

# Vanderbilt Journal of Transnational Law

---

Volume 14  
Issue 1 *Winter 1981*

Article 7

---

1981

## Case Digest

Journal Staff

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Jurisdiction Commons](#), [State and Local Government Law Commons](#), and the [Workers' Compensation Law Commons](#)

---

### Recommended Citation

Journal Staff, Case Digest, 14 *Vanderbilt Law Review* 223 (2021)  
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol14/iss1/7>

This Comment is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

# CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

## TABLE OF CONTENTS

1. Act of State Doctrine .....	223
2. Admiralty .....	224
3. Aliens' Rights .....	226
4. Jurisdiction and Procedure .....	227

### 1. Act of State Doctrine

#### ACT OF STATE DOCTRINE DOES NOT PRECLUDE INQUIRY BY UNITED STATES COURT INTO ALLEGED REPUDIATION BY A FOREIGN GOVERNMENT OF ITS OBLIGATION ARISING FROM A PURELY COMMERCIAL TRANSACTION

An Argentine industrial development bank cancelled letters of credit payable at Italian and Swiss banks which it had issued in favor of an Italian entrepreneur planning to relocate industrial plants in Argentina. The bank alleged that the credits were cancelled pursuant to instructions of a government bank and the directions of the President of the Republic of Argentina. The entrepreneur's assignee, seeking damages for the expired credits, moved for summary judgment dismissing the industrial bank's Act of State doctrine defense. In granting plaintiff's motion, the Supreme Court of New York found that the letters of credit were cancelled because of alleged fraud on the part of the Italian entrepreneur, a purely commercial reason, and that this exercise of power by the Argentine government was not peculiar to sovereigns, and therefore not protected by the Act of State doctrine. The court observed that the cancellation was not pursuant to any statute, decree, order, or resolution of the Argentine government and, relying on *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682 (1976) and *Hunt v. Mobil Oil Corp.*, 550 F.2d 68 (2d Cir. 1977), concluded that extending the Act of State doc-

trine to the repudiation of a commercial obligation would be inconsistent with the restrictive view of sovereign immunity. Citing *Dunhill*, the court reasoned that even if the orders of the Argentine president and government bank were considered public acts, there was no infringement of sovereignty in holding the Argentine government to the same rules of law in its commercial capacity as would apply to a private party in similarly engaged commercial activities. The court concluded that because the directives of the Swiss and Italian banks were extra-territorial in nature, under the Act of State principles of *Underhill v. Hernandez*, 168 U.S. 250 (1897), it need not consider the validity of Argentine government conduct within its own territory. *Significance* — This decision clearly delineates an exception to the Act of State doctrine for claims arising from purely commercial transactions with foreign governments, and assures a judicial determination of the rights of parties to those transactions whenever possible. *Mirabella v. Banco Industrial de la Republica Argentina*, 101 Misc. 2d 767, 421 N.Y.S.2d 960 (Sup. Ct. 1979).

## 2. Admiralty

### ADMIRALTY JURISDICTION EXTENDS INLAND TO AUTOMOBILE ACCIDENT CAUSED BY THE NEGLIGENCE OF SHIP'S CREW

Cruise passenger, after disembarking from a three hour excursion promoted as a "booze cruise," was struck and seriously injured on a street adjoining the dock by an automobile driven by a fellow passenger who was allegedly intoxicated at the time of the accident. Organizers of the cruise filed suit in federal district court to limit their potential liability under the Shipowner's Limitation of Liability Act. The injured passenger claimed that the organizers of the cruise inadequately supervised passengers who became illegally intoxicated while on board and failed to provide a safe means of exit. The district court held that these claims were not within the purview of the Admiralty Jurisdiction Extension Act. The court of appeals reversed and remanded, stating that the alleged negligent acts which led to the injury were sufficiently related to traditional maritime activities to meet the test for admiralty jurisdiction. Relying on *Guitierrez v. Waterman S.S. Corp.*, 373 U.S. 206 (1963), the court held that admiralty jurisdiction is present when a tort committed on board ship by the crew has an impact onshore at a time and place not remote from the negligent act. The court distinguished *Peytavin v. Government*

