

TEACHING ADMIRALTY AS A PART TIME JOB

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I write from the perspective of a part time teacher of admiralty law. I have taught at Widener University Law School in Wilmington, Delaware, and at Rutgers University School of Law, in Camden, New Jersey. My teaching experience in the formal classroom setting covers nearly twenty years. I have taught the basic course in Admiralty Law and also a seminar in Marine Insurance Law.

I have been told by no less an authority than Professor David Sharpe, formerly of the George Washington University Law School in Washington, D.C., now retired, that the majority of law school admiralty courses across the country are taught by adjunct faculty. I will accept this as true. In my limited experience, I have met many more practicing admiralty attorneys than full-time faculty. However, that may be because I travel not in the circle of full-time academia, but in the circle of the practicing admiralty bar, and only meet those full-time faculty who are active participating members of the Maritime Law Association of the United States, the bar association of the admiralty bar. Although I have great respect for the full-time faculty, many of whom are personal friends, I feel that a hands-on nuts and bolts course such as Admiralty Law is best taught by an experienced practitioner. Here is why.

I was taught admiralty law at Rutgers School of Law, in Camden, N.J., by a full-time faculty member who had never practiced admiralty. He had practiced labor law, which he also taught.¹ We diligently proceeded through the cases in the Foundation Press casebook, *Admiralty Law*, by Professor Jo

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1. William Jefferson Clinton, who went on to be President of the United States, arrived at the University of Arkansas in 1973 as its newest faculty member (his first job post-Yale Law School), and was assigned to teach admiralty, which he did. DAVID MARANISS, *FIRST IN HIS CLASS: A BIOGRAPHY OF BILL CLINTON* 288–89, 292 (1995). His stay at the University of Arkansas was brief; he was elected Attorney General of Arkansas shortly thereafter. *Id.* at 346, 349–50. However, the point is that teaching admiralty law is like being President: anyone can do it. Like being President, however, the question is: how well?

Desha Lucas.² We also covered the cases newly decided by the Supreme Court and other courts which our professor brought to our attention. We diligently considered the material, spending the allotted number of classes on each topic. Some subjects, like the law concerning carriage of goods, commanded several classes. Other topics, such as General Average, while complex in its calculations, were covered in a single session or part thereof. The class lecture case analysis method of teaching subjects in law school is venerable and well respected, and I shall not try to challenge it.

However, the long established method of learning by doing under the supervision of an experienced practitioner, formally known as “reading law,” in which the student is apprenticed to a practicing attorney, has fallen out of fashion. Indeed, most, if not all, states now require graduation from an accredited law school in order to take the bar examination and be admitted to the bar. There is, however, a vestige of this former method of learning the law still in existence. It is the summer clerkship, usually after the second year. In my case, that clerkship was expanded, beginning after Christmas of my second year, the summer following, and my third year. I worked as a law clerk at Clark, Ladner, Fortenbaugh & Young (Clark Ladner), an admiralty law firm in Philadelphia. Eventually, I was hired as an associate and then became a partner in that firm.³ It was while a law clerk at Clark Ladner that I learned the “how to” of practicing maritime law.

The “book learning” was a solid base for the practice of admiralty law. It taught the “law.” However, when one considers admiralty law as a field and the practice thereof, one must be very conscious of the fact that in this area especially, there is not only the *law* but also the *practice* to be considered. Indeed, one of the most active committees in the Maritime Law Association of the United States (MLA) is the Practice and Procedure Committee. There is a very large distinction between the two, and it is essential that the aspiring admiralty attorney learn both. Knowing the law only takes you one step forward. Knowing how it is applied (or at least how it should be) is the rest of the journey.

It is rare that a practicing admiralty attorney encounters a judge who has ever handled a maritime case in practice. Most judges learn admiralty “on the job.” Most do a pretty good job if it. However, in this area of law, more so than in most others, the bench relies on the bar to provide honest guidance on what is to be done in any given circumstance—for example, in the arcane area

2. JO DESHA LUCAS, ADMIRALTY: CASES AND MATERIALS (5th ed. 2003).

3. My clerkship began in January 1974. Initially, I was given assignments by all of the departments in the firm. However, I gradually moved into the maritime department exclusively. I was employed as an associate upon graduation from Rutgers in 1975. I became a partner in 1983. That firm dissolved in 1996. My present firm was formed by the admiralty partners of CLF&Y and has continued the maritime practice of the former firm.

