

## TEACHING ADMIRALTY

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Looking back, I realize that I have spent weeks, months, and probably years teaching admiralty to law students, speaking about it to judges and lawyers, testifying about it to legislators, and writing about it for all those different audiences. Being asked to contribute to this symposium has caused me to stop and ask myself why, and the answer involves both reflection and a little story telling. To begin with the story telling: Just how did I get started in admiralty? Some lawyers and law professors come to maritime law because they have a love of the sea, whether from sailing, recreational boating, or perhaps literature. Some come to it because they have a professional or educational background either in the military or maritime commerce. Some come to it because they fall into it in practice and consequently fall in love. None of the above apply to me.<sup>1</sup> My academic maritime journey was slightly more fortuitous, although I certainly fell in love with the subject. So, let me step back about twenty years or so.

I was teaching law at Louisiana State University (LSU) Law Center in Baton Rouge, and I had settled into torts as my area of primary particular academic interest. As a torts teacher who liked to talk, I frequently found myself giving speeches to lawyers about Louisiana tort law in southern Louisiana, where many lawyers engage in the practice of admiralty. In particular, in 1988 the Louisiana Legislature passed the Louisiana Products Liability Act, a comprehensive treatment and revision of Louisiana product liability law.<sup>2</sup> I had been a consultant to the Louisiana Trial Lawyers' Association, now the Louisiana Association of Justice, and as the bill that became the law wound its way through the legislature, I wrote an article on the Act,<sup>3</sup> and I gave some speeches about the Act's impact. Inevitably, during the talks, I would be asked: "Will that rule apply in maritime law?" As an admiralty "know-nothing" or "know-little," my answer was usually, "I don't

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1. Actually, the second research project I did as a young associate was a research project on the Carriage of Goods by Sea Act (COGSA) and, as I recall, shifting burdens of proof, but I went landward from there.

2. 1988 La. Acts 64 (codified in LA. REV. STAT. ANN. §§ 9:2800.51–9:2800.60 (2009)).

3. Thomas C. Galligan, Jr., *The Louisiana Products Liability Act: Making Sense of It All*, 49 LA. L. REV. 629 (1989).

know.” I am, at heart, an honest person. But when I honestly answer, “I don’t know,” I like to be able to go and find the answer.

At the same time, I was also writing portions of a legal newsletter for the Louisiana Trial Lawyers’ Association, and the person who was writing the admiralty portion of the newsletter moved on to other things. I inherited his section. Of course, I was able to read a case and summarize it, but I really did not know the context of the decision or its potential impact. I was describing the trees, but since I was not an admiralty expert (yet), I did not really see the forest and how the tree fit within it.

Unsure what to do, I turned to my mentor and friend, Frank Maraist. Not only was Frank Maraist one of the outstanding professors at the LSU Law Center, but he was probably the most successful and sought after CLE speaker in the state. He was also my guide in teaching torts and teaching in general and was the author of *Admiralty in a Nutshell*,<sup>4</sup> among many other publications. I explained my dilemma to Frank. Now, Frank Maraist is a man who thinks, works, and talks fast, and he wasted no time in telling me that there was only one solution.

“What?” I asked.

“You have to teach admiralty,” he said.

“But, I really don’t know anything about it, and besides, you teach it,” I replied.

My objection about lack of knowledge was genuine, and I certainly did not want to appear as if I were trying to steal a course from my favorite senior colleague.

“Ach,” he said. “You can learn the law and I will take a year off from teaching admiralty so you can teach it. And after that, because I know you will love teaching admiralty, we can have two sections per year, one in the fall and one in the spring, or we can alternate.” He delivered his advice matter of factly.

