Navy Admiralty Law Practice

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PREFACE

About this course:

This is a self-study course. By studying this course, you can improve your professional/military knowledge regarding Admiralty Law.

History of the course:

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## APPENDIX

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**ASSIGNMENT QUESTIONS** follow Appendix I.
I. THE ORIGINS AND NATURE OF ADMIRALTY LAW

Admiralty law, simply stated, is a tool for resolving the controversies that arise out of maritime damage. Admiralty law is unlike the law pertaining to property damage and personal injury on land sometimes referred to as “tort law.” Nevertheless, Admiralty law has been with us a long time. It has its roots in antiquity.

The most ancient and at the same time the most simple law was the law of the jungle under which loss or damage caused by another was simply allowed to lie where it fell. The victim absorbed a loss without compensation from anyone.

But mankind’s sense of justice was inflamed by the fact that a person damaged without fault had no recourse by a peaceful means to recover their loss from the ones who did the injury. Of course, the injured party could use self-help by way of revenge but this only added to the sum total of loss and greatly disturbed the peace of the community.

Hence, man’s progress from a savage to a civilized state has been marked by the development of rules designed to overcome the law of the jungle. No longer under law does the loss lie where it falls. The law causes the responsible party, or the party at fault, to make the injured party whole.

If you willfully or negligently injure your neighbor or damage his/her property and your neighbor is without fault, the courts will require that you respond in damages so that your neighbor may be made whole once again. The law will not let the loss lie where it fell.

This concept of the party at fault responding in damages to the party aggrieved is equally applicable in admiralty law as it is in the common law. (The term “common law” is used throughout this article to describe the body of law extant in this country exclusive of the admiralty field, a definition that, though not quite accurate, is reasonably expedient for the purpose here.) However, its implementation in admiralty has differed somewhat from the common law for the following reasons:

First, admiralty law is ancient. It has evolved slowly and by minute increment since mankind first ventured upon the surface of the sea for travel and trade.

At one time scholars opined that a Rhodian Code of admiralty law, perhaps dating back to 900 B.C., had been promulgated, but this theory has been repudiated largely by the complete
absence of any surviving historical record of such a code. However, it is apparent that a customary maritime practices did evolve and gain general acceptance among Mediterranean seafarers by the period 500-300 B.C., when Rhodes was the center of seagoing commerce. The earliest surviving reference to a particular Rhodian legal principle dates to the Third Century A.D., when a Roman lawyer named Paulus wrote five books of Sentences. A division of the second book, titled On the Rhodian Law, states:

“If, for the sake of lightening a ship, a jettison of goods has been made, what has been given for all shall be made up by the contribution of all.”

(As you will see, this Rhodian law of jettison is a precursor of the distinctive maritime doctrine of general average, discussed later in this course.) Other references to “Rhodian law” appear in Justinian’s Digests, published in 533 A.D., including the rather noteworthy comment attributed to Roman Emperor Antoninus, when petitioned for relief by one whose shipwreck had been plundered: “I am indeed lord of the world, but the law is lord of the sea. This matter must be decided by the maritime law of the Rhodians . . .”

In contrast, the common law of England commenced its development at the time of the Norman invasion. Therefore, it began to exist, as we know it about the year 1066 A.D.

Thus, the concepts upon which admiralty laws are based are about 1500 years older than those of the common law. Obviously, custom, practice, and statute have modified both systems greatly throughout the years, and, while there are many similarities, differences still exist.

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Second, admiralty law enjoys a universal character among maritime nations. It is apparent from the mobile nature of its primary subject matter (ships) that, of necessity, there must exist a worldwide similarity in the application of admiralty law by all of the principal maritime nations. This need for universality influenced the development of admiralty law.

Admiralty law grew up together with, and in similar fashion to, the ancient “law merchant.” Early in its evolution, various rules were agreed to by seafarers to facilitate maritime commerce, rules that attained widespread acceptance because of their practicality and, eventually, became enforced as the law among seafaring communities.

The importance of universality was apparent to the framers of the United States Constitution, who extended federal judicial power to “all cases of admiralty and maritime jurisdiction.”

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2 1 Benedict on Admiralty §§ 2-3 (E. Jhirad, A. Sann, B. Chase & M. Chynsky 7th ed. 1985) [hereinafter cited as 1 Benedict].

3 See N. Healy & D. Sharpe, Cases and Materials on Admiralty 3 (1974) [hereinafter cited as Healy & Sharpe].


5 Gilmore & Black, §§ 1-3; Healy & Sharpe, supra note 3, 1-2, see also Thomas J. Schoenbaum, Admiralty and Maritime Law Ch. III, (3rd ed. 2001)[hereinafter cited as Schoenbaum].

6 U.S. Const. art. III, § 2.
The wisdom of providing the federal government with the principal power over maritime commerce should be apparent; without it, both domestic and foreign shippers would have been subject to various states’ laws, to the probable detriment of the nation’s developing maritime trade.

Third, throughout its development, admiralty law deliberately has been treated as a species of law separate and distinct from the common law. In England, admiralty courts existed wholly apart from the general civil courts that entertained non-admiralty actions at law or equity. There, and in the United States, judges in admiralty cases applied substantive admiralty law, and would refer to common law principles for guidance only when the dispute at hand could not be resolved by the application of admiralty statutes and the “general maritime law” (a broad term that has been used to refer to both the admiralty practices generally accepted among the world’s seafaring nations and the particular judicially-developed body of admiralty rules enjoying the force of law within a particular country).

Further, the admiralty courts used their own set of procedural rules, often differing sharply from the procedures in other civil courts. In the United States, a separate set of Rules for Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court,7 and under which a United States District Court would transform itself into a court “sitting in admiralty,” were in effect until July 1, 1966. On that date, the procedural rules for all civil cases, including those in admiralty, were unified;8 however, even in this consolidation, certain traditional admiralty practices were retained (for example, unlike the usual civil case, there is no right to a jury trial in an admiralty action unless such a right is specifically granted by statute9). Furthermore, supplemental rules governing the procedures in particular types of admiralty cases were appended to the new unified rules.10 Thus, the separate character of admiralty law, both substantively and procedurally, has been fostered historically and is largely preserved in modern practice.

II. SOME COMPARISONS OF ADMIRALTY LAW AND COMMON LAW

A. Comparative Fault

Assume the following situations:

(1) Your automobile, being operated negligently upon a highway, is struck by a truck also being driven in a negligent manner by its owner.

(2) Your steam vessel, being operated negligently in a navigable channel, is struck by a tugboat also being operated in a negligent manner by its master.

In each situation, you seek to recover money damages from the other party, whose negligence was indisputably the primary cause of the particular collision. How does your own negligence affect your case? The answer, at least until recently, was quite different in the common law case, (situation (1)), compared to the result in the admiralty case, (situation (2)).

Under the common law doctrine of contributory negligence, first announced in England in 180911 and adopted in the United States shortly thereafter,12 any negligence of the plaintiff that

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7 Order of December 6, 1920, 254 U.S. 671.
contributed to the occurrence will be a complete bar to the plaintiff’s recovery. This result occurs even though the plaintiff’s negligence is slight compared to that of the defendant.

Admiralty law has never followed the common law doctrine of contributory negligence. For centuries, admiralty followed a “Rule of Divided Damages,” which required that property damage be divided equally whenever both parties contributed by their fault to the collision, regardless of the relative degree of each party’s fault. This rule traces back to Article XIV of the Rules of Oleron, a medieval maritime code promulgated in about 1150 A.D. The rule, adopted in the United States in the case The Schooner CATHARINE v. DICKINSON, was grounded in the notion that equal division of damages was “just and equitable, and . . . best [tended] to induce care and vigilance on both sides, in the navigation.”

In 1974, in the case of United States v. Reliable Transfer Co., the Supreme Court agreed with numerous commentators that the Rule of Divided Damages was “illogical, arbitrary, archaic and frequently unjust.” Noting that virtually all maritime nations applied a “Rule of Proportional Damages” the court adopted such a rule:

“We hold that when two or more parties have contributed by their fault to cause property damage in a maritime collision or stranding, liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault…”

This rule has been extended to all cases of property damage and personal injury arising from every kind of admiralty incident. However, when one party’s negligence is the “superceding cause” of damage, the Supreme Court, in upholding its decision in Reliable Transfer Co., has affirmed the requirement of legal or proximate causation as well as the related superceding cause doctrine. The Supreme Court has stated that these legal principles apply in admiralty notwithstanding its adoption of the comparative fault principle.

Interestingly, many, although not all, states have abandoned the common law doctrine of contributory negligence, recognizing its harshness, in favor of a system of comparative fault. In those jurisdictions, therefore, the results in the two aforementioned situations might now be quite similar.

B. The Maritime Lien

There are a few instances at common law in which a person may acquire a right to retain an article in his or her possession and look to the article for payment of a fee or other charge. For example, a warehouseman who stores goods may retain the goods until the storage charge is paid, and if the charge is not paid, the goods may be sold to satisfy the claim. To exercise a lien, however, the warehouseman must have possession of the goods. If possession of the goods is surrendered, the common law lien is lost.

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13 1 Benedict § 6.
14 58 U.S. (17 How.) 170, 15 L.Ed. 233 (1855).
15 Id., at 177-78.
17 Id., at 404.
18 Id., at 411.
20 See Gilmore & Black, Ch. IX, see also Schoenbaum, Ch. VII.
The maritime lien is quite different and gives extensive and flexible rights. This is because admiralty law looks upon a ship as a legal person with definite and personal needs. It requires food, servants, equipment, and many things to enable it to carry out the purpose for which it was created—navigation.

Generally speaking, to all who assist it, the ship itself may become liable—liable in rem (that is, the thing is liable, as distinguished from the liability of the owner or of some other person)—for services they have rendered. Thus, those who furnish it with supplies, fuel, towage, and many other things have a lien against the ship itself for their compensation. They may hold the ship and even sell it to satisfy their claims.

Unlike the common law lien, the maritime lien is not dependent upon the lienor’s possession. The lien follows the ship wherever it goes or into whoever’s possession it may come—even into the hands of a bona fide purchaser. A maritime lien may be divested only by sale under a decree of an admiralty court in a proceeding against the ship itself—that is, in a proceeding in rem.

When questions of priority within classes of lien holders arise, the liens take priority in the inverse order in which they were incurred. The theory behind this rule is that what was last done for the benefit of the ship was for the benefit of all concerned, including the holders of earlier liens. So the latest lien will defeat prior liens when the liens are in competition with each other.21

There is another reason for the peculiarities of the maritime lien. A ship by its very nature travels about and often finds itself in strange places and in need of assistance. It is a great help to the ship in securing its needs if the supplier knows he or she will acquire a lien, which he or she will not lose when the ship departs, and which will take precedence over other liens with which the ship may have been previously encumbered.

C. Salvage

The law of maritime salvage is another instance in which there is divergence between admiralty law and common law.

If your neighbor’s house catches fire and you voluntarily go to the rescue, and spend great effort and incur grave personal risk in saving their property and extinguishing the fire, your neighbor is under no legal obligation to pay for your services. The Good Samaritan acquires no rights at common law.

The law of admiralty has a different concept. If a ship breaks down at sea or catches on fire, a volunteer who tows the ship to port or extinguishes the fire is entitled to a reward for his or her successful salvage services. A salvor acquires a lien upon the ship to the extent an admiralty court decides is appropriate for the services rendered. Also, a salvor must act in good faith and exercise reasonable skill and prudent seamanship when undertaking a salvage action.22 A salvor whose conduct falls below this standard must be held accountable “as does negligence in the performance of any other assumed or imposed duty.”23

21 There can be no maritime lien against a public vessel. Any discussion concerning maritime liens is academic in the context of considering admiralty lien issues involving naval units. However, the doctrines are nonetheless important because of the underlying legal concepts found in the Suits in Admiralty Act and the Public Vessels Act (both acts are discussed in Article IV of this NRTC). Both Acts, while not allowing true in rem actions, proceed on in rem theories. See 46 U.S.C. § 788, and 46 U.S.C. § 743.

22 The Laura, 81 U.S. (14 Wall) 336, 20 L.Ed. 813 (1872).

23 The Cape Race, 18 F.2d 79,81 (2nd Cir. 1927).
Once a court determines that a salvage service has been rendered, a just and proper award must be fixed. Because the circumstances of each salvage are unique, no specific rule for determining the amount of the award can be given. The court has the discretion to fix the award, upon consideration and weighing the benefit conferred upon the property owner and the risks of the salvage operation. The traditional criteria for an award are as follows: the time and labor expended by the salvors in rendering the salvage service; the promptitude, skill, and energy displayed in rendering the service and saving the property; the value of the property risked or employed by the salvor, and the degree of danger to which this property was exposed; the value of the property saved; and, the degree of danger from which the lives and property are rescued.24

Applying these factors to a particular case is not a matter of scientific exactitude. The judge has discretion in giving credence to those factors of particular importance in the given factual situation.25

Because the judge’s determination of the award is highly subjective, the award in any one case has only limited precedential value for future cases. One respected admiralty text draws this succinct conclusion regarding salvage awards: “Eventually, the trial judge will pull an arbitrary figure out of the air.”26 However, a survey of 25 salvage awards reported in the American Maritime Cases Table of Salvage Awards between 1963 and 1982 revealed the following statistics: the high award was 50 percent of the value of the salved vessel; the low award was less than 1 percent; the average award was 11.9 percent; the median (13th) award was 6.2 percent; and the majority of the awards fell in the range between 1.2 percent and 14 percent.

Salvage awards are categorized as “high order,” “medium order,” and “low order,” based primarily on the dangers faced by and the skill and ingenuity required of the salvage crew in effecting the rescue.27 As might be expected, a judge would tend to be more generous in “high order” cases, and more parsimonious in “low order” cases. An example of a high order case was the salvage of the Coast Guard vessel INVINCIBLE, then “entirely impotent” and “in extreme peril” off the Oregon Coast after being struck by a sneak wave during violent weather. The salving vessel was the small fishing boat BARBARA LEE, which left its safe position and proceeded to INVINCIBLE to render aid. The heroic efforts of BARBARA LEE enabled the larger Coast Guard vessel to hang on until additional assistance arrived. Unfortunately, the exceptionally heavy sea caused the loss of BARBARA LEE and two of its crew during the salvage process. Under these circumstances, it is not at all surprising that a generous award would be made to the owner of BARBARA LEE, the estates of its two deceased crewmembers, and the one surviving member of its crew.28

In contrast, the “low order” salvage cases are characterized by “the simplicity of the operation, its short duration, the relative ease of accomplishment, and the minimal risk to both the salved and the salving vessels.”29 In Vernicos, the USS ALTAIR (AKS-32) and USS MERCURY (AKS-20), nested together in St. George’s Bay, Piraeus, Greece, broke free from the quay during “a sudden and violent squall.” The vessels radioed for assistance and checked their drift by use of their anchors. The Vernicos salvage tugs arrived about an hour after the storm had passed and, in calm weather,

24 Schoenbaum § 14-5.
25 Schoenbaum § 14-5.
26 Gilmore & Black at 563, see also Schoenbaum § 14-5 n. 23.
27 Gilmore & Black §§ 8-9, 8-10.
returned the naval vessels to their berth. The salvage award was less than 1 percent of the value of the salved vessels.

The law of maritime salvage is not limited to the salvage of a ship in distress, but may apply in any case of the rescue of another’s property from peril at sea. Thus, the Navy has paid awards for claims made for the salvage of a seaborne powered target, a torpedo, and a communications buoy.30 In one case, an award of $400,000 was paid to the owners and crew of a French merchant vessel on which a disabled Navy helicopter made an emergency landing at sea. The helicopter could not have made it back to its ship; but for the fortuitous presence of the merchant vessel, the helicopter would have been lost at sea. Aircraft in peril at sea are considered to be maritime objects subject to the law of salvage.31 The Navy’s award represented about 5 percent of the value of the helicopter.32

Finally, it should be noted that only successful salvage is entitled to a salvage award. If the vessel or other property is not saved, there can be no reward, regardless of the heroic efforts of those who attempted the salvage. Furthermore, in accordance with longstanding tradition, there is no reward when only human life is salved; however, a salvor of life is entitled to an award from the value of any property concurrently salved.33

The law of salvage is a by-product of the unwritten law of the sea, which required that assistance be rendered to those in distress. Life at sea is still dangerous and a ship in distress desperately needs assistance from others. The property in peril is usually of substantial value and human lives often are involved. It is well, therefore, that the unwritten law of the sea exists and that assistance will be prompted by the fact that a salvor has a legal right of compensation as well as a moral duty to respond.

D. General Average34

The doctrine of general average in maritime law has no counterpart at common law. As previously mentioned, it derives from the ancient Rhodian law of jettison.

This doctrine is based upon the concept that a ship’s voyage is a joint venture among the various participating interests, vessel and cargo, who place property “at risk” in undertaking the voyage. The vessel interest is the value of the vessel itself and the value of any “freight” (i.e., the compensation which the vessel owner is to receive for carrying the cargo) due at the conclusion of the voyage; during the voyage, these properties are “at risk” because of the perils and uncertainty

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30 The Navy’s ability to settle a salvage claim in admiralty should not be confused with the ability of a commanding officer to authorize payment of a finder’s reward for information leading to the recovery of certain types of ordnance, mobile targets, aircraft, and oceanographic equipment. See DOD Financial Management Regulation, Volume 5, Appendix D.

31 Lambros Seaplane Base v. M/S BATORY, 215 F.2d 228 (2d Cir. 1954).

32 Conversely, a party does not have the right to conduct salvage operations over the express objection of the owner of the property. Thus, a sunken naval aircraft (from World War II) cannot be salvaged absent the consent of the United States. International Aircraft Recovery, L.L.C. v. The Unidentified, Wrecked and Abandoned Aircraft, 218 F.3d 1255 (11th Cir. 2000), cert. denied, 531 U.S. 1144, 121 S.Ct. 1079 (2001). It should be noted that unlike civilian property, sovereign property typically is not considered abandoned because of the passage of time.


34 See Gilmore & Black, Ch. V; see Schoenbaum, Ch. X.
attending sea travel. The cargo interest is the value of the cargo being carried; it, too, is “at risk”
during the voyage. Of course, since there may be many merchants shipping cargo on a single vessel,
the voyage may have more than one cargo interest.

A general average situation arises when the property at risk in a voyage comes into a position of
peril, and a consequent voluntary sacrifice of a portion of that property is made for the purpose of
preserving the remainder from the peril. Typically, such a situation arises when a vessel master
orders that some cargo be jettisoned to save the ship and the remaining cargo, or that a portion of the
vessel be damaged to save the rest, or both.

In these cases, the law allows the value of the abandoned cargo, together with any other
expenses incurred in saving the vessel, to be subject to general average. Each of the interests
involved in the voyage will contribute to the cargo loss and other expenses in the proportion which
the value of his or her interest bears to the total amount of the loss. Thus, no single interest is
allowed to succeed at the expense of any other; the merchant whose cargo arrived unscathed will
pay a sum to the owner and merchants whose vessel and cargo were sacrificed so the voyage could
be completed.

E. Limitation of Liability

Still another unusual provision of admiralty law is the one under which a shipowner may, in
certain situations, limit his or her liability against claims to the value of their ship immediately after
the accident.

There are, of course, certain circumstances at common law in which a person’s liability is
limited. The liability of a stockholder in most corporations is limited to the extent of the
stockholder’s holdings, and the liability of a bankrupt person is limited to the value of their assets.
But the common law generally is wary of permitting persons to insulate themselves from liability
for their acts.

The rule permitting limitation of the shipowner’s liability in admiralty came about in the
United States by statute passed in 1851.36 The doctrine had been a part of the admiralty law of most
maritime nations for many years before that date. The incentive that prompted the legislation was
the desire by the United States to encourage the investment of capital in shipping enterprises.

It was urged in support of this legislation that a ship owner cannot control a vessel to the same
degree that the owner of a factory ashore can control a plant:

“[B]ecause of the extraordinary hazards of seaborne commerce and because the owner can
exercise only nominal control over his ‘servants’ once the ship has broken ground for the voyage,
the owner should be entitled to exoneration from liability, or at least to a limitation of liability, for
whatever happens after the ship has passed beyond his effective control. Contrariwise, he should be
held to liability for all loss from his failure to exercise effective control when he had the chance.”37

Therefore, if a shipowner was not “in privity”38 with the act causing the loss, damage or injury,
the owner could, in good conscience, limit his or her liability to the value of the vessel immediately

35 See Gilmore & Black, Ch. X, see Schoenbaum, Ch XIII.
37 Gilmore & Black, § 10-20.
38 See Schoenbaum, § 13-6 regarding a shipowner’s limitation of liability.
after the accident, even though this value may be only scrap value, or the value of a single lifeboat, or nothing at all.

Such was the law for several years until the MORRO CASTLE disaster.

The MORRO CASTLE, a passenger ship, caught fire while bound from Havana to New York. She was beached on the New Jersey coast. One hundred and thirty-five lives were lost and serious injuries were sustained by many of the survivors.

The ship had been completely gutted by fire and had only scrap value. The shipowner could, of course, limit his or her liability to that value. The consequence was that those who suffered serious injury and the next of kin of the dead received practically no compensation.

The unfairness of this situation led Congress, in 1935, to amend the law so as to require, in those cases where the ship’s value after the accident was insufficient to care for all claims and the fund portion available for paying personal injury and death losses was less than $60 per ton for that ship’s tonnage, that the personal injury/death portion of the limitation fund be increased by a sum equal to $60 per ton—this additional amount to be available solely for distribution to death and personal injury claimants. It should be noted that a limitation fund established or supplemented as a consequence of this statute does not benefit claimants seeking recovery for property damage.

In 1984 the statute was again amended, this time increasing the limitation fund sum for death and personal injury claimants to $420 per ton. The tonnage to be used in all cases is the gross tonnage of a motor vessel or the registered tonnage of a sailing vessel.

