THE MARITIME LAW:
AN OUTLINE OF ITS SOURCES AND VARIED STRUCTURES
WITH PARTICULAR REFERENCE TO THE UNITED STATES

DRAFT [Not presently for publication]

By
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I. INTRODUCTION

A. Purpose

The purpose of this essay is to provide correspondents in the American Admiralty with a brief and convenient abridgement of the jurisdiction. Citations are few. A cloud of them is available but would defeat my purpose by distracting attention from what I wish to present as plain truths, mostly familiar, with a few notes that may be useful or interesting. I have published a longer article advocating measures to increase the courts’ familiarity with the subject and this may be regarded as an attempt at an objective survey of it.

B. The Admiralties

The national admiralties (collectively the Admiralty) commenced as the maritime nations formed naval fleets for defense or aggression at sea. Their respective rights to navigable waters are rights of sovereignty, rather than cooperative agreements, and have their roots in commerce. A prominent example was the Rhodian Law of Jettison, 2,000 years old, still followed the world around as general average, under which the sacrifice of one’s property to save the voyage is compensated proportionately by those benefitted.

Historically, the admiralties of maritime nations start with their navies, and acquire non-military responsibilities on and about the national waters, as the only capable agencies to police them. In the 14th century the English Admiralty took the form of directions to the admiral making him the ruler of the sea, so far as that power belonged to the nation. Thus the admiral acquired responsibilities for legal control of the seas and for legal questions arising at sea, and the assistance of judges to decide them (the Admiralty court).

As the seas were increasingly used for commerce, more practices to preserve peace and advance safety were needed, that could not be grounded entirely maritime or local to be effective. From such beginnings has grown the extraordinary worldwide institution of Admiralty, a facility of great value and authority, with no headquarters, officers, employees or funds of its own.

As the authority of the maritime law springs from the Admiralty, rather than any particular nation, its interpretation and application depend on the Admiralty’s system of
courts which are ordinarily separate and independent of the nations’ municipal courts (except most notably in the United States where in maritime causes the federal courts shift their terrene pennants and become maritime courts, with Admiralty procedures).


The General Maritime Law (GML) is sometimes understood to represent the unwritten rules of the subject, and perhaps it did when most of them were in fact unwritten. It is, however, not so limited. No particular subject or parcel of the maritime law is labelled "general". In the dictionaries we find no reference to the GML, just “maritime” under “M” and “general” under “G”, the latter representing wide application and not character. The GML represents the sum of statutory and consensual laws governing rights and duties on the seas, as recognized in its principal features by maritime nations in their relations with others. Thus the Rules of the Road are compulsory by statute in our books and no doubt those of other nations, although perhaps not all, where they are nevertheless viewed as law. Admiralty Law, referring to the maritime law formerly promulgated by the admirals, may be spoken of with the same meaning or may refer to doctrines less comprehensive than the GML.

Little, if anything, can be found in the GML that would not be recognized as American, whether or not statutory.

II Sovereignty Confers Admiralty on the States

A. THE VICE-ADMIRALTIES

Vice admiralties were created in important ports in the American colonies, with their governors as vice admirals, who were granted somewhat broader powers than were held by the High Court of Admiralty in London itself on account of restrictions in England that did not apply to the colonies? Hence, when our colonies acquired their sovereignties, as a result of the Revolution, they included a great many responsibilities ranging from the customs enforcement through unlawful pollution of the waters, regulation of fishing, torts, crimes, and even the inquisition and disposition of dead bodies, e.g. the notable instance of Osama bin Laden and frequent routine sepultures.

B. THE STATE ADMIRALTIES FOLLOW

The vice admiralties, with no navy, were substantially carried ashore as the separate admiralties of the several States, and these were subsumed in the federal Constitution, in 1789, which placed A power exclusively in the federal government without any expression of membership in an existing institution. This had, however, already been considered in 1795, when the Supreme Court unhesitatingly embraced the existing international Admiralty law. The issue was whether a money judgment in Admiralty for the proceeds of sale of a prize in New Hampshire, rendered before that Colony had joined the Union, and therefore while a foreign state, should be enforced in Admiralty in

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the United States. It appears to have been assumed that, if the original colonial decision were correct, the courts of the United States should now execute it. The conclusion was positive, general and masterly: "If courts of Admiralty can carry into execution decrees of foreign admiralties, as seems to be settled law and usage; and if the district and circuit courts have Admiralty powers by the law and constitution, …there can be no doubt upon this point." The case has for more than two centuries stood for the binding force of an Admiralty decree in all Admiralty courts.

