

ReedSmith

# Collision Workshop Steamship Members' Week

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Solent University July 2023

**ReedSmith**  
Driving progress  
through partnership

# Collisions Seminar

- Investigation
- Negligence
- Collision Regulations
- Apportionment of liability



# Investigation

## **Vessel evidence**

- VDR
- Witness
- Engine / Deck
- ECDIS

## **Third Party**

- AIS
- CCTV
- Pilot
- MAIB Report

# Negligence

## The three step test

- Did a duty of care exist between the parties?
- Was there a breach of the duty of care?
- Did the loss or damage directly result from that breach?
  - *Donoghue v Stevenson* [1932] AC 562

# Negligence

## The duty of care

*“It is the duty of seamen to take reasonable care and to use reasonable skill to prevent the ship from doing injury”*

- Lord Blackburn in The “VOORWAARTS” and The “KHEDIVE” [ 1880] 5 App. Cas 876

*“We are not to expect extraordinary skill or extraordinary diligence, but that degree of skill and that degree of diligence which is generally to be found in persons who discharge that duty”*

- Dr Lushington in The “THOMAS POWELL” and The “CUBA” [1866] 14 LT 603

# Negligence

## Breach of the duty of care

- International Regulations for the Prevention of Collisions at Sea 1972 (as amended) “COLREGS”
- Local Regulations

# Negligence

## Breach of the duty of care

### International Regulations for the Prevention of Collisions at Sea 1972 (as amended) “COLREGS”

#### Rule 1

- a) These Rules shall apply to all vessels upon the high seas and in all waters connected herewith navigable by seagoing vessels.*
- b) Nothing in these Rules shall interfere with the operation of special rules made by any authority for roadsteads, harbours, rivers, lakes, or inland waterways connected with the high seas and navigable by seagoing vessels. Such special rules shall conform as closely as possible to these Rules.*

# Negligence

## Breach of the duty of care

### International Regulations for the Prevention of Collisions at Sea 1972 (as amended) “COLREGS”

#### Rule 2

- a) *Nothing in these Rules exonerate any, vessel or the owner, Master or crew thereof from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.*
- b) *In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved which may make a departure from these Rules necessary to avoid immediate danger.*



# The COLREGS

International Regulations for the Prevention of Collisions at Sea 1972 (as amended) “COLREGS”

<b>Part A</b> General	<b>Part B</b> Steering and sailing rules	<b>Part C</b> Lights and shapes
<b>Part D</b> Sound and light signals	<b>Part E</b> Exemptions	<b>Annexes</b> Technical details

# The COLREGS

## Rule 10 Traffic Separation Scheme

- a) Does not relieve any vessel of its obligations under other Rules
- b) (i) Proceed in general direction of flow
- c) Cross as nearly as possible at right angles
- f) A vessel navigating in areas near the terminations of traffic separation schemes shall do so with particular caution.
- j) A vessel of less than 20 metres in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane.

# The COLREGS

## Part B – Steering and Sailing Rules

- Section I      Conduct of vessels in any condition of visibility
- Section II     Conduct of vessels in sight of one another
- Section III    Conduct of vessels not in sight of one another

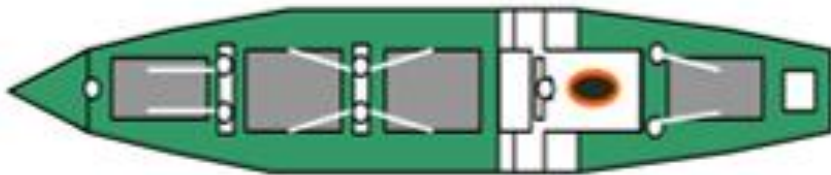
# Steering and Sailing Rules

International Regulations for the Prevention of Collisions at Sea 1972 (as amended) “COLREGS”

