

Table of Contents

Outline Table of Contents	IX
Table of Contents	XI
Abbreviations	XVII
Introduction	1
Part 1 [Factual Situation and Legal Foundations]	5
A. The Classification of Vessels	5
I. The Concept of ‘Classification’	5
II. The Historical Development of Classification Societies	8
III. The Relevance of Classification Societies for the Maritime Industry ..	11
1. The Necessity of a Classification of Vessels.....	11
2. Marine Insurance and Classification Societies.....	13
3. The Norwegian Saleform and a Confirmation of Class.....	16
4. Charter Parties and Classification Societies	18
5. The Rules of a Classification Society.....	19
6. Marine Surveyors	21
7. Other Activities	21
IV. The Relevance of Classification Societies for the International Community	22
V. The International Association of Classification Societies (IACS).....	24
VI. Current Challenges for Classification Societies	26
1. The Dual Role of Classification Societies.....	26
2. Selling Safety in a Competitive Environment	29
3. Shipowners/Operators Have to Report Damage.....	34
4. Sub-standard Classification Societies.....	35
5. Current International Developments: Goal-based Standards.....	38
6. Classification Societies in Litigation.....	40
B. Private Operations and Public Functions in Detail.....	43
I. Private Operations	43
1. Contracts and Contracting Parties	43
2. Obligations of the Classification Society	46

3. The Contents of the Classification Certificate, the Confirmation of Class and the Register of Ships	49
II. Public Functions	50
1. The Agreement with the Flag State on the Delegation of Power and the Statutory Survey Contract with the Shipowner or Shipyard ..	53
2. Obligations of the Classification Society	54
C. Non-Delegable Duty of the Shipowner to Make the Vessel Seaworthy and Presumption of Unseaworthiness	55
Part 2 [Legal Analysis].....	59
A. Private Functions: The Protection of Contracting Parties	59
I. English Law.....	59
1. Liability for Breach of Contractual Duty	60
2. Implied Contractual Duty to Exercise Reasonable Care and Skill	64
3. Tort of Negligence	65
4. Exemption and Limitation Clauses	66
II. United States Law	69
1. The Applicable Law: Federal or State Law	69
2. Breach of Contract, Warranty of Workmanlike Performance and Tort Law.....	71
3. The Leading Precedents	72
a. The Great American Insurance Case	72
aa. The Facts	72
bb. The Verdict.....	73
cc. Case Comment.....	78
b. The Shipping Corporation of India II Case	81
c. The Sundance Case.....	82
aa. The Facts	82
bb. The Verdict.....	83
cc. Case Comment.....	87
d. The Interore III Case.....	90
e. Conclusion.....	94
4. Exemption and Limitation Clauses	96
III. German Law	99
1. The Legal Nature of the Contract.....	99
2. Liability for Breach of Contract	102
3. Tort Law.....	104
4. Exemption and Limitation Clauses	104
IV. Conclusion.....	105
B. Private Functions: Liability Towards Third Parties	105
I. English Law.....	105
1. Contractual Protection of the Third Party	106
2. Tort of Negligence	106
a. Mariola Marine Corporation v. Lloyd’s Register of Shipping (The “Morning Watch”)	111
b. The Marc Rich Case (The “Nicholas H.”).....	113

aa. The Facts.....	113
bb. The Verdict.....	115
(1) Direct Physical Loss.....	116
(2) Voluntary Assumption of Responsibility	117
(3) Policy Considerations: Insurance	117
(4) Policy Considerations: the Role of Classification Societies	118
(5) Policy Considerations: Regulations on the Limitation of Liability.....	118
(6) Conclusions.....	120
cc. Case Comment.....	121
(1) Reasonable Reliance	121
(2) Policy Considerations.....	122
(3) Consequences: to Whom Are the Societies Liable?.....	125
c. Reeman v. Department of Transport.....	126
aa. The Facts.....	126
bb. The Verdict.....	126
cc. Case Comment.....	129
d. Perrett v. Collins and Others.....	130
aa. The Facts.....	130
bb. The Verdict.....	130
cc. Case Comment: Fairness, Justice and Reasonableness to be Considered?.....	133
e. Conclusion: Marc Rich Reasoning to be Applied to All Cases?..	135
3. Tort of Deceit	137
a. Braginton v. Chapman and Others (The “Midas”)	139
b. Thiodon v. Tindall (The “Ibex”).....	139
4. The Effect of Disclaimers of Liability.....	140
5. Conclusion.....	141
II. United States Law.....	142
1. Contractual Right of Indemnity.....	143
2. Tort of Negligence	145
a. The Steamship Mutual Case	149
b. The Gulf Tampa Drydock Case	152
c. The Continental Insurance Case	153
d. The Psarianos Case.....	155
e. Again: The Great American Insurance Case.....	155
f. Conclusions	158
3. Tort of Negligent Misrepresentation	160
a. The Coastal (Bermuda) Case.....	161
b. The Somarelf II Case.....	162
aa. The Facts.....	162
bb. The Verdict.....	164
cc. Case Comment.....	165
c. Again: The Sundance Case	166
d. The Cargill Case	169

