

A Synoptic Overview of the Lex Rhodia De Iactu*

Lex Rhodia de Iactu'ya Genel Bir Bakış



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Antoninus dicit Eudaemoni: "Ego orbis terrarum dominus sum,
lex autem maris, lege Rhodia de re nautica res iudicetur,
quatenus nulla lex ex nostris ei contraria est.
Idem etiam divus Augustus iudicavit.
(D. XIV. 2.9)

ABSTRACT

This article is an overview of the concept of the general average rules that the Romans adopted from the Rhodesian Law and took place in the codification of Iustinianus. General average is one of the most ancient vestiges of maritime law and practice. Although the decline of Ancient Greece and the rise of the Roman Empire altered the influence of Rhodes maritime law; Rhodes retained its existence as a uniform code, since it was peaceful and profitable for Mediterranean trade. The Mediterranean Sea was, for more than one thousand years, only ruled by the Rhodian law, although augmented with some additions by the Romans.

As a matter of fact, the *lex Rhodia de iactu* may be one of the most controversial issues of Roman private law, since the texts tend to be more historical than juristic. This is due to the structure and

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significance of the content of a highly complex system which described as ten compilations in Digest 14.2.0 (*De lege Rodia [Rhodia] de iactu*).

Keywords: *general average, jettison, lex rhodia, maritime law.*

ÖZET

Bu makale, Romalıların Rodos Yasasından aldığı ve Iustinianus'un derlemesinde yer alan müşterek avarya kavramına genel bir bakış niteliğindedir. Müşterek avarya, antik dönemler deniz hukuku ve uygulamasının en eski izlerinden biridir. Antik Yunan'ın çöküşü ve Roma İmparatorluğu'nun yükselişi Rodos Deniz Hukukunun etkisini değiştirmiş olsa da, Rodos Kanunu Akdeniz ticareti için barışçıl ve karlı olduğundan, yeknesak bir kod olarak varlığını devam ettirdi. Akdeniz'de, neredeyse bin yıldan fazla, Romalılar tarafından bazı eklemelerle çeşitlendirilmiş olsa dahi, sadece Rodos Hukuku hakim olmuştur.

Nitekim, *lex Rhodia de Iactu*, metinlerin hukuksal olmaktan çok, tarihsel olmasından dolayı, Roma Özel Hukukunun en tartışmalı konularından biridir. Bu, Digesta 14.2.0 (*De lege Rodia [Rhodia] de iactu*)'deki on derlemede açıklanan, oldukça karmaşık bir sistemin içeriğinin doğası ve öneminden kaynaklanmaktadır.

Anahtar Kelimeler: *avarya, müşterek avarya, lex rhodia, deniz ticaret hukuku*

I. Historical Background

The concept of a distribution of loss between the parties, under specific circumstances, involved in maritime adventure has to take place has ancient roots¹. The earliest forms of risk distribution in maritime trade, can be traced back to the early period of antiquity. For example, in 3000 BC., Chinese traders used to separate cargo consignments and load them on to several smaller barges to travel the dangerous parts of the voyage on the Yangtze River. At the end of the voyage, the owners of the successfully transported goods, owed a portion of those goods to the traders who suffered a loss. A similar form of risk distribution is to be found, in the practices of the merchants

¹ Attard, D. Joseph/Fitzmaurice, Malgosia/Gutierrez, N. Martinez/Arroyo, Ignacio/Belja, Elda: *The IMLI on International Maritime Law*, Volume II, Shipping Law, Oxford University Press, 2016, p. 580.

from Babylon. For this distribution, during transportation in caravans across the desert, all participating merchants jointly had to incur any individual losses caused by bandit attacks or robbery. This practice was legalized and codified by the Code of Hammurabi, dating back to 1760 BC.² In fact, these examples show us that, the experiences of the eastern people, on the issue of the distribution of loss, were transferred to the Mediterranean.

The earliest form of such contribution to common damage was general average which was an institute of shipping law and very similar, in nature, to marine insurance. Since the Middle Ages, general average has been handled as a separate subject which has independent from contracts for carriage of goods by sea and maritime insurance law³.

After a vessel starts voyage, most probably, it will face some problems during the voyage. Due to these problems, it's possible that, vessel, cargo, other equipments or seafreight loose its value. The purpose of the general average is, to divide these losses in equal pieces between cargo and ship owners. It can surely be said that, it's impossible to declare every loss as general average and force others to share the losses. At this point, it should be issued some rules for making borders clear⁴.

The laws do, however, deal with those cases in which contemporary law would fall under the regulations of general average. The principle of distributing damages amongst all involved in a sea journey, would be applied on increasingly more diverse average cases as the Middle Ages progressed. In contemporary laws, there is, also, a distinction between general average and petty averages. Essentially

² Attard/Fitzmaurice/Gutierrez /Arroyo /Belja, p. 580.

³ Frankot, Edda: 'Of Laws of Ships and Shipmen' *Medieval Maritime Law and its Practice in Urban Northern Europe*, Edinburg University Press, 2012, pp. 31-33.

⁴ The need for the contribution to the general average is based on equity. So, Hermogenianus says that [Hermogenianus (2 *Iuris epit.*), D. 14. 2. 5pr.: "*Amisssae navis damnum collationis consortio non sarcitur per eos, qui merces suas naufragio liberaverunt: nam huius aequitatem tunc admitti placuit, cum iactus remedio ceteris in communi periculo salva navi consultum est*] it was nice to admit the fairness of this contribution when has resolved, in the common peril, to the solution of the jettison. If the Romans had not recognized such a principle based on equity, no one would have wanted to trade with them. Chevreau, Emmanuelle: "*La lex Rhodia de iactu: un exemple de la réception d'une institution étrangère dans le droit romain*", *Legal History Review*, March 2005, Vol. 73, Issue 1/2, p.74.

the general average can be defined as; a contribution made by all parties concerned in a sea adventure, towards a loss brought about by the voluntary sacrifice of the property of one or more of the parties involved, for the benefit of all. This includes jettison, the cutting down of the mast, the cutting of ropes or cables, the slipping of the anchor, the deliberate running aground of a ship to prevent shipwreck, the sailing for a port of refuge for the same reason, the protection of the ship against enemies or pirates and the payment of ransom to the same⁵.

In the Middle Ages, another form of general average existed: when a ship was in danger of foundering a pilgrimage could be pledged to God, in order to gain his mercy and shipwreck. The costs of this pilgrimage and an offering were distributed among all involved in the same manner, as the contribution for damage. Therefore, this form of general average is, always, directly referred in the sources⁶.

Nowadays, a set of rules was developed resulting in the York-Antwerp Rules (YAR)⁷. After many revisions, the YAR can be found, as a reference, in almost all contracts of affreightment and most marine insurance policies in worldwide⁸.

The principles of general average applied as customary law in the Levant and on the island of Rhodes in the ninth century BC. The oldest written rules on general average of Rhodes, dating back to 470 BC., were compiled in the Digest of the Roman *Corpus Iuris Civilis*⁹,

⁵ Frankot, p. 31.

⁶ Frankot, p. 32.

