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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter I. THE ANCIENT CODES--ADMIRALTY AND MARITIME JURISDICTION OF EUROPE.

1-I Benedict on Admiralty I.syn

§ I.syn Synopsis to Chapter I: THE ANCIENT CODES--ADMIRALTY AND MARITIME JURISDICTION OF EUROPE.

§ 1 The Purpose of History in the Setting of Modern Law.

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Chapter I. THE ANCIENT CODES--ADMIRALTY AND MARITIME JURISDICTION OF EUROPE.

1-I Benedict on Admiralty § 1

§ 1 The Purpose of History in the Setting of Modern Law.

In the discussion of modern maritime law, in an age which has seen such tremendous technological developments, when man is able to construct leviathans of the deep of sizes and motive power far beyond the imagination of those who built the quinquiremes of Nineveh, in an age when maritime commerce and transportation has assumed dimensions and characteristics hitherto unknown, in an age which is witnessing social changes of a kind when there is a questioning of the very basis of the laws which have come down to us and of the values and norms they were intended to subserve, a reference to the antiquities of the legal lore of the sea is not likely to be of particular utility in the solution of the legal problems that arise.

We are, nevertheless, the inheritors of a great tradition. We have inherited the same spirit of inquiry and adventure which first imbued man to face the unknown sea and through the ages learn its ways and unlock its secrets, and which, in our time, has enabled us, by using the spring board of accumulated knowledge of the past, to take a leap into a far higher plane of scientific knowledge and harness it to our needs. And so if we look to the past, it is not so much that we may be fascinated by its quaint laws, but that utilising the experience of the milleniums we may seek to find and establish ourselves principles on which to build a just system of maritime law having relevance to a frame of reference composed of the many complex variables of new conditions, ideals, institutions, values and competing interests existing in our time.

We approach the study of history not merely in a spirit of piety to our forbears but our purpose will be to scan the panorama with a certain discernment, and, while permitting ourselves to feast our eyes in the vistas of undoubted charm, we shall note also the crooked lanes and byways, the harsh punishments and torments, devised by the foibles and frailties of man, and the greed and ambition of merchants and princes.

In adverting to the precedents and rules of practice of a bygone age, it should be our task to take due account of the times and circumstances in which they were set and to use them not as shackles to bind but as guides to lead us in our attempts to find a solution for our legal problems. n1 History will also teach us a certain humility; for, in this field of maritime law, we shall find that the forces of nature which our ancestors had to contend with and to provide legal solution for their ravages, have scant respect for the sophisticated handiwork of our times, that we rely much on the systems devised in the past to alleviate the hardships wrought by maritime casualties and disasters, that to this day we

have not been able to make a reasonable codification of our laws and private litigants have to bear enormous legal costs of establishing legal principles which ought to be the responsibility of the lawgivers to establish.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsJudicial Precedents

FOOTNOTES:
(n1)Footnote 1. References are sometimes made to the ancient precedents in the judgments of the Supreme Court in modern times. See, e.g., *Farrel v. United States, 336 U.S. 511, 69 S. Ct. 707, 93 L. Ed. 850* , where reference is made to Cleirac, Judgemens d'Oleron, Consolato del Mare, the Hansiatic Law. See also *Mitchell v. Trawler Racer, 362 U.S. 539, 80 S. Ct. 926, 4 L. Ed. 2d 941* where reference is made to the Laws of Oleron. Laws of Wisbury, Laws of Hanse Towns and the Marine Ordinances of Louis XIV.

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1-I Benedict on Admiralty § 2

§ 2 The Beginnings of Maritime Law.

Of the earliest records of sea laws we have those of ancient Babylon which are included in the famous code of Hammurabi dating perhaps earlier than 2000 B.C. and not later than 1600 B.C. n1 The ancient civilizations of India and China had many maritime contacts and there was much sea-faring in the Indian Ocean from time immemorial in which the Arabs and Indians took part. n2 But little is known of the laws and customs of these seafarers, even though considerable trade existed between India and Rome from about 200 B.C. n3 It would seem that the injunctions of the Hindu Religion against overseas travel inhibited the development of the Indian Shipping industry for the Indians were content to have their immense trade carried in foreign bottoms. n4 For the cradle of our maritime law we must turn to the Mediterranean Sea where the sea commerce has had a continuous history for nearly five thousand years.

The primacy of maritime supremacy in the Mediterranean Sea in the very ancient times was shared by the Egyptians and the Minoans. Of the Egyptian achievements we have a fair picture. n5 Of the Minoan or Cretan thalassocracy, the ancient tradition is now being confirmed by archeological studies and much that was ascribed to the Phoenicians in respect of the very remote antiquity, appertains apparently to the Minoans. However, neither a code nor a memory or tradition of laws has been preserved.

The Phoenicians began to gain maritime supremacy about the 12th century B.C. and held it for many centuries displaying supreme skill as seafaring people. Their cities, Byblus, Sidon, Tyre and Carthage to mention a few, were maritime centers of the ancient world. The Rhodians took over from the Phoenicians their mantle of maritime supremacy including inevitably those customs and practices which had stood the test of time and became known as the masters of the sea. Rhodes gradually became the center of commerce and, as such, achieved great prosperity reaching the height of its powers at about 300 B.C. As a center of maritime commerce in an age when civilization had already spread over a substantial portion of the globe, the customs and practices of the Rhodian sea farers became the pattern for others to follow much like in their appropriate sphere, the practices of Lloyd's of London in these days and sea law generally came to be known as the Rhodian Sea Law. There is no substantial basis for the view that the laws were *promulgated* in 900 B.C.; not that the date is too ancient n6 to be believed but that on the one hand there is no historical record and on the other, if there had been a promulgation as such there would have been better records of it.

What is probable and possible is that there grew up a body of customary sea laws of sufficient weight to command the

observances of the sea farers and of sufficient merit to attract encomiums of men like Strabo and Cicero without being of such general interest as to be a subject of any deep study and recordation. However, the traditions of that law were so great that all law for a thousand years was known as the Rhodian Sea Law and this name came to be attached particularly to the Sea Laws of Byzantium. There were, it transpires, attempts to pass off in the 5th and 6th centuries A.D. a set of laws as in deed being the original Rhodian Sea Laws. This matter is dealt with in the following section.

When we think of laws of those times it is necessary that we divest ourselves of the notions of nationality and sovereignty and their relation to the making and validity of laws. Nationality, as we know it, is of comparatively recent origin. In ancient times laws were essentially the embodiments of practice sanctioned by a long course of conduct and acceptance. Even the so called promulgation was no more than a formal crystallization of laws already in existence. When we look to the sea laws particularly, we must realize that the community of seafarers operated in a region far removed from the sway of any temporal power and that it was the compulsion of coexistence which brought into being customary rules of conduct which gained acceptance by the majority of the seafaring community. In those days, a merchant would often travel by sea with his goods and merchandise, and sometimes there might be more than one such merchant in a ship. The practice of these seafarers and merchants gave rise to customary law. At times a local ruler of a port might adopt these rules as his own, and these rules then came to be known as customs of the port. As Wigmore, speaking of the development of sea laws in the Mediterranean, puts it:

> "The empires on land rose and fell, one after another; and from time to time Europe's land found itself in a general condition of political and legal chaos. But, through all these vicissitudes there lived on at least one continuous, growing, and mature body of law. The sea-law continued, independently of racial and dynastic changes, because its vogue was in a region owned by no king or tribe or chieftain,--the Sea. The galleys were its home. The mariners of all waters had a common life and experience; their common guide was the sun by day and the stars by night; and so the common custom of sea-merchants was sealaw."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewInternational Trade LawGeneral OverviewInternational Trade LawImports & ExportsGeneral Overview

FOOTNOTES:
(n1)Footnote 1. See the following extracts from "The Babylonian Laws" by Driver & Miles:

[§ 234] If a shipman has caulked a ship (having a burthen) of I GUR for a man, he shall give him 2 shekels of silver for his fee.

[§ 235] If a shipman has caulked a ship for a man and has not made his work secure and so that ship springs a leak in that very year (or) reveals a defect, the shipman shall break up that ship and shall make the ship sound out of his own property and give (back) a sound ship to the owner of the ship.

[§ 236] If a man has hired out his ship to a shipman and the shipman has been careless and lets the ship founder or loses (it), the shipman shall replace the ship to the owner of the ship.

[§ 237] If a man has hired a shipman and a ship and has loaded it with grain, wool, oil, dates or any (other) lading whatsoever (and if) that shipman has been careless and so has let the ship founder and lost its cargo, the shipman shall replace the ship which he has let founder and any of its cargo that he has lost.

[§ 238] If the sailor has let the man's ship founder but then has raised it, he shall give half its price in silver (to its

owner).

[§ 239] If a man [has hired] a shipman, he shall give him 6 [*GUR* of grain] a year.

[§ 240] If a ship (under the command) of the master of a galley has rammed and so has sunk a (sailing) ship under (the command of) a master sailor, the owner of the ship whose ship is sunk shall formally declare anything that has been lost in his ship and the master of the galley which has sunk the (sailing) ship (under the command) of the master sailor shall replace his ship and whatever he has lost for him.

[§ 275] [If] a man has hired a barge, its hire (is) 3 grains of silver a day.

[§ 276] If a man has hired a galley, he shall pay 2 grains of silver a day (as) its hire.

[§ 277] If a man has hired a boat of I *GUR'S* tonnage, he shall pay of (a piece of) silver a day (as) its hire.

(n2)Footnote 2. Basham: "The Wonder That Was India."

(n3)Footnote 3. *Ibid.*

(n4)Footnote 4. *Ibid.*

(n5)Footnote 5. As early as the first dynasty, *circa* 3100-2890 B.C., wooden ships were built and Syrian lumber was imported. Large ocean going vessels, "Byblas boats," were in use in the Mediterranean Sea as early as the third dynasty, *circa* 2680-2613 B.C. An actual fourth dynasty (*circa* 2613-2494 B.C.) vessel discovered in 1954 in its rock grave is 143 feet long with a 20 foot beam, a spacious two roomed cabin and a canopy for the steersman. In the Middle Kingdom, *circa* 2133-1603 B.C., a vessel of 150 feet long and a crew of 120 sailors is mentioned. Ency. Brit.

(n6)Footnote 6. By that time several civilizations had come to maturity and had developed systems of law.

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1-I Benedict on Admiralty § 3

§ 3 The Maritime Law of the Rhodians. A Critical Survey of Claims to the Title.

Regarding the Rhodian law, n1 sometimes referred to as having been promulgated about 900 b.c. and having entered largely into later usage and legislation, n2 the only statement that can be made upon sufficient authority is that there was a Rhodian law of which *one sentence* is extant. Whether that sentence was a fragment of a code enacted by legislative authority, or a rule of law established by judicial decision, or a usage of commerce which became law, cannot be certainly known--nor can its date. To set forth in full the authorities on which our conclusion is based would require too much space. We summarize:

The maritime power of the Rhodians was prominent during the three or four centuries preceding the Christian era and it is fair to assume that any Rhodian law would by that time have taken permanent shape. But very few mentions of Rhodian law are found in classical authors. Strabo says that the Rhodians had an admirable system of law, and he mentions one law of Rhodes punishing with death anyone who was found inspecting the dockyards. Cicero, also, in his oration on the Manilian Law, praises the "naval discipline and glory" of the Rhodians, and in his work on Oratorical Invention, he speaks of a Rhodian law confiscating any vessel armed for fighting which came into any Rhodian port. No other mention of a Rhodian law by any classical writer appears to have been noticed. The earliest mention of any law of the Rhodians relating to maritime matters appears in the Sentence of Paulus, a Roman lawyer of the third century a.d. He wrote five books of Sentences, which are still extant. And in his second book there is a division headed "On the Rhodian Law." There are five articles in this division. The first of them is this:

> "If for the sake of lightening a ship, a jettison of goods has been made, what has been given for all shall be made up by the contribution of all."

When the Digests came to be drawn up (they were put forth by Justinian's authority, about a.d. 533), there was placed in the Fourteenth Book one title headed *"De lege Rhodia de jactu"* --"Of the Rhodian law of jettison." n3 The authors of the Digest, who had stated in their preface that they had prefixed to every law of the Digests the name of its author, prefixed to each of the ten Articles in that Fourteenth Book the name of a Roman jurisconsult. The first article, to which is prefixed the name of Paulus, is in the words quoted above from the Sentences of Paulus, with the preliminary words "By the Rhodian law it is provided." Furthermore, the third section of the Second Article of the Fourteenth Book of the Digests (which is stated to have been taken from a work by Paulus on The Edict) reads "if any ship is ransomed from

pirates, Servius, Ofilius, Labeo say that all should contribute." These three were great Roman juriconsults, who lived not far from the Christian era. Hence we are fairly justified in saying that at the time of the Christian era the principle of contribution had become a part of the Roman law so as to be discussed and applied by Roman lawyers and that about two hundred years afterward the rule was mentioned by Paulus as having been derived from Rhodian law and three hundred years later was stated by the authors of the Digests to be a provision of the Rhodian law.

There is another reference to the Rhodian law in the Digests. In the same Title of the Fourteenth Book of the Digests is an article relating the following anecdote:

> "The petition of Eudaemon of Nicomedia to the Emperor Antoninus. "Lord and Emperor Antoninus. Making shipwreck in Italy, we have been plundered by taxgatherers inhabiting the islands of the Cyclades.' Antoninus answers Eudaemon, "I indeed am lord of the land, but the law lord of the sea. Let it be judged by the Rhodian law prescribed concerning nautical matters, so far as none of our laws is opposed.' The same thing has the Divine Augustus decided."

The authority given in the Digests for this story is Volusius Moecianus, of whom Pardessus says that he was a lawyer who appears to have lived in the time of Trajan. If he was the author of this story, he must have lived in or after the reign of the Antonines. The reign of Trajan was from a.d. 98 to a.d. 117, and the Antonines reigned from a.d. 138 to a.d. 180. It would seem that Eudaemon, having been wrecked in Italia, had got as far as the Cyclades on his way to his home. Pardessus says that there is foundation for the opinion that, among the Greeks, shipwrecked property became the property of the Government. For some reason, probably under that rule, the taxgatherers of the Cyclades seem to have seized the goods which Eudaemon had saved from his shipwreck in Italy and Eudaemon petitioned the Emperor for relief. And the Emperor answered that the question of this forfeiture should be determined by the Rhodian law of nautical matters, if there were no Roman law opposed.

This reply of the Emperor gives no information as to the Rhodian law, except that there was such a law concerning nautical matters, and possibly a Roman law also. And if, as one old author says, Rhodes and the Cyclades were included in one political district, and the Prefect of Rhodes was Prefect of the Cyclades, we can see why the Emperor might have said that he would not interfere, but that Eudaemon's case should be determined by the Rhodian law, if there was no Roman law opposed.

The only conclusions, therefore, which can be fairly drawn from the Digests as to the Rhodian law of the sea are two:

First, that there was in the time of Antoninus such a law, which the Emperor mentions, without, however, giving any information as to any provision of that law, or as to whether it was a Code or a series of judicial decisions or a body of usages.

Second, the only information which we have as to any provision of that law is that one sentence of the Roman lawyer Paulus, set forth by him about a.d. 200, and stated by the authors of the Digests three hundred years later to have been a provision of the Rhodian law.

The statements made by many authors regarding the supposed diffusion of the Rhodian maritime law among the Mediterranean peoples and its alleged adoption into the Roman law, seem to have had their origin in the acceptance as authentic of a work called "Rhodian Law or Nautical Law of the Rhodians." Its origin is unknown. It was first put in print in a.d. 1561, and there are manuscript copies of it, the earliest of which dates probably from the tenth century. Pardessus prints it in his Lois Maritimes. n4 Those writers who accepted it as authentic drew conclusions from it as to the Rhodian law and later writers accepted and repeated those conclusions without examinations. But two learned writers of the law absolutely refused to accept it. Bynkershoek says:

> "We fitly wholly reject that Rhodian law, which some hungry little Greek or other fabricated." n5

And Heineccius says:

> "Whoever thrust forth into light those nautical laws, made a deception for learned men." n6

Some of the reasons for denying the authenticity of this alleged law as a law of the Rhodians may be given. It consists of a Prologue and two parts divided into articles. The Prologue, by which the author of it meant to give authority to the rest, is as follows:

> "Nautical Law of the Rhodians, which the most sacred Emperors, Tiberius, Hadrian, Antoninus, Pertinax, Lucius Septimus Severus, most august forever, have decreed.
>
> "Tiberius Caesar Augustus, pontifex maximus, in the thirty-second year of his Tribunitial power.
>
> "When sailors, shipmasters and merchants demanded of me that whatever things happen on the sea should come into contribution, Nero answering said, "Greatest, Wisest, Most Serene Tiberius Caesar, truly I think it is in no way necessary that I should approve of things which are proposed by your Majesty. Send to Rhodes, that diligent inquiry may be made about the business of seafaring men and merchants and passengers, about taking cargo in ships, about maritime partnerships, about purchases and sales of vessels and hire of shipwrights, and deposits of gold and silver and different things."
>
> "When Tiberius had included all these things in a decree and had signed it, he delivered it to Antoninus, most illustrious Consul, and to other Consular men, who advised him in that fortunate Rome, the crown of cities, Laurus and Agrippinus being most illustrious Consuls.
>
> "By these same men these things were also brought before that greatest Emperor Vespasian, and when he had set his signature to them in a very full Senate, Ulpius Trajan, with the most illustrious Senate, decreed this the law of the Rhodians."

Tiberius reached only the twelfth year of his Tribuneship, and there was no such consul as Antoninus in his reign. Tiberius died a.d. 37, and Vespasian began to reign in a.d. 70. So that "these same men" would have taken thirty-three years to go from Rome to Rhodes and make their report after their return. Then this Prologue says that Vespasian "set his signature to them," and that Trajan, who began to reign in a.d. 98, decreed them, as did also Hadrian, who began to reign in a.d. 138, and so did Pertinax and Severus, who reigned from a.d. 192 to 198. This alleged Rhodian law, therefore, is here alleged to have been "decreed" six times by six Roman Emperors during 126 years. This is incredible.

Tacitus, who wrote in his Annals a history of the reign of Tiberius, in the third book, in a discussion of "the beginning of laws and by what means we are come to such an infinite multitude of them," mentions the laws of Sparta, of Athens and of Crete, and the sending of ten men "to collect all the best laws of the Twelve Tables," but does not speak of this alleged commission of Tiberius, or the report said to have been adopted by Vespasian (although he lived through all Vespasian's reign), or even of the Rhodian law at all. The authors of the Digests, in the historical sketch which they give of the origin and progress of the laws of Rome, are equally silent as to any such inquiry as to the laws or customs of Rhodes or as to any decree authenticating these alleged provisions as laws of Rome. We are, therefore, justified in refusing to credit the statement of this Prologue and in accepting the judgment of Bynkershoek that this alleged Rhodian law is a fabrication of some "hungry little Greek or other." n7

Aside from the Prologue, the provisions of this so-called Rhodian law show that they could not have had a Rhodian origin. One provision contains twice the words that "according to Rhodian law" a rule is as stated. No Rhodian law would contain such language. Another provision requires that in certain cases the shipmaster and his crew "shall take an oath *on the Gospels.* " And two of the eight provisions entirely throw overboard that ground of contribution which is the especial element of the Rhodian law of jettison. They provide for contribution in cases where there has been no giving

up for the common benefit, as, for instance, where passengers have lost their money.

A production cannot be called Rhodian law which declares the law to be contrary to what has been recognized during the whole Christian era as the distinctive Rhodian principle of contribution in case of jettison, and which presents as its authority a Prologue so manifestly unreliable.

The statement with which we began, as to the sole knowledge as yet attainable of Rhodian law, seems to us to be well founded. It is improbable that any future labors of archaeologists will furnish further knowledge upon the matter. n8

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Tort ActionsMultiple DefendantsContributionAdmiralty LawPersonal InjuriesMaritime Tort ActionsNegligenceGeneral OverviewAdmiralty LawShippingGeneral Overview

FOOTNOTES:
(n1)Footnote 1. Written by Mr. Edward Grenville Benedict for the Fourth Edition (1910), based on an essay by Robert D. Benedict, editor of the 3rd edition of this work, published in the Yale Law Journal of February, 1909, p. 223. The views of the present editor as to the existence of a Rhodian Sea Law are given in § 2 *supra* . See a criticism of the above in McFee "Law of the Sea." The present editor would defer to the scholary treatment in Ashburner: Rhodian Sea Law: see note 8 *infra.*

(n2)Footnote 2. Encyc. de Jurisp., Art. Rhodien; 1 Boulay Paty, tit. Prel. §§ 1-6; Browne, Civ. and Ad. Law, 38; 3 Kent's Com. 1-21; *Robertson v. Baldwin, 165 U.S. 275, 17 S. Ct. 326, 41 L. Ed. 715 (1897)* .

(n3)Footnote 3. Title 2, §§ 143-151.

(n4)Footnote 4. Pardessus: Lois Maritimes (Paris, 1828-1845).

(n5)Footnote 5. Bynkershoek: Minor Works, V, De lege Rhodia de jactu (1744). The citation has not been identified.

(n6)Footnote 6. Heineccius: Operum (Geneva, 1771), Tome VI p. 277. The citation has not been identified. Ashburner describes the controversy less acidly: "The Rhodian Sea Law" (Oxford, 1909) p. lxi.

(n7)Footnote 7. It is curious to note that Pardessus has shown that there was a similar falsification put forth to give authority to the Consulat de la Mer. *Pardessus, Lois Maritimes,* Vol. 2, c. 12, p. 4 *et seq.*, (Paris, 1828-1845).

(n8)Footnote 8. A work entitled "The Rhodian Sea Law" by Walter Ashburner, M.A., of Lincoln's Inn, Barrister at Law and Late Fellow of Merton College, Oxford, was published in 1909, in which the writer with great erudition has discussed the work of which the above is written. He gives it no Rhodian authority. In his text he only calls it "The Sea Law." The Prologue he speaks of as mendacious--The second Prologue he calls rigmarole. He says that the work in its present shape must date from between a.d. 600 and a.d. 800; that it was probably put together by a private hand and that it is clear that Part III in the form in which we possess it has nothing to do with the Rhodians. The book is a high authority in agreement with the position of our text. Nevertheless, Ashburner does treat at any rate Part III as representing the law current in the Byzantine Empire. Part III is as follows:

Chapter I: A ship is lying in harbor or on a beach, and is robbed of its anchors. The thief is caught and he confesses. The law lays down that he be flogged and make good the damage he has done twice over.

Chapter 2: The sailors of a Ship *A,* by direction of their master captain, steal the anchors of Ship *B,* which is lying in harbor or on a beach. Ship *B* is thereby lost. If this is proved let the captain who directed the theft make good all the

damage to Ship *B* and its contents. If anyone steal the tackle of a ship or any article in use on board, i.e., ropes, cables, sails, skins, boats and the like, let the thief make them good twice over.

Chapter 3: The sailors of Ship *A* by direction of their captain steal the goods of a mercant or passenger. The sailor is caught. Let the captain make good the damage twofold to those who were robbed, and let the sailor receive a hundred blows. If the sailor commits the theft of his own accord and is caught and convicted by witnesses, let him be well beaten, especially if he has stolen money and let him make good the loss to the person robbed.

Chapter 4: The captain brings the ship into a place which is infested with thieves and pirates, although the passengers testify to the captain what is at fault with the place. There is a robbery. Let the captain make good the loss to the sufferers. On the other hand, if the passengers bring the ship in, in spite of the captain's protests, and something untoward happens, let the passengers bear the loss.

Chapter 5: If sailors set to fighting, let them fight with words and let no man strike another. If a man *A* strikes *B* on the head and opens it, or injures him in some other way, let *A* pay *B* his doctor's fees and expenses and his wages for the whole time he is away from work taking care of himself.

Chapter 6: Sailors are fighting, and *A* strikes *B* with a stone or a log. *B* returns the blow; he did it from necessity. Even if *A* dies, if it is proved that he gave the first blow, whether with a stone, log or axe, *B*, who struck and killed him, is to go harmless. *A* suffered what he wished to inflict.

Chapter 7: One of the captains, merchants or sailors, strikes a man with his fist and blinds him, or gives him a kick and happens to cause a hernia. The assailant is to pay the doctor's bill and for the eye, twelve gold pieces, for the hernia, ten. If the man dies, his assailant can be tried for murder.

Chapter 8: The captain to whom the ship is entrusted sets sail and runs away into another country with gold by will of the sailors. All their possessions, movable, immovable and self-moving, as may belong to them, are to be seized. Unless the amounts which these fetch in a sale make up the equivalent of the ship and the profits of the time [during which they are absent], let the sailors with the deputy captain be let out and make up the full amount of the loss.

Chapter 9: If the captain is deliberating about jettison let him ask the passengers who have goods on board and let them take a vote what is to be done. Let there be brought into contribution the goods; the bedclothes and wearing apparel and utensils are all to be valued; and if jettison takes place, with the captain and passengers the value is not to exceed a litra; with the steersman and mate, it is not to exceed half a litra; with a sailor not to exceed three grammata. Slaves and any others on board who are not being carried for sale, are to be valued at three minas. Anyone on board being carried for sale, he is to be valued at two minas.

In the same way, if goods are carried off by robbers, or enemies, all these are to come into contribution on the same principle. If there is an agreement for sharing in gain, after everything on board ship and the ship itself have been brought into contribution, let every man be liable for the loss which has occurred in proportion to his share of the gain.

Chapter 10: If the captain and crew are negligent and there is an injury or wreck, let the captain or the crew be responsible to the merchant for making the damage good. If it is through the merchant's negligence that ship and cargo are lost, let the merchant be responsible. If no default of either captain, crew or merchant, and a loss or wreck occur, what is saved from ship and cargo is to come into contribution.

Chapter 11: The merchants and the passengers are not to load heavy and valuable cargoes on an old ship. If they do, and the ship is damaged or destroyed, they are responsible. When merchants are hiring ships, let them make precise inquiry of other merchants who sailed before them, if the ship is completely prepared, with strong sailyard, sails, skins, anchors, ropes of hemp of the first quality, boats in perfect order, suitable tillers, sailors fit for their work, good sea

men, brisk and smart, the ship's sides stanch. In a word, let the merchants make inquiry into everything and then proceed to load.

Chapter 12: If a man makes a deposit in a ship or in a house, let him make it with a man known to him and worthy of confidence before three witnesses. If the amount is large, let him accompany the deposit with a writing. If the man who agreed to take charge of the deposit says that it is lost, he must show where the wall was broken through or how the theft took place and take an oath there was no fraud on his part. If he does not show it, let him restore the goods safe as he received them.

Chapter 13: If a passenger comes on board and has gold, or something else, let him deposit it with the captain. If he does not deposit it, and then says: "I have lost gold, or silver," no effect is to be given to what he says. But the captain and sailors, all those on board, are to take an oath.

Chapter 14: A man receives a deposit and then denies it. In due course the deposit is found on him after he had taken an oath or denied his liability in writing. He is to make good the deposit twice over and suffer the penalty of his perjury.

Chapter 15: A ship carries passengers, merchants or slaves whom the captain has taken in deposit. They arrive at a port or beach, and some leave the ship. Robbers give chase, or pirates make an attack, the captain gives the signal to put off. The ship gets away and is saved with the property of the passengers and merchants who are on board. Let each receive back his own goods, and let those who went out receive back their goods and chattels. If anyone is minded to pick a quarrel with the captain for leaving him on shore in a place infested with robbers, no effect is to be given to what he says because it was only when they were pursued that the captain and crew fled. If a merchant or passenger had someone else's slave in deposit, and left the slave in any place, let him make the loss good to the owner.

Chapter 16: Captains and merchants and whosoever borrows money on security of ship and freight and cargo, are not to borrow it as if it were a land loan ... if the ship and the money are saved ... lest a plot be laid against the money from the dangers of the sea or from pirates ... let them pay back the loan from the property on land with maritime interest.

Chapter 17: A gives gold and silver for a partnership. The partnership is for a voyage and he writes it down as it pleases him till when the partnership is to last. *B*, who takes the gold or the silver, does not return it to *A* when the time is up and it comes to grief through fire or robbers or shipwreck. *A* is to be held harmless and must receive his own again. But if, before the time fixed for the expiration of the contract, a loss arises from the dangers of the sea, then *A* and *B* should bear the loss according to their shares and to the contract as they would have shared in the gain.

Chapter 18: A man borrows money and goes abroad. When the time agreed on has expired, let them recover from his property on land according to law. If they cannot recover the debt, the capital of their loan is unconditionally repayable, but the interest shall be maritime interest so long as he is abroad.

Chapter 19: If a man hires a ship and pays earnest money, and afterwards says: "I have no need of it," he forfeits the earnest money. But if the captain acts wrongfully let him give back to the merchant double the earnest money.

Chapter 20: Where a man hires a ship, to be binding it must be in writing and signed by the parties, or it is void. Let them also write in penalties if they wish. If they do not write penalties, and there is a breach, either by the captain or the hirer--if the hirer provides the goods ... let him give half the freight to the captain. If the captain commits a breach, let him give half-freight to the merchant. If the merchant wishes to take out the cargo, he will give the whole freight to the captain. These penalties will be exacted as in cases where *A* brings a suit against *B.*

Chapter 21: Two persons make a partnership without writing. Both parties confess "we made a partnership on another occasion without writing and kept faith one to the other, and paid the tax on all occasions as if for a single capital." Something happens to one of the ships, either while it is in ballast or when it is loaded. What is saved is to

contribute one fourth part to the sufferer, since they do not bring forward a contract in writing but formed a partnership by word of mouth only. But let contracts in writing subscribed by the parties be firm and valid, and let the part saved contribute to the part that was lost.

Chapter 22: Let the captain take nothing but water and provisions and the ropes which ships have need of, where the merchant loads the whole ship according to written contract. If the captain is minded to put in other cargo after this, if there is room, let him put it in: if there is no room, let the merchant before three witnesses resist the captain and sailors. If there is jettison, it will rest with the captain; but if the merchant does not prevent it [the overloading] let him come to contribution.

Chapter 23: If there is a contract between merchant and captain let it be in writing and binding. If the merchant does not provide the cargo in full, let him provide freight for what is deficient, as they agreed in writing.

Chapter 24: The captain takes the half-freight and sails, and the merchant wishes to return. [He is on board.] They made and subscribed a contract in writing. The merchant loses his half-freight by reason of contract in writing. The merchant his hindrance. But where there is a loses his half-freight by reason of contract in writing and the captain commits a breach, let him return the half-freight and as much again.

Chapter 25: If the limit of time fixed by the contract passes, let the merchant provide the sailors' rations for ten days. If the second limit also passes, above all let the merchant make up the full freight and go away. But if the merchant is willing to add so much to the freight, let him give it and sail as he pleases.

Chapter 26: If one of the crew or captains sleeps off the ship and the ship is lost whether by day or night, all the damage regards the members of the crew or captains who slept off the ship, while those who remained on board go harmless. Those who were negligent must make good the damage to the owner of the ship.

Chapter 27: A ship is on its way to be freighted by a merchant or a partnership. The ship is damaged or lost by the negligence of sailors or of the captain. The cargo which lies in the warehouse is free from claims. If evidence is given that the ship was lost in a storm, what is saved of the ship is to come into contribution, together with cargo, and the captain is to retain half-freight. If any one of the partners denies the partnership, and is convicted by three witnesses, let him pay his share of the contribution and suffer the penalty of his denial.

Chapter 28: If a ship is hindered in the loading by a merchant or partner and the time fixed for loading passes, and it happens that the ship is lost by reason of piracy or fire or wreck, let him who caused the hindrance make good the damage.

Chapter 29: If the merchant does not provide the cargo at the place fixed by the contract, and the time for loading passes, and a loss happens by piracy, fire or wreck, all the injury to the ship rests on the merchant. But if the days of the allowed time have not passed when the accident happens, let them come into contribution.

Chapter 30: If the merchant loads the ship and he takes gold with him and the ship suffers one of the maritime risks, and the cargo is lost and the ship goes to pieces, let what is saved from the ship and cargo come into contribution, but let the merchant take his gold on paying one tenth. If he was saved without clinging to any of the ship's spars, let him pay the half-fare in accordance with the contract. If he had to cling for safety to one of the spars, let him pay one fifth fare.

Chapter 31: If a merchant loads the ship, and something happens to the ship, all that is saved is to come into contribution on either side; but the silver, if it is saved, is to pay a fifth; and the captain and the sailors are to help in the salving.

Chapter 32: If a ship is on its way to be loaded, whether hired by a merchant or in a partnership, and a disaster takes

place at sea, the merchant is not to ask return of the half-freight, but let what remains of the ship and cargo come into contribution. If the merchant or the partners have given an advance, let what agreement they have made in writing prevail.

Chapter 33: If the captain puts the cargo in the place fixed by the contract, and the ship is wrecked, let the captain recover the freight in full from the merchant, but goods already unloaded into warehouses do not come into contribution.

Chapter 34: If a ship is carrying linen or silk, let the captain provide good skins, in order that in a storm no harm may be done to the freight by the dashing of the waves. If the water rise in the hold, let the captain say so at once to those who have cargo on board, so that it may be brought up. If the passengers make it manifest to the captain and for all that the cargo is injured, the captain is responsible with the sailors. If the captain declares beforehand that the water is rising and the merchants do not bring up the goods, the captain and sailors go harmless.

Chapter 35: If a ship makes jettison of its mast, whether it break of its own accord or is cut, let all the sailors and merchants and the goods, and the ship so far as it is saved, come into contribution.

Chapter 36: If a ship in sail runs against another ship lying at anchor or with sails slackened, and it is daylight, the collision and the damage lie against the captain and crew of the first ship. Moreover let the cargo come into contribution. If it happens at night, the ship, at anchor or with sails slack, must light a fire for warning. If he has no fire let him shout. If he neglects to do this and a disaster [collision] takes place, he has himself to thank. If the sailsman was negligent and the watchman dozed off, the man who was sailing perished as if he ran on a shoal.

Chapter 37: If a ship comes to grief and the property of the merchants or passengers is saved while the ship is lost, let the debentures which are saved provide one fifteenth, but let not the merchant and the passengers give the ship to the captain.

Chapter 38: If a ship loaded with corn [wheat] is caught in a gale, let the captain provide skins [tarpaulins] and the sailors work the pumps. If they are negligent and the cargo is wetted by the bilge [in the hold] let the sailors pay the penalty. But if it is from the gale the cargo is injured, let sailors, captain and merchant bear the loss; and let the captain together with the ship and the sailors receive one six hundredths of each thing saved. If goods are to be thrown into the sea [jettison] let the merchants be the first to throw and then let the sailors take a hand. None of the sailors is to steal. If anyone steal, let the robber make it twofold and lose his whole gain.

Chapter 39: A ship with a cargo of corn [wheat] or wine or oil is in full sail. By wish of the captain and crew, who slacken sail, the ship goes into a place or off a beach against the wish of the merchant. The ship is lost, but the cargo and goods are saved. The merchant is to suffer no harm since he did not wish to go into that place. If while the ship is in full sail the merchant says to the captain: "I want to go into this place," and the place is not in the charter party, and the ship is lost, let the captain have his ship made good by the merchant. If it is by wish of both parties that they go in, and the ship is cast away, let everything come into contribution.

Chapter 40: A ship is wrecked and part of the cargo and the ship is saved. The passengers have on them gold or silver or silks or pearls. Let the gold that is saved provide a tenth, and the silver contribute a fifth. Let the whole silks, if they are saved dry, contribute a tenth, being equal to gold. If they are wetted, make an allowance for the abrasion and the wetting and let them come into contribution on that footing. Let the pearls according to their valuation contribute to the loss like a cargo of gold.

Chapter 41: If there are passengers on board and the ship is injured or destroyed, but the goods of the passengers are saved, let the passengers make a payment towards the loss of the ship. If two or three passengers lose their gold and pearls let them receive from all according to their capacity towards the loss, together with the contribution of the ship.

Chapter 42: If a ship springs a leak while carrying goods and the goods are taken out, let it lie with the captain, whether he wishes to carry the goods in the ship to the trading place agreed on, if the ship has been repaired. If the ship is not repaired but the captain takes another ship to the trading place, let him give the whole freight.

Chapter 43: If a ship is caught in a storm and makes jettison of the cargo, breaks its sailyards and tillers, anchors and rudders, let all these come into contribution, together with the value of the ship and the cargo that may be saved.

Chapter 44: A ship has a cargo and in a gale the mast is cut and jettisoned, or the tillers break or one of the rudders is lost. If the cargo gets wet from the gale, all these things come into contribution. But if the cargo is hurt more from the bilge than from the gale, let the captain take the freight and hand over the goods dry and in the quantity as he took them.

Chapter 45: If in the open sea a ship is overset or destroyed, let him who brings anything from it safe to land receive instead, of reward one fifth of what he saves.

Chapter 46: A boat breaks the ropes and gets off from its ship and is lost with all hands. If those on board are lost or die, let the captain pay their annual wages for the full year to their heirs. He who saves the boat with its rudders will give them all back as he in truth finds them, and receive a fifth part of what he saves.

Chapter 47: If gold or silver or anything else is raised from the sea from a depth of eight fathoms, let the salvor receive one third. If raised from fifteen fathoms let the salvor have one half, by reason of the danger of the sea. Where things are cast from sea to land and found there, or carried to within one cubit of the land, let the salvor have one tenth of what is salved.

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter I. THE ANCIENT CODES--ADMIRALTY AND MARITIME JURISDICTION OF EUROPE.

1-I Benedict on Admiralty § 4

§ 4 Other Codes and Systems.

We shall make a brief reference to other codes and systems which cannot but have been familiar to the framers of the American Constitution. Some of them are actual legislative enactments, others the ordinances of monarchs, and others are mere compilations, made up of extracts from well-known ancient codes and ordinances. Others, again, are mere essays and treatises on maritime subjects, which, in consequence of their practical wisdom, have, by long use and authority, come to be considered the highest evidence of marine law; and others are the voluntary regulations which persons interested in shipping have adopted for their own convenience; and which, in like manner, have ripened into law. They are to be found in the great work of Pardessus, in which he has collected the maritime laws of all commercial nations, and preceded each by a historical notice, valuable for the combined results of thorough historical and antiquarian research, careful and ingenious criticism, as well as liberal and generous views of the true end and proper extent of the maritime law. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewConstitutional LawGeneral OverviewInternational LawSources of International Law

FOOTNOTES:
(n1)Footnote 1. Pardessus, Lois Maritimes, *passim*, (Paris, 1828-1845).

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1-I Benedict on Admiralty § 5

§ 5 The Maritime Laws of the Kingdom of Jerusalem.

These laws date back to the existence of the Christian Kingdom of Jerusalem, established after the capture of the Holy City by Godfrey de Bouillon, in the first Crusade. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewInternational LawSources of International Law

FOOTNOTES:
(n1)Footnote 1. Pardessus: Lois Mar. 275.

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Volume 1: Jurisdiction Chapters I - XIV
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1-I Benedict on Admiralty § 6

§ 6 The Laws of Oleron.

The laws of Oleron take their name from the Ile d'Oleron off the southwestern coast of France. The English and French have long disputed the honor of having produced these laws, and their real origin is undoubtedly obscured by a remote antiquity; but, by common consent, they are admitted to be the foundation of all the European maritime codes. The earliest French edition to which Pardessus refers, published in 1485, bears for a title, "*Jugemens de la M'er, des Maisters, des Mariniers, des Marchants, et de tout leur estre*, " a literal translation of which is the title of the earliest English edition, published in the reign of Henry VIII--"Judgments of the Sea, of Masters, of Mariners, and Merchants, and all their doings." n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureStatutory AuthorityInternational LawSources of International Law

FOOTNOTES:
(n1)Footnote 1. Prynne, 107; Sea Laws, 116, 120; Cleirac, 1, 7; Malynes; Pet. Ad. Dec. Append.; 1 Pardessus: Lois. Mar. 283, 323; Browne Civ. and Ad. Law. 39; Miege, Anc. Sea Laws; 1 Boucher Consulat, ch. 18 to ch. 27. *See Crowley Marine Serv. v. Maritrans, Inc., 530 F.3d 1169 (9th Cir. 2008)* (citing text). A version appears in 30 F. Cas. 1171. The following is a version from the Black Book of Admiralty. Sir Travers Twiss:

The Judgments of the Sea.

(1) This is the copy of the Charter of Ol'eron of the Judgments of the Sea. First a man is made master of a ship. The ship belongs to two or three men. The ship departs from the country to which she belongs, and comes to Bordeaux or to Rochelle, or elsewhere, and is freighted to go to a strange country. The master may not sell the ship unless he has a mandate or procuration from the owners; but if he has need of money for his expenses, he may put some of the ship's apparel in pledge upon consultation with the ship's company, and this is the judgment in this case.

(2) A ship is in a haven and stays to await her time, and the time comes for her departure, the master ought to take counsel with his companions and to say to them: "Sirs, you have this weather." There will be some who will say the weather is not good, and some who will say the weather is fine and good. The master is bound to agree with the greater part of his companions. And if he does otherwise, the master is bound to replace the ship and the goods, if they are lost. And this is, etc.

(3) If a ship is lost in any land or in any place whatever, the mariners are bound to save the most they can; and if they assist, the master is bound, if he have not the money, to pledge some of the goods which they [the mariners] have saved, and to convey them back to their country; and if they do not assist, he is not bound to furnish them with anything nor to provide them with anything, on the contrary they shall lose their wages, when the ship is lost. And the master has no power to sell the apparel of the ship, if he has not a mandate or procuration from the owners, but he ought to place them in safe deposit, until he knows their wishes. And he ought to act in the most loyal way he can. (*Et si doit fere a plus loialment qil pourra.*) And if he act otherwise, he is bound to make compensation, if he have wherewithal. And this is the judgment, etc.

(4) A ship departs from Bordeaux or elsewhere; it happens sometimes that she is lost, and they save the most they can of the wines and the other goods. The merchants and the master are in great dispute, and the merchants claim from the master to have their goods. They may well have them, paying their freight for such part of the voyage as the ship has made, if it please the master. And if the master wishes, he may repair his ship, if she is in a state to be speadily repaired; if not he may hire another ship to complete the voyage, and the master shall have his freight for as much of the cargo as has been saved in any manner. And this is the judgment, etc.

(5) A ship departs from a port laden or empty, and arrives in another port; the mariners are not to go ashore without the leave of the master; for if the ship should be lost from any accident they would be bound to make compensation [if they have the wherewithal. But if the ship is in a place where she has been moored with four hawsers they may properly go ashore].

(6) Mariners hire themselves out to their master, and some of them go ashore without leave, and get drunk, and make a row (*fount contekes*), and there are some of them who are hurt; the master is not bound to have them healed, nor to provide them with anything; on the contrary he may properly put them ashore, and hire others in their place; and if the others cost more than they did, they ought to pay, if the master can find anything of theirs. But if the master sends a mariner on any service of the ship, and the mariner wounds himself or is hurt, he is to be healed and maintained at the cost of the ship.

(7) It happens that sickness attacks one of the ship's company, or two or three, and the sick man can do nothing in the ship, as he is so ill; the master ought to put him ashore, and seek a lodging for him, and furnish him with tallow or a candle, and supply him with one of the ship's boys to tend him, or hire a woman to nurse him; and he ought to provide him with such food as is used on the ship, that is to say, with as much as he had when he was in health, and nothing more, unless he pleases. If the sick man wishes to have more delicate food, the master is not bound to find it, unless it be at his [the sailor's] expense; and the ship ought not to delay her voyage for him; on the contrary she should proceed on it; and if he should recover he ought to have his wages for the whole voyage; and if he should die, his wife or his near relatives ought to have them [wages] for him. And this is, etc.

(8) A ship loads at Bordeaux, or elsewhere, and it happens a storm catches the ship at sea, and she cannot escape without casting overboard goods and wines; the master is bound to say to the merchants: "Sirs, we cannot escape without casting overboard wines and goods." The merchants, if there are any, answer as they will, and agree readily on a jettison on the chance, since the reasoning of the master is most clear; if they do not agree, the master ought not to give up for that reason casting over board as much as he shall see fit, swearing himself and three of his companions on the Holy Evangelists, when he has arrived in safety on shore, that he did not do it except to save the lives of the merchants and the ship and the goods and the wines. Those goods which are cast overboard ought to be appraised at the market

price of those which have arrived safely, and shall be sold and shared pound by pound amongst the merchants; and the master ought to share in the reckoning of his ship or his freight at his choice, to reimburse the losses; the mariners ought to have a tun free, and the rest they ought to share in the jettison, according to what they have on board, if they conduct themselves as men of the sea; and if they do not so conduct themselves, they ought not to have any exemption, and the master shall be believed on his oath. This is the judgment, etc.

(9) It happens that the master of a ship has to cut his mast from stress of weather; he ought to call the merchants, and show them that it is expedient to cut the mast to save the ship and the goods; and sometimes it happens that cables are cut and anchors abandoned to save the ship and the goods; they ought to be reckoned pound by pound as in jettison; and the merchants ought to share and pay without any delay everything, before the goods are landed from the ship; and if the ship should be on hard ground, and the master tarries for their dispute, and there shall be leakage, the master ought not to share in it; on the contrary he ought to have his freight as of the other goods which are saved.

(10) A master of a ship comes in safety to his place of discharge; he ought to show to the merchants the ropes with which he will hoist; and if he sees anything to mend, the master is bound to mend them, for if a tun is lost by fault of the hoisting or of the ropes, the master is bound to make compensation, he and his mariners; and the master ought to share all that he receives for the hoisting, and the hoisting ought to be reckoned in the first place to replace the losses, and the residue ought to be shared amongst them. But if the ropes break without his having shown them to the merchants, he and his mariners will be bound to make good all the damage. But if the merchants say that the ropes are fair and good, and they break each ought to share the loss, that is to say, the merchants to whom the wine belongs, so much alone. This is the judgment, etc.

(11) A ship loads at Bordeaux, or elsewhere, and hoists sail to convey her wines, and departs, and the master and mariners do not fasten their bulkheads as they ought and bad weather overtakes them on the sea in such manner that the casks within the ship crush either a tun or a pipe; the ship arrives in safety and the merchants say that the casks have destroyed their wines; the master says that it is not so; if the master can swear himself and three of his companions, or four of those the merchants have chosen, that the wines were not destroyed by the casks, as the merchants stowed their wines above the water line, they ought to be quit. If they are not willing to swear they ought to make good to the merchants all their damage, for they are bound to fasten well as surely their bulkheads (*boucles*) and their hatches (*'elores*) before they depart from the place where they have loaded. And this is the judgment, etc.

(12) A master hireth his mariners, and he ought to keep them in peace, and be their judge, if there is anyone who hurts another, whilst he puts bread and wine on the table, he who shall give the lie to another ought to pay four-pence. And the master, if he gives the lie to any one, ought to pay eightpence, and if anyone gives the lie to the master he ought to pay as much as the master. And if it so be that the master strikes one of his mariners, the mariner ought to abide the first blow whether it be of the fist or the palm of the hand; if the master strikes him again, he may defend himself. If a mariner strikes the master first he ought to lose a hundred shillings, or his fist, at the choice of the mariner. This is the judgment, etc.

(13) A ship is freighted at Bordeaux, or at Rochelle or elsewhere and arrives at her place of discharge and has a charter party, towage and harbor-pilotage fall upon the merchants. On the coast of Brittany all those whom they take after they have passed "L'Isle de Bas" are harbor pilots; and those of Normandy and of England (after they have passed Calais and those of Scotland) after they have passed Guernsey, and those of Flanders after they have passed Calais and those ... after they have passed Yarmouth. This is the judgment, etc.

(14) Contention arises on board of a ship between the master and his mariners. The master ought to take away the napkin from before the mariners three times before he sends them out of the ship. If the mariner offers to make amends according to the award of the mariners who are at the table, and if the master is so cruel that he will not do anything and puts him [the mariner] out of the ship, the mariner may follow the ship to her port of discharge and have all his wages as if he had come aboard the ship making amends according to the award of the other mariners. If the master has not

another mariner as good as this one, and the ship is lost through any accident, the master is bound to make good the damage, if he have wherewithal. This is the judgment, etc.

(15) A ship is in a roadstead moored and riding at her mooring and another ship strikes her while she is at rest. The ship is damaged by the blow and there are some wines stove in. The damage ought to be appraised and divided by halves between the two ships. And the wines which are in the two ships ought to be halved for the damage between the merchants. The master of the ship which has struck the other is bound to swear, himself and his mariners that he did not do it intentionally. The reason that this judgment is made is, that it may happen that a vessel would willingly place herself in the way of a better ship, if she were to have all her damage made good from having struck the other ship. But when she knows she ought to share the damage of both by halves she willingly places herself out of the way.

(16) A ship and divers others are in a haven where there is little or no water, and one of the ships dries and is too near another. The master of this ship ought to say to the other mariners [on the other ship]: "Sirs, you should raise your anchor [and move] for it is too near us and may do us damage." If they will not raise it the master for himself with his companions may proceed to raise it and remove it at a distance from them. If they fail to raise it and the anchor does then damage the others [other ship] must make compensation thoroughly. And if it be that they have let go an anchor without a buoy and it does damage they are bound to make compensation thoroughly. If they are in a haven which dries they are bound to put floats to their anchors, so that they may appear above water [as markers]. This is the judgment, etc.

(17) The mariners of the coast of Brittany ought to have only one cooked meal a day, by reason that they have drink going and coming. And those of Normandy ought to have two a day, by reason that their master only supplies them with water in going. But when the ship arrives at the land where the wine grows the mariners ought to have drink and the master ought to find it. This is the judgment, etc.

(18) A ship arrives to load at Bordeaux or elsewhere. The master is bound to say to his companions: "Sirs, will you freight your fares, or will you let them at the freight of the ship"? And they are bound to reply which they will do. And if they wish to freight choose to let them according to the freight of the ship, such freight as the ship shall have they shall have. And if they wish to freight [their fares] for themselves, they ought to freight them in such manner that the ship ought not to be delayed. And if it should happen that they find not freight the master is not to blame. And the master ought to show them their fares and their berths, and each ought to place there the weight of their venture. And if he wishes to place there a tun of water and it be cast into the sea, it is to be reckoned pound by pound for wine or other goods if the mariners exert themselves reasonably on the sea. And if they [the mariners] freight their fares to merchants the same franchise which the mariners shall have shall be allowed to the merchants. This is the judgment, etc.

(19) A ship arrives to discharge. The mariners wish to have their wages. And there are some who have neither cot nor chest on board; the master may retain of their wages, in order to take the ship back to the place whence he brought it, if they do not give good security to perform the voyage. This is the judgment, etc.

(20) The master of a ship hires mariners at the town whereof the ship is, some of them for the venture, the others for money, and it happens that the ship cannot find freight for those parts to come in, and it is expedient to go a further distance; those who are engaged for the venture ought to follow the ship, but to those who are engaged for money the master is bound to increase their wages, view by view and course by course, by reason that he has engaged them to go to a given place. And if they go a shorter distance than that for which the engagement was made, they ought to have all their wages but they ought to assist in bringing the ship in back to the place whence they brought it, if the master wishes, at the adventure of God. This is the judgment, etc.

(21) It happens that a ship is at Bordeaux or elsewhere; of such cooked food as there shall be in the ship, two mariners may carry with them ashore one mess such as they are cut on board ship. And such bread as there shall be, they ought to have according to what they can eat, and of drink they ought to have none. They ought to return all quickly in order that

the master lose not the service of the ship, for if the master loses it [the service] and there shall be damage, they ought to be bound to indemnify him. If one of the crew hurts himself for want of help they are bound to contribute for his cure and to make compensation to their companion and the master and their mess-men. This is the judgment, etc.

(22) A master lets for freight his ship to a merchant, and it is devised between them, and a term is fixed [for loading] and the merchant does not observe this time; on the contrary he keeps the ship and the mariners waiting for fifteen days or more and sometimes the master loses his time and his expenses from the default of the merchant. The merchant is bound to indemnify the master, and of the indemnification that shall be paid, the mariners ought to have one fourth and the master three fourths, because he provides the expenses. And this is the judgment, etc.

(23) A merchant freights a ship and loads her and sets her on her way and the ship enters a port and remains there so long that money fails them; the master keeps well and he may send to his own country to seek for money, but he ought not to lose time for if he does so he is bound to indemnify the merchants for the damage they shall incur. But the master may well take of the wines of the merchants and sell them to obtain provisions. And when the ship shall have arrived at her right discharge the wines which the master shall have taken, ought to be valued at the market price at which the others shall be sold, neither at a higher nor a lower price. And the master ought to have his freight of those wines as of the others. This is the judgment, etc.

(24) A young man is pilot of a ship, and he is hired to conduct her into the port where she ought to discharge, and it may well happen that the port where ships are placed to discharge is a closed port. The master is bound to provide her berth by himself and his crew, and to place buoys that they may appear above water, or to see that her berth is well buoyed, that the merchants may suffer no damage; and if damage results the master is bound to make it good, if they state reasons wherefore the master should be driven from his reasons. And the pilot who has well done his duty when he has brought the ship in safety to her berth, for so far ought he to conduct her and thenceforth the duty is on the master and his companions. This is the judgment, etc.

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1-I Benedict on Admiralty § 7

§ 7 Les Judgmens de Damme ou Lois de Westcapelle.

These are mainly a translation of the laws of Oleron, made for Dam, a city of Austrian Flanders, situated a short distance from the sea, near to Bruges. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureStatutory AuthorityInternational LawSources of International Law

FOOTNOTES:
(n1)Footnote 1. Pardessus: Lois Mar. 371.

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1-I Benedict on Admiralty § 8

§ 8 Laws of Wisbuy or Wisby.

Wisbuy, on the island of Gothland, in the Baltic Sea, was the great maritime and commercial entrepot of the north of Europe, more than five hundred years ago, and her maritime code was then known as *"Dat hogeste und dat oldeste water rechte von Wisby." "The ancient and supreme water law of Wisby."* n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureStatutory AuthorityInternational LawSources of International Law

FOOTNOTES:
(n1)Footnote 1. 2 Browne Civ. and Ad. Law, 39, 1 Pardessus: Lois Mar. 424, 463; Sea Laws, 174; Cleirac, 136, 139, 463, 524; Malynes; Pet. Ad. Dec. Append.; Miege, Anc. Sea Laws; 1 Boucher Cons. cs. 21 to 27.

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1-I Benedict on Admiralty § 9

§ 9 Le Consulat de la Mer--II Consolato del Mare--The Consulate of the Sea.

Grotius says that the Consulate was made up of various enactments of the Greek Emperors, of Germany, of the kingdoms of France, of Spain, of Syria, of Cyprus, of Majorca, and of the republics of Venice and Genoa. Later research has made it quite certain that it is of Catalan origin. Prepared for the use of commercial judges--"consuls of the sea"--it was first printed at Barcelona in 1494, and has been translated into all languages. In a sort of prologue it sets forth its contents:

> "These are the good constitutions and the good customs which regard matters of the sea, which wise men who traveled over the world communicated to our predecessors, who composed therewith books of the science of good customs. In what follows we shall find laid down the duties which the owner of a ship (senyor de nau) owes to the merchants and to the mariners and to the passengers, and to the other persons who are on board the ship, and likewise the duties which the merchant and the mariner and the passenger also owe to the shipowner."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPersonal InjuriesMaritime Tort ActionsNegligenceInvitees, Passengers & StowawaysAdmiralty LawShippingCarrier Duties & ObligationsGeneral Overview

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1-I Benedict on Admiralty § 10

§ 10 Le Guidon de la Mer.

This is an ancient treatise entitled *"Le Guidon pour ceux que font marchandize et qui mettent 'a la Mer";* written in French for the use of the merchants of Rouen. It is devoted mainly to the law of maritime insurance, but Cleirac declares that it is written with such consummate ability that, in explaining the contract of insurance, the author has completely elucidated the whole subject of maritime contracts and naval commerce. It is a work of the highest authority. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsCoverageInsurance LawBusiness InsuranceMarine InsuranceGeneral Overview

FOOTNOTES:
(n1)Footnote 1. 2 Pardessus: Lois Mar. 369, 377; Cleirac, 181; 2 Browne Civ. and Ad. Law, 41.

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1-I Benedict on Admiralty § 11

§ 11 The Laws of the Hansa Towns.

In the year 1254, Lubeck, Brunswick, Dantzic, and Cologne, in Germany, and, subsequently, Bruges in Flanders, London in England, and Novogorod in Russia, and the principal cities of the Rhine and other portions of Europe, constituted a sort of maritime confederacy, for the protection and promotion of their commercial interests; and, for that purpose, about the year 1597, formed a code of maritime law of the greatest respectability, embracing in its brief articles, much of what had before existed in the separate codes of the Hanseatic and other cities and of the nations of Europe. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsCoverageInternational LawSources of International Law

FOOTNOTES:
(n1)Footnote 1. This code may be found in 3 Pardessus: 431, 455; Miege's Anc. Sea Laws; Browne Civ. and Ad. Law, 39; 3 Kent's Com. 1-21; Cleirac, 157, 166; Pet. Ad. Dec. Append.; Sea Laws, 190, 195.

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1-I Benedict on Admiralty § 12

§ 12 Other Codes.

The Tabula di Amalfi is a collection of sea laws dating from the eleventh century, when Amalfi was an important seaport. Part of the text is in latin, and part in early Italian. These texts were lost or mislaid for about a century, n1 and recently came to light again. The Italian maritime Law Association has published them in a handsome edition. This Code was probably the direct successor of the Rhodian Sea Law and superseded it.

The other maritime ordinances and codes which had existed before that time were numerous, and are here briefly noted in the order in which maritime legislation or codification was commenced in each nation or city.

a.d. 940. The Maritime Law of Norway. 3 Pardessus 1, 21.
a.d. 1063. Maritime Law of the Two Sicilies. 5 Pardessus 214, 237.
a.d. 1117. Maritime Law of Iceland. 3 Pardessus 45, 55.
a.d. 1150. Maritime Law of Denmark. 3 Pardessus 205, 229.
a.d. 1158. Maritime Law of Lubeck. 3 Pardessus 391, 399.
a.d. 1160. Maritime Law of Pisa and Florence. 4 Pardessus 545, 569.
a.d. 1224. Maritime Law of the Prussian States. 3 Pardessus 447, 459.
a.d. 1232. Maritime Law of Venice and Austria. 5 Pardessus 1, 19.
a.d. 1243. Maritime Law of Catalonia, Aragon, Valencia, and Majorca. 5 Pardessus 321, 333.
a.d. 1254. Maritime Law of Sweden. 3 Pardessus 89, 111.
a.d. 1270. Maritime Law of Hamburg. 3 Pardessus 329, 337.
a.d. 1270. Maritime Law of Russia. 3 Pardessus 489, 505.
a.d. 1303. Maritime Law of Bremen. 3 Pardessus 309, 317.
a.d. 1303. Maritime Law of the Papal States. 5 Pardessus 99, 113.
a.d. 1316. Maritime Law of Genoa. 4 Pardessus 419, 439.
a.d. 1316. Maritme Law of Sardinia. 5 Pardessus 267, 281.

a.d. 1450. Maritime Law or Customs of Amsterdam, Enchuysen and Stavern. They were entitled, *"Ordonnances que les patrons et les negocians observent entre eux sur le droit maritime."* 1 Pardessus 393.

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. 5 Pardessus 223. See also Mc Fue: "Law of the Sea."

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1-I Benedict on Admiralty § 13

§ 13 Maritime Law of France.

The marine ordinances of France have always been held in deservedly high estimation. Her wisest statesmen and monarchs have, through many centuries, given the most profound attention to the subject of maritime law; and, under the administration of courts of admiralty, filled by the ablest judges, a system of maritime law has been there built up more perfectly than in any other country; while at the same time, commentators and jurisconsults of most various learning, and most profound and practical reflection, have been the cause and the effect of this constant attention to the best interests of maritime commerce. Cleirac says the marine ordinances of France are of the highest authority and that all the princes and republics of Europe, on the ocean, have adopted or followed them, and that they are general, and as such observed by all Christian Europe, and are also conformed to the Roman civil law and the customs of the Mediterranean Sea. They are thus by this great authority declared to be a part of the general maritime law. n1

The jurisdiction of the French admiralty has always been of the widest and most salutary character.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

FOOTNOTES:
(n1)Footnote 1. Ord. de la Marine, L.I. tit. 2, arts. 1-11; Merville Com. 13-25; 1 Valin, 112-151; Cleirac, Les Us et Coutumes de la Mer, Jurisdiction de la Marine, 316.

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1-I Benedict on Admiralty § 14

§ 14 Ordonnance de la Marine of 1681.

"The judges of the Admiralty," says the Ordonnance, "shall take cognizance, preferably to all others, and between all persons of whatever quality or condition, even though privileged, French and strangers, as well in demanding as defending, of all that concerns the construction, tackle and furniture, arming, victualling, and manning, sale and adjudication of ships.

"We declare them competent judges of all actions, proceeding from charter parties, freighting, bills of lading, freight, engaging and wages of seamen, and victuals furnished to them by order of the master during the manning of ships, together with policies of insurance and obligations of bottomry, or on the return from a voyage, and generally of all contracts concerning the commerce of the sea, notwithstanding all submission and privileges to the contrary.

"They shall likewise take cognizance of prizes taken at sea, wrecks, shipwrecks, and stranded ships, of jettison and contribution of averages, and of damages happened to ships and their lading, and also of inventories and deliverances of assets, left in ships by persons dying at sea.

"They shall likewise take cognizance of the dues for licences, thirds, tenths, sea marks, anchorage and others belonging to the Admiral, and of those which shall be levied or pretended by the lords of manors, or other private persons near the sea, upon the fisheries or fish, and upon goods or ships going out or coming into port.

"The cognizance of fishing in the sea and salt water, and the mouths of rivers shall belong to them, and likewise that of parks and fisheries; and they shall also take cognizance of the quality of nets and lines and of the buying and selling of fish in the boats, or upon the shore, ports, or harbors.

"They shall likewise take cognizance of damages done by ships to the fisheries, either upon the coasts or in navigable rivers, and of those that the ships shall receive from them, and likewise of the ways appointed for hauling up ships coming from the sea if there be no regulation, title or possession to the contrary.

"They shall also take cognizance of the damages done to the keys, banks, moles, palisadoes, and other works cast up against the violence of the sea, and shall take care that the depth of the ports and roads be preserved and kept clean.

"They shall take up the bodies of drowned persons, and shall draw up a report of the condition of the corpses found at sea and on the sand, or in the ports, as likewise of the drowning of mariners sailing in navigable rivers.

"They shall be present at the musters and reviews of the inhabitants of the parishes subject to the sea watch, and shall take cognizance of all differences arising upon that account, and likewise of crimes committed by them that are upon the guard of the coasts, while they are under arms.

"They shall also take cognizance of piracies and robberies, and desertions of seamen, and generally of all crimes and offences committed upon the sea, its ports, harbors and shores." n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewInternational LawSources of International Law

FOOTNOTES:
(n1)Footnote 1. Ord. de la Marine, L.I., tit. 2, arts. 1-11. In the third part of the "Us et Coutumes de la Mer," Cleirac, in his learned and curious treatise, "La Jurisdiction de la Marine ou de l'Admiraut'e," has extracted and collated the text of the royal ordinances of the Admiralty of France, from the earliest periods. Cleirac, 315.

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1-I Benedict on Admiralty § 15

§ 15 The Civil Law.

The admiralty law is indebted for many of its characteristics to the circumstances of the countries in which it was first administered. The countries that earliest reduced the law of the sea to a system, and adopted codes of maritime regulations, having been countries in which the Roman or civil law prevailed, the principles of that great system of jurisprudence were incorporated with, and gave character to, the maritime law; and so much were pure reason, abstract right, and practical justice mingled in that system, and so important was it that the general maritime law should be uniform and universal, that, in England, where the common law was the law of the land, the civil law was held to be the law of the admiralty, and the course of proceedings in admiralty closely resembled the civil law practice. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. Browne Civ. and Adm. Law. 348.

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1-I Benedict on Admiralty §§ 16-20

Reserved.

§§ 16Reserved.

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§ II.syn Synopsis to Chapter II: THE ANCIENT JURISDICTION OF THE ENGLISH ADMIRALTY.

§ 21 The Origin and Early Jurisdiction of the English Admiralty.

§ 22 The Grants of Jurisdiction.

§ 23 The Admiral's Commission. I.

§ 24 The Admiral's Commission. II.

§ 25 The Admiral's Commission. III.

§ 26 The Laws of Oleron.

§ 27 Zouch's Classification.

§ 28 The Black Book of the Admiralty. I.

§ 29 The Black Book of the Admiralty. II.

§ 30 The Black Book of the Admiralty. III.

§ 31 The Inquisition at Quinborough or Queenborough. I.

§ 32 Extent of Early Authority as Viewed in 1664.

§ 33 Statute of 1389. 13 Richard II, Cap. 5.

§ 34 The Admiral's Jurisdiction.

§ 35 Statute of 1391. 15 Richard II, Cap. 3.

§ 36 The Statute of 1400.

§§ 37-40 Reserved.

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1-II Benedict on Admiralty § 21

§ 21 The Origin and Early Jurisdiction of the English Admiralty.

The origin and early jurisdiction of admiralty in England is a matter of much uncertainty n1 and it is not possible to state precisely even the regnal period during which the court was first established. There is a picturesque suggestion that the origin might go back to the reign of Edgar, for the seal of the Judicial Committee of the Privy Council, with which every order in Admiralty appeals, was sealed until 1st November, 1875, when the Supreme Court of Judicature Act 1873 n2 came into operation, and bears on its face the words "Ab Edgare Vindico." n3 There is apparently some evidence of the exercise of admiralty jurisdiction during the reign of Henry I. n4 At all events in the fourteenth century during the reign of Edward III when the title of Admiral n5 came into use in England in the form "Amyrel of the Se" or "Admyrall of the Navy" the court of Admiralty was established. n6

Before that time port courts had existed to adjudge the affairs of merchants and mariners and these local tribunals continued for some time thereafter. The drift of the times is shown by the statute of 27 Edward III, st. 2, cap. 13, which provided that foreign merchants spoiled of their goods at sea should have restitution upon proof of their property in the goods without requirement of suit at common law. The reasons for establishing a Court of Admiralty with more than local competency were the complaints of piracy and the numerous spoils claims made by or against foreign sovereigns. The Court, whose procedure was not fixed, often made use of the aid of a jury versed in matters maritime and exercised jurisdiction not only in cases of spoils and piracy but also in mercantile and shipping cases. The jurisdiction became various and ample, embracing all maritime causes of action then known, whether of contract or of tort and whether civil or criminal, and causes of action arising at sea or beyond sea in foreign countries. n7

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. Cf. The Ellis A. Clark. Brown & L. 32; The Wave. Blatchf & H. 235 F. Cas. 17,297.

(n2)Footnote 2. 36 & 37 Vict. C. 66.

(n3)Footnote 3. Halsbury's Laws of England (Simonds Edition), Vol. 1 pp. 46, 47; See also 2 Co. Litt. 2260 b; Prynne's Animadversions on the 4th Institute 123; The reference to Edgar (944-975) is not entirely far fetched, for he had great interest in the administration of justice and the reorganization of the hundred, borough and shire courts was completed in his reign. He also encouraged trade and received embassies from foreign rules.

(n4)Footnote 4. See *De Lovio v. Boit, 2 Gall. 398* , F. Cas. 3776 (1815); The Zeta, (1892) P. 285 at p. 300 (actual decision *rev.* in the Zeta (1893) A.C. 468); Ordinance of Ipswich Rolls Series, Monumenta Juridica, The Black Book of Admiralty, Vol. 1, edited by Sir Travers Twiss.

(n5)Footnote 5. The Oxford English Dictionary, *contra* "Admiral."

(n6)Footnote 6. 3 Blackstone Com. p. 69; see also R. V. Keyn (1870). 2 Ex. D. 63, 46 L.J.M.C. 17, 41 J.P. 517, 13 Cox C.C. 403 and references at N.7, *infra.*

(n7)Footnote 7. See R. G. Marsden's illuminating introductions to two volumes of Select Pleas in the Court of Admiralty, forming volumes 6 and 11 of the Publications of the Selden Society, (1892 and 1897). See also *The Emulous, (1813) 1 Gall. 563* , F. Cas. 4479 (C.C.Mass.); *De Lovio v. Boit, (1815) 2 Gall. 398* , F. Cas. 3776 (C.C.Mass.).

See further the valuable essay on "Conflicts of Laws in the History of English Law" by Alexander N. Sack, in "Law: A Century of progress," 1937, New York University School of Law Centennial publication, Vol. 3, page 342.

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1-II Benedict on Admiralty § 22

§ 22 The Grants of Jurisdiction.

The Chancery, King's Bench, or Queen's Bench Common Pleas, Exchequer, and Admiralty, are all, in theory, branches of the royal prerogative. It is, therefore, in the acts and records of prerogative, in the commissions and ordinances of the monarch, that we are to look for the grants of jurisdiction, and the proper evidence of its legitimate extent, except when limited or extended by statute. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. On the general development of English law see W. S. Holdsworth "A History of English Law," 3rd ed., Vols. 1-7.

The "conflict of laws" between these competing branches of the prerogative is traced in Professor Sack's essay, N.7, § 21, *supra* .

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23-II Benedict on Admiralty § 23

§ 23 The Admiral's Commission. I.

The commission of the Admiral of England, by the ancient and the later patents, conferred a most ample jurisdiction, in the most unequivocal terms. It was as follows: *"Damus et concedimus, etc.* We give and grant to N. the office of our great Admiral of England, Ireland, and Wales, and the dominions and islands belonging to the same, also of our town of Calais and our marches thereof, Normandie, Gascoigne, and Aquitaine; and we make, appoint and ordain him our Admiral, etc., with all privileges, jurisdiction, etc., and power in civil causes *ad cognoscendum de placitis,* to hold conusance of *pleas, debts, bills of exchange, policies of insurance, accounts, charter parties, contractions, bills of lading, and all other contracts which any ways concern moneys due for freight of ships hired and let to hire, moneys lent to be paid beyond the seas at the hazard of the lender, and also of any cause, business, or injury whatsoever, had or done in, or upon, or through the seas, or public rivers, or fresh waters, streams, and havens and places subject to overflowing, whatsoever, within the flowing and ebbing of the sea, upon the shores or banks whatsoever adjoining to them or either of them, from any of the said first bridges whatsoever, toward the sea,* throughout our kingdoms of England and Ireland, or our dominions aforesaid, or elsewhere beyond the seas, or in any parts beyond the seas whatsoever," etc. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

FOOTNOTES:
(n1)Footnote 1. Zouch, Ass. 2; Selden, lib. 2, c. 16; The Little Joe, (1813) Stewart's Ad. R. 394. (Nova Scotia Vice-Admiralty) See "The Office of Vice-Admiral of the Coast," by Sir Sherstone Baker, privately printed, London, 1884.

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1-II Benedict on Admiralty § 24

§ 24 The Admiral's Commission. II.

All the patents of the office of Lord High Admiral, from the beginning of Queen Mary's time (1553) to the time of Charles II, are said by Zouch to have been conceived after one and the same form and tenor; and from his declaration and that of Selden, and from the commissions to the colonial vice-admirals and judges, hereafter set forth, which are said by Judge Story to be copied from them, it is presumed that, in the matter of judicial jurisdiction, the whole series of commissions, for many centuries, has conferred the same ample powers which will be found to be fully sustained by the other solemn royal acts relating to the same subject. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

FOOTNOTES:
(n1)Footnote 1. *Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* .

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1-II Benedict on Admiralty § 25

§ 25 The Admiral's Commission. III.

By the commission of Oyer and Terminer, also granted to the admiral, according to stat. 28, Henry VIII, cap. 15, power is granted to hear and determine "Of all and singular treasons, robberies, murders, etc., as well in and upon the sea, as any river, port, or fresh-water creek, or place whatever within the flowing of the sea to the full, beneath the first bridges toward the sea, or upon the shore of the sea, or elsewhere within the King's maritime jurisdiction of the admiralty of the realm, etc., as well against the peace and the laws of the land, as against the King's laws, statutes, and ordinances of the King's Court of Admiralty; and also touching *all and singular other matters which concern merchants and proprietors of ships, masters, shipmen, mariners, shipwrights, fishermen, workmen, laborers, sailors, scavengers, or any others."* n1

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. Zouch, Ass. 2.

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1-II Benedict on Admiralty § 26

§ 26 The Laws of Oleron.

The judgments or laws or rules of Oleron, n1 purported to be made by King Richard I, on his return from the Holy Land, in the latter part of the twelfth century, according to English judicial histories, n2 are among the earliest records of prerogative legislation on the subject of which we have any proper evidence. That monarch is said to have remained some time in the Island of Oleron, then a part of his dominions, lying in the Bay of Biscay off the coast of France and to have pronounced the judgments, as they are called, of Oleron. They seem to be of the nature of the rescripts of the Roman Emperors, and, collected together, have now existed for nearly seven hundred years as a code of maritime law, as respectable for its universal authority, justice, and equity, as venerable for its high antiquity. n3 The records of the Black Book of the Admiralty make frequent references to the laws of Oleron as furnishing a rule of decision. This code is accessible to all and will only be referred to here as embracing, in the most obvious construction of its sententious judgments, almost all the variety of maritime contracts, offenses, and liabilities, occurring as well in ports, in harbors, and on the coasts, as on the open sea.

In the time of Henry VIII they were published as "The judgment of the sea, of Masters, of Mariners, and Merchants, and all their doings," which is but a literal translation of the earlier French title of the same code. Later English publications entitle them "The Naval Laws of Oleron, instituted by Richard I, King of England, on his return from the Holy Land, in the end of the eleventh [*sic*] century, for the better regulation of *merchants, owners, and of ships, and mariners, and all seafaring persons in maritime affairs."* n4

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. Literally, the "Rolls" of Oleron: Pardessus Lois Mar. Vol. I c. 8. see § 6, *supra.*

(n2)Footnote 2. We are aware of the weighty authority of Pardessus that the laws of Oleron were not the production of Richard I; but as affecting the question under consideration, the English view of their origin is alone

important, and the older English writers, including the learned Selden, claimed them as the production of that monarch. Their promulgation has been ascribed to Eleanor, Duchess of Guienne.

(n3)Footnote 3. See *The Troop, 118 F. 769 (D. Wash. 1902)* .

"The laws of Oleron were introduced into England by King Richard the Crusader, and are to a large extent the basis of maritime law of that country, as well as of the United States ..."

(n4)Footnote 4. Sea Laws, 120; Cleirac, 7; Pet. Ad. R. Appendix; Zouch, Assertions (1663), p. 27; 3, 1 Pardessus, 320; Prynne, 107; Miege's Sea Laws, 3; Godolphin, 163; see § 6, N.1 for a version of the Laws of Oleron.

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1-II Benedict on Admiralty § 27

§ 27 Zouch's Classification.

Zouch thus classifies their provisions in a very general manner:

> "1. Touching ships hired for sea voyages, and their proceedings in the same.
>
> "2. Touching the safe keping and delivery of goods received into ships.
>
> "3. Touching the engaging (selling or hypothecating) of ships or goods, in case of necessity.
>
> "4. Touching contributions to be made for loss, upon occasion of common danger.
>
> "5. Touching damages done by or betwixt several ships.
>
> "6. Touching the charge for hiring of pilots, and their duty."

Under each of these classes he gives several specifications, and there are many matters of which he makes no mention, including mariners' wages. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

FOOTNOTES:
(n1)Footnote 1. Zouch, Assertions concerning the Jurisdiction of the Admiralty of England (1663), pp. 30-33.

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Volume 1: Jurisdiction Chapters I - XIV
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1-II Benedict on Admiralty § 28

§ 28 The Black Book of the Admiralty. I.

The Black Book of the Admiralty is an ancient book or register of admiralty laws, decisions, ordinances, and proceedings and acts of the King, the Admiral, and the Court of Admiralty, of England, from the earliest periods. It is not known with certainty when, or by whom, it was collected or compiled. It is of an ancient hand apparently, not written all at once, nor by one person, but the first part in the reign of Edward III, or Richard II, and the latter part in the reigns of Henry IV, Henry V, and Henry VI, long before the angry controversies between the common law courts and the Court of Admiralty. It has been considered by writers on maritime law as a book of very great authority. Mr. Selden styles it, *"Vestusti Tribunalis Maritimi Commentarii,"* and *"Codex Manuscripts de Admiralitatu";* and says there are in it constitutions touching the Admiralty of Henry I, Richard I, King John, and Edward I. n1 The Black Book of the Admiralty is not, however, a contemporary witness to anything prior to the fourteenth century and its references to earlier times are unhistorical.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

FOOTNOTES:
(n1)Footnote 1. Zouch, Ass. 3; Prynne, 115; 2 Browne Civ. & Adm. Law, 42 Zouch, Ass. 1; Seld. Dom. Mar. b. 2, c. 28; *De Lovio v. Boit, 2 Gall. 398* , F. Cas. 3776 (C.C. Mass. 1815).

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1-II Benedict on Admiralty § 29

§ 29 The Black Book of the Admiralty. II.

Judicial as well as executive jurisdiction was a source of power and profit from the numerous forfeitures and other perquisites, and all courts were ingenious and grasping in their efforts to extend their power. It was at one time taken for true that lords, in their liberties and franchises, by their bailiffs and other officers, encroached upon the proper jurisdiction of the Admiral and that the subject was brought before the King and his Council in the second year of Edward I, and the following ordinances n1 were the result of that resort to royal prerogative:

> "Item, it was ordained at Hastings by King Edward the first and his lords, that though divers lords had severall franchises to try pleas in ports, that neither their seneschalls (or stewards) nor bayliffs should hold plea, if it concerns merchant or Marriner as well for fact as charter of ships or (charter partyes) obligations, and other facts, though the same amounts but to twenty shillings or forty shillings. (No. 20.)
>
> "Item, any contract made between merchant and merchant, or merchant or marriner beyond the sea, or within the flood mark, shall be tryed before the Admiral and no where else by the ordinance of the said King Edward and his lords." (No. 21.)

Those ordinances are now regarded as apocryphal.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

FOOTNOTES:
(n1)Footnote 1. Taken from the Black Book of the Admiralty, published by authority of the Lord Commissioners of Her Majesty's Treasury, under the direction of the Master of the Rolls; London, Longman & Co. and Trubner & Co., Paternoster Row, (1871).

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1-II Benedict on Admiralty § 30

§ 30 The Black Book of the Admiralty. III.

Prynne, who quotes from the Black Book of the Admiralty cases of prizes, mariners' wages, demurrage, freights from and to several ports, and marine torts, in which constant reference is made to the laws of Oleron and the ordinances of Edward I as the ancient law of the admiralty, quotes also from the same book the inquisitions following: n1

> "*Item.*--Let inquisition be made of all those who implead *any merchants, mariners,* or other men, at the common law, of *anything pertaining to the ancient marine law, and if any one is indicted* and convicted, he shall pay a fine to the King for his improper suit and vexation, and *shall besides withdraw his suit from the common law, and bring it before the Admiral's Court,* if he will further prosecute it.
>
> "*Item.*--Let inquisition be made of those seneschals and bailiffs of lords having domains on the coasts of the sea, who hold a claim to hold any plea concerning *merchants or mariners,* exceeding 40 shillings sterling. ... *And this is the ordinance of Edward I at Hastings in the second year of his reign.*
>
> "*Et nota.*--That all contracts begun and made inter merchant and merchant, beyond sea, or within the flow and reflow, commonly called flood mark, shall be *tried and determined before the Admiral, and not elsewhere,* by the aforesaid ordinance."

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. Prynne, Animad. 116, 119.

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1-II Benedict on Admiralty § 31

§ 31 The Inquisition at Quinborough or Queenborough. I.

In the forty-ninth year of Edward III(a.d. 1376), the inquisition at Quinborough was taken by eighteen expert seamen, "men of knowledge and experience in maritime causes," before William Neville, Admiral of the North, Philip Courtney, Admiral of the West, and Lord Latimer, Lord of Cinque Ports. The verdicts there given were desired to be established by the King's letters patent in the Cinque Ports and towns adjoining to the Thames, to be observed by the owners, masters, and mariners of ships under penalties. They were enrolled amongst the records of the Tower, for the government of the admiralty. They cover a very wide range of maritime causes of complaint and of actions. The heads of them are given by Zouch, and are as follows: n1

> *"Heads of the Articles of the Inquisition, taken at Quinnborow in the year* 1376, *in the* 49*th of King Edward the Third, by eighteen expert seamen, before William Nevil, Admiral of the North, Philip Courtney, Admiral of the West, and the Lord Latimer, Warden of the Cinque Ports.*
>
> **"I. OFFENCES AGAINST THE KING AND KINGDOM.**
>
> "1. Of such as did furnish the enemy with victuals and ammunition, and of such as did traffic with the enemies without special license.
>
> "2. Of Traytors goods detained in ships and concealed from the King.
>
> "3. Of Pirates, their receivers, maintainers and consorters.
>
> "4. Of murthers, manslaughters, maimes and petty felonies, committed in ships.
>
> "5. Of ships arrested for King's service; breaking the arrest; and of sergeants of the admiralty, who for money discharge ships arrested for the King's service; and of mariners who having taken pay run away from the King's service.
>
> **"II. OFFENCES AGAINST THE PUBLIC GOOD OF THE KINGDOM.**
>
> "1. Of ships transporting gold and silver.

"2. Of carrying corn over sea without special license.

"3. Of such as turn away merchandises or victuals from the King's ports.

"4. Of forestallers, regrators, and of such as use false measures, balances, weights, within the jurisdiction of the admiralty.

"5. Of such as make spoil of wrecks, so that the owners, coming within a year and a day, cannot have their goods.

"6. Of such as claim wrecks, having neither charter nor prescription.

"7. Of wears, riddles, blindstakes, water mills, etc., whereby ships and men have been lost or endangered.

"8. Of removing anchors, and cutting of buoy-ropes.

"9. Of such as take salmons at unreasonable times.

"10. Of such as spoil the breed of oysters, or drag for oysters and mussels at unreasonable times.

"11. Of such as fish with unlawful nets.

"12. Of taking royal fishes, *viz.*, whales, sturgeons, porpoises, etc., and detaining one half from the King.

"OFFENCES AGAINST THE ADMIRAL, THE NAVY, AND DISCIPLINE OF THE SEA.

"1. Of judges entertaining pleas of causes belonging to the Admiral, and of such as in admiralty causes sue in the courts of common law, and of such as hinder the execution of the Admiral's process.

"2. Of masters and mariners contemptuous to the Admiral.

"3. Of the Admiral's shares of waifs or derelicts, and of deodands belonging to the Admiral.

"4. Of *Flotsom*, *Jetson* and *Lagon*, belonging to the Admiral.

"5. Of such as freight strangers' bottoms, where ships of the land may be had at reasonable rates.

"6. Of ship-wrights taking excessive wages.

"7. Of masters and mariners taking excessive wages.

"8. Of pilots, by whose ignorance ships have miscarried.

"9. Of mariners forsaking their ships.

"10. Of mariners rebellious and disobedient to their masters."

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:

(n1)Footnote 1. Zouch, Assertions (1663), pp. 1, 3, 90, 96; Malynes, cap. 17, 18.

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1-II Benedict on Admiralty § 32

§ 32 Extent of Early Authority as Viewed in 1664.

Chief Justice Anderson also, in 1664, declares that, according to these ordinances of Edward I, which he sets forth, the Admirals have used their authorities, to his time, for things done beyond the sea, and on the sea, and between high and low water mark, which proves that the space between high and low water mark is to be taken as a part of the sea, when the tide is in. n1 According to Godolphin n2 Admiralty then "possessed jurisdiction over all cases of jettison, ransom, average, consortship, insurance, mandates, procurations, payments, acceptilations, discharges, loans, hypothecations, forms, emptions, venditions, conventions, taking or letting to freight, exchanges, partnership, factorage, passage money, and whatever is of a maritime nature, either by way of navigation upon the sea, or of negotiation at or beyond the sea in the way of marine trade and commerce. So, also, the court had jurisdiction over all matters immediately relating to the vessels of trade and the owners thereof; all affairs relating to mariners, whether ship officers or common seamen; all matters relating to masters pilots, steersmen, boatswains, and other ship officers. Also all shipwrights, fishermen, and ferrymen. Also of all causes of maritime contracts, or, as if it were, contracts whether upon or beyond the seas."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

FOOTNOTES:
(n1)Footnote 1. Sir John Constable's Case, (1664) Anderson Rep. 89, 123 Engl. Repr. 367.

(n2)Footnote 2. See also Duryee v. Elkins, Abb, Adm. 530, F. Cas. 4, 197.

Benedict on Admiralty

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1-II Benedict on Admiralty § 33

§ 33 Statute of 1389. 13 Richard II, Cap. 5.

So strengthened, the Admiralty encroached upon other jurisdictions and usurped that which did not belong to it. It "arrogated to itself a scope of judicial, legislative and ministerial power which withdrew from the trial by jury and placed under the surveillance of the crown, of which the admiralty was only the representative more than half the jurisprudence and particularly the commercial jurisprudence of the kingdom." n1 Complaints were made to the King, not of the Admirals exercising their ancient jurisdiction in all maritime matters, but that within the bodies of the counties of the nation they took jurisdiction of trespasses, house-breaking, carrying away goods on land, of the King's deodands and wrecks; of regulating the prices of provisions, the wages of labor, and other things of this sort, interfering with the every-day business of the common people on land. This produced, in the year 1389, the statute 13 Richard II, cap. 5, re-enacting the proper maritime law, and the usage of the time of Edward III, n2 as follows;

> "*Item.*--Forasmuch as a great and common clamor and complaint hath been oftentimes made before this time, and yet is, for that the Admirals and their deputies hold their sessions in divers places within the realm, as well within franchise as without, accroaching to them greater authority than belongeth to their office, in prejudice of our Lord the King, and the common law of the realm, and in diminishing of divers franchises, and in destruction and improverishing of the common people, it is accorded and assented, that the Admirals and their deputies shall not meddle from henceforth of anything done within the realm, *but only* of a thing done upon the sea, as it hath been used in the time of the noble prince, King Edward, grandfather of our Lord the King, that now is." n3

"*But only,*" is another phrase for *unless* or *except*, and if either of those words had been used (the realm of England including all the British seas), there would hardly have been any dispute about the meaning of this Act. The Admiral "shall not meddle of anything done within the realm, except of a thing done upon the sea, as it hath been used in the time of King Edward III," was evidently intended only to enforce the ancient maritime jurisdiction, and to cut off the new usurpations of the Admirals on the land, and not on the water, to the prejudice of the King's perquisites, in diminishing the franchises of the lords, and impoverishing the common people, who were thus subject to double exactions. n4

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. Godolphin: "A View of the Admiral Jurisdiction."

(n2)Footnote 2. Prynne, 83.

(n3)Footnote 3. Evans' Stat. 271.

(n4)Footnote 4. Prynne, 86.

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1-II Benedict on Admiralty § 34

§ 34 The Admiral's Jurisdiction.

Between high and low water was, on all hands, held to be the sea when the tide was in, and the Admiral, it seems, took occasion, from his admitted right over the sea and between high and low water mark, to extend it to the land when the tide was out, and to claim the valuable perquisites of wrecks, always a *droit* of the King and not of the Admiralty, which were often on the land and the water, alternately as the tide ebbed and flowed, and to the dames and wiers in the small rivers and streams, and to the ponds; and in the franchises, liberties, cities, and boroughs within the bodies of the counties, as well on land as on water, the Admirals usurped the perquisites and privileges of the King and the lords. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

FOOTNOTES:
(n1)Footnote 1. Sir John Constable's Case (1664) Anderson Rep. 89, 123 Engl. Repr. 367; Sir Henry Constable's Case, Coke Rep. part 5, 106, 77 Engl. Repr. 218; Prynne, 116.

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1-II Benedict on Admiralty § 35

§ 35 Statute of 1391. 15 Richard II, Cap. 3.

Another statute was accordingly passed two years after the last, evidently intended to remedy this abuse, and to protect the common law jurisdiction in the bodies of the counties, that is, on the land, when the tide was out, and above high water mark, and in the tideless rivers, streams and ponds (as Chief Justice Anderson says, "the rivers which were in the counties,") and to protect the King and the lords in their perquisites. It was in these words:

> "*Item.*--At the great and grievous complaint of all the commons, made to our lord the King in this present parliament, for that the Admirals and their deputies do incroach to them divers jurisdictions, franchises, and many other profits, pertaining to our lord the King, and to other lords, cities and boroughs, other than they were wont, or ought to have of right, to the great oppression and impoverishment of all the commons of the land, and hindrance and loss of the King's profits, and of many other lords, cities and boroughs, through the realm: It is declared, ordained and established, that of all manner of contracts, pleas and quarrels, and all other things rising within the bodies of the counties, as well by land as by water, and also of wreck of the sea, the Admiral's Court shall have no manner of cognizance, power nor jurisdiction but all such manner of contracts, pleas and quarrels, and all other things rising within the bodies of counties, as well by land as by water as afore, and also wreck of the sea, shall be tried, determined, discussed and remedied by the laws of the land, and not before the Admiral, nor his lieutenant in any wise; nevertheless of the death of a man, and of a mayhem, done in great ships, being and hovering in the main stream of great rivers, only beneath the bridges of the same rivers, nigh to the sea, and in none other places of the same rivers, the Admiral shall have cognizance, and also to arrest ships in the great flotes for the great voyages of the King and the realm, saving always to the King all manner of forfeitures and profits thereof coming, and he shall have also jurisdiction upon the said flotes, during the said voyages only, saving always to the lords, cities and boroughs, their liberties and franchises." n1

This statute is not perfectly clear, and the obscurity arises aparently from the use of the phrase, "within the *bodies of the counties*, as well by land as by water," which by the common law judges, in later times, has been considered as equivalent to "within the territorial limits of the counties." This can hardly be the proper force of the language, since all the counties of England, bounded upon the seas or the navigable rivers, include a large portion of the water within their

territorial limits even beyond low water mark, and it has never been doubted that the counties extend at least to low water mark, no matter what may be the state of the tide; yet it seems to be equally well settled, that, at high water, the space between high water mark and low water mark, is not within the *body* of the county. That phrase, apparently, must be considered as applying only to the land and to such water (probably not navigable waters) as could not be considered as a part of the sea, or did not connect with it. Such seems to have been the opinion of Chief Justice Anderson, and of Coke himself. The Admiral's jurisdiction extended only to what was done in the water, including the water between high water mark and low water mark, in the ordinary and natural course of the sea. "Where the sea ebbs and flows, every thing done on the land when the sea is ebbed, shall be tried at the common law, for it is *then* parcel of the county, *infra corpus comitatus."* Below the low water mark, the Admiral has the sole and absolute jurisdiction. Between the high water mark and the low water mark, the common law and the Admiral have *divisum imperium*, interchangeably, as aforesaid, which seems to be proved by the statute of 13 Rich. II, chap. 5, confirming the usage in Edward III's time; and 15 Rich. II, cap. 3, not mentioning this well-known usage, does not take it away, but only new usurpations of things done in rivers which were in the counties. This is declared by the learned Prynne to be a most clear resolution of the thing in question, in point of right, law, and usage. Indeed, by a familiar rule of construction, the statute of 13 Rich. II, recognizing and establishing as law the usage of the time of Edw. III, could not be held to be repealed by the statute of 15 Rich. II, unless the act or the usage were expressly repealed or abrogated. n2

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:
(n1)Footnote 1. Evans' Stat. 271; Black Book of the Admiralty, Vol. 1, pp. 412, 413; *Jackson v. The Magnolia, 61 U.S. (20 How.) 296, 15 L.Ed. 909 (1858)* .

(n2)Footnote 2. Zouch, Ass. 5; Sir Henry Constable's Case; Coke's Rep. part 5, 106; Sir John Constable's Case, (1664) Anderson Rep. 89, 123 Engl. Repr. 367,; Prynne, 111.

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1-II Benedict on Admiralty § 36

§ 36 The Statute of 1400.

The statute of 1391 was followed, in the year 1400, by the statute of 2 Hen. IV, cap. 11:

> *"Item.*--Whereas in the statute made at Westminster, in the 13th year of the Second King Richard, among other things it is contained that the Admirals and their deputies shall not intermeddle from thenceforth, of any thing done within the realm, but only of a thing done upon the sea, according as it hath been duly used in the time of the noble King Edward, grandfather to the said King Richard, our Lord the King willeth and granteth that the said statute be firmly holden and kept and put in execution and that, as touching a pain to be set upon the admiral or his lieutenant, that the statute and the common law be holden against them; and that he, that feeleth himself grieved against the form of the said statute, shall have his action grounded upon the case against him that doth so pursue in the admiral's court, and recover his double damages against the pursuant, and the same pursuant shall incur the paid of £10 to the king for the pursuit to made, if he be attained."

By the statute of Henry VIII, c. 15, offences previously within the jurisdiction of the Admiralty were to be tried before commissioners appointed by the crown, and, as the judges of the common law courts were appointed such, the criminal jurisdiction was thus transfererd to them. By the statute of 32 Henry VIII, c. 14, civil cases of freight, charter parties and cargo damage were committed to the Admiralty.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawCharterpartiesCharter ContractsRemediesGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory Authority

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1-II Benedict on Admiralty §§ 37-40

Reserved.

§§ 37Reserved.

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1-III Benedict on Admiralty III.syn

§ III.syn Synopsis to Chapter III: THE ENGLISH ADMIRALTY DURING THE AGE OF CONFLICTWITH THE COMMON LAW AND THEREAFTER AT THE TIMEOF AMERICAN REVOLUTION AND SINCE.

§ 41 Strife Between Common Law and Admiralty.

§ 42 Agreement Between Admiralty and Common Law Judges.

§ 43 Grievances of 1611.

§ 44 The Agreement of 1632.

§ 45 Mutilation of Croke's Reports.

§ 46 Ordinances of 1648.

§ 47 Godolphin on the Jurisdiction, in 1685.

§ 48 Submission of the Admiralty after 1664.

§ 49 Commissions of the Vice Admirals.

§ 50 Action of the King's Bench.

§ 51 Narrow Jurisdiction of the English Admiralty in 1775.

§ 52 Revival of the Jurisdiction.

§ 53 Consolidation of the Courts.

§ 54 The Admiralty Court As Now Constituted and Its Present Jurisdiction.

§§ 55-57 Reserved.

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1-III Benedict on Admiralty § 41

§ 41 Strife Between Common Law and Admiralty.

During the sixteenth and seventeenth centuries, the English Admiralty came into serious conflict with the common law courts. The struggle between these courts originated in the same spirit that attempted to break down the whole system of Equity. The courts of common law manifested a great degree of jealousy and hostility, fostered by strong prejudice, and a very imperfect knowledge of the subject. "Jealousy," says Edwards, "is perhaps a mild word to apply to the passion with which the superior courts took up this question, for there appears to have been more greediness than emulation at the bottom of it. It was, says the learned Prynne, "for more jurisdiction, for gain, not for the public good, but that one jurisdiction might swallow up the other.' It is now known that the use of prohibition from King's Bench to the High Court of Admiralty took its rise before the time of Lord (*sic*) Coke whose name is chief on the common law side of the controversy. It is not to be wondered at that others, from subserviency to the opinion of so great a man, should have followed in the same track, or even have gone beyond it; *imitatores servum pecus!* Prohibitions n1 were hurled from Westminster and without much order, serving, therefore, more to irritate than to subdue the Admiralty Court, which, though powerless and without the means of attack, obstinately held out for its ancient and time-honored privileges." n2

The English Admiralty had always rightfully had jurisdiction over all maritime contracts, and the decisions of the courts of common law, prohibiting its exercise, were neither consistent in themselves nor reconcilable with principle. In those days, when might was right, in courts as well as camps, and jealousy, prejudice, and arrogance, to say nothing of the love of gain, influenced the decisions of judges, had the common law courts had the power to issue writs of prohibition to the Chancellor and had that high officer been anything less than the highest judicial functionary and the first subject of the realm, the Court of Chancery would have met the fate of the Court of Admiralty, and would have been stripped of the most useful portion of its jurisdiction. n3

Legal Topics:

For related research and practice materials, see the following legal topics:
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FOOTNOTES:

(n1)Footnote 1. The writ was issued originally only out of the King's Bench, as it was the King's prerogative writ. In Comyns' Digest tit. Prohibition, it is stated that in prohibition there is, first, "contempt of the Crown"; and, secondly, "damage to the party." In Bacon's abridgement tit. Prohibition, it is said that the superior courts of Westminster have a superintendency over all inferior courts and may in all cases of innovation, etc., award a prohibition; prohibitions do not import that the ecclesiastical or inferior tribunals are *"alia* than the King's courts," but signify that the cause is prohibited *"ad aliud examen,"* and that in the inferior court it is *"contra coronam et dignitatem regiam."*

(n2)Footnote 2. Edw. Ad. Juris. 17; Smart v. Wolff, 3 T.R. 348, 100 Engl. Repr. 600.

(n3)Footnote 3. *The Jerusalem, 2 Gall. 345* , Fed. Cas. No. 7294 (C.C.Mass. 1814).

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1-III Benedict on Admiralty § 42

§ 42 Agreement Between Admiralty and Common Law Judges.

In 1575, in the reign of Elizabeth, before the controversy had assumed that angry character which it afterward exhibited, the judges of the Admiralty and the common law judges entered into an agreement on the subject of prohibitions. n1 To this agreement, the Queen does not appear to have been a party but during the remainder of her reign, few prohibitions appear to have been issued against the Admiralty, two or three being mentioned by Coke in 4th Institutes. The agreement of 1575 is worthy of notice, as an evidence that the common law courts claimed a sort of legislative or prerogative power in matters of jurisdiction. They do not appear so much to be deciding principles and declaring the law, as granting requests, consenting to agreements, and making promises. It was indeed so: the law was on the side of the Admiralty; the power was in the hands of the common law judges. n2

The agreement of 1575 was as follows:

> *"The Request of the Judge of the Admiralty to the Lord Chief Justice of her Majesty's Bench and his Colleagues, and the Judges' Agreement, the 7th of May, 1575.*
>
> **Request.**
>
> "That after judgment or sentence definitive given in the Court of Admiralty, in any cause, and appeal made from the same to the High Court of Chancery; that it may please them to forbear granting of any writ of prohibition, either to the judge of the said court, or to Her Majesty's delegates, at the suit of him, by whom such appeal shall be made, seeing by choice of remedy that way, in reason he ought to be contented therewith, and not to be relieved any other way.
>
> **Agreement.**
>
> "It is agreed by the Lord Chief Justice and his colleagues, that after sentence given by the delegates, no prohibition shall be granted; and yet if there be no sentence, if a prohibition be not sued within the next term following sentence in the Admiral Court, or within two terms next after, at the farthest, no prohibition shall pass to the delegates.

Request.

"Also, that prohibitions be not granted hereafter upon bare suggestions or surmises, without summary examination and proof made thereof, wherein it may be lawful to the Judge of the Admiralty and the party defendant, by the favor of the court, to have counsel, and to plead for the stay thereof, if there shall appear cause.

Agreement.

"They have agreed, that the judge of the Admiralty, and the party defendant shall have counsel in court, and plead the stay, if there may appear evident cause.

Request.

"That the Judge of the Admiralty, according to such ancient order as hath been taken, 2 Ed. I, by the king and his counsel, and *according to the letters patents of the Lord Admiral* for the time being, and allowed of by other kings of this land ever since, and by custom, time out of memory of man, may have and enjoy the cognition of all contracts, and other things arising, as well beyond, as upon the sea, without any let, or prohibition.

Agreement.

"This is agreed upon by the said Lord Chief Justice and his colleagues.

Request.

"That the said Judge may have and enjoy the knowledge and breach of charter parties made between masters of ships and merchants, for voyages to be made to the parts beyond the seas, and to be performed upon, and beyond the sea, according as it hath been accustomed, time out of mind, and according to the good meaning of the statute of 32 H. VIII, c. 14, though the same charter parties happen to be made within the Realm.

Agreement.

"This is likewise agreed upon, for things to be performed either upon, or beyond the seas, though the charter party be made upon the land, by the statute of 32 H. VIII, c. 14.

Request.

"That writs of *corpus cum causa* be not directed to the said Judge in causes of the nature aforesaid; and if any happen to be directed, that it may please them to accept the return thereof, with the cause, and not the body, as it hath always been accustomed.

Agreement.

"If any writ of this nature be directed in the causes before specified, they are content to return the bodies again to the Lord Admiral's gaol, upon certificate made of the cause to be such, or if it be for contempt, or disobedience done to the court in any such cause."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. In Roscoe's Admiralty Jurisdiction & Practice [English] 5th Ed., Introduction p. 10, it is observed that the document seems not to have been made public in the reign of Elizabeth and that it is difficult to ascertain on what foundation rested the subsequent assertion of its existence.

(n2)Footnote 2. Prynne, 98; Edw. Ad. Juris. 21.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter III. THE ENGLISH ADMIRALTY DURING THE AGE OF CONFLICTWITH THE COMMON LAW AND THEREAFTER AT THE TIMEOF AMERICAN REVOLUTION AND SINCE.

1-III Benedict on Admiralty § 43

§ 43 Grievances of 1611.

The admiralty jurisdiction, at that time, appears to have extended to all cases of freight, charter parties, bottomry, mariners' wages, debts due to material-men for the building and repairing of ships, and, generally, to all maritime contracts. When, however, the Queen was dead, as well as most of those who were parties to the agreement, and reference was made to it, Coke denied its authority, because, as he said, the paper from which it was read to him was not subscribed with the hand of any judge; and, on his own responsibility, he declared that the judges of the King's Bench had never assented to it; and prohibitions were granted by him, more than ever before. The learned doctors of the Admiralty, however, still endeavored to convince the higher powers that their jurisdiction had no temptation to encroachment, and that, without wishing to enlarge the limits of their courts, they were only actuated by a love of justice and respect for their native dignities; but their outcries were little listened to by their rapacious invaders. The practitioners in the Admiralty were not the only sufferers from this useless conflict. The merchants--*i.e.*, the people--called loudly for a cessation of hostilities, and the Crown was appealed to in 1611, when the agreement of 1575 was read before the King, James I, as an agreement to which the judges of the common law and the Admiralty were parties. n1 At that time a specification of grievances was submitted to the King by the Lord High Admiral, and the Judge of the Admiralty. His Majesty ordered Dr. Dunn, the Judge of the Admiralty, to arrange the matters of complaint in specific articles, and, it seems, to submit them to the common law judges, to be answered by them; and they are said, by Coke, to have made the answers which he gives and which breathe his imperious spirit. The irresolute James does not appear to have made order in the premises but to have allowed the agreement of 1575 and the court of Admiralty to defend themselves as they best could; and Coke triumphed. n2

This list of grievances is known as *Articuli Admiralitatis.* They are as follows, with the caption of Coke. n3

> **"Articuli Admiralitatis.**
>
> "The complaint of the Lord Admiral of *England* to the King's most Excellent Majesty, against the Judges of the Realm, concerning Prohibitions granted to the Court of the Admiralty, 11 *Febr. penultimo die Termini Hillarii, Anno* 8 *Jac. Regis:* The effect of which complaint was after by his Majesties commandment set down in Articles by Doctor *Dun,* Judge of the Admiralty; which are as followeth, with

answers to the same by the Judges of the Realm; which they afterwards confirmed by three kinds of authorities in Law. 1. By Acts of Parlament. 2. By judgments and judicial proceedings; and lastly, by Book cases.

"Certain Grievances, whereof the Lord Admiral and his officers of the Admiralty do especially complain, and desire redress.

"1*st Objection.*--That whereas the conusance of all contracts and other things done upon the sea, belongeth to the Admiral jurisdiction, the same are made triable at the common law, by supposing the same to have been done in Cheapside, or such places.

"The Answer.--By the laws of this realm the Court of the Admiral hath no conusance, power or jurisdiction of any manner of contract, plea or querele within any county of the realm, either upon the land or the water; but every such contract, plea or querele, and all other things rising within any county of the realm, either upon the land or the water, and also wreck of the sea ought to be tried, determined, discussed and remedied by the laws of the land, and not before or by the Admiral nor his Lieutenant in any manner. So as it is not material whether the place be upon the water *infra fluxum et refluxum aquae:* but whether it be upon any water within any county. Wherefore we acknowledge that of contracts, pleas and querels made upon the sea, or any part thereof which is not within any county (from whence no trial can be had by twelve men) the Admiral hath, and ought to have jurisdiction. And no precedent can be showed that any prohibtion hath been granted for any contract, plea or querele concerning any marine cause made or done upon the sea, taking that only to be the sea wherein the Admiral hath jurisdiction, which is before by law described to be out of any county. See more of this matter in the answer to the sixth article.

"2*d Objection.*--When actions are brought in the Admiralty upon bargains and contracts, made beyond the seas, wherein the common law cannot administer justice, yet in these cases prohibitions are awarded against the Admiral Court.

"The Answer.--Bargains or contracts made beyond the seas, wherein the common law cannot administer justice (which is the effect of this article), do belong to the constable and marshal: for the jurisdiction of the Admiral is wholly confined to the sea, which is out of any county. But if any indenture, bond or other specialty, or any contract be made beyond the sea, for doing of any act or payment of any money within this realm, or otherwise, wherein the common law can administer justice, and give ordinary remedy; in these cases neither the constable and marshal, nor the Court of the Admiralty hath any jurisdiction. And, therefore, when this Court of the Admiralty hath dealt therewith in derogation of the common law, we find that prohibitions have been granted, as by the law they ought.

"*3d Objection.*--Whereas, time out of mind, the Admiral Court hath used to take stipulations for appearance and performance of the acts and judgments of the same court: it is now affirmed by the judges of the common law that the Admiral Court is no Court of Record, and therefore not able to take such stipulations: and hereupon prohibitions are granted to the utter overthrow of that jurisdiction.

"The Answer.--The Court of the Admiralty proceeding by the civil law is no Court of Record, and therefore cannot take any such recognizance as a Court of Record may do. And for taking of recognizances against the laws of the realm, we find that prohibitions have been granted, as by law they ought. And if an erroneous sentence be given in that court, no writ of error, but an appeal before certain delegates doth lie, as it appeareth by the statute of 8 Eliz. Regina, cap. 5, which proveth that it is no Court of Record.

"4*th Objection.*--That charter parties, made only to be performed upon the seas, are daily withdrawn

from that court by prohibitions.

"The Answer.--If the charter party be made within any city, port, town or county of this realm, although it be to be performed either upon the seas, or beyond the seas, yet is the same to be tried and determined by the ordinary course of the common law, and not in the Court of the Admiralty. And therefore when that court hath incroached upon the common law in that case, the Judge of the Admiralty and the party suing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the laws of the realm.

5*th Objection.*--That the clause of *Non obstante statuto,* which hath foundation in his Majesty's Prerogative, and is current in all other grants, yet in the Lord Admiral's Patent is said to be of no force to warrant the determination of the causes committed to him in his Lordship's Patent, and so rejected by the judges of the common law.

"The Answer.--Without all question the statutes of 13 R. 2, cap. 3, 15 R. 2, cap. 5, and 2 H. 4, cap. 11, being statutes declaring the jurisdiction of the Court of the Admiral, and wherein all the subjects of the realm have interest, cannot be dispensed with by any *non obstante,* and therefore not worthy of any answer; but by colour thereof, the Court of the Admiralty hath, contrary to those Acts of Parliament, incroached upon the jurisdiction of the common law, to the intolerable grievance of the subjects, which hath oftentimes urged them to complain in your Majesty's Courts of ordinary justice at Westminister, for their relief in that behalf.

"6*th Objection.*--To the end that the Admiral Jurisdiction may receive all manners of impeachment and interruption, the rivers beneath the first bridges, n4 where it ebbeth and floweth, and the ports and creeks are by the judge of the common law affirmed to be no part of the seas, nor within the Admiral Jurisdiction: and thereby prohibitions are usually awarded upon actions depending in that court, for contracts and other things done in those places; notwithstanding that by use and practice time out of mind, the Admiral Court have had jurisdiction within such ports, creeks and rivers.

"The Answer.--The like answer as to the first. And it is further added, that for the death of a man, and of mayhem (in those two cases only) done in great ships, being and hovering in the main stream only beneath the points n5 of the same rivers nigh to the sea, and no other place of the same rivers, nor in other causes, but in those two only, the Admiral hath cognizance. But for all contracts, pleas and querels made or done upon a river, haven, or creek, within any county of this realm, the Admiral without question hath not any jurisdiction, for then he should hold plea of things done within the body of the county, which are triable by verdict of twelve men, and merely determinable by the common law, and not within the Court of the Admiralty, according to the civil law. For that were to change and alter the laws of the realm in those cases, and make those contracts, pleas and querels triable by the common laws of the realm, to the drawn *ad aliud examen,* and to be sentenced by the Judge of the Admiralty according to the civil laws. And how dangerous and penal it is for them to deal in these cases, it appeareth by judicial precedents of former ages. But sees the answer to the first article.

"7*th Objection.*--That the agreement made in Anno Domini, 1575, between the Judges of the King's Bench and the Court of the Admiralty, for the more quiet and certain execution of Admiral Jurisdiction, is not observed as it ought to be.

"The Answer.--The supposed agreement mentioned in this article, hath not as yet been delivered unto us, but having heard the same read over before his Majesty (out of a paper not subscribed with the hand of any judge), we answer, that for so much thereof as differeth from these answers, it is against the laws and statutes of this realm; and therefore the Judges of the King's Bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the terms of the laws of the realm.

"8*th Objection*.--Many other grievances there are, which, in discussing of these former, will easily appear worthy also of reformation.

"The Answer.--This article is so general, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the Lord Admiral, his Officers and Ministers principally by colour of the said void *non obstante* and for want of learned advice, have unjustly incroached upon the common laws of this realm, whereof the marvail is the less, for that the Lord Admiral, his Lieutenants, Officers and Ministers have without all colour incroached and intruded upon a right and prerogative due to the Crown, in that they have seized and converted to their own uses, goods and chattels of infinite value, taken by pirates at sea, and other goods and chattels which in no sort appertain unto his lordship by his letters patent, wherein the said *non obstante* is contained, and for the which he and his Officers remain accountable unto his Majesty. And they, now wanting, in this blessed time of peace, causes appertaining to their natural jurisdiction, incroach upon the jurisdiction of the common law, lest they should sit idle and reap no profit. And if a greater number of prohibitions (as they affirm), have been granted, since the great benefit of this happy peace, than before in time of hostility, it moveth from their own encroachments upon the jurisdiction of the common law. So as they do not only unjustly incroach, but complain also of the Judges of the Realm for doing of justice in these cases."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCharterpartiesGeneral OverviewAdmiralty LawMaritime ContractsCoverageAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. Edw. Ad. Juris. 20.

(n2)Footnote 2. Introduction to Hall's Admiralty, x; Prynne, 99; Edw. Ad. Juris. 20.

(n3)Footnote 3. Zouch, Intro.; 4 Inst. 134.

(n4)Footnote 4. See note 5, *post.*

(n5)Footnote 5. *Pontes, pontibus,* bridges, it will be perceived, are translated by Coke, in the above answer, *points,* as though meaning the headlands at the mouth of the rivers--a gross perversion of language.

Benedict on Admiralty

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1-III Benedict on Admiralty § 44

§ 44 The Agreement of 1632.

The common law judges seem to have met with no further check during the residue of the reign of James I, and the first seven years of the reign of Charles I. In that year, the Lord High Admiral and Sir Henry Martyn, the Judge of the Admiralty, brought the matter again before the King and lords of his council, before whom the matters between the Admiralty and the Judges were several times heard and debated at large; and at last these ensuing Articles were drawn up, read, agreed, and resolved at the council board, by the King himself, and all the lords of his council, twenty-three in number, including Lord Keeper Coventry and Lord Privy Seal Montague, eminent lawyers, and signed by all the twelve judges of the common law courts, and by the "grand lawyer, Mr. William Noye, Attorney-General, a great professor and pillar of the common law," and by the Judge of the Admiralty, entered in the Council Table Register of Causes, and the original by his Majesty's command kept in the Council chest. n1

"At Whitehall, 18th of February, 1632. Present: The King's Most Excellent Majesty.

Lord Keeper,	Earl Morton,
Lord Archb. of York,	Lord V. Wimbleton,
Lord Treasurer,	Lord Vis. Wentworth,
Lord Privy Seal,	Lord V. Faukland,
Earl Marshall,	Lord Bishop of London,
Lord Chamberlain,	Lord Cottington,
Earl of Dorset,	Lord Newburgh,
Earle of Carlisle,	Mr. Treasurer,
Earl of Holland,	Mr. Comptroller,
Earl of Darby,	Mr. Vice Chamberlain,
Lord Chancellor of Scotland,	Mr. Secretary Coke,
Mr. Secretary Windebank.	

"This day his Majesty being present in Council, the articles and propositions following for the accommodating and settling of the differences concerning prohibitions, arising between his Majesty's Courts of Westminster, and his Court of Admiralty, were fully debated, and resolved by the Board. And were then likewise upon reading the same as well before the Judges of his Highnesse said Courts at Westminster as before the Judge of his said Court of Admiralty, and his Attorney-General, agreed unto and subsigned by them all in his Majesty's presence, and the transcript thereof ordered to be entered into the register of Council Causes and the original to remain in the Council chest.

"1. If suit shall be commenced in the Court of Admiralty upon contracts made, or other things personally done beyond the seas, or upon the sea, no prohibition is to be awarded.

"2. If suit before the Admiral for freight, or mariners' wages, or for the breach of charter parties for voyages to be made beyond the sea, though the charter parties happen to be made within the realm, and although the money be payable within the realm, so as the penalty be not demanded, a prohibition is not to be granted; but if suits be for the penalty, or if question be made, whether the charter parties were made or not; or whether the plaintiff did release, or otherwise discharge the same within the realme, that is to be tried in the King's Courts at Westminster, and not in the King's Court of Admiralty, so that first it be denied upon oath, that a charter partie was made, or a denial upon oath tendered.

"3. If suit shall be in the Court of Admiralty for building, amending, saving, or necessary victualling of a ship, against the ship itself, and not against any party by name, but such as for his interest makes himself a party, no prohibition is to be granted, though this be done within the realm.

"4. Likewise, the Admiral may inquire of, and redresse all annoyances and obstructions in all navigable rivers, beneath the first bridges, that are any impediments to navigation, or passage to, and from the sea, and also try personal contracts and injuries done there, which concern navigation upon the sea, and no prohibition is to be granted in such cases.

"5. If any be imprisoned, and upon *habeas corpus*, if any of these be the cause of imprisonment, and that be so certified, the partie shall be remained.

(Signed)	Tho. Trevor,
Thomas Richardson,	Geo. Vernon,
Ro. Heath,	James Weston,
Humphrey Davenport,	Robert Barkley,
John Denham,	Fran. Craweley,
Rich. Hutton,	Henry Marten,
William Jones,	William Noye,
George Croke,	Ex. T. Meautys."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCharterpartiesParty LiabilityGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. Prynne, Ad. 100; Introduction to Hall's Admiralty, xxiv.

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Chapter III. THE ENGLISH ADMIRALTY DURING THE AGE OF CONFLICTWITH THE COMMON LAW AND THEREAFTER AT THE TIMEOF AMERICAN REVOLUTION AND SINCE.

1-III Benedict on Admiralty § 45

§ 45 Mutilation of Croke's Reports.

The above is taken from Prynne, who was keeper of the records and had the means of securing the greatest accuracy and who seems to have had them carefully examined and certified and sets them out at length, in form, and with the signatures. They may be found in one form or another, published in many other places, but no two copies seem to agree in all the important particulars, especially in the second and fourth paragraphs; n1 and it is not a little remarkable that, having been preserved by Sir George Croke (who himself signed them), and published in two editions of his Reports, without criticism or comment, as evidence of the law, and referred to in the index, under the word *Admiralty*, in the third edition of those Reports, after the death of Sir George Croke, and of most, if not all, the judges and councillors who signed them, they should have been, without reason or apology, omitted, and their place left blank on the page, while the original reference to them was allowed to stand in the index, and so remains in all subsequent editions of Croke to this day. This very extraordinary mutilation of a book, then of high authority in the courts, tends to show that the common law jurists, who did not themselves actually perpetrate, were still willing to connive at the falsification of documents and books, to accomplish a triumph originally attempted from unworthy motives and pursued with persevering zeal, apparently from pride of opinion, or motives as discreditable as those in which the controversy had originated. n2

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. Dunlap's Ad. Prac. 13; Zouch, Ass. 7; Godolphin, 158.

(n2)Footnote 2. Croke's Reports Part 3, p. 296; various editions; Prynne, 100.

Benedict on Admiralty

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1-III Benedict on Admiralty § 46

§ 46 Ordinances of 1648.

These Articles were not liable to the objection that they were not signed, and for a number of years they kept the peace between the courts. n1 The troubles, however, between the King and the parliament and his people soon commenced and resulted in the overthrow of the royal authority and the establishment of the Protectorate. Little more is now known of the contest, except that it was probably renewed as soon as the check of royal authority was withdrawn. The republican parliament was then called upon by the friends of trade and commerce to take sides with the Admiralty and to secure to the people the benefits of its more enlarged jurisdiction. The Ordinance of 1648 was the consequence. n2 It was as follows:

Chapter 112.

The Jurisdiction of the Court of Admiralty Settled.

> "The Lords and Commons assembled in Parliament, finding many inconveniences daily to arise, in relation both to the trade of this Kingdom, and to the Commerce with foreign parts, through the uncertainty of jurisdiction in the trial of maritime causes, do ordain, and be it ordained by the authority of Parliament, That the Court of Admiralty shall have cognizance and jurisdiction against the ship or vessel with the tackle, apparel and furniture thereof, in all causes which concern the repairing, victualing and furnishing provisions for the setting of such ships or vessels to sea, and in all cases of bottomry, and likewise in all cases of contracts made beyond the seas concerning shipping or navigation, or damages happening thereon, or arising at sea in any voyage; and likewise in all cases of charter parties, or contracts for freight, bills of lading, mariners' wages, or damages in goods laden on board ships, or other damages done by one ship or vessel to another, or by anchors, or want of laying of buoys, except always that the said Court of Admiralty shall not hold pleas, or admit actions upon any bills of exchange, or accounts betwixt merchant and merchant, or their factors.
>
> "And be it ordained, That, in all and every the matters aforesaid, the said Admiralty Court shall and may proceed, and take recognizances in due form, and hear, examine, and finally end, decree, sentence and determine the same according to the laws and customs of the sea, and put the same decrees and

sentences in execution without any let, trouble or impeachment whatsoever, any law, statute or usage to the contrary heretofore made in any wise notwithstanding; saving always and reserving to all and every person and persons, that shall find or think themselves aggrieved by any sentence definitive, or decree having the force of a definitive sentence, or importing a damage not to be repaired in the definitive sentence given, or interposed in the Court of Admiralty, in all or any of the cases aforesaid, their right of appeal in such form as hath been used from such decrees or sentences in the said Court of Admiralty.

"Provided also, That this Ordinance shall continue authority aforesaid, that from henceforth there shall be three judges always appointed of the said court, to be nominated from time to time by both Houses of Parliament, or such as they shall appoint; and that every of the judges of the said court for the time being, that shall be present at the giving any definitive sentence in the said Court shall at the same time, or before such sentence given openly in Court deliver his reasons in law of such his sentence or of his opinion concerning the same; and shall also openly in Court give answers and solutions (as far as he may), to such laws, customs or other matter as shall have been brought or alleged in Court, on that part against whom such sentence or opinions shall be given or declared respectively.

"Provided also, That this Ordinance shall continue for three years, and no longer.

"Passed, the 12th April, 1648." n3

Continued and made perpetual by Ordinances of 1651, c. 3, 1654, c. 21 and 1656, c. 10.

Expired at the Restoration, anno 1660.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. In the Harleian Miscellany, vol. 8, pp. 371 to 382, will be found a pamphlet printed in 1690, entitled "Reasons for settling Admiralty Jurisdiction, etc., etc." attached to which are the articles of Feb. 18, 1632, and an order of Feb. 22, 1632, to the courts of common law to discontinue all prohibitions which come within the scope of the articles, and a petition of merchants for their reestablishment. In this petition it is stated as the result of that order that "the foreign contracts made beyond the sea, and the matter of charter parties for voyages, all ship-building, repairing, victualling of ships, mariners' wages, and other matters of mere Admiralty, did from thenceforth proceed in their due course in the said Court of Admiralty."

(n2)Footnote 2. Introduction to Hall's Admiralty, xxvi.

(n3)Footnote 3. Scobell's Collection of the Acts and Ordinances of the Republican Government of England, Anno 1648, p. 147.

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1-III Benedict on Admiralty § 47

§ 47 Godolphin on the Jurisdiction, in 1685.

Under this Ordinance, the Admiralty was administered till the Restoration by Dr. Godolphin, who had been one of the judges of the Admiralty under Cromwell, and had written his "View of the Admiral Jurisdiction." So great was his reputation for integrity and knowledge, that at the Restoration he was made King's Advocate and he immediately published his work, in which the actual jurisdiction of the court is set forth as follows: n1

> "Within the cognizance of this jurisdiction are all affairs that peculiarly concern the Lord High Admiral, or any of his officers *quatenus* such; all matters immediately relating to the navies of the kingdome, the vessels of trade, and the owners thereof, as such; all affairs relating to mariners, whether ship-officers or common mariners, their rights and privileges respectively; their office and duty; their wages; their offences, whether by wilfulness, casualty, ignorance, negligence, or insufficiency, with their punishments. Also all affairs of commanders at Sea, and their under-officers, with their respective duties, privileges, immunities offences, and punishments.
>
> "In like maner all matters that concern owners and proprietors of ships, as such; and all Masters, Pilots, Steersmen, Boatswains, and other Ship-Officers; all Ship-wrights, Fishermen, Ferry-men and the like; also all causes of seizures, and Captures made at Sea, whether *jure Belli Publici*, or *jure Belli Privati*, by way of Reprizals, or *jure nullo* by way of Piracy; also all Charter parties, Cocquets, Bills of Lading, Sea-Commissions, Letters of safe Conduct, Factories, Invoyces, Skippers Rolls, Inventories, and other Ship-papers; also all causes of Freight, Mariner's wages, Load-manage, Port-charges, Pilotage, Anchorage and the like.
>
> "Also all causes of Maritime Contracts *indeed* or *as it were Contracts*, whether upon, or beyond the Seas; all causes of money lent to Sea, or upon the Sea, called *Foenus Nauticum, Pecunia trajectitia, usura maritima, Bomarymony*, the Gross Adventure, and the like; all causes of pawning, hypothecating, or pledging of the ship itself, or any part thereof, of her Lading, or other things at Sea; all causes of *Jactus*, or casting goods overboard; and Contributions, either for Redemption of Ship or Lading, in case of seizure by Enemies or Pyrats, or in case of goods damnified, or disburdening of ships, or other chances, with Average; also all causes of spoil and depredations at Sea, Robberies and Pyracies; also all

causes of Naval Consort-ships, whether in War or Peace; Ensurance, Mandates, Procurations, Payments, Acceptilations, Discharges, Loans or Oppignorations, Emptions, Venditions, Conventions, taking or letting to Freight, Exchanges, Partnership, Factoridge, Passage-money, and whatever is of Maritime nature, either by way of *Navigation* upon the Sea, or of *Negotiation* at or beyond the Sea in the way of Marine Trade and Commerce; also the Nautical Right which Maritime persons have in ships, their Apparel, Tackle, Furniture, Lading and all things pertaining to Navigation; also all causes of Out-readers, or Out-riggers, Furnishers, Hirers, Fraighters, Owners, Part-owners of ships, as such; also all causes of Privileged ships, or Vessels in his Majesties Service or his Letters of *Safe Conduct;* also all causes of shipwreck at Sea, Flotson, Jetson, Lagon, Waiffs, Deodands, Treasure-Trove, Fishes-Royal; with the Lord Admiral's shares, and the Finders respectively.

"Also all causes touching Maritime offences or misdemeanours, such as cutting the Buoy-Rope or Cable, removal of an Anchor whereby any Vessel is moored, the breaking the Lord Admiral's Arrests, made either upon person, ship, or goods; Breaking Arrests on ships for the King's Service, being punishable with Confiscation by the Ordinance made at *Grimsby* in the time of *Rich. I.* Mariners absenting themselves from the King's Service after their being prest; Impleading upon a Maritime Contract, or in a Maritime Cause elsewhere than in the Admiralty, contrary to the Ordinance made at *Hastings* by *Ed. I* n2 and contrary to the Laws and Customes of the Admiralty of *England;* Forestalling of Corn, Fish &c. on shipboard, regrating and exaction of water-officers; the appropriating the benefit of Saltwaters to private use exclusively to others without his Majesties Licence; Kiddles, Wears, Blind stakes, Water mills, and the like, to the obstruction of Navigation in great Rivers; False weights or measures on ship-board; Concealing of goods found about the dead within the Admiral Jurisdiction, or of Flotsons, Jetsons, Lagons, Waiffs, Deodands, *Fishes, Royal,* or other things wherein the Kings Majesty or his Lord Admiral have interest; Excessive wages claimed by Ship-wrights, Mariners, &c. Maintainers, Abettors, Receivers, Concealers or Comforters of Pyrats; Transporting Prohibited goods without Licence; Draggers of Oysters and Muscles at unseasonable times, *viz.* between Mayday, and Holy-rood-day; Destroyers of the brood or young Fry of Fish; such as claim Wreck to the prejudice of the King or Lord Admiral; such as unduly claim privileges in a Port; Disturbers of the Admiral Officers in execution of the Court-decrees; Water-Bayliffs and Searchers, not doing their duty; Corruption in any of the Admiral-Court-Officers; Importers of unwholesome Victuals to the peoples prejudice; Fraighters of strangers Vessels contrary to the Law; Transporters of prisoners, or other prohibited persons not having Letters of safe Conduct from the King, or his Lord Admiral; Casters of Ballasts into Ports or Harbours, to the prejudice thereof; Unskilful Pilots whereby ship or man perish; Unlawful Nets, or other prohibited Engines for Fish; Disobeying of Embargos, or going to Sea contrary to the Prince his command, or against the Law; Furnishing the ships of Enemies, or the Enemy with ships; All prejudice done to the Banks of Navigable Rivers, or to Docks, Wharffs, Keys, or anything whereby Shipping may be endangered, Navigation obstrcted, or Trade by Sea impeded; Also embezilments of ship-tackle or furniture; all substractions of Mariners' wages; all defrauding of his Majesties Customes, or other Duties at Sea; also all prejudices done to, or by passengers a shipboard; and all damages done by one ship or Vessel to another; also to go to Sea in tempestuous weather, to sail in devious places, or among Enemies, Pyrats, Rocks, or other dangerous places, being not necessitated thereto; all clandestine attempts by making privy Cork-holes in the Vessel, or otherwise, with intent to destroy or endanger the ship; also the shewing of false Lights by Night either on shore, or in Fishing Vessels, or the like, on purpose to intice Sailors, to the hazard of their Vessels; all wilful or purposed entertaining of unskilful Masters, Pilots or Mariners, or sailing without a Pilot, or in Leaky and insufficient Vessels; also the overburdening the ship above her birthmark, and all ill stowage of goods a shipboard; also all Importation of *Contrabanda* goods, or Exportation of goods to prohibited Ports, or the places not designed; together with very many other things relating either to the state or condition of persons Maritime, their rights, their duties, or their defaults."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. Godolphin, "View of the Admiral Jurisdiction," (1685), pp. 43-48.

(n2)Footnote 2. *Supra*,§§ 29, 30, 31.

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1-III Benedict on Admiralty § 48

§ 48 Submission of the Admiralty after 1664.

The Ordinance of 1648 ceased to be in force at the Restoration and the common law judges again prohibited the Admiralty. The merchants petitioned for a reobservance of the rules of 1632; but neither their petitions, nor Judge Godolphin's arguments and learning, were regarded; and the civilians, tired of the struggle, appear to have preferred a peace, however disadvantageous, to war, however justly it might be carried on. The violent opinions, first expressed by Sir Edward Coke, and afterward supported by others with more subserviency than reason, could not be resisted, and the Admiralty submitted.

No significant attempt was made at the time to resolve the matter by statute. There was indeed a statute of Queen Anne, chap. 16, § 17, which recognized the right to sue in admiralty for seamen's wages; n1 and this right was confirmed by the statute of 2 George II, chap. 36, but nothing of greater import was enacted in this field.

It is well remarked by Edwards:

> "Although so much of the ancient authority of the Admiralty Court has been rendered nugatory in this nineteenth century, that court may look back with pride and observe how well it has survived the conflict;--how the arguments which were put forth with force, by those learned civilians in the sixteenth and seventeenth centuries appear, at last, to be listened to; for now the rule of *locality*, to which it was attempted to confine the jurisdiction of the Admiralty, has almost entirely given way to the more rational one of the *subject-matter* to be adjudicated upon."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. It was held that notwithstanding this statute, prohibition may be awarded; Edmonton v. Franklyn,

Fortescue, 231.

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1-III Benedict on Admiralty § 49

§ 49 Commissions of the Vice Admirals.

The commissions to the Vice-Admirals, issued from the Lord High Admiral, and to the Vice-Admiralty courts, issued from the High Court of Admiralty, during the next hundred years, while they furnish evidence of the extent of the jurisdiction of the courts to which they were issued, and also evidence of the jurisdiction of the High Court of Admiralty from which they issued, show that, wherever prohibitions could not reach the Admiralty, there its ancient plenary and beneficial jurisdiction was deputed and exercised, originally and on appeal, without restraint. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. See Chapter IV.

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1-III Benedict on Admiralty § 50

§ 50 Action of the King's Bench.

It is thus clear that the ancient jurisdiction of the English Admiralty was of a most extended and beneficial character, embracing all maritime causes of action, but it is equally true, that by prohibitions on most inconsistent and extraordinary grounds, "granted," as Prynne says, "on sudden motions without solemn argument," the exercise of that jurisdiction was from time to time restrained by the King's Bench within very narrow limits. n1

The Court of King's Bench had power to issue prohibitions, but it had no power to extend or diminish the jurisdiction of the Admiralty. That jurisdiction was conferred by the King's prerogative and royal commission, or by statute, or immemorial usage, and not otherwise, and could be limited only in the same manner. If the King's commission, or the proper exercise of the royal prerogative, or a statute, gave the jurisdiction, the King's Bench could not deprive the court of its jurisdiction, that is to say, of its right to take cognizance of causes, although by an improper exercise of irresponsible power, it did prevent the Admiralty from exercising the jurisdiction which properly belongs to it. The right of the Admiralty depends upon the construction of the grant of jurisdiction alone, no matter how often or for what causes prohibitions may have been issued. The Court of King's Bench had neither legislative nor executive powers to enable it rightfully to dispense with the law, whether that law were founded in parliamentary or prerogative legislation.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. The following cases are illustrative of the course of decision in England at the time:

Cases concerning contracts or things done on land: Susans v. Turner, Noy, 67; Cambridge v. Penrose, 2 Dyer, 159b, note; Green v. Colduck, 1 Keble 786; Brian v. Brown 2 Dyer, 159b note; Bushel v. Jay, 1 Keble 153; Palmer v. Pope, Hobart 79, Hobart 212b; Bridgerman's Case, Hobart 11; Capp's Case, 2 Rolle. Rep 492;

Cases concerning things done on land abroad: Spanish Embassy v. Pountes, 1 Rolle Rep. 133. De Acuna v. Joliff, Hobart 79; Fane v. Pennior, 1 Keble 479; Thomlison's Case, 12 Coke 104; Audley v. Jennings, Hobart 79, 213a; Delabrochis' Case, 3 Leon 232; Ball v. Trelawny, Cro. Car. 603.

Cases concerning contracts for materials and supplies: Godfrey's Case, Latch 11; Craddock's Case, 2 Brownl. & G. 37; Leigh v. Burley, Owen, 122; The Heinrich Bjorn, L. R. 10 Prob. Div. 44; Hoare v. Clement, 2 Shower K.B. 338; Justin v. Ballam, 2 Ld, Raym. 805, 1 Salk. 34, The Neptune, 3 Knapp, P.C.C. 94.

Cases concerning contracts for construction of ressels: Tasker v. Gale, Rolle. Abr. 533 (permitting admiralty jurisdiction: see the explanation of this case in *Ramsay v. Allegre, 25 U.S. (12 Wheat.) 611, 6 L. Ed. 746*); The Neptune, 3 Hagg. Adm. 132;

Cases concerning contracts of affreightment and charter parties: Watson v. Warner, Sid. pt. 2, 161; Claude v. Cooke, 2 Keble 498; Johnson v. Drake, 1 Keble 176; Bannings' Case, Rolle Abr. 532, pl. 13; Maldonado v. Slaney, Rolle Abr. 532.

Cases concerning contracts for sale of goods (*which obviously were not within admiralty jurisdiction*): Bylotta v. Pointel, 2 Dyer 159b; Haywood v. Davyes, Rolle Abr. 533 pl. 22.

Cases concerning seamen's wages: By and large admiralty was allowed to have jurisdiction except sometimes in the case of claims of masters or contracts under seal. Clay v. Snelgrave, 1 Ld. Raym. 576, Carth. 518; Queen v. London, 6 Mod. 205; Brown v. Benn, 2 Ld. Raym. 1247; Opy v. Child, 1 Salk 31; *Hook v. Moreton, 1 Ld. Raym. 397* ; *Alleson v. March, 2 Vent. 181* ; Jones' Case, Winch. 8; *Day v. Searl, 2 Strange 968* ; Howe v. Nappier, 4 Burr. 1944; Rex v. Pike, 2 Keble 779; *Coke v. Cretchet, 3 Lev. 60* ; *Mariners' Case, 8 Mod. 379* ; *Bens v. Parre, 2 Ld. Raym. 1206* ; Gawn v. Grandee, Holt. 49; The Harriet, Lush. Adm. Cas. 285; The Mona, 1. W. Rob. 137; The Sydney Case, 2 Dodson. Adm. 11; Bene v. Wilcocks, 2 Dyer. 159b; The Riby Grove, 2 W. Rob. 52; The Debricsia, 3 W. Rob. 33; Blackwell v. Clerk, 1 Keble 684e; The City of London, 1 W. Rob. 89e; Mills v. Gregory, Sayer 127; *Wells v. Osman, 2 Ld. Raym. 1045* ; *Wells v. Osmond, 6 Mod. 238* ; Wheeler v. Thompson, 1 Strange. 707; Mill v. Long, Sayer 136; *Bayley v. Grant, 1 Ld. Raym. 632* ; Reed v. Chapman, 2 Barnard K.B. 160; Woodward v. Bonithan, T. Raym. 3; Ragg v. King, 1 Barnard K.B. 297; The Herzogin Marie, Lush. Adm. Cas. 292; Brown Case, Holt 49; Edmantys v. Franklyn. Fortescue 231.

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1-III Benedict on Admiralty § 51

§ 51 Narrow Jurisdiction of the English Admiralty in 1775.

Our situation as British colonies, previous to the Revolution, and the adoption of the English common law, as interpreted in the English books, did much to influence opinion in this country in favor of the narrow English rule of Admiralty jurisdiction which prevailed at that time. That narrow platform of jurisdiction was only what remained, after long strife between the courts of common law and the Court of Admiralty had resulted in confining the Admiralty to the following very inconsiderable class of cases: n1

To enforce judgments of foreign courts of Admiralty, where the person or the goods were within the reach of the court;

Mariners' wages, where the contract was not under seal, and was made in the usual form;

Bottomry, in certain cases and under many restrictions and respondentia bonds on cargo;

Salvage, where the property was not cast on shore;

Cases between part owners disputing about the employment of the ship and possession of Ships where no title was involved;

Collisions and injuries to property or persons on the high seas;

Droits of the Admiralty.

The Court had also jurisdiction over the goods of pirates and goods piratically taken, and as a part of its old criminal and disciplinary jurisdiction (and distinct from its jurisdiction over torts) it entertained suits against masters of ships for assaults and battery committed on the high seas where the complainants were officers, seamen or passengers of the ship.

This was all that was left of that large jurisdiction which it had before rightfully exercised for centuries.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawFinds & SalvageOwnershipAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. Halsbury's Laws of England (Simonds [Third] Edition), p. 48, 3 Blackstones Commentaries 106; The Zeta (Mersey Docks and Harbour Board v. Turner), [1893] A.C. 468, 63 L.J.P. 17, 69 L. T 630, 57 JP. 660, 9 T.L.R. 624, 7 Asp. M.L.C. 369; Raft of Timber, 2 Wm. Rob. 251, (1844); The Eleanor, 6 Ch. Rob. 39 (1805); The Warrior, 2 Dods, 288 (1818); The Atlas, 2 Hag. Adm. (1827); Opy v. Adison 12 Mod. Rep. 38 (1693); The Hercules, 2 Dods 353 (1819); and see the cases cited at n.1 to § 50.

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1-III Benedict on Admiralty § 52

§ 52 Revival of the Jurisdiction.

In 1840 there began a movement for a revival of the ancient English Admiralty jurisdiction. In that year the first of the so-called Admiralty Court Acts was passed, n1 followed in 1846, 1854, 1861 and 1868 by other Acts, n2 all tending to give a broader and fuller jurisdiction to the High Court of Admiralty, so that by the year 1873 that court had general jurisdiction of matters of title and mortgage of ships, salvage, towage and necessaries, building, equipping and repairing ships, claims on bills of lading and for damage to goods, questions of account between part owners, claims for life salvage and seamen's wages, including master's wages, and jurisdiction of any claim for damage done by any ship.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawFinds & SalvageOwnershipAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityAdmiralty LawShippingBills of LadingGeneral OverviewGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. 3 & 4 Vict. c. 65.

(n2)Footnote 2. 9 & 10 Vict. c. 99; 17 & 18 Vict. c. 104; 24 Vict. c. 10; 31 & 32 Vict. c. 71.

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1-III Benedict on Admiralty § 53

§ 53 Consolidation of the Courts.

In the year 1873, the High Court of Admiralty was united and consolidated with the High Court of Chancery of England, the Court of Queen's Bench, The Court of Common Pleas at Westminster, the Court of Exchequer, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy to form the Supreme Court of Judicature. Later the Supreme Court was regulated by the Supreme Court of Judicature (Consolidation) Act, 1925, and several Administration of Justice Acts passed from time to time. As thus organized the Supreme Court had two permanent divisions, the High Court of Justice, for the hearing of original matters, and the High Court of Appeal, for the hearing of appeals. There were also divisions of the High Court of Justice, one of which was known as the Probate, Divorce, and Admiralty Division, to which causes of maritime nature were assigned. The divisions were constituted merely for the better distribution of work; all the jurisdiction vested in the High Court belonged to all the divisions alike and all the judges of the High Court had equal power, authority and jurisdiction, so that any judge could hear any cause or transfer it to another division. The result of this naturally has been to dispel the conflict between the admiralty and common-law jurisdiction, since both kinds of cases may be heard by the same judge in the same division of the High Court. As a matter of practice, however, maritime causes were assigned to the Probate, Divorce and Admiralty Division.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

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1-III Benedict on Admiralty § 54

§ 54 The Admiralty Court As Now Constituted and Its Present Jurisdiction.

The Administration of Justice Act, 1970, has made changes in the nomenclatures of the Divisions of the High Court of Justice and the distribution of the judicial work. By Section 2 of the Act, there has been constituted as part of the Queen's Bench Division of the High Court, an Admiralty Court to take Admiralty business, that is to say causes and matters assigned to that division and involving the exercise of the High Court's Admiralty jurisdiction, or its jurisdiction as a prize court. This Section further provides that the judges of the Adimarlty Court shall be such of the judges of the High Court as the Lord Chancellor may from time to time nominate to be Admiralty Judges. The Act stresses the position that nothing in the Section is to be taken as prejudicing provisions of the Supreme Court of Judicature (Consolidation) Act 1925 which enable the whole jurisdiction of the High Court to be exercised by any judge of that court.

The present admiralty jurisdiction of the High Court is derived partly from statute and partly from the inherent jurisdiction of the High Court of Admiralty. n1 Section 1 of the Administration of Justice Act 1956 as amended by the Administration of Justice Act 1970 provides as follows: n2

"1. Admiralty Jurisdiction of the High Court

"(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims--

(*a*) any claim to the possession or ownership of a ship or to the ownership of any share therein;

(*b*) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

(*c*) any claim in respect of a mortgage of or charge on ship or any share therein;

(*d*) any claim for damage done by a ship;

(*e*) any claim for damage received by a ship;

(*f*) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(*g*) any claim for loss of or damage to goods carried in a ship;

(*h*) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(*j*) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section fifty-one of the Civil Aviation Act, 1949, of the law relating to salvage to aircraft and their apparel and cargo);

(*k*) any claim in the nature of towage in respect of a ship or an aircraft;

(*l*) any claim in the nature of pilotage in respect of a ship or an aircraft;

(*m*) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

(*n*) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;

(*o*) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts, 1894 to 1954, is recoverable as wages or in the court and in the manner in which wages may be recovered;

(*p*) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(*q*) any claim arising out of an act which is or is claimed to be a general average act;

(*r*) any claim arising out of bottomry;

(*s*) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty, together with any other jurisdiction which either was vested in the High Court of Admiralty immediately before the date of the commencement of the Supreme Court of Judicature Act, 1873 (that is to say, the first day of November, eighteen hundred and seventy-five) or is conferred by or

> under an Act which came into operation on or after that date on the High Court as being a court with Admiralty jurisdiction and any other jurisdiction connected with ships or aircraft vested in the High Court apart from this section which is for the time being assigned by rules of court to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court.

"(2) The jurisdiction of the High Court under paragraph (*b*) of section (I) of this section includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such order as the court thinks fit.

"(3) The reference in paragraph (*j*) of subsection (I) of this section to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck as, under sections five hundred and forty-four to five hundred and forty-six of the Merchant Shipping Act, 1894, or any Order in Council made under section fifty-one of the Civil Aviation Act, 1949, are authorised to be made in connection with a ship or an aircraft.

"(4) The preceding provisions of this section apply--

> (*a*) in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;
>
> (*b*) in relation to all claims, wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
>
> (*c*) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

"Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Acts, 1894 to 1954."

It should be noted that the section itself preserves any other jurisdiction which was vested in the High Court of Admiralty immediately before the date of the commencement of the Supreme Court of Judicature Act 1873.

In accordance with this section and indeed even otherwise, the court is entitled to exercise jurisdiction in respect of any matters provided for by any other statute.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCollisionsGeneral OverviewAdmiralty LawFinds & SalvageEquitable SalvageGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. See Halsbury's Laws of England, 4th Edition, para. 307.

(n2)Footnote 2. The statute is based in part at least upon the International Convention Relating to the Arrest of Sea-going Ships and the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision both signed at Brussels on May 10, 1952. The text of those conventions will be found in Vol. 6 of this treatise. The section quoted redefines admiralty jurisdiction in the light of these conventions. Where the meaning of this Act is

not clear, the court may look to the terms of the conventions for the purpose of construing the Act. See The Banco [1971] P. 137, [1971] 1 All E.R. 524, [1971] 1 Lloyd's Rep 49 , CA: The Annie Hay [1968] P. 341, [1968] 1 All E.R. 657, The Andrea Ursula [1971] 1 All E.R. 821, [1971] 2 W.L.R. 681, [1971] 1 Lloyd's Rep 145 ; Salomon v. Customs and Excise Comrs [1967] *2 Q.B. 116, [1966]* 3 All E.R. 71, *C.A., and Post Office v. Estuary Radio Ltd [1968] 2 Q.B., 740* , [1967] 3 All E.R. 663 CA.

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1-III Benedict on Admiralty §§ 55-57

Reserved.

§§ 55Reserved.

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1-IV Benedict on Admiralty IV.syn

§ IV.syn Synopsis to Chapter IV: THE ADMIRALTY JURISDICTION OF SCOTLAND AND IRELAND.

§ 58 Admiralty Jurisdiction in Scotland.

§ 59 Admiralty Jurisdiction in Ireland.

§ 60 Reserved.

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1-IV Benedict on Admiralty § 58

§ 58 Admiralty Jurisdiction in Scotland.

The Admiralty and maritime jurisdiction of the other portions of the former Empire of Great Britain, and even of that island, by no means harmonized with this narrow jurisdiction of the High Court of Admiralty of the kingdom of England. In the kingdom of Scotland, and in the American Colonies, the Admiralty jurisdiction was of the most extensive and beneficial character. n1

> "It is true that in Scotland, before the creation of an Admiral after the example of other nations, the Deans of the Gild were ordinarily judges in civil debates betwixt mariner and merchant, as the Water-Bailey betwixt mariner and mariner, like as the High Justice was judge in their criminals. Which actions, all now [a.d. 1682] falling forth betwixt the persons aforesaid, of due, appertain to the jurisdiction of the Admiral, and therefore his Judge Depute or Commissar, called Judge Admiral, and none other, should sit, cognosce, determine and minister justice in the aforesaid causes. As likewise upon all complaints, contracts, offences, pleas, charges, assecurations, debts, counts, charter parties, covenants and all other writings concerning lading and unlading of ships, fraughts (freights), hires, money lent upon casualties and hazard at sea, and all other businesses whatsoever amongst seafarers, done on sea, this side sea, or beyond sea, not forgetting the cognition of writs and appeals from other judges, and the causes and actions of reprisals or letters of mark":

and also a most extended police and criminal jurisdiction. n2

The Scottish Admiralty Court has always had jurisdiction also in cases arising on bills of exchange and other mercantile causes not maritime, and also jurisdiction to arrest a debtor about to depart the country, and compel him to give security to pay the debt. n3

The High Admiral was His Majesty's Justice General upon the seas, and in all ports, harbors, creeks; and upon the navigable rivers below the first bridges and within the flood mark he had jurisdiction in all maritime and seafaring causes, foreign and domestic, whether civil or criminal, within the realm. The jurisdiction of the Court of Admiralty, was both civil and criminal. In civil matters, the Judge Admiral was judge in the first instance, in all maritime causes, as in questions on charter parties, freights, salvages, wrecks, bottomries, policies of insurance, and all questions relating to

the lading and unlading of ships, or any act to be performed within the bounds of his jurisdiction. He had jurisdiction also in all actions for recovery of goods, or their value, where the goods had been sent by sea from one port to another. In criminal matters, he had the exclusive cognizance of the crimes of mutiny and piracy on shipboard. n4

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionCivil ProcedureJurisdictionSubject Matter JurisdictionGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *De Lovio v. Boit, 2 Gall. 398, 468, 475* , F. Cas. 3776 (C.C. Mass. 1815). "In England the Courts of Admiralty have exercised a more limited jurisdiction than the like courts in Ireland and in Scotland the admiralty exercised a more comprehensive jurisdiction than the same courts have enjoyed in either *Ireland or in England": Netherlands American Steam Nav. Co. v. Gallagher, 282 F. 171, (2d Cir. [N.Y.] 1922)* .

(n2)Footnote 2. The quotation in the text is from a Scottish tract, set forth in Malynes, part second, at p. 341, and entitled a Collection of All Sea Laws. See also pp. 47, 48 of that part of Malynes.

(n3)Footnote 3. Boyd's Proceedings of the Admiralty of Scotland, 67, 69.

(n4)Footnote 4. Dunlap's Prac. 34; Boyd's Proceedings, 4, 5, 6; 2 Browne, Civ. § Adm. Law, 30; Bell's Dict. of the laws of Scotland, 29 (words "Admiral" and "Court of Admiralty"); Erskine's laws of Scotland, 32.

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1-IV Benedict on Admiralty § 59

§ 59 Admiralty Jurisdiction in Ireland.

There has also been in Ireland, from time immemorial, in Instance Court of Admiralty, and up to the year 1782, it also exercised the powers of a prize court. By the articles of Union, and by the act of 1782, its jurisdiction was confined to causes civil and maritime only. n1

It has not been thought necessary to inquire into the details of the actual jurisdiction of the Irish Admiralty, and this passing notice is given only further to illustrate the remark which has been made before, that, in the different portions of the British Empire, Admiralty jurisdiction was exercised in a widely different extent, and that "all Admiralty and maritime cases" would even then embrace more than the small class permitted to the English Admiralty.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Browne Civ. § Adm. Law, 32. (London, 1802; New York, 1840).

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1-IV Benedict on Admiralty § 60

Reserved.

§ 60Reserved.

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1-V Benedict on Admiralty V.syn

§ V.syn Synopsis to Chapter V: THE ADMIRALTY AND MARITIME JURISDICTION OF THE BRITISH COLONIES, BEFORE 1775.

§ 61 Courts of the Colonies.

§ 62 Commission of the Governor in New York. I.

§ 63 Commission of the Governor in New York. II.

§ 64 Commission of the Governor--Power To Create Courts

§ 65 Commission of Vice-Admiral.

§ 66 Governor Bellamont's Commission: To Suppress Piracy.

§ 67 Judge Morris' Commission: Vice Admiralty Court.

§ 68 Force of These Commissions.

§ 69 Local Extent of Their Jurisdiction.

§ 70 Jurisdiction Over Persons.

§ 71 Business of Vice-Admiralty Courts.

§ 72 Jurisdiction Complained Of.

§§ 73-80 Reserved.

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1-V Benedict on Admiralty § 61

§ 61 Courts of the Colonies.

At the time of the American Revolution, in addition to the Admiralty and maritime tribunals of England and Scotland, there existed the Admiralty courts of the British Colonies.

Under the British Constitution, the statutes of the Imperial Parliament did not bind the colonies, unless they were expressly named, while the King's commission ran through his whole dominions. n1 It is under the King's commissions, that the colonial Vice-Admiralty courts were created, and their jurisdiction remained as it had been originally granted. n2 Those commissions were issued from the High Court of Admiralty and thus furnish, for their respective dates, evidence not only of the jurisdiction of the colonial courts to which they were issued but also of the High Court of Admiralty at home from which they emanated. Commissions were issued from time to time to the governors, Vice-Admirals, and judges of Vice-Admiralty in the colonies. They were of four kinds, the second and fourth of which issued from the High Court:

1st. The commission to the governor as governor, which issued from the office of the Secretary of State.

2d. The commission to the governor as Vice-Admiral, which issued from the High Court of Admiralty.

3d. The general commission to the governor, and all the principal officers of state, under the act for the more effectual suppression of piracy, which issued from the office of the Secretary of State.

4th. The commission to the judges of the Vice-Admiralty Court, which issued from the High Court of Admiralty. n3

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionCivil ProcedureJudicial OfficersGeneral Overview

FOOTNOTES:

(n1)Footnote 1. *De Lovio v. Boit, 2 Gall. 398, 470* , F. Cas. 3776 (C.C. Mass. 1815); *Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* .

(n2)Footnote 2. The colonies did not undertake to make laws for the courts of admiralty, which were exclusively under the general regulation of the crown and of parliament; Willare v. Dorr, 3 Mason 91, F. Cas. 17679 (C.C. Mass. 1822). See Judge Hough's Collection of Cases in the Vice-Admiralty in the Colony of New York, and the American Historical Society's similar collection of Rhode Island cases.

(n3)Footnote 3. *Infra,* § 65 *et seq.,* The Elizabeth, 1 Hag. Adm. 226, 166 Engl. Repr. 81; *The Volunteer, 1 Sumn. 551* , F. Cas. 16991 (C.C., Mass.) (1834).

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1-V Benedict on Admiralty § 62

§ 62 Commission of the Governor in New York. I.

Many of these commissions may be found in the offices of the Secretaries of State of the States; but as they are not easily accessible, we shall insert one of each at full length, although some portion of their contents has no particular relation to the matter of the Admiralty jurisdiction. They are inserted without regard to chronological order, because, from the imperfection of the records in the State of New York, they are not preserved in that order. The commission of the governor gave him power to create courts of Admiralty, according to the commissions which he should receive from the High Court of Admiralty at home. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral OverviewAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. *Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* .

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1-V Benedict on Admiralty § 63

§ 63 Commission of the Governor in New York. II.

A large portion of the commission of the governor, as the political head of the colony, has no further relation to this question, than as showing how completely the organization and power of the courts was kept within the control of mere prerogative regulation. That portion of it will not be inserted here. The clauses giving the power to create courts are inserted, to show that the common law and Admiralty jurisdiction were created in the same manner and the Admiralty jurisdiction was granted in very general terms.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdiction

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1-V Benedict on Admiralty § 64

§ 64 Commission of the Governor--Power To Create Courts

> "William the Third by the grace of God, of England, Scotland, France, and Ireland, King, defender of the faith, etc. To our right trusty and well beloved Edward Hide, Esq., commonly called Lord Cornbury, greeting. ... And we do by these presents, give and grant unto you full power and authority, with the advice and consent of our said council, to erect, constitute and establish such and so many courts of judicature and public justice, within our said province and the territories under your government, as you and they shall think fit and necessary for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and for awarding of execution thereupon, with all reasonable and necessary powers, authorities, fees and privileges belonging unto them, and also to appoint and commissionate fit persons, in the several parts of your government, to administer the oaths appointed by act of parliament, to be taken instead of the oaths of allegiance and supremacy and the test, unto such as shall be obliged to take the same, and likewise to require them to subscribe the forementioned association. And we do hereby authorize and empower you to constitute and appoint judges and justices of the peace and other necessary officers and ministers in our said province, for the better administration of justice and putting the laws in execution, and to administer or cause to be administered such oath or oaths as are usually given for the due execution and performance of offices and places, and for the clearing of truth in judicial causes...
>
> "And we do hereby give and grant unto you, the said Lord Cornbury, full power and authority to erect one or more Court or Courts Admiral within your said province and territories for the hearing and determining of all marine and other causes and matters, proper therein to be heard, with all reasonable and necessary powers and authorities, fees and privileges, as also to exercise all powers belonging to the place and office of Vice-Admiral, of and in all the seas and coasts within your government, according to such commission, authorities and instructions as you shall receive from ourself, under the seal of our Admiralty, or from our High Admiral, or commissioners for executing the office of High Admiral of our foreign plantations for the time being."

Legal Topics:

For related research and practice materials, see the following legal topics:
Civil ProcedureEquityGeneral OverviewGovernmentsCourtsCreation & Organization

Benedict on Admiralty

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1-V Benedict on Admiralty § 65

§ 65 Commission of Vice-Admiral.

The commission to the Governor as Vice-Admiral was very full, granting, in language so clear that it cannot be misunderstood, an admiralty jurisdiction as wide and beneficial as the most zealous supporters of the English Admiralty ever claimed for it.

The commission to Lord Cornbury as Vice-Admiral was as follows. The original commission is in Latin, and the English translation of similar commissions given by Stokes and Du Ponceau has been here availed of. n1

> "Letters patent granted to the very noble and honorable Edward, Lord Cornbury, Governor of the provinces and colonies of New York, Connecticut, and East and West New Jersey, in America, and of the same Commander in Chief, for the time being, for the office of Vice-Admiral in the said provinces and colonies of New York, Connecticut, and East and West New Jersey.
>
> "William the Third, by the grace of God, of England, Scotland, France and Ireland, King, and Defender of the faith, to our well beloved, and liege Edward, Lord Cornbury, our Governor of our provinces and colonies of New York, Connecticut, and East and West New Jersey, in America, and Commander in Chief of said provinces and colonies for the time being, greeting:
>
> "We confiding very much in your fidelity, care, and circumspection in this behalf, do, by these presents, which are to continue during our pleasure only, constitute and depute you the said Edward, Lord Cornbury, our Captain General and Governor in Chief aforesaid, our Vice-Admiral, commissary, and deputy in the office of Vice-Admiralty, in our provinces and colonies, aforesaid, and the territories depending thereon in America, and in the maritime parts of the same and thereto adjoining whatsoever; with power of taking and receiving all and every the fees, profits, advantages, emoluments, commodities, and appurtenances whatsoever due, and belonging to the said office of Vice-Admiral, commissary, and deputy in our provinces and colonies, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, according to the ordinances and statutes of our High Court of Admiralty in England.
>
> "And we do hereby remit and grant unto you, the aforesaid Edward, Lord Cornbury, our power and

authority in and throughout our provinces and colonies, aforementioned, and the territories depending thereon, and maritime parts whatsoever of the same and thereto adjacent, and also through all and every the sea shore, public streams, ports, fresh water rivers, creeks, and arms, as well of the sea, as of the rivers and coasts whatsoever of our said provinces and colonies, and the territories depending thereon, and maritime parts whatsoever of the same and thereto adjacent, as well within liberties and franchises, as without.

"To take cognizance of, and proceed in, all civil and maritime causes, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, accounts, charter parties, agreements, suits, trespasses, injuries, extortions, and demands, and business civil and maritime whatsoever, commenced or to be commenced between merchants, or between owners and proprietors of ships and other vessels, and merchants or others whomsoever, with such owners and proprietors of ships and all other vessels whatsoever, employed or used within the maritime jurisdiction of our vice-admiralty of our said provinces and colonies, and the territories depending thereon, or between any other persons whomsoever, had, made, begun, or contracted for any matter, thing, cause, or business whatsoever, done or to be done within our maritime jurisdiction aforesaid, together with all and singular their incidents, emergencies, dependencies, annexed or connexed causes whatsoever or howsoever, and such causes, complaints, contracts, and other the premises above said, or any of them, which may happen to arise, be contracted, had or done, to hear and determine according to the rights, statutes, laws, ordinances, and customs anciently observed.

"And moreover, in all and singular complaints, contracts, agreements, causes and businesses civil and maritime, to be performed beyond the sea, or contracted there, howsoever arising or happening: and also in all and singular other causes and matters, which in any manner whatsoever touch or any way concern, or anciently have and do, or ought to belong unto the maritime jurisdiction of our aforesaid Vice-Admiralty in our said provinces and colonies, and the territories depending thereon, and maritime parts thereof, and to the same adjoining whatsoever, and generally, in all and singular all other causes, suits, crimes, offences, excesses, injuries, complaints, misdemeanors, or suspected misdemeanors, trespasses, regrating, forestalling and maritime businesses whatsoever, throughout the places aforesaid, within the maritime jurisdiction of our Vice-Admiralty of our provinces and colonies aforesaid, and the territories depending thereon by sea or water, on the banks or shores of the same howsoever done, committed, perpetrated, or happening.

"And also to inquire by the oaths of honest and lawful men of our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, dwelling both within liberties and franchises and without, as well of all and singular such matters and things, which of right, and by the statutes, laws, ordinances, and the customs anciently observed were wont and ought to be inquired after, as of wreck of the sea, and of all and singular the goods and chattels of whatsoever traitors, pirates, manslayers, and felons, howsoever offending within the maritime jurisdiction of our Vice-Admiralty of our provinces and colonies, aforementioned, and the territories depending thereon, and of the goods, chattels, and debts of all and singular their maintainers, accessories, counsellors, abettors, or assistants whomsoever.

"And also of the goods, debts, and chattels of whatsoever person or persons, felons of themselves, by what means, or howsoever coming to their death within our aforesaid maritime jurisdiction, wheresoever any such goods, debts, and chattels, or any part thereof, by sea, water, or land in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well within liberties and franchises, as without, have been or shall be found forfeited, or to be forfeited, or in being.

"And moreover, as well of the goods, debts, and chattels, of whatsoever other traitors, felons, and

manslayers wheresoever offending, and of the goods, debts, and chattels of their maintainers, accessories, counsellors, abettors, or assistants, as of the goods, debts, or chattels of all fugitives, persons convicted, attained, condemned, outlawed, or howsoever put, or to be put in exigent for treason, felony, manslaughter, or murder, or any other offence or crime whatsoever; and also concerning goods waived, flotson, jetson, lagon, shares and treasure found, or to be found; deodands, and of the goods of all others whatsoever taken, or to be taken, as derelict, or by chance found, or howsoever due, or to be due; and of all other casualties, as well in, upon, or by the sea and shores, creeks or coasts of the sea, or maritime parts, as in, upon, or by all fresh waters, ports, public streams, rivers, or creeks, or places overflowed whatsoever, within the ebbing and flowing of the sea or high water, or upon the shores and banks of any of the same within our maritime jurisdiction aforesaid, howsoever, whensoever, or by what means soever arising, happening, or proceeding, or wheresoever such goods, debts, and chattels, or other the premises, or any parcel thereof may, or shall happen to be met with, or found within our maritime jurisdiction aforesaid.

"And also concerning anchorage, lastage, and ballast of ships, and of fishes royal, namely sturgeons, whales, porpoises, dolphins, kiggs, and grampuses, and general of all other fishes whatsoever, which are of a great or very large bulk or fatness, anciently by right or custom, or any way appertaining or belonging to us.

"And to ask, require, levy, take, collect, receive, and obtain for the use of us, and to the office of our High Admiral of Great Britain aforesaid for the time being, to keep and preserve the said wreck of the sea, and the goods, debts, and chattels of all and singular other the premises.

"Together with all, and all manner of fines, mulcts, issues, forfeitures, amerciaments, ransoms and recognizances, whatsoever, forfeited, or to be forfeited, and pecuniary punishment for trespasses, crimes, injuries, extortions, contempts, and other misdemeanors whatsoever, howsoever imposed or inflicted, or to be imposed or inflicted for any matter, cause, or thing whatsoever in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjoining, in any Court of our Admiralty there held or to be held, presented or to be presented, assessed, brought, forfeited, or adjudged; and also all amerciaments, issues, fines, perquisites, mulcts, and pecuniary punishments whatsoever, and forfeitures of all manner of recognizances, before you or your lieutenant, deputy or deputies in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, happening or imposed, or to be imposed or inflicted, or by any means assessed, presented, forfeited, or adjudged, or howsoever by reason of the premises, due or to be due in that behalf to us, or to our heirs and succcessors.

"And further to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use as at the instance of any parties, for agreements or debts, or other causes whatsoever, and to put the same into execution, and to cause and command them to be executed; and also to arrest, and cause and command to be arrested, according to the civil and maritime laws, and ancient customs of our said court, all ships, persons, things, goods, wares and merchandizes, for the premises and every of them, and for other causes whatsoever concerning the same, wheresoever they shall be met with, or found throughout our said provinces and colonies, and the territories depending thereon, and maritime parts thereof and thereto adjoining, as well within liberties and franchises, as without; and likewise for all other agreements, causes or debts, howsoever contracted or arising, so that the goods or persons may be found within our jurisdiction aforesaid.

"And to hear, examine, discuss, and finally determine the same, with their emergencies, dependencies, incidents, annexed and connexed causes and businesses whatsoever; together with all other causes, civil and maritime, and complaints, contracts, and all and every the respective premises whatsoever above expressed, according to the laws and customs aforesaid, and by all other lawful usage,

means and methods, according to the best of your skill and knowledge.

"And to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal correction, and of inflicting any other penalty or mulct, according to the laws and customs aforesaid.

"And to do and administer justice, according to the right order, the cause of law, summarily and plainly, looking only into the truth of the facts.

"And to fine, correct, punish, chastise, reform, and to imprison, and cause and command to be imprisoned in any gaols, being within our provinces and colonies, aforesaid, and the territories depending thereon, the parties guilty, and the contemners of the law and jurisdiction of our Admiralty aforesaid, and violators, usurpers, delinquents and contumacious absenters, masters of ships, mariners, rowers, fishermen, shipwrights, and other workmen and artificers whatsoever exercising any kind of maritime affairs, according to the rights, statutes, laws and ordinances, and customs anciently observed; and to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered.

"And to preserve, or cause to be preserved, the public streams, ports, rivers, fresh waters and creeks whatsoever within our maritime jurisdiction aforesaid, in what place soever they be in our provinces and colonies aforesaid, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well for the preservation of our navy royal, and of the fleets and vessels of our kingdom and dominions aforesaid, as of whatsoever fishes increasing in the rivers and places aforesaid.

"And also to keep, and cause to be executed and kept, in our said provinces and colonies, and the territories depending thereon, and maritime parts thereof and thereto adjacent whatsoever, the rights, statutes, laws, ordinances, and customs anciently observed.

"And to do, exercise, expedite, and execute all and singular other things in the premises, and every of them, as they by right and according to the laws and statutes, ordinances and customs aforesaid should be done.

"And moreover to reform nets too close, and other unlawful engines or instruments wheresoever, for the catching of fishes whatsoever, by sea or public streams, ports, rivers, fresh waters or creeks whatsoever, throughout our provinces and colonies aforesaid, and the territories depending thereon, and maritime parts of the same and thereto adjacent, used or exercised, within our maritime jurisdiction aforesaid wheresoever.

"And to punish and correct the exercisers and occupiers thereof, according to the statutes, laws, ordinances and customs aforesaid.

"And to pronounce, promulge and interpose all manner of sentences and decrees, and to put the same in execution; with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, or which any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyages, or our said maritime jurisdiction, or the places or limits of our said Admiralty and cognizance aforementioned, and all other things done, or to be done.

"With power also to proceed in the same, according to the statutes, laws, ordinances and customs aforesaid, anciently used, as well of mere office mixed or promoted, as at the instance of any party, as the case shall require and seem convenient.

"And likewise with cognizance and decision of wreck of the sea, and of the death, drowning, and

view of dead bodies of all persons, howsoever killed or drowned, or murdered, or which shall happen to be killed, drowned, or murdered, or by any other means come to their death, in the sea, or public streams, ports, fresh waters, or creeks whatsoever, within the flowing of the sea and high water mark, throughout our aforesaid provinces and colonies, and the territories depending thereon, and maritime parts of the same, and thereto adjacent, or elsewhere within our maritime jurisdiction aforesaid.

"Together with the cognizance of mayhem in the aforesaid places, within our maritime jurisdiction aforesaid, and flowing of the sea and water there happening; with power also of punishing all delinquents in that kind, according to the exigencies of the law and customs aforesaid.

"And to do, exercise, expedite, and execute all and singular other things, which in and about the premises only shall be necessary or thought meet, according to the rights, statutes, laws, ordinances and customs aforesaid.

"With power of deputing and surrogating in your place for the premises, one or more deputy, or deputies, as often as you shall think fit; and also with power from time to time of naming, appointing, ordaining, assigning, making, and constituting whatsoever other necessary, fit, and convenient officers and ministers under you, for the said office, and execution thereof, in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same, and thereto adjacent whatsoever.

"Saving always the right of our High Court of Admiralty of England, and also of the Judge and Register of the said Court, from whom or either of them it is not our intention in any thing to derogate by these presents; and saving to every one who shall be wronged, or grieved, by any definitive sentence or interlocutory decree, which shall be given in the Vice-Admiralty Court of our provinces and colonies aforesaid, and the territories depending thereon, the right of appealing to our aforesaid High Court of Admiralty of England.

"Provided nevertheless, and under this express condition, that if you, the aforesaid Edward, Lord Cornbury, our Captain-General and Governor in Chief, shall not yearly, to-wit, at the end of every year, between the feast of Saint Michael the Archangel and All Saints duly certify, and cause to be effectually certified (if you shall be thereunto required), to us, and our Lieutenant Official, Principals, and Commissary-General and Special, and Judge and President of the High Court of our Admiralty of England, aforesaid, all that which from time to time, by virtue of these presents, you shall do and execute, collect, or receive in the premises, or any of them, together with your full and faithful account thereupon, to be made in an authentic form, and sealed with the Seal of our Office, remaining in your custody, that from thence, and after default therein, these our Letters Patent of the Office of Vice-Admiralty aforesaid, as above granted, shall be null and void, and of no force or effect.

"Further we do, in our name, command all and singular our Governors, Justices, Mayors, Sheriffs, Captains, Marshals, Bailiffs, Keepers of all our Gaols and Prisons, Constables, and all other our Officers and faithful liege subjects whatsoever, and every of them, as well within liberties and franchises, as without, that in and about the execution of the premises, and every of them, they be aiding, favouring, assisting, submissive and yield obedience, in all things as is fitting to you, the aforesaid Edward, Lord Cornbury, our Captain-General and Governor in Chief of our provinces and colonies aforesaid, and to your Deputy whomsoever, and to all other Officers by you appointed, and to be appointed, of our said Vice-Admiralty aforesaid, and the territories depending thereon, and maritime parts of the same, and thereto adjoining, under pain of the law, and the peril which will fall thereon.

"Given at London, in the High Court of our Admiralty, of England aforesaid, under the Great Seal thereof, this 3d day of October, 1701."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Stokes' View of the Constitution of the British Colonies, 166 (London, 1783); Du Ponceau on Jurisdiction, 158 (1824).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter V. THE ADMIRALTY AND MARITIME JURISDICTION OF THE BRITISH COLONIES, BEFORE 1775.

1-V Benedict on Admiralty § 66

§ 66 Governor Bellamont's Commission: To Suppress Piracy.

There was, next, the commission, or letters patent to the governor and principal officers, under the act of 11th and 12th Wm. III, for the more effectual suppression of piracy. n1 This authorized the creating or assembling, whenever occasion might require, of admiralty courts for the trial of piracies, felonies, and robberies committed on the sea, or within any harbor, river, creek or place, where the admiral had power, authority, and jurisdiction, according to the civil law and the course of the admiralty. The commission to Governor Bellamont was as follows:

General Admiralty Commission.

> "William the Third, by the grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, etc., To our Right trusty and right well beloved cousin Richard, Earle of Bellamont, our Capt. Genl. and Govr. in Chief of our province of New York, and territories depending thereon, in America; and to the Governor or Comander in Chief of the said province of New York for the time being: To our Trusty and well beloved John Nanfan, Esquire, our Lieut. Govr. of the said province of New York, and to our Lieut. Govr. of the said province for the time being: To our Trusty and well beloved, the Govr. of our Collony of Connecticut for the time being: To our Vice Admirall or Vice Admiralls of our Province of New Yorke, East and West New Jersey, and Connecticut, now and for the time being: To our Trusty and well beloved Stephen Cortland, Wm. Smith, Peter Schuyler, John Young, James Graham, Abraham De Peyster, Robt. Livingston, Samuel Staats, John Carbell, and Robert Walters, Esqs., members of our council in the said province of New Yorke, during their continuance in our said council, and to the members of our council in the said Island for the time being: To our Chief Justice of our province of New York, now and for the time being: To our Judge of Judges of the Vice Admiralty in the said province New Yorke, East and West New Jersey, and Connecticut, now and for the time being: To our trusty and well beloved, the Captains and Commanders of our ships of Warr within the Admiralty Jurisdiction of the said provinces of New York, East and West New Jersey, and Connecticut, now and for the time being: To our Trusty and well beloved, our Secretary of the said province of New York, now and for the time being: To our Trusty and well beloved Thomas Weaver, Esquire, Receiver of our Revenue of our said province of New Yorke, and to the receiver of our revenue in the said province for the time being: To our Trusty and well beloved Patrick Mayne and Edward

Randolph, Esqrs., Surveyors Genl, of our Customs in America and to the Surveyors General of our customs in America for the time being: To our Trusty and well beloved, the Collectors of our plantation duties in the said provinces of New York, East and West New Jersey, and Connecticut, appointed in pursuance of an act made in the Twenty-fifth year of the reign of our Royal Uncle, King Charles the Second, for the better securing the plantation trade, now and for the time being: and To our Trusty and well beloved George Larbin, Esquire, Greeting:

"Whereas, by an act passed last session of parliament, entitled an act for the more effectual suppressing of piracy, it is, amongst other things, enacted, that all piracies, fellonies and roberies, committed in or upon the sea, or in any haven, river, creek, or place where the Admirall or Admiralls have power, authority or jurisdiction, may be examined, enquired of, tryed, heard and determined and adjudged, according to the directions of the said act, in any place at sea, or upon the land, in any of our Islands, plantations, Colonies, Dominions, forts or factories, to be appointed for that purpose by our Commission or Commissions, under the great seal of England, or the Seal of the Admiralty of England, directed to all or any of the Admirals, Vice Admirals, Rear Admirals, Judges of Vice Admirals, or Commanders of any of our Ships of War; and also to all or any such person or persons, officer or officers, by name, or for the time being, as we should think fit to appoint, which said Commissioners shall have full power, jointly or severally, by warrant under the hand and seal of them, or any of them, to commit to safe custody any person or persons against whom Information of piracy, robery, or felony upon the sea, shall be given upon oath; and to call and assemble a Court of Admiralty on Shipboard, or upon the land, when, and as often as occasion shall require, which Court shall consist of seven persons, at least. And it is further enacted, that if so many of the persons aforesaid cannot conveniently be assembled, any three of the aforesaid persons, whereof the President or Chief of some English factory, or the Govr., Lieut. Govr., or member of our Council, in any of the plantations or colonies aforesaid, or Commanders of some of our Ships, is always to be one, shall have full power and authority, by virtue of the said act, to call and assemble any other persons on Shipboard, or upon the land, to make up the number of seven. And it is provided, that no persons but such as ae known merchants, factors, or planters, or such as the Captains, Lieuts., or warrant officers, in any of our Ships of war, or Captains, Masters or Mates, of some English Ship, shall be capable of being so called, and sitting and voting in the said court. n2

"And it is further enacted, that such persons, called and assembled as aforesaid, shall have full power and authority, according to the course of the Admiralty, to issue warrants for bringing any persons accused of pyracy or Robery before them, to be tryed, heard, and adjudged, and to summon witnesses, and to take informations and Examinations of witnesses upon their oath, and to do all things necessary for the hearing and final determination of any case of pyracy, robery and felony, and to give Sentence and Judgment of death, and to award execution of the offenders convicted and attainted as aforesaid, according to the will, acts, and the methods and rules of the Admiralty; and that all and every person and persons so convicted and attainted of pyracy and robery, shall have and suffer such losses of lands, goods, and chattels, as if they had been attained and convicted of any piracies, felonies and roberies, according to a statute made in the 28th year of the reign of King Henry the Eighth, for tryalls of pyracies or Roberies upon the high sea.

"Now Know Ye, that we, in pursuance of the said act of our special grace, certain knowledge and mere motion, have made, constituted and appointed, and by these presents do make, constitute and appoint you, the said Richard, Earl of Bellamont, and the Govr. or Commander in Chief of the said province of New York for the time being; John Nanfan, and the Lieut. Govr. of the said province for the time being; the Govr. of our Collony of Connecticut for the time being; the Vice Admiral or Vice Admirals of our said province of New Yorke, East and West New Jersey, and Connecticut, for the time now, and for the time being; Stephen Cortland, William Smith, Peter Schuyler, John Young, James

Graham, A. Depeyster, Robert Livingston, Saml. Staats, John Carbell, and Robert Walters, members of our Council in the said province of New Yorke, during their continuance in the said Council, and the members of our Council in the said province for the time being: our Chief Justice in our said province of New York for the time being; our Judge or Judges of the Vice Admiralty in the said provinces of New Yorke, East and West New Jersey and Connecticut, now and for the time being; the Capt. and Commander of our Ships of War within the Admiralty Jurisdiction of the said provinces of New Yorke, East and West New Jerseys and Connecticut, now and for the time being; the Secretary of the said province of New Yorke, now and for the time being: Thomas Weaver, and the receiver of our revenue of the province of New York for the time being; Patrick Mayne and Edward Randolph, and the Surveyor General of our Customs in America for the time being; our Collectors of our plantation duties in the said provinces of New York, and East and West New Jerseys and Connecticut, for the time being, and George Larbin, to be our Commissioners at the said several provinces of New York, East and West New Jersey, and Connecticut, for the examining, inquiring of, trying, hearing, and determining and adjudging, according to the directions of the said act, in any place at sea, or upon the land, at the said provinces of New York, East and West Ne Jerseys, and Connecticut, all pyracies, fellonies, and roberies, committed, or which shall be committed, in or upon the sea, or within any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction. And you, the said Richard, Earl of Bellamont, and the Govr. or Commander in Chief of the said province of New York, for the time being; John Nanfan, and the Lieut. Govr. or Commander in Chief of the said province, for the time being; the Govr. of our Collony of Connecticut for the time being; the Vice Admiral or Vice Admirals of our said provinces of New Yorke, East and West New Jersey, and Connecticut, now, and for the time being; Stephen Cortland, William Smith, Peter Schuyler, John Young, James Graham, Agraham Depeyster, Robert Livingston, Samuel Staats, John Carbell and Robert Walters, members of our Council in the said province, during their continuance in the said Council, and the members of our said Council in the said province, for the time being; our Chief Justice in our said province of New York, for the time being; our Judge or Judges of the Vice Admiralty in the said provinces of New York, East and West New Jersey and Connecticut, now and for the time being; the Captains and Commanders of our Shipps of War within the Admiralty Jurisdiction of the said provinces of New York, East and West New Jerseys and Connecticut, now and for the time being; the Secretary of the said province of New Yorke, now and for the time being; Thomas Weaver, and the receiver of our revenue of our said province of New York, for the time being; Patrick Mayne, and Edward Randolph, and the Surveyors Genl. of our Customes in America; our Collectors of our plantation duties in the said provinces of New Yorke, East and West New Jersey and Connecticut, for the time being; George Larbin, our Commissioner at the said provinces of New York, East and West New Jersey and Connecticut, for the purposes herein above mentioned; we do make, ordain and constitute, by these presents

"Hereby giving and granting unto you, our said Commissioners, jointly or severally, or any one of you, by warrant under the hand and seal of you, or any one of you, full power and authority to committ to safe custody any person or persons against whom Information of pyracy, robery, or felony upon the sea, shall be given upon oath, which oath you, or any one of you,

shall have full power and are hereby required to administer to all, and assemble a Court of Admiralty on Ship board, or upon the land, when, and as often as occasion shall require, which Court, our will and pleasure is, shall consist of seven persons at the least, and if so many of you, our said Commissioners, cannot conveniently be assembled, any three or more of you, whereof you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey, or Connecticut, or either of the said places for the time being, always to be one, shall have full power and authority, by virtue of the said act and of these presents, to call and assemble any other persons on ship board, or upon the land, to make up the number of seven; provided, that no persons but such as are known merchants, factors, or persons, or such as are Captains, Lieutenants, or warrant officers in any of our ships of war, Captains, Masters, or Mates, of some English Ships, shall be capable of being so called, sitting and voting in the said court.

"And our further will and pleasure is, and we do hereby expressly declare and command, that such persons, called and assembled as aforesaid, shall have full power and authority, according to the course of the Admiralty, to issue warrants for bringing any persons accused of pyracy or robery before them, to be tried, heard, and adjudged, and to summon witnesses, and to take informations and examinations of witnesses upon their oath, and to do all things necessary for the hearing and final determination of any case of pyracy, robery, or felony upon the sea, and to give sentence and judgment of death, and to award execution of the offenders, convicted and attained as aforesaid, according to the civil laws and the methods and rules of the Admiralty; and that all and every person or persons so convicted or attainted of pyracies and robery, shall have and suffer such losses of lands, goods, and chattels, as if they had been attainted and convicted of any pyracies, felonies, and roberies, according to the aforementioned statute made in the reign of King Henry the Eighth.

"And our express will and pleasure is, and we do hereby direct and command, that so soon as any Court shall be assembled as aforesaid, either on ship board, or upon the land, this our Commission shall first be openly read, and the said Court, then and there, shall be solemnly called and proclaimed, and then you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey or Connecticut, or either of the said places for the time being--shall, in the first place, publicly in open Court, take the oath appointed in the said act; and you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey, or Connecticut, or either of the said places, for the time being, having taken the oath in manner and form aforesaid, shall individually administer the same to every person who shall sit and have and give a voice in the said Court, upon the trial of such prisoner or prisoners as aforesaid. And lastly, we do hereby direct, impower and require you, our said Commissioners, to proceed, act, adjudge and determine in all things according to your powers, authority and directions of the above recited act, and of these presents; and the entry or enrollment thereof, shall be unto you, and each and every of you, for so doing, a sufficient warrant and discharge.

"In witness whereof, we have caused these our letters to be made patent. Witness ourself, at Westminister, the 23d day of November, in the twelfth year of our reign."

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Evans' Statutes, (1767-1821) 126 (London, 1836); Stokes' Colonies, 231-234.

(n2)Footnote 2. 6 Evans' Statutes, 126.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter V. THE ADMIRALTY AND MARITIME JURISDICTION OF THE BRITISH COLONIES, BEFORE 1775.

1-V Benedict on Admiralty § 67

§ 67 Judge Morris' Commission: Vice Admiralty Court.

The commissions to the judges of the vice-admiralty courts were equally full and explicit in their grant of jurisdiction, and it was under these commissions that the judicial powers of the admiralty, in civil causes, were actually administered in the colonies, from the beginning to the time of our Revolution.

The commission to Hon. Richard Morris, dated 15th Oct. 1762, was as follows:

Commission of the Vice-Admiralty Judge.

> "Letters patent granted to Richard Morris, Esq., for the office of Judge of the respective Courts of the Provinces and Colonys of New York, Connecticut, and East and West Jerseys, in America.
>
> "George the Third, by the grace of God, of Great Britain, France and Ireland, King, defender of the faith: To our beloved Richard Morris, Esquire, greeting: We do by these presents, make, ordain, nominate and appoint you, the said Richard Morris, Esquire, to be our Commissary in our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, and Territories thereunto belonging, in the room of the former judge, deceased, hereby granting unto you full power to take cognizance of, and proceed in all causes civil and maritime, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, policies of assurance, accounts, charter parties, n1 agreements, bills of loading of ships, and all matters and contracts which in any manner whatsoever, relate to freight due for ships, hired or let out; transport money or maritime usury (otherwise bottomry), or which do any ways concern suits, trespasses, injuries, extortions, demands, and affairs civil and maritime whatsoever, between merchants or between owners and proprietors of ships, or other vessels, and merchants, or other persons whomsoever, with such owners and proprietors of ships or other vessels whatsoever, employed or used, or between any other persons howsoever had, made, began, or contracted for any matter, cause or thing, business, or injury whatsoever, done or to be done as well in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high water mark, as upon any of the shores, or banks adjoining to them or either of them, together with all and singular their incidents, emergencies, dependencies annexed and connexed causes whatsoever; and such causes, complaints, contracts and

other the premises aforesaid, or any of them howsoever the same may happen to arise, be contracted, had, or done, to hear, and determine (according to the civil and maritime laws and customs of the High Court of Admiralty in England), in our said provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, and territories thereunto belonging whatsoever, and also with power to sit and hold courts in any cities, towns, and places in our provinces and colonys of New York, Connecticut, and East and West Jerseys, in America aforesaid, for the having and determining of all such causes and businesses, together with all and singular their incidents, emergencies, dependencies annexed and connexed causes whatsoever, and to proceed judicially and according to law, in administering justice therei.

"And moreover, to compel witnesses, in case they withdraw themselves for interest, fear, favor, or ill-will, or any other cause whatsoever, to give evidence to the truth in all and every the causes abovementioned, according to the exigencies of the law. And further, to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use, as at the instance of any parties for agreements or debts and other causes and businesses whatsoever, and to put the same in execution, and to cause and command them to be executed. Also, duly to search and enquire of and concerning all goods of traitors, pirates, manslayers, felons, fugitives and felons of themselves, and concerning the bodies of persons drowned, killed, or by any other means coming to their death in the sea, or in any ports, rivers, public streams, or creeks, and places overflowed; and also concerning mayhem happening in the aforesaid places, and engines, toils and nets prohibited and unlawful, and the occupiers thereof. And moreover, concerning fishes royal, namely, whales, kiggs, grampusses, dolphins, sturgeons, and all other fishes whatsoever, which are of a great or very large bulk or fatness, by right or custom any ways used, belonging to us and to the office of our High Admiral of England.

"And also of and concerning all casualties at sea, goods wrecked, flotzon, jetson, lagon, shares, things cast overboard and wrecked of the sea, and all goods taken, or to be taken as derelict, or by chance found or to be found; and all other trespasses, misdemeanors, offences, enormities, and maritime crimes whatsoever, done and committed, or to be done and committed as well in and upon the high seas, as all ports, rivers, fresh waters, and creeks, and shores of the sea to high water mark, from all first bridges towards the sea, in and throughout our said provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, and maritime coasts thereunto belonging, howsoever, whensoever, or by what means soever arising or happening.

"And also to proceed in all and every the causes and as also all fines, mulcts, amersements and compositions due and to be due in that behalf; to tax, moderate, demand, collect and levy, and to cause the same to be demanded, levied, and collected, and according to law to compel and command them to be paid.

"And also to proceedin all and every the causes and businesses above recited, and in all other contracts, causes, contempts and offences whatsoever, howsoever contracted or arising (so that the goods or persons of the debtors may be found within the jurisdiction of the Vice-Admiralty, in our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, aforesaid), according to the civil and maritime laws and customs of our said High Court of Admiralty, of England, anciently used, and by all other lawful ways, means, and methods, according to the best of your skill and knowledge. And all such causes and contracts to hear, examine, discuss, and finally determine, saving, nevertheless, the right of appealing to our aforesaid High Court of Admiralty of England, and to the Judge or President of the said court, for the time being. And saving also the right of our said High Court of Admiralty of England, and also of the Judge and Register of the same Court, from whom, or either of them, it is not our intention in anything to derogate by these presents.

"And also to arrest, and cause, and command to be arrested, all ships, persons, things, goods, wares

and merchandizes for the premises, and every of them, and for other causes whatsoever, concerning the same, wheresoever they shall be met with, or found, within our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America aforesaid, and territories thereof, either within liberties, or without, and to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal coercion, and of inflicting any other penalty or mulct, according to the laws and customs aforesaid; and to do and minister justice according to the right order and course of the law, summarily and plainly, looking only into the truth of the fact.

"And we impower you in this behalf, to fine, correct, punish, chastise, and reform and imprison, and cause and command to be imprisoned, in any gaols, being within our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, aforesaid, and maritime places of the same, the parties guilty, and violators of the law and jurisdiction of our admiralty aforesaid, and usurpers, delinquents, and contumacious absentees, masters of ships, mariners, rowers, fishermen, shipwrights, and all other workmen and artificers whomsoever, exercising any kind of maritime affairs, as well according to the aforementioned civil and maritime laws, and ordinances, and customs aforesaid, and their demerits, as according to the statutes and ordinances aforesaid, and those of our kingdom of Great Britain, for the Admiralty of England, in that behalf made and provided.

"And to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered and to promulge and interpose all manner of sentences and decrees, and to put the same in execution, with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, and which any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyages performed, or to be performed, or the maritime jurisdiction above said, with power also to proceed in the same according to the civil and maritime laws and customs of our aforesaid Court, anciently used as well those of mere office mixt or promoted, as at the instance of any party, as the case shall require and seem convenient.

"And we do by these presents (which are to continue during our royal will and pleasure only), further give and grant unto you, Richard Morris, Esquire, our said Commissary, the power of taking and receiving all and every, the wages, fees, profits, advantages and commodities whatsoever, in any manner due and anciently belonging to the said office, according to the custom of our High Court of Admiralty of England, committing unto you our power and authority concerning all and singular, the premises in the several places above expressed (saving in all things the prerogative of our High Court of Admiralty of England aforesaid), together with power of deputing and surrogating in your place for and concerning the premises, one or more deputy or deputies, as often as you shall think fit.

"Further, we do in our name command, and firmly and strictly charge, all and singular, our Governors, Commanders, Justices of the Peace, Mayors, Sheriffs, Marshals, Keepers of all our Gaols and Prisons, Bailiffs, Constables, and all other our officers and ministers and faithful liege subjects, in and throughout our aforesaid province and colonies of New York, Connecticut and East and West Jerseys, in America, and the territories thereunto belonging; that in the execution of this our commission, they be from time to time aiding, assisting, and yield obedience in all things, as is fitting, unto you and your deputy whomsoever, under pain of the law and the peril which will fall thereon. Given at London, in the High Court of our Admiralty aforesaid, under the great seal thereof, the sixteenth day of October, in the year of our Lord, one thousand seven hundred and sixty-two, and of our reign the second."

His predecessor, Lewis Morris, held the office from 1738, under a commission in the same words. These commissions were translations of the commissions of Roger Mompesson and Francis Harrison, who had previously filled this office; and they embraced the colonies from Delaware to and including Massachusetts. n2

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. *Vide* The Elizabeth, 1 Hagg. Adm. 226, 166 Engl. Repr. 81.

(n2)Footnote 2. A memorandium of other commissions is here inserted, to show their territorial extent. They are to be found in the office of the Secretary of State of New York:

James Duke of York, etc., to Thomas Dongan, commission as Governor of New York and the Islands, dated Sept. 30, 1682. His commission, as Vice-Admiral for the same, is dated Oct. 3, 1682.

James II, to Edmund Andross, commission as Governor of New York and New England, April 7, 1688.

William and Mary, to Henry Sloughter, commission as Governor, dated Jan. 4, 1689.

The same to Benj. Fletcher, commission as Vice-Admiral of New York, East and West New Jersey, New Castle and dependencies, dated 1693.

William III, to the Earl of Bellamont, commission of Vice-Admiral of New York, Massachusetts Bay, New Hampshire and dependencies, 1698.

Commission of Roger Mompesson, Judge of the Court of Vice Admiralty in Massachusetts Bay, New Hampshire, Connecticut, Rhode Island, the Jerseys, New York and Pennsylvania, and dependencies, April 1, 1703.

George I, to Francis Harrison, commission as Judge of the Court of Vice-Admiralty of New York, 13th February, 1721.

George II, to Lewis Morris, commission as Judge of the Vice-Admiralty Courts of New York, Connecticut, and East and West Jerseys, 16th January, 1738.

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Chapter V. THE ADMIRALTY AND MARITIME JURISDICTION OF THE BRITISH COLONIES, BEFORE 1775.

1-V Benedict on Admiralty § 68

§ 68 Force of These Commissions.

In these commissions and letters patent are found the source, extent, and definition of the admiralty and maritime jurisdiction in the colonies. We are not aware, that, up to the Revolution, any British statute in relation to the admiralty jurisdiction named the colonies; and the well known principles that statutes do not bind the colonies unless they are named and that the king's commission runs through his whole dominions are sufficient to make these commissions the legitimate source and law of the admiralty jurisdiction in the colonies. They declare that jurisdiction to extend to all causes, civil and maritime, embracing charter parties, bills of lading, policies of assurance, accounts, debts, exchanges, agreements, complaints, offences, and all matters which in any manner whatsoever relate to freight, transport money, maritime loans, bottomry, trespasses, injuries, extortions, demands and affairs whatsoever, civil and maritime. These general words are of the most comprehensive character, and include all matters which are in their nature maritime, while all those causes of which jurisdiction has been denied to the English Admiralty, are especially enumerated as admiralty and maritime causes. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Blackstone Commentaries, 106, 107, 108. (1765-69).

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1-V Benedict on Admiralty § 69

§ 69 Local Extent of Their Jurisdiction.

When we look, also, to the extent of this jurisdiction, so far as place is concerned, we find it equally extensive, comprehending everything done in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high water mark, from all first bridges toward the sea.

Legal Topics:

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1-V Benedict on Admiralty § 70

§ 70 Jurisdiction Over Persons.

So far as persons are concerned, it is equally extensive and embraces all demands and affairs between merchants, or merchants and owners of ships or other vessels, and other persons whomsoever, for any matters, cause or thing, business, or injury whatsoever, done as well in, upon, or by the sea, or public streams, or fresh water, ports, rivers, creeks and places overflowed whatsoever, within the ebbing and flowing of the sea, or high water-mark, as upon any of the shores or banks adjoining to them. This plainly embraces all classes of persons having any relation to maritime transactions; those who build and furnish vessels; those who equip, man and supply them; those who load and unload them; those who freight them; those who are employed in their service, to navigate or to preserve them, or to perform the various functions necessary or appropriate to enable the vessel to answer best the purposes to which she is devoted; and also those who injure her, or violate their duty or obligations to her,--a jurisdiction, to all intents and purposes, equal to that claimed by the admiralty, and set forth in so much detail by Dr. Godolphin. Indeed, it is not possible for the English language to make the grant clearer, or broader, or stronger.

Legal Topics:

For related research and practice materials, see the following legal topics:
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1-V Benedict on Admiralty § 71

§ 71 Business of Vice-Admiralty Courts.

These commissions were issued and acted under, in their widest interpretation, during the whole period of colonial government, in New York and elsewhere. The actual business of the vice-admiralty courts, as shown by their records, up to the time of the Revolution, proves that this extended jurisdiction was not dormant, but active. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Stokes' View of the Const. of the British Colonies, 270; Dunlap's Ad. Prac. 35, 37; The Tilton, 5 Mason 465, F. Cas. 14054 (C.C. Mass. 1830); Hon. C. M. Hough: "Cases in the Vice-Admiralty Court of New York" (Yale University Press); The American Historical Society Collection of Cases in the Vice-Admiralty Court of Rhode Island.

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1-V Benedict on Admiralty § 72

§ 72 Jurisdiction Complained Of.

It has indeed been said, that this extensive jurisdiction of the admiralty in the colonies was the subject of complaint at the time of the Revolution; and it is undoubtedly true, that the extension of the admiralty jurisdiction beyond its ancient limits was, in some petitions and public documents, stated as one of the grievances of the colonies. The difficulty with the mother country grew out of the imposition of taxes and the collection of revenue; and the whole of that jurisdiction was given to the admiralty, as was also trespass on the king's land, and other matters which were peculiarly offensive. "It was ordained," says the old Congress in their list of grievances, "that whenever offences should be committed in the colonies, against particular acts imposing duties and restrictions upon trade, the prosecutor might bring his action for the penalties in the Court of Admiralty." These were in no sense admiralty and maritime cases, and it was of this recent extension beyond the ancient limits--the limits of those commissions--that the colonies complained and not of the proper exercise of admiralty and maritime jurisdiction which had been practiced from the earliest times; and the fact that the constitution uses the word *"all* cases of admiralty and maritime jurisdiction," shows, the more when taken in connection with those complaints, that the Convention intended that the word *all* as well as the word maritime should have its proper signification. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. *Waring v. Clarke, 46 U.S. (5 How.) 411, 456, 464, 12 L. Ed. 226 (1847)* .

Benedict on Admiralty

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1-V Benedict on Admiralty §§ 73-80

Reserved.

§§ 73Reserved.

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1-VI Benedict on Admiralty VI.syn

§ VI.syn Synopsis to Chapter VI: ADMIRALTY JURISDICTION DURING THE PERIOD OFTHE REVOLUTION AND CONFEDERATION.

§ 81 Admiralty Courts: 1775-1789.

§ 82 Provision for Appeals From State Courts.

§ 83 Statute of Maryland.

§ 84 Statute of New Jersey.

§ 85 Statute of Pennsylvania.

§ 86 Statute of Rhode Island.

§ 87 Statute of New Hampshire.

§ 88 Statute of Virginia.

§ 89 Diversity in State Statutes.

§§ 90-100 Reserved.

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1-VI Benedict on Admiralty § 81

§ 81 Admiralty Courts: 1775-1789.

At the time of the Revolution, each State assumed for itself all the powers of sovereignty, including all judicial powers in their greatest plenitude, except so far as they were limited by the Articles of Confederation. n1 In some of the States in which an admiralty court had previously existed, the court was retained, the judge being appointed by the newly constituted State, by a simple commission, as Judge of the Court of Admiralty. No statute had specified his powers and his commission was silent on the subject. He was appointed to exercise the same powers as the colonial courts had exercised. In some of the States, as in New York, the statute of 15 Rich.II was enacted, and in others the jurisdiction remained unchanged. Thus, in different States, the constitutions of the admiralty courts and the limits of the admiralty jurisdiction were widely different. In some of them the court was abolished altogether and in others new courts were established with powers regulated by statute. n2

Whatever may have been the early views concerning the maintenance or constitution of an admiralty court, there was one matter which arose, long before the establishment of the Confederation, of common concern to all the States, calling for immediate resolution on the basis of some uniformity. This was the question concerning the disposal of booty and seizures and captures of vessels. Apparently, George Washington, finding himself distracted from his military duties to attend to these matters asked the Congress to take steps, n3 and the Congress, on November 25, 1775 passed a comprehensive resolution on the subject. n4 The fourth section of the resolution called for the establishment by the several legislatures in the United Colonies of appropriate courts of justice to deal with captures with a provision for trials being had by jury. The sixth section provided for an appeal from such courts to the Congress or such person or persons as they shall appoint.

The necessity of such courts was reinforced by a resolution of the Congress of March 23, 1776 permitting the inhabitants of the colonies to fit armed vessels to cruise on the enemies of the United Colonies. n5 The form of commission to commanders of private ships of war was settled by the Congress on April 2, 1776. n6

As a result of the recommendation of the Congress, if not by prior realization of the necessity, admiralty or maritime courts were set up in the States as follows: n7

Massachusetts	Nov. 1, 1775

Virginia	Jan. 20, 1776
Rhode Island	March 18, 1776
South Carolina	Apr. 1, 1776
Connecticut	May, 1776
Maryland	May 25, 1776
New Hampshire	July 3, 1776
New York	July 31, 1776
North Carolina	June 22, 1776
Georgia	Sept. 16, 1776
New Jersey	Oct. 5, 1776
Delaware	May 20, 1778
Pennsylvania	Sept. 9, 1778

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. Cf. *Talbot v. The Commanders and Owners of Three Brigs. 1 U.S. (1 Dall.) 95, 99, 1 L. Ed. 52, 54 (1784)* .

(n2)Footnote 2. Greenl. Laws of N. Y. 11, 18, 150, 152, 338.

(n3)Footnote 3. Robertson, "Admiralty and Federalism," Foundation Press, Inc. 1970, p. 96.

(n4)Footnote 4. "Whereas it appears from undoubted information, that many vessels, which had cleared at the respective custom-houses in these colonies, agreeable to the regulations established by Acts of the British Parliament, have, in a lawless manner, without even the semblance of just authority, been seized by his majesty's ships of war, and carried into the harbor of Boston, and other ports, where they have been rifled of their cargoes, by order of his majesty's naval and military officers, there commanding, without the said vessels having been proceeded against by any form of trial, and without the charge of having offended against any law.

"And whereas orders have been issued in his majesty's name, to the commanders of his ships of war, to proceed as in the case of actual rebellion against such of the seaport towns and places being accessible to the king's ships in which any troops shall be raised or military works erected, under color of which said orders, the commanders of the majesty's said ships of war have already burned and destroyed the flourishing and populous town of Falmouth, and have fired upon and much injured several other towns within the United Colonies, and dispersed at a late season of the year, hundreds of helpless women and children, with a savage hope, that those may perish under the approaching rigors of the season, who may chance to escape destruction from fire and sword, a mode of warfare long exploded amongst civilized nations.

"And whereas the good people of these colonies, sensibly affected by the destruction of their property and other unprovoked injuries, have at last determined to prevent as much as possible a repetition thereof, and to procure some reparation for the same, by fitting out armed vessels and ships of force, in the execution of which commendable designs it is possible, that those who have not been instrumental in the unwarrantable violences above mentioned may suffer, unless some laws be made to regulate, and tribunals erected competent to determine the propriety of captures.

Therefore resolved,

"1. That all such ships of war, frigates, sloops, cutters, and armed vessels as are or shall be employed in the present cruel and unjust war, against the United Colonies, and shall fall into the hands of, or be taken by, the inhabitants thereof, be seized and forfeited to and for the purposes hereinafter mentioned.

"2. Resolved, That all transport vessels in the same service, having on board any troops, arms, ammunition, clothing, provisions, military or naval stores of what kind soever, and all vessels to whomsoever belonging, that shall be employed in carrying provisions or other necessaries to the British army or armies, or navy, that now are, or shall hereafter be writhin any of the United Colonies, or any goods, wares, or merchandise for the use of such fleet or army, shall be liable to seizure, and with their cargoes shall be confiscated.

