## Contents

1 Introduction: Freedom in International Shipping .............. 1  
   Early Development of Maritime Law ........................ 2  
   Further Developments: Fifteenth and Sixteenth Centuries .... 5  
   The Rise and Fall of Nations and Freedom in International Shipping ...... 6  
   Growth of English Maritime Power and the Navigation Acts ........ 8  
   The Contemporary Public International Law Concept of Freedom  
   of the Seas ........................................ 9  
   Freedom of International Shipping Today .................... 11  

2 Shipping as a Vital Service to World Trade .................... 13  
   The Shipowning Business ................................ 13  
   Vital to World Trade .................................. 14  
   Maritime Constituency .................................. 16  
   Centres of Shipping .................................... 17  

3 The Sectors of Shipping ......................................... 19  
   Wet Bulk: The Tanker Sector ................................ 20  
   Dry Bulk ............................................. 21  
   Cargo Liners and Container Ships ............................ 21  
   Coastal and Short Sea ................................... 23  
   Passenger Liners/Cruise Ships ................................ 23  
   Ferries ................................................ 24  
   Offshore Operations ....................................... 25  
   General Considerations .................................... 25  

4 Private Shipping Organisations .................................. 27  
   International Shipping Associations .......................... 28  
      BIMCO ............................................. 28  
      International Chamber of Shipping (ICS) .................. 28  
      International Shipping Federation (ISF) ................... 29  
      Independent Tanker Owners Association (INTERTANKO) .... 29
International Association of Ports and Harbors (IAPH) 47
European Sea Ports Organisation (ESPO) 47
Marine Manufacturing Associations 48
Social and Charitable 48
International Transport Workers’ Federation (ITF) 48
Seafarers’ Welfare Organisations 48
Professional/Educational Institutions 49
Hellenic Marine Environment Protection Association (HELMEPA) 50

5 The Interface with Governments: National and International 51
Ministries, Agencies and the Law of the United Kingdom 51
The European Union (EU) and Its Institutions 54
The EU Institutions and Other Bodies 56
Division of Competence Between the EU and the EU Member States 60
Governmental Machinery in the United States Relevant to Shipping 61
US Congress 62
Departments 63
The Main United Nations Intergovernmental Bodies and Regional Agencies 64

International Maritime Organization (IMO): Originally Known as Inter-Governmental Maritime Consultative Organization (IMCO) 64
IMO and Other UN Maritime-Related Bodies 68
United Nations Conference on Trade and Development (UNCTAD) 69
International Labour Organization (ILO) 71
World Trade Organization (WTO) 73

Other Specialised Intergovernmental Groups 74
Organisation for Economic Co-operation and Development (OECD) 74
The Consultative Shipping Group (CSG) 75
World Customs Organization (WCO) 75

6 Shipping Nationalism and Government Involvement 77
The Backdrop 77

National Regulations or Requirements 79
Denial of Access to National Shipping Markets 79
Restrictions on Operations by Non-nationals 80
Restrictions on the Freedom of Non-nationals (Shore-Side) 80
Extra-Territorial Application of National Laws 80
Restrictions on the Charges for Shipping Services 81
Subsidies and Other Forms of Assistance 81
Shipping 81
Shipbuilding 82
Bilateral Government-to-Government Arrangements ............ 83
Regional Arrangements ........................................ 85
International Intergovernmental Arrangements ............ 85

7 Demise of Protectionism and Rise of Liberalisation ........ 89
Protectionism Today ........................................... 90
Trade Defence Instruments ................................... 92
  National ...................................................... 92
  The European Union ....................................... 93
Unfair Pricing Practices ........................................ 95
  United States .............................................. 96
  European Union ............................................ 96
Cabotage .......................................................... 99
International Activity and Legislation .......................... 100
  US/CSG Dialogue .......................................... 100
  Organisation for Economic Co-operation and Development
    (OECD) .................................................. 101
  UNCTAD ..................................................... 103
    World Trade Organization ................................ 104
Other Aspects .................................................. 107

8 Co-operation in Liner Shipping .............................. 111
The Conference System ........................................ 111
  Common Elements ......................................... 114
  Liner Freight Rates ....................................... 114
  Membership .................................................. 115
  Loyalty Arrangements ..................................... 116
  Time/Volume Agreements and Service Contracts ............ 117
  Surcharges and Adjustment Factors ......................... 119
  Pools ....................................................... 120
The Change to Containerisation and Liner Consortia ........... 120
  Consortia .................................................... 122
Other Co-operative Arrangements .............................. 122
  Discussion Agreements and Trade-Lane Agreements .......... 123
  Alliances/Global Partnerships ................................ 123
Contemporary Perspectives ...................................... 125
  Growth and Opportunity ................................... 125
  Investment ................................................... 125
  Profitability ................................................ 126
  Single-Trade/Multi-Trade/"Round-the-World" .................. 126
  Competition External and Internal .......................... 127

