Law of Maritime Salvage

An Overview
Disclaimer

- Summary of law, not legal advice
- Each case is very fact specific
Why do we care about salvage?
Nature of Marine Salvage

- Law of marine salvage of ancient vintage
- In the U.S., governed by general maritime law, including statutes, relevant treaties, and other international obligations
- Salvor of imperiled property on navigable waters gains a right of compensation from owner
Elements of Salvage Claim

- There must be a marine peril placing the property at risk of loss, destruction, or deterioration
- The salvage service must be voluntarily rendered and not required by existing duty or special contract
- The salvage efforts must be successful, in whole or in part
Marine Peril

- Court determines if, at time assistance rendered, ship was in a situation that might expose her to loss or destruction
- Danger need not be imminent or actual
- Reasonable apprehension of peril
- If ship has situation under control, there is no peril
Marine Peril?
Voluntary Nature of Act

- Contract or other obligation between salvor and salved will preclude voluntariness
- Motive of salvor is irrelevant – a professional salvor who acts for economic gain is a volunteer as well as a “good samaritan” salvor
Efforts Must be Successful

- For a salvage award, at least some of the property must be saved
- Distinction between marine salvage and contract salvage
Involuntary Salvage

- Salvage cannot be forced upon an owner
- Salvor who acts without consent of owner is a “gratuitous intermeddler” who is not entitled to a salvage award
- However, if vessel is a derelict, abandoned by master and crew, she can be salvaged without consent
Who Can be a Salvor

- Any person, including a corporation or a government agency, that performs an act of salvage as long as there was no preexisting duty to perform the act in question.

- Preexisting duty may arise out of the relationship of salvor to salved ship.
Examples of Preexisting Duties

• Crew members of salved ship are expected to take actions in perilous situation, thus normally denied awards

• Passengers are expected to give only incidental aid and are entitled to an award for extraordinary efforts

• Firemen, pilots, or other public employees may qualify for an award only if service outside line of official duties
Examples of Preexisting Duties

- Contract to provide assistance (e.g. Vessel Assist)
Navy and Coast Guard Vessels

- Navy and other military vessels are entitled salvage because their services are beyond the scope of their official mission.
- Coast Guard not entitled to salvage in performance of usual duties of going to aid of distressed vessels.
“Good Samaritan” Salvor

- Individual involved in rendering assistance gratuitously and in good faith is not liable for damages as a result of rendering assistance when the individual acts as an ordinary, reasonable, and prudent individual would have acted under the circumstances.
Salvor’s Negligence and Misconduct

- When salvor undertakes salvage effort, represents that it will be performed with reasonable skill and care
- Salvor liable for ordinary negligence in carrying out salvage operation
- Damages will reduce salvage award
Salvor’s Negligence and Misconduct

- Gross negligence, looting or spoilage of salved property will result in forfeiture of salvage award
- If salvage unsuccessful, salvor not responsible for losses
- Professional salvors held to higher standard
Salvage Award

• Court makes determination based on number of factors
• Very fact specific and discretionary
• Policy is to grant salvage awards that encourage others to incur risk and go to aid of vessels in distress, but to avoid windfalls of unreasonable extravagance
Elements of Salvage Award

- Salved value of vessel and other property
- Measure of success obtained by salvor
- Nature and degree of danger
- Skill and efforts of salvor
- Time and expense incurred by salvor
- Risk of liability and risk to salvor’s equipment
Newer Element of Salvage Award

- Skill and efforts of salvors in preventing or minimizing damage to the environment
Contract Salvage

- Salvor enters into contract to save maritime property using “best endeavors”
- Lloyd’s Open Form – “no cure, no pay”
- Other salvage contracts
- If salvage contract entered into when vessel is in an *in extremis* situation, courts may set it aside if compensation is grossly exorbitant or if salvor took unfair advantage or was guilty of fraud
Life Salvage

- Under general maritime law:
  - A life salvor has no claim against the person saved
  - “Pure life salvor” (no property saved) has no right to compensation from ship
- Has been modified by international conventions, statutes, and case law and may receive a reward
Obligations of Life Salvage

- Duty under both international law and domestic law to endeavor to save life at sea
- Standby Act (46 USC § 2303) requires master of vessel involved in collision to standby to extent he can do so without seriously endangering his own vessel, crew and passengers
Obligations of Life Salvage

- Salvage Act (46 USC § 2304) requires a master to render assistance to every person found at sea in danger of being lost so far as he can do so without danger to his own vessel, crew, or passengers.
Vessel Assist: Salvage v. Towing

- Typical membership services include towing disabled boat to port, battery jumpstarts, delivery of fuel, fluids, and basic parts to avoid a tow, and "soft" ungrounding assistance (absent contract could be considered salvage)

- Does not include "hard" groundings or assistance requiring multiple vessels, pumps, divers, etc.
Marine Insurance

- Check your Yacht Insurance Policy
- Salvage charges are normally a covered peril, but important to read and understand your insurance coverage, limits, and exclusions
Questions?