*Employees Ins. Co.*, 453 F.2d 1121 (5th Cir. 1972), which denied admiralty jurisdiction over an automobile accident in which plaintiff's car was struck from behind by another while parked on a floating pontoon at a ferry landing, on the basis of three factors. First, the injured party in the present case was a passenger aboard a commercial ship owned and operated by the defendants. Second, the alleged negligence here involved the performance of maritime duties by the ship's crew in caring for passengers. Last, the sequence of causal events in the instant case started on board the vessel and ended on land. *Significance* — Admiralty jurisdiction reaches an automobile accident on a municipal street as long as the time and place of the injury are not remote from the tortious act and the tortious activity which caused the injury was related to traditional maritime activities. *Duluth Superior Excursions, Inc. v. Makela*, 623 F.2d 1251 (8th Cir. 1980).

OUTER CONTINENTAL SHELF LANDS ACT INCORPORATES THE LONGSHOREMEN'S AND HARBOR WORKER'S COMPENSATION ACT, AND INCLUDES PROVISIONS DEPRIVING CLAIMS BY OUTER CONTINENTAL SHELF EMPLOYEES INJURED ON THE JOB AGAINST VESSEL OWNERS BASED UPON BREACH OF WARRANTY OF SEAWORTHINESS

A "wireline hand" injured when a steel pipe fell from a tool box being transferred from a vessel to the top deck of a fixed oil platform located on the outer Continental Shelf instituted a negligence action against both the vessel's owner and the owner of the tool box. Plaintiff amended his complaint to include a claim, based upon general maritime law, for breach of warranty of seaworthiness against the owner of the vessel being off-loaded. Defendant vessel owner moved to dismiss the unseaworthiness claim, arguing that the Outer Continental Shelf Lands Act (43 U.S.C. § 1331 *et seq.*) (OCSLA) incorporates the provisions of the Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. § 901 *et seq.*) (LHWCA) regarding legal redress for outer Continental Shelf workers injured on the job. Defendant contended that plaintiff was an employee covered under the LHWCA and that section 905(b) of that statute deprived him of a claim against a vessel owner based upon unseaworthiness. Plaintiff countered that section 905(b) was never intended to apply to the outer Continental Shelf, and that the only LHWCA provision incorporated into the OCSLA concerned its compensation requirements. Finding that the LHWCA applied to outer Continental Shelf employees, and the entire text of the LHWCA had been

incorporated into the OCSLA, the district court concluded that the OCSLA deprived plaintiff's claim against the vessel owner based upon unseaworthiness. The court reasoned that the result of adopting plaintiff's position would be to force vessel owners faced with suits by employees of independent contractors to enforce indemnity agreements with the independent contractors. Thus a situation would circumvent one of the express Congressional purposes in enacting the OCSLA provisions incorporating the LHCWA, i.e., that compensation be the exclusive liability of the employer to the employee. *Significance* — This is the first reported case to confront the issue of whether an outer Continental Shelf employee injured on the job may assert a claim, under the OCSLA, against a vessel owner based upon breach of warranty of seaworthiness. *Cloud v. Union Oil Company of California*, 481 F. Supp. 58 (1979).

