An Appraisal of the Features of Admiralty Jurisdiction under Maritime Law

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ABSTRACT
The operation of admiralty jurisdiction depends on well-known features. Maritime lien being a historic feature of modern maritime law has its root in the medieval European lex maritime. This lien which arose by operation of law is a privilege claim on maritime property. Maritime claims given rise to maritime lien under the common law and civil law are greatly different in scope. Within the former legal system claims which give rise to maritime lien will include damage caused by a vessel, salvage, crew accrued wages, master’s wages and disbursement. In addition to these claims, under the civil law system repairs to ships, supply of bunkers and other necessaries, stevedores’ claim and damage to cargo can also give rise to maritime lien. Saisie conservatoire (conservatory measure) and quasi in rem are part of civil jurisdiction maritime practice and afford better security to a claimant in a maritime dispute than does the mareva injunction under the common law jurisdiction where injunction is not a right. In maritime practice the possibility of conflict of laws cannot be eliminated. This is due to mobility of ships across international maritime boundaries. Claims in personam and claims in rem are also features which can give rise to a maritime dispute. The analysis of these three features constitutes the objective of the paper.

Keywords: Feature, Admiralty, Maritime

INTRODUCTION
The distinction between claims in rem and claims in personam is a unique to admiralty courts. These two features including maritime liens are the bases upon which an admiralty jurisdiction can be invoked. Claims in rem were originally founded on the notion of maritime lien whereby judgement was enforced against the property (res) arrested. This was done on the basis that a maritime lien attaches to the property from the moment of creation of such a claim. The right to enforce a maritime lien by an action in rem is confined to the ship against which the damage was caused or in relation to which the maritime lien arose, even if it was in the hands of a bona fide purchaser. Maritime claims under the admiralty jurisdiction are covered by the 1999 Arrest Convention, which extends to maritime claims whether or not the claims gave rise to a maritime lien.

Apart from proceedings against the ship, there is also the possibility of proceedings against the person interested in the property, by arresting him or his property. This is known as maritime attachment. Such attachment also referred to as quasi in rem action, is an integral part of the civil law system and affords a claimant the maximum protection or security he needs in ongoing proceedings against the defendant. In Compagnie Professionnelle D’Assurance v. Zhao Yue Ping, Société the West of English Ship Owners Mutual Insurance Association, Armateur M/V Luo Qing, the High Court of Wouri issued a warrant to arrest the vessel M/V Luo Qing as a conservatory measure to secure the plaintiff’s claim.

1 In rem and in personam actions, the former relate to an action against the res (property) and the latter is an action against the owner of the property.
2 These are claims against a res, which can be a ship or property on board a ship. The aim of an in rem claim is to cause the owner of the res to appear and defend the action against the res.
3 Maritime lien is a claim or a privilege upon a thing to be carried out by legal process and it travel with the thing into whosoever’s possession it may come. See Sir John Jervis in The Bold Buccleugh (1851) 7 Moo PC 267 at 284.
4 Per Sir John Jervis, Ibid, 286.
5 Article 9. See also Article 149 of the CEMAC Marine Merchant Code 2012. It is important to point out that the 1999 Arrest Convention forms an integral part of the CEMAC Marine Merchant Code.
6 Civil Judgement No. 595 of 1st August 2008 (Unreported).
The procedure of maritime attachment is similar to that of an in rem action in that it involves the seizure of a vessel. It has been cautioned that this procedure, also referred to as proceedings quasi in rem should not be confused with the in rem action because it was a device designed to compel the appearance of the defendant in an in personam action. The procedure in personam founded by the Merchant Shipping Act 1854, is parallel to an in rem action in that the defendant appears to defend the res.

Under common law, an action in rem is the basic procedure on which creditors rely for pre-judgment security and post-judgment enforcement. The arrest of the ship or other res (e.g. cargo or freight) in the action in rem places the res under judicial detention pending adjudication of the claim. It usually also secures the appearance in the action of the defendant shipowner and it establishes the jurisdiction of the court. If the court subsequently allows the claim, the judgment is then enforceable against the arrested res (by judicial sale) or the security given to take its place.

In civil law jurisdictions, where no action in rem exists, the action in personam may be combined with a "saisie conservatoire", or conservatory attachment. The saisie permits any property of the debtor (including ships) to be seized and detained under judicial authority pending judgment. The subsequent judgment, if favourable to the plaintiff, may then be enforced against the attached property or the security replacing it.

The objective of this paper is to analyse maritime liens, claims in personam and claims in rem as features of admiralty jurisdiction. To achieve this objective, the paper analyses maritime lien (1), it further examines the mode of exercise of admiralty jurisdiction (2) under which claims in personam (2-1) and claims in rem (2-2) are discussed. The paper furthermore discusses the connection between a claim and the defendant when a cause of action ensued (3).

