Preface	XV
Table of cases	xvii
Abbreviations	xxvii
1100101100110	
OPENING REMARKS	1
1 A Relatively New Debate in the Maritime Field	1
1.1 The Wrong Assumptions	1
1.2 New Developments	1
1.2.1 The Operation of the Shipping Industry Revisited	1
1.2.2 The Idea of the "General Average" in Insolvency Proceedings	3
1.2.3 Emphasis on the Rescue of the Debtor	5
1.2.3.1 Pre-Insolvency Proceedings	5
1.2.3.2 Insolvency Proceedings	6
2 Subject, Methodology and Structure of the Present Study	7
2.1 Subject Covered	7
2.2 Methodology	8
2.3 Structure	10
2.4 Terminology	11
2.1	
THE DILL ES OF MADITIME	<b>=</b>
PART I SYSTEMIC CONFLICT BETWEEN THE RULES OF MARITIMI	_
AND INSOLVENCY LAW	
CHAPTER 1 INSOLVENCY MECHANISMS AND THE OPERATION	
OF SHIPPING COMPANIES: FINANCIAL ASPECTS	15
1 Shipping Dependence on Bank Loans	15
1.1 Evolving Bank Lending Practices	15
1.1.1 Features	15
1.1.1.1 Macro Features of the Industry Seeking for Finance	15
(i) Capital Intensity	15
(ii) Market Cycles	16
1.1.1.2 Micro Characteristics of Borrowers	18
1.1.1.3 Characteristics of Lenders, With Particular Reference	
to Syndicated Loans	19
1 1.1.4 Features of the Loan Relationship	21

		1.1.2	The Shi	p as the N	Main Security	23
			1.1.2.1		es In Rem Against a Ship	23
					hip Mortgage	23
				(a		23
				(b	) Weaknesses	25
					wnership-Based Collaterals	26
				(a	•	
				,	Shipping Finance	26
				(b	) Transfer of Ownership as Security for a Debt	27
					1 The Statutory Example of the Greek CPML	27
					2 Lease-Back	28
				(c	) Lease Finance with Bareboat Charter	29
			1.1.2.2	Addition	nal Collaterals	32
				(i) O	ther Forms of Real Security	32
				(ii) C	ollaterals in Personam	33
	1.2	Limite	ed Recour	se to Oth	er Sources of Funding	34
		1.2.1	Raising	Equity or	Public Markets	34
		1.2.2	Risk Ma	nagemen	t through Freight Derivative Products	36
			1.2.2.1	The Eco	nomic Importance of Freight Derivatives	36
			1.2.2.2	Freight 1	Futures/Forward Contracts	38
			1.2.2.3	Freight (		39
2	The	Relatio	nship Bet	ween Fin	ance and Insolvency in the Shipping Sector	40
	2.1				nsolvency	40
		2.1.1	Distortio	on in the I	Financing of New Capacity	40
		2.1.2	Distortio	on in the (	Conditions of Bank Lending	42
	2.2	Insolv	ency Med	hanisms	at the Service of Finance	46
		2.2.1	At the S	ervice of	Finance in General	46
		2.2.2	At the S	ervice of	Ship Finance in Particular	48
			2.2.2.1	Preventi	ve Mechanisms	48
				(i) C1	reditworthiness Criteria	48
				(ii) Cı	reditworthiness Control or "Negative Pledge"	
				CI	auses	49
			2.2.2.2	Access t	o Funding	52
				(i) Ti	ghter Loan Terms and Securitization	52
				(ii) Pr	ivate Placement	53
				(iii) As	ssignment of Shipping Loans	54
CH	HAPT	ER 2	LEGAL	INTERA	ACTION BETWEEN INSOLVENCY	
				ARITIM		55
	The	Progres	sive Inter	nationaliz	zation of Insolvency Law	55
	1.1	_		Jniversali	•	55
		1.1.1			rritoriality and Plurality	55
		1.1.2			iversalism and Unity	57
		1.1.3		•	alism as a Legislative Choice	58
	1.2				on Cross-Border Insolvency	59
		1.2.1		al Feature	· · · · · · · · · · · · · · · · · · ·	59

