



Salty Impressionism: Admiralty Jurisdiction and Art
The National Arts Club, New York
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I. Admiralty Jurisdiction

- A. 28 U.S.C. § 1333: The District Court shall have original jurisdiction, exclusive of the courts of the States, of:
 1. Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
 2. Any prize brought into the United States and all proceedings for the condemnation of property taken.
- B. “Saving to suitors clause: Allows a party to bring an *in personam* suit, under federal law, in state court.
- C. Maritime tort jurisdiction
 1. Admiralty jurisdiction is triggered where an injury to a person or damage to property occurs relating to:
 - i. A vessel
 - ii. In navigation
 - iii. On navigable waters
 - iv. During the course of traditional maritime activity
 - v. With the potential for affecting maritime commerce.
 2. Locality and nexus
 - i. Locality: Navigable waters are waters used or capable of being used for commerce
 - ii. Capable of sustaining transport of goods or passengers by watercraft and includes:
 - a. Inland waters if they can support maritime commerce, they run through two states or empty into the sea and presently sustain maritime commerce;
 - b. Artificial waters as long as they meet all necessary elements of being “navigable water; and
 - c. Seasonal navigability whether they are frozen during the winter, but navigable during all other seasons.
 - iii. Nexus: A substantial relationship between the activity giving rise to an incident and traditional maritime activity.
 - a. *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982) – recreational/pleasure boating is traditional maritime activity.
 - Sisson v. Ruby*, 497 U.S. 358 (1990)– if activity disrupts maritime commerce, it has a connection to traditional maritime activity.

- b. *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249 (1972) – event must bear significant relationship to a traditional maritime activity.
 - c. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995) – a vessel is anything used for transportation on water.
 - 1. Note: *Lozman v. City of Rivera Beach*, No. 11-626 (Jan. 15, 2013) (floating home not in admiralty; based on objective evidence of a waterborne transportation purpose).
- D. Admiralty Extension Act: 46 U.S.C. § 30101
- 1. Admiralty courts have jurisdiction in cases where an injury was caused by a ship or other vessel on navigable waters, even if such injury occurred on land.
 - 2. Think fire aboard yacht that damages land-based structures.
- E. Supplemental Rules for Admiralty Jurisdiction or Maritime Claims and Asset Forfeiture Actions—Admiralty Procedural Rules
- 1. Rule B: Attachment (in personam)
 - i. Done when ship is not found within the district. Attachment → from owner. Garnishment → from possessor
 - ii. Purpose is to force owner to appear
 - iii. Procedure forces jurisdiction and gets security
 - iv. Restriction: limited to the value attached (found)
 - v. Cannot acquire concurrent jurisdiction (conventional way and with Rule B)
 - vi. Claim needs to be a maritime claim
 - vii. Exclusive to Federal Court
 - a. Must declare under oath that owner cannot be found within district.
 - b. Before judgment awarded, owner must have notice.
 - c. Electronic Funds Transfer no longer recognized as allowable.
 - viii. Case Examples
 - a. *Seawind* – “found within the district” → two prong test:
 - 1. whether respondent can be found within the district in terms of jurisdiction, and
 - 2. if so, whether it can be found for service of process.
 - b. *East Asiatic* – where:
 - 1. plaintiff began its action against defendant by process of maritime attachment levied against defendant’s assets located within the district,
 - 2. plaintiff failed to accomplish service upon defendant as mandated by F.R.C.P., and
 - 3. defendant did not appear to perfect court’s *in personam* jurisdiction, plaintiff’s recovery was limited to amount of property subjected to process of

maritime attachment, even if plaintiff could have achieved pure in personam jurisdiction over defendant through defendant's contacts with forum and receipt of perfected service.

