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Blameworthiness in the context of collisions

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Blameworthiness in the context of collision

- Negligence – application to collisions
- Collision Regulations
- Apportionment of liability

Negligence

The three step test

1. Did a duty of care exist between the parties?
2. Was there a breach of the duty of care?
3. Did the loss or damage directly result from that breach?

'Donoghue -v- Stevenson' [1932] AC 562

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 their duty”

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

Breach of the duty of care

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

Local Regulations

Breach of the duty of care

International Regulations for the Prevention of Collision 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 therewith 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.*

Breach of the duty of care

International Regulations for the Prevention of Collision 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)

- Part A** – *General*
- Part B** – *Steering and sailing rules*
- Part C** – *Lights and shapes*
- Part D** – *Sound and light signals*
- Part E** – *Exemptions*
- Annexes** – *Technical details*

The COLREGS

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

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*

Life at Sea

- Only 4 situations to encounter:
 - Head on
 - Crossing
 - Overtaking
 - Restricted visibility
- But tempered by narrow channels, TSS, pilot stations, anchorages

Life at Sea

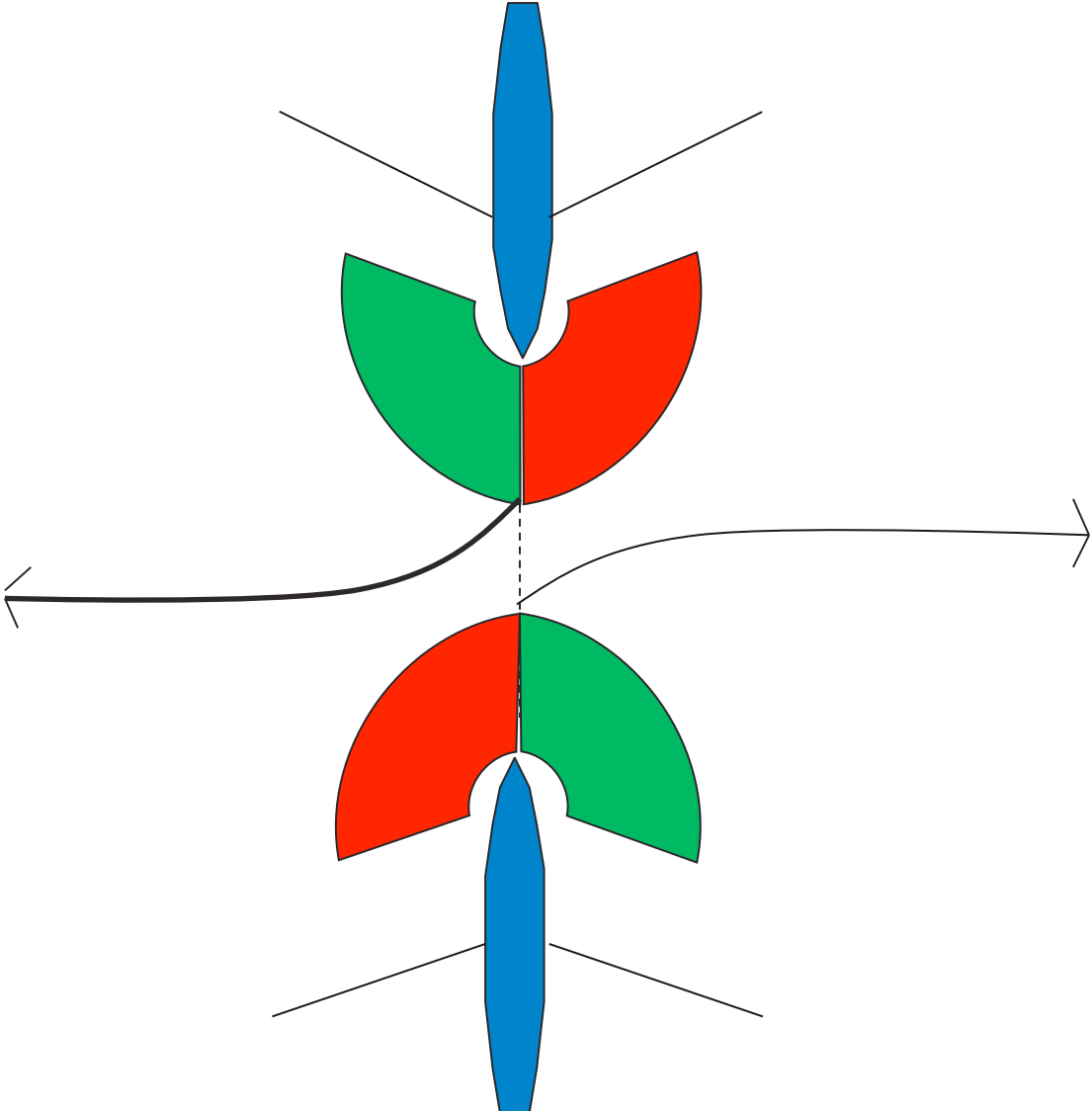
- Head on

- Rule 14

When 2 power driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other

....

