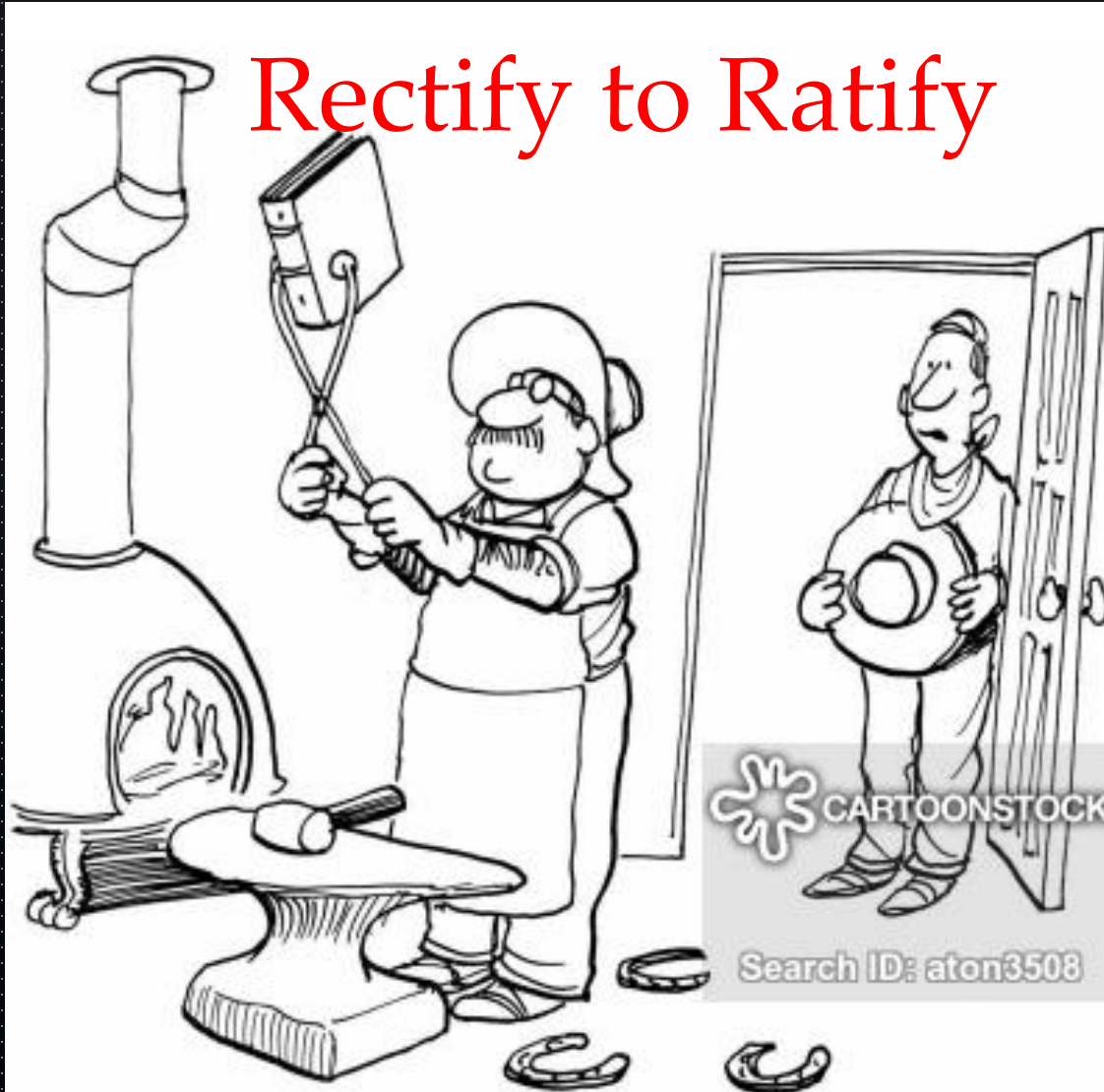


The Rotterdam Rules



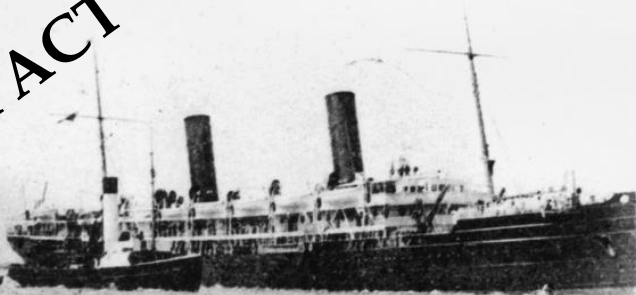
“Have you hammered out the new rule book yet?”

HISTORICAL CONTEXT

mandatory rules

for protection
of the weaker party

HARTER ACT
1893



THE ORIENT—ROYAL MAIL LINE, R.M.S. "O

Michael Daniel Harter



**Member of the
U.S. House of Representatives
from Ohio's 15th district**



| | |
|------------------------------|-------------|
| Hague rules | 1924 |
| Visby rules | 1968 |
| Hamburg rules | 1978 |
| Hague/Visby SDR | 1979 |
| Multimodal Convention | 1980 |
| Rotterdam Rules | 2008 |

WHO IS LIABLE?



HAGUE RULES

1924

Article 4 1. Neither **the carrier** nor **the ship** shall be liable for loss or damage ...

Article 1

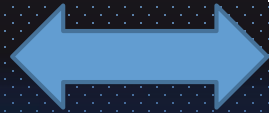
(a) "**Carrier**" includes the **owner** or the **charterer** who enters into a contract of carriage with a shipper.

Article 3 (3)

After receiving the goods into his charge the **carrier** or **the master** or **agent** of the carrier shall, ... issue ... a bill of lading ...



ship owner



charterer



sub charterer



master



agent



shipper

A screenshot of a Bill of Lading form. It contains fields for shipper, consignee, vessel, and cargo details. The form is titled "Bill of Lading" and has a "Download" button.

Has the charterer sufficient assets?



VectorStock®

VectorStock®

Is the asset accessible?



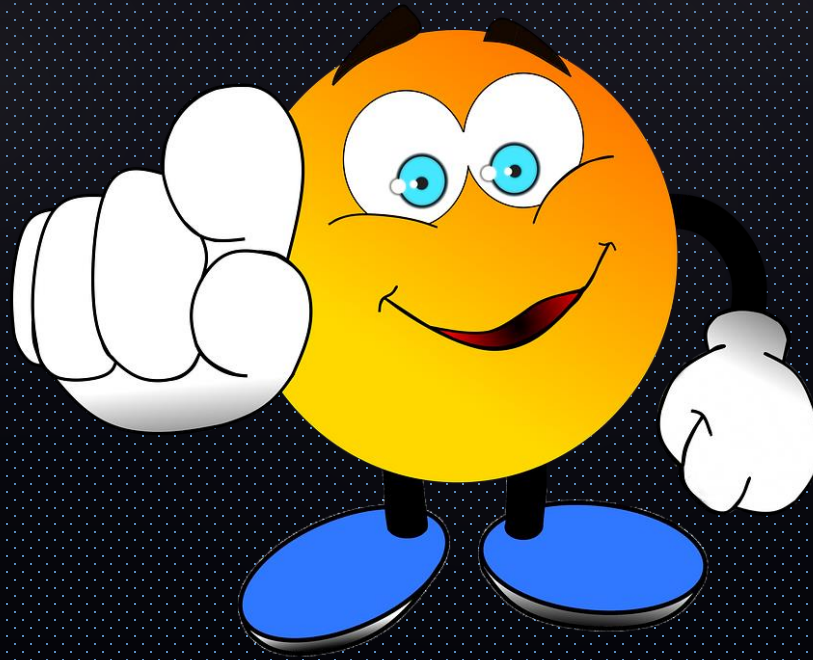
Download from
Dreamstime.com

This content is not intended for the purpose of providing financial advice.

