**RESEARCH MEMORANDUM**

**RE:** Research on King’s Bench

**DATE**: December 3, 2019

**Results of Research**

**Kings Bench Defined**

The Pennsylvania Supreme Court has the power to consider any case pending in a lower court and even some matters not pending in the courts when it sees the need to address an issue of “immediate public importance.” When it does so, the Supreme Court exercises its “King’s Bench power” or its power of “extraordinary jurisdiction” as provided by the Pennsylvania Constitution and Pennsylvania law

When it does so, the Supreme Court exercises its “King’s Bench power” or its power of “extraordinary jurisdiction” as provided by the Pennsylvania Constitution and Pennsylvania law. Although King’s Bench power, which is based on English common law, is similar in many respects to extraordinary jurisdiction, the two powers are not identical. Extraordinary jurisdiction enables the Supreme Court to assume jurisdiction of any matter pending before a lower court at any stage.

King’s Bench power may be exercised when no matter is pending – for example, if an issue of importance arises in connection with the Supreme Court’s administrative authority over the lower courts. It also gives the Supreme Court the authority to supervise and administer the judiciary. The Supreme Court exercises these powers only on rare occasions. It has exercised them to take jurisdiction of cases such as those involving election disputes, public employee strikes, prison overcrowding, investigating grand juries, powers of the Legislature and alleged judicial misconduct.

**Files a Petition for Extraordinary Relief Under King’s Bench Jurisdiction**

Place to File: Prothonotary – Based on the location of the county related to the property

**Duties of Prothonotary**.  All assignments of motions, miscellaneous petitions and applications for relief, including emergency motions and those requesting the exercise of King's Bench powers, extraordinary jurisdiction and original jurisdiction, shall originate in the Prothonotary's office.  No motions, petitions or applications will be considered which were not first filed in the Prothonotary's office and thence assigned.  Documents may be filed in paper format, or by electronic or facsimile transmission.  Once received, motions, petitions and applications will be monitored by the Prothonotary's office for compliance with applicable appellate rules.  Proposed filings that are not in compliance will not be docketed.  Proposed filings that are in compliance will be docketed and a response will be allowed.  At the expiration of the response period the documents will be forwarded to the Court.

<https://jlc.org/sites/default/files/case_files/Application%20for%20Extraordinary%20Jurisdiction.pdf>

Knicks v. Township of Scott

<https://www.supremecourt.gov/opinions/18pdf/17-647_m648.pdf>

Title 26 – Eminent Domain

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/26/26.HTM>

Examples of King Bench

<http://www.pacourts.us/assets/files/setting-6723/file-7668.pdf?cb=17846a>

**Case Law:**

City of Philadelphia v. Galdo, [194 A.3d 1043](https://casetext.com/case/city-of-phila-v-galdo-1) (Pa. 2018).

**Holding:**

The trial court ruled in favor of the City, holding that it was immune from suit because a claim of adverse possession cannot lie against a municipality. The Commonwealth Court vacated the trial court's order and remanded for trial on the adverse possession claim. The court held that the adverse possession claim could proceed against the City because the property was not devoted to a public use during the twenty-one-year prescriptive period, as required for immunity to apply. For the reasons set forth herein, we agree that the City is not immune from a claim of adverse possession under the facts presented and affirm the order of the Commonwealth Court.

**Scope of Review**

This Court subsequently granted the City's petition for allowance of appeal to address whether the Parcel was devoted to a public use where the property was acquired by condemnation to assist the Commonwealth with the construction of I-95 and was held by the City for subsequent resale. City of Philadelphia v. Galdo, [194 A.3d 1043](https://casetext.com/case/city-of-phila-v-galdo-1) (Pa. 2018). The determination of whether the Parcel was devoted to a public use is a question of law over which our standard of review is de novo and our scope of review is plenary. Scungio Borst & Assocs. v. 410 Shurs Lane Developers, LLC, [146 A.3d 232, 238](https://casetext.com/case/scungio-borst-assocs-v-410-shurs-lane-developers-llc-3#p238) (Pa. 2016).

