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The Scope of Maritime Law

The foundation of maritime law is a significant body of well-established common law, developed from ancient practices of maritime commerce and from the decisions of maritime courts applying those standards of traditional admiralty law, in what has become known in the U.S. courts as “the general maritime law.” Maritime law also includes statutory enactments, many of which are driven by, or at least based upon, international conventions and agreements, as well as established maritime customs.

In some ways, maritime law has developed apart from—and somewhat in tension with—local civil laws. It has done so because the fundamental purpose of maritime law is different from that of the civil law. While the civil law developed to help maintain a civil society and resolve disputes between members of a single nation, maritime law developed to promote the just and speedy resolution of disputes among persons from possibly different countries involved in maritime commerce.

In Restoration England, the admiralty courts often battled the civil courts, for reasons more related to access to court fees and jurisdictional power than legal policy and jurisprudence. In the United States, the tension between admiralty courts and local courts has been more affected by the tensions inherent in our federal form of government.

The designation of a matter as an “admiralty” matter brings it within federal jurisdiction, and makes it subject to the federal maritime law.¹ The necessary consequence is that the state law that would otherwise apply is supplanted by the federal rule of decision. To balance the national interest in a uniform maritime law with the local state interest in preserving state jurisdiction over local matters, the federal Judiciary Acts have noted that the federal courts have “original jurisdiction, exclusive of the courts of the states” over “any civil case of admiralty or maritime jurisdiction,” but then goes on, “saving to suitors in all cases all other remedies to which they are otherwise entitled” (this is referred to as the “Savings to Suitors” clause).²

Under that formulation, maritime cases are federal cases, subject to federal maritime law, and within the jurisdiction of the federal courts. However, those maritime cases that present issues traditionally within state common law jurisdiction—in other words, contract and tort cases—can still be tried in state courts.

Despite that compromise, the scope of maritime law remains in tension with the scope of state and other federal laws. Maritime law continues to adapt to changing commercial practices and demands, such as those posed by intermodal shipping, mixed sale, purchase, and delivery contracts, amphibious vehicles, and changing financial, social and employment standards. However, the traditional rule of thumb remains generally true—matters that involve vessels, or the movement of goods or people by water, will likely involve some aspect of maritime law. This chapter further outlines the reach and scope of maritime law.

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Definition

Q 1.1 What is “maritime law”?

“Maritime law” is a body of law applicable to maritime commerce and vessels. The key to understanding maritime law is to understand that it has developed to promote maritime commerce, which is a matter of international concern and practice. As a consequence, while most maritime nations have their own maritime law, the principles of maritime law are mostly consistent among maritime nations, and decisions based on general maritime law principles are widely recognized around the world.

Q 1.1.1 How does “maritime law” relate to “admiralty law”?

“Admiralty law” is generally synonymous with “maritime law,” although admiralty law is more correctly understood as a subset of maritime law. Admiralty law evolved as an amalgam of international common law and civil law or codes, decided by judges who would look to international practices and customs, as well as to the local civil law, to determine what standards to apply to maritime disputes.

Q 1.1.2 How is “maritime law” broader than “admiralty law”?

“Maritime law” includes not only admiralty law (maritime common law), but also maritime statutes and regulations enacted on a nation-by-nation basis or based on international conventions. Over time, nations have tended to enact specific statutes to codify traditional

admiralty law concepts, such as maritime liens and cargo claims, or to address other maritime matters that were not traditionally viewed as admiralty issues, such as vessel mortgages and marine insurance. More recently, most nations have implemented specific statutes regarding vessel construction standards, pollution prevention regulations, seafarer protection regulations, and similar laws. Much of the international maritime law is now based on international conventions developed under the auspices of the United Nations International Maritime Organization (IMO).³

History of U.S. Maritime Law

Q 1.2 Where did U.S. maritime law come from?

Much of United States and international maritime law developed from English admiralty law as first applied by local English maritime courts and then the English High Court of Admiralty, a special court under the authority of the Lord High Admiral formed to deal with maritime-specific issues in 1339.⁴

Q 1.2.1 What are the main features of English maritime law?

