

QUICK GUIDE TO MARITIME LAW

History and Applicability

Maritime Law, also referred to as Admiralty Law provides the rules under which all activity upon navigable waters are governed. Originating during the Roman Empire, Maritime Law was refined throughout the Middle Ages in Europe and transmitted to the United States of America through the Admiralty Law of England at the time of the American Revolution: "cases of admiralty and maritime jurisdiction" appears in the United States Constitution. (Art. III, sec. 2.) In the United States, Congress, the various state legislatures and the federal and state courts strive for uniformity of law and decision making principles so that, in theory, vessel owners, operators, crew, passengers and shippers of cargo may know what their rights and obligations are - what the rules are - no matter what the vessel's location or circumstances might be, and no matter whether the voyage is a commercial one or one just for recreation. For instance, the State of California has adopted the federal *Rules of the Road* that define how vessels encountering each other are to navigate. Also, all merchant mariners and commercial fishermen working for companies owned or controlled by Americans are protected by the *Jones Act*, 46 U.S.C., sec. 30104 and by the general maritime law of seaworthiness and/or Maintenance and Cure for injuries suffered due to negligence or "unseaworthy" conditions, no matter where the vessel or the seafarer was when injured: on board or ashore.

Practical Applications, Questions and Answers

Maritime Law's special application and special rules affect persons and companies in ways that are different from similar circumstances arising in a non-maritime situation; yet most non-lawyers and some lawyers are not aware of these differences and the effect is a poor result. Special applications and issues include, without limitation:

- **Merchant mariners and commercial fishermen** injured and disabled while a member of the crew usually are automatically entitled to receive transportation back to their shipping port and free medical care and a daily cash payment (all this is generally known as "Maintenance and Cure" benefits); however, when does this all apply and how much is the seafarer entitled to and for how long? Are these seafarers entitled to be paid any lost wages before settling the claim? What sort of monetary compensation for pain and suffering might be expected? Does making a claim give the employer the automatic right to refuse to rehire crewmember once he/she is Fit For Duty ("FFD")?

- Maintenance and Cure starts to become due when the fisherman or seaman first becomes too ill or injured to perform all required activities: "Not Fit for Duty" (NFFD). If the NFFD is caused by mutual combat, intoxication or SDTs, the employee is not entitled to the benefits. If the employee joins the vessel knowing of a NFFD condition, the benefits might not be available. The benefits usually end when the employee is Fit For [full sea] Duty or Permanently Not Fit for Sea Duty (PNFFD). Contact Berschler Associates, PC, for free, to find out how your circumstance fits into this law.
- Some seafarers are entitled to "unearned wages"; that is, the base rate due to be earned under the contract but for being NFFD. Payment is due when the contract period (voyage, articles, season ends).
- An employer is not allowed to retaliate against a crewmember for making a claim

- Not all employees aboard a vessel are seafarers under the Maritime Law. In rare instances, a person may be employed by the vessel owner operator, but be a “shore-based” employee whose rights to compensation do not come under the *Jones Act*. Contact Berschler Associates, PC, for free, to find out if your claim is under the *Jones Act* or a different law. 800-338-1441 or fill out the free consultation box.

•**Passengers** injured on pleasure cruises face the challenges of: (a) there an especially short time allowed in which to make a written claim; also, (b) the ticket of passage often requires any law suit to be filed in court quite far from the passenger's home. Finally, (c) settlement of significant claims are usually not available before a law suit is filed.

- Read the back of your ticket. It contains restrictions on what you can claim for, and what you have to do to avoid legal barriers to making a claim at all. Usually a written claim must be sent to the vessel operator within six months of the accident, illness or sickness before you can file a law suit. Usually a law suit must be filed within one year of the incident/accident/onset of illness.
- Some operators try to bar claims for illness by the ticket's terms.
- Contact Berschler Associates, PC, for free, to find out your rights. 800-338-1441 or fill in the free consultation box.

•**Recreational boaters** might not have a claim for personal injury damages under state law in states which apply an "Assumption of the Risk" defense; however, that defense generally is not accepted as valid under the Maritime Law.

- Such cases must be filed in federal court in order to take advantage of Maritime Law. Contact Berschler Associates, PC, for free, to find out if your claim can be filed in Federal Court. 800-338-1441 or fill in the free consultation box.



Interesting Questions of Maritime Law

- Who qualifies as a seafarer or a commercial fisherman?
- Are there state waters to which Maritime Law does not apply?
- What constitutes a "vessel"? Is a sailboard a vessel? A surfboard? An inner tube?
- When two vessels collide, whose fault is it?
- What special rules apply to vessels owned by the United States?
- Is monetary compensation measured differently under Maritime Law as compared to state law?

Berschler Associates, PC, with over 40 years of experience, has provided legal representation in maritime claims and/or defenses against such claims to persons and/or companies across America: from Seattle to Miami; from Boston to San Diego; from Detroit to Houston. Further, many lawyers who do not have experience in the practice of Maritime Law have received legal advice from Berschler Associates, PC and/or referred their maritime clients to Berschler Associates, PC.