of the arrest of a ship. One can read the Commercial Instruments and Maritime Liens Act,⁴ as well as Supplemental Admiralty Rules C and E,⁵ and still have many questions on how, exactly, does one arrest a ship, and what does one do after the marshal has served the papers and actually arrested the vessel? It is experience which fills in these gaps.⁶

Another example of an area completely unknown to the common law, or statutory law outside of admiralty, is the concept of Limitation of Liability. Limitation of Liability is governed by the Limitation of Shipowner's Liability Act passed in 1851 and re-enacted with the recodification of Title 46,⁷ with additional provisions for practice provided in Supplemental Admiralty Rule F.⁸ One only learns all of the various required steps by actually participating on a limitation case.

My approach to teaching admiralty was to follow the casebook as to material and to use the detailed table of contents as a course syllabus. But I used my lectures not to read the cases, but to "tell the tale" of my own experience in handling admiralty cases. My use of the Socratic Method was to hypothesize a situation which might arise in the course of a case. The hypothetical was usually based on an actual case in which I had been involved or one of which I was fully familiar, and which required the student to draw on

4. 46 U.S.C. §§ 31301–31343 (2006). This section was renamed by an overly active Senate Committee in the course of recodification of Title 46 of the United States Code. Act of Nov. 23, 1988, Pub. L. No. 100-710, 102 Stat. 4735, 4739–54; H.R. REP. NO. 100-918, at 11 (1988), *reprinted in* 1988 U.S.C.C.A.N. 6104, 6104. The omnibus act previously was named, in its constituent acts, the Ship Mortgage Act and the Maritime Lien Act, covering those areas respectively. H.R. REP. NO. 100-918, at 12, 34. Clarity was lost in the renaming, although having all the sections in one place, which was the purpose of the recodification, is indeed helpful.

5. Supplemental Admiralty Rule C governs the arrest of a vessel. FED. R. CIV. P. SUPP. R. C. Supplemental Admiralty Rule E fills in various gaps on the actual procedure for the arrest and sale of the vessel. FED. R. CIV. P. SUPP. R. E. These Supplemental Rules are themselves supplemented by Local Admiralty Rules, in force in most jurisdictions, which were drafted by the Practice and Procedure Committee of the MLA. *See* MODEL LOCAL ADMIRALTY RULES (Mar. Law Ass'n of the U.S. 2008).

6. The significance of the MLA Model Local Admiralty Rules, adopted in most districts as part of their local rules, is highlighted by the comments of an experienced practitioner, who, when he learned that the Practice and Procedure Committee had undertaken to draft the model local admiralty rules, in order to fill in the gaps left by the Supplemental Admiralty Rules, stated: "Why should we do that—then everyone will know how to do it—we're letting the secret out." However, despite the guidance offered by the local rules, there is still sufficient mystery in the practice of admiralty law. We need not follow the advice of Gandalf to Frodo: "[K]eep it secret . . . keep it safe!" J.R.R. TOLKIEN, *THE LORD OF THE RINGS*, PT. 1: *THE FELLOWSHIP OF THE RING* 45 (2d ed. 1978).

7. Act of Mar. 3, 1851, ch. 43, § 3, 9 Stat. 635 (codified as amended at 46 U.S.C. §§ 30501–30512 (2006)).

8. FED. R. CIV. P. SUPP. R. F.

the material under consideration at the time in order to frame an answer. Assuming the answer was correct, I would follow with the next question, which was: "OK, and how precisely do you do that?" We would then discuss how it was actually done in a particular case, and I would often have the pleadings for review in class. We would then review the opinion of the court on the topic if there was one.

