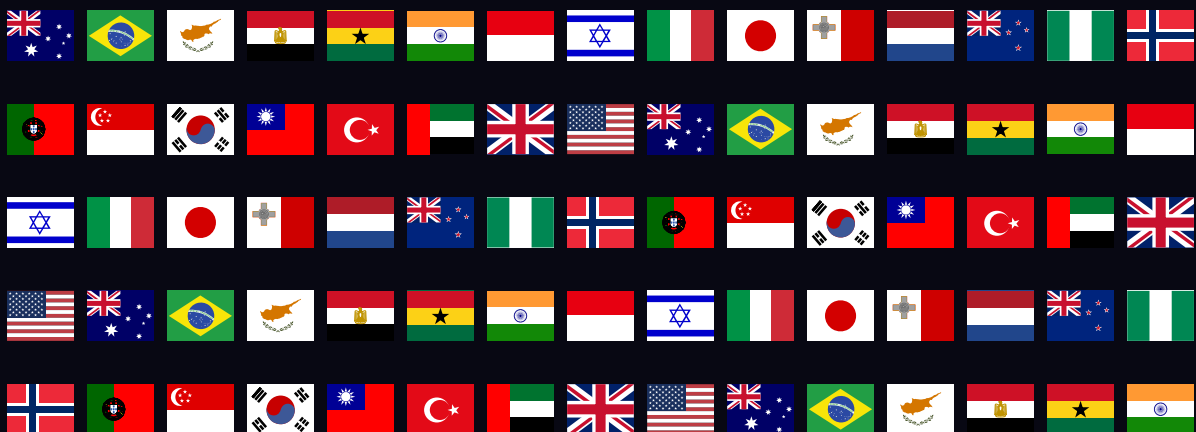


SHIPPING

Israel



Shipping

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into newbuilding contracts; ship registration and mortgages; limitation of liability; port state control; classification societies; collision, salvage, wreck removal and pollution; ship arrest; judicial sale of vessels, carriage of goods by sea and bills of lading; shipping emissions; ship recycling; jurisdiction and dispute resolution; international conventions; and recent trends.

Generated 26 June 2023

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NEWBUILDING CONTRACTS

Transfer of title

When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

The civil shipbuilding industry in Israel is not extensive. Transfer of title in a shipbuilding contract will pass in accordance with the contractual terms. Contractual freedom is safeguarded in Israel and governed by the Israeli Contracts (General Part) Law 1973 and the Contracts (Remedies for Breach of Contract) Law 1970. The usual position regarding the transfer of title in sale of goods cases is that title passes upon delivery and this will also be the position in shipbuilding contracts, even if the newbuilding has been financed by instalments; see section 33 of the Sale Law 1968, which provides that ownership of the object sold passes to the buyer upon its delivery, unless the parties agreed upon some other time or manner for the transfer of ownership. At the same time it should be noted that the nature of a shipbuilding contract (ie, whether it should be regarded as a pure contract for the sale of goods or a contract having the elements of a construction contract has not yet been decided by the Israeli courts), albeit it is likely that the Israeli courts would accept the rationale behind the two leading English House of Lords decisions in Hyundai Heavy Industries Co v Papadopoulos and Others (1980) and Stocznia Gdanska SA v Latvian Shipping Co, Latreefer Inc and Others (1998) that a shipbuilding contract is also a contract to build, launch, equip, deliver and sell a vessel.

Thus, the courts would recognise the validity of a contractual provision whereby conditional title passes to the buyer in the course of construction, with the buyer entitled to reject the vessel and rescind the contract in the event that the vessel does not meet contractual terms with the result that title would revert to the builder.

Law stated - 22 March 2022

Refund guarantee

What formalities need to be complied with for the refund guarantee to be valid?

The refund guarantee, being issued by the builder's bank, need not be registered to be valid, nor are there foreign currency regulations that would prevent execution of the guarantee. Guarantees issued by non-financial institutions would potentially have to be registered with the Registrar of Companies before they would become enforceable.

Law stated - 22 March 2022

Court-ordered delivery

Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

Under sections 2 and 3 of the Contracts Law (Remedies for Breach of Contract) 1970, a party injured by a breach of contract is entitled to the remedy of specific performance. Section 2 of the Law provides that the main remedies available to a party injured by a breach of contract are specific performance, termination and damages. Section 3 states that specific performance is subject to limited exceptions, among them impossibility of performance. The Israeli courts have moved away from the traditional approach whereby specific performance is to be considered a secondary remedy and instead take the view that enforcement of a contract is the desirable outcome in light of the obligatory nature of contracts. The result is that the above exceptions are narrowly construed. This judicial policy will also apply to the grant of specific performance in cases where builders breach shipbuilding contracts by wrongfully failing to make delivery.

Defects

Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

Defects in vessels could potentially give rise to claims in contract or in tort. Issues of non-conformity are governed by the Sale Law 1968. Section 13 of the Law provides that the buyer is under an obligation to examine the thing sold immediately after its receipt. Section 14 states that the buyer will notify the seller of any non-conformity immediately after examination or upon discovery of the non-conformity, whichever is earlier. If no notice is given, the buyer may not rely on it, save in the case of latent non-conformity which was not discoverable upon reasonable examination. Under section 15 of the Law, in the case of sale of movable property (such as a vessel) the buyer is not entitled to rescind the contract if notice is given more than two years after delivery and is not entitled to other remedies for breach of contract if notice is given more than four years after delivery. These limitation periods do not apply in cases of concealment of the non-conformity.

