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## Procedure - Admiralty Jurisdiction - Strict Locality Rule Rejected; Maritime Connection Necessary to Establish Admiralty Jurisdiction. *Smith v. Guerrant* (S.D. Tex. 1968)

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**PROCEDURE—ADMIRALTY JURISDICTION—STRICT LOCALITY RULE REJECTED; MARITIME CONNECTION NECESSARY TO ESTABLISH ADMIRALTY JURISDICTION.** *Smith v. Guerrant* (S.D. Tex. 1968).

Mr. Smith's Hyster forklift was left unattended on a wharf in the Galveston, Texas, yacht basin. It rolled off the wharf and onto a finger pier or walkway. Defendant Guerrant Construction Company was hired to use its crane to lift the forklift off the walkway and place it back on the wharf. While doing so, the crane's boom collapsed, causing the forklift to fall into the waters of the harbor. Smith filed a libel in admiralty for water damage, alleging that the tort was maritime because, under the locality rule, it was consummated in waters within maritime jurisdiction. Guerrant cross-complained in admiralty for the damage done to its crane. Smith moved to dismiss Guerrant's cross-complaint as not being within admiralty jurisdiction. Smith argued that since the damage to the crane occurred prior to touching the water, the tort did not take place within admiralty and maritime jurisdiction. The court, on its own motion, questioned jurisdiction of the original complaint. Neither party made any allegations of a maritime nature in their transaction. Since Smith cited no specific jurisdictional statute, the court assumed he relied upon article III, section 2 of the United States Constitution<sup>1</sup> and Title 28 U.S.C. section 1333.<sup>2</sup> *Held*: Jurisdiction denied as to the claims of both parties; when determining whether or not a claim is maritime in order to sustain jurisdiction in admiralty, a maritime connection is needed. A maritime connection is found when the tort claim is wholly related to maritime service, navigation, or commerce on navigable waters. *Smith v. Guerrant*, 290 F. Supp. 111 (S.D. Tex. 1968).

While deciding upon a maritime connection as a prerequisite to establishing admiralty and maritime jurisdiction under section 1333, the United States District Court in *Smith*, for the first time, rejected the strict locality jurisdiction rule.<sup>3</sup> This rule states that a court of admiralty may entertain a tort action if the transaction occurred or was consummated on a navigable

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1. Section 2 provides in part: "The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction . . . ."

2. *Smith v. Guerrant*, 290 F. Supp. 111, 112 n.6 (S.D. Tex. 1968); 28 U.S.C. § 1333 (1964).

3. 290 F. Supp. at 114.

waterway or on the high seas.<sup>4</sup> While the locality rule is simple to state, it is difficult to apply.

In deciding jurisdictional questions, many courts have paid lip service to the strict locality rule but have based their holdings on additional grounds. Courts have found that jurisdiction is established where the tort in question had some sort of a "maritime nature," such as a hatch cover falling on a ship, or, a surfboard rider striking an ocean swimmer.<sup>5</sup> Other courts have added another requirement that if there is in existence, in addition to locality, a maritime contract between the parties then there is a sufficient relationship to justify maritime jurisdiction under a "maritime contract" or "maritime status" theory.<sup>6</sup> However, there are times when, under the facts presented (libellant injured by protruding object in ocean, or libellant injured by diving off a pier into 18 inches of water) some courts will hold that a case is not within admiralty, or should not be within admiralty, and jurisdiction has been denied.<sup>7</sup> It is in this

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4. In *De Lovio v. Boit*, 7 F. Cas. 418, 444 (No. 3776) (C.C.D. Mass. 1815), Judge Story first stated:

[t]he delegation of cognizance of "all civil cases of admiralty and maritime jurisdiction" to the courts of the United States comprehends all maritime contracts, torts, and injuries. The latter branch is necessarily bounded by locality . . . .

*De Lovio* contains an exhaustive historical and multi-national discussion of the roots of maritime jurisdiction. See 25 HARV. L. REV. 381 (1912); I E. BENEDICT, THE LAW OF AMERICAN ADMIRALTY § 127 at 349-50 (6th ed. A. Knauth 1940). See also *The Plymouth*, 70 U.S. (3 Wall.) 20, 36 (1865), where the Court denied admiralty jurisdiction under a strict interpretation of locality. A steam vessel caught fire and the fire destroyed storehouses on the wharf. The tort was not complete within navigable water jurisdiction. However, 46 U.S.C. § 740 (1964) overruled *Plymouth* since it extended admiralty and maritime jurisdiction to damage or injury consummated or done on land to persons or property when caused by a vessel on navigable water.

