MARITIME LAW AND PRACTICE (LAWS 2001.03)

Fall Term 2017

Mondays, 15.00-16.30; Wednesdays, 13.00-14.30; Room 207

Instructor: Professor Aldo Chircop, JSD

DESCRIPTION

Maritime law, also referred to as Admiralty law and shipping law, is one of the oldest legal fields. Traced as far back as the Code of Hammurabi (circa 1780 BC) in relation to carriage of goods by water, maritime law has developed in close association with and in support of maritime trade. Since the 20th century, and in particular after the Second World War, maritime law has not only served to promote trade, but also to set standards for vessel safety, security and marine environment protection from ship activity. In particular, the efforts of the International Maritime Organization (IMO), a specialised agency of the United Nations and the Comité Maritime International, an international non-governmental professional organization, have promoted the universalization and uniform application of maritime law. In reality, there are few areas where uniformity has been achieved, but the aspiration for generally applicable rules continues to guide law-making in this field.

Maritime Law and Practice is an introductory survey of Canadian maritime law designed for students who are interested in future practice in the field or who seek to take the course out of general interest. Maritime law is a dynamic field driven by commercial and technological forces, safety and environmental considerations, and more recently also by security concerns. Although the emphasis is on Canadian law and practice, the nature of shipping activity gives this course an international commercial flavour. There will be occasions for comparisons (mostly with English law, Commonwealth and United States practice). The course provides a general overview of the principal subject-areas and institutions of maritime law, drawing heavily from other areas of public law (constitutional, environmental law) and private law (contracts, torts, insurance), as well as public and private international law.

By the end of this course, students will have gained a broad familiarity with the basic concepts, principles, institutions and procedures of Canadian and international maritime law and in-depth knowledge of contemporary issues in the field.
CREDIT AND ASSESSMENT

JD and exchange students

3 credits, 3 hours a week.

60% by written examination on 18 December (3 hours; no additional reading time). The exam consists of a major hypo (40%) and an essay question (20%). Students may bring into the exam room their own personally prepared notes (hardcopy/binder), but use of other materials or electronic devices is not permitted (other than personal computer for exam writing).

40% by written assignment based on a major hypo (comparable to an exam hypo). The assignment will be a maximum of five pages, including notes (letter size paper; one inch margins; 1.5 spacing; paginated). The assignment will be posted on Bright Space at noon on 1 November. The deadline for submission is noon on 15 November. The marked/commented assignment will be returned in class on 27 November. Students are required to submit assignments in hard copy to the Law School reception desk and ensure they are date and time stamped. The assignment will be discussed in the last class (4 December).

Graduate students

100% research paper: Graduate students will discuss their research topics and submit a provisional title, one paragraph abstract, preliminary table of contents and provisional bibliography by 2 October (in class). At their discretion, students may submit draft papers for comment by the instructor. If they choose to do so, the deadline for submission is 29 November. Commented papers are returned on 4 December. Students do not present their papers in class.

The deadline for submission of finalized papers at the School’s Reception is 18 December, noon. Extensions without the permission of the Studies Committee will not be permitted. Please note that the School applies penalties for late submissions.

Papers must be submitted in hard copy and electronically. Students must ensure papers are dated and time stamped. Students are required to provide an identical electronic copy of their paper to the instructor by the due date.

COURSE MATERIALS

The required course readings consist of selections from the course Textbook and excerpts of primary materials (Materials). The textbook is A. Chircop, W. Moreira, H. Kindred & E. Gold, eds, Canadian Maritime Law 2d (Toronto: Irwin Law, 2016) and may be purchased from the University bookstore or on the publisher’s website (available for both in hard copy and as an e-book). A copy of the textbook will be on reference at the Dunn Law Library. The other excerpted primary materials are posted on a weekly basis on Bright Space. Additional materials, such as power point slides and recent cases, will also be posted. Occasionally, students will be requested to browse particular websites.
Students are required to do the assigned readings in advance of each class. Students who wish to develop more in-depth knowledge of maritime law beyond what is discussed in class are encouraged to consult the publications listed at the end of the course programme below.

**POLICIES AND PROCEDURES**

1. **Student Requests for Accommodation**

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or the Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836.

2. **Submission of Major Papers and Assignments**

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: [https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html](https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html).

