

UiO : **Faculty of Law**
University of Oslo

Shipyard's Right of Retention

A comparative analysis on the multi-jurisdictional aspect of shipping from a shipyard's perspective.

Candidate number: 961

Submission deadline: 10.12.2023

Number of words: 17 999



Table of contents

1	INTRODUCTION.....	1
1.1	Legal Context.....	1
1.2	Scope of Thesis.....	2
1.3	Method.....	3
1.4	Terminology.....	4
1.5	Disposition.....	5
2	INTERNATIONAL CONVENTIONS ON MARITIME LIENS AND MORTGAGES.....	5
3	SHIPYARD’S RIGHT OF RETENTION.....	6
3.1	Introduction.....	6
3.2	Contracted Right of Retention.....	7
3.2.1	Repair Contracts.....	7
3.3	The Norwegian Right of Retention.....	9
3.3.1	Introduction.....	9
3.3.2	Claim.....	11
3.3.3	Connectivity.....	11
3.3.4	Possession.....	13
3.3.5	Assets Subject to the Retention Right.....	15
3.4	The English Possessory Lien.....	16
3.4.1	Statutory Possessory Lien.....	16
3.4.2	Possessory Lien.....	16
4	LEGAL OBLIGATION OF THE SHIPYARD WITHHOLDING A VESSEL.....	19
4.1	Duty of Care.....	19
4.1.1	Norwegian Principle.....	19
4.1.2	English Principle.....	20
4.2	The Right to Sell.....	21

5	ENFORCEMENT OF THE UNDERLYING CLAIM.....	22
5.1	Introduction	22
5.2	Ship Owning Company	22
5.3	Charterparties	23
5.3.1	Bareboat Charter	23
5.3.2	Non-lien Clause	24
5.4	Bankruptcy	25
5.5	Arrest.....	26
5.6	Enforcement of Maritime Claims Under UK Law.....	27
6	PRIORITY.....	27
6.1	Introduction	27
6.2	Maritime Lien	28
6.3	National Flagged Fully Mortgaged Vessel	29
6.3.1	Norwegian Law	29
6.3.2	English Law	30
6.4	Foreign Flagged Fully Mortgaged Vessel.....	31
6.4.1	Norwegian Law	31
6.4.2	English Law	32
6.5	Ship with a Foreign Statutory Lien	34
6.5.1	Norwegian Approach.....	34
6.5.2	English Approach	35
7	CESSATION OF LEGAL SECURITY	36
7.1	Cessation upon Payment	36
7.2	Cessation upon Surrender of the Vessel	36
7.3	Cessation upon Provision of Security	37
7.4	Wreckage or Decreased Value of the Vessel	39
8	CONCLUDING REMARKS	40

TABLE OF REFERENCE 43

1 Introduction

1.1 Legal Context

This thesis will examine the right of retention in a vessel provided to a shipyard in a repair and conversion situation under Norwegian and English law. Furthermore, the thesis will examine the enforcement of the retention right and how the priority given to the right works when it encounters other security holders' claims on vessels, such as registered mortgages and maritime liens.

From commencement of the monetary system there has been a necessity to extend credit to facilitate transactions between parties engaged in commercial activities. In maritime commerce, it has become evident as vessels grew larger and became more valuable that more money was needed in order to finance the construction and operation of a vessel. Such funds came over time for instance from lenders providing credit to the shipowner.

Correspondent with the development of various credit services, emerged the concept of security for a credit transaction placed in the vessel. Today, the presence of such financial instruments becomes apparent when shipowners engage in the acquisition or construction of vessels and as part of the financing acquire long-term loans corresponding with the bank's registration of a mortgage in the vessel's ship registry. However, credit and security can also arise from more temporary or extraordinary cross-border activities when the vessel trades during its lifespan. Therefore, it is important that the registration of mortgages is respected internationally when cross-border securities are attached to the vessel.

In order to cope with the diverse securities possible to attach to a vessel, it is necessary to establish a hierarchical order among security interests in the vessel. While the order exists when there are sufficient funds to satisfy all creditors, the hierarchy will solve conflicts only when there is an insufficient amount of funds to cover everyone's financial claims in the event of default/enforcement situation. Generally, the determination of priority for assets in such instance is made in accordance with domestic jurisdiction and its priority regime. In the case of vessels, however, the presence of its multi-jurisdictional aspect may give rise to conflicts between securities and their rank of priority in which a conflict of laws situation occurs.¹

An issue that arises is that claims may be subject to several legal jurisdictions. As a result, this leads to a multitude of jurisdictions are applied when deciding how to distribute the funds obtained from legal actions taken against the vessel. Instances of such assertions can occur at the high seas, as well as within territorial jurisdiction of states where the vessel is located. One

¹ To illustrate can a vessel be registered in Panama, operate between China and the Netherlands, be mortgage in Panama, and have a time-charter govern by English law.

scenario in which this occurs is in relation to the security undertaken during construction, conversion, or repair of a vessel at a shipyard. In general, it is common for shipyards to exercise the right to withhold² a vessel, until payment is made or security is provided, for the work that has been conducted on the vessel.

This right derives from a long tradition on the continent; if an individual transfers an asset for repair or other work, the individual conducting the work may retain the asset until receiving payment for work, unless otherwise agreed. Against other creditors this right may create potential conflict as it could harm the security already existent on the vessel. The underlying reason is here that the shipyard through its work provides an increased value in the vessel. Therefore, its performance should be protected against certain creditors as they should not benefit from the shipyard's work before the shipyard receives payment. However, the scope of such protection is often dependent upon the law of the forum in which the vessel is located.

Specific aspects of securities in vessels, such as the existence of the right of retention and arrest, are inherently subject to domestic law. Efforts have been made, however, over time to establish a unified international framework governing the priority given to the retention right and other legal securities on a vessel. When different legal securities are claimed while a right of retention in a vessel exists, the need for an adequate priority framework becomes clear. The same is true for other securities, as all security interests in a vessel are inherently linked. Three attempts were made over the previous century to establish an international convention for the harmonization of maritime liens and mortgagees in the shipping industry. However, only the most recent convention, from 1997, has successfully entered into force.

1.2 Scope of Thesis

The objective of this thesis is to examine the legal framework governing the shipyard's right of retention under both Norwegian and English law, with the intention of showcasing the influence the chosen law has on the enforcement of this retention right. The inquiry will be examined through a systematic approach that involves a comprehensive analysis of the two jurisdictions' framework on the creation till cessation of the right of retention and focus on the priority order given under the two systems.

The approach focusses on the cycle of a right of retention provided under the two systems to underscore the contrast accorded by each jurisdiction. However, to demonstrate the lack of consistency in regulation on priority internationally, additional jurisdictions will be used as illustration. However, limitations are made against the domestic law of other nations and how they affect the right of retention, while the contract as referred herein, is presumed governed by

² Refers to "tilbakeholdelsesretten" under Norwegian law.

either English or Norwegian law since the matter is individually assessed under each jurisdiction.

The emphasis will also be towards the difficulties to harmonize a unified legal framework governing securities in the maritime industry based on the analysis done. It is important to note that the conventions on unification of *mortgages* and *maritime liens* primarily focuses on these two securities since they are the most common forms of securities in a vessel. However, these securities will not be extensively explored since only their placement in the priority order are of interest when analyzed against the right of retention.

Outside the scope of this thesis is the right to detain a vessel that occurs under shipbuilding contracts. The reason being that question of right of detention given to a shipbuilder concerns the delivery and transfer of ownership of the vessel after completion rather than a question to retain a vessel from being under the control of the owner. Same applies to situations where the ownership during construction transfers gradually throughout the construction process or when there are uncertainties as to whether the supplied parts during reconstruction of a vessel concerns an integration or a transfer of ownership, similar to the shipbuilding situation.

1.3 Method

To conduct the analysis, the thesis will use both Norwegian and English legal methods. Due to their origins in different legal systems, namely civil law and common law, there are significant differences between the two jurisdictions. As a result, the approach used to define the legal implications of the retention right will differ significantly. However, when presenting the two legal systems, the method will be primarily descriptive and analytical.

The Norwegian framework of relevance mostly derives from codified statutes. In instances necessary case law will be utilized to exemplify the required conditions and procedures involved when the shipyard exercises its right of retention. Such case law expresses non-statutory principles and will give an indication how a similar case is solved. The Norwegian Maritime Code (hereinafter NMC) was made through a collective law cooperation between the Scandinavian countries. Therefore, judgements from these nations also will be of significance in the matter. These are addressed as "ND" judgements, which is the mark for Nordic Maritime Judgements, but Norwegian cases might also be part of this collection of judgements. This correlation is also the underlying cause why these countries legal literature is of interest. However, reservation is made to Swedish rules on mortgage as these rules differ from those existing under Norwegian law as they use a different mortgage system, named *hypothèques*.³

³ Falkanger (2010) p. 99

The analysis of English law will be based on precedents established by previous court decisions. The English court system requires that judgments adhere to previous court rulings. Thus, some 19th century cases will opine a well-developed legal principle that is followed in subsequent judgements. Moreover, the books included in the Lloyds shipping law library are central for the analysis as they hold significant relevance as they sample and draw out principles from the case law. These books are considered authoritative as they provide an in-depth analysis of the current legal standing of maritime law and are frequently cited in various law reports. Although some publications may be considered old, they reflect the legal stance by virtue of their reliance on case law. Therefore, these books' analysis on common law possessory lien will remain relevant.

Moreover, the inclusion of international conventions will serve to support the thesis by providing examples of prior attempts to establish unified codes for resolving issues of conflicting law. Three conventions of significance have attempted to establish a unified framework for the matter. Their legal significance is limited to the countries that have acceded them, which partly explains their limited relevance. Nevertheless, these findings will provide some insight into the existing research and identification of areas that require further investigation in order to provide a comprehensive international framework going forward.

Ultimately, the thesis will depend on the use of standard contracts that serve as the basis for the contractual agreement between the owner and the shipyard. The two standards used to illustrate how contracts govern the right of retention will be Bimco's REPAIRCON 2018 and a Norwegian standard contract for repair work.

1.4 Terminology

To mitigate potential misinterpretations of the terminology employed in the thesis, it is imperative to provide further clarification regarding the use of specific terms. Given that this thesis centers on Norwegian and English law and the applicability of legal concepts in both systems, there may be instances where the use of specific words could lead to misinterpretation.

The term "owner" will be employed throughout this thesis to refer to a company that operates the vessel for its own account, this typically will be the shipowner or the bareboat owner. Both time- and voyage charterers are excluded from the definition as the vessel in these situations are controlled by the shipowner.

Furthermore, a "lien" refers to an individual right someone is given as a benefit to claim "over and above a simple legal claim for a remedy against a particular defendant".⁴ In relation to

⁴ Jackson (2005) ch. 17.1

maritime liens, referred to as "sjøpant" in Norwegian law, these are distinct causes which are given a special protection based on the occurrence in question.

Additionally, it is possible confusion arise when both possessory lien and a right of retention are mentioned concurrently in the thesis. The concept of an English possessory lien can be considered analogous to the right of retention as defined by Norwegian law. However, the term "lien" under English law is utilized as a broad phrase encompassing several rights without clear distinction when it is a lien or not.⁵ Therefore, it is appropriate to use the word "possessory lien" exclusively for the English possessory lien, whereas the right of retention applies to both the English and Norwegian right to retain chattels.

Finally, "mortgage" is used in connection with the legal security pledged to the mortgagee in the vessel's title register provided to a lender when it lends money in exchange for a right to take title of the debtor's property in case of default under the condition set out in the applicable loan agreement.

1.5 Disposition

In Chapter 2, the thesis will present the existing international conventions on the unification of securities taken in vessel. The thesis will proceed with an examination of the Norwegian and English law regarding the requirement to assert the right of retention in Chapter 3. Thereafter, the legal obligation imposed on a retainer will be examined in Chapter 4. Following that, in Chapter 5, the emphasis shifts to enforcement of the underlying claim derived from possession, before Chapter 6 delves into the priority scheme imposed on the securities in a vessel under English and Norwegian law. Chapter 7 will examine the various grounds on which the right of retention may cease to exist. Finally, Chapter 8 will provide some concluding remarks to the retention right and the path forward in terms of securing international unification of rules for legal securities in vessels.

2 International Conventions on Maritime Liens and Mortgages

The first attempt to create an international convention to unify the mortgages and maritime liens held in vessels came with the Brussel Convention from 1926⁶. The convention was a poor attempt due to divergent perceptions on the wording among countries that ratified it, resulting in international differences. Primarily the convention focused on the unification of a large number of maritime liens and mortgages, but only a handful of countries ratified the convention. Therefore, the convention was later replaced by the International Convention for the Unification

⁵ Jackson (2005) p. 459–460.