Head on

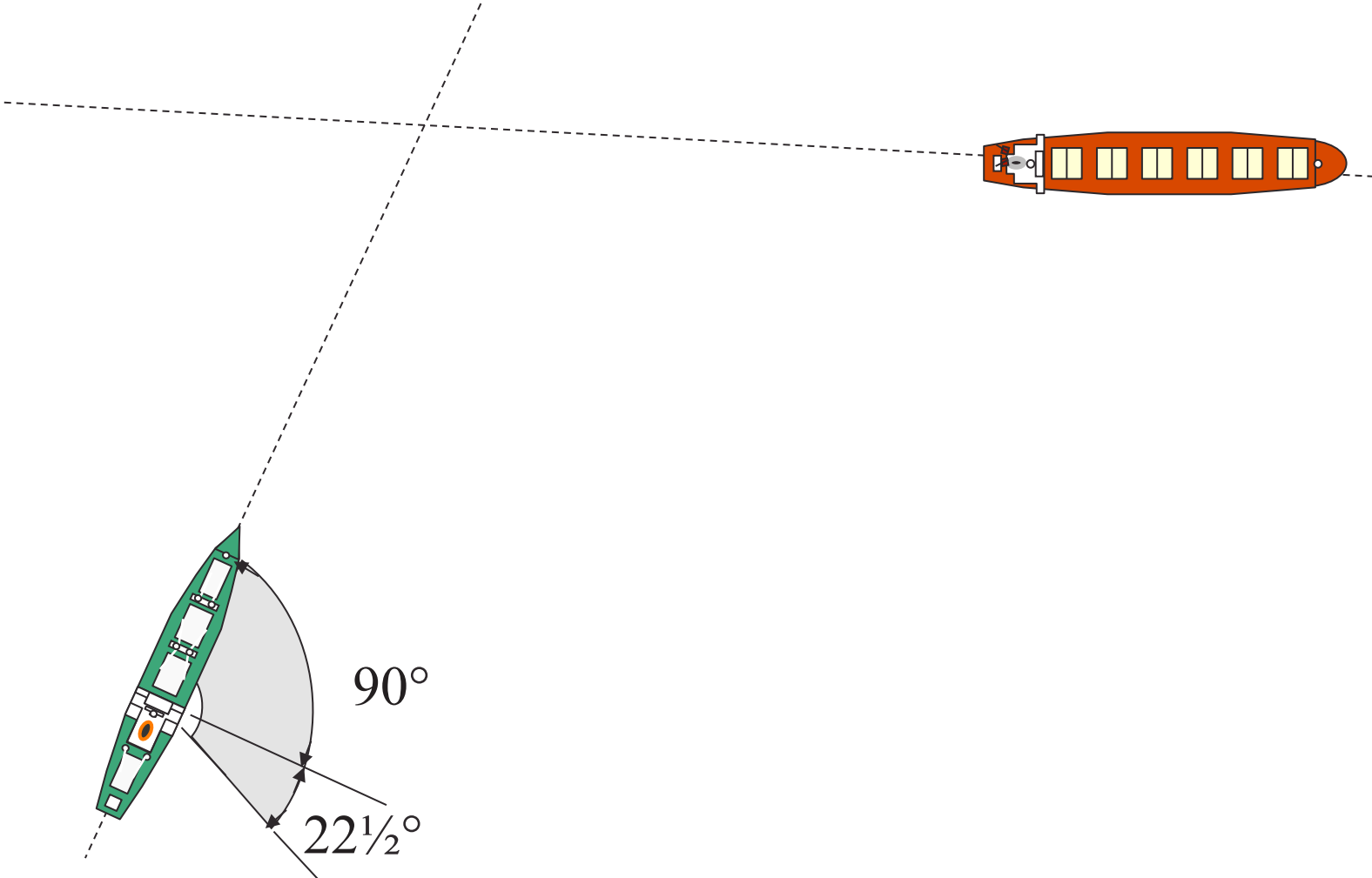


Crossing

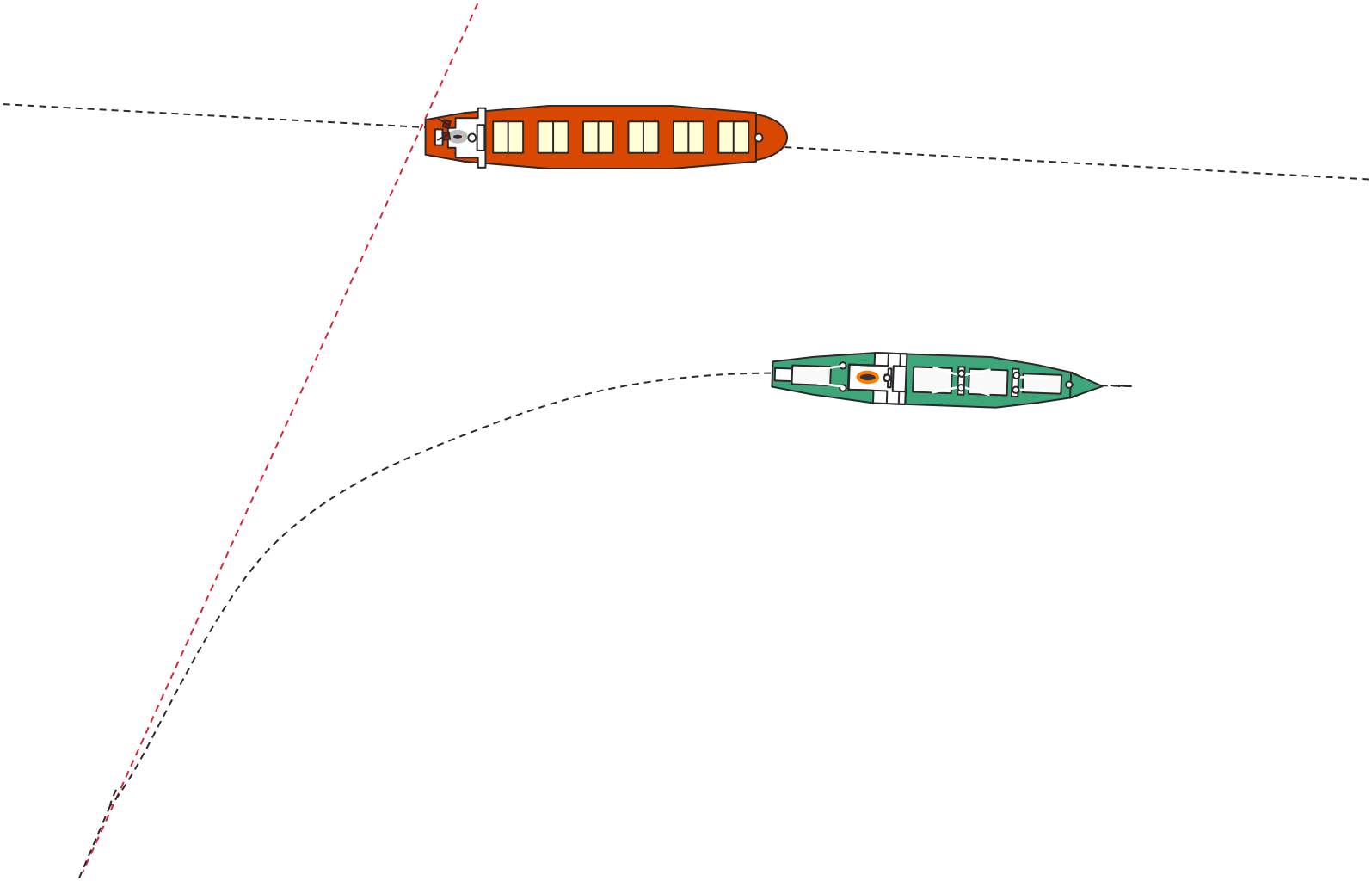
Rule 15 - Crossing situation

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.

Crossing



Crossing



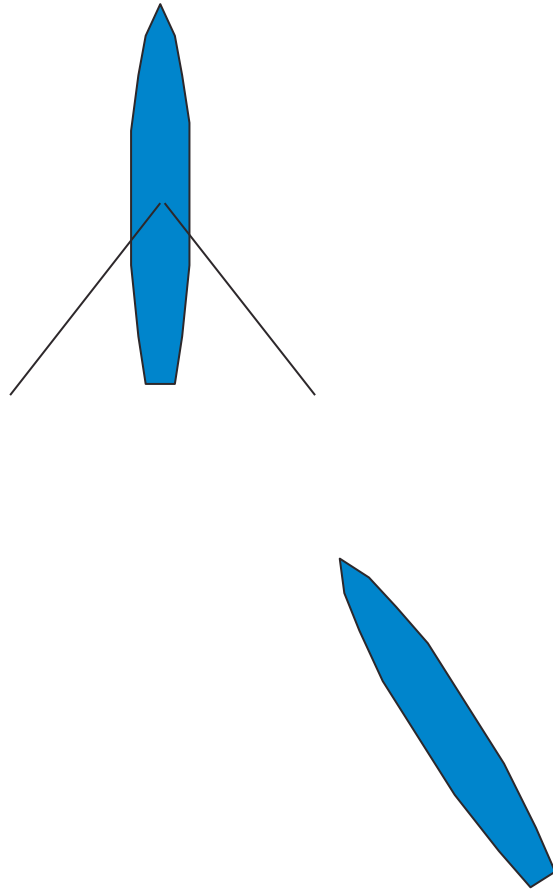
Overtaking

- Rule 13

Notwithstanding anything contained in the Rules of Part B, Section I and II, any vessel overtaking any other shall keep out of the way of the vessel being overtaken.

...

Overtaking



Restricted Visibility

Rule 19 - Conduct of vessels in restricted visibility

- a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.
- b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate manoeuvre.
- c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the Rules of section I of this part.
- d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing and/or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided:
 - (i) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken;
 - (ii) an alteration of course towards a vessel abeam or abaft the beam.

