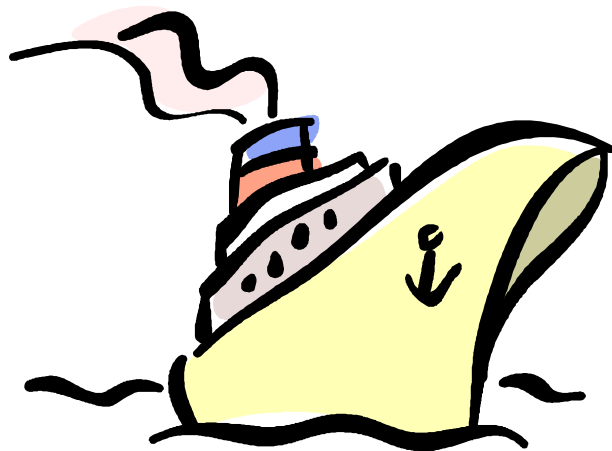




Limitation of liability in inland navigation: Ukrainian perspective



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Ukrainian law: International conventions

- Convention regarding the Regime of Navigation on the Danube (1948) and Additional protocol of 1998 – signed/ratified;
- CLNI – not signed/ratified;
- CMNI – signed in 2002 but not yet ratified;
- Bratislava agreements (BA): acceded by 2 large shipowning companies operating on Danube: Ukrrichflot and UDP.

Ukrainian law: domestic law

Merchant Shipping Code of Ukraine (1995) applies to:

- the seagoing vessels upon their sailing in the seas or inland waterways;
- the inland vessels upon their sailing in the seas as well as in inland waterways if they call the foreign seaport or in the cases of collisions with seagoing vessels and in the cases of salvage.

Ukrainian law: domestic law

Statute of Internal Water Transport of the USSR, adopted by the Decree of the Council of Ministers of USSR on 15.10.1955 №1801;

Extremely outdated act. Does not regulate liability and its limitation.



PROBLEM: There are no domestic legal acts which specifically regulate liability in inland navigation for inland vessels which sail only in inland waterways and do not call foreign seaport (s).

When is Ukrainian law applicable?

Contractual claims:

- Ukrainian law chosen by the parties;
- If no choice of law:
 - ✓ Contact of carriage of goods: carrier is Ukrainian;
 - ✓ Charterparty: charterer is Ukrainian etc.



When is Ukrainian law applicable?



Collision in Ukrainian inland waters/territorial sea.

Unless: both vessels fly non-Ukrainian flag.

NB: Parties can choose the law of the court (lex fori).

When is Ukrainian law applicable?



Collision/damages in Ukrainian inland waters/territorial sea.

NB: Parties can choose the law of the court (lex fori).

When do Ukrainian courts have jurisdiction?



Contractual claims

Parties choose Ukrainian court in a contract;

If no choice of court:

- Place of defendant (BA).





When do Ukrainian courts have jurisdiction?

Non-contractual claims (damages)

Dispute can be filed to Ukrainian court on claimant's discretion, inter alia, in cases:

- Defendant is registered on the territory of Ukraine;
- Damages are caused on the territory of Ukraine;
- If the vessel or other property of the defendant is located on the territory of Ukraine.





Ukrainian law: problematic aspect

Problems re. application of law (MSCU is not applicable) can arise in case of:

- Damage to goods carried by the inland vessel which does not call foreign seaport in inland waterways of Ukraine (if no rules in the contract of carriage and if BA is not applicable);
- Collision between two inland vessels which do not call foreign seaports in inland waterways of Ukraine;
- Collision between the inland vessel which does not call foreign seaport and the pier/bridge in inland waterways of Ukraine.

NB: If Ukrainian statutory law (other than MSCU) will be applicable – no liability can be limited.

Liability basis in Ukrainian law

CONTRACTUAL (carriage of goods)



MSCU: Strict, with certain exclusions:
Force-majeure;
Navigational fault;
Improper marking/packing;
Hidden defects etc.
NB: contracts which contradict – invalid.
BA: basically, the same.

