

Admiralty Jurisdiction and Maritime Law

Agencies: Federal departments, agencies, and other instrumentalities responsible for administering relevant laws.

Citation: [U.S. Const., art. III, § 2](#)

Enacted as: [Judiciary Act of 1789](#)

Where Law Applies: U.S. admiralty law applies to any waters navigable subject to interstate or foreign commerce.

Summary of the Law:

Although the terms “admiralty law” and “maritime law” are often used synonymously in the United States, they are in fact distinct from one another. The Framers of the U.S. Constitution used both words in Article III, Section 2: “The Judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction . . .” ([U.S. Const., art. III, § 2](#)). Admiralty law is comprised of rules that define the scope of the court’s admiralty jurisdiction, while maritime law is the substantive law applied by a court exercising admiralty jurisdiction. Maritime law consists of substantive rules created by federal courts, referred to as “general maritime law”, which do not arise from the Constitution or legislation of the U.S. However, the federal courts’ power to create these rules does arise from the Constitution’s grant of admiralty jurisdiction, as does Congress’s limited power to supplement admiralty law. General maritime law may apply rules that are customarily applied in other countries or those which are purely domestic. The federal courts have also occasionally looked to state law in resolving maritime disputes.

American admiralty and maritime law originally developed from British admiralty courts present in American colonies which operated separate from courts of law and equity. Through the [Judiciary Act of 1789](#), the U.S. Congress placed admiralty and maritime law under the jurisdiction of the federal district courts. Parties may not contract out of admiralty jurisdiction and states may not infringe on admiralty jurisdiction, either judicially or legislatively. However, admiralty courts are those of limited jurisdiction and do not extend to non-maritime matters. The “saving to suitors” clause provides for concurrent state jurisdiction to allow for non-admiralty remedies, as well. ([28 U.S.C. § 1333\(1\)](#)).

Source: Martin J. Davies, *Teaching Admiralty Law Requires Dismissing Important Subjects*, 55 St. Louis U. L.J. 483 (2011); Cornell University Law School, Legal Information Institute, [Admiralty: An Overview](#); and Federal Judicial Center publication, Robert Force, [Admiralty and Maritime Law](#) (2004).

Maritime Law as it Relates to Salvage

Origins of Salvage Law

The collection of maritime laws created around 900 BCE in Athens, specifically the city state of Rhodes, first codified the principle of offering a reward for the saving of imperiled maritime property. One-fifth of any property saved from an imperiled vessel was awarded to the salvor. If the vessel was already lost to the sea, either one-third or one-half was awarded to the salvor, depending on the danger taken to retrieve the items. Further, Rhodian law punished those who took anything from a wreck by violence by requiring the looter to return the property fourfold. As Rhodes became part of the Roman Empire, Roman law adopted Rhodian maritime law. The Roman-Byzantine Code and Digest of Justinian, compiled around 500 AD, contained edicts and opinions which reflected Mediterranean maritime law practices, including the doctrine of the salvor's right to be rewarded for his voluntary services, even if the services were rendered without the owner's request or knowledge. This doctrine was known as *negotiorum gestio* and was based on the theory of preventing unjust enrichment of one at the expense of another. With the decline of the Roman Empire, salvage law principles were passed on, as found in the Marine Ordinances of the Italian City of Trani in 1063 AD. Less than two hundred years later, the Laws of Oleron (or Rolls d'Oleron) from a port city of France, which contained provisions related to the law of salvage and finds, were introduced into the English legal system by King Richard I during his reign from 1189 to 1199. These laws were strikingly similar to the maritime rules in Spain and to those developed in Sweden in 1505, known as the Rules of Visby.

Surviving the transfer of laws from civilization to civilization over the centuries were three main concepts of salvage law: (1) the property right in the wrecked vessel may escheat (revert) to the state; (2) a wrecked vessel may be claimed by whoever first locates and obtains possession of it; and (3) that the title of the wrecked vessel remains with the owner, but the owner may be required to pay a salvage award to whoever saves the property and return it to the owner.

Generally, the efforts and expenses undertaken by one man to preserve the property of another do not create a lien upon the property benefited or an obligation to repay the expenditure. However, the exception to this rule is the maritime law concept of salvage. The reasoning underlying this policy arising out of the importance of trade, the peril of the sea, and that the property saved was in exceptional circumstances. The public policy differences between rewarding for salvage at sea versus on land still persist in today's modern world.

