MARITIME MYTHS, MISCONCEPTIONS, & URBAN LEGENDS

By: Barbara A. Kreitz Cook

Admiralty and maritime law is a distinct body of law (both substantive and procedural) fashioned by the federal courts and the U.S. Congress specifically to create uniformity nationally and internationally. Uniformity among the states was determined necessary to facilitate commerce and to protect seamen who were historically considered "generally poor and friendless and acquire habits of gross indulgence." Common maritime myths, misconceptions, and urban legends harbored by the lay person (including attorneys without maritime legal training) can wreak legal havoc on many fronts. Following are the highlights of the most significant of those myths.

Myth #1: A boat is a "thing" just like a car. A vessel has legal status as a female entity which can sue and be sued *in rem*, but only in a federal court sitting in admiralty.
Myth #2: A lien on a boat is like a lien on a car. A vessel can be burdened with unrecorded maritime liens which follow a boat through innocent changes in ownership.
Myth #3: A boat loan is like a car loan. Only loans which are Preferred Ship Mortgages and which are filed and perfected in accordance with that Act have priority over later-in-time liens.
Myth #4: The boat owner is liable for all property damage and personal injury caused by the boat. The Limitation of Liability Act of 1851 limits owner liability to the value of the boat for acts done without the privity or knowledge of the owner.
Myth #5: The navigational "Rules of the Road" are just like those on land. There is no right-of-way on the water!
Myth #6: State laws apply to all state waters. Once admiralty jurisdiction is established, all of the substantive rules and precepts peculiar to the law of the sea become applicable, and state law applies only to the extent not inconsistent with established maritime law.
Myth #7: A vessel is "in navigation" only when it is moving from place to place. "In navigation" does not mean that the vessel must be underway. A vessel is "in navigation" from the day it is "born" (first launched) until it is a "dead ship" (withdrawn from navigation.)
Myth #8: Recreational boating is not a commercial activity. Tell that to recreational marinas, repair facilities, electronics outfitters, and West Marine!
Myth #9: "Navigable waters" does not include the dry Everglades during dry season. Once a water is identified as "navigable", it retains that designation even if it is dry land in the winter (or at Georgia's 10-foot low tides).
Myth #10: A boat owner owes guests the highest degree of care pursuant to Florida's "dangerous instrumentality" statute. The admiralty rule is that a boat owner owes a guest only the duty to use reasonable care under the circumstances.
Myth #11: Federal maritime law always preempts state law. Federal maritime law preempts state law where admiralty jurisdiction exists and where there is controlling federal maritime law.
Myth #12: The sky is clear and I'm aground but need help to get off, so its only a tow job not salvage, right? Three facts establish a salvage situation: marine peril, voluntary assistance, success ("no cure-no pay"). The peril need not be imminent, but merely foreseeable.

Myth #13: OK OK so its salvage....and I know the seas were high and the hurricane was coming and you saved my life. But $50,000 is a lot for 1 hour's work! The award on an

action for salvage is not one of *quantum meruit*, but is a bounty historically given in the interests of public policy, to encourage rescue of life and property at sea, and to promote commerce.

Myth #14: I found it! Its mine! Finders - keepers. It is definitely urban legend that a derelict vessel found adrift becomes the property of the finder. The finder merely has a salvage claim.

Myth #17: We are in federal court so the federal rules of civil procedure apply! Only to the extent not inconsistent with admiralty rules if there is admiralty jurisdiction.

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