**Constitute Public Use**

A determination of whether property is devoted to a public use is dependent upon the individualized facts of each case. See Reading Area Water Authority v. Schuylkill River Greenway Ass'n, [100 A.3d 572, 580](https://casetext.com/case/reading-area-water-auth-v-schuylkill-river-greenway-assn-bern-twp-2#p580) (Pa. 2014) (holding that for purposes of eminent domain, "[t]he question of what constitutes a public use is highly fact-dependent"); see also Dornan v. Philadelphia Housing Authority, [200 A. 834, 840](https://casetext.com/case/dornan-v-phila-housing-authority#p840) (Pa. 1938) (opining that "judicial interpretation of 'public use' has not been circumscribed in our State by mere legalistic formulas or philological standards . . . ," but "has been left, as indeed it must be, to the varying circumstances and situations which arise, with special reference to the social and economic background of the period in which the particular problem presents itself for consideration").

**Notes on Police Powers**

"The standard to be applied in this type of case was well stated by Mr. Chief Justice STERN in the recent case of Cott Beverage Corporation v. Horst, 380 Pa. 113 (1955), 110 A.2d 405. In that case the Chief Justice, quoting from Gambone v. Commonwealth, 375 Pa. 547, 101 A.2d 634, stated at p. 118: ' ". . . By a host of authorities, Federal and State alike, it has been held that a law which purports to be an exercise of the police power must not be unreasonable, unduly oppressive, or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained. Under the guise of protecting the public interests, the legislature may not arbitrarily interfere with private business or impose unusual or unnecessary restrictions upon lawful occupations. The question whether any particular statutory provision is so related to the public good and so reasonable in the means it prescribes as to justify the exercise of the police power, is one for the judgment, in the first instance, of the law-making branch of the government, but its final determination is for the courts" '."

*In re Ownership of Notes*, 763 A.2d 575 (Pa. Cmmw. Ct. 2000)

Holding: Additionally, I note that this case, when originally filed, was transferred by this Court to the Supreme Court. The Supreme Court, under its Kings Bench powers, has a power of general superintendency over inferior tribunals that may be exercised where no matter is pending in a lower court. In re Avellino, 547 Pa. 385, 690 A.2d 1138 (1997). Had the Supreme Court considered this case improvidently filed, or falling outside the bounds of Commonwealth Court's jurisdictional scope, the Supreme Court could have quashed the appeal or remanded the case for trial. The Supreme Court chose not to exercise any of those procedural options. Instead, the Supreme Court, by order dated July 6, 1999, transferred the case back to this Court. Inherent in the Supreme Court's transfer of this case to our Court is a directive for us to address it. Inherent in our unified judicial system's duty to check and balance the power vested therein is a duty to address the merits of this rule's legitimacy.

In re Avellino, 547 Pa. 385, 690 A.2d 1138 (1997).

<https://www.courtlistener.com/opinion/1969887/in-re-avellino/>

Article V, Section 2 of the Constitution of 1968 did, as Judge Avellino suggests, establish that the Supreme Court has such *jurisdiction* "as shall be provided by law." However, Section 1 of the Schedule to Article V provided that "The Supreme Court shall exercise *all the powers* and, until otherwise provided by law, jurisdiction now vested in the present Supreme Court. . . ." It is apparent by its placement that the phrase "until otherwise provided by law" in this section applies only to "jurisdiction" and not to "powers." In 1976, the General Assembly "provided by law" for the jurisdiction of the Court \*390 by enacting Title 42 of the Pennsylvania Consolidated Statutes, the Judicial Code. According to the terms of Section 1 of the Schedule, however, the adoption of the Judicial Code superseded that Section only with respect to the jurisdiction of the Court. Thus the Court may still "exercise all the powers. . . vested in the . . . Supreme Court" at the time the 1968 Constitution was adopted, among which were those collectively referred to as the King's Bench powers. See generally *Carpentertown Coal & Coke Co. v. Laird,* [360 Pa. 94](https://www.courtlistener.com/opinion/4093253/carpentertown-coal-coke-co-v-laird/), [61 A.2d 426](https://www.courtlistener.com/opinion/4093253/carpentertown-coal-coke-co-v-laird/) (1948).

