

Shipowners' liability

– basic principles and notions. An overview



Dr. juris Morten Kjelland

A short repetition

- a paper-based sum up ...



Shipowners' liability

– owners' limitation of liability



Dr. juris Morten Kjelland

I

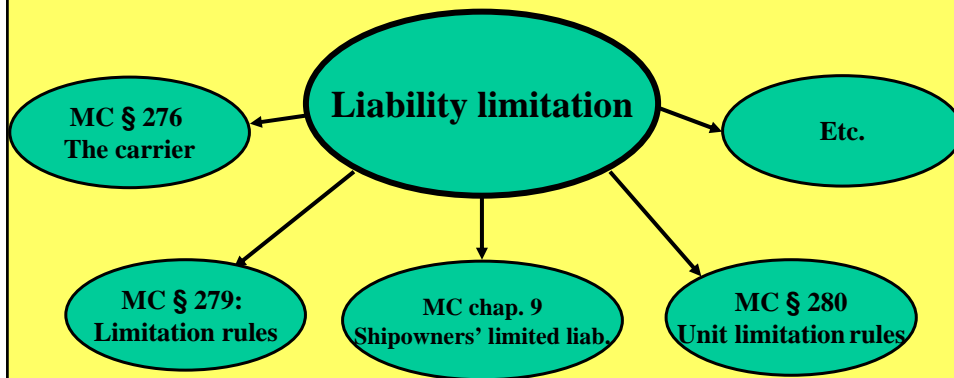
Introduction

– a frame for understanding the legal field

Introduction

– overview

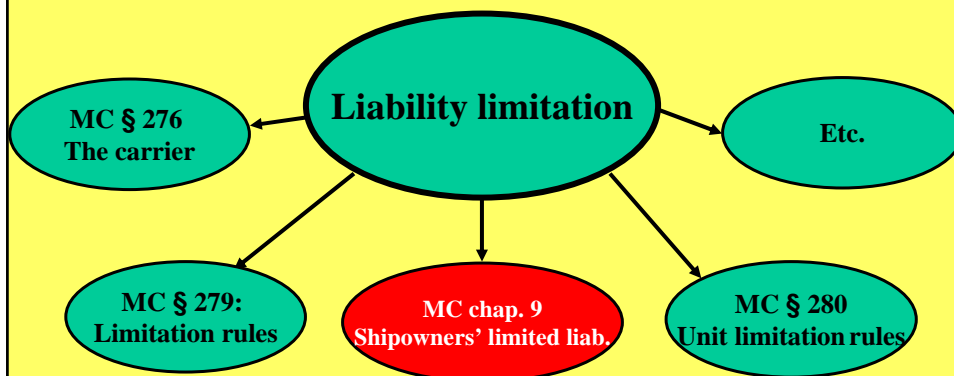
- Shipping is subject to a considerable degree of risk, and there is a tendency to spread and allocate risk.
- This is apparent in the different kinds of rules limiting liability.



Introduction

– overview

- Shipping is subject to a considerable degree of risk, and there is a tendency to spread and allocate risk.
- This is apparent in the different kinds of rules limiting liability.



Introduction

– distinctive features of the shipowners' limited liability

- The rules are characterized by the fact that they limit every type of claims due to a certain occasion.
- To capture this we use the term "global limitation" (norwegian: 'globalbegrensning').
- Includes, among other things, the rules of oil pollution.

Introduction

– some historical lines

- *Norwegian law: The execution system prior to 1933*; The shipowner was not personally liable, but the creditors had a maritime lien. If the ship was lost – creditors received nothing.
- *French law: The abandon system*. The shipowner could abandon the ship and thereby exempt from further liability.
- *English law: Legislation in 1734* limited the liability to the value of the ship before the accident.



This kind of variation in limitation rules was undesirable

→ ❶ Brussel Convention of 1957, ❷ Incorporated into MC in 1964, ❸ London Convention of 1976/incorporated into MC in 1983, ❹ Protocol of 1996 with higher liability limits ❺ Incorporated by the act of 7. January 2000 no. 2.

Introduction

– the present rules/central purposes

- Fewer types of claim are subject to limitation.
- But: Higher limitation amounts than before.
- In many cases conventions and statutes have become outdated as a result of the inflation.
- Bull, Falkanger & Brautaset (2004): The rules *should ideally* be large enough only in cases where liability is *very extensive*. (p. 180)
- Today: (Prudent) owners will obtain insurance cover for many of the risks to which they are subject → a "clue": Global limitation rules making it practical to cover the risk through insurance; a main function (comp. Wetterstein).

