

MARITIME LIENS

Comparing English law, and the position under the International Conventions relating to Maritime Liens of 1926, 1967 and 1993

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Introduction

Maritime liens are important. They are unusual in that they give rights against a vessel which survive a sale of the ship and which enjoy priority ahead of registered mortgages, even though they need not be registered themselves. They may give rights against a vessel even if the lien is created by a charterer or manager of the vessel. The classification of certain claims as maritime liens varies around the world. International Conventions have attempted, most recently in 1993, to impose a degree of uniformity.

Under English law by virtue of the decision of the Privy Council in the *Halcyon Isle* [1980] 1 Lloyd's Rep. 325, and under some other laws such as those of Cyprus and South Africa, whether a claim is a maritime lien is dictated by the law of the place of arrest. It is irrelevant whether the claimant has a maritime lien under their local law. In the US and Canada the position is different and the law of the place of creation of the lien can be significant.

The Conventions of 1926, 1967, and 1993 also deal with mortgages. However, the relevant provisions relating to the international regulation of the creation, registration and deletion of registered mortgages is outside the scope of this guide.

	English Law	1926 Lien Convention	1967 Lien Convention	1993 Lien Convention
1. Are Maritime Liens conferring priority identified?	Yes. Scope of the law is, however, not completely certain.	Yes.	Yes.	Yes.
2. Lien for master's and crew wages?	Yes. Extends to cover sick pay and paid leave and applies even if wages are partly paid to a third party at the crew member's request. For master's wages "see section 41 Merchant Shipping Act 1995 and The "Ever Success" [1999] 1 Lloyd's Rep 824" and for crew's wages see The "Turiddu" [1999] 2 Lloyd's Rep 401.	Yes. "Claims arising out of the contract of engagement of the master, crew...". Art 2(2).	Yes. "Sums due... in respect of their employment on the vessel". Art 4(1)(i).	Yes. Art 4(1)(a).
3. Lien for repatriation Costs of crew?	Yes (Westport (No. 4) [1968] 2 Lloyd's Rep. 559).	Not specifically mentioned. Local courts may interpret Convention to include such costs.	Not specifically mentioned. Local courts may interpret Convention to include such costs.	Yes. Art 4(1)(a).
4. National social insurance and pension contributions for crew?	No, if compulsorily due under national law. Yes if payable under contract of employment (Westport (No. 4), Acruz [1962] 1 Lloyd's Rep. 405). For pensions see The Halcyon Skies [1977] 1 Q.B 14, [1976] 1 Lloyd's Rep 461.	Not specifically mentioned. Local courts may interpret Convention to include such costs.	Not specifically mentioned. Local courts may interpret Convention to include such costs.	Social insurance contributions payable on behalf of crew members. Art 4(1)(a).
5. Lien for claim for wrongful termination of employment?	Yes (The "Blessing" [1877] 3 P.D. . N.B. Does not cover severance pay (The Tacoma City [1991] 1 Lloyd's Rep. 330).	Not specifically mentioned. Local courts may interpret Convention to include such costs.	Not specifically mentioned. Local courts may interpret Convention to include such costs.	Uncertain.
6. Lien for master's disbursements?	Yes. Provided for benefit of vessel and within scope of master's (ostensible) authority. See section 41 Merchant Shipping Act 1995. Does not include disbursements made on account of charterers as opposed to the shipowners, see The "Castlegate" [1893] A.C 38, but see The "Ever Success" at pg 828.	Yes. Provided within scope of authority and "necessary for preservation of vessel or continuation of voyage". Art 2(5).	No.	No.
7. Lien for salvage claims?	Yes. Unaffected by International Convention on Salvage 1989. Does not include claims for towage.	Yes. Art 2(3).	Yes. Art 4(1)(v).	Yes. Art 4(1)(c).
8. Lien for vessel's GA contribution?	Not unless salvage claim. However, at common law a shipowner has a possessory lien over the cargo for cargo owners' proportion of GA which is enforceable against the consignee of the cargo even	Yes. Art 2(3).	Yes. Art 4(1)(v).	No.
<i>(cont'd...)</i>				

