Liability of the shipowner

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Overview

• Ordinary rules on owner's liability
• Limitation of liability
I. The ordinary rules on owner’s liability

• Characteristic:
  – Often of rather strict but also a limited liability

• Examples of situations
  – Damage to property
  – Personal injury
    • In general
    • Employees
    • Passengers
  – Environmental liability (eg. oil pollution)

Focus: Non contractual liability

• Basis of liability:
  A. Fault based liability

  B. Strict liability

  C. Vicarious liability
A. Fault based liability

– The owner’s fault in choosing the employee
– The owner’s fault in instructing the employee

• NB: The highest ranking employees (managerial level) are identified with the owner

B. Strict liability

Ordinary rules

• Liability for dangerous enterprise
• Not dangerous enterprise
  – ND 1921.401. NH (NEPTUN)
  – ND 1971.36 NH (MARNA HEPSØ)
  – ND 1969.389 NH (LAGODALES)
  – ND 1973.348 NH UTHAUG

Special rules
– Oil pollution
– Emergency situations
C. Vicarious liability

• § 151
• "The Shipowner (reder) shall be liable to compensate damage caused in the service by the fault or negligence of the master, crew, pilot, tug or others performing work in the service of the ship"

• Elements of the rule:
  1. Basis of liability
  2. The relationship between the owner and the assistant
  3. The nature of the service provided
• Per 1:
  • Basis of liability: "fault or negligence"
    - The setting aside of statutory provisions
    - "good seamanship" as a criterion

• Per 2:
  • The relationship between the owner-assistant
    – Listed persons
    – "Others" (who are carrying out tasks for the ship)
      • Independent contractors?
      • Compulsory helpers?
• Per 3:
  • The nature of the service
  • Limitation in time
  • Geographical limitations?
  • A criterion from "randomness"?
  • Reasonableness and saglished
  • When in doubt: "Can the task be characterized as "typical for shipping enterprise"?"

Public liability

• Q: Can the owner pass on liability to public entities?
II. Limitation of shipowner’s liability

• General about the rules on limitation
• § 171 and § 172
  – A) Personal delimitation
  – B) Relation with a ship
  – C) The claim
  – D) Incident
• Conduct barring limitation
• The technique

• Per a) Delimitation as to persons (§ 171)
  – "Reder", shipowner, charterer, manager
  – anyone who delivers services in direct connection with salvage
  – someone for whom the reder or others mentioned in the first paragraph is responsible
  – The liability insurer
• Per B: The concept of a ship

  - General rule: the ordinary concept of a «ship» applies

  - Previously discussed:
    – Small boats (pleasure craft)
    – War ships

• Per C: Delimitation as to the type of claim (§ 172)
  • 1) Personal injury and loss of and damage to property if the injury or damage arose on board or in direct connection with the operations of the ship or with salvage
  • 2) Damage caused by delay
  • 3) Damage caused by infringement of a non-contractual right
  • 4) Some claims relating to measures taken to avert or minimize losses
• Exceptions: (173)
• Notice:
  – 1) Claims for salvage reward
  – 2) Claims for oilpollution
  – ...
  – 5) Claims in respect to injury to an employee

• Per D: «one and the same event» § 175, no. 4

• Ex. ND 1971.199 (DCC Esbern Snare)
• EX.ND 1987.160 (Ny Dolsøy)
• Conduct barring limitation: § 174
  – The owner’s own fault
  – The negligence standard
    • Intentional (deliberate) acts
    • «gross negligence and with knowledge that such loss would probably result»
    • Cp. ordinary definition of gross negligence: «A clear deviation from ordinary reasonable behaviour»

• The «technique» (§175: Claims under § 172)
  – No.1: Own passengers: SDR 250.000 SDR multiplied by «passengerfactor»
  – No.2: other personal injury claims: SDR 2.000.000 SDR (Limit can be increased with the tonnage)
  – No 3: all other claims and claims uncovered under no. 2: SDR: 1.000.000 (increase with the tonnage)