⁶ The International Convention for the Unification of Certain Rules relating to Maritime liens and Mortgages Maritime Liens and Mortgages, Brussels April 10, 1926.

of Certain Rules relating to Maritime liens and Mortgages signed in Brussels 27 May 1967 (hereinafter the 1967 Convention) in an attempt to create a better understanding on the recognition of liens and mortgages created by foreign nations. While only four countries ratified the convention, the domestic legislation in several countries were consistent with its provisions. The convention also provided national lawmaker's an option to legislate the shipyard's right of retention with a priority placed between maritime liens and mortgages.⁷

The latest attempt occurred in 1993 when 65 states signed the International Convention on Maritime liens and Mortgages (hereinafter the 1993 Convention). In comparison to the other two conventions has this availed as twenty-one parties have ratified the convention which puts it into force.⁸ However, given the 1967 Convention constituted the basis, the number of maritime liens and priority given to mortgages and the right of retention are almost the same. The current purpose of the convention was among other things, to improve uniform rules so that ship financing could become more international, and claims could be enforced more effectively where the vessel was at the time.⁹ However, neither Norway¹⁰ nor the U.K. have ratified the convention. This is also what is worrying as several of the major nations in shipping have yet to ratify the convention. The underlying reason is that the convention is too far from certain jurisdiction's legislative standard, especially those under the common law jurisdiction.¹¹ However, the need for uniform regulation in this area continue to exist. This is true in respect of the conflict of laws' provisions as domestic legislation continue to determine the enforceability and priority dependent upon the vessel's location.

3 Shipyard's Right of Retention

3.1 Introduction

The shipyard's legal protection commences when it undertakes work on a vessel, as stipulated by the contractual agreement and it obtains physical possession of the vessel. The act of possessing grants the shipyard a legal entitlement known as a right of retention, which is analogous to a possessory lien under English law. The defining characteristic of most liens is their non-registrable nature, which results in other security holders lack of ability to verify the presence of a lien. However, the fact that a shipyard has possession will provide an equal verification of a right similar to and in rank before registered rights. Furthermore, could it be argued given the optional right to govern the right of retention in both the 1967 and 1993

⁷ 1967 convention art. 6.

⁸ 1993 convention art. 19 requires 10 states to have ratified it.

⁹ Berlingieri (1995) p. 57.

¹⁰ Norway has yet to ratify it due to legislative amendments are needed, cf. Paulsen (2015) p. 26.

¹¹ Berlingieri (1995) p. 57.

Convention, that the right is regarded an international concept.¹² On that basis, shipowner, banks, and other security interests are cognizant of the fact that a shipyard has a retention right for work carried out on a vessel while it is under the shipyard's control.

In practice will the contractual agreement govern the legal relationship between the owner and the shipyard. Therefore, the repair agreement will provide guidance deciding the applicable law and the assertion of retention rights. But conflicts with the domestic law of the dispute could end up governing the right even though a different law governs the contract. The rationale is the judgement to enforce sale of the vessel is made by local courts, which have little knowledge of foreign rules leading to their favor to choose the law they are most familiar with.

The existence of a retention right during work performed in certain jurisdictions typically depends on either legislative or non-statutory rules, with emphasis the importance of possession of the movable asset. Additionally, is it possible that a right of retention is incorporated as a contractual clause to regulate the legal relationship between the owner and the shipyard. However, such a right will go beyond the right provided by law and functions similar to a registered charge created by agreement.

The rationale behind exercising a retention right for a shipyard is twofold. Primarily, does the retention impose a form of pressure on the owner to settle any outstanding debt. Hence, does the right encompass certain elements of self-help on the shipyard to obtain reimbursement for its contractual performance. In the event that the shipowner fails to make payment, the shipyard will retain possession of the vessel, resulting in the shipowner experiencing a loss of income. Secondly, the possession of the vessel serves as a security that often prioritizes the shipyard in terms of receiving payment above other creditors. However, considering the shipyard through repairs or conversion of the vessel, provide an increased value on the vessel beyond the cost of such work it is reasonable shipyards are given such extra security.

3.2 Contracted Right of Retention

3.2.1 Repair Contracts

When assessing the shipyard's contractual right to retain vessels during repair and conversion, the initial focus should be on examining the clauses included in the contract. The crux of both repair and conversion contracts lies in the existence of a retention clause which is triggered when the owner fails to perform its obligation to pay. Frequently, the shipyard and owner use pre-existing contractual agreements to regulate the work on the vessel. In cases of repair, the yard will attempt to enforce its standard terms and conditions, which is typically perceived as

¹² Supported by the option to legislate the principle in national law, cf. 1993 Convention art. 7.

favorable to the yard.¹³ On the other hand, the owner will argue to use more balanced standards such as BIMCO formats.

One example of a contract that may be considered as a balanced standard is REPAIRCON which was developed by BIMCO. An alternative is the repair contract developed by the Norwegian Shipowners' Association and the National Association of Ship- and Offshore Yards (Contract of 1997)¹⁴. Both contracts possess a common characteristic, namely the inclusion of a contracted retention right on the vessel.¹⁵ The wording in the two, do not regulate how the right of retention shall be exercised, only that it is triggered when payment is not made. Nevertheless, there are discrepancies in the phrasing used in the two contracts concerning payment. The Contract of 1997 stipulates that payment must be made in full according to the stipulated conditions of payment. In contrast, the BIMCO contract incorporates an "all sums due" clause. However, both states that the owner shall pay what is due under the contract and there should not be any differences between the scope of the two. Unless domestic legislation where the vessel is located supersedes, the additional contractual conditions to exercise the right of retention must be established through interpretation and supplementation by using the governing law of the contract.

The contractual right that gives the shipyard a right of retention applies only between the shipyard and the owner. In cases where the contract provides an extended security outside the scope of the retention right, the right needs registration in vessel's ship registry to be protected against third parties with the priority it receives upon registration. The right is seen as a charge created by agreement¹⁶ and becomes extinguished the same way it was secured through a deletion of the charge in the registry.

In contrast to the two standard contracts set out above, it is possible that contracts do not include a right to retain the vessel upon incomplete payment by the owner. In this situation, it is possible to supplement the contract with general legal principles. This is contingent upon the legal framework that governs the contractual agreement between the shipyard and the owner but could also be decided by domestic legislation where the vessel is located. The next sections 3.3 and 3.4 provide a description of this matter under Norwegian and English law.

Note that it is possible to explicitly renounce the right to retention. In cases where it may be inferred from background law that the right should be a supplement to the contract, any

¹³ Falkanger et.al (2017) p. 118.

¹⁴ Standard Contract Terms and Conditions for the Repair of Ships and Offshore Vessels at Norwegian Shipyards of 1985 revised 1997.

¹⁵ Contract of 1997 section 7 no. 4 and REPAIRCON section 6 (c) (III).

¹⁶ Refers to the Norwegian concept of "kontrakts pant".

exclusion of this supplement must be expressly stated in the contract. However, in some legal jurisdictions, the right of retention or other forms of legal securities are considered mandatory according to domestic law. Therefore, it is imperative that contractual clauses do not overlook nor dismiss them, but deals with the situation properly.¹⁷

3.3 The Norwegian Right of Retention

3.3.1 Introduction

The legal concept of a retention of chattels has a long-standing development in Norwegian law that stems from Roman laws on mortgages and pledges.¹⁸ Similar to pawning¹⁹, the creation of a right of retention is established by possession of the chattel. Analogous to the practice of pawning, the construction of legal security is established by means of possessing the chattel. However, the distinction between pawning and the right of retention is clarified by the specific interest they seek to protect, namely the lender's interest by lending money versus the repairer's interest in creating value on an asset through work done and receipt of payment for such work.

Today the right of retention is part of the overarching right to withhold a chattel when the contractual party does not fulfill its part of the contract. This covers both the right to retain and the right to detain a chattel. The shipyard's right to retention was a customary principle in Norwegian law prior to the approval and accession of the 1967 Convention, which made customary principles, part of the statutory rights found in NMC.²⁰ The customary right granted a supra priority status to the retainer in relation to both mortgagees and maritime lien holders.²¹ The right occurred as a side effect to there being an agreement consequently providing the repairer a right to withhold the vessel until payment was made.²²

In the context of shipbuilding, the right of detention has been part of statutory law since the repealed Sales Act of 1907 § 14. This right continues to exist and makes the principle in the Sale of Goods Act of 1988 applicable between shipbuilders and owners. However, it does not apply to repair of vessels since those performances does not prerequisite a sale.²³ However, the

¹⁷ Brækhus (2005) p. 583.

¹⁸ *Exemptio doli generalis* – used as a defense to resist a claim for performance under a contract due when a party acted in bad faith.

¹⁹ This is defined as "håndpant" under Norwegian law.

²⁰ Brækhus (1960) p. 92.

²¹ Brækhus (1979) p. 218–219.

²² Arnholm (1962) p. 338.

²³ Falkanger et.al. (2017) p. 98.

principle to withhold asset follows from general non-statutory principles of the law of obligations meaning the requirement of possession under detention are similar to retention.

Following the Norwegian adoption of the 1967 convention, the shipyard's retention and detention right followed from the old NMC of 1893 section 247 and was adapted to harmonize the 1967 Convention. This section has subsequently been incorporated in the current NMC § 54 which reads:

"A person building or repairing a ship may exercise a right to withhold the ship to secure a claim in respect of the building or repair, so long as he or she remains in possession of the ship.

The right of retention has lower priority than maritime liens on the ship, but ranks before other claims and other encumbrances on the ship".²⁴

According to this provision both the ship repairer and builder have a right to withhold a vessel, through a statutory right. The statutory right conferred by NMC § 54, operates as a *lex specialis* towards other general provisions in the Norwegian legal system, e.g., where a chattel is sold under the Sale of Goods Act of 1988 § 10.

Since the right in question is established as an act of law, the statutory right will overturn any contractual obligation imposing an increased right.²⁵ However, it remains conceivable to voluntarily abandon or restrict the exercise of the right. The rationale for this distinction stems from the disparity between a right established by a contractual agreement and the right obtained from legislative regulations. If the right is extended through a contractual clause, it is obvious that the lack of publicity will result in other creditors being unaware of the specific details and implication of the contractual right. This does not happen under NMC § 54 as the right follows directly from the statutory provision available to all creditors.²⁶ But an abandonment or restriction of the statutory right does not need registration as all creditors become beneficiaries to that action. As a result, it is only necessary for a contractual right which expands the right given to the shipyard to undergo registration, akin to the concept of "kontrakts pant" under Norwegian law, in order for such a right to receive legal protection against other unsecured and subsequent creditors. Other creditors are then aware of the capacity since the right is publicly available in the ship registry, but it does not hold an equivalent priority provided by the statutory right under NMC § 54. The topic of priority is deferred to section 6.

²⁴ Unofficial translation.

²⁵ Brækhus (2005) p. 583.

²⁶ NMC § 24 (2).

3.3.2 Claim

The existence of a claim against the vessel is a prerequisite for the application of the statutory right under NMC § 54. The claim would be made in relation to the owner's lack of compliance with the requirement to pay sums owed.²⁷ Where there are several instalments, could this result in a stoppage of work carried out by the shipyard while it maintains possession of the vessel. In accordance with Norwegian law, the amount claimed is not decisive in order to uphold the right. Rather, a prerequisite to invoke the right of retention is that the claim is voided before the right is asserted. However, it should be noted that an anticipatory breach on the date of payment can also be considered adequate provided that the debtor has provided assurance against the breach.²⁸

Furthermore, it is no need for the owner to dispute the claim. Therefore, the right may be affected upon the time the payment should have been made.²⁹ On the contrary, in the event that a claim is disputed, the shipyard may potentially expose itself to legal responsibility for a breach of contract due to an unlawful retention of the vessel. This is commonly included in the contractual clauses between the parties, which for instance sanctions delays caused by the shipyard.³⁰

3.3.3 Connectivity

Connectivity is a prerequisite to limit the scope of claims made by the right of retention. The requirement of connectivity derives from non-statutory principles and requires a discernible connection between the claim and the shipyard's possession of the vessel. The right to retain a vessel must essentially derive from the same legal relationship upon which the claim is based. A case in point for fulfillment of the requirement of connectivity occurs when the claim arises directly in connection to conversion or repair of a vessel.

