## Table of Contents

### Volume 1

#### CHAPTER 1. JURISDICTION

- § 1:1 Origin of admiralty
- § 1:2 The term “admiralty”
- § 1:3 Admiralty jurisdiction—Introduction
- § 1:4 Sources of admiralty law—Introduction
- § 1:5 The general maritime law—Transnational dimensions
- § 1:6 —Additional references to section 1:5—State law
- § 1:7 The saving-to-suitors clause
- § 1:8 —Litigation in state courts
- § 1:9 —Admiralty actions “at law” in federal court
- § 1:10 —Law applicable; reverse *Erie* doctrine
- § 1:11 —Removal
- § 1:12 Nonremovability exception for arbitrations
- § 1:13 The high seas and navigable waters of the United States including inland waters
- § 1:14 —Additional references to section 1:13—Obstructions to navigation
- § 1:15 Admiralty tort jurisdiction—The locus and nexus requirements
- § 1:16 —Maritime locus requirement
- § 1:17 —Maritime nexus requirement
- § 1:18 —Additional references to section 1:15—Pre-*Grubart* cases
- § 1:19 Injury or death on Outer Continental Shelf—Jurisdiction and related issues
- § 1:20 The Extension of Admiralty Jurisdiction Act (AEA)
- § 1:21 —The Admiralty Extension Act—Suits against the United States
- § 1:22 Nexus without locus
- § 1:23 Jurisdiction in contract cases
- § 1:24 Jurisdiction over seaman’s claims
- § 1:25 —Additional references to section 1:24—U.S. seamen
- § 1:26 Suits involving aliens
- § 1:27 —Jurisdiction
- § 1:28 ——Additional references to section 1:27—Jurisdiction: contacts with the U.S.
§ 1:29 —Choice of law
§ 1:30 —Additional references to section 1:29—Application of *Lauritzen-Rhoditis* factors
§ 1:31 Flags of convenience
§ 1:32 Forum non conveniens—Discretionary dismissal
§ 1:33 —Additional references to section 1:32—Discretion
§ 1:34 Conditional dismissal
§ 1:35 Alien seamen injured on American vessel
§ 1:36 United States seamen injured on foreign vessel
§ 1:37 —Additional references to section 1:36—United States seamen injured on foreign vessel
§ 1:38 Forum-selection clauses
§ 1:39 Arbitration clauses
§ 1:40 —Statutory rights
§ 1:41 —Additional references to sections 1:36 to 1:40—Forum-selection and arbitration clauses
§ 1:42 Personal jurisdiction

**CHAPTER 2. DEFINING SEAMEN**
§ 2:1 Introduction
§ 2:2 Seamen—Broad definition
§ 2:3 —Additional references to section 2:2—Seamen—Broad definition
§ 2:4 Jones Act seaman—The current test—Introduction
§ 2:5 —The Supreme Court decisions
§ 2:6 —“Members of a crew” distinguished from longshoremen, harborworkers, and offshore workers
§ 2:7 Seaman status—The fleet doctrine
§ 2:8 Jones Act seaman—Seamen—Perils of the sea
§ 2:9 —Additional references to section 2:5—The current test
§ 2:10 Scientific research employees
§ 2:11 —Additional references to section 2:9—Scientific research employees
§ 2:12 What is a vessel?
§ 2:13 Nonvessels
§ 2:14 —Structure not completed or launched
§ 2:15 —Extension of land
§ 2:16 —Work platforms—Harbor workers, offshore workers, or seamen?
§ 2:17 —Additional references to section 2:15—Nonvessel—Work platforms
§ 2:18 The vessel in navigation element
§ 2:19 Vessel in navigation—Navigable waters
§ 2:20 Vessel must be in navigation—Additional references to section 2:17—Vessel in navigation
Table of Contents

§ 2:21 Jones Act seaman—A question of fact
§ 2:22 —Additional references to section 2:19—Jones Act seaman
§ 2:23 Election of remedies
§ 2:24 Seamen as defined by federal statutes
§ 2:25 —Under immigration acts; aliens
§ 2:26 Seamen—Unsigned articles
§ 2:27 —Workaway
§ 2:28 —Masters and officers
§ 2:29 —Stowaway
§ 2:30 —Guests on pleasure boats
§ 2:31 —Volunteers

CHAPTER 3. DUTIES OF AMERICAN CONSULS
§ 3:1 Brief history of the Department of State
§ 3:2 The consular service
§ 3:3 Principal duties of consul
§ 3:4 Grades of consuls
§ 3:5 Consular protection as matter of public policy
§ 3:6 Laying complaints before the consul—Procedure
§ 3:7 Purpose and extent of the right to lay complaints before the counsel
§ 3:8 Insubordination and imprisonment of seamen—Historic background
§ 3:9 —Under present statute
§ 3:10 Criminal offenses
§ 3:11 Transportation of offending seamen
§ 3:12 The consular hearings
§ 3:13 Consul’s certificate
§ 3:14 Shipping out seamen
§ 3:15 Discharge—In general
§ 3:16 —Without approval of consul
§ 3:17 —Statutory provisions
§ 3:18 —Illness or injury incapacitating seaman for service
§ 3:19 —Payment of wages
§ 3:20 —One month’s extra wages
§ 3:21 —Records regarding discharge
§ 3:22 Property of deceased seamen
§ 3:23 Relief to destitute seamen
§ 3:24 Type of relief granted
§ 3:25 Seamen for purposes of consular relief
§ 3:26 Grounds for denial of relief
§ 3:27 Consular fees for services to seamen
§ 3:28 Accountability of consul for wages on discharge in foreign ports
§ 3:29 Notes of protest
§ 3:30 Naval officers acting as consuls
§ 3:31 Wages of master at time of discharge