As an example, on January 31, 1975, when I was a law clerk at Clark Ladner, a chemical tanker, the S.S. Edgar M. Queeny (Queeny), attempted to make a U-turn in the Delaware River.⁹ The turn being of wider radius than the pilot expected, the Queeny brushed the S.T. Corinthos (Corinthos), an oil tanker loaded with crude oil, which was docked and discharging its cargo across the river at the BP/Sohio Oil refinery pier in Marcus Hook, Pennsylvania.¹⁰ The anchor of the Queeny ripped a gash in the hull of the Corinthos in two of its cargo tanks.¹¹ The gash was above the level of the oil cargo remaining in the tank and the hydrocarbon fumes in the tank, having combined with the requisite amount of air during discharge, exploded.¹² The main deck of the Corinthos was blown into the air, and a large piece landed on the deck of the Queeny, which caused a fire on the deck of that ship, a sophisticated chemical tanker.¹³ The Queeny backed away, both to avoid the flames now engulfing the Corinthos, and to fight its own fire.¹⁴ The Corinthos burned and sank at the pier.¹⁵ Twenty-six of its crew and several visitors were killed.¹⁶ One crewman on the Queeny was killed, but the remaining crew was able to extinguish the fire and save the ship.¹⁷ Although the Corinthos sank at the pier, its hull still contained tens of thousands of barrels of crude oil, which continued to burn.¹⁸ The Coast Guard decided that allowing the oil to burn off was, despite the air pollution resulting, far preferable to putting the fire out and having the oil escape into the Delaware River and enter the delicate marshes along the Pennsylvania, New Jersey, and Delaware shorelines.¹⁹

9. BUREAU OF ACCIDENT INVESTIGATION, NAT'L TRANSP. SAFETY BD., REP. NO. USCC/NTSB-MAR-77-2, SS EDGAR M. QUEENY COLLISION WITH THE LIBERIAN S/T CORINTHOS, MARCUS HOOK, PENNSYLVANIA, 31 JANUARY 1975, at 18 (1977).

10. *Id.*

11. *Id.* at 9-10.

12. *Id.* at 50, 52.

13. *Id.* at 33.

14. BUREAU OF ACCIDENT INVESTIGATION, *supra* note 9, at 40.

15. *Id.* at 42-43.

16. *Id.* at 5.

17. *Id.* at 25, 41-42.

18. *Id.* at 42-43.

19. *See* BUREAU OF ACCIDENT INVESTIGATION, *supra* note 9, at 42.

As a lowly law clerk,²⁰ I was assigned to the library to research a multitude of issues, including: What was the effect of abandonment of the wreck of the *Corinthos* by its underwriters under the Wreck Act?²¹ Who would have to pay for the removal of the wreck from in front of the oil refinery pier if the owners and underwriters abandoned? If the owners of the *Queen* were successful in limitation, what would be the position of the pier owner in relation to other claimants to the fund? Who could BP/Sohio sue to recover its damages?, etc. While the answers to these questions might seem apparent to the experienced practitioner, they were worthy of research to determine the latest case law on the topics.

The owners of the *Queen* and the *Corinthos* each filed complaints seeking limitation of their liability and naming various other parties, including each other, as defendants in the actions seeking to recover damages.²² Eventually, when it was discovered that the astern turbine of the *Queen* was badly damaged, perhaps reducing its astern power, additional complaints were filed against the three companies who we referred to as the “products defendants.”²³ They were Bethlehem Steel—in whose yard the *Queen* was built, General Electric Company—which built the turbines, and the William Powell Valve Company, of Cincinnati, Ohio—which built the astern guardian valve which proved to be defective.²⁴ The failure of this valve, early in the life of the ship, had allowed metal fragments to be blown into the astern turbine of the ship, closing off two rows of turbine blades and reducing the astern power of the ship.²⁵ Expert testimony later established that had this turbine delivered full power, the collision would have been avoided by the *Queen*’s master’s timely emergency full stern order.²⁶ This aspect of the case gave rise to a number of interesting questions, on all of which the court ruled, including: Did admiralty recognize “products liability” as a cause of action?²⁷

20. During the eleven years that it took this saga to unfold, I progressed from lowly law clerk to partner and argued the case in the Third Circuit Court of Appeals on two separate occasions.

21. 33 U.S.C. §§ 409–415 (2006).

22. See *In re Bankers Trust Co.*, 503 F. Supp 337, 338–39 (E.D. Pa. 1980), *rev’d*, 651 F.2d 160 (3d Cir. 1981). Note the limitations proceedings relating to the S.S. *Edgar M. Queen*, and the companion action involving the S.T. *Corinthos* produced many actions in federal court, some of which are cited herein.

23. *Id.* at 338.

24. *Id.* at 339.

25. *Id.* at 343.

26. *Id.* at 343–44.

27. *In re Queen/Corinthos*, 503 F. Supp 361, 363–64 (E.D. Pa. 1980). This ruling was long before the decision of the United States Supreme Court in *East River Steamship Corp. v. Transamerica Delaval, Inc.*, which incorporated products liability law into admiralty. 476 U.S. 858, 865 (1986).

