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ADMIRALTY IS PROBABLY the one area of the law most foreign to the ordinary practitioner." [1] Perhaps this is the reason why *an admiralty bar* has grown up by convention, not by statute nor by rule of court. Nevertheless, attorneys admitted to practice before the Federal Bar are *Proctors in Admiralty,* and a particularly suitable case for the general practitioner is a personal injury action based upon the *doctrine of unseaworthiness*—a doctrine of absolute liability. This note examines the fundamental and dynamic concept of unseaworthiness, and investigates particularly the geographical limits ashore where such injuries may occur and yet be actionable. Crew misconduct will not be considered as a factor in unseaworthiness, as that subject has been treated elsewhere.[2]

History

The first authoritative statement which recognized the right to recover damages for injuries caused by unseaworthiness was Justice Brown's dictum in *The Osceola.*[3]

> That the vessel and her owners are . . . liable to an indemnity for injuries received by seamen in consequence of the unseaworthy ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.

Prior to 1903, vessel unseaworthiness merely gave to seamen the right to leave the ship without being deemed a deserter.[4] Even after *The Osceola,*[5] it was generally felt that liability would be limited to cases where negligence caused the unseaworthiness. The passage of the Jones Act[6] in 1915 failed to stimulate unseaworthiness actions because it was generally thought that an election was required between the Jones Act and the unseaworthiness causes of action. The Jones Act, being a compensation statute where recovery is liberally allowed, produced most of the cases.

One case instituted before the passage of the Jones Act is significant.[7] In that case, one Sandanger, assuming that a can contained coal

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1 Slaughter, Basic Principles of the Law of Admiralty, 19 Ark. L. Rev. 93 (Summer 1965).

2 Saari, Crew Conduct as Unseaworthiness, 15 Clev.-Mar. L. Rev. 265 (1966).

3 189 U.S. at 175 (1903).

4 Dixon v. The Cyrus, 7 F. Cas. 755 (No. 3930) (D. Pa. 1789).

5 *Supra* note 3.

6 46 U.S.C. § 688.

7 Carlisle Packing Co. v. Sandanger, 259 U.S. 255 (1922).

oil, poured gasoline over a wood fire in a cooking stove and was badly burned while aboard a motorboat. The case was brought into the State Court and decided upon the common law doctrine of straight negligence for the plaintiff. Upon appeal to the Supreme Court the decision was affirmed, but Justice McReynolds explained that there had been an atrocious error below:

> . . . the trial court might have told the jury that without regard to negligence the vessel was unseaworthy when she left the dock if the can marked "coal oil" contained gasoline. . . .[8]

The landmark case for modern unseaworthiness actions was decided in 1944, when *Mahnich v. Southern S.S. Co.*[9] affirmed the notion that unseaworthiness was entirely unrelated to negligence, and that any negligence of the ships officers or fellow seamen did not relieve the owners of liability—the owner's duty to provide the seamen a safe place to work is non-delegable. The suit involved a seaman's claim for injuries which occurred at sea when a rope, which supported staging upon which he was working, parted and he fell to the deck. There was a controversy in the lower federal courts as to whether the rope was negligently selected by the Mate-in-charge. The rope was unused for two years and thus decayed. The Supreme Court found it unnecessary to decide the question of negligence because:

> the exercise of due diligence does not relieve the owner of his obligation to the seamen to furnish adequate appliances. . . .[10]

Justice Stone did not stop there; he went on to say that the ship owner's duty to furnish a seaworthy ship is absolute, thus foreshadowing an ominous cloud of liability without fault over all vessels and vessel owners. As will be shown, the cloud spread to cover not only claimants who were not seamen but more unbelievingly to injuries which occurred on shore.

The Class Protected

Unknown to the owners or crew of the *SS Robin Sherwood* a latent defect existed in a cargo boom support shackle. During a loading operation, the shackle broke causing a load to drop and injure a longshoreman working in the ship's hold. The Supreme Court asserted that that which is absolute is non-delegable. The reasoning was that longshoremen did work traditionally done by seamen; therefore, they were subjected to the same hazards as seamen. The shipowners cannot delegate the duty to provide a seaworthy vessel merely by contracting out loading

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[8] *Id.* at 259.

[9] 321 U.S. 96 (1944).

