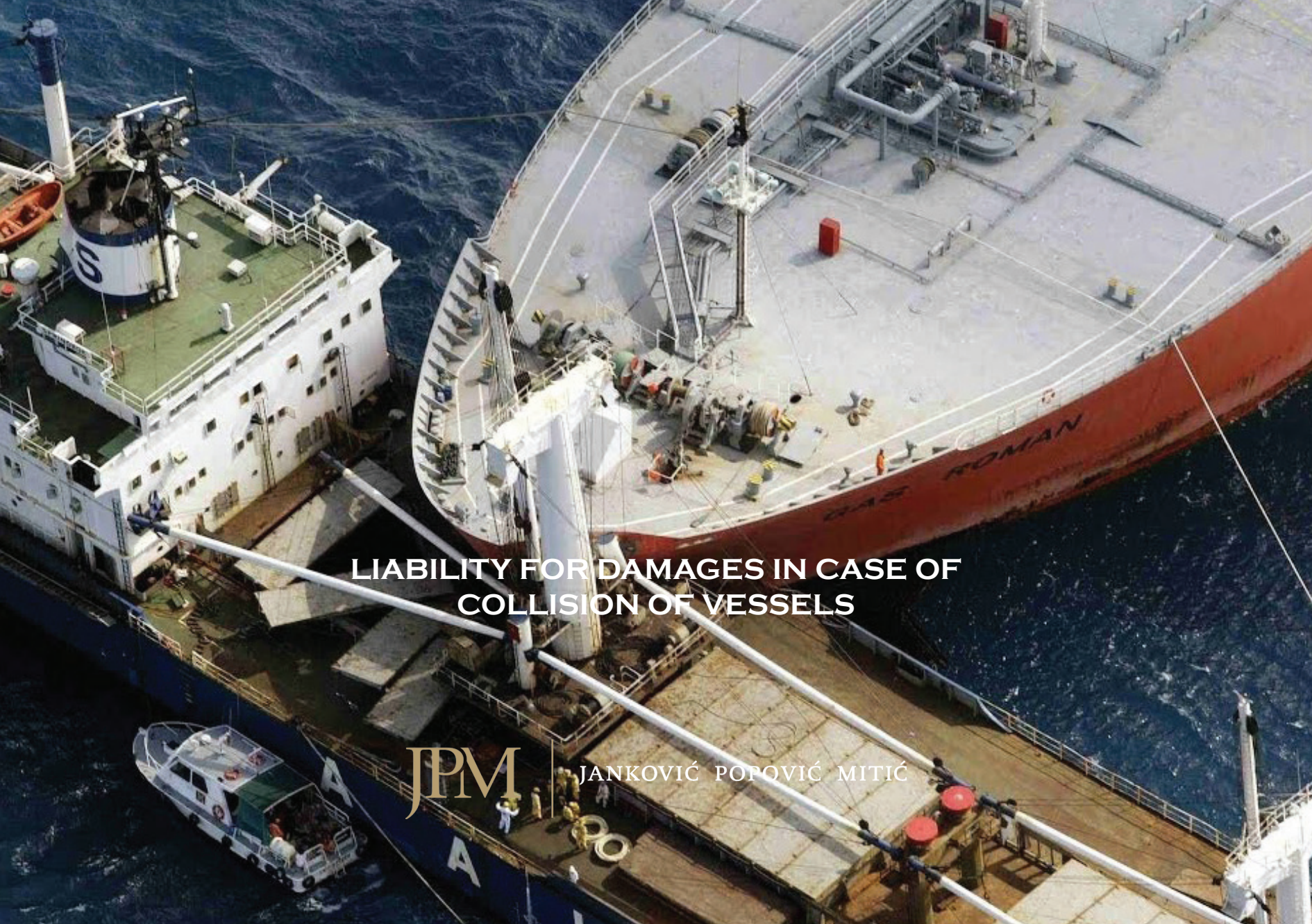


# LIABILITY FOR DAMAGES IN CASE OF COLLISION OF VESSELS

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Autors: Djordje Novčić, Partner and
Janez Vončina, Senior Associate
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## INTRODUCTION

Liability for damages, resulting from collision of vessels, is a subject-matter, regulated by Act on Merchant Shipping („Official Gazette of RS", Nr. 96/2015 and 113/2017 – Other Act, hereinafter referred to as „ZTD").

