Greece

by
Kyriaki Noussia
Law School, College of Social Sciences and International Studies,
University of Exeter, UK

Zoi Krokida
Attorney at Law

&

Iro Moraiti
Attorney at Law

This monograph is up-to-date as of April 2016

2016

Wolters Kluwer
The monograph Greece is an integral part of Transport Law in the International Encyclopaedia of Laws series.
Kyriaki Noussia holds the position of Senior Lecturer / Assistant Professor in Law at the Law School, College of Social Sciences and International Studies of the University of Exeter UK, as of January 2016. Dr. Noussia is a Greek Attorney-at-Law admitted to the Athens Bar as a Greek Barrister and she is licensed to appear before the Supreme Court and the Council of the State (Conseil d’État). She is a graduate of the Law School of the National and Kapodistrian University of Athens (Greece) and of the Universities of Essex, UK (LL.M.) and Southampton, UK (Ph.D.). Dr. Noussia broadly speaking specializes in arbitration and in international commercial law including transportation and maritime law. In her legal practice she has focused on transportation law, (re)insurance law, arbitration law and energy/environmental law. In the past she has held numerous academic positions abroad, such as at the University of Hamburg, Faculty of Law and at the Max Planck Institute for Comparative and International Private Law in Hamburg, Germany (Alexander von Humboldt Research Fellow, 2007–2010), and at the Birmingham Law School, University of Birmingham, UK (C.S.E.T. Lecturer in Common Law, 2004–2007). In 2013, she was a Fulbright (Greece) Visiting Scholar at the Columbia University Law School, USA. Since 2010, she has also taught part time at the University of Piraeus and at the University of the Aegean. She is also a member of various associations and committees in the fields of international commercial law, arbitration law, international procedural law, insurance law, and transport law.
The Authors

Zoi Krokida is an Attorney-at-Law admitted to the Athens Bar as a Greek Barrister and she is licensed to appear before the First Instance and Appeal Courts. She is a graduate of the Democritus University Law School (Thrace, Greece) and the University of Freiburg, Germany (LL.M., Magister in Commercial Law). At the moment she is completing her Ph.D. in intellectual property law at the University of Basel Law School (Basel, Switzerland) for which she earned a Greek State Scholarship ranking her as a legal scholar with distinction. She was a Visiting Research Scholar at Max Planck Institute for Comparative and International Private Law in Hamburg and at the Swiss Institute for Comparative Law in Lausanne. Ms. Krokida completed several internships in EU Institutions (European Commission) as well as International Organizations (International Bar Association). She specializes in intellectual property law, private international law, and maritime law.

Iro Moraiti is an Attorney-at-Law (Athens Bar, 2014) and an Economics Major. While studying in Athens Law School, where she graduated with first class honours (top 1.5% of 2012 class), she committed herself to another field, that of Economics and Business Administration. She graduated from Paris XIII-Nord, Ecole d’ Economie et Gestion (B.A., 2012). She also holds two LL.M. degrees (Masters in Laws), from New York University (NYU) School of Law (2015) and Athens Law School (2013), focusing on corporate and public law, respectively. She was a Graduate Editor in New York University Journal of Law and Business. She has also interned and worked at law offices in Athens, such as professors’ Dellis-Yannakopoulos Law Firm (2013–2014) and Michalis Dimitrakopoulos Law Firm (2010–2011).
Table of Contents

The Authors 3

List of Abbreviations 11

General Introduction  
*Kyriaki Noussia* 13

§1. General Background of the Country 13


§3. Pipelines 14

Part I. Introduction  
*Kyriaki Noussia* 15

Chapter 1. Definition and Notions 15

§1. Maritime Law and Transport Law 15

§2. The Law of the Sea 15

Chapter 2. Main Sources of Transport Law 17

§1. Maritime Transport 17

§2. Road Transport 19

§3. Rail Transport 19

§4. Air Transport 19

§5. Multimodal Transport 20

Chapter 3. Jurisdiction and Courts 21
Table of Contents

Chapter 4. State Immunity and Transport Laws 22

Chapter 5. Transport Intermediaries 23

§1. THE SHIPPING AGENT 23

§2. THE FREIGHT FORWARDER 23

§3. REMUNERATION 23

§4. LIABILITY 24

Part II. Maritime Law
Kyriaki Noussia, Zoi Krokida & Iro Moratti 25

Chapter 1. The Ship 25

§1. DEFINITION AND LEGAL STATUS 25

§2. REGISTRATION AND NATIONALITY OF OCEAN GOING VESSELS 28

§3. ACQUIRING THE OWNERSHIP OF A SHIP 30

Chapter 2. Maritime Liens and Mortgages 33

§1. MARITIME LIENS 33

§2. CATEGORIES OF MARITIME LIENS 33

§3. PERSONS ENTITLED TO ENFORCE A MARITIME LIEN 34
   I. Subject to Enforcement 35
   II. Ranking 35
   III. Exercise of Maritime Liens 35

§4. SHIP MORTGAGES 36
   I. Categories of Ship Mortgages 36

Chapter 3. Master and Crew 38

§1. MASTER 38
   I. The Appointment of the Master 38
   II. The Public Functions of the Master 38
   III. The Private Functions of the Master 39
      A. The Master as the Representative of the Owner 39
      B. The Master as Representative of the Cargo 39
      C. The Master as Representative of the Crew and Passengers 40
Table of Contents

IV. Special Duties of the Master 40
V. Termination of the Contract and the Liability of the Master 40
VI. Maritime Employment Contract: Legal Nature and Recruitment 41

§2. THE CREW 41
   I. The Maritime Contract: The Duties of the Seaman and His Rights 41
   II. The Maritime Employment Contract: Termination 43

Chapter 4. Liability and Limitation of Liability in Maritime Law 44

§1. LIMITATION OF LIABILITY UNDER THE CPML 45
§2. LIMITATION OF LIABILITY UNDER THE LLMC 45
§3. LIABILITY OF THE SHIPOWNER FOR HIS ACTIONS AND ACTIONS OF HIS EMPLOYEES 46
§4. PERSONS ENTITLED TO LIMITATION OF LIABILITY 46
§5. SHIPS FOR WHICH THE LIMITATION OF LIABILITY CAN BE EVOKED 47
§6. CLAIMS WHICH ARE SUBJECTED TO THE LIMITATION OF LIABILITY 47
§7. CLAIMS EXCLUDED FROM THE LIMITATION OF LIABILITY OF THE LLMC 48
§8. PROCEDURE BY LIMITATION AND CONSEQUENCES 48

Chapter 5. Charterparties 49

§1. DEFINITION AND VARIETY OF CHARTERPARTIES 49
§2. THE STATUTORY PROVISIONS 49
§3. THE DUTIES OF THE SHIPOWNER 50
§4. THE DUTIES OF THE CHARTERER 51
   I. Up to the Start of the Voyage 51
   II. During the Voyage 52
   III. After the Voyage 52

Chapter 6. Transport under the Bill of Lading 54

§1. DEFINITIONS AND FUNCTION OF THE BILL OF LADING 54
§2. VARIOUS TYPES OF BILL OF LADING 54
   I. Bill of Lading ‘Received for Shipment’ 54
Table of Contents

II. Through Bill of Lading 55
III. Shipped Bill of Lading – House Bill of Lading – Master Bill of Lading 55

§3. THE HAGUE RULES-THE VISBY RULES 55
   I. National Incorporation 55
   II. Combined Transport Bill of Lading-Multimodal Transport 56
   III. The Delivery Order 56
   IV. Booking Note 57
   V. Sea Waybill 57

§4. CARRIER AND THE BILL OF LADING 57
   I. General 57
   II. The Description of the Goods at the Bill of Lading 57
   III. Jurisdiction Clauses 58
   IV. Immunities and Limitation of Liability 58
   V. Advantages and Disadvantages of a Bill of Lading 59

Chapter 7. Pilotage 60
§1. LIABILITY FROM PILOTAGE 61
§2. LIABILITY TOWARDS A THIRD PARTY 61

Chapter 8. Salvage and Towage 62
§1. REMUNERATION 63
§2. LIABILITY OF THE SALVOR 63

Chapter 9. General Average 64

Chapter 10. Collisions 66

Chapter 11. Marine Pollution 71

Chapter 12. Arrest of Ships 74

Chapter 13. Carriage of Passengers 76
§1. BEFORE THE VOYAGE 76
§2. DURING THE VOYAGE 77
§3. LUGGAGE 77

8 – Greece
Chapter 14. The Future Law – The Rotterdam Rules

Part III. Other Transport

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§1. Sources of Transport-by-Road Law</td>
<td>83</td>
</tr>
<tr>
<td>§2. Transport by Road – Legal Definition</td>
<td>83</td>
</tr>
<tr>
<td>§3. The Transport by Road Contract and Involved Parties</td>
<td>83</td>
</tr>
<tr>
<td>§4. Parties’ Obligations – Obligation to Pay the Freight</td>
<td>85</td>
</tr>
<tr>
<td>§5. Carrier’s and Transport Consignee’s Liability</td>
<td>86</td>
</tr>
<tr>
<td>§6. Carrier’s and Transport Consignee’s Exemption from Liability</td>
<td>87</td>
</tr>
<tr>
<td>§7. Carrier’s Liability Suspension</td>
<td>88</td>
</tr>
<tr>
<td>I. Unconditional Receipt of the Goods</td>
<td>88</td>
</tr>
<tr>
<td>II. Statute of Limitations</td>
<td>89</td>
</tr>
<tr>
<td>III. Applicable Law</td>
<td>90</td>
</tr>
<tr>
<td>§8. Documents Supporting the Contract of Carriage – Consignment Note – Bill of Lading – Ticket</td>
<td>92</td>
</tr>
</tbody>
</table>

Chapter 2. Transportation by Rail

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§1. The Legal Framework</td>
<td>94</td>
</tr>
<tr>
<td>I. Internal Transportations by Rail</td>
<td>94</td>
</tr>
<tr>
<td>II. The International Transportations by Rail</td>
<td>94</td>
</tr>
<tr>
<td>§2. The Conclusion of the Transport by Rail Contract</td>
<td>95</td>
</tr>
<tr>
<td>§3. Goods Consignor’s and Consignee’s Rights and Obligations</td>
<td>95</td>
</tr>
<tr>
<td>§4. Carrier’s Rights and Duties</td>
<td>97</td>
</tr>
<tr>
<td>§5. Carrier’s Responsibility</td>
<td>98</td>
</tr>
<tr>
<td>§6. Claims, Plaintiff’s Rights, Damages and Their Calculation</td>
<td>98</td>
</tr>
</tbody>
</table>
Table of Contents

§7. Exemption from Liability ........................................... 100

Chapter 3. Air Transport .................................................. 102

§1. The Legal Framework for National and International Transportation by Air .......... 102

§2. The Legal Titles for National Carriages ................................ 103

§3. The Parties in an Air Carriage Contract .............................. 103

§4. Parties’ Rights and Obligations ...................................... 105
   I. The Consignor’s Rights and Obligations .......................... 105
   II. The Consignee’s Rights and Obligations ................. 106
   III. The Carrier’s Rights and Obligations .................. 106

§5. Carrier’s Liability ..................................................... 107
   I. Passengers’ Carriage ............................................. 107
   II. Luggage Carriage ................................................ 107

§6. The Unconditional Receipt of Goods ................................. 109

§7. The Statute of Limitations ........................................... 110

§8. Jurisdiction of Courts ................................................ 111

Chapter 4. Multimodal Transport ...................................... 112

Selected Bibliography ...................................................... 115

Index ............................................................................. 121
List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.Civ.P.</td>
<td>Code of Civil Procedure</td>
</tr>
<tr>
<td>CAL</td>
<td>Code on Aviation Law</td>
</tr>
<tr>
<td>CIM</td>
<td>Contract for the International Carriage of Goods by Rail</td>
</tr>
<tr>
<td>CIV</td>
<td>Contract of International Carriage of Passengers by Rail</td>
</tr>
<tr>
<td>CMI</td>
<td>International Maritime Committee</td>
</tr>
<tr>
<td>CMR</td>
<td>Convention on the Contract for the International Carriage of Goods by Road (CMR Convention)</td>
</tr>
<tr>
<td>COTIF</td>
<td>Convention for International Carriage by Rail</td>
</tr>
<tr>
<td>CPML</td>
<td>Code of Private Maritime Law</td>
</tr>
<tr>
<td>CPublicML</td>
<td>Code of Public Maritime Law</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organization</td>
</tr>
<tr>
<td>LD</td>
<td>Legislative Decree</td>
</tr>
<tr>
<td>LLCM</td>
<td>London Convention of 1976 on the Limitation of Liability for Maritime Claims</td>
</tr>
<tr>
<td>MARPOL</td>
<td>Convention of 1973 on the Prevention of Pollution from Ships</td>
</tr>
<tr>
<td>MEPC</td>
<td>Marine Environment Protection Committee</td>
</tr>
<tr>
<td>OTIF</td>
<td>Organization for International Carriage by Rail</td>
</tr>
<tr>
<td>PD</td>
<td>Presidential Decree</td>
</tr>
<tr>
<td>TOVALOP</td>
<td>Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution</td>
</tr>
</tbody>
</table>
List of Abbreviations
General Introduction

Kyriaki Noussia

§1. General Background of the Country

1. Greece is one of the countries of south-eastern Europe and the southern most country of the Balkan Peninsula. Its population as per the latest Census of 2011 is officially counted as comprising of 10,815,197 permanent inhabitants. The country occupies an area of 131,957 km². Outside Greece there is a huge Greek diaspora throughout the world, estimated at 7,000,000 Greek ex-pats. The Modern Greek state was founded after the Greek Revolution of 1821. Greece is divided geographically into the following prefectures / regional units: Central Greece, West Macedonia, East Macedonia and Thrace, Central Macedonia, Thessaly, Ionian Islands, Western Greece, Attica, Peloponnese, North Aegean, South Aegean, Crete.

2. From 1833 to 1923 and again from 1935 to 1974 Greece was a Kingdom. Between 1923 and 1935 it has been a Republic and between 1967 and 1974 it was under the suppressed regime of a right-wing dictatorship (‘Junta’). After the fall of the 1967–1974 dictatorship in 1974 and since the referendum of 8 December 1974 it has been and is a Republic. The state functions as centralized and not as a federal state. The Constitution currently in force is that of 1975, as lately amended on 27 May 2008 by the Parliament, and as per the Constitution Greece is a presided parliamentary democracy. The institution of the President of the Democracy exists but his powers vested to him via the Constitution are very much limited and the supremacy of the powers belongs as per the Constitution to the Parliament. Greece is a sovereign state with popular sovereignty as its basis. Hence, all powers derive from and are exercised as per the will of the people and the nation, as these are being represented by the 300 elected members of the Parliament.

§2. Foundations of the Greek Legal System – Distinction of Commercial Law

3. The general routes of Greek law can be found in Roman law on the one hand and customary law on the other hand. The sources of Greek law are legislation and customs. Legislation entails the statutes enacted by the State, while customs are used less nowadays. A third source of law is, (as per Article 28 §1 of the Greek Constitution) the generally accepted rules of international law and also EU law.

4. Commercial law forms a special branch of law and is regulated by special legislation. Hence, special regulations apply on branches of commercial law, such as e.g., transportation law. In addition, the general law of contracts of the Civil Code applies to commercial law to the extent that the special rules of commercial law do
not supersede it as per the *lex specialis* doctrine which dictates that a special law surpasses a general law.

§3. **Pipelines**

5. Greece has signed a tri-partite Treaty re the transportation of oil, with Russia and Bulgaria, for the pipeline Bourgas-Alexandroupolis¹ and a bilateral Treaty with the (then) USSR for the provision of gas to Greece from the USSR² as well as a bilateral Treaty with Russia, known as ‘Southstream’.³ Greece has also signed bilateral Treaties with Turkey⁴ and Italy⁵ respectively, as well as a tri-partite Treaty with Turkey and Italy.⁶

---

Part I. Introduction

Kyriaki Noussia

Chapter 1. Definition and Notions

§1. Maritme Law and Transport Law

6. Maritime law is the generic term which refers to all aspects of law relating to ships. A large part of the canon relates to shipping contracts. Maritime law also encompasses both private and public maritime law and in its wider meaning is distinguishable from both. Private maritime law, whilst a branch of commercial law, is not strict commercial law, in that it contains aspects from private civil law. Because of its international character maritime law has greater similarities between legal systems than most other fields of law.  

7. Transportation law is the generic term which applies and refers to all aspects of transport of passengers or cargo either by sea (maritime law), rail, road, or air transport. In that sense transportation law encompasses all the elements of transportation as well as the case where multiple ways of transportation are used for different ‘legs’/ parts of a transportation (multimodal transport).

§2. The Law of the Sea

8. The term ‘the law of the sea’ encompasses the international and intergovernmental agreements regarding the rights and obligations of states to use and/or protect international waters. Greece has acceded to /ratified the following treaties:

– The Geneva Convention of 1923 for the international status of maritime ports which was ratified by Law 3904/1929.
– The Montreux Convention of 1936 on the status of the Straits which was ratified by Law 2/1936.
– The London Convention of 1954 ‘On the prevention of marine pollution by oil’, which was adopted by the 1976 Protocol (and was ratified by the Presidential Decree 81/1989).
– The 1958 Geneva Convention on the Continental Shelf, which was ratified by the Legislative Decree 1182/1972.
– The Brussels Convention of 1971 on the establishment of an International Fund for Pollution Compensation re mineral oils, which was ratified by Law 1638/
1986 and the 2003 Protocol, which was ratified by Law 3482/2006 and last amended by Law 4150/2013.


– The 1990 Convention for the preparedness, cooperation and tackle Pollution from oil, which was ratified by Law 2252/1994 and The Protocol of 2000, which was ratified by Law 3100/2003.

– The Cooperation Protocol for Prevention of Pollution from Ships in emergency, combating pollution of the Mediterranean (Valletta 2002), which was ratified by Law 3497/2006.


– The Maritime Labour Convention, 2006 (MLC, 2006). In so doing, Greece has become the 32nd ILO Member State and the tenth EU Member State to have ratified this landmark Convention, which sets out decent working and living conditions for seafarers while creating conditions of fair competition for shipowners.

– The Erika I Package of maritime safety legislation.

– The Erika II Package of maritime safety legislation.
Chapter 2. Main Sources of Transport Law

§1. MARITIME TRANSPORT

9. As per the general principles of law, as per Articles 1–3 of the Greek Civil Code, the sources of maritime law are primarily the maritime legislation and the maritime custom. These sources are equal. Hence, it can be said that the maritime custom is used not only to interpret and fill the gaps of the maritime legislation but also in order to abolish it. Complimentary sources of maritime law are the commercial laws, the civil laws and the civil law customs.

10. Hence, it follows that hierarchically the complimentary sources of maritime law are first the commercial laws (comprising of both the commercial legislation and the commercial customs) and then, secondly the civil laws (comprising of both the civil legislation and the civil customs). A huge ongoing discussion exists as to the hierarchy of the sources of maritime law in terms of the filling of the gaps in the interpretation of maritime law. This discussion also touches upon the issues of the peculiarity and the autonomy of maritime law. Regarding the special principles of maritime law such as average, or salvage the filling of the gaps in the interpretation of maritime law needs to be done by the maritime law per se via all of the available means of interpretation, and only after the exhaustion of all possibilities of such an interpretation as mentioned hereinabove, should there be a recourse to the sources of commercial and civil law. However, regarding the principles of maritime law which appear as an exception to the more general principles of law, such as the maritime lien, the transfer of ownership of the vessel in order to satisfy and secure a claim, it is easier to directly find recourse to the rules entailed in commercial or civil law.

11. To begin with, the maritime custom, as all customs is used only for the interpretation and the completion of the will of the contracting parties, when in a contract there are gaps or vagueness. However, even on the basis of the above spectrum, maritime customs, which are numerous, have a significant and special meaning. However, when the maritime law refers to the maritime customs, then those customs are being reduced to secondary sources of maritime law.

12. The general terms and conditions of maritime transactions, such as charter-parties and towage, when they are being drafted by the contracting parties, do not constitute a source of maritime law, but only contractual terms. However, if they are imposed directly via a legislative provision, then they also form part of the sources of maritime law.

13. The basic maritime laws which also form a source of Greek maritime law are the two laws, codified, which regulate accordingly, private and public maritime

law. Those apart, many other laws also regulate issues of maritime law and hence form sources of it. Not least, the international maritime relations are regulated under priority by the numerous international conventions, many of which have been ratified under Greek law as per the Article 78§2 of the Constitution.


15. The Code of Public Maritime Law (CPublicML) (Law Decree 187/1973) entered into force on 4 April 1974. It contains the provisions regulating private maritime law and has codified many earlier laws of public maritime law as well as including many new provisions in the second book on maritime commerce of the Commercial Code.¹² The CPublicML has undergone substantial criticism, as it either fragmentally regulates many issues of public maritime law (e.g., pollution of the marine environment) or does not regulate them at all (e.g., administrative control of marine accidents, fishing, shipping charges and rights).¹³

16. The Greek court decisions and the body of the science of maritime law per se do not constitute sources of maritime law. Because the courts decisions, i.e., the case law, do not formulate the law as such as in the common law system, under the Greek system of law, which belongs to the continental law family, although Court precedent plays a role in shaping law, it does not constitute a source of law per se in the same way it does under common law.¹⁴ Although continental law does not know ‘binding precedent’ as they are known in common law, case law acts as a secondary source of law. Hence, case law still plays an essential law in formulating the evolution of maritime law, since courts via their interpretation of the law and issuing of decisions often lead the legislator in law reforms. The same applies as to the science of maritime law.¹⁵

17. The second book on maritime trade of the French Commercial Code of 1807 (Code de Commerce) was in force in Greece unchanged from 1821 until 1910. In 1910, the Law ΓΨΙΖ (17/24 of April) titled ‘Law amending commercial law’, came into force and replaced the second book of the Code de Commerce. The Editors of Law. ΓΨΙΖ used also as their source both the 1882 Italian Civil Code, the Belgian and partly also the German law.¹⁶ The second book of the Commercial Law was in force until 1958, when Law 3816 of 26/28 February of this year titled ‘Law on the ratification of the Code of Private Maritime Law’ was adopted, which replaced the

---

aforementioned book. The modern Greek legislature followed the system of the so-called formal autonomy private maritime law.

18. Other sources of maritime law are provisions referring to maritime law and embedded in other legislation, such as Articles 834, 1749 of the Greek Civil Code and a large array of laws pertaining to maritime issues such as the following laws: ‘law on preferred mortgages on ships’, ‘law on the liability of the representative concluding in Greece an employment contract with a mariner’, ‘the law on the status – as per foreign law – of established shipping companies’, ‘the law on maritime registers,’ ‘the law on shipwrecks and salvage’, ‘the law on shipping companies’ (‘Shipping Companies Registry’), etc.

§2. ROAD TRANSPORT

19. The sources of road transport in Greek law are to be found in Articles 95–101 and 102–107 of the Greek Commercial Code of 1835 and in addition in Article 681 et seq. of the Greek Civil Code on contract law and contractual projects. The general provisions of the Greek Civil Code on bilateral contracts and legal actions are applied by analogy and hence form also an indirect source of road transport under Greek law. After the incorporation of the Convention on the Contract for the International Carriage of Goods by Road (CMR Convention) into Greek law via Law 559/1977 (as amended by Law 1533/1985) only internal road transportations, i.e., those conducted within Greece, are governed by the provisions of the Greek Commercial Code and the rest of the road transports are governed by the CMR Convention.

§3. RAIL TRANSPORT

20. The sources of rail transport in Greek law are to be found in Article 1 paragraph 10 of the Legislative Decree 424/1962 on the unification of state rail networks, and in the Ministerial Decision of the Ministry of Transportation ‘on the Regulation of Rail Transport’, No 4/30-9-1968 (published in the Governmental Gazette, FEK B’ 497). The above Ministerial Decision regulates all rail transport (passenger, luggage, cargo) which is conducted within Greece.

§4. AIR TRANSPORT

21. The source of Greek air transport law, as far as internal air transportation is concerned – is the Code of Air Transport Law as this has been ratified by Law 1815/1988, which is regulating the transportation of goods. Another source is – as per the

EC Reg. 889/2002 – is the International Convention of Montreal 1999 (incorporated into Greek Law by Law 3006/2002) regarding the regulation of liability for passengers and luggage. EC Reg. 261/2004 is a source for internal and international air transport as far as overbooking, cancellation or delay in air transport is concerned.


§5. MULTIMODAL TRANSPORT

23. There are no binding legal instruments specifically governing multimodal transports in Greece. There has been a proposal to use by analogy the provisions of the CMR Convention on multimodal transport. In addition, parties may opt by mutual consent or by Convention) to adopt the Rules of the International Chamber of Commerce that are generally applied by international road hauliers.

Chapter 3. Jurisdiction and Courts

24. There is no specific maritime jurisdiction in Greece and no specific dedicated maritime courts. The jurisdiction of ordinary civil courts include:

(a) differences of private law, since the law does not have to admit other courts;
(b) voluntary jurisdictional cases that the law has admitted to them;
(c) cases governed by public law that the law has admitted to them.

25. The provision of paragraph 3 of Article 51 of Law. 2172/1993 determines the maritime disputes within the jurisdiction of the ordinary civil courts. The provisions, 12, 4, 5, 6, 7, 8 of the same article stipulated the establishment of maritime disputes sections which were constituted within the Piraeus Court of Appeal so as to hear the maritime disputes of the prefecture of Attica.

26. International subject matter jurisdiction of the Greek Courts is established, when, according to the Greek Code of Civil Procedure (C.Civ.P.) there is national jurisdiction either in virtue of a legal transaction (Article 33), or a tort (Article 35), or an estate (Article 40), or the general national jurisdiction of Greek courts, which is based on the legal establishment of the defendant (Article 22).

