

CHAPTER 37
BOTTOMRY

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§ 37101. What is Bottomry.

Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period.

SOURCE: CC § 3017.

§ 37102. Who May Hypothecate Ship.

The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place.

SOURCE: CC § 3018.

§ 37103. When Master may Hypothecate.

The master of a ship may hypothecate it upon bottomry only for the purpose of procuring repairs or supplies which are necessary for accommodating the objects of the voyage, or of securing the safety of the ship.

SOURCE: CC § 3019.

§ 37104. Same: No Alternative.

The master of a ship can hypothecate it upon bottomry only when he cannot otherwise relieve the necessities of the ship, and is unable to reach

adequate funds of the owner, or to obtain any on the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case.

SOURCE: CC § 3020.

§ 37105. Freight Money Loan.

The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him.

SOURCE: CC § 3021.

§ 37106. Rate of Interest.

Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated, when it appears unjustifiable and exorbitant.

SOURCE: CC § 3022.

§ 37107. Lender's Rights.

A lender upon a contract of bottomry, made by the master of a ship, as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.

SOURCE: CC § 3023.

§ 37108. Stipulation for Personal Liability Void.

A stipulation in a contract of bottomry, imposing any liability for the loan independent of the maritime risks, is void.

SOURCE: CC § 3024.

§ 37109. When to be Repaid.

In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.

SOURCE: CC § 3025.

§ 37110. Bottomry Loan Becomes Due.

Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.

SOURCE: CC § 3026.

§ 37111. How Loan is Lost.

A bottomry loan is independent of possession, and is lost by omission to enforce it within a reasonable time.

SOURCE: CC § 3027.

§ 37112. Preference Over Other Liens.

A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of materialmen for supplies or repairs indispensable to the safety of the ship, and a subsequent lien for salvage.

SOURCE: CC § 3028.

§ 37113. Priority.

Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity.

SOURCE: CC § 3029.

NOTE: No 1970 Civil Code §§ 3030-3035 existed.

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