CHAPTER 4. RELATION OF FOREIGN CONSULS TO SEAMEN
§ 4:1 Effect of Seamen’s Act of 1915
§ 4:2 The role of foreign consuls
§ 4:3 Treaties and conventions
§ 4:4 Wage disputes and matters of internal discipline
§ 4:5 Admiralty jurisdiction—Foreign vessels in American ports
§ 4:6 Where treaty exists giving consul exclusive control in civil disputes
§ 4:7 Where treaty provides for concurrent jurisdiction
§ 4:8 Treaty stipulations—Special circumstances
§ 4:9 Absence of treaty stipulations
§ 4:10 Where plaintiff is an American citizen
§ 4:11 Where statutes contravene treaty provisions

CHAPTER 5. MARITIME ADMINISTRATIVE LAW
§ 5:1 Duties of masters toward seamen
§ 5:2 Articles to be signed before shipping commissioner
§ 5:3 Allotments and advances
§ 5:4 Wages and effects of deserting seamen
§ 5:5 Merchant mariner’s documents and certificates of discharge
§ 5:6 Wages and effects of deceased seamen
§ 5:7 Coast Guard administrative hearings
§ 5:8 —Additional references to section 5:7—Administrative hearings
§ 5:9 Visas for alien seamen

CHAPTER 6. THE SHIPPING ARTICLES
§ 6:1 Shipping articles—the employment contract
§ 6:2 —Pre-employment physical examinations
§ 6:3 Articles must be in writing
§ 6:4 When articles required
§ 6:5 —Additional references to section 6:4—Shipping article—Great Lakes
§ 6:6 Articles signed at sea

xx
### TABLE OF CONTENTS

| § 6:7 | Failure to sign articles |
| § 6:8 | Alterations of articles |
| § 6:9 | Change in rating and wages |
| § 6:10 | Disaffirmance of articles |
| § 6:11 | Infant seamen |
| § 6:12 | Required form and content of articles; receipt by Coast Guard |
| § 6:13 | Continuous and voyage articles |
| § 6:14 | Rules of behavior |
| § 6:15 | Shore leave |
| § 6:16 | Dangerous weapons and intoxicants |
| § 6:17 | Use of sheath knives |
| § 6:18 | Scale of provisions |
| § 6:19 | Riders |
| § 6:20 | —When void |
| § 6:21 | Crew citizenship requirements |
| § 6:22 | Particulars of engagement |
| § 6:23 | Particulars of discharge |
| § 6:24 | Forecastle card |
| § 6:25 | Time to be on board vessel |
| § 6:26 | Description of voyage and time |
| § 6:27 | Services to end of voyage and to end of engagement |
| § 6:28 | End of specified time |
| § 6:29 | “Other ports and places in any part of the world” |
| § 6:30 | Final port of discharge |
| § 6:31 | Freedom from ambiguity |
| § 6:32 | Parol evidence |
| § 6:33 | Deviation |
| § 6:34 | Void articles |
| § 6:35 | Penalty for shipping without articles |
| § 6:36 | New articles obtained under duress |
| § 6:37 | Allotments |
| § 6:38 | Removal or death of master |

### CHAPTER 7. THE LOG BOOKS

| § 7:1 | The ship’s logs |
| § 7:2 | Official log book issued by Coast Guard |
| § 7:3 | Required entries; penalties for failure to make entries |
| § 7:4 | Happenings to be recorded by master in official log |
| § 7:5 | —Additional references to section 7:4—Required entries |
| § 7:6 | Entries relating to load lines and safety at sea |
| § 7:7 | Defective entries |
| § 7:8 | Entries logging offenses must be made promptly |
§ 7:9 Reading the log entry
§ 7:10 Failure to make entries
§ 7:11 —Additional references to section 7:10—Forfeiture of wages
§ 7:12 Admissibility of the log book as evidence
§ 7:13 Weight of log book entries as evidence
§ 7:14 Failure to produce logs
§ 7:15 Alterations

CHAPTER 8. DESERTION
§ 8:1 In general
§ 8:2 Historical background
§ 8:3 American statutes
§ 8:4 The log book entry
§ 8:5 Turning in deserters’ wages
§ 8:6 How deserters’ wages can be recovered
§ 8:7 Desertion defined
§ 8:8 Intent—A question of fact
§ 8:9 —Seaman’s clothes as indicative of intent
§ 8:10 —Intoxication and desertion
§ 8:11 —Staying ashore
§ 8:12 Desertion at sea
§ 8:13 Desertion before sailing
§ 8:14 Burden of proof
§ 8:15 Repenting deserter
§ 8:16 Infant deserter
§ 8:17 Deserting from harbor craft
§ 8:18 Desertion from fishing vessels
§ 8:19 Justifiable cause
§ 8:20 —Cruelty of ship’s officers
§ 8:21 —Fear of bodily harm from fellow-seaman
§ 8:22 —Drunkenness of fellow-seaman
§ 8:23 —Leaving vessel to see consul
§ 8:24 —Leaving vessel on advice of consul
§ 8:25 —Completion of the voyage
§ 8:26 —Mutual consent
§ 8:27 —Discharge by master
§ 8:28 —Connivance by master or officers
§ 8:29 —Bad or insufficient food
§ 8:30 —Failure to provide medical attention
§ 8:31 —Unsanitary or uncomfortable quarters
§ 8:32 —Disrating
§ 8:33 —Voyage broken up
§ 8:34 —Employment of lower grade substitutes
§ 8:35 —Deviation from the terms of the articles
§ 8:36 —Unseaworthiness
§ 8:37 —Lack of or improper articles
§ 8:38 —Working extra watches and overtime
§ 8:39 —Refusal to pay statutory half wages
§ 8:40 Labor strikes
§ 8:41 Partial forfeiture
§ 8:42 —Additional references to section 8:41—Partial forfeiture

