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CASES AND MATERIALS

# ADMIRALTY

FOURTH EDITION

*by*

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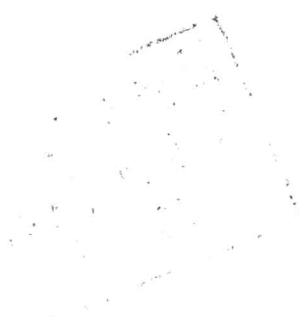
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## PREFACE

In the preface to the first edition of these materials, which appeared in 1969, the opinion was expressed that a one term course in admiralty cannot create a proctor and if it were designed with that in mind the student market for such a course would be small indeed. Such a course, however, can achieve certain desirable ends in the usual law school curriculum. It can fill a common gap in the student's study of federal jurisdiction. It can serve as a model of a body of law developed around the operation of a single, if variegated, industry. It can serve as a sort of domestic course in comparative law, exposing the student to different solutions to problems they have learned to work out along different lines in their common law courses. It can serve as a model of state-federal relations quite different from those worked out in most other areas of the law, affording a picture of what the world might look like without the Erie doctrine. It can be used to examine the weight of history and tradition in the law, and the relative success of statutory and case-to-case development. This is not to say, of course, that any of these objectives could not be, or is not, pursued in other courses. Since the curriculum is elective, however, educational objectives properly overlap the subject matter.

This fourth edition retains the biases that determined the selection of materials in the first. Part I is devoted to the admiralty jurisdiction in its setting in a federal republic and its administration within our dual system of courts. In Part II an effort has been made to illustrate the process by which the substantive law of the admiralty has grown, and to cover the major areas in which it departs significantly from common law principles. The gaps in coverage in the first edition remain. Detailed consideration of the commercial law aspects of transactions involving ocean transport has been left other opportunities; the law of marine insurance, always an important background consideration in carriage transactions, works its way into the materials only interstitially; and the large number of problems raised by the complex pattern of subsidies and regulation within which the shipping industry operates has been ignored. This is, perhaps, a pity, but casebooks must stop somewhere if students are to carry them around. In an area with as many faces as maritime law, each chapter is an iceberg and a choice must be made between a full set of very small tips and a smaller set sufficiently exposed to reveal, at least, their general contours.

In the twenty-seven years since the publication of the first edition, the Supreme Court had repudiated a number of hoary doctrines of the admiral-

ty, creating out of whole cloth a general maritime action for wrongful death; rejecting the traditional rule that maritime jurisdiction in tort cases depends upon location alone; and abandoning the traditional rule for the assessment of damages in mutual fault collisions by moieties, in favor of a rule of proportional fault. These “revolutionary” changes occurred largely during the first decade after the publication of the first edition, and since that time the Supreme Court has kept busy trying to reconcile the changes with related doctrine. In the case of the new action for wrongful death under the general maritime law, the task was complicated by the sweeping amendments to the LHWCA that occurred on the heels of its creation, largely eliminating the problem that prompted the Court to take the initiative and leaving in doubt the precise relationship of the new cause of action with the LHWCA, the Jones Act, and the Death on the High Seas Act.

Nor has the Court’s shift away from location alone as the litmus for tort jurisdiction in favor of an additional requirement of maritime nexus, been altogether uneventful, and over a decade after the recognition of the general requirement of maritime nexus, a vocal segment of the Court is calling for return to a “bright line” locational rule.

There have also been changes in the jurisdictional statutes of potential importance in admiralty and maritime cases. In 1990 § 1367 was added to provide for “supplemental jurisdiction,” providing a statutory basis for “pendent” jurisdiction of claims and parties, with special limitations in the case of diversity cases, creating new problems under the saving to suitors clause and in connection with the jury trial in maritime cases. Similarly, in 1991, the Removal Statute was amended to eliminate the derivative jurisdiction theory.

In the preface to the Third Edition, the author expressed the opinion that the next area for reform might be carriage of goods. This has not developed. The issue continue to simmer, however, and the student should give the matter an attentive eye. The area that has been most reform resistant over the longest period has been limitation of liability. Does the Court’s recent development of a broad concept of “maritime nexus” put pressure on the issue of limitation?

JO DESHA LUCAS

CHICAGO, ILLINOIS  
MARCH, 1996

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