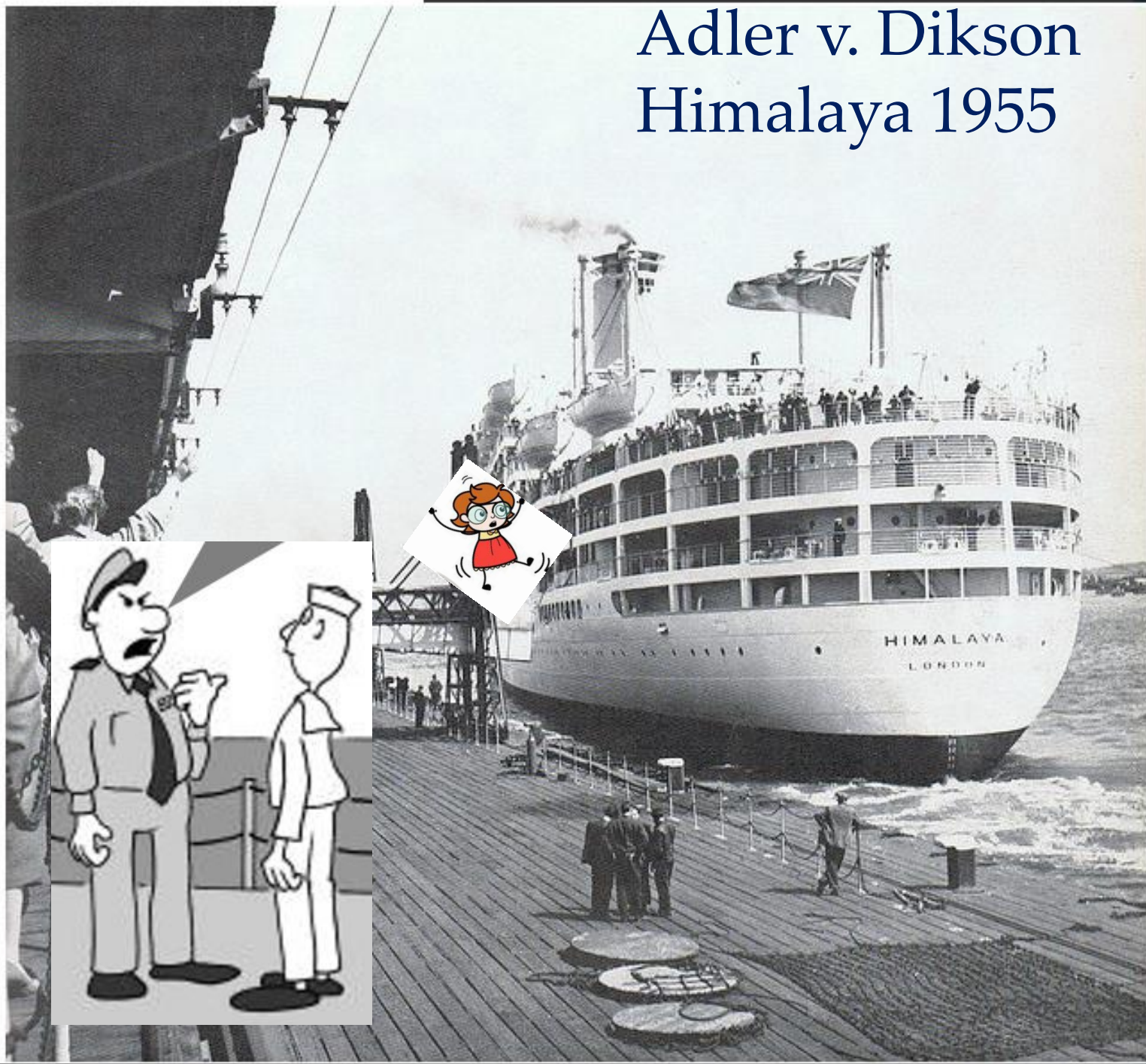
Download from
Dreamstime.com

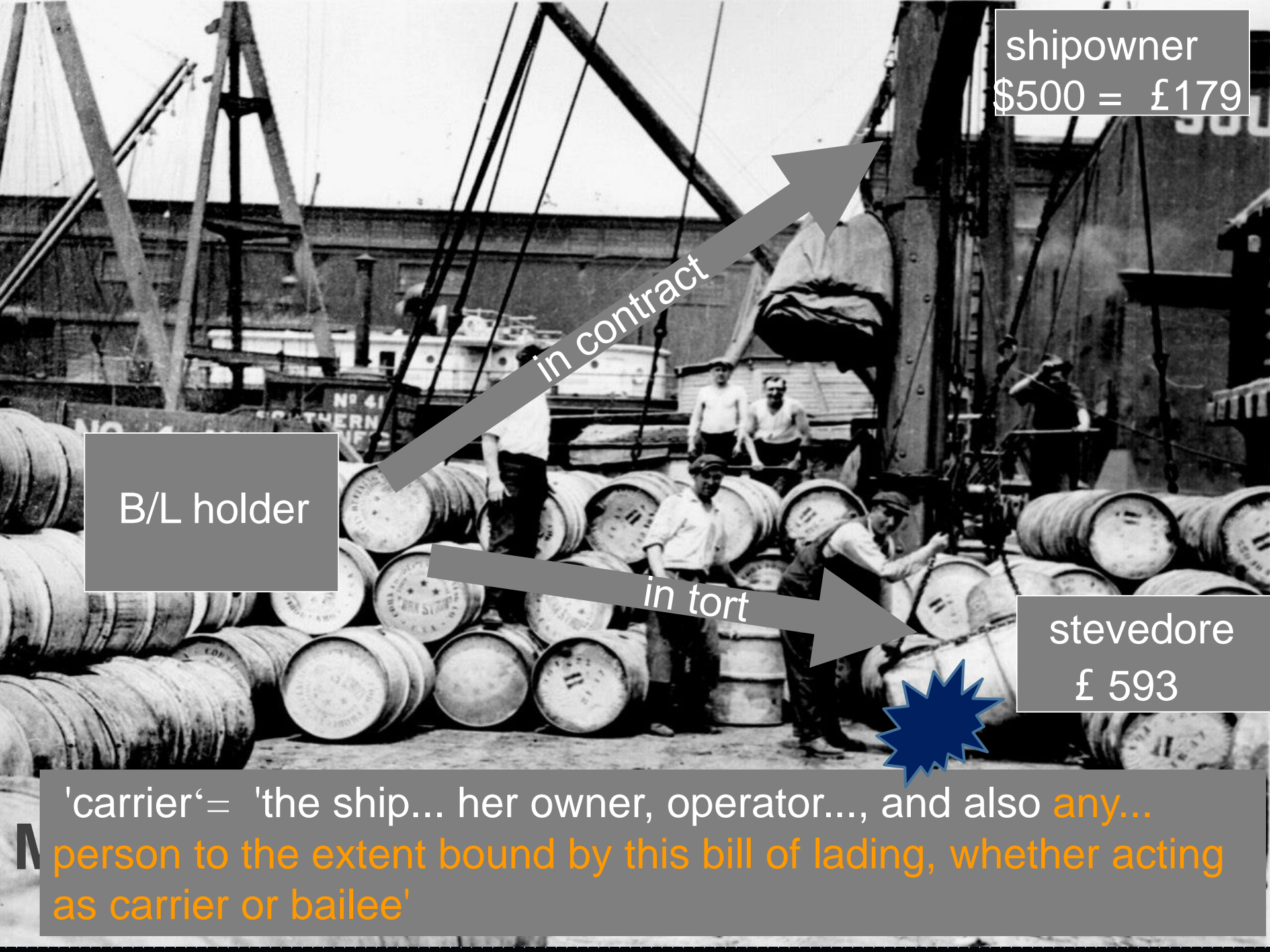
This content is not intended for the purpose of providing financial advice.

