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INTRODUCTION

- Collisions – what they are and how they happen
- Casualty management
- Liability – how fault is apportioned
- Insurance and claims



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COLLISIONS

- 'Collision' means the physical contact between two ships.
- 'Ship' has no special / legal definition
 - It includes tackle, cranes, anchors, but not items fixed 'temporarily' such as fishing nets.
- Collision does not include contact with fixed objects / property.

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COLLISIONS

Regulations for preventing collisions

- Laid down by the 1972 International Convention for Preventing Collisions at Sea (COLREGS)
- Recognised by every Flag State and by every Coastal State
- If two ships meet at sea, they are both obliged to follow the same rules

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COLLISIONS



COLREGS specify

- General rules that apply to all ships at all times
- Specific rules that apply to ships in sight of one another
- Technical rules for lights, sound signals etc.

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COLLISIONS

Most collisions are caused by human error

- Poor understanding of the COLREGS



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COLLISIONS

Most collisions are caused by human error

- Poor lookout



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COLLISIONS

Most collisions are caused by human error

- Poor assessment of risk of collision

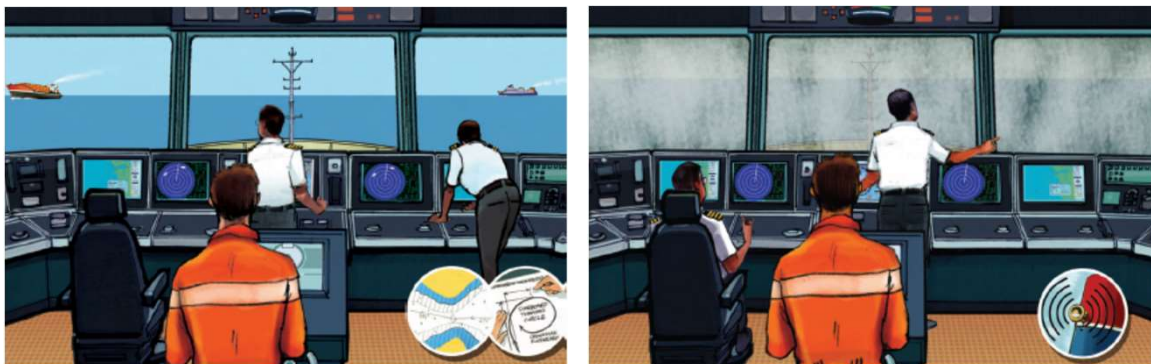


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COLLISIONS

Most collisions are caused by human error

- Excessive speed, especially in fog



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COLLISIONS

Most collisions are caused by human error

- Avoiding action taken too little and too late



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CASUALTY MANAGEMENT

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CASUALTY MANAGEMENT

Onboard the ship

- Preserve life, property and the environment
- Confirm any injuries, damage and pollution
- Stand by the other ship until allowed to proceed
- In territorial waters – report to the coastal state
- Save all automatically recorded data (Example - VDR recording)
- Express no opinions



