

JUS5402 Exam H21

Part I

The coastal freighter MS Nordkyn, of 2.000 tons, was owned and operated by Norship AS. In the morning of 22 June, in fair weather and good visibility, it sailed out of the Trondheim-fjord (mid-Norway) laden with general cargo.

The master Peder Aas had brought his son Frank, 15 years old. Frank used to accompany his father on trips like this during his summer holidays. This trip was particularly exciting for Frank. The managing director of Norship, Lars Holm, was also on board together with his daughter Mette-Marit.

When the ship had passed Stadsbygd (a place where the fjord opens up) Peder Aas went down to the engine room to consult with the chief engineer. The ship had misalignment of the propeller shaft and Peder wanted to discuss arrangements for the upcoming repair yard stay at Rissa, a place further out the fjord.

The mate, who ordinarily served as lookout on the bridge, was doing some maintenance work on deck. Rather than calling on the mate to come up and take command on the bridge, Peder Aas asked Frank to take over; there was a long and predictable sailing stretch ahead before reaching the entrance towards Rissa – and the ship was steadily sailing on auto pilot mode. Moreover, Peder Aas had instructed Frank to call for assistance if other ships were to appear.

Shortly after Peder Aas had left the bridge, Mette-Marit visited. Frank liked the idea of them being alone on the bridge. Peder Aas had previously showed Frank how to switch the autopilot from auto mode into manual steering mode. Frank had done this operation several times with his father watching.

When MS Nordkyn was approaching the entrance towards Rissa, Frank saw the MT Frey, a tanker of 1.000 tons, coming from starboard direction out from the repair yard. The MT Frey was operated by Kysttank AS. Her registered owner was Navigare AS.

Inspired by his female company on the bridge, Frank wanted to show that he could steer the ship as a fully fledged seaman. He did not call on his father as instructed. However, he fumbled with the autopilot control buttons and did not manage to get it into manual steering mode. Rather than turning to starboard to go aft of MT Frey, MT Nordkyn continued on its set autopilot course and hit MT Frey about mid-ship, tearing a hole in MT Frey's hull, causing MT Frey to take in water both above and below the water line. The master of the MT Frey tried to steer her towards shore to prevent her from sinking, but she eventually sank in shallow waters. During high tide one could see her bow and aft mast.

MS Nordkyn suffered severe damage in its bow area. Peder Aas, who arrived on the bridge immediately after having noticed the collision, managed to maneuver the ship to the repair yard at Rissa.

It was agreed that MT Frey was not to blame for the collision.

MT Frey emitted significant amounts of bunker oil, which polluted the beaches of Rissa. The ship had sailed in ballast, thus did not carry oil as cargo. However, her tanks had not been cleaned since the next intended cargo was of the same type as that previously carried.

The clean up costs incurred by the municipality was NOK 46 mill.

The Coastal Administration ordered the wreck of MT Frey to be removed. The municipality wanted to be in charge of this operation rather than leaving it to Kysttank and Navigare, and arranged for the wreck to be removed some months later, at the cost of NOK 4.6 mill.

The municipality claimed the clean up costs and costs of wreck removal in damages against both Kysttank and Navigare. The size of the claims was not in dispute.

Kysttank and Navigare denied liability by submitting that they were not responsible for the collision and the ensuing losses.

(1 SDR=10 NOK)

Q1: Is Kysttank and/or Navigare liable for the claims, and if so, in what amount?

Part II

We now assume that Kysttank and/or Navigare were liable under Q1. The company(ies) looked for reimbursement from Norship.

Moreover, the insurance company Marine Insurance AS had paid out the H&M total loss compensation to Navigare for the loss of MT Frey in the amount of NOK 10 mill, and also looked for reimbursement.

Norship denied liability by i.a. pointing to the fact that Frank Aas was not employed with the company, and that Frank's conduct was entirely unforeseeable. Norship submitted that the claims would instead have to be directed against the master Peder Aas.

To be on the safe side the claimants claimed against both Norship and Peder Aas.

A discussion arose also in respect of limitation of liability. The claimants submitted that Peder Aas' conduct amounted to gross negligence, and also that Lars Holm's conduct was in the borderline of gross negligence. In that respect it was undisputed that the staff of Norship knew that Peder Aas wanted to make a seaman out of Frank and that Peder gave Frank certain liberties on the bridge towards that educational end. According to the claimants, Lars Holm should therefore have been more vigilant, and not, as he did, go downstairs to have a beer with the steward.

Norship and Peder Aas denied liability, and denied even more strongly any allegation of gross negligence.

Q2: Is Norship liable, and if so, in what amount?

Q3: Is Peder Aas liable, and if so, is he entitled to limitation of liability (you are not asked to give a specific amount of potential liability)

Part III

We now assume that the claims by the municipality for clean up costs of NOK 46 mill and for wreck removal of NOK 4,6 mill were not made against Kysttank and Navigare but in stead against Norship direct (on the basis that MS Nordkyn was responsible for the collision). Moreover, Marine Insurance claimed the NOK 10 mill against Norship as stated in Part II.

We further assume that Norship is liable and is entitled to limitation of liability.

Q4: What are the claimants' recoverable losses?