WHO ELSE? IS LIABLE



Adler v. Dixon Himalaya 1955





shipowner
\$500 = £179

B/L holder

in contract

in tort

stevedore
£ 593

'carrier' = 'the ship... her owner, operator..., and also **any...**
**person to the extent bound by this bill of lading, whether acting
as carrier or bailee'**

HAGUE-VISBY RULES

1968

Article IV bis

The defences and limits of liability ... shall apply in any action against **the carrier** ... whether the action be founded in **contract** or in **tort**.

2. If such an action is brought against a **servant** or **agent** of the carrier (such servant or agent **not being an independent contractor**), such servant or agent shall be entitled to **avail himself of the defences and limits** of liability which the carrier is entitled to invoke under these Rules.

HAMBURG RULES

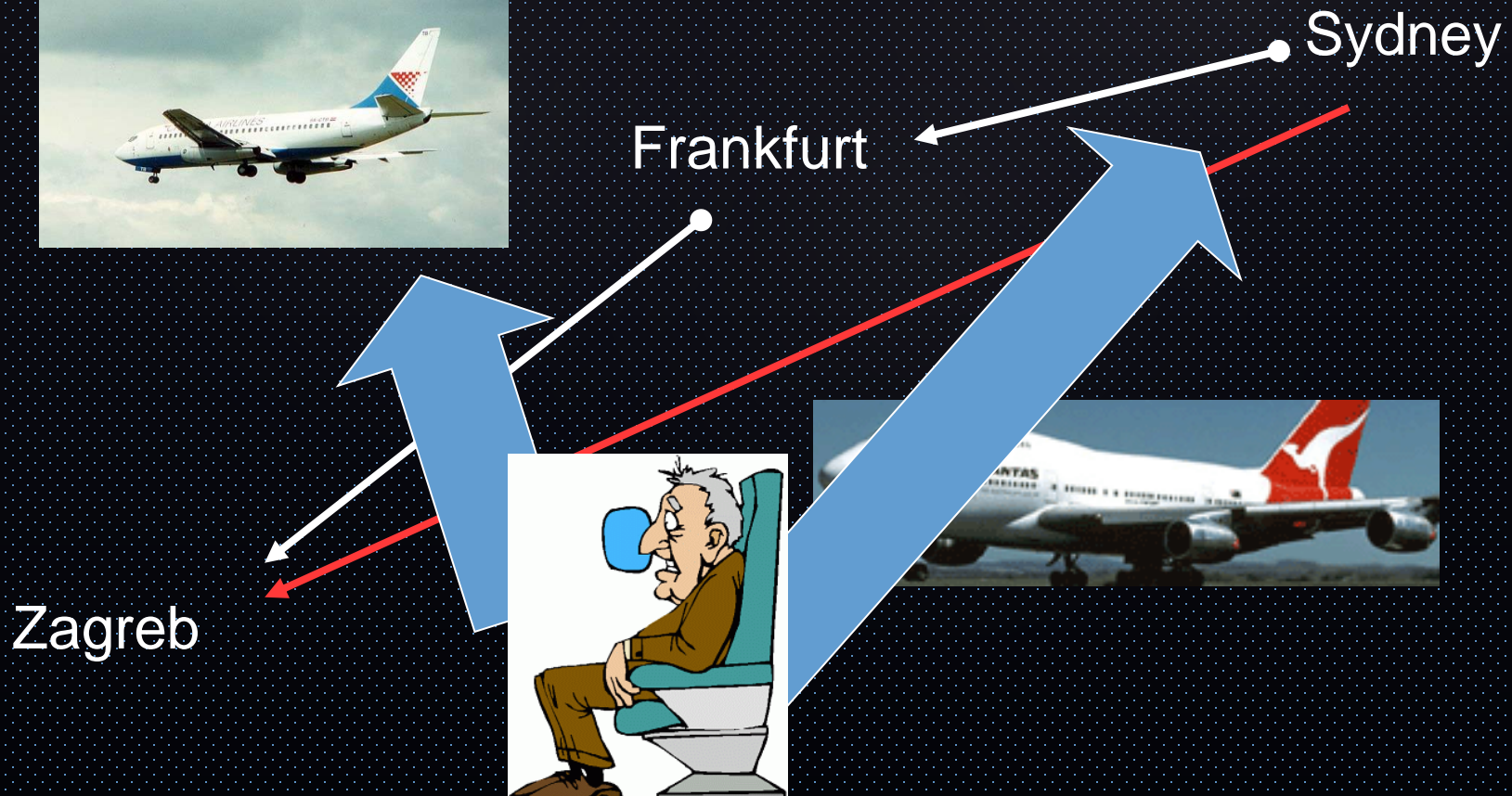
1978

Guadalajara 1961



“**actual carrier**” means a person ..., who, ... performs the whole or part of the carriage

The reason for introducing actual carrier



Hamburg rules

Article 1. Definitions ...:

2. "**Actual carrier**" means any person to whom the **performance** of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted

ROTTERDAM RULES

2009

COGSA 99

PERFORMING CARRIER ... means a person

(i) that **performs, undertakes** to perform, or **procures** to be performed any of a contracting carrier's responsibilities under a contract of carriage

CMI May draft 2001

CMI October draft 2001



International Federation of Freight Forwarders
Associations

CMI MADRID

12/13 November 2001



FIATA - Croatian proposal

Performing party means a person ... that **physically**
performs [**or fails to perform in whole or in part**]

..

US proposal

in whole = UNDERTAKES

The privity rule

A contract cannot effectively confer rights or impose duties on those who are not parties to it.



