

ADVANCED GENERAL MARITIME LAW COURSE—NON-PERSONAL
INJURY/WRONGFUL DEATH—SYLLABUS—SPRING 2014

COURSE EXPECTATIONS

- The objectives of this course are to teach the general substantive law of admiralty, paying particular attention to the issues of federal and state jurisdiction and the interplay between them and the substantive law; to consider ethical and professional questions that arise in the practice of law; and to apply the substantive and procedural rules of admiralty and maritime law in the practice of law.
- Eighty percent class attendance is required. Students will sign in each day they are in attendance and be prepared to participate in class discussions.
- Students may miss one class without penalty in exchange for attendance and participation at the Houston Bar Association Professionalism Day.
- One half point will be based on class participation. That means that one half point may be added for preparation and participation and that one half point may be taken off for failure to be prepared and participate.
- The final exam will consist of long and/or short essay questions. The questions may be weighted differently based on complexity of the issues but the exam paper will indicate how many points each question is worth.
- Contact Information: Jim Winton, Baker & Hostetler LLP, 811 Main Street, Suite 1100 Louisiana, Houston, Texas 77002-6111, Tel: (713) 646-1304, Fax: (713) 751-1717, jwinton@bakerlaw.com

READING ASSIGNMENTS


We will principally rely on, those portions of Frank L. Maraist, *et al.*, Cases and Materials on Maritime Law (2nd ed.) Thompson*West, 2009, outlined below. Additional cases will be distributed in advance to go into these issues in greater detail. We will cover only those personal injury cases in the book that are critical to understanding other issues in general maritime law. Students should plan on covering approximately 50 pages per week.

THE ADMIRALTY PRACTITIONER

- **Gus A Schill, Jr., OLD WINE INTO NEW BOTTLES, OLD WINE INTO NEW BOTTLES REVISITED,**

Chapter I: SCOPE OF ADMIRALTY JURISDICTION

- Art. III, § 2: . . . to all cases of admiralty and maritime jurisdiction. . .
- So who makes maritime law? Federal courts? Congress? State courts?
- Powers granted to Congress: Art. I, § cl. [3], to regulate commerce with foreign Nations, and among the several states; § 8, cl [10], to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; § 8 cl. [11], to grant letters of Marque and reprisal and make rules concerning captures on . . . water; § 8 cl [12], to provide and maintain a Navy; § 10—Powers Forbidden to the States: cl. 1, treaties, letters of marque and reprisal, ; cl [2] duties on imports or exports; [3] keep ships of war in time of peace, or engage in war.
- Article VI [2]: This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made . . . shall be the supreme Law of the Land; and the Judges in every States Shall be bound thereby. . . .
- 28 USC § 1333: Any civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies* to which they are otherwise entitled. What is not included:
- Admiralty—>Subject Matter Jurisdiction


 Substantive Law
- Does the substantive body of law operate without maritime jurisdiction?
- Can state courts create maritime law by way of common law?

- Interplay Between 1331, 1332 and 1333/9(h)
- *Southern Pacific v. Jensen*:
- *Chelentis v. Luckenbach SS Co., Inc.*
- Are *In re Amtrack Sunset Limited* and *Yamaha v. Calhoun* consistent?
- *Wilburn Boat v. Fireman's Fund*
- *Garrett v. Moore-McCormack Co., Inc.*

Chapter XX: JUDICIAL JURISDICTION AND PROCEDURE

A. Subject Matter Jurisdiction

1. Jury Trials
2. Jones Act claims can be brought in admiralty or at law.
3. Ditto DOHSA
4. Green—be careful
5. Rule 9(h) designation
6. Rule 14(c)
7. Separate and independent claims—>removal under diversity—no more.

B. Jurisdiction Over the Person and Service of Process

1. Basically same as in federal question, diversity or state court—*International Shoe*;
2. Fed.R.Civ.P. 4(n)(2): quasi in rem jurisdiction;
3. Rule B writ of foreign attachment;

C. Venue

1. State venue rules apply in state court;
2. In federal court, federal venue rules = jurisdiction
3. 28 U.S.C. § 1391
4. Special venue rules under Jones Act;

D. Procedure Generally

1. Joinder
2. Supplemental Jurisdiction

E. *In Rem* and *Quasi In Rem* Actions: Special Rules

1. General Provisions Governing *In Rem* and *Quasi In Rem* Proceedings.
 - A. Rule B
 - B. Rule C, claim to vessel and restricted appearance;
 - C. Rule D–Petitory Actions
 - D. State court jurisdiction over *in rem* claims????
2. Attachment and Garnishment: Special Provisions
3. Actions *in Rem*: Special Provisions

