

# SHIP ARREST IN ISRAEL

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1. Please give an overview of ship arrest practice in your country.

## 1.1 Sources of the Admiralty Court's Jurisdiction

The jurisdiction of the Israel Admiralty Court (which sits in Haifa) is established by the 1840 and 1861 English Admiralty Acts. These acts were extended to the Dominions and Possessions of the United Kingdom by the Colonial Courts of the Admiralty Act 1890. Under the Palestine Admiralty Jurisdiction Order of 1937 these acts were extended to Palestine, then a British mandated Territory. When the State of Israel was established in 1948, under the Law and Administration Ordinance, the Admiralty Court Acts of 1840 and 1861 became part of the domestic legislation of the newly established State. In the year 1960 the Israel Shipping Law (Vessels) was enacted. Section 41 of this law determines the Maritime Liens and their priorities as follows:

- (1) The official expenses of selling a vessel pursuant to a judicial sale,
- (2) Port and port related charges and expenses,
- (3) The costs of preserving a vessel pending Judicial sale,
- (4) Payments due to the master and crew including damages for personal injury,
- (5) Salvage expenses relating to the vessel, its cargo and equipment on board and expenses incurred in saving the lives of the crew and passengers.
- (6) Damages for personal injuries to passengers
- (7) Damages resulting from collisions or damage caused by the vessel to port installations and buildings, dry docks, and loss or damage to cargo and to passengers personal effects,
- (8) Mortgages - no distinction is drawn between a local or foreign registered Mortgage,
- (9) Necessaries.

The question of the existence of a Maritime Lien or a Statutory Claim in Rem is determined by the "Lex Causa" and the priorities, being procedural by the "Lex Fori". If a party wants to prove the Lex Causa this is done by providing the Court with an expert opinion. If no such opinion is provided in accordance with the identity of laws principle, Israel law will be applicable.

Latest Significant Judgments have been handed down by the Haifa Maritime Court:

- (i) In the matter of *M/V "Marianne"* the Haifa Maritime Court reconfirmed its authority to act as a Prize Court according to the Naval Prize Act 1864 and ordered, at the request of the State Of Israel on the confiscation of the *M/V Marianne* which was captured by the Israeli navy while attempting to breach the naval blockade imposed upon Gaza shore. This judgment follows the Haifa Maritime Court's decision in the matter of the *M/V Estelle* where it was held that the Haifa Maritime Court has the authority to act as a Prize court but in that matter the confiscation itself was denied due to the delay in bringing the proceedings before the Court after the *M/V Estelle* was captured.
- (ii) In the matter of *M/V "HURIYE ANA"* the Haifa Maritime Court held that a sister-ship arrest is not recognized under the Israeli Law as no such possibility/authority appears in neither of the Admiralty Court Acts of 1840 and 1861 which constituted the Maritime Court (as a Colonial Maritime Court) and as Israel is not a signatory party to the Brussels Convention 1952 or any other convention which allows a sister-ship arrest. This judgment is the first time that the Maritime Court has dealt in a reasoned judgement with the issue of sister ship arrest. Until then, only ex-parte decisions were given.
- (iii) In the matter of *M/V "Thor Horizon"* the Haifa Maritime court order on the stay of proceedings in a claim-in rem filed on the grounds of damage done to the goods, due to law and jurisdiction in the b/l

under which the cargo was carried. The Court held that contractual law and jurisdiction clauses apply also in in-rem proceedings.

- (iv) In the Matter of the M/V Captain Harry" the Haifa Maritime court recognized in a German Judgement handed by the District Court of Hamburg ordering that the Owners are not under an obligation to pay the Claimant for the bunkers is supplied to the sub-charterer of the vessel. As a result (of the recognition) the Haifa Maritime court dismissed the claim in rem filed before. This decision has been appealed before the Supreme Court.

### **1.2 The Application for Arrest**

The Application for Arrest must be filed with the Claim in Rem.

In practice, we support the Application by an Affidavit. A scanned Affidavit confirmed in front of the foreign lawyer or by an Israeli lawyer (by fax or e-mail) will be sufficient. Additionally the Affidavit can be given by the arresting attorney. Copies of all the relevant documents in support of the arrest are attached to the Affidavit.

A Power of Attorney is not requisite but in practice will file a signed POA, a copy scan is sufficient.

The Court has a discretion to order the arresting party to furnish security. The Court will order so on rare occasions such as when there is a serious doubt as to the validity of the documents constituting the application for arrest.

