

Death Before Dishonor: Go Down With the Ship?

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It has long been the lore of the sea that the 'captain goes down with the ship.' But, is there any 'law' behind that lore?

Interesting how maritime disasters precipitate protocols of sea etiquette. Another notion widely circulating is 'women and children first.' However, there is no law requiring such chivalry.

The 'women and children first' idea surfaced when the British ship HMS BERKINHEAD began to sink in 1852. In the ultimate act of self-sacrifice, the captain and officers allowed all women and children to board the lifeboats first and safely abandon the ship.¹

Captain Edward Smith of the TITANIC, the story goes, followed that same protocol directing that his officers ensure that all women and children first take to the lifeboats.

Contrast that with the recent outrage expressed by the world community when Captain Francesco Schettino of the COSTA CONCORDIA reportedly fell into a lifeboat abandoning more than 4,000 passengers and crew prematurely while refusing a Coast Guard order to return to the ship. The COSTA CONCORDIA crashed into a reef off the Italian coast with 32 people perishing. Then, on the 102nd anniversary of the TITANIC sinking last month, the South Korean ferry disaster occurred. Captain Lee Joon-Seok of the ferry SEWOL escaped to a rescue boat in his underwear (not identifying himself as the captain), while leaving behind all passengers and crew aboard the sinking vessel resulting in more than 300 lives lost. Both captains were arrested and charged with various crimes associated with their self-serving and potentially criminal behavior resulting in loss of life.

The potential sanctions against a master who prematurely evacuates a sinking ship that results in loss of life are enormous. Captain Schettino has faced several criminal charges in Italy including abandoning incapacitated passengers; manslaughter; three counts of causing a shipwreck owing to imprudence and negligence resulting in deaths; abandoning people unable to fend for themselves; and not having been the last to leave a shipwreck. Captain Lee of the SEWOL will undoubtedly face a similar fate.

Unlike the captain's creed of yesteryear portraying 'death before dishonor,' present day cowardice at sea whiffs of 'every man for himself.'

U.S. Law

There is no statute or regulation in the United States that requires the ship's master to actually go down with the ship. However, the Merchant Marine Officers' Handbook lists five duties of the captain in a marine casualty: 1) last man to leave the vessel, 2) use all reasonable efforts to save everything possible including diligence to aid in salvage and to save the cargo and the vessel, 3) make provisions for return of the crew, 4) communicate promptly with owners and underwriters, and 5) remain in charge until lawfully suspended.²

A captain who fails to remain in charge and provide for orderly evacuation will undoubtedly face both civil and criminal exposure for loss of life and property. The U.S. statute, 18 U.S.C. §1115, Misconduct or Neglect of Ship Officers, can be a lynchpin for a prosecution in such a situation. This statute is rarely used and has not been applied yet to a runaway captain. The statute casts a wide net stating in part, that "every captain, engineer and pilot employed on a vessel, by whose misconduct, negligence or inattention to duty on such vessel, the life of any person is destroyed...shall be fined under his title or imprisoned not more than ten years, or both." The statute applies only to commercial shipping, not pleasure craft.³ But, under its broad language which criminalizes negligence and misconduct that results in loss of life, the likes of Captains Schettino and Lee would certainly sink under the weight of this statutory violation.

A captain's duty stems also from admiralty law requiring the captain to exercise reasonable care for the safety of his or her passengers. When there are fare-paying passengers (such as aboard a cruise ship or ferry), the vessel owner and captain may have a 'heightened' standard of care applied.⁴ Indeed, at the very least, it is expected that the captain (the most experienced and knowledgeable ship's officer) will remain in command to orchestrate an orderly evacuation and ensure that all 'abandon ship' duties of the crew are complied with.

Thus, it is not true that once the order to 'abandon ship' is given, that the captain is also free to head for the hills. Indeed, because Captain Schettino was gone, a Hungarian member of the band (who died) was seen in video footage leading the evacuation.⁵

Safety and Duty

The International Convention for the Safety of Life at Sea (SOLAS) subscribed to by most seafaring nations after the 1912 TITANIC sinking, codifies safety requirements for ships including the number of lifeboats needed. SOLAS also codifies a captain's responsibility for the vessel and all people on board stipulating that the master "proceed with all speed" to help any person in distress.⁶ It does not mention when the captain is to leave the ship.

Marine salvage laws also form a basis for a master to remain with the ship in an emergency. In marine salvage law, when a vessel is in peril and abandoned, any 'good samaritan' vessel

can attempt to save or 'salvage' the disabled vessel, return her to shore and seek a high "reward" for saving the property. Such an award or 'reward' is computed based upon a percentage of the post-casualty value of the vessel saved. The theory being that the salvor 'saves' the marine insurance company from paying out a total loss had the vessel sunk. However, if the captain remains with the ship, then the terms of and payment for any such salvage operation can be reasonably negotiated and even assisted by the captain.

The duty to remain with the ship is even greater for military personnel and codified in Military Law. U.S. Navy Regulations state that in the case of the loss of a ship, a commanding officer shall remain by her so long as necessary and if it becomes necessary to abandon the ship, the commanding officer should be the last person to leave.⁷ Similarly, U.S. Coast Guard Regulations require that in the event of a shipwreck or other serious disaster, the Commanding Officer shall "when it becomes necessary to abandon ship, be the last person to leave and take all possible precautions to protect the survivors and such government property as has been saved."⁸

Conclusion

To be sure, no law requires a captain to actually sink with the ship. It is a moral code and ultimate act of self-sacrifice. We have all seen the ending of the TITANIC movie showing Captain Smith of the 'unsinkable' luxury liner as the last lifeboat departed and his ship slipped below the icy waters off the coast of Newfoundland.

Hopefully, there will be no movie of Captain Schettino falling into a lifeboat or the South Korean captain slinking off the ship in his underwear. These are certainly no "Kings of the World."

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Endnotes:

1. John Alan Cohan, "Two Men and a Plank: the Argument from a State of Nature," 29 Whittier Law Review 333. Winter 2007, pp. 380-383.
2. Turpin and MacEwen, Merchant Marine Officers' Handbook §§18-20 (Cornell Maritime Press, Inc., 1979).
3. *U.S. v. Cyril E. LaBrecque*, 419 F.Supp. 430 (D.N.J. 1976) (holding that captain of a noncommercial pleasure vessel could not be held criminally responsible under penal statute).
4. *In re Complaint of Jules S. Cornfield*, as owner of the vessel CARA ANNE, 365 F.Supp.2d 271, 282 (E.D.N.Y. 2004), citing *Monteleone v. Bahama Cruise Line*, 838 F.2d 63, 64-65 (2d Cir. 1988) and *Rainey v. Paquet Cruises*, 709 F.2d 169, 170 (2d Cir. 1983).
5. See, *Csepi v. Carnival*, 12 Civ. 03948 (RJS), S.D.N.Y (voluntarily dismissed, Sept. 20,

2012.).

6. SOLAS, Chapter V, Regulation 33.

7. U.S. Navy Regulations, Chapter 8, §0852, Loss of a Ship (The Commanding Officer, 1990).

8. U.S. Coast Guard Regulations, COMDTINEST M5000.3B, §4-2-8, Destruction of Vessel (1992).

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