Restricted visibility

AVOID ALTERATION OF
COURSE TO PORT UNLESS
OVERTAKING



AVOID ALTERATION
OF COURSE TO PORT

AVOID ALTERATION
OF COURSE TO
STARBOARD

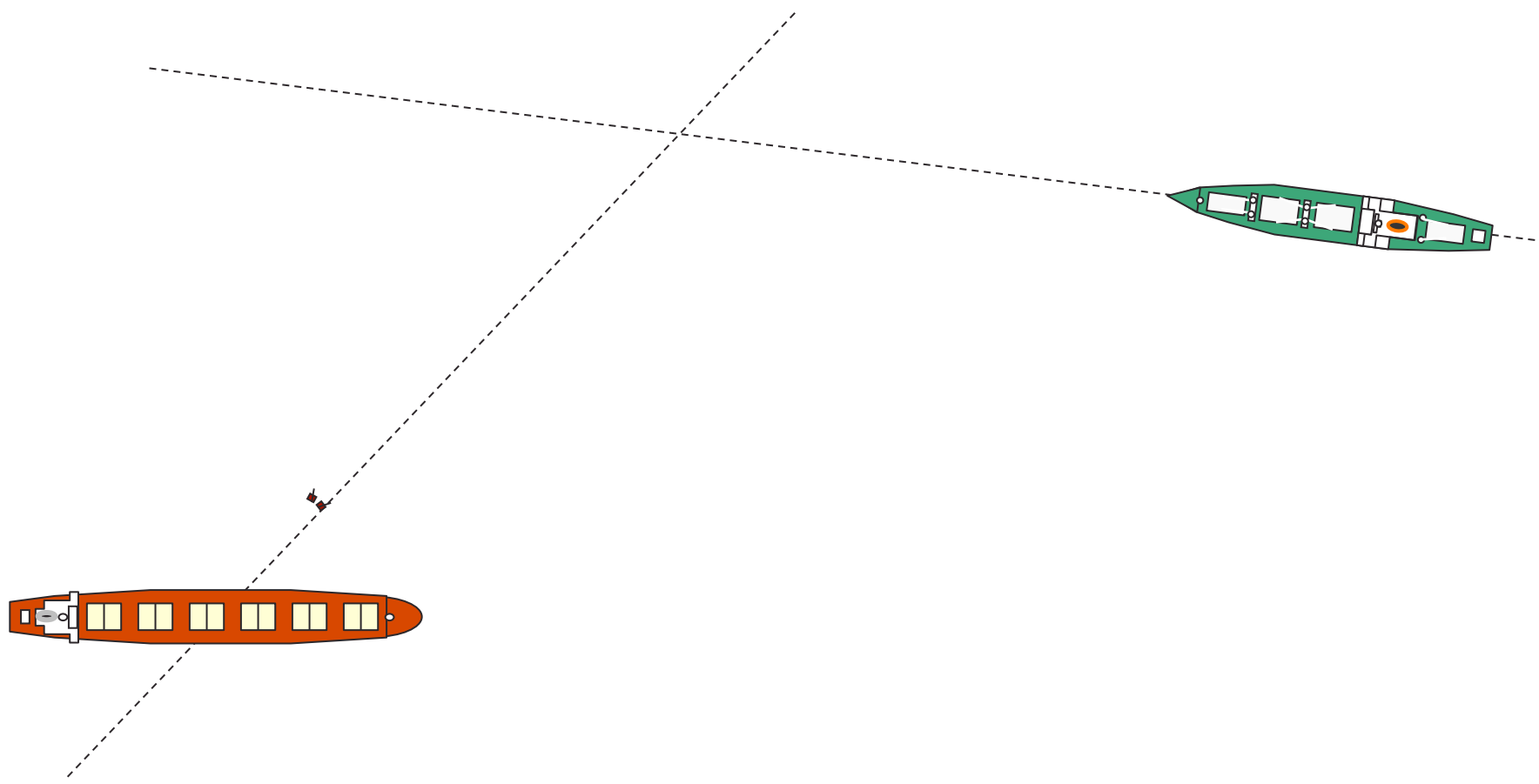
