

Comparison of maritime mortgages of Greek
Maritime Law with relevant institutions
of English Maritime Law

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M.SC. IN SHIPPING MANAGEMENT

**Comparison of the maritime mortgages of Greek
Maritime Law with relevant institutions of English
Maritime Law**

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LIST OF ABBREVIATIONS

CMI	Comité Maritime International
GRT	Gross Registered Tones
(LLMC)	Convention on Limitation of Liability for Maritime Claims
(MCA)	Maritime Coastguard Agency
(NYPE)	New York Produce Exchange
(UNCTAD)	United Nations Conference on Trade and Development

ABSTRACT

It is well known that most of the global trade's volume today is transported by the sea, so it is obvious that there is a close relationship between global trade and the shipping industry. But shipping industry is also a significantly volatile industry, which depends on various extra external factors such as geopolitical situation, environmental conditions, inflation, national policies regarding the shipbuilding industry, the increased demand for certain goods, the sharp change in the price of the basic raw materials etc. It is also an industry which appears to be cyclical, which means that there are relevant situations which seem to be repeated in regular intervals and are therefore called shipping cycles and consist of 4 phases (recession, recovery, peak and collapse). So due to shipping industry's affection by so many external and sometimes unpredictable factors, the need to fund the ship owner for a new vessel's acquisition, vessel's maintenance or operation, which are capital intensive tasks, is required, therefore the ship owners take loans from financial institutions. But on the other hand, the financial institutions which granted the loan need to assure that their money are safe, so the vessel itself becomes the collateral for the ship-owner's lenders, by registering encumbrances on it, the so-called maritime mortgages, simple or preferred. Another institution strongly connected with the shipping transactions is maritime liens, which is collateral security on the vessel arising simultaneously with the services or events that trigger the maritime lien. Ship owners promise to insure creditors' debt through the ship itself. As an interest in property, a maritime lien extends only to the value of the asset, which is ship's value. Both above institutions, i.e. maritime mortgages and liens are regulated differently in Greek and English jurisdiction, but the aim of both jurisdictions remains to provide security to the shipping industry, by providing the vessel itself as collateral.

Key Words:

shipping industry, shipping cycles, capital, lender, debtor, vessel, collateral, simple mortgage, preferred mortgage, maritime liens, bank, credit, funding

ΠΕΡΙΛΗΨΗ

Είναι γνωστό ότι το μεγαλύτερο μέρος του παγκόσμιου εμπορίου σήμερα μεταφέρεται δια θαλάσσης, επομένως είναι προφανές ότι υπάρχει στενή σχέση μεταξύ του παγκόσμιου εμπορίου και της ναυτιλιακής βιομηχανίας. Αλλά η ναυτιλιακή βιομηχανία είναι επίσης μια σημαντικά ευάλωτη βιομηχανία, καθώς εξαρτάται από διάφορους επιπλέον εξωτερικούς παράγοντες όπως η γεωπολιτική κατάσταση, οι περιβαλλοντικές συνθήκες, ο πληθωρισμός, οι εθνικές πολιτικές σχετικά με τη ναυπηγική βιομηχανία, η αυξημένη ζήτηση για ορισμένα αγαθά, η απότομη αλλαγή στην τιμή των βασικών πρώτων υλών κλπ. Είναι επίσης ένας κλάδος που φαίνεται να δρα κυκλικά, πράγμα που σημαίνει ότι υπάρχουν καταστάσεις που φαίνεται να επαναλαμβάνονται σε τακτά χρονικά διαστήματα και επομένως ονομάζονται ναυτικοί κύκλοι και αποτελούνται από 4 φάσεις (ύφεση, ανάκαμψη, αιχμή και κατάρρευση). Έτσι, λόγω της εξάρτησης της ναυτιλιακής βιομηχανίας από τόσους πολλούς εξωτερικούς και μερικές φορές απρόβλεπτους παράγοντες, υφίσταται η ανάγκη χρηματοδότησης του πλοιοκτήτη για την απόκτηση, τη συντήρηση ή τη λειτουργία ενός πλοίου, που είναι εργασίες έντασης κεφαλαίου, γιαυτό το λόγο οι πλοιοκτήτες λαμβάνουν δάνεια από χρηματοπιστωτικά ιδρύματα. Αλλά από την άλλη πλευρά, τα χρηματοπιστωτικά ιδρύματα που χορήγησαν το δάνειο πρέπει να διασφαλίσουν ότι τα χρήματά τους είναι ασφαλή, έτσι το ίδιο το πλοίο καθίσταται ως εγγύηση για τους δανειστές του ιδιοκτήτη του, υφιστάμενο την εγγραφή βάρους σε αυτό, τη λεγόμενη ναυτική υποθήκη, απλή ή προτιμώμενη. Ένας άλλος θεσμός που συνδέεται στενά με τις ναυτιλιακές συναλλαγές είναι τα ναυτικά προνόμια, τα οποία αποτελούν ασφάλεια στο πλοίο, οι οποίες προκύπτουν ταυτόχρονα με τις υπηρεσίες ή τα γεγονότα που ενεργοποιούν τη θαλάσσια δέσμευση. Οι πλοιοκτήτες υπόσχονται να ασφαλίσουν το χρέος των πιστωτών μέσω του ίδιου του πλοίου. Ως συμφέρον σε ακίνητο, το ναυτικό προνόμιο εκτείνεται μόνο έως την αξία του περιουσιακού στοιχείου, που είναι η αξία του πλοίου.

Αυτοί οι θεσμοί, δηλαδή οι ναυτικές υποθήκες και τα ναυτικά προνόμια ρυθμίζονται διαφορετικά τόσο στην ελληνική όσο και στην αγγλική δικαιοδοσία, αλλά ο στόχος και των δύο δικαιοδοσιών παραμένει η παροχή ασφάλειας στη ναυτιλιακή βιομηχανία, παρέχοντας το ίδιο το πλοίο ως εγγύηση.

Λέξεις κλειδιά:

ναυτιλιακή βιομηχανία, ναυτικοί κύκλοι, κεφάλαιο, δανειστής, οφειλέτης, σκάφος, εξασφαλίσεις, απλή υποθήκη, προνομιούχος υποθήκη, ναυτικό προνόμιο, τράπεζα, πίστωση, χρηματοδότηση

INTRODUCTION

The main aim of this Master's dissertation is to examine, analyze in depth and provide information about the similarities and differences between the Maritime Mortgages of Greek Maritime Law with relevant institutions of English Maritime Law. The main aspects analyzed are the instruments introduced by both Greek and English Maritime Law to secure a vessel's funding, the prerequisites for their establishment and the reasons for their annulment. After their analytical description, there will be a comparison between the institutions provided by each jurisdiction to identify which are their similarities and differences.

According to the United Nations Conference on Trade and Development (UNCTAD), about 80% of world trade by volume and 70% of global trade by value are transported by sea. From the above data the close relationship and interaction of international trade with ocean shipping can be detected. The term shipping refers to the branch of transport that deals with transportation goods by sea. In order to identify and analyze the particular characteristics of shipping, the researcher must keep in mind the relation of shipping with international trade.

First of all, shipping is a particularly vulnerable industry, that is heavily affected by external factors. The situation is indicatively classified among those of international trade, wars and other forms of conflict, geographical and qualitative orientation of international transactions, inflation, national policies regarding the shipbuilding industry, climatic conditions, the increased needs for certain goods, the sharp change in the price of the basic raw materials etc.(L. Athanasiou,2015). For example, the closing of the Suez Canal in 1967, the war of the Gulf in 1992, but also the evolving global financial crisis were events which affected shipping and world trade in general.

Additional characteristics of the shipping market are cyclicity (shipping cycles) and volatility of cash flows. More specifically, it is observed that the fare market exhibits strong volatility, which is largely linked to seasonality, the exposure of the market to external factors, as analyzed above, but also by nature of shipping as a secondary industry in relation to international trade.

The volatility is also due, as in any market, to the supply and demand of capacity, which in turn affects fare prices.

Additional business risk factors are price volatility of fuel, the cost of which is borne by the charterer (even if he owns the ship or just manages same) especially in voyage charters, but also the cost of money, i.e., the interest rate of borrowing, which fluctuates over the years. Business risk arises also from the conclusion of charter agreements, this risk is related to counterparty, i.e., whether and to what extent the latter will respond to its contractual obligations. Further risks are piracy, wars, or armed forces' conflicts, but also the technical-technological risks undertaken by the businessman engaged in shipping business.

Finally, a special feature of shipping is its increased needs in capital. One can reasonably understand this from the prices of the ships. By this we understand that Shipping is inherently a capital-intensive industry, since very large amounts of money are needed to acquire a ship and to operate same on a day-to-day basis.

Traditionally the ways of financing the shipping business, but also every company are two, financing through foreign and equity capital. However, the financing decision is particularly difficult for the shipping business because the latter is asked to choose between various forms of financing with different implications for her, as discussed below. However, choosing an appropriate financing method is not an exclusive internal case for the shipping business, which is also greatly affected from external factors, for example thanks to the level of interest rates, from trends markets and the legislative and tax environment in which it operates, and each shipping company develops. As for the fundamental strategic choice between equity and foreign capital, the critical fact is the nature of shipping as a capital-intensive industry. This means how a large amount of capital is required for the establishment and operation of a shipping company business. Therefore, the amount of funds required make it particularly difficult to finance exclusively from own funds, as the Greek ship owners did in the past. Therefore, to materialize possible investment from the shipping business, shipping companies finance to the whole or partially the cost of their investments with foreign capital.

Greek shipowners, in the past, mostly chose to fuel their shipping activity with their own capital, i.e., to use their net profits, following a more conservative and inward-looking financing method, which was intertwined with the structure and closed nature of the shipping industry.

However, the carrying out of shipping activity in modern conditions and the large capital burden it carries, pushes shipping companies to a policy of extroversion towards loan financing and modern money markets. However, this financing, due to the cyclicity and strong fluctuations presented by the shipping industry, as presented above, differs from other forms of financing of commercial companies. Reasonably, financiers, especially banking institutions, would not risk their exposure to such a large capital risk if they did not receive an adequate provision of real and debt collateral respectively.

At this point, the ship itself is required to become the object of a maritime credit, since one of the most important institutions to secure the lenders of the maritime activity, apart from the usual provision of personal guarantees on behalf of the shipowner or the main shareholders of the company, is the maritime mortgages established on ships (Piraeus Court of Appeal, Court Decision No. 138/2023).

Maritime mortgages are an institution analogous to the mortgage of the Civil Code, with one important exception, however, which is found in the nature of the objects on which it is established. A classic mortgage is a right in rem created only on immovable property, on the contrary, a ship is the only movable thing on which a mortgage can be created. The justifying reason is none other than its great monetary value and the size of the claims that the maritime mortgage is required to cover, claims that cannot be adequately covered by other security institutions. Moreover, another institution very frequently used in the shipping practice is the maritime liens, which may be defined as a type of privileged security for preferred claims against a ship for services rendered to it or damage done by it. Maritime liens are incidents of most maritime transactions. It was noted that maritime mortgages and maritime liens are inextricably connected with each other, therefore needed to also present those instruments of both Greek and English Maritime law and an attempt was made to identify the differences existing between the two jurisdictions as regards those instruments.