1. Maritime Liens

Maritime liens constitute a distinctive and historic feature of modern admiralty law. The court in 1851 defined maritime lien as "a claim or privilege upon a thing to be carried into effect by legal process ... that process to be a proceeding in rem ... This claim or privilege travels with the res. Statutory rights in rem which are not maritime liens, crystallise on the ship upon commencement of proceedings in rem as was seen in The Monica S19. These rights are otherwise referred to as statutory lien.

A maritime lien is a privileged charge on maritime property and arises by operation of law. It does not depend on possession of the property or an agreement between parties. Rather, it accrues from the moment of the event which gives rise to the cause of action and remains attached to the property. Maritime lien is invisible in the sense that it is not subject to any scheme of registration. It survives into the hands of a bona fide purchaser for value without notice. A maritime lien is enforced by a claim in rem.

As a privilege, the lien has been recognised as a right in the property of another19. This is an advantage of maritime lien over a statutory lien. The latter depends on the issue of the claim in rem form for it to crystallise on the property.

Despite the fact that a maritime lien is similar to a mortgage20, there exist some differences between them as follows:

A. Unlike a maritime lien, a mortgage is created by an agreement in a form prescribed by statute;
B. A mortgage needs registration which serves as notice to third parties and the date of registration determines its priority over subsequent registered mortgages;

The roots of maritime liens stretch far back to the Maritime Law of the ancient world12 and particularly to the medieval European Lex maritime. As part of the body of customary transnational mercantile law, maritime liens governed the relations of merchants who travelled by sea with their goods in the middle ages13. Originally purely oral, customary sea law was gradually committed to writing in the medieval sea codes14, which were generally collections of judgements rendered by merchant judges15.

The substantive right of maritime lien arises upon the occurrence of the mischief done by the ship16. For this reason it exists irrespective of an action in rem but needs to be enforced by the proceeding in rem17 since the lien is on the res. Statutory rights in rem which are not maritime liens, crystallise on the ship upon commencement of proceedings in rem as was seen in The Monica S. These rights are otherwise referred to as statutory lien.

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7 F. L. Wiswall, (Jr), Development of Admiralty Jurisdiction Since 1800 CUP (London, 1970). 13
8 Ibid, 14.
9 William Tetley, Arrest, Attachment and Related Maritime Law Procedures (1999) 73 Tul. L. Rev.
10 Ibid.
11 Sir John Jervis in the Bold Buccleugh (1851) Moo PC 267
12 Willim Tetley, Maritime Liens and Claims 2nd Ed., (Les Editions YvonBlais, Canada, 1998) 7-8.
13 Leon Trakman, The Law Merchant, The Evolution of Commercial Law (Littleton Colorado, 1983) 8.
14 Of the early codifications, the Roles of Oleron was the most important dating from the twelfth century and were composed on the Island of Oleron off the coast of Bordeaux then the center of wine trade between Aquitaine and England. See James Shephard, Les Orgines des Roles d’Oleron, an unpublished Master’s Thesis, University of Poitiers France, 1983, quoted by William Tetley in, 'Maritime Liens in the Conflict of Laws’ an Art. published in Law and Justice in a Multistate World, Essays in Honour of Arthue T. von Mehren, by Transnational Publishers Inc. N.Y. USA 2010 at 444.
15 Leon Trakman, op. cit. 10.
16 William Tetley, op. cit. 11.
17 AlekAmandaraka-Sheppard, op. cit. 22.
18 (1967) 2 Lloyd’s Rep. 113.
19 Gorell Barnes in The Ripon City(1897) 226. In this case, Gorell Barnes J. declared that ... a lien is a privileged claim upon a vessel in respect of services done to it or injury caused by it, to be carried into effect by legal process. It is a right acquired by one over another belonging to another. It is so to speak, a subtraction from the absolute property of the owner in the thing.
20 Their similarity arises from the fact that both are charges on the ship and can be enforced against the owner and any subsequent purchaser.
C. While a mortgage has priority over other statutory rights in rem, a maritime lien has priority over all other maritime claims and;

D. A maritime lien travels with the ship from the moment of creation, even when the ship is transferred to a bona fide purchaser without notice\(^{21}\).

Furthermore, a maritime lien is distinguished from the common law possessory lien, which is a right to retain possession of a chattel pending payment of an outstanding obligation for services rendered. In other words, a possessory lien is the right in one man to retain that which is in his possession, but belonging to another until certain demands are met. The moment possession is lost, the right to lien is also lost.

Another type of lien created by operation of law is an equitable lien. This lien does not depend on possession of the thing. It can be lost by sale of the thing to a bona fide purchaser for value without notice.

In most claims in rem, the vessel is often released on bail. There may however arise a situation whereby the lien (or rights) in rem against the ship exceed the value of the ship. In such situations, the owner will likely not enter appearance to have the ship released on bail. At this juncture, the admiralty court’s execution function \(^{22}\) of arresting and selling the ship so as to give a clear title to the purchaser will be put into operation. After the sale, the court will then proceed to distribute the proceeds amongst the lien creditors in order of priority. Important to note is the fact that maritime liens can be enforced, as all other maritime claims by an in rem claim. Also worth noting is the fact that the court will always strive to protect the interest of the plaintiff in situations where the defendant may want to deal with the property before judgement is passed. While waiting for the judgement, a plaintiff cannot prevent the defendant from dealing with assets before judgement, the way he pleases. The court would then intervene and grant an injunction if it finds it just.

