

Reply to CMI Unified Interpretation Questionnaire dated 19 February 2020 (and later revised)

Please refer to our replies in bold and italic after each question. Responses are based on laws in force in Norway as per May 2020.

I. PRELIMINARY QUESTIONS

1. Has your jurisdiction ratified the following conventions (the 'Conventions'):

a. International Convention on Civil Liability for Oil Pollution Damage 1969 ('CLC 1969')

Yes, but denounced and replaced by the 1992 protocol.

b. 1992 Protocol to the CLC 1969 ('CLC 1992')

Yes, incorporated and translated into domestic legislation.

c. Convention on Limitation of Liability for Maritime Claims 1976 ('LLMC 1976')

Yes, incorporated and translated into domestic legislation.

d. 1996 Protocol to the LLMC 1976 ('LLMC 1996')

Yes, incorporated and translated into domestic legislation.

(references to 'LLMC' shall be understood as references to either LLMC 1976 or, where applicable, to LLMC 1976 as amended by LLMC 1996)

e. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 ('HNS 1996')

f. 2010 Protocol to the HNS 1996 ('HNS 2010') (references to 'HNS' shall be understood as references to either HNS 1996 or, where applicable, to HNS 1996 as amended by HNS 2010)

Pending the HNS coming into force, legislation incorporating and translating the convention has been adopted but is not yet in force.

g. International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ('Bunkers Convention')

Yes, incorporated and translated into domestic legislation.

h. Nairobi International Convention on the Removal of Wrecks 2007 ('WRC')

Norway has decided to ratify the WRC but the formal act has been postponed to cater for various changes in legislation and insurances. Legislation incorporating and translating the convention has been adopted but is not yet in force.

Yes.

2. Please indicate whether the a.m. Conventions apply directly in your jurisdiction or whether the stipulations have been translated and incorporated into domestic legislation.

Please refer to the answers above.

3. Is the wording of domestic provisions incorporating art. V(2) CLC 1969/art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS/art. 6 Bunkers Convention/art. 10(2) WRC into domestic legislation different to the original text of the Conventions?

- The wording of art. V(2) CLC 1992 is almost identical to that found in § 194 of the Norwegian Maritime Code of 1994.

- The wording of art. 4 LLMC is almost identical to that found in § 174 of the Norwegian Maritime Code of 1994.

- The wording of arts. 7(5) and 9(2) HNS is almost identical to that found in § 214, jf. § 193 and § 215, jf. § 194 of the Norwegian Maritime Code of 1994.

- The wording of art. 6 Bunkers Convention is not found in the national legislation, but there are rules for limiting liability in accordance with LLMC.

- The wording of art. 10(2) WRC is not found in the prepared legislation, but there are rules for limiting liability in accordance with LLMC.

3a. If the answer to the previous question is in the affirmative, what are the differences?

Please refer to the answer above.

4. If your jurisdiction has not ratified the Conventions, does your jurisdiction recognise a right of limitation of liability for claims that would otherwise fall under the Conventions (the 'Equivalent Claims')?

N/A

4a. If the answer to the previous question is in the affirmative, what are the requirements for breaking the right to limitation for Equivalent Claims?

N/A

5. Are there any general principles of law in your jurisdiction that may serve to break the right to limitation otherwise than through the specific provisions contained in the Conventions (e.g. abuse of right)?

There are no general principles of law to that effect.

II. "PERSONAL ACT OR OMISSION" — Attribution to the person liable

6. How is the requirement for a "personal act or omission" in art. V(2) CLC 1992, art. 4 LLMC, and arts. 7(5) and 9(2) HNS interpreted in your jurisdiction?

There is no specific jurisprudence on this point, but the term will be interpreted in line with the general principles of causation, proximity and responsible party in Norwegian law.

7. Where the party entitled to limitation is an entity, what are the requirements for attributing an act or omission to the party entitled to limitation?

An entity can be liable for acts committed by individuals on two alternative legal grounds. The first alternative is attributing acts or omissions of the entity's organs (management or board of directors) to the entity itself. It is not clear how far down in the organization structure this liability

reaches, but it is in general thought to comprise senior individuals/employees with responsibility of key areas of the entity's business. Furthermore, if the act or omission is attributable to the management of the entity itself, i.e. safety, the entity will be held liable for such acts/omissions provided the other requirements for liability are fulfilled.

The second alternative is the statutory vicarious liability of a shipowner. The shipowner/entity will in short be liable provided that the employee or other contractual or other assistants has acted with intent or recklessness when performing its work for the entity/employer.

8. Are there court decisions or legal texts in your jurisdiction where the right to limitation under the Conventions or equivalent domestic legislation has been broken (or where it has been submitted that such right should be broken), respectively confirmed (or where it has been submitted that such right should be confirmed), for acts/omissions of:

8a. The Master?

8b. Crew members?

8c. The Designated Person Ashore/Company Security Officer?

