

ADMINISTRATION OF JUSTICE

YOU MAKE THE DECISION #3

The Fishermen and the Storm

Name: _____ Period: _____ Row: _____ Score: _____

YOUR PRESENT CASE concerns a maritime accident at sea. A sailor was lost when a huge wave washed him over board during a severe storm. There has been a maritime inquiry that resulted in the government charging the ship's captain with manslaughter.

The government's prosecuting attorney has the first mate, Hans Jacobs, on the stand.

"Mr. Jacobs, you were on the fishing boat Southern Belle during the storm when one of the crew members fell from the top of the ship's main mast into the sea, were you not?"

"Yes, sir I was."

"Will you tell us in your own words what you saw during this tragic accident?"

"Yes, sir. The Southern Belle is a very large fishing boat that is diesel powered with two masts. The main mast is 110 feet high and it has a crow's nest at the top. One of the guy lines was broken by the storm, and Simon Harris went aloft to fix it. The boat pitched hard to starboard when we were hit by a large wave causing Simon to fall from the crow's nest. He hit the water very hard landing on his back. It was the worst fall I have ever seen in twenty years at sea."

"How soon before Captain Hook became aware of this accident?"

"He knew at once because he witnessed seaman Harris hit the water."

"What did he do in order to rescue seaman Harris?"

"He did not do a thing to help him, sir."

"Nothing? He didn't stop the boat, or try to turn about, or put over a lifeboat?"

"No, sir. He did not do any of those things"

Captain Hook's attorney cross-examines First Mate Jacobs. "Mr. Jacobs, do you know for a fact as to whether Simon Harris was killed by the 110 foot fall into the sea?"

"I can't say that as a certainty, sir. The fall may in fact have killed seaman Harris or he may have drowned in the stormy sea."

"How were the conditions of the sea at this time?" "It was very rough, we were fighting to maintain control of the boat."

"To turn the boat around to search for Simon at this particular time would have been dangerous to the ship and her crew, would it not?"

"Yes, sir it would have been extremely dangerous in my opinion."

"In your opinion, could you have launched a small boat to try to rescue seaman Harris?"

"No, sir, it very likely would have been swamped by the stormy seas."

"Did anyone ask the captain to try and save seaman Harris to your knowledge?"

"Several of the crew pleaded with the captain to go back. Captain Hook said he thought Simon was killed by the long fall from the crow's nest into the sea. He also said it would take too long to turn the ship around, even if he took the risk. The captain was afraid the stormy seas would swamp the ship if he turned broadside to the rolling waves in an effort to turn around. The captain said he couldn't endanger the vessel and crew and we would have to go on."

You listen to several other witnesses who have similar testimony. Then you ask the attorneys to sum up their cases.

The government's attorney says, "This case is quite unusual, your honor. Most of the time, people are charged with doing something they should not have done. In this case, Captain Hook is charged with not doing something he should have done. His decision not to try to rescue the sailor is the issue before you. The prosecution's position, your honor, is that Captain Hook willfully neglected to perform a clear duty to go back to save seaman Harris. The law in this case is plain and simple. When someone does not do his duty, and someone dies as a result, the act committed is no less than a felonious homicide, manslaughter or murder. The ship's captain should be found guilty."

The captain's attorney says: "Captain Hook had reason to believe the sailor was killed by the fall into the sea. If in fact seaman Harris had been killed by the fall, a rescue attempt would have been in vain. In addition, it was impossible to save him at the time because of the stormy seas and bad weather. To try would have put the crew and the ship in eminent danger. Captain Hook had a duty to consider the safety and welfare of all his men not just seaman Harris. In addition he had a responsibility for the safety of his ship as well. We believe Captain Hook acted properly given the circumstances and should be acquitted."

"Thank you, gentlemen," you say. "You'll be notified shortly of the court's decision."

Now you are alone in your judge’s chambers. You must find the answers to several questions so that you can decide the case, and be sure your decision is within the law. You must consider all the facts, and then complete your official Opinion and Order.

Judge’s “Case Analysis Sheet”

To make an informed decision in a court dispute you must first examine the facts in issue. Please explain your answer fully.

1. Is it likely that Simon Harris was killed by the 110 foot fall into the sea from the crow's nest?

2. Could the captain have reasonably believed he was killed by the fall? **EXPLAIN**

3. What factors can you identify in the witnesses testimony that support your answer in question 2?

4. Since a large fishing boat in heavy seas takes up to a mile to stop, and considerable time to turn around, is it likely the crew could have found Simon if they had turned around? **EXPLAIN**

5. In the time it would take to turn the ship around could seaman Harris have drowned?

6. What do you think Captain Hook's duty should be to the ship and crew in this situation?

7. What are Captain Hook's responsibilities with regard to the lost sailor?

8. What reasons did Captain Hook state as to why he did not stop or try to rescue the sailor?

9. In what way does the weather become a factor in this case?

THE PEOPLE OF THE UNITED STATES)

Plaintiff

VS.

Criminal Case. No. B-874-62784-19

HAROLD L. HOOK

Defendant

COURT'S OPINION AND ORDER FOR JUDGMENT

The Facts

The defendant was charged with manslaughter for failing to stop his fishing boat to rescue a sailor who fell from his ship during a severe storm.

In this case it would appear Captain Hook had a clear duty to do something. He was bound both by statutory law and contract. He had to act, within the limits of safety of the ship, passengers and crew members in order to rescue the sailor.

Captain Hook also had a duty to preserve the ship and lives of those aboard the vessel. Within the time frame of just seconds, he had to decide which of these important conflicting duties to obey.

He _____ believe that seaman Harris had been killed by the fall. This _____
 did / could not was / was not
 a reasonable belief.

Occasionally one person will kill another person in an unlawful manner, but without meaning to kill them. An example would be two men engage in a drag race on a bright sunny afternoon down a city street. One of the drivers hits several people crossing the street at an intersection killing two people. It was an accident because he didn't intentionally try to do it. He would have tried to avoid the accident if he'd been driving properly, paying attention and going a reasonable speed. But he was driving unlawfully, and because of that the law says he may be guilty of manslaughter. If he had intended to kill the people, it would be a case for murder, which carries a much greater penalty.

Sometimes, as in this unfortunate case, a person must choose who he will save and who he must let die. It is a terrible choice for one to have to make. In a somewhat similar case to this, the judge said that the courts are humane. They will take into account what they call "cases of a necessity," that is, where people are forced to do something they would not have ordinarily done but the circumstances compelled them to act in the manner they did.

One court spoke of several court cases where severe hardships had caused 11 different people to act in a criminal fashion. The judge stated, "we are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy."

But if our laws are to have any meaning, the courts and the lawmakers must do the best they can, hoping always to do better. Because this is a criminal case, it must be clear beyond a reasonable doubt that it would have been possible to rescue Harris and that the Captain should have made the attempt.

In examining all of the evidence presented to this court, negligence constituting manslaughter
_____ the case here.

is / is not

It is my judgment that Captain Hook _____ guilty of manslaughter.

is / is not

JUDGE OF THE ABOVE TITLED COURT