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

3. **Plagiarism**

All students must read the University policies on plagiarism and academic honesty [http://academicintegrity.dal.ca/](http://academicintegrity.dal.ca/) and the Law School policy on plagiarism [http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html]. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious
academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

3. Assistance with writing

Dalhousie offers support services to assist students in their development of academic competencies. The Writing Centre, for instance, works to develop writing skills that meet university expectations in one-on-one sessions, in small groups, and in classes.

Contact information:

Dalhousie Writing Centre
Website: <https://www.dal.ca/campus_life/academic-support/writing-and-study-skills.html>

COURSE PROGRAMME

11 September: Introduction to the course and Canadian maritime law

Textbook: pp. 1-9, 13-18

13 September: The International Maritime Organization and administration of maritime law in Canada

Textbook: pp. 58-67
Browse: Website of the International Maritime Organization (IMO) and familiarize yourselves with the functions, committee structure and range of topics addressed by international maritime law conventions and other IMO instruments (http://www.imo.org/en/Pages/Default.aspx)

18 September: The ship, its ownership and registration

Textbook: pp. 275-288, 311-328
Materials: Canada Shipping Act, 2001, SC 2001, c 26, s 2
Federal Courts Act, RSC 1985, c F-7, s 2(1)
Canada v Saint John Shipbuilding and Dry Dock Co (1981), 43 NR 15, 126 DLR (3d) 353 (FCA)
20 September: Maritime law jurisdiction & definition of Canadian maritime law

Textbook: pp. 215-217, 158-188

Materials: Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985 App II, No 5, ss. 91, 92, 101
Federal Courts Act, RSC 1985, c F-7, ss 2, 22, 43
Zavarovalna Skupnost Triglav v Terrasses Jewellers Inc. and Bank of Montreal, [1983] 1 SCR 283
Seafarers’ International Union v Crosbie Offshore Services Ltd, [1982] 2 FCR 855, 153 DLR (3d) 485 (FCA)
Whitbread v Walley, [1990] 3 SCR 1273
Monk Corp v Island Fertilizer Ltd, [1991] 1 SCR 779
Newterm Ltd v MYS Budyonnogo (The), [1992] 3 FCR 255, [1992] FCJ No 454
Isen v Simms, [2006] 2 SCR 349, 273 DLR (4th) 752
Morrison v. Halifax (Regional Municipality), 2008 NSSC 375, 271 NSR (2d) 383

25 September: Provincial law considerations

Textbook: pp. 188-208

Materials: Jurisdiction of provincial courts
Ordon Estate v Grail, [1998] 3 SCR 437, 166 DLR (4th) 193

Application of provincial law in a maritime setting
Ordon Estate v Grail, [1998] 3 SCR 437, 166 DLR (4th) 193

Occupational health and safety
R v Mersey Seafoods Ltd, 2008 NSCA 67 (CanLII), 295 DLR (4th) 244
27 September: Marine insurance law -- introduction, types of cover and doctrines

Textbook: 402-403, 412-432, 404-408

Materials: Introduction and types of coverage
Marine Insurance Act, SC 1993, c 22, ss 2, 6

Disclosure and utmost good faith
Marine Insurance Act, SC 1993, c 22, ss 20-22, 80
Ferme Gérald Laplante & Fils Ltée v Grenville Patron Mutual Fire Insurance Co,
2002 CanLII 45070, 61 OR (3d) 481, 217 DLR (4th) 34 (CA)

Insurable interest
Marine Insurance Act, SC 1993, c 22, ss 7-18
Piper v. Royal Exchange [1932] 44 Ll.L.Rep. 10

Indemnity
Marine Insurance Act, SC 1993, c 22, ss 30, 66, 86
General Shipping and Forwarding Co v British Ins. Co Ltd (The Borre) (1923),
15 Ll L Rep 175

Constructive total loss
Marine Insurance Act, SC 1993, c 22, s 57
George Cohen Sons & Co v Standard Marine Insurance Co Ltd (1925), 21 Ll L
Rep 30 (KB)

