

THE ENFORCEMENT OF
MARITIME CLAIMS –
WHO LOSES OUT?
A PAPER (COMMENTARY)

BY

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"THE ENFORCEMENT OF MARITIME CLAIMS - WHO LOSES OUT?"

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"In The Tolten [1946] P.135,144 Scott L J described the Maritime Lien as "one of the first principles of the law of the sea, and very far-reaching in its effects." But, if the mortgagees are right, a maritime lien is in the modern law no more than a procedural remedy. So far from being far-reaching, its validity and effect will be subject to the domestic law of the forum in which it is sought to be enforced. If this be the law, we have travelled a great distance from the concept of a universal law of the sea. We have returned to the legal climate which in England prior to 1840 nourished the common law courts by excluding the Admiralty jurisdiction from "the body of the county," i.e., the internal waters, ports and dockyards of the country. In the climate of a dominating domestic law the concepts and principles of the law of the sea wilt and die."

Dissenting opinion of Lords Salmon and Scarman - Bankers Trust International Limited v Todd Shiphard Corporation: The Halcyon Isle [1980] 3 ALL ER 197.

INTRODUCTION

Unfortunately, I have not had the benefit of reading Geoff Mercer's paper at the time of writing this and my paper is therefore not a commentary in the true sense. I understand however, Geoff's main focus will be on the New Zealand Court of Appeals' 1991 decision in The Ship "Betty Ott" v General Bills Limited¹ with which he disagrees and a general discussion on the unsatisfactory state of affairs internationally in relation to uniform recognition of maritime claims and the question of priorities or rankings of competing claims where there is a limited fund in an action

1 [1992] NZLR 655

in rem. This paper is unlikely to introduce any debate on what Geoff covers in his paper as we seem to agree that the decision of the New Zealand Court of Appeal was, with respect, wrong and precisely that "dominating domestic law" which Lords Salmon and Scarman saw as the threat to the principles of the law of the sea. My paper also deals briefly with the question of priorities in the case of surrogate/associated/sister ship arrests and as Geoff may also deal with the question of the ranking of cargo claims in respect of discharge costs I briefly comment on that subject as well.

"THE BETTY OTT" DECISION

The main issue confronting the Court of Appeal in this case was whether the registration of a mortgage over the ship on the Australian Register was effective to give it priority over a prior equitable charge under a debenture. The ship was registered on the Australian Register of Ships and General Bills Ltd, one of the creditors, had a mortgage dated 31 July 1985 over her which was registered in the Australian Register on 28 October 1985. Prior to the date and registration of the mortgage, the ship's owner had given debentures in New Zealand to General Bills and another creditor Westpac, with priority accorded to the Westpac debenture. Westpac's equitable charge against the vessel under the debenture was dated 20 September 1984. General Bills obtained a judgment against the ship for \$1,020,000.00 plus interest and had her sold by the Registrar for \$225,500.00. Westpac intervened and obtained a judgment against the proceeds of the sale for \$337,534.00 and the question of priorities between the competing claims obviously became the central issue.

There is no conformity amongst the maritime nations of the world as to the ranking of rival maritime claims and in fact there are clear differences between various jurisdictions. The courts in Australia and New Zealand vested with Admiralty jurisdiction are successors to the former High Court of Admiralty in England.² Similar considerations of equity, public policy and commercial expediency to those in the UK have been adopted in these countries as well as many former British colonies and Commonwealth countries (refer Schedule A hereto).

There was no dispute between the parties in *The Betty Ott* and the Court of Appeal accepted that a later registered mortgage would take priority over an earlier equitable charge under a debenture. Although New Zealand and Australia have equivalent shipping registration legislation and the New Zealand Shipping and Seamen Act 1952 specifically allows the transfer of ships registered in other Commonwealth countries to the New Zealand shipping register³, the Court decided the Australian mortgage was not entitled to priority and the earlier equitable charge took priority on the basis that the Australian mortgage did not constitute a New Zealand registered mortgage. Mr Justice McKay delivering the Court of Appeals judgment recognised that the decision would fly in the face of the overall international system of registration of mortgages if a mortgage registered in one Commonwealth country was treated differently in another (and particularly where New Zealand and Australia were concerned) in the circumstances he favoured dominance of the domestic law. He further justified the decision on the basis that the Court did not think an Australian court would be likely to treat a New Zealand registered mortgage as taking priority over a prior unregistered mortgage existing in Australia.