III. ADMIRALTY JURISDICTION IN THE UNITED STATES

A. Generally

The term “jurisdiction” may be defined as the power of a court to hear and decide a particular case or class of cases. Most of the cases that arise in admiralty concern disputes involving maritime contracts or allegations of admiralty torts (a “tort” is a civil wrong, independent of contract, for which the victim may be entitled to money damages or other relief), and the power to decide these cases are spread among federal and state courts.

As mentioned earlier, in Article III of the United States Constitution, it is specified that the federal judicial power includes the power to decide admiralty cases. Therefore, any case, which truly arises “in admiralty,” may be brought for decision to an appropriate United States District Court. However, federal jurisdiction is not exclusive in admiralty matters, and some types of admiralty cases may be brought in state courts.

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39 For example, a badly damaged vessel thrown onto the beach during a storm may have only scrap value.

40 This was the situation in the American limitation proceeding that followed the stranding and sinking of the oil tanker TORREY CANYON off the southwest coast of England; the value of the lone salvaged lifeboat was $50. In re Barracuda Tanker Corp., 281 F. Supp. 228 (S.D.N.Y. 1968).

41 For example, when the ship sinks and nothing is salvaged.


44 28 U.S.C. § 1333; see Schoenbaum § 1-1.
Two types of suits exist in admiralty: an action *in personam* and an action *in rem*. The action in *rem*, previously discussed in the section on the maritime lien, is a suit brought against the ship itself. In the United States, all actions *in rem* must be brought in an appropriate United States District Court; there is no option to bring such a suit in a state court.\(^\text{45}\)

An action *in personam* is one brought against a named natural person or corporation. An action *in personam*, which arises in a maritime setting, may be brought in an appropriate United States District Court as an admiralty action. Alternatively, the plaintiff may elect to bring the case in an appropriate federal court as an ordinary, non-admiralty, civil action (if other requirements for obtaining federal jurisdiction over the matter are satisfied), or in an appropriate state court as an ordinary civil action.\(^\text{46}\) However, certain admiralty actions *in personam* may be limited by statute to a particular court; for example, an admiralty suit against the United States must be brought only in a United States District Court.\(^\text{47}\)

### B. Cases: Maritime Contracts

Admiralty jurisdiction includes cases arising from contracts of a maritime character. No precise definition has been formulated for the term “of a maritime character.” Generally, any contract to provide goods and services directly to a vessel for the purpose of furthering the vessel’s navigation and operation is considered maritime in character; thus, the crewmember’s contract of employment is maritime, as is a contract to insure, tow, pilot, load or unload a vessel. Other common maritime contracts are ocean bills of lading, charter parties (contracts to lease vessels), and ship repair contracts.\(^\text{48}\)

Interestingly, a contract to build a ship is not considered maritime.\(^\text{49}\) This longstanding principle was grounded in the idea that a vessel did not come into existence until its launching; accordingly, anything occurring before the vessel’s launching was not properly “in admiralty.”\(^\text{50}\)

### C. Cases: Admiralty Torts

The traditional American Rule for determining which torts were “admiralty torts” was one of locality: If the complained wrong occurred upon navigable waters, the tort was within the admiralty jurisdiction.\(^\text{51}\) For most of the tort cases brought before the admiralty side of the federal courts (crewmember’s injuries, passenger and other visitor injuries, and ship collisions), there was no doubt that the cases were properly and logically admiralty matters. However, carrying the

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\(^{48}\) Gilmore & Black, § 1-10; see Schoenbaum § 1-10.

\(^{49}\) *Northern Pacific Steamship Co. v. Hall Brothers Co.*, 249 U.S. 119 (1919); see Schoenbaum § 1-10.

\(^{50}\) “A ship is born when she is launched, and lives so long as her identity is preserved. Before her launching she is a mere congeries of wood and iron—an ordinary piece of personal property—as distinctly a land structure as a house ... [i]n the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction.” *Tucker v. Alexandroff*, 183 U.S. 424, 438 (1901).

\(^{51}\) *The PLYMOUTH*, 70 U.S. 20 (1866); see Schoenbaum § 1-5.
locality rule to its logical extreme, an assault (an intentional tort) by one swimmer on another swimmer in a navigable lake or river was cognizable in admiralty, notwithstanding that the tort had no connection whatsoever to the navigation of vessels or the business of carrying goods and passengers over water.

The American Rule was modified in the case of *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio.* In that case, a small jet taking off from Burke Lakefront Airport in Cleveland, bound for Portland, Maine, struck a flock of seagulls, causing the plane to crash into the navigable waters of Lake Erie. The company sought damages for the loss of the airplane from the owner/operator of the airport and certain persons employed there. Rejecting a pure locality test, the Supreme Court decided there was no admiralty jurisdiction by applying a test of locality plus a maritime nexus:

“[T]he mere fact that the alleged wrong ‘occurs’ or ‘is located’ on or over navigable waters . . . is not of itself sufficient . . . It is . . . require[d] also that the wrong bear a significant relationship to traditional maritime activity.”

While a transoceanic passenger flight arguably bears a significant relationship to traditional maritime activity because it performs a function traditionally accomplished by a ship, a flight between two points in the continental United States does not demonstrate this linkage; thus, the case was dismissed.

In a subsequent case, the court ruled that the phrase “traditional maritime activity” was not restricted to maritime commerce, and sustained admiralty jurisdiction over a tort lawsuit arising from the collision of two pleasure boats on a navigable river in Louisiana. Two later Supreme Court decisions further refined these jurisdictional principles. That is, in *Sisson v. Ruby,* the Court further articulated the jurisdictional standard that the incident must have had a potential impact on maritime commerce, which is based on the general nature of the activity involved. To determine that potential impact, the relevant activity must be considered as well as whether that activity has a substantial relationship to traditional maritime activity. Further, in *Jerome B. Grubart, Inc. v. Great Lakes Dredge and Dock Co.,* when finding jurisdiction over land-based injuries caused by a vessel in navigable waters, the Court reaffirmed its earlier holdings and also directed that such a maritime tort must involve a vessel.

Another thorny problem with determining which torts were within admiralty was addressed by Congress with the passage of the Admiralty Jurisdiction Extension Act. This statute extended admiralty jurisdiction to situations in which a tort is caused by a vessel on navigable waters but the damage or injury is consummated on land; examples would include a heaving line being negligently thrown from a vessel to a quay and striking a bystander or the windshield of a car, a

52 409 U.S. 249 (1972); see Schoenbaum § 1-5.
vessel negligently alliding with a wharf or pier (traditionally viewed as an extension of the land), and a carrier-based aircraft dropping a bomb and causing damage ashore.58

IV. ADMIRALTY SUITS BY OR AGAINST THE UNITED STATES

There has never been any difficulty about the government bringing suit against others in admiralty matters; however, at one time private persons had no legal remedy against the United States for damages caused by government vessels.

This was the result of the doctrine of sovereign immunity that the United States inherited from Great Britain. Under this doctrine “the King can do no wrong.” As the government had not given its consent to be sued in admiralty cases, the natural consequence of this lack of a judicial remedy was that Congress was burdened with numerous bills for the relief of private persons who had been injured by the negligent operation of government vessels.

In 1920 Congress passed the Suits in Admiralty Act,59 which provided that, while government merchant vessels would be exempt from seizure or arrest, an action in personam could be filed against the government for any case in which a like proceeding in admiralty could be maintained if the government vessel were, instead, privately owned.

The Suits in Admiralty Act covered only merchant vessels of the United States and there was still no waiver of sovereign immunity with respect to public vessels. All naval vessels are public vessels of the United States.

The Act that governs suits against the United States for damage caused by its public vessels is the Public Vessels Act.60 This 1925 statute permits an action in personam to be brought in admiralty against the United States for damages caused by public vessels. Like government merchant vessels, public vessels of the United States are exempt from seizure or arrest.

The net result is that government vessels of all kinds, public and merchant, are now subject to similar liabilities as commercial vessels, with the exception that arrest, seizure, or the existence of a maritime lien against a government vessel is not allowed. The personal credit of the United States is substituted for the security that arrest or a lien affords.

V. ADMINISTRATIVE SETTLEMENT OF ADMIRALTY CLAIMS

While the Public Vessels Act allowed suit against the government for damages caused by a naval vessel, it made no provision to enable the Department of the Navy to settle these cases administratively.

Before 1944, the Navy had a very restricted authority to settle admiralty claims administratively. Settlement could be accomplished only if the claim did not exceed $3,000. This

58 In a case of first impression, a court ruled that the Admiralty Jurisdiction Extension Act (AJEA) applied to an F/A 18 fighter attack jet that errantly dropped a bomb on a training range on the island of Vieques, Puerto Rico, in April 1999. Gary L. Anderson v. United States, 245 F.Supp 2d 1217, (M.D. Fl. 2002). The F/A 18 jet was launched from USS JOHN F. KENNEDY (CV 67) at sea and was under the control of the ship. The court held that a carrier-based aircraft was, in fact, an appurtenance to the ship and therefore, the damage ashore was caused by a vessel on navigable waters and met the admiralty jurisdiction test.


60 46 U.S.C. §§ 781-790; see Schoenbaum § 17-1.
was useless in settling anything other than very minor claims. Hence, most of the Navy’s admiralty business was placed into litigation where it was either settled by the Department of Justice or actually tried in the federal courts.

The great increase of naval activity in World War II, with the resultant increase of admiralty business, induced Congress in 1944 to authorize the Secretary of the Navy to settle admiralty claims against the United States in amounts up to and including $1,000,000. The Secretary was granted corresponding authority to settle the government’s claims for damage to naval property caused by vessels or floating objects. Currently, the Secretary of the Navy is authorized to settle affirmative and defensive administrative admiralty claims in amounts up to and including $15,000,000.

The authority and procedures for the administrative settlement of admiralty claims are discussed in detail in Parts C and D (§§ 1212-1224) of the Manual of the Judge Advocate General of the Navy [JAGINST 5800.7c or JAGMAN], Chapter 12, which is included in this NRTC following the text.

The remainder of this course presents a brief discussion of the substantive law that is applied by the adjudicating attorney (or by the trial judge) in evaluating an admiralty claim (or in deciding a lawsuit).

VI. PERSONAL INJURY CLAIMS

A. Proper Claimants

Under the Public Vessels Act, the United States may be held liable for “damages caused by a public vessel of the United States.” Early cases interpreting that phrase concluded that relief was appropriate only in those cases involving property damage. However, in American Stevedores, Inc v. Porello, the Supreme Court decided conclusively that, under the Act, the United States could be held liable for personal injuries occurring on public vessels.

Of course, a wide variety of persons may suffer injuries while on board a naval vessel, and not every victim is entitled to relief under the Public Vessels Act. As far back as 1928, a Federal Appeals Court reasoned that the system of benefits provided by the government indicated a congressional intent not to permit suits by naval personnel for death or injuries sustained on a public vessel. Under the well-known doctrine of Feres v. United States, the United States may not be held liable for injuries to servicemembers that occur incident to their service. This doctrine has been extended to cases arising in admiralty under the Public Vessels Act. Because the payment of an administrative claim is permitted only in cases in which the legal liability of the

61 58 Stat. 596 (1944); the current codification of this authority is found at 10 U.S.C. § 7622, see Schoenbaum § 18-4 for an overview of maritime arbitration issues.
62 59 Stat. 596 (1945); the current codification of this authority is found at 10 U.S.C. § 7623.
65 330 U.S. 446 (1947).
66 S 51 - CITY OF ROME, 27 F.2d 807 (2nd Cir. 1928).
68 Charland v. United States, 615 F.2d 508 (9th Cir. 1980); Beaucoudray v. United States, 490 F.2d 86 (5th Cir. 1974).
United States would be the probable outcome of litigation, this doctrine bars payment of administrative claims seeking money damages for injuries sustained by servicemembers incident to service on naval vessels.

Similarly, civil service officers and crewmembers that work on Military Sealift Command (MSC) vessels cannot maintain suit against the United States for personal injuries suffered thereon. These persons are, of course, employees of the United States, and as such are limited to the benefits and remedies prescribed in the Federal Employees Compensation Act.69 Their rights, therefore, are substantially different from the merchant crewmembers that work on MSC vessels operated by private contractors pursuant to contracts with MSC. These individuals enjoy the usual rights of merchant crewmembers in case of injury or illness, including the right to bring suit against their employer for wages, maintenance and cure, and compensation for personal injury. Although the United States is not the direct employer of these individuals, it has been determined that the United States, as shipowner, is a proper defendant in such a personal injury action.70

Generally, the injured party in the admiralty claims adjudicated by the Navy will fit into one of two broad categories: “shorworker” (a person onboard the naval vessel to accomplish work pursuant to a contract between the Navy and a civilian firm) and “ship’s visitor” (a person onboard the naval vessel for any other reason, including general visitors, special tour guests, salesmen, and individual crewmember guests).

B. Visitor Injury Cases

Liability of the United States in a visitor injury case occurs when the government fails in its duty, as a shipowner, to exercise reasonable care to provide for the safety of the visitor.71 Application of the Kermarec standard to Navy ships has been judicially recognized.72 A similar standard that applies to all naval activities is set forth in Article 0810(1), United States Navy Regulations, 1990, which requires the exercise of “. . . reasonable care to protect the persons and property of visitors.” The following cases provide examples of how the United States, through the actions or inaction of naval personnel, breached this duty and, accordingly, paid damages to the injured victims:

1) The aft brow of USS STARK (FFG 31) collapsed during public visiting hours in Chicago, causing serious injuries to two elderly women who were on the brow at the time of its collapse. Crewmembers on USS STARK had been negligent in using an undersized platform on which to rest the pier-side end of the brow, in failing to rig safety chains or some other apparatus that might have prevented the collapse, and in failing to inspect the aft brow for susceptibility to collapse when the forward brow (which was mounted on a platform twice as large) was noted to be in danger of rolling off its platform shortly before the aft brow rolled off its platform. A total of $200,900 was paid to the two claimants in settlement of their claims.

2) An elderly gentleman, attending a change of command ceremony onboard USS RANGER (CV 61), tripped at an uneven place in the deck (a lip ranging from 2 to 3 3/4 inches at the aircraft elevator number one door well). He fell, struck his face on the nonskid deck, and sustained serious facial injuries. Crewmembers were negligent in failing to correct the uneven deck at the aircraft

70 ELNA II - MISSION SAN FRANCISCO, 289 F.2d 237 (3d Cir. 1966).
71 Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959); see Schoenbaum § 3-5.
elevator number one door well. Alternatively, if the condition were not correctable, they were negligent in failing to erect a rope barrier or to mark the hazard with yellow caution stripes or other peculiar markings so the lip in the deck would not blend in with the rest of the dark gray deck. The Navy paid the claim for the victim’s medical expenses.

(3) The mother of a USS AMERICA (CV 66) crewmember was visiting the vessel after sunset. From the end of the brow, it was necessary to step down on two steps and a pallet before arriving on deck. Unlike the brow itself, there was no handrail alongside these final steps to assist the visitor. Furthermore, there were no signs warning of the descending steps, no assistance was offered to the victim by personnel on watch at the quarterdeck, and the quarterdeck area was lighted with only a single 20-watt light (normal lighting of the brow and quarterdeck was burned out or not yet installed). Not surprisingly, the victim misstepped from the brow and fell, breaking her ankle. Ship’s personnel had not exercised reasonable care for her safety, and the United States paid $15,000 in settlement of her claim.

(4) A salesman visiting USS EISENHOWER (CVN 69) slipped and fell in a passageway while being escorted to a supply office. One side of the passageway deck was being stripped of wax at the time, and, because of a slight list by the ship, some rivulets of stripper ran over onto the otherwise dry side of the passageway. The escorting petty officer gave a general warning to “watch your step” as he preceded the salesman through the passageway, but the salesman slipped on the rivulets of stripper. The crewmembers were negligent in allowing the “dry” side of the passageway to become dotted with rivulets of the very slick stripper, and in failing to provide a warning that would be adequate to alert the salesman to the nature and extent of the hazard. The government paid a judgment of over $14,000.73

While a duty is imposed to exercise reasonable care, a shipowner is not an insurer of the safety of visitors.74 A shipowner will not be held liable for unforeseeable injuries; accordingly, the United States was held not liable in Cobb75 (a guest onboard USS MEREDITH (DD 890) was injured when the ship, then underway, was struck by an unforeseen “freak wave”) and Sherman76 (an 11-year-old boy was pushed out of a gun tub by another boy during public visiting onboard USS PORTAGE (PCE 902)).

Furthermore, a shipowner does not guarantee an accident-free ship.77 Indeed, any shipowner, including the United States, knows that a vessel will, of necessity, have appurtenances, protuberances, and structural conditions that may be hazardous to visitors unfamiliar with them. In determining whether the United States has breached its duty of reasonable care when a visitor suffers an injury as a result of a shipboard condition, a court will examine the nature of the particular hazard (is it “open and obvious” or is it hidden from view) and the nature and extent of given or other measures taken in an attempt to negate the potential for harm. As a general rule, the more “open and obvious” a hazard is, the less a duty is placed on the shipowner to warn of the hazard and undertake steps to mollify it.

75 471 F. Supp. 102 (M.D. Fla.1979).
In *Esau v. United States*, the plaintiff fell after stepping into a 1.5-inch deep, 11-inch wide scupper running adjacent to the deck plating of USS *Chicago* (CG 11). The court noted that the condition should have been obvious, as it existed along a topside deck during daylight hours, even though it was not painted a contrasting color from the rest of the deck. Furthermore, the ship had taken the following precautions to ensure the safety of “Visitor’s Day” guests: posted warning signs to “watch your step” and “watch your head” in a number of places throughout the tour route, verbally instructed visitors at the outset of the tour to exercise care and caution in walking about the ship, and stationed crewmembers throughout the tour route to act as guides and to correct any hazardous conditions brought to their attention. The court decided the United States had not breached any duty to the plaintiff, and dismissed her suit. Likewise, in *Owens v. United States*, the court denied recovery to a plaintiff who injured himself when leaping from the *USS Brunswick* (ATS 3) accommodation ladder into the well of the ship’s motor whale boat, instead of using the available services of three Sailors stationed on the gunwale of the motor whale boat to assist visitors in descending the ladder and boarding the boat.

**C. Shoreworker Injury Cases**

In a general sense, the United States, as a shipowner, owes the shoreworker the same duty of reasonable care to provide for his or her safety as is owed to any visitor to the vessel. Traditional common law distinctions between business invitees and other guests were expressly rejected by the Supreme Court in *Kermarec*. Notwithstanding this, courts have attempted to define with particularity the duty of a vessel owner to the employees of an independent contractor hired to perform work aboard the vessel, although commentators may differ on whether the more particular standards are clearer than the general standard of reasonable care applicable in ship’s visitor cases not involving shoreworkers.

As an initial matter, shoreworkers have available to them the benefits provided pursuant to the Longshore and Harbor Workers’ Compensation Act. Under this statute, any firm whose employees are employed, in whole or in part, upon the navigable waters of the United States or on any pier, wharf, terminal or other adjoining area customarily used for loading, unloading, building or repairing a vessel, is obligated to maintain workmen’s compensation coverage in specified amounts for its employees. If an employee is then injured (or killed) in a work related accident, the compensation program is the exclusive remedy of that employee vis-à-vis his or her employer; the firm is immune from suit, even if the employer’s negligence, or the negligence of some fellow employee of the same firm, caused the employee’s injury (or death). However, as against the ownerof the vessel on which the employee was working at the time of the accident, the employee may recover if he or she can demonstrate that negligence attributable to the vessel was a proximate cause of the accident.

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80 358 U.S. at 630-32, see Schoenbaum Ch. V.
82 33 U.S.C. § 904.
84 33 U.S.C. § 905(b).
The Supreme Court set forth the duty of a vessel owner to a shoreworker in *Scindia Steam Navigation Company, Ltd. v. De Los Santos.*\(^85\) As a starting point, the duty of exercising reasonable care toward shoreworkers entails having the ship and its equipment in such condition that the experienced shoreworker will be able to come aboard and conduct his or her work with reasonable safety to persons and property.\(^86\) If there are hazards onboard the ship that are known to the vessel owner or crew, or which should be known to them in the exercise of reasonable care, and which are likely to be encountered by the shoreworker, then the vessel owner has the obligation to warn the shoreworker of the hazard.\(^87\) Again, as with other ship visitor cases, if the shipboard hazard would be open and obvious to a reasonably competent shoreworker, there is no duty to warn. If a vessel owner fails in this “duty to provide a reasonably safe working place,” the owner is liable to the shoreworker for resulting injury (or death). Thus, the United States paid the claim of a shoreworker injured in a fall down a steep ladder leading into the fireroom of USS *GUADALCANAL* (LPH 7), where the worker was engaged in ship repairs. Near the top of the ladder, crewmembers were cleaning a deck with soapy water, through which the worker walked before beginning to descend the ladder. The presence of soapy water on the deck in a well-lighted space arguably would constitute an open and obvious hazard about which there is no duty to warn and against which the competent shoreworker should take precautions, and were that the only alleged negligence recovery might have been denied. However, other crewmembers had been working on the ladder and had cleaned and left bare every other tread of the ladder in anticipation of the application of new nonskid pads. Unfortunately, the new nonskid pads had not yet been applied and no warnings were posted of this unquestionably hazardous condition, which was a proximate cause of the claimant’s injuries.

As a general rule, the vessel owner has no obligation to supervise and inspect the shoreworker’s activities for the purpose of discovering dangerous conditions that may develop as a result of those activities. Once the shoreworker is in control of the workspace or equipment, the shipowner is entitled to rely on the shoreworker’s expertise and duty to care for himself or herself, and if an accident occurs, the shipowner ought not be held liable.\(^88\) Of course, the vessel owner could, pursuant to contract provisions, undertake a duty to supervise and inspect shoreworker activities, but this would be unusual as it would markedly increase the shipowner’s liability exposure. Similarly, the vessel owner’s liability exposure will be increased if the owner or crewmembers exercise “active involvement and control” over the independent contractor operations; that is, control over the operative detail and actual methods of work used by the shoreworker, regardless of whether such control is permitted under the terms of the contract.\(^89\) The United States frequently reserves the right to approve the quality of a contractor’s workmanship in completing each item of the contract before accepting that item as conforming to the contract specifications. However, the mere reservation of a right to inspect and approve the work of an independent contractor does not subject the United States to the markedly increased liability exposure mentioned above.\(^90\)

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\(^85\) 451 U.S. 156 (1981).