II

Requirements

- applying the rules in MC Chap. 9

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171:

”The reder, shipowner, charterer or manager can limit his or her liability according to the provisions of this Chapter. The same applies to anyone performing services directly connected with salvage, including measures as mentioned in subparagraphs 4 in the first paragraph of Section 172 and the first paragraph of Section 172a.

If liability is asserted against anyone for whom the reder or other person mentioned in the first paragraph is responsible, that person shall also have this right to limit his or her liability.

An insurer of liability for claims which are subject to limitation has the same right to limitation as the insured party.”

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171 first paragraph:

”The **reder**, shipowner, charterer or manager can limit his or her liability according to the provisions of this Chapter. The same applies to anyone performing services directly connected with salvage, including measures as mentioned in in subparagraphs 4 in the first paragraph of Section 172 and the first paragraph of Section 172a.”

- Must be understood in the technical-legal meaning of the word.
- In other word: The one who equip, crew and route the ship for his own funds, are included.

Applying the rules in MC chap. 9

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MC § 171 first paragraph:

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- ▶ The **shipowner** can invoke the limitation rules in MC chap. 9.
- ▶ *E.g.* hire of ship with a hidden weakness (’sjødyktighetsmangel’), which leads to a collision while the ship is utilized by the bare boat-charterer).

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171 first paragraph:

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- ▶ **Bare boat-charterer:** at the same time also the *reder*, see above.
- ▶ **Time and voyage charterer:** «charterer» then has an independent meaning.
 - ↳ Example: If the entire cargo were lost in an accident and the bills of lading imposed liability on the time charterer as carrier.
- ▶ Do the limitation rules also apply in the **internal** relationship, e.g. in relation to claims brought by the owner?
 - ↳ Bull et al.: Probably yes (comp. the preparatory work). Opposite: English law.

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

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- Translation of the notion ”manager” and ”operator” in the convention.
 - ↳ Clarification: The one who actually operates the ship.
- An example: managing owner in a shipping partnership.

Applying the rules in MC chap. 9

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- The right to limitation also include salvors.
- But: There must be a certain relationship, *see* the expression ”*directly connected with...*”.

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171 first paragraph:

”The reder, shipowner, charterer or manager can limit his or her liability according to the provisions of this Chapter. The same applies to anyone performing services directly connected with salvage, **including** measures as mentioned in subparagraphs 4, 5 and 6 in the first paragraph of Section 172 and first paragraph of Section 172a.”

- Explicitly mentioned to make the wording of the statute clear, related to an important situation.
- Not exhaustive.

Applying the rules in MC chap. 9

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↳ ”[*Section 172 Claims subject to Limitation*

The right to limitation of liability applies, regardless of the basis of the liability, to claims in respect of:

...

4) the raising, removal, destruction or rendering harmless of a ship which is sunk, stranded, abandoned or wrecked, and of everything that is or has been on board the ship”

Applying the rules in MC chap. 9

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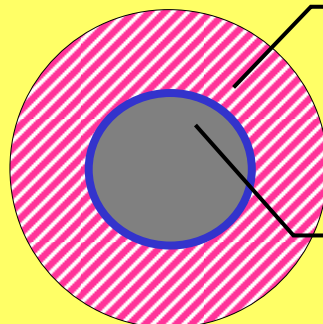
↳ *”[Limitations of liability claims related to cleaning up/ restoring after ship accidents etc.]”*

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171 first paragraph:

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Intermediate area: Actions outside the salvage vessel
↳ *See Tojo Maru* [1971] 1 Lloyd's. Rep 341 HL

Central area: Actions /accidents on board in the salvaging vessel

Applying the rules in MC chap. 9

– *Tojo Maru* [1971] 1 Lloyd's. Rep 341 H

- ▶ **Facts:** A *diver* from the salvaging vessel – *after* he had left the vessel – shot a bolt into the hull of the salvaged vessel.
- ▶ The English courts decided that the *earlier* Convention did NOT allow a right of limitation in this case.
- ▶ The *present* Convention (and statute) are drafted with the intention of PROVIDING a right to limitation in such cases.

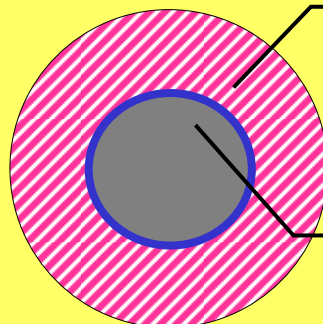


Applying the rules in MC chap. 9

– **subject gallery: who can invoke the rules?**

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Intermediate area: Actions outside the salvaging vessel
↳ *See Tojo Maru* [1971] 1 Lloyd's. Rep 341 HL:
Included in the notion?
↳ Bull et al.: Yes

Central area: Actions /accidents on board in the salvaging vessel

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171 second paragraph:

”If liability is asserted against anyone for whom the reder or other person mentioned in the first paragraph is responsible, that person shall also have this right to limit his or her liability.”

