

Which maritime law applies?

National Law, the law of the registered flag of the vessel or the law of the passport of the skipper?

The basics of maritime law to help you find out which national rules apply



The question which law applies in the case of yacht accidents is highly relevant and is often argued about in sailor circles. A question which definitely is not easy to answer in general. Depending on the case, the answer can be highly complicated if, for example, two boats with skippers, which are citizens from two different countries, on ships with different flag jurisdictions, collide with each other in international waters. Cases in which several fields of law may apply.

While the determination of the relevant jurisdiction of the applicable national law in inland navigation is relatively easy, the situation is much more complex in the maritime sector. Which national law is to be applied is not always immediately easy to recognize as this depends on various factors.

Note: International Private Law (IPL) is subject to constant changes due to it being derived from The European Common Law. The following examples all occurred around 2009 and might not be applicable today. Therefore, they are not to be seen as legal advice but only as guidelines of orientation. Therefore, each case is to be considered individually according to the respective regulations of the specific country.

In matters relating to the law of a foreign state the international private law (IPR) regulates which law is to be applied. In German legislation, IPR is in Chapter 2 of Part 1 of the Introductory Act to the Civil Code (EGBGB) in Articles 3-46.

In the case of unauthorized actions in principle the following applies:

- the “**Crime Scene Principle**”, i.e. “claims from tort are subject to the law of the state in which the restitutor has acted” (Art. 40 (1), first sentence, EGBGB, regard to foreign law).
- In the case of *activity offenses*, the law of the state is applied, in which the injury act was committed or the result of the action occurred.
- In the case of *crimes of omission*, the place where the injuring party should have acted at the latest under the applicable law. With cross-border offenses, the claimant acc. to Art. 40 (1) 2nd sentence EGBGB can choose instead of the law of the state in which the injury act was committed, also the law of that state where the damage occurred.

In overview, two areas of activity can be presented as follows:

- area 1: within the national territory (inland waters, territorial waters - 12 nm zone):

As a general rule, claims based on unlawful acts are assigned to the law of the state in which the restitutor has acted. In the territorial waters of a state the respective national law is applied. That is, the crime scene principle applies both outside the ship as well as aboard the ship, the law of the flag state does not apply then.

- area 2: outside the national territory (high seas):

On the high seas the crime scene law is the law of the flag state. This means that a ship on the high seas is a "territory" of that state whose flag has to be shown. The principles of Art. 40 ff. EGBGB must be applied in the same way. In a collision for example, for the time being, the flag right of the injuring party is the applicable law (Article 40 (1), second sentence, EGBGB).

Exception:

Art. 40 (2) EGBGB ("... the person liable and the injured person had their habitual residence in the same state at the time of the liability event, the law of that state is to be applied ...") is an exception of the crime scene principle.

If the affected parties (i.e., the injuring party and the injured party) have their "habitual residence" in the same state at the time of a claim, then the law of the state where the common habitual residence (centre of life) is, applies.

To illustrate the complex arrangements of the above-mentioned areas, here are some practical examples:

Issue a)

Within the national territory (inland waters, territorial waters - 12 nm zone):

A damage event in Italian territorial waters on a ship under Croatian flag between a crew member (residing in Austria) and

Version 1, a damaged crew member (living in Germany). Italian law applies, Art. 40 (1) 1st sentence EGBGB.

Version 2, a damaged crew member (living in Austria). Austrian law applies, exceptions Art. 40 (2) EGBGB

Issue b)

Within the national territory (inland waters, territorial waters - 12 nm zone):

A damage event in Italian territorial waters on a ship under Croatian flag between a skipper (residing in Germany) as injurer and

Version 1, a damaged crew member (living in Austria) on a ship under Slovenian flag. Italian law applies, Art. 40 (1), 1st sentence

Version 2, a damaged crew member (living in Germany) on a ship under Slovenian flag. German law applies, exceptions Art. 40 (2) EGBGB. **Issue c)** outside the national

territory (high seas)

A damage event at high seas on a ship under Croatian flag between a crew member (residing in Austria) as injurer and

Version 1, a damaged crew member (living in Germany).

Croatian law applies acc. crime scene rule Art. 40 (1) 1st sentence EGBGB

Version 2, a damaged crew member (living in Austria). Austrian law applies, exceptions Art. 40 (2) EGBGB.

Issue d) outside the national territory (high seas)

A damage event at high seas between a ship under Croatian flag with a skipper (living in Germany) as the injurer and

Version 1, a damaged crew member (living in Austria) on a ship under Slovenian flag.

Croatian law applies acc. crime scene rule Art. 40 (1) 1st sentence EGBGB, Option by the injured party for Slovenian law acc. Art. 40 (1) 2nd sentence EGBGB.

Version 2, a damaged crew member (living in Germany) on a ship under Slovenian flag.

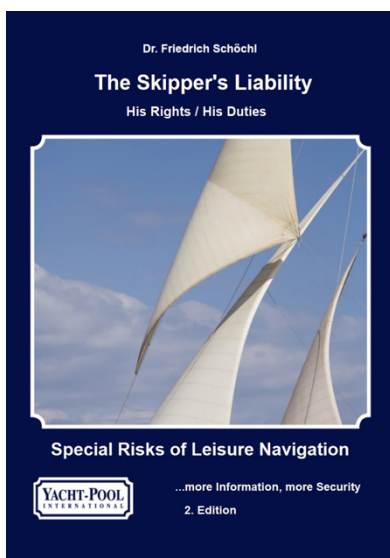
German law applies acc. exceptions Art. 40 (2) EGBGB.

The link to the crime scene or the prior common ordinary residence can be omitted in exceptional cases, if the damage according to the totality of the circumstances of the case have a much closer connection to the law of another country, § 41 Abs. 1 EGBGB (general clause).

That means the right is used which has e.g. a legal or actual closer relationship to the participants in connection with a debt relationship. A legal relationship would be e.g. a contract of carriage based on the close factual context in the performance of a contractual relationship. An actual relationship would be e.g. to start a holiday trip together.

Example: An Austrian tour operator charters a Maltese-flagged vessel of an Italian shipping company for international guests - Result: Even Austrian law might apply.

It should be mentioned that acc. to Art. 42 EGBGB (“... After the occurrence of the event, through which a non-contractual obligation has arisen, the parties can choose the right to which it is subject, (rights of third parties remain untouched ... ”) a subsequent choice of law is possible.



The parties can make a common choice after the occurrence of the damage with regard to the applicable law. Condition is, that the parties have reached a joint agreement. This agreement may also be oral, i.e. it does not have to be agreed in writing. It can also be in mutual agreement changed and then works back to the time of damage. This choice of law applies to all claims arising from the same damage event. Since several victims have the right to vote individually, due to reasons of practicability, one uniform solution is preferable.

The rights of a third party remain unaffected by this choice of law, i.e. he may choose his applicable law regardless of the agreement on the election of the other parties.

Find out more about legal questions in the book Liability of The Skipper – His Rights / His Duties! The English version is [now available on Amazon.com!](#)