27. As for the latter, it is worth mentioning the distinction between the actual establishment and the one stipulated in the shipping company’s laws of incorporation. It is widely held by the Courts that there is personal jurisdiction of the Greek courts so long as the actual establishment, that is the real centre of decision-making of the company, falls within Greek territory. Even if the legal establishment of the company, as declared in its laws of incorporation, is in Greece, but its actual management lies abroad, then Greek courts do not acquire the authority to hear the case ipso facto. They can, nonetheless, do so, in virtue of another ground of personal jurisdiction for the said shipping company.\footnote{20}
Chapter 4. State Immunity and Transport Laws

28. In Greek law state immunity to ships is assigned as per the United Nations Convention on the Law of the Sea (1982) (UNCLOS) articles, which was introduced into Greek law by Law 2321/23-6-1995. As it is commonly known, according to the Law of the Sea, ships are distinguished into two broad categories: state and private or merchant. Furthermore, state ships are identified either as government ships, engaged in any sort of public service, such as the supply of the lighthouses or as warships.

29. As per Article 29 of the UNCLOS, a warship means ‘a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline’ 21 Hence, the warships and the government ships operated for non-commercial purposes are entitled to sovereign immunity while using their right to innocent passage through the territorial sea and/or the contiguous zone of another State. On the other hand, government ships that are operated for commercial purposes are completely immune from the jurisdiction of any other State than the flag State, only while on the high seas.

30. As an exception to the above-mentioned, subsection A of the Convention, as well as Articles 30 & 31, cover the right of the coastal State to require the warship to leave its territorial sea immediately, in case of disregard to requests made to the latter for compliance with the coastal State’s laws and regulations; they also cover the flag State’s liability vis-à-vis the coastal State for any damage caused by the first’s warships or government ships.

Chapter 5. Transport Intermediaries

§1. The Shipping Agent

31. The shipping agent is an intermediary playing a crucial role in the maritime transportation. He is a freelancer with a registered seat, who professionally and upon remuneration conducts agency work related to the maritime operation and shipment. The Greek law stipulates via Presidential Decree (PD) PD 229/1995 and PD 427/1995 provisions of public law character for the operation of the profession of shipping agent. As per the above Presidential Decrees, the use of a shipping agent is compulsory as far as passenger, car ferry and tuck carrying ships are concerned. The above Presidential Decrees refer to shipping agents for vessels and not for cargo. The legal gap in Greek law as far as the relation of the shipping agent with the shipping company are concerned, is covered by the analogous application of provisions in commercial and civil law and more specifically, the provisions of the Articles 648 et seq. and 681 et seq. of the Greek Civil Code, on contracts and the provision of Article 713 of the Greek Civil Code on legal mandate. In addition the PD 219/1991 and the PD 312/1995 apply. Due to the fact that the shipping agent performs professional work of agency related to the maritime commerce and transportation, he is deemed to have a professional activity of commercial character and nature and hence he is deemed to be a merchant under Greek law, as per Article 1, of the Greek Commercial Code. The legal relation of the shipping agent and his client is categorized in Greek law as a contract entailing features of lease or hire services.

§2. The Freight Forwarder

32. The above should not lead to a confusion of the legal nature of the shipping agent with that of the freight forwarder. The latter is also a freelancer, he and is deemed to be a merchant under Greek law as per Article 1 of the Greek Commercial Code, however he is not an agent, for he only acts as an intermediary and is not involved in the formation of the contract between the contractual parties, but merely put them into contact. In contrast, the shipping agent forms and concludes the contract as an agent of the assignor who has entrusted him to act as his agent. In case the freight forwarder also concludes the contract between the contractual parties, he is then deemed to perform the tasks of the shipping agent and is legally treated as such.

§3. Remuneration

33. The shipping agent is entitled to recover his expenses which have occurred in the course of the performance of his agency work, as per Articles 721, 722 of the Greek Civil Code on the mandate, as well as his remuneration, usually in the form of commission for the agency work he conducts. The commission is directly linked
to the volume and number of contracts concluded as per Article 3 of the PD 219/1991 and Articles 648, 653, 654 of the Greek Civil Code.

§4. LIABILITY

34. The shipping agent is not liable against third parties, for, he only represents his assignor and hence is not directly contractually bound with the third party. He is only liable towards third parties for tortious liability, as per Articles 914, 919 of the Greek Civil Code and in case where his legal capacity exceeds the limits of the representative power assigned to him, as per Articles 231, 234 of the Greek Civil Code. In the case where the shipping agent is liable in tort, the liability is joint and several with the assignor, as per Articles 922, 926 of the Greek Civil Code.
Part II. Maritime Law
Kyriaki Noussia, Zoi Krokida & Iro Moraiti

Chapter 1. The Ship

§1. Definition and Legal Status

35. A ship is characterized as an object in law, both in terms of an economic view approach, since it is a goods which is receptive to use and economic exploitation, and in terms of a legal view, since all the legal conditions for its classification as such are met. It differs from other objects in that although it is subjected into rights established thereon or in connection to it, however the latter are special legal relations. The ship is placed in the centre of the legal relations arising from the operation of a shipping company. As an object, the ship is individualized because although legally speaking it is categorized as an object, it resembles to a natural person for it moves, is subjected to risks, and is destined to be ‘lost’. Elements that add characteristics of a natural person to this object are its’ name, which can be acquired already from the shipbuilding stage, its nationality which is associated with a certain flag and its’ ‘seat’ which matches that of the registered port. A ship can, inter alia, be a commercial ship, a naval war ship, a fishing ship, a rudder ship, a towing ship etc.

36. Based on the adoption of the CPML and the CPublicML a structure is only regarded as a ship for the purposes of the above Codes, provided that it fulfils the following conditions:

- As per Article 1 of CPML ‘A Ship, is any vessel of no less than ten net register tons intended to navigate at sea by its own means of propulsion’. The first requirement is that the structure should have the capacity of at least 10 tons. Hence, the vessel should be a hollow thing and with capacity of at least 10 tons. A registered ton is a means of measurement of capacity.
- The ship must also be capable of movement with its own power. Further, it must have its own means of propulsion in order to navigate. Although barges, light-houses do not fall under the description of a boat, tugs and fire tenders are included.
- The movement in the sea and not in lakes or inland waters excludes hydroplanes from the category. Submarines and flying boats come into the category of boats.

22. Article 947 Greek Civil Code.
24. I. Rokas, Introduction to Greek Private Maritime Law, 10 (Sakkoulas 2010).
The condition that a ship should navigate with a profit motive in order to be considered as a ship is not included in Article 1 of CPML. Nevertheless, such a distinction between merchant and non-merchant ships is based on the legal structures of joint shipownership, simple ownership, operation without ownership and state-ownership regarding transport or research reasons.  

Finally, a ship should be intended to navigate not for temporary voyages.

However, the CPublicML in Article 3 gives a broader definition, acknowledging that a ship is a 'boat construction designed for the transportation of people or goods, tugs, lifeboats, trawlers, pleasure boats, scientific research or other purposes'. Hence, ships are not only considered for commercial reasons, but also for scientific reasons such as exploration or maritime studies.

Ships that do not fall under the category of Article 1 of CPublicML, are referred to in the Code as 'navigable vessels'. These navigable vessels are subject to the provisions of Article 1 of CPublicML regarding the captain and the crew, the freight, ship collisions, marine insurance and the secure of creditors' interests.

An exception to the above are large drilling platforms or petrol storage hulls, which are considered as ships, excluding the application of the Article 1 of CPublicML provisions concerning the employment and obligations of the master and crew as well as the provisions of the CPublicML concerning the maintenance of the ship’s documents.

Law 468/1976 states that marine installations and floating structures regardless of their size are subject to certain provisions of Article 1 of CPublicML such as the ship ownership, mortgages, seizure and arrest and the auction of ships.

As far as floating structures (Article 4 CPublicML) are concerned, the opinion is divided: firstly, the combination of Articles 1 and 2 of CPublicML indicates that floating structures are intended to provide a certain service of executing a project, when one of the ship’s characteristics is present. On the one hand it is assumed that floating equipment can be considered as a ship (Article 3 of CPublicML). Some of the CPublicML and the Civil Law provisions are applied by analogy. The provisions entailed in Article 1 § 2 CPublicML can be applied to floating structures only if they navigate for profit. Hence, the floating equipment which complies with the above but has capability lower of 10 cores or no means of propulsion or no destination to move can be considered as a ship. However, this view is rejected as dangerous and arbitrary.

As per Article 1 of CPML, as ship is characterized any vessel of no less than 10 net register tons intended to navigate at sea by its own means of propulsion.

---

27. Article 3 of the CPublicML.
Floating structures intended to provide a certain service or execute a project, which do not possess one or more of the elements of the ship's notion, are classified as floating structures other than ships (e.g., boats, towed barges, floating drills). Some of the provisions of the CPML apply to them (Article III). Floating structures of more than 500 net register tons or of more than 1,000 tons of displacement are equated to ships as regards their regulation and hence the provisions of the first, second, eighth, ninth and tenth title of the CPML (except the provisions of Article I II of the CPML), the provisions of the Law Decree 3899/1958 concerning preferential ship mortgage and the provisions of the C.Civ.P. concerning arrest and seizure of ships are also hereinabove applied by analogy.50

43. The ship needs to be registered in the shipping registry (Article 2, I of the CPML, Article 6, I of the CPML), may fly the Greek flag (Article 10 of the CPML), is given a name (Article 6, III CPublicML) and has a certain capacity and dimensions being evidenced by official measurements (Article 21 et seq. CPublicML). The ship's link to a certain jurisdiction is confirmed by the award of that state’s nationality to the ship. The conditions under which Greek nationality is awarded to a ship are substantial and formal, Article 5 – as replaced by Presidential Decree 11/2000 – CPublicML, Article 6 CPublicML). Ships registered in the Greek registry and those that bear a temporary nationality certificate, fly the Greek flag (Article 10 CPublicML). The flag as an external element links the ship to a legal jurisdiction. Consequently, the real rights of a ship (ownership, pledge and mortgage) are governed by the law of the state whose flag the ship flies (Article 9 CPML). As per the prevailing view under Greek law, maritime liens are rights of real nature on a ship and hence are governed by the law of the flag. Their ranking depends on the seizure against the ship and is therefore governed by the lex fori.31 Ships under construction fall under the above mentioned category of marine installations and floating structures provisions and restrictions.

44. When it comes to the legal nature of ships, there is no clear legal definition in the CPML. It is often mentioned as a 'thing of rights and uses'.32 As ships are considered moveable objects (Article 987 Civil Code), the law has not equated ships with real property. However, the provisions regarding the real property are applicable due to the financial power and prestige of a ship. Provisions of arrest and seizure (Article 992 of the Greek C.Civ.P.), of preferential mortgages and liens (Articles 195–205 CPML) as well as registration in a special book, the shipping registry (Articles 2–8 CPML) are also applicable. The provisions of Article 1036 of the Greek Civil Code for the acquisition of a ship from a non-owner do not have any application.

32. I. Rokas, Introduction to Greek Private Maritime Law 10 (Sakkoulas 2010).
45. A Ship is also a complex thing and is composed of constituent and accessory parts. Article 953 of the Greek Civil Code defines components as those things which contribute to the ‘ability of the ship to move without altering the substance or purpose thereof’. More precisely a component is ‘that which cannot be removed without damage to it or to the main part’. For instance boilers, helm, helices, hearths of a ship, motors for motorboats and rudders are included.

46. Accessory parts according to Article 957 of Greek Civil Code are destined to serve the financial function of the ship. More precisely this part ‘that whilst accessories are not a constituent part of the main object, they have been designed to be placed in a particular position on the main object, and contribute to its use’. Such accessory parts are life boats, compasses, auxiliary motors, navigational aids, radar, telegraphic machines, anchors, and shipping documents.

§2. REGISTRATION AND NATIONALITY OF OCEAN GOING VESSELS

47. The registration of a vessel in a registry is considered the most important action in order to establish its link with the owner state. Greece has adopted the traditional system of keeping a national book of registry. The status of registration can be established only after the fulfillment of certain conditions set by the relevant state. Registration is classified in four categories: the registration of vessels which have capacity under 10 register tons, the registration of first-class vessels which have capacity between 10 and 60 register tons, the registration of second-class vessels with capacity over 60 register tons and the registries of second-class sailboats with capacity over 60 register tons.

48. The nationality of a vessel indicates its link with the owner state. In most Greek legal texts the definitions ‘nationality’ or ‘citizenship’ are used, although the first one is recognized as the right one in order to specify the bond of a ship with its state.

49. As per Article 5 of CPublicML, as this has been modified via the Presidential Decree 11/2000 the substantial condition for the nationality of a vessel relates to the element of Greek nationality. Only natural persons with Greek nationality or Greek legal entities i.e., Greek companies or members of other European countries or members of countries that belong to the European Economic area can request Greek nationality for a vessel. Moreover, the appointment of a representative or guarantor is required and the appointment of an administrator, who similarly must be established in Greece. Furthermore, those who apply for a Greek nationality for their vessels should at least hold 50 percent in the share capital of

---

33. A. Kiantou-Pambouki, Maritime Law I 60–63 (Sakkoulas 2005).
34. A. Kiantou-Pambouki, Maritime Law I, 64 (Sakkoulas 2005).
35. After the decision of European Court of Justice, Decision C-62/96, see V. Murray, European Court Opens up Greek Ship Registry, BIMCO Review 1999.
36. Article 5 § 3 CPublicML.
37. Article 5 § 2 CPublicML.
the ownership of the vessel (Article 48 of the EC Treaty). Legal representatives and management should also operate in Greece. Finally, if the ship seeks to be recognized as a Greek one, the company must have its seat as well as operate from Greece.\textsuperscript{38} Provisions concerning the passenger ships are not entailed to the PD.

50. As per Article 6 of the CPML the formal condition under which Greek nationality is awarded to a ship is by its entry in the Shipping Register, kept at a Greek port or consular authority (Article 6 CPubML). Then, the document of the entry is published by the national authorities. And thereafter the ship can fly the Greek Flag (Article 10 CPubML), have a name (Article 6 III CPubML), a certain capacity under the official provisions of Article 21 et seq. CPubML and all the rights and liabilities (ownership, pledge and mortgage) under the Greek jurisdiction (Article 9 CPML). It can also operate in coastal areas of Greece and enjoy all the privileges included in Article 11 of the CPubML. In case of war Greek ships can be seized by enemy states.\textsuperscript{39} Maritime liens in Greek Law are thus rights of a real nature of a ship and hence the law of the flag governs their existence and content.

51. The former Article 5.1 of the CPubML did not secure the Greek interests, without giving the alternative to the ship owners to change their foreign flags to Greek ones. After the ratification of Emergency Law 2687/1953 ‘Concerning the Income and Protection of Foreign Capital’, ships with foreign flag with capacity more of 1,500 tons were given the permission to change their flag due to the protection of foreign capital.\textsuperscript{40}

52. The loss of the Greek nationality of the ship is related with the real nature of the ship. As per Article 16 of the CPubML a ship may lose its Greek nationality when the conditions under Article 5 CPubML are not met. The situation where a ship is non-capable of propulsion or where it is a complete loss, constitute valid reasons that may justify the loss of the nationality. The absence of the ownership requirements would also lead to the loss of Greek nationality. For instance, when the ship no longer belongs anymore to a Greek citizen or Greek company by at least 50 percent in the share capital. Another case of loss is the transfer of the ownership of over 50 percent of the share capital in a non-EU country.\textsuperscript{41} Hence, the ship is no longer entitled to the Greek nationality and is deleted from the national shipping registry following decision by the Minister of Mercantile Marine.

53. Furthermore, there are some restrictions concerning the sale of ships abroad. These include the transfer of shares of Greek ownership without the approval of the four-fifths (4/5) of the creditors, the transfer of 1 percent or less of the ownership from a Greek ship to a non-Greek one, the transfer of a mortgaged ship without the


\textsuperscript{39} I. Rokas, \textit{Introduction to Greek Private Maritime Law}, 14 (Sakkoulas 2010).

\textsuperscript{40} I. Rokas, \textit{Introduction to Greek Private Maritime Law}, 15 (Sakkoulas 2010).

\textsuperscript{41} I. Rokas, \textit{Introduction to Greek Private Maritime Law}, 16 (Sakkoulas 2010).
approval of the mortgage lender. In times of war, the Mercantile Marine Minister must give his permission for a sale of Greek ship to a non-Greek.\footnote{I. Rokas, *Introduction to Greek Private Maritime Law*, 16–17 (Sakkoulas 2010).}

54. Greek ships which are registered as foreign capital as per Article 13 of the Legislative Decree (LD) LD 2687/1953, may belong to foreign legal entities if the latter are owned by more than 50 percent in their share capital by Greek citizens, and the latter needs to be confirmed by an official letter stating so and being issued by the Union of Greek Shipowners. After the entry of the ship in the register, the competent port authority shall issue in writing a document namely the ‘certificate of nationality’. This document is kept by the master always on board. Only ships that are registered as Greek ships can fly the Greek flag. It is also possible to have a temporary certificate of nationality – of restricted duration and validity – which can be issued by the Greek Consulate or the consular port authority, before the registration of the ship in the Greek register of ships.\footnote{I. Rokas & G. Theocharidis, *Maritime Law*, 29 (Sakkoulas 2015).}

§3. ACQUIRING THE OWNERSHIP OF A SHIP

55. The modes of acquisition of ownership of a ship are categorized in those having source in general law provisions and those who are based in specific provisions, either of the private or public maritime law.\footnote{I. Rokas & G. Theocharidis, *Maritime Law* 33 (Sakkoulas 2015).} The means by which a ship can be acquired are divided into original and derivative ways as well as via the provisions of private and public law:

1. Confiscation of the ship because of committing an offense, which carries confiscation as an ancillary penalty.
2. Fall of the ship or else capture of an enemy or neutral ship by naval forces which then declared it as ‘good prize’. This is an original mode of acquisition which derives its sources in public maritime law.
3. Receipt to the Greek State of ownership of a ship that sank in Greek coastal sea, as per Article 201 of the CPubML. This provision has now been repealed and has been replaced by the provisions of Law 2881/2001. As per Law 2881/2001 a new procedure has been established concerning the acquisition of a sunken ship, which prescribes the restoration by the shipowner *in natura* of the previous condition and only of the shipowner does not comply, there follows a restoration by the competent authority at the expense of the shipowner, unless the latter is either impossible or very expensive and in such a case what happens is disposal of the ship wreck in a publicly conducted open tender procedure. This is an original mode of acquisition, which is under the resolute condition of non-timely lifting and removal of the wreck by the owner.\footnote{I. Rokas & G. Theocharidis, *Maritime Law* 33 (Sakkoulas 2015).}
4. Abandoning of the insured ship to the insurer, provided there has been a declaration of abandonment effected to the insurer and provided that there has
been occurrence of some of the so-called large risks as per Article 281 CPub-
licML. This is a derivative mode of acquisition.

(5) Acquisition of the ship in the case of a auction of the ship. This is a deriva-
tive mode of acquisition.

(6) Acquisition of the ship via the disposal of the share of ownership of a
co-shipowner to the other(s). This is a derivative mode of acquisition.\textsuperscript{46}

(7) Acquisition through shipbuilding. Typically, shipbuilding begins with a con-
tract whereby one person undertakes for a consideration which is required, to
construct a ship. As per Article 4 of the CPML in order to enter a ship into
the shipping Register one must disclose the name and the place of the ship-
yard, the name and nationality of the person who ordered the shipbuilding,
the name of the ship, its size, its capacity and its means of locomotion. The
CPublicML with regard to the shipbuilding provisions refers to the provi-
sions of the Greek Civil Code for leasing, contractual projects, which shall
apply accordingly and by analogy, except otherwise agreed, except for the
Articles 683\textsuperscript{47}, 693\textsuperscript{48} and 695\textsuperscript{49} of the Greek Civil Code.

(8) Contractual Transfer. The mode of contractual transfer is the most common
way of ship acquisition. As per Article 6 of the CPML, in order for a transfer
to be effective the following requirements should be fulfilled:
– the transferor must have the ownership;
– the transferor must have the legal capacity as per the law;
– a written agreement should be made;
– the agreement should be reasonable;
– the agreement should have a legal causal justification (e.g., sale, gift \textit{inter
vivos} or by cause of death);
– the agreement should be entered into the Shipping Register;
– the agreement should not be forbidden by law.

(9) Acquisition by succession. As per Article 8 of the CPML it is possible to enter
an agreement to transfer the ownership of assets upon the satisfaction of the
condition of the death of the owner / donator (transfer of ownership / dona-
tion due to death) (Article 1192 Greek Civil Code), and the acceptance of
such legacies may also concern a ship (Articles 1193–1195 Greek Civil
Code).

(10) Acquisition by adverse possession. As per Article 292 of the Greek Civil
Code and in accordance with Article 1043 of the Greek Civil Code a pos-
sessor of a ship who possesses it acting in good faith, becomes the owner of
the ship after three years of uninterrupted possession. In case of the absence

\textsuperscript{46} I. Rokas & G. Theocharidis, \textit{Maritime Law} 34–35 (Sakkoulas 2015).
\textsuperscript{47} ‘When it comes to construction contract work, in case of doubt, if the material is necessary for this
purpose to grant the contractor shall apply for the sale, and if the grant the employer shall apply the
provisions of the contract.’
\textsuperscript{48} ‘The claims of the employer because deficiencies of project shall be barred, when ten years since it
became the receipt, if this is for buildings or for other constructions otherwise lapse in six months
in this limitation shall apply depending on Articles 555 (2) to 558.’
\textsuperscript{49} ‘For the requirements of the contract the contractor has a legal lien on movable property of the
employer, manufactured or has repaired, provided that they are in possession of.’
\textsuperscript{50} I. Rokas, \textit{Introduction to Greek Private Maritime Law} 21 et seq. (Sakkoulas 2010).
of a title, the ownership is acquired after uninterrupted possession for ten years.

(11) Public auction. In public auctions, transfer can be compulsory either under Article 992 of the C.Civ.P. or in certain cases, such as the surrender of the ship after creditor’s request. (Article 103 of the CPML).

(12) Surrender of the Ship to the Insurer. As per Article 281 of the CPML, in case the costs of salvage or repair exceed three-quarters (3/4) of the value of the ship or when the ship is irreparable, the owner can upon giving a three-month notice surrender the ship to the insurer.

(13) Share disposal. As per Article 20 of the CPML, when a co-owner is unable to service his debts, he may surrender his shares to the other co-owners. As per Article 20 of the CPML, the co-owner can also sell his shares.

(14) A particular method of ownership, for which there are plenty of opposed views in Greek legal theory is that of ownership through leasing. Although leasing is commonly practiced abroad, in Greece as per the provision 1665/1986 the application of this type of acquisition in ships and floating structures is excluded.

(15) Another method of acquisition is joint ownership. Articles 20 & 21 of the CPML govern the issue in derogation of the Greek Civil Code. All decisions concerning the common interest of joint owners are bound to the majority.

51. Article 284 of CPML.
52. I. Rokas, Introduction to Greek Private Maritime Law, 21 et seq. (Sakkoulas 2010).
Chapter 2. Maritime Liens and Mortgages

56. Maritime Liens and Mortgages have been regulated in the Greek Maritime Codes (CPML, CPublicML) and in the Greek Commercial Code. All of the provisions concerning Liens and Mortgages are contained in the Legislative Decree 3899/1958 as consolidated after the Convention for the unification of certain rules relating to the maritime liens and mortgages of Brussels in 10 April 1926.

57. Articles 205–207 CPML provide terms for Maritime Liens. Articles 195–204 CPML govern Ships Mortgages. The Brussels Convention of 10 April 1926 was enacted into Law by the LD 3899/1958 relating to the maritime claims. Another Brussels Convention regarding the protection of rights for ships under construction amended this Convention. This Convention is enacted by the LD 45700/1966.

§1. MARITIME LIENS

58. A maritime lien is defined as the right of the creditor upon the vessel or floating structure or freight. This right offers the creditors the power of preference in case of ranking privileges or the power of prosecution in case of a ship transfer or freight’s assigned to third parties. Greek Law limits the maritime liens and promotes the mortgage claims, highly supported by Greek shipping Society. They are divided into general and particular maritime liens. The general ones address the entire creditor’s property and the particular ones are focused on one specific object.

59. The ship and the floating structure become the objects of several obligations for the shipowner during their exploitation. Any creditors in question can be satisfied in priority over simple or preferential ship mortgages, and other creditors whose claims enjoy ranking privileges as per the general provisions, through the exercise of maritime liens.

§2. CATEGORIES OF MARITIME LIENS

60. The Maritime Liens can be grouped in four categories: The CPML secures four groups of claims through maritime liens (Article 205 I CPML), i.e., (a) legal costs incurred in the common interest of the creditors (e.g., costs of seizure against the ship), (b) claims arising out of contracts of employment between master and crew, including claims on basic wages, increments and allowances, claims on shipwreck, disease or labour accident as well as charges of the seamen’s pension fund.
upon the master and crew engagement, as well as remaining dues and charges owed to the seamen’s pension fund (Article 1 XX of the LD 87/1969), (c) expenses and remuneration on account of assistance at sea and salvage of the seized ship and (d) compensation owed to ships, passengers and cargo by reason of collision of ships.56

61. The first group entails the law costs due to the State as well as expenses in the common interest of the creditors; dues and charges on the ship; taxes and costs of watching and preservation of the ship. As far as the legal costs are concerned, as per Article 975 of the C.Civ.P, these are costs incurred in the common interest of creditors in order to preserve the ship during the process of sale and distribution. The legal costs also include the legal actions of seizure against a ship in order to obtain the judicial sale of a ship. Furthermore, light dues, consulate shipping dues, charges of anchoring, berthing, docking as well as other public taxes are also regulated via and included in the maritime liens. Pilotage charges are also included. The charges of supervision and preservation of a ship from the time it enters the last port are limited in the maritime claims.

62. The second group governs the claims arising out of the contract such as wages, allowances, medical reimbursements, claims on shipwreck (Articles 66–80 CPML). The contributions, based on the contract of the seamen, such as social insurance contributions of the Master and the Crew due to the Seamen’s Pension Fund, of the Capital of Seamen’s Unemployment and Disease, of the Mercantile Marine Welfare Fund, ease as well as of the Capital of Marine Education give rise to a maritime lien.

