

Admiralty Law
Professor Turack
Spring 1991
Time of Examination: 3 hours

Preface

1. For those students who wrote a paper to satisfy 75 percent of the final grade, you now have another choice as follows:

(a) you may have your paper count for 100 percent of the grade without answering any further question, or

(b) answer either part of question 1.

2. Persons who did not write a paper for this course must answer questions, 2, 3, and 4. But must not answer question 1.

3. Write legibly in pen.

4. Number your questions, and answer them in any order.

5. You may use the statutory materials distributed with this examination. Keep the statutory materials and this examination questionnaire.

6. No books or outside materials are to be used.

GOOD LUCK

1. To be answered only by those students who wrote a paper.

Answer EITHER (a) or (b).

(a) Select any decision of the Supreme Court that we have covered in this course, with which decision you disagree, and give your reasons for disagreeing.

(b) Experience in admiralty casts significant light on the relations between federal and state law that ought to prevail in all areas of potential conflict between state and federal law. Comment.

2. Rube Ross owned The Flask, a specially built vessel used for transporting large casks of scotch from Scotland to the United States. When Rube Ross bought the vessel, he needed \$40,000 to finance the purchase. Bank Two, Inc. loaned him the money and registered a ship mortgage in the ship's home port of Boston on August 25, 1988. In 1989, Rube Ross bought a house and convinced the Eldorado Savings & Loan Company to lend him \$20,000 with The Flask as security and note to that effect was given to the local manager of the Eldorado Savings & Loan Company. Rube Ross could not meet his federal tax bill on income for 1989, and the I.R.S. had

decided to arrest the ship.

Before reaching Boston Harbor on January 14, 1991, The Flask collided with The U.S. Thomas Jefferson, a coast guard vessel. As The Flask began to lean 40%, to the port side, Captain Ahab of The Flask gave the order to jettison two of the 1,000 gallon casks on deck. In the process of hoisting the second cask over the side, the wire cable snapped, the cask fell into the sea, but Farragut Jones, a seaman aboard The Flask was seriously injured. He was airlifted by helicopter in response to a call from The Flask to the Boston General Hospital.

The act of dumping the two casks saved the ship and its remaining cargo. At this point of time a gale arrived and The Flask in attempting to reach the breakwater area to ride out the storm before proceeding to the pier, collided with The Sampson, a 2,000-ton yacht. The Sampson sunk and The Flask next collided with the breakwater wall. Another vessel, The Harrod, saw this collision and came to rescue The Flask. In doing so, it first picked up Pete Wales, the watchman from The Sampson who was clinging to a piece of wreckage from The Sampson, then towed The Flask to the pier. Before the U.S. customs officer could get a declaration filled out as to the cargo, the ship was arrested by the U.S. Marshal pursuant to a complaint filed in the District Court office by the owner of the Flushomatic Toilet Corporation which had sold and installed three toilets aboard The Flask on June 1, 1990, under a conditional sales contract. Somehow the clerk from the District Court office thought that he could issue necessary documentation to the Marshal based on a registered chattel mortgage (the Flushomatic toilets are free-standing portables). The vessel had not paid its last wharfage bill for the period Sept. 7-9, 1990. Aside from Captain Ahab, The Flask carried a crew of six.

You are working for a firm unfamiliar with admiralty law, that has been retained by the owner of The Sampson. Explain to the senior partner of the law firm what priorities lie ahead for the various claimants and why?

3. Horace Heap, an employee of Harbor Services, Inc. (HSI), a local stevedoring company, was killed in 1990 in territorial waters of a State of the United States on board the steamship Gloria when he was called on board to assist in ridding the ship of ants and vermin after the ship had unloaded its cargo of wheat and prior to its taking on another cargo. While so engaged, he had quite unexpectedly been hit over the head by the negligent dropping of a cargo sling, which was being tested by ship's personnel. Heap had observed the testing of the sling and, although he was unfamiliar with ships' operations, he had out of curiosity placed himself in a dangerous position. Heap was taken, in great agony, to a local hospital in the State where he resided, was kept alive and conscious for two weeks by drugs which had painful side-effects but might have saved his life, and then died.

Heap left no immediate family and no will. His court-appointed administrator brought an action against the Gloria and its owners for wrongful death. There was also a count for survival of action for Heap's medical expenses, pain and suffering, loss of wages and funeral expenses. Both actions were predicated on negligence and unseaworthiness. At the trial, the court ruled that there was no unseaworthiness under federal law, that in any event Heap was not entitled to protection against unseaworthiness, that Heap was "more than 50% contributorily negligent," and that

therefore an action founded on negligence was barred both under a federal action for wrongful death, which would be guided by state law on the issue of contributory negligence, and under the state law which governed all issues in actions for survival. Further, although Heep left a dependent parent who would be entitled to compensation under the Longshoremen's and Harbor Workers' Compensation Act, the relevant state law, which the District Court thought would control as to beneficiaries on all theories including the action for wrongful death, provided for recovery only by immediate family (spouse, children, brothers and sisters) or their descendants. Heap appeals.

You serve as a law clerk to Judge Soft, a highly respected judge of the United States Court of Appeals for your Circuit. He asks you to give him a memorandum describing the issues involved, the state of the law, and how you think the appeal should be decided. Give your reasons.

4. The Julio is a Panamanian registered ship owned by a Colombian national, resident in Mexico. Periodically the vessel delivers and picks up cargo along the U.S. and Canadian west coast ports. Captain Sergio Mendes issues a bill of lading in accordance with the practice in the port of origin, that is, if goods are brought on board in Vancouver, Canada, a Canadian bill of lading is issued; if cargo is brought aboard at Seattle, in the United States, an American bill of lading is issued. On one trip from Victoria, British Columbia in Canada to Mazatlan, Mexico, cargo was brought on board in Victoria. Just off San Francisco in the United States, the ship's refrigeration system broke down. Instead of putting into port, the captain dropped anchor outside the U.S. territorial waters and asked his seamen who knew something about electricity to fix the problem. While one seaman worked diligently, he could not resolve the problem. Instead of alleviating the electrical problem, he negligently compounded the problem so that Captain Mendes had to dock in San Francisco in order to bring an U.S. expert aboard to remedy the situation. George Foreman, an employee of the S.A. Refrigeration Repair Inc., came aboard to do the repair. As part of the cargo was now deteriorating, Captain Mendes arranged to sell the decaying cargo for what he could get before it had no commercial value left at all. While the longshoreman, Peters, an illegal British resident alien in the United States, worked aboard the ship to remove the decaying cargo, he was injured when part of the cargo moved on its own when it should not have done so. Peter's employer, the Stevedore Co. sent two other longshoreman to bring Peters out. One of these persons, Claude Hacker negligently moved Peters thereby compounding his injury. The various delays caused the cargo to be worthless when finally removed. All of the parties want to sue in the United States. The carrier does not wish to allow any suit in the U.S. Courts. When captain Mendes communicates with the owner, he is instructed to set sail immediately. Before Captain Mendes can leave, the ship is arrested for failure to pay its wharfage bill. You can assume that the Canadian bill of lading provides "that Canadian courts have sole jurisdiction in relation to the carriage of goods, and Canadian law shall apply."

Explain what legal issues arise and how they are going to be resolved. Do not assume that Canadian, U.S., Mexican, Panamanian, or Colombian laws are the same.