ALUMNI
(Contributing Section)

MARINE INSURANCE LAW AND ADMIRALTY

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Law schools exist for a definite purpose. This purpose has been erroneously understood in many quarters, to embrace the teaching of law. The true purpose of such schools, however, is to teach its students to think legally,—that is because no man knows the law in its entirety and widest significance. Basic principles, underlying the field of law, may be thoroughly understood and appreciated as principles, but the application of these principles to a given group of facts, requires the aid and interpretation of decisions of our courts, hence the impossibility of all questions of law, evidenced in decisions of courts, remaining forever in the res judicatá class. Court decisions are subject to change and frequently upon what appears to be an insignificant item of difference in a group of facts; in other words, we sometimes find different decisions of our courts in cases where there has been apparently an identity of facts. This is so because it is next to impossible to have two groups of facts absolutely identical. One finds this situation succinctly expressed in the Roman adage "Quando duo faciunt idem, non est idem."

The law school functions effectively when it graduates a student who can think legally and who can find support of his appreciation of the relation of facts to legal principles in court decisions. The curriculum of a law school is ordained advisedly to meet the needs of the student and to develop the student in a normal manner. To this end the course of study is divided into years and subjects. Division of subjects in any educational curriculum is, in the large, arbitrary, and yet without such division, the task of training a student becomes exceedingly difficult, if at all possible. Subjects assigned for the first year law student are not entirely distinct, separate and independent from subjects subsequently undertaken in the second, third and fourth years of the school curriculum. Each and every subject presented at any period of the student's law school course, are part of the great and general subject of law. Grouping of subjects for the advanced law school student is made for the purpose of preparing the student for the field of business into which he shall shortly enter. In the business field we find also grouping and classification of subjects. Hence it frequently follows that after a few years of preliminary labor, the young attorney enters the field of a specialty in his law practice. He may become a real estate attorney; he may deal with bonds and investments; he may be interested in wills and estates; he may become the confidential adviser of a large corporation, or he may enter the banking, shipping or insurance field. In any one of the specialties with which the attorney may be interested, he will find much to learn from the standpoint of a practical business man. That attorney functions best in the interest of his clients when he is able to appreciate the business

point of view of his client. Appreciation of the business point of view of the client means that the attorney must have a practical knowledge of that business. Hence it is, for example, that the field of patent law is restricted to those attorneys who have become skilled in the field of mechanics, electricity and the like.

The object of this paper is concerned particularly with the needs of the law student for instruction in the particular field of marine insurance and admiralty law, is taught in but few of our law schools. The two subjects form the field of a specialty which has obtained rapid strides in the last quarter of a century. It is the writer's contention that these subjects, marine insurance and admiralty, should be made part of one course in the law school, and should be taught in all law schools, whether such schools are located on the coast, near inland waters or in the interior. No law school can rightly assume the point of view that it need not teach admiralty or marine insurance because, forsooth, that school is located at a great distance from a port. Graduates of law schools do not remain to continue practice within the shadow of the schools—they frequently settle at points far distant from the schools, and should not be handicapped by limitations placed on the courses because of the fact that the school is not located near a seaport, and therefore not interested in maritime problems.

All commerce deals inter alia with questions of shipping and insurance. The attorney who best understands such problems is the one who knows the field of marine insurance and admiralty law. It might be said that the well equipped admiralty attorney is not dependent upon a knowledge of marine insurance for the success of his practice. This view, however, is not supported by experience. The owner of the vessel, or the shipper of merchandise, undertakes to insure his interest against loss; and where ships are moved and merchandise carried, there insurance is found to exist, and the rules of maritime law applied. Admiralty law of today is practiced in the shadow of marine insurance. Marine insurance and admiralty are two of the oldest subjects known to commerce. They date back many centuries, and each has a development peculiar to itself, and yet related.