This thesis consists of 15 chapters. The first chapter analyses the shipping cycles and their effect on the shipping business decisions and planning. The second chapter analyses the maritime mortgage types of Greek Maritime Law and the prerequisites for their establishment. The third chapter states the requirements for the registration of both types of mortgages of Greek Maritime Law. The fourth chapter analyzes the reasons for amortization and annulment of Greek maritime mortgages and the relevant procedures to achieve same. The fifth chapter states the types of liens in general and the sixth states the special types of Maritime liens provided by Greek Maritime Law. The seventh chapter describes the procedure of exercising the maritime liens of Greek Maritime Law whereas the eighth chapter states the reasons and process of their amortization. The ninth chapter states the types of mortgages of English Maritime Law, the tenth chapter analyzes the process of registering and removing mortgages of English Maritime Law whereas the eleventh chapter states the reasons and process of amortization of English maritime mortgages and the twelfth chapter analyzes the enforcement procedure of English Maritime mortgages. The thirteenth chapter states the types of liens of English Maritime Law. Last the fourteenth chapter identifies the differences between the mortgages of Greek and English Maritime Law, the fifteenth chapter identifies the differences between liens of Greek and English Maritime Law and then there are some conclusions driven about the instruments of both Greek and English Legislation about the loan collaterals.

CHAPTER 1: SHIPPING CYCLES

The shipping industry is in every day need of capital and furthermore knows quite strong fluctuations, characteristics that make the financing of the shipping business different from other forms of financing of commercial companies.

In particular, the circularity of shipping should be analyzed further, as the latter is particularly taken into account and affects the financing to a great extent. More specifically, when freight rates are high, shipping companies' liquidity increases and ships' values are increased. On the contrary, when fares are low, then there is a decrease in the liquidity of shipping companies and of ships' values.

The above-described changes in cash flows and ship values increase the risk assumed by the financial institution, which is required to finance the business, as its evaluation takes place at a specific time moment and the repayment of the loan takes place over a long-term period. This is easily perceived, as during the term of the loan (5 – 8 years) dramatic changes may occur in the company's cash flows, as a result of which the latter is no longer able to meet its obligations. These changes are called shipping cycles (Shipping Cycles) and regardless of their duration, consist of four stages which are analyzed below.

Recession

The stage of recession, is initially manifested by the existence of excess capacity, i.e. there is a large supply of ships. This results in fares to be reduced more and more, even below the operating costs of ships. This drop in fares creates uncertainty in the market and therefore shipping companies are unable to find available sources of financing.

Recovery

In the recovery stage, the excess capacity described above is decreased and supply begins to match demand. The above situation creates a positive market climate, resulting in an increase in fares at least at levels higher than the operating costs of the ships. The positive climate that exists

in the shipping markets also drags the money markets and financial institutions are then more willing to finance shipping companies. Therefore the liquidity of shipping companies increases.

Peak/ Plateau

At this stage, supply fully meets demand, which however shows an upward trend. This climate favors the fares, which face a big rise. Credit institutions and markets are responding positively towards the financing of the shipping companies with the result, to be observed in increase in liquidity and ships' orders in shipyards.

Collapse

The increase in shipyard orders sharply increases the supply of ships and as a result the supply exceeds the demand for transportation services. Because of excess capacity fares fall and market sentiment begins to be characterized by uncertainty, which makes financing of new companies particularly difficult.

Shipping cycles have a direct impact on decision making and shipping financing, as in particular all parties behave according to the shipping cycle they assume they are in and also the financial institutions, as well as the other investors consider at what stage of the shipping cycle they are in, in order to finance shipping companies.



CHAPTER 2: MARITIME MORTGAGES OF GREEK MARITIME LAW

2. 1. TYPES OF MARITIME MORTGAGES OF GREEK MARITIME LAW

Each country has its form of a Ship Mortgage. The general criteria are similar, however, there are changes in the documentation and enforcement process of the mortgage in each jurisdiction. Since the international community recognizes over 193 nations, most of them have their own registration standards.

There are two types of Maritime Mortgage according to Greek Maritime Law, the simple and the preferred Maritime Mortgage. The simple maritime mortgage is regulated by the Code of Private Maritime Law and additionally by the provisions of the Civil Code, as per article 40 of Greek Code of Private Maritime Law. For its establishment, two prerequisites shall be met, on the one hand, the private will of the ship's owner is required as title, which allows the lender to register a mortgage on a certain ship. According to the law, his unilateral declaration is sufficient, but such a will cannot be excluded to be expressed by contract, as usually happens in practice, as per article 21 of Greek Code of Private Maritime Law. On the other hand, similar to the classic mortgage, in order to be validly established, the maritime mortgage requires the existence of publicity, which here is satisfied by the registration of the title in the relevant Maritime Mortgage Register of the port where the ship is registered, as per article 23 of Greek Code of Private Maritime Law.

Once validly established, the mortgage gives the lender firstly the possibility to auction the ship and to be satisfied preferentially, i.e. in priority, from the value it will receive at the public auction. This possibility is best served by the fact that the right of the mortgage lender follows the vessel, whereby a mortgage registered on the vessel continues to encumber it even if it is transferred to a third party. Therefore, the lender maintains his claim in order to be satisfied by the value of the ship even if same "changes hands".

Finally, the maritime mortgage entitles the mortgagor to demand the immediate repayment of the debt, if the ship is lost or suffers damages that substantially reduce its value, but also to insure his interest against maritime risks (up to an amount equal to of the loan increased by 30%), at the

expense of the shipowner, if the latter does not take this action, which as a rule is his own obligation and based on the mortgage contract, as per article 33 of Greek Code of Private Maritime Law.

An improved type of maritime mortgage is the preferred mortgage. It is an institution of Anglo-Saxon origin, which was introduced into Greek maritime law by Presidential Decree 3899/1958 and now is regulated by the Greek Code of Private Maritime Law, with the aim of making the financing of shipping activity more attractive, providing mortgage lenders with expanded rights. A key feature of the preferred mortgage, among other things, as mentioned above, is as per articles 26& 28 of Greek Code of Private Maritime Law the possibility offered to the lender to take over the management and operation of the ship for his own account, to secure his claim. The lender has also the right to sell the vessel at public auction, in case his claim is not satisfied and to be preferably satisfied or the lender may exercise other rights granted to him by further agreements with the debtor, the most basic of which is the right of private sale, i.e. sale of the ship without the need to follow the public auction procedures as per the same article of Greek Code of Private Maritime Law (A. Kiantou, Pambouki, 2007). The right of the lending party to the private sale of the ship together with the right to take over the management of the ship concern ships with a total tonnage of over 500 GRT(gross registered tones), or floating objects which have a total tonnage of over 500 GRT or displacement of 1000 GRT or more. Same rights are provided also to the lending party regarding a vessel which still at th shipyard, provided that it is already registered, according to article 18 of Greek Code of Private Maritime Law. (L. Athanasiou, "Ναυτικό Δίκαιο", Nomiki Vivliothiki, 2020)

Likewise, the above issue concerns also ships which have been registered as foreign capital, with the Legislative Decree 2687/1953, as long as these ships have a total tonnage exceeding 1,500 tons, as per article 39 of Greek Code of Private Maritime Law).

Moreover, preferred mortgage may be established only to a whole vessel (19 of Greek Code of Private Maritime Law). Therefore, the co-owner of the ship can't establish a preferred mortgage at his part of the co-owned vessel. So, in order for a preferred mortgage to be established on a co-owned vessel, all its co-owners shall agree for its establishment. (article 793 & 1113 of Greek Civil Code& article 19 of Greek Code of Private Maritime Law).

There may be several mortgages simple or preferred established on the same vessel; there may be firstly a preferred mortgage established and then a simple or the opposite. Or several vessels may satisfy one claim by the establishment to each of them of a preferred mortgage. Every preferred mortgage shall comply with the legal provisions. All the above vessels may be owned by the same or various owners.

Based on article 28 of Greek Code of Private Maritime Law, it is determined that in the event of taking over the ship's management, the lender will operate the ship for its own account and will have the authority to carry out any act consistent with the management and exploitation of the ship, but will not be able to bind the ship for a period longer than a year than the time it has set for the payment of the debt. In the case of taking over management, the lender does not become the owner of the ship, but the ship manager, who is liable based on the provisions of articles 49& 62 of Code of Private Maritime Law (P. Sotiropoulos, 1992).

The lender can sell the ship only when the debtor becomes overdue. However, if there is a dispute between the creditor and the debtor, the notary must ignore the debtor's objections and proceed with the transfer of the ship, so that there are no delays. Of course, there is the risk of announcing the sale as void (P. Sotiropoulos, 1992).

This practice, in addition to the flexibility it provides to lenders, can be considered in some aspects more beneficial for ship owners, who avoid the negative publicity that is often created around their name in the event of a compulsory public auction, thanks to the discretion presented by the private sale process.

The establishment of the preferred mortgage happens if there is a legal title for the acquisition by the preferred mortgage lender of the vessel for the satisfaction of his claim and the registration of this legal title at the relevant Ship Registry. Legal title for the acquisition of a preferred maritime mortgage is only an agreement between the owner of the vessel, debtor or third party and the lender (article:2 & article 22 of Greek Code of Private Maritime Law). So the private will is the only generative reason for the legal title needed for the registration of a simple or preferred mortgage and not the law or a court decision, as per article 20 of Greek Code of Private Maritime Law. Therefore, a preferred mortgage note can't be registered on a vessel. Moreover, the

required agreement about the establishment of a preferred mortgage may take place in Greece or in another country (article 22 of Greek Code of Private Maritime Law). This requirement of an agreement between the 2 parties about the establishment of the preferred mortgage aims to protect the parties' declaration of intent and also to protect the more vulnerable party, due to the increased obligations of the debtor and also the increased rights of the mortgage lender. Moreover, the needed agreement about the establishment of a preferred mortgage is a special agreement, because it refers to certain vessel or vessels of the mortgage debtor. Moreover it is an agreement in rem, cause it aims to establish a right in rem, i.e. the preferred mortgage; It includes a partial provision of the right of vessel's ownership; moreover, this agreement is causal, since its validity depends on the existence of a cause and last this agreement needs a certain documentation type in order to be valid.

More specifically, according to article 22 of Greek Code of Private Maritime Law, the agreement needed about the establishment of a preferred maritime mortgage needs to be a notarial document (if it is drawn up in Greece) or (if it is drawn up in any other country) it shall be a notarial deed or any other type of document required by the legislation of that country, where the agreement is drawn up (*lex loci actus*). This regulation aims to facilitate the use of the preferred maritime mortgage and bares contrast to the regulations which refer to the simple mortgage, which state that if it is concluded in any other country except Greece, it shall be constituted as a notarial deed.

