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Neal W. Settergren
Goldstein and Price P.C., neal@gp-law.com

WHY ADMIRALTY SHOULD BE STUDIED IN LAW SCHOOL

NEAL W. SETTERGREN*

INTRODUCTION

Admiralty is a unique area of the law. Because admiralty law has frequently been described as a trap for the unwary, its practice is often viewed as one that is highly specialized and limited to only a handful of attorneys (especially in midwestern states like Missouri and Illinois where I practice and teach). As a result of this view, many law students, and even law schools, conclude that this area of the law need not be studied in law school. However, as set forth below, admiralty is a subject that presents matchless learning opportunities for several reasons. First, because of the substantial role admiralty has played in the development of the common law, an admiralty course can serve as a general review course for a student's first-year curriculum, including those topics frequently tested on bar exams. Second, for students planning to pursue careers in litigation, a course in admiralty can introduce students to a wide variety of common practice fields besides just admiralty, including torts, contracts, bankruptcy, insurance, and worker's compensation. Third, an admiralty course can help prevent students from becoming one of those "unwary" practitioners that falls into an admiralty "trap" by failing to spot admiralty issues when they present themselves in other contexts, a phenomenon that occurs with some regularity. In short, admiralty is a course whose benefits should be emphasized to law students.

I. ADMIRALTY HAS PLAYED A SUBSTANTIAL ROLE IN THE DEVELOPMENT OF THE COMMON LAW AND IS A USEFUL BAR REVIEW COURSE

Admiralty law has played a substantial role in the development of the common law and can serve as a review course for many core legal principles. Thus, even for law students with no plans to enter a courtroom with their law degrees, admiralty can nonetheless be useful as a bar review course. Most first-year textbooks involve admiralty cases, although many first-year students would question whether they know anything about the subject. For example,

* Neal W. Settergren is a member at the law firm Goldstein and Price, L.C., in St. Louis, where he has practiced admiralty law since 2001. He is also an Adjunct Professor at Saint Louis University School of Law, where he has taught Admiralty Law since 2007.

in torts the "formula" that law students study for determining negligence was set forth in an admiralty case, *United States v. Carroll Towing Co*.[1] Tort students can also learn about the common law's abandonment of contributory negligence as a complete bar to recovery in favor of comparative fault principles through *United States v. Reliable Transfer Co.*,[2] another admiralty case.

Legal doctrines from first-year courses, such as torts, contracts, and property, form the basis to examine almost every topic in admiralty. In studying admiralty's law of salvage, students are reminded of their first days of Property class, when they studied centuries-old decisions regarding the law of finds.[3] The discovery and salvage of historic shipwrecks in the past few decades, such as the Titanic, has ignited a debate among courts, as well as scholars, over whether the law of salvage or the law of finds, each with their differing objectives, should be applied to these unique circumstances.[4]

Like salvage, admiralty's law of towage also requires students to re-examine several first-year concepts. The landmark towage decision of *Stevens v. White City* reminds students of bailment principles, which the Court refused to apply in towage, holding instead that the law of torts was applicable.[5] As a consequence, the tow is generally not permitted to rely on bailment principles when its property is damaged while in tow.[6] However, the tort doctrine of res ipsa loquitur can be re-introduced to students as one means through which some courts have allowed tows to circumvent the consequences of the decision in *Stevens* in some circumstances.[7]

Additional tort concepts that are well-suited to be re-examined in Admiralty include negligence per se and strict liability. In *Kernan v. American Dredging Co.*, the Court allowed a plaintiff to establish negligence under the Federal Employers' Liability Act (FELA),[8] which is the basis for admiralty's Jones Act,[9] by showing a statutory violation that resulted in a defect or insufficiency in equipment that contributed in fact to the injury.[10] In so

1. 159 F.2d 169, 173 (2d Cir. 1947).

2. 421 U.S. 397, 411 (1975).

3. *See, e.g.*, Armory v. Delamirie, (1722) 93 Eng. Rep. 664 (K.B.); 1 Strange 505.

4. *See, e.g.*, Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 569 F.2d 330, 336 (5th Cir. 1978) ("Whether salvage law or the adjunct law of finds should be applied to property abandoned at sea is a matter of some dispute."). *See also* R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel, 286 F.3d 194, 201–06 (4th Cir. 2002) (rejecting applying the law of finds and explaining the law of salvage in depth).