[10] *Id.* at 100.

operations to a stevedore company.[11] Control over stevedore operations is of no moment. In *Alaska S. S. Co. Inc. v. Petterson,*[12] under a similar fact situation, the court found the shipowner would be liable even if the rigging was brought on board by the longshoremen.

In *Pope & Talbot Inc. v. Hawn,*[13] the doctrine of unseaworthiness was extended to a carpenter injured while on board the vessel repairing a shore based grain unloader. A line was drawn, however, when a repairman aboard a vessel to clean a ship's generator met his death by inhalation of the cleaning fluid. The court asserted that he was a "specialist" and the type of work done was not that traditionally done by seamen.[14]

It is not unimportant that these quasi-seamen have common law remedies in the state courts when the injury occurs on land and also have a compensation remedy against their employer (the stevedore company) under the Longshoremen's and Harbor Workers' Compensation Act[15] for injuries occurring on shipboard. They are not without protection. Strangely, the Longshoremen Act left the maritime door open to third party actions against the shipowner based upon unseaworthiness as indicated. Fortunately, shipowners were granted a right of indemnity against the stevedore company based upon an implied warranty of workmanlike service.[16]

Subsequently, the doctrine of unseaworthiness was extended to injuries occurring to quasi-seamen ashore, but the Supreme Court has yet to draw a definite line as to just how far ashore the cloud of unseaworthiness extends.

Shore-Based Injuries—Seamen

A *seaman* is protected under the Jones Act while ashore assisting in repair of a gasket on a land pipe used to discharge cargo, because he is in the course of employment and working with a ship's appurtenance.[17] And, it now appears settled that the Extension of Admiralty and Maritime Jurisdiction Act[18] swept away any defense that the alleged personal injury occurred on the pier rather than on the ship. The early cases applied to physical damage done ashore. In a leading case, a vessel collided with a U.S. owned dike (constructed of pilings attached to the

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[11] Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946).

[12] 347 U.S. 396 (1954); *rehearing denied,* 347 U.S. 994.

[13] 346 U.S. 406 (1954).

[14] Sandy Hook Pilots Association v. Halecki, 358 U.S. 613 (1959).

[15] 33 U.S.C. 901 (1927).

[16] Ryan Stevedoring Co., Inc. v. Pan-Atlantic S.S. Corp., 349 U.S. 901 (1955). A case with a stormy history.

[17] O'Donnel v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943).

[18] 46 U.S.C. § 740 (1948) [hereinafter referred to as the Extension Act].

shore) and the court held that Admiralty jurisdiction was proper.[19] The wording of the 1948 Statute is clear enough; Admiralty jurisdiction will extend to all injuries:

> [C]aused by a vessel . . . notwithstanding that such damage or injury be done or consummated on land.[20]

Further, it has been said that an essential to jurisdiction in Admiralty over a tort is that it was committed *in relation* to navigable waters.[21]

The full force and effect of the doctrine of unseaworthiness rightfully belongs to *seamen* injured ashore. For example, a chief mate had his foot run over by gangway rollers when his ship surged; therefore, there was a question of unseaworthiness because the mooring lines were not taut.[22] Unseaworthiness is also in question where the seaman was not afforded a reasonably safe means of boarding and departing his vessel,[23] and where the seaman suffered injury because of an alleged failure to provide safety equipment (goggles) or require its use,[24] or where a seaman is not properly instructed to wear a life preserver while walking along a plank covered pipeline from his vessel to shore.[25]

When dealing with seamen, the courts have also denied liability in proper cases. In *Casselmann v. Tug Captain Kelly,*[26] a suit alleging unseaworthiness for lack of a tug boarding ladder, a ship's cook jumped from a barge to the deck of the tug and injured his leg. The court said he could have stepped from the barge to the upper deck of the tug if he had waited till the vessel swung alongside, and denied the application of unseaworthiness.

Similarly, a seaman's claim was denied on the basis that he injured his ankle while walking along the pier in a dangerous spot.[27] A seaman injured by a fall from a railroad trestle catwalk while returning from shore leave was not covered by the doctrine of unseaworthiness because no evidence was offered connecting the cause to the ship.[28] In all of these cases an element of connecting causation is an evident consideration.

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[19] U.S. v. Matson Navigation S.S. Co., 201 F.2d 610 (9th Cir. 1953).

[20] *Supra* note 18.

[21] 1 A. Knauth, Benedict on Admiralty 127 (6th ed. 1940).

[22] Olsen v. Isbrandtsen Co., 209 F. Supp. 6 (S.D. N.Y. 1962).

