Torts on Inland Waters--Admiralty Jurisdiction

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Comments

TORTS ON INLAND WATERS—ADMIRALTY JURISDICTION

I. INTRODUCTION

In recent years there has been a noticeable change in the recreational habits of many American families; pleasure boats have crowded inland lakes and rivers as the result of a "boating boom." Increased leisure and affluence have made pleasure boating "America's fastest growing family recreational activity."

In 1972 there were an estimated 8 million pleasure boats in the United States and about 40 million boat users. There were 5,910,794 pleasure boats registered with the U.S. Coast Guard. During the last year there were 3,942 reported boating accidents involving 5,044 vessels. These accidents

6. Id. at 11. These statistics come from reports filed by the boat owners following an accident. The Executive Secretary of the Missouri Boat Commission believes that a large number of accidents (perhaps as many as 50 percent) go unreported. Interview with John V. Buford, Executive Secretary of the Missouri Boat Commission in Jefferson City, June 22, 1973. The Motorboat Act of 1940 (as amended), 46 U.S.C. § 526 (1970), The Federal Boating Act of 1958, 46 U.S.C. § 527 (1970), and the regulations which implement these laws require that in case of collision, accident, or other casualty involving a motorboat or other vessel, the operator must file a report if the occurrence resulted in (a) loss of life, (b) personal injury incapacitating any person for more than 72 hours, or (c) property damage in excess of $100. Section 306.140, RSMo (1969), imposes a similar requirement. Under the Federal Boat Safety Act of 1971, 46 U.S.C. § 1451 (1971), new requirements for reporting accidents became effective on July 1, 1973, but the statistics used herein do not reflect the new criteria.

These accident reports are not officially available for use in litigation. 46 U.S.C. § 526 1(c) (1970) does not make the reports confidential nor specify the uses to which they may be put, but 46 C.F.R. § 173.10-1 (1972), repealed 37 Fed. Reg. 21404 (1972), required that they be kept confidential. Under Missouri law, § 306.140, RSMo (1969), the reports are confidential and cannot be used in litigation. Presumably, if one did obtain a copy of a report from the Coast Guard this statute would not bind a federal court.

The Missouri Boat Commission forwards copies of its reports to the Coast Guard. The Executive Secretary indicated to this writer that the commission will informally release a copy of a report if it is to be used for settlement purposes only, or if requested by an insurance company. Buford interview, supra.

There is an additional report available for fatal accidents. The Coast Guard requires an investigation by one of its officers and a written report in major accidents, particularly those involving loss of life. The findings of fact in such a report are available to all interested parties. In major accidents a Board of Investigation hears oral testimony and constructs a transcript.

7. Boating Statistics, supra note 5, at 10. These statistics do not include

(28)
resulted in 1,437 fatalities, 829 personal injuries incapacitating the victim for 72 hours or more, and $7,107,000 in property damage. Undoubtedly, there were numerous unreported accidents as well.

Of these accidents, the Coast Guard has said:

Vessel capsizings have consistently accounted for more of the lives lost in boating accidents each year than any other type of casualty. The great majority of capsizings are attributed to some fault of the operator in his handling of the vessel. Chief among these are improper loading or overloading of the boat; ignoring weather warnings, and proceeding under unfavorable weather conditions; and operating in waters which exceed the limits of the craft and/or the operator's training or experience.

Over half of the accident reports the Coast Guard received involved a vessel colliding with another vessel or with a fixed object. The principal cause of these collisions was the "failure of the operator to maintain a forward lookout." These collisions produced the preponderance of the reported personal injuries. Fires and explosions accounted for the next largest number of personal injuries and caused the greatest amount of property damage. Where a cause could be determined, the majority of the fires and explosions were attributed to some fault of the boat operator "such as improper installation or maintenance of engine or equipment, disobedience of safe fueling practices, and lack of operating experience."

Attorneys will be called on to enforce claims for injuries or damage sustained in such accidents. Despite the noncommercial nature of the

(a) accidents which did not directly involve a vessel, its equipment, or its appendages; (b) cases in which the boat was used solely as a platform for other activities, from which a person departed safely, and (c) accidents involving commercial vessels.

8. Id. Not included are homicides, suicides, or deaths that were attributed to "natural causes."

9. Id.

10. Id. at 12.

11. The Coast Guard makes a diligent effort to obtain accurate statistics. States the Coast Guard:

Data ... are corroborated by an extensive newspaper clipping service, and by figures of the National Safety Council and the National Center for Health Statistics. Careful consideration of data from all available sources indicate that almost all fatal boating accidents are included. The fatal accident statistics are believed to correspond to the actual situation ... Due to the lack of corroborative data regarding boating accident injuries and property damage, the extent to which all reportable of this type are actually reported is not known.


12. Id. at 7.

13. Id.

14. Id.


In admiralty, a claim is called a "libel"; the plaintiff is the libelant; the defendant is the respondent; the attorney is a proctor. Use of these terms has been avoided in this comment.

The Executive Secretary of the Missouri Boat Commission told this writer that the commission's patrolmen spend a significant amount of their time testifying
vessel and the inland location of the tort, these claims may be cognizable under the general maritime law and perhaps in an admiralty court. If so, the prosecution of the claim may differ significantly from the prosecution of a common law action in such critical areas as the plaintiff’s right to a jury trial, the effect of contributory negligence, the applicable statute of limitations, the interpretation of the insurance contract, and limitation of defendant’s liability. This comment is intended to assist attorneys in recognizing and handling a maritime claim.

II. JURISDICTION

A. In General

The Constitution states that the judicial power of the United States includes “all cases of admiralty and maritime jurisdiction.” The Judiciary Act of 1789 gave the federal courts “exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction... saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it.”

The reason for this grant of power to the new national judiciary was explained to the Virginia Convention of 1788, called to ratify the Constitution, by Governor John Randolph:

Cases of admiralty and maritime jurisdiction cannot, with propriety, be vested in particular state courts. As our national tranquillity and reputation, and intercourse with foreign nations, may be affected by admiralty decisions; as they ought therefore, to be uniform; and as there can be no uniformity if there be thirteen distinct, independent jurisdictions—this jurisdiction ought to be in the federal judiciary...

