



Creation of New Unification Instruments at UNCITRAL

Comparative Case Study of

Rotterdam Rules

and

Convention on the International Effects of Judicial Sales of Ships

Critical Thinking Skills

Analysis



Communication



Creativity



Problem Solving



Open-Mindedness



HISTORICAL CONTEXT

Edict Nautae Caupones Stabularii ut Recepta restituant

RECEPTUM NAUTARUM



Marcus Antistius Labeo (1st century) absolute liability with exception “*naufragio aut per vim piratorum*” –

Liber statutorum civitatis Ragusii

compositus anno 1272

If the ship is not well caulked, and the master and seaman ... cannot prove that the damage was caused by bad weather they should compensate for the damage.



And if at discharge less cargo is found than recorded by the notary, the loss should be compensated by the master and seaman as well.

19th century Civil and Commercial Codes

Coggs v. Bernard (1703)
by Sir John Holt



**CODE CIVIL
DES FRANÇAIS.**

TITRE PRÉLIMINAIRE.
**DE LA PUBLICATION, DES EFFETS
ET DE L'APPLICATION DES LOIS
EN GÉNÉRAL.**

ARTICLE 1.^{er}

Les lois sont exécutoires dans tout le territoire français, en vertu de la promulgation qui en est faite par le PREMIER CONSUL.

Elles seront exécutées dans chaque partie de la République, du moment où la promulgation en pourra être connue.

La promulgation faite par le PREMIER CONSUL sera réputée connue dans le département où siège le Gouvernement, un jour après celui de la promulgation; et dans chacun des autres départements, après l'expiration du même délai, augmenté d'autant de jours qu'il y aura de fois dix myriamètres [environ vingt lieues anciennes] entre la ville où la

Décidé le 14 Ventôse an XI.
Promulgué le 24 du même mois.

Coggs v Bernard



Court King's Bench
Citation(s) (1703) 2 Ld Raym 909, 92 ER

COMMON CARRIER

Judge(s) Lord Holt CJ, Powys J, Gould J and Powell J

Keywords

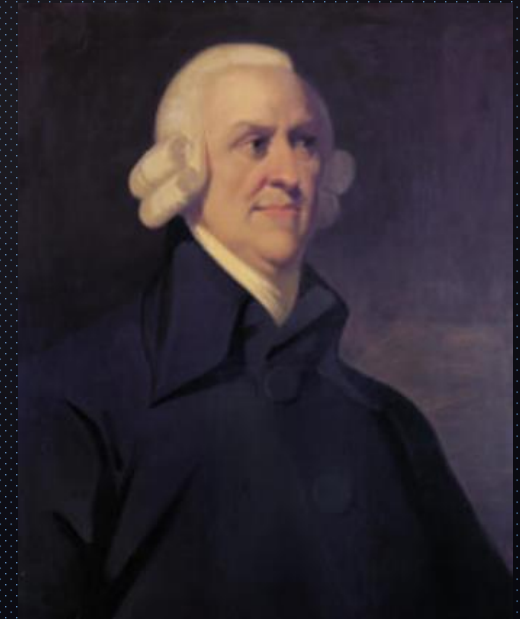
Bailment, negligence, strict liability, common carrier



Jean-Baptiste Colbert



Adam Smith



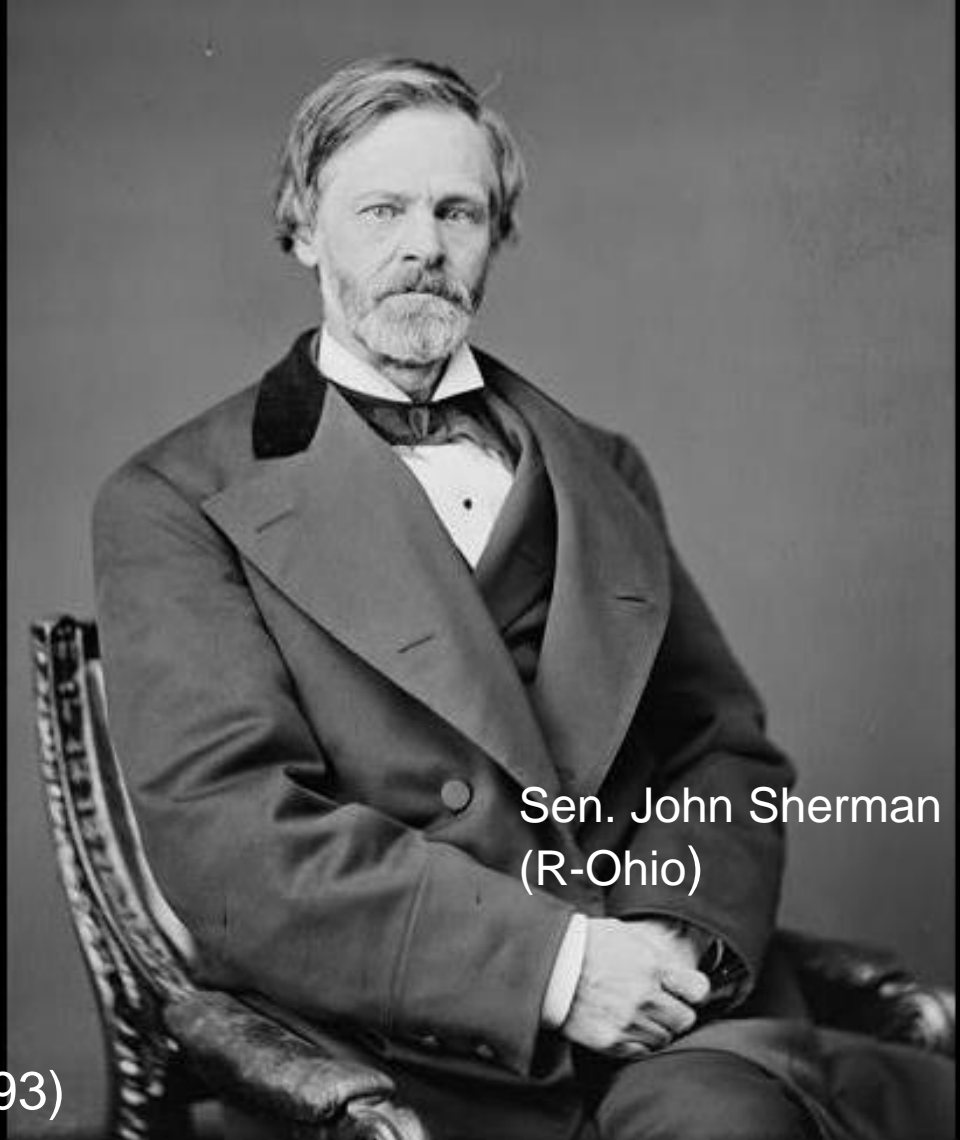
Wealth of Nations (1776).