2 The precursor of the Australian Admiralty Act 1988 (Cth) was an Imperial Act, the Colonial Courts of Admiralty Act 1890 (UK).

3 S409

Geoff Mercer as a New Zealand practitioner is obviously qualified to and will no doubt deal with the decision from New Zealand's perspective. I will limit my comment to Mr Justice McKay's conclusion that the Australian courts would decide the same way if the facts were reversed which undoubtedly will involve us both treading much the same ground.

Both the New Zealand and Australian Admiralty Acts vest the Admiralty Courts in the two countries with jurisdiction in respect of claims relating to mortgages of or charges on ships.⁴ The Admiralty Rules in both jurisdictions empower the courts to determine the order of priority of claims⁵.

The New Zealand Court of Appeal's ratio decidendi in *The Betty Ott* appears to be as follows:-

- the legislation for registration of ships in New Zealand which derived from the Merchant Shipping Act 1894 (UK) (as does the equivalent Australian legislation), is contained in Part XII of the Shipping and Seamen Act 1952. Registration is not obligatory in the case of a mortgage but the statutory power of sale is only conferred on a registered mortgagee. It follows that registration is necessary before a mortgage in the statutory form can create a legal charge on a vessel;
- Section 420(1) of the New Zealand Act, inter alia, deals with priority of mortgages in respect of ships but relates only to priority as between New

4 Section 4(1)(c) of the Admiralty Act No. 119 of 1973 (New Zealand) and Section 4(1)(2)(a)(iii) of Admiralty Act No. 34 of 1988 (Australia). The jurisdiction of these courts is not said to be limited to New Zealand and Australian mortgages and charges. Note however, prior to the Australian Admiralty Act of 1988 the Admiralty Courts did not have jurisdiction in respect of foreign registered ships unless a ship is already under arrest.

5 Rule 30, Admiralty Rules 1975 (New Zealand); and Rule 73, Admiralty Rules 1988 (Australian).

Zealand registered mortgages. It does not in terms deal with priority as between a registered mortgage and a non-registered mortgage. *Black v Williams*⁶ dealing with s69 of the Merchant Shipping Act 1854 (which is similar to S420(i) of the New Zealand Act) is however authority for the proposition that the legislation has left unaffected the position that unregistered mortgagees are postponed to those of registered mortgagees even though the date of the unregistered mortgage is antecedent to that of the registered mortgage and even though the existence of the unregistered mortgage was known to the registered mortgagee when he took his mortgage;

- In 1923 English decision in *The Colorado* served to demonstrate the difficulty in applying the principle of determining the substantive rights by the proper law of the transaction and only then applying the *lex fori* to the question of priority;
- A majority opinion in *The Halcyon Isle* departed from the principle applied in *The Colorado* and accorded the claim the priority it would have been entitled to receive under the *lex fori* if the events on which the claim was based had occurred within the jurisdiction of the *lex fori*.
- Although the consideration of the majority opinion in *Halcyon Isle* relate to the particular nature of maritime liens in English law and did not apply in the case of mortgages, Lord Diplock's obiter on the issue of priorities applying

6 [1895] 1 Ch 408.

to mortgages clearly accords priority to British registered mortgages (New Zealand registered mortgages when applied to this case) with "all other mortgages" ranked in order of date of creation.

- As the General Bills Australian mortgage was not a New Zealand registered mortgage it would rank as an equitable mortgage and be ranked with other equitable mortgages and charges in order of date of creation. As the Westpac equitable charge was antecedent to the General Bills Australian mortgage the Westpac claim had priority.
- On the basis that the Australian courts would follow the decision in *Black v Williams* and as they had no reason to depart from the authorities referred to above ie. the majority opinion in the Halcyon Isle and Lord Diplock's obiter, it was unlikely they would give priority to a New Zealand registered mortgage over a prior unregistered Australian mortgage if the position were reversed.

