

FLEETHAMBURG

RECHTSANWÄLTE | SOLICITORS | BARRISTERS

DEGREE OF FAULT:

*Recklessly and with knowledge
that damage would probably
result*

THE POSITION UNDER ENGLISH AND COMMON LAW

Degree of Fault – Recklessly and with Knowledge....

Intentional Wrongdoing:

A person directly intends those consequences which he desires to bring about by his acts.

Negligence:

The failure to take care when there is a duty to take care.

Wilful Misconduct:

Misconduct to which the will is a party, something more than accident or negligence.

Recklessness:

Unjustified risk taking

Degree of Fault – Recklessly and with Knowledge....

The London Convention

Article 4: Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that: the loss resulted from his personal act or omission,

- committed with the intent to cause such loss, or **recklessly and with knowledge that such loss would probably result**

Degree of Fault – Recklessly and with Knowledge....

The London Convention: - actual damage v. type of damage

The Leerort [2001] 2 Lloyd's Rep. 291



Knowledge of probability of collision with the actual colliding vessel;

OR possibly also,

Knowledge of probability of collision with some other vessel, not necessarily the actual colliding vessel

Degree of Fault – Recklessly and with Knowledge....

The Saint Jacques II and The Gudermes [2003] 1 Lloyd's Rep. 203



Concession that for the purposes of the summary proceedings, it would be sufficient if the Owner had knowledge of the probability of a collision with some vessel

Degree of Fault – Recklessly and with Knowledge....

Peracomo Inc. v TELUS Communications Co. [2014] SCC 29



Whether this description of the loss is considered to be of the “type of loss” or the “very loss” that resulted from Mr Vallee’s actions, on the trial judge’s finding of fact, Mr Vallee did not intend to cause that loss or know that it was a probable consequence of his actions

Degree of Fault – Recklessly and with Knowledge.....

Actual v. Type of damage

The Leerort [2001] 2 Lloyd's Rep. 291

The Saint Jacques II and The Gudermes [2003] 1 Lloyd's Rep. 203

Diana Shipping v. Te Runanga O Ngati Awa [2013] NZHC 500

Peracomo v TELUS Communications (CAN) [2014] SCC 29

Degree of Fault – Recklessly and with Knowledge...

Wilful Misconduct v. Recklessly and with knowledge that damage would probably occur





Vielen Dank!

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