"3. That no matter or commander of any vessel shall be entitled to cruise for, or make prize of any vessel or cargo, before he shall have obtained a commission from the congress, or from such person or persons as shall be for that purpose appointed, in some one of the United Colonies.

"4. That it be and is hereby recommended to the several legislatures in the United Colonies, as soon as possible, to erect courts of justice, or give jurisdiction to the courts now in being, for the purpose of determining concerning the captures to be made as aforesaid, and to provide that all trials in such case be had by a jury under such qualifications as to the respective legislatures shall seem expedient.

"5. That all prosecutions shall be commenced in the court of that colony, in which the captures shall be made, but if no such court be at that time erected in the said colony, or if the capture be made on open sea, then the prosecution shall be in the court of such colony as the captor may find most convenient; provided that nothing contained in this resolution shall be construed so as to enable the captor to remove his prize from any colony competent to determine concerning the seizure, after he shall have carried the vessel so seized within any harbor of the same.

"6. That in all cases an appeal shall be allowed to the congress, or such person or persons as they shall appoint for the trial of appeals, provided the appeal be demanded within five days after definitive sentence, and such appeal be lodged with the secretary of congress within forty days afterwards, and provided the party appealing shall give security to prosecute the said appeal to effect, and in case of the death of the secretary during the recess of congress, then the said appeal to be lodged in congress within twenty days after the meeting thereof.

"7. That when any vessel or vessels, shall be fitted out, at the expense of any private person or persons, then the captures made, shall be to the use of the owner or owners of the said vessel or vessels; that where the vessels employed in the capture shall be fitted out at the expense of any of the united colonies, then one third of the prize taken shall be to the use of the captors, and the remaining two thirds to the use of the said colony, and where the vessels so employed, shall be fitted out at the continental charge, then one third shall go to the captors, and the remaining two thirds, to the use of the united colonies; provided nevertheless, that if the capture be a vessel of war, then the captors shall be entitled to one half of the value, and the remainder shall go to the colony or continent as the case may be, the necessary charges of condemnation of all prizes being deducted before distribution made."

(n5)Footnote 5. The resolution went on to provide "--That all vessels and goods belonging to inhabitants of Great Britain, taken on the high seas, by armed vessels of private persons, and commissioned, being libeled and prosecuted in any court erected for trial of maritime affairs in any of the colonies, shall be deemed and adjudged to be lawful prize. Vessels and goods taken near the shores of a colony, by the people, or a detachment of the army, shall be deemed lawful prize, and condemned in the court of admiralty of that colony.--Commissions to be obtained, and bonds to be given for observance of instructions from Congress."

(n6)Footnote 6. The Commission contained, inter alia, the following instructions: "You shall bring such vessels, etc. as you shall take, to some convenient port of the United Colonies, that proceedings may thereupon be had in due

form, before the courts which are or shall be there appointed to hear and determine causes civil and maritime.--You shall bring one or two of the principal persons of the vessel, as soon as may be, to the judge of such court to be examined, and deliver to the said judge all papers, etc.--You shall keep and preserve every vessel, etc. by you taken, until they shall, by sentence of a Court properly authorized, be adjudged lawful prizes, not breaking bulk, nor suffering such a thing to be done." The commission ran in the name of the delegates of the United Colonies and was signed by the president of Congress; these commissions were also countersigned by the governors of the respective states.

(n7)Footnote 7. Putnam: "How the Federal Courts Were Given Admiralty Jurisdiction," *10 Cornell L.Q. 460 (1925).*

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1-VI Benedict on Admiralty § 82

§ 82 Provision for Appeals From State Courts.

Pursuant to the resolution of November 1775, Congress as a whole apparently heard some appeals itself, but soon began to delegate the powers to ad hoc committees. On January 30, 1777, Congress resolved that a standing committee, to consist of five members be appointed to hear and determine upon appeals brought against sentences passed on libels in prize cases in the courts of admiralty in the respective states.

The Articles of Confederation were adopted on November 15, 1777, signed and ratified by a majority of states on July 9, 1778 the final ratification coming on March 1, 1781. By Article IX of these Articles, the United States in Congress assembled were vested, among other things with the sole and exclusive power of "establishing rules for deciding in all cases what captures on land and water shall be legal, and in what manner prizes be taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally, appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts."

On January 15, 1780, Congress established a Court of Appeals "to hear, try and determine all appeals from the Courts of Admiralty in the states respectively, in cases of capture, which now are or hereafter may be duly entered and made in any of the said states." The Congress also resolved that the trials in the "court of appeals be according to the usage of nations and not by jury." On May 24, 1780, Congress settled the style of the court of appeals as "The Court of Appeals in cases of capture" and resolved that "all matters respecting appeals, now depending before Congress or the Commissioners of Appeals, consisting of members of Congress, be referred to the newly created Court of Appeals to be there judge and determined according to law."

Experience was to demonstrate the inherent weaknesses of the system under the Confederation, resulting in the inability of the Central Government to enforce the judgments of the Court of Appeals. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedurePrize Proceedings

FOOTNOTES:
(n1)Footnote 1. Cf. the following passage from the dissenting judgment of *Mr. Justice Pitney in Southern Pacific Co. v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917)* , and the case therein cited:

"It is matter of familiar history that one of the chief weaknesses of the Confederation was in the absence of a judicial establishment possessed of general authority. Except that the Continental Congress, as an incident of the war power, was authorized to establish rules respecting captures and the disposition of prizes of war, and to appoint courts for the trial of piracies and felonies committed on the high sea, and for determining appeals in cases of capture, and except that the Congress itself, through commissioners, was to exercise jurisdiction in disputes between the states and in controversies respecting conflicting land grants of different states, there was no provision in the Articles of Confederation for establishing a judicial system under the authority of the general government.

"The result was that not only private parties, in cases arising out of the laws of the Congress, but the United States themselves, were obliged to resort to the courts of the states for the enforcement of their rights. Many cases of this character are reported, some even antedating the *Confederation. Respublica v. Sweers (1779) 1 L. ed. 29, 1 Dall. 41* ; *Respublica v. Powell (1780) 1 L. ed. 31, 1 Dall. 47* ; *Respublica v. De Longchamps (1784) 1 L. ed. 59, 1 Dall. 111* . Even treason was punished in state courts and under state laws. See cases of *Molder, Malin, Carlisle, and Roberts (1778) 1 U.S. 33, 1 L. Ed. 25, 27, 1 Dall. 33, 39* .

"Before the Revolution, courts of admiralty jurisdiction were a part of the judicial systems of the several colonies. [*233] Waring v. Clarke, 5 How. 441, 454-456, 12 L. ed. 226, 232-234* , Benedict, Admiralty, §§ 118-165. Upon the outbreak of the war questions of prize law became acute, and the colonial Congress, by resolutions of November 25, 1775, passed in the exercise of the war power (*Penhallow v. Doane, 1 L. ed. 507, 518, 3 Dall. 54, 80)* , made appropriate recommendations for the treatment of prizes of war, but remitted the jurisdiction over such questions to the courts of the several colonies, reserving to itself only appellate authority. This system continued until the year 1780 (after the submission of the Articles of Confederation, but before their final ratification), when the Congress established a court for the hearing of appeals from the state courts of admiralty in cases of capture. The opinions of this court are reported in *2 Dall. 1-42, 1 L. ed. 263-281* , and numerous cases decided without opinion, as well as some of those decided by committees of the Congress prior to the establishment of the court, are referred to in the late Bancroft Davis's "Federal Courts Before the Constitution,' 131 U.S. xix-xliv., Appx. The weak point of this system was the want of power in the central government to enforce the judgment of the appellate tribunal when it chanced to reverse the decree of a state court. There were some curious cases of conflicting jurisdiction, illustrated by *Doane v. Penhallow (1787) 1 L. ed. 108, 109, 1 Dall. 218, 221* ; *Penhallow v. Doane (1795) 1 L. ed. 507, 517, 520, 3 Dall. 54, 79, 86* ; and United States v. Peters (1809) *3 L. ed. 53, 59, 60, 5 Cranch, 115, 135, 137* ."

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1-VI Benedict on Admiralty § 83

§ 83 Statute of Maryland.

In Maryland, a court of admiralty was established in 1776, "for the trial of captures and seizures, with full power to take cognizance of all libels on account of such captures and seizures and to proceed to a final determination, and decree thereupon which court was to consist of a judge to hear and determine, a register to record the proceedings and a marshal to call the said court and execute the several processes thereof ... The process and proceeding to be as usual in courts of admiralty, but if either party demand a jury on any material controverted fact," a jury was to be summoned. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral Overview

FOOTNOTES:
(n1)Footnote 1. Laws of Maryland, 1776.

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1-VI Benedict on Admiralty § 84

§ 84 Statute of New Jersey.

In New Jersey, an act regulating and establishing Admiralty jurisdiction, was passed in 1781, which provided that the Judge of the Admiralty should "hold a Court of Admiralty, and therein have cognizance in all cases of prize, capture and re-capture upon the water, from enemies, or by way of reprisal, or from pirates, and in general of all controversies, suits and pleas of Maritime Jurisdiction, and thereupon the said Judge shall pass sentence and decree according to the maritime law and the law of nations, and the ordinances of the Honorable, the Congress of the United States of America, and the laws of this State."

The second section provided that all causes should be tried by a jury. The 20th section established the same rule as to prohibitions as the Pennsylvania act. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Laws of New Jersey, 1781.

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1-VI Benedict on Admiralty § 85

§ 85 Statute of Pennsylvania.

In Pennsylvania, an Act for establishing a court of Admiralty was passed September 9, 1778, another for regulating and establishing Admiralty jurisdiction in March, 1780. The former act provided, inter alia, for appeals from the court in all cases except from the determination or finding of the facts by the jury which was to be without re-examination or appeal. By the latter act it was enacted that the judge should "hold a Court of Admiralty, and therein have cognizance of all controversies, suits and pleas of maritime jurisdiction, not cognizable at the common law, offences and crimes other than contempts against said court only excepted, and thereupon shall pass sentence, and decree according as the maritime law and the law of nations, and the laws of this commonwealth shall require."

By § 22, it was enacted that "all and every, the proceedings of the court of admiralty of this commonwealth, shall be liable to the prohibition of the Supreme Court of Judicature in like manner, and with like effect as the prohibition of the Court of King's Bench in England, in like cases." n1 The High Court of Errors and Appeals of Pennsylvania construing the words in the statute "not cognizable at the common law" held: n2

> "If the Court of Admiralty for this state can not take cognizance of things which courts of common law may draw into their cognizance, it seems to have been nugatory in the Legislature to have given that court any other jurisdiction than in cases of prize; for even in the case of wages, justly a favorite object of admiralty jurisdiction, mariners may sue for them at common law.
>
> "It appears to have been the intention of the Legislature, that justice should be done in the easiest and best manner, and that by the words "not cognizable at common law,' should be understood, "not properly cognizable at common law.' "

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Workers' ClaimsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:

(n1)Footnote 1. Laws of Pennsylvania, 1788.

(n2)Footnote 2. *Talbot v. The Commanders and Owners of Three Brigs, 1 U.S. (1 Dall.) 95, 1 L. Ed. 52 (1784)* .

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1-VI Benedict on Admiralty § 86

§ 86 Statute of Rhode Island.

In 1647 the first General Assembly of Rhode Island (then called Providence Plantations), passed an Ordinance reading as follows: "It is ordered that the Sea Laws, otherwise called Laws of Oleron, shall be in force among us, for the benefit of seamen upon the island; and the chief officers in the town shall have power to summon the Court and determine the cause or causes presented."

This order remained in force certainly till Rhode Island adopted the Constitution of the United States on May 29, 1970. n1 This ordinance was in the nature of an ancient statute which no one thought of repealing in spite of the numerous changes which took place in the interim.

Rhode Island's state court of Admiralty was created on March 24, 1776 in "the twilight period between loyalty and independence." n2 It was intituled an "Act for encouraging the fixing out and authorizing armed Vessels to defend the Sea-Coast of America, and for erecting a Court to try and condemn all Vessels that shall be found infesting the same."

> "The statute of Rhode Island of March, 1776, provided for a "court of justice, by and before such able and discreet person, as shall be annually appointed and commissioned by order of the General Assembly for that purpose, whose business it shall be to take cognizance of, and to try, any capture or captures, of any vessel or vessels, that may or shall be taken by any person or persons whomsoever and brought into said Colony.' "

This "Maritime Court for the Trial of Prize Causes" existed as such until July, 1780 when the Court was reconstituted as a Court of Admiralty to exercise jurisdiction also in respect of "Causes concerning Seamens Wages, Salvage, and all other matters and Things of a Maritime Nature, properly cognisable before and to be heard and determined by a Court of Admiralty." The procedure of the court provided for a jury to determine issues of fact.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral Overview

FOOTNOTES:

(n1)Footnote 1. We are indebted for this information to Amasa M. Eaton, Esq., of Providence, R. I., who gave as his authority 1 Bartlett's Col. Records of R. I., p. 151, and a pamphlet published by Judge Staples in 1847, entitled "The Proceedings of the First General Assembly of "The Incorporation of Providence Plantations.' " See also the American Historical Society's Collection of Rhode Island Reports, with an introduction by Mr. C. M. Andrews. For a comprehensive note see Weiner "Notes on the Rhode Island Admiralty, 1727-1790," *46 Harv. L. Rev. 44*.

(n2)Footnote 2. *Weiner "Notes on the Rhode Island Admiralty" supra* , n. 1: "The set ... was directed only at the present administration of Great Britain ... The set and resolves for the same session still bore the royal arms and concluded with a pious "God Save the King;' the ties of allegiance were not loosed until May 4, 1776."

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1-VI Benedict on Admiralty § 87

§ 87 Statute of New Hampshire.

On July 3, 1776 the legislature of New Hampshire passed an Act for the trial of captures. By this Act a court of justice by the name of the court maritime was constituted. A detailed procedure was laid down which the court and the parties were to follow. Trial was by jury. Provision was made for the distribution of the proceeds of Prize. Where prize was taken by any armed vessel fitted out at the charge of the united colonies an appeal lay to the continental Congress if made within the time specified. In other cases an appeal lay to the next superior court in the state. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral Overview

FOOTNOTES:
(n1)Footnote 1. See the following extract, from the Act, reproduced from *Penhallow v. Doane's Administrators, 3 U.S. (3 Dall.) 54, 1 L. Ed. 507* :

"And be it further enacted, That there shall be erected and constantly held in the town of Portsmouth, or some town or place adjacent, in the county of Rockingham, a court of justice, by the name of the court maritime, by such able and discreet person, as shall be appointed and commissioned, by the council and assembly, for that purpose, whose business it shall be to take cognizance, and try the justice of any capture or captures, of any vessel or vessels, that have been, may or shall be taken, by any person or persons whomsoever, and brought into this colony, or any recaptures, that have or shall be taken and brought thereinto.

"And be it further enacted, That any person or persons who have been, or shall be concerned in the taking and bringing into this colony, any vessel or vessels employed or offending, or being the property as aforesaid, shall jointly, or either of them by themselves, or by their attornies, or agents, within twenty days after being possessed of the same in this colony, file before the said judge, a libel in writing, therein giving a full and ample account of the time, manner, and cause of the taking such vessel or vessels. But in case of any such vessel or vessels, already brought in as aforesaid, then

such libel shall be filed within twenty days next after the passing of this act, and at the time of filing such libel, shall also be filed, all papers on board such vessel or vessels, to the intent, that the jury may have the benefit of the evidence, therefrom arising. And the judge shall as soon as may be, appoint a day to try by a jury, the justice of the capture of such vessel or vessels, with their appurtenances and cargoes; and he is hereby authorized and empowered to try the same. And the same judge shall cause a notification thereof, and the name, if known, and description of the vessel, so brought in, with the day set for the trial thereon, to be advertised in some newspapers printed in the said colony (if any such paper there be) twenty days before the time of the trial, and for want of such paper, then to cause the same notification to be affixed on the doors of the town-house, in said Portsmouth, to the intent that the owner of such vessel, or any persons concerned, may appear and show cause (if any they have) why such vessel, with her cargo and appurtenances, should not be condemned, as aforesaid. And the said judge shall, seven days before the day set and appointed for the trial of such vessel, or vessels, issue his warrant to any constable or constables within the county aforesaid, commanding them, or either of them, to assemble the inhabitants of their towns respectivly, and to draw out of the box, in manner provided for drawing jurors, to serve at the superior court of judicature, so many good and lawful men as the said judge shall order, not less than twelve, nor exceeding twenty-four; and the constable or constables shall, as soon as may be, give any person or persons, so drawn to serve on the jury in said court, due notice thereof, and shall make due return of his doings therein to the said judge, at, or before the day set and appointed for the trial. And the said jurors shall be held to serve on the trial of all such vessels as shall have been libelled before the said judge, and the time of their trial, published, at the time said jurors are drawn, unless the judge shall see cause to discharge them, or either of them before; and if seven of the jurors shall appear and there shall not be enough to complete the number of twelve (which shall be a panel) or if there shall be a legal challenge, to any of them, so that there shall be seven, and not a panel, it shall and may be lawful for the judge, to order his clerk, the sheriff, or other proper officer, attending said court, to fill up the jury with good and lawful men present; and the said jury when so filled up, and impannelled, shall be sworn to return a true verdict, on any bill, claim, or memorial which shall be committed to them according to law, and evidence; and if the jury shall find, that any vessel or vessels, against which a bill or libel is committed to them have been offending, used, employed or improved as aforesaid, or are the property of any inhabitants of Great Britain as aforesaid, they shall return their verdict thereof to the said judge, and he shall thereupon condemn such vessel or vessels, with their cargoes, and appurtenances, and shall order them to be disposed of, as by law is provided; and if the jury shall return a special verdict, therein setting forth certain facts, relative to such vessel or vessels (a bill against which is committed to them) and it shall appear to thesaid judge, by said verdict, that such vessel or vessels, have been infesting the sea coast of America, or navigation thereof, or that such vessels have been employed, used, improved, or offending, or are the property of any inhabitant, or inhabitants of Great Britain, as aforesaid, he, the said judge, shall condemn such vessel or vessels, and decree them to be sold, with their cargoes, and appurtenances, at public vendue; and shall also order the charges of said trial and condemnation, to be paid out of the money which such vessel and cargo, with her appurtenances, shall sell for to the officers of the court, according to the table of fees, last established by law of this colony, and shall order the residue thereof to be delivered to the captors, their agents, or attorneys, for the use and benefit of such captors, and others concerned therein: and if two or more vessels (the commanders whereof, shall be properly commissioned) shall jointly take such vessel, the money which she and her cargo shall sell for (after payment of charges as aforesaid) shall be divided between the captors in proportion to their men. And the said judge is hereby authorized to make out his precept, under his hand and seal, directed to the sheriff of the county aforesaid (or if thereto requested by the captors or agents to any other person to be appointed by the said judge) to sell such vessel and appurtenances, and cargo, at public vendue, and such sheriff or other person after deducting his own charges for the same, to pay and deliver the residue, according to the decree of the said judge.

"And be it enacted by the authority aforesaid, That any person or persons, claiming the whole, or any part or share, either as owner or captor of any such vessel, or vessels, against which a libel is so filed may jointly, or by themselves, or by their attorneys or agents, five days before the day set and appointed for the trial of such vessel or vessels, file their claim before the said judge; which claim shall be committed to the jury, with the libel, which is first filed, and the jury shall thereupon determine and return their verdict, of what part or share such claimant or claimants, shall have of the capture, or captures; and every person or persons who shall neglect to file his or their claim in the manner as aforesaid, shall be forever barred therefrom.

"And be it further enacted by the authority aforesaid, That every vessel, which shall be taken and brought into this colony, by the armed vessels of any of the united colonies of America, and shall be condemned as aforesaid, the proceeds of such vessels and cargoes, shall go and be, one third part to the use of the captors, and the other two thirds, to the use of the colony, at whose charge, such armed vessel was fitted out.

"And where any vessel or vessels shall be taken by the fleet and army of the united colonies, and brought into this colony, and condemned as aforesaid, the said judge shall distribute and dispose of said vessels, and cargoes, according to the resolves and orders of the American Congress.

"And whereas, the honorable continental Congress have recommended, that in certain cases an appeal should be granted from the court aforesaid.

"Be it therefore enacted, That from all judgments, or decrees, hereafter to be given in the said court maritime, on the capture of any vessel, appurtenances or cargoes, where such vessel is taken, or shall be taken by any armed vessel, fitted out at the charge of the united colonies, an appeal shall be allowed to the continental Congress, or to such person or persons, as they already have, or shall hereafter appoint, for the trials of appeals, provided the appeal be demanded within five days, after definitive sentence given, and such appeal shall be lodged with the secretary of the Congress, within forty days afterwards; and provided the party appealing, shall give security to prosecute said appeal with effect; and in case of the death of the secretary, during the recess of the Congress, the said appeal shall be lodged in Congress, within twenty days, after the next meeting thereof; and that from the judgment, decrees, or sentence of the said court, on the capture of any vessel, or cargo which have been or shall hereafter be brought into this colony, by any person or persons, excepting those who are in the service of the united colonies, an appeal shall be allowed to the superior court of judicature, which shall next be held in the county aforesaid.

"And whereas no provision has been made by any of the said resolves for an appeal from the sentence of decree of the said judge, where the caption of any such vessel or vessels may be made by a vessel in the service of the united colonies, and of any particular colony, or person together:

"Therefore be it enacted by the authority aforesaid: That in such cases, the appeal shall be allowed to the then next superior court as aforesaid: Provided the appellant shall enter into bonds with sufficient sureties to prosecute his appeal with effect. And such superior court, to which the appeal shall be, shall take cognizance thereof, in the same manner as if the appeal was from the inferior court of common pleas, and shall condemn or acquit, such vessel or vessels, their cargoes, and appurtenances, and in the sale, and disposition of them, proceed according to this act. And the appellant shall pay the court, and jury, such fees as are allowed by the law in civil actions."

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VI. ADMIRALTY JURISDICTION DURING THE PERIOD OFTHE REVOLUTION AND CONFEDERATION.

1-VI Benedict on Admiralty § 88

§ 88 Statute of Virginia.

Virginia declared herself independent on January 9, 1776 and on January 20, 1776 adopted a measure enacting, inter alia,

> "Be it therefore ordained that John Blair, James Holt, and Edmund Randolph, Esquires, be, and any two of them, be, and they hereby are, constituted judges to try and determine on all matters relating to vessels and their cargoes; which said judges shall have power to appoint an advocate, clerk, and such other person, as they may think proper to act as marshal, who shall, from time to time, execute all process of the said court, to be issued and signed by the clerk thereof."

The measure provided for an appeal to the Committee of Safety.

This was followed in October, 1776 by

> "An act establishing a court of Admiralty, to consist of three judges to be chosen by joint ballot of both branches of Assembly and commissioned by the Governor, or any two of them, to make a court and to hold their office for so long a time as they shall demean themselves well therein."

Provision was made that:

> "The court shall have cognizance of all causes heretofore of admiralty jurisdiction in this country, and shall be governed in their proceedings and decisions by the regulations of the Continental Congress, Acts of Annual Assembly, English statutes prior to the fourth year of the reign of King James the First, and the laws of Oleron, the Rhodians and Imperial laws, so far as the same have been heretofore observed in the English courts of admiralty, save only in the instances hereinafter provided for." n1

This Act was revised in 1779 and it was provided

> "Be it enacted by the General Assembly, That the Court of Admiralty to consist of three judges, any

> two of whom are declared to be a sufficient number to constitute a court, shall have jurisdiction of all maritime causes, except those wherein parties may be accused of capital offences, now depending and hereafter to be brought before them."

It was also expressly provided that such court was to be "governed in their proceedings and decisions by the regulations of the Congress of the United States of America; by the acts of the general assembly; by the *laws of Oleron and the Rhodian and Imperial Laws, so far as they have been heretofore observed in the English Courts of Admiralty; and by the laws of nature and nations.*" a wide and beneficial jurisdiction. The reference in the earlier statute to the "English Statutes prior to the fourth year of the reign of King James" was deleted. No one can fail to observe how distinctly the ancient ordinances and maritime laws, the civil law, and the former practices of the English Admiralty, are adopted instead of the narrow limit observed by the English Admiralty at that time. n2

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral OverviewAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Hening, Stat. at Large. Vol. 1. p. 101; and see Putnam: "How the Federal Courts Were Given Admiralty Jurisdiction," *10 Cornell L.Q. 460 (1925)*.

(n2)Footnote 2. Laws of Virginia, (1799) c. 26; *Waring v. Clarke, 46 U.S. (5 How.) 46 U.S. 441, 12 L. Ed. 226 (1874)* .

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1-VI Benedict on Admiralty § 89

§ 89 Diversity in State Statutes.

These references, without necessarily being exhaustive, are sufficient fully to establish that diversity which could hardly fail to exist in the different states, which though friendly and united for certain purposes, were, nevertheless, independent of, and foreign to, each other.

With this diversity existing, it could hardly be contended that the phrase, all cases of Admiralty and maritime jurisdiction, was to include only the cases so-called in some particular State which was not pointed out, much less to perpetuate in each State its peculiar law of Admiralty jurisdiction, thus making diversity instead of uniformity of Admiralty jurisdiction a portion of our organic law and requiring the constitutional grant to the general government to receive a different construction in the different States. Such a state of things must have made the judicial system of the United States entirely impracticable. In this view of the State courts of Admiralty, the grant must have been intended to embrace a general maritime jurisdiction.

If all the States, before the adoption of the Constitution, had re-enacted the statute of 15 Rich. II, it is not perceived how it could have had any influence on the construction of the Constitution. If the States, without exception, had abolished their courts of Admiralty, and swept away all their Admiralty and maritime jurisdiction before the Constitution was framed, such legislation, instead of rendering useless or nugatory the grant in question, would only have rendered it so much the more necessary. And on the same principle, any modification or limitation of the State jurisdiction would have no effect on the construction of the constitutional grant. Cases of a certain class would still be maritime cases, and it would be none the less important that they should be subject to the Federal judiciary, to secure that equal administration of the maritime law and that uniformity and nationality of decision under it, which would promote the harmony of the commercial world, of which the States formed an important part. And it would be none the less certain that a grant to the general government of jurisdiction in all such cases would make them all subjects of national jurisdiction, to be distributed to such courts and proceeded with in rem or in personam, with or without a jury, in such manner as Congress should provide. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. Martin v. Hunter's Lessee, 14 U.S.C. (1 Wheat.) 304, *4 L. Ed. 97 (1816)* ; *Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* ; *New Jersey Steam Nav. Co. v. Merchants Bank, 47 U.S. (6 How.) 47 U.S. 344, 12 L. Ed. 465 (1848)* .

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1-VI Benedict on Admiralty §§ 90-100

Reserved.

§§ 90Reserved.

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1-VII Benedict on Admiralty VII.syn

§ VII.syn Synopsis to Chapter VII: Source of Law and Jurisdiction of Admiralty

§ 101. Admiralty Jurisdiction a Constitutional Grant.

§ 102. The Term "Admiralty."

§ 103. The Term "Maritime."

§ 104. General Sources of Admiralty and Maritime Law and Jurisdiction.

§ 105. The Purpose of the Constitutional Grant--The Essential Harmony of the Maritime Law.

§ 106. General Character of the Jurisdiction.

§ 107. Courts Exercising Original Jurisdiction.

§ 108. Courts Exercising Appellate Jurisdiction.

§ 109. Legislative Power of Congress.

§ 110. The Limitations on Federal Legislative Power.

§ 111. The Legislative Power of Congress Non-Delegable.

§ 112. State Law: How Far Inoperative in Maritime Cases.

§ 113. State Law: How Far Given Effect in Maritime Cases.

§ 114. State and Federal Courts Apply Same Law to Maritime Causes of Action.

§§ 115-120 [Reserved].

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Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 101

§ 101. Admiralty Jurisdiction a Constitutional Grant.

Jurisdiction is the power to adjudicate a case upon its merits and dispose of it as justice may require. n1 The jurisdiction of any court to deal with a subject matter is derived from constitutional instruments and valid laws n2 which taken as a whole provide for a division and distribution of its jurisdiction over controversies justiciable n3 in their nature on the basis of, *inter alia,* the nature and classification of the subject matter. Admiralty and maritime jurisdiction is jurisdiction to adjudicate on matters which in accordance with the Constitution and valid laws in force are appropriate subjects n4 for determination by courts granted such a jurisdiction. The character of this jurisdiction is indicated broadly by the name itself and it is as such that it is comprehended within the judicial power of the United States conferred by the Constitution. Article III, section 2 of the Constitution provides that: "The judicial Power shall extend ... to all Cases of admiralty and maritime Jurisdiction." It is the purpose of this volume to investigate and state the content and the limits of admiralty and maritime jurisdiction as it has evolved in this country.

The term "admiralty jurisdiction" was well known in legal parlance of the time, but the Constitution used the additional attribute "maritime." Recent researchers have not succeeded in accounting for the appearance of the word "maritime" in the Constitutional language. n5 Justice Story thought that the word "maritime" was superadded, seemingly *ex industria,* to remove every latent doubt, n6 and his thesis was: n7

> "... There is a peculiar property in the incorporation of the term "maritime' into the Constitution. The disputes and discussions, respecting what the admiralty jurisdiction was, could not but be well known to the framers of that instrument. n8 ... One party sought to limit it by locality; another by the subject matter. It was wise, therefore, to dissipate all question by giving cognizance of all 'cases of maritime jurisdiction,' or, what is precisely equivalent, of all maritime cases. Upon any other construction the word 'maritime' would be mere tautology, but in this sense it has a peculiar and appropriate force... The language of the Constitution will therefore warrant the most liberal interpretation and ... had reference to that maritime jurisdiction, which commercial convenience, public policy, and national rights, have contributed to establish, with slight local differences, over all Europe."

The use of the term "maritime jurisdiction" was not an innovation of the framers of the Constitution. The expression had come into use, if not earlier, during the time of the confederation when courts were set up in the states to exercise

powers of admiralty courts. n9 It would seem but natural, therefore for the framers of the Constitution to use the same terminology when conferring the admiralty and maritime jurisdiction on the Federal Government.

In the context of the views then prevailing concerning the respective domains of admiralty and common law and the experience of the exercise of the jurisdiction separately by the states, the use of expression "all cases of admiralty and maritime jurisdiction" was perhaps calculated to achieve two objects, namely, (1) to exclude that jurisdiction which the English Admiralty anciently exercised or attempted to exercise over nonmaritime cases arising ashore, and (2) to preclude a resort to those English instances in which common law courts encroached upon the jurisdiction of admiralty as earlier legitimately exercised in England and as generally acknowledged in Europe. n10

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:

(n1)Footnote 1. *The Resolute, 168 U.S. 437, 18 S. Ct. 112, 42 L. Ed. 533 (1897)* ; *see also General Investment Co. v. New York Cent. R. Co., 271 U.S. 228, 46 S. Ct. 496, 70 L. Ed. 920 (1926)* ; *Erickson v. United States, 264 U.S. 246, 44 S. Ct. 310, 68 L. Ed. 661 (1924)* ; *Binderup v. Pathe Exchange, 263 U.S. 291, 44 S. Ct. 96, 68 L. Ed. 308 (1923)* ; *Geneva Furniture Mfg. Co. v. S. Karpen & Bros., 238 U.S. 254, 35 S. Ct. 788, 59 L. Ed. 1295 (1915)* ; *The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 33 S. Ct. 410, 57 L. Ed. 716 (1913)* ; *Davis v. Cleveland, C.C. & St. Co., 217 U.S. 157, 30 S. Ct. 463, 54 L. Ed. 708 (1910)* ; *Wedding v. Meyler, 192 U.S. 573, 24 S. Ct. 322, 48 L. Ed. 570 (1904)* ; *Illinois C.F.Co., v. Adams, 180 U.S. 28, 21 S. Ct. 251, 45 L. Ed. 410 (1901)* ; *In re Reed, 100 U.S. 13, 25 L. Ed. 538 (1879)* ; *McNitt v. Turner, 83 U.S. (16 Wall.) 352, 21 L. Ed. 341 (1873)* .

(n2)Footnote 2. *Cf. Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 19 L. Ed. 931 (1870)* ; *Jones v. Brinson, 238 N.C. 506, 78 S.E.2d 334 (1953)* .

(n3)Footnote 3. *Kansas v. Colorado, 206 U.S. 46, 27 S. Ct. 655, 51 L. Ed. 956 (1907)* .

(n4)Footnote 4. *Cf. The Young America, 21 Fed. Cas. 851 (D. Mich.)* .

(n5)Footnote 5. Robertson, *Admiralty and Federalism* (1970), Ch. 1 and *cf.* its review by Professor G. Gilmore, University of Chicago Law Review, vol. 38:431.

(n6)Footnote 6. *De Lovio v. Boit, 7 F. Cas. 418, 442, 443, 2 Gall. 398* , Fed. Cas. No. 3776 (C.C. Mass. 1815).

(n7)Footnote 7. *Id. Cf. Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 335, 4 L. Ed. 97, 105 (1816)* .

(n8)Footnote 8. *Citing Montgomery v. Henry, 1 U.S. [1 Dall.] 49, 1 L. Ed. 32* ; *Talbot v. Commanders and Owners of Three Brigs, 1 U.S. [1 Dall.] 95, 1 L. Ed. 52 (1784)* .

(n9)Footnote 9. A statute of New Jersey passed in 1781 referred to a court of admiralty having cognizance, *inter alia,* "... of all controversies, suits and pleas of Maritime Jurisdiction ...," *see* § 84, *supra;* a statute of Pennsylvania of 1780 similarly provided for "cognizance of all controversies, suits and pleas of maritime jurisdiction not cognizable at common law ...," *see* § 85, *supra;* in Rhode Island the "Maritime Court for the Trial of Prize Causes" was reconstituted in 1780 as a Court of Admiralty to exercise jurisdiction in respect of "causes concerning ... all other matters and things of a Maritime Nature ...," *see* § 86, *supra;* in Virginia, the Act establishing a Court of Admiralty was revised in 1779 to provide for the court to have jurisdiction "of all maritime causes ...," *see* § 88, *supra.*

(n10)Footnote 10. *Cf. Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* ; *see also The Moses Taylor*

v. Hammons, 71 U.S. (4 Wall.) 411, 18 L. Ed. 397 (1866) ; *The Bessie Mac., 21 F. Supp. 220 (W.D. Wash. 1937)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 102

§ 102. The Term "Admiralty."

The term "Admiralty" is derived from the word admiral which in turn is derived from an Arabic word meaning commander commonly represented in English by Ameer or Emir. n1 The Arabic word transliterated as *amir* occurred in many titles followed invariably by the particle *"al"* meaning "[of] the"; Christian writers assumed *"amir-al"* to be a substantive word and variously latinized it in analogous forms. Popular etymology assimilated these forms to more familiar words fashioning *amiral* finally to *admiral.* The modern maritime use is traceable from the office of *amir-al-bahr* or *amir-al-ma* meaning Ameer of the sea created by the Arabs in Spain and Sicily continued by the Christian Kings of Sicily and adopted by the Genoese, French and English under Edward III as "Amyrel of the Se" or "Admyrall of the Navy." In England the title Admiral styled more fully as the Lord High Admiral, appertained to "an officer or magistrate that had the government of the king's navy and the hearing and determining all causes, as well civil as criminal, belonging to the sea." n2 Originally, admiralty jurisdiction was but another phrase for the power of the admiral, a naval officer of the highest dignity and station, holding his authority directly from the sovereign, subordinate to the monarch alone and clothed with many of the prerogatives of royalty.

Every maritime nation has certain rules or laws in relation to ships, shipping and maritime matters--rules peculiar to itself, such as its navigation acts, the municipal regulations of its harbors, creeks, bays and navi gable rivers and of its own vessels; its rules in relation to wrecks, obstructions in rivers, prohibited nets, royal fisheries and other *droits* of the admiralty, constituting its maritime policies. These were originally enforced by the admiral, exercising in part a high executive and administrative function, which was a portion of the royal prerogative and was, in substance, confined to the waters and the vessels of his own nation. The admiralty court was the forum through which and by the aid of whose process, when necessary, these local municipal and administrative laws were enforced and their violators condemned in civil damages or criminally. These are properly the admiralty law of any country. Cases arising under these laws are cases of traditional admiralty jurisdiction. The administration of the law of the sea has passed into the hands of the regular courts of justice but the system of law thus administered has retained the name of the admiralty law, though the name and power of the admiral have ceased to be known in its execution.

The grant of admiralty and maritime jurisdiction is now given solely to the judicial power, all those functions of the admiral which may properly be called executive or administrative being unknown to the American admiralty. A judicial function to be exercised only in cases of maritime character, between party and party, by judges and courts and not by

the admiral or his deputies was thus granted to the United States in the simplest and most comprehensive language, providing for nothing but cases in court, embracing all of admiralty and maritime jurisdiction without condition, exception or limitation and independent of the character of the parties.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. The Oxford English Dictionary *contra* "Admiral." This paragraph is based largely on that entry.

(n2)Footnote 2. *Id.*, citing Cowel. For present Admiralty jurisdiction in England, *see* Chapter III, *supra.*

Benedict on Admiralty

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1-VII Benedict on Admiralty § 103

§ 103. The Term "Maritime."

The word "maritime" has in the Constitution its appropriate meaning, *i.e.*, relating to the sea, and "sea" is a word of wide extension and application, as will be more fully shown hereafter. n1 Its classical and scriptural equivalents are applied to all sorts of navigable waters. It is not restricted, even in common speech, to waters where the tide ebbs and flows, for the Baltic Sea, the Black Sea, the Sea of Azof, the Sea of Marmora, the Mediterranean Sea, the great scenes of early maritime enterprise, have no visible tide.

The term maritime as an attribute of a cause of action in tort is sometimes given a restricted meaning as importing admiralty and maritime jurisdiction only when having reference to maritime navigation and commerce. n2 Although the lines are not always easy to draw, it would likely lead to more satisfactory results if courts recognized that the purpose of having jurisdiction over maritime affairs is to provide a forum for developing a uniform body of law for those aspects of maritime commerce for which there is a substantial federal interest.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. *See* Chapter IX, *infra; Pure Oil Co. v. Snipes, 293 F.2d 60, 65 n.6, 1961 AMC 1651 (5th Cir. 1961)* .

(n2)Footnote 2. *See, e.g., Executive Jet Aviation, Inc. v. City of Cleveland, Ohio, 409 U.S. 249, 93 S. Ct. 493, 34 L. Ed. 2d 454 (1972)* . Note, however, that this case restricts the scope of the ruling only to aviation accidents. *See generally* § 171, *infra.*

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1-VII Benedict on Admiralty § 104

§ 104. General Sources of Admiralty and Maritime Law and Jurisdiction.

American maritime law, like the English maritime law, is not a branch of the common law of England. n1 Maritime law in England took its chacter and inspiration from the Civil Law n2 as indeed most European laws, but only so much of the general maritime law was in force as was accepted by a course of decision of the High Court of Admiralty or adopted or modified by Acts of Parliament. n3

At the time of the Revolution the English Admiralty had suffered much from the encroachment of the Common Law Courts. n4 It is possible that the jurisdiction of the Colonial Courts of Admiralty (far removed from the effective exercise of power of the Common Law Courts) based upon charters of ancient origin, containing words importing grant of jurisdiction of the largest amplitude, was perhaps, *de facto* if not *de jure* wider than that of the Court of Admiralty in England. n5 But it is not particularly material or important to determine what precisely this jurisdiction was to ascertain the nature of the grant of judicial power in this regard to the Federal Government. The framers of the Constitution were aware of the character and the source of maritime law and in conferring admiralty and maritime jurisdiction must have most certainly intended that very system to operate but subject, now, to its adoption in this country by the Federal Courts and the Congress. n6 Even before the Constitution was adopted, judicial sentiment had expressed unwillingness to be bound by British precedent in the construing of admiralty jurisdiction:

> "There was a time--when we listened to the language of her Senates and her courts, with a partiality of veneration, as to oracle. It is past--we have assumed our station among the powers of the earth, and must attend to the voice of nations--the sentiments of society into which we have entered." n7

The course of judicial decision in this country has, despite a number of early dissents or opinions to the contrary, n8 clearly established that the admiralty and maritime jurisdiction of the United States is not limited either by the restraining statutes or the judicial prohibitions of England--or by the local traditions of that land--but is to be interpreted by an original view of its essential nature and objects and with reference to analogous jurisdictions in other countries constituting the maritime commercial world as well as the jurisdiction in England. n9 It is also abundantly established that by the grant of admiralty and maritime jurisdiction, the national government took over the traditional body of rules, precepts and practices known to the lawyers and legislators as the maritime law, so far as the courts invested with admiralty jurisdiction should accept and apply them. n10 Admiralty cases are as old as navigation itself and, as they

arise, the law, admiralty and maritime, as it has existed for ages, is applied by our courts. n11 The law of the sea or maritime jurisprudence as it is sometimes termed, is in a peculiar sense an international law n12 and because of the international character of maritime law, continental codes and treatises are referred to and recognized as sources from which rules may be drawn. n13 "Courts of this country and other commercial countries have often deferred to a non-national law or international law of impressive maturity and universality." n14 The prevalence of a rule of law in a number of other countries is persuasive for its adoption here. n15

The general maritime law, however, is only so far operative as law in any country as it is adopted by the laws and usages of that country. There is no "mystic overlaw." n16 Foreign maritime usages are not obligatory upon us, n17 and though the civil law and the continental codes are a source of the maritime law, the admiralty and maritime jurisdiction of the United States does not necessarily include all cases which would fall within such jurisdiction according to the civil law and the practice and usages of continental Europe. n18 It is the maritime law as accepted and received in the United States that governs and, though the general maritime law is the ground work of our own maritime system, it is only by voluntary adoption and with such qualifications as our jurisprudence and statutes have made in it that it becomes our law. n19 It is in this sense--a sense that contemplates both judicial adaptation and legislative modification--that it may be said that the Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law. n20 The precise scope of admiralty jurisdiction is "not a matter of obvious principle or of very accurate history" n21 but the jurisdiction is of broad scope in this country n22 and the progress of our jurisprudence in freeing the jurisdiction from pre-revolutionary English restrictions and in giving a distinctive character to our maritime law has been marked by the overruling of earlier decisions and the qualification or rejection of earlier expressions of judicial thought.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:

(n1)Footnote 1. *Cf. Moragne v. States Marine Lines, 398 U.S. 375, 90 S. Ct. 1772, 26 L. Ed. 2d 339 (1970)* .

(n2)Footnote 2. *Id.*, citing treatise (6th ed.).

(n3)Footnote 3. Halsbury's *Laws of England*, 3d ed., vol. 1. p. 50: "The law administered in Admiralty actions is not the ordinary municipal law of England, but is the law which by Act of Parliament or reiterated decisions, traditions, and principles, has become the English maritime law. (Citing *The Gaetano and Maria* (1882), 7 P.D. 137, at p. 143.) Accordingly the original and common law jurisdiction of that Court must be ascertained from the continuous practice and the judgments of its judges and from the judgments of the Courts at Westminster: the former, in moulding and crystallising the principles and practice of their court, used the laws of the Rhodians, of Wisbey, the Hanse towns, of Oleron, the Digest, and French and other ordinances, which, though they are no part of the law of England, contain many valuable principles and statements of marine practice (*see The Gas Float Whitton No. 2*, [1896] P. 42, C.A., at p.48, *per* Lord Esher, M.R., quoting Abbott's Law of Merchant Ships and Seamen (5th Edn.) Preface to the 1st Edn. xi)."

(n4)Footnote 4. *See* Chapter V, *supra.*

(n5)Footnote 5. *Cf. Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* . *See* Chapter V, *supra*, on the scope of the colonial admiralty jurisdiction.

(n6)Footnote 6. *The Lottawanna, 88 U.S. (21 Wall.) 558, 22 L. Ed. 654 (1875)* .Waring v. Clarke, N.3, *supra.*

(n7)Footnote 7. *Per Dickenson, President, High Court of Errors and Appeals, in Talbot v. Commanders and Owners of Three Brigs, 1 U.S. (1 Dall.) 95, I L. Ed. 52 (1784).*

(n8)Footnote 8. *U.S. v. M'Gill, 4 U.S. (4 Dall.) 426, 1 L. Ed. 894, 26 F. Cas. 1088 (1806)* : "The words of the Constitution must be taken to refer to the admiralty and maritime jurisdiction of England (from whose code and practice we derive our systems of jurisprudence and generally speaking, obtain the best glossary) ..." *per* Justice Washington; Justice Johnson's concurring opinion in *Ramsay v. Allegre, 25 U.S. (12 Wheat.) 611, 6 L. Ed. 746 (1827)* ; Bains v. The James and Catherine, F. Cas. 756, Baldw. 544 (1832); Justice Woodbury's dissent in Waring v. Clarke, N.3, *supra;* Justice Daniel's dissent inthe *Propellor Genesse Chief v. Fitzbugh, 53 U.S. (12 How.) 443, 13 L. Ed. 1058 (1851)* ; his dissent also in *Ward v. Peck, 59 U.S. (18 How.) 267, 15 L. Ed. 383 (1855)* ; and in *The Magnolia, 61 U.S. (20 How.) 296, 15 L. Ed. 909 (1857)* .

(n9)Footnote 9. *Floyd v. Lykes Bros. S.S. Co., 844 F.2d 1044, 1988 AMC 1805 (3d Cir. 1988)* (*citing text*) (maritime law derives from the custom of the sea and looks to the law prevailing on land only when there is no clear precedent in the law of the sea; whether master has duty to notify next of kin before burying a deceased seaman at sea is governed by maritime law, not state law). *Stevens v. The Sandwich, F. Cas. 13, 409, 1 Pet. Adm. 233 (1801)* ; *De Lovio v. Boit, 7 F. Cas. 418, 2 Gall. 398, F. Cas. 37776 (C.C. Mass. 1815)* ; *Steele v. Thacher, F. Cas. 13,348, 1 Ware 85 (1825)* ;Waring v. Clarke, N.3, *supra;* *Cutler v. Rae, 48 U.S. (7 How.) 729, 12 L. Ed. 890 (1849)* ; *The Belfast, 74 U.S. (7 Wall.) 624, 19 L. Ed. 266 (1868)* ; *New England Marine Ins. Co. v. Dunham, 78 U.S. (11 Wall.) 1, 20 L. Ed. 90 (1870)* ; The Lottawanna, N.4, *supra.*

(n10)Footnote 10. *Swanson v. Marra Bros., 328 U.S. 1, 66 S. Ct. 869, 90 L. Ed. 1045 (1946)* ; *O'Donnell v. Great Lakes Dredge and Dock Co., 318 U.S. 36, 63 S. Ct. 488, 87 L. Ed. 596 (1943)* ; *Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934)* ; *Re Garnett, 141 U.S. 1, 11 S. Ct. 840, 35 L. Ed. 631 (1891)* ; The Lottawanna, N.6, *supra;* Waring v. Clarke, N.3, *supra.*

(n11)Footnote 11. *American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511, 7 L. Ed. 242 (1828)* .

(n12)Footnote 12. *Farrel v. U.S., 336 U.S. 511, 69 S. Ct. 707, 93 L. Ed. 850 (1949)* ; *The China, 74 (7 Wall.) 53, 19 L. Ed. 67 (1868)* .

(n13)Footnote 13. *The Maggie Hammond, 76 U.S. (9 Wall.) 435, 19 L. Ed. 772 (1869)* .

(n14)Footnote 14. *Lauritzen v. Larsen, 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254* ; *The Scotia (Sears v. The Scotia), 81 U.S. (14 Wall.) 170, 20 L. Ed. 822 (1872)* ; *The Sally, 12 U.S. (8 Cranch) 382, 3 L. Ed. 597 (1814)* .

(n15)Footnote 15. *Cf.* Detroit Trust Co. v. The Thomas Barlum, N.10, *supra.*

(n16)Footnote 16. *The Western Maid, 257 U.S. 419, 42 S. Ct. 159, 66 L. Ed. 299 (1922) per* Justice Holmes.

(n17)Footnote 17. *The Elfrida, 172 U.S. 186, 19 S. Ct. 146, 43 L. Ed. 413 (1898)* .

(n18)Footnote 18. *Ex parte Easton, 95 U.S. 68, 24 L. Ed. 373* .

(n19)Footnote 19. The Lottawana, N.6, *supra;* *The John G. Stevens, 170 U.S. 113, 18 S. Ct. 544, 42 L. Ed. 969 (1898)* .

(n20)Footnote 20. *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834 (1920)* ; *Giacona v. Capricorn Shipping Co., 394 F. Supp. 1189 (S.D. Tex. 1975)* .

(n21)Footnote 21. *The Blackheath, 195 U.S. 361, 25 S. Ct. 46, 49 L. Ed. 236 (1904)* .

(n22)Footnote 22. *The Steamship Jefferson, 215 U.S. 130, 30 S. Ct. 54, 54 L. Ed. 125 (1909)* .

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 105

§ 105. The Purpose of the Constitutional Grant--The Essential Harmony of the Maritime Law.

In the construction of the powers conferred by the Constitution it is indispensible to keep in view the objects for which those powers were conferred. n1 The Constitution was ordained and established by the people of the United States "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity...." n2 The grand purpose of the Constitution was to unify the several States, the whole people, in their national, international and interstate relations and all other purposes were subordinate and ancillary to this. The constitutional grants of power to the Government so established consist, therefore, of great classes of power. Those powers of government which especially affect our intercourse with foreign nations and their subjects or regulate matters of interstate concern and the rights in one State of citizens of another State, those powers in the exercise of which we were to be emphatically one people and clothed with equal rights, although in other and municipal respects we were to remain members of different communities, were granted to the general Government. By this distribution of power our intercourse with other nations was to be so regulated as to make us one of the family of nations, acknowledging the laws and respecting and adopting the usages which constitute the rule of international intercourse, and the several States were to be prevented from making conflicting laws on subjects of national interest and so destroying the harmony which alone could make us and keep us a nation, the United States. n3

This prevailing purpose is especially evident in the constitutional grant of judicial power. The Constitution draws the line between cases which belong to the United States Government and those which belong to the State governments but makes no grant of jurisdiction to this or that court beyond defining the original jurisdiction of the Supreme Court. The Constitution, in numerous classes of cases affecting our national relations or requiring a nationwide uniformity of law and administration n4 or demanding a freedom from local prepossessions, has transferred from the States to the Federal Government the judicial attribute of sovereignty to be exercised by such courts and in such manner as the Congress should provide. The constitutional grant of judicial power was fixed and inflexible the moment, the Constitution was adopted. The grant, however, was to the nation. The organization of the Federal courts and the distribution of judicial power among them (aside from the original jurisdiction of the Supreme Court) were left to Congress and have been subject to change from time to time. n5 With the exception of the original jurisdiction of the Supreme Court, an Act of Congress is necessary to vest in a Federal Court any part of the judicial power which the Constitution bestows upon the Federal Government: the Constitution and the statute must concur. Subjects of jurisdiction, embraced in the

Constitution, may lie dormant until Congress authorizes the exercise of such jurisdiction. n6

At the time of the adoption of the Constitution, there were no courts of the United States and a purely admiralty court was not necessarily contemplated as none has since been established; but it was evident that in the multifarious transactions on the ocean, seas, lakes and rivers, the highways of our intercourse and commerce among the several States and with the nations of the world, questions would continually arise upon which the law of nations and the law of maritime commerce, the maritime law, ought to supersede the numerous conflicting and changing rules that could not fail to result from the varying legislation and adjudication of the States. In no manner could a uniform administration of that great branch of the law of nations, known as the general maritime law, be secured except by the transfer of all cases of admiralty and maritime jurisdiction to the cognizance of the national judiciary and by committing to Congress the paramount authority to make all laws necessary and proper to carry into execution the power so vested, as by altering and amending the maritime law under which such cases are adjudged and adjusting the jurisdictional limits. n7 In the exercise of their admiralty jurisdiction, the Federal courts are not bound by State statutes in so far as they make inroads on a harmonious system. State legislation though recognized in certain aspects, consistent with the general principles and uniform operation of the maritime law, is not permitted to displace the characteristic features of the maritime law or to impair that uniformity which in international and interstate relations the Constitution designed to establish in conferring the maritime power upon the United States. n8 As to recognition of State regulation of maritime law, the matter is admirably stated inRomero v. International Terminal Operating Company: n9

> "Although the corpus of admiralty law is federal in the sense that it derives from the implications of Article 3 evolved by the courts, to claim that all enforced rights pertaining to matters maritime are rooted in federal law is a destructive oversimplification of the highly intricate interplay of the States and National Government in their regulation of maritime commerce. It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system. n10 But this limitation still leaves the States a wide scope. State-created liens are enforced in admiralty. n11 State remedies for wrongful death and state statutes providing for the survival of actions, both historically absent from the relief offered by the admiralty, n12 have been upheld when applied to maritime causes of action. n13 Federal courts have enforced these statutes. n14 State rules for the partition and sale of ships, n15 state laws governing the specific performance of arbitration agreements, n16 state laws regulating the effect of a breach of warranty under contracts of maritime insurance n17--all these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity. 'In the field of maritime contracts,' this Court has said, 'as in that of maritime torts, the National Government has left much regulatory power in the States.' Thus, if one thing is clear it is that the source of law in saving-clause actions cannot be described in absolute terms. Maritime law is not a monistic system. The State and Federal Governments jointly exert regulatory powers today as they have played joint roles in the development of maritime law throughout our history. n18 This sharing of competence in one aspect of our federalism has been traditionally embodied in the saving clause of the Act of 1789. Here, as is so often true in our federal system, allocations of jurisdiction have been carefully wrought to correspond to the realities of power and interest and national policy." n19

The realities of power and interest and national policy do, however, suggest certain changes in the bifurcation of functions. There are several matters, which despite our acceptance of State competence in a limited field call for a clear uniform practice and law. In respect of one such matter, the application of state remedies for wrongful death on navigable waters, the Supreme Court has in the *Moragne* case n20 in the interests, *inter alia*, of uniformity, overruled the *Harrisburg* n21 and held that an action does lie under the general maritime law for death caused by a violation of maritime duties. Another important matter, which calls for uniform action, this time by the Congress, is the establishment of a comprehensive code in respect of marine insurance.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionGeneral OverviewConstitutional LawThe JudiciaryJurisdictionMaritime JurisdictionConstitutional LawRelations Among GovernmentsGeneral Overview

FOOTNOTES:

(n1)Footnote 1. *Knox v. Lee, 79 U.S. (12 Wall.) 457, 20 L. Ed. 287* .

(n2)Footnote 2. U.S. Constitution, Preamble.

(n3)Footnote 3. *Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 4 L. Ed. 97 (1816)* ; Story's *Commentaries on the Constitution* (1833) § 1672 (5th ed. 1891); *The Moses Taylor, 71 U.S. (4 Wall.) 411, 18 L. Ed. 397 (1866)* .

(n4)Footnote 4. Holmes, J., *dissenting in Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834 (1920)* expressed the view that the only matters with regard to which uniformity of law is provided for in the Constitution are duties, imposts and excises, naturalization, and bankruptcy.

(n5)Footnote 5. The admiralty jurisdiction in respect of appeals has been rearranged by Congress on several occasions, notably by the Circuit Court of Appeals Act of March 3, 1891, the Act abolishing the Circuit Courts of March 3, 1911, and the Supreme Court Act of February 13, 1925.

(n6)Footnote 6. *Kelly v. State of Washington ex rel. Foss Co., Inc., 302 U.S. 1, 58 S. Ct. 87, 82 L. Ed. 3, 1937 AMC 1690 (1937)* .

(n7)Footnote 7. Constitution, Art. III, § 2; *id.* Art. II, § 8; *Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* ; *The Lottawanna, 88 U.S. (21 Wall.) 558, 22 L. Ed. 654 (1874)* ; *Richardson v. Harmon, 222 U.S. 96, 32 S. Ct. 27, 56 L. Ed. 110 (1911)* ; *Johnson v. U.S.B.E.F. Corp., 280 U.S. 320, 280 U.S. 320, 50 S. Ct. 118, 74 L. Ed. 451 (1930)* ; *Crowell v. Benson (Knudson's case), 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598, 1932 AMC 355 (1932)* ; *Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176, 1934 AMC 1417 (1934)* . *See generally* Harrington Putnam, "How the Federal Courts Were Given Admiralty Jurisdiction," *10 Cornell L.Q. 460 (1925).*

(n8)Footnote 8. *Union Fish Co. v. Erickson, 248 U.S. 308, 39 S. Ct. 112, 63 L. Ed. 261* ; *New Zealand Ins. Co. v. Earnmore S.S. Co., 79 F. 368 (9th Cir. 1897)* ; *Western Fuel Co. v. Garcia, 257 U.S. 233, 42 S. Ct. 89, 66 L. Ed. 210 (1921)* ; *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834 (1920)* ; *Grant Smith-Porter Ship Co. v. Rhode, 257 U.S. 469, 42 S. Ct. 157, 66 L. Ed. 321 (1922)* . *See also Byrd v. Napoleon Ave. Ferry Co., Inc., 125 F. Supp. 573 (E.D. La.)* , *aff'd, 227 F.2d 958 (5th Cir. 1965)* ; *Fematt v. City of Los Angeles, 196 F. Supp. 89, 1961 AMC 2391 (S.D Cal. 1961)* ; *see also Frame v. City of New York, 34 F. Supp. 194, 1940 AMC 935 (S.D.N.Y. 1940)* ; *Morales v. City of Galveston, 181 F. Supp. 202, 1961 AMC 2199 (S.D. Tex. 1959)* ; *Larios v. Victory Carriers, 316 F.2d 63, 1963 AMC 1704 (2d Cir. 1963)* .

(n9)Footnote 9. *Romero v. International Terminal Operating Co., 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959)* ; *cf. In the Matter of Alexander McNiel, 80 U.S. (13 Wall.) 236, 20 L. Ed. 624* .

(n10)Footnote 10. Citing: *Southern P. Co. v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086* ; *Garrett v. Moore McCormack Co., 317 U.S. 239, 63 S. Ct. 246, 87 L. Ed. 239* ; *Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 74 S. Ct. 202, 98 L. Ed. 143* . *See Maryland Casualty Co. v. Cushing, 347 U.S. 409, 74 S. Ct. 608, 98 L. Ed. 806* .

(n11)Footnote 11. Citing: *Vancouver S.S. Co. Ltd. v. Rice, 288 U.S. 445, 53 S. Ct. 420, 77 L. Ed. 885* ; *Peyroux v. Howard, 32 U.S. (7 Pet.) 324, 8 L. Ed. 700* . *See also Edwards v. Elliott, 88 U.S. (21 Wall.) 532, 22 L. Ed. 487* .

(n12)Footnote 12. Citing: *The Harrisburg, 119 U.S. 199, 7 S. Ct. 140* . "Death is a composer of strife by the

general law of the sea as it was for many centuries by the common law of the land." *Cardozo, J., in Cortes v. Baltimore Insular Line, Inc., 287 U.S. 367, 53 S. Ct. 173, 77 L. Ed. 368 . But see Moragne v. States Marine Lines, Inc., 398 U.S. 375, 90 S. Ct. 1772, 26 L. Ed. 2d 339 (1970)* .

(n13)Footnote 13. Citing: *The Hamilton, 207 U.S. 398, 28 S. Ct. 133, 52 L. Ed. 264 (1907)* ; *Western Fuel Co. v. Garcia, 257 U.S. 233, 42 S. Ct. 89, 66 L. Ed. 210* ; *Just v. Chambers, 312 U.S. 383, 61 S. Ct. 687, 85 L. Ed. 903 (1941)* .

(n14)Footnote 14. *See* N.13, *supra.*

(n15)Footnote 15. Citing: *Madruga v. Superior Court of California, 346 U.S. 556, 74 S. Ct. 298, 98 L. Ed. 290* .

(n16)Footnote 16. Citing: *Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582* .

(n17)Footnote 17. Citing: *Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 75 S. Ct. 368, 99 L. Ed. 337* .

(n18)Footnote 18. Citing: *Id.*

(n19)Footnote 19. "The grounds of objection to the admiralty jurisdiction in enforcing liability for wrongful death were similar to those urged here; that is, that the Constitution presupposes a body of maritime law, that this law, as a matter of interstate and international concern, requires harmony in its administration and cannot be subject to defeat or impairment by the diverse legislation of the States, and hence that Congress alone can make any needed changes in the general rules of the maritime law. But these contentions proved unavailing and the principle was maintained that a State, in the exercise of its police power, may establish rules applicable on land and water within its limits, even though these rules incidentally affect maritime affairs, provided that the state action "does not contravene any acts of Congress, nor work any prejudice to the characteristic features of the maritime law, nor interfere with its proper harmony and uniformity in its international and interstate relations.' It was decided that the state legislation encountered none of these objections. The many instances in which state action had created new rights, recognized and enforced in admiralty, were set forth in The City of Norwalk, and reference was also made to the numerous local regulations under state authority concerning the navigation of rivers and harbors. There was the further pertinent observation that the maritime law was not a complete and perfect system and that in all maritime countries there is a considerable body of municipal law that underlies the maritime law as the basis of its administration. These views find abundant support in the history of the maritime law and in the decision of this *Court."Just v. Chambers, 312 U.S. 383, 389, 390, 61 S. Ct. 687, 85 L. Ed. 903, 907, 908 (1941)* . "It is a broad recognition of the authority of the States to create rights and liabilities with respect to conduct within their borders, when the state action does not run counter to federl laws or the essential features of an exclusive federal jurisdiction." *Id. 312 U.S. at 391* .

Thus Congress was careful to make the Death on the High Seas Act applicable only outside state territorial waters so as not to intrude on state legislative competence. 59 Cong. Rec. 4482, 4886. *But see now* Moragne v. States Marine Lines, N.12, *supra.*

(n20)Footnote 20. Moragne v. States Marine Lines, N.12, *supra.*

(n21)Footnote 21. N.12, *supra. See also In re M/V Elaine Jones, 480 F.2d 11* (5th Cir. [Miss.] 1973).

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Volume 1: Jurisdiction Chapters I - XIV
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1-VII Benedict on Admiralty § 106

§ 106. General Character of the Jurisdiction.

Admiralty jurisdiction depends upon a variety of factors which it is the purpose of this treatise to discuss. In respect of certain claims, the maritime n1 nature of the controversy is regarded as the essential test.

The location of the occurrence of an event giving rise to a cause of action may in some cases by itself determine jurisdiction. n2 In others, the location of the sea or navigable waters may impart an element which, taken with other factors, will constitute sufficient maritime character to attract admiralty jurisdiction. n3 The majority of maritime controversies relate to vessels, and most transactions concerning or involving vessels are within admiralty jurisdiction--although there are notable exceptions. n4 In admiralty, the vessel is treated as though having a juridical personality, an almost corporate capacity, possessing not only rights but liabilities (sometimes distinct from those of the owner), n5 which may be enforced by process and decree against the vessel, binding upon all interested in her and conclusive upon the world, n6 for admiralty in appropriate cases administers remedies *in rem, i.e.,* against the property, as well as remedies *in personam, i.e.,* against the party personally.

While admiralty jurisdiction is general, and there is no minimum or maximum limit to the amount in controversy (as there is in diversity cases where the minimum is $10,000), it has been said that an admiralty court will not concern itself about a matter where the damages are nominal. n7 In general, maritime jurisdiction, though not confined to vessels, naturally centers around them, the great agents of maritime enterprise and affairs. There are some anomalies, however, like the doctrine that contracts to build and sell a ship are not, in this country, a subject of admiralty jurisdiction. n8 Subject to the modification and exceptions indicated later in this treatise, admiralty jurisdiction in the United States may be broadly stated as extending to the following questions or claims:

(1) any claim to the possession or ownership of a vessel or to the ownership of any share therein;

(2) any question arising between the co-owners of a vessel as to possession or employment. But the admiralty courts have, until recently, thought it beyond their power to provide equitable relief, including the determination of questions of equitable title to a ship and questions of account between owners;

(3) any claim in respect of a preferred mortgage of a vessel or any interest therein, but not of

non-maritime mortgages;

(4) any claim to enforce a maritime lien;

(5) any claim for damage done by a vessel;

(6) any claim for damage received by a vessel;

(7) any claim for loss of life or personal injury sustained in consequence of any defect in a vessel or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a vessel or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a vessel are responsible, being an act, neglect or default in the navigation or management of the vessel, in the loading, carriage or discharge of goods on, in or from the vessel or in the embarkation, carriage or disembarkation of persons on, in or from the vessel;

(8) any claim for loss of or damage to goods carried in a vessel;

(9) any claim arising out of any agreement for the carriage of goods in a vessel or to the use or hire of a vessel;

(10) any claim in the nature of salvage;

(11) any claim in the nature of towage in respect to a vessel;

(12) any claim in the nature of pilotage in respect of a vessel;

(13) any claim in respect of the furnishing of repairs, supplies, use of dry dock or maritime railway or other necessaries to a vessel;

(14) any claim by a master or member of the crew of a vessel for wages or maintenance and cure;

(15) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(16) any claim arising out of an act which is or is claimed to be a general average act;

(17) any claim arising out of bottomry;

(18) any claim for the forfeiture or condemnation of a vessel or of goods therein, except where forfeiture is under state laws;

(19) any claim for recovery of indemnity or premiums on maritime insurance policies;

(20) petitions for limitation of liability of owners of vessels;

(21) any claims rising out of respondentia bonds;

(22) claim in respect of any maritime tort (not otherwise provided for above), that is to say, a tort occurring on the sea or navigable waters but not in respect to aircraft accidents occurring in territorial

seas where the aircraft are in the course of inland transport;

(23) any claim in respect of any other contract not otherwise provided which is a maritime contract; and

(24) any claim to enforce a judgment of a foreign admiralty court.

This list, though detailed, is not exhaustive.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. The term "maritime" in this context has, as will be seen later, not proved easy to define. *See, e.g., Jack Neilson Inc. v. The Tug Peggy, 428 F.2d 54, 1970 AMC 1490 (5th Cir. 1970)* ; *The Blackheath, 195 U.S. 361 (1904)* ("the precise scope of admiralty jurisdiction is not a matter of obvious principle or very accurate history"); *Doolittle v. Knobeloch, 39 F. 40 (D.S.C. 1889) . Cf. International Sea Food Ltd. v. M/V Campeche, 566 F.2d 482, 1978 AMC 890 (5th Cir. 1978)* (admiralty court has jurisdiction to enforce a judgment of a foreign admiralty court even though claim is only for a money judgment and remedy lacks any other maritime flavor).

(n2)Footnote 2. *See East River S.S. Corp. v. Transamerica Delaval, Inc., 106 S. Ct. 2295, 2298, 1986 AMC 2027, 2032 (1986)* (torts occurring on high seas may not require a connection to traditional maritime activity); 2 *Benedict on Admiralty* § 112 (crimes).

(n3)Footnote 3. *See* § 171, *infra.*

(n4)Footnote 4. *E.g.*, contracts for building or sale of vessels.

(n5)Footnote 5. *Tucker v. Alexandroff, 183 U.S. 424 (1901)* ; *The "Sabine", 101 U.S. 384, 25 L. Ed. 982 (1879)* ; *The Maggie Hammond, 76 U.S. (9 Wall.) 435 (1869)* ; *The China, 74 U.S. (7 Wall.) 53 (1868) . See also Shipman v. United States, 309 F. Supp. 441, 1970 AMC 614 (E.D. Va. 1970)* ; *United States v. Terry E. Buchanan, 138 F. Supp. 754, 1956 AMC 646 (S.D.N.Y. 1956)* ; *The Yuri Maru, 17 F.2d 318, 1927 AMC 571 (E.D. Pa. 1923)* .

(n6)Footnote 6. *Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 1934 AMC 1417 (1934)* ; *Rounds v. Cleverport Foundry & Mach. Co., 237 U.S. 303, 35 S. Ct. 596, 59 L. Ed. 966 (1915)* ; *The Mary, 13 U.S. (9 Cranch) 126, 3 L. Ed. 678 (1815)* ; *Sirinakis v. Colonial Bank, 600 F.Supp. 946, 1985 AMC 1049 (S.D.N.Y. 1984)* .

(n7)Footnote 7. *Allsman v. Rhodes, 37 F. Supp. 122, 1941 AMC 57 (E.D. La. 1941)* citing treatise; *The Thrasyvoulos (P. Wigham-Richardson & Co. v. Continental Grain Co.), 28 F. Supp. 434, 1939 AMC 867 (S.D.N.Y. 1939)* ; *The Hunstanworth, 4 F. Supp. 656, 1933 AMC 1144 (E.D.N.Y. 1933)* .

(n8)Footnote 8. *See* § 186, *infra.*

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Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 107

§ 107. Courts Exercising Original Jurisdiction.

All the Federal courts are of statutory origin except the Supreme Court which is created by the Constitution n1 but is of statutory organization. n2 Only the original jurisdiction of the Supreme Court has been fixed by the Constitution: n3 the appellate jurisdiction of the Supreme Court and the jurisdiction, whether original or appellate, of the inferior Federal courts have been established and are from time to time altered by Acts of Congress. n4 In apportioning the Federal judicial power among the Federal courts, Congress has conferred upon the United States District Courts, exclusive of the courts of the States, original jurisdiction of any civil case of admiralty and maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled. n5 Congress had also conferred upon the United States District Courts similar exclusive jurisdiction specifically over prize causes. n6 In this country there are no separate courts of admiralty. n7 The United States District Court exercises its admiralty powers whenever appropriate at the sessions of the court.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityCivil ProcedureJurisdictionJurisdictional SourcesGeneral OverviewCivil ProcedureJurisdictionJurisdictional SourcesConstitutional Sources

FOOTNOTES:
(n1)Footnote 1. *U.S. Constitution, Article III, Section 1*.

(n2)Footnote 2. 28 U.S.C., Chapter 1.

(n3)Footnote 3. *Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 9 L. Ed. 1233* ; *see also U.S. v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32, 3 L. Ed. 259 (1838)* ; *Jackson v. Magnolia, 61 U.S. (20 How.) 296, 15 L. Ed. 909 (1857)* ; *Pennsylvania v. Quicksilver Mining Company, 77 U.S. (10 Wall.) 553, 19 L. Ed. 998 (1871)* ; *Stevenson v. Fain, 195 U.S. 165, 25 S. Ct. 6, 49 L. Ed. 142 (1904)* ; *Ex parte Wisner, 203 U.S. 449, 27 S. Ct. 150, 51 L. Ed. 264 (1906)* .

(n4)Footnote 4. 28 U.S.C., Chapter 81-95.

(n5)Footnote 5. *28 U.S.C. § 1933*; Congress twice attempted also to save to suitors their rights and remedies under State workmen's compensation statutes, but both acts of Congress were held unconstitutional in *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834 (1920) and Washington v. Dawson & Co., 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646, 1924 AMC 403 (1924)* . Congress thereafter enacted the Longshoremen's and Harbor Workers' Compensation Act, 1927.

(n6)Footnote 6. *Id.*

(n7)Footnote 7. In England, there has now been constituted as part of the Queen's Bench Division of the High Court, an Admiralty Court to take admiralty business.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 108

§ 108. Courts Exercising Appellate Jurisdiction.

Appellate jurisdiction in admiralty cases, in respect of both interlocutory orders n1 and final decisions, n2 has been conferred by Congress upon the United States Courts of Appeals whose decision is final, n3 subject to a power of review in (not a right of appeal to) the Supreme Court by *writ of certiorari* n4 and subject to the instructions of the Supreme Court on such questions of law as the Court of Appeals may certify to the Supreme Court which, if it chooses, may call the whole case before it. n5

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionCivil ProcedureAppealsAppellate JurisdictionGeneral OverviewCivil ProcedureAppealsAppellate JurisdictionInterlocutory OrdersCivil ProcedureU.S. Supreme Court ReviewFederal Court Decisions

FOOTNOTES:
(n1)Footnote 1. *28 U.S.C. § 1292*.

(n2)Footnote 2. *28 U.S.C. § 1291*.

(n3)Footnote 3. *28 U.S.C. § 1254*.

(n4)Footnote 4. *Id.*

(n5)Footnote 5. *Id.*

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
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1-VII Benedict on Admiralty § 109

§ 109. Legislative Power of Congress.

There is no specific or express power conferred by our Constitution upon Congress to legislate generally in respect of substantive maritime law and admiralty jurisdiction n1 though in respect of particular aspects express power exists. Under the tenth power of Article 1, Section 8 of the Constitution, namely the power "to define and punish Piracies and Felonies committed on the High Seas and offenses against the Law of Nations," Congress has the authority, without prejudice to any other powers n2 to legislate in respect of so much of the maritime law as concerns the specific subjects of piracy, felonies on high seas and offenses against international law. n3 The eleventh power of Article 1, Section 8 of the Constitution, "to declare war, grant letters of Marque and Reprisal and make Rules concerning Captures on Land and Water" is sufficient authority for legislation in respect of Naval Prize. The third power, "to regulate commerce with foreign nations and among the several States and with the Indian tribes" would authorize a great portion of legislation in maritime law. n4 The eighteenth power of Article 1, Section 8 of the Constitution is "to make all Laws which shall be necessary or proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States or in any Department or officer thereof." As the Judicial Power vested by the Constitution extends to all cases of admiralty and maritime jurisdiction, Congress undoubtedly has the power to make all laws necessary and proper to carry into execution the Judicial power in relation to such cases.

On strict construction of this power, n5 unaffected by the background and the legislative and judicial history, it would be difficult to construethis power standing alone as authorizing maritime legislation generally. n6 The Constitution, however, is a document which must be construed as a whole and it has always been interpreted n7 as investing the paramount legislative power in the Congress whether such power was sought to be derived from one or other of the express powers above mentioned, or as a necessary concomittant of and inherent in the grant of the judicial power.

"Commentators took that view, Congress acted on it, and the Courts including this Court [the Supreme Court] gave effect to it. Practically, therefore, the situation is as if that view were written into the provision." n8 This interpretation was reiterated by the Supreme Court in *Romero v. International Terminal Operating Company* n9 in these words:

> "Article III, § 2, cl. 1 (3d provision) of the Constitution and section 9 of the Act of September 24, 1789, have from the beginning been the sources of jurisdiction in litigation based upon federal maritime law. Article III impliedly contained three grants. (1) It empowered Congress to confer admiralty and

> maritime jurisdiction on the 'Tribunals inferior to the Supreme Court' which were authorized by Art. I, § 8, cl. 9. (2) It empowered the federal courts in their exercise of the admiralty and maritime jurisdiction which had been conferred on them, to draw on the substantive law 'inherent in the admiralty and maritime jurisdiction,' n10 and to continue the development of this law within constitutional limits. (3) It empowered Congress to revise and supplement the maritime law within the limits of the Constitution. n11
>
> "Section 9 of the First Judiciary Act granted the District Courts maritime jurisdiction. This jurisdiction has remained unchanged in substance to the present day."

When the Constitution was adopted, the existing maritime law became the law of the United States subject to the power in Congress to modify or supplement it as experience or changing conditions might require. Congress thus has the paramount and undisputed power to fix, determine, alter and revise the maritime law which shall prevail throughout the county; n12 and federal statutes, if constitutional, are paramount to any judicially fashioned rules of admiralty. n13

Whatever may be necessary to the complete exercise of admiralty and maritime jurisdiction is in the covenant of the Union, and Congress may pass all laws which are necessary and proper for giving this power the most complete effect, n14 and such exercise is necessary to confer jurisdiction on the District Courts. n15 Congress has also power to regulate commerce with foreign nations and among the several States and with the Indian tribes, n16 and though the scope of the maritime law and that of commercial regulation are not coterminous, the latter embraces the greater part of all that the former comprehends; n17 nevertheless, and contrary to what was at one time believed, n18 admiralty jurisdiction may not be restrained within the confines of the commercial power. n19 The power of Congress over navigation may be derived from the twin sources of the commercial power and the admiralty power, in some cases from one power and in other cases from both. n20 Similarly laws regulating remedies for seamen are referable both to the authority to regulate commerce and the authority flowing from the power to make laws which shall be "necessary and proper" to carry into execution the admiralty powers. n21 Although the Congress largely left to the Supreme Court the responsibility of fashioning the controlling rules of admiralty law, n22 its own contribution in the legislative sphere is substantial.

The Congress began the exertion of this authority at an early date. In the Judiciary Act of [September 24,] n23 1789, the Congress conferred upon the district courts of the United States exclusive jurisdiction of all seizures under the laws of impost, navigation, or trade of the United States, where the seizures were made on navigable waters wihin the respective districts. In the same year Congress passed Acts concerning Tonnage Duty, n24 Ship Registry, n25 and in the following year one concerning Government and Regulation of Seamen. n26 By the Act of [June 19,] 1813, n27 the Congress declared that a vessel employed in a fishing voyage should be answerable for the fishermen's share of the fish caught, upon a contract made on land, in the same form and to the same effect as any other vessel is liable to be proceeded against for the wages of seamen.

Important illustrations of the exercise of congressional power are found in the Limitation of Liability Act of [March 3,] 1851, n28 enacted for the purpose of encouraging investment in shipbuilding, by limiting the venture of shipowners to the loss of the ship itself, or her freight then pending, in cases of damage occasioned without the owner's privity or knowledge; n29 the extension, by the Act of [June 26,] 1884, n30 of the admiralty jurisdiction to proceedings for the limitation of liability, so as to include damages by a vessel to a land structure; n31 The Harter Act (February 13, 1893), regulating certain liabilities of carriers by water; n32 the Act of [June 23,] 1910, n33 providing for maritime lien for repairs or supplies furnished to a vessel in her home port, to be enforced by a proceeding, n34 *in rem;* the Salvage Act (August 1, 1912); n35 the Act of [March 30,] 1920, n36 providing for jurisdiction in admiralty of suits for damages from death caused by wrongful act and occurring on the high seas; n37 the (La Follette)Seamen's Act of [March 4,] 1915; n38 the Merchant Marine Act of [June 5,] 1920, n39 amending § 20 of the Act of 1915, thus bringing, in relation to seamen, into the maritime law, rules drawn from the federal Employers' Liability Act; n40 and the Longshoremen's and Harbor Workers' Compensation Act of [March 4,] 1927; n41 the Carriage of Goods by Sea Act (April 16, 1936); n42 the Merchant Marine Act, 1936 n43 (June 29, 1936), as now amended by the Merchant Marine Act, 1970, n44

fostering the development and maintenance of the Merchant Marine; the Admiralty Jurisdiction Extension Act, 1948 (June 19, 1948). n45

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawCongressional Duties & PowersLower Federal CourtsConstitutional LawCongressional Duties & PowersNecessary & Proper ClauseConstitutional LawCongressional Duties & PowersWar Powers Clause

FOOTNOTES:
(n1)Footnote 1. *Cf. Stoffel v. W.Y. McCahan Sugar Refining & Molasses Co., 35 F.2d 602 (E.D. Pa. 1929)* .

(n2)Footnote 2. *United States v. Flores, 289 U.S. 137, 53 S. Ct. 580, 77 L. Ed. 1086, 1933 AMC 649 (1933)* .

(n3)Footnote 3. *Cf. United States v. Holmes, 18 U.S. (5 Wheat.) 412, 5 L. Ed. 122 (1820)* ; *United States v. Furlong, 18 U.S. (5 Wheat.) 184, 5 L. Ed. 64 (1820)* ; *United States v. Smith, 18 U.S. (5 Wheat.) 153, 5 L. Ed. 57 (1820)* .

(n4)Footnote 4. *Providence & New York Steamship Co. v. Hill Mfg. Co., 109 U.S. 578, 3 S. Ct. 379, 27 L. Ed. 1038 (1883)* ; *The Lottawanna, 88 U.S. (21 Wall.) 558, 22 L. Ed. 654 (1875)* .

(n5)Footnote 5. While it is not incumbent upon Congress to specify the precise power, in the case of the Ship Mortgage Act 1920, Congress rested its authority upon the constitutional provisions including the judicial power to all cases of admiralty and maritime jurisdiction and conferring upon the Congress the eighteenth power referred to in the text. *See Detroit Trust Co. v. Steamer Thomas Barlum, 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934)* ; the Court did not rest its holding on this ground alone.

(n6)Footnote 6. *Southern Pacific Co. v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917)* , is perhaps the only case which relies solely on the combination of the granting of judicial power and the eighteenth power of Article 1, Section 8 as general authority to legislate in respect of maritime law.

(n7)Footnote 7. *Detroit Trust Co. v. Steamer Thomas Barlum, 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934)* ; *Panama Railroad Co. v. Andrew Johnson, 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748, 1924 AMC 554 (1924)* .

(n8)Footnote 8. Panama Railroad Co. v. Andrew Johnson, N.7 *supra.*

(n9)Footnote 9. *Romero v. International Terminal Operating Co., 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368, 1959 AMC 832 (1959)* .

(n10)Footnote 10. *Crowell v. Benson, 285 U.S. 22, 55, 52 S.Ct. 285, 76 L.Ed. 598 (1956)* .

(n11)Footnote 11. *See Crowell v. Benson, supra, at 55* .

(n12)Footnote 12. *Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* ; *The Lottawanna, 88 U.S. (21 Wall.) 558, 22 L. Ed. 654 (1875)* ; *Butler v. Boston & S.S.S.C., 130 U.S. 527, 9 S. Ct. 612, 32 L. Ed. 1017 (1889)* ; *Ex parte Garnett, 141 U.S. 1, 11 S. Ct. 840, 35 L. Ed. 631 (1891)* ; *The Hamilton (Old Dominion S.S. Co. v. Gilmore), 207 U.S. 398, 28 S. Ct. 133, 52 L. Ed. 264 (1907)* ; *Atlantic Transp. Co. v. Imbrovek, 234 U.S. 52, 34 S. Ct. 733, 58 L. Ed. 1208 (1914)* ; *Southern P. Co. v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917)* ; *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834 (1920)* ; *Washington v. W.C. Dawson & Co., 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646 (1924)* ; *Panama R. Co. v. Johnson, 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924)* ;

Crowell v. Benson, 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932) ; *U.S. v. Flores, 289 U.S. 137, 53 S. Ct. 580, 77 L. Ed. 1086, 933 AMC 649 (1933)* ; Detroit Trust Co. v. Steamer Thomas Barlum, N.7 *supra; Swanson v. Marra Bros., 328 U.S. 1, 66 S. Ct. 869, 90 L. Ed. 1045 (1946)* . In *Panama Ry. Co. v. Johnson, supra* , the court said, "[T]here are boundaries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation. ..." The limitation refers to Congress' power to alter admiralty jurisdiction, not to the substantive law. *Lucas v. "Brinkness" Schiffahrts Ges. Franz Lange, 387 F. Supp. 440, 1975 AMC 1684 (E.D. Pa. 1974) , cert. denied, 423 U.S. 866 (1975)* . Congress may not bring under the jurisdiction of the federal admiralty court a completely land-based acident or transaction, or remove from admiralty jurisdiction those types of accidents which occur on navigable waters.

(n13)Footnote 13. *Sompo Japan Ins. Co. of Am. v. Union Pac. R.R., 456 F.3d 54 (2d Cir. 2006)* (there is no requirement that the statutes be inherently maritime); *Royal Netherlands Steamship Co. v. Strachan Shipping Co., 301 F.2d 741 (5th Cir. 1962)* ; and *see Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 75 S. Ct. 368, 99 L. Ed. 337 (1955)* .

(n14)Footnote 14. Although the existence of the power to legislate is no proof of its valid exercise in a given instance: *U.S. v. Bevans, 16 U.S. (3 Wheat.) 336, 387, 389, 4 L. Ed. 404 (1818)* .

(n15)Footnote 15. *Jackson v. The Magnolia, 61 U.S. (20 How.) 296, 300, 15 L. Ed. 909 (1858)* .

(n16)Footnote 16. U.S. Constitution, Art. I, § 8.

(n17)Footnote 17. *The Lottawanna, 88 U.S. (21 Wall.) 558, 22 L. Ed. 654* .

(n18)Footnote 18. *The New Jersey Steam Navigation Co. v. The Merchant's Bank of Boston, 47 U.S.(6 How.) 344, 12 L. Ed. 465 (1848)* ; *Moore v. American Transport Co., 65 U.S. (24 How.) 1, 16 L. Ed. 674 (1860)* .

(n19)Footnote 19. *The Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443, 13 L. Ed. 1058 (1851)* ; *The Belfast, 74 U.S. (7 Wall.) 624, 19 L. Ed. 266 (1868)* ; *Providence & New York Steamship Co. v. Hill Manufacturing Co., 109 U.S. 578, 3 S. Ct. 379, 27 L. Ed. 1038 (1883)* ; *In re Garnett, 141 U.S. 1, 11 S. Ct. 840, 35 L. Ed. 631 (1891) . See also Guilbeau v. Falcon Seaboard Drilling Co., 215 F. Supp. 909 (E.D. La. 1963)* .

(n20)Footnote 20. *In re Three Buoys Houseboat Vacations U.S.A., Ltd., 689 F. Supp. 958 (E.D. Mo. 1988)* , the district court held that it lacked admiralty jurisdiction to hear a limitation of liability case because the collision giving rise to the claim occurred on non-navigable waters. The court held, however, that it had federal question and *commerce clause* jurisdiction to hear the limitation case. This did not aid the plaintiff as the court then held that the plaintiffs failed to state a cause of action because Congress did not intend the limitation statutes to apply to vessels on non-navigable waters. On appeal, the Eighth Circuit affirmed the district court's dismissal of the complaint but concluded that the federal courts lack subject matter jurisdiction of limitation actions that arise from injuries on non-navigable waters. The court likened a suit under the limitation act to a defense or to a suit for declaratory relief. *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 878 F.2d 1096, 1989 AMC 2058 (8th Cir. 1989) , vacated, 110 S. Ct. 3265 (1990)* . The Supreme Court vacated the decision and remanded in light of *Sisson v. Ruby, 497 U.S. 358, 1990 AMC 1801 (1990)* . On remand, the Court of Appeals again affirmed the dismissal of the limitation action essentially for the reasons given in its earlier opinion. *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 921 F.2d 775, 1991 AMC 1356 (8th Cir. 1990)* . For a discussion of *Sisson, see* § 171.

United States v. Burlington & Henderson County Ferry Co., 21 F. 331, 339, 340 (S.D. Iowa 1884) .

(n21)Footnote 21. *Daniel O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 63 S. Ct. 488, 87 L. Ed. 596, 1943 AMC 149 (1943)* .

(n22)Footnote 22. *Fitzgerald v. United States Lines, 374 U.S. 16, 83 S. Ct. 1646, 10 L. Ed. 2d 720 (1963)* .

(n23)Footnote 23. Sec. 9, 1 Stat. at L. 76, 77, chap.24. *Waring v. Clarke, supra* , *The Margaret, 6 L. Ed. 125, 127, 9 Wheat. 421* .

(n24)Footnote 24. 1 Stat. 27 (1789).

(n25)Footnote 25. 1 Stat. 55 (1789).

(n26)Footnote 26. 1 Stat. 131 (1790).

(n27)Footnote 27. 3 Stat. at L. 2, chap. 2, *46 U.S.C. § 531*.

(n28)Footnote 28. 9 Stat. at L. 635, chap. 43, *46 U.S.C. § 182*.

(n29)Footnote 29. *Norwich & New York Transp. Co. v. Wright, 20 L. Ed. 585, 13 Wall. 104 (1872)* ; *Hartford Acc. & Indem. Co. v. Southern P. Co., 273 U.S. 207, 214, 47 S. Ct. 357, 71 L. Ed. 612, 615 (1927)* .

(n30)Footnote 30. Section 18, 23 Stat. at L. 57, 58, chap. 121, *46 U.S.C. § 189*.

(n31)Footnote 31. *The Plymouth (Hough v. Western Transp. Co.), 70 U.S. 20, 18 L. Ed. 125 (1866)* ; *Cleveland Terminal & Valley R. Co. v. Cleveland S.S. Co., 208 U.S. 316, 28 S. Ct. 414, 52 L. Ed. 508 (1908)* ; *Richardson v. Harmon, 222 U.S. 96, 32 S. Ct. 27, 56 L. Ed. 110 (1911)* .

(n32)Footnote 32. *46 U.S.C. § 190 et seq.* ; 27 Stat. 445. The statute has been recodified as *46 U.S.C. § 30701 et seq.*

(n33)Footnote 33. 36 Stat. at L. 604, chap. 373.

(n34)Footnote 34. *The General Smith, 17 U.S. 438, 4 L. Ed. 609 (1819)* ; *The St. Jago de Cuba, 22 U.S. 409, 6 L. Ed. 122 (1824)* ; *The J.E. Rumbell, 148 U.S. 1, 13 S. Ct. 498, 37 L. Ed. 345 (1893)* ; *Piedmont & G.C. Coal Co. v. Seaboard Fisheries Co., 254 U.S. 1, 41 S. Ct. 1, 65 L. Ed. 97 (1920)* .

(n35)Footnote 35. *46 U.S.C. § 727 et seq* ; 37 Stat. 242.

(n36)Footnote 36. 41 Stat. 537, chap. 111, *46 U.S.C. § 76*.

(n37)Footnote 37. *The Hamilton (Old Dominion S.S. Co. v. Gilmore), 207 U.S. 398, 28 S. Ct. 133, 52 L. Ed. 264 (1907)* ; *Western Fuel Co. v. Garcia, 257 U.S. 233, 42 S. Ct. 89, 66 L. Ed. 210 (1921)* ; *Lindgren v. United States, 281 U.S. 38, 50 S. Ct. 207, 74 L. Ed. 686, 1930 AMC 399 (1930)* .

(n38)Footnote 38. Section 20, 38 Stat. at L. 1185, chap. 153, *46 U.S.C. §688*. *Chelentis v. Luckenbach S.S. Co., 247 U.S. 372, 38 S. Ct. 501, 62 L. Ed. 1171 (1918)* .

(n39)Footnote 39. 41 Stat. at L. 1007, chap. 250, *46 U.S.C. § 688*, amending § 20 of the Act of 1915. The statute is now codified as *46 U.S.C. § 30104*.

(n40)Footnote 40. *Panama R. Co. v. Johnson, 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924)* ; *Engel v. Davenport, 271 U.S. 33, 35, 46 S. Ct. 410, 70 L. Ed. 813, 816 (1926)* ; *Panama R. Co. v. Vasquez, 271 U.S. 557, 559, 46 S. Ct. 596, 70 L. Ed. 1085, 1086 (1926)* ; *Northern Coal & Dock Co. v. Strand, 278 U.S. 142, 147, 49 S. Ct. 88, 73 L. Ed. 232, 235 (1928)* .

(n41)Footnote 41. 44 Stat. at L. 1424, chap. 509, *33 U.S.C. § 901*; *Nogueira v. New York, N.H. & H.R. Co., 281 U.S. 128, 50 S. Ct. 303, 74 L. Ed. 754 (1930)* ; *Crowell v. Benson, 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932)* ; *Jacksonville Shipyards, Inc. v. Perdue, 539 F.2d 533, 1976 AMC 1934 (5th Cir. 1976) , aff'd sub nom. P.C. Pfeiffer*

Co. v. Ford, 444 U.S. 69, 100 S. Ct. 328, 62 L. Ed. 2d 225 (1979) (Congress has power under the admiralty clause of Article III to enact the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act).

(n42)Footnote 42. *46 U.S.C. § 1300 et seq.* ; 49 Stat. 1208. The statute now appears as a note following the recodified Harter Act, *46 U.S.C. § 30701*.

(n43)Footnote 43. *46 U.S.C. § 1101 et seq.* ; 49 Stat. 1985. The statute, as recodified, appears at *46 U.S.C. § 50101 et seq.*

(n44)Footnote 44. P.L. 91-469.

(n45)Footnote 45. *46 U.S.C. § 740, 62* Stat. 496; *see American Bridge Co. v. Gloria, 98 F. Supp. 71 (E.D.N.Y. 1951)* ; *United States v. Matson Navigation Co., 201 F.2d 610 (9th Cir. 1953)* . The Act was recodified in 2006 as *46 U.S.C. § 30101*. *See* § 173, *infra*.

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Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 110

§ 110. The Limitations on Federal Legislative Power.

From the foregoing it is apparent that the power of the Congress to legislate extends to the entire subject of maritime law and permits of the exercise of a wide discretion; n1 nevertheless, a certain limitation arises out of the very nature of its authority to legislate. In so far as the power is impliedly inherent in or derived from the grant of the judicial power, the boundaries of such power limit Federal legislative action. n2 The judicial power, however, has been delegated in general terms without any definition of its boundaries. The courts in this country rejected early the suggestion that the Constitution intended to crystallize admiralty jurisdiction to that prevailing in England at the time of the adoption of the Constitution. n3 The grant presupposed "a general system of maritime law" but the Constitution did not undertake to define the precise limits of that body of law or to lay down a criterion for drawing the boundary between maritime law and local law. n4 A reference to the maritime laws and jurisdiction of other nations cannot afford any real guidance as the extent of the jurisdiction varies from country to country.

> "This difficulty was increased by the complex character of our government, where separate and distinct specified powers of sovereignty are exercised by the United States and a State independently of each other within the same territorial limits. And the reports of the decisions of this court will show that the subject has often been before it, and carefully considered, without being able to fix with precision its definite boundaries; but certainly no state law can enlarge it, nor can an Act of Congress or rule of court make it broader than the judicial power may determine to be its true limits. And this boundary is to be ascertained by a reasonable and just construction of the words used in the Constitution, taken in connection with the whole instrument, and the purposes for which admiralty and maritime jurisdiction was granted to the Federal Government." n5

The conclusion, therefore, has been drawn that in "amending or revising the maritime law, the Congress cannot reach beyond the constitutional limits which are inherent in admiralty and maritime jurisdiction. n6 A concrete definition of these constitutional limits has been difficult of enunciation but an attempt was made in *Panama Rail Road Company v. Johnson* n7 to indicate the limits. It was stated:

> "... there are limitations which have come to be well recognized. One is that there are boundaries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation, as by excluding a thing falling clearly within them, or including a thing falling clearly

> without. Another is that the spirit and purpose of the constitutional provision require that the enactments--when not relating to matters whose existence or influence is confined to a more restricted field, as in *Cooley v. Port Wardens* n8--shall be coextensive with and operate uniformly in the whole of the United States." n9

In *Crowell v. Benson*, n10 the Supreme Court in considering the constitutionality of the Longshoremen's and Harbor Workers' Compensation Act relied heavilyon the fact that the Act covered only injuries on navigable waters of the United States. Thus it stated:

> "Unless the injuries to which the Act relates occur upon the navigable waters of the United States, they fall outside that jurisdiction. n11 Not only is navigability itself a question of fact, as waters that are navigable in fact are navigable in law, n12 but, where navigability is not in dispute, the locality of the injury, that is, whether it has occurred upon the navigable waters of the United States, determines the existence of the congressional power to create the liability prescribed by the statute." n13

In a later case, *Detroit Trust Company v. Steamer "Thomas Barlum,"* n14 the Supreme Court, while affirming the general principle limiting the authority to legislate, dispelled the notion that the authority of the Congress to enact legislation can be limited by previous decisions as to the extent of admiralty jurisdiction. The Court said:

> "We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns. These may require that former criteria of jurisdiction be abandoned, as, for example, they were abandoned in discarding the doctrine that the admiralty jurisdiction was limited to tidewaters."

One such concept is that compensation is payable without fault to maritime workers. Neither the traditional contract nor tort concepts cover the principle of the new liability.

A most recent illustration of this application of this principle is afforded by the amendments made to the Longshoremen's and Harbor Workers' Compensation Act by the amending Act of 1972. n15 This Act extends the coverage of the Act to an injury on "any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." The court deciding *Crowell v. Benson* n16 would probably have found such an extension a serious obstacle in upholding the constitutionality of the Act, but in the meantime, judicial consideration has brought to the fore several aspects which require a restatement of the limitations previously expressed. Aside from the important thought projected in *Detroit Trust Company v. Steamer "Thomas Barlum"* n17 of the possibility of having to abandon former criteria of jurisdiction in the light of new concepts, the matter is now approached not so much from the point of determining the theoretical limitations but defining concretely the subjects in respect whereof the Congress has paramount authority to legislate.

Thus in *O'Donnel v. Great Lakes Dredge and Dock Company*, n18

the court stated:

> "There is nothing in that grant of jurisdiction--which sanctioned our adoption of the system of maritime law--to preclude Congress from modifying or supplementing the rules of that law as experience or changing conditions may require. This is so at least with respect to those matters which traditionally have been within the cognizance of admiralty courts either because they are events occurring on navigable waters, n19 or because they are the subject matter of maritime contracts or relate to maritime services...
>
> "The right of recovery in the Jones Act is given to the seaman as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury

> is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters. *See Waring v. Clarke*, n20 and *New England Mut. M. Ins. Co. v. Dunham"* n21 (emphasis added).

The conclusion to which we are irresistibly drawn is that, while limitations do exist in theory, it is difficult to envisage circumstances which would call for any maritime legislation undertaken by the Congress, conforming to adequate standards of harmony of a national system, to be struck down by the courts. n22 The Supreme Court itself has pointed out the importance of giving hospitable scope to congressional purpose and deprecated reading legislation in a spirit of mutilating narrowness. n23

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Workers' ClaimsLongshore & Harbor Workers' Compensation ActAdmiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawCongressional Duties & PowersGeneral OverviewGovernmentsFederal GovernmentU.S. Congress

FOOTNOTES:
(n1)Footnote 1. *Cf. Panama Railroad Co. v. Johnson, 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924)* .

(n2)Footnote 2. *Detroit Trust Co. v. Steamer Thomas Barlum, 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934)* ; "But in amending and revising the maritime law, the Congress necessarily acts within a sphere restricted by the concept of the admiralty and maritime jurisdictions"; *Crowell v. Benson, 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1868)* ; *Meyer v. Tupper, 66 U.S. (1 Block.) 522, 17 L. Ed. 180 (1862)* .

(n3)Footnote 3. *Waring v. Clarke, 46 U.S. (5 How.) 441, 12 L. Ed. 226 (1847)* .

(n4)Footnote 4. *The Lottawanna (Rodd v. Heartt), 88 U.S. (21 Wall.) 558, 22 L. Ed. 654 (1875)* .

(n5)Footnote 5. Meyer v. Tupper, N.2, *supra.*

(n6)Footnote 6. Crowell v. Benson, N.2, *supra.*

(n7)Footnote 7. N.1, *supra.*

(n8)Footnote 8. *53 U.S. (12 How.) 299, 13 L. Ed. 996 (1851)* .

(n9)Footnote 9. *Citing* Waring v. Clarke, N.3, *supra;* The Lottawanna, N.4, *supra; Butler v. Boston S.S. Co., 130 U.S. 527, 9 S. Ct. 612, 32 L. Ed. 1017 (1889)* ; *Re Garnett, 141 U.S. 1, 11 S. Ct. 840, 35 L. Ed. 631 (1891)* ; *Southern P. Co. v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917)* ; *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834 (1920)* ; *Washington v. W.C. Dawson & Co., 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646 (1924)* ; 2 Story, Const. 51st ed., §§ 1663, 1664, 1672.

See Zych v. Unidentified, Wrecked & Abandoned Vessel, 941 F.2d 525, 1992 AMC 532 (7th Cir. 1991) (questioning constitutionality of statute, which the court read as divesting the federal courts of jurisdiction, unless it is demonstrated that the salvage of embedded shipwrecks did not clearly fall within the admiralty jurisdiction. The court did not explore the possibility that the statute does not disturb federal admiralty jurisdiction over such actions and only provides that state law shall provide the law governing the substance.) Subsequently the Seventh Circuit held that the statute was constitutional as it affected the case before it. *Zych v. Unidentified, Wrecked & Abandoned Vessel, 19 F.3d 1136 (7th Cir. 1994)* .

(n10)Footnote 10. N.2, *supra.*

(n11)Footnote 11. Citing: *Cleveland Terminal & V.R. Co. v. Cleveland S.S. Co., 208 U.S. 316, 28 S. Ct. 414, 52 L. Ed. 508, 13 Ann. Cas. 1215 (1908)* ; *Atlantic Transport Co. v. Imbrovek, 234 U.S. 52, 34 S. Ct. 733, 58 L. Ed. 1208, 51 L.R.A. (N.S.) 1157 (1922)* ; *State Industrial Commission v. Nordenholt Corp., 259 U.S. 263, 42 S. Ct. 473, 66 L. Ed. 933, 25 A.L.R. 1013, 21 N.C.C.A. 862* ; *Washington v. W.C. Dawson & Co., 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646, 656, 24 N.C.C.A. 253 (1924)* ; *Nogueira v. New York, N.H. & H.R. Co., 281 U.S. 128, 50 S. Ct. 303, 74 L. Ed. 754, 758, 760 (1930)* .

(n12)Footnote 12. Citing: *The Daniel Ball, 77 U.S. (10 Wall.) 557, 563, 19 L. Ed. 999 (1870)* ; *United States v. Holt State Bank, 270 U.S. 49, 46 S. Ct. 197, 70 L. Ed. 465 (1926)* ; *United States v. Utah, 283 U.S. 64, 51 S. Ct. 438, 75 L. Ed. 844, 849, 850 (1931)* ; *Arizona v. California, 283 U.S. 423, 452, 51 S. Ct. 522, 75 L. Ed. 1154 (1931)* .

(n13)Footnote 13. Citing: State Industrial Commission v. Nordenholt Corp., N.11, *supra;* Washington v. W.C. Dawson & Co., N.11, *supra;* Nogueira v. New York, N.H. & H.R. Co., N.11, *supra;* § 29, *supra.*

(n14)Footnote 14. N.2, *supra.*

(n15)Footnote 15. P.L. 92-576, amending the Longshoremen's and Harbor Workers' Compensation Act, Mar. 4, 1927, ch. 509, 44 Stat. 1424, *33 U.S.C. §§ 901, et seq.*

(n16)Footnote 16. N.2, *supra.*

(n17)Footnote 17. N.2, *supra.*

(n18)Footnote 18. *18 U.S. 36, 63 S. Ct. 488, 87 L. Ed. 596 (1943)* , emphasis supplied in the citation.

(n19)Footnote 19. *See* Waring v. Clarke, N.3, *supra.*

(n20)Footnote 20. *Id.*

(n21)Footnote 21. *78 U.S. (11 Wall.) 1, 20 L. Ed. 90 (1870)* .

(n22)Footnote 22. *Cf. American Bridge Co. v. The Gloria O., 98 F. Supp. 71 (E.D.N.Y. 1951)* : "Each cognate exercise of the congressional function residing in the necessary and proper power (Art. 1, Sec. 8) has met and survived the challenge...."

(n23)Footnote 23. *U.S. v. Hutcheson, 312 U.S. 219, 61 S. Ct. 463, 85 L. Ed. 788 (1941)* ; *Keifer & Keifer v. Reconstruction Finance Corp., 306 U.S. 381, 59 S. Ct. 516, 83 L. Ed. 784 (1939)* ; *Igneri v. Cie. de Transports Oceanique, 323 F.2d 257 (2d Cir. 1963)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 111

§ 111. The Legislative Power of Congress Non-Delegable.

Congress may not delegate to the States the legislative power which the Constitution bestows upon Congress for such power n1 is in its nature non-delegable. n2 To preserve adequate harmony and appropriate uniform rules relating to maritime matters and to bring them within the control of the Federal Government was the fundamental purpose of the grant of this judicial power in respect of all cases within admiralty and maritime jurisdiction and within that sphere and to that definite end Congress was empowered to legislate: it may not defeat the purpose for which the power was conferred.

Thus Congress may not defeat the purpose of a single, harmonious, national system of maritime law by a statute, although not retroactive, n3 making applicable to injuries within the admiralty and maritime jurisdiction and sustained in a maritime employment, the workmen's compensation laws of the several States which prescribe exclusive rights and liabilities and provide novel remedies. n4 But "uniformity" is required only when the essential features of an exclusive federal jurisdiction are involved, n5 and thus it has been held n6 that employers of maritime workers otherwise subject to state unemployment taxing acts are not excluded from the coverage of such acts whether by Article 3, Section 2 of the Constitution or by Congressional enactments.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureChoice of LawAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawCongressional Duties & PowersGeneral OverviewConstitutional LawRelations Among GovernmentsGeneral OverviewGovernmentsFederal GovernmentU.S. Congress

FOOTNOTES:
(n1)Footnote 1. *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834 (1920) , citing Re Rahrer, 140 U.S. 545, 11 S. Ct. 865, 35 L. Ed. 572 (1891) ; Marshall Field & Co. v. Clark, 143 U.S. 649, 12 S. Ct. 495, 36 L. Ed. 294 (1892) ; Buttfield v. Stranahan, 192 U.S. 470, 24 S. Ct. 349, 48 L. Ed. 525, Treas. Dec. 25119 ; Butte City Water Co. v. Baker, 196 U.S. 119, 25 S. Ct. 211 (1905) ; Interstate Commerce Commission v. Goodrich Transit Co., 224 U.S. 194, 32 S. Ct. 436, 56 L. Ed. 729 .*

See also Washington v. W.C. Dawson, 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646, 1926 AMC 403 .

(n2)Footnote 2. *The Lyndhurst, 48 F. 839 (S.D.N.Y. 1892)* ; *In re Long Island N.S.P. & F. Transportation Co., 5 F. 599 (S.D.N.Y. 1881)* ; *Workman v. New York City, 179 U.S. 552, 21 S. Ct. 212, 45 L. Ed. 314 (1900)* ; *Jensen v. Southern Pacific Co., 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917)* .

(n3)Footnote 3. *Peters v. Veasey, 251 U.S. 121, 40 S. Ct. 65, 64 L. Ed. 180 (1919)* ; *Coon v. Kennedy, 248 U.S. 457, 39 S. Ct. 146, 63 L. Ed. 358 (1918)* .

(n4)Footnote 4. Knickerbocker Ice Co. v. Stewart, N.1, *supra;* Washington v. W.C. Dawson, N.1, *supra.*

(n5)Footnote 5. *Just v. Chambers, 312 U.S. 383, 61 S. Ct. 687, 85 L. Ed. 903, 1941 AMC 430 (1941)* ; *Standard Dredging Corp. v. Murphy, 319 U.S. 306, 63 S. Ct. 1067, 87 L. Ed. 1416 (1943)* ; *Pacific Merchant Shipping Ass'n v. Aubry, 918 F.2d 1409 (9th Cir. 1990)* (*quoting text*).

(n6)Footnote 6. Standard Dredging Corp. v. Murphy, N.5, *supra.* Commenting on the *Jensen* case, N.2, *supra:* in relation to the matter at issue this court stated: That the state is vested with power to impose taxes in general upon employers to alleviate unemployment, and that the authority of the state is in no wise impaired by reason of blending the imposition of a tax with the relief of unemployment has already been decided by this Court. *Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327* ; *Steward Mach. Co. v. Davis, 301 U.S. 548, 57 S. Ct. 883, 81 L. Ed. 1279, 109 A.L.R. 1293* . In a series of cases, however, beginning withSouthern P. Co. v. Jensen, this Court called attention to the necessity of uniformity in certain aspects of maritime law, and invalidated several state workmen's compensation acts as applied on the ground that their enforcement would interfere with that essential uniformity. We are now asked to apply the *Jensen* doctrine to the field of unemployment insurance and to invalidate the statute before us on the ground that it is destructive of admiralty uniformity. The effect on admiralty of an unemployment insurance program is so markedly different from the effect which it was feared might follow from workmen's compensation legislation that we find no reason to expand the *Jensen* doctrine into this new area. Indeed, the *Jensen* Case has already been severely limited and has no vitality beyond that which may continue as to state workmen's compensation laws. *Cf. Parker v. Motor Boat Sales, 314 U.S. 244, 62 S. Ct. 221, 86 L. Ed. 184* . The court added a footnote and referred to Just v. Chambers, N.5, *supra; Davis v. Department of Labor and Industries, 317 U.S. 249, 63 S. Ct. 225, 87 L. Ed. 246 (192)* ; and for an account of the development of the *Jensen* doctrine referred also to the dissenting judgment of Mr. Justice Pitney in *Jensen.*

In spite of the criticism of *Jensen* and its progeny, which in many respects is valid, it is but fair to say that in the larger context of regulation of industrial relations in the shipping industry the application of the state laws of workmen's compensation would have retarded an even reform. Today the Longshoremen's and Harbor Workers' Compensation Act as amended by the 1972 amendments serves as a model in regard to the amount of compensation provided.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 112

§ 112. State Law: How Far Inoperative in Maritime Cases.

"Maritime law is not a monistic system. The state and Federal Governments jointly exert regulatory powers today as they have played joint roles in the development of maritime law throughout our history." n1 Although the Constitution has conferred Admiralty jurisdiction upon the United States as part of its judicial power, n2 the Constitution has not by express words or words of necessary implication granted the federal government exclusive power to legislate. That the federal government has such paramount (though not exclusive) legislative power is undoubted. n3 The power of the federal courts to make decisional law for maritime cases stems from the Constitution's grant of admiralty jurisdiction. n3.1 It is also well-established that state courts and legislatures have power to make law that is applicable in admiralty cases. Courts have struggled to articulate principles that determine the competence of states in this field. The next two sections of this chapter will consider the principles and rules that have evolved.

In 1917 the Supreme Court determined, in *Southern Pacific Company v. Jensen*, n4 that no state legislation concerning navigation is valid

> "if it contravenes the essential purpose expressed by an Act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which the maritime law was incorporated into our national law by the Constitution itself." n5

Indeed, under the strict view that the Constitution requires uniformity in maritime matters, Congress itself cannot authorize state action destructive of that uniformity. n6 One of the essential implications of *Jensen* is that state courts must apply the same law to an admiralty case as would be applied in the federal court. n7

The *Jensen* doctrine, though easily stated, is not easily applied. n7.1 All state laws, if given effect in admiralty cases, interfere to a degree with the uniformity of admiralty law. And whether a particular state law "materially" prejudices the characteristic features of maritime law is not self-evident. The *Jensen* Court recognized that the prohibition on state laws was not absolute and that states may modify maritime law in various respects. n8 Summarizing the problem the Supreme Court has said, "[a] maritime contract's interpretation may so implicate localinterests as to beckon

interpretation by state law. ... But when state interests cannot be accommodated without defeating a federal interest, ... then federal substantive law should govern." n8.1 A number of cases have said in effect that states may modify or supplement federal maritime law but that they may not flatly contradict it or deprive any person of a substantive federal right. n9

One might conclude from this that state law may be applied whenever there is a "gap" or "void" in the federal law. n10 But this formulation is less helpful than it seems. As the Supreme Court has long recognized, the absence of a federal right of recovery may suggest a strong federal interest, n11 and when a state "supplements" the federal law by adding a cause of action it thereby deprives the defendant of a substantive right to be free of an obligation. n12

The approach taken by may courts is to attempt to weigh the competing federal and state interests and to give effect to state law if it serves an interest that outweighs the federal interest. n13 In a recent case, the Eleventh Circuit summarized the task that a court must undertake in determining whether to apply state law toan admiralty case as follows: "One must identify the state law involved and determine whether there is an admiralty principle with which the state law conflicts, and, if there is no such admiralty principle, consideration must be given to whether such an admiralty rule should be fashioned. If none is to be fashioned, the state rule should be followed. ... If there is an admiralty-state conflict, the comparative interests must be onsidered--they may be such that admiralty shall prevail ... or if the policy underlying the admiralty rule is not strong and the effect on admiralty is minimal, the state law may be given effect. ..." n14

A divided panel of the Fifth Circuit has recently suggested that the choice of law problem involves a consideration of the following five factors:

> "[S]tate law is not preempted when it contains a detailed scheme to fill a gap in maritime law. ... [S]tate law is not preempted when the law regulates behavior in which the state has an especially strong interest. ... [M]aritime law preempts whenever a uniform rule will facilitate maritime commerce, or, conversely, when non-uniform regulation will work a material disadvantage to commercial actors. ... The final factor, stated baldly, is that plaintiffs should win personal injury or death maritime tort claims." n15

An example of the use of interest analysis in admiralty was the Supreme Court's decision in *Kossick v. United Fruit Company*. n16 The issue was whether New York's Statute of Frauds barred suit on an alleged oral contract by a shipowner to assume responsibility for improper medical treatment at a Public Health Hospital. The Court held that the federal admiralty rule enforcing oral contracts should control. It noted first that there ought to be "some presumption in favor of applying the law tending toward the validation of the alleged contract." n17 It then suggested a desire for uniformity for contracts such as the one before it that could be made anywhere in the world. Finally, the Court doubted the presence of a state interest in not lending her courts to the accomplishment of fraud, something which appears to us insufficient to overcome the countervailing considerations." n18

This approach possesses all the usual difficulties inherent in interest analysis, such as the problem of correctly determining the real interests being promoted and the uncertainty of weighing interests that have little in common. n19 Two recentcases illustrate these difficulties. In *Tidewater Marine Towing, Inc. v. Curran-Houston, Inc.*, n20 a common law wife sought damages for wrongful death under the general maritime law. The court denied recovery because Louisiana, the state of domicile and residence of the seaman and his common law wife, did not recognize the validity of their "marriage." Although noting that a contrary ruling would satisfy the admiralty courts' traditional concern for uniformity and liberal recovery in personal injury actions, n21 the court declined to do so saying that, "[t]he goal of uniformity in admiralty is moderated by legitimate concerns of federalism... We are aware of few instances in which state interests are accorded more deference by federal courts than in defining familial status." n22 The court relied on the use of state law to determine the status of "wife" or "widow" under the analogous wrongful death actions brought under the Death on the High Seas Act, the Jones Act and the Longshore and Harbor Workers' Compensation Act.

The *Tidewater* court was justified in relying on the use of state law to define the terms "wife" or "widow" under federal statutes. When Congress uses such terms it probably expects courts to adopt the definition of the law of the state of the parties' domicile or residence rather than to go to the trouble of creating a new definition. n23 To be consistent with the statutory wrongful death recoveries, the courts shoild impose the same limitations in judicially-created wrongful death actions. n24 It would be difficult to conclude, however, that the courts should do so out of concern for overriding state interests. Although states have significant interests in regulating many aspects of domestic relations, such an interest is probably lacking in the *Tidewater* situation. The relationship between the parties terminated with the seaman's death, and it would be hard to assert that a federal wrongful death recovery for the common law spouse would seriously impair the states interest in encouraging such couples to marry. n25 A more difficult issue would be raised in a suit for loss of consortium arising out of a nonfatal injury. But even then it is unlikely that allowing damages to the common law spouse would seriously impair significant state's interests.

Even when a court identifies conflicting federal and state interests, it is not easy to balance them. For example, in a long and thoughtful opinion, a district court held that Florida may not require salvors of historical artifacts to have a special license, nor may Florida grant exclusive rights to salvors regardless of the salvor's diligence or success, nor may it fix the salvor's compensation in a manner that conflicts with the admiralty's flexible method of remuneration. n26 The court noted Florida's interest "in obtaining and preserving cultural and historical artifacts" but asserted that these interests are also protected by federal law which also protects the federal rights of salvors. The court concluded that the federal interests outweigh the interests of the state.

It is at least arguable, however, that the court overstated the federal interest. In the absence of state law to the contrary, a federal court would be justified in using traditional salvage law to resolve a dispute about the salvage of historical artifacts buried at the bottom of the sea. Such principles presumably provide a fair means of resolving the dispute, and the principles are well established. But Florida's interest in preserving historical artifacts is substantial, and its legislature, presumably after considering the protection offered by salvage law, devised a scheme that it thought would best serve that interest. The scheme conflicts with the several salvage principles, but those principles are intended mainly to apply to a different set of circumstances--the rescue of lives and property in danger at sea. There is a need in an emergency at sea to encourage all who may be able to do so to come to the rescue in the hope of obtaining a generous reward. n27 The restrictions imposed by the Florida statute would probably conflict with a substantial federal interest were they to be applied to the typical salvage situation. n28 But those federal interests in encouraging prompt rescue by all available vessels are lacking when dealing with historical artifacts. The circumstances allow time for the orderly retrieval of the artifacts. Attempted rescue by any would-be salvor might damage the artifacts or cause them to be dispersed. Although there might be reason to differ as to whether salvage law or the Florida statute would best promote the preservation of the artifacts, the concerns of federalism would suggest deference to the state legislature's judgment. n29

Despite these difficulties, employing some form of interest analysis to resolve federal-state conflicts in admiralty can serve the desirable goals of accomodating important state concerns and of being responsive, in appropriate cases, to the will of Congress that state interests be taken into account. n30 But as the above two cases illustrate, interest analysis is not an ideal means for resolving all conflicts questions and must be used with caution. n31

A large body of law has been developed governing specific types of state laws that may not be given effect in admiralty. A state may not create a maritime lien upon a foreign vessel n32 nor impose upon a maritime contract, as for master'sservices (though made within the state), the requirement that it be in writing, n33 nor prescribe a fixed period of limitation for the enforcement of a maritime lien. n34 Nor can a state law deprive a party of redress in admiralty against a municipality for the negligence of its servants n35 or limit its pecuniary responsibility therefor n36 or make presentation to a municipal officer for adjustment of a condition of the right to sue in the federal courts, at least in equity and admiralty, n37 or make proof of reasonable value a prerequisite to recovery in admiralty upon a municipal contract for work, labor and services at a price specified. n38 Nor can the state prescribe the measure of maritime liability. n39 But the enforcement of a liability which a state has established in dealing with a maritime subject is not

invariably refused by a court of admiralty; uniformity is required only when the essential features of the exclusive jurisdiction are involved. n40 The field of workers' compensation forlongshore workers is one of the most complex. Although the Supreme Court's decision in *Southern Pacific Company v. Jensen* n41 seemed to leave states no power to legislate concerning injuries of longshore workers or others if those injuries were within the admiralty jurisdiction, subsequent cases allowed states to exercise legislative jurisdiction in cases that were considered "maritime but local." n42 Further, the Supreme Court interpreted the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) as giving states concurrent legislative jurisdiction over "local" injuries occurring on navigable waters. n43 As summarized by the Supreme Court in *Sun Ship, Inc. v. Pennsylvania*, n44

> "Before 1972, ... marine-based injuries fell within one of three jurisdictional spheres as they moved landward. At the furthest extreme, *Jensen* commanded that non-local maritime injuries fall under the LHWCA. 'Maritime but local' injuries 'upon the navigable waters of the United States,' *33 U.S.C. § 903(a),* could be compensated under the LHWCA or under state law. And injuries suffered beyond navigable waters--albeit with the range of federal admiralty jurisdiction--were remediable only under state law." n45 The 1972 amendments to what is now called the Longshore and Harbor Workers' Compensation Act extended the federal act to cover injuries occurring on land adjoining the navigable waters. n46 In *Sun Ship,* the Court held that states retained concurrent power under the amendments to apply their workers com pensation statutes to injuries occurring within those adjoining areas.

The validity and interpretation of indemnity clauses in stevedoring contracts, n47 charter parties, n48 contracts to provide borrowed-servant seamen, n49 and other maritime contracts, such as a drilling contract calling for the furnishing of a vessel as the main piece of equipment, n50 are governed by federal law. Federal law also governs the right to recover contribution or indemnity from a joint tortfeasor where the liability of both tortfeasors is governed by maritime law. n51

A more difficult problem arises in indemnity and contribution cases where one tortfeasor's obligation arises under maritime law and another tortfeasor's obligation arises under state law. Courts have generally applied state law when one of the tortfeasors acted on land. n52

A recent Fifth Circuit case, *Marathon Pipe Line Company v. Drilling Rig Rowan-Odessa*, n53 involved damage to a pipeline lying on the seabed of the Outer Continental Shelf. One tortfeasor was liable under maritime law for collision with the pipeline, and the other tortfeasor, although not sued by the tort victim, had an obligation under state law because it supplied a defectively manufactured part for repair of the pipeline. The court applied the maritime law of indemnity and broadly held that maritime law will govern contributory or noncontractual indemnity claims if the primary claim against the tortfeasor seeking contribution or indemnity is maritime. n54 Presumably, the court would have applied state law had the other tortfeasor been the one seeking indemnity. One could argue instead that since the right to contribution or indemnity is based on the prevention of unjust enrichment, n55 the body of law which imposes the primary obligation on the party who is sued for contribution or indemnity should be the body of law that determines whether that party has bees unjustly enriched when its obligation is discharged by another party. But both this approach and that adopted in *Marathon* lead to strange result that the law being applied to determine the ultimate allocation of liability between two tortfeasors will depend on the tort victim's fortuitous decision as to which party it seeks to execute its judgment. It would be more satisfactory of the same body of law, maritime or state, were applied to this determination regardless of which party seeks indemnity or contribution. Where one of the tortfeasors is liable because of state law, it is unlikely that the application of state law to the issue of contribution or indemnity will unduly interfere with federal interests or with maritime commerce. n56

The maritime statute of limitations or the admiralty doctrine of laches, rather than the state statute of limitations, applies in a maritime tort action brought in the federal court solely on the basis of diversity of citizenship, even where the plaintiff demands a jury trial. n57 Similarly, a Puerto Rican statute that interrupts the running of statutes of limitation does not apply to cargo claims under the Carriageof Goods by Sea Act. n58 A one-year limitation on actions printed in

small but legible type in a passenger ticket is given effect despite a contrary state statute. n59 An oral waiver of a time bar is valid under admiralty law regardless of state statutes to the contrary. n60 The federal rule of *forum non conveniens* preempts a state "open forum" statute as applied to a personal injury action brought by a foreigner. n61

Where two ships collided within a state's territorial waters, the measure of damages in the widow's death action against the non-carrying vessel was determined by maritime principles, rather than by the state wrongful death statute. n62 Similarly, federal admiralty law applies in an action alleging negligence of the Corps of Engineers arising out of the death of a passenger in a pleasure boat that went over a dam located in a state. n63

Federal law determines whether a master of a vessel owes a duty to next of kin before burying a deceased seaman at sea. n64 Federal law determines the validity of settlements of personal injury actions under the Jones Act or the general maritime law. n65 State law was held not applicable to an action arising out of an aircraft crashing at sea. n66 A state court has ruled that federal law governs the availability of attachment pending arbitration of a maritime dispute. n67 If an attachment is obtained under Rule B of the Federal Rules of Civil Procedure, a garnishee may not subsequently assert right under state law to set-off any amount owing to it. n68 The validity of a clause limiting the liability of a ship repairer is governed by federal admiralty law. n69 It was also held that state law could not "supplement" the maritime standard of care due to guests and impose a stricter burden on the shipowner. n70 Conversely, a state's boat guest statute limiting the right of a passenger to sue for negligence may not be given effect. n71 Similarly, a state's statute barring interspousal suits cannot be given effect in an action for personal injuries in admiralty. n72 The parole evidence rule as applied to maritime contracts is governed by maritime law. n73 A state statute restricting application of the collateral source rule will not be applied in a maritime case. n74 As required by federal statute, a federal court hearing an admiralty case will not follow the state rule on taxing fees of expert witnesses as costs even if the court also possesses diversity jurisdiction. n75 A state statute regulating the award of attorney fees will not be given effect in admiralty. n76

Even where a court determines that federal law, not state law, will govern a particular dispute, the court will often look to the laws of the states in fashioning the federal rule. n77 Where the common law authorities are split on the issue, the court will adopt the view that better comports with other relevant elements of admiralty law. n78

Once it has been determined under the *Jensen* doctrine that state law governs an issue in an admiralty case, what choice of law rules determine which state's law to be applied? *Klaxon Co. v. Stentor Elec. Mfg. Co.* n79 requires federal district courts in diversity cases to apply the choice of law rules of the state in which they sit. Although *Klaxon* is not binding in admiralty cases, it does provide a convenient means for resolving the issue, and given the lack of a substantial federal interest in the outcome of the issue, it makes sense to apply state choice of law rules in this context. n80 However, in a case where *Jensen* would otherwiserequire that federal substantive law be applied, it makes sense to apply a federal choice of law rule to determine whether the law of a foreign state or the choice of law provision drafted by the parties is to be given effect. n81 In such cases, the federal interest in the resolution of the choice of law issue seems sufficiently substantial for *Jensen* to require federal and state courts to apply federal choice of law, not state choice of law principles.

The Fifth Circuit has ruled that choice of law clauses are unenforceable in cases decided under the Outer Continental Shelf Lands Act. n82

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureChoice of LawAdmiralty LawPractice & ProcedureConstitutional AuthorityAdmiralty LawPractice & ProcedureFederal PreemptionConstitutional LawRelations Among GovernmentsGeneral OverviewConstitutional LawSupremacy ClauseFederal Preemption

FOOTNOTES:

(n1)Footnote 1. *Romero v. International Terminal Operating Co., 358 U.S. 354, 1959 AMC 832 (1959)* . In *Ex parte McNiel, 80 U.S. (13 Wall.) 236 (1872)* , the Court, dealing with the validity of state statutes regulating pilotage, stated:

> "But, conceding that this provision is a regulation of commerce and within the power of Congress upon that subject, it by no means follows that it involves the constitutional conflict insisted upon by the counsel for the petitioner. In the complex system of polity which prevails in this country the powers of government may be divided into four classes:
>
> "Those which belong exclusively to the States.
>
> "Those which belong exclusively to the National Government.
>
> "Those which may be exercised concurrently and independently by both.
>
> "Those which may be exercised by the States, but only until Congress shall see fit to act upon the subject. The authority of the State then retires and lies in abeyance until the occasion for its exercise shall recur."

(n2)Footnote 2. U.S. Const., Art. III, § 2.

(n3)Footnote 3. *See* § 109, *supra.*

(n4)Footnote 3.1. *Norfolk S. Ry. v. James N. Kirby, Pty Ltd., 543 U.S. 14, 25, 2004 AMC 2705 (2004)* . *See* David J. Sharpe, *Admiralty Jurisdiction: The Power over Cases, 79 Tul. L. Rev.1149 (2005).*

(n5)Footnote 4. *244 U.S. 205 (1917)* .

(n6)Footnote 5. *244 U.S. 205 at 216* . In *American Dredging Co. v. Miller, 114 S. Ct. 981, 987, 1994 AMC 913 (1994)* , the Court read the phrase "characteristic features of the general maritime law" narrowly saying that this applies only if the doctrine originated in admiralty or has exclusive application there. *See In re Ballard Shipping Co., 32 F.3d 623, 627, 1994 AMC 2705 (1st Cir. 1994)* .

See also Moragne v. States Marine Lines, 398 U.S. 375, 1970 AMC 967 (1970) ; *Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 1955 AMC 467 (1955)* ; *Maryland Cas. Co. v. Cushing, 347 U.S. 409, 1954 AMC 837 (1954)* ; *Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 1954 AMC 1 (1953)* ; *Garrett v. Moore-McCormack Co., 317 U.S. 239, 1942 AMC 1645 (1942)* ; *Kelly v. Washington ex rel. Foss Co., 302 U.S. 1, 1937 AMC 1490 (1937)* ; *J. Ray McDermott & Co. v. The Vessel Morning Star, 457 F.2d 815, 1972 AMC 907 (5th Cir. 1972)* ; *Koninklyke Nederlandsche Stoomboot Maalschappy, N.V. v. Strachan Shipping Co., 301 F.2d 741, 1962 AMC 1365 (5th Cir. 1962)* ; *New v. The Yacht Relaxin, 212 F. Supp. 703, 1963 AMC 152 (S.D. Cal. 1962)* ; *Frame v. City of New York, 34 F. Supp. 194, 1940 AMC 935 (S.D.N.Y. 1940)* . The power of the states to regulate maritime matters is parallel to the power of the states to regulate matters within interstate commerce. That is,

> "[w]here the subject is national in its character and admits and requires uniformity of regulation, affecting alike all the States ... Congress alone can act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free." *Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917) . See also Clyde S.S. Co. v. Walker, 244 U.S. 255 (1917)* ; *The Chusan, 5 F. Cas. 680 (C.C.D. Mass. 1843)* (No. 2717); *The Lyndhurst, 48 F. 839 (S.D.N.Y. 1892)* .

Congressional inaction sometimes gives states the right to act for themselves, as in the matter of liens prior to the

federal Lien Act of 1910 or of wrongful death at sea prior to 1920. Whether such state laws survive the entry of Congress into the field with a federal statute depends upon the circumstances. The enactment of the federal Motor Boat Act, for example, terminated the power of a state to regulate the same motor boats. *Kelly v. Washington ex rel. Foss Co., 302 U.S. 1, 1937 AMC 1490 (1937)* .

See Benazet v. Atlantic Coast Line R.R., 442 F.2d 694, 1971 AMC 1247 (2d Cir. 1971) , *aff'd sub nom. Atlantic Coast Line R.R. v. Erie Lackawanna R.R., 406 U.S. 340 (1972)* (where the Supreme Court has declared a principle of maritime law and Congress has not acted to reverse this principle by legislation, state legislation cannot operate to override the judicially-fashioned rule).

(n7)Footnote 6. *Washington v. W.C. Dawson & Co., 264 U.S. 219 (1924)* ; *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920)* ; *Sudden v. Industrial Accident Comm'n, 182 Cal. 437, 188 P. 803 (1920)* .

(n8)Footnote 7. *Ex parte New York, 256 U.S. 490 (1921)* . *See generally* § 114, *infra.* Shortly after the decision in *Erie R.R. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938)* , Robert Jackson, then Solicitor General and later Associate Justice of the Supreme Court, suggested that the overruling of *Swift v. Tyson, 41 U.S. (16th Pet.) 1 (1842)* , might undermine the doctrine that the maritime law should be uniform as the latter doctrine is based on the grant of jurisdiction to the federal courts. Jackson, The Rise and Fall of Swift v. Tyson, *24 A.B.A.J. 609, 644 (1938).* The previous editors of this volume did not think that the suggestion was apt "for while there may never have been a general federal common law apart from the common law of the States, there has always been a federal maritime law, quite apart from the existence or nonexistence of maritime law in any of the States." It seems to this editor that the question is more complicated if what is at stake in *Erie* is the very power of the federal courts to make law in areas outside the grant of power to Congress. *See* Westen and Lehman, *Is There Life for Erie After the Death of Diversity?, 78 Mich. L. Rev. 311, 338*-39 (1980); Ely, *The Irrepressible Myth of Erie, 87 Harv. L. Rev. 693, 703 (1974)*. Although part of the power of Congress to make admiralty law has been supported by the *Commerce Clause* or other powers conferred by Article I, the plenary congressional authority has been assumed to derive from the Article III grant of admiralty jurisdiction to the federal courts. Section 109, *supra* . One might attempt to reconcile *Erie* and *Jensen* by saying that Congress, or the drafters of the Constitution, intended that the federal courts would consult the body of general maritime law in making federal admiralty law. *See Westen and Lehman, supra, at 332-33*. But it could be similarly said that Congress or the drafters intended the federal courts to consult the common law in diversity cases. One answer may be that admiralty cases are different from diversity cases because there is a federal interest in having national uniformity in the former but not in the latter. *See* D. Currie, *Federalism and the Admiralty: "The Devil's Own Mess," 1960 Sup. Ct. Rev. 158, 163*. But others have taken the opposite view. *Id.* at ns.26-27. Another answer may be that the real evil inSwift v. Tyson was the lack of uniformity of result between state and federal courts, and that *Jensen* solved this problem in maritime cases, albeit in a different way from the solution worked out in *Erie. See Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 410-11, 1954 AMC 1, 7-8 (1953)* ; Friendly, *In Praise of Erie--And of the New Federal Common Law, 39 N.Y.U.L. Rev. 383, 404*-05 (1964).

(n9)Footnote 7.1. *See American Dredging Company v. Miller, 510 U.S. 443, 114 S. Ct. 981, 987, 127 L. Ed. 2d 285 (1994)* ("It would be idle to pretend that the line separating permissible from impermissible state regulation is readily discernible in our admiralty jurisprudence, or indeed is even entirely consistent within our admiralty jurisprudence.").

(n10)Footnote 8. The court recognized that states may create liens for repairs done in a vessel's home port, fix pilotage fees, and give a right to recover in death cases. *244 U.S. at 216* .

(n11)Footnote 8.1. *Norfolk Southern Ry. v. James N. Kirby Pty Ltd., 125 S.Ct. 385, 395, 2004 AMC 2705 (2004)* .

(n12)Footnote 9. *Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 409-10, 1954 AMC 1, 7 (1953)* . *See also Ellenwood v. Exxon Shipping Co., 984 F.2d 1270 (1st Cir. 1993) (citing text*); *Pacific Merchant Shipping Ass'n v. Aubry, 918 F.2d 1409 (9th Cir. 1990)* (*citing text*). *Workman v. City of New York, 179 U.S. 552, 563 (1900)* ; *Sun*

World Lines v. March Shipping Corp., 801 F.2d 1066 (8th Cir. 1986) ; *Austin v. Unarco Indus., 705 F.2d 1, 6, n.1, 1984 AMC 2333, 2337 (1st Cir.) , cert. dismissed, 463 U.S. 1247 (1983)* ; *Byrd v. Byrd, 657 F.2d 615, 1981 AMC 2563 (4th Cir. 1981)* (not give effect to state doctrine of interspousal immunity); *St. Hilaire Moye v. Henderson, 496 F.2d 973 (8th Cir.) , cert. denied, 419 U.S. 884 (1974)* (not give effect to state guest statute). *See also* G. Gilmore and C. Black, *The Law of Admiralty* 49-50 (2d ed. 1975) (states may "supplement" but not "flatly contradict established maritime law"). The editors of a leading conflict of laws casebook have made the "irreverent suggestion" that the Supreme Court's recent cases in this area might best be explained "on the nonneutral ground that they very consistently have protected the rights of plaintiffs in personal-injury and insurance cases." R. Cramton, D. Currie, H. Kay, *Conflict of Laws* 970-71 (3d ed. 1981). *See also* D. Robertson, *Admiralty and Federalism* 200 (1970). A panel of the Fifth Circuit has acknowledged the tendency, adding that it has "begun to doubt the wisdom of further change and [its] institutional competency to undertake it." *Exxon Corp. v. Chick Kam Choo, 817 F.2d 307, 319 (5th Cir. 197) , rev'd on other grounds, 108 S. Ct. 1684 (1988)* .

(n13)Footnote 10. *E.g., Palestina v. Fernandez, 701 F.2d 438 (5th Cir. 1983)* ; *Alcoa S.S. Co. v. Charles Ferran & Co., 383 F.2d 46, 50 (5th Cir. 1967) , cert. denied, 393 U.S. 836 (1968) . See also Carpenter v. United States, 710 F. Supp. 747 (D. Nev. 1988)* ("due to the absence of a uniform maritime rule concerning the effect of a prior release on the right of contribution by a joint tortfeasor, no conflict exists in applying [state statute]").

(n14)Footnote 11. *Just v. Chambers, 312 U.S. 383, 1941 AMC 430 (1941) . See Carey v. Bahama Cruise Lines, 864 F.2d 201, 1989 AMC 852 (1st Cir. 1988)* (ordinarily the *Jensen* rule "requires a delicate accommodation of federal and state interests," but in case where state rule of comparative negligence denies recovery to plaintiff who is more at fault than the defendant, the federal rule, which is an "essential and longstanding" feature of admiralty law will be applied). *See also The Roanoke, 189 U.S. 185 (1903)* ; *Manning v. Gordon, 853 F. Supp. 1187 (N.D. Cal. 1994)* (state doctrine of assumption of risk may not be applied to bar recovery by plaintiff who participated in a sailboat race). *See generally* D. Currie, *Federalism and the Admirality: "The Devil's Own Mess," 1960 Sup. Ct. Rev. 158, 167*-9 (1960).

(n15)Footnote 12. *Ellenwood v. Exxon Shipping Co., 984 F.2d 1270 (1st Cir. 1993)* (*citing* text, court concludes that absence of maritime rule allowing recovery for discrimination against the handicapped does not indicate a federal interest in protecting shipowners from such obligations, especially in light of federal legislation on the subject and the admiralty's historic concern for the welfare of seamen).

See Branch v. Schumann, 445 F.2d 175, 1971 AMC 2536 (5th Cir. 1971) (could not apply state statute requiring boat operators to exercise "highest degree of care" as it would increase burden on boat owner).

(n16)Footnote 13. *See East River S.S. Corp. v. Transamerica Delaval Inc., 476 U.S. 858, n.2, 1986 AMC 2027, 2032 (1986)* ; *Kossick v. United Fruit Co., 365 U.S. 731, 1961 AMC 833 (1961)* ; *Jig the Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171, 1976 AMC 118 (5th Cir. 1975) , cert. denied, 424 U.S. 954, 96 S. Ct. 1429, 47 L. Ed. 2d 360 (1976)* ; *Watz v. Zapata Off-Shore Co., 431 F.2d 100, 112-13, 1970 AMC 2307, 2324-25 (5th Cir. 1970)* ; *Morcher v. Nash, 26 F. Supp.2d 758, 1999 AMC 1413 (D.V.I. 1998)* (ownership as between widow and decedent's live-in companion governed by local law); *Muratore v. M/S Scotia Prince, 656 F. Supp. 471 (D. Me. 1987)* (state law governs photographers' infliction of emotional distress on passenger); *Cobb Coin Co. v. Unidentified, Wrecked & Abandoned Sailing Vessel, 525 F. Supp. 186, 1983 AMC 966 (S.D. Fla. 1981) . See generally* D. Robertson, *Admiralty and Federalism* (1970); D. Currie, *Federalism and the Admiralty: "The Devil's Own Mess," 1960 Sup. Ct. Rev. 158 (1960).*

A majority of the Supreme Court recently suggested that the only question to be answered in applying the *Jensen* rule is "simply whether the State had power to regulate the matter." *American Dredging Co. v. Miller, 114 S. Ct. 981, 988 n. 3, 1994 AMC 913 (1994)* . The majority rejected any inquiry into whether the State rule impairs maritime commerce. *Id.* In his concurring opinion, Justice Stevens severely criticised the validity of the *Jensen* decision. A year later the Court questioned whether the protection of maritime commerce must be accomplished through uniform rules of decision and suggested that a concern for avoiding local bias may be another goal of admiralty jurisdiction. *Jerome B.*

Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043, 1054 n.6 (1995) .

Sometimes courts fail to identify valid state interests altogether. In *Reneau v. Shoreline Marine Sightseeing Co., 1986 AMC 1274 (N.D. Ill. 1986)* , the court held that federal law, not Illinois law, applied to a slip and fall of a passenger aboard a sightseeing vessel on Lake Michigan. The plaintiff asserted that Illinois law presumes that accidents aboard common carriers are caused by the carrier's negligence. The court did not balance the state and federal interests, but instead asserted a need for uniformity so that highly mobile ships may have their rights and duties determined "by a reasonably uniform code rather than a "myriad of local laws.' " *Id. at 1276* (*quoting In re Oil Spil by Amoco Cadiz, 699 F.2d 909, 913, 1983 AMC 1633, 1635 (7th Cir.)* , *cert. denied, 464 U.S. 864, 104 S. Ct. 196, 78 L. Ed. 2d 172 (1983))* . The court noted that the rationale was not necessarily applicable to sightseeing vessels "which frequent one locality exclusively," but held that federal law applies because the vessel was on navigable waters and was engaged in a traditional maritime activity. Had the court balanced the competing federal and state interests, it might have concluded that the federal interest in promoting local sightseeing vessels on navigable waters is minimal compared to a state interest in compensating state residents and in regulating local sightseeing vessels.

(n17)Footnote 14. *Steelmet, Inc. v. Caribe Towing Corp., 779 F.2d 1485, 1488, 1986 AMC 1641, 1645 (11th Cir. 1986)* . In *Steelmet,* the court determined that Florida's judicially-created direct action against insurance companies could be applied in a maritime case. It found that federal maritime law neither permits nor expressly forbids a direct action. Then, following *Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 1955 AMC 467 (1955)* , the court recognized an important state interest in regulating insurance companies. The court also recognized a state interest in protecting injured third parties and the absence of a strong federal interest for uniformity in the area. Relying on *Cushing v. Maryland Cas., 198 F.2d 536, 1952 AMC 1803 (5th Cir. 1952)* , *rev'd on other grounds, 347 U.S. 409, 1954 AMC 837 (1954)* , the court noted that a direct action does not change the substantive admiralty law but only provides an additional remedy for an obligation voluntarily assumed by the insurer. *See also Puritan Ins. Co. v. Eagle S.S. Co., 779 F.2d 866, 1986 AMC 1240 (2d Cir. 1985)* (court must determine if there is a settled federal admiralty rule or whether a uniform federal rule should be fashioned; otherwise court should apply pertinent principles of the law of the relevant state).

(n18)Footnote 15. *Exxon Corp. v. Chick Kam Choo, 817 F.2d 307, 317-18 (5th Cir. 1987)* , *rev'd on other grounds, 108 S. Ct. 1684 (1988)* .

Applying the first four factors, the court ruled that the admiralty rule of *forum non conveniens* preempted a state "open forum" statute in a personal injury and death case brought by a foreigner. The state law did not fill a gap, the state lacked a strong interest, the federal rule was necessary to protect maritime actors throughout the world, and federal foreign policy interests required state courts to apply the federal rule. The court said that the fifth factor "cuts in both directions indiscriminately." *Id. at 317* .

See also Floyd v. Lykes Bros. S.S. Co., 844 F.2d 1044, 1988 AMC 1805 (3d Cir. 1988) ("state law may supplement maritime law when maritime law is silent or where a local matter is at issue, but state law may not be applied where it would conflict with maritime law").

(n19)Footnote 16. *365 U.S. 731, 1961 AMC 833 (1961)* .

(n20)Footnote 17. *365 U.S. at 741, 1961 AMC at 842 (1961)* .

(n21)Footnote 18. *Id.*

(n22)Footnote 19. *See also In re Oriental Republic Uruguay, 821 F. Supp. 950 (D. Del. 1993)* (pure economic loss is not recoverable under federal maritime law despite state law allowing such recovery in a pollution case because it conflicts with maritime rule).

See Ely, *Choice of Law and the State's Interest in Protecting Its Own, 23 Wm. & Mary L. Rev. 173 (1981)*; Brillmayer, *Interest Analysis and the Myth of Legislative Intent, 78 Mich. L. Rev. 392 (1980). See generally* Hill, *The Judicial Function in Choice of Law, 85 Colum. L. Rev. 1585 (1985)*. The choice of law problem in admiralty cases is unique in that one cannot often resort to a territorial approach for a resolution: whenever the locus of the relevant activity is within a state, it is also within the United States as a whole. Also, state courts may not resolve conflicts in admiralty cases by using the common method of favoring forum law if the forum has an interest. *Cf.* Currie, *Comments on Babcock v. Jackson, 63 Colum. L. Rev. 1233, 1242*-43 (1963) (suggesting that the court apply the law of the forum if a conflict between legitimate interests is unavoidable). State courts are expected to resolve conflicts in the same manner as a federal court.

The weighing of conflicts can have an ironic twist in cases covered by the Admiralty Extension Act, *46 U.S.C. § 30101* (formerly *46 U.S.C. § 740*), which extends admiralty jurisdiction and, by implication, maritime law to cases of injury on land caused by vessels on navigable waters. In *Palumbo v. Boston Tow Boat Co., 21 Mass. App. 414, 487 N.E.2d 546 (1986)* , a vessel struck a bridge, causing economic damage to a nearby restaurant that was forced to close. Although Massachusetts law allows recovery for pure economic loss, admiralty law does not. *Louisiana ex rel. Guste v. M/V Testbank, 752 F.2d 1019, 1985 AMC 1521 (5th Cir. 1985) (en banc) , cert. denied, 106 S. Ct. 3271 (1986)* ; *Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303, 1928 AMC 61 (1927)* . Prior to enactment of the Admiralty Extension Act, state law would have governed the plaintiff's case. The Act was intended, in part, to increase rights of land-based plaintiffs by eliminating the common law defense of contributory negligence. *See* S. Rep. No. 1593, 80th Cong., 2d Sess., *reprinted in* 1948 U.S. Code Cong. & Ad. News 1898. The court in *Palumbo* did not weigh the interests protected by the state and federal rules, but instead found a Congressional desire to apply a uniform general maritime rule to all bridge collision cases. It would seem that any weighing of interests in *Palumbo* would have been difficult because the state interest in protecting the economic interests of state residents is probably equally matched by the federal interest in protecting vessel owners from being exposed to that form of liability. *See also Nissan Motor Corp. in U.S.A. v. Maryland Shipbuilding & Drydock Co., 544 F. Supp. 1104, 1983 AMC 663 (D. Md. 1982) , aff'd without op., 742 F.2d 1449 (4th Cir. 1984)* (general common law as set forth in Restatement, not mere pro-plaintiff Maryland law nuisace and trespass, applies to damage to automobiles on Maryland shore caused by smoke emissions from vessels).

(n23)Footnote 20. *785 F.2d 1317 (5th Cir. 1986)* .

(n24)Footnote 21. *Cf.* Jarvis, *Rethinking the Meaning of the Phrase "Surviving Widow" in the Jones Act: Has the Time Come for Admiralty Courts to Fashion a Federal Law of Domestic Relations, 21 Cal. W.L. Rev. 463, 499*-501 (1985) (advocating a federal rule).

(n25)Footnote 22. *785 F.2d 1317 (5th Cir. 1986)* .

(n26)Footnote 23. *See Seaboard Air Line Ry. v. Kenney, 240 U.S. 489 (1916)* (absence of definition of "next of kin" in Federal Employer's Liability Act indicates purpose of Congress to leave the determination to state law); Seidelson & Bowler, *Determination of Family Status in the Administration of Federal Acts: A Choice of Law Problem for Federal Agencies and Courts, 33 Geo. Wash. L. Rev. 863, 878 (1965)*.

(n27)Footnote 24. *But see Kiesel v. Peter Kiewit & Sons' Co., 638 F. Supp. 1251, 1987 AMC 98 (D. Hawaii 1986)* (denying unmarried cohabitant recovery for loss of consortium, court under general maritime law must follow majority trend among the states; neither Hawaii nor majority of other jurisdictions recognize the right).

(n28)Footnote 25. *Cf.* Currie, *On the Displacement of the Law of the Forum, 58 Colum. L. Rev. 964, 1022*-24 (1958), reprinted in B. Currie, *Selected Essays on the Conflict of Laws* 1, 69-72 (1963) (where the object of the suit is not the determination of status, the forum law should supply the rule of decision; whether marriage is valid in place where marriage ceremony performed may be irrelevant to forum). *But see* Seidelson & Bowler, *Determination of Family Status in the Administration of Federal Acts: A Choice of Law Problem for Federal Agencies and Courts, 33*

Geo. Wash. L. Rev. 863, 873 (1965) ("[I]t would be shocking to have a federal agency through the application of federal family law, grant compensation (even under a federal act) as an award for having committed a series of criminal acts pursuant to the law of the place where the conduct occurred."). *Cf. Harrod v. Pacific S.W. Airlines, 118 Cal. App. 3d 155, 173 Cal. Rptr. 68 (1981)* (denial of wrongful death under state statute to meretricious spouse is constitutional because reasonably related to state's interest in promoting marriage); *Vogel v. Pan Am. World Airways, 450 F. Supp. 224 (S.D.N.Y. 1978)* (same). *See generally The Incidental Question Revisited--Theory and Practice in the Conflict of Laws, 26 Int'l & Comp. L.Q. 734 (1977)*; Reese, *Marriage in American Conflict of Laws, 26 Int'l & Comp. L.Q. 952 (1977).*

(n29)Footnote 26. *Cobb Coin Co. v. The Unidentified, Wrecked & Abandoned Sailing Vessel, 525 F. Supp. 186, 1983 AMC 966 (S.D. Fla. 1981) , followed in Commonwealth v. Maritime Underwater Surveys, Inc., 1987 AMC 2590 (Mass. Super. Ct. 1987) , aff'd, 403 Mass. 501, 531 N.E.2d 549, 1989 AMC 425 (Mass. 1988)* (applying maritime law of finds to ancient wreck but not ruling on whether state licensing scheme of salvage projects violates federal admiralty law because state statute was inapplicable given that statute presupposed that state owned resources and court held that it did not). *But see Jupiter Wreck, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 691 F. Supp. 1377, 1988 AMC 2705 (S.D. Fla. 1988)* (refusing to follow *Cobb Coin*, the court held that Florida's statutory scheme for regulating salvage of property owned by Florida did not conflict with federal salvage law because federal salvage law does not require the owner to allow salvage). For a discussion of whether state courts may hear salvage claims, see § 123, nn.13-22 and accompanying text.

(n30)Footnote 27. *See, e.g., Rogers v. Coastal Towing, L.L.C., 723 F.Supp.2d 929, 2010 AMC 2668 (E.D. La. 2010)* (state law that treats professional rescuers as assuming the risk conflicts with admiralty policy of encouraging rescue); *The Howard, 12 F. Cas. 630 (Super. Ct. S.D. Fla. 1838)* (No. 6752a); *The Henry Ewbank, 11 F. Cas. 1166 (C.C.D. Mass. 1833)* (No. 6376); *The Calypso, 166 Eng. Rep. 221 (Adm. 1828) . See generally* 3A *Benedict on Admiralty* §§ 232-234.

(n31)Footnote 28. But licensing of professional salvors is not unknown to the admiralty law. Federal courts in Florida are authorized to grant such licenses under *46 U.S.C. § 724*. *See In re Marine Archaeological Enters., 280 F. Supp. 477 (S.D. Fla. 1968)* (granting such a license). When Key West was one of the centers of salvage activity, a regular activity of the federal court there was the licensing of professional salvors. *See* Act of Feb. 23, 1847, ch. 20, § 3, 9 Stat. 131. When there is an adequate supply of potential salvors, it is reasonable to require them to meet minimum requirements for obtaining a license. *See* W. Marvin, *A Treatise on the Law of Wreck and Salvage* 5 (1858) ("no encouragement ought to be given to any increase" in the number of licensed wreckers in Key West; the 47 already licensed are sufficient). The ability of federal courts in Florida to license professional salvors does not necessarily conflict with a state desire to license treasure salvors. *See In re Andrews, 266 F. Supp. 162 (M.D. Fla. 1967)* (license obtainable under *46 U.S.C. § 724* is not intended for treasure salvors).

(n32)Footnote 29. In *Subaqueous Exploration & Archaeology v. The Unidentified, Wrecked & Abandoned Vessel, 577 F. Supp. 597, 1984 AMC 913 (D. Md. 1983)* , the court went a step further than that advocated here in upholding Maryland's regulation of sunken historical artifacts. The court said that sunken treasures are not in peril and so are not subject to salvage awards. *577 F. Supp. at 611, 1984 AMC at 932* . The case is criticized in Owen, *Some Legal Troubles With Treasure: Jurisdiction and Salvage, 16 J. Mar. L. & Com. 139 (1985).*

In 1987 Congress enacted the Abandoned Shipwreck Act of 1987, Pub. L. No. 100-298, 102 Stat. 432 (Apr. 28, 1988) which provided that the law of salvage shall not apply to certain shipwrecks in State waters in legal proceedings brought after date of enactment. *See Zych v. Unidentified, Wrecked & Abandoned Vessel, 746 F. Supp. 1334, 1991 AMC 359 (N.D. Ill. 1990)* (upholding constitutionality of the Abandoned Shipwreck Act, *43 U.S.C. § 2101 et seq.*), *on appeal, 941 F.2d 525, 1992 AMC 532 (7th Cir. 1991)* (questioning constitutionality of statute, which the court read as divesting the federal courts of jurisdiction, unless it is demonstrated that the salvage of embedded shipwrecks did not clearly fall within the admiralty jurisdiction. The court did not explore the possibility that the statute does not disturb federal admiralty jurisdiction over such actions and only provides that state law shall provide the law governing the substance.)

Subsequently the Seventh Circuit held that the statute was constitutional as it affected the case before it. *Zych v. Unidentified, Wrecked & Abandoned Vessel, 19 F.3d 1136 (7th Cir. 1994)* .

See also Deep Sea Research, Inc. v. The Brother Jonathan, 883 F. Supp. 1343 (N.D. Cal. 1995) (holding that portions of California law that gave state more rights than those provided by federal statute were preempted by the federal statute); *Lathrop v. Unidentified, Wrecked & Abandoned Vessel, 817 F. Supp. 953 (M.D. Fla. 1993)* (federal statutes and regulations law may limit rights of salvors of historic artifacts).

The *Eleventh Amendment* does not bar federal courts from having jurisdiction over an in rem admiralty action when the res is not within the State's possession. *California v. Deep Sea Research, Inc., 118 S. Ct. 1464 (1998)* .

(n33)Footnote 30. *E.g., Askew v. American Waterways Operators, Inc., 411 U.S. 325, 1973 AMC 811 (1973)* ; *Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440, 1960 AMC 1549 (1960)* ; *Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 1955 AMC 467 (1955)* . *See In re Ballard Shipping Co., 32 F.3d 623, 1994 AMC 2705 (1st Cir. 1994)* (states may regulate compensation for economic loss caused by oil pollution); *In re Nautilus Motor Tanker Co., 900 F. Supp. 697 (D.N.J. 1995)* (same); *In re Exxon Valdez, 767 F. Supp. 1509, 1991 AMC 1482 (D. Alaska 1991)* (states may regulate ship-to-shore pollution damage). *But see State of Maryland Dept. of Natural Resources, 51 F.3d 1220 (4th Cir. 1995)* (state law imposing strict liability for destruction of oyster beds is preempted by federal maritime law).

(n34)Footnote 31. *Cf.* J. Martin, *Conflict of Laws Cases and Materials*, 210-11 (1984) (suggesting that courts employing interest analysis have a tendency to misapply the doctrine by creating false interests).

(n35)Footnote 32. *The Roanoke, 189 U.S. 185 (1903)* ; *see Corsica Transit Co. v. W.S. Moore Grain Co., 253 F. 689 (8th Cir. 1918)* ; *The Boston, 271 F. 688 (E.D.N.Y. 1921)* ; *The Athinai, 230 F. 1017 (S.D.N.Y. 1916)* ; *The Chusan, 5 F. Cas. 680 (C.C.D. Mass. 1843)* (No. 2717); *The Lyndhurst, 48 F. 839 (S.D.N.Y. 1892)* .

(n36)Footnote 33. *Union Fish Co. v. Erickson, 248 U.S. 308 (1919)* . *See also Kossick v. United Fruit Co., 365 U.S. 731, 1961 AMC 833 (1961)* ; *Orient Mid-East Great Lakes Serv. v. International Export Lines, 207 F. Supp. 127, 1962 AMC 1910 (D. Md. 1962)* , *rev'd on other grounds, 315 F.2d 519, 1964 AMC 1810 (4th Cir. 1963)* .

(n37)Footnote 34. *Farrell Lines Inc. v. Ceres Terminals Inc., 161 F.3d 115, 1999 AMC 305 (2d Cir. 1998)* ; *The Key City, 81 U.S. (14 Wall.) 653 (1871)* . *See* Willard, *On Priorities Among Maritime Liens, 16 Cornell L.Q. 522 (1931).*

This view was abandoned in *Nolte v. Hudson Nav. Co., 297 F. 758, 1924 AMC 276 (2d Cir.)* , *cert. denied, 264 U.S. 590, 44 S. Ct. 403, 68 L. Ed. 865 (1924)* , but subsequently restored by the same court: *The Owyhee Silkworth, 66 F.2d 399, 1933 AMC 1185 (2d Cir. 1933)* . But a state's sovereign immunity is waived only to the extent intended by state statute. *Kamani v. Port of Houston Auth., 702 F.2d 612 (5th Cir. 1983)* ; *Trinity River Auth. v. Williams, 689 S.W.2d 883 (Tex. 1985)* . *See also Raymond Int'l Inc. v. The M/T Dalzelleagle, 336 F. Supp. 679, 1972 AMC 2120 (S.D.N.Y. 1971)* (state statute requiring notice to the Triborough Bridge and Tunnel Authority within 90 days of the collision is inapplicable to an *in personam* suit in admiralty); *Moore-McCormack Lines v. Shin Mitsubishi Heavy Indus., 337 F. Supp. 513, 1972 AMC 2170 (S.D.N.Y. 1971)* (the running of the state statute of limitations did not bar the indemnity suit in admiralty).

(n38)Footnote 35. *Northern Ins. Co. of New York v. Chatham County, 126 S. Ct. 1689, 2006 AMC 913 (2006)* ; *Workman v. City of New York, 179 U.S. 552 (1900)* ; *In re Chicago Flood Litigation, 308 Ill.App.3d 314, 719 N.E.2d 1117 (Ill. App. 1999)* , *appeal denied, 187 Ill.2d 568* and *188 Ill. 2d 564, 246 Ill. Dec. 123, 729 N.E.2d 496 (2000)* .

Section cited: *Dawson v. Garvin, 1987 AMC 977 (Md. Cir. Ct. 1985)* ; *In re Nueces County, Texas, Road Dist. No. 4 (The Nellie B.), 174 F. Supp. 846, 1960 AMC 1897 (S.D. Tex. 1959)* .

Since the Jones Beach State Parkway Authority is not immune from all suits, the New York statute providing that the New York Court of Claims is to have exclusive jurisdiction was held in effective to oust federal jurisdiction. "In an admiralty action ... where federal courts exercise the historic maritime jurisdiction (U.S. Const. Art. III § 2), a suitor may not be remanded to a state court by authority of a state statute." *Prendergast v. Long Island State Park Comm'n, 330 F. Supp. 438, 1971 AMC 374 (E.D.N.Y. 1970)* .

See Principe Compania Naviera, S.A. v. Board of Comm'rs, 333 F. Supp. 353, 1971 AMC 2639 (E.D. La. 1971) (Board of Commissioners for the Port of New Orleans not immune from suit). *But see Board of Comm'rs v. Splendour Shipping & Enters. Co., 255 So. 2d 869 (La. App. 1971)* (board is immune from suit in tort).

(n39)Footnote 36. *The Thielbek, 241 F. 209 (9th Cir.) , cert. denied, 245 U.S. 661, 38 S. Ct. 61, 62 L. Ed. 536 (1917) . See also Pelican Marine Carriers, Inc. v. City of Tampa, 791 F. Supp. 845 (M.D. Fla. 1992)* (state statute limiting liability of municipality to $100,000 cannot be applied to allision case that is governed by admiralty law; the court unfortunately suggested that the city could limit its liability if it were sued in state court).

A state may not limit a municipality's liability as a stevedore employer to workman's compensation payments. The shipowner's third party suit against the City of Milwaukee was not barred by the City's paying workers' compensation benefits to a longshoreman injured on board ship, even though the Wisconsin Workman's Compensation Act provided that such payments were the exclusive remedy against the employer. *Bagrowski v. American Export Insbrandtsen Lines, 440 F.2d 502, 1971 AMC 1534 (7th Cir. 1971) . See also In re RQM, LLC, 2011 U.S. Dist. LEXIS 81552 (N.D. Ill. 2011)* (not applying state law that would limit employer's contribution liability to an amount not to exceed its liability under state worker's compensation act).

(n40)Footnote 37. *Gamewell Fire-Alarm Tel. Co. v. The Mayor, 31 F. 312 (C.C.S.D.N.Y. 1887)* ; Jamaica Bay Towing Line v. City of New York, 1938 AMC 790 (S.D.N.Y. 1938) (when a barge is chartered to the City at specified hourly rates, the actual services being performed from time to time as required on "open market orders" from the City, the barge-owner may recover the agreed rate of hire without adducing proof that the rate is "just and reasonable," as is provided by § 149 of the City Charter); *Frame v. City of New York, 34 F. Supp. 194, 1949 AMC 935 (S.D.N.Y. 1940)* (state statutes limiting the time for suit against municipal corporations and requiring the presentation of a claim to the city before commencement of a suit are inapplicable in suits in the federal courts on maritime causes of action). *See also Scholl v. Town of Babylon, 95 A.D.2d 475, 466 N.Y.S.2d 976, 1984 AMC 157 (1983)* (notice of claim provision of state statute is inapplicable).

(n41)Footnote 38. *Rodgers & Hagerty, Inc. v. City of New York, 285 F. 362 (2d Cir. 1922) , cert. denied, 261 U.S. 621 (1923)* .

(n42)Footnote 39. *Hatt 65, L.L.C. v. Kreitzberg, 2009 U.S. Dist. LEXIS 25295 (N.D. Fla. 2009)* (state law does not apply in determining collision damages of pleasure yacht); *Carnival Corp. v. Carlisle, 953 So.2d 461, 2007 AMC 305 (Fla. 2007)* (applying federal law to hold that cruise line is not vicariously liable to a passenger for alleged negligence of shipboard doctor); *Clancy v. Mobil Oil Corp., 906 F. Supp. 42, 1996 AMC 272 (D. Mass. 1995)* (Jones Act preempts state law of loss of consortium).

O'Hara v. Celebrity Cruises, Inc., 979 F. Supp. 254, 1998 AMC 522 (S.D.N.Y. 1997) (issue of punitive damages in suit by passengers assaulted by crew member is governed by federal law); *Delta Marine v. Whaley, 813 F. Supp. 414 (E.D.N.C. 1993)* (federal maritime law governs issue of punitive damages in a products liability case).

Jones & Laughlin Steel Corp. v. Pfeifer, 462 U.S. 523, 1983 AMC 1881 (1983) (in calculating maritime worker's damages for loss of future earnings, district court may not use state "total offset" rule as a mandatory federal rule of decision); *Payne v. Jacksonville Forwarding Co., 290 F. 936, 1923 AMC 524 (5th Cir. 1923)* ; *A-1 Indus. v. Barge Rig #2, 1979 AMC 1486 (E.D. La. 1979)* (rate of prejudgment interest not mandated by rate of forum state); *Frost v.*

Gallup, 329 F. Supp. 310, 1972 AMC 1277 (D.R.I. 1971) (Rhode Island law providing for 8% interest on the award was held inapplicable in an application arising out of a collision in Rhode Island territorial waters); *Walter E. Heller & Co. v. O/S Sonny V., 595 F.2d 968, 1979 AMC 2822 (5th Cir. 1979)* (state usery laws, if not incorporated into the contract, have no application in actions involving a preferred ship mortgage). *But see Zim Israel Nav. Co. v. Special Carriers, Inc., 800 F.2d 1392 (5th Cir. 1986)* (court may exercise its discretion to award prejudgment interest at rates prescribed by state statute).

(n43)Footnote 40. *Just v. Chambers, 312 U.S. 383, 1941 AMC 430 (1941)* (applying a state statute permitting survival of a cause of action for personal injuries after the death of the tortfeasor); *Standard Dredging Corp. v. Murphy, 319 U.S. 306, 1943 AMC 651 (1943)* .

In Nagle v. United States, 1953 AMC 2109 (S.D.N.Y. 1953) (oral opinion), and injured repair worker filed a libel in admiralty against the owner of the ship on which he had been injured and against another party. The libelant settled with the shipowner for a flat sum, reserving his right underthe New York Debtor and Creditor Law, §§ 233 and 234, to proceed against the other alleged tortfeasor. At trial he was awarded judgment for a sum in excess of the settlement figure and was allowed to recover the excess from the nonsettling respondent. The court held that since the settlement had been accomplished in New York, the above state law was applicable.

The Lord's day observance laws of a state are ineffective to bar a right of action in admiralty. *Philadelphia, W. & B. R.R. v. Philadelphia & H. Tugboat Co., 64 U.S. (23 How.) 209 (1859)* ; *Sawyer v. Oakman, 21 F. Cas. 569 (C.C.S.D.N.Y. 1870)* (No. 12,402); *Sawyer v. Oakman, 21 F. Cas. 576 (D. Mass. 1867)* (No. 12,404).

(n44)Footnote 41. *244 U.S. 205 (1917)* .

(n45)Footnote 42. *E.g., Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469 (1922)* (state workers' compensation applies to injury incurred on navigable waters while engaged in shipbuilding even though tort would be within admiralty jurisdiction); *Western Fuel Co. v. Garcia, 257 U.S. 233 (1921)* (state wrongful death statute to be enforced in federal court having admiralty jurisdiction). *Cf. State Indus. Comm'n v. Nordenholt Corp., 259 U.S. 263 (1922)* (state workers' compensation act applies to injuries suffered by longshoreman on dock while unloading a vessel).

(n46)Footnote 43. *Calbeck v. Travelers Ins. Co., 370 U.S. 114, 1962 AMC 1413 (1962)* ; *Davis v. Department of Labor & Indus., 317 U.S. 249, 1942 AMC 1653 (1942)* .

(n47)Footnote 44. *447 U.S. 715, 1980 AMC 1930 (1980)* .

(n48)Footnote 45. *447 U.S. at 719, 1980 AMC at 1933 (1980)* .

(n49)Footnote 46. *33 U.S.C. § 903(a)*. Detailed treatment of workers compensation is given in 1A *Benedict on Admiralty*. *Thompson v. Shell Oil Co., 1988 AMC 485 (D. Or. 1985)* (applying state employer's liability law to claim by seaman who was injured while attempting to secure a barge to a defective piling; interference with national uniformity is less likely when state law is applied to a state-based defendant who must take precautions that a land-based worker will be injured).

(n50)Footnote 47. *Capozziello v. Brasileiro, 443 F.2d 1155, 1971 AMC 1477 (2d Cir. 1971)* ; *A/S J. Ludwig Mowinckels Rederi v. Commercial Stevedoring Co., 256 F.2d 227, 1958 AMC 1563 (2d Cir.) , cert. dismissed, 358 U.S. 801 (1958) . See also Aetna Cas. & Sur. Co. v. Cooper Stevedoring Co., 504 So. 2d 215 (Ala. 1987)* (indemnity clause in contract between stevedoring company and port terminal facility is governed by maritime law).

But see Stoot v. Fluor Drilling Servs., 851 F.2d 1514, 1989 AMC 20 (5th Cir. 1988) (validity of indemnity provision in catering contract is governed by state law where contract contained a provision that contract was to be governed by Louisiana law, Louisiana has a strong public policy favoring application of anti-indemnity statute, and Louisiana had a

substantial relationship to the parties or the transaction, and application of the Louisiana statute did not conflict with any fundamental purpose of maritime law).

(n51)Footnote 48. *Greenslate v. Tenneco Oil Co., 623 F. Supp. 573 (E.D. La. 1985)* .

(n52)Footnote 49. *Lefler v. Atlantic Richfield Co., 785 F.2d 1341, 1986 AMC 2885 (5th Cir. 1986)* .

(n53)Footnote 50. *Theriot v. Bay Drilling Corp., 783 F.2d 527 (5th Cir. 1986)* . *See Goings v. Falcon Carriers, Inc., 729 F. Supp. 1140 (E.D. Texas 1989)* (indemnity provision in repair contract governed by admiralty law).

(n54)Footnote 51. *Vaughn v. Farrell Lines, 937 F.2d 953, 1992 AMC 2908 (4th Cir. 1991)* (In shipowner's claim for indemnity from manufacturer of asbestos products for injury to seaman the court applied admiralty law saying, "We have determined that the underlying tort claims from which the indemnity claim is derived in this action are maritime tort claims to be adjudicated under federal admiralty jurisdiction. Therefore, '[a] noncontractual indemnity claim arising therefrom is similarly a maritime claim.' ").

In *Simeon v. T. Smith & Son, Inc., 852 F.2d 1421, 1989 AMC 2144 (5th Cir. 1988) , cert. denied, 490 U.S. 1106 (1989)* , the court apparently applied admiralty law to determine that a party that is liable under general maritime law for loss of consortium to seaman's spouse may not recover contribution from the seaman's employer whose only liability was for negligence under the Jones Act. The Jones Act does not impose liability for loss of consortium, and the court applied the "traditional view" that there is no right of contribution unless the tortfeasors share a common liability. The court was undoubtedly correct to answer the question as a matter of admiralty law, but it is not so clear that admiralty principles clearly support the "traditional view." In cargo cases it has long been settled that in case of a collision which damages cargo on board one of the vessels, the carrying vessel which is by statute exempt from liability to the owners of cargo is nonetheless liable to the non-carrying vessel for a portion of the cargo damage. *The Chattahoochee, 173 U.S. 540 (1899)* . Although this liability is considered to be part of the collision damage, the practical effect is that one party is liable for contribution even though there is no common liability. *See also Black v. Red Star Towing & Transp. Co., 860 F.2d 30, 1989 AMC 1 (2d Cir. 1988)* (en banc) where the court held that under general maritime law an innocent shipowner is entitled to contribution from a negligent party for maintenance and cure payments in proportion to the negligence of the third party. The court treated the claim as "nothing more than a claim for contribution under well-settled admiralty principles," even thought the third party had no common liability to pay maintenance and cure. *See generally* H. Hart and A. Sacks, The Legal Process: Basic Problems in the Making and Application of Law, at 525-26 (Tent. ed. 1958).

Daughtry v. Diamond M Co., 693 F. Supp. 856 (C.D. Cal. 1988) (issue of contribution among defendants sued under the Jones Act and general maritime law is to be based on maritime law, not the law of California).

White v. Johns-Manville Corp., 662 F.2d 243 (4th Cir. 1981) (noncontractual indemnity claim arising from maritime tort claim is maritime); *Tri-State Oil Tool Indus. v. Delta Marine Drilling Co., 410 F.2d 178, 1969 AMC 767 (5th Cir. 1979)* (same); *Pastore v. Taiyo Gyogyo K.K., 571 F.2d 777, 1978 AMC 2396 (3d Cir. 1978)* (contribution); *Sea-Land Serv., Inc. v. American Logging Tool Corp., 637 F. Supp. 240 (W.D. Wash. 1985)* (indemnity); *Bradford v. Indiana & Michigan Elec. Co., 588 F. Supp. 708 (S.D.W. Va. 1984)* ; *Kennedy Engine Co. v. Dog River Marina & Boatworks, 432 So. 2d 1214 (Ala. 1983)* . *See generally Cooper Stevedoring v. Fritz Kopke, Inc. 417 U.S. 106, 1974 AMC 537 (1974)* (recognizing general right of contribution); *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282, 1952 AMC 1 (1952)* (no right of contribution from longshore worker's employer).

(n55)Footnote 52. *E.g., Gauthier v. Crosby Marine Serv., 752 F.2d 1085, 1985 AMC 2477 (5th Cir. 1985)* ; *Joiner v. Diamond M Drilling Co., 677 F.2d 1035 (5th Cir. 1982)* ; *United States Lines v. United States, 470 F.2d 487 (5th Cir. 1972)* ; *Jones v. Waterman S.S. Corp., 155 F.2d 992, 1946 AMC 859 (3d Cir. 1946)* ; *McCann v. Falgout Boat Co., 44 F.R.D. 34 (S.D. Tex. 1968)* . *See also Pastore v. Taiyo Gyogyo K.K., 571 F.2d 777, 1978 AMC 2396 (3d Cir. 1978)* (maritime law applies to contribution claim for injuries occurring on board vessel on navigable waters);

Leather's Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800, 1971 AMC 2383 (2d Cir. 1971) (ancillary jurisdiction would exist over indemnity claim even though no independent basis of jurisdiction). *Cf. Shields v. Consolidated Rail Corp., 810 F.2d 397* (3d Cir. 1987 (state law governs contribution claim of employer liable under F.E.L.A.). *But cf. Moore-McCormack Lines v. Shin Mitsubishi Heavy Indus., 337 F. Supp. 513, 1972 AMC 2170 (S.D.N.Y. 1971)* (maritime law governs indemnity claim by seller of vessel against ship repairer even though seller's liability was based on state law). *But cf. Slaven v. BP America, Inc., 958 F. Supp. 1472, 1997 AMC 2580 (C.D. Cal. 1997)* (federal rule of contribution applies to federal and state claims arising from oil spill).

(n56)Footnote 53. *761 F.2d 229, 1986 AMC 2343 (5th Cir. 1985)* .

(n57)Footnote 54. The court said, "[T]he body of law establishing the indemnitee's primary liability governs his claim for indemnity or contribution against a third party." *761 F.2d at 235, 1986 AMC at 2351* . *Cf.* G. Gilmore & C. Black, *The Law of Admiralty* 319 (2d ed. 1975) (indemnity action for maintenance and cure should be governed by federal law because it is closely enough related to maintenance and cure action), *questioned in Gauthier v. Crosby Marine Serv., 576 F. Supp. 681, 1985 AMC 2467 (E.D. La. 1983)* , *aff'd, 752 F.2d 1085, 1985 AMC 2477 (5th Cir. 1985)* . *Marathon* was followed byHyundai *Merchant Marine Co. v. Burlington Northern & Santa Fe Ry. Co., 2005 AMC 74 (S.D. Tex. 2005)* . In *Hyundai* a maritime carrier contracted with a railway to carry cargo; amazingly the court ruled that even though these contracts were non-maritime, the indemnity claims brought by the maritime carrier were governed by admiralty law.

In *Black v. Red Star Towing & Transp. Co., 860 F.2d 30, 1989 AMC 1 (2d Cir. 1988)* (en banc) the court reversed The Federal No. 2, *21 F.2d 313 (2d Cir. 1927)* , and held that under general maritime law an innocent shipowner is entitled to contribution from a negligent party for maintenance and cure payments in proportion to the negligence of the third party. The court said that indemnity would be allowed where the third party is entirely at fault. Although the opinion did not focus on whether the claim for contribution was based on federal or state law, it seems that the court would consider the question determined by a uniform federal rule, noting that the claim "is nothing more than a claim for contribution under well-settled admiralty principles." *But see* Crochet v. Odeco, Inc., Civ. A. No. 84-5727 (E.D. La. May 25, 1988) (*1988 U.S. Dist. LEXIS 4833*) (Where worker aboard fixed platform was injured while being transferred to vessel by a crane, the court held that the crane operator's suit against vessel owner for tort indemnity and/or contribution "are governed by the same law which gives rise to the liability, if any, of [the vessel owner]." The court made no mention of Marathon Pipe Line Co. v. Drilling Rig Rowan-Odessa. It ultimately found that the vessel owner was not negligent so that it had no liability to the worker and was therefore not liable for tort indemnity or contribution. The court did find that the vessel was liable for contractual indemnity, finding that the contract calling for the transportation of personnel and equipment by water was a maritime contract.).

The cases relied on by *Marathon* do not provide much support for its holding. *White v. Johns-Manville Corp., 662 F.2d 243 (4th Cir. 1981)* , involved two tort claims that were held to be maritime. *Tri-State Oil Tool Indus. v. Delta Marine Drilling Co., 410 F.2d 178, 1969 AMC 767 (5th Cir. 1979)* (same), involved a maritime tort against one party and a claim based on the Jones Act and the general maritime law against the other. The choice of law does not appear to have been contested, and the court merely remarked, "This accident occurred in navigable waters; therefore, the federal maritime law is the applicable law." *410 F.2d at 186, 1969 AMC at 779* , citing the *Executive Jet* case of *Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 628 (1959)* , which restated the then generally accepted rule that torts occurring on ships in navigable waters are governed by admiralty law. *See generally* § 171, *infra.* It would be hard to conclude therefrom that the choice of law governing an indemnity claim should follow the law governing the indemnitee's liability or even that state law would not be applied if the indemnitor were liable because of state law. Similarly, in *Avondale Shipyards, Inc. v. The Vessel Thomas E. Cuffe, 434 F. Supp. 920, 927 (E.D. La. 1977)* , the court remarked, "An actionfor indemnity based upon a maritime tort is governed by maritime law," citing *Tri-State,* but both tortfeasors were liable for maritime torts ofnegligent construction or design of a vessel. Perhaps the strongest support is *In re Dearborn Marine Serv., 499 F.2d 263, 1975 AMC 1850 (5th Cir. 1974)* , *cert. dismissed, 423 U.S. 886, 96 S. Ct. 163, 46 L. Ed. 2d 118 (1975)* , where the court applied admiralty indemnity law to claims by a vessel owner liable for a

maritime tort against a drilling platform owner liable on state law applied as surrogate federal law. The opinion, however, did not address the choice of law issue. These cases recognize that the basis for applying maritime law to a noncontractual indemnity claim does not depend on whether the relationship between the indemnitor and indemnitee is maritime or nonmaritime. *See also Lowe v. Ingalls Shipbuilding, 723 F.2d 1173, 1184 (5th Cir. 1984)* . With the exception of *Dearborn,* however, all are consistent with the theory that the primary claims against the indemnitor and indemnitee must be maritime if the indemnity claim is to be maritime. None of the cases, including *Dearborn,* hold that maritime law applies to an indemnity claim against a party whose primary liability is bases on state law. The *Marathon* court butressed its result by reference to the *Restatement (Second) of Conflict of Laws* § 173 (1971). That section requires that the law of the state having the most significant relation to the parties and the occurrence be applied. The court said that the tort occurred in a "maritime place and that was where the relationship between the two [tortfeasors] centered." *761 F.2d at 235, 1986 AMC at 2351* . But one could also say that the tort occurred on the Outer Continental Shelf, which Congress has directed should be subject to the law of the adjacent state, *43 U.S.C. § 1333,* and, as the remainder of the opinion suggests, there was no relationship between the two tortfeasors.

(n58)Footnote 55. G. Palmer, *The Law of Restitution* § 10.6(c) (1978). *See Gauthier v. Crosby Marine Serv., 576 F. Supp. 681, 1985 AMC 2467 (E.D. La. 1983) , aff'd, 752 F.2d 1085, 1985 AMC 2477 (5th Cir. 1985) . Cf.* Restatement (Second) of Conflict of Laws § 221 comment *d* (1971) (place where benefit or enrichment is received will usually be the most important contact when there is no relationship between the parties).

(n59)Footnote 56. *Cf. Terry v. Raymond Int'l, Inc., 658 F.2d 398 (5th Cir. Unit A Oct. 1981)* (state law governs division of liability of joint tortfeasors where one tortfeasor is liable under the Jones Act and one is liable under state law for injury on an offshore platform in the North Sea); *Harrision v. Glendel Drilling Co., 679 F. Supp. 1413 (W.D. La. 1988)* (claim for contribution or indemnity by defendant who sued under the Jones Act and general maritime law against doctor arising out of medical malpractice on land is governed by state law; the court rejected the argument that the contribution claims must be maritime since the claims against the defendant are maritime); *Diaz v. United States, 655 F. Supp. 411, 1987 AMC 2293 (E.D. Va. 1987)* (state law of contribution and indemnity prevents recovery by United States against maintenance company where business invitee injured aboard docked vessel recovered against United States based on admiralty law but was barred under state law because contributory negligence from recovering from maintenance company); *Bradford v. Indiana & Michigan Elec. Co., 588 F. Supp. 708 (S.D.W. Va. 1984)* (court lacks maritime jurisdiction over claim for contribution and indemnity unless liability of both tortfeasors is based on maritime law).

The *Restatement of Conflicts* takes the position that the state where the conduct and injury occur should be applied "unless some other state has a greater interest in the determination of the particular issue." *Restatement (Second) of Conflict of Laws* § 173 comment **a** (1971). Although this approach will often have the advantage of simplicity, the place of each defendant's conduct will not always be the same as the place of injury. Nor would it make sense, for instance, to apply one law of indemnity to fire causing shore-side injury and another law of indemnity to the same fire causing injury to a vessel on navigable waters. Also, it is hard to see why the maritime law of indemnity should apply to cases occurring on the Outer Continental Shelf. The federal interest in applying federal law in the latter situation is diminished by Congress's direction that the law of the adjacent state ordinarily applies. *43 U.S.C. § 1333(a).*

A similar problem arises when a court must determine whether to apply state or federal law to determine the effect of a settlement on non-settling defendants. Federal law applies a "proportionate share" approach, reducing the judgment against the non-settling defendants by the settling defendant's proportion of fault, not by the amount of the settlement. *McDermott, Inc. v. AmClyde, 511 U.S. 202, 1994 AMC 1521 (1994)* . Under this approach the court does not conduct a hearing to determine whether the settlement was made in good faith and the settling defendant cannot be sued for contribution by the non-settling defendants. Two courts that have considered the matter have held that the federal rule applies if some maritime claims remain against the non-settling defendants. *White v. Sabatino, 526 F. Supp.2d 1135 (D. Haw. 2007)* ; *Slaven v. BP America, Inc., 958 F. Supp. 1472, 1997 AMC 2580 (C.D. Cal. 1997)* .

It is inappropriate to apply the rule of *Marathon Pipe* where the case involves international aspects. The court instead used the eight-factor test of *Lauritzen v. Larsen* as expanded by *Romero v. Int'l Terminal Operating Co.* Applying that test the court concluded to apply Dutch law to the third-party claims. *Cooper v. Meridian Yachts, Ltd., 575 F.3d 1151, 2009 AMC 2652 (11th Cir. 2009)* .

(n60)Footnote 57. *Mink v. Genmar Industries, Inc., 29 F.3d 1543, 1995 AMC 36 (11th Cir. 1994)* (in products liability case state statute of limiations is preempted; the court further held that state statue would not be applied even as to contract claims which are based on state law); *Mendez v. Ishikawajima-Harima Heavy Indus. Co., 52 F.3d 799 (9th Cir. 1995)* (maritime law's three year statute of limitations rather than state's shorter statute of limitations applies to maritime tort); *Butler v. American Trawler Co., 887 F.2d 20 (1st Cir. 1989)* (maritime law's three year statute of limitations rather than longer state statute of limitations, applies to maritime tort action arising from injuries sustained while boarding a docked vessel); *Coleman v. Slade Towing Co., 759 F. Supp. 1209 (S.D. Miss. 1991)* (maritime law's three year statute of limitations applies instead of longer state statute of limitations for action arising from occupational exposure to benzene); *Davis v. Britton, 729 F. Supp. 189, 1990 AMC 1678 (D.N.H. 1989)* (three year federal statute of limitations preempts state statute requiring suits against administrators of estates to be brought within one year after the original grant of administration). *But see TAG/ICIB Servs. v. Sedeco Servicio de Descuento en Compras, 570 F.3d 60, 2009 AMC 1968 (1st Cir. 2009)* (although governed by maritime doctrine of laches, the court considered a Puerto Rican statute of limitations to be the most analogous statute); *Walck v. Discavage, 741 F. Supp. 88 (E.D. Pa. 1990)* (federal statute of limitations applies but it does not prevent court from applying equitable principles of tolling). *King v. Alaska S.S. Co., 431 F.2d 994, 1970 AMC 2119 (9th Cir. 1970) . See also Scheibel v. Agwilines, Inc., 156 F.2d 636, 1946 AMC 1148 (2d Cir. 1946)* (*46 U.S.C. § 183b*, making it unlawful for the owner of a seagoing vessel transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation or otherwise a period for giving notice of, or filing claims for loss of life or bodily injury, less than one year, excludes longer state statutes of limitations); *Davis v. Newpark Shipbuilding & Repair, Inc., 659 F. Supp. 155 (E.D. Tex. 1987)* (maritime law does not include Louisiana law that provides that judgment against one solidary obligor tolls the statute of limitations as to all other solidary obligors).

(n61)Footnote 58. *Fireman's Ins. Co. v. Gulf Puerto Rico Lines, 349 F. Supp. 952, 1973 AMC 995 (D.P.R. 1972)* .

(n62)Footnote 59. *Lerner v. Karageorgis Lines, 66 N.Y.2d 479, 497 N.Y.S.2d 894, 1986 AMC 1041 (1985)* .

(n63)Footnote 60. Armenia Coffe Corp. v. S.S. Santa Magdalena, 1983 AMC 1249 (S.D.N.Y. 1982) .

(n64)Footnote 61. *Camejo v. Ocean Drilling & Exploration, 838 F.2d 1374 (5th Cir. 1988)* ; *Exxon Corp. v. Chick Kam Choo, 817 F.2d 307 (5th Cir. 1987) , rev'd on other grounds, 108 S. Ct. 1684 (1988)* ; *Golden Challenger Marinera S.A. v. Spalieris, 795 F. Supp. 802 (E.D. La. 1992)* (federal court may not enjoin state court to apply federal law). But a state may apply its own rule of forum non conveniens to admiralty cases within its courts. *American Dredging Co. v. Miller, 114 S. Ct. 981, 1994 AMC 913 (1994)* .

(n65)Footnote 62. *In re U.S. Steel Corp., 436 F.2d 1256, 1971 AMC 914 (6th Cir. 1970) , cert. denied, 402 U.S. 987, 91 S. Ct. 1665, 29 L. Ed. 2d 153 (1971)* .

(n66)Footnote 63. Jacobs v. United States, 1979 AMC 660 (E.D. Ky. 1979) .

Claims based on the failure to install a product that the Coast Guard has decided should not be required would conflict with the regulatory uniformity purpose of the *Federal Boat Safety Act. Lewis v. Brunswick Corp., 107 F.3d 1494, 1997 AMC 1921 (11th Cir. 1997)* .

(n67)Footnote 64. *Floyd v. Lykes Bros. S.S. Co., 844 F.2d 1044, 1988 AMC 1805 (3d Cir. 1988)* (master has absolute discretion under maritime law; common law prevailing on land that gives next of kin right to possession and custody of body for purposes of burial is based on a different set of circumstances and customs).

(n68)Footnote 65. *Whaley v. Rydman, 887 F.2d 976, 1989 AMC 2851 (5th Cir. 1989)* ; *Borne v. A & P Boat Rentals No. 4, Inc., 780 F.2d 1254, 1986 AMC 1782 (5th Cir. 1986)* ; *In re Bankers Trust Co., 752 F.2d 874, 1986 AMC 74 (3d Cir. 1985)* ; *Gisclair v. Tug Chantel Naquin, Inc., 694 F. Supp. 204 (E.D. La. 1988)* . *See also Gauthier v. Continental Diving Servs., 831 F.2d 559 (5th Cir. 1987)* (general maritime law governs the preclusive effect of a state court judgment rendered in an action under the Jones Act and the general maritime law); *Smith v. Pinell, 597 F.2d 994 (5th Cir. 1979)* (in a Jones Act action court will disregard state law that precludes an action to rescind a settlement for fraud absent a return of the settlement proceeds). But federal maritime law does not determine the validity of a power of attorney authorizing settlement. *In re Bankers Trust Co., supra.*

(n69)Footnote 66. *Helman v. Alcoa Global Fastners, Inc., 637 F.3d 986 (9th Cir. 2010)* (deaths from helicopter crash more than 3 nautical miles off the California coast are governed exclusively by the Death on the High Seas Act); *Lockwood v. Astronautics Flying Club, Inc., 437 F.2d 437, 1971 AMC 1183 (5th Cir. 1971)* (it would be otherwise if admiralty had no jurisdiction). *See Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 1973 AMC 1 (1972)* ; § 171, *infra* . *Offshore Logistics, Inc. v. Tallentire, 106 S. Ct. 2485, 1986 AMC 2113 (1986)* (the Death on the High Seas Act is the exclusive remedy for deaths resulting from injuries on the high seas). *See* § 113, *infra.*

(n70)Footnote 67. *Intermar Overseas, Inc. v. Argocean, S.A., 117 A.D.2d 492, 503 N.Y.S.2d 736, 1987 AMC 1316 (1986)* . *But see Victrix S.S. Co. v. Salen Dry Cargo A.B., 825 F.2d 709, 1987 AMC 2945 (2d Cir. 1987)* (state law governs award of legal fees for wrongful state law attachment in connection with action to enforce foreign judgment confirmation foreign arbitration award; plaintiff must accept state procedural rules applicable to state court remedy that it chose to assert).

(n71)Footnote 68. *Aurora Maritime Co. v. Abdullah Mohamed Fahem & Co., 890 F. Supp. 322 (S.D.N.Y. 1995)* .

(n72)Footnote 69. *Coastal Iron Works, Inc. v. Petty Ray Geophysical, 783 F.2d 577, 1987 AMC 571 (5th Cir. 1986)* . *See also Fahey v. Gledhill, 33 Cal. 3d 884, 191 Cal. Rptr. 639, 663 P.2d 197 (1983)* (exculpatory clause contract to repair a pleasure vessel governed by federal law); *Hudson Waterways Corp. v. Coastal Marine Serv., 436 F. Supp. 597, 1978 AMC 341 (E.D. Tex. 1977)* (the validity of a release of liability clause in a ship repair contract is governed by federal admiralty law).

(n73)Footnote 70. *Branch v. Schumann, 445 F.2d 175, 1971 AMC 2536 (5th Cir. 1971)* (the maritime standard applied notwithstanding the diversity character of the litigation and the fact that a party exercised his right to a jury trial). *See also Rindfleisch v. Carnival Cruise Lines, 498 So. 2d 488, 1987 AMC 944 (Fla. Dist. Ct. App. 1986)* (could not apply Florida law requiring common carrier to exercise "highest degree of care"); *Bird v. Celebrity Cruise Line, Inc., 428 F. Supp.2d 1275, 2005 AMC 2794 (S.D. Fla. 2005)* (refusing to apply state law of implied warranty of merchantability to claims arising from alleged food poisoning); *Reneau v. Shoreline Marine Sightseeing Co., 1986 AMC 1274 (N.D. Ill. 1986)* (criticized in n.13, *supra*). *See also Churchill v. F/V Fjord, 857 F.2d 571 (9th Cir. 1988)* (federal limitation of liability law preempts state statute which purports to make owner of any watercraft liable for injury or damage caused by negligent operation by son of owner). This decision was superseded by *Churchill v. F/V Fjord, 892 F.2d 763, 1990 AMC 2085 (9th Cir. 1988)* which rejected the state law claim on its merits.

(n74)Footnote 71. *St. Hilaire Moye v. Henderson, 496 F.2d 973, 1974 AMC 2661 (8th Cir.) , cert. denied, 419 U.S. 884 (1974)* .

(n75)Footnote 72. *Byrd v. Byrd, 657 F.2d 615, 1981 AMC 2563 (4th Cir. 1981)* .

(n76)Footnote 73. *Har-Win, Inc. v. Consolidated Grain & Barge Co., 794 F.2d 985 (5th Cir. 1986)* ; *Battery S.S. Co. v. Refineria Panama, S.A., 513 F.2d 735, 1975 AMC 842 (2d Cir. 1975)* .

(n77)Footnote 74. *Stanley v. Bertram-Trojan, Inc., 868 F. Supp. 541 (S.D.N.Y. 1994)* .

(n78)Footnote 75. *Carlson v. Palmer, 472 F. Supp. 396, 1980 AMC 1709 (D. Del. 1979)* .

(n79)Footnote 76. Misener Marine Const., Inc. v. Norfolk Dredging Co., *594 F.3d 832 , 2010 AMC 250 (11th Cir.) , cert. denied, 130 S. Ct. 3505 (2010)* ; *Sosebee v. Rath, 893 F.2d 54, 1990 AMC 1601 (3d Cir. 1990)* ; Reliable Salvage & Towing v. 35' *Sea Ray, 2011 U.S. Dist. LEXIS 35515 (M.D. Fla. 2011)* ; *Kearny Barge Co., Inc. v. Global Ins. Co., 943 F. Supp. 441, 1997 AMC 715 (D.N.J. 1996) , aff'd, 127 F.3d 1095 (3d Cir. 1997)* ; *Garan Inc. v. M/V Aivik, 907 F. Supp. 397, 1995 AMC 2657 (S.D. Fla. 1995)* ; *but see Morcher v. Nash, 26 F. Supp.2d 758, 1999 AMC 1413 (D.V.I. 1998)* (allowing attorney's fees under local law where local law governed substantive claim).

(n80)Footnote 77. *Exxon Co., U.S.A. v. Sofec, Inc., 116 S. Ct. 1813 (1996)* (applying the doctrines of proximate cause and superseding cause in a comparative fault system); *Broadley v. Mashpee Neck Marina, Inc., 471 F.3d 272, 2007 AMC 413 (1st Cir. 2006)* (refusing to narrow an overbroad exculpatory clause); *Contship Containerlines, Inc. v. Howard Indus., Inc., 309 F.3d 910 (6th Cir. 2002)* (applying federal common law rule recognizing quasi-contracts to shipment of goods); *Christensen v. Georgia-Pacific Corp., 279 F.3d 807, 2002 AMC 633 (9th Cir. 2002)* (general principles of tort law guide courts in maritime tort cases; court applied rescue doctrine to recognize duty to person who was injured while trying to rescue property endangered by defendants' negligence); *Southworth Machinery v. FV Corey Pride, 994 F.2d 37 (1st Cir. 1993)* (*citing text*) (contract for sale and installation of rebuilt engine on an existing commercial vessel is maritime but the Uniform Commercial Code is a source of federal admiralty law); *Marastro Compania Naviera S.A. v. Canadian Maritime Carriers, Ltd., 959 F.2d 49 (5th Cir. 1992)* (borrowing from general common law and in particular from the Restatement (Second) of Torts in fashioning a "common law admiralty" rule); *Pietrafesa v. Board of Governors for Higher Education, 846 F. Supp. 1066 (D.R.I. 1994)* (applying Restatement to maritime product liability claim); *International Marine & Indus. Applicators, Inc. v. Avondale Indus., Inc., 1994 U.S. Dist. LEXIS 2410 (E.D. La. Feb. 28, 1994)* (in suit for intentional tortious interference with contract, admiralty jurisdiction requires the application of a uniform admiralty rule, rather than state law; in absence of a statute or established maritime rule, court looks to Restatement, state law and the solutions of other courts to similar problems). *But see Favorito v. Pannell, 27 F.3d 716 (1st Cir. 1994)* ("absent a federal liability scheme ... Rhode Island provides the principal source of tort law relating to an accident within its coastal waters"); *Sletten v. Hawaii Yacht Club, 1993 AMC 2863 (D. Hawaii 1993)* (the court recognized that maritime law, not state law, applied to causes of action arising from a collision even though plaintiff invoked only the diversity jurisdiction of the court; however on the issue of liability for intentional infliction of emotional distress the court applied Hawaii law "in the absence of federal maritime law"); *Conticarriers & Terminals, Inc. v. Delta Bulk Terminal, 807 F. Supp. 1252 (M.D. La. 1992)* (looking to Louisiana law and Restatement of Restitution to create maritime rule of contribution between debtors).

E.g., American Export Lines v. Alvez, 446 U.S. 274, 1980 AMC 618 (1980) (common law generally recognizes that wife of tort victim may recover for loss of consortium); *DeLoach v. Companhia de Navegacao Lloyd Brasileiro, 782 F.2d 438, 1986 AMC 1217 (3d Cir. 1986)* (common law does not generally recognize minor's claim of loss of companionship of injured father); *Louisianaex. rel. Guste v. M/V Testbank, 752 F.2d 1019, 1985 AMC 1521 (5th Cir. 1985) (en banc) , cert. denied, 106 S. Ct. 3271 (1986)* ; *Furness Withy (Chartering), Inc. v. World Energy Sys. Assocs., 772 F.2d 802, 1985 AMC 1565 (11th Cir. 1985)* (court looks to *Restatement (Second) of Torts* for guidance in resolving issues raised involving tortious interference with maritime contract); *Kiesel v. Peter Kiewit & Sons' Co., 638 F. Supp. 1251, 1987 AMC 98 (D. Hawaii 1986)* (neither Hawaii nor majority of states recognizes right of unmarried cohabitant to recover for loss of consortium); *Maru Shipping Co. v. Burmeister & Wain Am. Corp., 528 F. Supp. 210, 1982 AMC 1320 (S.D.N.Y. 1982)* (court chooses to use Uniform Commercial Code rather than strict liability in tort to govern suit for recovery of pure economic loss). *Cf. Palmer Barge Line v. Southern Petroleum Trading Co., 776 F.2d 502 (5th Cir. 1985)* (court refers to Texas law where maritime law on economic duress is not well developed and maritime law as it does exist is not inconsistent with law of Texas); *Hebert v. Outboard Marine Corp., 638 F. Supp. 1166 (E.D. La. 1986)* (court applies to Louisiana products law because it is congruent with § 402-A of the *Restatement (Second) of Torts*).

(n81)Footnote 78. *Igneri v. Cie. de Transports Oceanique, 323 F.2d 257, 1963 AMC 2318 (2d Cir. 1963) , cert. denied, 376 U.S. 949 (1964)* (deny injured longshoreman's wife to sue for loss on consortium), *overruled American Export Lines v. Alvez, 446 U.S. 274, 1980 AMC 618 (1980)* (change in law since *Igneri*); Hachulla v. United States, 1981 AMC 2573 (D. Or. 1981) (common law courts are split on issue of parental immunity; better not to recognize

immunity in order to require parent to contribute to other tortfeasor). *But see Miles v. Apex Marine Corp., 498 U.S. 19 (1990)* (not free to create a remedy in an area dominated by federal statute); *Coats v. Penrod Drilling Corp., 61 F.3d 1113 (5th Cir. 1995)* (en banc) (not overrule maritime doctrine of joint and several liability in favor of a rule that has not been adopted by any state).

(n82)Footnote 79. *313 U.S. 487 (1941)* .