There was clearly nothing to be done except for me to teach admiralty. I spent the summer writing about torts while learning admiralty. I read *Admiralty in a Nutshell*, which provided as sound a basic education in admiralty as anyone could ever expect. I devoured Gilmore and Black<sup>5</sup> whose ability to turn a phrase kept me both hungry for more knowledge and smiling. I nestled in with Benedict<sup>6</sup> and with Norris.<sup>7</sup> And so, my intellectual love affair with admiralty began. I hid my emotional connection from my wife,

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4. FRANK L. MARAIST, *ADMIRALTY IN A NUTSHELL* (West Nutshell Ser. 1983).

5. GRANT GILMORE & CHARLES L. BLACK, JR., *THE LAW OF ADMIRALTY* (2d ed. 1975).

6. 1 *BENEDICT ON ADMIRALTY: JURISDICTION AND PRINCIPLES* (Steven F. Friedell ed., 7th ed. 2010).

7. 1 *MARTIN J. NORRIS, THE LAW OF MARITIME PERSONAL INJURIES* (4th ed. 1990); 1 *MARTIN J. NORRIS, THE LAW OF SEAMEN* (4th ed. 1985).

although I think she knew what was happening, and never uttered a jealous word. We actually rushed back early from vacation, driving twenty-five hours straight from New Jersey<sup>8</sup> to Baton Rouge (a decision we still argue about: “We should have stopped.” “No we shouldn’t.”), so I could have one extra full day to prepare my class notes for Admiralty. The only casualty of the trip was our overhead cargo carrier, which was dented beyond the pale when, exhausted from too much driving and simultaneously hopped up on coffee, I drove the van into the garage and forgot about the cargo carrier. In any event, the semester began and I survived my first cruise teaching maritime law. Of course, Maraist was right; I wanted to teach it again.

And so I learned more, and taught admiralty again and again. And as I gave some speeches and wrote a little, I became really hooked. Frank invited me to join him on a casebook he published through LSU. Then he invited me to be a co-author on *Admiralty in a Nutshell*.<sup>9</sup> Later, we updated that casebook published through LSU, and it is now published by West Publishing Company.<sup>10</sup> Wonderfully, Frank’s daughter Catherine, who is my former student in admiralty, has become a co-author with us on both *Admiralty in a Nutshell* and the casebook.<sup>11</sup>

As an aside, imagine how I felt when the daughter of one of the world’s foremost experts on admiralty (and my mentor) decided to take admiralty from me! But he was a wonderful friend and person, and she was both a fantastic student and person, so it all worked out better than anyone could have imagined. Incidentally, during the time Catherine was in my admiralty class, LSU hosted a “family day” and invited spouses, partners, parents, siblings, and friends to attend class with our students. It was a very nice day and Catherine brought her mother, Catherine, with her to Admiralty. I don’t think I was ever more nervous before a class, except when my own children visited!

In any event, besides the personal connection with people about whom I care very much, just why do I love admiralty so much?

Obviously, it was, in part, the sheer joy of learning something fresh and new that then became more familiar and more nuanced. But there is way more to it than that, and I can break it down into three interconnected pieces: 1) Admiralty involves all “aspects” or “types” of law, albeit on or near the water—it is broad in legal scope; 2) At the same time, it is a complete, self-

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8. A footnote is merited as there may be many readers who, at least prior to watching “The Jersey Shore,” would not equate the words “vacation” and “New Jersey” but, as native Jerseyans, we can attest that New Jersey is a beautiful place. And besides, we were visiting family.

9. FRANK L. MARAIST & THOMAS C. GALLIGAN, JR., *ADMIRALTY IN A NUTSHELL* (4th ed. 2001).

10. FRANK L. MARAIST, THOMAS C. GALLIGAN, JR. & CATHERINE M. MARAIST, *CASES AND MATERIALS ON MARITIME LAW* (2d ed. 2009).

11. FRANK L. MARAIST, THOMAS C. GALLIGAN, JR. & CATHERINE M. MARAIST, *ADMIRALTY IN A NUTSHELL* (West Nutshell ser., 6th ed. 2010).

contained system and for me, most importantly, it is a complete, self-contained tort system; and 3) Admiralty has its own unique “maritime [legal] flavor”<sup>12</sup> that makes it exotic. I will deal with each in turn.