International
Chamber of Shipping
Shaping the future of shipping

80% of the world fleet

Instrument should deal with the liability of the **contracting carrier** only and should not create a right of suit for cargo interests against any performing carrier/parties



WORLD SHIPPING COUNCIL
PARTNERS IN TRADE



NITL

THE NATIONAL
INDUSTRIAL
TRANSPORTATION
LEAGUE

The Shippers' Voice Since 1907

operate 90 percent of the global liner ship capacity

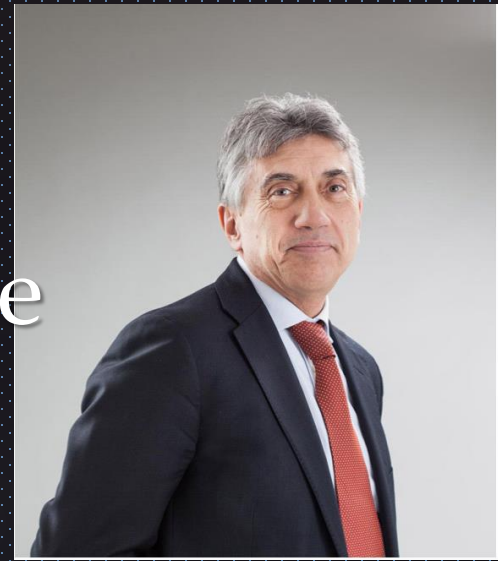
... **contracting carrier** alone should be liable for any cargo loss or damage.





- The practical effect would be to leave cargo interest without an effective remedy **whenever contracting carrier was insolvent or otherwise not amenable**
- Preemption of **bailment** and **tort** law

Madrid 12/13 Nov 2001
6 meeting of CMI Sub-committee



Prof Zunarelli comment

... every regime that provides for the channeling
of liability also includes **mandatory insurance**,
which **does not exist in this context.**
does not exist in this context.

CMI December draft 2001

UNCIRTA N.Y draft
April 2002

Performing party means a person ... that physically performs [or fails to perform in whole or in part] ...

ROTTERDAM RULES

LIABLE PARTIES

Article 17

Basis of liability

1. The **carrier** is liable for loss of or damage to the goods, as well as for delay

vicariously

Article 18

*Liability of **the carrier** for other persons*

- (a) Any performing party;
- (b) The master or crew of the ship;
- (c) Employees of the carrier or a performing party; or
- (d) Any other person that performs or undertakes to perform any of the carrier's obligations

Article 1

Definitions

5. “**Carrier**” means a person that enters into a contract of carriage with a shipper.

6. (a) “**Performing party**” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage

... to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.

7. “**Maritime performing party**” means a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of

An **inland carrier** is a maritime performing party only if it performs or undertakes to perform its services **exclusively within a port area.**

Article 19

Liability of maritime performing parties

3. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person **to which it has entrusted the performance** of any of the carrier's obligations under the contract of carriage ...

4. Nothing in this Convention imposes liability on the **master or crew** of the ship or on an **employee** of the carrier or of a maritime performing party.

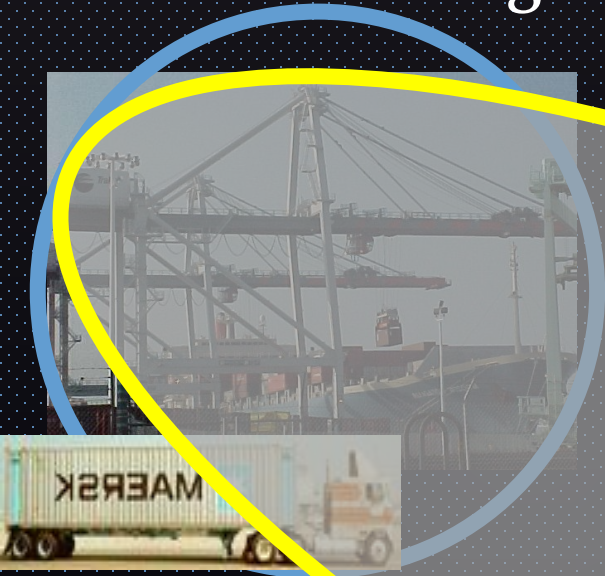
Article 19

Liability of maritime performing parties

- (a) The maritime performing party ... performed its activities with respect to the goods in a port in a Contracting State; and
- (b) The occurrence that ... took place:
 - (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship and either
 - (ii) while the maritime performing party had custody of the goods or
 - (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.

Maritime performing party

Port of loading



Port of discharge



Maritime
performing party



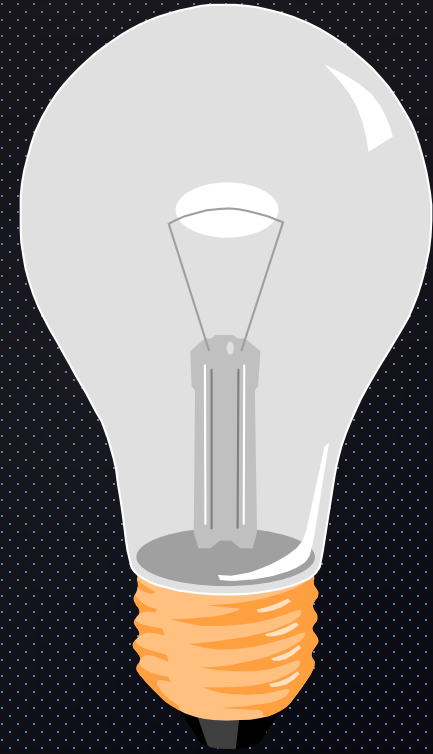
Article 20
Joint and several liability

1. If the **carrier** and one or more **maritime performing parties** are liable ... their liability is **joint and several** ...

ROTTERDAM RULES

ACTIONS IN TORT

Idea !!!!!!!



BEHIND THE INSTRUMENT APPROACH

Convention drags into its regime parties not privy to the contract of carriage



Performing party gets
protection (defenses & limits) against claims in tort

=

obligations to third party on convention terms

(from the fact that it entered in a contract with the carrier)

Actions in tort

Article 4

Applicability of defences and limits of liability

1. Any provision of this Convention that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded **in contract, in tort, or otherwise**, ... against:

- (a) The **carrier** or a **maritime performing party**;
- (b) The **master, crew** or any **other person** that performs services on board the ship; or
- (c) **Employees** of the carrier or a maritime performing party.