⁷ The York-Antwerp Rules (YAR) govern general average cases by reason of being incorporated into contracts of carriage. First instigated by an international conference in York in 1864. Their objective is to promote international uniformity in dealing with general average and to make the process involved commercially effective. The Rules are updated periodically, under the auspices of Comité Maritime International (CMI), which is made up of national Maritime Law Associations. York Antwerp Rules 2016, A Summary of the Changes, <https://www.ctplc.com/media/407923/york-antwerp-rules-2016.pdf>, (14.03.2017). For the detailed information see; Algantürk Light, Didem: "Müşterek Avarya-York Anvers Kuralları 1994 Revizyon Çalışmaları ile Getirilen Yenilik ve Düzenlemeler", AÜEHFD, C. VIII, S.1-2, (2004), pp.583-591.

⁸ Kruit, Jolien: "General average-general principle plus varying practical application equals uniformity?", The Journal of International Maritime Law, Vol. 21, 2015, pp. 191-192.

⁹ *Corpus Iuris Civilis*: A collective designation of Justinianus' codification, used first in the edition by Dionysius Gothofredus in 1583. The denomination embraces the *Institutiones*,

under the title of '*Lex Rhodia de iactu*'¹⁰. The Roman law is the basis of modern admiralty concepts¹¹; as such, in order to more fully appreciate the work of the *praetors*. It is essential to comprehend the basis of the Roman sea law, as it was developed during the formulary period and later incorporated into the European codes, such as those of Wisby, Oleron, The Hanse League, and the distinguished Ordinances of Louis XIV¹².

the *Digesta*, the *Codex* and the *Novellae*. Berger, Adolf; Transactions of the American Philosophical Society, Encyclopedic Dictionary of Roman Law, Philadelphia 1953, p. 417.

- ¹⁰ Attard/Fitzmaurice/Gutierrez/Arroyo/Belja, p. 580. In such a context, it seems appropriate to consider the use by Rome of foreign commercial and maritime rules, united under the name *lex Rhodia de iactu*. This is a question that has been discussed by the doctrine: the greater part is accepting a reception in Roman law of these rules so-called *lex Rhodia de iactu* [see this bibliography for accepting views: Huvelin, Paul: *Etudes d'histoire du droit commercial romain*, Paris 1929, pp. 184-195; Wieacker, Franz: "*Iactus in tributum nave salva venit (D.14.2.4.pr.)*", *Exegesen zur Lex Rhodia de iactu*", in: Studi in memoria di Emilio Albertario, I, Milano 1953, pp. 515-532; Atkinson, Kathleen Mary Tyrer, "*Rome and the Rhodian Sea-Law*", *IVRA*, 25 (1974), pp. 46-98; Manfredini, Arrigo D.: "*Il naufragio di Eudemone (D. 14.2.9)*", *SDHI*, 49 (1983), pp. 375-394; De Robertis, Francesco: "*Lex Rhodia, Critica e anticritica su D. 14.9*", in: Scritti vari di diritto romano, I, Bari 1987, pp. 309-327; Reichard, Ingo: *Die Frage des Drittschadensersatzes im klassischen römischen Recht*, Köln-Weimar-Wien 1993; Cannata, Carlo Augusto: "*Le disavventure del capitano J.P. Vos*", *Labeo*, 41 (1995), pp. 387-432; Wagner, Herbert: "*Die Lex Rhodia de iactu*", *RIDA*, 44 (1997), pp. 357-380; Purpura, Gianfranco: "*Ius naufragii, sylai e lex Rhodia, Genesi delle consuetudini marittime mediterranee*", *Annali del Seminario giuridico di Palermo*, 47 (2002), pp. 275-292.] some of them, categorically, are denying this possibility [see this bibliography for denying views: Kreller, Hans: "*Lex Rhodia, Untersuchungen zur Quellengeschichte des römischen Seerechts*", *Zeitschrift für das gesamte Handelsrecht und Konkursrecht*, 85 (1921), pp. 258-367; De Martino, Federico: "*Lex Rhodia*", in: *Diritto e società nell'antica Roma*, II, Roma 1982, pp. 72-147; Osuchowski, Waclaw: "*Appunti sul problema del "iactus" in diritto romano*", *IVRA*, 1 (1950), pp. 292-300.], Chevreau, pp. 68-69, fn.7-8.
- ¹¹ There was no modern concept of marine insurance in Roman Law. However, there are traces of certain forms of guarantees or of the writing of risks for cargo losses caused by maritime and war perils. Particularly important were the shipping loan (*foenus nauticum*) and the simulated sale of the ship and cargo, as the antecedents of marine insurance. Attard/Fitzmaurice/Gutierrez/Arroyo/Belja, p. 580.
- ¹² Gormley, Paul: "*The Development of the Rhodian-Roman Maritime Law to 1681, With Special Emphasis on the Problem of Collision*", *Inter-American Law Review*, Vol. III, 1961, p. 320. The general and other forms of average were practised to prevent even greater losses of life, ship and cargo. These reasons were cited in some of the laws, such as; Rôles d'Oléron, the Wisby Sea Laws, the Ordinance of Charles V of 1551, the Ordinance of Philip II of 1563 and the Marine Code of 1681 and the Consolato del Mare. Frankot, p. 32.

The Rhodians were the first legislators of the sea and promulgated a system of marine jurisprudence, that even the Romans themselves paid the greatest deference and respect, and they adopted it, as the guide of their conduct in naval affairs. At this period, which these laws were compiled, is not ascertained but supposed that, it was about the time, when the Rhodians first obtained the sovereignty of the seas and it was almost 916 BC.¹³.

Some authors, including Cicero and Strabo, refer to the Rhodian laws in their works but, neither of them specifically mentions the existence of a Rhodian maritime code¹⁴.

Although the decline of the ancient Greece and the rise of the Roman Empire did alter the influence of the Rhodian sea law. The Mediterranean Sea was for more than thousand years (300 BC. to 1200 AD.) only ruled by the Rhodian law, although augmented with some additions by the Romans:

D.14.2.9 (*Volusius Marcianus, ex lege Rhodia*):

"Aciwsis Eudaimonos Nikomydeus pros Antwninon basilea. Kurie basileu Antwnine, naufragion poiysantes en ty Italia diyrapagymen hupo tw n dymosiwn tw n tas Kukladas nysous oikountwn. Antwninos eipen Eudaimoni. Egw men tou kosmou kurios, ho de nomos tys valassys. Tw nomw tw n Hrodiwn krinesvw tw nautikw, en ohis mytis tw n hymeterwn autw nomos enantioutai. Touto de auto kai ho veiotatos Augoustos ekrinen. [Id est: Petitio Eudaemonis Nicomedensis ad imperatorem Antoninum. Domine imperator Antonine, cum naufragium fecissemus in Italia [immo in Icaria], direpti sumus a

¹³ Benedict, Robert D.: "The Historical Position of the Rhodian Law", Yale Law Journal, Vol. XVIII, No:4, Feb. 1909, p.223. The Rhodian sea law has emerged as a reflection of the sea dominance and maritime traditions that the Rhodians have maintained throughout the Hellenistic Period. In this context, Rhodos is also known as the *thalassocratic* (sea-dominated, having dominance over the seas), which is used for the purpose of defining military and commercial sovereignty established in the sea, which has about five years of experience (between BC. VII-II centuries) as the regime in which the authority is established in the proportion of the maritime enthusiast, is the terminological name given to the maritime enthusiast) has inherited a comprehensive maritime law procedure as a regime. Kurul, Erkan: "Iustinianus, Digesta XIV,2: Gemiden Mal Atımına İlişkin Rhodos Yasası Hakkında", Cedrus, The Journal of MCRI, Vol. 3, 2015, pp. 379-380.