First, admiralty is fascinating and fun for a teacher because it is not just one area of law—it is all law as law relates to maritime commerce and affairs. I know we live in an age of legal specialists; however, I have always been fascinated by law as an entire system and by how that system fits together. Moreover, clients tend not to think of having an admiralty problem or a torts problem or a warranty problem until they hear their lawyer use a label. They think they have a legal problem, and they want their lawyer to use all she knows to solve it—whatever law school subject it fits under. As such, I loved teaching remedies because it was a comprehensive look at the end game of all litigation. It cut across course boundaries.

Admiralty, in its way, is even more comprehensive than remedies. It involves contracts, commercial law, torts, international law, constitutional law, civil procedure, evidence, transportation law, energy law, conflicts of law, workers compensation, security devices, liens, international law, and more. It is a complete system, and it provides both student and teacher with the opportunity to study that complete system. The admiralty teacher sees both breadth and depth. The admiralty teacher and student explore law as it relates to maritime commerce and activity.

Notably, a significant portion of maritime law involves maritime contracts for the carriage of goods on water. This requires the student to understand bills of lading, allocations of risk, shifting burdens of proof when things go bad, two American statutes: the Harter Act<sup>13</sup> and the Carriage of Goods by Sea Act,<sup>14</sup> and international agreements. It involves contract and commercial law that is related and similar to the law on the land and distinctly maritime concepts, but more on those below.

Moreover, admiralty deals with ship mortgages and liens. For many students, their course in admiralty may be the first time they encounter the notion of a security interest. Contracts, commercial law, security devices, and more—you get the point. Admiralty is not a course about federal jurisdiction or intellectual process; it is a course about all the legal aspects of maritime commerce. It cuts across other law school subjects.

Additionally, another significant part of the law of admiralty involves maritime torts—whether of the collision variety or the personal injury variety.

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12. Of course, “maritime flavor” is a shorthand way to express one of the requirements for the existence of maritime tort jurisdiction.

13. Act of Feb. 13, 1893 (the Harter Act), ch. 105, 27 Stat. 445 (1893) (current version at 46 U.S.C. §§ 30701–30707 (2006)).

14. Carriage of Goods by Sea Act, ch. 229, 49 Stat. 1207 (1936) (current version at 46 U.S.C. § 30701 (2006)).

In studying maritime torts, the student sees not only the traditional tort claim between “unrelated” parties, but also how the employment relationship and worker’s compensation schemes fit into the torts world. In torts, the teacher alerts the student to the existence of worker’s compensation, but tells the student that if she wants to learn more she should take a course in worker’s compensation or employment law. In admiralty, when the student studies the Longshore and Harbor Worker’s Compensation Act (LHWCA)<sup>15</sup> and injuries to LHWCA workers, the student is forced to see how the puzzle pieces fit together (whether seamlessly or not is a question for the critic). Likewise, insurance is almost everywhere in admiralty.

Moreover, maritime law requires the teacher and the student to confront complex issues involving the United States Constitution’s admiralty jurisdiction<sup>16</sup> and the intriguing nature of that power, including the judicial power to develop maritime law where Congress is silent. Concomitantly, the admiralty student experiences an advanced course in civil procedure as she examines issues of jurisdiction, the right to a jury trial, removal, and the critical “saving to suitors” clause.<sup>17</sup> It is an education in the allocation of power between state and federal courts. In this regard, admiralty *is* a course in federal courts.

The teacher and student also must consider and understand difficult conflicts and choice of law issues at both the international and national levels. At the international level, the questions relate to which nation’s laws apply. At the national level, even when there is maritime jurisdiction, the court must decide whether to apply federal maritime law or to apply state law if the case does not deal with a matter of traditional maritime concern or require a uniform rule.<sup>18</sup> Here the lawyer, whether the case is a tort case or a contract case, has the ability to truly influence the outcome of the case by convincing the court to apply the body of law most beneficial to his or her client.

