

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the states all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations.”⁹¹⁹ Second, Congress reenacted the law but excluded masters and crew members of vessels from those who might claim compensation for maritime injuries.⁹²⁰

The Court found this effort unconstitutional as well, because “the manifest purpose [of the statute] was to permit any State to alter the maritime law and thereby introduce conflicting requirements.”⁹²¹ Finally, in 1927, Congress passed the Longshoremen’s and Harbor Workers’ Compensation Act, which provided accident compensation for injuries, including those resulting in death, sustained on navigable waters by employees, other than members of the crew, whenever “recovery . . . may not validly be provided by State law.”⁹²²

With certain exceptions,⁹²³ the federal-state conflict since *Jensen* has taken place with regard to three areas: (1) the interpretation of federal and state bases of relief for injuries and death as affected by the Longshoremen’s and Harbor Workers’ Compensation Act; (2) the interpretation of federal and state bases of relief for personal injuries by maritime workers as affected by the Jones Act; and (3) the application of state law to permit recovery in maritime wrongful death cases in which until recently there was no federal maritime right to recover.⁹²⁴

⁹¹⁹ *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 160 (1920). The decision was again 5-to-4 with the same dissenters.

⁹²⁰ 42 Stat. 634 (1922).

⁹²¹ *Washington v. Dawson & Co.*, 264 U.S. 219, 228 (1924). Holmes and Brandeis remained of the four dissenters and again dissented.

⁹²² 44 Stat. 1424 (1927), as amended, 33 U.S.C. §§ 901–950. In 1984, the statute was renamed the Longshore and Harbor Workers’ Compensation Act. Pub. L. 98–426.

⁹²³ *E.g.*, *Maryland Casualty Co. v. Cushing*, 347 U.S. 409 (1954) (state direct action statute applies against insurers implicated in a marine accident); *Wilburn Boat Co. v. Fireman’s Fund Ins. Co.*, 348 U.S. 310 (1955) (state statute determines effect of breach of warranty in marine insurance contract); *Southwestern Sugar & Molasses Co. v. River Terminals Corp.*, 360 U.S. 411 (1959); *Bisso v. Inland Waterways Corp.*, 349 U.S. 85 (1955) (federal rather than state law determines effect of exculpatory provisions in towage contracts); *Kossick v. United Fruit Co.*, 365 U.S. 731 (1961) (state statute of frauds inapplicable to oral contract for medical care between seaman and employer).

⁹²⁴ *Jensen*, though much criticized, is still the touchstone of the decisional process in this area with its emphasis on the general maritime law. *E.g.*, *Pope & Talbot v. Hawn*, 346 U.S. 406 (1953); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959). In *Askew v. American Waterways Operators*, 411 U.S. 325, 337–44 (1973), the Court, in holding that the states may constitutionally exercise their po-