The case was tried in 1979 on liability issues.²⁸ An appeal was taken to the Third Circuit, which remanded the case for further proceedings.²⁹ Meanwhile, the damage portion of the case was settled between BP/Sohio and the Queeny interests, as to the amount of damages only.³⁰ The damage case was then tried. The court ruled on damages, and this decision was also taken to the Third Circuit.³¹ While the case was being prepared for retrial on liability in the district court on remand, the entire matter settled.³² The events leading to settlement are of particular interest. The Queeny had significant insurance coverage. It had a primary policy and then excess in multiple layers.³³ Some of these layers were up to \$5,000,000, but others were as low as \$1,000,000.³⁴ The claimed damages exceeded \$70,000,000.³⁵ Pre-judgment and post-judgment interest were running on the damages, increasing the Queeny's liability by several million dollars per year.³⁶ Because each layer of insurance was responsible only for its actual amount, not the interest on that amount, each year new layers of coverage were "tapped" to the amount of newly accrued interest.³⁷ This made settlement almost impossible. In the late 1970s and early 1980s market rate interest was at record levels—15% and more.³⁸ Thus, underwriters whose layers were exhausted could earn 15% on their money by not settling the claims and not paying them. The only underwriters who were actually interested in settling the claims were those whose layers were about to be consumed by the accruing interest. The other layers, whose unanimous consent was required to settle, refused.³⁹ We needed a way to break through this impasse.

28. *In re Bankers Trust Co.*, 503 F. Supp. at 338–39.

29. *In re Bankers Trust Co. v. Bethlehem Steel Corp.*, 651 F.2d 160, 163, 175 (3d Cir. 1981), *rev'g* 503 F. Supp. 337 (E.D. Pa. 1980).

30. *In re Bankers Trust Co. v. Bethlehem Steel Corp.*, 658 F.2d 103, 111 (3d Cir. 1981), *aff'g in part, rev'g in part* 503 F. Supp. 350 (E.D. Pa. 1980).

31. *In re Bankers Trust Co.*, 503 F. Supp. 350, 357 (E.D. Pa. 1980), *aff'd in part, rev'd in part*, 658 F.2d 103 (3d Cir. 1981).

32. *Keystone Shipping Co. v. Home Ins. Co.*, 840 F.2d 181, 182, 183 (3d Cir. 1988).

33. *Id.* at 183.

34. *Id.*

35. Kent D. Syverud, *The Duty to Settle*, 76 VA. L. REV. 1113, 1195 (1990).

36. *In re Bankers Trust Co.*, 569 F. Supp. 386, 388 (E.D. Pa. 1983). *See Keystone Shipping Co.*, 840 F.2d at 183 n.7.

37. *See Keystone Shipping Co.*, 840 F.2d at 183 n.7 (noting that the court's order to pay the amount into the court would deprive the insurers of the ability to invest the money at risk and thus earn interest on it).

38. *See In re Bankers Trust Co.*, 569 F. Supp. at 388 (citing testimony of a financial planner from Standard Oil Company confirming the annual return of interest between July 1980 and August 1982 was 14.56%).

39. *Keystone Shipping Co.*, 840 F.2d at 182. The Home Insurance Company refused to settle, even when the other underwriters ultimately agreed to do so. *Id.* Whether a single

The initial limitation fund as stipulated by the Queeny interests was \$11,000,000, which returned 6% interest pursuant to Supplemental Admiralty Rule F.⁴⁰ We challenged the Supreme Court's Rule F as ultra vires based on a contention that the rate of interest on the fund was a matter of substantive law which the court could not establish by rule making, but only as substantive law. The district court rejected this argument, but found that the value of the vessel was \$18,000,000.⁴¹ The 6% would accrue on the \$11,000,000, but market rate interest would accrue on the fund in excess of the original stipulated \$11,000,000.⁴² The court also accepted our argument that it would be a denial of due process to limit interest to 6% when the funds,⁴³ if deposited in a Certificate of Deposit at a bank would return 15% (which was the case in the late 1970s and early 1980s).⁴⁴ The court agreed and ordered that the entire limitation fund, up to the full value of the vessel, and all accrued interest, be paid, in cash, to the clerk of the court within forty-eight hours.⁴⁵