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171 first paragraph:

”If liability is asserted against **anyone for whom the reder or other person mentioned in the first paragraph** is responsible, that person shall also have this right to limit his or her liability.”

- Includes everyone of the crew members.
- They do not have to be employed by the owner.
 - ↳ An example: Waiter B, employed by the owner A of the restaurant ”The Crawl”, can limit his liability.
- Pilots can limitate, whether they are employed by the owner or by the State.
- Do the limitation rules (also) here apply internally between the parties (e.g. between owner and crew)?
 - ↳ The legal sources: Ot.prp. no. 13 (1963-1964) indicates an affirmative answer. Comp. Bull, Falkanger & Brautaset (2004) p. 182.

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171 third paragraph:

«An insurer of liability for claims which are subject to limitation has the same right to limitation as the insured party.»

Applying the rules in MC chap. 9

– subject gallery: who can invoke the rules?

MC § 171 third paragraph:

«An insurer of liability for claims which are subject to limitation has **the same right** to limitation as the insured party.»

- ▶ Provides protection for the insurer.
- ▶ If the claimant pursues the insurer directly, he can not obtain larger damages than he would have done *if* he had sued the assured.
 - ↳ who in turn would have been indemnified by the insurer.

Applying the rules in MC chap. 9 – the notion 'ship' in his context

MC § 171 first paragraph:

”The reder, **ship**owner, charterer or manager can limit his or her liability according to the provisions of this Chapter.“

- As a **starting point** MC chap. 9 apply to all installations that can be considered ”vessels”/”ship” according to the common understanding of the notion in maritime law, see Bull et al p. 43 et seq.
- Examples of **borderline cases**:
 - ↳ **Pleasure craft**: The maximum liability depends on the vessel’s tonnage → can it be too low? No special problem today, because of the minimum liability, see MC § 175.
 - ↳ **Warship etc.**: May be immune from arrest and enforcement proceedings. But: Claims for damages can be pursued. The question is: Are the authorities entitled to invoke the limitation rules? Equitable considerations (‘reelle hensyn’) vs. case law as *Buttercup* (ND 1949 p. 532).

III

The scope of limitation

The scope of limitation

– overview

- ▶ ”The scope of limitation” refers to the categories of claim which can be limited.
- ▶ The requirement is that the claim falls within the categories listed.

Section 172 Claims subject to Limitation

The right to limitation of liability applies, regardless of the basis of the liability, to claims in respect of:

- 1) loss of life or injury to persons (personal injury) or loss of or damage to property (property damage), if the injury or damage arose on board or in direct connection with the operation of the ship or with salvage;
- 2) damage resulting from delay in the carriage by sea of goods, passengers, or their luggage;
- 3) other damage if it was caused by infringement of a non-contractual right and arose in direct connection with the operation of the ship or with salvage;
- 4) the raising, removal, destruction or rendering harmless of a ship which is sunk, stranded, abandoned or wrecked, and of everything that is or has been on board the ship;

The scope of limitation

– overview

- ▶ ”The scope of limitations” refers to the categories of claim which can be limited.
- ▶ The requirement is that the claim falls within the categories listed.
- ▶ The legal basis for liability is irrelevant (negligence/strict liability), see the former lecture.
 - ↳ Also gross negligence (e.g. of a crew member) is included, see *Tønsnes* (ND 1984 p. 129): about gross negligence of a crew member.
- ▶ It does not matter if the liability is based on a contract or not.
- ▶ Restrictive way of interpretation (”privilege”), but also consequential damages may be subject to limitation, see the expression ”in respect of” in MC § 172 first paragraph.
- ▶ Though limitation is excluded after chap. 9 (since the occasion is outside the categories listed), *other* rules can apply to reduce liability, e.g. Torts Act § 5.

The scope of limitations

– the structure in the statute

- ▶ Six categories in MC § 172, and they must be seen in the context of MC § 173 about claims excepted from limitation.

Section 172 Claims subject to Limitation

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- 4) the raising, removal, destruction or rendering harmless of a ship which is sunk, stranded, abandoned or wrecked, and of everything that is or has been on board the ship;



Section 173 Claims excepted from Limitation

The right to limitation of liability does not apply to

- 1) claims for salvage reward, including special compensation according to Section 49, contributions to general average, or remuneration pursuant to a contract relating to measures as mentioned in subparagraphs 4, 5 or 6 in the first paragraph of Section 172;
- 2) claims for oil pollution damage of the kind mentioned in Sections 191;
- 3) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- 4) claims in respect of nuclear damage caused by a nuclear ship;
- 5) claims in respect of injury to an employee covered by the second paragraph of Section 171 and whose duties are connected with the operation of the ship or with salvage;
- 6) claims for interest and legal costs.