5. 285 U.S. 195, 201–02 (1932).

6. Joel K. Goldstein, *Towage*, 31 J. MAR. L. & COM. 335, 348–50 (2000).

7. *See* The Anaconda, 164 F.2d 224, 228 (4th Cir. 1947) (permitting a tow to apply res ipsa loquitur as against a tug owner despite the rule in *Stevens*).

8. 355 U.S. 426, 438–39 (1958).

9. Jones Act, 46 U.S.C. § 30104 (2006).

10. *Kernan*, 355 U.S. at 429–31.

holding, however, the Court did not follow the common law's negligence per se rule, which required the statute be intended to prevent the type of injury that occurred.[11] Admiralty's unseaworthiness doctrine also presents an opportunity to review and build upon strict liability concepts introduced in torts.

In short, it is nearly impossible to study admiralty without being re-introduced to numerous common law doctrines that were studied during a student's first-year curriculum and which are frequent bar exam topics.

II. THE STUDY OF ADMIRALTY GIVES LAW STUDENTS INSIGHT INTO A WIDE VARIETY OF PRACTICE AREAS

For many lawyers, finding a practice area to their liking is a process that takes time and may involve some wrong turns. While law schools seek to educate their students to think like lawyers, it is difficult to replicate what lawyers in a specific field do in their practice. Therefore, numerous law students and even recent graduates of law school are interested in learning what a practice area really involves before committing to practice it. That is why so many law firms have developed rotations whereby summer and/or first-year associates can spend some limited amount of time learning about their firm's different practice areas before committing to a specific area.

Besides the common law basics mentioned above, an admiralty course can serve as an introduction into more specialized areas of the law, including insurance, bankruptcy, environmental law, and international law, among others.[12] The study of towage requires that admiralty students examine the Supreme Court's decision in *Bisso v. Inland Waterways Corp.*, where the Court held that exculpatory clauses in towage contracts were not enforceable.[13] While the rationale of the *Bisso* decision purports to be based in contract law, the decision itself does not tell the whole story because many maritime companies have used insurance law as a means to circumvent, or at least minimize, *Bisso's* impact, which towers viewed as detrimental.[14] Accordingly, any complete examination of towage law should include how the insurance concepts upheld in *Fluor Western* and *Twenty Grand Offshore* successfully permitted towers to contract away at least some of their potential liability for towing mishaps. Insurance law may also be addressed in admiralty by

11. *Id.* at 432–33.

12. This list is meant to be illustrative rather than exhaustive.

13. 349 U.S. 85, 95 (1955).

14. *See, e.g.*, Twenty Grand Offshore, Inc. v. W. India Carriers, Inc., 492 F.2d 679, 688 (5th Cir. 1974) (holding that a towing agreement requiring the tug and barge owner to each have their own insurance, to name the other party as an additional assured, and to obtain a waiver of subrogation did not violate *Bisso*); Fluor W., Inc. v. G & H Offshore Towing Co., 447 F.2d 35, 40 (5th Cir. 1971) (upholding clause requiring a cargo owner to insure its cargo and waive subrogation against the tower).

examining *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*,[15] and the conflicting interpretations lower courts have given to it.[16]

In addition to insurance law, admiralty also presents opportunities to introduce bankruptcy concepts. In the context of studying admiralty's Limitation of Liability Act,[17] students can learn how the law goes about allocating a limited amount of money that is insufficient to pay all of the claims, which is a fundamental question dealt with by our country's bankruptcy laws. The topic of maritime liens similarly can also be addressed with a healthy regard for bankruptcy practice and procedures.[18] Moreover, admiralty's seizure and attachments procedures provide a speedy and unique means to enforce obligations against entities who might otherwise be able to avoid them through bankruptcy or otherwise.[19]

In the aftermath of the 2010's Deepwater Horizon disaster in the Gulf of Mexico, environmental law has re-emerged as an interest to many students. Admiralty law, which has long concerned itself with the impact of the release of cargos and fuels into the navigation waterways shared by all mariners, provides a context for students to explore this subject. Since at least the sinking of the *Torrey Canyon* in 1967,[20] or at the very latest 1989's *Exxon Valdez* disaster,[21] environmental laws have affected admiralty. Through examining the Oil Pollution Act of 1990,[22] which was passed in response to the *Exxon Valdez* disaster,[23] students can investigate whether this law has been successful in meeting its objectives. The power of individual states, such as Washington, to enact their own environmental legislation when they conclude

15. 348 U.S. 310, 316 (1955) ("[T]he scope and validity of the [maritime insurance] policy here involved and the consequences of breaching them can only be determined by state law. . . .").