An alternative cause of action could lie in tort under either the Civil Wrongs Ordinance or the Defective Products Law to the extent that the defect has caused personal injury. To succeed in a negligence action, the buyer would have to show the existence of a duty of care, breach of the duty by the builder and a causal connection between the breach the resultant damage. Under the Defective Products Law, there is no need to prove negligence on the part of the manufacturer, a plaintiff need show only that the product was defective and that the injury was caused by the manufacturing defect. A product is considered defective if the circumstances of the case are more consistent with that conclusion than with the conclusion that it was not. The Consumer Protection Law also provides, inter alia, that a dealer should disclose to the consumer any defect or quality inferiority that materially diminishes the value of the product.

Law stated - 22 March 2022

SHIP REGISTRATION AND MORTGAGES**Eligibility for registration**

What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

A vessel owned by the State of Israel, an Israeli citizen or a company registered in Israel or owned by a foreign company, where more than 50 per cent of the shares in the vessel are owned by an Israeli citizen, must be registered in the Israeli vessel registry. Israeli law allows the registration of a vessel, less than 50 per cent of which is Israeli-owned, to register in Israel, upon making a special request to the Minister of Transport. Similarly, where more than 50 per cent of a vessel is Israeli-owned, the owner may apply to the Minister of Transport for permission not to register the vessel.

The Shipping (Foreign Vessel Under Control by Israeli Interests) Law 2005 provides that any vessel that is not eligible for registration in the Israeli Ship Register in accordance with the relevant Israeli shipping laws, but is controlled by Israeli interests (as statutorily defined) must be registered in Israel in a registry book, known as the Secondary Register (or the Grey Register), regardless of its ownership registration in a foreign registry.

A vessel under construction in Israel or abroad that complies with the above regulations may be registered in Israel.

Law stated - 22 March 2022

Who may apply to register a ship in your jurisdiction?

Israeli nationals, Israeli residents and corporations incorporated in Israel, but excluding foreign corporations registered as such under the relevant provisions of the Companies Law 1999 that has control over a foreign registered vessel, may apply to register a vessel in the Israeli Registry.

Law stated - 22 March 2022

Documentary requirements

What are the documentary requirements for registration?

In order to register a vessel in the Israeli Register, an owner must provide the registrar with a builder's certificate or bill of sale plus certificate of deletion of the vessel from the prior registry (in the case of a second-hand ship) as well as proof that the vessel is free from registered encumbrances. In the case of a vessel subject to a mortgage or charge, the owner must produce the consent of the mortgagee or chargee to register the vessel in Israel.

Law stated - 22 March 2022

Dual registration

Is dual registration and flagging out possible and what is the procedure?

Dual registration is not permitted, except in the case of foreign vessels controlled by Israeli interests. Thus, the Shipping (Foreign Vessel Under Control by Israeli Interests) Law 2005 provides that any vessel that is not eligible for registration in the Israeli Ship Register in accordance with the relevant Israeli shipping laws, but is controlled by Israeli interests (as statutorily defined) must be registered in Israel in a registry book, known as the Secondary Register (or the Grey Register), regardless of its ownership registration in a foreign registry.

Under Israeli law flagging out is not possible as all Israeli vessels must be registered, using the same process without distinction as to the size or purpose of the vessel concerned, albeit details of small boats of less than seven metres in length are maintained in a separate small boats' registry. Vessels under construction in Israel or abroad may also be registered in certain circumstances. Separate registries are kept for each port.

Law stated - 22 March 2022

Mortgage register

Who maintains the register of mortgages and what information does it contain?

The Mortgage Register is maintained by the Registrar of Vessels. The process of registration of the mortgage is initiated with the submission of a simple commercial financing instrument, setting out the degree of the mortgage and conditions for repayment. The parties must appear personally before the Registrar at the same time, complete a mortgage deed and sign it before the Registrar. The Registrar will assign a mortgage number, which is subsequently recognised as the mortgage on the vessel (this number will appear on the mortgage deed and all other deeds relating to this mortgage). If the ship owner is a company or corporation, the company or its representatives must also provide the Registrar with the minutes of the corporate management meeting, stating explicitly that a legal quorum of members has resolved to register the lien or mortgage in the Mortgage Register.

Law stated - 22 March 2022

LIMITATION OF LIABILITY

Regime

What limitation regime applies? What claims can be limited? Which parties can limit their liability?

The Israeli Shipping Law (Limitation on a Ship-Owner's Liability) 1965 adopts the International Convention relating to the liability of Owners of Sea-Going Ships (Brussels, 10 October 1957).

As Israel has not ratified the LLMC 1976, no limitation is available for those claims introduced by the LLMC 1976 and not found in the 1957 Convention.

Accordingly, the types of claims subject to limitation of liability are those set out in articles 1(a), 1(b) and 1(c) of the 1957 Convention. The claims that are not subject to limitation of liability are as set out in article 1(4) of the 1957 Convention.