9 Development of Competition Policy and Its Historical Evolution ... 129
Early Inquiries and Investigations and Their Consequences .... 129
  Royal Commission on Shipping Rings, 1909 (UK) ............ 129
  The Alexander Committee Report, 1914 (US) .................. 130
  US Shipping Act 1916 ....................................... 131
| Imperial Shipping Conference, 1921 | 131 |
| US Congressional Inquiries 1958–1961 | 132 |
| The Bonner Amendments, 1961 | 132 |
| CSG Ministers’ Resolution, 1963 | 133 |
| Further Activity in the US | 134 |
| Rochdale Inquiry, 1967–1970 (UK) | 134 |
| CENSA/ESC Code | 135 |
| United Nations Conference on Trade and Development | 136 |
| UNCTAD Shipping Committee, 1964–1974 | 136 |
| The UN Liner Code | 136 |
| The Brussels Package, 1979 (EC Regulation 954/79) | 137 |
| Reviews and the Future of the Liner Code | 138 |
| Development of Competition Policy in the USA and the European Union | 139 |
| General | 139 |
| The North Atlantic Saga | 139 |
| Trans-Atlantic Conference Agreement (TACA) | 141 |
| Multi-modal Rates: FEFC Case | 144 |
| More Developments Concerning TACA | 144 |
| Far East Trade, Tariff Charges and Surcharges Agreement (FETTSCA) | 146 |
| The United States | 146 |
| US Shipping Act 1984 | 146 |
| Ocean Shipping Reform Act 1998 | 148 |
| Europe | 151 |
| EU Competition Policy: Liner Conferences | 152 |
| Regulation 4056/86 | 153 |
| Application of EU Implementing Rules | 155 |
| OECD Activity | 157 |
| Review of Regulation 4056/86 | 158 |
| Subsequent Events and Developments | 161 |
| Liner Consortia | 164 |
| Other Jurisdictions | 168 |
| North America | 168 |
| Asia | 169 |
| Australia | 171 |

10 Maritime Governance | 173 |
| Introduction | 173 |
| Governance at the National Level | 173 |
| Maritime Policy and the Role of the Administration | 174 |
| The Hardware Components | 177 |
| Implementation of International Maritime Treaties | 178 |
| Flag State, Coastal State and Port State Roles | 178 |
| Maritime Administration | 179 |
Port State Role ............................................. 184
Coastal State Role ....................................... 188
Human Factor: The Soft Dimension ...................... 189
Human Error .............................................. 191
Seafarer Qualifications .................................. 191
Seafarer Welfare and Rights ............................... 195

11 Nationality and Registration of Ships: Concept and Practice .... 199
The Legal Concepts of Nationality, Registration and Flag .......... 199
Nationality ............................................... 199
Registration .............................................. 201
Flag ......................................................... 203
Role and Responsibilities of the Flag State ..................... 203
Types of Ship Registries .................................. 204
The Traditional Closed Registry System ....................... 204
Alternative Registries .................................... 205
The Open Registry System ................................ 206
Second or Secondary Registries ............................. 208
The Hybrid Registry ....................................... 212
Bareboat Charter Registration ............................... 213
Flagging Options .......................................... 215
Ships Under Construction ................................ 215
Provisional Registration ................................... 216
Priority of Mortgages ..................................... 217
Labour Issues and the ITF .................................. 217
The Case for and Against Open Registries ...................... 219
The Way Forward .......................................... 222

12 Maritime Safety Standards: Compliance and Enforcement .... 223
Maritime Safety ........................................... 223
Ship Safety ................................................ 224
Loadlines .................................................. 225
Seaworthiness ............................................. 226
Navigational Safety ....................................... 227
Collisions .................................................. 228
Personal and Occupational Safety of Crew ....................... 229
Professional and Vocational Competence and the Human Element ........................................................................ 229
Standards of Training, Certification and Watchkeeping .......... 230
Cargo Safety ................................................. 231
Liability Pertaining to Maritime Safety ......................... 231
Public and Private Law ..................................... 231
The Concept of Liability .................................... 232
Liability for Maritime Safety in Public Law ..................... 233
Contents

Liability for Maritime Safety in Private Law ........................................... 234
Liability Interfaces in Selected Maritime Safety Issues ............................. 235
Death and Personal Injury ......................................................................... 235
Casualty Investigations ............................................................................ 237
Safety Management .................................................................................... 238
Maritime Safety in the Current Milieu ....................................................... 240
The Private Sector Perspective ................................................................... 240
The Governmental Dimension ..................................................................... 244
The Role of the IMO .................................................................................. 244
Facts of Life in the Maritime World .......................................................... 247
Conclusion .................................................................................................. 248

13 Maritime Security: Legal Framework in International Law .................. 249
Introduction ............................................................................................... 249
Maritime Security ....................................................................................... 250
Piracy .......................................................................................................... 251
Armed Robbery Against Ships ................................................................... 252
Unlawful Acts ............................................................................................. 253
Terrorism ..................................................................................................... 254
Maritime Violence ....................................................................................... 256
International Legal Instruments and Current Developments .................... 257
Problem Areas ............................................................................................ 260
Conclusion .................................................................................................. 262

