

1. Record Nr.	UNINA9910483658703321
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Titolo	Effects of Insurance on Maritime Liability Law : A Legal and Economic Analysis / / by Muhammad Masum Billah
Pubbl/distr/stampa	Cham : , : Springer International Publishing : , : Imprint : Springer, , 2014
ISBN	3-319-03488-X
Edizione	[1st ed. 2014.]
Descrizione fisica	1 online resource (222 p.)
Disciplina	340 340.1 341 341.4
Soggetti	Law of the sea International law Insurance Environmental law, International Trade Law—Philosophy Law Water - Pollution Law of the Sea, Air and Outer Space International Environmental Law International Economic Law, Trade Law Theories of Law, Philosophy of Law, Legal History Waste Water Technology / Water Pollution Control / Water Management / Aquatic Pollution
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Description based upon print version of record.
Nota di bibliografia	Includes bibliographical references and index.
Nota di contenuto	1. Introduction -- 2. Lack of Insurance and Its Effect on Maritime Liability Law: A Historical Evaluation -- 3. Insurance and Limitation of Ship owners' Liability: An Economic Analysis -- 4. Insurance through General Average: Its Justifications and Effects on Optimal Care and on Social Costs -- 5. Maritime Cargo Liability Regimes in Light of

Insurance Realities -- 6. Role of Insurance in Providing Adequate Compensation for Oil Pollution Damage and in Reducing Oil Pollution Incidents -- 7. Incentive Effect of Liability Rules in the Presence of Liability Insurance -- 8. Conclusion.

Sommario/riassunto

The book examines how the absence of insurance in the past led to some special 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 shipowners' liability. In the absence of insurance, these principles served the function of insurance mostly for shipowners. 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 work thus recommends their abolition. It further argues that when insurance is easily available and affordable to the both parties to a liability claim, the main goal of liability law should be deterrence as opposed to compensation. This is exactly the case with the maritime cargo liability claims where both cargo owners and shipowners are invariably insured. As a result, the sole focus of 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 both for compensation and deterrence, the two traditional goals of liability law. The final question the work addresses is whether the deterrent effect of liability law is affected by the availability of liability insurance. Contrary to the popular belief the work attempts to prove 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.