

# Admiralty and Maritime Law

Cases and Materials

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## PREFACE

The authors have written this book to provide a new departure in the field of admiralty and maritime law. This specialty has long been treated by law schools as a moribund stepchild of federal jurisdiction, a study of those obscure cases that arise under the admiralty jurisdiction of the federal courts. Thus, law students have been deprived of the study of one of the most vital and dynamic fields of law.

The primary purpose of this book is to provide materials that are thorough, yet succinct enough for classroom use. They have been tempered and tested by use at Tulane University School of Law. Recognizing that the book contains more material than can be covered in the usual three-hour survey course in Maritime Law or Admiralty, the authors offer the following suggestions. The cases and materials have been organized to cover the most basic topics in the first six chapters. Therefore, in a three-hour survey course, it should be possible to cover Chapter 1 (which can be assigned as first-day introductory reading), parts of Chapter 2 (probably omitting the section on seabed mining), Chapter 3 (possibly omitting certain of the more specialized features of admiralty practice), and Chapters 4, 5, and 6. This selection adequately presents a historical and conceptual analysis of admiralty and the law of the sea: jurisdiction and practice, including the basic concepts of admiralty tort and contract law; maritime liens and ship financing; collision; limitation of liability; carriage of goods under bills of lading; charter parties; tug and towage; and general average. The last half of the book (Chapters 6-12) concerns more specialized topics of admiralty and maritime law: salvage, marine insurance, remedies of maritime workers, offshore operations, fisheries, and pollution. In the basic survey course, it should be possible to add one or more of these specialized chapters, subject to the instructor's interest and choice. The more specialized topics can be reserved for treatment in advanced courses of maritime law.

Maritime law today is more than shipping law (or, in more profane terms, "boat law"), although the shipping industry is still at its heart. The practice of maritime law is increasingly affected by the additional uses being made of the sea and the corresponding development of a "law of the sea" by national governments and the world community. As a result, the specialist in maritime law must be familiar with the laws related to the off-shore oil and gas industry, fisheries, and pollution control. The shipping industry as well is affected by the newer law of the sea. A feature of this book is its integral treatment of the law of the sea with more traditional admiralty law concepts.

A second important characteristic of maritime law that has not received sufficient emphasis in the past is the truly international character of this body of law. Maritime law is one of the few fields of law in which the major legal concepts are similar virtually all over the world. A specialist in maritime law can go almost anywhere on earth and find that he is understood by other experts in the field. This international character of maritime law is the result of both history and efforts toward harmonization by international organizations concerned with the field. This book deals with the major conventions in the field, ongoing international controversies, and choice of law considerations. Of great interest in this area are the very great differences between the developing nations of the world and some of the developed countries over the legal order concerning maritime transportation, marine insurance, and other matters.

The authors owe a debt of gratitude to many persons who, one way or another, have contributed to the production of this book. Dean Paul Verkuil of the Tulane

Law School has, by his friendship and leadership, provided ideal working conditions for performance of such a work. Several leading members of the maritime bar have also contributed suggestions and help. Three of these deserve special mention. Ben Yancey, John Sims, and Robert Acomb, all masters of their craft, provided advice and inspiration every step of the way.

Kathleen K. Charvet, Tulane Law School class of 1983, took on the responsibility of editing the manuscript of the book and performed with great skill and devotion. Her suggestions on both form and substance were excellent. Frank Accardo, Miriam Gamson, Cynthia Harris, and Deborah Sabalot, all students at Tulane, did excellent research memos on various subjects. Marjorie Appel, Chip Bailey, Glen Fillipone, Miriam Gamson, Frank Jones, James Mansour, Jim Marks, Rachel Lockwood, Julie Sirera, and Penny Schwartz did an excellent job checking cities and offering suggestions on the improvement of certain chapters of the book.

*Thomas J. Schoenbaum  
A.N. Yiannopoulos*

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# INTRODUCTION: AN OVERVIEW OF THE MARITIME LAW TRADITION

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### Some Definitional Problems

Maritime law is often viewed as virtually identical to the law of admiralty; both are commonly thought of as referring to the body of legal rules and concepts concerning the business of carrying goods and passengers by water. So defined, this subject is regarded as private law, separate and distinct from another body of law concerning the ocean and its resources — the law of the sea — that is looked upon as public, international law. From this viewpoint, admiralty, or maritime law, is considered old and traditional, while the law of the sea is largely a product of the post-World War II era.

A premise of this book is that the dichotomy between maritime (admiralty) law and the law of the sea is false.<sup>1</sup> On the contrary, these subjects spring from a common source and tradition. The fountainhead of both is man's relationship with the sea — man as a seafarer. The importance of this status and the need to resolve the conflicts associated with it have compelled the creation of a body of sea-law. The content of this law has been determined especially by economic and political considerations. Until the present century the economic and political importance of the sea was its critical role as a medium of commerce and trade. Both public and private sea-law thus evolved in response to problems created by shipping activity and the exercise of commercial and naval power. In the twentieth century, due to new economic and technological developments, the sea has become not only a medium of commerce but also a storehouse of resources for mankind. This has called forth reform efforts and new lawmaking activity in both the public and private law fields. Yet the essential unity of this body of law has not been broken. The student of traditional admiralty law cannot disregard new developments in the law of marine resources; the converse is true as well.

The term *maritime law* as used in this book is intended to cover not only shipping law but also the law governing the use and exploitation of the resources of the sea. This usage harkens to the etymological root meaning of the word *maritime*: “of or pertaining to the sea.” Maritime law in this sense has a different meaning than *admiralty*, which comes from the historical connection of American law with the jurisdiction exercised by an English court that originated in the medieval period.<sup>2</sup> Although the content of this jurisdiction changed over time and, in the United States, admiralty jurisdiction extends to inland waters,

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<sup>1</sup> It is also wrong to equate the definition of admiralty and maritime law to the shipping industry. As Gilmore and Black point out, the shipping industry has many legal concerns that involve the general law or shore transactions that are not part of the *Lex Maritima*. G. Gilmore & C. Black, *The Law of Admiralty* 1 (2d ed. 1975).

<sup>2</sup> The word *maritime* is of Latin origin and is doubtless of older vintage than the word *admiralty*, which is derived from Arabic through old French. *Maritime* has always been used to describe a particular subject matter. *Admiralty*, on the other hand, originally described an office, position, or authority. Thus, the jurisdictional root-meaning of the word *admiralty* is apparent. See the Oxford English Dictionary (1971).