[23] Superior Oil Co. v. Bufford Trahan, 322 F. 2d 234 (5th Cir. 1963).

[24] Pearson v. Tide Water Assoc. Oil Co., 223 P. 2d 669 (Cal. Dist. Ct. App. 1950).

[25] Darlington v. National Bulk Carriers Inc., 157 F. 2d, 817 (2nd Cir. 1946).

[26] 215 F. Supp. 240 (E.D. La.), *aff'd.,* 322 F. 2d 820 (1963).

[27] Reyes v. M/V Venus II, 257 F. Supp. 335 (D.P.R. 1966).

[28] Dangovich v. Isthmian Lines, Inc., 218 F. Supp. 235 (S.D. N.Y. 1963), *affd.* 327 F. 2d 355 (1964).

Ship's Service Test—Longshoremen

There is an unexplained development in the parallel cases involving injuries to longshoremen. Assuming the ship was in navigation, the courts clung tenaciously to the ship's service test to determine liability.[29]

Beginning in 1959 a New York District Court enlarged and explained the operation of the Extension Act.[30] In this case, a tug made an unauthorized mooring of a scow to a pier leased by the New York Port Authority. The scow sank and damaged the pier. The court held that the Act made a new concurrent remedy in admiralty available for an already existing action at common law, and made admiralty rather than common law principles of law and practice applicable to actions commenced under the Act.[31]

A few years later a longshoreman slipped on loose beans spilled on the dock during unloading and suffered back injuries. He claimed damages from the shipowner on the theory that the unloaded cargo containers (bean bags) had holes in them making the vessel unseaworthy. The Supreme Court denied that there was any distinction between personal injuries and physical damage where the impact is felt on the shore. Mr. Justice White said that nothing in the legislative history supports a restrictive interpretation of the statute, such as a ship ramming a bridge or where a ship's winch drops cargo on a longshoreman. Seaworthiness includes fitness for loading and unloading; seaworthiness arises out of the maritime relation whether on sea or ashore.[32]

The broad extension of the "Bean Case" should be distinguished from the case where a longshoreman is injured by being swept off a railroad car alongside a vessel during loading.[33] There the court held that it was a jury question whether the ship's gear was too short to swing lumber aboard without a premature lateral movement and that such inadequacy might be the *cause* of the accident. Some measure of causation and physical connection to the vessel's gear were present. The "Bean Case" shocked vessel owners and left them wondering just where it would all end. Herbert J. Baer described the effect of the decision in this manner:

> Whether one agrees with the Court or with Justice Harlan, it must be conceded that *Gutierrez* is a substantial stride forward in the development of a policy which makes the shipowner an insurer for

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[29] Annot., 84 A.L.R. 2d 620 (1962); Seas Shipping Co. v. Sieracki, *supra* note 11; Crumady v. Joachim Hendrik Fisser, 358 U.S. 423 (1959).

[30] *Supra* note 18.

[31] Petition of N.Y. Trap Rock Corp., 172 F. Supp. 638 (S.D. N.Y. 1959).

[32] Gutierrez v. Waterman S.S. Corp., 373 U.S. 206 (1963). It is important to note the complete lack of physical connection between the vessel and the beans once they had been spilled on the dock.

[33] Brown v. Westfal-Larsen & Co., 383 P. 2d 1003 (S. Ct. Ore. 1963).

all injuries sustained by longshoremen engaged in servicing the vessel.[34]

A short time later, a circuit court was presented with a controversy involving a longshoreman injured while engaged in the movement of freight cars propelled by a ship's line to position the cars for loading.[35] In sustaining recovery for the longshoreman, the court unnecessarily relied on the "Bean Case."

The Third Circuit was called upon in 1965 to define the physical limit of the unseaworthiness cloud over the shore. It did not.[36] A bulk cargo of nitrate of soda was being discharged using a shore-based crane. The crane bucket lifted the powdery substance from the ship's hold, swung around, and dropped it into a large shore-based hopper. (Funnel shaped containers that trucks drove beneath for loading.) Neither hopper nor crane were in any way attached to the vessel. The claimant was injured by a premature movement of the hopper door release handle which he was assigned to operate. It was held that the hopper had *sufficient connection* with the ship to be within the subject matter of the warranty of seaworthiness, reasoning that the doctrine would have applied while the crane reached in the ship's hold and removed cargo and such removal having a beginning must have an end. Further, it was said that unseaworthiness is not to be rigidly construed so as to exclude modern labor saving methods used to do the work traditionally done by seamen. The Supreme Court denied certiorari. As in the "Bean Case," here again there was a complete absence of direct causation or physical connection with the ship's appurtenances.