CHAPTER 9. CREW SALVAGE
§ 9:1 Scope
§ 9:2 Origin of salvage
§ 9:3 Difference between maritime and common law
§ 9:4 Public policy
§ 9:5 International salvage conventions
§ 9:6 The salvage service
§ 9:7 Definition of salvage award
§ 9:8 Elements necessary to valid salvage claim
§ 9:9 Definition of a salvor
§ 9:10 Types of salvage services
§ 9:11 Those entitled to salvage—In general
§ 9:12 —Master of salving vessel
§ 9:13 —Crew of salving vessel
§ 9:14 —Owner of salving vessel
§ 9:15 —Charterer of salving vessel
§ 9:16 —Corporations
§ 9:17 Salvor must be a volunteer
§ 9:18 —Common ownership of salved and salving vessels
§ 9:19 —Pilots
§ 9:20 —Passengers
§ 9:21 —Public officers
§ 9:22 —City firemen
§ 9:23 —Naval personnel—English rule
§ 9:24 — —American rule
§ 9:25 —Coast Guard
§ 9:26 —Crew salving own vessel
§ 9:27 — —Abandonment
§ 9:28 — —Wreck
§ 9:29 — —Discharged by master
§ 9:30 — —Recapture
§ 9:31 —Professional salvors
§ 9:32 Property subject to salvage—Maritime nature
§ 9:33 —Aircraft
§ 9:34 — Wrecks and derelicts
§ 9:35 — Money, bullion, bills of exchange, etc
§ 9:36 — Rafts of timber
§ 9:37 — Life salvage
§ 9:38 — — The Salvage Act of 1912
§ 9:39 — The peril to maritime property required
§ 9:40 — When aid is refused
§ 9:41 — How aid is accepted
§ 9:42 — Beneficial results to property saved required
§ 9:43 — Effect of contributing to eventual saving of property
§ 9:44 — Contract salvage—General
§ 9:45 — — Lloyd’s contract salvage form—LOF—SCOPIC Clause
§ 9:46 — Oppressive contracts
§ 9:47 — Whether salvage or towage
§ 9:48 — Salvage and towage distinguished
§ 9:49 — Award
§ 9:50 — Elements considered in determining amount
§ 9:51 — Skill displayed by salvors
§ 9:52 — Labor expended by salvors
§ 9:53 — Value of salved property
§ 9:54 — Value of and danger to salving property
§ 9:55 — Risk incurred by salvors
§ 9:56 — Degree of danger from which property rescued
§ 9:57 — Salvage and the environment
§ 9:58 — Effect of salvor’s misconduct
§ 9:59 — Fraud of salvor
§ 9:60 — Amount in discretion of court
§ 9:61 — Appeals as to amount of salvage award
§ 9:62 — Salvor’s expenses
§ 9:63 — Effect of death of salvor
§ 9:64 — When salvage made necessary by fault of salving ship
§ 9:65 — The salvage lien
§ 9:66 — Salvor’s right to possession
§ 9:67 — Statute of limitations

CHAPTER 10. CRIMINAL OFFENSES
§ 10:1 — Maritime crimes
§ 10:2 — Jurisdiction
§ 10:3 — Special maritime and territorial jurisdiction of the United States
§ 10:4 — Maritime Drug Law Enforcement Act (MDLEA)
§ 10:5 — Venue
§ 10:6 — Jury trials
| § 10:7 | Searches and seizures |
| § 10:8 | —For pollution, environmental offenses |
| § 10:9 | —Additional references to section 10:7—Search and seizure |
| § 10:10 | Abandonment of seaman in foreign port |
| § 10:11 | —“Maliciously” |
| § 10:12 | —“Without justifiable cause” |
| § 10:13 | —Use of physical force |
| § 10:14 | Rape, sexual abuse |
| § 10:15 | Detaining seaman's clothes |
| § 10:16 | Shanghaiing |
| § 10:17 | Unseaworthiness |
| § 10:18 | Revolt or mutiny—Definition |
| § 10:19 | —Making a revolt |
| § 10:20 | The statutory authority to prosecute mutiny |
| § 10:21 | Justification for revolt or mutiny—Unseaworthiness |
| § 10:22 | —Fear of bodily harm |
| § 10:23 | —Incompetency of master |
| § 10:24 | —Intoxication, insanity, etc |
| § 10:25 | —Void articles |
| § 10:26 | Endeavor to revolt or mutiny—Definition |
| § 10:27 | —Conspiracy |
| § 10:28 | —Confinement of master |
| § 10:29 | —Refusal of crew to obey orders |
| § 10:30 | —Change of masters |
| § 10:31 | —Justification |
| § 10:32 | The statutory authority to punish an endeavor to make a revolt |
| § 10:33 | —Vessel of the United States |
| § 10:34 | —“Crew of a vessel of the United States” |
| § 10:35 | The statutory authority to punish |
| § 10:36 | —Assault by the master |
| § 10:37 | —Assault by ship's officers |
| § 10:38 | Arson |
| § 10:39 | Murder |
| § 10:40 | Manslaughter |
| § 10:41 | Malicious mischief |
| § 10:42 | Piracy |
| § 10:43 | Privateering |
| § 10:43.50 | Pollution |
| § 10:44 | Plundering of distressed vessels |
| § 10:45 | Offenses of maritime character against foreign nations—The neutrality laws |
| § 10:46 | Slave trade prohibited |
§ 10:47 Robbery
§ 10:48 Destruction of vessels
§ 10:49 Explosives on vessels
§ 10:50 Boarding vessels before arrival

CHAPTER 11. LOSS OF CLOTHING AND PERSONAL EFFECTS
§ 11:1 Lost clothes and effects
§ 11:2 Statutory provisions
§ 11:3 Forfeiture of effects by misconduct
§ 11:4 Storage of seamen’s clothes on vessel creates gratuitous bailment
§ 11:5 Action against master, vessel and owner
§ 11:6 Damages for detention
§ 11:7 Burden of proof
§ 11:8 Proof of loss
§ 11:9 Measure of damages
§ 11:10 Defenses
§ 11:11 Loss of effects as result of collision or stranding

