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ADMIRALTY LAW

Expert Analysis

From Sea to Shining Sea: Admiralty Reigns

By **James Mercante**

Maritime law is so old. How old? One federal judge in New York found that it predates the birth of Christianity by 900 years.[1] Notably, two of America's Founding Fathers were prominent admiralty lawyers. Alexander Hamilton, one of our most famous immigrants, was a maritime lawyer in New York, and John Adams practiced in Massachusetts.

As shipping was an important link between nations engaged in commerce and trade in the Mediterranean Sea, a uniform law was necessary to apply to vessel owners, charterers, shippers, passengers and crews. Centuries later, maritime law became well anchored in the United States. The term "maritime" is used interchangeably with "admiralty." Yet, there is a subtle distinction. "Maritime" law broadly refers to the entire body of laws, rules, legal concepts and processes that relate to the use of marine resources, ocean commerce, and navigation. Admiralty law, on the other hand, is narrower in the sense that it refers more restrictively to just navigation and shipping in inland and ocean waters.[2] Over time, the two terms became synonymous as evidenced in the Federal Rules of Civil Procedure. Federal Rule 9(h) identifies "admiralty or maritime claims" as admiralty cases and Rule 38(e) refers to admiralty and maritime claims as exceptions to the right to a jury trial. Similarly, the Supplemental Rules for "Admiralty or Maritime Claims" and Asset Forfeiture Actions supplement the Federal Rules of Civil Procedure.

Finding Admiralty

Early explorers exported maritime law to Australia, America and other uncharted lands as ships set sail to discover the "New World." English settlers here established exclusive admiralty courts in each of the U.S. colonies, and utilized maritime law to both regulate and enforce England's trade laws. These courts functioned pursuant to the unique procedures of the admiralty courts of England. Most significantly, admiralty trials were conducted without juries in order to maintain some semblance of uniformity in decisions with far reaching impact. Many marine cases involved complex issues best suited for decision by a Judge with specialized knowledge of the law.[3] Although there are exceptions, this remains a viable rule, and has been codified in Rule 38(e) of the Federal Rules of Civil Procedure.

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Back to Hamilton. Following the American Revolution, Hamilton explained in 1788 (a bit tortuously) in The Federalist Papers No. 80, the need for federal (as opposed to state) jurisdiction over maritime and admiralty affairs: "The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizances of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace. The most important part of them are, by the present Confederation, submitted to federal jurisdiction." In July 1788, Hamilton's views wound their way into the U.S. Constitution, which provides "the judicial power shall extend … to all cases of admiralty and maritime jurisdiction." Article III, §2, Clause 1. Indeed, other than patent law, it is the only specialized practice specifically referenced in the U.S. Constitution. Alexander Hamilton also went on to establish what would later become known as the U.S. Coast Guard.

Maritime parlance can also be found in some of the earliest U.S legislation, including the Judiciary Act of 1789, which created lower federal courts with the power to hear maritime and admiralty matters. The jurisdictional grant is codified as 28 U.S.C. §1333. Similarly, the 1851 Vessel Owner's Limitation of Liability (more commonly known as the Limitation Act), exists nearly unchanged today in 46 U.S.C. §30505.

In its infancy, U.S. admiralty jurisdiction was primarily to hear "prize" cases, which involved a government authorized seizure of a foreign enemy vessel by a civilian mariner. The federal admiralty court was tasked to determine the legitimacy of the civilian's capture before auctioning the vessel and its cargo to distribute the proceeds to the civilian as a "prize."[4] In the mid-1800s, Congress ultimately outlawed these government-sanctioned seizures.

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The importance of harmony and uniformity in maritime laws across the nation was referred to by the U.S. Supreme Court as early as 1874 in *The LOTTAWANNA*, 88 U.S. 558. The Maritime Law Association of the United States was subsequently formed in 1899 to participate as a constituent member of the International Maritime Committee. The purpose of the MLA (still going strong today) was "to promote uniformity … and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices of different nations."[5]

Maritime Law Today

Maritime law has come a long way from the wooden sailing ship days and has application in many marine casualties. Indeed, some of the most notable maritime cases include the oil spills from EXXON VALDEZ and the BP DEEPWATER HORIZON[6]; sinkings of the luxury liner TITANIC and cargo ship EL FARO[7]; the Chicago flood of 1992[8]; 2013 fire and stranding of the Carnival Cruise Ship TRIUMPH[9];the COSTA CONCORDIA grounding and sinking off Italy; the catastrophic Staten Island Ferry ANDREW J. BARBIERI crash; a jet ski collision and even the crash of TWA Flight 800.[10]