F. Remedies

G. Appeals

H. Removal

1. Jones Act;
 - a. Fraudulent pleadings–Sidney Kirk;
 - b. Waivable right to remand;
2. No removal under 1333–>“saving to suitors”

Chapter II: NAVIGABLE WATERS

- *Hassinger v. Tideland Electric*
- *The Daniel Ball*

Chapter III: VESSELS

- *Wixom v. Boland Marine*
- *Goodman v. 1973 26 Foot Trojan Vessel, etc.*
- *Stewart v. Dutra*, 125 S.Ct. 1118 (2004)
- *Manuel v. PAW Drilling*
- *Pavone v. Mississippi Riverboat Amusement Corp.*
- *Holmes v. Atlantic Sounding*, 437 F.3d 441 (5th Cir. 2006)

Chapter IV: JURISDICTION OVER CONTRACTS

A. Maritime Contracts Generally

- *North Pacific SS. Co. v. Hall Bros.*

Other contracts:
carriage of goods

- Not Maritime Contracts:
- *APL v. Green*
- *Exxon Corp v. Central Gulf Lines*

B. Mixed Contracts

- *Lucky–Goldstar v. Phibro*
- *Kirby v. Norfolk Southern Railway*,

Chapter V: JURISDICTION OVER TORTS

A. General Maritime Tort Jurisdiction–The Jurisprudential Rule

- *Executive Jet v. City Cleveland*
- *Foremost Ins. v. Richardson*
- *Sisson v. Ruby*

B. Death on High Seas by Act

C. Admiralty Extension Act

- *Gutierrez v. Waterman SS Corp.*
- *Grubart v Great Lakes Dredge and Dock*
- *Duluth Superior Excursions, Inc. v. Makela*
- But see *Young v. Players Lake Charles LLC*, (P. 116) . . .

SUMMARY OF SCOPE OF MARITIME JURISDICTION
OVER CONTRACTS AND TORTS

A. Standard for Contracts

B. Standard for Torts

Chapter VI: CHARTER PARTIES

A. Generally

1. Demise or Bareboat: Like a U-Haul Rental.
2. Time: Like hiring moving company for period of time to load, move and unload goods to be designated.
3. Slot or Space: Like hiring a part of a moving van.

4. Voyage: Like hiring a moving company to go from point A to point B.

B. The Demise Charter

- *Matute v. Lloyd Bermuda Lines, Ltd.*

C. The Time Charter

D. The Voyage Charter

Chapter VII: CARRIAGE OF GOOD BY SEA AND TUG AND TOWAGE

A. Carriage of Goods by Sea

1. Coverage of Harter and COGSA

- New Legislation
- *Wemhoener Pressen v. Ceres Marine Terminals*
- *Mannesman Demag v. M/V CONCERT EXPRESS*
- *Jagenberg v. Georgia Ports Auth* (1995)
- *Norfolk Southern Railway Co. v. Kirby*, 125 S. Ct. 385 (2004)
- Progeny of *Norfolk Southern*
- *May v. Hamburg-Amerikanische Pakerfahrt Aktiengesellschaft* (1933)

2. General Allocation of Risks Between Shipper and Carrier

- *International Navigation Co. v. Farr & Bailey Manuf. Co.* (1901)

3. Allocation of Risks: Fire

- *Westinghouse v. M/V LESLIE LYKES*
 - *Nissan Fire & Marine Ins. Co. v. M/V HYUNDAI No. ??* (9th Cir. 1996)
4. Proof of Loss: Allocation of the Burdens
- *Plastique Tags, Inc. v. Asia Tans Line, Inc.* (11th Cir. 1996)
 - *United States v. Ocean Bulk Carriers* (5th Cir. 2001)
 - *Taisho Marine v. M/V SEA-LAND ENDURANCE* (9th Cir. 1987)
5. Damages
- *Fishman & Tobin v. Tropical Shipping* (11th Cir. 2001)
 - *Monica Textile Corp. SS TANA* (2nd Cir. 1991)
6. Deviation and Its Effects
- *Vision Air Flight v. M/V NATIONAL PRIDE* (9th Cir. 1998)
 - *Konica Business Machines v. SEA-LAND CONSUMER* (9th Cir.)
7. “Exculpatory” Clauses, Including Arbitration, For a Selection and Choice of Law Clauses
- *Vimar v. M/V SKY REEFER* (U.S. 1995)