Moreover, the rule of an agreement requested for the establishment of a preferred mortgage is contradicted by the provisions which regulate the Approval Deeds of vessels' registration as foreign capital which state at article 13 of Legislative Decree 2687-1953 that the vessel may be burdened with a preferred mortgage through an agreement or any other deed signed before a notary public (if signed in Greece) or (if signed in any other country) the deed shall be of the type required by the national law of that country. (L. Athanasiou, "Ναυτικό Δίκαιο", Nomiki Vivliothiki, 2020).

The establishment of the preferred mortgage may also include a prohibition on further sale or registration of new mortgages, therefore the lender is protected not only against the debtor, but a fortiori also against third party lenders, since it is shielded by the preferred mortgage more fully

against various risks, which cannot to be excluded, as par excellence are the risks of seizure or bankruptcy. Regarding procedural issues, the preferred mortgage, due to the greater collateral it provides, is established on ships of larger capacity (over 500 gross tons) and as a title for its establishment, a unilateral declaration is not sufficient, but a contract is definitely required. A preferred mortgage is usually granted in cases of financing for the purchase of new ships, in which case the maritime mortgage is recommended on them.

Finally, with the private sale there is no depreciation of the existing mortgages, which follow the vessel and in this way the debtor's claim may be satisfied by the new owner of the vessel. It is understood that the rights granted to the preferred mortgagee are intended not only to his protection against the debtor, but a fortiori also against third parties (e.g. other lenders), since the lender is shielded by the preferential mortgage more fully against various risks, which cannot be excluded, such as the risks of confiscation or bankruptcy. The utility, therefore, of the simple mortgage is questionable in relation to ships with a positively preferred mortgage, which, as most discussed, contributes the most to the crediting of the shipping market with international funds. The possible multiple mortgage claims on the same ship are classified regardless of type of the mortgage (as simple or preferred) in the order of registration of the mortgages in the relevant Maritime Mortgage Registry. So, if a simple mortgage is registered prior to the preferred one, it prevails from the later, as per article 24 of Greek Code of Private Maritime Law.

Another issue of course, is the extent and breadth of coverage of the related claims, which is for both two types of maritime mortgage as per article 18 par.3 of Greek Code of Private Maritime Law "the capital, accrued interest and costs". So, all accrued interests are co-insured, i.e., in the same registration class, regardless of their size, or of the seizure period, without requiring any further reference to the registration of the capital of the claim as interest-bearing, as well as the costs of the registration. (Notarial Inspection, 2009).

The preferred maritime mortgage was mostly used in the case of ships registered as foreign capital, as the approval acts of registration provided the shipowner with the possibility to encumber the ship with preference, i.e. with a mortgage that would include, in application of art. 13 par.2 of Legislative Decree 2687/1953 "on investment and protection of foreign funds", any condition for securing the claim.

The undertaking of management and exploitation of the vessel must emerge from the mortgage agreement. If this is not the case, then the mortgage is simple and not preferred.

(L. Athanasiou, Nomiki Vivliothiki, 2020)

2. 2. REGISTRATION PROCEDURE OF MORTGAGES OF GREEK MARITIME LAW

2. 2. 1. REGISTRATION OF SIMPLE MORTGAGE:

In order for a simple maritime mortgage to be registered, there shall be 2 terms satisfied: there shall be a legal title for the acquisition by the debtor of mortgage on a vessel in order to satisfy his claim and also the title shall be registered at the relevant Maritime Registry, which operates at central port authorities, as per article 21 of Greek Code of Private Maritime Law. In case the above 2 conditions co-exist, the mortgage begins to exist from the date of its registration at the Ship Registry of the place, where the vessel is registered, as per article 23 of Greek Code of Private Maritime Law. The registration makes visible to third parties the type, registration and its satisfaction in terms of priority.

For the registration of the maritime mortgage the interested person or any third person with an authorization by the first, shall submit a petition (article 1302 Greek Civil Code). Together with the petition, a verified copy of the legal title of the mortgage and some summaries shall be submitted. Usually the registration is requested by the mortgage lender, the debtor or the third party who is the new owner of the vessel and who granted the mortgage, in favor of the debtor. Moreover, the lenders of the mortgage lender have the legal right to request the registration of the mortgage, if he neglects to register same on the vessel (article 1303 of Greek Civil Code). The Law doesn't set any deadline to register the mortgage at maritime Mortgage Registry. However, it is at the mortgage lender's interest to register same the soonest. The Maritime Registrar, when he receives the petition, enters same according to chronological order and increasing number, at the relevant book of registries. If the registration is accepted, then the registrar shall write in the second column of the relevant page of the vessel the registration of the mortgage and the documents which accompanied the registration of the mortgage are kept in a separate folder.

The registration of a maritime mortgage is void in the following circumstances:

1. Firstly if it was registered after the registry of a seizure on the vessel, forced or conservative (article 34 of Greek Code of Private Maritime Law). So if the register of mortgage has taken

place after the registry of a forced seizure, then the mortgage can't be opposed to the garnisher and to the other lenders who have been registered legally and timely (article 997 par.3 of Greek Code of Civil Procedure). If the registry of the mortgage took place after the registry of a conservative seizure, the same results occur, provided that the garnisher has also filed a lawsuit for the main claim, according to provisions of article 715 par. 5 of Greek Civil Procedure.

2. Moreover, the mortgage registration is void, if it took place after the bankruptcy of the shipowner (according to article 25 of the Bankruptcy Code & article 35 of Greek Code of Private Maritime Law).

Last, if the same day a mortgage and a legal action in rem (as a usufruct on the vessel) are registered at the relevant registries, the one which preceded, even for a little time, is the one which is preferred (article 1207 of Greek Civil Code). So if the mortgage preceded of the usufruct, then it includes the vessel's full ownership, whereas, if the usufruct preceded, then the mortgage includes only the bare ownership of the vessel and the type of mortgage which may be established in this case is only the simple one, as per article 19 par. 5 of Greek Code of Private Maritime Law. But if the same day a forced seizure, a foreclosure and a mortgage are registered, then the forced seizure or the foreclosure precede, even if the mortgage was registered first.

The results by the mortgage occur when it gets materialized, which happens after its registration at the Maritime Registrar of the port where the vessel is registered (article 23 of Greek Code of Private Maritime Law), even if the parties have agreed its materialization to begin at a later stage. This happens because of the need to secure the transactions which refer to the vessel and this is the only way for the mortgage lender to be secured, in case of the vessel's transfer by its owner in the meantime between its registry and the mortgage's materialization, as per article 23 par.1 of Greek Code of Private Maritime Law.

As already mentioned, the Law of the vessel's flag regulates the ownership of the vessel, and moreover the mortgage on same, simple or preferred (articles 47 & 16 par. 1 of Greek Code of Private Maritime Law). So the mortgage on a vessel of foreign flag is regulated by the Legislation of the flag state. But if this vessel is transferred to a Greek legal or physical person

and gets registered at the Greek Registry, its pre-existing mortgage continues to be in force, provided that according to the Legislation of its previous flag it was registered at a national registry and also re-registered at a Greek Maritime Registry within 60 days from its change of flag to Greek (article 38 of Greek Code of Private Maritime Law). So, if the above prerequisites co-exist, the mortgage is materialized since its registration at the foreign national book. But the rights and obligations of the parties are regulated by the Greek Law, as per article 16 of Greek Code of Private Maritime Law. Moreover, all the mortgages which are registered on the same vessel and on the same date, simple or preferred, are registered in the same class.

Moreover, the valid registration of a mortgage on a vessel, results in the following, except of the materialization of the mortgage, as above stated:

1. It is prohibited to change the port of vessel's registry without the written approval of the mortgage lenders, which may be given through a private document (article: 36 par.1 of Greek Code of Private Maritime Law). This happens since otherwise the uncontrolled change of vessel's port of registry would hinder the imposition of seizures.
2. It is prohibited to change the mortgaged vessel's name without the written approval of the mortgage lenders, in order to secure them and third interested parties (as per the same article as above).
3. A transfer of a mortgaged vessel which results in its losing its Greek nationality is void, if it happened without the written approval of the mortgage lenders (article 37 of Greek Code of Private Maritime Law).

This is justified by the need to secure the mortgage lenders, since the law of vessel's new flag may amend their rights or may not recognize some of their rights. The article 37 of Greek Code of Private Maritime Law doesn't make a clear reference to a requirement of written approval of the mortgage lenders before changing vessel's flag, but it is accepted that their written approval is needed, even through a private document. When their approval is not given in writing, the deed of sale which results in losing the vessel's Greek nationality is void. But this invalidity has to be proposed by the mortgage lenders, in order to be effected

(article 175 of Greek Civil Code). Every Acceptable Act of vessel's registry as foreign capital clarifies that if the vessel is burdened with mortgage, the sale's act which results in losing its Greek nationality is according to article 37 of Greek Code of Private Maritime Law void, if it happens without the acceptance of the mortgage lender. However, the deletion of a mortgaged vessel registered as foreign capital for the change of its Greek flag happens by the relevant Authority after the ship-owner's written petition, acceptance of the mortgage lenders and their submission to relevant authority.

Since the registration of the mortgage, there is a mortgage relationship developed between the mortgage lender and the mortgage debtor. However, except this relationship, more relationships are developed between the mortgage lender and third parties who have in the same vessel mortgage or another right in rem. A mortgage relationship is also developed between the third owner of the mortgaged vessel and the debtor of the insured claim. By this mortgage relationship rights and obligations are developed by the parties.

2. 2. 2. REGISTRATION OF PREFERRED MORTGAGE:

Provided that the typical prerequisites of the preferred mortgage are met, the preferred mortgage comes into effect by its registration at the relevant Mortgage Book or Maritime Registry of the area, where the vessel is registered (article 23 of Greek Code of Private Maritime Law).

Preferred mortgage, which had been already registered on a vessel, before its acquiring the Greek flag, continues to exist, provided that it had been registered at a public book according to the vessel's previous nationality and was also re-registered at the Greek Book of Maritime Mortgages within 60 days from the acquisition of vessel's Greek flag (article 38 Greek Code of Private Maritime Law). If the above prerequisites are met, the preferred mortgage is regarded as existing from its registration at the foreign mortgage book. However, the rights and obligations of the parties by the preferred mortgage are regulated by the Greek law, due to the vessel's registration in Greece & the mortgage's re-registration at the Greek public books.

Otherwise, if the mortgage hadn't been registered at the foreign country's public books, it is regarded as invalid in Greece.