The scope of limitations

– some short remarks to the each category

- ▶ **No. 1: Personal injury and property damage.** The damage must have occurred on board or in direct contact with the operation of the ship/salvage. Exceptions for injured crew, see MC § 173 no. 5.
- ▶ **No. 2: Losses arising from delay** can be limited insofar as they arise in connection with a contract for the transport of goods or passengers, e.g. hotel expenses after the vessel has grounded.
- ▶ **No. 3: Liability for other damages** insofar as the claim does not arise out of contract, e.g. lost profits for a factory after cutting a sub-sea cable. Another example: blocking a waterway, also included (e.g. a canal), see NOU 1980:55.
- ▶ **No. 4: Expenses related to wreck removing,** sml. Harbour Act of June 8 1984 no. 51 § 18, see §§ 20 and 28 et seq.

The scope of limitations

– so-called ”privity”

- ▶ Even where the owner himself, or another party entitled to limit liability, has committed the error – so-called ”privity” (’egenfeil’) – can be limited.
- ▶ Requirement: The damages must not been caused intentionally or through gross negligence, see MC § 174.
- ▶ The rule applies also when it comes to limited companies, where e.g. general assembly or the board of directors has made a mistake.
- ▶ Still a lot of unsettled questions about identification, see Bull et al (2004):
”[I]dentification would result if the error were committed by management personnell within the shipowning company with a fairly significant level of responsibility” (p. 186)

The scope of limitation

– acts that result in unlimited liability

- ▶ MC § 174, employs the terminology of ordinary tort law → must be interpreted in accordance with the general principles of tort law.
- ▶ **Intentionally:** On purpose/knowingly, see e.g. *Despina* (ND 1979 p. 27): about damaged cargo.
- ▶ **Gross negligence**

Gross negligence

– a case-based explanation/definition

Testament case (Rt. 1989 p. 1318)

- A lawyer was held liable because he had misunderstood/forgotten some basic rules in inheritance law (invalid testament → loss).

- The Norwegian Supreme Court:

Gross negligence = ”a clear deviation from ordinary reasonable behaviour. There must be behaviour which is particularly blameworthy, where the person is significantly more to blame than there is a question of ordinary negligence”

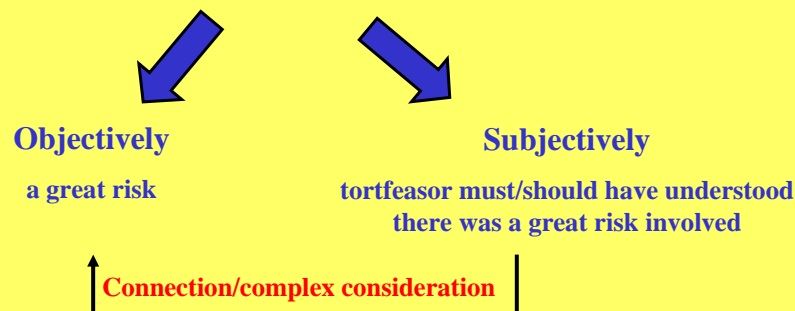
p. 1322)

➤ **Comp. Stockfish** (Rt. 2006 p. 321). A robbery of stockfish at a parking area in Rome. The Supreme Court found that the driver had acted with gross negligence, parking at this place: ”When it comes to the concept ’gross negligence’ ... In another context the prerequisite is explained this way in Rt. 1989 p. 1318: ”a clear deviation ...” (section 24)

The scope of limitation

– acts that result in unlimited liability

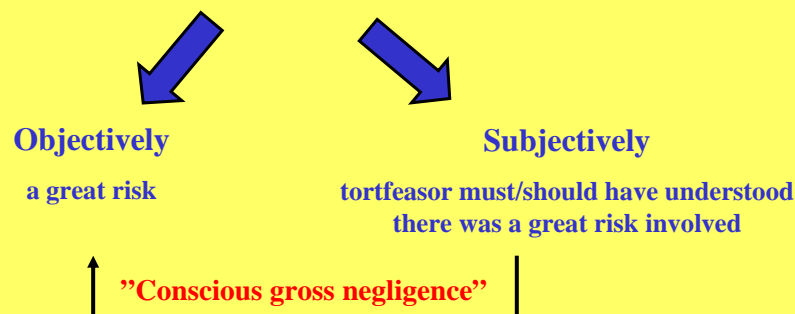
- MC § 174, employs the terminology of ordinary tort law → must be interpreted in accordance with the general principles of tort law.
- **Intentionally**: On purpose/knowingly, see e.g. *Despina* (ND 1979 p. 27): about damaged cargo.
- **Gross negligence**: Two elements of the basis for liability