Action by stand-on vessel

Rule 17 - Action by stand-on vessel

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

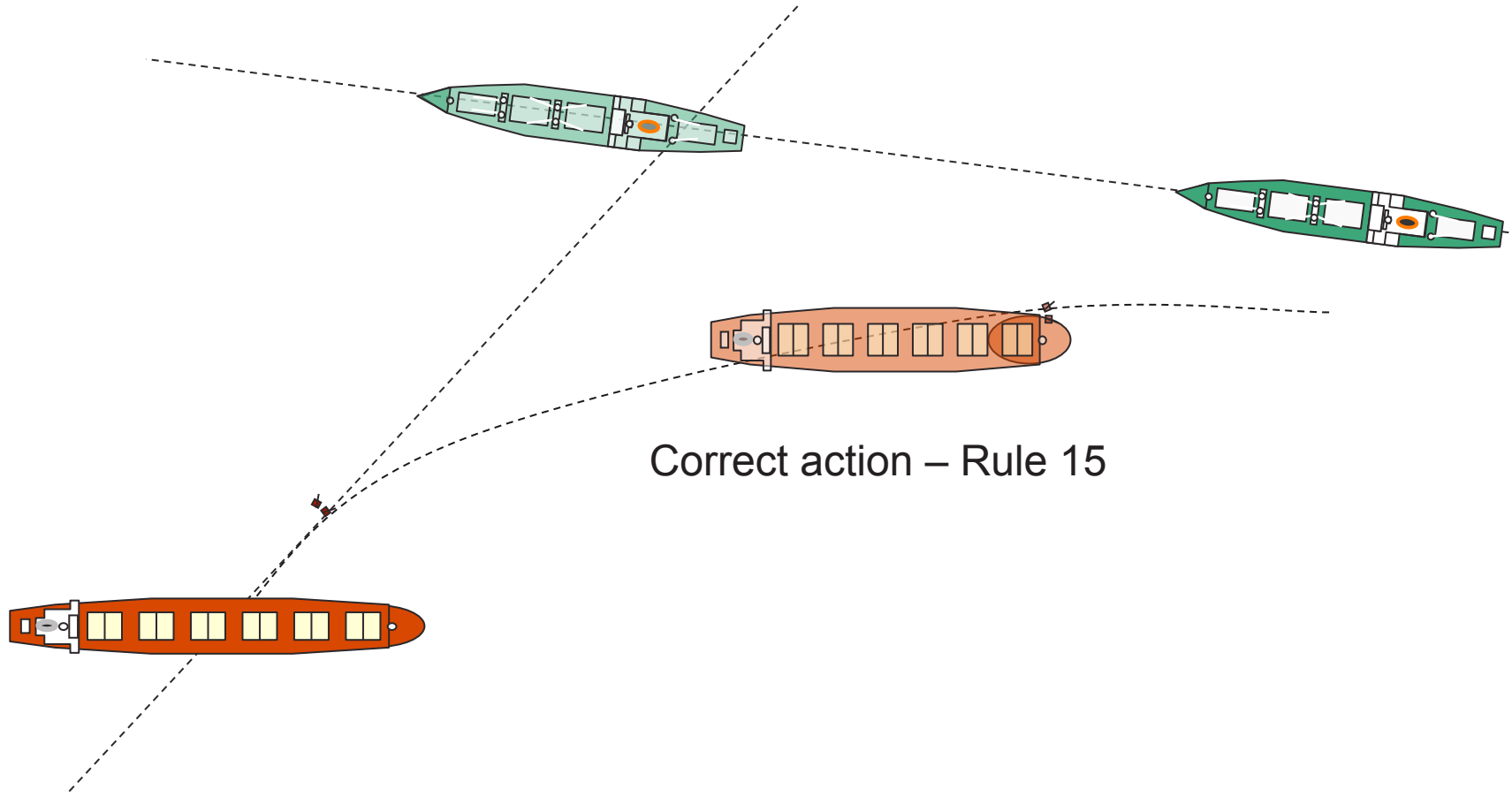
Action by stand-on vessel

(Crossing)



