

TEACHING ADMIRALTY POPULARLY

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INTRODUCTION

It is perhaps predictable that someone who has written the only law review article about *Gilligan's Island*,¹ the 1960s CBS sitcom about the shipwreck of the MINNOW, would include generous doses of popular culture in his admiralty course. Doing so, however, is not just about keeping me amused (although it certainly does help, especially during lectures on the workings of the Ship Mortgage Act).² Instead, as I hope to show in this essay, such references actually make for good teaching.³

I. THE PROBLEMS WITH AN ADMIRALTY COURSE

Admiralty is not a course that most students come to knowing very much about. Indeed, most know nothing about the subject.⁴ Even those who have nautical backgrounds—usually gained during stints at sea or weekends aboard their parents' boat—typically are struggling after just the first assignment. And who can blame them? Admiralty requires students to simultaneously integrate centuries of history with complex modern business practices as seen

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1. See Robert M. Jarvis, Essay, *Legal Tales from Gilligan's Island*, 39 SANTA CLARA L. REV. 185 (1998); *Gilligan's Island* (CBS 1964–1967).

2. 46 U.S.C. §§ 31301–31343 (2006) (original version at 46 U.S.C. § 922 (1988)). Actually, however, the Act is the source of one of the most entertaining cases an Admiralty teacher can assign—the so-called “errant decimal” dispute, in which a typist’s mistake briefly turned a \$92,885,000.00 ship mortgage into one for \$92,885.00. See *Prudential Ins. Co. v. S.S. Am. Lancer*, 686 F. Supp. 469, 470 (S.D.N.Y. 1988).

3. A growing number of law professors in other fields have reached the same conclusion. See, e.g., Michael M. Epstein, Book Review, 58 J. LEGAL EDUC. 597, 597–98 (2008) (reviewing DAVID RAY PAPKE ET AL., *LAW AND POPULAR CULTURE: TEXT, NOTES, AND QUESTIONS* (2007)).

4. At first, the same is often true of their instructors. Both Grant Gilmore and Charles L. Black, Jr. had no knowledge of the subject when they began teaching it. See Robert M. Jarvis, *Gilmore & Black at 50*, 38 J. MAR. L. & COM. 135, 143 (2007). Likewise, when Bill Clinton was assigned the course as a new law professor at the University of Arkansas School of Law, his knowledge came from what he had picked up as a student at Yale Law School. See Hillary Rodham Clinton, *Tribute to Charles Black*, 111 YALE L.J. 1911, 1913 (2002).

through the lens of common law judges applying a species of civil law that is replete with archaic terms⁵ (“restraint of princes” being my personal favorite).

Adding to the challenge is the fact that Admiralty is a course that requires a solid grounding in all of the first-year subjects as well as a host of upper-class electives.⁶ In short, Admiralty demands students to be both generalists and specialists prior to walking in the door.

Oddly enough, however, the real difficulty lies in the enthusiasm students have when signing up for Admiralty. Before the first day of class, students are excited about the adventure that lies before them—after all, the course promises tales of sunken treasure, marauding pirates, and epic naval battles. And compared to Income Tax, Admiralty seems like it should be smooth sailing.⁷

So it is not at all surprising that there is an almost immediate letdown when, during the first class, the professor announces that the semester will be spent trying to figure out the answers to such weighty questions as whether the inland portion of a contract for the carriage of goods by sea qualifies as a maritime contract and, therefore, is subject to federal admiralty law.⁸ Adding that such investigations will require a careful parsing of the underlying

5. See William Tetley, Q.C., *Maritime Law as a Mixed Legal System (with Particular Reference to the Distinctive Nature of American Maritime Law, Which Benefits from Both Its Civil and Common Law Heritages)*, 23 TUL. MAR. L.J. 317, 321 (1999) (“[M]aritime law, whether it be national or international, is composed of two constituent parts, general maritime law and maritime statutory law [T]here is also a modern *lex maritima*. Today’s general maritime law consists of the common forms, terms, rules, standards and practices of the maritime shipping industry”). See also Paul Myburgh, *Richard Cooper Memorial Lecture Admiralty Law—What Is It Good For?*, 28 U. QUEENSL. L.J. 19 (2009) (broadly evaluating the future of admiralty in Australian law).