Laissez-nous faire 1681





Sherman Antitrust Act 1890



Sen. John Sherman
(R-Ohio)

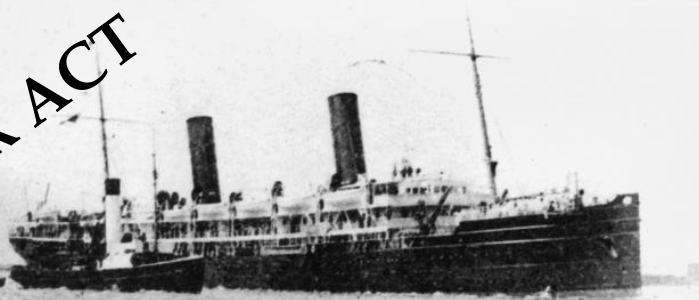
Spectrum Sports, Inc. v. McQuillan, (1993)

The purpose of the Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself ... against conduct which unfairly tends to destroy competition itself.

mandatory rules

for protection
of the weaker party

HARTER ACT
1893



THE ORIENT—ROYAL MAIL LINE, R.M.S. "O"

negligence, fault, or failure in
proper loading ...

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

اتفاقية الأمم المتحدة المتعلقة بعقود النقل الدولي للبضائع
عن طريق البحر كلياً أو جزئياً

联合国全程或部分海上国际货物
运输合同公约

UNITED NATIONS CONVENTION ON CONTRACTS
FOR THE INTERNATIONAL CARRIAGE OF GOODS
WHOLLY OR PARTLY BY SEA

CONVENTION DES NATIONS UNIES SUR LE CONTRAT DE
TRANSPORT INTERNATIONAL DE MARCHANDISES EFFECTUÉ
ENTIÈREMENT OU PARTIELLEMENT PAR MER

КОНВЕНЦИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ О
ДОГОВОРАХ ПОЛНОСТЬЮ ИЛИ ЧАСТИЧНО МОРСКОЙ
ПЕРЕВОЗКИ ГРУЗОВ

CONVENIO DE LAS NACIONES UNIDAS SOBRE EL CONTRATO
DE TRANSPORTE INTERNACIONAL DE MERCANCÍAS TOTAL
O PARCIALMENTE MARÍTIMO



100 Articles

76 Hague Rules Articles

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 ...



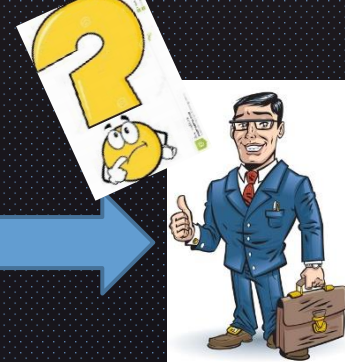
bare boat charterer



time charterer



voyage charterer



sub charterer



ship owner



shipper



master



agent

A screenshot of a 'Bill of Lading' form. The form contains various fields for shipping details, including 'SHIPPER', 'CONSIGNEE', 'VESSEL', 'DATE OF ISSUE', 'PORT OF ORIGIN', 'PORT OF DESTINATION', 'QUANTITY', 'GROSS WEIGHT', and 'NET WEIGHT'. There are also sections for 'REMARKS' and 'DECLARATION'. The form is partially filled out with text.

Shipper

TO BE USED WITH CHARTER-PARTIES

B/L No.

Reference No.

Consignee

Notify address

Vessel

Port of loading

Port of discharge

Shipper's description of goods

Gross weight

(of which on deck at Shipper's risk: the Carrier not being responsible for loss or damage howsoever arising)

Freight payable as per CHARTER-PARTY dated

SHIPPED at the Port of Loading in apparent good order and condition on board the Vessel for carriage to the Port of Discharge or so near thereto as she may safely get the goods specified above.

FREIGHT ADVANCE. Received on account of freight:

Weight, measure, quality, quantity, condition, contents and value unknown.

Time used for loading days hours.

IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Freight payable at

Place and date of issue

Dated at HAYWARD, CA

Number of original Bs/L

By APL

AGENT FOR THE CARRIER

JUG. 25TH 2003

WORKING COPY

Shipper	Bill of Lading No.	Reference No.
Consignee	Vessel	
Notify address	Port of loading	
	Port of discharge	
Shipper's description of goods (of which on deck at shipper's risk; the Carrier not being responsible for loss or damage howsoever arising)		Gross weight
Freight payable as per	SHIPPED at the Port of Loading in apparent good order and condition on the Vessel for carriage to	

Signature: (Master*/Agent*/Owner*/Charterer*)

*Delete as appropriate

If signed by an Agent indicate with a tick whether for and on behalf of:

- Master; or ?
- Owner Ocean Shipping Ltd., London (insert name); or
- Charterer (insert name)

Agent Atlantic Shipping Agency. Inc, N.Y. (insert name)

Identity of Carrier Clauses

The contract evidenced by this bill of lading is between the Merchant and the Owner of the vessel named herein and it is, therefore, agreed that the said shipowner alone shall be liable for any damage or loss due to any breach or non-performance of any obligation arising out of the contract of carriage.



MAERSK
LINE
RFC GHE092502HKS

**BILL OF LANDING
FOR PORT TO PORT
SHIPMENT**

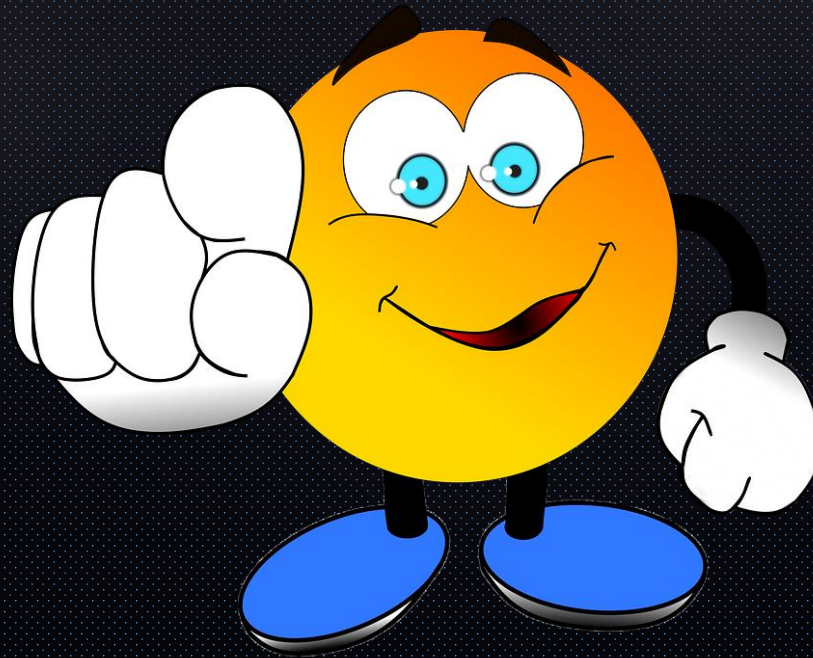
Shipper (Complete Name And Address) Shenzhen Ailisheng Trade Co., Ltd. Phoenix Road, Luohu district, Guangdong Shenzhen city, China Telephone and fax: 086-755-36922075		Packing List No.: 219618043-1		Bill of Landing No.: SSOF090406718	
Consignee (Complete Name And Address) Alejead Pc S.A.S - Aptdo Postal 28059 Carrera 100 5-39 - Cali - Valle - Colombia Telephone and email: 059-032-4491451 - alejead@hotmail.com		Freight And Charges Payable By: Shipper at shen zhen /Guangdong		Terms Of Sale: FOB (2010)	
Notify Party (Complete Name And Address) Same as consignee		Number of Original Bill of Landing Issued: Three (3)		Place and date of issue: 15 - August - 2010 Shen zhen / China	
Place of Receipt: Shen Zhen / China		Port Of Loading: Shangai / China		For Release Of Shipment, Please Contact: Agencia de Aduanas Siacomex Ltda - Buenaventura Calle 2 No. 2º-58 - PBX: (052) 242 2798 Fax: (052) 242 4823 - buenaventura@siacomex.com	
Place of Delivery: Cali / Colombia		Port Of Discharge: Buenaventura / Colombia		Total No. Of Container/Package Received By The Carrier: 1 / 0	
		For Transshipment To: Maersk Line		Vessel/Voyage: CSCL LE HAVRE / 0029W	
Marks And Numbers 20' steel Dry Cargo Container No: CSQU3054383	No. of PKGS 500 packages	Description of Packages And Goods 500 units of 15.6 inch laptop with core i7 8GB RAM, In 6 pallets with 80 packages each one with a volume of 1.63 M³ and 1 pallet with 20 packages with a volume of 0.41 M³	Gross Weight 1650 Kg	Measurement 10.2 M³	
The above particulars are according to the declaration of the shipper. The carrier received the above goods in apparent good order and condition, unless otherwise specified, for carriage to the place as agreed above subject to the terms of this Bill of Landing including those on the back pages. If required by the Carrier, one original of this Bill of Landing must be surrendered duly endorsed in exchange for the goods or delivery order. In witness whereof original Bill of Landing has been signed in the number stated below, one of which being accomplished the other(s) to be void. IN ACCEPTING THIS BILL OF LANDING, the Shipper, Consignee, Holder hereof, and Owner of the goods, agree to be bound by all of its stipulations, exceptions and conditions, whether written, printed or stamped on the front or back hereof, as well as the provisions above Carrier's published Tariff Rules and Regulations.					
Ocean freight		Prepaid USD 3,300	Collect	Shipped on Board: 20 - August - 2010 Place: Shangai	
In Witness Whereof		3 original Bills of Lading have been signed, not otherwise stated above, one of which being accomplished the others shall be void		Signature: B/No: SSOF090406718 Terms of landing continued on reverse side	