- c. *Staronset* – Shipowner could attach charterer's assets as security to avoid possibility of ultimate liability on stevedore's claims for fees for removing cargo from ship, even though shipowner's primary purpose in seeking attachment was not to obtain *in personam* jurisdiction over charterer; charterer was not to be found within the district, and thus, attachment undeniably fell within plain language of rule permitting attachment as adjunct of obtaining jurisdiction
 - d. *Teyseer* – Filing of admiralty or maritime *in personam* claim is not equivalent of *in personam* jurisdiction over party, and filing of purely *in personam* action does not determine jurisdiction over defendant; limited jurisdiction over defendant may be acquired by seizure of his assets, in which event, the *in personam* action takes on characteristics of action *in rem*, and with respect to consequences of release of the security, is guided by *in rem* precedents.
2. Rule C: Arrest (in rem)
- i. Allows *in rem* proceedings against maritime property, or for the benefit of obtaining security for satisfying claims (a.k.a. arrest). This is available when a person possesses a maritime lien, they may bring *in rem* action in federal court against the vessel itself.
 - a. A maritime lien is a pre-requisite to an *in rem* action.
 - b. Jurisdiction: a proper arrest under process of court trigger's the court's subject matter jurisdiction. To arrest the vessel, a party must file a complaint in court.
 - c. Notice: vessel owner must have notice of the arrest. Ship is defendant. Ship redresses plaintiff based on its value. The purpose is to establish jurisdiction and security.
 - d. Ship must be in district. Property = only the vessel.
 - e. To get vessel back, owner must file a claim of ownership against plaintiff.
 - f. Security: 1) special: guarantees this claim covered by specific security, 2) General: can be shared by multiple claimants. Ship free of lien when sold.
 - ii. Cases of note
 - a. *Cactus Pipe* (5th Cir. 1985)– if the vessel owner files a “claim of owner” in a proceeding characterized expressly in the complaint as *in rem*, then no arrest of a vessel is necessary.
 - b. *Republic Marine* (7th Cir. 1987)– jurisdiction over vessel in a maritime proceeding can be accomplished by that vessel's

- voluntary appearance and waiver of a defense of jurisdiction over the party.
- c. *Rep. Nat'l Bank of Miami* (SCOTUS 1992)– Gov't argued that *in rem* jurisdiction requires continuing control over the *res*. SCOTUS said “no.” Once power to hear an *in rem* case attaches, circumstances arising after the proper exercise of original jurisdiction will not divest a court of its jurisdiction.
 - d. *Incas* (5th Cir. 1984)– under the terms of Rule E (7), counter-security may be required when a counterclaim is asserted which arises “out of the same transaction or occurrence” as the original libel.
- iii. Maritime Liens: A maritime lien is a lien on maritime property given to secure the claim of a creditor who provided maritime products or services to the vessel or who suffered an injury from the vessel's use.
- a. Maritime property includes the vessel (and its appurtenances and equipment), cargo, freights and subfreights.
 - b. A party must have a maritime lien in order to arrest a vessel where the ship is the defendant.
 - c. If lien created by co-owner or joint venture, the lien is NOT granted.
 - d. There MUST be a link between the vessel and the wrong.
 - e. Parts of the ship that are necessary and integral to the ship may be arrested.
 - f. A lien is credit giving:
 - 1. a right to proceed vs. the ship; and
 - 2. priority over all other creditors. Liens are SECRET. No notice is required. Liens follow even if vessel owners change.
 - g. Priority of liens
 - 1. Seaman's wage lien: supersedes all other claims. Recoverable wages can include money owed for bonuses, vacation, annual allowances, overtime, and severance pay. Wages also include repatriation expenses. Contributions to trust funds, as well as health, retirement, pension, training, vacation, and similar benefits are usually not recoverable as wages.
 - 2. Maritime tort lien: include claims for a collision, personal injury, wrongful death under general maritime law. A claim over cargo if the cargo was used to cause the injury.
 - 3. Lien for the Breach of Charter or Shipping Contract - If the contract is not executory where it remains wholly unperformed or for which there remains something still to be done on both sides.