	1.2.2	Right of A	Access	61
		1.2.2.1	Of Foreign Representatives	61
		1.2.2.2	Of Foreign Creditors	63
	1.2.3	Recogniti	ion of Foreign Proceedings	64
		1.2.3.1	Criteria for Recognition	64
			(i) "Main" and "Non-Main" Proceedings	64
			(ii) The Public Policy Reservation	66
			Effects of Recognition	67
			(i) Provisional Relief Upon Application for	
			Recognition	67
			(ii) Automatic Effects of the Recognition of	
			a Foreign Main Proceeding	68
			(iii) Discretionary Effects Upon Recognition	69
			(iv) Safety Valves	70
	1.2.4	Coordina	ation of Proceedings	71
			Cooperation Between Courts and Representatives	71
			Coordination of Concurrent Proceedings	72
	1.2.5		ed States Enactment: Chapter 15	74
1.3			/848 on Insolvency Proceedings	76
	1.3.1		fferences Between an UNCITRAL and a European	
			order Insolvency	77
			Scope of Application	77
			Regulatory Content	79
	1.3.2		on to Open Insolvency Proceedings: EU Autonomous	
		Criteria		79
	1.3.3	Conseque	ences	82
			Automatic and Immediate Recognition	82
			(i) Extension of the Effects of Main Proceedings	82
			(ii) Fractured Universalism and Territorial	
			Proceedings	84
			(iii) Coordination	86
			Uniform Conflict-of-Laws Rules	87
Syst	emic D		s and Coordination Efforts	88
2.1		chy of Ru		88
	2.1.1	-	onal, But Not Similar Regimes	88
			Evolving Nature of Cross-Border Insolvency Law	89
			Qualitative Characteristics of International	
			Maritime Law	91
			(i) Substantive Uniformity	91
			(ii) A High Level of Maturity	92
			(iii) Potential Interaction of Multiple Regimes	94
	2.1.2	Coexiste	nce of EU Insolvency Law and International	
	2.112		e Conventions	95
		2.1.2.1	The Principle of the Pre-Eminence of EU Law	95
		2.1.2.2	Self-Sufficiency of Maritime Conventions Under	
			the Case-Law of the CJEU	99

2

	2.2	Mitiga	ating Subs	stantive	e Divergences: Proposed Guidelines	102
		2.2.1	Maritim	e Clair	ns v Insolvency Claims	102
			2.2.1.1	The "	Maritime Claim" Lacks Definition	102
				(i)	Common Minimum Characteristics	102
				(ii)	Diversity of Maritime Claims	104
				(iii)	The First Guideline	106
			2.2.1.2	Subst	antive Protection of Maritime Claims	106
				(i)	Preferred Maritime Creditors	106
				(ii)	The Substantive Attachment of the Claim to	
					the Ship: Maritime Liens	108
					(a) From the Perspective of Civil Law Systems	108
					(b) From the Perspective of English Law	110
				(iii)	Safeguarding Maritime Security Mechanisms	
					Within Insolvency Procedures	111
				(iv)	Second Guideline	112
		2.2.2	Universa	ality of	Insolvency Estate v Specificity of Maritime Property	112
			2.2.2.1	Proce	edural Mechanisms Connecting the Vessel to	
				the M	Iaritime Claim	112
				(i)	Arrest Under the 1952 Convention	113
				(ii)	Actions In Rem and the Personification of the Ship	114
					(a) Under the English Version	114
					(b) Under the US Version	116
				(iii)	Treatment of Specific Maritime Procedures in	
					the Context of Cross-Border Insolvencies	117
				(iv)	Third Guideline	120
			2.2.2.2	Settin	ng up a Special Purpose Property for Maritime	
				Clain	ns Subject to Limitation of Liability	120
				(i)	Exclusive Purpose of the Limitation Fund	120
					(a) Fragmentation of the International Regime	120
					(b) Common Characteristics	121
					1 Legal Nature: Assets Belonging to	
					the Debtor	121
					2 Exclusive Use for Specific Maritime	
					Creditors	123
				(ii)	The "Immunity" of Limitation Funds	125
					(a) Immunity as an Outcome of Interpretation	125
					(b) Immunity as a De Lege Ferenda Demand	127
				(iii)	The Fourth Guideline	128
		PAR	TII Al	REAS	OF CONFLICT BETWEEN MARITIME AND	
		1711			INSOLVENCY LAW	
CI	דת א נו	TER 3	ODENII	NG OI	F CROSS-BORDER INSOLVENCY	
C)	TAPI	EK )	PROCE			131
1	Det	erminin			Main Interests of Shinning Companies	131