5. See *Atlantic Transport Co. v. Imbrovek*, 234 U.S. 52 (1914), where a stevedore was injured by a falling hatch cover while unloading copper on a ship. In this specific instance, the "wrong which was the subject of the suit was . . . of a maritime nature." *Id.* at 61; *Campbell v. H. Hackfeld & Co.*, 125 F. 696, 700 (9th Cir. 1903), where libellant-stevedore was injured while unloading cargo in the hold of a vessel. Admiralty jurisdiction was denied since the court held there was no maritime relation; *Davis v. City of Jacksonville Beach*, 251 F. Supp. 327 (M.D. Fla. 1965), where respondent surfboard rider struck libellant while he was swimming in the ocean. The district court found the action to be within admiralty jurisdiction and added that "[e]ven if some maritime connection other than locality is required to sustain jurisdiction . . . it exists in this case." *Id.* at 328.

6. In *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), a stevedore was fatally injured while unloading cargo on a steamship. The Court found that both the stevedore's work and his contract were maritime and thus within admiralty jurisdiction. *Id.* at 217. *Accord*, *Clyde S.S. Co. v. Walker*, 244 U.S. 255 (1917).

7. In *McGuire v. City of New York*, 192 F. Supp. 866 (S.D.N.Y. 1961), libellant

area that the *Smith* problem was resolved in favor of denial of jurisdiction.

The purpose of federal jurisdiction in admiralty and maritime cases is the maintenance of uniformity and consistency in the field.<sup>8</sup> However, judicial use of the locality rule to reach the desired uniformity and consistency has been met with sharp criticism by text and law review writers.<sup>9</sup> *Smith* recognizes the problem of lack of uniformity in the area of maritime law and its holding that there must be a maritime connection in order for admiralty to entertain a tort claim is an attempt to eliminate the above inconsistencies.<sup>10</sup> However, this problem may be insoluble.

This insolubility is due to the intrinsic nature of maritime and admiralty jurisdiction under both the federal jurisdictional statute and other applicable federal statutes. The United States Constitution provides that the jurisdictional power of the United States shall extend to "all cases of admiralty and maritime jurisdiction."<sup>11</sup> The general admiralty jurisdiction statute, 28 U.S.C. section 1333, provides in part that:

The district court shall have original jurisdiction exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

A party, under the first part of the statute ("Any civil case of admiralty or maritime jurisdiction"), may establish the requisite admiralty jurisdiction through the locality rule.<sup>12</sup> While the statute recognizes that federal courts have original jurisdiction,

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was injured by a protruding object in the ocean off Staten Island. The district court stated the locality rule and held it was a rule of limitation. Since the libel did not relate to any tort growing out of navigation, it was held that the courts in the locality should determine the question. *Id.* at 871. *Accord*, *Chapman v. City of Grosse Pointe Farms*, 385 F.2d 962 (6th Cir. 1967), where libellant injured himself when he dove off a pier into 18 inches of water. Jurisdiction was denied.

8. *The Lottawanna*, 88 U.S. (21 Wall.) 558, 575 (1874); *accord*, *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 215 (1917).

9. *See* *Brown, Jurisdiction of the Admiralty in Cases of Tort*, 9 COLUM. L. REV. 1, 8-9 (1909); 25 HARV. L. REV. 381 (1912); Hough, *Admiralty Jurisdiction—of Late Years*, 37 HARV. L. REV. 529 (1924); C. Black, Jr., *Admiralty Jurisdiction: Critique and Suggestions*, 50 COLUM. L. REV. 259 (1950); *but see* 16 HARV. L. REV. 210 (1903), where there was doubt expressed as to the holding that a maritime connection exists.

10. 290 F. Supp. 111, 113 (1968).

