Contents

Chapter 1 Introduction .................................................. 1

Part I Maritime Accidents

Chapter 2 Maritime Accidents from a Legal Perspective ............ 7

A. Maritime Accidents and Marine Pollution ......................... 8

I. The 1969 Intervention Convention ................................ 10

1. The Requirement of Material Damage or Threat Thereto .......... 11

2. The Exclusion of Intent ............................................. 15

a) The Differentiation According to MARPOL .................... 15

b) Difficulties and Borderline Cases ............................... 18

II. The 1969 International Convention on Civil Liability for Oil Pollution Damage ...................................... 19

1. Events Covered by the Convention ............................... 19

2. Deliberate Pollution Under the CLC ............................. 20

3. Deliberate Pollution as a Reason of Exoneration ............... 22

III. The 1982 Law of the Sea Convention ............................ 23

1. Art. 221 UNCLOS .................................................. 23

2. Art. 211 para. 7 UNCLOS ........................................ 26

IV. Conclusion ............................................................. 27

B. Maritime Safety and the Protection of Life and Property at Sea ............................................................... 30

I. Safety of Ships ......................................................... 30

1. Maritime Casualties in the Framework of SOLAS ................ 32

a) The Requirement of Adverse Consequences .................... 33

b) Intent ................................................................. 36

2. Art. 94 para. 7 UNCLOS ........................................... 37

II. The Duty to Assist People in Distress at Sea .................... 40
Part II  Civil Liability Regimes

Chapter 3  Civil Responsibility Regimes and the Liability for Cargo Oil Pollution

A. Scope of Application as an International Regime
   I. Geographical Applicability
      1. Applicability of the CLC in Non-contracting States
         a) The Amoco Cadiz Case
         b) The Prestige Case
         c) Conclusion
      2. Is the CLC Part of the Domestic Law of Contracting States?
   II. The High Seas
   III. A “National Exception”?

B. Jurisdiction
   I. Judicial Venue
      1. Competent Court
      2. Authoritative Interpretation
   II. Recognition and Enforcement of Judgments
      1. Scope of the Recognition and Enforcement
      2. Exceptions to Recognition and Enforcement

C. Scope of Application
   I. Persistent Oil Carried as Cargo
   II. Ships

D. The Limitation of Liability and the Loss of the Right to Limitation
   I. The Shipowner’s “Personal” Act or Omission
   II. The Degree of Negligence and the Foreseeability of the Damage
   III. The Burden of Proof
   IV. Insurance

E. Overcoming the Channelling Provisions
   I. Claims Against Persons Outside the CLC Regime
      1. Crewmembers, Servants and Agents of the Owner
      2. Charterers and Managers
      3. Cargo Owners
      4. Classification Societies
      5. Shipyards
      6. Salvors
   II. Loss of the Channelling Benefit in Cases of Wrongful Behaviour
B. The Convention on Liability for Damage by Hazardous and Noxious Cargoes .............................................. 193

I. The Provisions of the HNS Convention ................. 194
   1. Geographical Scope of Application and Jurisdiction .................................................. 196
   2. Substances Covered ........................................... 197
   3. Definition of "Damage" ................................................................................. 199
   4. Strict Liability of the Shipowner .......................................................... 200
   5. Limitation in Time .................................................................................. 202
   6. The Limits of Liability ........................................................................... 202
   7. Contributions to the HNS Fund ......................................................... 204

II. Problems that May Arise with the Ratification of the HNSC .............................................. 206
   1. The Problem of the Relationship with Other Instruments .................................. 206
   2. The Practical Problems with Regard to the HNS Fund Contributions .................. 208
   3. Uncertainties in Costs ........................................................................... 208

III. Conclusion ......................................................................................... 209

C. Conclusion: Civil Responsibility for Environmental Pollution .............................................. 210

Chapter 5 Civil Responsibility Regimes for Passenger Claims .............................................. 217

A. The 1974 Athens Convention (PAL) ................. 220
   I. Scope of Application ........................................... 221
      1. Geographical Scope of Application .................................................. 222
      2. Claims and Contracts Covered .................................................. 225
      3. Jurisdiction ................................................................................. 228
   II. The Carrier’s Liability ........................................... 229
      1. The Notion of “Carrier” ................................................................................. 229
      2. Liability and Burden of Proof ........................................................................ 230
   III. Liability Limits ................................................................................ 233
   IV. Channelling and the Relationship to Consumer Protection Law .............................................. 235
   V. Relationship with Other Limitation Instruments .............................................. 239
   VI. Limitations in Time ........................................................................... 241

B. The 2002 Athens Protocol .................................. 242
   I. The PAL 2002 and the EU Regulation .............................................. 244
      1. The Rules on Jurisdiction, Recognition and Enforcement .................................. 245
      2. Geographical Scope of Application Under the EU Regulation .............................................. 247
   II. Liability Regime ................................................................................. 248
      1. Strict Liability for Shipping Incidents ........................................... 249
      2. Exoneration ................................................................................. 252
Part III  Jurisdiction and Conflict of Laws

Chapter 6  Jurisdiction

A. Judicial Jurisdiction in Public International Law

B. Legitimacy of Rules of Civil Jurisdiction for Maritime Torts

I. Domicile, Residence or Place of Business of the Defendant

II. Jurisdiction Based on the Subject Matter of the Claim

1. Forum Delicti in Maritime Torts
   a) Torts Occurring on the High Seas
      aa) Environmental Torts on the High Seas
      bb) Collisions
   b) Torts Occurring in the Exclusive Economic Zone
   c) Torts Occurring in Territorial Waters

2. Place of Employment for Maritime Labour Cases

III. The Venue of the Ship’s Arrest

IV. Domicile or Residence of the Claimant

V. Presence of the Defendant in the Adjudicating Country

VI. Conclusion

Chapter 7  Conflict of Laws

A. The High Seas

I. Offshore Installations, Cables and Pipelines on the High Seas

II. Damages Outside the Ship
   1. Solutions in English Law
   2. Solutions in French Law

C. Conclusion
3. Solutions in German Law .................................. 322
4. Solutions Under the Rome II Regulation ............. 322
5. Solutions in US Law ....................................... 326
6. Conclusion: In Favour of the Law of the Flag State ........................................... 328

III. Damages on or Directly Concerning the Ship .......... 331
1. The Distinction Between Shipboard and Outside Torts ........................................... 331
2. Solutions Under Domestic Legal Systems ............. 333
   a) Solutions in English Law .......................... 333
   b) Solutions in French Law ........................... 335
   c) Solutions in German Law .......................... 336
   d) Solutions Under the Rome II Regulation ..... 336
   e) Solutions in US Law ................................. 337
3. Conclusion ................................................. 341

IV. Environmental Damage on the High Seas ............ 342
V. Collisions on the High Seas ............................ 348

B. The Exclusive Economic Zone .......................... 357
I. Navigation ............................................... 357
II. Offshore Installations .................................. 361
   1. Incidents Outside of or Involving the Installation .......... 363
   2. Incidents on the Installation ........................ 368
C. Territorial Waters ....................................... 371
   I. Applicability of the Coastal State’s Laws in Territorial Waters ......................... 374
   II. Collisions in Territorial Waters ...................... 380
   III. Conclusion: Conflict of Laws in Territorial Waters ........................................ 384
D. Torts with Regard to Shipbuilding and Classification 386
E. Conclusion ................................................. 395

Chapter 8 Conclusions ...................................... 397

Bibliography ................................................... 401

About the International Max Planck Research School for Maritime Affairs at the University of Hamburg ............... 433