

I. UNITED STATES CONSTITUTION SEVENTH AMENDMENT

Right to trial by Jury

II. STATUTES AND CODES

A. Savings to Suitors, 28 U.S. §1333 Admiralty, Maritime and Prize Cases

Saving to Suitors Clause of the United States Constitution which permits admiralty actions in personam only to be initiated in State Courts. State Courts have concurrent jurisdiction in all admiralty cases except for actions in rem. In rem actions involve a suit directly against a vessel.

B. Ohio Revised Code

1. ORC §1547.02
2. ORC §1547.20
3. ORC §1547.61

C. Inland Navigation Rules

1. http://www.navcen.uscg.gov/pdf/navRules/COMDTINST_M16672_2D_NavRules_as_published.pdf

D. Ohio Navigation Rules / OAC §§1501:47-2 through 1501:47-2-36

1. <http://codes.ohio.gov/oac/1501%3A47-2>

O.R.C. §1547.02 establishes that the Ohio law applies to all vessels operating on the waters of Ohio. Further, O.R.C. §1547.61 establishes that Ohio law governs the operation, equipment, registration, numbering, and all other matters relating thereto whenever any vessel is operated on the waters in this State. Ohio has a statute governing special events requesting exemption from navigation rules. (O.R.C. §1547.20) It was not complied with here.

Chapter 1501:47-2 entitled Rules of Navigation, found in the Ohio Administrative Code, establishes navigation rules which are found at 1501:47-2 through 1501:47-2-36 in the Administrative Code. These rules parallel the Inland Navigation Rules of the United States.

III. CASES

Gasoline Products Co., v. Champlain Co., 283 U.S. 494, 498 (1931)

The purpose of a jury trial in civil cases is to assure a fair and equitable resolution of factual issues, *Gasoline Products Co., v. Champlain Co.*, 283 U.S. 494, 498 (1931)

Juno SRL v.s. /V Endeavour, 1995 AMC 2678, 58 F.3d 1 (1 Cir. 1995)

New Hampshire Ins. Co. v. Home Sav. and Loan Co. of Youngstown, Ohio, 581 F.3d 420 (6th Cir. 2009), 08-3902

No Maritime contract

Goodson v. McDonough Power Equipment, Inc., 2 Ohio St.3d 193 (Ohio 1983)

Application of collateral estoppel was at issue. The Court required an identity of issues. The Court also required mutuality of the parties

Thomas v. Express Boat Co., 759 F.2d 444, 448 (5th Cir. 1985)

The result in harm must be reasonably foreseeable.

The standard for negligence under General Maritime Law of the United States, states that the Plaintiff must demonstrate that there was a duty owed by the Defendant to the Plaintiff, breach of that duty, injuries sustained by Plaintiff, and a causal connection between Defendant's conduct and the Plaintiff's injury.

Daigle v. Point Landing, Inc., 616 F.2d 825, 827 (5th Cir. 1980) The result in harm must be reasonably foreseeable.

In re Cooper/T. Smith, et al. v. Gnots-Reserve, Inc., 929 F.2d 1073 (5th Cir. 1991)

The result in harm must be reasonably foreseeable.

Chavez v. Noble Drilling Corporation et al., 567 F.2d 287, 289 (5th Cir. 1978)

For the negligence of a Defendant to be a "legal proximate" cause of injury sustained by another, (1) the Defendant's negligence must be a cause-in-fact of the injured person's injuries, and (2) the risk and harm encountered by the injured person must fall within the scope of protection afforded by the duty to others breach by the Defendant's negligence.

United States v. Reliable Transfer, Co., Inc., 421 U.S. 397, 1975 AMC 541 (1975)

Until 1975, the respective liability of two vessels involved in a collision was determined according to rules of sole fault and equal division of damages. If one vessel was solely or predominantly at fault, the jury could assign all responsibility for the damages to that vessel, but if comparative fault could not be determined or both vessels were at fault, then regardless of which vessel might be more

culpable, the total damages resulting from the collision were equally divided between the two vessels

Now under the General Maritime Law of the United States, pure comparative fault is applicable to collision damages subject to the Inland Rules, *United States v. Reliable Transfer, Co., Inc.*, 421 U.S. 397, 1975 AMC 541 (1975).