B/L HOLDER

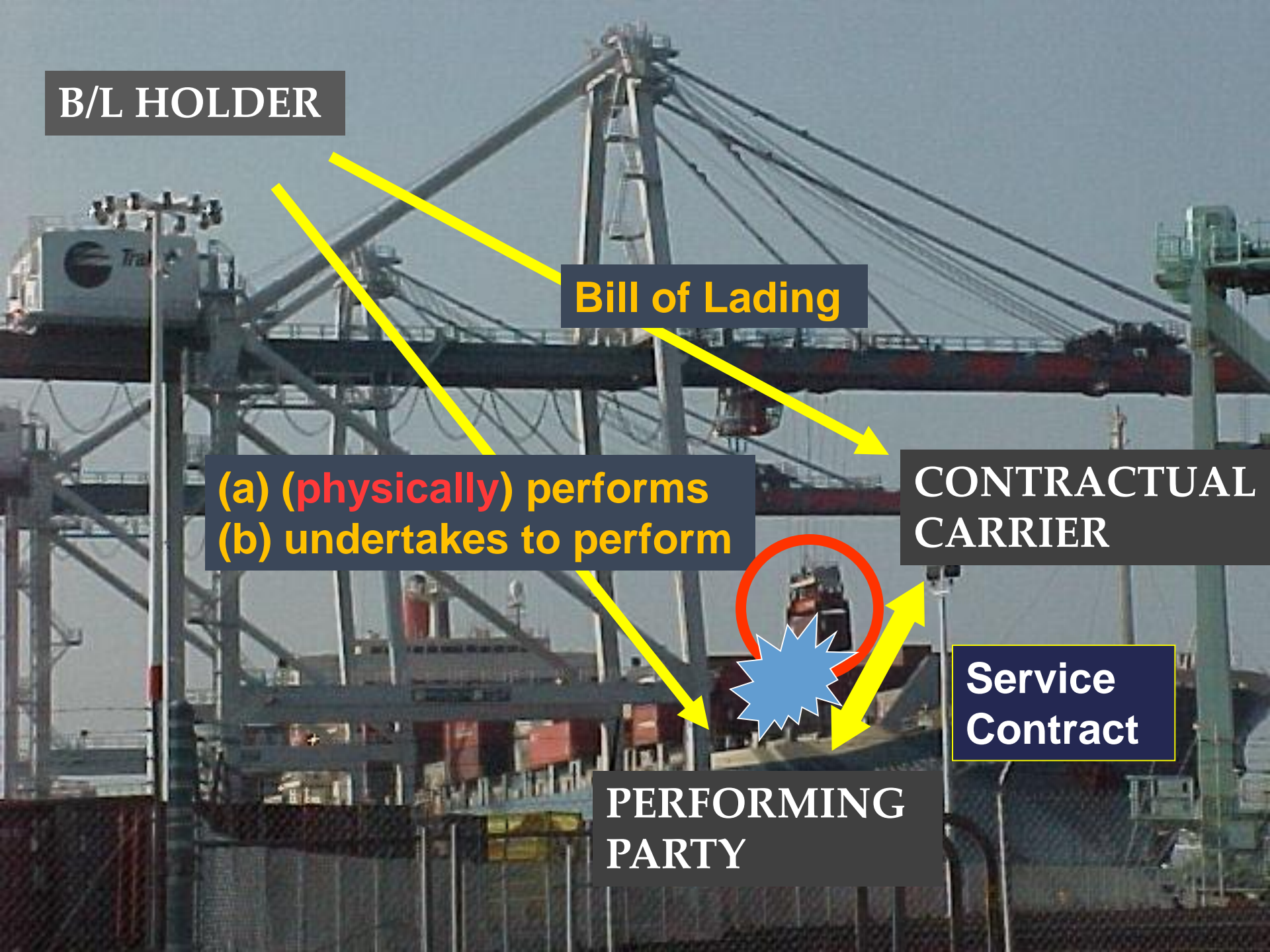
Bill of Lading

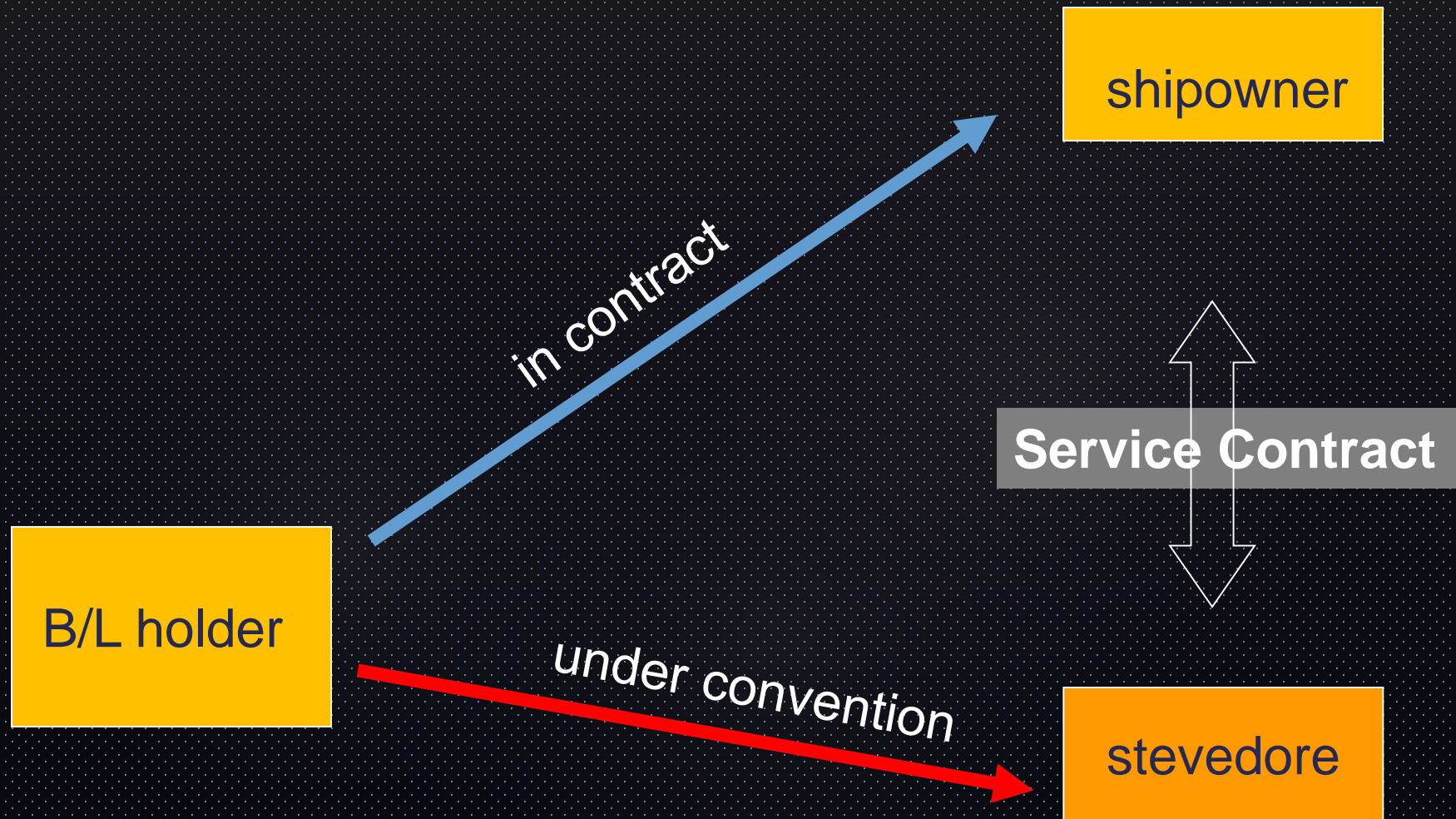
(a) (physically) performs
(b) undertakes to perform

