"Against the Ship?" OR "Rooted in Personal Liability?"

By Yoav Harris, Adv.

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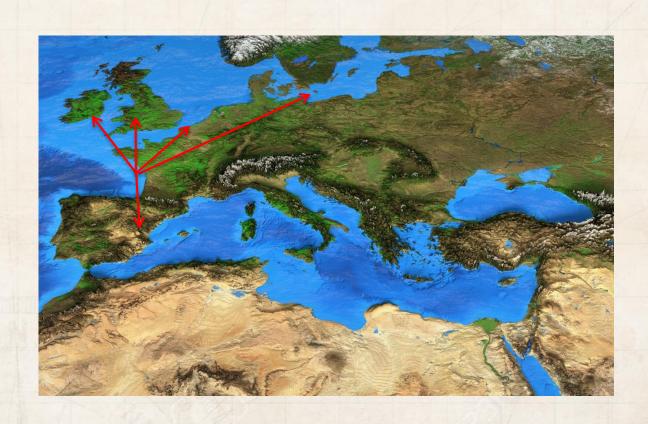
The Rhodian Law



"Maritime Liens in The Conflict of Laws", By Prof. W. Tetley

Roles of Oleron, 1505





Consolato Del Mare, 1494



CONSOLATO DEL MARE,

Tutti gli STATUTI, & ORDINI, disposti da gli Antichi per ognicosa di MERCANTIA, & di NAVIGARE.

> Cess à beneficio di Marinari , come di Mercami , Or Patroni di Nave.

CONSULAAT VAN DE ZEE,

Waar in begreepen zyn
Alle de KEUREN, en ORDONNANTIEN
bydeOuden gemaakt, aangaande alderly gevallen

Des KOOPHANDELS, en ZEEVAART,

So ten dienste der Bootsgefellen , als der Koopluyden, en Schippers.

Nitallyks myt het Italiaans in het Nederduyts versaalt, En doorgaans na het Origineel Catalaans verbetert, verklaart, on met een menw Regiller voorfien.



TOT LEYDEN,

By JOANNES du VIVIÉ, en ISAAK SEVERINUS.

1704



Ordonnance De La Marine (1681)



Louis XIV

Doctors' Commons, 1858









"The Naptune 3" (1835)



"By the civil law, and the laws of Oleron, which have been generally adopted by the Nations of Europe as the basis of their maritime law, whoever repaired or fitted out a ship had a lien on that ship for the amount of his demand. It is useless to cite authorities on this head, for they are undoubted..."





The Bold Buccleugh, in 1851:

"It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process, by a proceeding in rem, relates back to period where it first attaches".



DR. Lushington in The Mary Ann (1865):

"Spring into Existence the moment the circumstances give birth to it".





Lord Gorell Barnes, J.

in The Ripon City (1897):

"It is, so to speak, a subtraction from the absolute property

of the Owner in the thing."





"Maritime Lien" applies to five maritime claims:

Wages, Master's Disbursements, Salvage, Damage (caused by a ship), Bottomry and Respondentia.





"Statutory right in rem":

- Services Supplied to a Vessel
- Cargo Damage
- Breaches of Charterparty
- General Average





"Special Legislative Rights"-

Harbor and dock dues, wreck removal, confiscation of vessels.





- 1) Special legislative rights;
- 2) Court costs (costs of seizure and judicial sale);
- 3) Traditional maritime liens;
- 4) Ship mortgages;
- 5) Statutory rights in rem;



European-Continental Law: The Brussels Convention 1926





The maritime liens according to Art. 2 of the Convention:

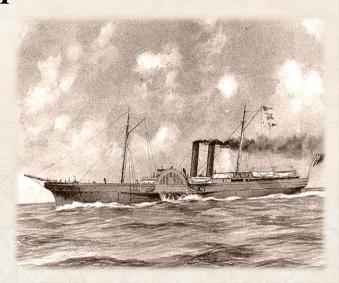
- (1) Preservation and Sale Costs; harbor dues;
- (2) Wages;
- (3) Salvage
- (4) Damage caused by the Ship, indemnities for injuries and damage to cargo;
- (5) Necessaries supplied under a contract with the Master

Owners' Personal Liability under the U.K. Law

The Castlegate 1893:



"Proper maritime lien must have its roots in the personal liability of the ship owner"



Owners' Personal Liability under the U.K. Law

The Exceptions:

"Where the owner of the ship allows another to assume possession of the ship and to represent himself as owner"



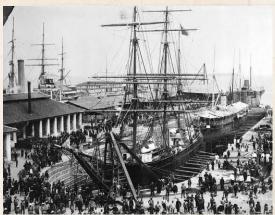
Owners' Personal Liability under the U.K. Law

The Exceptions:



Bottomry, Wages, Slavage

"...may validly occur notwithstanding that there exists no personal liability on the res owner".



Personal Liability under Owners under the Brussels Convention 1926

Art 13:

"The foregoing provisions apply to vessels under the management of a person who operates them without owning them or to the principal charterer...."





The British Mandate over Palestine - Israel (July 1st 1920 - May 14th 1948)



Admiralty Court Act, 1840 Admiralty Court Act, 1861 Colonial Courts of Admiralty act, 1890







The Israeli Shipping Act 1960



"After checking and comparing the two legal systems it is found that the Continental system is preferable..."



Shipping Act 1960

Clauses 40-41 (1)-(8)

Clause 53:

"the provisions relating to maritime liens will apply also on a vessel operated by a charterer or any other person which is not its owner..."





Brussels Convention 1926

Art. 2

Art. 13:

"The foregoing provisions apply to vessels under the management of a person who operates them without owning them or to the principal charterer..."







The Nadia S (1990)



"In my opinion, the question of the existence of maritime enslavement is a matter of <u>substantive</u> law, and as such must be controlled by the Lex Causa... The maritime lien gives the creditor a proprietary collateral for his claim. This security constitutes an essential part of his claim ... <u>It can not be said that we have procedural remedies</u>..."



The Halcyon Isle (1980)



The Ellen Hudig 2004

"A proper maritime lien must have its root in the personal liability of the Owner"

"Under English Law the requirements for proving personal liability of the owners differs between the different types of maritime liens".



The Nissos Rodos (2016)



A claim for port dues paid by the local agent was denied as commercial relations took place with the Operator and not the Owner".

* Port dues ("special legislative rights") over rank maritime liens (according to U.K. Law.)



The Captain Harry (2016)



A path to diversity?

"....maritime liens differ each other, some secure contractual obligations and other secure obligations set by law"

"A ship owner is liable for the payment of Salvage even is the owner is not responsible to the vessel being in distress...".

To be continued...



Thank You, Malaga



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