AN AUSTRALIAN RESPONSE

I deal now with how an Australian court might decide the issue if it were seized of the question and whether McKay J's conclusion that it would follow the New Zealand Court of Appeal's decision, was justified. No similar matter has become before the Australian courts as yet and in fact the really thorny question of recognition of foreign maritime liens has not been considered. I am therefore unable to say with any confidence what approach our courts would take and the federal nature of the Australian state and therefore court system may lead to different approaches

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being adopted by the courts in the various States until the question comes before the Australian High Court or unless legislative changes determine the issue. I am limited therefore to general comment on the correctness of the decision and therefore whether an Australian court would feel persuaded to adopt a similar approach.

The Shipping Registration Act 1981 (Cth) in Australia has broadly similar provisions to Part XII of the New Zealand Shipping and Seaman Act 1952 and covers the registration of Australian owned ships. Section 39 deals with the question of the priority of registered mortgages where there are two or more. Neither this legislation nor any other legislation covers the question of the recognition and ranking of foreign mortgages.

Black v Williams would indeed be followed in Australia and there would be no dispute that prior unregistered mortgages are postponed to later registered mortgages even though the existence of unregistered mortgages is known when the registered mortgage is effected. This however, in my view, has no bearing on the question of the recognition and ranking of foreign mortgages and with respect to the New Zealand Court of Appeal it is difficult to see why a similarity between the law in this regard between the two countries would persuade an Australian court that as a New Zealand registered mortgage was not an Australian registered one it should be ranked as an unregistered mortgage.

Although it is difficult to distil the true *ratio decidendi* in *The Colorado* the main thrust of the decision in my view was that the court acknowledged that under French law there were rights arising from the mortgage deed which were "higher than a mere right to proceed in rem" and therefore should be accorded the same ranking as an English maritime lien or mortgage. This approach is not inconsistent with the majority opinion in *The Halcyon Isle* and the New Zealand

Court of Appeal having raised perceived difficulties in adopting the approach, failed to deal with the fact that they were dealing with a registered mortgage, albeit foreign, and merely accorded it the status of an unregistered mortgage. In regard to classifying and ranking foreign claims the majority opinion in *The Halcyon Isle* preferred the approach of looking at the events giving rise to the claim and then according to the claim the priority (if any) in ranking which would have been appropriate if the events giving rise to the claim had arisen within the territorial jurisdiction of the court.

The New Zealand Court of Appeal with respect, did not give sufficient consideration to the fact that the majority opinion in *The Halcyon Isle* was dealing with a foreign maritime lien which was not recognised as a maritime lien under the law of Singapore or England. Whilst the majority was not prepared to accord preferential treatment to a claimant simply because such preference arises *ex lege* under a foreign system of law, it was prepared to do so if the preference would arise in the same or similar circumstances under the court's own law. Applying the majority approach to foreign registered mortgages would seem to entail simply ascertaining whether the security was in the nature of a mortgage as recognised in the *lex fori* and registered in accordance with the laws in that jurisdiction. To suggest otherwise would, in my view, mean that a foreign maritime lien such as salvage would not be recognised by the majority simply because it arose elsewhere and was not English based. Further the New Zealand Court of Appeal appears not to have given sufficient consideration to the difference between a mortgage and a maritime lien. A mortgage is a product of an express agreement between a debtor and a creditor and does not arise *ex lege* but is a contract in itself. Unlike the case of a foreign maritime lien the court is not being asked to supplant its own law for a foreign one but rather being asked to recognise that a foreign mortgage exists and enforce that contract which the parties have entered into in the foreign jurisdiction.⁷

⁷ Transol Bunker BV v MV Andrico Unity and Others; Grecian Mar SRL v MV Andrico Unity and Others 1987 (3) SA 794 at 812

The position in regard to foreign mortgages was neatly stated by Marais J in the *Andrico Unity* as follows:-

*"It is true that in deciding whether such a contract was concluded, the capacity of the parties to enter into it, and other questions, the court may have to take the foreign law into account but, once it has decided that such a contract does exist, and when it goes over to enforcing the contract and allowing the mortgagee the security to which a contract entitles him, it is not supplanting its own law with a foreign and different law. It is merely giving effect to an express agreement to the parties that such security should exist because such an agreement is in harmony with the English law and not repugnant to it. The matter can be put another way. If the domestic system of law acknowledges that preferential treatment in the distribution of a limited fund should be accorded to a creditor who has contracted specifically to secure the preference (such as a mortgagee), it is not inimical to its own perception of the appropriate order of priorities (which is commonly accepted as rightly being a domestic matter) to accord recognition and equivalent priority to a creditor who has acquired the right to such preference by contract in a foreign jurisdiction"*⁸