\(^86\) *Id.* at 167.

\(^87\) *Id.* at 172.

\(^88\) *Taylor v. Moram Agencies*, 739 F.2d 1384 (9th Cir. 1984); *Cowsert v. Crowley Maritime Corp.*, 680 P.2d 46 (Wash. 1984).

\(^89\) *West v. United States*, 361 U.S. 118 (1959); *Williams v. Fenix & Scisson, Inc.*, 608 F.2d 1205 (9th Cir. 1979).
The Supreme Court in *Scindia* did create one exception to the general rule that a shipowner has no duty to intervene in a shorworker’s operations: If the owner has actual knowledge of a dangerous condition, and knows that the shorworker is continuing to work despite the unreasonable risk of harm presented, and cannot reasonably expect that contractor personnel will remedy the situation, then a duty to intervene arises. Thus, the Navy paid the claim of a shorworker who was injured in an explosion onboard USS *JUNEAU* (LPD 10). The claimant, a welder, and the ship’s force firewatch assigned to the claimant reported that a temporary exhaust blower in the vicinity of the welding operation was not effectively removing smoke and fumes generated by the hotwork. A “safe for hotwork” certificate had been posted in the space where the welding operation was ongoing; however, the certificate was a number of days old and no inspection had been conducted by the contractor’s gas free engineers during the intervening period between the date of the certificate and the date of the explosion, despite a contractual obligation to conduct such inspections. All of these facts were known to members of the ship’s crew. Under these circumstances, where a hazardous condition existed and continuation of work was obviously improvident, the Navy, as the shipowner, had a duty to intervene. Failing in that duty, the government was liable to the claimant.

In summary, government liability in shorworker injury cases may arise when the government breaches the duty of reasonable care it owes to the shorworker (1) by failing to provide a reasonably safe place to work, (2) by failing to intervene in shorworker activities once a dangerous situation is made known to the shipowner (and other conditions necessary to create a duty to intervene are present), or (3) by failing to inspect and discover hazardous situations if a duty of inspection and supervision exists because of contract provisions or active involvement and control in the contractor’s operations.

VII. PROPERTY DAMAGE: ALLISION CLAIMS

Perhaps the most common property damage claim in admiralty is the allision claim. An allision occurs when a moving vessel strikes a stationary vessel or structure. Not unexpectedly, the law applied in such cases is weighted heavily in favor of the stationary vessel or structure; a presumption of fault on the part of the moving vessel exists when an allision occurs. To rebut this presumption, the moving vessel must show that it was faultless, or that the allision was occasioned primarily through the fault of the stationary object or was the result of inevitable accident.

The Navy routinely handles numerous allision claims, both by and against the United States, in cases involving moving vessels striking piers, bridges, buoys, and other vessels that are anchored or moored. For example, USS *JOHN HANCOCK* (DD 981) allided with a buoy in the approaches to the Humber River, England, causing severe damage to the buoy. A presumption of fault existed on the part of the ship, so the adjudication of the claim focused on possible evidence that might rebut the presumption. The allision occurred during clear visibility approximately 1 hour after sunrise. The buoy’s lights had been properly working in the twilight period before sunrise (when lookouts initially spotted the buoy visually); so it could hardly be said that the allision was primarily due to fault on the part of the structure. The ship was contending with a 25 knot wind, virtually perpendicular to her intended track, which was causing the vessel to be set toward the left side of the channel, but the otherwise satisfactory weather conditions were not so severe or

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91 451 U.S. at 175-176.

92  The *OREGON*, 158 U.S. 186 (1895), see Schoenbaum § 12-1.

93  *Carr v. Hermosa Amusement Corp.*, 137 F.2d 983 (9th Cir. 1943), *cert. denied*, 321 U.S. 764 (1944), see Schoenbaum § 12-3.
unusual as to constitute a “force majeure” or an “Act of God” that might have exonerated the vessel and rendered the occurrence an unavoidable or inevitable accident. In short, the ship had ample time, power, and clear water to pass the buoy safely in the channel (upwind of the buoy) or, if the set made it apparent that a successful upwind passage was unlikely, then to pass the buoy downwind and regain the channel following the passage. Since no evidence existed to exculpate the ship, the presumption of fault remained intact and the Navy paid the claim for the damaged buoy.

VIII: COLLISION CLAIMS: PROPERTY DAMAGE AND BODILY INJURY AND DEATH

A collision involves damage resulting from contact between two or more vessels, one of which is moving at the time of impact. Major claims against the United States that arise from collisions may be settled in the administrative claims process.94 Alternatively, they can be litigated in the U.S. Courts under the provisions of the Suits in Admiralty Act [“SIAA”]95 and the Public Vessels Act [“PVA”].96 Claims can involve hull damages as well as injury and death claim. Often, additional items are involved, such as lost profits or loss of use, pollution clean-up expenses, wreck removal, lost wages, cargo damage, survey fees, and crew repatriation expenses.97

The legal regimes governing the operation of vessels are primarily the International Rules for Preventing Collision at Sea, 1972 [“72COLREGS”]98 and the Inland Navigation Rules, 1980 [“Inland Rules”].99 The 72 COLREGS were developed by the Inter-Governmental Maritime Consultative Organization [“IMCO”], now known as the International Maritime Organization [“IMO”]. The 72 COLREGS generally control navigation on the high seas. The Inland Rules, 1980100 replaced the former Inland Rules, Western Rivers Rules, Great Lakes Rules, their respective pilot rules and interpretative rules as well as portions of the Motorboat Act of 1940. The old 19th century rules were a confusing patchwork of requirements that have been simplified by the Inland Rules which apply in the internal waters of the U.S.101

All U.S. flag vessels are required to comply with the 72 COLREGS102 and sanctions may be imposed by U.S. Courts against the owner or operator for failure to conform.103 Admiralty Courts strictly construe the 72 COLREGS.104

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94 JAGMAN, Chapter 12.
100 33 U.S.C. § 1603.
101 Healey & Sweeney, supra, at 8.
104 Gilmore & Black, § 7-3.
Like the 72 COLREGS, the Inland Rules are strictly construed by admiralty courts and compliance is mandatory. The operator who fails to adhere is subject to a civil penalty including a fine not to exceed $5,000 for each violation.\textsuperscript{105}

Fault is the basis of collision liability.\textsuperscript{106} The concept of no-fault liability is inapplicable in maritime collision law.\textsuperscript{107}

When two or more ships are involved in collision, they share the damages in proportion to the relative fault of each vessel.\textsuperscript{108} The 72 COLREGS and the Inland Rules provide much of the guidance for evaluating the conduct of the vessels’ relative fault. The U.S. Courts, however, have announced a number of presumptions of fault that govern many common situations.\textsuperscript{109}

The Rule of the Pennsylvania is the leading presumption of fault applied in collision and other maritime tort cases. The U.S. Supreme Court ruled in \textit{The Pennsylvania},\textsuperscript{110} that a ship that has violated a safety statute designed to minimize the risk of collision is presumed to be at fault unless it can prove that the violation could not have contributed to the casualty, not merely that the statutory violation did not cause the collision in this case. This is nearly an insurmountable burden. The Rule of the Pennsylvania is applied to large and small faults [major and minor] alike.\textsuperscript{111} Most collisions are “both-to-blame” cases with fault attributable to both vessels. Fault is allocated under the \textit{Reliable Transfer}\textsuperscript{112} rule in proportion to the culpable fault of each vessel. Sole fault collisions are rare occurrences,\textsuperscript{113} although one such situation is discussed below.

Importantly, the ship’s records and documents must be preserved.\textsuperscript{114} The unexplained failure to comply with a request for the production of a log-book, bell book, or other material record, like an unexplained failure to call a material witness within a party’s control, will give rise to an unfavorable inference.\textsuperscript{115} Likewise, rough notes, photographs, videotapes, audiotapes, and the like should be preserved as well as electronic chart display and information systems (“ECDIS”) and other electronic and computer-based records of events surrounding the collision.\textsuperscript{116} More troublesome are alternations in logbooks. In the leading case on this subject, \textit{The Chicago–The Silverpalm},\textsuperscript{117} the Ninth Circuit stated the rule as follows: “The alternation of log books by

\textsuperscript{105} 33 U.S.C. § 2072.

\textsuperscript{106} Healey & Sweeney, \textit{supra}, at 40.

\textsuperscript{107} \textit{Id}.

\textsuperscript{108} \textit{United States v. Reliable Transfer Co.}, 421 U.S. 397 (1975).

\textsuperscript{109} Healey & Sweeney, \textit{supra}, Chapter Two, § A.

\textsuperscript{110} 86 U.S. 125 (1874).

\textsuperscript{111} Healey & Sweeney, \textit{supra}, at 40-43.

\textsuperscript{112} 421 U.S. 397 (1975).

\textsuperscript{113} Healey & Sweeney, \textit{supra}, at 303-36.

\textsuperscript{114} Healey & Sweeney, \textit{supra}, at 55-56.

\textsuperscript{115} \textit{Cary-Davis Co. v. United States}, 8 F.2d 324 (1925); Griffin, \textit{On Collision} 636-37; Healey & Sweeney, \textit{supra}, at 55-56.

\textsuperscript{116} Healey & Sweeney, \textit{supra}, at 55-56.

\textsuperscript{117} 94 F.2d 754 (9th Cir. 1937).
erasure and substitution . . . has long been condemned in courts of admiralty. It not only casts suspicion on the whole case of the vessel, but creates a strong presumption that the erased matter was adverse to her contention.” If an error has been made in a logbook or some other record, it should be corrected by drawing a line through the erroneous words in such a manner as to leave the erroneous language legible.

Ships involved in collision are required by statute to render necessary assistance to save persons from danger caused by the casualty, so far as can be done without serious danger to the vessel or those on board. The masters of vessels involved in collisions are required to provide their names, addresses and identification of the vessels to the other ship’s master, injured parties and owners of any damaged property.

Government investigations often follow major incidents. Some investigations may be inadmissible but generally the statements of the witnesses, both written and oral are admissible. NAVY JAG practice is to request a litigation report in addition to any other investigation where there is a possibility of litigation. The litigation report investigating officer should prepare written notes based on the officer’s interview of the witnesses rather than having the witnesses prepare written statements.

One case involving a U.S. warship that was found free from fault was In the Matter of Ta Chi Navigation (Panama) Corp., the USS DAHLGREN (DDG-43) collided with M/V EURYBATES near the entrance to the Panama Canal. DAHLGREN was the privileged vessel in a crossing situation, governed by the former Rules of the Road. The Court, applying the navigation rules in effect before the 72 COLREGS, cast EURYBATES in sole fault for failing to “give way” [Under the former rule EURYBATES was the “burdened vessel,” now known as the “give way vessel,” while DAHLGREN was the “privileged vessel,” now known as the “stand-on vessel.”]. The Court noted that EURYBATES was required to keep out of DAHLGREN’s way, to avoid risk of collision crossing ahead of the naval vessel, and to take positive, early action to avoid the risk of collision. [Rules 15 and 16, 72 COLREGS]. Additionally, EURYBATES was faulted for failure to maintain a proper lookout. [Currently, Rule 5, 72 COLREGS]. DAHLGREN was exonerated because the

118 94 F.2d at 762.
119 The Eureka, 84 F2d 496 (9th Cir. 1936).
121 Healy & Sweeney, supra, at 56-57.
122 Consider the records of the Article 32 hearing and National Transportation Safety Board Investigation into collision between F/V EHIME MARU and USS GREENEVILLE off Pearl Harbor on 9 February 2001. U.S. Coast Guard investigations also may occur when one of the vessels involved in a U.S. flag ship or one of the persons involved is operating under a U.S. Coast Guard document or license (ship’s officer or pilot).
123 NTSB reports of investigation generally are inadmissible. Chiron Corp. v. NTSB, 198 F.3d 935 (D.C. Cir. 1998). A recent amendment provides that U.S. Coast Guard investigation reports are no longer admissible, altering the former general rule that facts were admissible while opinion or conclusory evidence was inadmissible. 46 U.S.C. § 6308. Nevertheless, currently, the underlying evidence may be discoverable and admissible.
125 728 F.2d 699 (5th Cir. 1984).
Court found she had a proper lookout visually and by radar, and had displayed the proper navigation lights and had acted correctly under the then-prevailing rules. During the course of the litigation the United States settled with the owner of the damaged cargo carried in EURYBATES. This is commonly done because both ships often are found at fault and the non-carrying vessel, here DAHLGREN, would have to pay innocent cargo’s full damages even if DAHLGREN were found only one percent at fault.126 Because DAHLGREN was exonerated, jeopardizing the government’s right to recover contribution for the payment to EURYBATES’s cargo, the court required EURYBATES to indemnify the United States for the entire payment to cargo under the doctrine of equitable subrogation.

More recently, in National Shipping Company of Saudi Arabia, Limitation Proceedings,127 the Court ruled that evidence of training and competence level of crew members of USS ARTHUR W. RADFORD (DD-968) was not relevant where the United States did not petition for limitation of liability and did not deny responsibility for the collision.128 The Court, however, ruled “evidence of the training and test results of [SAUDI RIYADH’s Third Mate] is admitted for the sole purpose of establishing whether the limitation plaintiffs [NSCSA] will be subject to full liability or limited liability for the negligence of its crew.”129 At trial, the Court found both ships responsible, allocated fault 65% to SAUDI RIYADH and 35% to ARTHUR W. RADFORD, but granted NSCSA’s petition for limitation of liability.

As a shipowner, the United States has the right to petition for limitation of liability under the 1851 Limitation of Liability Act.130 Under that venerable statute a shipowner may seek to limit its liability for damages to the post-casualty value of the ship.131 This is particularly appropriate in cases of multiple claims exceeding the post-casualty value of the vessel, but this procedure rarely can be employed in the case of most U.S. warships that have values often exceeding one billion dollars. To establish its right to limitation, the shipowner must prove: a) the cause or causes of the damage, and b) the fact that those causes were beyond “its privity and knowledge.” Limitation, which is disfavored by the courts, is granted in fewer than half of the cases where it is sought and generally denied where “shoreside management” is aware of the faults that give rise to the casualty.132

IX. PROPERTY DAMAGE: OTHER CLAIMS

Any loss, damage or destruction of property, afloat or ashore, which occurs incident to the operation of a naval vessel, may result in an admiralty claim against the United States. Similarly, any damage caused to Navy property by a privately owned vessel or floating object may result in an affirmative claim by the government against the offender. The Navy processes admiralty claims for

126 The Atlas, 93 U.S. 302 (1876).
127 84 F.Supp 2d 716 (E.D. Va 2000).
128 Id. at 773.
129 Id. at 775.
130 46 U.S.C. § 181 et seq.
131 Healy & Sweeney, supra, at 385-97.
132 Healy & Sweeney, supra, at 389-93.
property damage resulting from a wide variety of incidents other than allisions and collisions, but the most common are claims arising from damage to fishing nets or lines and claims arising from wake damage.

A. Net Damage Cases

Traditionally, fishermen have been recognized as favored in admiralty and their economic interests receive the fullest possible legal protection. When a fisherman suffers damage to fishing lines or nets as a result of another’s negligence, he may recover from the offending party not only the cost of repairing or replacing the damaged or destroyed property but also the estimated value of his lost or diminished catch. Naval vessels that become involved in net damage cases include ships, submarines, small boats, and amphibious vehicles; amphibious landing operations seem to be a particularly fertile source of these claims, with the damage being caused both by landing craft and by special operations personnel.

Provisions of 72 COLREGS or the Inland Rules usually apply in these cases, particularly Part C (Lights and Shapes), Rule 5 (maintaining a proper lookout), Rules 9 and 10 (concerning the privileges of a vessel operating in a narrow channel or in accordance with a traffic separation plan, and the obligation of fishing vessels not to impede the use of the channel), and Rule 18 (responsibilities between vessels when special circumstances are present, such as a vessel restricted in its maneuvering ability). The circumstance that most frequently results in a determination of Navy liability for net damage is the failure of the lookout to see or appreciate the significance of lights or dayshapes on a vessel indicating fishing or trawling in progress, or to see floats or buoys in the water indicating the presence of fishing lines or nets. When claims for net damage are denied, the reason usually is the failure to show proper lights or dayshapes on the fishing vessel, the failure to secure floats or buoys adequate to indicate the presence of a fishing line or net in the water, or the presence of the lines or nets in navigation channels or other prohibited areas.

B. Wake Damage Cases

The force of a vessel’s wake can cause property damage or personal injury, or perhaps both. The Navy has paid property damage claims to owners of boats thrown onto sandbars and shoals, and to owners whose vessels were slammed against piers, as a result of naval vessel’s wake, and personal injury claims to occupants of such craft. Similarly, the Navy has paid claims to the owners of piers and other shoreside property when wakes have caused property damage.

A vessel causing damage or injury to another vessel or its occupants, or to a shoreside structure, as a result of its wake will be held responsible for any failure to appreciate the reasonable effect of the vessel’s speed and motion through the water at the particular place and under the particular circumstances where the incident occurred. The vessel’s officers and crew are obligated to note the presence of others who might reasonably be affected and to take all reasonable precautions to avoid causing harm. It is no defense that a vessel was proceeding at its customary speed at the time of the incident. Balanced against the rule of GEORGIE MAY is the principle that a moving vessel is not an insurer against all damage resulting from its wake, but rather is liable only for damage or injury caused by unusual swells or suction.

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133 The DEL RIO, 209 F.2d 178 (9th Cir. 1953).
Liability of a vessel is established upon a showing that the alleged damage was caused by a wake, that the wake was created by the passing vessel that is being charged with responsibility, and that the damaged vessel was able to withstand the effects of ordinary swells and hydraulic suction, either by virtue of being properly moored or anchored, or, if the damaged vessel was underway at the time, by virtue of its general seaworthiness. Once these facts have been established, the offending vessel can absolve itself of fault only by showing that it was powerless to prevent the damage or injury by adopting any practical precautions, a result difficult to achieve since usually one of the precautionary measures available to the moving vessel is to reduce its speed, thereby reducing the size and effect of its wake.

An example of the analysis used in a wake damage case may be found in the claim of the owner of the boat TUCY, which was sunk by the wake of USS ATLANTA (SSN 712). The incident occurred approximately 4 nautical miles off Virginia Beach while the submarine was outbound on the surface in the southeast separation channel at a speed of 16 knots. The operator of TUCY, then on a pleasure voyage, decided to close the submarine to get a better view of it. At a position about 300 yards abeam of the submarine, TUCY was struck by the submarine’s wake, and the boat sank shortly thereafter. Notwithstanding that the submarine’s speed was considered ordinary in view of its location at sea in a major shipping lane (rather than in a harbor or other “close quarters” situation), the government did not escape liability for the accident. Members of the submarine’s crew denied noting the presence of TUCY, notwithstanding calm seas and clear weather. Under these circumstances, a court likely would have found a presumption of fault on the submarine’s part for failing to maintain a proper and vigilant lookout. Having violated a navigation rule, the United States would then have the burden of proving that USS ATLANTA’s violation was not and could not have been a contributing cause of the incident (the PENNSYLVANIA Rule), a result considered unlikely since awareness of the presence of other vessels and then taking all reasonable precautions to avoid damage are the indicia of innocence in wake damage cases. Of course, the operator of TUCY was not blameless, as he elected to navigate TUCY to within approximately 300 yards of a submarine when the prudent action would have been to open the distance between his craft and the much larger vessel. This comparative negligence of the operator of TUCY reduced his recovery by 50%.

X. MARITIME ENVIRONMENTAL LAW

In recent decades, awareness of environmental issues, both domestically and internationally, has been high. Dramatic incidents, such as the grounding of the EXXON VALDEZ in Alaska in 1989, have also spurred public awareness and spawned new legislation in the United States.

137 Rule 5, 72 COLREGS; Circle Line Sightseeing Yachts v. City of New York, 283 F.2d 811 (2d Cir. 1960).
138 86 U.S. 125 (1874).
139 The vessel was carrying 53,000,000 gallons of crude oil when it went aground in Prince William Sound. More than 10,000,000 gallons were spilled into the waters of the Sound affecting more than 1,300 miles of shoreline, making it the “worst oil spill disaster in the nation’s history.” C. de la Rue & C. Anderson, Shipping and the Environment, 55 (1998).
While U.S. Navy vessels are not subject to the full range of international treaties and domestic statutes, as will be discussed below, nonetheless certain general principles should be stated. That is, whether by statute or policy, public vessels of the United States are by and large subject to the same rigorous requirements concerning the protection of the environment as are merchant vessels. Further, as opposed to most areas of naval operations, which are carried out with little or no interference by other federal, state, or local governmental entities, in the environmental arena, those non-Navy authorities have a role, which at times can be critical. Similarly, while the statutory scheme concerning public vessels generally jealously guards certain traditional tenets of sovereign immunity (e.g., a public vessel may not be arrested to provide security for a maritime claim), in the environmental area, such is not the case: a fine imposed by a state, local, or other non-Navy federal entity may well be recognized and paid.

The examination of the full range of treaty, statutory, and regulatory provisions concerning the environment is beyond the scope of this nonresident training course. However, certain references are appropriate.

The primary source to consult is OPNA VINST 5090.1B, encaptioned Environmental and Natural Resources Program Manual. This instruction provides specific guidance on the many aspects of the Navy’s programs in this area. Certain parts of this instruction are worthy of a careful review by the admiralty practitioner, including: first, Chapter 10, “Oil and Hazardous Substances Contingency Planning”; second, Chapter 19, “Environmental Compliance Afloat”; third, Appendix A, “Pertinent Laws, Executive Orders, Regulations and Directives”; and, fourth, Appendix B, “Processing Notices of Violation (NOVs) or Noncompliance (NONs) Under Environmental Laws and Regulations.”