It is difficult to think of a particular case that encapsulates the comprehensive legal nature of admiralty. It is perhaps better to use a concept—maritime contract jurisdiction. As the admiralty teacher and student both know, the test for maritime contract jurisdiction is whether the subject

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15. Longshore and Harbor Workers’ Compensation Act, Pub. L. No. 98-426, 44 Stat. 1424 (codified as amended at 33 U.S.C. §§ 901–950 (2006)).

16. U.S. CONST. art. III, § 2.

17. 28 U.S.C. § 1333 (2006).

18. *See, e.g.*, *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996) (applying state law to a tort occurring in territorial waters); *Am. Dredging Co. v. Miller*, 510 U.S. 443 (1994) (analyzing whether, in admiralty cases filed in state court, federal law preempts state law regarding forum non-conveniens); *Wilburn Boat Co. v. Fireman’s Fund Ins. Co.*, 348 U.S. 310 (1955) (discussing the power of states to regulate the conditions of marine insurance contracts); *S. Pac. Co. v. Jensen*, 244 U.S. 205 (1917) (holding a state compensation statute for maritime cases is “not saved to suitors from the grant of exclusive jurisdiction”).

matter of the contract is maritime.<sup>19</sup> The test is a metaphor for the comprehensive legal nature of admiralty. That is, whatever the particular area of contract law at issue—conditions, warranties, limited remedies, or offer and acceptance—if the subject of the contract is maritime, then there is maritime jurisdiction and admiralty law governs.<sup>20</sup> Ironically, of course, contracts to build and sell ships are not “maritime,”<sup>21</sup> but nothing is perfect and I use the rule merely as an illustration.

The comprehensive nature of maritime law also presents itself in the way in which maritime law and concepts intersect and overlap with non-maritime law. For instance, in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*,<sup>22</sup> maritime law met land law head on. There, while driving piles to repair bridges spanning the Chicago River, workers apparently damaged a freight tunnel underneath the river, resulting in extensive flooding of basements in buildings adjacent to and near the Chicago River.<sup>23</sup> The pile-driving contractor petitioned to limit its liability under maritime law in federal court.<sup>24</sup> The limitation proceeding was a concursus proceeding, so all claimants and others were pulled into a federal court sitting in admiralty.<sup>25</sup> Moreover, the contractor sought indemnity and contribution from various “land based” alleged tortfeasors.<sup>26</sup> The case thus involved the interaction of maritime tort law, state tort law, the scope of federal jurisdiction, and potentially such issues as joint and several liability. Without giving it all away, the case beautifully exemplifies the interaction of maritime law with other potentially applicable bodies of law.

In short, teaching maritime law is not merely teaching admiralty, but it is teaching many different types of law—it is teaching a legal microcosm that involves and integrates many bodies of law into one course. Admiralty is therefore both a subject in itself and the study of an entire legal world—law on or affected by the water. Thus, admiralty is both specialized and broad at the same time. It is an entire legal system.

The second aspect of maritime law that I love is that it is not only an entire legal system, but it is also a self-contained system—an entire, self-contained

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19. *De Lovio v. Boit*, 7 F. Cas. 418, 444 (C.C.D. Ma. 1815) (No. 3776).

20. *Id.* at 443. Of course a court might choose to borrow or apply a state rule of decision, see cases cited in note 18, *supra*, but the case is still maritime.

21. *N. Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co.*, 249 U.S. 119, 126–27 (1919) (“It is settled that a contract for building a ship or supplying materials for her construction is not a maritime contract.”); *Magallanes Inv., Inc. v. Circuit Sys., Inc.*, 994 F.2d 1214, 1217 (7th Cir. 1993).

22. 513 U.S. 527 (1995).

23. *Id.* at 529.

24. *Id.* at 530–31.