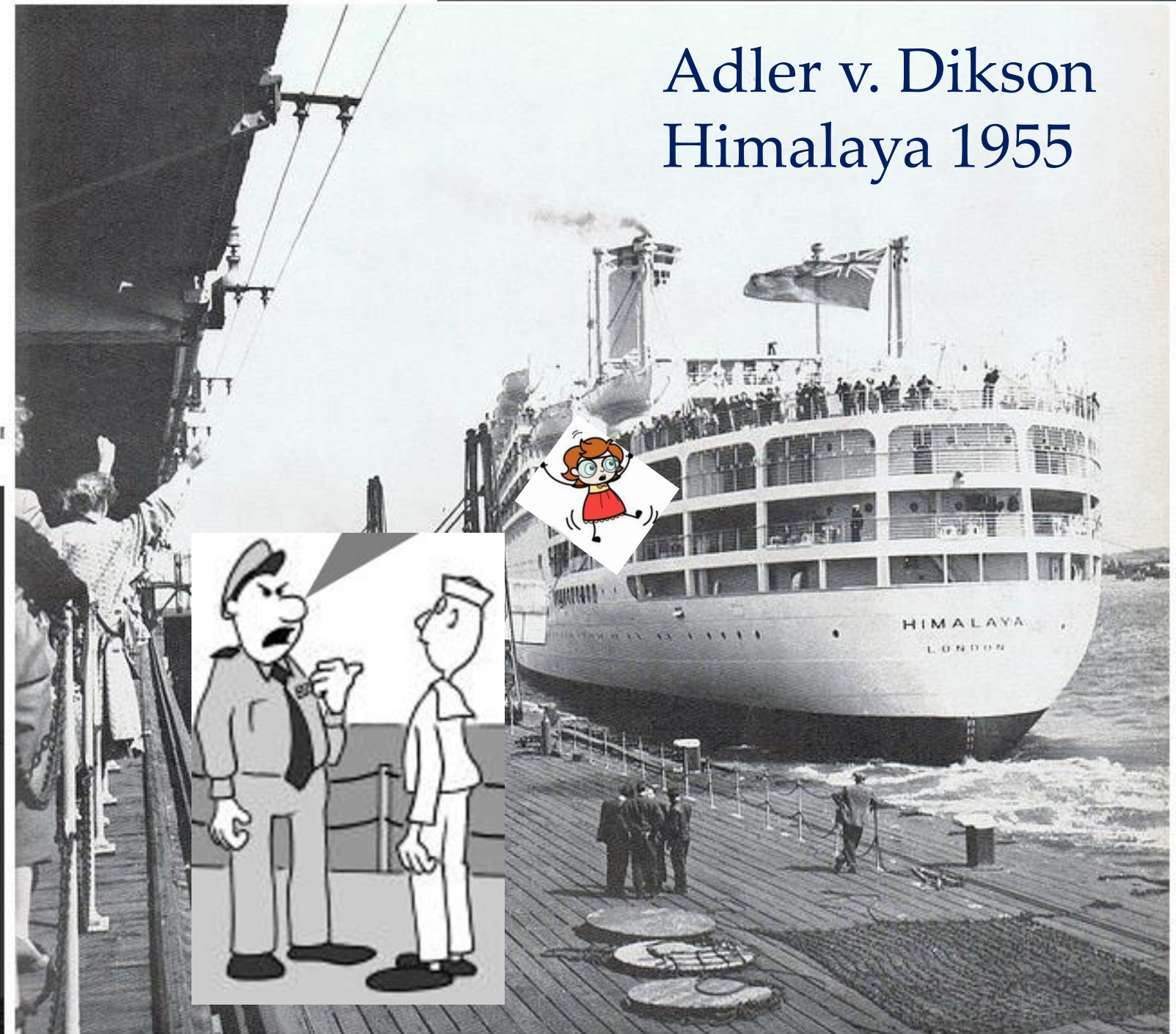
English law

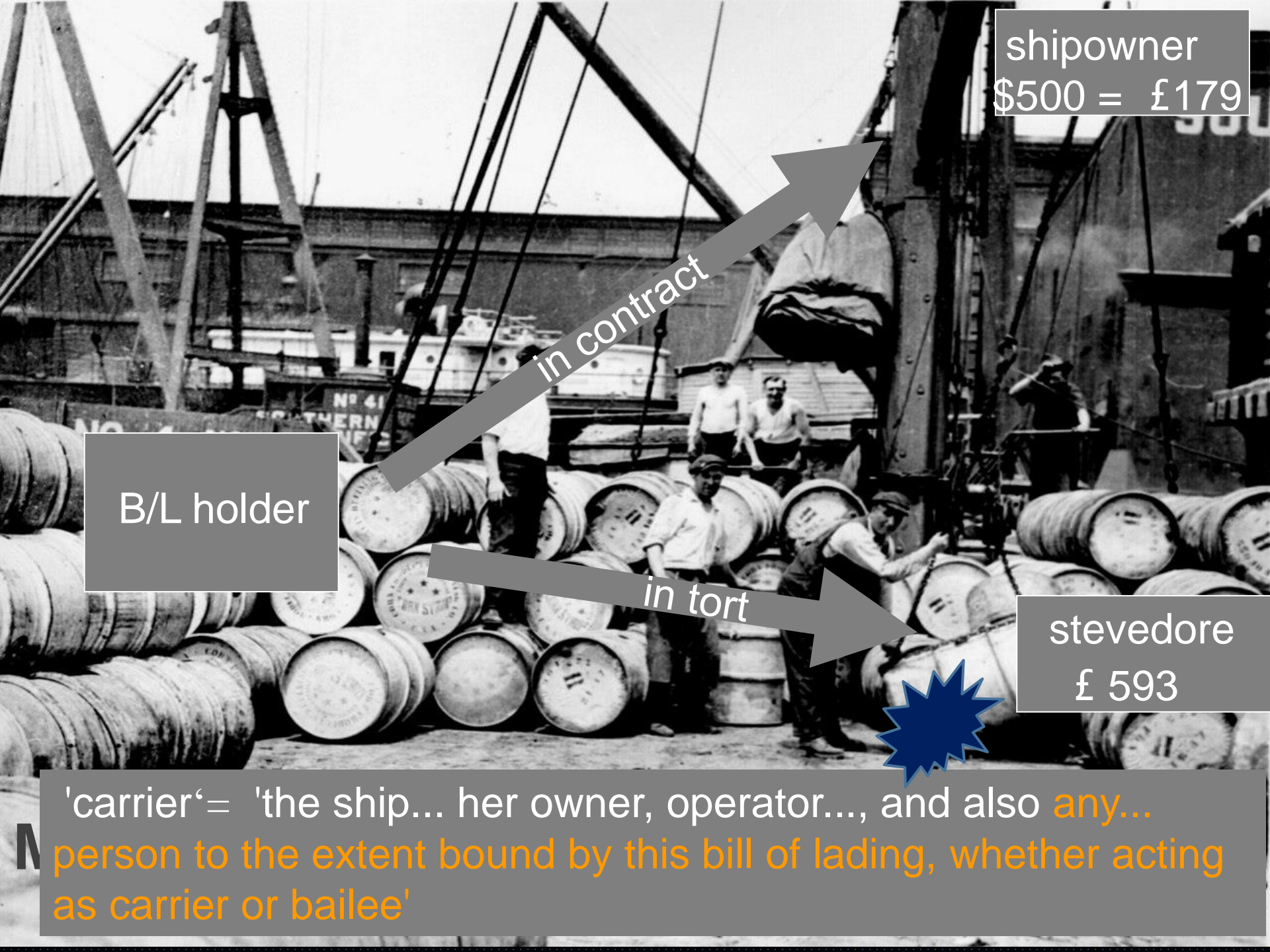
The Berkshire, [1974]
The Hector, [1998]
The Flecha, [1999]
The Starsin. [2003]

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'

THE HIMALAYA CLAUSE

No servant or agent of the Carrier (incl. independent