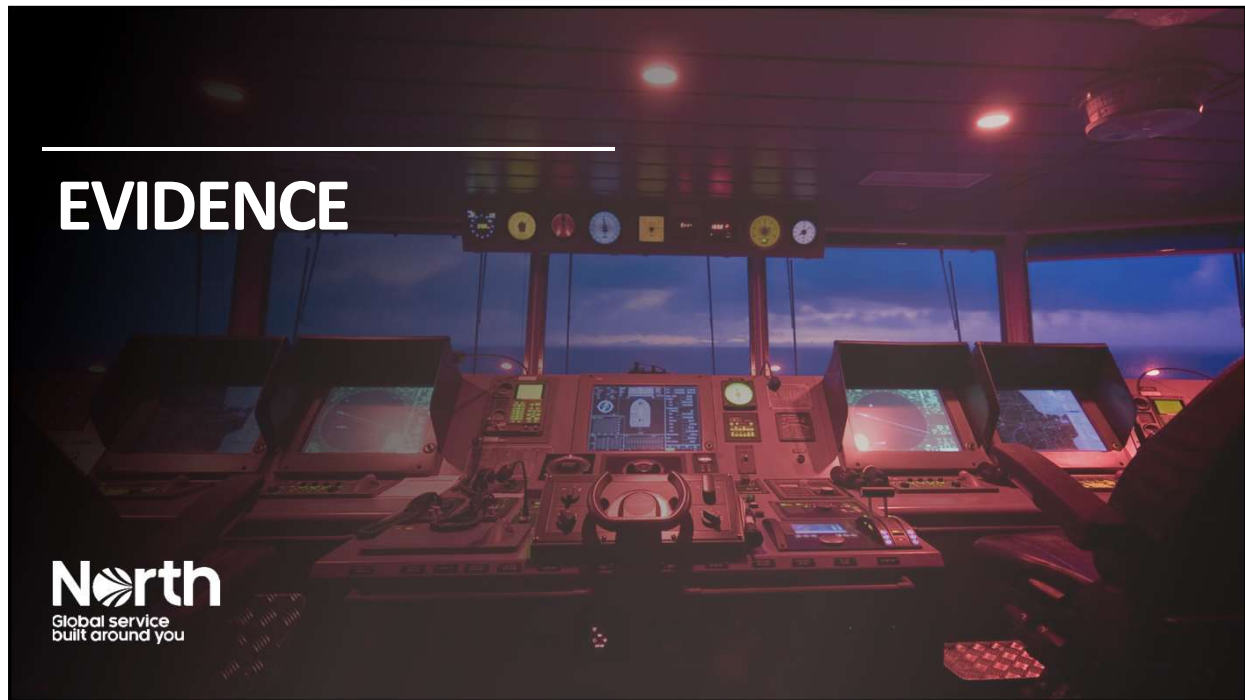
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CASUALTY MANAGEMENT

Ashore - in the ship operators office

- Activate emergency response plan
- Assist the Master in preservation of life, property and the environment
- Notify the competent authorities and insurers
- Identify port of refuge/repair
- In consultation with insurers:
 - appoint surveyors for joint, w/p survey of each ship
 - appoint lawyers/collision investigators

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EVIDENCE

- 'Save' all onboard recording devices, especially VDR and engine loggers
- Secure AIS data
- Arrange a joint, w/p damage survey
- Consider 'speed and angle of blow' survey
- Report facts only, never opinions
- Never alter charts or logs
- Only give witness statements to Owners' lawyer

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LIABILITY



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LIABILITY

Legal Basis

- A collision is a tort - a breach of the 'duty of care' to exercise good seamanship
- Each ship's 'causative breach(s)' of the COLREGS is identified
 - Degree of fault - qualitative inquiry
 - Causative potency (how causative is the fault?)
 - Culpability (blameworthiness)
- Each ship then bears the appropriate percentage of fault
 - Example - 60% on one ship, 40% on the other

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LIABILITY

- Collision limitation period is typically two years

Jurisdiction

- Jurisdiction and proper law
 - High seas – the Flag State(s)
 - Territorial seas – the Coastal State
- All states apply the COLREGS, but differently. For consistency, owners and insurers of both ships will often agree a common jurisdiction
- England is the only jurisdiction with a dedicated court and a specialist judge to hear collision actions
- Most collisions are resolved by agreement

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LIABILITY

Illustration - Apportionment of blame



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HOW IS LIABILITY APPORTIONED?