CHAPTER 12. WAGES
§ 12:1 Liability for wages
§ 12:2 —Additional references to section 12:1—Collective bargaining agreements
§ 12:3 — —Wages
§ 12:4 When wages are due—the statute
§ 12:5 The statutory right to half wages in port
§ 12:6 —Application to foreign vessels
§ 12:7 —Double wage penalty
§ 12:8 —Demand must be made in good faith
§ 12:9 —Demand before expiration of five days
§ 12:10 —Demand must be clearly made
§ 12:11 —Reasonable time must be given
§ 12:12 —Advance wages in foreign ports
§ 12:13 Suits for wages
§ 12:14 Arbitration clauses
§ 12:15 Jury trial
§ 12:16 Conditional payment of wages
§ 12:17 Failure to join vessel
§ 12:18 Loss or wreck of vessel
§ 12:19 Shipping seamen contrary to law
§ 12:20 Illegal voyages
§ 12:21 Payment of debts during voyage
§ 12:22 Wages not affected by limitation of liability
§ 12:23  Unearned wages
§ 12:24  One month's wages
§ 12:25  Seizure of vessel
§ 12:26  Wage increases obtained under duress
§ 12:27  Waiver of right to wages or for salvage
§ 12:28  Advances
§ 12:29  Allotments
§ 12:30  Statutory prohibition on attachment and assignment of wages
§ 12:31  Fair Labor Standards Act exemption
§ 12:32  The applicability of state wage laws
§ 12:33  Watch requirements and hours—The statute
§ 12:34  —Purpose
§ 12:35  —Dividing watches
§ 12:36  —Ratings in watches
§ 12:37  —Right to leave ship
§ 12:38  —Overtime
§ 12:39  —Penalties for violations
§ 12:40  Crew qualifications and requirements
§ 12:41  Custodia legis expenses
§ 12:42  Repatriation expenses
§ 12:43  Wage claims on double books

CHAPTER 13. CHANGE OF RATING
§ 13:1  Right of master to disrate
§ 13:2  Disrating for remedial purposes
§ 13:3  Grounds for disrating
§ 13:4  Disrating—Slight offense
§ 13:5  Upholding master's determination
§ 13:6  Disrating of officers
§ 13:7  Disrating to lowest grade
§ 13:8  Effect on seaman's contract
§ 13:9  Approval of consul
§ 13:10  Acceptance of new position
§ 13:11  Promotion
§ 13:12  Employment discrimination

CHAPTER 14. FINES AND FORFEITURES
§ 14:1  Ship discipline
§ 14:2  Fines benefit the shipowner
§ 14:3  Misconduct under general maritime law
§ 14:4  Fines and forfeitures regulated by statute
§ 14:5  Failure to join vessel
§ 14:6  Absence without leave
§ 14:7 Quitting vessel without leave after arrival
§ 14:8 Willful disobedience to lawful command
§ 14:9 Continued willful disobedience to lawful command
§ 14:10 Willful neglect of duty
§ 14:11 Assaulting master or other officers
§ 14:12 Willfully damaging vessel
§ 14:13 Stealing or willful damage to stores or cargo
§ 14:14 Fines and forfeitures apply also to officers
§ 14:15 Coastwise vessels
§ 14:16 Log book entry
§ 14:17 Misconduct while on port payroll

CHAPTER 15. DEDUCTIONS AND SET-OFFS
§ 15:1 Deductions against wages permitted
§ 15:2 Statutory enactment
§ 15:3 Effects of penalty statutes
§ 15:4 Set-offs
§ 15:5 Double recovery
§ 15:6 Smuggling by seaman
§ 15:7 Damages to vessel through negligence
§ 15:8 Loss of supplies
§ 15:9 Loss of cargo
§ 15:10 Where vessel fined for presence of stowaway
§ 15:11 Hospital expenses due to seaman’s misconduct
§ 15:12 Detention of vessel
§ 15:13 Improper deductions
§ 15:14 Expenses in rejoining vessel

CHAPTER 16. IMPROPER DISCHARGE—STATUTORY ONE MONTH'S WAGES
§ 16:1 The statutory right to one month’s wages
§ 16:2 Historical background
§ 16:3 Liquidated damages
§ 16:4 Without seaman’s fault
§ 16:5 Justification for discharge
§ 16:6 Without seaman’s consent
§ 16:7 After one month’s wages earned
§ 16:8 Before commencement of the voyage
§ 16:9 Improperly discharged
§ 16:10 Voyages where statute not applicable
§ 16:11 Unseaworthiness
§ 16:12 Revocation of discharge
§ 16:13 Discharge because of seizure of vessel
§ 16:14 Damages under lump sum articles
CHAPTER 17. DOUBLE WAGES

§ 17:1 Historical background
§ 17:2 Additional references to section 17:1—Protection of seamen
§ 17:3 The double wage statute
§ 17:4 Additional references to section 17:3—The Statute
§ 17:5 Is double wage payment a penalty?
§ 17:6 Double wages do not apply against the government
§ 17:7 Additional references to section 17:6—Claims against the United States
§ 17:8 Meaning of “without sufficient cause”
§ 17:9 Additional references to section 17:8—Arbitrary action
§ 17:10 — Sufficient cause
§ 17:11 — Unreasonable conduct
§ 17:12 — Insufficient cause
§ 17:13 — Difference of opinion
§ 17:14 Good faith shown
§ 17:15 Additional references to section 17:14—Good faith
§ 17:16 Sufficient cause—Wages paid
§ 17:17 Additional references to section 17:16—Failure to prove claim—Wages paid
§ 17:18 — Refusal to accept wages
§ 17:19 — When no discharge has taken place
§ 17:20 — Desertion
§ 17:21 — Perils of navigation
§ 17:22 — When legal questions are involved
§ 17:23 — Ruling of consul
§ 17:24 — Indefiniteness of articles
§ 17:25 — Absence of seaman at pay-off
§ 17:26 — Where owner of vessel did not know that wages were due
§ 17:27 — Arrest of vessel or financial difficulties of owner
§ 17:28 — Additional references to section 17:27—Bankruptcy
§ 17:29 — Double wage penalty during time of appeal
§ 17:30 Masters not entitled to double wage penalty
§ 17:31 Laches in bringing suit
§ 17:32 Additional references to section 17:31—Laches
§ 17:33 Coastwise voyages
§ 17:34 Additional references to section 17:33—Coasting voyage and those engaged in the coastwise trade
§ 17:35 No double wages—Great Lakes
§ 17:36 Improper discharge under section 10313
§ 17:37 Sick and hospitalized seamen
§ 17:38 —Conditional payment
§ 17:39 Time for which penalties run
§ 17:40 —Additional references to section 17:39—Time from which penalty runs

