Contents

Dedication .......................................................................................................................... V

Contents ............................................................................................................................. IX

Abbreviations .................................................................................................................. XVII

1. The history and legislative framework of marine insurance...................... 1
   1.1. Historical and policy reasons behind the various English statutes....1
       1.1.1. Early historical background ...................................................... 1
       1.1.2. The Lombards ...................................................................... 2
       1.1.3. Early English marine insurance ........................................... 3
       1.1.4. The founder of Lloyd’s and the rise of the Lloyd’s coffee house ............................................................. 3
       1.1.5. The first marine insurance companies ................................. 4
       1.1.6. The evolution of Lloyd’s and other forms of marine insurance companies .................................................. 5
       1.1.7. The growth and evolution of the system and law of marine Insurance ........................................................ 6
       1.1.8. The policy reasons which generated the enactment of the Marine Insurance Act 1906 ...................................... 8
   1.2. The history and legislative framework of marine insurance in Greece ......................................................................................... 9
   1.3. The history and legislative framework of marine insurance in Norway................................................................................................. 11
   1.4. The history and legislative framework of marine insurance in France ....................................................................................................... 13
   1.5. The history and legislative framework of marine insurance in the USA..................................................................................................... 15
       1.5.1. Introductory remarks ............................................................... 15
       1.5.2. The situation prior to and after the “Wilburn Boat Co v Fireman’s Fund Insurance Co case” ............................... 16
   1.6. The history and legislative framework of marine insurance in Canada .................................................................................................. 20
   1.7. The history and legislative framework of marine insurance in Australia ....................................................................................................... 21
   1.8. General conclusive remarks and comparative discussion ................. 22
2. Indemnity marine insurance contracts: basic features and cover provided ...........................................................................................................27
  2.1. Basic features of the marine insurance contracts ..............................................................27
  2.1.1. Basic features of the marine insurance contracts in England .........................................27
        2.1.1.1. The nature of the marine insurance contract: basic literature review .........................27
        2.1.1.2. The nature of the interest: insurable interest ..............................................................31
                2.1.1.2.1. Definition and evaluation of the concept of insurable interest and the requirements set by law for it .........................................................32
                2.1.1.2.2. On the illegality of the insured adventure ....................................................40
                2.1.1.2.3. The time when the insurable interest must attach .................................................40
                2.1.1.2.4. Critique on the existence of the requirement for insurable interest in relation also to overvaluation .................................................................42
        2.1.2. Basic features of the marine insurance contracts in Greece .............................................43
                2.1.2.1. An introduction to the Greek legal system and the interpretation of law in relation to contracts .................................................................43
                2.1.2.2. The nature and objective of marine insurance contracts in Greece ..........................44
                2.1.2.3. The formation of the marine insurance contract: basic requirements ..........................45
                2.1.2.4. The nature of the interest: insurable interest ..............................................................47
  2.1.3. Basic features of the marine insurance contracts in Norway ..........................................47
        2.1.3.1. General requirements for marine insurance contracts under the Norwegian law regime .................................................................47
        2.1.3.2. Insurable interest under the Norwegian law regime ....................................................49
  2.1.4. Basic features of the marine insurance contracts in France ..........................................50
        2.1.4.1. General requirements and duties of the contractual parties to a marine insurance contract under the French law regime ..................................................50
        2.1.4.2. The nature of the interest: insurable interest ..............................................................51
  2.1.5. Basic features of the marine insurance contracts in the USA .........................................52
        2.1.5.1. General requirements for the formation of marine insurance contracts in the USA .................................................................52
        2.1.5.2. The nature of the interest: insurable interest ..............................................................52
        2.1.6. Basic features of the marine insurance contracts in Canada ..........................................54
                2.1.6.1. General requirements and the objective of marine insurance contracts in Canada .................................................................54
                2.1.6.2. The nature of the interest: insurable interest ..............................................................55
  2.1.7. Basic features of the marine insurance contracts in Australia ..........................................57
        2.1.7.1. Basic requirements under the Australian law regime ....................................................57
2.1.7.2. The nature of the interest: insurable interest .................57
2.1.7.3. Insurable interest and the requirements for marine insurance contracts under the Australian law regime: the reform proposals .........59

2.2. The cover offered under marine insurance contracts in the various common law and continental law jurisdictions ..............65
2.2.1. The coverage offered under marine insurance contracts in England .................................................................65
2.2.2. The coverage offered under marine insurance contracts in Greece .................................................................70
2.2.3. The coverage offered under marine insurance contracts in Norway ...............................................................73
2.2.4. The coverage offered under marine insurance contracts in France .................................................................74
2.2.5. The coverage offered under marine insurance contracts in the USA ...............................................................75
2.2.6. The coverage offered under marine insurance contracts in Canada ...............................................................76
2.2.7. The coverage offered under marine insurance contracts in Australia ..............................................................77
2.2.7.1. The coverage offered under marine insurance contracts in the Australian law regime: the reform proposals .78