An earlier case[37] demonstrates how courts over-emphasize the ship's service test of applicability of unseaworthiness. A dockside line handler was injured by a parted mooring line and denied recovery because he was not doing work traditionally done by seamen. (Note that the same reasoning could not be applied to Great Lakes ore vessels, because their lines have traditionally been handled by the ship's crew.) Here we have a person intimately involved in an essential and ordinary seamanship operation, who was directly injured by a ship's appliance which may have even been patently defective, and he is denied the application of unseaworthiness.

The results in the "Bean" and "Hopper" cases are far reaching, when considered in the light of other recent decisions defining how unseaworthiness can arise. In 1960, it was held that "transitory conditions" can result in an unseaworthy vessel. Due diligence of the shipowner

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[34] Baer, Admiralty Law of the Supreme Court 48 (1967 Cumulative Supplement).

[35] Thompson v. Calmar S.S. Corp., 331 F. 2d 657 (3rd Cir. 1964).

[36] Spann v. Lauritzen, 344 F. 2d 204 (3rd Cir.), *cert. denied,* 382 U.S. 938 (1965).

[37] Fematt v. Nedlloyd Line, 191 F. Supp. 907 (S.D. Cal. 1961).

does not relieve him of his obligation under the doctrine.[38] The facts of this case reveal that a fisherman, slipping on a ship's rail covered with fish slime, can recover against the shipowner even though he was involved in the unloading operation which produced the "unseaworthy condition," regardless of the owners notice or ability to correct the situation. In a more recent case,[39] the Supreme Court held a ship could be made unseaworthy by the assignment of two men to do the work of three or four. A ship's mate assigned two seamen to haul an 8-inch mooring line across the deck; one man injured his back, and expert testimony showed three or four men should have been used.

The Issue

Should the rules established under the unseaworthiness doctrine and carried ashore by the Extension Act, be applied identically to seamen *and* to all those who do the work traditionally done by seamen? I think not. Should a hypothetical longshoreman slipping on the pier on a banana peel discarded minutes before by a fellow longshoreman during their lunch hour, recover against the shipowner upon the rationale that longshoremen, like seamen, must eat and that therefore there is sufficient connection with the unloading operation to invoke the doctrine of unseaworthiness? Could it be argued that the unloading of a vessel only ceases when the job is complete, when the hatch covers are once more in place? Should a hypothetical harbor worker assigned by his stevedore boss to haul an 8″ rigging line for a shore based crane be able to recover against the shipowner if he injures his back while hauling the line? Such results are absurd, and merely add to a multiplicity of suits already existing; such cases would not be just.

It is suggested that the courts are permitting recovery whenever and wherever a person is found doing the work traditionally done by seamen. By so doing they can never define the physical extent of the cloud of unseaworthiness. If one of the purposes of our judicial system of stare decisis is to inject an element of certainty in similar fact situations, then the courts are remiss in not defining the physical limits of unseaworthiness claims by quasi-seamen.

A Conflict

The Circuit Courts are not in agreement as to whether shore connected injuries are within the scope of unseaworthiness. In *McKnight v. N. M. Patterson & Son Ltd.*,[40] the court affirmed a motion for summary judgment for the defendant shipowner. It was held that even a long-

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[38] Mitchell v. Trawler Racer, Inc., 362 U.S. 539 (1960).

[39] Waldron v. Moore-McCormack Lines, Inc., 385 U.S. 810 (1967).

[40] 286 F. 2d 250 (6th Cir. 1960), *cert. denied,* 368 U.S. 913 (1961).