1.1 Power of the admiralty court to issue an injunction with respect to a maritime claim

The general rule under common law\(^{23}\) before 1975 was that a plaintiff could not obtain an injunction order to prevent the defendant from disposing of his property before judgement becomes final, unless the asset in the hands of the defendant belongs to the plaintiff. This reputed loss of the admiralty attachment in England was partially mitigated by the invention of the Mareva injunction\(^{24}\). The Mareva injunction also known as the freezing injunction is simply an interlocutory injunction issued by the competent court, prohibiting the defendant before or during a suit, or even after judgement, from removing assets, real or personal, moveable or immovable from the court’s jurisdiction, or from dealing with them where it appears to the court that without such an order, the plaintiff’s recovery on his claim will be jeopardised\(^{25}\).

The freezing injunction is not a statutory remedy\(^{26}\); it is rather an interim and ancillary measure covering any type of injunction sought to restrain a party from removing his property located within or without the jurisdiction. The purpose of this injunction is to preserve assets of the defendant for execution of a judgement or enforcement of an award subsequently obtained. In principle, there can be no objection to a defendant being allowed by the court to employ the property covered by the injunction, for the purpose of his business or where necessary, to pay living expenses, legal fees, or to ask in good faith to repay loans in the ordinary course of business as was the case in Devonshire\(^{27}\). In order for this injunction to be granted, the claimant must show that:

A. He has a good arguable case\(^{28}\);

B. He has a present and not a future cause of action against the defendant\(^{29}\);

C. The defendant has assets within the jurisdiction and there is a real risk that such property will disappear or be dissipated before a judgement can be enforced. This was the position in Third Chandris Shipping Corp. v Unimarine S.A.\(^{30}\)

D. The balance of convenience favours the issuing of the injunction\(^{31}\).

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\(^{21}\) For more on this distinction, see AlekaMandarak-Sh padd, 22-23.

\(^{22}\) According to Scott LJ in TheTotlen (1946) 135 (CA). This function of the court is called executive because once the lien is admitted or established by evidence of the right to compensation for damage suffered through the defendant’s negligence, there is no further judicial function for the court to perform apart from that in the registry where priorities, quantum and distribution are dealt with.

\(^{23}\) Under the civil law system, the plaintiff always has been protected under the civil law saisie conservatoire, (this measure of obtaining pre-judgement security for the plaintiff is covered by Articles 144 to 156 of the CEMAC Code 2012), which prevents the defendant from dealing with property or removing it within jurisdiction pending judgment.

\(^{24}\) The injunction takes its name from Lord Denning’s decision in Mareva Compania Naviera S.A v International Bulkers S.A (1975) 2 Lloyd’s Rep. 509.

\(^{25}\) William Tetley, op. cit p 410.

\(^{26}\) Per Lord Mustil in Mercedes-Benz AG v Leiduck (1995) WLR 718 (PC) p728.

\(^{27}\) (1999) 62(4) MLR 539, 539 - 563.

\(^{28}\) This condition was arrived at in, Ninemia Maritime Corp. v TraveSchiffahrtsgesellschaft (1983) 2 Lloyd’s Rep. 660, Aetna Financial Services v Feigelman (1985) 1 S.C.R 2 at 27.

\(^{29}\) See Veracruz Transportation Inc v VC Shipping Co Inc (1992) 1 Lloyd’s Rep. 353 (AC).

\(^{30}\) (1979) QB 645, 669.

\(^{31}\) See The Niederschen (1983) 2 Lloyd’s Rep 600 at 605.
In addition to the above, the claimant must make a full and frank disclosure in his statement of claim of all necessary facts. Further, the claimant is also expected to give an undertaking in damages to the court. The effect of this is that the defendant can ask the court to enforce it in case he suffered any loss as a result of the order.

Within the CEMAC zone and in Cameroon particularly, ship arrest as a conservatory measure, which is arrest for security pending a substantive matter, is similar to the freezing injunction under English law. Such a measure entails a temporary immobilisation of the ship by the claimant following a court order. The court may in the interest of business, instead of ordering an arrest as a conservatory measure, order a financial security. In *Comastrans S.A v Corlett Actividades Maritimas Lda & MV Nadine Corlett*, Forbang J. of the High Court of Buea, after having declined to make an outright order for the arrest of the vessel, MV Nadine Corlett berthed at the Tiko sea port until the motion for the arrest of the vessel was endorsed by the relevant maritime officials, held that it will be inequitable to allow the ship sail out of the port before the determination of the plaintiff’s claim. He then ordered financial security from the owner of the ship in lieu of arrest. He said: “in order to water down the harsh economic effect that the arrest of a ship may cause to the ship owner, the modern and common practice has been for the courts to order security from the ship owner in lieu of arrest as a just, equitable and valuable measure. Such guarantee is usually in the form of a written undertaking or a bank guarantee”.