The marine insprance policy is one of great antiquity, with peculiar phraseology, each of the terms of which policy has been accorded a legal value by innumerable decisions of courts. The policy deals with matters which pertain to risks of the sea. The peculiarity of the technical terms used calls for particular study and attention. Hull or cargo problems of marine insurance companies come continually to the desk of the marine attorney. As a rule, underwriters seek the advice of the attorney who is well equipped to advise with reference to marine insurance, and who is also well acquainted with maritime law. This is because of the fact that in event of underwriter's liability and a payment under the policy, the underwriter is subrogated to the rights of the assured, and upon such basis, the underwriter proceeds against the third party for collection of the loss or an adjudication of the damage which has come to the assured through the many known casualties of the sea. It is a fact that but very few attorneys are able to interpret a marine insur-

ance policy. Few also are able to go forward in accordance with the well established principles of maritme law in taking the necessary action to recover for loss or damage to hull or cargo.

The law and practice of marine insurance admiralty is sui generis, and the attorney who functions best in this field is the one who is thoroughly acquainted not only with the policy of insurance, but with the theory of underwriting; survey of cargo; and a knowledge of the many features of maritime law. Fire, life casualty and other forms of insurance, are as different from marine insurance as day is from night. It is possible to classify and standardize fire insurance. This is due to the fact that property on shore is largely stationary and is well protected by local ordinance against fire; by building law requirements, and other precautionary measures. Marine insurance, on the other hand, covers property that is moving at sea—either the hull itself or cargo that is carried in ships subject to the changing conditions of wind and storm and conditions in foreign territories, and carried by ships commanded by men who are for the time being beyond the actual control and supervision of their employers. No one ship ever meets the same conditions on two successive voyages, and it is a daily occurence in marine insurance circles that questions of general average, particular average, stranding, salvage, barratry, theft and pilferage come up for instant decision. One of the most important questions dealing with marine insurance is that of seaworthiness. This one question presents a field of amazing interest and of extraordinary peculiarity. The attorney who deals with this question must have a definite knowledge and appreciation of the various kinds and classes of vessels, the classification bureaux which pass upon seaworthiness, and the relation between under-with the issuance of a policy covering such item. All of the casualties which may come to the hull or cargo while water borne, and casualties which fall within a field influenced by the rules of maritime law. This is so not only with reference to the interpretation of the underwriter's liability in the policy, but also true with reference to the underwriter's ability to recoup his loss against the third parties. Let us take a typical illustration.

We will suppose that "A", the owner of hull, insures his interest in this hull with "B", an underwriter. Subsequently, the ship proceeds to sea, and while en route for a foreign port, meets with a terrific hurricane, making it necessary to jettison part of the cargo. The ship, thereafter proceeding on her course, comes into collision with another steamer, causing considerable damage to the hull of the assured boat. Thereafter, the ship proceeds on her voyage until a few hundred miles of her destination when her shaft breaks; being unable to proceed under her own steam, she sends out signals of distress, is picked up by a passing steamer, and towed to port. On arrival in port, it is found, upon examination, that considerable of her cargo is damaged. This recital is not an unusual one, and the reader can well appreciate the important questions which are presented as the result of this voyage. The underwriter immediately seeks to determine his liability by a careful exam-

ination of his policy. He will seek legal assistance to determine questions of seaworthiness, general average, collision clauses, salvage and liability of ship for damage to cargo. The attorney whose advice is solicited in connection with the above recital, is required to make a careful examination of the policy to work out the liability of underwriter, and thereafter will be concerned with an examination of the ship's papers, her certificate of classification; personnel of her officers and crew, and an examination of her bill of lading. He will also examine the entries of the log of the master to obtain a recital of the facts with reference to the jettisoning of cargo and the collision and salvage instances. General average bonds will have to be procured, survey of the ship undertaken, and examination of the alleged damaged cargo to be made by competent surveyors. The final completion and settlement of all the preliminaries arising out of this recital will take some time, and in the solution of such preliminaries the attorney must be well equipped with a knowledge of the intricacies of marine insurance and admiralty law. He must know both fields, otherwise he is not the man to function either in the interest of the assured alone, nor in the interest of underwriter.