CHAPTER 18. TRANSPORTATION AND REPATRIATION
§ 18:1 Statutory enactments
§ 18:2 Discharge—Illness or injury
§ 18:3 —Mutual consent
§ 18:4 —Misconduct
§ 18:5 —Complaint laid before consul
§ 18:6 —Improperly made
§ 18:7 Void articles
§ 18:8 Where seaman deserts
§ 18:9 Abandonment of voyage by owner
§ 18:10 Arrest of vessel
§ 18:11 Effect of loss or wreck of vessel
§ 18:12 Payment of return transportation by seaman
§ 18:13 Loss of transportation by election
§ 18:14 Transfer of ownership of vessel
§ 18:15 Where seamen join vessels at outports
§ 18:16 Final port of discharge
§ 18:17 Vessel captured as prize
§ 18:18 Striking seamen
§ 18:19 Transportation on inland waterways
§ 18:20 Limitation of liability

CHAPTER 19. THE WRECK STATUTE
§ 19:1 The wreck statute
§ 19:2 Vessel need not be totally destroyed
§ 19:3 Time when wages end
§ 19:4 Necessity of survey
§ 19:5 Transportation of seamen when vessel a wreck
§ 19:6 Negligence of master

CHAPTER 20. MARITIME LIENS
§ 20:1 Scope of chapter
§ 20:2 What is a maritime lien?
§ 20:3 Characteristics of a maritime lien
§ 20:4 Property subject to lien

xxx
§ 20:5 —Additional references to section 20:4—Liability of the vessel
§ 20:6 Those entitled to wage lien—Seamen
§ 20:7 Nature of the seaman's wage lien
§ 20:8 —Additional references to section 20:7—Wages
§ 20:9 Those entitled to wage lien—Master
§ 20:10 —Watchmen
§ 20:11 Arrest or seizure of vessel
§ 20:12 Priority of liens
§ 20:13 —Additional references to section 20:12—Liens for wage claims
§ 20:14 Loss of lien by laches, destruction of res or judicial sale following an in rem action
§ 20:15 State liens

Volume 2

CHAPTER 21. WAGES—DISCHARGE
§ 21:1 Discharge under the old sea codes
§ 21:2 Discharge of master
§ 21:3 —Additional references to section 21:2—Discharge of master
§ 21:4 Power of master to discharge
§ 21:5 Discharge by ship's officer
§ 21:6 Seaman voluntarily leaving ship
§ 21:7 Mutual consent
§ 21:8 Disobedience and insubordination
§ 21:9 —Additional references to section 21:8—Strikes
§ 21:10 Disobedience by officers
§ 21:11 Trivial causes
§ 21:12 Failure to report for duty
§ 21:13 Failure to join
§ 21:14 Drunkenness
§ 21:15 Stealing
§ 21:16 Gross misconduct
§ 21:17 Disrating
§ 21:18 Deviation
§ 21:19 Incompetency
§ 21:20 Failure to provide proper subsistence
§ 21:21 Change of masters and vessel's flag
§ 21:22 Arrest and seizure of vessel
§ 21:23 Discharge by operation of law
§ 21:24 Cruel treatment
§ 21:25 Illness and injury
§ 21:26 End of voyage
§ 21:27 Evidence of discharge
§ 21:28 Measure of damages
§ 21:29 —Additional references to section 21:28—Wrongful discharge

CHAPTER 22. WAGES AND EFFECTS OF DECEASED SEAMEN
§ 22:1 Sale of personal effects and log book entries
§ 22:2 Payment of funds to next-of-kin
§ 22:3 Administration of property of deceased
§ 22:4 Do wages cease at death?
§ 22:5 —Massachusetts rule
§ 22:6 —Under ancient codes
§ 22:7 —Modern view
§ 22:8 Burial expenses

CHAPTER 23. PUNISHMENT, FALSE IMPRISONMENT AND ABANDONMENT OF SEAMEN
§ 23:1 Power of master to punish
§ 23:2 Punishment under ancient codes
§ 23:3 Physical punishment by master prior to statute
§ 23:4 —Additional references to section 23:3—Reasonable punishment
§ 23:5 Confinement and use of irons
§ 23:6 When use of force by master or officer justified
§ 23:7 —Resisting assault by master or seaman in self-defense
§ 23:8 Punishment by subordinate officers; owner's liability
§ 23:9 When seamen justified in leaving vessel
§ 23:10 Confinement aboard vessel; false imprisonment
§ 23:11 Abandonment of seamen in foreign port

CHAPTER 24. SEAMEN’S RELEASES
§ 24:1 Scrutiny of releases by courts of admiralty
§ 24:2 Why protective care given to seamen
§ 24:3 —Additional references to section 24:2—Wards of admiralty
§ 24:4 Burden is upon one pleading release
§ 24:5 —Additional references to section 24:4—Burden of proof
§ 24:6 When is a seaman overreached?
§ 24:7 —Intoxication
§ 24:8 —Reliance on statements of shipowner or his agents
§ 24:9 —Reliance on shipowner’s doctor
§ 24:10 —Reliance on shipowner’s attorney
§ 24:11 —Release not fully understood by seaman
§ 24:12 —Additional references to sections 24:6 and 24:11—