Two general observations are in order concerning OPNA VINST 5090.1B. First, the immediate reporting of a pollution incident cannot, under any circumstances, be over-emphasized. See OPNA VINST 5090.1B at 10-4.2. To not promptly report an incident can result in serious consequences, including the implication of personal responsibility (see Section XI of this course). Second, as noted above, Navy commands, including afloat units, are required to cooperate, subject to certain restrictions, with non-Navy government officials. See OPNA VINST 5090.1B at 19-2.2.3. As such, it is incumbent on afloat commands, as well as those naval personnel providing legal advice, to be sensitive to these issues.

Reference was made above to Appendix A of the OPNAV instruction. This Appendix provides an excellent summary of the various statutes, orders, regulations, and directives that are relevant to environmental issues.

In that regard, to illustrate the interplay among treaties, statutes, and Navy policy and procedure, two main treaty/statutory enactments will be discussed.

The first is the International Convention for the Prevention of Pollution from Ships (“MARPOL”), 12 I.L.M. 1319 (1973). The purpose of the convention was to “establish a comprehensive regime resulting in the complete elimination of intentional pollution of the marine environment by oil and other harmful substances, as well as the minimization of accidental discharge of such substances.” Shipping and the Environment at 761. As the 1973 Convention’s technical requirements proved to be prohibitively costly in implementation, a second international treaties and domestic statutes, as will be discussed below, nonetheless certain general principles should be stated. That is, whether by statute or policy, public vessels of the United States are by and large subject to the same rigorous requirements concerning the protection of the environment as are merchant vessels. Further, as opposed to most areas of naval operations, which are carried out with little or no interference by other federal, state, or local governmental entities, in the environmental arena, those non-Navy authorities have a role, which at times can be critical. Similarly, while the statutory scheme concerning public vessels generally jealously guards certain traditional tenets of sovereign immunity (e.g., a public vessel may not be arrested to provide security for a maritime claim), in the environmental area, such is not the case: a fine imposed by a state, local, or other non-Navy federal entity may well be recognized and paid.

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140 U.S. Navy Regulations, 1990, Article 1163, also specifically prohibits the discharge of oil, trash or garbage into the waters of the United States, foreign internal waters or prohibited areas, such as the area within 50 miles of the United States coastline.
conference was convened, which resulted in the 1978 Protocol, 17 I.L.M. 546 (1978). Thus, MARPOL is now commonly referred to as “MARPOL 73/78”.141

MARPOL 73/78 exempts public vessels from its provisions; however, each signatory to the convention is to “ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with the present Convention.”142

Domestically, MARPOL 73/78 was enacted as positive statutory law, specifically, the Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1001 – 15. Similar to the terms of the convention, the statute does not apply, of its own terms, to public vessels. 33 U.S.C. §1902(b)(1). That having been said, in 1993, the statute was amended to require naval vessels to comply with Annex V to MARPOL 73/78 (which concerns the disposal of garbage) as well as certain requirements for the disposal of plastic. 33 U.S.C. § 1902(b)(2)-(e).

The second piece of legislation to briefly consider is the Oil Pollution Act of 1990 (“OPA-90”), 33 U.S.C. §§ 2701-61. A key aspect of OPA-90 concerns its liability scheme:

“[N]otwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shoreline or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) that result from such incident. 33 U.S.C. § 2702(a).”143

Liability under OPA-90 is strict and defenses are “very” limited. Shipping and the Environment at 182, 185. OPA-90 also has specific rules concerning the financial responsibility of “responsible parties” as well as claims procedures. 33 U.S.C. §§ 2716, 2713. However, OPA-90’s liability, financial responsibility and claims procedures do not apply to public vessels. 33 U.S.C. § 2702(c)(2).

Given that public vessels are exempt from major legislative liability and recovery schemes, such as OPA-90, the question remains as to how those in the Navy responsible for dealing with the aftermath of pollution, such as the Admiralty and Maritime Law Division of the Office of the Judge Advocate General of the Navy, should handle claims arising from an oil pollution or similar incident.

Procedurally, such claims come within the same statutory and regulatory framework that is set forth elsewhere in this course. Substantively, claims of this nature arise under the general maritime law. OPA-90, 33 U.S.C. § 2751(e), preserved the ability to institute a cause of action under general maritime law for property, economic, and natural resource damages.

As a threshold issue, it is well established that claims arising from an oil spill from a sea-going vessel into the navigable waters of the United States are within the admiralty tort jurisdiction. See, e.g., Burgess v. M/V TAMANO, 370 F. Supp. 247 (D. Me. 1973).


142 MARPOL 73/78 at art. 3(3).

143 Such damages can include damage to natural resources, real or personal property, loss of subsistence use, loss of certain government revenues, loss of profits and earnings capacity arising from damage to property or natural resources, and the net costs of increased public services incurred by a governmental entity. 33 U.S.C. § 2702 (b)(2).
Having established that general jurisdictional principle, there are several different legal theories under which such claims may be analyzed. First, such a claim may be grounded in a general theory of negligence. See In re Complaint of Ballard Shipping Co., 823 F. Supp. 68 (D. R.I. 1993). Second, many claims are advanced on a nuisance theory. See, Boca Ciega Hotel, Inc. v. Bouchard Transp. Co., Inc., 844 F. Supp. 1512 (M.D. Fla. 1994), aff’d, 51 F.3d 235 (11th Cir. 1995). Third, a closely related doctrine to nuisance that has been used is trespass. See, Kirwin v. Mexican Petroleum Co., 267 F. 460 (D. R.I. 1920). Finally, claims may cite the theory of an abnormally dangerous (or “ultra-hazardous”) activity. Boca Ciega Hotel, Inc., supra.

Regardless of the specific theory advanced, an admiralty claim against a naval vessel for damages arising from a pollution incident will require proof of damages as would be necessary for any other tort claim arising under general maritime law claims.144

The Manual of the Judge Advocate General of the Navy (JAGMAN), JAGINST 5800.7C, sets the standard for defining, reporting, investigating, and adjudicating claims and admiralty incidents of an environmental nature.145

The JAGMAN specifically defines air or water pollution damage caused by a vessel or occurring on navigable waters as an admiralty incident that may generate admiralty claims or litigation. See JAGMAN § 1203e(3).

In summary, given the plethora of statutory and regulatory provisions concerning environmental law issues, it must again be emphasized that any environmental incident involving a naval vessel requires prompt attention and an equally attentive investigation.

XI. OPERATIONAL MARITIME LAW

A. Inherent Right of Self-Defense

The United States, as all sovereign statutes, has the inherent right of self-defense, which is restated in Article 51 of the United Nations Charter. In April 1986, U.S. Naval and Air forces struck Libyan facilities supporting subversive and terrorist activities in Operation El Dorado Canyon. In an April 14, 1986, address to the Nation, President Reagan noted that the strikes were conducted in the exercise of our right of self-defense under Article 51 of the United Nations Charter. He went on to say that this was a necessary and appropriate action as a pre-emptive strike designed to deter an act of terrorism by Libya. (The entire speech may be found at www.reagan.utexas.edu/resource/speeches/1986/41486g.htm.)

Sovereign states have fixed territory, population, effective government, independence and capacity to conduct foreign relations. They have sovereign rights of territorial integrity, political independence, equality in law, and inherent right of self-defense.

144 It should be noted that the various states may advance claims against the United States based on claims of damage to natural resources. Where a particular state, such as Florida and Washington, has a specific statutory scheme to analyze factors such as toxicity, environmental sensitivity and clean-up efforts that result in an overall damage figure, then such claims can usually be adjudicated within the context of a maritime claim against the United States. Conversely, those states that do not have such a quantifiable procedure would be required to establish natural resource damages under the traditional rules, which is a very difficult task.

145 “Any tort arising, in whole or in part, from the operation of a vessel upon navigable waters is within the admiralty jurisdiction, and thus an admiralty incident. Furthermore, damage occurring ashore caused by a vessel or afloat object usually falls within the admiralty jurisdiction…” JAGMAN § 1203a.
Two main sources of international law are treaty law and customary international law. Treaties can either be bilateral (two states) or multilateral (multiple states). The United Nations and its specialized agencies, such as the International Maritime Organization (“IMO”) often propose and aid in the drafting of multilateral treaties. One example of a UN sponsored treaty is the IMO sponsored 72 COLREGS (see NRTC Article VIII). The U.S. is a signatory of the UN Law of the Sea Treaty and accordingly bound by its terms, but the Senate has yet to give its advice and consent as of the date of this edition (July 2003).

B. Collective of Self-Defense

In addition to the inherent right of self-defense reiterated under Article 51 of the UN Charter, states acting in concert have the right of collective self-defense. The two major examples of collective self-defense under the auspices of the United Nations were the defense of South Korea (1950-present) and the liberation of Kuwait from Iraqi occupation (1990-present). In both cases, the UN Security Council passed resolutions authorizing member states to use military force in a collective manner to accomplish the defense goals and repulse aggression.

Under the Laws of the Sea Treaty, the United States and other states have a maximum international sea of 12 nautical miles from the base line. (See Maritime Claims Reference Manual “MCRM”[146].) Navigational charts often reflect two lines of demarcation of the territorial seas and the MCRM must be carefully consulted.

While warships have the right to transit territorial seas, they cannot conduct the full range of maneuvers [i.e., improper gunfire tests in Japanese territorial waters resulted in an incident and the immediate relief for cause of the Commanding Officer, USS Towers (DDG-9) 9 Nov. 84].

To assert the US’s full panoply of navigational rights, since 1979 the U.S. Navy often engages in Freedom of Navigation Programs (“FON”). The goals of FON include encouragement of modification of excessive claims and demonstration of non-acquiescence. The FON program also includes diplomatic protests.

Beyond the territorial seas, a state may assert a contiguous zone that cannot extend beyond 24 nautical miles from the baseline. Finally, a state may assert an Exclusive Economic Zone (“EEZ”), which generally may not exceed 200 nautical miles from the baseline.

Base lines generally are measured from the low water mark but these are exceptions including straight baselines, bays and archipalegic baselines. [See NWP 14-1M and “MCRM”].

The high seas are seaward of the EEZ. International airspace is above the high seas, contiguous zones, and EEZ. Stated differently, national airspace only exists over the land and territorial seas of the state. Outer space is above the national and territorial airspace. There is no precise line of demarcation for outer space.

Beyond the territorial waters are international waters; these include contiguous zones, EEZ, and high seas.

Ships enjoy wide, newly unfettered right of the free navigational freedom on the high seas limited only by the due regard requirements for the rights of others and the 72 COLREGS (see NRTC Article VIII, infra.)

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In the EEZ and contiguous zone, ships enjoy high seas freedom but subject to restrictions on fishing and Marine Scientific Research (“MSR”). In territorial seas and archipelagic waters, ships enjoy the right of innocent passage that applies to all ships, including warships, cargo armament, or means of propulsion.

Innocent passage must be:

- Continuous and expeditious
- Stopping and anchorage permitted, where incidental to normal navigation, force majure or rendering assistance
- On the surface only
- May be suspended by coastal state
- Passage cannot be prejudicial to peace, good order or security of the control state.\(^{147}\)

**XII. ADMIRALTY CRIMINAL JURISDICTION**

Our review of admiralty law in this course has concentrated on the civil, that is, non-criminal, aspects of maritime practice. The United States does, however, recognize and exert criminal jurisdiction in a maritime context.\(^{148}\) The U.S. Constitution, Art. I, § 8, cl. 10, enumerates as one of the powers of Congress the ability to “define and punish Piracies and Felonies committed on the High Seas and offenses against the Law of Nations.” Further, Congress has defined in Title 18 of the United States Code certain categories of offenses as maritime crimes:

“The special maritime and admiralty jurisdiction of the United States extends to crimes committed on the high seas, the unenclosed waters of the Great Lakes, coastal waters seaward of the low water mark and on any other waters within admiralty jurisdiction out of the jurisdiction of any state of the United States, including crimes aboard vessels, aircraft, spacecraft in flight, and any offense against a national of the United States in a place outside the jurisdiction of any nation.”\(^{149}\)

State-federal jurisdiction may also be concurrent if the state applies its laws to the limit of its own jurisdiction. For coastal states, this is usually 3 nautical miles. In a case of dual jurisdiction, the doctrine of double jeopardy (a person may not be tried twice by the same sovereign for the same

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\(^{147}\) The USSR claimed that the Black Sea passage of USS *YORKTOWN* (CG-48) and USS *CARON* (DD-970) was not innocent because the ships allegedly were gathering electronic transmissions from the Soviet sources. This resulted in the famous “Bumping incident” (12 Feb 88) where Soviet ships ultimately contacted the U.S. Warships. Ultimately, the Jackson Hole agreement, supplementing the earlier INCSEA agreement between the Soviet and US Navies was reached to reduce the risk of incidents between the two forces. In the aftermath of the 01APR01 collision between a PRC F-8 and a USN EP3, the U.S. and China began discussions to explore an agreement similar to the INCSEA agreement. Senator John Warner, who served as President Nixon’s Secretary of the Navy and was instrumental in reaching the 1972 accord with the USSR, encouraged this.

\(^{148}\) For an overview of admiralty criminal jurisdiction, see Schoenbaum § 1-12.

offense, U.S. Constitution, Amendment V) does not apply and a prosecution in both state and federal courts is permitted.\textsuperscript{150}

A crime committed aboard a foreign vessel in the waters of the United States results in criminal jurisdiction in the courts of the United States since the vessel has subjected itself to American law by entering our waters.\textsuperscript{151} However, the principles of comity among nations (the general respect one sovereign gives to the jurisdiction and laws of another sovereign over its subjects) may make it proper for the United States to decline jurisdiction over offenses committed aboard foreign vessels that affect only the foreign nation and do not offend the “peace and dignity” of our country.\textsuperscript{152} The United States Department of State has developed regulations to deal with these issues and provide procedures to turn offenders over to the nation exercising jurisdiction over the vessel.\textsuperscript{153} On the other hand, when a local sovereign has not asserted its jurisdiction over an offense committed on an American flag vessel while in foreign waters, the United States can exercise its jurisdiction to prosecute the offense.\textsuperscript{154}

An integral part of exercising maritime criminal jurisdiction is the ability to search and seize ships at sea. The Customs Enforcement Statute (19 U.S.C. § 1581(a)) vests the United States Coast Guard with broad authority to board any vessel within the “customs waters”\textsuperscript{155} of the United States to carry out the purposes of this law. As such, the Coast Guard may examine, inspect, stop, and search any vessel and examine every part thereof, including any person or cargo on board. The Coast Guard’s authority extends to both American flag and foreign vessels, even if the vessel is not bound for a U.S. port. If the Coast Guard finds a violation of U.S. law, then the vessel may be seized and the persons on board may be tried for the offenses in courts of the United States.

On the “high seas,” the United States enjoys very broad authority to search, seize, and assert jurisdiction over vessels. Under international law and the U.S. Constitution, the United States exerts its criminal jurisdiction in cases of piracy and other serious crimes and offenses against international law (such as slave trading). Most frequently, however, the United States exercises its jurisdiction in matters involving trafficking in illegal drugs and other controlled substances. For example, the Coast Guard Enforcement Statute,\textsuperscript{156} permits the Coast Guard to search, seize, and arrest any vessel “upon the high seas and waters over which the United States has jurisdiction, for the prevention, detention, and suppression of violations of laws of the United States.”\textsuperscript{157} Congress has also enacted the Maritime Drug Law Enforcement Act (46 U.S.C. §§ 1910-1904) to give the Coast Guard even greater authority to prevent illegal drugs from entering the United States.

In this statutory framework, there is a body of law that outlines the various rules pertaining to the country of origin of a vessel. Depending on how a vessel is “flagged” (either U.S. or foreign) will determine the law enforcement response of the United States in the maritime criminal law setting. Generally speaking, the Coast Guard and U.S. customs officials have “plenary power” to

\textsuperscript{150} See \textit{Hoopengarner v. United States}, 270 F.2d 465 (6th Cir.1959).

\textsuperscript{151} \textit{Mali v. Keeper of the Common Jail}, 120 U.S. 1 (1887).

\textsuperscript{152} \textit{Id} at 12.

\textsuperscript{153} See 22 C.F.R. 265 (2002).

\textsuperscript{154} \textit{See United States v. Flores,} 289 U.S. 137 (1933).

\textsuperscript{155} Defined as “the waters within four leagues of the coast of the United States” or waters defined by an applicable treaty. 19 U.S.C. §1401(j).

\textsuperscript{156} 14 U.S.C. § 89(a). This section also permits warrantless searches of vessels in U.S. territorial waters based only on reasonable suspicion of criminal activity.

\textsuperscript{157} In most cases on the high seas, however, the Coast Guard only stops or searches vessels for which it has probable cause of a violation of U.S. law. See 19 C.F.R. § 162.3.
stop and board U.S. flag vessels on the high seas and within the jurisdiction of another sovereign, without a warrant and without any suspicion of criminal activity, to conduct a document review or safety inspection. If during such a review or inspection the U.S., official observes activity that gives him probable cause of criminal activity, then the private areas of the vessel may be investigated.

On foreign flag vessels, the United States has power over such vessels on the high seas. The fact that a vessel is outside the territorial limits of the United States does not necessarily place it beyond the limits of United States law. A criminal statute may have extraterritorial effect if it is not limited to domestic conduct by its terms and if legislative intent of extraterritorial application can be inferred from its policy or legislative history. Jurisdiction, even over foreign nationals, is proper under the objective territorial principle, which holds that jurisdiction extends to persons whose acts have an effect within the United States. There is authority for an investigatory stopping and boarding of a foreign vessel on the highs seas even if there is no probable cause as long as there exists reasonable suspicion of criminal activity.

A stateless vessel on the high seas may be subjected to an investigatory stop and inspection based upon reasonable suspicion of illegal activity. Jurisdiction may be asserted over persons on board without any showing of a connection with the United States. Stateless vessels are considered under international and maritime legal principles as dangerous outcasts without the right to navigate freely on the high seas. As the lawful subject of no nation, stateless vessels may be subjected to the jurisdiction of any state.

Although largely beyond the scope of this course, a developing trend to bear in mind is the potential for criminal action by local, state, or non-military federal authorities against naval personnel for the violation of environmental protection statutes. Such a development is not unthinkable given the current political sensitivity to environmental concerns. As such, and as discussed in Article X, any incident involving environmental issues is of concern and requires immediate attention, not only from the operational perspective but because of the concern expressed here.

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158 See, generally, United States v. Warren, 578 F.2d 1058 (5th Cir.1978) (en banc), rehearing denied, 586 F.2d 608 (5th Cir.1978); United States v. Conroy, 589 F.2d 1258 (5th Cir.1979), rehearing denied, 594 F.2d 241 (5th Cir.1979).

159 United States v. Williams, 617 F.2d 1063 (5th Cir. 1980) (en banc).


161 United States v. Williams, supra.

162 A vessel is stateless or without nationality if it is not authorized to fly the flag of any state. See H. Meyers, The Nationality of Ships 309 (1967).

163 United States v. Pinto-Mejia, 720 F.2d 248 (2d Cir.1983), opinion modified and rehearing denied, 728 F.2d 142 (2d Cir.1984).

164 United States v. Marino-Garcia, 679 F.2d 1373, (11th Cir. 1982).

165 For example, a discussion advocating greater environmental compliance on the part of public vessels is set forth in Note & Comment, Vessel-Source Pollution and Public Vessels: Sovereign Immunity v. Compliance, Implications for International Environmental Law, 9 Emory Int’l L. Rev. 507 (Fall, 1995). Given that naval vessels may be subject to fines, criminal liability is certainly a potential result of such situations.
APPENDIX I

JAGMAN, Chapter XII, is provided for use in the Admiralty Nonresident Training Course (NRTC). Please consult the actual JAGMAN for reference and citations for use in any legal submissions.

JAGMAN may be found at: www.jag.navy.mil/html/jag_services.htm

JAGMAN

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CHAPTER XII

ADMIRALTY CLAIMS

PART A—INTRODUCTION

1201 SCOPE

a. General application. This chapter applies to admiralty tort claims, including claims against the United States for death, personal injury, or property damage caused by a naval vessel or other property under the jurisdiction of the Department of the Navy, or resulting from a maritime tort committed by any agent or employee of the Department of the Navy, and affirmative claims by the United States for damage to naval property caused by another’s vessel or maritime tort. Also, this chapter briefly discusses salvage claims by or against the United States and claims by the Government for towage services rendered to privately owned vessels. This chapter does not apply to admiralty incidents involving only U.S. Government vessels or property. See section 1222.

b. Guidance and procedures. Part B of this chapter provides guidance to commanders on reporting and investigating admiralty incidents. Parts C and D of this chapter discuss procedures for processing admiralty claims by judge advocates involved in admiralty claims adjudication.

c. Notice. Effective handling of admiralty claims depends on immediate notice of any admiralty incident, however trivial, to the Judge Advocate General. See sections 1203 and 1204. Prompt reporting facilitates proper investigation and resolution of admiralty matters, whether the case is settled administratively under the Secretary of the Navy’s statutory claims authority or results in litigation.