The General Assembly recognized this distinction by acknowledging the general powers of the Supreme Court in 42 Pa.C.S. § 502. See also Pa.R.A.P. 3309, which is drawn in the disjunctive ("An application for extraordinary relief under 42 Pa.C.S. § 726, or under the powers reserved by the first sentence of Section 1 of the Schedule to the Judiciary Article.. . .")

Although in many respects an exercise of the Court's King's Bench powers is to the same effect as an exercise of extraordinary jurisdiction under 42 Pa.C.S. § 726, the two are not identical. Extraordinary jurisdiction under section 726 enables the Court to assume plenary jurisdiction of a matter pending before a court or district justice at any stage. The King's Bench powers are not so limited. The "power of general superintendency over inferior tribunals," may be exercised where no matter is pending in a lower court. Cf. *President Judge Determination Cases,* [420 Pa. 243](https://www.courtlistener.com/opinion/1944724/president-judge-determination-cases/), 216 A.2d 326 (1966) (King's Bench powers invoked to determine priority of commission of common pleas court judges). We therefore reject Judge Avellino's argument that this Court cannot take cognizance of the dispute because the subject matter does not fall within our statutory original jurisdiction, there is no final order as to which we can exercise appellate jurisdiction,[1] and \*391 there is no "case" pending as to which we can assume extraordinary jurisdiction.

The Supreme Court's "general supervisory and administrative authority over all the courts" was also set out explicitly in Article V, Section 10(a) of the 1968 Constitution. It was pursuant to this authority and the rulemaking authority identified in Section 10(c) that Pa.R.J.A. 706(d) and the April 11, 1986, Directive were promulgated. See generally *Petition of Blake,* [527 Pa. 456](https://www.courtlistener.com/opinion/2369936/petition-of-blake/), [593 A.2d 1267](https://www.courtlistener.com/opinion/2369936/petition-of-blake/) (1991). Judge Herron's assignment of Judge Avellino to the felony-waiver program when making assignments in the Trial Division for 1997 was made pursuant to his authority as Administrative Judge as described in paragraph (3)(A) of the Directive. Because the authority under which assignments are made ultimately derives from this Court, review and resolution of any disputes concerning assignments must necessarily be subject to the authority of this Court.

Rules of Court

<https://www.court.co.lancaster.pa.us/DocumentCenter/View/598/Civil-Rules-2018?bidId=>

Lancaster County – Prothonotary

<https://co.lancaster.pa.us/155/Prothonotary>

*Bd. of Revision of Taxes v. City of Philadelphia*, 607 Pa. 104 (Pa. 2010)

Section 761(a)(2) provides in relevant part: "The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings . . . [by] the Commonwealth government, including any officer thereof, acting in his official capacity, except eminent domain proceedings." 42 Pa.C.S. § 761(a)(2).

42 Pa.C.S. § 726 Extraordinary jurisdiction

Notwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.

Dolan v. City of Tigard, 512 U. S 374 (1994)

Under the well settled doctrine of "unconstitutional conditions," the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit. In evaluating Dolan's claim, it must be determined whether an "essential nexus" exists between a legitimate state interest and the permit condition. Nollan v. Page II California Coastal Comm'n, 483 U.S. 825, 837 . If one does, then it must be decided whether the degree of the exactions demanded by the permit conditions bears the required relationship to the projected impact of the proposed development. Id., at 834. Pp. 8-10.

