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Torts on Boats and Yachts

Jeffrey A. Rich

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SUMMER IS HERE, and boaters eagerly sail or drive their gems-of-the-ocean in summer fun.

To the lawyer, the boating season means personal injury cases of a special, and possibly, unfamiliar nature. Torts on yachts usually fall within United States admiralty law jurisdiction. We shall sketch the applicable law—for those who read as they run (over the waves).

Admiralty Law Jurisdiction

The section of the United States Code Annotated which applies to admiralty jurisdiction is Title 28, Section 1333, "Admiralty, maritime, and prize cases," which states that:

> The District Court shall have original jurisdiction, exclusive of the Courts of the States, of (1) Any Civil cases, admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled. . . .

Under the United States Constitution, Article 3, Section 2, Federal Courts have such admiralty and maritime jurisdiction as was known and understood in the United States when the Constitution was adopted. The test of admiralty jurisdiction, under the Act of 1789, is the nature of the claim on which the suit is founded, and not the form of remedy resorted to. When the claim is maritime, it comes within the Federal jurisdiction exclusively. The only exceptions are the rights of suitors to pursue common law remedies, or the equivalent thereof, in their courts.[1]

The Federal Court obtains jurisdiction through its general maritime jurisdiction. A civil action for damages filed on the law side of the District Court, to enforce a claim cognizable in admiralty, may then be maintained in the District Court. The case would arise "under the Constitution, laws or treaties of the United States," assuming that the requisite jurisdictional amount is present, and that all other requirements are met. This would be so if diversity of citizenship also existed, for such diversity would only be a cumulative or an additional basis for the court's jurisdiction.[2]

Further, the statutes, the Federal Rules of Civil Procedure, Title 28 U.S.C.A., and court decisions, recognize that the jurisdiction in admiralty

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1 The Petrel v. Dumont, 28 Ohio St. 602, 22 Am. R. 397 (1876).

2 Jansson v. Swedish American Line, 185 F.2d 212 (1st Cir. 1950).

is separate and apart from jurisdiction at law. Admiralty is still a separate field of law, with its own rules, methods, and procedure.[3]

For those who wish their boats to sit in the polluted waters of Lake Erie, for example, admiralty jurisdiction will govern their torts. The open waters of the Great Lakes have been held to be "high seas" within the meaning of the United States Constitution.[4]

There is much authority for the proposition that any tort action in admiralty jurisdiction depends entirely on the locality, the *lex loci delicti.* In applying the locality test for admiralty jurisdiction, the place where the negligent act occurs is not all important, but the place where the tort occurs is. Thus, whether the tort was the result of a defect in the product, or any other defect which occurred on land, it is the situs of the tort which gives the maritime jurisdiction its controlling effect.[5] We shall not discuss, here, the "center of gravity" view of conflicts of law.

Those enthusiasts of water sport who believe that their craft is too tiny to come within the powerful Federal jurisdiction are wrong. For the purpose of determining admiralty jurisdiction, the term "vessel" has been interpreted liberally and broadly. It indicates any structure used, or capable of being used, for transportation on water, and predominantly characterized by movement rather than fixity or permanence.[6] The yacht has been recognized as a structure within the term "vessel," and therefore, falls within the admiralty jurisdiction.[7]

Many different types of torts have been considered maritime in nature, and therefore, within the admiralty jurisdiction of the United States Federal Courts, such as claims for personal injuries sustained on board a ship in navigable water.[8] In the case of *Chelentis v. Luckenbach S.S. Co.,* the United States Supreme Court stated:

> Admiralty courts often fall into common law, for the reason that the law of admiralty, being, as it is, a collection of a few rules and customs of the sea which are grossly inadequate to cover its needs, literally borrowed common law principles. Common law courts on the other hand never administer the admiralty law. In a common law action on a maritime contract, as where a seaman sues for damages for failure of the shipowner to supply him with treatment for injuries, the contract is interpreted in the light of admiralty law but that law is not the basis of recovery.[9]

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[3] Rowley v. Sierra S.S. Co., 48 F. Supp. 193 (N.D. Ohio 1942).