The results of the registration of a preferred mortgage at the Registry are the below:

1. The results of the registration of a preferred mortgage at the Registry are generally the same with those of the simple mortgage.
2. There are some different rights of the mortgage lender before the lapse of the insured claim, which are the below:
 - 2.1. The mortgage lender has the right, if the vessel has been lost or has damages, so big that decrease significantly its value, to ask for the direct pay off of the debt, even if the person who provides the preferred mortgage is the third owner of the mortgaged vessel and not the debtor of the insured claim. The preferred mortgage lender doesn't have the above right, if the damages are not attributable to negligence of the debtor and provided

that the debtor provides sufficient insurance. The above provisions are mandatory, so the preferred mortgage lender can't agree with the debtor to ask immediately the direct pay off of the debt, if the damages are not attributable to debtor's negligence and given that the debtor provides sufficient insurance.

2.2. The mortgage lender has also the right to ask for the omission or the removal of the damaging acts or the direct pay off the debt or the establishment of another similar mortgage, if due to the will/ negligence of the debtor the vessel's condition has been deteriorated or her value has been decreased (articles 1284 and 1299 of Greek Civil Code), the direct pay off the debt if the preferred mortgaged vessel gets encumbered with another preferred mortgage too and the new mortgagor gets the management of the vessel for his account in order to satisfy his claim, the direct pay off the debt if the ownership of the mortgaged vessel has been transferred to the lender fiduciary and he got, based on relevant agreement, the management and exploitation of the vessel.

2.3. The mortgage lender has also the right, if there is no similar insurance cover, to insure the vessel on the debtor's expense towards maritime risks and towards war risks for the same value with the loan's value and increased by 30% (article 33 of Greek Code of Private Maritime Law). If the debtor doesn't pay the insurance fees, the preferred mortgage lender may ask for the direct pay off the debt. The insured claim through the preferred mortgage, includes also the insurance fees.

3 There are some different rights of the mortgage lender after the lapse of the insured claim, which are the below:

3.2.1 The preferred mortgage lender has the right to file towards the debtor a lawsuit, to ask for its payment, and in case of non payment, to ask for its satisfaction through the acceleration of enforcement towards any asset of the debtor as a simple manuscript lender (article 31 of Greek Code of Private Maritime Law & article 1293 of Greek Civil Code); or he may file a lawsuit in rem, which emerges by the preferred mortgage, towards the owner of the mortgaged vessel, even if he is the debtor of the claim or third party and to ask for enforced execution towards the mortgaged vessel for its sale at public auction and

his preferred satisfaction by the auction's amount (article 1291, 1292& 1294 of Greek Civil Code) or for the taking of management and exploitation of the vessel and the pay off by the claim's profits. The filing of the lawsuit in personam doesn't inhibit the right to file the lawsuit in rem. However, the preferred mortgage lender may proceed to above actions even before the lapse of the insured claim, if this claim becomes payable, based on a law or due to violation of a term of the loan agreement which sets the debtor in default.

3.2 The right of the preferred mortgage lender to acquire the vessel's exploitation and management of the mortgaged vessel on his account (article 27 of Greek Code of Private Maritime Law) constitutes a special power which emerges directly from the event, which is component of the preferred mortgage, it is practiced on the vessel even if its owner is not debtor of the insured claim, it follows the vessel even if it is transferred to a third person, provides the lender with the right to pay from his profits. That's why it constitutes a different type of the lawsuit in rem of the preferred mortgage lender. Provided that the use of the preferred lender's right to acquire the management and exploitation of the vessel constitutes forced execution towards the mortgage debtor, the prerequisites of the preliminary proceedings of forced execution shall be met. On the other hand, the Acceptance Acts of registration of vessels as foreign capital state in term 19 that the preferred mortgage lender has the right to acquire the vessel's management in order to counterbalance the profits with his claim without any need of judicial proceedings. However, it has been noticed, that if the vessel's owner refuses to give its management to the lender, it is very difficult or even impossible for the lender to acquire its management without judicial proceedings. In this case, the forced execution based on the acceptance act of vessel's registration as foreign capital, for its transfer to the lender is inevitable. From all the above, it is obvious that for the mortgage lender to be able to acquire the vessel's management, the vessel must have called at a Greek port or a place inside Greek inland waters. Otherwise, in case the vessel has called a port outside Greece, the acquisition of its management and exploitation by the mortgage lender becomes very difficult or even impossible.

3.3 Article 26 par. 2 of Greek Code of Private Maritime Law provides the mortgage lender with the possibility to agree with the debtor to proceed to further actions to satisfy his claim, among which is his right to sell the ship in private sale, provided that he has agreed same with the debtor in the agreement of preferred mortgage's establishment or after same with a separate agreement. In the latter case, the separate agreement shall be of the required type (i.e. notarial) and no rights of third parties are affected.

2. 3. AMORTIZATION AND ANNULMENT OF GREEK MARITIME MORTGAGES

The abolition of the mortgage's right occurs when 2 legal facts happen, its amortization and its annulment.

Amortization:

The amortization of a mortgage is regulated by articles 1317-1322 of Greek Civil Code and from the general provisions. Those reasons of amortization are connected with the insured claim, its object (i.e. the vessel), the legal title or the mortgage its-self.

1. Pay-off of the insured claim: By following the "Principle of Subsequence", whose more particular indication is found in article 1317 of Greek Civil Code, the pay off of the insured claim by any way results in the amortization of the mortgage". This happens when an amortizing reason for claims occurs, according to the general provisions (articles 416 of Greek Civil Code and after). Moreover, according to the "Principle of Subsequence", the lapse of a claim results in amortization of a mortgage (article 1320 of Greek Civil Code).
2. Reasons referring to the object of the mortgage: The reasons of amortization of the mortgage, which refer to its object are:
 - 2.1. the disappearance of the mortgaged vessel (article 1318 of Greek Civil Code), i.e. which means with the ultimate destruction of its material existence, which justifies its deletion by the Ship Registry (article 18 of Code of Public Maritime Law). If its destruction is not ultimate, the mortgage is maintained and is applied in its ruins, provided that they can be individualized. Nevertheless, only the aggravation of the mortgaged vessel or the transformation of its shape or type doesn't affect the mortgage (article 1322 of the Greek Civil Code).
 - 2.2. Merge: the mortgage is amortized when the rights of ownership and mortgage co-exist in the same person (article 1321 of Greek Civil Code). This case is different from the case when the status of creditor and debtor co-exist in the same person (article 453 of Greek

Civil Code). When this case occurs, the mortgage is amortized because of the insured claim (article 1317 of Greek Civil Code).

- 2.3.** Distribution of the mortgaged vessel: Mortgage which has been registered on a part of the vessel, is amortized or limited in case of its judicial distribution, according to article 492 of Code of Civil Procedure.
- 2.4.** Acquisition of the ownership of mortgaged vessel by a third party based on adverse possession: The acquisition of the ownership of a mortgaged vessel by a third party with adverse possession of any kind (article 14 of Greek Code of Private Maritime Law) brings about amortization of the mortgage, if the requirements of article 1053 of Greek Civil Code co-exist.
- 3.** Reasons referring to the legal title of mortgage's registration: If the mortgage was provided based on a resolutive deadline, the expiry of the deadline results in the mortgage's amortization (according to article 1318 Greek Civil Code). The same happens if the mortgage has been registered based on a resolutive condition, which was met. On the other hand the cancellation of the resolutive condition results in the cancellation of the mortgage, which is not exactly the same with the amortization, but has significant similarities, especially if a mortgage's elimination is to follow. Those reasons of mortgage amortization may be supported that refer not only to the legal title of the mortgage but also to the mortgage right itself.
- 4.** Amortization for reasons relevant to the mortgage right itself:

 1. Amortization of the mortgage may occur also through the resignation of the lender by the mortgage right (article 1318, par. 2 of Greek Civil Code),
 2. through the auction of the mortgaged vessel and the deposit of the auction's price (article 1318, par. 3 of Greek Civil Code). It is important to add in this point, that the auction of the mortgaged vessel and the payment of auction's price result in amortization of that mortgage of the garnisher as well as of any other mortgage which burdened the vessel (article 1318 par. 3 of Greek Civil Code). But if the auction is canceled, then the mortgage which was amortized revives and the Maritime Registrar

- shall make a relevant note in the Mortgage Books, after receiving the document evidencing the auction's cancellation.
3. To the reasons which result to amortization of the mortgage we may also include the merge (article 1321 of Greek Civil Code),
 4. the lapse of the insured claim (article 1320 of Greek Civil Code) (as above mentioned).

Results of the amortization:

After its amortization, the mortgage ceases to exist, but it is not totally abolished, until it is annulled, i.e. deleted from the Mortgage Registrar. Moreover, the mortgage which has been amortized, can't be revived. If the parties agree about the re-establishment of the mortgage and register same at the Mortgage Registrar, this mortgage is not regarded the same with the one already amortized, but a new one, as per article 1332 of Civil Code. This happens regardless if the right of mortgage which was amortized, had been annulled or not.

Annulment:

The annulment is the action with which the Maritime Registrar notes at the fourth column of the mortgage book and next to its registration its deletion. It targets to clear out the legal condition of the mortgaged vessel as it appears at the Mortgage Registrar as well as to satisfy the need of secure transactions. Usually annulment takes place when the mortgage is amortized as above stated or if the mortgage is void, in case for example of invalidity of its legal title or its registration. The maintenance of a void mortgage at the Mortgage Registrar brings about danger for the transactions and therefore shall be deleted from the Mortgage Registrar. Nevertheless, the mortgage is deleted from the Mortgage Book either with the lender's acceptance or with court decision (article 1324 of Greek Civil Code) or following mortgage's amortization due to auction of the mortgaged vessel (article 1005 of Greek Code of Civil Procedure).

The acceptance of the mortgage lender about the annulment of his mortgage right is needed, in order for the risk of its arbitrary abolition to be excluded. His acceptance is a unilateral legal act, which doesn't have to be addressed to other people and can't be recalled. It has an "in rem"

character since it refers to the abolition of the in rem right of the mortgage. It is a typical legal action, since it takes place through a notarial declaration (article 1325 of Greek Civil Code). The resignation of the mortgage lender by his mortgage right means also that he accepts its annulment if nothing else arises from the circumstances. However, vice versa the lender's acceptance about the mortgage's annulment means his resignation by the mortgage right, if nothing else arises from the circumstances.

The court's decision about a mortgage's annulment is required when the mortgage lender doesn't consent to its annulment, since he questions its amortization or its invalidity. In this case any person who has legal interest, may file a lawsuit against the mortgage lender and to ask the court to rule the annulment of the mortgage (articles 1324 & 1327 of Greek Civil Code). The mortgaged ship's owner, the next mortgage lenders and the rest lenders of the debtor may be regarded as having legal interest. The court will rule the annulment, if the mortgage has been amortized or if its registration is void (article 1328 Greek civil Code).

The vessel's auction and the payment of auction's price by the tenderer bring about mortgage's amortization (article 1005 of Greek Code of Civil Procedure) and justify its deletion by the Maritime Registrar, based on the summary of the award report.