In deciding the second question - whether the city's findings are constitutionally sufficient to justify the conditions imposed on Dolan's permit - the necessary connection required by the Fifth Amendment is "rough proportionality." No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development's impact. This is essentially the "reasonable relationship" test adopted by the majority of the state courts. Pp. 12-16.

*In re De Facto Condemnation & Taking of Lands of WBF Associates*, 588 Pa. 242 (Pa. 2006)

The property owner is entitled to just compensation for his or her property at the time it is being taken for public use. Just compensation is constitutionally required and grounded in fundamental concepts of fairness. Therefore, when private property is taken for public purpose, the intent of the Eminent Domain Code is to place the dispossessed property owner in the same position after the taking is concluded as existed prior to the condemnation. Generally, when property is condemned in a de jure condemnation, fair market value is the measure of damages, with provision for reimbursement of expenses associated with the proceedings. See Section 408 of the Eminent Domain Code, 26 P.S. § 1-408. There is no need to reimburse the property owner for mortgage interest because title passes fairly rapidly and any mortgage can be satisfied with the proceeds.

**Condemnee Rights to Expenses**

In a de facto condemnation, however, a considerable period of time can pass before the landowner initiates condemnation proceedings and resolution is reached. Section 609 of the Eminent Domain Code anticipates this occurrence and authorizes additional compensation for the property owner beyond that contemplated in Section 408. See R J Holding v. Redevelopment Authority, [885 A.2d 643](https://casetext.com/case/r-j-holding-v-redevelopment-authority) (Pa.Cmwlth.2005) (holding that Section 408 does not require that a condemnee be made whole); In re Condemnation, Route 1021, [709 A.2d 939](https://casetext.com/case/in-re-condemn-by-com-dept-of-transp) (Pa.Cmwlth.1998) (condemnee entitled to only costs and expenses related to condemnation pursuant to Section 408 rather than general damages under Section 609). Thus, where a condemnee has ownership expenses (e.g. mortgage interest, property taxes, insurance premiums, etc.) as an item of general damages that it would not have incurred absent the condemnor's refusal to acknowledge the taking, the condemnee is statutorily entitled to recover those expenses. See also Reichs Ford Road Joint Venture v. State Roads Commission, [388 Md. 500](https://casetext.com/case/reichs-ford-v-state-roads), [880 A.2d 307](https://casetext.com/case/reichs-ford-v-state-roads) (2005) (holding that property owner was entitled to seek compensation for lost rental income, mortgage interest, insurance and other types of general damages incurred as a result of the inverse condemnation); see generally Champs Convenience Stores, Inc. v. United Chemical Co., [329 N.C. 446](https://casetext.com/case/champs-convenience-stores-v-united-chemical-co-1), [406 S.E.2d 856](https://casetext.com/case/champs-convenience-stores-v-united-chemical-co-1) (1991) (finding that, while no North Carolina case holds that a property owner is entitled to recover as damages reasonable overhead expenses such as rent and mortgage interest, there is no North Carolina case that holds that a property owner cannot recover this type of damages); L S Constr. Co. v. Bradbury Homes, Inc., [208 Md. 476](https://casetext.com/case/l-s-const-co-v-bradbury-homes), [118 A.2d 681](https://casetext.com/case/l-s-const-co-v-bradbury-homes) (1955) (concluding that mortgage interest was an allowable cost as part of damages calculation); United States v. Property Located in Borough of Manhattan, [225 F.Supp. 498](https://casetext.com/case/us-v-certain-property-in-bor-of-manhattan) (S.D.N.Y.1964).

