

Contents

1	Introduction	1
	Reference	3
2	Background	5
2.1	Definition of Deck Cargo	5
2.2	The Impact of Deck Stowage on Other Fields of Law	7
2.2.1	Insurance	8
2.2.2	Letters of Credit (UCP 600)	9
2.3	Why Stow on Deck?	10
2.4	Containerisation	10
	References	13
3	Treaty Law	15
3.1	A Brief Chronology: From the Hague to the Rotterdam Rules	16
3.2	Deck Cargo Under the Conventions	19
3.2.1	The 1924 Hague and the 1968 Hague-Visby Rules	19
3.2.2	The 1978 Hamburg Rules	21
3.2.3	The 2008 Rotterdam Rules	24
3.3	Interpretation of International Conventions	28
	References	28
4	National Law	31
4.1	Nordic Law	31
4.1.1	The Nordic Maritime Law Collaboration	32
4.1.2	The Earlier Nordic Maritime Codes	34
4.1.2.1	The Fifth Chapter: On the Carriage of Goods	35
4.1.2.2	When Goods Could Be Carried on Deck	36
4.1.2.3	Liability for Deck Cargo	38
4.1.2.3.1	Exclusion of Liability	38
4.1.2.3.2	When the Contract Was Not Excluded from the 1891 Code	41

4.1.2.3.2.1	Authorised Deck Carriage	41
4.1.2.3.2.2	Unauthorised Deck Stowage	42
4.1.2.4	The Need for a Reform	42
4.1.3	General Features of the Current 1994 Nordic Maritime Codes	43
4.1.4	Chapter 13 on the Carriage of General Cargo	43
4.1.4.1	Scope of Application	44
4.1.4.2	A Grey Area Between Chapters 13 and 14	45
4.1.4.3	The Hague-Visby Rules Dressed in the Clothing of the Hamburg Rules	46
4.1.4.4	Two Brief Points on the Interpretation of Chapter 13	48
4.1.4.5	Adoption of the Rotterdam Rules?	48
4.2	English Law	49
4.2.1	Common Law	49
4.2.1.1	One Default Regime and One Collection of Principles of Interpretation	49
4.2.1.2	When the Hague Rules Regime Has Been Incorporated Purely by Contract	50
4.2.2	Statutory Law: The 1971 COGSA	50
4.2.2.1	Application by Virtue of Section 1(2)	51
4.2.2.2	Extended Application by Virtue of Section 1(3)–(6)	51
4.2.2.3	The Meaning of Having the Force of Law	52
4.2.2.4	Scope of the Contract Service	54
	References	55
5	When Goods May Be Carried on Deck	57
5.1	The Main Rule: Cargo May Not Be Stowed on Deck	58
5.1.1	Nordic Law	58
5.1.2	English Law	58
5.2	Agreement	59
5.2.1	Nordic Law	59
5.2.1.1	How Can the Parties Agree on Deck Stowage?	60
5.2.1.2	Standard Terms in a Bill of Lading: Part of the Contract of Carriage?	62
5.2.1.3	Liberty to Stow on Deck	65
5.2.1.4	Third Party Protection	66
5.2.2	English Law	67
5.2.2.1	The Bill of Lading: Containing or Evidencing the Contract?	68
5.2.2.2	How Can the Parties Agree on Deck Stowage?	69