63. The third group limits the remuneration for sea rescue and the contribution at the salvage of a seized vessel into maritime claims. The salvor is only reimbursed if his salvage operations regarding the ship are successful, and this is on the basis of the ‘no cure no pay’ principle.

64. The fourth group includes the compensation for collisions or damages of ships, navigational accidents, personal injuries of passengers or the crew, damaged cargo, damages in harbours, docks.57

§3. PERSONS ENTITLED TO ENFORCE A MARITIME LIEN

65. Anybody who is entitled in accordance with Article 205 I CPML can secure a maritime lien. Every creditor or a third person to whom the claim is transferred, is entitled to enforce a maritime claim if the debt is unpaid. The claim based on the contract or any charges of SPF have one year limit. (Article 207 CPML).

I. Subject to Enforcement

66. As per Article 205 CPML and Article 23 Brussels Convention the maritime lien can only be enforced on the vessel to which it is related to. As per the prevailing view, it extends to gross freight and the accessories of the vessel. Other views claim that it does not extend to sums owed to the shipowner due to possible delays for non-receipt of goods.58 The liens are attached to the ship and the creditors to whom the value of the ship is connected.59

II. Ranking

67. The Maritime Liens provided by Article 205 CPrML precede the ship mortgages and other creditors with privileges according to the C.Civ.P. (Article 1012 IV C.Civ.P). According to the CPML, creditors entitled to maritime liens are to be repaid first in case the proceeds of the sale after a public auction are not sufficient to satisfy all creditors. This means, that they are ranked inter se in comparison to legally privileged maritime creditors (Article 206a CPML) who have proportionate ranking. Creditors who ensure their rights through ship mortgages are ranked as per the rules of time priority (prior in tempore potior in iure). In case of a public auction of a ship, if the ship is registered as foreign capital (under Law 2687/53), then only the registered debts can be satisfied.60 Claims concerning the assistance at sea or salvage of a vessel offer priority over previous ones to creditors (Article 206b CPML).61 Maritime Liens can be erased in case of loss of the ship, sale to a public auction or creditor’s surrender of the liens.62

III. Exercise of Maritime Liens

68. Every creditor enjoying a maritime lien is entitled, when his claim for payment falls due unpaid, to seize the ship, even if the ship has been transferred to another person, in which case he must file an action before lapse of three months since recordation. This time limit is of one year, in the case that it concerns a claim of the master and crew out of the engagement contract, or charges of the seamen’s pension fund (Article 207 CPML as modified by Article 8 of the Law 1711/1987). When the proceeds of the sale at public auction are insufficient to satisfy all announced creditors, the person effecting the sale shall rank the creditors who enjoy maritime liens first, followed by creditors secured by simple or preferential ship mortgage, and last creditors enjoying a general or special privilege as per the C.Civ.P or other law provision (Article 1012 C.Civ.P.). Creditors protected by maritime liens are ranked inter se according to the lawful rank (Article 205 C.Civ.P.) i.e.,

59. I. Rokas, Introduction to Greek Private Maritime Law 35 (Sakkoulas 2010).
60. Article 2 of the Brussels Convention of Maritime Liens and Mortgages.
the creditors of the first group are ranked in priority over those of the second one and so on. Legally privileged maritime creditors of the same group are ranked pro portione (Article 206 (b) CPML). Creditors secured by simple or preferential ship mortgage are ranked as per the rules of time priority (prior in tempore potior in iure).\textsuperscript{63}

§4. SHIP MORTGAGES

69. Registered ships, registered ships under construction and floating structures are capable of being mortgaged offering security to the creditor without letting them be handed over. The mortgage requires a deed of mortgage which represents the ship’s value and the offer of this deed to the creditors, enabling them at the process of an execution to be entitled to their dividends.

I. Categories of Ship Mortgages

70. Ship mortgages in Greece is divided into simple and preferential mortgages. The simple ship mortgage is a right attaching to a ship or floating structure belonging to another person, established by a notarized unilateral statement of the shipowner and recorded in the mortgage registry (Article 1, I CPML).

71. The simple mortgage defines the real right of the owner to the ship, provided after the notarized, unilateral statement of the owner is registered in the mortgage registry. It enables the creditor to require satisfaction if his debt is not paid due to a public auction. As per Article 12 VI, VII of Law 2289/1995 a ship wholly or partially of floating structure regardless of its capacity, exploitations, storage can become an object of a mortgage.

72. On the other hand, following the Anglo-Saxon pattern the Greek Legislators introduced the preferential ship mortgage in order to provide more security to creditors. The preferential ship mortgage is a real right to a ship or floating structure belonging to a person, which is established by a notarized unilateral statement of the shipowner and its creditor and is recorded in the mortgage registry (Article 2, Law Decree 3899/1958). It provides the creditor, in case his due claim for payment remains unpaid, with the right of either selling the ship at public auction and be preferably satisfied by the proceeds of the sale, or taking over the operation of the ship for his own benefit in order to satisfy his claim from the ship’s exploitation, or exercising other rights provided by the mortgage contract, such as to freely sell the ship.\textsuperscript{64}


73. If a creditor’s claim of payments remains unpaid, he is able to sell the ship through a public auction, his debt being satisfied preferentially in the process or he may operate the ship for his own benefit in order to secure his claim or even sell the ships if this right is entitled to him according to the mortgage. As per Article 1 I CPr.ML the preferential mortgage includes the entire ship of over 500 tons or other floating structures regardless of their capacity or displacement (Article 12 VI, VII of Law 2289/1995) or if they are under construction. (Article 1 of Law 4757/1976). 65 It also entails the chattels aboard which are attached to its operation. 66 The entry to the mortgage Register supports from rights of the mortgagee such as rights on the operation and the management of the ship in order to satisfy his debts, payment of the debts from the sums received, become the operator and notification of his rights to the authorities. 67

Chapter 3. Master and Crew

§1. Master

I. The Appointment of the Master

74. As per Article 104 of the PublicML the Master of the vessel governs the vessel. His different functions entail public as well as private powers and duties, as he represents different interests of public and private law. As a result, he is considered to be the most important person in the ship.68

The Master is appointed by the shipowner or his representative in front of the public authority.69 In order to qualify for this function on board of a vessel of the Greek merchant marine, the Master must fulfil the following requirements: He must possess a Greek or EU or any other as may be required citizenship or any other citizenship as required (Article 37 § 40 II 1A CPML). He must possess the required license and excellent skills. (Article 76 § 2 CPublicML) In case of indisposition during the voyage the Greek Law contains an express provision regarding the appointment of the successor. Hence, the First Officer has to replace him when for emergency reasons the Master becomes indisposed.71

The vessel, depending on the category to which he belongs, must have certain organic synthesis of crew. This consists of seafarers who must have educational training and be inventoried.

The crew consists of sailors related between them with a legal relationship witnessed by the contract of maritime employment into which they have entered with the shipping company employing them. The contract should contain: (a) the identity and specificity of Recruits, (b) name of the ship, (c) identification of the owner / operator or administrator of joint ownership, (d) the details of the master, (e) the salary and (f) the duration of the contract. Any agreement for naval recruiting for work upon a vessel is a singular definitive agreement, which is governed by the general law. Collective agreements on marine labour complement the CPML. They apply to Greek and non-Greek seafarers and to vessels bearing a foreign flag.

II. The Public Functions of the Master

75. The Master has his own powers and functions. His functions are divided between public functions, special functions, representative functions and duties of financial nature. The first one defines the Master as a Magistrate. These public functions are defined in Articles of the CPublicML. Some of which are:

(a) The Master maintains order on board the ship and is supposed to assist everyone in case of an emergency in the ship.

68. A. Kiantou-Pambouki, Maritime Law I 195 (Sakkoulas 2005).
69. Article 37 CPML.
70. A. Kiantou-Pambouki, Maritime Law I 197 (Sakkoulas 2005).
71. Article 124 CPublicML.
(b) As an officer of the public prosecution the Master will set up the judicial investigation with respect to crimes committed during the voyage.  

(c) The Master has disciplinary power and is entitled to impose the Greek public order during the voyage when the ship is outside the jurisdiction of Greek authorities.  

(d) The Master is also a civil servant. He may draft birth certificates as well as death certificates. The Master can act as a public notary in cases of unexpected testaments during the voyage and must write the testament according to the last will of persons.  

(e) He can charge any punishment through fines under the Criminal Law over the crew and the passengers.  

(f) He must inform the port or the authorities in case of stowaways on board.  

(g) The Master can throw anything which has been stowed without his permission into the sea.  

III. The Private Functions of the Master  

A. The Master as the Representative of the Owner  

76. The private functions of the Master are highly enhanced, because he represents the interests of the owner as well as those of the operator. As per Article 84§ 1, 105§ 4 and 138 CPML the Master may represent the owner in general. It is the right for the Master to select and hire the crew, charter the ship, order the necessary repairs, buy any necessary equipment, or contract loans. The shipowner is not liable for the actions of the master conducted in excess of his duties. However, if the third party is not capable to detect the absence of authority, then the Shipowner is liable. Furthermore, according to Article 47§ 1, 48 and 105§ 4 CPML the Master can also represent the interests of the Owner judicially. He has the power to take legal actions concerning the vessel or the cargo or to accept official and unofficial documents on behalf of his employer.  

B. The Master as Representative of the Cargo  

77. The Master represents the interests of the parties of the cargo:  

(a) In case of collision, the claims of the master will represent the parties both in relation to the damages suffered by the owner and the damages suffered by the...
Shippers (Article 244 CPML). In such a case, the notification of the damage to the shippers must be done within two months after the damage. (b) In case of emergency during the voyage the master can use or sell part of the cargo as well as represent judicially the interests of the shippers. (Articles 44–47 CPML).

C. The Master as Representative of the Crew and Passengers

As per Article 44 of CPML, the Master can use the property of the crew or the passengers in case of an emergency during the voyage. He can also represent the passengers and the crew, in case of claims, as already mentioned above under Article 244 of CPML.

IV. Special Duties of the Master

Firstly, the Master has to be present on board the vessel and complete the voyage. He has the duty to make everything possible to lead the vessel to its destination. He will be the last person who will abandon the ship in case of an emergency. He is also entitled to keep the appropriate books for the voyage and is responsible for the recruitment of the crew as well as the termination of the contracts of engagement. (Articles 105–114 CPublicML and Articles 39–42 CPML).

V. Termination of the Contract and the Liability of the Master

The contract between the master and the owner is an employment contract and if any disputes occur the competent courts are the civil courts (labour division). Its termination can be made at any time without notice and an agreement to the contrary is void. Until recently, it was claimed that the master would not receive any compensation for his services. Nevertheless nowadays, the right of compensation is admitted as such, regardless of Article 28 CPML.

81. As far as the liability is concerned, firstly, according to the general rule as defined in Article 40 CPML, the Master is liable for any personal fault. Although this rule is limited under certain conditions: such as the exoneration of his liability...
for damages caused by the crew. In this case the Master is liable only if the dam-
ages are due to his fault or if he commits a tort.\textsuperscript{85}

VI. Maritime Employment Contract: Legal Nature and Recruitment

82. The Greek legislation on the maritime employment contract is laid down in
Articles 52–58 CPML, Articles 87–103 CPublicML and provisions in Greek Civil
Code and the Greek Labour Law. The contract is signed between the seaman and
the master. In this case the master is representative of the shipowner. In the Greek
Legal Theory its legal nature is defined as a reconstruct of impressments. Recently,
the prevailing view has been that it is a singular definite contract based on Article
361 of Civil Code. Hence, all the provisions of failure of provision or demurrage of
creditors are applicable. As per Articles 53–54 CPML the contract should enter the
shipping registry. There is an ongoing discussion concerning the registration of the
maritime employment contract at the shipping registry. The prevalent view is that
the registration constitutes probative character and not any constitutive character for
the validity of the contract.\textsuperscript{86}

§2. The Crew

I. The Maritime Contract: The Duties of the Seaman and His Rights

83. The crew is selected by the master and it includes all persons who are under
contract with payment of wages on board a ship or floating structure. It entails not
only those who offer maritime labour \textit{stricto sensu}\textsuperscript{87} but also those who perform
general or supplementary services on board.\textsuperscript{88} The contract of employment is
recorded by the port or consular authority in the crew list (Article 53 CPrM). A par-
tial payment of his wage is also required in advance.\textsuperscript{89}

84. Among the duties of the seamen, a few should be mentioned:

(a) To be on board on time. Each unjustified delay can be a good reason for ter-
mination of the contract.\textsuperscript{90}
(b) The seaman is obliged to obey to his superiors.\textsuperscript{91}

85. Articles 914, 919 Greek Civil Code.
86. A. Kiantou-Pambouki, \textit{Maritime Law I} 197 (Sakkoulas 2005).
87. Such as the guarding officer, the steersman, sailors, engineers.
88. Such as nurses, chefs, artists, carpenters.
89. A. Antapassis, \textit{Private Maritime Law, in Introduction to Greek Law} 291, 298–299, 308
90. Article 56 CPML.
91. Article 57 CPML.
(c) The seaman must only perform the service for which he has been hired for. Each activity in excess is overtime and is accepted only after an agreement between the Master and the seaman.  
(d) One is not allowed to load cargo on his own account. Drugs, alcoholic beverages, and guns are strictly banned onboard the vessel.  
(e) Finally, the seaman has the duty to keep the vessel in good shape.

In case one does not fulfil his duties, then he may be criminally liable (Article 20ff. of CPML), under the provisions of Civil Code for gross negligence and for breach of contract (Article 65 of CPML as well as Article 652 and 914 Civil Code).

Apart from the duties related to the contract, the Rights of a Seaman raise an important issue:

a. As per Article 54 of CPML, the wages are agreed in the contract. If no contractual agreement exists, then the wages which are to be paid are the same with the ones paid to the previous position holder. The wage has to be paid at the end of the voyage. If the voyage lasted less than a month, then the seaman deserves a wage for the whole month. A payment in advance can also be included. Wages up to two months can be paid in case of a shipwreck to the seamen who helped by the rescue if they don’t have another position in another ship.

b. As per Articles 101–103 of CPML and Article 81 of CPML the crew of the wreck must be fed and kept aboard until the final wage is paid and their return to Greece is scheduled.

c. In case of a loss of property of the crew during the shipwreck or an incident, a compensation should be given.

d. As per Article 66 of CPML, the sick seaman has the right to his wage during his sickness. In case of a termination due to his sickness, he has the right to his wage during his continuing sickness but not more than four months.

In case of an incident during work, the provisions of compensation of incidents at work.
II. The Maritime Employment Contract: Termination

86. The employment contract will end:

(a) In case of the loss of the vessel.
(b) In case of the loss of the Greek Flag.
(c) In the case of the Vessel’s sale to the public auction.
(d) When the agreed period is completed.
(e) When a member of the crew dies.

87. By termination of one party to the contract:

(a) As per Article 72 of CPML the Master may terminate his contract without term limit and without reason. He may also terminate the contract of any seaman at any time. In this case, the seaman has the right to ask for compensation only if the reason of the termination is not due to his misconduct. (Articles 72–75 CPML). Furthermore, as per Article 69 of CPML, the Master may also terminate the contract of the seaman for reason such as safety of the ship or absence of the seaman at embarkation.
(b) The seaman may terminate the contract and claim compensation if the Master does not fulfil his duties. (Article 74 CPML).

88. There is an ongoing discussion about the accurate definition of breach of his duties. In general, it is considered to be occurring in the situation where the captain has behaved in such way after which it has been impossible for the crew members to fulfil correctly and reasonably their duties. The termination occurs after the inefficient fulfilment of duties.

89. The Seaman after the termination of his contract can claim wages of up to two months or compensation equated to wages of fifteen, thirty or forty-five days in case of contract’s termination due to the wreckage or loss of the ship (Article 62, 75II, 76 of CPML). As per Articles 75–77 of the CPML the seaman has the right to be compensated if the vessel or the flag is lost, if there is a safety problem with the vessel as well as if there is insufficiency in the fulfilment of his duties. He also has the right to repatriation and to be fed on board until his return to Greece.

102. Article 68 CPML.
103. Article 70 CPML.
104. I. Rokas, Introduction to Greek Private Maritime Law 138–139 (Sakkoulas 2010).
108. Articles 78–80 CPML.
Chapter 4. Liability and Limitation of Liability in Maritime Law

90. As is known, the general rule in law provides for the unlimited liability of the liable person. Each person is liable with all his assets, in tort for damages from tortious actions conducted by him or his representatives / assignees or his agents. This general rule applies in principle and in maritime law. However, in maritime law, the person liable enjoys the benefit of the limitation of liability.

91. Although the general rules regarding the provisions of Greek Civil Law defines the unlimited liability of creditor, naval creditor is subjected to limitation of liability (Article 216 of Greek Commercial Code). The roots of this principle are dated back to the Middle Ages and since then are classified in five groups: (a) the system of limitation of liability via the concession of the ship for the satisfaction of the creditors for any cause, (b) the system of limitation of liability via the offer of a sum of money equal to the ship’s value, (c) the system of limitation of liability via the offer of a sum of money calculated on the basis of the gross tonnage of the ship, (d) the system of limitation of liability alternatively via the concession of the ship or the offer of a certain amount of money and (e) the so-called ‘Executionssystem’ i.e., the system of the limitation of liability via the in rem (of the ship) limitation of liability. In essence, the ‘Executionssystem’ entails the system of rem restriction, introduced firstly in the German Commercial Code. Nevertheless, the fairness of the limitation of liability has been often contested and this has been the reason why the International Maritime Committee (CMI) took the initiative and ultimately introduced a new International Convention, i.e., the London Convention of 1976 on the limitation of liability for maritime claims (LLMC).

92. Greek law initially regulated the limitation of liability via the provisions of the Greek Commercial Code of 1087, via Article 206 which stated that the shipowner is liable for damages owed to actions or omissions of the master of the ship, but is discharges of them via the concession of the ship or of the freight. Also as per Article 278 § 2, 279 § 1 of the Greek Commercial Code of 1087, the shipowner could limit his liability via the concession of the ship or of the freight, however he also had the choice to substitute the concession of the ship either by the payment of a sum of money equal to the ship’s value at the end of the voyage or of the freight, or by the payment of a sum of money equal to the value estimated on the basis of the gross tonnage of the ship.

93. Another early attempt to regulate the limitation of liability was via the Conference of Venice in 1907 which ended to an optional system for the shipowner who was allowed either to abandon his vessel, pay the value of it or pay the value of tonnage compensation. The Conference of Venice in 1907 and its Convention was also used, enacted by the Law ΓΨΙΖ/1910 in Greece, in order to reform Greek Maritime Law. Later, the Convention of Brussels in 1924 restricted the limitation into the value of the vessel and the freight as well as the tonnage. Another Convention, i.e., the Convention of Brussels of 1957 replaced the one of 1924 and restricts the liability at the level of tonnage only. Nevertheless, the insecurity towards the environmental problems caused by big oil vessels leaded to new initiatives towards the
limitation of liability. The result of these initiatives ended up with the CPML also regulates the limitation of liability in maritime law via Articles 85–106.

§1. LIMITATION OF LIABILITY UNDER THE CPML

94. The CPML also offers the system of the alternative method for the limitation of the liability in maritime law, i.e., the shipowner can either limit his liability via the concession of the ship or of the freight (Article 85 CPML), however he also had the choice to substitute the concession of the ship either by the payment of a sum of money equal to the ship’s value at the end of the voyage or of the freight, or by the payment of a sum of money equal to the three tens (3/10) of the value of the ship estimated on the basis of the gross tonnage of the ship (Article 86 CPML). Usually, although not stipulated in law, the freight owed is also conceded. In the case of claims for accident involving persons injury the shipowner, on top of the sum of money equal to the three tens (3/10) of the value of the ship estimated on the basis of the gross tonnage of the ship, offers an extra amount of three tens (3/10) of the value of the ship.

95. The system limiting liability under the CPML (Articles 85 et seq.) allowed the shipowner or operator to either concede the ship and its gross freight to the creditors, at the end of the voyage, in whichever condition this may be, even if the ship is a wreck or totally lost. This, however, is not possible if the ship has prior been abandoned and conceded to the insurer. Alternatively the shipowner could offer the creditors a sum equivalent to a part of its value at the commencement of the voyage and to the gross freight. This, however, is not possible in the case of claims relating to salvage or towage. What is also conceded is any claims of the shipowner for damages, against persons who have damaged the ship, but not any insurance claims.

96. The limitation of the liability of the shipowner is excluded: (a) in case of obligations owed to his own actions, (b) in case of the shipowner’s actions in tort, (c) in case of contracts concluded by the master upon the command or concession of the shipowner (d) in the case of claims arising from or in relation to the contracts of employment of the master or the crew.

§2. LIMITATION OF LIABILITY UNDER THE LLMC

97. Greece ratified the LLMC via Law 1923/1991. As per Article 15 of the LLMC, its provisions apply when a person entitled to limitation of liability pursues such limitation before a court of a contracting state or does so in order to release a ship or other property from arrest or to discharge any security given in the jurisdiction of a contracting state. It is irrelevant whether the person entitled to limit his liability has no residence or main business establishment in Greece, or whether the ship related to the limitation of liability flies the flag of a third non-contracting state.
Part II, Ch. 4, Liability and Limitation of Liability in Maritime Law

Greece has not used the option provided under Article 15 II concerning the non-application of the Convention in the above cases. Persons entitled to limit their liability for maritime claims as per Article 1 of the LLMC are, the proprietor, the operator, the charterer or ship’s manager, the assistant or salvor and in general every person (master, members of crew, and other servants) for whose actions any of the aforementioned person is liable. The applicability of the LLMC caused Articles 85 et seq. of the Code of Private Maritime Law to fall into disuse, however these provisions still apply with regard to the limitation regime for air cushion vehicles and floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof.  

98. As above mentioned, the limitation of liability is ruled in Greek Law in Articles 84–106 CPML. However, it is the regime of the LLMC which substantially amended the limitation of liability in Greece. One of its provisions concerns the increase of maritime claims which subjected to limitation. It also entails the increase of persons entitled to liability. Hence, the LLMC put aside the former Conventions based on the theory of maritime fortune and leads to the theory of dangers.

§3. LIABILITY OF THE SHIPOWNER FOR HIS ACTIONS AND ACTIONS OF HIS EMPLOYEES

99. Besides the shipowner’s liability for his own acts and negligence, he is also liable for the master’s, crew’s or pilot’s acts committed in the course of their employment. The Greek Civil Code introduces the responsibility of the ship owner according to 211 ff., 330, 334, 922 of the Greek Civil Code. In special provisions of the CPML such as Articles 84–106, the status of the liability of the shipowner for actions of his employees is prescribed. The ship operator is liable also for the unlawful acts of master’s, crew’s, and pilot’s during the performance of their duties. Furthermore, any crewmember is personally liable for his culpa levis act if the act is causing damage is an act which the crew commits usually rather than occasionally.

§4. PERSONS ENTITLED TO LIMITATION OF LIABILITY

100. The shipowner, the operator, the charterer, the ship’s manager, the assistant or salvor and all persons (crew, salvor, pilot, etc.) for whose acts, default or neglect the shipowner is responsible are entitled to limit their responsibility (Article 1 LLMC). The applicability of the provisions of LLMC put aside the provisions from the CPML.

110. Article 922 of the Greek Civil Code.
§5. Ships for Which the Limitation of Liability Can Be Evoked

101. The Convention does not define nor does it enumerate the ship or floating equipment whose owners, charterers, operators can limit their liabilities. It expressly excluded from its application air cushion vehicles and floating platforms constructed for the purpose of exploring and exploiting the natural resources of the seabed or the subsoil thereof (Article 15.5 LLMC). Neither does the Convention apply to ‘ships constructed for, or adapted to, and engaged in, drilling’ provided the state party’s domestic legislation states a higher limit or if the state party entered into a Convention governing the limitation of liability for such ships (Article 15.3 LLMC).

§6. Claims Which Are Subjected to the Limitation of Liability

102. Claims of the operator which are subjected to limitation of his liability are:

– Claims concerning the tortious acts of captain during his duties.\(^{112}\)
– Claims concerning the tortious acts of captain and its crew during their duties.\(^{113}\)
– Claims concerning tortious acts of the shipowner like a captain due to his negligence.\(^{114}\)
– Claims for compensation for sea rescue and salvage.\(^{115}\)
– Claims concerning the compensation because of the damages caused from shipwrecks in territorial waters or expenses due to harbour works or raising shipwrecks.\(^{116}\)
– Claims for loss of life, bodily injuries and property damage.\(^{117}\)
– Claims for damages due to delay in the maritime transport of cargo, passengers or luggage.\(^{118}\)
– Claims for contractual or extra-contractual compensation or reduction of the compensation.\(^{119}\)

103. The operator can limit his liability by surrendering the ship or offering a sum equal to its financial value. It is not possible to limit the liability in cases such as the following:

– For claims concerning the contracts after the agreement of the shipowner or seafaring contracts from the captain or the crew.\(^{120}\)

---

112. Article 84. 1 CPML.
113. Article 84. 2 CPML.
114. Article 85. 1(2) CPML.
115. Article 86. 3 CPML.
116. Article 89 CPML.
117. Article 2 §1 LLMC.
118. Article 2 §2 LLMC.
119. Article 2 §2 LLMC.
120. Article 87 CPML.
– For tortious acts made from the captain by his own default.
– For claims concerning the acts of the majority of the ship co-owners.\textsuperscript{121}

\section*{§7. Claims Excluded from the Limitation of Liability of the LLMC}

104. Claims excluded from the limitation of liability of the LLMC are:

\begin{itemize}
  \item Claims for salvage or contribution in general average are excluded from limitation (Article 3a LLMC).
  \item Claims for oil pollution, nuclear damage, or claims of the ship owner of a nuclear ship for nuclear (Article 3b,c,d LLMC).
  \item Claims of ship owner or salvor’s servant if under the law of the employment contract such a claim is prohibited to limitation of liability or is subjected to other limits (Article 3eLLMC).
\end{itemize}

\section*{§8. Procedure by Limitation and Consequences}

105. As per Article 90 of CPML the procedure to be followed for the establishment of the limitation of the liability entails a declaration submitted either to the relevant Court of First Instance where the ship is registered or to Court of Piraeus. The declaration must involve the names and addresses of the creditors, their claims and the nominated attorney. The declaration along with the receipt of the deposit of the sum at the public authority must be testified to the clerk of the Court.