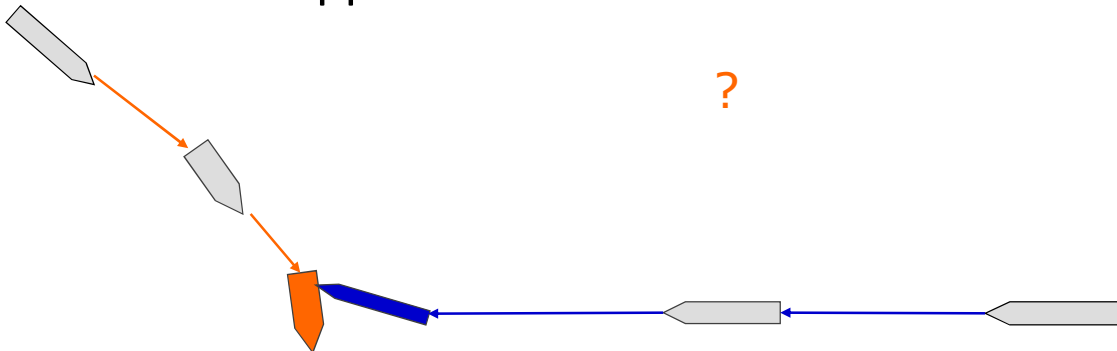
Illustration - Apportionment of blame



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HOW IS LIABILITY APPORTIONED?

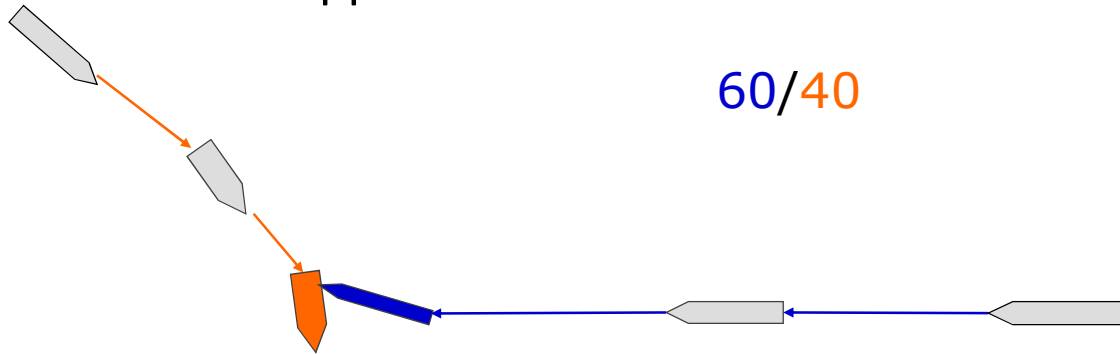
Illustration - Apportionment of blame



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HOW IS LIABILITY APPORTIONED?

Illustration - Apportionment of blame



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INSURANCE AND CLAIMS

CLAIM

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INSURANCE AND CLAIMS

Who pays?

- Hull and Machinery underwriters
- P&I Club
- Loss of Hire underwriters
 - Typically from day 14 onwards
- 'Below-deductible' detention insurance
 - Typically days 3 to 13
- FD&D insurers
- Owners' uninsured

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INSURANCE AND CLAIMS

Hull

- Own ship damage
- Other ship damage (3/4)
- Other cargo damage (3/4)
- Other ship detention (3/4)
- Own ship GA + salvage
- Other ship GA + salvage (3/4)

P&I

- Other ship damage (1/4)
- Own ship cargo damage
- Other ship cargo damage (1/4)
- Other ship detention (1/4)
- Other ship GA + salvage (1/4)

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INSURANCE AND CLAIMS

How are the cross claims settled in practice?

- Cross-liability
 - Each ship has a separate claim against the other
 - Each ship pays the appropriate % of the other ship's claim

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INSURANCE AND CLAIMS

- All P&I clubs indemnify on the basis of cross-liability unless either ship can limit their liability, in which case single-liability will apply
- Limitation applies to the net balance payable
- In most jurisdictions, limitation is in accordance with the 1976 Convention (as amended by the 1996 protocol in force 8th June 2015)

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INSURANCE & CLAIMS

Security

- Each ship will secure the claims of the other
- Security should always be co-ordinated with agreement on jurisdiction
- Security is often by exchange of P&I Club LOUs:
 - always discretionary
 - counter security may be required for any non-P&I liabilities

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SUMMARY

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SUMMARY

Collision

- Definitions
- Causation
- COLREGS

Insurance and claims

- Who pays
- What they pay
- Cross & single liability
- Security

Casualty management

- On-board and ashore

Liability

- Legal basis
- Apportion of fault

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THANK YOU

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