1202 ORGANIZATION

a. Secretary of the Navy. The Secretary of the Navy has authority for administrative settlement and direct payment of claims for personal injury or property damage caused by naval vessels or other property under the Department of the Navy’s jurisdiction, or by a maritime tort committed by an agent or employee of the Department of the Navy, and for towage or salvage services rendered to naval vessels, when the amount paid does not exceed $1,000,000.00 and the matter is not in litigation. 10 U.S.C. § 7622. The Secretary also has authority to settle affirmative admiralty claims for damage to property under the Department of the Navy’s jurisdiction caused by a vessel or floating object. 10 U.S.C. § 7623.

b. Judge Advocate General. The Judge Advocate General processes admiralty claims for adjudication by the Secretary of the Navy, or the Secretary’s designee, and acts as principal liaison with Department of Justice for admiralty tort cases in litigation. The address of the Judge Advocate General is:

Department of the Navy
Office of the Judge Advocate General
200 Stovall Street
Alexandria, VA 22332-2400

c. Other organizations. Other organizations may process some admiralty claims. Three naval commanders (Deputy Commander in Chief, U.S. Naval Forces, Europe; Commander Sixth Fleet; and Commander Fleet Air, Caribbean) have been delegated limited authority to adjudicate and settle admiralty tort claims against the United States arising in their respective jurisdictions. See section 1213b. Additionally, contract claims arising from operation of chartered vessels, including claims for charter hire, cargo damage, general average, and redelivery repairs, are handled by Office of Counsel, Military Sealift Command. Similarly, claims for damage caused by Department of the Navy-contract stevedores are handled by Office of Counsel, Naval Supply Systems Command. However, all tort claims arising from the operation of any naval vessel, including Military Sealift Command (MSC) vessels, are handled by the Judge Advocate General or, as appropriate, one of the three naval commanders above.
1203 ADMIRALTY INCIDENTS

a. Generally. Any tort arising, in whole or in part, from the operation of a vessel upon navigable waters is within admiralty jurisdiction, and thus, an admiralty incident. Furthermore, damage occurring ashore caused by a vessel or afloat object usually falls within admiralty jurisdiction, as does damage to certain structures located on navigable waters which traditionally are not thought of as vessels. Paragraphs b through m list common admiralty incidents which often generate admiralty claims or litigation. Whenever one of these incidents occurs, notify the Judge Advocate General immediately. See section 1204. Similarly, if a command receives a complaint, claim, invitation to a survey, or other correspondence alleging such an incident (even if the receiving command believes the complaint or allegation has no basis in fact), notify the Judge Advocate General immediately. If a command is uncertain whether a particular occurrence is an admiralty incident, contact the Judge Advocate General for guidance.

b. Collision. A collision occurs when a moving vessel strikes another moving vessel. See sections 0232, 1208, and 1209 for special considerations when investigating a collision.

c. Allision. An allision occurs when a moving vessel strikes a stationary vessel or structure; for example, a vessel underway strikes a pier, bridge, buoy, or anchored or moored vessel. See sections 0232, 1208, and 1209 for special considerations when investigating an allision.

d. Personal injury or death. Death or personal injury to an individual not an active duty member of the Armed Forces of the United States, occurring on board a naval vessel, on the brow of a naval vessel, or on a boat transporting the individual to or from a naval vessel, is an admiralty incident. All personal injuries or deaths in those circumstances must be reported to the Judge Advocate General despite how the injury occurred, whether there is any Department of the Navy responsibility for the injury, whether the injury appears minor, or whether the injured party stated an intention not to file any claim against the Government. Additionally, death or personal injury occurring ashore or on board another vessel not owned by the United States, and arising, in whole or in part, incident to any aspect of operation of a naval vessel, is an admiralty incident and must be reported. Examples include a person struck by anything thrown or dropped from a naval vessel, a ship’s brow rolling over the foot of a person standing on a pier, or an individual sickened by gases, smoke, or fumes from a naval vessel. See section 1210 for special considerations in death or personal injury investigations.

e. Property damage. Any loss, damage, or destruction of property, afloat or ashore, which arises, in whole or in part, incident to the operation of a naval vessel, or damage to naval property caused by a privately owned vessel or floating object, is an admiralty incident. Examples include:

(1) Fishing nets, lines, lobster pots, or other gear in the water, cut or damaged by naval vessels, including amphibious vehicles. Also, fishing gear damaged or lost by becoming fouled on Department of the Navy submarine cables, underwater naval ship or aircraft wreckage, or naval ordnance.

(2) Automobiles or other property located on a pier damaged by an object thrown or dropped from a naval vessel, or by paint overspray from the vessel, or by smoke, fumes, or chemicals from the vessel.

(3) Air or water pollution damage caused by a vessel or occurring on navigable waters.

(4) Damage or loss of a civilian contractor’s property on board a naval vessel.

(5) Significant damage to afloat naval property, including a vessel in dry-dock, from substandard performance by a civilian contractor.

f. Swell wash/wake damage. Civilian personal injury or property damage allegedly resulting from the wake or swell created by a naval vessel is an admiralty incident. Property damage includes damage to other vessels, shore structures, oyster beds, or clam flats. Similarly, damage to naval property from the wake or swell from a privately owned vessel is an admiralty incident.

g. Naval maritime target ranges. Civilian personal injury or property damage allegedly resulting from maintenance or use of a naval maritime target range is an admiralty incident.

h. Special services boats and marinas. Civilian personal injury or property damage allegedly resulting from use of special services rental boats, or damage to privately owned vessels moored at special services marinas allegedly resulting from Government
negligence, is an admiralty incident. A waiver of liability, signed as consideration to use a rental boat or for permission to moor a privately owned boat at a marina, does not obviate reporting the incident to the Judge Advocate General.

i. Naval aircraft. Civilian personal injury or property damage caused by naval aircraft on or over navigable waters is an admiralty incident. Examples include a minesweeping helicopter cutting fishing gear, and debris or ordnance falling from an aircraft and damaging a civilian boat or injuring its passengers.

j. Salvage. Salvage of any naval property by a civilian from navigable waters and salvage of civilian property by a naval unit are admiralty incidents.

k. Vessel seizures. A naval unit’s seizure of any civilian vessel is an admiralty incident. An example is seizing a civilian boat during a drug interdiction operation.

l. Groundings. The grounding of a naval vessel is an admiralty incident. See chapter II for special considerations when investigating a grounding.

m. Significant maritime incidents. Proximity of a naval vessel to any significant maritime incident should be reported to the Judge Advocate General because the United States, even if not directly involved, is often joined in litigation arising from these events. Examples include witnessing the loss or damage of a civilian merchant vessel, or the rescue at sea of survivors from a sunken or disabled vessel.

1204 INITIAL REPORT OF ADMIRALTY INCIDENT

a. Means of report. Every admiralty incident must be reported immediately by telephone ((202) 325-9744, AUTOVON 221-9744) or message (NAVY JAG ALEXANDRIA VA//31//) to the Judge Advocate General. This initial report is in addition to other reports required by higher authority and may be accomplished by making NAVY JAG ALEXANDRIA VA//31// an information addressee on a message report required by other directives (example: an OPREP 3 message).

b. Initial report. The initial report of an admiralty incident should include all information and detail available at the time of the report. Normally, an initial report includes date, time, and place of incident, a brief description of the incident and any resulting injury or damage, and identification of the parties involved in the incident (naval vessel, aircraft, or unit; civilian vessel, individual, or organization).

c. Notice. Immediate notice enables an admiralty attorney to examine the admiralty claims considerations of a particular case at an early stage. Liability may not be apparent to the naval command considering the operational, administrative, or disciplinary features of a case. The admiralty attorney provides advice on admiralty issues and assists in preparing the investigation considering a potential claim or civil lawsuit. Also, admiralty claims and litigation practice requires action soon after the event. Common examples include: engaging the services of an independent marine surveyor for attendance at a formal joint survey of damages (see section 1206); developing detention data on a naval vessel to be repaired; and ensuring segregation of repair work orders and cost data for an admiralty incident from other work, not arising from the admiralty incident, accomplished during a repair period for the convenience of the Department of the Navy.

1205 SUBSEQUENT INVESTIGATIVE REPORT

a. Generally. The initial report of an admiralty incident, discussed in section 1204, must be supplemented as soon as practical by a written investigative report of the facts and circumstances of the incident, including documents, witness statements or interview summaries, photographs, diagrams, and other data as required. Because this report is prepared in contemplation of a claim or litigation, the assigned admiralty attorney will advise and assist the investigating officer in preparing the report, and normally will request particular items as enclosures. This written investigative report will be either a JAG Manual investigation, as defined in Chapter II of this manual, or a letter report as set forth in this section. For most admiralty incidents, a letter report is appropriate to explain the facts of an incident and transmit relevant materials for claims adjudication. A JAG Manual investigation is used in serious cases where, in addition to civil liability issues, there are operational, organizational, or management issues, which a convening authority in his discretion may wish to examine.

b. Letter report. The letter report is a convenient reporting method that is less time consuming than a JAG Manual investigation. The precise form of a letter report is less important than the requirement that the circumstances of an incident be completely and promptly explained. The letter report usually consists of a letter from the command principally involved in an admiralty incident, addressed to Judge Advocate
General, with the facts of the case in narrative form. It includes witness statements or interview summaries, copies of documents, photographs, or other items which provide the basis for the factual narrative in the letter as enclosures.

c. JAG Manual investigation. For some admiralty incidents, a convening authority orders an administrative fact-finding body, known as a JAG Manual investigation. These investigations usually do not require a hearing. A serious casualty may be the subject of a court of inquiry or board of investigation where a hearing is required. See Chapter II. The Judge Advocate General will assist the investigating officer or panel to include information needed for potential claims or litigation which may arise from the incident. An advance copy of every JAG Manual investigation of an admiralty incident should be forwarded to the Judge Advocate General as soon as available. Delays in receiving an investigative report may prejudice the compromise of claims. Provide copies of endorsements on the JAG Manual investigation to the Judge Advocate General as the investigation is forwarded through the chain of command.

d. Court of Inquiry. The following additional considerations are relevant in admiralty cases involving courts of inquiry.

1. When investigating collisions or allisions with civilian vessels, personnel of the privately owned vessel will not be designated parties to the investigation or accorded such rights. They may, however, be invited to appear as witnesses with counsel while testifying. Such invitations are usually declined on advice of counsel. If invitees elect to appear, neither those individuals nor their counsel may be present when other witnesses are testifying.

2. Witnesses from a privately owned vessel testifying before a naval investigation should be furnished a copy of their testimony as a matter of written record, and the witnesses should be requested to inform the investigating officer or convening authority of any errors in the transcript. This increases the value of the record for its possible effectiveness for impeachment in later litigation. Opposing interests are not furnished a copy of the investigation report or any information on the testimony of naval witnesses.

3. In a court of inquiry, it usually is not advisable to subpoena witnesses from the private vessel involved in a collision with a naval vessel because the record of the naval inquiry would then be discoverable.

(4) If submission of the investigation report will be significantly delayed, an advance copy of the transcribed testimony at the investigation should be forwarded to the Judge Advocate General.

e. Relation to damage survey. A formal joint survey of damages, described in section 1206, is not a substitute for a command’s investigative report of an admiralty incident.

f. Release of investigative report. No command, other than the Office of the Judge Advocate General, may release the investigative report of an admiralty incident, or any portion, to a potential claimant, an attorney purporting to represent a claimant, or any other private person or organization. SECNAVINST 5720.42D. All requests for investigative reports shall be forwarded to the Judge Advocate General for action. See section 1211.

1206 SURVEYS

a. Claim asserted. When a claim for damage to property arising from an admiralty incident is asserted, the party contemplating such a claim usually invites the allegedly responsible party or parties to a formal joint survey of the damage. A survey minimizes subsequent disputes on the nature and extent of damage attributable to a particular incident, and provides a reliable estimate of the cost of repairs. If a claim is not settled administratively, the survey report can eliminate questions of proof during litigation. Failure to give opposing interests an opportunity to survey damage allegedly resulting from an admiralty incident places a heavy burden of proof on the party later seeking to establish such damage at trial. In most admiralty cases with substantial damage, whether involving potential claims by or against the United States, a joint survey of the damage will be desired.

b. Determination of damage. The survey is the formal, technical, joint survey held by representatives of the two (or more) parties involved. It is not an ex parte appraisal, as is used in the Department of the Navy’s internal investigation of an incident or with the disposal of worn or damaged naval material. Nor should a joint survey of damage be confused with the survey conducted on civilian vessels by representatives of marine underwriters following damage incidents. Rather, for a formal joint survey of damage, each party normally appoints its own surveyor who, with the other surveyor(s), examines the damage and attempts to reach agreement on the extent of damage from the casualty. The survey report lists items of damage and
recommended repairs. When all parties agree, the surveyors sign the report to record their concurrence; surveyors normally sign without prejudice as to liability. If there is disagreement, disputed points are specifically noted. No surveyor subscribes to any statement in the survey report when he disagrees.

c. Timeliness. Surveys should be held as soon after the casualty as possible. See section 1204. The Department of the Navy’s survey is accomplished under a contract between the Department of the Navy and a commercial marine damage survey firm. Survey services are also provided to the Army and Air Force under such contract.

d. Acceptance of survey invitation. Only the Judge Advocate General may accept survey invitations from potential claimants, extend survey invitations to persons allegedly responsible for damaging naval property, and request representation by a marine surveyor at the survey.

e. Notice to the Judge Advocate General. If any naval activity receives an invitation to attend a survey of damage, the Judge Advocate General must be notified immediately by telephone or priority message to permit a timely response.

1207 DOCUMENTARY EVIDENCE

a. Original documents. The Government’s position may be materially prejudiced if an original document is not available at trial. No apparently relevant original document should be destroyed or discarded without the prior approval of the Judge Advocate General. Photocopies of pertinent official documents are acceptable for investigative reports under section 1205; however, original logs, rough statements, chronologies, and other documents must be segregated and safeguarded for possible future use at a trial. Because a trial may occur years after the incident, the custodian must ensure the materials are not inadvertently discarded by persons unfamiliar with the admiralty incident and the reasons for preserving the documents.

b. Use of documents at trial. Although originals are required at trial, the original is produced for inspection only and does not become part of the court record. The court attaches a copy to the record of trial and returns the original to the Judge Advocate General for forwarding to the appropriate command.

c. Photographs and videotapes. Photographs and videotapes can be valuable enclosures to admiralty investigations, especially when taken near in time to the incident. They illustrate property damage, angle of collision, size and condition of equipment, and physical layout of a space where an injury occurs. Commands may use official photographers or other persons to take photographs. Record on the reverse side of each photograph: the hour and date it was taken; a brief description of the location or area photographed; the full name, rank or rate, and Social Security number of the photographer; and full names and addresses of persons present when the photograph was taken. Similar information should be on a label affixed to a videotape. This information is important so photographs or videotapes can be authenticated and identified by witnesses during litigation. Photographic negatives should be segregated and safeguarded for possible future use.

d. Logs. No erasures should be made in a logbook or original navigation record. Make corrections by lining through the original so that it is still legible and inserting the correction. The person making the change should initial the original entry and correction.

1208 COLLISION AND ALLISION CASES

a. Documentary evidence. The ship’s crew should gather and safeguard documentary evidence immediately after any collision or allision involving a naval vessel. Not all original logs and records listed below are relevant in every case; for example, some contain no information of value for a minor allision with a pier or other shore structure. The following are among the original records which normally must be preserved for the investigative report of the incident:

(1) Deck log;
(2) Bell book;
(3) Engineering log;
(4) Chart in use (do not erase markings once a collision or allision has occurred);
(5) Bearing book;
(6) Magnetic compass record;
(7) Deviation data, azimuth records, and course recorder records (to include SINS printout if installed);
(8) CIC log(s);
(9) Radar log(s);
(10) DRT plot (should be annotated with the DRT operator’s name and scale used for the plot);
(11) Bridge and CIC maneuvering board worksheets (signed and dated by the individual whose work is reflected);
(12) Photographs of bridge and CIC status boards (if possible, should be done immediately after the incident so the boards show data at time of incident);
(13) Radar plot;
(14) Communication and signal logs;
(15) Bridge and CIC voice radio logs;
(16) All messages on the incident (classified and unclassified, from every net, whether transmitted or received);
(17) Bridge, CIC, and engineering standing orders, and night orders;
(18) Fathometer record;
(19) Any audio or video tapes that recorded any aspect of the incident;
(20) Damage control reports

(21) Records on training and qualifications of individual watchstanders on the bridge, in CIC, and in the engine room;

b. Safeguard records. To preserve all records of first entry, collect and safeguard rough logs, notebooks, and individual sheets of paper containing navigational or other data later recorded in a smooth log, noting who recorded the particular information.

c. Conflicts of time. Conflicts between times of entries in various logs often cause difficulty in litigation. Comparisons of the clocks in the bridge, CIC, engine room, radio room, etc., should be recorded as soon as possible after a collision or allision.

d. List of officer and enlisted watchstanders. Completely list all officer and enlisted watchstanders on the bridge (including lookouts), signal bridge, CIC, and engine room at the time of the incident, as soon as possible after the incident. The identity of any other person who was in CIC, on the bridge, or otherwise topside when a collision or allision occurred, also should be noted. This list shall contain the full name, rank/rate, Social Security number, and watchstation of each individual.

1209 DOCUMENTING COLLISION DAMAGE AND REPAIR COSTS

a. Elements of naval damages. In almost all collisions where the other vessel is at least partially at fault, the United States will assert a claim against that vessel for the costs incurred in repairing the naval ship. Establishing the value of the Department of the Navy’s damage claim is often extremely difficult. The claim arising from a collision or allision may include the cost of:

(1) Temporary and permanent hull repairs;
(2) Dry-docking;
(3) Lost or damaged equipment, stores, provisions, fuel, and ammunition;
(4) Off-loading and reloading fuel and ammunition;
(5) Towage and pilotage;
(6) Personnel claims paid to crewmembers who suffered personal property losses due to the collision;
(7) Survey fees;
(8) Detention; and
(9) Emergency assistance by other naval commands to the naval vessel involved.

b. Collision repairs. Collision repair specifications should concur with the findings and recommendations in the joint survey report. If significant additional damage not covered by the original survey is discovered during repairs, the Judge Advocate General should be notified immediately so opposing interests may be contacted for a chance to survey newly discovered damage.

c. Repair costs. The Naval Sea Systems Command directs its field activities to maintain separate and exact records of collision repair costs and to expedite the furnishing of data to judge advocates preparing damage statements. Usually, original repair specifications, job orders, time and material cards, dry-docking report, and departure report are needed for damage statements. Coordination with the repair activity is necessary. The vessel’s logs must contain entries establishing the specific time the collision repairs were commenced and completed. A departure report must be checked to confirm that its data is consistent with other repair documents and that there is a proper allocation of costs.
between collision and noncollision items, as reflected by the job orders.

d. Noncollision work. All noncollision work must be covered by separate job orders to eliminate including noncollision work in the collision repair costs.

e. Commercial shipyard repairs. When naval vessels will be repaired in commercial yards rather than naval shipyards, invitations to bid are issued to commercial shipyards and the contract is awarded to the low bidder. The collision repair specifications should be based on the surveyor’s findings and recommendations. The shipyard’s bill or invoice and proof of Department of the Navy payment shows repair costs for those items performed by the commercial shipyard. As with repairs done by a naval shipyard, noncollision work should be covered by separate specifications, job orders, bids, and invoices.

f. Detention costs. When a commercial vessel must be withdrawn from service because of collision damage, her owner may recover the vessel’s loss of earnings and reasonable expenses incurred during the repair period. This loss of earnings rule does not apply to naval vessels since they do not carry passengers or cargo for profit.

(1) When a collision causes the unexpected loss of use of a naval vessel, however, the Government may recover the operating and maintenance costs of the ship for the period the Department of the Navy was deprived of the vessel’s normal service. Detention is not legally recoverable when a vessel would have otherwise been out of service, such as for periodic overhaul or prospective inactivation. Detention includes out-of-pocket expenses for the repair period, particularly—

   (a) Pay and allowances of officers and crew;

   (b) Subsistence of crew;

   (c) Fuel and lube oil consumed; and

   (d) Supplies and stores consumed.

(2) To support a detention claim, the Department of the Navy’s damage statement includes documentary evidence showing the exact subsistence, wages, and other expenses of the vessel. Affidavits from the cognizant supply, disbursing, and engineering officers stating that the original ship’s records (that must be preserved) disclose such expenditures will support the claim. The Judge Advocate General will provide advice and assistance on preparing affidavits and other documentation in support of a detention claim.

g. Prompt repairs. Collision repairs to a naval vessel should be made as expeditiously as practical, especially when a detention claim is being presented by the Government. A short repair period avoids the “skeleton crew doctrine,” where the Department of the Navy would recover as detention costs only the pay, allowances, and subsistence for a skeleton crew, rather than the full complement of members, when an extended repair period was involved.

1210 PERSONAL INJURY CASES

a. Generally. Any shipboard death or injury to an individual not a member of the armed forces of the United States is an admiralty incident. See section 1203d. This section applies to injuries to persons ascending or descending a brow, gangway, or accommodation ladder, or to injuries to persons on a pier or on another vessel as a result of events taking place on board the naval ship. Notify the Judge Advocate General immediately of such accidents so the incident is investigated as required by sections 1203 through 1205.

b. Types of victims. Generally, the injured party fits into one of two broad categories: “shoreworker” (a person on board the naval vessel to accomplish work under contract between the Department of the Navy and civilian firm); and “ship’s visitor” (a person on board the naval vessel for any other reason, including general visitors, special tour guests, salesmen, and individual crew member guests).

c. Considerations in any investigation. When investigating any personal injury or death case, consider:

(1) Logs. All shipboard injuries to persons not members of ship’s company should be recorded in the ship’s deck log. The occurrence may be mentioned in other logs, such as the engineering log when the incident occurs in an engineering space, or in the medical log if care is rendered by the medical department. All logs which might possibly contain an entry about the incident should be inspected by the investigating officer, and photocopies of each log containing a relevant entry should be included in the investigative report. When copying a log, copy the entire day’s log, not just the page containing the relevant entry. If no entries on an injury are found in any log, it may indicate the victim was not hurt seriously enough to
report the injury to the OOD or to request immediate medical assistance. Clearly identify logs reviewed and indicate that no entry was found on the alleged occurrence.

(2) Witnesses. Clearly identify all naval and civilian witnesses to the accident. Identify all persons in the space at the time of an accident, even if they claim not to have seen or heard anything. For naval personnel, include the member’s full name, rank/rate, and Social Security number. For civilians, include the person’s full name, home address, and telephone number. If the person is a civilian shoreworker, also include his badge number, employer, and shop where the person is employed. It is also useful to identify the ship’s personnel normally in charge of the particular space (division officer, LPO, DCPO) so they may be contacted to comment on the space’s cleanliness, upkeep, and general repair.

