



IUMI 2018

SHIP ARRESTS IN SOUTH AFRICA

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2018



Jurisdiction

- admiralty jurisdiction regulation act, no 105 of 1983
- defines maritime claims – wider than the 1999 arrest convention includes:

MOA claims

claims relating to containers

claims relating to ship's agents, clearing and

forwarding agents and lawyers

judgments and arbitration awards

Jurisdiction

- provides for two types of actions for enforcing maritime claims

in rem

in personam

- arrests including associated ship arrests
- attachment of property
- arrests for security for foreign proceedings

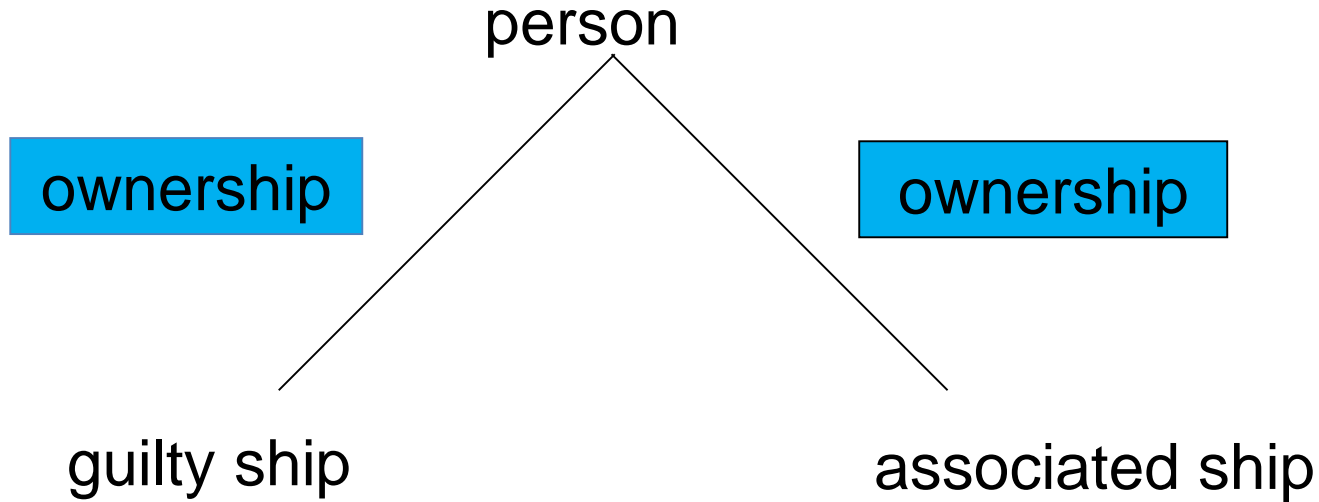
IN REM PROCEEDINGS AND ASSOCIATED SHIP



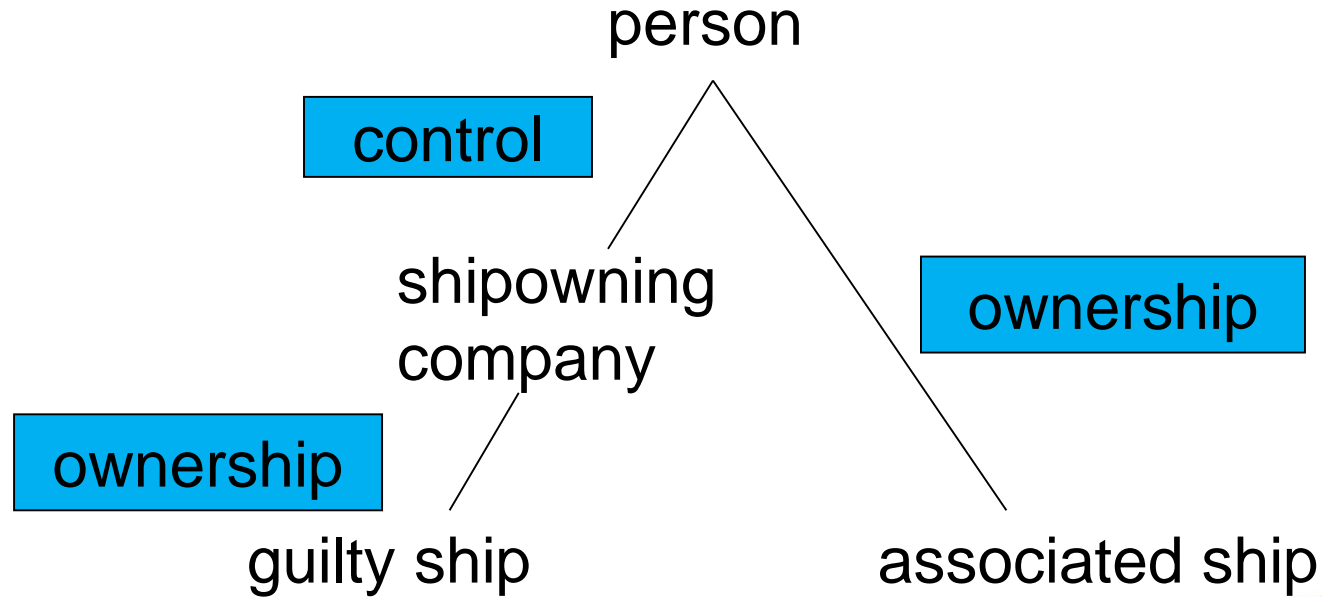
Proceedings *in rem*

- maritime lien over property arrested
- owner or bareboat charterer of property arrested liable *in personam* and property against or in respect of which the claim lies
- associated ship arrests and application to charterers
 - a ship, other than the ship in respect of which the maritime claim arose owned, at the time when the action is commenced –

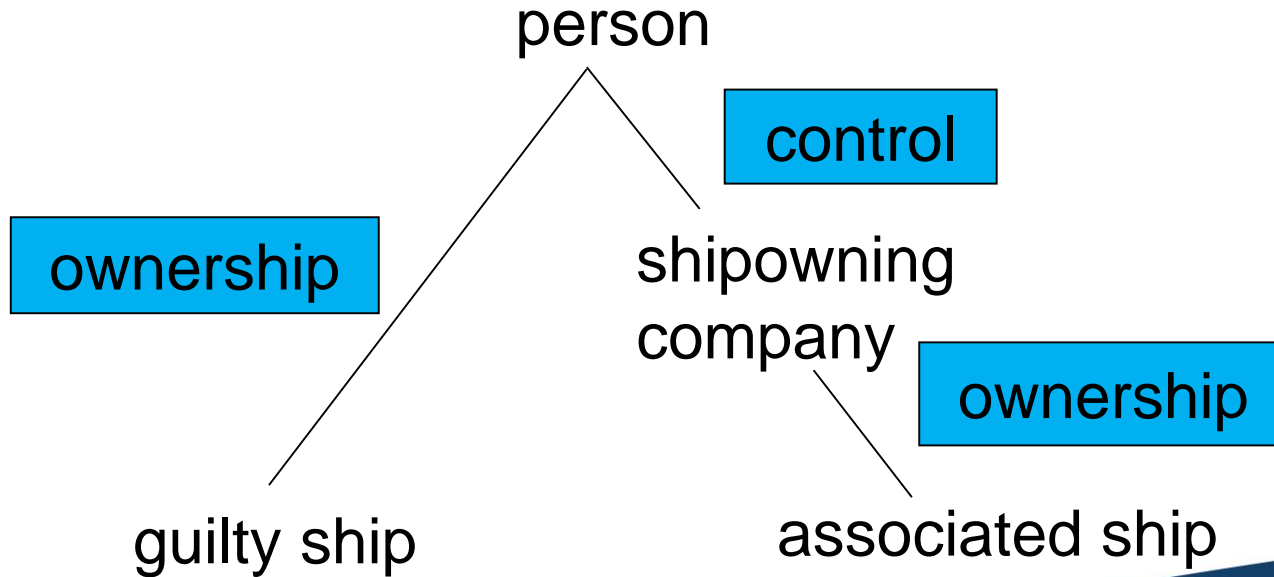
by the person who owned the ship concerned at the time the claim arose



