

Meaning of the “Causal Fact” of a Maritime Lien

—A Study on the Scope of the Theory of *Lex Rei Sitae* at the Time of Completion of the Causal Fact (summary)

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The question of the governing law of a maritime lien has been a subject of debate for many years, but it has yet to be settled by legislation or judicial precedents. In recent years several judicial precedents have supported the theory of cumulative application of the governing law of secured claims and the law of the location (*Lex Rei Sitae*) at the time of completion of the causal fact. However, since this theory is relatively new, there has not been sufficient discussion about what can be understood as the “causal fact”. This article aims to examine the meaning of the causal fact in terms of accrual of a maritime lien and to explore the scope to which the above theory shall be applicable.

This article first examines whether the dichotomy of meaning of the “location” set forth by the Supreme Court precedent regarding the bona fide acquisition of stolen motor vehicles shall be applicable to maritime lien on a ship. Given that ships are expected to always move so extensively across borders that it is impracticable to conceive of their base of utilization, and that there is a problem of flag-of-convenience ship, the meaning of the “location” for the purpose of determination of governing law of a maritime lien on a ship should be understood as the physical location.

In addition, this paper proposes that the secured claims of the maritime lien on a ship should be considered separately from secured claims in the external relationship, such as marine salvage claims, maritime torts, and claims for the supply of necessities, and secured claims in the internal relationship related to the persons and cargo on board, such as the crew wages and general average contribution claims. In the case of secured claims in an external relationship, facts such as the occurrence of a maritime accident or maritime torts, or the provision of goods and services to the ship can be understood as “causal fact”, while in the case of secured claims in an internal relationship, as the person and the cargo on board are sailing with the ship, and the location on a moment-to-moment basis is of little relevance for them, it should be outside the scope of the theory of the law of the location at the time of completion of the causal fact. In

addition, this article expressed an opinion that it is not unreasonable to think that the law of flag shall govern the accrual of a maritime lien in case of secured claims in the internal relationship, because such secured claims are caused by the damage to or special burden suffered by cargo, passengers, or crewmembers on board the ship and accordingly can be understood to have occurred on board the ship.