4. Liens for Necessaries* - Maritime Commercial Instruments and Liens Act (the "MCILA") states that a person providing necessaries to a vessel on the order of the owner or someone authorized by the owner has a maritime lien on the vessel, unless the provider of the necessaries has waived its right to the lien.
 1. To establish a maritime lien, a plaintiff must:
 - a. provide necessaries,
 - b. at a reasonable price,
 - c. to the vessel,
 - d. at the direction of the vessel's owner or agent.
 2. *Necessaries - repairs, supplies, towage, and the use of a drydock or marine railway. Courts agree that this list is not exhaustive and that the term "necessaries" should be liberally construed to include anything that facilitates or enables a vessel to perform its mission or occupation.
 5. Salvage - if a vessel saves another vessel from peril, the vessel saved must compensate the vessel that saved it. Courts often award around 5-25% of the value of the ship.
 6. Preferred Mortgages and Liens - Concept: when a ship is arrested, multiple creditors may swoop in before the ship is sold. The ship is only responsible up to the ship's value. Once the value is reached, the lien is gone.
 - h. There can be multiple liens, so who has priority? - When there is an ascertainable class, in order of preference:
 1. Custodia Legis—arrest costs
 2. Preferred liens
 3. Crew wages
 4. Torts
 5. Maritime contracts/necessaries
 6. Preferred mortgage (must fly a USA flag)
 7. Limited mortgage (foreign flag)
 - i. When no class, the priority goes to "Last in time, first in right." The "last voyage" rule.
3. Rule E – Procedural framework that allows a party to pursue a Rule B or Rule C action.
 4. Rule F - Limitation of Liability – 46 U.S.C. § 30501:
 - i. Purpose: Only the ship owner or operator may use this defense.
 - ii. Exclusive to federal court. No removal.
 - iii. Procedure: Owner must petition federal court requesting exoneration of liability, or that liability is limited to post-casualty value of the vessel.

- a. When filed, an automatic stay on all other related proceedings is created. If the captain is negligent ship owner is liable if the captain has management/supervisor capacity, and the ship is in port.
 - b. If a seagoing vessel does not have enough money to pay, the formula is \$420 per gross tonnage. Time limitation: 6 months after written notice of claim. Can recover from shipowner's insurance after the limitation proceeding is over.
 - c. The "flotilla rule": if a barge hits something, all barges fall under limitation of liability.
- II. Issues Where Art and Admiralty Intersect: Of course, this means that there are important considerations in having fine art aboard something that floats.
- A. Proper insurance and security is important for keeping art on board a yacht: There is no denying the symbiotic relationship between superyachts and art. You have only to look at the throngs of yachts in Biscayne Bay during Art Basel Miami Beach to know that superyacht owners are often art collectors too, and that the yachts themselves can be works of art.
 1. With all the possible challenges – from theft to damage – is it ever worth housing a fine art collection on board? Given that an art collection is often worth more than the yacht itself, are yachts the wisest place to keep them? The question is divisive, it seems, and depends on the yacht owner's attitudes towards risk, culture and yachting. Proper insurance and security is important for keeping art on board your yacht.
 2. A working alarm system is essential—indeed it will probably be a condition of the yacht's insurance. A lot of fire and flood incidents happen in ports, so it's about weighing the option between maximum security or quick release mechanisms. There has to be a plan to remove the art in a hurry, if necessary.
 3. The next consideration is whether the value of the art outweighs the value of the boat. Marine insurance policies are rarely standardized, so the art collection might be incorporated into it, but only for a limited amount. However, if the art is likely to outweigh the value of the vessel, a yacht owner will likely need additional specialist art insurance. Insurance companies expect owners to employ a professional art management service to guarantee maximum protection where all possible negative influences are avoided from day one.
 - B. Proper paperwork is vital
 1. Using the cautionary tale of a Spanish yacht owner who had an original Picasso seized in Corsica vividly illustrated the need for proper paperwork. In that instance, the owner was facing four years in jail and a €1,000,000 fine.
 - i. There are certain pieces of art where the state has a say in what can be done with it.
 - ii. If the yacht is travelling to a jurisdiction that the captain is unfamiliar with, it is wise to consult with a lawyer that specializes in art and admiralty to ascertain whether there needs to be precautions taken regarding art on board a yacht.