Modern Salvage Law

A lawsuit for a salvage award may be brought against either the vessel owner or the vessel itself *in rem*. In an *in rem* proceeding, the *res* (e.g., an object from the wreck) must be present in the district when the suit is filed or during the pendency of the action. To claim a salvage award, there must be a nexus between the item salvaged and traditional maritime activities, although this has been liberally interpreted. A person may provide salvage service to a vessel and its cargo without first receiving a request from the owner or agent of the vessel if it appears that a reasonable owner would have agreed to the services if he was present to do so. However, services which are rendered despite the objection of the person in authority over the vessel will

not receive a salvage award. A salvor must have a specific intent to confer a benefit on the salvaged vessel rather than another intention altogether.

Salvage law is divided into two different claims: pure salvage and contract salvage. Pure salvage most closely resembles the historical origins of salvage law. A pure salvage claim has three elements: (1) the property saved was exposed to a marine peril; (2) the service was voluntary, with no pre-existing duty or contract to rescue; and (3) the operation must be successful, either in whole or in part. Marine peril does not need to be imminent or absolute; all that is required is that the party seeking the award demonstrate that a reasonable apprehension of peril existed. The salvaged vessel only needs to be exposed to a danger that could lead to further damage without the service provided. The owner of the vessel has the burden of proving that the services were not voluntary; for example, the salvaged vessel's crew has a preexisting duty to the vessel under most circumstances. The party seeking the award also has the burden of proving his effort contributed to salvage of the property, regardless of whether the effort was laborious or dangerous. No salvage reward will be awarded if the property is lost, despite any efforts on the part of a would-be salvor.

In contract salvage, the service for salvage is entered into either by oral or written agreement and the amount of compensation is fixed, sometimes regardless of success of the operation. If the salvage service is rendered pursuant to contract salvage, the salvor has no right to additional compensation or a salvage lien. A salvage contract may incorporate a "no cure-no pay" provision in which compensation is only given for a successful salvage operation. However, even this contract may be set aside by a court if it violates contract law, such as being entered into under fraudulent representations.

Salvage Awards

Courts must consider the specific circumstances surrounding each case of pure salvage in order to determine the salvage award. The U.S. Supreme Court set out a list of factors to consider in setting an award, known as the "Blackwell factors", as they originated in *The Blackwell* case in 1869. (*The Blackwell*, [77 U.S. \(10 Wall.\) 1 \(1869\)](#)). There are six factors:

1. The labor expended by the salvors in rendering the salvage service,
2. The promptitude, skill, and energy displayed in rendering the service and saving the property;
3. The value of the property employed by the salvors in rendering the service and the degree of danger to which such property was exposed;
4. The risk incurred by the salvors in securing the property from impending peril;
5. The value of the saved property; and
6. The degree of danger from which the property was rescued.

Each factor must be considered but may not be accorded the same weight. The salvage award is apportioned among all co-salvors according to the degree of contribution. Professional salvors are usually awarded greater salvage awards than chance salvors due to their unique skill set and specialized equipment.

In addition to the salvage award, the salvor may recover expenses incurred while rendering the service. The court may also award compensation to the salvor for the loss or damage to the salvor's property which occurred during the salvage operations. Any party involved in the common venture is responsible for its proportionate share of the award to the salvor. Where salvage services were not requested, the property owner is not liable *in personam*, but the property is liable *in rem*.

Salvage versus Finds

In salvage law, a salvor obtains a lien against the vessel and may claim an award, but the title to the vessel remains with the owner. Under the law of finds, the finder of the vessel may acquire title if the court determines that the property has been permanently abandoned. The laws of salvage and finds may be subject to other federal laws, such as the Sunken Military Craft Act or the Archaeological Resources Protection Act of 1979. The law of finds may also be inapplicable where the abandoned property is embedded in submerged lands, in which case the owner of the lands owns the property, or where the property is on or embedded in lands where the owner has constructive possession of the property such that it cannot be deemed "lost". (See *Klein v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 758 F.2d 1511 (11th Cir. 1985)).

With regards to application in the maritime environment, salvage law is generally preferred over the law of finds. Underlying salvage law is the principle of mutual aid; in applying the law of finds, courts are promoting behavior at odds with this principle since potential salvors would have a greater incentive to wait until the property is abandoned and they can obtain full possession rather than to rescue the property and be granted a reward.