The shortcoming of the freezing injunction is that it only prevents movement or dissipation either partially or totally of the defendant’s assets. Unlike the admiralty attachment (maritime attachment applicable in the civil law system), it does not place the property under the jurisdiction of the court, nor does it permit execution against it by way of judicial sale, enforcing a final judgement. In the United States of America, the freezing injunction is absent as was judicially ascertained in the case of *Grupo Mexicano de Desarrollo v Alliance Bond Fund Inc*. Another reason for the absence of the freezing injunction in the U.S. is that the admiralty procedure takes its roots from the civil law thus preserving the quasi in rem jurisdiction.

From the above, it is clear that a claimant is highly protected under the civil law system than under the common law system due to the availability of the quasi in rem jurisdiction under the former. This is simply to say that maritime claimants in Cameroon are protected as they can rely solely on maritime attachment and not a freezing injunction for security pending a judgement. In *Ayabe & Fils Sarl and CIMED Sarl v Imperial Shipping, M/V Thuleland*, the second respondent (M/V Thuleland) transported three hundred and sixty thousand (360,000) bags of rice for the applicant from Vietnam to Cameroon. Some of the bags were lost and by a motion on notice, the applicant prayed the High Court Fako to arrest the ship which was within Cameroonian territorial waters and that the said arrest should serve as a conservatory measure. Upon the understanding that the applicant’s action was intended to cause the respondents to settle their contractual obligations towards the applicant worth 270, 900 Euros (177, 710, 400 FCFA), the court ordered the arrest of the ship as a conservatory measure.

In maritime practice, there is always a question of which law to apply when there is a maritime claim or dispute. This worry is often associated to conflict of laws.

### 1.2 Laws Applicable to Maritime Liens and Conflict of Laws

The concept of maritime lien originated in the 19th century. These liens attach on the ship in connection with which the claim arose and cannot be extinguished until a court sale.

**Under common law** claims which attract maritime lien include: damage lien, salvage lien, crew accrued wages, master’s wages and disbursements.

Other maritime claims can be assigned the status of a maritime lien by the law of the country in which the claim arose or where the contract was concluded. As ships move from one jurisdiction to another, the chances of a mortgagee’s right being affected cannot be minimised. This movement raises a problem of conflict of laws when a court is seized to determine the validity of a foreign lien before it determines priorities for the distribution of proceeds of sale of a ship.

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32 See [The Giovana](https://www.jstor.org/stable/2862410) (1999) 1 Lloyd’s Rep 867a case concerning non-sufficient disclosure where the claimant was denied the injunction.

33 See ‘ship Arrest as a Conservatory Measure in Cameroon’ by Feh Henry Baaboh, being a paper presented during the 3rd General Meeting of SHIPARREST.COM in Marseilles, France. 2006. Violation of an order to arrest by the owner of the vessel amount to contempt of court.

34 [Suit No HCF/166/05-06/2M/06].

35 The Learned Judge by declining to make such an order was simply implementing the provisions of the statute regulating maritime activities in Cameroon. (See Article 120 of CEMAC Marine Merchant Code 2001). Article 150 of the 2012 CEMAC Marine Merchant Code is a replica of Article 120 of the old Code.

36 See Yanou A. Micheal, **Practice and Procedure in Civil Matters in the Courts of Records in Anglophone Cameroon** (Wusen Publishers, Nigeria, 2012) 52.

37 William Tetley, *op. cit*, 411.

38 527 U.S 308, 119 S.Ct 1961, 1999 AMC 1963 (1999).

39 This is covered by Articles 144 to 126 of CEMAC Marine Merchant Code. These Articles deals with arrest as a conservatory measure (*saisie conservatoire*) under the 2012 CEMAC Marine Merchant Code *saisie conservatoire* is covered by Articles 144 to 156.

40 [Suit No. HCF/0244/M/10 (2010) (Unreported)].

41 See also [SoacamSarl v Golden Ace Shipping Ltd, Cyprus](https://www.jstor.org/stable/2862410) (1st respondent), M/V Master (2nd respondent). Suit No. HCF/0071/M/11 (2011) (Unreported), United Commodities Inc. v Florian’a Shipping Co. Ltd (1st respondent), M/V Kalisti (2nd respondent). TCFI/69m/2010 (unreported) and SoacamSarl v Xela TransportationServices Inc. (1st respondent) M/VXela (2nd respondent) TCFI/115m/2010 (unreported) in which the arrest of the 2nd respondent in each of the cases served as a conservatory measure to secure the claims of the applicants.