6. See Joel K. Goldstein, *Reconceptualizing Admiralty: A Pedagogical Approach*, 29 J. MAR. L. & COM. 625, 637 (1998) (“Admiralty also overlaps many of the substantive courses of legal study. The basic first year courses are heavily represented. The study of maritime personal injury and wrongful death, marine products liability, and collision overlaps with torts just as the study of marine insurance, charter parties, and carriage of passengers and goods implicate contracts. Property doctrines appear in, for instance, discussions of salvage and general average. But admiralty also shares common ground with many other upperclass courses, including environmental law, insurance, international law, legislation, products liability, remedies, and secured transactions, to name but a few.”) (footnote omitted).

7. See Paul L. Caron, *Tax Myopia, or Mamas Don’t Let Your Babies Grow Up to be Tax Lawyers*, 13 VA. TAX REV. 517, 520–21 (1994) (explaining that while most law students do end up taking Income Tax, during it they “have their initial distaste for tax confirmed and go on to become corporate lawyers, litigators, etc., avoiding all other professional contact with tax during (and after) law school”).

8. Oddly enough, this seemingly minor issue has twice received the attention of the Supreme Court in recent years. See *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 130 S. Ct. 2433, 2449 (2010) (delineating the boundaries between maritime law and railroad law); *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 22–23 (2004) (holding that such contracts do fall within the admiralty jurisdiction of federal courts).

documents, as well as a thorough examination of the Carmack Amendment,⁹ the Federal Bill of Lading Act (which sounds only slightly better when called the Pomerene Act),¹⁰ and the Carriage of Goods by Sea Act,¹¹ not to mention a comparison of the Hague Rules,¹² Hague-Visby Rules,¹³ Hamburg Rules,¹⁴ and now the Rotterdam Rules,¹⁵ ensures that whatever air is left in the room is sucked out of it.¹⁶

Other courses in the law school curriculum have equally difficult material—Property immediately comes to mind as does Sales.¹⁷ The difference is that students have to take those courses. Not only are they on the bar exam of every jurisdiction, but lots of lawyers handle cases involving real estate or chattels.

Admiralty, on the other hand, is a different kettle of fish. It does not appear on the bar exam of any state,¹⁸ and the likelihood of getting an

9. Act of June 29, 1906, ch. 3591, § 7, 34 Stat. 584, 595 (current version at 49 U.S.C. § 10745 (2006)).

10. Federal Bill of Lading Act (Pomerene Act) of 1916, ch. 415, 39 Stat. 538 (current version at 49 U.S.C. §§ 80101–80116 ((2006)).

11. Carriage of Goods by Sea Act, ch. 229, 49 Stat. 1207 (1936) (current version at 46 U.S.C. §§ 30701–30707 (2006)).

12. Convention for the Unification of Certain Rules Relating to Bills of Lading, Aug. 25, 1924, 51 Stat. 233, 120 L.N.T.S. 155, implemented by the Carriage of Goods by Sea Act (COGSA), 46 U.S.C. § 30701 (2006).

13. Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Signed at Brussels on 25th August 1924, Feb. 23, 1968, 1412 U.N.T.S. 128.

14. United Nations Convention on the Carriage of Goods by Sea, Mar. 31, 1978, 1695 U.N.T.S. 3.

15. United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules), Sept. 23, 2009, G.A. Res. 63/122, U.N. Doc. A/RES/63/122, U.N. Sales No. E.09.V.9 (2009).

16. *But see* Michael F. Sturley, *Maritime Cases About Train Wrecks: Applying Maritime Law to the Inland Damage of Ocean Cargo*, 40 J. MAR. L. & COM. 1 (2009) (demonstrating that in the hands of an expert, even the most arcane of topics can be made interesting).

17. Despite—or perhaps because of—their inherent difficulty, these subjects have produced some very funny law review articles. *See, e.g.*, Marianne M. Jennings, *Buying Property from the Addams Family*, 22 REAL EST. L.J. 43 (1993); Timothy R. Zinnecker, “*Dear Diary*” Moments in the Semester of a UCC Law Professor, 50 MERCER L. REV. 603 (1999).

18. In the old days, however, when bar exams were still informal affairs, at least one applicant was tested on admiralty:

Huey Long’s oral bar examination in 1915 is part of Louisiana lore. When asked by George Terriberry, an admiralty practitioner, what he knew about admiralty, Long replied, “Nothing.” When pressed about how he would handle an admiralty matter, Long announced, “I’d associate Mr. Terriberry with me and divide the fee with him.” Long passed.

ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 32–33 n.43 (1983) (quoting T. HARRY WILLIAMS, HUEY LONG 81 (1969)).

admiralty position after law school is quite small.¹⁹ Indeed, the typical law school graduate will never be faced with an admiralty question no matter how long he or she practices (this is especially true for those who end up in, say, Montana).²⁰ And once students realize that they don't have to take Admiralty—and that no one will fault them or think any less of them for having left law school without an admiralty course under their belt—the race to drop the class while there is still time begins in earnest.²¹

The struggle to keep students past the add/drop deadline, however, is just the beginning. As the semester grinds on, it becomes increasingly difficult to hold their attention. There are, of course, all the usual challenges: students surfing the web while in class, students uneasy about their job prospects, students worried about the bar exam, and students panicked by the size of their law school loans. Yet these problems are just the tip of the iceberg when it comes to teaching Admiralty.

As the complexity of the subject reveals itself, and as the cases (most of which are old and therefore difficult to decipher)²² fail to reveal any consistency in decision-making, students become frustrated. Of course, they become frustrated in other courses where the courts have failed to set out (or adhere to) a clear set of rules, but again, the realization that there is no real need to master Admiralty (except for the final exam, and then only if everyone

19. See generally ROBERT M. JARVIS, CAREERS IN ADMIRALTY AND MARITIME LAW (William D. Henslee & Sara Vlajcic eds., 1993). Although my book is now years out of date, it remains the only one to describe the near-heroic efforts that law students must often undertake to secure a job with a maritime employer, a situation that has only gotten worse with the passage of time.

20. I could just as easily have said North Dakota or Wyoming but then I could not have included a cite to Charles N. Fiddler, *The Admiralty Practice in Montana and All That: A Critique of the Proposal to Abolish the General Admiralty Rules by Amendments to the Federal Rules of Civil Procedure, and a Counterproposal*, 17 ME. L. REV. 15, 16 (1965).

21. Although there may be no cost to the individual student who escapes Admiralty, there are costs to the legal profession. For example, one noted commentator, while writing about the Supreme Court, has asked:

But who does the thinking once a maritime case is accepted for review? There is reason to believe that . . . much of the responsibility rests on the clerks. Law clerks, few of whom will have studied or had any other previous contact with admiralty, are unlikely to be much good at it. Admiralty and maritime law is a richly layered field that is remarkably resistant to quick study.

David W. Robertson, *Summertime Sailing and the U.S. Supreme Court: The Need for a National Admiralty Court*, 29 J. MAR. L. & COM. 275, 296 (1998).

22. For a variety of reasons, using more modern decisions to teach admiralty is problematic. See Robert M. Jarvis, *Doctrinal Choices in the Teaching of Admiralty*, 6 U. BRIDGEPORT L. REV. 431, 441 (1985) (book review) (noting that many professors are unlikely to choose a casebook that omits their favorite cases in favor of newer ones).

else in the class does so) makes students increasingly focus on other pursuits as the weeks go by.²³

II. REENGAGING ADMIRALTY STUDENTS THROUGH POPULAR CULTURE

If I am right (and I think I am), the challenge is not getting students excited about Admiralty—the challenge is keeping them excited about Admiralty. In other words, one has to fulfill their expectations about what a semester of Admiralty is going to look like. And the best way to do that, in my opinion, is by using examples drawn from popular culture.

In my admiralty course, I use popular culture whenever I can—and am always on the lookout for new opportunities to do so. Indeed, when used correctly, popular culture references do more than merely entertain students—they also enlighten and engage them.

Take, for example, *Gilligan's Island*.²⁴ While no one (not even me) would argue that the show was profound, it can be put to profitable use when teaching about negligent navigation. I ask my students whether the Skipper should have known that a storm was brewing—and if he did and still set out on that fateful three-hour tour, whether his decision was reckless and what damages the passengers and crew can seek. This leads to a spirited discussion in a way that no case does.

I make similar use of Aaron Sorkin's NBC drama, *The West Wing*.²⁵ In the episode entitled "Bad Moon Rising," we learn that Deputy White House Communications Director Sam Seaborn was previously an associate at a tony New York City law firm.²⁶ While there, he helped Kensington Oil purchase a tanker with a faulty steering mechanism.²⁷ The INDIO has now suffered a catastrophic spill and Seaborn is beside himself because the company went ahead with the deal only after he crafted an airtight liability shield for it.²⁸ To make amends, he considers resigning and violating the attorney-client privilege to ensure that Kensington pays, but ends up doing neither after speaking to another lawyer who points out that his testimony would never be admitted at trial.²⁹ While Sorkin obviously intended viewers to focus on the ethical

23. At sea, such situations are dealt with by informing the crew that "the floggings will continue until morale improves." Law professors, however, probably do best to avoid such pronouncements (at least until they get tenure).