As regards the New Zealand Court of Appeal's interpretation of Lord Diplock's obiter on the issue of priority as applied to mortgages, with respect, they were wrong. Lord Diplock made no reference to foreign registered mortgages notwithstanding he was prompted to make the obiter by the reference to *The Colorado*. The obiter is in my view restricted to British registered ships and British registered mortgages. It is hard to imagine in what circumstances competing registered mortgages from different countries would arise. To achieve the required security and notify lesser

8 *Andrico Unity* at page 813

claimants of the existence of a mortgage, the mortgage must of necessity be registered against the ship in the ship's country of registration.

As stated, the question of recognition of foreign maritime claims and their ranking has not as yet come before the Australian courts. For the reasons stated I consider it is open to an Australian court to adopt a different approach to that taken by the New Zealand Court of Appeal. Australian courts are no longer bound by the decisions of the Privy Council⁹ and to the extent the majority opinion in *The Halcyon Isle* is as the New Zealand Court of Appeal suggests, it would be, at best only persuasive. As attempts at international recognition of maritime liens and mortgages has to date been unsuccessful¹⁰ one would hope that the Australian Admiralty courts would see that as a good reason why the Admiralty courts should on the basis of comity, seek to enhance International uniformity.¹¹

Although the decision in *The Halcyon Isle* has determined the position in regard to the recognition of foreign maritime liens and priorities the decision is not theoretically binding on the English courts although it is of great persuasive value. It would appear the English Admiralty courts would be required to consider initially *The Colorado*, being a decision of English Court of Appeal, and only if distinguishable, be able to follow the persuasive authority of the Privy Council's decision in *The Halcyon Isle*. The issue under English law is by no means finally determined and it should be borne in mind that the minority opinion in *The Halcyon Isle* has received wide acclaim.

9 *Privy Council (Limitation of Appeals) Act 1968 (Cth) and Privy Council (Appeals from High Court) Act 1975 (Cth); Viro v R (1978) 18 ALR 257; 52 ALR 418; Cook v Cook (1987) 68 ALR 353; 61 ALJR 25; Britten v Alpogut (1986) 79 ALR 457*

10 Only a small number of countries have ratified the International Convention for Unification of Certain Rules Relating to Maritime Liens and Mortgages 1967.

11 Strongly supported by Hilton Staniland - Professor of Law, University of Natal, Durban - "The Halcyon Isle Revisited: A South African Perspective" (1989) Lloyds Maritime and Commercial Law Quarterly 174 at 189

The question has been decided upon by the highest appeal court in South Africa, namely the Appellate Division, in *The Andrico Unity* and the majority opinion in *The Halcyon Isle* was followed although "with considerable hesitation and diffidence". That case involved the recognition of a foreign maritime lien in the context of entitlement to arrest a vessel rather than priorities where there was a limited fund. The decision has been strongly criticised by sections of that country's maritime community¹² and there would appear to be active steps being taken to introduce legislation to provide for the recognition, enforcement and ranking of foreign maritime liens. A sub-committee of the South African Maritime Law Association has recommended amendments to facilitate this and are currently awaiting a response from certain sections of their association. This development is progressive and if the proposed amendments become law it will be far reaching and clearly an attractive jurisdiction for most foreign maritime claimants to pursue their claims. A copy of a paper on the question delivered by certain members of the sub-committee last year is attached and makes interesting reading.

As stated the question of foreign maritime liens has not as yet come before the Australian courts and in view of the New Zealand court of appeals decision in *The Betty Ott* it seems unlikely that recognition, limited or otherwise, would be forthcoming in that country without legislative changes.

The courts in Canada, probably due to its proximity to the USA, have been progressive in their recognition of foreign maritime liens without apparently overwhelming resultant difficulties¹³.