The purpose of connectivity is to protect the interests of mortgagees, owners, and other securities held in the vessel by preventing the shipyard from asserting arbitrary claims through its possession of the vessel. An instance of this nature may arise when a shipyard performs repair on several vessel owned by the same owner but only retains one of the vessels for the total claim of all repairs. In such case, this would result in an unreasonable intervention on the security attached to the vessel retained, opposed to the security interest held in the other vessels

²⁷ NMC § 54.

²⁸ Skoghøy (2021) p. 303.

²⁹ Ibid p. 302.

³⁰ REPAIRCON clause 7 and Contract of 1997 section 12.

owned by the owner.³¹ This distinction is clarified through the wording included in NMC § 54 which specifies that the right may be claimed against “*the ship to secure a claim in respect of the building or repair*”. This aligns also with the difference between actions *in rem* and *in personam* which is evident under English law, see more in section 5.6.

The necessity for connectivity applies to situations in which the shipyard loses possession of the vessel, but shortly after regains possession, while work continues from the same legal relationship. If the yard has lost possession or failed to take sufficient measures to keep the vessel, the right under NMC § 54 cease to exist when there no longer is a connection between the initial possession given, and the subsequent possession obtained when the vessel is reclaimed by the shipyard. The case referred in RG-1978-337 involved a dispute between a mortgagee and a shipyard about the scope of the right of retention asserted by a shipyard following the forced sale of a vessel. The shipyard permitted the vessel to initiate a voyage charter that was arranged while the vessel underwent repairs. During the voyage, the vessel was exposed to an incident resulting in both damage to the vessel in addition to the detection of insufficient repair work performed by the shipyard. Consequently, the vessel returned to the shipyard to undergo repairs and rectify the shortcomings made. The court held that the right of retention was applicable only to claims emerging after the incident. Hence, a natural connection between the claim and the possession of the vessel must exist in order for the right to be asserted.

In general, the requirement of connectivity pursuant to the statutory right of retention under Norwegian law, prevents the applicability of a right to retain a chattel derived from previously contractual relationships.³² In respect of the shipyard's right of retention this will occur when the shipyard retains a vessel that has not settled its previous bills without credit being provided. However, an exemption to the connectivity requirement has been applied when consideration of reasonableness should say otherwise. This has been the case concerning the freight forwarders right to retain cargo under a standard contract.³³ However, it is unlikely this principle applies to a shipyard right of retention as the freight forwarders right derives from a running contractual relationship, versus a singular contract of repair being made with the shipyard.

³¹ Brækhus (2005) p. 593.

³² Brækhus (2005) and Øyen (1998) p. 754–758.

³³ See. Rt-1973-967 and RG-1995-52.

3.3.4 Possession

3.3.4.1 *Established Possession?*

The main premise for the statutory right to withhold a vessel under NMC § 54 is the shipyard's physical possession of the ship.³⁴ Hence, although a shipyard possesses the authority to retain a vessel, it does not necessarily imply that the shipyard has a legal possession over the vessel. In contrast to a contractual lien, which establishes a lien when the contract is affected, the NMC § 54 does not explicitly indicate the precise moment which the possession is deemed to arise. The concept was debated among scholars but has been resolved by establish the same requirement for pawning, under Norwegian law called "håndpant". This occurs when the owner relinquishes possession of the vessel, and this act construe the legal security. Hence, where the possession never transfers from the owner to the shipyard during work performed on the vessel the retention right never becomes established. The deciding factor becomes whether the shipyard has received physical possession of the vessel.

3.3.4.2 *Retainers' Physical Possession*

Due to the similarities between the requirements of possession and those associated with pawning, determination of the possession is strict. The legal security is constituted by the retainer's possession of the vessel.³⁵ As a result, the loss of possession will lead to the loss of security granted to the shipyard. Hence, it is not possible to uphold an agreement to ease up on the requirement of possession provided by NMC § 54.³⁶

The protracted evolution of possession as the legal requirement to ensure security has resulted in well-defined cases in which possession is upheld as security. In general, the act of possession exists during the periods of drydocking and mooring of the vessel to the yards' quay for the purpose of doing necessary work on the vessel. However, under certain circumstances these actions are not sufficient. The determining factor is whether the owner has been deprived of the right to control the vessel, and that the shipyard effectively can decide if and when the owner shall regain such control of the vessel.³⁷ Consequently, it may be questionable to uphold a possession during repair if the crew are on-board the vessel even though the vessel is located at the shipyard's premise. Same goes if the vessel lays idle at a quay after completion and no measures are taken to secure control of the vessel.

³⁴ Same follows from the possessory lien under English law.

³⁵ Brækhus (2005) p. 579.

³⁶ RG-1978-337.

³⁷ Brækhus (2005) p. 579, cf. ND-2005-125.

The issue of whether the retainer possesses physical control of the vessel necessitates an individual consideration. The continued existence of the right to retain the vessel is contingent upon the presence of "objectively certifiable factors".³⁸ These factors refer to the preventive actions implemented by a shipyard to ensure the security of a vessel. The adequacy of the preventive actions implemented by shipyards has been a recurring issue in Scandinavian courts over the past century.

In the case of ND-2005-125, the shipyard asserted a right of retention after the vessel's one-hour journey from Svølvær to Vaterfjord, during which it returned the next day with equipment for a subsequent fishing charterer. The court held that the shipyard had lost possession due to its failure to lock the vessel, deposit ship's papers and allow access to the chartering crew and owner and thereby enabling the voyage to Vaterfjord. Moreover, a prohibition on sailing was not enacted by the shipyard.

In the case of ND-2011-291, a vessel was moored at the shipyard's quay following repairs due to a founding outside the premises of the shipyard. The vessel having been deemed unseaworthy after undergoing repairs was unable to cast off by its own propulsion. For about a month the vessel pended further clarification from the owner concerning where to go but was eventually sold to a recycling company. It was upon this sale that the owner came and towed the vessel to a quay located further south. The case pertained to whether the shipyard had possession of the vessel when the owner came and towed the vessel and concerned whether the requirement needed to secure possession was different between seaworthy and unseaworthy vessels.

The court ruled that the issue of possession should be evaluated based on actual actions taken, rather than what could have been done. Upon the removal of the engine, the shipyard alleged to have satisfied the necessary criteria if the vessels were to be seaworthy, which is true, cf. ND-2005-291. In contrast, the court maintained that a vessel deemed seaworthy is expected to leave on its own propulsion, hence, it is sufficient to remove the engine to prevent it from sailing. On the other hand, a vessel deemed unseaworthy will generally be towed away, and other measures are needed to prevent the vessel from leaving the shipyard, e.g., weld the vessel's mooring lines to the quay. Therefore, it is imperative to implement appropriate precautions based on what could have been done in the given case rather than rely on specific standards.

The question in a Swedish decision NJA 1922 p. 360 was whether the shipyard, which had located the vessel at a boat-slip further down the river, had possession of the vessel when a creditor issued a forced sale of the vessel. The docking location was chosen because heavy rapids in the river upstream prevented the vessel from sailing to the shipyard's premises. The

³⁸ ND-1991-176.

shipyard had built the slip, obtained permission from the landowner, and had workers and guards stationed at the slip during the construction. However, the possession requirement was not satisfied. The court was content by referring to the argument made by lower court. However, it seems that the underlying reason for the conclusion was due to the unclear transfer of possession from the owner to the shipyard, as the vessel's crew performed work on the vessel on occasion. It was also difficult for other creditors to see that the shipyard was in control when the vessel was not on the shipyard's premises.

In ND-1953-750, the court resolved the issue of possession based on the shipyard's display of passivity rather than concluding an unlawful retrieval by the owner. However, the court indicated that the possession was lost independently on the facts prior to the retrieval. The reason for this was that the vessel was relocated to a public harbor to undergo propellor testing. After the relocation, the vessel was manned by the owner's crew, and the ship repairers were only on-board during working hours. Due to the relocation, the shipyard was unable to control the vessel because there was no line of sight from the shipyard to the public harbor. The facts of the case also showcase that possession is normally lost if the crew conducts a test-trial without any representatives from the shipyard on-board, as this would enable the owner to regain control of the vessel. Such trials are usually required by the contract.³⁹

3.3.5 Assets Subject to the Retention Right

The wording “*claim in respect of*” as stated in NMC § 54 serves to restrict the assets subject to the statutory right. However, considering the restricted use of specific language and the absence of detailed explanations in the preparatory works regarding the meaning of the wording, it is necessary to turn to case law for guidance⁴⁰. It is natural that the right applies to the security of the vessel meaning the cost related to carry out work on the ship.⁴¹ Furthermore, the cost to rent a storage facility for a chattel will also be included.⁴² What falls under the scope of storage facility will naturally be assessed individually but concerning shipyard’s right to retain the vessel dock or quay expenses will be within the scope. Additionally, when the right is exerted over an extended period the accumulated interest rate will have equal priority as the principal amount claimed by the shipyard. This principle is also applicable in cases where the interest

³⁹ REPAIRCON clause 5 (c) (ii) and Contract of 1997 section 8.

⁴⁰ Innstilling VIII (1956) p 77–78

⁴¹ Rt-1933-367.

⁴² Skoghøy (2021) p. 314, cf. RG-1948-331.

rates are claimed against a bankruptcy estate while the shipyard maintains possession of the vessel.⁴³

3.4 The English Possessory Lien

3.4.1 Statutory Possessory Lien

To the contrary of the regulation in the Norwegian Maritime Code, the English maritime law does not have a *lex specialis* construing a statutory provision for the shipyard's possessory lien. A bit out of the scope but worth mentioning is the existence of the English Sale of Goods Act of 1979 right to withhold the vessel when payment is not made during the construction of newbuilds. Pursuant to section 41 of the Act of 1979, a seller is granted a statutory possessory lien where credit terms have not been extended to the buyer and the vessel is currently under the possession of the shipyard.⁴⁴ The caveat is that not all contracts entered by a shipyard are classified as sales contract.

In English law, there exist certain differentiations between sale and purchase agreements and those concerning supply of workmanship and materials. The conclusion is that the Sale of Goods Act applies only to the former. The classification of a shipbuilding contract as a sale and purchase agreement has been a subject of discussion under English law. However, it is generally accepted that shipbuilding contracts are within the scope of the relevant legislation.⁴⁵ Regarding both conversion and repair contract does the absence of a sale put them under the latter category. This distinction results in only shipbuilding contracts being subject to a statutory lien permitting a detention right under the Sale of Goods Act section 41. Ship repairers must consequently seek alternative options when exercising their right of retention under English law.

3.4.2 Possessory Lien

The common law possessory lien has been part of English law from the onset of the 19th century.⁴⁶ In English law, liens are divided into two categories: particular and general liens.⁴⁷ The division determines which assets the lienee is eligible to claim. A general lien confers upon the party holding the lienee a right against all assets owned by the lienor. On the other hand, a particular lien can only be asserted against the specific asset that has given rise to the lien. The possessory lien of a shipyard pertains to a particular lien that is enforced against the vessel to which the claim is associated. However, the possessory lien held by the shipyard

⁴³ Rt-1955-992.

⁴⁴ English Sale of Goods act of 1979 section 41 (1).

⁴⁵ Curtis et.al (2020) p. 4, cf. *McDougall v. Aeromarine of Emsworth Ltd* (1958).

⁴⁶ Jackson (2005) ch. 17.13.

⁴⁷ Jackson (2005) ch. 20.6.

is distinct from other possessory liens under common law, as it partly derives from maritime possessory liens. This was illustrated in the legal ruling known as *The Tergeste*, which established that a ship repairer's possessory lien arises upon the ship's entry into a shipyard, rather than being constantly restored during work done which is the case under the common law possessory lien.⁴⁸

The principle known as "the four corners of the contract" applies between professional parties to a contract. When a contract is tacit, it becomes challenging to supplement it with oral or implied terms. Because only what is stated in the contract is considered binding and agreed upon between the parties. However, it is settled law that a company or individual that lawfully possesses another party's property for the purpose of performing work retains a possessory lien on unpaid debts. Hence, it can be inferred the ship repairer has a possessory lien on installments undue, and the same applies under conversion of a vessel.⁴⁹ The rationale is that the possessory lien arises from the utilization through the physical control the shipyard has when performing work on a vessel. Consequently, for the principle not to apply to the contractual relationship between the shipyard and the owner must this follow directly from the contract.

Following general principles on particular liens, asset subject to a lien are the cost of materials supplied, work done, together with any incidental costs or expenses. However, unless explicitly stipulated in a contract, the scope of the lien does not encompass damages due to breach of contract.⁵⁰ However, and similar to the statutory possessory lien, the shipyard cannot assert a possessory lien when it extended credit terms to the owner since payment is then made after redelivery.

