

The in Rem Jurisdiction of the Israeli Maritime Court

The jurisdiction of the Israeli Maritime Court may be divided into two categories: *in rem* and *in personam*.

In *in personam* actions the court is requested to decide between the rights of one party against the other. The judgment will be binding only on the parties themselves.

In *in rem* actions the court deals with rights in relation to the subject matter (what we call res) – usually the vessel involved in the litigation. The outcome will be binding on all those who may be concerned, irrespective of whether or not they had been parties to the original litigation.

The jurisdiction of the Maritime Court is the most outstanding example of the *in rem* jurisdiction in the Israeli legal system.

Before Israel became a state, it was under the British Mandate, under British possession. The British brought in their rules, laws and legal system. The basis for the jurisdiction of the Maritime Court in Israel is the English admiralty law in its historic form. You would probably be surprised to hear that to this very day, the Israeli Maritime Court still rely on the Admiralty Court Act of 1840 and the Admiralty Court Act of 1861.

The Supreme Court of Palestine was established by virtue of the Order in Council of 1922, in order to exercise the Majesty's jurisdiction in that territory. On 1937 began the process of establishing an Admiralty Court

in Israel. This can be found in the Palestine Admiralty Jurisdiction Ordinance, 1937.

Section 2 reads as follows:

"The Supreme Court of Palestine shall be a court of admiralty and shall exercise admiralty jurisdiction in all matters arising upon the high seas or elsewhere or upon any lake, river or other navigable inland waters or otherwise relating to ships or shipping."

The wording of the order is strange since Israel has no lakes or rivers usable for water transportation worth mention, so its practical use is actually limited to the high seas.

Historically, the jurisdiction in Admiralty matters was in the hands of the Supreme Court in Israel. In accordance with the Maritime Court Law of 1952, the competences of the Supreme Court, as an Admiralty Court, were transferred to the District Court of Haifa which serves until this day as an Admiralty Court.

According to the Colonial Court of Admiralty Act of 1890, the powers of the Admiralty Court in the colony are equal to the powers of the High Court in England in matters of admiralty. It has been decided many times that the jurisdiction of the Maritime Court does not exceed the original powers of the High Court in England as they existed in 1890. This actually causes that considerably wide powers accorded to the High Court of England after 1890 did not extend the jurisdiction of the Israeli Court.

The English law is not automatically a part of the legal system of Palestine or Israel, unless specifically made applicable. Therefore, Israel

is not permitted to benefit from the amendments which were made in the English law after the year 1860.

For example:

- The power of the court in Israel is not extended to arrest sister ships;
- The Admiralty court is empowered to act (in a cargo damage) only if the case concerns import shipments to Israel and not export shipments.

For obvious reasons, the court has systematically extended its jurisdiction:

C.A. 296/71 – Mittera Assimina V. Helfur Ltd. – it was held that the jurisdiction by virtue of sec. 6 of the Admiralty Court Act, 1861 is not conditional upon physical or direct damage to goods, and the court was empowered to deal also with cases involving indirect damages, such as depreciation and loss of value.

C.A. 551/73 – Marioca Shipping V. Sela Insurance Co. – it was held that the Maritime Court was empowered to issue an order of temporary attachment in addition of the arrest of the vessel.

C.A. 2323/76 – Maritime Fruit Carriers Ltd. V. Manufacturers and Traders – it was held that when the court has to deal with a matter of civil procedure which the Vice Admiralty Rules, 1893 do not apply, then the Civil Procedure Rules of the Civil Courts will apply.

M.C. 7/80 – Israel Port Authority V. Faru – it was held that the Maritime Court should apply the ordinary rules of procedure of the Civil Courts to any subject which had not been specified in the Admiralty laws. In this case it was stated that there was no possibility to submit a third party notice since there was no such proceedings in the Admiralty rules. The court decided that the Civil Procedure Rules should apply.

It is actually called for to apply the civil procedure rules by virtue of section 16(3) of the Colonial Courts of Admiralty Act, 1890, which reads: *"So far as any such rules are inapplicable or do not extend the rules of court for the exercise by a court of its ordinary civil jurisdiction, they shall have effect as rules for the exercise by the same court of the jurisdiction conferred by this act"*.

On the other hand, the Maritime Court denied itself to deal with matters which have not been placed under its jurisdiction, such as actions *in rem* in relation to export shipments from Israel.