12 "Should Foreign Maritime Liens be Recognised?" - Hilton Staniland SALJ 1991 293

13 Ioannis Daskalelis [1974] 1 LLLR 174
Metaxas v The Galaxas [1989] 1 fc 386
Marlex Petroleum Inc v The Ship "Har Rai" 4 DLR (4th) 739

PRIORITIES IN THE EVENT OF SURROGATE/ASSOCIATED/SISTER SHIP ARRESTS

Having touched on the various problems associated with determining priorities where there is a limited fund in an action in rem against a wrongdoing ship there remains the question as to priorities where there is a limited fund in such proceedings brought against a surrogate/associated/sister ship. The different descriptions given the "innocent" ship in Australia, South Africa and the United Kingdom stems from fairly fundamental differences between their required association with the wrongdoing ship. As the differences are irrelevant for the purpose of this discussion I will use the term "sister ship" as it was from this that the Australian and South African concepts arose.

The question is whether claims maintain the priorities they possess against the wrongdoing ship when they are brought against a sister ship. Put another way, to what extent is a maritime claim reduced in priority when the proceedings in rem are against a sister ship.

The question was considered in some detail by the Australian Law Reform Commission into the Australia Civil Admiralty Jurisdiction.¹⁴ Quite correctly in my view, the Commission decided that claims brought against a sister ship were by definition a statutory right of action in rem and therefore maritime liens would lose any priority they had in respect of the wrongdoing ship and would be treated as general maritime claims alongside the other statutory liens brought against the vessel. This is specifically provided for in Australia's Admiralty Act 1988.¹⁵ Quite properly, proprietary maritime claims¹⁶ may not be pursued against a sister ship in view of the fact that it

14 Law Reform Commission Report No. 33 January 1986 paragraphs 259 to 262 inclusive.

15 S35.

16 S4(2): Claims relating to possession of, title to and mortgage of ships and enforcement of judgments against ships.

is the wrongdoing ship not the sister ship that has been made the specific subject of the security. As to ranking of the statutory rights in rem against sister ships, the Admiralty Act leaves the question open to the Courts although it is specifically provided that a transferred claim will not be given a lower priority than a statutory right in rem against the wrongdoing ship.¹⁶

In the UK the question is not covered by the relevant legislation. Although the English courts have not decided it authoritatively, it seems claims against a sister ship enjoy the same priority as a statutory right in rem. In the 1964 case of *The Leoborg (No. 2)*¹⁷, the court was not forced to decide on the issue but entertained argument that a maritime lien for seaman's wages should be ranked as a statutory lien as the seaman claimant still retained a maritime lien on the wrongdoing ship. It is interesting to note that the Australian Law Reform Commission, in addressing the problem, left open the question of whether maritime liens survive if pursued against a sister ship.¹⁸

The position in South Africa is that all claims in respect of the sister ship are to be met in the order stipulated in their Admiralty Jurisdiction and Regulation Act 1983 and then only do transferred claims attain any ranking. The transferred claims follow the same order of ranking. This effectively leaves the transferred claims in an even less favourable position than under the UK scheme in that they do not rank equally as statutory rights but wait in the wings to be satisfied after the statutory liens already in existence against the sister ship. It seems that this situation arose by virtue of their legislation accommodating "group ship claims" under its corporate veil provision and was intended to ensure that claims against the sister ship, where its owner was the

16 S35.

17 [1964] 1 Lloyds rep 380.

18 Refer paras 262 Law Reform Commission Report No. 33, Ibid.

relevant person was not prejudiced by claims transferred were the sister ship owner is not the relevant person.

CARGO DISCHARGE COSTS - PRIORITIES

There are no reported Australian or, to my knowledge, New Zealand decisions dealing with the ranking of cargo discharge costs in an action in rem where there is a limited fund. Two situations can arise where a ship is arrested following in rem proceedings; first, the party under the bill of lading who is entitled to delivery of the goods wishes to have them discharged and take delivery prior to the Marshal's sale and secondly where that party is not in a position to take delivery and the Marshal is compelled to discharge the property to effect the sale.

In the event of the first situation it appears that the Marshal will insist on the party entitled to delivery of the goods financing the costs or putting him in funds to guarantee payment of the costs. The costs are not restricted just to stevedoring costs but invariably include insurance, pilotage, port and tug charges and indemnity against loss or claims by any person arising out of berthing or discharge. The party entitled to and taking delivery of the cargo in such circumstances quite probably may bring a claim in rem against the ship and the question then arises as to the ranking of the claim for the discharge costs. The English court decisions in *The Jogoo*²⁰ and *The Myrto*²¹ held that notwithstanding the discharge of the cargo had benefited the other claimants in that the ship fetched a higher price than it would have had the cargo still been on board at the time of the sale, there was no principle of law which would justify the elevation of part of the cargo owner's

20 [1981] Vol. 1 Lloyds Law Rep page 513

21 [1984] Vol. 2 Lloyds Law Rep page 341

claim relating to the discharge costs to a position of a secured claim having priority over claimants such as mortgagees.