In order to claim possession over the vessel subject to a lien it is presupposed the possession was lawfully acquired. Generally, the lawful acquisition of possession is made through the contractual agreement with the owner to carry out specific work. In situations where work is performed without a contractual agreement, the absence of a contract precludes the creation of a possessory lien. Naturally there must be a reason why the vessel is located at the shipyard, and which also becomes the reason why the lien is incurred.

Moreover, the determination of whether an alleged exercise of a lien is legally valid or in compliance with an agreement is contingent upon the facts and degree in each case.⁵¹ The determining factor lies with whether the shipyard has an "overall or effective possession of the

⁴⁸ Jackson (2005) ch. 20.7, cf. *The Tergeste* (1903).

⁴⁹ *Woods v. Russell* (1822).

⁵⁰ Jackson (2005) ch. 20.32.

⁵¹ *The Narada* (1977).

ship” so that the vessel is prevented from sailing without the shipyard’s permission.⁵² Initially, it may be observed that there are similarities between the right given to a shipyard under the Norwegian and English framework. Nevertheless, there are notable distinctions between the right imposed by the two jurisdictions.

As mentioned, the possessory lien extends to a claim derived directly from the possession of a vessel. However, cost incurred during the possession of the vessel will be limited. For instance, the yard will not be permitted unless otherwise is expressed in the contract to carry the cost of maintaining possession of a vessel while asserting the possessory lien.⁵³ This diverges from the perception hold in Norwegian law, see. 3.3.5. However, in cases where the shipyard persists its contractual obligation and continues to carry out work on the vessel and simultaneously asserts a possessory lien, the expenses accrued are considered part of the principal amount and therefore subject to the lien. This ceases to exist when all work stipulated by the contract is completed. In conclusion, the determining factor is whether the cost is incurred upon the enforcement of the possessory lien or incurred under the contractual obligation itself.

In contrast to the statutory right under NMC, the shipyard has limited discretion in preventing an owner from sailing without payment being made. In *The Gregos*, a ship repairer conducted work on a vessel at private wharf owned by a different company than the shipyard, with the “berthing dues” being covered by the owner during repair. The ship repairer's power to prohibit a vessel from sailing by removing specific equipment from the vessel was limited due to the lack of a self-help remedy existent under English law with regards to possessory liens.⁵⁴ In the event that the vessel intends to embark on a voyage, the court determined that it would be more appropriate for the shipyard to seek an injunction, ordering the vessel to refrain from sailing until payment was received, or alternatively, to pursue a writ *in rem* to recover the outstanding amount rather than removing equipment from the vessel to prevent it from sailing.⁵⁵

⁵² *Ibid* and *The Tergeste* (1903).

⁵³ *The Katingaki* (1976) and *Somes v. British Empire Shipping Co.* (1860), cf. Jackson (2005) ch. 20.4.

⁵⁴ *The Gregos* (1985) p. 361.

⁵⁵ *Ibid* see. also, section 5.6.

4 Legal Obligation of the Shipyard Withholding a Vessel

4.1 Duty of Care

4.1.1 Norwegian Principle

In accordance with Norwegian legislation, the shipyard is subject to certain obligations when maintaining possession of a vessel in accordance with NMC § 54. These responsibilities derive from the non-statutory history of the right and are additionally stipulated in NC 5-8-17.

The obligations can be seen as a general duty to exercise care over the vessel, since the owner is prohibited from assuming control of it. This obligation persists throughout the possession of the vessel and is not contingent upon the assertion of the right to retention. The obligation encompasses both the responsibility of overseeing and the duty of safeguarding the vessel while possession is maintained. The requirement is imposed to prevent degradation throughout the shipyard's possession. It should be stressed that measures taken during the care are at the owner's cost.⁵⁶ If the shipyard fails to fulfill its commitment, it may be at danger of being held accountable for any damages incurred on the vessel during the period of retention.⁵⁷ Consequently, it is customary to have insurance coverage as a means of safeguarding against such potential losses.

In the case of ND-2000-373, the court determined that a shipyard was liable for violating the duty of care during a retention affected on the vessel MK Salmon. Following the repair rendered necessary by fire damage, a dispute arose between the owner and the shipyard for the cost incurred. At the commencement of the dispute, the shipyard issued a letter that asserted a right of retention and that they were aware of the duty of care. However, during heavy weather, the mooring line of MK Salmon buckled and teared due to twitching caused by the weather. Further, the vessel was secured to a smaller vessel which again was secured to a buoy. The court held that the shipyard had not adequately implemented steps to mitigate the founding when the mooring technique used implied a risk the lines were to twitch. The fact that the shipyard had shown an inadequate knowledge about mooring techniques and used wrong mooring lines constituted negligence. Hence, the shipyard was deemed responsible for the total value of the vessel, and equipment on-board.

In ND-1960-461, this was not the case. The case concerned the sinking of a vessel due to sudden influx of water, while the vessel the shipyard retained possession. Prior to the incident, the vessel had undergone pumping operations on October 24th and 26th. After being moved to a new berth on the October 26th, the vessel remained stable in the water until the accident on

⁵⁶ Brækhus (2005) p. 582.

⁵⁷ Ibid.

January 6th the following year. The court held that there was insufficient evidence to prove that the influx of water that caused the vessel to sink was caused by the shipyard's negligence. It was also queried whether the shipyard had a duty to pump the vessel free of water if water got into the vessel after relocation to a new berth. The consideration was prompted by the fact that shipyard's workload at the new berth was of "little...significance" consisting of a tugboat travelling between the shipyard and the berthing location. Due to the shipyard's limited presence at the new berth and the fact that the owner could both overlook the vessel and pump the vessel on its own, the shipyard was not in breach of its duty.

Consequently, the shipyard has a duty of care during the right of retention and becomes liable when the shipyard negligently does not uphold its duty. However, proximity of the owner or the vessel's crew could alleviate the shipyard duty. But this does not absolve the shipyard from the duty to care for the vessel while in its possession.

4.1.2 English Principle

In English tort law, a fundamental tenet is the recognition of an individual's duty of care to prevent injury from befalling another. A legal liability is imposed on the shipyard if a breach of this duty is found. However, it is a general principle that a possessory lien only extends to the vessel in possession.⁵⁸ The rationale is that the possessory lien should secure against the owner's indebtedness, but nothing more.⁵⁹ Hence, the lienee cannot recover from a lienor's loss and expenses which exclusively benefits the lienee and does not benefit the lienor.⁶⁰ The scope of the duty of care and cost incurred, therefore, is individually assessed under English law.

However, where extension of the capacity of the possessory lien is not provided by contract or statute, the lien will be limited to cost incurred under the contract and does not extend to expenses for keeping the vessel during the assertion of a possessory lien.⁶¹ Consequently, during retention the cost to berth the vessel while the duty is maintained will not be covered under the lien. However, it can be argued that expenses incurred where the owner derives benefit from the retention could be encompassed by expenses subject to the possessory lien. This would apply to expenditure necessary to preserve a vessel from deterioration in order to benefit the owner but does not encompass storage.

⁵⁸ Jackson (2005) ch. 20.4.

⁵⁹ *The Winson* (1982), cf. *Somes v. British Empire Shipping Co.* (1860).

⁶⁰ *Ibid.*

⁶¹ Jackson (2005) ch. 20.4.

4.2 The Right to Sell

When the owner fails to fulfill its contractual duties, the shipyard may find it financially burdensome to keep possession of the vessel. This is the circumstance when the requirement of the retention right must be met but the vessel occupies valuable dock space by laying idle and no alternative location exist. Rather than surrendering possession of the vessel, the shipyard may opt to pursue a sale of the vessel. However, a right to retention often confers upon the retainer the remedy of self-help against owner's indebtedness, rather than the right to sell the vessel. This means the shipyard can secure itself through its own actions, but the security cannot be converted to cash during possession. This trait is also rooted in the notion that by limiting the owner's control and profit-making abilities, sufficient pressure is exerted on the owner to fulfill its obligation to pay the claim rather than bestow the shipyard a right to sell. This is also what differentiate mortgage from a retention right as the mortgage gives an active right to sell should the loan agreement the mortgage is contingent upon, become defaulted. Therefore, the principle in both English and Norwegian law is that the possessor is never permitted to sell another "subjects" vessel without permission.

However, under Norwegian law, questions have been raised as to whether the law granting "craftsmen and others the right to sell a thing not collected" after work has been completed, also applies to a shipyard's right to sell a vessel.⁶² Although the wording of the law encompasses vessels, are vessels not within the intended scope of the statute as the purpose was aimed at work carried out on smaller assets. Consequently, the term "thing" used in the law should be interpreted to confide to less valuable and smaller assets.⁶³ To compare Scandinavian maritime law, it is worth mentioning that Sweden has a comparable norm, and Swedish lawmakers have given the shipyard a right to sell a vessel if the law's conditions are met.⁶⁴

Consequently, in order for a shipyard to sell a vessel the right of retention must be enforced through a maritime claim through the court systems. This will be deferred to section 5 below. Nevertheless, it should be mentioned that the right involves the ability for the retainer to receive an enforcement judgment for the claim not paid which later creates ground to force sale or take other legal actions against an owner.

⁶² Lov om rett for handverkarar o.a. til å selja ting som ikke vert henta.

⁶³ Brækhus (2005) p. 611.

⁶⁴See. Swedish Maritime Code § 3-39 (2) cf. Lag om näringsidkares rätt att sälja saker som inte har hämtats.

5 Enforcement of the Underlying Claim

5.1 Introduction

The right of retention provides shipyards the passive right to retain the vessel in support of a claim.⁶⁵ Therefore, it is crucial for the shipyard to actively assert a claim against the owner or any other relevant party in the event that the passive right is deemed insufficient. The action leads to the shipyard acquiring a legal foundation to implement enforcement measures against a company, but under English law also the vessel. This subsequently grants the shipyard the opportunity to receive an attachment on the vessel or bankrupt the company through legal proceedings, which may result in the vessel itself being subject to a forced sale.

The procedural process required to enforce the claim are determined by the dispute resolution clause contained in the contract made between the owner and the shipyard.⁶⁶ Vice versa, does this clause regulate a situation where the owner claims redelivery of the vessel. The resolution will be determined by either an arbitration tribunal or a domestic court, with the verdict subsequently serving as the basis for enforcement.

The international nature of shipping may provide challenges to the enforcement of judgements, as many countries do not recognize foreign court judgments. It is worth noting that most countries have acceded the New York Arbitration Convention, which enable the enforcement of arbitration judgements in domestic courts independent of the place of arbitration. In the event the jurisdiction does not recognize an arbitration award, or the chosen law of the contract, domestic law will apply regarding the enforcement of the underlying claim.

While the ability to enforce the underlying claim is assessed under this section the topic of priority between the legal interests will be deferred to section 6 as priority only is relevant where the fund established is exhausted by the creditors having legal protection in the assets of the company or the vessel.

5.2 Ship Owning Company

In a situation when a contract is entered between a shipyard and an owner, it is possible for the shipyard to receive a general basis for enforcement of claim under Norwegian law when the ship owning company bears responsibility for the claim lodged by the shipyard.⁶⁷ The foundation would be a remand to receive an attachment on the vessel.⁶⁸ This attached vessel

⁶⁵ Jackson (2005) ch. 0.8 and Brækhus (2005) p. 612.

⁶⁶ E.g., REPAIRCON clause 16.

⁶⁷ Norwegian Enforcement of Claims Act (ECA)§ 11-2, cf. § 4-1.

⁶⁸ ECA ch. 7.

may later be forced to be sold, provided that the judgement creating the attachment is legally enforceable.⁶⁹

Upon acquiring an attachment through judicial channels, the shipyard concurrently with the right of retention have an equivalent form of legal security in the vessel. The distinction between the two securities resides in the capacity to enforce the two rights as only an attached vessel may be subject to a forced sale. Between the assertion of the right of retention and the reception of the basis for enforcement with a subsequent attachment, it is possible for numerous of other securities to be established on the vessel, possibly obtaining a better priority than the attachment received by the shipyard. This raises the question whether the attachment holds an equivalent priority as the right of retention does in relation to other legal securities.

In Rt-1923-113, the shipyard received a maritime lien for the performed repair of a vessel and subsequently ordered a forced sale of the vessel. The maintained possession of the vessel later granted the shipyard a better legal protection than a wage claims a machinist had on the vessel. While the outcome would be different with today's law⁷⁰, the Supreme Court recognized the transfer of priority between the retention right and the derived reception of a maritime lien. The doctrine has later been confirmed in ND-2000-364 where it is stated that the retainer's attachment receives priority similar to the exerted right of retention rather than the isolated priority given through the attachment, or charge granted through a basis of enforcement created through courts. However, the priority will only be enforceable against the assets subject to the right of retention, meaning an attachment received on other assets owned by the company does not give the equivalent right.