Another important issue as far as jurisdiction is that the actual arrest of the vessel is only the means to realize the claim and not to find the jurisdiction of the court.

C.A. 362/83 – Menorah Insurance Co. V. The Donar -

The facts before the Supreme Court were the following: the plaintiff-appellant (Menorah) was the subrogated insurer in relation to a shipment of frozen fish carried from Germany to Israel. Menorah applied to the Admiralty Court and obtained an order for the arrest of the vessel, which

was actually seized and released only after the defendant ship's owners posted a bond to cover the amount of the claim. The defendants thereupon applied to the court by motion to cancel the order for arrest and return the bond, as well as to stay proceedings because of a foreign jurisdiction clause contained in the bill of lading.

The District Court granted the motion, finding that the plaintiff was at fault in not disclosing the foreign jurisdiction clause to the Court in clear and express terms, as well as being reticent about the fact that the ship called regularly at Israeli ports, so that there was no real need to arrest here.

It is an accepted rule in Israeli jurisprudence that a jurisdiction clause will not be regarded as exclusive, unless it states so clearly and explicitly. A clause from which the exclusivity does not unambiguously appear will be interpreted as conferring parallel jurisdiction only, so that a case may be brought in either jurisdiction.

In rejecting the appellant's contention on the non-exclusivity of the jurisdiction clause, Justice Netanyahu stated that cases of jurisdiction causes relating to maritime transport should be distinguished, as a jurisdiction clause in such contacts will not achieve its goal unless interpreted by the courts as exclusive. This is an important innovation in the law relating to jurisdiction clauses.

The jurisdiction of the Admiralty Court separates foreign ships from British (or Israeli) ships.

The Maritime Court in Israel shall have jurisdiction to decide all questions in regards to foreign ships, as to the following:

Mortgages on foreign vessels (not registered in Israel). Under the condition that the vessel is under arrest by an order of the Maritime Court (sec. 3 of the Admiralty Court Act, 1840).

Title to or ownership of any ship or vessel (sec. 4 of the Admiralty Court Act, 1840).

"The said court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel..."

Salvage and Towage: sec. 6 to the Admiralty Court Act of 1840 states that the Admiralty Court shall have jurisdiction to decide on all claims and demands in regards with salvage and towage.

"The High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage or for necessaries supplied to any foreign ship or sea-going vessel..."

Necessaries supplied to any foreign ship (sec. 6 of the Admiralty Court Act, 1840).

"The High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services

rendered to or damage received by any ship or sea-going vessel, or in the nature of towage or for necessaries supplied to any foreign ship or sea-going vessel..."

Claims relating to building, equipping and repairing any ship (sec. 4 of the Admiralty Court Act, 1861).

Crew wages (sec. 10 of the Admiralty Court Act, 1861).

"The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be done under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship..."

Loss of or damage to import cargo (sec. 6 of the Admiralty Court Act, 1861).

"The High Court of Admiralty shall have jurisdiction over any claim by the owner, or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the good or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship..."

Damage done by any ship (Sec. 7 of the Admiralty Court Act, 1861).

"The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship."

The laws relevant to an Israeli vessel are the Admiralty Court Act of 1861 and the Israeli Shipping Law of 1960. The Maritime Court shall have jurisdiction to decide upon the following:

Mortgages (sec. 11 of the Admiralty Court Act, 1861).

Title to or ownership of any ship or vessel (sec. 8 of the Admiralty Court Act, 1861).

Salvage and Towage: sec. 9 to the Admiralty Court Act of 1861 states that in regards with British vessel the Merchant Shipping Act of 1854 shall apply.

"All the provisions of the "The Merchant Shipping Act, 1854", in regard to salvage of life from any ship or boat within the limits of the United Kingdom shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered..."

Necessaries (sec. 5 of the Admiralty Court Act, 1861).

Port dues, docking charges, etc (cl. 41(2) to the Shipping Law of 1961).

Civil wrongs to crew members (sec. 41(4) to the Shipping Law of 1961).

General Average (Sec. 41(5) to the Shipping Law of 1961).

Appeals against decisions of the Registrar of Ships.

It must be noted that, in general, the jurisdiction of the Admiralty court, except of arrest of vessels, is not exclusive and actually the ordinary civil courts can act in any matter concerning shipping matters.

There have been some suggestions to renew the historic Admiralty laws to bring them up to date. It is still "sitting" on the desk of the Minister of Transport and hopefully would be dealt with sometimes soon.