**Reimbursement for Cost Incurred for Condemnation .**

Eminent Domain Code provides that, "[w]here proceedings are instituted by a condemnee under section 502(e), a judgment awarding compensation to the condemnee for the taking of property shall include reimbursement of . . . other costs and expenses actually incurred." 26 P.S. § 1-60

**Judge Ruling on Prior Case**

It is well established that judges of coordinate jurisdiction sitting in the same case should not overrule each other's decisions on the same issue. See Commonwealth v. Starr, [541 Pa. 564](https://casetext.com/case/commonwealth-v-starr-4), [664 A.2d 1326](https://casetext.com/case/commonwealth-v-starr-4) (1995). This rule is premised on sound judicial policy, and departure from the rule is permitted only in exceptional circumstances, such as where there has been an intervening change in the controlling law, where there has been a substantial change in the facts or evidence giving rise to the dispute, or where the prior holding was clearly erroneous and would create manifest injustice if followed. Id. at 1332. In Riccio v. American Republic Insurance Co., [550 Pa. 254](https://casetext.com/case/riccio-v-american-republic-insurance-company), [705 A.2d 422, 425](https://casetext.com/case/riccio-v-american-republic-insurance-company#p425) (1997), this Court explained that the coordinate jurisdiction rule falls within the "law of the case" doctrine, which embodies the concept that:

[A] court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter. Among the related but distinct rules which make up the law of the case doctrine are that: (1) upon remand for further proceedings, a trial court may not alter the resolution of a legal question previously decided by the appellate court in the matter; (2) upon a second appeal, an appellate court may not alter the resolution of a legal question previously decided by the same appellate court; and (3) upon transfer of a matter between trial judges of coordinate jurisdiction, the transferee trial court may not alter the resolution of a legal question previously decided by the transferor trial court.

Starr, 664 A.2d at 1331. The rule serves "not only to promote the goal of judicial economy" but also: "(1) to protect the settled expectations of the parties; (2) to ensure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end." Id. In ascertaining whether the law of the case doctrine applies, this Court looks to the timing of the rulings within the procedural posture of the case. Riccio, [705 A.2d at 425](https://casetext.com/case/riccio-v-american-republic-insurance-company#p425)

The scope of review by the court of common pleas is plenary, and the court is not bound by the findings or conclusions of the board of viewers. Witnesses can be changed and other evidence included or excluded by the condemnees as their trial strategy dictates. See, e.g., Stoner v. Metro. Edison Co., [439 Pa. 333](https://casetext.com/case/stoner-v-metropolitan-edison-co), [266 A.2d 718](https://casetext.com/case/stoner-v-metropolitan-edison-co) (1970); Snyder v. Common-wealth, [412 Pa. 15](https://casetext.com/case/snyder-v-commonwealth), [192 A.2d 650](https://casetext.com/case/snyder-v-commonwealth) (1963).

**Hughes v. Dep't of Transp**., [514 Pa. 300](https://casetext.com/case/hughes-v-com-dept-of-transp), [523 A.2d 747](https://casetext.com/case/hughes-v-com-dept-of-transp) (1987), this Court examined the meaning of the term "possession" within the context of the Eminent Domain Code. The Department of Transportation (Department) filed a declaration of taking for portions of various dairy farms. The owners sold their dairy herds and ceased all dairy operations. The Department argued that delay damages were inappropriate because the dairy farmers retained possession of the property. We concluded that, after a declaration of taking in which the owner maintains some degree of possession, deprivation of the normal use of the property constituted a taking. We stated:

In that twilight of eminent domain, between present possession in the owner and the future right of possession by the Commonwealth, all the possible ordinary concomitants of possession repose in the actual potential of the land. If the land cannot be put to its ordinary use because of the condemnation, such a result, without adequate compensation, would be an unjust taking and a waste of the uses of land. It follows that when the condemnation deprives the landowner of the normal uses of the land, pending physical possession by the Commonwealth, compensation must also be intended.

Id. at 751-52. It is also axiomatic that, when a public entity acting in furtherance of a public project directly and substantially interferes with property rights and, thereby, significantly impairs the value of the property, the result is a taking and compensation must be paid. In Hughes, the normal use was dairy farming. We conclude that the normal use of the WBF property in the case sub judice was for development of a PRD. All of the activities of WBF since acquiring the property were directed toward the development of a residential community, just as all of the activities conducted in Hughes were directed toward dairy farming. The fact that in both instances possession was retained and the land remained agricultural did not negate a deprivation of its actual "full and normal" use.