2 October: Marine insurance: doctrines continued

Textbook: pp. 408-411

Materials: Subrogation
Marine Insurance Act, SC 1993, c 22, s 81
Burnand v Rodocanachi (1882), 7 AC 333, 6 QB Div 633 (HL)
Castellain v Preston (1883), [1881-5] All ER Rep 493, 11 QBD 380
Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd, [1961] 2 All ER 487,
[1961] 1 Lloyd’s Rep 479 (HL)
Secunda Marine Services Ltd v Fabco Industries Ltd, 2005 FC 1565 (CanLII), [2006] 3 FCR 3, [2005] FCJ No 1918

Abandonment
Marine Insurance Act, SC 1993, c 22, ss 58-60
Attorney-General v Glen Line, Ltd et al (1930), 37 LJ L Rep 55, 46 TLR 451 (HL)
Rose v Weekes, [1984] FCJ No 502, 7 CCLI 287 (TD)

Perils of the sea
Marine Insurance Act, SC 1993, c 22, ss 2, 37(1), 37(5), 53
CCR Fishing Ltd v British Reserve Insurance Co, [1990] 1 SCR 814, 69 DLR (4th) 112
HB Nickerson & Sons Ltd v Insurance Co of North America et al (The JE Kenney), [1984] 1 FCR 575 (FCA)
566935 BC Ltd (cob West Coast Resorts) v Allianz Insurance Co of Canada, 2006 BCCA 469, 275 DLR (4th) 748

4 October: Marine insurance – policy and types of clauses


Materials: The policy
Marine Insurance Act, SC 1993, c 22, ss 25-31
International Hull Clauses 2003

Construction of marine policies
Marine Insurance Act, SC 1993, c 22, ss 3
Niagara Gorge Jet Boating Ltd (cob Whirlpool Jet) v AXA Canada Inc, 146 ACWS (3d) 156

Warranties
Marine Insurance Act, SC 1993, c 22, ss 32-39
Ocean Masters Inc v AGF MAT (Allianz AGF MAT Ltd), 2007 NLCA 35 (CanLII), 266 Nfld & PEIR 316

Other clauses
Thames and Mersey Insurance Co v Hamilton, Fraser & Co (The Inchmaree) (1887), [1886-90] All ER Rep 241, 12 App Cas 484 (HL)
Secunda Marine Services Ltd v Liberty Mutual Insurance Company, 2006 NSCA 82 (CanLII), 245 NSR (2d) 241
Duties of the Assured (Sue and Labour)
Integrated Container Service Inc v British Traders Insurance Co Ltd, [1984] 1 Lloyd’s Rep 154 (UKCA)  
North Coast Sea Products Ltd v ING Insurance Co of Canada, 2004 BCCA 95 (CanLII), [2004] ILR I-4284

THANKSGIVING: 9 OCTOBER (NO CLASS)

11 October: Visiting speaker (TBA)

16 October: Pilotage and towage law and terms

Textbook: pp. 729-747, 748-777

Materials: Pilotage law  
Pilotage Act, RSC 1985, c P-14  
Towage law and terms  
Eastern Canadian Tug Owners’ Association Standard Towing and Insuring Conditions  
Wire Rope Industries v British Columbia Marine Shipbuilders, [1981] 1 SCR 363, 121 DLR (3d) 517  
The Cap Palos, [1921] All ER Rep 249  
R v M/V Kathy L (The), 2010 BCPC 30, [2010] BCJ No 549  
Canada Salt Co v Irving Cedar (The), 2000 CanLII 16223, 193 FTR 20 (FC)  
Meeker Log and Timber Ltd v “Sea IMP VIII” (The) (1994), 1 BCLR (3d) 320 (SC), aff’d (1996), 21 BCLR (3d) 101 (CA)  
Rough Bay Enterprises Ltd v Budden et al, 2003 BCSC 1796 (CanLII), 22 BCLR (4th) 326

18 October: Salvage law and standard terms

Textbook: pp. 779-794

Materials: General Principles  
North Star Marine Salvage Ltd v The “BC Adventure”, [1973] FCR 50, 36 DLR (3d) 136  
General Accident Indemnity Co v Panache IV (The), 1997 CanLII 6372, [1998] 2 FCR 455 (TD)  
Hansisch v. Canada, 2004 BCCA 539, 35 BCLR (4th) 33

