

**LAW OFFICES CARL KINCAID**

**ARREST AND JUDICIAL SALE OF VESSELS  
UNDER BRAZILIAN JURISDICTION**

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# 1. Historical Introduction – Two leading cases

1.1. The “San Lorenzo” arrest

1.2. The “Windhuk” arrest

## **2. Applicable Legislation and International Treaties**

**2.1. The Brazilian Commercial Code (1850)**

**2.2. The Brussels Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (1926)**

**2.3. The Brazilian Procedural Code (CPC,1939)**

**2.4. The International Arrest Convention (1999) – Why the Brazilian government has not ratified it**

### 3. The arrest of ships under Brazilian jurisdiction

3.1. The international jurisdiction of the Brazilian courts (CPC, section 88)

3.2. The arrest as a specific precautionary measure – legal restrictions and difficulties (CPC, sections 813 and 814)

3.3. The arrest as a non-specific precautionary measure – broader possibility and court's discretion based on "fumus boni iuris" and "periculum in mora" (CPC, section 798)

3.4. The arrest is a preliminary procedure of a future recovery claim – Brazilian jurisdiction should apply to both actions

3.5. A "*pro expensis*" guarantee is required from foreign claimants having no assets within the Brazilian territory (CPC, section 825)

3.6. Procedures to lift the arrest – appeals and guarantees

3.7. Usual time frame between arrest, final decision on claim's merits ("*res judicata*") and judicial sale

## 4. Maritime liens and ship mortgages

4.1. Applicable domestic law and international treaties – Commercial Code and 1926 Brussels Convention

4.2. Ranking and priorities of maritime liens

4.3. The registration of mortgages at the Admiralty Court – Brazilian flag vessel exclusivity

4.4. Mortgage creditor rights ("*in rem*") and title enforcement – the jurisdiction issue

4.5. Judicial sale of the Vessel– auction procedures, requirements and effects

## **5. Final considerations and practical guidelines**

### **5.1. The Brazilian territory and its peculiarities – 27 different states and civil jurisdictions**





**5.2. Lack of knowledge/familiarity with shipping law – non-specialized judges or courts**

**5.3. Formalities and costs for litigation in Brazil – court expenses, sworn translations and lawyer's fees**

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