CHAPTER: 3 LIENS IN GENERAL

A lien is a form of security granted over an item of property to secure the payment of a debt or performance of some other obligation. The owner of the property (debtor), who grants the lien, is referred to as the lienee and the person who has the benefit of a lien (creditor) is referred to as the lienor.

A maritime lien is a type of security which is provided by law and gets attached to the ship, cargo or freight. Like especially explained by Professor Robert Force: “The naval privilege is a secured right introduced by maritime law. A lien is essentially a charge on property to pay a debt, and specifically a special property right over a ship, which is given to a creditor by law as security for a debt or claim arising from some service which was provided to the ship to facilitate its use in navigation or by an injury caused by the vessel in chartered waters. The fundamental purpose of the maritime lien regime is to provide security to project the claim while at the same time allowing the ship to continue her course in order to earn the fare or charter which are required in order to pay off the claim”.

Maritime liens derive from customs, are created by law and are hidden encumbrances that do not require the beneficiaries of the privileges to also be the owners of the collateral.

Maritime liens are internationally recognized. For thousands of years, the naval privilege regime has been understood and relies heavily on the actions of the ship's creditors towards their transactions with other people, especially with financiers who consider the ship itself as the main source of security.

Though the many different national legislations regulating the regime of maritime privileges make their application difficult. This difficulty in their implementation resulted in an international effort by the CMI to limit the number of privileges with the Venice Conference 1907, Brussels International Convention 1926 and Brussels International Convention 1967. But all the above efforts failed to unify the legislative regime governing maritime privileges.

Creditors know that they can seize the ship in any case and recover their debt from the proceedings of the judicial sale of the ship, regardless of who is the shipowner at the given time.

When involved in her bankruptcy, it is critical to determine whether a claim based on maritime lien is a secured claim so that a claimant under a maritime lien may be able to compete with the other unsecured creditors for what is left of the assets of the debtor.

Each separate regime of maritime privileges arises to respond to the unique characteristics of maritime property and shipping industry. The moment the ship sails to the open sea, the immediate possession and control of the shipowner is not always necessary.

During the journey, the ship needs the necessary expenses to undertake and continue her adventure. The ship needs to have proper navigation and the cargo needs to enjoy professional management, which will be based on a suitable captain and crew in order to provide the necessary navigation service. Due to the nature of the ship as movable property, which may continue to create liabilities against its existing creditors, these types of plaintiffs were so vulnerable and had less security and assurance as to whether they would be compensated for their debts. These people were indeed fundamental in the context of nautical adventure, and therefore the maritime privilege was developed in order to provide special protection to these claimants and to satisfy their interests.

Moreover, despite the movable nature of the property, the manner of possession and management of this type of assets is also an important factor that leads to this special maritime privilege status. Actual possession and ownership of an ocean-going ship is often very difficult to discern, as it may be hidden and disguised through a "one-ship company".

It is usual practice in the shipping trade to register a ship in the name of a company with no property other than the ship itself notwithstanding that each of these individual vessels may have a common parent company or holding company and be operated and managed together as a fleet. This arrangement is known as a "single-ship/ single vehicle company". The advantages of this arrangement are obvious: "By dividing their assets into single-owning companies, the preferred debtors wish to protect their overall investment, i.e., their fleet, from the ever-present dangers that appear in each of their ships individually" (Daniel H. Charest,2004). Often these companies will register in a country where public records and assets of the legal entity will have difficult access, with which privileged shipowner will be able to hide his identity and avoid taxation and

liability. However, in the absence of evidence of fraud, the courts generally refuse to lift the veil and look behind the "one-ship company" structure in order to identify the privileged ship owner of the company as the person responsible. This arrangement makes the rights of those having maritime claims still more uncertain and easier to shoot down. For this reason, granting them the right to satisfy their claims against the ship itself, the owners of maritime privileges will not be affected by the difficulty of identification of the actual shipowner. They can in every case assert their claim directly against the ship itself regardless of the ship owner at the time of execution of the claim.

CHAPTER: 4 LIENS OF GREEK MARITIME LAW

4.1. TYPES OF MARITIME LIENS OF GREEK MARITIME LAW

Maritime Liens of Greek Maritime Law are provided directly by the Law (Code of Civil Maritime Law, article 42), they are created upon the birth of the claim and law does not provide formal conditions for their establishment and exercise. Moreover, the existence of a maritime liens requires the existence of a claim. If the claim is transferred, then the maritime liens is transferred too, whereas if the claim is paid off, then the maritime liens is paid off too. The maritime claim also is connected with the specific claim and not with the debtor. It binds the whole vessel and secures the entire claim. The principle of exclusivity is no more in use, which means that it is possible for the maritime lienor to be satisfied by another vessel/asset of the debtor.

Moreover, the Code of Civil Maritime Law in the article 42 para. 1 secures 4 types of claims with maritime liens, which are the following:

1. the taxes related to navigation, the fees and rights borne by the ship, according to the latter 6 months before the forced seizure and the maintenance costs of the ship from its berth to the port where it was seized (first class),
 - 1.1. Taxes related to navigation, i.e., the taxes borne by the ship and the shipowner's income from its operation. VAT, turnover tax on gross receipts, income tax on master's and officers' salaries are not included in maritime liens because they are not regarded as shipping taxes.
 - 1.2. Fees and charges borne by the ship. This is the monetary provision imposed by the state in exchange for the services offered to public legal persons or public organizations (e.g., legal fees, navigational rights, consular fees, rights of embarkation, diversion, decommissioning, tanking, etc.). Fees and duties which are not borne by the vessel or are born by third parties are not secured by a maritime lien (i.e., fees borne by the passengers for the use of jetty and are collected by the shipowner or his agent who gives them to a public organization.

- 1.3. Costs of ship's maintenance, i.e., what is spent to keep the ship in good condition and to fulfill its purpose as an economic unit, suitable for movement on its own and to be receptive to utilization. In more detail, this clause refers to the costs paid for the restoration of damage caused by the operation of the ship and the passage of time, so that it is kept intact and unaltered in port. However, costs related to improving the ship's condition or increasing its price are not covered by a maritime lien. This clause also refers to the costs occurred about the last port where the vessel called and where its voyage was prevented due to the seizure, regardless of if the costs occurred before or after the seizure.
2. the requirements of the master and the crew arising from their maritime employment contract and the requirements of their social security bodies, to the extent determined by the special provisions in force at any time (second class),
 - 2.5. the rights of Navy Retirement Fund (NAT) by the recruitment of the master and crew members (seamen's' and seafarer's social security contributions), merchant seamen's welfare funds, seafarers' unemployment, and sickness funds as well as seafarers' training, other fees and rights due to NAT, fines imposed by the Maritime Employment Office (GENE) for the Unemployment and Sickness Fund. The rights owed to NAT are privileged, regardless of if they belong to the current financial year or the previous.
 - 2.6. the claims of the master and the crew members based on their contract of employment, i.e. their salary, its increases and allowances, overtime, salary in kind (even if there is no agreement for this, e.g. food), claims due to shipwreck (article 113 of Greek Code of Private Maritime Law), illness or accident at work (article 186 of Greek Code of Private Maritime Law), the solution of employment contract (articles 166 of Greek Code of Private Maritime Law & after). A contract of employment that is void or voidable is covered by the seaman's privilege. But the following are not covered by maritime privilege:
 - 2.2.1. the claims that do not have the employment contract as a legal cause but as an occasion (e.g. costs of repairing a ship, supplying a ship for the continuation of the

voyage, because they derive from the contract of command or management of others

2.2.2. the claims of the master or a member of the crew who is also the owner or co-owner.

3. costs and fees due to assistance at sea (salvage) of the auctioned vessel (third class) and

Maritime assistance means the provision of assistance to the vessel which is in real danger, and which results in the vessel's release from previous danger. Of course, the provision of this kind of assistance needed the provision of an incentive for the salvor, which was the provision of payment for the salvor (as referred in the article 113 of Greek Code of Private Maritime Law), which is based on the principle "No cure, no pay" (which means that a successful salvage needs a reasonable remuneration and finally operates as a measure towards the serious maritime dangers in today's times. This comes into a contrast with the "non-profit principle" of salvaging foreign property on land under the provisions on the "negotiorum gestio". The institution of maritime aid has an intense capitalistic character, and it relates to the insurance market. So, on the grounds that the claim by the salvage usually has insurance cover and rarely reaches the 50% of vessel's value, its provision with a lien doesn't significantly damage the rights of the mortgagee.

4. damages payable to ships, passengers and cargo due to collision of ships (fourth class).

As a ship's collision we mean the violent physical contact between two or more ships resulting in damage to them or to people and things on board. The term people in this clause is interpreted broadly to include all the people mentioned in article 204 of Greek Code of Private Maritime Law (i.e., master, crew, passengers, other occupants of the ship) and not only the "stricto sensu" passenger, who is connected with the ship-owner with a contract of transfer. If the violent contact was between a ship and another object (i.e. floating object, floating tank, wharf, bridge, reef) then it is called impingement and not collision (which is between ships). But when it has to do with an impingement between a vessel and a floating object, only the compensations referring to the vessel are equipped with a maritime lien. Moreover, the maritime lien doesn't include claims for damages incurred to people/objects except for the colliding vessels (which are based

on the article 914 of Greek Civil Code. Moreover, according to Article 43 of Greek Code of Private Maritime Law “privileged references of the same class are ranked symmetrically. Registrations of the third class, the later ones take precedence over the earlier ones. Exceptionally, benefits that ensue from the last before the auction help or rescue of the ship take precedence over all privileges that were on the ship before the matches were made acts of relief or dissociation. Requirements of the third class referring to the same event are ranked symmetrically.”

4. 2. EXERCISE OF MARITIME LIENS OF GREEK MARITIME LAW

The maritime liens according to article 1218 of Greek Civil Code follow the claim and refer to its capital, interest, fees of its judicial pursuit and the additional interest rates of privileged claims of legal entities under public law or the public in case of their non-payment.

Moreover, maritime liens are imposed on 2 types of property regardless of whether one is sufficient to satisfy the claim. The one is the vessel itself, including also commercial vessels, pleasure vessels, commercial public vessels and those which serve scientific purposes. The maritime liens are imposed on the vessel, regardless of the condition, in which it stands and they include also its components and extra-parts (but don't include its fuels and provisions) and the latter is the gross freight.

When the claim which is secured by a maritime lien becomes due and the debtor doesn't pay it off, then the lender has the right to proceed in enforcement of the lien on the ship or the freight. This may happen even if the vessel is transferred to a third party, as per article 44 of Greek Code of Private Maritime Law or the claim is transferred by the charterer to a third party or even if both those properties are already burdened with other limited rights.

The enforcement procedure differs if the lender has already an enforceable instrument or not. In case he already has an enforceable instrument, then he may proceed with forced execution and seizure of the vessel (according to articles 1237 of Greek Civil Code and article 1011 of Greek Code of Civil Procedure).