Overreaching
§ 24:13 When are seamen’s releases valid?
§ 24:14 —Additional references to section 24:13—Validity of
release
§ 24:15 Releases sustained—Seaman represented by counsel
§ 24:16 —Additional references to section 24:15—Counsel
§ 24:17 Validity of release where seaman understood what he
was doing
§ 24:18 Validity of release fairly made and fully understood
§ 24:19 —Additional references to section 24:18—Release
fairly made
§ 24:20 Validity of release where seaman receives inadequate
consideration
§ 24:21 —Additional references to section 24:20—Adequacy of
settlement
§ 24:22 Form and contents of release not necessarily
binding—Red release
§ 24:23 Wages—Prior to Seaman’s Act of 1915
§ 24:24 —Seaman’s Act of 1915—“Good cause shown”
§ 24:25 Release or receipt for wages does not release other
rights
§ 24:26 Where releases sustained and “good cause” not shown
§ 24:27 Wage releases before the master or the American
consul
§ 24:28 Scope of release—Settlement
§ 24:29 Release—Joint tort feasors

CHAPTER 25. RESPONSIBILITIES AND
DUTIES OF MASTER AND CREW
§ 25:1 Master as agent of owner
§ 25:2 Succeeding the master
§ 25:3 Power to sell vessel
§ 25:4 Power to incur liens
§ 25:5 Bills of lading
§ 25:6 Deviation
§ 25:7 Preservation of cargo
§ 25:8 Hypothecation of cargo
§ 25:9 Power to sell cargo
§ 25:10 Discretion in navigating vessel

xxxiii
§ 25:11  Additional references to section 26:10—Navigation
§ 25:12  Authority over ship's pilot
§ 25:13  Duty to assist persons in danger
§ 25:14  Authority over passengers
§ 25:15  Duty for care and safety of crew
§ 25:16  Additional references to section 25:15—Care and safety of crew
§ 25:17  Liability for wages
§ 25:18  Duty of crew to stand by ship

CHAPTER 26. MAINTENANCE AND CURE
§ 26:1  Introduction
§ 26:2  Comparison to workers' compensation
§ 26:3  Maintenance and cure—Of what it consists
§ 26:4  The wardship theory—Protecting seamen
§ 26:5  Additional references to section 26:4
§ 26:6  The sea codes of the Middle Ages—Text excerpts
§ 26:7  Black Book of Admiralty
§ 26:8  Nature of the duty to provide maintenance and cure
§ 26:9  Additional references to section 26:8—Relation to Jones Act action
§ 26:10  Humane and just reasons for provision of maintenance and cure
§ 26:11  Contractual obligation to provide maintenance and cure
§ 26:12  Additional references to section 26:11—Maintenance and cure—General maritime law
§ 26:13  Maintenance and cure—Cannot be contracted away
§ 26:14  Not compensation for injury
§ 26:15  Contributory negligence not a bar to recovery
§ 26:16  Additional references to section 26:15—Contributory negligence
§ 26:17  Assumption of risk not a bar to recovery
§ 26:18  Persons entitled to maintenance and cure
§ 26:19  “In the service of the ship”
§ 26:20  Additional references to section 26:19—Service of ship
§ 26:21  The seaman’s failure to disclose prior physical condition or injury—the McCorpen defense
§ 26:22  Additional references to section 26:21—Failure to disclose
§ 26:23  The meaning of cure
§ 26:24  Role of United States Public Health Service hospitals
§ 26:25  Amount of cure—Medicaid, Medicare, employer health benefits, and insurance
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 26:26</td>
<td>The meaning of maintenance</td>
</tr>
<tr>
<td>§ 26:27</td>
<td>Amount of maintenance</td>
</tr>
<tr>
<td>§ 26:28</td>
<td>Additional references to section 26:27 — Maintenance</td>
</tr>
<tr>
<td>§ 26:29</td>
<td>Seaman living with parents</td>
</tr>
<tr>
<td>§ 26:30</td>
<td>Additional references to section 26:29 — Seaman living with parents</td>
</tr>
<tr>
<td>§ 26:31</td>
<td>Trivial expenditures</td>
</tr>
<tr>
<td>§ 26:32</td>
<td>Daily rate of maintenance as set by collective bargaining agreements</td>
</tr>
<tr>
<td>§ 26:33</td>
<td>Additional references to section 26:32 — Collective bargaining agreement</td>
</tr>
<tr>
<td>§ 26:34</td>
<td>Employer's obligation for wages — End of voyage or for contract term</td>
</tr>
<tr>
<td>§ 26:35</td>
<td>Additional references to section 26:34 — Wages</td>
</tr>
<tr>
<td>§ 26:36</td>
<td>Beginning maintenance and cure</td>
</tr>
<tr>
<td>§ 26:37</td>
<td>Duration of the obligation to provide maintenance and cure</td>
</tr>
<tr>
<td>§ 26:38</td>
<td>Additional references to section 26:37 — Maximum cure</td>
</tr>
<tr>
<td>§ 26:39</td>
<td>Shipowner or vessel as insurer of health</td>
</tr>
<tr>
<td>§ 26:40</td>
<td>Seaman's right to additional award</td>
</tr>
<tr>
<td>§ 26:41</td>
<td>Employer's continuing obligation for future maintenance and cure</td>
</tr>
<tr>
<td>§ 26:42</td>
<td>Primary and secondary liability</td>
</tr>
<tr>
<td>§ 26:43</td>
<td>Liability of United States government — Suits in Admiralty Act and FECA</td>
</tr>
<tr>
<td>§ 26:44</td>
<td>Failure to pay maintenance and cure</td>
</tr>
<tr>
<td>§ 26:45</td>
<td>Additional references to section 26:44 — Damages</td>
</tr>
<tr>
<td>§ 26:46</td>
<td>Maritime lien</td>
</tr>
<tr>
<td>§ 26:47</td>
<td>Laches</td>
</tr>
<tr>
<td>§ 26:48</td>
<td>Additional references to section 26:47 — Laches</td>
</tr>
<tr>
<td>§ 26:49</td>
<td>Maintenance and cure for fishermen</td>
</tr>
<tr>
<td>§ 26:50</td>
<td>Additional references to section 26:49 — Fishermen</td>
</tr>
<tr>
<td>§ 26:51</td>
<td>Riverboats, harbor craft, and coastal vessels</td>
</tr>
<tr>
<td>§ 26:52</td>
<td>Illness or injury aboard vessel — Failure to provide proper medical attention</td>
</tr>
<tr>
<td>§ 26:53</td>
<td>Deviation from course to nearest port with medical care</td>
</tr>
<tr>
<td>§ 26:54</td>
<td>Master's treatment of sick seamen</td>
</tr>
<tr>
<td>§ 26:55</td>
<td>Ship's medicine chest</td>
</tr>
<tr>
<td>§ 26:56</td>
<td>Competency of doctor</td>
</tr>
<tr>
<td>§ 26:57</td>
<td>Hospitalization in port</td>
</tr>
<tr>
<td>§ 26:58</td>
<td>Alien seamen</td>
</tr>
<tr>
<td>§ 26:59</td>
<td>Desertion</td>
</tr>
</tbody>
</table>