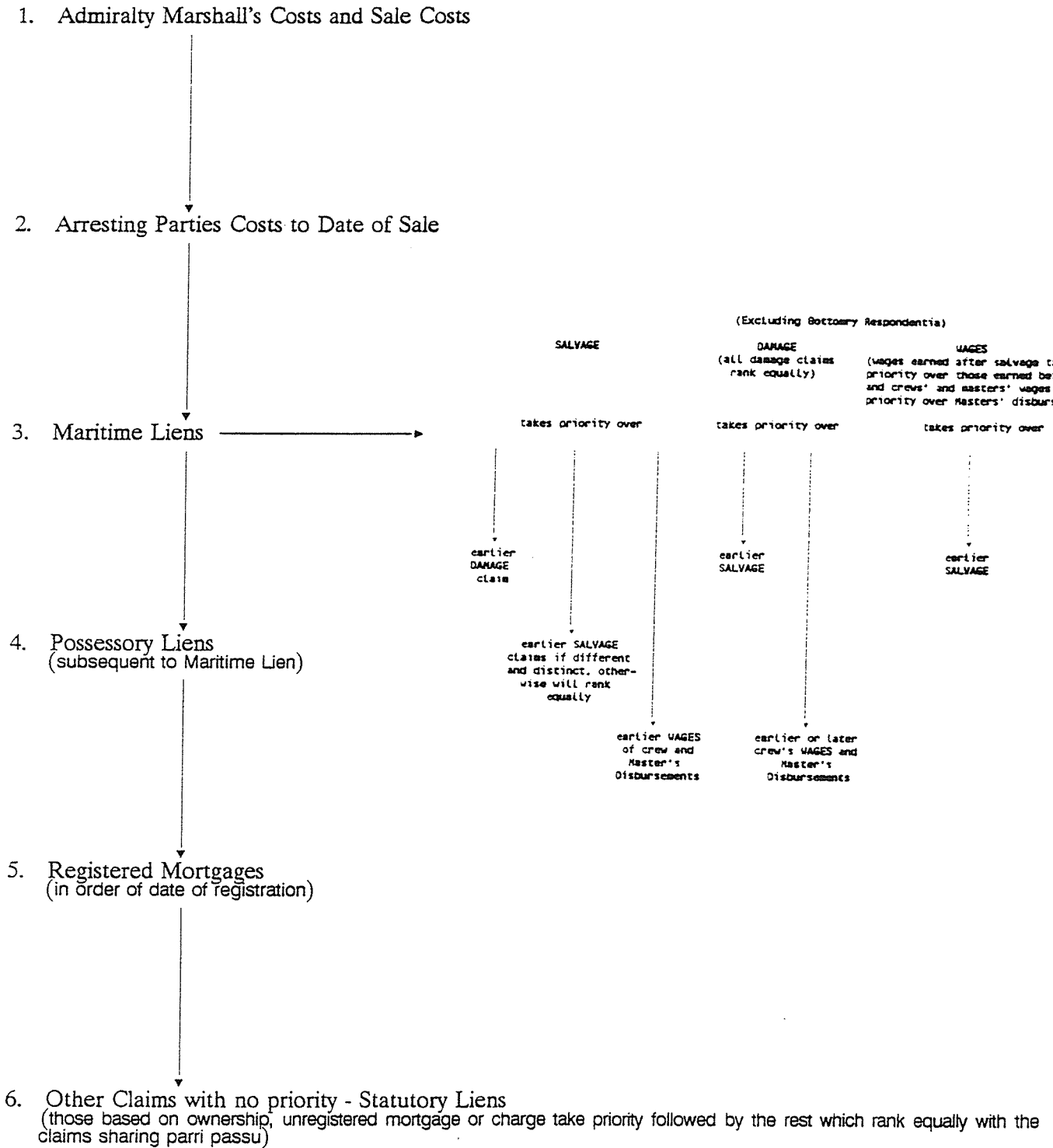
In the case of the second situation, it appears the Marshal has a choice to either sell the vessel loaded, probably for a lesser price as the purchaser would then be obliged to finance the discharge costs or, in the interests of obtaining the highest purchase price, finance the discharge costs himself which costs would constitute part of the sale expenses (to the extent it is not offset by the salvage value of the cargo) and would have priority in the rankings in most jurisdictions.