¹⁴ Kruit, p. 193.

publicis [immo a publicanis], qui in Cycladibus insulis habitant. Antoninus dicit Eudaemoni. Ego orbis terrarum dominus sum, lex autem maris, lege Rhodia de re nautica res iudicetur, quatenus nulla lex ex nostris ei contraria est. Idem etiam divus Augustus iudicavit.]

«A petition of Eudaimon of Nicomedia to the Emperor Antoninus; "Lord Emperor Antoninus, having been shipwrecked in Icaria we have been robbed by farmers of the revenue inhabiting the Cyclades Islands." Antoninus answered Eudaimon as follows: "I am, indeed, the Lord of the World, but the Law is the Lord of the sea; and this affair must be decided by the Rhodian law adopted with reference to maritime questions, provided no enactment of ours is opposed to it." The Divine Augustus established the same rule»¹⁵.

The Digest states the following, regarding any controversy that is arising in the Mediterranean Sea: "*This matter must be decided by the maritime law of Rhodians, provided that no law of ours is opposed to it*"¹⁶.

The first matter in this text, concerned a ship that was seized by the coastal authority, after it sank, near the Cyclades. It caused the objection¹⁷: Did the compilers read the *Lex Rhodia* by Maecianus from which the text was taken to include it into an article like "*De iactu*" (on throwing property overboard) which is unrelated to its content, only with a few lines? Another opinion suggests that, Maecianus did not write the work, *lex Rhodia*, and this section was taken from Maecianus' book, *De Publicis*, and, later included in the Digest. On the other hand, it is still uncertain, whether the *lex Rhodia* has the characteristics of *lex*. It is suggested that, due to the text, D.14.2.9 called *Volusius Maecianus*

¹⁵ In this article, Watson, Alan (ed.): *The Digest of Justinian* [revised English-language edition], Philadelphia, University of Pennsylvania Press, 2 vols, 1998, is used for the English translation of the Digest texts.

¹⁶ Gedecho, Hailegabriel: "*Historical Development of Maritime Law*", <http://www.abyssinia-law.com/study-on-line/item/1072-historical-development-of-maritime-law>, (28.08.2017), p.1/3. Chevreau, p. 70; Wagner, pp. 358-359.

¹⁷ Some scholars do not regard this text, as trustworthy; for there is no other source of the Rhodesian Law on such a crucial role in the Mediterranean. Kofanov, Leonid L.: "*Diritto Romano dei contratti e leges Rhodiae Commerciorum*", <http://www.nsu.ru/xmlui/bitstream/handle/nsu/4305/34.pdf?sequence=1&isAllowed=y>, p. 236. (19.08.2017).

ex lege Rhodia, and for various reasons in the doctrine, calling it is a *lex*, out of the question¹⁸.

This text caused, also, controversy concerning the date, when the Rhodos maritime commercial practices and its control of maritime, were adopted by the Romans. In conclusion, although, the *lex Rhodia* did not have the characteristics of *lex*, there should not be any doubt that, they were adopted and implemented by the Romans¹⁹.

¹⁸ Aubert, Jean-Jacques: "*Dealing with the Abyss: The Nature and Purpose of the Rhodian Sea-law on Jettison (Lex Rhodia de Iactu, D. 14.2) and the Making of Justinian's Digest*", (Rhodian), in *Beyond Dogmatics Law and Society in the Roman World*, (ed. by Cairns, John, W./ Du Plessis, Paul), Edinburg University 2007, p. 160; D'Ornanou, Constance: "*Une curieuse référence à la lex Rhodia de iactu dans la doctrine française du XVII e siècle*", in 70th session of the Société Internationale Fernand de Visscher pour l'Histoire des Droits de l'Antiquité (SIHDA), on September 2016, in Paris/France, Résumés-Abstracts-Riassunti, p. 35.

¹⁹ After the decline of the West Roman Empire, the territory of Italy was gradually divided and governed by smaller state formations, cities and some of them called by the 18th century, designation as the « maritime republics ». The most influential ones were, Amalfi, Pisa, Venice and Genoa. The contribution focuses on Amalfi, which lies on the coast of the Tyrrhenian Sea, in the nowadays region of Campania. The whole population of the city was interested in maritime traffic and business. They expanded not only over the Tyrrhenian Sea but all over the central and oriental Mediterranean where they founded several colonies. The city was plundered by the Pisans in 1135. In this context, it is worth pointing out that, until that year Amalfi, was the possessor of the Digest of the emperor Iustinianus which constituted the legal reference for the administration of justice in this city. During the above mentioned sack, the Digest was seized by the Pisans and then taken by the Florentines, when they conquered Pisa in 1406. However, even following the conquest of the city by the Pisans, the maritime business expansion of Amalfi, had not been interrupted. Their maritime commerce was regulated by the provision of the famous *Capitula et ordinationes curiae maritimae nobilis civitatis Amalphae* or abbreviated *Tabula de Amalphi / Tabula amalphitana*. It is sometimes said that, the Table of Amalfi is the oldest medieval maritime statute. Some voices oppose and claim that, the oldest one is that of the city of Trani, which will be mentioned briefly in the contribution, too. The main part of the contribution is dedicated to the provisions of the *Tabula amalphitana*. It is composed of 66 chapters, 21 in Latin, 45 in vulgar Italian. The Latin part might be from the 12th century, although some scholars states that its origin may go back to the time when Amalfi was an independent duchy (until 11th century); the latter one consists of the provisions, glosses and interpolations added during the 13th and 14th centuries. Until the 17th century they were used in the whole Mediterranean. We may pose the question, what kind of influence of the Roman law and even the Rhodian maritime statute can be seen on the medieval maritime statutes. Staloukalová, Mgr. Kamila: "*Lex Rhodia de iactu and Tabula Amalphitana. Influences, analogies and differences*", in 70th session of the Société Internationale Fernand de Visscher pour l'Histoire des Droits de l'Antiquité (SIHDA), on September 2016, in Paris/France, Résumés-Abstracts-Riassunti, p. 52; for *Tabula Amalp-*

It is attributed to the pre-classic jurists of Roman Law that, very probably, by their implies as *lex contractus* in all contracts of carrying of goods by sea, the Rhodian law came to be incorporated in the legal system. Zimmermann is one of the supporter of this view and explains it in the following: "*the idea of the community of risk and emanating from the principle of aequitas, late Republican jurisprudence received the lex Rhodia into Roman Law, not by way of legal surgery, but in a most natural or homeopathic manner*"²⁰.

It is by the name of "Rhodian Law" that this body of maritime customs of international character become known to the Romans when, after the Carthaginian wars and with the development of the Roman commercial and maritime activities, they started visiting the island of Rhodos with its famous schools of rhetoric for the purpose of study²¹. It is quite likely that, Romans adopted the sea law applied in the Mediterranean and incorporated these rules to some extent, possibly with the contemporary customary characteristics, into their legal system²². In fact, the Romans adopted the Rhodian law as part of *Ius Naturale*. The Rhodian law was considered to be part of the natural law, which the Romans readily recognized and incorporated into the Roman law, became a vital part of the *Ius Gentium*. In other words, the Roman *praetor peregrinus* adopted the foreign law, in order to solve current and pressing legal disputes on the theory that, such law was common to all people²³.