Although this reasoning is sound, history rather than logic compels the appli-
cation of admiralty law to a small pleasure craft on an inland waterway.\textsuperscript{21}

When the Constitution and the Judiciary Act of 1789 were adopted, the traditional admiralty jurisdiction in England had been severely limited, so that admiralty could accept only cases occurring on the sea or in English ports and harbors.\textsuperscript{22} In this country the Supreme Court has gradually expanded admiralty jurisdiction. In 1847 the jurisdiction extended "as far as the tide flows" into inland rivers.\textsuperscript{23} In 1851 it was said that the admiralty jurisdiction applies "to any other public water used for commercial purposes and foreign trade."\textsuperscript{24} The Supreme Court now interprets the admiralty jurisdiction to include "all navigable waters within the country."\textsuperscript{25} A water is navigable "if navigable in fact."\textsuperscript{26} It is not enough to be able to float a skiff,\textsuperscript{27} but the ability to operate a small motorboat can render a stream navigable.\textsuperscript{28}

A stream is within the navigable waters of the United States, and thus subject to admiralty jurisdiction, when in its ordinary condition it will, by itself or with other waters, form "a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water."\textsuperscript{29} Thus, a land-locked lake, whether privately or publicly owned, is not within the admiralty jurisdiction\textsuperscript{30} unless it lies on a state line.\textsuperscript{31} Navigable privately owned canals and other waters that connect up with a highway of commerce are within the admiralty jurisdiction.\textsuperscript{32}

\textsuperscript{21} See Robertson, supra note 17, for a discussion of the development of admiralty jurisdiction in the United States. Justice Story was the great admiralty judge in the early years of the nation, perhaps because of his early association with the town of Marblehead, Mass., where he was born and had his first law office. Of Justice Story's diligence in expanding the admiralty jurisdiction it was reportedly said, "If a bucket of water were brought into his court with a corn cob floating in it, he would at once extend the admiralty jurisdiction of the United States over it." Note, Extension of Federal Jurisdiction Over State Canals, 87 AMER. L. REV. 911, 916 (1903).

\textsuperscript{22} The reason for the contraction in admiralty jurisdiction was that the common law judges' fees were thereby increased. See Laing, Historic Origins of Admiralty Jurisdiction in England, 45 MICH. L. REV. 163 (1946); 1 Holdsworth, History of English Law 522-59 (1922). For an interesting discussion of the growth of the admiralty jurisdiction in England after the beginning of the nineteenth century see Wiswall, The Development of Admiralty Jurisdiction and Practice Since 1800 (1970).

\textsuperscript{23} Waring v. Clark, 46 U.S. (5 How.) 441, 461 (1847).


\textsuperscript{25} Southern S.S. Co. v. N.L.R.B., 316 U.S. 31, 41 (1943).

\textsuperscript{26} The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870).

\textsuperscript{27} Leovy v. United States, 177 U.S. 621, 633 (1900); The Montello, 87 U.S. (20 Wall.) 490, 442 (1874); In re River Queen, 275 F. Supp. 403 (W.D. Ark. 1967), involving the White River in Arkansas.

\textsuperscript{28} United States v. Holt State Bank, 270 U.S. 49, 56 (1926).

\textsuperscript{29} The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870).


The stream must be capable of sustaining commerce, but it need not be so used in fact. An artificial obstruction, like a dam or low highway bridge, does not render a body of water nonnavigable if it was capable of sustaining commerce in its natural state. That occasional difficulties are encountered in navigating the stream, as where it is necessary to portage around falls or rapids, does not preclude a judicial finding of navigability.

Each case is to be determined "on its own facts," but once a court has determined that a waterway is navigable, courts in subsequent cases will likely follow that determination. The opposite is not true; a waterway that has been nonnavigable may become so through construction of improvements.

The situs of the tort determines the applicable law. Thus, the general maritime law applies where the injury occurs on navigable waters of the United States, although the act of negligence occurs on land. A product liability suit involving defective manufacture of a vessel or its equipment is an admiralty claim. But structures like wharves and piers affixed permanently to shore and bed are extensions of the land, and therefore remedies for injuries on them are determined by local law. However, Congress has

33. The Montello, 87 U.S. (20 Wall.) 430, 441 (1874).
35. United States v. Holt State Bank, 270 U.S. 49 (1926). It is not enough for a stream to be navigable when subject to a flood of brief duration and uncertain recurrence. The high water must occur with reasonable frequency and at times of reasonable certainty. Frazie v. Orleans Dredging Co., 182 Miss. 193, 180 So. 816 (1938).
38. Id.
42. Johnson v. Traynor, 243 F. Supp. 184 (D. Md. 1965); Inland Barge Co. v. Nasbitt, 210 F. Supp. 690 (S.D. Ind. 1962). Compare Dardar v. Louisiana St. Dept. of Highways, 447 F.2d 952 (5th Cir. 1971), holding that a ferry which periodically traversed a waterway in transporting cars was not an extension of the land although connected to a cable attached to structures on either shore.
determined that maritime law applies in a collision on navigable waters between a vessel and wharves or foreshores.42

B. Navigable Waters of the United States Located in Missouri

That a tort occur upon navigable waters of the United States is essential for admiralty jurisdiction. The concept of navigability, however, is so elusive that knowledgeable attorneys might argue forever about it.43 To obtain some guidance in determining whether a claim can be brought under general maritime law, one can look to the U.S. Coast Guard. The Second Coast Guard District Operations Plan44 contains a list of Missouri rivers with determinations of their navigability.45 This Coast Guard deter-

Is a fall from a dock, after alighting from a vessel, cognizable in admiralty? Yes, according to Tullis v. Fidelity & Cas. Co. of N.Y., 397 F.2d 22 (5th Cir. 1968).

Where during a period of time immediately preceding the libelant's (plaintiff's) ill-fated dive from a pier into 18 inches of water, he had engaged in recreational activity having its focal point in the water and not on the dock, the situs of the tort was the navigable waters, but admiralty jurisdiction did not extend because tort was not of a maritime nature. Chapman v. City of Grosse Pointe Farms, 385 F.2d 962 (6th Cir. 1967).


43. For a good discussion see Laurent, Judicial Criteria of Navigability in Federal Cases, 1953 Wis. L. Rev. 8; Sovel, Determining the Applicable Law in Cases Arising in State Territorial Waters, 37 TEMP. L.Q. 479 (1964).


45. Apple Creek . . . . Not a navigable water of the United States.

Black River . . . . . . . . Navigable upriver to Mengo Bridge near Poplar Bluff.

Bull Shoals Lake . . . . Navigable.

Current River . . . . . . Navigable upriver to Van Buren, Mo. (Accord, 33 C.F.R. § 2.47-1 (1972)).


Des Moines River . . . . Navigable upriver to Raccoon River.

Elk River . . . . . . . . Navigable upriver to Noel, Mo.

Gasconade River . . . . Navigable upriver for 107 miles.

Grand River . . . . . . . Navigable upriver to New Brunswick, Mo.

Kansas River . . . . . . . Navigable to Junction Smokey Hill and Republican River.


Lake Taneycomo . . . . Navigable.

Lake Lotawana . . . . Not navigable (Privately owned).

Marys River . . . . . . . . Not navigable.

Meramec River . . . . . Navigable to Valley Park, Mo., upriver at mile 21.