	English Law	1926 Lien Convention	1967 Lien Convention	1993 Lien Convention
(...cont'd)	though the consignee is under no personal liability to contribute in GA.			
9. Lien for port dues?	No.	Yes. Art 2(1).	Yes. Art 4(1)(ii).	Port, canal, and other waterway dues. Art4(1)(d).
10. Lien for pilotage dues?	Although the question was left open in The "Ambetlios" and The "Cephalonia" [1923] P. 68, it is likely that if the matter were to be decided today the court would decide that no maritime lien existed, the position of the pilot being similar to that of a supplier of necessaries or a person performing towage services". See Meeson "Admiralty Jurisdiction and Practice" (2nd Ed) 2-097.	Yes. Art 2(1).	Yes. Art 4(1)(ii).	Yes. Art4(1)(d).
11. Lien for death and personal injury claims?	Probable that damage lien (see 12 below) extends to cover personal injury providing the test under 12 below is satisfied claims but may not cover all loss of life claims. See The "Vera Cruz" No 2 (1884) 9 P.D. 96 which concerned a claim by the deceased executors for injury done to the family.	Yes. Art 2(4).	Yes. "Whether on land or on water, in direct connection with the operation of the vessel". Art 4(1)(iii).	Yes. "Whether on land or on water, in direct connection with the operation of the vessel". Art 4(1)(c).
12. Lien for damage claims/damage done by ship (collisions etc)?	Yes providing: 1. the damage is caused by something done by those engaged in the navigation or management of the ship in a physical sense, 2. the ship is the actual or noxious instrument by which the damage is done and 3. the damage is sustained by a person or property external to the ship. See The "Rama" [1996] 2 Lloyd's Rep 281 at 293." Damage done by a ship does not include a claim for personal injuries after falling into the hold of a ship (The "Theta" [1894] P. 280) or a claim for damage to cargo on board the carrying ship (The "Vioctorea" (1887) 12 P.D. 105)". Damage to other vessels, shore installations, or even cargo external to the ship (The Rama [1996] 2 Lloyd's Rep. 281).	Yes. Damage to vessels, shore installations, "indemnities for loss of or damage to cargo or baggage". Art 2(4).	Yes. "Claims against the owner, based on tort, and not capable of being based on contract" for loss or damage to property. Art 4(1)(iv).	Yes. Tort claims other than those for damage to cargo etc. carried on vessel. Art 4(1)(e).

	English Law	1926 Lien Convention	1967 Lien Convention	1993 Lien Convention
13. Lien for oil pollution?	The damage lien extends to any claim in respect of liability incurred under chapter III of Part VI of the Merchant Shipping Act 1995 and any liability falling on the International Oil Pollution Compensation Fund or International Oil Compensation Fund 1984 under Chapter IV of part IV of the Merchant Shipping Act 1995.	No. May be covered by damage lien depending on local court's interpretation.	No. May be covered by damage lien depending on local court's interpretation.	Specifically excluded if damage covered by international Convention or national law providing for strict liability and compulsory insurance or other means of securing claims. Art 4(2)(a).
14. Lien for bottomry and respondentia?	Yes but redundant.	No.	No.	No.
15. Lien for "necessaries"?	No (The Heinrich Bjorn (1886) 11 App. Cas. 270).	Yes. Art 2(5). See 6 above.	No.	No.
16. Maritime Lien for ship repairers? (see 30 below)	No (Halcyon Isle [1980] 2 Lloyd's Rep. 325) cf e.g. US law.	No.	No.	No.
17. Other liens?	Class may be more extensive. It has been suggested that additional maritime liens arise by implication out of statutory provisions, namely i) fees and expenses of the receiver of a wreck (see s249 MSA 1995) and ii) damage sustained by the owner or occupier of lands by means of which assistance is tendered to a wreck (see s234(5) and 234(6) MSA 1995. These provisions essentially provide that these amounts shall be recoverable in the same manner as salvage. See also s250(3) MSA 1995 which provides for the remuneration of officers or men of the coastguard service in watching or protecting shipwrecked property.	Law costs due to the state and expenses incurred in preserving the vessel. Harbour dues and public taxes. Art 2(1), tonnage dues and the costs of watching and preservation from the time of the entry of the vessel into the last port.	Wreck removal. Art 4(1) (v).	Only those permitted by national law. See 29 below.
18. Lien for claims against owners?	Yes.	Yes.	Yes.	Yes.
19. Lien for claims against Demise/bareboat charterers	Yes.	Yes. Art 13. Except in cases where owner has been disposed by illegal act or not bona fide claimant.	Yes. Art 4 (1) and Art 7 (1).	Yes. Claims against "owner, demise charterer, manager or operator". Art 4.
20. Lien for claims against time/voyage charterers?	Possible where charterers create lien.	Yes. Art 13. Except in cases where owner has been disposed by illegal act or not bona fide claimant.	Yes. Art 4 (1) and Art 7 (1).	Not unless "manager or operator".