(n83)Footnote 80. *See Smith v. Mitlof, 198 F.Supp.2d 492 (S.D.N.Y. 2002)* (applying New York choice of law rules to non-maritime claims heard under court's supplemental jurisdiction); *Ingersoll Milling Mach. Co. v. M/V Bodena, 619 F. Supp. 493 at 505, 1987 AMC 988 (S.D.N.Y. 1985)* (court would look to New York choice of law rules to determine which state's substantive law would govern an insurance issue in the absence of a substantive federal rule), *modified, 829 F.2d 293, 1988 AMC 223 (2d Cir. 1987)* , *cert. denied, 484 U.S. 1042 (1988)* ; *Morcher v. Nash, 26 F. Supp.2d 758, 1999 AMC 1413 (D.V.I. 1998)* (applying Restatement of Conflicts as required by Virgin Island's law; nodiscussion of whether a maritime conflicts rule should be applied). *Cf. In re Merritt Dredging Co., 839 F.2d 203 at 205, 1988 AMC 2339 (4th Cir. 1988)* (use of state choice of law rules in bankruptcy proceeding). In *Icelandic Coast Guard v. United Technologies Corp., 722 F. Supp. 942 (D. Conn. 1989)* , the court said that it applied Connecticut choice of law rules because the maritime tort claim was raised in a diversity case. The court, however, determined that whatever state substantive law might be chosen would be in conflict with the federal substantive rule and therefore could not be given effect. Under the analysis given here, the court's use of state choice of law rules would have been proper even if the case had not been within the court's diversity jurisdiction. *But see Great Lakes Reinsurance (UK) PLC v. Durham Auctions, Inc., 585 F.3d 236, 2010 AMC 185 (5th Cir. 2009)* (applying federal maritime choice-of-law principles, the court applied a contractual choice-of-law provision calling for the application of New York law); *Cooper v. Meridian Yachts, Ltd., 575 F.3d 1151, 2009 AMC 2652 (11th Cir. 2009)* (a broad choice-of-law provision in a shipbuilding contract applies to claims for indemnity, contribution and equitable subrogation); *State Trading Corp. v. Assuranceforeningen Skuld, 921 F.2d 409, 1991 AMC 1147 (2d Cir. 1990)* (applying federal choice of law rule to determine whether to apply Connecticut direct action statute authorizing suit against insurer of judgment creditor); *Albany Ins. Co. v. Anh Thi Kieu, 927 F.2d 882 (5th Cir. 1991)* (court in maritime cases must apply general federal maritime choice of law rules; this means choosing the state having the most significant relationship to the issue in question; as applied to an insurance policy this means choosing the state with the greatest interest provided it is a state where an insurance policy was formed or where it was issued or delivered); *Certain Underwriters at Lloyds, London v. Inlet Fisheries, Inc., 370 F. Supp.2d 974 (D. Alaska 2004)* (federal choice of law rules apply "in cases based on federal jurisdiction, such as admiralty" (sic!)); *Roane v. Greenwich Swim Committee, 330 F. Supp.2d 306, 2005 AMC 45 (S.D.N.Y. 2004)* (applying state choice of law rule where case was filed as a diversity action); *Carney Family Inv. Trust v. Ins. Co. of N. Am., 296 F. Supp.2d 629 (D. Md. 2004)* ("federal choice of law rules apply" which the court equated with section 188 of the Restatement (Second) of Conflict of Laws). *State Trading Corp.* was followed in *Advani Enters., Inc. v. Underwriters at Lloyds, 140 F.3d 157 (2d Cir. 1998)* (applying five-part test); and in *Commercial Union Ins. Co. v. Horne, 787 F. Supp. 337 (S.D.N.Y. 1992)* . *State Trading Corp.* was also followed in *In re Litigation Involving Alleged Loss of Cargo, 772 F. Supp. 707 (D.P.R. 1991)* , but the court described the result as ironic and suggested that state choice of law rules would be applied if the plaintiff had "invoked the diversity jurisdiction of the court". The court then noted that it is "not always easy to determine on which side of the admiralty/diversity law fence a claim is meant to fall." *772 F. Supp. at 710* . This is yet another unfortunate result of imagining that there is a law side and an admiralty side to the federal district court. It would be better if the issue of jurisdiction of the federal court was kept separate from the issues of procedure and substantive law. *See* Friedell & Healy, An Introduction to *In Rem* Jurisdiction and Procedure in the United States, *20 J. Mar. L. & Com. 55, 63 (1989).*

(n84)Footnote 81. *Hodes v. S.N.C. Achille Lauro, 858 F.2d 905, 1988 AMC 2829 (3d Cir. 1988)* , *cert. dismissed, 490 U.S. 1001 (1989)* (choice of law provision); *Stoot v. Fluor Drilling Servs., 851 F.2d 1514, 1989 AMC 20 (5th Cir. 1988)* (same); *Gulf Trading & Transp. Co. v. M/V Tento, 694 F.2d 1191, 1194 (9th Cir. 1982)* , *cert. denied, 461 U.S. 929 (1983)* (whether foreign law applies); *Rainbow Line, Inc. v. M/V Tequila, 480 F.2d 1024, 1026 (2d Cir. 1973)* (same); *Siegelman v. Cunard White Star, Ltd., 221 F.2d 189, 192-93 (2d Cir. 1955)* (choice of law provision); *Itel*

Containers Int'l Corp. v. Atlanttrafik Express Serv. Ltd., 1988 AMC 2117 (S.D.N.Y. 1988) (whether foreign law applies). *See also Sembawang Shipyard, Ltd. v. Charger, Inc., 955 F.2d 983 (5th Cir. 1992)* (choice of law clauses in freely negotiated private international agreements are presumptively valid); *Milanovich v. Costa Crociere, S.p.A., 954 F.2d 763 (D.C. Cir. 1992)* (parties agreed that "American law" should be applied to decide validity of choice of law provision in passenger ticket; court applied second restatement, and cited other admiralty cases in upholding validity of provision; the carrier that drafted the choice of law provision argued that it was invalid).

(n85)Footnote 82. *Hollier v. Union Texas Petroleum Corp., 972 F.2d 662 (5th Cir. 1992)* ; *Matte v. Zapata Offshore Co., 784 F.2d 628 (5th Cir.) , cert. denied, 479 U.S. 872 (1986)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 113

§ 113. State Law: How Far Given Effect in Maritime Cases.

Under the principles stated in the previous section, and in the absence of Congressional legislation, a wide variety of state legislation has been allowed to create rights, to establish principles of liabilityin cases of contracts n1 as well as in torts n2 and even to create liens *in rem* enforceable in admiralty though not enforceable in the state courts. Thus, prior to the federal maritime lien acts, n3 liens upon a domestic vessel for repairs or supplies were frequently given by state statute, n4 and this is still possible if the state act is not superseded by an Act of Congress.

In the field of marine insurance, if there is no existing federal rule, the courts will, like Congress, leave the regulation of maritime insurance to the states. n5 A state's direct action statute is given effect in admiralty actions. n6

In the absence of federal precedent, courts will look to state law for guidance in determining matters relating to bank regulation. n7 A decision contrary to state law could be disruptive of banking practices.

Prior to the 1970 case of *Moragne v. States Marine Lines*, n8 state n9 and federal n10 courts enforced state wrongful death statutes even if the tort was committed upon navigable waters. If the state statute expressly created a lien, suit could be brought *in rem* in the federal courts. n11 In *Moragne,* the Supreme Court created a right torecover for wrongful death under the general maritime law. One of the issues left unresolved by the Court's decision was whether the state wrongful death statutes could continue to be applied. Lower courts have ruled that because *Moragne* undercut the need for state wrongful death acts, those acts could no longer be used in maritime cases if the injury occurs in territorial waters. n12 The Supreme Court, however, has held that *Moragne* establishes a floor, not a ceiling, for recovery and that state statutes may supplement the damages recoverable under *Moragne* for deaths occuring in territorial waters. n12.1 As for deaths occuring outside the territorial waters, the Fifth Circuit ruled that the state statutes could be relied on. n13 The court explained that the reason for this anomaly was that the *Moragne* cause of action does not apply on the high seas, n14 whereas § 7 of the Death on the High Seas Act specifically saves state wrongful death statutes, n15 Section 7 reads:

> "The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone." n16

In a five-to-four decision, *Offshore Logistics, Inc. v. Tallentire*, n17 the Supreme Court reversed the Fifth Circuit, holding that this section of the Death on the High Seas Act only saves the jurisdiction of the state courts to hear claims brought under that act.

The Death on High Seas Act does not preempt a survival action for the decedent's pain and suffering and for the decedent's suspected net earnings. Prior to *Moragne*, it was thought that survival actions could only be brought if a state statute applied. n18 But after *Moragne* created a federal cause of action for wrongful death, several circuits followed suit by creating a survival action under the general maritime law. n19 The Third Circuit, however, has held that plaintiffs may employ a state survival statute even though the injury occurred on the high seas, n20 although the continued validity of this approach is in doubt. n21 The determination of when title to a vessel passes is governed by state law even though the question arises in the course of a case within the court's admiralty jurisdiction. n22 A provision of a state watercraft statute permitting substituted service process on the Secretary of State may be used in a federal admiralty proceeding. n23 State law controls the limitation of liability of warehousemen for conversion of goods, even though the parties agreed to have the Carriage of Goods by Sea Act apply to the pre-loading and post-discharge periods. n24 State tort law dealing with assault and battery and *respondeat superior* may be applied in an admiralty suit. n25 Similarly, state law has been applied to a claim by a passenger for intentional infliction of emotional harm by a ship's photographer. n26

The provisions of a state medical malpractice statute will be given effect in admiralty actions. n27 The provision of the charter of the City of New York n28 prohibiting vessels from lying at pier ends except at their own risk of injury from vessels entering or leaving an adjacent dock and denying recovery for injuries so caused has been given effect in admiralty to the extent of charging vessels moored at a pier end with a presumption of contributory fault when damaged by vessels entering or leaving the slip at either side of the same pier, but not to the extent of precluding a recovery of half damages where the colliding vessel was negligent. n29

The New York statute requiring vessels navigating the East River between the Battery and Blackwell's Island to keep to the right in mid-river n30 has been given effect in countless cases. n31 Subject to the limitation that a state may not create a lien enforceable in admiralty by process *in rem* against a foreign vessel, n32 a lien (not previously existing in this country but not specifically provided for by statute) n33 for a master's wages has been enforced in admiralty under state statute n34 and so too a lien (not existing apart from statute) for breach by a vessel of an executory contract to load under charter, n35 a lien for state quarantine hospital expenses in caring for a seaman; n36 also liens for double wharfage, prior to 1910 when the maritime lien for wharfage was not established. n37 Municipal ordinances and local regulations respecting wharfage charges have been sustained. n38 Pilotage regulations (where not in conflict with an Act of Congress) have been frequently sustained n39 and inspection and quarantine laws held valid, n40 though not effective, to create a lien enforceable *in rem* in admiralty against a "foreign" vessel. n41

A state statute may impose tolls for the use of a waterway improved by the state, n42 and, in the absence of federal regulation, may regulate the rates of transportation wholly by water and unconnected with transportation by railroad, between two ports of the same state though the route traverses the high seas, n43 and may likewise regulate rates of ferriage from its own shore to another state. n44 A state statute has been sustained that prohibited aliens from engaging, either for themselves or as employees on fishing vessels owned and operated by citizens of the state, in commercial fishing in the waters of the state. n45 A state statute may give an insurance broker a maritime lien for an insurance premium. n46 A state may not grant a monopoly of navigation on interstate navigable waters. n47 A state may govern the conduct of its citizens upon the high seas with respect to matters in which the state has a legitimate interest if there is no conflict with acts of Congress. n48 Seamen in the coastwise trade are able to collect penalty wages provided by state law. n49 State regulation is permitted in the area of mortgages on undocumented vessels. n50 Although the federal Ship Mortgage Act governs all preferred ship mortgages, when the statute is silent on an issue, courts will look to state law. n51 By the federal Motorboating Act of 1958, the federal government has affirmatively relinquished much of its jurisdiction over undocumented vessels to states enacting comprehensive systems of numbering and regulation

conforming to the standards set forth in that Act. Accordingly, a mortgagee that is treated as an owner under state law is entitled to the notice that a local court rule provides must be given to owners in *in rem* actions. n52 California may apply its overtime pay laws to its resident who work on vessels not engaged in foreign, intercoastal or coastwise voyages. n53

A state statute that adopts procedures for personal injury actions alleging injuries from silica and asbestos can be applied in Jones Act litigation to the extent it seeks to assure reliable expert testimony. However, to the extent the statute imposes a higher standard of causation than the federal standard, it is preempted. n53.1

Aside from applying state law in cases within the admiralty jurisdiction of the federal courts as indicated above, state law is applied in those cases involving shipping--such as shipbuilding and the sale of vessels--that are not within the admiralty jurisdiction. n54 State statutes requiring unauthorized insurer to post bond before filing any pleading are given effect. n54.1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureChoice of LawAdmiralty LawPractice & ProcedureFederal PreemptionAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawRelations Among GovernmentsGeneral OverviewConstitutional LawSupremacy ClauseFederal Preemption

FOOTNOTES:
(n1)Footnote 1. *See, e.g., Madruga v. Superior Court, 346 U.S. 556, 1954 AMC 405 (1954)* ; *The Lottawanna, 88 U.S. (21 Wall.) 558 (1874)* . *But cf. Union Fish Co. v. Erickson, 248 U.S. 308 (1919)* .

(n2)Footnote 2. *See, e.g., Just v. Chambers, 312 U.S. 383, 1941 AMC 430 (1941)* ; *The Hamilton, 207 U.S. 398 (1907)* . *But cf. Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 1954 AMC 1 (1953)* ; *Butler v. Boston & Savannah S.S. Co., 130 U.S. 527 (1989)* .

(n3)Footnote 3. Act of June 23, 1910 ch. 373, 36 Stat. 604; Act of June 5, 1920 ch. 250, § 30, subsections P, Q, R, S, T, 41 Stat. 1005, *46 U.S.C. § 971-975*. *See, generally*, 2 *Benedict on Admiralty* § 35-39.

(n4)Footnote 4. *See The J.E. Rumbell, 148 U.S. 1 (1893)* ; *The Lottawanna, 88 U.S. (21 Wall.) 558 (1874)* ; *United States Guar. Co. v. Matson Nav. Co., 50 Cal. App. 2d 637, 123 P.2d 537, 1942 AMC 653 (1942)* .

(n5)Footnote 5. *Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 1955 AMC 467 (1955)* . In the course of the judgment, the Court said:

"Since the insurance policy here sued on is a maritime contract the Admiralty Clause of the Constitution brings it within federal jurisdiction. ... [*New England Mut. M. Ins. Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1870)* .] But it does not follow, as the courts below seemed to think, that every term in every maritime contract can only be controlled by some federally defined admiralty rule. In the field of maritime contracts [*footnote omitted*] in that of maritime torts, [*footnote omitted*] National Government has left much regulatory power in the States. As later discussed in more detail, this state regulatory power, exercised with federal consent or acquiescence, has always been particularly broad in relation to insurance companies and the contracts they make. Congress has not taken over the regulation of marine insurance contracts and has not dealt with the effect of marine insurance warranties at all; hence there is no possible question here of conflict between state law and any federal statute. But this does not answer the questions presented, since in the absence ofcontrolling Acts of Congress this Court has fashioned a large part of the existing rules that govern admiralty. And States can no more override such judicial rules validly fashioned than they can override Acts of Congress. *See, e.g., Garrett v. Moore-McCormack Co., 317 U.S. 239, 1942 AMC 1645* ."

348 U.S. at 313-14, 1955 AMC at 470-71 . Accord Littlefield v. Acadia Ins. Co., 392 F.3d 1 (1st Cir. 2004) (state law governed interpretation of criminal acts exclusion in yacht policy); *Bank of San Pedro v. Forbes Westar, Inc., 53 F.3d 273 (9th Cir. 1995)* (the bonding requirement of insurance companies is applied in maritime claims); *New Hampshire Ins. Co. v. Martech USA, Inc., 993 F.2d 1195 (5th Cir. 1993)* (in determining whether federal law applies court will consider whether the federal rule constitutes entrenched federal precedent, whether the state has a substantial, legitimate interest in application of its law, and whether the state rule is materially different from the federal rule); *5801 Associates, Ltd. v. Continental Ins. Co., 983 F.2d 662 (5th Cir. 1993)* (state law applied to interpretation of severability clause in insurance policy); *Taylor v. Lloyds Underwriters of London, 972 F.2d 666 (5th Cir. 1992)* (law of state having the greatest interest in the dispute ought to determine whether public policy disallows the recovery of punitive damages from the tortfeasor's insurance company); *Austin v. Servac Shipping Line, 794 F.2d 941 (5th Cir. 1986)* ; *Ingersoll-Rand Fin. Corp. v. Employers Ins., 771 F.2d 910 (5th Cir. 1985) , cert. denied, 475 U.S. 1046 (1986)* ; *Walter v. Marine Office of Am., 537 F.2d 89, 1977 AMC 1471 (5th Cir. 1976)* ; *Port Lynch, Inc. v. New England Int'l Assurety of Am., 754 F. Supp. 816 (W.D. Wash. 1991)* (federal law applies to issue of misrepresentation of nondisclosure of material facts in attempt to procure insurance policy; federal law also applies to issues of breach of navigation and trading warranties in insurance policies); Healy Tibbitts Constr. Co. v. Foremost Ins. Co., 1980 AMC 1600 (N.D. Cal. 1979) . *See also Pace v. Insurance Co. of N. Am., 838 F.2d 572 (1st Cir. 1988)* (allowing stat claim for bad faith refusal to pay a claim on a maritime hull policy); *INA of Texas v. Richard, 800 F.2d 1379 (5th Cir. 1986) , on remand, 664 F. Supp. 256 (S.D. Tex. 1987)* (state law determines whether insured under a marine policy is entitled to attorneys' fees); *Carney Family Inv. Trust v. Ins. Co. of N. Am., 296 F. Supp.2d 629 (D. Md. 2004)* (applying state law to issue of punitive damages and attorneys fees); *Arkwright-Boston Mfrs. Mut. Ins. Co. v. Energy Ins. Agency, 659 F. Supp. 97 (S.D. Tex. 1987)* (state law governs determination of whether an agency existed and whether it was breached); *Edinburgh Assurance Co. v. R.L. Burns Corp., 479 F.Supp. 138, 1980 AMC 1261 (C.D. Cal. 1979) , modified, 669 F.2d 1259 (9th Cir. 1982)* (state law governs relationship between insured and broker). Where there is a settled federal rule it will be applied. *D.J. McDuffie, Inc. v. Old Reliable Fire Ins. Co., 608 F.2d 145, 1980 AMC 1886 (5th Cir. 1979) , cert. denied, 449 U.S. 830 (1980)* (implied warranty of seaworthiness in maritime hull insurance policy); *Northfield Ins. Co. v. Barlow, 983 F. Supp. 1376 (S.D. Fla. 1997)* (doctrine of uberrima fidei governing misrepresentations in application for insurance is governed by federal law). *Cf.* Syndicate 420 at *Lloyd's London v. Early Am. Ins. Co., 796 F.2d 821, 832 (5th Cir. 1986)* (marine reinsurance contracts are "subject to the general maritime law" but an errors and omissions policy covering broker's fault in obtaining reinsurance on marine policy is not governed by maritime law). *But see Progressive Northern Ins. Co. v. Bachmann, 314 F. Supp.2d 820 (W.D. Wis. 2004)* (not applying federal rule of *uberrimae fidei* involving alleged misrepresentation of horsepower for a recreational boat that was damaged on a lake where insurance company could have inspected before it issued its policy); *Farmers Home Mut. Ins. Co. v. Insurance Co. of N. Am., 20 Wash. App. 815, 583 P.2d 644, 1979 AMC 2549 (1978) , cert. denied, 442 U.S. 942 (1979)* (not apply federal law developed in commercial setting to protection and indemnity policy in a yacht insurance policy where there is no well-established federal rule).

But see AASMA v. American S.S. Owners Mutual Protection & Indem. Ass'n, 95 F.3d 400 (6th Cir. 1996) (court creates a federal rule that five years after the close of the bankrupcty of a member, a maritime P & I club with a "pay first" clause in its contract is not liable to semen in direct actions).

For a full discussion of the issue see Goldstein, *The Life and Times of Wilburn Boat: A Critical Guide, 28 J. Mar. L. & Com. 395* & 555 (1997)(2 part article).

(n6)Footnote 6. *Cushing v. Maryland Cas. Co., 198 F.2d 536, 1952 AMC 1803 (5th Cir. 1952) , rev'd on other grounds, 347 U.S. 409 (1954)* (Louisiana's direct action statute). *Accord Steelmet, Inc. v. Caribe Towing Corp., 779 F.2d 1485 (11th Cir. 1986)* (applying Florida's judicially created direct action rule to a maritime case).

Louisiana's direct action statute applies to accidents occurring on the high seas where there are sufficient contacts with Louisiana. American Sugar Co. v. Vainqueur Corp. (M/V Vainqueur), 1970 AMC 405 (E.D. La. 1969) ; *Sassoni v. Savoie, 327 F. Supp. 474, 1971 AMC 1910 (E.D. La. 1971)* . P & I policy is subject to Louisiana direct action statute.

American Sugar Co. v. Vainqueur Corp. (M/V Vainqueur), supra.

Hull insurance is subject to the Louisiana direct action statute. *Coleman v. Jahncke Serv., 341 F.2d 956, 1965 AMC 535 (5th Cir. 1965) , cert. denied, 382 U.S. 974 (1966)* ; *American Sugar Co. v. Vainqueur Corp. (M/V Vainqueur), supra.*

Formaris v. American Sur. Co., 183 F. Supp. 339, 1967 AMC 1123 (D.P.R. 1960) (the Death on the High Seas Act does not provide for any direct action against insurers).

(n7)Footnote 7. *Reibor Int'l Ltd. v. Cargo Carriers (Kacz-Co.), 759 F.2d 262, 1985 AMC 2269 (2d Cir. 1985)* (plaintiff sought attachment pursuant to supplemental rule B on a bank a few hours before the bank had the funds intended for the defendant; state law determines whether attachment is valid); *Det Bergenske Dampskibsselskab v. Sabre Shipping Corp., 341 F.2d 50, 1965 AMC 234 (2d Cir. 1965)* (situs of debt determined by state law).

(n8)Footnote 8. *398 U.S. 375, 1970 AMC 967 (1970) . See also Miles v. Apex Marine Corp., 111 S. Ct. 317, 1991 AMC 1 (1990)* (general maritime cause of action for wrongful death also applies to seamen, but recovery does not include loss of society as these are not available under the Jones Act).

(n9)Footnote 9. *Sherlock v. Alling, 93 U.S. (3 Otto) 99 (1876)* ; *Steamboat Co. v. Chase, 83 U.S. (16 Wall.) 522 (1872)* .

(n10)Footnote 10. *Hess v. United States, 361 U.S. 314, 1960 AMC 527 (1960)* ; *M/V Tungus v. Skovgaard, 358 U.S. 588, 1959 AMC 813 (1959)* ; *Levinson v. Deupree, 345 U.S. 648, 1953 AMC 972 (1953)* ; *Western Fuel Co. v. Garcia, 257 U.S. 233 (1921)* ; *La Bourgogne, 210 U.S. 95 (1908)* ; *The Hamilton, 207 U.S. 398 (1907)* ; *The Transfer No. 12, 221 F. 409 (2d Cir. 1915)* ; *Cornell Steamboat Co. v. Fallon, 179 F. 293 (2d Cir.) , cert. denied, 216 U.S. 623 (1910)* .

(n11)Footnote 11. *The Albert Dumois, 177 U.S. 240 (1900)* ; *The Corsair, 145 U.S. 335 (1892)* ; *The Dauntless, 129 F. 715 (9th Cir. 1904)* ; *The Onoko, 107 F. 984 (7th Cir. 1901)* ; *The Glendale, 81 F. 633 (4th Cir. 1897)* ; *The Willamette, 70 F. 874 (9th Cir. 1895)* ; *The Merrimac, 242 F. 572 (S.D. Fla. 1917)* ; *The Alaska, 225 F. 645 (W.D. Wash. 1913)* ; *The Starr, 209 F. 882 (W.D. Wash. 1913)* ; *The General Foy, 175 F. 590 (D. Or. 1910)* ; *The Aurora, 163 F. 633 (D. Or. 1908)* ; *The Oregon, 45 F. 62 (D. Or. 1891) , rev'd on other grounds, 158 U.S. 186 (1895)* .

(n12)Footnote 12. *See Wahlstrom v. Kawasaki Heavy Indus., Ltd., 4 F.3d 1084 (2d Cir. 1993) , cert. denied, 114 S. Ct. 1060 (1994)* ; *In re S/S Helena, 529 F.2d 744, 1976 AMC 2022 (5th Cir. 1976)* ; *Neal v. Barisich, Inc., 707 F. Supp. 862 (E.D. La. 1989)* ; *Truehart v. Blandon, 672 F. Supp. 929 (E.D. La. 1987)* (nondependent parents and siblings have no right to recover for loss of society of a nonseaman under the general maritime law). *Accord Nelson v. United States, 639 F.2d 469 (9th Cir. 1981)* ; Bell v. Bahr-DeRose, Inc., 1982 AMC 1185 (N.J. Super. Ct. 1981) , *cert. denied, 93 N.J. 273 (1983) . But see Calhoun v. Yamaha Motor Corp., 40 F.3d 622, 1995 AMC 1 (3d Cir. 1994) (death of recreational boater) , cert. granted, 115 S.Ct. 1998 (1995)* ; *Texaco Refining & Marketing, Inc. v. Estate of Tran, 777 S.W.2d 783, 1990 AMC 2617 (Tex. Ct. App. 1989)* (applying state law), *vacated, 497 U.S. 1020, 110 S. Ct. 3266, 111 L. Ed. 2d 776 , on remand, 808 S.W.2d 61 (Tex. 1990)* (court to apply maritime law).

(n13)Footnote 12.1. *Yamaha Motor Corp., U.S.A. v. Calhoun, 116 S. Ct. 619 (1996)* . The Court left open whether state law can govern the rules of liability. The holding seems inconsistent with the Court's earlier decision that collisions involing pleasure boats must be within the admiralty jurisdiction so that all vessel operators will be "subject to the same duties and liabilities." *Foremost Insurance Co. v. Richardson, 457 U.S. 668, 676, 1982 AMC 2253 (1982) . See* Friedell, *Searching for a Compass: Federal and State Law Making Authority in Admiralty, 57 La. L. Rev. 825 (1997). But see In re* Amtrak "Sunset Limited" Train Crash in Bayou Canot, Ala. on Sept. 22, 1993, *121 F.3d 1421, 1997 AMC 2962 (11th Cir. 1997)* (despite holding in Yamaha, court must balance state and federal interests in deciding whether to apply state wrongful death statutes; since case "bears a substantial connection to traditional maritime

activity," federal law will be applied).

(n14)Footnote 13. *Tallentire v. Offshore Logistics, Inc. 754 F.2d 1274, 1986 AMC 23 (5th Cir. 1985) , rev'd, 106 S. Ct. 2485, 1986 AMC 2113 (1986) . Accord In re Exxon Corp., 548 F. Supp. 977, 1983 AMC 2767* (S.D.N.Y. 1982). *Contra Nygaard v. Peter Pan Seafoods, Inc., 701 F.2d 77, 1985 AMC 2085 (9th Cir. 1983)* ; *Wilson v. Transocean Airlines, 121 F. Supp. 85, 1954 AMC 1697 (N.D. Cal. 1954)* .

(n15)Footnote 14. *Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 1978 AMC 1059 (1978)* .

(n16)Footnote 15. *46 U.S.C. § 767. 754 F.2d at 1283, 1986 AMC at 34* .

(n17)Footnote 16. *46 U.S.C. § 767*. In 2006 this section was recodified as *46 U.S.C. § 30308*.

(n18)Footnote 17. *106 S. Ct. 2485, 1986 AMC 2113 (1986)* . Similarly, the federal statute preempts state wrongful death claims recast as contract claims. *Heath v American Sail Training Ass'n, 644 F. Supp. 1459 (D.R.I. 1986)* . In *Favaloro v. S/S Golden Gate, 687 F. Supp. 475, 1988 AMC 818 (N.D. Cal. 1987)* the court held that jury trial is available over DOHSA claims when diversity jurisdiction is established. But the court seems to have erred in applying this rule to the case before it as it mentioned that the parties in the consolidated action that alleged diversity jurisdiction also labeled their claims as maritime claims under *Rule 9(h) of the Federal Rules of Civil Procedure*. *687 F. Supp. at 481* . The right to jury trial is lost with respect to a claim if the plaintiff invokes rule 9(h) with respect to that claim.

(n19)Footnote 18. *E.g., In re Gulf Oil Corp., 172 F. Supp. 911, 1960 AMC 341 (S.D.N.Y. 1959) . See also Gillespie v. United States Steel Corp., 379 U.S. 148, 1965 AMC 1 (1964)* ; *Romero v. International Terminal Operating Co., 358 U.S. 354, 373, 1959 AMC 832, 847 (1959)* ; *Kernan v. American Dredging Co., 355 U.S. 426, 430 n.4, 1958 AMC 251, 255 (1958)* ; *Azzopardi v. Ocean Drilling & Exploration Co., 742 F.2d 890, 1986 AMC 434 (5th Cir. 1984)* ; *Dennis v. Central Gulf S.S. Corp., 453 F.2d 137, 1972 AMC 330 (5th Cir.) , cert. denied, 409 U.S. 948 (1972) . Cf. Just v. Chambers, 312 U.S. 383, 1941 AMC 430 (1941)* (applying state statute to determine that claim survived death of tortfeasor).

(n20)Footnote 19. *Graham v. Milky Way Barge, Inc., 824 F.2d 376 (5th Cir. 1987)* ; *Evich v. Connelly, 759 F.2d 1432, 1986 AMC 356 (9th Cir. 1985)* ; *Azzopardi v. Ocean Drilling & Exploration Co., 742 F.2d 890, 1986 AMC 434 (5th Cir. 1984)* ; *Barbe v. Drummond, 507 F.2d 794, 1975 AMC 204 (1st Cir. 1974)* ; *Spiller v. Thomas M. Lowe, Jr. & Assocs., 466 F.2d 903, 1972 AMC 2510 (8th Cir. 1972)* ; *Greene v. Vantage S.S. Corp., 466 F.2d 159, 1972 AMC 2187 (4th Cir. 1972)* .

(n21)Footnote 20. *Dugas v. Natioanl Aircraft Corp., 438 F.2d 1386, 1971 AMC 1056 (3d Cir. 1971)* .

(n22)Footnote 21. *See Preston v. Frantz, 11 F.3d 357, 1994 AMC 1736 (2d Cir. 1994)* (federal maritime law preempts state survival statute); *Neal v. Barisich, Inc., 707 F. Supp. 862 (E.D. La. 1989) . But see Miles v. Apex Marine Corp., 111 S. Ct. 317, 1991 AMC 1 (1990)* (refusing to address issue of whether lower courts may create general maritime law of survival or whether to "reaffirm the traditional rule"); *Texaco Refining & Marketing, Inc. v. Estate of Tran, 777 S.W.2d 783, 1990 AMC 2617 (Tex. Ct. App. 1989) (applying state law) , vacated, 110 S. Ct. 3266 , on remand, 808 S.W.2d 61 (Tex. 1990)* (court to apply maritime law).

See also Evich v. Morris, 819 F.2d 256 (9th Cir.) , cert. denied, 108 S. Ct. 261 (1987) (general maritime law right of survival is exclusive); *Offshore Logistics, Inc. v. Tallentire, 106 S. Ct. 2485, 2491 n.1, 1986 AMC 2113, 2119 (1986)* (whether state survival statutes may still be given effect was left undecided). *Kuntz v. Windjammer "Barefoot" Cruises, Ltd., 573 F. Supp. 1277 (W.D. Pa. 1983) , aff'd without op., 738 F.2d 423 (3d Cir.) , cert. denied, 469 U.S. 858 (1984)* (a lower court in the Third Circuit has allowed use of both a state survival statute and a survival action under the general maritime law).

(n23)Footnote 22. *S.C. Loveland, Inc. v. East West Towing, Inc., 415 F. Supp. 596, 1978 AMC 2293 (S.D. Fla. 1976) , aff'd, 608 F.2d 160 (5th Cir. 1979)* .

(n24)Footnote 23. *S.S. Philippine Jose Abad Santos v. Bannister, 335 F.2d 595, 1964 AMC 1817 (5th Cir. 1964)* . *See also LaBanca v. Ostermunchner, 664 F.2d 65, 1982 AMC 205 (5th Cir. Unit B Dec. 1981)* .

(n25)Footnote 24. *Colgate Palmolive Co. v. S/S Dart Canada, 724 F.2d 313, 1984 AMC 305 (2d Cir. 1983) , cert. denied, 466 U.S. 963 (1984)* .

(n26)Footnote 25. *Baggett v. Richardson, 473 F.2d 863 (5th Cir. 1973)* ; *Dean v. Shamo, 2008 U.S. Dist. LEXIS 22774 (E.D. Mich. Mar. 24, 2008)* (applying Michigan law to determine that the employer was vicariously liable for the employee's hazardous operation of motorboat as he was acting within the scope of his employment).

(n27)Footnote 26. *Muratore v. M/S Scotia Prince, 656 F. Supp. 471 (D. Me. 1987) , reprinted in part 1988 AMC 845 , aff'd in part, vacated in part, 845 F.2d 347 (1st Cir. 1988)* . The First Circuit Court of Appeals affirmed the award of compensatory damages for the intentional infliction of emotional harm but vacated the lower court's award of punitive damages. On the choice of law issue, the court of appeals noted that since neither the plaintiff nor the defendant objected to the application of Maine law, it would accept the application of that law for purposes of the appeal. Like the district court, however, it applied federal law to determine whether the charterer was liable for the photographer's conduct, and the court of appeals made it clear that federal admiralty law governed the award of punitive damages). *See also Lyon v. The Ranger III, 858 F.2d 22 (1st Cir. 1988)* (Massachusetts law applies to determine whether scuba divers are engaged in joint enterprise for purposes of imputing to one diver the negligence of the others where a diver was killed 1/4 mile from shore by a vessel due in part to the divers' failure to modify a dive plan). *But see Tassinari v. Key West Water Tours, L.C., 480 F. Supp.2d 1318 (S.D. Fla. 2007)* (applying federal law to negligent infliction of emotional distress claim; determining federal law by analogy to FELA).

(n28)Footnote 27. *Williams v. Reiss, 643 So. 2d 792 (La. Ct. App. 1994)* (court also found that no admiralty jurisdiction was present on the facts presented).

(n29)Footnote 28. New York Laws of 1897, ch. 378, § 879; New York Laws of 1901, ch. 466, § 879.

(n30)Footnote 29. *The Conway No. 23, 64 F.2d 121, 1933 AMC 779 (2d Cir. 1933)* ; *The Daniel B. Flannery, 282 F. 545 (2d Cir. 1922)* ; *The New York Cent. No. 18, 257 F. 405 (2d Cir. 1919)* ; *The Daniel McAllister, 258 F. 549 (2d Cir. 1919)* ; *The Baker Bros., 260 F. 650 (2d Cir. 1919)* ; *The Chauncey M. Depew, 139 F. 236 (2d Cir. 1905)* .

(n31)Footnote 30. New York Laws of 1882, ch. 410, § 757, New York City Consolidation Act.

(n32)Footnote 31. *E.g., The Bern, 74 F.2d 235, 1935 AMC 15 (2d Cir. 1934)* ; *The Syosset, 71 F.2d 666, 1934 AMC 876 (2d Cir. 1934)* ; *The Luna, 63 F.2d 808, 1933 AMC 574 (2d Cir. 1933)* ; *The Corsair, 37 F.2d 45, 1930 AMC 207 (2d Cir. 1930)* ; *The Black Diamond, 273 F. 811 (2d Cir. 1921)* ; *The New York Cent. No. 17, 256 F. 220 (2d Cir. 1919)* ; *The William E. Cleary, 235 F. 107 (2d Cir. 1916)* ; *The Wrestler, 232 F. 448 (2d Cir. 1916)* ; *The W.N. Bavier, 153 F. 970 (2d Cir. 1907)* ; *The Amos C. Barstow, 66 F. 366 (2d Cir. 1895)* ; *The Radium, 7 F. Supp. 804, 1934 AMC 915 (S.D.N.Y. 1934)* ; *The Bay State, 153 F. 973 (S.D.N.Y. 1907)* ; *The Hartford, 125 F. 559 (S.D.N.Y. 1903) , aff'd, 135 F. 1021 (2d Cir. 1905)* .

Construction Aggregates Co. v. Long Island R.R., 105 F.2d 1009, 1939 AMC 1341 (2d Cir. 1939) (a vessel violating the East River Statute was wholly exonerated, reversing the result in the trial court; Judge Clark in dissent remarked that the opinion leaves but little of the statute).

(n33)Footnote 32. *I.e.*, a vessel not under the U.S. flag.

(n34)Footnote 33. 82 Stat. 107, *46 U.S.C. § 606*.

(n35)Footnote 34. *Burdine v. Walden, 91 F.2d 321, 1937 AMC 1149 (5th Cir. 1937)* ; *The Louis Olsen, 52 F. 652 (N.D. Cal. 1892) , rev'd, 57 F. 845 (9th Cir. 1893)* (as erroneously construing the statute).

(n36)Footnote 35. *The J.F. Warner, 22 F. 342 (E.D. Mich. 1883)* .

(n37)Footnote 36. *The Wensleydale, 41 F. 829 (E.D.N.Y. 1890)* .

(n38)Footnote 37. *The Virginia Rulon, 28 F. Cas. 1231 (C.C.E.D.N.Y. 1876)* (No. 16,974). *See also The Shady Side, 23 F. 731 (E.D.N.Y. 1884)* .

(n39)Footnote 38. *Ouachita Packet Co. v. Aiken, 121 U.S. 444 (1887)* ; *Transportation Co. v. Parkersburg, 107 U.S. 691 (1882)* ; *Packet Co. v. Catlettsburg, 105 U.S. 559 (1881)* ; *Packet Co. v. Keokuk, 95 U.S. 80 (1877)* .

McNeely & Price Co. v. Philadelphia Piers, Inc., 196 A. 846, 1939 AMC 1435 (Pa. 1938) (control over rates and practices has now been placed, by statute, in the hands of the United States Maritime Commission).

Under New York City Charter, § 859; *see The Allan Wilde, 264 F. 291 (2d Cir. 1920)* ; *The Antonio Zambrana, 88 F. 546 (E.D.N.Y. 1898)* ; *The Craigendoran, 31 F. 87 (E.D.N.Y. 1887)* ; *The Scow No. 15, 92 F. 1008 (2d Cir. 1899)* ; *Marine Lighterage Co. v. Luckenbach S.S. Co., 139 Misc. 612, 248 N.Y.S. 71, 1931 AMC 378 (Sup. Ct. 1931)* .

Under Louisiana statute: *Ulster S.S. Co. v. Board of Comm'rs, 299 F. 474, 1924 AMC 1296 (5th Cir.) , cert. denied, 266 U.S. 620 (1924)* .

MacNeil v. Chicago Park Dist., 82 N.E.2d 452, 1949 AMC 534 (Ill. 1948) (a municipality may impose a harbor fee for the use of the municipal harbor and mooring facilities).

(n40)Footnote 39. *E.g., Anderson v. Pacific Coast S.S. Co., 225 U.S. 187 (1912)* ; *Thompson v. Darden, 198 U.S. 310 (1905)* ; *Olsen v. Smith, 195 U.S. 332 (1904)* ; *Ex parte Hagar, 104 U.S. (14 Otto) 520 (1881)* ; *Wilson v. McNamee, 102 U.S. (12 Otto) 572 (1880)* ; *Ex parte McNiel, 80 U.S. (13 Wall.) 236 (1871)* ; *Pacific Mail S.S. Co. v. Joliffe, 69 U.S. (2 Wall.) 450 (1864)* ; *Cooley v, Board of Wardens, 53 U.S. (12 How.) 299, 13 L. Ed. 996 (1851)* .

Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947) (state statutes regulating the appointment of Mississippi River port pilots for navigation of vessels through the Mississippi River approaching to the port of New Orleans and providing that only persons who have served a six-month apprenticeship under incumbent pilots may be certified for appointment, have been upheld as not denying equal protection of the laws, notwithstanding that in practical effect the statutes limited appointment of relatives of incumbents); *See McLain v. Lance, 146 F.2d 341, 1945 AMC 5 (5th Cir. 1944) , cert. denied, 325 U.S. 855 (1945)* , where the court held that a controversy between rival pilots as to their respective rights under state laws to pilot vessels within the territorial waters of a state was not within the exclusive jurisdiction of admiralty, particularly in view of § 9 of the Judiciary Act of 1789 saving to suitors the right of a common law remedy where the common law is competent to give it. Hutcheson, Circuit Judge, dissenting, expressed the view that the district court was without jurisdiction of the libel and that it should have been dismissed on that ground.

(n41)Footnote 40. *Compagnie Francaise de Navigation aVapeur v. Louisiana Bd. of Health, 186 U.S. 380 (1902)* ; *Morgan's S.S. Co. v. Louisiana Bd. of Health, 118 U.S. 455 (1885)* ; *Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824)* .

(n42)Footnote 41. *I.e.,* a vessel whose home port is not in the state: *The Athinai, 230 F. 1017 (S.D.N.Y. 1916)* , though enforceable against "domestic" vessel: *see Platt v. The Georgia, 34 F. 79 (E.D.N.Y. 1887)* .

(n43)Footnote 42. *Sands v. Manistee River Improv. Co., 123 U.S. 288 (1887)* .

(n44)Footnote 43. *Wilmington Transp. Co. v. Railroad Comm'n, 236 U.S. 151 (1915)* .

(n45)Footnote 44. *Port Richmond & B.P. Ferry Co. v. Board of Chosen Freeholders, 234 U.S. 317 (1914)* .

(n46)Footnote 45. *Lubetich v. Pollock, 6 F.2d 237 (W.D. Wash. 1925)* .

(n47)Footnote 46. *The Guiding Star, 9 F. 521 (S.D. Ohio 1881)* , *aff'd, 18 F. 263 (C.C.S.D. Ohio 1883)* .

(n48)Footnote 47. *Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824)* .

(n49)Footnote 48. *Skiriotes v. Florida, 313 U.S. 69, 1941 AMC 825 (1941)* (sustained the validity of a state statute prohibiting the use of diving equipment for the taking of sponges insofar as the statute applied to the taking of sponges on the high seas more than one marine league from mean low tide, the state statute being not inconsistent with the federal law (*16 U.S.C. § 781*) in the same field).

Commonwealth v. McHugh, 326 Mass. 249, 93 N.E.2d 751, 1950 AMC 1422 (1950) (proceeding in state courts against monopolistic acts within the state by union of deep sea fishermen).

(n50)Footnote 49. *Sewell v. M/V Point Barrow, 556 F. Supp. 168, 1984 AMC 2999 (D. Alaska 1983)* .

(n51)Footnote 50. *Paige v. Shinnihon Kishen, 206 F. Supp. 871, 1963 AMC 231 (E.D. La. 1962)* ; *United Barge Co. v. Logan Charter Serv., 237 F. Supp. 624, 1964 AMC 2100 (D. Minn. 1964)* (Minnesota "One Act" statute applied in admiralty).

(n52)Footnote 51. *Bank of Am. Nat'l Trust & Sav. Ass'n v. Fogle, 637 F. Supp. 305, 1986 AMC 2005 (N.D. Cal. 1985)* (court looks to state law to determine whether mortgagee is entitled to deficiency judgment if it fails to conform to statutory procedure governing private foreclosure sales).

(n53)Footnote 52. *New v. Yacht Relaxin, 212 F. Supp. 703, 1963 AMC 152 (S.D. Cal. 1962)* .

(n54)Footnote 53. *Pacific Merchant Shipping Ass'n v. Aubry, 918 F.2d 1409 (9th Cir. 1990)* . Attorneys fees will be allowed under state law when the underlying claim is not governed by admiralty law. *See Southworth Machinery v. FV Corey Pride, 994 F.2d 37 (1st Cir. 1993)* .

(n55)Footnote 53.1. *In re Global Sante Fe Corp., 275 S.W.3d 477, 2009 AMC 112 (Tex. 2008)* .

(n56)Footnote 54. *E.g., Lynnhaven Dolphin Corp. v. E.L.O. Enters., 776 F.2d 538, 1986 AMC 2659 (5th Cir. 1985)* ; *Point Adams Packing Co. v. Astoria Marine Constr. Co., 594 F.2d 763, 1979 AMC 2191 (9th Cir. 1979)* . *See generally*, Ch. XII, *infra.* Attorneys fees will be allowed under state law when the underlying claim is not governed by admiralty law. *See Southworth Machinery v. FV Corey Pride, 994 F.2d 37 (1st Cir. 1993)* .

(n57)Footnote 54.1. *Aqua-Marine Constructors, Inc. v. Banks, 110 F.3d 663, 1997 AMC 1617 (9th Cir. 1997)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty § 114

§ 114. State and Federal Courts Apply Same Law to Maritime Causes of Action.

In all maritime cases the same law, state or federal, is to be applied whether the case is brought in a state court of federal court, and if in federal court, whether jurisdiction is based on admiralty, diversity or some other grounds. n1 As explained in the previous sections, maritime law is derived from federal and state sources, and in appropriate cases state law will be applied to admiralty cases. n2 If a case is capable of being brought in federal court under that court's admiralty jurisdiction, the rights and liabilities of the parties are governed by maritime law even if the case is tried in state court.

Maritime law determines the measure of recovery and the apportionment of damages in cases of contributory negligence. n3 It is one of the fundamental propositions of maritime law that contributory negligence does not operate as a complete bar to recovery and must be considered only in mitigation of damages. n4

In 1893, the Supreme Court held in *Belden v. Chase* n5 that in collision cases state courts and federal courts having diversity jurisdiction should apply the common law rule of contributory negligence. n6 Although never expressly overruled by the Supreme Court, the state courts and lower federal courts have justifiably treated *Belden v. Chase* as no longer being good law. n7 In *Pope & Talbot, Inc. v. Hawn*, n8 the Supreme Court held that Pennsylvania's rule of contributory negligence could not be applied by a federal court having diversity jurisdiction to a suit by a longshoreman for injuries suffered on board ship in state waters. The Court referred to contributory negligence as a harsh and discredited rule of the common law that was "completely incompatible with the modern admiralty policy and practice ... which allows such consideration of contributory negligence in mitigation of damages as justice requires." n9 The Court held that the federal maritime law controls maritime rights and that while a state may sometimes supplement maritime policies, it may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by the interpretive decisions of the Supreme Court. The Court rejected the idea that a state court or a federal court having diversity jurisdiction might apply a different rule. "[T]he principle of equal justice embodied" in *Erie R. Co. v. Tompkins* n10 requires that the substantial rights in cases brought in diversity or in state court be the same as cases brought under the federal courts' admiralty jurisdiction. n11

Apparently at one time in admiralty, the stevedore employer's liability was determined upon common law principles, although the maritime rule concerning contributory negligence was applied. n12 Whatever may have been the position

with regard to a common law action in respect of injuries sustained ashore (which prior to the 1972 amendments of the Longshoremen's & Harbor Workers' Compensation Act were in any event not cognizable in admiralty), the position is now clear that in respect of any action for negligence, the maritime principle will govern. n13 Justice Frankfurter's opinion for the Court in *Caldarola v. Eckert* n14 created doubt about the ability of state courts to disregard maritime law. The case involved a suit for personal injuries by a longshoreman against a vessel's general agent for a maritime tort. The Court said that the case was "suable" in state courts by virtue of the Savings to Suitors Clause. The Court added:

> "Whether Congress thereby recognized that there were common law rights in the States as to matters also cognizable in admiralty, or whether it was concerned only with 'saving' to the States the power to use their courts to vindicate rights deriving from maritime law to the extent that their common law remedies may be available, is a question on which the authorities do not speak with clarity, ... In any event, whether New York is the source of the right or merely affords the means of enforcing it, her determination is decisive that there is no remedy in its courts for such a business invitee against one who has no control and possession of premises." n15

In a subsequent opinion, Justice Frankfurter seems to have interpreted *Caldarola* as standing for the proposition that state courts may choose not to provide a remedy for maritime causes of action. n16 He acknowledged, however, that whenever a state court provides a remedy for "federally created rights," it must apply the same substantive law as would be applied in a federalcourt. If Justice Frankfurter meant that state courts might be able to apply state law in situations where a federal court would apply maritime law, n17 the cases have disregarded this suggestion. n18

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureChoice of LawAdmiralty LawPractice & ProcedureJurisdictionCivil ProcedureJurisdictionDiversity JurisdictionGeneral OverviewCivil ProcedureJurisdictionSubject Matter JurisdictionJurisdiction Over ActionsConcurrent JurisdictionCivil ProcedureJurisdictionSubject Matter JurisdictionJurisdiction Over ActionsGeneral Jurisdiction

FOOTNOTES:

(n1)Footnote 1. *Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 1959 AMC 597 (1959)* ; *Carlisle Packing Co. v. Sandanger, 259 U.S. 255 (1920)* ; *Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918)* ; *Doe v. Celebrity Cruises, Inc., 394 F.3d 891, 2005 AMC 214 (11 th Cir. 2004)* (when court has diversity jurisdiction it may not apply admiralty law unless it first determines that it also has admiralty jurisdiction; even if parties agree that admiralty jurisdiction exists, the court must make its own determination); *Brotherhood Shipping Co. v. St. Paul Fire & Marine Ins. Co., 985 F.2d 323 (7th Cir. 1993)* ; *Everett v. Carnival Cruise Lines, 912 F.2d 1355, 1991 AMC 700 (11th Cir. 1990)* ; *Genetics Int'l v. Cormorant Bulk Carriers, Inc., 877 F.2d 806, 1989 AMC 1725 (9th Cir. 1989)* ; *Keefe v. Bahama Cruise Line, 867 F.2d 1318, 1990 AMC 46 (11th Cir. 1989)* ; *Carey v. Bahama Cruise Lines, 864 F.2d 201, 1989 AMC 852 (1st Cir. 1988)* ; *Maxwell v. Hapag-Lloyd Aktiengesellschaft, 862 F.2d 767, 1989 AMC 330 (9th Cir. 1988)* ; *Hodes v. S.N.C. Achille Lauro ed Altrigestione, 858 F.2d 905, 1988 AMC 2829 (3d Cir. 1988) , cert. denied, 490 U.S. 1001, 109 S. Ct. 1633, 104 L. Ed. 2d 149 (1989)* ; *Austin v. Unarco Indus., 705 F.2d 1 , reprinted in part, 1984 AMC 2333 (1st Cir.) , cert. denied, 463 U.S. 1247 (1983)* ; *Continental Cas. Co. v. Canadian Universal Ins. Co., 605 F.2d 1340, 1980 AMC 1907 (5th Cir. 1979) , cert. denied, 445 U.S. 929 (1980)* ; *Jansson v. Swedish Am. Line, 185 F.2d 212, 1950 AMC 1959 (1st Cir. 1950)* ; *Ove Tysko v. Royal Mail Steam Packet Co., 81 F.2d 960, 1936 AMC 365 (9th Cir. 1936)* ; *Sletten v. Hawaii Yacht Club, 1993 AMC 2863 (D. Hawaii 1993)* (the court recognized that maritime law, not state law, applied to causes of action arising from a collision even though plaintiff invoked only the diversity jurisdiction of the court; however on the issue of liability for intentional infliction of emotional distress the court applied Hawaii law "in the absence of federal maritime law"); *In re Glacier Bay, 746 F. Supp. 1379, 1991 AMC 739 (D. Alaska 1990)* ; *Neal v. McGinnis, Inc., 716 F. Supp. 996, 1990 AMC 1035 (E.D. Ky. 1989)* (*citing text*); *Anderson v.*

Whittaker Corp., 692 F. Supp. 764, 1989 AMC 470 (W.D. Mich. 1988) , aff'd in part, rev'd in part, 894 F.2d 804 (6th Cir. 1990) ; *Sea-Land Serv. v. American Logging Tool Corp., 637 F. Supp. 240 (W.D. Wash. 1985)* ; *Fireman's Ins. Co. v. Gulf Puerto Rico Lines, Inc., 349 F. Supp. 952, 1973 AMC 995 (D.P.R. 1972)* ; *Knapp v. United States Transp. Co., 181 A.D. 432, 170 N.Y.S. 384 (1918) . See, generally, D. Robertson, Admiralty and Federalism* 195 (1970); Currie, *The Silver Oar and All That, 27 U. Chi. L. Rev. 1, 11 (1959).*

See also Butler v. American Trawler Co., 887 F.2d 20 (1st Cir. 1989) (determining that federal three year statute of limitation rather than longer state statute of limitations applies to maritime tort claims and rejecting the reasoning of the district court which reached the same result by characterizing the problem as a substantive one under the *Erie* doctrine); *Ciolino v. Sciortino Corp., 721 F. Supp. 1491 (D. Mass. 1989)* (because federal substantive law applies to admiralty tort claim, court must apply the federal rules of procedure, not the state rules, to determine if amended pleading relates back to the date of the original pleading).

Spaulding v. Parry Nav. Co., 90 F. Supp. 564, 1950 AMC 1128 (S.D.N.Y. 1950) , rev'd on other grounds, 187 F.2d 257, 1951 AMC 441 (2d Cir. 1951) (a suit for indemnity or contribution in a case involving a maritime tort can be brought either in admiralty or at law, and the choice of the forum by the plaintiff cannot affect the defendant's substantive rights).

Hopson v. Kiessig, 1941 AMC 1173 (Cal. Super. 1941) (state civil rights statutes held inapplicable in state court action for breach of contract to carry by water in view of the maritime character of the contract). *Cf. Pryce v. Swedish-Am. Lines, 30 F. Supp. 371, 1940 AMC 67 (S.D.N.Y. 1939)* .

Sanderson v. Sause Bros. Ocean Towing Co., 114 F. Supp. 849, 1953 AMC 1261 (D. Or. 1953) (Oregon Employers Liability Act, not applicable to an employee's injury on a barge afloat in state waters; the state act imposes a much higher standard of care than that of the maritime law, and to apply it would destroy the uniformity of the maritime law); *Moore-McCormack Lines v. Amirault, 202 F.2d 893, 1953 AMC 605 (1st Cir. 1953)* (to the same effect is a suit at law for personal injuries due to collision); *Pioneer S.S. Co. v. Hill, 227 F.2d 262, 1956 AMC 118 (6th Cir. 1955)* (Ohio contributory negligence rule held inapplicable to a suit in the federal court for personal injuries suffered by shipfitter's helper while repairing vessel on interstate waterway); *Troupe v. Chicago, D. & G. Bay Transit Co., 234 F.2d 253, 1956 AMC 1367 (2d Cir. 1956)* (a common law action to recover damages for breach of warranty of seaworthiness can be brought on the civil side of the federal court which must apply the general maritime law). *Lerner v. Karageorgis Lines, 66 N.Y.2d 479, 497 N.Y.S.2d 894, 488 N.E.2d 824, 1986 AMC 1041 (1985)* (normally, the procedural rules of the forum will be applied unless they would be "outcome determinative"). *See also Exxon Corp. v. Chick Kam Choo, 817 F.2d 307 (5th Cir.) , cert. denied, 108 S. Ct. 343 (1987)* (rejecting the syllogism that matters that are procedural for *Erie* purposes are procedural in admiralty cases; issue is whether the state law conflicts with maritime law).

Lloyd v. Victory Carriers, Inc., 402 Pa. 484, 167 A.2d 689, 1962 AMC 239 (1960) (where a shipowner attempted to implead the stevedore in a Pennsylvania court action by the longshoreman against the shipowner (a practice prohibited by Pennsylvania procedural rules), the state court denied the impleading petition, stating that the right to implead the stevedore, being of only recent origin, is not an admiralty procedure deeply rooted in maritime law); *Capozziello v. Brasileiro, 443 F.2d 1155, 1971 AMC 1477 (2d Cir. 1971)* (although plaintiff invoked the diversity jurisdiction of the district court, federal maritime law rather than state law is applicable in interpreting an indemnity clause in a stevedoring contract).

Contra Phillips v. Sea Tow/Sea Spill of Savannah, 276 Ga. 352, 578 S.E.2d 846, 2003 AMC 750 (2003) (applying state law of quantum meruit to a salvage claim because "marine salvage" is not a remedy available in Georgia state courts); Schultheiss v. Mobil Oil Exploration & Producing S.E., 1971 AMC 1477 (W.D. La. 1984) (because diversity jurisdiction is only for purpose of hearing state claims, no right to jury trial where only claim is based on maritime law); *Murley v. Deep Explorers, Inc., 281 F. Supp.2d 580 (E.D.N.Y. 2003)* (state law applies to suits brought under diversity jurisdiction whereas federal maritime law applies to cases brought under admiralty jurisdiction or the Death on the High

Seas Act).

To preserve uniformity, state courts will look primarily to the law of the circuit in which it sits. *Clairol, Inc. v. Moore-McCormack Lines, 79 A.D.2d 297, 436 N.Y.S.2d 279, 1981 AMC 1193 (1981)* ; *Benton v. Hardaway Co., 1985 AMC 1506 (Ga. Super. Ct. 1984)* . *Cf. Alvez v. v. American Export Lines, Inc., 46 N.Y.2d 634, 415 N.Y.S.2d 979, 389 N.E.2d 461, 1979 AMC 906 (1979)* , *aff'd, 446 U.S. 274 (1980)* (court distinguished law of Second Circuit). *But see Swogger v. Waterman S.S. Corp., 518 N.Y.S.2d 715, 1987 AMC 2679 (Sup. Ct. 1987)* (rejecting lead of Second Circuit, court finds other circuit's reasoning more compelling and allows seaman to bring a maritime cause of action for asbestos injury).

Parties cannot divest a court of admiralty jurisdiction which otherwise exists. *See Friedman v. Cunard Line Ltd., 996 F. Supp. 303, 1998 AMC 1417 (S.D.N.Y. 1998)* . *But see C.N.R. Atkin v. Smith, 137 F.3d 1169, 1998 AMC 1239 (9th Cir. 1998)* (parties waived objection to district court's application of California law); *Fedorczyk v. Caribbean Cruise Lines, Ltd., 82 F.3d 69 (3d Cir. 1996)* (court applies state law since neither side objected to applying state law to passenger's slip and fall claim; court thought that maritime law applies only to if the case were brought "in admiralty" and that state choice of law would govern a diversity case). Maritime law applied to defendant's claim for contribution and indemnity against third-party supplier despite plaintiff's failure to invoke admiralty jurisdiction. *Aljalham v. Am. S.S. Co., 2010 U.S. Dist. LEXIS 68947 (E.D. Mich. 2010)* .

(n2)Footnote 2. *See* §§ 112-113, *supra.* In *Sosebee v. Rath, 893 F.2d 54, 1990 AMC 1601 (3d Cir. 1990)* the court correctly determined that in a case brought under the Saving to Suitors Clause the Virgin Islands law on allowance of attorneys fees could not be given effect since it conflicted with the federal admiralty rule. Dictum in the case might suggest, however, that state law can never be applied if the plaintiff had invoked the admiralty jurisdiction of the court. The court said:

> [U]nder the "saving to suitors" clause of *28 U.S.C. § 1333* important rights are preserved when a plaintiff does not specifically invoke admiralty jurisdiction. Chief among these is the right to a jury trial. ... A plaintiff not specifically invoking admiralty jurisdiction may also seek to have state, or in this case, territorial, law applied to the extent that such law does not conflict with admiralty law.

Id. at 56 (footnote omitted). The court correctly noted that federal maritime law governs in cases brought under the saving to suitors clause, *id.* at n.5.

(n3)Footnote 3. *Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 1959 AMC 597 (1959)* ; *Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918)* .

(n4)Footnote 4. *United States v. Reliable Transfer Co., 421 U.S. 397, 1975 AMC 541 (1975)* ; *Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 1959 AMC 597 (1959)* ; *Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 1954 AMC 1 (1953)* ; *The Max Morris, 137 U.S. 1 (1890)* ; *Carey v. Bahama Cruise Lines, 864 F.2d 201, 1989 AMC 852 (1st Cir. 1988)* (maritime rule preempts state rule denying recovery to plaintiff who is more negligent than the defendant). *Carey v. Bahama Cruise Lines, 864 F.2d 201, 1989 AMC 852 (1st Cir. 1988)* (maritime rule preempts state rule denying recovery to plaintiff who is more negligent than the defendant).

(n5)Footnote 5. *150 U.S. 674 (1893)* .

(n6)Footnote 6. *See also Atlee v. Packet Co., 88 U.S. (21 Wall.) 389 (1874)* ; *Guerrini v. United States, 167 F.2d 352, 1948 AMC 724 (2d Cir.)* , *cert. denied, 335 U.S. 843 (1948)* ; *In re Pennsylvania R. Co., 48 F.2d 559, 1931 AMC 852 (2d Cir.)* , *cert. denied, 284 U.S. 640, 52 S. Ct. 21, 76 L. Ed. 544 (1931)* ; *Johnson v. United States Shipping Bd. Emergency Fleet Corp., 24 F.2d 963, 1928 AMC 987 (2d Cir. 1928)* , *rev'd on other grounds, 280 U.S. 320 (1930)* ; *Sea Prods. Co. v. Puget Sound Nav. Co., 191 Wash. 276, 71 P.2d 43, 1937 AMC 1179 (1937)* ; *Puget Sound Nav. Co.*

v. Nelson, 41 F.2d 356, 1930 AMC 1386 (9th Cir.) , cert. denied, 282 U.S. 869 (1930) , on second appeal, 59 F.2d 697, 1932 AMC 1032 (9th Cir. 1932) ; Wolker v. Electric Ferries, Inc., 1936 AMC 1550 (S.D.N.Y. 1935) (oral) *, aff'd, 82 F.2d 1023 (2d Cir.) , cert. denied, 299 U.S. 540 (1936)* ; *New York Harbor Towboat Co. v. New York L.E. & W. R.R., 148 N.Y. 574, 42 N.E. 1086 (1896)* ; *Union S.S. Co. v. Nottinghams, 58 Va. (17 Gratt.) 115 (1866)* ; *Simpson v. Hand, 6 Whart. 311 (Pa. 1841)* .

(n7)Footnote 7. *Southport Transit Co. v. Avondale Marine Ways, 234 F.2d 947, 1956 AMC 1498 (5th Cir. 1956)* ; *Hawn v. Pope & Talbot Inc., 198 F.2d 800, 1952 AMC 1708 (3d Cir. 1952) , aff'd, 346 U.S. 406, 1954 AMC 1 (1953)* ; *W.E. Hedger Transp. Corp. v. United Fruit Co., 198 F.2d 376, 1952 AMC 1469 (2d Cir.) , cert. denied, 344 U.S. 896 (1952)* ; *Winter v. Eon Prod., Ltd., 433 F. Supp. 742, 1977 AMC 2653 (E.D. La. 1976)* ; *Intagliata v. Shipowners & Merchants Towboat Co., 26 Cal. 2d 365, 159 P.2d 1, 1946 AMC 263 (1945)* ; *Guilbeau v. Calzada, 240 So. 2d 104 (La. App. 1970)* ; *Sanders v. Richmond, 579 S.W.2d 401 (Mo. App. 1979)* ; *Wreyford v. Arnold, 82 N.M. 156, 477 P.2d 332 (1970)* ; *Nadler v. Wald, 340 N.Y.S.2d 966, 1973 AMC 2019 (Dist. Ct. 1973)* ; *C.F.Rule Constr. Co. v. Cumberland River Sand Co., 204 Tenn. 378, 321 S.W.2d 791 (1959)* (*citing text*); *Poss v. Dixie Sand & Gravel Co., 62 Tenn. App. 64, 458 S.W.2d 625 (1970)* (*citing text*); Middleton v. Lone Star Indus., 1977 AMC 76 (Va. Cir. Ct. 1976) . *Cf. Somerset Seafood Co. v. United States, 193 F.2d 631, 1952 AMC 697 (4th Cir. 1952)* (doubt about validity ofBelden v. Chase, but Virginia courts would apply federal admiralty rule); *Becker v. Crounse Corp., 822 F. Supp. 386 (W.D. Ky. 1993)* (in diversity case removed from state court, court applied federal law where plaintiff alleged that defendants negligently operated their barges so as to create surge of water that damaged their fishing boat); *Pelican Marine Carriers, Inc. V. City of Tampa, 791 F. Supp. 845 (M.D. Fla. 1992)* (state statute limiting liability of municipality to 100,000 cannot be applied to allision case that is governed by admiralty law; the court unfortunately suggested that the city could limit its liability if it were sued in state court.

(n8)Footnote 8. *346 U.S. 406, 1954 AMC 1 (1953)* .

(n9)Footnote 9. *346 U.S. at 408-09, 1954 AMC at 6* .

(n10)Footnote 10. *304 U.S. 64 (1938)* .

(n11)Footnote 11. *346 U.S. at 411, 1954 AMC at 8 . See also Garrett v. Moore-McCormack Co., 317 U.S. 239, 244-45, 1942 AMC 1645, 1649 (1942)* ("In many other cases this Court has declared the necessary dominance of admiralty principles in actions in vindication of rights arising from admiralty law.Belden v. Chase ... and 1893 decision which respondent relies upon as establishing a contrary rule, has never been thus considered in any of the later cases cited.").

(n12)Footnote 12. Treatise, 6th ed., vol. 1, p. 54, citing *The Buffalo, 154 F. 815 (2d Cir. 1907)* .

(n13)Footnote 13. *See* 1A *Benedict on Admiralty.*

(n14)Footnote 14. *332 U.S. 155, 1947 AMC 847 (1947)* .

(n15)Footnote 15. *332 U.S. at 158, 1947 AMC at 848-49* .

(n16)Footnote 16. *Pope & Talbot v. Hawn, 346 U.S. 406, 1954 AMC 1, 14 (1953)* (Frankfurter, J. concurring). *See* D. Currie, *Federalism and the Admiralty: "The Devil's Own Mess," 1960 Sup. Ct. Rev. 158, 182*-23 (1960). In *Caldarola,* Justice Frankfurter cited two cases that support this interpretation. *Douglas v. New York, N.H. & H. R. Co., 279 U.S. 377 (1929)* , held that New York is not required to open its courts to suits by a non-resident against a foreign corporation under the Federal Employers' Liability Act when the state's statutes did not generally provide for this type of suit and when the federal statute left the discretion to allow such suits with the state. The other case, *Testa v. Katt, 330 U.S. 386 (1947)* , held that the *Supremacy Clause* requires state courts to provide a forum for the enforcement of rights under the Emergency Price Control Act when those courts are given jurisdiction over the same type of claim arising under state law. *See also* D. Robertson, *Admiralty and Federalism* 247 (1970);Stevens, *Erie R.R. v. Tompkins*

and the Uniform General Maritime Law, 64 Harv. L. Rev. 246, 268 n.119 (1950). *See, generally,* Hart, *The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 506*-08 (1954). This interpretation of the Savings Clause makes sense. The clause permits suitors to go to any court other than a federal court having jurisdiction because of the admiralty nature of the case and seek a remedy to which "they are otherwise entitled." *28 U.S.C. § 1333*. If a state does not recognize a remedy for this type of action, then nothing in the Savings Clause requires the state courts to make one available.

(n17)Footnote 17. *See* D. Robertson, *Admiralty and Federalism* 247-48 (1970).

(n18)Footnote 18. *See, e.g., Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 628, 1959 AMC 597, 599-600 (1959)* ; *Pope & Talbot v. Hawn, 346 U.S. 406, 410-22, 1954 AMC 1, 7-8 (1953)* . *See also* American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts* 239 (1968).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VII. Source of Law and Jurisdiction of Admiralty

1-VII Benedict on Admiralty §§ 115-120

[Reserved].

§§ 115[Reserved].

Benedict on Admiralty

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Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

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§ VIII.syn Synopsis to Chapter VIII: THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

§ 121 Concurrent Jurisdiction Under Constitution.

§ 122 Concurrent Jurisdiction Under Act of Congress.

§ 123 Concurrent Remedy In Personam.

§ 124 Exclusive Admiralty Jurisdiction In Rem.

§ 125 State Court Attachments and Non-Maritime Liens.

§ 126 Equitable Remedies in Admiralty Cases.

§ 127 Jurisdiction and Choice of Law Under the Jones Act.

§ 128 Seamen on Foreign Ships.

§ 129 Discretionary Exercise of Jurisdiction in Admiralty.

§ 130 Jurisdiction Under the Foreign Sovereign Immunities Act: The Act, In General; Jurisdiction of United States Courts; Sovereign Immunity, In General; Exceptions to Immunity: Waiver; Exceptions to Immunity: Commercial Activities; Exceptions to Immunity: Property Taken in Violation of International Law; Exceptions to Immunity: Property Acquired by Succession or Gift; Exceptions to Immunity: Torts; Exceptions to Immunity: Enforcement of Maritime Lines; Liability and Damages; Counterclaims; Service, Pleadings and Default Judgments; Attachment and Execution.

§ 131. Suits against the Federal Government.

§ 132. Removal of Admiralty Cases to Federal Court.

§ 133. Rule 9(h)-Determining Which Procedures Apply When Federal Court Has Admiralty and Some Other Basis

of Jurisdiction.

§§ 134-140 [Reserved]

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 121

§ 121 Concurrent Jurisdiction Under Constitution.

The Constitution of the United States provides that the jurisdictional power of the United States shall extend to "all cases of admiralty and maritime jurisdiction." n1 This does not mean that every case cognizable in admiralty thereby ceases to be cognizable at common law. What it means is that the power and authority to declare admiralty and maritime law, the power to issue the special admiralty processes, and to grant the specific admiralty remedies is vested in the courts established for the exercise of such judicial power. The constitutional provision does not presume to deny the plaintiff a judicial determination of a case or cause of action which is also cognizable under the common law by the appropriate courts having jurisdiction for that purpose, but the remedies and processes peculiar only to the admiralty cannot be granted by a court not possessing admiralty and maritime jurisdiction.

The common law courts always had jurisdiction of a cause of action against a shipowner in contract or in tort, when he could be reached personally and money damages only were demanded. That right was not excluded by the admiralty grant in the constitution, and the concurrent right also to hear such cases as well as other cases of admiralty jurisdiction was immediately given to the newly constituted federal judiciary. The jurisdiction of the admiralty and of the common law courts is therefore, to a certain extent, concurrent. The common law jurisdiction, when concurrent with admiralty jurisdiction, may be exercised by state courts or, within the limitations n2 of the Constitution and of the Acts of Congress, by United States District Courts.

Story, in his *Commentaries on the Constitution,* says of the grant of admiralty jurisdiction:

> "It is exclusive in all matters of prize, for the reason that at the common law this jurisdiction is vested in courts of admiralty to the exclusion of the courts of common law. But in cases where the jurisdiction of the courts of common law and admiralty are concurrent (as in cases of possessory suits, mariner's wages, and marine torts) there is nothing in the constitution necessarily leading to the conclusion that the jurisdiction was intended to be exclusive; and there is as little ground upon general reasoning to contend for it. The reasonable interpretation of the constitution would seem to be that it conferred on the national judiciary the admiralty and maritime jurisdiction, exactly according to the nature and extent and modifications in which it existed in the jurisprudence of the common law. When the jurisdiction was exclusive, it remained so; when it was concurrent, it remained so. Hence the states

> could have no right to create courts of admiralty as such, or to confer on their own courts the cognizance of such cases as were exclusively cognizable in admiralty courts. But the states might well retain and exercise the jurisdiction in cases of which the cognizance was formerly concurrent in the courts of common law. The latter class of cases can be no more deemed cases of admiralty and maritime jurisdiction than cases of common law." n3

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureChoice of LawAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionConcurrent JurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime JurisdictionGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. U.S. Const. art. III, § 2.

(n2)Footnote 2. There must ordinarily be diversity of citizenship and at least $10,000 in controversy, *28 U.S.C. § 1332*, unless there is jurisdiction under any other statutory provision.

(n3)Footnote 3. 3 J. Story *Commentaries on the Constitution of the United States*, § 1666, n. 3 (1833), quoted with approval in *Taylor v. Carryl, 61 U.S. (20 How.) 583 (1857)* .

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1-VIII Benedict on Admiralty § 122

§ 122 Concurrent Jurisdiction Under Act of Congress.

The Judiciary Act of 1789 established the United States Courts and defined their jurisdiction as a contemporaneous construction n1 and implementation of the Constitution. It confirmed the jurisdiction of the common law courts by providing that the United States District Courts shall have "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction ... saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." n2 This clause was "inserted, probably, from abundant caution, lest the exclusive terms in which the power is conferred on the District Courts might be deemed to have taken away the concurrent remedy which had before existed." n3 The purport and intent of this provision have been the subject of judicial pronouncement on many occasions and some propositions are amply established. The saving to suitors of a common law remedy was not intended to inhibit the admiralty from taking cognizance of a case over which the common law courts had a concurrent jurisdiction. n4 Conversely, in cases of concurrent jurisdiction in admiralty and common law, the jurisdiction of the common law courts is not taken away. n5 The saving was for the benefit of suitors who sought to commence action. The provision gave the plaintiff and preserved for him the option to choose his forum if he sought a common law remedy. Although not free from doubt, it is generally thought that a plaintiff's choice of a state forum may not be defeated by removal to federal court where the only basis of federal jurisdiction is the admiralty nature of the case. n6

The saving was of common law remedies. This expression meant that the common law courts could give all remedies known to common law including those established by statute as available in common law courts other than characteristically admiralty remedies. The decision of the Supreme Court in *The Moses Taylor* n7 uses language calculated to be construed as giving a restricted meaning to the term common law remedies as excluding statutory remedies. It was there stated:

> " 'The case before us is not within the saving clause of the 9th section. That clause only saves to suitors the right of a common-law remedy, where the common law is competent to give it.' It is not a remedy in the common-law courts which is saved, but a common-law remedy. A proceeding *in rem*, as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common-law courts, it is given by statute." n8

Similarly, *The Hine v. Trevor* n9 declares:

> "But it could not have been the intention of Congress, by the exception in that section, to give the suitor all such remedies as might afterwards be enacted by state statutes, for this would have enabled the States to make the jurisdiction of their courts concurrent in all cases, by simply providing a statutory remedy for all cases. Thus the exclusive jurisdiction of the Federal courts would be defeated."

But in both these cases the court was dealing with state statutes adopting or authorizing typical admiralty remedies which are within the exclusive province of courts possessing admiralty jurisdiction to award, and to that extent alone the statutes contravened the Constitution. The Constitution did not purport to crystallize common law remedies as existing on the day that the Constitution came into force. It is accordingly well established that while attempted changes in substantive admiralty law working material prejudice to the characteristic features of the general maritime law or interfering with the proper harmony or uniformity of that law will not be permitted to be enacted by the states, n10 and while the states may not attempt to modify the remedial law of the admiralty courts, n11 the right of a common law remedy includes:

> "all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved. It includes remedies *in pais* as well as proceedings in court; judicial remedies conferred by statute, as well as those existing at the common law; remedies in equity, as well as those enforceable in a court of law. ... A State may not provide a remedy *in rem* for any cause of action within the admiralty jurisdiction. ... But otherwise, the State, having concurrent jurisdiction, is free to adopt such remedies, and to attach to them such incidents, as it sees fit." n12

An injured party's right to bring suit in state or federal court under the Saving to Suitors Clause does not prevent a federal district court from having jurisdiction under the Declaratory Judgment Act. n13 The court would have discretion, however, to dismiss the case, giving due consideration to a variety of relevant factors such as whether there are pending state court proceedings, whether the declaratory action was filed for the purpose of forum shopping, because of possible inequities in permitting the plaintiff to gain precedence in time and forum, or because of inconvenience to the parties and the witnesses. n14

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureChoice of LawAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityConstitutional LawThe JudiciaryJurisdictionConcurrent JurisdictionGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. Professor Robertson describes this as the Story-Benedict view in his *Admiralty and Federalism* (1970) Ch. *Cf.* Stevens, *Erie R.R. v. Tompkins and the Uniform General Maritime Law, 64 Harv L. Rev. 246 (1950)*; Dodd, *The New Doctrine of the Supremacy of Admiralty over the Common Law, 21 Colum. L. Rev. 647 (1921)*.

(n2)Footnote 2. Judiciary Act, September 24, 1789, ch. 20, 1 Stat. 73, 76, 77, Comp. Stat. §§ 530, 991:

Sec. 9.

> "That the district courts shall have, exclusively of the courts of the several states ... exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas; saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it; ..."

Subsequent revisions were as follows:

Rev. Stat. § 563.

> "The district courts shall have jurisdiction as follows:
>
> "Eighth. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common-law remedy, where the common law is competent to give it; and of all seizures on land and on waters not within admiralty and maritime jurisdiction. And such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts. [And shall have original and exclusive cognizance of all prizes brought into the United States, except as provided in P 6 of § 629, Comp. Stat. § 991(3).]."

Rev. Stat. § 711.

> "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states: ...
>
> "Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it."

The Judicial Code of 1911, ch. 231, 36 Stat. 1087:

> "Sec. 24. The district courts shall have original jurisdiction as follows: ...
>
> "Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; ...
>
> "Sec. 256. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states: ...
>
> "Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common-law remedy; where the common law is competent to give it."

Act of Oct. 6, 1917, ch. 97, 40 Stat. 395, Comp. Stat. § 991(3), Fed. Stat. Ann. Supp. 1918, p. 401.

That clause 3 of § 24 of the Judicial Code is hereby amended to read as follows:

> "Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the Workmen's compensation law of any State; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize."

Sec. 2. That clause 3 of § 256 of the Judicial Code is hereby amended to read as follows:

> "Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the Workmen's compensation law of any State."

Following *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920)* , the provisions were amended by Act of June 10, 1922, ch. 216, 42 Stat. at L. 634, Comp. Stat. § 991(3), as follows: That clause 3 of § 24 of the Judicial Code is hereby amended to read as follows:

> "Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants for compensation for injuries to or death or persons other than the master or members of the crew of a vessel their rights and remedies under the workmen's compensation law of any State, district, territory, or possession of the United States, which rights and remedies when conferred by such law shall be exclusive of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize. Provided, That the jurisdiction of the district courts shall not extend to causes arising out of injuries to or death or persons other than the master or members of the crew, for which compensation is provided by the workmen's compensation law of any State, district, territory, or possession of the United States."

Sec. 2. That clause 3 of § 256 of the Judicial Code is hereby amended to read as follows: ...

> "Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel, their rights and remedies under the workmen's compensation law of any State, district, territory, or possession of the United States."

By Acts of June 25, 1948, ch. 646, 62 Stat. 931, and May, 1949, ch. 139, § 79, 63 Stat. 101, and following the decision of *Washington v. W.C. Dawson & Co., 264 U.S. 219, 1924 AMC 403 (1924)* , the provisions were revised and are now contained in *28 U.S.C. § 1333*:

> "§ 1333. Admiralty, maritime and prize cases
>
> "The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> "(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
>
> "(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize."

See also 28 U.S.C. § 1356 for provisions relating to seizures. The Reviser's Note states, *inter alia*,

> " 'The saving to suitors' clause in said sections 41(3) and 371(3) was changed by substituting the words 'any other remedy to which he is otherwise entitled' for the words 'the right of a common-law remedy where the common law is competent to give it.' The substituted language is simpler and more expressive of the original intent of Congress and is in conformity with *Rule 2 of the Federal Rules of Civil Procedure* abolishing the distinction between law and equity."

(n3)Footnote 3. *New Jersey Steam Nav. Co. v. Merchants' Bank, 47 U.S. (6 How.) 344, 390 (1848)* .

(n4)Footnote 4. *New Jersey Steam Nav. Co. v. Merchants' Bank, 47 U.S. (6 How.) 344 (1848)* ; *Waring v. Clarke, 46 U.S. (5 How.) 441 (1847)* .

(n5)Footnote 5. *Chappell v. Bradshaw, 128 U.S. 132 (1888)* ; *Waring v. Clarke, 46 U.S. (5 How.) 441 (1847)* ; *Neal v. McGinnis, Inc., 716 F. Supp. 996, 1990 AMC 1035 (E.D. Ky. 1989)* (quoting text).

(n6)Footnote 6. *See* section 132, *infra.*

(n7)Footnote 7. *71 U.S. (4 Wall.) 411 (1866)* .

(n8)Footnote 8. *Id. at 431* .

(n9)Footnote 9. *71 U.S. (4 Wall.) 555, 572 (1866)* . *See also The Glide, 167 U.S. 606 (1897)* .

(n10)Footnote 10. *Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 1954 AMC 1 (1953)* ; *Garrett v. Moore-McCormack Co., 317 U.S. 239, 1942 AMC 1645 (1942)* ; *Washington v. W.C. Dawson & Co., 264 U.S. 219, 1924 AMC 403 (1924)* ; *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920)* ; *Peters v. Veasey, 251 U.S. 121 (1919)* ; *Clyde S.S. Co. v. Walker, 244 U.S. 255 (1917)* ; *Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917)* . *Cf. Maryland Cas. Co. v. Cushing, 347 U.S. 409, 1954 AMC 837 (1954)* .

(n11)Footnote 11. *Union Fish Co. v. Erickson, 248 U.S. 308 (1919)* . *Cf. Kossick v. United Fruit Co., 365 U.S. 731, 1961 AMC 833 (1961)* .

(n12)Footnote 12. *Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 124, 1924 AMC 418, 423 (1924)* (citations omitted).

(n13)Footnote 13. *Torch, Inc. v. Theriot, 727 F. Supp. 1048, 1990 AMC 1024 (E.D. La. 1990)* .

(n14)Footnote 14. *Rowan Companies v. Griffin, 876 F.2d 26, 1989 AMC 2371 (5th Cir. 1989)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 123

§ 123 Concurrent Remedy *In Personam.*

The remedies saved by the Savings to Suitors Clause n1 are those which may be granted in an *in personam* action against the defendant. Any court which has jurisdiction of the parties is thus authorized to entertain a civil action for the enforcement of a right conferred by maritime law where the right is of such a nature that relief may be given in such action by a proceeding *in personam.* n2 As explained by the Supreme Court in 1918, "[A] remedy is the means employed to enforce a right or redress an injury. ... Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law. ..." n3 More recently the Court has said, "Admiralty's jurisdiction is 'exclusive' only as to those maritime causes of action begun and carried on as proceedings *in rem.* ... But the jurisdictional act does leave state courts 'competent' to adjudicate maritime causes of action in proceedings '*in personam*' ...." n4 Accordingly, an action *in personam* may be brought in admiralty or at common law against the shipowner or other person liable, for example, to recover seamen's wages, n5 damages for collision, n6 damages for injury to vessels or other property on navigable waters, n7 damages for personal maritime injury, n8 cost of supplies furnished or repairs made to a vessel, n9 or for any cause of action, maritime in nature, arising under contracts of affreightment, contracts for the carriage of passengers, charter parties, bills of lading, shipping articles or policies of marine insurance or in respect of any personal demand, where jurisdiction of the person of the defendant can be secured. n10 State courts have jurisdiction to try *in personam* suits to partition ownership of vessels n11 and to quiet title to vessels. n12 In such cases the two jurisdictions are concurrent. Actions for bodily injury and death are frequently brought in courts of common law jurisdiction to obtain a jury trial.

Whether salvage actions can be brought in state courts is a matter of some complexity. State courts cannot hear salvage cases *in rem,* but they can decide claims based on a contract for a fixed price, and it has been said that they can adjudicate claims based on an implied contract for the reasonable value of the work, labor and services in the recovery of a vessel or wreck. n13 State courts can also hear salvage claims when raised as a counterclaim or defense to a suit by the owner of salved property for possession. n14 But the traditional view, although seldom amounting to a holding, has been that federal courts have exclusive jurisdiction over claims for salvage awards even if filed *in personam.* n15 As stated in the previous edition of this volume,

> "the principle objection is that the making of a salvage award is essentially a maritime remedy granted upon principles peculiar to admiralty law and foreign to the common law. In terms of the original

> judiciary act, a salvage award is not a remedy which the common law was competent to give, and under the words of the present statute, it is not a remedy to which a suitor is entitled otherwise than in admiralty."

This view, which is also taken by Judge Norris in Volume 3A of this treatise, n16 assumes that under the Savings to Suitors Clause state courts can hear only those maritime cases for which there was a cause of action at common law. n17 This view is inconsistent with the general theory stated above that state courts have concurrent jurisdiction over all maritime causes of action provided they proceed *in personam.* n18 A salvage award in an *in personam* action, although based on maritime rules, is a simple money judgment. It would therefore seem that state courts should be able to award salvage in *in personam* actions. n19 A few cases support this view. n20 But because only federal courts can hearsalvage cases *in rem,* a salvor will often find that the federal forum is more advantageous. n21 There would seem to be no objection if a state court desired to hear salvage cases in equity without a jury. n22

A state court may use all the several processes of the court, provided that such processes do not operate as a process *in rem.* n23 The common law courts deal with ships as personal property, subject like other personal property to the processes of attachment and execution. n24 The titles to vessels or contracts and torts relating to them are cognizable in those courts. n25

The extent to which the common law jurisdiction can be ousted by means of a petition for the limitation of the ship owner's liability is discussed in Volume 3.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureChoice of LawAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityConstitutional LawThe JudiciaryJurisdictionConcurrent JurisdictionGovernmentsCourtsCommon Law

FOOTNOTES:
(n1)Footnote 1. *28 U.S.C. § 1333*.

(n2)Footnote 2. *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, 369 U.S. 355, 1962 AMC 565 (1962)* ; *Engel v. Davenport, 271 U.S. 33, 1926 AMC 679 (1926)* ; *Panama R.R. v. Vasquez, 271 U.S. 557, 1926 AMC 984 (1926)* ; *Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 1924 AMC 418 (1924)* ; *Panama R.R. v. Johnson, 264 U.S. 375, 1924 AMC 551 (1924)* ; *Carlisle Packing Co. v. Sandanger, 259 U.S. 255, 259 (1922)* ; *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 159 (1920)* ; *Chelentis v. Luckenbach S.S. Co., 247 U.S. 372, 383-84 (1918)* ; *Rounds v. Cloverport Foundry & Mach. Co., 237 U.S. 303 (1915)* ; *Knapp, Stout & Co. v. McCaffrey, 177 U.S. 638 (1900)* ; *Chappell v. Bradshaw, 128 U.S. 132 (1888)* ; *Schoonmaker v. Gilmore, 102 U.S. 118 (1880)* ; *Steamboat Co. v. Chase, 83 U.S. (16 Wall.) 522 (1872)* ; *Leon v. Galceran, 78 U.S. (11 Wall.) 185 (1870)* ; *The Belfast, 74 U.S. (7 Wall.) 624 (1868)* ; *The Moses Taylor, 71 U.S. (4 Wall.) 411 (1866)* ; *The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1866)* ; *Taylor v. Carryl, 61 U.S. (20 How.) 583 (1857)* ; *New Jersey Steam Nav. Co. v. Merchants' Bank, 47 U.S. (6 How.) 344, 390 (1848)* ; *Waring v. Clarke, 46 U.S. (5 How.) 441, 460 (1847)* ; *Philadelphia & R.R. Co. v. Berg, 274 F. 534 (3d Cir.) , cert. denied, 257 U.S. 638 (1921)* ; *Stainless Steel & Metal Mfg. Corp. v. Sacal V.I., Inc., 452 F. Supp. 1073, 1981 AMC 2397 (D.P.R. 1978)* .

(n3)Footnote 3. *Chelentis v. Luckenbach S.S. Co., 247 U.S. 372, 384 (1918)* .

(n4)Footnote 4. *Madruga v. Superior Court, 346 U.S. 556, 560, 1954 AMC 405, 409 (1954) . See also Seas Shipping Co. v Sieracki, 328 U.S. 85, 88, 1946 AMC 698, 700 (1946)* ("[A] right peculiar to the law of admiralty may be enforced either by a suit in admiralty or by one on the law side of the court.") *See, generally,* American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts,* 234-39 (1968).

(n5)Footnote 5. *Leon v. Galceran, 78 U.S. (11 Wall.) 185 (1870) . See also Sipe v. Amerada Hess Corp., 689 F.2d 396, 1983 AMC 2601 (3d Cir. 1982)* (state court has concurrent jurisdiction over claims for refund of unemployment taxes alleged to be wrongfully withheld); *Cox v. Lykes Bros., 237 N.Y. 376, 143 N.E. 226, 1924 AMC 656 (1924)* (asserting state jurisdiction in a seaman's action for double wages; holding that the action was not for recovery of a "penalty"); *Lonnberg v. Knox, 123 Misc. 148, 204 N.Y.S. 852, 1924 AMC 878 (App. Term. 1924)* ; *Heino v. Libby, McNeill & Libby, 116 Wash. 148, 205 P. 854 (1921) .*

(n6)Footnote 6. *Schoonmaker v. Gilmore, 102 U.S. 118 (1880)* ; *Moore-McCormack Lines v. Amirault, 202 F.2d 893, 1953 AMC 605 (1st Cir. 1953)* ; *Intagliata v. Shipowners & Merchants Towboat Co., 26 Cal. 2d 365, 159 P.2d 1, 1946 AMC 263 (1945) .*

(n7)Footnote 7. *J.H. Burton & Sons Co. v. May, 212 Ala. 435, 103 So. 46, 1925 AMC 707 (1925)* ; *Sullivan v. Pittsburgh S.S. Co., 230 Mich. 414, 203 N.W. 126 (1925) .*

(n8)Footnote 8. *Seas Shipping Co. v. Sieracki, 328 U.S. 85, 1946 AMC 698 (1946)* ; *Pacific S.S. Co. v. Peterson, 278 U.S. 130, 1928 AMC 1932 (1928)* ; *Engel v. Davenport, 194 Cal. 344, 228 P. 710, 1924 AMC 1232 (1924) , rev'd, 271 U.S. 33, 1926 AMC 679 (1926)* ; *Cook v. Alaska S.S. Co., 8 F.2d 207, 1925 AMC 1534 (W.D. Wash. 1925)* ; *Ross v. Pacific S.S. Co., 272 F. 538 (D. Or. 1921)* ; *Crane v. Pacific S.S. Co., 272 F. 204 (D. Or. 1921)* ; *Missouri Valley Bridge & Iron Co. v. Malone, 153 Ark. 454, 240 S.W. 719 (1922)* ; *A. Paladini, Inc. v. Superior Court, 218 Cal. 114, 21 P.2d 941, 1933 AMC 989 (1933)* ; *Pottage v. Luckenbach S.S. Co., 206 Cal. 622, 275 P. 410, 1929 AMC 510 (1929)* ; *Baskin v. Industrial Accident Comm'n, 97 Cal. App. 2d 257, 217 P.2d 733 , aff'd, 340 U.S. 886 (1950)* ; *Crofton v. Pappas, 75 Cal. App. 2d 814, 171 P.2d 959, 1947 AMC 252 (1946)* ; *Larson v. Lewis-Simas-Jones Co., 29 Cal. App. 2d 83, 84 P.2d 296, 1938 AMC 1505 (1938)* ; *Long v. General Petroleum Corp., 11 Cal. App. 2d 708, 54 P.2d 1147 (1936)* ; *Sidney v. Lykes Bros. S.S. Co., 8 So. 2d 550 (La. Ct. of App. 1942)* ; *Proctor v. Dillon, 235 Mass. 538, 129 N.E. 265 (1920)* ; *Larry v. Moody, 242 Miss. 267, 134 So. 2d 462, 1961 AMC 2637 (1961)* ; *State ex rel. Compagnie Generale Transatlantique v. Falkenhainer, 309 Mo. 224, 274 S.W. 758 (1925)* ; *Baldwin v. Linde-Griffith Constr. Co., 115 N.J.L. 608, 181 A. 35 (1935)* ; *Maleeny v. Standard Shipbldg. Corp., 237 N.Y. 250, 142 N.E. 602 (1923)* ; *Reinhart v. Gerosa Crane Serv. Co., 263 A.D. 28, 31 N.Y.S.2d 162 (1941)* ; *Kennedy v. Cunard S.S. Co., 197 A.D. 459, 189 N.Y.S. 402 (1921)* ; *Knapp v. United States Transp. Co., 181 A.D. 432, 170 N.Y.S. 384 (1918)* ; *Odgaard v. Cosmopolitan Shipping Co., 171 Misc. 244, 12 N.Y.S.2d 389, 1939 AMC 1038 (Sup. Ct. 1939)* ; *Dopico v. New York Marine Co., 127 Misc. 677, 217 N.Y.S. 295 (Sup. Ct. 1926)* ; *La Rosa v. Carter & Weekes Stevedoring Co., 115 Misc. 392, 188 N.Y.S. 396 (N.Y. Mun. Ct. 1921)* ; *McConnell v. Williams S.S. Co., 142 Misc. 269, 254 N.Y.S. 597 (N.Y. City Ct. 1931) , rev'd on other grounds, 143 Misc. 426, 256 N.Y.S. 858 (App. Term 1932)* ; *Colonna Shipyard v. Bland, 150 Va. 349, 143 S.E. 729 (1928)* ; *Miller v. Alaska S.S. Co., 139 Wash. 207, 246 P. 296, 1926 AMC 1023 (1926)* ; *Haverty v. International Stevedoring Co., 134 Wash. 235, 235 P. 360 , aff'd, 272 U.S. 50, 1926 AMC 1638 (1926)* ; *Jackson v. Mitsui & Co., 132 Wash. 395, 232 P. 317 (1925)* ; *La Coco v. Massey S.S. Co., 174 Wis. 545, 183 N.W. 677 (1921)* ; *Georgia Cas. Co. v. American Milling Co., 169 Wis. 456, 172 N.W. 148 (1919) .*

(n9)Footnote 9. *Rounds v. Cloverport Foundry & Mach. Co., 237 U.S. 303 (1915)* ; *De Simone v. Transportes Maritimos Do Estado, 199 A.D. 602, 191 N.Y.S. 864 , aff'd on reargument,, 200 A.D. 82, 192 N.Y.S. 815 (1922)* ; *Crawford v. Roberts, 50 Cal. 235 (1875)* ; *Parisot v. Green, 46 Miss. 747 (1872) .*

(n10)Footnote 10. *Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 1924 AMC 418 (1924)* ; *Albany City Ins. Co. v. Whitney, 70 Pa. 248 (1871)* ; *Mailloux v. Elxnit, 7 Alaska 192 (1924)* ; *Parisot v. Helm, 52 Miss. 617 (1876)* ; *Ransberry v. North Am. Transp. & Trading Co., 22 Wash. 476, 61 P. 154 (1900)* ; *Gill v. North Am. Transp. & Trading Co., 37 Wash. 694, 79 P. 778 , aff'd, 203 U.S. 579 (1926)* ; *Triomphe Disc Corp. v. Chilean Line, 93 A.D.2d 228, 461 N.Y.S.2d 325, 1983 AMC 2135 (1983) .*

(n11)Footnote 11. *Madruga v. Superior Court, 346 U.S. 556, 1954 AMC 405 (1954) .*

(n12)Footnote 12. *Sellick v. Sun Harbor Marina, Inc., 384 F.2d 870, 1967 AMC 2309 (9th Cir. 1967)* ; *Pasternack v. Lubetich, 11 Wash. App. 265, 522 P.2d 867, 1974 AMC 1464 (1974)* .

(n13)Footnote 13. *Merrit & Chapman Derrick & Wrecking Co. v. Tice, 77 A.D. 326, 79 N.Y.S. 120 (1902)* . In determining the amount of reasonable compensation the jury may consider the value of the property saved and the peril of the service as well as the skill and science demonstrated. *Anthanissen v. Dart, 94 Ga. 543, 20 S.E. 124 (1894)* ; *Creevy v. Cummings, 3 La. Ann. 163 (1848)* . But this line of cases is inconsistent with the duty of state courts to apply to maritime cases the substantive law enunciated by the federal courts. *See* T. Schoenbaum, *Admiralty and Maritime Law*, 501 n. 8 (1987). *See, generally,* § 114, *supra.*

(n14)Footnote 14. *O.F. Shearer & Sons v. Decker, 349 F. Supp. 1214 (S.D. W. Va. 1972)* (state court can hear counterclaim for salvage); *State v. Vernooy, 109 A.D.2d 682, 486 N.Y.S.2d 735 (1985)* ; *Merrill v. Fisher, 204 Mass. 600, 91 N.E. 132 (1910)* (salvor entitled to lien when sued for replevin); *Baker v. Hoag, 7 N.Y. 555 (1853)* (salvor has right to retain the property for his lien and put the owner to a tender, and then try it in state court); *Chauveau v. Walden, 10 Mart. 100 (La. 1821)* (defendant in suit for money had and received can raise salvage as a defense and retain a lien on the property); *Windsor v. Walker, 1 N.C. 28 (1791)* (in suit for trover defendant entitled to salvage); *Hartfort v. Jones, 91 Eng. Rep. 1161 (K.B. 1698) . Cf. Winslow v. Walker, 2 N.C. 193 (1795)* (lien for salvage is lost when boat is transferred to another).

In *State v. Vernooy, supra* , the court determined that the salvor's claim for salvage must be heard separately by the Court of Claims. The latter court awarded salvage to the finders based on traditional salvage principles, applying *N.Y. Navigation Law § 132* (McKinney). *Vernooy v. State, 514 N.Y.S.2d 615 , reprinted in part, 1987 AMC 2483 (Ct. Cl. 1987)* .

(n15)Footnote 15. *See The Jefferson, 215 U.S. 130, 137 (1909)* ; *Houseman v. The North Carolina, 40 U.S. 40, 48 (1841)* ; *Phillips v. Sea Tow/Sea Spill of Savannah, 276 Ga. 352, 578 S.E.2d 846, 2003 AMC 750 (2003)* (not allowing claim for salvage but allowing claim for quantum meruit); Metropolitan Dade County v. One (1) *Bronze Cannon, 537 F. Supp. 923, 1984 AMC 669 (S.D. Fla. 1982)* ; *O'Neill v. Schoenbrod, 355 So. 2d 440 (Fla. App.) (holding) , appeal dismissed, 359 So. 2d 1218 (Fla. 1978)* ; *Merrit & Chapman Derrick & Wrecking Co. v. Tice, 77 A.D. 326, 79 N.Y.S. 120 (1902)* ; *Anthanissen v. Dart, 94 Ga. 543, 20 S.E. 124 (1894)* (salvage not available because state court cannot hear cases *in rem*); Sturgis v. Law, 5 N.Y. Super. Ct. (3 Sand.) 451 (1850) (Paine, J., two other judges concurred on other grounds); *Frith v. Crowell, 5 Barb. 209 (N.Y. Sup. Ct. 1849)* ; *Brevoor v. The Fair American, 4 F. Cas. 71 (D. Pa. 1800)* (No. 1847); Heisler v. Connors, 10 E.L.R. 61 (N.S. Sup. Ct. 1911) ; *Atkinson v. Woodhall, 158 Eng. Rep. 846 (Ex. 1862)* ; D. Steel & F. Rose, *Kennedy's Law of Salvage* 52-62 (5th ed. 1985); Owen, *Some Legal Troubles with Treasure: Jurisdiction and Salvage, 16 J. Mar. L. & Com. 139, 148 (1985)*; Zobel, *Admiralty Jurisdiction, Unification, and the American Law Institute, 6 San Diego L. Rev. 375, 401 (1969)*; Dewell, *Jurisdiction in Salvage Cases, 17 Yale L.J. 513 (1908). Cf. Studley v. Baker, 23 F. Cas. 275 (D. Mass. 1873)* (No. 13,559) (a review of cases suggests that jurisdiction of state courts is in "much doubt"); *Creevy v. Cummings, 3 La. Ann. 163 (1848)* (not decide whether court has right to apply maritime law of salvage to occurrence on inland waters). In Lipson v. Harrison, 22 L.T.R. 83 (Q.B. 1850), the court denied salvage where plaintiff failed to prove a contract. Lord Campbell said, "I do not by any means go so far as to say that in a court of common law there can be no action for salvage; but I am clearly of opinion that in this case no action can be maintained; and it is certainly contrary to convenience that such actions be brought here, because by the course of procedure in the Admirlty Court justice may be much more completely done in that Court." *See also Hood v. United States, 695 F. Supp. 237, 1988 AMC 2598 (E.D. La. 1988)* (suit against the United States for the failure of the Coast Guard to salvage a sinking vessel is within the admiralty and maritime jurisdiction of the federal court pursuant to the Public Vessels Act, *46 U.S.C. § 781 et seq.* and the Suits in Admiralty Act, *46 U.S.C. § 741 et seq.*).

(n16)Footnote 16. 3A *Benedict on Admiralty* § 14.

(n17)Footnote 17. Under Justice Story's view, quoted in § 121, *supra* , the Constitution denies common law courts

jurisdiction over cases if these cases were "exclusively cognizable in admiralty courts" prior to the drafting of the Constitution. Story specifically mentions only prize cases as being exclusive, and under *28 U.S.C. § 1333*, they remain exclusive. Although prize cases are similar in some respects to salvage cases, the former are intimately connected with the conduct of war, which is within the exclusive province of the federal government. It is not clear that state courts lacked jurisdiction to try *in personam* salvage cases at common law, *see* n. 20, *infra*, and it is clear that state courts can hear salvage actions when raised as a defense or counterclaim, *see* n. 14, *supra*.

Most of the dispute about whether state courts had "jurisdiction" to try salvage cases at common law seems to be really a dispute about whether the common law recognized a cause of action for salvage. The dispute is beside the point in the modern context, however, because state courts are required to apply the same substantive law to maritime cases as federal courts, regardless of whether there was a parallel cause of action at common law. *See* § 114. The dispute about salvage is in this respect similar to that of collision. Based on the old case of *Belden v. Chase, 150 U.S. 674 (1893)* , a former edition of this treatise took the position that state courts were "not competent to give the peculiar remedy of division of the damages, which an admiralty court can give." *Benedict on Admiralty* § 129 (4th ed. 1910). *See also Kalleck v. Deering, 161 Mass. 469, 37 N.E. 450 (Mass. 1894)* (Holmes, J.) (common law rules of contributory negligence and fellow servant doctrine apply to maritime cases in state courts). Today it is clear that state courts can apply maritime substantive law to collision cases, and it is generally thought that they must do so. *See* § 114, *supra*.

(n18)Footnote 18. *Auerbach v. Tow Boat U.S., 303 F. Supp.2d 538, 543-44, 2004 AMC 370 (D.N.J. 2004)* ; *Sebastian Tow Boat & Salvage, Inc. v. Slavens, 2002 U.S. Dist. LEXIS 27073 (D. Fla. 2002)* ; *Carr v. Jetter, 103 F. Supp.2d 1122 (E.D. Wis. 2000)* (claim for salvage remanded to state court).

See N. Healy & D. Sharpe, *Cases and Materials on Admiralty*, 73, 676 (2d ed. 1986).

(n19)Footnote 19. One might argue that the Savings Clause may not require states to hear salvage cases since state courts may not be required to provide a remedy in maritime cases that they do not generally provide. *See* § 114 at nn. 15-17, *supra* (discussion of *Caldarola v. Eckert, 332 U.S. 155, 1947 AMC 847 (1947))* . But a state court that provides a salvage remedy when raised as a defense or counterclaim, *see* n. 14, *supra*, ought to be required to provide that remedy in all cases.

(n20)Footnote 20. Young v. Smith, 1966 AMC 2654 (Civ. Ct. Md. 1966) (salvage case decided by state court sitting in equity apparently without objection by owner); *Hunter v. St. Louis & Miss. Valley Transp. Co., 25 Mo. App. 660 (1887)* (upholding state salvage statute because it does not create a maritime lien or authorize suit *in rem*); *Albany City Ins. Co. v. Whitney, 70 Pa. 248 (1871)* (state court has jurisdiction over salvage claim brought *in personam* although action may not lie if there is no promise to pay); Cashmere v. De Wolf, 4 N.Y. Super. (2 Sand.) 379 (1849) (dictum); *Peck v. Randall, 1 Johns. 165 (N.Y. 1806)* (salvage denied on merits, no discussion of propriety of jurisdiction). *See* Copp v. Reed, 16 N.B. 527 (1876) (2-1 decision that common law courts have jurisdiction over salvage claims where no apportionment among salvors is required); *Newman v. Walters, 127 Eng. Rep. 330 (C.P. 1804)* (salvage allowed passenger where owner ratifies after service was performed). *Cf. Blake v. Patten, 15 Maine 173 (1838)* (action by member of crew for share of salvage). *See also* Ark. Stat. Ann. §§ 21-301 to 21-315 (1968) (salvage action before county justice of the peace, maximum compensation prescribed). *See, generally*, G. Holt *Concurrent Jurisdiction of the Federal and State Courts* 196-97 (1888). *See also Jupiter Wreck, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 691 F. Supp. 1377 (S.D. Fla. 1988)* (state court may properly hear *in personam* action brought by State of Florida seeking injunction and damages for alleged violation of state statues limiting rights of treasure salvors to salvage property in submerged lands owned by the State because such an action is not within the exclusive admiralty jurisdiction of the federal court). For a discussion of the enforceability of state law in salvage matters, see § 112 of the text at nn.26-29.

(n21)Footnote 21. But if the owner of the salved property is a state, the federal courts will not be able to provide the salvor with complete relief, even in an *in rem* suit, unless the state waives its *Eleventh Amendment* immunity. *See Florida Dept. of State v. Treasure Salvors, Inc., 458 U.S. 670, 1983 AMC 144 (1982)* ; *Platoro Ltd. v. Unidentified*

Remains of A Vessel, 695 F.2d 893, 1984 AMC 2288 (5th Cir.) , cert. denied, 464 U.S. 818 (1983) .

In some cases there may be no liability *in personam. See Lambros Seaplane Base v. The Batory, 215 F.2d 228 (2d Cir. 1954)* (owners of salved property are not liable *in personam* unless they either requested the service or accepted and possessed the salved property).

(n22)Footnote 22. *See* Young v. Smith, 1966 AMC 2654 (Civ. Ct. Md. 1966) ; Cashmere v. De Wolf, 4 N.Y. Super. (2 Sand.) 379 (1849).

(n23)Footnote 23. *See* § 122 at nn. 11-13, *supra.*

(n24)Footnote 24. *See* § 125 at nn. 5-7, *infra.*

(n25)Footnote 25. *Taylor v. Carryl, 61 U.S. (20 How.) 583 (1857)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 124

§ 124 Exclusive Admiralty Jurisdiction *In Rem.*

The right to proceed *in rem* is the distinctive remedy of the admiralty and is administered exclusively by the United States courts exercising admiralty jurisdiction. No state can confer jurisdiction upon its courts to proceed *in rem* for any cause of action within the Admiralty Jurisdiction, n1 nor could Congress give such power to a state, since it would be contrary to the constitutional grant of such power to the federal government.

The saving clause of the Judiciary Act, and of the present procedural statute, n2 expressly preserving for the benefit of suitors all remedies to which they are entitled in a jurisdiction other than admiralty, does not contemplate the use of the admiralty *in rem* remedy in a common law court. Its meaning is that in cases of concurrent jurisdiction in admiralty and at common law, the jurisdiction in the latter is not taken away. n3 The remedy which state courts may administer, though it may be subject to regulation and modification by state statute, must be according to the general course of the common law. n4 The proceeding *in rem*, according to methods of maritime law, is the exclusive prerogative of the federal courts possessing civil admiralty and maritime jurisdiction. n5 Consequently, one may enforce maritime liens including those created by state law by an action *in rem* only in federal court, but one may sue on the underlying debt in an *in personam* action in federal or state court. n6

There is one exception to this rule. State courts have jurisdiction to seize, condemn, and forfeit any vessel or equipment employed in maritime activity for violation of a local law where such forfeiture and condemnation is specifically authorized by local law. n7

The common law is wholly incompetent to give the peculiar remedy afforded by the Limited Liability Act, n8 although when there is but one possible damage claimant, the shipowner has been able to obtain the advantage of the Act of Congress in a state court, by setting up the privilege in his pleading. n9

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem Actions GenerallyAdmiralty LawPractice & ProcedureAttachment & GarnishmentLimitations on LiabilityAdmiralty LawPractice & ProcedureJurisdictionAdmiralty

LawPractice & ProcedureStatutory AuthorityCivil ProcedureJurisdictionSubject Matter JurisdictionJurisdiction Over ActionsExclusive Jurisdiction

FOOTNOTES:

(n1)Footnote 1. *Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 1924 AMC 418 (1924)* ; *Rounds v. Cloverport Foundry & Mach. Co., 237 U.S. 303, 307, 308 (1915)* ; *The Robert W. Parsons, 191 U.S. 17, 36-38 (1903)* ; *The Glide, 167 U.S. 606 (1897)* ; *The Belfast, 74 U.S. (7 Wall.) 624 (1868)* ; *The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1866)* ; *The Moses Taylor, 71 U.S. (4 Wall.) 411 (1866)* ; *Acker v. The City of Athens, 177 F.2d 961, 1950 AMC 282 (4th Cir. 1949)* ; Lynchburg Crossing, Inc. v. S.S. M/V City of Port Allen, 1982 AMC 2072 (S.D. Tex. 1980) (since state court has no jurisdiction to proceed *in rem*, federal court cannot acquire *in rem* jurisdiction when action is removed to federal court); *Todd Shipyards v. The City of Athens, 83 F. Supp. 67, 1949 AMC 572 (D. Md. 1949)* .

In place of seizure of a vessel, a court can acquire *in rem* jurisdiction by other means including the posting of a letter of credit or a letter of undertaking. "A traditional letter of undertaking provides that, in consideration of the vessel not being seized and released on bond, the vessel owner will file a claim to the vessel and pay any judgment rendered against the vessel even if the vessel itself is subsequently lost." *Panaconti Shipping Co. v. M/V Ypapanti, 865 F.2d 705, 1989 AMC 1417 (5th Cir. 1989)* . *See generally* Friedell & Healy, *An Introduction to* In Rem *Jurisdiction and Procedure in the United States, 20 J. Mar. L. & Com. 55 (1989)*. In *Panaconti* the parties entered into a stipulation that the court held was the equivalent of a letter of undertaking. The stipulation stated its purpose was to avoid arrest of the vessel but did not indicate an intention to abandon its *in rem* Territorial courts have jurisdiction *in rem* as well as *in personam* when appropriately authorized by statute. *American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511 (1828)* ; *Meaamaile v. American Samoa, 550 F. Supp. 1227 . 1984 AMC 907 (D. Hawaii 1982)* .

(n2)Footnote 2. *28 U.S.C. § 1333*.

(n3)Footnote 3. *Waring v. Clarke, 46 U.S. (5 How.) 441 (1847)* .

(n4)Footnote 4. *Steamboat Co. v. Chase, 83 U.S. (16 Wall.) 522 (1872)* ; *Berton v. Tietjen & Lang Dry Dock Co., 219 F. 763, 770 (D.N.J. 1915)* .

(n5)Footnote 5. *28 U.S.C. § 1333*; *Kennedy v. Cunard S.S. Co., 197 A.D. 459, 466, 467, 189 N.Y.S. 402 (1921)* ; *MacDougall's Cape Cod Marine Serv. v. One Christina 40 Foot Vessel, 900 F.2d 408 (1st Cir. 1990)* (due process for non-maritime lien claims required at least a letter to his last known address; notice of maritime lien claims was also inadequate where plaintiff was exclusive custodian of vessel and where plaintiff's intent was to avoid giving notice).

(n6)Footnote 6. *The Glide, 167 U.S. 606 (1897)* ; *The J.E. Rumbell, 148 U.S. 1 (1893)* ; *The Kalorama, 77 U.S. (10 Wall.) 204 (1869)* ; *The Belfast, 74 U.S. (7 Wall.) 624 (1868)* ; *The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1866)* ; *The Moses Taylor, 71 U.S. (4 Wall.) 411 (1866)* ; *New Jersey Steam Nav. Co. v. Merchants' Bank, 47 U.S. (6 How.) 344 (1848)* ; *Peyroux v. Howard, 32 U.S. (7 Pet.) 324 (1833)* ; *The St. Jago de Cuba, 22 U.S. (9 Wheat.) 409 (1824)* ; *Burdine v. Walden, 91 F.2d 321, 1937 AMC 1149 (5th Cir. 1937)* ; Johnny's Automatic Transmission v. One 1971 Viking "Ellen J," *635 F. Supp. 442, 1986 AMC 1166 (N.D. Ohio 1985)* . *But see Gulf Coast Marine, Inc. v. Theriot, Duet & Theriot, Inc., 1985 AMC 1778 (La. Civ. Dist. Ct. 1983)* (dismissing *in personam* action that was joined with *in rem* action).

(n7)Footnote 7. *C.J. Hendry Co. v. Moore, 318 U.S. 133, 1943 AMC 156 (1943)* ; *Smith v. Maryland, 59 U.S. (18 How.) 71 (1855)* .

(n8)Footnote 8. *Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104, 123 (1871)* .

(n9)Footnote 9. *Ex parte Green, 286 U.S. 437, 1932 AMC 802 (1932)* ; *Langnes v. Green, 282 U.S. 531, 1931 AMC 511 (1931)* ; *Carlisle Packing Co. v. Sandanger, 259 U.S. 255 (1922)* ; *Green v. Langnes, 82 F.2d 926, 1936*

AMC 760 (9th Cir. 1936) ; *Green v. Langnes, 177 Wash. 536, 32 P.2d 565, 1936 AMC 764 (1934)* . *See also A. Paladini, Inc. v. Superior Court, 218 Cal. 114, 21 P.2d 941, 1933 AMC 989 (1933)* ; *Larsen v. Northland Transp. Co., 292 U.S. 20, 1934 AMC 501 (1934)* (while the shipowner in certain circumstances may ask limitation in the state court, he is not compelled to do so and may procure such limitations by separate proceedings in a federal court after judgment).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 125

§ 125 State Court Attachments and Non-Maritime Liens.

State courts may enforce liens given by state statutes against boats and vessels, provided the subject matter of the suit is not maritime in its nature and hence not within the admiralty jurisdiction of the federal courts. n1 For example, liens given by state statutes for the building of a vessel may be enforced in state courts and not in admiralty, because such construction contracts have been held not to be of a maritime character. n2

The admiralty court may, however, in a suitable case, entertain a petition for the limitation of the shipowner's liability and thereupon stay the progress of the cause in the state court and require the damage claimant to file his claim in the admiralty court and to accept the ranking of his lien in the general marshalling of all the liens by that court. n3

Even though the contract in suit be one upon which an action *in rem* could be maintained in admiralty, a state court in a personal action against the vessel's owner may use an auxiliary attachment against the vessel (like any other property) to afford security for payment of the personal judgment; n4 and the United States District Court exercising common law jurisdiction may do the same. n5 The title to a vessel so obtained is not better than similar title to any other species of property under the same circumstances; it does not possess the peculiar maritime virtue of being inherently "good against the world." n6 To constitute an invasion of admiralty jurisdiction it must appear that the cause of action is maritime and that the state court procedure is *in rem.* In *Knapp, Stout & Co. v. McCaffrey,* n7 a bill in equity to foreclose a common law possessory lien upon a raft for towage was held to be within the jurisdiction of the state court, the proceeding being nothing more than a suit *in personam* to enforce a common law remedy with an incidental attachment of the *res.* The Supreme Court said:

> "If the cause of action be one cognizable in admiralty *and* the suit be *in rem* against the thing itself, though a monition be also issued to the owner, the proceeding is essentially one in admiralty. If, upon the other hand, the cause of action be not one of which a court of admiralty has jurisdiction, *or* if the suit be *in personam* against an individual defendant, with an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law and within the saving clause of the statute ... of a common law remedy." n8

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime LiensNatureJurisdictionAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem Actions GenerallyAdmiralty LawPractice & ProcedureJurisdictionCivil ProcedureJurisdictionPersonal Jurisdiction & In Rem ActionsGeneral Overview

FOOTNOTES:

(n1)Footnote 1. *Martin v. West, 222 U.S. 191 (1911)* ; *Johnson v. Chicago & Pac. Elevator Co., 119 U.S. 388 (1886)* ; *Edwards v. Elliott, 88 U.S. (21 Wall.) 532, 22 L. Ed. 487 (1874)* ; *David C. Reid Co. v. Nantucket Sound Transport, 42 F. Supp. 304, 1942 AMC 1670 (E.D.N.Y. 1941)* ; *Arques v. National Superior Co., 67 Col. App. 2d 763, 155 P.2d 643 (1945)* ; *Sinton v. The R.R. Roberts, 34 Ind. 448 (1870)* ; *Wyatt v. Stuckley, 29 Ind. 279 (1868)* ; *Globe Iron Works Co. v. Huron Transp. Co. (The John B. Ketcham, 2d), 100 Mich. 583, 59 N.W. 247 (1894)* ; *Stapp v. The Clyde, 43 Minn. 192, 45 N.W. 430 (1890)* ; Fisher v. Luling (The Harriet), 33 N.Y. Super. 337 (1871); *Spitzer v. The Annette Ralph, 110 Or. 461, 223 P. 253 (1924)* ; *Cordrey v. The Bee, 102 Or. 636, 201 P. 202 (1921)* ; *Farwest Steel Corp. v. Desantis, 102 Wash. 2d 487, 687 P.2d 207, 1985 AMC 412 (1984)* .

(n2)Footnote 2. *The Winnebago, 205 U.S. 354 (1907)* ; *Edwards v. Elliott, 88 U.S. (21 Wall.) 532 (1874)* ; *Globe Ins. Works v. Huron Transp. Co. (The John B. Ketcham, 2d), 97 F. 872 (6th Cir. 1899)* ; *Goudy & Stevens, Inc. v. Cable Marine, Inc., 665 F. Supp. 67 (D. Me. 1987)* . *See Chase Manhattan Financial Servs. v. McMillian, 896 F.2d 452, 1990 AMC 1702 (10th Cir. 1990)* . However, the continued validity of the doctrine holding that contracts to construct a vessel are non-maritime is in doubt. *See, generally,* § 186, *infra.*

Similarly, prior to the enactment of the Admiralty Extension Act, *46 U.S.C. § 30101* (formerly *46 U.S.C. § 740*), it was held that the state courts may enforce a state-law lien upon a vessel, domestic or "foreign" (in the state and not the national sense) for a non-maritime tort committed the vessel by proceedings analogous to foreclosure for, as the federal court had no admiralty jurisdiction, there was no infringement of its jurisdiction. *Martin v. West, 222 U.S. 191 (1911)* ; *Johnson v. Chicago & Pac. Elevator Co., 119 U.S. 388 (1886)* . Under the Admiralty Extension Act these cases are considered maritime. *See* § 173, *infra.*

(n3)Footnote 3. *Richardson v. Harmon, 222 U.S. 96 (1911)* ; *United States v. Norfolk-Berkley Bridge Corp., 29 F.2d 115, 1928 AMC 1636 (E.D. Va. 1928)* .

(n4)Footnote 4. *Rounds v. Cloverport Foundry & Machine Co., 237 U.S. 303 (1915)* ; *International Milling Co. v. Columbia Transp. Co., 292 U.S. 511, 1934 AMC 945 (1934)* ; *Crofton v. Pappas, 75 Cal.App. 2d 814, 171 P.2d 959, 1947 AMC 252 (1946)* ; *United States Guar. Co. v. Matson Navigation Co., 50 Cal. App. 2d 637, 123 P.2d 537, 1942 AMC 653 (1942)* .

(n5)Footnote 5. Carr v. Union Sulphur Co. (The Frieda), 1937 AMC 227 (E.D. Pa. 1936) (a Jones Act case).

(n6)Footnote 6. *Belcher Co. v. M/V Maratha Mariner, 724 F.2d 1161, 1984 AMC 1679 (5th Cir. 1984)* .

(n7)Footnote 7. *177 U.S. 638 (1900)* .

(n8)Footnote 8. *Id. at 648* .

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Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 126

§ 126 Equitable Remedies in Admiralty Cases.

Almost one hundred years ago, in *The Eclipse,* n1 Mr. Chief Justice Fuller confidently summarized the limitations on an admiralty court's equitable powers:

> "While the court of admiralty exercises its jurisdiction upon equitable principles, it has not the characteristic powers of a court of equity. It cannot entertain a bill or libel for specific performance, or to correct a mistake; or declare or enforce a trust or an equitabletitle; or exercise jurisdiction in matters of account merely; or decree the sale of a ship for an unpaid mortgage, or declare her to be the property of the mortgagees and direct possession of her to be given to them." n2 In accordance with the doctrine stated in *The Eclipse*, there is substantial authority that admiralty does not take cognizance of specific performance n3 or of trusts n4 (other than general average trusts n5 and has no power to reform an instrument n6 nor to appoint a receiver n7 (except under the Ship Mortgage Act, 1920) n8 nor to issue an injunction, n9 nor to prevent unjust enrichment by means of a constructive trust, n10 nor to require an accounting except as incidental to the main relief and to jurisdiction acquired upon acknowledged grounds. n11 Also, it has been held that admiralty, having obtained jurisdiction, will not (except in a limitation of liability proceeding) usually dispose of non-maritime subjects for the purpose of doing complete justice after the manner of courts of equity. n12 The remedy of following and applying assets, as afforded by a creditor's bill or in bankruptcy, may not be worked out in an admiralty proceeding, n13 although a similar result may sometimes be obtained by enforcing the maritime lien against the proceeds of the sale of the ship or cargo. Nonetheless, the older doctrine recognized that an admiralty court is bound by its nature and constitution to give judgment as to all matters within its jurisdiction upon equitable principles and according to the rules of natural justice. n14

The doctrine of *The Eclipse* has been much criticized, n15 has been narrowed by statute, and has been abandoned altogether by some of the lower courts. It has long been established that admiralty courts will recognize equitable claims when raised as a defense. n16 Thus, admiralty may give effect to an equitable estoppel, n17 may prevent a party from taking advantage of his own fraud in the contract itself, n18 and may treat a contract as nullified by fraud n19 or entertain a defense counting on fraudulent misrepresentations. n20

In the 1950 case of *Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.,* n21 the Supreme Court allowed the libellant suing for lost cargo to seek to set aside an allegedly fraudulent transfer of an vessel attached as security for the maritime claim. The opinion recognized that "a court of admiralty will not enforce an independent equitable claim merely because it pertains to maritime property." n22 Hence, a creditor's bill to set aside a fraudulent transfer of a vessel would not be within the admiralty jurisdiction. But the Court approved the granting of equitable relief when such relief was "subsidiary to issues wholly within admiralty jurisdiction." n23 To do otherwise would be "to hobble a legal system that has been so responsive to the practicalities of maritime commerce and so inventive in adapting its jurisdiction to the needs of that commerce." n24

Swift & Co. cannot be fairly read as overruling the doctrine of *The Eclipse.* One could argue that the Court's nod in favor of *The Eclipse* in excluding an equitable claim "merely because it pertains to maritime property" refers only to the various contracts involving vessels, such as contracts to sell or build a vessel, that are deemed to be non-maritime. n25 But the Court seemed consciously to avoid a general statement about the equitable power concerning maritime matters, restricting itself to the power over non-maritime matters to protect its maritime jurisdiction. n26 Nonetheless, the language of the opinion opens the way to abandoning "the sterile theory of judicial separatism" n27 that underlays *The Eclipse.*

It is unclear why the federal courts felt themselves incapable of providing equitable relief where the only basis of their jurisdiction was the admiralty nature of the claim. It may have simply been a carry-over from the old English practice severely limiting the *in personam* jurisdiction of the High Court of Admiralty, or perhaps it developed as a means of checking the growth of federal power. n28 But whatever its source, there is no constitutional barrier to the exercise of equitable powers by a court having admiralty jurisdiction, n29 and Congress has authorized federal courts to issue injunctions in cases involving petitions to limit liability n30 and in maritime arbitration cases. n31 Nor do defendants in maritime cases have a substantive right to be free of equitable relief, as such relief is available in state or in federal courts having jurisdiction on some grounds other than the maritime nature of the dispute. More fundamentally, the difficulty of providing equitable relief vanishes once it is perceived that the "admiralty court" is but a federal court having jurisdiction because the subject matter before it is maritime. n32 Special rules of procedure still apply to certain maritime claims, but it can hardly be denied that in a case properly before it a federal court plainly has the *power* to issue injunctions or to grant other equitable relief. n33 And the exercise of that power in maritime cases is justified if the federal courts are to be effective in deciding maritime cases and establishing maritime law.

In recent years, some of the lower courts have jettisoned the old doctrine and have granted equitable relief when merited in admiralty cases. n34 As the First Circuit has put it:

> "This is a departure from the traditional rule, but we find no constitutional, statutory or policy reasons of substance for recognizing a continued limitation upon the power of federal courts sitting in admiralty, nor does it seem likely that the Supreme Court would today adhere to the traditional rule. See *Swift & Co., supra.* ... District courts sitting in admiralty, which now operate under virtually the same procedures as they do otherwise, should be able to provide the kind or degree of remedy that will properly and fully redress an injury within their jurisdiction, in keeping with the same principles they would apply in other comparable cases. ... [W]here equitable relief is otherwise proper under usual principles, it will not be denied on the ground that the court is sitting in admiralty." n35

In the colorful language of the Fifth Circuit:

> "The Chancellor is no longer fixed to the woolsack. He may stride the quarter-deck of maritime jurisprudence and, in the role of admiralty judge, dispense, as would his land-locked brother, that which equity and good conscience impels." n36

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureEquitable ReliefAdmiralty LawPractice & ProcedureJurisdictionCivil ProcedureEquityGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *135 U.S. 599 (1890)* .

(n2)Footnote 2. *135 U.S. at 608* (citations omitted).

(n3)Footnote 3. *Richard Bertram & Co. v. The Yacht, Wanda, 447 F.2d 966, 1971 AMC 1841 (5th Cir. 1971)* ; *The Guayaquil, 29 F. Supp. 578, 1939 AMC 1294 (E.D.N.Y. 1939)* ; *Kynoch v. The S.C. Ives, 14 F. Cas. 888 (N.D. Ohio 1856)* (No. 7958).

(n4)Footnote 4. *The Larch, 14 F. Cas. 1139 (C.C.D. Me. 1855)* (No. 8085); *Kellum v. Emerson, 14 F. Cas. 263 (C.C.D. Mass. 1854)* (No. 7669); *The G. Reusens, 23 F. 403 (S.D.N.Y. 1885)* ; *Davis v. Child, 7 F. Cas. 112 (D. Me. 1840)* (No. 3628); *The Perseverance, 19 F. Cas. 307 (S.D.N.Y. 1833)* (No. 11,017); *Port Welcome Cruises, Inc. v. S.S. Bay Belle, 215 F. Supp. 72, 1964 AMC 2674 (D. Md.)* , *aff'd, 324 F.2d 954 (4th Cir. 1963)* (An admiralty court has never imposed a trust on non-maritime property.).

(n5)Footnote 5. *The West Arrow, 80 F.2d 853, 1936 AMC 165 (2d Cir. 1936)* .

St. Paul Fire & Marine Ins. Co. v. The Motomar, 211 F.2d 690, 1954 AMC 870 (2d Cir. 1954) (A general average security deposit relation is a trust, not a debtor and creditor relation. When a general average deposit had been made in Spain in pesetas where the voyage ended, the cargo insurer, an American corporation, could not disregard a tender of the credit balance in Spain and sue for dollars in New York.).

(n6)Footnote 6. *Paul Marsh, Inc. v. Edward A. Goodman Co., 612 F. Supp. 635, 1986 AMC 396 (S.D.N.Y. 1985)* ; *Gronvold v. Suryan, 12 F. Supp. 429, 1936 AMC 105 (W.D. Wash. 1935)* ; *Meyer v. Pacific Mail S.S. Co., 58 F. 923 (N.D. Cal. 1893)* ; *Williams v. Providence Washington Ins. Co., 56 F. 159 (S.D.N.Y. 1893)* .

(n7)Footnote 7. *The Owego, 289 F. 263, 1923 AMC 713 (W.D. Wash. 1923)* ; *The Regent, 67 F. Supp. 149 (E.D.N.Y. 1946)* (in a possessory suit the court may approve a stipulation for the operation of the vessel by trustees and may compensate the trustees and their attorneys out of the fund created by insurance proceeds after the loss of the vessel).

(n8)Footnote 8. *46 U.S.C. § 952*; *The S.S. Southern Cross, 23 F. Supp. 613, 1938 AMC 839 (E.D. N.Y. 1938)* ; thereafter Congress amended the statute to provide that the Maritime Commission may itself be appointed receiver whenever it is the mortgagee: Bankruptcy Act of June 22, 1938, ch. XIV, §§ 701-703.

(n9)Footnote 9. *Schoenamsgruber v. Hamburg Am. Line, 294 U.S. 454, 1935 AMC 423 (1935)* ; *Streckfus Steamers v. Mayor & Aldermen of City of Vicksburg, 81 F.2d 298, 1936 AMC 572 (5th Cir. 1936)* ; *Nyon Technical Commercial, Inc. v. Equitable Equip. Co., 341 F. Supp. 777 (E.D. La. 1972)* ; Crain v. American Waterways Corp., 1956 AMC 1806 (E.D. Pa. 1956) ; *Sound Marine & Mach. Corp. v. Westchester County, 45 F. Supp. 980, 1942 AMC 1344 (S.D.N.Y. 1942)* , *aff'd, 135 F.2d 464 (2d Cir. 1943)* ; J.D. & A.B. Spreckles Co. v. Steamship Takaoka Maru, 1942 AMC 402 (S.D.N.Y. 1942) ; *Paterson v. Dakin, 31 F. 682 (S.D. Ala. 1887)* .

Injunction to compel the United States Marshal to execute a contract with salvors denied in Bonifay v. S.S. Paraporti, 1956 AMC 1898 (E.D. Va. 1956) , citing text.

Injunction of labor picketing of vessels is usually sought in either federal (civil) court or state courts: *Marine Cooks & Stewards v. Panama S.S. Co., 362 U.S. 365, 1960 AMC 783 (1960)* ; *Khedivial Line, S.A.E. v. Seafarer's Int'l Union*

(S.S. Cleopatra), 278 F.2d 49, 1960 AMC 795 (2d Cir. 1960) ; Incres S.S. Co. v. International Maritime Workers Union, 1960 AMC 991 (N.Y. Sup. Ct. 1960) .

(n10)Footnote 10. *Beverly Hills Nat'l Bank & Trust Co. v. Compania De Navegacione Almirante, S.A., 437 F.2d 301 (9th Cir.) , cert. denied, 402 U.S. 996, 91 S. Ct. 2173, 29 L. Ed. 2d 161 (1971)* . But the court can have pendent jurisdiction over the claim. *Id.*

An admiralty court can provide relief in quasi-contract to prevent unjust enrichment arising out of a maritime contract. *Archawski v. Hanioti, 350 U.S. 532, 1956 AMC 742 (1956)* . Such relief is also probably available if the unjust enrichment arises out of a maritime transaction in the absence of a maritime contract. *See Gulf Oil Trading Co. v. Creole Supply, 596 F.2d 515, 1979 AMC 585 (2d Cir. 1979)* ; *Peninsular & Oriental Steam Navigation Co. v. Overseas Oil Carriers, Inc., 553 F.2d 830, 1977 AMC 283 (2d Cir.) , cert. denied, 434 U.S. 859 (1977)* ; *Sword Line v. United States, 228 F.2d 344, 1956 AMC 47 (2d Cir. 1955) , on reh'g, 230 F.2d 75, 1956 AMC 1277 (2d Cir.) , aff'd, 351 U.S. 976 (1956)* . The court in *Gulf Oil* also had diversity jurisdiction and, as demonstrated by the pleadings, this was also apparently true in *Peninsular & Oriental. See* Friedell, *Compensation and Reward for Saving Life at Sea, 77 Mich. L. Rev. 1218, 1286*-88 (1979). In its *per curiam* affirmance in *Sword Line*, the Supreme Court noted, "The libel, though dependent on a statute, alleges unjust enrichment from a maritime contract." The question of quasi-contract relief in admiralty proceedings should be separated from the propriety of equitable relief because quasi-contract is a legal remedy.

One case contains the loose statement that "Admiralty has power to give equitable relief in causes of action based upon the concept of unjust enrichment when the claim arises out of a maritime contract." *Sommer Corp. v. Panama Canal Co., 329 F. Supp. 1187, 1191, 1972 AMC 453, 459 (D.C.Z. 1971) , modified, 475 F.2d 292 (5th Cir. 1973)* . But the authority cited for the proposition, H. Baer, *Admiralty Law of the Supreme Court* 363-67 (2d ed. 1969), is limited to a discussion of relief in quasi-contract.

(n11)Footnote 11. *The Emma B., 140 F. 771 (D.N.J. 1906)* . *W.E. Hedger Transp. Corp. v. Ira S. Bushey & Sons, 155 F.2d 321, 1946 AMC 788 (2d Cir.) , cert. denied, 329 U.S. 735 (1946)* (an admiralty court has jurisdiction to state an account as an incident to the foreclosure of a mortgage on vessels).

(n12)Footnote 12. *The Ada, 250 F. 194 (2d Cir. 1918)* ; *The Ciano, 63 F. Supp. 892, 1945 AMC 1474 (E.D. Pa. 1945)* . *W.E. Hedger Transp. Corp. v. Ira S. Bushey & Sons, 155 F.2d 321, 1946 AMC 788 (2d Cir.) , cert. denied, 329 U.S. 735 (1946)* (in a suit to foreclose a mortgage on vessels, the court has no jurisdiction over the mortgagor's claims for abuse of process in the seizure of the vessels or claims for payments made to the mortgagee under mutual mistake of fact). Section quoted: *American Hawaiian Ventures, Inc. v. M/V J. Latuharhary, 257 F. Supp. 622, 1966 AMC 1363 (D.N.J. 1966)* .

(n13)Footnote 13. The Melmay, 1932 AMC 1396 (D.C.Z. 1932) .

(n14)Footnote 14. *New York Dock Co. v. S.S. Poznan, 274 U.S. 117, 1927 AMC 723 (1927)* ; *United States v. Cornell Steamboat Co., 202 U.S. 184, Treas. Dec. 27365 (1906)* ; *The Kongo, 155 F.2d 492, 1946 AMC 1200 (6th Cir.) , cert. denied, 329 U.S. 735 (1946)* ; *Savas v. Maria Trading Corp., 285 F.2d 336, 1961 AMC 260 (2d Cir. 1960)* ; *The Kalfarli, 277 F. 391 (2d Cir. 1921)* ; *The David Pratt, 7 F. Cas. 22 (D. Me. 1839)* (No. 3597); *Brown v. Lull, 4 F. Cas. 407 (D. Mass. 1836)* (No. 2018); *Andrews v. Essex Fire & Marine Ins. Co., 1 F. Cas. 885 (D. Mass. 1822)* (No. 374). On several occasions Dr. Lushington expressed the view that the High Court of Admiralty exercises a legal as well as an equitable jurisdiction and that relief would be afforded if available in equity. *E.g., The Harriett, 166 Eng. Rep. 541 (Adm. 1841)* ; *The Johann Friederich, 166 Eng. Rep. 487 (Adm. 1839)* ; *The Monarch, 166 Eng. Rep. 481 (Adm. 1839) . See also The Cognac, 166 Eng. Rep. 281 (Adm. 1832)* .

Montauk Oil Transp. Corp. v. Sonat Marine, Inc., 871 F.2d 1169, 1989 AMC 1147 (2d Cir. 1989) ; *Black v. Red Star Towing & Transp. Co., 860 F.2d 30 (2d Cir. 1988)* (en banc) (equity which "is no stranger in admiralty" requires

third party tortfeasor to reimburse innocent shipowner for maintenance and cure payments limited to the third party's proportionate share of fault); *Walck v. Discavage, 741 F. Supp. 88 (E.D. Pa. 1990)* (federal statute of limitations applies but it does not prevent court from applying equitable principles of tolling); *Drew Ameroid Int'l v. M/V Green Star, 681 F. Supp. 1056, 1988 AMC 2570 (S.D.N.Y. 1988)* ("The maritime law prides itself upon equitable traditions and antecedents." It would be *prima facie* inequitable to make charterer pay freight for a voyage never performed.).

Sometimes courts applying equitable principles come quite naturally to think of themselves as having equitable power. *E.g., Kingstate Oil v. M/V Green Star, 815 F.2d 918 (3d Cir. 1987)* ("A district court sitting in admiralty ... has inherent equitable power to give priority to claims arising out of the administration of property within its jurisdiction where 'equity and good conscience' so require"). The primary case on which *Kingstate* is based, *New York Dock Co. v. S.S. Poznan, supra* , was careful to distinguish between applying equitable principles and giving equitable relief.

(n15)Footnote 15. *E.g.*, G. Gilmore & C. Black, *The Law of Admiralty* 43 (2d ed. 1975); American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts* 226-27 (1968); Zobel, *Admiralty Jurisdiction, Unification, and the American Law Institute, 6 San Diego L. Rev. 375 (1969)*; Morrison, *The Remedial Powers of the Admiralty, 43 Yale L. J. 1 (1933)*; Comment, *Foreclosing on The Eclipse Doctrine-- A Plea for Equity in Admiralty*, 11 Mar. Law. 301 (1986); Note, *An Assessment of the Availability of Injunctive Relief in Federal Courts Sitting in Admiralty After Pino v. Protection Maritime Insurance Co.*, 19 Colum. J. of Transnat'l L. 120 (1981); Note, *The Other Half of Executive Jet: The New Rationality in Admiralty Jurisdiction, 57 Tex. L. Rev. 977, 1004*-16 (1979); Note, *Admiralty Practice After Unification: Barnacles on the Procedural Hull, 81 Yale L. J. 1154 (1972).*

(n16)Footnote 16. *E.g., Rice v. Charles Dreifus Co., 96 F.2d 80 (2d Cir. 1938)* ; *Higgins v. Anglo-Algerian S.S. Co., 248 F. 386 (2d Cir. 1918)* ; *Chirurg v. Knickerbocker Steam Towage Co., 174 F. 188 (D. Me. 1909)* ; *The Daisy, 29 F. 300 (D. Mass. 1886)* . *See, generally, Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A., 339 U.S. 684, 1950 AMC 1089 (1950)* ; Morrison, *The Remedial Powers of The Admiralty, 43 Yale L. J. 1, 21 (1943)*. *But see C.N.R. Atkin v. Smith, 137 F.3d 1169, 1998 AMC 1239 (9th Cir. 1998)* (equitable principles not applied when there is an applicable statute).

(n17)Footnote 17. *Flores v. S.S. George Lykes, 181 F. Supp. 53, 1960 AMC 904 (D.P.R. 1960)* ; *Higgins v. Anglo-Algerian S.S. Co., 248 F. 386 (2d Cir. 1918)* .

In re United States, 212 F. Supp. 214, 1963 AMC 198 (E.D. La. 1962) , aff'd sub nom. Jarvis v. United States, 342 F.2d 799, 1966 AMC 1600 (5th Cir. 1965) (Generally, the United States government as the sovereign is not subject to a plea of estoppel.).

(n18)Footnote 18. *Higgins v. Anglo-Algerian S.S. Co., 248 F. 386 (2d Cir. 1918)* ; *The Hero, 6 F. 526 (E.D. Va. 1881)* ; *Pew v. Laughlin, 3 F. 39 (E.D. Pa. 1880)* .

(n19)Footnote 19. *The Stanley H. Miner, 172 F. 486 (E.D.N.Y. 1909)* . *See Mercantile Bank v. Flower Lighterage Co., 10 F.2d 705, 1926 AMC 747 (2d Cir.) , cert. denied, 271 U.S. 688 (1926)* .

(n20)Footnote 20. Deitcher Bros. v. Skibs, A/S Avanti, 1942 AMC 1466 (S.D.N.Y. 1942) ; *The Electron, 48 F. 689 (S.D.N.Y. 1891)* .

(n21)Footnote 21. *339 U.S. 684, 1950 AMC 1089 (1950)* .

(n22)Footnote 22. *339 U.S. at 690, 1950 AMC at 1094* .

(n23)Footnote 23. *See also Elliott v. MV Lois B., 980 F.2d 1001 (5th Cir. 1993)* (admiralty court may determine issue of fraudulent transfer).

339 U.S. at 692, 1950 AMC at 1095 .

(n24)Footnote 24. *339 U.S. at 691, 1950 AMC at 1095* .

(n25)Footnote 25. *See* § 186, *infra.*

(n26)Footnote 26. In *Atlanta Shipping Corp. v. Chemical Bank, 818 F.2d 240* , *reprinted in part, 1987 AMC 1856 (2d Cir. 1987)* . The court refused to exercise admiralty jurisdiction over a claim by a carrier that a bank received fraudulent transfers from a judgment debtor. Even though the dispute between the carrier and judgment debtor would have been within the court's admiralty jurisdiction, the court lacked admiralty jurisdiction over the claim against the bank because the carrier never invoked admiralty jurisdiction against the judgment debtor. A court will have admiralty jurisdiction to prevent a fraudulent transfer that occurs before judgment but only if it is "exercising admiralty jurisdiction over traditional admiralty claims." *818 F.2d at 248* . *See also Kommanditselskab Supertrans v. O.C.C. Shipping, Inc., 79 Bankr. 534 (S.D.N.Y. 1987)* (admiralty jurisdiction to prevent fraudulent transfer prior to judgment in admiralty case).

(n27)Footnote 27. *339 U.S. at 694, 1950 AMC at 1096* .

(n28)Footnote 28. *See* Morrison, *The Remedial Powers of the Admiralty, 43 Yale L. J. 1, 18* and 28 (1943). When the High Court of Admiralty was abolished, the Supreme Court of Judicature acquired the power to provide equitable relief in admiralty cases. Supreme Court of Judicature Act, 1873, 36 & 37 Vict. c. 66, §§ 16, 24. *Cf.* The Tubantia, 1924 P. 78 (injunction of rival salvors). *See, generally,* F. Wiswall, Jr., *The Development of Admiralty Jurisdiction Since 1800,* at 72 (1970). Apparently the first English statute to provide for *in personam* suits in admiralty was the Admiralty Court Act, 1854, 17 & 18 Vict. c. 78, § 13. Prior to that time, the High Court of Admiralty had on a few occasions proceeded by motions requiring the person served to appear and show cause, *e.g., The Meg Merrilies, 166 Eng. Rep. 434 (Adm. 1837)* ; *The Hope, 165 Eng. Rep. 440 (Adm. 1801)* , but it viewed the suit *in rem* as "the real foundation of this jurisdiction." *The Rapid, 166 Eng. Rep. 460, 461 (Adm. 1838)* .

(n29)Footnote 29. *Marine Transit Corp. v. Dreyfus, 284 U.S. 263, 1932 AMC 161 (1932)* .

(n30)Footnote 30. *46 U.S.C. § 185*; Fed. R. Civ. P. F(3). *See Hartford Accident & Indem. Co. v. S. Pac. Co., 273 U.S. 207 (1927)* .

(n31)Footnote 31. *9 U.S.C. §§ 4, 8.*

(n32)Footnote 32. *See, generally,* Currie, *The Silver Oar and All That: A Study of the Romero Case, 27 U. Chi. L. Rev. 1 (1959).*

(n33)Footnote 33. Although unification of the Admiralty and Civil Rules of Procedure in 1966 cannot enlarge the jurisdiction of the federal courts, nothing in the modern rules of procedure bars a federal court having admiralty jurisdiction from providing equitable relief. Rule 1 creates a single cause of action, Rule 18 allows free joinder of claims, and Rule 65 provides for injunctions without any exclusion of cases within the admiralty jurisdiction. *Compare* Colby, *Admiralty Unification, 54 Geo. L. J. 1258, 1268*-69 (1966) (unification has removed barrier to providing equitable relief); American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts,* 226-27 (1968) (same) *with* Robertson, *Admiralty Procedure and Jurisdiction After the 1966 Unification, 74 Mich. L. Rev. 1628, 1637*-45 (1976) (unification does not cure the senseless doctrine). *Cf. Snyder v. Whittaker Corp., 839 F.2d 1085, 1988 AMC 2534 (5th Cir. 1988)* ("To make prejudgment interest depend on the route by which a plaintiff arrived in federal court is to confuse jurisdiction with remedy in a way no longer accepted in other areas of the law"); *Lathrop v. Unidentified, Wrecked & Abandoned Vessel, 817 F. Supp. 953 (M.D. Fla. 1993)* (no injunction can be issued unless court has in personam jurisdiction over party sought to be enjoined).

(n34)Footnote 34. *Farrell Lines, Inc. v. Ceres Terms., 161 F.3d 115 (2d Cir. 1998)* ; *Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 640 F.2d 560, 1981 AMC 1857 (5th Cir. 1981)* (injunction of rival salvor); *Pino v. Protection Maritime Ins. Co., 599 F.2d 10, 1979 AMC 2459 (1st Cir.) , cert. denied, 444 U.S. 900*

(1979) (injunction of maritime tort); *Farrell Lines Inc. v. Columbus Cello-Polly Corp., 32 F. Supp. 2d 118 (S.D.N.Y. 1997)* (injunction against relitigation in any other forum) (quoting text); *Burmah Oil Tankers, Ltd. v. Trisun Tankers, Ltd., 687 F. Supp. 897 (S.D.N.Y. 1988)* (exercising its general equitable power, court stays arbitration where court had earlier confirmed arbitration award and one of the parties sought to arbitrate a second dispute that the court concluded was barred by res judicata; the court reasoned that since a federal court can enjoin state court proceedings that threaten to relitigate and impair a federal judgment, it ought to have the same power "to protect judgments against later arbitration proceedings"); *China Trade & Dev. Corp. v. M.V. Chong Yong, 1987 AMC 2533 (S.D.N.Y.) , rev'd on other grounds, 837 F.2d 33 (2d Cir. 1987)* (injunction to stop party from proceeding with simultaneous litigation in foreign forum); Phoenix Marine Enters. v. One (1) Hylas 46' *Convertible etc., 1987 AMC 2548 (S.D. Fla. 1987)* (injunction that party stop advertising sale of particular type of yacht and specific performance of oral agreement to sell a particular yacht and to act as distributor for that type of yacht); *Indian River Recovery Co. v. The China, 645 F. Supp. 141 (D. Del. 1986)* (injunction of rival salvor); *McKeithen v. The S.S. Frosta, 426 F. Supp. 307, 1978 AMC 12 (E.D. La. 1977)* (exercising equitable powers, court can establish plaintiff discovery and trial committee and fix basis for attorneys' fees to be paid the committee); *McKie Lighter Co. v. City of Boston, 335 F. Supp. 663, 1972 AMC 752 (D. Mass. 1971) . Cf. Vaughan v. Atkinson, 369 U.S. 527, 530, 1962 AMC 1131, 1133-34 (1962)* (the Court awarded counsel fees, and said, "Equity is no stranger in admiralty; admiralty courts are, indeed, authorized to grant equitable relief."); *Kingstate Oil v. M/V Green Star, 815 F.2d 918 (3d Cir. 1987)* ("A district court sitting in admiralty ... has inherent equitable power to give priority to claims arising out of the administration of property within its jurisdiction where "equity and good conscience' so require"); *Nissan Motor Corp. in U.S.A. v. Maryland Shipbldg. & Drydock Co., 544 F. Supp. 1104, 1983 AMC 663 (D. Md. 1982) , aff'd without op., 742 F.2d 1449 (4th Cir. 1984)* (court denied injunction because adequate remedy existed at law, no dispute apparently concerning power of admiralty court to issue injunction).

The Ninth Circuit also not yet endorsed the trend. In a 1971 case the court assumed that admiralty courts cannot grant relief for an "independent equitable claim," although it allowed such a claim to be heard as pendent to a maritime claim. *Beverly Hills Nat'l Bank & Trust Co. v. Compania De Navegacione Almirante, S.A., 437 F.2d 301 (9th Cir.) , cert. denied, 402 U.S. 996, 91 S. Ct. 2173, 29 L. Ed. 2d 161 (1971)* . Following *Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A., 339 U.S. 684, 1950 AMC 1089 (1950)* , the court has also allowed equitable relief when it is subsidiary or incidental to, or derivative of, an admiralty claim. *See B.P. N. Am. Trading, Inc. v. The Vessel Panamax Nova, 784 F.2d 975, 1986 AMC 1773 (9th Cir.) , cert. denied, 479 U.S. 849, 107 S. Ct. 175, 93 L. Ed. 2d 111 (1986)* (equitable power of admiralty court to award attorneys fees out of common fund). *Accord Pedersen v. M/V Ocean Leader, 578 F. Supp. 1534 (W.D. Wash. 1984)* (admiralty court can enforce agreement to settle a maritime case). *Cf. Clinton v. United States, 297 F.2d 899, 1961 AMC 2595 (9th Cir. 1961) , cert. denied, 369 U.S. 856 (1962)* (injunction of litigious seaman from making further claims on a 16-year-old cause of action).

In *Gave Shipping Co. v. Parcel Tankers, Inc., 634 F.2d 1156, 1981 AMC 985 (9th Cir. 1980)* , the court criticized the traditional rule, reasoning that an admiralty court which can apply equitable principles and which can issue injunctions in limitations proceedings "cannot be said to be wholly lacking in equitable powers." Nonetheless, the court adhered to the rule that stays of admiralty cases pending arbitration are not appealable. That rule was premised in part on the idea that since admiralty courts lack equitable powers, the stay cannot be treated as if it were an injunction. *See Schoenamsgruber v. Hamburg Am. Line, 294 U.S. 454, 1935 AMC 423 (1935)* ; 2 *Benedict on Admiralty* § 108.

Without addressing the possible jurisdictional limitations, a court has decided that in an in rem action a salvor in possession is entitled to exclude others from visiting the wreck site to photograph the wreck. *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel, 9 F. Supp.2d 624 (E.D. Va. 1998)* .

(n35)Footnote 35. *Pino v. Protection Maritime Ins. Co., 599 F.2d 10, 16, 1979 AMC 2459, 2467 (1st Cir.) , cert. denied, 444 U.S. 900 (1979)* .

(n36)Footnote 36. *Compania Anonima Venezolana De Navegacion v. A.J. Perez Export Co., 303 F.2d 692, 699, 1962 AMC 1710, 1720 (5th Cir.) , cert. denied, 371 U.S. 942 (1962)* (footnote omitted).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 127

§ 127 Jurisdiction and Choice of Law Under the Jones Act.

In 1920 Congress enacted what is popularly known as the Jones Act, which provides seaman with a cause of action against their employers for injury or death caused by negligence. n1 The Jones Act effectively bars any rights in regard to these matters being conferred by state law. n2

Jones Act actions may be brought in the federal or state courts, n3 or *in personam* in admiralty, n4 but not *in rem.* n5 If brought in state court, they may not be removed if the seaman objects. n6 No allegation or proof of diversity of citizenship is necessary to the jurisdiction of the district court in a Jones Act suit. n7 Although there are several circuits that hold the contrary, it seems that upon a proper showing a district court should be able to dismiss a Jones Act action for *forum non conveniens.* n8 In an early case, the Supreme Court held that the provision in the Act that "Jurisdiction" in Jones Act cases "shall be under the court of the district in which the defendant employer resides or in which his principal office is located" in fact refers to venue, not jurisdiction. n9 The recodification of the Jones Act in 2006 adopted the Supreme Court's interpretation. n9a Further it ruled that the defendant could waive the privilege conferred by this venue provision by entering a general appearance before or without claiming the privilege.

Later, in *Pure Oil Co. v. Suarez,* n10 the Supreme Court held that the definition of residence given in *28 U.S.C. § 1391(c)* was applicable to the Jones Act venue provision. This definition is as follows:

> "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

The period of limitation for a suit under the Jones Act is that provided by the Employers' Liability Act, *45 U.S.C. § 51* as amended from time to time. n11 When the Jones Act was passed, the period under the F.E.L.A. was two years and it was thought that this period stood crystallized in the Jones Act, and this view was advanced in the 6th edition of this treatise. It is clear, however, that the reference in the Jones Act is to the F.E.L.A. and its amendments. n12 Accordingly, the present period of limitation is three years. n13

A state court cannot reduce that time by applying its own statute of limitations. n14 Further, "[a]s an essential corollary

of that proposition, it may not qualify the seaman's Jones Act right by affixing a shorter limitation to his concurrent right of action for unseaworthiness." n15

Suit may be maintained under the Jones Act for injuries occurring on land while in the service of the ship, n16 or, as otherwise stated, while in the course of his employment, n17 or while on the pier or premises immediately adjacent to the ship on his way to or from the ship on shore leave. n18 It has been suggested that one test of liability for injuries received onshore is the relative proximity of the seaman to the ship at the time of the injury, n19 but the cases defining the liability of a ship for maintenance and cure following injury of the seaman ashore indicate that the question of liability *vel non* will not depend either on the occurrence of the injury in the course of the seaman's employment, in the strict sense of the term, or the relative proximity of the seaman to his ship at the time of injury.

The possible availability of a remedy under the workers' compensation law of the state does not affect the seaman's right to sue under the Jones Act for injuries received on shore. n20

The Jones Act is discussed in detail in Volume 1A.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActProcedureChoice of LawAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActProcedureJurisdictionAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActProcedureRemoval & VenueAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. *46 U.S.C. § 30104*. The statute as recodified in 2006 reads:

> Personal injury to or death of seamen
>
> (a) Cause of action. A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.
>
> (b) Venue. An action under this section shall be brought in the judicial district in which the employer resides or the employer's principal office is located.

The earlier version of the Jones Act, *46 U.S.C. § 688*, provided:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(n2)Footnote 2. *Gillespie v. United States Steel Corp., 379 U.S. 148, 1965 AMC 1 (1964)* ; *McAllister v. Magnolia Petroleum Co., 357 U.S. 221, 1958 AMC 1754 (1958)* ; *Lindgren v. United States, 281 U.S. 38, 1930 AMC 399 (1930)* .

(n3)Footnote 3. As examples:

Federal Courts: Van Beeck v. Sabine Towing Co., 300 U.S. 342 (1937) . But the *eleventh amendment* bars a Jones Act suit against a state in federal court. *Welch v. State Dept. of Highways & Public Transp., 107 S. Ct. 2941, 1987 AMC 2113 (1987)* . *State Courts:*

Sanders v. South Atlantic S.S., 49 Ga. App. 716, 1934 AMC 1394 (1934) ; *Messel v. Foundation Co., 274 U.S. 427, 1927 AMC 1047 (1927)* ; *Engel v. Davenport, 271 U.S. 33, 1926 AMC 679 (1926)* ; *Panama R.R. v. Vasquez, 271 U.S. 557, 1926 AMC 984 (1926)* . The Jones Act should be interpreted to achieve results which will be consistent with those of the admiralty law. The proceeding is to be governed by principles of the familiar *in personam* admiralty action: *Lopoczyk v. Chester A. Poling, Inc., 152 F.2d 457, 1946 AMC 40 (2d Cir. 1945)* .

Cf. Vojkovich v. Ursich, 49 Cal. App. 2d 268, 121 P.2d 803, 1942 AMC 299 (1942) ; *Macomber v. DeBardeleben Coal Co., 200 La. 633, 8 So. 2d 624, 1942 AMC 816 (1942)* . Whether the state court in which a Jones Act suit is brought proceeds in such manner that all the substantial rights of the parties under controlling federal law will be protected raises a federal question reviewable in the Supreme Court under § 237(b) of the Judicial Code (*28 U.S.C. § 344(b)*); *Garrett v. Moore-McCormack Co., 317 U.S. 239, 1942 AMC 1645 (1942)* . *Keough v. Cefalo, 330 Mass. 57, 110 N.E.2d 919, 1953 AMC 548 (1953)* .

(n4)Footnote 4. These factors determine choice of law, not subject matter jurisdiction. *Neely v. Club Med Management Services, 63 F.3d 166, 1996 AMC 776* ; *Lindgren v. United States, 281 U.S. 38, 1930 AMC 399 (1930)* ; *Baltimore S.S. Co. v. Phillips, 274 U.S. 316, 324-25, 1927 AMC 946, 952-53 (1927)* ; Carr v. Union Sulphur Co., 1937 AMC 227 (E.D. Pa. 1936) ; *Eckert v. Socony Vacuum Oil Co., 13 F. Supp. 342, 1935 AMC 1532 (E.D. Pa. 1935)* . The seaman who elects to sue under the Jones Act *in personam* in admiralty is not entitled to a jury trial; such a case is heard, in that court, by the single judge, like any other admiralty suit. *Cf. The Betsy Ross v. Ruljanovich, 145 F.2d 688, 1944 AMC 1468 (9th Cir. 1944)* .

(n5)Footnote 5. *Plamals v. The Pinar Del Rio, 277 U.S. 151, 1928 AMC 932 (1928)* ; *Samuels v. Munson S.S. Line, 63 F.2d 861, 1933 AMC 515 (5th Cir. 1933)* ; *The Roseville, 11 F. Supp. 150, 1935 AMC 896 (W.D. Wash. 1935)* ; *The Arizona, 5 F. Supp. 831, 1934 AMC 205 (W.D. Wash. 1934)* ; The Frank Lynch, 1927 AMC 987 (S.D.N.Y. 1927) . Thus the Jones Act suit is usually unsecured, unless a writ of foreign attachment may issue against a vessel or other property of the shipowner. *See* The Frieda, 1937 AMC 227 (D. Pa. 1936) ; *The New Brooklyn, 37 F. Supp. 955, 1941 AMC 319 (D. Mass. 1941)* ; *Roberts v. Consolidated S.S. Co., 38 F. Supp. 8, 1941 AMC 330 (W.D.N.Y. 1940)* ; *The Astra, 34 F. Supp. 152, 1940 AMC 1188 (D. Md. 1940)* . *Cf. Zouras v. Menelaus Shipping Co., 336 F.2d 209, 1964 AMC 1954 (1st Cir. 1964)* ; *The Betsy Ross, 145 F.2d 688, 1944 AMC 1468 (9th Cir. 1944)* .

(n6)Footnote 6. *Lirette v. N.L. Sperry Sun, Inc., 820 F.2d 116, 1987 AMC 2546 (5th Cir. 1987)* (en banc); *Perez v. Hornbeck Offshore Transp., LLC, 2011 U.S. Dist. LEXIS 46114 (E.D.N.Y. 2011)* ; *Fiolat v. Minnesota-Atlantic Transit Co., 31 F. Supp. 219, 1940 AMC 1324 (D. Minn. 1940)* ; *Kristiansen v. National Dredging Co., 4 F. Supp. 925, 1933 AMC 1360 (E.D.N.Y. 1933)* ; *Cameron v. American Mail Line, 5 F. Supp. 939, 1934 AMC 201 (D. Wash. 1934)* . *See Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 455, 2001 AMC 913, 925 (2001)* . The bar to removal is derived from *28 U.S.C. § 1445(a)*, which applies by its terms to actions under the Federal Employer's Liability Act (F.E.L.A.). The Jones Act, which incorporates all federal statutes "modifying or extending the common law right or remedy in cases of personal injury to railway employees," is held to incorporate the F.E.L.A. and *28 U.S.C. § 1445(a)*. *See Romero v. International Terminal Operating Co., 358 U.S. 354, 371 n. 29, 1959 AMC 832, 846 (1959)* . An order

remanding a Jones Act claim to state court is reviewable on appeal because a remand based on § 1445(a) is not based on a lack of subject matter jurisdiction. *28 U.S.C. § 1447(c)* precludes appeal of a remand for lack of subject matter jurisdiction. *Norfolk S. Ry. v. Demay, 592 F.3d 907 (8th Cir. 2010)* .

Beckwith v. American President Lines, 68 F. Supp. 353, 1946 AMC 1547 (N.D. Cal. 1946) (the inclusion of a cause of action for wages or bonus does not make the action removable where the gravamen of the complaint is negligence); *Pate v. Standard Dredging Corp., 193 F.2d 498, 1952 AMC 287 (5th Cir. 1952)* (an action combining a Jones Act claim for negligence and one under the general maritime law for unseaworthiness, where there is but a single invasion of a primary right, are not separate and independent claims or causes of action within the meaning of *28 U.S.C. § 1441(c)*, and such action brought in a state court is not removable); *Wamsley v. Tonomo Marine, Inc., 287 F. Supp.2d 657, 2003 AMC 2887 (S.D. W.Va. 2003)* (suit under Jones Act and for unseaworthiness and maintenance and cure is not removable).

Steele v. American S. African Line, 62 F. Supp. 636, 1945 AMC 1505 (N.D. Cal. 1945) . (Removal has been allowed on a showing that the defendant is not the employer of the plaintiff and that the grounds for federal jurisdiction exist, vis a vis, diversity of citizenship and the requisite amount in controversy). *Cf. Azzopardi v. Ocean Drilling & Exploration Co., 742 F.2d 890, 1986 AMC 434 (5th Cir. 1984)* (plaintiff held to have dropped Jones Act complaint against party sued in state court by amending complaint after removal to allege that other parties were the employer).

If the Jones Act claim has been fraudulently pleaded so as to prevent removal, the defendant may pierce the pleadings. The pleading is deemed fraudulent when it is baseless such that the removing party can show that there is no possibility that the plaintiff could establish a cause of action. *Burchett v. Cargill, Inc., 48 F.3d 173 (5th Cir. 1995)* ; *Lackey v. Atlantic Richfield Co., 990 F.2d 202 (5th Cir. 1993)* .

Where an injured seaman brought an action in the state court for negligence under the Jones Act and unseaworthiness under the general maritime law and, on petition, the action was removed to the federal court, where it was held that as there was just a single primary right involved, the case was a state court action. *Nickerson v. American Dredging Co., 129 F. Supp. 602, 1955 AMC 1299 (D.N.J. 1955)* . Jones Act claim founded on an insufficient allegation of an employment relationship between plaintiff longshoremen and defendant shipowner was held a fraud upon federal district court which had permitted removal of the action. *Rosario v. Waterman S.S. Corp., 158 F. Supp. 537, 1957 AMC 2063 (S.D.N.Y. 1957)* . Rodriguez v. National Bulk Carriers, 1962 AMC 2052 (D. Mass. 1962) .

(n7)Footnote 7. *Van Camp Sea Food Co. v. Nordyke, 140 F.2d 902, 1944 AMC 559 (9th Cir.) , cert. denied, 322 U.S. 760 (1944)* .

(n8)Footnote 8. *In re Air Crash Disaster Near New Orleans, La., 821 F.2d 1147, 1163 n. 25, 1987 AMC 2735 (5th Cir. 1987)* (en banc) (overruling several decisions); *Cruz v. Maritime Co. of Philippines, 702 F.2d 47, 1983 AMC 1615 (2d Cir. 1983)* ; *Sherrill v. Brinkerhoff Maritime Drilling, 615 F. Supp. 1021, 1985 AMC 2855 (N.D. Cal. 1985) , rev'd sub nom. Zipfel v. Halliburton Co., 832 F.2d 1477 (9th Cir. 1987)* ; *Doufexis v. Nagos S.S. Inc., 583 F. Supp. 1132, 1984 AMC 1377 (S.D.N.Y. 1983) . Cf. Ali v. Offshore Co., 753 F.2d 1327, 1333, 1985 AMC 2682, 2689 (5th Cir. 1985)* (*Gulf Oil* factors apply to Jones Act claims). *See also Piper Aircraft Co. v. Reyno, 454 U.S. 235, 1982 AMC 214 (1981)* (possibility of change of substantive law in alternative forum should ordinarily not begiven substantial weight). *Contra Zipfel v. Halliburton Co., supra* ; *Pereira v. Utah Transp., Inc., 764 F.2d 686, 1985 AMC 2743 (9th Cir. 1985)* ; *Needham v. Phillips Petroleum Co. of Norway, 719 F.2d 1481 (10th Cir. 1983)* ; *Szumlicz v. Norwegian Am. Lines, 698 F.2d 1192 (11th Cir. 1983) . See also Kassapas v. Arkon Shipping Agency, Inc., 485 So. 2d 565, 1986 AMC 2988 (La. App. 1986)* (Louisiana court cannot dismiss for *forum non conveniens*), *disapproved in Exxon Corp. v. Chick Kam Choo, 817 F.2d 307 (5th Cir.) , cert. granted, 108 S. Ct. 343 (1987)* (not involving a Jones Act claim). *See generally* Edelman, *Forum Non Conveniens: Its Application in Admiralty Law, 15 J. Mar. L. & Com. 517, 529*-32 (1984). The Ninth Circuit suggested in *Zipfel, supra* , that the Second Circuit's comments in *Cruz, supra* , were dicta because the facts in that case suggested, as the district court there held, that American law did not apply. *832 F.2d at*

1486 . But, as the Ninth Circuit observed, the *Cruz* court affirmed only the application of *forum non conveniens* by the district court and added,

> "We write simply to point out that maritime choice of law principles are not involved in a forum non conveniens analysis and that the district court's discussion on the subject was therefore unnecessary. ...
>
> "To summarize, when the Jones Act is applicable federal law is involved and the district court must exercise its power to adjudicate, absent some exceptional circumstances such as the application of the abstention doctrine or, as here, the equitable principle of forum non conveniens."

702 F.2d at 48, 1983 AMC at 1616 .

The cases refusing to dismiss Jones Act actions do so in part out of concern that it would be less convenient for foreign courts to apply the Jones Act than American courts. *See Fisher v. Agios Nicolaos V, 628 F.2d 308, 315 (5th Cir. 1980)* . But this line of reasoning was undermined by the Supreme Court's decision in *Piper Aircraft, supra* . First, a *forum non conveniens* dismissal, unlike a transfer between federal circuits under *28 U.S.C. § 1404(a)* does not require the alternative forum to apply the first forum's law. *454 U.S. at 253-54, 1982 AMC at 226-27* . Second, the need to apply a foreign forum's law is but one factor to consider and "is not sufficient to warrant dismissal. ..." *454 U.S. at 260 n. 29* , 1982 at 232.

Further support for the contrary position has been taken from the statement in *Baltimore & O.R.R. v. Kepner, 314 U.S. 44, 54 (1941)* that the "privilege of venue" under the Federal Employers' Liability Act "cannot be frustrated for reasons of convenience or expense." *Zipfel, supra, 832 F.2d at 1487* (the Jones Act contains a similar venue provision and incorporates the F.E.L.A.). *See also Miles v. Illinois Cent. R.R., 315 U.S. 698, 62 S. Ct. 827, 86 L. Ed. 1129 (1942) . Cf. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 505 (1947)* (*Kepner* and *Miles* held that *forum non conveniens* cannot defeat an F.E.L.A. action "because the special venue act under which those cases are brought was believed not to require it"). But *Kepner* and *Miles* involved an attempt to obtain an injunction in a state court to prevent a resident of that state from bringing an F.E.L.A. action in another court. And in *Douglas v. New York, N.H. & H.R.R., 279 U.S. 377 (1929)* , the Court held that F.E.L.A. only empowers states to hear cases arising under the statute, but does not require them to do so given the discretion created by the forum state's statute. *See also* Missouri *ex rel. Southern Ry. v. Mayfield, 340 U.S. 1 (1950)* (state may dismiss F.E.L.A. action for *forum non conveniens*); *Miles v. Illinois Cent. R.R., supra, 315 U.S. at 704* (approving of *Douglas*, the Court said "We do not deal here with the power of Missouri [the state where the F.E.L.A. was filed] by judicial decision or legislative enactment to regulate the use of its courts generally").

(n9)Footnote 9. *Panama R.R. v. Johnson, 264 U.S. 375, 1924 AMC 984 (1924)* .

(n10)Footnote 9a. *46 U.S.C. § 30104(b)*.

(n11)Footnote 10. *384 U.S. 202 (1966) . See also Bainbridge v. Merchants & Miners Transp. Co., 287 U.S. 278, 1933 AMC 32 (1932)* ; *Arthur v. Compagnie Generale Transatlantique, 72 F.2d 662, 1934 AMC 1199 (5th Cir. 1934)* ; The Metapan, 1935 AMC 1202 (S.D.N.Y. 1935) . The venue provisions of the Jones Act apply only to suits at law in the federal courts; they have no application to a suit brought in admiralty: *Sanders v. Seal Fleet, Inc., 998 F. Supp. 729 (E.D. Tex. 1998)* (quoting text) (construing the 1998 amendments to *28 U.S.C. § 1391(c)*); *McKola v. McCormick S.S. Co., 24 F. Supp. 378, 1938 AMC 904 (N.D. Cal. 1938)* ; nor in the state courts: *Rodrigues v. Transmarine Corp., 216 A.D. 337, 1926 AMC 606 (1926)* ; *Jacobsen v. United States Shipping Bd. Emergency Fleet Corp., 128 Misc. 138, 217 N.Y.S. 856, 1926 AMC 1483 (1926)* .

(n12)Footnote 11. Act of April 22, 1908, ch. 149, *45 U.S.C. § 56, 35* Stat. 66; *Engel v. Davenport, 271 U.S. 33, 1926 AMC 679 (1926)* ; *Rogosich v. Union Dry Dock & Repair Co., 67 F.2d 377, 1934 AMC 219 (3d Cir. 1933)* ; *Baltimore & O. R.R. v. Zahrobsky, 68 F.2d 454, 1934 AMC 118 (4th Cir. 1933) , cert. denied, 291 U.S. 680 (1934)* .

See also Reading Co. v. Koons, 271 U.S. 58, 1926 AMC 848 (1926) .

(n13)Footnote 12. *Panama R.R. v. Johnson, 264 U.S. 375, 1924 AMC 984 (1924)* .

(n14)Footnote 13. *McAllister v. Magnolia Petroleum Co., 357 U.S. 221, 1958 AMC 1754 (1958)* .

(n15)Footnote 14. *Id. Glus v. Brooklyn E. Dist. Terminal, 359 U.S. 231, 1959 AMC 2092 (1959)* (in a F.E.L.A. case, a suit commenced five years after an employee contracted an industrial disease held not time barred by the statutory three year limit because he averred that a railroad agent told him that the statutory limit was seven years).

The argument that a timely action filed in the Southern District of New York somehow tolled the statute of limitations in the present action in the District of Delaware rejected as wholly without merit. The lapse of three years between the date of injury and the date of suit extinguishes the right of action. *Claussen v. Mene Grande Oil Co., 275 F.2d 108, 1961 AMC 475 (3d Cir. 1960)* .

In re United States (USNS Potomac), 237 F. Supp. 434, 1964 AMC 1725 (E.D.N.C. 1964) , aff'd sub nom. Smith v. United States, 346 F.2d 449, 1965 AMC 1179 (4th Cir. 1965) (The filing of a limitation proceeding by the vessel owner does not operate to toll the three year limitation period set forth in the Jones Act).

(n16)Footnote 15. *McAllister v. Magnolia Petroleum Co., 357 U.S. 221, 225, 1958 AMC 1754, 1758 (1958)* .

Under *46 U.S.C. § 763a*, added in 1980, the statute of limitations for "recovery of damages for personal injury or death, or both, arising out of a maritime tort" is three years. The statute replaces the two year statute of limitations that previously applied to actions under the Death on the High Seas Act. It also replaces the use of laches for actions based on maritime torts such as unseaworthiness. *See* H.R. Rep. No. 96-737, 96th Cong., 2d Sess. 4, *reprinted in* 1980 U.S. Code Cong. & Admin. News 3303.

(n17)Footnote 16. *O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 1943 AMC 149 (1943)* (seaman ashore repairing apparatus being used to discharge sand from ship).

The Jones Act and the general maritime law apply to seamen injured while acting in the service of the ship, no matter where the accident occurs: they would still apply even if the seaman were injured "in the heart of the Louisiana mainland" so long as he was acting at the time as a seaman in the service of his ship: *Central Gulf S.S. Corp. v. Sambula, 405 F.2d 291, 1968 AMC 2521 (5th Cir. 1968)* .

(n18)Footnote 17. *Kyriakos v. Goulandris, 151 F.2d 132, 1945 AMC 1041 (2d Cir. 1945)* (seaman assaulted on land as result of incident arising in course of seaman's employment on ship board); *Dardar v. Louisiana, 322 F. Supp. 1115, 1971 AMC 1560 (E.D. La.) , aff'd, 447 F.2d 952, 1971 AMC 2381 (5th Cir. 1971) , cert. denied, 405 U.S. 918 (1972)* (ferryman injured on shore while operating a shore-based winch, taking some slack out of the cable on which the ferry ran).

(n19)Footnote 18. *Marceau v. Great Lakes Transit Corp., 146 F.2d 416, 1945 AMC 223 (2d Cir.) , cert. denied, 324 U.S. 872 (1945)* (seaman injured on pier at foot of ship's ladder while returning to ship after shore leave); McDonough v. Buckeye S.S. Co., 1951 AMC 2042 (N.D. Ohio 1951) (intoxicated seaman drowned in water off pier); *Flynn v. Reading Co., 50 F. Supp. 218, 1944 AMC 881 (E.D. Pa. 1943)* (the owner of the pier may also be liable, but only if the injuries were caused by his negligence).

(n20)Footnote 19. *Siclana v. United States, 56 F. Supp. 442, 1944 AMC 696 (S.D.N.Y. 1944)* (seaman assaulted by unidentified persons at some distance from the ship).

(n21)Footnote 20. *Marceau v. Great Lakes Transit Corp., 146 F.2d 416, 1945 AMC 223 (2d Cir.) , cert. denied, 324 U.S. 872 (1945)* .

But when a freight checker was assaulted by a dock boss on a pier, the assault not being directed or instigated by the shipowner, a judgment at law for the checker was reversed, holding that the injury was "accidental" within the meaning of the New York Workmen's Compensation Act, which afforded the checker his only remedy). *Whittington v. Moore-McCormack Lines, 196 F.2d 295, 1952 AMC 965 (2d Cir.) , cert. denied, 344 U.S. 865 (1952)* .

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 128

§ 128 Seamen on Foreign Ships.

In a series of cases, *Lauritzen v. Larsen,* n1 *Hellenic Lines v. Rhoditis* n2 and *Romero v. International Terminal Operating Co.,* n3 the Supreme Court established the following factors which, among others, are to be used in determining whether to apply the Jones Act and the American law of unseaworthiness: 1) the law of the flag; 2) the base of the defendant's operations; 3) the allegiance of the defendant shipowner; 4) the inaccessibility of a foreign forum; 5) the place of the wrongful act; 6) the place of contract; 7) the law of the forum; and 8) allegiance or domicile of the injured seaman. n4 Although not free from doubt, these factors are also applicable to American seamen serving on foreign vessels. n5 In 1982 Congress amended the Jones Act to exclude certain foreign workers engaged in off-shore mineral or energy production. n6

The Seamen's (La Follette) Act of 1915, n7 which abolished the penalties for desertion from a vessel safe in port, prohibited advances of pay, and granted a remedy for recovering half-pay, required the admiralty court to take jurisdiction of classes of cases previously excluded from that jurisdiction by treaties and on well-settled principles of discretion and comity; but that new policy, commanded by the Congress, was not effectuated until the President and the State Department had negotiated suitable denunciations and readjustments of the former treaties. n8 It is the settled policy of the admiralty court, in the exercise of its discretionary powers, to decline to take jurisdiction of causes between foreign seamen and foreign ships and shipowners, not merely when the cause of action arises under a foreign contract or in a foreign place or on the high seas, but even if the cause of action arises upon a contract made in our own territorial waters, or upon a tort occurring in those waters, unless there is a showing that the remedies afforded by the courts and consular and other authorities of the vessel's flag are unavailable, so that the libellant will suffer injustice and be without remedy unless the case is heard here. Such matters are sometimes said to relate to the "internal economy" of the vessel, and so long as the outward peace of the port is not thereby affected, the admiralty court will be inclined to leave matters of the "internal economy" of a foreign ship to be dealt with by the authorities of the vessel's flag. n9 Other maritime nations take the same attitude towards American seamen and American vessels coming to their ports.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActProcedureChoice of LawAdmiralty LawPersonal

InjuriesMaritime Workers' ClaimsUnseaworthinessGeneral OverviewAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:

(n1)Footnote 1. *345 U.S. 571, 1953 AMC 1210 (1953)* .

(n2)Footnote 2. *398 U.S. 306, 1970 AMC 994 (1970)* .

(n3)Footnote 3. *358 U.S. 354, 1959 AMC 832 (1959)* .

(n4)Footnote 4. These factors determine choice of law, not subject matter jurisdiction. *Neely v. Club Med Management Services, 63 F.3d 166, 1996 AMC 776* . These factors have been applied in numerous cases. *E.g., Dracos v. Hellenic Lines, 705 F.2d 1392, 1984 AMC 43 (4th Cir. 1983)* (the widow of a Greek chief engineer failed to establish under the factors enumerated in *Lauritzen* a basis for the application of American maritime law where the only factors connecting the deceased and the ship to the United States were the fortuitous docking of the vessel in Newport and the filing of the claim in a U.S. district court; the district court judge had discretion to deny jurisdiction based on the offensive use of collateral estoppel by the plaintiff where the plaintiff merely asserted the Supreme Court's finding in the *Rhoditis* that this same defendant had operations permanently based in the United States; plaintiff did not show that the condition found at the time of the *Rhoditis* trial continued to exist at the time of the present action some twelve years later); *Fisher v. The Agios Nicolaos V, 628 F.2d 308, 1981 AMC 1669 (5th Cir. 1980) , cert. denied, 454 U.S. 816 (1981)* (where a Greek seaman was killed in an accident in an American port aboard a Greek-flag vessel that was owned by a Liberian corporation and operated by a Panamanian corporation, United States, and not Greek, law goverened the action; the court conceded that "[t]he defendants make an extremely strong case for application of Greek law"; the ship flew the Greek flag and was registered in Greece; the seaman was a Greek citizen who had signed his employment contract in Greece; and the defendants, although Liberian and Panamanian corporations, were wholly-owned by Greek shareholders; however, under the *Rhoditis* rule, the "substantial use of a United States base of operations for the shipping and revenue of the vessel and its owner, together with the other United States contacts (the latter of which may not by themselves have been sufficient for the purpose)" justifies the application of American law; "base of operations" test was satisfied where the vessel's "entire business activity prior to the accident had been in the United States"; the "other United States contacts" consisted of the accident occurring in an American port, the seaman joining the ship at that port, and his working his entire service aboard the ship in that port); *Blanco v. Carigulf Lines, 632 F.2d 656, 1981 AMC 2493 (5th Cir. 1980)* (Honduran seaman entitled to discover facts supporting jurisdiction and is not required to rely upon defendants' affidavit in their motion to dismiss; a contrary rule would give an advantage to litigants who failed to comply with the rules of discovery); *Chirinos de Alvarez v. Creole, 613 F.2d 1240, 1980 AMC 1861 (3d Cir. 1980)* (where the accident occurred in Venezuela; the ship was registered and sailed under the Venezuela flag; the contract was made in Venezuela; all crewmen were citizens of Venezuela; and the Venezuelan courts were available to the parties, the court held that Venezuela had the paramount interest; the allegiance of the shipowner and the law of the forum were the only factors to support application of U.S. law); *Butler v. Ben Line Steamers Ltd., 664 F. Supp. 1367 (C.D. Cal. 1987)* (even though seaman was injured on drilling ship that had been stationed in American waters for eleven months, and even though record owner was half-owned by an American corporation, the law of the United Kingdom applied where the seaman was a citizen of the United Kingdom injured on a ship flying the flag of the United Kingdom, and the base of the owner is in the United Kingdom); *Banegas v. United Brands Co., 663 F. Supp. 198 (D.S.C. 1986)* (even though Honduran employer was ultimately owned by American interests and even though it maintained a business office in New York, the Jones Act did not apply to injuries to a Honduran seaman in the United States where the base of operations was in Honduras and the other factors favored application of Honduran law); Fitzgerald v. Zim Israel Nav. Co., 1975 AMC 1425 (S.D.N.Y. 1975) .

(n5)Footnote 5. *Coats v. Penrod Drilling Corp., 61 F. 3d 1113, (5th Cir. 1995)* (en banc) (unlikely for courts to deny benefit of American maritime law to American citizen who is recruited to work overseas and does not give up his permanent United States residence); *Fogleman v. Aramco (Arabian American Oil Co.), 920 F.2d 278 (5th Cir. 1991)* (upholding application of Saudia Arabian law to American worker where only American contact was the domicile of the plaintiff).

Schnexnider v. McDermott Int'l, Inc., 817 F.2d 1159 (5th Cir. 1987) (Australian law applies to American crewmember where the employment contract was made in the United States but all other contacts favored Australian law, but district court abused discretion in dismissing action for *forum non conveniens*); *Bilyk v. Vessel Nair, 754 F.2d 1541, 1985 AMC 2243 (9th Cir. 1985)* (dismissing action by American seaman injured on high seas while flying Mexican vessel's helicopter, vessel was based in Mexico, owners were Mexican); *Lockwood v. The M/S Royal Viking Star, 1987 AMC 890 (C.D. Cal. 1986)* (dismissing action by American seaman injured on Norwegian vessel in Hong Kong, base of operations and defendants allegiance were Norwegian, contract stipulates Norwegian law to apply). *Cf. Tjonaman v. A/S Glittre, 340 F.2d 290, 1965 AMC 57 (2d Cir. 1965)* (dismissing action by Dutch seaman who was legal resident alien of the United States on board Norwegian ship, no other factors support American law). *But see Symonette Shipyards v. Clark, 365 F.2d 464, 1966 AMC 2383 (5th Cir. 1966) , cert. denied, 387 U.S. 908 (1967)* (most important that seaman were American, articles were signed in the United States, were part of crew assembled in United States, their employer made contract for transportation with carrier in the United States); *Nye v. A/S D/S Svendborg, 358 F. Supp. 145, 1973 AMC 1708 (S.D.N.Y. 1973) , rev'd in part on other grounds, 501 F.2d 376, 1974 AMC 1343 (2d Cir. 1974) , cert. denied, 420 U.S. 694 (1975)* (not imply that American law must apply "just because a plaintiff is an American national" but nationality is most significant factor where American was sent by his American employer to repair a pump on a Danish vessel in the Canary Islands). In *Lauritzen v. Larsen*, the Court seemed to leave the question open, saying

> "Until recent times there was little occasion for conflict between the law of the flag and the law of the state of which the seafarer was a subject, for the long-standing rule ... was that the nationality of the vessel for jurisdictional purposes was attributed to all her crew. ... Surely during service under a foreign flag some duty of allegiance is due. But, also, each nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self-support. In some later American cases, courts have been prompted to apply the Jones Act by the fact that the wrongful act or omission alleged caused injury to an American citizen or domiciliary. (citing cases). We need not, however, weigh the seaman's nationality against that of the ship, for here the two coincide without resort to fiction. Admittedly, respondent is neither citizen nor resident of the United States. ... His presence in New York was transitory and created no such national interest in, or duty toward, him as to justify intervention of the law of one state on the shipboard of another." *345 U.S. at 586-87, 1953 AMC at 1222* .

Professors Gilmore and Black read this to mean that American law must always be applied to American citizens and domiciliaries. G. Gilmore and C. Black, *The Law of Admiralty* 475-76 (2d ed. 1975). But it more likely means that the United States has an interest in such plaintiffs that must then be weighed against the other factors. The cases cited by *Lauritzen* where the American citizenship or domicile "prompted" the courts to apply the Jones Act contained other American contacts. *See Uravic v. F. Jarka Co. (The Hamburg), 282 U.S. 234, 1931 AMC 239 (1931)* (American longshoreman employed by American company injured on German vessel in American port); *Shorter v. Bermuda & West Indies S.S. Co., 57 F.2d 313, 1932 AMC 266 (S.D.N.Y. 1932)* (American seaman injured on foreign ship while tied up at pier in New York); *Gambera v. Bergoty, 132 F.2d 414, 1943 AMC 45 (2d Cir. 1942)* (Italian subject who was domiciled in the United States was injured in American waters on a Greek vessel that was on a voyage that was probably wholly within American waters). *Gambera* did say however, that the fact that the plaintiff was unnaturalized should not count against him for, among other things, he works "side by side with those on behalf of whom the act was indubitably passed." *132 F.2d at 416, 1943 AMC at 47* . The *Lauritzen* opinion cited two cases that went the other way: *The Oriskany, 3 F. Supp. 805, 1933 AMC 1103 (D. Md. 1933)* ; *Clark v. Montezuma Transp. Co., 217 App. Div. 172, 216 N.Y.S. 295, 1926 AMC 954 (1926) . The Oriskany* involved an American seaman who was injured aboard a British vessel on the high seas during a voyage from Jamaica to Canada and it was assumed that British law applied. *Clark* involved an American seaman injured aboard a British ship in American waters.

(n6)Footnote 6. Pub. L. No. 97-389, § 503(a), 96 Stat. 1955, codified as *46 U.S.C. § 688(b)*. This statute also

denies these plaintiffs recovery "under any other maritime law of the United States for maintenance and cure or for damages for ... injury or death." *Camejo v. Ocean Drilling & Exploration, 838 F.2d 1374 (5th Cir. 1988)* . The Jones Act was recodified in 2006 as *46 U.S.C. § 30104*.

(n7)Footnote 7. Act of March 4, 1915, ch. 153; 38 Stat. 1169; *46 U.S.C. § 601*.

(n8)Footnote 8. *See* Foreign Relations of the United States: 1915, p. 3 *et seq.;* 1916, p. 33 *et seq.;* 1917, p. 9; 1918, p. 3; 1919, p. 37.

(n9)Footnote 9. *Hogan v. Hamburg-American Line, 152 Misc. 405, 272 N.Y.S. 690, 1934 AMC 797 (City Ct. 1934) , cert. denied, 295 U.S. 749 (1935)* ; *Jackson v. The Archimedes, 275 U.S. 463, 1928 AMC 157 (1928)* ; *The Ester, 190 F. 216 (E.D.S.C. 1911)* .

In Ortega v. Alexiahdes, 1950 AMC 1855 (S.D. Tex. 1950) , an alien seaman on a foreign ship recovered damages caused by unseaworthiness while the vessel was in an American port.

Guevara v. M.V. Rio Jachal, 1956 AMC 1301 (S.D.N.Y. 1956) (where a cargo damage libel brought by a Paraguayan citizen regarding a shipment of goods beginning in New York with transshipment to a river boat line at Buenos Aires, there being a clean transshipment receipt, jurisdiction was declined by the New York admiralty court, such dismissal best serving the question of equities which was presented).

See Murillo, Ltd. v. The Bio, 227 F.2d 519, 1956 AMC 76 (2d Cir. 1955) (the admiralty court declined to take jurisdiction in a suit between foreigners on the basis that no interests within the local jurisdiction were involved and that applicable bills of lading had designated the carrier's domicile as the proper place of suit); *Santorinakis v. S.S. Orpheus, 176 F. Supp. 343, 1959 AMC 1883 (E.D. Va. 1959)* (where the foreign shipowner has given a foreign seaman an illegal advance of wages in the United States in violation of 46 U.S.C. § 559, a court assumed jurisdiction over the entire wage dispute).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 129

§ 129 Discretionary Exercise of Jurisdiction in Admiralty.

Admiralty courts have jurisdiction of admiralty suits entirely between foreigners when proper service can be had or property attached, but generally a court may, in its discretion, dismiss the case on grounds of *forum non conveniens.* n1 When suitable reasons for accepting jurisdiction appear, such as convenience of obtaining evidence, or the adjustment of wages upon discharge of seamen from a foreign vessel in an American port, the court will assume jurisdiction. n2 Indeed, federal courts have mandatory jurisdiction over wage claims made in good faith, n3 and they will ordinarily entertain personal injury claims brought in the same suit. n4 Matters occurring on the high seas or concerning maritime affairs are properly cognizable by the court, regardless of nationality, n5 even though the parties have stipulated that disputes shall be settled before the courts of their own country. n6 But when a cause of action has arisen abroad and witnesses are abroad, n7 or treaty rights intervene, n8 or a foreign consul protests, n9 the court will ordinarily not accept jurisdiction unless it is necessary to prevent a failure of justice. n10 A bona fide assignment of a cause of action by an instrument absolute in terms will, in admiralty as at law, empower the assignee to maintain a suit, even though he will pay over the proceeds of his recovery to the assignor or others. n11 But the mere colorable assignment of a wholly foreign cause of action to a citizen will not, in itself, require the court to assume jurisdiction, nor move it to exercise its discretion. n12

Admiralty claims between an American citizen and a foreign citizen are also subject to dismissal for *forum non conveniens.* n13 When a citizen sues a foreign ship to recover his wages, however, a court has no right to refuse jurisdiction, unless deprived of it by treaty, and, having accepted it, will incidentally determine the rights of other sailors on the same ship, though the latter are foreigners. n14 If a citizen is a defendant or a party impleaded, or otherwise concerned in the action, the court will ordinarily assume jurisdiction. n15 Objection to the assumption of jurisdiction is waived by a general appearance. n16

Where the subject of one belligerent country sues the subject of another in regard to an *ante-bellum* commercial transaction between the parties, and both parties have their residence or their corporate headquarters abroad, the court may dismiss the libel in the exercise of discretion, n17 but when our country enters the war in association with the belligerent power of which the plaintiff is a subject, jurisdiction should be retained but proceedings suspended until, by the resumption of intercourse, the enemy alien defendant has opportunity to instruct its counsel and present his defense. n18

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureForumAdmiralty LawPractice & ProcedureJurisdictionCivil ProcedureVenueForum Non Conveniens

FOOTNOTES:
(n1)Footnote 1. *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 127 S. Ct. 1184, 2007 AMC 609 (2007)* (district court is not required to establish its own jurisdiction before dismissing on grounds of forum non conveniens); *Great Prize, S.A. v. Mariner Shipping Pty., Ltd., 967 F.2d 157 (5th Cir. 1992)* ; *Simcox v. McDermott Int'l, Inc., 152 F.R.D. 689 (S.D. Tex. 1994)* ; *Evans v. Cunard Line, Ltd., 1994 U.S. Dist. LEXIS 5029 (S.D.N.Y. 1994)* (British passenger suffered from salmonella poisioning soon after disembarking in United States from British ship; only American contacts were the medical personnel who treated him and the medical records). *See Andros Compania Maritima, S.A. v. Intertanker Ltd., 714 F. Supp. 669 (S.D.N.Y. 1989)* (general *forum non conveniens* analysis must be applied to admiralty actions). *See also Bhatnagar v. Surrendra Overseas Ltd., 820 F. Supp. 958 (E.D. Pa. 1993) , aff'd in part, vacated in part, 52 F.3d 1220 (3d Cir. 1995)* (minor plaintiff suing for negligence when she was aboard ship is not bound by forum selection clause in her father's employment contract with shipowner, on appeal the shipowner did not press this point).

Courts often dismiss on grounds of forum non conveniens in cases involving injured seaman where the court determines, under the factors developed by the Supreme Court in *Lauritzen v. Larsen, 345 U.S. 571, 1953 AMC 1210 (1953)* and *Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306, 1970 AMC 994 (1970)* that the law of a foreign country applies. *E.g., Perusahaan Umum Listrik Negara Pusat v. M/V Tel Aviv, 711 F.2d 1231 (5th Cir. 1983)* ; *Chiazor v. Transworld Drilling Co., 648 F.2d 1015, 1981 AMC 2678 (5th Cir. 1981) , cert. denied, 455 U.S. 1019, 102 S. Ct. 1714, 72 L. Ed. 2d 136 (1983)* ; *Volyrakis v. M/V Isabelle, 668 F.2d 863 (5th Cir. 1982)* ; Washington Pereira Mendes v. Zapata Du Brazil, 1983 AMC 2540 (S.D. Tex. 1982) . However, the determination that the Jones Act applies to a cause of action ought not to prevent a court from dismissing the action on grounds of *forum non conveniens. See* § 127, *supra,* n. 8.

Law of flag applied. Gonzalez v. Naviera Neptuno A.A., 832 F.2d 876 (5th Cir. 1987) (district court abused its discretion in refusing to dismiss action by survivor of Peruvian sailor who was killed on a Peruvian vessel in the United States; Peruvian law would apply to the dispute, the overwhelming number of witnesses reside in Peru, and there would be considerable difficulty in enforcing a judgment in the United States); *Sigalas v. Lido Maritime, Inc., 776 F.2d 1512, 1987 AMC 1132 (11th Cir. 1985)* (Greek seaman aboard Greek flag cruise vessel, 80% of stock of Liberian shipowner was held by Greeks who exercise complete control over the day-to-day management of the vessel, place of injury was Senegal; court disregards interest in protecting American passengers from incompetent ship's doctor); *Needham v. Phillips Petroleum Co. of Norway, 719 F.2d 1481 (10th Cir. 1983)* (conditional dismissal of a wrongful death action that had been instituted under DOHSA and the general maritime law was affirmed where foreign law applied; the place of the wrongful act, the vessel's flag, the shipowner's allegiance and related contracts were based in Norway; the fact that one of the defendants and its parent corporation were incorporated in the U.S. did not control the court's *forum non conveniens* determinations); *De Oliveira v. Delta Marine Drilling Co., 707 F.2d 843, 1985 AMC 753 (5th Cir. 1983)* (Brazilian law will be applied to an action involving an injured Brazilian national where Brazil was the place of the wrong and the place where he contracted employment with a Brazilian corporation, even though an American corporation had operational control over his work); *Morewitz v. Andros Compania Maritima, S.A., 614 F.2d 379, 1983 AMC 246 (4th Cir. 1980)* (other than the fact that the suit was instituted here and personal jurisdiction was obtained here it was found that the claims asserted bore no relationship to the U.S.).

Law of flag not applied. Fisher v. The Agios Nicolaos V, 628 F.2d 308, 1981 AMC 1669 (5th Cir. 1980) , cert. denied, 454 U.S. 816 (1981) (factors supporting the lower court's decision to retain jurisdiction were that the accident occurred in an American port; it was investigated by American authorities; American counsel were retained and

substantial steps in the litigation had already been completed; a bona fide wage claim arising under American laws had been joined with the maritime claims; and there was a substantial issue whether American or Greek law governed the wrongful death claims; conclusive on the *forum non conveniens* issue, however, was the holding that American, not Greek, law governed the action); *Phillips v. Amoco Trinidad Oil Co., 632 F.2d 82, 1981 AMC 238 (9th Cir. 1980)* , *cert. denied, 451 U.S. 920 (1982)* (seamen were all citizens and domiciliaries of Trinidad waters injured aboard an American-flag drilling vessel in Trinidad waters; the vessel had remained in Trinidad waters for six years prior to the accident, the seamen had all signed on in Trinidad, and the vessel's day-to-day operations were supervised in Trinidad; where a ship is "sailing in international commerce," the law of the flag usually outweighs all other factors but in this case the ship had been in Trinidad waters for six years and greater emphasis was due the "law of the place of the accident," "the allegiance and domicile of the injured," and "the law of the place of the contact;" Trinidad had a greater interest in seeing its law applied to the case than did the United States).

The standards established in *Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947)* and *Piper Aircraft Co. v. Reyno, 454 U.S. 235, 1982 AMC 214 (1981)* apply to *in rem* actions. *Perusahaan Umum Listrik Negara Pusat v. M/V Tel Aviv, 711 F.2d 1231, 1985 AMC 67 (5th Cir. 1983)* . The Fifth Circuit had earlier held if the suit is *in rem*, the district court should exercise jurisdiction unless the defendant can establish that an injustice will follow. *Poseidon Schiffhart, G.m.B.H. v. M/S Netuno, 474 F.2d 203, 1973 AMC 1180 (5th Cir. 1973)* ; *Motor Distribs. v. Olaf Pedersen's Rederi A/S, 239 F.2d 463, 1957 AMC 57 (5th Cir 1957)* . But in *Perusahaan*, the court determined that the *in rem* aspect of the case adds two elements to the *forum non conveniens* determination. First, one can ordinarily seize a vessel only once *in rem* to litigate a claim because the seizure releases the underlying lien. Second, the *in rem* proceeding gives the plaintiff a special security that may make *in personam* actions in other courts inadequate by comparison. The court reasoned that a conditional dismissal overcomes both of these factors. *Accord Anglo-American Grain Co. v. S/T Mina D'Amico, 169 F. Supp. 908, 1959 AMC 511 (E.D. Va. 1959)* ; Peugeot, Inc. v. S.S. Honestas, 1960 AMC 1690 (E.D. Va. 1959) .

The Astra, 34 F. Supp. 152, 1940 AMC 1188 (D. Md. 1940) (if jurisdiction is accepted in a suit for injuries by a foreign seaman the suit is one to enforce laws made for the health and safety of seamen so that no security for costs is required under the provisions of *28 U.S.C. § 837*); *The Halcyon, 32 F. Supp. 8, 1940 AMC 453 (E.D.N.Y. 1940)* (in a suit for wages by a group of Greek seamen on a Panamanian flag vessel of Greek ownership, jurisdiction was declined as to libelants who had been ordered deported to Greece but retained as to one of the seamen who had been released in the United States); *Johansson v. O.F. Ahlmark Co., 107 F. Supp. 70, 1952 AMC 947 (S.D.N.Y. 1952)* (jurisdiction of a suit for unseaworthiness and maintenance by a Swedish seaman employed on a Swedish ship declined; the libelant found to be entitled to substantial benefits under Swedish law).

The non-recognition by the United States of the submergence of Estonia into the U.S.S.R. was regarded as a persuasive circumstance leading the court to decline jurisdiction in a possessory suit involving an Estonian steamship brought by the representative of a chartering company organized under the laws of the U.S.S.R. wherein the claimant was the Estonian Consul General appointed by the old Estonian government. *The Kotkas, 37 F. Supp. 835, 1941 AMC 555 (E.D.N.Y. 1941)* .

Watt & Scott v. The City of Agra, 35 F. Supp. 351, 1940 AMC 1316 (S.D.N.Y. 1940) (even though the country of the appropriate forum is at war, the court will not accept jurisdiction of a suit between foreigners in the absence of anything to indicate that any hardship would result form the remission of the libelants to suit in that country); *Berendson v. Rederi Aktiebolaget Volo, 149 F. Supp. 140, 1957 AMC 95 (S.D.N.Y. 1957)* (jurisdiction declined as to Estonian seaman's personal injury at sea aboard Swedish vessel where Swedish court has discretionary jurisdiction to hearing pursuant to Swedish law); Prol v. Holland Am. Line, 1962 AMC 2566 (S.D.N.Y. 1962) (jurisdiction retained of dispute between Spanish seaman and Dutch shipowner until shipowner could establish that the seaman's claim could be heard adequately before the Netherlands Consul in New York).

In a personal injury suit between two foreign nationals the district court declined jurisdiction even though 15% of a Liberian cruise line's shares were owned in the United States and an overwhelming percentage of the vessel's passengers

were United States citizens. The defendant's base of operations was in Greece, and during the previous two years the vessel spent less than three days in United States ports. *Sigalas v. Lido Maritime, 1985 AMC 1028 (S.D. Fla. 1984)*

In remanding the case for completion of discovery on the shipowner's motion to decline jurisdiction, the Fourth Circuit said, "In the exercise of sound discretion, a district court may decline jurisdiction of a suit in admiralty brought by foreign seamen against a foreign ship. But before acting, the district court should be fully informed about all factors that have a significant bearing on the question of retaining jurisdiction, including the allegiance of the shipowner." *Lekkas v. Liberian M/V Caledonia, 443 F.2d 10, 1971 AMC 1928 (4th Cir. 1971)* .

See also Ex parte Newman, 81 U.S. (14 Wall.) 152 (1871) ; *The Maggie Hammond, 76 U.S. (9 Wall.) 435 (1869)* ; *Mason v. The Blaireau, 6 U.S. (2 Cranch) 240 (1804)* ; *Peters v. The Paula, 91 F.2d 1001, 1937 AMC 988 (2d Cir. 1937) , cert. denied, 302 U.S. 750 (1939)* ; *United States Merchants' & Shippers' Ins. Co. v. A/S Den Norske Afrika og Australie Line (The Tricolor), 65 F.2d 392, 1933 AMC 919 (2d Cir. 1933)* ; *Fairgrieve v. Marine Ins. Co., 94 F. 686 (7th Cir. 1899)* ; *The Sailor's Bride, 21 F. Cas. 159 (C.C.D. Mich. 1859)* (No. 12,220); *The Jerusalem, 13 F. Cas. 559 (C.C.D. Mass. 1814)* (No. 7293); *The Albani, 169 F.220 (E.D. Pa. 1909)* ; *The S.S. Bound Brook, 146 F. 160 (D. Mass. 1906)* ; *The Troop, 117 F. 557 (D. Wash. 1902) , aff'd sub nom. Kenney v. Blake, 125 F. 672 (9th Cir. 1903)* ; *The Sirius, 47 F. 825 (N.D. Cal. 1891)* ; *Neptune Steam Nav. Co. v. Sullivan Timber Co., 37 F. 159 (S.D.N.Y. 1888)* ; *Wilson v. The John Ritson, 35 F. 663 (D.S.C. 1888)* ; *The Salomoni, 29 F. 534 (D. Ga. 1886)* ; *Boult v. The Naval Reserve, 5 F. 209 (D. Md. 1881)* ; *The Amalia, 3 F. 652 (D. Me. 1880)* ; *Davis v. Leslie, 7 F. Cas. 134 (S.D.N.Y. 1848)* (No. 3639); *One Hundred and Ninety-four Shawls, 18 F. Cas. 703 (S.D.N.Y. 1848)* (No. 10,521); *The Bee, 3 F. Cas. 41 (D. Me. 1836)* (No. 1219). *Section cited: Mobil Tankers Co. v. Mene Grande Oil Co., 236 F. Supp. 362, 1965 AMC 480 (D. Del. 1964)* ; *Anastasiadis v. S.S. Little John, 346 F.2d 281, 1965 AMC 1405 (5th Cir. 1965) , cert. denied, 384 U.S. 920 (1966)* ; *Poseidon Schiffhart, G.m.B.H. v. M/S Netuno, 335 F. Supp. 684 (S.D. Ga. 1972) , rev'd, 474 F.2d 203, 1973 AMC 1180 (5th Cir. 1973)* .