Mississippi River . . . . . Navigable (Contra, regarding water body formed by removal of dirt from pit approximately 50 to 200 feet wide and several miles long with opening at either end into the Mississippi River, United States v. Ross, 74 F. Supp. 6 (E.D. Mo. 1947)).
mination is only persuasive, not binding, on the court.\footnote{48} A court may always decide for itself whether a particular stream is a navigable water of the United States (and thus subject to the general maritime law), nonnavigable, or a navigable state waterway (of which there are very few).\footnote{47}

Several streams are listed in the plan as not navigable, not because of a factual determination by the Coast Guard, but because Congress has instructed the Coast Guard that they be considered not navigable.\footnote{48} The most notable of these streams is the Platte River. The Coast Guard would apparently consider the Platte navigable but for the statute.\footnote{49} The courts

<table>
<thead>
<tr>
<th>Stream</th>
<th>Status</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Missouri River</td>
<td>Navigable (Accord, 33 C.F.R. § 2.47-5 (1972))</td>
<td></td>
</tr>
<tr>
<td>Norfolk Lake</td>
<td>Navigable (Accord, 33 C.F.R. § 2.47-10 (1972))</td>
<td></td>
</tr>
<tr>
<td>One Hundred and Two River</td>
<td>Not navigable (Accord, 33 U.S.C. § 40 (1970))</td>
<td></td>
</tr>
<tr>
<td>Osage River</td>
<td>Navigable to and including Lake of the Ozarks (Accord, 33 C.F.R. § 2.47-15 (1972))</td>
<td></td>
</tr>
<tr>
<td>See also Cambest v. McComas Hydroelectric Co., 212 Mo. App. 325, 245 S.W. 598 (K.C. Ct. App. 1922)).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Francis River</td>
<td>Navigable upriver for 308 miles.</td>
<td></td>
</tr>
<tr>
<td>Salt River</td>
<td>Navigable upriver for 5.1 miles.</td>
<td></td>
</tr>
<tr>
<td>Wappapello Reservoir</td>
<td>Not navigable.</td>
<td></td>
</tr>
<tr>
<td>White River</td>
<td>Navigable to upper reaches of Table Rock Lake (Accord, 33 C.F.R. § 2.47-20 (1972), stating that the stream is navigable &quot;to Branson, Missouri, at mile 520.&quot;).</td>
<td></td>
</tr>
</tbody>
</table>

The Coast Guard plan does not distinguish between navigable state waters (which are not in the stream of commerce and thus not subject to the admiralty jurisdiction) and nonnavigable waters, calling both "not navigable." That feature of the operations plan is preserved in the above chart. The chart does not purport to be complete—it is reproduced here to illustrate how little is required for a stream to be navigable.

There are few Missouri cases decided under the general maritime law, although many undoubtedly are cognizable in admiralty. Many cases, of course, involve navigability of a stream for some other purpose, viz., to determine the rights of a riparian landowner or to quiet title to a stream bed. For these decisions see 22 Mo. Digest Navigable Waters (1951).

47. Id. The dissenting opinion in Wreyford argues that whether a waterway is within the navigable waters of the United States is, or should be, a matter of fact to be decided at the trial level. However, a court may (as the majority in Wreyford does) take judicial notice that a river is navigable, at least insofar as the waters are within its jurisdiction. See Arizona v. California, 283 U.S. 423, 452 (1931).
48. See note 45 supra. The rivers are the Cuivre, Nodaway, the North Fork of the Cuivre, One Hundred and Two, Platte, and the West Fork of the Cuivre.
are not bound by this Congressional determination on navigability.\(^{50}\)

**C. The “Saving to Suitors” Clause\(^{61}\)**

Although the federal court’s admiralty jurisdiction is exclusive,\(^{62}\) most tort actions cognizable under maritime law need not be brought in admiralty court. Plaintiff may sue in state court,\(^{53}\) on the “civil side”\(^{64}\) of federal district court under diversity jurisdiction, or in admiralty. The choice exists because of the “Saving to Suitors” clause in the Judiciary Act of 1789.\(^{55}\)

That which is saved the suitor is his remedy, not substantive rights. Regardless which court hears the action, the substantive maritime law will apply and the parties’s rights and liabilities will not, in theory, be different. State courts, however, may be more reluctant than federal courts to decide that the general maritime law applies.\(^{56}\) Even if a common law court does apply the general maritime law, the rules of civil procedure will apply.\(^{57}\)

Some early cases construing the savings clause did hold that it was not necessary to apply the maritime law when an admiralty case was commenced in a state court,\(^{58}\) but later decisions have uniformly required the state court to conform to the maritime law as developed by the federal courts.\(^{59}\) At times, however, the maritime law will not determine an issue; in such a case state substantive law may have a role.

The maritime law is not a complete body of law, comprehensive in scope and covering every possible aspect of a personal injury or property damage case. It is a limited collection of principles that have been devel-

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50. Congress passed the statutes pursuant to the commerce power, U.S. Const. art. I, § 8 (3). It was said in The Genessee Chief v. Fitzhugh, 53 U.S. (12 How.) 449, 452 (1850) that:

They [the commerce power and the admiralty jurisdiction] are entirely distinct things, having no necessary connection with one another, and are conferred in the Constitution by separate and distinct grants.


54. The term “civil side” of federal district court is used to distinguish it from admiralty. The distinction is functionally similar to that between law and equity. Today, of course, there is only one action, the civil action.

55. *See* Comment, *State Jurisdiction in the Maritime Realm; Herein the Saving Clause, Its Background, Scope, and Effect*, 16 Merc. L. Rev. 450 (1965).

56. This would be a natural tendency, based on the court’s greater familiarity with its own law.

57. State *ex rel.* Kansas City Bridge Co. v. Missouri Workmen’s Comp. Comm., 81 S.W.2d 866 (St. L. Mo. App. 1935), aff’d, 92 S.W.2d 624 (Mo. 1936).

58. Belden v. Chase, 150 U.S. 674 (1893); The Max Morris, 137 U.S. 1 (1890); Atlee v. Packet Co., 88 U.S. (21 Wall.) 389 (1874); *In re* Pennsylvania R.R., 48 F.2d 559 (2d Cir. 1931).

opned to meet uniquely maritime problems,\textsuperscript{60} and it must at times be supplemented by the common law. One writer has suggested that there is a trend toward increasing application of state law in admiralty matters to plug these holes, at least where small, noncommercial vessels are involved.\textsuperscript{61}

Although plaintiff's decision to bring his action in state or federal court should have little effect on the substantive law applicable, it may have important procedural and strategic consequences. A jury will decide the facts if the action is brought in state court or on the civil side of federal court.\textsuperscript{62}

If a plaintiff brings his case in state court, the defendant's first thought may be to remove to federal court. This may not be possible. The United States Supreme Court, in \textit{Romero v. International Terminal Co.},\textsuperscript{63} has apparently decided that removal to the "civil side" of federal court is not possible under the federal question jurisdiction.\textsuperscript{64} One can therefore remove to the federal court's "civil side" only on a showing of diversity plus the jurisdictional amount. It is not possible to remove from state court to the admiralty side of the federal district court because that would nullify the benefit of the "savings" clause and deny plaintiff his choice of forum and remedy.\textsuperscript{65}

In general, a plaintiff may bring any in personam maritime action in state court, taking advantage of the saving to suitors clause.\textsuperscript{66} If an action is in rem, however, the admiralty court has exclusive jurisdiction, regardless of the savings clause.\textsuperscript{67} The test seems to be whether the defendant is a


\textsuperscript{63} 358 U.S. 354 (1959).