Traditionally, admiralty jurisdiction over tort actions extended only to those that occurred upon navigable waters. In 1948, however, Congress expanded this narrow rule when it enacted the Extension of Admiralty Jurisdiction Act, "which provides that 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." 46 U.S.C. §30101(a).[11]

The most recent sophisticated pronouncement of the test for maritime jurisdiction over torts is out of the Second Circuit, *In re Germain*, 824 F.3d 258 (2d Cir. 2016). In *Germain*, the Second Circuit held that an injury to a guest aboard an anchored pleasure craft who dove off the boat into navigable waters of a lake fell within the scope of admiralty jurisdiction. It involves a two-prong test. First, the tort must occur on navigable waters or have been caused by a vessel situated on navigable waters. Second, the tort must both (1) involve a potentially disruptive effect on maritime commerce and (2) bear a substantial relationship to traditional maritime activity. The test for maritime contracts was also clearly articulated by the Second Circuit in *Folksamerica Reinsurance Co. v. Clean Water of N.Y.*, 413 F.3d 307 (2d Cir. 2004). Contracts with a "genuinely salty flavor" primarily concerned with maritime objectives give rise to admiralty jurisdiction. Thus, the Comprehensive General Liability (CGL) insurance policy issued to a vessel tank cleaning service was governed by maritime law as per the *Folksamerica* decision.

Today, federal and state courts generally share concurrent jurisdiction over in personam maritime cases (i.e., a negligence action directly against the owner of a vessel), while federal courts continue to retain jurisdiction over many marine matters, such as in rem actions, the arrest of a vessel, and a vessel owner's Limitation of Liability action. Regardless of the venue, substantive maritime law should apply, but only if an "entrenched" principal of maritime law exists on a particular issue in dispute.[12] Some federal judges have questioned certain applications of maritime law in a non-commercial marine setting. For example, in applying the vessel owner's Limitation of Liability Act in a jet ski and pleasure craft collision, one circuit court lamented: "While we might agree in this case with the district court that extension of the Limitation Act to pleasure craft such as jet skis is inconsistent with the historical purposes of the Act, restriction of its applicability requires congressional action." *Keys Jet Ski v. Kays*, 893 F.2d 1225 (11th Cir. 1990).

As demonstrated, admiralty law continues to productively evolve from its immigrant roots and every indication is that it is here to stay.

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1. *In re city of New York*, 534 F. Supp. 2d 370 (E.D.N.Y. 2008) (Judge Edward R. Korman).

2. *Northeast Research v. One Shipwrecked Vessel*, 729 F.3d 197 (2d Cir. 2013) (internal citations omitted).

3. Gary T. Sacks and Neal W. Settergren, "The Use of Evidence in Admiralty Proceedings: Juries Should Not Be Trusted To Decide Admiralty Cases," 34 J. Mar. L. & Com. 163 (2003).

4. *Glass v. Sloop Betsey*, 1 L. Ed. 45 (1794).

5. http://mlaus.org/about-the-mla/.

6. *In re Exxon Valdez*, 767 F. Supp. 1509 (S.D. Alaska 1991); *In re Oil Spill*, 21 F. Supp. 3d 657 (E.D. La. 2010.

7. *The Titanic*, 209 F. 501 (S.D.N.Y. 1913); *In re Sea Star Line*, 2016 U.S. Dist. LEXIS 178293 (M.D. Fla. 2016)..

8. *Grubart v. Great Lakes Dredge and Dock Co.*, 513 U.S. 527 (1995).

9. *Terry v. Carnival*, 3 F. Supp. 3d 1363 (S.D. Fla. 2014).

10. *In re city of New York*, 522 F.3d 279 (2d Cir. 2008); *In re Air Crash Off Long Island*, 209 F.3d 200 (2d Cir. 2000).

11. *In re Germain*, 824 F.3d 258 (2d Cir. 2016) (Chief Judge Robert A. Katzmann) (internal citations omitted) (the author represented the vessel owner in this case).

12. *Preston v. Frantz*, 11 F.3d 357 (2d Cir. 1993); *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310.