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# The Titanic Submersible Tragedy and its Legal Implications for the Adventure Tourism Industry

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## ABSTRACT

*The tragic loss of a submersible with passengers on board during a Titanic wreck expedition in 2023 raises critical legal and safety concerns for the adventure tourism industry. Owned by OceanGate Expeditions, the uncertified submersible's operation prompts questions about regulatory lapses in the United States and Canada, where the company is based. The enforceability of liability waivers signed by passengers is scrutinized, emphasizing that fundamental rights like the right to life cannot be waived by simple contracts. This incident sheds light on the importance of safety regulations, certification, and international standards in adventure tourism. It also underscores the need to rebuild public trust while prioritizing safety and cooperation within the industry.*

## I. INTRODUCTION

The world was shocked to learn in June 2023 that a submersible with five people on board went missing off the waters of Halifax Canada. The ill-fated submersible was on a paid expedition to view the wreck of the RMS Titanic.

The submersible, named “Titan” was owned by Ocean Gate Expeditions, which charged US\$ 250,000/- per passenger for the journey. Ocean Gate had claimed the submersible had a hull made of “Carbon Fiber” and Titanium and could be operated using “off-the-shelf” components, including Logitech GamePad controllers which could be used to maneuver the vessel.

### (A) Passengers made to Sign Waiver Forms

Those going on board had to sign a waiver form that stated that the vessel had not been rated or certified by any independent or professional body. The passengers were warned that trauma, asphyxiation, and death could result as a consequence of the highly dangerous voyage.

CBS Correspondent David Vogue, who was a passenger on an earlier voyage, had earlier highlighted certain shortcomings in safety measures. He observed that the sub did not have an emergency transponder or locator beacon. He also remarked that during the dive before his, the

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submersible had gone missing for a few hours and during those ‘tense’ moments, the company reportedly blocked internet access from the mother ship to prevent any tweeting about the same.

## **II. DID REGULATORY LAPSES LEAD TO THIS CRISIS?**

The fact that an uncertified and unrated submersible was allowed to descend deep into the Atlantic with paying passengers on board speaks volumes about the lax regulatory environment in USA and Canada where OceanGate’s headquarters and operations are situated. Can companies be permitted to risk the lives of passengers merely based on waiver forms signed by them? Can a person’s right to life be waived by a simple signature on a private contract?

Startups have been in the news for numerous achievements as well as scandals. Showcasing themselves as poster boys of the new trend of ‘doing things differently’, startup founders are infamous for crossing the line every now and then. In the present case the field of deepsea exploration, which has been the traditional preserve of respectable ocean research institutes and maritime navies, witnessed the entry of a startup company which sought to introduce revolutionary change through what it thought were ‘innovative measures’.

Being bitten by the startup bug may be exciting but it should not lead to compromise on human life and safety standards. The US and Canadian Governments have some severe questions to answer on how an unregistered and uncertified vessel was permitted to carry untrained paying passengers, who were essentially laymen, on one of the most dangerous journeys on the planet. Why did not the US Coast Guard or the maritime regulator impound the vessel beforehand and prohibit its sailing on the open seas unless it was certified. Should the strict regime of shipping regulation step aside and bow down to private waiver and consent forms signed by eager and gullible tourists?

When we put emphasis on the legal implications of the Titanic submersible tragedy for the adventure tourism industry would depend on the specific laws and regulations of the jurisdiction where OceanGate Expeditions, the company operating the submersible, is based. In this case, OceanGate Expeditions is situated in the USA and Canada, so it would be important to consider the legal frameworks of both countries.

### **(A) Regulatory Environment:**

The incident raises questions about the regulatory environment in both the USA and Canada, as an uncertified and unrated submersible was allowed to operate with paying passengers on board. The relevant maritime authorities in each country, such as the U.S. Coast Guard and Transport Canada, would typically have regulations and certification processes in place to ensure the

safety of vessels and passengers. If there were regulatory lapses or failures to enforce existing regulations, it could indicate a lack of oversight and accountability.

### **(B) Liability and Waiver Forms:**

The waiver forms signed by the passengers, which stated that the vessel had not been certified or rated, raise important legal considerations. While waivers can be used to allocate certain risks between parties, they are subject to legal scrutiny. In many jurisdictions, including the USA, there are limitations on the enforceability of waivers, especially in cases involving gross negligence, intentional misconduct, or where public policy interests are at stake, such as the preservation of human life. Therefore, the validity and enforceability of the waivers would depend on the specific laws and regulations of the jurisdiction involved.

## **III. RIGHT TO LIFE AND CONTRACTUAL WAIVERS**

The fundamental right to life generally cannot be waived by a simple signature on a private contract. Even if individuals voluntarily sign waiver forms, there are legal and ethical limits to what can be waived when it comes to matters of life and safety. Courts may intervene if there is evidence of gross negligence, recklessness, or a failure to adhere to reasonable safety standards.