Otherwise, in case the lender has no enforceable instrument yet, he shall file a lawsuit in order to acquire an enforceable instrument and then he may proceed with foreclosure of the vessel without applying the procedure of article 1237 of Greek Civil Code (due to lack of enforceable instrument).

In case the vessel has been contractually transferred to a third party, then the lender who has an enforceable instrument may seize the vessel within 3 months from the register of the sale contract at the Ship Registry or within 1 year, in cases of crew claims based on their contract of employment or based on their rights of Navy Retirement Fund (NAT). There is no need to file a

lawsuit for the recognition of the maritime liens towards the person (legal or physical) who acquired the vessel.

On the other hand, the lender who has no enforceable instrument shall firstly file a lawsuit for recognition of his maritime liens towards the new ship's owner. Then he shall proceed to foreclosure of the vessel and based on the recognition of his maritime liens he may seize the vessel (article 1294 of Greek Civil Code).

In case of auction where the auction's outcome is not enough to satisfy all creditors, the classification of creditors is as follows:

1. Maritime Liens
2. Simple or preferred mortgage
3. General or certain liens
4. Manuscript lenders

The holders of maritime liens of the same group are classified "pro portione", which means proportionately to each one's liens. The creditors who have maritime mortgages at last, are classified based on "time priority rule".

The 19th term of the Approval Acts states that the preferred mortgages of article:13 of Legislative Decree 2687/1953, shall precede of all the rest maritime mortgages and of the rest maritime liens and of all the rest provisions of Greek Maritime Law, except of the liens mentioned in article 2 of the Brussels Convention of 1926 (referring to the consolidation of laws regarding liens and mortgages).

This Convention hasn't been legally sanctioned in Greece. Therefore, liens which are recognized only by the International Convention of 1926 and not by the Greek Code of Private Maritime Law, don't apply in Greek Law. The ranking of mortgages and liens is the below:

1. Maritime liens of article 2 of the International Brussels Convention of 1926, which are also mentioned in article 42 of Greek Code of Private Maritime Law.

2. Preferred maritime mortgages of article:13 of Legislative Decree 2687/1953, according to the order of their registration in the Maritime Mortgage Register (Rule of time priority)
3. Liens of article 42 of Greek Code of Private Maritime Law which don't exist also in the Convention of 1926, i.e. some amounts in favor of Navy Retirement Fund and the fines imposed by the Maritime Employment Agency
4. Simple or preferred mortgage of article 18 of Greek code of Private Maritime Law
5. Classification according to the provisions of Greek Code of Civil Procedures

4. 3. AMORTIZATION OF MARITIME LIENS OF GREEK MARITIME LAW

The amortization of maritime liens may occur for general or special reasons.

General reasons are the following:

1. Reasons which refer to the claim:

- 1.1. Based on the general legal provisions (pay off and offsetting)
- 1.2. the claim's lapse, through the successful filing of objection of the claim's lapse

2. Reasons which refer to the object of the claim:

- 2.7. vessel's loss or disappearance
- 2.8. the identification in the same person of the positions of maritime lienor and the ship-owner (article 1243 of Greek Civil Code)

3. Reasons referring to the maritime liens itself:

1. ability of the maritime lienor to resign by the maritime liens expressly or implicitly. However, the resignation of a master or a crewmember by their maritime liens is void.
2. the ship-owner's bankruptcy, i.e. if a lender undergoes a verification process and participates in the bankruptcy settlement vote, he is excluded from his maritime lien
3. ship-owner's declaration for the limitation of his responsibility or debt by maritime claims, based on the article 12 paragraph 1 of the Convention on Limitation of Liability for Maritime Claims (LLMC) of 1976

Special reasons are the following:

1. Reasons which refer to the vessel:

- 1.1. within three months or one year since the registry of the agreement of ship ownership transfer to the Ship's Registry (article 44 of Greek code of Private Maritime Law)
- 1.2. with the vessel's sale at auction based on legal provisions of seizure and in public auction (article 45 of Greek Code of Private Maritime Law)

2. Reasons which refer to the freight:

2.9. collection of freight by the charterer

CHAPTER: 5 MORTGAGES OF ENGLISH MARITIME LAW

5. 1. TYPES OF MORTGAGES OF ENGLISH MARITIME LAW

It is imperative to note that a shipowner transfers a security interest in a ship to a lender as collateral for a loan which refers to a ship. A ship mortgage is legally composed of three components, similar to other forms of mortgages: the mortgage loan, the mortgage document, and the rights arising from the mortgage deed granted to the money lender.

A registered ship or a share in any such ship may be made security for the repayment of a loan or the discharge of any other obligation, according to paragraph 21 of Schedule 1 to the Merchant Shipping Act of 1988.

Ship mortgages are distinct from other mortgage kinds of mortgages in three respects:

1. First, some privileged claims rank higher than mortgagee claims against the ship.
2. Secondly, ships inevitably cross international borders.
3. Thirdly, when at sea, a ship is always susceptible to partial or complete destruction. In the 19th century, ship mortgages were a commonly used practice in the shipping industry and a significant source of funding for ship owners.

Ships are considered chattels in the UK, and ownership disputes are resolved following the rules that apply to the law of personal property, particularly the provisions regarding the passing of property and conveying of title found in the Sale of Goods Act 1979. However, in general, the title to a ship won't pass by delivery and won't be established by possession. Upon production of the document establishing any such security (referred to in this Act as a mortgage), the registrar of the ship's port of registry shall record it in the register. The Merchant Shipping Act of 1894, the Merchant Shipping Act of 1988, and later revisions to the 1988 Act are the legal foundations for ship mortgages in the United Kingdom. According to the Merchant Shipping Act of 1894, only registered ships are eligible for "statutory legal mortgages", otherwise known colloquially as ship mortgages. All other ship-related mortgages must be purely equitable and may be placed on incomplete boats, foreign vessels and other vessels.

The UK statutory forms of mortgage generally fall into two categories i.e., those securing ‘principal sum and interest’ only and those securing an ‘account current or other obligation’.

Ship mortgages can be granted by an owner to secure their own obligations whether as principal debtor or as guarantor of another party’s obligations, although where a third party granting a ship mortgage is a UK company, lenders should ensure that the English law corporate benefit tests are met. Because principal sum and interest mortgages will not secure contingent or other liabilities beyond principal and interest payable under the loan, it is ‘account current or other obligation’ mortgages that are usually used in ship finance transactions.

The current pro forma UK statutory mortgages are issued by the Maritime and Coastguard Agency (MCA). These contain limited information, and, although English statute and common law provide mortgagees with a number of general rights if the owner defaults (such as the right to take possession of the ship, the right of sale, the right to appoint a receiver, the right to foreclose and the right to arrest the ship), it is usual that a lender will also require that a deed of covenants ‘collateral’ to the ship mortgage be executed. This will set out the lender’s rights and powers in more detail. The Merchant Shipping Act states that a registered ship mortgage must be in one of the forms prescribed by or approved under registration regulations and published on the [MCA website](#). The register of mortgages over UK ships is the responsibility of the centralized Registry of Shipping and Seamen in Cardiff, Wales (the Registry). Filings are made to the Registry.

A mortgage creates a fixed security over the ship, which attaches to the ship in rem. The mortgage will survive a change of ownership. It entitles the lender to sell the ship and use the sale proceeds to pay off the amount owing to it if the owner is in default. Under the Merchant Shipping Act every registered mortgagee shall have power, if the mortgage money or any part of it is due, to sell the ship or share in respect of which he or she is registered, and to give effectual receipts for the purchase money.

Mortgages are registered in the order in which they are produced to the registrar for the purposes of registration. Registration gives the registered mortgagee higher priority over unregistered mortgagees. This is irrespective of whether the unregistered mortgage was created first and is irrespective of knowledge. Where more than one mortgage is registered against the same ship or

share, the priority of the mortgages between themselves shall be determined by the order or time in which the mortgages were registered, the earliest registered mortgage having priority. Failure to register a mortgage at the Registry does not render the mortgage void. However, an unregistered mortgage will be an equitable mortgage and an unregistered mortgage will not have priority over a subsequently registered mortgagee.

Under English law, any person who is an intending mortgagee under a proposed mortgage may notify the registrar of the intended interest, and the registrar shall record that interest. This is known as a 'Notice of Mortgage Intent. A priority notice has effect for a period of 30 days. If the mortgage is executed and registered within 30 days and during that time another mortgage has been registered, the mortgage with the priority notice will take priority over the other mortgage even though it has been registered first.

Where the shipowner is a UK company, the mortgage and deed of covenants should also be registered with Companies House within 21 days of the creation of the charge. A copy of the security document will be placed on the register at Companies House and will be open to inspection by a search against the company. A failure to register with Companies House within this time limit renders the charge void against a liquidator, administrator or any creditor of the company.

Finally, before agreeing to lend the cash, a lender should consider obtaining other forms of security from the owner and doing necessary credit and due diligence checks on the borrower, beneficial owner, and any guarantors. In rare circumstances where the 'principal sum and interest' statutory mortgage is used, it is necessary to state the amount of the loan. Neither the total amount of the mortgage nor the maturity date need be stated in the 'account current' mortgage.

It is only the original mortgage instrument that must be presented when registering the mortgage with the Registry – neither the underlying debt instrument nor the deed of covenants needs to be filed or attached to it. The Registry will endorse the mortgage with the date and time of its registration and it will then be returned to the mortgagee. The Registry may accept for registration of a mortgage in favor of an agent or trustee (or, under English law, more commonly known as a 'security trustee') for the benefit of multiple lenders.

English law has well-established principles of trust and agency. If a syndicate of banks have put a trust structure in place whereby one of those lenders acts in a separate capacity as security trustee for itself and the other syndicate members, then for as long as the security trustee remains appointed in this capacity, security will not need to be amended if any of the syndicate banks (including the security trustee in its separate capacity as lender) sells or otherwise transfers its loan commitment to another lender.

The UK statutory form of mortgage can be transferred to a new mortgagee if the outgoing mortgagee completes and signs the form of transfer contained in the statutory mortgage and lodges this with the Registry. The Registry would not require evidence that the mortgagor has consented to this transfer. However, the loan documentation may have been negotiated in such a way that the lender or lenders may have to seek the borrower's consent to any transfer of commitment or of the underlying security. If the lenders in question also benefit from a deed of covenants this will need to be transferred to the new security trustee. Depending on how the transaction is effected, if the mortgagor is a UK company, new charge registrations may also be required at Companies House.

5. 2. REGISTRATION AND REMOVAL PROCEDURE OF MORTGAGES OF ENGLISH MARITIME LAW

Lord Herschell LC stated in “Baumwoll Manufacturer Von Carl Scheibler v. Furness” case that:

“Although the Legislature has now taken greater security to see that the person registered as an owner is properly registered than before, all it has done is to make the register prima facie evidence of ownership. In fact, it assumes that anybody may altogether displace the statutory effect given to it by proving what the facts really are.”