2.3. General conclusive remarks and comparative discussion ...........80

3. Types of losses in marine insurance contracts .........................89
3.1. Types of losses in marine insurance contracts under the English law regime .........................................................89
3.1.1. Indemnity and losses ..................................................89
3.1.1.1. Total losses: actual total loss .................................90
3.1.1.1.a. Where the subject-matter is totally destroyed: actual total loss of a ship – a “total wreck” .........................92
3.1.1.1.b. Actual total loss of a ship: a missing ship ..93
3.1.1.1.c. Actual total loss: where the subject-matter insured ceases to be “a thing of the kind insured” .................................................93
3.1.1.1.d. Actual total loss: where the assured is “irretrievably deprived” of the subject-matter insured .................................................95
3.1.1.1.e. Actual total loss of freight: actual total loss of freight caused by a total loss of ship and/or goods .................................................96
3.1.1.1.f. Recovery for a partial loss .................................97
3.1.1.2. Constructive total loss ............................................98
3.1.1.2.a. Types of constructive total loss:
reasonable abandonment of the
subject-matter insured............................. 100

3.1.1.2.b. Types of constructive total loss:
deprivation of possession of ship
or goods................................................... 102

3.1.1.2.3. Effects of constructive total loss:
abandonment of the subject-matter
insured – the meaning of “the notice
of abandonment” .................................... 105

3.1.1.2. Indemnity and partial losses ....................... 110

3.1.1.2.1. Indemnity and particular average losses.. 110

3.1.1.2.2. General average losses ........................ 111

3.1.1.2.3. Indemnity and the “sue & labour” clause 113

3.2. Types of losses in marine insurance contracts under
the Greek law regime ........................................ 113

3.2.1. Total loss and abandonment under the Greek law regime 113

3.3. Types of losses in marine insurance contracts under
the Norwegian law regime ................................ 116

3.3.1. The cover offered under the Norwegian marine insurance
contracts............................................................... 116

3.3.2. Types of losses under the Norwegian marine insurance
law ................................................................. 118

3.4. Type of losses in marine insurance contracts under the French
law regime...................................................... 119

3.4.1. Losses under French marine insurance contracts........ 119

3.4.2. French marine insurance contracts and abandonment .... 119

3.5. Types of losses in marine insurance contracts under
the US law regime................................................ 121

3.6. Types of losses in marine insurance contracts under
the Canadian law regime.................................. 122

3.7. Types of losses in marine insurance contracts under
the Australian law regime................................ 123

3.8. General conclusive remarks and comparative discussion...... 124

4. Valuation and the measure of indemnity in marine insurance
contracts.................................................................. 127