5.2.2.3	Standard Terms in a Bill of Lading: Part of the Contract of Carriage?.....	70
5.2.2.4	Liberty to Stow on Deck.....	72
5.2.2.5	Third Party Protection.....	74
5.3	Custom	75
5.3.1	Nordic Law	75
5.3.1.1	What Is Custom?.....	76
5.3.1.2	Containerised Deck Cargo.....	79
5.3.2	English Law	82
5.3.2.1	What Is a Custom?.....	82
5.3.2.2	Containerised Deck Cargo.....	85
5.4	Law or Statutory Provision	86
5.4.1	Nordic Law	86
5.4.2	English Law	87
5.5	Whether Deck Stowage Against an Express Agreement Can Be Authorised by Custom or Law	88
5.6	Conclusions	89
5.6.1	Summary	89
5.6.2	Observations	90
5.6.2.1	Liberty Clauses	91
5.6.2.2	Containerised Cargo	93
	References	94
6	Liability for Deck Cargo	97
6.1	The Nordic (Statutory) Approach: A Special Deck Cargo Liability Regime	98
6.1.1	Liability for Authorised Deck Cargo	99
6.1.1.1	Presumption of Liability	100
6.1.1.2	The Carrier's Obligations Towards the Shipper	103
6.1.1.3	The Standard of Care	104
6.1.1.4	Special Risk Involved in Deck Stowage v. Negligence	106
6.1.1.5	The Carrier's Duty to Examine Containers Packed by the Shipper	108
6.1.1.6	Two Carrier Liability Reliefs	112
6.1.1.6.1	Exclusion of Liability: Damage Caused by Error in Navigation or Fire	112
6.1.1.6.2	Limitation of Liability	114
6.1.1.6.2.1	Package or Unit?	115
6.1.1.6.2.2	The Relevant Package or Unit in the Case of Consolidated Goods	116
6.1.1.2	Liability for Unauthorised Deck Cargo	119
6.1.1.2.1	"Exclusively" a Consequence of the Deck Carriage	119

6.1.2.2	Unauthorised Deck Stowage: A Fundamental Breach of Contract?	121
6.1.3	Liability for Cargo Carried on Deck Contrary to an Express Agreement	122
6.2	The English (Judicial) Approach: Freedom of Contract with Certain Restrictions	123
6.2.1	Deck Cargo Falling Under the Mandatory Scope of the 1971 COGSA	124
6.2.1.1	First Exception: Application Through Art. I(c)	124
6.2.1.2	Second Exception: Application Through Incorporation	125
6.2.2	Liability Under Common Law	125
6.2.2.1	The Default Regime	126
6.2.2.2	Principles of Interpretation	127
6.2.2.2.1	The Duty to Care for the Cargo	128
6.2.2.2.2	The Duty to Provide a Seaworthy Vessel	128
6.2.2.2.3	The Duty Not to Deviate	129
6.2.2.3	The Doctrine of Deviation: From Rule of Law to Principle of Interpretation?	130
6.2.2.3.1	The Doctrine of Fundamental Breach	131
6.2.2.3.2	Does Deviation Compose a Special Case?	132
6.2.2.3.3	The Further Issue of Unauthorised Deck Carriage as a “Quasi-Deviation”	133
6.2.2.3.4	As a Principle of Interpretation	134
6.2.2.4	The 1977 UCTA	134
6.2.3	Liability Under the 1971 COGSA	135
6.2.3.1	The Hague-Visby Catalogue	135
6.2.3.1.1	The Allocation of Proof in Theory	137
6.2.3.1.2	The Allocation of Proof in Practice	139
6.2.3.2	The Carrier’s Obligations Towards the Shipper	140
6.2.3.3	The Standard of Care	143
6.2.3.4	When Deck Stowage Is Negligent	144
6.2.3.5	Special Risk Involved in Deck Stowage v. Negligence	146
6.2.3.6	The Carrier’s Duty to Examine Containers Packed by the Shipper	148
6.2.3.7	Two Carrier Liability Reliefs	149
6.2.3.7.1	Exclusion of Liability: Damage Caused by Error in Navigation or Fire	149
6.2.3.7.2	Liability Limitation	151

Contents	xv
6.2.3.7.2.1 “In Any Event”	152
6.2.3.7.2.2 Package or Unit?	153
6.2.3.7.2.3 The Relevant Package or Unit in the Case of Consolidated Goods	154
6.3 Conclusions	156
6.3.1 Comparative Evaluation	157
6.3.1.1 A Presumed Liability Regime	158
6.3.1.1.1 A Catalogue of Illusionary Reliefs of the Burden of Proof	158
6.3.1.1.2 A Not-so-Special “Special Deck Cargo Liability Regime”	160
6.3.1.2 Limitation of Liability	161
6.3.1.3 Exclusion of Liability	164
6.3.2 Legislative Recommendations	164
References	166
Table of Cases	169
About the International Max Planck Research School for Maritime Affairs at the University of Hamburg	177