The issue of whether shipwrecks are abandoned has been the subject of much litigation. Some courts have inferred abandonment by the mere passage of time and the failure of the owner to assert an ownership claim. (See, e.g., *Andrea Doria* at 1105.) Other courts have adopted a "totality of the circumstances" test to determine whether a shipwreck is indeed abandoned. (See *Commonwealth v. Maritime Underwater Surveys, Inc.*, 531 NE2d 549, 552 (Mass. 1988)). Recently, courts have looked to whether technological advances existed to rescue a shipwreck in order to determine if that ship wreck is abandoned. (See, e.g., *Columbus-America Discovery Group v. Atlantic Mutual Insurance Company*, 974 F.2d 450 (4th Cir. 1992)). It should be noted, however, that the United States and other nations take the position that their sovereign shipwrecked vessels, no matter where in the world they are located, are *not* abandoned, absent an express renunciation of ownership by the proper authority. (See, e.g., *United States v. Steinmetz*, 973 F.2d 212 (3rd Cir. 1992)).

Source: Federal Judicial Center publication, Robert Force, [Admiralty and Maritime Law](#) (2004).

Cases:

- *Chance v. Certain Artifacts Found & Salvaged from The Nashville*, [606 F.Supp. 801 \(S.D. Ga. 1984\)](#), *aff'd mem.*, [775 F.2d 302 \(11th Cir. 1985\)](#).
- *Columbus-America Discovery Group v. Atlantic Mutual Insurance Co.*, [974 F.2d 450 \(4th Cir. 1992\)](#), *cert. denied*, 507 U.S. 1000 (1993).

- *Klein v. Unidentified Wrecked & Abandoned Sailing Vessel*, [758 F.2d 1511 \(11th Cir. 1985\)](#) (Kravitch, J., concurring in part, dissenting in part), *aff'g* [568 F. Supp. 1562 \(S.D. Fla. 1983\)](#).
- *Treasure Salvors, Inc. v. Unidentified, Wrecked & Abandoned Vessel*, [569 F.2d 330 \(5th Cir. 1978\)](#), *modifying* [408 F. Supp. 907 \(S.D. Fla. 1976\)](#).

Law Articles:

James A.R. Nafziger, *The Evolving Role of Admiralty Courts in Litigation Related to Historic Wreck*, 44 Harv. Int'l L. J. 251 (2003).

- This Article discusses the role that U.S. admiralty courts play in filling gaps in international dispute resolution regarding historic wrecks at sea and their salvage around the world.

Jonathan Joseph Beren Segarra, *Cursing Under a Star-Dogged Moon: Why the Legal Regime Concerning the Recovery of Ancient or Historic Vessels Must Change*, 25 U.S.F. Mar. L.J. 93 (2012-2013).

- This Article explores the law of salvage and the law of finds, as well as the benefits and drawbacks of each, before examining the courts' application of either law to ancient shipwreck recovery.

Kevin Doran, *Adrift on the High Seas: The Application of Maritime Salvage Law to Historic Shipwrecks in International Waters*, 18 Sw. J. Int'l L. 647 (2012).

- This Article discusses the application of U.S. maritime law to historic shipwrecks in international waters and suggests that American courts change their approach in preserving the historical and cultural value of these shipwrecks.

Jonathan Joseph Beren Segarra, *Above Us the Waves: Defending the Expansive Jurisdictional Reach of American Admiralty Courts in Determining the Recovery Rights to Ancient or Historic Wrecks*, 43 J. Mar. L. & Com. 349 (2012).

- This Article reviews the jurisdictional reach of maritime nations pertaining to treasure salvage, giving special consideration to U.S. "constructive *in rem* jurisdiction". The author then seeks to show the U.S. courts' relative conformity with various international salvage conventions and that the extraterritorial application of American salvage law is more accurately characterized as a devoted application of, rather than an injury to, the shared law of nations.

David J. Bederman, *Law of the Land, Law of the Sea: The Lost Link Between Customary International Law and the General Maritime Law*, 51 Va. J. Int'l L. 299 (2010-2011).

- This Article proposes that customary international law be re-linked to general maritime law and share both its status as "law of the land" and its implied preemption of state law, and recommends an approach for doing so.

Jonathan M. Gutoff, *Admiralty, Article III, and Supreme Court Review of State-Court Decisionmaking*, 70 Tul. L. Rev. 2169 (1995-1996).

- This Essay responds to concerns that the Supreme Court does not have the authority to fully review admiralty decisions made by state courts under the saving-to-suitors clause.

Other Relevant Sources:

- Villanova University School of Law, [Admiralty Law Research Guide](#)
- Tulane University Law School, [Tulane Maritime Law Journal](#)
 - Includes a cumulative index by subject and by title, as well as table of contents for past issues.