(n2)Footnote 2. *Panaconti Shipping Co. v. M/V Ypapanti, 865 F.2d 705, 1989 AMC 1417 (5th Cir. 1989)* (district court abused its discretion in dismissing a suit for *forum non conveniens* where parties had entered into a stipulation agreeing to litigate in the forum).

Except as to half wages, the Seamen's Act has not affected the court's discretion to refuse jurisdiction as between the seamen and the master of a foreign vessel: *The Roxen, 7 F.2d 739, 1925 AMC 190 (E.D. Va. 1925)* ; The Luise Nielsen, 1924 AMC 1062 (D. Or. 1924) .

In case of injury to a seaman from unseaworthiness of a foreign ship in a United States port, jurisdiction is sometimes exercised and our law applied: *The Apurimac, 7 F.2d 741, 1925 AMC 604 (E.D. Va. 1925)* ; *The Navarino, 7 F.2d 743, 1925 AMC 1062 (E.D.N.Y. 1925)* . *Contra* The Pinar del Rio, 1925 AMC 1309 (S.D.N.Y. 1925) , *aff'd on other grounds, 277 U.S. 151, 1928 AMC 932 (1928)* .

See also Varvovsos v. Pezas, 41 F. Supp. 318, 1941 AMC 1351 (S.D.N.Y. 1941) (suit for wages by Greek seamen against the Greek owner of a Greek vessel wherein it appeared that the seamen had signed on in the United States, that Greece was occupied by the armed forces of Italy and Germany, and the seamen would have been left without an adequate remedy if jurisdiction were declined); *Kyriakos v. Polemis, 53 F. Supp. 715, 1943 AMC 1391 (S.D.N.Y. 1943)* (suit by a foreign seaman, residing in the district, against the owner of a Greek ship chartered to the British government, for injuries received on shore in the United States when the seaman was assaulted by another crew member); Komardis v. Compania Internacional De Vapores, 1943 AMC 1437 (N.Y. Sup. 1943) (action by a seaman on a Panamanian vessel for maintenance, cure and wages); *Dalmas v. Stathatos, 84 F. Supp. 828, 1949 AMC 770 (S.D.N.Y. 1949)* (salvage suit by Greek crew members of salving vessel notwithstanding that owners of foreign ships involved had signed a Lloyd's Salvage agreement calling for London arbitration).

Gonzales v. Dampkslsk Dania A.S., 108 F. Supp. 908, 1953 AMC 359 (S.D.N.Y. 1953) (in a suit for injuries suffered

on a Danish ship by a Spanish seaman, in absence of satisfactory showing of an adequate remedy under the laws of Denmark, it was held the court should not exercise discretion to dismiss); *Yee Ying Ching v. M/V Maratha Endeavour, 301 F. Supp. 809, 1968 AMC 2689 (E.D. Va. 1968)* (a court in the exercise of its discretion retained jurisdiction of personal injury claim of Hong Kong seaman serving on British flag vessel registered at Nassau for injures incurred on high seas in Pacific Ocean, there being no home forum for the parties, and medical treatment having been given in New York).

Jurisdiction accepted. Diaz v. Naviera Humboldt, 722 F.2d 1216, 1986 AMC 211 (5th Cir. 1984) (dismissal of a Jones Act suit based on *forum non conveniens* was vacated where the trial court failed to adequately protect plaintiff's interests by failing to make the dismissal conditional). *See also Vaz Borralho v. Keydril Co., 696 F.2d 379, 1984 AMC 728 (5th Cir. 1983)* ; *Gahr Devs., Inc. of Panama v. Nedlloyd Lijnen, B.V., 723 F.2d 1190, 1986 AMC 296 (5th Cir. 1984)* (vacature of writs of attachment and conditional dismissal of consolidated admiralty action for *forum non conveniens* affirmed in the absence of a showing that the trial court abused its discretion where no party was a U.S. resident, no event connected with the dispute took place in the U.S., the witnesses were unavailable for service of process in the district, the subject collision occurred in foreign inland waters and foreign law was not held to govern the action); *G.B.C. Nigeria (Ltd.) v. M/V Sophia First, 588 F. Supp. 76, 1985 AMC 1493 (S.D.N.Y. 1984)* (in a Nigerian assignee's action against its cargo underwriter and a Japanese ocean carrier, the court rejected a *forum non conveniens* motion where the defendant corporation was doing business in the forum and failed to provide specific information about difficulties in procuring witnesses and evidence); Magnolia Ocean Shipping Corp. v. M/V Marco Azul, 1981 AMC 2071 (E.D. Va. 1981) (the federal courts are very reluctant to dismiss on *forum non conveniens* grounds admiralty suits between foreigners of different nationalities; where transfer to the home forum of either one of the parties would have been as inconvenient for the other party as litigating the action in an American court and the action had reached a relatively advanced stage, including the taking of depositions, the court decided to retain jurisdiction of the action).

Jurisdiction refused. Perusahaan Umum Listrik Negara Pusat v. M/V Tel Aviv, 711 F.2d 1231, 1985 AMC 67 (5th Cir. 1983) the court affirmed the conditional dismissal on *forum non conveniens* grounds of a suit by a foreign cargo owner against another foreign vessel which collided at sea with the cargo carrier. The defendant met the burden of showing that England was an adequate alternative forum even though an *in rem* action had been filed in the lower court. All of the parties, as well as the relevant witnesses and records, were scheduled to appear in a simultaneous action in London. In *De Oliveira v. Delta Marine Drilling Co., 707 F.2d 843, 1985 AMC 753 (5th Cir. 1983)* , the court, on rehearing, reversed the lower court and required a conditional dismissal of an action by a Brazilian national who was working for a Brazilian company and who was injured and treated in Brazil. The vessel was in Brazil and the court assured the availability of compulsory process against the defendant. In Ghana Textile Mfg. Co., Ltd. v. M/V Oti River, 1980 AMC 1620 (S.D.N.Y. 1980) , an action to recover for a cargo of cotton destroyed by fire was dismissed on grounds of *forum non conveniens* where the fire occurred in Ghana, the parties were residents of Ghana, the vessel was registered in and all witnesses but one resided in Ghana, and no United States interests were involved. The court held that the issuance of the bills of lading in Texas was no bar to dismissal.

(n3)Footnote 3. *46 U.S.C.A. § 10504 (1987)*, formerly *46 U.S.C. § 596*. *See Morewitz v. Andros Compania Maritima, S.A., 614 F.2d 379 (4th Cir. 1980)* ; *Bekris v. M/V Aristoteles, 437 F.2d 219, 1971 AMC 641 (4th Cir. 1971)* ; *Vlachos v. M/V Proso, 637 F. Supp. 1354, 1986 AMC 2928 (D. Md. 1986)* . *See also Hansen v. Lorentzen, 53 F. Supp. 869, 1943 AMC 1401 (S.D.N.Y. 1943)* (jurisdiction over suit by foreign seamen against a foreign ship for wages notwithstanding a provision in the articles that disagreements regarding the construction of the contract should be settled by a consul of the country of the ship's flag).

Although wages are due and payable upon discharge, death does not constitute a discharge. For wages to become payable prior to discharge there must be a demand for payment. In absence of showing that a demand was made, the wage claim is not in "good faith." *Sigalas v. Lido Maritime, Inc., 776 F.2d 1512, 1987 AMC 1132 (11th Cir. 1985)* .

(n4)Footnote 4. *Abraham v. Universal Glow, Inc., 681 F.2d 451, 1984 AMC 2555 (5th Cir. 1982)* ; *Grevas v.*

M/V Olympic Pegasus, 557 F.2d 65, 1977 AMC 1207 (4th Cir.) , cert. denied, 434 U.S. 969 (1977) ; *Vidovic v. Losinjska Plovidba Oour Broadarstvo, 1 Wage & Hour Cas. 2d (BNA) 1523 (E.D. Pa. 1994) . See also The Fletero v. Arias, 206 F.2d 267, 1953 AMC 1390 (4th Cir.) , cert. denied, 346 U.S. 897 (1953)* .

(n5)Footnote 5. *The Belgenland, 114 U.S. 355 (1885)* ; *Jose Taya's Sons v. Compania Arrendataria, 280 F. 825 (2d Cir. 1922)* ; *Cunard S.S. Co. v. Smith, 255 F. 846 (2d Cir. 1918)* ; *The Bosworth, 300 F. 992, 1924 AMC 978 (E.D.N.Y. 1924)* ; The Hallgrim, 1924 AMC 1401 (E.D.N.Y. 1924) ; *Aktieselskabet K.F.K. v. Rederiaktiebolaget Atlanten, 232 F. 403 (S.D.N.Y. 1916) , aff'd, 250 F. 935 (2d Cir. 1918) , aff'd sub nom. The Atlanten, 252 U.S. 313 (1920)* ; *The Baker, 157 F. 485 (E.D.N.Y. 1907)* ; *The August Belmont, 153 F. 639 (S.D. Ga. 1907)* ; *The Alnwick, 132 F. 117 (S.D.N.Y. 1904)* ; *Pouppirt v. Elder Dempster Shipping Co., 122 F. 983 (E.D. Va.) , rev'd on other grounds, 125 F. 732 (4th Cir.) , cert. denied, 191 U.S. 576 (1903)* ; *The Troop, 118 F. 769 (D. Wash. 1902) , aff'd, 128 F. 856 (9th Cir.) , cert. denied sub nom. Kenney v. Louie, 195 U.S. 632 (1904)* ; *Bolden v. Jensen, 70 F. 505 (D. Wash. 1895)* ; *The City of Carlisle, 39 F. 807 (D. Or. 1889)* ; *Chubb v. Hamburg-American P. Co., 39 F. 431 (E.D.N.Y. 1889)* ; *The Russia, 21 F. Cas. 86 (S.D.N.Y. 1869)* (No. 12,168); *The Jupiter, 14 F. Cas. 54 (S.D.N.Y. 1867)* (No. 7585).

(n6)Footnote 6. *Fairgrieve v. Marine Ins. Co., 94 F. 686 (8th Cir. 1899)* ; *Gough v. Hamburg, etc., 158 F. 174 (S.D.N.Y. 1907)* ; *The Topsy, 44 F. 631 (D.N.C. 1891)* ; *Slocum v. Western Assurance Co., 42 F. 235 (S.D.N.Y. 1890)* ; *Prince S.S. Co. v. Lehman, 39 F. 704 (S.D.N.Y. 1889)* ; Schuster Naval Stores Co. v. Ozean-Stinnes Lines, 1962 AMC 999 (S.D. Ga. 1961) .

Sfiridas v. Santa Cecelia Co., 265 F. Supp. 252, 1966 AMC 2295 (E.D. Pa. 1966) (court retained jurisdiction of a suit by a foreign seaman against a foreign shipowner despite the fact that foreign law might have to be applied); *Damaskinos v. Societa Navigacion Interamericana, 255 F. Supp. 919, 1967 AMC 77 (S.D.N.Y. 1966)* (court declined in its discretion to entertain a suit by a Greek seaman injured on board a Liberian vessel off the New Jersey coast on a voyage to Houston, Texas).

The Supreme Court vacated a decision refusing to enforce a forum selection clause and retaining jurisdiction. The Court said, "The correct approach would have been to enforce the forum clause specifically unless [the plaintiff] could clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." *M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 1972 AMC 1407 (1972)* .

(n7)Footnote 7. *Empressa Lineas Maritimas Argentinas, S.A. v. Schichau-Unterweser, A.G., 955 F.2d 368 (5th Cir. 1992)* (foreign plaintiff's choice of an American forum merits less deference than an American's choice of that forum; convenience is less likely when a plaintiff chooses a foreign forum).

The Iquitos, 286 F. 383 (W.D. Wash. 1921) ; The Kanto Maru & Ingeren, 1939 AMC 1229 (S.D. Cal. 1939) .

The Harfry, 39 F. Supp. 893, 1941 AMC 1825 (D.N.J. 1941) (unavailability of witnesses is not controlling on the issue whether the court will accept jurisdiction of suits between foreigners although it is one of the factors considered); *Northern Star S.S. Co. of Canada v. Kansas Milling Co., 75 F. Supp. 534, 1947 AMC 1686 (S.D.N.Y. 1947)* (suit in the Southern District of New York by a Canadian corporation against a Kansas corporation).

The Rio Salado, 67 F. Supp. 115, 1946 AMC 603 (S.D.N.Y. 1946) (jurisdiction declined in a suit between Argentine nationals where witnesses were available in Argentina and counsel stipulated defense of limitations would not be pleaded in a suit brought in that country); *Pettersen v. S.S. Bertha Brovig, 92 F. Supp. 171, 1950 AMC 1143 (S.D.N.Y. 1950)* (jurisdiction declined in suit for injuries by Norwegian seaman against a Norwegian vessel where articles provided for application of Norwegian law which provided a remedy).

Spingos v. Transatlantic Shipping Co., 1959 AMC 1212 (S.D.N.Y. 1959) ; *Nieto v. The S.S. Tinnum, 170 F. Supp. 295, 1958 AMC 2555 (S.D.N.Y. 1958)* ; *Hatzoglou v. Asturias Shipping Co., 193 F. Supp. 195, 1961 AMC 1870*

(S.D.N.Y. 1961) ; Mitsubishi Shoji Kaisha v. Kawasaki Kisen Kaisha, 1960 AMC 151 (S.D. Cal. 1959) . Jurisdiction declined: *Agrio v. Oceanic Operations Corp., 204 F. Supp. 10, 1962 AMC 173 (S.D.N.Y. 1961)* ; *Mpampouros v. S.S. Auromar, 203 F. Supp. 944, 1962 AMC 849 (D. Md. 1962)* (court declined to entertain a libel by foreign seaman against a foreign flag and foreign owned vessel for injuries incurred on the high seas, where the only contact with the United States was the fact that all the shipowner's corporate directors and two of five stockholders were United States citizens).

(n8)Footnote 8. *The Belgenland, 114 U.S. 355 (1885)* ; *The Elwine Kreplin, 8 F. Cas. 588 (C.C.E.D.N.Y. 1872)* (No. 4426); *The Ester, 190 F. 216 (E.D.S.C. 1911)* ; *The Koenigin Luise, 184 F. 170 (D.N.J. 1910)* ; *The Bound Brook, 146 F. 160 (D. Mass. 1906)* ; *The Burchard, 42 F. 608 (S.D. Ala. 1890)* ; *The Pawashick, 19 F. Cas. 5 (D. Mass. 1872)* (No. 10,851); *The Becherdass Ambaidass, 3 F. Cas. 13 (D. Mass. 1871)* (No. 1203). Treaty stipulations excluding the admiralty in favor of the consular jurisdiction held inapplicable where there was no consular representative to exercise it, *The Amalia, 3 F. 652 (D. Me. 1880)* ; *The Salomoni, 29 F. 534* (S.D. Ga. 1886). *Contra The Ester, 190 F. 216 (E.D.S.C. 1911)* , or where the consul acquiesces. *The Wind, 22 F. Supp. 883, 1938 AMC 471 (E.D. Pa. 1938)* . The constitutionality of treaty excluding the admiralty jurisdiction questioned where American citizen libelant: *The Neck, 138 F. 144 (D. Wash. 1905)* ; *The Falls of Keltie, 114 F. 357 (D. Wash. 1902)* ; *Bolden v. Jensen, 70 F. 505, 510 (D. Wash. 1895)* ; *The Epsom, 227 F. 158 (W.D. Wash. 1915)* . *See* the argument in *Ex parte Newman, 81 U.S. (14 Wall.) 152 at 156 (1871)* ; *The Cherokee Tobacco, 78 U.S. (11 Wall.) 616 (1871)* ; *Asakura v. City of Seattle, 265 U.S. 332 (1924)* ; but maintained in the *Koenigin Luise, 184 F. 170 (D.N.J. 1910)* ; *The Albergen, 223 F. 443 (S.D. Ga. 1915)* ; *In re Ross, 140 U.S. 453 (1891)* , and commonly assumed in cases cited *supra* conformable to the expressions of the court in *The Belgenland, 114 U.S. 355 (1885)* . In *The Baker, 157 F. 485 (E.D.N.Y. 1907)* , the question was one of interpretation merely.

Fostinis v. The S.S. Memas, 35 F. Supp. 661, 1941 AMC 349 (E.D.N.Y. 1941) .

The 1922 Treaty between the United States and Greece providing that the consular officers of the respective nations should alone take cognizance of differences which may arise either at sea or in port between the captains, officers and crews, without exception, particularly in reference to the adjustment of wages and the execution of contracts, does not extend to tort actions for personal injuries: Poggi v. Kassos Steam Nav. Co., 1941 AMC 833 (D. Mass. 1941) . Under the 1902 Treaty between the United States and Greece an order of the Greek Consul not involving a wage dispute but compelling a Greek seaman to leave a Greek vessel in a U.S. port would be enforceable in the district court: *Petition of Georgakopoulos, 81 F. Supp. 411, 1949 AMC 868 (E.D. Pa.) , writ of prohibition denied, 171 F.2d 886, 1949 AMC 872 (3d Cir. 1948)* . Liberia:

Keramiotis v. Basilia Compania Maritima, S.A., 176 F. Supp. 269, 1959 AMC 1394 (S.D.N.Y. 1959) .

(n9)Footnote 9. Several treaties provide that jurisdiction is concurrent: *Vander Weyde v. Ocean Transport Co. (The Taigen Maru), 297 U.S. 114 (1936)* ; *The Paula, 91 F.2d 1001, 1937 AMC 988 (2d Cir.) , cert. denied, 302 U.S. 750 (1937)* ; The Binna, 1938 AMC 682 (S.D. Tex. 1938) .

Cases under the older treaties were: *The Ester, 190 F. 216 (E.D.S.C. 1911)* ; *The Bound Brook, 146 F. 160 (D. Mass. 1906)* ; *Tracy v. The Walter D. Wallet, 66 F. 1011 (S.D. Ala. 1895)* ; *The Burchard, 42 F. 608 (S.D. Ala. 1890)* ; *The Montapedia, 14 F. 427 (E.D. La. 1882)* ; *Fry v. Cook, 14 F. 424 (E.D. La. 1876)* . *But see The Kentigern, 99 F. 443 (E.D.N.Y. 1900)* . Belated protest disregarded: *The Strathearn, 239 F. 583 (N.D. Fla. 1917) , rev'd on other grounds, 256 F. 631 (5th Cir. 1919) , aff'd, 252 U.S. 348 (1920)* .

Jurisdiction has been declined in the following cases in which the foreign consul joined in the request that the court refuse to accept jurisdiction. The Taxiarchis, 1940 AMC 318 (E.D.N.Y. 1939) (suit by Greek seamen for wages, bonus and repatriation); *The Prince Pavle, 32 F. Supp. 5, 1940 AMC 543 (E.D.N.Y. 1940)* (suit by Yugoslav seamen on Yugoslav vessel for wages including cause of action under *46 U.S.C. § 596*); Gonzalez v. Lauritzen, 1940 AMC 220 (E.D.N.Y. 1940) (suit by Chilean seaman on Danish vessel who was injured in New York Harbor); *Kofouros v.*

Giannoutsos, 174 F.2d 477, 1949 AMC 1141 (4th Cir. 1949) (libel for wages, and damages by Greek seaman against Greek vessel); *Taylor v. Atlantic Maritime Co., 86 F. Supp. 496, 1949 AMC 1192 (S.D.N.Y. 1949)* , *aff'd* as to any claim under the general maritime law, but *rev'd* as to the claim under the Jones Act, *179 F.2d 597, 1950 AMC 352 (2d Cir. 1950)* (suit by foreign seaman against a foreign shipowner and ship for illness); Eriksson v. The Frej, 1948 AMC 63 (N.D. Cal. 1947) (suit for repatriation expenses, damages for breach of contract and failure to furnish a certificate of satisfactory service by citizen of Finland against Swedish vessel, where hearing had been afforded by Swedish Consul); *Brookhouse v. Cunard White Star Ltd., 1948 AMC 760 (N.Y. City Ct. 1948)* (state court action by the American assignee of a foreign corporation's cargo claim against a foreign shipowner arising out of shipment in a foreign vessel to a foreign country); *The Papazoglou, 175 F.2d 730, 1949 AMC 1135 (4th Cir. 1949)* (a United States court may assume jurisdiction in a suit for wages involving a foreign ship where the contract was made and settlement had been effected in the United States); Poggi v. Kassos Steam Navigation Co., 1941 AMC 833 (D. Mass. 1941) (the failure of consular agent representing the government of the ship's flag to intervene is one factor that may lead to retention of jurisdiction by the U.S. court, particularly where it is doubtful whether the seaman could obtain any redress if the court should decline jurisdiction). It has been held that the court will take jurisdiction in suits by foreign seamen where it is not shown that he has been accorded all the rights to which he has been entitled by his counsel: *Spyratos v. Curuclis, 35 F. Supp. 837, 1940 AMC 1605 (E.D.N.Y. 1940)* . Or where the facts are in dispute in a suit for wages and repatriation: *The Memas, 35 F. Supp. 661, 1940 AMC 1606 (E.D.N.Y. 1940)* . Or where the protesting counsel's who indicated that he had pre-judged the seaman's claim: Kontokostas v. S.S. Aurora, 1952 AMC 1984 (D. Or. 1952) .

Jurisdiction of a foreign seaman's suit under the Jones Act for maintenance and cure was declined by the New York state court where the seaman was a Spanish national, the ship and employer Venezuelan, and the seaman signed on in a Columbia port and was injured on the high seas. The articles provided that the rights of the parties were to be governed by Venezuelan law and the Consul General of Venezuela at New York stated that he was prepared to hear and determine plaintiff's claim: *Del Rio Cumbrera v. Grancolombiana Inc., 120 N.Y.S.2d 513, 1953 AMC 214 (1952)* .

Jurisdiction declined of a suit for injuries by a Polish seaman who signed on a Swedish ship in Argentina. His rights held governed by Swedish law under which the Swedish Consul in New York was prepared to adjudicate the case. Absent a showing of hardship upon the seaman, the court declined to exercise its discretionary jurisdiction: Koziol v. S.S. Flygia, 1953 AMC 220 (S.D.N.Y. 1952) .

Export Ins. Co. v. Skinner, 115 F. Supp. 154, 1953 AMC 1288 (S.D.N.Y. 1953) (to the same effect); *Monteiro v. Sociedad Mar. San Nicholas, S.A., 175 F. Supp. 1, 1959 AMC 2360 (S.D.N.Y. 1959)* ; *Malanos v. Chandris, 181 F. Supp. 189, 1959 AMC 2363 (N.D.N.Y. 1959)* ; *Kyriakos v. Polemis, 53 F. Supp. 715, 1943 AMC 1391 (S.D.N.Y. 1943)* ; *The S.S. Emmy, 39 F. Supp. 871 (S.D.N.Y. 1941)* ; *Varvvovsos v. Pezas, 41 F. Supp. 318, 1941 AMC 1315 (S.D.N.Y. 1941)* .

A Norwegian seaman's suit for injuries commenced after the invasion of Norway was dismissed on representations by the Norwegian consul that the case was covered by Norwegian remedies, without prejudice to renewal of the suit if such remedies proved non-existent: *Lura v. The Ivaran, 121 F.2d 445, 1941 AMC 1224 (2d Cir. 1941)* .

Where a complaint sought recovery for a non-resident foreign corporation for the loss of goods carried by sea from Australia to the Canal Zone and there transshipped by a foreign carrier for a Colombia destination, the action was dismissed as constituting an undue burden on commerce, Mitchell & Sons, Ltd. v. Grace Line, Inc. 1955 AMC 753 (Mun. Ct. N.Y. 1955) .

Atencio S. v. The Ciudad de Bogota, 155 F. Supp. 590, 1958 AMC 349 (S.D.N.Y. 1957) (Colombian vessel--Colombian seaman injured at sea); McMurchie v. S.S. Valmar, 1958 AMC 2280 (E.D.N.Y. 1958) (citing text); *Anglo-American Grain Co. v. The S/T Mina D'Amico, 169 F. Supp. 908, 1959 AMC 511 (E.D. Va. 1959)* .

Jurisdiction declined: *Giatilis v. The Darnie, 171 F. Supp. 751, 1959 AMC 1248 (D. Md. 1959)* .

Conte v. Flota Mercante del Estado, 277 F.2d 664, 1960 AMC 1075 (2d Cir. 1960) (delay of Argentine shipowner in seeking dismissal of suit by Argentine seaman until the eve of trial encouraged the court to accept jurisdiction).

Georgoussis v. Extramae Panama, S.A., 194 F. Supp. 181, 1961 AMC 448 (S.D.N.Y. 1960) (U.S. admiralty courts have a duty to protect foreign seamen especially where their remedy elsewhere is extremely uncertain); *Industria E. Comercio de Minerios, S.A. v. Novo Genuesis, 310 F.2d 811 , 1963 AMC 109 (4th Cir. 1962)* (U.S. Court declined jurisdiction of a libel for cargo loss against a foreign vessel, where U.S. cargo owner had been paid in full by foreign insurer and the U.S. owner had no further interest in possible recoveries); *Volkenburg v. Nederland-Amerika Stoomv. Maats., 336 F.2d 480, 1964 AMC 1958 (1st Cir. 1964)* (dismissed, injury in United States territorial waters was the sole U.S. contact); *Zouras v. Menelaus Shipping Co., 336 F.2d 209, 1964 AMC 1954 (1st Cir. 1964)* (dismissed, sole point of contact being injury in United States territorial waters); *Poulos v. S.S. Ionic Coast, 264 F. Supp. 237, 1967 AMC 1804 (E.D. La. 1967)* (court declined jurisdiction over suit by Greek seaman for injuries incurred on Greek vessel in Mexican waters, but retained jurisdiction over that portion of his complaint alleging kidnapping attempt by shipowner at New Orleans to return seaman to Greece).

The court in its discretion dismissed suit for *forum non conveniens* commenced by Honduran seaman against Honduran shipowner where injuries were incurred outside New York. The fact that the shipowner maintained an office in New York did not furnish sufficient ground for keeping the action in New York, nor does the ownership of defendant's stock by a U.S. corporation compel such retention: Thompson v. Empresa Hondurena de Vapores, S.A., 1967 AMC 2156 (N.Y. Sup. Ct. 1967) .

(n10)Footnote 10. *The Almena, 23 F. Supp. 645, 1938 AMC 908 (E.D.N.Y. 1938)* ; *The Gloria de Larrinaga, 196 F. 590 (S.D.N.Y. 1911)* ; *The Kaiser Wilhelm der Grosse, 175 F. 215 (S.D.N.Y. 1909)* ; *The Troop, 117 F. 557 (D. Wash. 1902) , aff'd sub nom. Kenney v. Blake, 125 F. 672 (9th Cir. 1903)* ; *Goldman v. Furness, Withy & Co., 101 F. 467 (S.D.N.Y. 1900)* ; *Bucker v. Klorkgeter, 4 F. Cas. 555 (S.D.N.Y. 1849)* (No. 2083); *Bernhard v. Creene, 3 F. Cas. 279 (D. Or. 1874)* (No. 1349); *Muir v. The Brisk, 17 F. Cas. 954 (E.D.N.Y. 1870)* (No. 9901); *Davis v. Leslie, 7 F. Cas. 134 (S.D.N.Y. 1848)* (No. 3639); *The Napoleon, 17 F. Cas. 1157 (S.D.N.Y. 1845)* (No. 10,015); *The Pacific, 18 F. Cas. 943 (S.D.N.Y. 1830)* (No. 10,644); *Thomson v. The Nanny, 23 F. Cas. 1104 (D.S.C. 1805)* (No. 13,984).

See Perez & Compania (Cataluna), S.A. v. M/V Mexico I, 826 F.2d 1449 (5th Cir. 1987) (district court did not abuse its discretion by dismissing foreign shipping agent's suit against foreign ship owner arising out of non-payment for fuel supplied in Spain and used on voyage from Spain to the United States where all witnesses and evidence is in Spain or Europe; case remanded to determine whether to condition dismissal on owner's agreement to satisfy any judgment by Spanish court); *Zekic v. Reading & Bates Drilling Co., 680 F.2d 1107, 1984 AMC 1895 (5th Cir. 1982)* (although American law was inapplicable to claims by an injured Yugoslav seaman, the trial court has discretion to dismiss conditionally or unconditionally as the interests of justice may dictate); *Gipromer v. S.S. Tempo, 487 F. Supp. 631, 1983 AMC 1625 (S.D.N.Y. 1980)* (where dismissal of a cargo damage action based on principles of *forum non conveniens* would seriously prejudice plaintiff by virtue of the running of the statute of limitations and foreclosure of the opportunity to obtain personal jurisdiction over the defen dants, a transfer to a more appropriate forum was ordered, in the interest of justice). *See also Tramp Oil & Marine, Ltd. v. M/V Mermaid I, 743 F.2d 48, 1985 AMC 459 (1st Cir. 1984)* (dismissal of *in rem* action on *forum non conveniens* grounds was improper without specifying that there was an adequate alternative forum); *Veba-Chemie, A.G. v. M/V Getafix, 711 F.2d 1243, 1985 AMC 85 (5th Cir. 1983)* (the requirements of the federal transfer of venue statute, *28 U.S.C. § 1404(a)*, do not apply to dismissals out of the federal system on *forum non conveniens* grounds; the controlling factor to a *forum non conveniens* determination is whether the alternative forum is available at the time of dismissal, not whether the suit might have been commenced there originally); *Cargill, Sugar Ltd. v. Esal (Commodities) Ltd., 1985 AMC 217 (S.D.N.Y. 1984)* (the court granted a dismissal on *forum non conveniens* grounds on the condition that the defendant give assurances that any judgment the plaintiff may collect will at least equal the assets previously attached).

(n11)Footnote 11. *The Mandu, 102 F.2d 459, 1939 AMC 287 (2d Cir. 1939)* .

The Eemdyjk, 286 F. 385 (W.D. Wash. 1923) (if the assignment does not appear to be merely colorable, and testimony is available within the United States, the court may assume jurisdiction); *The Tricolor, 65 F.2d 392, 1933 AMC 919 (2d Cir. 1933)* (an American underwriter's interest in a foreign cargo risk on a foreign ship on a non-American voyage was not sufficient to move the court to take jurisdiction).

Compania Sansinena, S.A. v. Flota Mercante Del Estado, 1944 AMC 420 (S.D.N.Y. 1944) (even though an American insurance company may be interested because it has paid a loss, this may not suffice to move the court's discretion to accept jurisdiction in a cargo suit between foreign parties where all the witnesses are abroad). *But cf.* Mateos v. S.S. Rio Juramento, 1948 AMC 753 (E.D. La. 1948) (jurisdiction was accepted in a cargo damage suit by an American underwriter in the name of a citizen of Argentina against an Argentine merchant vessel and the Republic of Argentina, as owner of the vessel); Twedberg, Kleppe S.A. v. Rederi A/B Gylfe, 1949 AMC 1198 (E.D. La. 194) (jurisdiction was accepted on a cargo damage libel by Brazilian owners in behalf of American insurer against Swedish vessel which had carried cargo from the *United States to Brazil). Insurance Co. of N. Am. v. British India Steam Nav., 38 F. Supp. 47, 1941 AMC 626 (E.D. La. 1941)* (jurisdiction has been declined in a suit by an American underwriter as the subrogee of foreign shippers against the owners of a British vessel that sank on a voyage from Singapore to Hong Kong or Shanghai).

St. Paul Fire & Marine Ins. Co. v. The Republica de Venezuela, 105 F. Supp. 272, 1952 AMC 1370 (S.D.N.Y. 1952) (jurisdiction was accepted of a cargo suit brought by an American underwriter as subrogee of a foreign shipper on a foreign ship, voyage between foreign ports, under a bill of lading calling for any litigation to be conducted in Amsterdam, the court finding several strong reasons for retention of jurisdiction).

American Steel Barge Co. v. Chesapeake & O. Coal Agency Co., 115 F. 669 (1st Cir. 1902) ; *Moran Towing & Transp. Co. v. Conners-Standard Marine Corp., 316 F.2d 811, 1963 AMC 1173 (2d Cir. 1963)* ; *Cobb v. Howard, 5 F. Cas. 1133 (S.D.N.Y. 1856)* (No. 2924).

Horton & Horton, Inc. v. T/S J.E. Dyer, 1969 AMC 2262 (S.D. Tex. 1969) (in mutual fault collision case, if the first joint tortfeasor settles his case with the injured plaintiff and thereby secures an assignment of the injured plaintiff's cause of action against the second tortfeasor, the first joint tortfeasor may recover 50% of the settlement amount from the second joint tortfeasor).

Ohio Barge Line v. Dravo Corp., 326 F. Supp. 863 (W.D. Pa. 1971) (an assigned claim remains within the admiralty jurisdiction despite the fact that a non-maritime contract may be a defense against the assignee).

(n12)Footnote 12. *The Mantadoc--The Yorkton (Canada Malting Co. v. Paterson S.S.), 285 U.S. 413, 1932 AMC 512 (1932)* ; *Goldman v. Furness, Withy & Co., 101 F. 467 (S.D.N.Y. 1900)* .

(n13)Footnote 13. Alcoa S.S. Co. v. M/V Nordic Regent, 636 F.2d 147, 1980 AMC 309 (2d Cir. 1980) (en banc) (the usual standards for determining *forum non conveniens* motions established in *Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947)* apply); *Cerro De Pasco Copper Corp. v. Knut Knutsen O.A.S., 187 F.2d 990, 1951 AMC 630 (2d Cir. 1951)* (district court did not abuse its discretion in dismissing on the ground of *forum non conveniens* a cargo suit by an American cargo owner against a Norwegian ship in view of bill of lading clause requiring claims to be settled only in Norway); *Penny v. United Fruit Corp., 869 F. Supp. 122 (E.D.N.Y. 1994)* (*forum non conveniens* dismissal is appropriate in suit by estate of naturalized American for asbestos injuries arising on British ships with little contact with the United States when seaman was a British citizen); *Atlanta Corp. v. Polskie Linie Oceaniczne, 683 F. Supp. 347, 1988 AMC 2871 (S.D.N.Y. 1988)* (neither American citizenship of plaintiffs nor the fact that evidence of their damages is in the United states prevents the granting of a *forum non conveniens* dismissal of shippers' claims for damages from foreign carriers arising out of collision in German waters where the relevant evidence and witnesses were in Germany,

the issues that would arise in the liability phase of a trial had already been decided by an administrative body in Germany, and the owners of the two vessels in the collision were not within the jurisdiction of the court); *The Saudades, 67 F. Supp. 820, 1946 AMC 1019 (E.D. Pa. 1946)* (mere inconvenience to another noncitizen party is not a ground for refusing jurisdiction which should be assumed unless injustice would result); *C. Brewer & Co. v. American President Lines, 37 F. Supp. 230, 1941 AMC 30 (S.D.N.Y. 1940)* (jurisdiction accepted over ten cargo damage suits against a Canadian carrier where seven of the libelants were U.S. citizens and it did not appear that the convenience of witnesses would be served by a trial in Canada); *Tsitinakis v. Simpson, Spence & Young, 90 F. Supp. 578, 1950 AMC 1135 (S.D.N.Y. 1950)* (jurisdiction declined in suit by foreign seaman against foreign shipowner and American corporation for injuries received in foreign country). *See also Iberian Tankers Co. v. Terminales Maracaibo, C.A., 322 F. Supp. 73, 1971 AMC 644 (S.D.N.Y. 1971)* (jurisdiction conditionally declined, where foreign parties' only connections with U.S. were plaintiff's attaching defendant's New York bank account and an agreement that New York would be the site of arbitration).

"An admiralty action by non-residents against defendants who maintain a principal place of business within the forum chosen by plaintiffs should not be dismissed on the ground of *forum non conveniens* unless defendants clearly establish that they will be unfairly prejudiced by the Court's exercise of its jurisdiction." *Alegria v. Grand Bassa Tankers, Inc., 337 F. Supp. 401, 1972 AMC 2363 (S.D.N.Y. 1971)* . The retention of a suit between foreigners is within the discretion of the district court and the exercise of such discretion may not be disturbed on appeal unless abused: *Asiatic Petroleum Corp. v. "Italia" S.A. Di Navigazione, 119 F.2d 610, 1941 AMC 689 (3d Cir. 1941)* ; *The Rio Salado, 67 F. Supp. 115, 1946 AMC 603 (S.D.N.Y. 1946) . Cf. Johnson v. North Atl. & Gulf S.S. Co., 42 F. Supp. 713, 1941 AMC 1585 (E.D. Pa. 1941)* .

See also Swift & Co. Packers v. Compania Columbiana del Caribe, S.A., 339 U.S. 684, 1950 AMC 1089 (1950) (jurisdiction may not be declined under the doctrine of *forum non conveniens* in a suit by a United States citizen against a foreign respondent, at least without assuring the citizen that the respondent will appear in the courts of his country and that security will be given equal to the security obtained by attachment in the district court; the court left undecided the general question whether admiralty courts may decline jurisdiction over libels brought by citizens of the United States in any case). *See, generally,* Bickel, *Forum Non Conveniens in Admiralty, 35 Cornell L.Q. 12 (1949)*; Braucher, *The Inconvenient Federal Forum, 60 Harv. L. Rev. 908 (1947).*

(n14)Footnote 14. *The Maria, 67 F.2d 571, 1933 AMC 1642 (2d Cir. 1933)* ; *The Oriskany, 3 F. Supp. 805, 1933 AMC 1103 (D. Md. 1933)* ; *The Epsom, 227 F. 158 (W.D. Wash. 1915)* ; *The Neck, 138 F. 144 (D. Wash. 1905)* ; *The Falls of Keltie, 114 F. 357 (D. Wash. 1902)* ; *The Karoo, 49 F. 651 (D. Wash. 1892)* .

(n15)Footnote 15. *But see In re* Ocean Ranger Sinking off *Newfoundland, 589 F. Supp. 302, 1985 AMC 1293 (E.D. La. 1984)* (court conditionally dismissed death actions on behalf of Canadian seamen while retaining actions on behalf of American seamen).

(n16)Footnote 16. *The Ucayali, 159 F. 800 (E.D.N.Y. 1908)* .

But see Bekris v. Greek M/V Aristoteles, 437 F.2d 219, 1971 AMC 641 (4th Cir. 1971) ("Defendant's timely objection to the court's [subject matter] jurisdiction as an affirmative defense was sufficient to preserve the issue regardless of the prior entry of a general appearance.").

(n17)Footnote 17. *Watts, Watts & Co. v. Unione Austriaca di Navigazione, 229 F. 136 (2d Cir. 1915) , aff'g, 224 F. 188 (E.D.N.Y. 1915)* .

In cargo suits between nationals of belligerent nations wherein the libelant predicated recovery on deviation as a tort independent of contract and the respondent urged the court to decline jurisdiction on the ground that the cause of action did not arise in the United States, that the cargo was not delivered or intended to be delivered in the United States and that the controversy was between citizens of two belligerent nations, jurisdiction was declined unless the libelant should

amend the libel to set out the contract so as to give the court an opportunity to pass on the question of jurisdiction in the light of the facts thus presented: African Explosives Indus. v. Hamburgamerikanishe Packetfahrt Aktiengesellschaft, 1941 AMC 441 (S.D. Fla. 1941) .

In Hong Kong & Shanghai Banking Corp. v. Lloyd Triestino, 1941 AMC 470 (D.C.Z. 1941) , a cargo suit between nationals of belligerent countries, the libel pleaded a cause of action for conversion and the court declined to require the libelant to produce the contract of carriage, holding that the contract was unnecessary to the disposition of the question whether the court should accept jurisdiction in the exercise of its discretion.

(n18)Footnote 18. *Watts, Watts & Co. v. Unione Austriaca di Navigazione, 248 U.S. 9 (1921) . See also The Kaiser Wilhelm II, 246 F. 786 (3d Cir. 1917) , rev'g, 230 F. 717 (D.N.J. 1916) . See also Robinson v. Continental Ins. Co., 1 K.B. 155, 161, 162 (1915) .*

In *Juando v. Taylor, 13 F. Cas. 1179 (S.D.N.Y. 1818)* (No. 7558), it was held that no suit or proceeding of any sort can be maintained in the courts of a neutral nation by the subjects of one belligerent against the subjects of the other for acts growing out of war.

The status of the defendant as an alien enemy is not alone sufficient to justify a postponement until the end of hostilities: *Braun v. Italia Societa Anonima Di Navigazione, 35 N.Y.S.2d 246, 1945 AMC 105 (N.Y. City Ct. 1942) .*

Pipe v. The La Salle, 49 F. Supp. 662, 1943 AMC 263 (S.D.N.Y. 1943) (although the agent for a non-resident alien enemy may be permitted to maintain a suit in admiralty, the proceeds if any are held subject to the Trading With the Enemy Act of 1917 and regulations thereunder). *Cf. United States v. Insurance Co. of N. Am., 143 F.2d 53, 1944 AMC 79 (4th Cir. 1944)* ; The Odenwald, 1942 AMC 1623 (D.P.R. 1942) .

Szanti v. Teryazos, 45 F. Supp. 618, 1942 AMC 975 (E.D.N.Y. 1942) (a Hungarian seaman who was injured in New York harbor and who overstayed his period for shipping out of the United States and remained in the United States without an immigrant visa was a non-resident enemy alien so that a suit for injuries commenced prior to declarations of war between the United States and Hungary was required to be stayed for the duration of such war after it was declared).

Libby, McNeill & Libby v. Bristol City Line of Steamships, 41 F. Supp. 386, 1941 AMC 1294 (S.D.N.Y. 1941) (jurisdiction has been declined in a suit by a U.S. firm against a British charterer for loss of a cargo sold by the U.S. firm to a Canadian company for export to the United Kingdom when shipment by the U.S. firm was prohibited by the Neutrality Act).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 130

§ 130 Jurisdiction Under the Foreign Sovereign Immunities Act: The Act, In General; Jurisdiction of United States Courts; Sovereign Immunity, In General; Exceptions to Immunity: Waiver; Exceptions to Immunity: Commercial Activities; Exceptions to Immunity: Property Taken in Violation of International Law; Exceptions to Immunity: Property Acquired by Succession or Gift; Exceptions to Immunity: Torts; Exceptions to Immunity: Enforcement of Maritime Lines; Liability and Damages; Counterclaims; Service, Pleadings and Default Judgments; Attachment and Execution.

The Act, In General. Congressional enactment of the Foreign Sovereign Immunities Act ("FSIA") n1 was intended to satisfy a two-fold purpose. The Act was designed to provide a means for injured persons to bring lawsuits arising out of commercial activity against foreign states or entities owned by foreign states in the United States courts. The Act was further intended to create a standard for establishing a foreign state's entitlement to sovereign immunity. n2

The Act represents an attempt by the federal government "to preempt any other State or Federal law (excluding applicable international agreements) for according immunity to foreign sovereigns." n3 The FSIA was also intended to bring federal law and procedure into alignment with principles of international law n4 by entrusting all claims of sovereign immunity to the exclusive determination of the courts n5 and abandoning the former practice whereby the State Department, at the request of a foreign state, would convey a binding recommendation of immunity *vel non* to the courts. n6 The FSIA denotes a Congressional repudiation of the principle of absolute sovereign immunity initially espoused by Chief Justice Marshall. n7 Instead, more than 150 years after the Supreme Court first addressed the issue, Congress has codified the "restrictive" principle of sovereign immunity in the FSIA, at the behest of the State Department. Under the restrictive principle of sovereign immunity, foreign states are no longer immune to the jurisdiction of the United States courts in disputes that involve foreign sovereigns' commercial activities. n8 Furthermore, the Act provides a statutory procedure for service of process and obtaining *in personam* jurisdiction over a foreign state, n9 as well as a means of recourse against foreign sovereigns in the event that they fail to pay a final judgment which has been rendered under the Act. n10

Jurisdiction of United States Courts. Although jurisdiction under the FSIA exists concurrently in state and federal courts, n11 Congress has expressed a clear preference that sovereign immunity cases be heard in federal courts in order to promote the development of a uniform body of law in this area. n12 To this end, *28 U.S.C. § 1441* gives foreign sovereigns the power to remove to federal court any action brought against them in a state court. n13

The FSIA does not affect the rules of decision that govern an underlying claim. n14 The procedural rules of the forum state govern extraterritorial service of process under *Fed. R. Civ. P. 4(e)*, n15 and may limit the effective reach of jurisdiction. n16 Similarly, federal courts must observe the forum state's statute of limitations, regardless of the source of the rules of decision in the case, unless the controlling substantive law includes a specific limitation provision. n17

Section 1330 grants the district courts subject matter n18 and personal n19 jurisdiction in non-jury civil actions which may be brought against foreign states under §§ 1605 and 1607, as well as under applicable international agreement, without regard to the amount in controversy. n20 Although Congress meant to incorporate the constitutional requirements of minimum contacts and adequate notice, which have been incorporated into §§ 1330(c), 1605(b) (1), (2) and 1608, n21 the courts have generally required that the exercise of personal jurisdiction under the statute meets the constitutional requirements of due process. n22

Under the Act, n23 a "Foreign state" is explicitly defined to include political subdivisions and corporations, the majority interests of which are held by a foreign state or political subdivision. n24 "Commercial activity" for which a foreign state may be subject to suit encompasses both a regular course of commercial conduct as well as particular acts, the commercial nature of which may be determined by the nature of the acts themselves rather than by their ultimate purpose. n25 Commercial activity occurs "in" the United States, for purposes of establishing jurisdiction under FSIA, if the act is either wholly performed or executed in the United States or if it is found to be a commercial transaction or act having a "substantial contact" with the United States. n26

Although the thrust of the Act is cast in terms whereby foreign states are presumed to be immune from the jurisdiction of United States courts unless one of the exceptions created by the Act is deemed applicable, n27 it should be noted that the immunity exceptions specified in §§ 1605 and 1607 are subject to "existing treaties and other international agreements to which the United States is a party." n28

Sovereign Immunity, In General. Sovereign immunity remains an affirmative defense which must be pleaded and proved by the party asserting it. Once a foreign state produces *prima facie* evidence of its entitlement to immunity, the burden of going forward then shifts to the opposing party to establish lack of entitlement to immunity. The ultimate burden of proving a right to immunity, however, always rests with the party asserting that right. n29 If a claim asserted under the Act does not fall within one of the exceptions to immunity created by §§ 1605 and 1607, the foreign state will be immune to jurisdiction in all state courts as well as to federal jurisdiction. n30 Furthermore, the question of immunity, not merely the question of the courts subject matter jurisdiction, will be foreclosed from further litigation.

Exceptions to Immunity: Waiver. Section 1605 specifies the circumstances in which the federal and state courts must deny immunity to a foreign state. Subsection (a) (1) denies sovereign immunity where a foreign state has explicitly or implicitly waived its right to immunity. An explicit waiver may be found in the terms of an international agreement or in a contract with a private party. Implicit waiver may be found when a foreign state subjects itself to the terms of the substantive law of another country, where it agrees to arbitration in another country n31 or where it files a responsive pleading without raising its immunity as a defense. n32 An explicit waiver may not be unilaterally withdrawn except in accordance with its terms. n33

Exceptions to Immunity: Commercial Activities. Subsection (a) (2) denies immunity in three types of situations that involve the commercial activities of a foreign state. In the first of these situations, n34 immunity will be denied when it is found that a foreign sovereign has been engaged in a commercial activity in the United States. n35 The second situation n36 denies immunity when an act is performed in the United States in connection with the foreign state's commercial activities performed elsewhere. In the third situation, n37 immunity will be denied if it is found that the foreign sovereign has committed "an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States."

The lower federal courts have differed over the proper interpretation of the first clause of § 1605(a) (2). n38 Some have held that the denial of immunity is dependent upon a connection or nexus between a foreign state's commercial activity in the United States and the specific underlying claim. Others have held that there is no immunity for acts outside the United States comprising an integral part of the foreign state's commercial activity in the United States.

Immunity will be denied under the second clause of § 1605(a) (2) in cases arising from a commercial or private act committed within the United States in connection with commercial activity elsewhere. While the legislative history acknowledges some duplication of the coverage between clauses one and two, this clause was included in the interest of clarity. In order that an act be sufficient to deny immunity under this clause it must be sufficient in and of itself "to form the basis of a cause of action." n39

Under the third and last clause of § 1605(a) (2) immunity will be denied in cases arising from commercial conduct abroad which has a direct effect within the United States. n40 Such a grant of jurisdiction to the United States courts is intended to be consistent with the principles enunciated in § 18 of the *Restatement of Law, Second, Foreign Relations Law of the United States.* n41 However, neither this clause nor subsection (e) of § 1603 is intended to affect the application of the Sherman Antitrust Act n42 to actions against foreign states. n43 Clause 3 has been somewhat strictly construed. Indeed, in order to satisfy the "direct effect" language of the clause, the result of the activity must be foreseeable, substantial, and immediate. n44 Thus it has been held that injury or death inflicted upon an American citizen abroad is not a "direct effect" in the United States within the meaning of this clause. n45

Exceptions to Immunity: Property Taken in Violation of International Law. Subsection (a) (3) denies immunity in cases involving property n46 taken in violation of international law, n47 where: the property is subsequently found to be present in the United States in connection with the foreign state's commercial activities in the United States; or where the subject property is owned and operated by an agency of a foreign state that is engaged in commercial activity in the United States. n48

Exceptions to Immunity: Property Acquired by Successsion of Gift. Subsection (a) (4) denies immunity in cases involving property in the United States acquired by succession or gift, and in cases involving realty. Diplomatic and consular property are excepted from the subsection. n49 Whether the property is used for commercial or public purposes is of no consequence. n50

Exceptions to Immunity: Torts. Subsection (a) (5) grants jurisdiction to federal and state courts in cases involving tort actions not covered by (a) (2). This subsection is primarily intended to adddress the problem of traffic accidents, n51 but includes in its scope all foreseeable claims for damages arising from tortious acts or omissions "of a foreign state or its officials or employees, acting within the scope of their authority" n52 occurring within the breadth of United States jurisdiction and not excluded by the "discretionary function" or "intentional tort" immunity defense. n53

Exception to Immunity: Arbitration Agreements. Subsection (a) (6), added in 1988, denies immunity if an action is brought either to enforce an agreement made by a foreign state to submit to arbitration "concerning a subject matter capable of settlement by arbitration under the laws of the United States," or to confirm an arbitration award made pursuant to such an agreement if one of the following criteria is met:

A) the arbitration takes place in the United States or is intended to,

B) the arbirtration agreement or award "is or may be governed" by a United States treaty,

C) the underlying claim could have been sued on in a United States court under the Foreign Sovereign Immunities Act, or

D) the foreign sovereign waives its immunity. n54

Exceptions to Immunity: Enforcement of Maritime Liens. Section 1605(b) denies immunity in suits brought in admiralty to enforce maritime liens against foreign vessels or cargo where the lien is based upon the commercial activities of the foreign state n55 and the requirements for delivery of the summons and complaint specified under paragraph (b) (1) and the service procedures of section 1608(a) and (b) have been complied with. n56 Such a suit would be grounded upon *in rem* jurisdiction but for the foreign state's ownership and possession of the vessel. Any recovery on this jurisdictional basis may not exceed the value of the vessel or cargo that is subject to the lien, regardless of the amount of the lien. The commercial activity upon which the lien is based need not have occurred in the United States. This subsection, when read in conjunction with § 1609, emphasizes the legislature's intent to abolish attachment as a means of obtaining jurisdiction over foreign sovereigns where there is a nexus between the claim and the United States. n57 Although a lien may initially be based upon the presence of the vessel within U.S. territory, jurisdiction over the foreign sovereign as owner of the vessel is not dependent upon arrest and seizure of the vessel. Indeed, a claimant who arrests a vessel which is actually or constructively known to be owned and possessed by a foreign state will be liable for any damages sustained by the foreign state as a result of the arrest. n58

The right to enforce a maritime lien under § 1605(b) will also be lost if the strict notice requirements of § 1605(b) (1) and (2) are not met. Copies of the summons and complaint must be delivered to the person in possession of the vessel, usually the master or an officer. n59 Actual notice must be given to the foreign state, by one of the methods described in § 1608, within ten days of service of process upon the person in possession of the vessel. n60

A lien claimant who loses the right to pursue a claim under § 1605(b) due to the failure to properly serve the foreign state may nevertheless pursue a remedy under the long arm provisions of § 1605(a). n61 In *Velidor v. L/P/G Benghazi,* n62 plaintiffs served the master of the vessel, but failed to serve the foreign state, thereby losing the right to enforce their lien. The court held, in accordance with the legislative history, that §§ 1605(a) and (b) provide alternative, rather than mutually exclusive grounds for obtaining *in personam* jurisdiction. The court further held that service upon the master, although insufficient under § 1605(b), satisfied the requirements of § 1608 insofar as that section applies to actions under § 1605(a).

Liability and Damages. Section 1606 provides that, in cases in which sovereign immunity is denied, the liability of a foreign state is determined in the same manner and to the same extent applicable to any other defendant. n63 However, punitive damages may not be assessed against a foreign state, except in a wrongful death action in which the only damages recoverable under applicable law are denominated punitive. In such a case, damages shall be measured by the actual pecuniary loss suffered by the person for whom the action was instituted. This section does not, however, bar the recovery of punitive damages from an agency or instrumentality of a foreign state. n64

Counterclaims. Section 1607 grants jurisdiction over certain counterclaims against foreign state plaintiffs. Subsection (a) states that all of the exceptions to sovereign immunity that are included in § 1605 are applicable to counterclaims. Subsection (b) deprives sovereigns of immunity in a second category of claims; those in which the counterclaim is based upon the same transaction or occurrence that is the subject matter of the claim asserted by the foreign state. Subsection (c) further expands the exceptions to immunity to include counterclaims in the nature of a setoff, regardless of whether the setoff arises from the same transaction or occurrence which gave rise to the claim asserted by the foreign state. Subsections (b) and (c) express the intention of Congress that foreign states be deemed to have submitted to the jurisdiction of the court to the extent to which they claim the benefit of the court's jurisdiction as plaintiffs. n65 This section neither expands nor restricts the scope of cross-claims otherwise authorized under *Fed. R. Civ. P. 13(a)*. n66

Service, Pleadings and Default Judgments. Section 1608 provides exclusive procedures for service of process upon, filing of responsive pleading by, and obtaining default judgments against foreign states, their agencies and instrumentalities. n67 The section plays an integral role in the Act and is patterned after other specialized federal statutory service provisions. n68 Subsection (a) outlines the procedures for service of the summons and complaint upon a foreign state or political subdivision, while subsection (b) covers service upon an agency or instrumentality of a foreign state. According to the legislative history of the Act, "there is a hierarchy in methods of service." Subsection (a)

is thus intended to encourage foreign states and potential plaintiffs to reach an agreement on how service is to be made. n69 The legislative history accompanying subsection (b) further indicates that service by special arrangement is the preferred method and generally contemplates that neither physical service abroad nor domestic service on diplomats will be ordered by a court. n70 Subsection (c) states the times at which service will be deemed to have been made under each of the distinct methods of service. Subsection (d) provides that a foreign state must file an answer within sixty days of the date of service, a period of time that corresponds to suits against the United States. Subsection (e) limits default judgments to cases in which plaintiff adduces satisfactory evidence of a right to relief. It also provides that notice of any default judgment must be served upon a foreign state or political subdivision. n71

Attachment and execution. Attachment and execution of the property of a foreign state are governed by §§ 1609 through 1611 of the Act. This portion of the Act follows the same general structure of those sections that govern a foreign state's immunity to jurisdiction. As a general proposition, foreign sovereigns are afforded immunity from attachment and execution. There are exceptions to this immunity, however, and these exceptions are spelled out in §§ 1609 and 1611 of the Act. n72

Section 1609 has as its principle effect the elimination of attachment as a means of commencing a lawsuit. Both the long arm provisions of the Act and the liberal reach of the section that confers personal jurisdiction allow for elimination of jurisdictional attachment, thereby eliminating a significant source of irritation between the United States and foreign governments. n73

Although the traditional view on execution against foreign states' property has been one of absolute immunity, § 1610 was drafted with the intent of bringing the exceptions to this immunity in line with the trend toward limiting this immunity in conformance with the exceptions to jurisdictional immunity under the Act. n74 Thus, where there is evidence of a waiver or a nexus between the property sought to be attached and the claim, immunity from attachment will be denied. In most instances, a court order must be obtained prior to attachment or execution, which orders may not be granted until a reasonable time has elapsed after entry of judgment.

The property of certain international organizations remains absolutely exempt from attachment based on the belief that the purpose of said organizations would be frustrated if their assets were available to the reach of private litigants. n75 At the same time that the FSIA was enacted, the federal removal statute was amended to give foreign states a clear right of removal in suits brought against them. The effect of removal, however, is to extinguish a demand for jury trial. n76

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawSovereign Immunity & LiabilityForeign GovernmentsCivil ProcedureRemovalBasisActions Against Foreign StatesInternational LawImmunityForeign Sovereign Immunities ActGeneral OverviewInternational LawImmunityForeign Sovereign Immunities ActJurisdictionGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *28 U.S.C. §§ 1330, 1602-1611*; P.L. 94-583 (1976).

In enacting the FSIA, Congress specifically invoked its constitutional powers to prescribe the jurisdiction of the federal courts [*U.S. Const. Art. I, § 8, Cl. 9*; Art. III, § 1], to define offenses against the "Law of Nations" [*U.S. Const. Art. I, § 8, Cl. 10*], to regulate commerce with foreign nations [*U.S. Const. Art. I, § 8, Cl. 3*] and to make all laws necessary and proper to execute the powers of the federal government [*U.S. Const. Art. I, § 8, Cl. 18*; Art. III, § 2, Cl. 1]. *See* H.R. Rep. No. 1487, 94th Cong., 2d Sess. 12, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6611. This exercise of legislative power and grant of jurisdiction to the courts was held constitutional by the *Supreme Court in Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 1983 AMC 1817 (1983)* ("By reason of its authority over

foreign commerce and foreign relations, Congress has the undisputed power to decide, as a matter of federal law, whether and under what circumstances foreign nations should be amenable to suit in the United States").

The narrow issue in *Verlinden* was whether the FSIA confers jurisdiction on the federal courts to adjudicate an action brought by a foreign plaintiff against a foreign state defendant on a non-federal cause of action, and, if so, whether that grant of jurisdiction is constitutional under Article III. The Court answered both questions in the affirmative. The broad language of the opinion of the unanimous Court leave no doubt that the entire statutory scheme passes constitutional muster.

(n2)Footnote 2. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 6, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6604.

Note that the FSIA is not intended to affect either the doctrine of *forum non conveniens, Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 490 n. 15, 1983 AMC 1817, 1824 (1983)* , or the *Act of State Doctrine, Chas. T. Main Int'l v. Khuzestan Water & Power Auth., 651 F.2d 800 (1st Cir. 1981)* ; *Int'l Assoc. of Machinists v. O.P.E.C., 649 F.2d 1354 (9th Cir. 1981) , cert. denied, 454 U.S. 1163 (1982)* , H.R. Rep. No. 1487, 94th Cong., 2d Sess. 20-21, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6618-19.

(n3)Footnote 3. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 12, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6610-11. Neither the Alien Tort Statute, *28 U.S.C. § 1350*, nor the grant of admiralty jurisdiction, *28 U.S.C. § 1333(1)*, provide an additional basis for obtaining federal jurisdiction over a foreign state. *Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 1989 AMC 501 (1989) . See also Transatlantic Shiffahrtskontor GmBh, 996 F. Supp. 326 (S.D.N.Y 1998)* (admiralty jurisdiction is not available where the FSIA applies).

(n4)Footnote 4. *McKeel v. Islamic Republic of Iran, 722 F.2d 582 (9th Cir. 1983) , cert. denied, 469 U.S. 880 (1984)* ; *Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 1981 AMC 1605 (2d Cir. 1981) , cert. denied, 454 U.S. 1148 (1982)* ; H.R. Rep. No. 1487, 94th Cong., 2d Sess. 14, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6612-13.

(n5)Footnote 5. *28 U.S.C. § 1602*; H.R. Rep. No. 1487, 94th Cong., 2d Sess. 6, 8, 14-15, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6604, 6613. *See also Unidyne Corp. v. Government of Iran, 512 F. Supp. 705 (E.D. Va. 1981)* (the FSIA was not intended to extend the jurisdictional competency of state or federal courts). *See also Amerada Hess Shipping Corp. v. Argentine Republic, 830 F.2d 421, 1987 AMC 2705 (2d Cir. 1987)* (tort claim for attack on neutral vessel in international waters is permitted under Alien Tort Statute, *28 U.S.C. § 1350*; the FSIA is not the exclusive basis for jurisdiction against a foreign sovereign).

Chas. T. Main Int'l v. Khuzestan Water & Power Auth., 651 F.2d 800 (1st Cir. 1981) (the FSIA does not, however, deprive the president of the power to settle or provide alternative procedures for settlement of claims against foreign states in times of international crisis); *Unidyne Corp. v. Government of Iran, supra.*

(n6)Footnote 6. *See Ex Parte Republic of Peru, 318 U.S. 578 (1945)* ; *Ervin v. Quintinilla, 99 F.2d 935 (2d Cir. 1938)* .

(n7)Footnote 7. The principle of absolute sovereign immunity was adopted by the *Supreme Court in the Schooner Exch. v. McFadden, 11 U.S. (7 Cranch) 116 (1812)* . Chief Justice Marshall, for the Court, described the jurisdiction of a sovereign within its territorial boundaries as absolute, exclusive, and susceptible only of self-imposed limitation. He also held that the principle of sovereign immunity *vis-a-vis* foreign sovereigns would be observed only as a matter of implied international compact.

(n8)Footnote 8. The State Department had previously adopted the restrictive principle of sovereign immunity for application to requests for immunity made through diplomatic channels. Letter from Acting Legal Adviser of Jack B.

Tate to the Acting Attorney General, Philip V. Perlman, May 19, 1952, *reprinted in* 26 Dept. of State Bulletin 984, and in *Alfred Dunhill of London v. Cuba, 425 U.S. 682, 711 (1976)* (Appendix 2), The "Tate Letter."

(n9)Footnote 9. *28 U.S.C. § 1608. See Frolova v. Union of Soviet Socialist Republics, 558 F. Supp. 358 (N.D. Ill. 1983) , aff'd, 761 F.2d 370 (7th Cir. 1985) .*

(n10)Footnote 10. *28 U.S.C. §§ 1609-1611.*

(n11)Footnote 11. *28 U.S.C. §§ 1602, 1604, 1605, 1607, 1608.*

(n12)Footnote 12. *First Nat'l City Bank v. Banco Para El Comercio Exterior, 459 U.S. 942 (1983)* ; H.R. Rep. No. 1487, 94th Cong., 2d Sess. 12, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6610.

(n13)Footnote 13. *Id.*

(n14)Footnote 14. *First Nat'l City Bank v. Banco Para El Comercio Exterior, supra.*

(n15)Footnote 15. *Fed. R. Civ. P. 4(e),* as amended by P.L. 97-462 § 2, 96 Stat. 2527 (1963).

(n16)Footnote 16. *In re Sedco, 543 F. Supp. 561 (S.D. Tex. 1982)* ; *W.G. Bush & Co. v. Sioux City & New Orleans Barge, 474 F. Supp. 537 (M.D. Tenn. 1977) .*

(n17)Footnote 17. *Guaranty Trust Co. v. York, 326 U.S. 99 (1945)* ; *Board of Regents v. Tomanio, 446 U.S. 478 (1980) . See Gilson v. Republic of Ireland, 682 F.2d 1022 (D.C. Cir. 1982)* (applying D.C. statute of limitations).

But see Goar v. Compania Peruana De Vapores, 688 F.2d 417 (5th Cir. 1983) (a direct action against the insurer of a corporation owned by a foreign state, brought pursuant to state statute is nevertheless an action against a foreign state as a matter of federal law, and the plaintiff has no right to a jury trial; the *seventh amendment* does not guarantee the right to a jury trial in such a case).

(n18)Footnote 18. *28 U.S.C. § 1330(a).*

Subsection 1330(a) provides the sole source of federal jurisdiction in actions against corporations owned by foreign states. *Goar v. Compania Peruana De Vapores, supra* (rejecting assertion that § 1332(a) provides alternative basis of jurisdiction); *Williams v. Shipping Corp. of India, 653 F.2d 875 (4th Cir. 1982) , cert. denied, 455 U.S. 982 (1982)* ; *Ruggerio v. Compania Peruana De Vapores, 639 F.2d 872 (2d Cir. 1981)* ; *Rex v. Compania Peruana De Vapores, 660 F.2d 61 (3d Cir.) , cert. denied, 456 U.S. 926 (1981) .*

(n19)Footnote 19. *28 U.S.C. § 1330(b).*

(n20)Footnote 20. This is intended to encourage the bringing of federal actions against foreign states. H.R. Rep. No. 1487, 94th Cong., 2d. Sess. 13, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6611-12.

(n21)Footnote 21. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 13, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6619. *See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)* ; *International Shoe Co. v. Washington, 326 U.S. 310 (1945) . See* the notice provisions in *28 U.S.C. § 1608. See also 28 U.S.C. § 1605(b) (1)* and *(2),* which apply to proceedings in admiralty for enforcement of maritime liens.

(n22)Footnote 22. *See, e.g., Gilson v. Republic of Ireland, 682 F.2d 1022 (D.C. Cir. 1982)* ; *Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 1981 AMC 1605 (2d Cir. 1981) , cert. denied, 454 U.S. 1148 (1982)* ; *Chisholm & Co. v. Bank of Jamaica, 643 F. Supp. 1393 (S.D. Fla. 1986)* ; *Kalamazoo Spice Extraction Co. v. Provisional Military Gov't of Socialist Ethiopia, 616 F. Supp. 660 (W.D. Mich. 1985) . See, generally,* Kane, *Suing Foreign Sovereigns: A Procedural Compass, 34 Stan. L. Rev. 385, 396-*97 (1982). *But see Alberti v. Empresa*

Nicaraguense De La Carne, 705 F.2d 250, 252 (7th Cir. 1983) (exceptions to immunity in FSIA "provide the minimum contacts with the United States required by due process").

(n23)Footnote 23. *28 U.S.C. § 1603* provides the definitions to be applied in construing the Act.

(n24)Footnote 24. Where several states by treaty own a corporation engaged in shipping, the corporation is an agency or instrumentality of a foreign state even though no state owns more than 50% of the shares. *Mangattu v. M/V Ibn Hayyan, 35 F.3d 205, 1995 AMC 523 (5th Cir. 1994)* .

(n25)Footnote 25. For example, a contract to make repairs on an embassy building is a commercial contract, even though the ultimate purpose of the contract is the furtherance of a public function. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 16, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6615. *See also Meadows v. Dominican Republic, 817 F.2d 517 (9th Cir. 1987)* (obtaining loan commitment is type of activity private persons perform); *Transamerican S.S. Corp. v. Somali Democratic Republic, 767 F.2d 998, 1985 AMC 2617 (D.C. Cir. 1985)* (Somali exceeded diplomatic behavior by acting as a commercial middleman between the co-defendant shipping agency and the plaintiff vessel owner; Somali embassy acted in an essentially private capacity when it assisted the agency in collecting payment from the vessel owner; embassy did not attempt to mediate the conflict or negotiate a settlement or even to investigate the causes or merits of the dispute); *Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 1981 AMC 1605 (2d Cir. 1981) , cert. denied, 454 U.S. 1148 (1982)* (purchase of cement is a commercial activity).

(n26)Footnote 26. It is left to the courts to formulate a comprehensive definition of "substantial contacts." Congress has indicated only that the term is intended to require something more than the U.S. citizenship or residency of the plaintiff. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 17, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6616. *See Falcoal, Inc. v. Turkiye Komur Isletmeleri Kurumu, 660 F. Supp. 1536 (S.D. Tex. 1987)* (agreement to open letter of credit in the United States, and the failure to do so, do not constitute "substantial contact" with the United States); *Brazosport Towing Co. v. 3,838 Tons of Sorghum, 607 F. Supp. 11, 1985 AMC 646 (S.D. Tex. 1984) , aff'd, 790 F.2d 891 (5th Cir. 1986)* (court lacked subject matter jurisdiction under FSIA when it ordered an interlocutory sale of cargo for unpaid ocean freight because defendant was an instrumentality of the Mexican government which did not conduct or contract business within the United States or with a United States party; as there was no valid judgment a timely motion under Rule 60(B) (4) was granted to render the final judgment void, and plaintiff must deposit the sale's proceeds in the court's registry).

(n27)Footnote 27. *28 U.S.C. § 1604*; H.R. Rep. No. 1487, 94th Cong., 2d Sess. 17, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6616 ("Stating the basic principle in terms of immunity may be of some advantage to foreign states in doubtful cases ...").

(n28)Footnote 28. *Id. See Colonial Bank v. Compagnie Generale Maritime et Financierre, 645 F. Supp. 1457, 1987 AMC 753 (S.D.N.Y. 1986)* (treaty with France which assures that nationals and companies of the two countries shall have access to the courts of the other country does not deprive company owned by France from claiming immunity under the FSIA).

(n29)Footnote 29. *28 U.S.C. § 1604*. *See* H.R. Rep. No. 1487, 94th Cong., 2d Sess. 17, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6616-17. *See also Meadows v. Dominican Republic, 817 F.2d 517 (9th Cir. 1987)* ; *Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371 (5th Cir. 1980)* ; *In re Sedco, 543 F. Supp. 561 (S.D. Tex. 1982)* ; *De Sanchez v. Banco Central de Nicaragua, 515 F. Supp. 900 (E.D. La. 1981)* .

(n30)Footnote 30. *28 U.S.C. § 1330(a)*. *See* H.R. Rep. No. 1487, 94th Cong., 2d Sess. 13, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6611-12.

(n31)Footnote 31. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 18, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6616-17; *Ipitrade International, S.A. v. Federal Republic of Nigeria, 465 F. Supp. 824 (D.D.C. 1978) . But see Maritime Int'l Nominees Est. v. Republic of Guinea, 693 F.2d 1094 (D.C. Cir. 1983) , cert. denied, 464 U.S. 815 (1983)*

; *Chicago Bridge & Iron Co. v. Islamic Republic of Iran, 506 F. Supp. 981 (N.D. Ill. 1980)* . *But see Cargill Intl S.A. v. MT Pavel Dybenko, 991 F.2d 1012 (2d Cir. 1993)* (an agreement to arbitrate in a foreign country, without more, ought not to operate as a waiver of sovereign immunity in United States courts, especially in favor of a non-party to the agreement); *Colonial Bank v. Compagnie Generale Maritime et Financierre, 645 F. Supp. 1457, 1987 AMC 753 (S.D.N.Y. 1986)* (corporation did not waive its immunity either by seeking confirmation of London arbitration award against a third party in a related action or by raising, as a defense of set-off, the judgment against the third party).

(n32)Footnote 32. *Rodriguez v. Transnave Inc., 8 F.3d 284, 1994 AMC 769 (5th Cir. 1993)* (defendant did not waive sovereign immunity by petitioning to remove case to federal court; nor did it waive immunity by appearing in court even though it had not been properly named; nor did two year delay in urging motion to dismiss constitute waiver as it had asserted immunity in its answer and the two years were spent developing the facts relating to the immunity issue; implied waivers are rarely found and must be based on strong evidence that foreign state intended a waiver).

Northern Shipping Co. v. M/V Tivat, 1987 AMC 590 (E.D. Pa. 1986) ; *Sea Lift, Inc. v. Refinadora Coastarricense de Petroleo, S.A., 601 F. Supp. 457, 1986 AMC 997 (S.D. Fla. 1984)* , *rev'd on other grounds, 792 F.2d 989, 1986 AMC 2982 (11th Cir. 1986)* . Merely pleading that the court lacks subject matter jurisdiction will not suffice. *Id.*

(n33)Footnote 33. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 18, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6616-17.

(n34)Footnote 34. *28 U.S.C. § 1605(a) (2) (i).*

(n35)Footnote 35. *Compare* §§ 1603(d) and (e): a "commercial activity" may be *either* a course of conduct or a single act; a "commercial activity carried on *in* the United States" is one which has "substantial contacts" with the United States. *See Sugarman v. Aeromexico, 626 F.2d 270 (3d Cir. 1980)* (first clause of § 1605(a) (2) not intended to be read literally).

(n36)Footnote 36. *29 U.S.C. § 1605(a) (2) (ii).*

(n37)Footnote 37. *28 U.S.C. § 1605(a) (2) (iii).*

(n38)Footnote 38. While the Third Circuit has explicitly adopted the "nexus test," *Sugarman v. Aeromexico, Inc., 626 F.2d 270 (3d Cir. 1980)* ; *Velidor v. L/P/G Benghazi, 653 F.2d 812 (3d Cir. 1981)* , *cert. dismissed, 455 U.S. 929, 102 S. Ct. 1297, 71 L. Ed. 2d 474 (1982)* ("It is essential that there be a nexus between the plaintiffs' grievance and the sovereign's commercial activity."), the Second Circuit's stance on the issue appears to be unsettled. In the case of *In re Rio Grande Transport, Inc., 516 F. Supp. 1155 (S.D.N.Y. 1981)* , plaintiff's vessel sank in the Mediterranean after a collision with a vessel operated by CNAN which was en route to West Germany pursuant to a commercial transaction which was not shown to have any nexus with the United States. In interpreting the first clause of § 1605(a) (2), the court stated:

> "By defining 'commercial conduct' broadly, the Congress apparently did not intend to require that the specific commercial transaction or act upon which an action is based have occurred in the United States or have had substantial contact with the United States; only the broad course of conduct must be so connected." *516 F. Supp. at 1162* .

It appeared as if the Second Circuit might have adopted this line of reasoning. *Rio Grande* was cited with approval in *Ministry of Supply, Cairo v. Universe Tankships, Inc., 708 F.2d 80 (2d Cir. 1983)* , but the remainder of the court's discussion did not go so far. The court held that when a foreign state has carried on a commercial activity within the United States, the first clause of § 1605(a) (2) withdraws immunity with respect to claims based not only on acts within the United States but also with respect to acts outside the United States if they comprise an integral part of the state's "regular course of commercial conduct" or "particular commercial transaction" having substantial contact with the

United States. *Id. at 84* . More recent district court decisions within the Second Circuit have rejected the broad "doing business" standard suggested by *Rio Grande. See Colonial Bank v. Compagnie Generale Maritime et Financierre, 645 F. Supp. 1457, 1987 AMC 753 (S.D.N.Y. 1986)* ; *Castillo v. Shipping Corp. of India, 606 F. Supp. 497, 1985 AMC 2926 (S.D.N.Y. 1985)* (injury on vessel in Dominican Republic is not based on United States commercial activity merely because defendant has shipping activities in the United States; the act complained of had no "impact on or tie to [defendant's] commercial activities in this country"). *See also Lasagne v. Divi Hotels, 685 F. Supp. 88, 1989 AMC 16 (S.D.N.Y. 1988)* (solicitation of American tourists in United States lacks a sufficient.

In the case of *Vencedora Oceanic Navigacion v. Compagnie Nationale Algerienne De Navigacion (CNAN), 730 F.2d 195 (5th Cir. 1984)* , not only did the Fifth Circuit enunciate its own position on the issue, but it also questioned the posture of the Second Circuit. The court explicitly adopted the Third Circuit's "nexus" test as stated in *Velidar* (CNAN's extensive commercial activities in the United States had no nexus with the particular claim asserted in the case, and therefore provided no bases for abrogation of CNAN's sovereign immunity). *See also Chicago Bridge & Iron Co. v. Islamic Republic of Iran, 506 F. Supp. 981 (N.D. Ill. 1980)* . In addition, the court stated that while it could be argued that the Second Circuit had adopted a "doing business" interpretation of the first clause of § 1605(a) (2) since the *Cairo* court cited *Rio Grande* as support for its holding, the Fifth Circuit was "reluctant to construe *Cairo* as an adoption of the doing business' interpretation of clause one when this interpretation was not before the court, and where the facts of [*Cairo*] meet the nexus test applied by the *Second Circuit in Gemini Shipping, Inc. v. Foreign Trade Organization for Chemical Food Stuffs, 647 F.2d 317 (2d Cir. 1981)* ." Indeed the facts in *Cairo* did not require a holding as broad as that of *Rio Grande* where the cargo at issue in *Cairo* was purchased and loaded in the United States and the purchase was financed under *7 U.S.C. § 1691 et seq.* Meanwhile, in *Gilson v. Republic of Ireland, 682 F.2d 1022 (D.C. Cir. 1982)* , the court of appeals stated that clause one of § 1605(a) (2) would be satisfied: if plaintiff could establish a nexus existing between the foreign state's commercial activity in the United States and the wrong underlying the claim in the case; or, if it could be shown that the foreign state's actions constituted an element of the cause of action under controlling substantive law. 682 F.2 at 1027 n.22 .

(n39)Footnote 39. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 19, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6617-18.

(n40)Footnote 40. *See Ministry of Supply, Cairo v. Universe Tankships, Inc., 708 F.2d 80 (2d Cir. 1983)* (the third clause of § 1605(a) (2) "... was included so as to withdraw immunity with respect to certain acts outside the United States in connection with a commercial activity as to which immunity had not already been withdrawn by the first clause.").

(n41)Footnote 41. The Restatement provides:

> "§ 18. Jurisdiction to Prescribe with Respect to Effect within Territory.
>
> "A state has jurisdiction to prescribe a rule of law attaching legal consequences to conduct that occurs outside its territory and causes an effect within its territory, if either
>
> "(a) the conduct and its effect are generally recognized as constituent elements of a crime or tort under the law of states that have reasonably developed legal systems, or
>
> "(b) (i) the conduct and its effect are constituent elements of activity to which the rule applies; (ii) the effect within the territory is substantial; (iii) it occurs as a direct and foreseeable result of the conduct outside the territory; and (iv) the rule is not inconsistent with the principles of justice generally recognized by states that have reasonably developed legal systems."

See H.R. Rep. No. 1487, 94th Cong., 2d Sess. 9, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6618.

(n42)Footnote 42. *15 U.S.C. § 1 et seq.*

(n43)Footnote 43. The FSIA does not affect the holdings of such cases as: *United States v. Pacific & Arctic Ry. & Nav. Co., 228 U.S. 87 (1913)* ; *Pacific Seafarers v. Pacific Far E. Line, 404 F.2d 803 (D.C. Cir. 1968) , cert. denied, 393 U.S. 1093 (1969)* . H.R. Rep. No. 1487, 94th Cong., 2d Sess. 19, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6618.

(n44)Footnote 44. *Maritime Int'l Nominees Est. v. Republic of Guinea, 693 F.2d 1094 (D.C. Cir. 1982) , cert. denied, 464 U.S. 815 (1983)* ; *Decor by Nikkei Int'l, Inc. v. Federal Rupublic of Nigeria, 497 F. Supp. 893 (S.D.N.Y. 1980) , aff'd sub nom. Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 1981 AMC 1605 (2d Cir. 1981) , cert. denied, 454 U.S. 1148 (1982)* .

(n45)Footnote 45. *Zernicek v. Brown & Root, Inc., 826 F.2d 415 (5th Cir. 1987)* ; *Lasagne v. Divi Hotels, 685 F. Supp. 88, 1989 AMC 16 (S.D.N.Y. 1988)* ; *Harris v. V.A.O. Intourist, Moscow, 481 F. Supp. 1056 (E.D.N.Y. 1979)* ; *Upton v. Empire or Iran, 459 F. Supp. 264 (D.D.C. 1978) , aff'd without op., 607 F.2d 494 (D.C. Cir. 1979) . See Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 1981 AMC 1605 (2d Cir. 1981) , cert. denied, 454 U.S. 1148 (1982)* (failure to pay American corporation in the United States constitutes a direct effect in the United States, undecided if it would be a direct effect within the United States to fail to pay a foreign corporation in the United States or to pay an American corporation overseas); *Falcoal, Inc. v. Turkiye Komur Isletmeleri Kurumu, 660 F. Supp. 1536 (S.D. Tex. 1987)* (drawing on American corporation's performance bond caused a direct effect in the United States); *Colonial Bank v. Compagnie Generale Maritime et Financierre, 645 F. Supp. 1457, 1987 AMC 753 (S.D.N.Y.1986)* (alleged wrongful seizure of vessel in France and Egypt had an indirect effect on American bank holding a mortgage on the vessel; even though bank probably suffered a greater loss than the owner, the determining factor is whether the loss was direct); *Evans v. Petroleo Brasileiro, S.A., 1985 AMC 1614 (S.D. Tex. 1984)* (pain and suffering, medical expense, lost wages and the distress of family members within the United States are not a "direct effect").

(n46)Footnote 46. This subsection is also applicable to property exchanged for property taken in violation of international law which falls within one of the two enumerated categories. H.R. Rep. No. 1487, 94th Cong. 2d Sess. 19, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6618.

(n47)Footnote 47. The legislative history points out that this would include "the nationalization or expropriation of property without payment of the prompt adequate and effective compensation required by international law." It would also include takings shich are arbitrary or discriminatory in nature. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 19, 20, *reprinted in* 1976 U.S,. Code Cong. & Admin. News 6618, 6619.

(n48)Footnote 48. The FSIA does not affect the application of the "act of state" doctrine. *Chas. T. Main Int'l v. Khuzestan Water & Power Auth., 651 F.2d 800 (1st Cir. 1981)* ; *International Ass'n of Machinists v. Organization of Petroleum Exporting Countries, 649 F.2d 1354 (9th Cir. 1981) , cert. denied, 454 U.S. 1163 (1982) . See Alfred Dunhill of London, Inc. v. Cuba, 425 U.S. 682 (1976)* (commercial activity not protected by act of state doctrine). *See also* H.R. Rep. No. 1487, 94th Cong. 2d Sess. 19, 20, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6619. *But see Sage Int'l, Ltd. v. Cadillac Gage Co., 534 F. Supp. 896 (E.D. Mich. 1981)* .

(n49)Footnote 49. *See* "Tate Letter" of 1952, 26 Department of State Bulleting 984 (1952).

(n50)Footnote 50. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 20, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6619.

(n51)Footnote 51. *Frolova v. Union of Soviet Socialist Republics, 761 F.2d 370 (7th Cir. 1985)* .

(n52)Footnote 52. In determining whether a tort committed by a foreign official or employee was executed within the scope of his employment, such actions must be of such a nature that the foreign state could reasonably foresee that a

tort might occur as a result of such employment. *Skeen v. Federative Republic of Brazil, 566 F. Supp. 1414 (D.D.C. 1983)* (foreign country could not reasonably foresee that grandson of its ambassador to United States would assault and shoot someone outside a United States nightclub; the resolution of this issue, being factual in nature, was an appropriate case for a jury trial); *Letelier v. Republic of Chile, 488 F. Supp. 665 (D.D.C. 1980)* (district court had jurisdiction over a case brought by personal representatives of a Chilean dissident killed in the United States where it was claimed that the dissident was killed at the direction of the foreign government).

(n53)Footnote 53. *28 U.S.C. § 1605(a) (5)*:

> "(A) preserves immunity from claims based upon 'Discretionary functions';
>
> "(B) preserves imunity from claims based upon a number of specified torts not involving physical harm."

See Yessenin-Volpin v. Novosti Press Agency, 443 F. Supp. 849 (S.D.N.Y. 1987) (jurisdiction denied under § 1605(a) (5) where claims arising out of libel are specifically excluded);

Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 1989 AMC 501 (1989) (attack on vessel on the high seas was not "in the United States" even though waters were within admiralty jurisdiction and even though effect of tort was felt in the United States).

(n54)Footnote 54. Pub. L. No. 100-669 (1988).

(n55)Footnote 55. *China Nat'l Chemical Import & Export Corp. v. M/V Lago Hualaihue, 504 F. Supp. 684 (D. Md. 1981)* (collision claims involving commercial vessels are included).

(n56)Footnote 56. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 21, 22, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6620, 6621.

(n57)Footnote 57. H.R. Rep. 1487, 94th Cong., 2d Sess. 27, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6626.

(n58)Footnote 58. Pub. L. No. 100-699 (1988) (amending *28 U.S.C. § 1605(b) (1)*). However, a preferred ship mortgage against a foreign owned vessel may be enforced *in rem. Id.* (adding *28 U.S.C. § 1605(d)* and *28 U.S.C. § 1610(e)*.

Under prior law notice of suit to enforce maritime lien could not be delivered if vessel or cargo were arrested. *See* H.R. Rep. 1487, 94th Cong., 2d Sess. 21, 22, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6620, 6621; *O'Connell Mach. Co. v. M.V. Americana, 566 F. Supp. 1381, 1983 AMC 2622 (S.D.N.Y. 1983) , aff'd, 734 F.2d 115, 1984 AMC 2200 (2d Cir.) , cert. denied, 469 U.S. 1086 (1984)* (posting of letter of undertaking to avoid an arrest is the equivalent of an arrest); *Jet Line Servs. v. M/V Marsa El Hariga, 462 F. Supp. 1165, 1979 AMC 543 (D. Md. 1978) . See generally,* Simmons, *Admiralty Practice under the Foreign Sovereign Immunities Act--A Trap for the Unwary, 12 J. Mar. L. & Com. 109, 117*-21 (1980). Although there was occasionally some misunderstanding of this matter, it appears that wrongful seizure did not deprive the plaintiff of the right to sue the owner of the vessel under *28 U.S.C. § 1605(a). O'Connell Mach. Co. v. M.V. Americana, supra. But see Northern Shipping Co. v. M/V Tivat, 1987 AMC 590 (E.D. Pa. 1986)* (reading *Jet Line, supra* , as holding that the plaintiff loses "any *in personam* right he has against the owner" but saying that "[s]uch a harsh result was clearly not intended by Congress"); Maritime Law Ass'n Doc. No. 673 at 9066 (1987) (reprinting testimony on behalf of Maritime Law Association that *Jet Line* held that plaintiff who wrongfully arrests a vessel loses not only his *in rem* claim but "loses his entire claim"); Kane, *Suing Foreign Sovereigns: A Procedural Compass, 34 Stan. L. Rev. 385, 409 n.124 (1982)* (Although statute and legislative history are silent, strong desire to avoid international friction caused by attachment would suggest that plaintiff should be

barred.). Some confusion may have resulted from the House Report's statement that "If, however, the vessel or its cargo is arrested or attached, the plaintiff will lose his *in personam* remedy and the foreign state will be entitled to immunity--except in the case where the plaintiff was unaware that the vessel or cargo of a foreign state was involved." H.R. Rep. 1487, 94th Cong., 2d Sess. 27, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6626. But this statement was in the context of the creation of *in personam* action to enforce a maritime lien under § 1605(b). Moreover, the House Report observes that "Section 1605(b) would not preclude a suit in accordance with other provisions of the bill--*e.g.*, section 1605(a) (2)." H.R. Rep. 1487, 94th Cong., 2d Sess. 27, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6626. *Cf. Velidor v. L/P/G Benghazi, 653 F.2d 812 (3d Cir. 1981) , cert. dismissed, 455 U.S. 929, 102 S. Ct. 1297, 71 L. Ed. 2d 474 (1982)* (Failure to provide notice required by § 1605(b) (2) does not preclude suit under § 1605(a).).

(n59)Footnote 59. *Castillo v. Shipping Corp. of India, 606 F. Supp. 497, 1985 AMC 2926 (S.D.N.Y. 1985)* (service on general agent insufficient, must be served on master of ship or his second in command).

(n60)Footnote 60. *28 U.S.C § 1605(b) (1).* H.R. Rep. 1487, 94th Cong., 2d Sess. 21, 22 *reprinted in* 1976 U.S. Code Cong. & Admin. News 6620, 6621.

(n61)Footnote 61. *Id.*

(n62)Footnote 62. *653 F.2d 812 (3d Cir. 1981) , cert. dismissed, 455 U.S. 929, 102 S. Ct. 1297, 71 L. Ed. 2d 474 (1982) .*

(n63)Footnote 63. This section cannot be read literally with regard to procedure, since § 1330 confers jurisdiction only in nonjury actions. The substantive law governing the cause of action applies to a foreign state defendant as to any other defendant. H.R. Rep. 1487, 94th Cong., 2d Sess. 12, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6610; *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611, 622 n. 11 (1983) .*

(n64)Footnote 64. *See* de *Letelier v. Republic of Chile, 502 F. Supp. 259 (D.D.C. 1980)* (awarding punitive damages against Chilean intelligence agency).

(n65)Footnote 65. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 23, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6622.

(n66)Footnote 66. *Ministry of Supply, Cairo v. Universe Tankships, Inc., 708 F.2d 80 (2d Cir. 1983)* (reading § 1605 as applying to cross-claims).

(n67)Footnote 67. Note, however, the special additional requirements in cases involving maritime liens, *28 U.S.C. § 1605(b) (1), (2).*

(n68)Footnote 68. H.R. Rep. No. 1487, 94th Cong. 2d Sess. 24, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6622, 6623.

(n69)Footnote 69. Under subsection (a) (1) service may be made in accordance with any special arrangement made between plaintiff and the foreign state or political subdivision. If such an arrangement has been made service *must* be made according to its terms. If an arrangement has not been agreed to, subsection (a) (2) allows service "in accordance with an applicable international convention on service of judicial documents." If neither subsection (a) (1) nor (a) (2) applies, subsection (a) (3) allows service by mail whereby the court clerk would send a copy of the "notice of suit" along with a copy of the summons and complaint to the head of the foreign state's ministry of foreign affairs. *See Fed. R. Civ. P. 4(i) (1) (D).* As a "method of last resort," subsection (a) (4) allows the clerk of the court to send to the secretary of state copies of the notice of suit, summons and complaint for service upon the foreign state through diplomatic channels. H.R. Rep. No. 1487, 94th Cong. 2d Sess. 24, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6623.

(n70)Footnote 70. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 25, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6623, 6624.

(n71)Footnote 71. *Id.*

(n72)Footnote 72. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 26-27, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6624-26. These sections govern whether the immunity from attachment and execution have been waived, not § 1605 which concerns waiver of jurisdictional immunity. *Mangattu v. M/V Ibn Hayyan, 35 F.3d 205, 1995 AMC 523 (5th Cir. 1994)* .

(n73)Footnote 73. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 27, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6626.

(n74)Footnote 74. *See also Liberian E. Timber Corp. v. Government of the Republic of Liberia, 659 F. Supp. 606 (D.D.C. 1987)* (Liberian Embassy bank accounts are immune from attachment even though some of the funds may be used for commercial purposes).

(n75)Footnote 75. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 27-29, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6626-28.

(n76)Footnote 76. H.R. Rep. No.1487, 94th Cong., 2d Sess. 32, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6631.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 131

§ 131. Suits against the Federal Government.

The United States has waived its sovereign immunity for certain types of admiralty suits brought in federal court under two statutes, commonly referred to as the Suits in Admiralty Act and the Public Vessels Act. A party intending to sue the United States for an admiralty cause of action must comply strictly with the applicable statute. Suit may be brought only in federal court, and trial is by the court rather than a jury. n1 The Public Vessels Act is the narrower of the two statutes, concerning, as its name suggests, only injuries involving public vessels of the United States. n2 The Suits in Admiralty Act waives the federal government's immunity in three types of situations: where the admiralty suit involves a vessel of the United States, where the admiralty suit involves cargo belonging to the United States, or where the United States could be sued in admiralty if it were a private party. n3 Where the Suits in Admiralty Act overlaps with the Public Vessels Act the latter statute controls. n4

The Suits in Admiralty Act applies to both contract and tort claims. n5 Claims under the Suits in Admiralty Act and Public Vessels Act must be filed within two years after the cause of action arose. n6 In those circumstances where a plaintiff's tort claim against the United States would not constitute an admiralty claim if brought against a private party, the proper remedy is under the Federal Tort Claims Act. n7 The matter is not always easy to determine, as the definition of a maritime tort claim turns not only on the location of the injury but on whether the tort satisfies a sufficient connection to traditional maritime activity. n8 Because the statute of limitations under the Suits in Admiralty Act and Public Vessels Act is shorter than under the Federal Torts Claims Act, it is advisable in case of doubt to plead in the alternative under any statute that might be applicable. n9 Suits under the Public Vessels Act are governed by the provisions of the Suits in Admiralty Act unless the two statutes are inconsistent. n10 The Public Vessels Act is more restrictive in a few areas. For example, it allows for no prejudgment interest, n11 it only allows foreign plaintiffs to bring suit if the plaintiff's state allows American nationals to sue in its courts in similar circumstances, n12 and it provides that no officer or member of the crew of a public vessel may be subpoenaed in connection with any suit under the Public Vessels Act without the consent of the Secretary of the department, the commanding officer or certain other persons. n13 The two statutes have different venue provisions. The Suits in Admiralty Act allows for suit in the district where any of the plaintiffs reside or have their principle place of business or where the vessel or cargo is found. n14 The Public Vessels Act requires that suit be brought in the district where the vessel or cargo charged with liability is found. If the vessel or cargo is outside the United States, then suit may be brought in any United States district where "any plaintiff resides or has an office for the transaction of business." If neither of these two provisions can be satisfied, the

Public Vessels Act permits suit to be brought in any district court. n15

The Suits in Admiralty Act authorizes plaintiffs to sue the government *in personam.* n16 In addition, a plaintiff may elect to proceed "according to the principles of an action *in rem*" if the plaintiff so elects in the complaint and if "it appears that an action *in rem* could have been maintained had the vessel or cargo been privately owned and possessed." n17 Although the statute permits no seizure or arrest of government property, the ability to sue on *in rem* principles has the effect of making the government liable in those circumstances where a private vessel could be sued *in rem* even though the private vessel owner could not be personally liable. For example, a private vessel might be sued *in rem* for collisions caused by the negligence of a pilot even though the private owner would have no *in personam* liability in that circumstance. n18

Although the Public Vessels Act waives immunity "for damages caused by a public vessel," n19 it is not necessary for the damage to have been caused, as in collision cases, by the physical operation of the public vessel. Rather it will suffice that personnel in the operation of the ship were negligent. n20

Although neither the Suits in Admiralty Act nor the Public Vessels Act includes a provision exonerating the government when it exercises a discretionary function, most courts have read that exclusion into the acts. n21

The Suits in Admiralty Act and Public Vessels Act provide an important immunity for agents and employees of the government. Such persons may not be sued "by reason of the same subject matter" if either of the statutes provides a remedy against the United States. n22 Because the two year statute of limitations applicable to the Suits in Admiralty Act and Public Vessels Act is shorter than the time limit on admiralty suits that normally can be brought against a third party, n23 failure to sue the United States as the proper party within the two year period may leave injured plaintiffs without recourse. n24

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawSovereign Immunity & LiabilityFederal GovernmentPublic Vessels ActProcedureAdmiralty LawSovereign Immunity & LiabilityFederal GovernmentPublic Vessels ActScopeAdmiralty LawSovereign Immunity & LiabilityFederal GovernmentSuits in Admiralty ActProcedureAdmiralty LawSovereign Immunity & LiabilityFederal GovernmentSuits in Admiralty ActScope

FOOTNOTES:
(n1)Footnote 1. *46 U.S.C. § 30903* (prior to the 2006 recodification, the applicable section was *46 U.S.C § 742*).

(n2)Footnote 2. The Public Vessels Act, *46 U.S.C §§ 31101-31113*, does not define what is meant by a "public vessel." Common examples of public vessels are warships and Coast Guard vessels. *See e.g., United States v. United Continental Tuna Corp., 425 U.S. 164, 1976 AMC 258 (1976)* (naval destroyer); *United States Fire Ins. Co. v. United States, 806 F.2d 1529, 1987 AMC 1028 (11th Cir. 1986)* (coast guard vessel); *Harrington v. United States, 748 F. Supp. 919, 1991 AMC 630 (D.P.R. 1990)* (suit involving Coast Guard vessel is cognizable only under the Public Vessels Act). A privately owned vessel which is operated for the United States can be a public vessel. *Favorite v. Marine Personnel & Provisioning, Inc., 955 F.2d 382 (5th Cir. 1992)* (vessel was bareboat chartered to government); *Santos v. RCA Service Co., 603 F. Supp. 943, 1987 AMC 1769 (E.D. La. 1985)* (vessels used in testing and evaluation of naval weapons). For purposes of subtitle II of title 46 of the United States Code, which does not include the Public Vessels Act, a "public vessel" is defined as a vessel that "(A) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and (B) is not engaged in commercial service." *See Marine Coatings v. United States, 674 F. Supp. 819, 1987 AMC 2365 (S.D. Ala. 1987) , vacated on other grounds, 932 F.2d 1370, 1991 AMC 2487 (11th Cir. 1991)* (definition in *46 U.S.C. § 2101(24)* does not clearly apply to the Public Vessels Act but is not necessarily inconsistent with existing case law; naval support vessels are not necessarily involved in a

commercial service). A maritime lien claim for ship repairs falls under the Suits in Admiralty Act and not under the *Public Vessels Act. Marine Coatings of Alabama v. United States, 71 F.3d 1558, 1996 AMC 1035 (11th Cir. 1996)* .

(n3)Footnote 3. *46 U.S.C. § 30903* (formerly *46 U.S.C. § 742*). *See Kelly v. United States, 531 F.2d 1144, 1976 AMC 284 (2d Cir. 1976)* (negligent failure of Coast Guard to rescue and negligently causing others not to come to aid of drowning victim in navigable waters states a maritime cause of action so that suit must be brought under the Suits in Admiralty Act, not the Federal Tort Claims Act); *Weatherford v. United States, 957 F. Supp. 830, 1997 AMC 1243 (M.D. La. 1997)* (suit based on alleged negligence of Army Corps of Engineers in supervising a dredging project was governed by the SAA even though the case did not involve government vessels or cargoes).

(n4)Footnote 4. *United States v. United Continental Tuna Corp., 425 U.S. 164, 1976 AMC 258 (1976)* (reciprocity provision of Public Vessel Act controls even though suit against public vessel is brought under the Suits in Admiralty Act).

(n5)Footnote 5. *United States v. United Continental Tuna Corp., 425 U.S. 164, 1976 AMC 258 (1976)* . However, wage claims by government employees working aboard government vessels must be brought in the Court of Claims. *Id.* at 179, n.18. *Amell v. United States, 384 U.S. 158 (1966)* . The Public Vessels Act authorizes a limited range of contract actions, those for towage and salvage services. *46 U.S.C. § 781*. *See Buck Kreihs Co. v. International Marine Carriers, Inc., 741 F. Supp. 1249 (E.D. La. 1990)* (the Suits in Admiralty Act, but not the Public Vessels Act, provides a remedy for breach of a repair contract).

(n6)Footnote 6. *46 U.S.C. § 30905* (formerly *46 U.S.C. § 745*). *Duke v. United States, 711 F. Supp. 332, 1990 AMC 1030 (E.D. Tex. 1989)* . A cause of action for contribution brought against the United States under the Suits in Admiralty Act does not arise until the party seeking contribution has paid more than its share of damages. *Sea-Land Service, Inc. v. United States, 874 F.2d 169, 1989 AMC 1750 (3d Cir. 1989)* .

(n7)Footnote 7. *See Kelly v. United States, 531 F.2d 1144, 1976 AMC 284 (2d Cir. 1976)* .

(n8)Footnote 8. For discussion of what constitutes a maritime tort see § 171 *et seq*.

(n9)Footnote 9. *Ayers v. United States, 277 F.3d 821, 2002 AMC 403 (6th Cir.) , cert. denied, 122 S. Ct. 2330 (2002)* ; *Duke v. United States, 711 F. Supp. 332, 1990 AMC 1030 (E.D. Tex. 1989)* . It is disputed whether the two year statute of limitations under the Suits in Admiralty Act is subject to tolling. *Compare Hedges v. United States, 404 F.3d 744 (3d Cir. 2005)* (subject to tolling); *McCormick v. United States, 680 F.2d 345, 1984 AMC 1799 (5th Cir. 1982)* (former Fifth Circuit case) (same); *with T.J. Falgout Boats, Inc. v. United States, 508 F.2d 855, 1975 AMC 343 (9th Cir. 1974) , cert. denied, 421 U.S. 1000 (1975)* (statute of limitations is jurisdictional and cannot be tolled); *Melton v. United States, 1989 AMC 34 (D.S.C. 1988)* (statute cannot be equitably tolled during period that plaintiff filed administrative claim with the Coast Guard). The Third Circuit in *Hedges* overruled its decision in *Bovell v. United States, 735 F.2d 755 (3d Cir. 1984)* based on the Supreme Court's decision in a Title VII case, *Irwin v. Dep't of Veterans Affairs, 498 U.S. 89 (1990)* .

It seems to be accepted that the statute will be tolled in the case of a prisoner of war who was prevented from suing, *Osbourne v. United States, 164 F.2d 767 (2d Cir. 1947)* . There is also authority that the statute will be tolled in case of fraud. *Scarborough v. Atlantic Coast Line R.R., 178 F.2d 253 (4th Cir. 1949)* . Timely submission of an administrative claim under the Federal Tort Claims Act will not suffice to toll the statute of limitations under the Suits in Admiralty Act. *Duke v. United States, supra. See also Rashidi v. American Presidential Lines, 96 F.3d 124 (5th Cir. 1996)* (not toll a garden variety claim of excusable neglect); *Ammer v. United States, 1995 U.S. App. LEXIS 12925 (4th Cir. 1995)* (not toll suit even though Coast Guard provided form to plaintiff's attorney upon his request which indicated that claim must be filed with the agency within two years); *Justice v. United States, 6 F.3d 1474, 1994 AMC 317 (11th Cir. 1993)* (tolling not warranted merely because prior suit was dismissed without prejudice and delays were due to attorneys lack of diligence); *Favorite v. Marine Personnel & Provisioning, Inc., 955 F.2d 382 (5th Cir. 1992)* (tolling not warranted

merely because employer has paid maintenance and cure); *Hawaii v. United States, 173 F. Supp.2d 1063, 2001 AMC 1737 (D. Haw. 2000)* (tolling would not be justified merely by the defendant's failure to apprize plaintiff of the applicable statute of limitations where parties were corresponding regarding claim).

(n10)Footnote 10. *46 U.S.C. § 31103* (formerly *46 U.S.C. § 782*).

(n11)Footnote 11. *46 U.S.C. § 31107* (formerly *46 U.S.C. § 782*).

(n12)Footnote 12. *46 U.S.C. § 31111* (formerly *46 U.S.C. § 785*). *Taghadomi v. United States, 401 F.3d 1080, 2005 AMC 958 (9th Cir. 2005)* ; *Harrington v. United States, 748 F. Supp. 919, 1991 AMC 630 (D.P.R. 1990)* . As explained in *Taghadomi*, the PVA's reciprocity requirement applies to any claim brought under the SAA or the FTCA if the claim could have been brought under the PVA. *See Tobar v. United States, 639 F.3d 1191 (9th Cir. 2011)* .

(n13)Footnote 13. *46 U.S.C. § 31110* (formerly *46 U.S.C. § 785*).

(n14)Footnote 14. *46 U.S.C. § 30906* (formerly *46 U.S.C. § 742*).

(n15)Footnote 15. *46 U.S.C. § 31104* (formerly *46 U.S.C. § 782*).

(n16)Footnote 16. *46 U.S.C. § 30903* (formerly *46 U.S.C. § 742*).

Suit must be brought against the United States of America. The Coast Guard cannot be sued in an SIAA action in its own name. *Good v. Ohio Edison Co., 149 F.3d 413 (6th Cir. 1998)* .

(n17)Footnote 17. *46 U.S.C. § 30907* (formerly *46 U.S.C. § 743*). The same ability to proceed on *in rem* principles has been read into the *Public Vessels Act. Canadian Aviator, Ltd. v. United States, 324 U.S. 215, 1945 AMC 265 (1945) . But see Turecamo of Savannah, Inc. v. United States, 36 F.3d 1083 (11th Cir. 1994)* (although bound by precedent the panel suggests that under *46 U.S.C. § 31342* no in personam suit may be brought by a sub-contractor against the United States for towing services); *Hopeman Bros., Inc. v. USNS Concord, 898 F. Supp. 338, 1995 AMC 2900 (E.D. Va. 1995)* (maritime liens against the United States are prohibited and may not be enforced through an in personam action).

(n18)Footnote 18. *See The China, 74 U.S. 53 (1869) . See generally,* Friedell & Healy, *An Introduction to* In Rem *Jurisdiction and Procedure in the United States, 20 J. Mar. L. & Com. 55 (1989).*

(n19)Footnote 19. *46 U.S.C. § 31102* (formerly *46 U.S.C. § 781*).

(n20)Footnote 20. *Canadian Aviator, Ltd. v. United States, 324 U.S. 215, 1945 AMC 265 (1945)* (crew aboard government vessel negligently guided plaintiff's vessel through waters).

(n21)Footnote 21. In *McMellon v. United States, 387 F.3d 329, 2004 AMC 2553 (4th Cir. 2004) , cert. denied, 125 S. Ct. 1828 (2005)* (en banc) the court recognized the discretionary function exception on grounds of separation of powers but not on grounds of Congressional intent. In doing so it overruled *Lane v. United States 529 F.2d 175 (4th Cir. 1975)* . There were several strong dissents. *See also In re Joint Eastern and Southern Districts Asbestos Litig., 891 F.2d 31 (2d Cir. 1989)* ; *Gercey v. United States, 540 F.2d 536 (1st Cir. 1976) , cert. denied, 430 U.S. 954 (1977)* ; *Wiggins v. United States, 799 F.2d 962, 1987 AMC 316 (5th Cir. 1986)* ; *Chotin Transp. Inc. v. United States, 819 F.2d 1342, 1988 AMC 2375 (6th Cir.) (en banc) , cert. denied, 484 U.S. 953 (1987)* ; *Callas v. United States, 682 F.2d 613 (7th Cir. 1982)* ; *Earles v. United States, 935 F.2d 1028 (9th Cir. 1991)* ; *Tew v. United States, 86 F.3d 1003 (10th Cir. 1996)* ; *United States Fire Ins. Co. v. United States, 806 F.2d 1529, 1987 AMC 1028 (11th Cir. 1986)* (Public Vessel Act); *Williams v. United States, 747 F.2d 700 (11th Cir. 1984)* ; *Canadian Transport Co. v. United States, 663 F.2d 1081, 1980 AMC 2103 (D.C. Cir. 1980)* ; *McAllister Bros., Inc. v. United States, 1989 AMC 1163, 1176 (S.D.N.Y. 1989)* (citing cases).

The discretionary function exception "protects only governmental actions and decisions based on considerations of public policy." *Berkovitz v. United States, 486 U.S. 531 (1988)* .

The Coast Guard has discretionary authority to order a forced evacuation of a vessel where there was a reasonable belief that there was life-threatening emergency. *Thames Shipyard & Repair Co. v. United States, 350 F.3d 247, 2004 AMC 112 (1st Cir. 2003)* , *cert. denied, 124 S. Ct. 2848 (2004)* .

As one court stated, "Decisions regarding the allocation of scarce resources, the training of personnel, the equipment of vessels, whether to render assistance, search and rescue policies and procedures, the method of response, and the provision of a mechanism for access to historical data on casualties are all discretionary in nature and shielded from tort liability ..." Wright v. P.J. St. Pierre Marine, Inc., 1990 AMC 325, 335 (S.D. Tex. 1989) . *Accord Azille v. United States, 2008 AMC 2820 (D.V.I. 2008)* .

The government had discretion when it placed a buoy 60 feet from a wreck and notified mariners accordingly, but it did not have discretion to move the buoy another 250 feet away from the wreck without notifying mariners that it had done so. *Sheridan Transp. Co. v. United States, 834 F.2d 467, 1987 AMC 1168 (5th Cir. 1987) , appeal after remand, 897 F.2d 795 (5th Cir. 1990)* .

Failure of government-issued chart to depict a large boulder was protected by dicretionary exception. *In re The Glacier Bay, 1994 AMC 2051 (D. Alaska 1993)* .

The government's decision to use asbestos in construction of World War II merchant vessels was protected under the discretionary exception. *Gordon v. Lykes Bros. S.S. Co., 835 F.2d 96, 1989 AMC 2911 (5th Cir. 1988)* .

The Fifth Circuit has said that "the discretionary function exception in principle shields from tort liability the Coast Guard's apprehension and transportation of drug-running vessels. But the government would not be shielded from liability if the destruction of the vessel resulted from the violation of Coast Guard regulations. *B. & F. Trawlers, Inc. v. United States, 841 F.2d 626, 1988 AMC 1577 (5th Cir. 1988)* .

The Coast Guard's inspection and certification of a passenger vessel is protected by the discretionary act exception. *Smith v. United States Coast Guard, 220 F. Supp.2d 275, 2002 AMC 2322 (S.D.N.Y. 2002)* ; the Coast Guard's alleged negligent interference with salvage efforts was covered by the discretionary act exception. *Northern Voyager L.P. v. Thames Shipyard & Repair Co., 214 F. Supp.2d 47, 2002 AMC 1331 (D. Mass. 2002)* .

The Commanding Officer of a Coast Guard vessel acted in accordance with established Coast Guard policy in destroying a seized unseaworthy vessel even though the Coast Guard had adequate supplies on board to repair the vessel. *Montego Bay Imports, Ltd. v. United States, 1990 AMC 618 (S.D. Fla. 1990)* .

The Fifth Circuit has not incorporated the law enforcement exception of the Federal Tort Claims Act, *28 U.S.C. § 2680(c)*, into the Suits in Admiralty Act or the Public Vessels Act. *B. & F. Trawlers, Inc. v. United States, supra.*

It has been held that the defamation exception of the Federal Tort Claims Act is not incorporated into the *SIAA or the PVA. Perrodin v. United States, 350 F. Supp.2d 706, 2005 AMC 1006 (D.S.C. 2004)* .

(n22)Footnote 22. *46 U.S.C. § 745. See Dearborn v. Mar Ship Operations, Inc., 113 F.3d 995, 1997 AMC 1829 (9th Cir. 1997)* (charterer of government vessel was agent, construing provisions of charter party); *Martin v. Miller, 65 F.3d 434, 1995 AMC 2972 (5th Cir. 1995)* (wage claim); *Favorite v. Marine Personnel & Provisioning, Inc., 955 F.2d 382 (5th Cir. 1992)* (suit by seaman against his employer was barred by Public Vessels Act. The federal government retained exclusive control over the vessel. It has bareboat chartered the vessel from one party and then contracted with

another to provide the crew and operate the vessel on the government's behalf. The contract with the operator did not change the nature of the charter to a time charter. Finally, the employer was an agent of the government.); *Nelsen v. Research Corp. of University of Hawaii, 805 F. Supp. 837 (D. Hawaii 1992)* (mere government ownership of vessel under charter does not make charterer an agent; on facts held that charterer was not an agent of the United States).

Henderson v. International Marine Carriers, 1990 AMC 400 (E.D. La. 1989) , aff'd, 921 F. 2d 275, 1991 AMC 1431 (5th Cir. 1990) (table) (private operator of government owned vessel may not be sued for personal injuries allegedly caused by negligence and unseaworthiness, but it may be sued for alleged arbitrary refusal to pay maintenance and cure claims as the latter may not be sued on under the Suits in Admiralty Act; evidence showed that all maintenance and cure payments were made by the operator). *Accord, Shields v. United States, 662 F. Supp. 187 (M.D. Fla. 1987)* . Other courts have held that the private operator is immune to suits for arbitrary refusal to pay maintenance and cure claims. *O'Connell v. Interocean Management Corp., 90 F.3d 82 (3d Cir. 1996)* ; *Kasprik v. United States, 87 F.3d 462 (11th Cir. 1996)* ; *Manuel v. United States, 50 F.3d 1253 (4th Cir. 1994)* ; *Smith v. Mar Inc., 896 F. Supp. 75 (D.R.I. 1995)* .

The concept of agent can include an independent contractor who is subject to the control of the United States. *In re United States, 367 F.2d 505, 1966 AMC 1943 (3d Cir. 1966) , cert. denied, 386 U.S. 932, 87 S. Ct. 953, 17 L. Ed. 2d 805 (1967)* ; *Cruz v. Marine Transport Lines, Inc., 634 F. Supp. 107, 1988 AMC 675 (D.N.J.) , aff'd, 806 F.2d 252 (3d Cir. 1986) , cert. denied, 481 U.S. 1048 (1987)* ; *Santos v. RCA Service Co., 603 F. Supp. 943, 1987 AMC 1769 (E.D. La. 1985) . But see Servis v. Hiller Systems Inc., 54 F.3d 203 (4th Cir. 1995)* (independent contractors who performed limited repair tasks and were not suject to operational control of the United States were not agents).

The immunity under *46 U.S.C. § 745* also applies to suits under the *Public Vessels Act. Cruz v. Marine Transport Lines, Inc., supra* ; *Santos v. RCA Service Co., supra* ; *Buck Kreihs Co. v. International Marine Carriers, Inc., 741 F. Supp. 1249 (E.D. La. 1990)* .

The Fifth Circuit has explained that before the exclusivity provision of *46 U.S.C. § 745* may be invoked, two requirements must be satisfied. First, the United States must have consented to suit under the Suits in Admiralty Act. Second, the United States must be subject to a traditional maritime claim. *Williams v. Central Gulf Lines, 874 F.2d 1058, 1989 AMC 2634 (5th Cir. 1989) , cert. denied, 110 S. Ct. 843 (1990)* . In the case before it the United States as time charterer had no operational control of the vessel and could therefore not be sued for personal injuries arising out of negligence of the crew or unseaworthiness. Consequently, the Fifth Circuit held that the vessel owner was not shielded from suit by virtue of *46 U.S.C. § 745*.

(n23)Footnote 23. Maritime tort claims are barred after three years. *46 U.S.C. § 763(a)*. The two year statute of limitations applies to maintenance and cure claims brought against the United States, as provided for by the Clarification Act, *50 App. U.S.C. § 1291(a)*. *Bullen v. United States, 1994 AMC 1895 (W.D. Wash. 1993)* .

(n24)Footnote 24. *See Santos v. RCA Service Co., 603 F. Supp. 943, 1987 AMC 1769 (E.D. La. 1985)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 132

§ 132. Removal of Admiralty Cases to Federal Court.

The generally accepted rule is that cases may not be removed from state court to federal court where the only basis of the federal court's jurisdiction is admiralty. n1 If the court has both admiralty jurisdiction and some other basis of federal jurisdiction, such as diversity or federal question jurisdiction, then the case can be removed. n2 The rule as stated above may be an oversimplification as explained below.

The Saving to Suitors Clause

Removal is governed by statute. *28 U.S.C. § 1441(a)* provides, "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court ..." This sentence would seem to permit removal of admiralty cases since the district courts have original jurisdiction and no act of Congress expressly provides that admiralty actions are non-removable. However, the Saving to Suitors Clause n3 has been interpreted to save a plaintiff's right to bring an admiralty action *in personam* in state court. That right would be frustrated if the defendant could remove the action to federal court.

There are two difficulties with this explanation of the Saving to Suitors Clause. First, it does not explain why admiralty actions can be removed if there is some other basis of federal jurisdiction such as diversity. n4 Second, it is something of a stretch to read the Saving to Suitors Clause as "expressly" providing that no removal is permitted. One could rejoin that the primary interest protected by the Saving to Suitors Clause is the right to jury trial, and a plaintiff in a removed case will be able to assert a right to jury trial if there is diversity or federal question jurisdiction. This explanation of the Saving to Suitors Clause is difficult, however. More is at stake in selecting a state court than the right to jury trial. A state court may be more convenient, its procedures more familiar or more favorable, and its docket more speedy than the federal court. Moreover, the plaintiff may not seek a jury trial or even be entitled to one. n5

28 U.S.C. § 1441(b)

To properly understand the problem it is necessary to understand the intricacies of *28 U.S.C. § 1441(b)*. The first sentence of that section provides, "Any civil action of which the district courts have original jurisdiction founded on a

claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties." The second sentence of § 1441(b) provides, "Any other such aciton shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."

Section 1441(b) thus sets up two classes of removal cases. In one set are federal question cases--those arising under the Constitution, treaties or laws of the United States--which are removable without regard to citizenship. The other set of cases are all other actions which fall under the district court's original jurisdiction. The latter class can only be removed if none of the defendants is a citizen or resident of the state where the action is filed. Since the Supreme Court has held that admiralty actions are not federal question cases, n6 admiralty actions are not included under the first sentence of § 1441(b). By definition, they fall under the second sentence since they are "other" actions within the district courts original jurisdiction. As such § 1441(b) seems to provide that admiralty actions may be removed if none of the defendants are citizens or residents of the state. n7

If this reading of § 1441(b) is correct, then admiralty actions will rarely be removable when there is no other basis of federal jurisdiction. Most of the time when a defendant is not sued in her home state there will be diversity jurisdiction. The federal court will only lack diversity jurisdiction in such cases when the dispute does not satisfy the amount in controversy requirement or in the rare case where the plaintiff and defendant are from State A but the suit is brought in state B. n8

Can the Plaintiff Waive an Improper Removal?

It not infrequently occurs that a plaintiff fails to object to the defendant's improper removal of an admiralty action to federal court. n9 This may be due to oversight or indifference. In some situations the impropriety of removal may not be obvious since the parties may have labored under the mistaken belief that there was some other basis for federal jurisdiction besides admiralty. There is authority that a federal district court must remand a case to state court once it becomes known that the only basis of the court's jurisdiction is admiralty. The reason for doing so is apparently that the court believes it lacks subject matter jurisdiction, a defect which the parties cannot waive. n10 The difficulty with this approach is that the court has subject matter jurisdiction since the case is within the court's admiralty jurisdiction. The better rule is to allow the plaintiff to waive the defect in removal, a matter now governed by statute. n11

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionCivil ProcedureRemovalBasisDiversity of CitizenshipCivil ProcedureRemovalBasisFederal QuestionsCivil ProcedureRemovalNonremovable ActionsCivil ProcedureRemovalWaivers

FOOTNOTES:
(n1)Footnote 1. *Romero v. International Terminal Operating Co., 358 U.S. 354, 371-72, 1959 AMC 832, 846 (1959)* ; Oklahoma *ex rel. Edmondson v. Magnolia Marine Transp. Co., 359 F.3d 1237, 2004 AMC 491 (10th Cir. 2004)* ; *In re Chimenti, 79 F.3d 534 (6th Cir. 1996)* ; *Servis v. Hiller Systems Inc., 54 F.3d 203 (4th Cir. 1995)* ; *Armstrong v. Alabama Power Co., 667 F.2d 1385 (11th Cir. 1982)* ; *Poirrier v. Nicklos Drilling Co., 648 F.2d 1063, 1982 AMC 1514 (5th Cir. 1981)* ; *Auerbach v. TowBoat U.S., 303 F. Supp.2d 538, 2004 AMC 370 (D.N.J. 2004)* ; *Carr v. Jetter, 103 F. Supp.2d 1122(E.D. Wis. 2000)* (claim for salvage remanded to state court); *Greenidge v. Mundo Shipping Corp., 41 F. Supp.2d 354 (E.D.N.Y. 1999)* ; *Canino v. Londres, 862 F. Supp. 685, 1995 AMC 675 (D.N.H. 1994)* ; *Bonnette v. Shell Offshore, Inc., 838 F. Supp. 1175 (S.D. Tex. 1993)* ; *MacFarland v. United States Fidelity & Guar. Co., 818 F. Supp. 108 (E.D. Pa. 1993)* (saving to suitors clause designed to protect right to jury trial); *DeBello v. Brown & Root Inc., 809 F. Supp. 482 (E.D. Tex. 1993)* (DOHSA case not removable when no diversity jurisdiction exists); *Benjamin v. Natural Gas Pipeline Co., 793 F. Supp. 729 (S.D. Tex. 1992)* (the Admiralty Extension Act does not change the rule

on removability); *Zoila-Ortego v. B J-Titan Servs., 751 F. Supp. 633, 1991 AMC 1205 (E.D. La. 1990)* ; *Fogleman v. Tidewater Barges, Inc., 747 F. Supp. 348 (E.D. La. 1990)* (removal improper over admiralty claim even though court would also have had jurisdiction under the Outer Continental Shelf Lands Act); *Leonard v. Kern, 651 F. Supp. 263 (S.D. Fla. 1986)* ; *Means v. G & C Towing, Inc., 623 F. Supp. 1244 (S.D. W. Va. 1986)* ; *Coody v. Exxon Corp., 630 F. Supp. 202, 1987 AMC 390 (M.D. La. 1986)* ; *Camacho v. Cove Trader, Inc., 1986 AMC 2082 (E.D. Pa. 1985)* ; *Hite v. Norwegian Caribbean Lines, 551 F. Supp. 390 (E.D. Mich. 1982)* ; *Superior Fish Co. v. Royal Globe Ins. Co., 521 F. Supp. 437 (E.D. Pa. 1981)* ; *Harbor Towing Corp. v. Wilso, 470 F. Supp. 740 (D. Md. 1979)* ; *Buckley v. Brent Towing Co., 412 F. Supp. 382, 1976 AMC 1325 (N.D. Miss. 1976)* ; Louissaint v. Hudson Waterways Corp., 1975 AMC 1150 (S.D.N.Y. 1975) ; *Eastern Steel & Metal Co. v. Hartford Fire Ins. Co., 376 F. Supp. 763, 1974 AMC 1701 (D. Conn. 1974)* ; *J.J. Ryan & Sons v. Continental Ins. Co., 369 F. Supp. 692, 1974 AMC 644 (D.S.C. 1974)* ; *Cunningham v. Bethlehem Steel Co., 231 F. Supp. 934, 1965 AMC 340 (S.D.N.Y. 1964)* ; *Victorias Milling Co. v. Hugo Neu Corp., 196 F. Supp. 64, 1961 AMC 2369 (S.D.N.Y. 1961)* ; *Hill v. United Fruit Co., 149 F. Supp. 470 (S.D. Cal. 1957)* .

Failure to follow the rules on removal can be costly as shown in *Kiesgen v. St. Clair Marine Salvage, Inc., 2010 U.S. Dist. LEXIS 69379 (E.D. Mich. 2010)* . Following defendant's salvage of the plaintiff's boat, the defendant took possession of the boat after the plaintiff refused to pay. The plaintiff sued for conversion in state court, and the defendant removed the action to federal court, answered the complaint in state court but failed to file an answer in federal court. The federal clerk entered a default. Subsequently the defendant filed an *in rem* third-party action against the plaintiff's vessel. Because there was no basis of jurisdiction other than admiralty, the federal court remanded the case to state court. The third-party action was void because the defendant was in default. The parties had earlier acknowledged that the attorney's fees could quickly exceed the amount in dispute.

(n2)Footnote 2. *See also* American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts* 239-43 (1968); Steven F. Friedell, *The Disappearing Act: Removal Jurisdiction of an Admiralty Claim, 30 Tul. Mar. L.J. 75 (2006)*; Sharpe, *Removal to Admiralty Revisited, 22 J. Mar. L. & Com. 485 (1991).*

When the Outer Continental Shelf Lands Act, *43 U.S.C. 1349(b)(1)*, gives the federal courts original jurisdiction, a case brought in state court pursuant to the Saving to Suitors clause may be removed to federal court under *28 U.S.C. § 1441(a)* even though there is no diversity. *Tennessee Gas Pipeline v. Houston Casualty Ins. Co., 87 F.3d 150 (5th Cir. 1996)* . The court questioned whether removal would be proper under the first sentence of *28 U.S.C. § 1441(b)* since the claim for allision damages did not appear to arise under the Constitution, treaties or laws of the United States. It allowed removal under the second sentence of that section because the parties were from Texas and the case was filed in Louisiana.

A case based on the Outer Continental Shelf Lands Act can not be removed under the first sentence of *28 U.S.C. § 1441(b). Bulen v. Hall-Houston Oil Co., 953 F. Supp. 141, 1997 AMC 1793 (E.D. La. 1997)* ; *Courts v. Accu-Coat Services, Inc., 948 F. Supp. 592, 1997 AMC 1367 (W.D. La. 1996)* .

In determining whether the amount-in-controversy requirement is satisfied, the court may not take into account the amount sought in the defendant's counterclaim. *Piacun v. Swift Energy Operating, LLC, 2010 U.S. Dist. LEXIS 28551 (E.D. La. 2010)* .

(n3)Footnote 3. *28 U.S.C. § 1333(1). See* § 122, *supra*.

(n4)Footnote 4. Perhaps the reason for this is historical. *Prior to Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917)* , state courts applied common law to saving clause cases, and when removed to the Circuit Courts based on diversity the common law was still applied. *See e.g., Steamboat Co. v. Chase, 83 U.S. 522, 534 (1872)* . If so, requiring the continuance of the rule requiring some other basis for federal jurisdiction before allowing the removal of an admiralty case is anachronistic. It is fundamental that maritime law governs any case that could have been brought in federal court under the admiralty jurisdiction. *See* § 114, *supra*.

(n5)Footnote 5. *See e.g., Jupiter Wreck, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 691 F. Supp. 1377 (S.D. Fla. 1988)* ("considerations of comity militate against federal courts asserting jurisdiction because an admiralty issue may be implicated;" remanding to state court an action seeking an injunction and civil damages against a treasure salvor for alleged violation of state statutes limiting rights of salvors of state property on submerged lands); *Bergeron v. Quality Shipyards, Inc., 765 F. Supp. 321, 1991 AMC 2766 (E.D. La. 1991)* (In his complaint in state court plaintiff invoked state statute allowing plaintiff to require that admiralty actions be tried without a jury. The invocation of this statute did not waive plaintiff's right under Saving to Suitors Clause to prevent removal where there was no independent basis of federal jurisdiction.).

(n6)Footnote 6. *Romero v. International Terminal Operating Co., 358 U.S. 354, 371-72, 1959 AMC 832, 846 (1959)* . Suits for wrongful death under the Death on the High Seas Act are not removable. *Trinh v. Yamaha Boat Co., 122 F. Supp.2d 1364, 2001 AMC 948* (S.D. Ga. 2000). *Contra Phillips v. Offshore Logistics, 785 F. Supp. 1241, 1992 AMC 2258 (S.D. Tex. 1992)* .

(n7)Footnote 7. *In re* Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on April 20, 2010, *747 F.Supp.2d 704, 709, 2010 AMC 2937, 2943 (E.D. La. 2010)* ; *Walsh v. Seagull Energy Corp., 836 F. Supp. 411 (S.D. Tex. 1993)* (case remanded to state court because defendant was citizen of Texas, but removal would have been possible had defendant not been a citizen of state where action was brought; saving clause does not bar removal); *Crawford v. East Asiatic Co., 156 F. Supp. 571 (N.D. Cal. 1957)* (removal allowed if defendant is not a citizen of State where action is brought); Currie, *The Silver Oar and All That, 27 U. Chi. L. Rev. 1, 16*-17 (1959). *But see Yangming Marine Transport Corp. v. Electri-Flex Co., 682 F. Supp. 368 (N.D. Ill. 1987)* (*dictum* that the Judicial Improvements Act of 1985, codified as *28 U.S.C. § 1441(e),* permits removal of an admiralty case from state court if it were styled by the plaintiff as an admiralty case; in other situations admiralty cases may not be removed under § 1441(a) if the defendant is a citizen of the state in which the action is brought; the court leaves undecided "[e]xactly how this new type of removal works" where the defendant is not a citizen of the state where the action is brought; the court criticized the result that some but not all admiralty cases are removable). The court in *Yangming* seems to have returned to the reading of the removal statute set out by *Crawford v. East Asiatic Co., 156 F. Supp. 571 (N.D. Cal. 1957)* but through the indirect route of the 1985 amendment, which did not seem to have the "saving to suitors" type of case in mind. The 1985 amendment provides that removal is not precluded "because the State court from which such civil action is removed did not have jurisdiction over that claim." This statute would allow removal of an *in rem* action over which the state court lacked jurisdiction. However, the statute would seem to have no impact on cases where a state court has jurisdiction under the "saving to suitors" clause, whether or not the case is labeled by the plaintiff as an admiralty case. In *Nesti v. Rose Barge Lines, 326 F. Supp. 170 (N.D. Ill. 1971)* , and *Pacific Far E. Line v. Ogden Corp., 425 F. Supp. 1239, 1977 AMC 2561 (N.D. Cal. 1977)* , the courts purported to follow *Crawford, supra* , but read it as also requiring diversity.

(n8)Footnote 8. *E.g., Tennessee Gas Pipeline v. Houston Casualty Ins. Co., 87 F.3d 150 (5th Cir. 1996)* .

(n9)Footnote 9. In *Reneau v. Shoreline Marine Sightseeing Co., 1986 AMC 1274 (N.D. Ill. 1986)* , the court allowed removal of a personal injury case where there was no diversity, apparently without objection by the plaintiff. *See also White v. Sabatino, 526 F. Supp.2d 1143 (D. Haw. 2007)* (sole basis of jurisdiction was admiralty); *Murillo v. Caddell Dry Dock & Repair Co., 2005 U.S. Dist. LEXIS 15161 (S.D.N.Y. July 26, 2005)* (where the defendant removed based on admiralty jurisdiction and the plaintiff moved to remand asserting no admiralty jurisdiction, the court denied the motion to remand finding that the case was within the admiralty jurisdiction).

(n10)Footnote 10. *Lewis v. United States, 812 F. Supp. 620 (E.D. Va. 1993)* ; *J. Aron & Co. v. Chown, 894 F. Supp. 697 (S.D.N.Y. 1995)* (since plaintiff elected to bring a non-diverse common law action instead of an admiralty action, removal is not permitted). For a discussion of this problem in the context of the Jones Act, *see* § 127, *supra* at n.6.

(n11)Footnote 11. *28 U.S.C § 1447(c)* provides in part "A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal ... " Under this section failure

to object to the improper removal of an admiralty case from state court within 30 days will constitute a waiver provided that the case is one that could have been brought within the original jurisdiction of the federal court. *Morris v. Princess Cruises, Inc., 236 F.3d 1061, 2001 AMC 804 (9th Cir. 2001)* ; *Ragas v. Tennessee Gas Pipeline Co., 136 F.3d 455, 1998 AMC 1805 (5th Cir. 1998)* (court incorrectly said that district court would have had "federal question jurisdiction under admiralty law" if action had been filed in that court); *Pierpoint v. Barnes, 94 F.3d 813 (2d Cir. 1996)* ; *Baris v. Sulpicio Lines, 932 F.2d 1540 (5th Cir. 1991)* ; *Romeo v. Sherry, 308 F. Supp.2d 128 (E.D.N.Y. 2004)* (case improperly removed by third-party defendant); *Joe Boxer Corp. v. Fritz Transp. Int'l, 33 F. Supp.2d 851, 1998 AMC 2576 (C.D. Cal. 1998)* ; *Dao v. Knightsbridge Int'l Reinsurance Corp., 15 F. Supp.2d 567 (D.N.J. 1998)* (plaintiff waived removal even though he retained demand for jury trial) (citing text); *Nielson v. Weeks Marine Inc., 910 F.Supp. 84, 1996 AMC 1698 (E.D.N.Y. 1995)* ; *Benjamin v. Natural Gas Pipeline Co., 793 F. Supp. 729 (S.D. Tex. 1992)* ; *McAllister Bros. Inc. v. Ocean Marine Indemnity Co., 742 F. Supp. 70, 1990 AMC 890 (S.D.N.Y. 1990)* . *See also Grubbs v. General Electric Credit Corp., 405 U.S. 699 (1972)* (waiver prior addition of § 1447(c).

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter VIII THE JURISDICTION OF FEDERAL AND STATE COURTS TO HEAR MARITIME CAUSES

1-VIII Benedict on Admiralty § 133

§ 133. Rule 9(h)-Determining Which Procedures Apply When Federal Court Has Admiralty and Some Other Basis of Jurisdiction.

Prior to 1966, admiralty cases were governed by their own admiralty rules ofprocedure. n1 In 1966 the Federal Rules of Civil Procedure were amended to apply to all civil actions, including legal, equitable and maritime claims. n2 The current procedural rules preserve certain special provisions applicable to admiralty claims. These rules include a special procedure for impleading third parties (Rule 14c), a provision that the Rules themselves do not create a right to jury trial for admiralty claims (Rule 38(e)), a lack of venue restriction (Rule 82), the ability to sue *in rem* (Rule C), maritime attachment (Rule B), rules governing possessory, petitory and partition actions (Rule D), and rules for exoneration or limitation of liability (Rule F).

Rule 9(h) of the Federal Rules of Civil Procedure provides:

> Admiralty or Maritime Claim.
>
> (1) *How Designated.* If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.
>
> (2) *Designation for Appeal.* A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within *28 U.S.C. § 1292(a)(3)*. n3

When a case in federal court is solely within the court's admiralty jurisdiction, the court will apply the special procedural rules for admiralty claims. n4 However, if a case in federal court is within the admiralty jurisdiction and some other basis of federal jurisdiction, such as diversity or federal question, the plaintiff or other party asserting a claim will want to decide whether it wants to have the court apply the admiralty procedures to its claims. If it wants the admiralty rules to apply, the plaintiff or other party asserting a claim needs to include a statement in the pleadings substantially like the following: "This is an admiralty or maritime claim within the meaning of Rule 9(h)." n5

The identifying statement called for by Rule 9(h) does not assert that the federal court has admiralty jurisdiction, nor does it assert that admiralty law governs the case. It merely asserts that admiralty procedures will be applied to the case. n6 Unfortunately, some courts have confused these issues. n7 If a claim arises within the admiralty jurisdiction and some other basis of federal jurisdiction and the plaintiff or other party asserting a claim does not want the admiralty procedures to be applied (for example if it wants to have a jury trial), then the Rules of Civil Procedure do not require the plaintiff or other party asserting a claim to state anything further. To prevent any misunderstanding it might be wise in this instance to state explicitly, "This is *not* an admiralty or maritime claim within the meaning of Rule 9(h)." n8

Because the 9(h) statement relates to a claim but not a case, a party asserting more than one claim ought to be able to identify some claims as maritime and others as not maritime. n9 Also, a defendant or third party that is bringing a claim ought to determine whether to identify that claim as maritime regardless of the choice made by the plaintiff with regard to its claim. n10 Again, it is unfortunate that some courts have not read the rule this way. n11 Rule 18 allows the joinder of admiralty and non-admiralty claims, and Rule 20 allows a claim to be brought against a vessel and another party. If some but not all of the claims are admiralty claims, and if a jury trial has been demanded for one of the non-admiralty claims, then the court ought to allow the jury to determine the issues in all claims that are closely related. An objection might be that Rule 38(e) provides, "These rules shall not be construed to create a right to trial by jury of the issues in an admiralty or maritime claim within the meaning of Rule 9(h)." However, in *Fitzgerald v. United States Lines Co.*, n12 the Supreme Court directed that the jury that decides aJones Act claim must also decide the related maritime claim for maintenance and cure. Although *Fitzgerald* preceded the 1966 amendments to the Federal Rules of Civil Procedure, the lower courts have overwhelmingly held that it still governs. n13

Amendments to add or withdraw an identifying statement are governed by the principles of Rule 15. n14 Rule 15(b) allows for amendment to conform to the evidence "when issues not raised by the pleadings are tried by express or implied consent of the parties." With respect to the making of a 9(h) designation, some courts have tried to determine the intention of the plaintiff from the totality of the circumstances including subsequent actions by the parties. n15 These courts have considered whether the pleading invokes admiralty jurisdiction, n16 asserts that maritime law governs the dispute, n17 or demands a jury, n18 whether the party objected to a defendant's third-party complaint under Rule 14(c), n19 and whether the plaintiff has filed an interlocutory appeal. n20 It is doubtful if Rule 9(h) meant to allow amendment by these kinds of indirect routes. Even if it were proper to consider the plaintiff's subsequent conduct, some of the grounds that courts have considered are surely irrelevant. Asserting that the court has admiralty jurisdiction or that maritime law governs is consistent with both making a Rule 9(h) designation and not making the designation. n21 Failure to demand a jury trial does not necessarily show an intention to make a Rule 9(h) designation. The plaintiff may want the case tried as a non-9(h) case in other respects but still prefer to have a non-jury trial. Similarly, demanding a jury trial does not necessarily show an intention to avoid making a Rule 9(h) designation. A jury demand is proper for certain cases arising on the Great Lakes. n22 In other situations a plaintiff may have erred in thinking it was entitled to a jury trial. The plaintiff's acquiescence in the defendant's impleader under Rule 14(c) is also of dubious value as an indication of the plaintiff's intention. The plaintiff may have been unaware of the consequences of Rule 14(c) or have assumed that the court would treat the impleader as being under 14(a), relying on its failure to make a formal Rule 9(h) designation. Similarly, filing an interlocutory appeal may simply have been improper rather than an indication of intention to amend the pleadings. n23 Because a Rule 9(h) designation deprives all parties of the right to demand a jury trial, courts ought not to find that such a designation has been made unless there has been a clear showing that the party asserting a claim has demanded that the special admiralty procedures be applied. n24

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionCivil ProcedurePleading & PracticePleadingsHeightened Pleading RequirementsGeneral OverviewCivil ProcedureJoinder of Claims & RemediesGeneral OverviewCivil ProcedureTrialsJury TrialsRight to Jury Trial

FOOTNOTES:

(n1)Footnote 1. The Admiralty Rules were first adopted in 1845 and were amended from time to time. *E.g., 254 U.S. 673 (1921)* .

(n2)Footnote 2. *Fed. R. Civ. P. 1.*

(n3)Footnote 3. Rule 9(h) was amended in 2007 for stylistic reasons. The previous version of the rule read:

> A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. A case that includes an admiralty or maritime claim within this subdivision is an admiralty case within *28 U.S.C. § 1292(a)(3).*

(n4)Footnote 4. A suit is brought to limit liability, being solely within the court's admiralty jurisdiction, will be tried without a jury even if a claimant makes a claim under the Jones Act. *In re Weeks Marine, Inc., 2011 U.S. Dist. LEXIS 84176 (E.D.Pa. 2011)* .

(n5)Footnote 5. Fed. R. Civ. P. form 2(d).

The plaintiff is the master of his complaint. If the plaintiff is entitled to a non-jury trial under Rule 9(h), the defendant has no constitutional or statutory right to a jury trial. *Becker v. Tidewater, Inc., 405 F.3d 257, 2005 AMC 1113 (5 th Cir. 2005)* .

Styron v. Norfolk Dredging Co., 262 F.R.D. 502 (E.D.N.C. 2009) (under the court's local rules every Rule 9(h) action needs to have a caption "In Admiralty;" that in combination with a statement that "Jurisdiction is also vested by virtue of the General Maritime Laws of the United States" identified the claim as a 9(h) claim). The court unfortunately confused choice of law with the procedural rules since the admiralty law would have been applicable even if the plaintiff had not made a 9(h) election.

(n6)Footnote 6. *Greenwell v. Aztar Ind. Gaming Corp., 268 F.3d 486, 493, 2002 AMC 587, 593-94 (7th Cir. 2001) , cert. denied, 535 U.S. 1034 (2002) ; Cooper v. Loper, 923 F.2d 1045, 1048, 1991 AMC 1032, 1034-36 (3d Cir. 1991)* . The Advisory Committee that drafted Rule 9(h) contemplated that a complaint that alleges the presence of diversity and admiralty jurisdiction will not be tried under the admiralty procedural rules unless the plaintiff makes a statement invoking those rules. It explained:

> The allegation of diversity of citizenship might be regarded as a clue indicating an intention to proceed as at present under the saving-to-suitors clause; but this, too, would be ambiguous if there were also reference to the admiralty jurisdiction, and the pleader ought not be required to forego mention of all available jurisdictional grounds.
>
> Other methods of solving the problem were carefully explored, but the Advisory Committee concluded that the preferable solution is to allow the pleader who now has power to determine procedural consequences by filing a suit in admiralty to exercise that power under unification, for the limited instances in which procedural differences will remain, by a simple statement in his pleading to the effect that the claim is an admiralty or maritime claim.

Notes of Advisory Committee on Rules--1966 Amendment, reprinted in 28 U.S.C. Appendix--Rules of Civil Procedure, Form 2 at 284 (2006).

(n7)Footnote 7. *E.g., Bodden v. Osgood, 879 F.2d 184, 186, 1989 AMC 2312 (5th Cir. 1989)* (an identifying statement under Rule 9(h) invokes the court's admiralty jurisdiction); *Foulk v. Donjon Marine Co., 144 F.3d 252, 256-57, 1998 AMC 2926 (3d Cir. 1998)* (same); *T.N.T. Marine Service, Inc. v. Weaver Shipyards & Dry Docks, Inc., 702 F.2d 585, 1984 AMC 1341 (5th Cir.) , cert. denied, 464 U.S. 847 (1983)* (allegation that suit was for "breach of maritime contract and for maritime tort" constituted a 9(h) designation).

In *Luera v. M/V Alberta, 635 F.3d 181 (5th Cir. 2011)* , the court said, "Rule 9(h) appears to require an affirmative statement from the plaintiff to invoke the admiralty rules for claims cognizable under admiralty and some other basis of jurisdiction." *Id. at 188* . However the court felt constrained by circuit precedent to hold that "the mere assertion of admiralty jurisdiction as a dual or an alternate basis of subject matter jurisdiction for a claim is sufficient to make a Rule 9(h) election to proceed in admiralty for that claim." *Id. at 188-89* . In a subsequent unpublished opinion the Fifth Circuit ruled that even where the plaintiff asserted both admiralty and federal question jurisdiction, the defendant was entitled to demand a jury trial where the parties had stipulated that the plaintiff had not designated the claim as a Rule 9(h) claim. *Apache Corp. v. Global Santa Fe Drilling Co., 2011 U.S. App. LEXIS 14454 (5th Cir. 2011)* .

(n8)Footnote 8. Dyer, *Note the Jury on the Quarterdeck: The Effect of Pleading Admiralty Jurisdiction When a Proceeding Turns Hybrid, 63 Tex. L. Rev. 553, 542 (1984). Accord Apache Corp. v. Global Santa Fe Drilling Co., 2011 U.S. App. LEXIS 14454 (5th Cir. 2011)* .

(n9)Footnote 9. *See Ghotra v. Bandila Shipping, 113 F.3d 1050, 1997 AMC 1936 (9th Cir. 1997) , cert. denied, 522 U.S. 1107, 118 S. Ct. 1034, 140 L. Ed. 2d 101 (1998)* ; *Haskins v. Point Towing Co., 395 F.2d 737 (3d Cir. 1968)* .

In *Luera v. M/V Alberta, 635 F.3d 181 (5th Cir. 2011)* , the Fifth Circuit held that a longshore worker who had sued a vessel *in rem* and its owner and manager *in personam* could have all of her claims tried to a jury. The plaintiff had alleged only diversity jurisdiction over the claims against the *in personam* defendants. The court reasoned that as long as the plaintiff alleged diversity jurisdiction as the sole basis for hearing the *in personam* claims, she is entitled under the saving-to-suitors clause and the *Seventh Amendment* to have those claims heard by jury. The court ruled that *Fitzgerald v. United States Lines Co*. allows the closely related *in rem* claim to also be heard by the jury.

(n10)Footnote 10. *In re Lockheed Martin Corp., 503 F.3d 351, 358, 2007 AMC 2304 (4th Cir. 2007) , cert. denied, 128 S.Ct. 2080 (2008)* ; Bank Meridian, N.A. v. Motor Yacht It's 5'oclock Somewhere, 2010 U.S. Dist. LEXIS 81102 (D.S.C. 2010) ; *Continental Ins. Co. v. Industry Terminal & Salvage Co., 2006 AMC 630 (W.D. Pa. 2005)* (insured filed counterclaim and demanded a jury trial to which it was entitled despite insurer's complaint which made a Rule 9(h) election); *Sphere Drake Ins. PLC v. J. Shree Corp., 184 F.R.D. 258, 1999 AMC 1480 (S.D.N.Y. 1999)* (same). *Contra Windsor Mt. Joy Mut. Ins. Co. v. Johnson, 264 F. Supp. 2d 158, 2003 AMC 2174 (D.N.J. 2003) . See also Concordia Co. v. Panek, 115 F.3d 67, 1997 AMC 2357 (1st Cir. 1997)* (noting the conflict and declining to decide the issue). *See also* Carefree Cartage, Inc. v. Husky Terminal & Stevedoring, Inc., 2007 U.S. Dist. LEXIS 95189 (W.D. Wash. Dec. 7, 2007) (even though the plaintiff did not allege any maritime claims, the defendant can bring third party claims under *Fed. R. Civ. Pro. 14(a)* that are within the court's admiralty jurisdiction).

In *In re Lockheed Martin Corp., supra* , the court took the unusual step of doubting whether the insured's counterclaim for damages was a "true" counterclaim. It nonetheless concluded that an insurer's declaratory judgment action could not deprive the insured of a jury trial if the defendant insured so demanded even though the insurer had designated its action as an admiralty or maritime claim. The court based the latter aspect of its decision on *Beacon Theatres v. Westover, 359 U.S. 500 (1959)* .

The court seems to have arrived at the right result for the wrong set of reasons. The insured's counterclaim was not frivolous--it was not only compulsory but was the only means by which the defendant could obtain a money judgment.

Therefore the court should have ruled that the insured had the right under rule 9(h) to demand a jury trial of its counterclaim.

However, it is highly doubtful that a defendant in a declaratory judgment action who has not filed a counterclaim should be able to invoke *Beacon Theatres* to overturn the plaintiff's Rule 9(h) designation. Declaratory judgment actions were created by federal statute in 1934, prior to the merger of law and equity, and could be brought at both law and equity. Beginning in 1961, Admiralty Rule 59 provided a means for bringing declaratory judgment actions in admiralty. In *Beacon Theatres*, the Court held that a defendant asserting a legal counterclaim to a declaratory judgment action that was brought in equity had the right to demand a jury trial. As *Lockheed* noted, *Beacon Theatres* has been read to teach that since declaratory judgment actions are neither legal nor equitable, when the only claim is a claim for declaratory judgment one must determine whether a party may demand a jury trial by looking "to the kind of action that would have been brought had Congress not provided the declaratory judgment remedy." *503 F.3d at 359 , quoting Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 284 (1988)* .

This was a helpful doctrine following the merger of law and equity when the issue became whether to characterize the declaratory judgment action as legal or equitable. *See* Owens-Illinois, Inc. v. Lake Shore Land Co *., 610 F.2d 1185, 1189 (3rd Cir. 1979)* . A court of equity always had discretion not to maintain a suit and would in any event dismiss the action if there was an adequate remedy at law. *See Beacon Theatres, supra at 509* ; *Hargrove v. American Central Ins. Co., 125 F.2d 225, 228 (10th Cir. 1942)* (insurer's declaratory judgment action was triable as of right by jury because it had an adequate remedy at law); *Aetna Cas. & Surety Co. v. Quarles, 92 F.2d 321 (4th Cir. 1937)* (discretion to dismiss equitable action for declaratory judgment because related claim at law was pending). *See generally* Note, Right to Trial by Jury in Declaratory Judgment Actions, *3 Conn. L. Rev. 564 (1971)*. Further, in determining whether a claim is equitable or legal, the court must primarily consider the remedy sought. *Chauffeurs, Teamsters and Helpers, Local 391 v. Terry, 494 U.S. 558, 565 (1990)* .

The situation is different when the underlying action is a claim for damages that is within both the admiralty and diversity jurisdictions and when the party seeking the declaratory judgment has designated that claim as maritime. It is true, for example, that had the insurer in *Lockheed* not sought a declaratory judgment the insured could have sued for breach of contract and demanded a jury trial because there was diversity jurisdiction. However, a court of admiralty has never dismissed an action on the grounds that there was an adequate remedy at law. Moreover, it is not helpful to consider the nature of the remedy that is sought because a claim for money damages can be brought both in admiralty and at law. It is doubtful that either the Saving to Suitors clause or the *Seventh Amendment* gives the defendant the right to trump the plaintiff's Rule 9(h) designation where the defendant has not counterclaimed for damages. *See* Friedell, Lexis-Nexis Expert Commentary to *In re* Lockheed Martin, Corp., (2008). In general, Rule 9(h) preserves the right of the plaintiff to a non-jury proceeding that existed prior to the 1966 merger of admiralty and civil cases. It would be odd to think that prior to 1966 a respondent in almost all declaratory judgment actions brought under Admiralty Rule 59 (except those seeking purely equitable relief) would have had the right to demand a transfer of the action to the "law" side of the court. Rule 59 preserved the right to jury trial, but this was intended only for certain actions arising on the Great Lakes. *See* Advisory Committee Note, 29-701 *Moore's Federal Practice - Civil § 701.06*.

(n11)Footnote 11. *E.g., Harrison v. Flota Mercante Grancolombiana, S.A., 577 F.2d 968, 1979 AMC 824 (5th Cir. 1978)* (once plaintiff makes a Rule 9(h) designation the entire case including claims against fourth-party defendant must be governed by maritime procedures); Am. S.S. Owners Mut. Prot. & Indem. Ass'n v. Lafarge N. Am., Inc., 2008 U.S. Dist. LEXIS 58458 (S.D.N.Y. 2008) (where defendant's counterclaim arose out of same contract and involved the same operative facts); *Great Lakes Reinsurance (UK) PLC v. Masters, 2008 AMC 1045 (M.D. Fla. 2008)* ; *Davis v. Baker Hughes Oilfield Operations, Inc., 2007 U.S. Dist. LEXIS 13594 (E.D. La. 2007)* . The Eleventh Circuit followed *Harrison* as it constitutes earlier panel precedent. *St. Paul Fire & Marine Ins. Co. v. Lago Canyon, Inc., 561 F.3d 1181 (11th Cir. 2009)* . In a concurring opinion, Judge Wilson criticized *Harrison* and concluded that the defendant "should be entitled to a jury trial on its 'legal' counterclaim even though [the plaintiff] sought declaratory judgment and invoked admiralty jurisdiction ..." *Id. at 1199* . The Fifth Circuit's latest jurisprudence in this area seems to be moving closer to

the proper reading of Rule 9(h). *See supra* n. 9.

(n12)Footnote 12. *374 U.S. 16 (1963)* .

(n13)Footnote 13. *E.g., Concordia Co. v. Panek, 115 F.3d 67, 71-72, 1997 AMC 2357 (1st Cir. 1997)* ; *Moncada v. Lemuria Shipping Corp., 491 F.2d 470 (2d Cir.)* , *cert. denied, 417 U.S. 947 (1974)* ; *Foulk v. Donjon Marine Co., 144 F.3d 252, 260 n. 7, 1998 AMC 2926 (3d Cir. 1998)* ; *Vodusek v. Bayliner Marine Corp., 71 F.3d 148, 1996 AMC 330 (4th Cir. 1995)* ; *Daniel v. Ergon, Inc., 892 F.2d 403, 409 (5th Cir. 1990)* ; *Ingram River Equip. v. Pott Indus., 816 F.2d 1231, 1235, 1987 AMC 2343 (8th Cir. 1987)* ; *Ghotra v. Bandila Shipping, 113 F.3d 1050, 1997 AMC 1936 (9th Cir. 1997)* , *cert. denied, 522 U.S. 1107 (1998)* ; *Harville v. Johns-Manville Prods. Corp., 731 F.2d 775, 779, 1986 AMC 731 (11th Cir. 1984)* ; *In re Great Lakes Dredge & Dock Co., 1996 U.S. Dist. LEXIS 5553, *10 (N.D. Ill. Apr. 25,1996)* ; *Gyorfi v. Partrederiet Atomena, 58 F.R.D. 112, 1973 AMC 1823* (N.D. Ohio 1973). *Contra McCann v. Falgout Boat Co., 44 F.R.D. 34, 1968 AMC 650 (S.D. Tex. 1968)* ; *Sanderlin v. Old Dominion Stevedoring Corp., 281 F. Supp. 1015 (E.D. Va. 1968)* .

(n14)Footnote 14. Although the current version of Rule 9(h) makes no mention of amendment, the prior version did, and the changes to Rule 9(h) were intended for stylistic purposes only. *See supra* note 3.

See Billiot v. Key Energy Servs., 2011 U.S. Dist. LEXIS 45853 (W.D. La. 2011) (plaintiff was allowed to strike his own jury demand where complaints had designated claims as Rule 9(h) claims, no defendant had demanded a jury trial, and defendants did not object to bench trial but opposed motion on the plaintiff's assumption that there was admiralty jurisdiction); *Miller v. Orion Construction, L.P., 2007 U.S. Dist. LEXIS 87002 (S.D. Tex. Nov. 27, 2007)* (denying plaintiff's motion to remove the Rule 9(h) designation due to undue delay and prejudice to the defendant which prepared for trial assuming that a judge would be the fact-finder).

(n15)Footnote 15. *E.g., Wingerter v. Chester Quarry Co., 185 F.3d 657, 2000 AMC 1596* (7th Cir. 1999). *Contra Banks v. Hanover S.S. Corp., 43 F.R.D. 374, 382 (D. Md. 1967)* (even though all parties agreed that plaintiff's intention was to bring an admiralty and maritime claim, the complaint did not properly identify the claim as a 9(h) claim so as to deprive third-party defendant of its right to jury trial).

(n16)Footnote 16. *Conti v. Sanko S.S. Co., 912 F.2d 816 (5th Cir. 1990)* ; *Gilmore v. Waterman S.S. Corp., 790 F.2d 1244 (5th Cir. 1986)* .

(n17)Footnote 17. *T.N.T. Marine Service, Inc. v. Weaver Shipyards & Dry Docks, Inc., 702 F.2d 585, 1984 AMC 1341 (5th Cir.)* , *cert. denied, 464 U.S. 847 (1983)* .

(n18)Footnote 18. *Wingerter v. Chester Quarry Co., 185 F.3d 657, 667, 2000 AMC 1596 (7th Cir. 1999)* .

(n19)Footnote 19. *Foulk v. Donjon Marine Co., 144 F.3d 252, 257, 1998 AMC 2926 (3d Cir. 1998)* .

(n20)Footnote 20. *Id.* at n. 6.

(n21)Footnote 21. See text accompanying note 6 *supra*.

(n22)Footnote 22. *See 28 U.S.C. § 1873*. *See generally* section 147 *infra*.

(n23)Footnote 23. Moreover, in *Foulk note 19 supra* , the interlocutory appeal was contested. Even if it is relevant, Rule 15(b) allows for amendment of the pleadings only when the issues have been tried by express or implied consent of the parties. Furthermore, in *Foulk* the issue was whether the court had jurisdiction to hear the appeal. It would be odd to say that the plaintiff can confer jurisdiction to hear an interlocutory appeal of what is otherwise a non-9(h) claim merely by seeking appellate review. The plaintiff's ability to amend its pleadings by implication ought to be no greater than its right to do so by formal amendment under Rule 15(a). Once trial had commenced and especially

after the district court had issued its opinion, the district court would hardly have granted permission to amend to add a rule 9(h) designation.

(n24)Footnote 24. *See generally* Steven F. Friedell, *When Worlds Collide: The In Rem Jury and Other Marvels of Modern Admrialty, 35 J. Mar. L. & Com. 143 (2004)*.

Benedict on Admiralty

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[Reserved]

§§ 134-140[Reserved]

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§ IX.syn Synopsis to Chapter IX: THE SEA AND JURISDICTION OVER INLAND WATERS

§ 141 The Sea--The Primary Maritime Locale.

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§ 143 Navigable Waters--Specific Cases.

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§ 145 Development of Jurisdiction Over Canals.

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter IX. THE SEA AND JURISDICTION OVER INLAND WATERS

1-IX Benedict on Admiralty § 141

§ 141 The Sea--The Primary Maritime Locale.

Although admiralty jurisdiction includes the sea and other navigable waters, the sea is the primary domain of the admiralty jurisdiction, corresponding to the territorial domain of the common law courts. In an age when the concept of venue was indistinguishable from jurisdiction, occurrences at sea were indubitably within admiralty jurisdiction, although other causes pertaining to maritime transactions came also to be considered by the Admiral. Even the common law courts at the height of their supremacy, when they even denied the separate character of admiralty law, acknowledged "that of contracts, pleas and querels upon the sea or any part thereof which is not within any county (from whence no trial can be had by twelve men) the Admiral hath and ought to have jurisdiction." n1 The common law conceded jurisdiction to the Admiralty because the jurisdiction of the common law ended at the water's edge. As Blackstone stated:

> "[Admiralty] courts have jurisdiction and power to try and determine all maritime causes, or injuries, which, though they are in the nature of common law cognizance, yet being committed upon the high seas, out of the reach of our courts of justice, are therefore to be remedied by a peculiar court of their own." n2 Prior to the development in international law of the concept of the territorial sea, which in turn affected the concept of the high seas, the realm of England according to the common law extended only to the low water mark, and all beyond was the high seas. n3 Even as late as 1876, the common law jurisdiction was conceived in England to stop at the low water mark. n4 The term "high seas" which was used to describe the locale of admiralty jurisdiction continued to have the meaning assigned to it by English common law as including waters on the seacoast and without boundaries of the low water. This definition was used in the early days in the United States. n5 The term "high seas" has now acquired a specialized meaning. It is defined in the Convention on the High Seas to mean all parts of the sea that are not included in the territorial sea or in the internal waters of a state. n6 This special meaning does not affect admiralty jurisdiction generally. The extension of the state jurisdiction over its territorial sea may, however, affect the choice of law applicable to events occurring within that area. n7

It is difficult to see how the matter of the tides came to have a relation to jurisdiction. In England, the rise and fall of the tide was originally spoken of only in relation to the space between high and low water marks in tidewaters, and so within admiralty jurisdiction, when the tide was in; but or had no relation to the general question of admiralty

jurisdiction. "As far as the tide ebbed and flowed," meant as far as the high water mark on the shore, and not as far up the stream as the tide was perceptible. It had no relation to tideless waters. But in England, during the contests with the admiralty, the common law courts seized upon anything for a pretext to further their views and it was easy to make the flowing of the tide a limit, as well in the navigable rivers as on the seacoast. In the maritime law, there is nothing that confines maritime transactions or the maritime law to tidewaters or salt water. Our courts have generally rejected the tidewater test of jurisdiction. n8 Admiralty jurisdiction is not confined to the high seas, and difficulties are bound to arise when transactions take place in the periphery of admiralty and common law jurisdiction. Matters relating to ships and navigation (which are of the essence of maritime jurisdiction) cannot be confined to the high seas, for ships must bring their cargoes to seaports and enter navigable rivers and streams. Similarly, land transactions cannot be wholly confined within the ambit of the land boundaries. In England, the resolution was to some extent made by the tide theory to allow the application of admiralty jurisdiction to certain transactions affecting shipping and navigation within the ebb and flow of the tide. This theory was also adopted in the early stages of the development of admiralty law in this country but later abandoned in favor of the test of navigability.

In matters of contract, admiralty jurisdiction in the United States has been dependent on the maritime nature of the transaction, irrespective of locality. In 1972, the Supreme Court announced that admiralty jurisdiction over torts required a significant connection with traditional maritime activity. n9 The Supreme Court has recently suggested that a connection to traditional maritime activity may be unnecessary to sustain admiralty jurisdiction over occurrences on the high seas. n10

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPersonal InjuriesGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. 4 Coke, *Institute* 134.

(n2)Footnote 2. 3 W. Blackstone, *Commentaries on the Law of England* 106 (1768). He added, though, that the common law courts have exclusive jurisdiction over many matters, including charter parties and other contracts, arising in part on the sea and in part on land.

(n3)Footnote 3. M. Hale, *de Jure Maris* c. 4 (1787); Selden, *Mare Clausum*, Book 2.

(n4)Footnote 4. The Queen v. Keyn, 2 Ex. D. 63 (1876).

(n5)Footnote 5. *De Lovio v. Boit, 7 F. Cas. 418, 428 (C.C.D. Mass. 1815)* (No. 3776); *United States v. Newark Meadows Imp. Co., 173 F. 426 (S.D.N.Y. 1909)* .

(n6)Footnote 6. Convention adopted, Geneva April 29, 1958; *see* 6A *Benedict on Admiralty*. For definition of territorial sea and inland waters, *see* 6A *Benedict on Admiralty*, the Convention on the Territorial Sea. *See Reynolds v. Ingalls Shipbldg. Div., 788 F.2d 264, 1986 AMC 2839 (5th Cir.) , cert. denied, 107 S. Ct. 278 (1986)* .

(n7)Footnote 7. *See, generally,* §§ 112-113, *supra.* It is specifically provided that despite the extension of state jurisdiction over the territorial sea, the United States continues to retain "all its navigational servitude and rights in and powers of regulation and control of [the navigable waters and the lands beneath such waters] for the constitutional purposes of commerce, navigation, national defense and international affairs. ..." *43 U.S.C. § 1314. See United States v. Rands, 389 U.S. 121, 1967 AMC 2263 (1967) . See also Nicol v. Gulf Fleet Supply Vessels, Inc., 743 F.2d 289, 295 n. 12, 1985 AMC 2669, 2677 (5th Cir. 1984)* (discussion of whether accident 45 miles off the coast of Abu Dhabi is within the high seas).

(n8)Footnote 8. *Mullenix v. United States, 984 F.2d 101 (4th Cir. 1993)* . *See also Duke v. United States, 711 F. Supp. 332, 1990 AMC 1030 (E.D. Tex. 1989)* (in holding that waterway was navigable the court found that in addition to being capable of supporting commercial traffic the waterway is subject to tidal influence).

United States v. Rodgers, 150 U.S. 249 (1893) ; *Ex Parte Boyer, 109 U.S. 629 (1884)* ; *The Eagle, 75 U.S. (8 Wall.) 15 (1868)* ; *The Hine, 71 U.S. (4 Wall.) 555 (1866)* ; *The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443 (1851)* . Earlier cases had limited admiralty jurisdiction to waters within the ebb and flow of the tide. *See Waring v. Clarke, 46 U.S. (5 How.) 441 (1846)* ; *United States v. Coombs, 37 U.S. (12 Pet.) 72 (1838)* ; *The Steamboat Orleans v. Phoebus, 36 U.S. (11 Pet.) 175 (1837)* ; *Peyroux v. Howard, 32 U.S. (7 Pet.) 324 (1833)* ; *The Steam Boat Thomas Jefferson, 23 U.S. (10 Wheat.) 428 (1825)* .

Although the later Supreme Court cases have terminated the importance of the tides for limiting the admiralty jurisdiction, occurrences in areas within the ebb and flow of the tide are within the admiralty jurisdiction even though those areas are not covered by water at the time of the alleged event. *The Steamship Jefferson, 215 U.S. 130 (1909)* ; *Hassinger v. Tideland Elec. Membership Corp., 781 F.2d 1022, 1986 AMC 2635 (4th Cir.) , cert. denied, 1986 AMC 2702 (1986)* ; *Dailey v. City of N.Y., 128 F. 796 (S.D.N.Y. 1904) . Accord United States v. Stoeco Homes, Inc., 498 F.2d 597, 610 (3d Cir. 1974) , cert. denied, 420 U.S. 927 (1975) . See also In re Paradise Holdings, Inc., 795 F.2d 756, 1987 AMC 104 (9th Cir.) , cert. denied, 107 S. Ct. 649 (1986)* (admiralty jurisdiction extends to shallow, non-navigable waters that are within the ebb and flow of the tide).

(n9)Footnote 9. *Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 1973 AMC 1 (1972)* .

(n10)Footnote 10. *East River S.S. Corp. v. Transamerica Delaval Inc., 476 U.S. 858, 1986 AMC 2027(1986)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter IX. THE SEA AND JURISDICTION OVER INLAND WATERS

1-IX Benedict on Admiralty § 142

§ 142 Jurisdiction Over Navigable Inland Waters.

Navigable inland rivers and lakes susceptible of use as highways of interstate and international commerce are within the admiralty and maritime jurisdiction. n1

The rivers, so far as they are navigable, have always been held, even in England, to be within the admiralty jurisdiction. The jurisdiction of the colonial vice-admiralty courts extended to "public streams, fresh waters, rivers and creeks." In early cases the Supreme Court held that the federal courts' admiralty jurisdiction was limited to waters within the ebb and flow of the tide. n2 But in *The Genesee Chief,* n3 it sustained the jurisdiction over the Great Lakes and adopted the public navigable character of the waters as the jurisdictional test. It distinguished the English doctrine confining admiralty jurisdiction to the ebb and flow of the tide because in England tidewaters alone are navigable.

Although the meaning of the term "navigable" will vary with the context, n4 for purposes of determining admiralty jurisdiction those rivers are public navigable rivers in law which are navigable in fact; that is, used or susceptible of use in their ordinary condition as highways of commerce, of trade and travel in the modes customary on water. n5 The true criterion of navigability is capability of use by the public for purposes of transportation and commerce, rather than the extent and manner of such use. n6 Fitness for use by steam and sail vessels is not essential. It suffices that, for example, light-draft barges, propelled by animal power and avoiding falls by portages, carry a considerable tonnage. n7 It is not enough that a fishing skiff or gunning canoe can be made to float at high water, n8 that a skiff or small lugger can pass to connecting waters, n9 or that logs, poles and rafts are floated down in high waters. n10 Navigability need not be continuous through the year, but must be as regular as the seasons and of a duration long enough to be useful and valuable in transportation. n11 Jurisdiction over navigable rivers, above the flux and reflux of the tide applies even though the river be made more readily navigable by artificial improvement. n12

Although there is some authority to the contrary, n13 the better view is that a river that is no longer capable of supporting interstate or international trade ceases to be subject to admiralty jurisdiction. n14 A court should take judicial notice that an important river is navigable n15 and may consult authoritative works to enable it to do so; but when in doubt or when the matter is not one of general knowledge, the court will require evidence. n16 Congress frequently passes special Acts which declare the abandonment, for the time at least, of the federal claim that a particular waterway is navigable. n17

Navigability alone is not the test as to whether specified waters are or are not public waters of the United States. Our rivers constitute navigable waters of the United States within the meaning of the Acts of Congress when they form in their ordinary condition, by themselves or by uniting with other waters, a continuous highway over which commerce is or may be carried on with other states or foreign countries, in the customary modes in which such commerce is conducted by water. n18 The inland lakes of various states are navigable but, having no navigable outlet linking them with our system of waterways, they are not public waters of the United States. n19 It is not dispositive for purposes of admiralty jurisdiction that a river as a whole is navigable. It is essential that the river be currently navigable where the injury transpired. n20

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. *Price v. Price, 929 F.2d 131, 1991 AMC 2176 (4th Cir. 1991)* .

A waterway that supports purely intrastate commercial shipping is not navigable.

The federal admiralty jurisdiction is founded upon the need for a uniform body of governing law with respect to navigation and commercial maritime activity. Applying uniform rules of admiralty prevents those engaged in interstate and foreign shipping from being subjected to conflicting rules of law. Such a concern is not present in the context of purely intrastate commercial shipping because only one body of law will necessarily apply and shippers will not be subjected to conflicting legal rules.

Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 878 F.2d 1096, 1099 (8th Cir. 1989) , vacated, 110 S. Ct. 3265 (1990) . *United States v. Oregon, 295 U.S. 1, 1935 AMC 594 (1935)* ; *Grays Landing Ferry Co. v. Stone, 46 F.2d 394, 1931 AMC 787 (3d Cir. 1931)* ; *Davis v. Gulf & Interstate Ry., 31 F.2d 109, 1929 AMC 700 (5th Cir. 1929)* (the artificial dredging of a naturally non-navigable waterway does not require the owner of a fixed bridge to substitute a drawbridge). Congress has no jurisdiction over non-navigable streams, except within federal public lands or reservations, unless the obstruction of such streams would affect the interests of interstate or foreign commerce further down the stream. *See* Appalachian Elec. *Power Co. v. Smith, 4 F. Supp. 6 (W.D. Va.) , rev'd, 67 F.2d 451 (4th Cir. 1933)* (New River, a tributary of the Kanawha which was navigable to a point 155 miles below); *Tennessee Valley Auth. v. Ashwander, 78 F.2d 578 (5th Cir. 1935) , aff'd, 297 U.S. 288 (1936)* ; *United States v. Central S. Co. of Vallejo, 43 F.2d 977 (N.D. Cal. 1930)* (the Federal Water Power Act does not vest the Water Power Commission with all the powers of the federal government relative to streams). *See also New Jersey v. New York, 283 U.S. 336 (1931)* (the Delaware Diversion Case); *Arizona v. California, 283 U.S. 423 (1931)* (the Boulder Dam); *In re Madsen, 187 F. Supp. 411, 1963 AMC 488 (N.D.N.Y. 1963)* , citing treatise.

The rights of the holder of title to the bed of a stream are subordinate to the dominant power of the federal government in respect of navigation, the exercise of which is not an invasion of any private property right for which the United States must pay compensation. Any structure is placed in the bed of a stream at the risk that it may be injured or destroyed, whether or not it is a physical interference with navigation: *United States v. Chicago, M. St. P. & Pac. R.R., 312 U.S. 592, 313 U.S. 543, 1941 AMC 549 (1941)* .

A vessel in drydock on a navigable waterway is in or on navigable waters for purposes of admiralty jurisdiction. *In re Sea Vessel, Inc., 23 F.3d 345 (11th Cir. 1994)* . A floating walkway that connects a dock to the land is an extension of the land. *Ellis v. Riverport Enters., Inc., 957 F. Supp. 105, 1997 AMC 2264 (E.D. Ky. 1997)* .

(n2)Footnote 2. *The Thomas Jefferson, 23 U.S. (10 Wheat.) 428 (1825)* ; *The Orleans v. Phoebus, 36 U.S. (11 Pet.) 175 (1837)* .

(n3)Footnote 3. *The Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443 (1851)* . *See Nelson v. Leland, 63 U.S. (22 How.) 48 (1860)* . *Cf. Carson v. Blazer, 2 Binn. 475, 4 Am. Dec. 463 (Pa. 1810)* .

(n4)Footnote 4. In *In re Three Buoys Houseboat Vacations U.S.A., Ltd., 689 F. Supp. 958 (E.D. Mo. 1988)* , the plaintiffs sought to limit liability arising out of a collision on Lake of the Ozarks involving two houseboats, one of which was owned by a company engaged in the business of chartering such vessels. The district court made three holdings of significance here. It first held that the Lake of the Ozarks is not navigable for purposes of admiralty jurisdiction even though certain regulatory agencies had made decisions or declarations which stated or which might suggest that they had found the lake to be navigable for other purposes. It then held that despite the lack of admiralty jurisdiction it had federal question and *commerce clause* jurisdiction to hear a limitation action under *28 U.S.C. §§ 1331* and *1337*. This did not help the plaintiff, however, as the court then held that Congress did not intend that owners of vessels on non-navigable waters should be able to limit liability and thus ruled that plaintiffs failed to state a cause of action. On appeal, the Eighth Circuit affirmed the district court's dismissal of the complaint but concluded that the federal courts lack subject matter jurisdiction of limitation actions that arise from injuries on non-navigable waters. The court likened a suit under the limitation act to a defense or to a suit for declaratory relief. *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 878 F.2d 1096 (8th Cir. 1989)* . The Supreme Court vacated the decision, *497 U.S. 1020, 110 S. Ct. 3265, 111 L. Ed. 2d 775 (1990)* and remanded in light of *Sisson v. Ruby, 497 U.S. 358, 1990 AMC 1801 (1990)* . On remand, the court of appeals again affirmed the dismissal of the limitation action essentially for the reasons given in its earlier opinion. *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 921 F.2d 775, 1991 AMC 1356 (8th Cir. 1990)* . *Kaiser Aetna v. United States, 444 U.S. 164 (1979)* ; *Adams v. Montana Power Co., 528 F.2d 437, 1978 AMC 680 (9th Cir. 1975)* ; *Reynolds v. Bradley, 644 F. Supp. 42, 187 AMC 637 (N.D.N.Y. 1986)* .

(n5)Footnote 5. *The Daniel Ball, 77 U.S. (10 Wall.) 557 (1871)* ; *Thompkins v. Lake Chelan Recreation, Inc., 1995 AMC 2311 (E.D. Wash. 1995)* (it is not enough that waterway is used for commercial shipping; the waters themselves must have an interstate nexus); *Watring v. Unnamed Inboard Motor Boat, 322 F. Supp. 1226, 1971 AMC 1556 (S.D. Va. 1971)* (Sutton Reservoir not shown to be navigable for commercial purposes).

(n6)Footnote 6. *Duke v. United States, 711 F. Supp. 332, 1990 AMC 1030 (E.D. Tex. 1989)* (navigability not affected by regulation banning commercial fishing).

United States v. Utah, 283 U.S. 64, 1932 AMC 87 (1931) ; *The Montello, 87 U.S. (20 Wall.) 430 (1874)* ; *Edwards v. Hurtel, 717 F.2d 1204 (8th Cir. 1983)* ; *Finneseth v. Carter, 712 F.2d 1041, 1983 AMC 2391 (6th Cir. 1983)* ; *Livingston v. United States, 627 F.2d 165, 1982 AMC 1065 (8th Cir. 1980)* , *cert. denied, 450 U.S. 914 (1981)* ; *In re Paradise Holdings, Inc., 619 F. Supp. 21 (C.D. Cal. 1984)* , *aff'd, 795 F.2d 756, 1987 AMC 104 (9th Cir.)* , *cert. denied, 107 S. Ct. 649 (1986)* ; *Sawczyk v. United States Coast Guard, 499 F. Supp. 1034, 1982 AMC 560 (W.D.N.Y. 1980)* ; *Marroni v. Matey, 492 F. Supp. 340 (E.D. Pa. 1980)* .

Cf. Georgia Power Co. v. Federal Power Comm'n, 152 F.2d 908 (5th Cir. 1946) (involving the test of navigability for the purpose of the Federal Power Act, *16 U.S.C. § 791a et seq.*).

McKie v. Diamond Marine Co., 104 F. Supp. 275, 1952 AMC 1390 (S.D. Tex. 1952) , *rev'd on evidence, 204 F.2d 132 (5th Cir. 1953)* (a dredge cutting a new channel to an oil well drilling site was held not to be operating on navigable waters).

(n7)Footnote 7. *The Montello, 87 U.S. (20 Wall.) 430 (1874)* .

(n8)Footnote 8. *Lynch v. McFarland, 808 F. Supp. 559 (W.D. Ky. 1992)* (even though a river trickles from a lake in one state and makes a meandering passage into another state, and is at best navigable only by canoes and rafts is not

the highway of commerce that Congress intended to regulate).

Davis v. Gulf & Interstate Ry., 31 F.2d 109, 1929 AMC 700 (5th Cir. 1929) ; *Rowe v. Granite Bridge Corp., 38 Mass. (21 Pick.) 344 (1838) . See United States v. Holt State Bank, 270 U.S. 49 (1926)* (Mud Lake, Minnesota, an overflow of Thief River, held navigable); *Toledo Liberal Shooting Co. v. Erie Shooting Club, 90 F. 680 (6th Cir. 1898)* ; *Strother v. Bren Lynn Corp., 671 F. Supp. 1118 (W.D. La. 1987)* (inland marsh where the only type of boat that could be used was an air boat or a small pirogue cannot support commerce and is not navigable); *United States v. Ladley, 42 F.2d 474 (D. Idaho 1930)* (Mission Lake, Idaho, drained by irrigation ditches and subsequently held not navigable); *Natcher v. City of Bowling Green, 264 Ky. 584, 95 S.W.2d 255 (1936)* (pleasure boating on pool of Barren River).

(n9)Footnote 9. *Leovy v. United States, 177 U.S. 621 (1900)* .

(n10)Footnote 10. *United States v. Rio Grande Dam & Irrigation Co., 174 U.S. 690 (1899) . But see Ne-Bo-Shone Ass'n v. Hogarth, 7 F. Supp. 885, 1934 AMC 1553 (W.D. Mich. 1934)* (does not cite *United States v. Rio Grande Dam & Irrigation Co., supra ;* each situation turns on its facts).

Central Maine Power Co. v. Federal Power Comm'n, 345 F.2d 875, 1967 AMC 1123 (1st Cir. 1965) (the capability of a river (Kennebec) to be used for loose logging, standing alone, is sufficient to render the river navigable).

(n11)Footnote 11. *Sanders v. Placid Oil Co., 861 F.2d 1374, 1989 AMC 912 (5th Cir. 1988)* (citing earlier version of text); *Meche v. Richard, 2007 U.S. Dist. LEXIS 17898 (W.D. La. 2007)* .

Harrison v. Fite, 148 F. 781 (8th Cir. 1906) .

It is not necessary for navigability that the use of a river should be continuous. The character of the region, its products and the difficulties or dangers of the navigation influence the regularity and extent of the use. Small traffic compared to the available commerce of the region is sufficient: *United States v. Appalachian Elec. Power Co., 311 U.S. 377 (1940)* .

(n12)Footnote 12. *In re Garnett, 141 U.S. 1 (1891)* ; *The Montello, 87 U.S. (20 Wall.) 430 (1874)* ; *The Daniel Ball, 77 U.S. (10 Wall.) 557 (1871)* ; *The Eagle, 75 U.S. (8 Wall.) 15 (1869)* ; *The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1867)* ; *Jackson v. The Magnolia, 61 U.S. (20 How.) 296 (1858)* ; *The Lucky Lindy, 76 F.2d 561, 1935 AMC 553 (5th Cir. 1935) . See United States v. Cress, 243 U.S. 316 (1917)* (reviewing the authorities in a case involving the rights of riparian owners).

Dye v. United States, 107 F. Supp. 6, 1952 AMC 1990 (W.D. Ky. 1952) , rev'd on other grounds, 210 F.2d 123 (6th Cir. 1954) (the United States is empowered to build a dam in the Ohio River near Louisville, Ky., to improve navigation, the stream being navigable).

(n13)Footnote 13. *E.g., George v. Beavark, Inc., 402 F.2d 977, 1968 AMC 2759 (8th Cir. 1968)* ; *Jones v. Duke Power Co., 501 F. Supp. 713 (W.D.N.C. 1980)* ; *Madole v. Johnson, 241 F. Supp. 379, 1966 AMC 2610 (W.D. La. 1965)* .

(n14)Footnote 14. *In re Mission Bay Jet Sports, LLC, 570 F.3d 1124, 2009 U.S. App. LEXIS 13529 (9th Cir. 2009)* (passengers were injured when thrown from jet skis in area that was restricted to personal watercraft; the area was not enclosed or obstructed); *LeBlanc v. Cleveland, 198 F.3d 353, 2000 AMC 609 (2d Cir. 1999)* ; *Alford v. Appalachian Power Co., 951 F.2d 30 (4th Cir. 1991)* ; *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 878 F.2d 1096 (8th Cir. 1989) , vacated, 110 S. Ct. 3265 (1990) , remanded, 921 F.2d 775, 1991 AMC 1356 (8th Cir. 1990)* .

Livingston v. United States, 627 F.2d 165, 1982 AMC 1065 (8th Cir. 1980) , cert. denied, 450 U.S. 914 (1981) ;

Chapman v. United States, 575 F.2d 147, 1978 AMC 2202 (7th Cir. 1978) (en banc); *Adams v. Montana Power Co., 528 F.2d 437, 1978 AMC 680 (9th Cir. 1975)* ; *In re Bernstein, 81 F. Supp.2d 176, 2000 AMC 760 (D. Mass. 1999)* ; Historic Aircraft Recovery Corp. v. Wrecked & Abandoned Voight F4U- *1 Corsair Aircraft, 294 F. Supp.2d 132 (D. Me. 2003)* ; *Hardwick v. Pro-Line Boats, Inc., 895 F. Supp. 145 (S.D. Tex. 1995)* ; *Thompkins v. Lake Chelan Recreation, Inc., 1995 AMC 2311 (E.D. Wash. 1995)* ; *Minix v. Fellers, 654 F. Supp. 1127 (N.D. Cal. 1987)* ; *Reynolds v. Bradley, 644 F. Supp. 42 (N.D.N.Y. 1986)* ; *Motley v. Hale, 567 F. Supp. 39 (W.D. Va. 1983)* ; *Smith v. Hustler, Inc., 514 F. Supp. 1265 (W.D. La. 1981)* . *See also,* G. Gilmore & C. Black, *The Law of Admiralty* 33 n. 103 (2d ed. 1975).

(n15)Footnote 15. *United States v. Rio Grande Dam & Irrigation Co., 174 U.S. 690 (1899)* (the Rio Grande); *Davis v. United States, 185 F.2d 938, 1951 AMC 93 (9th Cir. 1950)* (Lake Tahoe); *Lands v. A Cargo of 227 Tons of Coal, 4 F. 478 (D.N.J. 1880)* (Newark Bay); *Streckfus Steamers v. Fox, 14 F. Supp. 312, 1936 AMC 1158 (S.D. W. Va. 1936)* (Ohio River).

(n16)Footnote 16. *The Montello, 78 U.S. (11 Wall.) 411 (1871)* ; *87 U.S. (20 Wall.) 430 (1874)* ; *United States v. Cavalliotis, 105 F. Supp. 742, 1952 AMC 2027 (E.D.N.Y. 1952)* ; *United States v. Brewer-Elliott Oil & Gas Co., 249 F. 609, 616, 617 (W.D. Okla. 1918) , aff'd, 270 F. 100 (8th Cir. 1920) , aff'd, 260 U.S. 77 (1922)* .

Even though parties stipulated in the District Court that the river was navigable, the appellate court was required to question on its own the existence of admiralty jurisdiction where the record indicated that the casino vessel could only travel 300 yards because of a dam on one side and a bridge on the other side. *Weaver v. Hollywood Casino-Aurora, Inc., 255 F.3d 379 (7th Cir. 2001)* .

(n17)Footnote 17. Congress usually takes the precaution of declaring that "the right to alter, amend or repeal" the Act is expressly reserved. *See, e.g.*, the Act of Aug. 12, 1937, ch. 607, 50 Stat. 632; *33 U.S.C. § 54*, declaring Burr Creek at Bridgeport, Conn., to be non-navigable; or the Acts of June 5, 1936, ch. 530, 49 Stat. 1484, and of August 16, 1937, ch. 650, 50 Stat. 649, declaring Bayou St. John and Bayou Sauvage at New Orleans to be non-navigable. The passage of such an Act permits the War Department to approve the erection of a fixed-span bridge which hinders commerce.

(n18)Footnote 18. *The Daniel Ball, 77 U.S. (10 Wall.) 557 (1871)* . *United States v. Utah, 283 U.S. 64, 1932 AMC 87 (1931)* (A navigable connection with salt water is not essential, if the navigable waterway is interstate. Thus, the Colorado and Green Rivers, above the unnavigable Grand Canyon, are navigable interstate waterways and within the admiralty jurisdiction.); *United States v. Burlington & Henderson County Ferry Co., 21 F. 331 (S.D. Iowa 1884)* (Mississippi River held navigable). Section cited: *In re Madsen, 187 F. Supp. 411, 1963 AMC 488 (N.D.N.Y. 1960)* .

South Carolina v. Georgia, 93 U.S. 4 (1876) (the United States, because of its dominant servitude, may change the course of a navigable stream without being constitutionally obligated to pay compensation to the riparian owners).

The United States, because of its dominant servitude over navigable waters, may impair or destroy a riparian owner's access to navigable waters without having to pay compensation therefor, even though the market value of the riparian owner's land is substantially diminished: *United States v. Commodore Park, Inc., 324 U.S. 386 (1945)* ; *Scranton v. Wheeler, 179 U.S. 141 (1900)* ; *Gibson v. United States, 166 U.S. 269 (1897)* .

Federal Power Comm'n v. Niagara Mohawk Power Corp., 347 U.S. 239, 249 (1954) (the power to regulate navigation confers upon the United States a dominant servitude which extends to the entire stream and to the stream bed below ordinary high-water mark); *United States v. Rands, 389 U.S. 121, 1967 AMC 2263 (1967)* (the navigational servitude of the United States does not extend beyond the high-water mark).

The Federal Constitution affords to Congress and the federal government the power to regulate commerce in all the navigable waters of the United States, which are for this purpose the public property of the nation and subject to all the requisite legislation by Congress. *United States v. Rands, 389 U.S. 121, 1967 AMC 2263 (1967)* ; *Gilman v.*

Philadelphia, 70 U.S. 713, 724-25 (1866) .

Shipyard whose access to deep water was seriously impaired by construction of 45-foot highway bridge across inlet may not ground its claim against the state in the right of navigation, as this is a public right from the abridgment of which riparian owners suffer no damage different in character from that to be suffered by the general public. *Colberg v. State ex rel. Dept. of Pub. Works, 432 P.2d 3, 62 Cal. Rptr. 401, 1967 AMC 2269 (1967).*

While the Submerged Lands Act, Pub. L. No. 31, 67 Stat. 29 (1953), *43 U.S.C. §§ 1301-1343*, confirmed and vested in the states title to the lands beneath navigable waters within their boundaries and to the natural resources within such lands and waters, it expressly retained for the United States "all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership." *United States v. Rands, 389 U.S. 121, 1967 AMC 2263 (1967)* .

(n19)Footnote 19. *Oseredzuk v. Warner Co., 354 F. Supp. 453, 1972 AMC 2007 (E.D. Pa. 1972)* , *aff'd, 485 F.2d 254, 1974 AMC 254 (3d Cir. 1973)* , *cert. denied, 415 U.S. 977 (1974)* (land locked lake not within admiralty jurisdiction; not matter that could be made navigable by removing strip of land between lake and navigable river); *City of Los Angeles v. Aitken, 10 Cal. App. 460, 52 P.2d 585 (Dist. Ct. App. 1935)* (Mono Lake is navigable); *Luscher v. Reynolds, 153 Or. 625, 56 P.2d 1158 (1936)* (Blue Lake, Oregon, is not navigable).

Lake Murray, Oklahoma, not connected with navigable waters, is owned by the State of Oklahoma which may regulate and prohibit its use by vessels. A citizen has no constitutional right to maintain a vessel on a state-owned lake without its consent. *Harris v. State ex rel. Okla. Planning & Resources Bd., 207 Okla. 589, 251 P.2d 799, 1953 AMC 1169* .

Shogry v. Lewis, 225 F. Supp. 741, 1965 AMC 2745 (W.D. Pa. 1964) (Lake Chautauqua, N.Y., is not within the admiralty jurisdiction of the United States); *Marine Office of America v. Manion, 241 F. Supp. 621, 1965 AMC 1760 (D. Mass. 1965)* (Lake Winnipesaukee, N.H., is not within the admiralty jurisdiction of the United States).

Simpson v. Utah, 365 F.2d 185, 1967 AMC 1688 (10th Cir. 1966) (the issue of the navigability of Utah's Great Salt Lake is undecided); *Johnson v. Wurthman, 227 F. Supp. 135, 1964 AMC 1777 (D. Or. 1964)* (Lake of the Woods, wholly within Oregon at an altitude of 4,950 feet, 3 miles long by 1 mile wide, with no outlets that could be considered navigable, is not a navigable water of the United States); *In re Madsen, 187 F. Supp. 411, 1963 AMC 488 (N.D.N.Y. 1960)* (Lake Pleasant, N.Y., is not navigable). *Contra:*

Loc-Wood Boat & Motors, Inc. v. Rockwell, 245 F.2d 306, 1957 AMC 2085 (8th Cir. 1957) (admiralty has jurisdiction over Lake of the Ozarks, a lake created by Bagnell Dam on the Osage River and lying entirely in the State of Missouri); *Livingston v. United States, 627 F.2d 165, 1982 AMC 1065 (8th Cir. 1980)* , *cert. denied, 450 U.S. 914 (1981)* (the parties did not question the jurisdiction and the case has been disapproved); *Madole v. Johnson, 241 F. Supp. 379, 1965 AMC 2610 (W.D. La. 1965)* (admiralty has jurisdiction over Lake Hamilton, located entirely in Arkansas and formed by Carpenter Dam built across the Quachita River).

(n20)Footnote 20. *Weaver v. Hollywood Casino-Aurora, Inc., 255 F.3d 379 (7th Cir. 2001)* . *See In re Katrina Canal Breaches Consol. Litig., 2007 U.S. Dist. LEXIS 23206 (E.D. La. 2007)* (wetlands are not navigable waters).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter IX. THE SEA AND JURISDICTION OVER INLAND WATERS

1-IX Benedict on Admiralty § 143

§ 143 Navigable Waters--Specific Cases.

The following have been held to be navigable waters: Allegheny River, n1 Androscoggin River, n2 Arkansas River, n3 Bayou Segnette, n4 Cape Fear River, n5 Catahoula Lake, n6 Chippewa River, n7 Colorado River, n8 Columbia River, n9 Connecticut River, n10 Cumberland River, n11 Dale Hollow Lake, n12 Delaware River, n13 Des Moines River, n14 Des Plaines River, n15 Duck Creek, n16 Ellicott Creek, n17 Fox River, n18 Hudson River, n19 James River, n20 Joyce Slough, n21 Kansas River, n22 Lake Champlain, n23 Lake Coeur d'Alene, n24 Lake Ferguson, n25 Lake Gaston, n26 Lake Rycade, n26.1 Lake Tahoe, n27 Lake Texoma, n28 Lake Winnisquam, n28a Lake Wylie, n29 Maumee River, n30 Miller's River, n31 Mississippi River, n32 Missouri River, n33 Mohawk River, n34 Monongahela River, n35 Moyie River n36 Muskingum River, n37 Navajo Lake, n38 Niagara River, n39 Norris Lake, n40 Oconto River, n41 Ohio River, n42 Pacific Lake, n43 Pine River, n44 Pond Branch, n45 Potomac River, n46 Presque Isle Stream, n47 Rappahannock River, n48 Rock River, n49 Sacramento River, n50 Saginaw River, n51 Seneca River, n52 Susquehanna River, n53 Suwannee River, n54 Sweetwater Lake, n55 Toledo Bend Lake, n56 Wabash River, n57 Willow River. n58

In 1957 the Eighth Circuit held that the Lake of the Ozarks was navigable, n59 but that decision has since been disapproved. n60 Also, the earlier cases holding Lake Hamilton to be navigable n61 must now be regarded as no longer good law. n62

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureVenue

FOOTNOTES:
(n1)Footnote 1. *United States v. Union Bridge Co., 143 F. 377 (W.D. Pa.) , aff'd, 204 U.S. 364 (1906) .*

(n2)Footnote 2. *Gerrish v. Brown, 51 Me. 256 (1863) ; Thompson v. Androscoggin River Imp. Co., 54 N.H. 545 (1874) .*

(n3)Footnote 3. *Jackson-Walker Coal & Material Co. v. Hodges, 283 F. 457 (D. Kan. 1918) .*

(n4)Footnote 4. *Duke v. United States, 711 F. Supp. 332, 1990 AMC 1030 (E.D. Tex. 1989)* .

Guilbeau v. Calzada, 240 So. 2d 104 (La. App. 1970) .

(n5)Footnote 5. *Richards v. Blake Builders Supply, Inc., 528 F.2d 745, 1976 AMC 74 (4th Cir. 1975)* .

(n6)Footnote 6. *Wilder v. Placid Oil Co., 611 F. Supp. 841 (E.D. La. 1985)* , aff'd *sub nom. Sanders v. Placid Oil Co., 861 F.2d 1374, 1989 AMC 912 (5th Cir. 1988)* .

(n7)Footnote 7. *Pound v. Turck, 95 U.S. 459 (1877)* .

(n8)Footnote 8. *Arizona v. California, 283 U.S. 423 (1931)* ; *State v. Bonelli Cattle Co., 11 Ariz. App. 412, 464 P.2d 999 (1970)* , *rev'd on other grounds, 107 Ariz. 465, 489 P.2d 699, 1972 AMC 1371 (1972)* .

(n9)Footnote 9. *Anderson v. Columbia Contract Co., 94 Or. 171, 184 P. 240* , *reh'g denied, 94 Or. 171, 185 P. 231 (1919)* .

(n10)Footnote 10. *Chapman v. Kimball, 9 Conn. 38 (1831)* ; *Hollister v. Union Co., 9 Conn. 436 (1833)* .

(n11)Footnote 11. *Goodin's Ex'r v. Kentucky Lumber Co., 90 Ky. 625, 14 S.W. 775 (1890)* .

(n12)Footnote 12. *Finneseth v. Carter, 712 F.2d 1041, 1983 AMC 2391 (6th Cir. 1983)* .

(n13)Footnote 13. *Rundle v. Delaware & Raritan Canal Co., 55 U.S. (14 How.) 79 (1852)* .

(n14)Footnote 14. *Shortell v. Des Moines Elec. Co., 186 Iowa 469, 172 N.W. 649 (1919)* .

(n15)Footnote 15. *Economy Light & Power Co. v. United States, 256 F. 792 (7th Cir.)* , *aff'd, 256 U.S. 113 (1919)* .

(n16)Footnote 16. *Cummins v. Spruance, 4 Del. (4 Har.) 315 (1845)* .

(n17)Footnote 17. *Stegmeier v. State, 117 Misc. 626, 191 N.Y.S. 894 (Ct. Cl.)* , *aff'd, 204 App. Div. 858, 197 N.Y.S. 951 (1922)* .

(n18)Footnote 18. *The Montello, 87 U.S. (20 Wall.) 430 (1874)* .

(n19)Footnote 19. *Thompson v. Fort Miller Pulp & Paper Co., 195 App. Div. 271, 186 N.Y.S. 817 (1921)* ; *Waterford Elec. Light, Heat & Power Co. v. State, 117 Misc. 480, 191 N.Y.S. 657 (Ct. Cl. 1921)* .

(n20)Footnote 20. *Old Dominion Iron & Nail Works Co. v. Chesapeake & O. Ry., 116 Va. 166, 81 S.E. 108 (1914)* .

(n21)Footnote 21. *Clinton Bd. of Park Comm'rs v. Claussen, 410 F. Supp. 320 (S.D. Iowa 1976)* .

(n22)Footnote 22. *Kaw Valley Drainage Dist. v. Missouri Pac. Ry., 99 Kan. 188, 161 P. 937 (1916)* .

(n23)Footnote 23. *Moore v. Day, 199 App. Div. 76, 191 N.Y.S. 731 (1921)* , *aff'd, 235 N.Y. 554, 139 N.E. 732 (1923)* .

(n24)Footnote 24. *In re Rowley, 425 F. Supp. 116, 1977 AMC 199 (D. Idaho 1977)* ; *Shepard v. Coeur d'Alene Lumber Co., 16 Idaho 293, 101 P. 591 (1909)* .

(n25)Footnote 25. *Buckley v. Brent Towing Co., 412 F. Supp. 382, 1976 AMC 1325 (N.D. Miss. 1976)* .

(n26)Footnote 26. *United States v. Lamastus & Associates, Inc., 785 F.2d 1349, 1353, n.7 (5th Cir. 1986)* (per curiam); *Truehart v. Blandon, 672 F. Supp. 929, 1988 AMC 491 (E.D. La. 1987)* .

Richards v. Blake Builders Supply, Inc., 528 F.2d 745, 1976 AMC 74 (4th Cir. 1975) .

(n27)Footnote 26.1. *Meche v. Richard, 2007 U.S. Dist. LEXIS 17898 (W.D. La. 2007)* .

(n28)Footnote 27. *Davis v. United States, 185 F.2d 938, 1951 AMC 93 (9th Cir. 1950)* , *cert. denied, 340 U.S. 932 (1951)* .

(n29)Footnote 28. *Wilburn Boat Co. v. Firemen's Fund Ins. Co., 201 F.2d 833, 1953 AMC 284 (5th Cir. 1953)* , *rev'd on other grounds, 348 U.S. 310, 1955 AMC 467 (1955)* .

(n30)Footnote 28a. *In re Bernstein, 81 F. Supp.2d 176, 2000 AMC 760 (D. Mass. 1999)* .

(n31)Footnote 29. *Hartman v. United States, 522 F. Supp. 114, 1982 AMC 1074 (D.S.C. 1981)* .

(n32)Footnote 30. *Spooner v. McConnell, 22 F. Cas. 939 (C.C.D. Ohio 1838)* (No. 13,245).

(n33)Footnote 31. *Commonwealth v. Inhabitants of Charlestown, 18 Mass. (1 Pick.) 180, 11 Am. Dec. 161 (1822)* .

(n34)Footnote 32. *St. Anthony Falls Water Power Co. v. Board of Water Comm'rs, 168 U.S. 349 (1897)* ; *State v. Muncie Pulp Co., 119 Tenn. 47, 104 S.W. 437 (1907)* , *rev'd on other grounds sub nom. Cissna v. Tennessee, 246 U.S. 289 (1918)* .

(n35)Footnote 33. *Coates v. United States, 110 F. Supp. 471 (D. Mo. 1953)* .

(n36)Footnote 34. *People v. Canal Appraisers, 33 N.Y. 461 (1865)* .

(n37)Footnote 35. *Grays Landing Ferry Co. v. Stone, 46 F.2d 394 (3d Cir. 1931)* .

(n38)Footnote 36. *United States v. Wallace, 157 F. Supp. 931 (D. Idaho 1957)* .

(n39)Footnote 37. *Guthrie v. McConnel, 2 Ohio Dec. Rep. 157 (1859)* .

(n40)Footnote 38. *Wreyford v. Arnold, 82 N.M. 156, 477 P.2d 332 (1970)* .

(n41)Footnote 39. *Sawczyk v. United States Coast Guard, 499 F. Supp. 1034, 1982 AMC 560 (W.D.N.Y. 1980)* (from the American falls to Lewiston, N.Y.); *In re State Reservation at Niagara, 16 Abb. N. Cas. 159 (N.Y. Sup. Ct.)* , *appeal dismissed, 102 N.Y. 734, 7 N.E. 916 (1884)* .

(n42)Footnote 40. *Hall v. Robinson, 495 F. Supp. 123 (E.D. Tenn. 1980)* .

(n43)Footnote 41. *Leigh v. Holt, 15 F. Cas. 262 (C.C.E.D. Wis. 1873)* (No. 8220).

(n44)Footnote 42. *Bellaire, Benwood & Wheeling Ferry Co. v. Interstate Bridge Co., 40 F.2d 323 (4th Cir.)* , *cert. denied, 282 U.S. 861 (1930)* ; *Dye v. United States, 210 F.2d 123, 1954 AMC 448 (6th Cir. 1954)* .

(n45)Footnote 43. *Lant v. Wolverton, 122 Wash. 62, 210 P. 1 (1922)* .

(n46)Footnote 44. *Ne-Bo-Shone Ass'n, Inc. v. Hogarth, 7 F. Supp. 885, 1934 AMC 1553 (W.D. Mich.)* , *aff'd, 81 F.2d 70 (6th Cir. 1934)* .

(n47)Footnote 45. *Witt v. Jefcoat, 44 S.C.L. (10 Rich.) 389 (1857)* .

(n48)Footnote 46. *Mullenix v. United States, 984 F.2d 101 (4th Cir. 1993)* .

United States v. White's Ferry, Inc., 382 F. Supp. 162, 1976 AMC 481 (D. Md. 1974) , *aff'd, 529 F.2d 518, 1976 AMC 486 (4th Cir. 1975)* (at White's Ferry, Va.).

(n49)Footnote 47. *Smart v. Aroostook Lumber Co., 103 Me. 37, 68 A. 527 (1907)* .

(n50)Footnote 48. *Home v. Richards, 8 Va. (4 Call.) 441, 2 Am. Dec. 574 (1798)* .

(n51)Footnote 49. *In re Horicon Drainage Dist., 136 Wis. 238, 116 N.W. 16 (1908)* .

(n52)Footnote 50. *People v. Gold Run Ditch & Mining Co., 66 Cal. 138, 4 P. 1152 (1884)* .

(n53)Footnote 51. Tittabawassee Boom Co. v. Cunning, Howell N.P. 82 (Mich. Ch. 1883).

(n54)Footnote 52. *James Frazee Milling Co. v. State, 122 Misc. 545, 204 N.Y.S. 645 (Ct. Cl. 1924)* .