contractor) shall ... be under any liability to the shipper ...



HAGUE-VISBY RULES

1968

Article IV bis

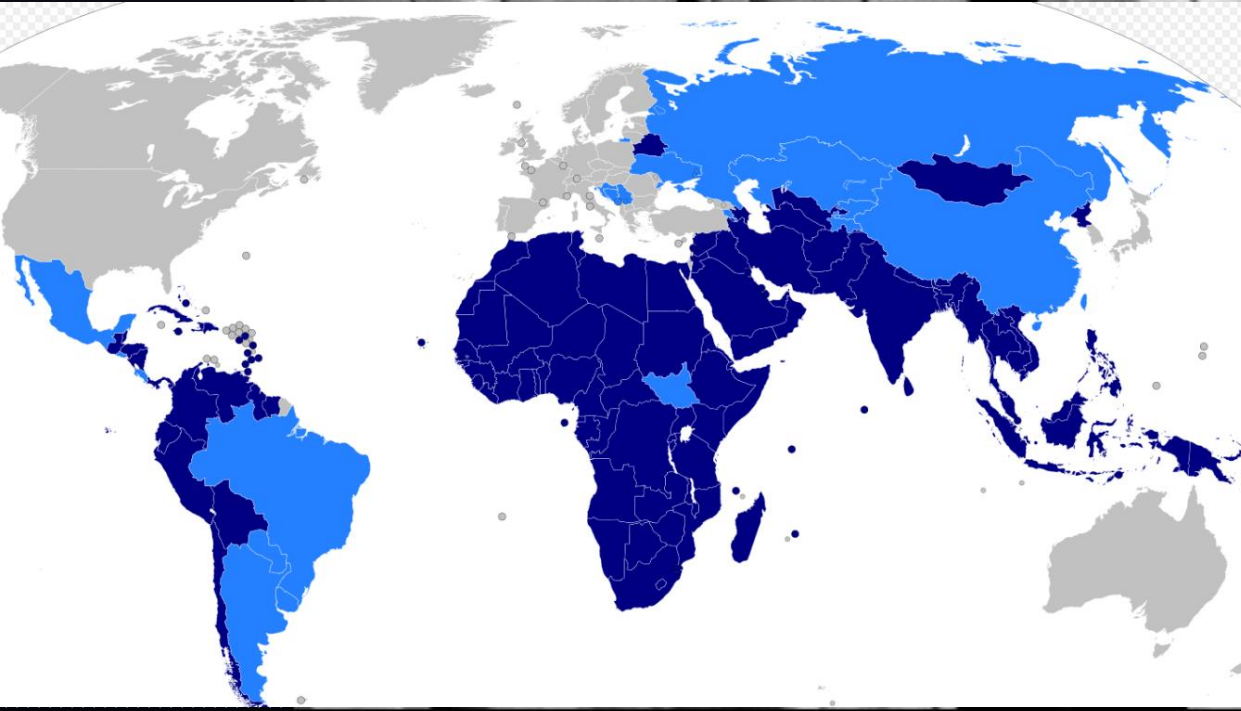
The defences and limits of liability ... shall apply in any action against **the carrier** ... whether the action be founded in **contract** or in **tort**.