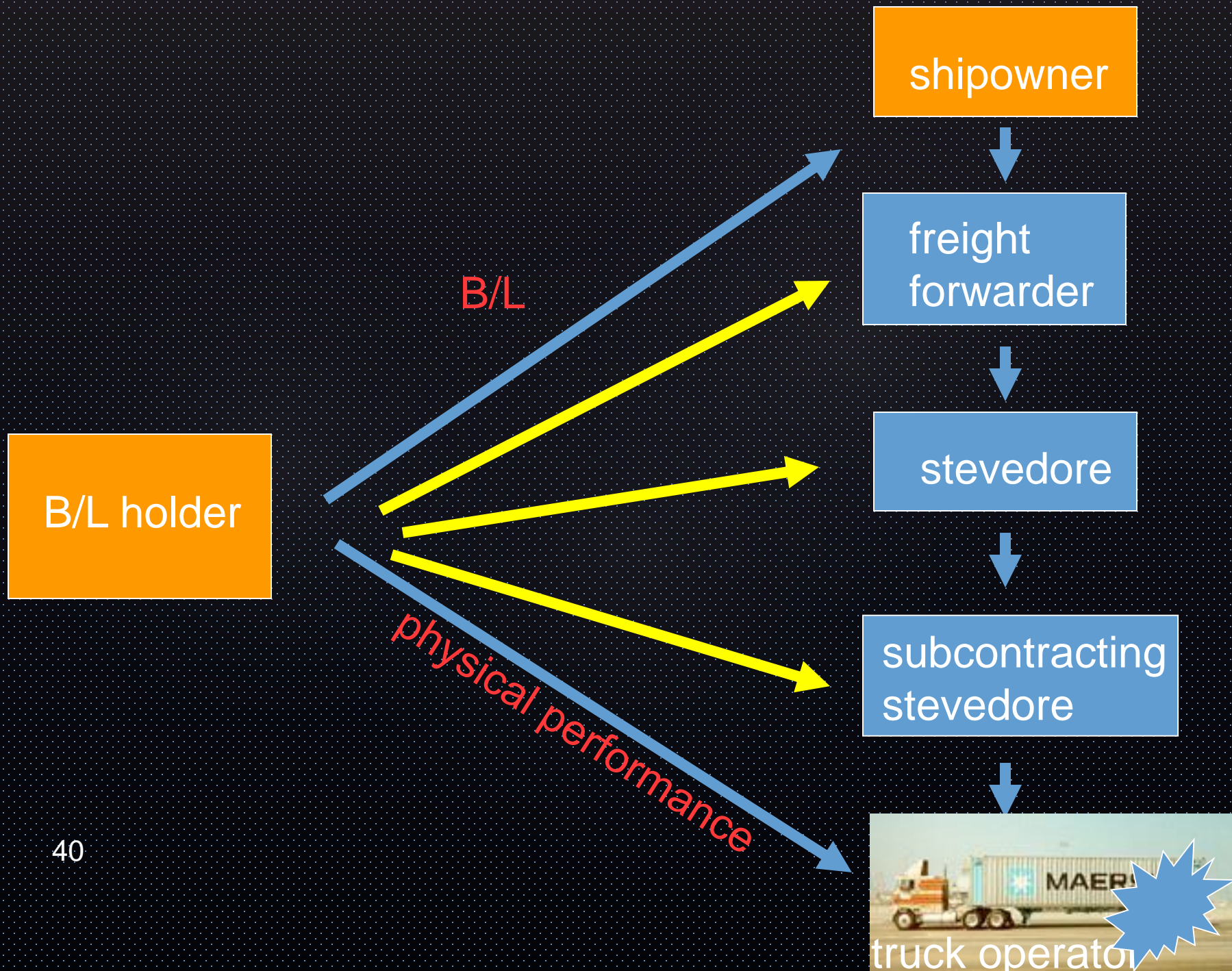
**CONTRACTUAL
CARRIER**

**Service
Contract**

**PERFORMING
PARTY**









amendments

Compulsory insurance



contractual
liability for cargo

42

liability in tort +
contractual liability for
passengers, crew

IMO Guidelines on Shipowners
responsibility in respect of Maritime
Claims

DIRECTIVE 2009/20/EC EU of 23
April 2009 on the insurance of
shipowners for maritime claims

Charteres request

... every regime that provides for the
channeling of liability also includes
mandatory insurance, which

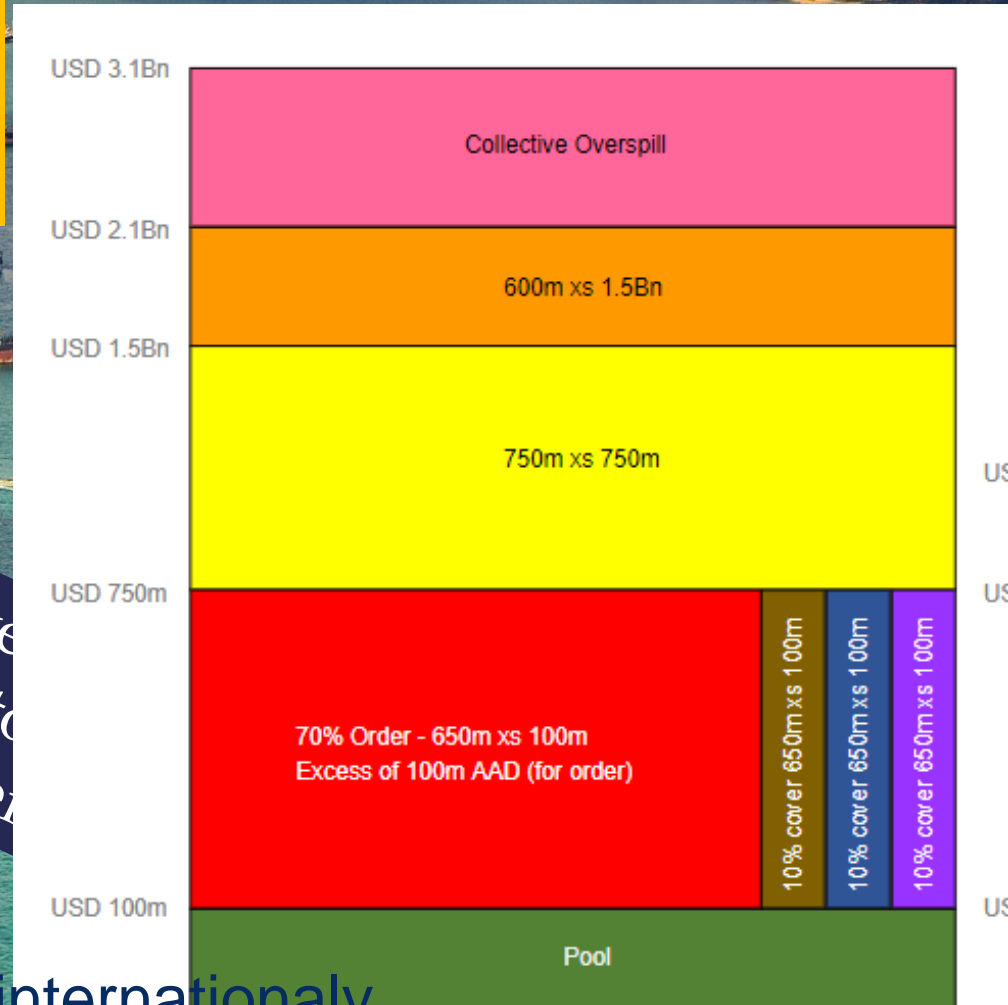
does not exist in this context.