The *lex Rhodia de iactu* establishes an illustration of the reception in the Roman private law of foreign rules. Some practical requirements make indispensable the using, in the Roman law, of the Rhodian

hitana also see, Purpura, Gianfranco: "*Alle origini delle consuetudini marittime mediterranee. Symbola, sylai e lex Rhodia*", in Atti Convegno "Ordinamenta Maris" Trani, 30/31 maggio 2013, Vol. 2013-06, pp. 1-20.

²⁰ Zimmermann, Reinhard: *The Law of Obligations*, Roman Foundations of the Civilian Tradition, Oxford 1996, pp. 406-412.

²¹ Gofas, Dimitri C.: "*The Lex Rhodia de Iactu*", 1994 Rhodes Papers, in Entry into Force of the Law of The Sea Convention, (ed. Norquist, Myron H./Moore, John,N.), 1995 Netherlands, p. 31.

²² Before codification, how the distribution of damage principle was applied in practice, , that requirements were to be met and whether it was applied in a homogeneous way, is not known. Kruit, p. 193.

²³ Gormley, p. 324.

principle based on the equity which requires the contribution to common damage. But the introduction of this principle, isn't followed by a technical reception²⁴. Indeed the technical realization of the principle is fulfilled exclusively in the Roman framework of the *locatio conductio*²⁵.

II. The general definitions of the Roman maritime commerce

The conquest of the Western Mediterranean and the «Punic Wars» are regarded as a milestone for maritime commerce in the economy of Rome, however, the Romans sailed firstly, at the time dates back earlier to the 4th century BC.²⁶.

In Rome, the word *commercii*, signified that the buying and selling goods between two parties, more generally, transferring and acquiring goods especially through *mancipatio* in compliance with the *ius civile*. The evolution of maritime law terminology continued until the conquests in the East. After these conquests, it is observed to have been entirely controlled by the Greeks. Before the conquest, information on the trade of Rome, especially concerning the maritime trade and the control of the Greeks, is limited²⁷.

Harbor workers, shipmen and tradesmen were related to maritime commerce in Rome. A "gubernator" led the crew. It means that the *gubernator*, nowadays regarded as a shipmen, corresponds to ruler or governor was interpreted differently by literary and legal experts. In different texts, helmsmen, maritime pilots and captains are also, described by the term *gubernator*. A "mercator" was a person, who leases a small place on a ship for his goods and a "negociator" was a person who leases an entire ship for commercial activity. A *negociator* can be

²⁴ For details of the reception of this legal institution see, Chevreau, p. 69-80.

²⁵ In fact, two aspects highlight the lack of technical reception: the one side is the legal aspect of contribution and on the other hand, the processual realization of the contribution. This is the setting of the *locatio conductio*, a good faith bilateral contract, that is chosen for contribution since it was the only contract that was used for the transport maritime. Chevreau, p. 80.

²⁶ Ünan, Mehtap: *Roma Hukukunda Lex Rhodia De Iactu Çerçevesinde Müşterek Avarya Kurumu*, Yayınlanmamış Yüksek Lisans Tezi, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü 1991, p.3.

²⁷ Ünan, p. 2.

associated with today's charterer with a full charter for an entire ship and a *mercator* can be associated with a partial charter for a specific place on a ship²⁸.

The term "*magister navis*", which embodies technical and commercial duties, is also used in many sources. *Magister navis*, *nauclerus* and *exercitor navis* conducted commercial business by operating ships²⁹.

An *exercitor navis*, is a person who runs a ship with the aim of earning profit. An *exercitor navis* can be the owner of ship or operate the ship based on the right to use and enjoy the property of another (*ususfructus*) or right in *personam* arising from *locatio conductio*. A *magister navis* might have been slave of the *exercitor navis* or a *fillius familias* of his or a free Roman citizen. Since the *magister navis* represents the *exercitor* on the ship, the *exercitor* could be asked to pay debts arising from the operations of *magister navis* by collateral action (*actio exercitoria*).

So a person named *vector* entrusts the transport of his goods to *gubernator* of the boat or *magister navis*, in charge of transporting them to a destination, on payment of a sum or *merces*. It is a *locatio operis faciendi*, in which the *vector* is *locator* and the *magister navis* is *conductor*. Note that for reasons of profitability, on the same boat, several *vectors* have loaded goods and each *vector* is individually bound to the *exercitor* or *magister navis* by a contract of carriage³⁰.

However, it is persistently stated in many sources that, the *magister navis* was the only ruler of the ship and the only person who had the authority to make such technical decisions³¹.

The fact that, in D.14.2.2.1, the authority of *magister navis* to decide general average acts on his own was interpreted differently by Latin scholars, so it caused uncertainty about this issue:

²⁸ Ünán, pp. 17-18.

²⁹ Łopuski, Jan: "From Limitations of Shipowner's Liability to Limitation of Liability For Maritime Claims, Some Theoretical Questions, PM 1991", in *Maritime law in the Second half of 20th Century-selected Articles*, Torun 2008, p. 262.

³⁰ Chevreau, p.75.

³¹ Łopuski, p. 263.

D. 14.2.2.1 (*Paulus libro 34 ad edictum*):

"Si conservatis mercibus deterior facta sit navis aut si quid exarmaverit, nulla facienda est collatio, quia dissimilis earum rerum causa sit, quae navis gratia parentur et earum, pro quibus mercedem aliquis acceperit: nam et si faber incidem aut malleum fregerit, non imputaretur ei qui locaverit opus. Sed si voluntate vectorum vel propter aliquem metum id detrimentum factum sit, hoc ipsum sarciri oportet".

"If the merchandise is saved, and the ship is damaged, or has lost part of her equipment, no contribution should be made, for the condition of the things provided for the use of the ship is different from that on account of which the freight has been received; since, if a blacksmith breaks an anvil or a hammer, this will not be charged to him who hired him to do the work. Where, however, the loss occurred with the consent of the passengers, or on account of their fear, it must be made good".

The text is about a case where a ship is damaged during navigation (for example, its mast fell or its anchor was lost), and it concludes that, the damage does not constitute general average. This text states that general average on a ship is shared, only by decision of its passengers and only if it occurs as a result of fear. Thus, it is concluded that the will of passengers, not the *magister navis*, is at the forefront. However, there is no text that clarifies this topic in the Digest, except for this single sentence about which Latin scholars have made a variety of comments³².

III. *De lege Rodia [Rhodia] de iactu*: Concerning the Rhodian law of general average

In spite of the today's advanced technology, maritime navigation still involves danger. The term, general average means the distribution of the extraordinary expenses incurred by a ship and its cargo and any damages to them at the sea. If some of the properties on a voyage were sacrificed to save others or an expense was incurred for the common interest, it would be unfair not to share the expense or damage among those who benefited from the voyage. Therefore, it can be stated that, general average is based on the idea of justice, in the sense of equity.

³² Cerami, Pietro/Petrucci, Aldo: *Diritto commerciale romano*, 2010, p.267.