\textsuperscript{64} \textit{Id. See also Comment, The Federal Question in Maritime Cases: "Congressional Intent,"} 8 Stan. L. Rev. 129 (1955).


person (or corporation) rather than a ship or navigation device. In the latter case, the state court may not act.

III. LIMITATION OF LIABILITY

Under the maritime law a vessel is personalized. The negligence of a vessel's master or operator is imputed to the ship herself; it is "she" who is at fault. The owner in turn is responsible for his vessel.

In 1851, in an apparent effort to stimulate the shipbuilding industry, Congress passed the Limitation of Liability Act. The act was intended to place American merchant shipping on an equal footing with European competitors who enjoyed such right of exculpation at home. The statute allows a vessel owner to limit his liability for damages to the value of his damaged vessel if he can show that the injury occurred without his "privity or knowledge." In effect, the owner is saying, "I didn't know what was going on. Here, you take my ship and we'll call it even." Owners of pleasure boats may take advantage of this act.


[T]he great object of the statute was to encourage shipbuilding and to induce investment of money in this branch of industry, by limiting the venture of those who build the ship to the loss of the ship itself or her freight then pending, in cases of damage or wrong, happening without the privity or knowledge of the ship owner, and by the fault or neglect of the master or other person on board...


73. If the vessel is totally destroyed there is no liability. California Yacht Club v. Johnson, 65 F.2d 245 (9th Cir. 1933). See discussion of salvage rights note 100 infra.


A vessel seeking limited liability may proceed in two ways. First, where no state court actions have been commenced against him he may bring a limitation proceeding in admiralty court (and often including in the petition a demand for exoneration from any liability). If a claim against him has been filed in admiralty court, then limitation may be raised in the answer to that claim. Either way, limitation actions are cognizable only in federal admiralty court. After the petition has been filed, potential claimants will be given a period of time in which to file their claims in admiralty court. The admiralty court will then determine if the vessel's owner is liable on the claims, and if so, whether that liability should be limited.

Alternatively, the owner may use the act somewhat like an affirmative defense to actions filed against him in state courts. Each injured party should have brought his claim under the general maritime law. If there

L.Q. 423, 428 (1964), the author concludes that the Supreme Court has not squarely passed on the issue of the applicability of the limitation statute to pleasure boats.

76. The Quarrington Court, 102 F.2d 916 (2d Cir. 1939), cert. denied, 307 U.S. 645 (1939), stating that an owner may defend an independent suit brought against him, or may initiate a limitation proceeding in admiralty court and require all claimants to establish their rights therein.

A petition for limitation is a protective measure which neither admits liability nor waives any defense. Petition of United States, 367 F.2d 505 (3d Cir. 1966), cert. denied, 386 U.S. 932. (1967).


78. The Chickie, 141 F.2d 80 (3d Cir. 1944).


80. Fed. R. Civ. P. Supp. F(4) reads in part as follows: The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at his last known address, and also to any person who shall be known to have made any claim on account of such death.

Once an admiralty court acquires jurisdiction over a limitation of liability proceeding, its jurisdiction is exclusive. In re Northern Transatlantic Carriers Corp., 300 F. Supp. 866 (D.P.R. 1969), vacated on other grounds, 423 F.2d 139 (1st Cir. 1970).

81. Fed. R. Civ. P. Supp. F(5), F(8). See also Colonial Sand & Stone Co. v. Muscelli, 151 F.2d 884 (2d Cir. 1945), holding that the right to limit liability is distinct from the question of the existence of liability, although both may be tried at one time for convenience; The James Horan, 10 F. Supp. 363 (D.N.J.), aff'd, 78 F.2d 870 (3d Cir.), cert. denied, 296 U.S. 621 (1935).
is more than one claim pending, upon the filing of the limitation action the admiralty court will enjoin the continued prosecution of the state court actions\(^\text{82}\) and will consolidate them for hearing in the admiralty court. If liability is found and limitation is granted, then the claimants will share the value of the vessel.\(^\text{83}\) If limitation is not granted, the admiralty court will not decide the value of the claims, but will allow the continuance of the state court actions.\(^\text{84}\)

Where limitation is filed and there is only one state action pending, the state court action will be allowed to continue to judgment; a jury may decide the matter of liability and damages.\(^\text{85}\) Limitation may be asserted in the state proceeding but it does not have to be litigated there.\(^\text{86}\) Following the state court judgment on liability, the admiralty court may decide the issue of limitation.\(^\text{87}\)

Regardless which course of action is chosen, it is necessary that the limitation action be filed within six months after receipt of a written notice of a claim.\(^\text{88}\)

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\(^\text{84}\) Petition of Follett, 172 F. Supp. 304 (S.D. Tex. 1958) (once limitation denied the state courts may continue their cases, since to do otherwise would deny the claimants their rights under common law remedies, including jury trial, without protecting any established right of the owner).

\(^\text{85}\) *In re* Putnam, 55 F.2d 73 (2d Cir. 1932) (where only one claim could arise, the yacht owner petitioning for limited liability was denied an injunction forbidding actions against him even though that one claim exceeded the value of the yacht). See Petition of Boraks, 142 F. Supp 364 (D. Mass. 1956), stating that the real reason for bringing all claims into the limitation proceeding is to marshal assets and insure an equitable distribution.

\(^\text{86}\) The state court can decide the limitation issue where there is only one claim. Langnes v. Green, 282 U.S. 531 (1931). The reason why limitation may be raised in the state action is to avoid problems with the six-month statute of limitations applicable to limitation petitions. See note 88 infra; Larsen v. Northland Transp. Co., 292 U.S. 20 (1934); Petition of Trawler Weymouth, Inc., 223 F. Supp. 161 (D. Mass 1963).

\(^\text{87}\) Langnes v. Green, 282 U.S. 531 (1931).

\(^\text{88}\) 46 U.S.C. § 185 (1970). This six-month statute of limitations was added to the law in 1936.

In the following cases the written notice has been held sufficient: Petition of Allen N. Spooner & Sons, Inc., 253 F.2d 584 (2d Cir. 1958) (notice of claim was a letter stating “We may press a claim against you.”); Standard Wholesale Phosphate & Acid Works v. Travelers Ins. Co., 107 F.2d 378 (4th Cir. 1939) (letter from insurance company notifying employer of company’s right of subrogation to any claims that injured employees might have); The Irving, 28 F. Supp. 585 (S.D.N.Y.), *aff’d*, 107 F.2d 1011 (2d Cir. 1939) (notice sufficient even though it simply informed vessel owner that 550 tons of plaster were a
The proper venue for a limitation of liability petition in admiralty court will depend upon the vessel's status. If the limitation complaint will be filed in that district in which the vessel has been attached or arrested in respect to a claim for which limitation is sought. If the vessel has not been attached or arrested, the limitation action may be heard in any district court in which the vessel owner has been sued with respect to a claim. If neither of the above has occurred limitation proceedings may be commenced in the district in which the vessel is found.