In relation to arrest for a supply of necessaries, being a contractual lien the Haifa Admiralty Court will order an arrest if the Claimant is the contractual party to the agreement under which the necessaries were supplied, even if the party is not the actual supplier itself. On the other hand a Claimant which did not enter with the Owners in an agreement for the supply will not be entitled to a maritime lien, even if it is the actual supplier. Entering such an agreement can be done by the Owner itself, the Master or any entity authorized by the Owner to enter in such agreements (such as the managers of the operators).

The arrest procedure is relatively swift and the arrest can be effected within 24 hours of receiving instructions. If the application is made on a Saturday or Public holiday, this period may be extended as a result. Most of the arrest applications do not require an appearance before the Court or the Judge. The claim in rem and the arrest applications are filed by electronic communication followed by a message sent from the Court's Clerk to the presiding Judge to draw his attention that an arrest application is filed.

The Order of Arrest will be normally discharged by the provision of a P&I Club or other acceptable guarantee. In the latter case this would be normally a local bank guarantee.

The Vessel can apply to set aside the Arrest by contesting the merits of the claim or, on the grounds that the claim does not constitute a maritime lien or a statutory right in Rem under the Lex Causa or that the Admiralty Court does not have jurisdiction. In order to avoid delay to the vessel, security can be furnished without prejudice and subject to the vessel's rights to contest the Arrest and to have the security provided cancelled.

Upon serving the Order of Arrest on the vessel's Command, the Port Authority and Border Police, the Arrest becomes effective. The arrest order is drafted in a manner it will contain orders according to which a scanned copy of the Arrest Order forwarded by e-mail or fax will be sufficient for the authorities for arresting the vessel and complying with the order. In practice an original true copy of the order is served after it has been sent by fax or e-mail.

### **1.3 Court Fees and Legal Costs**

The Court fees payable are 2.5% of the amount claimed in the Claim in Rem of which half is payable at the time of filing the claim. No additional Court fee is payable for the Application of Arrest.

The legal fees for attending to the Arrest excluding VAT (at present 17%) and disbursements, are between US\$4,000.-

and US\$6,500.-, depending on the complexity and urgency of the matter.

## **2. Which International Convention applies to arrest of ships in your country?**

Although no international convention related to ship arrest has been formally adopted by the Israeli legislature the Israeli Shipping Act of 1960 follows the Brussels 1926 Convention and the Admiralty Court can use the convention as a persuasive source of law.

3. Is there any other way to arrest a ship in your jurisdiction?

Ships or any other property of the debtor can be provisionally attached in a normal civil claim. This requires that the cause of action is within the Court's normal civil jurisdiction and the provision of a guarantee.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

Apart from arrest or attachment. Under normal civil procedure Rules and Practice the Court can also grant a "Mareva Injunction.

5. For which types of claims can you arrest a ship?

Those claims in respect of which the Admiralty Court has jurisdiction in terms of the enactments stated in Clause 1 above.

6. Can you arrest a ship irrespectively of her flag?

A ship can be arrested irrespectively of its flag except an Israel registered vessel cannot be arrested for necessities supplied in Israel.

7. Can you arrest a ship irrespectively of the debtor?

According to the Haifa Maritime Court's line of recent judgements only the debtor is entitled to a maritime lien- for example the contractual supplier as opposed to the actual supplier. Such right(s) can be assigned by the debtor and in such a case the assignee will receive the debtor's rights and as a result will be entitled to a maritime lien.

8. What is the position as regards sister ships and ships in associated ownership?

As Israel is not a signatory party to any of the Conventions allowing a sister ship arrest and as no such an arrest is applicable under the Admiralty Court Acts of 1840 and 1861 which constitute the Maritime Court under the judgment held recently in the matter of the M/V HURIYE ANA" The Admiralty Court held that no such an arrest is recognized under the Israeli law.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Israeli Shipping Act 1960 follows the Brussels convention of 1926 and accordingly, clause 53 of this act states that the orders relating to maritime liens will apply also to "vessels operated by a charterer or any other person who is not it's owner". On the other hand, the Maritime Court is recently consistent with the ruling that a maritime lien requires personal liability of the Owners. We anticipate that this tension, and also the meaning of the Israeli legislator's wording when enacting the Israeli Shipping Act 1960 (that between the two distinguished maritime liens regimes: the English and the Continental it prefers the latest according to Brussels Convention 1926, will be resolved by the Supreme Court under an appeal we have filed on the Maritime Court's decision denying a local agents claim in rem for unpaid port dues paid by the Agent to the Haifa Port on each call of a ro-ro vessel, due to the fact that the Agent had no agreement with the Owners of the vessel. The Appeal is scheduled to November 2017.