Pursuant to the terms of the 1957 Convention, the right of limitation is granted to a broad class of individuals and entities including charterers, managers and operators of seagoing vessels, as well as masters and members of the crew acting in the course and scope of their employment.

The Israel Shipping (Limitation on a Ship-Owner's Liability) (Amendment) Law 1987 amended the 1965 Law previously referred to by adopting the 1979 Protocol and replacing Gold Francs with Special Drawing Rights (SDR). Pursuant to the 1979 Protocol, the limitations of liability applicable in Israel are SDR 66.67 per tonne for cargo claims and SDR 206.67 per tonne for personal claims.

It should be noted that the Shipping (Limitation on a Ship-Owner's Liability) (Amendment) Bill, 2015 proposes that Israel adopt the 1976 Convention, together with the Protocols of 1996 and 2012. The proposed law intends to allow salvors to limit their liability.

Law stated - 22 March 2022

Procedure

What is the procedure for establishing limitation?

Ship owners can apply to the Admiralty Court to establish a Limitation Fund, calculated as set out in the 1957 Convention on Limitation of Liability for Maritime Claims. The court will give orders as to the ship owner's deposit and the manner in which notices will be published to creditors.

It should be noted that the Israeli courts accept the deposit of funds in Israeli currency, in a sum determined by the court. However, parties will often agree on the provision of local bank guarantees. The Israeli Admiralty Court has accepted letters of undertaking issued by P&I Clubs as security for the release of vessels from arrest and it is likely that they would also accept letters of undertaking issued by P&I Clubs in lieu of arrest.

Once a fund is constituted, claims by local creditors must be filed within 30 days. Foreign creditors are given 60 days to file their claims.

According to section 9(a) of the Law, constitution of a fund creates a bar to other actions.

Law stated - 22 March 2022

Break of limitation

In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

In view of the fact that Israel is a signatory to the International Convention relating to the liability of Owners of Sea-Going of 1957, article 1 of that convention applies, to the effect that ship owners may limit their liability 'unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner'. In view of the fact that the creation of a limitation fund often provides an incentive for settling the underlying dispute, the Israeli courts have not had occasion to discuss in depth the legal tests for breaking a limitation fund.

Law stated - 22 March 2022

Passenger and luggage claims

What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

Israel has not adopted the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and there is no Israeli legislation relating to passenger rights or creating limitation regimes in respect of passenger claims, albeit the death or personal injury of a passenger gives rise to a statutory lien on a vessel by virtue of section 41(6) of the Shipping (Vessels) Law 1960. It is doubtful whether the Israeli courts would recognise the validity of contractual limitations of liability in personal injury cases, including in cases governed by foreign law.

Law stated - 22 March 2022

PORT STATE CONTROL

Authorities

Which body is the port state control agency? Under what authority does it operate?

The Israel Ministry of Transport has established the Shipping and Ports Administration (SPA) to regulate all activities relating to Israel's maritime activities. The SPA is responsible for the safety of Israeli shipping.

Port Regulations provide very detailed regulations relating to the conduct of vessels, safety, and order in the Israel ports. The State of Israel implemented the Port State Control (PSC) inspection system in 1997, in accordance with International Maritime Organization (IMO) and International Labour Organization (ILO) resolutions.

PSC inspections are conducted to ensure that foreign vessels calling at Israeli ports comply with international regulations and conventions. The SPA is responsible for all PSC activities, and aims to inspect each and every tanker and passenger ship arriving at Israeli ports, as well as 25 per cent of the container ships and general cargo ships, with an emphasis on bulk carriers.

Law stated - 22 March 2022

Sanctions

What sanctions may the port state control inspector impose?

Pursuant to the Ports (Shipping Safety) Regulations 1982, the Port State Inspector may order the renewed inspection of a vessel found to be deficient and order the detainment of foreign vessels found to be unseaworthy. The Inspector may also refuse to allow a foreign vessel entry to Israeli territorial waters if to do so would be considered unsafe to shipping, the environment or an individual.

Appeal

What is the appeal process against detention orders or fines?

A ship owner or master may file an appeal against a port inspector's decision regarding unseaworthiness or detention to the head of the Shipping and Ports Administration. The latter is required to make a decision on the appeal within 24 hours. The owner or master may also file an administrative petition to the District Court in accordance with the provisions of administrative law.

Law stated - 22 March 2022

CLASSIFICATION SOCIETIES

Approved classification societies

Which are the approved classification societies?

It should be noted that for the purpose of confirming the safety of containers under the Ports (Container Safety) Regulations – 1982, a recognised association includes, inter alia, the following classification societies (apart from the Israel Standards Institute): American Bureau of Shipping (ABS); Bureau Veritas (BV); DNV GL; Lloyd's Register of Shipping (LR); Nippon Kaiji Kyokai (NKK); and Registro Italiano Navale (RINA).

Law stated - 22 March 2022

Liability

In what circumstances can a classification society be held liable, if at all?

To date, the Israeli courts have not had occasion to consider the liability of a classification society.

Law stated - 22 March 2022

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

Can the state or local authority order wreck removal?

The Ports Ordinance 1971 provides that the Israel Ports Company may demand that owners remove a vessel that has been lost or abandoned in Israeli waters where that vessel poses a danger to navigation or docking.

It should be noted that the Wrecks and Salvage Fees Ordinance 1926 provides 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 in the case of dispute.