It should be noted that in cases where the vessel is under a forced sale abroad, Norwegian law will acknowledge the sale and extinguish any right associated with the vessel, as long as the vessel is situated in a jurisdiction where the forced sale took place, and the sale is made in compliance with the applicable domestic regulations.⁷¹

5.3 Charterparties

5.3.1 Bareboat Charter

During bareboat charters the repair contract is often entered between the charterer and the shipyard while the vessel undergoes repair. The shipyard's enforcement of a retention right against a charterer, is distinct since the registered owner becomes a third party to the conflict between the shipyard and the charterer concerning the sum due. The value receiving a basis for

⁶⁹ ECA ch. 11 see. especially ECA §§ 11-2, 11-10 and sub-chapter II and III.

⁷⁰ The difference comes as a result was the shipyard's retention right was previously regarded as a maritime lien.

⁷¹ NMC § 76.

enforcement against the charterer is trivial, however, as the value in the company is contingent upon the vessel's operational status. If they already are short on cash, will inevitably the imposed pressure on the chartering company's ability to generate income, ultimately bleed the company dry.

Since the claim is against the charter the basis for enforcement does not have any effect on the vessel itself as the ownership resides with the registered owner of the vessel. Hence, the priority granted through a right of retention is not transferred to an attachment received on the bareboat charterer. However, the company may have other assets and an attachment on these could show result.

One side effect to a breach of contract committed by the bareboat charter, is the impact it has on the shipowner. Given that the shipyard holds possession of the vessel, the right of retention continues since the right pertains to the unpaid instalment for repair or conversion on the vessel.⁷² The characteristic bears resemblance to maritime liens encumbered on a vessel until they are claimed or statute-barred.⁷³ Hence, it is unreasonable to allow the shipowner to receive the vessel without compensating for the work performed as this would bestow the owner an inequitable advantage against the shipyard. Consequently, the shipyard can continue to retain the vessel until the claim is settled by the shipowner.

Therefore, it is common for most bare-boat charterers to include a clause that allows the shipowner to cancel the charter in order to minimize such loss. This is because the money paid to the shipyard at a later stage may be recovered from the bare-boat charterer or its bankruptcy estate.

5.3.2 Non-lien Clause

Typically, the competence to encumber a vessel with the purpose to preserve it is bestowed with the owner or the Master.⁷⁴ However, where the right of retention follows from non-statutory principles, such as in English law or standard contracts, the contract may be invalidated if the owner does not have the right competence. According to English law, it is recognized that the hirer of a chattel is entitled to have it repaired, thereby creating a possessory lien, to enable a continued use of the chattel in the way it is ordinarily used for.⁷⁵ This is also the situation under Norwegian law.⁷⁶

⁷² NMC § 54 first paragraph.

⁷³ NMC §§ 51 and 55.

⁷⁴E.g., NMC § 137.

⁷⁵ *Williams v. Allsup* (1861) and *Singer Manufacturing Co. v. London & South Western Railway Company* (1894).

⁷⁶ Brækhus (2005) ch. 275.2.

A peculiar issue that arises under a bare-boat charter occurs where the shipowner has included a non-lien clause.⁷⁷ This clause grants exclusive competence to the shipowner to impose any lien on the vessel. However, the clause only affects the legal relationship between shipowner and charterer. Consequently, the charter is obliged in such a case to notice third parties of its limited competence to encumber liens on the vessel.⁷⁸ Where the shipyard is unaware of the competence of the bare-boat charterer and a retention right is created, the creation of the lien will be a violation of the contract between the charterer and the shipowner, and particularly if the shipowner does not acknowledge the right of retention then asserted by the shipyard.

The issue then becomes whether the lien was acquired lawfully. Under English law the crux of the matter is whether the shipyard was in good faith regarding the charterers competence to encumber the vessel.⁷⁹ This is also the view under Norwegian law.⁸⁰ On the other side, where the shipyard is in bad faith, regarding the competence of the charterer, could this affect the creation of the right to retain the vessel.

In conclusion where the shipyard becomes aware of the non-lien clause, if the shipyard wants the contract the solution is to issue of a bank guarantee or other form of security from the bare-boat charterer in order to have some form of security for the work performed.

5.4 Bankruptcy

If the owner of a vessel is declared bankrupt while the shipyard has possession of the vessel, the bankruptcy estate must respect the shipyard's right to retain the vessel according to Norwegian law.⁸¹ Hence, the shipyard maintains the security the right of retention provides against the owner's bankruptcy.⁸² However, if the value of the vessel were to decrease below the claimed value by the shipyard, any excess amount, the shipyard would have to seek through a claim for dividend in the bankruptcy estate. Additionally, it is necessary for the shipyard to accept that the bankruptcy estate is permitted to sell the vessel with the effect the retention right is extinguished, and the shipyard's claim is paid.⁸³ This right imposed to a bankruptcy estate only occurs if there after the sale of the vessel is left a sum the estate can distribute to the other creditors as dividends.

⁷⁷ See. BARECON 2001 clause 16.

⁷⁸ See. BARECON 2001 clause 16.

⁷⁹ *Tappenden v. Artus* (1964).

⁸⁰ Cf. Brækhus (2005) ch. 275. 2, cf. ekstl. § 1 no. 1 and 2.

⁸¹ Deknl. § 8-17.

⁸² Deknl. § 8-17, cf. § 8-14.

⁸³ Deknl. § 8-17, cf. § 8-15.

In English law the possessory lien remains unaffected by an insolvency of the company. The reason is if a lienee were to surrender the vessel to the bankruptcy estate, the security and priority of the claim would be lost.⁸⁴

5.5 Arrest

If the shipyard loses possession of the vessel and no longer can regain it, the only recourse to pursue the underlying claim should the owner not pay the claim is to initiate legal proceedings to arrest the vessel. Therefore, it is worth to mention shortly the concept of arrest as a legal remedy due to its correlation to the right of retention.

Compared to the right of retention and its inclusion in the 1997 Convention, are arrests of a vessel enforceable with most nations through the International Convention on the Arrest of Ship.⁸⁵ The international recognition of the convention allows for the possibility of arresting a vessel in states party to the convention provided that the domestic legislation for arresting a vessel is met.⁸⁶ Pursuant to Article I letter (m) an arrest can be made for maritime claims arising from “construction, conversion, repair, converting or equipping of the ship”. Hence, the shipyard has the possibility to legally arrest a vessel due to a defaulted payment by the owner.

Both a retention right and arrest results in the owner loses control over the vessel until sufficient security is provided, very often by way of a P&I or Hull & Machinery clubs Letter of Undertaking (LoU). Therefore, both methods have the objective of ensuring coverage and put pressure on the owner to provide alternative coverage or pay the disputed claim. However, the priority granted through the right of retention will not be transferred when the vessel is arrested, seeing that the shipyard no longer has possession of the vessel. Thus, the arrestee must accept that current creditors with better security have a better priority than the shipyard if the vessel becomes sold under the legislation where the vessel is located.⁸⁷

In relation to an arrest being enforced while the shipyard has possession of the vessel, it follows from English law that the shipyard shall be put in the same position as if he did not surrender the vessel, should the vessel be forced sold after arrest.⁸⁸ Similar will be the case under Norwegian law.⁸⁹

⁸⁴ Jackson (2005) p. 533.

⁸⁵ A closer examination on ship arrest is found in *Berlingieri on Arrest of Ships: Volumes I and II*.

⁸⁶ Under Norwegian law a vessel can be arrested pursuant to NMC part I ch. 4.

⁸⁷ Falkanger (2010) p. 109–110.

⁸⁸ *The Songa Venus* (2021).

⁸⁹ NMC § 54.

5.6 Enforcement of Maritime Claims Under UK Law

The enforcement of maritime claims under English law deviates from the standard approach followed under English law. This is because maritime claims are distinct from regular claims and are instead put under the Admiralty jurisdiction under the English court system. Consequently, the resolution of a maritime dispute is pursued within the Admiralty jurisdiction of the High Court. According to section 20 (2) *litra n* of the Supreme Courts Act, a shipyard's claim for building, repair, etc. will be subject to the court's jurisdiction. A special feature of Admiralty jurisdiction is the utilization of a dual action system versus a singular system being in place outside the Admiralty court. The system relies on an action or claim that is initiated either *in personam* or *in rem* before the court.

An action *in personam* is characterized by a claim directed at a defendant, whereas an action *in rem* is initiated against a vessel where the dispute concerns maritime law. Furthermore, it is important to emphasize that an action *in rem* solely establishes or derives its creation from a lien.⁹⁰ Hence, the enforcement of a possessory lien against the vessel will constitute an action *in rem*. However, by directly claiming against the owner in Admiralty a maritime claim could also be based on the possessory lien enforced *in personam*.⁹¹ The distinction between the two actions is important in cases where there is a conflict between creditors outside of Admiralty and other non-maritime securities. The reason is that a conflict between a maritime claim and a claim raised outside the Admiralty court could impact the hierarchy of priorities vested in the vessel, as both claims outside and inside Admiralty may be brought against the same asset meaning the vessel.⁹² Therefore, when assessing the priority of claims under English law it is necessary to consider the priority for both actions *in rem* and *in personam* and their priority in relation to each other.⁹³

6 Priority

6.1 Introduction

Conflicts may emerge between the shipyard's right of retention and other security holders in certain situations, leading to a competition between the economic interest associated with the security held in a vessel. These conflicts arise when the aggregate number of securities and claims surpasses the total value of a vessel. These assertions could for instance be made by banks, salvors, insurance companies and other interest in the vessel.

⁹⁰ Jackson (2005) ch. 17.62.

⁹¹ Jackson (2005) ch. 23.8.

⁹² Jackson (2005) ch. 23.3.

⁹³ *Ibid.*

Typically, each vessel is separated and owned in single purpose company/vehicle, often called SPV, to spread and contain the risk associated with operating the vessel and protect the parent and sister companies, meaning the value in the SPV are with the vessel, and the assets attached, such as fuel, equipment and so on. Hence when a security holder loses priority could the security attached to the vessel be lost as it would be impossible to pierce the corporate veil, all depending on how the loan and finance structure is put in place in the group. For a shipyard, this situation arises when it loses possession of the vessel or when other securities are granted a better priority than the retention right. The same applies to other holders of securities as the competition to receive compensation for the acquired security may be outcompeted by a given jurisdiction. This is why it is important to have good understanding of where to seek arrest and later sale of a vessel by following its trading pattern before deciding on enforcing a claim.

The foregoing is called forum shopping, a strategic practice aimed at obtaining a more favorable outcome for the holder of a specific security under one jurisdiction, compared to what would be achieved under a different one. Somewhat outside the scope of the thesis, but illustrative for the forum shopping strategy utilized by the maritime industry, is the Rule B Attachment arrests made in the US for claims made in disputes where the currency was in USD as it was rather easy to bring an international dispute before a US court (and claiming forum), arresting disputed monies being transferred through the US monetary system.⁹⁴ This practice allowed similar pressure as retention rights on the parties. Since around 2009, this strategy is more difficult to deploy.⁹⁵ Although, the shipyard often relies on the chosen law of the contract or domestic law for the shipyard, other security holders or claimants may be affected by the introduction of a different jurisdiction being applied when the vessel is sold or transferred to the bankruptcy estate of the ship owning company.

6.2 Maritime Lien

Under international maritime law, a fundamental concept is that a maritime lien in most cases has superior priority over all other rights in a vessel. This follows from the effort made in the three Conventions to establish a common system for determining the hierarchical order of securities in a vessel. Following the 1997 Convention, five specific incidents have been prioritized over all other securities due to their precarious nature.⁹⁶ However, in many countries which have not ratified the convention their legislation does not align with any of the conventions. Hence, the occurrences that give rise to a maritime lien may vary in capacity, resulting in different priority schemes being applied under different jurisdictions. Furthermore,

⁹⁴ *Winter Storm Shipping v. TPI* (2002).

⁹⁵ *The Jaldhi* (2009).

⁹⁶ See. Convention 1967 art. 4 no. 1.

also the priority in each jurisdiction that have ratified one of the conventions could differ, as discretionary powers have been given to lawmakers, for instance the priority given to the shipyard's right of retention.⁹⁷

The Norwegian legislation regarding maritime liens is concurrent with five incidents set out in the 1997 Convention.⁹⁸ Pursuant to NMC § 52 all maritime liens have priority over any other claim in the vessel. Consequently, the maritime lien will have priority over any retention exerted on a vessel and same applies to any mortgages. Therefore, in practice will a salvage award made by a salvor of the vessel precede over a claim for a conducted repair made by a shipyard under Norwegian law.