Vessel B



Vessel A



General Cargo 2008



Bulk 2012

# Overtaking

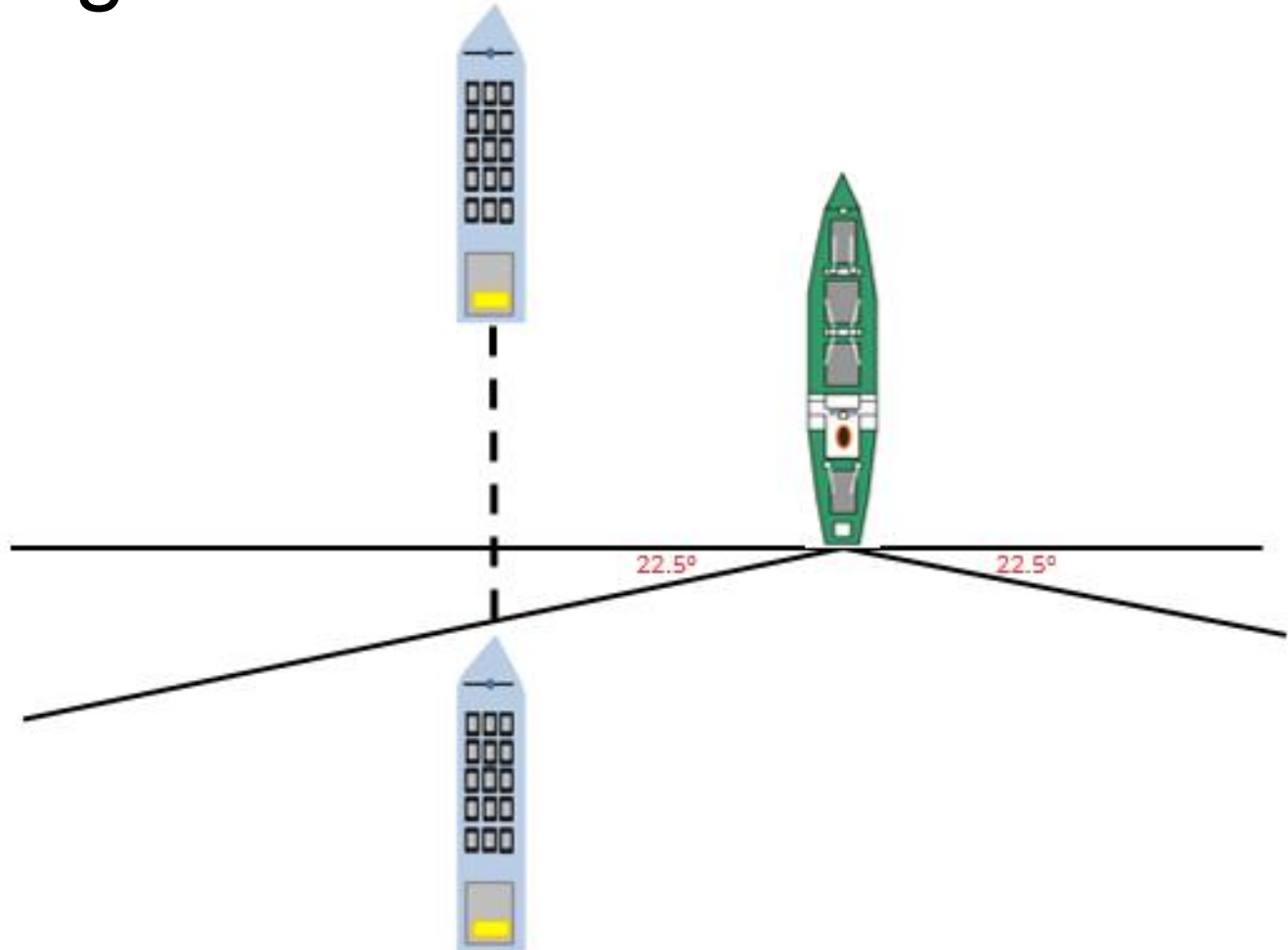
International Regulations for the Prevention of Collisions at Sea 1972 (as amended)  
“COLREGS”

## Rule 13

- a) *“...any vessel overtaking any other shall keep out of the way of the vessel being overtaken”.*
- b) *A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the stern light of that vessel but neither of her sidelights.*
- c) *When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.*
- d) *Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.*