Law stated - 22 March 2022

International conventions

Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

Israel has ratified the International Regulations for Preventing Collisions at Sea 1972 (COLREG 72) and incorporated them into Israeli law via the Ports (Preventing Collisions at Sea) Regulations 1972.

Israel is not a party to the Salvage Convention 1989.

Section 41(7) of the Shipping (Vessels) Law 1960 creates a statutory lien for damages resulting from collisions or damage caused by the vessel to port installations, buildings and dry docks, as well as loss or damage to cargo and to passengers' personal effects.

Israel is a party to the following International Conventions relating to pollution:

- the International Convention for the Prevention of Pollution from Ships, 1973 as modified by Protocol 1978 (MARPOL 73/78);
- Protocol to the International Convention on Civil Liability for Oil Pollution Damage, (CLC PROT 1992);
- Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (FUND PROT 92);
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 as amended (OPRC 1990); and
- Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean 1995.

Local legislation relating to pollution includes:

- Prevention of Sea-Water Pollution by Oil Ordinance [New Version] 1980;
- Regulations for the Prevention of Sea-Water Pollution by Oil (Guarantee for Fine Payments and Cleaning Expenses) 1983; and
- Regulations for the Prevention of Sea-Water Pollution by Oil (Marine Environment Protection Fee) 1983.

The Prevention of Sea-Water Pollution by Oil Ordinance applies to Israeli territorial waters and inland waters and its provisions may be applied to non-Israeli vessels outside Israeli territorial waters which threaten to pollute Israeli territorial waters. The Ordinance specifies actions to be taken in the case of oil discharges and creates a fund for the Prevention of Sea-Water Pollution with the goal of creating financial resources for the fight against and prevention of pollution of sea water and the seashore and for their cleansing and inspection. In cases of discharge of oil into the sea, the Minister of Transport may, by notice, request the owner of the vessel to take specified measures aimed at preventing, stopping or reducing the discharge. A 'marine environment protection fee' may be imposed on owners or operators of vessels, as well as on owners or operators of installations on land or at sea from which oil might be discharged or allowed to escape into the sea. The Ordinance and regulations provide for offences, fines and penalties as well as legal and procedural matters, and indeed in recent years there have been cases where the Ministry of the Environment has enforced the Prevention of Sea-Water Pollution by Oil regulations by bringing criminal charges against infringing owners.

After considerable delay, in January 2022, the Knesset's Economic Committee finally approved Ministry of Transport Regulations designed to protect the marine environment, by drastically reducing the amount of organic and non-organic sewage dumped by vessels at sea. The regulations give effect to the International Convention for the Prevention of

Pollution from Ships (MARPOL) 1973, Annex IV. The new regulations provide for the removal of waste stored in the vessels while in port, and sanctions for infringement.

Law stated - 22 March 2022

Salvage

Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no mandatory form of salvage agreement operating in Israel and the Lloyd's standard form agreement is frequently seen and enforced. Salvage services may be performed by professional or non-professional salvors and insofar as the services are offered wholly or in part in Israeli waters their fees are guaranteed under the Wrecks and Salvage Fees Ordinance 1926.

Law stated - 22 March 2022

SHIP ARREST

International conventions

Which international convention regarding the arrest of ships is in force in your jurisdiction?

Israel is not a party to either the 1952 or the 1999 Arrest Conventions.

Law stated - 22 March 2022

Claims

In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

The Admiralty Court in Israel has jurisdiction to arrest a vessel insofar as the claim falls either within the scope of the Colonial Courts of Admiralty Acts 1840-1861, a relic from the time of the British Mandate which now form part of Israeli domestic law, or is the subject of a statutory right of action in rem under the Shipping (Vessels) Law 1960. Thus, under the Courts of Admiralty Acts, the Admiralty Court may order the arrest of a vessel, inter alia, in respect of a claim concerning title or ownership of a vessel, salvage, towage, services rendered to a vessel, damage done by any ship, necessities supplied to a ship, building, equipping or repairing a ship, or damage to goods imported to Israel under a bill of lading. Additionally, the Admiralty Court can order the arrest of a vessel for a claim giving rise to a statutory lien under the Shipping (Vessels) Law 1960, including, for example, damages for personal injuries to passengers, crew wages and mortgages.

The Israeli Admiralty Court has no jurisdiction to order the arrest of a sister ship or associate ship. This was recently reconfirmed in the case of M/V Huriye Ana. A ship can be arrested in respect of an obligation of a bareboat charterer; however, there is no jurisdiction to arrest a time-chartered vessel for a claim against a time charterer in the absence of personal liability of the owner as well.

Nonetheless, within the context of a civil suit against the ship-owner as opposed to admiralty proceedings, the court may order the corporate veil to be lifted and consequently the attachment of sister ships or vessels owned by affiliated companies. Attachment orders in civil proceedings are comparable to arrest orders except in so far as they require the

provision of collateral security.

Law stated - 22 March 2022

Maritime liens

Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

The Israeli Shipping (Vessels) Law 1960 sets out the maritime liens which give allow the Court to exercise its jurisdiction to order the arrest of a vessel. This law widens and elaborates on the Admiralty Court's jurisdiction as established by the Colonial Courts of Admiralty Acts.

