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Introduction

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One untutored in maritime law may find this symposium a strange blend of topics: tort (recovery of noncompensatory damages, and joint and several liability), contract (indemnity), limitation of liability, wreck removal, and the interplay of foreign and state law and procedure. However, to those who study and practice admiralty, the combinations are not unusual—such is the nature of maritime law. For those unfamiliar with that law, a brief explanation may be helpful.

If a matter is "in admiralty," that is if it falls within the admiralty and maritime jurisdiction granted to the federal sovereign by Article III, section 2, clause 3 of the United States Constitution, its judicial resolution is governed by a distinct and comprehensive body of law—the maritime law of the United States.[1] For the most part, that law is derived from, and comports with, the general maritime law of nations, common to all seafaring sovereigns.[2] It primes, but then, somewhat ironically, often applies the law of one of the fifty states.[3]

Given this unusual scenario, it is not surprising that maritime law fascinates the scholars, judges, and practitioners who deal with it. One attraction for scholars is that admiralty law provides the opportunity to compare and critique many areas of private law, from tort theories to commercial disputes to special bodies of law unique to admiralty. Maritime law also presents a perfect setting for a study of one of the most intriguing of academic subjects—the interplay of state and federal laws in our unique American system of federalism.[4]

As one would suspect, the attraction of maritime law to practitioners is more pragmatic. A lawyer who wanders unwarily into an area pre-empted by federal maritime law can find himself or herself quickly in the "deep water" of potential malpractice. But the flipside of the coin is that one who "knows admiralty" frequently is able to avoid an otherwise undesirable result dictated by state law or to obtain through maritime law a friendlier forum or a rule of law more advantageous to his or her client.[5]

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1. *See generally* Grant Gilmore & Charles L. Black, The Law of Admiralty (2d ed. 1975). Although somewhat outdated, Gilmore & Black remains a valuable research tool in admiralty law.

2. *Id.*

3. One of the most significant examples is maritime insurance law. Although a contract to insure a vessel is "maritime," state law applies unless there is an applicable federal statute or established admiralty common-law rule. *See, e.g.*, Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 75 S. Ct. 368 (1955).

4. One of the best writings on this subject is by Professor Robertson, an author in this symposium. *See* David W. Robertson, Admiralty and Federalism (1970).

5. Thus a tort "caused" by a "vessel" on navigable waters is maritime, dictating both the application of admiralty substantive law and the availability of the federal forum under 28 U.S.C. §

Maritime law is of particular importance to practitioners in a jurisdiction such as Louisiana, which borders upon the Gulf of Mexico, experiences extensive offshore oil production, and hosts five of the nation's busiest ports.[6] Thus, the LSU Law Center and some of the state's other law schools provide the state's bar with elaborate pre- and post-graduate training in maritime law. LSU's major contribution to post-graduate admiralty education is a biannual seminar on Maritime Personal Injury Law, founded thirteen years ago through the effort of the Law Center's most illustrious alumnus, the late Judge Alvin B. Rubin of the United States Fifth Circuit Court of Appeals. Judge Rubin's work with the seminar now is carried on by another outstanding alumnus, Chief Judge Henry A. Politz of the same court. Several of the articles in this symposium grew out of presentations at the 1994 LSU Maritime Personal Injury Law Seminar.

Each of the articles in this symposium should be of critical interest to the admiralty scholar or practitioner. The validity of indemnity provisions in contracts that have maritime aspects is one of the most important—and puzzling— issues arising out of the offshore exploration for minerals. Joint and several liability (solidarity) and rules of contribution in maritime law differ significantly from state law rules, presenting difficult problems in the resolution of any claim with a "salty" flavor. The United States Supreme Court's somewhat cryptic decision in *Miles v. Apex Marine Corp.*[7] has cast doubt upon whether maritime law will permit recovery of important elements of damages, such as punitive damages and damages for loss of society. Maritime law provides an unusual remedy—limitation of liability—which allows a shipowner under certain circumstances to surrender his vessel (even a sunken one) and thereby avoid personal liability for the damage the vessel has caused or the debts it has incurred.[8] The interplay of this unique maritime remedy and an equally unique state remedy—Louisiana's Direct Action statute[9]—remains unresolved. Limitation of liability is one of the many special rules which maritime law provides for shipowners. Another is the obligation of the owner to remove a wrecked vessel which poses a threat to maritime shipping and commerce.[10]

Perhaps the most broadly relevant article in this symposium is Professor David Robertson's exhaustive study of admiralty and maritime litigation in state court. Professor Robertson's article is an outgrowth of a presentation which he made to Louisiana state court judges in 1994, a presentation which those judges requested because they suddenly had become inundated with previously rare

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1333 (1988). *See, e.g.*, Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 115 S. Ct. 1043 (1995) (applying maritime law to claims arising out of the flooding of buildings in downtown Chicago).

6. In 1992, the Deepwater Superport off the Louisiana coast ranked first in the nation in tonnage; Baton Rouge ranked fifth, New Orleans sixth, Plaquemine eighth, and Lake Charles twelfth.

7. 498 U.S. 19, 111 S. Ct. 317 (1990).

8. 46 U.S.C. app. §§ 181-192 (1988 & Supp. V 1993).

9. La. R.S. 22:655 (1978 & Supp. 1995).

10. 33 U.S.C. § 409 (1988).

admiralty cases. The flight of admiralty plaintiffs to state court undoubtedly is the result of a number of factors. One, of course, is the basic difference between the federal and state court systems. In the federal system, the docket runs the attorneys, while in the state system, the lawyers generally set the pace for the processing of civil claims. Another factor is the perception by some attorneys that the maritime plaintiff generally fares better in state court. This perception is based upon a number of reasons, including greater access to jury trials and differing judicial attitudes on maritime tort liability. This is particularly important because if the maritime claim is filed in state court and there is no definitive federal rule—either a statute or a decision of the United States Supreme Court—the state court probably is not bound by the rule of the federal circuit in which the state is geographically located, but may make its own "guess" whether state law or federal law should apply, and if federal law should apply, the rule that law provides.[11] Professor Robertson thoroughly explores some of the advantages and disadvantages presented when the admiralty litigant turns to state court.

Professor Robertson is only one of the outstanding scholars whose work appears in this symposium. Professor Robert Force of Tulane University, a leading maritime teacher, provides what may be the best analysis yet of the troubling *Miles* decision. Professor Bill Tetley, a leading Canadian and international maritime scholar, explores important aspects of wreck removal. The authors of the other articles are leading maritime writers and practitioners in New York, Louisiana, and Texas.

This symposium touches upon only a few of the maritime matters which should be of interest to the admiralty practitioner.[12] However, the symposium explores well those topics upon which it touches, and should be useful to the maritime bar.

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11. *See, e.g.*, Backhus v. Transit Casualty Co., 549 So. 2d 283 (La. 1989).

12. One arising in Louisiana which must await another day is the impact of maritime law upon the gambling armada which has invaded this state in recent years. For an indication of the impact of maritime law upon the riverboat gambling casinos, see Frank Maraist & Thomas Galligan, Maritime Roulette, 42 La. B.J. 127 (1994).