11. U.S. CONST. art. III, § 2.

12. C. Black, Jr., *supra* note 9, at 266.

the "savings" clause places a limit upon it. This clause has been interpreted to mean a suitor (or libellant), in addition to an action before an admiralty court, may enforce any maritime *in personam*<sup>13</sup> claim by civil action in a state court, or in federal court on the basis of diversity of citizenship.<sup>14</sup>

If a party desires a jury trial and lacks diversity he may pursue a remedy in the state court.<sup>15</sup> While the forum is different, the federal substantive maritime rules as to comparative negligence, assumption of risk, burden of proof, etc., control in all three courts.<sup>16</sup> The doctrine of comparative negligence is applied<sup>17</sup> while contributory negligence does not bar recovery.<sup>18</sup> The defense of assumption of risk<sup>19</sup> and statute of limitations<sup>20</sup> are not available to the respondent. However, although respondent loses his right to contribution between tortfeasors,<sup>21</sup> he may seek a petition for limitation of liability.<sup>22</sup> Admiralty has established no statutory standard of care in tort actions<sup>23</sup> and review of lower court decisions is limited.<sup>24</sup> Despite the

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13. Admiralty courts may hear both *in personam* and *in rem* claims. *In personam* claims may, where jurisdiction over the defendant is obtained, be brought in either common law or admiralty. Therefore, *in personam* jurisdiction is concurrent. However, *in rem* jurisdiction, where a lien may be enforced against the *res* (usually a ship), is within the exclusive jurisdiction of the admiralty court. 1 E. BENEDICT, THE LAW OF AMERICAN ADMIRALTY §§ 22-23 (6th ed. A. Knauth 1940). As far as *in personam* claims are concerned, "exclusivity is totally illusory." C. Black, Jr., *supra* note 9, at 265.

14. 28 U.S.C. § 1332 (1964); G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY 1-13 (1957). This is assuming diversity of citizenship. There are two circuits which have held that without diversity the federal district court did not have jurisdiction even though the subject was a maritime tort. *Paduano v. Yamashita Kisen Kabushiki Kaisha*, 221 F.2d 615, 619 (2d Cir. 1955); *Jordine v. Walling*, 185 F.2d 662, 667 (3d Cir. 1950). The Supreme Court has upheld this position in *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 360-80 (1959).

15. M. NORRIS, THE LAW OF MARITIME PERSONAL INJURIES § 81 (2d ed. 1966). However, under Title 28 U.S.C. § 1873 (1964), a trial by jury is allowed where either party demands it and the tort or contract matter occurs upon lakes or navigable waters connecting lakes.

16. M. NORRIS, *supra* note 15, at § 80.

17. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 629 (1959).

18. *The Max Morris*, 137 U.S. 1, 14 (1890).

19. *Socony-Vacuum Oil Co. v. Smith*, 305 U.S. 424, 429 (1939); *Bow v. Pilato*, 82 F. Supp. 399, 402 (1949).

20. The doctrine of laches may be applied to determine if an action is barred. *Gardner v. Panama R.R.*, 342 U.S. 29, 30-31 (1951).

21. *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282, 285 (1952).

22. *Butler v. Boston and Savanna S.S. Co.*, 130 U.S. 527, 552 (1889).

23. *See Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630-31 (1959).

24. While an admiralty suit is tried de novo on appeal, the lower court findings will

availability of these different judicial forums, the substantive rights of the federal admiralty courts similarly are applied in order to achieve the desired uniformity.<sup>25</sup>

The ability to apply the same rules in each forum would allow some uniformity and consistency but for the fact that the "savings" clause is also considered to give to the state courts concurrent jurisdiction with admiralty in cases where the original state court is competent to give a remedy.<sup>26</sup> The *Smith* court recognized the traditional concurrent jurisdiction of the state courts applying state law, but did not seem to see that the "savings" clause could produce contradictory results between state and admiralty courts.<sup>27</sup>

The *Smith* court did hold, however, that section 1333 should be construed strictly since it was not the exclusive basis for admiralty jurisdiction.<sup>28</sup> Admiralty jurisdiction has been expanded by such federal statutes as the Extension of Admiralty Jurisdiction Act,<sup>29</sup> the Death on the High Seas Act,<sup>30</sup> and the Longshoremen's and Harbor Workers' Act.<sup>31</sup> Judge Noel, in *Smith*, did not mention the locality rule as being applied to the latter two acts, but there have been cases under those acts which have been decided after finding jurisdiction under the locality rule.