xxxv
§ 26:60 Willful misbehavior or misconduct
§ 26:61 —Venereal diseases, AIDS, and drug use
§ 26:62 —Intoxication
§ 26:63 —Additional references to sections 26:60 to 26:62—Willful misconduct
§ 26:64 The Shipowners’ Liability Convention of 1936
§ 26:65 Discharge
§ 26:66 Costs and interest
§ 26:67 —Additional references to section 26:66—Interest
§ 26:68 Burial expenses
§ 26:69 Bringing suit in state or federal court—In personam or in rem
§ 26:70 —Suit against multiple employers
§ 26:71 Pleadings
§ 26:72 Joinder of actions
§ 26:73 Duplication of recovery
§ 26:74 —Collateral source
§ 26:75 —Additional references to section 26:73—Duplication
§ 26:76 Burden of proof
§ 26:77 Subrogation
§ 26:78 —Additional references to section 26:77—Indemnity
§ 26:79 Recovery by third parties of medical expenses

CHAPTER 27. SEAWORTHINESS
§ 27:1 Why duty imposed upon shipowner
§ 27:2 Owner’s legal obligation
§ 27:3 —Additional references to section 27:2—Vessel owner’s duty
§ 27:4 Shipowner’s liability without fault
§ 27:5 Seaworthiness—A relative term
§ 27:6 Effect of transitory conditions on seaworthiness
§ 27:7 —Additional references to section 27:6—Unseaworthiness
§ 27:8 Duty to provide competent crew
§ 27:9 —Additional references to section 27:8—Unseaworthiness—Crew
§ 27:10 Obedience to orders
§ 27:11 —Additional references to section 27:10—Care for seamen
§ 27:12 Living and working conditions aboard ship
§ 27:13 Defective ship’s structure and appliances
§ 27:14 Furnishing best appliances
§ 27:15 —Additional references to section 27:14—Unseaworthy conditions
§ 27:16 Shipowner’s non-delegable duty
TABLE OF CONTENTS

§ 27:17 —Additional references to section 27:16—Non-delegable duty
§ 27:18 Seaman’s failure to properly use good appliances
§ 27:19 Assumption of risk
§ 27:20 —Additional references to section 27:19—Contributory negligence and assumption of risk
§ 27:21 Comparative negligence
§ 27:22 —Additional references to section 27:21—Contributory negligence
§ 27:23 Proximate cause
§ 27:24 —Additional references to section 27:23—Proximate cause
§ 27:25 Negligence and unseaworthiness claims distinguished
§ 27:26 —Additional references to section 27:25—Negligence and unseaworthiness
§ 27:27 Disasters and catastrophes—Inference of unseaworthiness
§ 27:28 Burden of proof
§ 27:29 —Additional references to section 27:28—Burden of proof
§ 27:30 Inspection certificates
§ 27:31 Coast Guard regulations
§ 27:32 —Additional references to section 27:31—Breach of regulations
§ 27:33 Laches in unseaworthiness suits
§ 27:34 —Additional references to section 27:33—Limitations period
§ 27:35 Jury trial—Questions of fact
§ 27:36 —Damages

CHAPTER 28. SUITS AGAINST THE UNITED STATES, STATES AND FOREIGN STATES
§ 28:1 Historic background
§ 28:2 —Additional references to section 28:1—Discretionary function
§ 28:3 ——Feres doctrine
§ 28:4 Government as a shipowner
§ 28:5 —Additional references to section 28:4—United States as owner-charterer
§ 28:6 Commencing suit
§ 28:7 —Additional references to section 28:6—Forthwith service
§ 28:8 Time within which to bring suit
§ 28:9 —Additional references to section 28:8—Time within which to bring suit
§ 28:10 Arrest and seizure of vessels
§ 28:11 Exclusive remedy—Parties
§ 28:12 —Additional references to section 28:11—Parties
§ 28:13 The Federal Tort Claims Act
§ 28:14 Venue
§ 28:15 —Additional references to section 28:14—Venue
§ 28:16 Reciprocity
§ 28:17 —Additional references to section 28:16—Reciprocity
§ 28:18 Interest and costs
§ 28:19 —Additional references to section 28:18—Interest
§ 28:20 Merchant seamen and military jurisdiction
§ 28:21 —Additional references to section 28:20—Military jurisdiction
§ 28:22 Payment of decrees
§ 28:23 Settlement of claims
§ 28:24 Subpoenaing officers or crew of public vessel
§ 28:25 Rights of seamen employed on government vessels
§ 28:26 —Additional references to section 28:25—Civil service seamen
§ 28:27 — —Third party employers
§ 28:28 — —Clarification Act
§ 28:29 State immunity
§ 28:30 —Additional references to section 28:29—State immunity
§ 28:31 Immunity of foreign sovereigns
§ 28:32 Contract claims