25. *Id.*

26. *Id.* at 531.

system of tort law. That maritime law contains or has its own regime or rules of torts is certainly not surprising; after all, it deals with torts on the water. My point here is pedagogical and has to do with teaching and learning. The inevitable trend of teaching law school courses at the national, or even international, level means that the course is necessarily comparative. That is, the course in torts or contracts or property is about what many jurisdictions do: it is about the law of New York and California and Montana and New Jersey and England and Peru and so on. It is about what the majority rule is and what the minority rule is and what other views or rules there are. What is gained is a broad understanding of many approaches. What is possibly lost is, perhaps, an understanding of how the different rules actually fit together in a particular jurisdiction—are those rules fair? Consistent? Coherent? Logical? And how does learning the various rules and approaches “model” solving a particular legal problem in a particular jurisdiction the way a lawyer does? What may be lost in the national or international law school course is the ability to meaningfully analyze how a particular jurisdiction’s rules fit together. And yet, ironically, it is the law of a particular system that occupies the attention and professional lives of most of our students. That is not to say that they should not understand law in a global context—they must. But it is to say that most lawyers spend most, or at least a lot, of their time dealing with the law of a particular jurisdiction, or at least solving problems raised in particular jurisdictions.

In admiralty, the student sees and studies one particular tort regime. The student learns a body of self-contained doctrine and then considers how it fits together. The student analyzes substantive and remedial maritime tort law and is forced to consider whether the various recovery rules for seamen, longshore workers, oil and gas production workers, passengers, and others fit together. When the student studies maritime wrongful death, she is confronted with a labyrinth of not always fair, consistent, or up to date law, and as such, she is forced to confront discrete issues of doctrine, policy, and justice head-on.<sup>27</sup> Is

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27. See *Deepwater Horizon Tragedy: Hearing Before the S. Comm. on Commerce, Sci., & Transp.*, 111th Cong. (June 30, 2010) (statement of Thomas C. Galligan, Jr.) (arguing that that “[t]he failure to allow recovery for loss of society damages in . . . maritime wrongful death cases . . . is unjust, dated, inconsistent and out of alignment with current values”); *The Risky Business of Big Oil: Have Recent Court Decisions and Liability Caps Encouraged Irresponsible Corporate Behavior?: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 12–13, 72–73 (June 8, 2010) (statement of Thomas C. Galligan, Jr.) (discussing how the current laws for recovery in maritime cases incentivize irresponsible corporate behavior); *Legal Liability Issues Surrounding the Gulf Coast Oil Disaster: Hearing Before the H. Comm. on the Judiciary*, 111th Cong. 120–37 (May 27, 2010) (statement of Thomas C. Galligan, Jr.) (“[T]he current law is confusing, conflicting, arguably incoherent when viewed as a whole, and potentially under compensatory and an inadequate deterrent.”).

it fair that the Death on the High Seas Act (DOHSA)<sup>28</sup> denies recovery of loss of society damages to the survivors of most people killed on the high seas? And does it make sense that the only exception to the DOHSA “no recovery” rule is for the survivors of those killed in commercial aviation disasters?<sup>29</sup> Why should the law be different for airline disasters as opposed to cruise ship deaths or oil rig deaths, as occurred on the Deepwater Horizon, or helicopter crashes? And why don’t the survivors of Jones Act seamen have the right to recover for loss of society either?<sup>30</sup> Is the expansion of the DOHSA and Jones Act “no recovery” rules to other contexts (deaths within territorial waters)<sup>31</sup> and other types of non-pecuniary damages (loss of consortium)<sup>32</sup> justified, or is it an instance of judicial liability limitation? The questions outlined above involve an area where the case study is most poignant and most challenging—the rights of the survivors of those killed at sea. However one answers these questions, the point is that the admiralty student addresses them not by asking what is the law in New York, as compared with California, as compared with Illinois. Instead, the student confronts the issues head-on within one tort recovery system and cannot explain away inconsistency and illogic by merely saying that is how it is in Texas or Florida. Maritime tort law thus presents the student with a case study in one torts system.