When filing a limitation action security must be posted with the admiralty court. This may be a deposit equal to the value of the boat in its damaged condition or, at the vessel owner's option, the owner's interest in the boat may be transferred to a court-appointed trustee.

Limitation of liability is possible only when the vessel owner is without privity or knowledge of the fault or negligence that caused or contributed to the injury. "Privity" means that the owner in some way participated in the cause of the injury; "knowledge" signifies that the owner is cognizant of the condition that caused the accident. The burden of proof is on the total loss and that the owner would be held liable for all damages; did not contain a statement of amount claimed as damages).

The notice was insufficient in the following cases: Petition of Anthony O'Boyle, Inc., 51 F. Supp. 430 (S.D.N.Y. 1943) (mere knowledge of the ship-owner of the accident is insufficient; written notice required); The Belleville, 35 F. Supp. 934 (E.D.N.Y. 1940) (letter written in the Norwegian language by injured employee's wife saying the husband needed the money "and I hope I get what he is asking for.").

See Petition of American M.A.R.C., Inc., 224 F. Supp. 573 (S.D. Cal. 1963) (an effective notice given by one claimant will start the period running as to all claimants).

91. Id.
92. Id.
93. Id. F(1).
94. Coryell v. Phripps, 317 U.S. 406 (1943). Limitation is not available where the owner was operating the vessel. Davis v. United States, 185 F.2d 933 (9th Cir. 1950), cert. denied, 340 U.S. 952 (1951). In Stewart v. Stephens, 225 Ga. 155, 66 S.E.2d 890 (1969), the Georgia Supreme Court applied the "family purpose" doctrine to impute the negligence of defendant's 13-year-old daughter-operator to her parent. The case was not brought under the general maritime law; it is unclear if this result would obtain if it were. See Feley v. Gamble, 185 Minn. 357, 241 N.W. 37 (1932), indicating the family purpose doctrine may not apply in a maritime case.
95. The Cleveco, 154 F.2d 605 (6th Cir. 1946). In The Inga, 33 F. Supp. 122 (S.D.N.Y. 1940), the boat owner knew that the engine was sputtering and leaking gasoline; gas vapors in the bilge exploded; the owner was denied limitation. Accord, The Friendship II, 113 F.2d 105 (5th Cir. 1940), rev'd on other grounds sub nom. Just v. Chambers, 312 U.S. 383, rehearing denied. 312 U.S. 716 (1941) (defective exhaust leaking carbon dioxide into stateroom).

Five men were returning from a rabbit hunt aboard an 18-foot cabin cruiser. The boat was going at full throttle with the owner at the helm. Wishing to go below into the cabin, the owner turned the navigation of the boat over to an inexperienced member of the hunting party. The boat crashed into a bank at full speed. Held: limitation of liability denied. Nuccio v. Royal Ind. Co., 280 F. Supp. 468 (D. La. 1968).
vessel owner—he must prove the negative, i.e., that he lacked privity or knowledge.\textsuperscript{96} This can be difficult, for the failure to exercise "due diligence" may amount to privity.\textsuperscript{97} The negligent failure to discover a vessel's unseaworthy condition may amount to privity or knowledge.\textsuperscript{98} And, of course, for corporation-owned vessels, privity of knowledge of a manager or general agent of the corporation will be imputed to the corporation.\textsuperscript{99}

**IV. COLLISIONS WITH ANOTHER VESSEL OR FIXED OBJECT**

**A. In General**

Collision\textsuperscript{100} cases under the general maritime law are governed by statutory and regulatory precepts known collectively as the "Rules of the Road."\textsuperscript{101} A violation of these Rules is negligence per se.\textsuperscript{102} The Rules, unlike

\begin{itemize}
\item[96.] Coryell v. Phipps, 317 U.S. 406 (1943); Austerberry v. United States, 169 F.2d 583 (6th Cir. 1946); Petition of Binstock, 213 F. Supp. 909 (S.D.N.Y. 1963), aff'd, 303 F.2d 267 (2d Cir. 1964).
\item[97.] The Malcolm Baxter, Jr., 277 U.S. 323 (1928); Loc-Wood Boat & Motors, Inc. v. Rockwell, 245 F.2d 306 (8th Cir. 1957).
\item[99.] Spencer Kellogg & Sons, Inc. v. Hicks, 285 U.S. 502 (1932); The Cleveco, 154 F.2d 605 (6th Cir. 1946). The knowledge or privity of an ordinary employee not having a managerial function will usually not be imputed to the corporation. U.S. v. Eastern Transp. Co., 59 F.2d 984 (2d Cir. 1932).
\item[100.] This comment does not discuss salvage rights in detail. Salvage is compensation allowed to persons who assist in saving a ship or its cargo from impending danger, or assist in its recovery from actual loss. BLACK'S LAW DICTIONARY 1580 (4th ed. rev. 1968). The following quotation from Norris, The Landlubber Takes to the Waters, 37 TEMP. L.Q. 375, is illustrative of the right:
\end{itemize}

"Recently on a Sunday afternoon a large cabin cruiser was lazily sailing along one of the Great Lakes not far offshore when suddenly an explosion occurred below decks followed by quickly enveloping flames. Fortunately for the boat's occupants the cruiser was passing a yacht club when the mishap took place. About twenty of the club's members jumped into their boats and went to the aid of the stricken craft. So prompt and able were their efforts that the fire was put out before the yacht was near to destruction. The lives of those aboard the craft were saved. Shortly thereafter the club members retained counsel to press their claim for salvage. The hitherto grateful boat owner became violently indignant at the thought of recreational boat owners seeking a salvage reward. Indignant or not, the insurance company lawyer after researching the law wisely concluded that their claim was a meritorious one and arranged for a mutually satisfactory settlement. . . . Salvage is a service voluntarily rendered in relieving property from an impending peril at sea or other navigable waters by those under no legal obligation to do so."

\textit{Id.} at 380-81.

