

Preface

The book examines how the absence of insurance in the past led to some unique maritime liability law principles such as ‘general average’ (i.e., losses or expenses shared by all the parties to a maritime adventure) and the limitation of ship owners’ liability. In the absence of insurance, these principles served the function of insurance mostly for ship owners. As commercial marine insurance is now widely available, these principles have lost their justification and may in fact interfere with the most important goal of liability law, i.e., deterrence from negligence. The book thus recommends their abolition.

When insurance is easily available and affordable to both parties to a liability claim, the main goal of liability law should be deterrence as opposed to compensation. This is the case with maritime cargo liability claims where both cargo owners and ship owners are invariably insured. As a result, the main focus of the cargo liability law should be and, to a great extent, is deterrence. On the other hand, in the vessel-source oil pollution liability setting, pollution victims are not usually insured. Therefore, oil pollution liability law has to cater for both compensation and deterrence, the two traditional goals of liability law.

The final issue addressed in the book is whether the deterrent effect of liability law is compromised by the availability of liability insurance. Contrary to popular belief, the book argues that the presence of liability insurance is not necessarily a hindrance but can be a complementary force towards the realization of deterrent goal of liability law.

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