(3) Witness statements. The investigating officer should prepare a summary of the interview with the witness, rather than having the witness write, sign, or adopt a statement. Many civilian shoreworkers may be reluctant to prepare or sign a written statement, especially when one of their fellow workers is involved. Frequently they will provide a statement to their employer, which the investigating officer may obtain by requesting a copy of the employer’s accident report. If an apparent witness declines to provide any information, it is extremely important to obtain the precise identifying data mentioned in the preceding paragraph.

(4) Inspection of the accident site. A claim or suit by an injured shoreworker or visitor is based on a contention that the ship was negligently maintained or operated. A post-accident inspection can be corroborated by evidence of other inspections (zone, safety, or health and comfort) closely preceding the incident. Evidence that qualified personnel (DCPO, LPO, division officer, safety officer, or investigating officer) carefully inspected a site immediately following an accident and found the area free from defects is especially important when there is no eyewitness to the injury. The post-accident inspection should focus on conditions likely to have contributed to the particular incident; for example, if the victim was injured in a fall, the inspection should include the quality of the footing (Was the deck or ladder wet or greasy? Were the ladder treads worn?), lighting in the space, and existence of structural conditions and protuberances that might cause an individual to fall. Similarly, if the injury resulted from the failure or giving-way of any of the vessel’s gear or equipment, a careful examination to discover the cause of the failure should be made, and, if feasible, the gear should be carefully preserved. Whenever possible, a post-accident inspection should include photographs of the accident location (or gear involved) before any changes are made after the incident. See section 1207c. Furthermore, if a defective condition is uncovered, the inspector should attempt to determine how long the condition has been in existence, who (individual and employer) created the condition, and, if created by someone other than a United States employee, whether any crewmembers learned of the defective condition prior to the accident. Finally, PMS records for a space or piece of equipment should be consulted and retained when a defective condition is found.

(5) Medical records. Include copies of all naval medical records of treatment by naval personnel in an investigative report of a death or injury. The investigating officer should not delay an investigation to obtain detailed medical records from a civilian hospital, physician, or the injured party. The investigating officer should determine the general nature of the victim’s injuries from reports and records readily available to the Department of the Navy.

d. Shorworker injuries. For a shoreworker injury investigation, an accident report and/or an employer’s report of injury may be obtained from the injured worker’s employer, the shipyard safety office, or the cognizant office of the Supervisor of Shipbuilding, Conversion and Repair, USN (SUPSHIP).

e. General visiting and ship tours. In addition to paragraph c of this section, investigative reports of an injury occurring during general visiting or tours of the ship should comment on warnings given to visitors (conspicuous signs, printed warnings on brochures provided, and verbal warnings by a tour guide), and presence of crewmembers on the tour route to assist visitors and correct any hazardous conditions noted.

f. Civilian Federal employees. If a civilian Federal employee died or was injured in the course of employment in an admiralty incident, report it immediately to the Judge Advocate General. The Federal Employees Compensation Act (FECA), is the sole means of redress against the United States for such individuals. 5 U.S.C. §§ 8101-8193. Accordingly, investigative responsibilities for these cases will be streamlined and the Judge Advocate General will provide guidance. If the victim is injured outside the course of employment, FECA does not apply and the
case is investigated as any other personal injury or death case.

1211 CORRESPONDENCE WITH PRIVATE PARTIES

a. Forward to JAG. All correspondence received by a command on an admiralty incident, especially that from a claimant or an attorney purporting to represent a claimant, shall be forwarded expeditiously to the Judge Advocate General for reply. Under SECNAVINST 5820.8 and SECNAVINST 5720.42D, the Judge Advocate General is responsible for processing requests for Department of the Navy records, for access to Department of the Navy property and information, or for interviews of naval personnel in admiralty matters. These requests often precede claims or lawsuits against the United States.

b. Naval personnel. All naval personnel contacted by a claimant, or by a claimant’s attorney on an admiralty incident, should not give a statement or make any admissions which might prejudice the Government’s case. Rather, the member should report the contact to the commanding officer, who will inform the Judge Advocate General.

c. Admission of liability. Naval personnel shall not advise a claimant to forward a repair bill so the Department of the Navy can “take care of it.” This advice may mislead the claimant and serve as a later charge the Department of the Navy admitted liability. Similarly, avoid any informal, off the record assurances of probable recognition of a claim.

PART C - ADMIRALTY CLAIMS AGAINST THE DEPARTMENT OF THE NAVY

1212 NAVAL LIABILITY


b. Suits in Admiralty Act. The Suits in Admiralty Act provides that, whenever a suit in admiralty can be brought against a private party or vessel, a suit can be brought against the United States in like circumstances. The law specifies that a Government vessel or cargo shall not be subject to arrest or seizure; rather, a complaint in personam shall be brought against the United States in Federal district court for the district in which plaintiffs (or any one of them) reside or have their principal place of business, or in which the vessel or cargo charged with liability is found.

c. Public Vessels Act. All naval vessels are public vessels and litigation for damages caused by such vessels must proceed under the Public Vessels Act. The Act allows a complaint in personam against the United States in the Federal district court for the district in which the public vessel is located at the time of the filing of the complaint. If the public vessel is outside the territorial waters of the United States, then suit may be brought in the district in which the plaintiffs (or any one of them) reside or have an office or business, or, if none of the plaintiffs reside or have a business or office in the United States, then in any district court. Although the Public Vessels Act is primarily a tort statute, it allows suits arising from maritime contracts, including suits for towage and salvage services rendered to a public vessel, to be brought against the Government.

d. Admiralty Jurisdiction Extension Act. While admiralty jurisdiction in the United States originally did not extend to damage caused by a vessel to a land structure, such as a pier or wharf, the Admiralty Jurisdiction Extension Act, 46 U.S.C. App. § 740, may make the United States liable under the Suits in Admiralty Act or the Public Vessels Act whether the damage occurs on navigable waters or on land.

1213 AUTHORITY FOR CLAIMS SETTLEMENT

a. SECNAV authority. The Secretary of the Navy has authority to settle, compromise, and pay claims up to $1,000,000.00 for: (1) damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage and salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy. A claim settled for an amount over $1,000,000.00 must be certified to Congress. Regulations on the Secretary’s settlement authority are found at 32 C.F.R. part 752.
b. Delegation. The Secretary of the Navy may delegate settlement authority when the amount to be paid is not over $100,000.00. 10 U.S.C. § 7622. Under that authority, the following have settlement authority within the limits specified:

(1) The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Admiralty), payment not to exceed $100,000.00 per claim;

(2) Deputy Commander in Chief, U.S. Naval Forces, Europe; and Commander Sixth Fleet, payment not to exceed $10,000.00 per claim for claims within the jurisdiction of their respective commands; and

(3) Commander Fleet Air, Caribbean, payment not to exceed $3,000.00 per claim for loss, damage, or destruction of fishing equipment adjacent to Culebra Island and Vieques Island, Puerto Rico.

c. Settlement. Settlement is final when the claimant accepts payment.

1214 STATUTE OF LIMITATIONS

a. Suits under the Suits in Admiralty Act or the Public Vessels Act. For the court to have jurisdiction under the Suits in Admiralty Act or the Public Vessels Act, suit must be filed within 2 years after the incident on which the cause of action is based. This limitation cannot be waived administratively, nor is the statute of limitations tolled by filing a claim with the Government.

b. Admiralty claims. The 2 year statute of limitations also applies to the Secretary of the Navy’s settlement authority for admiralty claims filed against the United States. A settlement and written approval of the Secretary or designee must be concluded before the end of the 2 year period or the claimant must file suit under the appropriate statute. A statement describing the Secretary’s settlement authority and this limitation is usually included in the initial correspondence from the Judge Advocate General to a claimant or claimant’s counsel to avoid future assertions that he was misled.

1215 ADMINISTRATION OF ADMIRALTY CLAIMS

a. Generally. It is the Department of the Navy’s policy to settle admiralty claims fairly and promptly when legal liability exists. Administrative settlement of admiralty claims eliminates the expense and delay of litigation while obtaining a result advantageous to the financial interests of the United States. Litigation is likely when settlement cannot be arranged.

b. Assistance to claimants. Refer claimants or potential claimants inquiring about rights or procedures to the Judge Advocate General or other appropriate adjudicating authority listed in section 1213b. The cognizant admiralty attorney will advise the individual how to present a claim, the address the notice of claim should be mailed to, and what, if any, evidence is required. An officer or employee of the Government cannot act as agent or attorney for another in the prosecution of any claim against the United States. 18 U.S.C. § 205. See chapter VII for requests for legal assistance with claims against the United States.

1216 ADJUDICATING ADMIRALTY CASES AS FOREIGN CLAIMS

a. Foreign Claims Act. Admiralty claims arising in foreign countries may be adjudicated under the Foreign Claims Act. 10 U.S.C. § 2734. As indicated in chapter VIII, such claims are not handled as foreign claims without the Judge Advocate General’s prior authorization.

b. Copy to JAG. If permission is granted for an admiralty claim to be adjudicated under foreign claims regulations, the Judge Advocate General shall be provided a copy of the Foreign Claims Commission proceedings and, if an award is made to claimant, with a copy of the executed release.

PART D - AFFIRMATIVE ADMIRALTY CLAIMS

1217 AUTHORITY FOR AFFIRMATIVE CLAIMS SETTLEMENT

Department of the Navy is responsible for allowing subrogation claims accruing in favor of the United States. For example, when the Department of the Navy leases a privately owned pier which is damaged by a commercial vessel, and the lease obligates the Department of the Navy to pay the pier owner for the damage, or when naval property is damaged while leased to private interests and the Department of the Navy assumes the risk of loss or damage, the Department of the Navy may recover from the tort-feasor.

c. Settlement authority. The Secretary’s settlement authority is limited to claims up to $1,000,000.00 and not in litigation. 10 U.S.C. § 7623. Once suit is filed, the case comes under Department of Justice's cognizance for settlement. 32 C.F.R. part 752. The Secretary is authorized to execute a release on behalf of the United States upon payment of the affirmative admiralty claim. Acceptance of payment and execution of a release by the Secretary is final on all parties as to the United States' claim.

d. Delegation. The Secretary may delegate settlement authority when the amount to be received does not exceed $100,000.00. 10 U.S.C. § 7623. The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Admiralty) may also exercise the Secretary’s authority in settlements not exceeding $100,000.00. Those individuals with limited authority to settle admiralty claims against the Department of the Navy reflected in section 1213b(2) and (3) do not have corresponding affirmative claims settlement authority.

e. Compromise and settlement. The Secretary of the Navy may consider, adjust, compromise, settle, and receive payment for any claim of the United States for salvage services rendered by the Department of the Navy. 10 U.S.C. § 7365. Salvage claims are discussed further in section 1220.

1218 STATUTE OF LIMITATIONS FOR AFFIRMATIVE CLAIMS

The United States has a 3 year statute of limitations to assert an affirmative claim or commence litigation for money damages arising from any tort, including admiralty torts. 28 U.S.C. § 2415b and 32 C.F.R. part 752. This limitation has certain exclusions, such as lack of Government knowledge of the incident giving rise to the claim, an inability to prosecute a claim due to declared war or unavailability of the res or the defendant, and various exemptions from legal process. 28 U.S.C. § 2416.

1219 AFFIRMATIVE CLAIMS ADMINISTRATION

All claims by the United States for money damages arising from admiralty incidents should be timely and pursued aggressively. The Judge Advocate General acts on behalf of the Secretary in asserting and negotiating affirmative admiralty claims.

PART E - MISCELLANEOUS

1220 SALVAGE

a. Claims. Salvage claims may be filed against the Department of the Navy for compensation for towage and salvage services, including contract salvage, rendered to a naval vessel or other property under the Department of the Navy’s jurisdiction. The United States may file claims for salvage services rendered by naval vessels or units. Regulations on these claims are published at 32 C.F.R. part 752.

b. Salvor. A successful salvor is generally entitled to: (1) reimbursement of expenses, such as cost of labor and materials expended; and (2) a bonus or reward which is something less than the value of the salved property. Salvage awards encourage others to risk their ships and lives to save another’s property from the sea, but discourage unnecessary or exaggerated service. There is no reward to salvage only human life; however, a salvor of life is entitled to an award from the value of any property also salved. The crew of a salving vessel may receive a share of the salvage award. A civilian crew that assists in salvaging a naval vessel has a separate cause of action against the Government from that of the civilian vessel owner. Uniformed naval personnel cannot maintain suit for salvage services performed as part of their official duties.

c. Suits for compensation. Suits against the United States seeking compensation for salvage may be maintained under the Public Vessels Act and the Suits in Admiralty Act. The Secretary of the Navy may pay salvage claims under 10 U.S.C. § 7622. Salvage claims against the Department of the Navy are reported and investigated under sections 1203 through 1205, and processed under the procedures in Part C of this chapter.
Both claims and suits against the United States for salvage are subject to the 2 year statute of limitation. See section 1214.

d. Administrative settlement. When a naval ship or unit renders salvage assistance, the Secretary of the Navy can administratively settle the claim against the private shipowner. 10 U.S.C. § 7365. Affirmative salvage claims are reported to and processed by the Assistant Supervisor of Salvage, USN. See NAVSEAINST 4740.4. Affirmative salvage claims are referred to the Judge Advocate General only if the Assistant Supervisor of Salvage is unsuccessful. The Assistant Supervisor of Salvage normally asserts. Department of the Navy affirmative salvage claims on a per diem basis as an administrative convenience, but the Government is not precluded from asserting its affirmative claim on a salvage-bonus basis.

e. Offset. If the private shipowner seeks to offset the Department of the Navy’s per diem charges, in whole or in part, with a claim for damage to his ship allegedly caused by the salvaging naval vessel or its personnel, the per diem charge usually is withdrawn and the Department of the Navy’s claim reasserted on a salvage-bonus basis. When a private shipowner pays the per diem salvage charge and then, without prior notice, presents a claim for damage caused to his vessel during the salvage operation, the prior settlement of the Government’s salvage claim precludes reasserting that claim on a salvage-bonus basis. To avoid such liability, settlement of a naval affirmative salvage claim is normally conditioned upon release from any claim for damage to the private ship incurred during the salvage operation. Any damage to a private vessel during a salvage operation should be investigated under section 1205 and immediately reported to the Judge Advocate General, who may arrange for a joint survey of the damage.

f. Finder’s reward. A “finder’s reward” may be paid for information leading to the recovery of certain types of ordnance, mobile targets, aircraft, and oceanographic equipment. See NAVSEAINST 8500.1 and NAVCOMPT Manual, paragraph 046380.

1221 TOWAGE AND PILOTAGE

A. Generally. The Department of the Navy, on occasion, performs towage or pilotage services for privately owned vessels. The two services are distinct, especially for liability for damage caused by negligent towing versus damage caused by negligent pilotage.

b. Liability. When commercial firms perform towage or pilotage, they usually attempt to exempt themselves from liability for damage by contract clauses. Exemption clauses are generally successful in pilotage, but the courts have consistently held clauses invalid that attempt to contract away liability for negligent towing. To protect the Department of the Navy from liability for negligent pilotage when a commercial firm would, by contract, be relieved of liability, naval pilotage should be performed only upon execution of the suggested contract in Appendix A-12-a.

1222 INTRAGOVERNMENT ADmiralty INCIDENTS

a. Waiver doctrine. Potential claims for collisions between vessels and for other admiralty incidents involving property damage, when the owners involved are the Department of the Navy and another Government agency, are subject to waiver. The waiver doctrine is based upon Comptroller General decisions that appropriations of one Government department are not available to pay the claims of another.

b. Report of incident. When it appears only Federal Government interests are involved, a report of the admiralty incident must be made under sections 1203 and 1204; an investigation of liability and survey of damage are not required. Upon receiving the initial report of the incident, the Judge Advocate General confirms the status of the vessels or property involved by correspondence with the other Government agency, and the waiver is made a matter of record. It is important to avoid unnecessary labor and expenditures when the claim is subject to waiver. If in doubt on the status of the other vessel or property, request advice by rapid means from the Judge Advocate General.

1223 FOREIGN GOVERNMENT CLAIMS

a. Report to JAG. Admiralty incidents involving naval vessels or property, and a vessel or property owned by a foreign government, must be reported to the Judge Advocate General under sections 1203 and 1204. Action on such claims may be affected by treaties, international law, and Federal statutes. For example, the Foreign Sovereign Immunities Act recognizes a foreign nation’s immunity for sovereign or public acts of that nation in United States territory and limits immunity for commercial or personal acts. 28 U.S.C. §§ 1604-1611.

b. Jurisdictional process. Under customary international law, a nation’s public war vessels are not
subject to jurisdictional process in any other nation; all naval vessels (including MSC vessels) are immune from arrest. If an attempt is made to arrest a naval vessel in a foreign country, include NAVY JAG ALEXANDRIA VA//31// as an information addressee in the message report of the arrest attempt. If requested, the Judge Advocate General will then assist Department of Justice and Department of State to obtain the ship’s immediate release.

c. Immunity. Government-owned merchant ships have limited immunity from jurisdictional process of a foreign state. For example, a foreign government-owned vessel is exempt from U.S. jurisdiction if devoted to public use or government operations; however, the immunity of foreign government-owned merchant vessels in competitive commercial transactions may be restricted.

d. Waiver agreements. The United States has waiver agreements with the British and Canadian governments so certain maritime claims between the United States and Great Britain or Canada, arising out of the operation of public vessels of these respective governments, are waived. See Maritime Transportation and Litigation Agreement with Great Britain, 4 December 1942, 56 Stat. 1780, E.A.S. 282; and Waiver of Claims Involving Government Ships Agreement with Canada, 15 November 1946, 61 Stat. 2520, T.I.A.S. 1582. These admiralty incidents do not require the usual investigative report or survey for claims purposes.

e. Status of forces agreements. Admiralty claims are also affected by Status of Forces Agreements. Under article VIII of the NATO Status of Forces Agreement, an intergovernmental admiralty claim for damage to property owned and used by the armed forces of one contracting party, caused by a vessel of another contracting party, is waived if either the damaging vessel or the damaged property was used in the operation of the North Atlantic Treaty. Similarly, under article XVIII of the Status of Forces Agreement with Japan, the United States and Japan mutually waive claims for property damage caused by members of their defense forces if the damaging instrumentality or the damaged property was being used for official purposes. A similar provision is in the Status of Forces Agreement between the United States and the Republic of Korea.

1224 COAST GUARD AND NATIONAL TRANSPORTATION SAFETY BOARD INVESTIGATIONS

a. Coast Guard investigations of marine casualties.

(1) The Coast Guard routinely receives reports of and investigates marine casualties or accidents involving privately owned vessels. “Marine casualty or accident” includes collisions, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of vessel gear and equipment, and any other damage which might affect the seaworthiness of the vessel. Public vessels of the United States, and all naval vessels, are exempt from investigation even if involved in the incident under investigation. 46 C.F.R. part 4. Naval personnel are not required to report a marine casualty involving a public vessel to the Coast Guard, complete any Coast Guard form or other document describing the maritime incident, or participate in a Coast Guard investigation. The incident must be reported to the Judge Advocate General under sections 1203 and 1204.

(2) The Department of the Navy may assist the Coast Guard with its investigation by sharing information from the Department of the Navy’s own investigation and making naval personnel available as witnesses, but the Department of the Navy will not prejudice its claims or litigation. Information disclosed to the Coast Guard normally becomes part of a public record of the incident and is available to interests opposed to the United States. The Judge Advocate General decides whether to disclose a naval investigation to the Coast Guard and whether naval personnel will be made available to testify at a Coast Guard investigative hearing. Requests for such information, reports, or witnesses should be forwarded to the Judge Advocate General by rapid means.

(3) The Judge Advocate General may provide a copy of the Department of the Navy’s investigative report of an admiralty incident to the Coast Guard investigator when issues of civil liability are not involved or have been settled. In other situations, the Judge Advocate General may give the Coast Guard a copy of the Department of the Navy report only if it is used exclusively for Coast Guard purposes and not made part of the public record. This practice assists the Coast Guard’s understanding of the incident, supports the Department of the Navy’s policy of interagency cooperation, and preserves the Government’s position on claims or litigation.

b. National Transportation Safety Board (NTSB) investigations of marine casualties.

(1) The NTSB, an independent Government agency, promotes transportation safety by conducting independent investigations of accidents involving
Government regulated transportation: air, highway, rail, pipeline, and major maritime casualties. The NTSB may conduct an investigation of any casualty involving public and nonpublic vessels. The NTSB shall conduct an investigation when: the casualty involves a Coast Guard and a nonpublic vessel, and at least one fatality or $75,000.00 in property damage; the Commandant of the Coast Guard and NTSB agree that NTSB should investigate a casualty involving a public (e.g., a U.S. Navy) vessel and a nonpublic vessel, and involving at least one fatality or $75,000.00 in property damage; or the casualty involves “significant safety issues relating to Coast Guard safety functions.” See 49 U.S.C. §§ 1901-1907, and 49 C.F.R. parts 845 and 850.

(2) The NTSB investigation does not have priority over other official inquiries into major marine casualties, such as the Department of the Navy’s JAG Manual investigation. The NTSB conducts a simultaneous but separate investigation from the JAG Manual investigation. After a major marine casualty, ensure original documents are preserved and witnesses (after any exercise of their right to counsel) are made available to the Department of the Navy’s investigating officer. Copies of documents and naval witnesses should then be made available to NTSB for its investigation. NTSB has subpoena power, enforceable through the Federal courts, for the production of persons and documents. The Department of the Navy’s policy is to cooperate with the NTSB’s investigation as much as possible, while safeguarding the rights of individuals involved in the incident and preventing unnecessary disruption of the JAG Manual investigation.