shoreman injured in the ship's hold by a shore based crane did not render the vessel unseaworthy because the crane was under the control of an independent contractor and it never became physically attached to the ship. In *Huff v. Matson Navigation Co.*[41] the exact opposite result was reached when a longshoreman in a ship's hold was injured by the "sugar scraper" of a shore based crane. Similarly, *Metzger v. Torm*[42] held that a defective cargo sling at the end of a shore based crane could render a vessel unseaworthy. The sling broke and caused the death of a longshoreman because the sling was *deemed an appurtenance of the ship.* The court distinguished between the facts in a Second Circuit decision[43] where a "jury rig" sling was used by a foreman to hoist a baggage conveyor to a vessel's sideport. In the latter decision, the rig broke while being hoisted by a shore based crane; the claimant was riding the conveyor at the time so he fell to the dock and injured his leg. The court held the vessel's appurtenances were not unseaworthy and his shore based injury was not within the scope of the doctrine. And in *Deffes v. Federal Barge Lines Inc.*,[44] the Fifth Circuit held that a defective marine leg inserted into a vessel's hold to unload a bulk cargo would render the vessel unseaworthy. In essence, only *Spann*[45] and *Forkin*[46] are in direct conflict because each involves an injury ashore caused by shore based machinery. It remains for the Supreme Court to speak upon the matter. The denial of Petition for Certiorari in the *Spann* case is not sufficient.

Conclusions

It is a well established rule of admiralty that a shipowner is liable to indemnify a *seaman* for an injury caused by unseaworthiness of the vessel or its equipment. The shipowner has an absolute non-delegable duty of care to provide a safe atmosphere about his vessel. The notable prerequisites to recovery are that (1) the vessel is in navigation[47] (not laid up or dismantled) and (2) the plaintiff is in the class protected[48] (doing the work traditionally done by seamen).

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[41] 338 F. 2d 205 (9th Cir. 1964).

[42] 245 F. Supp. 227 (D. Md. 1965).

[43] Forkin v. Furness Withy & Co., 323 F. 2d 638 (2d Cir. 1963).

[44] 361 F. 2d 422 (5th Cir. 1966), *rev'g* 229 F. Supp. 719 (E.D. La. 1964). See also, Cockrell v. A. L. Mechling Barge Lines, Inc., 192 F. Supp. 622 (S.D. Tex. 1961); Miller v. The Transandina, 1964 A.M.C. 1159 (S.D. Cal. 1964); Litwinowicz v. Weyerhaeuser S.S. Co., 179 F. Supp. 812 (E.D. Pa. 1959) (ship's gear gave way injuring longshoreman working in R.R. car on pier); Manson v. Weyerhaeuser S.S. Co., 229 F. Supp. 569 (E.D. Pa. 1964) (plaintiff on pier fell on slippery steel plate deemed to be an appurtenance because it had been used on ship).

[45] *Supra* note 36.

[46] *Supra* note 43.

[47] Roper v. United States, 368 U.S. 20 (1961).

[48] Seas Shipping Co. v. Sieracki, *supra* note 11; Sandy Hook Pilots Association v. Halecki, *supra* note 14.

Thus the geographical limits of the cloud of unseaworthiness remain elusive and undefined. There should, however, be a caveat where the cause of the injury emanates ashore. In such cases, the application of absolute liability should not be charged until a substantial causal connection is found. Under the Extension Act,[49] there is at least an implication that the injury-producing cause commenced aboard the vessel and was merely "consummated" ashore. Surely, the injury to a longshoreman must, in some way, have been caused by some type of unseaworthiness.

Circuit Justice Forman used similar reasoning in *Hagans v. Ellerman & Bucknall S.S. Co.*[50]

A stevedore company was engaged to unload a cargo of sand bags in a vessel's hold. Slings were lowered into the hold and loaded with bags of sand; winches elevated the full slings out of the hold and deposited them on a flattruck. The truck was then towed into a warehouse on the pier where the sand was unloaded by a gang of longshoremen. Hagans was in the act of grasping a bag to unload the truck when his foot slipped on sand on the floor causing his body to twist resulting in an injury to his back. The court dismissed the contention that maritime jurisdiction did not attach because of the situs of the alleged tort. It was made clear, however, that jury questions were presented as to (1) whether the vessel was rendered unseaworthy by the broken cargo containers (sand bags) which caused the loose sand in the warehouse, *and* (2) whether such unseaworthiness was the cause of the injury to the longshoreman.

The rule that Admiralty extends to those doing work traditionally done by seamen must only be used to determine the applicability of maritime law and not determinative of the issue of unseaworthiness, especially when considering shore based personal injuries.

Post Script

> "The perils of the sea, which mariners suffer and shipowners insure against, have met their match in the perils of judicial review." [51]

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[49] *Supra* note 18.

[50] 318 F. 2d 563 (3rd Cir. 1963).

[51] Gilmore & Black, The Law of Admiralty 248 (1957).