106. As far as the consequences are concerned, as per Article 102 of CPML, any legal action initiated from the creditors against the ship is prohibited. Furthermore, in case the freight has not been paid, the demands are assigned to the creditors as a class and not individually.\textsuperscript{122}

\textsuperscript{121} I. Rokas, \textit{Introduction to Greek Private Maritime Law}, 43 (Sakkoulas 2001).
\textsuperscript{122} Article 102 CPML; I. Rokas, \textit{Introduction to Greek Private Maritime Law} 46 (Sakkoulas 2001).
Chapter 5. Charterparties

§1. Definition and Variety of Charterparties

107. The charterparty123 is a bilateral agreement between the two parties, the provider of the ship, the shipowner and the one to whom it is hired, the charterer. In contracts of good or in passenger carriage, the contracting parties are the carrier and the shipper.124 The charterparty entails the usual terms of a contract such as the name of the contracting parties, the name of the ship, the duration of the voyage and the loaded cargo and the remuneration, the freight or hire.

108. The document is served as a proof of its terms. In legal terms, the charterparty is an evidence of the freight contract. In case of a loss of the document, its terms can be proved by witnesses. A conclusion of the contract can also be made orally. The facts which follow the completion of the contract such as the loading of the ship and the cargo can have a separate proof from the terms of the contract. A bill of lading can also be used separately from the charterparty. Taking into consideration the possibility of arising conflicts relating to the two documents, the prevailing view supported that in case of disagreements between the contracting parties, the bill of lading will rule the differences between the carrier and the consignee and the charterparty the ones between the carrier and the shipper.125

§2. The Statutory Provisions

109. Charter parties are dealt in the CPML in Articles 107–189. These provisions entail the use of the entire ship, the transport of cargo and the transport of passengers.126

110. The first category, comprises the charter contract in the strict sense, whereby the entire ship is at the disposal of the charterer. It constitutes an element of the contract.

111. The second category comprises the carriage of goods / cargo by sea without specifying which part of the ship will be used. In this kind of charter the important aspect is the effect of transportation of the goods / cargo from place to place without the need to determine the part of the space of the ship that will be used. This again is a charter contract in the strict sense.

112. The third category is ruled under the provisions of Articles 174–189 of CPML. It distinguishes into subcategories such as the time charters, the voyage charters, the bare boat charters, and the sub-charters. The time charters are defined

through the fixed period of the hire of the ship. The voyage charters are defined through the element that the hire of the ship is destined to last until the completion of the agreed voyage. The voyage charter constitutes under Greek law a form of project contract and the parties may validly agree upon the obligations; however, as in the case of time charter, the party autonomy and freedom as per the contractual clauses is limited by the relevant provisions of the CPML which are *ius cogens*.

113. In Greece, the most used time charters are the Baltic time charters and the most used voyage charters are the Gencon voyage charters. By the bare boat charter the whole ship is hired in order to transport passengers. For the sub-charters the provisions for charters are to be used. They are defined by the fact that their nature consists into the leasing of the ship from the charterer to a third party.

§3. THE DUTIES OF THE SHIPOWNER

114. The shipper is obliged to pay the freight and any other expenses made due to the over delay. The freight is payable after the loading of the cargo. In case of absence of an agreed freight in the contract, the usual freight is to be considered at the same place and same time. If there is also an overloading of the cargo, then the appropriate sum to the freight is to be added.128

115. Although there are Stock Exchanges for freight, such as the Baltic Exchange in London and the one in New York, there is already a price list relating to the carriage of passengers and national sea trading. As per Article 178 of Code of Public Maritime Law, the price list for the main and the secondary passenger and freight lines is ruled by the decisions of the Ministry of Merchant Marine. The prices for the regional lines are regulated and defined by the competent Port Authority after the approval of the Ministry of Merchant Marine. The above mentioned approved prices are mandatory and any other agreement is prohibited.

116. As per Article 151 of Code of Private Maritime Law, the shipper has not the right to throw away the cargo loaded in case the value of the cargo is reduced. Exceptionally, he can throw away the tanks whose whole content leaked in the vessel.

117. Apart from the above mentioned duties the shipowner is also responsible for bringing the goods for loading to the agreed place, give the appropriate certificate for loading and receipt for unloading. He must also hold the necessary documents in order to clarify possible controls from the Port National Authorities.129

128. Article 149 CPML.
§4. THE DUTIES OF THE CHARTERER

118. The duties of the charterer or carrier are ruled in Chapter II of the Sixth Part of the CPML together with other specific provisions relating to the freight. The Hague-Visby Rules operate separately and independently from the CPML and are enacted by Law 2107/1992. The Greek legislator has not given a concrete answer whether the application of the Hague-Visby Rules cancels the application of the provisions of the CPML. Although there is an ongoing discussion, the prevailing view supports the priority of Hague rules towards the old provisions of the CPML.

119. The duties of the charterer are divided into the obligations up to the start of the voyage, during the voyage and after the arrival at the port.

I. Up to the Start of the Voyage

120. As per Article 111 of CPML, the charterer must be able to provide for and guarantee the seaworthiness of the ship and keep the ship in a condition suitable for the use of the cargo.

121. As per Article 113 CPML the charterer is obliged to use the ship that was agreed in the charterparty contract.

122. He is also obliged by the charterparty to take the ship at the same place in order the cargo to be loaded. If there is no place agreed then the charterer can dock the ship to a berth and notify the ship owner for the place.

123. An agreed time is also included, considering the liability of the charterer for all damages in case of delays for loading the cargo later of the agreed time. In case of absence of responsibility from the side of the charterer, a cancelling clause will enable the hirer to cancel the contract and liberate the charterer from any liability.

124. The charterer has also the duty of loading cargo and stowage. In case the loading is not completed before the sailing off of the ship or if the cargo is damaged, his liability will arise.

125. Although the charterer has an interest in completing accurately his contract, his obligation to wait until the cargo is loaded is mandatory. Quite exceptionally, if it is agreed that the loading will take place in certain days or if there is no agreement, then he is released from his obligation to wait or accepting additional time.

130. Article 134 CPML.
131. Article 401 of Civil Code; Piraeus Multi-Member Court of First Instance, No. 1514 (1992) 407.
126. If the duration of the loading (laytime) is agreed from the two parties or follows the national customs and is completed before the agreed time, then the charterer can also ask for compensation which will be approximately half of the agreed demurrage.

127. If laytime is over and the charterer must still wait for loading (demurrage), the sum owned is that corresponding to the half of the laytime. For the calculation of the detention Sundays and other national holidays are included. After the expiry of the demurrage period the additional time is called extra contractual demurrage and is calculated as double demurrage. Once the demurrage expires, the charterer may sail after giving three days’ notice to the shipper. If during this three days’ notice, there is a loading of part of the cargo, the charterer can unload the cargo and exercise his right to compensation.132

II. During the Voyage

128. As per Article 126 of CPML, the charterer is obliged to follow the agreed route. Any other change is prohibited. In contrast, if the ship follows another route against the contract, this will be permitted under three conditions, i.e., (a) for the purpose of saving people’s lives, (b) for goods (c) for any other reasonable cause. Reasonable causes can include illness of a member of crew, bad weather conditions, or extraordinary provision requirements. Such an exception constitutes an infringement to Articles 281133 and 288 of the Greek Civil Code.134

129. As per Article 112b CPML the charterer is obliged to safeguard and maintain the cargo in perfect condition at sea.

130. As per Article 113 CPML, the charterer is prohibited to carry the cargo on deck.

III. After the Voyage

131. The same principles as for the loading are followed for unloading. The unloading falls under the responsibility of the charterer. As per Article 127 of CPML, the charterer must bring the ship to the agreed dock in correlation to the suitability of the regional weather conditions. As per Article 127.b of the CPML the unloading of the cargo and its potential expenses is charged to the charterer.

133. ‘The exercise of the right is prohibited if manifestly exceeds the limits imposed by the good faith or morality or social or economic purpose of the right.’
134. ‘The debtor has an obligation to meet the provisions as required by good faith, taking into account merchantable mores.’

52 – Greece
132. The same provisions for loading concerning the laytime and demurrage are also used in case of discharge.

133. As per Article 152 of CPML, the charterer under any circumstances has not the right to retain the cargo, even if he is not paid the wage agreed as well as other expenses. The person who receives the cargo and the bill of lading is the lawful consignee. He is entitled to pay the wage and any other additional provision occurred.135 There is an ongoing discussion about the legal status of the consignee.136 In case there are more than one consignees, the charterer may choose a custodian to keep the cargo and liberate himself from the liability.137

134. As per Article 130 CPML the charterer has the obligation to deliver the cargo to the person entitled to receive it, in return for payment of the freight and any other benefits.

---

135. Article 153 CPML.
136. Whether he is the owner of the goods or if he receives the cargo on behalf of a third party.
Chapter 6. Transport under the Bill of Lading

§1. Definitions and Function of the Bill of Lading

135. The bill of lading has been in existence for many years. The term bill of lading as a document of title was first used in English jurisdiction and borrowed from the legislators of the International Convention of Brussels in 1924. The bill of lading has a threefold function: it is an acknowledgement of lading or receipt of goods, it entails the responsibility of the carrier to transport the goods and it constitutes a document of title.

136. First of all, as per Article 107 of CPML the bill of lading forms an evidence of contract for the transport of goods. It does not form any contract between the two parties. The shipped bill of lading is considered to have a stronger documentary function in contrast to be received for shipment bill of lading. The bill of lading evidences also the perception of the goods and the contract with its terms. (Article 125 of CPML). Any objection between the carrier and the holder of the bill of lading is solved according to the terms of the contract. In an objection between the carrier and the creditors the terms of the bill of lading prevail (Article 170 CPML).

137. The received for shipment bill of lading as well as the shipped bill of lading also have an in rem function. As per Article 168 CPML, the perception of the goods under the possession of the carrier is established through it.

138. Finally, under the Greek Law, the bill of lading constitutes a document of title and incorporates all the characteristics of it – contractual, manifest and issued in nominal and in order waybill. It also entails a private contractual right against the carrier.138

§2. Various Types of Bill of Lading

I. Bill of Lading ‘Received for Shipment’

139. The Bill of Lading ‘received for shipment’ was introduced after the needs of ocean commercial companies in correlation to the embarkation and stowage. It serves as a receipt for goods through the contract of carriage of goods to the sea.139

139. A. Kiantou-Pambouki, Maritime Law II, 377 (Sakkoulas 2007).
II. Through Bill of Lading

140. The through Bill of Lading is issued for the cargo loaded in the ship for different means of transport. In case the through bill is not issued, the bills for the other parts of the journey are named as local, partial and apportioned.140

III. Shipped Bill of Lading – House Bill of Lading – Master Bill of Lading

141. The shipped Bill of Lading is issued after the loading of the cargo.141 A House Bill of Lading is issued by a Non-Vessel Operating Common Carrier or by a freight forwarder to the person who is their customer and will typically contain the following information:

- The party to notify.
- The party listed as the consignee.
- Any listed parties in a letter of credit for the shipment.

House bills of lading are issued on what is called a back-to-back basis with a master bill of lading (MBL). This means that the HBL should be an exact copy of the MBL that the shipping company is provided with – except that the shipper, consignee and notify parties which will typically be someone different than in the Master Bill of Lading.

A Master Bill of Lading is given to the shipping line, the company that is going to do the actual cargo transportation or to the carrier of the cargo. This document will be generated and handed over to the shipping line by the Non-Vessel Operating Common Carrier or the freight forwarder. A Master Bill of Lading should contain the following information:

- Notifications for anyone that the freight forwarder or the Non-Vessel Operating Common Carrier has chosen to inform about shipment arrival.
- At the destination port, an agent that will act as the consignee.
- The shipper listed in the Master Bill of Lading.

Care must be taken to ensure that the HBL and the MBL are not exact copies of each other.

§3. THE HAGUE RULES-THE VISBY RULES

I. National Incorporation


---

140. I. Rokas, Introduction to Greek Private Maritime Law 117 (Sakkoulas 2001).
141. A. Kiantou-Pambouki, Maritime Law II 377 (Sakkoulas 2007).
As per Article III.3 the carrier or the master or the agent of the carrier must issue a bill of lading when they are asked from the shipper. At the same time the carrier is expected to show details ruled in Article III 3 a,b,c such as the number of packages, the quantity of the goods, the weight, the condition of the goods. As per Article III 4 the Bill of Lading is a prima facie evidence for the receipt of the goods which are described in detail under Article III 3a,b,c.142

II. Combined Transport Bill of Lading-Multimodal Transport

143. Due to the new maritime practices and the rapid evolution in use of containers and modern vessels it was inevitable the introduction of combined Transport Bill of Lading. By an agreement the two parties can decide, that the carriers holds the liability of the cargo during the voyage, until the cargo is unloaded to its place of destination. The combined transport bill of lading has been introduced in accordance with the Geneva Convention of 24 May 1980 on the International Multimodal Transport of Goods.

144. According to Greek Law the definition of multimodal transport is not easy to be given. The multimodal transport is subject to the legislation governing by rail. Although suggestions have been made, there are no relevant provisions in Greek Law concerning multimodal transport. There has been a proposal to use by analogy the provisions of the CMR Convention on multimodal transport.143

III. The Delivery Order

145. The delivery order entails parts of the Bill of Lading. In case there are more than one consignee or if the consignee wants to receive partially the cargo due to inadequacy of space for all the goods, then the Bill of Lading does not correspond with the rising needs. The segmentation of the Bill of Lading and the issue of more than one delivery orders serves the recent developments in maritime practice. The legal nature and the results depend each time on the person who issues the order or its type. As per the prevailing view the ship’s delivery order is considered to be the type of delivery order to whom has many characteristics in common. The ship’s delivery order is issued from the carrier or his agent.145 Another view claims that the delivery order can be issued from the consignee too.146
IV. Booking Note

146. The carrier in order to secure enough space for the cargo in the ship of coastal line in preference, issues the booking note. It is considered to be a pre-contract for the carriage of goods by the sea and has many types. Its transmission is made through computer or other electronic devices. Booking note can concern the charter party or the agreement for the carriage of goods by sea. It can have a simple or more detailed form (Note de synthese). Each sea company for coastal lines can choose its own form of booking note. The Conline booking note made by BIMCO is very often used in accordance with the widely known Bill of Lading, the Conline bill and is expressed in the words of the following clause: ‘The contract is agreed to be executed in accordance with the terms mentioned in previous pages, which prevail other terms of previous contracts, which will be prevailed form the terms of the Bill of Lading (Conline bill), which are mentioned at the back page.’

V. Sea Waybill

147. This document is issued instead of the Bill of Lading. It proves the contract of carriage of goods by sea but it doesn’t constitute any other document of receipt or transfer of goods. It is neither a commercial title nor a negotiable instrument enjoying the credit security of banks. Besides the disadvantages, sea waybill can travel with the goods; reduce delays as well as the carrier’s risk towards the consignee. There is an increasing percentage in use of sea waybills instead of bills of Lading.\textsuperscript{148}

\section*{§4. Carrier and the Bill of Lading}

I. General

148. The bill of lading is considered to be a par excellence representative title of merchandise. As is known, a bill of lading is a commercial title entailing the exercising of a private right against the carrier and bearing the signature of the person who exercises this right.\textsuperscript{149}

II. The Description of the Goods at the Bill of Lading

149. As per Article III 3a,b,c the goods specified in a bill of lading should be described in accordance to their quality, quantity and weight and not a detailed description.

\textsuperscript{147} A. Kiantou-Pambouki, Maritime Law II 383 (Sakkoulas 2007).
remuneration. A simple remuneration of the nature of goods is included. As per Articles 137 of CPML and Art. III in case of a misstatement in relation to the goods per se the liability of the carrier is erased.

III. Jurisdiction Clauses

150. Greek Courts look upon favourably clauses purporting to offer additional clarification in cases of problems arising in relation to bills of lading. The most common used clauses are:

– the clause of applicable law,\textsuperscript{150}
– the Paramount clause,\textsuperscript{151}
– the jurisdiction clause,\textsuperscript{152}
– arbitration clauses.
– clauses liberating the carrier from his liability.\textsuperscript{153}

151. As per Article 142 of CPML any other agreement concerning the limitation of the carrier’s liability shall be null and void. Any other agreement relating to the change in burden of proof shall be null and void. Any agreement in accordance to the assignment of the insurance to the carrier is also null and void.

IV. Immunities and Limitation of Liability

152. Immunities are to be found in Article 138 CPML, where fire is treated as an autonomous case. As per Article 138 in case of fire, the carrier is not liable if the fire is not cause from his own actions. In contrast, if the fire is caused from his individual fault, then he is liable for the damages at vessel.

153. Furthermore, the carrier is liable for any negligent misstatement concerning the freight contract such as the nationality of the ship, its capacity, the arrangements concerning the cargo or delay of the ship relating to the wrong statements of the engine’s speed.\textsuperscript{154} Exceptionally, any misstatement of the carrier concerning the quality of the cargo or other characteristics with the knowledge of the charterer, exclude his own liability.

\textsuperscript{150} Court of Pireaus, 1553/1990, END 1990, p. 269; the same Court, 2322/1990, END 1990, p. 166.
\textsuperscript{153} Article 143 CPML, in a limited number and under certain circumstances; A. Kiantou-Pambouki, in A.N. Yiannopoulos, \textit{Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems} 210 (Kluwer law International 1995).
\textsuperscript{154} Article 136 CPML.
V. Advantages and Disadvantages of a Bill of Lading

154. As is known, the Bill of Lading is a negotiable commercial instrument. On the one side, it is considered to have many advantages. One of them is the transfer and the delivery of goods safely and accurately. It provides security in maritime practice and financial credibility as well as flexibility in international trade because of the lack of many formalities. It shows who the legal owner of the goods is and it has a burden of proof in jurisdictional level.\textsuperscript{155}

155. On the other side, the extensive use of the traditional form of Bill of Lading identifies the existing problems in its use. The high technological development has led to accelerating speed of the ships. Unlike, it has not lead to the accurate arrival of the Bill of Lading through the detour to a bank. This event has an effect on creating delays and crowding at the ports.\textsuperscript{156} Another disadvantage is the rising costs of issuing and transportation of the goods as well as costs caused by misstatements at the Bill of Lading.\textsuperscript{157} Furthermore, the absence of strict official form by issuing a Bill of Lading leaves the buyers exposed to possible frauds from the part of the consignor.\textsuperscript{158}

\begin{itemize}
\item \textsuperscript{155} A.N. Yiannopoulos, Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems 17–19 (Kluwer law International 1995).
\item \textsuperscript{156} A.N. Yiannopoulos, Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems 18 (Kluwer law International 1995).
\item \textsuperscript{158} A.N. Yiannopoulos, Ocean Bills of Lading: Traditional Forms, Substitutes, and EDI Systems 18 (Kluwer law International 1995).
\end{itemize}
Chapter 7. Pilotage

156. The master, though capable of navigating the vessel, may need the assistance of a person with specialized knowledge of local conditions and navigational hazards who is generally taken on board a vessel, at a specific place, so as to navigate the vessel through difficult passages to or from a port. Pilotage is a term denoting the services rendered by the pilot to aid the master. Under Greek law, the role of the pilot is nowadays effected by the master (Article 43 CPML) or a crew officer. As per Article 182 CPML, there continues to exist the notion of ‘pilot-consultant’ who consults the master in relation to navigation through difficult passages. In the past, the ‘pilot-consultant’ was distinguished from the ‘port pilot’ where the former would be offering his piloting services for pilotage through ports and the latter would be offering his piloting services for pilotage in the open sea. Under Greek Law pilotage is legislatively regulated via Articles 181–187 of the CPublicML as well as via numerous Presidential Decrees (PDs), such as PD 348/1974 on the abolition of compulsory pilotage and 416/1981 on the rights relating to pilotage. Law 3142/1955 regulates all issues not covered by Articles 181–187 of CPublicML.

157. Greece has a pilotage service rendered by the State and administratively belonging to the Ministry of Marine Mercantile. In many prefectures, there are public pilotage stations ready to assist in the passage of vessels (Article 2 Law 3142/1955). Those public pilotage stations administratively belong to the local prefectures of the port in which they are located (Article 16 Law 3142/1955). The use of a pilot is compulsory in places where a state pilotage station exists (Article 183 of the CPublicML) or where special circumstances detect so. In such a case the duty to use the services of a pilot are detected by the director of the relevant port authority who orders so (Article 185 of the CPublicML). Pilotage is not compulsory in the cases prescribed in Article 187 paragraph 2 CPublicML) or in cases of force majeure or where the pilot was called on service and never showed up (Article 186 of the CPublicML). For the use of the pilotage service, fees are owed which are payable to the pilotage station (Article 184 of the CPublicML). Under Greek law, the pilot is legally placed under the orders of the master and is considered as replacing the shipowner. Indeed the later can limit his liability in relation to the actions and liabilities of the pilot (Article 84 of the CPublicML, Article 283 et seq. CPML, 235 et seq. CPML). Hence, it is concluded that the pilotage contract is a contract of services and is ius cogens as it is compulsory not only to enter it but in most cases there is no freedom to opt as to the pilot administered. This all is justified for the sake of safe navigation. However, once signed the pilotage contract operates as any other contract and not strictly as ius cogens.159

§1. LIABILITY FROM PILOTAGE

158. For any damages suffered by the pilot during the rendering of his services, including the embark to and disembark from the vessel, the owed liability lies with the shipowner. In particular the liability of the shipowner extends to and covers acts or omissions of the shipowner, master or crew, for all of which the shipowner is liable. Those acts or omissions, resulting in the owed liability lies of the shipowner may arise out of contractual liability (infringement of the clauses of the pilotage contract) or may arise out of tortious liability grounds. In the latter case, the shipowner apart, the person responsible for the tortious liability is additionally liable towards the pilot.

159. The master remains fully responsible for the vessel and any damage occurred to it, even during the execution of the pilotage services by the pilot, for the latter cannot bear any contractual liability as he is only offering his advice. The pilot is only liable for damage caused to the vessel due to his negligent provision of consulting (Article 239 CPML, Article 914 Greek Civil Code).

§2. LIABILITY TOWARDS A THIRD PARTY

160. The shipowner is liable towards a third party with which he has a contractual relationship for any damages caused from the pilotage. In the case of a charterparty contract, the shipowner is liable for the damage occurred as per Article 134 et seq. CPML. In the case of carriage of goods by sea under a bill of lading, the shipowner is liable for the damage occurred both in contract and in tort as per Article 84 paragraph 2 CPML. The shipowner is also liable in tort, even in the absence of a contractual legal relation, for damages caused by the people he uses for the rendering of services, including the pilot. In the latter case, the liability towards a third party is joint and several and shared by the shipowner and the pilot in case the later cannot establish negligence in his acts which resulted into the damage (Article 17 paragraph 7 Law 3142/1955). In addition, the master has joint and several towards a third party as a result of damage caused by piloting advice which he put in use (Article 40 CPML).
Chapter 8. Salvage and Towage

161. Salvage and towage is regulated in Greek law by Articles 246–256, CPML and Articles 188–189 CPubML). However, following the London Convention on Salvage 1989 as ratified and incorporated into Greek Law via Law 2391/1996, the latter’s provisions apply and regulate salvage. The new legislative framework also regulates internal salvage operations, however the CPML and CPubML provisions continue to apply to the extent that the London Convention on Salvage 1989 refers to national law.\textsuperscript{160}

162. The maritime assistance / salvage consists in providing assistance on any kind of risk that may be at a board with the main purpose of saving people, ship or cargo and where the fare was paid or agreed. The salvage company will be remunerated if it manages to save the vessel and all those in distress, i.e., only if it manages to carry out a beneficial effect (principle of ‘no cure no pay’). However the salvage company is entitled to be reimbursed for reasonable expenses occurred during the salvage operation, even if the latter is not successful and hence there exists no further remuneration claim. The persons who proceeded in the salvage operation despite the express and reasonable prohibition of the master of the vessel in danger, are not entitled to the reimbursement of fees or costs for their performance. In addition, neither the master nor the crew of a vessel in distress, are entitled to remuneration. Last but not least, in total contract to the ‘no cure no pay’ principle the salvor is entitled to be reimbursed and receive a special remuneration in the case where by his actions he has eliminated or reduced any incurred environmental damage and pollution (Article 1 LCS 1989). Such a special remuneration is limited or not owed where the salvor has been negligent in the course of the execution of his salvage work which is related to the reduction or elimination of any incurred environmental damage and pollution.

163. A tug is entitled to remuneration only if it provided great service which was not stipulated by the towing contract. The contract for assistance or rescue (standard agreement by the classification societies, mainly the English Lloyd) concluded in time of risk and under its influence can be cancelled or modified by the court upon request by anyone who has an interest if the content is contrary to grace, especially if the agreed fee is manifestly excessive or disproportionate to the service offered. If no agreement is reached, the fee is then to be set by the court. No remuneration is paid for the rescue of people, unlike their luggage. Professional towing is done by special ships, equipped with a license from the competent Port Authority, with the consent of the Merchant Ships Inspection Directorate. Also, equipping a ship with the necessary shipping documents and certificates of airworthiness required. Under Greek law, Presidential Decree define the extent of the right to tow, cases of occasional or exceptional towage from other ships and related rights of tugs or other vessels under foreign flag.

\textsuperscript{160} I. Rokas & G. Theocharidis, \textit{Maritime Law} 392–396 (Sakkoulas 2015).
§ 1. Remuneration

164. As per Article 15 § 1 of the London Convention on Salvage 1989, the distribution of the remuneration among the beneficiaries is determined by the law of the state of the flag the ship flies (lex navis). For ships flying the Greek flag, Article 251 CPML applies.