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

Non-Aligned Movement

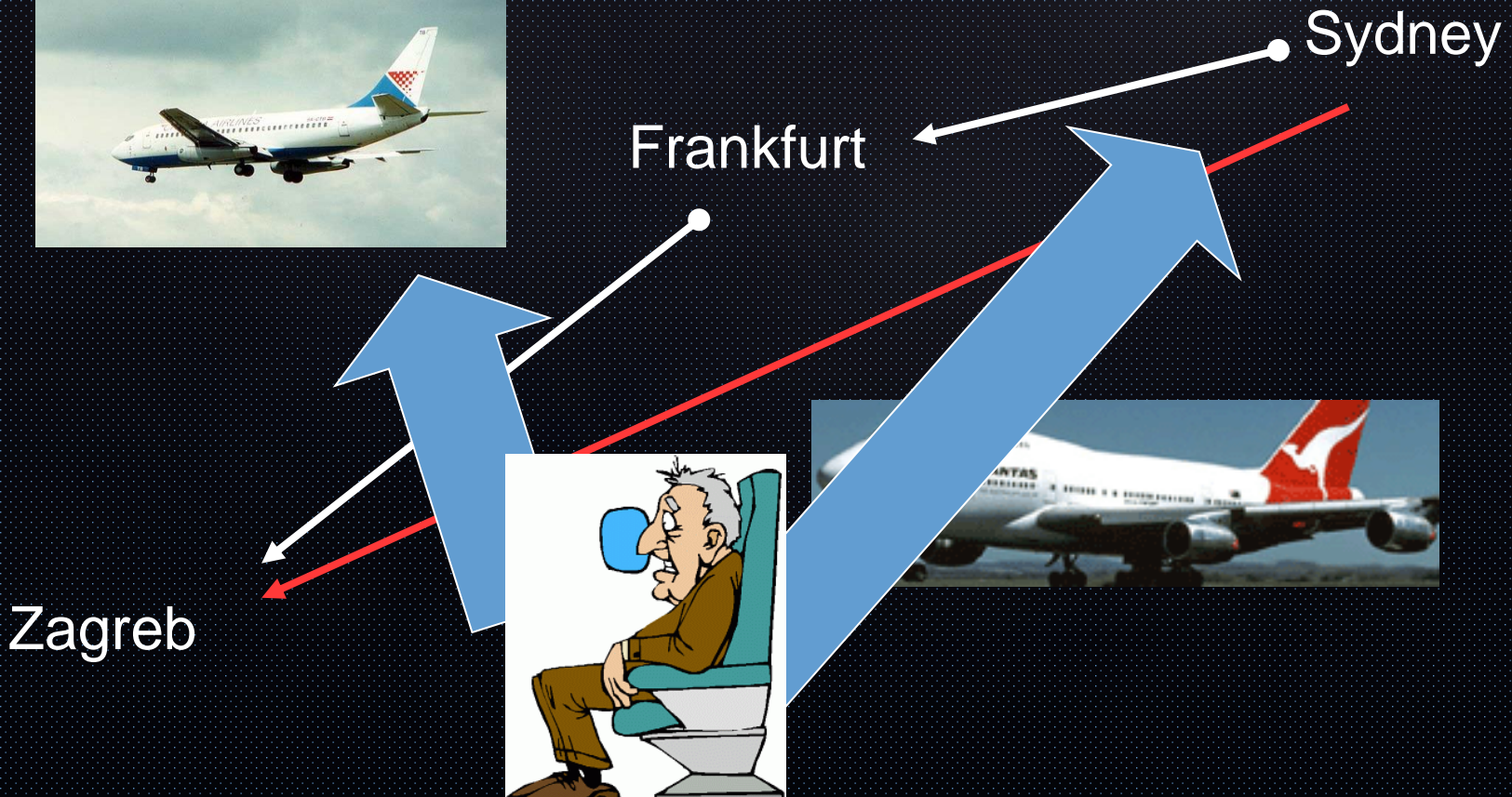


Guadalajara 1961



“**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

Preparatory work

COGSA 99

HARTER ACT 1893

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

(A) CONTRACTING CARRIER

(B) PERFORMING CARRIER

- (i) performs,
- (ii) undertakes to perform
- (iii) procures to be performed

B/L holder

shipowner



physical performance



truck operator



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

[Res inter alios acta]

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



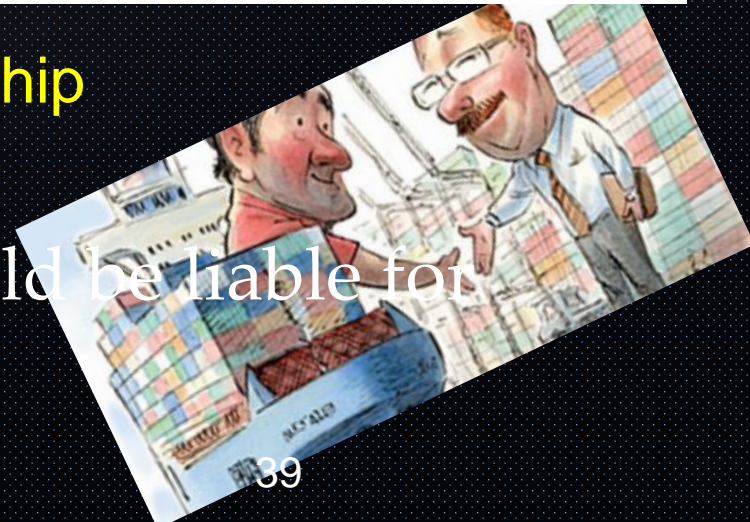
NITL

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.



A cartoon illustration of a man with a beard and glasses sitting at a desk with a computer. He is smiling and looking at the screen. A speech bubble above him contains the Latin phrase "CRITICO, ERGO SUM.".

CRITICO,
ERGO SUM.

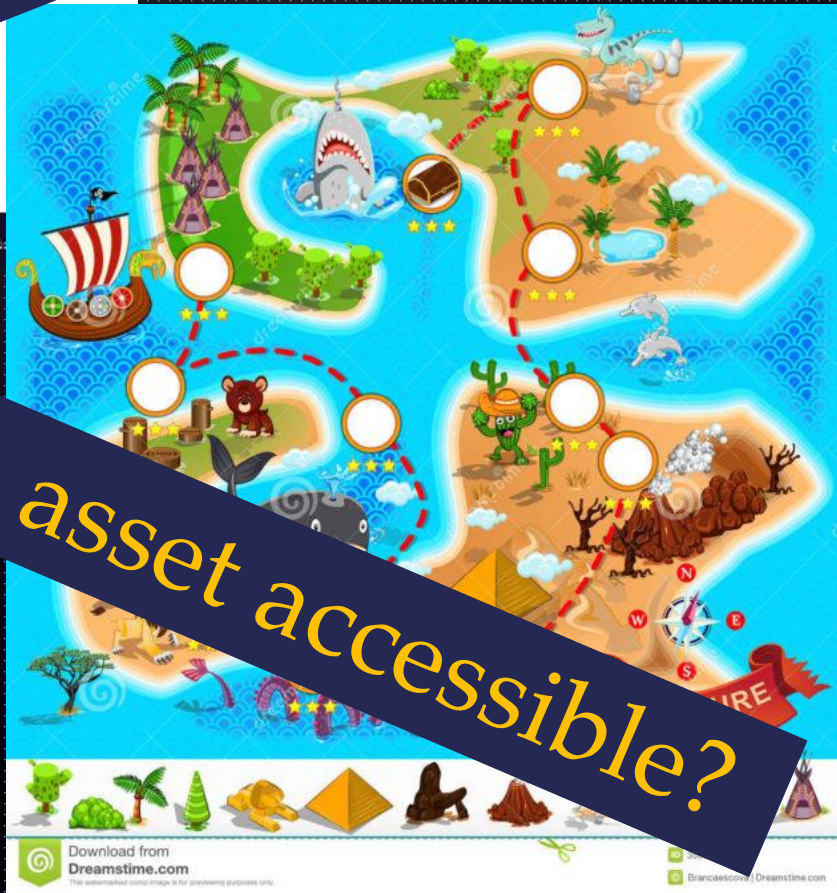
- The practical effect would be to leave cargo interest without an effective remedy **whenever contracting carrier was insolvent or otherwise not amenable**
- Preemption of **bailment** and **tort** law



VectorStock

VectorStock

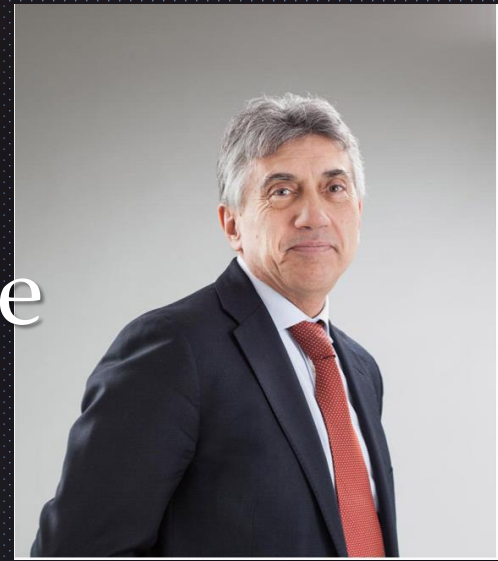
Has the carrier sufficient assets?