(3) Usually NTSB announces whether it will investigate within 1 day after the incident occurs. An NTSB official in Washington, DC, notifies the type commander of the naval vessel involved by telephone, although the group or squadron commander may receive initial notification. Upon notice of NTSB involvement, notify the Judge Advocate General by telephone of the initial notice from NTSB and any requests from NTSB. Also, a Department of the Navy liaison officer must be appointed as point of contact (POC) for NTSB. The POC should be of the rank of 0-4 or above, technically competent in shipboard navigation and engineering skills, and not a crewmember of the vessel involved. A judge advocate should be available to assist the POC and keep the Judge Advocate General advised of the status of the NTSB investigation.

(4) NTSB may request to inspect documents and interview Department of the Navy crewmembers as soon as the vessel involved arrives at the pier. The POC should insist that the JAG Manual and NTSB investigations proceed in an orderly fashion. The following is suggested as a reasonable sequence of events:

(a) When the ship returns to port, the investigating officer for the JAG Manual investigation should have been assigned. If not transported to the ship while at sea, the investigating officer should immediately collect and review charts, logs, and other documents aboard the ship, and may commence interviews of crewmembers.

(b) Within a few days of the ship’s return, and under arrangements made by the POC, the NTSB (generally three to four officials) arrives on board and is provided with copies of unclassified relevant documents. NTSB officials may conduct preliminary crewmember interviews, but sworn statements should not be permitted. Document review and preliminary interviews take 2 to 4 days.

(c) The NTSB advises the Department of the Navy of the date, time, and place of the formal hearing and requests the appearance of specifically-named crewmembers. The hearing is usually held 2 to 4 weeks after the incident. The POC is usually the Department of the Navy’s official representative at the hearing. A judge advocate also should attend the hearing as an observer.

(d) The JAG Manual investigation is completed as soon as possible. The convening authority forwards an advance copy to the Judge Advocate General under section 1205.

(e) The judge advocate who attended the NTSB hearing should get a copy of the verbatim transcript and summary report of the hearing from the POC and forward them to the Judge Advocate General.
SUGGESTED FORMAT FOR PILOTAGE AND TUG SERVICES CONTRACT
(See Section 1221)

It is understood and agreed that the furnishing of pilotage and associated tug services by the Department of the Navy for the vessel __________________________ shall not be construed to give rise to a personal contract between the named individuals signing this agreement; and

it is further understood and agreed that the Department of the navy in furnishing any pilotage and associated tug services shall have the benefit of all exemptions from and limitations of liability to which the owner of a vessel is entitled under the applicable statutes of the United States; and

it is further understood and agreed that when any pilot or a captain of any tug furnished to or engaged in the service of assisting a vessel making use or having available her own propelling power, goes on board such vessel, or any vessel, he becomes the borrowed servant of the vessel assisted and her owner or operator for all purposes and in every respect, including but not limited to the handling and navigation of such vessel and in respect to any orders given to any assisting tugs, his services while so on board being the work of the vessel assisted and not of the United States Navy and being subject to the exclusive supervision and control of the ship’s personnel; and

it is further understood and agreed that the assisted vessel and her owners will assume all liability for any loss or damage (including that suffered or caused by any assisting tug) resulting from or arising out of the negligence or fault of the pilot or assisting tug and that neither the United States navy, nor any pilot, nor any tug shall be liable, directly or by way of indemnity or otherwise, for any such loss or damage; and

it is further understood and agreed that if any such assisted vessel is not owned by the person or company ordering the pilotage and associated tug services, that such person or company warrants its authority to bind the vessel and her owners to all provisions of the preceding paragraphs, and agrees to indemnify and hold harmless the Department of the Navy, its agents, servants, employees and any assisting tug or pilot from any claim and all damages and expenses that may be sustained or incurred in consequence of such person or company not having such authority.

________________________________________________________________________
(Signature)

________________________________________________________________________
(Title)

FOR

________________________________________________________________________
(Name of Ship)
ASSIGNMENT 1

Textbook Assignment: Read “Admiralty Law and Its Application in Navy Admiralty Claims Practice: A Primer,” Articles I through V, found at pages 1 through 13 in the nonresident training course (NRTC), and JAGMAN, chapter XII, sections 1201 through 1211, found at pages AI-4 through AI-12 in the NRTC.

Learning Objective: Trace the historical development of admiralty law and compare admiralty law and common law principles in selected subject areas.

1-1. The branch of law known as admiralty law is founded on which of the following principles?
   1. Emerged from statutory enactments
   2. Evolved from the common law
   3. Accepted because of their practicality and facilitation of maritime commerce
   4. Accrued from international conventions

1-2. Because of the universal applicability and importance of admiralty issues, the U.S. Constitution extends the federal judicial power to all cases of admiralty and maritime jurisdiction.
   1. True
   2. False

1-3. When the plaintiff and the defendant share the fault for causing the accident, which of the following correctly states the present United States law on the awarding of damages in an admiralty lawsuit?
   1. The court will apply the Rule of Contributory Negligence to deny damages to any party whose fault contributed to the accident
   2. The court will apply the Rule of Divided Damages, awarding each party 50% of its proved damages, because each party contributed to the accident
   3. The court will apply the Rule of Majority Fault, awarding damages in full to the party that was less than 50% responsible for causing the accident
   4. The court will apply the Rule of Proportional Damages, allocating damages to both sides in accordance with the relative degrees of each side’s fault

1-4. Generally, a lien is a legal right to hold, and if necessary, to sell an item of property to satisfy a claim or a charge.
   1. True
   2. False

1-5. A ship’s chandler holds a lien against a ship for stores supplied by the person. The ship sails without paying its bill to the chandler.
   Which of the following statements about the chandler’s lien is true?
   1. The lien still applies
   2. The lien is divested by the ship’s departure
   3. The lien is suspended until the ship returns
   4. The lien is revoked by the ship’s departure, but may easily be reinstated if the ship ever reappears in that port

1-6. Assume that a ship with several suppliers’ liens against it is sold at auction pursuant to a court order from a proceeding in rem. The lien that generally takes precedence is which, if any, of the following?
   1. First one incurred
   2. Last one incurred
   3. First one presented to the court, regardless of when it was incurred
   4. There is no priority among the liens. All liens will receive a proportionate share of the proceeds of the sale

1-7. When a person voluntarily salvages a vessel, what, if anything, is he entitled to receive under admiralty law for his efforts?
   1. A reward equal to the value of the vessel he has salved
   2. A fair compensation for his services
   3. Only reimbursement for actual out-of-pocket expenses incurred in salving the vessel
   4. Nothing; a volunteer salvor acquires no legal rights in admiralty
1-8. Which of the following statements about maritime salvage is NOT correct?

1. The salvage of a vessel adrift without power in calm waters is likely to be classified as a “low order” salvage
2. “High order” salvage awards tend to be more generous because of the dangers faced by the salvors
3. Predicting a particular salvage award is difficult because the determination of such awards tends to be subjective and arbitrary
4. The law of maritime salvage applies only to the salvage of ships from the perils of the sea

1-9. The basic tenet of the doctrine of general average is that all parties in a particular voyage share those losses occasioned by the perils of the sea proportionately to their interest in the venture.

1. True
2. False

1-10. A shipowner in the United States may lawfully limit his liability for property damage caused by the negligent operation of his ship to the vessel’s value immediately after the accident, including to zero if the vessel sinks or otherwise is totally destroyed.

1. True
2. False

1-11. Assume that a vessel of 2,000 gross tons strikes a bridge, causing death and injury to various persons who were located on the bridge, and ripping a hole in the vessel that causes it to sink. According to U.S. statutory law, the shipowner may limit his liability to death and injury claimants to which, if any, of the following limitations?

1. Zero, since his vessel was lost in the incident
2. $120,000
3. $840,000
4. Under U.S. statutory law, a shipowner is prohibited from any limitation of liability in cases involving personal injury or death

Learning Objective: Recognize which cases are within admiralty jurisdiction in the United States, and under what circumstances the U.S. Government may be liable in admiralty.

1-12. In the United States, initial jurisdiction over an admiralty action in rem rests with what court?

1. U.S. Court of Claims
2. U.S. Supreme Court
3. U.S. District Courts
4. U.S. Courts of Appeals

1-13. Which of the following is NOT a maritime contract for purposes of determining admiralty jurisdiction?

1. Contract to build a ship
2. Seaman’s contract of employment
3. Contract to repair a ship
4. Contract to lease a ship

1-14. For a tort to be within admiralty jurisdiction in the United States, it is required that the tortuous conduct occur on navigable waters and include what other factor?

1. Damage caused by such wrongful conduct occurs to a person or property located on navigable waters
2. The wrong complained of bears a significant relationship to traditional maritime activity
3. A demonstrable nexus exists between the wrong complained of and maritime commerce
4. Nothing more is required; any tort occurring on navigable waters is within admiralty jurisdiction

1-15. The Suits in Admiralty Act of 1920 provided that a government-owned merchant vessel would not be subject to seizure or arrest, but an action in personam could be filed against the United States.

1. True
2. False
1-16. Before the passage of the Suits in Admiralty Act, individuals could not sue the United States for damages caused by government ships because of the application of which of the following reasons?

1. Mutual fault
2. Proximate cause
3. Proceedings in rem
4. Sovereign immunity

1-17. Under the Public Vessels Act of 1925, U.S. Navy vessels are subject to the same laws as privately owned vessels except that they are exempt from which of the following actions?

1. Arrest
2. Seizure
3. Maritime lien
4. Each of the above

Learning Objective: Define the general scope of the Navy’s admiralty claims settlement authority, and identify how certain naval organizations are involved with processing admiralty claims.

1-18. The Secretary of the Navy is entitled to settle admiralty claims for damage caused by Navy vessels in amounts up to and including $15,000,000.

1. True
2. False

1-19. Chapter 12 of the JAG Manual applies to all of the following incidents EXCEPT which of the following?

1. Damage caused by a privately owned ship to a Navy pier
2. Injury to a civilian swimmer caused by a Navy ship’s wake
3. Allision involving a Navy ship and a Navy pier
4. Collision involving a Navy ship and a civilian sailboat

1-20. When an admiralty incident occurs, what immediate action should the involved Navy command take?

1. Have the legal officer make a tentative evaluation of Navy liability and, if it appears that the Navy is liable, convene a court-martial
2. Report the occurrence to the Judge Advocate General (Code 11)
3. Conduct a joint survey of the damage
4. If it appears that a private firm or individual is responsible for damaging Navy property, serve a notice of claim on the offending party

1-21. The mission of the Admiralty and Maritime Law Division (Code 11) of the Office of the Judge Advocate General is to perform which of the following actions?

1. Process admiralty claims against the Navy
2. Process the Navy’s affirmative admiralty claims
3. Act as liaison with the Department of Justice for Navy admiralty litigation
4. All of the above

1-22. Only the Secretary of the Navy may adjudicate and settle admiralty tort claims against the United States Navy.

1. True
2. False

1-23. An admiralty tort claim against the United States for damage or personal injury caused by the operation of a Military Sealift Command (MSC) ship will be processed and adjudicated by the Office of Counsel, MSC.

1. True
2. False

Learning Objective: Recognize the variety of incidents that give rise to admiralty claims and litigation, and identify the reporting and investigating obligations of an involved command when such an incident occurs.
1-24. Which of the following, if any, of the incidents need NOT be reported and investigated under JAGMAN, chapter 12, as an admiralty incident?

1. Dependent son of Navy ship crewmember falls over the side while climbing on the ship’s lifelines; boy drowns
2. Navy ship’s brow rolls over the foot of Marine corporal waiting on the pier to embark for a deployment; three toes crushed, requiring amputation
3. Mayor of port city being visited by a Navy ship slips while enroute in the Captain’s gig to a welcoming conference onboard the ship, then at anchor in the harbor; the mayor’s minor injuries are easily treated by a ship’s Corpsman
4. All of the above must be reported and investigated under JAGMAN, chapter 12.

1-25. Assume that the mayor described in response number 3 of the preceding question, upon his arrival at the anchored ship, assures the attending Corpsman and the ship’s commanding officer that he has no intention of filing any claim against the Navy. “After all,” the mayor says, “my concern is maintaining favorable relations with you Navy, because ship visits are good for my city’s economy.” Under these circumstances, JAGMAN, chapter 12, does not apply and the commanding officer may ignore the incident.

1. True
2. False

1-26. Before a demonstration amphibious landing held at Camp Pendleton for members of Congress and other dignitaries, the Department of the Navy causes to be published in local Notice to Mariners appropriate warnings that fishing gear should be cleared from the coastal waters near the designated landing beach. Nevertheless, two incidents described below, occur during the demonstration in which fishing gear is damaged. Which, if any, of these incidents must be reported and investigated as an admiralty incident?

1. A Navy minesweeping helicopter spots markers for crab pots about 1000 yards off the beach, and demonstrates the proficiency of its cutting gear by severing the marker line from each pot
2. A Marine amphibious tracked vehicle becomes entangled in fishing nets located about 500 yards from the beach; a Marine enters the water and, using his knife, cuts the vehicle free
3. Both 1 and 2 are admiralty incidents and must be reported and investigated accordingly
4. None of the above

1-27. Assume that a Navy ship hears the radio distress call of a commercial fishing vessel and immediately proceeds to the vessel’s location, where it stands by to render any requested assistance. How should the occurrence be reported?

1. As an admiralty incident under JAGMAN, chapter 12
2. As an admiralty incident only if the Navy ship actually saves the stricken fishing vessel from sinking
3. As an admiralty incident only if the efforts of Navy personnel to save the fishing vessel actually cause it to sink
4. As an admiralty incident only if the Navy ship rescues the crew of the fishing vessel
1-28. When should the initial report of an admiralty incident to the Office of the Judge Advocate General (Code 11) be made?

1. Immediately
2. Within 15 days following the date of the incident
3. Within 30 days following the date of the incident
4. Within 60 days following the date of the incident

1-29. A command may satisfy the requirement for initial reporting of an admiralty incident to the Office of the Judge Advocate General (Code 11) by performing which of the following actions?

1. Filing an admiralty incident report, which must be separate from any other required reports about the incident
2. Arranging for a survey of damage by a locally available qualified Marine surveyor
3. Sending to the Office of the Judge Advocate General (Code 11) a copy of the JAG Manual investigation when it is finalized
4. Making NAVY JAG WASHINGTON DC an information addressee on other reports required by higher authority

1-30. After submitting the initial report of an admiralty incident, which of the following statements about a command’s responsibilities is correct?

1. A JAG Manual investigation must be prepared and forwarded to the Office of the Judge Advocate General (Code 11)
2. A court of inquiry must be convened in accordance with chapters IV and V of the JAG Manual; a copy of its hearing transcript must then be forwarded to the Admiralty Division
3. A litigation report must be prepared and forwarded to the Department of Justice for use in defending the interests of the United States
4. A letter to the Office of the Judge Advocate General (Code 11), setting forth the facts and circumstances of the incident, and forwarding substantiating documents such as photographs, logs, and witness accounts, are usually an appropriate format for a command’s subsequent investigative report

1-31. A command’s subsequent investigative report of an admiralty incident must be submitted within what timeframe?

1. 30 days after the date of the incident
2. 60 days after the date of the incident
3. 90 days after the date of the incident
4. As soon as practical

1-32. An advance copy of a JAG Manual investigation of an admiralty incident should be sent to the Office of the Judge Advocate General (Code 11) as soon as it is prepared to avoid prejudice to the interests of the United States during the period while the investigation is being reviewed and endorsed by the chain of command.

1. True
2. False

1-33. When a formal joint survey of damage is attended by all parties involved in an admiralty incident, the survey report will be an appropriate substitute for a command’s subsequent investigative report of the occurrence.

1. True
2. False
1-34. A command may provide a copy of its investigative report of an admiralty incident to which, if any, of the following persons or organizations?

1. A claimant, or a claimant’s representative, but only upon a written request
2. A private organization, such as the shipyard at which the Navy vessel is located when the incident occurred
3. An individual not connected to the incident, such as a reporter
4. None of the above

Learning Objective: Demonstrate an understanding of the purpose and importance of conducting a joint survey of damage following an admiralty incident.

1-35. Which of the following statements about a survey of damage is NOT correct?

1. A survey is intended to minimize disputes about the extent of damage in any subsequent claim or litigation
2. When Navy property has been damaged in an admiralty incident, the responsibility for arranging and issuing invitations to a damage survey rests with the United States
3. The failure of a private shipowner to afford the United States the opportunity to survey property allegedly damaged by the Navy will result in denial of any subsequent claim against the government
4. Only the Judge Advocate General (Code 11) may issue and accept survey invitations and request representation by the Navy’s marine survey firm following Navy admiralty incidents

1-36. The survey procedure followed by the Navy following an admiralty incident is intended primarily to accomplish which of the following requirements?

1. Satisfies the requirement of marine underwriters
2. Maintain a close working relationship with the Navy’s marine surveyors
3. Establish the specific damage resulting from an admiralty incident
4. Provide a substitute for a command’s investigative report of the incident

1-37. The Navy will issue invitations to a damage survey after which of the following situations occur?

1. Every admiralty incident involving the Navy
2. Every admiralty incident in which the Navy is apparently responsible for damaging privately owned property
3. The submission of an admiralty claim against the Navy
4. Most admiralty incidents involving substantial damage to Navy property

1-38. Which of the following, if any, is the usual procedure for conducting a formal damage survey?

1. Each party to appoint its own surveyor, who conducts the damage survey independently of all other surveyors
2. Each party to appoint its own surveyor, who conducts the damage survey jointly with all other surveyors
3. One surveyor will be chosen by agreement of all parties to survey the damage
4. None of the above

1-39. Which of the following is NOT intended to be a part of the report of a joint survey of damage?

1. A determination of liability for the incident
2. A detailed list of the damage attributable to the incident
3. Recommended repairs for the damage suffered in the incident
4. All of the above are intended to be a part of a joint survey report
1-40. Which of the following statements is correct?

1. The Navy has retained the services of a civilian marine damage survey firm to provide the Navy’s surveyor at joint damage surveys following admiralty incidents.
2. The investigating officer appointed by the command involved in the incident normally will act as the Navy’s marine surveyor at a joint damage survey following an admiralty incident.
3. An attorney from the Admiralty Division of the Office of the Judge Advocate General normally will act as the Navy’s marine surveyor at a joint damage survey following an admiralty incident.
4. A technically qualified person from a Navy shipyard, SUPSHIP office, or maintenance activity normally will act as the Navy’s marine surveyor at a joint damage survey following an admiralty incident.

Learning Objective: Demonstrate understanding of the handling of original documents that may have relevance to an admiralty investigation.

1-41. It is an acceptable practice to include copies of logs and documents, instead of originals, in investigative reports of admiralty incidents.

1. True
2. False

1-42. Which of the following statements about documentary evidence is NOT correct?

1. The government’s case may be prejudiced if original documents are not available for trial.
2. An original log or other official naval record that is produced at trial is copied for the record of trial, and the original is then returned to the Navy.
3. Unofficial documents relating to an admiralty incident, such as rough statements, chronologies, and the like are not admissible evidence and therefore need not be retained for possible use at a future trial.
4. When the custodian of original documents relating to an admiralty incident transfers, special care should be taken to ensure the successor understands the importance of safeguarding the materials.

1-43. What information should be recorded concerning each photograph included in the investigative report of an admiralty incident?

2. The hour, date, and place where the photograph was taken.
3. Names and addresses of persons present when the photograph was taken.
4. All of the above.

1-44. Assume that a Navy destroyer, moored to a pier, is struck by a wayward merchant vessel during a heavy fog. Flooding results in four compartments of the Navy ship. Which of the following must be preserved for inclusion in the ship’s investigative report?

1. The destroyer’s magnetic compass record, deviation data, and navigation chart.
2. The destroyer’s bell book, DRT plot, and photographs of the bridge and ICI status boards.
3. The destroyer’s Engineering Log, Deck Log, and damage control reports.
4. All of the above.
1-45. Assume that a merchant vessel, moored to a pier, is struck by a wayward Navy destroyer during a heavy fog. Flooding results in four compartments of the Navy ship. Which of the following should be preserved for inclusion in the ship’s investigative report?

1. The destroyer’s magnetic compass record, deviation data, and navigation chart
2. The destroyer’s bell book, DRT plot, and photographs of the bridge and CIC status boards
3. The destroyer’s Engineering Log, Deck Log, and damage control reports
4. All of the above

Learning Objective: Recognize special considerations applicable when investigating collisions and shipboard personal injuries.

1-46. Which of the following statements about a collision is correct?

1. Sheets of paper containing rough navigational or other data should be destroyed as soon as possible to avoid later liability
2. Clocks on the bridge and in CIC and the engine room should be compared as soon as possible
3. A list should be prepared of all persons on the bridge or in CIC, except watchstanders, when the collision occurred
4. All unclassified messages about the collision should be collected, and all classified messages should be shredded

1-47. To properly account for collision repairs, all such repairs to Navy ships must be accomplished at Navy shipyards.

1. True
2. False

1-48. While collision repairs are being accomplished, which of the following work will be observed?

1. Noncollision work may not be done even though it may be a convenient opportunity for other repairs to be undertaken
2. Noncollision repair work may proceed concurrently, but must be covered by separate job orders
3. Noncollision repairs may proceed concurrently, but must not be covered by a job order
4. Noncollision repairs may proceed without regard to collision repairs; the cost of all repairs will be asserted against the party responsible for the collision, since but for the collision those expenses would not have occurred

1-49. While a Navy ship is undergoing repairs for collision damage, significant additional damage not included in the joint survey report is discovered. To substantiate the additional damage as properly recoverable from the opposing interests, the Navy should accomplish which of the following?

1. Convene a new survey of all known collision damage
2. Notify the opposing interests and provide them with an opportunity to survey before the additional damage is repaired
3. Accomplish the additional repairs on a separate job order
4. Amend the original survey report, and send a copy to the opposing interests

1-50. When, if ever, is the United States entitled to recover detention costs because of collision damage to a Navy ship?

1. When the vessel must be withdrawn from regular service to accomplish the repairs
2. When the vessel must be repaired in a commercial shipyard
3. When the collision damage will be repaired during a regularly scheduled overhaul
4. Never
1-51. Which, if any, of the following expenses may be included in the detention costs asserted on behalf of a laid up Navy ship?