[4] U. S. v. Rodgers, 150 U.S. 249, 14 S. Ct. 109 (1893).

[5] See: McCall v. The Susquehanna Electric Co., 278 F. Supp. 209 (D.C. Md. 1968). Also, Union Marine and General Insurance Co. v. American Export Lines, Inc., 274 F. Supp. 123 (S.D.N.Y. 1966).

[6] Cope v. Vallette Dry Dock Co., 119 U.S. 625, 7 S. Ct. 336 (1887).

[7] The Owyhee, 60 F. 2d 641 (E.D.N.Y. 1932), aff'd 66 F. 2d 399 (2 Cir. 1933).

[8] Spencer Kellogg & Sons v. Hicks, 285 U.S. 502, 52 S. Ct. 450 (1932); Chelentis v. Luckenbach S.S. Co., 247 U.S. 372, 38 S. Ct. 501 (1918).

[9] Chelentis v. Luckenbach S.S. Co., *supra* n. 8, at 375.

Admiralty Jury Trial

If your name is Aristotle Onassis, you might be able to get a jury trial if a tort happens to occur on your boat while in the Great Lakes. And it is not because you are rich, Greek, or well married! The fact is that in order to qualify for the only exception to the no-jury rule in admiralty law you must have a very large yacht. Your yacht must weigh at least 20 tons to merit a jury trial on the navigable waters within the United States under the admiralty jurisdiction.

The United States Code Annotated, Title 28, Section 1873, entitled "Admiralty and Maritime Cases," states:

> In any case of admiralty and maritime jurisdiction relating to any manner of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, employed in the business of commerce and navigation between places and different states upon lakes and navigable waters connecting said lakes the trial of all issues of fact shall be by jury if either party demands it.

Thus, those poor souls who must languish in the poverty and deprivation of their 38 foot schooners shall not be afforded the luxury of trial by their peers.

Effects of Erie Railroad v. Tompkins

For those legal scholars whose "gut reaction" is to argue *Erie Railroad v. Tompkins* in order to determine which substantive law to apply, remember the exception of the Erie doctrine? "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State." [10]

The United States Constitution, Article 3, Section 2, grants the Federal Government the power to govern maritime law. Therefore, the doctrine of *Erie* does not provide authority to apply a state's substantive law in admiralty tort cases.

Maritime Law Governs Maritime Torts

In the case of *Caruso v. The Italian Line,*[11] the court held that a personal injury sustained by a passenger on the high seas, while he was a passenger aboard a liner, was a maritime tort. This cause of action against the liner was governed by the general maritime law of the United States.

Even the smallest repairs, when neglected, can cause big problems. In one action, a guest of a crew member sued the owner of the vessel for injuries sustained by that guest in a fall on the stairway of the vessel

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[10] Erie Railroad v. Tompkins, 304 U.S. 64, 78, 58 S. Ct. 817 (1938).

[11] 184 F. Supp. 862 (S.D.N.Y. 1960).

while in port. The plaintiff argued that the fall was caused by the defective manner in which the canvas runner had been tacked to the stairway. The legal rights and liabilities were held to be within the full reach of the admiralty jurisdiction, and were measurable by the standards of maritime law, rather than by law of the State of New York.[12]

Duties and Liabilities to Licensees, Invitees, or Guests

Admiralty law has some interesting distinctions in these areas, though it may follow state law standards. An average yacht owner is most concerned with the duty he owes his guests. Outside of the admiralty law, however, there have been several cases in which social guests have been referred to as licensees, or gratuitous licensees. The Ohio Supreme Court has refused to recognize the concept of putting social guests into any one of the three commonly recognized molds of the law of negligence; that is, licensee, invitee, or trespasser. The cases have merely considered, and discussed, social guests as such, and by referring to the one owing the duty and obligation to the guest as the host.[13]