Is the asset accessible?



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 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

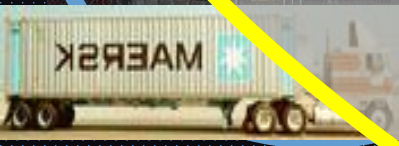
... to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.

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.**

Maritime performing party

Port of loading



Port of discharge



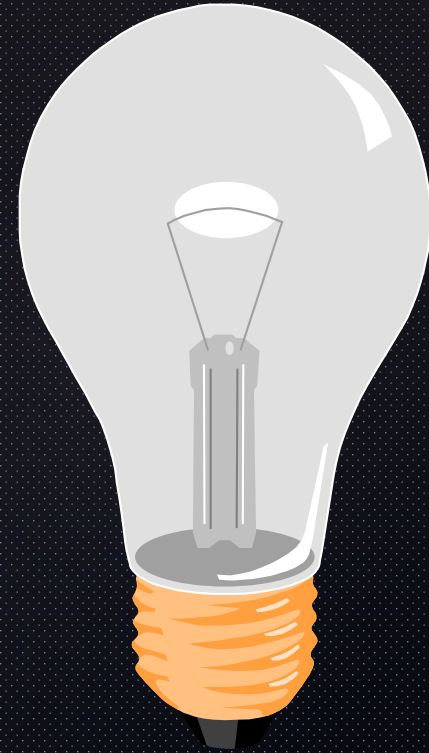
Maritime performing party



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

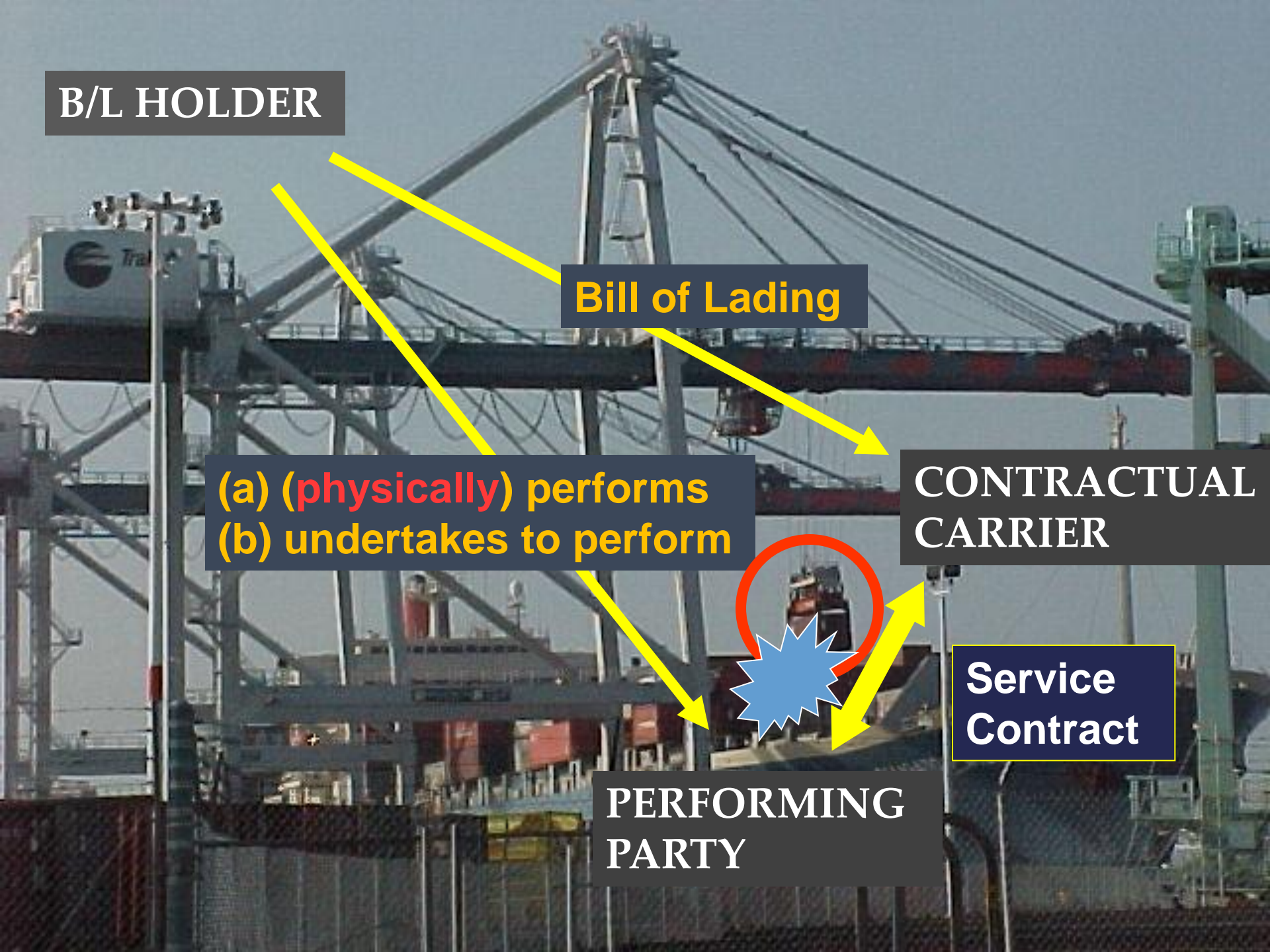
Bill of Lading

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

**CONTRACTUAL
CARRIER**

**Service
Contract**

**PERFORMING
PARTY**



Rotterdam Rules

How to move forward?