42 See Sir John Jervis definition in *The Bold Buccleugh* (1851) 7 Moo PC 267 at 284.

43 Aleka Mandaraka-Shappard, *op. cit* 145.

44 [Ibid.](https://www.jstor.org/stable/2862410)
Common law recognises the priority of a mortgage over the statutory rights in rem, but not over a maritime lien. In the United States whose admiraltry law follows that of the civil law family, maritime lien includes repairs to a ship, supply of bunkers, other supplies (necessaries), stevedores' claims, claims under towage and even damage to cargo. It follows therefore that these will have priority over mortgages under civil law but not under common law. In this wise, we can safely hold that the scope of maritime lien under civil law is wider than under the common law. Under common law, what is considered as maritime lien in civil law jurisdiction will simply be classified as statutory rights in rem which become statutory liens in rem from the issue of the claim form. They will not however have priority over a mortgage. For the purpose of priority, a crucial question is whether or not the recognition of a maritime lien should be decided by applying the law of the State where the claim arose, that is, the lex causae, or the law of the forum, that is, the lex fori. To answer this question, the guiding principle is whether the maritime lien is considered as a substantive right or a procedural remedy? Where it is considered as a substantive right given by the law of the State (lex causae), then in enforcing it in another jurisdiction where the claim against the vessel is being tried, it should be afforded the priority it deserves by its nature. On the contrary, if it is a procedural remedy, then its enforcement will depend on the procedure of the forum of the court determining the priorities. In situations like this, the potential for conflict of laws is very real.

The Halcyon Isle\(^46\) is a case which involved the priority of claims between a mortgagee, an English bank granted under English law and an American ship-repair yard\(^47\), which carried out repairs to the vessel in New York. The mortgage was not registered. Knowing that his rights were protected under American law, the repairer let the vessel sail without payment of the cost of repairs. Later, the mortgage was registered. The ship was diverted by the mortgagees to Singapore and was arrested by them (the mortgagees). She was subsequently sold by order of the High Court of Singapore. The court applied English law\(^48\). When the proceeds of sale were insufficient to satisfy all claims, the question arose whether the claim of the mortgagees should take priority over that of the ship repairers. Since the claim of the ship repairer gave rise to a maritime lien under US law, the judge decided in favour of the law of the State, that is, in favour of the ship repairer. This decision was reversed on appeal. Upon further appeal to the Privy Council, the issue was which law should apply? The law of the country where the contract was concluded (lex loci contractus), or the law of the country where the matter was tried (lex fori)? By a majority of 3 to 2, it was held that a maritime lien was a remedy and therefore, subject to the lex fori, that is, English law which regarded the claim of the ship repairer as a statutory right in rem ranking after mortgages\(^49\). Their Lordships simply did not take into cognizance the law of the State where the agreement between the ship repairers and the ship owners took place, that is, the law of the U.S. For this reason, they considered claims of the ship repairers as ranking only after the mortgagee’s claim. This was (and still is) because under English admiraltry law, ship repair does not fall under the categories of claims\(^50\) giving rights to maritime claims which will operate to rank in priority over a mortgage. Trite to note here is the fact that had it been the vessel was diverted by the mortgagees to Cameroon, that is within CEMAC, and arrested and the matter tried in Cameroon courts, the ship repairers’ claim would have ranked over the mortgagees’ claim since ship repair under Cameroon admiralty law\(^51\) gives rise to maritime lien.

In an earlier case\(^52\) decided in Canada by the Canadian Supreme Court, it was held that the shipyard’s claim had priority over a mortgage. The court relied on an English decision in The Colorado\(^53\). The facts of The Ioannis Daskalelis and the statement of Lord Justice Ritchie will shed more light here. In that case, a Panamanian ship was subject to a Greek-registered mortgage. Ship repairers rendered necessary repairs to a vessel in New York. The ship left the shipyard without payment of the costs of repairs and was diverted by the mortgagees to a port in Vancouver, Canada. They arrested her. The question the Supreme Court of Canada had to resolve was whether the shipyard’s claim had priority over the mortgage? In answering this question in the affirmative, Ritchie LJ said:

Where, for instance, two or more persons prosecute claims against a ship that has been arrested in England, the order in which they are entitled to be paid is governed exclusively by the English law. In the case of a right in rem such as a lien however, this principle must not be allowed to obscure the rule that the substantive right of a creditor depends upon its proper law. The validity and nature of the right must be distinguished from the order in which it ranks in relation to other claims. Before it determines the order of payment, the court must examine the proper law of the transaction upon which the claimant relies in order to verify the validity of the right and to establish its precise nature\(^54\).

In reliance upon Lord Justice Ritchie’s statement, the court recognised the ship repairer’s claim applying U.S law and forth with held that the lien was a substantive right governed by the law of the country where it was created.

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45 Under the civil law system, they will have priority even over preferred mortgages especially when they enter into force before the filing of the mortgage.

46 (1981) AC 221, p 234

47 It should be remembered that under American admiraltry law, unlike the English admiralty law, ship repairs is a maritime claim which gives rise to a maritime lien.

48 From above we discovered that under English law, ship repair (does not give rise to a maritime lien which can be prioritised over a mortgage) is only a statutory right in rem which became a statutory lien in rem following the issue of a claim form.

