

LIMITATION OF LIABILITY CROSSING THE BORDERS

A FRENCH – GERMAN APPROACH

Introduction

Position of the problem

- **Common Rhine Border in the middle of the river (accord Paris 13.04.2000)**
- **Different legal regimes in France and Germany for the limitation of liability, though on the Rhine the German principle of a fault liability applies**
- **In Germany CLNI, in France CLNI not ratified**
- **Adding to this point the application of the local law of Alsace Moselle**

Introduction

Insofar we shall tackle the following points as explanation and solutions

I/ Geography

II/ History ?

III/ Jurisdiction

IV/ Applicable Law

V/ FRANCE : border and borders

VI / de lege ferenda

I. Geography

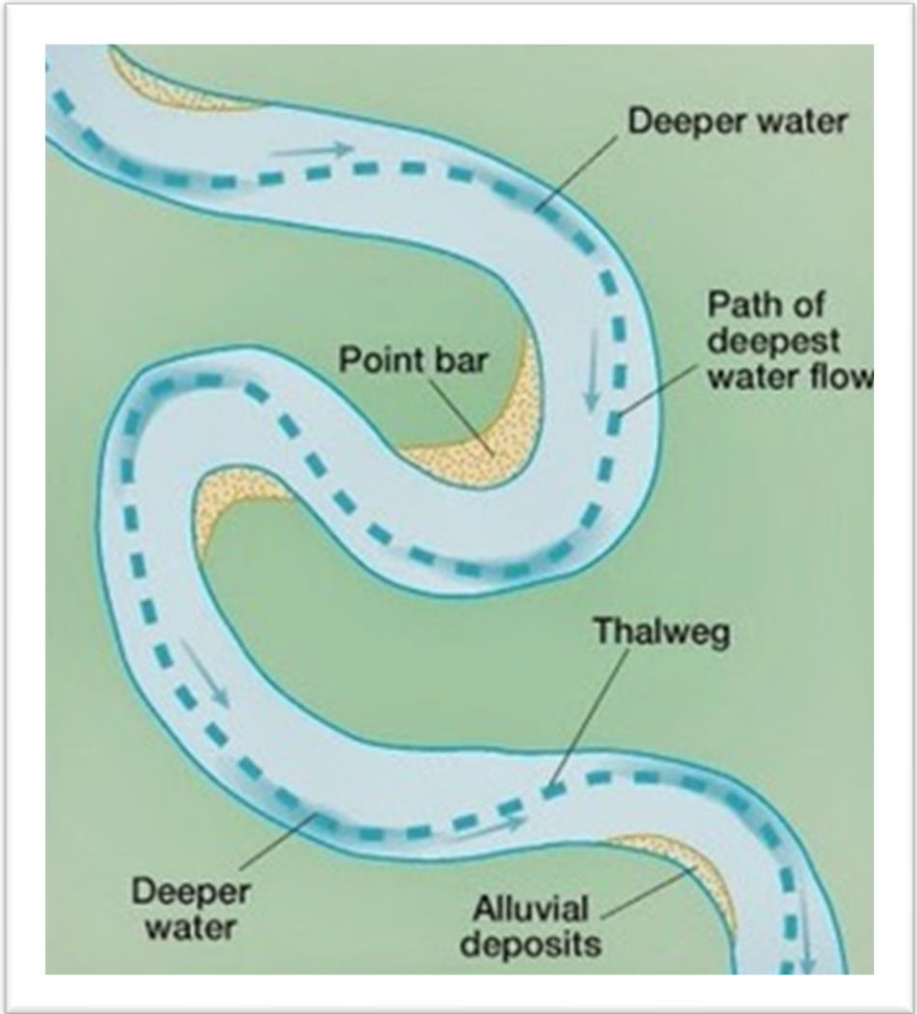
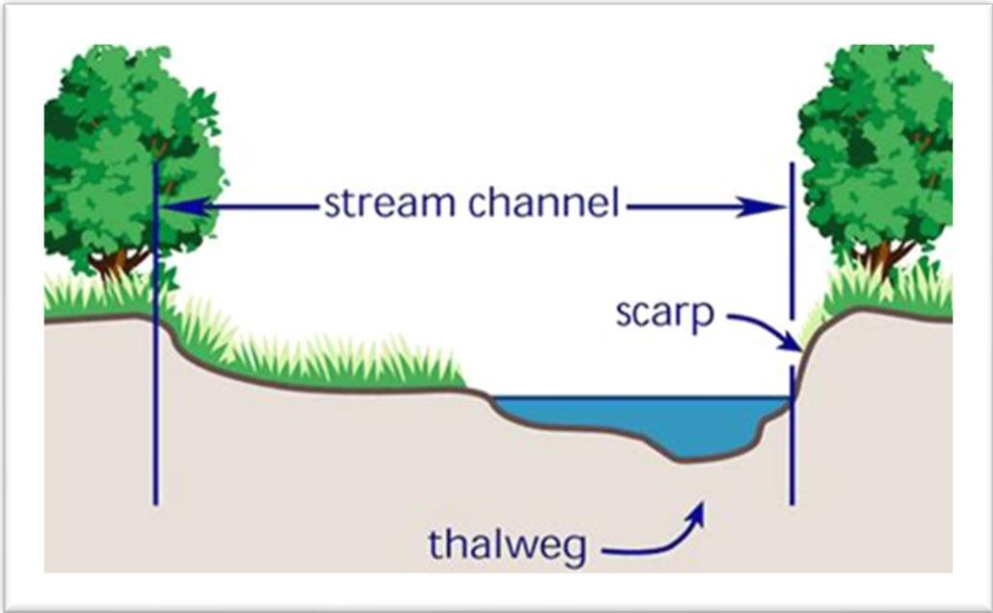