16. *See, e.g.*, Lexington Ins. Co. v. Cooke's Seafood, 686 F. Supp. 323, 328 (S.D. Ga. 1987) ("*Wilburn Boat* has been severely criticized by the commentators, . . . [and] fortunately, does not bind this Court with respect to the facts of the case at bar."); Kimta A.S. v. Royal Ins. Co., 9 P.3d 239, 242 (Wash. Ct. App. 2000) (finding that Washington courts "employ the analysis" of *Wilburn Boat*).

17. 46 U.S.C. §§ 30501–30512 (2006).

18. *See, e.g.*, United States v. ZP Chandon, 889 F.2d 233 (9th Cir. 1989) (addressing crewmembers' liens in the context of a bankruptcy proceeding).

19. *See* Robert M. Jarvis, *An Introduction to Maritime Practice Under Rule B*, 20 J. MAR. L. & COM. 521, 538 (1989) ("If, however, Rule B [governing attachment] was successfully utilized prior to bankruptcy, the plaintiff is subject to the bankruptcy, but receives the elevated status of a lien creditor.").

20. *See In re* Barracuda Tanker Corp., 409 F.2d 1013, 1013 (2d Cir. 1969) (addressing claims from the United Kingdom and others for damages from oil leaked from *Torrey Canyon*, which sunk on March 18, 1967).

21. *See In re* Exxon Valdez, 270 F.3d 1215, 1221–23 (9th Cir. 2001).

22. Oil Pollution Act of 1990, 33 U.S.C. §§ 2701–2762 (2006).

23. *In re Exxon Valdez*, 270 F.3d at 1246.

federal law has gone too far or has failed to go far enough, can also be studied to reinforce the federalism issues that lurk beneath almost every admiralty issue.[24]

A final topic, but one related to environmental law, that can be utilized extensively in an admiralty course is international and comparative law. Nearly any admiralty topic can serve as a basis to compare the laws of the United States with law of other maritime nations or treaties that exist between some maritime nations.

III. A SINGLE ADMIRALTY COURSE CAN PREVENT STUDENTS FROM LATER BECOMING UNWARY PRACTITIONERS THAT FALL INTO AN ADMIRALTY "TRAP"

Because admiralty law touches so many different areas of the law, it should come as no surprise that it finds its way into the practices of many non-admiralty attorneys over the course of their careers. As set forth below, in recent years admiralty law has substantially impacted claims as far-reaching as lost cargo arising from a land-based train derailment, flooding that affected downtown businesses in Chicago's Loop, and Amtrak passengers who were killed when their train derailed crossing a bridge in Alabama. While none of these claims had a distinctively admiralty flavor at first glance, admiralty law nonetheless impacted the outcome of each case in a significant manner.

At least three recent examples are illustrative. First, in *Norfolk Southern Railway Co. v. James N. Kirby, Pty Ltd.*, the United States Supreme Court applied admiralty law for the benefit of a non-maritime party.[25] In *Norfolk Southern*, a railroad was hired to transport machinery from Savannah, Georgia to a General Motors plant in Huntsville, Alabama.[26] The machinery had been transported from its origin in Australia to Savannah, Georgia by Hamburg Süd, a German-based, ocean shipping company.[27] While in transit on the railroad, the Norfolk train derailed, causing alleged damage to the machinery totaling $1.5 million.[28] The railroad defended itself from the ensuing claim by arguing for the enforcement of the $500 per package damage limitation that was contained in two bills of lading that were issued to the plaintiff by Hamburg Süd and ICC, a freight forwarder who had arranged for the transportation.[29] A divided panel of the Eleventh Circuit Court of Appeals rejected the notion that the railroad should benefit from the damage limitation clauses contained in bills of lading to which they were not a party, but the Supreme Court

24. *See, e.g.*, United States v. Locke, 529 U.S. 89 (2000) (examining whether various environmental laws passed by the state of Washington were preempted by federal law).