1. Dry-docking expense
2. Personnel claims paid to crewmembers
3. Survey fees
4. None of the above

1-52. Which of the following statements about investigations of shipboard personal injury incidents is NOT correct?

1. In the investigative report, identify all of the logs inspected for entries about the incident, and not just those logs in which relevant information was found
2. If a witness to the incident is unwilling to provide information, every effort should be made to determine the person’s full name, address, employer, and other identifying information
3. The investigating officer should obtain witness statements instead of preparing summaries of interviews
4. The investigating officer should include relevant naval medical records in the report, but need not attempt to obtain detailed medical records from a civilian physician or the injured party

1-53. What is the purpose of conducting an immediate and detailed inspection of the accident location after a visitor is injured on board a Navy ship?

1. To assist the accident victim in prosecuting a claim against the Navy
2. To gather information useful in refuting an unfounded claim that negligence on the part of the ship and its crew caused the victim’s injury
3. To determine the likely cause of the accident
4. Both 2 and 3 are correct

1-54. When the individual inspecting the location of a shipboard personal injury detects a hazardous or defective condition that might have contributed to the accident, the individual should take which of the following actions?

1. Attempt to determine how long the condition had been in existence, and whether it was known to ship’s personnel
2. Determine whether the condition was caused by Navy personnel and, if so, correct the condition immediately before it becomes known to the victim’s attorney
3. Locate and discard PMS and other maintenance records regarding the applicable space or equipment
4. Photograph the location if the hazardous or defective condition was caused by non-Navy personnel

1-55. Because shoreworkers who witness a personal injury incident involving a fellow shoreworker are likely to give statements about the occurrence to their employer, it is particularly important to seek copies of accident reports and like materials from the victim’s employer, the shipyard safety office, and the cognizant office of the Supervisor of Shipbuilding, Conversion and Repair, USN.

1. True
2. False

Learning Objective: Specify the limitations on correspondence and discussion with potential claimants and their representatives.
1-56. The ship’s legal officer, upon learning that a visitor was injured while on board the vessel, goes to sick bay where the victim is being given first-aid. Hoping to head off a claim against the Navy, the legal officer sympathetically advises the victim to “send the medical bills to my attention, and I will see that they get taken care of.” This action by the legal officer is not correct for what reason?

1. The legal officer does not have settlement authority for admiralty claims
2. The victim may be misled concerning the fact of or extent of the Navy’s liability for the accident
3. When prosecuting a claim or conducting litigation arising from the accident, the victim’s attorney is likely to argue that the advice amounts to an admission of liability
4. All of the above

1-57. Because such requests often precede claims or lawsuits against the United States, a command receiving requests for copies of Navy investigations or records relating to an admiralty incident, or for access to Navy property or interviews with servicemembers about admiralty matters, should immediately report such request to which of the following offices?

1. The local Naval Legal Service Office
2. The Office of the Judge Advocate General (Code 11)
3. The Department of Justice or local U.S. Attorney’s office
4. All of the above
ASSIGNMENT 2

Learning Objective: Demonstrate an understanding of the extent of and conditions for government liability in admiralty matters pursuant to various statutes.

2-1. Under what conditions, if any, may a private citizen bring suit against the United States for damage caused by the tug USNS MOHAWK (T-AFT 170)?

1. If Congress expressly agrees to waive immunity for that suit
2. If the litigation could reasonably result in a greater award than is likely to be offered in settlement of a claim
3. If a lawsuit could be brought by that citizen against a private person or corporation under similar circumstances
4. A U.S. citizen may not sue the government for damage caused by a USNS vessel

2-2. Assume that a resident of Delaware is injured when his anchored sailboat is struck by Navy YD 99 in Little Creek, Virginia, harbor where the YD is permanently assigned. If the injured person decides to bring suit under the Public Vessels Act, where must the suit be filed?

1. United States District Court for the Eastern District of Virginia
2. United States District Court for the District of Delaware
3. United States District Court, Washington, D.C.
4. Suit may be brought in any United States District Court

2-3. To avoid missing the statute of limitation, the injured Delaware resident must file his lawsuit within what time frame?

1. 6 months after the date of the injury
2. 6 months after his claim is denied
3. 2 years after the date of the injury
4. 2 years after his claim is denied

2-4. The Admiralty Jurisdiction Extension Act affected the liability of the United States for admiralty incidents involving the Navy in what way, if any?

1. Made the government liable when damage occurs on land, as well as on water, as a result of an admiralty incident
2. Extended the liability of the government to personal injuries, as well as property damage, caused by admiralty incidents
3. Extended the government’s liability to include damage or injury caused by acts of Navy employees, even though a vessel was not involved in the incident
4. No effect whatsoever

Learning Objectives: Specify the authority, policies, and procedures for settlement of admiralty claims against the Navy, including the responsibilities of the claimant, assigned admiralty attorney, and adjudicating authority.

2-5. Admiralty claims settled for an amount exceeding $15,000,000 must be certified to the Attorney General for approval.

1. True
2. False

Textbook Assignment: Read “Admiralty Law and Its Application in Navy Admiralty Claims Practice: A Primer,” Articles VI through XII, found at pages 13 through 31 in the NRTC, and JAGMAN, chapter XII, sections 1212 through 1224, found at pages AI-12 through AI-18 in the NRTC.
2-6. Suppose a claimant settles a claim against the Navy. A few weeks after depositing the settlement check, he discovers that the agreed amount will not be sufficient to cover all of his losses. What recourse, if any, does he have?

1. To recover his uncompensated losses, he will have to file suit against the United States
2. He may recover his uncompensated losses by filing a supplemental claim with the Navy
3. He may renegotiate the earlier settlement, but only with a different adjudicating authority
4. None

2-7. Assume that repeated efforts to negotiate settlement of an admiralty claim against the government have been unsuccessful, and it appears certain that settlement cannot be accomplished before the expiration of the statute of limitation. To ensure that the claimant is not denied appropriate relief, what action should be taken?

1. The claimant must submit a written request for an extension of the limitation period
2. The Judge Advocate General must toll the statute of limitation by administrative declaration
3. The claimant must file suit in the appropriate United States District Court
4. The negotiating judge advocate must certify that the claim was received within the statutory period

2-8. What is the Navy’s policy concerning admiralty claims in situations involving Navy liability?

1. Settle and pay claims under $10,000 upon a determination of Navy liability
2. Shift the burden of payment to the Department of Justice by refusing payment of large claims, thus forcing the claimant to resort to litigation
3. Effect a fair and prompt settlement, regardless of the size of the claim
4. Use loopholes to avoid Navy responsibility and technicalities to frustrate claimant’s efforts at obtaining compensation

2-9. A claim arising from an admiralty incident overseas may be settled pursuant to the Foreign Claims Act with the permission of the Judge Advocate General.

1. True
2. False

Learning Objective: Specify the authority, policies, and procedures for asserting and settling the Navy’s affirmative admiralty claims, particularly the responsibilities of the assigned admiralty attorney and adjudicating authority.

2-10. When persons or vessels cause damage to Navy property, the Navy is entitled to pursue affirmative admiralty claims by virtue of the authority contained in the Suits in Admiralty Act.

1. True
2. False

2-11. The Secretary of the Navy has authority to settle affirmative admiralty claims up to a maximum of what amount?

1. $10,000
2. $100,000
3. $1,000,000
4. $15,000,000

2-12. The Secretary of the Navy has delegated his affirmative claims settlement authority, up to specified limits, to which of the following persons?

1. The Assistant Judge Advocate General (Civil Law)
2. Commander in Chief U.S. Naval Forces, Europe
3. Commander, Sixth Fleet
4. All of the above
2-13. The limitation period within which the United States must commence litigation against the party responsible for damaging Navy property in an admiralty incident is within what time period?

1. 3 years from the date of the incident
2. 2 years from the date of the incident
3. 3 years from the date of the denial of the government’s affirmative claim
4. 6 months from the date of the denial of the government’s affirmative claim

2-14. Assume that the admiralty attorney assigned a particular affirmative claim sends a letter to the tort-feasor asserting the Navy’s intention to hold the tort-feasor responsible for damaging a Navy ship. Accompanying the demand letter is a damage statement establishing that the cost of repairing the ship was $130,000. A few weeks later the attorney receives, by return mail, a check from the tort-feasor’s insurance company for $130,000 and a draft release to be returned to the company. The attorney should perform, which, if any, of the following actions?

1. Deposit the check in the U.S. Treasury, and execute the release on behalf of the Secretary of the Navy
2. Secure the check and release while obtaining final approval of the settlement from the Secretary of the Navy
3. Secure the check and release while obtaining final approval of the settlement from the Judge Advocate General
4. None of the above

Learning Objective: Demonstrate an understanding of authority and procedures applicable to salvage claims by and against the Navy.

2-15. Affirmative salvage claims are asserted for the Navy by whom?

1. Department of Justice
2. Assistant Supervisor of Salvage, USN
3. Office of the Judge Advocate General (Code 11)
4. Military Sealift Command

2-16. As an administrative convenience, Navy affirmative salvage claims normally are calculated and asserted on a per diem basis, rather than by seeking an award based upon the value of the salved property and consideration of other factors.

1. True
2. False

2-17. Assume that an Alaskan fisherman retrieves a reusable Navy target drone from the Bering Sea, where it had been lost during a fleet exercise. The target was lost by the Navy on 1 November 1985; it was recovered by the fisherman on 1 December 1985. To succeed in a salvage claim, the claim must be acted upon in which of the following ways?

1. Filed not later than 1 June 1986
2. Approved not later than 1 November 1987
3. Approved not later than 1 December 1987
4. Filed not later than 1 November 1988

2-18. For the case described in the preceding question, who is entitled to claim a salvage award?

1. The owner of the fishing vessel
2. The crew aboard the fishing vessel at the time of the salvage
3. Both the owner and the crew of the fishing vessel
4. The Assistant Supervisor of Salvage, USN

2-19. Assume that a Navy tug salvages a commercial vessel, and a claim is asserted by the Navy against the vessel and its owner. The owner files an offsetting claim against the Navy for damage suffered by his vessel during the assistance. In this situation, the Navy probably would perform which of the following actions?

1. Withdraw its per diem salvaged claim and assert a salvage-bonus claim for a higher value
2. Withdraw its per diem salvage claim and file suit against the vessel and its owner
3. Amend its per diem salvage claim to include the amount being sought by the vessel owner
4. Abandon its per diem salvage claim on condition that the vessel owner does likewise
2-20. Assume that the enlisted crew of a Navy motorwhale boat is conducting coxswain training in the waters off Port Hueneme, California, when they see the occupants of a small pleasure boat frantically waving at them. The crew promptly steers the motorwhale boat toward the pleasure craft and discovers it is drifting out to sea without power or communications capability, and that one of the occupants, an elderly gentleman, is complaining of chest pains. Assistance is called for on the motorwhale boat’s radio, and the pleasure craft is taken in tow. The ill gentleman is soon picked up by a Coast Guard speedboat and taken to a hospital, where he recovers. The pleasure craft is towed to safety by the Navy boat. Which of the following statements is correct?

1. The Navy is entitled to a salvage award for saving the pleasure craft
2. The Navy is entitled to a salvage award for saving the gentleman’s life
3. The crew of the Navy boat is entitled to a salvage award separate from that claimed by the Navy
4. All of the above

Learning Objective: Demonstrate an understanding of principles applicable to special maritime cases involving towage, pilotage, and waiver situations.

2-21. What distinction, if any, have the courts made concerning liability for negligent performance of towage services and pilotage services?

1. The Navy may not be held liable for negligent towage, but may be held liable for negligent pilotage
2. Persons providing towage services may exempt themselves by contract from liability for their negligent acts, but those providing pilotage services may not
3. Persons providing pilotage services may exempt themselves by contract from liability for their negligent acts, but those providing towage services may not
4. None

2-22. When the Navy agrees to provide a pilot and associated tug services to a privately-owned vessel, why should the language contained in JAGMAN, Appendix A-12-d, be incorporated into the contract?

1. To provide notice that the Navy does not consent to liability for any damage occurring while it provides such services
2. To enable the Navy to claim and recover any damages resulting from the operation
3. To document the aided vessel’s agreement to pay for the services provided by the Navy
4. To ensure the Navy enjoys the same protection from liability that a commercial firm enjoys under similar circumstances

2-23. A claim arising from which of the following incidents is subject to waiver?

1. Damage to a Navy vessel by an Air Force helicopter
2. Damage to a Navy pier by a National Oceanic and Atmospheric Administration survey boat
3. A collision between Navy and Coast Guard training vessels
4. All of the above

2-24. The doctrine of waiver of claims arising from incidents involving only different departments of the federal government is based on which of the following determinations?

1. Appropriations of one department cannot be used to pay the claims of another department
2. There can be no liability between agents of the same employer
3. Claims between different agencies of the same government represent conflicts of interest
4. There is no fair or adequate method for determining the extent of damages in such cases
2-25. The provision mandating waiver of claims arising from incidents involving only different departments of the federal government applies to final settlement of claims, but does not affect the requirements that an investigative report of the incident be prepared and a joint survey of the damage be conducted.

1. True
2. False

2-26. Assume that a British submarine, outbound from Port Canaveral, Florida, collides with a Navy escort ship, causing extensive damage to the ship. The collision occurs within U.S. territorial waters. The Navy’s claim will be handled in which of the following manners?

1. Paid by the British government upon a demonstration that the submarine was negligently operated
2. Paid by the British government pursuant to treaty obligations, without any need to demonstrate negligence by the submarine
3. Barred by application of the Foreign Sovereign Immunities Act
4. Barred by operation of a waiver agreement, applicable to such claims, between the U.S. and Great Britain

2-27. Although American law exempts U.S. Navy vessels from arrest, such vessels may be lawfully arrested in foreign ports.

1. True
2. False

2-28. A vessel owned by a foreign government may forfeit its immunity from arrest in the United States under which of the following circumstances?

1. The vessel is engaged in a competitive commercial enterprise
2. The vessel is suspected of violating U.S. customs or immigration laws
3. The vessel is involved in a maritime accident
4. The vessel is operated in such a manner that it constitutes a hazard to navigation

Learning Objective: Specify the policies of the Navy regarding participation in and cooperation with investigations of maritime accidents conducted by the Coast Guard and NTSB.

2-29. Naval personnel are not required to report a marine casualty involving a U.S. Navy vessel to the Coast Guard, complete any Coast Guard form or other document describing the incident, or participate in a Coast Guard investigation of the incident.

1. True
2. False

2-30. As a matter of policy, the Navy renders the fullest possible cooperation to Coast Guard investigations of marine casualties under which of the following conditions?

1. Important Navy interests are not harmed thereby
2. Only civil liabilities issues are involved
3. Any official records furnished are included in the public Coast Guard report
4. Navy records are not required

2-31. The decision whether U.S. Navy personnel will be permitted to testify at a Coast Guard investigation hearing is made by which of the following persons?

1. The Commanding Officer of the affected servicemember
2. The local judge advocate where the servicemember is stationed
3. The Judge Advocate General of the Navy
4. The commandant of the Coast Guard District where the hearing is being held

2-32. The primary consideration whether to permit Navy personnel to testify at a Coast Guard investigation is on which of the following determinations?

1. The effect on public opinion of failing to provide the witness
2. Protection of the United States’ position in the event of litigation arising from the accident
3. Whether the witness’ testimony will be favorable to the Navy
4. The appearance and demeanor of the witness
2-33. A National Transportation Safety Board (NTSB) investigation of a marine casualty does not take priority over other official inquiries into the incident, such as the Navy’s own JAG Manual investigation.

1. True
2. False

2-34. Unlike Coast Guard investigations, the NTSB has the power to subpoena Navy witnesses and documents when investigating a marine casualty.

1. True
2. False

Learning Objective: Demonstrate an understanding of basic legal principles applicable to admiralty personal injury cases.

2-35. Assume that Military Sealift Command’s oceanographic research vessel USNS DUTTON (T-AGS 22) is refueling underway from a civilian tanker operating under contract with MSC. During the UNREP, DUTTON suffers a steering casualty because of poor maintenance of steering equipment. The resulting inability to stay on station causes the span wire to part, and the whip action injures a number of people on both ships. Upon filing an admiralty claim or lawsuit against the Navy, which of the following persons may expect to recover damages?

1. A Navy E-4, riding DUTTON as a member of the Oceanographic Unit Detachment, who was observing the UNREP out of curiosity
2. A civil service officer on DUTTON who was supervising a refueling station during the UNREP
3. A seaman, employed by the contractor operating the tanker, who was walking across the weather deck to the galley for chow when the accident occurred
4. All of the above

2-36. The standard for determining liability to an injured ship visitor is whether the ship took every possible measure to ensure that the ship was made safe for visitors.

1. True
2. False

2-37. Assume that a civilian visitor trips and falls over an uneven place in a ship’s deck during an “Open House” weekend. Liability of the Government likely will depend on which of the following factors?

1. The warnings given to the visitor about the hazard
2. How obvious or hidden the hazard was to a visitor unfamiliar with the ship
3. The reason why the uneven place in the deck existed
4. All of the above

2-38. If a civilian federal employee is injured in the course of employment in an admiralty incident, the investigative responsibilities of the Navy command are likely to be streamlined since these persons are barred from obtaining relief from the government through an admiralty claim or litigation.

1. True
2. False

2-39. Assume that a shoreworker, employed by Ace Cleaning Co., a subcontractor of West Coast Shipyard, is injured while working on board USS HEWITT (DD 966), then located at the shipyard for overhaul. The shoreworker is barred from recovering damages for his injury in a lawsuit against which of the following organizations?

1. Ace Cleaning Co.
2. West Coast Shipyard
3. United States
4. All of the above

2-40. With respect to shoreworkers, exercising reasonable care for their safety includes the practice of which of the following safety practices?

1. Having the ship and its equipment in generally safe condition when the worker enters to do his work
2. Supervising a shoreworker’s operations to ensure that no dangerous conditions develop
3. Guaranteeing an accident-free worksite for the shoreworker
4. All of the above
2-41. A shipowner has no general duty to monitor a shoreworker’s performance for the purpose of discovering dangerous conditions that may develop, unless such a duty arises pursuant to contract or because of the vessel owner’s active involvement and control over the shoreworker’s operations.

1. True
2. False

Learning Objective: Demonstrate an understanding of basic legal principles applicable in various admiralty cases.

2-42. Assume that a Canadian warship arrives at Naval Station, San Diego, for an official port visit in connection with its participation in joint exercises in the Eastern Pacific Ocean. The ship’s approach is too fast, and it strikes the pier hard, damaging four pier pilings. This type of incident is known by which of the following terms?

1. A collision
2. An allision
3. A shore station injury
4. An inexcusable blunder

2-43. Which of the following statements about the incident described in the preceding question is NOT correct?

1. The incident must be reported to the Office of the Judge Advocate General (Code 11) pursuant to JAGMAN chapter 12
2. An investigative report (either letter report or JAG Manual investigation) must be prepared and forwarded to the Office of the Judge Advocate General (Code 11)
3. A presumption of fault on the part of the Canadian vessel exists
4. The Navy will not recover the cost of repairing the pier from the Canadians

2-44. Assume that the USS JOHN HANCOCK (DD 981) is making a port call at Annapolis, Maryland, in connection with graduation week activities at the U.S. Naval Academy. As the ship is proceeding slowly toward its designated anchorage, a sailboat with a “NO NUKES” protest message on its sail crosses ahead of the ship. The boat then turns to attempt another crossing; however, a sudden gust of wind causes the sailboat to strike the starboard bow of the ship. Which of the following statements about the incident is correct?

1. The incident is a collision
2. A presumption of fault on the part of the sailboat exists
3. Because the incident is minor, it need not be reported and investigated
4. All of the above are correct

2-45. With respect to the incident described in the preceding question, the sole law used to analyze liability is the International Regulations for Preventing Collisions at Sea, 1972, also known as 72 COLREGS.

1. True
2. False

2-46. Which of the following is an example of the PENNSYLVANIA Rule?

1. If a vessel involved in a collision was, at the time of the incident, violating any navigation rule, that vessel will be liable for the other vessel’s damage
2. If a collision results from violations of the navigation rules by both vessels, each vessel will bear one-half of the other vessel’s damage or losses
3. If an allision occurs notwithstanding the moving vessel’s compliance with all navigation rules, the moving vessel will not be held liable for the damage
4. A vessel violating any navigation rule cannot escape responsibility for a collision unless it can prove that its violation did not cause and could not have contributed to the mishap
2-47. The International Convention for the Prevention of Pollution from Ships (referred to as MARPOL 73/78) applies to Navy vessels in which of the following circumstances?

1. When operating in combat situations during which it becomes necessary to discharge pollutants
2. When the vessel is subject to Annex V to MARPOL, pursuant to the Act to Prevent Pollution from Ships, pertaining to the disposal of garbage and plastic
3. When the vessel can comply with MARPOL even if it reduces operational capabilities
4. All of the above

2-48. Which of the following statements describes the special maritime and admiralty jurisdiction of the United States pertaining to criminal activity?

1. Extends only to crimes committed on the high seas by foreign nationals
2. Extends to the unenclosed waters of the Great Lakes, the high seas, coastal waters seaward of the low water mark and all other waters within the admiralty jurisdiction
3. Extends only if there is no other way to prosecute a crime
4. None of the above

2-49. With respect to United States registered or documented vessels, customs officials and the Coast Guard may stop and board such a vessel on the high seas only in situations where there is a suspicion of criminal activity and where a neutral and detached magistrate has issued a federal warrant.

1. True
2. False

2-50. Claims arising from an oil spill from a sea-going vessel, into the navigable waters of the United States, fall within the admiralty tort jurisdiction.

1. True
2. False

2-51. Under OPNAVINST 5090.1B, when a pollution incident occurs, Navy commands retain authority to handle all aspects of the incident on the local level and are encouraged but not required to cooperate with officials outside of the Department of the Navy.

1. True
2. False