### 3. Aliens' Rights

#### UNIVERSITY'S RESTRICTIVE DEFINITION OF DOMICILE, WHICH PRECLUDES NONIMMIGRANT ALIENS FROM ATTAINING "IN-STATE" STATUS FOR TUITION PURPOSES, DOES NOT VIOLATE DUE PROCESS

Nonimmigrant alien students, dependent on parents holding a nonimmigrant visa granted to officers or employees of international treaty organizations, brought suit against the University of Maryland and its president, alleging that the University's refusal to allow them the opportunity to establish "in-state" status for tuition purposes violated the due process and equal protection clauses of the Fourteenth Amendment. Holding that the University's refusal constituted an "irrebuttable presumption of non-domicile" in violation of due process, the district court ruled in favor of the students, and the court of appeals affirmed. The Supreme Court granted certiorari. After finding the case "squarely within *Vlandis v. Kline*, 412 U.S. 441 (1973) as limited by *Weinberger v. Salfi*, 422 U.S. 749 (1975), to those situations in which a state purports to be concerned with domicile, but at the same time denies to one seeking to meet its test of domicile the opportunity to show factors clearly bearing on that issue," the Court remanded the case to the Maryland state court to determine whether nonimmigrant aliens could become Maryland domiciliaries. The Maryland state court answered affirmatively and requested that the case be restored to the Supreme Court's active docket. In the meantime, though, the University had adopted a

more restrictive definition of domicile, including cost equalization figures, which explicitly precluded nonimmigrant aliens from "domiciliary" status. The Supreme Court then refused to hear the case and remanded it to the district court for further consideration in light of subsequent opinions. While acknowledging that the University's initial policy denied the students due process under the "impermissible irrebuttable presumption" doctrine of *Vlandis*, the district court found that the University's subsequent, more restrictive policy was constitutional because it is now *universally* recognized that nonimmigrant aliens cannot qualify for "in-state" status, and thus an "impermissible irrebuttable presumption" no longer exists. *Significance* — This decision indicates the considerable leverage which courts are willing to afford state universities in drafting tuition-related policies and in particular, those affecting nonimmigrant aliens. The decision also exposes the weakness of the *Vlandis* doctrine, made even more fragile by the Court's refusal to hear the case after the University's restrictive policy change. Notably, the district court did not address whether the revised policy violated the Equal Protection or Supremacy Clauses and ordered a conference to address those points. *Moreno v. Toll*, 480 F. Supp. 1116 (D. Md. 1979).

#### 4. Jurisdiction and Procedure

##### ORDER OF ATTACHMENT OF FUNDS HELD IN TRUST IN UNITED STATES BANK FOR FOREIGN GOVERNMENT TO SECURE ENFORCEMENT OF JUDGMENT EXPECTED IN A PENDING CONTRACT ACTION IN THE UNITED STATES NEEDS RECONSIDERATION WHEN EXTRAORDINARY CIRCUMSTANCES PRECIPITATE RAPID CHANGE IN THE RELATIONSHIP BETWEEN THAT FOREIGN GOVERNMENT AND THE UNITED STATES

On June 13, 1979, the United States District Court for the Southern District of New York entered an order attaching funds held by a New York bank in trust for the Islamic Revolutionary Council of Iran, in order to secure enforcement of a judgment expected in a contract action pending in the Northern District of Texas between a United States corporation and an Iranian government agency. On November 28, 1979 after hearing an appeal by the Revolutionary Council, the Second Circuit remanded the case to the district court to reconsider its order in light of the changing relationship between Iran and the United States due to the seizure of United States hostages in Teheran. Specifically, the Second Circuit recommended that the lower court reconsider: (1)

the position of the Department of State as to the right of access to United States courts of the Iranian government agency, (2) the necessity for the district court's order in light of Exec. Order No. 12,170, 3 C.F.R. 457 (November 14, 1979), "freezing" Iranian assets in the United States, and (3) the district court's interpretation of the Treaty of Amity, Economic Relations, and Consular Rights, Aug. 15, 1955, United States-Iran, 8 U.S.T. 899, T.I.A.S. No. 3853, in light of Department of State documents made available to the Second Circuit. *Significance*— This decision demonstrates the willingness of a prominent United States court to consider suspension of normal civil procedure in deference to the Executive Branch when critical foreign relations issues so require. *Electronic Data Systems Corporation Iran v. Social Security Organization of the Government of Iran*, 610 F.2d 94 (2d Cir. 1979).