25. 543 U.S. 14, 23–24 (2004).

26. *Id.* at 21.

27. *Id.*

28. *Id.*

29. *Id.* at 18–21.

reversed.[30] Writing for a unanimous Supreme Court, Justice O'Connor began her opinion by stating: "This is a maritime case about a train wreck."[31] Following this introduction, Justice O'Connor explained that the need for uniformity in general maritime law required that the railroad be permitted to enforce the damage limitation clauses contained in the bills of lading.[32] The railroad was no doubt pleased that its attorneys spotted the admiralty issues that arose from a domestic train wreck, which ultimately saved the railroad from substantial potential liability.

A second example is *In re Amtrak "Sunset Limited" Train Crash in Bayou Canot, Alabama, on September 22, 1993*.[33] In *Amtrak*, forty-seven passengers aboard an Amtrak train were killed when the train derailed while attempting to cross a railroad bridge that crosses Big Bayou Canot near Mobile, Alabama.[34] Unbeknownst to the train operator, a tow of barges had struck a bridge support earlier in the day, causing the railroad track to become laterally misaligned.[35] In the litigation that followed, the victims' families sought to pursue wrongful death claims under Alabama law, which permitted the recovery of punitive damages based on a showing of simple negligence and also precluded apportioning damages among joint tortfeasors.[36] However, the Eleventh Circuit Court of Appeals disagreed, holding that federal maritime law governed the claims, thereby precluding recovery for punitive damages and requiring apportionment of fault among joint tortfeasors in accordance with admiralty law.[37] The Eleventh Circuit reasoned that the facts of the case were "so closely related to activity traditionally subject to admiralty law that the reasons for applying federal maritime law are undeniably present."[38] No doubt, the families of the victims, whose claims were negatively impacted by admiralty law even though their deceased family members were merely Amtrak passengers with no conceivable connection to traditional maritime activity, did not share the Eleventh Circuit's view that admiralty law should be applied to the detriment of their claims.

Third, in *Jerome B. Grubart, Inc. v. Great Lakes Dredge and Dock Co.*, many businesses and property owners located in Chicago's Loop were damaged in the Great Chicago Flood of 1992 when water from the Chicago River poured into a freight tunnel running under the River.[39] This flooding

30. *Norfolk*, 543 U.S. at 22, 36.
31. *Id.* at 17, 18.
32. *Id.* at 28.
33. 121 F.3d 1421 (11th Cir. 1997).
34. *Id.* at 1422–23.
35. *Id.*
36. *Id.* at 1423.
37. *Id.* at 1427.
38. *In re Amtrak*, 121 F.3d at 1426.
39. 513 U.S. 527, 529 (1995).

was alleged to have been caused by events seven months earlier when Great Lakes, who was under contract with the City of Chicago, replaced pilings around the piers that support the Kinzie Street Bridge.[40] The flood victims alleged that Great Lakes' actions had been negligent in weakening the structure of the tunnel below the Chicago River, which Chicago had negligently maintained.[41] The victims of the flood argued against admiralty jurisdiction in the subsequent limitation of liability proceeding filed by Great Lakes by arguing, among other things, that the damages were too far removed in space and time to come within admiralty.[42] Lacking any dissent, the Supreme Court found that admiralty jurisdiction existed.[43] While the Court recognized that the City of Chicago's alleged negligence was non-maritime (in failing to maintain its tunnel), the Court reasoned that as long as "one of the arguably proximate causes of the incident originated in the maritime activity of a tortfeasor" the test for admiralty jurisdiction could be satisfied.[44] Accordingly, a single maritime party can occasionally force other non-maritime parties to litigate in admiralty, such as occurred in *Grubart*.

In sum, important admiralty issues can arise in a wide-variety of contexts that may appear, at least initially, to be non-maritime in nature.

CONCLUSION

No matter their future plans, compelling reasons exist for law students to study admiralty.

40. *Id.* at 530.
41. *Id.*
42. *Id.* at 535–36.
43. *Id.* at 529, 548.
44. *Grubart*, 513 U.S. at 541.