A more mundane but practical example involves the interplay between the LHWCA and third-party tort claims. There, the student studies in detail the right of a worker to recover in workers compensation from his or her employer. The student studies when the worker might have a right to recover in tort from the employer. And the student studies the right of the employer to recover LHWCA benefits it has paid the worker from a third-party tortfeasor, as well as the allocation of attorney’s fees in pursuing that recovery. It is an extremely practical lesson in real tort issues that a student does not usually receive in the first-year torts course. In addition, maritime torts present the student with more complex tort-related issues, like indemnity agreements,

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28. See 46 U.S.C. § 30303 (2006) (limiting damages to “the pecuniary loss sustained by the individuals for whose benefit the action is brought”); *Zicherman v. Korean Air Lines, Inc.*, 516 U.S. 217, 230 (1996).

29. *Id.* § 30307 (a)–(b) (allowing additional recovery for non-pecuniary damages “if the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of the United States”).

30. See *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (“There is no recovery for loss of society in a Jones Act Wrongful Death Action.”).

31. *In re Am. River Transp. Co.*, 490 F.3d 351, 356 (5th Cir. 2007) (holding that there are no loss of society damages in state territorial waters).

32. See *Sea-Land Servs., Inc. v. Gaudet*, 414 U.S. 573, 585–91 (1974) (discussing the arguments for and against loss of support type damages and ultimately allowing a widow to collect damages). But see *Michel v. Total Transp., Inc.*, 957 F.2d 186, 191 (5th Cir. 1992) (finding no loss of consortium damages were available under the Jones Act).



which may be glossed over in torts courses but which are dealt with in more detail in admiralty because of their importance.

So, I realize that I love teaching admiralty because of its breadth. And I love it because it presents the student with an actual torts recovery regime—perhaps not a fair, functional, and coherent regime, but a self-contained regime nonetheless. However, I also love it because it is, at the same time, distinctive. Let me try another metaphor to explain what I mean. It has always struck me how amazing—even downright miraculous—we human beings are. In so many ways we are the same—all made of basically similar molecules, similar patterns of motion and thinking—we all need to eat, we all fall in love. And yet at the same time, we are so different—noses, waistlines, tastes, DNA combinations. Well, admiralty law is that way too; it is the same as a lot of other law the student studies but it is also so, so beautifully and tantalizingly different.

General average, salvage, limitation of liability, prize, finds, great swaths of American federal judge-made law all make the study of maritime law unique. Add to that the responsibility of the vessel for the acts of the pilot and towage. And then throw in the notion of arresting the vessel (so that is what *in rem* means?) and that the priority of maritime liens seems absolutely backwards to the landlubber lawyer. All of these things give maritime law its own distinctive flavor. These truly maritime doctrines give teaching maritime law a briny taste. And for the maritime personal injury scholar and teacher, there is even more. The rights of seamen and seamen status are fascinating topics. Studying and trying to explain the United States Supreme Court's seamen status decisions<sup>33</sup> is an exercise is truly trying to understand the shifting of the tides. And, the longshore worker's Section 905(b)<sup>34</sup> claim and its evolution is another particularly admiralty concept. I could go on!

In conclusion, as I look back, I realize how lucky I was to get asked those questions about admiralty when I was giving torts speeches so many years ago in Louisiana. And I realize how fortunate I was to have a friend and mentor like Frank Maraist. I also know that if I had followed my own ideas of what I did, or what I might teach and write about, I probably never would have discovered and dove into maritime law. I would never have known the three reasons I love admiralty—breadth, the comprehensive study of one (torts) system, and all those uniquely maritime rules. Teaching admiralty and how I came to teach it have taught me that flexibility and adaptability are crucial—whether in one's life or in a legal system.

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33. *E.g.*, *Chandris v. Latsis*, 515 U.S. 347 (1995).

34. 33 U.S.C. § 905(b) (2006).