DELICTUAL



FAULT

Limitation of liability: contractual

MSCU:

Invoice value of the goods

If no invoice value: 666,67
SDR (EUR 756) per package or
2,0 SDR (EUR 2,27) per kg

BA:

500 CHF (EUR 404) per
package or 0,15 CHF (EUR
0,12) per kg.

NB: If MSCU is applicable – BA
limitation can not be applied,
as it is lower than in MSCU
Direct prohibition in MSCU

Limitation of liability: delictual (MSCU)

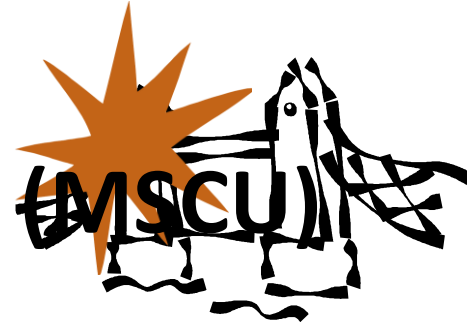
(a) Loss of life or personal injury:

(i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

- for each ton from 501 to 3,000 tons, 500 Units of Account;
- for each ton from 3,001 to 30,000 tons, 333 Units of Account;
- for each ton from 30,001 to 70,000 tons, 250 Units of Account; and
- for each ton in excess of 70,000 tons, 167 Units of Account;





Limitation of liability: delictual (MSCU)

(b) in respect of any other claims:

(i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

- for each ton from 501 to 30,000 tons, 167 Units of Account;
- for each ton from 30,001 to 70,000 tons, 125 Units of Account; and
- for each ton in excess of 70,000 tons, 83 Units of Account.

NB: Application of limitation of liability rules of MSCU

General rule:
applies to vessels
which
Ukrainian

Foreign vessels:
limitation liability
of the
of the flag

Dispute in Ukrainian court:
If the foreign law provides
for lesser limits – limits in
MSCU shall apply.

Breaking through the limitation of liability

**Contractual liability
(carriage of goods):**

Deliberate damage;

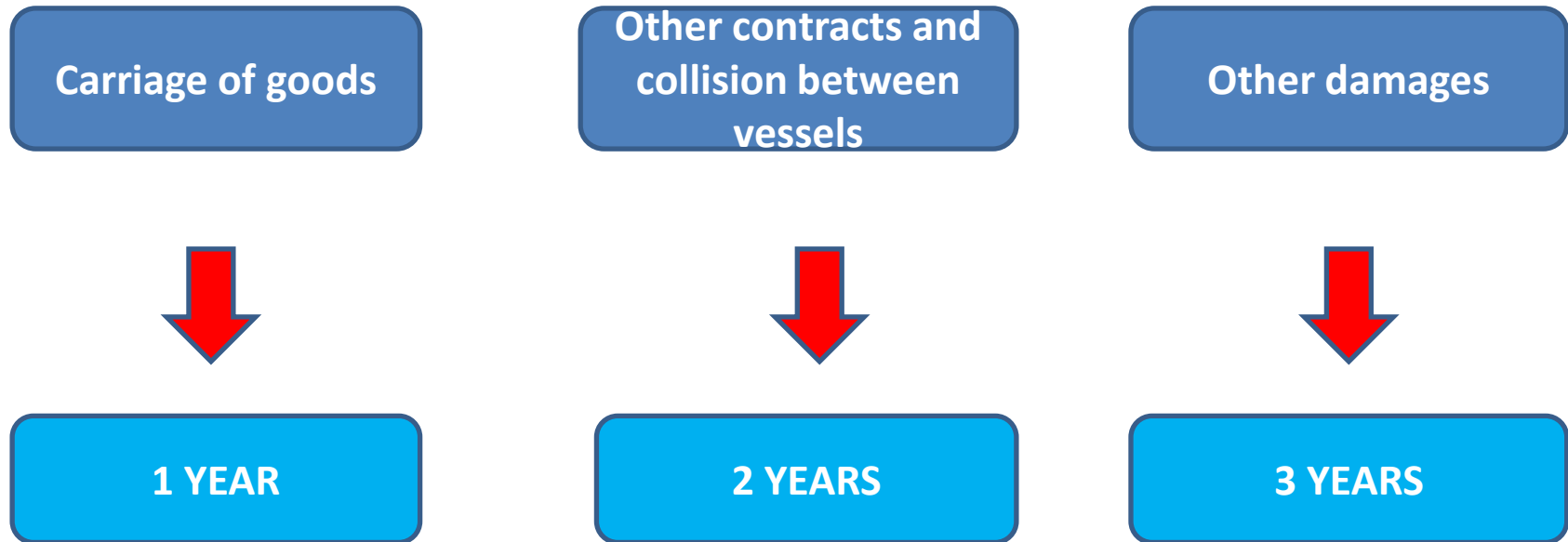
Gross negligence
(recklessness).

Non-contractual liability:

Deliberate damage;

Gross negligence
(recklessness).

Ukrainian law: time-bars



Thank you for your attention!





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