The boundaries and enforceability of maritime liens under UK law are subject to some uncertainty.⁹⁹ This is mostly related to the prevalence of case law. It is established that maritime liens arise in relation to a claim for salvage, damage caused by a vessel, seamen's wages, and master's wages and disbursements in addition to bottomry and respondentia.¹⁰⁰ Following the judgement of *The Tergeste*, maritime liens are given the highest priority among all encumbrances in a vessel, save for a possessory lien that were established before the existence of the maritime lien.¹⁰¹ Therefore, if a shipyard acquires possession of a vessel and a maritime lien is subsequently established, the possessory lien will prevail. On the other hand, the shipyard must honor a maritime lien established before its possessory lien.¹⁰² This arises when the vessel reaches the shipyard for repair in order to preserve the remaining value of the vessel after the vessel was salvaged. Nevertheless, mariners' wages only have priority over the shipyard's possessory lien until the point of entry at the shipyard. Reason is that these wages accrue after the vessel entered the shipyard, and the shipyard's performance should therefore be protected.¹⁰³

6.3 National Flagged Fully Mortgaged Vessel

6.3.1 Norwegian Law

The simplest determination of priority occurs in a retained NIS-registered vessel that is subject to Norwegian law and jurisdiction and is fully mortgaged by mortgagees for the full value of the vessel. The regulations of priority in vessels are mandatory as long as the case is being held

⁹⁷ 1997 Convention art. 7.

⁹⁸ NMC § 51.

⁹⁹ Jackson (2005) p. 30.

¹⁰⁰ Jackson (2005) ch. 2.39.

¹⁰¹ *The Tergeste* (1903).

¹⁰² *The Russland* (1923).

¹⁰³ *The Gustaf* (1862).

in Norwegian courts. The resolution of conflicting securities in a vessel are under Norwegian law determined by NMC chapter III part II which addresses “maritime liens etc. in ships”. The further conflict between the right to retain the vessel versus the mortgage on the vessel is determined by NMC § 54. The rule stipulates that any encumbrances on the vessel not regarded maritime liens¹⁰⁴, are subordinate to the right of retention in terms of priority.¹⁰⁵ As a result, all securities, apart from maritime liens, will be granted protection below the right of retention. In terms of conflicting right of retention is this unlikely to happen, as the necessity of possession prohibits such situations.

However, as previously stated, the priority will solely be applicable to expenses that are covered by the right to retain the vessel, as outlined in section 3.3.5. The rationale for prioritizing the shipyard is based on the value it offers other security holders through the repair and conversion of the vessel. Consequently, legislators have deemed it necessary to protect the additional value the shipyard provides by performing work on a vessel.

The ability to extend the right of retention beyond what is legally protected by statutory provisions assumes that the other security holders in the vessel have agreed to the right of entry. To ensure that this expanded entitlement is protected against new burdens on the vessel, the right must be registered in line with NMC § 41, cf. NMC chapter 2.

6.3.2 English Law

When determining the priority on a vessel that is fully mortgaged for its full market value and registered under the Merchant Shipping Act¹⁰⁶, the starting point is that a possessory lien has priority against any securities subsequently acquired in the vessel.¹⁰⁷ A characteristic for the possessory lien is that it departs from the prevailing approach found in Admiralty jurisdiction, where securities first in time prevails subsequent securities.¹⁰⁸ Hence, a mortgage not registered in accordance with the Merchant Shipping Act and Merchant Shipping Regulation does not prevail the possessory lien.¹⁰⁹ Although the company has registered an additional charge prescribed to ensure that the mortgage can be enforced against other creditors in the vessel.¹¹⁰ It should be noted pursuant to *The Colorado*, that British registered mortgages on British vessels

¹⁰⁴ Maritime liens are defined as the five types of maritime liens recognized under Norwegian law, see. NMC § 51.

¹⁰⁵ NMC § 54 second paragraph.

¹⁰⁶ Merchant Shipping Act of 1995 Part I.

¹⁰⁷ Jackson (2005) ch. 23.112.

¹⁰⁸ Meeson et.al. (2018) ch. 6.

¹⁰⁹ Merchant Shipping Act (1995 c. 42) part II and Merchant Shipping Regulations (1993 no. 3138).

¹¹⁰ Companies Act (2006 c. 46) part 25.

are given a special treatment that places them above other mortgages, regardless of the origin of the other mortgages on the English registered ship.¹¹¹ The possessory lien granted to a shipyard under English law remains unaffected, as it holds priority over all mortgages on the vessel.¹¹² In regard to maritime liens will they precede possessory liens presupposed they are established before the vessel enters the shipyard.¹¹³

Since the possessory lien is created through a contract it is presupposed that the prior interest e.g., the mortgagee, has permitted the transaction the possessory lien depends on.¹¹⁴ Essentially, it is comparable to the Norwegian concept of “opptrinnsrett” which refers to a security holder agreeing to subordinate its interest to another party with a higher priority. An explicit acceptance will unequivocally grant the right to entry, but the same applies following the mortgage knew the vessel were to operate in the charter-market, such as under a bare-boat charter, see. 5.3.

In a situation where the possessory lien no longer exerts pressure on the owner, an option would be to arrest or receive an attachment on the vessel with a subsequent remand to force a sale. The cost of taking an action *in rem* to bring about such sale, have the same priority as the possessory lien has regardless of any other legal securities created.¹¹⁵ The basis for this principle is to place the shipyard in the same position as the dispute never occurred, as this action could have been avoided if owner or creditor came together to pay the shipyard.¹¹⁶

6.4 Foreign Flagged Fully Mortgaged Vessel

6.4.1 Norwegian Law

The NMC has incorporated a provision, NMC § 75, to regulate the choice of law in cases when a foreign flagged vessel is the subject of a dispute before Norwegian courts, with the aim of preventing conflicts. The provision originates from art. 12 no. 1, art. 2 and art. 6 no. 1. of the 1967 Convention which no longer is ratified by Norway. Currently, the choice of law provision reflects the principle of *lex fori*.¹¹⁷ Consequently, a matter tried before Norwegian courts will

¹¹¹ *The Colorado* (1923), cf. *The Halcyon Isle* (1980).

¹¹² *Williams v Allsup* (1861).

¹¹³ *The Gustaf* (1862), cf. Meeson et.al. p. 221.

¹¹⁴ Jackson (2005) ch. 23.112.

¹¹⁵ *The Songa Venus* (2021).

¹¹⁶ *Ibid.*

¹¹⁷ Pursuant to the law commentary on NMC § 75 applies the retention right in NMC § 54 as a mandatory provision NMC § 75 second paragraph protects the yard in terms of foreign flagged vessel where the home-state has different rules on priority.

be decided by the usage of Norwegian law on the applicable dispute. Therefore, the right of retention in a foreign flagged vessel is given the same priority as stipulated in the NMC § 54.¹¹⁸ This does not apply to a dispute between mortgagees as this is determined by the rules of the vessel's flag-state.¹¹⁹

Whereas shipbuilding, conversion and ship repair are treated similar under NMC § 54, it should be noted NMC § 75 treat shipbuilding differently where the shipyard is not located in Norway.¹²⁰ In this situation Norway applies *lex rei sitae*, meaning the priority is determined by the jurisdiction where the vessel is built. Consequently, a foreign shipyard is treated differently dependent upon whether it builds or repairs the vessel, in regard to the shipyard's right to withhold a vessel.

6.4.2 English Law

The English rules on conflict of laws primarily derive from case law, although certain statutes provide choice of law provisions for certain conflicts.¹²¹ Given that the shipyard's possessory liens under English law are non-statutory in nature, the matter is governed by case law. However, the process construed through case law is applicable to both statutory and non-statutory matters and follows a four-stage process.¹²²

The first stage pertains to determining whether the matter is of a procedural or substantive nature. Procedural matters are regulated by the *lex fori*, whilst substantive matters are categorized into a classification system according to their legal concepts under English law. This classification system pertains to claims derived from contract, tort, restitution or proprietary issues. Once the legal concept is defined, the judge will proceed by determining which rule to apply to the matter at hand and it is where the decision to apply English or foreign law to the matter happens.¹²³ The judge will ultimately evaluate how the chosen dispositive rule addresses the issue.

However, an additional control will be conducted after the capability of the rule is clarified. This step evaluates whether public policy should be given priority and enforce English law in relation to the matter instead of the foreign law. This measure is implemented to avoid any unintended outcome, such as the misinterpretation of a concept that would lead to the

¹¹⁸ NMC § 75 first paragraph.

¹¹⁹ NMC § 75 second paragraph no. 1.

¹²⁰ Cf. NMC § 75 third paragraph.

¹²¹ E.g., Contracts Act (1990 c. 36) and Private International Law Act (1995 c. 42).

¹²² Jackson (2005) ch. 26.4–26.27.

¹²³ Jackson (2005) ch. 26.5.

application of a large number of foreign laws in matters falling under the jurisdiction of English courts. On the flip side, excessive reliance on public policy might create ambiguity regarding whether claims are safeguarded under foreign law or if English law takes precedence. In order to ascertain how English law applies to a maritime dispute involving a fully mortgaged foreign vessel, it is necessary to evaluate each claim separately as each claim would create its own dispositive rule. It should be noted that the content of the foreign law is a matter of facts and must therefore be proved to apply to the specific case. If this is not adequately done the foreign law is deemed identical to the English law.¹²⁴

The process of determining a maritime claim is carried out in accordance with four-stage process set out above. To advise whether the claim is of substantive nature Section 20 (2) of the Supreme Courts Act outlines specific matters that pertain to substantive concerns under Admiralty.

The next step is to categorize the specific claim into a distinct category under the alternatives set out in the section. This is due to several categories of claim can exist under each alternative pursuant to section 20 (2). Therefore, each claim must be evaluated separately. Generally, claims based on foreign law that matches those of English statutory provision *in rem* jurisdiction are admitted.¹²⁵ Where the claim does not fit any statutory provision or category the outcome will be opposite, and the claim will not be admitted.¹²⁶

While the classification controls the category in which each claim is placed and hence whether foreign law may apply to the substantive nature of the case, procedural law determines the priority assigned to each claim. Hence, both time-bars, priorities, remedies and evidence are part of the procedure regulated by *lex fori*.¹²⁷ In general, English law will be applied to determine the priority of a foreign vessel. However, exemption exist from the principle of *lex fori*. This concerns the priority and validity of mortgages on foreign vessels which is governed by their *situs* or flag-state.¹²⁸

However, the matter of validity could be exempted when the mortgage is not created according to the flag-state's legislation but fulfils the requirement of a mortgage under English law. This was the case in *The Angel Bell* where an attempted creation of a mortgage resulted in the

¹²⁴ Jackson (2005) ch. 26. 15.

¹²⁵ Jackson (2005) ch. 26.24.

¹²⁶ Ibid ch. 26.27.

¹²⁷ Ibid ch. 26.33.

¹²⁸ Osborne (2016) p. 159 and *British South Africa Company v De Beers Consolidated Mines, Limited* (2010).

creation of an equitable mortgage under English law while the attempted creation of a mortgage in accordance with Panamanian law was not fulfilled.

Concerning the possessory lien or right of retention a shipyard has in a vessel, it is clear such a right is acknowledged by English court, but the matter of procedure regarding the priority falls under *lex fori*. Hence, it has the same priority as granted by if the shipyard were located in under English jurisdiction, ref. section 6.3.2. A closer assessment on foreign liens is deferred to section 6.5.2.

6.5 Ship with a Foreign Statutory Lien

6.5.1 Norwegian Approach

As a result of the global nature of shipping, a vessel may be subject to a maritime lien from a foreign state before it enters a Norwegian shipyard. This situation arises for example when a U.S. vessel that has previously been repaired in the U.S. is subsequently repaired at a Norwegian shipyard. According to U.S. law a shipyard is granted a maritime lien on the vessel in exchange for providing credit for repairing the vessel.¹²⁹ Therefore, the shipyard can extinguish its possessory lien through redelivery of the ship, since, according to U.S. law, the shipyard holds an equal priority as a maritime lien. Consequently, should the owner fail to repay the credit provided, an action *in rem* may be pursued.