A ship mortgage must be registered to be enforceable while failing does not necessarily deem the mortgage null and void. For this:

1. The sellers guarantee that the ship is devoid of any charters, encumbrances, mortgages, maritime liens, and other obligations at the time of delivery and
2. To prevent further legal action following sales brought on by claims relating to unregistered mortgages, it is crucial for purchasers to register ships with mortgages.

Under the Merchant Shipping Acts, an unregistered mortgagee is not eligible for any of the advantages listed. One of the most important benefits of registration is the priority that the mortgagee receives based on the registration date.

In the following situations, but not limited to them, registration gives a mortgagee a higher priority:

1. Later registered or unregistered mortgagees;
2. Earlier unregistered mortgagees, regardless of knowledge of them.
3. Additional advances were made later under a prior registered mortgage, where it was agreed that the mortgage should cover present and future advances by the mortgagee.

Mortgagees of a ship or a part of a registered British ship are permitted to notify the registrar of their planned interests. The registrar may record those notices under rule 59 of the Merchant Shipping (Registration of Ships) Regulations of 1993 in the UK. The registered mortgagees will take precedence over other registered mortgages that may have been completely registered initially after they have been later completed or registered.

5. 3. AMORTIZATION OF A MORTGAGE UNDER BRITISH LAW

According to Regulation 62(2) of the Merchant Shipping (Registration of Ships) Regulations of 1993: “If for a good reason, the registered mortgage cannot be produced to the Registrar; the mortgagee may, upon being satisfied that the mortgage has been properly discharged, record in the Register that the mortgage has been discharged”. When a mortgage has been registered by a person falsely claiming to be the mortgagee or when the mortgage was not completed by the mortgagee, it is proper to ask that record in the register be deleted. Simply put, once the mortgage obligation has been satisfied, a mortgage may be discharged. According to Schedule 1’s Paragraph 13 of the Merchant Shipping Act of 1995: “Where a registered mortgage has been discharged, the registrar shall, on production of the mortgage deed and such provided that there is evidence of the discharge of the mortgage as may be prescribed,¹¹⁹ cause an entry to be made in the register to the effect that the mortgage has been discharged.”

When a discharge entry is accidentally entered in the register, the mortgage is still considered to be discharged, and all future entries pertaining to the mortgage are void. A note on the register stating that the discharge had been entered incorrectly could not be used to reinstate the mortgage. In contrast, the court will order the purchaser to be registered as the owner in cases where an entry of discharge was made accidentally, and a bill of sale was completed by a mortgagee.

Whether someone who relies on the register will be harmed by the inaccurate entry must be considered in each circumstance. If not, the court may order that the entry be corrected, but it will not do so at the expense of a third party that has relied on the entries in the register while acting innocently.

5. 4. ENFORCEMENT OF A SHIP MORTGAGE UNDER BRITISH LAW

The case of a ship mortgage and the choice of applicable law should be incorporated into the security documents of the ship mortgage. Although the flag of registry determines the legislation that applies to a ship mortgage, the underlying security documentation is frequently subject to a separate law. For this, the English law has been one of the most popular choices. The English Law procedure is based on a contractual right. Therefore, the terms agreed by a mortgagor are the specific terms that produce the rights of a mortgagee. Usually, the loan documentation identifies the events of default by the mortgagor, which eventually give the mortgagee the right to enforce the mortgage. Identifying the event of default can itself be a difficult task, considering the wide range of certain events, such as any breach of a material adverse change clause. However, in the end, the same is identified on a case-to-case basis.

The process for the enforcement of a ship mortgage is as follows:

Service of notice and demand:

After the event of default has been successfully identified, we then need to ensure that a notice and demand is adequately served to the mortgagor, the process of which must be in accordance with the agreed terms of the mortgage. If there is any deviation with the agreed terms of the mortgage, it is possible for the notice to be deemed invalid.

Repossession:

It is possible to enforce the mortgage, once the notice and demand has been served, and a reasonable time period has passed, providing the mortgagor with the adequate opportunity to make the repayment arrangements. The enforcement is usually done by the mortgagee, through repossession of the vessel. The main objective behind taking the repossession would be to sell the vessel as soon as possible, in most cases. However, till the time the sale is completed, it is advisable to employ a commercial manager for the proper operation of the vessel.

Under the English Law, if the terms of the mortgage grant the mortgagee the right to repossession after the demand has been served, it is not necessary to obtain any official court order to take the repossession of the vessel. This can be done through the appointment of any specialist firm for obtaining the physical possession of the vessel, or through the appointment of any Lawyer

Once the possession is received by the mortgagee, and the mortgagee makes the decision to sell the vessel, the mortgagee is expected to sell the vessel at the best price which is reasonably obtainable for the vessel. If the mortgagee is unable to do so, it might be possible that the mortgagee faces the claims of the mortgagor and other creditors.

The mortgagee is not required to hold the title of the vessel before the sale of the vessel, mainly because the terms of the loan and the mortgage documents themselves grant the mortgagee with the power to sell, either through its own right or as an attorney of the mortgagor.

While this may seem to be a beneficial course with a speedy repossession of the vessel, however, it is not possible to go down this route in case the mortgagor has disputed the event of default and/or the repossession of the vessel. Further, if other creditors also exist in the picture, they would need to be paid off by the mortgagee, before the mortgagee can proceed with the sale of the vessel. Therefore, to avoid such issues and disputes over the vessel, and to ensure that the sale is through a clean title, mortgagees often prefer to arrest the vessel and go through the sale procedure through a court order.

When choosing the governing law for the security documentation, the enforcement procedure is necessary to be known. Under the English law, as discussed above, the contract between the parties allows the mortgagee to take repossession of the vessel in the event of default, and even allow the mortgagee to further sell the vessel without any court intervention. Therefore, one shall be aware of these facts before entering into any contractual obligations. Moreover, it is crucial to know what steps to take if enforcement is needed when deciding on the governing legislation for the underlying security papers for a ship mortgage. English law operates under the premise that it will respect the contractual agreement reached by the parties and that the courts will act to enforce that agreement where necessary. According to English law, the parties' contractual agreement gives the mortgagee the right to seize the vessel in the event of a default and, if it so

chooses, to sell it without seeking a judge's permission. English law, which allows a mortgagee to enforce a right of possession, authorizes the mortgagee to take the vessel and weigh its choices. Speed and flexibility are crucial. When the vessel operates in international waters, and there are practical limitations on bringing an enforcement action against the mortgage in any pertinent foreign jurisdiction, this may be very crucial.

CHAPTER: 6 LIENS OF ENGLISH MARITIME LAW

6. 1. TYPES OF LIENS OF ENGLISH MARITIME LAW

In English Maritime Law and other common law jurisdictions, only certain types of claims can activate maritime liens, whereas most other maritime claims may activate other types of liens, as explicitly analyzed below.

Possessory Liens:

A possessory lien (general or particular) is a right to retain the property being in the possession of the lienor until a claim is satisfied or an obligation is fulfilled by the lienee. For the creation of the lien possession is essential and must be rightful, without the need for a particular purpose and continuous. (Hatton v. Car Maintenance Co. Ltd.)

General Possessory Liens:

A general possessory lien affects any and all of the lienee's property in the possession of the lienor and stands as security for all of the debts of the lienee to the lienor. It may arise through a deal, continuous and well recognized usage or express agreement. (Jowitt v. Union Cold Storage co.) By usage it exists in the case of solicitors, factors, brokers and bankers.

Particular Possessory Liens:

A particular possessory lien requires a close connection between the property and the service rendered. It can only be exercised in respect of fees relating to the instant transaction; the lienor cannot use the property held as security for past debts as well. It does not arise unless the relevant work has been completed and the tangible property has been improved (not simply maintained) by the work or expenditure. At common law, the carrier has a possessory lien on cargo for freight payable on delivery, however, this lien is not granted (unless specifically provided by agreement) for advance freight, dead-freight, demurrage and damages for detention.

Enforcement of possessory liens:

A common law lien only gives a passive right to retain; there is no power of sale which arises at common law, although some statutes have also conferred an additional power of sale (Torts (Interference with Goods) Act 1977, Sale of Goods Act 1979), and it is possible to confer a separate power of sale by contract (charterparties). A possessory lien is extinguished by loss of possession of the goods, payment of the amount claimed, provision of security in substitution of the lien or abandonment.

Equitable Liens:

An equitable lien is a non-possessory security right in respect of property over which there cannot be a common law possessory lien, provided that such lien is recognized by law of equity. Thus, enforcement of an equitable lien by sale of the property can only be effected if its existence is confirmed through a Court declaration.

Contractual Liens:

A lien may be created by express provision in a contract on the occurrence of particular circumstances. The nature and extent of the lien will depend upon the contractual words. (NYPE cl. 18, Exxonvoy 1969 cl. 21, Lord Diplock in *Miramar Corporation v. Holborn Oil Trading*)

Statutory Liens:

Certain statutes provide for a passive right to retain property against its owner as security for obligations. Such provisions may not only create a statutory lien but also determine its application and enforcement. (Torts (Interference with Goods) Act 1977 ss. 12&13, Sale of Goods Act 1979 ss. 41-43& 48, Merchant Shipping Act 1894 ss. 494-495)

Maritime Liens:

A Maritime Lien can be described as a privileged claim (not dependent upon possession as is the possessory lien and usually referring to salvage rewards, harm caused by ship or certain unpaid contractual obligations), upon maritime property (ship/cargo/freight), for service to it or damage done by it, accruing from the moment the claim attaches, traveling with the property unconditionally (not lost if property is sold to an "Equity's Darling" as is the equitable lien) and is enforced by an action in rem (at any time). A maritime lien is a privileged claim, which means

that the maritime lienor has a higher priority than other creditors in the event that the maritime property (usually the ship) is sold with the intention of distributing the proceeds to satisfy various creditors. Among more than one maritime lienors over the same property, a salvor's lien has priority (and in reverse order of time if there is more than one salvors (i.e., the later before the earlier) over a "damage" lienor (a lien which arises because of a damage done) and a "contractual" lienor (a lien which arises because of breach of contract). Thus, salvage has a priority over earlier salvage, earlier damage, earlier wages, earlier claims to forfeiture by the crown, subsequent possessory liens, necessities, mortgagee and other creditors.

Maritime liens (also called convention liens) are listed in Article 4 of the International Convention on Maritime Liens and Mortgages of 1993 (adopted in replacement of 1926 and 1967 Conventions) as follows:

1. Salvage
2. Crew wages and social insurance contributions
3. Claims for loss of life or injury
4. Claims for port, canal and pilotage dues
5. Claims based on tort for physical loss or damage (other than cargo damage).