Interpretation of the Admiralty jurisdiction in the United States has become gradually more sensible over the years since the Revolution, by assuming some of the broader jurisdiction of the vice-admiralties, as well as some newer features. It has remained stubbornly constant in excluding ship building and ship sales, with no plausible reason and leaving them awkwardly related to other transactions.

In providing for Admiralty jurisdiction, the draftsmen of the Constitution casually handed it to all federal courts, and thus to all federal judges, who were few then, as were those who sat specially in Admiralty in other countries. Few they still are because not many specialists are required to cater to one national industry. Rather obviously, the draftsmen had no vision of how their numbers here would rise to more than 800, with the result that most federal judges would be denied experience in the field.

III Scope of the Area Concerned

D. A Navigable waters

1. Surface

The Maritime Waters, to which the Maritime Law applies, are between baselines of land (continents and islands). The baselines, although variable to accommodate irregularities, are generally the coastal low-water lines. There is no visible or invisible line cutting off the Admiralty realm short of them, notwithstanding that municipal authorities and activities (think of moorings) are thrust outward from them. Activities and casualties on and in those waters are subject to the Maritime Law and Admiralty jurisdiction, as well as to local authorities that serve and police them. As control of the sea cannot be exercised without occasional resort to coastal lands, the maritime jurisdiction extends to shores in such cases. In many of them, the territory is subject to regular control and exploitation ashore for recreation or other public pursuits, with overlapping jurisdiction.

2. Extension to Inland waters

In *The Propeller Genesee Chief*, in 1851, the Court decreed that the Admiralty power of the United States extends inward from the high seas to the navigable lakes and rivers of the country connecting with the seas. Contest and conjecture continued through the rest of the century. This liberal trend extended in time to waters such as Lake Tahoe, separating two States. Laws for the inland waters are made by Congress, and fully connected in function with the international maritime waters, although not a part of them. There, as elsewhere, the Maritime Law applies when it is appropriate.
II. The Waters (and Ink) of Jurisdiction

A. Generally

Admiralty does much work ashore, in regard, e.g., to vessel designs and conditions, contracts, liens, training, licensing, drills and discipline, all related to operations offshore and within the Admiralty jurisdiction. The F.R.P.C. provides in Rule 9(h) that, where they jurisdiction exists and is not exclusive, the plaintiff may choose to proceed in Admiralty, an option mainly relevant to the choice of jury trial. The cases that must remain in Admiralty are the in rem proceedings discussed below. Regardless of the choice under Rule 9, Maritime Law will be the law of the case, and the procedure will not be affected except for availability of jury trial and denial of interlocutory appeal. This rule does not apply where a local agency operates in, or polices, inshore waters, and prosecutes a charge or claim in the municipal jurisdiction.

Questions of jurisdiction of torts, crimes and contracts arise at and near the shorelines, and may be approached with confusion as to what law and legal system applies to them. If we may exclude the Canon Law and the Natural Law, we are left with either the municipal or the Admiralty law. Within the latter are two principal classes of cases, prize and instance, and among the latter, in rem, which is to say that the case requires or affects some element of ownership or control, and in personam, all others.

B. Particular Subjects

These subjects, exclusively in rem, are claims, each concerning res of title, possession or control or funds representing it; and also calling for remedies not within the municipal law. Note the invariable involvement of tangible interests. Each of these is assumed not to involve any aircraft or aviation.

- Title (not incidental to construction)*
- Possession of vessel or cargo*
- Lien on vessel*
- Lien on cargo*
- Ship Mortgage (per U.S. statute and analogue to bottomry)*
- Limitation of Ship-owners' liability*
- Partition and sale of vessel*
- Bottomry or Respondentia, (Loan secured by surviving ship or cargo) *
- Marine insurance*
- Salvage*
- Public Vessels and Suits in Admiralty Acts
- Prosecution or litigation concerning a service or penalty of Admiralty
- Various marine casualty or contract claims with no link to municipal law.*

C. Subjects Involving Events Over Water—Aviation

It is old law that merely falling into navigable water from land or a land-based object does not involve Admiralty jurisdiction; the carelessness or violence above is the gist of
the matter and occurs on land. This is not to say that Admiralty may not impose a lifesaving duty of help to the fallen party, as to the passenger or crewman overboard or the swimmer in navigable waters, depending on the circumstances.