> A host is not the insurer of the safety of a guest while he is upon the premises of the host and there is no implied warranty on the part of the host that the premises to which a guest is invited by him are in safe condition. A host who invites a social guest to his premises owes the guest the duty of (1) exercising ordinary care not to cause injury to his guest by any act of the host or by any activities carried on by the host while the guest is on the premises. (2) To warn the guest of any condition of the premises which is known to the host in which one of ordinary prudence and foresight in the position of the host would reasonably consider dangerous, if the host has reason to believe that the guest does not know and will not discover such dangerous condition.[14]

As Professor Prosser suggests, the occupier does not insure the safety of his guest, and his duty is only to exercise reasonable care for his protection. He must use due care not to injure the visitor by negligent activities, and he must warn him of latent dangers of which the occupier knows. Further, he must inspect the premises and discover possible dangerous conditions of which he does not know, and take reasonable precautions to protect the guest from the dangers which are "foreseeable from the arrangement or use." [15]

> On the other hand, there is no liability for harm resulting from conditions from which no unreasonable risk was to be anticipated,

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[12] Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 79 S. Ct. 406 (1959).

[13] Scheivel v. Lipton, 156 Ohio St. 308, 102 N.E. 2d 453 (1951). For an excellent discussion of personal injury on yachts see: Martin J. Norris, Your Boat & The Law (Lawyers Co-Op. Publ. Co., Rochester, New York, 1965), especially pages 143-69.

[14] *Supra* n. 13, at headnote.

[15] Prosser, Torts 402 (3rd Ed. 1964).

> or those which the occupier did not know and could not have discovered with reasonable care. The mere existence of a defect or danger is not enough to establish liability, unless it is shown to be of such a character or such duration that the jury may reasonably conclude that due care would have discovered it.[16]

Admiralty is a law within the law and, in order to determine the status and duty of parties, its cases must be examined by themselves.

If one's guest is a boating fan, the duty of care which is owed him may not be as great as that owed to a non-boater. An interesting action resulted when a water skiing guest of a motor boat owner was asked by the owner to start the outboard motor. The guest was injured when he negligently wrapped the starting rope around his hand, instead of using the rope's hand grip, and the motor misfired. The guest-plaintiff was pulled against the motor.

A directed verdict for the defendant-owner was affirmed. The court stated that the proximate cause of the injury to the plaintiff, an experienced mechanic who also owned an outboard motor, was his negligent handling of the starting rope. And it was not, therefore, the owner's negligent failure to warn plaintiff of prior motor misfiring. The court stated that:

> Under Florida law, plaintiff, though attempting to start the motor at owner's request, was a licensee to whom owner owed only a duty to refrain from wanton negligence and wilful misconduct and to warn of defects known to owner not ordinarily discoverable by licensee.[17]

Being unique, this case has never been cited as authority in any other action. Florida law should not have been applied because admiralty has its own standards of care, and law as to status of parties. The only other explanation for this decision is that the boat was in non-navigable waters when the accident occurred, and thus, Florida law applied. The case, however, does not tell the reader where the boat was located.

"Admiralty law does not recognize the conceptual common law distinction between invitee and licensee." [18] In a 1964 admiralty tort case, it was stated that, "an invitee who is injured by a temporary condition aboard a vessel must show notice to the shipowner of the dangerous condition. The situation is unlike that of unseaworthiness." [19] This case also said that, "a shipowner owes a business invitee only the duty of exercising ordinary care for his safety; there is no implied warranty of seaworthiness or assurance of safety." [20]

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[16] *Id.*, at 402-403.

[17] Wagner v. Owens, 155 So. 2d 181, 63 A.L.R. 2d 343, 1964 A.M.C. 689 (D. Ct. App. Fla. 1963).

[18] Kleveland v. U. S., 1964 A.M.C. 649, 650 (1964).

[19] Greene v. Invicta, 1964 A.M.C. 1531; aff'd 1965 A.M.C. 282 (1965).

[20] *Ibid.*

Those who rent, rather than own a boat, are relieved of some liability when they allow someone else to operate the craft. No duty rests on owners who charter pleasure boats for operation by others to warn users of the common and obvious hazards of boating. It is, thus, not negligent to fail to warn a woman member of a pleasure boat party against sunbathing or standing on the roof of a cabin cruiser from which she fell.[21]

As for that great hazard of water—unwanted waves, the owner of a boat is not liable for injuries resulting, unless he is negligent. In the case of *Weedle v. West*,[22] the passengers failed to prove negligence when a "sneaker wave" struck part of a fishing boat. No recovery was allowed.