An issue arises where the vessel upon arrival to a repair yard in Norway has yet to take an action *in rem* and the Norwegian shipyard claims a right to retain the vessel until the owner settles what is due. Similar issue arises where bankruptcy, arrest or other enforcement procedures are taken by other securities in the vessel while at the Norwegian shipyard or in port.¹³⁰

According to NMC § 75, second paragraph, number 2, the priority of all legal rights in a vessel is subordinate to all registered rights. The legal right referred to in that paragraph includes any foreign rights that arise from the vessel's flag-state. The flag-state also governs the priority between mortgagees, but Norwegian law decides the priority given to maritime liens and the right to retain the vessel.¹³¹ Consequently, any foreign rights that align with a Norwegian maritime lien or right to retention will be given precedence according to NMC chapter 3. The maritime lien provided to a U.S. shipyard has its basis under U.S. federal law and does not fulfil any alternative under NMC § 51. Further, the U.S. maritime lien will not suit the right of

¹²⁹ Cf. 46 USC §§ 31341 – 31343.

¹³⁰ See. Section 4.2 and Section 5.

¹³¹ NMC § 75 second paragraph no. 1.

retention, as the requirement of possession is already extinguished. Consequently, the U.S. shipyard must step aside to any registered mortgagees.

This outcome does not appear to be the case in all Scandinavian countries. Following ND-1997-1 (Supreme Court judgement), with reference to ND-1995-12 (Gothenburg District Court) the Swedish court concluded against this perception. The case concerned a vessel registered in Panama that acquired bunker oil in an Egyptian port. The vessel was later “kvarstad” (term for Swedish arrest) at a Swedish yard because bunker oil had not been paid. According to Panamanian law, if someone delivers bunker oil that is deemed necessary for the operation of the vessel, they would be entitled to a maritime lien on the vessel that receives the oil. Although Swedish law did not include a maritime lien on "necessaries", this did not prevent the existence of a maritime lien being attached to the vessel upon "kvarstad". Hence, the court concluded that the existence of the maritime lien falls under the flag-state rather than *lex fori* and gave the claim priority on the level of a maritime lien. This is complete opposite of the Norwegian standpoint where this is determined by *lex fori* "in all cases" what is given priority deemed a maritime lien.¹³²

6.5.2 English Approach

The facts described in section 6.5.1 was influence by the facts presented in the precedent set by the Privy Council in a case known as *The Halcyon Isle*.¹³³ The dispute revolved around a vessel registered and mortgaged in England. The vessel had undergone repairs in the U.S. resulting in a maritime lien being placed on it to get payment for the repair work. The Privy Council overturned the previous judgment made by the High Court of Singapore, which had been influenced by a precedent made by the Supreme Court of Canada.¹³⁴ The High Court determined that the issue regarding the accumulation of a maritime lien should be determined based on *lex loci contractus*¹³⁵ whereas the question of the priority was addressed according to *lex fori*. The Council had a contrary view, asserting that the English law's evaluation of foreign statutory liens, as well as other types of liens, is contingent upon the existence of a comparable lien under English law in order for recognition to take place. This was accomplished by applying the procedure outlined in section 6.4.2. When such a lien does not exist, the foreign lien will not be acknowledged, and no priority given. On the other hand, where the foreign lien

¹³² NMC § 75 first paragraph.

¹³³ *Bankers Trust International Ltd v. Todd Shipyards Corporation* (1980).

¹³⁴ *The Ioannis Daskalelis* (1974).

¹³⁵ Law of the place where the contract is made.

is acknowledged priority will be equivalent to the priority such lien would receive under English law.

From an English perspective, the judgement settled an issue determining the nature of claims under English law. However, from an international perspective the judgement may incentivize forum shopping in similar cases.¹³⁶ The ripple effect of the ruling continues to propagate, as the judgment has been progressively adopted in other common law jurisdictions, for instance in Australia.¹³⁷

7 Cessation of Legal Security

7.1 Cessation upon Payment

The primary reason for the cessation of retention right happens when the owner fulfills its outstanding payment obligations to the shipyard. Once payment is made the shipyard no longer retains any interest in the secured vessel, as the purpose of exerting pressure on the owner no longer exist. Nevertheless, if the owner does not fulfill the obligation to pay, the expiration of the statute of limitations does not impact the claim attached with the right to retain the vessel.¹³⁸ The claim continues to exist as long as the shipyard has possession of the vessel, seen demonstrated in RG-1934-187, where the right of retention remained intact for 13 years while the shipyard had possession of the vessel. However, if a shipyard refuses to accept correct payment from the owner and the owner is no longer at fault does this refusal result in loss of the right. However, claims paid with a reservation attached contradict this principle.¹³⁹

7.2 Cessation upon Surrender of the Vessel

Provided the shipyard surrenders or no longer can prevent the loss of possession the retention right ceases to apply, and the owner regain control of the vessel. This is also clear when the shipyard surrenders the vessel voluntarily to the owner, with a reservation to maintain the claim. Similar applies to a temporary release of the vessel, as illustrated in Rt-1932-38. In this case the shipyard permitted the release of the vessel to the owner, allowing them to fish herring for a period of two months. This resulted in a loss of possession. However, there are certain restrictions to the principle of surrender when the actions made by the owner or someone under the owner's control results in the loss of possession.

¹³⁶ Jackson (2005) ch. 26.172.

¹³⁷ *Sam Hawk* (2016) and Douglas (2017).

¹³⁸ Fl. § 27 (3).

¹³⁹ See. RG-1934-187 and RG-1933-75.

If the owner or someone under its control engages in criminal conduct such as coercion or fraud that result in the shipyard losing possession of the vessel, the shipyard has legal grounds to reclaim possession. In ND-1990-177, representatives of the owner successfully abducted the vessel by deceitfully inform the shipyard they needed to conduct a test on the fishing machinery. Additionally, they requested to stay the night aboard the vessel, as the test voyage were scheduled the next day. Although, the shipyard allowed the representatives to take accommodation in the vessel, it reiterated the retention right by stating that the vessel was prohibited from leaving without representatives from the shipyard being on-board. Anyway, during the night, the representative managed to abduct the vessel consequently taking control of the vessel. The court held that the surrender of possession was due to the shipowner's fraudulent behavior through misinformation about the need for a test voyage. Consequently, the shipyard by initiating legal procedures the same day managed to reclaim the right of retention.

When the loss of possession is a result of unlawful activity, the efforts to regain the vessel must be undertaken within reasonable time and be effective to reinstate the possession. While this was done in ND-1990-177, if a shipyard remains passive, the possibility to reclaim possession will quickly be lost regardless of the owner's possession if enough time has passed. Swiftiness is necessary as a vessel also can reach the high seas being outside the control of the port state preventing measures from being taken to reinstate possession. In such a case, arrest must be taken the next time the vessel arrives to port.

If a shipyard takes unreasonable amount of time to initiate legal actions against the owner, the shipyard may lose the ability to regain possession. This was concluded in ND-1953-750. Following the completion of test trials, the vessel did not return to the port. This was due to the personnel of the shipyard was commanded to go ashore on a pilot vessel, while the vessel's crew continued sailing. Following the test trial, it was clear the shipyard no longer had possession, even though it was questioned whether it was lost prior to the shipyard's crew returning to shore, see section 3.3.4.2. Regardless, since the shipyard awaited three and a half months before legal actions were taken against the owner to reclaim possession of the vessel, the court determined that the claim was not presented within "reasonable time" after possession was lost. One of the arguments were the vessel's arrival to port two weeks after the incident, with no legal action taken. As a result, the court found it more reasonable to beneficiary other security holders rather than reinstate the priority granted through the right of retention.

7.3 Cessation upon Provision of Security

Once the shipyard receives sufficient security for the total amount claimed, it is obliged to surrender possession of the vessel. Under certain situations, the owner would prefer the vessel redelivered in exchange of providing security as a temporary form of payment, due to the lack of accessible funds being available upon redelivery. This situation arises when the vessel

undergoes repair or conversion, and is completed before the agreed redelivery, resulting in the owner lacking necessary finances. A different case, happens when the owner anticipates the vessel being rechartered upon redelivery by the shipyard, consequently, having the necessary finances dependent by a bank guarantee issued by future income.

According to Norwegian law, shipyards are not obliged to accept bank guarantees or other security provisions as payment.¹⁴⁰ The reason being when there is no dispute, the debtor is obliged to pay the final instalment as stipulated by contract since a shipyard cannot operate on bank guarantees and/or club letters.¹⁴¹ Only disputed claims create grounds for a guarantee by the funds being put into an escrow account until the dispute is solved.

The potential danger of accepting alternative forms of payment in exchange for redelivery of a vessel to the owner is shown in Rt-1915-694. In the case, the shipyard surrendered the vessel while a claim was upheld for the work that was carried out. Upon the vessel's delivery, the shipyard received two money orders that the bank did not honor due to its bankruptcy. As a result of the bank's bankruptcy, the owner redelivered the vessel to the shipyard, but shortly after redelivery the owner was also declared bankrupt. Based on the reinstatement of the shipyard's possession of the vessel, a dispute about the right of retention in the vessel arose between the shipyard and the owner's bankruptcy estate. The owner's bankruptcy estate demanded possession of the vessel on the basis that the shipyard lost its retention right when they accepted the money orders and delivered the vessel to the owner. The court agreed with the bankruptcy estate that the shipyard lost possession when the bank failed to honor the money orders, resulting in the rightful possessor of the vessel being the bankruptcy estate. Consequently, the shipyard lost priority of the claim and became an ordinary claimant to the estate for the conducted repairs.

Nevertheless, there is an exception, to the general rule that the shipyard is not required to accept guarantees and club letters. This exemption applies when the owner suffers significant harm if the shipyard continues to retain the vessel. A disagreement may arise on the calculation of the final instalment, and it will need time to fathom what the owner owes. In such a circumstance, it would be unreasonable for the shipyard, by virtue of the pressure to retain the vessel, to be able to force payment of an amount to which it is not entitled before it is calculated. However, the owner should not have the ability to instantly have the vessel redelivered by objecting to

¹⁴⁰ Brækhus (1979) p. 223.

¹⁴¹ ND-1949-290.

the calculation of the final instalment and must seek an interim court order to receive the vessel.¹⁴²

On the owner's side the worst outcome will be that the retention result in a financial loss or cancelation of charter.¹⁴³ Thus, by providing security to the court prior to a final settlement the owner may receive the vessel if the interim court order is successful. However, the requirement for its success is solely determined by a concise evaluation of the shipyard's assertion and the owner's objection to the assertion made by a judge.¹⁴⁴

7.4 Wreckage or Decreased Value of the Vessel

When the shipyard carries out repair or conversion of a vessel, there are inherent dangers associated with such work. For example, it is possible for a vessel to catch fire during hot works, founder during test trials or fracture in two when in drydock. Although the progress of the work may be delayed, it is alien that the vessel is deemed a "construction total loss" (CTL) during the work. Conversely, CTL is more commonly deemed when the vessel arrives at the yard after being salvaged by a salvor due to an incident at sea. The determining factor is if the vessel is so badly damaged that the expense of repairing is no longer justifiable.

Due to the associated risk related to the shipyard's work it is customary to carry either a builder's or repair's risk insurance. This is entered based on which party bears the responsibility should the vessel be damaged while located at the shipyard's premise. If the vessel is declared CTL or no longer carries any value, the security attached to the vessel is lost. Normally, the shipowner carries such risk through its own insurance. But the vessel's insurance company may recourse if the shipyard were at fault which is the reason behind the shipyard's insurance.

The scope of insurance is differently governed where the CTL happens outside the shipyard's risk. The shipyard then becomes a surrogate on the payment received by the owner for its claim for the cost incurred while the vessel lies at the shipyard. This was the case prior to the incorporation of Norwegian Insurance Contract Act § 7-1, which currently does not grant retainer's a surrogate under the law.

In some cases, fluctuation in the market the vessel trades results in a decreased value in the vessel. The value of the vessel has a direct correlation to the amount the right of retention secures. In a situation where the claim exceeds the market value of the vessel, the exceeded amount will not have the same security as given through the possession of the vessel. This part receives the lowest priority, unless it follows from a registered contractual lien that it has a

¹⁴² See. Tvl. § 34-1 (1) litra b.

¹⁴³ Brækhus p. 224.