Thus, if the maritime connection rule articulated in *Smith* is accepted, there may be doubts as to its applicability under both the Death on the High Seas Act, and the Longshoremen's and Harbor Workers' Act. While the Death on the High Seas Act does not specifically mention tort claims for wrongful death caused by airplane crashes in navigable waters beyond the one marine league limit,<sup>32</sup> such claims, with one exception,<sup>33</sup> have been held to be within exclusive admiralty jurisdiction.<sup>34</sup>

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be accepted, unless clearly against a preponderance of the evidence. *Kulack v. The Pearl Jack*, 178 F.2d 154, 155 (6th Cir. 1949).

25. *Oroz v. American Pr sident Lines, Ltd.*, 259 F.2d 636, 638 (2d Cir. 1958).

26. M. NORRIS, *supra* note 15, § 84 at 209.

27. 290 F. Supp. at 113.

28. *Id.*

29. 46 U.S.C. § 740 (1964).

30. 46 U.S.C. § 761 *et seq.* (1964).

31. 33 U.S.C. § 901 *et seq.* (1964).

32. 46 U.S.C. § 761 (1964) provides:

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore

In *Wilson v. Transocean Airlines*,<sup>35</sup> an airplane bound for Oakland crashed into the Pacific Ocean 325 miles from Wake Island. Pursuant to the Death on the High Seas Act, the district court found the requisite admiralty jurisdiction, holding that the locality of the tort controls the question of whether the action may be brought into admiralty.<sup>36</sup> The admiralty court, in *Lavello v. Danko*,<sup>37</sup> allowed a libel which alleged that the tortious conduct occurred other than on the high seas, even though the impact of the tortious conduct took place over the high seas.<sup>38</sup> Also, in *Weinstein v. Eastern Airlines, Inc.*,<sup>39</sup> a district court has found admiralty jurisdiction within one marine league of shore. That court, analogizing to the Death on the High Seas Act cases, decided that under the locality rule an admiralty court could apply state law.<sup>40</sup>

Therefore, it may be argued that if the *Smith* maritime connection test were applied to wrongful death actions arising out of an airplane crash beyond or within one marine league, such cases may not come within admiralty jurisdiction. This is so because the strict locality rule was used to establish admiralty jurisdiction in *Wilson*, *Lavello*, and *Weinstein*. It may initially

of any State . . . the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty . . . .

33. In *Letet v. United Aircraft Corp.*, 10 N.Y.2d 258, 176 N.E.2d 820 (1961), the New York Court of Appeals held in a one page opinion that jurisdiction under the Death on the High Seas Act was concurrent and a state court could use state procedural rules to enforce substantive rights under the federal act.

34. *Wilson v. Transocean Airlines*, 121 F. Supp. 85, 92-93 (N.D. Cal. 1954).

35. 121 F. Supp. 85 (N.D. Cal. 1954).

36. *Id.* at 93. The court stated that "the tort is deemed to occur, not where the wrongful act or omission has its inception, but where the impact of the act or omission produces such injury as to give rise to a cause of action." *Id.* at 92. *Accord*, *Fireman's Fund Ins. Co. v. City of Monterey*, 6 F.2d 893, 895 (N.D. Cal. 1925); *Lacey v. L.W. Wiggins Airways, Inc.*, 95 F. Supp. 916, 918 (D. Mass. 1951); *Thomson v. Bassett*, 36 F. Supp. 956, 957 (W.D. Mich. 1940).

37. 175 F. Supp. 92 (S.D.N.Y. 1959).

38. *Id.* at 93.

39. 316 F.2d 758 (3d Cir. 1963), *cert. denied*, 375 U.S. 940 (1963).