In another case, while under orders to take deck chairs below in the face of a pending storm, a tourist class deck steward was injured when the action of a wind and waves threw him against the hatch in a pile of disarranged chairs. Verdict was for the shipowner, and so affirmed, two to one.[23]

Another wave-case occurred when a passenger, one of a charter party of seven, on a 54-foot sports fishing boat, was injured when the boat, in open sea, encountered "a freak wave." The case held that, on the facts the jury was entitled to find that the wave created a "sudden peril," and that the master acted in an emergency. Also, "that the injuries resulted from an unavoidable accident." The question of liability was purely factual. The trial court properly instructed the jury, and the appellate court refused to disturb the jury's verdict for the respondent.[24]

Care must be exercised when being overtaken by other yachts, or one may be overtaken by a damage suit. A passenger in a 14-foot outboard motorboat was held entitled to damages for personal injuries, when a 43-foot sports fishing vessel passed at approximately 15 m.p.h., at a distance of 35 feet, causing swells which threw libellant forward out of his seat, and then forcefully back into his seat, resulting in a fracture of vertebrae. Though the courageous may think this a "fun" ride, the guest did not. Since the libellant was a guest, "any negligence on the part of such operator is not imputed to libellant." [25]

The Federal Court, under its admiralty jurisdiction will apply the state substantive law in the case of wrongful death. For example, a man went aboard a corporation's yacht at the invitation of the corporation's construction engineer and was killed by explosion and fire while assisting his host in starting the motor. He was held by state standards to be a licensee, not an invitee. There being no wilful or wanton misconduct,

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[21] Craig v. Caplan, 48 Cal. Rptr. 105, 1966 A.M.C. 1869 (1965).

[22] 375 F. Supp. 165, 1967 A.M.C. 2249 (W.D. Wash. 1967).

[23] Oliveras v. U. S. Lines, 318 F. 2d 890, 1963 A.M.C. 1962 (2nd Cir. 1963).

[24] Washburn v. Ensley, 1959 A.M.C. 1585, 1588 (1959).

[25] Moran v. Georgie May, 164 F. Supp. 881, 1958 A.M.C. 1152, 1157 (S.D. Fla. 1958).

and no condition of danger known to the host of which the guest should have been warned, his widow was not entitled to recover under the Florida Death Statute.[26]

Contributory vs. Comparative Negligence

Contributory negligence is not an absolute defense in admiralty. The doctrine of comparative negligence prevails. Under this doctrine, the contributory negligence factor only diminishes the amount of recovery.[27]

Historically, the comparative negligence doctrine results from the original English Admiralty Rule which divided the damages equally between the negligent parties. In 1911 England conformed to the Brussels Maritime Convention by adopting a statute providing for a division "in proportion to the degree which each vessel was at fault." [28] The United States never has adhered to the Brussels Convention. In collision cases, the Federal Courts continue to divide the damages equally. This always has been supposed to be required by early decisions of the Supreme Court, particularly in the *Schooner Catharine.*[29]

A contemporary decision from a Federal District Court in Illinois has classified the supposed rule of the Supreme Court as dictum, and has proceeded to apportion according to fault, even in a collision case.[30] Objections commonly made to such apportionment is that it is not possible to make a fair estimate; that it places too heavy a burden or reliance upon the triers of fact; that it will lead to too many appeals, and the like. They all have been considered and rejected long since in Admiralty Law, and have not been borne out by subsequent experience.

A libel for personal injuries claimed that libellant, engaged in painting aboard a yacht, became aware of cigarette smoke in the engine room. She hastened to the engine room and there slipped on grease, fell, and broke her leg. There were no witnesses to the accident. The court held that the burden of proving negligence had not been sustained.