**Importance of Knicks for Scott Township**

In *Knick*, Mrs. Knick, a resident of Scott Township, Lackawanna County, challenged a Township ordinance that permitted others to access her property at certain times of the day because there was a cemetery located thereon. Mrs. Knick brought suit in state court, seeking a declaration that the ordinance effected a taking of her property. She likewise sought an injunction to prevent others from accessing her property and the Township from enforcing the ordinance while the court decided the issues. Notably, Mrs. Knick did not seek compensation by explicitly bringing an inverse condemnation claim, which is a cause of action against a governmental defendant to recover the value of property which has been taken by the governmental defendant.

When the state court declined to rule on Mrs. Knick’s requests, Mrs. Knick then filed a claim in federal district court under 42 U.S.C. 1983, alleging a Fifth Amendment takings claim. The federal district court dismissed Mrs. Knick’s action based on the case of *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, a 1985 U.S. Supreme Court decision which held that property owners must seek just compensation under state law in state court before bringing a federal takings claim under §1983. The Third Circuit affirmed, and Mrs. Knick sought reprieve from the United States Supreme Court.

In a 5-4 decision, the Supreme Court, in a majority opinion authored by Chief Justice Roberts, overturned *Williamson*, holding that a property owner aggrieved of an inverse condemnation need not first seek compensation in state court; rather, it is the right of a landowner to originally seek relief in the federal courts.

To get to this conclusion, the majority in *Knick* focused on *when* a taking occurs. In reviewing *Williamson* and its progeny, the majority noted that such a holding does not align with the unequivocal language of the Fifth Amendment: “[N]or shall private property be taken for public use, without just compensation.” The majority further noted that the Takings Clause does not say: “Nor shall private property be taken for public use, without an available procedure that will result in compensation.” Thus, a Fifth Amendment Takings violation occurs the moment the property was acquired without payment, regardless of the availability of post-condemnation remedies. It necessarily follows, then, that a landowner may file first (and only) in federal court to seek appropriate compensation for a taking.

The majority opinion and dissent in *Knick* spans 25 pages, addressing many complex issues of property law and stare decisis. But while the analysis in *Knick* is complex in many respects, the takeaway is simple: landowners now have another arrow in their quiver regarding venue to seek compensation for inverse condemnations, and entities with the power of eminent domain are about to get much more familiar with federal court.

Szabo v. Com. Dep’t of Transp, 172 A. 3d 1109 ( PA 2017)

<https://law.justia.com/cases/pennsylvania/supreme-court/2019/46-wap-2017.html>

Statement of Szabo - To deny them the opportunity for a hearing would place the burden of identifying condemned property squarely on the shoulders of private landowners and would contradict basic property rights ingrained in our Constitution.

**Possible Argument for King Bench or Extraordinary Filing to Supreme Court of PA**

1. The law is well settled that when an entity is clothed with the power of eminent domain has be even a non-appropriate act substantially deprived an owner of the use and enjoyment of his property, a *de facto* taking will be deemed to have occurred. Greenfield Twp. 582 A. 2d 44
2. PennDOT has failed to pay just compensation in violation of Penn. Constitution and U. S. Constitution

The Fifth Amendment to the United States Constitution provides, in pertinent part:

No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. CONST. amend. V.

Article 1, Section 10 of the Pennsylvania Constitution provides, in pertinent part:

[N]or shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured. PA. CONST. art. 1, § 10.

Example of Application for An Exercise of Either’s King’s Bench Power or Extraordinary Jurisdiction

<https://jlc.org/sites/default/files/case_files/Application%20for%20Extraordinary%20Jurisdiction.pdf>