

(intro Son of a Son of a Sailor):

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(voice of John Hughes Cooper):

Good morning to Captain and crew alike and welcome to the Admiralty Docket. This is John Hughes Cooper with a glimpse into your rights and responsibilities at sea and upon the navigable waters.

Today our subject is Shipboard Injury to Passengers and Visitors.

A person who contracts to travel aboard a vessel in exchange for payment of a fare, is called a passenger. Other than passengers and seamen, a person aboard a vessel with the consent of her owner is called a visitor, whether aboard for business or pleasure.

Historically, the general maritime law imposed upon vessel owners a very high duty of care to protect passengers from injury or death aboard a vessel, but imposed a lesser duty of care to protect visitors while aboard. In many cases this distinction was based upon common law real property concepts of invitees and licensees and was said to flow from the greater benefits to the vessel owners from the presence of fare paying passengers as compared to lesser benefits to the vessel owners from the presence of non paying visitors.

However, this landside distinction was abandoned by the U. S. Supreme Court in the 1959 case, Kermarec v. Compagnie Gererale Transatlantique, which requires vessel owners to exercise reasonable care to protect from injury or death all non-crewmembers lawfully aboard a vessel, whether passengers or visitors.

Generally, this means that passengers and visitors are

entitled to safe means of boarding the vessel, safe facilities aboard the vessel, and compliance with all applicable safety standards and regulations. Passengers and visitors are also entitled to freedom from negligence on the part of the vessel owners or their employees, freedom from reasonably preventable injury by other passengers or visitors, and freedom from intentional misconduct of the vessel owners or their employees. Under the doctrine of attractive nuisance, vessel owners who fail to anticipate and protect against a child's natural attraction to certain dangerous conditions may be held liable for injuries to children thus lured into danger.

By contrast, vessel owners owe no duty of care to protect persons unlawfully aboard a vessel, such as stowaways. Vessel owners will be held responsible for injury or death to persons unlawfully aboard the vessel, only if the injury or death results from willful or wanton misconduct amounting to inhumane treatment by the owners or crew.

If facilities are unsafe for passengers or visitors, a vessel owner may be required to make the facilities safe. Or, if cost or time considerations make such action impractical and if passengers and visitors can avoid the danger, a vessel owner may satisfy its duty by giving adequate warning of existing conditions.

If a passenger or visitor suffers injury or death aboard a vessel because of the negligence or wrongful conduct of a party other than the vessel owner or the crew, the passenger or visitor may have a cause of action against that party for such negligence

on the exact limits of conduct for an officer on a U. S. vessel in the company of a debutant after dark.

Also note that the statutory language provides penalties for seduction and illicit connection during the voyage, so presumably activities in port are exempt from the strictures of this law.

For conviction, the statute requires that the seduction be accomplished "under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents." This seems to include most of the successful methods of seduction, except for the ever popular shared consumption of alcohol, which may lead to the plea of "Not guilty, your honor, I seduced her with vintage wines."

A second paragraph of the statute further provided that "Subsequent intermarriage of the parties" is a complete defense to the charges..." So, the shipboard Romeo risks a choice between a fine of \$1,000 and a year in federal prison on the one hand and a lifetime of wedded bliss with the victim on the other. The statutory language does not protect male passengers from identical conduct by employees, male or female, and thus raises the issue of possible unlawful discrimination based upon sex of the passenger.

Whether you may be a master, officer, seaman, or other employee aboard a U. S. vessel, or whether you may be a female passenger, whether you agree or disagree with this statute, you are hereby advised that on November 9, 1990, this statute was repealed by Congress, thus ending 81 years of federal protection of female passengers from seduction.

More next week on The Admiralty Docket. Until then, remember your rights and responsibilities may change as you approach the shore and may God Almighty grant you pleasant sailing.

(second voice with Send Lawyers, Guns and Money):

The Admiralty Docket is written and narrated by John Hughes Cooper who specializes in admiralty law litigation with the law firm of Cooper & Raley. The legal principles discussed are general in nature. Laws change and even similar circumstances may call for application of different laws. If you have a question for a future edition of The Admiralty Docket please write to John Hughes Cooper at P. O. Box 1248, Charleston 29402.