Danger
The Charlotte (1848), 3 Wm Rob 68, cited in The Troilus (1949), [1950] P 92 (CA)
Brooks Aviation, Inc v Boeing SB-17G, 2004 FC 710 (CanLII), [2005] 1 FCR 352

Voluntariness
The “San Demetrio” (1941), 69 Ll L Rep 5
General Accident Indemnity Co v Panache IV (The), 1997 CanLII 6372, [1998] 2 FCR 455 (TD)

Success
Manchester Liners Ltd v “Scotia Trader”, [1971] FCR 14 (FCTD)
The Tojo Maru, [1972] AC 242 (HL) 18
Brooks Aviation, Inc v Boeing SB-17G, 2004 FC 710 (CanLII), [2005] 1 FCR 352

23 October: Salvage continued and places of refuge

Textbook: pp. 794-803, 804-816

Materials: Salvage contract and compensation
Lloyd’s Standard Form of Salvage Agreement, 2011 (LOF 2011)
SCOPIC 2011 Clause

Places of refuge for ships
P&I Letter of Cover for Salvage Contracts

25 October: Maritime safety: collisions at sea

Textbook: pp. 824-835, 836-843

Materials: Standard of care and good seamanship
Peracomo Inc v Société Telus Communications, 2012 FCA 199, 433 NR 152

Collision Avoidance Rules
Collision Regulations, CRC, c 1416, Schedule 1, implementing the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS 1972), 20 October 1972, 1050 UNTS 16
Canada Shipping Act, 2001, SC 2001, c 26, s 148
Federal Court Rules, SOR/98-106, ss 498-500
North Ridge Fishing Ltd v Preferred Holdings (The Prosperity), 2000 BCSC 1124 (CanLII), 78 BCLR (3d) 388

30 October: Maritime safety: death and personal injury at sea

Textbook: pp. 1065-1081
Readings: Applicable Law
Whitbread v Walley et al, [1990] 3 SCR 1273, 77 DLR (4th) 25

Principles and Rules
Marine Liability Act, SC 2001, c 6, ss 4-14, Schedule 2 (Athens Convention)
Small Vessel Regulations, SOR/2010-91, ss 400(1), 401
Efford v Bondy (cob Zodiac Whale Watching and Inter-Island Excursions Ltd), 1996 CanLII 1223, 60 ACWS (3d) 1087 (BCSC)
R v Broadwith, 2007 BCSC 1910 (CanLII), [2007] BCJ No 2834
Kotai v Queen of the North (The), 2009 BCSC 1405, 70 CCLT (3d) 221
Foisy Estate v Queen of the North (The), 2008 BCSC 1777, [2008] BCJ No 2518

1 November: Maritime safety: defences

Textbook: pp. 843-850, 959-981, 986-989, 1081-1083
Readings: Contributory Negligence
Vogelsang v Vandale, 2008 SKPC 137 (CanLII), 326 Sask R 254
Marine Liability Act, SC 2001, c 6, ss 17-23
Siemens v J.D. Irving, 2012 FCA 225

Limitation of Liability
Marine Liability Act, SC 2001, c 6, ss 24–34, Schedule 1
Peracomo Inc. v TELUS Communications Co, 2014 SCC 29, [2014] 1 SCR 621

(MID-TERM STUDY BREAK: 6-10 NOVEMBER: NO CLASSES)

(UNIVERSITY CLOSED ON 13 NOVEMBER: NO CLASS)
15 November: Vessel-source pollution

Textbook: pp. 864-930

Materials: Pollution as a strict liability offense
R v The M/V “Glenshiel”, 2001 BCCA 417 (CanLII), 90 BCLR (3d) 289
Newfoundland Recycling Ltd v Her Majesty the Queen (Attorney General for Canada), 2008 NLTD 38 (CanLII), 274 Nfld & PEIR 83
R v The M/V “Point Vibe”, [2000] NSJ No 147
Canada v Berhad, 2005 FCA 267, 338 NR 75