40. *Id.* at 763-65. The court reasoned that:

[i]f, as it has been held, a tort claim arising out of the crash of an airplane beyond the one marine league line is within the jurisdiction of admiralty, then *a fortiori* a crash of an aircraft just short of that line but still within the navigable waters is within that jurisdiction as well. To hold otherwise would be to impose an illogical and irrational distinction on the operation of the broad grant of admiralty jurisdiction extended by the Constitution and implemented by 28 U.S.C.A. § 1333.

appear that, under the *Smith* rule, there would be little maritime connection between an airplane flight and admiralty. Such a suit can be brought on the civil side of the federal district court with little fear of losing any uniformity and consistency of laws. The *Smith* rule may hold, in a future action with facts similar to *Wilson*, that such a crash is "only incidentally related to navigable waters and wholly unconnected with maritime commerce . . . ."41 However, there is some *dicta* in the cases which reveal a judicial understanding that a maritime relation could be found, since airplanes, by their very nature, have to fly over seas and are performing essentially the same tasks as vessels.<sup>42</sup>

There also may be problems applying the maritime connection rule under the Longshoremen's and Harbor Workers' Compensation Act.<sup>43</sup> This Act deals with compensation for injuries to employees who perform services of the type performed by longshoremen and harbor workers as contrasted with employees (crewmen) who are naturally and primarily aboard ship to aid in a vessel's navigation.<sup>44</sup> While these employees are not classed as seamen in the sense of members of the crew of a

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41 290 F. Supp. at 113. See 316 F.2d at 763, where the court reasoned that: aircraft have become a major instrument of travel and commerce over and across the same waters. When an aircraft crashes into navigable waters, the dangers to persons and property are much the same as those arising out of the sinking of a ship or a collision between two vessels.

42. In discussing the purpose of the Death on the High Seas Act, the court in *D'Aleaman v. Pan American World Airways*, 259 F.2d 493, 495 (2d Cir. 1958) stated that:

When the Act was passed (March 30, 1920) the only feasible way to be carried beyond the jurisdiction of any law applicable to wrongful death was by ship. However, with the development of the transoceanic airship the same extraterritorial situation was made possible in the air. The Act was designed to create a cause of action in an area not theretofore under the jurisdiction of any court. The means of transportation into the area is of no importance. The statutory expression "on the high seas" should be capable of expansion to, under, or, over, as scientific advances change the methods of travel. The law would indeed be static if a passenger on a ship were protected by the Act and another passenger in the identical location three thousand feet above in a plane were not.

43. 33 U.S.C. §§ 901 *et seq.*; section 903(a) provides that:

Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States . . . and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.

44. *South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251, 260 (1940).

vessel,<sup>45</sup> they have been allowed to file libels in admiralty.<sup>46</sup> Since the Longshoremen's Act "relates solely to injuries occurring upon the navigable waters of the United States, it deals with the maritime law, applicable to matters that fall within the admiralty and maritime jurisdiction."<sup>47</sup>

In *Caldaro v. Baltimore and Ohio Railroad Co.*,<sup>48</sup> a freight handler employed by a railroad company was injured on a gang plank connecting a pier with a steel car float in navigable waters. The district court, in finding admiralty jurisdiction, stated that the phrase "upon the navigable water" in the Longshoremen's Act is the same phrase as used to determine admiralty jurisdiction by means of the locality test.<sup>49</sup>

In *Interlake Steamship Co. v. Nielsen*,<sup>50</sup> decedent ship custodian drove his car off the end of a dock where his ship was berthed. He died of a skull fracture caused when his car hit the frozen waters of Lake Erie. It was held that since the situs of the injury and the death occurred on the frozen navigable waters admiralty could take jurisdiction under the Longshoremen's Act.<sup>51</sup>

Assuming the locality rule is discarded, there is doubt that the *Smith* court would find a maritime connection between a railroad worker injuring himself on a plank, or between a ship's custodian driving off a pier, and maritime commerce. Thus, under the locality rule, the tort is within maritime jurisdiction, while under *Smith's* maritime connection rule, it may be without. *Smith* could easily find that such actions are "wholly unconnected with maritime commerce [and] can be litigated in state courts under the diverse rules of state law without affecting maritime endeavors."<sup>52</sup>

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45. *Id.* at 260.

46. *Id.* at 256.

47. *Crowell v. Benson*, 285 U.S. 22, 39 (1932).

48. 166 F. Supp. 833 (E.D.N.Y. 1956).

49. *Id.* at 836; *see also* *Richards v. Monahan*, 17 F. Supp. 252, 253 (D. Mass. 1936) and *Smith v. Lampe*, 64 F.2d 201, 202 (6th Cir. 1933), where the circuit court said "where the negligent act originates on land and the damage occurs on water, the cause of action is within the admiralty jurisdiction."