Faced with having to pay the full amount of the fund into court, and thus being denied any further interest on the money, the underwriters agreed to settle.⁴⁶

This dilation and discourse is illustrative of one piece of admittedly extensive admiralty litigation.⁴⁷ However, it is not uncommon for a practicing admiralty attorney to have been involved in such litigation. In teaching admiralty law, the principles are often illustrated by one or more leading cases, which, while interesting, lack the texture one obtains by actually participating in the case. The appellate cases included in casebooks, often edited to leave only the point being presented, give the law but lack the context and texture of the practice of the law. This texture brings the law alive for the student and, in my experience, brings home those technical points of the law which otherwise might be learned for the exam but then abandoned in the ebb and flow of more and different courses. Having drafted the pleadings and appeared before the court, arguing for a particular order from or action by the court in the context of a real case enables the teacher to bring more to the lecture and discussion

underwriter may hold out was litigated and resolved in *Keystone Shipping Co. v. Home Insurance Co.* in the insurance company's favor. *Id.* at 182–83.

40. *In re Edgar M. Queeny Limitation Proceedings*, 1986 A.M.C. 209, 209 (E.D. Pa. 1985).

41. *Id.*

42. *Id.* at 211.

43. *In re Banker's Trust Co.*, 569 F. Supp. at 394.

44. *See id.* at 388. The court found that an equitable post-judgment interest rate was 10%. *Id.* at 389.

45. *In re Edgar M. Queeny Limitation Proceedings*, 1986 A.M.C. at 211.

46. *Keystone Shipping Co. v. Home Ins. Co.*, 840 F.2d 181, 183 (3d Cir. 1988).

47. There were many reported decisions in the Queeny saga, on many other aspects of trial procedure and substantive admiralty law. To find these, search "Edgar M. Queeny" on Lexis® or Westlaw®.

than is otherwise possible in the classroom. The practicing attorney, who has this experience but does not call upon it in the classroom, denies students vital substance and interesting aspects of the law.

One final note, which I think is important, is the length of the standard law school course. When I started teaching the semester was fifteen weeks. It was then shortened to fourteen weeks. This took away three classes from the standard three-credit admiralty course. In most schools, admiralty is offered as a single three-credit upper class elective course. A few schools actually break the course down into various specialized courses, giving the student a chance to engage in deeper study of the material. I have mixed feelings about the multiple course approach. Law school is short enough, and there are so many different areas of law to cover, that I am not sure that spending multiple courses on the field of admiralty law is the correct path for undergraduate legal education. I fully agree that the LL.M. in admiralty offers an excellent opportunity to expand on the basic admiralty course, however. But, I was able to come to a compromise while teaching at Widener University School of Law in Wilmington, Delaware. There, with the agreement of my dean and little opposition, I divided the standard three-credit course into two two-hour courses. One focused on the casualty side of admiralty law, including personal injury law, damage to cargo, limitation of liability, salvage, etc. The other course covered the "business side" including ship mortgages, liens, insurance, bills of lading, charter parties, etc. Both courses included coverage of jurisdiction and the Admiralty Rules. Neither course was a prerequisite for the other and either could be taken alone, with the caveat that the student was leaving with "half a loaf" if only one was taken.

In my practice, I have had the opportunity to work with attorneys who came into the firm and were assigned to the admiralty group who had not taken admiralty law. Of course, in assigning such an "untutored" attorney to a particular case, I first gave her or him a short course on the area of law involved and usually handed him or her the casebook with a homework assignment to bring them quickly up to speed. My tutorials continued along the way during the handling of the case. A good attorney can learn admiralty (or any other area of) law on the job, if there are those with the time and the inclination to teach. However, given the times in which we practice, and the demands for instant expertise, I fear that finding such a mentor may be more and more difficult. Thus, the aspiring lawyer, desiring to practice admiralty law, is best advised to come at the practice as well prepared as possible. On the job training will come with each and every case that is handled. The teachers will be not only the attorneys in your own firm, but each of the opponents you face.

I have found the teaching of admiralty law to be one of the most enjoyable and educational aspects of my practice of the law. I have always found the law to be not just a means to a particular end, hopefully an end favored by my

client, but a living, growing body which has form and substance of its own. The body of the law is not to be abused. Each of us, in our daily practice of the law, must strive to have it be, as Immanuel Kant might have had it, that law which we would have applied to us, not just to our opponents.