Section 40 establishes the existence of maritime liens against the vessel and also creates maritime liens on the freight due and the ancillary rights stated in section 43. Section 41 determines the liens on the freight due and the ancillary rights stated in section 43. Section 41 determines the liens and their priorities, as follows :

1. the official expenses of selling a vessel pursuant to a judicial sale;
2. port and port related charges and expenses;
3. the costs of preserving a vessel pending judicial sale;
4. payments due to the master and crew including damages for personal injury;
5. salvage expenses relating to the vessel, its cargo and equipment on board and expenses incurred in saving the lives of the crew and passengers;
6. damages for personal injuries to passengers;
7. damages resulting from collisions or damage caused by the vessel to port installations and buildings, dry docks, and loss or damage to cargo and to passengers personal effects;
8. mortgages – no distinction is drawn between a local or foreign registered mortgage; and
9. necessities.

Section 43 extends the maritime liens to include unpaid damages due to the ship owner for damage caused to the vessel or for loss of freight and for amounts due to the ship owner under general average or for amounts due to the ship owner for salvage services rendered by the vessel.

Law stated - 22 March 2022

Wrongful arrest

What is the test for wrongful arrest?

There is no decisive authority in the Admiralty Court regarding the definition of wrongful arrest or the amount of damages due in such cases. A party seeking an interim remedy (such as an attachment or order of arrest) may potentially be liable in tort if they have acted unreasonably or maliciously (CA 732/80 Arens v Bet-El , where the Supreme Court considered the applicant's duty to present the court with the full factual basis).

Alternatively, in the relatively unusual case that the Admiralty Court has required a guarantee to be put up at the time of arrest, that guarantee could be forfeit in the appropriate circumstances should bad faith be shown. Failure of the claim, per se, would not usually give rise to a successful claim for wrongful arrest.

Law stated - 22 March 2022

Bunker suppliers

Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

A supplier cannot arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel. While there is no statutory requirement in Israel that owners be personally liable in order for a right in rem to arise, recent case law suggests that the Admiralty Court will not enforce a maritime lien in the absence of personal liability on the part of the owner (ALA 851/99 M/V Ellen Hudig (2004)). Similarly, in CF 45897-02-12 M/V Emmanuel Tomasos (2014) the actual bunker supplier's claim was denied on the ground that only the contractual supplier who had contracted with the owners could be a creditor under the necessities' lien. Likewise, in AF 24399-05-15 M/V Nissos Rodos (2016) it was held that the local agent who had been nominated by the operator of the vessel, and paid the port dues for the numerous calls of the vessel at Haifa Port, was not entitled to enforce a maritime lien for 'port dues of any kind . . . paid by a third party' on the ground that the agent had no agreement with the owners and that therefore the owner was not personally liable to pay the agent.

Again, in AF 22358-02-14 M/V Captain Harry (2016), a supplier's claim was dismissed due to a lack of owner's liability; nonetheless, the Admiralty Court noted that there were different types of maritime liens and that, for example, the maritime lien for salvage existed, even if the owners were not liable for the circumstances leading to the salvage event.

Law stated - 22 March 2022

Security

Will the arresting party have to provide security and in what form and amount?

Other than in exceptional circumstances, an arresting party usually will not have to provide security prior to being granted an order of arrest. In ALA 201/ 93 Fullwood Marinated Inc v Lofobunker Co SA (The Arctic Hunter), it was held that such exceptional circumstances might arise where the application for arrest is based on documents of doubtful veracity. This is in contrast to the comparable order of attachment in civil proceedings, where the court will order security to be put up, usually in the form of a personal letter of undertaking as well as a letter of undertaking by a suitable financial institution undertaking to reimburse the defendant should the application be set aside and/or the claim be dismissed on the merits causing the defendant to incur a loss. The court may exempt the claimant from providing the third-party LOU where it is deemed just and proper to do so. The court has discretion to determine the amount of the LOU after balancing the interests and competing rights of the parties.

Law stated - 22 March 2022

How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

The court may agree that the arrested vessel be released upon the provision of suitable security. Such security usually takes the form of a P&I letter of undertaking, or Israeli bank guarantee with the amount of the security agreed following negotiations between the parties and usually equal to the value of the claim. The security will generally not exceed the value of the ship.

Law stated - 22 March 2022

Formalities

What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

A party wishing to appoint a lawyer to make an arrest application must provide the attorney with a power of attorney to act. While not a strict requirement, it is advisable to support an ex parte application with an affidavit setting out the facts. These documents need not be notarised although they should be authenticated by an attorney in accordance with Israeli rules of evidence. Israel is a signatory of the Apostille Convention; however, it is not necessary to notarise and apostille documents prior to submitting them in evidence. Scanned documents suffice in view of the fact that documents are filed in court electronically using a dedicated program. Original documents will only be required if an issue arises between the parties as to the authenticity of a document. Generally, preparation of an arrest application takes a number of hours, depending on the availability of evidence. Translations are not required where documents are in English.

Law stated - 22 March 2022

Ship maintenance

Who is responsible for the maintenance of the vessel while under arrest?

The owners will be responsible for the vessel's maintenance insofar as they file a notice of appearance in the claim in rem within the appropriate time limit. In the event that no such notice is filed and the claimant applies for the appointment of a liquidator or receiver, the Admiralty Court may grant such an application and the liquidator or receiver will then become responsible for the maintenance of the vessel until she is sold at judicial auction.