50. 338 F.2d 879 (6th Cir. 1964).

51. *Id.* at 883; *see also* *Upper Lakes Shipping Ltd. v. International Longshoremen's Ass'n*, 33 F.R.D. 348, 350 (S.D.N.Y. 1963); *Fireman's Fund Ins. Co. v. City of Monterey*, 6 F.2d 893 (N.D. Cal. 1925).

52. 290 F. Supp. at 113.

The acceptance of the *Smith* maritime connection rule would, in essence, be the adoption of the same rule used to determine jurisdiction in maritime contract actions; i.e., the subject matter of the contract (its maritime nature and character) controls.<sup>53</sup> The *Smith* court states that to require a "maritime connection in all tort cases would complement . . . [current] trends by making the jurisdictional issue simpler to resolve and by making the resolution less arbitrary."<sup>54</sup> This may be a doubtful result since maritime jurisdiction has, for example, in contract actions been: (1) admitted for the weighing, inspecting and measure of cargo,<sup>55</sup> but denied for storing cargo in a vessel after a voyage;<sup>56</sup> (2) allowed for a suit under an insurance policy,<sup>57</sup> but denied on a contract to obtain insurance for a vessel;<sup>58</sup> (3) allowed for suit on a contract to act as seamen for fishing and canning,<sup>59</sup> but denied on a contract by a broker to furnish fourteen crew members for a merchant ship.<sup>60</sup> By attempting to eliminate the arbitrariness of the locality rule, the maritime connection rule, as set forth in *Smith*, may be exposed to the same criticism that has been leveled at the maritime contract rule, that it has "about as much 'principle' as there is in a list of irregular verbs."<sup>61</sup>

To go from one confusion to another may not necessarily be disadvantageous; this is so because the same rule would be used to determine both contract and tort claims. *Smith* and *Weinstein* are illustrative of the problem that the maritime connection rule would obviate. In *Smith*, the forklift was damaged when it struck the water, while the crane was damaged when the boom collapsed. The accident with the forklift was governed by the strict locality rule for jurisdiction while the crane accident was not. However, under the maritime connection test, libellant-

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53. 1 E. BENEDICT, THE LAW OF AMERICAN ADMIRALTY § 62 (6th ed. A. Knauth 1940).

54. 290 F. Supp. at 114.

55. *Constantine v. The Schooner River Queen*, 2 F. 731, 732 (S.D.N.Y. 1880).

56. *The Richard Winslow*, 67 F. 259, 261 (E.D. Wis. 1895), *aff'd* 71 F. 426 (7th Cir. 1896).

57. *Insurance Co. v. Dunham*, 78 U.S. (11 Wall.) 1, 30-33 (1870).

58. *Warner v. The Bear*, 126 F. Supp. 529, 530 (D.C. Alas. 1955).

59. *Domenico v. Alaska Packers' Ass'n*, 112 F. 554, 556 (N.D. Cal. 1901).

60. *Goumas v. K. Karras & Son*, 140 F.2d 157, 158 (2d Cir. 1944).

61. 50 COLUM. L. REV. at 264. For an illustrative collection of maritime contract versus non-maritime contract cases, see 1 E. BENEDICT, THE LAW OF AMERICAN ADMIRALTY §§ 66-67 (6th ed. A. Knauth 1940).

Smith would have to succeed in alleging a maritime connection for both the libel and the cross-complaint in order to bring a suit in admiralty. If he failed on one action (respondent-Guerrant's cross-complaint for crane damage) his own libel for water damage would fail. He would have failed to prove a true maritime connection since both claims have to be wholly related to maritime commerce. Also, in *Weinstein*, the tort claims arising out of the airplane crash were within admiralty while actions for breach of warranty were not.<sup>62</sup> In *Weinstein*, a failure to prove a maritime connection in *both* tort and contract claims would deny the libellant admiralty jurisdiction (assuming he wished to raise both at the same time).<sup>63</sup>

A final test for the maritime connection rule as determinative of admiralty jurisdiction, would be acceptance by the United States Supreme Court.<sup>64</sup> With *Smith*, a conflict has emerged between federal district courts with respect to determining maritime jurisdiction. As noted above, due to the inherent ambiguity of the "savings" clause in section 1333 and the federal acts which occupy part of the maritime field, the much sought-after uniformity and consistency has not yet been achieved. The acceptance of the maritime connection rule by the Supreme Court might be a step in the right direction.