> While no one can be certain of the truthfulness of a witness on the stand, my impression is that the libellant did not give an accurate account of how the injuries occurred. Whether the difficulty be attributed to lack of observation, lack of memory, or lack of intention to tell the truth, I am not certain.[31]

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[26] Emerson v. Holloway Concrete Products Co., Inc., 282 F. 2d 271, 1961 A.M.C. 1484 (5th Cir. 1960).

[27] See: Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 74 S. Ct. 202 (1953); The Max Morris, 137 U.S. 1, 11 S. Ct. 29 (1890); Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424, 59 S. Ct. 262 (1938); and Beadle v. Spencer, 298 U.S. 124, 56 S. Ct. 712 (1936).

[28] Maritime Conventions Act of 1911, 1 & 2 Geo. V, C. 57 § 1.

[29] 17 How. 170, 21 U.S. 434 (1854); also the Max Morris, *supra* n. 26.

[30] N. M. Patterson & Sons v. City of Chicago, 209 F. Supp. 576 (N.D. Ill. 1962).

[31] Harding v. Brown, Smith & Jones, 1954 A.M.C. 1011, 1012.

Another case held that where the condition of a port hatch was defective, but not so bad as to be obvious to a longshoreman, the Board of Appeals upheld the finding of contributory negligence by the trial court reducing damages by 20%.[32] In maritime torts, contributory negligence is not a bar to suit, but it is a fact to be considered under the maritime tort doctrine of comparative negligence.[33]

Where a maritime tort action, pursuant to the saving-of-suitors clause, is tried in a state court or in a Federal District Court, the comparative negligence doctrine has been held applicable.[34] Where, however, the wrongful death statute of a state is applied by an admiralty court, the state rule on the effect of contributory negligence, rather than the comparative negligence doctrine of maritime law, is usually applied.

With regard to the question of division of damages with the distribution in proportion to the degree of negligence, when the proportions are not prescribed by statute, the cases are not in harmony.[35] The prevailing view now appears to be that in the case of both to blame collisions, the full burden of losses sustained by both boats will be shared equally.[36]

The Defense of Assumption of Risk

The defense of assumption of risk has been applied in some admiralty cases. But that defense can be applied only in conjunction with the established admiralty doctrine of comparative negligence as mentioned above. Thus it does not exclude recovery, but merely diminishes the amount.[37]

Because of the obvious danger involved in the sport of boating, the plaintiff may be taken to have assumed the risk of these dangers and, therefore, undertake to look out for himself and relieve the defendant of responsibility. As Justice Cardozo, a non-boater who loved the thrills of a roller-coaster ride, summarized very neatly, "the timorous may stay at home." [38]

The plaintiff must know and understand the risk that is being incurred, and that the choice to incur it must be entirely free and volun-

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[32] Hebert's Case, 365 F. 2d 341, 1966 A.M.C. 2223 (5th Cir. 1966).

[33] Judy v. Belk, 181 So. 2d 694, 1966 A.M.C. 1854 (Dist. Ct. App. Fla. 1966).

[34] Garrett v. Moore-McCormack Co., 317 U.S. 239, 63 S. Ct. 246 (1942).

[35] See: Intagliata v. Shipowners & Merchants Towboat Co., 26 Cal. 2d 365, 159 P. 2d 1 (1945); American Stevedores v. Porello, 330 U.S. 446, 67 S. Ct. 847 (1947); Aktieselskavet Cuzco v. The Sucarseco, 294 U.S. 394, 55 S. Ct. 467 (1935).

[36] U. S. v. Atlantic Mutual Insurance Co., 343 U.S. 236, 72 S. Ct. 666 (1952).

[37] Gaderson v. Texas Contracting Co., 3 F. 2d 140 (5th Cir. 1924); The Serapis, 51 F. 91 (4th Cir. 1892). Also Socony-Vacuum Oil Co. v. Smith, *supra* n. 26; The Seeandbee, 102 F. 2d 577 (6th Cir. 1939).

[38] Murphy v. Steeplechase Amusement Company, 250 N.Y. 479, 480, 166 N.E. 173, 174 (1929).

tary. The sport of boating is hazardous, and the waves which a boat incurs can be assumed to cause a great deal of dangerous activity. By coming aboard a boat, the party must be deemed to accept this well-known risk.

