

ARREST OF SHIP UNDER JAPANESE LAW

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I. Case Study under Japanese law

- 1. Cargo Interest can arrest the vessel attacked by piracy by Maritime Lien for Cargo Claim for cargo damage,**
- 2. in case the ship owner is proved to be negligent,**
- 3. and the vessel is put into Japanese territory,**
- 4. however, cannot do so on the ground of deviation.**

II. General Aspect of Arrest of Ships under Japanese law

1. Point of Difference with UK Law

- (1) Wider claims can obtain lien; e.g. bunker suppliers, GA contribution, salvors**
- (2) No Action-in-rem, but start of enforcement / court auction;
Not much time for defending**
- (3) No Admiralty Court – District Court (1st instance court) which is nearest to the relevant port or in 8 cities (e.g., Tokyo, Osaka, Nagoya etc.) has jurisdiction.**
- (3) Similar rules for Conflict of laws ; “lex fori” – the law where arrest is applied for governs the case.
However, in 2014, a Japanese court held the law where the claim arose (the place of bunkering) governs the case.**

II. General Aspect of Arrest of Ships under Japanese law

- 2. All documents must be translated into Japanese.**
- 3. Documents must show the claim actually arose; e.g., B/Ls, evidence of damage, receipt of bunker, contract of crews**
- 4. No security for arrest by maritime lien, but security is necessary for provisional attachment, which is given for every claims against ship owner**
- 5. It has been difficult to claim for wrongful arrest, which means the court blames another court which once issued the arrest order, however, recently some judgements are held for damage by wrongful arrest.**
- 6. Court auction starts about a few weeks after arrest.
The court invites bids for purchase of the vessel themselves without engaging brokers, and the bidder of highest price obtains ownership without any encumbrances automatically (but recognition by the flag country (?)) without any commission for the court.**

III. “MOL Comfort”

- 1. Under the tonnage limitation procedure based on London Convention in Tokyo District Court**
- 2. Procedure for fact finding is almost finished, claimants are to submit legal position.**
- 3. Another litigation between MOL and shipyard is pending, which is considered to affect whether the limitation is to be broken or not.**
- 4. No one knows when it is finished !**