165. The sum of the salvage remuneration is contractually agreed, before or after the provision of the salvage per se. If no agreement is reached, the sum of the salvage remuneration is determined either by state courts or arbitral tribunals, after taking into consideration the following factors:

– The value of the salvaged ship and any other assets.
– The capacity of the salvors and the effort attributed to the salvage operation.
– The extent of the success of the salvage operation.
– The nature and extend of the risk entailed.
– The effort incurred by the salvors.
– The time, loss and expenses incurred by the salvo.
– The risk and danger into which the salvors run in the course of the salvage operation.
– The timely provision of the salvage operation.
– The availability of other ship and salvage means.
– The level of readiness and suitability of the equipment and its value.  

§ 2. Liability of the Salvor

166. Under Greek law the liability of the salvor is established in the London Salvage Convention 1989 (Article 8 paragraph 1 & Article 18) and in the Civil Code provisions (Article 914 et seq.).

Chapter 9. General Average

167. The ancient law of general average was, during the Christian era, incorporated into a number of national legal systems. In the course of this process, it received a number of differing interpretations. Therefore, in the nineteenth century enthusiasm for internationalization, efforts were made to impose on its interpretation some measure of uniformity. This resulted in what have become known as the York-Antwerp Rules. These Rules do not form an international convention, but are incorporated by reference into contracts of carriage. This process has in fact imposed a quite remarkable measure of uniformity on the basis of average adjustments around the world. There have been various sets of York-Antwerp Rules over the years; the most commonly known have been the 1890, the 1924, the 1950 Rules, and the most recent editions, which have modernized general average, are York-Antwerp Rules 1974 (as amended in 1990), the 1994 and 2004 York-Antwerp Rules. Most general average adjustments are today drawn up on the basis of the York-Antwerp Rules 1994, although some are still prepared according to the YAR 1974 (as amended in 1990). The most recent set of Rules, dated 2004, were the result of pressures imposed by cargo insurers. They have therefore found little favour with the remainder of the maritime community, and are seldom encountered in contracts of carriage. The fact that a general average act can occur in any international waters, or on the high seas, raises the questions of which law and jurisdiction should apply to the general average adjustments. But, if the York-Antwerp Rules are incorporated into the contract, they will govern the adjustment of general average. They provide a complete code and, by the general rule of interpretation, they ‘shall apply to the exclusion of any law and practice inconsistent with them’, if the parties to a contract have adopted them. The York-Antwerp Rules consist of a set of lettered rules, followed by a set of numbered rules. The lettered rules from A to G state the general principles, while the numbered rules (I to XXIII) are specific and deal with commercial practicability; they qualify the general principles.

General average is regulated in Greek law by Articles 219–234, CPML. What constitutes general average is losses and extraordinary costs that are effected voluntarily and under reasonable discretion in order to save the ship or its cargo from common maritime risks, provided that the desired effect was achieved. General average also encompasses expenditure and the avoidance of other costs which would have the character of general average, but only up to the amount of the latter. General average exists in the case in which the event which created the risk was caused by a defect of the ship or its cargo or is attributed to the fault of the master or the recipient of the cargo. The beneficiary of the jettison can sue the liable party. General average constitute also: a) salary and crew supply costs and other costs which prevented the voyage upon State order, or because the ship was forced to remain in a port due to war or other similar cause, b) salary and crew supply costs in ship berthing at a port to perform the repairs necessary for the continuation of the journey, where those constitute general average. The extent of the damage may extend to sacrifice all for the sake of ship cargo and vice versa.

168. The master should prepare a written report, as soon as this is possible, on the decisions taken and their justifications, the actions made for the general average

64 – Greece

Transport Law – Suppl. 46 (2016)
for the things that were rescued or had suffered damage. This report is signed by members of the crew and has also to be copied in the logbook. Claims and liabilities of each specific risk are cleared in a way that it is reflected in the accounting books at the damage settlement section (Average Adjustment). The settlement of the average occurs at the final port of discharge or at the port one where the journey was interrupted, and is conducted by the master of the average adjuster. The Average Adjusters are freelance technical and legal experts and are members of the Association of Average Adjusters and Lloyd’s. In Greece, they are appointed by the President of the Court of First Instance or the Magistrate and abroad their appointment is effected by the relevant Consular Authority. The Average Adjusters record all details that constitute the claim against the insurers in a special table (Adjustment), which is then handled to the insurers for their consideration and with the aim to achieve a settlement. The settlement is subsequently confirmed by the Court or the relevant Consular Authority abroad.
Chapter 10. Collisions

169. Greece has indeed ratified three International Conventions of Brussels, namely the Convention of 1910 ‘on the unification of certain rules on collision of ships’ which was ratified by Law ΓΩΠΣΤ / 1911, the Convention of 1952 ‘on the unification of certain rules regarding the relevant Courts for the resolution of private disputes of ships’, which was ratified by Legislative Decree 4407/1964, and the 1952 Convention ‘on the unification of rules relating to the criminal law jurisdiction over conflicts re ships collisions or other events in navigation’, which was ratified by the LD 4407/1964, however those conventions per se do not constitute national law as such, as some of their provisions have simply been incorporated into the provisions of Articles 235–245 CPML. The wrongful collision of ships is a specific form of tort, which is being regulated primarily by the provisions of the above articles of the CPML and secondarily by the provisions of Articles 297–298 and 914 et seq. of the Greek Civil Code. 162 Hence we can say that the ship collisions are regulated in Greek law by Articles 235–245 CPML. On the 16 May 2007 the International Maritime Organization (IMO) at a conference held in Nairobi adopted a final draft of a convention on wreck removal, designated the Nairobi International Convention on the Removal of Wrecks, 2007. The Convention will come into force after ratification by at least ten states and this process is predicted to take not less than three to five years. The first four articles address the scope, purpose and application of the Convention. The Convention permits a state party to take measures to remove a wreck that is a hazard to navigation or the marine environment. A hazard is defined as a danger to navigation or a condition giving rise to harmful consequences to coastlines or other wider coastal interests such as ports or fisheries, tourism, offshore and underwater infrastructure. The health of coastal populations and conservation of both marine and non-marine wildlife are further considerations in determining a hazard within the meaning of the Convention. The Convention restricts measures taken by the coastal state to being reasonable and proportional to the hazard faced, such measures to cease on removal of the wreck. The ‘Convention Area’ is identified as the Exclusive Economic Zone (EEZ) of a signatory state, but excluding the territorial sea itself where national law, if any, applies. However there is provision in Article 3(2) for a state party to include their territorial seas within the scope of the Convention if they so wish. A ‘Ship’ is given a wide definition. Other than fixed structures or floating platforms while actually engaged in exploration, practically all sea going water borne craft fall within the scope of the Convention. There is no minimum gross tonnage in this respect. A ‘Wreck’ includes a ship, or any part of a ship, or object that has been on board a ship but has become detached, e.g., cargo, that as a consequence of a maritime casualty has sunk or stranded or is adrift. The definition extends to a casualty that may be reasonable expected to become a wreck, provide salvage services are not already being rendered. A ‘Maritime Casualty’ has an equally wide definition, being an incident of navigation such as a collision or stranding, but extending to any occurrence on board or even external to the ship, for example an explosion alongside a terminal.

162. Court of Appeal of Dodekanese, Decision 201/1999, END 27, 397.

Transport Law – Suppl. 46 (2016)
Articles 5 to 9 state the actions required by the Convention. This includes reporting of a wreck by the Master or its owner/operator in a precise format stating the location of the wreck, its characteristics and condition including the nature of any cargo on board with particular reference to any hazardous or noxious substances. The report is to include the quantity and types of any oils on board including bunker and lubricating oils. The duty to report is to the Affected State, that is the state in which the wreck is located, which in turn is to determine whether the wreck poses a hazard in accordance with the specified criteria, mentioned on above. The Affected State is to establish the precise location of the wreck, to promulgate its position and the threat it poses and, as necessary, mark its position utilising the international system of buoyage. The costs associated with locating and marking the wreck can be recovered from the owner. Having determined the wreck poses a hazard, Article 9 of the Convention places the onus on the registered owner to remove it. The Affected State may dictate conditions for its removal, including setting deadlines for certain stages of the operation, although the Convention limits these conditions to those of safety and the protection of the marine environment. Moreover, the Affected State has a right to intervene during a wreck removal operation but, again, this intervention is limited by the Convention to considerations of safety and the protection of the marine environment. There is some scope here for dispute between the owner and the Affected State as to what constitutes such considerations. An owner is permitted under the Convention to contract with a salvor or other suitable party to remove the wreck, but if they fail to do so, or immediate action is required before the owner can mobilizes such services, the Affected State may undertake the task. Article 10 of the Convention holds the owner liable for the cost of locating, marking and removing the wreck without specific reference to any limitation to these costs other than the general restriction in Article 2 of being reasonable and proportional to the hazard faced. However, liability is excluded in the event of an act of war, or the usual IMO description of hostile activity or through force majeure described as a natural phenomenon of an exceptional, inevitable and irresistible character. A further exclusion is where the maritime casualty is intentionally caused by a third party; This may include acts of terrorism, however, in order to qualify, any resulting damage would need to be shown to be ‘wholly caused’ by such act so that it does not provide a complete defence in the event that even a small contributory negligence on the part of the shipowner is involved. This is a very large burden of proof and may not ultimately assist an owner even where the initiating event was a terrorist act. This impacts on the issue of compulsory insurance (see below). A final exclusion is the failure of a Government to properly maintain navigational aids again provided there is no intervening circumstance or break in causation. The onus of proof lies with the party seeking to benefit from these exclusions. Article 10 also permits an owner to limit liability pursuant to any applicable limitation regime. However, it is often the case that local legislation ratifying the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended (more recently the London Protocol with increased limits) to specifically exclude the right to limit in respect of wrecks. Liabilities that would otherwise be in conflict with other IMO conventions, such as CLC, HNS, Nuclear Damage and Bunker Oil Pollution are excluded under the Wreck Convention. Finally, Article 10 preserves the right of parties incurring cost under the Convention to pursue a recourse action
against a third party, such as another vessel involved in a collision. The longest article within the Convention, Article 12, requires the owner of a ship of 300 gross tonnes or more registered in a signatory state to maintain insurance or other acceptable form of financial security to cover liability under the Convention. The value is to be determined by the applicable legal limitation regime but in any event not to exceed the limits determined by the 1976 LLMC. Each ship is to carry a certificate in an approved format, a draft of which is included in the single annex to the Convention. Ships not registered in a signatory State may obtain certificates from any other state party. Importantly, the Convention insists that no ship registered in a state party is to be permitted to operate unless it has a certificate and that each state party is to ensure that any ship, whether of a state party or not, on entering its jurisdiction has such certificate as evidence of insurance or other financial security. Article 12 also provides for claims for costs arising out of the provisions of the Convention to be brought directly against the insurer or guarantor stated in the certificate. That party may invoke the same defences and/or seek to limit liability as entitled by the registered owner, except that party is not entitled to invoke a defence of bankruptcy of the registered owner or that the cover as evidenced by the certificate has in some way been prejudiced. Such insurer may bring a defence to claims where it can be shown the maritime casualty was caused by the wilful misconduct of the registered owner. An owner may be held liable under the Convention even in the event of a terrorist act. As P&I Clubs do not cover owners for terrorism, the question of provision of the necessary documentation to deal with the compulsory insurance requirements remains an issue to be resolved. Article 13 imposes a dual time limit within which a claim may be brought: Claims under the Convention will be time barred if not brought within the first three years from the date the Affected State determines the wreck constitutes a hazard with an absolute time bar of six years from the date of the maritime casualty. The Convention opened for signature from 19 November 2007 until 18 November 2008 and, thereafter, has been open for ratification, accession or acceptance. It stipulates entry into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary General. In conclusion, the Convention seeks to lay down a uniform set of rules for dealing with a wreck and its removal. In this respect the Convention reflects current non-convention practice but with the very significant introduction of compulsory insurance and the right of action directly against that insurer. As at 18 August 2015, twenty-four Contracting States have signed the Convention (Albania, Antigua and Barbuda, Bahamas, Bulgaria, Congo, Cook Islands, Cyprus, Denmark, Germany, India, Iran, Kenya, Liberia, Malaysia, Malta, Marshall Islands, Morocco, Nigeria, Niue, Palau, Panama, Tonga, Tuvalu, U.K.).

170. A collision of vessels can be considered the violent physical contact of ships in the maritime field, as a result of either human factors or unforeseeable circumstances. In case of joint and several liability each shipowner is liable for the loss incurred by its vessel. In all other cases (force majeure, fortuitous event, doubts about the causes of the conflict) the losses incurred are borne by the ships which have suffered those losses.
171. After a collision the master of every ship that collided must a) to assist any other vessel, crew and passengers, if there is a serious risk for his own ship and its passengers and crew and b) make known to the other ship the data of his ship (name, port of registration, port of departure and destination). Failure to provide assistance to the other ship and the violation of the Regulations for the avoidance of collision constitute specific nautical crimes for which the master of the ship is liable (CPML, Article 224, 225). In order to ascertain the causes which lead to the collision an administrative control is carried out by the Investigation Board of Maritime Accident and any claims for the recovery of damages are brought before the Greek courts when a) the party liable for the collision has its residence/seat in Greece, b) the ship bears a Greek flag c) the collision occurred in Greek territorial waters, d) Greece is the ship’s seizure place, even if the seizure was lifted before the introduction of the claim (CPML, Articles 134, 195–201).

172. A wreck denotes the destruction of the vessel due to an accident (e.g., bad weather, stranding, collision, sabotage, war), as well as the vessel itself after the disaster.

173. As per the CPublicML, the Port Authority, once aware of the wreck, uses all possible means to assist and rescue the crew and passengers. For this purpose, the Port Authority shall mobilize all the instruments at its disposal and any appropriate private media, whose crew is obliged to comply with the recommendations and provide assistance to survivors. Also, the Port Authority is required to provide assistance to rescue the ship, its cargo and to take the necessary steps to safeguard the things that survived. The rescued things are transported and stored in customs warehouses on behalf of their owners. Applicants or their legal representatives are invited to submit their claims within six months to recover them.

174. When a wreck is found at the bottom of the territorial waters of the country, the Port Authority shall, within six months of publication invite all interested parties to submit to the court of first instance an application for recovery of the ship ownership. If this is refused or not submitted, the wreck is then a State asset as per the relevant issued court decision. Anyone who finds an abandoned relic of a ship or a wreck or cargo, is required within twenty-four hours to declare it to the Port Authority, which then issues a relevant protocol and acts as a custodian.

175. In the case of a ship collision which is owed to force majeure or accident or, finally, in case that there is doubt as to the causes of the collision, the losses are borne by those who have suffered the losses, and if the liability for the collision is attributed to the ship, the latter bears the losses. The beneficiary of the compensation claim is the one ship against another as per each ship’s degree of fault and any person which suffered damage due to the collision (e.g., crew, charterer). The claim is subject to a one-year limitation period, which begins after the end of the year in which the collision occurred.

163. Article 236 CPML, Court of Appeal of Piraeus, Decision 573/2004, END, 32, 204.
176. The damage caused by a ship collision can be manifold. With regards to the extent of the compensation, the latter is defined by the law of the court adjudicating (lex fori), which is something that creates uncertainty to the parties involved. Hence, and in an effort to mitigate such a negative impact, the International Maritime Committee adopted in 1987 the Lisbon Rules, which – although non-binding – can be adopted by the parties. Those rules seek to streamline the calculation of the compensation, particularly with regard to consequential or pure economic loss (e.g., loss of freight or loss of future freight).\(^\text{165}\) As per Article 1, a CPML, all of the provisions regarding collision of ships also apply to floating crafts.\(^\text{166}\)

Chapter 11. Marine Pollution

177. The Greek law on maritime pollution is following the lead of the international events. Greece, as member state of the International Maritime Organization and as a prominent shipping country

178. In the field of marine pollution, the catastrophic oil spill of Torrey Canyon triggered the reaction at a global level against marine pollution. The first attempt in early 1969 was to bind voluntarily shipowners to reimburse the coastal states for all expenses incurred by the latter in connection with clean-up measures (Tanker Owners Voluntary Agreement-TOVALOP\textsuperscript{167}), with its supplement, according to which the owner of the ship is objectively liable against the coastal state, but not to any third parties.

179. In the meanwhile and because the voluntary scheme of compensation of persons who suffer damage from oil pollution was not seen as an adequate and sufficient mechanism of oil pollution prevention, the IMO and its member states agreed to proceed to a legally formal, see binding level; the International Maritime Organization drafted the ‘twin’ Conventions of Brussels, that is the International Convention on Civil Liability for Oil Pollution Damage of 1969 and the International Convention of the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, as it was subsequently amended by its 1992 Protocol.\textsuperscript{168}

180. According to the Conventions, the tanker owner is strictly liable for the damages caused, irrespectively of any fault or wrongful act of hers, and can only be exonerated for the events exhaustively mentioned in the texts of the Conventions (Article III and IV, respectively). To counterbalance this strict form of liability, the quantitative limitation of the tanker owners’ liability is provided, with the establishment of a financial fund that is addressed to fully indemnify and compensate the victims of oil pollution (Article 4 of the Fund Convention). The portion for each ship owner is determined according the tonnage of her ship(s). The victims can chose to seek compensation against either the ship owner or the insurance company of the latter, and if the victim is addressed against the latter, then the shipowner avails herself of liability (channelling of liability to a single person). On the other hand, if the harmful incident occurred as a result of the actual fault of privity of the owner, then the liability limitation does not longer apply (Article V of the 1969 Convention).

181. The 1969 Convention on Civil Liability for Oil Pollution Damage and the 1992 Protocol were introduced to the Greek legal system by Law 314/1976\textsuperscript{169}

\begin{thebibliography}{99}
\end{thebibliography}
the Fund Convention by Law 1638/1986, both of which introduce the Conventions’ systems in Greek legal order without any special additions or alterations.

182. Another prominent international convention in the field of marine pollution is the International Convention for the Prevention of Pollution from Ships (MARPOL). More accurately this is the fundamental international text covering prevention of pollution of the marine environment by ships from operational causes and accidental discharges. The first (or parent) International Maritime Organization (IMO) Convention that was signed on the 2nd of November 1973 at IMO headquarters was never implemented as such as it was absorbed by the MARPOL Protocol a few years later, in 1978. Both texts were put into force on the 2nd of October 1983.

183. Since then, the unified instrument has been amended several times with additional Protocols. In 1992 it was made obligatory for all tanker owners to have double hulls in their tankers’ bunkers and for existing tanker owners to fit double hulls, obligation that was subsequently revised in 2001 and 2003. In addition oil-carrying ships are required to have appropriate equipment as oil-discharge monitoring system, slop tanks, pumping arrangement, etc.

184. The issuance of a certificate of compliance to the Regulations of the Convention and its Annexes is also provided along with the obligation of all parties to accept the certificates issued by other party of the Convention as equally valid and are attributed the authority to deny entrance of a ship in their ports or off-shore terminals, if the ship does not carry a valid, or does not carry at all, a valid certificate in accordance with the provisions of the Regulations. The parties of the Convention have also the authority to inspect the ships entering their inland waters and in case of violation detection, they are entitled to take measures altering the ship’s sail.

The 1973 Convention and the Protocol of 1978 were adopted in response to Torrey Canyon oil spill that took place close to UK’s coasts, threatening not only maritime life but also the lives of the inhabitants near the affected coastline.

185. The MARPOL Convention and Protocols were introduced in Greek law by ratification of the Convention by Law 1269/1982 ‘For the ratification of the International Convention OF 1973 for the Prevention of Marine Pollution by Ships and the Protocol of 1978 thereby’. The Law is composed by 14 articles, that were subsequently amended by Article 2 of Law 3104/2003, which, additionally ratifies the 1997 Protocol of the MARPOL Convention; the Protocol adds Annex VI to the latter, with which transitory and procedural issues regarding the implementation of the Convention’s Regulation are treated.

186. The MARPOL Convention, or more accurately its corpus (which also incorporates additional legal texts as it will further be mentioned) is the main instrument in Greek Law regulating matters of marine and coastal pollution by ships. The provisions of the Convention’s Regulations, that were included in the (originally) 5 Annexes, were frequently amended, improved or even abolished by several ministerial decisions or regulatory acts of the executive branch.

187. Relatively recently, Annex I and II along with their appendices were amended, following the Marine Environment Protection Committee (MEPC) 117 and 118 rulings of the 15 October 2004, that were ratified by the PD 17/2007\(^\text{174}\); they were further amended by MEPC 141 ruling of 24 March 2006 which also added Regulation 12A. All the aforementioned amendments and revisions followed the procedures described exhaustively in Article 16 of the International Convention of 1973, in order to heighten the safety standards and ensure the prevention of marine pollution in a more effective manner.

188. What is worth mentioning is that substantive measures are taken on the part of Greece in order to ensure that MARPOL’s system is profoundly implemented and is not been impeded by the actual practice. In that sense, the Greek Government sought to form a priori security backdrops, such as the deterrence of any forms of the Convention’s violation. These measures are both preventive as well as represive and are namely of criminal, administrative and disciplinary\(^\text{175}\) level. At EU level – following the accident of the oil tanker ‘Erika’ which broke in two 40 miles off the coast of Brittany (France) in December 2009, and whereby more than 10,000 tons of heavy fuel oil were spilt, thereby creating an ecological disaster – pressure of public opinion prompted the European Commission to propose action at Community level. Hence, the Commission proposed a number of measures that could be taken immediately, as well as on a longer term, more complex measures which would be the subject of a second and third legislative package. The packages of these measures are known as Erika I, II, and III. The Erika I package contained measures on port state control, classification societies and double-hull oil tankers. The Erika II package consists of measures on monitoring, controlling and setting up an information system, a fund to compensate victims of oil pollution and the creation of a Maritime Safety Agency. In January 2004, the European Commission announced a new package of legislative measures. The Commission Communication on the Erika III package was presented to Parliament and Council on 8 February 2006. The third maritime safety package was adopted by the European Parliament on 11 March 2009. Most of the measures in the package took effect in late 2010.


\(^{175}\) When the violation is committed while the seafarer’s is at service on the ship where she is lawfully registered to service.
Chapter 12. Arrest of Ships

189. A ship or floating structure can be seized by a creditor so as to secure payment of a claim when such a claim is embodied in a final and irrevocable judgment or is enforceable under a writ of execution (arrest). Arrests of ships and certain floating structures is regulated by Articles 710, 713, 715, 720 of the C.Civ.P. as well as by the Convention for the unification of certain rules concerning arrest on seagoing ships (10 May 1952).

190. Application of the above Convention presupposes the existence of an international legal relation. However, it is not required that the ship which is to be arrested within the territory of a contracting state flies the flag of another contracting state. It is possible for a ship flying the Greek flag to be arrested in Greece according to the Convention, as long as the relevant claim is not purely domestic, but of an international character. If the creditor is located within a non-contracting state arrest of the Greek ship shall again take place according to the Convention since Greece has not used option 8 III thereof and has not excluded, either wholly or partly, any non-contracting state from the advantages granted by the Convention. However, as per the prevailing opinion, the Convention does not apply to ships flying the flag of a non-contracting state. Greek law is, however, different from the above Convention, the main difference being that the Convention allows for the arrest of a ship only to secure a maritime claim, i.e., a claim created by an incident of the ones referred to in the Convention (Article I I Convention for the unification of certain rules concerning arrest on seagoing ships). If the Convention applies but the claim is not a maritime one, the creditor cannot arrest the ship but is entitled to arrest any other asset of the shipowner as per the provisions of the C.Civ.P.

191. The creditor who possesses a writ of execution can seize the ship or floating structure of his debtor and cause their sale at public auction in order to satisfy his claim through the proceeds of the sale as per the provisions of the C.Civ.P.

192. According to the Articles 710, 713, 715, 720 C.Civ.P., as well as according to the Convention relating to the arrest of seagoing ships, enacted by LD 357/1974, the arrest of ships can be used in order to secure a claim against the ship owner or a ship. The Convention is only applicable to contracting states. The ship can be arrested in the territory of a contracting state even though it does not fly the flag of another country. However, Greece has not used the option under Article 8 III. Hence, the non-contracting states are not excluded from the provisions of the Convention. Nevertheless, the prevailing opinion supports that the Convention is not applicable to the ships with flag of a non-contracting state. Otherwise, a ship would be in risk of being arrested for non-contracting claims under Article 3 I of the Convention or even another ship operated by same person at the same time to the claim.


As far as the legal nature of the claim is concerned, a maritime claim may only lead to the arrest of a ship on behalf of the creditor, enabling at the same time to the arrest of any other asset of the ship owner if the claim is not maritime according to the Articles of the Greek C.Civ.P.\textsuperscript{178}

193. As per Article 713.3 the arrest of the ships should be included in the Register and fulfil some specific terms. Firstly, it is both forbidden and invalid to dispose off any of the arrested things from the person against whom the arrest was ordered. As per Article 715. 2.c. the arrest of the ship will be made after its notification to the debtor. Within thirty days the claimant must bring the principal action. If the deadline passed without action the arrest is automatically revoked.

194. Secondly, as per Article 720 an arrested ship must not leave the port. The master of the harbour is responsible for preventing the ship from leaving the port. The court under Article 702 can accept any embarkation of the arrested ship for one or more journeys after the request of the owner of legitimate interest.

195. Thirdly, the arrested ship cannot be subjected to mortgage.\textsuperscript{179}

\begin{flushright}
\textsuperscript{179} Article 199 CPML.
\end{flushright}
Chapter 13. Carriage of Passengers

196. As in carriage of goods by sea, same in carriage of passengers, the law contains general provisions to regulate the internal carriage of passengers (CPML and general law provisions) and other separate provisions regulate the international carriage of passengers (International Convention of Athens 1974, and London Protocols 1976, 2002). The legislator did not introduce in Law 1922/1991 and Law 4195/2013, via which the international legal instruments were ratified, a provision to extend their scope of application in internal transportation. The extension of their scope of application in internal transportation at European level with the Annex I of the Regulation 329/2009, whereby the status of liability as defined in the International Convention of Athens 1974 was extended to apply also in the internal transportation of passengers in the EU member states.