20 November: Civil liability for oil pollution damage

Textbook: pp. 932-958

Materials: Compensation regimes
Marine Liability Act, SC 2001, c 6, ss 47-49, 57-58, 63-64, 75-89, 91-94, 101-111, Schedules 5-6, as am by SC 2009, c 21
Browse: IOPCF Claims Manual
Canada v Ship-source Oil Pollution Fund, 2008 FC 1094 (CanLII), 299 DLR (4th) 45
Relational economic loss
Landcatch Ltd v International Oil Pollution Compensation Fund, [1999] 2 Lloyd’s Rep 316
Alegrete Shipping Co Inc and another v International Oil Pollution Compensation Fund 1971 and others; The Sea Empress, [2003] EWCA Civ 65

22 November: Maritime claims and Admiralty procedure

Textbook: pp. 360-391, 262-269

Materials: Liens, mortgages and ranking of claims
Summary of Statutory Liens from Federal Courts Act, RSC 1985, c F-7, ss 22(2), 43(3)
Marine Liability Act, SC 2001, c 6, ss 139-140
Comeau’s Sea Foods Ltd v The “Frank and Troy”, [1971] FCR 556 (FCTD)
Stone et al v The SS Rochepoint and Owners (1921), 21 Ex CR 143, 68 DLR 651
Canadian Imperial Bank of Commerce v Le Chêne No 1 (The), 2003 FC 873, [2004] 1 FCR 120
St. Lawrence Transportation Co, Ltd v Schooner Amedee T, [1924] Ex CR 204
Maritime mortgages
Canada Shipping Act, 2001, SC 2001, c 26, ss 65-72

Priorities and ranking
Royal Bank of Canada v 1132959 Ontario Ltd, 170 A.C.W.S. (3d) 644
Finansbanken ASA v GTS Katie (The), 2002 FCT 73, 115 ACWS (3d) 882

27 November: Maritime claims and procedure continued


Materials: Enforcement of maritime claims
Labrador Sea Products Incorporated v. Northern Auk (Ship), 2007 FC 679
Mount Royal Walsh Inc v Jensen Star (The), [1990] 1 FCR 199 (FCA)
Hollandsche Aanneming Maatschappij v. Ryan Leet (The), [1997] 3 F.C 12
Maritima de Ecologia, S.A. de C.V. v. Maersk Defender (Ship), 2007 FCA 194
Westshore Terminals Limited v. Leo Ocean S.A.(The Cape Apricot), 2014 FC 132;
2014 FC 136; 2014 FCA 231

29 November: Maritime claims and procedure continued

Textbook: pp. 270-273

Readings: The Mareva Injunction
Liberty National Bank & Trust Co v Atkin et al (1981), 31 OR (2d) 715 (H Ct J)
Third Chandris Shipping Corp, Western Sealane Corp and Aggelikai Ptera Compania Maritima v Unimarine S.A. (The Genie, Pythia, and Angelic Wings), [1979] QB 645, 2 Lloyd’s Rep 184 (UKCA)
Front Carriers Ltd v Atlantic & Orient Shipping Corp, 2006 FC 18, [2006] FCJ No 26

Discussion of hypos in class

4 December: Last class

Discussion of mid-term assignment
Discussion of practice hypos
Examination brief

REFERENCE AND RECOMMENDED MATERIALS

1. Journals

Lloyd's Maritime & Commercial Law Quarterly
2. **Law reports**

- Canada Law Reports (Exchequer Court)
- Canada Federal Court Reports
- Canada Supreme Court Reports
- Aspinall's Reports of Maritime Cases (New Series)
- Lloyd's Law Reports
- American Maritime Cases
- Lloyd’s Maritime Law Newsletter

3. **Websites**

- AdmiraltyLaw.Com, http://www.admiraltylaw.com/ (maintained by Stephen Giaschi in Vancouver; an excellent and up to date website which students are advised to consult regularly)


- Comité Maritime International, http://www.comitemaritime.org/ (as the name indicates, this is the CMI official website and contains information on current initiatives on the unification of maritime law)

- International Maritime Organization, http://www.imo.org/HOME.html (as the name suggests, this is the official website of the IMO and is an excellent source on the latest developments in international safety and environmental standard-setting for ships)

- The Legal and Legislative Resource Center, http://www.lpig.org/admir.html (this site is useful for US and comparative maritime law materials)

- Transport Canada, http://www.tc.gc.ca/en/menu.htm (this site is the most complete and authoritative source of Canadian maritime legislation and federal initiatives concerning shipping regulation generally)

4. **Maritime law texts**


