



Shipowners' Global Limitation of Liability and the Conflict of Laws: International Regimes and Issues in Forum-Shopping

Barnabas W. B. Reynolds, Michael N. Tsimplis

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At present, three international conventions (one of which has been modified by many signatory states to produce a fourth regime), together with certain pre-existing national regimes, provide this entitlement to limit most types of private law liability arising in the ordinary course of the shipowner's activities. Limitation may be invoked by the shipowner in two principal ways: by way of a defence, or by commencing a limitation action, which latter normally involves constituting a limitation fund. Whether the shipowner should take the initiative and start a limitation action, or whether he or she should wait and use limitation as a defense, will depend on the choice of fora available. Significant differences among jurisdictions inevitably give rise to forum-shopping.

In the course of this book's practical explanation and discussion of shipowners' rights to limit their liability, the authors consider how the conflict of laws rules of various jurisdictions might be used by parties in international commerce to raise the most advantageous defense or select the most suitable tribunal to commence a limitation action. For each potentially applicable limitation regime, the book identifies the amount to which liability is limited and the tests that apply when a claimant wishes to challenge a shipowner's right to limit liability.

Among the issues brought to the fore are the following:

- right to the lowest limit versus the strongest protection of the right to limit;
- circumstances under which the ship against which the action is brought may be arrested and sold;
- when the shipowner's right to limit can be challenged and denied;
- action *in rem* for collisions;
- freezing injunctions; and ;
- direct action against an insurer.

The book also discusses various specific liability regimes that address damage suffered by passengers, damage to cargo interests, oil pollution damage from tankers, damage from bunker oil from non tankers, and damage caused by hazardous and noxious cargoes.

As an in-depth exploration and analysis of the differences between the various limitation regimes that provide shipowners with a global entitlement to limit liability--and the broader legal issues such limitation rights gives rise to--this book will prove invaluable to any party involved in shipping disputes. Lawyers representing either shipowners (and other parties with an interest in the ship's operations) or claimants will clearly identify the major issues related to the selection of the appropriate forum for the limitation of liability, including procedural details.

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