The thirteen P&I Clubs provide liability cover for approximately 90% of the world's ocean-going tonnage.

The Pool and Reinsurance layer for chartered entries are identical to owned entries up to the cover

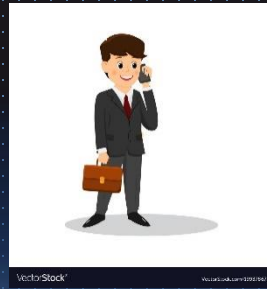
44

53,000 merchant ships trading internationally





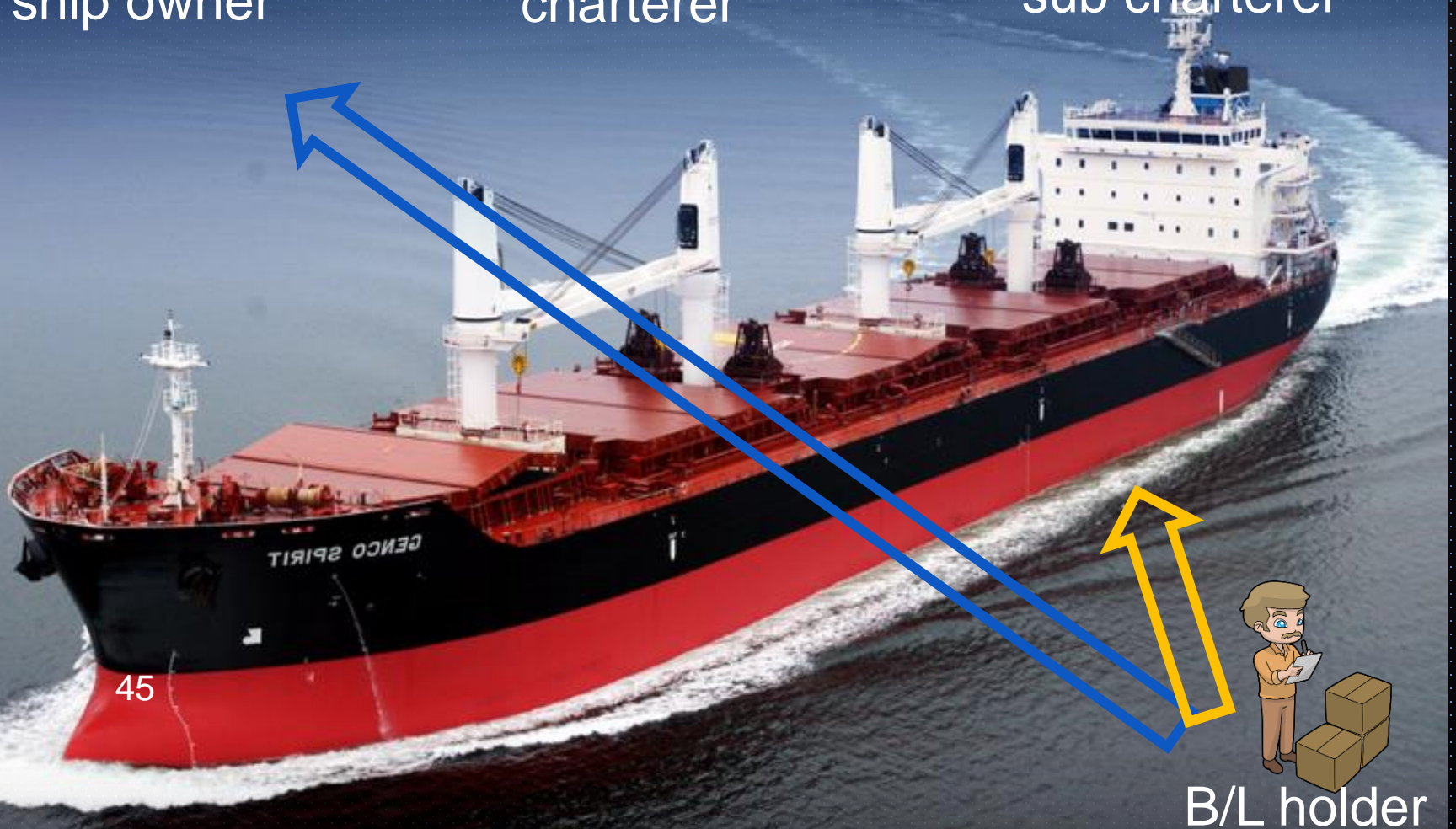
ship owner



charterer



sub charterer



B/L holder

Article 37
Identity of the carrier

2. If **no** person is identified in the contract particulars as the carrier ... **the registered owner of that ship is presumed to be the carrier,**

unless it proves that the ship was under a **bareboat charter** at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this **bareboat charterer is presumed to be the carrier**. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.

Article 37

Identity of the carrier

1. If a **carrier is identified** by name in the contract particulars, any other information in the transport document ... relating to the ...identity of the carrier shall have no effect to the extent that it is inconsistent with that identification

3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or (the shipowner) is the carrier.



ship owner



bare boat
charterer



time
charterer



voyage
charterer



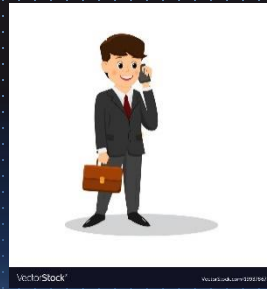
ship's
manager

INSURED





ship owner



charterer



sub charterer

in B/L

a) designated as carrier

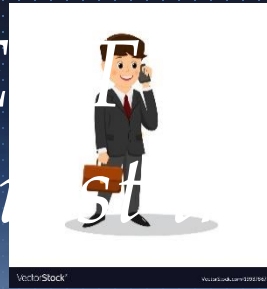
b) particulars of approved insurance policy