Although it represents lex specialis, ZTD does, with respect to liability for damages in cases of shipping accidents, not differ from the general principles of liability for damages, regulated by the Act on Obligations („Official Gazette of SFRJ", Nr. 29/78, 39/85, 45/89 – Decision of CCJ and 57/89, „Official Gazette of SRJ", Nr. 31/93 and „Official Gazette of SCG", Nr. 1/2003 – Constitutional Decrees, hereinafter referred to as „ZOO").

The aforesaid, above all, indicates that establishing of obligation to compensate damage is in each and every case dependent on fulfilment of all of the required conditions of delict respectively non-contractual liability, i.e., existence of the injuring and injured party, damage, inadmissible (unlawful) action, committed by the injuring party, causal relation between such an action and the damage, as well as guilt of the injuring party.

Nevertheless, specifics, codified by ZTD, are not insignificant.

## LIABILITY OF A SHIP

Article 589 of ZTD stipulates that liability in case of collision is on the ship that caused collision, whereby liability of a ship refers to ship owner, lessee, charterer, operator or manager. ZTD does, therefore, in fact provide liability of a person, who was in possession of the ship at time of collision.

Given that a ship shall always be commanded by its commander with an eventual assistance of a pilot, the question of ship's liability shall actually come down to the question, whether the commander's and/or pilot's action was appropriate in a given situation. In other words, it seems that ship's liability for damages is, as a matter of fact, a special form of liability for other, meaning that the ship's possesor shall be exculpated from the liability, should it turn out that the commander respectively pilot did under concrete circumstances act as he/she must have acted.

## LIABILITY OF TWO OR MORE SHIPS FOR SAME DAMAGE

Should damage be caused by two or more ships, each ship shall be held liable to the extent of its gulit (Article 591 of ZTD). This provision of ZTD envisages a principle of distributed liability of ships, the actions or omissions of which led to (same) damage.

Thus, evey ship shall be obliged to compensate only part of the damage caused, namely, to the extent, corresponding to the share of its guilt (for instance, a ship, whose contibution to the damaging event amounts to 30%, shall be obliged to compensate 30% of damage caused).

Regime of liability of more injuring parties for same damage, as stipulated by ZTD, is special in relation to general regulation of ZOO, which provides joint and several liability for damage, caused by more parties, acting together (Article 206 of ZOO). ZTD also differs from the principle of joint and several liability, when the extent of liability/guilt of individual participant cannot be established. In such a case, liability for damages shall be distributed equally.


## GROUNDS FOR EXCULPATION

A ship shall not be held liable for damages, in case damage is caused by coincidence or force major, or the cause for collision cannot be established. In those cases the damage shall be born by the injured party her-/him-/itself (Article 591, Paragraph 2 of ZTD). These grounds for exculpating from liability for damages, as provided by ZTD, are confusing, taking into consideration the principle of guilt respectively the principle of subjective liability, stipulated by ZTD on the other hand.

When the injuring party is to be held liable pursuant to the principle of guilt, then he/she/it shall, in accordance with general principles of law on torts, be excused from liability, should he prove that damage was not brought about as a consequence of his guilt.

However, in view of grounds for exculpation, as provided by ZTD, the question is, whether only absence of guilt shall be sufficient for the injuring party not to be held liable for damages (but instead the injuring party shall also need to be in a position to prove the existence of coincidence/force major respectively non-existence of causal relation between his action and damage). In other words, ZTD seemingly attempts to combine/unite principles of subjective and objective liability, thus creating confusion by its interpretation.

## LIABILITY FOR LOST PROFIT

Article 592 of ZTD stipulates compensation of lost profit in case of collision of ships, regardless of the grade of guilt.

This provision of ZTD is also confusing, since it, under application of a contrario argument, raises a question of relevance of the grade of guilt (intention, gross negligence, slight negligence) in respect of simple loss. ZTD does, namely, not provide any special provision with regard to simple loss.

Thus, interpretation of ZTD may take two directions – that the grade of guilt is in this case not relevant (however, the issue here would be, why does ZTD specially envisage irrelevance of the grade of guilt in respect of lost profit), or yet, that the grade of guilt is relevant here (in which case the issue would be, which grade that is, given this is not defined by the law).

## LIMITATION OF A CLAIM

As opposed to the general regulation of ZOO, ZTD in its Article 597 provides a special time bar for the claim to compensate damage, caused by collision of ships. The time bar is two years upon collision.

## FACIT

In respect of liability for damages, brought about by collision of ships, ZTD provides numerous specifics in comparison to the regulatory framework of ZOO.

On the other hand, these very specifics are the reason for certain vagueness and doubts, which at the time are not yet clarified by court practice and legal doctrine, and shall thus definitely pose a challenge to legal profession in future.