	English Law	1926 Lien Convention	1967 Lien Convention	1993 Lien Convention
21. Lien for claims against managers?	Not unless interested in vessel.	Yes. Art 13. Except in cases where owner has been disposed by illegal act or not bona fide claimant.	Yes. Art 4 (1) and Art 7 (1).	Yes.
22. Can maritime lien be enforced against a sister ship?	A maritime lienee who utilises alternative sister ship proceedings enjoys no higher right or priority that that enjoyed by a statutory lienee (See The "Leoborg" (No 2) [1964] 1 Lloyd's Rep 380.)	No specific provision.	No specific provision.	No specific provision.
23. Maritime lien against cargo?	For salvage claims.	No. But effective against GA contributions due to owner. Art4(2).	No.	No.
24. Maritime lien against freight?	Yes where freight earned at date lien created.	Yes. On freight in owner's possession, for the voyage during which claim giving rise to lien arises or any voyage made during the subsistence of the same contract of engagement for crew wages claims. Arts 10, 2 and 4.	No.	No.
25. Priority of Liens (ranking in order of priority)	<p>(NB the rules below apply unless there is any special reason why a maritime lien claimant should be subordinated, see The "Ruta" [2000] 1 Lloyd's Rep 359.)</p> <ol style="list-style-type: none"> Salvage Damage Crew wages and Master's wages Master disbursements Bottomry (now obsolete) Mortgages Statutory liens (6 and 7 are not maritime liens) <p>However there are a number of more detailed rules regarding their inter-relationships:</p> <ol style="list-style-type: none"> The damage lien stands superior to all rival voluntary liens except a voluntary lien of a later date which has preserved the res. This will inevitably be the case in relation to a later salvage lien and will sometimes be the case in relation to a later wage lien. The salvage lien therefore has priority over all prior liens including damage but 	<ol style="list-style-type: none"> costs of preserving vessel and sale costs. immediately arising salvage and GA claims. masters and crew wages. salvage and GA claims. damage and personal injury claims. master's disbursements or necessities. registered mortgages. other claims. <p>(N.B. Apart from 2. claims arising in last voyage rank ahead of earlier voyage claims. Arts 5 and 6. N.B. II, 7 and 8 are not maritime liens).</p>	<ol style="list-style-type: none"> immediately arising salvage and GA claims. crew wages etc. port etc. dues. death and personal injury claims. tort/collision claims. other salvage claims. shiprepairer's lien (see below). registered mortgages. national maritime liens. other claims. Art 5(2), Art 6(1),(2). <p>(N.B. 8 and 10 are not maritime liens).</p>	<ol style="list-style-type: none"> immediately arising salvage claims. crew wages etc. death and personal injury claims. other salvage claims. port etc. dues tort/collision claims. registered mortgages. national maritime liens (see 15 below). Art 5(2), Art 6. <p>(N.B. 7 is not a maritime lien).</p>

(cont'd...)