Law stated - 22 March 2022

Proceedings on the merits

Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

The Admiralty Court has jurisdiction to order the arrest or attachment of a vessel as security for foreign judicial or arbitral proceedings, upon provision of prima facie evidence that the ship-owner will not be in a position to satisfy a judgment or arbitral award. Moreover, interim relief in the form of ship arrest or temporary attachment may be obtained before the foreign arbitration proceedings have been initiated (CA 102/88 Silver Goose Delicatessen Ltd v Cent or S.A.R.L.).

Law stated - 22 March 2022

Injunctions and other forms of attachment

Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Apart from in rem proceedings, a vessel or other asset may be attached in ordinary civil proceedings. The Admiralty Court may also grant other forms of injunction available under the Israeli Rules of Civil Procedure to the extent that

plaintiffs are able to prove that these are necessary to secure their claim.

Law stated - 22 March 2022

Delivery up and preservation orders

Are orders for delivery up or preservation of evidence or property available?

The court may grant an order to deliver up or preserve evidence, but this is a fairly uncommon measure. More common is an order allowing a witness statement to be taken from the master or crew or orders enabling court-appointed surveyors to examine the vessel and documents on board.

Law stated - 22 March 2022

Bunker arrest and attachment

Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

An order of arrest made by the Admiralty Court will usually apply to the vessel, her freight and bunkers. Similarly, it is possible to obtain an order of attachment against bunkers in the same way as any other chattel, subject, of course, to the applicable rules of retention of title.

Law stated - 22 March 2022

JUDICIAL SALE OF VESSELS

Eligible applicants

Who can apply for judicial sale of an arrested vessel?

An application for the judicial sale of a vessel is usually made by the claimant and will follow judgment entered against the vessel or ship owner. Such an application is generally made upon it becoming apparent that the owner is unable to pay the judgment sum. Occasionally, however, a sale order will be made on the application of an interested party, when the vessel deteriorates in value and there are outstanding or increasing debts, for example, for crew payments and suppliers. In such a case, the sale will precede the judgment and the fund will be held in court in lieu of the res, subject to the priorities listed in section 41 of the Shipping (Vessels) Law 1960.

Law stated - 22 March 2022

Procedure

What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

The procedure for judicial sale of a vessel is set out in the Vice Admiralty Rules 1883. Under these provisions, in the event that no Notice of Appearance is filed on behalf of the shipowner within seven days after service of the writ of summons, or where owners fail to maintain the arrested vessel, the Admiralty Court may order the judicial sale of the vessel. Such sales are usually handled by a receiver appointed by the court and are carried out by public auction although the court will, in rare circumstances, order the vessel to be sold by private contract. A judicial sale will usually

be completed within a time period of 30–45 days as of the date of the sale order. The court costs will vary from case to case and consist of disbursements and the court-appointed receiver's fees determined in accordance with regulations applicable to appointed office-holders' fees.

Law stated - 22 March 2022

Claim priority

What is the order of priority of claims against the proceeds of sale?

Priorities are set out in section 41 of the Shipping (Vessels) Law 1960. All the maritime liens set out in section 41, except necessities, rank higher than the statutory right in rem granted by a mortgage. The first debt which will be paid by the sale proceeds are the expenses incurred in the judicial sale, followed by port dues and fees and then the costs of guarding and maintaining the vessel until her sale. Next on the list of priorities are the master and crew's wages, followed by salvage and general average, death and personal injuries on board, collision and property damage claims, necessities and mortgages.

Law stated - 22 March 2022

Legal effects

What are the legal effects or consequences of judicial sale of a vessel?

Judicial sale will have the effect of extinguishing all prior liens, including maritime liens, and thereby giving the purchaser clean title.

Law stated - 22 March 2022

Foreign sales

Will judicial sale of a vessel in a foreign jurisdiction be recognised?

The recognition of foreign judgments in Israel is mainly regulated in the Foreign Judgment Enforcement Law. Once a foreign judgment, including an order of sale by a competent court, is declared to be enforceable, it has the same validity as an Israeli judgment for the purposes of execution.

Law stated - 22 March 2022

International conventions

Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

The State of Israel is not a party to the above convention.

Law stated - 22 March 2022

CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

International conventions

Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

Israel has adopted the Hague-Visby Rules, by virtue of the Carriage of Goods by Sea Ordinance 1926, as amended in 1992. Israel is not a party to the Hamburg Rules or Rotterdam Rules.

For the purpose of the Hague-Visby Rules, carriage at sea begins when the goods are loaded onto the vessel and ends when they are discharged from the vessel.

Law stated - 22 March 2022

Multimodal carriage

Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

Israel has not adopted any conventions or local laws specifically relating to combined transport.

Law stated - 22 March 2022

Title to sue

Who has title to sue on a bill of lading?

The consignee has title to sue under a bill of lading.

Law stated - 22 March 2022

Charter parties

To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

Clauses of the charter party that are reproduced in the bill of lading, and that have been accepted by the holder of the bill of lading are considered binding; mere reference to a charterparty clause may not be considered sufficient, albeit the issue will be one of construction in each case.

However, a charterparty jurisdiction or arbitration clause incorporated into a bill of lading held by a third party will in most circumstances be considered binding.