The scope of limitation

– acts that result in unlimited liability

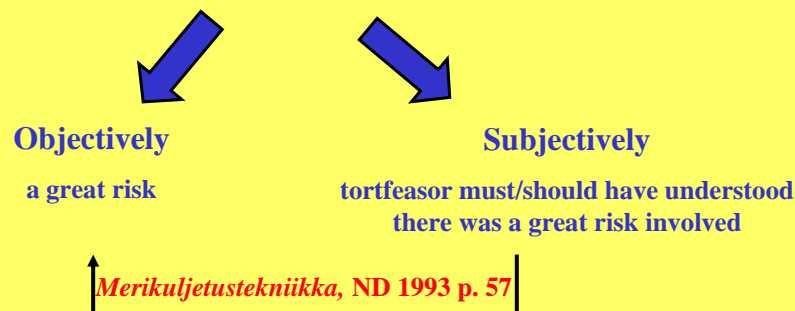
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The scope of limitation

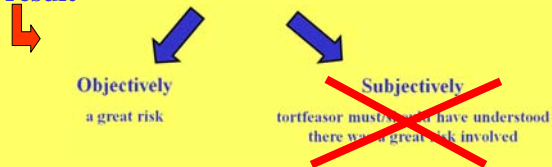
– acts that result in unlimited liability

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- ▶ **Gross negligence:** Two elements of the basis for liability



Merikuljetustekniikka (ND 1993 p. 57)

- ▶ A vessel **capsized** ('tipped over') with loss of deck cargo.
- ▶ This happened as a result of **gross negligence** with respect to making the vessel seaworthy prior to departure.
- ▶ **BUT: there had been NO "UNDERSTANDING" that loss would result**



↳ **Therefore: the limitation survived**

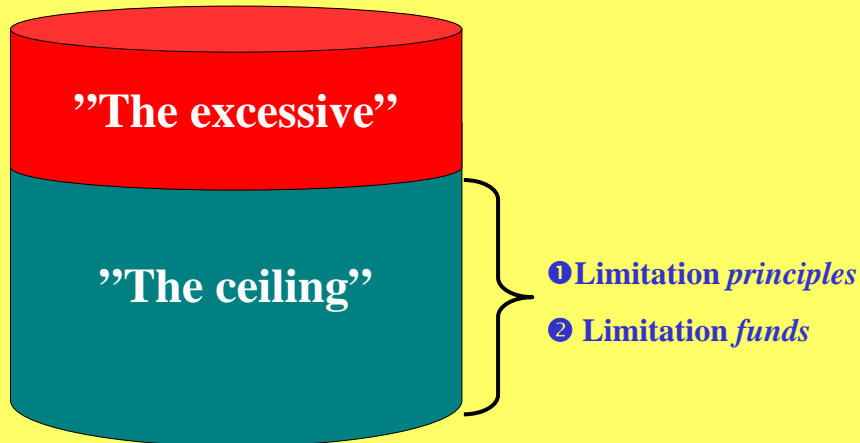
IV

Liability in practice

Liability in practice

– overview/the main questions

- The purpose of global limitation: protect shipowners from excessive liability.
- The damages must reach a certain level – a predetermined "ceiling".



Liability in practice

• limitation principles

- Traditionally tied to the vessel's **tonnage**.
- This principle is still used in the Maritime Law of today, MC 1994 – but now there is a mandatory minimum liability.
- Once a **certain size of tonnage is reached** (measured in tonnage units), an amount is added for each further tonnage unit (based on a **regressive scale**).
 - ↳ I.e. the greater the tonnage, the lesser the addition per tonn.

Liability in practice

② limitation funds

- Fixed in **SDR** (to ensure that limitation funds do not vary too much from country to country).
- **Personal injury**
 - ↳ **Passenger liability: 175 000 SDR x number of passengers (certified)**, see MC § 301 second paragraph, see § 175 no. 1.
 - ↳ **Other personal injuries (e.g. crew on a ship that has been run into): 2000 000 SDR, but there are rules, increasing**
Nb! Owner can not limit liability for claims from crew on his *own* ship, MC § 173 no. 5.
- **Property damages**
 - ↳ 1 000 000 SDR, but there are rules of increase
- **Special rules for different situations/cases**
 - ↳ E.g. drilling ships/drilling platforms, see MC §§ 181 2nd sect. and 507 2nd sect.