	English Law	1926 Lien Convention	1967 Lien Convention	1993 Lien Convention
(...cont'd)	<p>is subordinate to a later damage lien, another later salvage lien or a later wages lien if that lien has preserved the res.</p> <p>iii) Crew wages no longer have priority over master's wages. They rank <i>pari passu</i>, see <i>The Royal Wells</i> [1985] QB 86 and <i>The "Ever Success"</i> [1999] 1 Lloyd's Rep 824 at 828.</p> <p>iv) A bottomry lien is wholly subordinate to both prior and later wages liens and damage liens and subordinate to later salvage liens, all subject to limited exceptions.</p> <p>v) The possessory lien is subordinate to all maritime liens which attach prior to the assumption of possession, but takes priority over all such liens which accrue subsequent to the assumption of possession.</p>			
26. Do Liens rank ahead of mortgages?	Yes.	Yes. See 25 above. Art 3.	Yes. See 25 above. Art 5(1).	Yes. See 25 above. Art 5(2).
27. Ranking of liens in same category. <i>Pari passu</i>, or priority based on date of creation?	Usually <i>pari passu</i> except salvage liens. The last salvage lien in time prevails over earlier salvage liens (see <i>The "Veritas"</i> [1901] P. 304).	<i>Pari passu</i> . Art 5. Except salvage and claims resulting from contracts or acts of master (i.e. disbursements/necessaries).	Apart from salvage and GA, claims rank <i>pari passu</i> . Art 5(3).	Apart from certain salvage claims, rank <i>pari passu</i> . Art 5(3).
28. Special ranking for salvage claims?	Last salvage lien has priority over earlier liens. May be subject to later damage claim or later wages claim if this has preserved the res.	Last salvage lien has priority over earlier liens.	Yes. Most recent salvage or GA claims rank first. Art 5(4).	Yes. Most recent salvage claims rank first. Art 5(4).
29. Additional liens permitted under national law?	N/A.	Not excluded. "Nothing.. shall be deemed to affect... modes of procedure or methods of execution authorized by national law". Art 16.	Yes. Art 6(1).	Yes. However claims will cease to be liens after 6 months (unless vessel arrested within this period), or 60 days after a bona fide sale. Art 6.
30. Possessory lien for shiprepairer or shipbuilder?	Yes.	No specific provision.	Yes. "May" rank ahead of registered mortgages but lost when vessel ceases to be in possession of yard. Art 6.	States have power to create possessory lien. Lien lost when vessel ceases to be in possession of yard. Art 7.

	English Law	1926 Lien Convention	1967 Lien Convention	1993 Lien Convention
31. Do maritime liens survive sale of vessel/change of ownership?	Yes, even where purchaser is a bona fide purchaser for value without notice of the claim (see The "Bold Buccleugh" (1851) 7 Moo PC 257) the lien.	Yes. "Claims secured by a lien follow the vessel into whatever hands it may pass" Art 8, but see 33 below	Yes. Art 7.	Yes. Art 8.
32. Do maritime liens survive change of flag/registration?	Yes.	Logically, yes but not specifically addressed. Art 8.	Yes. Art 7.	Yes. Art 8.
33. Do maritime liens survive the judicial sale of the vessel?	No (<i>Cerro Colorado</i> [1993] 1 Lloyds Rep. 58). Other circumstances where a maritime lien will be extinguished: <ol style="list-style-type: none"> the payment of the claimant or provision of appropriate security for the amount claimed. by laches i.e. if the lien claimant fails to pursue its claim with reasonable diligence the court may not permit it to enforce against the ship (see The "Kong Magnus" [1891] P. 223) destruction or total loss of the ship expiry of the relevant limitation period (see No 40 below) the sale of the res to the Crown or to a foreign sovereign in circumstances where they will have immunity from suit.* 	"Sale shall extinguish a lien only if accompanied by formalities of publicity laid down by national law". Art 9.	No. Art 11(3).	No. Art 12. Provided vessels in jurisdiction and sale has been effected in accordance with the law of the state and Article 11 and 12.
34. Priority of claims against proceeds of judicial sale	(NB the rules below apply unless there is any special reason why a maritime lien claimant should be subordinated, see The "Ruta" [2000] 1 Lloyd's Rep 359.) <ol style="list-style-type: none"> Costs of detention Arresting party's costs Salvage Damage Crew wages and Master's wages Master disbursements Bottomry (now obsolete) Mortgages Statutory liens Shipowner's interest (6 and 7 are not maritime liens) <p>However there are a number of more detailed rules regarding their inter-relationships: i) The damage lien stands</p>	<ol style="list-style-type: none"> costs of preserving vessel and sale costs. immediately arising salvage and GA claims. master's and crew's wages. salvage and GA claims. damage and personal injury claims. master's disbursements or necessities. registered mortgages. other claims. <p>N.B. Apart from 2 claims arising in last voyage rank ahead of earlier voyage claims. Arts 5 and 6.</p>	<ol style="list-style-type: none"> costs of arrest and sale. immediately arising salvage and GA claims. crew wages etc. port etc. dues. death and personal injury claims. tort/collision claims. other salvage claims. shiprepairers lien (see below). registered mortgages. national maritime liens. other claims. owner's interest. Art 11(2). 	<ol style="list-style-type: none"> costs of arrest and detention which includes costs for the upkeep of the vessel and crew as well as wages and other sums referred to in Art 4 (1) (a) incurred from the time of arrest Art 12 (2). wreck removal costs (if provided for by national law), Art 12 (3) immediately arising salvage claims. crew wages etc. death and personal injury claims. other salvage claims. port etc. dues. tort/collision claims. mortgages. national maritime liens. other claims. shipowner's interest. Art 12.