Since
2008





amendments

Compulsory insurance



contractual
liability for cargo

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

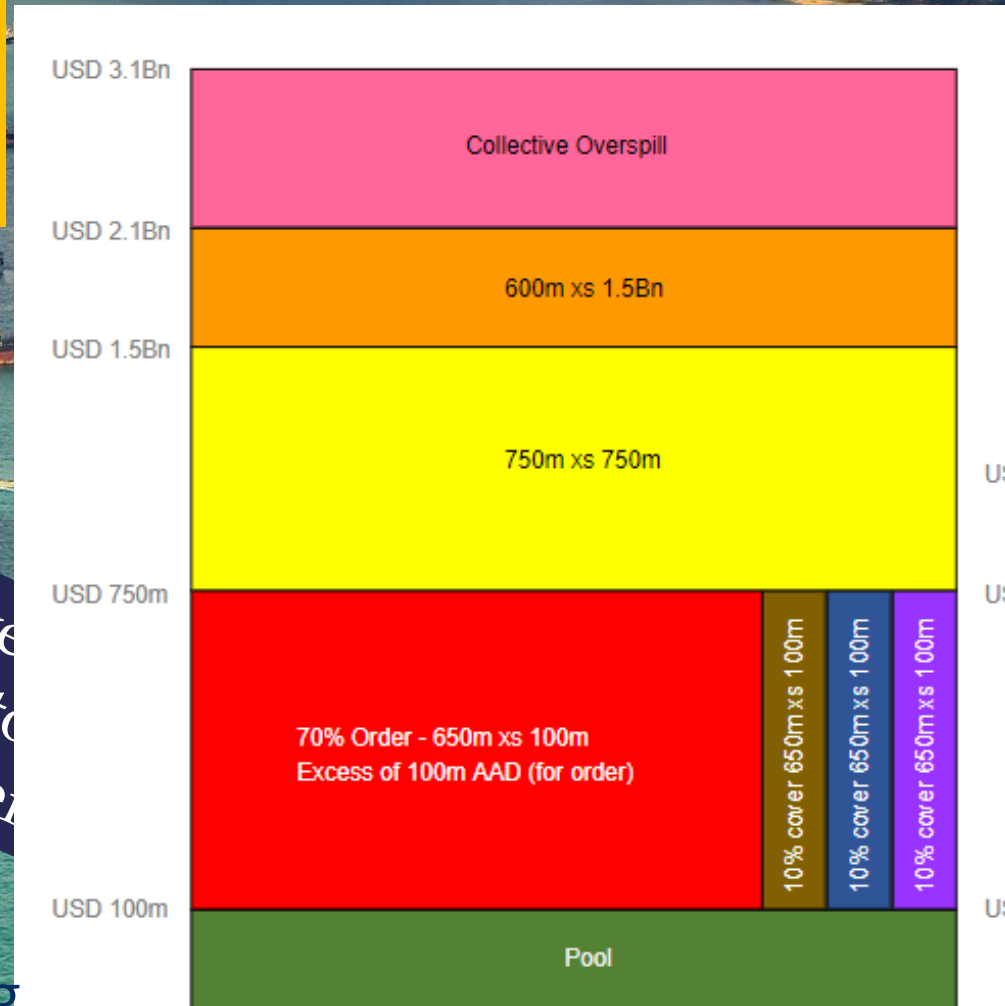
A man with long brown hair and a black cap, wearing a dark, patterned jacket over a white ruffled shirt, holds a large, plain white egg in his left hand and a brown book in his right. The background is dark and textured.

... 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 chartered entries are identical to owned entries up to the cover





ship owner



bare boat
charterer



time
charterer



voyage
charterer



ship's
manager

INSURED



P&I INSURANCE

CARGO INSURANCE

DIRECT ACTION against insurer



CARRIER



in B/L

a) designated as carrier

b) particulars of approved insurance policy



B/L holder

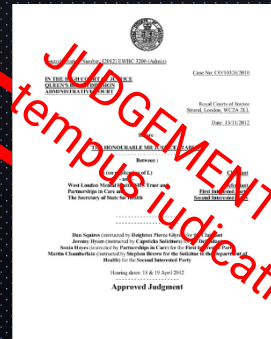
DIRECT ENFORCEMENT ACTION against insurer



INSURER



CARRIER



SHIP



B/L holder

A man in a dark suit jacket, white shirt, and pink striped tie is pulling open his jacket with both hands. The background is white. A dark blue diagonal banner is overlaid on the image.

Don't you worry
about insolvent or not amenable carrier

JURISDICTION / ARBITRATION





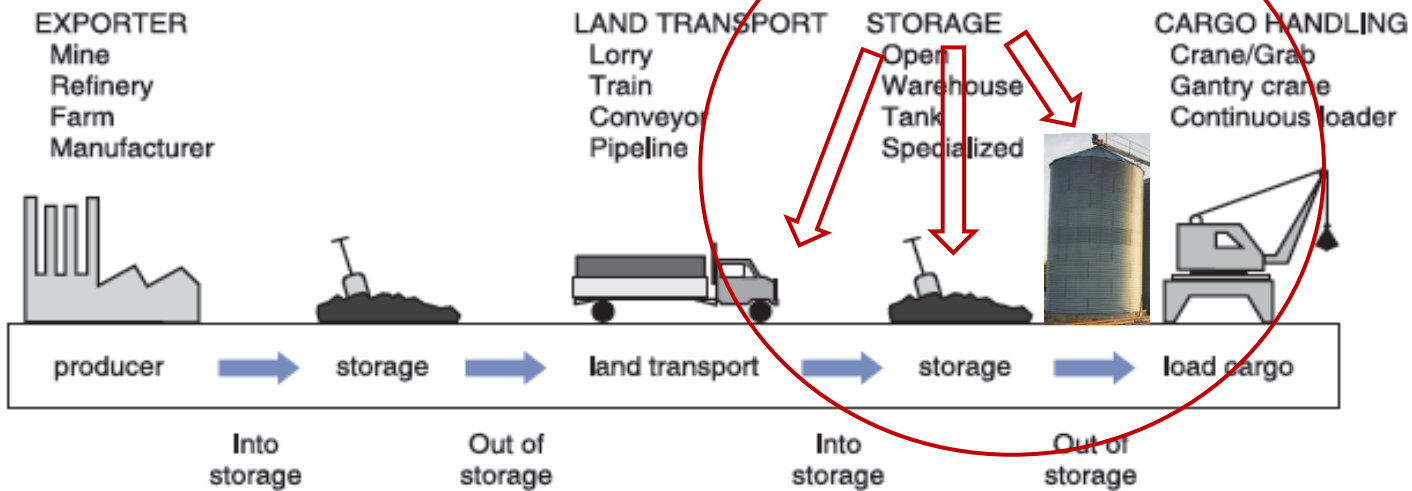
THE TIDE HAS CHANGED



Common rules are not enough

The typical wheat supply chain

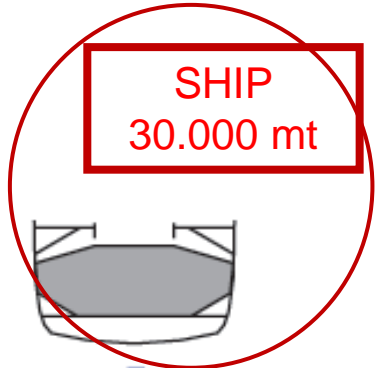
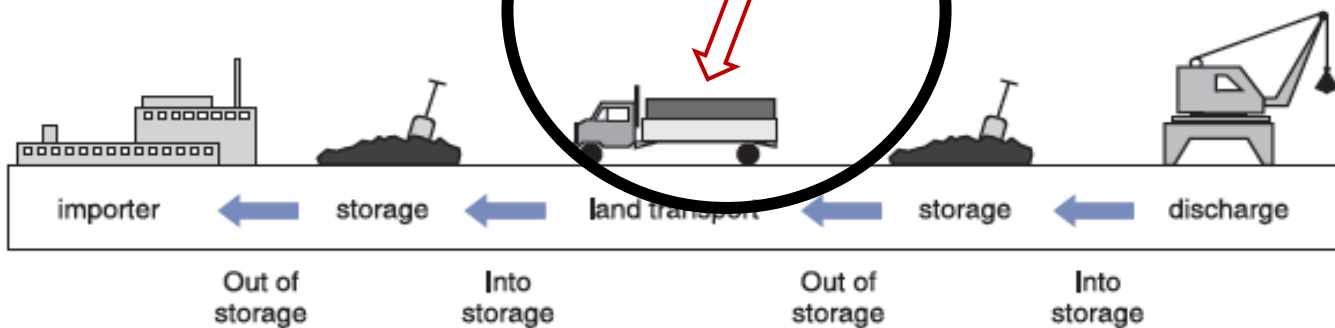
SHORE 30.000 mt