Liability in practice

– one ore more incidents

- The limitation rules applies to claims arising from *one* incident, see MC § 175.
- **Complex and concrete consideration**
 - ↳ The extreme points are easily considered.
 - ↳ The problem is **the borderline situations**, see for example damages to other vessels in the harbour area caused by a failure in the vessel's reversing machinery.

V

Oil pollution and environmental liability

Oil pollution and environmental liability

• the scope of the rule, requirements in MC §§ 191 and 206

- 1 The source of the pollution must be a **ship designed** for the transport of oil in bulk, i.e. in tanks, see § 191 third paragraph + the ship must **actually transporting oil** in bulk when the incident occurs/be on a subsequent voyage (unless the owner proves that no such oil from such transport remained onboard).
- 2 The oil: so-called **persistent mineral oil**, see § 191 fourth paragraph.
- 3 The convention-based rules only apply to **damage/loss arised outside the vessel**, see MC § 191 second paragraph item a).
- 4 The convention-based rules only apply to damage/loss arised in **Norway, in the Norwegian economic zone, in another convention state or in that state's economic zone**, see MC § 206 first paragraph
- 5 The convention-based rules do NOT apply to **warships** (or other ships owned or employed by a state, which at the time of the discharge were utilised exclusively for non-commercial state activities), see MC § 206 (3).

Oil pollution and environmental liability

• strict liability

➤ **Main rule** in MC § 191 first paragraph: strict liability

➤ **Three exceptions (to make the shipowner exempt from liability):**

① MC § 192 (1) item a): The shipowner can prove that the damage was caused by an act of war (or a similar action in an armed conflict etc.).

② MC § 192 (1) item b): The shipowner can prove that the damage was "entirely caused by an act by a third party with intent to cause damage".

③ MC § 192 (1) item c): The shipowner can prove that the damage was caused by negligence of a public authority in connection with maintenance of lights or other navigational aids.



Some illustrations from case law ...

Oil pollution and environmental liability

- examples from case law: Tsesis (ND 1983 p. 1)

➤ **Facts:** The vessel ran aground, and oil escaped resulting considerable damage.
+ The dangerous area had been discovered several years before, BUT not been noted on the chart etc because of an error.

➤ **High Court** (in Sweden): held that a chart was a "navigational aid" as stated in the Swedish Liability for Oil Pollution Act § 3 (2) item 3 (= MC § 192 (1) item c).



And further: The majority (4) also held that the failure to report the dangerous area was a ground for exemption from liability.

Oil pollution and environmental liability

- examples from case law: Jose Marti (ND 1987 p. 64)

➤ **Facts:** The vessel ran aground because of an negligent error of the pilot, and oil escaped resulting considerable damage.

➤ **The Court (Svea hovrätt):** held that a PILOT is NOT a "navigational aid".



The owner did NOT escape from his liability.

Oil pollution and environmental liability

• strict liability

➤ **Main rule** in MC § 191 first paragraph: strict liability

➤ **Three exceptions (to make the shipowner exempt from liability)**

➤ **The conception "oil pollution damage" is defined in MC § 192 (2)**



Also expenses taken to avoid/limit damage are included in the notion.

➤ **If the injured party has wilfully or negligently contributed to the damage, liability may be reduced in accordance with ordinary tort law, see MC § 192 (2).**



***Sirocco* (ND 1984 p. 8):** Oil leaked in the harbour and caused damage. Without success, the shipowner claimed that the harbour owner had contributed to the damage by failing to undertake preventive measures – even though he should have known there was a risk that the vessel had grounded and sprung a leak.

Oil pollution and environmental liability

• channelling of liability

- MC § 191: **The party strict liable = the shipowner**, see definition in MC § 191 (5).
- The owner can **ONLY** be made liable for oil pollution damage **according to the provisions of chap. 10**, see MC § 193 (1).
 - ↳ **An injured party therefore can NOT pursue the shipowner under a different basis of liability if the loss is not covered by the convention-based rules.**
- **The rationale** for channelling liability is that the interests of the injured party are protected by the extensive and well secured strict liability imposed on the shipowner.
 - ↳ **Further reading, see Bull, Falkanger & Brautaset pp. 202-203.**

Oil pollution and environmental liability

• compulsory insurance

- MC §§ 197-200: **compulsory insurance** for the owner of a ship carrying more than 2 000 tons of oil as bulk cargo.
 - ↳ **Normally this requirement will be satisfied through the owner's P & I insurance.**
 - ↳ **A certificate must be issued, see Regulation 24. May 1996 no. 514.**
- **The injured party** has an unconditional right to bring his claim under the convention-based rules *directly* against the insurer, see MC § 200 (1), first sentence.
 - ↳ **Further reading, see Bull: Tredjemannsdekninger i forsikringsforhold (1988) pp. 57-221.**