8. Statute of Limitations and Stale Claims

- *Lithotip, CA v. SS GUARICO (SDNY 1984)*

B. Tugs and Towage

- *Agrico Chemcial Co. v.M/V BEN W. MARTIN*
- *Bisso v. Inland Waterways Corp.*

Chapter VIII: MARITIME LIENS

A. Conventional Lien-The Maritime Preferred Ship Mortgage

B. Implied Maritime Lien

- *Epstein v. Corporacion Peruana de Vapores (SDNY 1971)*
- *Foss Launch & Tug Co. v. Char Ching Shipping USA Ltd.*, 808 F.2d 697 (9th Cir.)
- *Itel Containers Intern. Corp. v. Atlanttrafik Exp. Serv. Ltd.* 982 F.2d 765 (2nd Cir. 1992)
- CONTRA: *Equilease Corp. v. M/V SAMPSON*, 793 F.2d 598, 603 (5th Cir. 1986) (en banc)
- *Motor-Services Hugo Stamp, Inc. v. M/V REGAL EMPRESS, etc., in rem*, 165 Fed.Appx. 837 (11th Cir. 2006)
- ***THE RIO GRANDE*, 90 U.S. 458, 2006 A.M.,C. 898 (1874)**

C. Liens on Cargo

D. Ranking of Liens

- *THE WILLIAM LEISHEAR* (D. Md. 1927)
- *Bank One v. MV MR. DEAN* (5th Cir. 2002)

Chapter IX: GENERAL MARITIME TORT LAW

A. Negligence

- *Kermarec v. Compagnie Gernerale Transatlantique* (US 1959)
- *Kornberg v. Carnival Cruise Lines, Inc.* (11th Cir. 1984)

B. Cause in Fact

C. Limited Duty and Legal Cause

- **Robbins Dry Dock v. Flint, 275 U.S. 303, 48 S. Ct. 134 (1927)**
- *Petition of Kinsman Transit*
- *American Export Lines v. Alvez*, (US 1980)
- *State of Louisiana v. M/V TESTBANK* (5TH Cir. 1985, *en banc*)

D. Vicarious Liability

- *Stoot v. D & D Catering Service* (5th 1987)

E. Product Liability

- *East River SS Co. v. Transamerica DeLaval Corp.* (US 1986)
- *Nicor Supply Ships v. General Motors Corp.*, (5th Cir. 1989)
(Page 263)

F. Damages

- *Exxon v. Baker*

G. Defenses

- *Kornberg v. Carnival Cruise Lines, Inc.*
- *United States v. Reliable Transfer* (US 1975)
- *National Marine Services, Inc. v. Petroleum Service Corp.*
- *Exxon Company v. Sofec, Inc.* (US 1996)

G. Joint and Several Liability Contribution and Indemnity

- Maritime rule is that tortfeasors are jointly and severally liable.
- May make maritime jurisdiction appealing to plaintiffs.
- *Cooper Stevedoring Co. v. Fritz Kopke Inc.* (US 1974)
- *McDermott v. AmClyde*, (US 1994)
- *Chisholm v. UHP Projects Inc.*, (4th Cir.)
- *Marathon Pipe Line Co v. D/R Rowan Odessa* (5th Cir. 1985)
- *Cities Service Co. v. Lee-Vac Ltd.* (5th Cir. 1985)
- *Loose v. Offshore Navigation In.* (5th Cir. 1982)

Chapter X: COLLISION

A. General Collision Law Principles

- *THE JUMA* (2ND Cir. 1906)
- *Atkins v. Lorentzen* (5th Cir. 1964)
- *Errors In Extremis*
- *Hood v. Knappton Corp* (9th Cir. 1993)

B. Statutory Fault

- *Tokio Marine & Fire Ins. Co. v. M/V FLORA* (5TH Cir. 2001)
- *Inland River Towing, Inc. v. American Comm. Barge Line.* (N.D. Miss 2000)
- ***Trinidad Corp. v. SS KEIYOH MARU*, 845 F.2d 818 (9th Cir. 1988)**
- *Antillen v. MS MOUNT YMITOS* (5TH CIR. 1998)
- *Canal Barge Co v. China Ocean Shipping* (ED La. 1984)
- ***CROWLEY MARINE SERVICES INC. V. MARITRANS INC.*, 447 F.3D 719 (9TH CIR. 2006)**
- *In re Denet Towing Services, Inc.*, 2006 WL 1210961 (5th Cir. 2006)

C. Damages

- *Standard Oil of NJ v. Southern Pacific Co.* (US 1925)
- *Gaines Towing and Transp v. Atantia Tanker Corp* (5th Cir. 1999)