Local English courts developed procedures over time that were intended to promote maritime trade. Then, as now, merchants depended upon the ability to keep their vessels moving and to minimize the amount of time that vessels might be detained in port. They naturally preferred trading to ports where they could be assured of prompt resolutions of disputes, where they would not be exposed to arbitrary, local influences from a “hometown” jury, and where the rules of decision would be as close as possible to those used in other ports. These courts tended to have—

- trial by experienced maritime judges, rather than local lay juries who might not understand the exigencies of navigation or maritime commerce, or who might be more subject to local influences;
- expedited trials and other procedures for resolving maritime disputes;

- more flexible standards for evidence and taking or preserving testimony;
- reference to established “sea codes” or other international standards;
- procedures for obtaining security for claims by arresting vessels or attaching vessels; and
- procedures for interim relief for stranded sailors.

Q 1.2.2 How did the English admiralty courts develop?

Ultimately, the local maritime courts were centralized by the English royal government and placed under the authority of the Lord High Admiral. That eventually led to tension between the admiralty courts and the common law courts over jurisdiction and the benefits of fees from the handling of disputes. By the time of the American Revolution, the two court systems had reached a point of equilibrium, with the admiralty courts claiming jurisdiction over matters arising on tidewaters and the high seas, and the local courts assuming jurisdiction over all other disputes.

Q 1.2.3 What is the origin of U.S. admiralty courts?

That split in jurisdiction was replicated when the Founding Fathers drafted the U.S. Constitution. While most “common law” disputes, such as torts, contract, and property issues, were left to the state common law courts, the Constitution expressly provided for federal jurisdiction over admiralty matters. Article III, Section 2, Clause 1 states that “The judicial Power shall extend to . . . all Cases of admiralty and maritime Jurisdiction . . .”

Q 1.2.4 What is the extent of federal admiralty jurisdiction?

The federal admiralty jurisdiction was implemented through the Judiciary Acts of 1789 and subsequent versions, now codified in the United States Code.⁵ The statute setting out the jurisdiction of federal district courts over maritime cases states:

Admiralty, maritime and prize cases: The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

As a consequence, maritime law is established as a matter of federal law, developed largely through judge-made common law.⁶

Maritime vs. Non-Maritime Law

Q 1.3 How is maritime law different from other law in the United States?

Because maritime law has developed for the purpose of facilitating maritime commerce, it has a number of differences from non-maritime law, many of which first developed from the ancient sea codes and English development of those codes. For example:

- maritime law liability standards are often different than those under local laws;⁷
- damages under maritime law are often different than those under local laws;⁸
- maritime cases can be brought in federal court without regard to diversity of citizenship or amounts in controversy;⁹
- maritime cases are generally tried to a judge, rather than a jury;¹⁰
- maritime law often treats vessels as legal “persons,” *in rem*;¹¹
- maritime cases permit *ex parte* pre-judgment attachment of property without any need to show good cause (subject to certain jurisdictional standards);¹²
- maritime law includes limitation of liability rights for vessel owners;¹³
- most maritime cases are not subject to statutory “limitation” deadlines, unlike cases under state law, but instead are evaluated for timeliness under the equitable doctrine of laches;¹⁴

- oral contracts are always valid under maritime law, but often not valid under state laws;¹⁵ and
- parties in maritime cases can often take advantage of expedited discovery rules and other means to obtain evidence quickly.¹⁶

Maritime Law Status Today

Q 1.4 What is the status of maritime law in the United States?

Maritime law is a dynamic and evolving branch of law in the United States through both developments in maritime common law and through congressional and federal government administrative actions. Congress and the courts continue to grapple with new maritime issues presented by offshore energy exploration, changes in transportation technologies and systems, and ever-increasing use of waterways for energy, trade, fishing, and recreation.

Q 1.4.1 Can maritime law extend to non-maritime activities?