14 Protection of the Marine Environment ............................................... 265
Introduction ............................................................................................... 265
The Regime of Ship-Source Oil Pollution in Public Law .............................. 265
Legal Framework Under UNCLOS ............................................................ 265
The Intervention Convention ..................................................................... 271
Regulatory International Law Framework ................................................ 273
Overview of MARPOL 73/78 ..................................................................... 274
Common Features of the Annexes .............................................................. 276
The OPRC Convention ............................................................................... 281
Other Contemporary Regulatory Law on Ship-Source Pollution ............... 283
Dumping of Wastes at Sea ......................................................................... 283
Transboundary Movement of Hazardous Wastes and Ship Recycling ....... 284
Anti-fouling Systems ................................................................................... 284
Invasive Alien Species ............................................................................... 285
Ships’ Exhaust Emissions .......................................................................... 285

15 The Private Law of Ship-Source Pollution ............................................ 295
Introduction ............................................................................................... 295
Liability Issues ........................................................................................... 296
Nature of the Claim ..................................................................................... 296
Basis of Liability ........................................................................................ 298
Application of Tort Law Independent of Conventions ............ 299
  The Common Law Approach ........................................ 299
  Trespass and Nuisance ............................................ 300
  Negligence ......................................................... 301
The Evolution and Application of Convention Law ............ 301
  The Torrey Canyon Disaster ...................................... 301
  The Civil Liability Convention ................................ 302
Salient Features of CLC 1969 ..................................... 303
Salient Features of the Fund Convention, 1971 ............... 305
Changes to CLC 1969 and Fund 1971 ........................... 306
The CLC and Fund Convention of 1992 ......................... 307
Compensation Issues ............................................... 309
  Compensable Damage ............................................. 309
Pollution Damage and Preventive Measures .................... 310
  Damage to Property .............................................. 310
Economic Loss ....................................................... 311
Consequential Loss ............................................... 311
Pure Economic Loss ............................................... 312
Relational Economic Loss ....................................... 312
Environmental Damage ........................................... 313
Industry Action .................................................... 313
  Interim Arrangements Following the Torrey Canyon ......... 313
  Voluntary Action Following Adoption of the Supplementary Fund . 314
Other Ship-Source Pollution ...................................... 315
  Hazardous and Noxious Substances ............................. 315
Ship-Source Pollution Damage from Bunker Oil ............... 318
Unilateral National and Regional Legislation ................. 319
  U.S. Oil Pollution Act 1990 .................................... 319
Unilateral Regional Legislation in the EU ..................... 321
Conclusion .......................................................... 321

16 Liability and Limitation of Liability ................................. 323
Introduction ........................................................ 323
  A Brief History of Limitation Rights .......................... 324
IMO Instruments .................................................... 324
Convention Relating to the Carriage of Passengers and Their Luggage by Sea ........................................... 328
Developments in Europe ........................................... 330
Liability and Limitation Regimes for Carriage of Cargo .......... 331
  The Hague Rules ................................................ 331
  The Hague–Visby Rules ......................................... 332
The Hamburg Rules ................................................... 333
United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (Rotterdam Rules) .................................................... 334
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conclusion: The Current Milieu and Beyond</td>
<td>339</td>
</tr>
<tr>
<td>Factors Affecting the Shipping Market</td>
<td>340</td>
</tr>
<tr>
<td>Regulation and Technological Advancement</td>
<td>340</td>
</tr>
<tr>
<td>Carriage of Goods</td>
<td>341</td>
</tr>
<tr>
<td>Overcapacity</td>
<td>341</td>
</tr>
<tr>
<td>Market Players</td>
<td>342</td>
</tr>
<tr>
<td>Ship Finance</td>
<td>342</td>
</tr>
<tr>
<td>The Unevenness of the Playing Field</td>
<td>343</td>
</tr>
<tr>
<td>Profitability</td>
<td>343</td>
</tr>
<tr>
<td>The Age of Fleets</td>
<td>343</td>
</tr>
<tr>
<td>Ethical Standards</td>
<td>344</td>
</tr>
<tr>
<td>National Unilateralism, Regionalism or Internationalism</td>
<td>344</td>
</tr>
<tr>
<td>Priorities for the Future</td>
<td>346</td>
</tr>
<tr>
<td>Status of Freedom in Shipping</td>
<td>347</td>
</tr>
<tr>
<td>Bibliography</td>
<td>349</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>355</td>
</tr>
<tr>
<td>Table of Legislation</td>
<td>357</td>
</tr>
<tr>
<td>Table of Conventions and Other Treaty Instruments</td>
<td>359</td>
</tr>
<tr>
<td>Index</td>
<td>361</td>
</tr>
</tbody>
</table>
Farthing on International Shipping
Mukherjee, P.K.; Brownrigg, M.
2013, XXIX, 411 p. 6 illus., 2 illus. in color., Hardcover
ISBN: 978-3-642-34597-5