(...cont'd)

	English Law	1926 Lien Convention	1967 Lien Convention	1993 Lien Convention
(cont'd...)	<p>superior to all rival voluntary liens except a voluntary lien of a later date which has preserved the res. This will inevitably be the case in relation to a later salvage lien and will sometimes be the case in relation to a later wage lien.</p> <p>ii) The salvage lien therefore has priority over all prior liens including damage but is subordinate to a later damage lien, another later salvage lien or a later wages lien if that lien has preserved the res.</p> <p>iii) Crew wages no longer have priority over master's wages. They rank <i>pari passu</i>, see <i>The Royal Wells</i> [1985] QB 86 and <i>The "Ever Success"</i> [1999] 1 Lloyd's Rep 824 at 828.</p> <p>iv) A bottomry lien is wholly subordinate to both prior and later wages liens and damage liens and subordinate to later salvage liens, all subject to limited exceptions.</p> <p>v) The possessory lien is subordinate to all maritime liens which attach prior to the assumption of possession, but takes priority over all such liens which accrue subsequent to the assumption of possession.</p>			
35. Can maritime liens be assigned by a claimant?	<p>Probably not. It is certain that the underlying claim can be assigned. Transfer of the status of a maritime lien is less certain. "<i>The Wasp</i>" (1867) LR 1 A&E 367 is not authority for the proposition that the right of a maritime lien would be assigned with a claim giving rise to a maritime lien" See also <i>The "Sparti"</i> [2000] 2 Lloyd's Rep 618 (HK).</p> <p>Note however the distinction between contractual assignment and transferal or subrogation. Where a creditor with a maritime lien is paid by some third party (e.g. a mortgagor) with the consent</p>	<p>Claims must be bona fide but no specific provision. Not excluded. Will depend on national law.</p>	<p>Yes. Provided simultaneous assignment of underlying claim effected. Art 9.</p>	<p>Yes. Mere assignment of claim or subrogation of rights sufficient to transfer lien. Art 10.</p>
(...cont'd)				