10. Do your Courts require counter-security in order to arrest a ship?

Not normally, only in exceptional cases where the Court has material doubts as to the cause of action as same appears from the documentation filed in support of the Arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

For Arrest purposes the Courts make no distinction between the historical maritime liens which are embodied in the 1840 and 1861 Admiralty Acts and the additional maritime liens (which are in effect statutory claims in rem) constituted by the Section 40 of the Shipping Law 1960.  
See Clause 1 above.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, as in Clause 1.1 above. None of the International Arrest Conventions apply in Israel as a matter of ratification or accession. However as the Israeli Shipping Law mentioned in clause 1 above follows, in clause 41, part of the International Convention for the Unification of Certain Rules of Law Relating to Maritimes Liens and Mortgages 1926 and as the Court itself was established by and according to English Law and the Admiralty Court in fact follows both, it may well be arguable to ask the Court to follow a relevant Convention on a specific matter, as a matter of customary law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

As explained in clause 1.2 above, the arrest can be effected within 24 hours of receiving instructions.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA is not obligatory. We support the arrest application with an Affidavit which should clearly set out the cause of action and the documents in support thereof should be attached to the Affidavit.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

For the Arrest Application and Order no original documents are required, but the originals would have to be produced if the claim proceeds to trial.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Court will only accept jurisdiction if the Claim in Rem is recognised under the laws mentioned in Clause 1 above. The Application for Arrest is ancillary to the Claim in Rem which means that if there is no jurisdiction over the Claim in Rem – an arrest cannot be affected.

17. What is the procedure to release a ship from arrest?

The ship can be released from arrest by successfully contesting the alleged grounds of arrest or the Courts jurisdiction or by providing an acceptable guarantee.

18. What type of security needs to be placed for the release?

The usual securities acceptable to the Court are a deposit within the Court a P&I LOU issued by one of the International Group of P&I Clubs or a bank guarantee issued by an Israeli bank.

19. Does security need to cover interest and costs?

Under the Arrest order the Court states the amount that should be deposited or secured for the release of the Vessel. Usually the interests and costs are included in the claim and the arrest order as being part of the maritime lien.

20. Are P& I LOUs accepted as sufficient to lift the arrest?

Yes. See 18 above.

21. How long does it take to release the ship?

If security is provided as above, a matter of a day. If the arrest is contested for substantive or procedural reasons, the Court will attempt to resolve the matter as soon as possible but if the issues are complex this may take up to a week.

22. Is there a procedure to contest the arrest?

Yes, as described in clause 17 above.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After preliminary hearings the matter is normally concluded within one year as from the date of filing the Claim in Rem. As a matter of practice the Arrest in itself normally determines the matter.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. The Court can award damages for wrongful arrest if the arrest or attempted arrest is malicious or grossly negligent.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Corporate veil can be lifted in circumstances of fraud, deceit or maliciousness.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

A ship can be sold pendente lite if it can be shown that the continuation of the arrest will substantially affect the value of the ship. In this case the net sale proceeds are regarded as having substituted the ship for all purposes, including the eventual determination of the validity of the claims in rem and the priorities.

*\* Adv. John Harris established the legal firm of J. Harris &co. in 1977. The firm dedicated exclusively to the practice of Maritime and Admiralty law. The firm regularly receives "top tier" ratings from independent legal rating entities including Legal 500, Dun & Bradstreet and BdiCoface, Chambers and has been nominated as a finalist by Lloyd's List for the award "Maritime Lawyer of the Year" for the Middle East and Indian subcontinent.*

*\* Adv. Yoav Harris graduated in 1999 in "summa cum laude" from the law faculty of Haifa University and specializes in maritime law and commercial litigation. As of April 2017 He is head of the maritime department of Prof. Bein &Co. Yoav is co-lecture at the law faculty of the Haifa University for civil procedure, contributes articles to the Israeli monthly magazine named the "cargo" and to the international quarterly "ARBITRATION WATCH". Yoav Harris's articles regarding the Haifa Maritime Court's authorities to act as a Prize Court were cited both by the Maritime Court and the Supreme Court when deciding on the matter of the M/V Estelle.*

*The two legal offices, John Harris & Co, and Prof. Bein & co. comprise a joint shipping law group which is supported by professional and pro-legal staff. According to Legal 500 "the response time is excellent as is the quality of the advice", the "best shipping lawyer in Israel", "John Harris is a 'seasoned professional who can handle the biggest cases, both wet and dry' and Yoav Harris is described as "outstanding" and "an outstanding lawyer, with razor-sharp observations and profound legal knowledge".*