1.	The CO	OMI as th	e Connecting Factor	131
	1.1.1	The CO	MI of Legal Persons	131
		1.1.1.1	Constitutive Elements	131
			(i) The Function of the COMI under the Insolvency	
			Regulation and the UNCITRAL ML	131
			(ii) Main Interests	132
			(iii) Administration on a Regular Basis	133
			(iv) Objective Ascertainability by Third Parties	134
		1.1.1.2	The Presumption of the Registered Office	135
			(i) The Function of the Presumption	135
			(ii) Rebuttal of the Presumption	136
			(iii) The Application of the Presumption Under	
			US Chapter 15	138
	1.1.2	The CO	MI of Groups of Companies	141
		1.1.2.1	The Principle: Separate Insolvency Proceedings for	
			Each Legal Entity	141
		1.1.2.2	The Exception: One COMI for Integrated Groups of	
			Companies	144
		1.1.2.3	The Light Form of Procedural Cooperation	145
		1.1.2.4	Group Coordination Proceedings (GCP)	147
		1.1.2.5	C.1 ((T) 1-1-1:-1	
			in the Context of Group Insolvencies	148
1	.2 The C	OMI of S	Shipping Companies	151
	1.2.1	Choice	of the Cross-Border Insolvency Regime	151
		1.2.1.1	Selection Criteria: Cross-Border Elements	151
		1.2.1.2		
			the Material Scope of the Regulation	153
	1.2.2	Corpora	ate Shipping Structure as a Nexus of Cross-Border	
			nts: The Greek Paradigm	154
		1.2.2.1		
			Ship Registries of Other Member States	155
		1.2.2.2		
			and Ships Registered as Foreign Capital	157
		1.2.2.3	Foreign Shipowning/Ship-Management Companies	
			with Ships Flying a Foreign Flag	158
		1.2.2.4	. –	
			Shipping COMI	159
	1.2.3	Localiz	zing the COMI of Shipping Groups	162
		1.2.3.1	The Development Strategy of Shipping Groups	162
		1.2.3.2		
			Groups	163
			(i) A Single Group COMI	163
			(ii) Coordination Issues	166
2	The Effect	ts on the S	Shipping Company of the Opening of Insolvency	
	Proceeding			167
			CITRAL Regime	167

	2.1.1	Allocati	ion of Jurisdiction: The US Example	167
		2.1.1.1	Allocation of Jurisdiction Between Bankruptcy and	
			Admiralty Courts	168
		2.1.1.2	The Classification of Maritime Disputes as "Core",	
			"Non-Core" and "Unrelated"	171
		2.1.1.3	The Chapter 15 "Gap Period"	175
	2.1.2		ining the Applicable Law	177
		2.1.2.1	The Rule	177
		2.1.2.2	Choice of Law and Measures to Pierce the	
			Applicable Law	177
			(i) The Limits of Direct and Indirect Choice	177
			(ii) Piercing the Foreign Applicable Law	179
2.2	Under	the EU F		181
	2.2.1		on of Jurisdiction: Actions Related to Insolvency	
		Proceed		181
		2.2.1.1		182
		2.2.1.2	Examples of Related and Non-Related Actions	183
	2.2.2		ons to the Application of Lex Fori Concursus	187
		2.2.2.1		187
			Implied Exceptions	189
	2.2.3		ect of Cross-Border Insolvency Proceedings on Maritime	103
		Arbitrat		191
			Legal Characterization and Treatment of Pending	
			Arbitrations	191
		2.2.3.2		195
СНАРТ	ER 4	THE TI	REATMENT OF MARITIME SECURITIES	199
			s: Mortgage and Transfer of Title	199
1.1			Preferred) Mortgages in Insolvency Proceedings	199
	1.1.1	,	B of the Insolvency Regulation: Conditions	
		of Appli		199
		A A	The Meaning of the Exception	200
			(i) The Nature of the Provision	200
			(ii) The In Rem Nature of the Ship Mortgage	201
		1.1.1.2	Determining the Situs of the Vessel	202
		1,1,1,2	(i) Situs Based on the Registration Link	203
			(ii) Situs Based on the Physical Location of	203
			the Vessel	205
	1.1.2	Consequ	uences and Potential Outcomes	207
	1.1.2	1.1.2.1	Cases in Which the Exception Applies	207
		1.1.2.2	Cases in Which the Exception Does Not Apply	207
		1.1.2.2	(i) EU Debtor – Intra-Union Proceedings – Third	207
			Country Flag State	207
			(ii) EU Debtor – Intra-Union Proceedings –	207
			Registration and Proceedings in the Same	
			Member State	208
			IVICIIIUCI State	200