49 See Lord Diplock’s statement who delivers the majority judgement at 234.

50 Under the English Supreme Court Act 1981, claims recognised as giving rise to maritime liens are, a) damage done by ship, b) salvage, c) seamen’s wages, d) master’s wages and disbursement, e) bottomry bond, but under American law whose admiralty follows that of the civil law legal system, ship repairs, falling under necessities, constitute a maritime lien and not a statutory right in rem.

51 See Article. 149 of the 2012 CEMAC Marine Merchant Code.

52 The Ioannis Daskalelis (1974) 1 Lloyd’s Rep. 174.

53 (1923) 102.

54 Ritchie LJ in The Ioannis Daskalelis (1974) 1 Lloyd’s Rep. at 177.
from general maritime law and is based on the concept that the ship has itself caused harm, loss or damage to others or their property and must itself make good the loss. Since the ship must pay for the wrong it has committed, it must be compelled to do so by Admiralty process- by forced sale. After the sale, the proceeds are used to satisfy the lien holders. In case the proceeds are insufficient, each privileged creditor will be satisfied in order of priority until the available proceeds are exhausted. This will then extinguish any lien on the property or res.

1.3 Extinction of Maritime Liens
Extinction of maritime liens can take place in one of five ways:
A. Prescription of the debt for which the lien is security. This will normally be due to delay of suit to enforce the lien by an in rem claim;
B. Destruction of the ship or cargo upon which the lien is placed since the object for which it attaches no longer exists;
C. Judicial sale of the ship and the buyer will receive the vessel free of encumbrances;
D. Waiver or general principle of estoppel (which estops the lien holder from exercising his right); and
E. Provision of bail, payment into court, or provision of security by way of an undertaking or guarantee.

2. Mode of Exercise of Admiralty Jurisdiction
In the exercise of admiralty jurisdiction, a distinction is always made between truly and non-truly in rem claims. Truly in rem causes involve claims dealing with proprietary rights on the ship and maritime liens in which the defendant is the ship. Other maritime claims not concerned with proprietary rights in a ship are referred to as non-truly in rem claims. Truly in rem claims can be brought against the relevant ship without considerations of who would be liable personally (in personam) for the claim, or who the beneficial owner of the ship to be arrested is. Maritime lien attaches to the ship. On the other hand, a non-truly in rem claim is brought against the ship only when consideration of ownership or liability in personam is to be determined. Below is a discussion of two types of claims.

2.1 Claims in Personam
These are claims against a person. Admiralty jurisdiction under the civil law legal system has always proceeded on the basis of claims or actions in personam. The civil law

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55 The exception is of course Cameroon where both civil law and common law are practiced. Under the common law system, necessaries include repairs, towage, stevedoring, goods and materials needed for the vessel's operation as well as claims arising from the contract of carriage and charter parties, though maritime claims are only secured by a statutory right in rem because they are never considered as giving rise to maritime lien under this legal system.

56 Christopher Hill, op. cit. 122.

57 Ibid.

58 By virtue of Article 9 of the Brussels Convention on Liens and Mortgages, any maritime lien which is not enforced within a period of one year is extinguished. The statute made it clear that this period should be continuous i.e. without interruption or suspension.

59 See also D.C. Jackson, Enforcement of Maritime Claims, 4th ed. (London, LLP, 2005) 501 who noted that the capture of the res and its condemnation as price extinguishes a lien.

60 This is the case because a buyer of a vessel in an admiralty sale acquires a clean title.

61 A waiver of a lien is an intentional renunciation either expressly or impliedly, of the right to claim upon the lien security.

62 See The Ruta (2000) 1 Lloyd's Rep. 359.

63 Aleka Mandraaka Sheppard, op. cit. 68.

64 Ibid.
countries did not know the action in rem. The reason for this is that France which is a prototype of the civil law legal system never experienced the conflicts between the royal courts and other courts as was the case in England. Plaintiffs including maritime claimants under civil law may add to their in personam claims, a saisie conservatoire in order to compel the defendant’s appearance and obtain a pre-judgement seizure of the defendant’s ship or other asset within the court’s territorial jurisdiction. Judgements in personam upholding the claim may be enforced against the whole of the defendant’s property whether moveable or immovable.

A proceeding in personam has two weaknesses: the first is that it is sometimes difficult to obtain permission to serve the defendant when he is out of jurisdiction and the second is that, unlike the in rem claim, the in personam claim provides no security for the claim. This means that any judgement obtained is not beneficial to the judgement creditor unless a security is obtained to satisfy the judgement. Hence for the claimant to be on a safe side he needs to pray the competent court to arrest the ship.

2.2 Claims in Rem

The distinguishing feature of an in rem claim has always been the ability of the claimant to proceed against the ship directly, since the ship was regarded or personified as the actual defendant. This notion gave rise to the personification theory aimed at explaining the nature of an in rem claim. This theory aims at bringing the person liable for the claim to lie, the ship or property must be within jurisdiction and provide security in place of arrest. The unique feature of an in rem claim, procedurally, lies in its triple function: it assists the plaintiff;

A. to obtain security for the claim;
B. to invoke the jurisdiction of Cameroonian court on the merits of the case;
C. to have the right in rem crystallised on the property from the time of issue of the in rem claim form. This is with regard to non-truly in rem claims.