101. These . . . boats more often than not, are operated by illiterate persons who are unaware even that Rules of the Road exist." Dill v. Plaquemine Towing Corp., 167 F. Supp. 866 (E.D. La. 1958). See Wiesemann v. Pavlat, 413 S.W.2d 23 (St. L. Mo. App. 1967), for a discussion of the use of the Missouri APPROVED INSTRUCTIONS in a maritime personal injury case involving the Rules of the Road.

the laws applicable to automobiles, are not easily understood,\textsuperscript{103} and to the uninitiated might appear to be totally unreasonable.\textsuperscript{104}

For the pleasure boat owner in Missouri the most important Rules are the "Inland Rules"\textsuperscript{105} that apply to vessels close to the shoreline and to all navigation on inland waters.\textsuperscript{106} The Coast Guard has supplemented these with "Pilot Rules for Inland Waters."\textsuperscript{107} There are also some special rules that apply to the "western rivers,"\textsuperscript{108} the chief of which is the Mississippi River and its tributaries. The National Park Service and the U.S. Army Corps of Engineers have promulgated additional regulations that apply to vessels operating on waters under the control of those agencies.\textsuperscript{109} In addition, there are some special rules for sail and unpowered vessels.\textsuperscript{110}

These rules are not optional or advisory. A vessel operator "shall" do the designated acts. The Rules prescribe and limit a small pleasure boat operator's conduct well beyond his probable expectation. For example, the Rules establish the standard required for vessel lighting while underway or at anchor, and while towing or being towed.\textsuperscript{111} Whistle signals are required when approaching others\textsuperscript{112} and when in a fog.\textsuperscript{113} Discussed below are "steering and sailing rules" that prescribe the required conduct of each vessel in any of three common situations: (1) when meeting a vessel coming from the opposite direction; (2) when overtaking another vessel; and (3) when two vessels are on a crossing course.

\textsuperscript{103}Collision liability under maritime law is determined by principles wholly different that those governing automobile collisions, and the assessment of fault. The law of safe driving is, for the most part, well-known to the initiates on the jury. For that matter, most shore-side tort concepts are readily understandable, as it is implicit in the court's charge to the jury, when each of the twelve suddenly becomes a "prudent man."

A. Farrell, Liability for Collisions with Other Vessels, Fixed Objects, Etc.: The Rules of the Road, PROGRAM MATERIALS, supra note 77.

\textsuperscript{104}"[T]he purpose of the Rules is to prevent collision." Societa Anonima Navigazione Alta Italia v. Oil Transport Co., 232 F.2d 422 (5th Cir. 1956).


\textsuperscript{106}Boundary lines of the inland waters are found at 33 C.F.R. § 82.1 (1973).

\textsuperscript{107}33 C.F.R. §§ 80.01-.40 (1973). Available in pamphlet form free of charge from any U.S. Coast Guard Marine Inspection Office as Pamphlet CG-169, Rules of the Road, INTERNATIONAL - INLAND.

\textsuperscript{108}33 C.F.R. §§ 95.01-.80 (1973). Available in pamphlet form free of charge from any U.S. Coast Guard Marine Inspection Office as Pamphlet CG-184, Rules of the Road, WESTERN RIVERS. The Missouri Boat Commission has adopted some of the Rules of the Road.

\textsuperscript{109}33 C.F.R. § 207 (1973).


\textsuperscript{111}46 U.S.C. § 526(b) (1970). "The failure to carry proper lights, required by statutory rules of navigation, is one of the most recklessly unlawful faults a vessel can commit, and merits the severest condemnation." H & H Wheel Service, Inc. v. Cornet, 219 F.2d 904 (6th Cir. 1955), quoting from Waring v. Clark, 46 U.S. (5 How.) 441 (1847).

\textsuperscript{112}See text accompanying notes 114-120 infra.

B. Approaching Vessel

Where vessels are meeting one another substantially head-on, certain passing signals must be exchanged. On the western rivers, the vessel moving downstream has the right of way in deciding in which direction to move. That vessel will sound her horn one time if she proposes to pass on the right, twice, if she intends to pass on the left. The other vessel repeats the signal if it agrees with the proposed course of conduct. If either vessel fails to understand the other's intention she is required to “immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle.” If one of the vessels does not sound its horn and there is a collision, that vessel must prove that her failure to sound the horn did not contribute to the cause of the accident. The proof of this negative proposition will be extremely difficult.

C. Overtaking

If one vessel wishes to overtake another proceeding in the same direction, it must request and obtain permission to do so from the vessel ahead. “Violation of the overtaking rule is one of the most frequent causes of collision, and invariably the overtaking vessel is found at fault.”

The overtaking vessel sounds one blast of her horn. The vessel being overtaken grants permission by sounding a blast. Should the overtaken vessel fail to sound a signal, or if she gives a danger signal of four or more short blasts, the overtaking vessel must slow and remain behind the lead vessel.

D. Crossing Course

The most difficult application of the Rules of the Road is in regard to vessels on a crossing course. The vessel that has the other on her starboard (right) side is the “give-way” ship; the other is in the privileged position. The privileged ship has an obligation to maintain her course and speed; if she slows down without notice to the other vessel, and the latter slows down in obedience to the Rules, a new collision course is created. However, the privileged ship does not have the right to proceed oblivious to the “give-way” ship's failure to act. She must at some point take avoiding action.

E. Prudence and Seamanship

Although the Rules of the Road are specific, there are occasions where a court must apply a general tort requirement of prudence. Two of the

118. Farrell, supra note 103, at AMF-7.
121. The Fanwood, 28 F. 373 (S.D.N.Y. 1886); The Aurania & The Republic,
Rules—the "general prudential" rule and the "rule of good seamanship"—enable one to argue that special circumstances require a departure from the Rules or require that greater care be exercised than the Rules require. One of these special circumstances may apply to a pleasure boat accident.

V. DIVIDED DAMAGES RULE

Property damage liability in collision cases is based on fault, which is usually established by a violation of the Rules of the Road. Because a Rule violation is negligence per se, often each vessel will have been negligent. Under the traditional common law rule, the claimant would be denied recovery under the doctrine of contributory negligence.

Admiralty law has historically avoided this harsh result by dividing the damages equally between the vessels. Thus, if each vessel has violated a navigation rule, and vessel A suffers $4,000 in damages and vessel B suffers $3,000, vessel A can recover $500 from B. This result may be more

29 F. 98 (S.D.N.Y. 1886); Wiesemann v. Pavlat, 413 S.W.2d 23, 27 (St. L. Mo. App. 1967).

The crossing situation, and its agony for navigators, can best be imagined by night. Vessel A is privileged but must maintain her course and speed. Her watch sees the starboard green side and open white range lights of B at a substantial distance off the port bow of A. Vessel B is under the duty to give way in a classic crossing situation. She does nothing. Minutes go by and the distance closes... Vessel B's bearing remains unchanged, constantly 45° off the port bow. B's green light gets larger and larger as A, in complete obedience, maintains her course and speed. But for how long must she? The souls of seamen are now being tried. If A hauls off to her port, to permit B to cross her bow, and if that very moment B, finally obeying the law, turns to her starboard, they will be heading into one another. If A turns to her starboard, and to a new course, and B to her port, another intersecting collision course may well be in the making, on a rapidly closing oblique angle.

Farrell, supra note 103, at AMF-S.

122. 33 U.S.C. § 212 (1970) provides:
In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances [including the limitations of the craft involved] which may render a departure from the above rules necessary in order to avoid immediate danger.