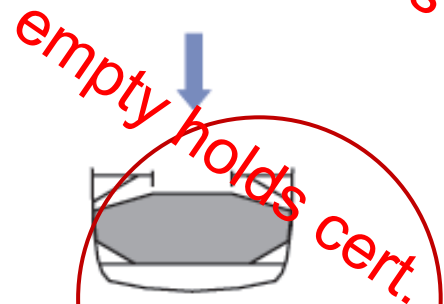
- The transport system includes 17 operations:
- 1 sea voyage
 - 8 movements to/from storage
 - 1 ship loading operation
 - 1 ship discharge
 - 2 land journeys
 - 2 land loadings
 - 2 land unloadings

-500 mt

SHORE 29.500 mt



sealed hatch covers



SHIP 30.000 mt

Objective 1:
Use biggest ship possible

Objective 2:
Use most efficient cargo handling

Objective 3:
Make systems compatible

Objective 4:
Keep stocks as small as possible



Forum designated by
the jurisdiction / arbitration clause

Liner trade single contracts
BL holder alternative jurisdiction - agreed place
of delivery + ?

LEX MERCATORIA

LEGAL PACKAGE



CARRIAGE OF GOODS RULES
(LIABILITY & DEFENCES)

GENERAL CONTRACT LAW
(MITIGATION OF DAMAGE)

QUALITY OF TRIBUNALS
(EVALUATION OF EVIDENCE & INTERNATIONAL STANDARDS
& SPEED & FAIRNESS)



UNITED NATIONS CONFERENCE ON
TRADE AND DEVELOPMENT
PROSPERITY FOR ALL

ARBITRATION
CENTRE

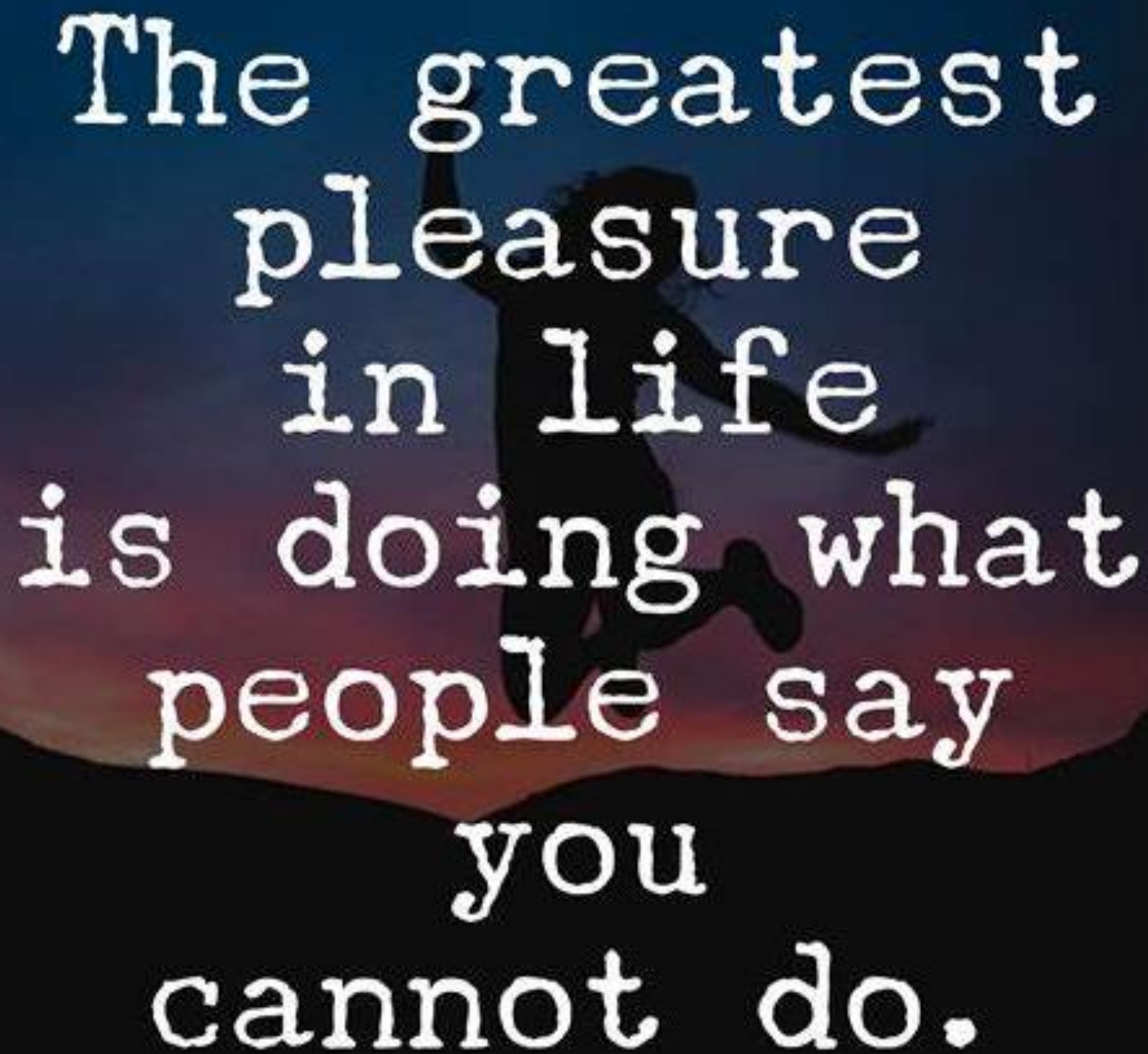
For UN Convention on Contracts for the
International Carriage of Goods Wholly or Partly
by Sea

Petar Kragić and Diana Jerolimov

A MODERN
LEX MERCATORIA

For Carriage of Goods by Sea



A silhouette of a person jumping or dancing against a sunset background. The person is in the center, with arms raised and legs bent, suggesting a joyful movement. The background is a gradient from dark blue at the top to orange and red at the bottom, with a dark horizon line at the bottom. The text is overlaid on the image in a white, monospaced font.

The greatest
pleasure
in life
is doing what
people say
you
cannot do.



THANK YOU
ZADAR



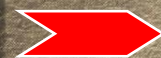
Change Happens

They Keep Moving The Cheese



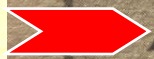
Anticipate Change

Get Ready For The Cheese To Move



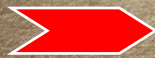
Monitor Change

Smell The Cheese Often So You Know When It Is Getting Old



Adapt To Change Quickly

The Quicker You Let Go Of Old Cheese,
The Sooner You Can Enjoy New Cheese



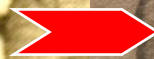
Change

Move With The Cheese



Enjoy Change!

Savor The Adventure And Enjoy
The Taste Of New Cheese!



Be Ready To Change Quickly And Enjoy It Again & Again

They Keep Moving The Cheese



The Channel Ranger [2014]

interim anti-suit
injunction

*All terms ... of the Charter Party, ..., including the **Law and Arbitration Clause** are ...*

Hamburg
Rules

*This Charter Party shall be governed by English law, and any dispute arising out of or in connection with this Charter shall be submitted to the **exclusive jurisdiction of the High Court of Justice of England and Wales.**"*