Res Ipsa Loquitur

At this point, counsel may approach the Bench with the famous Latin battle cry, *res ipsa loquitur*. The requirements for this principle are: (1) the event must be of a kind which ordinarily does not occur in the absence of someone's negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff. Some courts have even suggested a fourth condition; that evidence as to the true explanation of the event must be more readily accessible to the defendant than to the plaintiff.[39]

In the case of common carriers, as long as the injuries to passengers were from causes within the control of the carrier, such as defective equipment, the doctrine of *res ipsa loquitur* has been held to be applicable.[40]

It should be noted, however, that the defendant must be in exclusive control of the instrumentality which has caused the accident. For example, a common instrumentality aboard a boat is a chair. What happens when it collapses? In a Rhode Island case, not in admiralty, recovery was denied to a customer in a store who sat down in a chair which collapsed.[41]

> The application of this doctrine is limited by the following considerations: (1) the apparatus or thing must be such that in the ordinary instance no injury would result unless from a careless construction, operation or user; (2) both inspection and user must have been at the time of the injury in the control of the party charged with neglect; and (3) the injurious occurrence or condition must have happened irrespective of any voluntary action at the time by the party injured . . . applying these limitations of the doctrine to the testimony, we find that the plaintiff is not entitled to the benefit of the doctrine because it appears that the chair was under her exclusive control and use.[42]

Thus, the doctrine of *res ipsa loquitur* may not apply where, from the facts connected with the fall of a seat, an inference may be reason-

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[39] Prosser, *op. cit. supra* n. 15, at 218. Also see Silwowski v. New York, N.H. & H.R. Co., 94 Conn. 303, 108 A. 805 (1920); Poth v. Dexter Norton Estate, 140 Wash. 272, 248 P. 374, 375 (1926).

[40] Bressler v. New York Rapid Transit Corp., 277 N.Y. 200, 13 N.E. 2d 772 (1938).

[41] Kilgore v. Shepard Co., 52 R.I. 151, 158 A. 720 (1932).

[42] *Id.* at 721.

ably drawn that the accident could have been due to causes other than negligence on the part of the defendant.[43]

It must be noted, that cases in this area are not in harmony. Our collapsed chair example has been held more often than not to be within the *res ipsa loquitur* doctrine.[44]

What Substantive Law Applies?

Admiralty has a body of laws all its own. If there are general maritime principles available, the Court may not contradict those ancient laws. However, the Court may choose, in the absence of any maritime law to the contrary, to supplement or apply state substantive law to fill the void.

The classic case in this respect is *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*[45] This case involved a marine insurance policy. The owners of a small houseboat used for commercial carriage of passengers on an inland lake between Texas and Oklahoma sued the insurer to recover for the loss of the boat by fire while it was moored on the lake.

The insurer defended on the grounds of alleged breach of warranties against the sale, transfer, assignment, pledge, hire, charter or use of the boat for commercial purposes without the insurer's written consent. Claiming that the policy had been made and delivered in Texas, the owners of the boat urged that the case was controlled by the Texas law. Under this law, no breach of the provisions of a fire insurance policy is a defense to any suit, unless the breach contributes to the loss.

This case made four conclusions:

1. Since there was a marine insurance policy, the case fell within the admiralty jurisdiction of the Federal Government.

2. That there was no statutory or judicially established Federal Admiralty Rule governing the warranties that were involved.

3. That the Court declined to establish a new rule.

4. In the absence of such a Federal Admiralty Rule, the case is governed by the appropriate state law.[46]

The Court said:

Since the insurance policy here sued on is a maritime contract the Admiralty Clause of the Constitution brings it within the Federal

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[43] *Res Ipsa Loquitur* was also held not to apply to the collapse of a chair in the following cases: Mulry v. Boston Elevated R. Co., 728 Mass. 210, 179 N.E. 595 (1932); Chicago R.I. & G.R. Co. v. Jones, 77 Okla. 140, 187 P. 233 (1920); ElPaso Electric Co. v. Barker, 134 Tex. 496, 137 S.W. 2d 17 (1940); and Slonka v. Nassau Electric R. Co., 191 App. Div. 727, 182 N.Y.S. 156 (1920).