4.1. Valuation and the measure of indemnity.......................... 127

4.1.1. Valuation and the measure of indemnity in England...... 127

4.1.1.1. Valued and unvalued policies.......................... 128

4.1.1.2. The mode of calculation and the finality of losses . 135

4.1.2. Valuation and the measure of indemnity in Greece........ 136

4.1.3. Valuation and the measure of indemnity in Norway........ 139

4.1.4. Valuation and the measure of indemnity in France......... 140

4.1.5. Valuation and the measure of indemnity in the USA ....... 141

4.1.6. Valuation and the measure of indemnity in Canada........ 142
4.1.7. Valuation and the measure of indemnity in Australia ........ 142
4.2. Total losses and the measure of indemnity ................................. 143
  4.2.1. Total losses and the measure of indemnity in England .... 143
  4.2.2. Total losses and the measure of indemnity in Greece ...... 149
  4.2.3. Total losses and the measure of indemnity in Norway ...... 150
  4.2.4. Total losses and the measure of indemnity in France ....... 154
  4.2.5. Total losses and the measure of indemnity in the USA ..... 155
  4.2.6. Total losses and the measure of indemnity in Canada ....... 157
4.3. Partial losses and the measure of indemnity .............................. 157
  4.3.1. Partial losses and the measure of indemnity in England .... 157
    4.3.1.1. Partial loss of a ship and the measure of indemnity ......................................................... 158
    4.3.1.2. Partial loss of goods and the measure of indemnity ............................................................... 159
    4.3.1.3. Partial loss of freight and the measure of indemnity ............................................................... 160
    4.3.1.4. General average losses and the measure of indemnity ............................................................. 161
  4.3.2. General average losses and the measure of indemnity in Norway ......................................................... 161
  4.3.3. Successive losses and the measure of indemnity in England ................................................................. 163
  4.3.4. “Sue & labour” and the measure of indemnity in England .... 164
  4.3.5. “Sue & labour” and the measure of indemnity in Norway .. 166
  4.3.6. “Sue & Labour” and the measure of indemnity in Canada .. 167
4.4. Over-insurance and the re-opening of valuation ...................... 167
  4.4.1. Over-insurance, under-insurance and the re-opening of valuation in England ............................................. 167
  4.4.2. Over-insurance and the re-opening of valuation in Greece ................................................................. 172
  4.4.3. Over-insurance and the re-opening of valuation in Norway ................................................................. 172
4.5. Floating policies and open-cover insurance .............................. 174
  4.5.1. Floating, open-cover policies and the measure of indemnity in England .................................................. 174
  4.5.2. Floating, open-cover policies and the measure of indemnity in Greece .................................................... 192
  4.5.3. Floating, open-cover policies and the measure of indemnity in France .................................................... 192
  4.5.4. Floating, open-cover policies and the measure of indemnity in the USA .................................................... 193
  4.5.5. Floating, open-cover policies and the measure of indemnity in Canada .................................................... 193
4.6. Critical discussion on valuation and the measure of indemnity... 194
4.7. Salvage and the measure of indemnity .................................... 197
4.8. Consequential, future profit loss and the measure of indemnity .. 199
4.9. Mortgagee’s interest insurance and the measure of indemnity.... 204
4.10. Double Insurance and the measure of indemnity ............... 207
  4.10.1. Double insurance and the measure of indemnity in England ................................................. 207
  4.10.2. Double insurance and the measure of indemnity in Norway .................................................. 211
  4.10.3. Double insurance and the measure of indemnity in Canada .................................................. 212
4.11. General conclusive remarks and comparative discussion .... 213

5. Subrogation rights arising from marine insurance contracts .... 215
  5.1. The rights of the insurer on payment in marine insurance contracts in England ....................................... 215
  5.1.1. The doctrine of subrogation: definition and perspectives ... 215
  5.1.2. The rights in respect of which subrogation arises and their extent; the persons upon which subrogation rights may be effected ................................................................. 216
  5.1.3. Recovery in the case of under-insurance or partial insurance ...................................................... 227
  5.2. The rights of the insurer on payment in marine insurance contracts in Greece .................................................. 230
  5.3. The rights of the insurer on payment in marine insurance contracts in Norway ........................................ 231
  5.4. The rights of the insurer on payment in marine insurance contracts in France ........................................ 234
  5.5. The rights of the insurer on payment in marine insurance contracts in the USA ............................................. 234
  5.6. The rights of the insurer on payment in marine insurance contracts in Canada ........................................ 237
  5.7. The rights of the insurer on payment in marine insurance contracts in Australia ................................. 237
    5.7.1. The main areas of the reform in relation to subrogation under the Australian law regime ............. 239
  5.8. General conclusive remarks and comparative discussion .... 241

6. Discussion on the principle of indemnity in marine insurance contracts ................................................................. 245
  6.1. General critique .............................................................................................................................................. 245
  6.2. Advantages and disadvantages of the proposition for a future law reform ................................................................. 252
    6.2.1. General remarks on the idea of unification and/or harmonisation ...................................................... 252
    6.2.2. The arguments for and against a law reform by means of new codification ........................................ 253
  6.3. Alternatives to legislative reform ................................................................................................................. 259
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.4. Provisions related to indemnity in need of reform</td>
<td>261</td>
</tr>
<tr>
<td>6.4.1. The discussion on possible reform of the sections</td>
<td>261</td>
</tr>
<tr>
<td>on insurable interest</td>
<td></td>
</tr>
<tr>
<td>6.4.2. The discussion on possible reform of the sections relating</td>
<td>263</td>
</tr>
<tr>
<td>to the measure of indemnity</td>
<td></td>
</tr>
<tr>
<td>6.5. General conclusions and future prospects</td>
<td>264</td>
</tr>
<tr>
<td>Bibliography</td>
<td>269</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>275</td>
</tr>
<tr>
<td>Table of Statutes</td>
<td>289</td>
</tr>
<tr>
<td>Index</td>
<td>293</td>
</tr>
<tr>
<td>About the Author</td>
<td>297</td>
</tr>
</tbody>
</table>
The Principle of Indemnity in Marine Insurance Contracts
A Comparative Approach
Noussia, K.
2007, XX, 298 p., Hardcover
ISBN: 978-3-540-49073-9