197. As per Articles 174–189 CPML in accordance with the provisions in Greek Civil Code the passenger have the choice to base his claim upon tort liability and not only upon the contract of carriage. The contract of carriage constitutes an evidence of a ticket and is not issued either instead of a bill of lading or instead of a charterparty. In case the name of the passenger is written on the ticket, then it is not transferable.

198. Articles 174–189 CPML regulate the liability of the carrier for the passengers’ luggage, but not the liability of the carrier for the death or bodily injury of the passengers. Hence, in the latter case, the general law provisions on breach of contract apply by analogy. Thus, in case of death or bodily injury of the passenger due to an act, or omission or negligent act of the carrier, the latter is liable in contract (Article 330, 334 Greek Civil Code). There is no liability if the death or bodily injury has occurred by an event for which the carrier is not liable (Article 336 Greek Civil Code). Also, there is limitation of liability or none liability owed in the case of contributory fault owed by the passenger (Article 300 Greek Civil Code).

§1. BEFORE THE VOYAGE

199. In case the passenger fails to embark on time, the carrier has no contractual obligations towards him and the passenger is obliged to pay the entire fee. In case the ship is late embarking, the passenger retains the right to stay on board as well as demand food requirements as per Article 176 CPML. The right of compensation due to a long delay in embarking in not excluded. If the passenger rescinds the contract or suffers a health problem or has an accident before the embarkation, the carrier has the right to demand the half of the price ticket. The contract is terminated and both parties are released from their contractual obligations if an incident concerning the ship is happened.

180. I. Rokas & G. Theocharidis, Maritime Law 370 (Sakkoulas 2015).
181. For ships of category A, B and with the possibility to extend the application to ships of category C and D.
§2. DURING THE VOYAGE

200. If the passenger disembarks in other destination as the agreed during the voyage, the carrier is obliged to demand the entire price of the ticket. If the disembarkation is due to a health’s problem or an incident concerning the passenger, then the passenger can ask for refund for the unused part of the journey. In case of delay in the embarkation relating to ship repairs, requisition of the ship, prevention of State’s Authority, the passenger can ask for refund to his ticket.

201. In case of a passenger’s death his family members may claim compensation for grief and suffering. Finally, the liability of a carrier in case of a passenger’s death is not limited according to the International Convention of LLMC, ratified from Greece and enacted by Law 1923/1991. Finally, passengers are obliged to follow the orders of the captain in order to secure safety on board.

§3. LUGGAGE

202. The carrier is also liable for damage to the luggage of the passengers, whether the luggage were given for storage (Article 187 CPML) or whether they were kept in the passenger cabin (Article 188 CPML). In the first case for the establishment of the liability, the provisions on charterparties, and especially those on carriage of goods by sea are applied by analogy and by express reference. The carrier is liable for loss or damage to the cargo (luggage), provided that the loss or damage was owed to a lack of diligence in its handling. The contract of carriage of passengers is evidenced by the issue of a fare / ticket (Article 174 CPML). There is no obligation for the issue of a separate ticket for the transportation of luggage. Only in case of an excessive weight a special fee for the luggage is required, otherwise no special fee is included. As per Article 188 of CPML if the passenger safe-keeps himself his luggage, the carrier is liable for the loss or damage for which the master or the crew would also be liable.

§4. THE ATHENS CONVENTION

203. The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL) was adopted at a Conference, convened in Athens in 1974 and was designed to consolidate and harmonize two earlier Brussels conventions dealing with passengers and luggage and adopted in 1961 and 1967 respectively. The Convention establishes a regime of liability for damage suffered by passengers carried on a seagoing vessel. It declares a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier. However, unless the carrier acted with intent to cause such damage, or recklessly and with knowledge that such

damage would probably result, he can limit his liability. For the death of, or personal injury to, a passenger, this limit of liability is set at 46,666 Special Drawing Rights (SDR) per carriage. The 2002 Protocol, introduces compulsory insurance to cover passengers on ships and substantially raises those limits to 250,000 SDR per passenger on each distinct occasion. As far as loss of or damage to luggage is concerned, the carrier’s limit of liability varies, depending on whether the loss or damage occurred in respect of cabin luggage, of a vehicle and/or luggage carried in or on it, or in respect of other luggage. The 1976 Protocol made the unit of account the Special Drawing Right (SDR), replacing the ‘Poincaré franc’, based on the ‘official’ value of gold, as the applicable unit of account. The 1990 Protocol was intended to raise the limits set out in the convention but it did not enter into force and was superseded by the 2002 Protocol. The 2002 Protocol introduced compulsory insurance to cover passengers on ships and raises the limits of liability. It also introduced other mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes dealing with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents, backed by the requirement that the carrier take out compulsory insurance to cover these potential claims. The limits contained in the Protocol set a maximum limit, empowering – but not obliging – national courts to compensate for death, injury or damage up to these limits. The Protocol also included an ‘opt-out’ clause, enabling State Parties to retain or introduce higher limits of liability (or unlimited liability) in the case of carriers who are subject to the jurisdiction of their courts. As far as compulsory insurance is concerned, a new Article 4bis of the Convention requires carriers to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the limits for strict liability under the Convention in respect of the death of and personal injury to passengers. The limit of compulsory insurance or other financial security should not be less than 250,000 Special Drawing Rights (SDR) per passenger on each distinct occasion. Ships are to be issued with a certificate attesting that insurance or other financial security is in force and a model certificate is attached to the Protocol in an Annex. The limits of liability have been raised significantly under the Protocol, to reflect present day conditions and the mechanism for raising limits in the future has been made easier. The liability of the carrier for the death of or personal injury to a passenger is limited to 250,000 SDR per passenger on each distinct occasion. The carrier is liable, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or was wholly caused by an act or omission done with the intent to cause the incident by a third party. If the loss exceeds the limit, the carrier is further liable – up to a limit of 400,000 SDR per passenger on each distinct occasion – unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier is liable if the incident which caused the loss was due to the fault or neglect of the carrier. The Protocol allows a State Party to regulate by specific provisions of national law the limit of liability for personal injury and death, provided that the national limit of liability, if any, is not lower than that prescribed in the Protocol. The liability of the
carrier for the loss of or damage to cabin luggage is limited to 2,250 SDR per passenger, per carriage. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle is limited to 12,700 SDR per vehicle, per carriage and the liability of the carrier for the loss of or damage to other luggage is limited to 3,375 SDR per passenger, per carriage. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 SDR in the case of damage to a vehicle and not exceeding 149 SDR per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage. The 2002 Protocol introduces a new procedure for amending the limits of liability under the Convention, so that any future raises in limits can be achieved more readily. Under the 1974 Convention, limits could only be raised by adopting amendments to the Convention which require a specified number of States’ acceptances to bring the amendments into force. The 2002 Protocol therefore introduced a tacit acceptance procedure for raising the limits of liability.
Chapter 14. The Future Law – The Rotterdam Rules

204. The law governing international carriage of goods by sea today is very fragmented. The Rotterdam Rules were signed with an aim to update the law governing carriage of goods by sea and to introduce a modern regime. The Rotterdam Rules aim to establish uniform rules to modernize and harmonize the rules that govern international carriage of goods by sea. The goal of creating uniform rules was one of the most important reasons for the steps to reform this area of law since the situation with increasing differences between different jurisdictions in the law governing carriage of goods by sea was only getting worse and something had to be done in order to restore the uniformity that had once existed. The failure of the previous legal instruments is centred in that they constitute different sets of rules which are interpreted in different ways by courts and arbitration panels all over the world together with several national hybrid regimes which incorporate parts of the before-mentioned sets of rules are in force. The present regimes (Hague/Hague-Visby/ Hamburg Rules) are obsolete in many ways. The answer behind the need for reform has been to create a new convention. The Rotterdam Rules have therefore been developed by the CMI and to promote uniformity and to modernize and adapt the rules governing carriage of goods by sea to the conditions of the twenty-first century.

§1. The Rotterdam Rules

205. Article 1 of the Rules contains a list with the definitions of the different concepts used in the convention. The convention applies to contracts of carriage which provides for international carriage by sea (the contractual approach). The scope has been widened in relation to the Hague-Visby Rules in the sense that the Rules just like the Hamburg Rules applies both inward and outward and in relation to both the Hamburg Rules and the Hague-Visby in the sense that the Rules may be applicable on door-to-door contracts that provides for multimodal transport. The aim of the convention is to be applicable in liner transportation except when a charter party or similar contract is issued but not in non-liner transportation. The Rotterdam Rules are applicable to international carriage if a sea-leg is included. The Rules are mainly applicable to contracts of carriage in liner-transportation but in certain circumstances they may apply in non-liner transportation. Furthermore, the focus is less on the documentation but more on the contract as such. Just as the Hamburg Rules, the Rules apply to contracts of carriage by sea no matter the type of documentation used. One of the innovations of the Rotterdam Rules is the multimodal scope of application of the Rules which includes provisions for solving situations of overlap and conflict with other transport-conventions. Another innovation is the limited freedom of contract that can apply provided that some specific conditions are met.

The Rotterdam Rules thus provides for door-to-door coverage. Even though the convention may apply to other modes of transport; it is not a truly multimodal instrument but rather a ‘maritime-plus’ convention. Thus, the contract of carriage must provide for sea-carriage for the convention to be applicable and the period of
responsibility is naturally larger than the equivalent of the other regimes because of
the new multimodal application.

206. Article 79 of the Rotterdam Rules governs freedom of contract and just as
its counter-parts in the Hague-Visby regime and in the Hamburg Rules it provides
a possibility to increase the obligations and liabilities of the carrier but not to
decrease them unless the Rules provide otherwise. The cargo interested persons
(including the shipowner) under the Rules cannot have their obligations or liability
increased nor decreased, instead those obligations or liability remain unchanged
under Article 79 unless the Rules provide otherwise.

207. Article 80(1) of the Rotterdam Rules states that a volume contract between
the carrier and shipper may provide for greater or lesser rights, obligations and
liabilities than those imposed by the Rules, provided (Article 80(2) that certain con-
ditions are fulfilled in order for the derogation to be binding.

208. Regarding the basic obligations of the carrier, Article 11 explicitly sets out
the obligations to carry the goods to the place of destination and deliver them to the
consignee. This express mentioning was not present in the previous regimes, instead
the obligations were all implicit. The obligation of seaworthiness does not differ
much from the Hague-Visby regime since the wording is very similar, however the
obligation has been made continuous in the Rotterdam Rules and entails the exer-
cise of due diligence to make the ship seaworthy before the beginning of the voy-
age but also the maintenance of its seaworthiness during the voyage.

209. The liability regime for cargo damage due to a breach of any of the obliga-
tions sets out the basis for the carrier’s liability and the burden of proof. What
differs now are the exceptions that can be applied even if fault exists and the regu-
lation of the burden of proof, which is clearly stated in the Rotterdam Rules. The
carrier is excepted from all or part of its liability (Article 17(2)) if it shows that the
cause or one of the causes of the loss, damage or delay was not due to its fault (or
the fault of any person for whom it was responsible). The removal of the nautical
fault exception, which is an important change and imposes harder demands on the
carrier. The carrier’s liability can be limited but in the Rotterdam Rules, the levels
of liability have been raised and the scope has been widened.
Part III. Other Transport

Kyriaki Noussia & Iro Moraiti

Chapter 1. Transport by Road

§1. Sources of Transport-by-Road Law

210. Transport by road is in Greek law originally regulated by the Greek Commercial Law (King’s Decree of the 19th April – 1st of May 1835), its Articles 95–102 in particular. Provided that this law is, nowadays, up to a great extent obsolete, it does not correspond to contemporary needs of transport by road, nor does it regulate subjects such as consignor’s rights and obligations, limitation of carrier’s liability, the extent and division of subsequent carriers’ liability, consignee’s and third parties’ rights, bill of lading by land issues etc. After the International Convention on the Contract for the International Carriage of Goods by Road (CMR) was ratified by the Greek Parliament and its Law n. 559/1977, the above-mentioned only regulate all inland, Greek territory transport of goods by road, whereas all other remaining are covered by the said Convention.

§2. Transport by Road – Legal Definition

211. There is no single original definition set by the Greek legislator for the so-called ‘transport by road’. It is, though, accepted that the term englobes all transport by land of people and goods in exchange of a fee. When transportation of goods is executed on a single contract, but with several means of transport (e.g., truck for one party and ship for another), it is called combined transport; whereas mixed transport is the type of contractual transport where the means that carries the goods that are to be transported (e.g., truck) is carried on a different means of transport (e.g., ship) for the whole or part of the trip.183 Consecutive transport is the kind of transport that is operated on a single contract but with several carriers, of the same or different means. It can either plain or combined.

§3. The Transport by Road Contract and Involved Parties

212. The carrier is an independent contractor (‘ergoliptis’), vis-à-vis the consignor, and as such any arising issue that is not resolved under the Commercial Law is subject to the relative clauses of the Greek Civil Code (independent contractor ship, Article 681 subs), as well as the articles regarding bilateral contracts,

---

183. For the combined and mixed transports by rail and road, that are regulated exclusively, see A. Kiantou-Pambouki, Elements of the Law on the Transport by Road 139 (1989).
Article 362 CC) and those of independent lease contractorship, not excluding all the general clauses applying to all contracts, under the Civil Code.

213. Moreover, if there is a mixed contract, involving other obligations of ancillary nature, apart from the carriage of goods, such as the obligation of the carrier to collect the monetary value of the good(s) being transferred (cash on delivery), then we have to distinguish two distinct cases: if the carrier is not a merchant, under the definitions of the Greek Commercial Law, then the ancillary obligation falls under the above-mentioned articles of the Civil Code, regarding independent contractorship on the contrary when the carrier is a merchant then the ancillary (presumptively non-commercial) activity becomes commercial, by subject, and commercial law provisions are applicable.

214. A transport consignment is the contractual relationship among either the cargo consignor and the carrier or the cargo consignee and the carrier, by virtue of which the latter has the obligation to effectuate the transport not on his own means, but by choosing another carrier to operate the carriage of goods, with whom he enters into a(nother) transport contract, for the consignor’s or the consignee’s account, acting however on his own name.

215. This is the key difference between the transport consignee – who acts always on his own name – and a transport broker or agent, who brings together the parties (consignor/consignee and carrier), acting always at their (parties’) own name and account.

216. The freedom of the transport consignee to designate his subcontractor, the specific means of transport, as well as the routes for the transport to be carried out successfully, is one of the main characteristics of this contract. This freedom is well on par with her heightened liability, who actually guarantees the anticipated evolution of the contractual relationship. However, the transport consignee’s freedom to act, is not to be conceived to be absolute, nor does it constitute the sole element of the transport consignment. Along with freedom comes her obligation to follow instructions given by the goods consignor/consignee, as per the goods transport contract (original contract). If, by virtue of the latter, transport consignee’s freedom is anyhow limited or circumscribed, it follows that her liability is accordingly limited to all those acts that are not affected by the goods’ consignor/consignee authority. Any damage that is caused by the transport consignee to the goods that are transferred but is causally linked to the goods consignor’s guidelines should not imputed to the first. It is, lastly, well obvious that the attribution of the legal term of ‘consignor’ depends on the facts of the case and the interpretation of the contract.

217. The parties that can be involved in a contract of transport may differ, depending on the needs of the specific transportation. In its most plain version, the contract engages three parties: the goods’ consignor, their consignee and the carrier.

184. The freedom to choose the means of transport is a necessary element of the transport consignment in French law.
It is very common that a transport consignee would be involved, as described above, who can be contracted either with the goods’ consignor or the consignee. There can also be a fifth party involved, the intermediary transport consignee. The latter enters into a contractual relationship with the original transport consignee and acts at his own name and account, him as well, when carrying out the transportation of goods and substituting the original consignee. He is jointly and severally liable with the original transport consignee as well with the carrier, vis-à-vis the goods’ consignor and/or consignee.

218. A distinction should be drawn between the above-described notion and the one of ‘sub-consignee’. The latter is only responsible for a part of the transportation of goods and he does not act at his own name and account; he is rather considered to be a servant of the transport consignee, for damages caused to the goods’ consignor and third parties.

219. The agent for the receipt of the goods is another party that can be involved in the transport contract. He is responsible only to receive the goods and hand them to their consignee, after their transportation is concluded. He is considered a servant of the original transport consignee and acts at his name and account.

220. The goods’ consignor is the person that handles the goods that are to be transported to the carrier or the transport consignee and the goods consignee is the person that receives the goods for a value in exchange. They can both be contracted with the carrier and in each case, the person that does not do so can ask for the execution of the transport contract, according to the provisions of the Greek Civil Code about third party beneficiaries, in Articles 410 subs. Accordingly, if the party that is not directly contracted with the carrier is, by contract, charged with different expenses he does not have the legal obligation to do so, unless he expressly consents so (Article 415 Civil Code).

§4. PARTIES’ OBLIGATIONS – OBLIGATION TO PAY THE FREIGHT

221. The main obligation of the carrier’s counterparty (or the god’s consignee) is to pay the freight, in exchange to main carrier’s obligation to carry and deliver the goods in sound condition. The freight should include all expenses incurred by the carrier, apart from his fee. 185

222. As for the freight in public transportation, it is governmentally designated in form of a maximum and a minimum, so that every price in the range drawn by these two extremes is acceptable. On the top of that, there is also a standard freight designated centrally for each tonnage carried with public transportation vehicles. If any additional services, these are controlled by Articles 650 and 682 of the Civil Code, regarding independent contractorship and labour contracts respectively.

185. Greek Supreme Court’s decision 322/1919, Θ 31, 115.
223. There are also further obligations for the carrier’s counterparty, stemming from the general provision of good faith and commercial practices as stipulated in Article 288 Civil Code, including their obligation to inform the carrier about the cargo's nature and so forth.

§5. CARRIER’S AND TRANSPORT CONSIGNEE’S LIABILITY

224. As mentioned above, carrier’s liability is, according to Articles 102–103 of the Commercial Code, heightened (i.e., objective): the carrier is responsible for any damage caused to the cargo, irrespectively of his personal fault or mismanage. Consequently, the carrier is responsible for the damages that were actually a matter of luck that cannot be attributed to anyone’s sphere of control. The upper limit of this strict liability are matters of force majeure, in which case the carrier is exempted.186

225. As a result, when suing the carrier for cargo’s loss or damage, one does not need to prove the carrier’s wilfulness or even lack of diligence, nor does he need to mention where exactly (in which part of the route) did the accident happen, or the cause of the accident. It is up to the carrier to object and prove that any damage that was caused can only be attributed to force majeure.

226. It is worth mentioning that in the Draft of the New Commercial Code187 there is a slightly different system of liability, establishing188 an exemption of carrier’s liability for those events that were not and could not have been avoided by a diligent and prudent carrier, just as per the International Convention on the Contract for the International Carriage of Goods by Road (CMR)189 system. This heightened liability commences from the loading point of the goods on the truck and remains until their delivery to their recipient.

227. The transport consignee is responsible for the safe and sound delivery of the cargo and is held liable for every delay in its delivery (Commercial Code Article 96), as much as he does for any loss or damage (Commercial Code Article 97). Similarly to the carrier, transport consignee is charged objectively, meaning that he is held liable for any event, including those out of his sphere of control, being limited only by force majeure events. He is also responsible for his employees’ fault, or of his sub-consignee’s, with who he is jointly and severally liable.

228. Damages for delay or loss of the cargo are not regulated in the Commercial Code; instead they are governed by the general provisions of the Civil Code and they include any loss and/or loss of earnings (expectation damages). In the case of

188. Article 149.
combined transportations, the rule of the last means of transport applies: the damaged party has to sue per the last means’ rulebook. If, for instance, the last part of the combined transportation is a maritime transportation, then the carrier’s counterparty has to sue based on the CPML, regardless on to where the damage actually took place. The rationale behind this solution is that the injured party would not necessarily be aware of the place where the breach of contract (or the tort) occurred. It is to its benefit, that she can sue on a safer ground, that of the last means of transport rulebook.

229. There can be a situation where a contract claim and a tort claim are inter-twined, so that both lawsuits could be filed. In that case, in Greek transport law, the tort claim is generally preferred. A tort claim is sustained where the breach of duty, the intrusion into the counterparty’s safety, health, or profit is attributed to an intentional act or omission of the carrier, the transport consignee or their employees.

§6. CARRIER’S AND TRANSPORT CONSIGNEE’S EXEMPTION FROM LIABILITY

230. As it has been pointed out above (§ 1.05), carrier’s and transport consignee’s liability is objective and can be restricted via contractual clauses, with the limitations of Article 332 (validity of liability exemption clauses), as provided in Article 97 of the Commercial Code.

231. The above article is referring, however, to only the transport consignee and not the carrier. It is, though, interpreted as to capture both of them, indistinctively, as there is no substantial reason to treat them differently.190

232. The exemption grounds provided in law are:

(a) Force majeure, according to Articles 102–103 of the Commercial Code.
(b) The flaw or the special nature of the cargo, according to Article 102 § 2 of the Commercial Code, under the condition that the flaws were the exclusive root cause of the damage and that no superseding event occurred. The burden is on the carrier (or transport consignee) to prove that the damage was caused due to the special nature (or flaw) of the cargo, adducing it as a defence. The special nature or flaw of the cargo only exempts the carrier from his default liability, only in case of cargo damage and not loss (‘jettison’, as per Article 102 language). From the above, a gap in law is created in case when due to the specific or dangerous nature of the cargo, or its physical flaw(s), its quantity is partially diminished, extinct, evaporated, etc., equating to partial loss. In this case, we should be applying by analogy the provisions of Article 17§ 4 of the CMR.
(c) An act or omission of the sender or the recipient of the goods. This exemption is not explicitly provided for in the Commercial Code, it is, though, deduced

190. They are both liable as the guarantor of the cargo. See CoA Decision no. 4414/1975, in Review of Commercial Law, KZ, p. 411; L. Georgakopoulos, Handbook of Commercial Law, Vol. 2. Contracts (Sakkoulas 1998).
from Article 300 of the Civil Code, which reflects a general principle of the Greek Law on matters of contributory negligence. Moreover, it is stipulated in Article 17 § 2 CMR.

233. Negligence in loading, packing or unpacking of the cargo on the truck resulting in its damage, would induce carrier’s liability, unless there has been an unconditional agreement between the parties that the sender (or the recipient) are responsible for their diligent packing, loading and or discharge on the truck.191

234. Regarding the transport consignee’s potential exemption from her liability it should be noted that there is no relevant provision in the Commercial Code. However, as it has been noted above (§ 1.05), transport consignee and the carrier are burdened with the same kind of liability, that of the cargo’s guarantor. It is, thus, agreed that her liability comes up to the extent of force majeure events and she can be exempted from liability, invoking the same grounds as the carrier does.

235. It is, however, evident that the transport consignee is also liable for her own negligence in the execution of the contract against the recipient or the sender of the goods, irrespectively of any internal agreement between the carrier (original party of the transport agreement with the sender of the goods, or its recipient) and the transport consignee. In the case of such an agreement, the carrier is not exempted from the liability that is having against his counterparty in the original contract of transport and the exempted clauses are ineffective.

§ 7. CARRIER’S LIABILITY SUSPENSION

I. Unconditional Receipt of the Goods

236. Carrier’s liability can be lifted or suspended when there is an unconditional receipt of the goods from the recipient. As it has been noted above, the time period that the carrier and the transport consignee are responsible for the cargo and its maintenance in good condition is the time period between the receipt on his part of goods for loading and their receipt by their final recipient.

237. According to the exempted ground of Article 104 of the Commercial Code, the complete, physical and unconditional receipt of the transported goods, as well as the payment of the freight render any potential lawsuit against the carrier for the cargo’s loss or damage, inadmissible.

238. The conditions under which Article 104 of the Commercial Code is applied are the following: (a) the full and physical receipt of the goods, so as the goods are in the recipient’s disposition and she is in a position to ascertain their condition, (b) the payment of the freight in its total and of any charges for the transport by the recipient after the delivery of the goods. In the case where the freight is only

191. The Commercial Code does not have a stipulation regarding the above.
partially funded, Article 104 is not applicable. In addition, the payment of the freight before the receipt of the goods by their owner, without any animus of waiving all her legal rights does not extinguish the latter’s ability to sue; (c) the unconditional or without protest receipt of the goods. Any reserves in receiving the goods or even any protests on the part of the cargo (final) owner are considered to relinquish the liability suspension of the carrier. Reservations or protests do not have to be made under any formalities, but there have to be concrete and well founded as to the cargo’s flaws or shortage.

239. Article 104 exempted clause can only be adduced as a defence by the carrier and the court cannot take it into consideration of its own motion. It is only applicable in the transportation contract and is not relevant to the contractual relationship between the sender and the recipient of the goods. Article 104 is also applicable on the transport consignee.

II. Statute of Limitations

240. The other ground for liability suspension provided in law is the statute of limitations. Article 107 of the Commercial Code provides for a six-month statute of limitations, for inland transportations, whereas CMR is applied for all the international ones.

241. All lawsuits stemming from the loss or damage of the cargo fall under the above statute of limitations. The lawsuit for the delays in delivery is also subject to the above, even though it is not explicitly provided for in the above article. In that last case, the statute of limitations begins to run from the day when the cargo should have been delivered to its recipient.

242. In this short statute of limitations only transport contract claims fall under and any other potential claim that does not result from the transport contract are treated differently. In the same statute of limitations fall all the claims against the transport consignee as well.

243. In a malicious breach of contract on the part of the carrier (or the transport consignee) Article 107 of the Commercial Code is inapplicable. In this case, the general provision of Article 937 of the Civil Code comes into force. The same is true when a claim for tort can be filed by the same events. For every other aspect regarding the statute of limitations of Article 107, Article 250 subsection of the Civil Code are applicable.

244. The claims of the carrier against the sender or the recipient of the goods for the freight payment are subject to the twenty-year long statute of limitations of Article 250 paragraph 3 of the Civil Code.

192. Statute of limitations for torts.
III. Applicable Law

245. After the ratification of the International Convention on the Contract for the International Carriage of Goods by Road (CMR),\textsuperscript{193} every transport by road from and to Greece is subject mandatorily to its provisions, regardless of the parties’ nationality or the country where the transport contract was concluded, or even the destination or loading country.