8d. Other individuals within the entity entitled to limitation?

8e. Third-party contractors (e.g. agents of the vessel)?

If your answer is in the affirmative in any of the above questions, please briefly describe (a) the relevant facts; and (b) the rationale for the attribution of the relevant act or omission to the party entitled to limitation.

There are no court decisions dealing with the above to date.

III. "WITH THE INTENT"/"RECKLESSLY" — Degree of fault

9. How is "intent" in art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS or relevant implementing domestic legislation interpreted in your jurisdiction?

"Intent" is interpreted in line with the legal meaning given to this expression in Norwegian legislation in general. In short, one may say that "intent" is a legal term that describes the subjective state of mind that exists when the person performing an act makes it with the knowledge of its results or has had the will to perform said action).

10. How is recklessness under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS or relevant implementing domestic legislation interpreted in your jurisdiction? Does negligence qualify as recklessness ('Qualifying Negligence') under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS in your jurisdiction?

Recklessness is interpreted as gross negligence and otherwise in line with the legal meaning given to this expression in Norwegian legislation in general. In short, one may say that "negligence" is a failure to exercise appropriate care expected to be exercised amongst specified circumstances. "Gross negligence" requires a significant discrepancy between the care exercised and the care/action that can be objectively described as justifiable.

10a. If the answer to the previous question is in the affirmative, what are the elements of Qualifying Negligence under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

Please refer to the answer above.

11. What is the standard for recklessness under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

Please refer to the answer to question 10 above.

12. How is "actual fault" in art. V(2) CLC 1969 interpreted in your jurisdiction?

N/A.

13. How is "privity" in art. V(2) CLC 1969 interpreted in your jurisdiction?

N/A.

IV. KNOWLEDGE OF THE LIKELIHOOD OF THE HARMFUL RESULT

14. How is the requirement for knowledge in art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS interpreted in your jurisdiction?

There is no available jurisprudence on this point. However, it is assumed that the term will be interpreted in line with general tort law and on a case-to-case basis.

15. Does imputed or background knowledge suffice for the purposes of art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

Please refer to the answer to question 14 above.

15a. If the answer to the previous question is in the affirmative, what are the relevant requirements?

Please refer to the answer to question 14 above.

16. Does failure to obtain the necessary information suffice for the purposes of art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

Please refer to the answer to question 14 above.

16a. If the answer to the previous question is in the affirmative, what are the relevant requirements?

Please refer to the answer to question 14 above.

V. "SUCH DAMAGE"/"SUCH LOSS"

17. How has the term "such loss"/"such damage" (art. 4 LLMC - art. V(2) CLC 1996/arts. 7(5) and 9(2) HNS 1996, respectively) been interpreted in your jurisdiction?

Currently, there is no jurisprudence on this point. The wording differs slightly in the various national provisions incorporation the said conventions. However, the term will in most instances not cause any significant argument, but rules of causation and what will be deemed as a reasonable foreseeable loss will play a part in the interpretation.

VI. BURDEN OF PROOF

18. Who bears the burden of proof to show that the requirements for breaking the right to limit are fulfilled?

Pursuant to general procedural rules of burden of proof, the party arguing that the requirements for breaking the limits are fulfilled has the burden of proof.

19. Is it possible under the procedural rules of your jurisdiction that the burden of proof may shift to the person liable under certain conditions?

No, but the court will always decide the case of the balance of probabilities.

VII. INDICATIVE REFERENCE TO OTHER CONVENTIONS

20. What is the wording used to implement art. 10(2) WRC and art. 6 of the Bunkers Convention in your jurisdiction?

WRC – N/A

Please refer to the answer above to question 3 concerning the Bunker Convention art. 6.

21. How have art. 10(2) WRC and art. 6 of the Bunkers Convention been interpreted in your jurisdiction in the context of breaking the right to limitation?

WRC – N/A

At the present, there is no jurisprudence on art. 6 of the Bunkers Convention.

VIII. EQUIVALENT PROVISIONS

22. The same language for the test for breaking the liability limits is used in art IV (5)(e) of the Hague Rules as amended by the Visby Protocol:

22a. Has your country ratified the Hague-Visby Rules or enacted these rules into their domestic legislation?

Yes, the Hague-Visby rules are enacted into domestic legislation. However, the rules of the Norwegian Maritime Code were aligned with the Hamburg Rules as far as possible without having to derogate from the Hague-Visby Convention. Domestic carriage is nonetheless regulated differently.

22b. If the answer to the previous question is in the affirmative, how are the relevant criteria as listed above (II-V) interpreted in the context of the respective provision incorporating art. IV (5)(e) of the Hague-Visby Rules?

Art. IV (5)(e) is found in § 283 of the Norwegian Maritime. There is no case law on the point of breaking the liability limits.

19 May 2020, by Benedicte H. Urrang, lawyer at Nordisk Skibsrederforening (Nordisk Defence Club), Norway