

THE RECOGNITION OF FOREIGN LAW: FOREIGN MARITIME LIENS UNDER MEXICAN LAW

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ABSTRACT: Maritime liens, without a doubt, are a unique and hugely important feature of maritime law. Broadly speaking, they represent a claim on or special right to a vessel. However, there is no uniformity when it comes to studying this unique feature. It is from the Anglo-Saxon jurisdictions that we get the majority of our information about its nature and associated problems. In this article, the law on maritime liens is examined through a comparative study of several Anglo-Saxon jurisdictions and Mexican law. Also under investigation are the problems that arise when a national court is faced with a maritime lien created under foreign law, and when that maritime lien differs from those liens established under the law that governs the domestic court.

KEY WORDS: Maritime liens, Foreign Law, Substantive Law, Procedural Law, Arrest of ships.

RESUMEN: Sin lugar a duda los privilegios marítimos representan una figura única y de suma importancia del derecho marítimo. A grandes rasgos se puede decir que un privilegio marítimo es un crédito o privilegio sobre un buque, sin embargo, es en sus particularidades que no hay uniformidad a la hora de estudiar esta figura tan única. De tal modo que son las jurisdicciones anglosajonas aquellas que nos dan mayor detalle sobre la naturaleza y problemas que surgen de su estudio. En este trabajo se estudia el derecho de los privilegios marítimos a través de un estudio comparativo de varias jurisdicciones anglosajonas y el derecho Mexicano. Luego, se estudian los problemas que surgen cuando un juez nacional se enfrenta con un privilegio marítimo nacido bajo el derecho extranjero, y aun ms importante cuando ese privilegio marítimo difiere de aquellos establecidos en su legislación.

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PALABRAS CLAVE: *Privilegios marítimos, derecho extranjero, derecho sustantivo, derecho procedimental, embargo precautorio de buques.*

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I. INTRODUCTION

Maritime law is a unique branch of the law. Among its areas of specialization is admiralty law. Because of its nature, admiralty law requires deep knowledge of other areas of the law such as insurance, environmental, international and contract laws.

Maritime transactions are based on good faith. The dynamism and nature of the maritime business sometimes require creditors to wait for payment. Vessels must navigate in order to earn money and pay dues, therefore, the creation of maritime credits or the right to a maritime claim has been of paramount importance to the development of international trade. For instance, a company that repairs a vessel needs security that its services will be paid. Without collateral, the company cannot allow the ship to sail away. A maritime lien can be said to provide greater security for a claimant than a regular maritime claim. The enforcement of a maritime lien through the arrest of the ship gives certainty to the claimant that negotiations for the provision of security by the P&I Club or the bank will be held.

Despite the fact that the expression maritime lien is recognized in the national law of all countries, and that these nations are aware of the importance of this feature of maritime law, there is no global agreement on the precise character of maritime liens.

In fact, the law of maritime liens has developed differently across the globe, and substantial disparities remain in the way it is administered. Therefore, it is natural that conflicts of laws should arise in regard to claims of this nature.

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