

PRESENTED AT
28th Annual David W. Robertson
Admiralty and Maritime Law Conference

September 20, 2019
South Texas College of Law
Houston, TX

**Vessel Seizure under the
Federal Admiralty Rules
Panel Discussion**

Hon. Nancy K. Johnson, U.S. District Court, Southern District of Texas, Houston, TX
Joseph Castro, U.S. Department of Justice, Houston, TX
Phillip B. Dye Jr., Vinson & Elkins LLP, Houston, TX

Moderator, Bradley A. Jackson

Author Contact Information:
Phillip B. Dye, Jr.
(pdye@velaw.com)
Benjamin D. Betner
(bbetner@velaw.com)

Table of Contents

Introduction and Overview	1
I. Determining Admiralty Jurisdiction	2
A. Admiralty Tort Jurisdiction.....	3
1. The Locality Test	3
2. The Connection Test.....	4
B. Admiralty Contract Jurisdiction	7
1. Nature and Character of the Contract (“The Primary Objective Test”).....	7
2. Inherently Local Test	10
II. Determining the Admiralty Claim: Attachment or Arrest.....	11
A. Rule B: Attachment for <i>in personam</i> Claims.....	12
1. The Underlying Claim	14
2. Found Within the District	14
3. Property Within the District.....	15
4. No Maritime or Statutory Bar to Attachment	15
B. Rules C and D: Arrest for <i>in rem</i> Claims.....	15
1. Maritime Lien Enforcement: Rule C	16
2. Asserting Possessory and Title Rights: Rule D	17
III. How To Attach Or Arrest The Property.....	17
A. Applying for Attachment or Arrest.....	18
1. The Complaint	18
2. Additional Security	19
3. Judicial Review of Complaint.....	19
B. Service of Process and Notice	19
1. Service of Process and Notice.....	20
2. Responsive Pleading	21
C. Post-Attachment and Post-Arrest Proceedings.....	22
1. Release of Property	22
2. Hearing and Challenging a Seizure.....	22
3. Judicial Sale	24
Appendix.....	25

Introduction and Overview

Your client calls one morning and tells you that there is a maritime vessel in your federal district that needs to be seized. Unfortunately, they also inform you that the vessel is liable to move out of the district at any moment. How do you make sure that the vessel or property does not leave your district?

Vessel seizure under federal law is covered by the Supplement Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, which are part of the Federal Rules of Civil Procedure (the “Supplemental Rules”). The Supplemental Rules provide for two main actions for seizing vessels: maritime attachment or vessel arrest. Maritime attachment is covered under Rule B of the Supplemental Rules, while vessel arrest falls under Rules C and D. Both procedures allow the United States Marshals Service to take tangible attached or arrested property into custody.

Part I discusses the first step to take when pursuing arrest or attachment—ensuring a federal court has proper admiralty jurisdiction under 28 U.S.C. § 1333. The specifics of the test will vary based on the type of claim that is brought. This guide will focus on the tests for tort and contract claims because those are the most common.

Part II reviews the requirements for attachment and arrest actions under the Supplemental Rules. The procedures for each action are similar, with a few key differences, mainly that Rule B attachment applies for *in personam* claims against a defendant, and Rule C arrest applies for *in rem* claims against the vessel or other maritime property itself.

Part III provides a brief outline on attachment and arrest procedures under the Supplemental Rules, covering application, service of process, and post-seizure requirements.

I. Determining Admiralty Jurisdiction

In order to decide a claim based on federal maritime and admiralty law, the federal district court must first have proper admiralty jurisdiction. The Constitution states that “[t]he judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction.”¹ This grant of jurisdiction has been codified as 28 U.S.C. § 1333:

28 U.S. Code § 1333. Admiralty, Maritime and Prize Cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

- (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
- (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

Cite as 28 U.S.C. § 1333.

Admiralty jurisdiction, as conferred by this statute, is a form of subject matter jurisdiction such as federal question or diversity jurisdiction.² Claiming admiralty jurisdiction does not exclude the possibility of claiming other avenues of subject matter jurisdiction as well.³ You would, however, be precluded from using the Supplemental Rules.⁴

The test for determining if admiralty jurisdiction exists varies depending on what body of law the claim is brought under. As such, Subpart A will look at the test that is

¹ U.S. Const. Art. III, § 2.

² Thomas J. Schoenbaum, *Admiralty & Maritime Law* § 3.2 (6th ed. 2018) [hereinafter cited as Schoenbaum].

³ *Id.* Generally, compared to other types of subject matter jurisdiction, admiralty jurisdiction means differences in the right to a jury trial, choice of law issues, appealability, etc....

⁴ You could still seize maritime property, but you would have to use applicable statute rules such as a writ of sequestration.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Vessel Seizure under the Federal Admiralty Rules Panel Discussion

Also available as part of the eCourse

[So Your Client Wants to Seize a Vessel \(or its Cargo\): A Primer on How its Done](#)

First appeared as part of the conference materials for the

28th Annual David W. Robertson Admiralty and Maritime Law Conference session

"So Your Client Wants to Seize a Vessel (or its Cargo): A Primer on How its Done"