Charging an expense that benefits everyone or a damage tolerated for everyone's benefit to only one party (or only a few parties) would not be unfair but also would be unfavorable. It would cause the relevant party to hesitate to make a sacrifice which was compulsory for the common interest or enable this sacrifice not to be made at the required time and consequently, everyone would suffer damage³³.

All of Rhodos' maritime commercial practices, are not described precisely in the Digest. Maritime issues, such as the freight to be paid for slaves, the general average for mitigation of cargo, saving a ship from pirates, as well as throwing property overboard are stipulated in D.14.2. However, it mainly consists of the general average for the jettison of cargo³⁴.

The Digest mentions, the second century AD.'s Roman jurist Paulus, as the source for the *Lex Rhodia de Iactu*. There, follows the second pure maritime title "Book 14, Title 2 (*De lege Rhodia de iactu*)", which may be the most widely known of these. *De lege Rodia [Rhodia] de iactu* is generally seen as the basis of, what has later become the institute of general average. It consists of ten fragments. Interestingly, it is the only title dealing with maritime affairs, which does not include any fragment by Ulpianus. The leading jurist here is Paulus, who is represented with three fragments under his name and one under the name of Labeo. In the latter, Paulus critically discusses principles formulated by Labeo, which do not, however, cover issues under general average. Rather, the fragment deals with three different disputes under contracts for the carriage of goods by sea. The remaining six fragments have been excerpted from the works of Papinianus, Callistratus, Hermogenianus, Iulianus and Maecianus³⁵. The last of these, is actually a statement

³³ Aubert, Jean-Jacques: "Commerce", (Cambridge), in *The Cambridge Companion to Roman law*, (ed. by Johnston, David), Cambridge University Press 2015, p.232.

³⁴ Aubert, Cambridge, p.233.

³⁵ In Digest, title 14.2 is composed of ten excerpts from the work of well-known jurists ranging, chronologically, from Labeo in the Augustan period to Hermogenian in the Diocletianic period. Those authors themselves cite earlier, late Republican jurists, such as Servius Sulpicius Rufus and his students Ofilius and Alfenus Varus, as well as stars like Massurius Sabinus or little known figures like Papirius Fronto. Aubert, *Rhodia*, pp. 158-159.

on the authority of the *lex Rhodia*, and thus has been chosen as the opening fragment for Book 53 of the *Basilica*³⁶.

D. 14.2.1 (*Paulus libro secundo sententiarum*):

"*Lege Rodia [Rhodia] cavetur, ut si levandae navis gratia iactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est*".

"The *lex Rhodia* provides that, if jettison of merchandises has been carried out in order to lighten the ship, everyone has to contribute to compensate what has been given up for the sake of all³⁷.

The first fragment is the text of Paulus (D. 14.2.1) which lays down the principle of general average under Rhodian law. This text is taken from the title seven (entitled *Ad legem Rhodiam*) of the second book of the *Sententiae*. It was suspected, because it is taken from the Sentences of Paulus whose doubts are known about the classic character of this book³⁸.

Sententia 2.7.1 (*Ad legem Rhodiam*):

"*Levandae navis gratia iactus cum mercium factus est, omnium intributione sarciatur, quod pro omnibus iactum est*".

³⁶ Atamer, Kerim: "*Sources of Roman Maritime Law in the Digest*, Banka ve Hukuk Dergisi, Vol. 63, 2010, pp. 81-82. In passing, it ought to be pointed out that a so-called *Nomos Rhodion nautikos* ("Rhodian Sea Law") has also been attached to several editions of the *Basilica*. However, this text is not to be confused with the ancient *lex Rhodia* as considered in D. 14. 2. for it has been proven that the *Nomos* was not genuine Rhodian law, as indeed it would appear to have been written only as a private collection of maritime rules in the 7th or 8th century. Atamer, p. 82. The most radicals have engaged in an interpolationist critique: They challenged the Greek and Rhodian origin of this law, concerning general average. And they have seen in D. 14.2 (*De lege Rhodia de iactu*) a posteriori creation of compilers whose end point would be the *nomos rhodion nautikos* drafted late in the eighth century AD. and Roman classical law, would have developed an autonomous maritime law, without receiving foreign rules. The other part of the doctrine defends the reception of *lex Rhodia*, in Roman classical law, with more or less reserve. Some of them lean towards a pure and simple reception of a foreign rule in Roman law and the others limit the application of the *lex Rhodia* for simple local situations in the provinces. Chevreau, p.71.

³⁷ It is essentially, what has become known in England as a general average, and is referred to in Germany as "(grosse) Haverei". Zimmermann, p. 407.

³⁸ Chevreau, p. 69.

"(It is provided by the *Lex Rhodia* that³⁹) if merchandise is thrown overboard for the purpose of lightening a ship, the loss is made good by the assessment of all which is made for the benefit of all".

In Paulus definition, jettison calls for compensation on the part of those who did not suffer from it, provided that they had actually benefitted from it (*pro omnibus*). We can say that, this is nothing less than an early form of cargo insurance⁴⁰. This provision was set forth by Paulus about 200 AD. and stated by the authors of the Roman Digests 300 years later to have been a part of the Rhodian law⁴¹.

The owners (*vectors*) of the goods that have been jettisoned, have a right to sue the *exercitor* or *magister navis* on the basis of contract of *locatio conductio*. Carriage by sea was usually undertaken by way of *locatio conductio operis faciendi*, as stated above. Depending on the object of transportation, it was *locatio conductio rerum vehendarum* or *vectorum vehendorum*. Alternatively, the contract could be *locatio conductio rei* (the hiring of space on the ship). In this case, a duty to carry out transportation was created, only if the parties had added a special agreement to that effect⁴².

Three conditions must be fulfilled for applying this legal remedy:

1) First, plaintiffs must be the legitimate owners of the goods (*amissarum mercium domini*).

2) Second, they (as *locatores*), must have contracted with the *exercitor* or *magister navis* (as *conductor*), for the transport of the goods; means that the jettison of goods which were not transported free of charge.

³⁹ The explicit mention of the *lex Rhodia* is missing in the text of Sententiae, although the alleged title "*Ad legem Rhodiam*" justifies somewhat its absence in the text, while its appearance in D. 14.2.1 can be explained as an adjustment by the compilers. Aubert, Rhodia, pp. 159-160.

⁴⁰ Aubert, Rhodia, p. 160.

⁴¹ Rosen, Samuel: "*The Origin and Development of the Modern Maritime Law*", Law Society Journal, Vol. 6, 1934-1935, p.242.

⁴² Zimmermann, p. 408, fn. 147.

3) Thirdly, jettison must have been carried out as the result of a crisis, this includes bad weather, but not a brawl or mutiny, (*laborante nave*)⁴³.

The point is that, all are expected to ship in and share in the damage in proportion to something that is not clearly explained. Indeed, Roman law of jettison is an extension of the modalities of the law of *locatio conductio*, as a result of very specific circumstances.

