

SYLLABUS FOR MARITIME PERSONAL INJURY AND DEATH

Spring 2020

PROFFESSOR JOHN F. UNGER

## LEARNING OBJECTIVES

The objectives of this course are to teach the substantive law of the subject matter integrated with the practical skills necessary to the practice of law in this area.

## ATTENDANCE, CLASS PARTICIPATION AND EXAMS

You are required 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 two or three essay questions, closed book.

## OFFICE HOURS AND CONTACT INFORMATION

Contact can be made by email to [ungerjohnf@gmail.com](mailto:ungerjohnf@gmail.com). Typically available weekdays between 9 a.m. and 5 p.m. Also available for meeting before or after class upon timely request.

## 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 and the 2020 Supplement at the Dean's Office prior to start of classes).

## COURSE SUMMARY

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) the remedies and requirements for actions pursuant to the Jones Act, the doctrine of the warranty of seaworthiness of a vessel, and the concept of maintenance and cure; (4) the rights of a non-maritime worker against a vessel owner; (5) the remedies of a longshore or harbor worker against the employer and a third-party vessel owner; (6) maritime claims for indemnity and contribution and the impact of state anti-indemnity statutes; (7) the rights and remedies of individuals injured or killed working in the offshore oil and gas industry; and (9) recoverable damages by maritime workers in the event of death.

## SPECIFIC MATERIAL TO BE COVERED

### **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 since 1972 when the U.S. Supreme Court introduced the requirement of a relationship with traditional maritime activity the courts have continued to define the contours of maritime jurisdiction.

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.<sup>1</sup> This 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?**

The United States Supreme Court has given substantial attention to this issue recently. "A wide range of floating objects are subject to a determination of whether they should be classified as vessels for the purpose of defining the rights of injured claimants.

### **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."

### **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.

---

<sup>1</sup>The two remaining independent avenues for recovery are the theory of the vessel's unseaworthiness as well as maintenance and cure.

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**

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 than those in this area.

With respect to a longshore worker's right to recover damages from the non employer vessel owner, Congress significantly modified the 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. The courts continue to define the elements necessary for a successful claim against the vessel owner.

### **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.

**Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)**

**Chosen names and preferred pronouns—including non-binary ones such as they/them/their—will be respected in our classroom. Please feel free to reach out to me at any time, in person, or by phone, text or email, if you want to make me aware of your chosen name or preferred pronoun, or if you have concerns about how I or your classmates address you. I'll try my best to honor your preferences. Please attribute any lapses to failings of memory, or habit, and do not feel embarrassed to correct me if I err.**