CHAPTER 29. WRONGFUL DEATH AND SURVIVAL ACTIONS
§ 29:1 Introduction, history, and overview
§ 29:2 The Jones Act
§ 29:3 The Death on the High Seas Act (DOHSA)
§ 29:4 —Geographic scope of DOHSA
§ 29:5 — —Additional references to section 29:4—Admiralty jurisdiction not exclusive
§ 29:6 —Survival actions unavailable under DOHSA
§ 29:7 The general maritime law wrongful death remedy
§ 29:8 DOHSA and the Jones Act death remedy compared
§ 29:9 Damages—In general
§ 29:10 —Pecuniary loss for wrongful death in maritime cases
§ 29:11 —Loss of nurture—Loss of education and inheritance—Loss of society
§ 29:12 —Punitive damages
TABLE OF CONTENTS

§ 29:13 Beneficiaries under DOHSA and the Jones Act
§ 29:14 Time within which to institute suit
§ 29:15 Contributory negligence
§ 29:16 —Additional references to section 29:14—Statute of limitations
§ 29:17 Jones Act—Remedies given to personal representative
§ 29:18 —The class of beneficiaries
§ 29:19 —Additional references to section 29:18—Beneficiaries
§ 29:20 Jones Act beneficiaries—Dependent next of kin
§ 29:21 —Effect of beneficiary’s death
§ 29:22 Suit under foreign death acts

CHAPTER 30. THE JONES ACT
§ 30:1 Personal injury under general maritime law—Wards of the court or not?
§ 30:2 Seamen’s Act of 1915
§ 30:3 The Jones Act
§ 30:4 Exclusion of foreign offshore workers
§ 30:5 The Jones Act—Additional references to sections 30:3 to 30:4—Foreign offshore workers
§ 30:6 Incorporation of the Federal Employers’ Liability Act
§ 30:7 Constitutionality
§ 30:8 Liberal construction
§ 30:9 —Additional references to section 30:8—Suits against third parties
§ 30:10 “Seaman” under the Jones Act
§ 30:11 The employer-employee relationship
§ 30:12 —Additional references to section 30:11—Employment relationship
§ 30:13 —Fishermen
§ 30:14 Death remedies and damages
§ 30:15 Time for commencing suit
§ 30:16 —Additional references to section 30:15—Time limitations
§ 30:17 Prepayment of court costs
§ 30:18 Venue
§ 30:19 —Additional references to section 30:18—Venue—Corporation
§ 30:20 ——Suit in state court
§ 30:21 Personal jurisdiction
§ 30:22 Diversity of citizenship
§ 30:23 How suit may be brought
§ 30:24 —Additional references to section 30:22—Diversity
§ 30:25 Removal and transfer
§ 30:26 Removal and transfer causes—Additional references to section 30:25—Nonremovability
§ 30:27 — — Remand
§ 30:28 — — Statute—Nonremovability
§ 30:29 — — Convenience
§ 30:30 — — Separate and independent claim
§ 30:31 — — Transfer—Burden of proof
§ 30:32 — — — Factors
§ 30:33 — — Place where incident occurred
§ 30:34 In the course of employment
§ 30:35 — Injuries suffered ashore
§ 30:36 — Additional references to sections 30:34 to 30:35—Course of employment
§ 30:37 Negligence
§ 30:38 — Additional references to section 30:37—Negligence
§ 30:39 Safe place to work
§ 30:40 — Piracy
§ 30:41 Violation of statute or regulation—The Pennsylvania Rule—Negligence per se
§ 30:42 Res ipsa loquitur
§ 30:43 The causation element
§ 30:44 Contributory negligence
§ 30:45 — Additional references to section 30:44—Contributory negligence and comparative fault
§ 30:46 Assumption of risk
§ 30:47 — Additional references to section 30:46—Assumption of risk
§ 30:48 Government contractor defense
§ 30:49 Role of the jury
§ 30:50 Right to trial by jury
§ 30:51 Role of the jury—Additional references to sections 30:49 to 30:50—Right to trial by jury
§ 30:52 Evidence
§ 30:53 — Additional references to section 30:52—Discovery
§ 30:54 — — Expert testimony
§ 30:55 Assault
§ 30:56 — Additional references to section 30:55—Assault
§ 30:57 Burden of proof
§ 30:58 Abatement
§ 30:59 Damages
§ 30:60 — Medical expenses and care
§ 30:61 — Pain and suffering
§ 30:62 — Lost wages
§ 30:63 — Loss of future earnings and impairment of earning capacity
§ 30:96 Shipowners’ third party suits
§ 30:97 —Additional references to section 30:96— Contribution and indemnity
§ 30:98 The seaman as defendant
§ 30:99 —Additional references to section 30:98—Seaman as defendant
§ 30:100 Collected cases—Employer negligent
§ 30:101 —Employer not negligent

Volume 3

CHAPTER 31. OTHER SEAMEN’S ACTION
§ 31:1 Death in state waters
§ 31:2 Negligence of non-employers
§ 31:3 Invasion of privacy
§ 31:4 False imprisonment
§ 31:5 Intentional infliction of emotional distress
§ 31:6 Products liability—Negligence—Strict liability
§ 31:7 —Additional references to section 31:6—Products liability
§ 31:8 Americans with Disabilities Act
§ 31:9 Claims in Bankruptcy
§ 31:10 Family and Medical Leave Act

APPENDICES
APPENDIX A. Forms
APPENDIX B. Federal Rules of Civil ProcedureFor The United States District Courts
APPENDIX C. Title 46 Recodifications
APPENDIX D. Selected USCA Provisions Relating to Jurisdiction, Removal, and Venue
APPENDIX E. Maritime Labour Convention, 2006

Table of Laws and Rules
Table of Cases
Index