123. 33 U.S.C. § 221 (1970) provides:
Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

124. Many pleasure boat operators do not follow the Rules, at least to the extent they apply to such activity. As a matter of speculation it is submitted that "custom" may play a significant role in determining liability.

125. See generally Staring, Contribution and Division of Damages in Admiralty and Maritime Cases, 45 CALIF. L. REV. 304 (1957).

126. Le Ley Oleyroun, De Superiortate Maris et Jure Admirality Angliae, 12 Edw. 3 (1388). The rule has a biblical predecessor. Exodus 11:35 states: "And if one man's ox hurt another's, that he die; then they shall sell the live ox, and divide the money of it; and the dead ox also they shall divide."

satisfactory than with contributory negligence, but its mechanical application fails to acknowledge degrees of fault.

In 1910 the maritime nations agreed to an International Collision Convention which adopted a rule of comparative negligence.\textsuperscript{128} The United States is the only major maritime nation that has failed to ratify or adhere to the Convention. This failure has been harshly criticized.\textsuperscript{129}

The courts have occasionally escaped from the division of damages rule through a "major-minor" fault principle,\textsuperscript{130} under which the vessel guilty of minor fault is not required to divide damages with the other vessel. The application of this judge-made rule is too uncertain for the practitioner to rely on.

A 1962 federal district court decision in Illinois\textsuperscript{131} attempted to repudiate the divided damages rule by asserting that the Supreme Court's language that seemed to require it was only dictum.\textsuperscript{132} Unfortunately, the decision was reversed by the Seventh Circuit Court of Appeals.\textsuperscript{133} Divided damages is still the law in admiralty.

VI. PERSONAL INJURIES

A. INJURIES TO SEAMEN

An injured seaman may take advantage of the plaintiff-favoring Jones Act,\textsuperscript{134} the doctrine of maintenance and cure,\textsuperscript{135} and the implied warranty

\textsuperscript{128} Convention for the Unif. of Certain Rules of Law Respecting Collisions, Brussels, 1910.
\textsuperscript{129} Farrell, supra note 103, at AMF-11.
\textsuperscript{130} The Victory, 168 U.S. 410, 423 (1897); The Great Republic, 90 U.S. (23 Wall.) 20, 34 (1874); Staring, supra note 125, at 341 n.242.
\textsuperscript{131} N.M. Paterson & Sons, Ltd. v. Chicago, 209 F. Supp. 576 (N.D. Ill. 1962).
\textsuperscript{132} Id. at 584-86.
\textsuperscript{133} N.M. Paterson & Sons, Ltd. v. Chicago, 324 F.2d 254 (7th Cir. 1963).
\textsuperscript{134} 38 Stat. 1185 (1915), as amended, 46 U.S.C. § 688 (1970). Two of the more unusual cases: An intoxicated seaman was left lying on a dock while his sober shipmate went to notify a ship's officer. The shipowner was held liable when the drunk in his stupor turned over and fell off the dock and drowned. McDonough v. Buckeye S.S. Co., 103 F. Supp. 478 (N.D. Ohio 1951), aff'd, 200 F.2d 558 (6th Cir. 1952); cert. denied, 345 U.S. 926 (1953). A seaman dropped a large fish. Unfortunately, it landed on one end of a board, causing the other end to fly up and hit a fellow fisherman in the face. The shipowner had to pay. Petriceich v. Devlahovich, 107 F. Supp. 871 (S.D. Cal. 1952).
\textsuperscript{135} See generally Norris, Maritme Personal Injuries § 13 (1966). Maintenance and cure is the traditional right of a seaman who is injured or becomes sick in the service of a ship to receive medical treatment plus the cost of board and lodging until he is fit to return to work or until he has reached the maximum possible cure. Seamen are regarded as wards of the admiralty court and are given very liberal treatment. Aguilar v. Standard Oil Co., 318 U.S. 724 (1943). In Rowald v. Cargo Carriers, Inc., 243 F. Supp. 629 (E.D. Mo. 1965), an injured seaman received maintenance and cure during the period of time he was undergoing brain surgery at public expense at a U.S. Public Health Service Hospital.
of seaworthiness (which approaches absolute liability). These three theories of recovery are independent of one another, although "there is but a single wrongful invasion of his [the seaman's] primary right of bodily safety and but a single legal wrong." The theories may be distinguished as follows: (1) Maintenance and cure is an ancient maritime doctrine that reads into the seaman's contract of employment a clause requiring the employer to pay for the seaman's food, lodging, and wages during a portion of his incapacity; (2) the Jones Act allows recovery for negligence—for pain and suffering, permanent damage, lost wages, and medical expenses; (3) seaworthiness is a warranty read into the seaman's employment contract regarding the relative safety of the place of employment. Thus, the Jones Act would cover a seaman injured by his employer's negligence while on shore, although no cause of action for unseaworthiness would exist. Unseaworthiness could be found where the employer was not negligent. Maintenance and cure lies even though the employee had a heart attack or brain tumor and the ship was not unseaworthy nor the employer negligent. To the extent that the damages recoverable under these theories overlap, multiple recovery is not allowed.

Under the Jones Act, the defenses of assumption-of-risk, contributory negligence, and fellow-servant negligence are eliminated and comparative negligence is applied. Unlike state workmen's compensation systems, no damage limitation is applied to the injured seaman.

A seaman has been defined as "one whose occupation is to navigate vessels upon the sea," but that definition is too narrow. Although it is

136. See Comment, Recent Developments in the Doctrine of Unseaworthiness, 24 U. Fla. L. Rev. 236 (1972); see generally Norris, supra note 135, §§ 29-54. In the early days of shipping, seaworthiness meant a vessel staunch and sound in hull, and with gear and sail free of defects. Within recent decades, however, under a series of court decisions in cases involving personal injury, the concept of unseaworthiness has had some startling and fantastic changes. A boat or vessel might appear to be in perfect shape; but should there be a spot of oil or grease on a deck and should that condition result in injury to a seaman, then the craft will be held to be unseaworthy.


138. See note 135 supra.

139. LaFontaine v. The G.M. McAllister, 101 F. Supp. 826 (S.D.N.Y. 1951) (seaman permitted, following Jones Act recovery, to file second suit seeking payment of maintenance and cure to the extent it did not seek double recovery). In Central Gulf S.S. Corp. v. Sambula, 405 F.2d 291 (5th Cir. 1968), a seaman recovered under the Jones Act because the employer had been negligent in providing maintenance and cure. See Comment, The Case for a Federal Workman's Compensation Act to Cover Inland Waterways Seamen, 17 St. L.U.L.J. 475 (1975).