D. Comparative Fault

- *US v. Atlantic Mut. Ins. Co.* (US 1952)

E. Wreck Removal

Chapter XI: WORKER INJURIES: SEAMEN

A. Determination of Seaman Status

- *McDermott International v. Wilander* (US 1991)
- *Chandris, Inc. v. Latsis* (US 1995)
- *Harbor Tug and Barge Co. v. Papai*, (US 1997)
- *Wisner v. Professional Divers of New Orleans*, (La. Sup. Ct. 1999)
- *Fisher v. Nichols*, (9th Cir. 1996):

2. Unseaworthiness

- *Colon v. Trinidad Corp.* (SDNY 1960)
- *Vargas v. McNamara* (1st Cir. 1979)
- *Usner v. Luckenbach Overseas Corp.* (US 1971)
- *Scindia Steam Navigation v. De Los Santos* (US 1981)
- *Kerr-McGee Corp. v. MA-JU Marine Services, Inc.* (5th Cir. 1987)

Chapter XV. MARINE INSURANCE

A. The Governing Law

- *Healy Tibbitts Construction Co. v. Foremost Ins. Co.* (N.D. Cal. 1979)
- *Albany Ins. Co. v. Anh Thi Kieu* (5th Cir 1991)

B. First Party Insurance; Hull and Cargo

- *Shaver Transportation Co. v. The Traveler's Indemnity Co.* (D.Or. 1979)

C. Third Party Liability: The P&I Policy

- *Crown Zellerback Corp. v. Ingram Industries, Inc.* (5th Cir 1986)

XVI. LIMITATION OF LIABILITY

A. General Statutory Rules Governing Limitation

1. The Substantive Statutory Provisions

B. Asserting Limitation of Liability

- ***In re River city Towing Services, Inc.*, 420 F.3d 385 (5th Cir. 2005)**

C. Avoiding Limitation of Liability

1. The Personal Contracts Doctrine

- *Signal Oil & Gas Co. v. The Barge W-701* (5th Cir 1981)
- *Mediterranean Shipping Co. SA Generva v. Pol-Atlantic* (2nd Cir 2000)

2. Privity or Knowledge

- *Farrell Lines, Inc. v. Jones* (5th Cir 1976)
- *Petition of Kinsman Transit I* (2nd Cir 1964)

D. Limitation and the Saving to Suitors Clause; The Chess Game to Get Back to State Court

- *Lewis v. Lewis & Clark Marine, Inc.* (US 2001)

E. Asserting Limitation as a Defense

- *Mapco Petroleum, Inc. v. Memphis Barge Line, Inc.* (Tenn. 1993)

F. Limitation and Oil Pollution Claims

- *Complaint of Metlife Capital Corp.* (1st Cir. 1997)

XVII. SOVERIGN IMMUNITY

A. Federal Sovereign Immunity

1. Suits in Admiralty Act

2. Public Vessels Act

- What's the difference between the two?
- *McCormick v. United States* (5th Cir 1982)

B. Foreign Sovereign Immunity

- *China National Chemical Import & Export Corp. v. M/V LAGO HULAIHUE* (D Md. 1981)

C. State and Local Governmental Immunity

Chapter XVIII: SALVAGE AND GENERAL AVERAGE

A. Salvage

1. Salvage: The Pre-Convention Rules

- *Flagship Marine Services, Inc. v. Belcher Towing Company* (11th Cir 1992)
- *Trico Marine Operators, Inc. v. Dow Chemical Co.* (E.D. La. 1992)
- *United States v. Ex—USS Cabot* (S.D. Tex. 2000—Judge Tagle)

2. International Salvage Convention

3. Finds and Abandoned Shipwrecks

- *Sea Hunt, Inc. v. The Unidentified Shipwrecked Vessel or Vessels* (4th Cir 2000)

B. General Average

- *Royal Insurance Co. of America v. Cineraria Shipping Co.* (M.D. Fla. 1995)

Chapter XIX. CHOICE OF LAW IN MARITIME MATTERS

A. American Maritime Choice of Law Rules

- *Hellenic Lines Ltd. v. Rhoditis* (US, 1970)

B. Forum Non Conveniens

- *Liaw Su Teng v. Skaarup Shipping Corp.* (5th Cir 1984)
- *Chick Kam Choo v. Exxon Corp.* (US 1988)

C. Choice of Forum/Choice of Law Contracts

- *Bremmen v. Zapata Off-Shore Company* (US 1972)