

SYLLABUS FOR MARITIME PERSONAL INJURY AND DEATH

FALL 2013

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LEARNING OBJECTIVES

The objectives of this course are to teach the substantive law of the subject matter in a manner which will provide a historical review of the law and present day status; to consider ethical and professional questions related to the subject matter, and to integrate the subject matter with the analytical and practical skills necessary to the practice of law in this area.

ATTENDANCE, CLASS PARTICIPATION AND EXAMS

You are expected to attend class (minimum of 80 percent attendance to pass class), having read the daily assignment before arriving and being prepared to discuss the material in class. Your grade in the class will be made up entirely of your grade on the final examination. The format of the examination will be three essay questions, closed book.

ASSIGNED TEXT

The assigned text is Maritime Personal Injury and Death by Gus A. Schill, Jr. and John F. Unger (Obtain a copy of the course book from the copy center).

SUMMARY OF MATERIAL TO BE COVERED

These are per the pages which follow.

OVERVIEW OF MARITIME PERSONAL INJURY/DEATH COURSE

The following subjects will be covered in this course: (1) the ingredients for maritime jurisdiction and the available forums for litigation; (2) the dual questions focusing upon the definitions of who is a seaman and what is a vessel; (3) whether a foreign national can file an action against a foreign vessel owner in the United States, and if so, the relationship of the *forum non conveniens* and basic *in personam* jurisdictional concepts; (4) the remedies and requirements for actions pursuant to the Jones Act, the doctrine of the waiver of S/U of a vessel, and the concept of maintenance and cure; (5) the rights of a non-maritime worker against a vessel owner; (6) the remedies of a longshore or harbor worker against his employer and a third-party vessel owner; (7) maritime claims for indemnity and contribution and the impact of state anti-indemnity statutes; (8) the rights and remedies of injured or killed working in the offshore oil and gas industry; and (9) recoverable damages by a maritime worker including the complex issues surrounding recovery of damages in the event of death.

Admiralty Jurisdiction

One element of federal court jurisdiction focuses upon an admiralty docket, a subject that is separate from other areas of federal court jurisdiction. Cases filed on this docket are given a civil action number, but they proceed as trials to the court as opposed to a jury. Admiralty jurisdiction is dependent upon the tort and contract disputes having a maritime nexus. Not only is jurisdiction dependent upon this nexus, but so is the choice of laws for governing maritime principles. Parenthetically, the terms “admiralty” and “maritime” are synonymous.

For many years maritime tort law jurisdiction only required an accident on navigable waters, but in 1972, the U.S. Supreme Court introduced the requirement of a relationship with traditional maritime activity. You will note that subsequent decisions from the Supreme Court have merely returned to the simple test of a tort occurring on the navigable waters test.

One note of caution. Maritime causes of action are not limited to the admiralty docket; they may be filed in the state court, or on the civil side of the federal court with the right to a jury trial assuming either diversity or federal question jurisdiction. Strangely, maritime actions are not considered as a federal question for the purpose of jurisdiction.

Seaman Status

One of the three avenues of recovery available to a vessel’s crewmember is the Jones Act, a statute dependent upon the showing of an employer’s negligence.¹ This

¹The two remaining independent avenues for recovery are the theory of the vessel’s unseaworthiness as well as maintenance and cure.

statute incorporates the terms of the Federal Employers' Liability Act (FELA), a workers compensation Act for railroad workers. There are three requirements to claim the benefits of the Jones Act. They are assignment to a vessel, the plaintiff being classified as a seaman, and an employee-employer relationship. This section focuses upon the necessary ingredients for a maritime worker to reach the status of a seaman (member of the vessel's crew).

What is a Vessel

Judge John R. Brown raised the rhetorical question of whether the object in question constituted "A Capital Ship For an Ocean Trip?" You will conclude after studying the decisions in this section that a vessel need not meet this requirement. Unusual objects are classified as vessels for the purpose of determining if the injured worker is a seaman.

Foreign Seaman/Choice of Law/*Forum Non Conveniens*

Two dominant features of American lawyers are resourcefulness and creativity. The issue of foreign nationals being able to claim American maritime personal injury remedies became a significant issue in many courts as drilling activities in foreign waters expanded. Added to this set of facts was the growing number of foreign flag oceangoing vessels that had this country "as a base of operation." The issue became one of whether this country's standard of living would be expanded to workers from other countries. Stated in another manner, could U.S. companies increase their profits by employing foreign workers, thereby avoiding monetary exposure for injuries based upon our monetary standards?

The initial decisions on this issue seemed to favor the foreign workers; however, statutory provisions and case law reversed this trend by denying Jones Act status to the workers and dismissing their litigation on the basis of *forum non conveniens*.