24. *Gilligan's Island*, *supra* note 1.

25. *The West Wing* (NBC 1999–2006).

26. *The West Wing: Bad Moon Rising* (NBC television broadcast Apr. 25, 2001). For a more detailed description of the show's plot, see Robert M. Jarvis, *The Admiralty Lawyer in Popular Culture*, 37 J. MAR. L. & COM. 23, 46–48 (2006).

27. *The West Wing: Bad Moon Rising*, *supra* note 26; Jarvis, *supra* note 26, at 47.

28. *The West Wing: Bad Moon Rising*, *supra* note 26; Jarvis, *supra* note 26, at 47.

29. *The West Wing: Bad Moon Rising*, *supra* note 26; Jarvis, *supra* note 26, at 47–48.

dilemma faced by Seaborn, I use the storyline to consider the interplay between the Limitation of Liability Act and the Oil Pollution Act.³⁰

Once an Admiralty instructor becomes open to the possibility of incorporating popular culture into his or her course, the list of available works is long.³¹ Need to spice up your discussion of the Longshore and Harbor Workers Compensation Act?³² Let Marlon Brando (in *On the Waterfront*)³³ do the heavy lifting for you. Looking to have your students experience a marine casualty (without having to explain to the dean why the graduating class has suddenly become a bit smaller)? Show a clip from *The Poseidon Adventure*³⁴ or *Titanic*.³⁵ Having trouble making salvage exciting? *Reap the Wild Wind* features John Wayne battling a giant squid,³⁶ while *The Wreck of the Mary Deare* makes co-conspirators out of Gary Cooper and Charlton Heston.³⁷ And if a maritime courtroom drama is what you seek, films like *Amistad* (with a cameo by Justice Harry Blackmun playing Justice Joseph Story, the father of American shipping law)³⁸ or *The Caine Mutiny* (starring Humphrey Bogart)³⁹ simply can't be beat.

I try to use popular culture references from the first day of class to the final exam. In April 2005, for example, a rogue wave hit the NORWEGIAN DAWN while she was racing to New York City to appear in an episode of Donald Trump's NBC reality series *The Apprentice*.⁴⁰ I made extensive use of the litigation sparked by the incident throughout my Fall 2005 course.⁴¹

30. Limitation of Liability Act, 46 U.S.C. §§ 30501–30512 (2006); Oil Pollution Act, 33 U.S.C. §§ 2701–2762 (2006). The complicated relationship between these two statutes is cogently discussed in Donald C. Greenman, *Limitation of Liability Unlimited*, 32 J. MAR. L. & COM. 279, 303–05 (2001).

31. See Robert M. Jarvis, Editor's Note, Symposium, *Admiralty Law in Popular Culture*, 31 J. MAR. L. & COM. 519 (2000) (providing numerous examples of the use of admiralty in different types of media, including art, films, music, novels, poetry, and television).

32. 33 U.S.C. §§ 901–950 (2006).

33. ON THE WATERFRONT (Columbia Pictures 1954).

34. THE POSEIDON ADVENTURE (Twentieth Century Fox 1972).

35. TITANIC (Twentieth Century Fox & Paramount Pictures 1997).

36. REAP THE WILD WIND (Paramount Pictures 1942).

37. THE WRECK OF THE MARY DEARE (Metro-Goldwyn-Mayer 1959).

38. AMISTAD (DreamWorks 1997).

39. THE CAINE MUTINY (Columbia Pictures 1954).

40. See *Conigliaro v. Norwegian Cruise Line, Ltd.*, 2006 A.M.C. 2934, 2935 (S.D. Fla. 2006); *The Apprentice* (NBC 2004–present).

41. After the lead case was dismissed, however, the remaining ones petered out. See Dan Cordtz, *Win in Initial Storm Suit May Signal Smooth Sailing Ahead*, DAILY BUS. REV. (Miami), June 8, 2007, at A1 (noting that the judge empaneled the same jury for all of the separate trials and that the jury found for the defendants in the first trial).