[44] For annotation on the cases in this area see: 21 A.L.R. 2d 420.

[45] 348 U.S. 310, 75 S. Ct. 368, 1955 A.M.C. 457 (1955).

[46] *Id.*

> Jurisdiction . . . but it does not follow, as the Courts below seem to think, that every term in every maritime contract can only be controlled by some Federally defined admiralty rule. In the field of maritime contracts as in that of maritime torts, the national government has left much regulatory power to the states.[47]

The Court went on to argue that the crucial questions involved in the case were whether there were judicially established Federal Admiralty Rules governing the warranties, and if there were not, should the Court fashion some. Justice Frankfurter, concurring in the opinion, stated:

> It is to be assumed that were the Queen Mary, on a world pleasure cruise, to touch at New York City, New Orleans and Galveston, a Lloyd's policy covering the voyage would be subjected to the varying insurance laws of New York, Louisiana, and Texas? Such an assumption, I am confident, would not prevail were a decision necessary. The business of marine insurance often may be so related to the success of many manifestations of commercial maritime endeavor as to demand application of a uniform rule of law designated to eliminate the vagaries of state law and to keep harmony with marine insurance laws of other great powers. . . . It is appropriate to recall that the preponderate body of maritime law comes from the Court and not from Congress . . . as is true of other maritime interests, however, the demand for uniformity is not inflexible, and does not preclude the balancing of the competing claims of state, national and international interest. . . . In rejecting abdication of all responsibility by this Court for uniformity in marine insurance and its complete surrender to the states, one is not required to embrace another absolute, complete absorption by this Court of the field of maritime insurance, and entire exclusion of the states. It is not necessary to assert that uniformity, if it be required in any case, is required in all cases cognizable in admiralty—whether the craft was for business or pleasure, touched in five states, five nations, or never left the confines of an inland lake. The deceptive lure of certainty and comprehensive symmetry should not be permitted to conceal the fact that admiralty's expansion beyond 'the ebb and flow of the tide' has been a response to demands more inflective than those for mechanical uniformity.
>
> Under the distribution of power between national authority and local authority, admiralty has developed for more than a hundred years by rulings of the Court, but not by absolutes either of abstention or extension.[48]

Thus, in the *Wilburn* case, the Court declared that it will follow and create maritime principles as necessary. However, if the Court feels that it does not wish to create a new principle, and there is no historical principle of maritime law which applies, the Court may choose to apply the state substantive law in the maritime case.

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[47] *Id.* at 313.

[48] *Id.* at 323, 324.

There is no difference in the duty which is owed in admiralty to a licensee or invitee.[49] That duty is to use ordinary care under the circumstances, and not to cause injury to the party.[50] Finally, the maritime law principles are to be applied, even if the action is brought in the state court; but if no maritime principle is available, the state substantive law may be used to supplement the admiralty law.[51]

Conclusion

Thus, torts on yachts nearly always come within the admiralty and maritime jurisdiction of the Federal Courts. As to cases involving most reasonable-sized yachts, jury trials are not available. As for the substantive law to apply, if no maritime law governs the action, and the Federal Court does not wish to create one, state substantive law will be applied.

Do not forget to either repair defects or warn your guests about the defects on your ship. A checklist may be advisable. Just because your guest helps bring about his injury will not relieve you of your liability, though it will help lessen your damage burden.

Non-boaters and the faint-of-heart should stay home! Yachts and boats can be dangerous. If your host does not drive safely and keep his boat in proper repair, however, your injuries from those defects may well speak for themselves as to your host's liability.

Yes, summer is here, the lakes and rivers are astir, and boaters and lawyers are deep in summer's yachting fun.

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[49] Kleveland v. U.S., *supra* n. 18; also Kermarec v. Compagnie Generale Transatlantique, *supra* n. 12.

[50] *Ibid.*

[51] Wilburn Boat Co. v. Fireman's Fund Ins. Co., *supra* n. 45.