Magister navis was liable to his customer (*vectors*) under the *locatio conductio*⁴⁴. He was able to proceed against the other customers whose goods had been saved and he could avail himself of the *actio conducti* or he could induce the other consignors to make their payment by withholding their goods (*ius retentionis*):

D. 14.2.2.pr. (*Paulus libro 34 ad edictum*):

"Si laborante nave iactus factus est, amissarum mercium domini, si merces vehendas locaverant, ex locato cum magistro navis agere debent: si deinde cum reliquis, quorum merces salvae sunt, ex conducto, ut detrimentum pro portione communicetur, agere potest. Servius quidem respondit ex locato agere cum magistro navis debere, ut ceterorum vectorum merces retineat, donec portionem damni praestent. Immo etsi "non" retineat merces magister, ultro ex locato habiturus est actionem cum vectoribus: quid enim si vectores sint, qui nullas sarcinas habeant? Plane commodius est, si sint, retinere eas. At si non totam navem conduxerit, ex conducto aget, sicut vectores, qui loca in navem conduxerunt: aequissimum enim est commune detrimentum fieri eorum, qui propter amissas res aliorum consecuti sunt, ut merces suas salvas haberent".

"What is to be done if there are passengers who have no baggage? It evidently will be more convenient to retain their baggage, if there is any; but if there is not, and the party has leased the entire ship, an action can be brought on the contract, just as in the case of passengers who have rented places on a ship; for it is perfectly just that the loss should

⁴³ Aubert, Rhodia, p. 161.

⁴⁴ If, however, it was inequitable to let the loss lie with the person whose goods had been sacrificed, it would have been equally inequitable to see the *magister navis* lose out. Zimmermann, p. 408.

be partially borne by those who, by the destruction of the property of others, have secured the preservation of their own merchandise".

The passage suggests that, the action brought against the *magister navis*, must result in his seizing and holding the goods of the other transporters, until they pay their share of the damage⁴⁵.

IV. Conditions of General Average

We can sort the conditions of Roman general average in the followings.

1) The ship and its cargo should be in shared danger: This provision clearly indicated, in the Digest text below.

D. 14.2.2.2 (*Paulus libro 34 ad edictum*):

"*Cum in eadem nave varia mercium genera complures mercatores coegissent praetereaque multi vectores servi liberique in ea navigarent, tempestate gravi orta necessario iactura facta erat: ...*"

"Where several merchants collect different kinds of goods in the same ship, and, in addition, many passengers, both slaves and freemen, are travelling in it, and a great storm arises, and part of the cargo is necessarily thrown overboard; ..."

2) Goods must be sacrificed for the common interest: The most important difference between damages constituting general average from damages due to the sinking of a ship is that, according to general average, those whose goods are saved, share the damages of those whose goods are sacrificed. The principles of general average contribution are implemented, only if a sacrifice is made compulsorily for the interest of a ship and its cargo. For any other reason, jettison of cargo does not require the expense to be shared. Therefore, general average should only be performed, in cases of serious danger to protect a ship and its cargo⁴⁶.

⁴⁵ Aubert, p. 161.

⁴⁶ Ünán, p. 44.

D.14.2.2.6 (Paulus libro 34 ad edictum):

"Si quis ex vectoribus solvendo non sit, hoc detrimentum magistri navis non erit: nec enim fortunas cuiusque nauta excutere debet."

"If any of the passengers should be insolvent, the loss resulting from this will not be suffered by the master of the vessel; for a sailor is not obliged to inquire into the financial resources of everybody".

D. 14.2.2.3 (Paulus libro 34 ad edictum):

"Si navis a piratis redempta sit, servius ofilius labeo omnes conferre debere aiunt: quod vero praedones abstulerint, eum perdere cuius fuerint, nec conferendum ei, qui suas merces redemerit".

"If the ship has been ransomed from pirates Servius, Ofilius, and Labeo state that all should contribute; but with reference to what the robbers carried away, the loss must be borne by the party to whom it belonged, and no contribution should be made to him who ransomed his property".

It is said that the opinions in the texts, D.14.2.6 and D.14.2.3, do not contradict each other. In Papinianus' response, the mast of the ship was cut or sacrificed specifically, so that the cargo and the ship could escape danger. However, according to Iulianus' text, no part of the ship was to have been intentionally sacrificed in the face of shared danger. Damage caused by storms and lightning was later repaired in the harbor and was not regarded as general average⁴⁷.

3) Obtaining useful results is required: The expected result of throwing property overboard is to save the ship and other property. After the sinking of the ship, those who can save their own properties, have no liability to share, since they fell into the sea as a natural result of the sinking of the ship and were not sacrificed for the common interest⁴⁸.

According to Rhodos' maritime practices, a *magister navis* or *gubernator* used to consult a committee of passengers who had maritime experience before throwing cargo overboard for the common interest

⁴⁷ Rougé Jean: *Recherches sur l'organisation du commerce maritime en Méditerranée sous l'empire romain*, Paris 1966, p. 404; Chevreau, p. 77, fn. 43.

⁴⁸ Aubert, Cambridge, p. 234.

of the ship and its cargo when in serious danger. The decision of the committee was not binding, but it was mandatory to consult such a committee before the cargo was thrown overboard⁴⁹.

According to Roman law, the only ruler of the ship, the *magister navis*, decided whether a sacrifice was required for the common interest, and if required, how it would be done. A *magister navis* was not required to abide by the rule of the committee or obtain its approval to jettison cargo.

It is thought that, the authority to decide the general average belonged to the *magister navis*, but a text in D.14.2.2.1 creates uncertainty about this.

V. The Calculation of Contributions to General Average:

At the first, *locator* could sue the *magister navis*, for the value of his property that has been jettisoned, minus his own share of the loss; the *magister navis* would sue the other *locatores* for their *pro rata* contribution⁵⁰. The method used to calculate the proportion of contribution to general average in the *lex Rhodia* is simple. All losses were regarded as a whole, and the total amount of damage is divided into the value of the goods saved⁵¹.

Contributio was due only when the loss of material goods ensured the preservation and safekeeping of other material goods. It concerns real, movable property, not persons, slaves belonging to the former category⁵². Slaves who were lost at sea or slaves who died on the ship because of illness or slaves who threw themselves overboard, were not to be counted as jettisoned goods⁵³.

Jurists draws the line at what damage should be taken into consideration. Wear and tear on the ship or on any other tool of

⁴⁹ Ünan, pp. 47-48.

⁵⁰ Zimmermann, p. 408.

⁵¹ Ünal, pp. 54-55.

⁵² Aubert, *Rhodia*, p. 162.

⁵³ D.14.2.2.5 (*Paulus libro 34 ad edictum*): "*Servorum quoque qui in mare perierunt non magis aestimatio facienda est, quam si qui aegri in nave decesserint aut aliqui sese praecipitaverint.*"

production (for example an anvil or a hammer) do not cause for *contributio*⁵⁴.

In D. 14.2.2.2, this possibility for *contributio*, was discussed:

D. 14.2.2.2 (Paulus libro 34 ad edictum):

"*Cum in eadem nave varia mercium genera complures mercatores coegissent praetereaque multi vectores servi liberique in ea navigarent, tempestate gravi orta necessario iactura facta erat: quaesita deinde sunt haec: an omnes iacturam praestare oporteat et si qui tales merces imposuissent, quibus navis non oneraretur, velut gemmas margaritas? Et quae portio praestanda est? Et an etiam pro liberis capitibus dari oporteat? Et qua actione ea res expediri possit? Placuit omnes, quorum interfuisset iacturam fieri, conferre oportere, quia id tributum observatae res deberent: itaque dominum etiam navis pro portione obligatum esse. Iacturae summam pro rerum pretio distribui oportet. .."*

"Where several merchants collect different kinds of goods in the same ship, and, in addition, many passengers, both slaves and freemen, are travelling in it, and a great storm arises, and part of the cargo is necessarily thrown overboard; the question was with respect to the following point, namely, whether it was necessary for all to make good what was thrown overboard; and whether this must also be done by those who had brought on board such merchandise as did not burden the ship; as, for instance, precious stones and pearls, and if this was the case, what portion of the same must be contributed..".