e.	The Otto Candies Case	171
aa.	The Facts	171
bb.	The Verdict	172
cc.	Case Comment.....	174
f.	§ 311 Restatement (Second) of Torts	177
4.	Strict Liability?	179
a.	Abnormally Dangerous Activities	179
b.	Liability for Defective Products	181
c.	Conclusion.....	186
5.	Tort of Fraudulent Misrepresentation.....	186
6.	The Effect of Disclaimers of Liability	187
7.	Conclusion	188
III.	German Law	188
1.	Implied Agreement to Provide Information (Konkludenter Abschluss eines Auskunftsvertrages).....	189
2.	Contract with Protective Effects Towards Third Parties (Vertrag mit Schutzwirkung zugunsten Dritter)	192
a.	Proximity of Performance (<i>Leistungsnähe</i>).....	195
b.	Interest of the Contractual Creditor (<i>Gläubigernähe</i>)	198
c.	Foreseeability (<i>Erkennbarkeit</i>).....	202
d.	Third Party in Need of Protection (<i>Schutzbedürftigkeit des Dritten</i>)	205
aa.	Recipients of a Confirmation of Class	206
bb.	Passengers.....	208
cc.	Crew Members	209
dd.	Insurance Companies.....	209
e.	Addendum: Incorrect Information by the Shipowner	210
3.	Culpa in Contrahendo	210
4.	§ 823 (1) BGB.....	213
a.	<i>Verkehrspflicht</i> : Surveying and Rule-making as a Potential Source of Danger	215
b.	Two <i>Verkehrspflichten</i> of a Similar Kind – Exoneration of One of the Tortfeasors?	222
c.	Technical Standards as the Relevant Standard of Care	223
d.	Other Prerequisites of § 823 (1) BGB	224
5.	§ 823 (2) BGB.....	225
6.	§ 826 BGB	225
7.	The Effect of Disclaimers	227
8.	Conclusion	229
IV.	Application of the Conclusions to Claims by Different Parties.....	230
1.	Claims by Recipients of a Confirmation of Class	230
2.	Claims by Persons Which have Consulted the Classification Certificate or the Ship’s Register	232
3.	Claims by Legal Subjects Which Have not Received Information ..	233
a.	Persons that Have Been Affected in Their Life or Health	233
b.	Legal Subjects that Have Sustained Other Damage	234

C. Public Functions.....	234
I. Liability under English Law	235
1. Claims by Private Parties	235
a. Liability of the Classification Society.....	236
b. Liability of the Crown for the Acts of the Classification Society	238
2. Recourse of the Flag State.....	239
II. Liability under United States Law	240
1. Claims by Private Parties	240
a. Choosing the Plaintiff: Whether to Sue the Classification Society or the U.S. Government	240
b. The Concept of Immunity.....	243
c. The Discretionary Function Exemption.....	245
2. Recourse of the Flag State.....	248
III. Liability under German Law	248
1. Claims by Private Parties	248
a. Civil Liability or State Liability for the Survey of Vessels	248
b. Preconditions of § 839 BGB.....	252
c. State Liability as a Subsidiary Liability.....	254
2. Recourse of the Flag State.....	255
IV. Excursus: Damage Caused by Both a Classification and Statutory Survey.....	256
Part 3 [A Convention on the Limitation of Liability of Classification Societies].....	259
A. The Limitation of Liability in Shipping	259
I. The History of Limitations	260
II. Cargo Limitations	263
III. Global Limitations.....	265
IV. Limitations as Regards Passengers.....	269
V. Limitations of Civil Liability for Oil Pollution Damage	271
B. Limitation of Liability under the Current System of Limitations.....	277
I. On the Application of Existing Limitation Regulations to Classification Societies.....	277
1. International Conventions	277
a. Cargo Limitations: The Hague/Visby and Hamburg Rules	277
aa. Interpretation of Servant, Agent and Independent Contractor in the Hague/Visby Rules	277
(1) Grammatical Interpretation	280
(2) Systematic Interpretation.....	280
(3) Functional Interpretation	281
bb. The Hamburg Rules.....	281
cc. Private Limitations under the Bills of Lading: Himalaya Clauses.....	282
b. Limitations by the LLMC.....	284
c. Limitations by the Athens Convention	287

d. Special Limitations: CLC and HNS Convention	288
aa. The CLC	288
bb. The HNS Convention	290
2. Regional Regulation: Directive 94/57/EC.....	291
3. National Regulation: USA	292
a. Cargo Limitations	292
b. Global Limitations.....	293
c. Special Limitations: OPA 1990 and CERCLA.....	293
4. CMI Model Contractual Clauses and Principles of Conduct.....	298
5. Conclusion	299
II. The “Estonia” Case – an Example of the Effects of the Current System.....	300
III. Conclusion.....	303
C. Justifications of a New Convention on the Limitation of Liability	304
I. Classification Societies as a Part of the Maritime Safety System.....	304
II. Insurance and Compensation.....	304
1. Insurability of Unlimited Claims Against Classification Societies ..	304
2. Should the Shipowner be Protected from Additional Insurance Costs?.....	306
III. Existence of a System of Compensation for Oil Pollution Damage ...	307
IV. Self-Protection of Classification Societies by Company Law	307
V. Liability and the Control of Old Vessels	308
VI. How Should the Interests be Balanced?	308
1. Prevention and Compensation.....	310
2. Economic Efficiency	312
3. Conclusion: Exemption, Limitation or Unlimited Liability?	315
D. Principles of a Convention on the Limitation of Liability	316
I. European or International Law?	316
II. Strict Liability?.....	318
III. Harmonised Basis of Fault Liability?.....	320
IV. Reversal of the Burden of Proof?	322
V. Basis of Limitation: Tonnage or Fees?.....	322
VI. Level of Limitations	323
VII. Interrelation with the Limitation of Liability of the Shipowner	327
E. The Limitation of Liability for Public Functions	328
F. Conclusion	329
Bibliography	331
Table of Cases	351
Table of International Conventions	365
Index.....	373