Law stated - 22 March 2022

Demise and identity of carrier clauses

Is the 'demise' clause or identity of carrier clause recognised and binding?

It is a question of construction in each case whether the 'demise' clause and 'identity of carrier' clause will be recognised by the court. They will not automatically be binding.

Law stated - 22 March 2022

Shipowner liability and defences

Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

The Israeli courts have not yet had occasion to consider the issue of shipowners' liability under charterers' bills of lading where the owner is not stated to be the contractual carrier (ie, where no reference is made to the owner as carrier). It is likely that the owners' liability will depend on circumstances extraneous to the bill of lading.

Law stated - 22 March 2022

Deviation from route

What is the effect of deviation from a vessel's route on contractual defences?

Pursuant to article IV Rule 4 of the Hague-Visby Rules, any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be a breach of the contract of carriage, and the carrier will not be liable for any ensuing loss or damage. An unjustified deviation may be considered a breach of the contract of carriage and would preclude the carrier from relying on any exclusion clause limiting his or her liability.

Law stated - 22 March 2022

Liens

What liens can be exercised?

The Shipping (Vessels) Law 1960 provides a list of maritime liens that can be exercised on the vessel, cargo and freight. In addition, the Israeli courts will recognise possessory liens, floating charges and other contractual liens set out in charter parties and bills of lading. Nonetheless, the Admiralty Court has rejected its jurisdiction to order the arrest of a vessel on the basis of a contractual lien only.

Law stated - 22 March 2022

Delivery without bill of lading

What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

Delivery without the production of a bill of lading may result in the carrier becoming liable for any ensuing loss. This difficulty is usually overcome by the consignee presenting a letter of indemnity to indemnify the carrier for such loss.

The courts have not yet considered the validity of such LOIs.

Law stated - 22 March 2022

Shipper responsibilities and liabilities

What are the responsibilities and liabilities of the shipper?

The shipper's duties are as set out in article 111(5) of the Hague Visby Rules, namely to properly mark, number, quantify and weigh the goods as well as indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. In addition, the shipper will have the responsibilities and liabilities arising from the sale contract with third parties.

Law stated - 22 March 2022

SHIPPING EMISSIONS

Emission control areas

Is there an emission control area (ECA) in force in your domestic territorial waters?

Israel has not yet established ECAs in its territorial waters, although domestic regulation does control air and marine pollution.

Law stated - 22 March 2022

Sulphur cap

What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

The Shipping and Ports Authority, in collaboration with the Ministry of Environmental Protection has drafted regulations to prevent air pollution from vessels. These regulations, first published in 2019, have not yet been signed into force.

The draft regulations are in compliance with (and even more stringent than) the requirements in IMO 2020, the term used to describe the implementation of the Regulations to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL). IMO 2020 aims to improve air quality and to protect the environment by reducing sulphur oxide produced by ships. Israel will only be able to ratify Annex 6 after the regulations take effect. Once in effect, ships entering Israeli territorial waters and Israeli registered ships will be required to use fuel oils with a sulphur content of 0.5 per cent m/m or lower; an approved equivalent means of compliance such as exhaust gas cleaning systems (EGCS) commonly referred to as 'scrubbers'; or non-fuel oil alternatives such as switching to liquefied natural gas (LNG) as fuel.

A 2016 task force funded by the Ministry of Environmental Protection recommended a number of measures to reduce pollution in the marine sector at both the Haifa and Ashdod ports.

Law stated - 22 March 2022

SHIP RECYCLING

Regulation and facilities

What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

Not applicable.

Law stated - 22 March 2022

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

Which courts exercise jurisdiction over maritime disputes?

The Admiralty Court seated in Haifa has exclusive jurisdiction to hear cases in rem and also hears cases in personam. The jurisdiction is still being exercised in virtue of the British Admiralty Courts Acts of 1840 and 1861 with the proviso that said jurisdiction does not exceed that exercised by the High Court in England in 1890.

Law stated - 22 March 2022

Service of proceedings

In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

Procedure in the Admiralty Court is governed by the Vice Admiralty Rules 1883, and in the event of lacuna by the Israeli Rules of Civil Procedure 2018. Service on a defendant located outside the jurisdiction requires leave of the court.

Law stated - 22 March 2022

Arbitration

Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

There are no domestic arbitral tribunals operating in Israel specialising in maritime arbitrations.

Law stated - 22 March 2022

Foreign judgments and arbitral awards

What rules govern recognition and enforcement of foreign judgments and arbitral awards?

Israel is a party to the 1958 New York Convention on the Enforcement and Ratification of Foreign Arbitral Awards, which provides for the stay of judicial proceedings in the case of a foreign arbitration agreement, unless the court finds that the agreement is null and void, inoperative or incapable of being performed.

Section 29 of the Israeli Arbitration Law 1968 provides that matters regarding enforcement or cancellation of an arbitration award governed by an international convention to which Israel is a party will be dealt with according to the provisions of that convention. As a result, a court considering the ratification of a foreign arbitral award would consider

matters such as whether recognition and enforcement of the award is consistent with Israeli public policy.

Law stated - 22 March 2022

Asymmetric agreements

Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

Courts will recognise the validity of asymmetric jurisdiction and arbitration agreements, subject, of course, to the rules applicable to the construction of such clauses.