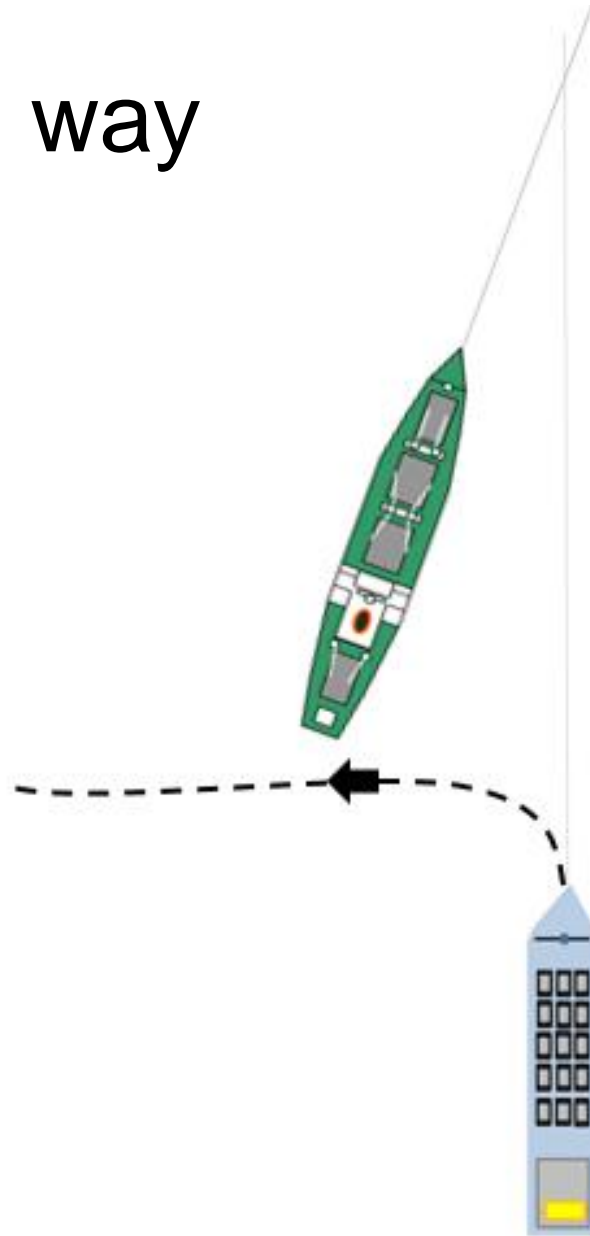
# Overtaking

## Rule 13



# Overtaking – give way

## Rule 13



# Crossing

International Regulations for the Prevention of Collisions at Sea 1972 (as amended) “COLREGS”

## Rule 15

When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.



# Action by Stand-On Vessel

International Regulations for the Prevention of Collisions at Sea 1972 (as amended) “COLREGS”

## Rule 17

(a) (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.

(a) (ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

(b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

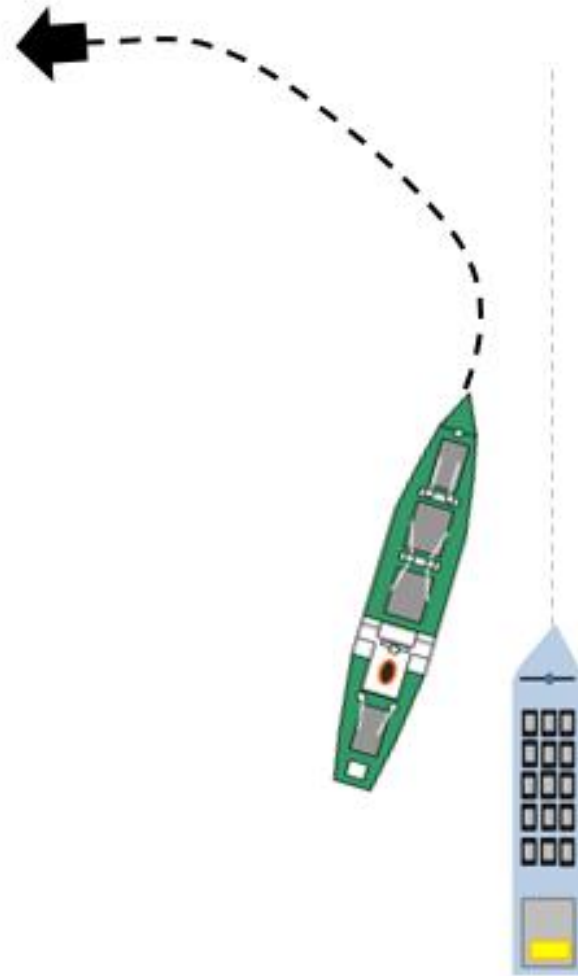
(c) A power-driven vessel which takes action in a crossing situation in accordance with subparagraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.

(d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

# Action by a Stand-On Vessel

## Rule 17

**Rule 17 (b)** When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.



# Responsibilities between vessels

International Regulations for the Prevention of Collisions at Sea 1972 (as amended) “COLREGS”

## Rule 18

Except where Rule 9, Rule 10, and Rule 13 otherwise require:

(a) A power-driven vessel underway shall keep out of the way of:

- (i) a vessel not under command;
- (ii) a vessel restricted in her ability to manoeuvre;
- (iii) a vessel engaged in fishing;
- (iv) a sailing vessel

# Apportionment of liability

## Collision Convention 1910

### S. 187 Merchant Shipping Act 1995

- 1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault.*
- 2) If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.*
- 4) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.*

# Apportionment of liability

*“the law of apportionment, ...is not one of distribution of moral blame, but of the comparative appreciation of the degree in which the respective faults of the vessels in fault have contributed to the result.”*

- Lord Justice Scott in The “BUCCINUM” [1936] 55 Lloyd’s Rep. 205 p. 218

*“inquiry must be qualitative rather than quantitative”*

- Lord Justice Sir Gordon Willmer [1974] 2 Lloyd’s Rep. 253

# Apportionment of liability

## Consider – Causative Fault

1. Identify situation
2. Identify rules and faults
3. Consider whether faults are causative

# Apportionment of liability

## **Consider – Blame and apportionment**

1. What was the most blameworthy fault
2. How much blame should it attract

“A collision at sea can ruin your entire day”

Thucydides (c. 460 B.C. – c. 395 B.C.)