2. Knowing the provenance of certain materials, such as rosewood and ivory, is just as important for satisfying customs officials. With all this in mind, owner's representatives and captains need to get their paperwork in order before setting off on a maiden voyage, by utilizing their art advisors to explain these things. Having thorough art documentation is as important as getting the plumbing right on a yacht.
- C. Copies must be marked as such
1. Some yacht owners choose to use their yachts to display copies of artworks that they own, with the originals kept safely in a vault on dry land. While this approach may seem sensible, it is not without its drawbacks, as they have to be marked as replicas or they can be mistaken for forgeries and destroyed by the customs authorities.
- D. Too much light can damage a yacht's artwork
1. Lighting is all-important, both directional and ambient. As on land, photography, watercolors and drawings need to be protected from natural light, so frame them using a highly protective anti-glare, anti-reflective glass and hang works away from direct light sources. A yacht's design becomes paramount, as the use of carefully deployed lighting aboard a yacht becomes critical to ensure maximum artistic impact with minimum damage.
 2. However, aside from avoiding harmful UV rays, light can also play a key role in the way the art is displayed and viewed. Due to the limited ceiling height in a yacht, it is highly recommended that owners work with an interior designer early on in the process.
- E. Install art on yachts the right way
1. You cannot simply hang a painting on board a yacht; it needs to be screwed to the wall. The same goes for fixing small sculptures and objects, which is where "museum glue" (also called gel, wax or putty) comes in: a clear product that fixes objects to surfaces (though not irrevocably) to stop them shifting in a swell.
 2. Climate control to extend the life of art on board
 - i. The air quality and temperature within each room is important: humidity is bad for art, as is salt air and direct sunlight. Strict insurance requirements means even museums have to fulfil high standards before important pieces are allowed to be shown and a yacht is no different. Special climate boxes are needed for transportation and the owner may need to install an alarm system to alert of atmospheric changes. This becomes more complex when a yacht is in a far-flung jurisdiction—what does the captain do when the yacht is in Rangiroa in French Polynesia?
 3. Display works only where the climate can be effectively controlled and the elements shut out. This includes avoiding placing anything of value near a vent, heat or cooling source. This means a very detailed "art plan" at the planning and build stage of a yacht.
- F. Trust but verify with the art dealer when choosing specialists for a yacht's artwork

1. Every dealer, gallery and specialist house has its own specialists and quite often the artist will insist the framer of their choice is chosen. So the best advice is: take the advice of the art dealer but verify with the naval architect and space designers that the art work will work in the space. Limited space and technical classifications have a major influence of the display of an artwork and seeking qualified advice before buying is essential to plan the perfect surroundings for existing pieces or to choose the perfect piece for an existing surrounding. Art is nice to have, but it has to have the best possible setting to inspire.
 2. The dealer is also more likely to be able to suggest artists which complement each other. For example, superyacht GUILTY's Jeff Koons-designed hull is complemented by modern works by artists such as Martin Creed.
- G. Consider where the art is to be delivered for installation
1. There are various jurisdictions that will want to tax art that is in its borders. In this ever-increasing need for tax dollars, yacht owners are a desirable target. However, several jurisdictions are friendly towards yacht owners and understand that sometimes, a yacht is in the jurisdiction only temporarily and thus, it and its appurtenances should not be taxed because of that temporary stay.
 2. Fort Lauderdale has now created foreign-trade zones, which permits international vessels to dock at such FTZ's without paying duty or have them repaired or upgraded by marine industry craftsmen in South Florida. Currently, owners of foreign flagged vessels that have not paid U.S. Customs Duties are not able to offer their vessels for sale while in U.S. waters. Of course, this is beneficial for yachts with pricey art on board, as well as yachts looking to upgrade, including the addition of art on board.
 3. Merchandise lawfully brought into these zones may be stored, sold, exhibited...mixed with foreign or domestic merchandise, or otherwise manipulated or manufactured.
 4. Zone facilities may be utilized for the full exhibition of foreign merchandise for an unlimited length of time with no requirement for exportation or payment of duty.
 - i. Retail trade is prohibited in zones.
 5. Advantages in zones—savings in shipping charges, duty and taxes may result from shipping unassembled or disassembled products for assembly—i.e., vessels.
- III. Scenario I: "Seizure of Superyacht"
- A. Akhmedov Divorce
 - B. Little Guy Does not Get Paid and Everyone Suffers
- IV. Scenario III: "Vessel Casualty"
- V. Important Considerations
- A. Admiralty jurisdiction
 - B. Vessel considerations
 - C. What Happens When Your Art Meets Admiralty Procedure
- VI. For more information, you may reach me at mov@chaloslaw.com or mov@miamimaritimelaw.co.