¹⁴⁴ See. Tvl. § 34-1 (1) litra b.

better priority. Worst case if the right of retention does not secure the whole claim and the ship owning company declares bankruptcy, the exceeded amount will be covered through dividends at the lowest priority.¹⁴⁵

8 Concluding Remarks

The shipyard's right of retention is a commonly used right in both Norwegian and English law. The purpose of the right is twofold: firstly, to provide legal protection to the shipyard for any work undertaken and secondly, to serve as a means of exerting pressure on the owner to fulfill its contractual obligation to the shipyard. Primarily it is the shipyard that benefits from the right. However, the security has a byproduct as it does not discriminate in relation to the owner's ability to pay. This is evidenced as the shipyard normally will undertake work on the vessel as the shipyard is aware of its preferred status with priority commencing when possession of the vessel is gained. Moreover, the right does not interfere with the mortgagees given that they often receive a benefit from the vessel's repair or conversion, as it maintains or increases in value as a consequence. In that respect, the right of retention serves as an efficient instrument to ensure continued commerce between shipyards and owners, since all parties with an interest in the vessel are aware of the shipyard's priority.

The analysis of the Norwegian and English right of retention reveals that both exercise the right of retention in a comparable manner. Decisive is that the claim derives from a legal obligation on the owner to pay what is due under the contract entered with the shipyard. Consequently, any credit issued by the shipyard will prevent the assertion of the right. Furthermore, the retention may not be exerted against any vessel the owner has but must derive from the same vessel the work was performed on during the same visit to the shipyard. Upon the existence of a claim, it is vital that the shipyard have possession of the vessel and maintain control of the vessel in order for the right of retention to be asserted against the owner. Any loss of possession due to the shipyard's conduct, or exchange of possession against any form of payment will result in the cessation of the right. This also results in the priority provided through the retention right being extinguished unless the owner has acted unlawfully, and actions have been taken swiftly to regain possession.

The shipyard's right of retention between the two legal systems have also some differences in terms of what is protected and can be enforced under the retention right. However, the differences mostly reside in the subtle nuances related to recognition of a legal security and priority it has, rather than the fundamental concept of the retention itself. The presence of these

¹⁴⁵ Deknl ch. 9.

subtle nuances illustrates the challenges in an overarching problem to create a unified regional or global framework on the recognition of securities in vessels.

Since Norwegian law on priority is founded on the 1967 Convention, the status quo on Norwegian law in this area is not far from the situation under the 1993 Convention which governs the priority between legal securities in vessels. Hence, the various provisions in Norway are compliant with the legal standards set forth in the 1993 Convention. Consequently, the right of retention has the second highest priority on a vessel behind maritime liens.

This does not hold true for English law, which tends to apply its own law to resolve conflict of laws issues, without taking much of the 1993 Convention's basis into consideration in its rulings. Although, it is sometimes difficult to ascertain the applicable law, the straightforward approach under English law will always be to apply the *lex fori*. However, this approach is not beneficial from an international standpoint and will continue to make certain forums and forum shopping more favorable until a common ground is found in this important area of law, as this thesis illustrate.

As particularly English law dominate the world of shipping, the problem with the English law preference over foreign law, makes the English position problematic. This has not a huge impact on the right of retention as elaborated in this thesis, but to unify the security regime and enforcement in vessels this constitute a problem. As said, this is an obstacle that can be overcome in most retention right situations.

The determining element behind the lack of ratification has traditionally been the number of maritime liens recognized under the conventions, but also the priority given to such liens over mortgages.¹⁴⁶ To increase the number of countries to ratify the existing or a future convention in this area, it is important to give more consideration to the jurisdictions of common law nations. Typically, the question of priority may be determined by *lex situs* with supplementation of the law of the flag, rather than relying on the law of the forum. This will mainly enhance the predictability of conflict of laws situations for all security holders, while also ensure and simplify the enforceability of maritime claims internationally. However, until a unification is established, securities will remain vulnerable to security holders seeking to exploit jurisdictional differences in the recognition of maritime claims worldwide.

The legal domain in this area, however, is complex and there are still several uncertainties yet to be addressed by the Conventions.¹⁴⁷ Nevertheless, there have been some advancements in

¹⁴⁶ Jackson (2005) p. 509 – 510.

¹⁴⁷ The convention has yet to treat what effect enforcement of liens have against each other and the lapse of any lien. This is under Norwegian law solved in tvl. § 33-10 first paragraph litra f, and was the crux of the matter in HR-2014-194-A.

the enforcement of arrest and liens in connection to the 1993 convention that did not exist in 1967. This is fitting, given most nations have ratified the Arrest convention which allows for the arrest of vessels based on maritime claims.¹⁴⁸ However, until states come together to unify the legal security, conflict of laws will be a hot topic when vessels are arrested or subject to other actions internationally.

¹⁴⁸ Cf. Arrest Convention of 1999.

Table of Reference

Conventions

1999	International Convention on Arrest of Ships, London 12 of March 1999
1993	International Convention on Maritime Liens and Mortgages, Geneva 6 of May 1993
1967	The International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, Brussels 27 of May 1967
1958	The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958
1926	The International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, Brussels 10 of April 1926

Legislation

English

2006	Companies Act of 2006 c. 46
1995	Merchant Shipping Act of 1995 c. 21
1995	Private International Law Act of 1995 c. 42
1993	Merchant Shipping Regulations of 1993 no. 3138
1990	Contracts Act of 1990 c. 36
1981	Senior Courts Act of 1981 c. 54
1979	Sale of Goods Act of 1979 c 54

Norwegian

1994	Lov 24 juni 1994 nr. 39 Norwegian Maritime Code (Sjøloven)
1992	Lov 26 juni 1992 nr. 86 about Enforcement of Claims Act (ECA) (Lov om tvangsfullbyrdelse om midlertidig sikring (tvangsl.))

- 1989 Lov 16 juni 1989 nr. 69 Insurance Contract Act (Forsikringsavtaleloven – fal.)
- 1988 Lov 13 mai 1988 nr. 27 Sale of Goods Act (Kjøpsloven - kjl)
- 1984 Lov 8 juni 1984 nr. 59 Creditors' Seizure Act (Dekningsloven – dekl.)
- 1979 Lov 18 mai 1979 nr. 18 Limitation Act (Foreldelsesloven – fl.)
- 1978 Lov 2 juni 1978 nr. 37 about Good Faith Acquisition Act (Godtroervervsloven - ekstl.)
- 1953 Lov 29 mai 1953 nr. 1 about craftsmen and others right sell things not collected (Lov om rett for handverkarar o.a. til å selja ting som ikke vert henta)
- Lov 24 mai 1907 nr. 2 about Sale of Goods (Kjøpsloven) (repealed)
- 1893 Lov 20 juli 1893 nr. 1 Maritime Code (Sjøloven) (repealed)
- 1687 Lov 15 april 1687 Norwegian Code (Kong Christian Den Femtis Norske Lov) (NC)

Swedish

- 1994 Sjölagen (1994:1009) (Swedish Maritime Code)
- 1985 Lag om näringsidkares rätt att sälja saker som inte har hämtats (1985:982)

USA

Ship Mortgage Act 1920, 46 U.S.C Subtitle III Chapter 313 §§ 31301 - 31343

Literature

Arnholm. Carl Jacob. *Panteretten*. 3rd ed. Oslo: Johan Grundt Tanum, 1962

Berlingieri, Francesco. *The 1993 Convention on Maritime Liens and Mortgages*. Lloyd's Maritime and Commercial Law Quarterly (1995) p. 57 - 76

Brækhus, Sjur. *Omsetning og kreditt 2*. 3rd ed. Oslo: Universitetsforlaget, 2005

Brækhus, Sjur. *Tilbakeholdsretten. Jussens Venner* (1979) p. 181-231 - (JV-1979-181)

Brækhus, Sjur. *Verkstedenes tilbakeholdsrett i reparerte skip. Jussens Venner* serie R nr. 5 (1960) p. 92-95 – (JV-1960-92)

Curtis, Simon, Ian Gaunt, William Cecil. *The Law of Shipbuilding Contracts*. 5th ed. Informa Law by Routledge, 2020

Douglas, Michael (2017) Characterisation of a foreign maritime lien by the lex fori, *Oxford University Commonwealth Law Journal*, 17:1, 152-161, DOI: <https://doi.org/10.1080/14729342.2017.1342756>

Falkanger, Thor, Hans Jacob Bull and Lasse Brautaset. *Scandinavian Maritime Law*. 4th ed. Universitetsforlaget, 2017

Falkanger, Thor. *Sjøpant og beslektede sikkerhetsrettigheter. Festskrift till Torgny Håstad 2010* s 99-113 – (FEST-2010-th-99)

Jackson, David C. *Enforcement of Maritime Claims*. 4th ed. London: Informa Law from Routledge, 2005

Meeson, Nigel and John A. Kimbell. *Admiralty Jurisdiction and Practice*. 5th ed. New York: Informa Law by Routledge 2018

Osborne David. Graeme Bowtle and Charles Buss. *Law of Ship Mortgages*. 2nd ed. New York: Informa Law by Routledge 2016

Paulsen, Trond S. and Ingrid Finne Reenskaug. *Arrest, utlegg og begjæring om tvangssalg av utenlandsk fartøy. Om uteglemt internasjonal konvensjon, manglende verneing og annet som kan gå galt. Tidsskrift for forretningsjus* (2015) p. 3-30 – (TFF-2015-3)

Skoghøy. Jens Edvin A. *Panterett*. 5th ed. Oslo: Universitetsforlaget, 2021

Øyen, Ørnulf. *Kravet til konneksitet ved utøvelse av detensjonsrett, retensjonsrett og utvidet motregningsrett*. *Tidsskrift for Rettsvitenskap* (1998) volume 4 p. 711-762

Preparatory works

Innstilling VIII fra Sjølovkomitéen til lov om endring av reglene om registrering av skip, partrederi, sjøpant m.m. 1969

Case law

Australian

Sam Hawk Reiter Petroleum Inc v. The Ship "Sam Hawk" [2016] FCAFC 26

English

The Halcyon Isle Bankers Trust International Ltd v. Todd Shipyards Corporation [1980] 2 Lloyd's Rep. 325

British South Africa Company v De Beers Consolidated Mines, Limited [1910] 2 Ch. 502

The Winson China Pacific SA v. Food Corporation of India [1982] 1 Lloyd's Rep. 117

The Gregos Gregos, The [1985] 2 Lloyd's Rep. 347

The Gustaf Gustaf, The [1862] 5 WLUK 27 or (1862) Lush. 506

The Colorado Hills Dry Docks & Engineering Company LTD v. "Colorado" [1923] Lloyd's Rep vol 14 p. 251

The Angel Bell Iraqi Ministry of Defence and Others v. Arcepey Shipping Co. S.A. and Gillespie Bros. & Co. LTD. Gillespie Bros. & Co. LTD. v. Iraqi Ministry of Defence and Others [1979] 2 Lloyd's Rep. 491

The Katingaki Katingaki, The [1976] 2 Lloyd's Rep. 372

McDougall v. Aeromarine of Emsworth Ltd [1958] 2 Lloyd's Rep. 345.

The Narada Narada, The [1977] 1 Lloyd's Rep. 256

The Russland Russland, The [1924] P. 55 or (1923-24) 17 Ll. L. Rep. 306

Singer Manufacturing Co. v. London & South Western Railway Company
[19894] 1 Q.B. 833

Somes v. British Empire Shipping Co. [1860] 8 H.L. Cas. 338

The Songa Venus Songa Venus, The [2021] 2 Lloyd's Rep. 365

Tappenden v. Artus and Another [1964] 2 Q.B. 185.

The Tergeste Tergeste, The [1903] p. 26

The Ioannis Daskalelis Todd Shipyards Corporation v. Altema Compania Maritima S.A and the
Ship "Ioannis Daskalelis" [1974] 1 Lloyd's Rep 174

Williams v. Allsup [1861]142 E.R. 514

Woods v. Russell [1822] 106 E.R. 1436

Norwegian

HR-2014-194-A

RG-1995-52

RG-1978-337

Rt-1973-967

Rt-1955-992

RG-1948-331

RG-1934-187

Rt-1933-367

RG-1933-75

Rt-1932-38

Rt-1923-113

Rt-1915-694

Nordic

2011 ND-2011-291

2005 ND-2005-125

2000 ND-2000-364

2000 ND-2000-373

1997 ND-1997-1

1995 ND-1995-12

1991 ND-1991-176

1990 ND-1990-177

1960 ND-1960-461

1953 ND-1953-750

1949 ND-1949-290

Swedish

NJA 1922 p. 360

USA

The Jaldhi Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd (585 F.3d 58)
(2009)

Winter Storm Shipping, Limited v. TPI (310 F.3d 263) (2002)

Standard Contracts

REPAIRCON 2018

Standard Contract Terms and Conditions for the Repair of Ships and Offshore Vessels at Norwegian Shipyards of 1985 revised 1997

BARECON 2001