Both the shipowner and pearls' owner were to contribute on the basis of the respective monetary value of discarded and saved goods, for the latter, clothes and jewellery but excluding food, considered common property in times of crisis⁵⁵.

The text is aimed at the ship owner who is often not the *magister navis*. This obligation to contribute to the ship owner's expense must be understood in a sense restrictive. It will contribute for his part, if only he had loaded goods on the ship. They have been saved and it is normal for him, to participate in the common compensation. On the other hand, if he had not placed his *merces* on the ship, he has no

⁵⁴ Aubert, Rhodia, p. 162.

⁵⁵ Aubert, Rhodia, p. 163.

reason to contribute to any damage, as a third party. The regulation will only concern the *vectores* and the *magister navis* liquidator of the contribution⁵⁶.

D. 14.2.2.4 (*Paulus libro 34 ad edictum*):

"Portio autem pro aestimatione rerum quae salvae sunt et earum quae amissae sunt praestari solet, nec ad rem pertinet, si hae quae amissae sunt plures veniri poterunt, quoniam detrimenti, non lucri fit praestatio. Sed in his rebus, quarum nomine conferendum est, aestimatio debet haberi non quanti emptae sint, sed quanti venire possunt."

"The share is generally, contributed in accordance with the valuation of the property which is saved, and of that which is lost; and it makes no difference, if that which was lost might have been sold for a higher price, since the contribution relates to loss and not to profit. With reference, however, to those things on account of which contribution must be made, the estimate should be based upon, not what they had been purchased for, but upon what they could be sold for".

The pricing of lost property is based on the purchase value, not on resale value, the merchant's potential profit (*lucrum*) being a matter of personal loss. Conversely, the pricing of saved property, depends on its resale value⁵⁷.

The ransoming of goods, outside the context of a ship, does not call for contributio:

D.14.2.2.3 (*Paulus libro 34 ad edictum*):

"Si navis a piratis redempta sit, servius ofilius labeo omnes conferre debere aiunt: quod vero praedones abstulerint, eum perdere cuius fuerint, nec conferendum ei, qui suas merces redemerit"

"If the ship has been ransomed from pirates Servius, Ofilius, and Labeo state that all should contribute; but with reference to what the robbers carried away, the loss must be borne by the party to whom it

⁵⁶ Chevreau, p. 77, fn. 43.

⁵⁷ Ünan, pp. 57-61; Chevreau, p.79.

belonged, and no contribution should be made to him who ransomed his property".

And other Digest texts, related to the general average, between D. 14.2.2.6-8 regularised these following issues:

- a) passengers' insolvency, not to be shouldered by the captain;
- b) the reversibility of *contributio*, if jettisoned goods reappear later, in that

case contributors have an *actio ex locato* against the captain for refund, while the captain has an *actio ex conducto* against the fortunate owners;

- c) the latter's permanent right of ownership, excluding *usucapio*, because jettisoned goods are not to be regarded as abandoned (*derelictum*)⁵⁸.

Conclusion

As a result; there should be a comparison of the general average provisions in the *lex Rhodia* with those of the Turkish Commercial Code. The most important features of the general average in the *lex Rhodia*, that are preserved in today, clearly seen in the Turkish Commercial Code and the York-Antwerp rules⁵⁹.

1. If a ship which is fully or partially loaded, faces a shared maritime danger, and an extraordinary sacrifice is made and expense is incurred intentionally to protect the ship and cargo from shared danger, the act of sacrifice is reasonable and useful results can be derived from it. This much is stated in the chapter, *lex Rhodia de Iactu* in the Digest, but is neither systematic nor entirely clear.
2. The principle that dangers arising from unreasonable behavior are not regarded as general average and the term of "useful results" were addressed in *lex Rhodia* ambiguously and in a different way than they are today. D.9.2.0 (*Ad legem Aquiliam*) states that, if the cargo is thrown overboard without any

⁵⁸ Aubert, *Rhodia*, pp. 163-164.

⁵⁹ For the detailed information see; Çetingil, Ergon/ Kender, Rayegan/ Ünan Samim: *Müşterek Avarya Hukuku*, İstanbul 2011.

obligation, general average is out of question. Although it is possible to interpret this to mean that, an act of general average must be reasonable, D.14.2.2.1 shows that this matter is not clear enough.

3. Although the condition of obtaining useful results is regarded as, saving the ship and its cargo in part or in full today, it was considered nearly equal to the rescue of the ship in the *lex Rhodia*.
4. Today, a causal relation is not sought between useful results and sacrifice. This matter is not clear in the *lex Rhodia*.
5. Today, it is set forth under the Article 1272/2 of the Turkish Commercial Code that, every excessive expense are taken into consideration, in order for an expense to be considered within general average not to be made is considered within general average, *pro rata*, even though other ones concerned benefit from these excessive expenses until the amount of prevented expenses⁶⁰. The *lex Rhodia* contains no similar provision about going beyond the common interest and taking the general average into account.
6. Stranding, floating, extinguishing fires, accommodation general averages and the temporary repair general average, which are regulated in todays various national laws and the York-Antwerp rules, were not included in the *lex Rhodia*.
7. Sharing expenses and damages counted as general average among ship, load and freight is called average adjustment today. Calculations about sharing are recorded in a document called a general average statement. The *lex Rhodia* contains no indications about the individuals who carried out this duty.
8. Some rules for the process of average adjustment are also described in the *lex Rhodia*. For example; principles such as using the values of the ship and the cargo that safely arrive at their destination as a base, forming a debit side and a credit side and calculating general average contributions as the proportion between the totals of these sides were, also, set forth in the *lex Rhodia*.

⁶⁰ Özbakır, Ferah/Özbakır, Ali Fuat: *Turkish Commercial Code*, İstanbul 2017, p. 554.

