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Israel Shipping Law
Legal Overview

S. Friedman & Co. Advocates

Adv. A. Cohen-Dor

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GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Before the establishment of the State of Israel (in 1948), during the period of the British Mandate, the Supreme Court of Palestine was established by the provisions of the Palestine Order in Council of 1922 in terms of powers set out in the Foreign Jurisdiction Act of 1890.

Thereafter, following the Palestine Admiralty Jurisdiction Order of 1937, which was enacted under the powers of the Colonial Courts of Admiralty Act of 1890, it was ruled that the Supreme Court of Palestine should be the Admiralty Court and should exercise admiralty jurisdiction.

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In 1952, in terms of the Israeli Maritime Court Law, it was provided that all the powers and procedures of the Supreme Court, in its capacity as a Court of Admiralty, should be vested in the District Court of Haifa, which should act as the Maritime or Admiralty Court.

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Thus, basically, the Admiralty law and practice in the State of Israel is still based on the provisions of the British Admiralty Court Acts of 1840 and 1861 and the rules of procedure as set out in the Vice Admiralty Rules of 1883 Accordingly, the above laws and procedures govern the proceedings for enforcement of a foreign vessel's mortgage before the court.

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FORUM AND JURISDICTION

Courts

It is possible to identify two types of courts within which shipping disputes are litigated in Israel.

1. Civil courts

General cargo claims against carriers and damage caused to vessels are considered as commercial or civil disputes and therefore may be handled by the civil courts in accordance with the amount sued. Claims up to 2.5 million new Israeli shekels are sent to the magistrates' courts and above this sum claims are sent to the district courts.

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Generally speaking, these types of claim are governed by the **Israeli Carriage of Goods by Sea Ordinance as amended in 1992 (as amended Codex 1379, 5752 (22.1.1992), which incorporates the Hague-Visby Rules into the Israeli law**. These Rules govern claims concerning cargoes that are both imported into Israel and exported out of the country.

According to these Rules the statute of limitation in cargo claims is one year after the date that the cargo was discharged or should have been discharged.

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2. The Admiralty Court

Under the terms of the Israeli **Admiralty Court Law of 1952** the District Court of Haifa serves as an Admiralty Court, jurisdiction of which is derived of the old **British Admiralty Court Acts of 1840 and 1861**, according to which the court has jurisdiction to decide in claims concerning title or ownership of a vessel, salvage, towage, services rendered to a vessel, damage done by any ship, necessaries supplied to a ship, building, equipping or repairing a ship, or damage to cargo.

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Furthermore, the **Israeli Shipping Law (Vessels) of 1960**, specifies several types of occurrence that give rise to a maritime lien over a vessel and therefore provides the Admiralty Court jurisdiction to decide in claims that concern such liens: expenses in respect of selling a vessel by the court, payments made for docking services and pilotage operations, payments sued of a vessel by its crew, payments sued of a vessel pursuant of casualties or injuries occurring on a vessel, damages sued pursuant to a collision of a vessel and payments sued for the supply of necessaries, etc.

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Cargo claims

Many cargo claims in Israel are brought against carriers by insurers of cargo on the basis of their subrogation rights, but neither is it uncommon to have the importers or exporters themselves sue.

The courts obtain jurisdiction over the claim since the cargo (allegedly lost or damaged) is either discharged or loaded in Israel. Nevertheless, should the contract of carriage contain a jurisdiction clause, whether same is an arbitration clause or regular jurisdiction, the court may dismiss the case at its discretion and in compliance with guidelines prescribed by Supreme Court precedents.

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Limitation of liability

There are two main facilities that impose a limitation of liability of a vessel, both of which are based on internationally accepted sets of rules.

The first, as noted above, **the Hague-Visby Rules**, incorporated into Israeli law, provides general defences and immunities to a carrier.

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The second, the **Israeli Shipping Law (Limitation on a Shipowners Liability) of 1965** incorporates the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships (Brussels, 10 October 1957). In a nutshell, this Convention provides a shipowner with the opportunity to establish a limitation fund that will serve as a maximum exposure against the shipowner for any specific occurrence giving rise to the dispute.

This tool has not been dealt with by Israeli courts extensively, but it remains in force and often serves as a catalyst for settlements.

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REMEDIES

Ship arrest

The procedure for arresting a vessel is quite simple and all that is required is a short application to the Admiralty Court, which includes an application for arresting the vessel and a claim supplement. This application is made *ex parte* and the court reviews the application; if it meets the requirements of any of the causes of arrest then the court will issue a warrant for an arrest.

Such a warrant remains in force for six months after its issuance and may be executed once the vessel enters Israeli waters. In this regard, it is possible to arrest a vessel even if not at berth and waiting outside the port (as long as it anchors on Israeli territory).

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If, however, the vessel is not moored alongside a pier then it may be difficult to enforce as it is almost impossible to prevent a ship from sailing without permission in such circumstances.