The tragic incident involving the submersible "Titan" and its implications for the adventure tourism industry raises important legal questions regarding regulatory lapses, liability, and the rights of passengers. While I can provide some general international legal perspectives, it is important to note that specific regulations and legal frameworks may vary across countries.

### **1. International Convention for the Safety of Life at Sea (SOLAS):**

The SOLAS convention, adopted by the International Maritime Organization (IMO), sets minimum safety standards for ships, including passenger vessels. It covers various aspects related to ship construction, stability, equipment, operational procedures, and safety management. While the convention primarily applies to traditional seagoing vessels, some provisions may be relevant to submersibles or other specialized vessels operating in international waters.

### **2. Liability for Maritime Accidents:**

International maritime law includes principles of liability for accidents at sea. These principles may apply to incidents involving submersibles, depending on the circumstances. For instance, if the accident resulted from the negligence or fault of the submersible operator or owner, they could be held liable for damages under general principles of tort law or specific maritime

liability regimes.

### **3. Waivers and Exculpatory Clauses:**

The enforceability of waivers and exculpatory clauses, such as the one mentioned in the scenario, can vary across jurisdictions. In general, while individuals have the freedom to enter into contracts and assume certain risks, there are legal limits on the extent to which one can waive liability for gross negligence, willful misconduct, or actions contrary to public policy. The validity and enforceability of such waivers would depend on the specific laws and legal principles of the relevant jurisdiction.

### **4. Duty of Care and Safety Regulations:**

In the context of adventure tourism, companies providing specialized services, such as submersible expeditions, may have a duty of care towards their passengers. They may be required to adhere to safety regulations, maintain appropriate equipment, provide adequate training, and take reasonable precautions to ensure the safety of their customers. Failure to meet these obligations could potentially result in liability for negligence or breach of contract..

### **5. National and Local Regulations:**

Apart from international conventions, specific national or local laws and regulations may govern the operation of submersibles and adventure tourism activities. These regulations may address issues such as vessel certification, safety standards, licensing requirements for operators, emergency procedures, and liability frameworks. The regulatory framework within the USA and Canada, where Ocean Gate Expeditions operates, would be particularly relevant to this case.

## **IV. MAJOR INTERNATIONAL CASE LAW & CONVENTION**

### **(A) Case Laws**

**1. Costa Concordia Disaster (2012):** The Costa Concordia, a cruise ship, ran aground off the coast of Italy, resulting in multiple fatalities and injuries. The case highlighted issues of negligence, inadequate safety measures, and the responsibility of the cruise ship operator. The subsequent legal proceedings emphasized the duty of cruise ship companies to prioritize passenger safety and adhere to international regulations.

**2. Schloendorff v. Society of New York Hospital (1914):** This landmark case in the United States established the doctrine of informed consent in medical treatment. It recognized the right of patients to be fully informed about the risks and benefits of medical procedures and to give

voluntary and knowledgeable consent. This case's principles can be relevant to the discussion of waivers and consent forms in the adventure tourism industry.

### **(B) Conventions**

- 1. International Maritime Organization (IMO):** The IMO is a specialized agency of the United Nations responsible for promoting maritime safety and the prevention of marine pollution. It has developed various conventions and regulations applicable to the safety of vessels, including those involved in adventure tourism. Notable conventions include the International Convention for the Safety of Life at Sea (SOLAS) and the Code of Safety for Special Purpose Ships.
- 2. Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea (1974):** This convention establishes a liability regime for accidents involving the carriage of passengers by sea. It imposes strict liability on carriers for personal injury, death, or damage to passengers' luggage, with certain limits on compensation. The convention provides a framework for addressing liability issues in cases where passengers suffer harm during maritime transportation.
- 3. United Nations Convention on the Law of the Sea (UNCLOS) (1982):** UNCLOS is a comprehensive international treaty governing various aspects of the world's oceans, including maritime safety. It sets out principles for the protection and preservation of the marine environment, as well as regulations related to navigation, safety, and the prevention of accidents at sea. UNCLOS provides a broad framework for addressing safety issues in maritime activities.

## **V. JURISDICTION**

It is important to note that the specific application of case law and conventions to the Titanic submersible tragedy would depend on the jurisdiction where legal proceedings are conducted and the circumstances of the case.

Based on the information provided in the article, OceanGate Expeditions is headquartered in the United States, and its operations are situated in both the USA and Canada. Therefore, the jurisdictions that would likely have authority over OceanGate Expeditions and the Titanic submersible tragedy would be the United States and Canada. Both countries would have a role in investigating the incident, determining regulatory lapses, and potentially initiating legal proceedings, depending on the specific circumstances and applicable laws.