Oil pollution and environmental liability

• The international compensation fund

- No rules in MC, but in the **Fund Convention 1992** (which is given direct legal effect in Norway, see MC § 201 (1), second sentence).
- The fund will **only be liable** if the Fund Convention's rules regarding scope of application is satisfied.
- Liability to injured parties can arise in **three situations**:
 - ① the shipowner is not liable because of exceptions in MC § 192
 - ② owner and his insurer are (financially) not able to cover the liability
 - ③ the damage exceeds the owner's limitation on liability pursuant to MC § 194
- The fund covers (after the 2002 change), as a main rule, **amounts up to SDR 203 million**.

Oil pollution and environmental liability

• non-convention-based liability for oil pollution

- MC § 207 contains rules which is related to **liability AND limitation** of liability for oil pollution covered by MC § 191, BUT to which convention-based rules on liability do NOT apply, pursuant to § 206.
- The rule is quite **complicated**.
- **An overview:**
 - ↳ 1. and 2. para.: apply to damage caused by pollution on the Norwegian shelf outside the Norw. economic zone – if, and to the extent, that Norwegian law is applicable on the high seas (and to the costs of related preventive measures).
 - ↳ 3. para. applies if a case is brought in a Norwegian court which relates to damage caused by pollution in a state which has not ratified the Liability Conv.
- ➔ **In BOTH cases the conditions in MC § 191 must be satisfied (i.e. the incident must involve a spill of persistent oil from a ship carrying oil as bulk cargo).**

Oil pollution and environmental liability

• liability for oil pollution damage subject to global limitation

- MC § 208 contains rules regarding **liability AND limitation** of liability for oil pollution damage which is NOT of the type mentioned in § 191 (and therefore NOT covered by the conv.-based rules or rules in MC § 207).
- The provision is divided into **two parts/elements**:



1.-3. paragraph:

pollution by *persistant* oil from ships/installations transporting oil as *bulk cargo*

4. paragraph:

Pollution by *non-persistent* oil and oil blends, *without* regard to whether the ship/installation transports oil as bulk cargo

Oil pollution and environmental liability

• liability for oil pollution damage subject to global limitation

- MC § 208 contains rules regarding **liability AND limitation** of liability for oil pollution damage which is NOT of the type mentioned in § 191 (and therefore NOT covered by the conv.-based rules or rules in MC § 207).
- The provision is divided into **two parts/elements**
- MC § 208 is applicable where damage caused by oil pollution arises **in the Kingdom, on Norw. continental shelf and on the high seas** (insofar as Norwegian tort law is applicable).
- **Ordinary principles of strict** liability in MC § 191 shall be applied with the exception contained in MC § 192.

Oil pollution and environmental liability

◉ other environmental liability



Petroleum Act

* MC § 209 (1) established that the provisions in MC chap. 10 do NOT restrict the liability under the Petroleum Act chap. 7.

* MC § 209 (2) establishes that if the licensee is liable under the Petroleum Act chap. 7, then no claim can be made pursuant to MC §§ 207-208 (beyond what follows from Petr. Act §§ 7-4 and 7-5)

Others environmental liability

* E.g. HNS convention

* E.g. The pollution Act § 53 and chap 8.

* Etc., see Bull et al pp. 209-210.

VI

Some final reflections.

The use of legal sources – and some remarks about writing papers ...

Theoretical exercises

Theoretical exercises – some general remarks

- No existing "templates" or any other kind of "given answers"
- Every paper must be adapted to the actual exercise ("tailor made")
- Different kind of tests, and therefore different types of questions
 - ↳ Different exercise-models (to be expanded in a moment)
- The purpose of the exercise is to evaluate the student's knowledge level. The (written) paper is, eventually supplied with the verbal achievement, the only basis for evaluating/grading.
 - ↳ Therefore: We have to know something about how this system register and credit ...

Theoretical exercises

– plan & framework

- Make your own outlines & framework for your paper.
- A great range of distributions when it comes to the test-levels.
 - ↳ Sometimes the exercise *corresponds* with the chapter in your book → Then the challenge is to *free* yourself from that framework.
 - ↳ Sometimes the you need insight in *several* legal fields, and be able to *combine*.
- Structure your elements in a logical and organized order, and give your paper the right proportions.
 - ↳ In general: 1) Main parts follow naturally after each other , 2) Sub-sections succeed naturally, 3) Every sentence naturally succeeds.
 - ↳ E.g. Main rules and starting points before exceptions.
E.g. Description of the "simpler & safe" before the unsettled.