The development of aviation raised the question years ago whether Admiralty should, as it were, take over and provide the rules of aviation. This was wisely not attempted. Nevertheless, by of a convenient accretive process the Admiralty moved into the field of air casualties. Increasing need for a remedy for loss of life at sea and dissatisfaction with the device of extending the various State statutes to offshore casualty sites led Congress to enact the Death on the High Seas Act, providing for damages for death of an individual caused by wrongful act, neglect, or default occurring on the high seas, with qualifications of high seas, distance at sea, degree of fault and foreign law.

The prevailing international law on this subject is the Warsaw Convention. It governs liabilities in both personal and cargo casualties, and, again it has its own qualifications and limits.

These several provisions are too variously qualified, overlapping, dependent on circumstances and subject to election to be further discussed here and assigned to Admiralty or not.

D. Choice and Consequences under Rule 9 (h)

Rule 9(h) of the F.R.C.P. provides a plaintiff with a claim falling both in Admiralty and non-Admiralty jurisdiction a choice of Admiralty. Of course, if Admiralty is exclusive as discussed above, no selection is necessary or effective. It is a selection of procedure only, as it does not change the law of the case. Selection of Admiralty has the advantages of:

1) avoiding other jurisdictions’ various conditions;
2) expedition, usually; and
3) availability of interlocutory judgment under 29 U.S. Code §1292(a)(3).

But if the conditions are met, an astute lawyer may conceive a more extravagant award from a jury.

E. Devolutions to Other Agencies

Civil functions of the Navy are devolved, without loss of maritime connection, to the:

- Coast Guard (a military institution operating with the Navy in time of war)--a vast responsibility for life saving, customs, coastal patrol, and the safe design, construction and operation of merchant and pleasure vessels in war and peace;
- Army Corps of Engineers-- supervision of navigable waters and works in them;
- National Marine Fisheries Service-- management, conservation and protection of living marine resources;
- Maritime Administration--building, financing, ownership, operation and regulation of merchant vessels and enforcement of cargo preference and coastwise trade laws;
- Department of Labor-- historical concern for the welfare of maritime workers;
• National Oceanic and Atmospheric Administration—nautical charts and other navigational information.

F. Modern Codifications

In the late 19th century, Navigational rules for vessels were promulgated by England for her own vessels and others acceding to them, as many did, and similar rules followed closely in America. In 1910, there began a series of conventions known as “Brussels Conventions”, sponsored diplomatically by Belgium, and largely drafted and promoted by the CMI. These commenced with conventions on laws of collision and salvage in 1910. They were followed by conventions on limitation of liability (1924, 1957 and 1976), the Hague Rules of bills of lading in 1924, widely used, and others through the 1960s and onward under the sponsorship of the United Nations/IMO. These also are additions or modifications and are sometimes the subjects of litigation, under the Maritime Law.

G. Administration by Coast Guard

As I have stated, the Admiralty has no facilities of its own to carry out its works, which are therefore furnished by the national admiralties. In the United States, The Coast Guard is the agency most involved in Admiralty service. It has more than 40,000 regular and 7,000 reserve members carrying on the works of shore patrol, customs, registrations, vessel design and construction approval, operation of many vessels and training and licensing of personnel, and others. In most of its operations it may be said to represent the Admiralty in action.

H. Judicial Function-National Admiralty courts

The British Admiralty was most influential on our own. Its origin can be assigned to an order of the king in 1347 and its powers found in the commissions of its admirals, under which the whole territory of the seas (so far as it could be claimed) was ruled. As Lord Coke, no friend of Admiralty, wrote, “altum mare is out of the jurisdiction of the common law, and within the jurisdiction of the lord admiral, whose jurisdiction is verie antient.” Thus the whole government administration at sea fell under the admiral, and the administration of its laws under his judges in the High Court of Admiralty. Vice Admiralty courts were established in the major ports of the colonies, in which the grants of administration and jurisdiction of the governors as vice admirals were broader than in the High court. Powers of the vice admiralties were largely continued in the admiralties of the states and inherited and devolved in turn and continued with developments to serve advancing technology. The majority if the legal work involved is done in a field of law very different from the municipal law and requiring acquaintance with the actualities of the field.

III. SOME HISTORICAL NOTES OF INTEREST

A. Ancient
The Island of Rhodes is credited with a code of maritime law (mentioned in Book 2, Title 7 of the Roman law text, *Opinions of Julius Paulus* (circa 235): including the *Lex Rhodia de Jactu* or Rhodian Law of Jettison (ca. 900-800 B.C.) known today as the law of General Average. Book XIV, Title II of the *Digests of Justinian*, (a part of *Corpus Civilis*) is entitled "Concerning the Rhodian Law of Jettison" and without otherwise referring to its source, includes a second reference to *Lex Rhodia*: And it appears that Demosthenes argued a case of infringement of the Admiralty law of bottomry in Athens, of which a portion survives. Such instances are understood to be evidence supporting parts of American maritime law, the so-called GML. Other instances in the early centuries can be found.