(n55)Footnote 53. People *ex rel. New York, O. & W. Ry. v. State Tax Comm'n, 116 Misc. 774, 191 N.Y.S. 464 (Sup. Ct. 1921)* ; *Commonwealth v. Fisher, 1 Pen. & W. 462 (Pa. 1830)* .

(n56)Footnote 54. *Bucki v. Cone, 25 Fla. 1, 6 So. 160 (1889)* .

(n57)Footnote 55. *Roberts v. Taylor, 47 N.D. 146, 181 N.W. 622 (1921)* .

(n58)Footnote 56. *Stallworth v. McFarland, 350 F. Supp. 920 (W.D. La. 1972)* , *aff'd, 493 F.2d 1354 (5th Cir. 1974)* .

(n59)Footnote 57. *Dawson v. James, 64 Ind. 162 (1878)* ; *State v. Wabash Paper Co., 21 Ind. App. 172, 51 N.E. 949 (1898)* .

(n60)Footnote 58. *Willow River Club v. Wade, 100 Wis. 86, 76 N.W. 273 (1898)* .

(n61)Footnote 59. *Loc-Wood Boat & Motors v. Rockwell (The Grand Glaize), 245 F.2d 306, 1957 AMC 2085 (8th Cir. 1957)* .

(n62)Footnote 60. *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 878 F.2d 1096, 1989 AMC 2058 (8th Cir. 1989)* , *vacated, 110 S. Ct. 3265 (1990)* .

Livingston v. United States, 627 F.2d 165, 1982 AMC 1065 (8th Cir. 1980) , *cert. denied, 450 U.S. 914 (1981)* .

(n63)Footnote 61. *Free v. Sample, 324 F. Supp. 1362, 1971 AMC 1953* .

(W.D. Ark. 1971); *Madole v. Johnson, 241 F. Supp. 379, 1965 AMC 2610 (W.D. La. 1965)* .

(n64)Footnote 62. *See Smith v. Hustler, Inc., 514 F. Supp. 1265 (W.D. La. 1981)* . *See, generally*, § 142 at nn. 13-14, *supra.*

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter IX. THE SEA AND JURISDICTION OVER INLAND WATERS

1-IX Benedict on Admiralty § 144

§ 144 Jurisdiction Over Canals.

In *Ex parte Boyer,* n1 jurisdiction was established over canals even though wholly artificial, wholly within the body of a state and subject to state ownership or control. The state may be considered to have dedicated its property to the public uses of interstate and foreign commerce, n2 and it has, indeed, been held that the statutes of the state which owns a canal, imposing the cost of removing wrecked vessels from the canal prism upon the owner of the wreck, must yield to the superior federal policy which permits the owner of a wreck to abandon it. n3 Jurisdiction has likewise been assumed over the waters of a privately owned and maintained ship canal open to public navigation upon the payment of a toll. n4

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. *109 U.S. 629, 3 S. Ct. 434, 27 L. Ed. 1056 (1884)* . *See The Robert W. Parsons, 191 U.S. 17* , S. Ct. 8, *48 L. Ed. 73 (1909)* ; *The E.M. McChesney, 8 Ben. 150* , Fed. Cas. No. 4463 (S.D.N.Y. 1875); *White v. John W. Cowper Co., 271 F. 423, 425 (2d Cir. 1921)* .

(n2)Footnote 2. *Malony v. City of Milwaukee, 1 F. 611, 612, 613 (S.D.N.Y. 1880)* .

(n3)Footnote 3. *The Central States, 9 F. Supp. 934, 1935 AMC 461 (E.D.N.Y. 1935)* ; United States v. Cargill, Inc., 1964 AMC 1742 (E.D. La.) (where owner of wrecked vessel abandons it to the U.S. government, the only right that the U.S. has to recover its expenses for removing the wreck is a right *in rem* against the vessel; there is no right *in personam* against the owner of the wrecked vessel).

(n4)Footnote 4. *Guinan v. Boston, Cape Cod & N.Y. Canal Co., 1 F.2d 239, 1924 AMC 1161 (2d Cir. 1924)* ; *The Lucky Lindy, 76 F.2d 561, 1935 AMC 553 (5th Cir. 1935)* ; *Southern Natural Gas Co. v. Gulf Oil Corp., 320 So. 2d 917, 1976 AMC 616 (La. Ct. App. 1975)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter IX. THE SEA AND JURISDICTION OVER INLAND WATERS

1-IX Benedict on Admiralty § 145

§ 145 Development of Jurisdiction Over Canals.

The jurisdiction of the admiralty over canals and their flotillas, originally propelled by the power of animals, is now firmly established, although denied in the early history of the admiralty of this country on the theory, since disapproved, that the jurisdiction depended upon the presence of the tide, n1 and also upon the theory that a canal boat is not a *vessel* within the meaning of the admiralty law. n2 The point was also pressed that, as canals are ordinarily wholly within its jurisdiction; it was suggested that there was a distinction between an intra-state canal like the Erie Canal and an international canal like the Suez. In 1862, Dr. Lushington took jurisdiction of a collision occurring in the Great North Holland Canal, which is wholly in Holland, but did so solely on the ground that the English Admiralty Jurisdiction Act gave to the court jurisdiction over any claim for damages done by any ship--which did not touch the question as raised in this country. n3 In 1877, the question of the jurisdiction of the admiralty over the canals of this country was presented to the Supreme Court by an application for a writ of prohibition, n4 the District Court having entertained jurisdiction of a collision on the Raritan Canal, which lies wholly within the State of New Jersey, connecting the waters of the Delaware River with New York Bay. The Supreme Court was evenly divided on the question of jurisdiction, and accordingly denied the application, without opinion. In 1884 the question was again submitted to the Supreme Court in *Ex parte Boyer* n5 on an application to prohibit the District Court from entertaining jurisdiction of a collision which had occurred on the Illinois and Michigan Canal, which connects Lake Michigan and the Chicago River with the Illinois River and the Mississippi. The jurisdiction was sustained on the ground that the canal was a part of the public navigable waters of the United States and hence within the legitimate scope of the admiralty jurisdiction conferred by the Constitution and statutes of the United States, the Court saying that whether a canal was wholly artificial, or wholly within the body of a state and subject to its ownership and control, or whether, at the time of the collision, one or the other of the vessels was on a voyage from one place to another in the same state was immaterial. But the court reserved the question whether the jurisdiction would extend to waters wholly within the body of a state and from which vessels can not so pass as to carry on commerce by water with places in another state or in a foreign country.

The matter came again before the Supreme Court in 1903 in the case of *The Robert W. Parsons,* n6 which presented the question whether or not the exclusive admiralty jurisdiction of the federal courts includes canal boats so that a lien under a state statute for repairs upon a canal boat used in navigation wholly within the State of New York, *i.e.,* upon the Erie Canal and the Hudson River, could not be enforced in the state court. The Supreme Court said that an attempted denial of the exclusive jurisdiction of the federal admiralty court must rest upon one of two grounds, *i.e.,* because the

cause of action arose upon an artificial canal, or because a canal boat is not a ship or vessel in the contemplation of the maritime law. The Court followed *Ex parte Boyer* as to the first point and held that the waters of the Erie Canal are public navigable waters, though the Court still reserved the question whether waters which, though navigable, are wholly intra-state and used only for local traffic, are to be considered as navigable waters of the United States. n7 And as to the question whether canal boats are to be regarded as ships and vessels within the meaning of the admiralty law, the Court held that they are to be so regarded, holding further that it mattered not, on the question of jurisdiction, that the repairs were made in dry dock, or that the contract for such repairs concerned a vessel employed wholly in navigation within the borders of a single state.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. McCormick v. Ives, 15 F. Cas. (S.D.N.Y. 1849) (No. 8720); Boon v. The Hornet, 3 F. Cas. (E.D. Pa. 1841) (No. 1640).

(n2)Footnote 2. *The Ann Arbor, 1 F. Cas. 946 (C.C.S.D.N.Y. 1858)* (No. 408). *See Van Santwood v. The John B. Cole, 28 F. Cas. 1075 (N.D.N.Y. 1846)* (No. 16,875).

(n3)Footnote 3. *The Diana, 167 Eng. Rep. 243 (1862)* .

(n4)Footnote 4. *The Monitor, 17 F. Cas. 601 (E.D.N.Y. 1877)* (No. 9708). Mr. Justice Davis had resigned on March 4, 1877, and Mr. Justice Harlan did not take his seat until December 10, 1877. In the interval the Court consisted of eight justices. There is no report of this matter in the Supreme Court reports; the fact of the application and its denial is noted in Federal Cases.

(n5)Footnote 5. *109 U.S. 629 (1884)* . *See Malony v. City of Milwaukee, 1 F. 611 (S.D.N.Y. 1880)* .

(n6)Footnote 6. *191 U.S. 17 (1903)* .

(n7)Footnote 7. There the matter has since rested. It is the general opinion that intra-state lakes like Sunapee in New Hampshire, Placid and George in New York, Hopatcong in New Jersey, Salt Lake in Utah are not within the admiralty jurisdiction, and that the federal navigation and shipping laws do not apply to the vessels which ply their waters and to the owners, charterers and crews of such vessels.

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Chapter IX. THE SEA AND JURISDICTION OVER INLAND WATERS

1-IX Benedict on Admiralty § 146

§ 146 The Judiciary Act of 1789.

The United States, by the First Act of Congress in relation to the judiciary, passed September 24, 1789, declared that the admiralty and maritime jurisdiction extended to seizures where such seizures are made on "waters navigable from the sea by vessels of ten or more tons burden." n1 This language, which described the carrying capacity of the river, not of the vessel respecting which the jurisdiction might be exercised in a particular litigation, n2 has disappeared from our statutes. That the admiralty jurisdiction extends over such waters had become so thoroughly settled that upon the revision of the statutes of the United States in 1873 these words were omitted, the words granting to the district courts jurisdiction over "all civil causes of admiralty and maritime jurisdiction" n3 being deemed sufficient to cover the subject matter, including seizures on such waters. The early Act is nonetheless valuable as a contemporaneous construction, n4 for it did not confine admiralty jurisdiction to tidewaters. n5

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawForfeitures & PenaltiesGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. 1 Stat. 73, 77, ch. 20, § 9. The limitation of 10 tons burden was later dropped, and the jurisdiction extended to all waters navigable by any vessel capable of commercial utility. The limitation "from the sea" disappeared after the extension of the jurisdiction to the Great Lakes and the inland rivers.

(n2)Footnote 2. *The Hine v. Trevor, 71 U.S. (4 Wall.) 555 (1866)* .

(n3)Footnote 3. R.S. 563; the subject is now covered by *28 U.S.C. § 1333*.

(n4)Footnote 4. *The Montello, 87 U.S. (20 Wall.) 430 (1874)* ; *The Daniel Ball, 77 U.S. (10 Wall.) 557 (1871)* ; *The Genesee Chief, 53 U.S. (12 How.) 443 (1851)* .

(n5)Footnote 5. *Jackson v. The Magnolia, 61 U.S. (20 How.) 296 (1857)* .

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Volume 1: Jurisdiction Chapters I - XIV
Chapter IX. THE SEA AND JURISDICTION OVER INLAND WATERS

1-IX Benedict on Admiralty § 147

§ 147 Act of 1845 Affecting the Great Lakes.

The Act of February 20, 1845 n1 expressly conferred upon the district courts admiralty jurisdiction on the Great Lakes in matters affecting enrolled or licensed vessels of at least twenty tons burden engaged in commerce between different States and Territories as upon the high seas or tidewaters. The Great Lakes and the navigable waters connecting them were, however, soon declared to be within the constitutional scope of admiralty and maritime jurisdiction. n2 As the Great Lakes are navigable, the district courts also have jurisdiction under the terms of the Judiciary Act of 1789. n3 Thus the Act of 1845, which was passed for the purpose of extending the admiralty jurisdiction, was accordingly inoperative as a grant of jurisdiction and equally inoperative as a restriction upon it because not so intended. n4 The Act has been repealed but its provision securing to either party in admiralty cases the right to jury trial, if he thinks proper to demand it, has been preserved, n5 and is a peculiar feature of admiralty practice on the Great Lakes.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawPractice & ProcedureStatutory AuthorityCivil ProcedureTrialsJury TrialsRight to Jury TrialConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. 5 Stat. L. 726 (1845).

(n2)Footnote 2. *The Genesee Chief, 53 U.S. (12 How.) 443 (1851)* .

(n3)Footnote 3. Act of Sept. 24, 1789, 1 Stat. 73, 77 ch. 20, § 9; now *28 U.S.C. § 1333*.

(n4)Footnote 4. The Supreme Court said that the Act of 1845 was "obsolete": *The Eagle, 75 U.S. (8 Wall.) 15 (1868)* . *See also The Nyack, 199 F. 383, 386 (7th Cir. 1912)* ; *The Western States, 159 F. 354, 357 (2d Cir.)* , *cert. denied, 210 U.S. 433 (1908)* ; *The Illinois, 12 F. Cas. 1177 (E.D. Mich. 1874)* (No. 7004); *The Flora, 9 F. Cas. 291 (N.D. Ill. 1853)* (No. 4878). Concerning this rebuff to the effort of Congress to extend the admiralty jurisdiction to the Great Lakes by statute, Mr. Justice Henry Billings Brown, after his retirement from the Supreme Court, wrote that it discouraged further legislative efforts to alter the jurisdiction for over half a century. Brown, *Jurisdiction of the*

Admiralty in Cases of Tort, 9 Colum. L. Rev. 1 (1909).

(n5)Footnote 5. *28 U.S.C. § 1873*; *Sellon v. Great Lakes Transp. Co. (The H.A. Scandrett), 87 F.2d 708, 1937 AMC 326 (2d Cir. 1937)* ; *Frederickson v. Luedtke Constr. Co., 427 F. Supp. 1309 (W.D. Mich. 1977)* ("[T]he language of *28 U.S.C. § 1873* refers to net or burden tonnage, and not to gross weight.").

It is unclear if the statute confers a right to a common law jury or to an advisory jury. *Compare Cleveland v. McIver, 109 F.2d 69, 71 (6th Cir. 1940)* (advisory), *The City of Toledo, 73 F. 220 (D. Ohio 1896)* and *The Empire, 19 F. 558 (D. Mich. 1884)* (same) *with The Western States, 159 F. 354 (2d Cir.) , cert. denied, 210 U.S. 433 (1908)* (common law jury) and *Nice v. Chesapeake & Ohio Ry., 305 F. Supp. 1167 (W.D. Mich. 1969)* (same). *See generally*, Mark Barrett, *Verdict of Great Lakes Jury in Seaman's Personal Injury Action Not Merely Advisory, 2 J. Mar. L.& Com. 672 (1971)*. Because appeals in admiralty used to be heard *de novo*, it was thought to be impossible to allow a common law jury. *See The Empire, supra. See also* Henry Billings Brown, *Jurisdiction of the Admiralty in Cases of Tort*, 9 Colum. L. Rev. 1, 4 (1909); Steven F. Friedell, *A Lump of Coal: Behind the Scenes of The Osceola, 34 Rutgers L.J. 637, 644 (2003)*.

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1-IX Benedict on Admiralty § 148

§ 148 Other Acts.

The Act "for the government and regulation of seamen in the merchant service," passed July 20, 1790, n1 § 6, subjected all seamen and all ships and vessels "in the merchant service" (that is to say, not in the public naval service) to the jurisdiction of the admiralty in cases of mariner's wages, and it makes no allusion whatever to the sea or the tides. The Act of July 16, 1798, n2 for the relief of the sick and disabled seamen, embraced coasting vessels and was amended by the Act of May 3, 1802, n3 expressly providing that persons employed in navigating "every boat, raft, or flat" going down the Mississippi, with the intention to proceed to New Orleans, shall be considered as *seamen* of the United States. n4

The Act "for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," passed February 8, 1793 n5 (following a previous Act for registering and clearing vessels, etc.), n6 the Act of March 2, 1819, n7 supplementary to the Acts concerning the coasting trade, and the Act of May 7, 1822, n8 for the collection of duties on exports and tonnage in Florida, expressly include all the "navigable rivers of the United States." The Limitation of Liability statutes, which had, since their first enactment in 1851, excluded canal boats, barges, lighters, and "any vessel of any descriptionwhatsoever used in rivers of inland navigation" n9 were altered in 1886 so as to apply "to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges and lighters"; n10 certain further amendments made in 1935 and 1936 were limited in their application to "seagoing" vessels. n11 Much of the maritime legislation enacted since 1910 applies to all the navigable waters of the United States without distinction--to the high seas, the coastal waters, sounds and bays, the Great Lakes, the inland rivers and lakes. n12 If an exclusion is intended, it is usual to express it. n13Action under the Death on the High Seas Act lies only in the event of the death occurring on the high seas beyond a marine league from the shore. n14 *18 U.S.C.§§ 2192* and *2193*, n15 provide for the punishment of incitation to mutiny and mutiny by the crew of a vessel "on the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States," and accordingly apply to a ship docked in a port of the United States not the home port of the vessel. n16

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesDeath ActionsDeath on the High Seas ActGeneral OverviewAdmiralty LawPractice &

ProcedureAttachment & GarnishmentLimitations on LiabilityAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime JurisdictionCriminal Law & ProcedureCriminal OffensesMiscellaneous OffensesRiot, Rout & Unlawful AssemblyGeneral Overview

FOOTNOTES:

(n1)Footnote 1. Act of July 20, 1790, ch. 29; 1, Stat. 131, 133; this became R.S. 4546, 4547, *46 U.S.C. §§ 603-604*, and was repealed by the Act of Aug. 26, 1983, 97 Stat. 600-604.

(n2)Footnote 2. Act of July 16, 1798, ch. 77; 1 Stat 605; this became R.S. 3689, and was repealed by the Act of June 26, 1884, ch. 121, § 15; 23 Stat. 57.

(n3)Footnote 3. Act of May 3, 1802, c. 51; 2 Stat. at L. 192; this became R.S. 3689. *See* n. 2, *supra.*

(n4)Footnote 4. But this has been held not to give the admiralty jurisdiction *in rem* of a suit for raftsman's wages: *A Raft of Cypress Logs, 20 F. Cas. 169 (W.D. Tenn. 1876)* (No. 11,527) (the Act applied only to rafts navigated to New Orleans, it had been repealed in 1873, and that a right *in rem* for wages would necessarily extend to the logging industry the whole concept of maritime liens, which would have been undesirable).

(n5)Footnote 5. Act of Feb. 18, 1793, ch. 8; 1 Stat. 305.

(n6)Footnote 6. Act of Sept. 1789, ch. 11; 1 Stat. 55.

(n7)Footnote 7. Act of March 2, 1819, ch. 48; 3 Stat. 492.

(n8)Footnote 8. Act of May 7, 1822, ch. 62; 3 Stat. 684. All of these limiting provisions subsequently disappeared from the statute books.

(n9)Footnote 9. Act of March 3, 1851, ch. 43, § 7; 9 Stat. 635, which became R.S. 4289 (1873), and is now *46 U.S.C. § 188*.

(n10)Footnote 10. Act of June 19, 1886, ch. 421, § 4; 24 Stat. 80; R.S. 4289 as amended, which is now *46 U.S.C. § 188*.

(n11)Footnote 11. Act of June 5, 1936, ch. 521; 49 Stat. 1479; *46 U.S.C. § 183(b), (f)*.

(n12)Footnote 12. Some of the statutes which apply on all navigable waters of the United States are: The Salvage Act of August 1, 1912, ch. 268; 37 Stat. 242; *46 U.S.C. §§ 2304, 80107* (formerly §§ 727, 729-731); The (La Follette) Seamen's Act of March 4, 1915, ch. 153; 38 Stat. 1164, *46 U.S.C. §§ 80, 8101* (formerly § 222), 250, 365, 366, 569, 596, 597, 599, 601, 656, 673, 688, 701, 703, 712, 713; The Merchant Marine Act of June 5, 1920, ch. 250; 41 Stat. 988; *46 U.S.C. §§ 861-885, 13,984*; The Suits in Admiralty Act of March 1920, ch. 111, 41 Stat. 537; *46 U.S.C. §§ 30901-30918* (formerly *46 U.S.C. §§ 761-768*); The Home Port Act of February 16, 1925, ch. 235; 43 Stat. 948; *46 U.S.C. §§ 1011-1014*; The Public Vessels Act of March 3, 1925, ch. 428; 43 Stat. 1112; *46 U.S.C. §§ 31101-31113* (formerly *46 U.S.C. §§ 781-790*); The Longshore and Harbor Workers' Compensation Act of March 4, 1927, ch. 509; 44 Stat. 1424; *33 U.S.C. §§ 901-950*; The revision of the Maritime Laws of May 27, 1936, ch. 463; 49 Stat. 1381; *46 U.S.C. §§ 239, 597*; The Merchant Marine Act of June 29, 1936, ch. 858; 49 Stat. 1985; The Merchant Marine Act of June 23, 1938, ch. 600; 52 Stat. 953; 46 U.S.C. §§ 1101ff, *1279*; The Rivers and Harbors Appropriation Act of 1899, *33 U.S.C. §§ 403, 406*.

(n13)Footnote 13. Some of the Acts whose operation is limited to the high seas, or to salt water, or to "sea-going" vessels are: The Death on the High Seas Act of March 30, 1920, ch. 111; 41 Stat. 537; *46 U.S.C. §§ 761-768*, recodified in 2006 as *46 U.S.C. §§ 30301-30308*; The Safety of Life at Sea Convention (London) of May 31, 1929, 50 Stat. 121, 1929 AMC 993, 1936 AMC 1260, 1936 AMC 1492; The Loadline Acts of August 27, 1935, ch. 747; 49 Stat. 888, *46*

U.S.C. §§ 88-88i; The Merchant Marine Act of May 22, 1928, ch. 675; 45 Stat. 689; *46 U.S.C. §§ 891-891x*; and portions of the 1935 and 1936 amendments to the Limitation of Shipowners' Liability Acts of August 29, 1935, ch. 804, and July 6, 1936, ch. 521, 49 Stat. 1479, *46 U.S.C. §§ 181-189*.

(n14)Footnote 14. Act of March 30, 1920, ch. 111, 41 Stat. 537, *46 U.S.C. § 761*.

(n15)Footnote 15. June 25, 1948, ch. 645, 62 Stat. 800.

(n16)Footnote 16. *Southern S.S. Co. v. National Labor Relations Bd., 316 U.S. 31, 1942 AMC 515 (1942)* .

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Volume 1: Jurisdiction Chapters I - XIV
Chapter IX. THE SEA AND JURISDICTION OVER INLAND WATERS

1-IX Benedict on Admiralty § 149-160

[Reserved].

§ 149[Reserved].

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Volume 1: Jurisdiction Chapters I - XIV
Chapter X SHIPS AND VESSELS

1-X Benedict on Admiralty X.syn

§ X.syn Synopsis to Chapter X: SHIPS AND VESSELS

§ 161. The Necessity for Definitions of Ships and Vessels.

§ 162. What Is a Ship or Vessel.

§ 163. Size Not Determinative for General Purposes of Admiralty Law.

§ 164. Purpose Determinative.

§ 165. Vessel: Defined by Act of Congress.

§ 166. Interpretation of the General Statutory Definition.

§ 167. What Appurtenances Are Considered Part of the Vessel.

§ 168-170 Reserved.

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Volume 1: Jurisdiction Chapters I - XIV
Chapter X SHIPS AND VESSELS

1-X Benedict on Admiralty § 161

§ 161. The Necessity for Definitions of Ships and Vessels.

It is sometimes important to determine whether a structure is to be considered a ship or vessel. For example, it may be necessary to determine whether a structure afloat is subject to a maritime lien or may be a subject of a maritime salvage. n1 A considerable portion of admiralty law is now governed by statutes, and disputes concerning what is a vessel revolve largely around the interpretation of a statutory definition. n2 A structure may be a vessel for the purpose of the application of one rule of admiralty law and not for another. For example, a seaplane in maritime peril can be the subject of a maritime salvage n3 and is subject to International Regulation for Preventing Collisions at Sea, n4 but may well not be a vessel within the meaning of the statutes limiting the liability of the owner for damage caused by it, n5 nor will it be considered a vessel for purposes of the Jones Act. n6 Sometimes special provisions are enacted to regulate the operation of certain types of vessels which, while subject to a special statutory regime for certain purposes, continue to be governed by the general law or other statutes for other purposes. For example, motorboats which are defined as including every vessel propelled by machinery and not more than sixty-five feet in length (excepting tug boats and tow boats) are required to comply with the Motorboats Act of 1940. n7 They nevertheless have generally continued to be vessels for other purposes of maritime law. For example, collisions involving pleasure craft n8 and contracts to repair such vessels n9 are within the federal court's admiralty jurisdiction. There is a well-established line of cases that has allowed owners of pleasure craft protection under the limitation of liability statutes. n10 Some more recent cases have denied such owners that protection, based on the view that the limitation statutes were intended to protect commercial interests and out of concern that allowing pleasure craft vessels to limit liability would leave injured victims with virtually no compensation. n11 The lower federal courts are divided over whether the Limitation of Liability Act applies to pleasure craft. Some reason that since the Act does not specifically apply to pleasure craft and since the reason for the Act was to benefit commercial shipping, that limitation should be denied. n12

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingGeneral OverviewAdmiralty LawShippingRegulations & StatutesGeneral OverviewConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:

(n1)Footnote 1. *See, e.g., South Fla. Dredging Co. v. American Steel Dredge No. 77, 286 F. 454 (S.D. Fla. 1923)* ; *Pleason v. Gulfport Shipbuilding Corp., 221 F.2d 621, 1955 AMC 794 (5th Cir. 1955)* ; *Lambros Seaplane Base v. The Batory, 215 F.2d 228, 1954 AMC 1789 (2d Cir. 1954)* .

(n2)Footnote 2. *See, e.g.*, many of the statutes contained in U.S.C. Titles 33 (Navigation and navigable waters) and 46 (Shipping). *See* § 165, *infra.*

(n3)Footnote 3. *Lambros Seaplane Base v. The Batory, 215 F.2d 228, 1954 AMC 1789 (2d Cir. 1954)* .

(n4)Footnote 4. *33 U.S.C. § 1601*.

(n5)Footnote 5. *Hubschman v. Antilles Airboats, Inc., 440 F. Supp. 828 (D.V.I. 1977)* ; *Noakes v. Imperial Airways, 29 F. Supp. 412, 1939 AMC 1048 (S.D.N.Y. 1939)* ; *Dollins v. Pan-American Grace Airways, 27 F. Supp. 487 (S.D.N.Y. 1937)* .

(n6)Footnote 6. *Hebert v. Air Logistics, Inc., 720 F.2d 853, 1984 AMC 1512 (5th Cir. 1983)* (helicopter with pontoons); *Barger v. Petroleum Helicopters, Inc., 692 F.2d 337, 1983 AMC 2854 (5th Cir. 1982)* ; *Smith v. Pan Air Corp., 684 F.2d 1102, 1983 AMC 2837 (5th Cir. 1982)* (a claim for damage to a helicopter being used in place of a vessel to ferry passengers and supplies to and from an offshore drilling structure is within the admiralty jurisdiction because there is a sufficient connection to traditional maritime activity).

Strictly speaking, the test under the Jones Act is whether the plaintiff is a "seaman," but in determining his status the courts consider whether he was a member of a ship's crew. *See, e.g., Desper v. Starved Rock Ferry Co, 342 U.S. 187 (1951)* ; *Wixom v. Boland Marine & Mfg. Co., 614 F.2d 956 (5th Cir. 1980) . See, generally, Sohyde Drilling & Marine Co. v. Coastal States Gas Prod. Co., 644 F.2d 1132, 1982 AMC 2644 (5th Cir. 1981)* .

(n7)Footnote 7. *46 U.S.C. § 526 et seq.*

(n8)Footnote 8. *E.g., Foremost Ins. Co. v. Richardson, 457 U.S. 668, 1982 AMC 2253 (1982)* .

(n9)Footnote 9. *E.g.*, Leyendecker v. Cooper, 1978 AMC 1544 (D. Md. 1978) (oral opinion); Norfolk Shipbuilding & Drydock Corp. v. M/V Norma T., 1977 AMC 103 (E.D. Va. 1976) .

(n10)Footnote 10. *Richards v. Blake Builders Supply, 528 F.2d 745, 1976 AMC 74 (4th Cir. 1975)* ; *Gibboney v. Wright, 517 F.2d 1054, 1975 AMC 2071 (5th Cir. 1975)* ; *Feige v. Hurley, 89 F.2d 575, 1937 AMC 913 (6th Cir. 1937)* ; *The Anico, 22 F.2d 960, 1928 AMC 284 (5th Cir. 1928)* ; *In re Brown, 536 F. Supp. 750 (N.D. Ohio 1982)* ; *In re Rowley, 425 F. Supp. 116, 1977 AMC 199 (D. Idaho 1977)* ; *The Francesca, 19 F. Supp. 828, 1937 AMC 1006 (W.D.N.Y. 1937) . See* Stolz, *Pleasure Boating and Admiralty: Erie at Sea, 51 Cal. L. Rev. 661, 709 (1963). Coryell v. Phipps (The Seminole), 317 U.S. 406, 1943 AMC 18 (1943)* (the Supreme Court allowed limitation, finding no privity or knowledge, but did not address the question whether yachts are covered by the statute). *Cf. In re Hutchinson, 162 F.2d 103, 1947 AMC 1467 (6th Cir. 1947)* (absolving owner of negligence); *Schoremoyer v. Barnes, 190 F.2d 14, 1951 AMC 1537 (5th Cir. 1951)* (state automobile guest statute inapplicable to motorboat on navigable lake).

(n11)Footnote 11. *In re Sisson, 668 F. Supp. 1196 (N.D. Ill. 1987) , aff'd on other grounds, 867 F.2d 341, 1989 AMC 609 (7th Cir. 1989) , rev'd, 497 U.S. 358, 1990 AMC 1801 (1990)* . The Supreme Court held that the tort in *Sisson* was maritime so that the district court had jurisdiction under *28 U.S.C. § 1333* to hear the limitation case. The Court did not reach the issue of whether pleasure craft owners are entitled to limit liability; *In re Shaw, 668 F. Supp. 524 (S.D.W. Va. 1987) , rev'd, 846 F.2d 73 (4th Cir. 1988)* (table); *In re Lowing, 635 F. Supp. 520 (W.D. Mich. 1986)* ; *In re Tracey, 608 F. Supp. 263 (D. Mass. 1985)* ; *Baldassano v. Larsen, 580 F. Supp. 415 (D. Minn. 1984) . See also* G. Gilmore & C. Black, *The Law of Admiralty* 882 (2d ed. 1975).

(n12)Footnote 12. *In re Roffe, 724 F. Supp. 9, 1990 AMC 2229 (D.P.R. 1989)* ; *In re Myers, 721 F. Supp. 39, 1990 AMC 352 (W.D.N.Y. 1989)* ; *In re Keys Jet Ski, Inc., 704 F. Supp. 1057 (S.D. Fla. 1989)* (involving jet skis), *rev'd, Keys Jet Ski, Inc. v. Kays, 893 F.2d 1225, 1990 AMC 609 (11th Cir. 1990)* ; *In re Lewis, 683 F. Supp. 217, 1988 AMC 1000 (N.D. Cal. 1987)* .

All of the courts of appeal to address the issue have adhered to the older view. *In re Guglielmo, 897 F.2d 58, 1990 AMC 1191 (2d Cir. 1990)* ; *Keys Jet Ski, Inc. v. Kays, 893 F.2d 1225, 1990 AMC 609 (11th Cir. 1990)* ; *In re Hechinger, 890 F.2d 202, 1990 AMC 765 (9th Cir. 1989)* ; *In re Young, 872 F.2d 176, 1989 AMC 1217 (6th Cir. 1989) , cert. denied, 497 U.S. 1024, 110 S. Ct. 3270, 111 L. Ed. 2d 780 (1990) . Accord Keller v. Jennette, 940 F. Supp. 35, 1997 AMC 955 (D. Mass. 1996)* ; *Greenley v. Meersman, 838 F. Supp. 381 (C.D. Ill. 1993)* ; *In re Boca Grande Club, Inc., 715 F. Supp. 341, 1989 AMC 2321 (M.D. Fla. 1989)* ; *In re Dillahey, 733 F. Supp. 874, 1990 AMC 1458 (D.N.J. 1990)* ; *In re Roberto, 1987 AMC 982 (D.N.J. 1986) . See also Anderson v. Whittaker Corp., 894 F.2d 804, 1990 AMC 2308 (6th Cir. 1990)* (negligent owner lost right to limit liability because he had knowledge of boat's defect).

A panel of the Fourth Circuit wrote in an unpublished opinion that until reversed *en banc* the earlier holding of that *Circuit in Richards v. Blake Builders Supply, 528 F.2d 745, 1976 AMC 74 (4th Cir. 1975)* was still good law. *In re Shaw, 1989 AMC 116 (4th Cir. 1988)* .

See also § 225, *infra.*

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter X SHIPS AND VESSELS

1-X Benedict on Admiralty § 162

§ 162. What Is a Ship or Vessel.

In maritime law in the absence of a compelling statutory definition, n1 the terms ship and vessel are used interchangeably as synonymous terms, connoting a craft capable of being used for transportation on oceans, rivers, seas, and navigable waters. n2 It is sometimes said that a ship is born when she is launched n3 and lives so long as her identity is preserved, n4 whether afloat or sunk or stranded. n5 But admiralty jurisdiction will not necessarily apply to all transactions involving such a vessel. n6 For example, admiralty has no jurisdiction even after an uncompleted vessel is launched over contracts to furnish materials, work, and labor for her completion. n7 Similarly, the warranty of seaworthiness may not be imposed unless the vessel is in navigation. n8 On the other hand, a harbor front worker employed in shipbuilding on navigable waters or on adjoining areas on land may be entitled to compensation under the Longshore and Harbor Workers' Compensation Act even though the vessel is neither constructed nor launched. n9

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Workers' ClaimsLongshore & Harbor Workers' Compensation ActAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingGeneral OverviewAdmiralty LawShippingRegulations & StatutesGeneral OverviewConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. *See* § 165, *infra.*

(n2)Footnote 2. *Cope v. Vallette Dry Dock Company, 119 U.S. 625 (1887)* ("It is true that the terms 'ships' and 'vessels' are used in a very broad sense to include all navigable structures intended for transportation."). *See also Ellis v. United States, 206 U.S. 246 (1907)* ; *The Pioneer, 30 F. 206 (E.D.N.Y. 1886)* ; *Saylor v. Taylor 77 F. 476 (4th Cir. 1896)* .

Some of the early editions of this treatise adopted the following definition: "A locomotive machine adapted to transportation over rivers, seas and oceans." Enc. Amer., (1829) Art. Ship. *Cf. Pollock v. Cleveland Shipbuilders Co., 56 Ohio St. 655, 47 N.E. 582 (1895)* citing treatise, 3d Ed. This definition has not been retained as the expression *locomotive machine* connotes a form of self-propulsion, and thus militates against the rest of the thesis on this subject.

In the sailing vessel era, the word "ship" had a special meaning, namely, a sailing vessel of three or more masts and square rigged on all masts. Such full rigged ships have become so rare that for practical purposes the special meaning has ceased to be current. In common usage the word is applied generally to all larger vessels which are capable of self-propulsion either mechanically or by sails. This is also the normal nautical usage which maintains a distinction, familiar to sailors, between a ship and a boat.

(n3)Footnote 3. *Tucker v. Alexandroff, 183 U.S. 424, 22 S. Ct. 195, 46 L. Ed. 264 (1901)* . The Court said:

> "A ship is born when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron--an ordinary piece of personal property--as distinctly a land structure as a house, and subject only to mechanics' liens created by state law and enforceable in the state courts. In the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction. She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name. Her owner's agents may not be her agents, and her agents may not be her owner's agents. ... She is capable, too, of committing a tort, and is responsible in damages therefor. She may also become a quasi bankrupt; may be sold for the payment of her debts, and thereby receive a complete discharge from all prior liens, with liberty to begin a new life, contract further obligations, and perhaps be subjected to a second sale. We have had frequent occasion to notice the distinction between a vessel before and after she is launched. In *People's Ferry Co. v. Beers, 15 L. Ed. 961, 20 How. 393* , it was held that the admiralty jurisdiction did not extend to cases where a lien was claimed for work done and materials used in the construction of a vessel; while the cases holding that for repairs or alterations, supplies or materials, furnished after she is launched, suit may be brought in a court of admiralty, are too numerous for citation.
>
> "So sharply is the line drawn between a vessel upon the stocks and a vessel in the water, that the former can never be made liable in admiralty, either *in rem* against herself or *in personam* against her owners, upon contracts or for torts, while if in taking the water during the process of launching, she escapes from the control of those about her, shoots across the stream and injures another vessel, she is liable to a suit *in rem* for damages."

For criticism of the personification of the ship, *see* § 186, *infra.*

(n4)Footnote 4. *Tucker v. Alexandroff, 183 U.S. 424, 22 S. Ct. 195, 46 L. Ed. 264 (1901)* .

(n5)Footnote 5. *Eastern Transport Co. v. United States, 272 U.S. 675 (1927)* ; *United States v. Wilson, 235 F.2d 251, 1951 AMC 2364 (2d Cir. 1958)* ; *The George W. Elder, 206 F. 268 (9th Cir. 1913)* ; *The Snug Harbor, 46 F.2d 143, 1931 AMC 204 (E.D.N.Y. 1930)* .

(n6)Footnote 6. *Cf. Anderson v. Susquehanna S.S. Co., 275 F. 989 (E.D. Va. 1921)* , *aff'd, 6 F.2d 858 (4th Cir. 1925)* .

(n7)Footnote 7. *Thames Towboat Co. v. The Schooner "Francis McDonald," 254 U.S. 242 (1920)* ; *Nilo Barge Line v. The M/V Bayou DuLarge, 584 F.2d 841, 1980 AMC 750 (9th Cir. 1978)* . *See* § 186, *infra.*

(n8)Footnote 8. *Roper v. United States, 368 U.S. 20 (1969)* ; *West v. United States, 361 U.S. 118, 80 S. Ct. 189, 4 L. Ed. 2d 161 (1959)* ; *Rogers v. M/V Ralph Bollinger, 279 F. Supp. 92 (E.D. La. 1968)* ; *Kissinger v. United States, 176 F. Supp. 828 (E.D.N.Y. 1959)* .

(n9)Footnote 9. Longshore and Harbor Workers' Compensation Act, *33 U.S.C. §§ 902* and *903*. Compare the view

formerly expressed in *United States Cas. Co. v. Taylor, 64 F.2d 521, 1933 AMC 1200 (4th Cir. 1933)* . For purposes of a negligence claim under § 905(b) of the Act, however, courts have generally applied the general statutory definition of a vessel found in *1 U.S.C. § 3*. *See Richendollar v. Diamond M Drilling Co., 819 F.2d 124 (5th Cir. 1987)* (en banc); *May v. Transworld Drilling Co., 786 F.2d 1261 (5th Cir. 1986)* ; *McCarthy v. The Bark Peking, 716 F.2d 130, 1984 AMC 1 (2d Cir. 1983)* , *cert. denied, 465 U.S. 1078 (1984)* .

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Volume 1: Jurisdiction Chapters I - XIV
Chapter X SHIPS AND VESSELS

1-X Benedict on Admiralty § 163

§ 163. Size Not Determinative for General Purposes of Admiralty Law.

In the absence of any statutory requirement for any particular purpose, the character of ships and vessels can hardly be denied to structures which, in every particular, are superior to the ships and vessels of those countries and period in which the great codes of maritime law were promulgated and enforced. The first discoverers of America committed themselves to the unknown ocean in barks, one not above fifteen tons, Frobisher in two vessels of twenty or twenty-five tons, Sir Humphrey Gilbert in one of ten tons only. n1 Nor can it make any difference how the vessel is propelled, n2 whether by the wind, the tide, screw or paddles, steam, naphtha, n3 internal combustion engines, n4 or animals, or whether it is towed by another vessel. n5 American admiralty courts have considered cases involving rowboats and other very humble craft and have, for instance, granted seamen's remedies to seamen on vessels under five tons. n6

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingGeneral OverviewAdmiralty LawShippingRegulations & StatutesGeneral OverviewConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. From an article in the Quarterly Review cited by Benedict in the earlier editions of this treatise which in turn were cited in *The Robert W. Parsons, 191 U.S. 17, 29 (1903)* .

(n2)Footnote 2. *The Devonshire, 13 F. 39 (9th Cir. 1882)* ("A vessel is none the less one on account of the manner of her propulsion whether by oars, sails or steam."). *See also The General Cass, 10 F. Cas. 169 (E.D. Mich. 1871)* (No. 5,307). Federal legislation on shipping often deals specifically with craft with different modes of propulsion, *e.g.*, steam, gas, fluid, naphtha, electric motors. *See 46 U.S.C. § 404*.

(n3)Footnote 3. *Cf. The Mary Powell, 92 F. 408 (2d Cir. 1899)* .

(n4)Footnote 4. *Cf. Kelly v. Washington ex rel. Foss Co., 302 U.S. 1, 1937 AMC 1490 (1937)* .

(n5)Footnote 5. *The Robert W. Parsons, 191 U.S. 17 (1903)* .

(n6)Footnote 6. *Keys Jet Ski, Inc. v. Kays, 893 F.2d 1225, 1990 AMC 609 (11th Cir. 1990)* (a seven-foot jet ski with a 65 horsepower engine capable of reaching speeds in excess of 30 miles per hour is a vessel).

The Virginia Belle, 204 F. 692 (E.D. Va. 1913) (granting a maritime lien for wages of a person employed as an engineer on a motor boat less than five tons and not registered; neither the size of the vessel nor the fact that it was not registered affected the question of jurisdiction); *Grays Landing Ferry Co. v. Stone, 46 F.2d 394 (3d Cir. 1931)* (an 18-foot ferry boat is "a vessel used on rivers or inland navigation" for the purpose of limitation of liability); *The Pioneer, 21 F. 426 (S.D. Ga. 1884)* (the size of the vessel (less than five tons) did not protect it from an action *in rem* for a seaman's wages). *But see Alaska Packers Ass'n v. Industrial Accident Comm'n, 276 U.S. 467, 1928 AMC 768 (1928)* (applying "maritime but local" doctrine to Workmen's Compensation case); *Alaska Packers Ass'n v. Marshall, 95 F.2d 279, 1938 AMC 821 (9th Cir. 1938)* (same).

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Chapter X SHIPS AND VESSELS

1-X Benedict on Admiralty § 164

§ 164. Purpose Determinative.

It is not the form, the construction, the rig, the equipment, or means of propulsion that establishes the jurisdiction, but the purpose and business of the craft as an instrument of maritime transportation, n1 that is to say, whether the craft is a navigable structure intended for maritime transportation. n2 The Fifth Circuit has identified three factors usually present when a floating platform is not a vessel: (1) the structures involved were constructed and used primarily as a work platforms; (2) they were moored or otherwise secured at the time of the accident; and (3) although they were capable of movement and were sometimes moved across navigable waters in the course of normal operations, any transportation function they performed was merely incidental to their primary purpose. n3

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingGeneral OverviewAdmiralty LawShippingRegulations & StatutesGeneral OverviewConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. *The Robert W. Parsons, 191 U.S. 17 (1903)* ; *The General Cass, 10 F. Cas. 169 (E.D. Mich. 1871)* (No. 5,307).

(n2)Footnote 2. *Keys Jet Ski, Inc. v. Kays, 893 F.2d 1225, 1990 AMC 609 (11th Cir. 1990)* (a seven-foot jet ski with a 65 horsepower engine capable of reaching speeds in excess of 30 miles per hour is a vessel); *Wahlstrom v. Kawasaki Heavy Indus., Ltd., 800 F. Supp. 1061 (D. Conn. 1992)* (same).

Cope v. Vallette Dry Dock Co., 119 U.S. 625 (1887) .

The following structures have been held to be within the admiralty jurisdiction:

Floating casino which navigates a river: Weaver v. Hollywood Casino-Aurora, Inc., 255 F.3d 379 (7th Cir. 2001) .

Watercraft without motive power: Nogueira v. New York, N.H., & H.R.R., 281 U.S. 128, 1930 AMC 763 (1930) ; *Ex parte Easton, 95 U.S. 68, 24 L. Ed. 373 (1877)* ; *Martinson v. State Indus. Accident Comm'n, 60 P.2d 972, 1936 AMC 1566 (Or. 1936)* . *But see De Wald v. Baltimore & Ohio R.R., 71 F.2d 810, 1934 AMC 1110 (4th Cir. 1934)* .

A raft: Muntz v. A Raft of Timber, 15 F. 555 (C.C.E.D. La. 1883) ; *Seabrook v. Raft of R.R. Cross-Ties, 40 F. 596 (D.S.C. 1889)* ; *The F. & P.M. No. 2, 33 F. 511 (E.D. Wis. 1888)* .

A floating bath house: The Public Bath No. 13, 61 F. 692 (S.D.N.Y. 1894) ; *The M.R. Brazos, 17 F. Cas. 951 (S.D.N.Y. 1879)* (No. 9898) (not as a vessel but because the tort was on water).

A houseboat: Miami River Boat Yard v. 60' Houseboat, 390 F.2d 596, 1968 AMC 336 (5th Cir. 1968) ; *Hudson Harbor 79th St. Boat Basin v. Sea Casa, 469 F. Supp. 987, 1979 AMC 2401 (S.D.N.Y. 1979)* .

A floating elevator: The Hezekiah Baldwin, 12 F. Cas. 93 (E.D.N.Y. 1876) (No. 6449).

A dredge anchored by spuds: The Frank R. Gibson, 87 F. 364 (N.D.N.Y. 1898) .

A floating pontoon moored by a cable and used as a ferry landing: The Mackinaw, 165 F. 351 (D. Or. 1908) ; *The Bart Tully, 251 F. 856 (6th Cir. 1918)* . These cases are probably overruled by *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co., 271 U.S. 19, 1926 AMC 684 (1926)* .

Derrick lighter moored to bulkhead under construction and used to unload boats carrying concrete blocks for the construction work: Norman v. Merritt & Chapman Derrick & Wrecking Co., 200 App. Div. 360, 193 N.Y.S. 195 (1922) .

Derrick barge: Mouton v. Tug Ironworker, 811 F.2d 946 (5th Cir. 1987) .

Derrick scow: The Sunbeam, 195 F. 468 (2d Cir. 1912) .

A dredge: The Virginia Ehrman, 97 U.S. 309 (1878) ; *In re Waldeck-Deal Dredging Co., 45 F.2d 951, 1931 AMC 77 (4th Cir. 1930)* ; *Richmond Dredging Co. v. Standard Am. Dredging Co., 208 F. 862 (9th Cir. 1913)* ; *North Am. Dredging Co. v. Pacific Mail S.S. Co., 185 F. 698 (9th Cir. 1911)* ; *The International, 89 F. 484 (3d Cir. 1898)* ; *McRae v. Bowers Dredging Co., 86 F. 344 (C.C.D. Wash. 1898)* ; *Saylor v. Taylor, 77 F. 476 (4th Cir. 1896)* ; *The Alabama, 22 F. 449 (C.C.S.D. Ala. 1884)* ; *The Steam Dredge No. 6, 222 F. 576 (S.D.N.Y. 1915)* , *aff'd, 241 F. 69 (2d Cir. 1917)* ; *McMaster v. One Dredge, 95 F. 832 (D. Or. 1899)* ; *Steam Dredge No. 1, 87 F. 760 (D.N.J. 1898)* ; *The Starbuck, 61 F. 502 (E.D. Pa. 1894)* ; *The Atlantic, 53 F. 607 (D.S.C. 1893)* ; *Aitcheson v. The Endless Chain Dredge, 40 F. 253 (E.D. Va. 1889)* ; *The Pioneer, 30 F. 206 (E.D.N.Y. 1886)* .

Floating dredge: Ellis v. United States, 206 U.S. 246 (1907) .

A floating sand-digger: Weeks Crane No. 3, 1935 AMC 549 (S.D.N.Y. 1935) .

Dredging not to improve any navigable channel: Bowers Hydraulic Dredging Co. v. Federal Contracting Co., 148 F. 290 (S.D.N.Y. 1906) , *aff'd, 153 F. 870 (2d Cir.)* , *cert. denied, 207 U.S. 587 (1907)* . *But cf. Woods v. Merrill-Stevens Dry Dock & Repair Co., 14 F. Supp. 208, 1936 AMC 879 (S.D. Fla. 1936)* (the employment of her crew is not maritime).

Quaere as to dredge: In re Hydraulic Steam Dredge No. 1, 80 F. 545 (7th Cir. 1897) .

Drill boat: Eastern S.S. Corp. v. Great Lakes Dredge & Dock Co., 256 F. 497 (1st Cir.) , *cert. dismissed, 250 U.S.*

676 (1919) .

A scow platform: In re Kansas City Bridge Co., 19 F. Supp. 419, 1937 AMC 1042 (W.D. Mo. 1937) ; *The Ark, 17 F.2d 446, 1927 AMC 38 (S.D. Fla. 1926)* ; *Rogers v. A Scow Without A Name, 80 F. 736 (E.D.N.Y. 1897)* .

A float used to hold oysters: Braisted v. Denton, 115 F. 428 (E.D.N.Y. 1902) .

A scow platform: Ruddiman v. A Scow Platform, 38 F. 158 (S.D.N.Y. 1889) .

A scow used as a platform to display fireworks: The Columbiad (Kenny v. City of N.Y.), 28 F. Supp. 175, 1939 AMC 1006 (E.D.N.Y. 1939) .

A pile driver: Pile Drive E.O.A., 69 F. 1005 (E.D. Mich. 1894) .

A marine railway: The Professor Morse, 23 F. 803 (D.N.J. 1885) .

Pile driver scow: The Raithmoor, 186 F. 849 (E.D. Pa. 1911) , rev'd on other grounds, 241 U.S. 166, 36 S. Ct. 514, 60 L. Ed. 937 (1916) (maintaining jurisdiction also over unfinished beacon); *In re P. Sanford Ross, Inc., 196 F. 921 (E.D.N.Y. 1912) , rev'd on other grounds, 204 F. 248 (2d Cir. 1913)* ; *George Leary Constr. Co. v. Matson, 272 F. 461 (4th Cir. 1921)* ; *Lawrence v. Flatboat, 84 F. 200 (S.D. Ala. 1897) , aff'd, 86 F. 907 (5th Cir. 1898)* ; *Self v. Central Station Equip. Co., 65 F.2d 789, 1933 AMC 1013 (5th Cir. 1933)* ; *Jenkins v. Rancocas Constr. Co., 61 F.2d 96, 1932 AMC 1245 (3d Cir. 1932)* (even when laid up in a yard).

Dumping Scow: In re Eastern Dredging Co., 138 F. 942 (D. Mass. 1905) .

Scow carrying ballast: Endner v. Greco, 3 F. 411 (S.D.N.Y. 1880) .

A barge used for storage and transportation: In re Great Lakes Transit Co. (The Glenbogie), 63 F.2d 849, 1933 AMC 1019 (6th Cir. 1933) ; *The Wilmington, 48 F. 566 (D. Md. 1880)* ; or merely for storage afloat: The Coelleda-The Swallow, 1932 AMC 1044 (1932) (Griffin, Arb.). *Contra Wood v. Two Barges, 46 F. 204 (C.C.E.D. La. 1891)* (contrary to current practice and established principle). *See The McLain No. 5, 25 F. Supp. 944, 1939 AMC 136 (E.D.N.Y. 1939)* .

A "pump-boat": Charles Barnes Co. v. One Dredge Boat, 169 F. 895 (E.D. Ky. 1909) (floating structure especially constructed to pump out barges); *Winslow v. A Floating Steam Pump, 30 F. Cas. 308 (D.N.J. 1879)* (No. 17880) (a chuncker or draft used to pump water out of a dry dock).

A marine pump: The Big Jim, 61 F. 503 (E.D. Pa. 1894) .

A scow carrying lumber: The General Cass, 10 F. Cas. 169 (E.D. Mich. 1871) (No. 5307).

Old steamboat converted into a pleasure barge: The Club Royale, 13 F. Supp. 123, 1936 AMC 441 (D.N.J. 1935) ; *The Showboat, 47 F.2d 286, 1931 AMC 19 (D. Mass. 1930)* ; *Ringler v. Laing (The Sea Lark), 21 F.2d 794, 1927 AMC 1427 (W.D. Wash. 1927)* ; *The City of Pittsburgh, 45 F. 699 (W.D. Pa. 1891) . Contra Hayford v. Doussony (The Pirate Ship), 32 F.2d 605, 1929 AMC 849 (5th Cir. 1929)* .

Museum vessel capable of being towed: McCarthy v. The Bark Peking, 716 F.2d 130, 1984 AMC 1 (2d Cir. 1983) , cert. denied, 465 U.S. 1078 (1984) ; *Clinton Bd. of Park Comm'rs v. Claussen, 410 F. Supp. 320 (S.D. Iowa 1976)* .

Museum vessel permanently moored: Luna v. Star of India, 356 F. Supp. 59, 1973 AMC 1597 (S.D. Cal. 1973) .

Passenger vessel withdrawn from navigation for use as tourist attraction but not permanently attached to land: In re Queen Ltd., 361 F. Supp. 1009, 1973 AMC 2510 (E.D. Pa. 1973) .

A dismantled steamboat converted into a floating hotel: The Hendrick Hudson, 11 F. Cas. 1085 (S.D.N.Y. 1869) (No. 6355); *Hayford v. Doussony (The Pirate Ship), 32 F.2d 605, 1929 AMC 849 (5th Cir. 1929)* (a dancing platform); *The Jim & Bill, 4 F. Supp. 258, 1933 AMC 968 (E.D.N.Y. 1933)* (but not until the conversion is completed).

Partially dismantled steamer still able to float, carry cargo and be towed: United States v. Steamtug Barranca, 1927 AMC 1208 (E.D. La. 1927) ; *The C.H. Northam, 181 F. 983 (D. Mass. 1909)* .

Steam propeller stranded, pumped out and hauled afloat and kept afloat only by steam pumps and had to be towed: Craig v. Continental Ins. Co., 141 U.S. 638 (1891) .

A wreck: The Snug Harbor, 46 F.2d 143, 1931 AMC 204 (E.D.N.Y. 1930) .

Vessel not raised for a year and a half: The George W. Elder, 206 F. 268 (9th Cir. 1913) .

Tug driven aground above ordinary high water mark: The Gulfport, 243 F. 676 (S.D. Ala. 1917) , aff'd, 250 F. 577 (5th Cir.) , cert. denied, 248 U.S. 560 (1918) .

Motor boats: In re Liebler (The Francesca), 19 F. Supp. 829, 1937 AMC 1006 (W.D.N.Y. 1937) ; *The Alola, 228 F. 1006 (E.D. Va. 1915)* ; *The Virginia Belle, 204 F. 692 (E.D. Va. 1913)* .

Commercial use is not a prerequisite; a pleasure fishing boat is a vessel: London Guar. & Accident Co. v. Industrial Accident Comm'n, 256 P. 857, 1927 AMC 1224 (Cal. Dist. Ct. App. 1927) , rev'd on other grounds, 265 P. 825, 1928 AMC 883 (Cal. 1928) . See, generally, Disbrow v. Walsh Bros. 36 F. 607 (S.D.N.Y. 1888) ; *The Ella B., 24 F. 508 (N.D.N.Y. 1885)* ; *Murray v. The Ferry Boat Nimick, 2 F. 86 (W.D. Pa. 1880)* .

Section cited: *Dann v. The Dredge Sandpiper, 222 F. Supp. 838, 1964 AMC 472 (D. Del. 1963)* .

A steam yacht, laid up in the Mississippi River and out of commission for four years: *Kilb v. Menke, 121 F.2d 1013, 1941 AMC 1344 (5th Cir. 1941)* .

An unrigged yacht without motive power: Kilb v. Menke, 121 F.2d 1013, 1941 AMC 1344 (5th Cir. 1941) .

The pipe line of a dredge working in a navigable channel, although not a "vessel," is a maritime "object," for injuries to which by collision an action *in rem* would lie even prior to passage of the Admiralty Extension Act in 1948, *46 U.S.C. § 740*: *McWilliams Dredging Co. v. United States, 105 F. Supp. 582, 1952 AMC 1420 (E.D. La. 1952)* .

A raft of logs is a vessel: The Mary, 123 F. 609 (S.D. Ala. 1903) ; *United States v. Marthinson, 58 F. 765 (E.D.S.C. 1893)* .

Tanker midbodies towed across the Atlantic Ocean, while not vessels within the meaning of the U.S. customs laws and therefore not exempt from import duties, would nonetheless be vessels within the meaning of the Wreck Act, as during the trans-Atlantic towage they carried crews and navigational lights. *Compare* United States v. Bethlehem Steel Co., 1966 AMC 2748 (C.C.P.A.) *and United States v. Moran Towing & Transp. Co., 374 F.2d 656, 1967 AMC 1733 (4th Cir. 1967)* .

An offshore drilling platform resting on legs extending to the bottom of the sea is a vessel: Offshore Co. v. Robison,

266 F.2d 769, 1959 AMC 2049 (5th Cir. 1959) .

A floating derrick engaged in pouring concrete for a bridge is a vessel: Summerlin v. Massman Constr. Co., 199 F.2d 715, 1952 AMC 1965 (4th Cir. 1952) .

A floating drydock being towed to sea to be destroyed by sinking at sea is a "vessel" within the meaning of the Wreck Act, 33 U.S.C. §§ 409-415: *United States v. Moran Towing & Transp. Co., 374 F.2d 656, 1967 AMC 1733 (4th Cir. 1967)* .

A barge moored behind piles on a river bank used as a platform for coal cleaning machinery is a vessel: Jeffrey v. Henderson Bros., 193 F.2d 589, 1952 AMC 359 (4th Cir. 1951) .

A ferry that traveled along a cable which was stretched across the water and was secured by winches on either end: Dardar v. Louisiana, 322 F. Supp. 1115, 1971 AMC 1560 (E.D. La. 1971) , aff'd, 447 F.2d 952, 1971 AMC 2381 (5th Cir. 1971) .

A barge (motorboat): Free v. Sample, 324 F. Supp. 1362, 1971 AMC 1953 (W.D. Ark. 1971) .

A carfloat (a barge without a motor and with railroad tracks to accommodate railroad cars): Benazet v. Atlantic Coast Line R.R., 442 F.2d 694, 1971 AMC 1247 (2d Cir. 1971) , aff'd on other grounds, 406 U.S. 340, 1972 AMC 1121 (1972) .

Text cited: *J.W. Petersen Coal & Oil v. United States, 323 F. Supp. 1198 (N.D. Ill. 1970)* .

The following have been held not to be "vessels" within admiralty jurisdiction.

A vessel resting in a specially prepared stone bed which would require several non-mininal modifications which would be highly impractical if not impossible to make for vessel to be seafaring: Marina Entertainment Complex, Inc. v. Hammond Port Auth., 842 F. Supp. 367 (N.D. Ind. 1994) .

A dry dock: Cope v. Vallette Dry Dock Co., 119 U.S. 625 (1887) ; *Salvor Wrecking Co. v. Sectional Dock Co., 21 F. Cas. 281 (C.C.E.D. Mo. 1876)* (No. 12,273); *Berton v. Tietjen & Lang Dry Dock Co., 219 F. 763 (D.N.J. 1915)* ; *The San Cristobal, 215 F. 615 (S.D. Ala. 1914) , aff'd, 230 F. 599 (5th Cir. 1916)* ; *The Warfield, 120 F. 847 (E.D.N.Y. 1903)* ; *Snyder v. A Floating Dry Dock, 22 F. 685 (D.N.J. 1884) . But see J.M.L. Trading Corp. v. Marine Salvage Corp., 501 F. Supp. 323 (E.D.N.Y. 1980)* (maritime lien attaches to floating drydocks for wharfage when structures were not being used as drydocks but were being moored temporarily during voyage).

Stationary dock and breakwater:

Royal Ins. Co. of Am. v. Pier 39 Ltd. Partnership, 738 F.2d 1035, 1986 AMC 2392 (9th Cir. 1984) . A wharfboat used as warehouse and office, not capable of navigation: Evansville & Bowling Green Packet Co. v. Chero Cola Co., 271 U.S. 19, 1926 AMC 684 (1926) .

A floating boat-house: Woodruff v. One Covered Scow, 30 F. 269 (E.D.N.Y. 1887) (but court has admiralty jurisdiction and lien attaches for wharfage).

A floating casino: *Pavone v. Mississippi Riverboat Amusement Corp., 52 F.3d 560 (5th Cir. 1995)* .

A floating hunting and fishing camp whose transportation function was incidental to its primary purpose of serving as a base for hunting and fishing: *Theriot v. St. Martin, Lirette, Gaubert & Shea, 702 F. Supp. 1273, 1990 AMC 281*

(E.D. La.) , aff'd without op., 878 F.2d 1433 (5th Cir. 1989) .

An amphibian airplane: Dollins v. Pan-American Grace Airways, 27 F. Supp. 487, 1939 AMC 691 (S.D.N.Y. 1939) .

An overseas transport flying boat: Noakes v. Imperial Airways (The Cavalier), 29 F. Supp. 412, 1939 AMC 1048 (S.D.N.Y. 1939) .

A floating derrick anchored near a seawall and used in the construction of a highway on the seawall has been held not to be a vessel within the maritime jurisdiction so as to render compensable under the state workmen's compensation law the death of a watchman on the derrick: *Heikkila v. J. Rich Steers, Inc., 261 App. Div. 1012, 1941 AMC 578 (1941) .*

A floating hydraulic dredge being used to make land: J.C. Penney-Gwinn Corp. v. McArdle, 27 F.2d 324, 1928 AMC 1328 (5th Cir. 1928) . See Miami River Boat Yard v. 60' Houseboat, 390 F.2d 596, 1968 AMC 336 (5th Cir. 1968) .

A dredge cutting a new channel in non-navigable water to an oil well drilling site: McKie v. Diamond Marine Co., 104 F. Supp. 275, 1952 AMC 1390 (S.D. Tex. 1952) , rev'd on evidence, 204 F.2d 132 (5th Cir. 1953) .

A fully equipped ocean vessel reduced to the condition of a grain storage barge: Roper v. United States, 282 F.2d 413, 1960 AMC 1719 (4th Cir. 1960) .

A barge: Ex Parte Easton, 95 U.S. 68 (1877) .

A tubular section destined to become part of a tunnel for automotive traffic beneath a river is not a vessel while floating towards its final resting place; surely if a ship undergoing major construction, reconstruction or overhaul is not a vessel in navigation, a non-maritime structure undergoing major construction for the purpose of becoming an integral part of a tunnel can not be a vessel in navigation while under construction: *Hill v. B.F. Diamond, 311 F.2d 789, 1963 AMC 591 (4th Cir. 1962) .*

A dredge used solely to produce sand and gravel for sale ashore is not a vessel: Johnson & Towers Baltimore, Inc. v. The Dredge, 241 F. Supp. 598, 1965 AMC 1169 (D. Md. 1965) (no maritime lien attaches).

A fixed unmanned platform resting in the Gulf of Mexico over thirty miles off the Louisiana coastline is not a vessel, as it clearly was not designed to float. Employees injured thereon therefore do not fall within the definition of seamen: *Ocean Drilling & Exploration Co. v. Berry Bros. Oilfield Serv., 377 F.2d 511, 1967 AMC 2593 (5th Cir.) , cert. denied, 389 U.S. 849 (1967) .*

A floating dry dock is not a vessel: Bernardo v. Bethlehem Steel Co., 314 F.2d 604, 1963 AMC 574 (2d Cir. 1963) (shore-based welder's Jones Act personal injury action); *De Martino v. Bethlehem Steel Co., 164 F.2d 177, 1948 AMC 943 (1st Cir. 1947)* (personal injury action by painter under the general maritime law).

Submersible type "inshore" drilling barge is a vessel: Trinidad Corp. v. American S.S. Owners Mut. Protection & Indem. Ass'n, 229 F.2d 57, 1956 AMC 286 (2d Cir. 1956) ; *City of Los Angeles v. United Dredging Co., 14 F.2d 364, 1927 AMC 188 (9th Cir. 1926)* ; *The Dick-Keys, 7 F. Cas. 678 (C.C.S.D. Ohio 1863)* (No. 3898); *Guilbeau v. Falcon Seaboard Drilling Co., 215 F. Supp. 909, 1965 AMC 346 (E.D. La. 1963)* ; *Disbrow v. Walsh Bros., 36 F. 607 (S.D.N.Y. 1888)* ; *The Wilmington, 48 F. 566 (D. Md. 1880)* ; *The Kate Tremaine, 14 F. Cas. 144 (E.D.N.Y. 1871)* (No. 7622); Cheramie v. Liberty Mut. Ins. Co., 1965 AMC 2063 (La. Dist. Ct. 1965) ; Rousse v. American Ins. Co., 1965 AMC 2629 (La. Dist. Ct. 1964) ; *Johnson v. C.F. Harms Co., 25 N.J. Misc. 457, 55 A.2d 165, 1946 AMC 1555 (Essex County Ct. 1946) .*

Oil drilling platforms located in the Gulf of Mexico are not vessels, but are rather artificial islands: Kimble v. Noble Drilling Corp., 416 F.2d 847, 1969 AMC 2029 (5th Cir. 1969) .

Fixed structures on the outer Continental Shelf are not vessels within the admiralty jurisdiction. The Outer Continental Shelf Lands Act, Pub. L. No. 212 (1953), 67 Stat. 462, *43 U.S.C. § 1331 et seq.* , makes federal law, supplemented by state law, applicable to these artificial islands as though they were federal enclaves within the state. *Chevron Oil Co. v. Huson, 404 U.S. 97, 1972 AMC 20 (1971)* (state statute of limitations will apply in the future); *Rodrigue v. Aetna Cas. & Sur. Co., 395 U.S. 352 (1969)* (applying Louisiana law rather than Death on the High Seas Act to an injury on an artificial island); *Dickerson v. Continental Oil Co., 449 F.2d 1209 (5th Cir. 1971)* (applying Louisiana law in determining liability and the amount of damages to be awarded); *Bertrand v. Forest Corp., 441 F.2d 809 (5th Cir. 1971)* (the Longshoremen's and Harbor Workers' Compensation Act is plaintiff's exclusive remedy).

Pontoon bridge on a state highway is a bridge and not a vessel: Cookmeyer v. Louisiana Dept. of Highways, 433 F.2d 386, 1972 AMC 1120 (5th Cir. 1970) , cert. denied, 401 U.S. 980 (1971) . But see Peytavin v. Government Employees Ins. Co., 453 F.2d 1121, 1972 AMC 1202 (5th Cir. 1972) . The Act was recodified in 2006 as *46 U.S.C. § 30101*. *See* § 173, *infra*.

(n3)Footnote 3. *Burchett v. Cargill, Inc., 48 F.3d 173 (5th Cir.)*

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter X SHIPS AND VESSELS

1-X Benedict on Admiralty § 165

§ 165. Vessel: Defined by Act of Congress.

The current definition of the word 'vessel' enacted as a rule of general construction of federal statutes is as follows: n1 "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

This definition applies to every federal statute, n2 unless that statute itself prescribes another definition, or unless the context otherwise indicates; any structure falling within the definition is a vessel.

There is no legally significant difference between the statutory definition of the term "vessel" and the meaning attributed to it by the general maritime law as obtaining in this country. n2a While one may not ascribe to the Congress an intent to restate maritime law when it enacted a definition for the construction of statutes generally, n3 it is highly unlikely that Congress, in formulating a definition of a word of so immediate a connection with maritime law and so likely to recur in maritime legislation, could have intended materially to depart from the meaning under the general maritime law. This conclusion is supported by subsequent enactments of Congress. For example, when Congress codified certain aspects of the law of maritime liens in the Maritime Liens Acts of 1910 and 1920, n4 it had no intention to change the basic principles of maritime law. n5 Nevertheless, Congress was content to leave the Acts to be construed in accordance with the general statutory definition of the word vessel, which if indeed different from the meaning under the general maritime law would have had the effect of changing the law. It is manifest that the legislation was predicated on the assumption that the statutory definition was identical with the meaning under the general maritime law.

The statutory definition has been relied upon even in cases under the general maritime law. For example, courts employed the statutory definition in holding dredges to be vessels, and from the tenor of their judgments they appeared to regard the definition as declaratory of and conforming to tests under the general law. n6 The Supreme Court, too, in *Ellis v. United States,* n7 a case not directly involving the construction of a statute, resorted to the definition for holding scows and floating dredges to be vessels.

In *Charles Barnes Co. v. One Dredge Boat,* n8 a case of a libel for supplies to a pumpboat, the court saw no reason why the statutory definition should not govern. The court cited and relied upon Mr. Justice Bradley's definition n9 of

ships and vessels as including "all navigable structures intended for transportation" as the general maritime law definition, and reading the word *intended* in the subjective sense, thought that the statutory definition was somewhat broader but nevertheless applicable. For the purpose of the case the narrower construction sufficed. It would seem that on a proper construction of Mr. Justice Bradley's definition, the expression "intended for transportation" as used by him has the normal connotation of "purposed" or "designed" for transportation and thus is synonymous with the expression, "capable of being used as a means of transportation." In *Reppert v. Robinson,* n10 it was said by Judge Taney:

> "The manner in which the vessel is actually employed cannot affect the question of jurisdiction. It depends upon her character ... and it did not rest with the owner to confer or take away the admiralty jurisdiction, at his pleasure, by the mode or trade in which he afterwards employed her." n11

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingGeneral OverviewAdmiralty LawShippingRegulations & StatutesGeneral OverviewConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. *1 U.S.C. § 3* (originally enacted as Act of July 30, 1947, ch. 388, § 3, 61 Stat. 633). This section was derived from an Act for the prevention of smuggling (Act of July 18, 1866, ch. 201, § 1, 14 Stat. 178).

(n2)Footnote 2. *Lambros Seaplane Base v. The Batory, 215 F.2d 228, 1954 AMC 1789 (2d Cir. 1954) . E.g., 46 U.S.C.A. § 2101(45) (West Supp. 1987)* adopts this definition for purposes of Subtitle II dealing with vessels and seamen.

(n3)Footnote 2a. *Bunge Corp. v. Freeport Marine Repair, Inc., 240 F.3d 919, 2001 AMC 1367(11th Cir. 2001)* (citing text).

(n4)Footnote 3. *Burchett v. Cargill, Inc., 48 F.3d 173, 1995 AMC 1576 (5th Cir. 1995) . See also Manuel v. P.A.W. Drilling & Well Service, Inc., 135 F.3d 344, 1998 AMC 1390 (5th Cir. 1998)* (determination of vessel status is based on purpose for which structure was constructed and business in which craft is engaged).

(n5)Footnote 4. *46 U.S.C. § 971 et seq.*

(n6)Footnote 5. *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries Co., 254 U.S. 1, 41 S. Ct. 1, 65 L. Ed. 97 (1920) .*

(n7)Footnote 6. *E.g., Saylor v. Taylor, 77 F. 476 (4th Cir. 1896)* ; *The Pioneer, 30 F. 206 (E.D.N.Y. 1886) .*

(n8)Footnote 7. *206 U.S. 246 (1907) .*

(n9)Footnote 8. *169 F. 895 (E.D. Ky. 1909) .*

(n10)Footnote 9. *Cope v. Vallette Dry Dock Co., 119 U.S. 625, 629 (1887) .*

(n11)Footnote 10. *20 F. Cas. 541 (C.C.D. Md. 1851)* (No. 11,703).

(n12)Footnote 11. *Id. at 543 , quoted in London Guar. & Accident Co. v. Industrial Accident Comm'n, 256 P. 857 (Cal. Dist. Ct. App. 1927) , rev'd on other grounds, 203 Cal. 676, 265 P. 825 (1928) , rev'd on other grounds, 279 U.S. 109 (1929) .*

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter X SHIPS AND VESSELS

1-X Benedict on Admiralty § 166

§ 166. Interpretation of the General Statutory Definition.

The general statutory definition n1 provides two alternative tests for a watercraft or other artificial contrivance to be included within the term "vessel," namely, (a) that it is used as a means of transportation, or (b) that it is capable of being so used. Several cases have emphasized that a structure is a vessel even though it is merely "capable of being used" as a means of transportation on water. n2 In *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, n3 the Court gave as one reason for not holding the wharfboat in question a "vessel" that it was not "practically capable" of being used as a means of transportation. One court has seized upon the word "practically" to hold that the word "capable" in the definition must be read as "practically capable." n4

The word "transportation" does not have a restricted connotation. As stated in *The International:* n5

> "The terms of this provision are broad and unqualified. The word 'transportation' is not expressly or impliedly limited to the carriage of passengers or merchandise for hire. A pleasure yacht or an ice boat is a vessel within the meaning of the section, equally with a merchantman or an ocean liner; although the ice boat be designed solely to keep navigation open, and the pleasure yacht may carry neither passenger nor merchandise for hire. While the dredge was not intended or adapted for the carriage of merchandise or passengers, and did not possess the power of self-propulsion except to an inadequate extent through the use of its steam shovel or dipper as a paddle, it was nevertheless a water craft 'used, or capable of being used, as a means of transportation on water.' Its permanent home was on navigable water, and it was intended and adapted for navigation and transportation by water of its crew, supplies and machinery, from point to point, in carrying on the work of deepening and removing obstructions from channels and harbors in aid of navigation and commerce. Admiralty jurisdiction attaches to such dredges. Within the sphere of their activities they are subject to the maritime law of contracts and of torts and to the laws of navigation. The scows also were water craft 'used, or capable of being used, as a means of transportation on water.' It is immaterial that they were to be laden with mud from the shovel or scoop of the dredge instead of ordinary merchandise. They were designed to receive and transport mud by water in the course of rendering valuable maritime service. Equally with the dredge they were vessels within the meaning of the statute."

In *Stewart v. Dutra Construction Company*, n6 the Supreme Court reaffirmed that dredges are vessels for purposes of the Jones Act and Longshore and Harbor Workers' Compensation Act ("LHWCA"). The Court disapproved of the First Circuit's narrower interpretation that to be considered a Jones Act vessel the structure must either have the purpose or primary business of navigation or be in actual navigation or transit at the time of the injury. n7 According to the Court, *1 U.S.C. § 3* only requires that the structure be "used, or capable of being used, as a means of transportation on water." It does not require that it be *primarily* used for that purpose. Nor is it required that the vessel be moving at the time of the injury. A vessel is "in navigation" as long as it has not been removed from the water for extended periods of time. If there is a "practical possibility" as opposed to "merely a theoretical one" that a craft can again be put to sea, it remains a vessel. n8 The Court said that in some cases this may raise a factual question for the jury. The Court also clarified what *1 U.S.C. § 3* means by "transportation." A dredge satisfies the transportation requirement if it is capable of transporting equipment and workers over water.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActProcedureJurisdictionAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsLongshore & Harbor Workers' Compensation ActAdmiralty LawPractice & ProcedureJurisdictionConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:
(n1)Footnote 1. *1 U.S.C. § 3*.

(n2)Footnote 2. *Campbell v. Loznicka (The Scorpio), 181 F.2d 356 (5th Cir. 1950)* . After emphasizing the words "capable of being used" in the statutory definition, the court added:

> "It was not essential to admiralty jurisdiction of the court to show that the Scorpio had hauled any part of the commerce of the world or that it had navigated any of the seven seas. ...
>
> "Whether or not the Scorpio had ever sailed the seas or transported any portion of the world's commerce, is, therefore, not controlling. Undoubtedly, it was a type of water craft, long afloat, readily towable, and entirely capable of being used, even if inefficiently, in transportation, when moved by a tug, and was a 'vessel' within the wording of the statute. ..."

Id. at 359 . See also McCarthy v. The Bark Peking, 716 F.2d 130, 1984 AMC 1 (2d Cir. 1983) , cert. denied, 465 U.S. 1078 (1984) (museum vessel with rudder welded in place capable of being towed though not put to sea under her own power for over 50 years); *M/V Marifax v. McCrory, 391 F.2d 909, 1968 AMC 965 (5th Cir. 1968)* ; *Miami River Boat Yard, Inc. v. 60' Houseboat, 390 F.2d 596, 1968 AMC 336 (5th Cir. 1968)* ; *Producers Drilling Co. v. Gray, 361 F.2d 432 (5th Cir. 1966)* ; *Pleason v. Gulfport Shipbldg. Corp., 221 F.2d 621 (5th Cir. 1955)* ; *Butler v. Ellis, 45 F.2d 951 (4th Cir. 1930)* ; *City of Los Angeles v. United Dredging Co., 14 F.2d 364 (9th Cir. 1926)* ; *The International, 89 F. 484 (3d Cir. 1898)* ; *Trident Marine Managers, Inc. v. M/V Serial # CE- BRF0661586, 688 F. Supp. 301, 1988 AMC 763 (S.D. Tex. 1987)* (unfinished pleasure craft that were not capable of being launched or navigated but were part of inventory of business establishment were not "vessels" so that court lacked *in rem* jurisdiction against them); *In re The Queen Ltd., 361 F. Supp. 1009, 1973 AMC 2510 (E.D. Pa. 1973)* ; *Luna v. Star of India, 356 F. Supp. 59, 1973 AMC 1597 (S.D. Cal. 1973)* ; *New England Fish Co. v. The Barge or Vessel Sonya, 332 F. Supp. 463 (D. Alaska 1971)* (although a craft may be a vessel, it may not be a "vessel navigating"); *Dardar v. Louisiana, 322 F. Supp. 1115 (E.D. La. 1971)* ; *City of Erie v. S.S. North American, 267 F. Supp. 875 (W.D. Pa. 1967)* (brief historical sketch of the present-day rule); The Artemis, 53 F.2d (S.D.N.Y. 1931) (no question was raised as to whether the yacht when hauled up and stored away continued to be a vessel); *The Showboat, 47 F.2d 286 (D. Mass. 1930)* (schooner tied to wharf and used for restaurant and dancing); *The Ark, 17 F.2d 446 (S.D. Fla. 1926)* .

(n3)Footnote 3. *271 U.S. 19 (1926)* . The Court also observed that the wharfboat, which was connected to city water and electric systems, had a permanent location and did not encounter any perils of navigation. The Court observed that the purpose of the limitation of liability statutes was to "promote the building of ships, to encourage the business of navigation, and in that respect to put this country on the same footing with other countries." It concluded, "[t]here appears to be no reason for the application of the rule of limited liability" to the wharfboat. The result could perhaps have been better explained by reliance on the statutory provision restricting the right to limit liability to "seagoing vessels and also to all vessels used on lakes or rivers or in inland navigation." The purpose of this provision is to restrict the application of the Act to vessels in navigation and not to those withdrawn from navigation.

(n4)Footnote 4. *In re Kansas City Bridge Co., 19 F. Supp. 419 (W.D. Mo. 1937)* .

(n5)Footnote 5. *89 F. 484 (3d Cir. 1898)* .

(n6)Footnote 6. *125 S.Ct. 1118, 2005 AMC 609 (2005)* .

(n7)Footnote 7. *See 230 F.3d 461, 2001 AMC 1116 (1[st] Cir. 2000)* . The court based its decision on *DiGiovanni v. Traylor Bros., Inc., 959 F.2d 1119, 1992 AMC 1521 (1st Cir. 1992)* . The Fifth Circuit had established a similar test but recognized a structure as a vessel if it was designed or used primarily for transportation of cargo, equipment or persons across navigable waters or was so engaged at the time of the injury. *Bernard v. Binnings Constr. Co., 741 F.2d 824, 829, 1985 AMC 784 (5th Cir. 1984)* . The Second Circuit modified the *Bernard* test to hold:

> Our test of whether summary judgment is warranted, then, considers (1) whether the structure was being used primarily as a work platform during a reasonable period of time immediately preceding the accident; (2) whether the structure was moored or otherwise secured at the time of the accident; and (3) whether, despite being capable of movement, any transportation function performed by the structure was merely incidental to its primary purpose of serving as a work platform. *Tonnesen v. Yonkers Contracting Co., Inc., 82 F.3d 30, 1996 AMC 1777 (2d Cir. 1996)* .

The Ninth Circuit held that vessel status is except in rare cases a factual question for the jury. *Martinez v. Signature Seafoods, Inc., 303 F.3d 1132, 2002 AMC 2242 (9[th] Cir. 2002)* (excluding craft that are out of navigation).

(n8)Footnote 8. *Board of Commissioners v. M/V Belle of Orleans, 535 F.3d 1299 (11th Cir. 2008)* (casino boat was a vessel since it was capable of moving under its own power and was capable of being towed even though it was moored to the dock for four years; the owner's intentions to keep the vessel moored are not determinative). *See generally*, Volume 1B of this treatise § 11b.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter X SHIPS AND VESSELS

1-X Benedict on Admiralty § 167

§ 167. What Appurtenances Are Considered Part of the Vessel.

Since the term "vessel" does not by itself indicate what goes with her, transactions concerning vessels were drafted, describing for instance a sailing vessel as the "ship, her tackle, apparel and furniture"; and it was understood in this formulation that the rigging constituted the tackle; the sails, the apparel; the anchors and numerous utensils for the ship's use as furniture. n1

At some stage the term "appurtenances" came to be used, sometimes in addition to and sometimes in lieu of "tackle, apparel and furniture." In England the word appurtenances was used in a statute of 53 Geo. III, n2 and was construed to mean that whatever belonged to a shipowner that was on board his vessel for the objects of the voyage and the adventure in which she was engaged constituted a part of the vessel and her appurtenances. n3 In the case of transfer of property, such as a sale, the ship is like any other chattel. The owner may not pass any better title than he has, and in the event of the sale of a vessel, irrespective of the most extended use of words of inclusion, the owner cannot pass any title to articles in the ship which do not belong to him.

In the United States, maritime liens arising by operation of the law, such as for seamen's wages, attach to appurtenances even though they are owned separately. n4 The trend of modern cases is to consider the vessel itself and all equipment which is an integral part of the vessel and essential to its navigation and operation as the *res* subject to preferred maritime liens. n5 Where, however, any business is conducted by the vessel separate and apart from its navigation, the property in respect of such business is not liable to a lien. n6 This rule has been extended to apply to all types of maritime liens. For example, a maritime lien on account of collision attaches to articles held to be appurtenances irrespective of their ownership. n7

The Hope n8 held that as against a materialman not charged with the knowledge or notice of any reservation of title to engine, the engine as part of the tackle, etc., of the vessel was subject to the materialman's liens for repairs and supplies.

Learned v. Brown n9 is an illustration of an article (a piano placed on board as advertisement for the piano company) which did not belong to the owners of the ship and which was no necessary part of the vessel's tackle, etc., and which the court held was not subject to a lien. The court also held that the property in it did not pass to the purchasers of the vessel.

In *The Showboat,* n10 the court made a distinction between (1) the articles which became a part of the vessel or were for use as furnishings, and thus became subject to maritime liens, and (2) the articles which were put on board for use in the restaurant and dance hall which did not become part of the vessel. In the first case the title of the conditional vendors was postponed to the maritime lienors, but not in the second case.

As between a repairer and owner, when propellers and tail shafts, essential to the ships navigation, were delivered to repairer by owner with the intent and purpose of incorporating them in the repaired vessel, they became appurtenances of the vessel. n11 In prize matters, the distinction is made only between the cargo and the vessel, so that the term "ship or vessel of war" embraces "her armament, search lights, stores, everything, in short, attached to or on board the ship in aid of her operations." n12 Fishing permits are appurtenances of a fishing vessel. n13

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime LiensNatureJurisdictionAdmiralty LawMaritime LiensNatureProperty Subject to LienAdmiralty LawMaritime LiensPriority & SourcesContractsWagesAdmiralty LawPractice & ProcedureJurisdictionContracts LawSecured TransactionsPerfection & PriorityPriorityLiensMechanics' Liens

FOOTNOTES:
(n1)Footnote 1. *See The Hope, 191 F. 243 (D. Mass. 1911)* ; *The Edwin Post, 11 F. 602 (D. Del. 1882)* ; *The Dundee, 166 Eng. Rep. 39 (Adm. 1823)* .

When steamers came to be used, the description adopted was (with variations in different forms): "The steamer, her engines, boilers, machinery, masts, bowsprits, boats, anchors, cables, rigging, tackle, apparel, furniture and all other appurtenances thereunto appertaining and belonging"; and in forms of mortgage there were added the words: "and all additions, improvements and replacements hereafter made in or to the vessel or any part or appurtenance or equipment there of."

(n2)Footnote 2. Act to Limit the Responsibility of Ship Owners in Certain Cases, 1813, 53 Geo. 3, ch. 159, §§ 7, 8, 10, 13.

(n3)Footnote 3. *Gale v. Laurie, 108 Eng. Rep. 58 (K.B. 1826)* ; *The Dundee, 166 Eng. Rep. 39 (Adm. 1823)* . In both cases the question was whether the fishing stores on board were appurtenances.

(n4)Footnote 4. *The Edwin Post, 11 F. 602 (D. Del. 1882)* .

(n5)Footnote 5. *Churchill v. F/V Fjord, 892 F.2d 763, 1990 AMC 2085 (9th Cir. 1989)* (in order to establish liability of fishing vessel *in rem* for injury caused by skiff, plaintiff must show that skiff was part of fishing vessel's "equipage" and that operator of skiff was in lawful possession of the skiff).

The S.S. Tropic Breeze, 456 F.2d 137 (1st Cir. 1972) ; *United States v. F/V Sylvester F. Whalen, 217 F. Supp. 916 (D. Me. 1963)* (fathometer and radar equipment are essential to the navigation of the ship).

(n6)Footnote 6. *The Hirondelle, 21 F. Supp. 223, 1937 AMC 1597 (S.D. Ala. 1937)* .

(n7)Footnote 7. *Turner v. United States, 27 F.2d 134 (2d Cir. 1928)* (refrigerating plant belonging to the charterer and installed on the specific terms that it would remain the property of the charterer became a part of the ship and had to share the loss); *The Augusta, 15 F.2d 727 (E.D. La. 1920)* (wireless equipment rented by the ship as part of the ship's equipment subject to the lien).

(n8)Footnote 8. *191 F. 243 (D. Mass. 1911)* .

(n9)Footnote 9. *94 F. 876 (5th Cir. 1899)* .

(n10)Footnote 10. *47 F.2d 286 (D. Mass. 1930)* .

(n11)Footnote 11. *Stewart & Stevenson Services v. The M/V Chris Way MacMillan, 890 F. Supp. 552 (N.D. Miss. 1995)* .

(n12)Footnote 12. *The Manila Prize Cases, 188 U.S. 254, 268 (1903)* .

(n13)Footnote 13. *Gowen, Inc. v. F/V Quality One, 244 F.3d 64, 2001 AMC 1478 (1st Cir. 2001)* .

Benedict on Admiralty

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Reserved.

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§ 171. General Principles and the Development and Application of the Nexus Requirement.

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XI MARITIME TORTS

1-XI Benedict on Admiralty § 171

§ 171. General Principles and the Development and Application of the Nexus Requirement.

In general, to be considered maritime n1 a tort must have a significant connection to traditional maritime activity n2 and, except in the case of certain seamen's injuries, n3 must either occur on navigable waters or be "caused by a vessel on navigable water" within the meaning of the Admiralty Extension Act. This section will consider the first requirement, known as the nexus requirement, and the other principles will be considered in the remainder of the chapter.

For a long time the prevailing idea was that "[e]very species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance." n4 It did not matter that the tort bore no relationship to navigation or maritime commerce. n5

Although the principle was frequently stated, it never amounted to a holding of the Supreme Court. n6 The author of the first two editions of this treatise, Erastus C. Benedict, was apparently the first to sound a dissonant note when he expressed what has come to be described as his "celebrated doubt": n7

> "It has nevertheless been doubted whether the civil admiralty jurisdiction, in cases of tort, does not depend upon the relation of the parties to some ship or vessel and embrace only those tortious violations of maritime right and duty which occur in relation to vessels to which the admiralty jurisdiction in cases of contract applies. If one of several landsmen bathing in the sea should assault or imprison or rob another, it has not been held that admiralty would have jurisdiction of an action for the tort." n8 Some of the lower courts, sharing these views, restricted the admiralty jurisdiction to cases involving some connection with maritime service, navigation, or commerce. n9

In *Executive Jet Aviation, Inc. v. City of Cleveland,* n10 a 1972 case involving a plane crash in Lake Erie, the Supreme Court said

> "the mere fact that the alleged wrong 'occurs' or 'is located' on or over navigable waters--whatever that means in an aviation context--is not of itself sufficient to turn an airplane negligence case into a 'maritime tort'. It is far more consistent with the history and purpose of admiralty to require also that the wrong bear a significant relationship to traditional maritime activity. We hold that unless such a

> relationship exists, claims arising from plane accidents are not cognizable in admiralty in the absence of legislation to the contrary." n11

Although the holding in *Executive Jet* was specifically limited to "aviation tort claims arising from flights by land-based aircraft between points within the continental United States," most courts read the case as requiring something more than maritime locality for all torts. n12 This interpretation was confirmed by the Supreme Court's 1982 decision in *Foremost Insurance Co. v. Richardson,* n13 where both the majority and the dissenting opinions agreed that the nexus requirement of *Executive Jet* applies generally to all torts occurring on navigable waters. n14 The major issue in *Foremost* was whether non-commercial activities could satisfy the nexus requirement. *Foremost* involved a collision of two pleasure boats. The five-to-four majority in *Foremost* held that "traditional maritime activity" was not to be equated with commercial activity. Rather, a collision between any two vessels in navigable waters is within the admiralty jurisdiction of the federal courts. According to the Court, "[b]ecause the 'wrong' here involves the negligent operation of a vessel on navigable waters, we believe that it has a sufficient nexus to traditional maritime activity to sustain admiralty jurisdiction in the District Court." n15 Although conceding that "the protection of maritime commerce" is the "primary focus of admiralty jurisdiction," the majority asserted that the federal interest in protecting maritime commerce "can be fully vindicated only if *all* operators of vessels on navigable waters are subject to uniform rules of conduct." n16 The opinion observed that a collision between two pleasure crafts at the mouth of the St. Lawrence Seaway would have a substantial effect on maritime commerce and that admiralty law has traditionally been concerned with navigational rules. The majority buttressed its holding by contending that a rule limiting maritime jurisdiction to commercial activities would create uncertainty because of the line-drawing problems of determining what is sufficiently commercial. n17

The Court's reasoning in *Foremost* was less than compelling. It is true that a collision of two pleasure crafts can adversely affect maritime commerce, and it may be assumed that uniform rules of the road are necessary for all vessels on navigable waters. But it is far from clear that uniform rules of liability or the admiralty rule of laches are necessary to insure compliance with navigational rules, n18 and it is even less clear that federal district courts must remain open so that these liability rules can be enforced. What remains of *Foremost* 's reasoning is the difficulty in drawing lines between commercial and non-commercial activities. But line-drawing difficulties are inevitable whatever the test might be, and conceptual boundaries are harder to draw than spatial ones. n19

The Supreme Court has made little attempt since *Foremost* to define the term "traditional maritime activity." In a 1986 case, *East River Steamship Corp. v. Transamerica Delaval, Inc.,* n20 it unanimously decided with little fanfare that products liability suits against manufacturers of commercial vessels are within the admiralty jurisdiction because maritime commerc is "a primary concern of admiralty law." n21 Although the lower courts had anticipated this holding, n22 it was significant because the Court reaffirmed the rule that contracts to construct a vessel are not considered maritime. n23 The holding therefore may suggest that any non-maritime activity on land that tortiously interferes with commercial vessels on navigable waters is cognizable in admiralty. n24 Perhaps of greater significance, *East River Steamship* raised the possibility that the nexus requirement need not be met when a tort occurs on the high seas. n25 The Court's other effort to explain the nexus requirement was its decision in 1986 that the crash of a helicopter being used in place of a vessel to ferry personnel to and from offshore structures is maritime. n26 In *Sisson v. Ruby,* n27 the Supreme Court held that a suit to limit liability by the owner of a pleasure craft which caught fire while docked at a marina was within the admiralty jurisdiction even though no commercial vessels were affected. The fire erupted in the area of the vessel's washer/dryer unit and destroyed the marina and several other vessels. The Court construed the nexus test as requiring a two part inquiry. First, "a court must assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt commercial activity." n28 The court stressed that the determination of the potential impact of the general incident on maritime commerce does not turn on the actual effects on maritime commerce nor does it turn on the particular facts of the incident in this case, such as the source of the fire or the specific location of the yacht at the marina, that may have rendered the fire on the Ultorian more or less likely to disrupt commercial activity. n29 The Court concluded that in the case before it "the general features--a fire on a vessel docked at a marina on navigable waters--plainly satisfy the requirement of potential disruption to commercial maritime

activity." n30 The second part of the *Sisson* inquiry is that "the party seeking to invoke maritime jurisdiction must show a substantial relationship between the activity giving rise to the incident and traditional maritime activity." n31 Again, the Court stressed that the relevant "activity" must be defined without regard to the particular facts of the case but by the "general conduct from which the incident arose." The *Sisson* Court said that the relevant activity in *Executive Jet* was air travel, not a plane sinking. It said that the relevant activity in *Foremost* was navigation. In the case before it the Court said that the relevant activity was the "storage and maintenance of a vessel at a marina on navigable waters." n32

Such an activity possessed the required nexus to traditional maritime activity because it is a "common, if not indispensable, maritime activity." n33 In a footnote, the Court noted the Circuits' various approaches to resolving the nexus requirement. It declined to adopt any of them saying "at least in cases in which all of the relevant entities are engaged in similar types of activity ... the formula initially suggested by *Executive Jet* and more fully refined in *Foremost* and in this case provides appropriate and sufficient guidance to the federal courts." n34 It appears to this writer that the test announced in *Sisson* suffers from a similar weakness as the *Kelly* four-part test. The method of characterization employed in each test is subject to easy manipulation. The Court characterized the relevant activity in *Sisson* as storage of a vessel at a marina. But one could also have characterized the relevant activity as washing and drying clothes or more generally, as recreation. n35 The Supreme Court attempted to clarify the *Sisson* test five years later in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.* n36 The case involved severe damage to the Chicago Loop by allegedly negligent pile driving several months earlier by a crane that was on a barge that was secured to the river bed. The Court said of the first prong of the *Sisson* test, which focuses on the potential effects of the incident turns on an "intermediate level of possible generality." n37 "What matters is whether the incident could be seen within a class of incidents that posed more than a fanciful risk to commercial shipping." n38 In considering the second prong of *Sisson,* having to do with whether the incident shows a substantial connection to traditional maritime activity, the Court said that it asks "whether a tortfeasor's activity, commercial or noncommercial, on navigable waters is so closely related to activity traditionally subject to admiralty law that the reasons for applying special admiralty rules would apply in the case at hand." n39 The Court further explained that the requirement is met when at least one alleged tortfeasor engaged in such activity. n40 As for the problem with the *Sisson* tests, that they can be easily manipulated, the Court responded that "although there is some play in the joints in selecting the right level of generality...the inevitable imprecision is not an excuse for whimsy" and 'hyper-generalization' ought not to allowed as it would "convert *Sisson* into a vehicle for eliminating admiralty jurisdiction." n41

Further, the Court said the test "turns on the comparison of traditional maritime activity to the arguably maritime character of the tortfeasor's activity in a given case." n42 Of equal importance, the Court finally disapproved of the four-part and seven-part tests that had been used by many lower courts. n43 The *Grubart* case does much to clarify the criteria laid down in *Sisson,* particularly when it acknowledged that torts involving a vessel on navigable waters will 'ordinarily' be with the admiralty jurisdiction. n44 It remains to be seen if the Court's test will avoid the pitfalls of the four-part and seven-part tests rejected by the Court: they were "hard to apply, jettisoning relative predictability for open-ended rough and tumble of factors, inviting complex argument in a trial court and a virtually inevitable appeal." n45 In a wide variety of cases, the lower courts have struggled to find guidance from the Supreme Court's pronouncements in *Executive Jet* and its progeny as to what constitutes a "significant connection to maritime commerce." n46 The remainder of this section will analyze the holdings and reasonings in the lower court cases. As will be seen, although the courts employ a dizzying array of rationales to justify their decisions, the results in most of the cases fall into a few categories.

A year after *Executive Jet,* the Fifth Circuit in *Kelly v. Smith,* n47 established a test for the nexus requirement, which was adopted by several other circuits, n48 that requires consideration of the following four factors: 1) the functions and roles of the parties; 2) the types of vehicles and instrumentalities involved; 3) the causation and type of injury; and 4) traditional concepts of the role of admiralty law.

As mentioned above, in 1995 the Supreme Court disapproved of the use of the *Kelly* test. n49 But the Court is unlikely to require changes in the outcome of more than a handful of the results in these decisions. The lower courts have

generally held a case to be within the admiralty jurisdiction when it involved a vessel on navigable waters, which seems to be the direction required under the Supreme Court's latest precedents. Moreover, the *Kelly* test seems to overlap the *Sisson* prong of whether the general character of the activity shows a substantial relationship to traditional maritime activity. In applying this test the Court has indicated that the presence of a vessel on navigable waters will ordinarily be determinative. n50 Furthermore, the Supreme Court has indicated that part of the inquiry concerns the determining whether "reasons for applying special admiralty rules would apply in the case at hand." n51 This seems similar to the last part of the *Kelly* test.

The courts had a lot of flexibility in applying each of the *Kelly* factors and in weighing their relative importance in particular cases. For example, the *Kelly* court required a minimal showing to satisfy the four factors. The case involved some deer poachers who, while escaping from an island in their fifteen-foot motor boat, were shot by caretakers on the island. The court characterized the deer poacher at the tiller of the boat as the "pilot," the vehicle involved was a boat, the firearms were not "inherently indigenous to land as to preclude any maritime connection," and "admiralty has traditionally been concerned with furnishing remedies for those injured while traveling navigable waters."

By contrast, the Fifth Circuit in *Woessner v. Johns-Manville Sales Corp.* n52 seemed to apply the four factors more strictly in excluding shipyard workers' claims against asbestos manufacturers. The court said that the manufacturers are land-based and "in no way uniquely tied to the maritime industry." The workers, though important to the maritime industry, were engaged in tasks linked more to the land than to the sea. Although the vehicles were vessels in navigable waters, "their involvement was at most tangential." The instrumentality, the asbestos, has no uniquely maritime character; the tools and equipment used in the installation have few maritime attributes. The injuries and their cause could just as well have occurred on land. The traditional concepts of maritime law concern primarily "the federal interest in the need for a uniform development of the law governing maritime industries" and "do not implicate any interest in uniform resolution of the claims of land-based workers exposed to asbestos while aboard vessels."

As the two cases suggest, n53 the *Kelly* factors did not readily yield a sure solution to the nexus question and were subject to varying standards of application. n54 The Seventh Circuit had rejected the *Kelly* test in favor of confining the admiralty jurisdiction in tort cases either to cases directly involving commercial maritime activity, or to cases involving exclusively non-commercial activities in which the wrong (1) has a potentially "disruptive impact" on maritime commerce and (2) involves the "traditional maritime activity" of navigation.

The Supreme Court has rejected the Seventh Circuit's test as too narrow. n55 Despite these uncertainties and difficulties, most of the cases have fallen into a few recognizable factual patterns.

In a variety of situations where both parties were land-based and the injury could have occurred in an essentially identical way on land, the courts have tended to deny admiralty jurisdiction. For example, although the courts have differed somewhat as to the reasoning, n56 claims by shipyard workers for asbestos injuries against manufacturers are almost uniformly held to be non-maritime. n57 Similarly, sandblasters who contracted silicosis from working on oil drilling platforms have been denied relief in admiralty against manufacturer of products used during their work. n58 Claims by painters n59 or automobile drivers n60 who fell from a bridge fail the nexus test. A products liability suit by a passenger on a pleasure craft against a manufacturer of a gun that misfired while in the boat is non-maritime. n61 Similarly, a claim by a business invitee on board a naval vessel against a maintenance company that negligently stripped wax causing plaintiff to slip and fall is non-maritime. n62 Among other claims falling within this category, n63 one should include the pre- *Executive Jet* case involving two automobiles that collided on a floating pontoon causing whiplash injuries. n64 As will be discussed in § 174, *infra*, workers on fixed offshore oil platforms covered by the Outer Continental Shelf Lands Act, *43 U.S.C. § 1333 et seq.* , do not have admiralty causes of action unless their injuries are caused by a vessel because artificial islands are treated as being part of the land. n65 But even in cases not covered by the Lands Act, courts treat those who work on fixed offshore oil platforms as if they were land-based workers; that is, their claims against platform or land-based defendants are treated as being non-maritime when there is nothing uniquely maritime about the injury. n66

By contrast, a seaman injured on a vessel has a maritime cause of action even when the tortfeasor is land-based and the nature of the negligence and injury is one commonly regulated by state law. n67 Also, the injuries of marine construction workers injured on or in the navigable waters have been held to be maritime. n68 Injuries occurring as a result of the loading and unloading of cargo on a vessel satisfy the nexus requirement. n69

Injuries to passengers on excursion boats or other vessels for hire arising out of the fault of the vessel operator or owner are maritime even though there is nothing uniquely maritime about the type of injury. n70 Courts have asserted admiralty jurisdiction over claims that tortious activities by others, even on shore, have interfered with the navigation of vessels. n71 For example, claims arising from the failure to mark or remove an obstruction to navigation are within the admiralty jurisdiction. n72 Torts due to the maintaining of electric wires that pose a hazard to navigation are maritime. n73 The wrongful use of firearms against a vessel, even a pleasure craft, gives rise to a maritime tort. n74 Similarly, claims that defective products have caused damage to a vessel or its passengers are held to be maritime. n75 Admiralty jurisdiction has been exercised over claims that the navigation errors n76 of a vessel have caused injury to others, including even swimmers n77 and water skiers. n78 Some courts would go further and allow any claim arising out of the negligent operation of a vessel which injures a passenger, swimmer, or water skier, even though the operation does not constitute a wrong to other vessels. n79 Other courts will deny jurisdiction unless the gravamen of the complaint is an error in navigation. n80 Courts will not assert admiralty jurisdiction over a recreational swimmer's injuries caused by neither the negligent operation nor the negligent navigation of a vessel. n81 There is admiralty jurisdiction over claims that cruise vessels that served liquor to passengers they know or should know will injure themselves or others while operating an automobile after leaving the vessel. n82

Special treatment is given to airplane crashes on navigable waters. *Executive Jet* held that "in the absence of legislation to the contrary, there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States." n83 The Court suggested that a crash of a plane flying from New York to London might be within the admiralty jurisdiction because "it would be performing a function traditionally performed by waterborne vessels." n84 It also suggested that the Death on the High Seas Act would apply to death claims arising from airplane crashes on the high seas even if those flights are between points within the continental United States. n85 More recently the Court has held that the crash of a helicopter being used in place of a vessel to ferry personnel to and from offshore structures is maritime. n86 The lower courts have generally acted consistently with these directives. n87 Surprisingly, some of the lower courts have required a showing of a significant relationship to traditional maritime activity even when the Death on the High Seas Act applied. n88 The above categories describe most of the cases that have followed in the wake of *Executive Jet.* n89 In general, the cases are an improvement over the old locality rule. n90 The courts have begun to recognize that torts lacking a close connection to the shipping industry should be non-maritime, as the best reason for having federal admiralty jurisdiction is that there is a federal interest in having uniformity in commercial shipping matters. n91 It is arguable that the lower courts have gone farther than the Supreme Court intended in excluding the shipyard workers' asbestos claims against manufacturers. n92 But the line that has been drawn is a defensible one as there is arguably little federal interest in the uniform resolution of these disputes. But the results in the asbestos cases make the inclusion of pleasure boating cases all the more questionable. Even though uniform standards of conduct are desirable in such cases, it is not necessary to have uniform rules of liability or the jurisdiction of a federal court to safeguard the interests of pleasure boaters.

One reform that seems desirable is the elimination of the locality requirement for maritime torts. n93 Whether a tort occurs on the water should be but one factor to be considered in determining whether the tort meets the nexus requirement. The Admiralty Extension Act has helped by including damage done on land by vessels on navigable waters, n94 and the courts have made an exception for some seamen's claims arising out of their maritime status. n95 As the courts are becoming accustomed to requiring a maritime nexus for tort claims as they have for contract claims, there seems to be no principled reason for excluding tort claims merely because they lack a maritime locale. n96

The line-drawing difficulties involving pleasure boating have not been resolved by the Supreme Court's holding in

Foremost that collisions involving pleasure boating are within the federal court's admiralty jurisdiction. n97 As the discussion above shows, courts have had to determine whether accidents involving pleasure craft not involved in a collision are within the admiralty jurisdiction. Most court have held that products liability actions involving pleasure craft are within the admiralty jurisdiction, at least where the vessel is in navigation. n98 But the courts are split over whether personal injury actions brought by a passenger or water skier against an owner or operator of a pleasure boat are maritime. Some courts exclude these cases from the admiralty jurisdiction if the error is only an error in operation of the vessel but not a navigational error that poses a threat to other vessels. Other courts extend admiralty jurisdiction so as to include cases of operational error. n99 Taken separately these rules are justifiable. But what happens in the common situation where an injured passenger on a pleasure boat sues the operator and the manufacturer? Aside from the difficulty of making the distinction between operational and navigational errors, this combination of rules creates the unfortunate situation that a part of an passenger's action for personal injuries is maritime if brought against the manufacturer but the part of the action against the operator of the boat may not be. The concept of pendent jurisdiction may help resolve the problem. But it leaves the anomalous situation that the manufacturer on land of a product that need not be uniquely maritime finds its liability judged by maritime standards whereas an operator of a vessel on navigable waters finds his or her obligation determined by the law of a state. It would make more sense if the courts were to exclude non-commercial pleasure boating disputes from the admiralty jurisdiction.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Tort ActionsGeneral OverviewAdmiralty LawPersonal InjuriesMaritime Tort ActionsProducts LiabilityAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActNegligence StandardAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsMaritime Tort ClaimsAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Theoretically, a court might determine that a tort is maritime for purposes of jurisdiction but that as a matter of choice of law, state law ought to govern the claim. *See, generally*, §§ 112-113. But almost without fail the courts that have found sufficient federal interest to hear a tort claim have found a sufficient interest to apply federal law. *See Hall v. Zambelli, 675 F. Supp. 1023 (S.D. W. Va. 1988)* (products liability claim by individual working on board barge to set off fireworks against the manufacturer and others "does not require an application of uniform laws, uniformity being the *raison d'etre* of exclusive federal admiralty jurisdiction"). *But see Baggett v. Richardson, 473 F.2d 863 (5th Cir. 1973)* (applying state law to assault and battery of captain on board a vessel lying in port in navigable water); *Thompson v. Shell Oil Co., 1988 AMC 485 (D. Or. 1985)* (applying state employer's liability law to claim by seaman who was injured while attempting to secure a barge to a defective piling). And federal courts are understandably reluctant to exercise admiralty jurisdiction when it is apparent that the cause of action is to be governed by state law because of substantial state interests. *Cf. Royal Ins. Co. of Am. v. Pier 39 Ltd. Partnership, 738 F.2d 1035, 1986 AMC 2392 (9th Cir. 1984)* (insurance on floating breakwater and floating dock not maritime, state law might apply to claim and no need for guarantee of nationwide uniform maritime law).

See also Muratore v. M/S Scotia Prince, 656 F. Supp. 471 , reprinted in part, 1988 AMC 845 (D. Me. 1987) (court has admiralty jurisdiction and applies general maritime law to slip and fall claim but will apply state law to claim by passenger arising out of ship's photographers' infliction of emotional distress). This decision was affirmed in part and vacated in part in 845 R.2d 347 (lst Cir. 1988). The First Circuit Court of Appeals affirmed the award of compensatory damages for the intentional infliction of emotional harm but vacated the lower court's award of punitive damages. On the choice of law issue, the court of appeals noted that since neither the plaintiff nor the defendant objected to the application of Maine law, it would accept the application of that law for purposes of the appeal. Like the district court, however, it applied federal law to determine whether the charterer was liable for the photographer's conduct, and the court of appeals made it clear that federal admiralty law governed the award of punitive damages).

In *Wells v. Liddy, 186 F.3d 505 (4th Cir. 1999)* the court made the odd conclusion that admiralty law governed an alleged defamation made during a seven-day Mediterranean cruise even though it left undecided whether the defamation action could have been brought within the court's admiralty jurisdiction.

(n2)Footnote 2. *Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 1973 AMC 1 (1972)* . It is unclear if the nexus requirement must be met if the tort occurs on the high seas. *See East River S.S. Corp. v. Transamerica Delaval, Inc., 106 S. Ct. 2295, 2298, 1986 AMC 2027, 2032 (1986)* . At the other extreme, the Supreme Court has never decided whether the nexus requirement must be met when an action is brought for damage done on land under the Admiralty Extension Act, *46 U.S.C. § 30101* (formerly *46 U.S.C. § 740*). *See Foremost Ins. Co. v. Richardson, 457 U.S. 668, 677 n. 7, 1982 AMC 2253, 2260 (1982)* . But several lower courts have held that a maritime nexus is required under the Act. *See* § 173, *infra.*

(n3)Footnote 3. *See* § 175, *infra.*

(n4)Footnote 4. *The Plymouth, 70 U.S. (3 Wall.) 20, 36 (1865) . See also Victory Carriers, Inc. v. Law, 404 U.S. 202, 1972 AMC 1 (1971)* ; *Nacirema Operating Co. v. Johnson, 396 U.S. 212, 1969 AMC 1967 (1969)* ; *Rodrigue v. Aetna Cas. & Surety Co., 395 U.S. 352 (1969)* ; *Kossick v. United Fruit Co., 365 U.S. 731, 1961 AMC 833 (1961)* ; *Hess v. United States, 361 U.S. 314, n. 7 (1959)* ; *Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 1959 AMC 597 (1959)* ; *Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 1954 AMC 1 (1953)* ; *O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943)* ; *T. Smith & Son, Inc. v. Taylor, 276 U.S. 179, 1928 AMC 447 (1928)* ; *State Indus. Comm'n v. Nordenholt Corp., 259 U.S. 263 (1922)* ; *Grand Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 42 S. Ct. 157, 66 L. Ed. 321 (1922)* ; *Martin v. West, 222 U.S. 191 (1911)* ; *Cleveland Terminal & Valley R.R. v. Cleveland S.S. Co., 208 U.S. 316, 28 S. Ct. 414, 52 L. Ed. 508 (1908)* ; *The Blackheath, 195 U.S. 361 (1904)* ; *Panama R.R. v. Napier Shipping Co., 166 U.S. 280 (1897)* ; *Johnson v. Chicago & Pac. Elevator Co., 119 U.S. 388 (1886)* ; *Ex parte Phenix Ins. Co., 118 U.S. 610 (1886)* ; *Leathers v. Blessing, 105 U.S. 626 (1881)* ; *Ex parte Easton, 95 U.S. 68 (1877)* ; *The Belfast, 74 U.S. (7 Wall.) 624 (1868)* ; *The Rock Island Bridge, 73 U.S. (6 Wall.) 213 (1867)* ; *The Plymouth, 70 U.S. (3 Wall.) 20 (1865)* ; *The Commerce, 66 U.S. (1 Black) 574 (1861)* ; *Philadelphia, W. & B. R.R. Co. v. Philadelphia, & Havre de Grace Steam Towboat Co., 64 U.S. (23 How.) 209 (1859)* ; *New Jersey Steam Navigation Co. v. Merchants' Bank, 47 U.S. (6 How.) 344, 394 (1848)* ; *Waring v. Clarke, 46 U.S. (5 How.) 441 (1847)* ; *Hornsby v. Fish Meal Co., 431 F.2d 865, 1970 AMC 1841 (5th Cir. 1970)* ; *Penn Tanker Co. v. United States, 409 F.2d 514 (5th Cir. 1969)* ; *Weinstein v. Eastern Airlines, 316 F.2d 758, 1965 AMC 2258 (3d Cir.) , cert. denied, 375 U.S. 940 (1963)* ; *Davis v. City of Jacksonville Beach, 251 F. Supp. 327, 1966 AMC 1231 (M.D. Fla. 1965)* ; *King v. Testerman, 214 F. Supp. 335, 1963 AMC 2054 (E.D. Tenn.1963)* ; *The M.R. Brazos, 17 F. Cas. 951 (S.D.N.Y. 1879)* (No. 9898); *Lake Shore & M.S.R. Co. v. The Neil Cochran, 14 F. Cas. 949 (N.D. Ohio 1872)* (No. 7990); *The Ottawa, 18 F. Cas. 906 (E.D. Mich. 1872)* (No. 10,616); *De Lovio v. Boit, 7 F. Cas. 418 (C.C.D. Mass. 1815)* (No. 3776) (Story, J.); *Thomas v. Lane, 23 F. Cas. 957 (C.C.D. Maine 1813)* (No. 13,902) (Story, J.). *See also* The Mersey Dock & Harbor Bd. v. Turner (The "Zeta"), [1893] A.C. 468 (H.L.); 3 W. Blackstone, *Commentaries on the Law of England* 106 (1768); 4 Coke, *Institute* 134.

(n5)Footnote 5. *London Guar. & Accident Co. v. Industrial Accident Comm'n, 279 U.S. 109, 123-24 (1929)* :

> "It is clearly established that the jurisdiction of the admiralty over a maritime tort does not depend upon the wrong having been committed on board a vessel, but rather upon its having been committed upon the high seas or other navigable waters."

The Plymouth, 70 U.S. (3 Wall.) 20, 36 (1865) :

> "The jurisdiction of the admiralty does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality--the high seas, or navigable waters where it occurred. Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters is of

admiralty cognizance."

Weinstein v. Eastern Airlines Inc., 316 F.2d 758, 761 (3d Cir.) , *cert. denied, 375 U.S. 940 (1963)* :

"The critical factor in determining whether a tort claim comes within the broad statutory grant of admiralty jurisdiction is the situs of the tort, i.e., the place where it happened. If the tort occurred on navigable waters, the claim is one that lies within the jurisdiction of the courts of admiralty; nothing more is required." (footnote omitted).

United States v. Matson Navigation Co., 201 F.2d 610, 613 (9th Cir. 1953) :

"Admiralty jurisdiction extends to every species of tort committed upon the high seas or on navigable waters."

See generally, Note, *Admiralty Jurisdiction Over Torts, 16 Harv. L. Rev. 210 (1903).*

(n6)Footnote 6. The question was left open in *Atlantic Transp. Co. v. Imbrovek, 234 U.S. 52 (1914)* . The Court, however, specifically rejected as "too narrow" the contention

"that a maritime tort is one arising out of an injury to a ship, caused by the negligence of a ship or a person, or out of an injury to a person by the negligence of a ship; that there must either be an injury to a ship or an injury by the negligence of the ship, including therein the negligence of her owners or mariners; and that, as there was no negligence of the ship in the present case, the tort was not maritime."

(n7)Footnote 7. Hough, *Admiralty Jurisdiction--Of Late Years, 37 Harv. L. Rev. 529, 531 (1924).*

(n8)Footnote 8. E. Benedict, *The Law of American Admiralty* 173 (1850).

(n9)Footnote 9. *E.g., Peytavin v. Government Employees Ins. Co., 453 F.2d 1121, 1972 AMC 1202 (5th Cir. 1972)* ; *Chapman v. City of Grosse Pointe Farms, 385 F.2d 962, 1968 AMC 386 (6th Cir. 1967)* ; *Smith v. W.F. Guerrant, 290 F. Supp. 111, 114 (S.D. Tex. 1968)* ; *McGuire v. City of N.Y., 192 F. Supp. 866, 1962 AMC 516 (S.D.N.Y. 1961)* . *See also* American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts* 229-34 (1968). In The Queen v. The Judge of the City of London Court, [1892] *1 Q.B. 273, 294 (C.A.)* , Lord Esher, the Master of the Rolls, said:

"On what does the jurisdiction of the Admiralty Court depend? It does not depend merely on the fact that something has taken place on the high seas. That it happened there is, no doubt, irrespectively of statute, a necessary condition for the jurisdiction of the Admiralty Court; but there is the further question, what is the subject-matter of that which has happened on the high seas? It is not everything which takes place on the high seas which is within the jurisdiction of the Admiralty Court. A third consideration is, with regard to whom is the jurisdiction asserted? You have to consider three things--the locality, the subject-matter of complaint, and the person with regard to whom the complaint is made. You must consider all these things in determining whether the Admiralty Court has jurisdiction."This case was distinguished the following year in The Mersey Dock & Harbor Bd. v. Turner (The "Zeta"), [1893] A.C. 468 (H.L.). But it was followed in *Campbell v. H. Hackfield & Co., 125 F. 696 (9th Cir. 1893)* which held that a longshoreman's claim against his employer for personal injuries suffered aboard a ship was non-maritime. This holding was disapproved in *Atlantic Transport Co. v. Imbrovek, 234 U.S. 52 (1914)* .

(n10)Footnote 10. *409 U.S. 249, 1973 AMC 1 (1972)* .

(n11)Footnote 11. *409 U.S. at 268, 1973 AMC at 15-16* .

(n12)Footnote 12. *E.g., Crosson v. Vance, 484 F.2d 840, 1973 AMC 1895 (4th Cir. 1973)* (no admiralty jurisdiction involving a water skiing accident); *Oppen v. Aetna Ins. Co., 485 F.2d 252, 1973 AMC 2165 (9th Cir. 1973)* (admiralty has jurisdiction over claims arising from oil spill from a platform on the outer continental shelf which polluted state waters); *Earles v. Union Barge Line, 486 F.2d 1097, 1973 AMC 2404 (3d Cir. 1973)* (admiralty has no jurisdiction over injury sustained by a swimmer who strikes a submerged boat ramp while diving from a dock, even though the water level of the lake is controlled by the defendant); *Gypsum Carrier, Inc. v. Union Camp Corp., 489 F.2d 152, 1974 AMC 227 (5th Cir.) , cert. denied, 417 U.S. 931 (1974)* (admiralty has jurisdiction over action commenced against shore-based paper mill whose smoke so obstructed navigation as to cause plaintiff's vessel to collide with a railroad bridge spanning a navigable waterway; there is a substantial maritime connection even though the agency responsible for the obstruction of navigation had a non-maritime origin and the negligence occurred on land).

(n13)Footnote 13. *457 U.S. 668, 1982 AMC 2253 (1982)* .

(n14)Footnote 14. The majority left open the possibility that the nexus requirement might not apply under the Admiralty Extension Act, *46 U.S.C. § 740* (now codified as *46 U.S.C. § 30101*). *457 U.S. at 677 n. 7, 1982 AMC at 2260* . The dissent based its view on the jurisdictional statute, *28 U.S.C. § 1333*, suggesting that the constitutional reach of admiralty jurisdiction might be broader. *457 U.S. at 681 n. 5, 1982 AMC at 2264* .

(n15)Footnote 15. *457 U.S. at 674, 1982 AMC at 2258* .

(n16)Footnote 16. *457 U.S. at 674-75, 1982 AMC at 2258* .

(n17)Footnote 17. According to the Court, a strict commercial rule would cause the existence of admiralty jurisdiction to turn upon such fortuitous factors as whether the boat had ever been rented or used for commercial fishing, thereby leading to inconsistent results in the state courts. The majority concluded that its holding was consistent with Congressional enactments, particularly the general definition of "vessel" in *1 U.S.C. § 3*, the federal "Rules of the Road" governing navigation, and the Admiralty Extension Act, which do not distinguish between commercial vessels and pleasure craft.

(n18)Footnote 18. *See* Stolz, *Pleasure Boating and Admiralty: Erie at Sea, 51 Cal. L. Rev. 661, 713*-14 (1963).

(n19)Footnote 19. *See Kossick v. United Fruit Co., 365 U.S. 731, 1961 AMC 833 (1961)* ("The boundaries of admiralty jurisdiction over contracts, as opposed to torts or crimes, being conceptual rather than spatial, have always been difficult to draw.").

(n20)Footnote 20. *476 U.S. 858, 106 S. Ct. 2295, 1986 AMC 2027 (1986)* .

(n21)Footnote 21. *476 U.S. at 864, 106 S. Ct. at 2298, 1986 AMC at 2032* . Whether a court has admiralty jurisdiction to hear a products liability claim is a distinct question from whether the plaintiff states a claim on which relief can be granted. A federal court would lack subject matter jurisdiction over a product liability suit only if the claim was clearly concocted for the sole purpose of obtaining federal jurisdiction or if the claim was wholly insubstantial and frivolous. *Employers Ins. of Wausau v. Suwannee River SPA Lines, 866 F.2d 752 (5th Cir. 1989)* .

For further discussion of the federal courts' jurisdiction to hear products liability suits in admiralty, see § 186 in the text at nn.6-8.

(n22)Footnote 22. *See, e.g., Ocean Barge Transport Co. v. Hess Oil Virgin Islands, Corp., 726 F.2d 121, 1984*

AMC 1979 (3d Cir. 1984) ; *In re Oil Spill by the Amoco Cadiz, 699 F.2d 909, 1983 AMC 1633 (7th Cir.) , cert. denied, 464 U.S. 864, 104 S. Ct. 196, 78 L. Ed. 2d 172 (1983)* ; *Jones v. Bender Welding & Mach. Works, 581 F.2d 1331, 1979 AMC 1300 (9th Cir. 1978)* ; *Pan-Alaska Fisheries, Inc. v. Marine Constr. & Design Co., 565 F.2d 1129, 1978 AMC 2315 (9th Cir. 1977)* ; *Jig The Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171, 1976 AMC 118 (5th Cir. 1975) , cert. denied, 424 U.S. 954, 96 S. Ct. 1429, 47 L. Ed. 2d 360 (1976)* . The issue on which the lower courts divided was whether a remedy existed in tort action when a defective product injures only itself causing pure economic loss. The Supreme Court held that such loss must be dealt with by contract law.

(n23)Footnote 23. *476 U.S. at 872, n. 7, 106 S. Ct. at 2303, 1986 AMC at 2039 . See generally,* §186, *infra.*

(n24)Footnote 24. In *Foremost,* the Court noted that not every accident, like the airplane crash in *Executive Jet,* that might disrupt maritime commerce is within the admiralty jurisdiction, but that where the "potential hazard to maritime commerce arises out of activity that bears a substantial relationship to traditional maritime activity, as does the navigation of the boats in this case, admiralty jurisdiction is appropriate." *457 U.S. at 675, n. 5, 1982 AMC at 2259* . The Court in *East River Steamship* did not allude to this comment. One could easily distinguish this comment in *Foremost* because the effect on maritime commerce in *East River Steamship* was actual, not "potential."

(n25)Footnote 25. *476 U.S. at 864, 106 S. Ct. at 2298, 198 AMC at 2032 .*

(n26)Footnote 26. *Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 106 S. Ct. 2485, 1986 AMC 2113 (1986)* .

(n27)Footnote 27. *497 U.S. 358, 110 S. Ct. 2892, 1990 AMC 1801 (1990)* .

(n28)Footnote 28. *110 S. Ct. at 2896, 1990 AMC at 1805 .*

(n29)Footnote 29. *Id.*

(n30)Footnote 30. *Id.*

(n31)Footnote 31. *110 S. Ct. at 2897, 1990 AMC at 1806 .*

(n32)Footnote 32. *Id.*

(n33)Footnote 33. *110 S. Ct. at 2898, 1990 AMC at 1808 .*

(n34)Footnote 34. *110 S. Ct. at 2897, n.4, 1990 AMC at 1807 .*

(n35)Footnote 35. *See Delta Country Ventures, Inc. v. Magana, 986 F.2d 1260 (9th Cir. 1993)* . In this case the court held, 2-1, that there was no admiralty jurisdiction where a passenger dove off deck of houseboat and was seriously injured when he struck something under the water. The majority of the court defined the activity involved as aquatic recreation off a pleasure boat. The dissent would have defined the activity as the anchoring and mooring of the boat, but suggested that admiralty jurisdiction was proper even under the majority's description of the activity.

Delta County was overruled by *Taghadomi v. United States, 401 F.3d 1080, 2005 AMC 958 (9th Cir. 2005)* .

(n36)Footnote 36. *115 S. Ct. 1043 (1995) .*

(n37)Footnote 37. *Id. at 1051*

(n38)Footnote 38. *Id.*

(n39)Footnote 39. *Id.* This explanation is weakened by the Court's acknowledgment that the application of a uniform federal maritime law is only a secondary goal of admiralty jurisdiction and that state law is sometimes applied

in admiralty. *Id. at 1054, n.6* .

(n40)Footnote 40. As noted by Justice O'Connor in her concurring opinion, if admiralty jurisdiction is found over a particular claim it need not exercise admiralty jurisdiction over all claims and parties in the case. The usual rules of supplemental jurisdiction and impleader will apply. *Id. at 1055* . *See In re Aramark Leisure Serv., 523 F.3d 1169 (10th Cir. 2008)* (district court had admiralty jurisdiction over pleasure boat owner's claim to limit liability and had supplemental jurisdiction to resolve dispute between operator of the vessel and the owner's insurer).

(n41)Footnote 41. *Id. at 1052* .

(n42)Footnote 42. *Id.*

(n43)Footnote 43. *Id. at 1055* . Subsequently the Fifth Circuit, which originated the multifactor tests recognized that they were rejected by *Grubart*. *See Coats v. Penrod Drilling Corp., 61 F.3d 1113 (5th Cir. 1995)* (en banc).

(n44)Footnote 44. *Id. at 1053* . *See Alderman v. Pacific Northern Victor, Inc., 95 F.3d 1061 (11th Cir. 1996)* (injury to carpenter installing an elevator on vessel during conversion from oil drilling vessel to fish processing vessel is maritime); *Coats v. Penrod Drilling Corp., 61 F.3d 1113, (5th Cir. 1995)* (en banc) ("Providing compensation for shipboard injuries is a traditional function of the admiralty laws.").

(n45)Footnote 45. *Id. at 1055* .

(n46)Footnote 46. *See generally*, George, *Maritime Tort Jurisdiction: A Survey of Developments from Executive Jet to Foremost Insurance Co. v. Richardson, 24 S. Tex. L.J. 495 (1983)*; Calamari, *The Wake of Executive Jet-- A Major Wave or a Minor Ripple,* 4 Mar. Law. 52 (1979); Annotation, *Admiralty Jurisdiction: Maritime Nature of Tort--Modern Cases, 80 A.L.R. Fed. 105 (1986)* . The nexus requirement is hardly self-defining. Prior to *Executive Jet* a court said that on similar facts that a plane crash in territorial waters has a maritime nexus. *Weinstein v. Eastern Airlines, 316 F.2d 758, 763, 1965 AMC 2258 (3d Cir.) , cert. denied, 375 U.S. 940 (1963) . See Smith v. W.F. Guerrant, 290 F. Supp. 111, 114 (S.D. Tex. 1968)* .

(n47)Footnote 47. *485 F.2d 520, 1973 AMC 2478 (5th Cir. 1973) (2-1 decision) , cert. denied, 416 U.S. 969 (1974)* . In dissent, Judge Morgan agreed that the four factors were relevant but thought that an additional consideration should be the weighing of the relevant federal and state interests.

(n48)Footnote 48. *Drake v. Raymark Indus., 772 F.2d 1007, 1986 AMC 1965 (1st Cir. 1985) , cert. denied, 106 S. Ct. 1994 (1986)* ; *Oman v. Johns-Manville Corp., 764 F.2d 224, 1985 AMC 2317 (4th Cir.) (en banc) , cert. denied, 106 S. Ct. 351 (1985)* ; *Harville v. Johns-Manville Prods. Corp., 731 F.2d 775, 1986 AMC 731 (11th Cir. 1984)* ; *Edynak v. Atlantic Shipping Inc., 562 F.2d 215, 1977 AMC 2477 (3d Cir. 1977)* ; *T.J. Falgout Boats, Inc. v. United States, 508 F.2d 855, 1975 AMC 343 (9th Cir. 1974) , cert. denied, 421 U.S. 1000 (1975)* ; *St. Hilaire Moye v. Henderson, 496 F.2d 973, 1974 AMC 2661 (8th Cir.) , cert. denied, 419 U.S. 884 (1974) . See also In re American Export Lines, 620 F. Supp. 490 (S.D.N.Y. 1985)* ; *Kayfetz v. Walker, 404 F. Supp. 75 (S.D.N.Y. 1975)* (Lumbard, J.); *Bordelon v. T.L. James & Co., 380 So. 2d 226 (La. App. 1980)* . The Fourth Circuit has said that the last factor is the most important. *Oman, supra, 764 F.2d at 231 . Cf. Woessner v. Johns-Manville Sales Corp., 757 F.2d 634, 643, 1986 AMC 1922, 1934 (5th Cir. 1985)* ("particular emphasis should be placed on the fourth factor" when the other factors would lead to differing results). *But see King v. Universal Elec. Constr., 799 F.2d 1073 (5th Cir. 1986)* (critical of *Kelly* test because it includes cases where there is no federal interest in uniformity).

(n49)Footnote 49. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043, 1055 (1995) . But see Green v. Vermilion Corp., 144 F.3d 332 (5th Cir. 1998)* (applying Kelly factors).

(n50)Footnote 50. *Id. at 1053* . In *Norfolk Southern Ry. v. James N. Kirby Pty Ltd., 125 S.Ct. 385, 2004 AMC 2705 (2004)* the Supreme Court said, "To ascertain whether a contract is a maritime one, we cannot look to whether a

ship or other vessel was involved in the dispute, as we would in a putative maritime tort case. *Cf.* Admiralty Extension Act, *46 U.S.C. App. § 740* ('The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury ... caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land')." The Admiralty Extension Act was recodified in 2006, as *46 U.S.C. § 30101*, and the above-referenced section now reads: "The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage ... caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land." *See* § 173, *infra*. The Fifth Circuit's reading of *Sisson* was that it neither approved nor disapproved of the *Kelly* test, and that the Fifth Circuit will continue to use that approach and the cases applying it. *Broughton Offshore Drilling, Inc. v. South Central Machine, Inc. 911 F.2d 1050, 1052 n.1 (5th Cir. 1990)* . Similarly, the Fourth Circuit has said that the *Kelly* factors may still be used, but cautions that "we must project more generally the composite genre of the tort or its essential elements and determine whether traditional maritime commerce will be affected. *Price v. Price, 929 F.2d 131, 135, 1991 AMC 2176 (4th Cir. 1991)* . The Third Circuit indicated that it would continue to apply the four-factor test in the wake of *Sisson. Sinclair v. Soniform, Inc., 935 F.2d 599, 1991 AMC 2341 (3d Cir. 1991)* .

The Ninth Circuit indicated that the *Kelly* test survives *Sisson* except that the factor concerning the causation and nature of the injury is precluded by *Sisson. See Delta Country Ventures, Inc. v. Magana, 986 F.2d 1260 (9th Cir. 1993)* . *See also Alderman v. Pacific Northern Victor, Inc., 887 F. Supp. 1495 (N.D. Fla. 1994)* (*Kelly* and *Sisson* tests are complimentary).

(n51)Footnote 51. *Id. at 1051* .

(n52)Footnote 52. *757 F.2d 634, 1986 AMC 1922 (5th Cir. 1985)* .

(n53)Footnote 53. *Compare Parker v. Gulf City Fisheries, Inc., 803 F.2d 828, 1987 AMC 1384 (5th Cir. 1986)* (the function and role of a doctor based on land who does not seek out seaman as patients was maritime because he knew that a captain was at sea when he gave the captain's wife advice about his condition) *with Diaz v. United States, 655 F. Supp. 411, 1987 AMC 2293 (E.D. Va. 1987)* (the function and role of a maintenance company waxing deck of naval vessel and the plaintiff who was on board to discuss sale of restaurant equipment with the ship's personnel "is no different from those which occur on dry land").

(n54)Footnote 54. Applying the *Woessner* approach to the facts in *Kelly*, one could say that the parties involved, deer poachers and island caretakers, were primarily engaged in non-maritime activities. The vehicle involved, a small boat, was being used for a non-traditional maritime purpose, and firearms are primarily intended for use on land and are outside the admiralty's traditional concern. The causation and injury do not differ materially from gunshot injuries on land. Finally, the admiralty has traditionally not been concerned with furnishing remedies for trespassers and there is no federal interest in uniform regulation of the dispute between the parties.

A recent panel in the Fifth Circuit was critical of the test and the result in *Kelly* but felt bound by that decision. *King v. Universal Elec. Constr., 799 F.2d 1073 (5th Cir. 1986)* (electrical construction lineman was killed when he fell off a boat that he used for first time on his first river crossing for his employer; although the interests of uniformity point against admiralty jurisdiction, under the *Kelly* test the lineman was the "pilot" of a skiff who drowned, and "no more violence [is] done to the traditional concepts of the role of admiralty law by according [the] widow an admiralty remedy than was done in granting one to the head poacher, Kelly ..."). *See also Houston Oil & Minerals Corp. v. American Int'l Tool Co., 827 F.2d 1049 (5th Cir. 1987)* (critical of rule denying admiralty jurisdiction to property damage claims arising out of oil well drilling operations whereas admiralty jurisdiction would exist with respect to personal injury claims arising out of those operations).

The Fifth Circuit complicated the *Kelly* test by suggesting that in addition to *Kelly* factors, the court is to consider indicia of maritime flavor in "(1) the impact of the event on maritime shipping and commerce (2) the desirability of a uniform national rule to apply to such matters and (3) the need for admiralty 'expertise' in the trial and decision of the

case." *Molett v. Penrod Drilling Co., 826 F.2d 1419 (5th Cir. 1987)* .

Kelly was narrowly distinguished in *Hall v. Zambelli, 675 F. Supp. 1023 (S.D. W. Va. 1988)* where the court held that a products liability claim by individual working on board barge to set off fireworks against the manufacturer and others is non-maritime. The plaintiff had argued that defective fireworks could be as dangerous to shipping as the gunfire in *Kelly,* but the court said that in *Kelly* the dear poacher was operating a vessel whereas the fireworks plaintiff was not engaged in any maritime activity and the maritime situs of his injury had little to do with his injury.

As *Molett* suggests, some courts have attempted to find guidance from language in *Executive Jet* and *Foremost* suggesting that traditional maritime activities are those in which the admiralty courts have expertise. *E.g., Bubla v. Bradshaw, 795 F.2d 349, 1987 AMC 1333 (4th Cir. 1986)* ; *Owens-Illinois, Inc. v. United States District Court, 698 F.2d 967, 1984 AMC 1468 (9th Cir. 1983)* ; *Onley v. South Carolina Elec. & Gas Co., 488 F.2d 758, 1974 AMC 79 (4th Cir. 1973)* ; *City of N.Y. v. Waterfront Airways, Inc., 620 F. Supp. 411 (S.D.N.Y. 1985)* ; AIU Ins. Co. v. Foss Launch & Tug, 1982 AMC 2490 (W.D. Wash. 1982) (oral); *Hark v. Antilles Airboats, Inc., 355 F. Supp. 683, 1973 AMC 895 (D.V.I. 1973)* . In *Executive Jet,* the Supreme Court said, "Through long experience, the law of the sea knows how to determine whether a particular ship is seaworthy, and it knows the nature of maintenance and cure. It is concerned with maritime liens, the general average, captures and prizes, limitation of liability, cargo damage, and claims for salvage." *409 U.S. 249, 270, 1973 AMC 1, 17* . In *Foremost,* the Court stated that "admiralty law has traditionally been concerned with the conduct alleged to have caused this collision by virtue of its 'navigation rules--rules that govern the manner and direction those vessels may rightly move upon the waters.' " *457 U.S. at 675, 1982 AMC at 2259* (quoting *Executive Jet, 409 U.S. at 270, 1973 AMC at 17*). *But see Ingram River Equip. Inc. v. Pott Indus., 756 F.2d 649 (8th Cir. 1985) , vacated, 106 S. Ct. 3269 (1986)* (rejecting expertise as necessary for maritime jurisdiction). This standard is of little help. The expertise standard would be over-inclusive with respect to water-skiing cases, for example, which seem to occur frequently enough to give the federal courts an undeserved expertise. To be consistent, the expertise argument should lead some classes of cases, such as salvage, general average, and prize cases, to be dropped from the admiralty's purview since few sitting federal judges have any significant judicial expertise with these matters. (Prize cases, which are intimately connected to the conduct of war, are specifically included in the grant of exclusive jurisdiction to the federal courts. *28 U.S.C. § 1333(2).* Salvage and general average disputes are ordinarily resolved by arbitration.) But no one would seriously contend that federal courts should lose jurisdiction over these matters.

See also Watson v. Massman Constr. Co., 850 F.2d 219, 1989 AMC 73 (5th Cir. 1988) ("the imprecise fluidity of [the *Kelly*] 'test' is neatly illustrated by the *Kelly* case itself; Judge Morgan, accepting the majority test, dissented from their conclusion that admiralty jurisdiction was present;" "no 4:58:41 PM standard exists for defining maritime flavor"). In one case a court found that the *Kelly* test led to an impasse that was broken by reference to Sisson v. *Ruby. Antoine v. Zapata Haynie Corp., 777 F. Supp. 1360 (E.D. Tex. 1991)* . In a recent decision a lower court resolved the nexus issue by applying the three guidelines set out in *Molett v. Penrod Drilling Co., 826 F.2d 1419, 1988 AMC 2112 (5th Cir. 1987)* and gave only a "*see also*" reference to Kelly v. Smith. *Miller v. Griffin-Alexander Drilling Co., 685 F. Supp. 960, 1989 AMC 118 (W.D. La. 1988)* . The holding in *Miller,* that a seaman's suit for medical malpractice allegedly committed on land does not meet the nexus requirement was well-established prior to *Molett. See* n.67 *infra.* The lower court's decision was affirmed on appeal. *873 F.2d 809 (5th Cir. 1989)* . The panel rejected the appellant's argument that the district court erred in applying the *Molett* guidelines without reviewing the *Kelly* factors. The court said:

The *Molett* test may bring a court to precisely the same result as the *Kelly* test. Indeed, we discern little difference between the two tests. The first *Molett* factor, the impact on maritime shipping requires a court to consider the *Kelly* factors of the functions of the parties and types of vehicles and instrumentalities involved. A court cannot determine whether a tort claim is maritime without considering where and how it originated and to whom the injury occurred. The second *Molett* factor, the desirability of a uniform national rule, is no different from the *Kelly* factor examining the traditional role of admiralty law. The last *Molett* factor, the need for admiralty expertise, requires a court to consider the

type of injury and its cause. There is no conflict. The First Circuit has agreed with the application of the three additional factors set forth in *Molett* and finds them "to be a more precise enunciation of the examination specified by the fourth factor in the *Kelly* test." *Shea v. Rev-Lyn Contracting Co., 868 F.2d 515, 518 (1st Cir. 1989)* .

(n55)Footnote 55. *In re Sisson, 867 F.2d 341, 345, 1989 AMC 609, 615 (7th Cir. 1989) , rev'd sub nom. Sisson v. Ruby, 497 U.S. 358, 1990 AMC 1801 (1990)* . In rejecting the *Kelly* test the Seventh Circuit simply noted, "we do not find it helpful in developing the kind of analysis indicated by *Executive Jet* and *Foremost.*" *Id.* n.2. Judge Ripple concurred in the judgment on the grounds that fire in the case "presented no harm to maritime commerce." *867 F.2d at 351, 1989 AMC at 626* . But he would not have limited admiralty jurisdiction in noncommercial cases to those involving navigation. The decision was disapproved of in *In re Young, 872 F.2d 176, 1989 AMC 1217 (6th Cir. 1989) , cert. denied, 110 S. Ct. 3270 (1990) . See also In re American Auto, Inc., 1989 AMC 1489 (N.D. Cal. 1989)* (approving of the result in the Seventh Circuit decision in *Sisson* and saying that the reasoning in that case "is not inconsistent with the use of the four factor test and in fact logically follows from a consideration of those factors"). In a footnote, the Supreme Court in *Sisson* noted the Circuits' various approaches to resolving the nexus requirement. It declined to adopt any of them saying "at least in cases in which all of the relevant entities are engaged in similar types of activity...the formula initially suggested by *Executive Jet* and more fully refined in *Foremost* and in this case provides appropriate and sufficient guidance to the federal courts."

The Seventh Circuit said that it will apply a three part test: "(1) did [the alleged wrong] occur on the navigable waters of the United States? (2) did it pose a potential hazard to maritime commerce? and (3) was it substantially related to traditional maritime activity? *Great Lakes Dredge & Dock Co. v. City of Chicago, 3 F.3d 225, 1993 AMC 2409 (7th Cir. 1993) , aff'd sub nom. Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043 (1995)* .

(n56)Footnote 56. The Third Circuit applied the four-part *Kelly* test to asbestos related injuries to determine that they are non-maritime. The court suggested that the role of the asbestos manufacturers might tend to support the assertion of admiralty jurisdiction because they manufactured and marketed their products for use on vessels. But the court noted that the products were not designed for maritime use and concluded, "[i]n any event, we do not find this aspect of the first [*Kelly*] factor dispositive." *Eagle-Picher Indus. v. United States, 846 F.2d 888, 896 n. 11, 1988 AMC 2058, 2071 (3d Cir.) , cert. denied, 488 U.S. 965 (1988)* . The case is criticized in *Eagle-Picher Indus. v. United States, 937 F.2d 625 (D.C. Cir. 1991)* . The District of Columbia Circuit said

Such characterizations, however, give us pause. One could just as easily describe a worker offloading a ship as engaged in the landlubber's trade of cargo hauling and transfer, depict a worker repairing sails as a seamster using the skills and training of a landsman, or characterize a laborer varnishing a vessel's trim as performing a painter's role--one "linked more with the land than with the sea." *937 F.2d at 633-34* . The Second Circuit emphasized that the product was not designed specifically for maritime use. *Keene Corp. v. United States, 700 F.2d 836, 1983 AMC 1421 (2d Cir. 1983) , cert. denied, 464 U.S. 864 (1983)* . The First Circuit emphasized that the workers were not performing tasks traditionally performed by seaman. *Austin v. Unarco Indus., 705 F.2d 1 , reprinted in part, 1984 AMC 2333 (1st Cir.) , cert. dismissed, 463 U.S. 1247 (1983)* . The Fifth and Eleventh Circuits have rejected these considerations as controlling. *Woessner v. Johns-Manville Sales Corp., 757 F.2d 634, 1986 AMC 1922 (5th Cir. 1985)* ; *Harville v. Johns-Manville Prods. Corp., 731 F.2d 775, 1986 AMC 731 (11th Cir. 1984)* .

(n57)Footnote 57. *Eagle-Picher Indus. v. United States, 846 F.2d 888, 1988 AMC 2058 (3d Cir.) , cert. denied, 488 U.S. 965 (1988) . But see John Crane, Inc. v. Jones, 650 S.E.2d 851 (Va. 2007) , cert. denied, 128 S. Ct. 1257 (2008)* .

In *Lopez v. A.C. & S., Inc., 858 F.2d 712 (Fed. Cir. 1988)* the court applied the law of the Ninth Circuit, and held that a pipefitter's claim for injury caused by asbestos against manufacturer of asbestos is not within the admiralty jurisdiction whether arising out of new construction or repair. Consequently a suit for indemnity by the manufacturer against the United States as vessel owner is not maritime. The court further held, following *Drake v. Raymark Indus., 772 F.2d*

1007, 1986 AMC 1965 (1st Cir. 1985) , cert. denied, 476 U.S. 1126 (1986) , that a claim could not be brought against the United States as vessel owner under section 905(b) of the Longshore and Harbor Workers' Compensation Act.

Oman v. Johns-Manville Corp., 764 F.2d 224, 1985 AMC 2317 (4th Cir.) (en banc) , cert. denied, 474 U.S. 970 (1985) , overruling White v. Johns-Manville Corp., 662 F.2d 234, 1982 AMC 1770 (4th Cir. 1981) ; *Woessner v. Johns-Manville Sales Corp., 757 F.2d 634, 1986 AMC 1922 (5th Cir. 1985)* ; *Austin v. Unarco Indus., 705 F.2d 1 , reprinted in part, 1984 AMC 2333 (1st Cir.) , cert. dismissed, 463 U.S. 1247 (1983)* ; *Harville v. Johns-Manville Prods. Corp., 731 F.2d 775, 1986 AMC 731 (11th Cir. 1984)* ; *Myhran v. Johns-Manville Corp., 741 F.2d 1119 (9th Cir. 1984)* ; *Owens-Illinois, Inc. v. United States District Court, 698 F.2d 967, 1984 AMC 1468 (9th Cir. 1983)* ; *Keene Corp. v. United States, 700 F.2d 836 (2d Cir.) , cert. denied, 464 U.S. 864 (1983)* ; *Volpe v. Johns-Manville Corp., 323 Pa. Super. 130, 470 A.2d 164 (1983) . See generally,* Comment, *Admiralty Jurisdiction over Asbestos Torts: Unknotting the Tangled Fibers, 54 U. Chi. L. Rev. 312 (1987)*; Note, *Admiralty--The Fourth Circuit Falls in Line--* Oman v. Johns-Manville Corp., *22 Wake Forest L. Rev. 253 (1987).*

A seaman's product liability suit against manufacturers of asbestos is within the admiralty jurisdiction, and his wife's claim against these defendants for loss of society is also encompassed within the general maritime law. *Tritt v. Atlantic Richfield Co., 709 F. Supp. 630 (E.D. Pa. 1989)* .

In *Robinson v. United States, 730 F. Supp. 551, 1990 AMC 1493 (S.D.N.Y. 1990)* the court concluded that a seaman's tort claims arising on the high seas against an asbestos manufacturer were within the admiralty jurisdiction.

Claims by seamen for asbestos against vessels and manufacturers ought to be heard in admiralty, but the courts have had some difficulty coming to this result. *See Petersen v. Chesapeake & O. Ry., 784 F.2d 732, 1987 AMC 769 (6th Cir. 1986)* (although the court lacks admiralty jurisdiction over asbestos claims, it has jurisdiction of a Jones Act claim arising from exposure to asbestos and had pendent jurisdiction over the seaman's claim for unseaworthiness); *Lingo v. Great Lakes Dredge & Dock Co., 638 F. Supp. 30 (E.D.N.Y. 1986)* (court lacks admiralty jurisdiction over claim by seaman against asbestos manufacturer; recognizes that in other circuits applying the four *Kelly* factors the result would likely be different); *Swogger v. Waterman S.S. Corp., 518 N.Y.S.2d 715, 1987 AMC 2679 (Sup. Ct. 1987)* (defendant shipowners in suit for recovery under the Jones Act and general maritime law have maritime cause of action for indemnity against manufacturers and suppliers of asbestos; seaman would have had a maritime cause of action against the third-party defendants).

A similar issue is whether a shipyard worker may maintain an admiralty action against a vessel that was being repaired in navigable waters. In *Drake v. Raymark Indus., 772 F.2d 1007, 1986 AMC 1965 (1st Cir. 1985) , cert. denied, 106 S. Ct. 1994 (1986)* , the court ruled that manufacturers and suppliers of asbestos products may not maintain a third party action under the Longshore and Harbor Workers' Compensation Act, *33 U.S.C. § 905(b)* against a builder and repairer of ships in connection with injuries sustained by shipyard workers complaining of injury from work on vessels being constructed or repaired. Even though the action is brought on diversity grounds, a tort action by a shipyard worker would lack a maritime nexus and the act only authorizes the bringing of maritime torts. The court noted the irony that the asbestos manufacturers were here contending that injuries were governed by maritime law even though they had argued successfully in the earlier cases that maritime law did not apply. Even though some of the work was performed on ships, the torts remained non-maritime, as that factor had been considered in the earlier cases.

The situation in the Fifth Circuit is more complicated. Although the court has not directly answered the question in a case involving a shipyard worker, the court agrees with the First Circuit that a § 905(b) suit against a vessel requires a maritime nexus. *Richendollar v. Diamond M Drilling Co., 819 F.2d 124, 1987 AMC 2613 (5th Cir. 1987)* (en banc) (rejecting the rule of *Hall v. Hvide Hull No. 3, 746 F.2d 294, 1985 AMC 1408 (5th Cir. 1984))* . Also, uncompleted vessels on land are not vessels within the admiralty jurisdiction nor are they vessels for purposes of § 905(b) actions even under the court's diversity jurisdiction. *Id.* The court suggested, however, that there is admiralty jurisdiction over any unseaworthiness claim by a land-based worker to whom the warranty of seaworthiness is owed. *Woessner v.*

Johns-Manville Sales Corp., 757 F.2d at 642-43, 1986 AMC at 1933 (5th Cir. 1985) (for workers covered by the Longshore & Harbor Workers' Compensation Act to have a claim for unseaworthiness, the disease must have become manifest before the 1972 amendments to the Act became effective); *Castorina v. Lykes Bros. S.S. Co., 758 F.2d 1025, 1986 AMC 2683 (5th Cir.) , cert. denied, 106 S. Ct. 137 (1985)* (longshoreman injured).

(n58)Footnote 58. *Touchstone v. Land & Marine Applicators, Inc., 628 F. Supp. 1202 (E.D. La. 1986)* .

(n59)Footnote 59. *Gaspard v. Amerada Hess Corp., 13 F.3d 165 (5th Cir. 1994)* (painter's helper fell off a wharf while attempting to board a barge, he hit a beam and struck the barge); *Shows v. Harber, 575 F.2d 1253, 1981 AMC 892 (8th Cir. 1978) . See also Gowdy v. United States, 412 F.2d 525 (6th Cir.) , cert. denied, 396 U.S. 960 (1969)* (electrician fell from lighthouse); *Hammond v. United States, 613 F. Supp. 358 (W.D. Pa. 1985)* (painter fell from dam); *Petrou v. United States, 529 F. Supp. 295 (D. Md. 1981)* (painter fell from lighthouse).

(n60)Footnote 60. *In re Silver Bridge Disaster Litigation, 381 F. Supp. 931 (S.D. W. Va. 1974)* (bridge collapse).

(n61)Footnote 61. *Curlee v. Mock Enters., Inc., 173 Ga. App. 594, 327 S.E.2d 736 , reprinted in part, 1986 AMC 292 (1985)* .

(n62)Footnote 62. *Diaz v. United States, 655 F. Supp. 411, 1987 AMC 2293 (E.D. Va. 1987)* (but claim against United States, as owner of vessel, is maritime). *But cf. Bubla v. Bradshaw, 795 F.2d 349 (4th Cir. 1986)* (the maritime environment was found to be a significant factor in contributing to the electrocution of a marine surveyor aboard a houseboat).

(n63)Footnote 63. *River Riders, Inc. v. Steptoe, 672 S.E.2d 376 (W. Va. 2008)* (accident involving white river rafting is governed by maritime law); *Penton v. Pompano Construction Co., 976 F.2d 636 (11th Cir. 1992)* ("a construction site accident--caused by a land-based backhoe operated by landlubbers and resulting in a typical construction site injury--lacks 'sufficient maritime flavor' to support [plaintiff's] characterization of this incident as the offloading of a vessel."); *Petro v. Jada Yacht Charters, Ltd., 854 F. Supp. 698, 1994 AMC 1146 (D. Hawaii 1994)* (passenger sued fellow passenger after fight broke out after disembarking from pleasure cruise is outside the admiralty jurisdiction; suit against ship or its employees who served alcohol on board would be a far stronger case for jurisdiction); *Feenerty v. Swiftdrill, Inc., 706 F. Supp. 519 (E.D. Tex. 1989)* (suit by flight attendant against employer of passenger who allegedly assaulted her while in flight for negligent hiring and negligent supervision lacks sufficient nexus with traditional maritime activity).

In *Watson v. Massman Constr. Co., 850 F.2d 219, 1989 AMC 73 (5th Cir. 1988)* , a claim by the survivors of bridge construction worker who fell to his death in Mississippi River against manufacturers of hose and coupling used in construction of pier was held to be non-maritime. The court suggested that the result might be different if a defective product had damaged the work barge. In what is probably an over-statement the court said, "[f]ederal admiralty courts have jurisdiction over a tort dispute if either the injured party or the alleged tortfeasor is a traditional maritime actor, or at least if either of these parties is performing the same function in a traditional maritime activity." *Id. at 220-21* (footnote omitted). While it is generally true that torts involving traditional maritime actors will usually satisfy the nexus requirement, not every tort involving a seaman or a vessel is necessarily maritime. As the court went on the observe, a seaman must still satisfy the locality requirement. Moreover, it is doubtful if a court should exercise admiralty jurisdiction over a garden-variety tort where, for example, the defendant does not know or have reason to know that the plaintiff is a seaman who is likely to be injured at sea. For example, in *Parker v. Gulf City Fisheries, Inc., 803 F.2d 828, 1987 AMC 1384 (5th Cir. 1986)* , the court exercised admiralty jurisdiction over a land-based doctor for a malpractice claim where the doctor knew that the plaintiff was a seaman who was at sea at the time he allegedly gave negligent advice to the seaman's wife. The case seems about as far as a court will go in exercising admiralty jurisdiction. It is doubtful if the court would have exercised admiralty jurisdiction had the doctor not known of the seaman's status and location or at least if the doctor had lacked reason to know. The holding in *Watson* was followed in *Reecer v. McKinnon Bridge Co., 745 F. Supp. 485 (M.D. Tenn. 1990)* .

Molett v. Penrod Drilling Co., 826 F.2d 1419 (5th Cir. 1987) (insufficient nexus over product liability claim by survivors of land-based rig builders against seller of defective chain for deaths on nearly completed oil derrick); *Kling v. Waguespack, 635 F.2d 406 (5th Cir. Unit A Jan. 1981)* (claim that the liquidator of a corporation violated a state fiduciary duty to maintain a vessel is not maritime where the vessel was significant only as a corporate asset); *King v. President Riverboat Casino-Mississippi, Inc., 894 F. Supp. 1008 (S.D. Miss. 1995)* (injuries by patron on board a riverboat dockside casino not used to transport passengers or cargo are non-maritime); *Hall v. Zambelli, 675 F. Supp. 1023 (S.D. W. Va. 1988)* (products liability claim by individual working on board barge to set off fireworks against the manufacturer, distributor, operator of fireworks, city and festival commission is non-maritime); *Yates v. Island Creek Coal Co., 485 F. Supp. 995 (W.D. Va. 1980)* (homes were lost in flood allegedly caused by strip mining operations); Capital Leasing, Inc. v. Integrated Container Serv., 1980 AMC 1594 (E.D. La. 1980) (wrongful attachment of cargo containers stored on land lacks the requisite nexus). *See also Smith v. W.F. Guerrant, 290 F. Supp. 111 (S.D. Tex. 1968)* (crane on land dropped forklift into water, case approved of in *Executive Jet, 409 U.S. at 255-57, 1973 AMC at 6-7*).

But see Martinez v. Pacific Indus. Serv. Corp., 904 F.2d 521 (9th Cir. 1990) (land-based worker's products liability suit against manufacturer of equipment used to clean out boilers on vessels was maritime; worker was performing work traditionally performed by seamen); *Shea v. Rev-Lyn Contracting Co., 868 F.2d 515 (1st Cir. 1989)* (construction worker who was engaged in repair of bridge and who fell from ball of crane attached to barge met the nexus requirement).

An important pre- *Executive Jet* case that would presumably come out differently today is *Watz v. Zapata Off-Shore Co., 431 F.2d 100, 1970 AMC 2307 (5th Cir. 1970)* . *Watz* involved a land-based pipefitter who was injured due to the alleged fault of the land-based manufacturers of a hoist and chain that were used in installing a 20-foot pipe on a vessel. The court addressed the continued validity of the locality rule, but concluded in light of the precedents that the locality rule was still viable. The court suggested that the case before it would still be considered maritime under most demands for reform, suggesting that "only a minimum" maritime connection was required by those cases departing form the locality rule, noting that those cases involved "swimmers, a person falling off a dock, a crane breaking and dropping a lift-truck into the water." *431 F.2d at 111, 1970 AMC at 2321-22* . Foreshadowing the kinds of controversies that have developed after *Executive Jet*, the *Watz* court said that were it to reconsider the locality rule it would need to analyze the admiralty's interest in regulating the ship repair and conversion industry, the appropriateness of admiralty jurisdiction over personal injury claims, the capacity of state courts to manage cases "where the 'culpable' conduct occurred away from the sea and navigable waters and where the conduct has no demonstrated orientation towards maritime affairs," and the possible need for "uniform regulation by admiralty ... to protect workers in mari time-related activities." *431 F.2d at 111, 1970 AMC at 2322* .

But see Matthews v. Lykes Bros. S.S. Co., 1987 AMC 1707 (C.D. Cal. 1987) (in part) (maritime law governs products liability claim by longshoreman against manufacturer of forklift).

(n64)Footnote 64. *Peytavin v. Government Employees Ins. Co., 453 F.2d 1121, 1972 AMC 1202 (5th Cir. 1972)* .

(n65)Footnote 65. *See Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352, 89 S. Ct. 1835, 23 L. Ed. 2d 360 (1969)* .

(n66)Footnote 66. *See, e.g., Scarborough v. Clemco Indus., 391 F.3d 660, 2005 AMC 96 (5th Cir. 2004) , cert. denied, 125 S. Ct. 1932 (2005)* (Jones Act seaman's claim against manufacturers of sandblasting equipment is a maritime tort; as long as one of the putative tortfeasors was engaged in a traditional maritime activity, the requirement that the tort bear a substantial relationship to traditional maritime activity is satisfied); *Terry v. Raymond Int'l, Inc., 658 F.2d 398 (5th Cir. 1981) , cert. denied, 456 U.S. 928 (1982)* (seaman's suit against crane manufacturer for injury on offshore platform is governed by state law); *In re Dearborn Marine Serv., 499 F.2d 263, 1975 AMC 1850 (5th Cir.*

1974) , cert. dismissed, 423 U.S. 886, 96 S. Ct. 163, 46 L. Ed. 2d 118 (1975) (offshore oil platform exploded killing persons on nearby vessel, platform worker aboard vessel has non-maritime claim against platform defendants but a maritime claim against vessel owner); *West v. Chevron U.S.A., Inc., 615 F. Supp. 377 (E.D. La. 1985)* (workers on fixed oil platform fell onto a vessel while being transferred in basket to that vessel; tort is non-maritime since "[t]he accident and resulting injuries could have been sustained on a platform or land-based rig as well"). But claims by offshore workers injured while being transported by vessel or helicopter to the platform are maritime. *E.g., Offshore Logistics, Inc. v. Tallentire, 106 S. Ct. 2485, 1986 AMC 2113 (1986)* (helicopter ferrying workers from offshore platform); *Smith v. Southern Gulf Marine Co. No. 2, Inc., 791 F.2d 416 (5th Cir. 1986)* (passenger on crewboat being transported to offshore platform slipped and fell on vessel); *Rutledge v. A & P Boat Rentals, Inc., 633 F. Supp. 654 (W.D. La. 1986)* (general maritime law governs claim by catering hand who was injured while on board vessel for passage to offshore drilling platform; he was a "visitor," not a "passenger," under *46 U.S.C. § 2101(21) (C) (viii)*).

(n67)Footnote 67. *Weaver v. Hollywood Casino-Aurora, Inc., 255 F.3d 379 (7th Cir. 2001)* (nexus satisfied where slot machine attendant was injured on riverboat casino); *Taylor v. Kennedy Engine, Inc., 861 F.2d 127 (5th Cir. 1988)* (nexus requirement satisfied where land-based crane damaged ladder on vessel causing seaman to fall on vessel even though the vessel was at dock undergoing repairs and was apparently not able to proceed under its own power; the court noted that the case "does not lie near the core of admiralty jurisprudence and perhaps is closer to its outer boundaries"); *Delaney v. Merchants River Transp., 829 F. Supp. 186, 1994 AMC 1207 (W.D. La. 1993)* (suit by operator of barge against barge manufacturer for design defect is maritime); *Miller v. Penobscot Bay Medical Associates, 836 F. Supp. 31, 1994 AMC 1814 (D. Me. 1993)* (seaman's suit against doctor was maritime where seaman alleged that he was terminated from his employment as a result of an erroneous report of a physical examination performed by the doctor even though examination occured on land); *Ingram Barge Co. v. Exxon Co., 847 F. Supp. 45 (M.D. La. 1993)* (vessel owner's suit against pipeline company for reimbursement of mainentance and cure payments to seaman injured aboard vessel even though vessel was docked and injury resulted from explosion on land); *Antoine v. Zapata Haynie Corp., 777 F. Supp. 1360 (E.D. Tex. 1991)* (medical malpractice where at least some medical care was given to seaman while he was still onboard the vessel is within the admiralty jurisdiction); *Ciolino v. Sciortino Corp., 721 F. Supp. 1491 (D. Mass. 1989)* (seaman's claim against manufacturer of allegedly defective hydraulic system installed on commercial fishing vessel is within the admiralty jurisdiction); *Bans v. United States, 1988 AMC 2547 (D. Mass. 1988)* (nexus requirement is clearly satisfied where vessel's crew member is injured in the performance of his seaman's duties by the negligence of the vessel's operator).

See also White v. United States, 53 F.3d 43 (4th Cir. 1995) (security guard hired by ship repairer has maritime claim against shipowner for negligence in maintaining gangway); *Miles v. Melrose, 882 F.2d 976, 1990 AMC 57 (5th Cir. 1989) , cert. denied, 494 U.S. 1066 (1990)* (shipowner which is liable for death of seaman who was killed by a violent crewmember states a maritime tort claim against the union who referred the assailant to the vessel without warning of his violent propensities); *Miller v. Griffin-Alexander Drilling Co., 685 F. Supp. 960, 1989 AMC 118 (W.D. La. 1988) , aff'd, 873 F.2d 809 (5th Cir. 1989)* (Claim against doctors and hospitals for medical malpractice allegedly committed while plaintiff was on land does not meet the nexus requirement. The district court held that the malpractice claims may not be made pendent to Jones Act and general maritime claims against employer for there is not a common nucleus because the sources of the claims are too dissimilar. Even if the exercise of pendent jurisdiction were constitutionally proper, the court would, as a matter discretion, not do it because of the state concern with medical malpractice and the minimal effect on judicial economy and convenience of trying the claims together. On appeal it was held that the district court acts well within its sound discretion.); *Martinez v. Pacific Indus. Serv. Corp., 904 F.2d 521 (9th Cir. 1990)* (land-based worker's products liability suit against manufacturer of equipment used to clean out boilers on vessels was maritime; worker was performing work traditionally performed by seamen).

See also Williams v. Reiss, 643 So. 2d 792 (4th Cir. 1994) (medical malpractice claim by seaman for alleged failure to warn of back condition is non-maritime where examination occurred on land). *Accord Masherah v. Dettloff, 968 F. Supp. 336 (E.D. Mich. 1997) .*

But see Hasty v. Trans Atlas Boats Inc., 389 F.3d 510, 2004 AMC 2860 (5th Cir. 2004) (after an intoxicated crewmember attacked a fellow seaman and was fired, the attacker refused to leave the vessel; harbor police were called and escorted him from the vessel, but he escaped their custody and returned to the vessel where he renewed the attack on the other seaman; negligence claim against the harbor police did not satisfy the nexus test); *Greenwell v. Aztar Ind. Gaming Corp., 268 F.3d 486 (7th Cir. 2001)* (claim by employee on casino boat that her employer directed her to use incompetent doctors or fraudulently induced her to use them lacks a substantial connection to traditional maritime activity; the employee did not claim that that her back injury occurred at work nor did she claim that the employer knew or had reason to believe that the doctors were incompetent; claim is no more maritime than a claim that an employee of defendant had broken into her house and poisoned her goldfish"); *Cochran v. E.I. duPont de Nemours, 933 F.2d 1533 (11th Cir. 1991)* (Navy sailor's claims against manufacturers for injuries allegedly arising from exposure to silica and asbestos on an aircraft carrier are not within the admiralty jurisdiction; sailor's work in maintaining non-skid deck would be no different if he had been working on land and most of his exposure occurred while vessel was in port and his injury is of a type that afflicts thousands of land-based workers).

Compare Parker v. Gulf City Fisheries, Inc., 803 F.2d 828, 1987 AMC 1384 (5th Cir. 1986) (there is admiralty jurisdiction over claim that doctor on land gave negligent advice to ship's captain's wife concerning the captain knowing that captain was at sea); *Baggett v. Richardson, 473 F.2d 863 (5th Cir. 1973)* (court has admiralty jurisdiction but will apply state law to assault and battery of captain on board a vessel lying in port in navigable water); *Thompson v. Shell Oil Co., 1988 AMC 485 (D. Or. 1985)* (there is a sufficient maritime nexus over a claim by a seaman who was standing on a barge which he was attempting to secure to a dock and who was injured by a defective piling since "injuries to seamen, occurring in the sphere of maritime commerce, are a traditional concern of admiralty law"; but state employer liability law may be applied); *Bradford v. Indiana & Mich. Elec. Co., 588 F. Supp. 708 (S.D. W. Va. 1984)* (suit by seaman against manufacturer of defective chair not specifically designed for vessels would be maritime); *Fawcett v. Pacific Far East Lines, 76 F.R.D. 519 (N.D. Cal. 1977)* (claim by employer of seaman who died during voyage that doctor negligently certified seaman as fit for duty is cognizable in admiralty); *Swogger v. Waterman S.S. Corp., 518 N.Y.S.2d 715, 1987 AMC 2679 (Sup. Ct. 1987)* (defendant shipowners in suit for recovery under the Jones Act and general maritime law have maritime cause of action for indemnity against manufacturers and suppliers of asbestos; seaman would have had a maritime cause of action against the third-party defendants) *with Joiner v. Diamond M Drilling Co., 677 F.2d 1035 (5th Cir. 1982)* (shipowner's indemnity claim against land-based doctor for alleged on-shore malpractice is non-maritime); *Harrison v. Glendel Drilling Co., 679 F. Supp. 1413 (W.D. La. 1988)* (same); *Hiner v. Longstaff, 543 F. Supp. 1123 (W.D. Wash. 1982)* (negligence ofparamedics in rendering first aid assistance to crew member on dock is non-maritime). *But see Petersen v. Chesapeake & O. Ry., 784 F.2d 732, 1987 AMC 769 (6th Cir. 1986)* (although the court lacks admiralty jurisdiction over asbestos claims, it has jurisdiction of a Jones Act claim arising from exposure to asbestos and had pendent jurisdiction over the seaman's claim for unseaworthiness); *Lingo v. Great Lakes Dredge & Dock Co., 638 F. Supp. 30 (E.D.N.Y. 1986)* (court lacks admiralty jurisdiction over claim by seaman against asbestos manufacturer; in other circuits applying the four *Kelly* factors the result would likely be different).

For a discussion of assault of one seaman by another, *see* 1B *Benedict on Admiralty*, § 11a.

(n68)Footnote 68. *Coats v. Penrod Drilling Corp., 5 F.3d 877, 1994 AMC 826 (5th Cir. 1993) , cert. denied, 114 S. Ct. 1303 (1994) , on reh'g, 61 F. 3d 1113 (5th Cir. 1995)* (worker on oil rig off the coast of the United Arab Emirates); *Shea v. Rev-Lyn Contracting Co., 868 F.2d 515 (1st Cir. 1989)* (construction worker who was engaged in repair of bridge and who fell from ball of crane attached to barge met the nexus requirement). *But see Brown v. McKinnon Bridge Co., 732 F. Supp. 1479 (E.D. Tenn. 1989)* (employee injured while constructing bridge did not have a maritime cause of action even though he worked on piers in the water because the court found that his task was identical to those of workers on land); *Henson v. Odyssea Vessels, 2007 U.S. Dist. LEXIS 83123 (E.D. La. Nov. 7, 2007)* (plaintiff who worked on a fixed platform alleged that he was violently slammed into the deck of a waiting vessel; no nexus to maritime activity was shown because injury on the vessel was fortuitous); *Solet v. CNG Producing Co., 908 F. Supp. 375, 1995 AMC 2700 (E.D. La. 1995)* (welder on a fixed offshore oil platform who claims he was injured when

crane operator negligently set the basket down on a vessel did not satisfy the nexus test).

Nelson v. United States, 639 F.2d 469 (9th Cir. 1981) (piledriver drowned while repairing a wave suppressor); *Smith v. United States, 497 F.2d 500 (5th Cir. 1974)* (underwater blasting from barge in connection with construction of levee injured employee working on barge); *Sluijmers v. United States, 306 F. Supp.2d 982, 2003 AMC 2875 (D. Or. 2003)* (salvage worker being transported to site by helicopter was injured when lowered to deck of vessel); *Quattlebaum v. Foster Marine Contractors, Inc., 600 F. Supp. 158 (S.D. Fla. 1985)* (claim for personal injuries of diver against island developer is maritime where diver was employed by subcontractor to construct subaqueous water main and was physically tied to barge at time of cave-in of trench). *Cf. Trautman v. Buck Steber, Inc., 693 F.2d 440 (5th Cir. 1982)* (salvage diver clearing Suez Canal of sunken vessels is engaged in traditional maritime activity). *But see Powers v. Bethlehem Steel Corp., 477 F.2d 643 (1st Cir.) , cert. denied, 414 U.S. 856 (1973)* (maritime nexus lacking in suit by land-based piledriver employed to repair pilings who was working on raft attached to pier and was injured by light bulb due to alleged fault of owner of shipyard).

(n69)Footnote 69. *E.g., Green v. Vermilion Corp., 144 F.3d 332 (5th Cir. 1998)* ; *Solano v. Beilby, 761 F.2d 1369, 1986 AMC 1634 (9th Cir. 1985)* (longshoreman injured while loading automobile on vessel); *Ocean Barge Transp. Co. v. Hess Oil Virgin Islands Corp., 726 F.2d 121 (3d Cir. 1984)* ; *Edynak v. Atlantic Shipping Inc., 562 F.2d 215, 1977 AMC 2477 (3d Cir. 1977)* ; *Moser v. Texas Trailer Corp., 623 F.2d 1006, 1984 AMC 707 (5th Cir. 1980)* (engineering company employee fell from housing module onto deck of barge on which it was stored); *Orgulf Transp. Co. v. Hill's Marine Enters., Inc., 188 F.Supp.2d 1056, 2002 AMC 1554 (S.D. Ill. 2002)* ; *Ercole v. KS Difko XLIII Kodif XLIII A.P.S., 793 F. Supp. 61 (S.D.N.Y. 1992)* (lasher injured on board ship); *Stevenson v. Point Marine, Inc., 697 F. Supp. 285 (E.D. La. 1988)* (roustabout injured while unloading drilling equipment from vessel to fixed platform); *Hails v. Atlantic Richfield Co., 595 F. Supp. 948 (W.D. La. 1984) . See Atlantic Transp. Co. v. Imbrovek, 234 U.S. 52 (1914)* (admiralty jurisdiction extends to tort claim by longshoreman against his employer for injuries on a ship in navigable waters). *Cf. American President Lines v. Green Transfer & Storage, Inc., 568 F. Supp. 58 (D. Or. 1983)* (negligent loading of cargo container causing damage to container has sufficient nexus to traditional maritime activity). *But see* Whitcombe v. Stevedoring Serv. of America, 2 F.3d 313, 1993 AMC 2097, 1993 AMC 2797 (9th Cir. 1993) (injury to cargo on land by terminal operator was non-maritime); *Crotwell v. Hockman-Lewis, Ltd., 734 F.2d 767 (11th Cir. 1984)* (2-1 decision) (insufficient nexus where worker unloading crate from truck alleged that crate was damaged while on ship and asserted jurisdiction under the Admiralty Extension Act). For actions by longshore and harbor workers against ships for negligence, *see* 1A *Benedict on Admiralty.*

(n70)Footnote 70. *In re Mission Bay Jet Sports, LLC, 570 F.3d 1124, 2009 U.S. App. LEXIS 13529 (9th Cir. 2009)* (passengers were injured when thrown from jet skis); *Doe v. Celebrity Cruises, Inc., 394 F.3d 891, 2005 AMC 214 (11 th Cir. 2004)* (sexual assault of cruise passenger by crew member on shore near docked ship; the two became acquainted aboard ship, and crew member directed passenger to particular bar on shore); *Wallis v. Princess Cruises, Inc., 306 F.3d 827, 2002 AMC 2270 (9th Cir. 2002)* (claim of intentional infliction of emotional distress); *McDonough v. Royal Caribbean Cruises, Ltd., 48 F.3d 256 (7th Cir. 1995)* (dolly pushed by stewart ran over passenger's foot in elevator); *Sinclair v. Soniform, Inc., 935 F.2d 599, 1991 AMC 2341 (3d Cir. 1991)* (alleged failure of crew to treat passenger who developed decompression sickness following dive was within the admiralty jurisdiction; the court declined to determine whether the passenger's claim against the manufacturer of the buoyancy compensator vest used in the dive was also within the admiralty jurisdiction holding that in any event this claim was within the court's supplemental jurisdiction); *Wilkinson v. Carnival Cruise Lines, 920 F.2d 1560 (11th Cir. 1991)* (passenger injured by sliding glass door); *Everett v. Carnival Cruise Lines, 912 F.2d 1355, 1991 AMC 700 (11th Cir. 1990)* (slip and fall over metal threshold cover for fire door); *Beard v. Norwegian Caribbean Lines, 900 F.2d 71, 1991 AMC 444 (6th Cir. 1990)* (passenger allegedly slipped on wet spot while playing a game of basketball on deck); *Butler v. American Trawler Co., 887 F.2d 20 (1st Cir. 1989)* (boarding of ship differs from way in which one enters a building, airplane or car and bears a significant relation to traditional maritime activity); *Keefe v. Bahama Cruise Line, 867 F.2d 1318, 1990 AMC 46 (11th Cir. 1989)* (slip and fall on wet spot while dancing at ship's outdoor discotheque; ship was sailing in navigable waters); *Carey v. Bahama Cruise Lines, 864 F.2d 201, 1989 AMC 852 (1st Cir. 1988)* (injury to passenger

caused by sliding gangway that connected ship to a tender is a "uniquely maritime injury").

Monteleone v. Bahama Cruise Line, Inc., 838 F.2d 63 (2d Cir. 1988) (slip and fall on a flight of stairs, the district court cited the Admiralty Extension Act, *46 U.S.C. § 740* (now codified as *46 U.S.C. § 30101*), as the basis for jurisdiction); *Smith v. Southern Gulf Marine Co. No. 2, Inc., 791 F.2d 416 (5th Cir. 1986)* (passenger on crewboat being transported to offshore platform slipped and fell on vessel); *Kornberg v. Carnival Cruise Lines, 741 F.2d 1332, 1985 AMC 826 (11th Cir. 1984) , cert. denied, 470 U.S. 1004 (1985)* (general maritime law governs class action suit brought on diversity grounds for damages caused by the failure of a cruise ship's sanitary system); *Rainey v. Paquet Cruises, Inc., 709 F.2d 169, 1983 AMC 2100 (2d Cir. 1983)* (General maritime rule of reasonable care in the circumstances applies to claim by passenger who tripped over a stool in the ship's discotheque while dancing: "The extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger to the passenger, will determine how high a degree of care is reasonable in each case."); *Duluth Superior Excursions, Inc. v. Makela, 623 F.2d 1251, 1980 AMC 2518 (8th Cir. 1980)* (suit by a passenger on a "booze cruise" against the excursion vessel for injuries sustained after disembarking by a fellow passenger's drunken driving); *Hajtman v. NCL (Bahamas) Ltd., 526 F. Supp.2d 1324, 2008 AMC 1145 (S.D. Fla. 2007)* (suit alleging medical malpractice); *Suter v. Carnival Corp., 2007 AMC 2564 (S.D. Fla. 2007)* (suit alleging medical malpractice on theory of apparent agency); *Bird v. Celebrity Cruise Line, Inc., 428 F. Supp.2d 1275, 2005 AMC 2794 (S.D. Fla. 2005)* (claims arising from alleged food poisoning); *Friedman v. Cunard Line Ltd., 996 F. Supp. 303, 1998 AMC 1417 (S.D.N.Y. 1998)* (fall during aerobics class while ship was at anchor) (reviewing cases); *Wright v. United States, 883 F. Supp. 60, 1995 AMC 60 (D.S.C. 1994)* (guest on board a pontoon boat who injured finger after jumping in an unautorized place has a maritime claim against the person who rented the boat); *Truehart v. Blandon, 672 F.Supp. 929 (E.D. La. 1987)* (injury to passenger on pleasure boat is within the admiralty jurisdiction); *Muratore v. M/S Scotia Prince, 656 F. Supp. 471 (D. Me. 1987)* (court has admiralty jurisdiction and applies general maritime law to slip and fall claim but applies state law to claim by passenger arising out of ship's photographers' infliction of emotional distress); *Rutledge v. A & P Boat Rentals, Inc., 633 F. Supp. 654 (W.D. La. 1986)* (general maritime law governs claim by catering hand who was injured while on board vessel for passage to offshore drilling platform; he was a "visitor," not a "passenger," under *46 U.S.C. § 2101(21) (C) (viii)*); *Reneau v. Shoreline Marine Sightseeing Co., 1986 AMC 1274 (N.D. Ill. 1986)* ; *Spinola v. Costa Line, 637 F. Supp. 4 (D.P.R. 1985)* (general maritime law applied to suit alleging sexual molestation of passenger by crew member); *Febles Rios v. Phaidon Navegacion, S.A., 634 F. Supp. 479 (D.P.R. 1985) , aff'd without op., 795 F.2d 75 (1st Cir. 1986)* (maritime law applied to claim by passenger on cruise ship for injuries due to fall); *Kuntz v. Windjammer "Barefoot" Cruises, Ltd., 573 F. Supp. 1277 (W.D. Pa. 1983) , aff'd without op., 738 F.2d 423 (3d Cir.) , cert. denied, 469 U.S. 858 (1984)* (pssenger on commercial vessel injured in scuba diving accident); *Caraballo v. Autoridad de Los Puertos de Puerto Rico, 388 F. Supp. 308 (D.P.R. 1974)* (passenger being transported for hire); *Rindfleisch v. Carnival Cruise Lines, 498 So. 2d 488, 1987 AMC 944 (Fla. Dist. Ct. App. 1986)* (general maritime law governs slip and fall on cruise ship's stairway). *But cf. Montgomery v. Harrold, 473 F. Supp. 61 (E.D. Mich. 1979)* (no admiralty jurisdiction over death caused by lethal fumes aboard pleasure craft that at all relevant times was moored to dock).

See also Emery v. Rock Island Boatworks, Inc., 847 F. Supp. 114 (C.D. Ill. 1994) (passenger fell through open man-hole); *Gillmor v. Caribbean Cruise Line, 789 F. Supp. 488 (D.P.R. 1992)* (admiralty law applies to action by passenger who was stabbed and robbed on pier against cruise line for negligence of crew member in directing him to purchase a newspaper on a pier while negligently failing to warn him that the pier was a high crime area).

Cf. In re Kanoa, Inc., 872 F. Supp. 740 (D. Hawaii 1994) (dictum that "[a]ny actionable injuries received while on board the boat would clearly be subject to admiralty jurisdiction ... even if the injuries occurred during such non-maritime activities as eating or dancing.").

Cf. Palmer v. Fayard Moving & Transp. Corp., 930 F.2d 437 (5th Cir. 1991) (public relations agent for vessel owner who was injured while descending a ladder on board vessel has maritime tort claim even though she was not a passenger), *followed, Alderman v. Pacific Northern Victor, Inc., 887 F. Supp. 1495 (N.D. Fla. 1994)* (carpenter slipped

on ladder).

Prior to *Executive Jet* it was well established that cases of assault and battery, imprisonment or other personal injury or ill usage, arising between the master, officers or crew on the one hand and passengers, invitees or trespassers on the other, were within the admiralty jurisdiction when such cases occurred on board, at sea or in coastal waters. *E.g., Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 1959 AMC 597 (1959)* (guest of seaman fell on stairway); *Chicago D. & G.B. Transit Co. v. Moore, 259 F. 490 (6th Cir. 1919) , cert. denied, 251 U.S. 553 (1919)* (tainted food and water served passengers); *The Minnetonka, 146 F. 509 (2d Cir. 1906) , cert. denied, 203 U.S. 589, 27 S. Ct. 777, 51 L. Ed. 330 (1906)* (ship's employee stole passenger's jewelry); *The Western States, 151 F. 929 (W.D.N.Y. 1907) , aff'd, 159 F. 354 (2d Cir.) , cert. denied, 210 U.S. 433 (1908)* (assault by ship's employee on passenger and discourteous treatment by other employees to whom she complained); *The Willamette Valley, 71 F. 712 (N.D. Cal. 1896)* (refusal to provide first class passage); *The Normannia, 62 F. 469 (S.D.N.Y. 1894)* (false representation that no steerage passengers would be aboard; vessel was quarantined after outbreak of cholera primarily among the steerage passengers); *The Aberfoyle, 1 F. Cas. 30 (S.D.N.Y.) (No. 16) , aff'd, 1 F. Cas. 35 (C.C.S.D.N.Y. 1848)* (No. 17) (inadequate food for passengers). *See also The Moses Taylor, 71 U.S. (4 Wall.) 411 (1870)* .

But see H2O Houseboat Vacations Inc. v. Hernandez, 103 F.3d 914, 1997 AMC 390 (9th Cir. 1996) (injuries due to carbon monoxide fumes in rented houseboat that was tied to the shore are non-maritime because the incident did not have the potential to disrupt maritime commerce). The court in this case may have taken a limited view of its jurisdiction because this was an action to limit liability. But it seems odd that the court did not consider the renting of a houseboat itself to be maritime commerce. *H2O Houseboat Vacations* was distinguished in *In re Houseboat Starship II, 2006 A.M.C. 1335 (M.D. Tenn. 2005)* . In that case the passengers alleged injury from monoxide poisoning that occurred while the vessel was tied to an island on the third day of a voyage. The court found that the commercial travel on a navigable waterway was a traditional maritime activity. The Ninth Circuit extended *H2O Houseboat* in a case holding that the negligence claim of a tourist photographer who fell while ascending a ladder on a naval-historical museum was not within the admiralty jurisdiction because "the alleged incident could not possibly disrupt maritime commerce" because it could not injure any person or thing outside the vessel. *Peru v. USS Missouri Memorial Ass'n, 207 Fed. Appx. 843, 2007 AMC 597 (9th Cir. 2006)* [LTD]. Contrary to the Ninth Circuit's holding, a negligently maintained ladder aboard a vessel seems well within the range of activities that have been treated as maritime. *Grubart* requires an examination of "whether the incident could be seen within a class of incidents that posed more than a fanciful risk to commercial shipping." *513 U.S. 527 at 539* . Consistent with the other cases discussed previously in this note, it would seem that the potential risk to others on board the vessel would satisfy the *Grubart* requirement.

(n71)Footnote 71. *Taghadomi v. United States, 401 F.3d 1080, 2005 AMC 958 (9th Cir. 2005)* (search and rescue operation including alleged failure to contact fire department satisfies the nexus test); *Broughton Offshore Drilling, Inc. v. South Central Machine, Inc. 911 F.2d 1050, 1052 n.1 (5th Cir. 1990)* (damage to drilling barge and its buoyancy mat allegedly caused by tortious failure to repair hydraulic cylinders which were installed on blowout preventer is within the admiralty jurisdiction); *Bender Shipbuilding & Repair Co. v. Brasileiro, 874 F.2d 1551, 1991 AMC 220 (11th Cir. 1989)* (collision between floating drydock under construction which broke free of its moorings and vessel on navigable waters is within the maritime jurisdiction); *Grab v. Traylor Bros., 2011 U.S. Dist. LEXIS 48154 (E.D. La. 2011)* (following an allision with a survey tower on navigable waters, suit alleging that contractor negligently failed to ensure that other contractors under its supervision complied with laws regarding maritime safety was a maritime tort); *Brown Marine Serv., Inc. v. Louisiana Land & Exoploration Co., 1994 U.S. Dist. LEXIS 8923 (E.D. La. 1994)* (supplying contaminated gasoline and loading it into vessel's storage compartments inflicted damage to vessel in navigable waters); *Western Transp. Co. v. Pac-Mar Serv., 547 F.2d 97, 1978 AMC 693 (9th Cir. 1976)* (although use of barge as floating warehouse was non-maritime, court has admiralty jurisdiction of liability claims for barge's sinking and recovery costs and for payment of detention to other vessels); *In re Motor Ship Pacific Carrier, 489 F.2d 152, 1974 AMC 227 (5th Cir.) , cert. denied, 417 U.S. 931, 94 S. Ct. 2643, 41 L. Ed. 2d 235 (1974)* (smoke from shore-based mill obstructed navigation of commercial vessel, causing vessel to collide with bridge); *Klinghoffer v. S.N.C. Achille Lauro, 739 F. Supp. 854, 1990 AMC 2725 (S.D.N.Y. 1990)* (seizure of vessel in navigable waters is a maritime wrong); *Alamia v.*

Chevron Transp. Corp., 660 F. Supp. 1123 (S.D. Miss. 1987) (court has admiralty jurisdiction over claim that excessive wake created by tanker caused shrimp boat to heel over, throwing some of its gear and the day's catch overboard); *Kohlasch v. New York State Thruway Auth., 460 F. Supp. 956 (S.D.N.Y. 1978)* (defendant obstructed navigable channel by discharging debris); *Oppen v. Aetna Ins. Co., 485 F.2d 252, 1973 AMC 2165 (9th Cir. 1973)* (oil spill caused damage to pleasure vessels interfering with their right to navigation); *Trinity River Auth. v. Williams, 689 S.W.2d 883 (Te. 1985)* (failure to warn of dangerous back water currents near dam cause fishing boat to sink); *Sawczyk v. United States Coast Guard, 499 F. Supp. 1034, 1982 AMC 560 (W.D.N.Y. 1980)* (failure of Coast Guard to inspect raft and equipment bears a significant relationship to traditional maritime activity); *In re Holoholo Litig., 557 F. Supp. 1024, 1984 AMC 436 (D. Hawaii 1983)* (marine scientists who had been engaged in oceanographic research at the time of their deaths were found to have been engaged in a mission which bore a significant relationship to traditional maritime activity for purposes of determining whether plaintiffs were entitled to federal maritime remedies). *But see Briggs v. Town of Brewster, 1989 AMC 752 (D. Mass. 1988)* (nexus test not satisfied by allegation that police department in negligently failing to raise alarm and step up search for missing fishing vessel caused death of passenger on board).

(n72)Footnote 72. *Sanders v. Placid Oil Co., 861 F.2d 1374, 1989 AMC 912 (5th Cir. 1988)* (fifteen-foot outboard motorboat struck submerged pipe); *Ison v. Roof, 698 F.2d 294 (6th Cir.) , cert. denied, 461 U.S. 957 (1983)* (pleasure craft struck unlit conveyor); *McCormick v. United States, 680 F.2d 345, 1984 AMC 1799 (5th Cir. 1982)* (pleasure vessel hit unmarked piling near the outer end of a pier); *Fisher v. Danos, 671 F.2d 904 (5th Cir.) , cert. denied, 459 U.S. 840 (1982)* (skiff hit unlit jetty); *Lane v. United States, 529 F.2d 175, 1976 AMC 66 (4th Cir. 1975)* (towing a skier, pleasure boat hit a sunken barge that the government should have either marked or removed); *Respess v. United States, 586 F. Supp. 861 (E.D. La. 1984)* (pleasure vessel hit a tree branch); Hartman v. United States, 1982 AMC 1074 (D.S.C. 1981) (pleasure vessel hit unmarked piling).

(n73)Footnote 73. *Hassinger v. Tideland Elec. Membership Corp., 781 F.2d 1022, 1986 AMC 2635 (4th Cir.) , cert. denied, 106 S. Ct. 3294 (1986)* (while beaching an 18 foot sailboat, mast hit an energized uninsulated power line, power line was dangerous impediment to navigational function); *Brown v. United States, 403 F. Supp. 472, 1976 AMC 1139 (C.D. Cal. 1975)* (sailing pleasure boat down Colorado River, mast struck low-hanging power line; either electrocuted or drowned). *But see Bendlin v. Virginia Elec. & Power Co., 449 F. Supp. 934, 1979 AMC 748 (E.D.N.C. 1978)* (no maritime jurisdiction over the owner of campground who negligently failed to warn a camper of a dangerous power line located off his property).

(n74)Footnote 74. *Szyka v. United States Secretary of Defense, 525 F.2d 62, 1975 AMC 2504 (2d Cir. 1975)* (alleged shelling of vessel by military installation on shore); *T.J. Falgout Boats, Inc. v. United States, 508 F.2d 855, 1975 AMC 343 (9th Cir. 1974) , cert. denied, 421 U.S. 1000 (1975)* (hit by Sidewinder missile shot from Navy plane); *Kelly v. Smith, 485 F.2d 520, 1973 AMC 2478 (5th Cir. 1973) , cert. denied, 416 U.S. 969 (1974)* (deer poachers escaping on small boat shot from shore); *Meche v. Richard, 2007 U.S. Dist. LEXIS 17895 (W.D. La. 2007)* .

(n75)Footnote 75. *E.g., Yamaha Motor Corp., U.S.A. v. Calhoun, 516 U.S. 199, 1996 AMC 305 (1996)* (jet ski); *East River S.S. Corp. v. Transamerica Delaval Inc., 476 U.S. 858, 1986 AMC 2027 (1986)* (commercial vessel); *Sperry Rand Corp. v. Radio Corp., 618 F.2d 319, 1981 AMC 1284 (5th Cir. 1980)* (a suit by a manufacturer of a gyro-pilot steering system against the manufacturer of small component parts not specifically manufactured for incorporation in marine systems is maritime, vessel was grounded and involved in a collision); *Jones v. Bender Welding & Mach. Works, 581 F.2d 1331, 1979 AMC 1300 (9th Cir. 1978)* (defective design and negligence caused damage to fishing vessel and lost profits); *Jig The Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171, 1976 AMC 118 (5th Cir. 1975) , cert. denied, 424 U.S. 954, 96 S. Ct. 1429, 47 L. Ed. 2d 360 (1976)* (vessel sank due to negligent design); *Richards v. Blake Builders Supply, Inc., 528 F.2d 745, 1976 AMC 74 (4th Cir. 1975)* (explosion on pleasure craft caused death and personal injuries); *Szollosy v. Hyatt Corp., 208 F. Supp.2d 205, 2002 AMC 1432 (D. Conn. 2002)* (suit for personal injuries on jet ski and third party claim against parent for contribution and indemnity); *Anderson v. Whittaker Corp., 692 F. Supp. 764, 1989 AMC 470 (W.D. Mich. 1988)* (products liability suit against manufacturer of pleasure vessel that sank on Lake Michigan satisfies the nexus requirement; there is a federal interest in uniform standards because defective pleasure craft are likely to be hazards to commercial and noncommercial

vessels; risks posed by the defect were exclusive to the maritime locale unlike the asbestos suits); *Hebert v. Outboard Marine Corp., 638 F. Supp. 1166 (E.D. La. 1986)* (defective outboard motor on pleasure craft flew into boat and caused personal injuries). *But see Kunreuther v. Outboard Marine Corp., 715 F. Supp. 1304 (E.D. Pa. 1989)* (personal injury to swimmer resulting from allegedly defectively designed outboard motor does not satisfy the nexus test); *Lloyds of London v. Montauk Yacht Club & Inn, 704 F. Supp. 1175, 1989 AMC 1229 (E.D.N.Y. 1989)* (negligent repair of an ordinary washer/dryer unit which was aboard a pleasure yacht is not a maritime tort); *Sisson v. Hatteras Yachts, Inc., 1987 U.S. Dist. LEXIS 9483 (N.D. Ill. Oct.13, 1987)* (no admiralty jurisdiction over products liability claim against manufacturer of washer/dryer which caused fire on moored non-commercial vessel).

(n76)Footnote 76. *State of Maryland Dept. of Natural Resources, 51 F.3d 1220 (4th Cir. 1995)* (claim for damage to oyster beds caused by stranding of barge is within the maritime jurisdiciton); *Price v. Price, 929 F.2d 131, 1991 AMC 2176 (4th Cir. 1991)* (court has admiralty jurisdiction where navigation errors of small pleasure craft operator allegedly caused wake which injured passenger as she disembarked).

One court has called this the "hit a tanker" test. If the errors are such that the vessel might have hit a tanker, the admiralty has jurisdiction. *Smith v. Knowles, 642 F. Supp. 1137 (D. Md. 1986)* .

(n77)Footnote 77. *In re Paradise Holdings, Inc., 795 F.2d 756, 1987 AMC 104 (9th Cir.) , cert. denied, 107 S. Ct. 649 (1986)* (negligent operation of vessel killed body surfer and injured other swimmers); *Oliver v. Hardesty, 745 F.2d 317, 1985 AMC 630 (4th Cir. 1984)* (collision between pleasure boat and swimmer); *Medina v. Perez, 733 F.2d 170, 1985 AMC 627 (1st Cir. 1984) , cert. denied, 469 U.S. 1106 (1985)* (two swimmers injured by outboard-powered pleasure boat, 120 feet from beach); *In re Town of Chatham, 2011 U.S. Dist. LEXIS 3956 (D. Mass. Jan. 13, 2011)* (alleged negligence of harbormaster in failing to rescue a swimmer constitutes a maritime tort but related claims concerning town's signs, staff, and emergency response equipment and protocols were non-maritime); *Olivelli v. Sappo Corp., 225 F. Supp. 2d 109 (D.P.R. 2002)* (suit for wrongful death arising from scuba diving was governed by maritime law since a vessel transported the divers from the shore and there were allegations that the vessel was not properly equipped to treat the diver). Scuba diver's suit alleging negligence of diving guide is maritime where dive was from vessel and injury was caused by other vessel. *In re Pacific Adventures, Inc., 5 F. Supp.2d 874 (D. Haw. 1998)* ; *Schumacher v. Cooper, 850 F. Supp. 438 (D.S.C. 1994)* .

(n78)Footnote 78. *Bodnar v. Hi-Lex Corp., 919 F. Supp. 1234 (N.D. Ind. 1996)* ; *In re Shaw, 668 F. Supp. 524 (S.D. W. Va. 1987) . But see Jorsch v. LeBeau, 449 F. Supp. 485, 1978 AMC 1452 (N.D. Ill. 1978)* .

(n79)Footnote 79. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043 (1995)* (negligent installation of pilings from barges on Chicago River which disrupted commercial maritime activity and caused substantial damage to business on shore).

In re Bird, 794 F. Supp. 575, 1993 AMC 737 (D.S.C. 1992) (one passenger pushed another off of a pleasure boat while it was anchored; court reluctantly concluded that there would be admirality jurisdiction).

Thibodaux v. Atlantic Richfield Co., 580 F.2d 841, 1979 AMC 1794 (5th Cir. 1978) , cert. denied, 442 U.S. 909 (1979) (vessel taking plaintiff's decedent to work was overloaded and sank); *St. Hilaire Moye v. Henderson, 496 F.2d 973, 1974 AMC 2661 (8th Cir.) , cert. denied, 419 U.S. 884 (1974)* (operation of pleasure boat is a traditional maritime activity); *Whitehouse v. Fountain Powerboats, Inc., 1996 AMC 221 (S.D. Fla. 1995)* (worker who climbed on board powerboat to clean and detail it fell on allegedly defective seat cushion); *In re ABC Charters, Inc., 558 F. Supp. 367 (W.D. Wash. 1983)* (passenger on pleasure yacht rendered unconscious due to carbon monoxide poisoning when vessel was berthed for evening); *Banchi v. Miller, 388 F. Supp. 645, 1974 AMC 2147 (E.D. Pa. 1974)* (death by drowning of passenger on pleasure vessel, due to fault in navigation, negligent use and/or operation which caused it to capsize); *Scholl v. Town of Babylon, 95 A.D.2d 475, 466 N.Y.S.2d 976, 1984 AMC 157 (1983)* (pleasure vessel collided with decedent who was snorkeling for crabs); *Roper v. Stafford, 444 A.2d 289 (Del. Super. Ct. 1982)* (injury to passenger on pleasure craft when it crossed other vessel's wake). *Cf. Consolidated Aluminum Corp. v. C.F. Bean Corp., 833 F.2d 65*

(5th Cir. 1987) (under admiralty law the owner of a dredge which negligently ruptured a natural gas pipeline due to its failure to observe a safety plan is not liable forphysical damages to an aluminum processing plant six miles away which occurred due to the cut off of natural gas); *Luna v. Star of India, 356 F. Supp. 59, 1973 AMC 1597 (S.D. Cal. 1973)* (slip and fall on stairway of vessel permanently moored to shore and used as floating museum).

(n80)Footnote 80. *Delta Country Ventures, Inc. v. Magana, 986 F.2d 1260 (9th Cir. 1993)* (2-1) (no admiralty jurisdiction where passenger dove off deck of houseboat and was seriously injured when he struck something under the water).

It has been held that gambling aboard a riverboat casino is not a traditional maritime activity. *Tagliere v. Harrah's Ill. Corp., 2005 U.S. Dist. LEXIS 9587 (D. Ill. 2005)* . Although the holding may be questioned, the court could have reached the same result had it found that the craft which was permanently moored was no longer a vessel. *See* section 166 *supra*.

Courts are divided over whether to include injuries caused from parasailing in the admiralty jurisdiction. *Compare Beiswenger Enters. Corp. v. Carletta, 779 F. Supp. 160 (M.D. Fla. 1991)* (outside admiralty jurisdiction; involvement of vessel was minimal as towline had already been cut before injury occurred) *with In re Skyrider, 1991 AMC 1956 (D. Hawaii 1990)* (asserting admiralty jurisdiction the court said in part, "navigation is an essential component in the parasailing activity" and injury occurred while being towed).

Foster v. Peddicord, 826 F.2d 1370 (4th Cir. 1987) (no admiralty jurisdiction where passenger on yacht for a recreational outing having business-related overtones dove into shallow water and was injured); *Hogan v. Overman, 767 F.2d 1093, 1986 AMC 502 (4th Cir. 1985)* (allegation that defendant carelessly and negligently operated motorboat so as to cause water skier to fall is adequate to confer admiralty jurisdiction, because negligent operation of motorboat can be construed as general allegation of navigational error); *Souther v. Thompson, 754 F.2d 151, 1985 AMC 2351 (4th Cir. 1985)* (no admiralty jurisdiction where operator of motor boat towing two water skiers failed to stop boat when one skier's wake sprayed water in other skier's face); *Crosson v. Vance, 484 F.2d 840, 1973 AMC 1895 (4th Cir. 1973)* (no admiralty jurisdiction where motor boat towing a water skier ran into shoals); *Smith v. Knowles, 642 F. Supp. 1137, 1987 AMC 794 (D. Md. 1986)* (no admiralty jurisdiction where passenger on pleasure craft jumped overboard but could not swim; the failure to provide life jackets or rescue passengers will not impede maritime commerce); *American Nat'l Bank & Trust Co. v. United States, 636 F. Supp. 147, 1987 AMC 1753 (N.D. Ill. 1986)* (no admiralty jurisdiction for injuries caused by diving from private boat into shallow lake; alleged failure of United States to warn of shallow water); *Reed v. United States, 604 F. Supp. 1253 (N.D. Ind. 1984)* (no admiralty jurisdiction over dive from boat into shallow water); *Webster v. Roberts, 417 F. Supp. 346, 1976 AMC 2073 (E.D. Tenn. 1976)* (no admiralty jurisdiction where negligent operator of tow boat injured water skier); *Pfeiffer v. Weiland, 226 N.W.2d 218 (Iowa 1975)* (injury to water skier involving no danger to navigation or commerce). *See Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 256 n. 5, 1973 AMC 1, 6 (1972)* (disapproving of *King v. Testerman, 214 F. Supp. 335, 1963 AMC 2054 (E.D. Tenn. 1963)* where court asserted admiralty jurisdicion over operator of boat who failed to give signals to water skier). More doubtful is *Richards v. Blake Builders Supply, Inc., 528 F.2d 745, 1976 AMC 74 (4th Cir. 1975)* , where the court exercised admiralty jurisdiction over a claim that an operator of a small boat negligently swerved to port and crashed into a bank. The case has been treated as a negligent navigation case, *see Southern, supra* , because the *Richards* court remarked that the controversy arose out of the boat's navigation. *528 F.2d at 749, 1976 AMC at 80* .