I am not the first Admiralty teacher to use this technique. When the ANDREA DORIA collided with the STOCKHOLM in July 1956, Professor Herbert R. Baer of the University of North Carolina scrapped his planned syllabus and instead taught the course using the resulting

Likewise, that semester's final exam included a question based on Tiger Woods' then-pending claim that Christensen Shipyards Ltd. was improperly advertising the fact that it had built the reclusive golfer's new yacht (aptly named PRIVACY).⁴²

CONCLUSION

When I was a law student, I took Admiralty three times.⁴³ During my first foray, in the winter of 1982 at the University of Pennsylvania, my instructor was Professor Covey T. Oliver, who was then nearing the end of his distinguished career. On the first day of class, he ruefully explained that as he had been allotted just one and a half credits,⁴⁴ he could do no more than examine (and only briefly, he emphasized) the contours of federal maritime jurisdiction. Substantive topics—such as pilotage, salvage, and towage—would have to remain a mystery (and they did, along with collision, charter parties, and the Jones Act).⁴⁵

My second foray came the following spring as a visiting student at Rutgers University. Professor Steven F. Friedell, who was then starting his distinguished career, generously agreed to let me sit in on his three-credit course. Thus, each week I rode the Speedline between Philadelphia and Camden. By the end of the semester, I had re-learned jurisdiction and filled in the gaps left by my earlier outing.⁴⁶

lawsuit's pleadings. See Herbert R. Baer, *The Andrea Doria's Contribution to the Teaching of Admiralty Law*, 10 J. LEGAL EDUC. 101 (1957).

42. The matter was settled in 2006 for an undisclosed amount. See Erik Matuszewski, *Tiger Woods, Yacht Builder Settle Suit*, S. FLA. SUN-SENTINEL, May 9, 2006, at 2D.

43. I was quite lucky to be able to do so—as has been explained elsewhere, many law schools either do not offer Admiralty or give the course only infrequently. See Steven R. Swanson, *A Survey of Admiralty Offerings in United States Law Schools*, 29 J. MAR. L. & COM. 657 (1998).

44. It was not uncommon during this period for Penn to offer less-heavily subscribed courses (like Admiralty) as mini-courses. Such courses were known around the law school as "Q" (for quarter) courses.

45. Despite being limited in what he could cover in the classroom, Professor Oliver had strong feelings about how students should approach the subject. In an article penned a few years before I took his course, he wrote: "Admiralty involves the interplay of landlubber law and sea law, the latter too often deemed to have evolved from 'the Rhodian Law and All That' of Professors Gilmore and Black, rather than from its true sources—judicial perceptions of brooding omnipresences and occasional, partial congressional pronouncements." Covey T. Oliver, *Legal Relations Among Legal Systems: Games, Pains, and Some Pending Problems*, 127 U. PA. L. REV. 909, 911 (1979).

46. Professor Friedell's generosity did not stop at letting me take his course—he also offered good advice when I made the decision to look for a full-time teaching job. To this day, one of the highlights of my career remains returning to Rutgers and giving a guest lecture to his class. See Robert M. Jarvis, *Expanding the Carrier's Right to Claim Indemnity Under Section 3(5) of COGSA for Inaccurate Bills of Lading*, 24 DUQ. L. REV. 811, 811 n.* (1986).

My final foray came two years later when, as an LL.M. student at New York University, I took Admiralty with Professor Nicholas J. Healy, who was then deep into his distinguished career.⁴⁷ By the conclusion of his four-credit course, I was as well-prepared to be a proctor as any law student could hope to be.⁴⁸

Twenty-five years later, the tables have turned, and I am now in front of the classroom instead of the back—captain of the ship, if you will, rather than apprentice seaman. And each time that I prepare to put out to sea, I find having a ready supply of popular culture references makes my admiralty course better on both sides of the lectern.

47. Professor Healy's numerous contributions to the shipping world are recounted in Tribute, *Nick Healy: Father, Teacher, Author, Editor of The Journal of Maritime Law & Commerce, Maritime Lawyer—A Remembrance*, 40 J. MAR. L. & COM. 471 (2009).

48. Of course, even the best Admiralty course is only the beginning of a new lawyer's education, and he or she must continue to be nurtured:

You [the experienced maritime lawyer] too can and must be the teacher. This is a time to forget the billable hour and recognize the value of preserving the corpus and approach of our special field. Involve young lawyers directly in every facet of practice.

That generational responsibility extends beyond the office. Have lunch with a young lawyer, who may be more up to date in recent trends than you are. While you are learning about metadata and e-discovery from that more youthful colleague, teach her also about the protean character of the proctor in admiralty: clever and adaptable, but always answering honestly, even if only when fairly cornered.

Lizabeth L. Burrell, Plus Ça Change: *The Protean World of the Maritime Specialist*, 81 TUL. L. REV. 1359, 1374 (2007).