The issues presented by the *Smith* case are very narrow; which rule, locality or connection, should be used to establish admiralty or maritime jurisdiction? One real problem which will continue beyond the ultimate resolution of that issue is the difficulty in defining specifically what a maritime connection is and applying that definition to sundry fact situations, so that uniformity and consistency result.

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62. 316 F.2d at 766.

63. This would create an anomalous situation. The district court in *Weinstein* would have to find a maritime connection in the breach of warranty causes of action where previously such actions were held to be not within admiralty jurisdiction. 316 F.2d at 766. In *Noel v. United Aircraft Corp.*, 204 F. Supp. 929 (D. Del. 1962) arising from an airplane crash, an action for breach of an implied warranty of fitness and merchantability under the Death on the High Seas Act did not lie since it was not provided for in the Act. *Id.* at 940; noted in 48 VA. L. REV. 1467 (1962).

64. In *Atlantic Transport Co. v. Imbrovek*, 234 U.S. 52 (1914), the Court stated that:

[t]he appropriate basis, it is said, of all admiralty jurisdiction, whether in contract or in tort, is the maritime nature of the transaction or event . . . .

We do not find it necessary to enter upon this broad inquiry.

*Id.* at 61. *Accord*, as to the first point, *The Raithmoor*, 241 U.S. 166, 176 (1916)

But these narrow issues are only indicative of a much broader problem underlying this entire area: that is, the validity of maintaining concurrent maritime jurisdiction between state and federal courts. Although an extended discussion of that issue is beyond the scope of this note, some brief remarks are appropriate.

In view of the foregoing problems, the questions arise whether, in fact, there is a need for maritime jurisdiction, and more importantly, a need for concurrent state and federal court jurisdiction to adjudicate admiralty claims.

While it is true that admiralty and maritime jurisdiction is specifically provided for in the Constitution under article III, section 2, there is no mention that admiralty should have a special set of jurisdictional and substantive rules. The only reason that can be found is historical. Arising out of the exercise of customary sea law, maritime courts in English port towns by the fifteenth century were annexed to the Lord High Admiral's Office. The common law courts resented the fact that the Admiralty Office had acquired jurisdiction over civil cases of a maritime nature. Due to this resentment, the jurisdiction of the Admiralty court was limited by statute to "a thing done upon the sea."<sup>65</sup>

It is from this background that the colonies inherited jurisdiction to decide maritime cases and subsequently included admiralty and maritime cases within the federal purview under the Federal Judiciary Act of 1789,<sup>66</sup> now codified as section 1333 of Title 28 U.S.C. As has been mentioned, the "savings" clause does not make admiralty jurisdiction federally exclusive since it allows admiralty courts to apply state laws when no federal statute applies, and when it is found that a tort was maritime but local.<sup>67</sup> This casts doubt on the desire to maintain "uniformity and consistency." If uniformity and consistency in the administration of admiralty jurisdiction is truly sought, then perhaps the "savings" clause should be eliminated from section 1333. Thus, there would be no problem concerning the court in

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65. G. GILMORE AND C. BLACK, *THE LAW OF ADMIRALTY* 8-10 (1957).

66. *Id.* at 18.

67. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 313-14 (1955); *Western Fuel Co. v. Garcia*, 257 U.S. 233, 242 (1921).

which one may pursue a remedy. A suggested new rule would be: any tort which occurred on navigable waters, or, had a maritime connection, shall be brought within the exclusive jurisdiction of the federal district courts.

Unfortunately, enacting exclusive federal admiralty jurisdiction will not solve the problem of determining whether there is in fact a maritime connection. The *Smith* court merely states that a tort claim should be wholly related to maritime service, to navigation, and to commerce on navigable waters. It is not clear whether these three criteria should be viewed jointly or separately. However, it seems that it would be unreasonable to view them jointly, and therefore if any one of the three satisfied the test of substantial maritime connection, then admiralty jurisdiction would follow. But this may not be sufficient in defining the connection rule. Reference should be made to the varying fact patterns in which the maritime connection rule was applied in contract actions.

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