B/L holder

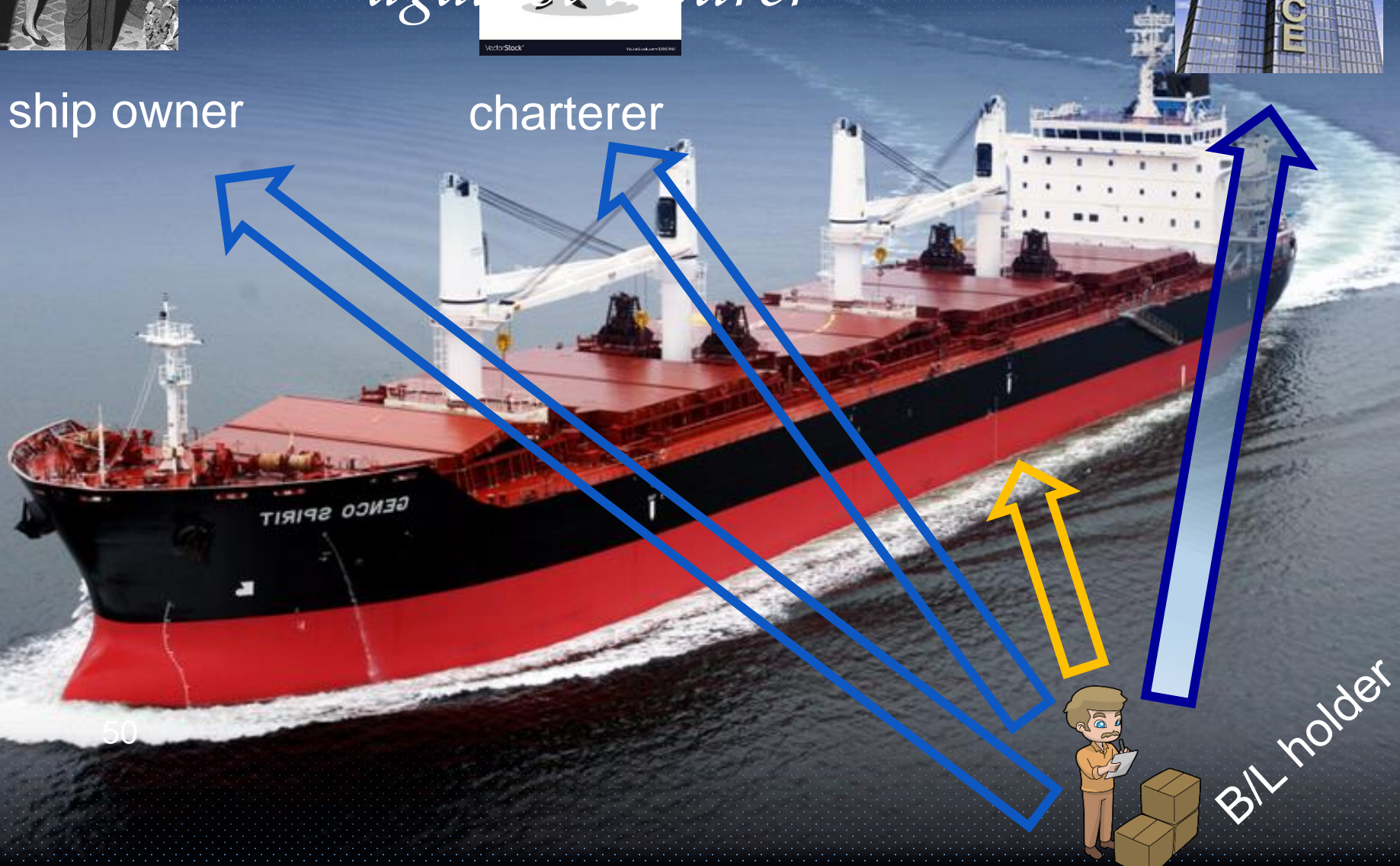


DIRECTIONS against the insurer



ship owner

charterer



50



B/L holder

ROTTERDAM RULES

JURISDICTION / ARBITRATION



Chapter 14 Jurisdiction

Article 66

Actions against the carrier

Unless the contract of carriage contains an **exclusive choice of court agreement** ... the plaintiff has the right to **institute judicial proceedings** under this Convention against the carrier:

Article 66
Actions against the carrier (Cont.)

(a) In a competent court (in) one of the following places:

- (i) The **domicile** of the carrier;
- (ii) The place **of receipt agreed** in the contract of carriage
- (iii) The place **of delivery agreed** in the contract of carriage; or
- (iv) The port where the goods are initially **loaded** on a ship or the port where the goods are finally **discharged** from a ship; or

(b) In a competent court or courts designated by an **agreement** between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Convention.

Article 67

Choice of court agreements

1. The **jurisdiction (clause)** ... is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:
 - (a) Is contained in a **volume contract** that ... states the names and addresses of the parties and either (i) is **individually negotiated** or (ii) contains a **prominent statement** that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and
 - (b) Clearly designates the courts of one Contracting State ...

Article 67

Choice of court agreements (Cont.)

2. A person that is **not** a party to the volume contract is bound by an exclusive choice of court agreement ... only if:

(a) The court is in one of the places designated in article 66, subparagraph (a);

(b) That agreement is contained in the transport document or electronic transport record;

(c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and

(d) **The₅₅ law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.**

Article 68

Actions against the maritime performing party

.... court within the jurisdiction ... situated one of the following places:

(a) The domicile ...; or

(b) The port where the goods are received by the maritime performing party the port where the goods are delivered ... or the port in which the maritime performing party performs its activities with respect to the goods.

Article 71

Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement ... if a single action is brought against **both** the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to **both** article 66 (**places for carrier**) and article 68 (**places for maritime performing party**). If there is no such court, such action may be instituted in a court designated pursuant to article 68, subparagraph (b) (places for maritime performing party - domicile), if there is such a court.

Article 73

Recognition and enforcement

1. A decision made in one Contracting State ... shall be recognized and enforced in another Contracting State ...when both States have made a declaration in accordance with article 74.
2. A court may **refuse** recognition and enforcement based on the grounds for the refusal of recognition and enforcement available **pursuant to its law**.
3. This chapter shall not affect the application of the rules of a regional economic integration

Article 75 Arbitration agreements

1. ... parties **may agree** that any dispute ... shall be **referred to arbitration**.

2. The arbitration proceedings shall, at **the option** of the person asserting a claim against the carrier, take place at:

(a) Any place designated for that purpose in the **arbitration agreement**; or

(b) **Any other place** situated in a State where any of the following places is located:

- (i) The domicile of the carrier;
- (ii) The place of receipt agreed in the contract of carriage;
- (iii) The place of delivery agreed in the contract of carriage; or
- (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.

Article 76

Arbitration agreement in non-liner transportation

1. Nothing in this Convention affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation of carriage that would not otherwise be subject to this Convention.
2. Notwithstanding, an arbitration agreement in a transport document or electronic transport record ... is subject to this chapter unless such a transport document or electronic transport record:
 - (a) Identifies the parties to and the date of the charter party or other contract excluded from the application of this Convention ... ; and
 - (b) Incorporates by specific reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

Opt in

Article 78 *Application of chapter 15*

The provisions of this chapter shall bind only Contracting States that declare ... **that they will be bound by them.**

WAY FORWARD



63

THE TIDE HAS CHANGED



Forum designated by
the jurisdiction / arbitration clause

Liner trade single contracts

BL holder alternative jurisdiction - agreed place
of delivery + ?



UNITED NATIONS CONFERENCE ON
TRADE AND DEVELOPMENT
PROSPERITY FOR ALL

ARBITRATION
CENTRE

For UN Convention on Contracts for the
International Carriage of Goods Wholly or Partly
by Sea



THANK YOU
ZADAR