAMS IN WEST VIRGINIA

A recent decision of the Supreme Court of Appeals of West Virginia held that the Public Land Corporation of West Virginia holds title to the beds of all navigable streams in the state and that the said Public Land Corporation may license individuals or corporations to extract the minerals on and under the beds of such navigable streams.¹

The navigability of a stream is a question of fact to be decided in each case.² The United States Supreme Court has said that if a stream be capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, then the stream is navigable in fact and becomes in law a public river or highway.³ And once a stream has met the test of navigability, it remains navigable in law even though its use for navigation may have ceased.⁴ Under the above rule, a stream usable only for pleasure boating has been held navigable,⁵ and "in logging

¹ Campbell Brown & Co. v. Elkins, 93 S.E.2d 248 (W. Va. 1956).

² The Daniel Ball, 77 U.S. (10 Wall.) 557 (1871).

³ The Montello, 87 U.S. (20 Wall.) 430 (1874).

⁴ United States v. Appalachian Electric Power Co., 311 U.S. 377 (1941); Economy Light & Power Co. v. United States, 256 U.S. 113 (1921).

⁵ Coleman v. Schaeffer, 163 Ohio St. 202, 126 N.E.2d 444 (1955).