1966

Admiralty: Final Examination (January 20, 1966)

William & Mary Law School

ADMIRALTY FINAL EXAMINATION January 20, 1966

I., II. & III.

Hypothetical opinion of U. S. District Court (S. D. N. Y.), in The Flyer:

"X, District Judge. The S.S. Flyer, a big New York Harbor tug owned by Ace Corp. and registered in Hoboken, New Jersey, was libelled in rem in this court April 1, 1965, on a claim by A Oil Co. for $20,000 worth of fuel oil bought by Ace Corp. on April 30, 1964, for use by the Japan, another tug owned by Ace Corp. Other libels in rem have been filed against the Flyer, and the Flyer has been sold by order of this court. The sale brought $100,000, over and above court costs and expenses of the sale. I must determine in what proportions the several libellants get paid from this fund.

"Since the claim by A Oil Co. was the first one filed, and is the oldest in time, I give it top priority.

"Second is a claim by B Brewery for $5,000 worth of beer supplied the crew of the Flyer on May 20, 1964, on the order of Joe Jones, National Maritime Union shop steward for the Flyer. It is shown to my satisfaction that Joe Jones was properly appointed by the Union officials to represent the seamen forming the crew of the Flyer, and this furnishing of supplies took place within the New York Harbor 40-day rule period after the first supplies were furnished by A Oil Co.

"Third, I rank a claim by C Oil Co. for $10,000 worth of fuel oil supplied to the Flyer on May 30, 1964, for her own use.

"Fourth in priority is a lien for an unpaid $5,000 premium due June 1, 1964, on a marine insurance policy covering the Flyer. This policy was taken out by Ace Corp. as owner of the Flyer, but since all lienors are protected by the policy inasmuch as in the law they are part owners, this lien really should have first place. I find, however, that the laws of the State of New Jersey concerning marine insurance provide that there shall be no maritime lien for insurance premiums on a vessel whose home port is in New Jersey. I must therefore give this lien the position established by traditional admiralty rules.

"Fifth, I place a lien for $25,000 in favor of the owners of the British vessel Orient, arising out of a collision in New York Harbor on Sept. 1, 1964, between the Flyer and the Orient, in which I find that the Flyer bears 1/4 of the blame and the Orient 3/4. The damage to the Flyer amounted to $75,000 and the damage to the Orient amounted to $25,000. Since neither owner has paid the damages suffered by the other, I award $25,000 to the Orient and declare this sum a lien against the Flyer.

"Sixth, I place a salvage lien in favor of D. Towage Co. for $25,000 for salvage services performed March 1, 1965. I find that the Flyer had run aground in Lower New York Bay in the fog that morning, well out of the course of most shipping. Her master sent out an "SOS" call by radio, and a tug of the D Towage Co. responded to the call within half an hour, and after an hour's work pulled the Flyer free. I find that no specific contract was made between the owners of the Flyer, or the ship itself, and D Towage Co.; but this seems a reasonable sum to fix as salvage.

"Seventh, I would rank wage liens of seamen on the Flyer in the amount of $5,000, but there will not be enough money to cover these from the proceeds of the sale by this court. These seamen should have sought to enforce their maritime lien for wages by action in a New Jersey state court, since they are all New Jersey residents; therefore they should not complain if there is nothing left from which the present court can satisfy their alleged liens.

"Eighth, I would place a claim by Bay Dredging Co. for collision damage done by the Flyer on March 20, 1965, to its floating dredge. This dredge was engaged in filling in shoreside properties on Staten Island (New York) for factory sites, and thus was not engaged in interstate commerce. It was therefore a land object, rather than a maritime one, and as is well known there can be no maritime lien in favor of a land object for damage done by a vessel, the only recovery being in a state court through an action of law.

"I reject entirely any maritime lien in favor of New Jersey Shipwrights for repairs and supplies furnished the Flyer on March 31, 1965, since it is more recent than the other claims, and since the $25,000 worth of supplies and repairs were furnished to the Flyer under a season fleet contract whereby New Jersey Shipwrights agreed to supply and repair all tugs owned by Ace Corp. Ace Corp. had two tugs at the time, the Flyer and the Japan. I understand that a supply-man or repairman can never have a maritime lien if there is a fleet contract or a season contract. This seems reasonable, since the Federal Maritime Lien Statutes of 1910 and 1920 provide liens only for those who 'furnish to a vessel' supplies or

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repairs or other necessaries 'upon the order of the owner or owners of such vessel, or of a person authorized by him or them.'