141. BLACK'S LAW DICTIONARY 1517 (4th ed. rev. 1968); see Osland v. Star Fish & Oyster Co., 107 F.2d 113, 114 (5th Cir. 1939).
unusual for an owner of a small pleasure craft to employ a crew, it is possible than an individual on the vessel will be a "seaman."\textsuperscript{142}

### B. Injuries to Shore Workers

In pleasure boating accidents injuries to shore workers probably arise more frequently than injuries to seamen, primarily because a pleasure boat owner has more occasion to hire a shorworker. Included in the category of shorworkers are repairmen,\textsuperscript{143} watchmen,\textsuperscript{144} janitors,\textsuperscript{145} supplymen,\textsuperscript{146} longshoremen,\textsuperscript{147} and others doing similar work.

Injuries to shorworkers involved in pleasure boating accidents will most frequently be redressed through the state workmen's compensation system. However, there are occasions when the shorworkers may be able to take advantage of other remedies or where the state workmen's compensation act will not apply.\textsuperscript{148}

The Federal Longshoremen's and Harbor Workers' Compensation Act\textsuperscript{149} provides the shorworker his remedy against his employer where there was an injury aboard a vessel in navigable waters. This remedy is considerably more liberal than the state workmen's compensation act that would apply if the injury occurred on shore. The act applies, however, only if the vessel is at least 18 tons net.\textsuperscript{150}

The seaman's remedies\textsuperscript{151} are available to a shorworker if he can show he is doing work traditionally done by seamen.\textsuperscript{152}

\textsuperscript{142} In Walliser v. Bassett, 33 F. Supp. 636 (E.D. Wis. 1939), the widow of a "seaman" collected from her husband's employer for his wrongful death. The deceased was a shor employee of one of the owners of a sailing yacht who had been taken on a cruise as the ship's cook. Because the cook was a "seaman," his widow was not restricted to workmen's compensation payments.

In In re Read's Petition, 224 F. Supp. 241 (S.D. Fla. 1963), a young man came aboard to join a crew for a Miami to Nassau race. He neither sought nor received payment for his services and was obliged to make other arrangements for the return trip to Miami. During the race he was struck and seriously injured by the handle of a defective winch. Because he had been helping with the sails, he was found to be a "seaman."

\textsuperscript{143} Read v. United States, 201 F.2d 758 (3d Cir. 1953) (carpenter). See Norris, supra note 135, § 5.

\textsuperscript{144} Hillcone S.S. Co. v. Steffen, 136 F.2d 965 (9th Cir. 1943).

\textsuperscript{145} Parker v. Motor Boat Sales, 314 U.S. 244 (1941).


\textsuperscript{147} The Max Morris, 137 U.S. 1 (1890); Price v. S.S. Yacucy, 378 F.2d 156 (5th Cir. 1967).


\textsuperscript{151} See notes 134-40 and accompanying text supra; George, Ship's Liability to Longshoremen Based on Unseaworthiness, 19 La. B.J. 11 (June 1971); Comment, Maintenance and Cure, the Jones Act, and Land-Based Seamen, 46 Tulane L. Rev. 877 (1972).

C. Injuries to Guests

An injury to a guest on the navigable waters of the United States gives rise to a cause of action for negligence under the general maritime law,153 but the guest cannot proceed on the theory of unseaworthiness.154 Assumption of the risk is not a defense, however, and comparative negligence is applied.155 Admiralty courts draw no distinction between licensees and invitees.156 Because the maritime law is applicable, laches, not a statute of limitations, will apply.

D. Injuries to Water Skiers157

A water skier can recover under the maritime law for injuries sustained as a result of the negligent conduct of others. The cause of action for a skiing injury is for negligence. The doctrines of assumption of the risk and contributory negligence will only mitigate damages and will not bar recovery.158

E. Wrongful Death159

In 1970 the United States Supreme Court in Moragne v. States Marine Lines160 overturned a line of cases going back 84 years to The Harrisburg,161 and held that there was a nonstatutory action for wrongful death under the general maritime law. Previously, the only possible maritime death actions were those authorized by federal or state statutes.162 Moragne left uncertain the elements of the new cause of action. The Courts said only that "in most respects the law applied in personal-injury cases will answer all questions that arise in death cases."163 The Court indicated that a desire

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154. Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959); see 37 Temp. L.Q. 548 (1964), concluding that a passenger on a pleasure boat is not, but should be, protected by a warranty of seaworthiness.
158. Isaacson v. Jones, 216 F.2d 599 (9th Cir. 1954).
161. 119 U.S. 199 (1886).
for uniformity in the general maritime law was a major reason for the decision.¹⁶⁴

At present it is uncertain who may prosecute a claim for wrongful death. It has been argued that the schedule of beneficiaries in the Death on the High Seas Act¹⁶⁵ should be used as a persuasive analogy.¹⁶⁶ One court has adopted the schedule,¹⁶⁷ but others have not found it necessary to do so.¹⁶⁸

The measure of damages is also uncertain.¹⁶⁹ The Fifth Circuit Court of Appeals has held that survival damages (pain and suffering of the decedent) may be recovered in a Moragne action.¹⁷⁰ The Sixth Circuit has said that loss of consortium suffered between injury and death is not compensable.¹⁷¹

Although laches—and not a statute of limitations—would apply to this new wrongful death action, the need for uniformity with the statutory duty actions has led some courts to impose the same limitation periods the statutes prescribe. One court said that the applicable state limitation period will apply.¹⁷² Another applied the three-year limitation period of the Jones Act in the interest of uniformity.¹⁷³ The Second Circuit has applied the two-year limitation of the Death on the High Seas Act.¹⁷⁴

Although these questions are unresolved, the Moragne decision greatly changes the general maritime law. It could significantly expand the possible liability of pleasure boat owners for death in a jurisdiction that otherwise would place a statutory limit on a death action recovery.

¹⁶⁴. Id. at 401.
¹⁶⁵. 46 U.S.C. § 761 (1970). This act states that the personal representative may initiate the suit.
¹⁶⁶. The United States so argued as amicus curae in Moragne, but the Supreme Court did not find it necessary to decide the point. 398 U.S. 375, 407 (1970).
¹⁶⁸. Mungin v. Calmar S.S. Corp., 342 F. Supp. 479 (D. Md. 1972) (mother of illegitimate children of the deceased and one of the illegitimate children were permitted to intervene in an action brought by the decedent's widow).
¹⁷⁰. Dennis v. Central Gulf S.S. Corp., 323 F. Supp. 943 (E.D. La. 1971), aff'd, 453 F.2d 137 (5th Cir. 1972). Pain and suffering is compensated under the Jones Act but not under the Death on the High Seas Act, and so the Supreme Court's desire for uniformity was not totally satisfied.
VII. CONCLUSION

The Missourian who operates a pleasure boat on the Lake of the Ozarks or any other navigable water of the United States and who is involved in a maritime accident may discover that he and his attorney are involved in a lawsuit that neither really understands. The attorney may find himself concerned with legal principles with which he is totally unfamiliar.

An injured party may discover that his injuries will be largely uncompensated because of the Limitation of Liability Act.

The party at fault may discover that the contributory negligence of the plaintiff will not relieve him of liability.

In short, things can be different.

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