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Salty Impressionism: Art and the Sea

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Admiralty Jurisdiction

Found at 28 U.S.C. § 1333, which states:

- The District Court shall have original jurisdiction, exclusive of the courts of the States of any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled



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Maritime Tort Jurisdiction

- Triggered when there is an injury to a person or damage to property, occurring or relating to:
 - A vessel
 - In navigation
 - On navigable waters
 - During the course of a traditional maritime activity
 - With the potential for affecting maritime commerce.



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Applying Maritime Tort Test

- Vessel



These...



Not this...



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Applying Maritime Tort Test

- In navigation and on navigable waters



This...



Even this...

Not this...





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During the Course of a Maritime Activity



This—for sure



This—not so sure

- It is the activity of the tortfeasor, not the injured party, that controls the analysis



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With the Potential for Affecting Maritime Commerce

- *Sisson v. Ruby* test
 - More than “fanciful” risk of having a potentially disruptive impact on maritime commerce



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The Admiralty Extension Act

- The Act provides that admiralty jurisdiction shall extend to all cases of damage or injury to persons or property caused by a vessel on navigable waters, irrespective whether the injury occurred on the vessel or ashore.
- Think a fire on board a vessel that damages land-based structures.



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Supplemental Rule B

- Used to obtain in personam jurisdiction over an party
 - » If party fails to answer, they default
 - » Property gets sold



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Supplemental Rule C

- *In rem* proceeding
- Against the whole vessel and everything contained within it
- To release vessel from arrest, owner must post security



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Maritime Liens

- Exercised against vessel and its appurtenances
- This would arguably include its art if can be defined an appurtenance
- Even if not an appurtenance, the art will be “held hostage” by the arrest until secured or intervention undertaken



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Priority of Maritime Liens

1. Custodia legis—arrest costs
2. Seaman's wages
3. Salvage and general average liens
4. Maritime tort liens
5. Pre-mortgage maritime liens for necessities
6. Preferred ship mortgage liens
7. Necessaries
8. State created liens
9. Liens for penalties and forfeitures for violation of federal statutes
10. Preferred non-maritime liens
11. Attachment liens (Rule B)
12. Maritime liens in bankruptcy



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Supplemental Rule E

- This is the procedural framework for pursuing a Rule B or C action
- The one thing to remember in Rule E is that the local rules applying Rule E allow intervention as of right



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Supplemental Rule F

- Shipowner may seek to limit liability to the value of the vessel post-casualty
- Owners and part owners may seek remedy
- A vessel owner must petition federal court within 6 months seeking exoneration from or limitation of liability of a claim
- When filed, the court issues an injunction staying all other litigation regarding matter
- Huge litigation advantage to vessel owner



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Where Art and Admiralty Intersect

INSURANCE AND SECURITY





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Proper Paperwork





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Other Practical Concerns

- Too much light
- Install art in the right way
- Climate control
- Trust and verify specialists
- Consider where art is to be delivered for installation



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Scenario I: Divorce Leads to Seizure





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Scenario II: “The Little Guy”





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Scenario II: FLIBS





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Scenario III: Vessel Casualty





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Scenario III: A Cruise Ship





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Scenario III: Dali and Cruise Ships





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Things to Remember

- Admiralty Jurisdiction
- Vessel Considerations
- Art Meeting the Sea is Not for the Faint of Heart



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Questions?

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