Causation and Standard of Care

This chapter considers the evidentiary burden upon the seaman to establish negligence on the part of the employer and/or the unseaworthiness of the vessel. The burden to establish breach of duty and causation for Jones Act negligence is light, while a somewhat higher burden is placed on the plaintiff to establish the unseaworthiness of the vessel and causation. This is unusual since the courts consider unseaworthiness to be a concept of liability without fault even though the definition is "reasonably fit for its intended use."

You will also note that assumption of risk is not an acceptable defense in the area of maritime personal injury litigation. The plaintiff's negligence is quantified as the percentage that contributed to the accident. The plaintiff's negligence, even if for example is set at 75%, cannot act as a complete bar to a recovery; the damages are simply reduced by the percentage of the injured worker's conduct.

Maintenance and Cure

This is the most venerable of all maritime personal injury concepts. It is traced to the Middle Ages and is denominated as being a part of the Laws of Oleron.

A seaman is entitled to maintenance (food and lodging expenses) while on outpatient status, plus cure (medical expenses) until a maximum recovery is achieved. The crewmember need only show an illness or injury during the course of service aboard the vessel; there is no need to establish liability through either negligence or unseaworthiness. Additionally, the plaintiff's negligent conduct cannot reduce the recovery.

Longshore and Harbor Workers

Introductory remarks relative to the work activities on the waterfronts are essential to an understanding of the problems relating to injuries involving longshore workers. In most instances the longshore workers are not direct employees of a vessel owner, but are employed by an independent contractor referred to as a stevedore. These workers are not considered as seamen for Jones Act purposes. Their recovery against the employer is now resolved in most instances by workers' compensation pursuant to the Longshore Act, a federal statute.

Of all the maritime theories of liability concerning maritime workers, perhaps none has been more subject to shifting changes that negate previous judicial and statutory precedents than those in this area. The problems started in the 1920s with the Supreme Court negating state workers' compensation acts for workers injured on the navigable waters of this country. The *Jensen* decision cited the lack of uniformity among the state statutes as being inimical to maritime law. The Congress attempted to resolve the problem of uncompensated injuries by incorporating the laws of each particular state as federal law. This statute was held to be unconstitutional by the Court's reasoning that a lack of uniformity is not possible in the context of maritime matters. It was in the latter part of the 1920s that Congress enacted the Longshore & Harbor Workers' Compensation Act, a workers' compensation scheme within a federal framework, that applies to longshore and harbor workers who are injured on the navigable waters or an adjoining area of the United States.

The next question presented several decades later focused upon a longshore worker's third-party rights against a non-employer vessel owner. The Supreme Court decided in the *Sieracki* decision that a vessel owner owed the warranty of seaworthiness to these workers since crewmembers at one time performed cargo operations. It should be recalled that these workers are not employed by the vessel owner. The problems created by this rule were manifested in the shipowner's right to recover indemnity from the stevedore-employer on the theory of a warranty of workmanlike performance owed to the vessel's interest. Litigation then became three-sided donnybrooks with a significant amount of resources paid to lawyers.

Congress significantly modified the preceding procedures in 1972 by denying the warranty of seaworthiness theory to injured longshore workers, forbidding actions for indemnity by the vessel owner against the stevedore, and providing for a substantial increase in workers' compensation benefits from the stevedore-employer. The statutory modification provided a cause of action sounding in negligence for the injured worker against the vessel owner, but subsequent court decisions give such a strict definition to this type of negligence that third-party actions against the vessel owner are rarely successful.

Indemnity and Contribution

This section concerns remedies that defendants in maritime actions have against other parties for full contractual indemnity or contribution to judgments or settlements made in favor of injured plaintiffs. The impact of state “anti indemnity” statutes is discussed.

Wrongful Death and Monetary Losses

This section treats the theories of liability that are available to the survivors of maritime workers who are killed as a consequence of a maritime tort.

Also, the issues relative to figuring monetary losses for both personal injuries and death will be covered. In other words, liability is established but how much money will the plaintiff receive?

Offshore Workers and Artificial Islands

This is an area that has few clear answers. Remedies for workers on fixed and floating structures vary to a significant degree. It is a complex mix of state and federal laws including the Outer Continental Shelf Lands Act (OCSLA).

Statutes of Limitations and Laches

This concluding section will explore possible pitfalls and defenses associated with the question of timeliness of a maritime personal injury claim. A suit for maritime personal injury must be filed within three years from the date of the accident. However, shorter state statutes of limitation can be held to apply to injuries to maritime workers in certain instances.