	English Law	1926 Lien Convention	1967 Lien Convention	1993 Lien Convention
(cont'd...)	of the court, the lien will be transferred to the third party in the sense of being able to stand in his shoes as regards priority. This is better known as subrogation. In the <i>absence of leave</i> of the court the <i>voluntary</i> payment of a claim giving rise to a maritime lien does not transfer the lien and the priority will not be preserved. See The "Petrona" [1917] P.198, The "Vasilisa" [1972] 1 Lloyd's Rep 51 and The "Berostar" [1970] 2 Lloyd's Rep 403.			
36. Can a maritime lien pass to an insurer by subrogation?	Yes under s79 Marine Insurance Act 1906.	Claims must be bona fide but no specific provision. Not excluded. Will depend on national law.	Yes. Provided simultaneous subrogation of underlying claim effected. Art 9.	Yes. Art 10.
37. Registration of maritime liens?	No.	Not required but contracting states can impose formal requirements. Art 11.	No.	No.
38. When does the Convention apply?	N/A. Maritime liens are treated under English law as being determined by the legal system (lex fori) applicable in the place the lien is to be enforced in rem (Halcyon Isle [1980] 2 Lloyd's Rep 325).	If action taken in contracting state provided vessel is registered in a contracting state, or if local law applies it to other vessels. Art 14.	Applies to "all sea-going vessels registered in a contracting state or a non-contracting state". Art 12.	Sea-going vessels registered in contracting state and other vessels provided subject to states jurisdiction. Art 13.
39. Does the Owner have a right to limit liability?	Yes. Under the 1976 Limitation Convention (Merchant Shipping Act 1979).	Acknowledged by Arts 4 and 7.	Yes. Art 14.	Yes. Provided applicable limitation convention and claim covered. Art 15.
40. How long does a maritime lien survive?	Subject to appropriate limitation period for claim. E.g. 2 years for collision damage under s190 MSA 1995, 6 years for claims for crew's wages and master's wages and disbursements under the Limitation Act 1980.	Subject to national law, liens cease to exist at the expiration of one year, or 6 months for supplies made to master. Can extend period up to maximum of 3 years if vessel does not call at port in claimant's territory inside a year. Art 9.	Extinguished after one year from the time the claim arises unless vessel has been arrested in meantime, and the arrest leads to a judicial sale. Art 8.	Extinguished after 1 year unless vessel is arrested and sold in the meantime. Time runs from date claim arises, or discharge of seaman for crew claim. Art 9.
41. Does a maritime lien give rights against the ship's insurers (if e.g. vessel is actual total loss)?	No. See circumstances where a maritime lien is extinguished above. Only rights enforceable would arise under Third Party (Rights Against Insurers) Act 1930.	No. Expressly excluded by Art 4.	Not expressly prohibited.	No. Art 10. "Claimants may not be subrogated to compensation payable to the owner of the vessel under an insurance contract".
42. Entry into force	N/A	In force.	In force.	6 months after 10 countries ratify or accede Art 19 (1).

Contracting parties to the 1926, 1967 and 1993 conventions

Country	1926 Convention ³	1967 Convention ³ (Not yet in force)	1993 Convention ⁴ (Not yet in force)
Algeria	Yes		
Argentina	Yes		
Belgium	Yes		
Brazil	Yes		
Cuba	Yes		
Denmark ¹		R ²	
Estonia	Yes		A
Finland ¹			
France	Yes		
Haiti	Yes		
Hungary	Yes		
Iran	Yes		
Italy	Yes		
Lebanon	Yes		
Luxembourg	Yes		
Madagascar	Yes		
Monaco	Yes		A
Morocco		A ²	
Norway ¹		R ²	
Poland	Yes		
Portugal	Yes		
Romania	Yes		
Russian Federation			A
Spain	Yes		A
St. Vincent & Grenadines			A
Switzerland			
Sweden ¹		R ²	

Country	1926 Convention ³	1967 Convention ³ (Not yet in force)	1993 Convention ⁴ (Not yet in force)
Syria		A	
Turkey	Yes		
Tunisia			R
Ukraine			A
Uruguay	Yes		
Vanuatu		A	A
Zaire	Yes		

R – Ratified A – Acceded

- 1 Denmark, Finland, Norway and Sweden all denounced the 1926 Convention on 1st March 1966. All except Finland have now ratified the 1967 Convention.
- 2 Reservation has been made in the accession/ratification instrument.
- 3 Information correct as at 29th September 2003.
- 4 Information correct as at 27th August 2003.

The 1967 Convention will come in to force three months after five States have deposited instruments of ratification. Although there are currently six instruments of ratification/accession deposited, four of these are subject to reservations. The treaty does not specifically say that it requires deposit without reservation although this is the case for some treaties. Norway and Sweden have made reservation stating that they intend to legislate, Denmark has made reservation in respect of applicability to the Pharo Islands and Morocco has stated that Article 15 of the Convention will not apply to it.

The 1993 Convention will come into force six months after ten States have expressed their consent to be bound.

Notes

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