Action by stand-on vessel

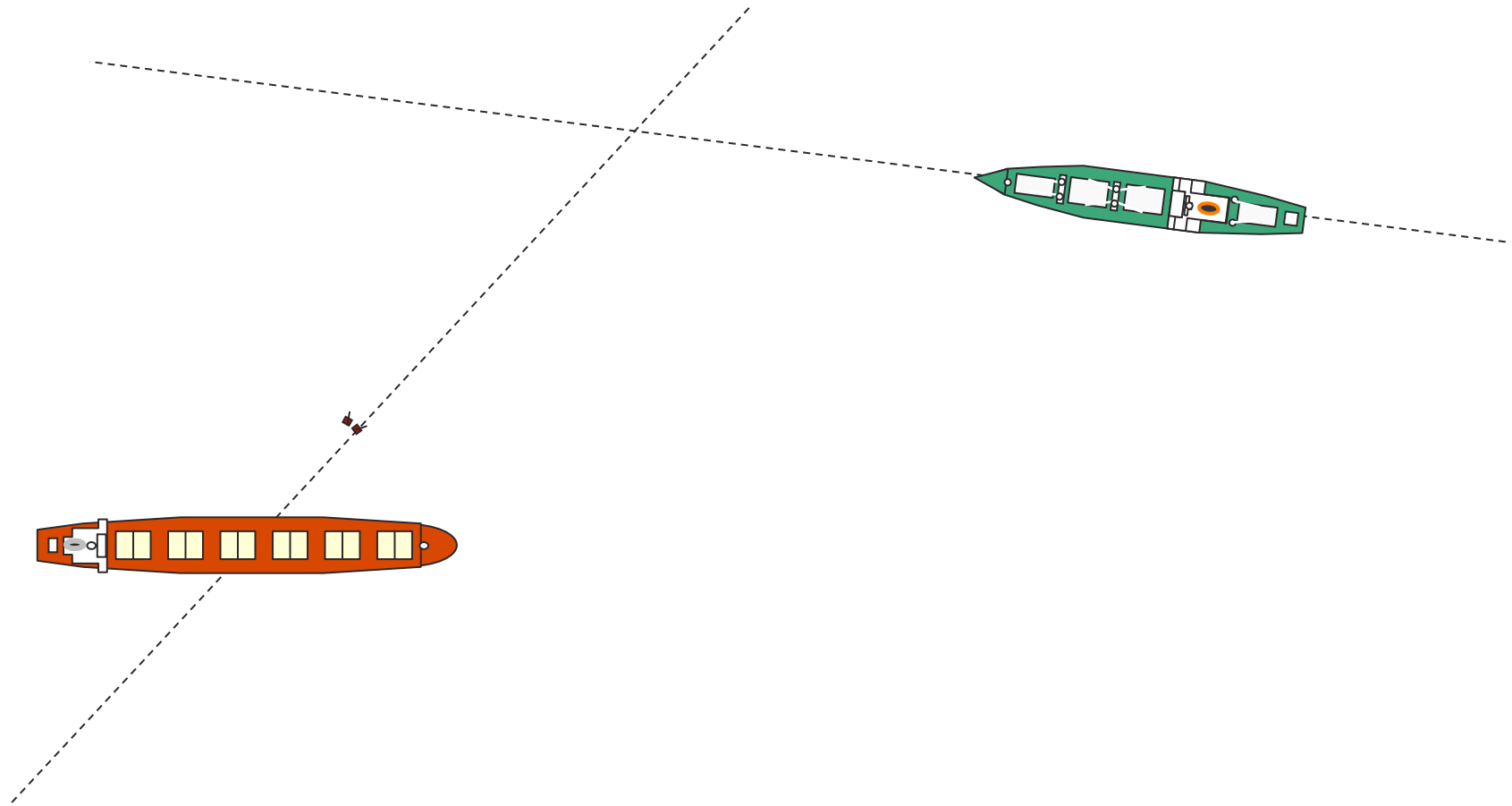
(Crossing)