See also In re Sisson, 663 F. Supp. 858 (N.D. Ill. 1987) , aff'd, 867 F.2d 341, 1989 AMC 609 (7th Cir. 1989) (no admiralty jurisdiction over tort claims against owner of docked pleasure yacht arising out of fire on yacht due to defective washer/dryer which damaged marina and neighboring boats). The decision was reversed by the Supreme Court. *Sisson v. Ruby, 497 U.S. 358, 1990 AMC 1801 (1990)* .

A court exercised admiralty jurisdiction where the facts were unclear if the decedent was swimming or if he was had fallen from the boat. Without deciding whether swimming or diving from a recreational boat is a non-maritime activity,

the court concluded that the relevant activity was navigation of the boat. *Polly v. Carlson, 859 F. Supp. 270, 1994 AMC 2878 (E.D. Mich. 1994)* .

But see Lewis Charters, Inc. v. Huckins Yacht Corp., 871 F.2d 1046, 1989 AMC 1521 (11th Cir. 1989) (nexus requirement not met where fire on boat stored at marina destroyed other yacht and the marina); *Latin American Property & Cas. Ins. Co. v. Hi-Lift Marina, Inc., 887 F.2d 1477, 1990 AMC 2004 (11th Cir. 1989)* (negligence at storage facility which caused fire to destroy 200 boats stored there is not within the admiralty jurisdiction); *Dean v. Maritime Overseas Corp., 770 F. Supp. 309 (E.D. La. 1991)* (nexus requirement not met where hydrocarbon emitted by vessel docked in port allegedly caused plaintiff, who suffered from an asthmatic condition, to fall while in her home several blocks away); *McDonough v. Nolley, 729 F. Supp. 84, 1990 AMC 1020 (W.D. Wash. 1990)* (suit by owner of pleasure yacht for negligent repairs which caused vessel to catch fire while moored at dock does not satisfy the nexus requirement); *In re American Auto, Inc., 1989 AMC 1489 (N.D. Cal. 1989)* (nexus not met where fire on yacht moored in area away from commercial traffic). The Seventh Circuit reversed, holding that even though the District Court's ruling had "common-sense appeal," the Admiralty Extension Act provided an independent basis of federal jurisdiction. The case was remanded if the permanently moored boat was a "vessel." *Tagliere v. Harrah's Ill. Corp., 445 F.3d 1012 (7th Cir. 2006)* .

(n81)Footnote 81. *Delgado v. Reef Resort Ltd., 364 F.3d 642, 2004 AMC 1109 (5th Cir. 2004)* (death of scuba diver did not affect maritime commerce nor was it connected with traditional maritime activity even though the decedent was transported by vessel to the dive site and was supervised by vessel's crew); *Onley v. South Carolina Elec. & Gas Co., 488 F.2d 758, 1974 AMC 79 (4th Cir. 1973)* (no admiralty jurisdiction where diver injured when struck submerged boat ramp, level of lake was controlled by defendant in connection with its generation of electricity); *In re Kanoa, Inc., 872 F. Supp. 740 (D. Hawaii 1994)* (claims arising from death during a recreational scuba dive from a commercial dive vessel were non-maritime); *Duplechin v. Professional Ass'n for Diving Instructors, 666 F. Supp. 84 (E.D. La. 1987)* (no admiralty jurisdiction over claim that diving school negligently instructed diver concerning symptoms and treatment of decompression sickness; diver was injured three years after taking course); *Clinton Bd. of Park Comm'rs v. Claussen, 410 F. Supp. 320 (S.D. Iowa 1976)* (no admiralty jurisdiction where small boy jumped in fear from a floatation platform, which became unsecured as a result of owner's negligence a few minutes after owner moved vessel, used as a nautical museum, from its winter mooring to its summer mooring); *Rubin v. Power Auth., 356 F. Supp. 1169, 1973 AMC 1524 (W.D.N.Y. 1973)* (no admiralty jurisdiction where recreational divers were drawn into water intakes of generating plant due to alleged negligence of defendant to erect warnings and barriers). *But see McClenahan v. Paradise Cruises, Ltd., 888 F. Supp. 120 (D. Hawaii 1995)* (vessel's failure to warn and failure to aid 'snuba' divers is basis for maritime jurisdiction).

In *Executive Jet, 409 U.S. 249, 256* nn. 5-6, *1973 AMC 1, 6* , the Court cited with approval *McGuire v. City of N.Y., 192 F. Supp. 866, 1962 AMC 516 (S.D.N.Y. 1961)* (no admiralty jurisdiction where bather was injured by submerged object) and disapproved of *Davis v. City of Jacksonville Beach, 251 F. Supp. 327, 1966 AMC 1231 (M.D. Fla. 1965)* (admiralty jurisdiction where swimmer was injured by surfboard).

(n82)Footnote 82. *Duluth Superior Excursions, Inc. v. Makela, 623 F.2d 1251, 1980 AMC 2518 (8th Cir.1980)* ; *Bay Casino, LLC v. M/V Royal Empress, 199 F.R.D. 464, 2000 AMC 502 (E.D.N.Y. 1999)* ; *Young v. Players Lake Charles, L.L.C., 47 F. Supp.2d 832, 1999 AMC 2529 (S.D. Tex. 1999)* .

(n83)Footnote 83. *Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 274, 1973 AMC 1, 20 (1972)* . The holding has survived *Foremost* even though the Supreme Court recognized in the later decision that the crash of any plane on navigable waters constitutes a potential threat to navigation. *Foremost Ins. Co. v. Richardson, 457 U.S. 668, 675 n. 5, 1982 AMC 2253, 2259 (1982)* .

(n84)Footnote 84. *409 U.S. at 271, 1973 AMC at 17-18* .

(n85)Footnote 85. "[I]t may be considered as settled today that [the Death on the High Seas Act] gives the federal

admiralty courts jurisdiction of such wrongful death actions." *409 U.S. at 263-64, 1973 AMC at 12* . "Of course, under the Death on the High Seas Act, a wrongful death action arising out of an airplane crash on the high seas beyond a marine league from the shore of any State may clearly be brought in a federal admiralty court." *409 U.S. at 271 n. 20, 1973 AMC at 17* , "Some such flights, *e.g.*, New York City to Miami, Florida, no doubt involve passage over 'the high seas beyond a marine league from the shore of any State.' To the extent that the terms of the Death on the High Seas become applicable to such flights, that Act, of course, is 'legislation to the contrary.' " *409 U.S. at 274 n. 26, 1973 AMC at 20* . Throughout the opinion the Court limited its requirement of a maritime nexus to those situations where there was no legislation to the contrary. The Court reasoned that Congress possesses adequate authority under the *Commerce Clause* to include aviation death or injury actions in the federal courts. *409 U.S. at 274, 1972 AMC at 20* .

(n86)Footnote 86. *Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 106 S. Ct. 2485, 1986 AMC 2113 (1986)* . *See also Smith v. Pan Air Corp., 684 F.2d 1102, 1983 AMC 2836 (5th Cir. 1982)* ; *Ledoux v. Petroleum Helicopters, Inc., 609 F.2d 824, 1980 AMC 2162 (5th Cir. 1980)* .

(n87)Footnote 87. *Preston v. Frantz, 11 F.3d 357, 1994 AMC 1736 (2d Cir. 1994)* (helicopter was ferrying passengers from the mainland over the high seas to an island); First & Merchants Nat'l Bank v. Adams, 1981 AMC 2592 (4th Cir. 1981) (crash of airplane in Canadian waters is within the admiralty jurisdiction); *Roberts v. United States, 498 F.2d 520 (9th Cir.) , cert. denied, 419 U.S. 1070 (1974)* (transoceanic plane transporting cargo which crashed in water is within the admiralty jurisdiction); Sikorsky Aircraft Corp. v. Lloyds TSB Gen. Leasing (No. 20) *Ltd., 774F. Supp. 2d 431, 2011 U.S. Dist. LEXIS 35861 (D. Conn. 2011)* (helicopter crashed during flight between Newfoundland and offshore oil production facility); *In re* Hudson River Mid-Air Collision on August 8, 2009, *2011 U.S. Dist. LEXIS 65491 (D.N.J. 2011)* (collision of small plane and sight-seeing helicopter is not maritime); *Fernandez-Reyes v. Hill Construction Corp., 915 F. Supp. 520 (D.P.R. 1996)* (crash of helicopter that was used to carry a professional photographer to cover a regatta is non-maritime); *In re Air Disaster Near Honolulu, Hawaii, 792 F. Supp. 1541 (N.D. Cal. 1992)* ; *Friedman v. Mitsubishi Aircraft Int'l, Inc., 678 F. Supp. 1064 (S.D.N.Y. 1988)* (nexus requirement of *Executive Jet* need not be satisfied in cases under the Death on the High Seas Act); Duvall v. Hughes Tool Co., 1979 AMC 1918 (D. Alaska 1978) (land-based helicopter crash is outside admiralty jurisdiction); *Hubschman v. Antilles Airboats, Inc., 440 F. Supp. 828 (D.V.I. 1977)* (seaplane that flew over and broke up after emergency landing in international waters is within admiralty jurisdiction); *Hammill v. Olympic Airways, S.A., 398 F. Supp. 829 (D.D.C. 1975)* (admiralty jurisdiction where plane crashed in Greek domestic waters during flight across Mediterranean Sea); *Teachey v. United States, 363 F. Supp. 1197, 1974 AMC 266 (M.D. Fla. 1973)* (Coast Guard helicopter rescued plaintiff's decedent from Gulf of Mexico, landed at Key West, passengers did not disembark but remained on board for flight to St. Petersburg, Florida; craft crashed off coast of St. Petersburg; no admiralty jurisdiction because crash not in course of the performance of an air-sea rescue but in transporting from one Coast Guard base to another); *Hark v. Antilles Airboats, Inc., 355 F. Supp. 683, 1973 AMC 895 (D.V.I. 1973)* (on flight from St. Thomas to St. Croix on amphibian plane, seconds after take-off and before pilot achieved minimum control speed, craft lost power and was ditched into harbor; action was maritime because craft had not fully completed the takeof phase of the flight nor been brought under control as an airborne vehicle; alternatively, crash was within admiralty jurisdiction because flight was to be over international waters). *But see U.S. Aviation Underwriters, Inc. v. Pilatus Business Aircraft, Ltd., 582 F.3d 1131 (10th Cir. 2009)* (airplane crash in the Sea of Okhotsk between Japan and Russia that caused slight injuries was not a maritime tort; flight by airplane enthusiasts; "If an airplane had not been available, the trip would never have happened").

For international flights governed by the Warsaw Convention, the courts will apply the federal maritime law to the issue of damages. *Hollie v. Korean Air Lines Co., 60 F.3d 90 (2d Cir. 1995)* ; *In re Air Disaster at Lockerbie Scot., 37 F.3d 804 (2d Cir. 1994) , cert. denied, 115 S. Ct. 934 (1995)* .

Cf. T.J. Falgout Boats, Inc. v. United States, 508 F.2d 855, 1975 AMC 343 (9th Cir. 1974) , cert. denied, 421 U.S. 1000 (1975) (Sidewinder missile fired from Navy plane hit vessel is within the admiralty jurisdiction). *See also Icelandic Coast Guard v. United Technologies Corp., 722 F. Supp. 942 (D. Conn. 1989)* (products liability suit arising

out of crash of Icelandic Coast Guard helicopter on high seas satisfies the nexus test). *But see American Home Assurance Co. v. United States, 389 F. Supp. 657 (M.D. Pa. 1975)* (flight from Atlantic City to Block Island, N.Y. not maritime even though destination was only accessible by air or sea).

(n88)Footnote 88. *E.g., Kunreuther v. Outboard Marine Corp., 715 F. Supp. 1304, 1990 AMC 727 (E.D. Pa. 1989)* (in a suit arising out of the death of a swimmer allegedly caused by a defective outboard motor, the court determined that the Death on the High Seas Act did not control because of the lack of a maritime nexus; the accident occurred in Jamaican territorial waters). To its credit the court subsequently recognized its error and withdrew the opinion. *Kunreuther v. Outboard Marine Corp., 757 F. Supp. 633, 1991 AMC 1812 (E.D. Pa. 1991)* . The correct approach is also illustrated by *Klinghoffer v. S.N.C. Achille Lauro, 739 F. Supp. 854 (S.D.N.Y. 1990)* (in addition to jurisdiction based on a maritime tort claim and diversity jurisdiction, court has subject matter jurisdiction over claims under the Death on the High Seas Act).

For actions involving the negligence of airplane not involving death claims, the nexus requirement must be met. *See, e.g., Morgan v. United Air Lines, 750 F. Supp. 1046 (D. Colo. 1990)* .

See also Brons v. Beech Aircraft Corp., 627 F. Supp. 230 (S.D. Fla. 1985) (state law, not Death on the High Seas Act, applies to high seas plane crash on flight between land points in Florida); *Hayden v. Krusling, 531 F. Supp. 468, 1984 A.M.C. 1215 (N.D. Fla. 1982)* (crash 55 miles offshore, land-based flight between Florida and Louisiana). *See also Kuntz v. Windjammer "Barefoot" Cruises, Ltd., 573 F. Supp. 1277, 1280 (W.D. Pa. 1983) , aff'd without op., 738 F.2d 423 (3d Cir.) , cert. denied, 469 U.S. 858 (1984)* (Death on High Seas Act provides basis for jurisdiction over scuba diving accident during cruise provided there is a nexus with traditional maritime activities); *Fosen v. United Technologies Corp., 484 F. Supp. 490 (S.D.N.Y.) , aff'd without op., 633 F.2d 203 (1980)* ; *Mancuso v. Kimex, Inc., 484 F. Supp. 453 (S.D. Fla. 1980)* (maritime jurisdiction overdeath actions under Death on the High Seas Act arising from crash of plane carrying cargo from Miami to Jamaica because maritime status and maritime situs are satisfied). *Compare Miller v. United States, 725 F.2d 1311 (5th Cir.) , cert. denied, 469 U.S. 821 (1984)* (action under Suits in Admiralty Act for wrongful death on high seas proper since trip had sufficient nexus to traditional maritime activity) *with Ford v. Wooten, 681 F.2d 712, 715 n. 2 (11th Cir. 1982) , cert. denied, 459 U.S. 1202 (1983)* (admiralty jurisdiction under Death on the High Seas Act may be broader than in other contexts). *But see Smith v. Pan Air Corp., 684 F.2d 1102, 1983 AMC 2836 (5th Cir. 1982)* (Death on the High Seas Act applies to deaths that occur more than three miles from shore); *Valentine v. United States, 630 F. Supp. 1126 (S.D. Fla. 1986)* (same); *Francis v. Forest Oil Corp., 628 F. Supp. 836 (W.D. La. 1986)* (same); *McPherson v. Union Oil Co., 628 F. Supp. 265 (S.D. Tex. 1985)* (same); *In re Air Crash Disaster Near Bombay, 531 F. Supp. 1175 (W.D. Wash. 1982) . See generally,* David, *Maritime Aviation Death, 48 J. Air L. & Com. 593, 602*-04 (1983).

One hopes that the Supreme Court has removed all doubt on this subject by its opinion in *Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 106 S. Ct. 2485, 1986 AMC 2113 (1986)* , where the Court determined that admiralty jurisdiction over a helicopter crash on the high seas could be sustained based on the Death on the High Seas Act or the traditional principles of *Executive Jet. 106 S. Ct. at 2493, 1986 AMC at 2122* . Moreover the Court held that the Death on the High Seas Act is the exclusive death remedy for deaths occurring on the high seas. *But see Moyer v. Klosters Rederi, 645 F. Supp. 620, 1987 AMC 1404 (S.D. Fla. 1986)* (death of passenger on cruise line from snorkeling met nexus requirement; court noted that under *Offshore Logistics* Death on High Seas Act is exclusive "where it applies" but held that death from injuries within the territorial waters of a foreign country required nexus to traditional maritime activity in order for Act to apply).

(n89)Footnote 89. Some cases do not fit easily into any category. *See Sohyde Drilling & Marine Co. v. Coastal States Gas Prod. Co., 644 F.2d 1132, 1982 AMC 2644 (5th Cir. May 1981) , cert. denied, 454 U.S. 1081 (1981)* (no admiralty jurisdiction over property damage arising from blowout of gas well, case was followed but criticized in *Houston Oil & Minerals Corp. v. American Int'l Tool Co., 827 F.2d 1049 (5th Cir. 1987)) . Compare Montgomery v. Harrold, 473 F. Supp. 61 (E.D. Mich. 1979)* (no admiralty jurisdiction over death caused by lethal fumes aboard friend's

pleasure craft that at all relevant times was moored to dock, craft was not in "use as a boat *qua* boat, but merely as a place of recreation") *with In re ABC Charters, Inc., 558 F. Supp. 367 (W.D. Wash. 1983)* (admiralty jurisdiction exists over claim of passenger on pleasure yacht who was rendered unconscious due to carbon monoxide poisoning when vessel was berthed for evening).

Compare Moore v. Hampton Roads Sanitation Comm'n, 557 F.2d 1030, 1977 AMC 1162 (4th Cir. 1977) (en banc) , cert. denied, 434 U.S. 1012 (1978) (no admiralty jurisdiction for destruction of oyster beds under leases from the state by a city's negligent discharge of sewage) *with National Sea Clammers Ass'n v. City of N.Y., 616 F.2d 1222 (3d Cir. 1980)* (admiralty jurisdiction over tort claims arising from discharge of sewage that damages shellfish), *vacated sub nom. Middlesex County Sewage Auth. v. National Sea Clammers Ass'n, 453 U.S. 1 (1981)* (Federal Water Pollution Control Act preempts federal common law remedies); Wilson v. United States, 1976 AMC 2237 (E.D. Va. 1976) (damage to oyster beds constitutes a maritime tort). *See also Conner v. Aerovox, Inc., 730 F.2d 835, 1984 AMC 2507 (1st Cir. 1984) , cert. denied, 470 U.S. 1050 (1985)* (maritime tort claim for damage to fishing grounds is preempted by Federal Water Pollution Control Act); *Blanchard v. South La. Contractors, Inc., 1987 AMC 1562 (La. Dist. Ct. 1987)* (maritime law governs validity of agreement to settle maritime action for damage to oyster beds caused by dredge which ruptured underwater pipeline).

See also Kuehne & Nagel (Ag & Co) v. Geosource, Inc., 625 F. Supp. 794 (S.D. Tex. 1986) (sufficient nexus to maritime activities established for allegation of misrepresentation by transportation company that caused freight forwarder to enter into contracts of affreightment even though breach of contract action is not maritime because contract was not wholly maritime), *rev'd on other grounds, 874 F.2d 283 (5th Cir. 1989)* ; *Ross v. Moak, 388 F. Supp. 461 (M.D. La. 1975)* (no admiralty jurisdiction when person delivering laundry slipped on wooden gangway over land used as a means of access to a store located on moored barges; the structure was not a vessel).

(n90)Footnote 90. One problem that may not have been foreseen when the nexus rule was adopted is that an injury on navigable waters may now involve maritime claims against some defendants and non-maritime claims against others. To be efficient courts should exercise pendent jurisdiction over the non-maritime claims and determine whether maritime law or state law governs the issues of indemnity and contribution between the defendants. As to the latter question, *see* § 112, *supra*, where it is suggested that state law ought generally to govern.

(n91)Footnote 91. *See McDonough v. Nolley, 729 F. Supp. 84, 85 (W.D. Wash. 1990)* ("As a matter of policy federal courts should be cautious in exercising jurisdiction over classes of cases where there is no compelling federal interest or compelling federal issue"); *Thyssen, Inc. v. S.S. Rio Capaya, 1988 AMC 1878 (M.D. Fla. 1988)* (court has admiralty jurisdiction over claim that vessel converted containers that were leased to it).

Fareast Commodities Res. Ltd. v. SGS SA, 2011 U.S. Dist. LEXIS 27299 (S.D.N.Y. 2011) (surveyor's negligent misrepresentation of iron ore's content is not maritime in nature even though ore was transported by vessel); Baker v. Captain Jeffrey A. Johnson & Assocs., No. 86 Civ. 1796 (S.D.N.Y. Sept. 21, 1987) (Westlaw) (negligent performance of prepurchase survey of yacht is not within the admiralty jurisdiction since there is no national interest in uniformity or potential for impact on maritime commerce). *See generally,* Stolz, *Pleasure Boating and Admiralty: Erie at Sea, 51 Cal. L. Rev. 661 (1963)*; Black, *Admiralty Jurisdiction: Critique and Suggestions, 50 Colum. L. Rev. 259 (1950)*.

(n92)Footnote 92. Although the shipyard workers and the asbestos manufacturers are land-based, the workers are engaged in an important maritime activity. Their presence on navigable waters is less fortuitous than, for example, automobile drivers who fall into a navigable river when a bridge collapses. One could compare their claim to a product liability suit brought by a shipowner against the maker of a component part that can be used in a both maritime and non-maritime products. *E.g., Sperry Rand Corp. v. Radio Corp., 618 F.2d 319, 1981 AMC 1284 (5th Cir. 1980) . Cf. Atlantic Transport Co. v. Imbrovek, 234 U.S. 52 (1914)* ("To hold that a case of a tort committed on board a ship in navigable waters, by one who has undertaken a maritime service, against one engaged in performance of that service, is not embraced within the constitutional grant and the jurisdictional act, would be to establish a limitation wholly without

warrant.") *See also* Comment, *Admiralty Jurisdiction over Asbestos Torts: Unknotting the Tangled Fibers, 54 U. Chi. L. Rev. 312 (1987)*. But the federal interest in uniformity may not be as great when a vessel owner is not a party. And there is little reason for a federal court to take admiralty jurisdiction of a claim governed by state law. *See* n. 1, *supra.*

(n93)Footnote 93. It is perhaps a bit odd that the Supreme Courts opinion in *Sisson v. Ruby, 497 U.S. 358, 1990 AMC 1801 (1990)* , discussed above at n.26.1 *et seq.*, did not discuss the need for satisfaction of the locality requirement. On the facts, a fire at a marina on Lake Michigan, the locality requirement would seem to be easily satisfied. Although it may have been an insignificant omission, one's curiosity is further aroused by the Court's subsequent treatment of a suit to limit liability arising out of a fire on the *Lake of the Ozarks. Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 110 S. Ct. 3265 (1990)* . The lower courts held that the locality requirement was not met, and the Eighth Circuit Court of Appeals had therefore concluded that the district court lacked subject matter jurisdiction. *878 F.2d 1096, 1989 AMC 2058 (8th Cir. 1989)* . Yet the Supreme Court vacated the court of appeals decision and remanded in light of *Sisson.* It would be highly unlikely that the Court intended to jettison the locality requirement in silence. A more likely explanation is that the Court wanted the court of appeals in *Three Buoys* to consider the question *not* addressed in *Sisson*, that is, whether the Limitation of Liability Act applies to claims that are outside the admiralty jurisdiction provided by *28 U.S.C. § 1333*. On remand, the court of appeals again affirmed the dismissal of the limitation action essentially for the reasons given in its earlier opinion that the Limitation of Liability Act did not provide an independent basis for federal jurisdiction. *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 921 F.2d 775, 1991 AMC 1356 (8th Cir. 1990)* . Any doubts about the Court's thinking on this subject were put to rest in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043 (1995)* where the Court clearly held that both the nexus and locality requirements must be satisfied. *Id. at 1048* .

Evergreen Marine Corp. v. Six Consignments, 806 F. Supp. 291 (D. Mass. 1992) (a claim alleging tortious interference with a maritime contract is not within the admiralty jurisdiction when the impact is not felt on navigable waters; plaintiff delivered cargo to defendant absent receipt of bills of lading).

Shea v. Rev-Lyn Contracting Co., 868 F.2d 515 (1st Cir. 1989) (in order for a tort claim to be within the admiralty jurisdiction the alleged wrong must satisfy the situs test of occurring on navigable waters and the status test of bearing a significant relationship to traditional maritime activity); *Dirma v. United States, 695 F. Supp. 714 (E.D.N.Y. 1988)* (same).

The situs requirement must be met even when the tort results in the creation of a maritime contract. *Kuehne & Nagel (Ag & Co) v. Geosource, Inc., 874 F.2d 283 (5th Cir. 1989)* . The court held that alleged misrepresentations by a transportation company which induced freight forwarders to enter into multi-modal contracts of affreightment still had to satisfy the locality requirement. *See also* § 172, *infra.*

There was some question in the wake of *Executive Jet* whether maritime jurisdiction can be exercised when only the nexus requirement is met. *Executive Jet* had criticized the locality rule for creating "perverse and casuistic borderline situations" *409 U.S. at 255, 1973 AMC at 5* , and one might have thought that the Court would have favored abandoning the locality requirement to solve that problem. In *Carroll v. Protection Maritime Ins. Co., 512 F.2d 4, 1975 AMC 1633 (1st Cir. 1975)* , the court asserted jurisdiction over a complaint by seamen alleging that an insurer had blacklisted them. Although the locality requirement could be said to be satisfied because the blacklisting had an impact on vessels at sea, the opinion suggested that torts having no maritime locality should be within the jurisdiction if they have an intimate relationship to maritime service, commerce, or navigation. It has also been suggested that the intentional interference with a maritime contract constitutes a maritime tort and may be an exception to the locality requirement. *River & Offshore Servs. Co. v. United States, 651 F. Supp. 276 (E.D. La. 1987) . See also Orient Mid-East Lines v. Albert E. Bowen, Inc., 255 F. Supp. 627, 1966 AMC 623 (S.D.N.Y. 1966)* (inducement of a breach of contract that causes a light sailing is a maritime tort). The other post- *Executive Jet* opinions have held that satisfying the nexus requirement is not enough. *See, e.g., East River S.S. Corp. v. Transamerica Delaval, Inc., 106 S. Ct. 2295, 2298, 1986 AMC 2027, 2031-32 (1986)* (after concluding that the alleged torts satisfied the traditional locality

requirement, the Court said, "When torts have occurred on navigable waters within the United States, the Court has imposed an additional requirement of a 'maritime nexus' ... ."); *Wiedemann & Fransen, A.P.L.C. v. Hollywood Marine, Inc., 811 F.2d 864 (5th Cir. 1987)* ; *In re Paradise Holdings, Inc., 795 F.2d 756, 1987 AMC 104 (9th Cir.) , cert. denied, 107 S. Ct. 649 (1986)* ; *Petersen v. Chesapeake & Ohio Ry., 784 F.2d 732, 1987 AMC 769 (6th Cir. 1986)* ; *Hassinger v. Tideland Elec. Membership Corp., 781 F.2d 1022, 1986 AMC 2635 (4th Cir.) , cert. denied, 106 S. Ct. 3294 (1986)* ; *Drake v. Raymark Indus., 772 F.2d 1007, 1986 AMC 1965 (1st Cir. 1985) , cert. denied, 106 S. Ct. 1994 (1986)* ; *Keene Corp. v. United States, 700 F.2d 836, 1983 AMC 1421 (2d Cir. 1983) , cert. denied, 464 U.S. 864 (1983)* ; *Graco, Inc. v. Colberg, Inc., 162 Cal. App. 3d 322, 208 Cal. Rptr. 465 (1985)* ; *Gardner v. Old Dominion Stevedoring Corp., 225 Va. 599, 303 S.E.2d 914 (1983) . But cf. Austin v. Unarco Indus., 705 F.2d 1, 8-9, 1984 AMC 2333, 2342 (1st Cir.) , cert. dismissed, 463 U.S. 1247 (1983)* ("While it appears that the injury must generally still occur on navigable waters, the claim here clearly meets the locality prong of the *Executive Jet* test.").

(n94)Footnote 94. *See* § 173, *infra.*

(n95)Footnote 95. *See* § 175, *infra.*

(n96)Footnote 96. *See Sirius Ins. Co. (Uk) Ltd. v. Collins, 16 F.3d 34 (2d Cir. 1994)* (the court held that an insurance on pleasure boat was a maritime contract even though vessel was stolen while on shore; the court noted that the theft of the vessel was not a maritime tort); *David Wright Charter Serv. v. Wright, 925 F.2d 783, 1991 AMC 2927 (4th Cir. 1991)* (injury caused during repair of vessel which was on blocks in a shed located 75 feet from the water does not satisfy the situs test even though a contract for repair of the vessel would have been within the admiralty jurisdiction). In *Chi Shun Hua Steel Co. v. Crest Tankers, Inc., 708 F. Supp. 18, 1989 AMC 2551 (D.N.H. 1989)* the court held that an agreement to release a vessel from attachment did not constitute a maritime contract and that a claim for fraud arising out of the departure of the vessel did not constitute a maritime tort. The court nonetheless held that the release from attachment constituted the furnishing of a "necessary" to the vessel creating a maritime lien under *46 U.S.C. § 971*. In *Thyssen, Inc. v. S.S. Rio Capaya, 1988 AMC 1878 (M.D. Fla. 1988)* , the court exercised admiralty jurisdiction over a claim that a vessel converted containers that were leased to it. In finding that the nexus requirement was met, the court noted that container leases are maritime contracts. *Id. at 1882, n.4* . The court found that the locality test was met because the conversion occurred there even though the containers were located afterwards on land and used for carrying cargo on land. The court buttressed its holding by citing the Admiralty Extension Act, *46 U.S.C. § 740* (recodified as *46 U.S.C. § 30101*).

Accord Swaim, *Yes, Virginia, There is An Admiralty: The Rodrigue Case, 16 Loy. L. Rev. 42 (1969-70). But see Gulf Coast Shell & Aggregate LP v. Newlin, 623 F.3d 235, 2011 AMC 421 (5th Cir. 2010)* (conversion claim is non-maritime where transfer of a dredge's title occurred on land and the transfer of the title to an entity other than the one agreed upon did not bear a substantial relationship to maritime activity because "[i]t relates merely to possession and ownership of the dredge, not to the vessel in its use as such."); Note, *Admiralty--Tests of Maritime Tort Jurisdiction, 44 Tul. L. Rev. 166 (1969)* (a nexus test would be difficult to apply). The lack of principle is seen most clearly in those situations where a tort claim substantially overlaps a contract claim but only the latter is treated as being maritime. *E.g., Pierside Terminal Operators, Inc. v. M/V Floridian, 374 F. Supp. 27, 1974 AMC 602 (E.D. Va. 1974) , rev'd on other grounds sub nom. Oriente Commercial, Inc. v. American Flag Vessel, M/V Floridian, 529 F.2d 221, 1975 AMC 2484 (4th Cir. 1975)* (repair claims are based on maritime contract but fraud and misrepresentation relating to repair lack maritime locality); *Thomson v. Chesapeake Yacht Club, 255 F. Supp. 555, 1966 AMC 2275 (D. Md. 1966)* (fall through hole in extension of pier into water gives rise to non-maritime tort, but breach of contract to provide a safe dock or wharf accommodation is maritime). *Compare* Capital Leasing, Inc. v. Integrated Container Serv., 1980 AMC 1594 (E.D. La. 1980) (wrongful attachment of cargo containers stored on land lacks the requisite nexus) *with Mefer S.A.R.L. v. Naviagro Maritime Corp., 533 F. Supp. 337, 1982 AMC 1401 (S.D.N.Y. 1982)* (breach of an agreement to release a vessel from attachment is a maritime contract). *See also Omaha Indem. Co. v. Whaleneck Harbor Marina, Inc., 610 F. Supp. 154, 1986 AMC 345 (E.D.N.Y. 1985)* (contract to store vessel for winter is maritime but jurisdiction for tort damage is not maritime).

There are also situations where the tort claim, but not a related contract claim, is treated as maritime. *E.g.*, *East River S.S. Corp. v. Transamerica Delaval, Inc., 106 S. Ct. 2295, 1986 AMC 2027 (1986)* (products liability arising out the construction of a vessel); *Kuehne & Nagel (Ag & Co) v. Geosource, Inc., 625 F. Supp. 794 (S.D. Tex. 1986)* (alleged misrepresentation by transportation company induced freight forwarder to enter into multi-modal contract of affreightment) (the court of appeals held that the situs requirement for admiralty jurisdiction was not met). *See* § 172, *infra.*

See also Thurmond v. Delta Well Surveyors, 836 F.2d 952 (5th Cir. 1988) (court looked in part to tort cases to determine that an indemnity agreement in a contract to perform wireline services on navigable waters was non-maritime). There is admiralty tort jurisdiction over the crash of a helicopter ferrying workers and supplies from an artificial island to shore. *Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 1986 AMC 2113 (1986)* . *See supra*, note 85. However, a contract to carry workers by helicopter to a fixed platform is non-maritime. *Alleman v. Omni Energy Servs. Corp., 434 F. Supp. 2d 405 (E.D. La. 2006)* .

(n97)Footnote 97. *See* text at n.13, *supra.*

(n98)Footnote 98. *See* n.52, *supra.*

(n99)Footnote 99. *See* nn.56-57, *supra.*

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XI MARITIME TORTS

1-XI Benedict on Admiralty § 172

§ 172. Scope and Effect of the Locality Rule.

Except in the case of certain seamen's injuries, n1 even though a tort has a significant relation to traditional maritime activity, n2 it will not be within theadmiralty jurisdiction unless the tort either occurs on the navigable waters n3 or is caused by a vessel on those waters within the meaning of the Admiralty Extension Act. A tort occurs on the navigable waters when its "substance and consummation" take place there, n4 even though the negligent activity occurred on land. n5 Unless covered by the Admiralty Extension Act, as discussed in the next section, where the origin of the wrong is on navigable waters but the consummation and substance of the injury are on land, the admiralty has no jurisdiction. n6 Difficult questions, involving fine distinctions, often arise as to whether the substance and consummation of the wrong or injury occurred on land or on navigable waters. n7 In cases of personal injury, the location of the person at the time of the first impact of the injury is controlling. It has been said, "The cause of action originated and injury had commenced on the ship, the final consummation somewhere being inevitable. It is not of vital importance to the admiralty jurisdiction whether the final injury culminated on the stringpiece of the wharf or in the water." n8 Accordingly, admiralty has assumed jurisdiction of an action for injury to one who, while descending from a ship on to the wharf by means of a ladder provided therefore, was thrown upon the wharf and injured by reason of the ladder's being negligently left unfastened to the rail of the vessel and so slipping while he was descending. n9 Similarly, jurisdiction has been taken of an action for injury to a passenger who, in stepping from the shore end of the gangplank, was thrownforward upon the dock by reason of the negligent placing of the gangplank, the gangplank being treated as part of the vessel. n10 Also, where a longshoreman while at work on a vessel was struck by a swinging cargo hoist and thrown upon the wharf, the Supreme Court held that the maritime cause of action was not altered by the fact that the longshoreman was thrown from the vessel on to the land. n11 And where a longshoreman, who had been working on a wharf putting bales in a sling and chose to ride on the sling with the last load, was fatally injured by being thrown back upon the wharf as a result of the sling's striking either the rail or the side of the ship, it was held that from the time he was lifted from the wharf on the sling by means of the ship's tackle he was under the control of an instrumentality of the ship, and his situation was the same as it would have been had he been physically on board the ship. n12

A converse case is illustrated by *T. Smith & Son v. Taylor*. n13 There a longshoreman, employed in the unloading of a vessel at a dock, was standing upon a stage that rested solely upon the wharf and projected a few feet over the water near the vessel. He was struck by a sling loaded with cargo, which was being lowered over the vessel's side and was knocked into the water where sometime later he was found dead. The Supreme Court held the case to be non-maritime,

saying, "The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death." n14 Unless the injured person is a seaman, the federal courts do not have admiralty jurisdiction over a tort merely because the person injured is engaged in the performance of a maritime contract at the time that he suffers an injury. n15 When an employee working on board a vessel on navigable waters sustains personal injuries there, his rights will be determined by maritime law if the tort bears a significant relationship to traditional maritime activity. But if the employee is injured on land, apart from the provisions of the Longshore and Harbor Workers' Compensation Act, n16 no general maritime rule prescribes the liability, and the local law is applied. n17 As suggested in the previous section, it would be more satisfactory if courts no longer required a maritime locality for those torts that satisfy the nexus requirement.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Tort ActionsGeneral OverviewAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsLongshore & Harbor Workers' Compensation ActAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsMaritime Tort ClaimsAdmiralty LawPractice & ProcedureJurisdictionTortsTransportation TortsWatercraftGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *See* § 175, *infra.*

(n2)Footnote 2. *Evergreen Marine Corp. v. Six Consignments of Frozen Scallops, 4 F.3d 90, 1994 AMC 30 (1st Cir. 1993)* (conversion occurred on land; potential impact on integrity of order bills of lading is not enough to confer jurisdiction); *David Wright Charter Serv. v. Wright, 925 F.2d 783 (4th Cir. 1991)* (injury caused during repair of vessel which was on blocks in a shed located 75 feet from the water does not satisfy the situs test even though a contract for repair of the vessel would have been within the admiralty jurisdiction); Insurance Company of North America v. S/S "Cape Charles," *843 F. Supp. 893 (S.D.N.Y. 1994)* (claim by ocean carrier against trucker for damage to cargo was non-maritime since alleged negligence occurred on land *Braver v. Seabourn Cruise Line, Inc., 808 F. Supp. 1311 (E.D. Mich. 1992)* (state law applied to passenger who fell in pier area after leaving the gangplank area).

See Egorov, Puchinsky, Afanasiev & Juring v. Terriberry, Carroll & Yancey, 183 F.3d 453, 1999 AMC 2573 (5th Cir. 1999) (attorneys for crew members in wage dispute do not have a maritime claim for tortious interference where they cannot show an impact at sea); *Wiedemann & Fransen, A.P.L.C. v. Hollywood Marine, Inc., 811 F.2d 864 (5th Cir. 1987)* (attorneys for Jones Act plaintiff do not have a maritime claim for tortious interference with contract to represent their client); *Corrigan v. Harvey, 951 F. Supp. 948, 1996 AMC 2831 (D. Haw. 1996)* (fight on pier); *Sea Land Indus. v. General Ship Repair Corp., 530 F. Supp. 550, 1982 AMC 2120 (D. Md. 1982)* (negligent maintenance and repair of land-based crane); Capital Leasing, Inc. v. Integrated Container Serv., 1980 AMC 1594 (E.D. La. 1980) (wrongful maritime attachment of cargo containers stored on land lacks maritime locality and lacks requisite nexus).

(n3)Footnote 3. *See In re Mission Bay Jet Sports, LLC, 570 F.3d 1124, 2009 U.S. App. LEXIS 13529 (9th Cir. 2009)* (passengers were injured when thrown from jet skis in area that was restricted to personal watercraft; the area was not enclosed or obstructed); *Wilkins v. Commercial Investment Trust Corp., 153 F.3d 1273 (11th Cir. 1998)* (fraud claims by investors against vessel and vessel owner were non-maritime); *Broughton v. Florida Int'l Underwriters, Inc., 139 F.3d 861 (11th Cir. 1998)* (broker's negligence in placing hull insurance is non-maritime); *Florio v. Olson, 129 F.3d 678 (1st Cir. 1997)* (line handler injured on land after vessel was brought into drydock); *Murillo v. Caddell Dry Dock & Repair Co., 2005 U.S. Dist. LEXIS 15161 (S.D.N.Y. July 26, 2005)* (injury during repair work on vessel on a floating dry dock is within the admiralty jurisdiction); *In re Bridges Enters., 2003 AMC 2811 (S.D. Fla. 2003)* ; *Smith v. Mitlof, 198 F.Supp.2d 492 (S.D.N.Y. 2002)* (torts of fraud and negligent misrepresentation allegedly arising in the sale of a vessel occurred on land where the sale contract was consummated); *Dao v. Knightsbridge Int'l Reinsurance Corp., 15 F. Supp.2d 567 (D.N.J. 1998)* (negligent failure to provide adequate hull insurance and negligent failure to provide survey required by insurance contract did not occur on navigable water); for a definition of navigable water *see* § 142,

supra.

(n4)Footnote 4. *The Plymouth, 70 U.S. (3 Wall.) 20 (1865)* . *In re Chicago Flood Litigation, 719 N.E.2d 1117 (Ill. App. 1999)* (City of Chicago's alleged negligence took effect when company drove a piling into a tunnel wall). One court misapplied the locality rule, holding that the tort occurred where the defendant's wrongful conduct took place rather than where the initial injury happened. *White v. Sabatino, 526 F. Supp.2d 1143 (D. Haw. 2007)* . The case involved a suit for the wrongful death of an automobile driver who was killed by a passenger who had been given too much to drink while on board the vessel. The plaintiff sued among others the county for failing to enforce a liquor control rule. The court held that the alleged tort occurred on the vessel. Having found admiralty jurisdiction the court did not consider it necessary to determine whether it had supplemental jurisdiction. On the merits the court found that the county did not owe a duty to the plaintiff.

(n5)Footnote 5. *East River S.S. Corp. v. Transamerica Delaval Inc., 476 U.S. 858, 1986 AMC 2027 (1986)* (products liability claims for defectively constructed turbines since injury occurred on high seas or were discovered in port); *Taghadomi v. United States, 401 F.3d 1080, 2005 AMC 958 (9th Cir. 2005)* (even though negligent conduct occurred on land, failure of Coast Guard to contact fire department is a maritime tort because injury occurred on navigable waters); *J. Lauritzen A/S v. Dashwood Shipping, Ltd., 65 F.3d 139, 1995 AMC 2730 (9th Cir. 1995)* (tortious interference with maritime contract is non-maritime where tort occurred on land); *Butler v. American Trawler Co., 887 F.2d 20 (1st Cir. 1989)* (because tort occurs where negligence takes effect, not where the negligent act occurred, the maritime locality requirement is satisfied where a wharf's negligence in not providing an adequate ladder caused the plaintiff to suffer injuries on a vessel when she used a ship's rigging to board the vessel); *Taylor v. Kennedy Engine, Inc., 861 F.2d 127 (5th Cir. 1988)* (crane on land damaged ladder on vessel causing seaman to fall on vessel); *Miller v. Penobscot Bay Medical Associates, 836 F. Supp. 31, 1994 AMC 1814 (D. Me. 1993)* (seaman's suit against doctor was maritime where seaman alleged that he was terminated from his employment as a result of an erroneous report of a physical examination performed by the doctor even though examination occured on land since its impact was on the operations of the ship on which he served). *But see Masherah v. Dettloff, 968 F. Supp. 336 (E.D. Mich. 1997)* (maritime locality not satisfied where allegedly negligent medical examination occurred on land even though seaman died of heart attack while at sea); *Miller v. Griffin-Alexander Drilling Co., 685 F. Supp. 960, 1989 AMC 118 (W.D. La. 1988)* , *aff'd, 873 F.2d 809 (5th Cir. 1989)* (distinguishing *Parker v. Gulf City Fisheries, 803 F.2d 828 (5th Cir. 1986)* , alleged medical malpractice committed while seaman was on land does not meet the locality requirement; injury is not on the navigable waters merely because injury may prevent the seaman from returning to work as a seaman).

See McAllister Towing & Transp. Co. v. Thorn's Diesel Serv., 163 F. Supp.2d 1329 (M.D. Ala. 2001) (misrepresentation of condition of marine transmission gear occurred on land even though buyer's contract to resell the gear was maritime contract).

See also Kuehne & Nagel (Ag & Co) v. Geosource, Inc., 874 F.2d 283 (5th Cir. 1989) . The court of appeals held that alleged misrepresentations on land which induced freight forwarders to enter into multi-modal contracts of affreightment did not satisfy the locality requirement even though some of the cargo remained on board vessels at sea. The plaintiff's injury resulted from the carrier's failure to deliver the cargo to its destination. "The fact that some of the cargo sat on the vessels is incidental to the forwarders' damages, most of which related to the added cost of the overland transportation. At best, the injury, if any, that occurred on navigable water was too remote from the tortious act to meet the situs requirement for admiralty jurisdiction." Similarly, in *Atlantic Dry Dock Corp. v. United States, 773 F. Supp. 335 (M.D. Fla. 1991)* , the court held that the situs requirement was not met in an allegation that the federal government made misrepresentations concerning plans and specifications for the overhaul work of two Coast Guard ships. The misrepresentations had their effect on dry dock outside of navigable waters. *See also Parker v. Gulf City Fisheries, Inc., 803 F.2d 828, 1987 AMC 1384 (5th Cir. 1986)* (negligence of doctor on shore allegedly caused injury to ship's captain while at sea); *Carroll v. Protection Maritime Ins. Co., 512 F.2d 4, 1975 AMC 1633 (1st Cir. 1975)* (blacklisting of seaman has effect on navigable waters); *In re Motor Ship Pacific Carrier, 489 F.2d 152, 1974 AMC 227 (5th Cir.)* , *cert. denied, 417 U.S. 931 (1974)* (smoke from shore-based mill obstructed navigation so as to cause

collision with bridge); *Kelly v. United States, 531 F.2d 1144, 1976 AMC 284 (2d Cir. 1976)* (alleged negligence of Coast Guard on land that caused drowning); *American Global Lines v. United States, 645 F. Supp. 783, 1987 AMC 530 (S.D.N.Y. 1986)* (vessel ran aground due to alleged negligence of Coast Guard in granting license to pilot); *American President Lines. Green Transfer & Storage, Inc., 568 F. Supp. 58 (D. Or. 1983)* (negligent loading of container on land that causes damage to container while at sea); *Sawczyk v. United States Coast Guard, 499 F. Supp. 1034, 1982 AMC 560 (W.D.N.Y. 1980)* (it did not matter that no maritime activity had occurred at time of Coast Guard's alleged negligence in failing to inspect raft and equipment).

(n6)Footnote 6. *The Panoil, 266 U.S. 433, 1925 AMC 181 (1925)* ; *Martin v. West, 222 U.S. 191 (1911)* ; *The Troy, 208 U.S. 321 (1908)* ; *Johnson v. Chicago & Pac. Elevator Co., 119 U.S. 388 (1886)* ; *United States v. Matson Nav. Co., 201 F.2d 610, 1953 AMC 272 (9th Cir. 1953)* ; *United States v. The John R. Williams, 144 F.2d 451, 1944 AMC 1061 (2d Cir.) , cert. denied, 323 U.S. 782, 65 S. Ct. 271, 89 L. Ed. 625 (1944)* ; *Portland General Elec. Co. v. United States, 142 F.2d 552, 1944 AMC 777 (9th Cir.) , cert. denied, 323 U.S. 761 (1944)* ; *Maine v. United States, 134 F.2d 574, 1943 AMC 495 (1st Cir.) , cert. denied, 319 U.S. 772 (1943)* ; *National Union Fire Ins. Co. v. United States, 436 F. Supp. 1078, 1977 AMC 1956 (M.D. Tenn. 1977)* ; *Turner Terminal Co. v. United States, 93 F. Supp. 441, 1950 AMC 1857 (S.D. Ala. 1950)* ; *The Nootka Sound, No. V-305-G, 51 F. Supp. 544, 1943 AMC 1145 (W.D. Wash. 1943)* ; *The Russell No. 6, 42 F. Supp. 904, 1941 AMC 1610 (E.D.N.Y. 1941)* .

(n7)Footnote 7. *See, generally, Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 255, 1973 AMC 1, 5-6 (1972)* .

(n8)Footnote 8. *The Strabo, 98 F. 998, 1000 (2d Cir. 1900) , quoted in The Admiral Peoples, 295 U.S. 649, 653, 1935 AMC 875, 878 (1935)* .

(n9)Footnote 9. *The Strabo, 98 F. 998 (2d Cir. 1900)* .

(n10)Footnote 10. *The Admiral Peoples, 295 U.S. 649, 1935 AMC 875 (1935) . See also White v. United States, 53 F.3d 43 (4th Cir. 1995)* (slip from gangway onto pier). There is no admiralty jurisdiction if the plaintiff is injured on a gangway that is permanently affixed to the land. *Bessey v. Carnival Cruise Lines, 579 F. Supp.2d 1377 (S.D. Fla. 2008)* .

(n11)Footnote 11. *Minnie v. Port Huron Terminal Co., 295 U.S. 647, 1935 AMC 879 (1935)* ; *Thompson v. Shell Oil Co., 1988 AMC 485 (D. Or. 1985)* (seaman standing on barge meets the locality requirement even though he was injured while attempting to fasten a line to a defective piling).

(n12)Footnote 12. *L'Hote v. Crowell, 54 F.2d 212, 1932 AMC 27 (5th Cir. 1931) , rev'd on other grounds, 286 U.S. 528, 1932 AMC 145 (1932)* .

(n13)Footnote 13. *276 U.S. 179, 1928 AMC 447 (1928)* .

(n14)Footnote 14. *276 U.S. at 182, 1928 AMC at 449* .

See also Shea v. Rev-Lyn Contracting Co., 868 F.2d 515 (1st Cir. 1989) (maritime locality satisfied where construction worker who was repairing a drawbridge fell onto barge while "riding" a ball of a crane that was attached to the barge); *Whittington v. Sewer Constr. Co., 541 F.2d 427, 1976 AMC 967 (4th Cir. 1976)* (plaintiff fell while dismantling a bridge onto a barge; "the tortious act which caused plaintiff's injuries occurred while he was suspended from a shore-based winch"); *Higgins v. Leland, 839 F. Supp. 374 (D.S.C. 1993)* (shrimper failed to satisfy the nexus requirement where injury commenced on dock, allegedly due to defective board, even though he fell into boat moored at dock and even though he alleged that dock was damaged when it was hit by another vessel on a previous occasion, that vessel not having been made a party to the case).

In *Gillmor v. Caribbean Cruise Line, 789 F. Supp. 488 (D.P.R. 1992)* , the court said that the locality requirement

was satisfied where a crew member on board a vessel directed a passenger to purchase a newspaper on a pier and negligently failed to warn passenger that pier was a high crime area. The court could have more properly reached this result by applying the Admiralty Extension Act. Similarly, in *Doe v. Celebrity Cruises, Inc., 394 F.3d 891, 2005 AMC 214 (11 th Cir. 2004)* the court held that there was admiralty jurisdiction where a crew member aboard a cruise ship raped a passenger on shore after directing her group to a particular bar near the ship and taking her to a park near the ship after 3 am. The court found that the locality requirement was satisfied because it thought that "the shore is now an artificial place to draw a line," quoting *Norfolk Southern Ry. v. James N. Kirby Pty Ltd., 125 S.Ct. 385, 388, 2004 AMC 2705 (2004)* and noting that the incident effectively began and ended aboard the ship. The court also argued that the purposes of admiralty jurisdiction would be served by applying a uniform rule to crewmember assaults on passengers. Again a simple application of the Admiralty Extension Act would have given the court admiralty jurisdiction over the various defendants who were alleged to have been vicariously liable for the assault. The court's reliance on *Kirby* was misplaced as the issue there was whether a contract was maritime.

Cf. Duluth Superior Excursions, Inc. v. Makela, 623 F.2d 1251, 1980 AMC 2518 (8th Cir. 1980) (suit by passenger on a "booze cruise" against the vessel for injuries sustained after disembarking by a fellow passenger's drunken driving was within the Admiralty Extension Act); *Beiswenger Enters. v. Carletta, 779 F. Supp. 160 (M.D. Fla. 1991)* (alleged negligence of vessel caused injuries to parasail rider; although negligence occurred in navigable waters its alleged effect took place both on those waters and on shore, so that the locality requirement was satisfied under the Admiralty Extension Act). *But see In re Catamaran Holdings, LLC, 2010 U.S. Dist. LEXIS 124210 (D. Haw. 2010)* (where crewmember negligently drove his vehicle from one pier to another while working for his employer and injured a pedestrian who was on her way to a passenger excursion vessel the suit against his employer was not caused by a vessel. There was no evidence that the crewmember was acting in the scope of his employment when he drove his vehicle for what may have been his own convenience).

(n15)Footnote 15. *Netherlands Am. Steam Nav. Co. v. Gallaghar, 282 F. 171 (2d Cir. 1922)* .

(n16)Footnote 16. *33 U.S.C. § 901, et seq.*

(n17)Footnote 17. *State Indus. Comm'n v. Nordenholt Corp., 259 U.S. 263 (1922)* ; *Holland v. Sea-Land Serv., 655 F.2d 556, 1981 AMC 2474 (4th Cir. 1981)* , *cert. denied, 455 U.S. 919 (1982)* (state law applies to longshoreman suit against terminal for injuries on land); Martin v. Compagnie Generale Transatlantique, 1982 AMC 2810 (Mass. Super. Ct. 1981) .

A wrongful death action by a seaman's widow against the land-based shipowner's managing company was non-maritime where both the negligent act and the death occurred on land. After the seaman was seriously injured at sea, the defendant failed to arrange to have the seamen evacuated ashore. *Motts v. M/V Green Wave, 25 F. Supp.2d 771, 1999 AMC 1519 (S.D. Tex. 1998)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XI MARITIME TORTS

1-XI Benedict on Admiralty § 173

§ 173. The Admiralty Extension Act.

The traditional rule that tort jurisdiction in admiralty does not extend to damage caused on land n1 was altered in 1948 by a statute. As recodified in 2006, the statute provides that the admiralty jurisdiction "extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable water even though the injury or damage is done or consummated on land." n2 The principal purpose of the Admiralty Extension Act was to remedy the anomalous situation that parties aggrieved by injuries done by ships to persons or property ashore (such as bridges, docks, and the like) could not sue in admiralty even though the damage to ships caused by a land structure was maritime. n3 The Act applies when injury is caused by direct collision between a ship and a bridge n4 or a pier, n5 or by reason of the vessel's running aground, n6 or through the failure of the ship's tackle, appurtenances and equipment, such as by the failure of ships' winches and booms during loading operations. n7 Similarly, damage caused ashore by discharge of ship's waste, n8 by the overflow of cargo of heating oil in harbor waters, n9 or other pollution damage n10 is also covered. Further, the Act applies when damage is caused by negligence of the ship's personnel while operating the ship. n11

In *Gutierrez v. Waterman Steamship Corp.,* n12 the Supreme Court applied the act to a longshoreman unloading a vessel who slipped on beans which had spilled out of bags during unloading. The shipowner was held negligent in allowing cargo so poorly stowed or laden to be unloaded, thereby causing a dangerous condition for the longshoreman. The Court stated:

> "There is no distinction in admiralty between torts committed by the ship itself and by the ship's personnel while operating it, any more than there is between torts committed by a corporation and by its employees. And ships are libeled as readily for an unduly bellicose mate's assault on a crewman... or for having an incompetent crew or master ... as for a collision. Various far-fetched hypotheticals are raised, such as a suit in admiralty for an ordinary automobile accident involving a ship's officer on ship business in port, or for someone's slipping on beans that continue to leak from these bags in a warehouse in Denver. We think it sufficient for the needs of this occasion to hold that the case is within the maritime jurisdiction under *46 U.S.C. § 740* when, as here, it is alleged that the shipowner commits a tort while or before the ship is being unloaded, and the impact of which is felt ashore at a time and place not remote from the wrongful act." n13

An injury on a pier by pier-based equipment remains outside the scope of the Admiralty Extension Act, and the Supreme Court has rejected attempts to extend admiralty jurisdiction to injuries to longshoremen in such cases. n14 The Admiralty Extension Act applies not only to claims against the vessel but to claims against third parties when "caused by a vessel." Whether the claim is against the ship or a third party, the courts have held that there must be some fault attributable to the vessel for the court to have jurisdiction under the Act. n15 To be covered by the Admiralty Extension Act, the vessel must be upon the navigable waters at the time it causes injury. n16 Several lower courts have held that a tort must have a significant relationship to traditional maritime activity for the court to have admiralty jurisdiction under the Act. n17 One could argue that Congress did not intend to impose a maritime nexus requirement in the Act. At the time that the Act was passed, it was generally thought that no maritime nexus was required. And under the *Commerce Clause,* Congress could extend admiralty jurisdiction without requiring a maritime nexus. n18 But the principle underlying the Act is that the torts consummated on land are not, for that reason, any less entitled to be considered maritime than torts consummated at sea. There is no reason to think that torts consummated on land are to be preferred. In the absence of a clear Congressional directive to the contrary, it makes sense to require the same nexus for torts consummated on land as for those consummated on the navigable waters.

The Admiralty Extension Act provides that in respect of any claim against the United States for damage or injury done or consummated on land by a vessel on navigable waters, "a civil action ... may not be brought until the expiration of the 6-month period after the claim has been presented in writing to the agency owning or operating the vessel causing the injury or damage." n19 The purpose of such a notice is clearly to give the government an opportunity to investigate the claim departmentally and to settle it. n20 The notice must be in writing, and an oral notice will not suffice. n21 The presentation of a written claim is a jurisdictional matter. n22 The expression "agency owning or operating the vessel" is not defined. Although the words "operating the vessel" are likely to cause difficulty, their import has been thoroughly analyzed in *J.W. Petersen Coal & Oil Co. v. United States.* n23 The conclusion is that a vessel may be considered as "operated by the United States" only when there is substantial and extensive operation or direction by government personnel, "something closer to a time charter where the government directs the vessel's overall functions even though the owner may control the operation of the vessel's personnel and equipment rather than a single purpose contract entered into with an independent contractor." n24

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Tort ActionsGeneral OverviewAdmiralty LawPersonal InjuriesMaritime Tort ActionsNegligenceGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawSovereign Immunity & LiabilityFederal GovernmentSuits in Admiralty ActProcedureAdmiralty LawSovereign Immunity & LiabilityFederal GovernmentSuits in Admiralty ActScope

FOOTNOTES:

(n1)Footnote 1. *Martin v. West, 222 U.S. 191 (1911)* ; *The Troy, 208 U.S. 321 (1908)* ; *Cleveland Terminal & Valley R.R. v. Cleveland S.S. Co., 208 U.S. 316 (1908)* ; *The Plymouth, 70 U.S. (3 Wall.) 20 (1866)* .

(n2)Footnote 2. *46 U.S.C. § 30101*. The provisions of the statute are as follows:

§ 30101. Extension of jurisdiction to cases of damage or injury on land

(a) In general. The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.

(b) Procedure. A civil action in a case under subsection (a) may be brought in rem or in personam according to the principles of law and the rules of practice applicable in cases where the injury or damage has been done and consummated on navigable waters.

(c) Actions against United States.

(1) Exclusive remedy. In a civil action against the United States for injury or damage done or consummated on land by a vessel on navigable waters, chapter 309 or 311 of this title [*46 USCS §§ 30901 et seq.* or *31101 et seq.*], as appropriate, provides the exclusive remedy.

(2) Administrative claim. A civil action described in paragraph (1) may not be brought until the expiration of the 6-month period after the claim has been presented in writing to the agency owning or operating the vessel causing the injury or damage.

The earlier statute, *46 U.S.C. § 740*, read:

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: *Provided*, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: *Provided further*, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage. (June 19, 1948, ch. 526, 62 Stat. 496.).

The Act is constitutional. *United States v. Matson Navigation Co., 201 F.2d 610, 1953 AMC 272 (9th Cir. 1953)* ; *Fematt v. City of Los Angeles, 196 F. Supp. 89, 1961 AMC 2391 (S.D. Cal. 1961)* ; *American Bridge Co. v. The Gloria O, 98 F. Supp. 71, 1951 AMC 1388 (E.D.N.Y. 1951)* .

The Act was applied by the Supreme Court without question in *Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 1963 AMC 1649 (1963)* . And the Act was referred to by the *Supreme Court in Victory Carriers v. Law, 404 U.S. 202, 209-10, 1972 AMC 1, 8 (1971)* .

The Act has no official title. It is sometimes referred to as the Extension of Admiralty Jurisdiction Act.

(n3)Footnote 3. H.R. Rep. No. 1523, 80th Cong., 2d Sess. 2 (1948). *See also Victory Carriers v. Law, 404 U.S. 202, 1972 AMC 1 (1971)* ; *Nacirema Operating Co. v. Johnson, 396 U.S. 212, 1969 AMC 1967 (1969) . See generally,* Galligan, *The Admiralty Extension Act at Fifty, 29 J. Maritime L. & Commerce 495 (1998).*

It has been held that the *Seventh Amendment*, which requires a jury trial in suits at common law, applies to claims brought under the *Admiralty Extension Act. South Port Marine, LLC v. Gulf Oil Ltd Partnership, 56 F. Supp.2d 104, 1999 AMC 2113* (D. Me. 1999). *Contra American Bridge Co. v. The Gloria O, 98 F. Supp. 71 (E.D.N.Y. 1951)* .

(n4)Footnote 4. *Empire Seafoods, Inc. v. Anderson, 398 F.2d 204 (5th Cir.) , cert. denied, 393 U.S. 983 (1968)* ; *In re J.E. Brenneman Co., 782 F. Supp. 1021 (E.D. Pa. 1992)* ; Selim v. Naviera Aznar, S.A., 1976 AMC 673 (N.D. Ohio 1976) (injured painters on bridge); *Minnesota Dept. of Highways v. M/V Santee, 353 F. Supp. 409 (D. Minn. 1973)* ; *Palumbo v. Boston Tow Boat Co., 21 Mass. App. 414, 487 N.E.2d 546 (1986)* .

(n5)Footnote 5. *In re New York Rock Corp., 172 F. Supp. 638 (S.D.N.Y. 1959)* ; *Shell Oil Co. v. S.S. Tynemouth, 211 F. Supp. 908 (E.D. La. 1962)* ; *Sulphur Terminals Co. v. Pelican Marine Carriers, 281 F. Supp. 570 (E.D. La. 1968)* ; *Hinfin Realty Corp. v. M/V Poling Bros. No. 7, 348 F. Supp. 1391, 1972 AMC 2465 (E.D.N.Y. 1972) . See Nyon Technical Commercial, Inc. v. Equitable Equip. Co., 341 F. Supp. 777, 1972 AMC 2302 (E.D. La. 1972)* (the admiralty court accepted jurisdiction of a suit for trespass on plaintiff's wharf).

(n6)Footnote 6. *Dean v. Shamo, 2008 U.S. Dist. LEXIS 22774 (E.D. Mich. Mar. 25, 2008)* (vessel became airborne and landed about 100 feet from the shoreline); *Blanchard v. American Commercial Barge Line Co., 343 F. Supp. 920 (M.D. La.) , aff'd, 468 F.2d 950 (5th Cir. 1972)* .

(n7)Footnote 7. *Strika v. Netherlands Ministry of Traffic, 185 F.2d 555, 1951 AMC 84 (2d Cir. 1950) , cert. denied, 341 U.S. 904 (1952)* ; *Hagans v. Farrell Lines, 237 F.2d 477, 1956 AMC 2133 (3d Cir. 1956)* .

(n8)Footnote 8. *Hovland v. Fearnley & Eger, 110 F. Supp. 657, 1952 AMC 1953 (E.D. Pa. 1952)* .

(n9)Footnote 9. *In re New Jersey Barging Corp., 168 F. Supp. 925, 1959 AMC 2532 (S.D.N.Y. 1958)* .

(n10)Footnote 10. *Louisianaex rel. Guste v. M/V Testbank, 752 F.2d 1019, 1985 AMC 1521 (5th Cir. 1985) (en banc) , cert. denied, 106 S.Ct. 3271 (1986)* ; *In re Exxon Valdez, 767 F. Supp. 1509, 1991 AMC 1482 (D. Alaska 1991)* .

(n11)Footnote 11. To hold the ship's personnel liable under the Admiralty Extension Act it is not sufficient that they have acted negligently aboard the vessel, but their acts must have been connected with the vessel's service. *Clinton v. Joshua Hendy Corp., 285 F.2d 199, 1961 AMC 727 (9th Cir. 1960)* (admiralty had no jurisdiction to entertain an action against the chief mate of defendant's vessel who had written a libelous letter aboard the ship).

(n12)Footnote 12. *373 U.S. 206, 1963 AMC 1649 (1963)* .

(n13)Footnote 13. *373 U.S. at 210, 1963 AMC at 1652-53* (citations and footnote omitted). In 2006, the Admiralty Extension Act was recodified as *46 U.S.C. § 30101*. The court gave short shrift to the defense that the ship owners did not control the pier or have even the right to control the pier, saying: "The man who drops a barrel out of his loft need not control the sidewalk to be liable to the pedestrian whom the barrel hits." *373 U.S. at 211, 1963 AMC at 1654 . See also Burrage v. Flota Mercante Grancolombiana, S.A., 431 F.2d 1229, 1970 AMC 2254 (5th Cir. 1970)* ; *Christiansen v. Big Island Fish Connection, Inc., 885 F. Supp. 207, 1995 AMC 669 (D. Hawaii 1994)* (sea captain slipped on fish slime left on dock).

(n14)Footnote 14. *Efferson v. Kaiser Alluminum & Chemical Corp, 816 F. Supp. 1103 (E.D. La. 1993)* .

Victory Carriers v. Law, 404 U.S. 202, 213-14, 1972 AMC 1 (1971) ("In the present case ... the typical elements of a maritime cause of action are particularly attenuated: respondent Law was not injured by equipment which was part of the ship's usual gear or which was stored on board, the equipment which injured him was in no way attached to the ship, the fork lift was not under the control of the ship or its crew, and the accident did not occur aboard ship or on the gang plank.").

See also Nacirema Operating Co. v. Johnson, 396 U.S. 212, 1969 AMC 1967 (1969) ; *McCullum v. United Int'l Corp., 493 F.2d 501 (9th Cir. 1974)* ; *Garrett v. Gutzeit O/Y, 491 F.2d 228, 1972 AMC 319 (4th Cir. 1974)* (cargo container is appurtenance of the vessel); *Snydor v. Villain & Fassio et Compania Internazionale di Genova Societa Reunite di Naviagaione, S.P.A., 459 F.2d 365 (4th Cir. 1972)* ; *Cannida v. Central Gulf S.S. Corp., 452 F.2d 949, 1972 AMC 370 (3d Cir. 1971)* ; *Kent v. Shell Oil Co., 286 F.2d 746, 1961 AMC 1671 (5th Cir. 1961)* (Admiralty Extension Act did not apply to truck driver who was injured while unloading his truck using skids running from the truck to the defendant's barge); *Feehan v. United State Lines, Inc., 522 F. Supp. 811, 1982 AMC 364 (S.D.N.Y. 1981)* (no admiralty jurisdiction over suit against manufacturer of straddle carrier which caused injury on pier; even if vessel's supervision of loading procedures caused injury, manufacturer did not contribute to the inadequate supervision and claim against manufacturer did not arise out the condition that might render the injury vessel-caused); *Boyd v. American Export Isbrandtsen Lines, 375 F. Supp. 1052, 1973 AMC 2203 (E.D. Va. 1973)* (Admiralty has no jurisdiction where "the plaintiff was injured on land, while unstuffing a container located in a warehouse approximately one-half mile from the pier. Delivery had been completed by the vessel. The vessel had departed ... several days prior to the accident. The stripping of the container was not arranged for by the shipowner; nor did it have any connection with the vessel; its machinery or equipment; its crew, or its loading or unloading. [The shipowner] had no authority to break the seal which had been placed on the container by the shipper to ascertain if the cargo had been properly loaded."); *May v. Lease Serv., 365 F. Supp. 1202 (E.D. La.) , aff'd, 487 F.2d 915 (5th Cir. 1973)* (No admiralty jurisdiction where plaintiff was injured by an electric drill which received its motive power from a cable connection with the vessel. "Admittedly, the power line connection that existed in the instant case was a more substantial link with the vessel than were the guy wires [in *Davis v. W. Bruns & Co., supra*]. Nevertheless, the crane and winch were permanently affixed to the platform. The drill was not equipment carried by the [defendant's vessel], but was brought onto the platform from another boat. The missing safety plate, which plaintiff contends caused the drill to buck and, consequently, plaintiff to fall, was supposed to be left at all times on the platform. And all of this equipment--crane, winch, drill, and safety plate--were the property of Mobil Oil Corporation.") *Torres v. Hamburg-Amerika Line, 353 F. Supp. 1276 (D.P.R. 1972)* (defective cargo container is appurtenance); *Jones v. Fruchtreederei Harald Schuldt & Co., 347 F. Supp. 853, 1973 AMC 1153 (E.D. La. 1972) , aff'd sub nom. Davis v. W. Bruns. & Co., 476 F.2d 246, 1973 AMC 1148 (5th Cir. 1973)* (Injury occurred to shore-based worker when banana boxes on conveyor belt jammed and fell. There was no action under the Admiralty Extension Act even though the conveyor was connected to the vessel by two guy wires and its control switches were located aboard the vessel. District Court: "[A]ctual causation of the injuries by the vessel, its crew, or its appurtenances is the real test of the parameters of the Admiralty Jurisdiction Extension Act, not potential control by the vessel or crew over the injury causing instrumentality ... In this case the fact that the control switches were placed aboard ship as a safety measure is a mere circumstance, not a factor that contributed in any way to the injury." Court of Appeals: "[T]he facility here was permanently affixed to the shore, it was not an appurtenance of the ship, and it was never disconnected from the shore."). *But see Gebhard v. S.S. Hawaiian Legislator, 425 F.2d 1303, 1970 AMC 2056 (9th Cir. 1970)* ("straddle carrier" is an appurtenance of the vessel). The 1972 amendments to the Longshore and Harbor Workers' Compensation Act have extended the coverage of the Act to injuries occurring on navigable waters of the United States as well as "any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel." *33 U.S.C. § 903(a)*. The effect of the Act has been to furnish a compensation schedule for disability or death of pier-side workers acting within the scope of their employment and, under *33 U.S.C. § 905(b)*, deprive them of their former remedy for unseaworthiness as *Sieracki* seamen. Any wrker who is covered by the Longshore Workers' Act may now sue the vessel only for negligence.

(n15)Footnote 15. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043 (1995)* (not imposing a temporal or spatial limitation in addition to the traditional "proximate cause" requirement); *Margin v. Sea-Land Servs., 812 F.2d 973 (5th Cir. 1987)* ; *Pryor v. American President Lines, 520 F.2d 974, 1975 AMC 1345 (4th Cir. 1975)* ; *Bay Casino, LLC v. M/V Royal Empress, 199 F.R.D. 464, 2000 AMC 502 (E.D.N.Y. 1999)* ; *Maryland Port Admin. v. S.S. American Legend, 453 F. Supp. 584, 1978 AMC 1423 (D. Md. 1978)* ; *Park v. Unites States Lines, 50 Md. App. 389, 1983 AMC 216 (1981) . See Karpovs v. Mississippi, 663 F.2d 640, 1982 AMC 1956*

(5th Cir. Unit A Dec. 1981) (drawbridge being opened to permit passage of vessels crushed plaintiff's decedent's car, not caused by a vessel within meaning of Act); *Adams v. Harris County, 452 F.2d 994, 1972 AMC 1320 (5th Cir. 1971) , cert. denied, 406 U.S. 968 (1972)* (the negligent raising of a drawbridge by a bridgekeeper resulting in personal injury to a motorcyclist could not be said to have been the fault of the vessel for whose benefit the drawbridge had been raised). *See* Tokyo Marine & Fire Ins. Co. v. Perez & Cia de Puerto Rico, 893 F. Supp. 132, 1996 AMC 607 (D.P.R. 1995) . *But see Egorov, Puchinsky, Afanasiev & Juring v. Terriberry, Carroll & Yancey, 183 F.3d 453, 1999 AMC 2273 (5th Cir. 1999)* (to be within the Admiralty Extension Act, damage must be caused by the vessel or her appurtenances, not merely those acting for the vessel; lawyers for crew members did not have a maritime claim for tortious interference with the contract between them and their clients).

(n16)Footnote 16. *See David Wright Charter Serv. v. Wright, 925 F.2d 783 (4th Cir. 1991)* ; *Boudloche v. Conoco Oil Corp., 615 F.2d 687, 1981 AMC 1980 (5th Cir. 1980)* (injured on shore while removing boat from river); *Delome v. Union Barge Line Co., 444 F.2d 225, 1971 AMC 1369 (5th Cir.) , cert. denied, 404 U.S. 995 (1971)* (vessel in drydock is no longer on navigable waters).

(n17)Footnote 17. *Christensen v. Georgia-Pacific Corp., 279 F.3d 807, 2002 AMC 633 (9th Cir. 2002)* (longshoreman on land injured his back while pulling on line in attempt to rescue vessel that was adrift; since his injury was caused by a vessel on navigable waters it satisfied the location test for a maritime tort); *White v. United States, 53 F.3d 43 (4th Cir. 1995)* (dictum); *Great Lakes Dredge & Dock Co. v. City of Chicago, 3 F.3d 225, 1993 AMC 2409 (7th Cir. 1993)* ; *Crotwell v. Hockman-Lewis, Ltd., 734 F.2d 767 (11th Cir. 1984)* ; *Sohyde Drilling & Marine Co. v. Coastal States Gas Producing Co., 644 F.2d 1132, 1982 AMC 2644 (5th Cir.) , cert. denied, 454 U.S. 1081 (1981)* ; *Efferson v. Kaiser Alluminum & Chemical Corp, 816 F. Supp. 1103 (E.D. La. 1993)* (extensions of land, like a dock, are not within the admiralty jurisdiction); *Beiswenger Enters. v. Carletta, 779 F. Supp. 160 (M.D. Fla. 1991)* ; *Dean v. Maritime Overseas Corp., 770 F. Supp. 309 (E.D. La. 1991)* ; *Felix v. Arizona Dept. of Health Servs., 606 F. Supp. 634 (D. Ariz. 1985)* ; *Jorsch v. Le Beau, 449 F. Supp. 485, 1978 AMC 1452 (N.D. Ill. 1978)* ; *Heim v. City of N.Y., 442 F. Supp. 35 (E.D.N.Y. 1977)* ; *Roberts v. Grammer, 432 F. Supp. 16 (E.D. Tenn. 1977)* ; *In re Cook Transp. Sys., 431 F. Supp. 437 (W.D. Tenn 1976) . But see Tagliere v. Harrah's Ill. Corp., 445 F.3d 1012 (7th Cir. 2006)* (no nexus required under the Admiralty Extension Act); David W. Robertson & Michael F. Sturley, *The Admiralty Extension Act Solutio* n, *34 J. Mar. L. & Com. 209 (2003).*

The Supreme Court has not decided the issue. *See Foremost Ins. Co. v. Richardson, 457 U.S. 668, 677 n. 7, 1982 AMC 2253, 2260 (1982)* . But it seems to leaning strongly in the direction of requiring a nexus in all maritime actions. In *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043 (1995)* the Court said described the Admiralty Extension Act as "congressional modification to gather the odd case into admiralty." *Id. at 1048* . It further said that to satisfy the locality requirement under *28 U.S.C. § 1333(1)* the tort must either occur on navigable water or be caused by a vessel on navigable water, citing the Admrialty Extension Act. *Id*. But because the Court found jurisdiction under *28 U.S.C. § 1333(1),* it did not consider whether the Admiralty Extension Act "provides an independent basis of federal jurisdiction." *Id. at 1053 n.5* .

(n18)Footnote 18. *See Executive Jet Aviation v. City of Cleveland, 409 U.S. 249, 1973 AMC 1 (1972)* .

(n19)Footnote 19. *See* text of statute, *supra* n. 2.

(n20)Footnote 20. *In re Ingram Barge Co., 435 F. Supp. 2d 524 (E.D. La. 2006)* (claims that the United States was liable for damage caused by failing to sink a barge that ran into a levee during the flooding that ravaged New Orleans after Hurricane Katrina was governed by the Admiralty Extension Act); *Carr v. United States, 136 F. Supp. 527 (E.D. Va. 1955)* .

(n21)Footnote 21. *Hahn v. United States, 218 F. Supp. 562 (E.D. Va. 1963)* .

(n22)Footnote 22. *Id. Saint Paul Fire & Marine Ins. Co. v. United States, 28 F. Supp.2d 472, 1998 AMC 2254*

(E.D. Tenn. 1998) .

(n23)Footnote 23. *323 F. Supp. 1198, 1970 AMC 1763 (N.D. Ill. 1970)* .

(n24)Footnote 24. *323 F. Supp. at 1206, 1970 AMC at 1772 , quoted in Trautman v. Buck Steber, Inc., 693 F.2d 440 (5th Cir. 1982)* (construing the phrase "operated by or for the United States" in the Suits in Admiralty Act, *46 U.S.C. § 741*).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XI MARITIME TORTS

1-XI Benedict on Admiralty § 174

§ 174. Damages to Fixed Structures in Navigable Waters.

In the absence of legislation to the contrary, satisfaction of the locality requirement for admiralty jurisdiction over torts occurring on or in relation to fixed structures on navigable waters has depended upon whether the structure is deemed to be part of the land or not. n1 The Admiralty Extension Act n2 has diminished the importance of the distinction. As discussed in the previous section, this Act provides that admiralty jurisdiction includes all cases of damage to property "caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land." When this provision is applicable, the legal status of a fixed structure involved in the tort is therefore of no consequence; n3 where, however, the instrumentality causing the tort is not a vessel on navigable water, the legal status of the structure is essential for determining whether the locality requirement for establishing admiralty jurisdiction is met. n4 Any structure permanently attached to the mainland is regarded as an extension of the mainland. On this basis, piers, wharves, docks, jetties and landings, bridges and other similar structures are held to be extensions of land even though their use and purpose is maritime. n5

The first case to be litigated in the Supreme Court of a structure completely surrounded by water was *The Blackheath,* n6 involving a collision between a vessel and a beacon resulting in damage to the beacon. Although conceding "there is no question that [the beacon] was attached to the realty and that it was part of it by the ordinary criteria of the common law," n7 the Court made the following exception:'

> "It is enough to say that we now are dealing with an injury to a government aid to navigation from ancient times subject to the admiralty, a beacon emerging from the water, injured by the motion of the vessel, by a continuous act beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of the sea. In such a case jurisdiction may be taken without transcending the limits of the Constitution or encountering *The Plymouth* or any other authority binding on this court." n8

The premise that artificial structures attached to the bottom of the sea and protruding over the surface become land for the purpose displacing admiralty jurisdiction is open to question. The soil lying below the line of ordinary high tide, and *a fortiori* below the line of low tide, has traditionally been regarded by the law as water, not land. n9 Nonetheless, the criterion of *The Blackheath* was confirmed and extended in *The Raithmoor* n10 to cover a structure in navigable water

in the course of construction and intended to be an aid to navigation. n11 In *The Poughkeepsie,* n12 the court considered it as established that platforms in navigable waters surrounded by water displaced admiralty jurisdiction in relation to any tort damage to or on it since "[t]he project which the libellant was engaged in is not even suggestive of maritime affairs. It was supplying water to a city and the mere fact of the means being carried under the bed of a river, with extensions through the river to the surface, did not create any maritime right nor was it in any sense an aid to navigation, which was the distinguishing feature of *The Blackheath*." n13 In *Rodrigue v. Aetna Casualty & Surety Co.,* n14 the Supreme Court confirmed its adoption of this reasoning, and held that under the Outer Continental Shelf Lands Act, n15 the conventional admiralty principles do not apply to occurrences on the artificial islands and fixed structures on the continental shelf. n16 The Court's reasoning has been applied to artificial islands not covered by the Lands Act. n16.1 But damage to artificial islands and fixed structures by vessels is covered by the Admiralty Extension Act and is governed by admiralty law. n17

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Tort ActionsGeneral OverviewAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsOuter Continental Shelf Lands ActAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawSovereign Immunity & LiabilityFederal GovernmentSuits in Admiralty ActScope

FOOTNOTES:

(n1)Footnote 1. *T. Smith & Co. v. Taylor, 276 U.S. 179, 1928 AMC 447 (1928)* ; *The Plymouth, 70 U.S. (3 Wall.) 20 (1865)* ; *In re Pennsylvania R.R. (The Brinton), 48 F.2d 559, 1931 AMC 852 (2d Cir.) , cert. denied, 284 U.S. 640 (1931)* ; *Netherlands Am. Steam Nav. Co. v. Gallagher, 282 F. 171 (2d Cir. 1922)* ; *Smalls v. Atlantic Coast Shipping Co., 261 F. 928 (E.D. Va. 1919)* ; *The Albion, 123 F. 189 (D. Wash. 1903)* ; *Price v. The Belle of the Coast, 66 F. 62 (E.D. La. 1894)* ; *The Mary Garrett, 63 F. 1009 (N.D. Cal. 1894)* ; *The Mary Stewart, 10 F. 137 (E.D. Va. 1881)* ; *Nacirema Operating Co. v. Johnson, 396 U.S. 212, 1969 AMC 1967 (1969)* (piers, like bridges, are not transformed from land structures into floating structures by the mere fact that vessels may pass beneath them).

Longshoreman's injury on pier caused by stevedore-employer's equipment is not within admiralty jurisdiction. *Victory Carriers Inc. v. Law, 404 U.S. 202, 1972 AMC 1 (1971)* ; *Chagois v. Lykes Bros. S.S. Co., 457 F.2d 343 (5th Cir. 1972)* ; *Cooper v. Australian Coastal Shipping Comm'n, 338 F. Supp. 1056, 1972 AMC 1912 (E.D. Pa. 1972) . See also Snydor v. Villain & Fassio et Compania Int. Di Genova, etc., 459 F.2d 365, 1972 AMC 1143 (4th Cir. 1972) .*

Leather's Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800, 1971 AMC 2383 (2d Cir. 1971) (shipper's claim against terminal operator for negligent loss of a container of cargo is not a maritime claim); *Union Marine & Gen. Ins. Co. v. American Export Lines, 274 F. Supp. 123, 1967 AMC 924 (S.D.N.Y. 1966)* (negligent guarding of cargo unloaded on to a pier is not a maritime tort); *Kent v. Shell Oil Co., 286 F.2d 746, 1961 AMC 1671 (5th Cir. 1961)* (injury on pier caused where pipe rolled off truck injuring truck driver is not a maritime injury); *Salmond v. Isbrandtsen Co., Inc., 286 A.D. 1015, 144 N.Y.S.2d 578, 1955 AMC 2334 (1955) , cert. denied, 351 U.S. 968 (1956)* (injury to shore workman loading truck on pier by a cracked block being discharged from vessel to the truck is not governed by maritime law where injury was not caused by vessel and no proof of unseaworthiness was shown); *Bird v. S.S. Fortuna, 232 F. Supp. 690, 1964 AMC 2394 (D. Mass. 1964)* (an action in tort by consignee against wharf owner for negligent damage to shipment after discharge from vessel is not justiciable in admiralty); *Bird v. S.S. Fortuna, 250 F. Supp. 494, 1965 AMC 1765 (D. Mass. 1965)* (damage to cargo on a pier caused by water leaking from a defective pier roof is not cognizable within the admiralty jurisdiction, even though the cargo was moving in interstate commerce, because both the alleged negligence and the damage took effect on land); *Toups v. Texaco, Inc., 317 F. Supp. 579 (W.D. La. 1970)* (a permanent fixed platform located in a bay within the territorial jurisdiction of a state is an artificial island, and admiralty lacks jurisdiction over injuries occurring on it); *Cookmeyer v. Louisiana Dept. of Highways, 433 F.2d 386, 1972 AMC 1120 (5th Cir. 1970) , cert. denied, 401 U.S. 980 (1971)* (admiralty does not have jurisdiction where plaintiff fell from his motorcycle while crossing a pontoon bridge). *See also Adams v. Harris County, 452 F.2d 994, 1972 AMC 1320 (5th*

Cir. 1971) , cert. denied, 406.S. 968 (1972). Complaint that rust damage to cargo was caused by the City's negligence in leaving cargo in open storage on the pier exposed to the elements does not state a tort within the admiralty jurisdiction. The further contention that the City negligently failed to notify plaintiff that the goods had received customs clearance and could be picked up was likewise insufficient to invoke admiralty jurisdiction. *Howmet Corp. v. Tokyo Shipping Co., 320 F. Supp. 975, 1971 AMC 1987 (D. Del. 1971)* .

(n2)Footnote 2. *46 U.S.C. § 30101* (formerly *46 U.S.C. § 740*).

(n3)Footnote 3. *Sekco Energy, Inc. v. MV Margaret Chouest, 820 F. Supp. 1008 (E.D. La. 1993)* .

See Rodrigue v. Aetna Cas. & Surety Co., 395 U.S. 352, 360, 1969 AMC 1082, 1088 (1969) .

(n4)Footnote 4. *Hastings v. Mann, 340 F.2d 910, 1965 AMC 549 (4th Cir.) , cert. denied, 380 U.S. 963 (1965)* .

(n5)Footnote 5. *Id. See also Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352, 1969 AMC 1082 (1969)* ; *Ryan v. United States, 304 F. Supp.2d 678, 2004 AMC 749 (D. Md. 2003)* ; *Ellis v. Riverport Enters., Inc., 957 F. Supp. 105, 1997 AMC 2264 (E.D. Ky. 1997)* (a floating walkway that connects a dock to the land is an extension of the land); *Dirma v. United States, 695 F. Supp. 714 (E.D.N.Y. 1988)* (injury on vessel in dry dock affixed to shore does not satisfy the locality requirement for admiralty jurisdiction).

(n6)Footnote 6. *195 U.S. 361 (1904)* .

(n7)Footnote 7. *Id. at 364* .

(n8)Footnote 8. *Id. at 367-68* .

(n9)Footnote 9. *Lorino v. Crawford Packing Co., 142 Tex. 51, 175 S.W.2d 410 (1943)* ; *De Meritt v. Robison, 102 Tex. 358, 116 S.W. 795 (1909)* .

(n10)Footnote 10. *241 U.S. 166, 36 S. Ct. 514, 60 L. Ed. 937 (1916)* .

(n11)Footnote 11. On the authority of these cases jurisdiction of the admiralty was in *Doullut & Williams Co. v. United States, 268 U.S. 33, 1925 AMC 641 (1925)* , sustained where "[t]he damaged piles constituted no part or extension of the shore as wharves, bridges and piers do. Although driven into the bottom of the river and attached in that way only to the land, they were completely surrounded by the navigable water and were used exclusively as aids to navigation." On the other hand in the *Panoil, 266 U.S. 433, 1925 AMC 181 (1925)* , where it was suggested that the purpose of a dike was to facilitate navigation, the Supreme Court distinguished the case on the ground that "[t]he dike constitutes an extension of the shore and must be regarded as land" and it was not enough that the dike "may affect the flow of the water and thereby ultimately facilitate navigation. ..."

(n12)Footnote 12. *162 F. 494 (S.D.N.Y.) , aff'd mem., 212 U.S. 558 (1908)* .

(n13)Footnote 13. *162 F. at 496* .

(n14)Footnote 14. *395 U.S. 352, 1969 AMC 1082 (1969) . See also Hufnagel v. Omega Service Indus., Inc., 182 F.3d 340 (5th Cir. 1999)* .

(n15)Footnote 15. *43 U.S.C. § 1333 et seq.*

(n16)Footnote 16. *Texaco Exploration & Prod., Inc. v. AmClyde Engineered Prods. Co., 448 F.3d 760 (5th Cir.) , on reh'g, 453 F.3d 652 (5th Cir. 2006)* (products liability action arising during construction of tower designed to be permanently fixed to outer continental shelf is governed by OCSLA and is not within the admiralty jurisdiction; the traditional maritime transportation had been completed at the time of the loss; the grant of jurisdiction under OCSLA is

to be read broadly). By contrast, the Fifth Circuit held that an offshore oil worker's suit for injuries aboard a lifeboat, although jacked up and not "under sail," was within the court's admiralty jurisdiction. The worker asserted that his injury was caused by the cluttered and unsafe condition of the lifeboat deck. *Strong v. B.P. Exploration & Prod., Inc., 440 F.3d 665, 2006 AMC 599 (5th Cir. 2006)* .

(n17)Footnote 16.1. *See Terry v. Raymond Int'l, Inc., 658 F.2d 398, 1982 AMC 2053 (5th Cir. Unit A Oct. 1981)* , *cert. denied, 456 U.S. 928 (1982)* (injury on offshore platform in North Sea is not governed by admiralty law since island platform is extension of subsoil); *Graham v. Freeport Sulphur Co., 962 F. Supp. 82 (E.D. La. 1997)* .

(n18)Footnote 17. *Marathon Pipe Line Co. v. Drilling Rig Rowan-Odessa, 761 F.2d 229, 1986 AMC 2343 (5th Cir. 1985)* ; *Continental Oil Co. v. London S.S. Owners' Mut. Ins. Ass'n, 417 F.2d 1030, 1969 AMC 1882 (5th Cir. 1969) , cert. denied, 397 U.S. 911 (1970)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XI MARITIME TORTS

1-XI Benedict on Admiralty § 175

§ 175. Torts Depending Upon Maritime Status.

A principle which is in the process of evolution but whose dimensions are not clearly established excepts from the locality rule torts arising out of maritime status or relation. Prior to the adoption of the Jones Act in 1920, seamen had no right to recover an indemnity for personal injuries inflicted through the negligence of the master or other members of the crew unless the vessel was unseaworthy. n1 The Jones Act gives seamen the right to maintain an action for damages at law for personal injuries resulting from the negligence of his employer, his agents or employees. In *O'Donnell v. Great Lakes Dredge & Dock Co.,* n2 the Supreme Court held that a seaman injured on shore while in the service of his vessel was entitled to recover for his injuries under the Jones Act. The Court pointedly observed:

> From its dawn, the maritime law had recognized the seaman's right to maintenance and cure for injuries suffered in the course of his service to his vessel, whether occurring on sea or land. ...
>
> Some of the grounds for recovery of maintenance and cure would in modern terminology be classified as torts. But the seaman's right was firmly established in the maritime law long before recognition of the distinction between tort and contract. ...
>
> The right of recovery in the Jones Act is given to the seaman as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters.
>
> Since the subject matter, the seaman's right to compensation for injuries received in the course of his employment, is one traditionally cognizable in admiralty, the Jones Act, by enlarging the remedy, did not go beyond modification of substantive rules of the maritime law well within the scope of the admiralty jurisdiction whether the vessel, plying navigable waters, be engaged in interstate commerce or not. n3

Building on *O'Donnell* and lower court cases, n4 the Supreme Court, in *Gutierrez v. Waterman Steamship Corp.*, n5 held "that the duty to provide a seaworthy ship and gear, including cargo containers, applies to longshoremen unloading the ship whether they are standing aboard ship or on the pier." n6 The Court dealt separately with the question of maritime jurisdiction, concluding that the Admiralty Extension Act conferred such jurisdiction for torts committed by a

ship's personnel that take effect on land. n7 The notion that admiralty jurisdiction would extend to any unseaworthiness action was cut short in *Victory Carriers, Inc. v. Law*. n8 There, the Court held that the admiralty jurisdiction does not extend to an unseaworthiness action by a longshoreman for injuries on a pier caused by defective equipment belonging to the stevedore. The Court explained,

> The decision in *Gutierrez* turned, not on the 'function' the stevedore was performing at time of his injury, but, rather, upon the fact that his injury was caused by an appurtenance of a ship, the defective cargo containers, which the Court held to be an 'injury, to person ... caused by a vessel on navigable water' which was consummated ashore under [the Admiralty Extension Act]. n9

The furthest reach of the status exception to the locality requirement appears to be in the defamation area. In *Foster v. United States*, n10 a district court held that a seaman's claim for slander, libel and unlawful imprisonment due to the alleged malicious conduct of his master, acting as agent for the seaman's employer and operator of his vessel, was within admiralty jurisdiction because the alleged tort arose out of a maritime status or maritime relation. The court analogized the claims to the obligation to provide a seaworthy vessel because both have "their genesis in the maritime relationship." n11 But more recently, the Ninth Circuit has held that the locality requirement must be satisfied in a seaman's defamation action. The court affirmed the dismissal for lack of maritime jurisdiction of a defamation action brought by the chief mate of a merchant vessel alleging that as a result of a letter written aboard ship by the chief engineer to the officer's employer, the employer chose not to promote him to master of the ship. In a brief opinion, the court held that the locality requirement was not met because the letter was received on land, and the decision not to promote the plaintiff occurred on land. n12 These cases, which clearly bear a significant connection to traditional maritime activity, n13 demonstrate again the difficulty of the *Executive Jet* requirement that a tort must satisfy both the nexus and locality requirements. One could avoid the difficulty by liberally construing the locality requirement since at least some, if not most, of the damage caused by defamation will occur at sea. But it seems preferable to extend the status exception to the locality requirement in these cases. While not every dispute by a seaman is to be converted into a maritime tort or contract, n14 a seaman's suit for defamation against an employer or fellow worker raises the kinds of concerns that are at the heart of the admiralty court's traditional role. n15 The damages in such a case are likely to involve damage to the seaman's status, and the factual issues are likely to involve an evaluation of the seaman's performance of his maritime duties.

Similar concerns have prompted courts to hold that a suit by a seaman for retaliatory discharge may be brought as a maritime tort. n16 Such suits are usually tied closely to the bringing of a Jones Act action or maritime claim against the employer. But more importantly they involve a determination of the adequacy of the seaman's performance of his duties and a regulation of the relationship between the shipowner and the seaman, matters which have long been the concern of the admiralty law.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Tort ActionsNegligenceComparative & Contributory NegligenceAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActProcedureJurisdictionAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem Actions GenerallyTortsNegligenceDefensesAssumption of RiskGeneral OverviewTortsVicarious LiabilityGeneral Overview

FOOTNOTES:

(n1)Footnote 1. *The Osceola, 189 U.S. 158 (1903) . See, generally*, Lucas, *Flood Tide: Some Irrelevant History of the Admiralty, 1964 Sup. Ct. Rev. 249.*

(n2)Footnote 2. *318 U.S. 36, 1943 AMC 149 (1943) .*

(n3)Footnote 3. *318 U.S. at 41-43, 1943 AMC at 153-54 . See also Swanson v. Marra, 328 U.S. 1, 1946 AMC*

715 (1946) .

(n4)Footnote 4. *Pope & Talbot, Inc. v. Cordray, 258 F.2d 214, 1959 AMC 603 (9th Cir. 1958)* ; *Hagans v. Farrell Lines, 237 F.2d 477, 1956 AMC 2133 (3d Cir. 1956)* ; *Strika v. Netherlands Ministry of Traffic, 185 F.2d 555, 1951 AMC 84 (2d Cir. 1950)* , *cert. denied, 341 U.S. 904 (1951)* ; *Robillard v. A.L. Burbank & Co., 186 F. Supp. 193, 1962 AMC 536 (S.D.N.Y. 1960)* .

(n5)Footnote 5. *373 U.S. 206, 1963 AMC 1649 (1962)* .

(n6)Footnote 6. *373 U.S. at 215, 1963 AMC at 1656* .

(n7)Footnote 7. *See* § 173, *supra.*

(n8)Footnote 8. *404 U.S. 202, 1972 AMC 1 (1971)* .

(n9)Footnote 9. *404 U.S. at 210-11, 1972 AMC at 8-9* . By contrast, one of the cases on which the Supreme Court relied in *Gutierrez, Strika v. Netherlands Ministry of Traffic, 185 F.2d 555, 1951 AMC 84 (2d Cir. 1950)* , *cert. denied, 341 U.S. 904 (1951)* , thought that the *O'Donnell* line of cases, independent of the Admiralty Extension Act, conferred maritime jurisdiction over injuries to longshoremen and seamen caused by unseaworthiness.

(n10)Footnote 10. *Foster v. United States, 156 F. Supp. 421 (S.D.N.Y. 1957)* .

(n11)Footnote 11. *156 F. Supp. at 423* . *Accord Papageorgiou v. Lloyds of London, 436 F. Supp. 701 (E.D. Pa. 1977)* (although not free from doubt, claims for defamation and false imprisonment stemming from investigation of maritime casualty and resulting in loss of maritime employment are within the admiralty jurisdiction; court dismissed action based on *forum non conveniens*). *See also Castillo v. Argonaut Trading Agency, 156 F. Supp. 398 (S.D.N.Y. 1957)* (even though the basis of the seaman's claim was false imprisonment in Australia, admiralty jurisdiction was deemed to exist because the false imprisonment arose out of a disagreement relating to conditions on board the vessel). *But see Forgione v. United States, 202 F.2d 249, 1953 AMC 323 (3d Cir.)* , *cert. denied, 345 U.S. 966 (1953)* (no admiralty jurisdiction for false imprisonment of seaman on land); *Bain v. Sandusky Transp. Co., 60 F. 912 (E.D. Wis. 1894)* (wrongful arrest of seaman alleged to have deserted is not within the maritime jurisdiction).

(n12)Footnote 12. *LaMontagne v. Craig, 817 F.2d 556, 1987 AMC 2477 (9th Cir. 1987)* , *aff'g, 632 F. Supp. 706 (N.D. Cal. 1986)* . The lower court opinion relied on two cases, *Clinton v. Joshua Hendy Corp., 285 F.2d 199, 1961 AMC 727 (9th Cir. 1960)* and *Clinton v. International Org. of Masters, Mates & Pilots of Am., 254 F.2d 370, 1958 AMC 1673 (9th Cir. 1958)* . The earlier case held that there was no admiralty jurisdiction over the seaman's tort claims for interference with his contractual relation with his union because there was no allegation that the tort was committed upon navigable waters. The opinion did not discuss the status exception to tort jurisdiction although it did say in its discussion of the seaman's contract claims against his union that "[t]he mere fact that libellant is a seaman does not convert his disputes into maritime contracts or torts. ..." *254 F.2d at 372, 1958 AMC 1675* (quoting *Clinton v. West Coast Local No. 90 Masters, Mates & Pilots Union of Am., 161 F. Supp. 177, 178 (N.D. Cal. 1955))* . In the later case, involving a defamation claim against his employer, the litigious seaman raised the status exception, but the court held that "principles of collateral estoppel, res judicata and/or rule of the case" foreclosed the issue. More recently, the Ninth Circuit held that admiralty jurisdiction applied where a chief engineer sent a telex on board a vessel requesting that the plaintiff not be assigned to the vessel. Although the telex was received on shore, the locality requirement was satisfied because it was "published" when it was given to the telex operator on board the vessel. *Guidry v. Durkin, 834 F.2d 1465 (9th Cir. 1987)* .

(n13)Footnote 13. *See Guidry v. Durkin, 834 F.2d 1465 (9th Cir. 1987)* ; *LaMontagne v. Craig, 632 F. Supp. 706, 708 (N.D. Cal. 1986)* , *aff'd, 817 F.2d 556, 1987 AMC 2477 (9th Cir. 1987)* .

(n14)Footnote 14. *See Miller v. Griffin-Alexander Drilling Co., 685 F. Supp. 960, 1989 AMC 118 (W.D. La.*

1988) , aff'd, 873 F.2d 809 (5th Cir. 1989) (alleged medical malpractice committed while seaman was on land does not meet the locality requirement; injury is not on the navigable waters merely because injury may prevent the seaman from returning to work as a seaman). *See also Clinton v. International Org. of Masters, Mates & Pilots of Am., 254 F.2d 370, 372, 1958 AMC 1673, 1675 (9th Cir. 1958)* (quoting *Clinton v. West Coast Local No. 90 Masters, Mates & Pilots Union of Am., 161 F. Supp. 177, 178 (N.D. Cal. 1955))* .

(n15)Footnote 15. *Cf. Guidry v. Durkin, 834 F.2d 1465 (9th Cir. 1987)* (alleged defamation arising from chief engineer's request that a civilian employee not be assigned to the vessel bears a significant relationship to maritime activity; decisions involving the manning of a vessel's engines is crucial to her safe operation).

(n16)Footnote 16. *Merchant v. American S.S. Co., 860 F.2d 204 (6th Cir. 1988)* ; *Smith v. Atlas Off-Shore Boat Serv., 653 F.2d 1057 (5th Cir. Unit A Aug. 1981)* . In neither case did the opinions address the locality requirement, but they held that a claim could be stated under the general maritime law.

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Chapter XI MARITIME TORTS

1-XI Benedict on Admiralty § 176

§ 176. Tort Liability *In Rem* and ***In Personam--Respondeat Superior*.**

The question of liability *in rem* or *in personam* is a question of substantive law and for a detailed treatment, reference should be made to the appropriate chapters of this treatise. The general rule in respect of torts committed by the master or crew of a vessel is that, apart from the personal liability of tortfeasors, the vessel is liable *in rem* n1 and the owner of the vessel, as employer of the master and the crew, is liable *in personam.* n2 The liability of the vessel *in rem* extends to a tort committed by a pilot even if his employment is compulsory, n3 but in such cases, there is no liability of the owner *in personam.* n4 It follows on principle that the owner is not liable for the malicious act of a stranger. n5 In all cases of injury and/or damage, the rule of comparative negligence comes into play n6 and the doctrine of the assumption of risk exists as in common law, n7 but with noteworthy exceptions. For assault, it was previously provided n8 that the ship was not liable *in rem* when sued in tort but a number of exceptions have been ingrafted on this rule. n9

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPersonal InjuriesMaritime Tort ActionsNegligenceComparative & Contributory NegligenceAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActProcedureJurisdictionAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem Actions GenerallyTortsNegligenceDefensesAssumption of RiskGeneral OverviewTortsVicarious LiabilityGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *Workman v. City of N.Y., 179 U.S. 552 (1900)* ; *The John G. Stevens, 170 U.S. 113 (1898)* ; *The Minnetonka, 146 F. 509 (2d Cir.) , cert. denied, 203 U.S. 589, 27 S. Ct. 777, 51 L. Ed. 330 (1906)* ; *The Anaces, 93 F. 240 (4th Cir. 1899)* .

But the vessel is not liable *in rem* for punitive damages as such damages do not give rise to a lien on the vessel. *Hunley v. Ace Maritime Corp., 927 F.2d 493, 1991 AMC 1217 (9th Cir. 1991)* .

The owner of the vessel is liable *in personam* and the vessel is liable *in rem* for injuries done to persons by the negligence of the master or crew, but the negligence must be such as would make the owner liable under the same

circumstances in a suit at common law. The burden of proving negligence on the part of the ship, its master or crew, rests upon the libellant. *Lamb v. Interstate S.S. Co., 149 F.2d 914, 1945 AMC 987 (6th Cir. 1945) . Cf. The Severance, 152 F.2d 916, 1946 AMC 128 (4th Cir. 1945) , cert. denied, 328 U.S. 853 (1946)* ; Blaske v. Dick, 1941 AMC 782 (S.D. Ill. 1941) , *appeal dismissed, 126 F.2d 96, 1942 AMC 844 (7th Cir. 1942)* ; *Weeks Crane No. 3, 53 F. Supp. 763, 1943 AMC 1410 (E.D.N.Y. 1943)* ; *The Daly No. 48, 45 F. Supp. 279, 1942 AMC 581 (E.D.N.Y. 1942)* .

Tide Water Associated Oil Co. v. Richardson, 169 F.2d 802, 1948 AMC 1819 (9th Cir. 1948) (shipowner liable for injuries received by Coast Guard inspector who fell into an unlighted and unguarded hatch); *Young Bros. v. Cho, 183 F.2d 176, 1950 AMC 1268 (9th Cir. 1950)* (tug liable for negligence of master in performance of towing agreement even though master may have been unauthorized to enter into the agreement); *Chimene v. Dow, 104 F. Supp. 473, 1952 AMC 1405 (S.D. Tex. 1952)* (several friends who went fishing in a powered rowboat, one of whom lost his life as a result of collision, were held engaged in a joint enterprise or venture so that the negligence of one was the negligence of all).

Mason v. United States, 177 F.2d 352, 1949 AMC 1800 (2d Cir. 1949) (shipowner liable to tugboat pilot as business invitee for injuries received when pilot attempted to climb slack Jacob's ladder, with diminution of award because of pilot's contributory negligence); *Hendricksen v. Hugh Roberts & Son, 74 F. Supp. 72, 1947 AMC (S.D.N.Y. 1947)* (a bargee who was required to use a ship's ladder in passing from the barge to the pier was a business visitor of the ship to whom the ship owner had a duty to furnish proper gear and safe passage).

(n2)Footnote 2. In *Guttner v. Pacific Steam Whaling Co., 96 F. 617 (N.D. Cal. 1899)* , the master of a whaling vessel, in conjunction with Arctic aborigines, tortiously took from another vessel stores and gear, some of which he used for his own vessel and some of which went to the natives. It was held that the owner of his vessel was liable but only for such portion of the property as was appropriated by the master to the use of his vessel.

The Martha R. Grimes, 49 F. Supp. 591, 1943 AMC 191 (S.D.N.Y. 1943) (as between a bareboat charterer who furnishes the master and crew and a sub-charterer, the charterer is primarily liable for the master's negligence and the sub-charterer is secondarily liable); *The Chickie, 141 F.2d 80, 1944 AMC 635 (3d Cir. 1944)* (liability of time charterer); *La Interamericana, S.A. v. The Narco, 146 F. Supp. 270, 1957 AMC 284 (S.D. Fla. 1956) , rev'd on other grounds sub nom. Nardelli v. Stuyvesant Ins. Co., 258 F.2d 718, 1958 AMC 2404 (5th Cir. 1958)* (a bareboat charterer having control over the navigation of a vessel involved in a collision is liable *in personam* therefor, but the bareboat owner is not); *P. Dougherty Co. v. Mannesis, 51 F. Supp. 966, 1943 AMC 995 (S.D.N.Y. 1943)* (the master is not liable *in personam* for a collision that occurs in the absence of the master when the ship was in charge of a chief officer with all the powers, duties, and responsibilities of the master, in the absence of a showing that the chief officer was incompetent or inexperienced); *In re Vest, 116 F Supp. 901, 1954 AMC 145 (N.D. Cal. 1953)* (where the master of a daytime party fishing boat, without the knowledge or consent of the owner and contrary to usual practice, took the boat out on a night trip, whereupon it came into collision with another vessel and sank, causing the deaths of several passengers, the owner was not liable for the collision or the deaths as the doctrine of *respondeat superior* did not apply); L.H. Hamel Leather Co. v. S.S. City of Auckland, 1957 AMC 89 (D. Mass. 1957) (a shipping agent operating on a ship-to-ship basis with a foreign corporation was held unqualified to accept service of process in a libel for cargo damage when not duly engaged in such capacity at the time process was served); *Baggett v. Richardson, 473 F.2d 863 (5th Cir. 1973)* (however, where there was not sufficient proof that plaintiff's assailants were in the course and scope of their union jobs, theassailants' unions were not liable for plaintiff's injuries under the doctrine of *respondeat superior*).

(n3)Footnote 3. *The China, 74 U.S. (7 Wall.) 53 (1868)* ; *Ralli v. Thoop, 157 U.S. 386 (1895) . See also, The John G. Stevens, 170 U.S. 113 (1897)* ; *The Barnstable, 181 U.S. 464 (1901)* ; *The Brig Malek Adhel, 43 U.S. (2 How.) 210 (1844)* ; *In re M/V Elaine Jones, 480 F.2d 11 (5th Cir. 1973) , cert. denied, 423 U.S. 840, 96 S. Ct. 71, 46 L. Ed. 2d 60 (1975)* ; *Afran Transp. Co. v. S/S Transcolorado, 468 F.2d 772 (5th Cir. 1972)* ; *The Helen, 5 F.2d 54, 1925 AMC 267 (2d Cir. 1924)* .

(n4)Footnote 4. *Homer Ramsdell Transp. Co. v. La Compagnie Generale Transatlantique, 182 U.S. 406 (1901)* . *See also Prevatt v. M/V Diana, 322 F. Supp. 1025 (M.D. Fla. 1971)* .

(n5)Footnote 5. *Campbell v. Pennsylvania R.R., 85 F. 462 (2d Cir. 1898)* .

(n6)Footnote 6. *The Arizona v. Anelich, 298 U.S. 110 (1936)* (seamen's injury cases are usually brought at law under the Jones Act, § 33 of the Merchant Maritime Act of June 5, 1920, *46 U.S.C. § 688*, which provides for the prorating of contributory negligence to any extent which the triers of the fact deem appropriate). *See also The Max Morris, 137 U.S. 1 (1890)* .

Paul v. United States, 54 F. Supp. 60, 1943 AMC 1438 (E.D. La. 1943) (recovery has been denied for injuries received by a seaman when he fell from an unsafe gangway on his return to the ship from shore leave, on the ground the seaman had incurred an obvious risk from a dangerous situation).

There is no defense of contributory negligence to the duty of rescue. *Kirincich v. Standard Dredging Co., 112 F.2d 163, 1940 AMC 868 (3d Cir. 1940)* ; *Harris v. Pennsylvania R.R., 50 F.2d 866, 1931 AMC 1303 (4th Cir. 1931)* .

Strika v. Holland Am. Line, 1950 AMC 1354 (S.D.N.Y.) , *aff'd, 185 F.2d 555, 1951 AMC 84 (2d Cir. 1950)* , *cert. denied, 341 U.S. 904 (1951)* (damages for injuries caused by unseaworthiness reduced because of negligence of longshoremen).

Cf. Lawrenson v. Chas. Kurz & Co., 1950 AMC 1149 (E.D. Pa. 1950) (the law of seaworthiness and assumption of risk was adequately covered in the part of the charge dealing with negligence and contributory negligence).

Isaacson v. Jones, 216 F.2d 599, 1954 AMC 2053 (9th Cir. 1954) (passenger precariously perched on gunwale does not assume risk of the operator's failure to warn him of sharp turn but was guilty of contributory negligence in that he knew he was courting danger, the rule of comparative negligence being applicable in admiralty).

Grenawalt v. South African Marine Corp., 130 F. Supp. 432, 1955 AMC 1253 (S.D.N.Y. 1955) , *aff'd, 243 F.2d 575, 1957 AMC 989 (2d Cir. 1957)* (where two ways are available to gain an objective, one safe and one dangerous, and a servant chooses the dangerous method, both being known to him, he does so at his peril); *Gypsum Carrier, Inc. v. Handelsman, 307 F.2d 525, 1963 AMC 175 (9th Cir. 1962)* (in reviewing a trial court's ruling on contributory negligence based on conflicting evidence, the "clearly erroneous" rule of McAllister v. United States applies); *Lang v. Coastwise Line, 206 Or. 667, 294 P.2d 341, 1956 AMC 1838 (1956)* (proof of contributory negligence mitigates damages recoverable in a personal injury action brought in a state court). The Jones Act was recodified in 2006 as *46 U.S.C. § 30104*.

(n7)Footnote 7. *The Scandinavia, 156 F. 403 (D. Me. 1907)* ; *Holm v. Cities Serv. Transp. Co. (The Halo), 60 F.2d 721, 1932 AMC 1188 (2d Cir. 1932)* (a seaman not under orders who chooses the more dangerous rather than the safer path assumes the risk of injury). *See Beadle v. Spenser, 298 U.S. 124, 1936 AMC 635 (1936)* .

The burden of proof to establish contributory negligence as an affirmative defense rests on the party by whom it is asserted in admiralty as well as under Rule 8(c) of the Rules of Civil Procedure: *The Anna O'Boyle, 124 F.2d 180, 1942 AMC 257 (2d Cir. 1941)* ; *La Guerra v. Lloyd Brasileiro, 124 F.2d 553, 1942 AMC 195 (2d Cir.) , cert. denied, 315 U.S. 824 (1942)* .

Jeffries v. De Hart, 102 F. 765 (3d Cir. 1900) ; *The Saratoga, 94 F. 221 (2d Cir. 1899)* .

(n8)Footnote 8. *The Robinson, 3 F.2d 507, 1925 AMC 684 (E.D. Pa. 1925)* ; *The Sallie Ion, 153 F. 659 (E.D. Pa. 1907)* .

(n9)Footnote 9. *See The Rolph, 293 F. 269, 1924 AMC 23 (N.D. Cal. 1923) , aff'd, 299 F. 52, 1924 AMC 942 (9th Cir. 1911)* .

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[Reserved].

§§ 177[Reserved].

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Chapter XII MARITIME CONTRACTS

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§ 189. Suits by Cargo Owners Against Carriers.

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[a] Consignors.

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Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 181

§ 181. Extent of the Jurisdiction Over Contracts.

The European maritime codes and treatises always determined maritime jurisdiction solely by the maritime nature and character of the transactions. They treat all the cases of the furnishing of supplies and services, contract, and tort or accident relating to ships, shipping, and maritime commerce as being governed by maritime law. n1

We find no allusion to tides, as affecting the law, no exceptions of ports or harbors, or narrower "bodies of counties," or contracts in unusual form whether sealed or unsealed, with or without a penalty, made on land or on shipboard. The only question is whether the transaction relates to ships and vessels, masters and mariners, as the agents of commerce, on navigable waters. n2 "*Toutes affaires relatives a la navigation et aux navigateurs appartiennent au droit maritime*." n3

While these principles have not been adopted in the United States in their entirety, it is now settled law that the jurisdiction of admiralty in contract depends upon the subject matter of the contract. If the nature and character of the contract is maritime, that is to say, if the contract is related to a maritime service or a maritime transaction, there is admiralty jurisdiction. n4 The old English rule, which conceded jurisdiction, with few exceptions, only to contracts made and to be performed upon tidal or navigable waters and which for a time, influenced a few decisions n5 in this country, has long been abandoned.

In two instances, home port liens and ship mortgages, Congress has declared that contracts which the courts had previously deemed to be non-maritime and incapable of sustaining a maritime lien should thereafter be regarded as maritime in character and support a maritime lien, n6 and in each instance the Supreme Court has acquiesced in the new classification. n7

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:

(n1)Footnote 1. 3 Kent's *Commentaries* 1-18 (14th ed. 1896); Boulay-Paty 96 (1834); 3 Pardessus, *Lois Maritimes* 451 (1828).

In the Sixth Edition the corresponding section was prefaced with the following passage, which has been occasionally cited:

> "The celebrated and learned commentators upon the maritime codes and other writers of textbooks upon the maritime law, such as Selden, Grotius, Stracha, Bynkershoek, Valin, Stypmanus, Loccenius, Casa Regis, Emerigon, Kuricke, Pothier, Roccus, Malynes, Cleirac, Boucher, Boulay Paty, Pardessus, Vinnius, Lubeck, Targa and many others, whose works have been the universally known and everywhere conceded evidence of the admiralty and maritime law, have not adopted any narrow rule respecting the extent of the admiralty jurisdiction. The question, whether the cause of action arose within the limits of a country, or in a harbor, or was founded upon an instrument, sealed or unsealed, or made on shore or on shipboard, in a usual or unusual form, appears never to have entered the minds of those legislators and jurists."

Section 62 at 126-27.

(n2)Footnote 2. *Kossick v. United Fruit Co., 365 U.S. 731, 1961 AMC 833 (1961)* , citing treatise.

(n3)Footnote 3. Quoted in 3 Pardessus, *Lois Maritimes* 451 (1834) from the nameless author of a history (1745) of the Statutes of Culm, a Prussian State. The Statute dated from 1598 and there was an older Statute of Culm of the 11th Century. *See also* 1 Boulay-Paty 99 (1834); quotation referred to in *Kossick v. United Fruit Co., n. 2, supra.*

(n4)Footnote 4. *Detroit Trust Co. v. Thomas Barlum, 293 U.S. 21, 1934 AMC 1417 (1934)* ; *North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co., 249 U.S. 119 (1919)* ; *Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1870)* ; *Sanderlin v. Old Dominion Stevedoring Corp., 385 F.2d 79, 1967 AMC 1691 (4th Cir. 1967)* ; *James Richardson & Sons v. Conners Marine Co., 141 F.2d 226, 1944 AMC 444 (2d Cir. 1944)* ; *Berwind-White Coal Mining Co. v. City of New York, 135 F.2d 443, 1943 AMC 682 (2d Cir. 1943)* ; Terra Resources, Inc. v. Atchafalaya Workover Contractors, Inc., 1980 AMC 1082 (E.D. La. 1978) ; *T. Smith & Son v. Rigby, 305 F. Supp. 418, 1969, AMC 2092 (E.D. La. 1969)* ; *Mid-Am. Transp. Co. v. St. Louis Barge Fleeting Serv. Inc., 229 F. Supp. 409, 1964 AMC 2610 (E.D. Mo. 1964) , aff'd, 348 F.2d 920, 1965 AMC 1932 (8th Cir. 1965)* ; *Dann v. Dredge Sandpiper, 222 F. Supp. 838, 1964 AMC 472 (D. Del. 1963)* , citing treatise; *Marubeni-Iida (Am.), Inc. v. Nippon Yusen Kaisha, 207 F. Supp. 418, 1962 AMC 1082 (S.D.N.Y. 1962)* , citing treatise; *The Ciano, 63 F. Supp. 892, 1945 AMC 1474 (E.D. Pa. 1945)* .

(n5)Footnote 5. *New Jersey Steam Nav. Co. v. Merchants' Bank, 47 U.S. (6 How.) 344 (1848)* ; *The Orleans v. Phoebus, 36 U.S. (11 Pet.) 175, 183 (1837)* ; *Peyroux v. Howard, 32 U.S. (7 Pet.) 324, 341 (1833)* ; *The Thomas Jefferson, 23 U.S. (10 Wheat.) 428, 429 (1825) . But see Carter-Green-Redd, Inc. v. USS Cabot/Dedalo Museum Foundation, 756 F. Supp. 276, 1991 AMC 2867 (E.D. La. 1991)* (part of the explanation for holding that options to charter a vessel are non-maritime was that such agreements are "made on land to be performed on land and there is no need or justification for resort to the law of the sea.")

(n6)Footnote 6. The Lien Acts of 1910 and 1920, and the Preferred Ship Mortgage Act of 1920.

(n7)Footnote 7. As to Lien Acts: *United States v. Carver (The Clio), 260 U.S. 482, 1923 AMC 47* . As to the Mortgage Act: *Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 1934 AMC 1417 (1934) . See Netherlands Shipmortgage Corp. v. Madias, 717 F.2d 731, 1984 AMC 141 (2d Cir. 1983)* (*46 U.S.C. § 954(a)* confers jurisdiction over action by mortgage against mortgagor but not against guarantor); *Puget Sound Prod. Credit Ass'n v. O/S Bold Lady, 1985 AMC 889 (W.D. Wash. 1984)* (same); *New v. Yacht Relaxin, 212 F. Supp. 703, 1963 AMC 152 (S.D. Cal. 1962)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 182

§ 182. What Is a Maritime Service or Transaction.

One searches in vain for a verbal formula that will explain all of the rules for determining the jurisdiction over contract cases. As Justice Harlan wrote, "The boundaries of admiralty jurisdiction over contracts ... being conceptual rather than spatial, have always been difficult to draw. Precedent and usage are helpful insofar as they exclude or include certain common types of contract. ..." n1 Some of the precedents, like those excluding shipbuilding contracts, are based on the old and now discredited idea that contracts are not maritime if they are "made on land, to be performed on land." n2 A definition that explains many of the cases but not others is that

> "[A]n agreement acquires [the necessary] maritime quality only when the matters performed or entered upon under it pertain to the fitment of a vessel for navigation, aid and relief supplied her in preparing for and conducting a voyage, or the freighting or employment of her as the instrument of a voyage." n3

This definition is too narrow as it excludes contracts of stevedores, n4 watchmen, n5 and presumably others who provide service to a vessel before or after a voyage, as well as insurance on vessels and cargo, all of which are now regarded as maritime. n6

In general, a contract relating to a ship in its use as such, or to commerce or navigation on navigable waters, or to transportation by sea or to maritime employment is subject to maritime law and the case is one of admiralty jurisdiction, whether the contract is to be performed on land or water. n7 Although this principle has afforded a useful guideline in many cases, it is too general to determine each case. As described in the remainder of this chapter, other principles and a long course of judicial decisions have qualified this principle.

A contract is not considered maritime merely because the services to be performed under the contract have reference to a ship or to its business, or because the ship is the object of such services or that it has reference to navigable waters. n8 In order to be considered maritime, there must be a direct n9 and substantial link between the contract and the operation of the ship, its navigation, or its management afloat, taking into account the needs of the shipping industry, for the very basis of the constitutional grant of admiralty jurisdiction was to ensure a national uniformity of approach to world shipping. n10

The Federal Maritime Lien Act does not provide a separate basis for admiralty jurisdiction. Despite language in the Act to the contrary, the statute only provides for maritime liens if admiralty jurisdiction is otherwise established over the claim. n11

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionInsurance LawBusiness InsuranceMarine InsuranceGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *Kossick v. United Fruit Co., 365 U.S. 731, 735, 1961 AMC 833 (1961)* . *See also Fox v. Patton, 22 F. 746 (S.D.N.Y. 1884)* .

(n2)Footnote 2. *People's Ferry Co. v. Beers, 61 U.S. (20 How.) 393, 402 (1857)* . As stated in *New Jersey Steam Navigation Co. v. Merchants' Bank, 47 U.S. (6 How.) 344, 392 (1848)* :

> "[I]f the substantial part of the service under the contract is to be performed beyond tide-waters, or if the contract relates exclusively to the interior navigation and trade of a state, jurisdiction is disclaimed. ...
>
> "...
>
> "Contracts growing out of purely internal commerce of the state, as well as commerce beyond tide-waters, are generally domestic in their origin and operation, and could scarcely have been intended to be drawn within the cognizance of the federal courts."

(n3)Footnote 3. *Cox v. Murray, 6 F. Cas. 681, 682 (S.D.N.Y. 1848)* (No. 3304).

(n4)Footnote 4. *E.g., Cox v. Murray, 6 F. Cas. 681 (S.D.N.Y. 1848)* (No. 3304).

(n5)Footnote 5. *Gurney v. Crockett, 11 F. Cas. 123 (S.D.N.Y. 1849)* (No. 5874). In this decision Judge Betts, who wrote *Cox v. Murray* one year earlier, wrote that for a contract of personal services concerning vessels to be maritime

> "it must be connected with the reparation or betterment of the vessel, or be rendered in aid of her navigation, directly by labor on the vessel, or in sustenance and relief of those conducting her operations at sea."

(n6)Footnote 6. *See* § 184, *infra.*

(n7)Footnote 7. *Nacirema Operating Co. v. Johnson, 396 U.S. 212, 1969 AMC 1967 (1969)* ; *Armour & Co. v. Fort Morgan S.S. Co., 270 U.S. 253, 1926 AMC 327 (1926)* ; *North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co., 249 U.S. 119 (1919)* ; *Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1870)* ; *Davis & Sons, Inc. v. Gulf Oil Corp., 919 F.2d 313 (5th Cir. 1990)* (quoting text); *Hellenic Lines Ltd. v. Gulf Oil Corp., 340 F.2d 398, 1965 AMC 51 (2d Cir. 1965)* ; *Clinton v. International Org. of Masters, Mates & Pilots of Am., 254 F.2d 370, 1958 AMC 1673 (9th Cir. 1958)* ; *Detroit Trust Co. v. The Thomas Barlum, 68 F.2d 946, 1934 AMC 464 (2d Cir.)* , *rev'd on other grounds, 293 U.S. 21, 1934 AMC 1417 (1934)* ; *The Oregon, 55 F. 666 (6th Cir. 1893)* ; *Bark San Fernando v. Jackson, 12 F. 341 (C.C.E.D. La. 1882)* ; *Wortman v. Griffith, 30 F. Cas. 648 (C.C.S.D.N.Y. 1856)* (No. 18,057); *De Lovio v. Boit, 7 F. Cas. 418, 444 (C.C.D. Mass. 1815)* (No. 3776); *Venezuelan Container Line C.A. v. Navitran Corp., 792 F. Supp. 1281 (S.D. Fla. 1991)* (quoting text); *Boyd, Weir & Sewell, Inc. v. Fritzen-Halcyon Lijn, Inc., 709 F.*

Supp. 77, 1989 AMC 1159 (S.D.N.Y. 1989) . *Richard Constr. Co. v. Monongahela & Ohio Dredging Co., 284 F. Supp. 290, 1968 AMC 1808 (W.D. Pa. 1968)* , *modified, 407 F.2d 1170 (3d Cir. 1969)* ; Columbus Line v. Boston ShippingCo., 1967 AMC 1276 (D. Mass. 1967) ; *United States Lines v. International Longshoremen's Ass'n, 265 F. Supp. 666, 1967 AMC 1042 (D. Mass. 1967)* ; *Silver v. The Sloop Silver Cloud, 259 F. Supp. 187, 1967 AMC 737 (S.D.N.Y. 1966)* ; *Economu v. Bates, 222 F. Supp. 988, 1965 AMC 1289 (S.D.N.Y. 1963)* ; *Compania Argentina De Navegacion Dodero v. Atlas Maritime Corp., 144 F. Supp. 13, 1957 AMC 100 (S.D.N.Y. 1956)* ; *Parsons & Whittemore, Inc. v. Rederi Aktiebolaget Nordstjernan, 141 F. Supp. 220, 1956 AMC 1123 (S.D.N.Y. 1956)* ; *Grand Banks Fishing Co. v. Styron, 114 F. Supp. 1, 1953 AMC 2172 (D. Me. 1953)* ; *The Milwaukee Bridge, 291 F. 711 (S.D.N.Y. 1922)* ; *Dailey v. City of N.Y., 128 F. 796 (S.D.N.Y. 1904)* ; *Florez v. The Scotia, 35 F. 916 (S.D.N.Y. 1888)* ; *The Vidal Sala, 12 F. 207 (S.D. Ga. 1882)* ; *The Fifeshire, 11 F. 743 (E.D. La. 1882)* ; *The Canada, 7 F. 119 (D. Or. 1881)* ; Lands v. A Cargo of *227 Tons of Coal, 4 F. 478 (D.N.J. 1880)* ; *The Ella, 48 F. 569 (E.D. Va. 1880)* ; *The George T. Kemp, 10 F. Cas. 227 (D. Mass. 1876)* (No. 5341). A plaintiff in maritime cases may recover *in personam* or *in rem* upon an account stated, without proving each item of the account. A maritime transaction does not cease to be maritime by stating the account. *The Hattie Thomas, 262 F. 943 (2d Cir. 1920)* ; *Morse Dry Dock & Repair Co. v. Munson S.S. Co., 158 F. 1021 (2d Cir. 1908)* , *aff'g, 155 F. 150 (S.D.N.Y. 1907)* ; *The Castlewood, 298 F. 184, 1924 AMC 849 (E.D. Pa. 1924)* , *aff'd, 5 F.2d 1013 (3d Cir. 1925)* .

(n8)Footnote 8. *Atlantic Mut. Ins. Co. v. Balfour Maclaine Int'l, 968 F.2d 196 (2d Cir. 1992)* (citing text) ("in examining whether admiralty jurisdiction encompasses a claim, a federal court must initially determine whether the subject matter of the dispute is so attenuated from the business of maritime commerce that it does not implicate the concerns underlying admiralty and maritime jurisdiction); *Union Texas Petroleum v. PLT Engineering, 895 F.2d 1043 (5th Cir. 1990)* (use of vessels incidental to building of gas transportation system from an offshore platform).

Thurmond v. Delta Well Surveyors, 836 F.2d 952 (5th Cir. 1988) (wireline services on offshore well is non-maritime even though services were performed from a barge in navigable waters); *Laredo Offshore Constructors, Inc. v. Hunt Oil Co., 754 F.2d 1223, 1986 AMC 237 (5th Cir. 1985)* ; *Chi Shun Hua Steel Co. v. Crest Tankers, Inc., 708 F. Supp. 18, 1989 AMC 2982 (D.N.H. 1989)* ; *Sea Land Indus. v. General Ship Repair Corp., 530 F. Supp 550, 1982 AMC 2120 (D. Md. 1982)* ; *T. Smith & Son, Inc. v. Rigby, 305 F. Supp. 418, 1969 AMC 2092 (E.D. La. 1969)* ; *P.D. Marchessini & Co. v. Pacific Marine Corp., 227 F. Supp. 17, 1964 AMC 1538 (S.D.N.Y. 1964)* ; *General Engine & Marine Works, Inc. v. Slay, 222 F. Supp. 745 (S.D. Ala. 1963)* ; *Grand Banks Fishing Co. v. Styron, 114 F. Supp. 1, 1953 AMC 2172 (D. Me. 1953)* ; *Fox v. Patton, 22 F. 746 (S.D.N.Y. 1884)* ; *McBride v. Standard Oil Co., 196 A.D. 822, 188 N.Y.S. 90 (1921)* .

(n9)Footnote 9. *Alphamate Commodity GMBH v. CHS Europe SA, 627 F.3d 183 (5th Cir. 2010)* (quoting text); *Nehring v. Steamship M/V Point Vail, 901 F.2d 1044 (11th Cir. 1990)* (quoting text); *Kreatsoulas v. Freights of the Levant Pride, 838 F. Supp. 147 (S.D.N.Y. 1993)* (quoting text); *South Carolina State Ports Auth. v. M/V Tyson Lykes, 837 F. Supp. 1357, 1994 AMC 1294 (D.S.C. 1993)* (holding that admiralty jurisdiction does not apply to certain services provided to containers, the court found that the services were "unrelated to the direct loading or discharging of the vessels"); *Carter-Green-Redd, Inc. v. USS Cabot/Dedalo Museum Foundation, 756 F. Supp. 276 (E.D. La. 1991)* .

Theriot v. Bay Drilling Corp., 783 F.2d 527 (5th Cir. 1986) (quoting text); *Weinstein v. Eastern Air Lines, 316 F.2d 758, 1965 AMC 2258 (3d Cir.)* , *cert. denied, 375 U.S. 940 (1963)* ; *Pacific Sur. Co. v. Leatham & Smith Towing & Wrecking Co., 151 F. 440 (7th Cir. 1907)* ; *Ford Motor Co. v. Wallenius Lines, 476 F. Supp. 1362, 1980 AMC 1114 (E.D. Va. 1979)* ; *Webster v. Longfellow Cruise Line, Inc., 725 F. Supp. 63, 1990 AMC 1815 (D. Me. 1989)* (quoting previous edition, the court said, "In order for a claim to be maritime in nature, 'there must be present a direct and proximate juridical link between the contract and the operation of the ship.' " Hence, claims under state law to place a corporation under receivership and dissolve the corporation are not within the maritime jurisdiction merely because the corporation's primary asset is a vessel.).

(n10)Footnote 10. The issue is whether the services are too far removed from maritime matters to be characterized

as maritime. *P.R. Ports Auth. v. Umpierre-Solares, 456 F.3d 220 (1st Cir. 2006)* (contract to raise a dead ship is a maritime contract where the vessel was obstructing navigation).

(n11)Footnote 11. *E.S. Binnings, Inc. v. M/V Saudi Riyadh, 815 F.2d 660 (11th Cir. 1987)* . *Contra Ventura Packers, Inc. v. F/V Jeanine Kathleen, 305 F.3d 913, 2002 AMC 2248 (9th Cir. 2002)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 183

§ 183. Preliminary Contracts, Collateral and Mixed Contracts.

The maritime law does not take cognizance of agreements which are not maritime although they are preliminary to maritime contracts and have direct reference to them. n1 For example, a policy of marine insurance is a maritime contract; but an agreement to make or procure a particular policy was generally thought not to be. n2 Consequently, if the agreement should be violated and the policy should not be issued, or, being issued, should differ in important particulars from that agreed upon, admiralty would not have jurisdiction of a suit for breach of the contract, or to reform the policy n3 or to take cognizance of a mutual mistake. n4 But if the policy had actually been issued, admiralty jurisdiction would attach for any suit on the policy issued. Where, however, a policy has been effected and there is a condition precedent to the attachment of the risk which it is the duty of a carrier to fulfill, its failure to do so is a breach of a maritime contract of carriage in failing to perform the contract in the manner agreed upon rather than a breach of a preliminary contract to procure insurance. n5 Also, where one of the terms of a maritime contract of affreightment is that the carrier shall insure the cargo, a breach of the term can be proved in admiralty although the contract to insure standing by itself would not be a maritime contract. n6

So, too, the chartering of a ship is a maritime service and the charter party is a contract within the cognizance of the admiralty; but an undertaking to make a charter party, or to procure a person to make one, is not within the admiralty jurisdiction; n7 it is not considered a maritime contract, and is not subject to the regulation of the maritime law.

Like the other principles used to define maritime contracts, the principle that preliminary contracts are non-maritime is easier to state than to apply. n8 For in a sense, even maritime contracts are preliminary to some other maritime contract. For example, although contracts to load a vessel, contracts to watch a vessel before a voyage, leases of shipping containers, and contracts to repair and supply vessels are considered to be maritime, n9 they might also be viewed as preliminary to contracts to carry goods by sea. Although these examples demonstrate that the preliminary contract concept can be misapplied, n10 the principle may be a useful shorthand reference for determining that some matters are too insubstantially connected to maritime commerce to be within the admiralty jurisdiction. The principle may also signify that the federal interest in regulating the contract is outweighed by a state interest. n11 Although the principle accomplishes these ends reasonably well, it has played a role in leading some courts to exclude from the admiralty jurisdiction matters like general agency agreements that are "intimately related to the shipping industry and would warrant inclusion within admiralty." n12

A different approach was suggested in *Planned Premium Servs. v. International Ins. Agents, Inc.*, n13 The court was critical of the approach that focuses on relative importance of the service to the shipping industry as it will not provide "the bright line rule essential for the predictability and stability of this important area of the law." n14 Instead the court would hold that contracts are non-maritime where the services provided are "identical to or essentially similar to non-maritime services regularly performed by those not involved in the operation of vessels." n15

Another principle for determining maritime jurisdiction is that a non-maritime contract does not acquire a maritime character and is not ordinarily cognizable in admiralty merely because it is collateral to a maritime contract. n16 For example, a bond securing the performance of a charter party is not a maritime contract for purposes of admiralty jurisdiction, although the charter party itself is a maritime contract; n17 the surety on the bond neither promises performance of the charter party nor is he authorized to do so; his obligation is merely to pay damages in the event of non-performance. Where, however, there is a promise to perform a charter in the default of another, there is a maritime contract. n18

Contracts that contain maritime and non-maritime obligations present a special problem. It was said that a contract will not be within the admiralty jurisdiction unless it is wholly maritime. n19 There were two exceptions to this rule. First, if the non-maritime element is incidental and not separable, maritime jurisdiction will encompass the entire claim. n20 Second, if the non-maritime element is separable from the maritime element so that it may be litigated separately without prejudice to either party, there is admiralty jurisdiction over the maritime element. n21 If the non-maritime elements of the contract are significant and if the maritime aspects are inseparable, it was held that admiralty would not have jurisdiction over the contract. n22

Courts have considerably relaxed this standard. n23 In determining whether a multi-modal contract was maritime, the Supreme Court described the case before it as "a maritime case about a train wreck." n24 In that case, *Norfolk Southern Railway v. James N. Kirby Pty Ltd.*, the Court held:

> [S]o long as a bill of lading requires substantial carriage of goods by sea, its purpose is to effectuate maritime commerce--and thus it is a maritime contract. Its character as a maritime contract is not defeated simply because it also provides for some land carriage. Geography, then, is useful in a conceptual inquiry only in a limited sense: If a bill's *sea* components are insubstantial, then the bill is not a maritime contract. n25

In addition, a federal court having admiralty jurisdiction will also have pendent jurisdiction over non-maritime causes of action which derive from a common set of operative facts provided that the maritime causes of action are themselves substantial. n26

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionContracts LawContract InterpretationSeverabilityInsurance LawBusiness InsuranceMarine InsuranceGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *E.S. Binnings, Inc. v. M/V Saudi Riyadh, 815 F.2d 660 (11th Cir. 1987)* ; *Johnson Prods. Co. v. M/V La Molinera, 619 F. Supp. 764 (S.D.N.Y. 1985)* ; *Outbound Maritime Corp. v. P.T. Indonesian Consortium of Constr. Indus., 582 F. Supp. 1136, 1984 AMC 2072 (D. Md. 1984)* ; *P.D. Marchessini & Co. v. Pacific Marine Corp., 227 F. Supp. 17, 1964 AMC 1538 (S.D.N.Y. 1964)* ; *Doolittle v. Knobeloch, 39 F. 40 (D.S.C. 1889)* ; *The Crystal Stream, 25 F. 575 (S.D.N.Y. 1885)* ; *The Tribune, 24 F. Cas. 191 (C.C.D.R.I. 1837)* (No. 14,171). In language that has been frequently quoted, Judge Addison Brown wrote:

> "The distinction between preliminary services leading to a maritime contract and such contracts themselves have [sic] been affirmed in this country from the first, and not yet departed from. It furnishes a distinction capable of somewhat easy application. If it be broken down, I do not perceive any other dividing line for excluding from the admiralty many other sorts of claims which have a reference, more or less near or remote, to navigation and commerce. If the broker of a charter-party be admitted, the insurance broker must follow,--the drayman, the expressman, and all others who perform services having reference to a voyage either in contemplation or executed." *The Thames, 10 F. 848 (S.D.N.Y. 1881)* .

(n2)Footnote 2. *F.S. Royster Guano Co. v. W.E. Hedger Co., 48 F.2d 86, 1931 AMC 952 (2d Cir.) , cert. denied, 283 U.S. 858 (1931)* ; *Home Ins. Co. v. Merchants' Transp. Co., 16 F.2d 372 (9th Cir. 1926)* ; *Virginia-Carolina Chem. Co. v. Chesapeake Lighterage & Towing Co., 279 F. 684 (2d Cir. 1922)* ; *United Fruit Co. v. United States Shipping Bd. Merchant Fleet Corp., 42 F.2d 222 (D. Mass. 1930)* ; *St. Paul Fire & Marine Ins. Co. v. Birrell, 164 F. 104 (D. Or. 1908)* ; *The City of Clarksville, 94 F. 201 (D. Ind. 1889)* ; *Marquardt v. French, 53 F. 603 (S.D.N.Y. 1893)* .

The Supreme Court's recent decision in *Exxon Corp. v. Central Gulf Lines, Inc., 111 S. Ct. 2071, 1991 AMC 1817 (1991)* casts doubt on the validity of any blanket assertion that an agency contract is non-maritime. The Court overruled its earlier holding in *Minturn v. Maynard, 58 U.S. (17 How.) 477 (1855)* that agency contracts are *per se* non-maritime. Instead courts must determine whether the nature and subject matter of the particular contract is maritime. Several courts have now held that contracts to procure marine insurance are maritime contracts. See the discussion at §§ 184-185, *infra*.

(n3)Footnote 3. *The City of Clarksville, 94 F. 201 (D. Ind. 1899)* ; *Williams v. Providence Washington Ins. Co., 56 F. 159 (S.D.N.Y. 1893)* ; *Andrews v. Essex Fire & Marine Ins. Co., 1 F. Cas. 885 (D. Mass. 1822)* (No. 374).

(n4)Footnote 4. *Elf Exploration, Inc. v. Cameron Offshore Boats, Inc., 863 F. Supp. 386 (E.D. Tex. 1994)* (quoting text); *Meyer v. Pacific Mail S.S. Co., 58 F. 923 (N.D. Cal. 1893)* .

(n5)Footnote 5. *F.S. Royster Guano Co. v. W.E. Hedger Co., 48 F.2d 86, 1931 AMC 952 (2d Cir.) , cert. denied, 283 U.S. 858 (1931)* .

(n6)Footnote 6. *Angelina Cas. Co. v. Exxon Corp., U.S.A., 876 F.2d 40, 1989 AMC 2677 (5th Cir. 1989)* (quoting text, vessel owner's obligation to have charterer named in insurance policy is a non-maritime obligation but the insurance policy naming the charterer as additional insured is a maritime contract); *Nash v. Bohlen, 167 F. 427 (E.D.N.Y. 1909)* .

(n7)Footnote 7. *Boyd, Weir & Sewell, Inc. v. Fritzen-Halcyon Lijn, Inc., 709 F. Supp. 77, 1989 AMC 1159 (S.D.N.Y. 1989) . See also Carter-Green-Redd, Inc. v. USS Cabot/Dedalo Museum Foundation, 756 F. Supp. 276, 1991 AMC 2867 (E.D. La. 1991)* (option to enter into charter of vessel is non-maritime); *Taylor v. Weir, 110 F. 1005 (D. Or. 1901)* ; *The Thames, 10 F. 848 (S.D.N.Y. 1881)* ; *Torices v. The Winged Racer, 24 F. Cas. 62 (S.D.N.Y. 1858)* (No. 14,102).

(n8)Footnote 8. The Supreme Court's recent decision in *Exxon Corp. v. Central Gulf Lines, Inc., 111 S. Ct. 2071, 1991 AMC 1817 (1991)* casts doubt on the validity of the preliminary contract doctrine. The Court overruled its earlier holding in *Minturn v. Maynard, 58 U.S. (17 How.) 477 (1855)* that agency contracts are *per se* non-maritime. Instead courts must determine whether the nature and subject matter of the particular contract is maritime. *See* the discussion at § 185. In *Exxon* the Court noted that it had never ruled on the validity of the preliminary contract doctrine and did not reach that question in the case before it, but it emphasized that "courts should focus on the nature of the services performed by the agent in determining whether an agency contract is a maritime contract." *111 S. Ct. at 2077 n.7* . In a recent case a court said that "after *Exxon*, it is necessary to determine if each agency agreement is maritime in nature,

even if the contract is for preliminary services." *Venezuelan Container Line C.A. v. Navitran Corp., 792 F. Supp. 1281, 1283 (S.D. Fla. 1991)* . *See also American Sail Training Ass'n v. Litchfield, 705 F. Supp. 75 (D.R.I. 1989)* (agreement by owner of tall ship to provide liability insurance to cover sponsor of racing event and to provide a seaworthy vessel is a maritime contract and not merely preliminary to a maritime adventure).

In *Boyd, Weir & Sewell, Inc. v. Fritzen-Halcyon Lijn, Inc., 709 F. Supp. 77, 1989 AMC 1159 (S.D.N.Y. 1989)* the court said that in determining whether a contract is preliminary to a maritime contract or a necessary part of it, the focus of the court's inquiry must be on the nature of the work to be performed under the contract. It refused to depart from *The Thames, 10 F. 848 (S.D.N.Y. 1881)* because it had been approved by the Second Circuit. Even though the Second Circuit might hold that acting as a chartering broker is a maritime service, the court felt that it "may not rule on what it believes the Second Circuit might do, but rather, is bound to follow existing precedents." *709 F. Supp. at 79* .

Cf. CTI-Container Leasing Corp. v. Oceanic Operations Corp., 682 F.2d 377, 379, 1982 AMC 2541, 2544 (2d Cir. 1982) (general definitions of contract jurisdiction).

A 1987 decision by the Second Circuit demonstrates the difficulty of applying the preliminary contract doctrine. In *Ingersoll Milling Mach. Co. v. M/V Bodena, 829 F.2d 293 (2d Cir. 1987)* , *cert. denied, 484 U.S. 1042 (1988)* , the court exercised admiralty jurisdiction over a contract between a shipper and a freight forwarder that called for the latter to prepare, obtain and process shipping documents including a bill of lading. The court said that the services were not preliminary to a voyage but were essential to it because "[w]ithout these, there can be no voyage." *Id. at 302* . Much the same can be said as a practical matter of many other contracts that have been deemed to be preliminary. It is difficult, for example, to distinguish a general agency contract which the *Ingersoll* court described as one that requires "soliciting cargo or passengers, and procuring supplies, crews, stevedores, and tugboats." *Id.* Although *Ingersoll* says that these services are "preliminary to maritime contracts," one could also say that they are essential to the prosecution of a voyage. *Accord Hotung v. Cargo of Crate Containing Nine Boxes of Documents, 452 F. Supp. 2d 564, 2007 A.M.C. 419 (D.N.J. 2006)* .

See also Shipping Financial Services Corp. v. Drakos, 140 F.3d 129 (2d Cir. 1998) (although not ruling on the continued validity of the preliminary contract doctrine, the court holds that the particular charter party brokerage agreement is not sufficiently maritime in nature); *Inversiones Calmer, S.A. v. C.E. Heath & Co., 681 F. Supp. 100 (D.P.R. 1988)* (implied contract to survey vessel in preparation of procurement of insurance was non-maritime even though a contract to survey vessel in connection with repairs would be maritime because the former contract "does not advance the concerns of admiralty sufficiently to be considered maritime").

(n9)Footnote 9. *See* § 184, *infra.*

(n10)Footnote 10. Indeed, earlier cases considered the services of stevedores and watchmen to be non-maritime in part because they were not concerned directly enough with the operation or betterment of a vessel. The stevedore was thought to be no different than a drayman. *E.g., Paul v. The Ilex, 18 F. Cas. 1346 (C.C.D. La. 1876)* (No. 10,842); *M'Dermott v. The S.G. Owens, 16 F. Cas. 15 (C.C.E.D. Pa. 1849)* (No. 8748); *The Amstel, 1 F. Cas. 798 (S.D.N.Y. 1831)* (No. 339). *See The Wivanhoe, 26 F. 927 (E.D. Va. 1886)* (at one time contracts to load vessel's were non-maritime, contracts to unload vessels were maritime); *The George T. Kemp, 10 F. Cas. 227 (D. Mass. 1876)* (No. 5341). The watchman's service was considered to be incidental to a vessel's probable employment at sea. *E.g., Gurney v. Crockett, 11 F. Cas. 123 (S.D.N.Y. 1849)* (No. 5874). It is well settled today that stevedoring contracts are maritime. *See* § 184, n. 20, *infra.* And there is little doubt that a watchman's services are now regarded as maritime, provided the vessel is not withdrawn entirely from navigation. *See* § 184, n. 33, *infra.* Courts now regard even the winter storage of a pleasure craft as a maritime contract. *See* § 184, n. 28, *infra.*

(n11)Footnote 11. Although state interests can be accommodated by allowing state law to govern aspects of a maritime contract, *see generally* §§ 112-113, *supra,* if state law is to be applied, much of the reason for exercising

federal jurisdiction disappears. *Cf. Royal Ins. Co. of Am. v. Pier 39 Ltd. Partnership, 738 F.2d 1035, 1986 AMC 2392 (9th Cir. 1984)* (insurance on floating breakwater and floating dock not maritime, state law might apply to claim and no need for guarantee of nationwide uniform maritime law).

(n12)Footnote 12. *Peralta Shipping Corp. v. Smith & Johnson (Shipping) Corp., 739 F.2d 798, 804, 1985 AMC 989, 999 (2d Cir. 1984) , cert. denied, 470 U.S. 1031 (1985)* . Other courts have not felt compelled to exclude these contracts from their jurisdiction. *See* § 184, n. 56, *infra. See also* Emala, *Admiralty Jurisdiction over Agency Contracts,* 1986 Lloyd's Mar. & Com. L.Q. 12.

(n13)Footnote 13. *928 F.2d 164, 1991 AMC 2918 (5th Cir. 1991)* .

(n14)Footnote 14. *Id. at 167* .

(n15)Footnote 15. *Id. at 166* .

(n16)Footnote 16. *Fednav, Ltd. v. Isoramar, S.A., 925 F.2d 599, 1991 AMC 1425 (2d Cir. 1991)* ; *Luvi Trucking, Inc. v. Sea-Land Serv., 650 F.2d 371, 1981 AMC 2586 (1st Cir. 1981)* ; *Whiteway Enters. v. M/V Hellenic Innovator, 1984 AMC 258 (S.D. Tex. 1983)* .

(n17)Footnote 17. *Pacific Sur. Co. v. Leatham & Smith Towing & Wrecking Co., 151 F. 440 (7th Cir. 1907)* ; *Eadie v. North Pac. S.S. Co., 217 F. 662 (N.D. Cal. 1914)* .

(n18)Footnote 18. *Northern Star S.S. Co. of Canada v. Kansas Milling Co., 75 F. Supp. 534, 1947 AMC 1686 (S.D.N.Y. 1947) . Cf. Compania Espanola de Petroleos, S.A. v. Nereus Shipping, S.A., 527 F.2d 966, 1975 AMC 2421 (2d Cir. 1975) , cert. denied, 426 U.S. 936 (1976)* (guarantor bound to arbitrate where it agreed in case of default to "perform the balance of the contract" and to "assume the rights and obligations" of the charterer).

(n19)Footnote 19. *Lucky-Goldstar Int'l (America), Inc. v. Phibro Energy Int'l, 958 F.2d 58 (5th Cir. 1992)* (citing text); *Simon v. Intercontinental Transport (ICT) B.V., 882 F.2d 1435 (9th Cir. 1989)* (citing text).

See The Eclipse, 135 U.S. 599 (1890) ; *Grant v. Poillon, 61 U.S. (20 How.) 162 (1857)* ; *Pillsbury Flour Mills Co. v. Interlake S.S. Co., 40 F.2d 439 (2d Cir. 1930)* ; *Home Ins. Co. v. Merchants' Transp. Co., 16 F.2d 372, 1927 AMC 57 (9th Cir. 1926)* ; *The Ada, 250 F. 194 (2d Cir. 1918)* ; *The Pennsylvania, 154 F. 9 (2d Cir. 1907)* ; *Plummer v. Webb, 19 F. Cas. 891 (C.C.D. Me. 1827)* (No. 11,233); *The Navigadora No. 73, 45 F.2d 639 (D.N.J. 1930)* .

(n20)Footnote 20. *Pillsbury Co. v. Port of Corpus Christi Auth., 1994 AMC 2244 (S.D. Tex. 1994)* (wharfage and storage of cargo on land); *Orient Atlantic Parco, Inc. v. Maersk Lines, 740 F. Supp. 1002, 1991 AMC 148 (S.D.N.Y. 1990)* (claim for customs duties that the shipper might have to pay in connection with the shipment of defective goods is incidental to maritime transportation and within the admiralty jurisdiction; claim for cold storage while the parties attempted to resolve their dispute was not sufficiently related to maritime activity to be within the admiralty jurisdiction).

See also Union Fish Co. v. Erickson, 235 F. 385 (9th Cir. 1916) , aff'd, 248 U.S. 308 (1919) ; *Keyser v. Blue Star S.S. Co., 91 F. 267 (5th Cir. 1899)* ; *Rosenthal v. The Louisiana, 37 F. 264 (C.C.E.D. La. 1889)* ; *Luckenbach S.S. Co. v. Coast Mfg. & Supply Co., 185 F. Supp. 910, 1960 AMC 2076 (E.D.N.Y. 1960)* ; *The Thomas P. Beal, 295 F. 877, 1924 AMC 640 (W.D. Wash. 1924)* ; *Nash v. Bohlen, 167 F. 427 (E.D.N.Y. 1909)* ; *Evans v. New York & P.S.S. Co., 145 F. 841* and *163 F. 405 (S.D.N.Y. 1906)* ; *The Pulaski, 33 F. 383 (E.D. Mich. 1888)* .

(n21)Footnote 21. *Atlantic Mut. Ins. Co. v. Balfour Maclaine Int'l, 968 F.2d 196 (2d Cir. 1992) . Imbesa America, Inc. v. M/V Anglia, 134 F.3d 1035, 1998 AMC 1545 (11th Cir. 1998)* (remanding to trial court to determine if dockage and stevedoring portions of contract could be separated from non-maritime cargo handling services without prejudice to either party).

Kuehne & Nagel (Ag & Co) v. Geosource, Inc., 625 F. Supp. 794 (S.D. Tex. 1986) , vacated in part, remanded,, 874 F.2d 283 (5th Cir. 1989) . The court of appeals approved of the trial court's holding that the multi-modal contracts in question were not maritime contracts. The case was followed in *Berkshire Fashions, Inc. v. M.V. Hakusan II, 743 F. Supp. 303, 1991 AMC 690 (D.N.J. 1990)* . On appeal, the Third Circuit reversed and remanded to the trial court to determine, based primarily on customary practice, if the bill of lading contemplated both land and sea transport. *Berkshire Fashions, Inc. v. The M.V. Hakusan II, 954 F.2d 874 (3d Cir. 1992)* . The appellate court agreed that if the bill of lading contemplated land and sea transport that admiralty jurisdiction would be lacking as the "extensive cross-United States transport" of goods would not be incidental nor could the two portions of transport be severed. *Accord, Joe Boxer Corp. v. Fritz Transp. Int'l, 33 F. Supp.2d 851, 1998 AMC 2576 (C.D. Cal. 1998)* ; *Coleman Co. v. Compagnie Generale Maritime, 903 F. Supp. 45, 1996 AMC 757 (S.D. Ga. 1995)* .

Thurmond v. Delta Well Surveyors, 836 F.2d 952 (5th Cir. 1988) (performance of wireline service on offshore well is non-maritime contract that can be separated from the maritime aspects of the arrangement, so that Louisiana law prohibiting indemnity actions governs); *Natasha, Inc. v. Evita Marine Charters, Inc., 763 F.2d 468, 1986 AMC 490 (1st Cir. 1985)* (charter separable from sale of vessel); *Flota Maritima Browning de Cuba v. Snobl, 363 F.2d 733, 1966 AMC 1999 (4th Cir.) , cert. denied, 385 U.S. 837, 87 S. Ct. 82, 17 L. Ed. 2d 71 (1966)* (same); *Berwind-White Coal Mining Co. v. City of New York, 135 F.2d 443, 1943 AMC 682 (2d Cir. 1943)* ; *Eastern Mass. St. Ry. Co. v. Transmarine Corp., 42 F.2d 58, 1930 AMC 1454 (1st Cir.) , cert. denied, 282 U.S. 883 (1930)* ; *Compagnie Francaise de Navigation a Vapeur v. Bonnasse, 19 F.2d 777, 1927 AMC 1325 (2d Cir. 1927)* ; *Alaska Barge & Transp., Inc. v. United States, 373 F.2d 967, 1967 AMC 1155 (Ct. Cl. 1967)* ; *MacDougall's Cape Cod Marine v. One Christina 40 Foot Vessel, 721 F. Supp. 374 (D. Mass. 1989) (citing text) , aff'd on other grounds, 900 F.2d 408 (1st Cir. 1990)* ; *Jones v. Berwick Bay Oil Co., 697 F. Supp. 260 (E.D. La. 1988)* ; *Puerto Rico Maritime Shipping Auth. v. Luallipam, Inc., 1987 AMC 221 (D.P.R. 1986)* (intermodal contract having incidental land carriage); *Embassy of Pakistan v. Columbia Grain, Inc., 1984 AMC 2269 (D. Or. 1983)* ; *Tropwood, A.G. v. Tae Chang Wood Indus. Co., 454 F. Supp. 964, 1980 AMC 2961 (N.D. Ill. 1978)* ; *United Fruit Co. v. United States Shipping Bd. Merchant Fleet Corp., 42 F.2d 222, 1930 AMC 1404 (D. Mass. 1930)* .

(n22)Footnote 22. *Board of Commissioners v. M/V Belle of Orleans, 535 F.3d 1299 (11th Cir. 2008)* ; *Laredo Offshore Constructors, Inc. v. Hunt Oil Co., 754 F.2d 1223, 1986 AMC 237 (5th Cir. 1985)* ; *Terra Nova Ins. Co. v. Acer Latin America, Inc., 931 F. Supp. 852 (S.D. Fla. 1996)* (policy covered risks in all manner of transport); *Outbound Maritime Corp. v. P.T. Indonesian Consortium of Constr. Indus., 582 F. Supp. 1136, 1984 AMC 2072 (D. Md. 1984)* .

(n23)Footnote 23. *Folksamerica Reinsurance Co. v. Clean Water of N.Y., Inc., 2005 U.S. App. LEXIS 13041 (2d Cir. 2005)* (modified Comprehensive General Liability policy is a maritime contract because its "primary objective" was to provide marine insurance).

(n24)Footnote 24. *Norfolk Southern Ry. v. James N. Kirby Pty Ltd., 125 S.Ct. 385, 390, 2004 AMC 2705 (2004)* .

(n25)Footnote 25. *Id. at 385* . One court has read *Kirby* to extend admiralty jurisdiction to the contract between an overland freight forwarder and customs broker with an overseas shipper. *BDL Int'l v. Sodetal USA, Inc., 377 F. Supp.2d 518 (D.S.C. 2005)* . Goods were shipped from France to Charleston, South Carolina. The plaintiff would then provide customs brokerage services and arrange for inland transportation. Regarding the contract to provide inland transportation, the court concluded, "The primary objective of the contracts was to complete the transport of goods sent by sea from France to the United States. The fact that the delivery was sent overland does not alter the contracts' maritime nature." *BDL Int'l, 377 F. Supp.2d 518 at 523* . It seems that the case should have been distinguished from *Kirby*. *Kirby* involved a multimodal bill of lading and the railroad was carrying the cargo under that contract. By contrast, the contract in *BDL* was to arrange for inland transportation after the goods had arrived in port. The decision seems on stronger ground with regard to the custom brokerage services. The court found that "these services were essential to the successful shipment of the materials, as without them, [the shipper's] materials could never have entered

the country." *BDL Int'l, 377 F. Supp.2d 518 at 524* . However, the decision conflicts with other cases that have held services provided to cargo on shore to be non-maritime. *See* § 185, *infra* at notes 17 and 29-30.

(n26)Footnote 26. *MacDougall's Cape Cod Marine v. One Christina 40 Foot Vessel, 900 F.2d 408, 1990 AMC 1643 (1st Cir. 1990)* ("as a general proposition nonmaritime matters may be combined in an admiralty complaint, on the basis of pendent jurisdiction, and not deprive the court of jurisdiction over the maritime claim ... as long as clearly separable"); *Employers Ins. of Wausau v. Suwannee River SPA Lines, 866 F.2d 752, 1990 AMC 447 (5th Cir.) , cert. denied, 493 U.S. 820, 110 S. Ct. 77, 107 L. Ed. 2d 43 (1989) . See also Feigler v. Tidex, Inc., 826 F.2d 1435, 1988 AMC 1922 (5th Cir. 1987)* (upholding use of pendent party jurisdiction over non-diverse defendants involved in auto accident which aggravated back injury which formed the basis for a claim under the Jones Act and general maritime law); *Leather's Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800, 1971 AMC 2383 (2d Cir. 1971)* (pendent party jurisdiction); *Insurance Company of North America v. S/S "Cape Charles," 843 F. Supp. 893 (S.D.N.Y. 1994)* (in admiralty action by insurer of cargo owner against ocean carrier, ocean carrier's third party claim against trucker was non-maritime but court would exercise pendant party jurisdiction; trucker retained right to jury trial so that if insurer prevailed against ocean carrier on nonjury claim, the jury would decide trucker was liable); *Syndicate 420 at Lloyd's London v. Glacier Gen. Assurance Co., 633 F. Supp. 428 (E.D. La. 1986)* ; *Ford Motor Co. v. Wallenius Lines, 476 F. Supp. 1362, 1980 AMC 1114 (E.D. Va. 1979)* ; *Ohio Barge Line v. Dravo Corp., 326 F. Supp. 863 (W.D. Pa. 1971)* .

But see Galt G/S v. Hapag-Lloyd AG, 60 F.3d 1370 (9th Cir. 1995) (claim against ocean carrier for cargo damage may not serve as basis for ancillary jurisdiction for indemnity claim against consignee for damage occuring in consignee's warehouse; the two claims are separated in time and by the carrier's relinquishing control of the cargo and therefore arise from different occurrences); *Miller v. Griffin-Alexander Drilling Co., 685 F. Supp. 960, 1989 AMC 118 (W.D. La. 1988) , aff'd, 873 F.2d 809 (5th Cir. 1989)* (malpractice claims against doctor and hospital may not be made pendent to Jones Act and general maritime claims against employer for there is not a common nucleus because the sources of the claims are too dissimilar). *See, generally, United Mine Workers of Am. v. Gibbs, 383 U.S. 715 (1966)* .

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 184

§ 184. Maritime Contracts: Particular Instances.

Suits have been sustained as resting on a maritime contract in the following cases:

Insurance related cases

On an insurance policy; n1 for insurance premiums; n2 for breach of a carrier's agreement to comply with the terms of a shipper's insurance policy; n3

Carriage of goods and passengers

For a bill of lading or charter, n4 even of a vessel yet to be built; n5 upon an oral charter; n6 on a bond given by a charterer for due performance of his charter; n7 for reserving cargo space on a ship and, on the part of the shipper, agreeing to fill such space; n8 an agreement to arbitrate a dispute concerning an interstate shipment of goods by water; n9 by a broker who chartered a ship for another in his own name, and sued the latter for refusal to accept the charter and for expenses and brokerage fees; n10 for breach of charterer's agreement to advance master's necessary expenses; n11 suit *in rem* by charterer of entire ship adopting master's act in shipping cargo of third persons and collecting freight; n12 contract to convey passengers; n13 by one to furnish vessels, and by another to furnish cargo for such vessels; n14 by or against an owner of cargo in general average; n15 claim for cargo damage where the bill of lading falsely described the condition of the goods; n16 suit *in rem* to recover freight paid under protest in a bill of lading dispute; n17 the ocean-carriage portion of an Interstate Commerce Commission through rail-and-ocean export bill of lading, or of an ocean-and-rail import contract of carriage; n18 on a contract guaranteeing a letter of credit on security of a vessel's freight; n19

Service to cargo and vessels

A stevedoring contract; n20 a contract to supply marine fuel; n21 a contract for lease of cargo shipping containers; n22 contract by a port terminal owner to supply a container-handling crane to a stevedore; n23 for the use of a dry dock; n24 or a marine railway; n25 for removing ballast; n26 for lockage in a river; n27 for wharfage; n28 for providing line handling services; n29 for laying up a vessel; n30 for re-launching a vessel which has been driven ashore; n31 contracts

for weighing, inspecting and measuring cargo; n32 for coopering cargo; n33 for compressing cargo; n34 for the services of a watchman; n35 for the service of a diver; n36 for the service of an average adjuster; n37 negligent performance of a fumigation contract; n38 for supplying nets to a fishing vessel; n39 for certification and classification of a vessel; n40

Repair and conversion of vessels

For repairing a vessel; n41 a contract to convert a coal burning ferry-boat into an oil burner; n42 a contract to repair ships in the navigable waters of a harbor with an indemnity clause providing that the ship owners shall be indemnified by the contractor against claims for damages arising out of the contractor's negligence in the performance of the contract; n43

Labor cases

A collective bargaining contract between a shipowner and a seaman's union; n44 on a contract to act as sailors to fishing grounds, to fish, and to can and load the fish on shore; n45 a pilot's bond for proper performance of his duties; n46 a pilot's salary or fees allowable under a State statute; n47 a shipowner's oral contract with a seaman to indemnify him for all negligent treatment received at the U.S. Public Health Service Hospital; n48 hospital services rendered to seaman at request of master or shipowner; n49

Salvage and Towage

Contract salvage; n50 and a towing contract. n51

Miscellaneous

Courts have also held the following contracts to be maritime: a contract to remove submerged piling about one mile off shore in the Gulf of Mexico and to transport to shore machinery salvaged from the water; n52 so much of a contract relating to the extension of a railroad track by means of a trestle over navigable water as required the restoration of the bottom of the ship to its former condition whenever the trestle should be removed; n53 a contract to guard alien seamen who had been ordered detained on board a vessel under an executive order by the immigrationauthorities; n54 and the charter of a scow by a city for the display of fireworks; n55 breach of an agreement to release a vessel from attachment. n56 An oral contract to lift a building from shore onto a crane, to transport the building upon navigable waters, and to relocate it on shore seven miles upstream is a maritime contract. n57 A contract whereby defendant would be allowed to use a chartered vessel for carriage of goods to an island and whereby plaintiff would act as agent for the vessel for procuring stevedoring services was held to be a maritime contract. n58 Some courts have held that a contract for the management and operation of an owner's vessel is a maritime contract. n59 The Ninth Circuit has held that an insurance broker's suit for premiums advanced on a marine insurance policy arises out of the maritime contract and is therefore within the court's admiralty jurisdiction. n60 A contract to provide research to assist in locating a sunken vessel is maritime. n61

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCharterpartiesCharter ContractsGeneral OverviewAdmiralty LawCharterpartiesCharter ContractsBills of LadingAdmiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionInsurance LawBusiness InsuranceMarine InsuranceGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1870) . See Sirius Ins. Co. (Uk) Ltd. v. Collins, 16 F.3d 34 (2d Cir. 1994)* (insurance on pleasure boat even though vessel was stolen while on shore); *Morrow Crane Co.*

v. Affiliated FM Ins. Co., 686 F. Supp. 265, 1988 AMC 691 (D. Or. 1987) (insurance on cargo carried on deck); Syndicate 420 at *Lloyd's London v. Early Am. Ins. Co., 796 F.2d 821 (5th Cir. 1986)* (marine reinsurance is also a maritime contract but errors and omissions policy covering broker's fault in obtaining reinsurance on maritime policy is not within the admiralty jurisdiction nor is it governed by maritime law).

See La Reunion Francise SA v. Barnes, 247 F.3d 1022, 2001 AMC 1521 (9th Cir. 2001) (policy limited use of vessel to inland waters of California and required vessel to be stored on land for half the year); *Jeffcott v. Aetna Ins. Co., 129 F.2d 582, 1942 AMC 1021 (2d Cir.) , cert. denied, 317 U.S. 663* (l942); *New York & Cuba Mail S.S. Co. v. Continental Ins. Co., 117 F.2d 404, 1941 AMC 243 (2d Cir.) , cert. denied, 313 U.S. 580 (1941)* ; *The Texas No. 1 (Eggers v. National Union Fire Ins. Co.), 112 F.2d 541, 1940 AMC 1106 (5th Cir. 1940)* ; *The Fanny D. (Eggers v. Southern S.S. Co.), 112 F.2d 347, 1940 AMC 1101 (5th Cir.) , cert. denied, 311 U.S. 680, 61 S. Ct. 49, 85 L. Ed. 438 (1940)* ; *Insurance Co. of N. Am. v. Virgilio, 574 F. Supp. 48 (S.D. Cal. 1983)* (insurance contract on pleasure boat); *Insurance Co. of N. Am. v. Langan Constr. Co., 327 F. Supp. 567, 1971 AMC 1637 (S.D. Ala. 1971)* ; *Brittingham v. Tugboat Underwriting Syndicate, 262 Md. 134, 277 A.2d 8, 1971 AMC 1639 (1971)* ; *Markel Am. Ins. Co. v. Watkins Co., 2008 U.S. Dist. LEXIS 16191 (W.D. Ark. Mar. 3, 2008)* (even if underlying tort claim is not maritime, an insurance policy covering a jet-ski in "inland lakes, rivers and intercoastal waterways of the United States" is a maritime contract). *But see Royal Ins. Co. of Am. v. Pier 39 Ltd. Partnership, 738 F.2d 1035, 1986 AMC 2392 (9th Cir. 1984)* (insurance on floating breakwater and floating dock not maritime).

But see In re Balfour Maclaine Int., Ltd., 873 F. Supp. 862 (S.D.N.Y. 1995) (no admiralty jurisdiction over insurance covering goods stored in warehouse). *See, generally,* § 219, *infra.*

(n2)Footnote 2. *The Illinois, 12 F. Cas. 1178 (W.D. Tenn. 1879)* (No. 7005). Insurance is a necessary under the *Federal Maritime Lien Act. Equilease Corp. v. M/V Sampson, 793 F.2d 598, 1986 AMC 1826 (5th Cir.) (en banc) , cert. denied, 479 U.S. 984, 107 S. Ct. 570, 93 L. Ed. 2d 575* (1986). *Contra Grow v. Steel Gas Screw Lorraine K, 310 F.2d 547, 1963 AMC 2044 (6th Cir. 1962)* . Cases prior to the Federal Maritime Lien Act generally held that there was no lien unless given by state statute. *See The City of Camden, 147 F. 847 (S.D. Ala. 1906)* ; *The Hope, 49 F. 279 (D. Wash. 1892)* ; *The Daisy Day, 40 F. 603 (C.C.W.D. Mich. 1889)* ; *In re Insurance Co., 22 F. 109 (N.D.N.Y. 1884) , aff'd, 24 F. 559 (C.C.N.D.N.Y. 1885)* ; *The Jennie B. Gilkey, 19 F. 127 (C.C.D. Mass. 1884)* ; *The Guiding Star, 9 F. 521 (S.D. Ohio 1881) , aff'd, 18 F. 263 (C.C.S.D. Ohio 1883)* ; *The John T. Moore, 13 F. Cas. 897 (C.C.D. La. 1817)* (No. 7430). *See also The Wabash, 279 F. 921 (D. Conn. 1922) . Contra The Dolphin, 7 F. Cas. 862 (E.D. Mich.) (No. 3973) , aff'd, 7 F. Cas. 866 (C.C.E.D. Mich. 1876)* (No. 3974) (there is a lien); *The Illinois, supra* (same).

(n3)Footnote 3. *Royster Guano Co. v. W.E. Hedger Co., 48 F.2d 86, 1931 AMC 952 (2d Cir.) , cert. denied, 283 U.S. 858 (1931)* ; *The Alvah, 59 F. 630 (E.D.N.Y. 1894)* .

(n4)Footnote 4. *Marine Logistics, Inc. v. England, 265 F.3d 1322 (Fed. Cir. 2001)* ; *Armour & Co. v. Fort Morgan S.S. Co., 270 U.S. 253, 1926 AMC 327 (1926)* ; *Genetics Int'l v. Cormorant Bulk Carriers, Inc., 877 F.2d 806, 1989 AMC 1725 (9th Cir. 1989)* ; *Randall v. Chevron U.S.A., Inc., 788 F. Supp. 1391 (E.D. La. 1992)* ; *Compass Marine Corp. v. Calore Rigging Co., 716 F. Supp. 176 (E.D. Pa. 1989) . See also* The Secundus, 1927 AMC 639 (E.D.N.Y. 1927) (charter hire held in escrow); *Osaka Shosen Kaisha v. Pacific Export Lumber Co., 260 U.S. 490 (1922)* ; *The Arlyn Nelson, 243 F. 415 (W.D. Wash. 1917)* .

Northern Star S.S. Co. of Canada v. Kansas Milling Co., 75 F. Supp. 534, 1947 AMC 1686 (S.D.N.Y. 1947) (an agreement to perform a charter party is a maritime contract); *Energy Molasses Corp. v. Marine Transp. Co., 1984 AMC 2705 (S.D.N.Y. 1984)* (a dispute between shipowner and charterer over whether charterer is obligated to pay sum of money if owner not able to secure new charter is maritime).

But see Sonito Shipping Co. v. Sun United Maritime Ltd., 478 F. Supp. 2d 532, 2007 AMC 1018 (S.D.N.Y. 2007) (even though shipowner's claim for indemnity against charterer was a maritime claim, it was premature under English

law because the cargo claims had not been paid; therefore the shipowner was not entitled to a Rule B attachment of the charterer's assets); *Marina Entertainment Complex, Inc. v. Hammond Port Auth., 842 F. Supp. 367 (N.D. Ind. 1994)* (whether port authority complied with state statute governing the awarding of leases is not within the admiralty jurisdiction).

(n5)Footnote 5. *The Baracoa, 44 F. 102 (S.D.N.Y. 1890)* .

(n6)Footnote 6. *Hastorf v. F.R. Long-W.G. Broadhurst Co., 239 F. 852 (2d Cir. 1917)* ; *American Hawaiian S.S. v. Willfuehr, 274 F. 214 (D. Md. 1921)* ; *Quirk v. Clinton, 20 F. Cas. 146 (S.D.N.Y. 1849)* (No. 11,518); *Warren & Arthur Smadbeck, Inc. v. Heling Contracting Corp. (The Progress), 50 F.2d 99, 1931 AMC 1123 (2d Cir. 1931)* (charter of a sand-sucking dredge in Great South Bay); *Northern Star S.S. Co. of Canada v. Kansas Milling Co., 75 F. Supp. 534, 1947 AMC 1686 (S.D.N.Y. 1947)* (suit may be maintained on an oral contract).

(n7)Footnote 7. *Davis v. Dittmar (The Edmont), 6 F.2d 141, 1925 AMC 549 (2d Cir. 1925)* ; *Haller v. Fox, 51 F. 298 (D. Wash. 1892)* . *Contra Pacific Sur. Co. v. Leatham & Smith Towing & Wrecking Co., 151 F. 440 (7th Cir. 1907)* ; *Eadie v. North Pac. S.S. Co., 217 F. 662 (N.D. Cal. 1914)* .

(n8)Footnote 8. *Baltimore Steam-Packet Co. v. Patterson, 106 F. 736 (4th Cir. 1901)* ; *Chase Bag Co. v. United States (The Laurel), 71 Ct. Cl. 264, 1931 AMC 191 (1930)* ; *Kaufman v. John Block & Co., 60 F. Supp. 992, 1945 AMC 343 (S.D.N.Y. 1945)* (a cause of action against a firm which, representing itself as the agent for the charterer of a ship, entered into a contract for sea carriage of goods delivered to the firm but not carried has been held within the admiralty jurisdiction).

(n9)Footnote 9. *J.V. Lane & Co. v. O'Donnell Transp. Co., 9 F. Supp. 39, 1934 AMC 1523 (E.D.N.Y. 1934)* .

(n10)Footnote 10. *Adler v. Galbraith, Bacon & Co., 156 F. 259 (W.D. Wash. 1907)* .

(n11)Footnote 11. *Keyser v. Blue Star S.S. Co., 91 F. 267 (5th Cir. 1899)* .

(n12)Footnote 12. *H. Liebes & Co. v. Klengenberg (The Arctic), 23 F.2d 611, 1928 AMC 314 (2d Cir. 1928)* ; *The Port Adelaide, 62 F. 486 (2d Cir. 1894)* .

(n13)Footnote 13. *Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991)* (choice of forum provision); *The Moses Taylor, 71 U.S. (4 Wall.) 411 (1866)* ; *Vavoules v. Kloster Cruise Ltd., 822 F. Supp. 979 (E.D.N.Y. 1993)* . *The Pacific, 18 F. Cas. 935 (C.C.S.D.N.Y. 1850)* (No. 10,643); *Colby v. Norwegian Cruise Lines, Inc., 921 F. Supp. 86 (D. Conn. 1996)* (choice of forum provision even though injury took place on land); *The Aberfoyle, 1 F. Cas. 30 (S.D.N.Y.) (No. 16) , aff'd, 1 F. Cas. 35 (C.C.S.D.N.Y. 1848)* (No. 17).

(n14)Footnote 14. *Graham v. Oregon R. & Nav. Co., 135 F. 608 (S.D.N.Y. 1905)* .

(n15)Footnote 15. *Compagnie Francaise de Navigation a Vapeur v. Bonnasse, 19 F.2d 777, 1927 AMC 1325 (2d Cir.) , cert. denied, 275 U.S. 551 (1927)* ; *The Emilia S. de Perez, 22 F.2d 585, 1927 AMC 1839 (D. Md. 1927)* ; *Bark San Fernando v. Jackson, 12 F. 341 (C.C.E.D. La. 1882)* ; *The Sudbury, 33 F.2d 293, 1929 AMC 520 (N.D. Cal. 1929)* .

(n16)Footnote 16. *The Carso, 53 F.2d 374, 1931 AMC 1497 (2d Cir.) , cert. denied, 284 U.S. 679, 52 S. Ct. 140, 76 L. Ed. 574 (1931)* , but if the cargo owner seeks to recover the purchase price, he must sue for deceit at law. *Cf. The Sophocles, 51 F. Supp. 953, 1943 AMC 966 (S.D.N.Y. 1943)* .

As to effect of carrier's deception in issuing a clean COGSA bill of lading for damaged goods upon libellant cargo owner's burden of proof as to damages, *see Empresa Central Mercantil v. Republic of the United States of Brazil, 147 F. Supp. 778, 1957 AMC 218 (S.D.N.Y. 1957) , aff'd, 257 F.2d 747, 1958 AMC 1809 (2d Cir. 1958)* .

(n17)Footnote 17. *Tatsuuma Kisen Kabushiki Kaisha v. Robert Dollar Co. (The Hakutatsu Maru), 31 F.2d 401, 1929 AMC 535 (9th Cir. 1929) . See also Gamboa, Rodriguez, Rivera & Co. v. Imperial Sugar Co., 125 F.2d 970, 1942 AMC 396 (5th Cir.) , cert. denied, 316 U.S. 691 (1942)* (involving a contest between shipper and consignee for freight refund after frustration of a voyage); *Krauss Bros. Lumber Co. v. Dimon S.S. Co., 290 U.S. 117, 1933 AMC 1578 (1933)* (contract to refund excess freight money payment if a competing line were shown to have made a lower rate enforced *in rem* upon the discovery, 17 months after the cargo carriage had been terminated by delivery of the goods, that a competing carrier had in fact made a lower rate).

American E. Corp. v. United States, 133 F. Supp. 11, 1955 AMC 1775 (S.D.N.Y. 1955) , aff'd, 231 F.2d 664, 1956 AMC 866 (2d Cir.) , cert. denied, 351 U.S. 983 (1956) (a suit against the government for refund of overpayments of hire of government-owned merchant vessels is maritime in character and governed by the two-year limitation of the Suits in Admiralty Act).

(n18)Footnote 18. *The Scantic, 40 F.2d 39, 1930 AMC 899 (5th Cir. 1930)* ; *Norton v. Southern Ry. & Merchant Fleet Corp. (The Hatteras), 138 Misc. 784, 246 N.Y.S. 676, 1931 AMC 364 (Mun. Ct. 1930)* .

(n19)Footnote 19. *The Advance, 72 F. 793 (2d Cir.) , cert. denied, 163 U.S. 690 (1896)* .

(n20)Footnote 20. *American Stevedores v. Porello, 330 U.S. 446, 1947 AMC 349 (1947)* ; *New Orleans Stevedoring Co. v. United States, 439 F.2d 89, 1971 AMC 1456 (5th Cir. 1971)* ; *Capoziello v. Brasileiro, 443 F.2d 1155, 1971 AMC 1477 (2d Cir. 1971)* ; *Indemnity Ins. Co. of N. Am. v. California Stevedore & Ballast Co., 307 F.2d 513, 1962 AMC 2507 (9th Cir. 1962)* ; *A/S J. Ludwig Mowinckels Rederi v. Commercial Stevedoring Co., 256 F.2d 227, 1958 AMC 1563 (2d Cir. 1958)* ; *T. Smith & Son v. Rigby, 305 F. Supp. 418, 1969 AMC 2092 (E.D. La. 1969)* ; *Hugev v. Dampskisaktieselskabet Int'l, 170 F. Supp. 601, 1959 AMC 439 (S.D. Cal. 1959) , aff'd, 274 F.2d 875 (9th Cir.) , cert. denied, 363 U.S. 803 (1960)* ; *The O'Leary, 74 F. Supp. 313, 1948 AMC 65 (E.D. Pa. 1947)* ; *Steers Sand & Gravel Corp. v. Wortmann & Sons, 74 F. Supp. 806, 1947 AMC 1489 (S.D.N.Y. 1947) . Cf. Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917)* (longshoreman's employment was a maritime contract); *Atlantic Transport Co. v. Imbrovek, 234 U.S. 52, 61-63 (1914)* (loading and stowing a ship's cargo is a maritime service).

Ellerman Lines v. Atlantic & Gulf Stevedores, Inc., 339 F.2d 673, 1965 AMC 283 (3d Cir. 1964) , cert. denied, 382 U.S. 812 (1965) (suit by shipowner alleging breach of stevedore's implied warranty of workmanlike service); Farrell Lines v. Universal Maritime Serv., 1978 AMC 1035 (S.D.N.Y. 1978) (loss of cargo when under control of stevedore-terminal operator).

See also Cooper v. Loper, 923 F.2d 1045, 1991 AMC 1032 (3d Cir. 1991) (suit by shipowner alleging breach of dockowner's implied warranty of workmanlike performance is maritime in nature); *American President Lines v. Green Transfer & Storage, Inc., 568 F. Supp. 58 (D. Or. 1983)* (contract to load a cargo container is maritime).

A contract to unload and store cargo is maritime where storage is incidental to the unloading. *Hoogovens Estel Verkoopkantoor v. Ceres Terminals, 1984 AMC 1417 (S.D.N.Y. 1983)* ; *Marubeni-Iida (Am.), Inc. v. Nippon Yusen Kaisha, 207 F. Supp. 418, 1962 AMC 1082 (S.D.N.Y. 1962)* . A contract of carriage continues to govern the relationship between the shipper and carrier after discharge but before delivery and is therefore within the admiralty jurisdiction. *Leather's Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800, 1971 AMC 2383 (2d Cir. 1971)* . Although the shipper's tort claim against the terminal operator for negligent storage is non-maritime, the claim may be heard as pendent to the maritime claim against the carrier. *Id.* In *Leather's Best,* the court suggested that admiralty jurisdiction would cease if the shipper were dilatory in calling for his goods. *451 F.2d at 807, n. 5, 1971 AMC 2383, 2389* . But in *Morse Electro Prods. v. S.S. Great Peace, 437 F. Supp. 474, 1979 AMC 486 (D.N.J. 1977)* , the court upheld admiralty jurisdiction in a case of misdelivery despite the shipper's delay. The latter court distinguished *Leather's Best* as a case involving theft.

(n21)Footnote 21. *Exxon Corp. v. Central Gulf Lines, 500 U.S. 603, 1991 AMC 1817 (1991)* ; *Equatorial Marine Fuel Mgmt. Serv. v. MISC Berhad, 591 F.3d 1208, 2010 AMC 245 (9th Cir. 2010) . Kristensons- Petroleum, Inc. v.*

Sealock Tanker Co., 304 F. Supp.2d 584, 2004 AMC 1184 (S.D.N.Y. 2004) .

(n22)Footnote 22. *Interpool Ltd. v. Char Yigh Marine (Panama) S.A., 890 F.2d 1453, 1990 AMC 1 (9th Cir. 1989)* ; *Foss Launch & Tug Co. v. Char Ching Shipping U.S.A., 808 F.2d 697, 1987 AMC 913 (9th Cir.)* , *cert. denied, 484 U.S. 828, 108 S. Ct. 96, 98 L. Ed. 2d 57 (1987)* ; *CTI-Container Leasing Corp. v. Oceanic Operations Corp., 682 F.2d 377, 1982 AMC 2541 (2d Cir. 1982)* ; *Triton Container Int'l Ltd. v. Kien Hung Shipping Co., 2004 AMC 1566 (C.D. Cal. 2004)* ; *Transamerica ICS, Inc. v. M/V Panatlantic, 1984 AMC 489 (S.D. Fla. 1983)* ; Star Shipping A/S v. Star Lines Shipping Co., 1981 AMC 2959 (D.N.J. 1981) . *See also Orbis Marine Enters. v. TEC Marine Lines, 692 F. Supp. 280, 1989 AMC 1604 (S.D.N.Y. 1988)* (contract to purchase marine shipping containers is a maritime contract even though contract was executory and was containers were not earmarked for a particular vessel).

(n23)Footnote 23. *Maryland Port Admin. v. S.S. American Legend, 453 F. Supp. 584, 1978 AMC 1423 (D. Md. 1978) . But see Sea Land Indus. v. General Ship Repair Corp., 530 F. Supp 550, 1982 AMC 2120 (D. Md. 1982)* (contract to repair, maintain and move such a crane for use by longshore workers is non-maritime).

(n24)Footnote 24. *Folksamerica Reinsurance Co. v. Clean Water of N.Y., Inc., 413 F.3d 307 (2d Cir. 2005)* (modified Comprehensive General Liability policy is a maritime contract because its "primary objective" was to provide marine insurance). *But see Capital Yacht Club v. Vessel Aviva, 409 F. Supp.2d 1 (D.D.C. 2006)* (although contract for wharfage is maritime, membership contract with yacht club included non-severable and non-incidental non-maritime elements such that suit for non-payment of monthly fee was not within the court's admiralty jurisdiction).

(n25)Footnote 25. *Goodman v. 1973 26 Foot Trojan Vessel, 859 F.2d 71 (8th Cir. 1988)* (even though non-commercial vessel); *The Alliance, 236 F. 361 (N.D. Cal. 1916)* .

(n26)Footnote 26. *Roberts v. The Bark Windermere, 2 F. 722 (S.D.N.Y. 1880)* .

(n27)Footnote 27. *Monongahela Navigation Co. v. The Steam Tug "Bob Connell," 1 F. 218 (C.C.W.D. Pa. 1880)* .

(n28)Footnote 28. *Ex parte Easton, 95 U.S. 68 (1877)* ; *Eastern Mass. St. Ry. v. Transmarine Corp. (The Surico), 42 F.2d 58, 1930 AMC 1454 (1st Cir. 1930)* ; *Ex parte Lewis 15 F. Cas. 451, 452 (C.C.D. Mass. 1815)* (No. 8310); *Thomson v. Chesapeake Yacht Club, 255 F. Supp. 555, 1966 AMC 2275 (D. Md. 1966)* ; *Bird v. S.S. Fortuna, 232 F. Supp. 690, 1964 AMC 2394 (D. Mass. 1964)* ; *Braisted v. Denton, 115 F. 428 (E.D.N.Y. 1902)* ; *Kate Tremaine, 14 F. Cas. 144, 145-46 (E.D.N.Y. 1871)* (No. 7622).

For distinction between an export charge and a wharfage charge under the Philippine Tariff Act of 1940, *see Sociedad Armadora Aristomenis Panama, S.A. v. 5020 Long Tons of Raw Sugar, 223 F.2d 417, 1955 AMC 1518 (3d Cir. 1955) , aff'g, 122 F. Supp. 892, 1954 AMC 1642 (E.D. Pa. 1954)* .

Mid-America Transp. Co. v. St. Louis Barge Fleeting Serv., 229 F. Supp. 409, 1964 AMC 2610 (E.D. Mo. 1964) , aff'd, 348 F.2d 920, 1965 AMC 1932 (8th Cir. 1965) (contract for the use of a wharf by the owner of a ship).

(n29)Footnote 29. *Balt. Line Handling Co. v. Brophy, 771 F. Supp. 2d 531, 2011 AMC 975 (D. Md. 2011)* (the court applied state law under a maritime-but-local analysis).

(n30)Footnote 30. *The Hattie Thomas, 59 F. 297 (D. Conn. 1894)* . Contracts to store pleasure craft on land, even over winter, are maritime. *American E. Dev. Corp. v. Everglades Marina, Inc., 608 F.2d 123, 1980 AMC 2011 (5th Cir. 1979)* ; *Ziegler v. Rieff, 637 F. Supp. 675, 1987 AMC 241 (S.D.N.Y. 1986)* ; *Omaha Indem. Co. v. Whaleneck Harbor Marina, Inc., 610 F. Supp. 154, 1986 AMC 345 (E.D.N.Y. 1985)* ; *Medema v. Gombos's Marina Corp., 97 F.R.D. 14, 1983 AMC 1611 (N.D. Ill. 1982)* ; Rogers v. Yachts America, Inc., 1983 AMC 417 (D. Md. 1982) (storage for over one year); *Schuster v. Baltimore Boat Sales, Inc., 471 F. Supp. 321, 1980 AMC 789 (D. Md. 1979)* ; *Fireman's Fund Am. Ins. Co. v. Boston Harbor Marina, Inc., 285 F. Supp. 36, 1968 AMC 967 (D. Mass. 1968) , rev'd on other grounds, 406 F.2d 917 (1st Cir. 1969)* ; *The C. Vanderbilt, 86 F. 785 (E.D.N.Y. 1898) , aff'd on other grounds sub*

nom. The America, 93 F. 986 (2d Cir. 1899) (storage of domestic vessel removed from navigation is maritime but does not give rise to lien). *But see* § 185, n. 19, *infra.*

(n31)Footnote 31. *The Ella, 48 F. 569 (E.D. Va. 1880)* .

(n32)Footnote 32. *Constantine v. The Schooner River Queen, 2 F. 731 (S.D.N.Y. 1880)* .

(n33)Footnote 33. *The E.A. Baisley, 13 F. 703 (E.D.N.Y. 1882)* ; *The Onore, 18 F. Cas. 728 (E.D.N.Y. 1873)* (No. 10,538).

(n34)Footnote 34. *The Wivanhoe, 26 F. 927 (E.D. Va. 1886)* . *But see The Paola R., 32 F. 174 (C.C.E.D. La. 1887)* .

(n35)Footnote 35. *Port Welcome Cruises, Inc. v. S.S. Bay Belle, 215 F. Supp. 72, 1964 AMC 2674 (D. Md.)* , *aff'd, 324 F.2d 954 (4th Cir. 1963)* (maintenance men aboard vessel docked for winter in navigable water); *Union Marine & Gen. Ins. Co. v. American Export Lines, 274 F. Supp. 123, 1967 AMC 924 (S.D.N.Y. 1966)* (contract with carrier to protect cargo unloaded from vessel); *The Herdis, 22 F.2d 304 (D. Md. 1927)* (caretakers performing work only a competent seaman could perform on idled vessel afloat on navigable waters); *The Seguranca, 58 F. 908 (S.D.N.Y. 1893)* ; *Wishart v. The Jos. Nixon, 43 F. 926 (D. Pa. 1890)* (watched and kept her ready for navigation); *The Maggie P., 32 F. 300 (E.D. Mo. 1887)* ; *The Erinagh, 7 F. 231 (S.D.N.Y. 1881)* ; *The George T. Kemp, 10 F. Cas. 227 (D. Mass. 1876)* (No. 5341); *The Harriet, 11 F. Cas. 586 (S.D.N.Y. 1845)* (No. 6097). *Cf.* Ross v. Steamship Zealand, 1956 AMC 1185 (E.D. Va. 1956) (watchman employed on a vessel in port can sue for personal injuries caused by vessel's unseaworthiness); *Defiore v. American S.S. Co., 110 F. Supp. 427, 1952 AMC 1997 (W.D.N.Y. 1952)* (watchman on board fully manned vessel ready to engage in commerce is a Jones Act seaman). *See also* Coastal Dry Dock & Repair Corp. v. The S.S. Baybelle, 1975 AMC 1736, 1742-47 (S.D.N.Y. 1975) . *Contra Hoof v. Pacific Am. Fisheries, 279 F. 367, 369 (9th Cir. 1922)* , *cert. denied, 263 U.S. 712 (1923)* ; *The Fortuna, 206 F. 573 (W.D. Wash. 1913)* ; *The Sinaloa, 209 F. 287 (N.D. Cal. 1913)* ; *Williams v. The Sirius, 65 F. 226 (N.D. Cal. 1895)* ; *The America, 56 F. 1021 (D.N.J. 1893)* ; *Gurney v. Crockett, 11 F. Cas. 123 (S.D.N.Y. 1849)* (No. 5874).

The contractor who furnishes a watchman has no lien. *The Seguranca, 58 F. 908 (S.D.N.Y. 1893)* ; *The Erinagh, 7 F. 231 (S.D.N.Y. 1881)* . There is no lien for services of watchman on a vessel withdrawn from navigation. *The General Lincoln, 24 F.2d 441 (D. Md. 1928)* .

(n36)Footnote 36. *Akers v. Shaw Envtl., Inc., 2010 U.S. Dist. LEXIS 90579 (W.D. La. 2010)* (magistrate's recommendation) *adopted, 2010 U.S. Dist. LEXIS 90571 (W.D. La. 2010)* ; *Smith v. Brown & Root Marine Operators, 243 F. Supp. 130, 1965 AMC 2368 (W.D. La. 1965)* , *aff'd, 376 F.2d 852 (5th Cir. 1967)* ; *The Murphy Tugs, 28 F. 429 (E.D. Mich. 1886)* .

(n37)Footnote 37. *Coast Wrecking Co. v. Phoenix Ins. Co., 13 F. 127 (C.C.E.D.N.Y. 1882)* .

(n38)Footnote 38. *Luckenbach S.S. Co. v. Ruddy Fumigant Co., 11 F. Supp. 390, 1935 AMC 899 (W.D. Wash. 1935)* .

(n39)Footnote 39. *The Hiram R. Dixon, 33 F. 297 (E.D.N.Y. 1887)* ; *The Sam & Priscilla, 275 F. 937 (D. Mass. 1921)* , *aff'd, 9 F.2d 17, 1926 AMC 67 (1st Cir. 1925)* .

(n40)Footnote 40. *Sundance Cruises Corp. v. American Bureau of Shipping, 7 F.3d 1077, 1994 AMC 1 (2d Cir. 1993)* .

(n41)Footnote 41. *F.W.F. Inc. v. Detroit Diesel Corp., 494 F. Supp.2d 1342 (S.D. Fla. 2007)* (dispute as to settlement agreement concerning repairs of engine); *Endner v. Greco, 3 F. 411 (S.D.N.Y. 1880)* (scow). *See, generally,* § 187, *infra*. Norfolk Shipbuilding & Drydock Corp. v. M/V Norma T., 1977 AMC 103 (E.D. Va. 1976) (a contract for

the repair of a small pleasure craft is maritime). *See also Schuster v. Baltimore Boat Sales, Inc., 471 F. Supp. 321, 1980 AMC 789 (D. Md. 1979)* (contract to prepare sailboat for winter storage and keep it in storage is within admiralty jurisdiction being akin to repair contract). *But see Lloyds of London v. Montauk Yacht Club & Inn, 704 F. Supp. 1175, 1989 AMC 1229 (E.D.N.Y. 1989)* (contract to repair an ordinary washer/dryer unit aboard a pleasure yacht is not a maritime contract).

(n42)Footnote 42. *The President Roosevelt (Robbins Dry Dock & Repair v. City of N.Y.), 116 F.2d 420, 1941 AMC 388 (2d Cir. 1940) . Cf. MacDonald v. United States, 79 F. Supp. 953, 1948 AMC 993 (E.D.N.Y. 1948)* (a contract to convert a dry cargo vessel for carriage of mules is a maritime contract); *Ira S. Bushey & Sons v. The Ocean Spray, 160 F. Supp. 815, 1957 AMC 1789 (E.D.N.Y. 1957)* (contract to refit naval vessel for fishing service without rebuilding hull or general structure, though vessel was not in active commerce at time of contract, was cognizable in admiralty).

(n43)Footnote 43. *Acceptance Ins. Co. v. SDC, Inc., 952 F. Supp. 644 (E.D. Mo. 1997)* ; *Severn v. United States, 69 F. Supp. 21, 1946 AMC 1468 (S.D.N.Y. 1946)* ; *Finley v. United States, 130 F. Supp. 788, 1955 AMC 2357 (D.N.J. 1955)* (a contract to convert a government tanker into a privately owned tanker for commercial use, together with the shipyard's indemnity provisions therein contained, is a maritime contract within the jurisdiction of admiralty).

(n44)Footnote 44. A contract requiring a shipowner to contribute to seamen's trust funds is maritime, but the claims for failure to contribute do not constitute maritime liens. *Nehring v. Steamship M/V Point Vail, 901 F.2d 1044 (11th Cir. 1990)* ; *American-Hawaiian S.S. Co. v. Sailors Union of the Pac., 37 F. Supp. 828, 1941 AMC 567 (N.D. Cal. 1941)* .

(n45)Footnote 45. *Cummings v. Miller Time, 705 F. Supp. 62, 1988 AMC 2666 (D.P.R. 1988)* (fishermen's suit for unpaid wages based on share of fish caught may be brought *in rem* and *in personam*); *Domenico v. Alaska Packers' Ass'n, 112 F. 554 (N.D. Cal. 1901)* .

(n46)Footnote 46. *The Fort Armstrong, 51 F.2d 1063, 1931 AMC 1145 (S.D. Ga. 1931)* .

(n47)Footnote 47. Lent Traffic Co. v. Gould, 1925 AMC 368 (3d Cir. 1924) ; *Fordham v. Munson S.S. Line (The Profit and The Margit), 6 F. Supp. 435, 1934 AMC 49 (S.D.N.Y. 1934)* .

(n48)Footnote 48. *Kossick v. United Fruit Co., 365 U.S. 731, 1961 AMC 833 (1961)* .

(n49)Footnote 49. *Methodist Episcopal Hosp. v. Pacific Transp. Co., 3 F.2d 508 (N.D. Cal. 1920) . Cf. Maritime Overseas Corp. v. United States, 433 F. Supp. 419, 1978 AMC 2514 (N.D. Cal. 1977)* (agreement between shipowner and United States to provide and charge for medical care is a maritime contract). *See also Parker v. Gulf City Fisheries, Inc., 803 F.2d 828, 1987 AMC 1384 (5th Cir. 1986)* (there is admiralty jurisdiction over tort claim that doctor on land gave negligent advice to ship's captain's wife concerning the captain knowing that captain was at sea). *But see Joiner v. Diamond M Drilling Co., 677 F.2d 1035 (5th Cir. 1982)* (shipowner's indemnity claim against land-based doctor for alleged on-shore malpractice is non-maritime); *Masherah v. Dettloff, 968 F. Supp. 336 (E.D. Mich. 1997)* (contract to perform pre-employment physical of seamen is non-maritime).

(n50)Footnote 50. *P.R. Ports Auth. v. Umpierre-Solares, 456 F.3d 220 (1st Cir. 2006)* (contract to raise a dead ship is a maritime contract where the vessel was obstructing navigation); The Freedom, 1932 AMC 933 (W.D.N.Y. 1932) . *Cf. The Paul E. Thurlow, 53 F. Supp. 362, 1943 AMC 1291 (E.D.N.Y. 1943) . See also Stickelber v. Fisher, 11 F. Supp.2d 1374 (S.D. Fla. 1998)* (investor's claim against treasure salvor is maritime).

(n51)Footnote 51. Moran Towing & Transp. Co. v. Navigazione Liberia Triestina, 1936 AMC 233 (E.D.N.Y. 1936) .

Under an agreement whereby a shipowner agreed to be liable for any damages resulting from assistance furnished by

a tug in bringing the ship to a pier, a suit by the owner of the tug for indemnification for any damages that it might be required to pay in a pending state court action for damage to the pier is within the maritime jurisdiction and is not premature, notwithstanding that the state court action has not terminated. Such a suit is not for a declaratory judgment: *Moran Towing & Transp. Co. v. United States, 56 F. Supp. 104, 1944 AMC 784 (S.D.N.Y. 1944)* .

Lykes Bros. S.S. Co. v. The Tug A.W. Whiteman, 138 F. Supp. 725, 1956 AMC 1192 (E.D. La. 1956) (a tug was held liable for collision damages arising from negligent breach of the towage contract).

(n52)Footnote 52. *Eastes v. Superior Oil Co., 65 F. Supp. 998, 1946 AMC 1398 (W.D. La. 1946) , aff'd, 160 F.2d 189, 1947 AMC 1742 (5th Cir.) , cert. denied, 331 U.S. 859 (1947)* .

(n53)Footnote 53. *Berwind-White Coal Mining Co. v. City of N.Y., 135 F.2d 443, 1943 AMC 682 (2d Cir. 1943)* .

(n54)Footnote 54. *Ring v. The Dimitrios Chandris, 133 F.2d 124, 1943 AMC 57 (3d Cir. 1943)* .

(n55)Footnote 55. *Kenny v. City of N.Y., 108 F.2d 958, 1940 AMC 186 (2d Cir. 1940) , aff'd, 1939 AMC 1006 (E.D.N.Y. 1939)* .