The idea of crystallisation of non-truly in rem claim on the ship against which proceedings in rem has been established was established by Brandon J. in The Monica. In this case, the owners of the cargo on board the vessel claimed damages to their cargo and issued a writ in rem. At the time of the issue, the ship was named Monica Smith and was owned by S. but before the writ was served, the ship was transferred to T and was renamed Monica S. The writ was subsequently amended to describe the name and the defendants as the owners of the ship formerly called Monica Smith and now known as Monica S. The writ was then served on the ship. The new owner T entered conditional appearance and applied by motion to set aside the writ or service. After the service, T sold the ship to someone else. T claimed, inter alia, a declaration that no lien or charge arose against Monica S by reason of issue of the writ or service on grounds that:

1. he (T) was not the owner of the vessel at date of issue, or when the course of action arose;
2. he would not be liable in personam;
3. the claim gave no right to maritime lien or charge on the ship;

He further claimed that the plaintiff had only a statutory right of action in rem under the Administration of Justice Act 1956, which was only enforceable against the res if (i) the

65 William Tetley, 406 - 408.
66 Temporal immobilisation of a ship which compel its owner to appear in court and answer a case against him.
67 William Tetley, 962-963. Sister ships may also be seized in a saisie conservatoire.
68 It is well worth noting that under the common law tradition, security in this case can only be by means of a freezing injunction and as already seen this injunction will not definitely secure the claimant since the asset made subject to the injunction may not be sufficient to satisfy the claim or the defendant can even obtain a variation of the injunction by which the asset may be used for his business.
69 AlekaMandaraka-Sheppard, op. cit., 11.
70 Ibid.
71 The Bazias (1993) 1 Lloyd’s Rep. 101.
72 See Article 144 of the CEMAC Marine Merchant Code 2012. By virtue of this Article, a vessel owned (or a private vessel been exploited for the benefit of the State) by the government of Cameroon is immune from arrest.
73 This immunity is succinctly covered by Article 144 (2) of the CEMAC Marine Merchant Code 2012. The Article provides: ships belonging to the State or exploited her, cannot be arrested if at the moment that the claim arose, the ship was exclusively carrying out a governmental and not a commercial service (this Code is entirely in French so the translation here is not official and main for the purpose of this paper).
74 (1967) 2 Lloyd’s Rep. 133.
res was arrested while still owned by the person liable in *personam*, or (ii) the writ had been served before change of ownership.

Brandon J. had to decide the issue whether a change of ownership of the ship, occurring after the institution of proceedings but before service of process or arrest, defeated the statutory right of action in *rem*. In other words, whether the steps as mentioned prohibited the crystallisation of a non-truly in *rem* claim on the property? After having reviewed all previous authorities relevant to the issue at stake, Brandon J. held that, T was the owner of the ship at the time of service of writ and had an interest in defending it (i.e. he was the person liable in *personam*). As a matter of principle, he continued, if creation of substantive right could occur on arrest, then it could occur at date of action brought. To this end he concluded that the defendant contention was wrong.

What we should note in the above decision is that it was the institution of the suit or claim which gave the plaintiffs the right to arrest and which arrest provided them with security. The relevance of the facts and decision of this case to Cameroonian shipper as well as maritime practitioners in the country is that it serves as precedent to matters concerning damage to cargo being shipped. Practitioners in maritime law in Cameroon should take particular note on this case since the International Convention on the Arrest of Ships 1999 makes it clear that nothing in the Convention shall be construed as creating a maritime lien and damage caused by operation of the ship is one of the claims envisaged by the statute.

2.2.2 Nature and elements of Claims in *rem*

By nature, a claim in *rem* is separate from a claim in *personam*. For many years, the view has been that an in *rem* claim is entirely independent from a claim in *personam*. The claim is against the ship or in appropriate circumstances, against other property such as cargo and freight and not against its owner. The owner may take part in an in *rem* claim where he deems it necessary to defend his property, but it is essentially an action against his property and not him.

The features of an in *rem* claim include the following:
1. it is primarily a means of obtaining security for a claim;
2. it is a means of having jurisdiction by arresting the ship within jurisdiction;
3. with regard to a maritime lien, the in *rem* proceeding gives effect to a right already accrued on the ship, which dates back to the date of its creation. The maritime lien is enforceable against the ship in question notwithstanding the change of ownership, either prior to, or after the issue of the proceeding or liability in *personam*;
4. Concerning non-truly in *rem* claims, the in *rem* proceeding causes a statutory right in *rem* to crystallise on the ship from the time of issue of the in *rem* proceeding. From that time, the in *rem* claim or statutory lien is enforceable against the ship irrespective of subsequent change of ownership even if the new owner is a *bona fide* purchaser without notice.

5. In both truly and non-truly in *rem* claims, the value of the ship has always been the limit for the satisfaction of maritime claims, unless the defendant acknowledged service of the in *rem* proceeding, or otherwise submitted to jurisdiction unconditionally, in which case the action also became one in *personam*.