After the vessel is arrested, it is possible to release it in exchange for a P&I club LoU or equivalent security. In the event the vessel is not released and the claim against it is accepted, then the court will initiate a procedure to sell the vessel in order to enforce the judgment given.

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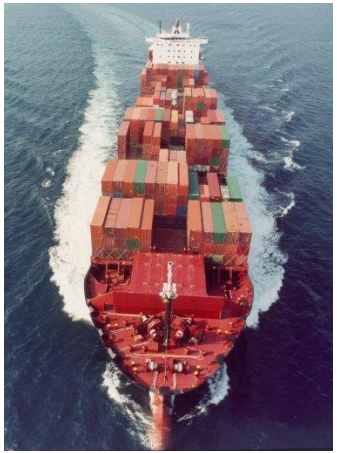
There has been a notable increase in bunker supply-related arrests during the past few years in Israel but recently the Admiralty Court rejected a claim of a sub-contractor of a bunker supplier, and ruled that the entitlement to sue for unpaid bunkers lies with the entity that supplied and contracted with the vessel[1].

Israeli law does not recognize
an arrest of a vessel for a liability
claimed against her sister ship



[1] MC 45897-02-12 *OW Bunker Malta Ltd v. MV Emmanuel Tomasos*.

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Environmental regulation

The CLC Convention was incorporated into the domestic Law for Liability for Oil Pollution Damages of 2004. The Oil Pollution Fund Convention, as amended 2000, is also in force by virtue of the same local law.

According to this law, the liability for oil pollution is of the registered owner of the vessel. Clause 22(2)(d) explicitly excludes, where a cause of action for liability may be established according to the law, the liability, inter alia, of the vessel's charterers (without making any distinction between the various possible classifications of the charterer, i.e., time, voyage or otherwise), managers or operators according to any other law, to the extent that said damage was not caused by any action or omission intentionally made by the aforesaid in order to cause the pollution, or due to recklessness, made with the actual knowledge that the action would probably cause the damage.

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The specific laws dealing with oil pollution do not impose, as such, liability on a charterer (time or voyage) or owner of the oil carried on board the vessel. Nevertheless, such liability may be established on the basis of the local tort laws, to the extent that negligence on part of the charterer or cargo owners may be established in connection with the pollution and damages.

Nevertheless, in the event of damage or incident falling within the terms of the Law for Liability for Oil Pollution Damages of 2004, the aforesaid parties will be exempted from liability unless it is proved that their action or omission was intentionally made in order to cause the pollution, or due to recklessness.

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Civil liability may be imposed also by virtue of the Seawater Pollution by Oil (Prevention) Ordinance (New Version) 1980, with the reservation that such law does not specifically impose liability on a charterer or owner of the oil carried on board the vessel.

Otherwise and generally, according to various environmental laws in Israel, liability for environmental incidents will be imposed on the person that actually caused the environmental incident or that violated the provisions of the relevant environmental laws, and such laws include not only criminal penalties, but also liability for the costs of restoration of the damages caused thereby.

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The main criminal law which may be applied to such circumstances (criminal proceedings) is the aforementioned Ordinance, according to which the owner or master of the vessel from which the oil is discharged or allowed to escape will be liable for a fine as determined[2]. The law does not impose liability on a charterer or owner of the oil carried on board the vessel as such, but same law does not preclude the criminal liability of other parties according to the general criminal law (not only for negligence but personal injury, for instance).

The Bunker Convention entered into force internationally on 21 November 2008, but the Israeli legislator has not yet commenced the implementation of this new convention into the domestic law.

[2] If he or she has been convicted before of an offence under this section, or aggravated circumstances may be established, he or she shall be liable to a greater fine or imprisonment for one year.

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Collisions, Salvage and Wrecks

The Ports Ordinance 1971 is the relevant legislation for the handling of wrecks and salvage of ships in Israeli waters. This Ordinance provides that should a vessel be lost or abandoned in Israeli waters and it poses a danger for the navigation or docking of vessels, then the authorised authority (the Israeli Ports Company Ltd, a state company) may demand the wreck's removal of its owners.

In the event that the owner does not cooperate, the authority may remove the

wreck by itself and later sue

the owner for its costs or damages.

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Additionally, the Wrecks and Salvage Ordinance (An Ordinance to make provision for control over wrecks and payment of salvage) of 1926 determines that where any services are rendered wholly or in part within the waters of Israel in saving life from any vessel, or in assisting any vessel that is wrecked, stranded or in distress, or saving the cargo or apparel of that vessel, or any part thereof, there shall be payable to the salvor by the owner of the vessel, cargo, apparel or wreck, a reasonable amount of salvage, to be determined through mandatory arbitration in the event of dispute. Salvage in respect of the saving of life of any person on the vessel will be payable by the owner of the vessel in priority to all other claims for savage payable.

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Established in 1928 as part of a shipping agency (M.Dizengoff was the first mayor of Tel Aviv) is a dedicated P&I commercial correspondence office and we have a subsidiary company

Moria Dizengoff

subsidiary company which is a Marine brokering dealing with insurance for vessels, ships agencies and Freight Forwarders