(n56)Footnote 56. *Rex Oil, Ltd. v. M/V Jacinth, 873 F.2d 82, 1990 AMC 373 (5th Cir. 1989) , cert. denied, 493 U.S. 1043 (1990), 493 U.S. 1043, 110 S. Ct. 836, 107 L. Ed. 2d 832* (even if Rule D writ of attachment was improperly issued, settlement agreement to release a sea-going vessel into commerce is a maritime contract). *Mefer S.A.R.L. v. Naviagro Maritime Corp., 533 F. Supp. 337, 1982 AMC 1401 (S.D.N.Y. 1982) . But cf.* Capital Leasing, Inc. v. Integrated Container Serv., 1980 AMC 1594 (E.D. La. 1980) (wrongful maritime attachment of cargo containers stored on land is not a maritime tort because it fails the locality test and is probably not maritime in nature). *But see Chi Shun Hua Steel Co. v. Crest Tankers, Inc., 708 F. Supp. 18 (D.N.H. 1989)* .

(n57)Footnote 57. *Richard Constr. Co. v. Monongahela & Ohio Dredging Co., 284 F. Supp. 290, 1968 AMC 1808 (W.D. Pa. 1968) , modified, 407 F.2d 1170 (3d Cir. 1969) . But see Provost v. Huber, 594 F.2d 717 (8th Cir. 1979)* (no jurisdiction to hear salvage claim for attempt to raise a house that sank through the ice while being transported; house had not embarked upon a maritime adventure).

(n58)Footnote 58. *Interocean S.S. Corp. v. Amelco Eng'rs Co., 341 F. Supp. 995, 1971 AMC 1660 (N.D. Cal. 1971)* . The Supreme Court's recent decision in *Exxon Corp. v. Central Gulf Lines, Inc., 111 S. Ct. 2071, 1991 AMC 1817 (1991)* casts doubt on the validity of any blanket assertion that an agency contract is non-maritime. The Court overruled its earlier holding in *Minturn v. Maynard, 58 U.S. (17 How.) 477 (1855)* that agency contracts are *per se* non-maritime. Instead courts must determine whether the nature and subject matter of the particular contract is maritime. *See* the discussion at § 185.

(n59)Footnote 59. *Hinkins S.S. Agency, Inc. v. Freighters, Inc., 498 F.2d 411, 1974 AMC 1397 (9th Cir. 1974)* ; *Hadjipateras v. Pacifica, S.A., 290 F.2d 697, 1961 AMC 1417 (5th Cir. 1961)* ; KMJ Serv. v. Seacrest Marine, L.L.C., 2008 U.S. Dist. LEXIS 29250 (E.D. La. Apr. 9, 2008) ; *Naess Shipping Agencies, Inc. v. SSI Navigation, Inc., 1985 AMC 346 (N.D. Cal. 1984)* (contract obligating party to render services in connection with the construction, chartering, and performance of charters of 4 vessels for 14 years has a sufficient nexus to maritime activity to be within the admiralty jurisdiction; not preliminary to maritime contract); Port Marine Serv. v. The M/V Stedman Smith, 1982 AMC 1428 (E.D. Va. 1982) (agency contract with shipowner to obtain cargo, publish tariffs, arrange for container rentals, collect freights, present invoices, arrange for loading and provide manifests is maritime); *Seawind Compania, S.A. v. Crescent Line, 211 F. Supp. 157, 1962 AMC 2002 (S.D.N.Y. 1962)* (contract covering the operations of a steamship service). *See also Bergen Shipping Co. v. Japan Marine Servs., 386 F. Supp. 430, 1975 AMC 490 (S.D.N.Y. 1974)* (failure to furnish crew that would perform and failure to settle dispute with crew); *Haveron v. Goelet, 88 F. 301 (S.D.N.Y. 1898)* (contract to obtain seamen for voyage by vessel treated like providing necessaries to vessel); *The Gustavia, 11 F. Cas. 126 (S.D.N.Y. 1830)* (No. 5876) (same); *Coquette Originals, Inc. v. Canadian Gulf Line, 240 So.*

2d 847 (Fla. App. 1970) . See also ProShipLine Inc. v. Aspen Infrastructures Ltd., 594 F.3d 681, 2010 AMC 450 (9th Cir. 2010) (contract to act as general sales and port services agent for a charterer is a maritime contract). *Accord ProShipLine Inc. v. Aspen Infrastructures Ltd., 585 F.3d 105, 2009 AMC 2430 (2d Cir. 2009)* .

But see, Peralta Shipping Corp. v. Smith & Johnson (Shipping) Corp., 739 F.2d 798, 1985 AMC 989 (2d Cir. 1984) , cert. denied, 470 U.S. 1031 (1985) ; *P.D. Marchessini & Co. v. Pacific Marine Corp., 227 F. Supp. 17, 1964 AMC 1538 (S.D.N.Y. 1964)* ; § 185, n. 5, *infra* . In *E.S. Binnings, Inc. v. M/V Saudi Riyadh, 815 F.2d 660 (11th Cir. 1987)* , the court ruled that an agency contract is non-maritime and distinguished *Hinkins* and *Hadjipateras*, say ing that the *Hinkins* involved direct supervision of husbanding services for one ship in connection with a specific voyage and that *Hadjipateras* (which is binding precedent in the Eleventh Circuit) involved an agreement to manage and operate a vessel which had as its core the "actual physical operation of the vessel by the agent." By contrast, in *Peralta* the Second Circuit rejected these distinctions.

(n60)Footnote 60. *Stanley T. Scott & Co. v. Makah Dev. Corp., 496 F.2d 525, 1974 AMC 934 (9th Cir.) (2-1 decision) , cert. denied, 419 U.S. 837 (1974)* . Although the general rule was once that contracts to procure marine insurance were non-maritime, see § 185, nn. 12-13, *infra*, several courts today have taken the opposite view based on *Exxon Corp. v. Central Gulf Lines, Inc., 500 U.S. 603, 1991 AMC 1817 (1991) . E.g., Fernandez v. Haynie, 120 F. Supp.2d 575, 2001 AMC 786* ; *Pacific Growth S.A. v. Aon Corp., 2000 AMC 152 (S.D.N.Y. 1999)* ; *Dao v. Knightsbridge Int'l Reinsurance Corp., 15 F. Supp.2d 567, 1999 AMC 210 (D.N.J. 1998)* ; *Illinois Constructors Corp. v. Morency & Assoc., Inc., 794 F. Supp. 841, 1993 AMC 203 (N.D. Ill. 1992)* ; *Romen, Inc. v. Price-Forbes, Ltd., 824 F. Supp. 206, 1993 AMC 1363 (S.D. Fla. 1992)* .

(n61)Footnote 61. *Odyssey Marine Exploration, Inc. v. Unidentified, Shipwrecked Vessel or Vessels, 636 F.3d 1338 (11th Cir. 2011)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 185

§ 185. Non-Maritime Contracts: Particular Instances.

Causes have been dismissed, as not resting on maritime contracts, in the following cases:

Building and sale of vessel

For the building of a vessel; n1 for the sale of a vessel; n2 on a contract for the sale of a vessel framed as a charter with option to purchase at the end of the term for the charter hire already paid; n3 and for services in purchasing a vessel. n4

Agency contracts

Prior to the Supreme Court's 1991 decision in *Exxon Corporation v. Central Gulf Lines, Inc.*, n5 it was held that the following contracts were non-maritime: a general agency agreement for matters like the husbanding of vessels, solicitation of cargoes, collection of freights and payment of charges; n6 for services of broker or agent in procuring charter for ship n7 although the agreement to pay commissions therefor be embodied in the charter; n8 for agent's commissions on his own advances; n9 for services as freight and passenger agent; n10 for services as shipping agent; n11 for advertising steamer excursions; n12 on a contract to procure insurance for a vessel n13 or for cargo; n14 for an attendance fee; n15 on a contract with a freight forwarder preliminary to procurement of actual carrier; n16 and a contract for cargo damage inspection after unloading. n17

However, in *Exxon* the Court overruled *Minturn v. Maynard* n18 which had established the rule that agency contracts were outside the admiralty jurisdiction. The *Exxon* court reasoned that the *Minturn* holding was based on two now discredited grounds: that admiralty courts could not entertain an action for a balance of accounts and that the admiralty courts could not hear actions not involving a lien against a vessel. Furthermore, *Minturn's* holding was inconsistent with the general approach used in contract cases--to be within the admiralty jurisdiction the nature and subject matter of the contract must be maritime. The Court sought to narrow its holding--courts should not apply a per se rule excluding all agency contracts from admiralty jurisdiction. Instead they must "look to the subject matter of the agency contract and determine whether the services performed under the contract are maritime in nature." n19 Applied to the facts before them, the Court held that when Exxon acted as agent for vessel owner in obtaining fuels from other sellers, the agency agreement was maritime. The nature and subject matter of the transaction, said the court, was the value of fuel received

by the ship and was the same as those situations where Exxon directly supplied fuels to the vessels.

The Court's decision in *Exxon* is its most significant in many years in the maritime contract field and substantially enlarges the types of contracts that are subject to admiralty jurisdiction. Although limited by the Court to agency contracts, and limited further by the Court's insistence that some agency contracts may still be found to be non-maritime, the reasoning of the Court may have implications for several other types of cases as well. The opinion cast further doubt on the continued validity of the preliminary contract rule. n20 Moreover, the Court's reasoning may signal the end of the unfortunate rules that contracts to build a vessel and contracts to sell a vessel are non-maritime. n21 The holdings in those cases are also premised on the grounds that where performance of a contract does not result in a maritime lien the contract must be non-maritime. Those holding are inconsistent with the approach taken in *Exxon* that courts must look only to the nature and subject matter of the contract. Such contracts should be regarded as maritime for they directly relate to maritime commerce. *Exxon,* together with the Court's recent holding in the torts area, help to focus the attention of the courts on exercising federal jurisdiction where doing so would advance a federal interest in the uniform application of law to matters of maritime commerce.

The following contracts have been held to be non-maritime:

Storage

For permanent storage ashore for cargo to be discharged from vessel; n22 forwharfage of a "dead ship" n23 or of a vessel while laid up for the winter; n24 for receiving and storing cargo on a vessel during the winter; n25 for storage of sails; n26 for the lease of a wharf; n27 for a lease of a bar on a vessel; n28 for an action against a terminal operator for loss of cargo; n29 for an action against a port authority for services to containers; n30

Sale of cargo

On a contract by a master to carry cargo, sell it, and account for the proceeds; n31 a charterer's contract to deliver goods to a consignee at stated intervals and fixed places; n32 on sale of coal to be transported by sea and delivered by ship; n33

Ancillary matters

To determine whether a partnership in a vessel exists; n34 on an assignment of freights for a non-maritime purpose; n35 on a non-maritime mortgage, *i.e.,* a mortgage of vessel property not in accordance with the Preferred Ship Mortgage Act; n36 on a bond given by a charterer for due performance of the charter party; n37 for breach of warranty of quality of coal for ballast; n38 on a general contract to furnish bunkers for vessels. n39

Miscellaneous

Admiralty courts have also refused jurisdiction on a promissory given for ship's repairs, the suit being *in rem;* n40 relating to employment of workmen to build a structure on an island, involving use of a ferry on which an accident occurred; n41 on a contract to build a drawbridge, with covenant to hold the bridge-owner harmless in the event of an admiralty suit against him; n42 on charter of a barge merely to breast vessels away from a wharf; n43 for dredging a non-navigable ditch; n44 a contract to paint a "dead" ship, completely withdrawn from commerce; n45 a contract to repair a generator where the repairer did not know that the generator was for a vessel; n46 a contract to compromise and settle a claim for a seaman's death; n47 a contract to enter into a charter party; n48 an action by a seaman against his union for failing to provide him with proper job allocations in breach of the union's by-laws and constitution; n49 an agreement among pilots for the distribution of fees; n50 a contract for the extension of railroad tracks on a trestle over navigable waters; n51 an action for damages caused to a railroad when

it was forced to reroute its trains when a vessel collided with a bridge that the railroad had agreed to use; n52 on an agreement to reimburse a steamship company for railroad charges advanced; n53 on a traffic agreement between a railroad company and a steamship owner for the operation of a through line of transportation; n54 on a railway bill of lading covering land and sea carriage, the place of damage not appearing; n55 a lease of grain unloading equipment; n56 a contract to supply a "traxcavator" and operator to a stevedore for use in its stevedoring business; n57 a contract for manufacture and sale of electrical blowers specifically designed for use in freeing gas on hot barges and warranted as being explosion-proof; n58 a contract to pay a vessel owner for information about drug smugglers who used his vessel; n59 for supplying fishermen bound on a fishing voyage with such articles of personal use as tobacco, clothing, rubber boots; n60 on a contract for a boys' school to be conducted on shipboard; n61 on a contract to navigate a raft; n62 for obtaining a concession to dig guano. n63 A contract to perform wireline services for a well in navigable waters is non-maritime. n64 Contracts to test wells are notmaritime. n65 A stevedore's insurance contract against liability under the Longshore and Harbor Worker' Compensation Act is a non-maritime contract. n66 A contract to contribute to the settlement of cargo dispute by one not a party to the original action or its settlement is not a maritime contract. n67 A contract to truck containers to the pier is non-maritime even though the trucker positions the trucks under the stevedore's cranes to aid the loading. n68 A contract to ferry workers by helicopter from the shore to a fixed platform is non-maritime. n69 Several older decisions held that admiralty courts could not provide relief in quasi-contract even though the unjust enrichment arose out of the breach of a maritime contract. n70 It is now clear that such relief is available. n71 A more difficult question is whether admiralty courts can provide equitable relief. As discussed in § 126, *supra*, although the older doctrine was that such relief was not generally available, some of the lower courts have provided such relief.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionBusiness & Corporate LawAgency RelationshipsAgents DistinguishedGeneral AgentsBusiness & Corporate LawGeneral PartnershipsFormationPartnership AgreementsCivil ProcedureEquityRelief

FOOTNOTES:

(n1)Footnote 1. *E.g., People's Ferry Co. v. Beers, 61 U.S. (20 How.) 393 (1857)* ; *J.A.R., Inc. v. M/V Lady Lucille, 963 F.2d 96 (5th Cir. 1992)* ; *El Fenix de Puerto Rico v. Serrano Gutierrez, 786 F. Supp. 1065, 1992 AMC 486 (D.P.R. 1991)* . A contract to repair a "dead ship" is non-maritime. *Robert E. Blake Inc. v. Excel Environmental, 104 F.3d 1158, 1997 AMC 609 (9th Cir. 1997)* . *See* § 186, *infra.*

(n2)Footnote 2. *Lynnhaven Dolphin Corp. v. E.L.O. Enterprises, 776 F.2d 538, 1986 AMC 2659 (5th Cir. 1985)* ; *Magnolia Ocean Shipping Corp. v. M/V Mercedes Maria, 644 F.2d 880* (noted), *1982 AMC 731 (4th Cir. 1981)* (unpublished); *S.C. Loveland, Inc. v. East West Towing, Inc., 608 F.2d 160, 1980 AMC 2947 (5th Cir. 1979)* , *cert. denied, 446 U.S. 918 (1980)* ; *Atlantic Lines v. Narwhal, Ltd., 514 F.2d 726, 1976 AMC 642 (5th Cir. 1975)* ; *Richard Bertram & Co. v. The Yacht, Wanda, 447 F.2d 966, 1971 AMC 1841 (5th Cir. 1971)* , citing section; *Gerard Constr., Inc. v. Motor Vessel Virginia, 480 F. Supp. 488, 1981 AMC 115 (W.D. Pa. 1979)* ; Williams v. The Atte-Wode, 1941 AMC 1428 (N.D. Ill. 1941) ; *The Guayaquil, 29 F. Supp. 578, 1939 AMC 1294 (E.D.N.Y. 1939)* .

Industrial Equip. & Marine Servs. v. M/V Mr. Gus, 333 F. Supp. 578, 1972 AMC 1086 (S.D. Tex. 1971) (action for breach of express and implied warranties made in connection with the sale of a vessel is not within the admiralty jurisdiction).

Herman Family Revocable Trust v. Teddy Bear, 254 F.3d 802, 2001 AMC 2064 (9th Cir. 2001) .

(n3)Footnote 3. *The Ada, 250 F. 194 (2d Cir. 1918)* .

Hirsch v. The San Pablo, 81 F. Supp. 292, 1948 AMC 1992 (S.D. Fla. 1948) (admiralty is without jurisdiction in suit for specific performance of a contract to sell a vessel or to enforce an equitable title). As to the equitable power of the admiralty courts generally, *see* § 126.

Grand Banks Fishing Co. v. Styron, 114 F. Supp. 1, 1953 AMC 2172 (D. Me. 1953) (a suit for damages for breach of a contract for the sale of a vessel based upon alleged misrepresentations as to her condition is not within the admiralty jurisdiction).

(n4)Footnote 4. *Wilkins v. Commercial Investment Trust Corp., 153 F.3d 1273 (11th Cir. 1998)* (investors who posted letter of credit or advanced funds to prospective purchaser lack a maritime contract even though the funds ended up paying off refurbishers of ship); *Doolittle v. Knobeloch, 39 F. 40 (D.S.C. 1889)* .

(n5)Footnote 5. *111 S. Ct. 2071, 1991 AMC 1817 (1991)* .

(n6)Footnote 6. *Minturn v. Maynard, 58 U.S. (17 How.) 477 (1855)* ; *E.S. Binnings, Inc. v. M/V Saudi Riyadh, 815 F.2d 660 (11th Cir. 1987)* ; *Peralta Shipping Corp. v. Smith & Johnson (Shipping) Corp., 739 F.2d 798, 1985 AMC 989 (2d Cir. 1984) , cert. denied, 470 U.S. 1031 (1985)* ; *Goumas v. K. Karras & Son, 51 F. Supp. 145, 1943 AMC 818 (S.D.N.Y. 1943) , aff'd, 140 F.2d 157, 1944 AMC 60 (2d Cir.) , cert. denied, 322 U.S. 734 (1944)* ; *T. Smith & Son, Inc. v. Rigby, 305 F. Supp. 418, 1969 AMC 2092 (E.D. La. 1969)* ; *P.D. Marchessini v. Pacific Marine Corp., 227 F. Supp. 17, 1964 AMC 1538 (S.D.N.Y. 1964)* ; *The Centaurus, 291 F. 751, 1923 AMC 811 (4th Cir. 1923) . Cf. Infretra Shipping, Ltd. v. M/V Melody, 1987 AMC 1753 (D. Mass. 1986)* (general agent would have maritime claim if it could prove that it looked to credit of vessel when it advanced money and services). *But see* § 184, n. 56, *supra.*

(n7)Footnote 7. *Shipping Financial Servs. v. Drakos, 140 F.3d 129, 1998 AMC 1578 (2d Cir. 1998)* (rule survives decision in *Exxon*); *Harley Mullion & Co. v. Caverton Marine, 2008 AMC 2361 (S.D.N.Y. 2008)* (same); *Morgan Guar. Trust Co. v. M/V Hellenic Sun, 1987 AMC 217 (D. Md. 1986)* (even though commission to broker specified in charter); Labash v. Royal Dutch Petroleum Co., 1979 AMC 361 (S.D.N.Y. 1978) ; *Rhederei Actien Gesellschaft Oceana v. Clutha Shipping Co., 226 F. 339 (D. Md. 1915)* ; *The J.C. Williams, 15 F. 558, 559 (S.D.N.Y. 1883)* ; *The Thames, 10 F. 848 (S.D.N.Y. 1881) . See P.D. Marchessini v. Pacific Marine Corp., 227 F. Supp. 17, 1964 AMC 1538 (S.D.N.Y. 1964)* ; *Miravalles Compania Naviera, S.S. v. Nissho Co., 207 F. Supp. 716, 1963 AMC 243 (E.D.N.Y. 1962)* .

D.C. Andrews & Co. v. United States, 124 F. Supp. 362, 1954 AMC 2221 (Ct. Cl. 1954) (brokerage payable by the shipowner to the cargo broker is not a maritime transaction and the remedy is not under the Suits in Admiralty Act but in the Court of Claims since the admiralty court will not take jurisdiction of the non-maritime part of an otherwise maritime contract).

(n8)Footnote 8. *Brown v. West Hartlepool Steam Nav. Co., 112 F. 1018 (5th Cir. 1902)* ; *Richard v. Holman, 123 F. 734 (D. Md. 1903)* ; *Taylor v. Weir, 110 F. 1005 (D. Or. 1901)* ; *Richard v. Hogarth, 94 F. 684 (D.N.J. 1899)* .

(n9)Footnote 9. *Galatis v. Galatis (The Miss Nassau), 55 F.2d 571, 1932 AMC 267 (5th Cir. 1932)* ; The Helen M., 1932 AMC 587 (D. Mass. 1932) ; *The M. Vivian Pierce, 48 F.2d 644, 1931 AMC 967 (D. Mass. 1931)* ; *The J.C. Williams, 15 F. 558, 559 (S.D.N.Y. 1883)* . But a mere port agent who makes disbursements to pay the ship's bills has a lien: *The Englewood, 57 F.2d 319, 1932 AMC 343 (E.D.N.Y. 1932)* ; *The Peryneas, 1931 AMC 1419 (D.C.Z. 1931)* .

(n10)Footnote 10. *The Harvey & Henry, 86 F. 656 (2d Cir. 1898)* ; *Richard v. Hogarth, 94 F. 684 (D.N.J. 1899)* ; *The Humboldt, 86 F. 351 (D. Wash. 1898)* .

(n11)Footnote 11. *Admiral Oriental Line v. United States, 86 F.2d 201, 1936 AMC 1730 (2d Cir. 1936)* ; *P.D. Marchessini Co. v. Pacific Marine Corp., 227 F. Supp. 17, 1964 AMC 1538 (S.D.N.Y. 1964)* ; *The Retriever, 93 F. 480*

(D. Wash. 1899) . *But see Bergen Shipping Co. v. Japan Marine Servs., 386 F. Supp. 430, 1975 AMC 490 (S.D.N.Y. 1974)* (contract to furnish crew that would perform, and to settle dispute with crew is maritime); *Haveron v. Goelet, 88 F. 301 (S.D.N.Y. 1898)* (contract to obtain seamen for voyage by vessel treated like providing necessaries to vessel); *The Gustavia, 11 F. Cas. 126 (S.D.N.Y. 1830)* (No. 5876) (same); *Coquette Originals, Inc. v. Canadian Gulf Line, 240 So. 2d 847 (Fla. App. 1970)* .

(n12)Footnote 12. *The Havana, 54 F. 201 (S.D.N.Y. 1893)* , *aff'd on other grounds, 64 F. 496 (2d Cir. 1896)* .

(n13)Footnote 13. *Planned Premium Servs. v. International Ins. Agents, Inc., 928 F.2d 164, 1991 AMC 2918 (5th Cir. 1991)* (a financing contract preliminary to obtaining maritime insurance is non-maritime); *Inversiones Calmer, S.A. v. C.E. Heath & Co., 681 F. Supp. 100 (D.P.R. 1988)* ; *Frank B. Hall & Co. v. S.S. Seafreeze Atl., 423 F. Supp. 1205 (S.D.N.Y. 1976)* (advance of premiums to avoid cancellation of policy); *Warner v. The Bear, 126 F. Supp. 529, 1955 AMC 1123 (D. Alaska 1955)* ; *The Barryton, 54 F.2d 282, 1931 AMC 1878 (2d Cir. 1931)* ; *Reliance Lumber Co. v. Rothschild, 127 F. 745 (E.D. Pa. 1904)* (against an insurance broker under a state statute which makes such broker personally liable on contracts of insurance made by him on behalf of companies not authorized to do business in such state). *See Peralta Shipping Corp. v. Smith & Johnson (Shipping) Corp., 739 F.2d 798, 1985 AMC 989 (2d Cir. 1984)* , *cert. denied, 470 U.S. 1031 (1985)* ; *P.D. Marchessini v. Pacific Marine Corp., 227 F. Supp. 17, 1964 AMC 1538 (S.D.N.Y. 1964)* . *But see Stanley T. Scott & Co. v. Makah Dev. Corp., 496 F.2d 525, 1974 AMC 934 (9th Cir.)* , *cert. denied, 419 U.S. 837 (1974)* (insurance broker's suit for premiums advanced on a marine insurance policy is maritime).

(n14)Footnote 14. *Andrews v. Essex Fire & Marine Ins. Co., 1 F. Cas. 885 (C.C.D. Mass. 1822)* (No. 374); *Continental Cameras Co. v. FOA & Son Corp., 658 F. Supp. 287 (S.D.N.Y. 1987)* ; *The City of Clarksville, 94 F. 201 (D. Ind. 1899)* ; *Marquardt v. French, 53 F. 603 (S.D.N.Y. 1893)* . *See Royster Guano Co. v. W.E. Hedger Co., 48 F.2d 86, 1931 AMC 952 (2d Cir.)* , *cert. denied, 283 U.S. 858 (1931)* ; *Virginia-Carolina Chem. Co. v. Chesapeake Lighterage & Towing Co., 279 F. 684 (2d Cir. 1922)* (admiralty does have jurisdiction when the failure to procure insurance is incidental to breaches of maritime agreements); *Rosenthal v. The Louisiana, 37 F. 264 (C.C.E.D. La. 1889)* ; *The Thomas P. Beal, 295 F. 877, 1924 AMC 640 (W.D. Wash. 1924)* ; *Nash v. Bohlen, 167 F. 427 (E.D.N.Y. 1909)* .

(n15)Footnote 15. *Richard v. Holman, 123 F. 734* (D. Md. 1903). *Contra The Ascutney, 278 F. 991 (D. Md. 1922)* , *rev'd on other grounds, 289 F. 802, 1923 AMC 412 (4th Cir. 1923)* , *citing The Wyandotte,145 F. 321 (4th Cir. 1906)* , where, however, a bottomry bond was given for this and other items.

(n16)Footnote 16. *Johnson Prods. Co. v. M/V La Molinera, 619 F. Supp. 764, 1987 AMC 2511 (S.D.N.Y. 1985)* (Lumbard, J.). *But see Ingersoll Milling Mach. Co. v. M/V Bodena, 829 F.2d 293 (2d Cir. 1987)* (contract by freight forwarder to secure a clean bill of lading, not merely to transfer documents, is a maritime contract).

(n17)Footnote 17. *Ford Motor Co. v. Wallenius Lines, 476 F. Supp. 1362, 1980 AMC 1114 (E.D. Va. 1979)* . *Cf.* Atlantic Mut. Ins. Co. v. M/V TFL Enter., 1987 AMC 632 (S.D.N.Y. 1986) (no jurisdiction for claim against carrier for damage to containerized cargo which occurred on land after cargo was detained by customs).

(n18)Footnote 18. *58 U.S. (17 How.) 477 (1855)* .

(n19)Footnote 19. *111 S. Ct. at 2077* . An agency contract was held to be maritime where it did not involve mere bookkeeping functions, such as the collection of freights, but where agent undertook to make all arrangements for ships while in port. *Venezuelan Container Line C.A. v. Navitran Corp., 792 F. Supp. 1281, 1283 (S.D. Fla. 1991)* .

(n20)Footnote 20. *Shipping Financial Services Corp. v. Drakos, 140 F.3d 129 (2d Cir. 1998)* (although not ruling on the continued validity of the preliminary contract doctrine, the court holds that the particular charter party brokerage agreement is not sufficiently maritime in nature); *Dao v. Knightsbridge Int'l Reinsurance Corp., 15 F. Supp.2d 567 (D.N.J. 1998)* (contract to procure marine insurance is maritime given the "historically recognized uniqueness and importance of marine insurance and maritime risks") (citing text). In a recent case a court said that "after *Exxon,* it is

necessary to determine if each agency agreement is maritime in nature, even if the contract is for preliminary services." *Venezuelan Container Line C.A. v. Navitran Corp., 792 F. Supp. 1281, 1283 (S.D. Fla. 1991)* . *See also West Africa Trading & Shipping Co. v. London Int'l Group, Inc., 1996 AMC 1905 (D.N.J. 1996)* (raising possibility that contracts to procure marine insurance may be within the admiralty jurisdiction, but concluding that state substantive law applies to case and that federal and state choice of law rules would yield the same result as to which state's law applied).

See § 183 *supra.*

(n21)Footnote 21. *Kalafrana Shipping Ltd. v. Sea Gull Shipping Co., 591 F. Supp.2d 505, 2008 AMC 2409* (S.D.N.Y. 2008). *Contra Ocean Benignity Ltd. v. Ocean Maritime Co., Ltd., 606 F.Supp.2d 519 (S.D.N.Y. 2009)* ; *Unicorn Bulk Traders Ltd. v. Fortune Maritime Enterprises, Inc., 2009 AMC 90 (S.D.N.Y. 2009)* ; *A. Elephant Corp. v. HiFocus Group Ltd., 2009 U.S. Dist. LEXIS 19396 (S.D.N.Y. 2009)* ; *Aggelikos Prostatis Corp. v. Shun Da Shipping Group Ltd., 2009 U.S. Dist. LEXIS 7770 (S.D.N.Y. 2009)* . *See* § 186 *infra.*

(n22)Footnote 22. *St. Louis Cold Drawn, Inc. v. Beelman River Terminals, Inc., 863 F. Supp. 1013 (E.D. Mo. 1994)* ; *Antilles Ins. Co. v. M/V Abitibi Concord, 755 F. Supp. 42, 1991 AMC 2862 (D.P.R. 1991)* (contract solely to store cargo is non-maritime but court may exercise pendent party jurisdiction where related maritime claim is brought against carrier); *Orient Atlantic Parco, Inc. v. Maersk Lines, 740 F. Supp. 1002, 1991 AMC 148 (S.D.N.Y. 1990)* (claim for cold storage while the parties attempted to resolve their dispute was not sufficiently related to maritime activity to be within the admiralty jurisdiction); *Gowanus Storage Co. v. United States Shipping Bd. Emergency Fleet Corp., 271 F. 528 (E.D.N.Y. 1921)* . *But see Standard Brands, Inc. v. Nippon Yusen Kaisha, 42 F. Supp. 43, 1942 AMC 477 (D. Mass. 1941)* (recovery for cargo damage caused by negligence of the steamship company acting as a warehouseman in stowing the cargo on land after the voyage and the contract of carriage had terminated; it does not appear that the question of jurisdiction was raised or considered). A contract between consignee and pier operator to store goods after discharge on pier premises is not a maritime contract. *Pine St. Trading Corp. v. Farrell Lines, 278 Md. 363, 364 A.2d 1103, 1977 AMC 426 (1976)* ; *Howmet Corp. v. Tokyo Shipping Co., 320 F. Supp. 975, 1971 AMC 1987 (D. Del. 1971)* ; *Bird v. S.S. Fortuna, 232 F. Supp. 690, 1964 AMC 2394 (D. Mass. 1964)* . *But see Leather's Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800, 1971 AMC 2383 (2d Cir. 1971)* (claim against terminal operator may be heard pendent to claim against carrier). *See* § 185, n. 20 *supra.*

(n23)Footnote 23. *Atlantic Mut. Ins. Co. v. Balfour Maclaine Int'l, 968 F.2d 196, 1993 AMC 1097 (2d Cir. 1992)* ; *Murray v. Schwartz, 175 F.2d 72, 1949 AMC 1081 (2d Cir. 1949)* .

(n24)Footnote 24. *The Murphy Tugs, 28 F. 429 (E.D. Mich. 1886)* (no lien based on state statute; claim not maritime in nature). *See The Richard Winslow, 71 F. 426 (7th Cir. 1896)* . *But see* § 184 n. 28, *supra.*

(n25)Footnote 25. *The Richard Winslow, 71 F. 426 (7th Cir. 1896)* ; *Pillsbury Flour Mills Co. v. Interlake S.S. Co. (The E.A.S. Clark), 36 F.2d 390, 1929 AMC 1678 (W.D.N.Y. 1929)* ; *The Milwaukee, 15 F.2d 886, 1926 AMC 1627 (W.D.N.Y. 1926)* ; *The Pulaski, 33 F. 383 (E.D. Mich. 1888)* .

Mid-American Transp. Co. v. St. Louis Barge Fleeting Serv., 229 F. Supp. 409, 1964 AMC 2610 (E.D. Mo. 1964) , *aff'd, 348 F.2d 920, 1965 AMC 1932 (8th Cir. 1965)* (a contract to load cargo on barge for future delivery to final destination is a maritime contract, where barges were left only temporarily and were not taken out of commerce); *Western Transp. Co. v. Pac-Mar Serv., 547 F.2d 97, 1978 AMC 693 (9th Cir. 1976)* (although use of barge as floating warehouse was non-maritime, court has admiralty jurisdiction of liability claims for barge's sinking and recovery costs and for payment of detention to other vessels).

(n26)Footnote 26. *Gilbert Hubbard & Co. v. Roach, 2 F. 393 (C.C.N.D. Ill. 1880)* .

(n27)Footnote 27. *The James T. Furber, 157 F. 126 (D. Me. 1907)* . The lease of a wharf is distinguishable from wharfage. In a lease the rent is payable whether or not the wharf is used. Wharfage refers to use of a wharf, and

contracts relating to it are maritime. *The James T. Furber, 129 F. 808 (D. Me. 1904)* . But a covenant in such a lease to maintain a suitable berth at the wharf was maritime. *Eastern Mass. St. Ry. v. Transmarine Corp., 42 F.2d 58, 1930 AMC 1454 (1st Cir.) , cert. denied, 282 U.S. 883 (1930)* .

(n28)Footnote 28. *The Illinois, 12 F. Cas. 1178 (W.D. Tenn. 1879)* (No. 7005).

(n29)Footnote 29. *Ferrex Int'l, Inc. v. M/V Rico Chone, 718 F. Supp. 451, 1989 AMC 1109 (D. Md. 1988)* .

(n30)Footnote 30. *South Carolina State Ports Auth. v. M/V Tyson Lykes, 837 F. Supp. 1357, 1994 AMC 1294 (D.S.C. 1993)* .

(n31)Footnote 31. *Krohn v. The Julia, 37 F. 369 (C.C.E.D. La. 1889) . But see H. Liebes & Co. v. Klengenberg (The Arctic), 23 F.2d 611, 1928 AMC 314 (9th Cir. 1928)* .

(n32)Footnote 32. *Yone Suzuki v. Central Argentine Ry. (The Kofuku Maru), 27 F.2d 795, 1928 AMC 1521 (2d Cir. 1928) , cert. denied, 278 U.S. 652, 49 S. Ct. 178, 73 L. Ed. 563 (1929)* ; *The Navigadora No. 73, 45 F.2d 639, 1930 AMC 1631 (D.N.J. 1930)* .

(n33)Footnote 33. *Luckenbach S.S. Co. v. Gano Moore & Co., 298 F. 343 (S.D.N.Y. 1923)* . Similarly, breach of a lease-and-services contract that would provide the plaintiff with gasoline that would be transported on vessels is not a maritime contract. *Euclid Energy Ltd. v. SIA Ventall Terminals, 598 F. Supp.2d 454 (S.D.N.Y. 2009) . Accord, Alphamate Commodity GMBH v. CHS Europe SA, 627 F.3d 183 (5th Cir. 2010)* (contract for sale of grain); *Lucky-Goldstar Int'l (Am.) v. Phibro Energy Int'l, 958 F.2d 58, 1992 AMC 2235 (5th Cir. 1992)* (contract for sale of a chemical does not become a maritime contract merely because the contract required the seller to ship the chemical); *Fareast Commodities Res. Ltd. v. SGS SA, 2011 U.S. Dist. LEXIS 27299 (S.D.N.Y. 2011)* (surveyor's negligent misrepresentation of iron ore's content is not maritime in nature even though ore was transported by vessel).

(n34)Footnote 34. The Red Wing, 1926 AMC 336 (S.D. Cal. 1926) . *See also Lucky-Goldstar Int'l (America), Inc. v. Phibro Energy Int'l, 958 F.2d 58 (5th Cir. 1992)* (contract to transport and sell cargo is non-maritime where the maritime aspects are insufficiently separable for trial in admiralty without prejudicing rights of party to try non-maritime aspects of case to a jury).

(n35)Footnote 35. *In re Atlantic, Gulf & Pac. S.S. Co. (The Charles H. Cramp), 3 F.2d 311, 1924 AMC 131 (D. Md. 1924) , aff'd on other grounds, 3 F.2d 438 (4th Cir. 1925)* .

(n36)Footnote 36. *Richard Bertram & Co. v. The Yacht, Wanda, 447 F.2d 966, 1971 AMC 1841 (5th Cir. 1971)* (if a mortgage is within the Ship Mortgage Act, admiralty has exclusive jurisdiction; if the mortgage is not within the Act, admiralty has no jurisdiction); *McCorkle v. First Pa. Banking & Trust Co., 459 F.2d 243 (4th Cir. 1972)* (admiralty lacks jurisdiction over an action to determine title of a ship where title turns on the continued validity of a non-preferred mortgage); Lewco Corp. v. One 1984 23' *Chris Craft Motor Vessel, 889 F. Supp. 1114 (D. Minn. 1995)* ; *The Defiance, 3 F.2d 48, 1925 AMC 56 (E.D.N.C. 1924)* ; *The S.S. Guatemala, 68 F. Supp. 894, 1946 AMC 1719* (E.D.N.Y. l946), *modified sub nom. Larsen v. New York Dock Co., 166 F.2d 687, 1948 AMC 756 (2d Cir. 1948)* (a contract that two mortgages on a vessel should rank together without priority for either has been held non-maritime).

(n37)Footnote 37. *Pacific Sur. Co. v. Leatham & Smith Towing & Wrecking Co., 151 F. 440 (7th Cir. 1907)* ; *Eadie v. North Pac. S.S. Co., 217 F. 662* (N.D. Cal. 1914). *Contra Haller v. Fox, 51 F. 298 (D. Wash. 1892)* .

See Kreatsoulas v. Freights of the Levant Pride, 838 F. Supp. 147 (S.D.N.Y. 1993) (contract of personal guaranty of loan to operator of vessels is not a maritime contract; also, the assingment of freights to guaranty the loan was non-maritime since the assignments were made in a separate agreement by a third party). *But see South Carolina State Ports Auth. v. Silver Anchor, S.A., 23 F.3d 842 (4th Cir. 1994)* (shipping agent who allegedly guaranteed debt had sufficient non-title interest in the services that the port authority provided vessels such that his guaranty was a maritime

contract).

(n38)Footnote 38. *Aktieselskabet Fido v. Lloyd Brazileiro, 267 F. 733, 738 (S.D.N.Y. 1919) , aff'd, 283 F. 62 (2d Cir.) , cert. denied, 260 U.S. 737 (1922)* .

(n39)Footnote 39. *Jones v. Berwick Bay Oil Co., 697 F. Supp. 260 (E.D. La. 1988)* ("a blanket contract to supply fuel for use by a fleet of vessels engaged in a maritime activity is not a maritime contract as to any part that remains executory," even though the supplier used a vessel to transport the fuel to its own tanks and even though the individual injured during the storage operation was a seaman; if the supplier's employee had been injured while supplying fuel to particular vessels he would have been injured while performing a maritime obligation).

The Navemar, 1935 AMC 1246 (S.D.N.Y. 1935) ; *Garcia v. Warner, Quinlan Co., 9 F. Supp. 1010, 1935 AMC 63 (S.D.N.Y. 1934)* .

(n40)Footnote 40. *The President Arthur, 42 F.2d 288, 1930 AMC 1079 (S.D.N.Y. 1930) , aff'd, 72 F.2d 276, 1934 AMC 1179 (2d Cir.) , cert. denied, 293 U.S. 615 (1934) . See also* Di Palacio v. The President Arthur, 1932 AMC 1134 (E.D.N.Y. 1932) .

(n41)Footnote 41. *P.J. Carlin Constr. Co. v. Heaney (The Observation), 299 U.S. 41, 1936 AMC 1677 (1936)* .

(n42)Footnote 42. *The Wonder, 79 F.2d 312, 1935 AMC 1310 (2d Cir. 1935)* .

(n43)Footnote 43. *W.F. & R. Boatbuilders, Inc. v. Hudson River Steamboat Co., 9 F. Supp. 932, 1935 AMC 466 (E.D.N.Y. 1935)* .

(n44)Footnote 44. The W.T. Blunt, 1923 AMC 1109 (E.D. Mich. 1923) (summary); *In re* Hydraulic Steam Dredge No. 1, *80 F. 545 (7th Cir. 1897)* (dredge sucking sand from lake bed to build land on shore; contract non-maritime); *R. Maloblocki & Assocs. v. Metropolitan Sanitary Dist., 369 F.2d 483, 1966 AMC 2279 (7th Cir. 1966)* (a contract to dredge silt from river for primary purpose of flood control, most of the work being done in non-navigable waters, enlargement and deepening of the channel being merely incidental; contract not maritime).

(n45)Footnote 45. *Hanna v. The Meteor, 92 F. Supp. 530, 1950 AMC 1046 (E.D.N.Y.) , aff'd, 184 F.2d 439, 1950 AMC 2029 (2d Cir. 1950) , cert. denied, 340 U.S. 933 (1951)* .

(n46)Footnote 46. A A B Elec. Indus. v. Control Masters, Inc., 1980 AMC 1795 (E.D. La. 1980) .

(n47)Footnote 47. *Mulvaney v. Dalzell Towing Co., 90 F. Supp. 259, 1950 AMC 1053 (S.D.N.Y. 1950)* .

(n48)Footnote 48. Jacobson v. Monarch Cruise Lines, 1977 AMC 152 (S.D. Fla. 1976) .

(n49)Footnote 49. *Clinton v. International Org. of Masters, Mates & Pilots of Am., 254 F.2d 370, 1958 AMC 1673 (9th Cir. 1958)* .

(n50)Footnote 50. Del Greco v. New York Harbor Indep. Pilots, 1983 AMC 2221 (S.D.N.Y. 1983) .

(n51)Footnote 51. *Berwind-White Coal Mining Co. v. City of N.Y., 135 F.2d 443, 1943 AMC 682 (2d Cir. 1943)* .

(n52)Footnote 52. *Louisville & N. R.R. v. Arrow Transp. Co., 170 F. Supp. 597, 1959 AMC 1035 (N.D. Ala. 1959)* .

(n53)Footnote 53. *Pacific Coast S.S. Co. v. Moore, 70 F. 870 (N.D. Cal. 1896) , aff'd sub nom. Pacific Coast S.S. Co. v. Ferguson, 76 F. 993 (9th Cir. 1896)* .

(n54)Footnote 54. *Graham v. Oregon R. & Nav. Co., 134 F. 454, 135 F. 608 (S.D.N.Y. 1904)* ; *Pacific Coast S.S. Co. v. Moore, 70 F. 870 (N.D. Cal. 1896)* , *aff'd sub nom. Pacific Coast S.S. Co. v. Ferguson, 76 F. 993 (9th Cir. 1896)* .

(n55)Footnote 55. *El Oriente, 5 F.2d 251, 1925 AMC 1262 (E.D.N.Y. 1925)* ; *The Ciano, 63 F. Supp. 892, 1945 AMC 1474 (E.D. Pa. 1945)* (admiralty has no jurisdiction of a suit against a rail carrier for cargo damage involving a shipment form Europe to an inland point in the United States on a through bill of lading issued by the ocean carrier to which the rail carrier was not a party).

(n56)Footnote 56. *Intercontinental Contractors v. Canadian Maritime Carriers, 1986 AMC 2161 (E.D. Pa. 1986)* .

(n57)Footnote 57. *T. Smith & Son, Inc. v. Rigby, 305 F. Supp. 418, 1969 AMC 2092 (E.D. La. 1969)* .

(n58)Footnote 58. *In re Alamo Chem. Transp. Co., 320 F. Supp. 631, 1971 AMC 1019 (S.D. Tex. 1970)* , citing text.

(n59)Footnote 59. *Cesaroni v. United States, 624 F. Supp. 613 (S.D. Ga.)* , *aff'd, 780 F.2d 1031 (11th Cir. 1985)* .

(n60)Footnote 60. *The Mary F. Chisholm, 129 F. 814 (D. Me. 1904)* .

(n61)Footnote 61. *The Pennsylvania, 154 F. 9 (2d Cir. 1907)* .

(n62)Footnote 62. *A Raft of Cypress Logs, 20 F. Cas. 169 (W.D. Tenn. 1876)* (No. 11,527).

(n63)Footnote 63. *Wenberg v. A Cargo of Mineral Phosphate, 15 F. 285 (S.D.N.Y. 1883)* .

(n64)Footnote 64. *Thurmond v. Delta Well Surveyors, 836 F.2d 952, 1988 AMC 2763 (5th Cir. 1988)* . But contracts for offshore drilling and mineral operations involving the use of a vessel are maritime. *Lewis v. Glendel Drilling Co., 898 F.2d 1083 (5th Cir. 1990)* (noting the apparent contradiction in these two rules and suggesting the need for en banc review). Torquing bolts, under a master service agreement, on a blow-out preventer from a jack-up drilling rig used as a work platform is a maritime contract. *Hoda v. Rowan Cos., Inc., 419 F.3d. 379, 2005 U.S. App. LEXIS 15611 (5th Cir. 2005)* . *Thurmond* was further limited by a later case that held even though a blanket contract for services associated with offshore oil and gas production was non-maritime, a subsequent work order requiring the use of a vessel and its crew was a maritime contract and therefore the complete contractwas subject to maritime law. *Davis & Sons, Inc. v. Gulf Oil Corp., 919 F.2d 313 (5th Cir. 1990)* . *See also Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115 (5th Cir. 1992)* (contract between casing service contractor and oil company was maritime in nature; crew had contracted to travel upon and enable a special-purpose vessel to perform its intended purpose).

(n65)Footnote 65. *Hollier v. Union Texas Petroleum Corp., 972 F.2d 662 (5th Cir. 1992)* .

(n66)Footnote 66. *Simon v. Intercontinental Transport (ICT) B.V., 882 F.2d 1435, 1990 AMC 288 (9th Cir. 1989)* .

(n67)Footnote 67. *Fednav, Ltd. v. Isoramar, S.A., 925 F.2d 599 (2d Cir. 1991)* (the original action was, however, brought against the defendant's vessel *in rem*).

(n68)Footnote 68. *Green Light Transport, Inc. v. Ocean Express Lines, Inc., 1994 AMC 2314 (S.D. Fla. 1994)* .

(n69)Footnote 69. *Alleman v. Omni Energy Servs. Corp., 434 F. Supp. 2d 405 (E.D. La. 2006)* .

(n70)Footnote 70. *E.g., Silva v. Bankers Commercial Corp., 163 F.2d 602, 1947 AMC 1266 (2d Cir. 1947)* ; *Home Ins. Co. v. Merchants' Transp. Co., 16 F.2d 372, 1927 AMC 57 (9th Cir. 1927)* ; *Williams v. Providence*

Washington Ins. Co., 56 F. 159 (S.D.N.Y. 1893) .

(n71)Footnote 71. *Archawski v. Hanioti, 350 U.S. 532, 1956 AMC 742 (1956)* ; *Sword Line v. United States, 228 F.2d 344, 1956 AMC 47 (2d Cir. 1955)* , *on reh'g, 230 F.2d 75, 1956 AMC 1277 (2d Cir.)* , *aff'd, 351 U.S. 976, 76 S. Ct. 1047, 100 L. Ed. 1493 (1956)* . *See* § 126, n. 10, *supra.*

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 186

§ 186. Contracts for the Building and Sale of Ships.

In the United States it is settled by authority that a contract for building a ship, or supplying materials for her construction, is not a maritime contract. n1 The Supreme Court so held in 1857 in *People's Ferry Co. v. Beers,* n2 and has followed that ruling both in dicta and decision in every subsequent case in which the subject has been presented or reference to it made. n3 The supplying of the original equipment of the vessel, as well as the building of the hull, is held to be outside of the admiralty jurisdiction. n4 A contract for the customization of a vessel which was part of the original sale and/or construction of a new vessel is non-maritime. n5

Even after the vessel is launched, while she is not yet sufficiently advanced to discharge the functions for which she is designed, the materials, work and labor for her completion are not the subject matter of admiralty jurisdiction. n6 The contract is treated as one merely preliminary to the use of the ship as an instrument of commerce and navigation.

As a corollary to the rule that contracts for the building of ships are non-maritime, a breach of an express or implied warranty arising under such contract is not actionable in admiralty. n7 Nonetheless, an admiralty court has jurisdiction over a products liability action based on negligence or strict liability in tort, with the limitation that a manufacturer in a commercial relationship has no tort obligation to prevent a product from injuring itself. n8 In a products liability case, if the maritime claims are substantial, then the non-maritime claims deriving from a common nucleus of operative facts may also be adjudicated at the same time. n9

The Supreme Court originally excluded shipbuilding contracts from the admiralty jurisdiction because the contract was made on land, to be performed on land; n10 and, although the Court discarded this factor in determining the maritime character of other contracts, n11 the rule has persisted, being supported by the principle of *stare decisis* and upon the ground of want of immediate relation between the original construction of the ship and navigation and commerce by water. n12 "A ship is born," the Supreme Court said,

> "when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron--an ordinary piece of personal property--as distinctly a land structure as a house, and subject only to mechanics' liens created by state law and enforceable in the state courts. In the baptism of launching she receives her name, and from the moment her keel touches the water she is

transformed, and becomes a subject of admiralty jurisdiction." n13

This picturesque definition and its progeny were cast in an era when the personification of the ship had become an intellectual necessity. But it is generally accepted that admiralty jurisdiction should extend to matters closely connected with shipping. n14 It can hardly be denied that the building of a ship bears a substantial relation to maritime commerce or that there is a substantial federal interest in shipbuilding. When confronted with a tort claim arising out of defective design or construction, the courts have had little difficulty concluding that the tort has a significant connection to traditional maritime activity. n15 There seems to be no valid reason (apart from the principle of *stare decisis*) why a ship in its intangible state should not be a maritime subject. n16

Although never held by the Supreme Court, it has been well established by the lower courts that contracts for the sale of the vessel are non-maritime. n17 The doctrine is perhaps best understood as an analogy to the rule that excludes shipbuilding contracts from the admiralty jurisdiction. n18 But even the personification theory used to justify the shipbuilding cases does not apply to contracts to sell a ship that has already been completed.

Notwithstanding the modification made in this country, the ancient authorities on maritime law are unanimous in regarding a contract for building a ship as a maritime contract. n19 The International Convention relating to the arrest of seagoing ships defines a maritime claim to include, *inter alia*, a claim arising out of the construction of a ship. n20 Based on this convention, England has a statute which provides for admiralty jurisdiction over contracts for building of ships. n21 Similar laws are in force in the other countries which are signatories to the convention. n22

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawMaritime ContractsBreach of Warranty ActionsAdmiralty LawMaritime ContractsCoverageAdmiralty LawPractice & ProcedureJurisdictionContracts LawTypes of ContractsConstruction Contracts

FOOTNOTES:
(n1)Footnote 1. *J.A.R., Inc. v. M/V Lady Lucille, 963 F.2d 96 (5th Cir. 1992)* ; *Stephens Boat Co. v. The Barge "Orr 1", 791 F. Supp. 145 (E.D. La. 1992)* (citing text); *El Fenix de Puerto Rico v. Serrano Gutierrez, 786 F. Supp. 1065, 1992 AMC 486 (D.P.R. 1991)* .

The Supreme Court's recent decision in *Exxon Corp. v. Central Gulf Lines, Inc., 111 S. Ct. 2071 , 1991 AMC 1817 (1991)* casts doubt on the validity of the doctrine that contracts to build or sell a vessel are non-maritime. The Court overruled its earlier holding in *Minturn v. Maynard, 58 U.S. (17 How.) 477 (1855)* that agency contracts are *per se* non-maritime. Instead courts must determine whether the nature and subject matter of the particular contract is maritime. The Court rejected the holding in *Minturn* in part because of the discredited doctrine that only contracts which create a lien could be maritime. Similar considerations underlie the unfortunate rules regarding the building and sale of vessels. *See* the discussion at § 185.

Paragraph quoted: *Boat LaSambra v. Lewis, 321 F.2d 29, 1966 AMC 691 (9th Cir. 1963)* .

(n2)Footnote 2. *61 U.S. (20 How.) 393 (1858)* .

(n3)Footnote 3. *East River S.S. Corp. v. Transamerica Delaval, Inc., 106 S. Ct. 2295, 2303 n. 7, 1986 AMC 2027, 2039 (1986)* ; *Kossick v. United Fruit Co., 365 U.S. 731, 1961 AMC 833 (1961)* ; *New Bedford Dry Dock Co. v. Purdy, 258 U.S. 96 (1922)* ; *Thames Towboat Co. v. The Francis McDonald, 254 U.S. 242 (1920)* ; *North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbldg. Co., 249 U.S. 119 (1919)* ; *The Winnebago, 205 U.S. 354 (1907)* ; *Graham & Morton Transp. Co. v. Craig Shipbldg. Co., 203 U.S. 577, 27 S. Ct. 777, 51 L. Ed. 325 (1906)* ; *The Robert W. Parsons, 191 U.S. 17 (1903)* ; *Tucker v. Alexandroff, 183 U.S. 424 (1902)* ; *Knapp, Stout & Co. v. McCaffrey, 177 U.S.*

638 (1900) ; *The J. E. Rumbell, 148 U.S. 1 (1893)* ; *The Lottawanna, 88 U.S. (21 Wall.) 558 (1875)* ; *Edwards v. Elliott, 88 U.S. (21 Wall.) 532 (1874)* ; *Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1871)* ; *The Belfast, 74 U.S. (7 Wall.) 624 (1869)* ; *Morewood v. Enequist, 64 U.S. (23 How.) 491 (1860)* ; *Roach v. Chapman, 63 U.S. (22 How.) 129 (1860)* .

Text quoted: *Chase Manhattan Financial Servs. v. McMillian, 896 F.2d 452, 1990 AMC 1702 (10th Cir. 1990)* .

(n4)Footnote 4. *The Winnebago, 205 U.S. 354 (1907)* ; *Edwards v. Elliott, 88 U.S. (21 Wall.) 532 (1874)* ; *Roach v. Chapman, 63 U.S. (22 How.) 129 (1860)* ; *The United Shores, 193 F. 552 (W.D.N.Y. 1912)* ; *The William Windom, 73 F. 496 (N.D. Iowa 1896)* ; *The Paradox, 61 F. 860 (S.D.N.Y. 1894)* ; *The J.C. Rich, 46 F. 136 (S.D. Ala. 1891)* ; *In re Glenmont, 32 F. 703 (D. Minn. 1887)* , *aff'd, 34 F. 402 (C.C.D. Minn. 1888)* ; *The Pioneer, 30 F. 206 (E.D.N.Y. 1886)* ; *The Count De Lesseps, 17 F. 460 (E.D. Pa. 1883)* ; *The Pacific, 9 F. 120, (E.D. Va. 1881)* ; *The Iosco, 13 F. Cas. 89 (E.D. Mich. 1874)* (No. 7060); *The Norway, 18 F. Cas. 435 (S.D.N.Y. 1869)* (No. 10,359).

(n5)Footnote 5. *Hatteras of Lauderdale, Inc. v. Gemini Lady, 853 F.2d 848 (11th Cir. 1988)* (upholding imposition Rule 11 sanctions on plaintiff's counsel for alleging admiralty jurisdiction without making a meritorious or good faith argument as to why the rule should be changed).

(n6)Footnote 6. *Thames Towboat Co. v. The Francis McDonald, 254 U.S. 242 (1920)* ; *Chase Manhattan Financial Servs. v. McMillian, 896 F.2d 452, 1990 AMC 1702 (10th Cir. 1990)* ; *Nilo Barge Line v. The M/V Bayou DuLarge, 584 F.2d 841, 1980 AMC 750 (9th Cir. 1978)* ; *Deibert Barge-Bldg. Co. v. United States, 289 F. 805, 1923 AMC 622 (4th Cir. 1923)* ; *Abdelnour v. Bassett Custom Boatworks, Inc., 614 F. Supp.2d 123 (D. Mass. 2009)* ; *Stephens Boat Co. v. The Barge "Orr 1", 791 F. Supp. 145 (E.D. La. 1992)* . *See also MacDougall's Cape Cod Marine v. One Christina 40 Foot Vessel, 721 F. Supp. 374 (D. Mass. 1989)* , *aff'd on other grounds, 900 F.2d 408 (1st Cir. 1990)* (commissioning of vessel which consisted of installing masts, spars, rigging, winches, and various other deck tackle, and servicing the machinery to prepare for launching constituted original construction of the vessel because the outfitting was necessary before the vessel could serve its intended purpose); *Hatteras of Lauderdale, Inc. v. Gemini Lady, 662 F. Supp. 1525 (S.D. Fla. 1987)* (citing text). In *General Engine & Mach. Works v. Slay, 222 F. Supp. 745, 1964 AMC 552 (S.D. Ala. 1963)* , the court recognized the rule that contracts made before launching are outside the admiralty jurisdiction even though they cover work to be done after launching. But it suggested that contracts made after launching for completion of the vessel might be within the admiralty jurisdiction. The court cited two old cases for this proposition, *The Manhattan, 46 F. 797 (D. Wash. 1891)* ; *The Revenue Cutter, No. 2, 20 F. Cas. 568 (D. Or 1877)* (No. 11,714). The suggestion is inconsistent with *The Francis MaDonald, supra* which disapproved of these earlier cases. There is admiralty jurisdiction, however, with respect to materials such as spare parts that are not supplied for a vessel's completion. *The Pinthis, 286 F. 122, 1923 AMC 384 (3d Cir. 1923)* . *See also Hoof v. Pacific Am. Fisheries, 279 F. 367 (9th Cir. 1922)* , *cert. denied, 263 U.S. 712 (1923)* . The Maritime Liens Act, *46 U.S.C. § 971*, refers to the furnishing of repairs, bt makes no reference to building activities.

(n7)Footnote 7. *East River S.S. Corp. v. Transamerica Delaval, Inc., 106 S. Ct. 2295, 2303 n. 7, 1986 AMC 2027, 2039 (1986)* (citing text); *Smith v. Mitlof, 198 F.Supp.2d 492 (S.D.N.Y. 2002)* .

(n8)Footnote 8. *East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 1986 AMC 2027 (1986)* ; *Mink v. Genmar Industries, Inc., 29 F.3d 1543, 1995 AMC 36 (11th Cir. 1994)* ; *In re Oil Spill by the Amoco Cadiz, 699 F.2d 909, 1983 AMC 1633 (7th Cir.)* , *cert. denied, 464 U.S. 864 (1983)* ; *Dudley v. Bayou Fabricators, Inc., 330 F. Supp. 788 (S.D. Ala. 1971)* ; *Ohio Barge Line v. Dravo Corp., 326 F. Supp. 863 (W.D. Pa. 1971)* .

Court lacked admiralty jurisdiction over allegation that towers and bushings on a jack-up barge were improperly fabricated. Since the damaged equipment did not cause personal injury or damage to other property, it was not cognizable in admiralty under *East River S.S. Corp v. Transamerica Delaval, Inc.* Further, the claim was not in admiralty merely because the president of the defendant company said that "he would take care" of any problems with the equipment. This did not amount to a contract to repair the equipment, but was at most an express warranty for

repair, and express warranties are outside the admiralty jurisdiction. *Boson Marine 6, Ltd. v. Crown Point Indus., Inc., 854 F.2d 46, 1989 AMC 146 (5th Cir. 1988)* .

(n9)Footnote 9. *See* § 184 n. 16, *supra.*

(n10)Footnote 10. *The J.E. Rumbell, 148 U.S. 1 (1893)* ; *Edwards v. Elliott, 88 U.S. (21 Wall.) 532 (1874)* ; *Morewood v. Enequist, 64 U.S. (23 How.) 491 (1860)* ; *Roach v. Chapman, 63 U.S. (22 How.) 129 (1860)* ; *People's Ferry Co. v. Beers, 61 U.S. (20 How.) 393 (1858)* .

(n11)Footnote 11. *See, e.g., Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1871)* .

(n12)Footnote 12. *Thames Towboat Co. v. The Francis McDonald, 254 U.S. 242, 41 S. Ct. 65, 65 L. Ed. 245 (1920)* .

(n13)Footnote 13. *North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbldg. Co., 249 U.S. 119, 127 (1919)* (quoting *Tucker v. Alexandroff, 183 U.S. 424, 438 (1902))* .

(n14)Footnote 14. *See, e.g., Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 1973 AMC 1 (1972)* .

(n15)Footnote 15. *E.g., East River S.S. Corp. v. Transamerica De-laval, Inc., 106 S. Ct. 2295, 1986 AMC 2027 (1986)* ; *In re Oil Spill by the Amoco Cadiz, 699 F.2d 909, 1983 AMC 1633 (7th Cir.) , cert. denied, 464 U.S. 864, 104 S. Ct. 196, 78 L. Ed. 2d 172 (1983)* ; *Jig The Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171, 1976 AMC 118 (5th Cir. 1975) , cert. denied, 424 U.S. 954, 96 S. Ct. 1429, 47 L. Ed. 2d 360 (1976)* ; *In re American Export Lines, 1983 AMC 2376 (S.D.N.Y. 1983)* . *See* § 171, *supra.*

(n16)Footnote 16. *Kalafrana Shipping Ltd. v. Sea Gull Shipping Co., 591 F. Supp.2d 505, 2008 AMC 2409 (S.D.N.Y. 2008)* . Substantial uniformity is achieved in those cases governed by the Uniform Commercial Code. *See East River S.S. Corp. v. Transamerica Delaval, Inc., 106 S. Ct. 2295, 2303 n. 7, 1986 AMC 2027, 2039 (1986)* . The American Law Institute has suggested that the anomaly is of little practical significance since the parties to shipbuilding transactions know the rules and can safeguard their interests, and that ancillary and pendent jurisdiction will provide the federal courts with jurisdiction in appropriate cases. American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts* 228 (1969). *See also* Maraist, Admiralty, *45 La. L. Rev. 179, 181 n. 14 (1984)* (parties possess equal bargaining power and can choose the law between them). Although such factors reduce the harm caused, it seems senseless to deny federal courts the power to set uniform standards that protect federal interests and to deny them an independent basis of jurisdiction.

Judge Posner has observed that shipbuilding contracts involve damage at a fixed locale, and "most of them--the ship buyer's suit on an executory contract, or the shipbuilder's suit for the price, for example--do not involve safety or other distinctively maritime issues at all." *In re Oil Spill by the Amoco Cadiz, 699 F.2d 909, 914, 1983 AMC 1633, 1637 (7th Cir.) , cert. denied, 464 U.S. 864, 104 S. Ct. 196, 78 L. Ed. 2d 172 (1983)* . But these factors do not distinguish shipbuilding from many other types of maritime contracts, such as stevedoring, ship repairing, or wharfage. Nor does this rationale explain why suits for breach of contract to build a vessel that involve safety concerns are non-maritime.

(n17)Footnote 17. *E.g., Gulf Coast Shell & Aggregate LP v. Newlin, 623 F.3d 235, 2011 AMC 421 (5th Cir. 2010)* (oral contract to transfer title to a third party is not maritime); *Herman Family Revocable Trust v. Teddy Bear, 254 F.3d 802, 2001 AMC 2064 (9th Cir. 2001)* (citing text); *Magallanes Investment, Inc. v. Circuit Systems, Inc., 994 F.2d 1214 (7th Cir. 1993)* ; *Cary Marine, Inc. v. The Motorvessel Papillon, 872 F.2d 751, 1990 AMC 828 (6th Cir. 1989)* ; *Hatteras of Lauderdale, Inc. v. Gemini Lady, 853 F.2d 848 (11th Cir. 1988)* ; *Lynnhaven Dolphin Corp. v. E.L.O. Enters., 776 F.2d 538, 1986 AMC 2659 (5th Cir. 1985)* ; *Magnolia Ocean Shipping Corp. v. M/V Mercedes Maria, 644 F.2d 880* (noted), *1982 AMC 731 (4th Cir. 1981)* (unpublished); *S.C. Loveland, Inc. v. East West Towing, Inc., 608 F.2d 160, 1980 AMC 2947 (5th Cir. 1979) , cert. denied, 446 U.S. 918 (1980)* ; *Atlantic Lines v. Narwhal, Ltd., 514 F.2d 726, 1976 AMC 642 (5th Cir. 1975)* ; *Richard Bertram & Co. v. The Yacht, Wanda, 447 F.2d 966, 1971*

AMC 1841 (5th Cir. 1971) ; *Casco Marina Dev., LLC v. M/V Forrestall, 384 F. Supp.2d 154 (D.D.C. 2005)* ; *Chi Shun Hua Steel Co. v. Crest Tankers, Inc., 708 F. Supp. 18, 1989 AMC 2551 (D.N.H. 1989)* ; *Gerard Constr. Inc. v. M/V Virginia, 480 F. Supp. 488, 1981 AMC 115 (W.D. Pa. 1979)* ; Williams v. The Atte-Wode, 1941 AMC 1428 (N.D. Ill. 1941) ; *The Guayaquil, 29 F. Supp. 578, 1939 AMC 1294 (E.D.N.Y. 1939)* ; *The Ada, 250 F. 194 (2d Cir. 1918)* . *See, generally,* Comment, *Admiralty Jurisdiction and Ship-Sale Contracts, 6 Stan. L. Rev. 540 (1954). But see Orbis Marine Enters. v. TEC Marine Lines, 692 F. Supp. 280, 1989 AMC 1604 (S.D.N.Y. 1988)* (contract to purchase marine shipping containers is a maritime contract because containers are not the equivalent of vessels but are "necessaries" for purposes of maritime liens under *46 U.S.C. § 971*).

(n18)Footnote 18. *See* Comment, *Admiralty Jurisdiction and Ship-Sale Contracts, 6 Stan. L. Rev. 540 (1954).*

(n19)Footnote 19. "All civilians and jurists agree, that in this appellation [maritime contracts] are included, among other things, ... contracts for maritime service in the *building,* repairing, supplying, and navigating ships. ..." *De Lovio v. Boit, 7 F. Cas. 418, 444 (C.C.D. Mass. 1815)* (No. 3776) (Story, J.) (emphasis added).

By the civil law: "Whoever gives credit for *building,* or furnishing, or repairing a ship, has a lien upon it." "What any one gives credit for, for the purpose of *building,* repairing, furnishing, or outfitting, or even selling a ship, is a lien upon it." *Justinian's Digest,* 42.6.26.34 (emphasis added).

By the Consulat: "If a ship newly built is sold at the suit of creditors, before it has been launched, or before it has made a voyage, the mechanics, caulkers and other workmen, as well as those who have furnished timber, pitch, spikes and other things necessary for the *building* of the ship, shall be preferred to all other creditors whatever, even to those who may have lent money, with a written declaration that it is to be used in the *building* of a vessel." *Consulat de la Mer,* ch. 32 (emphasis added).

Cleirac, to the same effect says: "Hypothecation is special and privileged for the wages of the carpenters, caulkers, and other workmen, and for those also who have furnished tar, pitch, casks, timber, spikes, oakum, and other materials for the *building* or repairing a vessel." Cleirac, *Jur. de la Marine,* 351, Art. 6 (1661) (emphasis added). The Marine Ordinance of 1691 is equally clear: "The judges of the admiralty have jurisdiction exclusively of all others, and between all parties, of every thing which concerns the *building,* tackle, apparel, furniture, outfit, victualling, sale, and adjudication of vessels." *Ord. de la Marine,* Tit. 2, Art. 1 (1691) (emphasis added).

In like manner, Valin, commenting on this article of the Ordinance: "There is never any dispute in relation to the objects expressed in this article, which concern the *building, rigging, furniture, outfit, sale, and adjudication of vessels;* and in truth what would be the function of admiralty courts, if they had not jurisdiction of such causes?" 1 *Valin* 113.

Emerigon quotes with approbation, and as authority, the foregoing, and other similar passages, in ch. 12, §§ 3-5 of his treatise on maritime loans, and on page 566, quarto edition, (1809) saying: "There is nothing so much favored as the price of work and materials for the *building* of a vessel. Commerce and the State are interested in it. It is just that the workmen and materialmen should enjoy the lien upon the thing, which is given them by the Marine Ordinance. They cannot be deprived of this privilege except when it is proved that they trusted the person, not the thing." Boulay Paty, in his commentaries on the Commercial Code, (1834) in which the jurisdictional clauses of the Ordinance are re-enacted, §§ 1 and 2, brings down in equivalent words, this maritime law of all the ages, as does the Nouveau Valin (1810).

Even the English judges, with the King and his Council, in the resolutions of 1632, say:

> "If suit shall be in the Court of Admiralty, for *building,* amending, saving, or necessary victualling of a ship, against the ship itself, and not against any party by name, but such as for his interest makes himself a party, no prohibition is to be granted, though this be done within the realm." *Resolution* 3, § 44, *supra* .

And under the commission of the Vice Admiralty Court of Massachusetts this jurisdiction was exercised, for in the records of the court is to be found a suit by a builder of a ship *in rem* for its price after it had been delivered. *See Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1, 10 (1871)* .

If we pass behind these great authorities to the original codes of all the maritime states and cities, which the wonderful industry and learning of Pardessus have brought together, in his great work (6 vols. quarto), *Collection des Lois Maritimes Anterieures au xviiie Siecle,* (1828-1845) we find that the history, the text, and the commentary of the codes and collections of maritime usages, from the earliest periods of antiquity, agree as to the maritime character of contracts for building ships.

(n20)Footnote 20. Convention Relating to the Arrest of Sea-Going Ships, *opened for signature* May 10, 1952, 439 U.N.T.S. 193.

(n21)Footnote 21. Administration of Justice Act 1956, 4 & 5 Eliz. 2, ch. 46, §§ 1, 2 as amended by the Administration of Justice Act of 1970.

(n22)Footnote 22. For text of convention, *see* 6A *Benedict on Admiralty* 8-2.2.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 187

§ 187. Contracts for the Repair of Ships.

After a ship has been built and is ready to enter upon her service, contracts to repair or rebuild her are maritime. n1 One explanation of the distinction betweencontracts to construct a new vessel and those for repairing or rebuilding an old one that stated in the judgment of Hanford, J. in *The Manhattan:*

> "[I]f there is any reason for the distinction other than the mere fact that it exists because the courts have created it by their arbitrary decisions, it is to be found in this: that a maritime contract is defined to be one having reference to commerce or navigation. The particular element essential to give it a maritime character is direct connection with commercial transactions or navigation; and such connection is lacking in a contract to create a new ship, or, if not lacking entirely, it is remote and contingent, so that it is not perceptible at the time the contract goes into effect as a binding obligation. But whatever is done to or about an existing ship has direct reference to commerce and navigation. A ship ... as a maritime subject gives a maritime character to all transactions directly connected with it. The cases are distinguishable thus: One class, founded upon contracts for the repairing and rebuilding of vessels, holds such contracts to be maritime, because they affect vessels ... and the other class, founded upon contracts for the building of proposed vessels, holds such contracts to be non-maritime, because they touch maritime subjects only by relation to proposed vessels, the future existence of which is contingent upon performance of the terms of the contract in each case." n2

The Supreme Court has more succinctly held that "the true basis for the distinction between the construction and the repair of a ship, for the purposes of admiralty jurisdiction, is to be found in the fact that the structure does not become a ship, in the legal sense, until it is completed and launched." n3

Admiralty jurisdiction exists whether the repairs are carried out while a ship is afloat, while in dry dock or while hauled up by ways upon land. n4 The quantum of the work involved in the repairs does not affect the jurisdiction so long as the work can be properly classed in the category of repairs. The word repairs as used in Liens Act, 1910, has a broad meaning, and due effect must be given to the ample ambit of this word without attempting to draw too refined a distinction between reconstruction and repairs. n5 In *Thames Towboat Co. v. The "Francis McDonald,"* n6 the Supreme Court regarded the work done as being for the purpose of completing the original construction and the contract

in respect thereof was accordingly held to be non-maritime, even though the hull had to be towed to another port. In the case of *The Jack-O-Lantern,* n7 which involved the conversion of a car float with neither motive power nor steering gear into a steamer for amusement purposes, the Supreme Court held it to be a case of repairs. The Court said:

> "We are not disposed to enlarge the compass of the rule approved in *Thames Towboat Co. v. The 'Francis McDonald,'* under which contracts for the construction of entirely new ships are classed as non-maritime, or to apply it to agreements of uncertain intendment--reasonable doubts concerning the latter should be resolved in favor of the admiralty jurisdiction." n8

The Supreme Court rejected the suggestion that the ultimate use to which a vessel would be devoted should determine whether a vessel's conversion should be regarded as repair or as new construction.

Rather than announce a rigid definition of repairs and new construction, the Court approved of the following views of Judge Hughes in the *United States v. The Grace Meade* as being both sound and helpful:

> "And generally, it may be held as a principle, that, where the keel, stem, and stern-posts and ribs of an old vessel, without being broken up and forming an intact frame, are built upon as a skeleton, the case is one of an old vessel rebuilt, and not of a new vessel. Indeed, without regard to the particular parts reused, if any considerable part of the hull and skeleton of an old vessel in its intact condition, without being broken up, is built upon, the law holds that in such a case it is the old vessel rebuilt, and not a new vessel. But where no piece of the timber of an old vessel is used without being first dislocated and then replaced, where no set of timbers are left together intact in their original positions, but all the timbers are severally taken out, refitted, and then reset, there we have a very different case. That is a case of a vessel rebuilt." n9

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsCoverageAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:

(n1)Footnote 1. *New Bedford Dry Dock Co. v. Purdy, 258 U.S. 96 (1922)* ; *Southworth Machinery v. F/V Corey Pride, 994 F.2d 37 (1st Cir. 1993)* (citing text) (contract for sale and installation of rebuilt engine on an existing commercial vessel is maritime but the Uniform Commercial Code is a source of federal admiralty law); *Coastal Iron Works v. Petty Ray Geophysical, 783 F.2d 577 (5th Cir. 1986)* ; *Point Adams Packing Co. v. Astoria Marine Constr. Co., 594 F.2d 763, 1979 AMC 2191 (9th Cir. 1979)* ; *The Susquehanna, 267 F. 811 (2d Cir. 1920)* ; *Todd Marine Enters., Inc. v. Carter Mach. Co., 898 F. Supp. 341 (E.D.Va. 1995)* (replace engines); *Buck Kreihs Co. v. International Marine Carriers, Inc., 741 F. Supp. 1249 (E.D. La. 1990)* ; Norfolk Shipbldg. & Drydock Corp. v. M/V Norma T., 1977 AMC 103 (E.D. Va. 1976) . *See Rubino v. Hudson River Glassworks, 1990 U.S. Dist. LEXIS 9388 (S.D.N.Y. July 26, 1990)* (contract to repair pleasure vessel is maritime). *See also Southwest Marine, Inc. v. United States, 680 F. Supp. 1400, 1988 AMC 2098 (N.D. Cal. 1988)* (district court may transfer suit involving a contractual dispute arising out of the overhaul of a naval vessel to the Armed Services Board of Contract Appeals; although the relevant statute, *41 U.S.C. § 609(d),* by its terms only authorizes the Claims Court to transfer such cases, the legislative history indicates that Congress meant for district courts to have this power also). *But see McDonough v. Nolley, 729 F. Supp. 84 (W.D. Wash. 1990)* (suit by owner of pleasure yacht for negligent repairs which caused vessel to catch fire while moored at dock does not satisfy the nexus requirement); *Lloyds of London v. Montauk Yacht Club & Inn, 704 F. Supp. 1175, 1989 AMC 1229 (E.D.N.Y. 1989)* (contract to repair an ordinary washer/dryer unit aboard a pleasure yacht is not a maritime contract).

(n2)Footnote 2. *46 F. 797, 799-800 (D. Wash. 1891)* .

(n3)Footnote 3. *North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbldg. Co., 249 U.S. 119, 127 (1919)* . *See also Hatteras of Lauderdale, Inc. v. Gemini Lady, 853 F.2d 848 (11th Cir. 1988)* (citing earlier version of this text).

(n4)Footnote 4. *Gonsalves v. Morse Dry Dock & Repair Co., 266 U.S. 171 (1924)* ; *The Robert W. Parsons, 191 U.S. 17 (1903)* ; *North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbldg. Co., 249 U.S. 119 (1919)* .

(n5)Footnote 5. *New Bedford Dry Dock Co. v. Purdy (The Jack-O-Lantern), 258 U.S. 96 (1922)* .

(n6)Footnote 6. Thames Towboat Co. v. The "Francis McDonald," *254 U.S. 242 (1920)* .

(n7)Footnote 7. *New Bedford Dry Dock Co. v. Purdy, 258 U.S. 96 (1922)* .

(n8)Footnote 8. *Id. at 99* .

(n9)Footnote 9. *Id. at 100* (quoting *25 F. Cas. 1387, 1389 (E.D. Va. 1876)* (No. 15,243)).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 188

§ 188. Executory Contracts.

An executory contract of a maritime nature sustains an action *in personam* in admiralty, n1 but will not, in and of itself, permit a lien on a vessel. n2 Whether the contract is one of affreightment, carriage of passengers, charter, or the furnishing of repairs, supplies, services and other necessaries to the vessel, sufficient performance is required before the vessel will be deemed to have assumed responsibility of the contract and thereby become subject to a lien. n3 With respect to all necessaries covered by the Federal Maritime Lien Act, no lien arises until they are actually "furnished" to the vessel. n4 An anticipatory breach will not provide the supplier with any more than an *in personam* right. In the same manner, the owner who charters his ship cannot be bound *in rem* for violation of the charter agreement until the charterer has actually taken possession. n5 The right of a passenger to claim a lien does not arise until such person is on board for the purpose of carriage, and the mere purchase of a ticket or choice of a berth without embarkment does not suffice. n6 As to baggage, no lien for its loss arises unless, at the time of the loss, either the passenger had been received for carriage, or his baggage placed in the control or custody of the ship. n7 Thus, it is not the contract alone, nor the consideration, which permits the lien; the commencement of performance pledges the vessel and not merely the contractor's promise to complete the contract.

While all maritime contracts may ultimately form the basis of a lien, the most disputed area has been that involving contracts of affreightment. Essentially, the rights of owners of ships and cargo with respect to liens are "mutual and reciprocal"; n8 no lien results from breach of contract of carriage until the shipowner's lien upon the cargo for freight has attached. The law creates no lien on a vessel as a security for the performance of a contract to transport cargo until some lawful contract of affreightment is made, and the cargo to which it relates has been delivered into the custody of the master or someone with authority to receive it. n9 This latter act must result in a union between ship and cargo either by virtue of actually loading the goods on board, delivering goods alongside the vessel (if the bill of lading indicates no contrary specification), loading goods on lighters, or a similar commitment by performance. n10 Even where such union has occurred by way of loading, no lien will arise for losses due to the ship's delay where she was required to sail *only* with a full cargo, and the shipper was aware that he was dealing with the charterer and assumed the charterer's bill of lading setting forth such requirement. n11 Nor will a lien arise where a ship's delay results in loss of market value or other costs but causes no physical damage to the cargo. n12

Because a vessel is not bound by a contract until she has commenced performance to the degree that she has pledged

herself to completion, failure to depart on a voyage, or refusal to accept cargo will not allow the charterer or shipper a maritime lien. n13 Nor will seamen who held themselves in readiness for the voyage subsequently abandoned have such a lien. n14 The right of the master to refuse all or part of a shipment for whatever reason may not be materially altered by state enactments. n15 However, where a portion of the goods intended for shipment has been placed in the master's custody, a lien will be imposed to the extent of the goods actually placed on board. n16

The only time that a lien will be allowed where cargo has not been delivered into custody of the master is where the master has signed a bill of lading acknowledging receipt of goods on board, and the indorser has changed his position in reliance thereof to his detriment. But, as to a shipowner or the shipper of the goods, the bill of lading is not binding where the goods are not in fact loaded on the vessel. n17

A lien will arise for freight paid in advance but not earned under the terms of the contract. n18

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsAffreightmentAdmiralty LawMaritime ContractsCoverageAdmiralty LawMaritime LiensNatureGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionContracts LawTypes of ContractsExecutory Contracts

FOOTNOTES:
(n1)Footnote 1. *Baltimore Steam Packet Co. v. Patterson, 106 F. 736 (4th Cir. 1901)* ; *Boutin v. Rudd, 82 F. 685 (7th Cir. 1897)* ; *The Kootenai, 295 F. 422, 1924 AMC 67 (E.D.N.Y. 1923)* ; *Terminal Shipping Co. v. Hamberg, 222 F. 1020 (D. Md. 1915)* ; *The Allerton, 93 F. 219 (D. Or. 1899)* ; *The J.F. Warner, 22 F. 342 (E.D. Mich. 1883)* ; *The Monte A., 12 F. 331 (S.D.N.Y. 1882)* . *See The Fredensbro, 18 F.2d 983, 1927 AMC 1258 (E.D. Pa. 1927)* . *See also Bunn v. Global Marine, Inc., 428 F.2d 40 (5th Cir. 1970)* ; *Continental Grain Co. v. Toko Lines, 333 F. Supp. 1349 (E.D. La. 1971)* .

(n2)Footnote 2. *Vandewater v. Mills (The Yankee Blade), 60 U.S. (19 How.) 82 (1856)* ; *The Margaretha, 167 F. 794 (2d Cir. 1909)* ; *Guffey v. Alaska & Pac. S.S. Co., 130 F. 271 (9th Cir. 1904)* ; *The S.L. Watson, 118 F. 945 (1st Cir. 1902)* ; *The Priscilla, 114 F. 836 (2d Cir. 1902)* ; *The Ripon City, 102 F. 176 (5th Cir. 1900)* ; *The Francesco, 116 F. 83 (E.D. Pa. 1902)* ; *The Habil, 100 F. 120 (S.D. Ala. 1900)* ; *The Allerton, 93 F. 219 (D. Or. 1899)* ; *The Bella, 91 F. 540 (W.D. Wash. 1899)* ; *The Eugene, 83 F. 222, (D. Wash. 1897) , aff'd, 87 F. 1001 (9th Cir. 1898)* ; *The Seven Sons, 69 F. 271 (W.D. Pa. 1895)* ; *The Guiding Star, 53 F. 936 (S.D. Ohio 1893)* ; *The Prince Leopold, 9 F. 333 (E.D. La. 1881)* ; *The City of Baton Rouge, 19 F. 461 (E.D. La. 1881)* ; *Scott v. The Ira Chaffee, 2 F. 401 (E.D. Mich. 1880)* .

(n3)Footnote 3. *The Keokuk, 76 U.S. (9 Wall.) 517 (1869)* ; *The Freeman v. Buckingham, 59 U.S. (18 How.) 182 (1855)* ; *The S.L. Watson, 118 F. 945 (1st Cir. 1902)* ; Atlantic Richfield Co. v. 28,000 Tons More or Less of Refined Petroleum Prod., 1982 AMC 2184 (D. Mass. 1980) .

"The rule of admiralty, as always stated, is that the cargo is bound to the ship and the ship to the cargo. Whatever cases may have been decided otherwise disregarded the universal fact that no lien arises in admiralty except in connection with some visible occurrence relating to the vessel or cargo or to a person injured. This is necessary in order that innocent parties dealing with vessels may not be the losers by secret liens, the existence of which they have no possibility of detecting by any relation to any visible fact. It is in harmony with this rule that no lien lies in behalf of a vessel against her cargo for dead freight, or against a vessel for supplies contracted for, but not actually put aboard." *Osaka Shosen Kaisha v. Pacific Export Lumber Co., 260 U.S. 490 at 500, 1923 AMC 55 at 60 (1923)* (quoting *The S.L. Watson, supra at 952*). *See also Krauss Bros. Lumber Co. v. Dimon S.S. Corp., 290 U.S. 117, 1933 AMC 1578 (1933)* .

When performance does not relate to a specific vessel a lien will not be imposed. *The Allerton, 93 F. 219 (D. Or. 1899)* (a breach of contract for stevedore's services to be rendered generally for one year where no services rendered which were referable to a particular ship); *The S.L. Watson, supra* , (charter for carriage of cargo of one or more vessels does not bind any particular one so as to allow a lien for breach of owner's duty).

(n4)Footnote 4. *Compania Argentina De Navegacion Dodero v. Atlas Maritime Corp., 144 F. Supp. 13 (S.D.N.Y. 1956) . See 46 U.S.C. §§ 971-975.*

(n5)Footnote 5. *See E.A.S.T., Inc. v. M/V Alaia, 673 F. Supp. 796 (E.D. La. 1987) , aff'd, 876 F.2d 1168, 1989 AMC 2024 (5th Cir. 1989)* (citing text) (lien arises for breach of a time charter after the vessel is placed at the disposal of the charterer; in the case of a voyage charter a lien would not arise until the vessel takes control over cargo; the basis for the distinction is that a voyage charter may constitute a contract of affreightment and the charterer does not begin performance until the cargo is under the control of the vessel whereas a time charter should not be viewed as a contract of affreightment and charter begins performance before any cargo is loaded on the vessel); *The Valmar, 38 F. Supp. 618, 1941 AMC 872 (E.D. Pa. 1941)* .

(n6)Footnote 6. *The Eugene, 83 F. 222 (D. Wash. 1897) , aff'd, 87 F. 1001 (9th Cir. 1898)* (no lien where passenger purchased ticket but was unable to board because of owner's default); *The Bella, 91 F. 540 (D. Wash. 1899)* ; *Todd Shipyards Corp. v. The City of Athens, 83 F. Supp. 67, 76 (D. Md. 1949)* ("The obligation to transport passengers either in accordance with a previous contract or advertised schedule is not the obligation of the vehicle used for transportation, but of the owner or operator of the vehicle"); *Archawski v. Hanioti, 129 F. Supp. 410 (S.D.N.Y. 1955) , rev'd, 350 U.S. 532, 1956 AMC 742 (1956)* .

(n7)Footnote 7. *The Priscilla, 114 F. 836 (2d Cir. 1902)* (even though baggage delivered to pier at time of loss, no contract with a particular vessel had been made).

(n8)Footnote 8. *The Lady Franklin, 75 U.S. (8 Wall.) 325 (1868)* ; *The Freeman v. Buckingham, 59 U.S. (18 How.) 182 (1855)* .

(n9)Footnote 9. *The Keokuk, 76 U.S. (9 Wall.) 517 (1869)* ; *Freeman v. Buckingham, 59 U.S. (18 How.) 182 (1855)* ; *The Defiance, 3 F.2d 48 at 52, 1925 AMC 56 at 64 (E.D.N.C. 1924)* ("There can be no delivery to the ship, in the maritime sense, whether of supplies or of cargo, so as to bind the ship *in rem*, until the goods are either actually put on board the ship, or else are brought within the immediate presence or control of the officers of the ship"); *Bulkley v. Naumkeag Steam Cotton Co., 65 U.S. (24 How.) 386 (1860)* (where partial loading of shipment on vessel and smaller portion on lighter to be reloaded onto vessel, delivery to master and lien permitted as to goods destroyed by explosion on lighter prior to transfer); *Fyfe v. Pan-Atlantic S.S. Co., 114 F.2d 72, 1940 AMC 1037 (2d Cir.) , cert. denied, 311 U.S. 711 (1940)* (shipper is precluded from contracting against liability during transshipment where a through bill of lading has been issued, and will be liable for damage caused by fire on lighter it hired); *The Guiding Star, 53 F. 936 (S.D. Ohio 1893)* (no lien for loss of goods destroyed by fire on landing while in custody of keeper of landing and before delivery on board, even though bill of lading already issued by steamer).

(n10)Footnote 10. *Scott v. The Ira Chaffee, 2 F. 401 (E.D. Mich. 1880)* (absent delivery of boiler to propeller or her master the contracts of affreightment is executory and no lien attaches); *Osaka Shosen Kaisha v. Pacific Export Lumber Co., 260 U.S. 490, 1923 AMC 55 (1923)* ; *The Keokuk, 76 U.S. (9 Wall.) 517 (1869)* ; *San Juan Trading Co. v. The Marmex, 107 F. Supp. 253, 1952 AMC 1999 (D.P.R. 1952) . See also Bulkley v. Naumkeag Steam Cotton Co., 65 U.S. (24 How.) 386 (1860)* (neither vessel nor its owner are made liable by master's signature on a bill of lading for goods which were never placed on board since master's authority does not arise until the goods are on board).

(n11)Footnote 11. *The Esrom, 272 F. 266 (2d Cir.) , cert. denied, 257 U.S. 634 (1921)* .

(n12)Footnote 12. *Melwire Trading Co. v. M/V Cape Antibes, 811 F.2d 1271 (9th Cir. 1987)* . In this case the cargo was actually worth more on the delayed date than it was on the planned day of delivery. But the 99-day delay

caused the consignee expenses and on delivery the ship's cranes malfunctioned while unloading the cargo causing the consignee additional expenses.

(n13)Footnote 13. *Vandewater v. Mills, 60 U.S. (19 How.) 82 (1856)* (a mere agreement to carry passengers even though affecting ships and navigation does not come within maritime jurisdiction and therefore does not subject vessel to a lien for breach of contract; if the master or owner refuses to perform his contract, or for any other reason the ship does not receive cargo and depart on her voyage according to contract, the charterer has no privilege or maritime lien on the ship for such breach of the contract by the owners, but must resort to his personal action for damages as in other cases); *Belvedere v. Compania Plomari de Vapores, 189 F.2d 148, 1951 AMC 1217 (5th Cir. 1951)* (no lien for loss of goods by spoilage resulting from failure of vessel to arrive at prearranged destination on schedule so as to prepare to load cargo); *The Margaretha, 167 F.794 (2d Cir. 1909)* (no liability *in rem* for failure to enter into charter as per executory agreement); *The Monte A., 12 F. 331 (S.D.N.Y. 1882)* (owner refused to carry cargo claiming that charterer's contract was invalid). *See also Guffey v. Alaska & Pac. S.S. Co., 130 F. 271 (9th Cir. 1904)* ; *Continental Grain Co. v. Toko Lines, 333 F. Supp. 1349 (E.D. La. 1971)* (no lien attached where ship never reached grain loading area nor did ship or transporters' representatives have custody of the cargo); *The Francesco, 116 F. 83 (E.D. Pa. 1902)* .

(n14)Footnote 14. *The Ripon City, 102 F. 176 (5th Cir. 1900)* (lien between vessel and cargo arising from contract of affreightment does not extend to agreements with the charter party not related to the cargo); *The Seven Sons, 69 F. 271 (W.D. Pa. 1895)* (where intended voyage is abandoned, seamen must seek their remedy at common law).

(n15)Footnote 15. *Osaka Shosen Kaisha v. Pacific Export Lumber Co., 260 U.S. 490, 1923 AMC 55 (1923)* .

(n16)Footnote 16. *Osaka Shosen Kaisha v. Pacific Export Lumber Co., 260 U.S. 490, 1923 AMC 55 (1923)* ; *The Valmar, 38 F. Supp. 618, 1941 AMC 872 (E.D. Pa. 1941)* (executory contract of charter party breached before performance commenced gave rise to lien only to extent of groceries and supplies actually delivered on board for crew).

(n17)Footnote 17. *Bulkley v. Naumkeag Steam Cotton Co., 65 U.S. (24 How.) 386 (1860)* ; *Olivier Straw Goods Corp. v. Osaka Shosen Kaisha, 27 F.2d 129, 1928 AMC 1027 (2d Cir. 1928)* (while shipper is not bound by bill of lading, the indorser of the bill of lading is presumptuously the owner of the goods shipped and as such is entitled to rely on master's acknowledgment of receipt).

(n18)Footnote 18. *Krauss Bros. Lumber Co. v. Dimon S.S. Corp., 290 U.S. 117, 1933 AMC 1578 (1933)* ; *International Paper Co. v. The Schooner Gracie D. Chambers, 248 U.S. 387 (1919)* ; *The Oregon, 55 F. 666 (6th Cir. 1893)* (lien permitted even though breach of agreement to charge only stipulated freight coincided with another breach of promise to make delivery since recovery is based on freight collected in excess of contractual agreement, and not upon damages for failure to make proper delivery); *The Maiden City, 33 F. 715 (S.D. Ala. 1887)* ; *The New Hampshire, 21 F. 924 (E.D. Mich. 1880)* . *See also Tatsuuma Kisen Kabushiki Kaisha v. Robert Dollar Co., 31 F.2d 401, 1929 AMC 535 (9th Cir. 1929)* ; *The Muskegon, 10 F.2d 817, 1924 AMC 1512 (S.D.N.Y. 1924)* ; *The Ada, 233 F. 325 (D. Md. 1916)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 189

§ 189. Suits by Cargo Owners Against Carriers.

[a] In General.

A bill of lading contract between cargo owner and common carrier, as well as a dock receipt issued by a carrier before a bill of lading has been issued, are maritime instruments and rights and liabilities between the parties arising out of those contracts may be litigated in a federal court based on its admiralty jurisdiction, even though the causes of action arise on land. n1 While cargo owners may file suits at law against ocean carriers in the courts of the various states, n2 such suits are infrequent except when the amounts involved are small or when cargo owners wish to try their cases before juries. In most cases of substantial size, cargo owners wish to have their rights determined by an admiralty judge, particularly as state court judges are usually unfamiliar with the principles which govern maritime contracts of carriage.

[b] Admiralty Jurisdiction *In Rem*.

When cargo is damaged while on ship board and in some cases even before stowage, the cargo owner may sue *in rem* against the vessel to recover his loss. Jurisdiction *in rem* is dependent either upon seizure of the vessel by the process of the federal court n3 or upon the ability to seize her. In practice, it is infrequent for a vessel to be actually seized under process. When the vessel is in the court's jurisdiction, upon counsel for the cargo owner advising counsel for the carrier of the intent to seize her in a suit *in rem*, counsel for the carrier will normally file in court or deliver to the counsel for the cargo owner, a stipulation for value representing the vessel. n4

[c] Admiralty Jurisdiction *In Personam*.

Suit may be filed *in personam* against a carrier in any jurisdiction where it can be reached by process. n5 When the carrier's vessel on which damage to cargo occurred, or other property of the carrier, is within the court's jurisdiction, and the amount of the cargo loss is greater than the value of the vessel, the cargo owner will normally, in the same suit, proceed against both the vessel *in rem* and the vessel owner *in personam* with a clause of foreign attachment of the vessel or other property of the vessel owners. n6 If the suit should be limited to *in rem*, recovery would only be effected up to the value of the ship attached or to the amount of the stipulation filed to represent her value. On the other hand, if the suit is filed both *in rem* and *in personam* with a clause of foreign attachment, while security will be available to the cargo owner only to the extent of the value of the vessel or other property attached, if the cargo owner prevails he will

be entitled to a decree *in personam* to the full extent of his loss, as long as the vessel owner appears in the suit *in personam* as he normally will do to avoid default and consequent loss of the property which has been attached.

Seizure under a clause of foreign attachment, however, may not be effected if the vessel owner has a representative in the jurisdiction upon whom process can be served. n7

[d] Admiralty Jurisdiction When the Cargo Owner and Carrier Are Foreign Citizens.

If the plaintiff cargo owner is a foreign citizen and the vessel, in a suit *in rem*, flies a foreign flag or the defendant, in a suit *in personam*, is a foreign citizen, the jurisdiction of the federal court is discretionary. n8 If the voyage which the suit concerns is between foreign ports, the federal court will normally exercise its discretion to decline to retain jurisdiction unless the equities are strongly persuasive in favor of jurisdiction. n9

If the plaintiff, the vessel, and the defendant are foreign, but the voyage in interest is to or from a United States port, our federal courts will in some cases exercise their discretion to retain jurisdiction inasmuch as the United States Carriage of Goods by Sea Act, by its terms, governs the rights of the parties in such a case. However, in such cases the courts will consider all the equities which are persuasive on the issue of the proper exercise of their discretion. n10

Even where the plaintiff-cargo owner is a domestic corporation as an assignee of a foreign corporation and the defendants are all foreigners, the court may decline jurisdiction. n11

[e] Bill of Lading Executory Provisions Limiting Admiralty Jurisdiction.

Bills of lading sometimes contain a clause providing that any suit by the cargo owner against the carrier must be filed in some specific court, usually the court of the country of the ship's flag. Prior to 1995 these clauses were not given effect when the bill of lading was governed by the Carriage of Goods by Sea Act (COGSA). n12 The older view was that such clauses tended to "lessen" or relieve the carrier from liability in violation of section 3(8) of COGSA. The courts, however, could decline to hear the case under the doctrine of *forum non conveniens*. n13

The approach to forum selection clauses in bills of lading under COGSA was at odds with two general trends. One was that foreign forum selection clauses in international commercial transactions are generally favored, especially in admiralty, unless the party resisting enforcement "can clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." n14

The other trend is that clauses requiring foreign arbitration under COGSA were generally upheld. n15

In 1995 the Supreme Court ruled that neither COGSA nor the Federal Arbitration Act prohibited forum selection or foreign arbitration clauses. The Court noted that a court in the United States need not recognize a foreign court's judgment if it is repugnant to the policy of the United States. n16

[f] Determination of Cargo Damages.

The measure of damages for cargo loss is usually based on the difference between the fair market value of the goods in sound condition less their salvage value. n17

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingBills of LadingEffectiveness & ValidityCivil ProcedureRemediesDamagesGeneral OverviewConstitutional LawThe JudiciaryJurisdictionMaritime JurisdictionContracts LawContract Conditions & ProvisionsForum Selection Clauses

FOOTNOTES:

(n1)Footnote 1. *North Pacific S.S. Co. v. Hall Bros., 249 U.S. 119, 125 (1919)* ; *The Fort Morgan, 270 U.S. 253, 1926 AMC 327 (1926)* ; *Krauss Bros. Lumber Co. v. Dimon S.S. Corp., 290 U.S. 117, 1933 AMC 1578 (1933)* ; *Archawski v. Hanioti, 350 U.S. 532, 1956 AMC 742 (1956)* ; *Baker Oil Tools, Inc. Delta S.S. Lines 562 F.2d 938, 1978 AMC 370 (5th Cir. 1977)* , *modified, 571 F.2d 978 (5th Cir. 1978)* ; *Netherlands A.M. Steam Nav. Co. v. Gallagher, 282 F. 171 (2d Cir. 1922)* ; Graham Whitcombe v. Stevedoring Serv. of Am., No. 91-56530 (9th Cir. June 16, 1993) (The circuit court refused to apply admiralty law to a claim by a shipper to recover for damage caused by the defendant stevedore's improper storage of the cargo on land before loading. While the court admitted that stevedores are most commonly associated with maritime activity, they explained that "the nature of the conduct that produces the claim" governs whether the claim falls within the ambit of admiralty law. In this instance, the cargo was damaged when the stevedore was performing "marine terminal" services. Such services are considered "non-maritime activities."); *Luckenbach v. Coast, 185 F. Supp. 910, 1960 AMC 2076 (E.D.N.Y. 1960)* .

(n2)Footnote 2. *Soto v. Caribe Shipping Co., 1992 AMC 1365 (P.R. 1991)* , *cert. denied, 112 S. Ct. 935 (1992)* .

(n3)Footnote 3. Supplemental Rule C of the Federal Rules of Civil Procedure. *See Cavcar Co. v. M/V Suzdal, 723 F.2d 1096, 1984 AMC 609 (3d Cir. 1983)* .

(n4)Footnote 4. *See generally* Friedell and Healy, *An Introduction to In Rem Jurisdiction and Procedure in the United States, 20 J. Mar. L. & Com. 55 (1989).*

(n5)Footnote 5. Rule 4(f) and Supplemental Rules C and E of the Federal Rules of Civil Procedure. *See generally Insurance Co. of N. Am. v. S/S Cte Rocio, 1992 AMC 2568 (S.D.N.Y. 1992)* (Defendant carrier, based in Spain, was unable to persuade the court to dismiss the case based on *forum non conveniens.* The court concluded that, while most of the documents and witnesses were disbursed throughout Europe, convenience rather than distance would help determine whether Spain was the more appropriate forum, noting that European intra-continental flights are actually less frequent and more expensive than flights to New York. In addition, the court noted that most of the evidence was documentary and that the transport of such material would not unduly burden the parties.); *See Oscar Matute v. Procoast Navigation, Ltd. 1990 AMC 698 (D.N.J. 1989)* (vessel owner not subject to jurisdiction merely because time chartered vessel makes weekly calls at a U.S. port); *United Rope Distributors, Inc. v. Seatriumph Marine Corp., 1989 AMC 1838 (W.D. Wisc. 1989)* , *aff'd, 930 F.2d 532, 1992 AMC 559 (7th Cir. 1991)* ; *Asarco, Inc. v. Glenara, Ltd., 1989 AMC 1895 (M.D. La. 1989)* , *aff'd, 912 F.2d 784 (5th Cir. 1990)* (plaintiff's mere intention to have cargo delivered to the forum state as insufficient to qualify as minimum contacts where vessel sank en route and cargo never reached its destination); *Daval Steel Products v. M/V Juraj Dalmatinac, 718 F. Supp. 159, 1989 AMC 1510 (S.D.N.Y. 1989)* (that defendant's P & I club maintained a New York office was not a sufficient contact to support New York jurisdiction); *New York Marine Managers, Inc. v. M/V Topor-1, 716 F. Supp. 783, 1990 AMC 986 (S.D.N.Y. 1989)* (facts supported finding of minimum contacts with New York even though Turkish law prohibited the Turkish carrier from doing business in New York); Trade Arbed, Inc. v. M/V Singapore Star, 1989 AMC 29 (D. Conn. 1988) ; Trade Arbed, Inc. v. M.V. Adriatik, 1983 AMC 2619 (S.D.N.Y. 1983) (mere foreseeaility of injury in New York did not create sufficient connection to that state); Societe Idex & Societe Sovifrais v. Mediterranean Lines, 1983 AMC 1676 (S.D.N.Y. 1983) (a forum selection clause constituted consent to personal jurisdiction in New York); ACLI Int'l Inc. v. S/S Maersk Rando, 1981 AMC 2620 (S.D.N.Y. 1981) .

(n6)Footnote 6. *Id.*

(n7)Footnote 7. Supplemental Rule B of the Federal Rules of Civil Procedure.

(n8)Footnote 8. *Contact Lumber Co. v. P.T. Moges Shipping Co., 918 F.2d 1446, 1991 AMC 678 (9th Cir. 1990)* ; *Paper Operations Consultants International, Ltd. v. S.S. Hong Kong Amber, 513 F.2d 667, 1975 AMC 2349 (9th Cir. 1975)* (jurisdiction declined where plaintiff was a Bahamian corporation, defendant was a Liberian corporation, and the voyage was between the ports of Vancouver and Singapore); *Philippine Packing Corp. v. Maritime Co. of the*

Philippines, 519 F.2d 811, 1975 AMC 1901 (9th Cir. 1975) (apparently reversing *sub silentio Tokio Marine & Fire Insurance Co. v. Nippon Yusen Kaisha, 466 F. Supp. 212, 1976 AMC 215 (W.D. Wash 1975)* , which promulgated a mechanical rule that the court should accept jurisdiction unless defendant can establish that to do so would work an injustice); *Trade Arbed, Inc. v. M/V Nea Tyhi, 1992 AMC 1046 (E.D. La. 1991)* ; *Travelers Indemnity Co. v. S.S. Alca, 710 F. Supp. 497, 1989 AMC 1843 (S.D.N.Y. 1989)* ; Latif Bawany Jute Mills, Ltd. v. Hellenic Lines, Ltd., 1976 AMC 2408 (S.D.N.Y. 1976) (jurisdiction retained where one of plaintiffs was a subrogated American cargo insurer and defendant shipowner's contacts with New York were "sufficient.") Kooperativa Forbundet Stockholm v. Vassa Line Oy, 1975 AMC 1972 (S.D.N.Y. 1975) ; Allianz Versicherungs-Aktiergesellschaft Munich Reinsurance Co. v. S.S. Eskisehir, (jurisdiction declined in German plaintiff's suit against Turkish defendant where Turkish law was neither exotic nor uncivilized and Turkish courts could administer impartial justice); Hartford Fire Insurance Co. v. Orient Overseas Line, 1976 AMC 212 (W.D. Wash. 1975) (following *Philippine Packing Corp. v. Maritime Co. of the Philippines, supra.*); *Charter Shipping Co. v. Bowring, Jones & Tidy, Ltd. (The Charterhague), 281 U.S. 515, 1930 AMC 1121 (1930)* ; *The Brisk, 195 F.2d 1015, 1952 AMC 738 (5th Cir. 1952)* .

(n9)Footnote 9. *Extractora de Productos v. M/V Sonia M, 1991 AMC 2953 (S.D.N.Y. 1991)* (court dismissed action on grounds of *forum non conveniens* where voyage was between foreign ports so that COGSA was not involved and there was a forum selection clause); *Excel Shipping Corp. v. Seatrain Int'l S.A., 584 F. Supp. 734, 1986 AMC 1587 (E.D.N.Y. 1984)* (declining to dismiss third-party complaint by shipowner against shipper where a finding against the shipper might have a bearing on the consignee/s suit against the shipowner in the main action); *Fireman's Fund Ins. Co. v. Pan Ocean Bulk Carriers, Ltd., 559 F. Supp. 527, 1983 AMC 1643 (N.D. Cal. 1983)* ; *Snam Progetti S.P.A. v. Lauro Lines, 387 F. Supp. 322, 1975 AMC 631 (S.D.N.Y. 1974)* (jurisdiction declined where voyage was between foreign ports and there was a forum selection clause providing for litigation in Italy.); The Home Insurance Co. v. S.S. Ciudad de Cumans, 1975 AMC 355 (S.D.N.Y. 1974) ; *Transomnia G.m.b.H. v. M/S Toryu, 311 F. Supp. 751, 1970 AMC 1686 (S.D.N.Y. 1970)* (jurisdiction declined where plaintiff was a Swiss corporation,, defendants were Japanese, Korean, and Panamanian corporations, and voyage was from the Philippines to South Korea); The Solhavn, 1939 AMC 456 (E.D. Pa. 1937) ; *The Lady Drake, 1 F. Supp. 317, 1932 AMC 745 (E.D.N.Y. 1932)* ; *The Beaverbrae, 60 F.2d 363, 1931 AMC 1545 (E.D.N.Y. 1931)* ; The Orita, 1931 AMC 232 (S.D.N.Y. 1930) .

(n10)Footnote 10. *La Seguridad v. Transytur Line, 707 F.2d 1304, 1983 AMC 3559 (11th Cir. 1983)* (district court abused discretion in dismissing action where evidence of what conduct constituted the alleged breach and whether it occurred in Venezuela or the United States was yet undeveloped "making impossible any determination of the relative convenience of the respective forums"); Kymi Kymmene v. M/V Atlantic Pioneer, 1981 AMC 587 (S.D. Ga. 1981) (case not dismissed where Finland would be only marginally more convenient); Ghana Textile Mfg. Co. v. M/V Oti River, 1980 AMC 1620 (S.D.N.Y. 1980) ; *Sherkat Tazamoni Auto Internash v. Hellenic Lines, Ltd., 277 F. Supp. 462, 1968 AMC 328 (S.D.N.Y. 1967)* (jurisdiction declined where plaintiff was an Iranian corporation, defendant was a Greek corporation and voyage was from New York to Iran; retention of jurisdiction would have been unfair to the carrier who was willing to defend in Iran where most of the evidence and witnesses were located); *The Brisk, 195 F.2d 1015, 1952 AMC 738 (5th Cir. 1952)* ; French Line v. Banque Bonnasse, 1926 AMC 130 (S.D.N.Y. 1926) , *aff'd, 19 F.2d 777, 1927 AMC 1325 (2d Cir. 1927)* ; *The Maria, 4 F. Supp. 168, 1933 AMC 595 (E.D.N.Y.) , appeal dismissed, 67 F.2d 571 (2d Cir. 1933)* .

(n11)Footnote 11. Del Monte Corp. v. Everett Steamship Corp., 1974 AMC 1880 (N.D. Cal. 1973) (assignee "stands in shoes" of assignor).

(n12)Footnote 12. *Indussa Corp. v. S.S. Ranborg, 377 F.2d 200, 1967 AMC 589 (2d Cir. 1967)* (en banc). The case was followed in other circuits. *See Conklin & Garrett, Ltd. v. M/V Finnrose, 826 F.2d 1441, 1988 AMC 318 (5th Cir. 1987)* ; *Union Ins. Society of Canton v. S.S. Elikon, 642 F.2d 721, 1982 AMC 588 (4th Cir. 1981)* .

(n13)Footnote 13. *See Union Ins. Society of Canton v. S.S. Elikon, 642 F.2d 721, 1982 AMC 588 (4th Cir. 1981)* ; *Travelers Indemnity Co. v. S.S. Alca, 710 F. Supp. 497, 1989 AMC 1843 (S.D.N.Y. 1989)* ; *C.A. Seguros Orinoco v. Naviera Transpapel, C.A., 677 F. Supp. 675, 1988 AMC 1757 (D.P.R. 1988) . See also The Alabama, 109 F. Supp. 856,*

1952 AMC 1766 (S.D.N.Y. 1952) (bill of lading not involving COGSA).

(n14)Footnote 14. *M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 1972 AMC 1407 (1972)* . The case involved a contract to tow a rig from Louisiana to Italy and contained a clause requiring litigation in London. In a footnote, the Court noted that COGSA was not involved in this case and mentioned with apparent approval *Indussa v. S.S. Ranborg, 377 F.2d 200 (2d Cir. 1967)* . *See 407 U.S. at 11, n. 11* . The Court also suggested that foreign forum selection clauses would be suspect in a dispute between two Americans and a local dispute. *Id. at 17* .

The Court extended its holding in *Bremen* to apply to domestic forum selection clauses in passenger cruise tickets. *Carnival Cruise Line v. Shute, 111 S. Ct. 1522, 1991 AMC 1697 (1991)* . Although Congress effectively overruled this decision, it subsequently restored the statute to its former wording. Pub. L. No. 103-206, § 309, 107 Stat. 2419, 2425 (1993). *See Compagno v. Commodore Cruise Line, 1995 AMC 276 (E.D. La. 1994)* . For the original overruling see Pub. L. No. 102-587, § 3006, 106 Stat. 5039, 5068 (1992), ammending *46 U.S.C. App. § 183c*. *See* Sturley, *Forum Selection Clauses in Cruise Line Tikcets: An Update on Congressional Action "Overruling" the Supreme Court*, 24 J. of Mar. L. & Com. 399 (1993).

(n15)Footnote 15. The distinction was made by the *Indussa* court. *377 F.2d at 204 n.4* . *See also Citrus Marketing Board v. M/V Ecuadorian Reefer, 754 F. Supp. 229, 1991 AMC 1042 (D. Mass. 1990)* (foreign arbitration clauses in bills of lading are enforceable as no showing was made that Congress intended to preclude foreign arbitration of disputes that are governed by COGSA and failed to demonstrate that such arbitration conflicts with the underlying purposes of COGSA; shippers were foreigners); *Mid South Feeds, Inc. v. M/V Aqua Marine, 1988 AMC 437 (S.D. Ga. 1986)* (court will honor foreign arbitration clause where shipper's agent prepared bill of lading specifically incorporating charter party's the arbitration clause; the court might find clause invalid if it were drafted by the carrier); *Fakieh Poultry Farms v. M/V Mulheim, No. 85 Civ. 2657, 1986 U.S. Dist. LEXIS 18670 (S.D.N.Y. Oct. 23, 1986)*) (following distinction in *Indussa*, arbitration in London would not violate COGSA; arbitration clause was contained in bill of lading). *But see Hughes Drilling v. M/V Luo Fu Shan, 852 F.2d 840, 1988 AMC 2648 (5th Cir. 1988) , cert. denied, 489 U.S. 1033 (1989)* (not require foreign arbitration of general average claim because it would violate COGSA); *State Establishment for Agric. Prod. Trading v. M/V Wesermunde, 838 F.2d 1576, 1988 AMC 2328 (11th Cir.) , cert. denied, 488 U.S. 916 (1988)* (although Cogsa did not apply of its own force to the shipment but only as a contractual term, section 3(8) of Cogsa prohibits enforcement of provision in bill of lading incorporating charter party clause requiring arbitration in London where England had no connection with either the making or the performance of the bill of lading; alternatively, the arbitration clause violates Cogsa because no actual notice of it was given to the shipper when it signed the bills of lading); *Organes Enters. v. The M/V Khalij Frost, 1989 AMC 1460 (S.D.N.Y. 1989)* (refusing to apply the distinction drawn by the Second ircuit in *Indussa* between foreign adjudication and foreign arbitration, the court holds that an foreign arbitration clause inserted in a bill of lading violates § 1303(8) of COGSA). Cf. *Kaystone Chemical, Inc. v. The Bow-Sun, 1989 AMC 2976 (S.D.N.Y. 1989)* (the enforceability of a foreign arbitration clause is probably foreclosed by *Indussa*; in any case foreign arbitration was part of an express agreement, not a form of adhesion contract).

(n16)Footnote 16. *Vimar Seguros Y Reaseguros, S.A. v. M/V Sky Reefer, 115 S. Ct. 2322, 1995 AMC 1817 (1995)* . *See generally* 2 Benedict on Admiralty § 107.

(n17)Footnote 17. *Texport Oil Co. v. M/V Amolyntos, 816 F. Supp. 825 (E.D.N.Y. 1993)* (Plaintiff shipper was denied an award based on loss of market value where a discolored gasoline shipment was still sold by the plaintiff at the market price without any discount. The district court also refused to award plaintiff for the costs incurred in restoring the gasoline to its normal color. The court noted that the blending process would have taken place regardless because the gasoline's octane and RVP levels had to be modified to meet government standards. Plaintiff shipper failed to prove that additional blending costs were incurred in order to convert the gasoline to its normal color.); *Judy-Philippine Inc. v. S/S Verazano Bridge, 805 F. Supp. 185 (S.D.N.Y. 1992)* (The district court denied plaintiff's motion to amend its complaint from the original demand to an increased claim based on the market value of the goods. The court noted that plaintiff shipper was unable to establish that the losses it sustained were roughly equivalent to the market value of the

cargo. The court explained that the purpose of the judgment is to restore the plaintiff to the position it would have been in had there been no breach. The court declined to restrict itself to solely utilizing the market value of goods to determine damages, noting that if other, more precise means of loss-determination are available, they would be implemented.); *Hong Kong Islands Line Am. S.A. v. Distribution Servs. Ltd., 795 F. Supp. 983 (C.D. Cal. 1991)* (The district court awarded plaintiff liquidated damages in accordance with a provision in the service contract between plaintiff and defendant shipper after the latter failed to fulfill its contractual obligations. The court reasoned that the liquidated damages provision, which required the defendant to pay $1500 for every forty-foot equivalent unit not shipped below the contractual minimum, produced a reasonable estimate of plaintiff's likely loss as a result of defendant's breach.); *Caterpillar Overseas v. Farrell Lines, 1988 AMC 2894 (E.D. Va. 1988) , aff'd, 900 F.2d 714, 1991 AMC 75 (4th Cir. 1990)* ; *Rhobbe, Inc. v. M/V Carib Trader, 1986 AMC 2495 (S.D. Fla. 1985)* (damages based on values stated in initial export declaration, found to be more credible than revised declaration made after the loss); *Austracan (U.S.A.) Inc. v. Neptune Orient Lines, 612 F. Supp. 578, 1985 AMC 2952 (S.D.N.Y. 1985)* (plaintiff's contemporaneous contract to resell the goods was most accurate measure of damages); *Hoogovens Estel Verkoopkantoor, B.V. v. Ceres Terminals, Inc., 1984 AMC 1417 (S.D.N.Y. 1983)* (in absence of evidence showing fair market value, court will look at invoice value instead; surveyors properly determined value of damage steel coils by determining invoice value of a representative sample); *Pacoli (Canada) Lmt'd. v. M/V Minerva, 523 F. Supp. 579, 1982 AMC 1365 (S.D.N.Y. 1981)* ; *Amstar Corp. v. M/V Alexandros T, 472 F. Supp. 1289, 1979 AMC 1975 (D. Md. 1979)* , *aff'd, 664 F.2d 904 (4th Cir. 1981) . See also United States v. Central Gulf Lines, 747 F.2d 315 (5th Cir. 1984)* , *aff'd, 575 F. Supp. 1430, 1985 AMC 595 (E.D. La. 1983)* (the government may recover prejudgment interest even though cargo was being transported for humanitarian purposes); Fireman's Fund Ins. Cos. v. M/V Vigsnes, 1986 AMC 1899 (N.D. Fla. 1985) (no compensable damage for rusted steel plates for which purchaser paid fair value and placed them in inventory).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 190

§ 190. Suits by Carriers.

[a] Recovering Freight.

Suits brought against a cargo owner by a carrier to recover freight due under the terms of an ocean bill of lading or to impress a lien on the cargo for freight are clearly within the admiralty jurisdiction of the federal court. n1 Suits *in personam* against cargo owners for freight may also be filed in the courts of various states where the cargo owners may be served with process.

[b] Recovering Contribution in General Average.

General Average is a purely maritime principle and suits to recover contribution from cargo owners to the vessel owner's General Average sacrifices, or which in any way involve the General Average rights of the parties, are clearly within the admiralty jurisdiction of federal courts. n2

[c] Securing Statutory Limitation of Liability.

Only the federal court has jurisdiction to adjudicate a complaint seeking limitation of liability filed under the terms of the Limited Liability Statute; or to determine a vessel owner's rights to limitation when limitation is claimed in the owner's answer to a suit, if that right is contested. n3

[d] Damage to Vessel.

A federal court can exercise its admiralty jurisdiction to hear a shipowner's action against the shipper for damage to the vessel caused by negligent packing of the cargo. n4

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingBills of LadingGeneral OverviewAdmiralty LawShippingCarrier Duties & ObligationsLimitations on LiabilityAdmiralty LawShippingGeneral

AverageConstitutional LawThe JudiciaryJurisdictionMaritime Jurisdiction

FOOTNOTES:

(n1)Footnote 1. *See* Ambassador Factors v. Rhein-, Maas-, Und See- *Schiffahrtskontor GMBH, 105 F.3d 1397, 1997 AMC 1562 (11th Cir. 1997)* (quoting text). *Dampskibsselskabet Torm v. Beaumont Oil Ltd., 927 F.2d 713, 1991 AMC 1573 (2d Cir.) , cert. denied, 112 S. Ct. 183 (1991)* ; *Genetics Int'l v. Cormorant Bulk Carriers, Inc., 877 F.2d 806, 1989 AMC 1725 (9th Cir. 1989)* .

(n2)Footnote 2. *Charter Shipping Co. v. Bowring (The Charter Hague), 281 U.S. 515, 1930 AMC 1121 (1930)* ; *French Line v. Banque Bonnasse, 19 F.2d 777, 1927 AMC 1325 (2d Cir. 1927)* .

(n3)Footnote 3. *Ex parte Green 286 U.S. 437, 1932 AMC 802 (1932)* .

(n4)Footnote 4. Sea-Land Service, Inc. v. The Purdy Company, 1982 AMC 1593 (W.D. Wash. 1981) . *But see* ACLI Int'l Inc. v. Medafrica Line, 1983 AMC 1113 (S.D.N.Y. 1983) (carrier not entitled to lien against cargo for fumigation expenses as these were not "unloading expense" under the bill of lading and maritime liens are *stricti juris* and may not be extended to new classes of cases by analogy).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XII MARITIME CONTRACTS

1-XII Benedict on Admiralty § 191

§ 191. Parties-Plaintiff.

[a] Consignors.

In several jurisdictions it is established that the consignor named in a bill of lading, by virtue of having made the contract of carriage with the carrier, is a proper party-plaintiff without proof of ownership of the cargo or of the bill of lading, at the time that suit is instituted. n1 It was said arguendo in *Transmarine Corp. v. Chas H. Leevit & Co.* n2 that where title has passed, the buyer-consignee alone has a cause of action against the carrier, inasmuch as the consignor has suffered no loss as the result of damage sustained by the cargo. In that case the court did not consider whether a consignor as such might recover when the record does not disclose where the ownership of the merchandise lies. In view of the authorities cited above, in default of evidence as to ownership, it appears that a consignor as such is entitled to recover.

If the consignor's name does not appear on the bill of lading he may yet have standing to sue if, by the preponderance of the evidence, the court is convinced he has an ownership interest. n3

[b] Consignees, Endorsees, and Holders of Bills of Lading.

The cases are clear that the consignee named in a bill of lading is a proper party-plaintiff, his title being presumed by virtue of being named consignee. n4 So also the endorsee of an order bill of lading who has possession of that instrument, is a proper party-plaintiff. n5

It is well-established that the holder of a bill of lading may bring suit in his own name, even though he holds it for the account of another. n6

[c] Volunteers or Agents of Cargo Owners.

It is well-established that a simple volunteer, without any interest in the cargo, purporting to act for the cargo owner, may file suit against a carrier in admiralty, to recover for loss or damage which cargo has sustained. In *The North Carolina* n7 the Supreme Court said:

> "We consider it as well settled, in admiralty proceedings, that the agent of absent owners may libel, either in his own name, as agent, or in the name of his principals, as he thinks best; that the power of attorney, subsequent to the libel, is a sufficient ratification of what he had before done in their behalf; and that the consignees had such an interest in the whole cargo, that they may lawfully proceed in this case, not only for what belonged to them, and was shipped on their account, but for that portion also which was shipped by Porter, as his own, and consigned to them."

In *National Interocean Corp. v. Emmons Coal Co.,* n8 it was held that an agent of an agent of a vessel owner was a proper party-plaintiff in a suit brought to recover freight. The court gave careful consideration to the authorities and said in the course of its opinion:

> "The question presented by this record is whether such a libel may be filed, not by the agent of the one in whom is the right of action, but by the agent of that agent. The principle upon which the rulings made proceed seems to be that admiralty concerns itself only with the question of whether the libel is filed and recovery is thus sought with the authority and sanction of the real party in interest. We say this because it has been held that a cause may proceed to final decree, although the libel was filed in the name of the agent, and the authority of the principal was not given until after the action had been brought. We interpret this as meaning that, although the libel is filed in the name of an agent as libelant, recovery may be had for the cause of action set forth, notwithstanding the fact that the right of action is in another, provided that such principal, even as late as the trial, sanctions what has been done in his behalf.
>
> "Our conclusion is that the rule in admiralty is that the right of a party to maintain a libel depends upon the fact of whether he has a real interest or represents a real interest."

In *United States of America v. U.S. Steel Products Co.* n9 it was held that a consignor from whom title had passed but who purported to represent the actual owner, might properly be a party-plaintiff even though no authority to represent the owner had been received up to the time of trial. The court ordered, however that the plaintiff file proof that the consignee-owner of the merchandise ratified the filing of suit, as a condition precedent to the entry of decree.

The decision in *The Burgondier* n10 somewhat modifies that in *United States of America v. U.S. Steel Products Co.* n11 In *The Burgondier* the District Court held the carrier liable for damage to cargo and entered decree for the plaintiff who had filed suit in a representative capacity, on the principle of *The North Carolina.* n12 Neither at the time of trial nor before the entry of the decree had the cargo owner ratified the action taken by the plaintiff. In reversing the District Court, the Court of Appeals cast no doubt on the right of suit by a plaintiff acting in a representative capacity, n13 but it held that evidence of ratification of the action taken, by the actual party in interest, must be offered at the time of the trial.

[d] Assignees.

There was originally some support for the principle that a bare assignee had no standing in admiralty as a party-plaintiff; n14 although, if he had some independent interest in the cause of action, it was held that he was a proper party-plaintiff. n15 Under present decisions there appears to be no doubt of the right of a bare assignee to be a party-plaintiff in an admiralty cause of action. n16

[e] Right of Subrogation.

Comment has been made that most cargo is covered by insurance. If the underwriter pays to the cargo owner the loss which has been suffered, suit may be filed in the name of the cargo owner for the account of the underwriter. n17 Also, the underwriter may file suit in its own name by right of subrogation. n18

Upon paying a loss, the underwriter's right of subrogation does not depend upon assignment but arises by operation of

law. n19 Thus, suit in the name of the underwriter by right of subrogation lies against the United States of America, as it is not affected by the statutory provision prohibiting suits against the United States by an assignee. n20

If suit is filed in the name of a cargo owner and subsequently the underwriter becomes subrogated to the cargo owner's rights by paying the loss, the underwriter may file a petition of intervention to take over the right of recovery. The filing of such an intervening petition is not the commencement of a new suit and the intervenor may recover in the original suit even if the petition of intervention was filed after the period of limitation has run. n21

[f] Owners of a Portion of a Cause of Action.

It is now established that a plaintiff who has only a part interest in a cause of action against a carrier, may file suit to recover his part interest. This situation usually arises when an underwriter makes a partial settlement of its assured-cargo owner's claim under the policy and the cargo owner declines to take part in a suit against the carrier which the underwriter wishes to press. n22

[g] Effect of the Federal Rules of Civil Procedure.

Effective July 1, 1966, the Supreme Court "Rules of Practice in Admiralty and Maritime Cases" were rescinded and thereafter the "Rules of Civil Procedure for the United States District Courts" have governed "all suits of a civil nature ... at law or in equity or in admiralty ...." Under those rules the cargo owner's first pleading in admiralty, which has historically been known as a "libel," becomes a "complaint"; the "libelant" becomes the "plaintiff," and the "respondent" becomes the "defendant."

Rule 17(a) of the Rules provides that "Every action shall be prosecuted in the name of the real party in interest." However, the rule also provides. "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest."

The admiralty principles discussed hereinabove in this chapter have been established by the decisions of the courts over many years. The application of Rule 17(a) of the Rules of Civil Procedure to admiralty cases is bound to affect the principles discussed by the extent of the impact remains for future decisions. Certainly, when possible, the plaintiff named in a complaint should be the party who has suffered the loss. However, it is sometimes impossible to ascertain what party has legally suffered loss of cargo until after the time for suit will have expired and, in such cases, suit in the name of the shipper from whom title has passed or in the name of a volunteer, may be the only practical course to follow.

[h] Parties Defendant.

Depending on the facts, the vessel, the vessel owner, the charterer or any or all of them, may be named as defendants.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCharterpartiesCharter ContractsBills of LadingAdmiralty LawPractice & ProcedureGeneral OverviewAdmiralty LawShippingBills of LadingGeneral OverviewBusiness & Corporate LawAgency RelationshipsAgents DistinguishedGeneral OverviewContracts LawThird PartiesSubrogation

FOOTNOTES:
(n1)Footnote 1. *Northern Commercial Co. v. Lindblom, 162 F. 250 (9th Cir. 1908)* ; *Blanchard v. Page, 8 Gray 281 (Mass.)* ; City of Brunswick, 1934 AMC 552 (D. Mass. 1934) ; *Carter v. Southern Ry., 111 Ga. 38, 36 S.E. 308 (1900)*

; *Davis v. Pattison, 24 N.Y. 317 (N.Y.C. App. 1862)* ; Dows v. Cobb, 12 Barbour 310 (N.Y. Sup. Ct. 1848). See *Unilever (Raw Materials) Ltd. v. M/T Stolt Boel, 77 F.R.D. 384, 1978 AMC 167 (S.D.N.Y. 1977)* (court permitted substitution of consignee for shipper as party plaintiff after running of statute of limitations where defendant shipowners had fair notice of the action and were not prejudiced by the substitution); *United States v. Central Gulf Lines, 747 F.2d 315 (5th Cir. 1984)* (nothing in COGSA governs who has title to goods shipped by sea or who may sue to recover for lost goods).

(n2)Footnote 2. *1928 AMC 682 (2d Cir. 1928)* .

(n3)Footnote 3. Socomet, Inc. v. S.S. Sliedrecht, 1975 AMC 314 (S.D.N.Y. 1975) .

(n4)Footnote 4. *Lawrence v. Minturn, 58 U.S. (17 How.) 100 (1854)* ; *McKinlay v. Morrish, 62 U.S. (21 How.) 343, 16 L. Ed. 100 (1858)* ; *The Vaughan & Telegraph, 81 U.S. (14 Wall.) 258, 20 L. Ed. 807 (1871)* ; *E.Y.K. Int'l v. Sea-Land Serv., 1992 AMC 2575 (S.D.N.Y. 1992)* (The district court granted defendant carrier summary judgment on the ground that the plaintiff failed to prove that it had a legal interest in the shortage of cargo delivered. The court explained that the plaintiff's name was not on any of the bills of lading and that another party, with a name similar to plaintiff's, had established itself as consignee. The plaintiff conceded that the goods in question belonged to the consignee, but explained that it later acquired an interest in the goods. The court rejected this argument for failure to present any written evidence to establish such a legal interest.). *National Starch & Chemical Corp. v. S.S. Hermione, 399 F. Supp. 1177, 1975 AMC 1982 (S.D.N.Y. 1975) , aff'd, 538 F.2d 310 (2d Cir. 1976)* .

(n5)Footnote 5. *Conrad v. Atlantic Ins. Co., 26 U.S. (1 Peters) 386, 7 L. Ed. 189 (1828)* ; *The Thames, 81 U.S. (14 Wall.) 98, 20 L. Ed. 804 (1871)* ; *The Vaughan & Telegraph, 81 U.S. (14 Wall.) 258, 20 L. Ed. 807 (1871)* .

(n6)Footnote 6. *The Thames, 81 U.S. (14 Wall.) 98, 20 L. Ed. 804 (1871)* ; *Conrad v. Atlantic Ins. Co., 26 U.S. (1 Peters) 386, 7 L. Ed. 189 (1828)* .

(n7)Footnote 7. *40 U.S. (15 Peters) 40, 10 L. Ed. 653 (1841) . See Marathon Int'l Petroleum Supply Co., v. I.T.I. Shipping, S.A., 766 F. Supp. 130, 1991 AMC 2612 (S.D.N.Y. 1991)* (suit by wholly owned subsidiary of eventual purchaser of oil was proper where subsidiary was an intermediary purchaser, subject to the ratification of the parent company which suffered the alleged loss).

(n8)Footnote 8. *270 F. 997 (E.D. Pa. 1921)* .

(n9)Footnote 9. *27 F.2d 547, 1928 AMC 1365 (S.D.N.Y. 1928)* .

(n10)Footnote 10. *28 F.2d 398, 1928 AMC 1635 (S.D.N.Y. 1928) , rev'd, 34 F.2d 120, 1929 AMC 1141 (2d Cir. 1929)* .

(n11)Footnote 11. *See* n. 9 *supra.*

(n12)Footnote 12. *See* n. 7 *supra.*

(n13)Footnote 13. *See also The President Hayes, 233 F. Supp. 697, 1964 AMC 1247 (S.D.N.Y.) , aff'd, Levatino v. Amer. Pres. Lines, 337 F.2d 729 (2d Cir. 1964)* .

(n14)Footnote 14. *The Trader, 129 F. 462 (D. Wash. 1904)* .

(n15)Footnote 15. *Italia Di Navigazione, S.p.A. v. M.V. Hermes I, 564 F. Supp. 492, 1984 AMC 485 (E.D.N.Y.) , aff'd, 724 F.2d 21, 1984 AMC 1676 (2d Cir. 1983)* (charterer as assignee of shipper in suit against carrier); *The Prussia, 100 F. 484 (D. Wash. 1900)* .

(n16)Footnote 16. *Nissho-Iwai Co. v. M/T Stolt Lion, 1986 AMC 269 (S.D.N.Y. 1984)* ; *The Cabo Villano, 14*

F.2d 978 (E.D.N.Y. 1926) , modified, 18 F.2d 220, 1927 AMC 996 (2d Cir. 1927) ; *The Bencleuch, 10 F.2d 49, 1926 AMC 107 (2d Cir. 1925) , cert. denied, 271 U.S. 680 (1926)* .

(n17)Footnote 17. *Phoenix Ins. Co. v. Erie Transp. Co., 117 U.S. 312 (1866)* ; *The Potomac, 105 U.S. 630 (1881)* ; *United States v. American Tobacco Co., 166 U.S. 468 (1897)* ; *Hall & Long v. Railroad Cos., 80 U.S. (13 Wall.) 367 (1871)* ; *Pacific Coast S. S. Co. v. Bancroft-Whitney Co., 94 F. 180, (9th Cir. 1899) , rev'd, 180 U.S. 49 (1901)* ; *The Admiral Fisk, 35 F.2d 549, 1929 AMC 1130 (S.D.N.Y. 1929) , aff'd, 41 F.2d 718 (2d Cir. 1930) , cert. denied, 282 U.S. 874, 51 S. Ct. 79, 75 L. Ed. 772 (1930)* .

(n18)Footnote 18. *Liverpool Steam Co. v. Phenix Ins. Co., 129 U.S. 397 (1889)* ; *Phoenix Ins. Co. v. Erie Transp. Co., 117 U.S. 312 (1886)* ; *The Potomac, 105 U.S. 630, 26 L. Ed. 1194 (1881)* . *St. Paul Fire & Marine Ins. Co. v. Marine Transp. Servs., 1992 AMC 1845 (S.D. Fla. 1992)* (cargo insurer which sued pursuant to right of subrogation could only assert what the shipper could have claimed). See *Gibbs v. S/S Dona Paz, 96 F.R.D. 599, 1984 AMC 516 (E.D. Pa. 1983)* (cargo insurer sued carrier and carrier was allowed to implead the cargo owner claiming its negligence in performing stevedoring operations caused the damage since as stevedore its interests were distinct from those of the plaintiff).

(n19)Footnote 19. *Liverpool Steam Co. v. Phenix Ins. Co., 129 U.S. 397, 9 S. Ct. 469, 32 L. Ed. 788 (1889) . See Gradmann & Holler GmBH v. Continental Lines, S.A., 504 F. Supp. 785, 1981 AMC 376 (D.P.R. 1980)* (insurer did not obtain subrogation rights where it paid its insured after insured transferred title and risk to the goods to buyer; the seller under a C.I.F. contract had failed to obtain insurance for buyer); *In re* Allied Chemical Inter-American Corp. (M.V. Michael), 1978 AMC 773 (Arb. 1977) (insurer entitled to the benefit of arbitration agreement entered into by its insured).

(n20)Footnote 20. *United States v. Aetna Sur. Co., 338 U.S. 366 (1949)* ; *The Naiwa, 3 F.2d 381, 392, 1925 AMC 85 (4th Cir. 1924)* .

(n21)Footnote 21. *Rule 24 of the Federal Rules of Civil Procedure*; *Mason v. Marine Ins. Co., 110 F. 452 (6th Cir. 1901)* ; *The Naiwa 3 F.2d 381, 1925 AMC 85 (4th Cir. 1924)* ; *Federal Ins. Co. v. Detroit Fire & Marine Ins. Co., 202 F. 648 (6th Cir.) , cert. denied, 229 U.S. 620, (1913)* ; *The St. Johns, 101 F. 469 (S.D.N.Y. 1900)* .

(n22)Footnote 22. *United States v. Aetna Sur. Co., 338 U.S. 366 (1949)* .

Benedict on Admiralty

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Chapter XII MARITIME CONTRACTS

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[Reserved].

§§ 192[Reserved].

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Chapter XIII POSSESSORY AND PETITORY ACTIONS--OWNERS--ACCOUNTING

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§ XIII.syn Synopsis to Chapter XIII: POSSESSORY AND PETITORY ACTIONS--OWNERS--ACCOUNTING

§ 201. Possessory and Petitory Actions.

§ 202. Disagreements Between Part Owners as to Voyages--Partition Sales--Bond for Safe Return.

FORM No. 202-1 Stipulation for the Safe Return of a Vessel in a Suit by a Part Owner

FORM No. 202-2 Bond for Safe Return

§ 203. Suits for an Accounting.

§§ 204-210. Reserved.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIII POSSESSORY AND PETITORY ACTIONS--OWNERS--ACCOUNTING

1-XIII Benedict on Admiralty § 201

§ 201. Possessory and Petitory Actions.

There is admiralty jurisdiction over possessory and petitory suits and of proceedings on the part of the owners for the removal of the master. n1 Petitory suits are suits in which it is sought to try the title to a ship independently of any possession of the vessel. n2 Possessory actions are actions to recover vessels n3 or other property n4 to which an owner, seaman or lienor is of right entitled. Possessory actions are analogous to the action of replevin or detinue at the common law, in which the specific property is recovered instead of damages.

Possessory suits may be brought to reinstate the owners of ships who have been wrongfully deprived of their property. This includes cases of restitution of captured property n5 and of vessels irregularly or illegally condemned or sold by the master without legal authority or in an illegal or irregular manner. n6 In this country, the jurisdiction of the admiralty over this class of cases is well settled. n7 The older cases held that an admiralty court will not enforce a merely equitable title of one out of possession, n8 yet may notice an equitable title alleged by a claimant in possession when raised as defense. n9 But this limitation is doubtful today. As discussed in § 126, *supra*, there is no reason for a federal court having admiralty jurisdiction to lack the power to grant equitable relief, and some of the lower courts have repudiated this artificial limitation on their powers. n9a

A purchaser wrongfully dispossessed has been restored to possession though he had no bill of sale n10 and a principal's title has been enforced against his agent though the agent had the bill of sale made out to himself or to both jointly. n11 A possessory suit may be brought by a sheriff from whose possession the vessel has been wrongfully removed n12 and a charterer by demise may recover possession from the general owner who, having taken possession ostensibly to make repairs during the term, refuses to return the vessel. n13 "Sit down" strikers have been removed from vessels by marshals enforcing decrees under possessory libels; n14 and the crew of a foreign ship, in disagreement with the owner and master as to her employment in a trade favoring one side or another in a revolutionary or civil conflict in the country of the vessel's flag, have similarly been caused to yield possession of the vessel to the marshal. n15 Jurisdiction in a possessory suit may continue after the loss of the vessel while being operated by trustees pursuant to stipulation, for the purposes of distribution of the proceeds of insurance. n16 An action to determine title to a vessel and the right of possession may be brought *in personam* in state court, but such an action can only resolve the disputes as between the parties and does not resolve the rights in the vessel as against the world. n17

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime LiensEnforcementAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Personam ActionsAdmiralty LawPractice & ProcedureAttachment & GarnishmentPartition, Petitory & Possessory ActionsAdmiralty LawPractice & ProcedureJurisdictionCivil ProcedureEquityGeneral Overview

FOOTNOTES:

(n1)Footnote 1. *Ward v. Peck, 59 U.S. (18 How.) 267 (1856)* ; *New England Ins. Co. v. The Sarah Ann, 38 U.S. (13 Pet.) 387 (1839)* ; *Jones v. The Yacht Hull No. 01, 625 F.2d 44, 1981 A.M.C. 1005 (5th Cir. 1980)* ; *Hunt v. Cargo of Petroleum Prods., 378 F. Supp. 701, 1975 A.M.C. 1811 (E.D. Pa. 1974) , aff'd, 515 F.2d 506 (3d Cir.) , cert. denied, 423 U.S. 869 (1975)* ; *Silver v. Sloop Silver Cloud, 259 F. Supp. 187, 1967 A.M.C. 737 (S.D.N.Y. 1966)* (citing treatise); *Diedman v. The Joseph Hume, 7 F. Cas. 681 (S.D.N.Y. 1862)* (No. 3901). *See The See Reuter, 165 Eng. Rep. 1219 (Adm. 1811)* ; *The Martin of Norfolk, 165 Eng. Rep. 617 (Adm. 1802)* .

The Capt. K. Papazoglou, 1949 A.M.C. 1135 (4th Cir. 1949) (a possessory libel is the proper remedy when seamen refuse to leave the vessel after discharge). *Cf.* Papadakis v. The Virginia, 1948 A.M.C. 1721 (E.D. Va. 1948) .

The procedure followed in federal courts for possessory, petitory and partition actions is provided in Rule D of the Supplemental Rules of the Federal Rules of Civil Procedure. *See* § 202, n. 3, *infra.*

(n2)Footnote 2. *The Tilton, 23 F. Cas. 1277 (C.C.D. Me. 1830)* (No. 14,054).

The Guayaquil, 29 F. Supp. 578, 1939 A.M.C. 1294 (E.D.N.Y. 1939) (admiralty has no jurisdiction of a suit to compel a seller of a vessel to deliver her to a buyer).

"A petitory suit ... requires plaintiff to assert a legal title to the vessel; mere assertion of an equitable interest is insufficient. *The Amelia, 23 F. 406 (C.C.S.D.N.Y. 1877)* ; *Stathos v. The Maro, 134 F. Supp. 330, 332 (E.D. Va. 1955)* . It must be noted that plaintiff on this motion makes no claim to legal title in his moving papers, seeking only possession pending the outcome of his action, so this would seem to eliminate a petitory action." *Silver v. Sloop Silver Cloud, 259 F. Supp. 187, 191, 1967 A.M.C. 737, 741 (S.D.N.Y. 1966)* .

A possessory action may be joined with a petitory action. *See The Friendship, 9 F. Cas. 822 (C.C.D. Mass. 1855)* (No. 5123); *The Sarah Ann, 21 F. Cas. 432 (C.C.D. Mass. 1835) (No. 12,342) , aff'd, 38 U.S. (13 Pet.) 387 (1839)* .

(n3)Footnote 3. *Compania Espanola de Navegacion Maritima, S.A. v. The Navemar, 303 U.S. 68, 1938 A.M.C. 15, (1938)* ; *United States v. Jardine (The Cocoethes), 81 F.2d 745, 1936 A.M.C. 93 (5th Cir. 1935)* .

"A possessory action is one where a party entitled to possession of a vessel seeks to recover that vessel. It is brought to *reinstate* an owner of a vessel who alleges wrongful deprivation of property (citing treatise). This statement indicates that the action is one to recover possession rather than to obtain original possession. *Stathos v. The Maro, supra at 332* ; see *The Guayaquil, 29 F. Supp. 578 (E.D.N.Y. 1939)* ." *Silver v. Sloop Silver Cloud, 259 F. Supp. 187, 191, 1967 A.M.C. 737, 741 (S.D.N.Y. 1966)* .

Offshore Express, Inc. v. Begeron Boats, Inc., 1978 A.M.C. 1504 (E.D. La 1977) (the action may be maintained if the prior possession is constructive).

(n4)Footnote 4. *E.g.* cargo: *Post v. Jones, 60 U.S. (19 How.) 150 (1856)* ; The California, 1937 A.M.C. 1092 (S.D. Cal. 1936) ; The North Haven, 1935 A.M.C. 1475 (E.D. La. 1935) ; *The Director, 26 F. 708 (D. Or. 1886)* ; *The Dauntless, 7 F. 366 (E.D.N.Y. 1881)* ; *528 Pieces of Mahogany, 9 F. Cas. 200 (D. Mass. 1874)* (No. 4845).

The claim must be based on a maritime tort or contract. *Hunt v. Cargo of Petroleum Prods., 378 F. Supp. 701, 1975 A.M.C. 1811 (E.D. Pa. 1974) , aff'd, 515 F.2d 506 (3d Cir.) , cert. denied, 423 U.S. 869 (1975)* ; *Cary Marine, Inc. v. The Motorvessel Papillon, 872 F.2d 751, 1990 A.M.C. 828 (6th Cir. 1989)* (Rule D is unavailable where plaintiff's claim to vessel arises out of the breach of a non-maritime purchase agreement).

New England Trawler Equip. Co. v. One Model D. Trawler Winch, Etc. (The Donald), 5 F. Supp. 627, 1933 A.M.C. 1668 (D. Mass. 1933) (equipment, sold for a new vessel).

(n5)Footnote 5. *The Steamship Appam, 243 U.S. 124 (1917)* ; *Manro v. Almeida, 23 U.S. (10 Wheat.) 473 (1825)* ; *L'Invincible, 14 U.S. (1 Wheat.) 238 (1816)* ; *The Dove, 7 F. Cas. 979 (C.C.D. Mass. 1813)* (No. 4035).

(n6)Footnote 6. *The Commerce, 66 U.S. (1 Black) 574 (1862)* ; *Ward v. Peck, 59 U.S. (18 How.) 267 (1855)* ; *The Friendship, 9 F. Cas. 822 (C.C.D Me. 1855)* (No. 5123); *Taylor v. The Royal Saxon, 23 F. Cas. 797 (C.C.E.D. Pa. 1849)* (No. 13,803); *The Tilton, 23 F. Cas. 1277 (C.C.D. Mass. 1830)* (No. 14,054); *The J.B. Lunt, 13 F. Cas. 426 (S.D.N.Y. 1853)* (No. 7246).

Contra The John Jay, 13 F. Cas. 686 (C.C.S.D.N.Y. 1853) (No. 7352) (this was really a suit to foreclose an ordinary non-maritime mortgage; Judge Nelson's language went beyond what was required to support the correct result).

(n7)Footnote 7. *Wood v. Two Barges, 46 F. 204 (C.C.E.D. La. 1891)* (quaere); *The Amelia, 23 F. 406 (C.C.S.D.N.Y. 1877)* ; *The Tilton, 23 F. Cas. 1277 (C.C.D. Mass. 1830)* (No. 14,054); *Phoeniz Maritime Enters. v. One (1) Hylas 46' Convertible etc., 1987 A.M.C. 2548 (S.D. Fla. 1987)* (even though party lacks legal title to vessel, it may bring an action to recover possession where it had such a right under an oral contract); *Jervey v. The Carolina, 66 F. 1013 (E.D.S.C. 1895)* ; *The Daisy, 29 F. 300 (D. Mass. 1886)* ; *The Ella J. Slaymaker, 28 F. 767 (D. Del. 1886)* ; *The Director, 26 F. 708 (D. Or. 1886)* ; *The G. Reusens, 23 F. 403 (S.D.N.Y. 1885)* ; *Snyder v. A Floating Dry-Dock, 22 F. 685 (D.N.J. 1884)* ; *Thurber v. The Fannie, 23 F. Cas. 1179 (E.D.N.Y. 1876)* (No. 14,014); *Diedman v. The Joseph Hume, 7 F. Cas 681 (S.D.N.Y. 1862)* (No. 3901); *The Watchman, 29 F. Cas. 372 (D. Me. 1832)* (No. 17,251).

The Tietjen & Lang No. 2, 53 F. Supp. 459, 1944 A.M.C. 518 (D.N.J. 1944) (admiralty has jurisdiction in a suit to recover possession of a vessel from a buyer after default in the payment of the purchase price under a contract providing for payment of cash on delivery, notwithstanding that the buyer tendered checks that were never cashed by the seller); *The Guayaquil, 29 F. Supp. 578, 1939 A.M.C. 1294 (E.D.N.Y. 1939)* (it has been held that admiralty has no jurisdiction of a suit to compel a seller of a vessel to deliver her to a buyer); *Ex parte Fassett, 142 U.S. 479 (1891)* (jurisdiction exists over a libel to recover possession of a yacht seized by the Collector of the Port for non-payment of duties); *Brent v. Thornton, 91 F. 546 (5th Cir. 1898)* (when a Collector of Customs refuses to issue papers to a vessel, a possessory action in admiralty will not lie though the vessel may be temporarily prevented from navigating as a result of his refusal).

(n8)Footnote 8. *The Eclipse, 135 U.S. 599 (1890)* ; *The Clifton, 143 F. 460 (4th Cir. 1906)* ; *The Amelia, 23 F. 406 (C.C.S.D.N.Y. 1877)* ; *Kellum v. Emerson, 14 F. Cas. 263 (C.C.D. Me. 1854)* (No. 7669); *The Helys, 173 F. 928 (S.D.N.Y. 1909)* ; *The Robert R. Kirkland, 92 F. 407 (D.N.J. 1899)* ; *The G. Reusens, 23 F. 403 (S.D.N.Y. 1885)* ; *The Ella J. Slaymaker, 28 F. 767 (D. Del. 1886)* ; *The C.C. Trowbridge, 14 F. 874 (N.D. Ill. 1883)* ; *Wenberg v. A Cargo of Mineral Phosphate, 15 F. 285 (S.D.N.Y. 1883)* .

Atamanchuck v. Atamanchuck (The Supply No. 3), 61 F. Supp. 459, 1945 A.M.C. 1244 (D.N.J. 1945) (admiralty has jurisdiction in a possessory suit by the legal owner of a vessel who has been deprived of possession under a forged bill of sale); *The Captain Johnson, 64 F. Supp. 559, 1946 A.M.C. 929 (D.N.J. 1946)* (there is no admiralty jurisdiction in a possessory suit by the owners of an interest in a boat who were fraudulently induced to execute a bill of sale, the remedy being a suit in equity to set aside the bill of sale and impress the boat with a trust); *The Amable, 32 F. Supp. 451, 1940 A.M.C. 709 (E.D.N.Y. 1940)* (the interest of a shipyard in a used motor boat under a contract of sale of a new boat providing for acceptance of the old boat in part payment of the price has been held insufficient to support a petitory

libel); *The Managua (Garcia v. Garcia), 42 F. Supp. 381, 1942 A.M.C. 67 (S.D.N.Y. 1941)* (a libel brought to set aside the sale by the surviving partner of four steamships owned by a partnership on the ground that the surviving partner had no authority to make the sale and that the buyer had knowledge of that fact has been dismissed as not within the admiralty jurisdiction).

See also Stathos v. The Maro, 134 F. Supp. 330, 1956 A.M.C. 188 (E.D. Va. 1955) , citing text, where admiralty jurisdiction was denied in a suit requiring specific performance of a contract to transfer stock of a corporation whose sole asset was a vessel.

(n9)Footnote 9. *Chirurg v. Knickerbocker Steam Towage Co., 174 F. 188 (D. Me. 1909)* . *See The Helys, 173 F. 928 (S.D.N.Y. 1909)* ; *Davis v. Child, 7 F. Cas. 112 (D. Me. 1840)* (No. 3628); *Government of Kingdom of Belgium v. The Lubrafoil, 43 F. Supp. 403, 1941 A.M.C. 975 (E.D. Tex. 1941)* (a foreign government suing for possession of a requisitioned vessel must establish actual possession and compliance with its requisitioning laws; mere delivery to the master by the consul of a notice of requisition is insufficient).

(n10)Footnote 9a. *But see Gulf Coast Shell & Aggregate LP v. Newlin, 623 F.3d 235, 2011 AMC 421 (5th Cir. 2010)* (reversing the District Court, the court held that unless plaintiff asserts a legal title the court lacks admiralty jurisdiction).

(n11)Footnote 10. *Thurber v. The Fannie, 23 F. Cas. 1179 (E.D.N.Y. 1876)* (No. 14,014); but not put into possession: *The Guayaquil, 29 F. Supp. 578, 1939 A.M.C. 1294 (E.D.N.Y. 1939)* .

(n12)Footnote 11. *The Daisy, 29 F. 300 (D. Mass. 1886)* ; *The Taranto, 23 F. Cas. 696 (D. Mass. 1849)* (No. 13,751).

(n13)Footnote 12. *The Bonnie Doon, 36 F. 770 (D. Del. 1888)* .

(n14)Footnote 13. *The Nellie T., 235 F. 117 (2d Cir. 1916)* ; *Brooklyn Ash Removal Co. v. Connell, 225 N.Y. 503, 122 N.E. 620 (1919)* .

(n15)Footnote 14. *Korthinos v. The Niarchos, 175 F.2d 730 (4th Cir. 1949)* ; *The Losmar, 20 F. Supp. 887, 1937 A.M.C. 1295 (D. Md. 1937)* ; *The Oakmar, 20 F. Supp. 650, 1937 A.M.C. 1135 (D. Md. 1937)* ; The West Irmo, 1937 A.M.C. 1140 (E.D.N.Y. 1937) ; *United States v. U.S.A.F. Coastal Crusader, 210 F. Supp. 430, 1962 A.M.C. 2294 (D. Md. 1962)* (the United States as vessel owner, brought possessory libel to remove seamen of charterer who refused to leave at the end of the charter).

(n16)Footnote 15. *The Navemar, 17 F. Supp. 495, 1937 A.M.C. 13 (E.D.N.Y. 1936)* . *But see People ex rel.* Hansen v. Gabrielsen (The Norbris), 1937 A.M.C. 1138 (N.Y. Sup. Ct. 1937) ; *The Wind (Tvedt, Master v. Hauge), 22 F. Supp. 883, 1938 A.M.C. 471 (E.D. Pa. 1938)* . In both cases there was a treaty respecting the functions of the consul in matters of discipline on board the vessel.

(n17)Footnote 16. *The Regent, 67 F. Supp. 149 (E.D.N.Y. 1946)* .

(n18)Footnote 17. *Pasternack v. Lubetich, 11 Wash. App. 265, 1974 A.M.C. 1464 (1974)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIII POSSESSORY AND PETITORY ACTIONS--OWNERS--ACCOUNTING

1-XIII Benedict on Admiralty § 202

§ 202. Disagreements Between Part Owners as to Voyages--Partition Sales--Bond for Safe Return.

In case of dissension between part owners concerning the employment of a vessel, n1 unless the owners of the majority interest have contracted out of their rights by agreeing to the management of the vessel, n2 they may employ the ship; and if the minority dissent, the minority may insist, by action if necessary, for the execution by the majority of a bond for her safe return. n3 In this event, dissenting owners are not liable to contribute in case of loss and are not entitled to share the profits of the voyage. n4 In the absence of express dissent, minority owners are presumptively entitled to share profits n5 and answerable for the liabilities of the venture. n6 If repairs are absolutely necessary to a voyage, the majority in interest may cause them to be made and the other owners, if they dissent, cannot share in the future earnings of the ship without allowing for the expense of the repairs although their value is not exhausted in the voyage. n7 Admiralty has jurisdiction to compel the majority owners to give the required security to the dissenting minority interest. n8 If the majority decline to employ the ship at all, the minority may similarly employ the ship giving the necessary bond. n9 Cases of licitation or sale, for the purpose of partition, are also within the power of the American admiralty as they are of the European maritime courts, n10 and while such jurisdiction is normally exercised only as between equal interests, n11 it may also be exercised at the instance of the majority, n12 and presumably in appropriate circumstances even at the instance of the minority. n13

A decree of partition or licitation cannot issue merely upon a libel *in rem;* it is essential that the co-owner also be sued and served *in personam.* n14 Parties proceeding in state courts can proceed only *in personam* against the co-owners. Thus a state court in ordering and effecting a sale acts only upon the interests of the parties before it and does not affect the interest of the others in the world at large. n15 Any person buying a vessel at such a sale buys it subject to any prior maritime liens.

FORM No. 202-1 Stipulation for the Safe Return of a Vessel in a Suit by a Part Owner
District Court of the United States for the Southern District of New York

Whereas, a complaint was filed in this court, on the _____ day of _____, 19 _____, by A.B., owner of one-quarter of the ship or vessel called the Packet, her tackle, etc., against the said ship or vessel, her tackle, etc., for the reasons and causes in the said complaint mentioned, and the interest of complainant in the said vessel, her tackle, etc., is of the value of _____ dollars, as appears by the consent (or appraisement) on file in said cause, and C.D. and E.F.,

the other owners of said vessel, and G.H., merchant, residing _____, and I.J., broker, residing _____, their sureties, parties hereto, hereby consenting and agreeing, that in case of default on the part of the said other owners or their sureties, execution may issue against their goods, chattels, and lands, for the sum of _____ dollars;

Now, therefore, it is hereby stipulated and agreed, that the stipulators undersigned are, and each of them is bound, in the sum of (double the value of libelant's share) dollars, conditioned that the said vessel shall safely return from her present intended voyage, to the port of New York.

_____ C.D.
_____ E.F.
_____ G.H.
_____ I.J.

(*Justification*)

FORM No. 202-2 Bond for Safe Return

District Court of the United States for the Southern District of New York

Know all men by these presents, that we, C.D., owner of three-fourths of the brig Packet, and E.F., residing at _____, and by occupation _____, and G.H., residing at _____, and by occupation _____, his sureties, are held and firmly bound unto A.B., in the sum of _____ dollars ($ _____), being double the appraised (or agreed) value of the interest of A.B. in the brig Packet, to the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at the city of New York, the _____ day of _____, 19_____.

Whereas, a complaint has been heretofore, and on the _____ day of _____, 19 _____, filed in the District Court of the United States for the Southern District of New York, by A.B., the owner of one-quarter of the brig Packet, against the said brig, her tackle, etc., and against C.D., the owner of the other three-quarters of said brig, to obtain security for the safe return of the said brig from a proposed sealing voyage from the Port of New York to the Pacific Ocean, from which voyage the said A.B. dissents, upon which libel the said brig has been seized by the Marshal of the court, and is now in the custody of the court; and

Whereas, the value of the one-quarter of the said brig owned by the libelant, A.B., has been fixed by appraisement (or by agreement) at the sum of _____ dollars ($_____);

Now, therefore, the condition of this obligation is such that if the said brig shall safely return to her home port of Hudson, New York, from the proposed sealing voyage to the Pacific Ocean, or, in case of her loss or failure to so return, if C.D. above named, shall appear and abide by and perform the decree of the court, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof we have hereunto set our hands and seals the _____ day of _____, 19_____.

_____ C.D.
_____ E.F.
_____ G.H.

(*Acknowledgment and Justification*)

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime LiensNatureProperty Subject to LienAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Personam ActionsAdmiralty LawPractice & ProcedureAttachment & GarnishmentPartition, Petitory & Possessory ActionsAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. The owners of a ship are ordinarily tenants in common. *See The William Bagaley, 72 U.S. (5 Wall.) 377 (1867)* ; *Scull v. Raymond, 18 F. 547 (S.D.N.Y. 1883)* ; Revens v. Lewis, 20 F. Cas. (C.C.S.D.N.Y. 1835) (No. 11,711); *Bagruder v. Bowie, 16 F. Cas. 488 (C.C.D.C. 1825)* (No. 8964); *Higgins v. Eva (The Fort Bragg), 259 P. 502, 1927 A.M.C. 1787 (Cal. Dist. Ct. App. 1927) , aff'd, 204 Cal. 231, 267 P. 1081 (1928)* ; *McLauthlin v. Smith, 166 Mass. 131 (1896)* ; *Carver v. Miller & Houghton, Inc., 121 Misc. 707, 201 N.Y.S. 807, 1924 A.M.C. 183 (Sup. Ct. 1923) , aff'd, 211 A.D. 807, 206 N.Y.S. 890 (1924)* ; *Wright v. Marshall, 3 Daly 331 (N.Y. C.P. 1870)* . Yet there may be a special partnership between them, in the ship, as well as in the cargo, in regard to a particular voyage or adventure: *Mumford v. Nicoll, 20 Johns. 611 (N.Y. 1822)* .

As to accounting for profits, *see Wathen v. Pearce, 3 A.2d 486, 1939 A.M.C. 200 (Md. 1939)* .

(n2)Footnote 2. *The William Bagaley, 72 U.S. (5 Wall.) 377 (1867)* . *See also The Orleans v. Phoebus, 36 U.S. (11 Pet.) 175 (1837)* ; *Fischer v. Carey, 173 Cal. 185, 159 P. 577 (1916)* .

(n3)Footnote 3. *See* cases at nn. 1 and 2, *supra* and see the forms appended to this section.

Supplemental Rule D in The Federal Rules of Civil Procedure provides:

"Possessory, Petitory, and Partition Actions

> "In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel, in all actions so maintainable with respect to the possession of cargo or other maritime property, and in all actions by one or more part owners against the others to obtain security for the return of the vessel from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the vessel for any voyage on giving security for its safe return, the process shall be by a warrant of arrest of the vessel, cargo, or other property and by notice in the manner provided by Rule B(2) to the adverse party or parties."

The 1966 Advisory Committee's Note states:

> "This carries forward the substance of Admiralty Rule 19.
>
> "Rule 19 provided the remedy of arrest in controversies involving title and possession in general. *See Tilton, 23 Fed. Cas. 1277* (No. 14,054) (C.C.D. Mass. 1830). In addition it provided that same remedy in controversies between co-owners respecting the employment of a vessel. It did not deal comprehensively with controversies between co-owners, omitting the remedy of partition. Presumably the omission is traceable to the fact that, when the rules were originally promulgated, concepts of substantive law (sometimes stated as concepts of jurisdiction) denied the remedy of partition except

where the parties in disagreement were the owners of equal shares. *See Steamboat Orleans, 36 U.S. (11 Pet.) 175 (1837)* . The Supreme Court has now removed any doubt as to the jurisdiction of the district courts to partition a vessel, and has held in addition that no fixed principle of federal admiralty law limits the remedy to the case of equal shares. *Madruga v. Superior Court, 346 U.S. 556, 1954 A.M.C. 405 (1954)* . It is therefore appropriate to include a reference to partition in the rule."

(n4)Footnote 4. *Head v. Amoskeag Mfg. Co., 113 U.S. 9 (1885)* ; *The Marengo, 16 F. Cas. 709 (D. Mass. 1866)* (No. 9065); *Sproul v. Hemmingway, 31 Mass. (14 Pick) 1 (1833)* ; *Peters v. Rohrman, 272 F. 338 (D.N.J. 1921)* ; Stedman v. Feidler, 20 N.Y. (1859).

(n5)Footnote 5. *Scull v. Raymond, 18 F. 547 (S.D.N.Y. 1883)* ; *Wathen v. Pearce, 3 A.2d 486, 1939 A.M.C. 200 (Md. 1939)* .

(n6)Footnote 6. *McCready v. Thorn, 51 N.Y. 454 (1873)* .

(n7)Footnote 7. *The Two Marys, 10 F. 919, 924 (S.D.N.Y. 1882)* ; *Green v. Briggs, 67 Eng. Rep. 1219 (Chancery 1848)* .

(n8)Footnote 8. *The Steamboat Orleans v. Phoebus, 36 U.S. (11 Pet.) 175, 183 (1837)* ; *Lewis v. Kinney, 15 F. Cas. 484 (C.C.E.D. Mo. 1879)* (No. 8325); *Coyne v. Caples, 8 F. 638 (D. Or. 1881)* ; *The Marengo, 16 F. Cas. 709 (D. Mass. 1866)* (No. 9065); *Bragson v. The Kitty Simpson, 3 F. Cas. 1199 (S.D.N.Y. 1857)* (No. 1798); *Sturges v. The Mary Staples, 23 F. Cas. 310 (S.D.N.Y. 1857)* (No. 13,566a); *Fox v. Paine, 9 F. Cas. 642 (E.D. Pa. 1839)* (No. 5014); *Willings v. Blight, 30 F. Cas. 50 (D. Pa. 1800)* (No. 17,765).

See The Susan E. Voorhis, 23 F. Cas. 445 (E.D.N.Y. 1879) (No. 13,633) (forfeiture of bonds); *The Olga, 254 F. 439 (S.D.N.Y. 1918)* (minority owner entitled to bond for payment to him of his share of proceeds of sale of vessel).

(n9)Footnote 9. *The Orleans v. Phoebus, n. 2 supra.*

(n10)Footnote 10. *Madruga v. Superior Court, 346 U.S. 556 (1954)* ; *Steamboat Orleans v. Phoebus, 36 U.S. (11 Pet.) 175 (1837)* ; *The Seneca, 21 F. Cas. 1081 (C.C.E.D. Pa. 1876)* (No. 12,670); *Coyne v. Caples, 8 F. 638 (D. Or. 1881)* ; *The Annie H. Smith, 1 F. Cas. 968 (S.D.N.Y. 1878)* (No. 420); *Burr v. The St. Thomas, 4 F. Cas. 823 (S.D.N.Y. 1851)* (No. 2195); *Stevens v. The Sandwich, 23 F. Cas. 29 (D. Md. 1801)* (No. 13,409); *Willings v. Blight, 30 F. Cas. 50 (E.D. Pa. 1800)* (No. 17,765); *Skrine v. The Hope, 22 F. Cas. 305 (D.S.C. 1793)* (No. 12,927). Story on Partnership 435, 436; Dunlap Prac. 67, 69.

See also Cline v. Price, 39 Wash. 2d 816, 239 P.2d 322, 1952 A.M.C. 391 (1951) .

(n11)Footnote 11. *Steamboat Orleans v. Phoebus, 36 U.S. (11 Pet.) 175 (1837)* ; *Lewis v. Kinney, 15 F. Cas. 484 (C.C.E.D. Mo. 1879)* (No. 8325); The Red Wing, 1926 A.M.C. 336 (S.D. Cal. 1925) ; *The Ocean Belle, 18 F. Cas. 524 (S.D.N.Y. 1872)* (No. 10,402); *Bradshaw v. The Sylph, 3 F. Cas. 1177 (S.D.N.Y. 1841)* (No. 1791).

See Tunno v. The Betsina, 24 F. Cas. 316 (D.S.C. 1857) (No. 14,236).

Andrews v. Betts, 8 Hun 322 (N.Y. 1876) (between owners of unequal shares equity may order partition by sale); *The Emma B., 140 F. 770 (D.N.J. 1905)* (pending decree of sale and partition, the admiralty court may allow the vessel to remain in commission and may take bond for her delivery to the marshal).

Accounting in equity, *see Misner v. Strong, 181 N.Y. 163, 73 N.E. 965 (1905)* ; *Carver v. Miller, 121 N.Y. Misc. 707, 1924 A.M.C. 183 (N.Y. 1924)* .

(n12)Footnote 12. *Madruga v. Superior Court, 346 U.S. 556, 1954 A.M.C. 405 (1954)* .

(n13)Footnote 13. As stated in *Madruga v. Superior Court, 346 U.S. 556, 563 n.16, 1954 A.M.C. 405, 411* :

> "The rule of the civil as of the common law, that no one should be compelled to hold property in common with another, grew out of a purpose to prevent strife and disagreement: Story's Eq. sec. 648; and additional reasons are found in the more modern policy of facilitating the transmission of titles and in the inconvenience of joint holding." *Caldwell v. Snyder, 178 Pa. 420, 422, 35 A. 996* . "... [P]artition is a right much favored, upon the ground that it not only secures peace, but promotes industry and enterprise, that each should have his own." *Cannon v. Lomax, 29 S.C. 369, 371, 7 S.E. 529, 530* .

(n14)Footnote 14. *Tucci v. Arbusto (The Aranac II), 56 F.2d 666, 1932 A.M.C. 67 (S.D.N.Y. 1931)* .

(n15)Footnote 15. *Madruga v. Superior Court, 346 U.S. 556, 1954 A.M.C. 405 (1954)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIII POSSESSORY AND PETITORY ACTIONS--OWNERS--ACCOUNTING

1-XIII Benedict on Admiralty § 203

§ 203. Suits for an Accounting.

As discussed in § 126, *supra,* the older precedent denied equitable powers to federal courts having jurisdiction solely because of the admiralty nature of the claim. Consequently, in the United States, these courts had no jurisdiction in a suit for an accounting as such, whether between part owners or other maritime adventurers, or between principal and agent in transactions maritime. n1 This principle has been subject to the exception that where the accounting is incidental or ancillary to any remedy for a maritime cause of action, admiralty was entitled to order accounting. n2 It was formerly stated that an admiralty court would not attempt to adjust complicated accounts n3 but would relegate the parties to the court of chancery or other appropriate tribunal. While the discretion is always preserved to the admiralty court, there is no rule that admiralty must suspend judgment in every case when a question of accounting arises and require the litigants to seek a remedy on this aspect in another forum. Modern practice is clearly established in allowing admiralty to proceed with accounting when this was necessary to the complete adjustment of rights. n4

In recent years some federal courts have held that they have the power to provide equitable relief in admiralty cases. n5 This is a welcome change, and it should allow the courts to provide for an accounting in maritime cases when merited. n6 The present jurisdiction of admiralty courts which has been extended beyond the original frontiers by a course of legislation and otherwise, the unified rules of procedure, the essential propriety of vesting adequate power in the admiralty courts to determine all cause of maritime jurisdiction by the grant of a remedy which is just and proper, as also the desirability of conforming to a certain uniformity in international practice in the light of international conventions, n7 all point to a need for a considered reevaluation of precedents born at a time where the legal system permitted itself to be ruled from the grave by the old forms of action of medieval England.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawPractice & ProcedureJurisdictionCivil ProcedureRemediesEquitable AccountingsGeneral Overview

FOOTNOTES:
(n1)Footnote 1. *Swift & Co. Packers v. Companie Colombiana Del Caribe S.A., 339 U.S. 684, 1950 A.M.C. 1089 (1950)* ; *Ward v. Thompson, 63 U.S. (22 How.) 330 (1859)* ; *Grant v. Poillon, 61 U.S. (20 How.) 162 (1857)* ; *Minturn*

v. Maynard, 58 U.S. (17 How.) 477 (1854) ; *The Steamboat Orleans v. Phoebus, 36 U.S. (11 Pet.) 175 (1837)* ; *Hadjipateras v. Pacifica S.A., 290 F.2d 697, 1961 A.M.C. 1417 (5th Cir. 1961)* ; *Kellum v. Emerson, 14 F. Cas. 263 (C.C.D. Mass. 1854)* (No. 7669); *Lee v. Lee (The Ella D.), 1931 A.M.C. 922 (S.D. Cal. 1931)* (summary); *The Zillah May, 221 F. 1016 (W.D. Wash. 1915)* ; *The H.E. Willard, 53 F. 599 (D. Me. 1891) , aff'd, 52 F. 387 (C.C.D. Me. 1892)* ; *The John E. Mulford, 18 F. 455 (S.D.N.Y. 1883)* ; *The Brothers, 7 F. 878 (D. Md. 1881)* ; *Daily v. Doe, 3 F. 903 (S.D.N.Y. 1880)* ; *The Larch, 14 F. Cas. 1139 (D. Me. 1855)* (No. 8085).

(n2)Footnote 2. *Swift & Co. Packers v. Compania Colombiana Del Caribe S.A., 339 U.S. 684, 1950 A.M.C. 1089 (1950)* ; *Hadjipateras v. Pacifica S.A., 290 F.2d 697, 1961 A.M.C. 1417 (5th Cir. 1961)* ; *W.E. Hedger Transp. Corp. v. Ira S. Bushey & Sons, 155 F.2d 321, 1946 A.M.C. 788 (2d Cir.) , cert. denied, 329 U.S. 735 (1946)* ; *Metropolitan S.S. Co. v. Pacific-Alaska Nav. Co., 260 F. 973, 980 (D. Me. 1919)* ; *The Emma B., 140 F. 771 (D.N.J. 1905)* ; *Cline v. Price, 39 Wash. 2d 816, 239 P.2d 322, 1952 A.M.C. 391 (1951)* . In *W.E. Hedger Transp. Corp. v. Ira S. Bushey & Sons, supra* , Judge Learned Hand said,

> "It is true that a court of admiralty will not entertain a suit for an accounting as such: as, for example, an accounting between co-owners of a vessel, or between maritime adventurers, or between principal and agent, and so on. (citing cases) ...
>
> "(It may be doubted whether *Metropolitan S.S. Co. v. Pacific-Alaska Nav. Co., D.C., 260 Fed. 973* , is in accord with these decisions.) Nevertheless, it has never been true, when an accounting is necessary to the complete adjustment of rights over which admiralty has independent jurisdiction, that it will suspend its remedies midway and require the parties to resort to another court. Thus, when an accounting was necessary to determine a fisherman's 'lay,' or share of the catch, Lowell, J., entertained the suit, although the statute passed for that purpose--R.S. § 4391, *46 U.S.C.A. § 531*--did not apply. *The Carrier Dove, D.C., 93 F. 978* . In The I. S. E. No. 2, 15, F.2d 749, the Ninth Circuit took jurisdiction in a similar case without noticing the statute. On the other hand in 1830 in The Fair Play, Fed.Cas.No.4,615, Betts, J., refused to entertain the libel of a seaman for wages which involved an accounting, and Mr. Justice Thompson affirmed the decree; but the libel was *in rem* and the actual decision was merely that a seaman's lien for wages is only for an 'adjusted balance.' It is only fair to add, however, that Judge Betts thought even a libel *in personam* 'exceedingly doubtful.' *In the John E. Mulford, D.C., 18 F. 455* , one part owner filed a libel for the sale of the vessel and partition of the proceeds, as an incident to which Judge Brown entertained an accounting against the parties who had operated the vessel before the sale. He put his decision upon the ground that, although a suit for an accounting alone would not have lain between the parties, when an accounting became necessary to the winding up of a suit over which the admiralty had independent jurisdiction, the court would state the account. For this he relied in part upon the opinion of Judge Ware in The Larch, Fed.Cas.No.8,086. Although Mr. Justice Curtis reversed that decree in *The Larch, supra* , Fed.Cas.No.8,085, it was because he did not think that admiralty had jurisdiction ovr the principal controversy. Judge Cross followed *Judge Brown in the Emma B., D.C., 140 F. 771* ; and Judge Cushman recognized the doctrine in *The Zillah May, supra, D.C., 221 F. 1016* . Clearly, a court of admiralty at times must state accounts as an incident to the disposition of suits within its cognizance: general average is one instance, and salvage is another. In the case at bar, the foreclosure suit was brought under *§ 951 of Title 46, U.S.C.A.*, and it would be impossible to enforce the statute, if the suit must be halted every time a question of accounting arose as to the amount due upon the mortgage."

(n3)Footnote 3. *Grant v. Poillon, 61 U.S. (20 How.) 162 (1857)* .

(n4)Footnote 4. *See* cases at n.2, *supra.*

(n5)Footnote 5. *See* § 126, *supra.*

(n6)Footnote 6. *Cf. Hadjipateras v. Pacifica S. A., 290 F.2d 697, 1961 A.M.C. 1417 (5th Cir. 1961)* .

(n7)Footnote 7. *See, e.g.,* 6 *Benedict on Admiralty,* International Convention Relating to the Arrest of Sea-Going ships (Brussels--May 10, 1952).

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Reserved.

§§ 204Reserved.

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§ XIV.syn Synopsis to Chapter XIV: JURISDICTION IN SPECIAL CASES

§ 211 Towage.

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§ 219 Insurance.

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Scope

SCOPE

Towage -- Wharfage-- Stevedores --Demurrage--Mar itime Loans--Seizures--Limitation of Liability--Pilotage--Collision

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1-XIV Benedict on Admiralty § 211

§ 211 Towage.

Countless vessels, such as barges and canal boats, have no motive power of their own and are built with a view to receiving their propelling force from other sources. Other vessels with motive power of their own employ auxiliary power to hasten their progress or to assist in working about harbors or into docks. To supply such power to another vessel is towage and the towage contract is in all its features within the cognizance of the admiralty, for such a contract is in its nature maritime. n1 By the general maritime law, towage created a lien upon the vessel towed in many but by no means in all instances, n2 and the Maritime Lien Act of 1910 as originally enacted n3 was held not to embrace towage in the phrase "other necessaries." n4 Hence the amendment of 1920 has expressly given a lien for towage. n5 Breaches of the towing contract and damages resulting from negligence in towing, *i.e.*, towage torts, are also within the admiralty jurisdiction. n6 Although the towage contractor is usually not a common carrier, n7 it may not contract against all liability for its own negligent towage. n8

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime LiensNatureProperty Subject to LienAdmiralty LawPersonal InjuriesMaritime Tort ActionsNegligenceGeneral OverviewAdmiralty LawTowageContractsAdmiralty LawTowageDutiesAdmiralty LawTowageLiability

FOOTNOTES:
(n1)Footnote 1. Section cited: *Dann v. Dredge Sandpiper, 222 F. Supp. 838, 1964 AMC 472 (D. Del. 1963)* .

The substantive law of Towing is stated in *Bucknill's Law of Tug and Tow* (2d ed., London, 1927).

Moran Towing & Transp. Co. v. Navigazione Libera Triestina, S.A., 92 F.2d 37, 1937 AMC 981, 983 (2d Cir.) , *cert. denied, 302 U.S. 744 (1937)* ; *The Alabama, 22 F. 449 (C.C.S.D. Ala. 1884)* ; *The Queen of the East, 12 F. 165 (C.C.E.D. La. 1882)* ; *The Erastina, 50 F. 126 (S.D.N.Y. 1892)* ; *The John Cuttrell, 9 F. 777 (E.D.N.Y. 1881)* ; *Kearney v. A Pile Driver, 3 F. 246 (D.N.J. 1880)* .

Where the contract of towage is oral, consisting of a telephone call to the captain of the tug to move a vessel from one place to another, the contract is considered to call for the performance of the job in the usual and customary manner established by previous dealings of the parties: *Mustic Terminal Co. v. Thibeault, 108 F.2d 813, 1940 AMC 183 (1st Cir. 1940)* .

Under a towing contract providing that the hire should be considered earned in the event of loss or standing of the raft or from any other cause except the disablement of the tugs or their equipment whereby the tug should be prevented from completing the contract, the hire was not earned when the tug's engine's broke down 82 miles from the destination and another tug completed the voyage: *California Towing Co. v. Benson Lumber Co., 113 F.2d 66, 1941 AMC 140 (9th Cir. 1940)* .

(n2)Footnote 2. *The Skomvaer, 286 F. 711, 1923 AMC 15 (S.D.N.Y. 1922) , modified, 297 F. 746, 1924 AMC 507 (2d Cir. 1924) . See The Hatteras, 255 F. 518 (2d Cir. 1918)* ; *The Saratoga, 100 F. 480 (D.R.I. 1900)* .

United States v. Daniels Towing & Drydock, Inc., 214 F.2d 501, 1954 AMC 1530 (5th Cir. 1954) (the United States, under *46 U.S.C. § 742*, is liable for towage charges if a privately owned vessel would be liable under the same circumstances).

Moon Eng'g Co. v. The S.S. Valiant Power, 193 F. Supp. 460, 1961 AMC 226 (E.D. Va. 1960) (towing charges for moving a vessel while in the custody of the marshal create a lien).

(n3)Footnote 3. Act of June 23, 1910, ch. 373; 36 Stat. 604.

(n4)Footnote 4. *The J. Doherty, 207 F. 997 (S.D.N.Y. 1913)* ; *The Hatteras, 255 F. 518 (2d Cir. 1918)* .

(n5)Footnote 5. Act of June 5, 1920, ch. 250, § 30, sub-sec. P; 41 Stat. 988, 1005; *46 U.S.C. § 971*. *Fairmont Shipping Corp. v. Chevron Int'l Oil Co., 511 F.2d 1252, 1975 AMC 261 (2d Cir.) , cert. denied, 423 U.S. 838 (1975)* ; *Bouchard Transp. Co. v. Tug Gillen Bros., 389 F. Supp. 77 (S.D.N.Y. 1975)* .

(n6)Footnote 6. *Stevens v. The White City, 285 U.S. 195, 1932 AMC 468 (1932)* ; *The John G. Stevens, 170 U.S. 113 (1898)* ; *The Margaret, 94 U.S. 494 (1876)* ; *The Syracuse, 79 U.S. (12 Wall.) 167 (1870)* ; *The Quickstep, 76 U.S. (9 Wall.) 665 (1869)* ; *Moran Towing & Transp. Co. v. Navigazione Libera Triestina, S.A., 92 F.2d 37, 1937 AMC 981 (2d Cir.) , cert. denied, 302 U.S. 744 (1937)* ; *The Temple Emery, 122 F. 180 (E.D. Wis. 1903)* ; *The Allie & Evie, 24 F. 745 (S.D.N.Y. 1885)* ; *The Annie Williams, 20 F. 866 (D.N.J. 1884)* ; *The M.J. Cummings, 18 F. 178 (N.D.N.Y. 1883)* .

Stevens v. East-West Towing Co., 649 F.2d 1104, 1982 AMC 2820 (5th Cir. 1981) , cert. denied, 454 U.S. 1145 (1982) (a tug's warranty of workmanlike performance extends to preparations necessary and incident to the actual towing; a negligent shipowner is not barred from recovering against a towing company that has breached its warranty of workmanlike performance so long as that negligence does not prevent performance of a workmanlike job); *Candies Towing Co. v. M/V B & C Eserman, 673 F.2d 91 (5th Cir. 1982)* (although the tug was guilty of many statutory violations and was negligent as to the grounding of the barge, there was no causation shown for the sinking of the barge many days later in bad weather conditions; even though the district court incorrectly held that the Pennsylvania rule only applies to collision cases, remand was not necessary where neither the tug's actions nor statutory violations could have caused the sinking); *Tidewater Grain Co. v. SS Point Manatee, 1985 AMC 1353 (E.D. Pa. 1984)* (when a tug company employee takes control of a dead boat under tow, he may not be considered a borrowed servant of the shipowner; if the tug employee negligently navigates the boat, pilotage clauses will not apply unless the vessel is under propeller power; since the pilot was totally in control of the vessel, the presence of the ship's master on board is irrelevant); *St. Paul Fire & Marine Ins. Co. v. Vest Transp. Co., 500 F. Supp. 1365, 1982 AMC 450 (N.D. Miss. 1980) , aff'd, 666 F.2d 932 (5th Cir. 1982)* (the "flotilla doctrine," which characterizes a tug and its tow as a single vessel, applies only to cases based on contract and not to torts; although a claim for the reimbursement of wreck removal costs

under a P & I policy involves contractual relations, the policy provisions are based on the underlying tort of negligence and, therefore, the doctrine is inapplicable).

An agreement for the charter of barges for a definite time at a fixed rate of hire and a separate contract for towing is not a contract of affreightment so that a suit *in rem* against the tug for damage to the tow or its cargo is *ex delicto* and not *ex contractu: New Orleans Coal & Bisso Towboat Co. v. The Texas Co., 122 F.2d 141, 1941 AMC 1463 (5th Cir. 1941)* .

Palmer v. Agwillines, 135 F.2d 689, 1943 AMC 674 (2d Cir. 1943) (a common carrier by water in possession and control of a barge and its cargo at a point of transshipment after delivery by the initial carrier is under a primary duty of care to both); *Young Bros. v. Cho, 183 F.2d 176, 1950 AMC 1268 (9th Cir. 1950)* (tug liable for negligence of master in abandoning tow); O'Brien Bros., Inc. v. McAllister Lighterage Line, 1943 AMC 783 (E.D.N.Y. 1943) (if it is established that a collision was caused by fault on the part of one of a fleet of tugs operated by the respondent in a suit in personam, identification of the particular tug involved is not essential); *Adams v. The Peter Moran, 94 F. Supp. 520, 1951 AMC 58 (S.D.N.Y. 1951)* (the tug and its tow are independent vessels each liable for its own faults. A vessel damaged by the fault of both can recover full indemnity from either, notwithstanding the terms of the towage contract); *Sternberg Dredging Co. v. Moran Towing & Transp. Co., 196 F.2d 1002, 1952 AMC 1118 (2d Cir.) , on reh'g, 200 F.2d 603, 1953 AMC 181 (2d Cir. 1952)* (where an unmanned tow at sea is observed to have a list and the tug failed to put someone aboard to ascertain the reason, a presumption arose that the tug's failure was the cause of the subsequent foundering of the tow, requiring the tug to go forward with rebutting evidence); Bisso v. Waterways Transp. Co., 1956 AMC 1760 (5th Cir. 1956) (taking an overloaded barge in tow which subsequently stranded was held negligence on the part of the tug and the barge); *Bisso v. Inland Waterways Corp., 114 F. Supp. 713, 1953 AMC 1664, 1953 AMC 2091 (E.D. La. 1953) , aff'd, 211 F.2d 401 (5th Cir. 1954) , rev'd on other grounds, 349 U.S. 85, 1955 AMC 899 (1955)* (where a tug brings her dumb tow into collision with a stationary object, there is a presumption that the collision occurred through the negligence of the tug, which was in favor of the two as well as the stationary object and the tug bears the burden of going forward wit proof that no act or omission on her part caused the collision); *Hendry Corp. v. Aircraft Rescue Vessels C-77436 and C-77439, 113 F. Supp. 198, 1953 AMC 2115 (E.D. La. 1953)* (tug held negligent (but not "grossly" negligent) when she took more vessels in tow than she could reasonably have expected to tow in weather reasonably to be expected); *Conners-Standard Marine Corp. v. Oil Transfer Corp. 120 F. Supp. 180, 1954 AMC 293 (E.D.N.Y. 1953)* (where a tug was shown to have been careless in the handling of a chartered barge, causing ice damage, the tug owner was held primarily liable therefor); *Ulster Oil Transp. Corp. v. The H.A. Meldrum, 122 F. Supp. 767, 1954 AMC 1591 (E.D.N.Y. 1954) , aff'd, 229 F.2d 568 (2d Cir. 1956)* (a tug not being considered a bailee, the burden is on the towed vessel to prove the tug's negligence).

Roberts v. St. Marks Towing Co., 129 F. Supp. 239, 1955 AMC 1109 (N.D. Fla. 1955) (where oil escaped from a barge into a river while unloading, and damaged boats downstream, responsibility rested on the towing company which had to transport and unload and not on the cargo owner, the towing company being an independent contractor); *Foss Launch & Tug Co. v. The Kukui, 130 F. Supp. 180, 1955 AMC 1623 (N.D. Cal. 1955)* (a towage contract is not a bailment and the remedy for failure to deliver is in tort, there be- ing no guarantee that the tow will be delivered); *Conners-Standard Marine Corp. v. Marine Fuel Transfer Corp., 135 F. Supp. 365, 1955 AMC 1759 (E.D.N.Y. 1955)* (a tug captain had no duty to make a painstaking examination of the vessel to be towed as the charterer's order for towage was a representation that the barge was fit to be towed); *Ulster Oil Transp. Corp. v. The H.A. Meldrum, 229 F.2d 568, 1956 AMC 306 (2d Cir. 1956)* (there was no negligence on the part of the tug where in attempting to pass another tow, its barge rubbed against the canal bank and a three-inch stone was imbedded in the barge); Tankers & Tramps Corp. v. Tug Jane McAllister, 1964 AMC 2551 (S.D.N.Y. 1964) , *aff'd, 358 F.2d 896, 1966 AMC 1205 (2d Cir.) , cert. denied, 385 U.S. 947 (1966)* (there is no maritime lien upon a tug assisting a vessel in a harbor, where the tug master, on board the assisted vessel as "pilot," acts negligently).

(n7)Footnote 7. Not a common carrier: *The Syracuse, 79 U.S. (12 Wall.) 167 (1870)* .

A common carrier: *Sacramento Nav. Co. v. Salz, 273 U.S. 326, 1927 AMC 397 (1927)* .

United Barge Co. v. Notre Dame Fleeting & Towing Serv., 568 F.2d 599, 1978 AMC 1163 (8th Cir. 1978) (a fleet operator, although not an insurer, has a basic responsibility to care for the barges in its custody).

A tug is not a common carrier or an insurer and is not liable for damage to the tow in absence of negligence: *The Mack, 154 F.2d 711, 1946 AMC 681 (5th Cir. 1946)* ; *Massman Constr. Co. v. Sioux City & New Orleans Barge Lines, 462 F. Supp. 1362, 1980 AMC 1164 (W.D. Mo. 1979) . Cf. Stall & McDermott v. The Southern Cross, 196 F.2d 309, 1952 AMC 876 (5th Cir. 1952)* ; *The Anacondia, 164 F.2d 224, 1947 AMC 1658 (4th Cir. 1947)* ; *Exner Sand & Gravel Corp. v. Gallagher Bros. Sand & Gravel Corp., 157 F.2d 291, 1946 AMC 1449 (2d Cir. 1946)* ; *Wilbanks & Pierce v. Hendry, 150 F.2d 214, 1945 AMC 1076 (5th Cir. 1945)* ; *Waldie v. Steers Sand & Gravel Corp., 151 F.2d 129, 1945 AMC 872 (2d Cir. 1945)* ; *The Pride, 135 F.2d 999, 1943 AMC 689 (2d Cir. 1943)* ; *The Winding Gulf, 72 F. Supp. 50, 1947 AMC 819 (D. Md. 1947) , aff'd sub nom. Boston Metals v. The Winding Gulf, 209 F.2d 410 (4th Cir. 1954) , rev'd on other grounds, 349 U.S. 122 (1955)* ; *The Val No. 2, 66 F. Supp. 125, 1946 AMC 429 (E.D.N.Y. 1946)* ; *Pioneer S.S. Co. v. Great Lakes Towing Co., 68 F. Supp. 757, 1946 AMC 1206 (N.D. Ohio 1946)* ; *General Motors Corp. v. Petterson Lighterage & Towing Corp., 56 F. Supp. 564, 1944 AMC 1171 (S.D.N.Y. 1944)* ; *The Mariner, 52 F. Supp. 739, 1944 AMC 703 (D. Mass. 1943)* ; *The Ruth Shaw, 52 F. Supp. 202, 1943 AMC 1223 (E.D.N.Y. 1943)* ; *The Cynthia II, 50 F. Supp. 961, 1943 AMC 1016 (D. Md. 1943)* ; *The Lena, 49 F. Supp. 191, 1943 AMC 444 (E.D.N.Y. 1943)* ; *The Mack, 50 F. Supp. 159, 1943 AMC 756 (E.D.N.Y. 1943)* ; Tucker v. The Patience, 1940 AMC 634 (S.D.N.Y. 1940) ; *Mengel Co. v. Inland Waterways Corp., 34 F. Supp. 685, 1940 AMC 1339 (E.D. La. 1940)* . A general release from liability running to the tower is void unless the tow is under power and in control of the tower's servants. Petterson Lighterage & Towing Corp. v. The J.R. Russell, 1949 AMC 1836 (S.D.N.Y. 1949) .

Cornell Steamboat Co. v. United States, 321 U.S. 634, 1944 AMC 344 (1944) (a towage contractor may be a "common carrier" for the purposes of the regulatory authority of the Interstate Commerce Commission under Part III of the Interstate Commerce Commission Act although not liable as a common carrier in admiralty or at common law).

A tug is obligated to take reasonable care of its tow while the towage relationship continues: *The Tillie S., 123 F.2d 899, 1942 AMC 121 (2d Cir. 1942)* ; *Stall & McDermott v. The Southern Cross, 95 F. Supp. 612, 1951 AMC 549 (E.D. La. 1951) , aff'd, 196 F.2d 309, 1952 AMC 876 (5th Cir. 1952)* .

Canadian Aviator, Ltd. v. United States, 324 U.S. 215, 1945 AMC 265 (1945) (where a tug negligently grounds its tow the tug and its owner are liable for the damages); *W. Horace Williams Co. v. M/V Wakulla, 109 F. Supp. 698, 1953 AMC 380 (E.D. La. 1953) , aff'd, 213 F.2d 27, 1954 AMC 1354 (5th Cir. 1954)* (a tug has the duty to see that the tow is properly made up and the lines sufficient and securely fastened).

Causal connection between the tug's negligence and the damage must be shown: Oil Transfer Corp. v. The Celtic, 1946 AMC 1713 (S.D.N.Y. 1946) ; *Buckeye S.S. Co. v. Union Towing & Wrecking Co., 68 F. Supp. 749, 1946 AMC 1213 (N.D. Ohio 1946)* ; *The New York Trap Rock Corp. v. Harry R. Conners, 66 F. Supp. 456, 1946 AMC 371 (E.D.N.Y. 1946)* ; *O'Donnell Transp. Co. v. The Ashbourne, 61 F. Supp. 914, 1945 AMC 732 (E.D.N.Y. 1945)* .

Negligence of the tug is not presumed from the happening of damage to the tow: *The S.S. Bellatrix, 114 F.2d 1004, 1941 AMC 149 (3d Cir. 1940)* ; *The Bermuda, 62 F. Supp. 284, 1945 AMC 786 (S.D.N.Y. 1945)* ; The Delmar, 1941 AMC 590 (S.D.N.Y. 1941) , *aff'd, 141 F.2d 1020, 1944 AMC 366 (2d Cir. 1944) . See Curtis Bay Towing Co. v. Southern Lighterage Corp., 200 F.2d 33, 1952 AMC 2034 (4th Cir. 1952)* (the tug was held negligent on the evidence in continuing to tow a leaking scow instead of beaching it). *But see New York Trap Rock Corp. v. The Dynamic, 50 F. Supp. 507, 1943 AMC 144 (E.D.N.Y. 1942) , aff'd, 136 F.2d 683, 1943 AMC 880 (2d Cir. 1943)* .

The burden of proof of negligence on the part of the tug is on the tow: *Stall & McDermott v. The Southern Cross, 196 F.2d 309, 1952 AMC 876 (5th Cir. 1952)* ; *Red Star Barge Line v. The Russell No. 7, 168 F.2d 717 (2d Cir. 1948)* ;

Simkins v. R.L. Morrison & Sons, 107 F.2d 121, 1940 AMC 24 (5th Cir. 1939) ; *Pioneer S.S. Co. v. Great Lakes Towing Co., 68 F. Supp. 757, 1946 AMC 1206 (N.D. Ohio 1946)* ; *The Baltimore, 53 F. Supp. 462, 1944 AMC 146 (E.D.N.Y. 1944) , aff'd, 148 F.2d 335, 1945 AMC 429 (2d Cir. 1945)* ; *Campos v. Curtis Bay Towing Co., 61 F. Supp. 1010, 1945 AMC 978 (E.D. Pa. 1945)* ; *Leary v. City of N.Y., 52 F. Supp. 643, 1943 AMC 1055 (E.D.N.Y 1943)* ; New York Trap Rock Corp. v. The Maple Leaf, 1943 AMC 442 (E.D.N.Y. 1943) ; *The Burnside, 31 F. Supp. 519, 1940 AMC 786 (S.D.N.Y. 1940)* . Exclusive control of the instrumentalities causing the damage necessary for the application of the res ipsa rule, may be found by the trier of fact on conflicting evidence. *The Rocona v. Guy F. Atkinson Co., 173 F.2d 661, 1949 AMC 843 (9th Cir. 1949)* ; *W. Horace Williams Co. v. M/V Wakulla, 109 F. Supp. 698, 1953 AMC 380 (E.D. La. 1953) , aff'd, 213 F.2d 27, 1954 AMC 1354 (5th Cir. 1954)* . *In re Reading Co., 121 F. Supp. 808, 1954 AMC 1848 (S.D.N.Y. 1954)* (no liability for losses and damage due to inevitable accident).

Controlling and assisting tugs. When a towing operation involves one or more assisting tugs whose activities are directed by the master or person in charge of a controlling tug or a tug master who boards and controls the assisted vessel as pilot or navigator in charge, the assisting tugs are liable only for properly carrying out the orders of the master or pilot in charge and for the consequences of their own negligence. Thus, assisting tugs not themselves negligent, have been held not liable for consequences of execution of orders of the pilot or master of the controlling tug in maneuvering the flotilla: *Compania Maritima Samsoc v. Moran Towing & Transp. Co., 197 F.2d 607, 1952 AMC 1291 (2d Cir. 1952)* , nor are they responsible, without orders, for the maintenance of a lookout for the flotilla, *id.*, nor for negligent navigation of the vessel being assisted resulting in the breaking of a hawser and damage to other vessels: *Logue Stevedoring Corp. v. The Dalzellance, 198 F.2d 369, 1952 AMC 1297 (2d Cir. 1952)* .

On the other hand the controlling tug or the employer of the tug master or pilot who assumes charge of the flotilla's navigation has been liable for failure to properly arrange and apply the towing power of the assisting tugs so as to hold the assisted ship up into tideway and to maintain a proper lookout for the flotilla: *Compania Maritima Samsoc v. Moran Towing & Transp. Co., supra.*

Moran Towing & Transp. Co. v. Empresa Hondurena de Vapores, 194 F.2d 629, 1952 AMC 592 (5th Cir.) , cert. denied, 343 U.S. 978 (1952) (tug in control of tow negligent; helper tug exonerated); Linde-Griffith Constr. Co. v. The Authentic, 1952 AMC 932 (S.D.N.Y. 1952) , *rev'd on other grounds, 210 F.2d 757 (2d Cir. 1954)* (tug taking a tall pile driver through a lift bridge owes a duty both to the bridge and its tow, and was held liable to both, when it attempted to pass before the lift span had been sufficiently raised, although the bridge tender had also been negligent and had signaled the tug to proceed); *Curtis Bay Towing Co. v. The Fairwill, 110 F. Supp. 881, 1953 AMC 195 (E.D. Va. 1952)* (inactive barge in tow of one of two colliding tugs, both at fault, held free from fault and damages assessed in halves against the tugs in fault. No part of the damages should be assessed against the non-participating barge); *McLain Line v. M/V Archers Hope, 109 F. Supp. 128, 1953 AMC 228 (E.D.N.Y. 1952)* (helper tug held in fault for failing to check swing of tow into path of collision; controlling tug not in fault); *W. Horace Williams Co. v. M/V Wakulla, 109 F. Supp. 698, 1953 AMC 380 (E.D. La. 1953) , aff'd, 213 F.2d 27, 1954 AMC 1354 (5th Cir. 1954)* (where a dumb barge in complete control of the tug is damaged, the doctrine of *res ipsa loquitur* applies); *Harris v. Sabine Transp. Co., 202 F.2d 537, 1953 AMC 489 (5th Cir. 1953)* ; *Geo. W. Rogers Constr. Corp. v. United States, 118 F. Supp. 927 (S.D.N.Y. 1954)* (collision held due to concurrence of unseaworthiness of ship and errors of pilot, supplied by the owners under New York Harbor Pilotage Clause, the shipowner being liable for both); United States v. The Inland Chief, 1954 AMC 191 (D. Or. 1954) (tug held solely at fault for towing dredge with high boom under an overhead cable (aid to navigation and flood control when there was not sufficient clearance)); *Sanders v. Meyerstein, 124 F. Supp. 77, 1956 AMC 203 (E.D.N.C. 1954)* .

Berthing of tow: The Rocona v. Guy F. Atkinson Co., 173 F.2d 661, 1949 AMC 843 (9th Cir. 1949) ; *Rice v. The Marion A. C. Meseck, 148 F.2d 522, 1945 AMC 426 (2d Cir. 1945) , cert. denied, 326 U.S. 740 (1945)* ; *New York Trap Rock Corp. v. The Metropolitan No. 4, 128 F.2d 831, 1942 AMC 903 (2d Cir. 1942)* ; *The Graebner, 66 F. Supp. 456 (E.D.N.Y. 1946)* ; *The Valoil No. 14, 52 F. Supp. 830, 1943 AMC 1158 (E.D.N.Y. 1943)* ; *O'Brien Bros. v. The Pennsylvania R.R., 39 F. Supp. 908, 1941 AMC 883 (E.D.N.Y. 1941)* . *P. Dougherty Co. v. The G.M. McAllister, 159*

F.2d 486, 1947 AMC 288 (2d Cir.) , cert. denied, 331 U.S. 848 (1947) (tug liable for damage resulting from selection of an unsafe berth by tug master); *The Sherlie, 173 F.2d 708, 1949 AMC 838 (2d Cir.) , cert. denied, 338 U.S. 824 (1949)* ; *Horan v. The Grace II, 103 F. Supp. 857, 1952 AMC 1037 (E.D.N.Y. 1952)* (tug which moored barge at a pier end, obstructing the approach to an adjacent slip, held liable, in part, when another tug with car floats, negligently collided with the barge); *Bronx Towing Line v. Continental Ins. Co., 108 F. Supp. 298, 1952 AMC 1532 (E.D.N.Y. 1952) , aff'd, 204 F.2d 512, 1953 AMC 1039 (2d Cir. 1953)* (the liability of a tug for berthing its tow is an unsafe place extends to collision damage suffered by the tow approximately eight hours after the tug left it in the unsafe place); Reichert Towing Line v. Burns Bros. Coal Co., 1953 AMC 1456 (E.D.N.Y. 1953) (tug held liable for collision damage when it moored barge at a coaling plant so as to obstruct passage of other vessels); *Spokane P. & S. Ry. v. The S.S. Fairport, 116 F. Supp. 549, 1953 AMC 1638 (D. Or. 1953)* (when a tug is assisting an alien vessel, the tug is the servant and is required to obey the orders of the master and the tug is not in fault for a collision if it obeys such orders); United States Gypsum Co. v. Curtis Bay Towing Co., 1953 AMC 2071 (E.D. Va. 1953) (where a steamer, being docked by a tug master pursuant to a contract containing te pilotage clause and being assisted by the tug, there is a presumption of negligence on the part of the tug and her master when the steamer collided with a pier, but none against the steamer herself, no negligence on the parts of her and her personnel being shown).