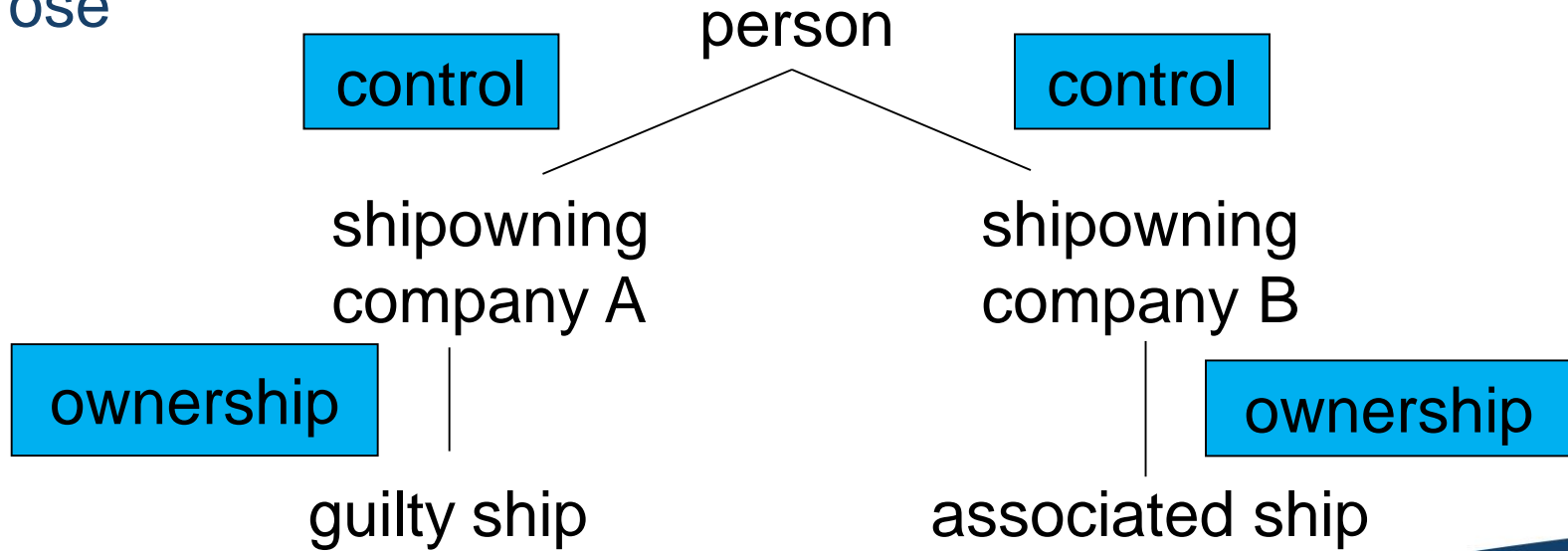
by the person who controlled the company which owned the ship concerned at the time the claim arose



by a company controlled by a person who owned the ship concerned at the time the claim arose



by a company controlled by the person who controlled the company which owned the ship concerned at the time the claim arose



Timing, deeming provisions and examples

- a person is deemed to control a company if he or she has the power, directly or indirectly, to control the company
- direct control is de jure control – common element over 50% shareholding
- indirect control is de facto control and means the power to steer the direction and fate of the company

Timing, deeming provisions and examples

- German KGs and “Hanjin Paradip” in which Korean concept of chaebol in terms of which small portions of equity but effective control through horizontal and vertical cross holdings

Factors which are circumstantial of common control

- common directors and office bearers
- common managers or operators
- published statements or financial results
- shared addresses
- cross-mortgages
- common signatories to important documents

Factors which are circumstantial of common control

- fleet entries with P&I clubs
- common branding

none of these alone would suffice to prove an association

Evidence required

- onus is on the claimant to prove the association on a balance of probabilities
- allegations of common ownership or control which are not denied are sufficient to found an association
- allegations which are denied but in respect of which no evidence is led to prove such denial are also sufficient

Evidence required

- however found in the “Guo Shun” that adverse inference cannot be drawn in a reconsideration of the application

procedure

- procedure
- security to the value of the res

in personam proceedings



in personam proceedings

- defendant resident in South Africa
- defendant has submitted to court's jurisdiction
- insurance Act 27 of 1943
- defendant's property attached to found or confirm jurisdiction – any property and not limited to value of property
- procedure

security arrests



arrests for security for foreign proceedings

for an arrest for security for proceedings elsewhere a claimant must show that –

- It has a maritime claim enforceable by an action in rem or in personam
- it has a prima facie case in respect of the claim;
- the claim is prima facie enforceable in the nominated forum or forums
- it has a genuine and reasonable need for security

CONCLUSION

Audience questions

THANK YOU

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18 September 2018