Law stated - 22 March 2022

Breach of jurisdiction clause

What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

The Israeli court will not accept jurisdiction to stay proceedings initiated abroad.

Law stated - 22 March 2022

What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

The court may order the Israeli claim to be stayed within the framework of an application for an anti-suit injunction, after considering various issues such as whether the foreign jurisdiction clause is exclusive, delay and forum non conveniens.

Law stated - 22 March 2022

LIMITATION PERIODS FOR LIABILITY

Time limits

What time limits apply to claims? Is it possible to extend the time limit by agreement?

As a general rule, claims not relating to land are subject to limitation periods of seven years. Certain specific laws provide for shorter periods. The statute of limitations begins to run on the date the cause of action accrues, with a number of exceptions, such as in cases of fraud or where the damage was unknown to the claimant. Time limits may be extended by agreement in non-land cases, this is most often seen in insurance cases where the time limit for submitting a claim is often three years. Cargo claims are subject to the 12-month limitation under the Hague-Visby Rules and maritime liens are subject to three-year limitation periods.

Law stated - 22 March 2022

Court-ordered extension

May courts or arbitral tribunals extend the time limits?

Courts and arbitral tribunals do not have power to extend time limits in the absence of the parties' agreement.

MISCELLANEOUS

Maritime Labour Convention

How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

As of 2019, Israel has ratified 49 International Labor Organization Conventions and one Protocol, among them all eight Fundamental Conventions. The Technical Conventions include the Placing of Seamen Convention, 1920 (No. 9); Paid Vacations (Seafarers) Convention (Revised) 1949 (No. 91); C092 – Accommodation of Crews Convention (Revised), 1949 (No. 92); C133 – Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133); C134 – Prevention of Accidents (Seafarers) Convention, 1970 (No. 134); C147 – Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

Israel is not a member of the Maritime Labor Convention 2006; however, the Israel Ports Administration is working with the Ministry of Transport on plans to allow its adoption.

Law stated - 22 March 2022

Relief from contractual obligations

Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

According to Israeli law, a contract will not be considered to have been frustrated merely because the contractual obligations are more onerous to perform. The test for frustration is set out in section 18 of the Contracts (Remedies for Breach of Contract) Law 1970, the principal requirement being that the frustrating event could not have been anticipated. The Israeli courts tend to construe this defence very narrowly, even holding that 'hostilities' or omissions in government activities preventing the issue of permits, are not a frustrating event in view of the fact that they are foreseeable.

Law stated - 22 March 2022

Other noteworthy points

Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

Not applicable.

Law stated - 22 March 2022

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?





The Supreme Court has issued two important judgments recently.

In the first, Civil Appeal 206/20 Teva Pharmaceutical Industries Ltd et al v T&M Goshen Security Services Ltd, the Supreme Court reversed the decision of the Tel Aviv District Court and set a new precedent with regard the ability of foreign (ie, not licensed in Israel) insurers, to file subrogation claims in Israeli courts. The Supreme Court ruled that a foreign insurer may file a direct subrogation claim or an indemnification claim against the third-party wrongdoer who caused the harmful event, as a result of which the insured incurred damages compensated by the foreign insurer. Consequently, Israeli licensing is not a prerequisite for subrogation rights under Israeli law. It is sufficient for a foreign insurer to prove a contractual obligation of the insurer towards the insured in accordance with a valid insurance policy; payment in accordance with the aforesaid obligation; and a third party that has a duty to compensate the insured for the relevant event. This overturns the previous situation under which foreign insurers could only submit subrogation claims by means of the insured (ie, that the insured would submit the claim against the third-party wrongdoer, in trust for the insurer).

In the second case, ALA 6493/21 Legaziel v R.S. Design Ltd , the Supreme Court held by a majority that an older judicial policy should be restored whereby a foreign jurisdiction clause will be interpreted in a literal and precise manner, contrary to the 'softer' approach according to which the jurisdiction clause does not apply save where it is express and clear. Moreover, in the appropriate circumstances, third parties will also be able to rely on these clauses.

Law stated - 22 March 2022

Jurisdictions

	Australia	Holding Redlich
	Brazil	Kincaid Mendes Vianna Advogados
	Cyprus	Chrysses Demetriades & Co LLC
	Egypt	Eldib Advocates
	Ghana	Kimathi & Partners Corporate Attorneys
	India	Phoenix Legal
	Indonesia	Budidjaja International Lawyers
	Israel	J.SPRINZAK Maritime Law Firm
	Italy	Studio Legale Mordiglia
	Japan	Okabe & Yamaguchi
	Malta	Dingli & Dingli Law Firm
	Netherlands	Van Steenderen MainportLawyers
	New Zealand	Hesketh Henry
	Nigeria	Creed & Brooks
	Norway	Advokatfirmaet BÅHR AS
	Portugal	Ana Cristina Pimentel & Associados Sociedade de Advogados SP RL
	Singapore	Haridass Ho & Partners
	South Korea	Cho & Lee
	Taiwan	Lee and Li Attorneys at Law
	Turkey	Cavus & Coskunsu Law Firm
	United Arab Emirates	Afridi & Angell
	United Kingdom	MFB Solicitors
	USA	Seward & Kissel LLP