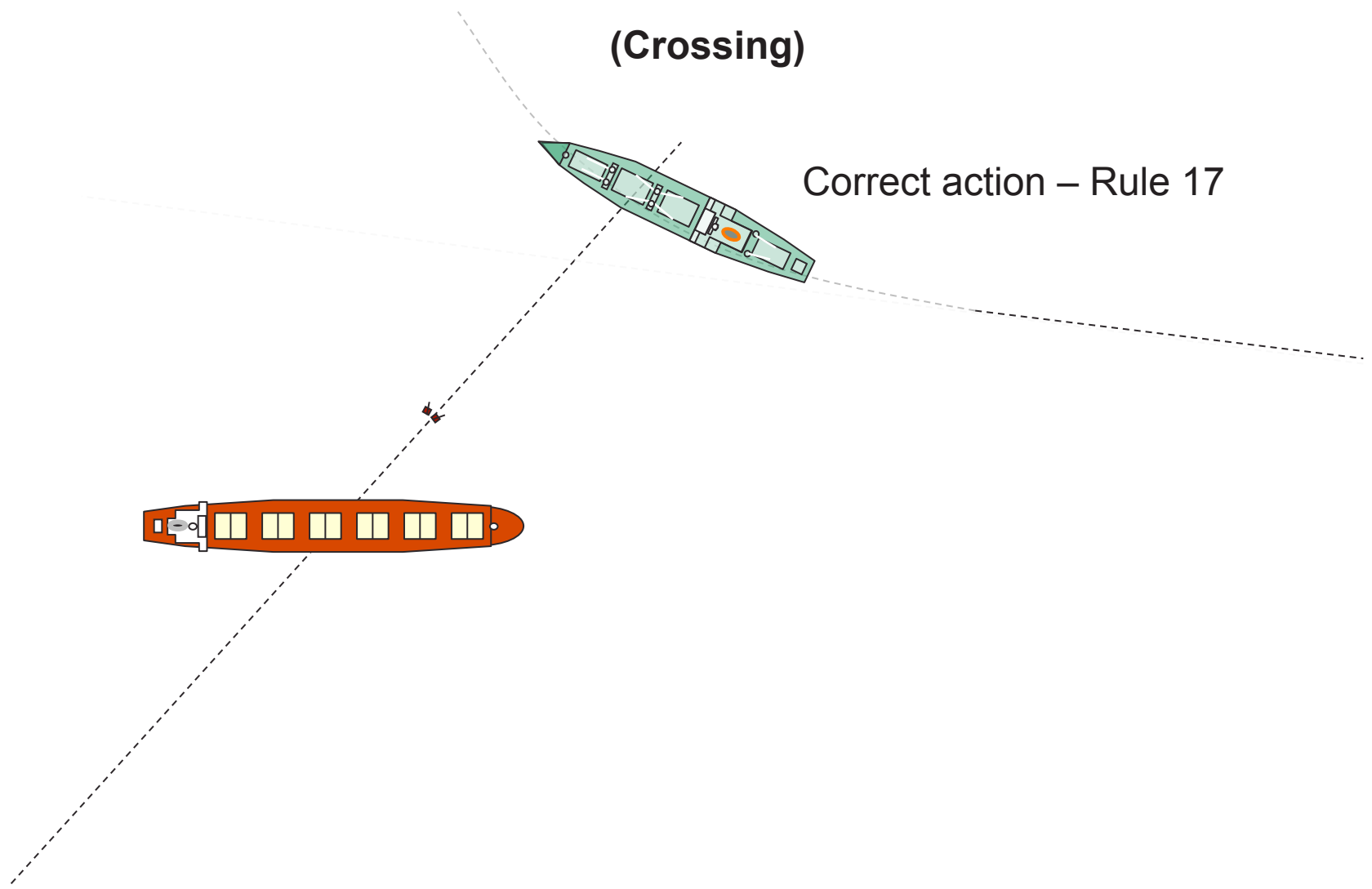
Correct action – Rule 15

Action by stand-on vessel

(Crossing)



Action by stand-on vessel



Apportionment of liability

Collision Convention 1910

(Section 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 353

Apportionment of Liability

CONSIDER – Causative Fault

- (1) Identify situation
- (2) Identify rules and faults
- (2) Consider whether the faults are causative (not number of them)

Apportionment of Liability

CONSIDER – Blame and apportionment

- (1) What is the most blameworthy fault
- (2) How much blame should it attract

These are essentially factual questions. What would it be reasonable for a Master to do in those circumstances.

Blameworthiness

- Consider also:
 - Time to take action
 - Nature of manoeuvre
 - Use of engine/whistle
 - Agony of the moment

The Court decides

- No experts allowed from either side
- Judge assisted by Trinity House Masters
- Plots prepared by Counsel
- Need for quality evidence

“A collision at sea can ruin your entire day”

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