Border between France and Germany

Upper Rhine

“Since, in accordance with the border treaty between the German Reich and France of August 14, 1925, in this section of the river the German-French border is determined by the Thalweg, i.e. by the uninterrupted sequence of the deepest soundings, and therefore the fairway runs alternately to the left and right of this Thalweg ...”

CA CCNR, 2.3.1977, n° 67 P - 2/77



II. History

1801: Treaty of Lunéville (F)

- 1804: Code Civil
- 1808: Code de Commerce

1871: “Reichsland Elsaß-Lothringen” (D)

- 1895: BinSchG
- 1900: BGB

1919: Treaty of Versailles (F)

- 1924: - Act introducing the civil law
 - Act introducing the commercial law

1956: Moselle Convention

**1960: Geneva Convention on the
Unification of Certain Rules
Relating to Collisions between
Inland Navigation Vessels**

1988/

**2012: CLNI (ratified by Germany,
not ratified by France)**

	maximum limit of liability	
	F BinSchG 1895	D CLNI 2012
<u>Vessel</u> 1.500 t, 750 KW, 100.000 SDR <u>Damage</u> 600.000 SDR	100.000 SDR	825.000 SDR

III. Jurisdiction

Article 7 Brussels I^{bis} Regulation

[Special jurisdiction]

A person domiciled in a Member State may be sued in another Member State:

...

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur

...

Article 67 Brussels I^{bis} Regulation

[Union instruments for specific matters]

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments.

Article 9 Brussels I^{bis} Regulation

**[Special jurisdiction in matters relating to
Maritime liability]**

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

Article 35 Mannheim Act

In criminal cases (Article 34 I), the competent Rhine navigation court shall be the one in whose district the offence was committed; in civil cases, the court in whose district the payment had to be made (Article 34 II a) or in which the damage was inflicted (Article 34 II b, c, c).

Article 35^{bis} Mannheim Act

If, in the case referred to in article 34, para. II.c, the harmful events have occurred in the territories of two riparian States, or if it is impossible to determine in which territory they occurred the court which has been seized alone or which is first seized shall have jurisdiction.

IV. Applicable Law

Article 4 Rome II Regulation

General rule



(1) Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

(2) However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

(3) Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

§ 5m BinSchG

§§ 4 to 5I shall apply irrespective of the law applicable under private international law if, at the time of the event giving rise to liability

1. the ship for which liability is to be limited was navigating in German waters or any other waters subject to the Strasbourg Convention of 27 September 2012 on Limitation of Liability in Inland Navigation (CLNI 2012) ...

VII/ FRANCE : BORDER - BORDERS

- **Duality of French law regime and conception**
- **Regime on the inland waterways**
- **And Regime on the Rhine**

V/ FRANCE : BORDER – BORDERS

No limitation of liability unlimited liability as application of law of liability, either in tort or contractual

Reminder : Article 1242 Code Civil:

« one is not only liable for the damage caused due to one's act, but also due to the acts of persons one is responsible for or caused by the objects under one's custody. »,

Strict liability,

Liability for goods under custody (Sachhaftung)

Exoneration of liability due to force majeure

INLAND WATERWAYS –

Rhine and international part of the Mosel

- **L 4471-1 Code des Transports- Law June 1924 and June 1968 for the**
- **Application of the German Binnenschiffahrtsgesetz of 1895 in its ve**
per 11.11.1918

**remained in force after WWI in order to maintain legal unity on the
part of the Rhine**

BORDER - BORDERS

INLAND WATERWAYS – Rhine and international part of the Mosel

- **Application of Principle of “Exekutionshaftung” - execution of the claim by the creditor only up to the value of the ship and freight after accident**
- **Reminder –historically 3 main systems for global limitation**
 - **System of abandonment,**
 - **system of limitation to the execution of claim,**
 - **system based on the size of the vessel**

VI / SOLUTION DE LEGE FERENDA

- **Ratification of CLNI Convention**
- **Creating the uniform regime of owner's liability**
- **Unfortunately no news yet**