### B Middle Ages

Codes of maritime law were compiled to govern maritime commerce centered in their respective regions. They were of Oleron, of Wisby, and of the Hansa Towns. Of these the most important has been that of Oleron, an island off the coast of southwestern France. It was brought to England by Eleanor of Aquitaine, and adopted there, and has been cited as authority by the Supreme Court. The codes deal with matters of ownership, command, seamen, cargoes, bottomry, liabilities and fishing, have been consulted here, for instance, on the seaman’s benefit of maintenance, cure and wages and employment status when injured on liberty by falling from a window of an Italian dance hall, and leaving or returning to the vessel. A celebrated code is that of Louis XIV, in 1681, with which his minister Colbert is credited. It is five “books” of many sections; divided into several parts and chapters, including maritime contracts and extended disquisition on marine insurance, which until recently was in France made the foundation of all other types of insurance, by statutory reference to the marine code with amending details. The insurance terms provided by the code spread across Europe in the 17th century and were most influential onward in the development of the industry in England. Although written to govern the French Marine, it was adopted by other European nations as a statement of the maritime law; and admired in the United States as authoritative.

Many features of the old regional codes have formed or flavored the Anglo-American law, a few by statute but most otherwise; the remedy of maintenance and cure for injured or ill mariners is one that has drifted directly into modern law with importance, but not by statute. In The Osceola, 189 U.S. 158 (1903) the Rules of Oleron and of The Hansa Towns, supported by agreement of the French law and a number of others, established the ill and injured seamen’s rights known as maintenance, cure and wages in American maritime law. A number of other Supreme Court opinions, as well as many in the lower courts could be cited for the absorption of the medieval codes.

### APPENDIX

**AN EARLY AUTHORITY ON THE CODES.** References to the medieval codes and that of Louis XIV are from my cherished set of *PETERS’ ADMIRALTY DECISIONS* (1807), two volumes octavo of well-selected decisions on a variety of issues in Admiralty. Their appendices together provide annotated codes of Oleron, Wisby and the Hansa Towns) and the relevant parts of Louis XIV’s lengthy opus and various American statutes and essays, altogether a selection more pleasurable than the run-of-the-mill case book.
A SPIRITED ENVOI. Volume I contains the opinion in The Ship Harmony and her Cargo, from a period near the end of the Quasi War with France in 1800. The Harmony, (American), sailed under convoy from Portsmouth for Philadelphia, with Mrs. Ann and Miss Esther Collet among her passengers. About six weeks later, she was captured by a French corvette. Most crew members and passengers were removed. The Mate was left aboard (a practice, I believe) and the Collets were “suffered” to remain, with three cooks and another passenger. The French put on a prize crew of three officers and seven seamen, with instructions to sail to Rochelle.

Somewhat vexed no doubt, the Collets lost no time in colluding with the mate as to how they could recover the vessel. The three cooks were recruited to the group. We are not told what was decided, but two days later the vessel was en route to Philadelphia under the Mate, leaving us exceedingly curious to know how all concerned had spent their time. In port the owners recovered their vessel and cargo and the passengers and cooks sued for salvage, which was formerly denied to crews and passengers. The scholarly judge overruled the precedents and awarded salvage.

The Collets received one share, $3,353.41, not a bad figure in the dollars of 1800, although I suspect that they would have received a full share each had they been men. One hopes but doubts that they are remembered on a stela, or at least some Philadelphian graffiti, in the shipyard.

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1. The Widening Gap between Admiralty and the Practice of Its Courts and what We Need to Do about It, 47 J. Mar. Law & Comm. 341 (July 2016).
2. 33 U.S. Code chs. 2-4
5. United States v. State of California, 532 U.S. 19, 1947 AMC 1579, 1592. (1947) (“Conceding that the State has been authorized to exercise local police power functions in the marginal belt does not detract from the U.S. Government’s paramount rights in and power over the area.”)
10. See, e.g., Sagan v. U.S. v. 392 F.3d 593, 2003 AMC 2597, 2601 (under SIAA “plaintiff must show that the United States would be liable under maritime tort law”).
11. See, e.g., 33 U.S.C. 1608 and 2072

See, e.g., July 4, 2017