Reliable Transfer represented a substantial step in the modernization of U.S. maritime law, and the principle recognized in that case has since been extended well beyond collision cases and now include maritime personal injury claims.

Krelick v. Alter 2006 AMC 710

The Krelick Court decided after Juno, distinguishes Juno and holds Juno is not applicable to sailboat races conducted in the United States subject to the U.S. Sailing Prescription.

Sletten v. Hawaii Yacht Club, 1993 WL 643379, 1993 AMC 2863 (D Haw. 1993)
Earlier cases support the Krelick decision. In *Sletten v. Hawaii Yacht Club*, 1993 WL 643379, 1993 AMC 2863 (D Haw. 1993), a dispute arose out of a collision between two sailing vessels in a race in Honolulu Harbor. An issue of whether to apply racing rules or the inland rules was an issue. The Sletten Court decided that the racing rules do not preempt the applicability of the statutory provisions of the inland rules.

De Sole v. U.S., 1992 AMC 242, 947 F.2d 1169

It is likely that the De Sole Court would defer to the yacht racing rules only to the extent that they were in harmony with maritime law regarding culpability. The De Sole Court tempered any deference it may have toward the yacht racing authorities, stating, “we should hesitate before concluding that fact finding and decisions by the yacht racing committees are all together preclusive of any question related to disputes.”

Simler v. Connor, 372 U.S. 221 (1963)

Byrd v. Blue Ridge Rural Electric Cooperative, Inc., 356 U.S. 525 (1958), 57

“The nature of the tribunal which tries issues may be important in the enforcement of the parcel of rights making up a cause of action or defense.... It may well be that, in the instant personal injury case, the outcome would be substantially affected by whether the issue of immunity is decided by a judge or jury.”

Sec. 20 of the Federal Arbitration Act, Title 9, U.S. Code; however, that Act only applies to maritime contracts evidencing a transaction involving commerce. Here, there is no maritime commerce and it is unlikely that the 6th Circuit

Court of Appeals would consider this to be a maritime contract. 581 F.3d 420 (6th Cir. 2009), 08-3902, *New Hampshire Ins. Co. v. Home Sav. and Loan Co. of Youngstown, Ohio*.

YC submitted an application for a marine event to the Department of Homeland Security through the United States Coast Guard (“USCG”)

At ¶3 of the permit, the USCG instructs the marine event sponsor that all applicable “Navigation Rules” apply to all participants in the event and require the marine event sponsor, in this case, the YC, to “insure” that the participants in the event understand that the Navigation Rules apply.

The YC application for a permit does not request that special rules of racing (RRS) will apply. Consequently, the permit does not provide that any “special local regulation” was issued to establish a restricted area and other patrols. In fact, the permit says “there will not be a Special Local Regulation issued and there is no restriction placed on the use of any navigable waters by other parties. The so-called binding YC Sailing Instructions were not submitted to the USCG as part of the application. The application and permit did not provide for the application of the Racing Rules.

In this case, the national authority is the U.S. Sailing Association. The U.S. Sailing Association prescribes in R.67 (Exhibit F) that:
The protest committee shall find facts and make decisions only in compliance with the rules. No protest committee or US Sailing appeal authority shall adjudicate any claim for damages. Such a claim is subject to the jurisdiction of the courts.

- I. A basic purpose of the rules is to prevent contact between boats. By participating in an event governed by the rules, a boat agrees that responsibility for damages arising from any breach of the rules shall be based on fault as determined by application of the rules, and that she shall not be governed by the legal doctrine of 'assumption of risk' for monetary damages resulting from contact with other boats.
- II. the protest committee cannot apply the Inland Rules, the Ohio Navigation Rules or the General Maritime law of the United States of comparative fault because it is not authorized to apportion fault by percentage as required by The Supreme Court's decision in *Reliable Transfer, Infra*.

The protest committee was wrong for exonerating a vessel if she could have avoided the collision and did not. RRS decision 123 (Exhibit H) holds that a vessel that does that should not be exonerated.