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Perth, Western Australia
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SCHEDULE A

**BROADLY ACCEPTED RANKINGS* OF MARITIME CLAIMS
AGAINST A LIMITED FUND IN ACTION IN REM**

Rankings



* Note rankings have emerged from various principles applied by the Courts in the UK but cannot be said to constitute rules of ranking as such.

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April 1991

FOREIGN MARITIME LIENS

Resumé prepared for purposes of the workshop to be held at the 1991 AGM of the MLA to discuss the proposed amendment of the Admiralty Jurisdiction Regulation Act so as to provide for the enforcement of foreign liens

1. BACKGROUND

South African Maritime law, following English law, provides for the recognition and enforcement of only a handful of maritime liens: the so-called "traditional maritime liens". On the other hand, many countries give maritime lien status to a far longer list of claims. For example, of a survey of 52 countries, 31 confer maritime liens for contractual cargo claims, which South Africa does not. (CMI survey distributed at 1990 MLA AGM by Hilton Staniland.)

In England, the Privy Council decided by a 3:2 majority against the recognition of foreign liens. (*The Halcyon Isle* (1981) AC 221) The South African Appellate Division, when asked to consider the matter, decided in favour of the majority decision in the *Halcyon Isle* "with considerable hesitation and diffidence". (*The Andrico Unity* 1989 (4) SA 325 (A)). The *Halcyon Isle* and *Andrico Unity* decisions have met with a vast amount of criticism from academic writers.

2. THE NEED FOR AMENDMENT

The subject has been the topic of a number of meetings of the Durban and Cape Town Chapters of the MLA and the principle has been accepted that statutory provision should be made for the recognition, enforcement and ranking of foreign maritime liens. A committee appointed by the Chapters and consisting of Advocate Douglas Shaw Q.C., Professor Hilton Staniland and Mr John Dyason, is unanimous about the need for amendment, in principle, so that South Africa conforms with the majority of maritime nations.

3. THE MECHANICS

The aforesaid committee has considered two alternative methods of amending the AJRA:

3.1 First Alternative

By the amendment of the following sub-sections of the AJRA, by the insertion of the underlined words:

S1(1)(ii)(v): "Any claim relating to any maritime lien under the lex causae, whether or not falling under any of the preceding paragraphs."

S3(4)(a): "If the claimant has a maritime lien under the lex causae over the property to be arrested,"

3.2 Second Alternative

By the addition of a new sub-section 1(4):

- "S(4)(a) *Any maritime lien shall be recognised and enforceable under this Act, if it is recognised and enforceable under the law of the place where*
- (i) *the services giving rise thereto were rendered;*
 - (ii) *the goods the supply of which gives rise thereto were supplied;*
 - (iii) *the contract giving rise thereto was concluded;*
 - (iv) *the delict or other act giving rise thereto occurred.*
- (b) *If the services were rendered, goods were supplied, contract was concluded or delict or other act occurred on the high seas, the recognition and enforceability of any maritime lien shall be determined according to the law applicable to the transaction or act in question.*
- (c) *The law of the place referred to in paragraph (a) or (b) of this sub-section, as the case may be, shall apply to all questions of conflict of laws relating to the transaction in question."*

4. PRIORITIES

It has been argued that the recognition, enforcement and ranking of a foreign maritime lien may serve to prefer a foreign creditor over a local creditor. If section 11 is left as it stands, s11(1)(e) would indeed have the effect of preferring some foreign lien creditors over creditors whose claims do not enjoy maritime lien status. Thus, a US cargo claimant would be preferred over a South African cargo claimant.

It is accordingly proposed that s11(1)(e) be deleted. The effect of this would be that foreign maritime liens would be ranked in terms of the remaining provisions of s11; in other words, the underlying transaction or event which gives rise to the foreign maritime lien would determine the ranking of the lien.