Yes, maritime law may extend to non-maritime matters if the activities are related to maritime matters. U.S. Supreme Court cases, in 2004 and 2010, significantly expanded the reach of maritime law to cover even the inland portions of multi-modal shipments due to the need to allow for a uniform remedy system to cover shipments from point of origin to point of destination.¹⁷ Other combinations of congressional action and judicial decisions have led to a gradual expansion of maritime jurisdiction. For example, the reach of the Death on the High Seas Act has expanded as courts—and Congress—have confirmed that the act covers deaths from offshore aviation accidents as well as those on board vessels.¹⁸

In commercial litigation, an expansive reading of maritime law's remedy of maritime attachment to cover wire transfers passing through intermediate banks in New York led to a massive volume of maritime cases in New York until the Second Circuit Court of Appeals—encouraged by overwhelmed district court judges—put some limits on the practice.¹⁹

Maritime law has also been extended to civil forfeitures arising under federal criminal laws.²⁰

Q 1.4.2 What is the relationship between maritime law and state law in the United States?

Although maritime law is a unique body of law, it has many links to state laws and other federal law. In those cases where existing maritime law does not address a particular issue, a maritime judge may look to state laws to guide the decision.²¹ In state courts, judges trying maritime cases under the “Savings to Suitors” clause—such as those involving boating accidents or maritime contracts—must apply maritime law.²² As a consequence, federal maritime law and state laws are interrelated, with developments in one system necessarily affecting the other.

Notes

1. See, e.g., *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 243 (1942); *S. Pac. Co. v. Jensen*, 244 U.S. 205, 215 (1917).
2. 28 U.S.C. § 1333.
3. The IMO was created pursuant to the Convention on the International Maritime Organization adopted in 1948 which went into force in 1958. Probably the three most important conventions created by the IMO are the: International Convention for the Safety of Life at Sea (SOLAS), 1974; International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL); and International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).
4. See Charles S. Cumming, *The English High Court of Admiralty*, 17 TUL. MAR. L.J. 209 (1993).
5. 28 U.S.C. § 1333.
6. See, e.g., *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 483 (2008).
7. Maritime law uses a “pure” comparative fault system, as contrasted with the contributory fault or partial comparative fault systems used in many States. See chapter 30, *infra*.
8. See, e.g., *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990).
9. 28 U.S.C. § 1333.
10. FED. R. CIV. P. 38(e).
11. FED. R. CIV. P. SUPP. ADM. R. C.
12. FED. R. CIV. P. SUPP. ADM. R. B.
13. 46 U.S.C. § 30505; FED. R. CIV. P. SUPP. ADM. R. F.
14. See, e.g., *P.R. Ports Auth. v. Umpierre-Solares*, 456 F.3d 220, 227 (1st Cir. 2006).
15. *Kossick v. United Fruit Co.*, 375 U.S. 731, 734 (1961).
16. FED. R. CIV. P. 30(a)(2)(A)(iii).
17. *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 130 S. Ct. 2433 (2010); *Norfolk S. R. Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14 (2004).
18. See, e.g., *Zicherman v. Korean Air Lines Co.*, 516 U.S. 217, 231 (1996).
19. The rash of maritime attachment litigation was triggered by decisions from the Second Circuit Court of Appeals in *Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263 (2d Cir. 2002); *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434 (2d Cir. 2006); and *Consub Delaware LLC v. Schahin Engenharia Limitada*, 543 F.3d 104 (2d Cir. 2008). The practice was significantly curtailed by the court’s decision in *Shipping Corp. of India v. Jaldhi Overseas PTE Ltd.*, 585 F.3d 58 (2d Cir. 2009).

20. 18 U.S.C. § 981 *et seq.*

21. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 313 (1955) (because insurance is a matter regulated by the states, the court will look to state insurance law); *Princess Cruises v. Gen. Elec. Co.*, 143 F.3d 828, 834 (4th Cir. 1998) (maritime law may consider state law regarding the formation of contracts); *Bell v. Tug Shrike*, 332 F.2d 330, 334 (4th Cir. Va. 1964) (because there is no developed maritime law of marriage, the court may look at the relevant state law).

22. *See, e.g., S. Pac. Co. v. Jensen*, 244 U.S. 205, 215 (1917); *Fahey v. Gledhill*, 33 Cal. 3d 884, 887 (Cal. 1983) ("State law is inapplicable to a maritime cause of action if it works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations.").