246. The only instances where the applicable law might be an issue are the international transportation of goods or the international transportation of people where the CMR is not called into force by its provisions. Such cases involve, for example, an international transport of household goods, which is expressly exempted from the Convention’s scope of application by Article 1 § 4; or when the Convention is primarily applicable but there are issues that are not fully and exhaustively regulated by it. Of interest is, also, the case where two foreigners agree on a foreign country to adhere to a transport contract which will take place within two Greek cities.

247. On the 1 April 1991 the Rome International Convention on Contractual Obligations came into force in the Greek legal system.\textsuperscript{194} In Article 21 it is expressly stipulated that the enforceability of other international conventions that are valid and, what is more, prevail over CMR, is not prejudiced.\textsuperscript{195} In the field of international transportations such a convention is the CMR.

248. The above-mentioned Rome Convention 1980 provides in Article 3 for the freedom of choice of the law on the contracts that are amongst those mentioned in Article 1, hence transport contracts as well.\textsuperscript{196}

249. In the case where the contractual parties have not chosen the applicable law, the Convention solution in Article 4 § 1 is the law of the country that has the closest connection with the contract at issue. According to paragraph 2 of Article 4, the country with the closest connection is presumed to be the country where the party who is to effect the most characteristic performance has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or non-incorporate, its central administration.\textsuperscript{197}

250. The transportation contract of goods is explicitly exempted from the presumption of Article 4 paragraph 2. There is a special presumption applying to the

\textsuperscript{193} By Law 559/1977 of the Greek Parliament.
\textsuperscript{194} By Law 1792/1988 of the Greek Parliament.
transport contracts, according to which the country with the closest connection is the one where the carrier has its central administration, at the time of the contract conclusion, providing that the said country is either the loading or delivery country, or the central administration of the sender (Article 4 paragraph 4).

251. As ‘sender’ qualifies every person that hands in goods to the carrier in order for the latter to transport them and as ‘loading’ and ‘discharge place’ qualify the places that are agreed upon the conclusion of the contract.

252. The term ‘carrier’ is defined broadly enough as the person that is in charge of the obligation to carry the goods, irrespectively of whether she effects the transportation on her own or with her employees. It, thus, encompasses the transport consignee in addition to the carrier, under the condition that she is responsible for the carriage of goods and not simply find another (sub)carrier who will ultimately be responsible to do so. This latter is probably subject to the general presumption of Article 4 paragraph 2 of the Rome Convention and the law of the country where the transport consignee has his habitual residence, or, in the case of a body corporate, its central administration.

253. In the same context, passengers’ transportation contracts do not call into force paragraph 4 of Article 4; instead they are subject to the general presumption of paragraph 2, taking into consideration that the different regime for each and every passenger would result to an unbearable insecurity in transactions.

254. Even though carrier’s habitual residence is not the safest connecting element, in any case the judge when trying to determine the country with the closest connection to the contract could not eliminate the country where the carrier resides habitually.

255. According to Article 4 paragraph 5, paragraph 4 is not applied if it appears from the circumstances as a whole that the contract is more closely connected with another country.

256. In the Greek Civil Code Article 25, that provides for the law applicable on contracts in the Greek legal order, only comes into force when a contract that was concluded on or before the 1st of April 1991 is at issue. After that date, which was the date that the Rome Convention came into force, its provisions shall be applied, regardless of whether the law that is determined applicable, is of a country’s member to the Convention or not.

§8. DOCUMENTS SUPPORTING THE CONTRACT OF CARRIAGE – CONSIGNATION NOTE – BILL OF LADING – TICKET

257. In the case of road transportation, and contrary to what is the case in the maritime field, where transportations are usually lengthier in time, it has been habitual to use instead of a bill of lading a, what is called in Greek Commercial Code (Article 101), ‘agogiastirio’ or consignment note.

258. Whereas the bill of lading is issued by the carrier and handled to the shipper, the consignment note is issued by the sender and contains the nature, weight, quality and other characteristics of the to be transported goods, recipient’s details and further instructions to the carrier, as well as, some or all of, the indicative elements that are listed in Article 101 of the Commercial Code. It is handled to the carrier and is accompanying the cargo until they reach their final destination. It is also possible that the consignment note is issued by the transport consignee, per Article 101 § 3, its function remaining the same.

259. The consignment note is not a security and is appropriate to simply prove the transport contract. It is not considered to be the only documentary evidence for the purposes of Article 394 § 2 of the Greek C.Civ.P., since it is not considered to be the exclusive transport document, as the latter can be proven by witnesses as well. The proving evidence that results by the issuance of a consignment note operates in favour of only the carrier and not the sender, according to the general principle of the C.Civ.P. (Article 447), that a private document operates as proving evidence only against its issuer, except for if the sender’s contestant adduced it in trial.

260. The issuance of a bill of lading for transport by road is not provided for in the Commercial Code; it is, however, possible per the provisions of Article 76 of the Legislative Decree of 17-7/13-8-1923 regarding the special provisions on corporations.

261. However, all the above-mentioned provisions are prejudiced by the detailed tax law provisions of the Greek Code of Books and Records (Presidential Decree 186/1992), on the documents that the sender must provide the carrier with, on the one hand, and those that the carrier should keep during the carriage of the goods, on the other.

262. Specifically, the sender is required to handle to the carrier or the transport consignee the ‘transportation note’ (‘stixio diakiniseos’), which must accompany the goods during the whole journey and be delivered to the final recipient along with
the goods, as per Article 11 of the Code of Books and Records. The carrier, in other words, should be issuing the bill of lading in four copies: one is staying with the carrier and accompanies the cargo, one is delivered to the shipper, the third one, which is labelled 'proof of expenses' is delivered to the person that is paying the fares and the last one as the counterfoil.

263. The elements that should be mandatorily printed on the bill of lading are exposed in Article 16 paragraph 7 of the said Code and these are amongst others the name of the sender, carrier and recipient, destination of the goods, fare, number of the truck, bill of lading issuance place and date etc.

264. In international transportations (not only by road, but by rail and air as well), it is conceivable that other documents of equivalent order are printed instead, provided that these documents are provided in international conventions that Greece has ratified (Code of Books and Records, Article 16. § 11).
Chapter 2. Transportation by Rail

§1. The Legal Framework

I. Internal Transportations by Rail

265. By virtue of the legislative authorization provided in the LD. 4246/1962 ‘Regarding unification of the national rail networks’, Article 1 § 10, the ministerial decree of the Minister of Transportations no A/20998/3079 of the 4th/30th September 1968, set out the rule book regarding rail transportations; The Regulation of Transportations by Rail (RTR from now on) provides the framework for all transportations by rail, both those of passengers and goods, that are carried out within the national borders.

II. The International Transportations by Rail

266. All international transportations are regulated by the so-called ‘Bern Conventions’, as they were signed in Bern, where the administrative headquarters of the Organization for International Carriage by Rail (OTIF) and the International Union of Railways are located. These conventions were primarily the Contract for the International Carriage of Goods by Rail (Contrat de Transport International Ferroviaire des Marchandises – CIM) and the Contract of International Carriage of Passengers by Rail (Contrat de Transport International des Voyageurs et des Baggages – CIV). These Contracts were introduced to the Greek legal order by the King’s Decree No 334 of the 19th of May to 24th of July 1972, along with their Protocols and the Final Act of the 7th Revisionary Convention. On the 9th of May 1980 a new contract for the international transportations was signed; the Convention concerning International Carriage by Rail, also known as COTIF by the initials of Convention relative aux Transports Internationaux Ferroviaires was ratified by Law 1593/1986 and was put into force on the 1st of November 1986.

267. To the aforementioned Convention were appended two annexes, the revised and amended texts of the CIV and CIM conventions for the carriage of passengers and goods, respectively, that are called since then, the Uniform Rules regarding the International Carriage by Rail of Passengers (CIV) and of Goods (CIM). As international carriages by rail are conceived all the carriages that are proven by a passengers’ ticket, a consignment note or a bill of lading and are operated between two Member States’ territories. During the session of the Organization’s Revisionary Committee that took place from the 14 to the 21st of December 1984, the supplementation and amendment of the texts of the Unified Rules CIV and CIM. This
supplementation was ratified by the ministerial decree of the Minister of Transpor-
tations no 22935/2496 of the 10.10/15-11-1990 titled ‘Ratification of the amend-
ments and supplementations to the Convention concerning International Carriage by
Rail (COTIF) of the 9th May 1980’ and was put into force on the 1st of January
1991, abolishing ipso facto all previously existing provisions.

§2. THE CONCLUSION OF THE TRANSPORT BY RAIL CONTRACT

268. As for the internal carriages of goods, the transport contract is concluded
upon the receipt of the goods at the consignor’s establishment along with the issu-
ance of the bill of lading (Article 64 § 1 RTR). The bill of lading is presented by the
goods consignor (Article 59 § 1 RTR) and is sealed by the carrier, after the handing
in of the articles that are to be transported (Article 64 § 2 RTR). The sealing of the
bill of lading equips it with evidentiary (of the conclusion of the contract) effect,
but not substantive.

269. Similar to this provision for the inland carriages is the provision for the
conclusion of an international carriage, as well as the effect of the sealed bill of lad-
ing, pursuant to Article 11 of the COTIF-CIM.

270. The parties involved in a by rail contract are no different from the parties
involved in a by road transportation contract, as described above. The only distinc-
tion concerns the transport consignee: as it has been pointed out previously, a nec-
essary element for the existence of a transport consignee in a transportation contract
is her freedom to choose the carrier who is eventually going to carry out the car-
rriage, the vehicles of transport and the routes that are to be followed. As in Greece,
the only and exclusive legal carrier by law is the National Company for Railroad
(OSE in Greek), it is obvious why there cannot be a transport consignee in a by rail
transportation contract. Similarly, in many countries there is just one company,
either public or private, that is charged with the operation of the railroad carriages.

§3. GOODS CONSIGNOR’S AND CONSIGNEE’S RIGHTS AND OBLIGATIONS

271. In a by rail transportation contract, wither national or international, the rate
that is attributed to the carrier is determined according to transport invoices that
contain charters with the pricing of the transportations. For the national carriages,
on the one hand, these invoices are deliberated by the carrier and approved by the
Ministry for Transportations; for the international, on the other, they are provided
by the Member States.

205. Articles 10 and 11 TRT.
206. Article 6 of COTIF.

Transport Law – Suppl. 46 (2016)
272. The goods’ consignor or their consignee have the obligation to pay to the carrier any residual service charges, pursuant to Article 74 TRT and 6 § 9 of the COTIF-CIM, for national and international carriages respectively, apart from the transport rates due.

273. In a by rail carriage, the goods are handed in at the carrier’s establishment, at the respective services’ departments, during working hours. The goods that are to be delivered packaging is the goods’ consignor’s responsibility, for the safe and sound transportation of both the goods and the rest cargo of the carrier, as well as for prevention purposes of any accidents to persons and the railroad materials.

274. Another important obligation for the consignor is to fill out honestly and accurately the bill of lading, when handing in the goods to the carrier, in the documents specifically provided by the latter to the goods’ consignor for this purpose. The consignor is liable for any inaccurate or false statement.

275. Furthermore, the goods’ consignor, apart from the filling out and handing in of the bill of lading, the goods’ consignor has the obligation to fill out all documents that are necessary for the lawful transportation of goods, such as any documents that are indispensable for customs offices’ inspections or any other administrative purposes.

276. One of the fundamental rights of the goods’ consignor and their consignee is to modify the carriage contract (see Articles 82–83 of TRT and 30–32 of the COTIF-CIM, for the national and international carriages, respectively). This right is mainly pertaining to the goods’ consignor and is ceded to their consignee upon physical delivery of the goods and their bill of lading, or, alternatively, the claiming for the goods after they have reached the destination place.

277. In both national and international carriages, the right of the goods’ consignor to have their consignee to pay the carrier upon the goods’ receipt, an amount usually equal to the value of the goods (cash on delivery – COD) is regulated in great detail.

---

207. Article 69 TRT and 20 § 1 of the COTIF-CIM, for the national and international carriages, respectively.
208. Article 66 § 2, 3, 4; 91 § 3 TRT and Art. 19 § 2, 3, 4 of the COTIF-CIM, for the national and international carriages, respectively.
209. Articles 59 and 63 TRT, 12 and 18 of the COTIF-CIM, for the national and international carriages, respectively.
210. Article 67 § 2 TRT and 25 of the COTIF, for the national and international carriages, respectively.
211. Article 82 § 1 TRT and 30 § 4 COTIF-CIM, for national and international carriages, respectively.
212. Article 82 § 6 TRT, 30 § 4 COTIF-CIM, for inland and international transportations, respectively.
213. Article 75 TRT and 17 COTIF-CIM for inland and international transportations, respectively.
§4. CARRIER’S RIGHTS AND DUTIES

278. The carrier has the duty to inspect the goods, their packaging and labelling, to receive the goods and prepare them for transportation and to seal the bill of lading that the consignor issued.\(^\text{214}\) The carrier has also the right to note on the bill of lading any reservations that she might have regarding the condition of the goods, their packaging and so forth.\(^\text{215}\)

279. The obligation to load the goods is regulated primarily by the agreement made by the parties, as evidenced by the bill of lading’s stipulations. If no relative agreement is in place, then, for the national transportations, it is the goods’ consignor’s responsibility to load in the following cases:

(a) for the for the shipping of goods in full cargos;
(b) for partial shipping of goods weighing more than 500 kg per item, or of lengthy items of more than 6 meters;
(c) for the carriage of (alive) animals;
(d) for the carriage of corpses, whereas for all the rest shippings the loading obligation stays with the carrier.\(^\text{216}\)

280. With regard to an international carriage, absent an unequivocal agreement of the parties, the responsibility to load the goods stays with the consignor or the carrier, depending on the specific provisions of the law of the delivery place.\(^\text{217}\) The main obligation of the carrier is, of course, the physical delivery of the goods to their contractual destination and to their recipient. The delivery of the goods by the carrier at the customs office or to any public depositories that are not under carrier’s supervision, is treated as delivery to the consignee.\(^\text{218}\)

281. In case where there are factors obstructing delivery of the goods, then the carrier is allowed to change route or to ask for guidance from the goods’ consignor.\(^\text{219}\)

282. With connection to the inland transportations of goods, if their consignor does not provide the carrier with sufficient guidance in a timely manner, or if the notification of the carrier cannot be provided promptly, then the latter has the right to sell the goods via a public call for tenders; the reward obtained will be assigned to the consignor’s account, after the deduction of any charges, customs or other

\(^{214}\) Articles 61, 64 RTR and 11 § 1 COTIF-CIM, for the national and international carriages, respectively.

\(^{215}\) Articles 61, 66 TRT and 19 § 3, 21 COTIF-CIM, for the national and international carriages, respectively.

\(^{216}\) Article 73 § 1 TRT.

\(^{217}\) Article 20 § 2 COTIF-CIM.

\(^{218}\) Article 77 § 8 TRT and 28 § 1 COTIF-CIM, for national and international transportations, respectively.

\(^{219}\) Article 85 TRT and 34 COTIF-CIM, for the national and international carriages, respectively.
expenses incurred. 220 This provision also applies to an international carriage at which the delivery place is within Greek territory. 221

§5. CARRIER’S RESPONSIBILITY

283. The responsibility of the carrier is generally objective, meaning that he is liable for any loss, damage or delay of the carried goods without the need for his counterpart to prove any fault in his conduct; unless there is fault on the part of the goods’ consignee, or insufficient guidance provided to the carrier or a defect in the cargo that could not be inspected and certified by the carrier, or, lastly, events of force majeure, then the carrier is generally liable. 222 The onus for proving any exemptive ground is on the carrier.

284. Rail carrier’s liability extents from the point in time where he takes into his account the goods, meaning from the loading time and ends with the delivery of the goods to their contractual consignee.

285. In a carriage by rail, both national and international, it is common sometimes to have a double basis for the carrier’s liability: that of breach of contract and of a tort. Nonetheless, in case of such concurrence, the rail carrier can only be held up to the extent of the contractually stipulated liability and has the right to invoke any limiting ground that would restrict or even prejudice her liability, 223 unless the damage (or loss, or delay) is attributed to a malicious or grossly negligent act of hers. In such case, the rail carrier is obliged to restitute any economic loss; in case of gross negligence the damages due by the rail carrier are equal the double of the damages due, in case where the carrier would be in breach of the contract. 224

286. To the same kind of liability are subject all carrier’s employees and other staff that the carrier engages for the performance of the carriage, for their acts and omissions. 225

§6. CLAIMS, PLAINTIFF’S RIGHTS, DAMAGES AND THEIR CALCULATION

287. The provision on the calculation of damages in case of damage or loss of the goods is very similar to the one stipulated in the CMR Convention. 226 More specifically, the damages cover only the actual loss for the damaged or lost goods and not any possible damage, according to Article 298 of the Greek Civil Code. In case

220. Article 85 §§ 7, 8, 9, 10, 11 TRT.
221. Article 34 § 6 sentence b’ of COTIF-CIM.
222. Article 91 §§ 1, 2, 3, TRT and 36 §§ 1, 2, 3 COTIF-SIM, for the national and international carriages respectively.
223. Article 96 TRT and 51 COTIF-CIM, for inland and international transportations, respectively.
224. Article 6 TRT and 50 COTIF-CIM, for the national and international rail carriages, respectively.
225. Article 6 TRT and 50 COTIF-CIM, for national and international carriages, respectively.
226. Article 95 TRT and 40, 42, 43 COTIF-CIM.
of damage of the goods, the damages cannot exceed the amount that would be recoverable in case of goods’ loss.\textsuperscript{227} In a partial loss case during an international carriage, damages cannot exceed the triple of the fares,\textsuperscript{228} whereas at a national one, damages cannot exceed a certain limit that is calculated on the weight of the missing cargo.\textsuperscript{229} The aforementioned limitations do not form part of the minimum and necessary content of the claim that the plaintiff must adduce; instead, they are objections that the carrier should invoke, in order to limit her liability. The above-mentioned value of the goods is calculated according to their current share value and, in absence of such reference, according to the current market value; in absence of a market value as well, then the common (for national carriages) or the usual (for the international carriages) value for such goods, meaning of the same quantity or quality, at the day and place of the contract conclusion, is invoked.\textsuperscript{230} As it is the case for the carriages that fall within the scope of application of the CMR, if the goods are lost or damaged in an inland carriage, then the rail carrier is obliged to return the fares paid to her, along with any custom or other charges.\textsuperscript{231}

\textsuperscript{288} In case of damages caused to the plaintiff because of the delay in the goods delivery, then she is entitled to damages covering her actual loss, pursuant to the general provisions of Greek law (Article 298 of the Greek Civil Code). The damages, however, cannot exceed certain limits, which for a national transportation cannot be greater than the double of the fares’ amount (so long as the delay is not greater than forty-eight hours). In an international transportation, the damages can, at most, be equal to the triple of the fares’ amount, and in any case, it cannot exceed the amount that would be due in a total loss case.\textsuperscript{232}

\textsuperscript{289} In a carrier’s gross negligence case, that resulted in loss or damage of the goods or delay in their delivery, the previously described limitation of her liability is not applicable; as a result every possible loss of the plaintiff (consignor or consignee) is recoverable according to the general provisions (Article 298 of the Greek Civil Code).\textsuperscript{233}

\textsuperscript{290} With connection to the national carriages, there is the option for the sender or goods consignee to subscribe to a specific amount of damages recoverable that has to be noted on the bill of lading, for which she pays an extra fee to the rail carrier; in such case the carrier is obliged to restitute the total damage of the consignee up to that amount’s limit,\textsuperscript{234} diverging from the damages calculation default rules.

\textsuperscript{227} Article 95 § 1 case (b) TRT and 42 § 2 of the COTIF-CIM, for national and international carriages, respectively.
\textsuperscript{228} Article 43 § 3 COTIF-CIM.
\textsuperscript{229} Article 45 § 1 sentence (a) TRT.
\textsuperscript{230} Article 95 § 1 case (a) and (b) TRT. Art. 40 COTIF-CIM for national and international carriages.
\textsuperscript{231} Article 95 § 1 TRT and 40 § 3 COTIF-CIM, for national and international carriages, respectively.
\textsuperscript{232} Article 95 § 1 case (c) TRT and 43 §§ 1.5 COTIF-CIM, for inland and international transportation respectively.
\textsuperscript{233} Article 95 § 4 TRT and 44 COTIF-CIM for national and international carriages, respectively.
\textsuperscript{234} Article 95 § 3 and 76 TRT.
291. The carrier is also liable for interests that are calculated on the damages, with an interest rate of 5 percent per day since the day of the claim’s submission or the formal notice to pay.\textsuperscript{235}

292. In the national context, the plaintiff can potentially be:

(a) the passenger, in a passenger’s carriage contract;
(b) the bearer of the consignment note, in a goods’ carriage contract;
(c) the consignor, for the time that he is entitled to dispose the goods, and the consignee since she enters the carriage contract and substitutes the consignor in the latter rights.

It is evident that, apart from all of the above mentioned persons, their successors are entitled, as well, to claim the goods; especially the insurer that was substituted to the consignor’s or consignee’s rights has the right, pursuant to Article 210 of the Commercial Law, to sue for damages against the carrier for any loss or damage of the goods.\textsuperscript{236}

§ 7. EXEMPTION FROM LIABILITY

293. In case of a partial (not total) loss or damage of the goods, or in case of a delay in their delivery, the unrestricted acceptance of the goods by their consignee results into a write-off of the claims against the carrier, unless:

(a) The damage is attributed to the rail carrier’s maliciousness or gross negligence.
(b) The loss or damage has been ascertained according to the procedures of Article 96 TRT r 53 COTIF-CIM or that assertion did not occur due carrier’s fault.
(c) A delay in the delivery has occurred and the consignee claimed against the carrier for his loss within fourteen days, with reference to the national transportations, and in sixty days, with reference to the international.
(d) There is an inconspicuous damage\textsuperscript{237} of the goods, that is ascertained by the consignee within seven days from their receipt and she, furthermore, proves that the damage occurred in the meantime of the loading and delivery of the goods.

\textsuperscript{235} Article 95 §1 TRT and 47 COTIF-CIM, for national and international carriages.
\textsuperscript{236} I. Rokas Comments at No 6670/1984 Ruling of the Athens Court of First Instance in EEmpD ΛΣΤ', p. 277.
\textsuperscript{237} Article 99 § 2 case (d) TRT, where the case of ‘damages’ is only mentioned and not that of ‘loss’. It is evident that this is about an unintentional mistake, because there is no reason to treat the case of goods’ loss differently; moreover, in the next sentences of the same provision the case of loss, reappears and both words are used interchangeably.
294. The rail carrier is also exempted from liability for the following reasons: 238

(1) The damage or the delay occurred due to the goods consignor or consignee’s fault, or to a goods’ inherent defect, or to events that where impossible for the carrier to avoid.

(2) When the damage is the result of specific risks that are inherent to:

   (a) The open-wagon carriage.
   (b) The missing or the defected nature of the packaging.
   (c) The consignor’s acts during the loading of the goods or the consignee’s during the unloading.
   (d) The specific nature of certain goods, that are more susceptible in breaking, in rusting, draining etc.
   (e) The mislabelling of goods of dangerous nature due to which there should have not been accepted for carriage.
   (f) The living animals transportation.
   (g) The unaccompanied carriage, in cases where, in virtue of an agreement between the parties or a specific provision, the carriage should have been made otherwise.

295. It is not possible for the parties to add, via a contractual stipulation on the bill of lading or on other documents, other limiting or exempting grounds on those previously mentioned. Even this is not specifically provided for in the text law, it can, nonetheless, be assumed with certainty from the system of that relative chapter in Law. 239

238. Article 91 §§ 2, 3 TRT and 36 §§ 2 and 3 of COTIF-CIM, for inland and international carriages respectively.

239. Article 100 § 1 TRT and 58 § 1 COTIF-CIM, for national and international carriages respectively.
Chapter 3. Air Transport

§1. The Legal Framework for National and International Transportation by Air

296. The national transportations by air, those that are operated within national borders and both departing and arrival points are located in Greece, either there are transportations of goods or persons, are regulated by the provisions of the Code for Aviation Law (from now on: CAL), that was ratified by Law 18151/1988; specifically, Articles 94–116, Article 122 concerning general average and contribution during a flight, Articles 133–134 on goods insurance, Articles 137 and 167 for the obligatory insurance against passengers’ accidents and the legal consequences for not conforming to them, Articles 155–156 on the statute of limitations of the contractual obligations arising from an air transport contract and Article 168 on the criminal liability for carrying illegal material.240

297. As for the international transportations, either of goods or persons, they are regulated by the Warsaw Convention that was integrated into Greek law by Law 596/1937. It was subsequently amended in 1955, by the Hague, the Netherlands, and in 1971 the Guatemala Protocols. All three Protocols were ratified by Law 1778/1988.241

298. As international carriage by air, in the Warsaw system, it is meant any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention.242

299. All internal carriages by air, meaning within Greek territory, were reserved for only Greek airlines, the so-called cabotage, by virtue of Article 2 § 3 of CAL.243 Greek, under the light of the European law, are all aircrafts that belong to citizens of a EU member state, at, at least, 50%.244

240. Before the Code on Aviation Law (CAL) was introduced, all internal transportations within Greek borders were regulated by the Warsaw Convention, which by Art. 194 of the CAL was abrogated.
§2. THE LEGAL TITLES FOR NATIONAL CARRIAGES

300. In the field of the national carriages of persons, Article 94 of CAL provides for the ticket of transportation, as the evidence of the transport contract and it is issued by the carrier. Nonetheless, according to Article 94 § 3 of the CAL, even if the ticket has not been issued, the transport contract is regulated by the CAL provisions, with the only difference that no witnesses can be employed in order to prove the conclusion of the contract, according to the provisions of Article 394 § 2 of the C.Civ.P.

