



**Proceedings *in rem* in Spanish Law.
Searching for your strongest position**

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Structure of this presentation.-

(i).- Introduction to the, so called, *ius in rem*.

A.- Concept.

B.- *ius in rem* Vs *ius in personam*.

Structure of this presentation.-

(ii).- *Actions in rem.*

A.- Concept.

B.- Importance.

Structure of this presentation.-

(iii).- Actions *in rem* in Shipping Law.

A.- Birth of an *Actio in rem*. Applicable law.

B.- Concept & Credits that create *Actions in rem*.

C.- Characteristics.

D.- Extinction.

Structure of this presentation.-

(iv).- Other Actions *in rem*. Judicial Deposit of the cargo

A.- Concept & Definitions.

B.- Procedure.

C.- Future trends.

(i).- Introduction to the *Ius in Rem*

A) Concept:

- There is no legal definition of *Ius in Rem* in Spanish Law.
- However, Civil Code devotes several provisions to said *Ius in rem*.
 - Arts. 609 and 1095
 - Art. 1280.1
 - Among others...

(i).- Introduction to the *Ius in Rem*

B) *Ius in Rem Vs Ius in personam.*

- Direct & Immediate power over the asset – Relation between 2 persons.
- Opposition *erga omnes* – Opposition against actual debtor.

(ii).- *Actions in Rem*

A) Concept.

- Actions that are available to the legitimate holders of a *Ius in Rem*.

(ii).- *Actions in Rem*

B) Importance.

- Follow the asset independently of any potential transmission.
- Have preference over other rights/actions against the asset.

(iii).- Actions *in Rem* in Shipping Law

A.- Birth of an *Actio in Rem*. Applicable law.

- What are we talking about when we mention *Actions in Rem* in Shipping Law?

Maritime liens!!

Spanish

Comm.

Code

1993 Convention











(iii).- Actions *in Rem* in Shipping Law

C.- Characteristics.

- Legal Origin.
- Specialty.
- Accessoriness & Indivisibility.

(iii).- Actions *in Rem* in Shipping Law

C.- Characteristics.

- Right of pursuit.
- Realization.
- Preference.

(iii).- Actions *in Rem* in Shipping Law

D.- Extinction.

- Extinction of the credit.
- Action time barred.
- Judicial sale of the vessel.

(iv).- Other Actions *in rem*. Judicial Deposit the cargo.

- (iv.1) Concept and Definitions.
- (iv.2) Procedure.
- (iv.3) Future trends.



(iv.1).- Concept and Definitions.

- **Art. 665 Com. Code:** *“The cargo will be specially affected to the payment of the freight, costs and rights caused by the same cargo and to the proportional part of the general average due by the charterers (...). In case of doubt of payment, the Judge or Tribunal, by request of the Captain, will grant the deposit of the cargo untill full payment is confirmed.”*
- **Art. 666 Com. Code:** *“Captain will be allowed to request the sale of the cargo in the necessary proportion for payment of the freight, costs and rights that may correspond, reserving the right to claim the rest of these concepts still owed should the amount obtained fail to cover the credit.”*

(iv.1).- Concept and Definitions.

- **Art. 667 Com. Code:** *“The cargo will be affected to the payment of the freight and costs during 20 days since delivery or its deposit. Along this time frame, it will be possible to request the sale of same even if there are other creditors and in case of insolvency of the Charterer or Consignee.”*

(iv.1).- Concept and Definitions.

- We face a privilege in favour of the Shipowners with preference over the rest of the creditors even in the case of insolvency of the debtor (whether the charterer or the consignee). Exemption to the “*par conditio creditorum*” principle.
- As stated in art. 666 Com. Code, in connection with the deposit of the cargo, Master can jointly request the Court to demand from the Charterer/Consignee the immediate payment of the amount owed.
- Should Charterer/Consignee fail to do so immediately, the judicial sale of the cargo will proceed, according to art. 2161.11 of the old Civil Procedural Act, still applicable to this procedure.

(iv.2).- Procedure.

- *Ex parte* application to the Court. Mere allegation of the credit is enough.
- No counter security is required by Court.
- Once the Court grants the Judicial Deposit, according to our experience, freight and related expenses are paid via acting Court.
- Otherwise, the judicial bailee (private company) accepts its appointment, receives the cargo and has to take care of same.

(v.4).- Future trends.

- An old friend: Spanish Commercial Code 1885.
- An incoming friend: Spanish Navigation Act.
- Arts. 302 to 304 contain not only the possibility of the Judicial Deposit of the cargo, but also the right of detention.

...Thanks for your kind
attention!!



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