In the scenario presented, OceanGate Expeditions, the company that owned the ill-fated

submersible "Titan," had its headquarters and operations in the United States and Canada. Therefore, the legal regimes of both countries would potentially be relevant in assessing the situation. Now let's have looked the legal regime of US & Canada:

**(A) United States:**

**1. Regulation of Adventure Tourism:** In the United States, adventure tourism activities are generally regulated at the state level. Each state may have its own laws and regulations concerning liability waivers, safety standards, and licensing requirements for operators. Additionally, federal laws and regulations related to maritime safety, such as those enforced by the U.S. Coast Guard, may be applicable.

**2. Liability and Waivers:** While the enforceability of liability waivers varies across states, many jurisdictions recognize their validity to some extent. However, waivers may not shield companies from liability in cases involving gross negligence, willful misconduct, or violation of applicable safety regulations.

**3. Maritime Law:** Maritime accidents in U.S. waters can be subject to various maritime laws, including the Jones Act, the Limitation of Liability Act, and general maritime law principles. These laws govern liability, compensation, and other aspects of maritime incidents.

**(B) Canada:**

**1. Adventure Tourism Regulation:** Canada does not have a specific federal regulatory framework for adventure tourism. The regulation of such activities generally falls under provincial or territorial jurisdiction. Each province or territory may have its own laws and regulations governing adventure tourism, including safety standards, liability waivers, and licensing requirements.

**2. Liability and Waivers:** The enforceability of liability waivers in Canada varies across provinces and territories. Courts may assess the waiver's validity based on factors such as the clarity of language, the nature of the risk, and public policy considerations. Similarly to the United States, waivers may not absolve operators from liability for gross negligence, willful misconduct, or violations of safety regulations.

**3. Maritime Law:** Canada has its maritime laws that govern maritime accidents and activities within Canadian waters. The Canada Shipping Act, 2001 and related regulations establish safety requirements for vessels, including submersibles, and outline liability regimes for maritime incidents.

**(C) India:**

1. **Adventure Tourism Regulation:** India does not have a specific comprehensive regulatory framework for adventure tourism. The regulation of adventure tourism activities falls under various state laws, including those related to tourism, safety, and liability.
2. **Liability and Waivers:** The enforceability of liability waivers in India is subject to general contract law principles. Indian courts may scrutinize such waivers and may not enforce them if they are deemed to be against public policy or unconscionable. The principle of negligence and duty of care towards customers would also be relevant in assessing liability.
3. **Maritime Law:** The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, governs maritime claims and liabilities in India. It incorporates international conventions such as the SOLAS and establishes provisions for liability, compensation, and jurisdiction in maritime incidents.

The article highlights a tragic incident involving the adventure tourism industry, specifically the submersible tourism sector. This incident raises several ramifications and considerations for the adventure tourism industry as a whole:

- i. **Safety Regulations and Standards:** The incident draws attention to the importance of robust safety regulations and standards for adventure tourism activities. It underscores the need for comprehensive and enforceable regulations that ensure the safety of participants. Governments and industry bodies may need to review and strengthen existing regulations or develop new ones to mitigate risks and enhance safety measures.
- ii. **Liability and Duty of Care:** The incident raises questions about the liability of adventure tourism operators in cases of accidents or mishaps. Adventure tourism companies have a duty of care toward their customers, which includes providing safe equipment, adequately trained staff, and adhering to recognized safety standards. This incident emphasizes the potential legal and financial consequences for operators who fail to fulfill this duty.
- iii. **Certification and Accreditation:** The fact that the submersible in question was uncertified and unrated highlights the importance of proper certification and accreditation processes for adventure tourism equipment and operators. Establishing mandatory certification processes and ensuring compliance with safety standards can help prevent such incidents and enhance consumer confidence in the industry.



- iv. **Public Perception and Trust:** Tragic incidents like this can significantly impact public perception and trust in the adventure tourism industry. Consumers may become more cautious or hesitant to engage in high-risk activities, leading to a decline in demand and potential economic repercussions for the industry as a whole. Rebuilding trust through transparent safety measures and enhanced regulations becomes essential.
- v. **Contractual Agreements and Waivers:** The scenario mentions that passengers were required to sign waiver forms that absolved the company from liability. The incident raises questions about the validity and enforceability of such waivers, particularly when negligence or regulatory non-compliance is involved. Governments may need to assess the extent to which waivers can absolve operators of their responsibilities and consider regulations that protect consumer rights and safety.
- vi. **International Cooperation and Standards:** Adventure tourism often attracts participants from different countries, necessitating international cooperation and consistent safety standards. International organizations, such as the International Adventure Tourism Standards (IATS) organization, could play a role in setting industry-wide safety standards and facilitating cooperation among countries to ensure consistent regulations and best practices.

## VI. CONCLUSION

In Conclusion, I would say the tragic incident involving the submersible in the adventure tourism industry highlights the need for stronger safety regulations, certification processes, and a reassessment of liability waivers. It underscores the importance of maintaining consumer trust and fostering international cooperation to ensure the safety and sustainability of the industry.

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