301. The transport contract of goods can be evidenced by the luggage ticket, according to Article 95 §§ 1 and 2 of the CAL, which is issued by the carrier and can be integrated to the transportation ticket.

302. The national transportation of goods’ contract can be evidenced by the national air consignment note, that, according to Article 98 § 1 of the CAL, is issued by the carrier before the loading in three copies – one for the carrier, that is signed by the goods’ consignor, one for the consignee that is signed by the carrier and the goods’ consignor and is accompanying the goods, and one for the goods’ consignor, that is signed by the carrier (Article 99 § 1 CAL) and that has the legal that is provided in Article 98 of the CAL.

303. The contract of an national carriage transportation is regulated by the Greek Code for Aviation Law, even if no national air carriage ticket has been issued (98 § 3 CAL).

304. The national carriage transportation is a promissory note payable to the payee or the bearer on demand (see Article 99 §§ 3 and 4 of CAL), and any evidence against the validity of its content is unconditionally permissible (Article 100 § 1 CAL).

§3. THE PARTIES IN AN AIR CARRIAGE CONTRACT

305. The parties in an air carriage contract are no different from the parties as described previously for the other types of transportation (road, rail). Only with

regard to the carrier, there is a crucial distinction that must be drawn and was introduced by the Guadalajara Convention of 1961.\textsuperscript{246} According to Article I of the said Convention, the carrier is the person that is contracted with the passenger or the goods’ consignor or with the person that is acting on behalf of the passenger or the goods’ consignor (the contractual carrier), as well as the person who is performing the whole or part of the carriage, by virtue of authority from the contracting carrier, but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention (actual carrier).\textsuperscript{247}

306. The Guadalajara Convention establishes the carrier’s liability, for the contractual carrier with regard to the whole of the carriage and for the actual to part of the carriage that she is actually performing.\textsuperscript{248}

The Greek Code on Aviation Law introduces the same provision of the Guadalajara Convention’s, that of joint and several liability for both the contractual (for the whole carriage) and the actual carrier (for the part of the carriage that she actually performed), in its Article 112.\textsuperscript{249}

307. As has been noted, in order for the carrier to assume the quality of an actual carrier, she needs not to be a successive carrier. The characteristic element of the successive carrier is that she is always contracted with the passenger or the goods’ consignor and assumes the performance of a part of the carriage, under the condition that the carriage is considered by the parties as a single one and it is also affirmed upon the conclusion of the contract.\textsuperscript{250}

308. It has to be highlighted that the distinction among the contractual carrier, on the one hand, and the carrier consignee, on the other is crucial, even though the line between the two notions is often quite obscure.\textsuperscript{251} The criterion of distinction would always be the parties will as it is expressed under the given circumstances;


\textsuperscript{247.} Convention Suppelementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, Signed in Guadalajara on 18 Sep. 1961 – Guadalajara Convention 1961, available on http://www.jus.uio.no/lm/air.carriage.warsaw.convention.guadalajara.supplementary.convention.1961/doc.html Art. 1 (b) and (c).


\textsuperscript{250.} For the successive carriage, see N. Papachronopoulos, The Successive Carrier Liability according the Warsaw Convention, Elliniki Dikaiosini 34 (1438).

\textsuperscript{251.} For the transportation consignee see N. Papachronopoulos, The Successive Carrier Liability according the Warsaw Convention, Elliniki Dikaiosini 34 (1438).
for example if the parties sought for a third party to perform the carriage contract, then, we would, presumptively, have a transport consignee, whereas, the if the parties sought for the performance of the transportation activity, then there would, presumptively, be about a contractual carrier. The consequences of such a distinction are important, because the liability provisions and its limitations are implemented only to the person that qualifies for a carrier and not for a carrier consignee.

§4. PARTIES’ RIGHTS AND OBLIGATIONS

I. The Consignor’s Rights and Obligations

309. As it has already been mentioned, in the field of international transportations, the consignor is obliged to emit the bill of lading for air transportations or the luggage ticket, containing all elements that are provided for in the Warsaw Convention.

310. Another obligation for the consignor is (i) to inform the carrier before the loading of the cargo about it and to (ii) hand in all necessary documents that are necessary for the custom offices or any other administrative procedures that the carrier will have to deal with during the air carriage. Any absence or irregularity in these documents results into the consignor’s liability. The carrier, on the other hand, is legally obliged to check upon the validity of the content of these documents that she receives from the consignor.

311. Furthermore, in the field of both the national and international transportations, the consignor is obliged to pay the carrier a ‘reward’, as per the Warsaw Convention wording or a fee for the undertaking of the carriage, unless this is an obligation that has been explicitly assumed by the consignee.

One of the most fundamental rights that the consignor enjoys is her right to dispose of the goods in four different ways:

(a) by withdrawing them at the aerodrome of departure or destination;
(b) by stopping them in the course of the journey on any landing;
(c) by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note;
(d) by requiring them to be returned to the aerodrome of departure.

252. N. Papachronopoulos, The Successive Carrier Liability according the Warsaw Convention, Elliniki Dikaiosini 34 (1438).
253. N. Papachronopoulos, The Successive Carrier Liability according the Warsaw Convention, Elliniki Dikaiosini 34 (1438).
254. Article 16 Warsaw Convention.
255. Article 1§ 1 of the Warsaw Convention.
256. Article 13 § 1 of the Warsaw Convention.
257. Article 12 of the Warsaw Convention.
312. An identical provision, inspired by the Warsaw Convention has been introduced in national air carriages and is contained in the Greek Code for Aviation Law, Article 105.258

313. The above-mentioned right to dispose the goods must be exercised without any prejudice to the carrier or other consignors’ rights and he must repay any expenses occasioned by the exercise of this right. It must also be exercised under the condition that the carrier has already performed all his legal obligations under the carriage contract.259

314. In order for the carrier to be entitled to exercise her disposal right, she needs to present the bill of lading or the consignment note delivered to her.260 If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, she will be liable, without any prejudice to her right of recovery from the consignor, for any damage which may be caused to any person who is lawfully in possession of that part of the air consignment note.261

II. The Consignee’s Rights and Obligations

315. The carrier, as soon as the goods arrive at the place of their destination, is obliged to notify the consignee accordingly, who, from that point on, has the right to receive the goods upon the payment of the ‘reward’ to the carrier if not already paid by the consignor, according to their agreement.

316. An identical right is provided for in the Greek Aviation Code (Article 102 § 1) with the additional right of the carrier to publicly sell or dispose the goods, if the consignee is denying to receive the goods, within ten days, following the procedure that is described in Article 193 §§ 1,2 Code for Aviation Law (permission of the Court of First Instance of the legal residence of the consignee to do so, under Article 740 to 781 of the C.Civ.P.

III. The Carrier’s Rights and Obligations

317. All the aforementioned rights and obligations of the goods’ consignor and consignee correspond to the carrier’s rights and obligations, respectively.

258. For a general overview on the right of the carrier to dispose the goods see N. Papachronopoulos, The Successive Carrier Liability according the Warsaw Convention, Elliniki Dikaiosini 34 (1438).
259. Article 12 §§ 1 and 2 of the Warsaw Convention. Contrast with Art. 105 § 2 which is much less detailed but following the same principle.
260. Article 12 §3 of the Warsaw Convention and 105 §1 f the Greek Code for Aviation Law.
261. See Art. 12 § 3. The Greek Code for Aviation Law does not provide for the consequences on the consignor for not exercising the goods’ disposal right, without the production of the bill of lading (or the consignment note). As a result, the implication of Art. 12 § 3 of the Warsaw Convention on the national carriages, as well, must be referred.
318. A special right of the carrier that is only provided for, explicitly, in the international field of air carriages, is the carrier’s right to refuse the conclusion of a carriage contract, per Article 33 of the Warsaw Convention and with the reserve of the provisions of Article 5 § 3 of the Warsaw Convention. This right is depend-able on the special circumstances of each carriage contract, as well as the specific airline’s characteristics.

§5. CARRIER’S LIABILITY

I. Passengers’ Carriage

319. In a national carriage of passengers by air, the carrier’s liability is objective and extends over any incident that took place during the period where the passenger were on board, as well as at the embarking and disembarking time, and due to which death or injury were caused to the passenger.262

320. The above-mentioned liability of the carrier against passengers also includes any force majeure incidents, notwithstanding the exception for deaths caused exclusively by a significant medical condition of the passenger.263 To the same extent liable is both the contractual and the actual carrier.264 To counter this quite heightened liability that the carrier face, the Greek legislator has provided for the limitation by amount of the carrier’s liability. In Article 110 § 1 of the Greek Code for Aviation Law, the carrier’s obligation to pay damages to any damaged passenger cannot exceed the amount of four million drachmas or EUR 11,739 per passenger. In case of the carrier’s or her employees’ malfeasance this limitation can no longer be invoked. the onus is on the person that acclaims the malfeasance of the carrier or her employees, meaning the passenger (Article 111 § 1 Code for the Aviation Law). From paragraph 1 of Article 111 of the CAL it can safely be inferred that the limitation is only applicable to negligence cases (even if gross negligence).265

The above-mentioned amount of limitation is also valid in case where there are multiple tortfeasors (see Article 114 of the Greek Code for Aviation Law). In that case, the tortfeasors are all jointly and severally liable up to the extent of that amount.

II. Luggage Carriage

321. The air carrier of luggage is obliged to pay damages to the luggage consignee for the total or partial damage of it, its loss, deterioration. He is liable from

262. Article 106 of the Greek Code for Aviation Law.
263. In the Warsaw System, Art. 20 of the Convention, there is an exemptive ground for the carrier if the latter has taken all necessary measures in order to avoid the incident take place. This exempted ground is absent in the Greek law and the carrier is still liable, even if she has been perfectly diligent.
264. Article 112 of the Greek Code on Aviation Law.
the moment where the luggage is loaded until their possession is passed on their consignee (Article 107 of the Greek Code for Aviation Law). The air carrier is also liable for any damage caused to the consignee due to any delay caused to the luggage delivery to the latter (Article 108 of the Code for Aviation Law).

322. The carrier can be excused, if he manages to prove that she has taken all measures that were reasonably foreseeable as necessary, for the avoidance of the misconduct and, thereby, the damage caused to the passenger (Article 107 § 2 of the Greek Code for Aviation Law). As a matter of fact, there is a presumption against the carrier that she is in fault which she can overrule, having the onus to adduce evidence that she took all measures deemed necessary for the avoidance of the damaging event.

323. Additionally, the air carrier liability can be reduced or even prejudice in case where the damage, loss, deterioration, or delay in the carriage of luggage can be imputed to passenger’s wrong or the carrier’s employees.

324. Article 110 § 1 case (b) & (c) of the Greek Code for Aviation Law introduces the limitation by amount of the carrier’s liability for the transportation of luggage, as well. More precisely, the quantitative limitation per good is 2,000 drachmas or 5.87 euros per gram of the good and 4,000 drachmas or 11.74 euros per gram of luggage (in case of luggage transportation, respectively).

325. In case of the carrier’s or her employees’ malfeasance this limitation can no longer be invoked. The onus is on the person that acclaims the malfeasance of the carrier or her employees, meaning the passenger (Article 111 § 1 Code for the Aviation Law). As noted above, from the wording of paragraph 1 of Article 111 CAL, it can safely be inferred that the limitation is only applicable to negligence cases (even if gross negligence). The onus is on the passenger to prove the carrier’s or her employees malfeasance.

326. The above-mentioned amount of limitation is also valid in case where there are multiple tortfeasors (see Article 114 of the Greek Code for Aviation Law). In that case, the tortfeasors are all jointly and severally liable up to the extent of that amount.

327. In case of the carrier’s or her employees’ malfeasance this limitation can no longer be invoked. The onus is on the person that acclaims the malfeasance of the carrier or her employees, meaning the passenger (Article 111 § 1 Code for the Aviation Law). From paragraph 1 of Article 111 of the CAL it can safely be inferred that the limitation is only applicable to negligence cases (even if gross negligence).

328. The above-mentioned amount of limitation is also valid in case where there are multiple tortfeasors (see Article 114 of the Greek Code for Aviation Law). In that case, the tortfeasors are all jointly and severally liable up to the extent of that amount.

329. In case of the carrier’s or her employees’ malfeasance this limitation can no longer be invoked. The onus is on the person that acclaims the malfeasance of the carrier or her employees, meaning the passenger (Article 111 § 1 Code for the Aviation Law). From paragraph 1 of Article 111 of the CAL it can safely be inferred that the limitation is only applicable to negligence cases (even if gross negligence).²⁶⁸

330. The above-mentioned amount of limitation is also valid in case where there are multiple tortfeasors (see Article 114 of the Greek Code for Aviation Law). In that case, the tortfeasors are all jointly and severally liable up to the extent of that amount.

§6. THE UNCONDITIONAL RECEIPT OF GOODS

331. In the international air carriages,²⁶⁹ the unconditional receipt of goods by their consignee, without any protestation on the part of the consignee creates a rebuttable presumption (prima facie evidence) that the goods were delivered in a sound situation. This presumption, as rebuttable, can be refuted if the consignee proves positively that the goods were damaged during the carriage, given, however, that the consignee did complain to the carrier for the condition of the goods, right after the receipt of the goods. An identical regulation is introduced in the Greek system regarding national carriages, by Article 104 § 1 of the Code for Aviation Law.

332. Paragraphs 2 and 4 of Article 26 of the Warsaw Convention establish the inadmissibility of any actions against the carrier if the complaint was not filed forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

333. In the case of national air carriages of goods, Article 104 of the Code for Aviation Law in its paragraph also introduces the inadmissibility of actions against the carrier that were not proceeded by a complaint, submitted to the carrier in a timely manner (right after the discovery of the damage or, the latest, fourteen days from the receipt of the luggage in the case of a luggage damage or twenty-one days

²⁶⁹ Warsaw Convention, Art. 26 § 1.
from the day that the goods were made available to their consignee, in a case of delivery delay.

334. In the case of an international carriage by air of goods and luggage, the inadmissibility of such claims against the carrier (that were not proceeded by a written protestation) applies to only the damage or partial loss cases. Instead, it is not applicable to total loss cases.

335. The inadmissibility is also not applicable if the consignee was hindered by fraud of the carrier to submit the complaint (Article 104 § 5 of the Code for Aviation Law and 26 § 4 of the Warsaw Convention, for the national and international cases, respectively).

336. The protestation has to be submitted in written, upon the document of carriage or by separate notice in writing dispatched within the time-frame that was mentioned above (Article 26 § 3 of the Warsaw Convention and 104 § 4 of the Code for Aviation Law, for international and national carriages, respectively).

§7. The Statute of Limitations

337. In the field of national carriages, all claims against the air carrier in a national transportation or goods or passengers have a two-year statute of limitation, according to Article 155 of the Code for Aviation Law. It commences on the expiry of the year when the delay, damage or loss of luggage or goods (or the physical damage or death of passengers) took place. As for the rest, meaning all matters regarding interruption or suspension of the statute of limitations, the relative provisions of the Greek Civil Code will be called into force.

338. When there is a multitude of claims against the carrier, that of a tort and a breach of contract, then for the tort the general provision of Article 937 of the Greek Civil Code will apply (five year long statute of limitation) and abrogate the provision of the of Article 155 of the Code for Aviation Law.

339. As for the international carriages, according to Article 29 § 1 of the Warsaw Convention, all claims against the carrier are extinguished if an action is not brought within two years, beginning from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. The two-year statute of limitation of the Warsaw Convention, Article 29 § 1 applies to all claims against the carrier in an international carriage, irrespectively of whether it is a tort claim or a breach of contract and prejudices the application of any other national provision (e.g., the five-year statute of limitation of Article 937 of the Greek Civil Code).271

270. N. Papachronopoulos, The Successive Carrier Liability according the Warsaw Convention, Elliniki Dikaiosini 34 (1438).
271. N. Papachronopoulos, The Successive Carrier Liability according the Warsaw Convention, Elliniki Dikaiosini 34 (1438).
§8. JURISDICTION OF COURTS

340. In an international air carriage, the Warsaw system provides for the Courts of multiple contracting states to be competent, in order to make it easier for the plaintiff to sue. These courts can either be of the ordinary residence of the carrier, or of its principal place of business, or of its establishment by which the contract has been made or if the place of destination (Article 28 § 1 of the Warsaw Convention).

341. Especially with regard to the damages claim when death, physical injury or delay were sustained by the passenger or when destruction, loss, deterioration or delay of luggage took place, paragraph 2 of Article 28 of the Warsaw Convention introduces another additional jurisdiction of any court of the contracting member states, simplifying even more the procedural requirements for the plaintiff to seek remedy. This paragraph was introduced by the Guatemala Protocol 1971 and was ratified by the Greek Government by its law no 1778/1988.

342. For the national carriages, the Greek Code for Aviation Law does not provide for any special jurisdiction for the torts or breach of contract claims that arise from a carriage contract and, therefore, the general provision of Greek law apply.
Chapter 4. Multimodal Transport

343. In connection to the multimodal transportation in Greek law, it should be pointed out that there is no universal regulation that applies in all modes of transport. It should, therefore, be examined whether in each field of transportation (road, rail, or air) there are specific provisions regarding multimodal transportation and how they can be systematically combined.

344. For example in marine transportation, the Code of Private Maritime Law is applied to all national charter party-based transportation, on the one hand; and all other transportation contracts are regulated by international texts (the Hague-Visby Rules mainly), irrespectively on to whether a bill of lading has been issued. Some articles of the Code of Private Maritime Law are, nonetheless, applied to a national transportation contract, on matters where the Hague-Visby Rules are silent. Prominent such example is the freight (Articles 149–154 of the Code of Private Maritime Law), the withdrawal and the non-performance on a transportation contract (Articles 155–167 of the Code of Private Maritime Law).

345. As a matter of fact, both the Code of Private Maritime Law and the Hague-Visby Rules have been designed to solely apply on a plain maritime transportation. On the other hand, in a transportation by road, provisions about multimodal or combined transportation are also absent. The relative texts are quite obsolete and inadequate to fully regulate road transportation, without reference to other texts. Even the provisions of Articles 133–152 of the Draft Commercial Code of 1991, that were supposed to modernize the law of national transportation by road, did not include any regulation on the multimodal transportation.

346. In the transportation by rail field, as it has already been mentioned, the Greek Regulation of Rail Transportations provides in its Article 2 about the mixed transportations (paragraphs 1 and 2). In the first sentence of paragraph 2 it is stipulated that the provisions of the Greek Regulation of Rail Transportations are applied by analogy to carriages undertaken by the rail carrier that involve other means of transport and are necessary to perform the task he has assumed. Furthermore, it is stipulated that the said provision is applied, irrespectively of whether the other means of transport have been used for a part or the whole route. Practically, nonetheless, the rail carrier does not assume to operate the whole carriage with other means of transport than by train. Most commonly, the rail carrier undertakes to operate the rail part of the route and then a road carrier assumes to continue with the road part of the route. The second sentence of Article 2 sets forth that all other


273. See A. Kiantou-Pambouki, Maritime Law, issue II, ibid., p. 308.


275. It was introduced in Greek law by Decision of the Minister for Transportation no A/20998/3079 of 4/30 September 1968, after the legislative authorization of Law no 4246/1962 ‘Regarding the unification of the national rail networks’.
means of transport (apart from the train) can be owned by the rail carrier, without it being necessary for the performance of a multimodal transportation; they can also be owned by other persons with whom the rail carrier has been contracted in order to effectuate a multimodal transportation. The first sentence of the second paragraph states that the Regulation’s provisions can be prejudiced by the agreement of the parties, so long as the parties’ agreement is incorporating the existing, at each time, freight rate that is applicable to all transportations of the same genre, as approved by the Ministry of Transportation submitted to all required forms of publication. In addition, the second sentence of paragraph 2 clearly states that the aforementioned agreement of the parties cannot derogate from the provisions of the Regulation regarding rail carrier’s liability. On the liability matter, thus, the Regulation is strict and does not leave room for any deviations.

347. From the above-mentioned Greek Regulation of Rail Transportations, it can be deduced that it applies to all kinds of transportation, e.g., rail-road transportation, rail-maritime, or rail-air transportation. However, as far as national combined transportations are concerned, the combination of rail and road means of transportation (and vice-versa) are mostly implemented.

348. As for the air transportation, finally, it is already know that the Code for Aviation Law\textsuperscript{276} is generally applicable in all national air carriages. In its provisions, however, there is no specific reference to multimodal or combined transportation due to inasmuch the same reasons that that such provisions are absent from the other means of transport national regulatory texts.

349. It could be claimed, nonetheless, that this gap in law is filled by analogy with the relative stipulation of the Montreal International Convention of 1999, according to which, in the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention will apply to only the part of carriage that is carried out by air, provided that the carriage by air falls within the terms of Article 1.

350. From the said provision, it follows that there is not a required combination of means of transport; put it otherwise, it could be applied to any potential carriage that implicates the use of more than one modes of transport. It is, also, implied that the provisions of Montreal Convention are strictly limited to the air transportation and the parties cannot deviate upon their agreement.

The Rotterdam Rules aims to establish uniform rules to modernize and harmonize the rules that govern international carriage of goods by sea. The goal of creating uniform rules was one of the most important reasons for the steps to reform this area of law since the situation with increasing differences between different jurisdictions in the law governing carriage of goods by sea was only getting worse and something had to be done in order to restore the uniformity that had once existed. The failure of the Hamburg Rules and the following increasing number of national hybrid regimes that aims to update the law on their own has contributed to

\textsuperscript{276} That was ratified by Law 1815/11.11.1988.
the present problematic situation. Today three different sets of rules (all of them dated and in need of modernization among which the ones most commonly used are the two oldest) that are interpreted in different ways by courts and arbitration panels all over the world together with several national hybrid regimes which incorporate parts of the before-mentioned sets of rules are in force. The present situation with large variations in the law is not sustainable in the long run since there is so much to gain from having uniform laws governing this area. The benefits of uniformity are easy to see: if the law is uniform litigation will be less necessary and the costs for transport lower since the law will be predictable (i.e., it will be more easy to allocate the risks of cargo loss or damage), and all parties involved in a contract of carriage will be able to know that their liability will be the same wherever a dispute is resolved. Uniform law increases predictability and provides certainty. In doing so, it helps to the evolution and preservation of law.
Selected Bibliography

I. MARITIME LAW

Antapassis, A., Maritime Salvage and Rescue, Sources and Interpretation, Sakkoulas, 1992.
Christodoulou D., Liability for Oil Pollution Damages at a Maritime Transportation of Oil Products, EEmpD 51, 467.
Selected Bibliography


Rokas, I., *Comments at no 6670/1984 ruling of the Athens Court of First Instance*, ΕΕνδικ. Δ. ΑΣΤ’, 277.


II. ROAD – RAILROAD LAW


Selected Bibliography


III. AIR LAW


Stylianou S., *The Contractual and the Actual Carrier Liability, per the Greek CAL*, EEmpD MD‘, 192.

IV. SELECTED GREEK BIBLIOGRAPHY


Christodoulou, D., *Liability for Oil Pollution Damages at a Maritime Transportation of Oil Products*, EEmpD 51, 467.


Selected Bibliography


Rokas, I., *Comments at No 6670/1984 Ruling of the Athens Court of First Instance, EEmpD ΛΣΤ*, 277.


Stylianou S., *The Contractual and the Actual Carrier Liability, per the Greek CAL*, EEmpD MD*, 192.


Selected Bibliography


V. SELECTED FOREIGN BIBLIOGRAPHY


# Index

The numbers here refer to paragraph numbers.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Paragraph Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air transport</td>
<td>7, 21–22, 264, 296–343, 347, 348, 350</td>
</tr>
<tr>
<td>Arrest</td>
<td>40, 42, 44, 97, 189–195</td>
</tr>
<tr>
<td>Charterer</td>
<td>97, 100, 101, 107, 110, 113, 118–134, 153, 175</td>
</tr>
<tr>
<td>Charterparties</td>
<td>12, 107–136, 160, 197, 202</td>
</tr>
<tr>
<td>Collision</td>
<td>38, 60, 64, 77, 169–176</td>
</tr>
<tr>
<td>Crew</td>
<td>29, 38, 39, 60, 62, 64, 68, 74–76, 78, 79, 83–89, 96, 97, 99, 100, 102, 103, 128, 156, 158, 162, 167, 168, 171, 173, 175, 202</td>
</tr>
<tr>
<td>Freight</td>
<td>32, 38, 58, 66, 92–95, 106–108, 114, 115, 118, 134, 153, 176, 221–223, 237, 238, 244, 344, 346</td>
</tr>
<tr>
<td>Freight forwarder</td>
<td>32, 141</td>
</tr>
<tr>
<td>General average</td>
<td>104, 167–168, 296</td>
</tr>
<tr>
<td>Luggage</td>
<td>20, 21, 102, 163, 198, 202, 203, 301, 309, 321–330, 332–334, 337, 341</td>
</tr>
<tr>
<td>Marine pollution</td>
<td>8, 15, 177–188</td>
</tr>
<tr>
<td>Maritime lien</td>
<td>10, 43, 50, 56–68</td>
</tr>
<tr>
<td>Maritime mortgage</td>
<td>56–59, 69–73</td>
</tr>
<tr>
<td>Maritime transport</td>
<td>9–18, 31, 102, 228, 345</td>
</tr>
<tr>
<td>Multimodal</td>
<td>7, 23, 143–144, 205, 343–350</td>
</tr>
<tr>
<td>Pilotage</td>
<td>61, 156–160</td>
</tr>
<tr>
<td>Pipeline</td>
<td>5</td>
</tr>
<tr>
<td>Rail transport</td>
<td>7, 20, 144, 164, 265–295, 305, 343, 346, 347</td>
</tr>
<tr>
<td>Road transport</td>
<td>7, 19, 23, 210–264, 270, 305, 343, 345–347</td>
</tr>
<tr>
<td>Salvage</td>
<td>10, 18, 55, 60, 63, 67, 95, 102, 104, 161–166, 169</td>
</tr>
<tr>
<td>Greece</td>
<td>121</td>
</tr>
</tbody>
</table>
Index


Shipping agent, 31–34, 141, 145

Towage, 12, 95, 161–166