			1.1.2.3	The Insolvency Regulation Does Not Apply	208
				(i) De Facto	208
				(ii) De Jure: Activation of the UNCITRAL Regime	209
			1.1.2.4	Case Study: Greek Law as the Law of the Ship's Register	211
				(i) No Secondary Proceedings in the State of the	010
				Ship's Register	212
				(ii) Secondary Proceedings Are Opened:	212
				Application of the Lex Concursus Secundarii	212
				(iii) The Right to Assume Operation of the Ship	216
	1.2	Title-B	ased Sec	urity in Insolvency Proceedings	218
		1.2.1	The Adv	antage: Exception from the Insolvency Estate	218
			1.2.1.1	The Limited Scope of Art. 10 of the Insolvency	
				Regulation: Reservation of Title	218
			1.2.1.2	C.1 T -1 O	220
		1.2.2			223
				Risk of Legal Recharacterization	223
			1.2.2.2		224
2	Ex I	Lege Lie			225
2	2.1	The Pr	reliminar	y Issue of the Existence of the Maritime Lien	225
	2.1	2.1.1	Concen	tual and Regulatory Diversity	225
		2.1.2	Propose	ed Rules of Conflict	228
		2.1.2		Lex Causae	229
			211	(i) In its Original Form	229
				(ii) Corrective Interventions: The Law	
				Appropriate to Maritime Liens	231
			2122	Lex Fori	232
				Lex Navis	234
	2.2	The S		on of Maritime Liens in Insolvency Proceedings	236
	2.2	2.2.1	The La	w Applicable to Ranking: Return to Lex Fori	237
		2.2.1	2.2.1.1		237
				Examples of Application	238
		2.2.2		g Issues	239
		2.2.2	2.2.2.1	CAF it I amain	
			4.4.4.1	the Context of Insolvency	239
			2.2.2.2	- too to one it in Determine	
			4.4.4.4	Pre-Insolvency and Post-Insolvency Liens	243
			2.2.2.3	and the CI invidations	
			4.4.4.3	Greek Law	245
			2.2.2.4		247
	2.2	The		Arrest the Ship	248
	2.3		Dowtiel	Neutralization of the Right to Arrest	248
		2.3.1		D Not Detablish a	
			2.3.1.1	Right In Rem	248
			2.3.1.2	CI 1 -1	250
			2.3.1.2	(i) Release of the Vessel	250
				(ii) Security to Release the Ship from Arrest	252

			2.3.1.3	The Status of the Proceedings on the Merits in Light	254
		0.00	((T D	of Art. 18 of the Regulation Claims" Under Common Law and Insolvency:	251
		2.3.2		cial Time Factor	256
					256
			2.3.2.1	A Previously Filed Action In Rem (i) Treatment in the Context of the Insolvency	250
					256
				Regulation	258
				(ii) Treatment Under the UNCITRAL Regime	261
			2.3.2.2	Actions In Rem Subsequent to Insolvency Proceedings	201
			2.3.2.3	Assessment of Statutory Claims In Rem by a	263
				Foreign Court	203
СН	A DT	ER 5	INSOLV	VENCY AND LIMITATION OF LIABILITY FOR	
CH	AI I	LK J		TIME CLAIMS	266
1	Intro	leina I i		of Liability	267
1					267
	1.1		pplicable		267
	1.2	150 500 00 00	ntive Sol		207
		1.2.1		Insolvency Proceedings: Limitation of Liability	267
				the Constitution of a Fund	269
		1.2.2		ng the Opening of Insolvency Proceedings	270
2	Con			imitation Fund	270
	2.1			ency Proceedings	270
		2.1.1		ution of the Fund by the Debtor-Shipowner	270
			2.1.1.1	Parallel Application of the LLMC 1976/96 and the	270
				Insolvency Regulation	270
				(i) The Issue from the Perspective of the LLMC	270
				(ii) The Issue from the Perspective of the	0.50
				EU Insolvency Regulation	272
				(iii) Parallel Application of the CLC 1992 and	
				the Insolvency Regulation	274
			2.1.1.2	Parallel Application of an International Convention	
				on Limitation and the UNCITRAL ML	275
		2.1.2	Constitu	ution of the Fund by the Insurer	278
	2.2			e Limitation Fund	278
	2.2	2.2.1	Constit	ution of the Fund During the Suspect Period	279
		2.2.1	2.2.1.1		279
			2.2.1.2		280
		2.2.2		et Barring Limitation	282
	2.3			Opening of Insolvency Proceedings	284
					207
Po	ostfac	ee.			287
Bi	bliog	raphy			291
In	dex				305