As marine insurance is now taught in our law schools, it is but one item of the general subject of insurance, whether the same be taught with the use of the text book, or by the case system. There is, therefore, little opportunity afforded the student to become well acquainted with the principles underlying the study of marine insurance and no opportunity at all of becoming acquainted with the various documents which are used in connection with marine insurance, and which, of themselves, requires much attention and study to be properly appreciated and understood. Admiralty law has assumed a more important status in the curricula of the schools in which it is taught, and yet this subject matter, as prepared for the attention of the student, is by no means established as an item in the curricula in its true importance. In schools where the case system is used, the one case book on admiralty is that of Ames. This book deals with questions of jurisdiction of the courts; subject matter included within the jurisdiction; bottomry bonds; respondentia, maritime liens; charter parties; salvage and the like.

Admiralty, as practiced, even in it's leading features, embraces a sphere far more exhaustive than that suggested by Ames' case book. From a practical standpoint, admiralty law includes within its scope not only the big questions of jurisdiction, bottomry bonds, liens, etc., but questions relating to the purchase and sale of vessels; the documenting of such vessels under their respective flags; the rules and regulations concerning the ship's papers; employment and the rights and duties of the crew; the charter of the ship; questions of freight and matters dealing with the loading and discharging of the ship. Further, there are the real big questions coming within the scope of the Harter Act, the Limited Liability Act and similar questions arising out of other Federal statutes dealing with ships and shipping. One must not forget also the many peculiar points of law dealing with the charter party. This document, originally simple in

its construction, has now grown in extent and nature, so that it requires one who is an expert to decipher its scope and meaning, and to spell out the rights and liabilities created by virtue of its terms and conditions. Bills of lading, evidencing as they do receipt of goods, contract of carriage and ownership of merchandise, form an important part of the work of the admiralty attorney. There are hundreds of bills of lading now in use, each with clauses common to others, and yet each having particular clauses of its own. These bills of lading, or at least the ones in common use, must be known in their entirety and understood as a necessary and integral part of the work of the marine attorney.

In law schools where admiralty is taught, very little attention is given to the question of collision. This is really one of the most prolific sources of litigation within the field of admiralty law. Ability to handle such matters requires, as a condition precedent, a working knowledge of the so-called "Rules of the Road." These rules govern the movements of ships not only in what is known as inland and coastwise waters, but also while such ships are on the high seas. The attorney who does not know what these rules are and what they signify, is necessarily incompetent to pass upon the question of merit in the matter of collision. The rules are not difficult—to the limited amount of knowledge which one must have of navigation can easily be procured —and yet, apparently there has been no time allotted in the few schools in which admiralty is taught, to give to the students the working materials with which to attempt solutions in the field mentioned. True it is that law schools teach one to think legally, but it is not a trespass upon the function of the law school to intermingle with this theory practical elements which will give theory an attractive setting. In the writer's experience, no practical illustrations are made in law schools which handle the subject of admiralty with reference to points so vitally interesting to the student who later becomes the practitioner, viz: the principal parts of a ship with which the admiralty attorney must become acquainted, the "rules of the road" which govern the movement of ships and the working knowledge of charts, ship's papers, protests and surveys, with each of which documents the student will spend much of his time as a practitioner in working out various problems. Practice and procedure in the admiralty courts are not made a part of the subject of admiralty taught in our schools, and a knowledge of this branch of the law must be acquired by the attorney after he enters upon his life's work. In many ways this apparently in justifiable, and yet it seems to the writer that with a small portion of the time allotted for the course in admiralty, much assistance could be rendered the student in outlining the peculiar practice and procedure in our admiralty courts. This outline would at least prepare the student for what was to follow, and would enable him to eliminate many embarrassing errors which he is bound to make because he leaves the law school, in many instances, carrying a deckload of theory, with nothing of a practical nature to support this load.

There is, undoubtedly, no field in the practice of law that is more interesting and constructive than the field