6. In the absence of acknowledgement of service or submission to jurisdiction, the in *rem* proceedings as far as domestic law is concerned remain solely in *rem* and no personal jurisdiction over the owner, or the person liable in *personam* would be created by service.

7. A court sale by the Admiralty Marshal, consequent to judgement in the action in *rem*, extinguishes all encumbrances on the ship and gives a clean title to the purchaser.

2.2.3 Conditions for Enforcing a Claim in *rem*

Actions in *rem* can be brought against the ship irrespective of owner at the time the claim form is issued, or who would be liable personally when the cause of action arises. For this reason, it is said that the claims are truly in *rem*. The claims are proprietary rights which attach on the relevant ship from the moment of their creation. No conditions are required to enforce truly in *rem* claims.

Contrary to maritime claims which give rise to liens, for a plaintiff to enforce a maritime claim which does not give rise to a lien, referred to above as non-truly in *rem* claim, there must be a personal liability and ownership link between the person liable and the relevant ship.

3. Connection between a claim and the defendant when a cause of action arose

In *rem* proceedings can be instituted where the claim arises in connection with a ship, and also where the person who would be liable on an action in *personam* was, at the time the action arose, the owner or charterer or person in possession or control of the ship. A claimant in a non-truly in *rem* claim needs to first of all identify who would be liable in *personam*. That may be the owner, or charterer, or the person in possession or control when the cause of action arose.

Owner would literally be interpreted to mean the registered owner of the ship. In *The Evpolcign*, Lord Donaldson said:

... in real commercial life, ... registered owners, even in one-ship companies, are not bare legal owners. They are both legal and beneficial owners of all the shares in the ship and any division between legal and equitable interest occurs in relation to the registered owner itself, which is almost always a juridical person. The legal property in its shares may well be held by A and the equitable property by B, but

75 The Law governing ship arrest in Cameroon as from July 2012 is the Merchant Marine Community Code of 22nd July 2012. This law replaces the old 2001 law.
76 Article 9.
77 Christophe Hill, 102.
78 See *The Monica S* (1967) 2 Lloyd’s Rep. 113.
this does not affect the ownership of the ship, or the shares in the ship. They are the legal and equitable property of the ship.

In *Haji Ioannou v Frangos*\(^85\), the Court of Appeal held that the ownership of the ship for the purpose of admiralty jurisdiction means legal ownership (i.e. registered owner). A similar position was held in *The Tian Sheng*\(^86\) wherein the Hong Kong Court of Final Appeal explained that as far as owner is concerned, registration is virtually conclusive unless there was a fraudulent procurement of registration.

Charterer is not to be limited to demise charterer as was decided by Lord Donaldson in *the EvpoAgnic*, but extends to time charterer\(^87\) and voyage charterer\(^88\), while person in possession or control refers to one in the position of a demise charterer who can be a manager or operator of the ship\(^89\).

The liability of the owner or charterer or the person in possession or control must have arisen when he had the status at the particular time when the cause of action arose. In *Hussein El Sarji c/Getmam Cameroun S.A, Grimaldi Lines, Cpt Cdt M/V Grande Argentina*\(^90\), the Court of First Instance Bonanjo\(^91\) Douala held that defendants were liable for damage caused to the plaintiff as they were in possession and control of the ship when the cause of action arose. The plaintiff in this case agreed with the carrier to transport his car from Hamburg Germany to Cameroon. On delivery, the car was seriously damaged and the plaintiff brought a successful claim against the defendants.

**Conclusion**

Maritime liens, claims in personam and claims in rem constitute the fundamental features of admiralty jurisdiction and in reliance upon either of these features a claimant can cease the admiralty court’s jurisdiction. For one to invoke the jurisdiction of an admiralty court the object of his claim should be within the jurisdiction of the court. The court can on the application of the plaintiff issue an injunction order to prevent the defendant from dealing away with the property in dispute. The mobility of vessels across international maritime borders has also given to issues of conflict of laws.

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84 *Ibid* 415.
85 (1999) 2 Lloyd’s Rep. 337.
86 (2000) 2 Lloyd’s Rep 430.
87 *The Span Terza* (1982) 1 Lloyd’s Rep. 225 (CA). In this case, the court held that demise charterer must include ‘time charterer’.
88 *The Tychy* (1999) 2 Lloyd’s Rep. 11 (CA). Lord Justice Clarke in this case said demise charterer includes even a voyage charterer.
89 AlekaMandaraka-Sheppard, 96.
90 Commercial Judgement No 56 of 13\(^{th}\) December 2006 (Unreported).
91 The Court of First Instance (CFI) was competent here because the amount claimed by the plaintiff was inferior to ten million (10000000) FCFA. This material competent of the CFI is provided by s. 15(2) of Law No 2006/015 of 29\(^{th}\) December 2006 organising the Judiciary in Cameroon. By the same Law any claim equals to or above ten million (10,000,000) FCFA falls within the material competence of the High Court. The CFIs and High are therefore admiralty courts in Cameroon.