BIBLIOGRAPHY

- Algantürk Light, Didem:** *Müşterek Avarya-York Anvers Kuralları 1994 Revizyon Çalışmaları ile Getirilen Yenilik ve Düzenlemeler*, AÜEHFD, C. VIII, S.1-2, (2004), p.583-591.
- Atamer, Kerim:** "Sources of Roman Maritime Law in the Digest", *Banka ve Hukuk Dergisi*, Vol. 63, 2010, pp. 63-132.
- Atkinson, Kathleen Mary Tyrer:** "Rome and the Rhodian Sea-Law", *IVRA*, 25 (1974), pp. 46-98.
- Attard, D. Joseph/Fitzmaurice, Malgosia/Gutierren, N. Martinez./Arroyo, Ignacio./Belja, Elda:** *The IMLI on International Maritime Law*, Volume II, Shipping Law, Oxford University Press, 2016.
- Aubert, Jean-Jacques:** "Commerce", (Cambridge), in *The Cambridge Companion to Roman law*, (ed. by Johnston, David), Cambridge University Press 2015, pp. 213-246.
- Aubert, Jean-Jacques:** "Dealing with the Abyss: The Nature and Purpose of the Rhodian Sea-law on Jettison (*Lex Rhodia de Iactu*, D. 14.2) and the Making of Justinian's Digest", (Rhodian), in *Beyond Dogmatics Law and Society in the Roman World*, (ed. By Cairns, John, W./ Du Plessis, Paul), Edinburg University 2007, pp.157-173.
- Benedict, Robert D.:** "The Historical Position of the Rhodian Law", *Yale Law Journal*, Vol. XVIII, No:4, Feb. 1909, pp.223-242.
- Berger, Adolf:** *Transactions of the American Philosophical Society, Encyclopedic Dictionary of Roman Law*, Philadelphia 1953.
- Cannata, Carlo Augusto:** "Le disavventure del capitano J.P. Vos", *Labeo*, 41 (1995), pp. 387-432.
- Cerami, Pietro/ Petrucci, Aldo:** *Diritto commerciale romano*, 2010.
- Chevreau, Emmanuelle:** "La lex Rhodia de iactu: un exemple de la réception d'une institution étrangère dans le droit romain", *Legal History Review*, March 2005, Vol. 73, Issue 1/2, pp. 67-80.
- Çetingil, Ergon/ Kender, Rayegan/ Ünán Samim:** *Müşterek Avarya Hukuku*, İstanbul 2011.
- D'Ornanou, Constance:** "Une curieuse référence à la lex Rhodia de jactu dans la doctrine française du XVII e siècle", in 70th session of the Société Internationale Fernand de Visscher pour l'Histoire des Droits de l'Antiquité (SIHDA), on September 2016, in Paris/France, Résumés-Abstracts-Riassunti, p. 35.
- De Martino, Federico:** "Lex Rhodia", in: *Diritto e società nell'antica Roma*, II, Roma 1982, pp. 72-147.
- De Robertis, Francesco:** "Lex Rhodia, Critica e anticritica su D. 14.9", in: *Scritti vari di diritto romano*, I, Bari 1987, pp. 309-327.

- Frankot, Edda:** *'Of Laws of Ships and Shipmen' Medieval Maritime Law and its Practice in Urban Northern Europe*, Edinburg University Press, 2012.
- Gedecho, Hailegabriel:** *Historical Development of Maritime Law*,
- Gofas, Dimitri C.:** "The *Lex Rhodia de Iactu*", in 1994 Rhodes Papers, Entry into Force of the Law of The Sea Convention, (Ed. Norquist, Myron H./Moore, John,N.), 1995 Netherlands.
- Gormley, Paul:** "The Development of the Rhodian-Roman Maritime Law to 1681, With Special Emphasis on the Problem of Collision," *Inter-American Law Review*, Vol. III, 1961, pp.320-332.
- Huvelin, Paul:** *Etudes d'histoire du droit commercial romain*, Paris 1929.
- Kofanov, Leonid L.:** "*Diritto Romano dei contratti e leges Rhodiae Commerciorum*", <http://www.nsu.ru/xmlui/bitstream/handle/nsu/4305/34.pdf?sequence=1&isAllowed=y>,
- Kreller, Hans:** "*Lex Rhodia, Untersuchungen zur Quellengeschichte des römischen Seerechts*", *Zeitschrift für das gesamte Handelsrecht und Konkursrecht*, 85 (1921), pp. 258-367.
- Kruit, Jolien:** "General average-general principle plus varying practical application equals uniformity?", *The Journal of International Maritime Law*, Vol. 21, 2015, pp. 190-202.
- Kurul, Erkan:** "*Iustinianus, Digesta XIV,2: Gemiden Mal Atımına İlişkin Rhodos Yasası Hakkında*", *Cedrus, The Journal of MCRI*, Vol. 3, 2015, pp. 379-380.
- Łopuski, Jan:** "*From Limitations of Shipowner's Liability to Limitation of Liability For Maritime Claims, Some Theoretical Questiones, PM 1991*", in *Maritime law in the Second half of 20th Century-selected Articles*, Torun 2008, pp. 261-273.
- Manfredini, Arrigo D.:** "*Il naufragio di Eudemone (D. 14.2.9)*", *SDHI*, 49 (1983), pp. 375-394.
- Osuchowski, Waclaw:** "*Appunti sul problema del "iactus" in diritto romano*", *IVRA*, 1 (1950), pp. 292-300.
- Özbakır, Ferah/Özbakır, Ali Fuat:** *Turkish Commercial Code*, İstanbul 2017. p. 236. (19.08.2017).
- Purpura, Gianfranco:** "*Alle origini delle consuetudini marittime mediterranee. Symbola, sylai e lex Rhodia*", in *Atti Convegno "Ordinamenta Maris" Trani, 30/31 maggio 2013*, Vol. 2013-06, pp. 1-20.
- Purpura, Gianfranco:** "*Ius naufragii, sylai e lex Rhodia, Genesi delle consuetudini marittime mediterranee*", *Annali del Seminario giuridico di Palermo*, 47 (2002), pp. 275-292.
- Reichard, Ingo:** *Die Frage des Drittschadensersatzes im klassischen römischen Recht*, Köln-Weimar-Wien 1993.
- Rosen, Samuel:** "*The Origin and Development of the Modern Maritime Law*", *Law Society Journal*, Vol. 6, 1934-1935, pp.241-252.

- Rougé, Jean:** *Recherches sur l'organisation du commerce maritime en Méditerranée sous l'empire romain*, Paris 1966.
- Staloukalová, Mgr. Kamila:** "Lex Rhodia de iactu and Tabula Amalphitana. Influences, analogies and differences", 70th session of the Société Internationale Fernand de Visscher pour l'Histoire des Droits de l'Antiquité (SIHDA), on September 2016, in Paris/France, Résumés-Abstracts-Riassunti, p. 52.
- Ünan, Mehtap:** *Roma Hukukunda Lex Rhodia De Iactu Çerçevesinde Müsterek Avarya Kurumu*, Yayınlanmamış Yüksek Lisans Tezi, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü 1991.
- Wagner, Herbert:** "Die Lex Rhodia de iactu", RIDA, 44 (1997), pp. 357-380.
- Watson, Alan (ed.):** *The Digest of Justinian* [revised English-language edition], Philadelphia, University of Pennsylvania Press, 2 vols, 1998.
- Wieacker, Franz:** "Iactus in tributum nave salva venit (D.14.2.4.pr.), Exegesen zur Lex Rhodia de iactu", in: Studi in memoria di Emilio Albertario, I, Milano 1953, pp. 515-532.
- Zimmermann, Reinhard:** *The Law of Obligations, Roman Foundations of the Civilian Tradition*, Oxford 1996.
- York Antwerp Rules 2016, A Summary of the Changes, <https://www.ctplc.com/media/407923/york-antwerp-rules-2016.pdf>, (14.03.2017).
- <http://www.abyssinialaw.com/study-on-line/item/1072-historical-development-of-maritime-law>, (28.08.2017), p.1/3.
- http://droitromain.upmf-grenoble.fr/Anglica/D14_Scott.htm#II, (30.08.2016).