The International Convention on Maritime Liens and Mortgages of 1993 sets out priorities as follows:

1. Convention liens (with the rank stated above)
2. Rights of retention in favor of repairers or shipbuilders
3. Registered mortgages
4. Other maritime liens (as per Article 6 of the Convention on Maritime Liens and Mortgages of 1993)

CHAPTER: 7 COMPARISONS

7.1. COMPARISON OF MARITIME MORTGAGES OF GREEK MARITIME LAW WITH THOSE OF ENGLISH MARITIME LAW

Although the rational of maritime mortgages in both Greek and English jurisdictions present some similarities, especially between preferred mortgage of Greek Maritime Law and this of English Maritime Law, there exist numerous differences between the 2 jurisdictions' regulations regarding same. More specifically:

1. Greek Maritime Law provides 2 types of Maritime Mortgages which are distinguished based on the lenders' powers, i.e. simple and preferred (which has similarities with this of English Maritime Law). On the contrary, English Maritime Law provides two types of mortgages, as far as the object of mortgage is concerned, i.e. those securing 'principal sum and interest' only and those securing an 'account current or other obligation'.
2. According to Greek Code of Private Maritime Law article 18, maritime mortgage maybe established to incomplete vessels as well, provided that they are registered at the relevant Ship Registry. On the contrary, according to English Maritime Law and especially according to Merchant Shipping Act of 1894 the mortgage established on an incomplete vessel or a floating object is not regarded as a ship's mortgage, but a ship-related mortgage.
3. According to Greek Code of Private Maritime Law article 18 there are limitations to the vessels eligible for establishment of a preferred maritime mortgage whereas there are no such limitations in the Merchant Shipping Act of 1894.
4. The Merchant Shipping Act states that a registered ship mortgage must be in one of the forms prescribed by or approved under registration regulations and published on the [MCA website](#). On the contrary, Greek Maritime Law states only that the mortgage shall be even a unilateral declaration of the debtor, verified by a notary public (in the case of simple mortgage) and an agreement between the debtor and the lender verified by a notary (in the case of preferred mortgage).

5. According to English Maritime Law, it is usual that a lender will also require that a deed of covenants 'collateral' to the ship mortgage be executed. This will set out the lender's rights and powers in more detail and shall be registered at the Ship Registry together with the mortgage agreement. There is no such an instrument provided by Greek Maritime Law.
6. Under English law, any person who is an intending mortgagee under a proposed mortgage may notify the registrar of the intended interest, and the registrar shall record that interest. This is known as a 'Notice of Mortgage Intent' (form MSF 4739). A priority notice has effect for a period of 30 days. If the mortgage is executed and registered within 30 days and during that time another mortgage has been registered, the mortgagee with the priority notice will take priority over the other mortgage even though it has been registered first. There is no such instrument provided by Greek Maritime Law.

7. 2. COMPARISON OF MARITIME LIENS OF GREEK MARITIME LAW WITH THOSE OF ENGLISH MARITIME LAW

Although there may be some similar items traced between the liens of Greek and English Maritime Law, there are the following basic differences between them, which are analyzed as follows:

1. In most jurisdictions such as England, Australia, Singapore and other Common law countries, the courts have decided that the law of the judge ("lex fori") will also govern the process of recognizing the status of the foreign claim and the issue of priority, (The Halcyon Isle (Bankers Trust International Ltd v. Todd Shipyards Corporation [1981] AC 221, [1980] 2 Lloyd's Rep. 325, 1980 AMC 1221 (P.C.)). This constitutes the issue against how much the determination of the existence of maritime lien for the plaintiffs constitutes a matter of lex fori only (Jennifer Devlin, The UNCITRAL Model Law on Cross-Border Insolvency and Impact on Maritime Creditors (June, 2009) (unpublished LLB(Hons) dissertation, University of Auckland). The majority decision was based on the assumption that maritime privileges are regarded as substantive rights for the purpose of conflict of laws (William Tetley QC, "Maritime Liens in Conflict of Laws", in Law and Justice in a Multi-State World: Essays in Honour of Arthur T von Mehren, 448. 468 KAR Nafziger & Symeon C Symeonides eds 2002). On the contrary, according to Greek Code of Private Maritime Law article 47 all the rights in rem on the vessel, which means not only those mentioned in article 973 of Greek Civil Code but also any other right which has the characteristics of the insurance in rem, i.e. power of prosecution and right of priority are regulated by Lex Navi, i.e. by the Law of the vessel's flag. Therefore, the presence of the maritime liens and their powers are regulated by the Law of the vessel's flag. This was also judged at the following court decisions Piraeus Court of Appeal Decision No 131/2012& Piraeus Court of Appeal Decision No 275/2012.
2. In the UK, only certain types of claims can activate traditional maritime liens, while most other maritime claims can only activate statutory liens. For this reason, it is required to distinguish the maritime liens by the statutory liens. A statutory lien arises only from the

moment of the vessel's seizure (or, in the United Kingdom, from the time of "warranty of arrest", rather than from the moment services were rendered on the ship or damaged by the ship. The statutory lien does not travel along with the ship, as is done with the traditional maritime lien, and is extinguished from the sale of the ship. In addition, the statutory lien has a series of ranking after the maritime mortgage, while the traditional maritime lien is before "mortgage" in the ranking order of liens. On the contrary, according to Greek Maritime Law there are four types of maritime liens, i.e. a) the taxes related to navigation, the fees and rights borne by the ship, and the maintenance costs of the ship from its berth to the port where it was seized (first class), b) the requirements of the master and the crew arising from their maritime employment contract and the requirements of their social security bodies (second class), c) costs and fees due to assistance at sea (third class) and d) damages payable to ships, passengers and cargo due to collision of ships (fourth class).

3. In the UK, Australia, Singapore and most countries of common law, the enforcement of maritime proceedings in rem is available for claims secured by maritime liens, collateral rights and maritime mortgages (William Tetley International Maritime and Admiralty Law 432 (2002); Supreme Court Act 1981, § 21 (Eng.)). However, the theory of personalization has been abandoned since the end of the 19th century and has evolved into the well-known "procedure theory" ("procedural theory") (Martin Davies, In Defense of Unpopular Virtues: Personification and Ratification, 75 Tul. L. Rev. 337, 342 (2000)). The procedural theory considers the action in rem as "simply a construction of forcing the shipowner to appear in person rather than as actual action against the ship itself. Based on this "procedural" theory of the action in rem, a ship may be arrested to compel the shipowner to appear in court and provide security before the judgment is issued. The capture of a sister ship is also permitted in specific cases (UK Supreme Court Act 1981, c. 54, § 21(4)(b)(ii) (Eng.); Canada: Federal Court Act, R.S.C. 1985, c. F-7, § 43(8). William Tetley, International Maritime and Admiralty Law 407 (2002)). The capture in procedural theory is effectively known as quasi in rem treatment. It has the same effect as the B-Rule connection in the US, where "once the shipowner appears, his personal liability does not conflict with value of the ship and all its assets become available for satisfac-

tion of any decision against him. (Martin Davies, In Defense of Unpopular Virtues: Personification and Ratification, 75 Tul. L. Rev. 337, note 45 (2000); *The Broadmayne*, 1916 P. 64, 76 (Eng. C.A.); *The Dupleix*, 1912 P. 8, 15; *The Gemma*, 1899 P. 285, 292-94 (Eng. C.A.); *The Dictator*, 1892 P. 304, 320-23; Nigel Meeson, Admiralty Jurisdiction and Practice 93-94 (2016) (discussing quasi in rem claims). On the contrary, in Greece the lender depending on whether he has he has an enforceable instrument in hands or not, may either proceed to forced execution and seizure of vessel or he shall file an acknowledging lawsuit to establish an enforceable instrument and then proceed as per above.

CONCLUSIONS

The present thesis was the motive for extensive research and conclusions' making. The main points that can be summarized based on the above analysis are the following:

Shipping is a business where offer and demand are developed in a special and competitive environment, which makes it different from other business branches. Shipping business may be characterized as strongly dependent to various external factors, cyclical with strong fluctuations and also capital intensive, which also faces frequent changes due to the shipping cycles. Since very large amounts of money are needed in order to acquire a ship and to operate same on a day-to-day basis, shipping companies are always in need of financing, which may happen in two ways, i.e. through foreign or equity capital. In the past, Greek ship-owners used to prefer equity capital as a financing instrument, but during the lapse of time, they needed a more extrovert approach to face the demanding globalized reality. Therefore, they commenced using foreign capital in the way of loans more often. The banking institutions on the other hand, needed significant collateral in order to grant loans of such big amounts, as needed by shipping companies, so the vessel itself became the collateral for its purchase, maintenance or operation funding. In this way, maritime mortgages were introduced to both jurisdictions, i.e., Greek and English, in order to provide banking institutions with assurance that their loans will be protected. Moreover, maritime lien is an institution inseparably connected with maritime mortgages, since they accompany most of shipping transactions and provide their beneficiaries with prioritized satisfaction of their claims. Both the maritime mortgages and maritime liens constitute the most significant measures introduced in order to create balance in shipping industry. As the ship is a source of obligations and at the same time a separate property to cover these obligations, the onshore creditors whose claims are not linked to the economic exploitation of the ship should not be able to undertake execution on it and its benefits. This is intended with the liens, which essentially reserve the vessel for the maritime lenders while in the same time they push the onshore lenders to lower classes.

The power of this connection is captured on the one hand on the fact that there is no obligation of publicity of maritime liens and on the other hand on the fact that the hierarchy of liens is qualita-

tive and not chronological. Nevertheless, the strong connection of rights with the vessel and the introduction of the ship as basic means of maritime loyalty does not justify a legal separation of the vessel by the rest assets of the ship-owner. This conclusion is undeniable in Greek jurisdiction as well as in other civil law jurisdictions, which haven't introduced until now any exception by the principle of indivisibility of a person's assets. This has the consequence that in Greek law the maritime lien is special, but not exclusive, which means that land creditors can also be satisfied by execution on board the ship and the charter. Conversely, maritime preferential creditors can also turn against the other assets of the debtor in the event that they are not satisfied with the value of the ship and the freight, an element that becomes even more important in the event that the debtor is a different person from the owner of the ship, where maritime creditors can commence enforcement against the personal debtor instead of vessel's execution and vice versa.

Moreover, In the Greek legal order, the maritime mortgage is the main method of collateral of the shipowner's contractual creditors. The Greek legal order recognizes two types of mortgages: the simple maritime mortgage (art. 18 of Greek Code of Private Maritime Law) and the Anglo-Saxon preferred maritime mortgage. "Both constitute a right in rem (without the exercise of jurisdiction) on foreign ship or floating object to secure a claim through the preferential satisfaction of the maritime lender. Each of them provides the lender with different powers but both of them serve the same target, to secure the lender towards the debtor.

Greek and English Maritime Law show various differences in their institutions of maritime liens and maritime mortgages, some of which are depicted above. But the important thing is that although different jurisdictions have different detailed rules or priorities of maritime liens and different theories of the nature of real estate safeguards, the entire shipping industry seems to have already created one connected and harmonious system for the satisfaction of maritime privileges and funding security within each regime separately.

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