"The sums in this court from the proceeds of the sale of the Flyer shall be distributed according to the foregoing opinion."

One of the new circuit judges of the U. S. Court of Appeals for the Second Circuit has had no admiralty experience or training, but thinks that there is something wrong in this opinion when the case is appealed to the Court of Appeals. He therefore asks you, as his law clerk, to prepare for him a brief memorandum commenting on the points made in this opinion and suggesting what you think the District Court should have done on each of the issues raised.

IV.

Libellant delivered at Antwerp, Belgium, 200 generators in good condition, to S.S. Hawk, owned by the U. S. but under bareboat charter to Monarch S.S. Co., for shipment to Norfolk, Va., under a bill of lading referring to the Carriage of Goods by Sea Act. The Hawk had four tanks under the No. 2 hold, just forward of the bridge, known as the forward and aft port tanks, and the forward and aft starboard tanks. The other holds being well-filled with lightweight cargo, libellant's generators were stowed in the forward starboard tank; these normally being safe and dry.

Before loading libellant's cargo, a small crack in front of the superstructure on the port side had been repaired at Hamburg. Prior to sailing from Hamburg the captain of the Hawk ordered the two aft tanks (port and starboard) kept free of cargo so that water ballast could be taken on en route if necessary. When the vessel left Antwerp, the weather was moderate, but the next day a strong westerly wind and high seas were encountered. The welded-up crack on the port side opened, and the vessel took in some water and commenced to list to port. To correct this condition, the chief officer ordered the starboard aft tank filled from the deck via a filler line connected to a stationary gooseneck pipe leading down to the aft starboard tank. This gooseneck was about a foot away from a similar gooseneck leading to the forward starboard tank. By gross error, the ship's carpenter connected the water line to the gooseneck leading to the forward starboard tank, which contained the libellant's machinery. This error was not discovered, and the ship proceeded to Norfolk without further incident.

On arrival at Norfolk, it was learned that the water had greatly damaged libellant's generators stowed in the forward starboard tank. The shipment was returned to the shipper for repairs, and damages were stipulated at $200,000. The Hawk was surveyed at Norfolk after discharge of the damaged generators and certified as being seaworthy and able to return to Europe without needing any repairs.

Libellants bring an action in rem against the Hawk in the U. S. District Court for the Eastern District of Virginia. What arguments should be made for libellants? For owners of the Hawk? What result and why?

V.

Regal Oil Co. is a Delaware corporation engaged in drilling for oil on the continental shelf off Texas. It operates from 20 to 30 miles offshore, using floating derrick platforms anchored in place. It has three of these specially-built floating derrick platforms, each in the form of a rectangular scow about 150 feet x 25 ft., drawing 6 ft. of water, and holding the derrick, pumps and other machinery. These derrick platforms were constructed and fully equipped at Galveston, Texas; were without motive power, and were towed out to their locations with equipment and a skeleton crew aboard. They are anchored at each of the four corners, in about 50 feet of water.

Regal Oil Co. also owns and maintains six tugs and a flotilla of 20 unpowered tank scows into which the oil is pumped by the derrick-platform pumps. The tank scows are then towed to Regal's shore installations. The tugs, and the derrick and pump engines on the derrick platforms, all use diesel oil as operating fuel. In the course of a year each derrick platform will use about as much diesel oil as two tugs.

Client sells diesel oil and wants to make a contract with Regal to supply it with all the diesel oil it needs, on a yearly basis, for operating the tugs and the derrick platforms (including the pumps and derrick engines on these platforms). Client, however, wants to keep the right to a maritime lien against the tugs and the derrick platforms for any unpaid bills, since the credit standing of Regal is rather shaky. Can the client obtain such liens if he supplies on an annual contract for the entire operations? What steps would you, as his counsel, advise in this matter? What considerations are involved?