Grounding of tow: Nissho-Iwai Am. Corp. v. M/T Grand Day, 1980 AMC 2882 (S.D.N.Y. 1980) (both the tug and the tow were found negligent where the tug operator undertook the tow knowing that its tug was of insufficient power, where the towing apparatus was negligently arranged, the towing winch did not operate properly, and the vessel was towed on an excessively long line, and where the lack of an operable anchor made the towed vessel unseaworthy; damages were apportioned 60% to the tug and 40% to the tow); *Sears Nav. Co. v. The Coyne Sisters, 106 F. Supp. 511, 1952 AMC 754 (E.D.N.Y. 1952)* ; United States v. The Relief, 1953 AMC 516 (N.D. Cal. 1953) (tug with a dead ship in tow held liable for running tow into a submerged wreck the location of which was known or ascertainable from charts and notices to mariners which should have been aboard the tug but were not). Tug's services in freeing tow from strand due to tug's negligence were part of towing services and not salvage. *Id. New York Trap Rock Corp. v. Colonial Sand & Stone Co., 115 F. Supp. 96, 1953 AMC 789 (E.D.N.Y. 1953) , aff'd, 232 F.2d 635 (2d Cir. 1956)* (a tug held at fault for mooring her tow so that it drifted over and grounded upon a known submerged wreck).

It is the duty of a tow to follow the course of her tug: *P. Dougherty Co. v. United States, 207 F.2d 626, 1953 AMC 1541 (3d Cir. 1953) , rev'g, 97 F. Supp. 287, 1951 AMC 1032 (D. Del. 1951) , cert. denied, 347 U.S. 912 (1954)* .

Where a tow failed to follow her tug and grounded, negligence of the tug in setting a course too close to shore is a "condition" not a "cause" of the grounding. *Id.*

American Trading & Prod. Corp. v. The St. John, 118 F. Supp. 832, 1953 AMC 1898 (E.D.N.Y. 1953) (excessive speed of steamer being assisted held sole cause of breaking and casting off of tug's line, grounding of steamer, and damage to one of the tugs).

Furnishing inadequate tug: The Severance, 152 F.2d 916, 1946 AMC 128 (4th Cir. 1945) , cert. denied, 328 U.S. 853 (1946) ; *The Primavera, 98 F. Supp. 661, 1951 AMC 1637 (S.D.N.Y. 1951)* .

Moving tow under adverse weather conditions: R.T.C. No. 20 Corp. v. Tug Bronx, 1981 AMC 2465 (S.D.N.Y. 1981) (an accident involving a tug and a steel barge in tow alongside was held to be caused by negligence where the heavy weather encountered by the vessels was neither unusual nor unforeseeable and should have been anticipated by the tug's captain; in a separate incident, the tug captain was found to have negligently caused the grounding of a steel barge that was being push-towed in an icy channel, when it knowingly proceeded without any navigation aids); *Aiple Towing Co. v. M/V Lynne E. Quinn, 534 F. Supp. 409, 1982 AMC 1869 (E.D. La. 1982)* (a tug was wholly at fault for the sinking of the barge it had in tow where the tug's crew failed to secure the inland barge's manhole covers before open-sea towage began, failed to keep the barge under close inspection during the tow, failed to seek safe waters despite unfavorable weather forecasts, and failed to have hoses for its pumps on board); Grauwiller v. Steers Sand & Gravel Corp., 1941

AMC 1490 (E.D.N.Y. 1941) (in part); *Gould v. Pennsylvania R.R., 30 F. Supp. 208, 1940 AMC 137 (E.D.N.Y. 1939)* ; *The Brilliant, 64 F. Supp. 612, 1945 AMC 1282 (E.D. Pa. 1945)* . (failure of a tug to stand by tow case adrift in a storm held not negligence); *Sidney Blumenthal & Co. v. Atlantic Coast Line R.R., 139 F.2d 288, 1943 AMC 1341 (2d Cir. 1943) , cert. denied, 321 U.S. 795 (1944)* (a towing company is charged with notice of all information available to those in its employ on shore and its liability is not limited by what the master knows in reference to weather conditions). *Cf. The Cleveland, 52 F. Supp. 937, 1944 AMC 139 (E.D.N.Y. 1943)* .

McGeeney v. East Kingston Brick Co., 1952 AMC 318 (S.D.N.Y. 1951) (tug and helper tug held negligent in failing to control barges in tow in strong wind and tide); *National Distillers Prod. Corp. v. Boston Tow Boat Co., 134 F. Supp. 194, 1955 AMC 604 (D. Mass. 1955)* (tug captain was negligent in undocking a Liberty-ship by failing to consider the result of a sudden gust of wind which should have been anticipated).

Tug boats only furnishing power and moving dead steamer which had master and crew aboard held not responsible for damage due to breaking away of steamer in sudden squawl where steamer's hawser was defective and crew unready to drop anchor. A tug captain on board the steamer as harbor pilot was the servant of the ship and not of the tugs: *In re Barrett, 108 F. Supp. 710, 1953 AMC 159 (S.D.N.Y. 1952) , modified on other grounds, 209 F.2d 487 (2d Cir. 1954)* .

Bisso v. Inland Waterways Corp., 114 F. Supp. 713, 1953 AMC 1664 (E.D. La. 1953) , aff'd, 211 F.2d 401 (5th Cir. 1954) , rev'd on other grounds, 349 U.S. 85 (1955) (tug held negligent in attempting to take tow of four barges through the spine of barges against a seven-mile current and "boils" prevailing at that place, and in failing to break up the tow into groups of two for such passage).

Tug assisting ships to an from docks: A steamship being assisted by a tug has the duty not to subject the tug to an extraordinary or unexpected hazard without giving timely warning but the tug assumes the risks incident to taking up a position alongside the ship near the ship's propeller: The Tuscania, 1940 AMC 32 (E.D.N.Y. 1940) . *Cf. Charles Kurz & Co. v. United States, 1946 AMC 1303 (S.D.N.Y. 1946)* , wherein a tug was held solely at fault for striking rudder of ship in assisting steamer to dock. The tug is liable for damage to the ship being assisted caused by the fault of the tug. *Great Lakes Towing Co. v. American S.S. Co., 165 F.2d 368, 1948 AMC 249 (6th Cir.) , cert. denied, 333 U.S. 881 (1948)* . The tug assumes the ordinary risks of the venture and cannot recover for damage not caused by the fault of the steamer. *Henjes Marine, Inc. v. United States, 79 F. Supp. 945, 1948 AMC 1254 (E.D.N.Y. 1948) , aff'd, 176 F.2d 310, 1949 AMC 1504 (2d Cir. 1949)* .

Under a standard pilotage clause a steamship under the control of a tug master as docking pilot is liable on in rem principles for damage to a tug assisting in the operation caused by the fault of the vessel notwithstanding ownership of the tug by the employer of the tug master: Mathiasen Shipping Co. v. United States, 1949 AMC 1831 (S.D.N.Y. 1949) ; *Dalzell v. The New York, 77 F. Supp. 793, 1948 AMC 1230 (E.D.N.Y. 1948)* . The tugboat company is not liable for the act of its captain while on board the assisted steamer as pilot. New Jersey Bell Tel. Co. v. Standard Oil Co., 1950 AMC 136 (S.D.N.Y.) .

A tug operator who contracted to berth a steamer with the assistance of tugs, the steamer having no master aboard and being navigated by the captain of one of the tugs held solely liable when the steamer's hawser broke and she struck and damaged some lighters. The tug operator could not escape liability to the owners of the lighters because of his contract with the shipowner containing the pilotage indemnity agreement. Effect of that agreement as between the tug operator and shipowner not decided: *Logue Stevedoring Corp. v. The Dalzellance, 98 F. Supp. 276, 1952 AMC 653 (S.D.N.Y. 1951) , rev'd, 198 F.2d 369, 1952 AMC 1297 (2d Cir. 1952)* , holding the navigational faults of the master, acting as pilot, are imputable to the large vessel and do not impose liability on any of the assisting tugs.

P. Dougherty Co. v. United States, 104 F. Supp. 711, 1952 AMC 537 (S.D.N.Y. 1951) (owner of tugs towing dead ship under contract which anchored the ship in an exposed place, leaving a party of inexperienced men aboard, held solely at fault when the ship dragged its anchor and collided with some barges); Meseck Towing Lines v. United States,

1952 AMC 321 (S.D.N.Y. 1951) , *aff'd, 197 F.2d 250, 1952 AMC 1106 (2d Cir. 1952)* (in a suit for injury to a tug due to negligence of the steamer being assisted, the burden of proof is with the tug); *Patterson Oil Terminals, Inc. v. The Port Covington, 109 F. Supp. 953, 1952 AMC 1745 (E.D. Pa. 1952) , aff'd, 205 F.2d 694, 1953 AMC 1371 (3d Cir. 1953)* (a pilotage clause in a towing contract does not affect the tort liability to others of either party to the contract, whatever its effect may be as between the said parties;) *Atlantic Mut. Ins. Co. v. The Bulkcrude, 107 F. Supp. 771, 1952 AMC 1400 (S.D. Tex. 1952)* (a pilotage clause in a towing contract was held not to afford indemnity to a tug which was damaged by her own negligence).

Duty of tow: Weeks Dredging & Contracting, Inc. v. B. Turecamo Towing Corp., 482 F. Supp. 1053, 1981 AMC 260 (E.D.N.Y. 1980) (a tug breached the duty of prudent and careful navigation owed to its tow where it navigated a scow with a 17-foot draft through a narrow, shoaled channel in New York harbor, failed to give way to a passing flotilla under tow at the narrowest part of the channel, and ran the scow aground; where the tug failed to take bearings or otherwise establish the exact location of the grounding of its tow and where there was conflicting testimony at trial, the tug was unable to prove that the Coast Guard's failure to chart a shoal caused the grounding); Goff v. Apex Towing Co., 1982 AMC 551 (E.D. La. 1980) (the warranty of workmanlike performance implied in a towage contract requires the tug to perform its duties safely and properly; although the barge owes its tow a warranty of seaworthiness, the presence of a small amount of loose grain on the hatch covers of a grain-carrying barge did not render it unseaworthy, even though the barge had been under the tug's control only a few minutes when a tug crew member slipped and fell because the tug was in the best position of the parties to avoid the harm); Varley v. United States, 1981 AMC 1998 (D. Or. 1980) (the Coast Guard was negligent in deciding to tow a fishing vessel over a bar in rough seas instead of awaiting more favorable conditions).

A vessel in charge of tugs must conform her own navigation to the movement of the tugs so as to assist them as far as practicable and exercise proper diligence and efficiency in obeying the orders of the tugs: *The Shenango, 51 F. Supp. 503, 1943 AMC 913 (E.D. Wis. 1943)* ; *United States v. Wood Towing Corp., 44 F. Supp. 645, 1942 AMC 754 (E.D. Va. 1942)* .

A tug, acting as an assisting tug wholly under the direction of the steamer it is assisting and her pilot, is not liable for the damage done in the course of the movement of the steamer being assisted unless it is shown that she is guilty of some independent negligence: *Baker, Carver & Morrell Ship Supplies v. Mathiasen Shipping Co., 140 F.2d 522, 1944 AMC 181 (2d Cir. 1944)* . *Cf.* The John J. Timmins, 1940 AMC 848 (S.D.N.Y. 1940) . A ship has been held not liable for death of members of the crew of a tug caused by the negligence of the tug in assisting the ship after it had stranded, the tug being an independent contractor: *Lamb v. Interstate S.S. Co., 149 F.2d 914, 1945 AMC 987 (6th Cir. 1945)* .

A pilotage clause which makes a tug's master the servant of the owner of a steamer which he boards and of which he directs the navigation while docking will require the steamship owner to indemnify the tug owner for any damage caused by the tug master's negligence, although the steamer and her personnel were not contributorily negligent; the pilotage clause does not extend to the tug's faults in failing, where the tug master boarded the steamer to make fast to the steamer with sufficient and properly placed lines, nor to the tug owner's fault in failing to furnish a sufficient number of tugs for the maneuver in contemplation: United States Gypsum Co. v. Curtis Bay Towing Co., 1953 AMC 2071 (E.D. Va. 1953) .

The steamer's owner is entitled to recover from the tug master, despite the pilotage clause, any damages it was compelled to pay to others, due to the tug master's personal negligence in navigating the steamer or tug. *Id.*

As between a pier owner whose property was damaged and a steamer being assisted by a tug and navigated by the tug master under a contract containing the pilotage clause, the negligence of the tug and her master is not assignable to the steamer and the pier owner may recover its damages from the tug owner, the tug and her master personally, jointly and severally. *Id.*

The indemnification of the tug owner from the steamer owner under the pilotage clause should be reduced to one half of what the tug owner was required to pay for the dock damage, where the tug and owner were also held liable, independently of the negligence of the tug captain as pilot of the steamer. *Id.*

American Trading & Prod. Corp. v. The St. John, 118 F. Supp. 832, 1953 AMC 1898 (E.D.N.Y. 1953) .

Pilotage clause having effect to relieve tug of liability for negligent acts of tug's personnel is valid and is not against public policy. But a provision in the contract that "the movement contemplated will be done at the sole risk of the craft to be towed" does not exonerate the tug from liability for its negligence: *Bisso v. Inland Waterways Corp., 114 F. Supp. 713, 1953 AMC 1664 (E.D. La. 1953)* , *aff'd, 211 F.2d 401 (5th Cir. 1954)* , *rev'd, 349 U.S. 85, 1955 AMC 899 (1955)* on ground of public policy. *Geo. W. Rogers Constr. Corp. v. United States, 118 F. Supp. 927 (S.D.N.Y. 1954)* (pilotage clause held valid, and pilot's negligence held to be ship's not tug's negligence). Parties:

In re Salter Marine, Inc., 1981 AMC 2944 (E.D. Va. 1981) (a stevedore breached its warranty of workmanlike performance to a tug owner where its improper barge loading procedures left the barge with a list and the list caused the barge to capsize and sink in heavy weather; the stevedore was liable to indemnify the tug owner for the full amount paid for the lost cargo, salvage, and repairs to the barge); *Tucker v. Palmer, 45 F. Supp. 12, 1942 AMC 726 (E.D.N.Y. 1942)* (the owner of a damaged barge may join the tug and a third vessel as respondents and have a decree against the vessel shown to be liable); The Anne Marie Tracy, 1944 AMC 854 , *rev'd on the merits, 147 F.2d 393, 1945 AMC 138 (2d Cir. 1945)* (the tug may implead and establish the liability of the owner of another vessel claimed to be liable for damage to a barge); *The Russel No. 3, 68 F. Supp. 202, 1946 AMC 542 (E.D.N.Y. 1946)* (damages may be divided as between the tug and another vessel through whose combined fault a collision occurs with resulting damages to the tow); *New York Trap Rock Corp. v. Christie Scow Corp., 165 F.2d 314, 1948 AMC 231 (2d Cir. 1948)* (the tug and its operator are primarily responsible for damage caused by leaving the barge at an exposed place. The charterer of the barge is secondarily liable for damage occurring during the term by negligence of the party to whom the barge was entrusted; and a party who contracted for the use of the barge without chartering is liable only for negligence.); *The Maui, 70 F. Supp. 772, 1947 AMC 487 (E.D.N.Y. 1947)* (tug, and not charterer of scow, liable for damage caused by tug in shifting scow).

National Distillers Prods. Corp. v. Boston Tow Boat Co., 134 F. Supp. 194, 1955 AMC 1925 (D. Mass. 1955) (as to towing, the undocking pilot is under the direct observation of and subject to the ultimate control of the ship's master).

Defenses: The tug undertakes only for that degree of skill, care and prudence necessary for the management of a seaworthy tow and is not liable for damage caused by unseaworthiness of the tow: *Finlay v. Smith, 65 F. Supp. 801, 1946 AMC 1035 (E.D.N.Y. 1946)* ; *McClain Line v. Reading Co., 53 F. Supp. 736, 1944 AMC 157 (E.D.N.Y. 1944)* . *But contra* where the unseaworthiness of the tow was not the cause of the loss, as when a tug negligently continued to tow a leaking scow after it had developed a severe list: *Southern Lighterage Co. v. The J. Alvah Clark, 103 F. Supp. 580, 1952 AMC 1007 (E.D. Va. 1952)* , *aff'd sub nom. Curtis Bay Towing Co. v. Southern Lighterage Corp., 200 F.2d 33, 1952 AMC 2034 (4th Cir. 1952)* .

Tucker v. The Reading Co., 127 F.2d 527, 1942 AMC 621 (2d Cir. 1942) (as to the shifting of lines and other "internal economy" of a barge, the tug may assume that the bargee is competent and leave her care to him except in case of foul weather, changes of weather, or other events which might endanger the barge beyond the resources of the bargee's limited skill). *Cf. Finlay v. Smith, 65 F. Supp. 801, 1946 AMC 1035 (E.D.N.Y. 1946)* ; The Patience, 1944 AMC 871 (E.D.N.Y. 1944) .

Sargent Barge Line v. Wyomissing, 127 F.2d 623, 1942 AMC 623 (2d Cir. 1942) (ice in East River at New York in January which does not prevent navigation is not an act of God or inevitable accident excusing a tug from liability for damage to a barge in tow caused by negligent navigation after ice formed between the bow of the tug and the bow of the barge).

(n8)Footnote 8. *Bisso v. Inland Waterways Corp., 349 U.S. 85, 1955 AMC 899 (1955) . See also Twenty Grand Offshore, Inc. v. West India Carriers, 492 F.2d 679, 1974 AMC 2254 (5th Cir. 1974) , cert. denied, 419 U.S. 836 (1974)* (the court upheld provisions of a towage contract requiring the owners of a tug and tow to fully insure their respective vessels and to obtain in each of the policies a waiver of subrogation and designation of the other party as an additional insured); *In re* Salter Marine, Inc., 1981 AMC 2944 (E.D. Va. 1981) (the assignee of a towage contract could not recover indemnity from the assignor for failure to enforce the shipper's promise to obtain insurance because the assignor had never made any such promise to the assignee; the assignor was not estopped from denying the assignee's right to indemnity because it had made no representations regarding insurance); *In re* Gwynedd Corp., 1979 AMC 531 (S.D.N.Y. 1978) (a tug is not exempt from liability for the negligent loss of its tow by applying the COGSA $500 package limitation incorporated in the towage contract).

Boston Metals Co. v. S.S. Winding Gulf, 349 U.S. 122, 1955 AMC 927 (1955) , rev'g, 209 F.2d 410, 1954 AMC 183 (4th Cir. 1954) (a contract is invalid if its purpose is to shift responsibility for a towboat's negligence to its tow); *United States v. Nielson, 349 U.S. 129, 1955 AMC 935 (1955) , rev'g, 209 F.2d 958, 1954 AMC 1511 (2d Cir. 1954)* (the tug company is relieved from liability for damage due to negligent pilotage where the piloted ship makes an agreement releasing the tug company but the tug company cannot collect damages for injury to its own tug brought about by the tug's negligent pilotage).

But see The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 1972 AMC 1407 (1972) (upholding foreign forum selection clause in towage contract).

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 212

§ 212 Wharves and Bridges.

Admiralty has jurisdiction of suits against the owners of bridges, docks and wharves for damage caused vessels by the improper and unsafe condition of such structures. n1 A wharfinger is one who keeps a wharf for the purpose of receiving goods for hire. n2 He does not guarantee the safety of vessels coming to his wharf but is bound to exercise reasonable diligence to ascertain the condition of the berths, n3 and if there is any dangerous obstruction, to remove it or give notice of its existence to vessels about to berth at the wharf. He may be liable for injuries to persons using the wharf on the familiar principles applicable to the liability of any property owner or occupant for injuries occurring on his property. n4 The master, however, is bound to use ordinary care and must not heedlessly run into danger. n5 A bridge owner's or wharfinger's suit against a vessel for damage occasioned by the vessel to a bridge or wharf is within the jurisdiction of admiralty under the Admiralty Extension Act. n6

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCollisionsLiabilityGeneral OverviewAdmiralty LawCollisionsPreventionDuties of CareAdmiralty LawMarinasObligations & RightsAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. *Smith v. Burnett, 173 U.S. 430 (1899)* ; *United States v. Mowbray's Floating Equip. Exch., Inc., 601 F.2d 645, 1979 AMC 1530 (2d Cir. 1979)* ("To establish a wharfinger's liability for the sinking of a vessel at the wharf the vessel must make out a case of negligence against the wharfinger"; since the wharfinger at no time exercised exclusive possession of the lighter berthed at its wharf, no inference of negligence against the wharfinger, as bailee, can arise); *Schwerman Trucking Co. v. Gartland S.S. Co., 496 F.2d 466, 1974 AMC 2316 (7th Cir. 1974)* ; Cameco v. Sullivan Security, 1974 AMC 1853 (S.D.N.Y. 1973) , *aff'd, 1974 AMC 2568 (2d Cir. 1974)* ; Taylor v. M/V Tiburon, 1975 AMC 1229 (E.D. La. 1974) ("It has been consistently held that the right to navigate is paramount to the right to maintain bridges over waterbodies, and for this reason the courts have considered bridges as obstructions to navigation ... Hence, owners of bridges are burdened with the responsibility of providing competent personnel on such bridges to insure proper operation. Further, as bridgetenders, these individuals bear the burden of coordinating water traffic and communicating with approaching vessels in an attempt to avoid accidents or collisions."); *United States v.*

Norfolk-Berkley Bridge Corp., 29 F.2d 115, 1928 AMC 1636 (E.D. Va. 1928) .

M.P. Howlett, Inc. v. The Catherine Carroll, 56 F. Supp. 466, 1944 AMC 922 (E.D.N.Y. 1944) (bridge owner liable for sinking of barge which struck exposed ends of a sheathing on fender piles protecting approach to drawbridge); *Oregon-Washington Bridge Co. v. The Lew Russel, Sr., 196 F.2d 707, 1952 AMC 888 (9th Cir. 1952)* (bridge operator held at fault for collision of ship with bridge when electric signal devices failed to work when draw span did not open; the regulations of the War Department for operation of bridges do not purport to set ultimate standards of care in civil actions).

Liability for negligence in operation of drawbridges: *Pennsylvania R.R. v. The Buchanan Boys, 155 F.2d 585, 1946 AMC 1065 (2d Cir. 1946)* ; *Bouker Contracting Co. v. City of N.Y., 121 F.2d 13, 1941 AMC 1217 (2d Cir. 1941)* ; *The S.S. Bellatrix (United States v. Martin), 114 F.2d 1004, 1941 AMC 149 (3d Cir. 1940)* ; *City of Cleveland v. McIver, 109 F.2d 69, 1940 AMC 1238 (6th Cir. 1940)* ; Linde-Griffiths Constr. Co. v. The Authentic, 1952 AMC 932 (S.D.N.Y. 1952) ; Gartland S.S. Co. v. City of Chicago, 1946 AMC 966 (N.D. Ill. 1946) ; The Taylor, 1943 AMC 641 (E.D.N.Y. 1943) (summary); The P.R.R. No. 272, 1943 AMC 782 (S.D.N.Y. 1943) ; United States v. City of Chicago, 1941 AMC 1409 (N.D. Ill. 1941) ; *M & M Dredging & Constr. Co. v. Miami Bridge Co., 39 F. Supp. 311, 1941 AMC 1661 (S.D. Fla. 1941)* ; Mystic S.S. Co. v. City of Boston, 1940 AMC 419 (D. Mass. 1940) . Liability of the United States for damage to bridges: *Merritt-Chapman & Scott Corp. v. United States, 174 F.2d 205, 1949 AMC 1005 (2d Cir. 1949)* . *See also United States v. South Carolina State Highway Dept., 171 F.2d 893, 1949 AMC 350 (4th Cir. 1948)* ; City & County of San Francisco v. United States, 1948 AMC 2055 (N.D. Cal. 1948) ; *State Road Dept. v. United States, 85 F. Supp. 489, 1949 AMC 1638 (N.D. Fla. 1949)* , *aff'd, 189 F.2d 591 (5th Cir. 1951)* , *cert. denied, 342 U.S. 903, 72 S. Ct. 291, 96 L. Ed. 676 (1952)* .

Omaha Packing Co. v. Pittsburgh F.W. & C. Ry., 120 F.2d 594 (7th Cir.) , *cert. denied, 314 U.S. 645 (1941)* (the Federal Bridge Act (*33 U.S.C. § 494*) supersedes provisions of city ordinances relating to the operation of drawbridges).

Fix v. International Bridge Co., 117 F.2d 137 (2d Cir. 1941) (under a statute requiring an international bridge company to display lights from sunset to sunrise "during the season of navigation" and maintain an attending tug to assist vessels "at all times" the obligation to maintain the tug was limited to the season of navigation).

A bridge with which a steamer collided was held an unreasonable obstruction to navigation although it was a lawful structure when built. Its owner has a duty to maintain it so that it would not become an unreasonable obstruction by reason of changed conditions and increased demands of commerce and navigation. The declaration of the Secretary of War that such bridge was an unreasonable obstruction to navigation is binding and conclusive on the bridge owner: *Seaboard Air Line R.R. v. The Pan Maryland, 105 F. Supp. 958, 1952 AMC 1064 (S.D. Ga.)* , *rev'd, 199 F.2d 761, 1952 AMC 1934 (5th Cir. 1952)* , *cert. denied, 345 U.S. 909 (1953)* , holding that the bridge, although an obstruction to navigation had been only a passive factor in the institution and the proximate cause of the collision had been the fault of the steamer.

United States v. The Yacona, 112 F. Supp. 863, 1953 AMC 1052 (E.D. Pa. 1953) (a drawbridge operator held without fault in signalling a small powered vessel proceeding toward the draw with the tide to stop while a large steamer came through from the opposite direction). Vessel signalled to stop held solely at fault for collision with a pile dolphin.

Steamtug Aladdin, Inc. v. City of Boston, 163 F. Supp. 499, 1958 AMC 2441 (D. Mass. 1958) (if the bridge is owned by the United States, a libel in admiralty does not lie against the U.S. under the Suits in Admiralty Act; the sole remedy may be a civil action under the Federal Tort Claims Act).

(n2)Footnote 2. *M. & J. Tracy, Inc. v. Marks, Lissberger & Son, 283 F. 100 (2d Cir. 1922)* .

When liability attaches: Berwind-White Coal Mining Co. v. City of N.Y., 135 F.2d 443, 1943 AMC 682 (2d Cir. 1943) (where the owner of a pier permitted vessels to use for mooring purposes the side of a trestle built by a railroad company ad- joining the pier and collected wharfage therefor notwithstanding that a sign on the pier read "No Berthing Allowed At This Pier," and after the removal of the trestle the owner took no action to warn vessels that the waters adjacent were not still safe and available for berthing, the owner was a "general wharfinger"). *See O'Brien Bros. v. Maloney Materials Corp., 136 F.2d 902, 1943 AMC 816 (2d Cir. 1943)* (evidence insufficient to establish liability of city as a wharfinger for damage suffered by a barge at a bulkhead). *Seaboard Sand & Gravel Corp. v. Youghiogheny & Ohio Coal Co., 65 F. Supp. 489, 1946 AMC 886 (E.D.N.Y. 1946)* (the consignee of cargo on a scow is liable for damage to the scow caused by improper mooring at the consignee's dock).

Centeno v. Garner, 1952 AMC 1894 (S.D.N.Y. 1952) (summary) (Operator of a coal loading wharf held liable for damage to barge where the coal was loaded to it in a manner causing the hull to twist and the barge to sink. The bargee had no duty at the loading berth other than to see that the barge was not overloaded.).

Swenson v. The Argonaut, 204 F.2d 636, 1953 AMC 1585 (3d Cir. 1953) (where steamship moored at pier broke adrift during heavy thunderstorm with high wind and caused damage to pier and other vessels moored thereat, and such of the docking facilities as had been used by the steamship were soundly constructed and adequately maintained, the pier owner was held without fault for the damage to the steamship and other vessels and was allowed recovery of the damages to the pier caused by the steamship); *New York Trap Rock Corp. v. Colonial Sand & Stone Co., 115 F. Supp. 96, 1953 AMC 789 (E.D.N.Y. 1953) , aff'd, 232 F.2d 635, 1956 AMC 1050 (2d Cir. 1956)* (wharf owner not liable when tug moored barge negligently so that it grounded on known submerged wreck near the berth; there being other safe berths available).

Extent of duty: Waldie v. Steers Sand & Gravel Corp., 151 F.2d 129, 1945 AMC 872 (2d Cir. 1945) (the duty of a wharfinger is to exercise reasonable care as determined in each situation by balancing the risks imposed upon others by not taking precautions against the cost and trouble of the precautions); *Berwind White Coal Mining Co. v. City of N.Y., 135 F.2d 443, 1943 AMC 682 (2d Cir. 1943)* (the wharfinger must use reasonable diligence in providing a safe berth which includes the taking of reasonable precautions to remove underwater obstructions that might otherwise endanger the vessels moored to his pier). *Cf. New York Trap Rock Corp. v. City of N.Y., 117 F.2d 259 (2d Cir. 1941)* ; Kelly v. Pennsylvania R.R., 1942 AMC 868 (E.D.N.Y. 1942) (summary); *Hams v. Luckenbach Terminals, Inc., 38 F. Supp. 485, 1941 AMC 1412 (D.N.J. 1941)* ; *Manhattan Lighterage Corp. v. Moore-McCormack Line, 45 F. Supp. 271, 1942 AMC 568 (E.D.N.Y. 1940)* ; A.C. Dutton Lumber Corp. v. Suffolk Materials Co., 1940 AMC 1065 (E.D.N.Y. 1940) ; F.E. Grauwiller Transp. Co. v. Colonial Sand & Stone Co., 1944 AMC 1500 (E.D.N.Y. 1944) (summary).

Petrie Transp. Co. v. W.E. Hedger Transp. Corp., 1941 AMC 806 (E.D.N.Y. 1941) (summary) (the owner of a wharf is not liable for damage to a scow brought in to the wharf at a time other than that designated by the owner when the berth would have been safe at the time designated); *Baldwin v. New York Cent. R.R., 87 F. Supp. 562, 1950 AMC 314 (E.D.N.Y. 1949)* (as respects the duty of the lessee of a pier, a vessel moored at the pier without the authority or permission of the lessee is a trespasser or mere licensee); *Tracy Towing Line v. City of Jersey City, 105 F. Supp. 910, 1952 AMC 2017 (D.N.J. 1952)* (the lessee of a pier who changes the berth of a tug moored thereat held at fault for not refastening her lines properly); The Home Ins. Co. v. Philadelphia Piers, 1951 AMC 1738 (E.D. Pa. 1951) (liability for cargo damage from rain).

Segrave Transp. Co. v. Eskey Coal & Fuel Co., 205 F.2d 257, 1953 AMC 1254 (2d Cir. 1953) (wharf owner and tenant have no responsibility to barges which are moored in adjacent slip so that they squeeze together when the tide falls); Reichert Towing Line, Inc. v. Burris Bros. Coal Co., 1953 AMC 1456 (E.D.N.Y. 1953) (coal plant operator held not liable for collision damages when a tug left a barge at the plant when it was not in operation and moored the barge so that it obstructed the passage of other vessels); *New York Trap Rock Corp. v. City of N.Y., 116 F. Supp. 814, 1953 AMC 1653 (E.D.N.Y. 1953)* (wharfinger held liable for damages to scow when it placed her in a berth not deep enough for her to afloat at low tide); *Martin Oil Serv. v. John H. Hay Co., 219 F.2d 237, 1955 AMC 552 (5th Cir. 1955) , aff'g,*

21 F. Supp. 704, 1954 AMC 1389 (E.D. La. 1954) (where a tug removed a barge from a nest of barges at a wharf, failing to re-secure the rest and the wharfinger after notice also failed to re-secure the barges, both were liable for damages when a barge broke adrift).

As to sinking of a yacht tied up at dock for winter and the duty of care of boatyard where yacht was laid up, *see Wentz v. Hartge, 132 F. Supp. 527, 1955 AMC 1830 (D. Md. 1955)* .

Drydocks: Where a barge was raised on a floating drydock in winter and was damaged from block of ice being wedged under the bottom, the barge owner had the burden of proving that the dock operator had been negligent. The evidence being held in balance whether the ice had adhered to the keelsons of the barge or had negligently been allowed to be on the floor of the dock, the libelant was denied recovery: *Exner Sand & Gravel Corp. v. Swenson, 110 F. Supp. 531, 1953 AMC 778 (E.D.N.Y. 1953) , aff'd, 212 F.2d 205 (2d Cir. 1954)* .

Section cited: *Medomsley Steam Shipping Co. v. Elizabeth River Terminals, Inc., 214 F. Supp. 32, 1962 AMC 2337 (E.D. Va. 1962) , appeal dismissed, 317 F.2d 741, 1963 AMC 1444 (4th Cir. 1963) , rev'd on other grounds, 354 F.2d 476 (4th Cir. 1966)* (the court failed to extend the doctrine of implied warranty to include the obligations of a wharfinger).

A contract to provide wharfage is a maritime contract: *Ex parte Easton, 95 U.S. 68 (1877)* ; *Bird v. S.S. Fortuna, 232 F. Supp. 690, 1964 AMC 2394 (D. Mass. 1964)* .

(n3)Footnote 3. *Kenosha Auto Transp. Corp. v. Algoma Cent. Ry., 577 F. Supp. 542, 1984 AMC 2899 (E.D. Wis. 1983)* (if the owner of a pier and the operator of a pier are both in a position to determine the suitability of the pier to receive bulk cargo and to guard against collapse, then both have a duty to do so; if neither of the parties conducts a proper investigation of the structural strength of the pier, and the pier collapses, then both will be guilty of negligence, and liable for any damage which occurs, whether to the pier or the cargo; liability will be allocated in proportion to the relative fault of each tortfeasor).

(n4)Footnote 4. *Kenosha Auto Transp. Corp. v. Algoma Cent. Ry., 577 F. Supp. 542, 1984 AMC 2899 (E.D. Wis. 1983)* (if the lessor repudiates the lease, he will not be entitled to enforce indemnity provision which is typically included in lease agreements); *Rogers v. Yachts Am., Inc., 1983 AMC 417 (D. Md. 1982)* (although the bailor of a pleasure boat made out a prima facie case of negligence by proving that he delivered the boat to the marina in good condition and that it was returned damaged, the marina owners successfully proved the exercise of due care by establishing that there was no contractual obligation to inspect the boat apart from a periodic check for external damage and that the plaintiff failed to obey the "unwritten rule" among boat owners that it is the boat owner's duty to periodically visit his vessel for maintenance purposes); Marine Office of Am. Corp. v. Marine Corp., 1981 AMC 768 (D. Mass. 1980) (a marina was liable for the sinking of a yacht in its custody, where its negligent failure to protect the open cockpit from heavy rain was proximate cause of the sinking; no recovery was allowed for the replacement of parts specifically designed to be immersed in or exposed to seawater).

Paleockrasas v. Garcia, 183 F.2d 244, 1950 AMC 1301 (2d Cir. 1950) (lessees of pier liable for injuries to steward when baggage conveyor he was using instead of stairs reversed its direction); *Leonard v. Prince Line, 157 F.2d 987, 1946 AMC 1631 (2d Cir. 1946) . Cf. Cornell v. Hearst Sunical Land & Packing Corp., 55 Cal. App. 2d 708, 131 P.2d 404, 1943 AMC 580 (1942)* (denying recovery for the death of a fisherman who was killed when he fell from approach to wharf on the ground that his death was caused by his own negligence); *Cia Exportadora E Importadora Mexicana, S.A. v. Marra Bros., 59 F. Supp. 989, 1945 AMC 182 (S.D.N.Y. 1944)* (the lessee of a pier has been held liable at law for damage to the pier caused by overloading it with cargo resulting in its collapse); *Slattery v. Marra Bros., 186 F.2d 134, 1951 AMC 183 (2d Cir.) , cert. denied, 341 U.S. 915 (1951)* (pier tenant liable to stevedore as business guest or invitee).

(n5)Footnote 5. Azcon Corp. v. The Tug North Dakota, 1982 AMC 1448 (D. Minn. 1981) (owner of a dock who failed to maintain the dock in a condition sufficient to withstand normal currents, swells and maritime activity in the slip was found to be 75% negligent and defendant, whose tug failed to maintain a safe distance from the dock or to prevent her engines from washing out the fill supporting plaintiff's dock, was found 25% negligent for the damage to plaintiff's dock); *In re Flowers, 526 F.2d 242 (8th Cir. 1975)* ("Where the use of a docking facility is for the mutual benefit of the dock owner as well as the owner of the vessel making use of the dock, the duty to exercise reasonable care is imposed on both parties."); *Bunge Corp. v. M/V Furness Bridge, 558 F.2d 790, 1977 AMC 2109 (5th Cir. 1977) , cert. denied, 435 U.S. 924 (1978)* (while a wharfinger must exercise reasonable diligence in furnishing a vessel with a safe berth and alerting it to any hidden danger that it could not reasonably be aware of, it was the responsibility of the ship's master, and not the wharfinger, to determine the number of tugs necessary for properly docking a ship whose improper berthing resulted in damage to a wharf); Shell Pipe Line Corp. v. M/T Cys Alliance, 1982 AMC 389 (E.D. La. 1981) (unless the parties contract to the contrary, the vessel and its master, and not the dock owner, are responsible for proper mooring).

The Eastchester, 20 F.2d 357, 1927 AMC 1092 (2d Cir. 1927) (if the wharfinger makes a positive statement as to the safety of his wharf and berth, the vessel owner and master may rely upon it); *The Bleakley No. 76, 54 F.2d 530, 1932 AMC 17 (2d Cir. 1931)* (if the master makes his own examination, as by sounding, he must do so with reasonable care); *Nassau Sand & Gravel Co. v. Red Star Towing & Transp. Co., 62 F.2d 356, 1933 AMC 54 (2d Cir. 1932)* (if no representations are made, the master must examine for himself); The Burns Bros. No. 73, 1938 AMC 382 (E.D.N.Y. 1938) (on all occasions, the owner or master must attend to their vessel or arrange to have it attended to). *See also Smith v. Burnett, 173 U.S. 430 (1899)* ; *Panama R.R. v. Napier Shipping Co., 166 U.S. 280 (1897)* ; *Sawyer v. Oakman, 21 F. Cas. 569 (C.C.S.D.N.Y. 1870)* (No. 12,402); *The Henry Clark v. O'Brien, 65 F. 815 (E.D. Pa. 1895)* ; *Peterson v. Great Neck Dock Co., 75 F. 683 (E.D.N.Y. 1896)* ; *Daly v. Quinlan, 131 F. 394 (E.D.N.Y. 1904)* .

State court cases: Garfield & Proctor Coal Co. v. Rockland-Rockport Lime Co., 184 Mass. 60, 67 N.E. 863 (1903) ; *Nickerson v. Tirrell, 127 Mass. 236 (1879)* ; *Carelton v. Franconia Iron & Steel Co., 99 Mass. 216 (1868)* ; *Barber v. Abendroth, 102 N.Y. 406, 7 N.E. 417 (1886)* .

See Bouker Contracting Co. v. Williamsburg Power Plant Corp., 130 F.2d 96, 1942 AMC 1159 (2d Cir. 1942) (dividing damages be tween the wharfinger and bargee for sinking of scow at an unsafe berth, as against the contention that the owner assumed the risk of such damage under a provision of the contract that the owner assumed all responsibility and risk incident to the work including risk arising from the negligence of any person engaged in such work). *Roah Hook Brick Co. v. Erie R.R., 179 F.2d 601, 1950 AMC 502 (2d Cir. 1950)* (the owner of the dock and the charterer of a barge which is damaged as a result of having been moored at an unsafe berth may be primarily and secondarily liable, respectively); Cunningham v. City of N.Y., 1950 AMC 1384 (E.D.N.Y. 1950) (tenant of pier primarily and owner secondarily liable for damage to vessel caused by broken pile); Tucker v. Edward A. Thompson, Inc., 1941 AMC 808 (E.D.N.Y. 1941) (the tug bringing the barge into the berth has no obligation to sweep the bottom to determine whether there are lumps on the bottom although the master knows that the water is insufficient to float the barge at low tide); O'Donnell Transp. Co. v. City of N.Y., 1952 AMC 1040 (E.D.N.Y. 1952) (wharf owner held liable when its employees shifted a barge alongside another causing it to be damaged by an ice cake between them).

Oil Transfer Corp. v. Spentonbush Fuel Transp. Serv., 1940 AMC 820 (S.D.N.Y. 1940) (The wharfinger has the duty to warn a barge captain that a berth is unsafe for such a loaded barge at normal low tide by reason of the slope of the bottom but where the damage is caused by negligence in loading the barge under the control and direction of a responsible barge captain employed by the owner the owner is solely liable for the resulting damage. If no representations are made by the wharfinger it is the duty of the master of the vessel to ascertain whether the berth is safe.); *City Compress & Warehouse Co. v. United States (The Southport), 190 F.2d 699, 1951 AMC 1511 (4th Cir. 1951)* (wharfinger liable for damage caused when deadman to which ship was moored pulled out).

Central Barge Co. v. City of Minneapolis, 123 F. Supp. 275, 1954 AMC 2170 (D. Minn. 1954) (Where a barge, tied up at a city wharf, broke away due to the huge amount of ice converging on her, the city was held liable for negligence

in mooring, failure to use ordinary care and proper diligence in furnishing a safe berth or to ascertain dangerous conditions and give notice of their existence.).

Daly v. Reading Co., 220 F.2d 534, 1955 AMC 709 (2d Cir. 1955) (railroad's duty, the same as that of a wharfinger, is to furnish a fair berth to a loaded barge and on receiving notice that berth was foul, the railroad had duty to make the berth fair or remove the barge).

United States v. Standard Oil Co., 217 F.2d 539, 1955 AMC 824 (6th Cir. 1954) (where an oil tanker while discharging gasoline at a dock was destroyed by fire due to lighting igniting gasoline in the water caused by a hose connection which parted in a sudden squall, it was the duty of those in charge of the tanker to keep her secure and to know of the possibility of squalls; there was no negligence on part of the dock owner).

New York Trap Rock Corp. v. Colonial Sand & Stone Co., 115 F. Supp. 96, 1953 AMC 789 (E.D.N.Y. 1953) , *aff'd, 232 F.2d 635, 1956 AMC 1050 (2d Cir. 1956)* (a wharfinger was not liable for damage to a moored barge due to a submerged wreck nearby).

(n6)Footnote 6. *See* § 173, *supra.*

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 213

§ 213 Wharfage.

During the furnishing, supplying, loading, unloading and repairing of a vessel, it is necessary that she should lie at a wharf, dock or pier to be most conveniently and safely accessible. The pecuniary charge to which vessels are liable for such use of a dock or wharf is called wharfage or dockage n1 and is a subject of admiralty jurisdiction n2 even in the case of "domestic" vessels. n3 A lien has been allowed even as against "domestic" vessels n4 unless the wharfage was furnished upon the credit of the owner or charterer and not of the vessel. n5 But no lien arises when a vessel has been withdrawn from navigation and is merely stored at a wharf. n6 The master and owner of the ship and the ship herself may be proceeded against in admiralty to enforce the payment of the wharfage, whether the vessel lie alongside the wharf or at a distance and use of the wharf only temporarily for boats or cargo. n7 Of the same nature is the charge for storing the sails or other furniture in a storehouse on shore and such storage is also the subject of a maritime action. n8

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMarinasRegulationAdmiralty LawMaritime LiensNatureJurisdictionAdmiralty LawMaritime LiensPriority & SourcesContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. *South Carolina State Ports Auth. v. M/V Tyson Lykes, 837 F. Supp. 1357, 1994 AMC 1294 (D.S.C. 1993)* ; Pouch Terminal, Inc. v. M/V Atra, 1982 AMC 2268 (S.D.N.Y. 1982) (in determining the amount of wharfage fees to be allowed as administrative expenses in the judicial sale of a vessel, the court was not bound by the wharfage contract between the vessel owner and the terminal; the court established a reasonable fee based upon the rate that the terminal had established prior to the arrival of the arrested vessel); *Manhattan Lighterage Corp. v. Moore-McCormack Line, 45 F. Supp. 271, 1942 AMC 568 (E.D.N.Y. 1940)* ; *McNeely & Price Co. v. Philadelphia Piers, Inc., 329 Pa. 113, 196 A. 846, 1939 AMC 1435 (1938)* ; *Marine Lighterage Corp. v. Luckenbach S.S. Co., 1931 AMC 378 (N.Y. Sup. Ct. 1931)* .

The Allan Wilde, 264 F. 291 (2d Cir. 1920) (Greater New York Charter § 859 (since amended), creating a scale of wharfage charges, held not to preclude an agreement for a higher rate).

Where the mining of a cargo destined for a certain ship was delayed by the Annual Miners' Holiday and the ship arrived and tendered ready to load, the court held that lay time ran from the day and hour of tender and as the Miners' Holiday concluded the day before the tender, the pleas of "strike" or the "Sundays" and "Holidays" clauses were not available to the charterer to excuse the delay. Shipping Enters. Corp. v. M.V. Rotterdamsche Kolen Centrale, 1955 AMC 871 (Arb. N.Y. 1953) .

(n2)Footnote 2. *Ex parte Easton, 95 U.S. (5 Otto) 68 (1877)* ; *Inbesa America, Inc. v. M/V Anglia, 134 F.3d 1035, 1998 AMC 1545 (11th Cir. 1998)* (quoting text); *McNeely & Price Co. v. Philadelphia Piers, Inc., 329 Pa. 113, 196 A. 846, 1939 AMC 1435 (1938)* (the power to regulate wharfage, formerly always local, has now been transferred to the Federal Maritime Commission).

(n3)Footnote 3. *The C. Vanderbilt, 86 F. 785 (E.D.N.Y. 1898) , aff'd sub nom. The America, 93 F. 986 (2d Cir. 1899)* ; *Braisted v. Denton, 115 F. 428 (E.D.N.Y. 1902)* .

(n4)Footnote 4. *The Scow No. 15, 92 F. 1008 (2d Cir. 1899)* ; *The Allianca, 56 F. 609, 613 (S.D.N.Y. 1893)* ; *Woodruff v. One Covered Scow, 30 F. 269 (E.D.N.Y. 1887)* ; *The Kate Tremaine, 14 F. Cas. 144 (E.D.N.Y. 1871)* (No. 7622). *See The Poznan, 297 F. 345, 1923 AMC 413 (S.D.N.Y. 1923) , rev'd on other grounds, 9 F.2d 838, 1925 AMC 1289 (2d Cir. 1925) , rev'd on other grounds, 274 U.S. 117, 1927 AMC 723 (1927) . But see The C.W. Moore, 107 F. 957 (E.D. Wis. 1901)* .

Moon Eng'g Co. v. The S.S. Valient Power, 193 F. Supp. 460, 1961 AMC 226 (E.D. Va. 1960) (wharfage during time vessel is in custody of the marshal creates a lien).

(n5)Footnote 5. *The Advance, 60 F. 766 (S.D.N.Y. 1894) , aff'd, 71 F. 987 (2d Cir. 1896)* ; *The C.W. Moore, 107 F. 957 (E.D. Wis. 1901)* .

(n6)Footnote 6. *The Murphy Tugs, 28 F. 429 (E.D. Mich. 1886)* ; *The C. Vanderbilt, 86 F. 785 (E.D.N.Y. 1898) , aff'd sub nom. The America, 93 F. 986 (2d Cir. 1899)* ; *The Andrew J. Smith, 263 F. 1004 (E.D.N.Y. 1920)* ; *The Jack-O-Lantern, 282 F. 899 (D. Mass. 1922)* ; The Derrick Hoister No. 22, 1924 AMC 1116 (E.D. Pa. 1924) ; *Tri-Continental Fin. Corp. v. Tropical Marine Enters. (The Abaco Queen), 164 F. Supp. 1, 1958 AMC 2507 (S.D. Fla. 1958) , aff'd on other grounds, 265 F.2d 619 (5th Cir. 1959) . But see Goodman v. 1973 26 Foot Trojan Vessel, 859 F.2d 71 (8th Cir. 1988)* (court has admiralty jurisdiction over claim for wharfage of non-commercial vessel even though boat's registration had expired and even though boat was in need of repair and was stored on shore after it sank; such factors do not necessarily mean that the vessel was withdrawn from navigation; furthermore the vessel's status at the time of contracting is determinative).

(n7)Footnote 7. Text cited in *Ex parte Easton, 95 U.S. 68, 77 (1877)* . *See* The Lighter M.C.L. No. 36, 1924 AMC 486 (E.D.N.Y. 1924) . *Cf. United States v. Berger, 66 F. Supp. 950 (D. Alaska 1946)* , involving right of government to collect wharfage charges for use of Alaska Railroad's Terminal reserve.

(n8)Footnote 8. *Johnson v. The M'Donough, 13 F. Cas. 768 (S.D.N.Y. 1829)* (No. 7395); *Roberts v. The Bark Windermere, 2 F. 722 (S.D.N.Y. 1880)* ; *The Phebe, 19 F. Cas. 424 (D. Me. 1837)* (No. 11,065); *Ex parte Lewis, 15 F. Cas. 451 (C.C.D. Mass. 1815)* (No. 8310); *Gardner v. The New Jersey, 9 F. Cas. 1192 (D. Pa. 1806)* (No. 5233). To same effect, *see* § 184, *supra* at n. 28, *contra, see* § 185, *supra* at nn. 18 and 19.

Text cited in holding storage of yachts or boats a maritime service: *The Navis, 196 F. 843, 846 (D. Me. 1912)* .

It has been held that a claim for refund of wharfage paid under duress and mistake is not within the jurisdiction. Boera Bros. v. United States, 1924 AMC 1474 (E.D.N.Y. 1924) . But it is now clear that such actions based on quasi-contract are within the admiralty jurisdiction. *See Archawski v. Hanioti, 350 U.S. 532, 1956 AMC 742 (1956)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 214

§ 214 Lighterage.

For the loading and unloading of cargo and the receiving of supplies, it is, under many circumstances, necessary or expedient for the vessel to anchor at a distance from the land and to have her cargo or supplies, her passengers and crew, transported in lighters, barges or other small craft. The service thus rendered is maritime and lightermen, bargemen and watermen thus rendering service to a vessel are all entitled to resort to the admiralty to enforce the payment of their demands by proceeding *in personam* against the master or *in rem* against the vessel herself, or against the cargo or other property which they transport. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime LiensNatureJurisdictionAdmiralty LawMaritime LiensPriority & SourcesContractsWagesAdmiralty LawPersonal InjuriesMaritime Workers' ClaimsJones ActProcedureJurisdictionAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Personam ActionsAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem Actions Generally

FOOTNOTES:
(n1)Footnote 1. *The Owego, 292 F. 403 at 405, 1923 AMC 1060 at 1062 (E.D. La. 1923)* ; *Thackarey v. The Farmer of Salem, 23 F. Cas. 877 (E.D. Pa. 1835)* (No. 13,852).

Pontin Lighterage Co. v. American Export Lines, 126 F. Supp. 824, 1955 AMC 50 (E.D.N.Y. 1954) (no custom or usage exists in the Port of New York for steamship companies to pay the overtime of lighter captains or to reimburse lighterage companies for such payments, lighterage being a maritime matter subject to admiralty jurisdiction).

A lighter transferring cargo from one steamship to another at a point of transshipment is a substitute for the ship and the carrier is responsible for damages suffered through the act of the lighterage company during the transshipment. A clause in a through bill of lading exempting the carrier from liability for damage to cargo during transshipment is ineffectual under § 1 of the Harter Act (*46 U.S.C. § 190*): *Fyfe v. Pan-Atlantic S.S. Co., 114 F.2d 72, 1940 AMC 1037, (2d Cir.) , aff'd, 311 U.S. 711 (1940) . W.E. Hedger Transp. Co. v. The Columbia Transp. Co., 1945 AMC 1268*

(W.D.N.Y. 1945) (the shipowner is liable for damage to barges caused by negligence in discharging cargo into the barges with the personnel of the ship assisted by stevedores).

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Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 215

§ 215 Stowage--Stevedores.

To enable the vessel safely to transport her cargo, it is of the first importance that the cargo be well stowed, that the vessel may keep her trim, that one portion of cargo may not injure another by contact, by leaking, by fumes, heat or odor, and that storms may not dislodge and destroy it. The business of stowing ships and of breaking out cargo at the port of delivery has fallen into the hands of a separate class of persons known as stevedores. Their services are maritime. n1 The workmen or longshoremen employed by a head stevedore must look to him for their pay and have no lien upon the ship. But such lien can be claimed as against a vessel where the shipmaster directly employs the longshoremen or, before they render the service, agrees to pay them. n2

A stevedore is liable for damage to a vessel resulting from his negligence in loading or unloading the cargo. n3 Responsibility for such negligence cannot be avoided by a claim that the loading was in accordance with the instructions of the master of the vessel. n4 The stevedore's liability may extend to other vessel damaged as a result of his negligence. n5 In the event of concurrent negligence, the damages may be divided. n6

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime LiensPriority & SourcesContractsWagesAdmiralty LawPersonal InjuriesMaritime Tort ActionsMultiple DefendantsGeneral OverviewAdmiralty LawPersonal InjuriesMaritime Tort ActionsNegligenceGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionTransportation LawWater TransportationMaintenance & Safety

FOOTNOTES:
(n1)Footnote 1. *American Stevedores, Inc. v. Porello, 330 U.S. 446, 1947 AMC 349 (1947)* ; *International Stevedoring Co. v. Haverty, 272 U.S. 50, 1926 AMC 1638 (1926)* ; *Atlantic Transp. Co. v. Imbrovek, 234 U.S. 52 (1914)* ; *The Main, 51 F. 954 (5th Cir. 1892)* ; *Hoogovens Estel Verkoopkantoor, B.V. v. Ceres Terminals, Inc., 1984 AMC 1417 (S.D.N.Y. 1983)* (admiralty jurisdiction for maritime services extends to an action for cargo damage incurred during a stevedore's unloading and storage of steel coils at its terminal: the unloading process constituted a maritime service that was clearly within admiralty jurisdiction; the storage of the coils was incidental to the unloading and was

also within the court's jurisdiction); *The Mattie May, 45 F. 899 (D.S.C. 1891)* ; *The Gilbert Knapp, 37 F. 209 (E.D. Wis. 1889)* ; *The Wivanhoe, 26 F. 927 (E.D. Va. 1886)* ; *The Hattie M. Bain, 20 F. 389 (S.D.N.Y. 1884)* ; *The Canada, 7 F. 119 (D. Or. 1881)* .

Joseph v. Carter & Weekes Stevedoring Co., 330 U.S. 422 (1947) (a state statute imposing a local tax on gross receipts or upon the privilege of conducting the business of stevedoring measured by the gross receipts is invalid as an interference with commerce, since stevedoring is essentially a part of the commerce itself).

(n2)Footnote 2. *The Hattie M. Bain, 20 F. 389 (S.D.N.Y. 1884) . Cf. The Seguranca, 58 F. 908 (S.D.N.Y. 1893)* .

(n3)Footnote 3. *The S.C.L. No. 9 (Lavino Shipping Co. v. S.C. Loveland Co.), 114 F.2d 964, 1940 AMC 1355 (3d Cir. 1940)* ; *North Atl. & Gulf S.S. Co. v. New Orleans Stevedoring Co., 111 F. Supp. 413, 1953 AMC 828 (E.D. La. 1953) , aff'd, 213 F.2d 859, 1954 AMC 1347 (5th Cir. 1954)* ; *Salmons Dredging Co. v. The Herma, 180 F.2d 833, 1950 AMC 839 (4th Cir. 1950)* ; *Chile S.S. Co. v. Nacirema Operating Co., 79 F. Supp. 557, 1948 AMC 819 (S.D.N.Y. 1948)* ; *The Benjamin Williams, 74 F. Supp. 119, 1947 AMC 1547 (D. Mass. 1947)* ; *The Scipio (O'Donnell Transp. Co. v. Seaboard Coal Dock Co.), 73 F. Supp. 402, 1947 AMC 1491 (E.D.N.Y. 1947)* ; *The Scow Zeller No. 12 (Zeller Marine Corp. v. McAllister Lighterage Line), 70 F. Supp. 476, 1947 AMC 87 (E.D.N.Y. 1947)* ; *Marine Operating Co. v. Lindgren, Swinerton, Inc., 63 F. Supp. 1007, 1946 AMC 306 (S.D.N.Y. 1946)* ; *The Carbon Light, 66 F. Supp. 292, 1946 AMC 1011 (S.D.N.Y. 1946) , aff'd, 171 F.2d 586, 1949 AMC 163 (2d Cir. 1948)* ; New York Trap Rock Corp. v. George H. Flinn Corp., 1944 AMC 926 (E.D.N.Y. 1944) ; *Seaboard Sand & Gravel Corp. v. James Hughes, Inc., 56 F. Supp. 468, 1944 AMC 929 (E.D.N.Y. 1944)* ; Nevins v. New York Cent. R.R., 1941 AMC 1007 (S.D.N.Y. 1941) (summary).

O'Donnell Transp. Co. v. Tidewater Iron & Steel Co., 90 F. Supp. 953, 1950 AMC 1607 (D.N.J. 1950) (a "no damage" notation signed by the bargee does not exonerate the stevedore for negligence in loading although damages may be divided if the negligence of the bargee in permitting the barge to be towed when he knew she was in danger may result in a division of damages).

The Adelaide Kelly, 1945 AMC 176 (S.D.N.Y. 1945) (the burden of proof to establish the negligence of the stevedore is on the owner of the vessel claiming damage); *Zeller Marine Corp. v. Nessa Corp., 166 F.2d 32, 1948 AMC 418 (2d Cir. 1948)* (the owner of a barge damaged by a stevedore has a duty to minimize damages and is entitled to an award that will give him a boat as seaworthy and practically serviceable as before, and not one which would be sufficient to restore the vessel to her identical condition before the damage).

Old Dominion Stevedoring Corp. v. United States, 130 F. Supp. 662, 1956 AMC 193 (E.D. Va. 1955) (failure of a government-owned vessel to maintain its preventer guys on booms in good working order as required by contract with stevedore imposed no affirmative duty on stevedore to discover defects in such equipment and precluded government's set-off claim for vessel damage).

(n4)Footnote 4. Woodworth v. Murray, 1940 AMC 1063 (E.D.N.Y. 1940) ; *Seaboard Sand & Gravel Corp. v. James Hughes, Inc., 56 F. Supp. 468, 1944 AMC 929 (E.D.N.Y. 1944)* .

(n5)Footnote 5. *Salmons Dredging Co. v. The Herma, n. 3 supra ;* The N.Y.C. Brandon, 1946 AMC 1306 (S.D.N.Y. 1946) (in part).

(n6)Footnote 6. *Smith Scow Corp. v. Seaboard Great Lakes Corp., 146 F.2d 535, 1945 AMC 151 (2d Cir. 1945)* ; *The Henry E., 61 F. Supp. 327, 1945 AMC 934 (E.D.N.Y. 1945) , aff'd sub nom. F.E. Grauwiller Transp. Co. v. Exner Sand & Gravel Corp., 162 F.2d 90, 1947 AMC 882 (2d Cir. 1947)* ; United States v. Seas Shipping Co., 1950 AMC 1081 (E.D.N.Y. 1950) (in part); *Salmons Dredging Co. v. The Herma, n. 3, supra.*

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 216

§ 216 Demurrage.

Demurrage is an allowance for the detention of a vessel in loading or unloading beyond the time allowed for the purpose in the charter party or bill of lading. It is in the nature of extended freight and is intended as a compensation to the vessel for the freight she might have earned during the period of detention. Ordinarily demurrage is expressly stipulated for by contract and demurrage is properly so called only when so stipulated. In the absence of express contract damages in the nature of demurrage and often loosely so termed are recoverable for a breach of the implied obligation to load or unload the cargo with reasonable dispatch. n1 From the nature of maritime commerce and navigation, all practicable promptness and certainty are of the utmost importance. The merchant is bound to give the ship all reasonable dispatch. Ships are made to plough the seas but any who are connected with a vessel may improperly delay or impede her progress. The merchant may neglect to put his goods on board at the beginning or to take them out at the end of the voyage. The ship may be delayed to make repairs in cases of collision, or by arrest or seizure without sufficient cause. The loss caused to the shipowner by the hindrance or delaying of his vessel is compensated by demurrage or by damages in the nature of demurrage.

Actions to recover demurrage are admiralty and maritime causes. n2 In the *Black Book of the Admiralty* are found cases of demurrage. Interest is allowed on demurrage provided for by charter party and duly demanded; n3 it is also generally allowed upon damages for detention caused by collision. n4

An action for repayment of an overpayment of demurrage has been held to be within the jurisdiction. n5 Demurrage for the wrongful detention of a pleasure boat is normally not awarded. n6

Additional cases on demurrage are collected in 2B *Benedict on Admiralty,* Chapter II.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCharterpartiesCharter ContractsRemediesDamagesAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingRegulations & StatutesCarriage of Goods by Sea ActDamages

FOOTNOTES:

(n1)Footnote 1. *Dick Chiarello & Bros. v. Central R. Co., 256 F. 297 (2d Cir. 1919)* ; *Ben Franklin Transp. Co. v. Federal Sugar Ref. Co., 242 F. 43, 46 (2d Cir. 1917)* ; *Empire Transp. Co. v. Philadelphia & R. Coal & Iron Co., 77 F. 919 (8th Cir. 1896)* ; *Randall v. Sprague, 74 F. 247 (1st Cir. 1896) . Cf. Zarati S.S. Co. v. Park Bridge Corp., 154 F.2d 377, 1946 AMC 557 (2d Cir. 1946)* .

Ocean Transp. Line v. American Philippine Fiber Indus., 743 F.2d 85, 1985 AMC 741 (2d Cir. 1984) (in a contract of affreightment which contains an ambiguous container demurrage provision, a reasonable rate of demurrage will apply with the time period commencing when the parties themselves understood to be subject to penalties; one who guarantees the costs of ocean freight is secondarily liable for any demurrage incurred, as admiralty law views demurrage as "extended freight").

(n2)Footnote 2. *The Apollon, 22 U.S. (9 Wheat.) 362 (1824)* ; *George E. Warren Corp. v. Britain S.S. Co. (The Dartford), 100 F.2d 283, 1938 AMC 1548 (1st Cir. 1938)* ; *The Isonzo II, 98 F.2d 694, 1938 AMC 1419 (2d Cir. 1938)* ; *The Lively, 15 F. Cas. 631 (C.C.D. Mass. 1812)* (No. 8403); *The Buffalo Bridge, 22 F. Supp. 49, 1938 AMC 414 (S.D.N.Y. 1938)* ; *Snell v. The Independence, 22 F. Cas. 716 (E.D. Pa. 1830)* (No. 13,139); *Brown v. The Neptune, 4 F. Cas. 413 (E.D. Pa. 1829)* (No. 2022).

See Sarnia S.S., Ltd. v. Continental Grain Co., 125 F.2d 362, 1942 AMC 117 (7th Cir. 1942) (construing a contract for payment of demurrage).

(n3)Footnote 3. *Milburn v. 35,000 Boxes of Oranges & Lemons, 57 F. 236 (2d Cir. 1893)* ; *Harrison v. Hughes, 119 F. 997 (D. Del. 1903)* .

(n4)Footnote 4. *Agwilines, Inc. v. Eagle Oil & Shipping Co. (The San Veronico), 153 F.2d 869, 1946 AMC 142 (2d Cir.) , cert. denied, 328 U.S. 835 (1946)* ; *Todd Erie Basin Dry Dock v. The Penelopi, 148 F.2d 884, 1945 AMC 541 (2d Cir. 1945)* ; *The J.G. Gilchrist, 173 F. 666 (W.D.N.Y. 1909) , aff'd, 183 F. 105 (2d Cir. 1910)* ; *The Bulgaria, 83 F. 312 (N.D.N.Y. 1897)* ; *The Natchez, 78 F. 183 (5th Cir. 1896)* ; *The M. Kalbfleisch, 59 F. 198 (E.D.N.Y. 1893)* ; *New Haven Steam-Boat Co. v. The Mayor, 36 F. 716 (S.D.N.Y. 1888)* .

The Aurora, 64 F. Supp. 502, 1945 AMC 235 (E.D. La. 1945) , aff'd, 153 F.2d 224, 1946 AMC 506 (5th Cir. 1946) (loss of use of boat in customary shrimp freighting and trawling based on conditions immediately prior to collision); *Eastes v. Superior Oil Co., 65 F. Supp. 998, 1946 AMC 1398 (W.D. La. 1946) , aff'd, 160 F.2d 189, 1947 AMC 1742 (5th Cir.) , cert. denied, 331 U.S. 859 (1947)* (damages for loss of use of motor boat used as shrimping boat recovered as collision damages); *The Pocahontas (Eagle Transp. Co. v. United States), 109 F.2d 929, 1940 AMC 351 (2d Cir.) , cert. denied, 310 U.S. 641 (1940)* (drydocking and detention may not be allowed as collision damages where dry docking is required by damages received subsequent to the collision and inspection shows that there was no underwater damage caused by the collision).

No allowance for the loss of use of a naval vessel can be made in the determination of collision damages in the absence of evidence as to the specific use or service of the vessel. The Evansville, 1941 AMC 62 (E.D.N.Y. 1941) . Demurrage allowed in collision suit between United States and private shipowner, *see* report of Commissioner in The Del-Mar-Va, 1945 AMC 1332 (E.D. Va. 1945) . If the lowest valuation is less than the cost of necessary repairs the vessel should be regarded as a total loss for which the damages are the value at the time of collision less the value of the wreck as salvage, without demurrage and with interest on the net amount from the date of the collision. If the value of the vessel is in excess of the reasonable cost of repairs, damages include cost of repairs, demurrage occasioned by the reasonable time for repairing the expense of raising the vessel to ascertain the extent of the damage and anticipated profits of the voyage on which the vessel was engaged at the time of the collision. *O'Brien Bros. v. The Helen B. Moran, 160 F.2d 502, 1947 AMC 493 (2d Cir. 1947)* . Detention damages allowed at going charter rate for period of detention for collision repairs, excluding period required for owners repairs. Barrett Co. v. The William J. Moran, 1948

AMC 1848 (S.D.N.Y. 1948) . Lost daily earnings of tank vessel not included in collision damage where substitute vessel was not chartered, the measure of damages being expense or loss of profits caused by the lay-up, or interest on the capital value of the vessel less depreciation. *Sinclair Ref. Co. v. American Sun, 79 F. Supp. 1005, 1948 AMC 1853 (S.D.N.Y. 1948) , rev'd on other grounds, 188 F.2d 64, 1951 AMC 845 (2d Cir. 1951)* . Prospective profits of a charter party not entered upon at the time of a loss are not recoverable as damages for the loss of the vessel. *Ozanic v. United States (The Petar), 165 F.2d 738, 1948 AMC 340 (2d Cir. 1948) . Cf.* The San Clemente, 1943 AMC 758 (N.D. Cal. 1943) (holding that where the owner s unable to charter another vessel to substitute for the vessel damaged in the collision and has no suitable substitute ship to take the place of the damaged vessel loss of profits is a proper element of demurrage and detention damage. *Sinclair Ref. Co. v. American Sun, 79 F. Supp. 1005, 1948 AMC 1853 (S.D.N.Y. 1948) , rev'd on other grounds, 188 F.2d 64, 1951 AMC 845 (2d Cir. 1951)* (premiums for insurance of vessel laid up for collision repairs may not be included in the collision damages); *Van Camp Sea Food Co. v. Di Leva, 171 F.2d 454, 1949 AMC 319 (9th Cir. 1948)* (fishermen on a lay may recover from the owner of the boat for loss of earnings during a period of lay-up of the boat for repairs required as a result of collision with another boat of the same owner caused by negligent operation of the other boat).

Clause 4, W.S.A. Time Charter, Part II, held valid and effective to prevent recover of detention during repair of collision damages, if vessel is "off line" during the detention period, even though owner has agreed to reimburse charterer for payment during the detention period. *M. & J. Tracy, Inc. v. The Rowen Card, 116 F. Supp. 516, 1953 AMC 1700 (E.D.N.Y. 1953)* (Commissioners report), *report confirmed, 116 F. Supp. 516, 1953 AMC 2045 (E.D.N.Y. 1953)* .

City of Miami v. Western Shipping & Trading Co., 232 F.2d 847, 1956 AMC 778 (5th Cir. 1956) (loss of future profits during detention period held, a proper element of collision damage).

Sabine Transp. Co. v. Steamship Esso Utica, 1955 AMC 2102 (E.D. Tex. 1955) (damages for detention of a commercial vessel are measured by the profit which the owner would have realized had she been free and, if under charter, the best measure of loss of earnings is the profits the owner would have earned had the vessel been able to comply with the charter).

Domar Ocean Transp., Ltd. v. M/V Andrew Martin, 754 F.2d 616 (5th Cir. 1985) (where the plaintiff engaged in the business of freight transportation and improved a tug and barge so they could be used in tandem, he has the necessary proprietary interest in the combined unit to recover for loss in earnings caused by damage to the barge).

(n5)Footnote 5. *United States Shipping Bd. Emergency Fleet Corp. v. Banque Russo Asiatique, 286 F. 918, 1923 AMC 387 (3d Cir. 1923)* .

(n6)Footnote 6. *See The Conqueror, 166 U.S. 110 (1897)* ; *Snavely v. Lang, 592 F.2d 296, 1979 AMC 1011 (6th Cir. 1979)* ; *Nordasilla Corp. v. Norfolk Shipbldg. & Drydock Corp., 1982 AMC 99 (E.D. Va. 1981)* (under the rule of *The Conqueror*, the owner of a pleasure craft could not recover damages for loss of use of the vessel occasioned by negligent repairs; even though it is unjust that the owner of a yacht worth over $750,000 could not recover damages for a loss of use of 14 months, the precedents are clear and binding).

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 217

§ 217 Dispatch Money.

Dispatch money is a bonus given the charterer for loading or unloading more rapidly than the charter party requires and is not recoverable unless the contract provides for it. Dispatch money, when due by the terms of the charter party, may be recovered in an action in admiralty and the right may be enforced *in rem.* n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCharterpartiesCharter ContractsRemediesGeneral OverviewAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem Actions GenerallyAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. The West Cawthorn, 1925 AMC 389 (D. Md. 1925) ; *The Corvus, 282 F. 939 (D. Md. 1922)* , *aff'd, 288 F. 973 (4th Cir. 1923)* .

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Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 218

§ 218 Maritime Loans: Including Bottomry Loans, Respondentia Bonds and Master's Loans.

In the civil law, in the various maritime codes, and in the elementary writings of the most learned commentators, the law of maritime loans, principally known as bottomry and respondentia, held a prominent place. n1 They are no longer used in the shipping industry, owing to the changes in methods of communication. n2

Bottomry loans were those in which a sum of money was loaned for a particular voyage, at maritime interest, on the security of the ship, or the ship and freight, or the ship, freight and cargo, on condition that if the voyage were performed safely, the loan should be repaid with the interest, and if she did not so arrive but is lost by a peril of the sea, nothing should be paid. The lender thus took the risk of the voyage and the loss of the vessel discharged the obligation as completely as payment. Such loans were within the admiralty jurisdiction n3 even if they were given in part to secure non-maritime disbursements. n4 But if it were stipulated that the lender shall not incur maritime risk, admiralty had no jurisdiction. n5

Respondentia bonds were bonds given to secure a loan, made solely on the cargo, instead of the ship. Loans on respondentia were loans at maritime interest and were secured by the goods on their safe arrival, but put both the principal and interest at risk and give the lender no claim for any payment whatever if the goods be lost. The jurisdiction of the admiralty over them was never denied in the courts of the United States. n6

For a sample bottomry bond and a sample respondentia loan, *see* 1 *Benedict on Admiralty* (6th ed. 1940) at 316-21. n7

The admiralty has also jurisdiction of a loan negotiated by the master to repair damage done to the vessel on the high seas, n8 but not of a loan, made in port, to enable the borrower to buy a vessel. n9 An assignment of freights for advances is maritime or not, according as the purposes to which the loan is to be devoted are or are not maritime. n10

Advances made to discharge maritime liens are within the jurisdiction and entitled to the liens discharged. n11

The master's authority to borrow on the vessel's credit is confined to necessities for which other provision is lacking. n12

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime LiensGeneral OverviewAdmiralty LawMaritime LiensPriority & SourcesContractsBottomryAdmiralty LawPractice & ProcedureJurisdictionInsurance LawBusiness InsuranceMarine InsurancePartial Loss

FOOTNOTES:

(n1)Footnote 1. *Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 1934 AMC 1417 (1934)* ; *The Julia Blake, 107 U.S. 418, 2 S. Ct. 692, 27 L. Ed. 595 (1882)* ; *Conard v. Atlantic Ins. Co., 26 U.S. (1 Pet.) 386, 437 (1828)* ; *The Draco, 7 F. Cas. 1032 (C.C.D. Mass. 1835)* (No. 4057); *The Zephyr, 30 F. Cas. 928 (C.C.D. Mass. 1824)* (No. 18210); *The Packet, 18 F. Cas. 965 (C.C.D. Mass. 1823)* (No. 10,654); *De Lovio v. Boit, 7 F. Cas. 418 (C.C. Mass. 1815)* (No. 3776); *The Jerusalem, 13 F. Cas. 559 (C.C.D. Mass. 1814)* (No. 7293).

(n2)Footnote 2. The latest reported case of a bottomry bond was apparently *The Katherine, 15 F.2d 387, 1926 AMC 878 (E.D. La. 1926)* which ironically concerned the issue of whether a bottomry bond was superior to a chattel mortgage on wireless apparatus installed on the ship. The court held that it was, in part, because such equipment had become standard on vessels of that type of vessel. *See also Barnes v. The Kongo, 174 F.2d 67 (6th Cir. 1949)* (written agreement that loan would be repaid from proceeds of freight does not constitute a respondentia bond, an archaic instrument no longer in use).

(n3)Footnote 3. *The Grapeshot, 76 U.S. (9 Wall.) 129 (1869)* ; *The Virgin, 33 U.S. (8 Pet.) 538 (1834)* ; *Conard v. Atlantic Ins. Co., 26 U.S. (1 Pet.) 386 (1828)* ; *The Draco, 7 F. Cas. 1032 (C.C.D. Mass. 1835)* (No. 4057); *The Mary, 16 F. Cas. 938 (C.C.D. Conn. 1824)* (No. 9187); *The Packet, 18 F. Cas. 965 (C.C.D. Mass. 1823)* (No. 10,654); *The Northern Light, 106 F. 748 (D. Wash. 1901)* ; *Knight v. The Attila, 14 F. Cas. 755 (E.D. Pa. 1838)* (No. 7881); *Wilmer v. The Smilax, 30 F. Cas. 84 (D. Md. 1804)* (No. 17,777). *See Abbott On Shipping*, 176, n. 2 (1850); 3 Kent Comm. (14 Ed. 1896) 361, Note (e). In a suit on a bottomry bond, one who questions the right of the master to execute it should plead that fact as a defense: *O'Brien v. Miller, 168 U.S. 287 (1897) . See Conard v. Nicoll, 29 U.S. (4 Pet.) 291, 310 (1830) .*

(n4)Footnote 4. In *Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 1934 AMC 1417 (1934)* , the same principle was applied to Preferred Ship Mortgages, and *The Draco* was expressly approved and followed. *See also The Wyandotte, 145 F. 321 (4th Cir. 1906) .*

(n5)Footnote 5. *Maitland v. The Atlantic, 16 F. Cas. 522 (E.D. La. 1855)* (No. 8980).

(n6)Footnote 6. *Conard v. Atlantic Ins. Co., 26 U.S. (1 Pet.) 386 (1828)* ; *Franklin Ins. Co. v. Lord, 9 F. Cas. 712 (C.C.D. Mass. 1826)* (No. 5057); 3 Kent Comm. 357.

(n7)Footnote 7. *See also* N. Healy and D. Sharpe, *Cases and Materials on Admiralty* 179-81 (2d ed. 1986) (Lloyd's Form of Bottomry Bond).

(n8)Footnote 8. *Bulgin v. The Rainbow, 4 F. Cas. 612 (D.S.C. 1798)* (No. 2116).

(n9)Footnote 9. *The Perseverance, 19 F. Cas. 307 (S.D.N.Y. 1833)* (No. 11,017).

(n10)Footnote 10. *Freights of the Kate, 63 F. 707 (S.D.N.Y. 1894)* ; *The Advance, 72 F. 793 (2d Cir. 1896)* ; *Bank of British N. Am. v. Freights of the Hutton, 137 F. 534 (2d Cir. 1905)* ; *The Charles H. Cramp, 3 F.2d 311, 1924 AMC 131 (D. Md. 1924) .*

See also Brown v. Gray, 24 N.Y.S. 61, 70 Hun. 261 (Sup. Ct. 1893) .

Cf. Blidberg, Rothchild Co. v. Chandris, 1943 AMC 122 (N.Y. Sup. Ct. 1943) (freight earnings assigned by shipowner are not subject to attachment by creditor or shipowner).

(n11)Footnote 11. *The City of Camden, 147 F. 847 (S.D. Ala. 1906)* ; *The Nisseqogue, 280 F. 174 (D.N.C. 1922)* ; *The Ascutney, 278 F. 991 (D. Md. 1922)* , *rev'd on other grounds, 289 F. 802, 1923 AMC 412 (4th Cir. 1923)* ; *The Ruth E. Merrill, 286 F. 355 (2d Cir. 1923)* .

Fielder v. Bay Const. Co. (The Florida), 5 F.2d 227, 1925 AMC 1214 (5th Cir. 1925) (contractor advancing wages of crew of subcontractor's dredge held subrogated to crew's lien and such lien not waived by agreement that sum should be repaid out of dredge's earnings); *The Bergen, 7 F.2d 379, 1925 AMC 1363 (S.D. Cal. 1925)* (indorser of notes given for money to pay crew's wages held entitled to their lien); *Findley v. Lanasa, 276 F.2d 907, 1960 AMC 1444 (5th Cir. 1960)* (advancer of funds to pay crew wages entitled to a maritime lien).

(n12)Footnote 12. *The Maud Palmer, 224 F. 654 (D. Mass. 1915)* .

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 219

§ 219 Insurance.

The contract of insurance against the perils of the sea is one that was suggested by and sprang from the hazards peculiar to vessels in the pursuit of maritime commerce. The rights, duties, and liabilities which are its characteristics have always been regulated by the maritime law. Indeed, the investigation of a case of marine insurance is but an inquiry into the facts, transactions, and perils of navigation and the application of the principles and rules of the maritime law. The contract has always and everywhere been considered maritime and nowhere, out of England, has it ever been excluded from the admiralty jurisdiction.

In the Admiralty Court of Scotland, jurisdiction of cases of marine insurance is undisputed. There went up to the House of Lords, in 1813 and 1814, eight cases of insurance, commenced and decided in the Scotch Admiralty, involving questions of unseaworthiness from bad construction and from old age, cases of concealment and false representation, cases of the right to abandon, the effect of abandonment, and of its acceptance, insurance of vessels, of freight, and of cargo. A great part of the masterly treatises of Roccus, of Cleirac, of Valin, of Emerigon, of Boulay Paty, and Pothier upon the maritime law is devoted to the law of insurance, and the celebrated anonymous work, the Guidon de la Mer, is but a commentary on a policy of insurance, in which all the principles of the maritime law are found in the law of insurance. It is not easy to find a reason why the admiralty should have cognizance of bottomry contracts and not of policies of insurance, both of which respect maritime risks, injuries, and losses. A bill of lading, under the general maritime law and apart from statute, operates much like a policy of insurance, guaranteeing the safety of goods against all risks, except the perils of the seas and, in modern times, other excepted perils, and these are coverable by insurance. A reference to the great compilation of Pardessus n1 will show, in the maritime codes of five-and-twenty states and cities, the law of marine insurance holding an important and unquestioned position in the maritime law of all commercial communities, from the earliest periods of insurance. It is, indeed, of all contracts, the most purely maritime.

The jurisdiction of the American admiralty over policies of insurance, was sustained by Justice Story, on principle, in the memorable case of *De Lovio v. Boit,* n2 in which the admiralty jurisdiction was so fully and learnedly discussed, and again in *Andrews v. The Essex Fire and Marine Insurance Company* n3 and later by the Supreme Court in *Insurance Co. v. Dunham.* n4 Cases on the subject are now of frequent occurrence. n5

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdictionInsurance LawBusiness InsuranceMarine InsuranceGeneral OverviewInsurance LawBusiness InsuranceMarine InsuranceDefinitions

FOOTNOTES:

(n1)Footnote 1. Pardessus, *Collection des Lois* (1828-1845): titles *Assurance Mutuelle* and *Assurance prime.* Section cited: *Grow v. G/S Loraine K, 310 F.2d 547, 1963 AMC 2044 (6th Cir. 1962)* .

(n2)Footnote 2. *7 F. Cas. 418 (C.C.D. Mass. 1815)* (No. 3776).

(n3)Footnote 3. *1 F. Cas. 885 (C.C.D. Mass. 1822)* (No. 374). *See also Gloucester Ins. Co. v. Younger, 10 F. Cas. 495 (C.C.D. Mass. 1855)* (No. 5487); *Hale v. Washington Ins. Co., 11 F. Cas. 189 (C.C.D. Mass. 1842)* (No. 5916); *Peele v. Merchants' Ins. Co., 19 F. Cas. 98 (C.C.D. Mass. 1822)* (No. 10,905). On the substantive law, *see Arnould on Marine Insurance,* 12th ed. (1939).

(n4)Footnote 4. *78 U.S. (11 Wall.) 1 (1870)* .

(n5)Footnote 5. *E.g., Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 1955 AMC 467 (1955)* (there is no established federal admiralty rule affecting a breach of warranty in a marine insurance policy). *Morewitz v. West of England Ship Owners Mut. Protection & Indemnity Ass'n, 896 F.2d 495, 1990 AMC 1507 (11th Cir. 1990)* (federal court has admiralty jurisdiction to hear direct action suit against liability insurers for wrongful death; subject matter jurisdiction is based on the insurance contract not on the direct action statute). *But see Temple Drilling Co. v. Louisiana Ins. Guar. Ass'n, 946 F.2d 390 (5th Cir. 1991)* (suit by owner of drilling rig against state insurance guaranty association for indemnification under state statute for payments made after its insurer defaulted is not within the admiralty jurisdiction); *Simon v. Intercontinental Transport (ICT) B.V., 882 F.2d 1435, 1990 AMC 288 (9th Cir. 1989)* (stevedore's insurance contract against liability under the Longshore and Harbor Worker' Compensation Act is a non-maritime contract); *Folksamerica Reinsurance Co. v. Clean Water of N.Y., Inc., 281 F. Supp.2d 530 (E.D.N.Y. 2003)* (comprehensive general liability policy issued to a company in the business of cleaning ships is not a maritime contract).

Syndicate 420 at *Lloyd's London v. Early Am. Ins. Co., 796 F.2d 821 (5th Cir. 1986)* (marine reinsurance is also a maritime contract but errors and omissions policy covering broker's fault in obtaining reinsurance on maritime policy is not within the admiralty jurisdiction nor is it governed by maritime law).

Ahmed v. American S.S. Mut. Protection & Indem. Ass'n, 640 F.2d 993, 1981 AMC 897 (9th Cir. 1981) (in direct action suit of seamen against the marine insurer of their insolvent employer district court correctly applied New York law and held that the policy of insurance at issue was an indemnity policy and that New York law precluded direct action suits based on marine protection and indemnity insurance). On remand: Ahmed v. American S.S. Owners Mut. Protection & Indem. Ass'n, 1982 AMC 1228 (N.D. Cal. 1982) , *aff'd, 701 F.2d 824 (9th Cir.)* , *cert. denied, 464 U.S. 826 (1983)* (the statutory exemption that has been granted to maritime insurers from the direct action provisions of the New York State insur-ance code does not unlawfully discriminate against merchant seamen: although merchant seamen have been favored by federal law in some contexts, they have no vested right to bring a direct action against a marine insurer). *St. Paul Fire & Marine Ins. Co. v. Vest Transp. Co., 500 F. Supp. 1365, 1982 AMC 450 (N.D. Miss. 1980)* , *aff'd, 666 F.2d 932 (5th Cir. 1982)* (an estoppel cannot be used to extend the terms of an insurance policy or provide coverage that is specifically excluded by the policy's terms; where both the P & I insurer and the insured were fully aware of the facts surrounding a claim under the policy, a statement made by the insurer's agent, which was wrong as a matter of law, that the loss was covered by the policy, could not be used to prevent the insurer from denying liability for the loss).

Underwriters at Lloyd's v. May, 1983 AMC 2447 (S.D. Cal. 1983) (traditionally admiralty regulates marine

insurance, citing text).

Direct actions: Continental Oil Co. v. Bonanza Corp., 677 F.2d 455, 1983 AMC 387 (5th Cir. 1982) (although a third party has no right to bring a direct action against a shipowner's P & I insurer under either admiralty or Texas state law, a time charterer who is named as an additional assured on the policy has a separate right arising from the policy to bring an action against the underwriter for wreck removal costs); *Signal Oil & Gas Co. v. Barge W-701, 654 F.2d 1164, 1982 AMC 2603 (5th Cir. 1981) , cert. denied, 455 U.S. 944 (1982)* (a barge owner that obtained its liability policy outside of the State of Louisiana, thereby making the policy unreachable under the Louisiana direct action statute, did not thereby breach an effectual insurance" warranty to the owner's contractor); *Wabco Trade Co. v. S.S. Inger Skou, 663 F.2d 369, 1982 AMC 727 (2d Cir. 1981) , rev'g, 1981 AMC 876* (New York's statutory exception to direct actions, which favors marine insurers, takes precedence over a conflicting but more general state procedure which allows enforcement of judgments against any debt; thus, a money judgment may not be enforced against a judgment debtor's marine insurance policy).

Jeffcott v. Aetna Ins. Co., 129 F.2d 582, 1942 AMC 1021 (2d Cir.) , cert. denied, 317 U.S. 663 (1942) (policies insuring a pleasure yacht against marine risk but containing a provision that the owner warrants that the yacht will be laid up and out of commission during the life of the policies are within the admiralty jurisdiction).

Insurance Co. of N. Am. v. Lanasa Shrimp Co., 726 F.2d 688, 1984 AMC 2915 (11th Cir. 1984) (if insured proves that vessel left port in a seaworthy condition and the vessel mysteriously sinks or disappears, it will be presumed to have been lost by a peril of the sea; an insurer can rebut such a presumption by proving that the loss resulted from a risk expressly excluded by the policy or by showing that the vessel became unseaworthy during the voyage and was lost as a result of the unseaworthiness); *Fine v. American Eagle Fire Ins. Co., 178 Misc. 27, 32 N.Y.S.2d 21, 1942 AMC 96 (N.Y. City Ct. 1941) , aff'd, 180 Misc. 789, 46 N.Y.S.2d 512 (App. Div. 1943)* (the sinking of an unattended yacht at her moorings due to leaks in the exhaust outlet, toilet valve, and in the seams was not due to a peril of the sea covered by a marine hull policy); *Mettler v. Phoenix Assurance Co., 107 F. Supp. 194, 1952 AMC 1734 (E.D.N.Y. 1952)* (the burden of proof is on the insured to show that the sinking of a scow which had been "holed" was due to a peril of the sea).

Boston Ins. Co. v. Dehydrating Process Co., 204 F.2d 441, 1953 AMC 1364 (1st Cir. 1953) (Where an insured vessel sinks at a sheltered berth in calm weather without any obvious explanation, a presumption of unseaworthiness arises. But when the common proofs establish that the vessel was in fact seaworthy and was neither overloaded not improperly loaded, a counter presumption arises that the sinking was caused by some extraordinary although unknown and unascertainable peril of the sea. The answer need not point out the precise peril which caused the loss.).

Glens Falls Ins. Co. v. Long, 195 Va. 117, 77 S.E.2d 457, 1953 AMC 1841 (1953) (proof of seaworthiness before voyage and entry of water into hull which sinks boat suffices to raise rebuttable presumption that loss was occasioned by peril of the sea or some latent defect).

Watson v. Providence Washington Ins. Co., 106 F. Supp. 244, 1952 AMC 1812 (E.D.N.C. 1952) , appeal dismissed, 201 F.2d 736 (4th Cir. 1953) (When a vessel sinks in fair weather and calm water, the burden on the assured to show a loss by peril insured against is not sustained by the mere proof that the vessel was seaworthy. Authorities holding that the unexplained loss of a vessel shown to have been seaworthy raises a presumption that the loss was due to sea peril or latent defect examined and disapproved.).

McBride v. The Home Ins. Co., 105 F. Supp. 116, 1952 AMC 938 (E.D. La. 1952) (An oral contract of marine insurance is within the admiralty jurisdiction. Its terms may be shown by or implied from the acts of the parties, including previous dealings and all the attending circumstances.).

Kaye v. Doe, 204 Misc. 719, 125 N.Y.S.2d 135, 1953 AMC 2098 (Sup. Ct. 1953) (ability of resident judgment holder for personal injury in an airplane accident to accomplish service of process upon defendant's non-admitted liability

underwriters, both under New York State Statute and the terms of Clause 8-a, N.S.A. of Lloyd's policy form).

Red Top Brewing Co. v. Mazzotti, 202 F.2d 481, 1953 AMC 309 (2d Cir.) , cert. denied, 345 U.S. 958 (1953) (there must be literal compliance with a warranty in marine insurance policy on meal, requiring inspection and a certificate of condition as to insect infestation).

Hillcrea Export & Import Co. v. Universal Ins. Co., 110 F. Supp. 204, 1953 AMC 799 (S.D.N.Y. 1953) , aff'd, 212 F.2d 206 (2d Cir.) , cert. denied, 348 U.S. 834 (1954) (warehouse to warehouse clause did not bring policy into effect while goods were being shifted from other of shipper's warehouses to its waterside warehouse where the goods were to be segregated and made ready for the ocean transportation). *Ideal Cement Co. v. Home Ins. Co., 112 F. Supp. 413, 1953 AMC 1072 (S.D. Ala. 1953) , aff'd, 210 F.2d 937 (5th Cir. 1954)* (breach of warranty of seaworthiness held proximate cause of insured barge sinking).

A peril originating on land as a result of deficiencies of land equipment being used to raise a vessel from the water has no relation to a "peril of the sea." Damage to vessel so caused held not covered by a marine policy: Lind v. Boston Ins. Co., 1953 AMC 1047 (Wash. Super. Ct. 1953) .

Compania Maritima Astra v. Archdale (The Armar), 134 N.Y.S.2d 20, 1954 AMC 1674 (Sup. Ct. 1954) (in marine insurance, the American rule is that there is a constructive total loss when there is a high probability that the repair and recovery costs will be greater than 50 per cent of the insured value, the insured having the burden of proof regarding the estimated repairs and it is proper to include in such estimate, expenditures required to take the ship from its peril to a port of safety and make it seaworthy).

Miranda v. Galveston, 123 F. Supp. 889, 1955 AMC 1844 (S.D. Tex. 1954) (under the Longshoremen's Act, the stevedore's insurance carrier was entitled to recover from the city of Galveston under its indemnity agreement where a group of longshoremen became ill from a fumigant placed in grain by the city).

Boyce-Harvey Mach., Inc. v. Stadnard Fire Ins. Co., 1955 AMC 563 (E.D. La. 1955) (where a yacht was damaged on being hauled out on a marine railway, recovery was allowed against the insurer for cost of repair, restoration in amount of low bid together with fees and expenses due the naval architect and marine surveyor and interest; but the court rejected recovery for penalties and attorneys' fees because a dispute existed as to the origin, cause and extent of the damage, and held that the insurer's refusal to pay was not arbitrary or unreasonable).

Texas City Terminal Ry. v. American Equitable Assurance Co., 1955 AMC 1852 (S.D. Tex. 1955) (where properties of Texas City Terminal Co. were damaged by explosions of fertilizer cargoes on nearby vessels, it was held that the damage was within coverage of the blanket explosion risk policies of the Terminal Co., but the Terminal's fire policy did not cover the cargo in the ship burning prior to the explosions; likewise the Terminal Co. was not liable as bailor for property in its warehouses or on its property as to be required to insure it).

Centennial Ins. Co. v. Parnell, 83 So. 2d 688, 1956 AMC 406 (Fla. 1955) (a marine insurance agent represents the applicant and what he tells the applicant does not bind the company unless the latter has given the agent such power).

Saskatchewan Gov't Ins. Office v. Ciaramitaro, 234 F.2d 491, 1956 AMC 1400 (1st Cir. 1956) (warranty in hull policy covering fishing vessel that it would be used in day fishing from a certain port did not preclude vessel from staying overnight at other ports near area proposed to be fished the next day).

Magna Mercantile Co. v. Great Am. Ins. Co., 1969 AMC 2063 (N.Y. Sup. Ct. 1969) (where cargo insurer flatly denied liability one week prior to expiration of policy's one-year time for suit clause, assured did not act with due diligence in filing suit nine weeks later).

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Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 220

§ 220 Consortship.

Vessels engaged in the fisheries, in wrecking, in privateering, or other maritime employment, in which association increases efficiency or security, often agree to make common cause of their enterprise. Such arrangements are agreements of consortship. They are maritime contracts and are within the acknowledged jurisdiction of the admiralty of this country. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawMaritime ContractsCoverageAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. *Andrews v. Wall, 44 U.S. (3 How.) 568 (1845)* .

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1-XIV Benedict on Admiralty § 221

§ 221 Survey and Sale in Port of Distress.

The admiralty has also jurisdiction of the survey and sale of vessels and their cargoes. n1 In case of distress or serious injury, where the master, in a port distant from the owners, finds it impracticable to repair, refit, or proceed on his voyage, the sale of the vessel and cargo seems to be his only resort and nothing can be more fit and proper than that the maritime courts, administering the law of the sea and in some sort the law of nations, should be held competent to examine into the circumstances and order a sale. The master himself cannot fail to find in such a jurisdiction a most reliable auxiliary, and to the owner and underwriter it must be a protection against fraud, improvidence and indiscretion.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawMaritime ContractsGeneral OverviewAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. *See Janney v. Columbian Ins. Co., 23 U.S. (10 Wheat.) 411 (1825)* ; *The Tilton, 23 F. Cas. 1277 (C.C.D. Mass. 1830)* (No. 14,054).

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1-XIV Benedict on Admiralty § 222

§ 222 Penalties.

For the protection of its commerce, for the collection of its revenues, and for the enforcement of all the regulations of its police in navigable waters, the United States, like all other commercial nations, finds it necessary to impose penalties and forfeitures on goods afloat and on vessels, by the instrumentality of which the laws of trade, navigation, and revenue have been violated. In a great variety of such cases, the vessels and the goods are the only things within the reach of the courts and their process. A penalty or forfeiture attached to a ship or vessel, or the goods on board of her, is enforced by a seizure of the thing and the proceeding to condemn it is a suit in the district court, in the name of the United States, or other party, in whose favor the penalty or forfeiture is imposed. n1

Seizures are usually made by revenue officers or commanders of armed vessels, in coastal waters or on the high seas. n2 Seizure is a prerequisite of forfeiture. n3 But where only a penalty and not a forfeiture is sought to be enforced, the suit may be brought before a seizure is had. n4

Unless the statute clearly conditions the enforcement of the lien upon the prior assessment of the penalty in a personal proceeding against the master or owner, n5 a penalty may be fixed and collected in an admiralty proceeding *in rem* without previous conviction of the person responsible. n6 But an action does not lie in admiralty to collect a penalty by proceedings *in personam.* n7 In a proceeding *in rem* for forfeiture, the prior acquittal of the claimant in a criminal prosecution for the offense alleged as ground of forfeiture is conclusive against the Government. n8

For additional information on penalties and forfeitures, *see* 2 *Benedict on Admiralty*, Chapter X.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawForfeitures & PenaltiesCivil ForfeituresAdmiralty LawForfeitures & PenaltiesCriminal ForfeituresAdmiralty LawForfeitures & PenaltiesProcedureAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem Actions GenerallyAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:

(n1)Footnote 1. *28 U.S.C. § 1355*.

(n2)Footnote 2. *Waring v. Clarke, 46 U.S. (5 How.) 441 (1847)* ; Collection Act of March 2, 1799, § 70, 1 Stat. 627, 678; Collection Act of August 4, 1790, § 27, 1 Stat. 145, 163; *Gelston v. Hoyt, 16 U.S. (3 Wheat.) 246 (1817)* ; *The Ann, 13 U.S. (9 Cranch) 289 (1814)* ; Slave Trade Acts of May 10, 1800, 2 Stat. 70, and March 2, 1807, 2 Stat. 426; Piracy Act of March 3, 1819, 3 Stat. 510; Bett's Prac., 68 (1838); *The Commerce, 66 U.S. (1 Black) 574 (1861)* .

(n3)Footnote 3. *Republic Nat'l Bank v. United States, 113 S. Ct. 554 (1992)* (citing text) (in an in rem forfeiture action the court does not lose jurisdiction by the prevailing party's transfer of the res from the District); *Elliott v. M/V Lois B., 980 F.2d 1001, 1993 AMC 1816 (5th Cir. 1993)* (court did not lose jurisdiction after vessel left district as judgment would not be entirely useless).

The Underwriter, 6 F.2d 937, 1925 AMC 1254 (D. Conn. 1925) , rev'd on other grounds, 13 F.2d 433, 1926 AMC 1432 (2d Cir. 1926) , aff'd sub nom. Maul v. United States, 274 U.S. 501, 1927 AMC 1020 (1927) . See also Central Vt. Transp. Co. v. Durning, 294 U.S. 33, 1935 AMC 9 (1935) . In *Seijo v. United States (The Ernestina), 20 F.2d 904, 1927 AMC 1498 (1st Cir. 1927)* , it was held that the imposition of a penalty on the owner, etc., is, under the Tariff Act of 1922, a prerequisite of seizure and forfeiture.

(n4)Footnote 4. *The Paolina S, 11 F. 171 (C.C.S.D.N.Y. 1880)* ; *The Missouri, 17 F. Cas. 483 (E.D.N.Y. 1870) (No. 9653) , aff'd, 26 F. Cas. 1273 (C.C.E.D.N.Y. 1870)* (No. 15,785).

(n5)Footnote 5. *As in The Strathairly, 124 U.S. 558 (1888)* (relating to R.S. 4253, 4255, 4259, 4264, 4266, 4270, all of which were replaced by the Steerage Passenger Act of Aug. 2, 1882, ch. 374, *46 U.S.C. §§ 151-162*, which was repealed in 1983); *Seijo v. United States (The Ernestina), 20 F.2d 904, 1927 AMC 1498 (1st Cir. 1927)* (Tariff Act of 1922).

(n6)Footnote 6. *The Scow "6-S", 250 U.S. 269, 39 S. Ct. 452, 63 L. Ed. 977 (1919)* ; *United States v. The Coamo, 267 U.S. 220, 1925 AMC 546 (1925)* ; *The Maskinonge, 63 F.2d 311, 1933 AMC 971 (1st Cir. 1933)* ; *The Barbara Cates, 17 F. Supp. 241, 1936 AMC 1446 (E.D. Pa. 1936)* .

Under 49 U.S.C. § 781, a vessel may be forfeited for possession of contraband placed on board with the knowledge of the owner, notwithstanding subsequent transfer to a purchaser for value. *The Harpoon II, 71 F. Supp. 1022, 1947 AMC 1157 (D. Mass. 1947)* .

United States v. The Meacham, 107 F. Supp. 997, 1952 AMC 2039 (E.D. Va. 1952) , aff'd, 207 F.2d 535, 1953 AMC 1771 (4th Cir. 1953) , cert. denied, 348 U.S. 801 (1954) (vessel held forfeited for false United States documentation upon findings that her purchase money had largely been contributed by Chinese interests and that the United State citizens asserted to have 75% ownership and control were figureheads).

(n7)Footnote 7. *United States ex rel. Pressprich & Son Co. v. James W. Elwell & Co., 250 F. 939 (2d Cir.) , cert. denied, 248 U.S. 564, 39 S. Ct. 8, 63 L. Ed. 423 (1918) . See Prince Line, Ltd. v. American Paper Exports, Inc., 55 F.2d 1053, 1932 AMC 226 (2d Cir. 1932)* ; *United States v. White's Ferry, Inc., 382 F. Supp. 162 (D. Md. 1974) , aff'd, 529 F.2d 518 (4th Cir. 1975)* .

(n8)Footnote 8. *Coffey v. United States, 116 U.S. 436 (1886)* ; *Colon v. Hanlon (The Norberta), 50 F.2d 353, 1931 AMC 1859 (1st Cir. 1931)* ; The Gully, 1923 AMC 279 (S.D.N.Y. 1923) .

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Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 223

§ 223 Seizures. I--Jurisdiction.

The Judiciary Act of 1789, § 9, gave to the district courts exclusive original jurisdiction of all civil causes of admiralty and maritime jurisdiction, "including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas." n1 The case of *The Eagle*, n2 which followed *The Genesee Chief*, n3 in holding that the grant of "all civil causes of admiralty and maritime jurisdiction" was sufficient in itself to convey the jurisdiction over inland waters, held that, for such reason, the words of the statute above quoted were inoperative, because jurisdiction of such seizures is conveyed by the general grant of jurisdiction overall civil causes of admiralty and maritime jurisdiction. Upon the revision of the statutes in 1872, the provision above quoted was therefore omitted, but provision was made for jurisdiction of seizures in places to which the admiralty jurisdiction does not extend. n4 All seizures made on navigable waters, under the laws of impost, navigation and trade of the United States, are matters of admiralty jurisdiction within the general grant of jurisdiction over "all civil causes of admiralty and maritime jurisdiction." n5

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawForfeitures & PenaltiesCivil ForfeituresAdmiralty LawForfeitures & PenaltiesConstitutional ProvisionsAdmiralty LawForfeitures & PenaltiesCriminal ForfeituresAdmiralty LawForfeitures & PenaltiesProcedureAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:
(n1)Footnote 1. Judiciary Act of Sept. 24, 1789, ch. 20, § 9; 1 Stat. 76.

(n2)Footnote 2. *75 U.S. (8 Wall.) 15 (1868)* .

(n3)Footnote 3. *53 U.S. (12 How.) 443 (1852)* .

(n4)Footnote 4. *28 U.S.C. § 1356*.

(n5)Footnote 5. *See, e.g., The Palmyra, 25 U.S. (12 Wheat.) 1 (1827)* ; *The Sarah, 21 U.S. (8 Wheat.) 391 (1823)* ; *Yeaton v. United States, 9 U.S. (5 Cranch) 281 (1809)* ; *The Betsey, 3 U.S. (3 Dall.) 6 (1795)* ; *The Ben R, 134 F. 784 (6th Cir. 1904)* ; *Steele v. Thacher, 22 F. Cas. 1204 (D. Me. 1825)* (No. 13,348).

The Abby Dodge, 223 U.S. 166 (1912) (Congress has no power to regulate the taking of sponges in waters within the territorial limits of a state).

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1-XIV Benedict on Admiralty § 224

§ 224 Seizures. II--Practice.

It is the place of seizure, and not the place of committing the offense, which decides the jurisdiction. n1 If the seizure be made in a foreign jurisdiction, or on the high seas, the district court of the district to which the property is brought has jurisdiction. n2 If the seizure be made within a judicial district of the United States, the district court of that district has jurisdiction. n3 If the seizure be unlawful, the party has his redress by a suit *in personam* in the admiralty. The jurisdiction in this class of torts is co-extensive with the jurisdiction of the seizure and exists whether the seizure be on the high seas, in ports and harbors, or on the lakes and rivers of the interior.

Where there has been a condemnation in a revenue case of forfeiture, an informer entitled to a share of the proceeds may institute an original suit in the admiralty to recover them. n4 But the collection of duties is not a cause of admiralty and maritime jurisdiction and a suit *in rem* to enforce the payment of duties cannot be maintained. n5 An American vessel may be seized on the high seas and so also, subject only to diplomatic considerations, may a foreign vessel that has committed an offense within our jurisdiction. n6 During the Prohibition era, 1918 to 1933, the United States concluded a series of treaties with Great Britain, Canada and other countries giving the right to examine vessels which were actually outside the three-mile limit but possessed of such speed as to be able to reach the coast within one hour's run. n7 This was held to apply the American criminal laws to a vessel within one hour's run of the coast. n8 Even before the treaty, the seizure of a liquor-laden British vessel hovering within twelve miles of the coast was held *prima facie* valid under the Tariff Act of 1922. n9 However, that Act did not restrict the right to seize an American vessel, beyond such limit, "which had become "liable to seizure and forfeiture' by reason of definite and accomplished violations of the law under which she was enrolled and licensed." n10 Coastwise vessels which went to sea to meet rum-runners, were seized for trading outside their license; n11 and yachts which did the same thing were seized for carrying merchandise for pay. n12 The Shipping Board, in selling vessels, required purchasers to covenant that intoxicating liquors would not be imported, and such covenants were enforced. n13 Involuntary entrance of intending rum-runners upon the territorial waters of the United States was held a crime; and the persons in charge of such vessels were held guilty of conspiracy in aiding and abetting the bootleggers on shore who were engaged in selling the liquor brought ashore from liquor ships on the high seas. n14 But a common carrier vessel carrying forbidden liquors or drugs, such as opium, without the knowledge or privity of the shipowner or master, is not subject to seizure or forfeiture, and could not be proceeded against under the National Prohibition Act. n15 A vessel seized and libelled by the United States for forfeiture may not be released upon a stipulation if the United States Attorney objects; n16 and such vessels may be taken over by the

government for its use, instead of being sold at public auction. n17 The validity of an attachment, or the propriety of a seizure *in rem*, may always be promptly raised by a motion to vacate; and the rights of the government are not increased by serving process under a libel in addition to the original seizure. n18

The right of hot pursuit of a foreign vessel is now regulated by Article 23 of the Convention on the High Seas n19 which entered into force on September 30, 1962 and to which the United States is a party. Briefly stated, this Article permits a coastal state to undertake the pursuit of a foreign ship which has violated the laws and regulations of the state. The pursuit must commence when the offending ship or any of its boats is within the territorial sea or contiguous zone of the pursuing state and may be continued in the high seas so long as the pursuit is not interrupted. The pursuit must end when the pursued ship reaches the territorial sea of its own country or a third state.

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawForfeitures & PenaltiesCivil ForfeituresAdmiralty LawForfeitures & PenaltiesCriminal ForfeituresAdmiralty LawForfeitures & PenaltiesProcedureAdmiralty LawPractice & ProcedureJurisdictionInternational LawTerritorial Boundaries

FOOTNOTES:

(n1)Footnote 1. *The Merino, 22 U.S. (9 Wheat.) 391 (1824)* ; *The Sarah, 21 U.S. (8 Wheat.) 391 (1823)* ; *The Ann, 13 U.S. (9 Cranch) 289 (1814)* ; *Whelan v. United States, 11 U.S. (7 Cranch) 112 (1811)* ; *Keene v. United States, 9 U.S. (Cranch) 304 (1809)* ; *United States v. The Betsey & Charlotte, 8 U.S. (4 Cranch) 443 (1808)* ; *United States v. One Raft, 13 F. 796 (C.C.D. Md. 1882)* .

(n2)Footnote 2. *28 U.S.C. § 1395*; *The Merino, 22 U.S. (9 Wheat.) 391 (1824)* ; *The Margaret, 22 U.S. (9 Wheat.) 421 (1824)* ; *The Abby, 1 F. Cas. 26 (C.C.D. Mass. 1818)* (No. 14).

(n3)Footnote 3. *28 U.S.C. § 1395*.

(n4)Footnote 4. *The Amiable Nancy, 16 U.S. (3 Wheat.) 546, 4 L. Ed. 456 (1818)* ; *The Eleanor, 15 U.S. (2 Wheat.) 345 (1817)* ; *Colson v. Thompson, 15 U.S. (2 Wheat.) 336 (1817)* ; *Whelan v. United States, 11 U.S. (7 Cranch) 112 (1811)* ; *The Active v. United States, 11 U.S. (7 Cranch) 100 (1811)* ; *Yeaton v. United States, 9 U.S. (5 Cranch) 281 (1809)* ; *United States v. The Betsey & Charlotte, 8 U.S. (4 Cranch) 443 (1808)* ; *The Grand Sachem (Del Col. v. Arnold), 3 U.S. (3 Dall.) 333 (1797)* ; *United States v. La Vengeance, 3 U.S. (3 Dall.) 297 (1797)* ; *The Betsey, 3 U.S. (3 Dall.) 6 (1795)* ; *Westcot v. Bradford, 29 F. Cas. 736 (C.C.D.N.J. 1824)* (No. 17,429); *Burke v. Trevitt, 4 F. Cas. 746 (C.C.D. Mass. 1816)* (No. 2163).

(n5)Footnote 5. *United States v. 350 Chests of Tea, 25 U.S. (12 Wheat.) 486 (1827)* ; *The Waterloo, 29 F. Cas. 399 (S.D.N.Y. 1830)* (No. 17,257), the reason being that customs duties are neither penalties nor forfeitures.

(n6)Footnote 6. *Ford v. United States (The Quadra), 273 U.S. 593, 1927 AMC 728 (1927)* ; *The Marianna Flora, 24 U.S. (11 Wheat.) 1 (1826)* ; *The Rosalie M., 4 F.2d 815, 1925 AMC 1014 (S.D. Tex. 1925)* .

(n7)Footnote 7. British Treaty of May 22, 1924; U.S. Treaty Series No. 685; 43 Stat. 1761; Canadian Treaty of June 6, 1924; Treaty Series No. 718; 44 Stat. 2097; French Treaty of June 30, 1924; Treaty Series No. 755; 45 Stat. 2403; similar treaties were made with Germany, Sweden, Norway, Denmark, Italy, Belgium, Spain, Panama, Netherlands and Cuba. *See* Jessup: *The Law of Territorial Waters*, ch. VI (1927).

(n8)Footnote 8. *See Hennings v. United States, 13 F.2d 74, 1926 AMC 935 (5th Cir. 1926)* ; *The Sagatind, 11 F.2d 673, 1926 AMC 751 (2d Cir. 1926)* ; *The Over The Top, 5 F.2d 838, 1925 AMC 1504 (D. Conn. 1925)* ; *The Panama, 6 F.2d 326 (S.D. Tex. (1925)* ; *United States v. The Pictonian, 3 F.2d 145, 1925 AMC 467 (E.D.N.Y. 1924)* ; *The Frances Louise, 1 F.2d 1004, 1924 AMC 1421 (D. Mass. 1924)* .

(n9)Footnote 9. *The Muriel E. Winters, 6 F.2d 466, 1925 AMC 1509 (S.D. Tex. 1925)* .

(n10)Footnote 10. *Maul v. United States, 274 U.S. 501, 1927 AMC 1020 (1927)* (Justice Brandeis concurred and expressed the opinion that "the Coast Guard is authorized to arrest American vessels subject to forfeiture under our law, no matter what the place of seizure and no matter what the law violated.").

(n11)Footnote 11. *The Esther M. Rendle, 7 F.2d 545, 1925 AMC 1441 (1st Cir. 1925)* , *cert. denied, 273 U.S. 730 (1926)* ; *The Amriald, 6 F.2d 413 (D.R.I. 1925)* .

(n12)Footnote 12. *The Herreshoff, 6 F.2d 414 (D.R.I. 1925)* .

(n13)Footnote 13. *The Homestead, 7 F.2d 413, Treas. Dec. 41296 (S.D.N.Y. 1925)* .

(n14)Footnote 14. *Latham v. United States, 2 F.2d 208, Treas. Dec. 41302 (4th Cir. 1924)* .

(n15)Footnote 15. *The Spray, 6 F.2d 414 (D.R.I. 1925)* ; The Orduna, 1925 AMC 194 (S.D.N.Y. 1925) ; *The Mount Clinton, 6 F.2d 418, 1924 AMC 1096 (S.D.N.Y. 1924)* . *But see United States v. One 1972 Wood, 19' Custom Boat, 501 F.2d 1327 (5th Cir. 1974)* (a vessel being used to transport marijuana without the knowledge of the owner was seized).

See, generally, Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 1974 AMC 1895 (1974) .

(n16)Footnote 16. *The Lorraine Rita, 6 F.2d 175, 1925 AMC 1012 (E.D. Va. 1925)* ; *The Frances Louise, 1 F.2d 1004, 1924 AMC 1421 (D. Mass. 1924)* ; *The Three Friends, 166 U.S. 1 (1897)* ; but a release under bond might be had if the proceeding were merely under the National Prohibition Act: *The G-883, 6 F.2d 416, 1925 AMC 1509 (D.R.I. 1925)* .

(n17)Footnote 17. Act of March 3, 1925, ch. 438; 43 Stat. 1116, *19 U.S.C. §§ 522-524* (subsequently repealed).

(n18)Footnote 18. *United States v. Specified Quantities of Intoxicating Liquors, 7 F.2d 835 (2d Cir. 1925)* ; *Skibs A/S Abaco, Aruba, Astrea & Noruega v. Ardeshir B. Cursetjee & Sons, 133 F. Supp. 465, 1955 AMC 1586 (S.D.N.Y. 1955)* .

(n19)Footnote 19. 13 U.S.T. 2312, TIAS 5200, 450 UNTS 82, *reprinted in* 6A *Benedict on Admiralty*, Doc. 10-1.

Article 23 provides:

> "1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 24 of the Convention of the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.
>
> "2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.
>
> "3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such

practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship."4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

"5. Where hot pursuit is effected by an aircraft:

"(a) The provisions of paragraphs 1 to 3 of the present article shall apply *mutatis mutandis;*

"(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

"6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an enquiry before the competent authorities, may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

"7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained."

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 225

§ 225 Limitation of Liability.

Proceedings by vessel owners to limit their liability as permitted by the Acts of Congress are within the admiralty jurisdiction even if the claims limited against might not be sued upon in admiralty. n1

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCharterpartiesParty LiabilityLimitations on LiabilityAdmiralty LawCollisionsLiabilityLimitations on LiabilityAdmiralty LawPractice & ProcedureJurisdictionAdmiralty LawShippingCarrier Duties & ObligationsLimitations on Liability

FOOTNOTES:
(n1)Footnote 1. *Richardson v. Harmon, 222 U.S. 96 (1911)* ; *In re Houseboat Starship II, 2006 A.M.C. 1335 (D. Tenn. 2005)* (quoting text); *In re Colonial Trust Co., 124 F. Supp. 73, 1955 AMC 1290 (D. Conn. 1954)* (quoting 6th edition of text); *The Trim Too, 39 F. Supp. 271, 1941 AMC 1147 (D. Mass. 1941)* . *See* *In re Bernstein, 81 F. Supp.2d 176, 2000 AMC 760 (D. Mass. 1999)* (criticizing rule but following it as controlling precedent).

See *In re Sisson, 867 F.2d 341, 1989 AMC 609 (7th Cir. 1989)* , *rev'd on other grounds,* *497 U.S. 358, 1990 AMC 1801 (1990)* . The court of appeals held that the Limitation of Liability Act does not provide a basis for admiralty jurisdiction if the purpose is to limit liability for a tort which not bear any connection to traditional maritime activity. The court reasoned that applying the Limitation of Liability Act to non-maritime torts would not advance the purpose of the Act in improving the competitive position of American shipping, would be inconsistent with the requirement that a tort victim must show a nexus to traditional maritime activity in order to obtain admiralty jurisdiction, and was inconsistent with the principle of federalism since the tort victim's claims could be heard in state court under state law. The Supreme Court reversed on the grounds that the tort involved in the case met the nexus requirement and was therefore a maritime tort. The Supreme Court left unresolved whether a district court would have jurisdiction under the Limitation of Liability Act even if there were no admiralty jurisdiction under *28 U.S.C. § 1333*. *Sisson v. Ruby, 497 U.S. 358, 110 S. Ct. 2892, 2894 n. 1, 1990 AMC 1801, 1802* . Although the Supreme Court had requested the parties to address the issue of whether *Richardson v. Harmon* ought to be reconsidered, *493 U.S. 1055, 110 S. Ct. 863, 107 L.*

Ed. 2d 947 (1990) , the Court's opinion in *Sisson* did not address that issue. The United States, as amicus curiae, argued in its brief on the merits that *Richardson v. Harmon* was wrongly decided. *In re Sisson* was followed by *Lewis Charters, Inc. v. Huckins Yacht Corp., 871 F.2d 1046, 1989 AMC 1521 (11th Cir. 1989)* and *In re American Auto, Inc., 1989 AMC 1489 (N.D. Cal. 1989)* , but was disapproved of by *In re Young, 872 F.2d 176, 1989 AMC 1217 (6th Cir. 1989)* . *See also In re Sheen, 709 F. Supp. 1123 at 1129, 1989 AMC 1345 at 1352 (S.D. Fla. 1989)* (th Limitation of Liability Act "allows an owner to seek exoneration from both maritime and non-maritime claims sounding in tort or contract.").

A different approach to the problem was taken in *In re Three Buoys Houseboat Vacations U.S.A., Ltd., 689 F. Supp. 958 (E.D. Mo. 1988)* , *aff'd, Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 878 F.2d 1096 (8th Cir. 1989)* . There the plaintiffs sought to limit liability arising out of a collision on Lake of the Ozarks involving two houseboats, one of which was owned by a company engaged in the business of chartering such vessels. The district court made three holdings of significance here. It first held that the Lake of the Ozarks is not navigable for purposes of admiralty jurisdiction even though certain regulatory agencies had made decisions or declarations which stated or which might suggest that they had found the lake to be navigable for other purposes. It then held that despite the lack of admiralty jurisdiction it had federal question and *commerce clause* jurisdiction to hear a limitation action under *28 U.S.C. §§ 1331* and *1337*. This did not help the plaintiff, however, as the court then held that Congress did not intend that owners of vessels on non-navigable waters should be able to limit liability. Hence it ruled that the plaintiffs failed to state a cause of action. On appeal, the Eighth Circuit affirmed the district court's dismissal of the complaint but concluded that the federal courts lack subject matter jurisdiction of limitation actions that arise from injuries on non-navigable waters. The court likened a suit under the limitation act to a defense or to a suit for declaratory relief. The court's disposition made it unnecessary to determine whether the nexus requirement applies to limitation actions, but it noted, "if the Limitation of Liability Act application is truly coextensive with admiralty jurisdiction such a nexus requirement would seem to apply." *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 878 F.2d 1096, 1102 (8th Cir. 1989)* . The Supreme Court vacated the decision and remanded in light of *Sisson. 497 U.S. 1020, 110 S. Ct. 3265, 111 L. Ed. 2d 775 (1990)* . On remand, the court of appeals again affirmed the dismissal of the limitation action essentially for the reasons given in its earlier opinion. *Three Buoys Houseboat Vacations U.S.A., Ltd. v. Morts, 921 F.2d 775, 1991 AMC 1356 (8th Cir. 1990)* . The conclusion of the Eighth Circuit that the Limitation of Liability Acts is not an independent source of federal jurisdiction was followed in *David Wright Charter Serv. v. Wright, 925 F.2d 783 (4th Cir. 1991)* . *Accord, Seven Resorts, Inc. v. Cantlen, 57 F.3d 771 (9th Cir. 1995)* ; *Guillory v. Outboard Motor Corp., 956 F.2d 114, 1993 AMC 605 (5[th] Cir. 1992)* ; *In re Fields, 967 F. Supp. 969 (M.D. Tenn. 1997)* .

See In re Nolty J. Theriot, Inc., 841 F. Supp. 209 (S.D. Tex. 1994) (limitation statute does not provide an independent basis for federal jurisdiction; vessel cannot limit its liability to seaman injured in car accident on way to vessel for crew change even though claim by seaman under the Jones Act is a maritime-based claim).

An action to limit liability for a maritime contract is within the federal jurisdiction even though the breach of contract occurred outside the navigable waters. *In re Lady Jane, Inc., 818 F. Supp. 1470 (M.D. Fla. 1992)* (breach of repair contract is maritime even though fire which destroyed the vessel occurred outside of navigable waters).

For discussion of whether pleasure craft are considered to be "vessels" for purposes of the limitations statutes, see § 161 n.11.

See 3 *Benedict on Admiralty*, "Limitation of Liability."

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 226

§ 226 Pilotage.

Admiralty has jurisdiction of an action by an injured party, usually a shipowner, against a pilot to recover for injury to a vessel or for salvage or damages paid to other parties by reason of the pilot's negligence in navigation or in the selection of the anchorage. n1 An action may also be maintained at law. n2 A municipality which supplies the pilot may also be liable for his negligence. n3 Pilot's associations are usually so organized as not to be liable for the negligence of their members. n4 Nor are they liable to their own members and employees for the negligent actions of their pilot boats. n5 The vessel piloted is liable *in rem* for the pilot's errors. n6 Vessels owned by pilots' associations may be liable *in rem* for collision damage caused by the fault of the pilot boat. n7 The shipowner is not personally liable for injuries inflicted exclusively by the negligence of a pilot compulsorily accepted by the vessel n8 but the vessel is liable *in rem* upon a distinct principle of the maritime law, namely, n9 that the vessel in whosesoever hands she lawfully is, is herself considered as the wrongdoer liable for the tort and subject to a maritime lien for the damage. n10

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCollisionsCompulsory PilotsAdmiralty LawCollisionsLiabilityGeneral OverviewAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem Actions GenerallyAdmiralty LawPractice & ProcedureJurisdictionGovernmentsLocal GovernmentsClaims By & Against

FOOTNOTES:

(n1)Footnote 1. *Chase v. Hammond Lumber Co. (The Watsonville), 79 F.2d 716 (9th Cir. 1935)* ; *Matheson v. Norfolk & North Am. Steam Shipping Co. (The Pacific Commerce), 73 F.2d 177, 1934 AMC 1451 (9th Cir. 1934)* ; *Sideracudi v. Mapes, 3 F. 873 (S.D.N.Y. 1880)* ; *Strathleven S.S. Co. v. Baulch, 244 F. 412 (4th Cir.) , cert. denied, 245 U.S. 663 (1917)* . Insufficient proof of personal fault: *The Georgie, 14 F.2d 98, 1926 AMC 1175 (9th Cir. 1926)* ; *The Manchioneal, 243 F. 801 (2d Cir. 1917)* . A pilot's surety bond is a maritime contract: *The Fort Armstrong, 51 F.2d 1063, 1931 AMC 1145 (S.D. Ga. 1931)* ; but such a surety was excused in *Moody ex rel. United States v. Megee (The Eldena), 41 F.2d 515, 1930 AMC 1677 (5th Cir. 1930) . See McGrath v. Nolan (The Childar), 83 F.2d 746, 1936 AMC 724 (9th Cir. 1936) .*

(n2)Footnote 2. *Campagnie General Transatlantique v. Tawes, 111 F.2d 92 (5th Cir. 1940) .*

(n3)Footnote 3. *City of Long Beach v. American President Lines, 223 F.2d 853, 1955 AMC 1548 (9th Cir. 1955)* ; *The Thielbek, 241 F. 209 (9th Cir. 1917)* . *Contra City of Los Angeles v. Standard Transp. Co. (The Lebec-The Seekonk), 32 F.2d 988, 1929 AMC 1287 (9th Cir. 1929)* ; *Standard Oil Co. v. United States (The Bostwick-The Casey), 27 F.2d 370, 1928 AMC 1419 (S.D. Ala. 1928)* ; *General Petroleum Corp. v. The City of Los Angeles (The Hakonesan Maru), 22 Cal. App. 2d 332, 70 P.2d 998, 1937 AMC 1272 (1937)* . *But see Kitanihon-Oi S.S. Co. v. General Constr. Co., 678 F.2d 109, 1982 AMC 2275 (9th Cir. 1982)* (2-1 decision) (although a port commissions harbor pilots and requires their use in its tariff, the port is not liable in implied warranty for their non-negligent performances; distinguishing *City of Long Beach, supra* , because in that case, the pilots were hired by the port and the shipowner paid the pilotage fees to the port whereas here the shipowner paid the pilots directly).

(n4)Footnote 4. *Mobile Bar Pilots Ass'n v. Commissioner, 97 F.2d 695 (5th Cir. 1938)* ; *United Fruit Co. v. Mobile Towing & Wrecking Co., 177 F. Supp. 297, 1960 AMC 115 (S.D. Ala. 1959)* . Non-liability of pilots' association not selecting, controlling, supplying or discharging the pilot: *Guy v. Donald, 203 U.S. 399 (1906)* ; *Dampskibsselskabet Atlanta S/S v. United States (The Sierra Leona), 31 F.2d 961, 1929 AMC 855 (5th Cir. 1929)* ; *The Manchioneal, 243 F. 801 (2d Cir. 1917)* .

(n5)Footnote 5. *The Black Gull, 82 F.2d 758, 1936 AMC 334 (2d Cir. 1936)* . *See also Walsh v. Zuisei Kaiun, K.K., 606 F.2d 259, 1980 AMC 2788 (9th Cir. 1979)* (although the drowning death of a pilot was one-third attributable to the unseaworthiness of a launch owned by a pilots' association, the pilot's wife could not recover from the association because the pilot was a member of the association and the launch's unseaworthiness was, therefore, imputed to him; Washington, the state under which the association was formed and operated, strictly imputes an association's negligence to its members; even under a more liberal view, looking to the member's ability to affect association policy, the negligence was imputable to the decedent because he was a long-time member of the association was a voice in its affairs at least equal to any other member and he had used the launch hundreds of times without criticizing its design, despite having knowledge of the defect causing its unseaworthiness).

(n6)Footnote 6. *The China, 74 U.S. (7 Wall.) 53 (1868)* ; *The Varanger, 50 F.2d 724, 1931 AMC 1168 (4th Cir. 1931)* ; *The Helen, 5 F.2d 54, 1925 AMC 267 (2d Cir. 1924)* ; *Jure v. United Fruit Co. (The City of Canton-The Atenas), 6 F.2d 6, 1925 AMC 887 (5th Cir. 1925)* ; O'Hare v. United States, 1950 AMC 182 (W.D. Wash. 1950) . *See* 2 *Benedict on Admiralty* § 44.

(n7)Footnote 7. *The Sandy Hook, 35 F. Supp. 150, 1940 AMC 1045 (S.D.N.Y. 1940) , aff'd, 121 F.2d 304 (2d Cir.) , cert. denied, 314 U.S. 684 (1941)* .

(n8)Footnote 8. *Homer Ramsdell Transp. Co. v. Compagnie Generale Transatlantique, 182 U.S. 406 (1901)* (an action at law but determined on principles of general application); *Texaco Trinidad, Inc. v. Afran Transp, Co., 538 F. Supp. 1038, 1983 AMC 1582 (E.D. Pa. 1982) , aff'd, 707 F.2d 1395 (3d Cir. 1983)* (vessel owner not liable *in personam* for a collision between a tanker and its buoy facility where the tanker's pilot was found to be compulsory, although not required by statute or law, since the ship would not have been permitted to moor or unload without the pilot according to the buoy owner's regulations).

In an unusual decision, the Eleventh Circuit recently held that where a moving vessel under the direction and control of a compulsory pilot collided with a moored vessel, the owners of moving vessel were not entitled to summary judgment relieving them of *in personam* liability even though the trial court found the pilot to be not negligent. The court said that the owners can rebut the presumption of fault against the moving vessel only by showing that the pilot's negligence was the sole cause of the collision and they failed to do so because the pilot was not negligent. It would not suffice that the owners submit evidence that the instrumentalities under their control did not contribute to the accident. *Mount Washington Tanker Co. v. Wahyuen Shipping, Inc., 833 F.2d 1541 (11th Cir. 1987)* . The decision is hard to understand since neither the pilot nor the owner's employees were at fault.

(n9)Footnote 9. *The China, 74 U.S. (7 Wall.) 53 (1868)* , rejecting the older English rule of non-liability *in rem* in

cases of compulsory pilotage. *See Logue Stevedoring Corp. v. The Dalzellance, 198 F.2d 369, 1952 AMC 1297 (2d Cir. 1952)* ; United States v. S.S. President Lincoln, 1964 AMC 1841 (N.D. Cal. 1964) ; *Det Forenede Dampskibs-Selskab A/S v. The Excalibur, 112 F. Supp. 205, 1953 AMC 525 (E.D.N.Y. 1952) , aff'd, 216 F.2d 84, 1954 AMC 2035 (2d Cir. 1954)* ; O'Hare v. United States, 1950 AMC 182 (W.D. Wash. 1949) ; *Campos v. Curtis Bay Towing Co., 61 F. Supp. 1010, 1945 AMC 978 (E.D. Pa. 1945) . Cf.* The Buenos Aires Maru, 1940 AMC 1530 (S.D.N.Y. 1940) , in which the owner of a vessel that had been grounded while transitting the Panama Canal and the cargo owner claimed that the vessel had been crowded out of the channel by the respondent vessel while both vessels were in charge of compulsory Panama Canal pilots.

The English rule was changed by the Pilotage Act of 1913, § 15. *See Carver on Carriage of Goods by Sea* (12th ed. 1971).

(n10)Footnote 10. *See* 2 *Benedict on Admiralty* § 44.

Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
Chapter XIV. JURISDICTION IN SPECIAL CASES

1-XIV Benedict on Admiralty § 227

§ 227 Collisions.

The word "collision," when first used in admiralty practice, apparently had the narrow meaning of the striking together of two vessels while being navigated, and by a slight extension included cases where a vessel ran afoul of a stationary vessel or where a vessel was brought into contact with another vessel by swinging on her anchor; n1 this is the sense in which the word is used in the collision regulations. n2 In maritime insurance, unless the meaning is expressly extended, it is said ordinarily to connote the contact of a vessel with another navigable object n3 but has sometimes been held to include impact with a non-navigable floating object. n4 For the purpose of admiralty jurisdiction in torts arising out of a collision, the term is used in its broadest sense to include every case where a vessel strikes another vessel or object whether afloat or not. The traditional admiralty jurisdiction as extended by the Admiralty Extension Act n5 now embraces all such torts. Admiralty also takes jurisdiction where a ship owner sues *in personam* for damages to his vessel by contact with a non-maritime structure. n6 Suits *in rem* lie only as against vessels and floating objects deemed to be vessels. Admiralty favors the trial of a cause of collision upon complaint and cross complaint; in such an event the matter litigated is the collision, rather than the individual suits of the complainants against the alleged tortfeasors. n7

Where vessels operating together are at fault in a collision each is responsible *in rem* for its proportionate part n8 of the damage even though they may belong to the same owner. n9 Notwithstanding common ownership, *in rem* liability exists only with respect to a vessel which is at fault in a collision. n10 If a vessel is in the control of another vessel or its commanding officer, the latter vessel is held to *in rem* liability, if in fault, on the ground that it controlled the ship in collision. n11 If the collision concerns only foreign vessels and cargoes and does not occur in the territorial sea of the United States, the jurisdiction is discretionary. n12 Claims for personal injuries or death resulting from collisions are governed by the three-year limitation period established by the Uniform Statute of Limitations for maritime Torts n13 (for actions arising after October 6, 1980), or, in an appropriate case, the Jones Act. n14 Unless otherwise governed by statute n15 or agreement, all other collision actions are governed by the maritime doctrine of laches. n16

Legal Topics:

For related research and practice materials, see the following legal topics:
Admiralty LawCollisionsLiabilityGeneral OverviewAdmiralty LawCollisionsLiabilityLimitations on LiabilityAdmiralty LawMaritime LiensDefensesAdmiralty LawPractice & ProcedureAttachment & GarnishmentIn Rem

Actions GenerallyAdmiralty LawPractice & ProcedureJurisdiction

FOOTNOTES:

(n1)Footnote 1. *London Assurance v. Companhia de Moagens do Barreiro, 167 U.S. 149 (1897) . See Lehigh & Wilkes-Barre Coal Co. v. Globe & Rutgers Fire Ins. Co., 6 F.2d 736 (2d Cir. 1925)* , citing treatise, 4th edition.

(n2)Footnote 2. *Cf. Bennet S.S. Co. v. Hull Mut. S.S. Protecting Soc., [1914] 3 K.B. 57 (C.A.)* ; *Reicher v. Borwick, [1894] 2 Q.B. 548 (C.A.)* ; The Normandy, [1904] P. 187; *Chandler v. Blogg, [1898] 1 Q.B. 32* .

(n3)Footnote 3. *London Assurance Co. v. Companhia de Moagens do Barreiro, 167 U.S. 149 (1897)* ; *Western Transit Co. v. Brown, 152 F. 476 (S.D.N.Y. 1907) , aff'd, 161 F. 869 (2d Cir.) , cert. denied, 210 U.S. 434 (1908)* .

The Schodack, 89 F.2d 8, 1937 AMC 548 (2d Cir. 1937) (it has been held that a Running Down Clause covers the risk of damage to a moored vessel by means of a collision blow transmitted through the hull of a vessel interposed between the vessel insured and the vessel damaged).

Damage done by swells or by crowding or negligent navigation without contact is not collision damage, although there is frequent liability for such harms. *But see* Bernert Towboat Co. v. USS Chandler (DDG 996), *666 F. Supp. 1454 (D. Or. 1987)* (collision in broadest sense includes a tug hitting a swell).

(n4)Footnote 4. *Newtown Creek Towing Co. v. Aetna Ins. Co., 163 N.Y. 114, 57 N.E. 302 (1900)* ; *Freiberger v. Globe Indem. Co., 205 A.D. 116, 199 N.Y.S. 310 (1923)* ; *Carroll Towing Co. v. Aetna Ins. Co., 203 A.D. 430, 196 N.Y.S. 698, 1923 AMC 77 (1922)* ; Newman v. Home Ins. Co., 1939 AMC 1482 (N.Y. Sup. Ct. 1939) ; *Western Transp. Co. v. Brown, 152 F. 476 (S.D.N.Y. 1907) , aff'd, 161 F. 869* (2d Cir. 1908). *Contra Cline v. Western Assurance Co., 101 Va. 496, 44 S.E. 700 (1903)* .

Lehigh & Wilkes-Barre Coal Co., v. Globe & Rutgers Fire Ins. Co., 6 F.2d 736, 1925 AMC 717 (2d Cir. 1925) (contact between a vessel and the bottom or side of a channel is not a collision). In *The M.R. Brazos, 17 F. Cas. 951 (S.D.N.Y. 1879)* (No. 9898), a tugboat ran into a floating bath house moored beside the channel; the bath house owner brought a libel in admiralty, and although the bath house was not a "vessel," jurisdiction was sustained because the locality of the tort was maritime.

Hall Bros. S.S. Co. v. Young, [1939] 1 K.B. 748, 63 Lloyds L.L.R. 142 (C.A.) (liability imposed by a statute for damaging a pilot boat is not the same as liability for the tort of collision and is not covered by the Running Down Clause).

(n5)Footnote 5. *46 U.S.C. § 740. See* § 173, *supra.*

(n6)Footnote 6. *Cf. Eastes v. Superior Oil Co., 65 F. Supp. 998, 1946 AMC 1398 (W.D. La. 1946) , aff'd, 160 F.2d 189, 1947 AMC 1742 (5th Cir.) , cert. denied, 331 U.S. 859 (1947)* , wherein the owner of a motorboat recovered damages in a collision resulting from striking submerged piling in navigable waters against oil company that had placed piling in waters and contractor that had negligently failed to remove piling in accordance with the terms of a contract with the oil company.

Trinidad Corp. v. American S.S. Owners Mut. Protection & Indem. Ass'n, 130 F. Supp. 46, 1955 AMC 1280 (S.D.N.Y. 1955) , aff'd, 229 F.2d 57 (2d Cir.) , cert. denied, 351 U.S. 966 (1956) (where a steamer came in contact with a floating pipeline which in turn sank a moored shrimpboat, the steamer's liability was caused other than by collision with another vessel or craft under an insurance policy).

(n7)Footnote 7. *United States v. Norwegian Barque "Thekla," 266 U.S. 328, 1925 AMC 37 (1925)* ; *The Bertie E. Tull, 10 F. Supp. 492, 1935 AMC 977 (D. Del. 1935)* ; Hough: "Admiralty Jurisdiction;--Of Late Years," *34 Harv. L.*

Rev 505 (1924). Cf. United States v. Shaw, 309 U.S. 495 (1940) .

New York Scow Corp. v. Olsen, 121 F.2d 704, 1941 AMC 123 (2d Cir. 1941) (a single collision is one tort and decree *in rem* for collision damages to two scows will bar a subsequent suit *in personam* for damages to a third scow arising out of the same collision).

Standard of review: Consolidated Grain & Barge Co. v. Archway Fleeting & Harbor Serv., 712 F.2d 1287 (8th Cir. 1983) (a finding of equal fault on the part of barge and tug owners did not violate the rule in *United States v. Reliable Transfer Co.* where the trial judge's factual findings were not clearly erroneous); *Mac Towing Inc. v. American Commercial Lines, 670 F.2d 543 (5th Cir. 1982)* (the district court's finding that both tows which collided when caught in a strong tidal current were equally at fault in causing the collision was not clearly erroneous); *Alkmeon Naviera, S.A. v. M/V Marina L., 633 F.2d 789, 1982 AMC 153 (9th Cir. 1980)* (the district court's findings of fault in an admiralty collision case were subject to the clearly erroneous standard of review; there was no clear error in a 60%/40% division of fault where both vessels prior to the collision had been proceeding at full cruising speed in fog and had not been using radar properly, and where one of the vessels made an improper port turn minutes before the collision). *Damages: Stevens v. F/V Bonnie Doon, 731 F.2d 1433, 1985 AMC 363 (9th Cir. 1984)* (proper assessment of collision damages ordinarily set at the time of the accident, but the district court has the discretion to set a different time from which damages may be measured bases upon the "practicalities of obtaining reliable evidence"); Whitney S.S. Co. v. United States, 1983 AMC 1757 (W.D.N.Y. 1983) , *aff'd, 1985 AMC 493 (2d Cir. 1984)* (since the last clear chance doctrine is no longer applicable in determining admiralty damages, the Coast Guard was held liable for failing to maintain a buoy even though the grounded vessel was 80% at fault for negligent navigation; dissent: since the boat was two miles from the buoy when the wrong turn was made, the navigator's reliance on the buoy was not the proximate cause of the accident); Empresa Lineas Maritimas Agrentinas v. United States, 1983 AMC 2668 (D. Md. 1982) , *aff'd, 730 F.2d 153, 1984 AMC 1698 (4th Cir. 1984)* (the United States could not limit its liability for damages "to the amount of its vessel" since "one or more persons in the chain of command over [the captain] had knowledge or were charged with knowledge of the existence of [the captain's] physical problems and loss of sleep, which were responsible for his bad judgment, the cause of the collision"); Citadel Shipping Co. v. Consolidated Grain & Barge Co., 1983 AMC 1721 (E.D. La. 1982) (liability for damages incurred in a collision were allocated equally where the evidence failed to reveal the parties' comparative degrees of fault); *Ionian Glow Marine, Inc. v. United States, 670 F.2d 462, 1982 AMC 838 (4th Cir. 1982) , rev'd, 1982 AMC 117 (E.D. Va. 1981) , cert. denied, 460 U.S. 1021 (1983)* (following *Weyerhaeuser S.S. Co. v. United States, 372 U.S. 597 (1963)* , a private cargo vessel could assert as damages against the United States amounts that it had paid to servicemen injured aboard the government vessel even though indemnity actions against the United States would be barred under the *Feres-Stencel Aero* doctrine); *Pizani v. M/V Cotton Blossom, 669 F.2d 1084 (5th Cir. 1982)* (the award of damages granted to a dock owner by the district court was vacated because plaintiff introduced only a lump-sum bid for improvements on his dock as proof of the amount of damages; it was impossible to determine the actual cost of damages caused by the defedant since the award included the cost of improvements to enhance the value of plaintiff's property, which defendant could not be held liable for); *Rogers Terminal & Shipping Corp. v. International Grain Transfer, Inc., 672 F.2d 464 (5th Cir. 1982)* (plaintiff-owner of floating grain elevator damaged in a collision was entitled to recover damages although the vessel was bareboat chartered at the time of the accident, plaintiff was entitled to a sum representing the amount plaintiff would have received under the charter, but for the collision); *Stevens v. F/V Bonnie Doon, 655 F.2d 206, 1982 AMC 294 (9th Cir. 1981)* (where the *in rem* seizure of a fishing boat was made in good faith to secure a possible judgment in a collision case, the district court erred in awarding the boatowner damages for lost profits and deterioration of the vessel during the period of detention; the losses were the result of a valid maritime lien and were not proximately caused by the collision).

Bouchard Transp. Co. v. Tug Ocean Prince, 691 F.2d 609, 1982 AMC 2944 (2d Cir. 1982) (since it is a common practice for owners to take advantage of an unexpected drydocking to perform outstanding repairs or periodically required inspections, apportionment of detention losses and costs commonly attributable to the owner's work and to repair of damage resulting from a collision turns on whether the collision damage required immediate repair; when a collision necessitates immediate repairs, the tortfeasor is liable for the detention costs attributable to the collision; in this

case owner's work performed at the same time was held not to have prolonged the time needed for collision repairs, although it did prolong the period out of service); *Kingston Shipping Co. v. Robbarts, 667 F.2d 34, 1982 AMC 2705 (11th Cir.) , cert. denied, 458 U.S. 1108 (1982)* (district court's application of the rule in *Robins Dry Dock* was affirmed, barring the owners of vessels that were delayed by a collision from recovering for economic losses not associated with physical damages); *In re Bankers Trust Co., 658 F.2d 103, 1982 AMC 961 (3d Cir. 1981) , cert. denied, 456 U.S. 961 (1982)* (in determining the fair market value of a vessel that was destroyed in a collision, the value assigned by a district court based on the contemporaneous sales market, the opinions of qualified appraisers and the value of the vessel's charter was not clearly erroneous; although the contemporaneous sales market figure was based on the sale of only one ship, the court properly considered differences in age, speed and deadweight tonnage in reaching the market value of the destroyed vessel).

A wrongdoer in a collision is liable for the damages to the other vessel as they exist at the moment of their creation. *Shipowners & Merchants Tugboat Co. v. United States, 205 F.2d 352, 1953 AMC 1259 (9th Cir.) , cert. denied, 346 U.S. 829 (1953)* . Unrepaired collision damages may be recovered even though the damaged (government owned) vessel was sold at the statutory price without deduction for the unrepaired damages. *Id.*

According to the general maritime law, the collision loss occurs where the tort is committed, and the injured party's claim is for the amount of that loss valued in money at that time. In a collision on the high seas between foreign flag vessels when the suit is in this country, the general maritime law is as interpreted and applied by the law of the forum. *The Glyfe v. The Trujillo, 209 F.2d 386, 1954 AMC 233 (2d Cir. 1954)* . Repair claims in foreign money allowed as exchanged into money of the forum at the rate prevailing when the expenditures were made. The date of judgment rule rejected. *Id.*

The Anti-Assigment Act, *31 U.S.C. § 3727* prevents a carrier from suing for cargo damage under the Public Vessels Act where the carrier was without fault even though the carrier paid for the lost cargo. Bernert Towboat Co. v. USS Chandler (DDG 996), *666 F. Supp. 1454 (D. Or. 1987)* .

Interest and costs: In re Bankers Trust Co., 658 F.2d 103, 1982 AMC 1098 (3d Cir.) , cert. denied, 456 U.S. 961 (1982) (the vessel owner's gross overstatement of its damages constituted exceptional circumstances which prevented a prompt resolution of the case and supported the denial of pre-judgment interest; since post-judgment interest in admiralty cases is not limited by the legal rate of interest in the state in which a district court sits the award of post-judgment interest as the state's legal rate was an issue to be reconsidered on remand); *Bunge Corp. v. American Commercial Barge Line Co., 630 F.2d 1236, 1980 AMC 2981 (7th Cr. 1980)* (absent special circumstances, a successful plaintiff in a maritime collision case is entitled to interest on the judgment figured from the date of the collision; a demand for damages greater than those actually awarded is not a circumstance justifying a refusal to award prejudgment interest; it is an abuse of discretion to deny interest without setting forth the reasons for the denial); *Independent Bulk Transp. v. The Vessel Morania Abaco, 676 F.2d 23, 1982 AMC 1535 (2d Cir. 1982)* (court not bound by an ironclad rule as to the date from which prejudgment interest may be awarded; the court reversed and remanded an award commencing from the date plaintiff paid for collision repairs where demurrage was not recovered so that there was no threat of a double-recovery; the district court did not err by fixing the rate of interest without considering plaintiff's precise credit circumstances as the rate should be based on what short-term, risk-free obligations would earn).

Stevens v. F/V Bonnie Doon, 655 F.2d 206, 1982 AMC 294 (9th Cir. 1981) (an admiralty court has wide discretion in deciding whether to award costs of action; where the losing party in a collision case had been deprived of the use of his fishing boat for 19 months as a result of its *in rem* seizure, the district court's refusal to access costs against that party was not error).

Violation of Statutes, Rules, and Customs: Pelican Marine Carriers, Inc. v. City of Tampa, 791 F. Supp. 845 (M.D. Fla. 1992) (The *Pennsylvania* rule, which also applies to allisions, does not require that the violator establish that its fault could not by any stretch of the imagination have had any causal relation to the accident); *Trinidad Corp. v. S.S.*

Keiyoh Maru, 845 F.2d 818, 1989 AMC 627 (9th Cir. 1988) ("burden imposed by *The Pennsylvania* rule is discharged by a clear and convincing showing of no proximate cause, rather than the stricter test of beyond a reasonable doubt;" failure to post a lookout is statutory duty under 1972 COLREGS, rule 5; district court finding was not clearly erroneous that American tanker met the requirement under *The Pennsylvania* rule by showing by clear and convincing evidence that its failure to post a lookout and its failure to use its radar would not have prevented a collision with a Panamanian tanker that transgressed two restricted zones); *United States v. Compania Peruana de Vapores, 1984 AMC 262 (D. Or. 1983)* (the conclusions and opinions of a Coast Guard investigation conducted pursuant to federal statutes and regulations cannot be regarded as a final judgment on which collateral estoppel and *res judicata* will apply; doubtful if findings of fact in Coast Guard report may be admitted in evidence); *In re Interstate Towing, 717 F.2d 752, 1983 AMC 2971 (2d Cir. 1983)* (Rule 163.10 of the Pilot Rules allows for the use of interpretation and judgment regarding the length of a hawser. As such, the rule of *The Pennsylvania* was misapplied since the tug maintained a straight and proper course and the length of the tow was not clearly a cause of the collision); *Louisiana ex rel. Guste v. M/V Testbank, 564 F. Supp. 729, 1984 AMC 112 (E.D. La. 1983) , aff'd without op., 767 F.2d 916 (5th Cir. 1985)* (a negligent turn to port by an incoming vessel causing it to cross the centerline of the Mississippi River Gulf Outlet in violation of the Narrow Channel Rule was held to be the sole proximate cause of a collision between the incoming vessel and the outbound cargo carrier); V/O Exportkhelb v. S.S. William A. Reiss, 1983 AMC 728 (N.D. Ohio 1982) (fault for a near collision lies with the vessel that failed to sound a danger signal after the officers mistakenly concluded that a port to port passing agreement had been abandoned; where the more prudent course would have been to reduce speed, the officers' call for a starboard to starboard passing and failure to identify the ship constituted negligence despite the fact that *33 U.S.C. § 291*, relevant in this setting, does not call for a vessel to slow or top and reverse until the vessels are within a half-a-mile from each other, which the vessels here had not yet attained); *Florida E. Coast Ry. v. Revilo Corp., 637 F.2d 1060, 1982 AMC 643 (5th Cir. Unit B Feb. 1981)* (the rule of *The Pennsylvania,* which shifts the burden of proof on the issue of causation, has retained its viability even after the Supreme Court's opinion in *Reliable Transfer;* the latter case discarded the rule of divided damages in favor of a comparative fault rule but it did not dispense with the heavy presumption of liability that is raised upon proof of the violation of a statute; the rule announced in *The Pennsylvania* applies to vessel-bridge collisions); *Moran Towing & Transp. Co. v. The City of N.Y., 620 F.2d 356, 1980 AMC 1414 (2d Cir. 1980)* (where a lookout upon a tug failed to adequately perform his duties, constituting a statutory fault under *33 U.S.C. § 221*, the court held that the tug failed to sustain its burden under *The Pennsylvania*'s rule of showing that its statutory fault could not have caused the collision between a crane and a bridge; damages were allocated based on the comparative degree of fault between the City of New York, for failing to properly raise the span of a bridge, and the tug); *First Nat'l Bank v. Material Serv. Corp., 597 F.2d 1110, 1980 AMC 817 (7th Cir. 1979)* (a party guilty of a statutory fault must prove both that the fault did not cause, and could not have been a cause of the collision; a barge guilty of violating three light rules, two whistle rules and one lookout rule did not meet its burden under *The Pennsylvania*'s rule of proving that the casual relation between its statutory fault and the collision with a pleasure boat was "speculative, improbable or remote"); *Valley Towing Serv. v. S/S American Wheat, 618 F.2d 341, 1981 AMC 436 (5th Cir. 1980)* (although Article 15 of the Inland Rules of Navigation, *33 U.S.C. § 191 (1976)* requires vessels in fog to sound signals, Congress did not intend "tha a ship may navigate at the perimeter of fog without obligation to sound fog signals under conditions where it can reasonably be expected that another vessel might cross its path"; the district court was instructed to determine whether the failure to sound signals was a contributing cause of the collision). Where two ships of the same registry collide on the high seas, the law of the common flag applies. Thus where two Greek merchant vessels collided, Greek law was applicable. The Ninth Circuit held, however, that it was not necessary to determine and apply foreign law because Greece is a party to the 1960 Safety of Life at Sea Convention (1960 SOLAS) (citing 6B *Benedict on Admiralty* Doc. 14-1). The 1960 SOLAS constitutes "a uniform set of internationally recognized navigational rules and thus they have the status of general maritime law." The court also noted that Greece is a party to the 1910 Brussels International Convention with Respect to Collision and, therefore, follows comparative fault principles (Article 4) and does not recognize evidentiary presumptions (Article 6) (citing 6 *Benedict on Admiralty* Doc. 3-2). Under International Rule 16(c), a vessel, which turned hard astarboard when its radar detected another ship approaching three-and-one-half miles dead ahead, acted properly in order to avoid a "close-quarters" situation. The court further held that the vessel's failure to stop engines, even if a close-quarters situation already existed, was proper because stopping engines would have increased the probability of a collision. The other ship's turn to port five minutes

prior to the collision was improper because Rule 6 states a preference for starboard turns. *Alkmeon Naviera, S.A. v. M/V Marina L, 633 F.2d 789, 1982 AMC 153 (9th Cir. 1980)* .

First Nat'l Bank v. Material Serv. Corp., 597 F.2d 1110, 1980 AMC 817 (7th Cir. 1979) ("Unlike the automobile highways rules, there is no general maritime rule requiring a vessel to operate in the right half of a channel except when overtaking and passing a vessel ahead.").

The point-bend custom is a custom for navigating upon the Mississippi River below New Orleans that has been given judicial recognition. The custom requires vessels navigating upriver to "come up under the points in the slackwater" and downbound vessels to "run the bends." At times the custom requires vessels to cross the river diagonally so as to stay in the bends or under the points. "The obvious navigational hazard requires all those piloting on the river to be well versed in the custom." *Valley Towing Serv. v. S/S American Wheat, 618 F.2d 341, 1981 AMC 436 (5th Cir. 1980)* (remanding to district court to determine if custom had been adhered to, and if not, whether the failure was a contributing cause of the collision). But because this practice is not a rule of law, failure to follow it will not invoke *The Pennsylvania*'s rule. *Canal Barge Co. v. China Ocean Shipping Co., 579 F. Supp. 243, 1985 AMC 731 (E.D. La. 1984) , aff'd, 770 F.2d 1357, 1986 AMC 2042 (5th Cir. 1985)* .

Parker Bros. & Co. v. DeForest, 221 F.2d 377, 1955 AMC 786 (5th Cir. 1955) (requirement of necessity of maintaining a lookout on the lead barge of every tow is a question of fact to be decided under all the circumstances entering into a collision).

(n8)Footnote 8. *Trinidad Corp. v. S.S. Keiyoh Maru, 845 F.2d 819, 1989 AMC 627 (9th Cir. 1988)* (the liability under the rule of *The Pennsylvania* cannot be modified by a showing that fault of the vessel that violated a statute was less than that of the other vessel as this would revive the major/minor fault rule that was abrogated by the adoption of comparative negligence).

Capt'n Mark v. Sea Fever Corp., 692 F.2d 163, 1983 AMC 2651 (1st Cir. 1982) (where the two helmsman were the only eyewitnesses, the court held that (1) the unequivocal testimony of the privileged vessel that the burdened vessel was proceeding without running lights was to be given greater weight, notwithstanding the general rule that affirmative testimony that a condition exists merits greater weight than negative testimony that it does not; (2) the burdened vessel was obligated to take "early and substantial action" to pass astern of the privileged vessel and was in error in attempting to cross the privileged vessel's bow and in failing to signal either its port or starboard turns; (3) due to the small size and function of the privileged vessel, it was not in error as a matter of law in failing to have a lookout as prescribed in the International Rules; (4) the failure of the privileged vessel to sound five short blasts as a danger signal where the vessel was not "in sight of" the burdened vessel did not rise to the level of a "statutory fault" under *The Pennsylvania*'s rule; and (5) the privileged vessel was not required to take action to avoid the collision where its inability to see the burdened vessel would have been more hazardous than its maintaining its present course); *Allied Chem. Corp. v. Hess Tankship Co., 661 F.2d 1044, 1982 AMC 1271 (5th Cir. Unit A Nov. 1981)* (under the rule in *The Pennsylvania*, the breach of Inland Rules that require a vessel that is underway to sound whistles in the fog and to post a lookout on a tow constituted clear statutory fault; since both vessels involved in the collision failed to assign a proper or sufficient radar watch, the apportionment of liability on an equal basis was amply supported by the record); *Magno v. Corros, 630 F.2d 224, 1981 AMC 2324 (4th Cir. 1980) , cert. denied, 451 U.S. 970 (1981)* (a district court judgment, finding the United States 25% at fault for the collision of a pleasure boat at night with a 1,100-foot long contraction dike in a navigable river marked by the Coast Guard with a single light at the channel end, was reversed where it was held that the Coast Guard was under no duty to mark the dike any more clearly than it did; the Coast Guard had neither abused its discretion by marking the dike with a single light, nor had it been negligent in the exercise of its discretion); Ed Broussard Marine Serv. v. M/V Destination, 1983 AMC 2159 (E.D. La. 1983) (after signals for a port-to-port passing in a 125-foot channel were exchanged between a southbound supply vessel and a northbound tug and its barges in tow, the supply vessel lost steering, grounded and caused the tug's second barge to collide with the supply vessel's stern; the failure of both vessels to sound danger signals coupled with the supply vessel's failure to stay on the starboard side of

the channel constituted equal violations of the Inland Rules thus necessitating 50% liability being assessed gainst each vessel); Whitney S.S. Co. v. United States, 1983 AMC 1757 (W.D.N.Y. 1982) , *aff'd, 1985 AMC 493 (2d Cir. 1984)* (where the Coast Guard's failure to discover and warn of a buoy's absence combined with a vessel's negligence in causing its grounding, damages would be apportioned according to the fault of each party); *AMOCO Transp. Co. v. S/S Mason Lykes, 550 F. Supp. 1264, 1983 AMC 1087 (S.D. Tex. 1982) , rev'd on other grounds, 768 F.2d 659 (5th Cir. 1985)* (the failure of an incoming cargo carrier to properly chart an out-going vessel's course, to reduce its excessive speed due to fog and its order of a hard port turn during a port-to-port passage (a move admitted to be "unbelievably stupid") was held to have presumptively caused the collision rendering the vessel 90% liable for the damages; the outgoing tanker's failure to post a lookout and its failure to make a more decisive starboard course change rendered it 10% liable). *Neptune Maritime Co. of Monrovia v. The Vessel Essi Camilla, 562 F. Supp. 14, 1982 AMC 1836 (E.D. Va. 1982) , aff'd without op., 714 F.2d 132, 1984 AMC 2983 (4th Cir. 1983)* (although a vessel that drags its anchor and collides with another ship may rebut the presumption of fault on its part by presenting evidence that the collision could not have been prevented or that the other vessel could have taken action to avoid the collision, the court found that the ship, which dragged anchor, fouled her propeller in a stationary ship's anchor chain, and caused both vessels to drift into a third vessel, was solely at fault where time and weather conditions prevented the other ships from taking action to avoid contact); Portland Pipe Line Corp. v. M/V Barcola, 1982 AMC 2725 (D. Me. 1982) (the presumption of negligence applicable to collisions between stationary and moving objects applies to collisions involving fender systems designed to cushion dockings without the necessity of showing that the pier itself, and not just the protective panels, had been damaged inthe collision; the tug company and the tug involved in docking the vessel that collided with the fender system fell within the scope of the presumption; however, a pilotage clause indemnifying the tug company for the negligence of the docking pilot was enforced where mismanagement was attributable to the docking pilot, assessing damages based on the useful life of the fender system).

(n9)Footnote 9. *The Eugene F. Moran, 212 U.S. 466 (1909)* ; *United States v. S.S. Washington, 241 F.2d 819, 1957 AMC 201 (4th Cir.) , cert. denied, 355 U.S. 817 (1957)* .

(n10)Footnote 10. *Sacramento Nav. Co. v. Salz, 273 U.S. 326 (1927)* ; *Liverpool, Brazil & River Plate Steam Nav. Co. v. Brooklyn E. Dist. Terminal, 251 U.S. 48 (1919)* ; *United States v. S.S. Washington, 241 F.2d 819, 1957 AMC 201 (4th Cir.) , cert. denied, 355 U.S. 817 (1957)* .

(n11)Footnote 11. *United States v. The Australia Star (The Hindoo), 172 F.2d 472 (2d Cir.) , cert. denied, 338 U.S. 823, 70 S. Ct. 69, 94 L. Ed. 499 (1949)* ; *United States v. S.S. Washington, 241 F.2d 819, 1957 AMC 201 (4th Cir.) , cert. denied, 355 U.S. 817 (1957)* .

(n12)Footnote 12. *Canada Malting Co. v. Paterson S.S. Co. (The Mantadoc and Yorkton), 285 U.S. 413, 1932 AMC 512 (1932)* ; The Ingeren, 1939 AMC 1229 (S.D. Cal. 1939) .

(n13)Footnote 13. *46 U.S.C. § 763a*.

(n14)Footnote 14. *46 U.S.C. § 56*. *See* 1B *Benedict on Admiralty* § 5.

(n15)Footnote 15. *E.g.*, Cargo damage claims governed by the Carriage of Goods by Sea Act are subject to a one-year statute of limitations. *46 U.S.C. § 1308(6)*. *See* 2A *Benedict on Admiralty* § 163.

(n16)Footnote 16. Etheridge v. Crew, 1982 AMC 616 (S.D. Ala. 1981) (the three-year Uniform Statute of Limitations for Maritime Torts applies as a rule-of-thumb to a collision action in which the doctrine of laches is the appropriate limitation device even though the Act may not be applied retroactively).

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Benedict on Admiralty

Volume 1: Jurisdiction Chapters I - XIV
APPENDIX A

1-A Benedict on Admiralty APPENDIX A.syn

§ A.syn Synopsis to Appendix A: APPENDIX A

Title 46 (Already Enacted as Positive Law)

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APPENDIX A

1-A Benedict on Admiralty

Title 46 (Already Enacted as Positive Law)

THE RECODIFICATION OF TITLE 46

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I. Introduction

In October 2006, Congress passed an Act to complete the restatement and recodification of title 46 of the United States Code, which includes a major portion of U.S. maritime legislation. *See* Pub. L. No. 109-304, 120 Stat. 1485 (2006). The new Act, a joint project of the Department of Transportation and the Office of the Law Revision Counsel of the House of Representatives, restates most of the provisions that were until recently found in the appendix to title 46 and enacts them as positive law within the statutory framework that was created in 1983 when the first portion of title 46 was recodified.

Like all codification legislation, the new Act was not intended to make substantive changes in the law. The purpose was simply to restate existing law to conform to "the understood policy, intent, and purpose of the Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections both of substance and of form." *2 U.S.C. § 285b(1)*. Thus the judicial decisions and other authorities construing the prior statutory language continue to be valuable sources for understanding the meaning of the current law.

II. Historical Background

For most of the twentieth century, various government agencies attempted to update and codify U.S. shipping laws. In 1916, the Shipping Board (a predecessor of the current Maritime Administration) undertook an examination of these laws, but Congress never acted on its recommendations. Immediately after World War II, bills to codify the shipping

laws were introduced in two Congresses, but neither passed. For much of the 1960s, the Maritime Administration, the Coast Guard, and the Customs Service worked with Congress to propose new legislation, but the effort apparently stalled in the administrative reorganization that created the Department of Transportation.

In 1983, Congress finally took the first step in the process of revising title 46 and enacting it into positive law. In Public Law 98-89, 97 Stat. 509, Congress enacted subtitle II of title 46, and (in section 2(j)) gave the Federal Maritime Commission and the Department of Transportation two years to "submit to Congress a proposed codification of the laws within their respective jurisdictions related to shipping and maritime matters."

In the meantime, Congress moved the unrestated provisions of the previous title 46 into an appendix in which the familiar section numbers were retained. Thus the Jones Act, which until 1983 had been codified at *46 U.S.C. § 688*, temporarily found a new home at *46 U.S.C. app. § 688*. (It is now codified at *46 U.S.C. §§ 30104-05*.) The Admiralty Extension Act similarly moved to *46 U.S.C. app. § 740* (until its latest move to *46 U.S.C. § 30101*). For older statutes, that change represented just one more in a series of recodifications. The Limitation Act was originally passed in 1851. 9 Stat. 635. It was then codified, as amended, in the Revised Statutes, which were enacted as positive law in 1874. 18 Stat. 831-833. With the promulgation of the U.S. Code in 1926, it was recodified (but not as positive law this time) at *46 U.S.C. §§ 181-188*. It then moved to the appendix to title 46. It has now been recodified--and again enacted as positive law--as *46 U.S.C. §§ 30501-12*.

Although the recodification of title 46 did not proceed as quickly as Congress had intended, the process did continue. In 1988, for example, the Federal Maritime Lien Act and the Ship Mortgage Act were recodified as *46 U.S.C. §§ 30101*, 31301-31343, and these provisions were enacted into positive law. 102 Stat. 4735.

The 2006 Act completes the process, recodifying almost all of the provisions that had been included in the appendix and enabling all of title 46 to be cited as positive law.

III. The Special Problems of COGSA And the Jones Act

Two statutes that had been included in the appendix to title 46 created special problems for the recodification project. The Carriage of Goods by Sea Act (COGSA), ch. 229, 49 Stat. 1207 (1936) (until recently codified at *46 U.S.C. app. §§ 1300-15*), is not an ordinary statute but the U.S. enactment of an international convention popularly known as the Hague Rules. Congress thought it would be inappropriate for a treaty party to unilaterally modify what was, in essence, the language of the treaty. *See* Michael F. Sturley, *Reflections on the Recodification of Title 46*, 2 BENEDICT'S MAR. BULL. 209, 214-215 (2004). Furthermore, the United States is currently participating in international negotiations to modernize the Hague Rules, which will soon provide a new convention to supersede COGSA. Thus it would be particularly inappropriate to amend COGSA while these negotiations are pending. *See id.* at 215.

As a result of these difficulties, Congress decided that COGSA should simply drop out of title 46 and become an uncodified statute (pending the completion of the international negotiations). COGSA remains in force (and is properly cited by its original section numbers), but it appears in the U.S. Code only as a note following *46 U.S.C. § 30701* (the first section of the recodified Harter Act). Although this may create some practical difficulties for a time, they should be easily resolved once people recognize what has happened. For the time being, a suitable citation form for a COGSA provision, such as the section 4(5) package limitation, would be as follows: Carriage of Goods by Sea Act § 4(5), ch. 229, 49 Stat. 1207 (1936), *reprinted in* note following *46 U.S.C. § 30701* (previously codified at *46 U.S.C. app. § 1304(5) (2000)*). This suggested form tells the reader: (1) the official source from 1936, (2) the location where the text will be found in the 2006 edition of the U.S. Code, and (3) the familiar way in which the statute has been cited for the last 25 years.

The Jones Act, *46 U.S.C. §§ 30104-05* (until recently codified at *46 U.S.C. app. § 688*) has created a very different sort

of problem. When Congress passed the statute in 1920 (after an earlier attempt had been held ineffective), Merchant Marine Act, ch. 250, § 33, 41 Stat. 1007, 988 (1920), serious questions were raised about the constitutionality of the new provision. The Supreme Court resolved these constitutional objections by construing the Act to have a very different meaning than the plain language might have suggested. *See Panama Railroad Co. v. Johnson, 264 U.S. 375 (1924)* . Thus the statute operated for over eighty years with a meaning that was not clearly revealed in the statutory language.

Unfortunately, the new section 30104 clarifies and simplifies the language that Congress passed in 1920 rather than the interpretation adopted by the *Panama Railroad* Court in 1924. If today's courts were to take the new statutory language at face value, that might accomplish a significant change in the substantive meaning of the statute--a change that was not intended in the codification statute. To correct any potential problem, an "update bill" has been prepared to correct this problem (and address some other minor issues). It should not be controversial and is expected to pass as soon as Congress takes up the issue. When it does, the accepted meaning of the Jones Act will be confirmed (and the new language will be read into the 2006 recodification).

IV. Disposition Tables

The following tables (reprinted from a report accompanying H.R. 1442) show the disposition of existing provisions affected by the bill. These tables include provisions from titles 19, 46, 46 Appendix, and 48 of the United States Code and provisions of certain Reorganization Plans.

Section	Disposition (Title 46 unless otherwise specified)
128.....	60502
130 (1st sentence).....	60501
130 (last sentence related to 19:128).....	60502
130 (last sentence related to 19:130).....	60501
131.....	60501

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Section	Disposition (Title 46 unless otherwise specified)
2101(2).....	102
2101(3).....	103
2101(3a).....	104
2101(6).....	105
2101(10).....	106
2101(10a).....	107
2101(12).....	110
2101(17b).....	111
2101(36).....	112
2101(41).....	113

2101(44)..... 114
2101(45)..... 115
2101(46)..... 116
2108..... 504
12101(a)(1)..... 108
12101(a)(2), (b)..... 12101
12101 note (Pub. L. 104-324, § 1117)..... 55113
12102(a) (related to tonnage)..... 12102
12102(a)..... 12103
12102(b)..... 12103
12102(c)..... 12113
12102(d)..... 12111
12102 note (Pub. L. 105-277, § 203(b)-(e))..... 12113
12103(a) (less filing by owner)..... 12105
12103(a) (related to filing by owner)..... 12104
12103(b)..... 12104
12103(c), (d)..... 12105
12103(e)..... 12133
12103a..... 12105
12104..... 12134
12105..... 12111
12106(a)..... 12112
12106(b)..... 12102, 12112
12106(c)..... 12116
12106(d)..... 12117
12106(e), (f)..... 12119
12106 note (Pub. L. 105-383, §§ 502-504)..... 12121
12108(a)..... 12113
12108(b)..... 12102, 12113
12108(c)..... 12116
12108(d)..... 12113
12109..... 12114
12110(a), (b)..... 12102
12110(c)..... 12114
12110(d)..... 12131

12111(a).....	12135
12111(b)-(d).....	12136
12112.....	12115
12117.....	12137
12119.....	12138
12119 note (Pub. L. 107-295, § 403).....	12138
12120.....	12139
12122.....	12151
12123.....	12152
12124.....	12106

Title 46 Appendix

Section	Disposition (Title 46 unless otherwise specified)
3 note prec. (Act 12-27-1950, §§ 1, 2).....	501
3.....	Superseded. Provided that the Commissioner of Customs shall supervise the laws relating to the admeasurement of vessels and the assignment of signal letters and official numbers, and that the Commissioner's decision relating to the interpretation of those laws and the collection and refund of tonnage taxes is final. These functions have been transferred to other officials.
9(a), (b).....	Previously repealed.
9(c).....	Obsolete reporting requirement.
9(d).....	Previously repealed.
14 (words before last proviso).....	12107
14 (last proviso).....	12151
42.....	60103
57.....	60102
59.....	Obsolete. Provides penalty for officials neglecting to perform acts required by title 48 of the Revised Statutes.
91.....	60105
97.....	60106
98.....	60109
100.....	60107
104.....	60504
111.....	Omitted but not repealed. Provides that Great

	Lakes trade does not make vessel liable to entry and clearance fees. Same provision at 19 U.S.C. 288.
121 (1st sentence).....	60302
121 (2d sentence).....	60301
121 (3d sentence related to distress).....	60305
121 (3d sentence related to trade).....	60306
121 (4th sentence).....	60302
121 (5th sentence words before semicolon).....	60302
121 (5th sentence words after semicolon).....	60304
121 (last sentence words before semicolon).....	60312
121 (last sentence words after semicolon).....	60302
122.....	60307
123.....	60308
124.....	60309
125.....	60310
128, 129.....	60303
132.....	60301
133, 134.....	60311
135.....	60312
141.....	60503
142.....	60505
143.....	60506
144, 145.....	60507
146.....	60502
163.....	60101
181.....	30503
182.....	30504
183(a).....	30505
183(b) (1st sentence).....	30506
183(b) (last sentence).....	30507
183(c)-(e).....	30506
183(f) (related to 46 App.:183(b)-(e)).....	30506
183(f) (related to 46 App.:183b).....	30508

183(g).....	30510
183b.....	30508
183c.....	30509
184.....	30507
185.....	30511
186.....	30501
187.....	30512
188.....	30502
189.....	30505
190.....	30704
190 note (Act 2-13-1893, § 8).....	Unnecessary. Provided effective date for Act.
191.....	30705
192.....	30706
193.....	30703
194.....	30707
195.....	30702
196.....	Unnecessary. Provides that sections 190-196 shall not be held to modify or repeal certain other laws. Unnecessary because of the codification of the relevant laws.
251, 251a.....	55114
251b.....	Unnecessary. Authorizes the Secretary of the Treasury to issue regulations for the enforcement of certain provisions. See 31 U.S.C. 321(b).
262.....	Unnecessary. Provides that documented vessels shall not be employed in any trade whereby the revenue laws are defrauded. See 19 U.S.C. 1703.
277.....	12133
289.....	55103
289a, 289b.....	55121
289c.....	55104
290.....	Previously omitted from U.S. Code. Superseded by 46 App. U.S.C. 883.
291.....	55120
292.....	55109
316(a), (b).....	55111
316(c).....	55118
316(d), (e).....	80104

316a.....	55112
319.....	Transfer to 19 U.S.C. 1706a.
320.....	Unnecessary. Provides for remission or mitigation of certain fines by the Commissioner of Customs. See section 504 of the revised title.
321.....	Obsolete. Provides penalty for officials acting contrary to title 50 of the Revised Statutes in connection with documentation and measurement of vessels and collection of fees.
322.....	Obsolete. Provides penalty for officials neglecting to perform acts required by title 50 of the Revised Statutes.
323.....	Unnecessary. Provides penalty for officials falsifying vessel documents under title 50 of the Revised Statutes. See 18 U.S.C. 507 and 2197.
324.....	Unnecessary. Provides penalty for persons who assault, resist, or obstruct officers in execution of vessel documentation laws and title 50 of the Revised Statutes. See 18 U.S.C. 111.
326.....	502
327.....	503
328.....	Obsolete. Provides that penalties and forfeitures incurred under title 50 of the Revised Statutes may be recovered the same as those relating to the collection of duties.
336.....	Obsolete. Provides that canal boats and boats employed on the internal waters of a State (except those with sails or propelling machinery and those employed in trade with Canada) are not subject to the Act of Feb. 18, 1793, ch. 8, 1 Stat. 305 (relating to the enrolling and licensing of vessels in the coastwise trade) and are exempt from the payment of customs and other fees.
354, 355.....	60104
441, 443, 444.....	50503
446-446c.....	50504
446 note (Pub. L. 97-322, § 201).....	Unnecessary. Provides short title for the Sailing School Vessels Act of 1982.
466c.....	Transfer to 7 U.S.C. 8304 note.
491 (words before semicolon).....	30102
491 (words after semicolon).....	30103
688(a).....	30104
688(b).....	30105

721.....	80101
722.....	80103
723.....	80103
724.....	80102
725.....	80105
726.....	80106
727, 729, 730.....	80107
731.....	2304, 80107. See § 15(8) of bill.
738.....	80301
738a.....	80302
738c.....	80303
740.....	30101
741 (11th-26th words).....	30902
741 (less 11th-26th words).....	30913
741 note.....	30901
742 (1st sentence).....	30903
742 (2d sentence).....	30906
742 (3d sentence).....	30903
742 (last sentence).....	30906
743 (1st sentence).....	30908
743 (2d, 3d sentences).....	30910
743 (4th-6th sentences).....	30908
743 (last sentence).....	30907
743a.....	Superseded. Prohibited interest on claims prior to filing of suit under 46 App. U.S.C. 745. Superseded by 1950 amendment to 46 App. U.S.C. 745.
744.....	30914
745 (words before 1st proviso).....	30905
745 (1st proviso).....	30904
745 (2d proviso).....	Obsolete. Relates to suits under the Act of Mar. 9, 1920 (popularly known as the Suits in Admiralty Act) brought no later than Dec. 13, 1951.
745 (last proviso).....	30910
746.....	30909
747.....	30915
748.....	30912
749.....	30911

750.....	30916
751.....	30917
752.....	30918
761(a).....	30302
761(b).....	30307
761 note (popular name).....	30301
762(a).....	30303
762(b).....	30307
763a.....	30106
764.....	30306
765.....	30305
766.....	30304
767.....	30308
768.....	Obsolete. Provides that the Act of Mar. 30, 1920 (popularly known as the Death on the High Seas Act) shall not affect any pending suits.
781.....	31102
781 note (popular name).....	31101
782 (1st sentence).....	31104
782 (last sentence words before last comma).....	31103
782 (last sentence words after last comma).....	31107
783 (words before proviso).....	31102
783 (proviso).....	31105
784.....	31110
785.....	31111
786.....	31108
787.....	31109
788.....	31112
789.....	31106
790.....	31113
801.....	Unnecessary. Defines terms for purposes of the Shipping Act, 1916. Some of the terms appeared only in sections which were previously repealed and others are redundant with title-wide definitions in chapter 1.
802.....	50501
803.....	50502

804a.....	Obsolete. Reorganized the U.S. Shipping Board which was subsequently abolished.
808(a).....	Previously repealed.
808(b).....	57109
808(c)-(f).....	56101
808a.....	56101
811 (1st sentence words before 1st comma).....	50105
811 (1st sentence words after 1st comma).....	50106
811 (2d sentence words before 2d comma).....	50105
811 (2d sentence words after 2d comma).....	50107
811 (3d sentence).....	50106
811 (4th sentence).....	50109
811 (last sentence).....	50111
817d(a) (1st-5th, 29th-last words).....	44103
817d(a) (6th-28th words).....	44101
817d(b).....	44103
817d(c).....	44104
817d(d).....	44106
817d(e).....	44105
817e(a) (1st-14th, 37th-last words).....	44102
817e(a) (15th-36th words).....	44101
817e(b).....	44102
817e(c).....	44104
817e(d).....	44106
817e(e).....	44105
833.....	Unnecessary. Contains a separability provision for the Shipping Act, 1916.
834.....	60108
835.....	56102
836, 837.....	56105
839 (1st par.).....	56103
839 (last par.).....	56104
842.....	Unnecessary. Provides short title for the Shipping Act, 1916.
861.....	50101
864a.....	Obsolete. Authorizes allowances to purchasers

	of vessels for cost of putting the vessels in class, without regard to 50 App. U.S.C. 1736(d), which was subsequently repealed. Also impliedly repealed by 46 App. U.S.C. 1119 for other than title XI (1936 Act) foreclosures.
864b.....	57108
865.....	Obsolete. Authorizes sale of vessels to aliens. Executed for 1920 vessel inventory, superseded by Merchant Marine Act, 1936, and impliedly repealed by 1950 freeze. See § 14 of Act of Mar. 8, 1946 (50 App. U.S.C. 1735 note).
865a.....	53101 note (ODS)
866.....	Obsolete. Provides for determination of appropriate steam-ship lines and for sale or charter of vessels. Executed for 1920 vessel inventory, superseded by Merchant Marine Act, 1936, and impliedly repealed by 1950 freeze. See § 14 of Act of Mar. 8, 1946 (50 App. U.S.C. 1735 note).
867.....	50302
868.....	Unnecessary. Requires insurance for risk of loss in installment sales contracts under Merchant Marine Act, 1920. Executed for 1920 vessel inventory and unnecessary because such insurance is now standard.
869.....	Obsolete. Authorizes Secretary of Transportation to insure vessels and facilities under Merchant Marine Act, 1920. Impliedly repealed by 46 App. U.S.C. 1119.
871.....	57106
872.....	50304
875.....	50304
876(a)(1).....	Unnecessary. Authorizes the Secretary of Transportation to make rules and regulations to carry out the Merchant Marine Act, 1920. See 49 U.S.C. 322(a).
876(a)(2).....	42101
876(a)(3).....	42102
876(b), (c).....	42102
876(d).....	42103
876(e).....	42101
876(f), (g).....	42104
876(h).....	42105
876(i).....	42106

876(j).....	42107
876(k).....	42108
876(*l*).....	42109
877.....	55101
883 (words before 1st proviso).....	55102
883 (1st proviso, 2d proviso less meaning of "re-built").....	12132
883 (2d proviso related to meaning of "re-built").....	12101
883 (3d proviso).....	55116
883 (4th proviso).....	55119
883 (5th proviso).....	55117
883 (6th proviso).....	55107
883 (7th proviso).....	55106
883 (8th proviso).....	Expired in 1984. Related to transportation of merchandise in coastwise trade.
883 (2d-6th sentences, last sentence less provisos).....	55105
883 (10th proviso).....	55115
883 (11th proviso).....	55102
883 (12th proviso).....	55110
883 (last proviso).....	55108
883 note (Pub. L. 104-324, § 1120(f)).....	12120
883-1.....	12118
883a (1st sentence).....	12139
883a (2d, last sentences).....	12151
883b.....	Unnecessary. Authorizes the Secretary of Transportation to prescribe regulations to carry out certain provisions. See 49 U.S.C. 322(a).
884.....	58108
885.....	Transfer to 15 U.S.C. 38.
887.....	Unnecessary. Contains a separability provision for the Merchant Marine Act, 1920.
888.....	Unnecessary. Incorporates definitions from 46 App. U.S.C. 801-803 and defines "alien" for purposes of the Merchant Marine Act, 1920. See definitions in chapter 1 and section 50501 of the revised title.
889.....	Unnecessary. Provides short title for the Merchant Marine Act, 1920.

891.....	50101
891b.....	57106
891c.....	Obsolete and unnecessary. Recognizes the need for replacement vessels owned by the United States and directs the Secretary of Transportation to present recommendations to Congress for new vessels.
891u.....	Obsolete. Defines terms for purposes of the Merchant Marine Act, 1928.
891v.....	Obsolete. Reaffirms the policy of 46 App. 866. See disposition of that section in this table.
891w.....	Obsolete. Relates to the allocations of operations of ships under the Merchant Marine Act, 1928. Executed for 1928 vessel inventory and impliedly repealed by 1950 freeze. See § 14 of Act of Mar. 8, 1946 (50 App. U.S.C. 1735 note).
891x.....	Unnecessary. Provides short title for the Merchant Marine Act, 1928.
1101.....	50101
1111(a), (b).....	Previously repealed.
1111(c) (related to seal).....	301
1111(c) (related to records).....	303
1111(c) (related to rules and regulations).....	305
1111(d) (related to Commission).....	307
1111(d) (related to Secretary).....	Unnecessary. Authorizes expenditures and appropriations under the Merchant Marine Act, 1936.
1111(e).....	Unnecessary. Authorizes the Federal Maritime Commission and the Secretary of Transportation to employ personnel. See 5 U.S.C. 3101 and 49 U.S.C. 323.
1111(f) (1st, last sentences).....	Unnecessary. Provides for traveling and subsistence expenses. See 5 U.S.C. ch. 57.
1111(f) (2d sentence related to Commission).....	Obsolete. Provides for additional pay of military officers detailed to Federal Maritime Commission.
1111(f) (2d sentence related to Secretary).....	49 U.S.C. 109. See § 11 of bill.
1111 note (Pub. L. 89-56).....	301
1111 notes (Reorg. Plans).....	See disposition tables for Reorg. Plans following this table.

1111a.....	Obsolete. Restricts expenditures for administrative expenses by the Federal Maritime Commission and the Secretary of Transportation. Presumably only intended to apply, as originally enacted, to the U.S. Maritime Commission, which has been abolished.
1112.....	50303
1114.....	Obsolete. Provided that functions of the former U.S. Shipping Board under certain laws, which previously had been transferred to the Department of Commerce, were transferred to the Federal Maritime Commission and the Secretary of Transportation. Also originally provided the former United States Maritime Commission, and later the FMC and the Secretary, with authority to prescribe regulations. This grant of regulatory authority to the FMC and the Secretary is unnecessary because it is provided by other law. See section 305 of title 46 (as enacted by this bill) and section 322(a) of title 49.
1115.....	58107
1116, 1116a.....	Obsolete. Provides for creation of a construction fund for use by the Department of Transportation. Impliedly repealed by 46 App. U.S.C. 1119.
1117 (related to Commission).....	Obsolete. Authorizes the Federal Maritime Commission to make contracts and disbursements under the Merchant Marine Act, 1936, and provides for auditing the Commission's financial transactions.
1117 (related to Secretary).....	49 U.S.C. 109. See § 12 of bill.
1118 (related to Commission).....	306
1118 (related to Secretary).....	50111
1118 note (Pub. L. 106-398, [§ 3506]).....	50111
1119.....	49 U.S.C. 109. See § 12 of bill.
1120.....	50102
1121(a)-(c).....	50103
1121(d).....	50105
1121(e).....	50106
1121(f).....	50109
1121(g).....	50106
1121(h), (i).....	50109
1121(j) (words before 1st semi-	50105

colon).....	
1121(j) (words between 1st and 2d semi-colons).....	50110
1121(j) (words after 2d semicolon).....	50109
1121-1.....	55301
1121-2.....	50112
1122(a).....	50104
1122(b)(1).....	50110
1122(b)(2).....	50105
1122(c).....	50105
1122(d).....	50110
1122(e).....	Previously repealed.
1122(f).....	50108
1122(g).....	50111
1122a.....	50113
1122b.....	55501
1123.....	50109
1124.....	50306
1125.....	57105
1125 note (Pub. L. 86-518, § 9).....	57105, 57506
1125a.....	57107
1126-1(a) (1st sentence).....	51101
1126-1(a) (last sentence), (b).....	51104
1131.....	53101 note
1132.....	52101
1151-1157.....	53101 note (CDS)
1158(a).....	57102
1158(b).....	57103
1159.....	53101 note (CDS)
1160(a).....	57301
1160(b) (1st sentence).....	57302
1160(b) (2d sentence).....	57304
1160(b) (3d sentence).....	57305
1160(b) (4th-7th sentences).....	57306
1160(b) (last sentence).....	57302
1160(c).....	57303
1160(d).....	57305
1160(e).....	57307

1160(f).....	50111
1160(g).....	57308
1160(h).....	Previously repealed.
1160(i).....	57104
1160(j).....	57101
1161(a).....	53301
1161(b) (1st sentence words before 6th comma).....	53302
1161(b) (1st sentence words between 6th and 10th commas).....	53303
1161(b) (1st sentence between 10th and 16th commas).....	53302
1161(b) (1st sentence words after 16th comma).....	53305
1161(b) (last sentence).....	53302
1161(c).....	53306
1161(d).....	53307
1161(e).....	53308
1161(f).....	53309
1161(g), (h).....	53310
1161(i).....	53311
1161(j).....	53312
1161(k).....	Obsolete. Provides that 46 App. U.S.C. 1161 applies to taxable years beginning after Dec. 31, 1939.
1161(*l*).....	53304
1161(m)-(o).....	53301
1162.....	53101 note (CDS)
1171-1176.....	53101 note (ODS)
1177(a) (1st sentence).....	53503
1177(a) (2d sentence related to purpose).....	53503
1177(a) (2d sentence related to deposits).....	53504
1177(a) (last sentence).....	53504
1177(b)(1), (2).....	53505
1177(b)(3).....	53501
1177(c).....	53506
1177(d).....	53507
1177(e).....	53508

1177(f).....	53509
1177(g).....	53510
1177(h) (less (2) (last sentence)).....	53511
1177(h)(2) (last sentence).....	53512
1177(i).....	53513
1177(j).....	53514
1177(k)(1)-(3).....	53501
1177(k)(4).....	Unnecessary definition of "United States". See ch. 1 of the revised title.
1177(k)(5)-(9).....	53501
1177(*l*) (1st sentence).....	53515
1177(*l*) (2d sentence).....	53502
1177(*l*) (last sentence).....	53516
1177(m).....	53517
1177-1.....	53501
1177a.....	Unnecessary. There are no longer any recapture provisions in ODS contracts.
1178-1185a.....	53101 note (ODS)
1187-1187e.....	53101 note (MSF)
1191.....	57501
1192.....	57502
1193(a).....	57503
1193(b).....	57502
1193(c) (related to construction, reconstruction, or reconditioning).....	57503
1193(c) (related to chartering).....	57512
1194.....	57504
1195 (1st, 2d sentences).....	57505
1195 (last sentence).....	57506
1196(a).....	57512
1196(b) (1st sentence related to announcement).....	57512
1196(b) (1st sentence related to authority).....	57515
1196(b) (last sentence).....	57513
1197.....	57515
1198.....	57516
1199.....	57517
1200.....	57518

1201.....	57511
1202(a).....	57519
1202(b), (c).....	57520
1202(d).....	57521
1203.....	57514
1204.....	57531
1205.....	57532
1211, 1212.....	53101 note
1213(a) (less 3d sentence as related to 1121(a)).....	53101 note. See § 14(b) of bill.
1213(a) (3d sentence related to 1121(a)).....	50103
1213(b).....	49 U.S.C. 109. See § 12 of bill.
1222.....	58101 note. Repealed eff. Oct. 1, 2005, by Maritime Security Act of 2003.
1223(a).....	58101
1223(b).....	58102
1223(c).....	Previously repealed.
1223(d).....	58103
1223(e).....	Previously repealed.
1223(f).....	58104
1226.....	58105
1227.....	58106
1228 (1st, 2d pars.).....	58109
1228 (last par.).....	505
1241(a).....	55302
1241(b).....	55305
1241(c).....	55303
1241-1.....	55304
1241a.....	50301
1241b.....	50301
1241b note (limitation on funds for fiscal year 1957).....	50301
1241c.....	50301
1241d.....	55311
1241e.....	55313
1241f(a)-(d).....	55314
1241f(e).....	55312
1241g.....	55315

1241h.....	55316
1241h note (appropriations for payments of ocean freight differentials).....	55316
1241i.....	Unnecessary. Provides a general authorization of appropriations for 46 App. U.S.C. 1241e-1241o.
1241j.....	55317
1241k-1241n.....	Obsolete. Provided for a commission to study and report on agricultural export transportation policy. The commission's work has been completed and the commission has been abolished.
1241o.....	55314
1241p.....	55318
1241q.....	55333
1241r.....	55332
1241s.....	55334
1241t(a), (c).....	55335
1241t(b).....	55336
1241u.....	Obsolete reporting requirement.
1241v.....	55331
1242(a) (1st, 2d sentences).....	56301
1242(a) (3d sentence).....	56303
1242(a) (4th sentence).....	56307
1242(a) (last sentence).....	56303
1242(b).....	56303
1242(c) (1st sentence).....	56302
1242(c) (2d sentence).....	56304
1242(c) (last sentence).....	56303
1242(d) (1st par. words before 2d comma).....	56303
1242(d) (1st par. words after 2d comma).....	56304
1242(d) (last par.).....	56305
1242(e).....	56306
1242a(a).....	56501
1242a(b).....	56502
1242a(c).....	56503
1242a(d).....	56504
1242a(e).....	56502
1244(a).....	109

1244(b).....	Unnecessary definition of "person". See 1 U.S.C. 1.
1244(c).....	50501
1244(d).....	Unnecessary. Defines "construction" as including outfitting and equipping.
1244(e).....	Previously repealed.
1244(f).....	Unnecessary. Defines "Representative" and "Member of the Congress" as including Delegates to the House of Rep- resentatives from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner to the House of Representatives from Puerto Rico.
1244(g).....	114
1245 (1st sentence).....	Unnecessary. Contains a separability provision for the Merchant Marine Act, 1936.
1245 (last sentence).....	101 note
1247.....	50305
1248.....	53101 note (CDS and ODS)
1271.....	53701
1272.....	53717
1273(a).....	53702
1273(b).....	53711
1273(c).....	53709
1273(d).....	53705
1273(e) (1st sentence).....	53705
1273(e) (last sentence).....	53721, 53722
1273(f).....	53704
1273(g).....	53732
1273(h).....	53704
1273(i), (j).....	57306
1273a.....	53707
1274(a).....	53706
1274(b)(1).....	53707
1274(b)(2).....	53709
1274(b)(3)-(7).....	53710
1274(b) (last 2 sentences).....	53709
1274(c)(1) (1st sentence).....	53711
1274(c)(1) (last sentence).....	53709
1274(c)(2).....	53711
1274(d)(1), (2).....	53708

1274(d)(3).....	53732
1274(d)(4).....	53707
1274(d)(5).....	Previously repealed.
1274(e).....	53714
1274(f)(1).....	53713
1274(f)(2), (3).....	53708
1274(f)(4).....	53713
1274(g).....	53717
1274(h).....	53710
1274(i).....	53709
1274(j).....	53732
1274(k).....	53712
1274(*l*).....	53703
1274(m).....	53712
1274(n).....	53703
1274a.....	53734
1275(a).....	53721
1275(b).....	53722
1275(c).....	53724
1275(d).....	53723
1275(e).....	53725
1275(f).....	53722
1279a.....	53715
1279b.....	53716
1279c.....	53731
1279d.....	53732
1279e.....	53733
1279f.....	53735
1279g.....	53702
1280.....	53717
1280a.....	53733
1280b.....	53718
1281(a)-(c).....	53901
1281(d).....	Unnecessary. Defines "citizen of the United States" for pur- poses of the war risk insurance program as including corporations, partnerships, and associations. See 46 App. U.S.C. 1244(c) and section 50501 of the revised title.
1281(e).....	Unnecessary definition of "Secretary".

1282.....	53902
1283(a) (1st, 2d sentences).....	53903
1283(a) (last sentence).....	53910
1283(b) (1st sentence).....	53903
1283(b) (last sentence).....	53901
1283(c)-(f).....	53903
1284.....	53903
1285.....	53905
1286.....	53904
1287.....	53907
1288.....	53909
1288a.....	53909
1289(a)(1).....	53910
1289(a)(2).....	53906
1289(b)-(f).....	53910
1290.....	Unnecessary. Provides that the war risk insurance program does not affect seamen's rights under existing law.
1291.....	50111
1292.....	53911
1293.....	53908
1294.....	53912
1295 (1st sentence).....	51101
1295 (last sentence cl. (1)).....	51103
1295 (last sentence cl. (2)).....	51104
1295a.....	51102
1295b(a).....	51301
1295b(b)(1)-(3)(C).....	51302
1295b(b)(3)(D).....	51303
1295b(b)(3)(E).....	51305
1295b(b)(3)(F).....	51311
1295b(b)(3)(G).....	Unnecessary. Defines "State" for purposes of 46 App. U.S.C. 1295b(b)(3) as including the several States.
1295b(b)(4).....	Obsolete. The Trust Territory of the Pacific Islands has been terminated. See 48 U.S.C. 1681 note prec.
1295b(b)(5)-(7).....	51304
1295b(b)(8).....	51309

1295b(c).....	51311
1295b(d).....	51308
1295b(e)(1)-(4).....	51306
1295b(e)(5).....	51310
1295b(f).....	51307
1295b(g).....	51309
1295b(h).....	51312
1295b(i).....	51313
1295b(j).....	51314
1295c(a).....	51501
1295c(b).....	51503
1295c(c)(1), (2).....	51504
1295c(c)(3)(A).....	51507
1295c(c)(3)(B).....	51508
1295c(d)(1).....	51505
1295c(d)(2).....	51501
1295c(e).....	51502
1295c(f).....	51506
1295c(g)(1)-(6).....	51509
1295c(g)(7).....	51510
1295c(h).....	51511
1295c note (Pub. L. 101-115, § 4).....	51504
1295c-1.....	49 U.S.C. 109. See § 12 of bill.
1295d(a), (b).....	51703
1295d(c).....	51704
1295e.....	51701
1295f.....	51702
1295g(a).....	Unnecessary. Provides that the Secretary of Transportation shall establish such rules and regulations as may be necessary to carry out title XIII of the Merchant Marine Act, 1936, relating to maritime education and training. The Secretary has general regulatory authority under 49 U.S.C. 322(a).
1295g(b)-(d).....	51103
1300-1315.....	30701 note
1501.....	80501
1501 note (Pub. L. 95-208, § 1).....	Unnecessary. Provides short title for the International Safe Container Act.
1502(a) (related to application of Conven-	80502

tion).....	
1502(a) (related to approval and examination).....	80504
1502(b).....	Previously repealed.
1503(a)-(c)(1).....	80503
1503(c)(2).....	80506
1503(c)(3).....	80503
1503(d).....	80506
1503(e).....	80503
1504.....	80505
1505.....	80509
1506.....	80507
1507.....	80508
1601-1603.....	49 U.S.C. 109. See § 12 of bill.
1604-1608.....	Executed and obsolete. Related to the transfer of the Maritime Administration from the Department of Commerce to the Department of Transportation.
1609.....	49 U.S.C. 109 note
1610.....	Omitted but not repealed. Contains a separability provision for the Maritime Act of 1981.
1701.....	40101
1701 note (Pub. L. 98-237, § 1).....	Unnecessary. Provides short title for the Shipping Act of 1984.
1702.....	40102
1703.....	40301
1704(a).....	40302
1704(b)-(d).....	40303
1704(e) (less last sentence).....	40305
1704(e) (last sentence).....	40301
1704(f).....	40301
1704(g).....	40303
1705(a)-(f).....	40304
1705(g)-(i).....	41307
1705(j).....	40306
1705(k).....	41307
1706.....	40307
1707(a), (b).....	40501
1707(c).....	40502

1707(d)..... 40501
1707(e)..... 40503
1707(f), (g)..... 40501
1708(a)..... 40701
1708(b)..... 40702
1708(c) (1st sentence)..... 40703
1708(c) (last sentence), (d)..... 40704
1708(e)..... 40705
1708(f)..... 40706
1709(a)..... 41102
1709(b)(1)-(12)..... 41104
1709(b)(13), (words after cl. (13))..... 41103
1709(c)..... 41105
1709(d)(1)..... 41102
1709(d)(2)..... 41106
1709(d)(3) (related to (b)(10))..... 41106
1709(d)(3) (related to (b)(13))..... 41103
1709(d)(4)..... 41106
1709(d)(5)..... 41103
1709(e)..... 41101
1710(a), (b)..... 41301
1710(c) (1st-3d sentences)..... 41302
1710(c) (last sentence)..... 41307
1710(d)-(f)..... 41302
1710(g) (related to time limit)..... 41301
1710(g) (less time limit)..... 41305
1710(h)(1)..... 41307
1710(h)(2)..... 41306
1710a(a)..... 42301
1710a(b), (c)..... 42302
1710a(d)..... 42303
1710a(e)(1), (2)..... 42304
1710a(e)(3)..... 42306
1710a(f)..... 42305
1710a(g)..... 306
1710a(h) (related to 876(a)(2))..... 42101
1710a(h) (related to 1712(b)(6))..... 41108
1710a(i)..... 42307

1711.....	41303
1712(a).....	41107
1712(b).....	41108
1712(c)-(f).....	41109
1713(a), (b).....	41304
1713(c).....	41308
1713(d).....	41309
1713(e).....	41308, 41309
1714.....	40104
1715.....	40103
1716.....	305
1718(a).....	40901
1718(b).....	40902
1718(c).....	40903
1718(d).....	40901
1718(e).....	40904
1719(a)-(c).....	Executed. Amended various provisions restated in the revised title, and repealed other provisions.
1719(d).....	40101 note
1719(e).....	Unnecessary. Provided transitional and savings provisions relating to enactment of the Shipping Act of 1984 and amendments to that Act by the Ocean Shipping Reform Act of 1998.
1801.....	70302
1802.....	70306
1803.....	70303
1804.....	70304
1805.....	70305
1806.....	Obsolete. Provided for presidential review of sanctions against terrorists who seize or attempt to seize vessels, and for a report to Congress by Aug. 27, 1987.
1807.....	70301
1808.....	Expired. Authorized appropriations for fiscal years 1987 through 1991.
1809.....	70306
1901.....	Unnecessary. Provided a short title for the Maritime Drug Law Enforcement Act, which is restated in ch. 705 of the revised title.
1902.....	70501

1903(a).....	70503
1903(b), (c).....	70502
1903(d).....	70505
1903(e).....	70503
1903(f).....	70504
1903(g).....	70506
1903(h).....	70503
1903(i).....	70502
1903(j).....	70506
1904.....	70507
2001.....	51901
2001 note (Pub. L. 100-324, § 1).....	Unnecessary. Provides short title for the Merchant Marine Decorations and Medals Act.
2002.....	51901
2003.....	51902
2004(a).....	51903
2004(b).....	51904
2004(c).....	51907
2004(d).....	51901
2005.....	51905
2006.....	51906
2007.....	51908

Title 48

Section	Disposition (Title 46 unless otherwise specified)
1664.....	55101

Reorganization Plan No. 6 of 1949

Section	Disposition (Title 46 unless otherwise specified)
All	301

Reorganization Plan No. 21 of 1950

Section	Disposition (Title 46 unless otherwise specified)
101-106.....	Previously superseded. See section 305 of Reorg. Plan No. 7 of 1961.
201.....	49 U.S.C. 109
202.....	Previously superseded. See section 305 of Re-

	org. Plan No. 7 of 1961.
203, 204.....	49 U.S.C. 109
302-307.....	Previously superseded. See section 305 of Reorg. Plan No. 7 of 1961.

Reorganization Plan No. 7 of 1961

Section	Disposition (Title 46 unless otherwise specified)
101.....	301
102(a)-(c).....	301
102(d).....	302
103.....	Executed and obsolete. Transferred functions under certain provisions of law from the Federal Maritime Board to the Federal Maritime Commission. The provisions referred to either are restated in a way that reflects the transfer or have been previously repealed.
104.....	301
105(a)-(c).....	304
105(d).....	301
201.....	49 U.S.C. 109
301.....	Impliedly repealed. Provided that the last sentence of 46 App. U.S.C. 1111(b), which pertained to conflicts of interest, shall apply to the Commissioners, officers, and employees of the Federal Maritime Commission. This provided, in substance, the same thing as 46 App. U.S.C. 1111(b), which was subsequently repealed.
302.....	Temporary and obsolete. Provided for interim appointments to the Federal Maritime Commission.