Theoretical exercises

– plan & framework

- Do necessary limitations.
But: *your delimitation must be explained and rational*
- Last: An advice and guideline:

To not start too early writing the paper
– make a detailed outline (except if you at once see you
are able to go straight ahead).

Theoretical exercises

– different exercise models. Features & challenges


① Based on notions/terms

- Different kinds, but often developed through case law
 - ↳ E.g. "culpability", "causation", "adequacy" etc.
 - ↳ But also words/expressions in the statutes, e.g. "ship", "limitation" etc.
- The purpose of this type of exercise is to determine the meaning of the notion (which factual phenomenon is included).
- Explain the function(s) of the notion, and its structure/place in the large system.

Theoretical exercises

– different exercise models. Features & challenges

② Based on statutes

- Different kinds, but often developed through case law
 - ↳ E.g. MC § 418, MC chap. 10 etc.
 - Different possible structures:
 - ↳ E.g. substantive law vs. procedural law (if the statute contains both elements)
 - ↳ E.g. conditions/requirements vs. effects
 - ↳ E.g. focus on the central notions
- Anyway. Remember the *general* approach: sources of law
- 

Theoretical exercises

– different exercise models. Features & challenges

③ Comparison

➤ This kind of exercise is often demanding

↳ Because: Need knowledge about (at least) two legal fields, and be able to do a purposeful/interesting comparison.

➤ Challenges – and advices

↳ Often too much parallel descriptions

↳ What to do: analyse the different legal elements (notions etc), and make a *successive* comparison (not just in the end of the paper).

Mode of expression

- and some final remarks ...

Theoretical exercises

– mode of expression/presentation

- Use the sources of law. NB!
- When **quoting** statutes (or other sources):
 - ↳ Be precise.
 - ↳ Find the relevant "keywords" – do not quote the text in full.
- Use of **case law**
 - ↳ It is OK to use the nick name (it is not necessary to remember the references).
 - ↳ Describe just what is necessary of the facts (including the result), to understand to legal relevance of the judgement.
 - ↳ Remember to answer this question: What is this judgement telling us? Is it expressing a general understanding of the statutes, or do we have to compare differences and similarities in the facts?

Theoretical exercises

– mode of expression/presentation

Other general points

- ↳ Write **easy/plainly** – give a concise answer (to the point)
- ↳ Use **short and clear sentences**; cut the redundant "word flow"

Writing the papers

- structure, layout etc.

Generally

➤ Give a clear and concise answer – "to the point"

➤ Short sentences

↳ Do not use a lot of "extra" words - cut the redundant

↳ Example 1:

As mentioned above it is not hard to understand why the limitation rules are important.

Writing the papers

- structure, layout etc.

Generally

➤ Give a clear and concise answer – "to the point"

➤ Short sentences

↳ Do not use a lot of "extra" words - cut the redundant

↳ Example 1:

Limitation rules are important.

Writing the papers

- structure, layout etc.

Generally

➤ Give a clear and concise answer – "to the point"

➤ Short sentences

↳ Do not use a lot of "extra" words - cut the redundant

↳ Example 2:

Furthermore, the recently quoted legal text shows that passengers' right to compensation depends on several conditions.

Writing the papers

- structure, layout etc.

Generally

➤ Give a clear and concise answer – "to the point"

➤ Short sentences

↳ Do not use a lot of "extra" words - cut the redundant

↳ Example 2:

Passengers' right to compensation depends on several conditions.

Theoretical exercises

– mode of expression/presentation

Other general points

- ↳ Write easy/plainly – give a concise answer (to the point)
- ↳ Use short and clear sentences; cut the redundant "word flow"
- ↳ Formulate clear headlines (numbering etc.)
- ↳ Explain notions/terms (just after its presentation)
- ↳ Finish your argumentation
- ↳ Give examples (case law)
- ↳ Raise questions + use legal sources to answer
- ↳ Check spelling (orthography)

Some final remarks and
reflections ...

Final remarks & reflections

“Many candidates are too defensive when they are writing. It seems like they write in a self-defence. The fear of failing is stronger than the will to make a good exam. You have to believe in yourself, which can be developed by a solid piece of work and doing exercises (especially making plans and frameworks). Everyone can do progress if they want to, and too many are not progressing because they don't think they will succeed.

From the sport psychology there is a good example: A high jumper, who always failed at 1.90 meter, had no problem passing 1.85. His coach set the list at 1.90, and let the athlete think it still was at 1.85 – and he did it!”

(Dalseide/Rudi: How to write better theory papers when graduating in law p. 22)

Some other perspectives - motivation ...



Shipowners' liability

– basic principles and notions. An overview



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