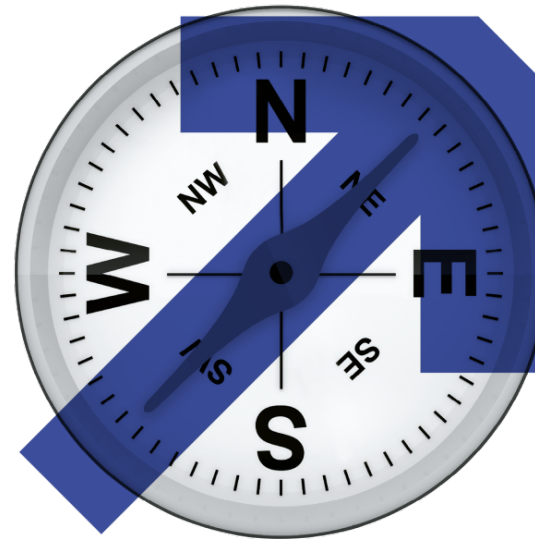


# Dematerialized negotiable transport documents: industry and regulatory responses

Prof. Dr. Alexander von Ziegler

Zurich, 14 April 2021



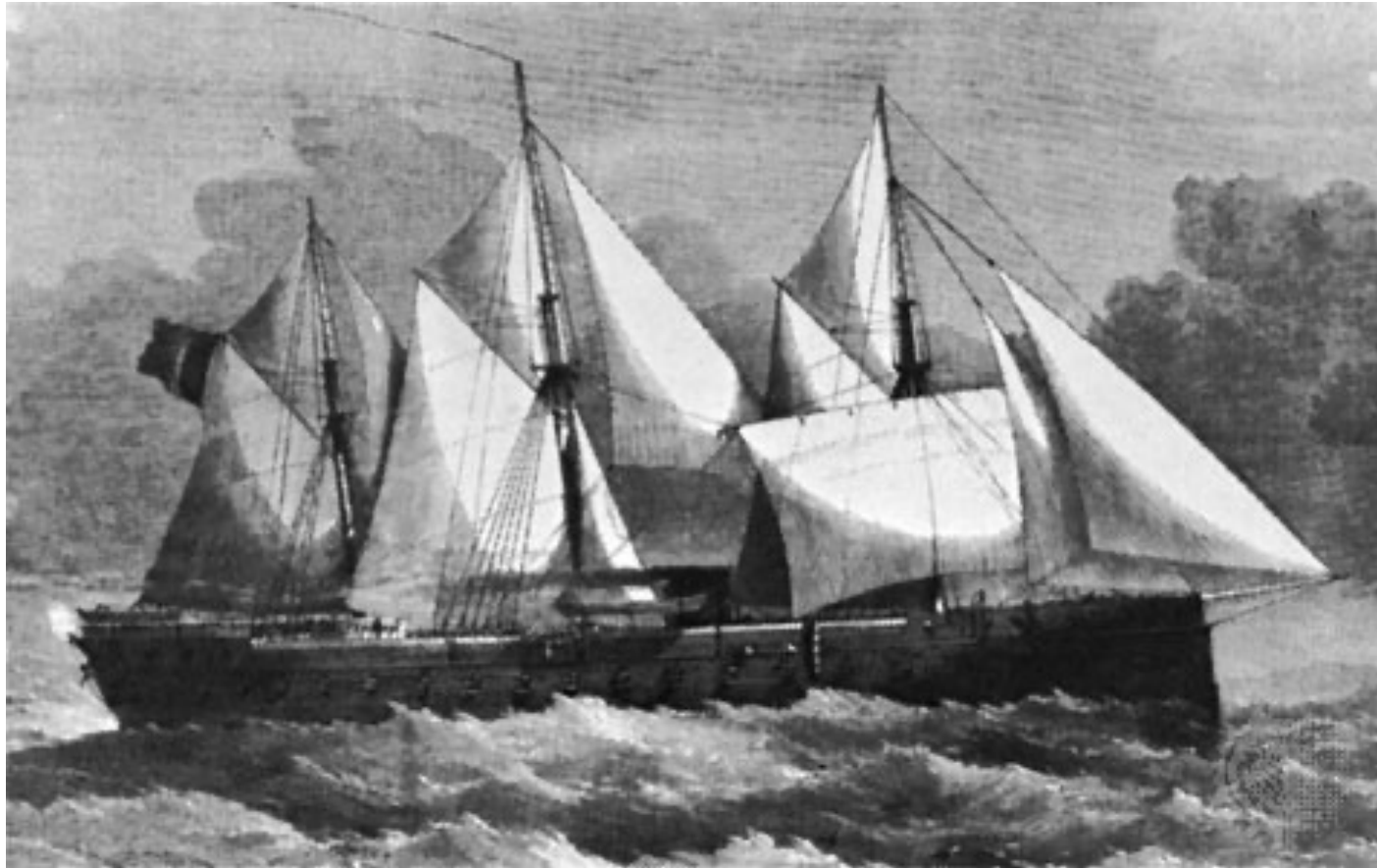
**Universität  
Zürich** <sup>UZH</sup>



# Negotiable Transport Document

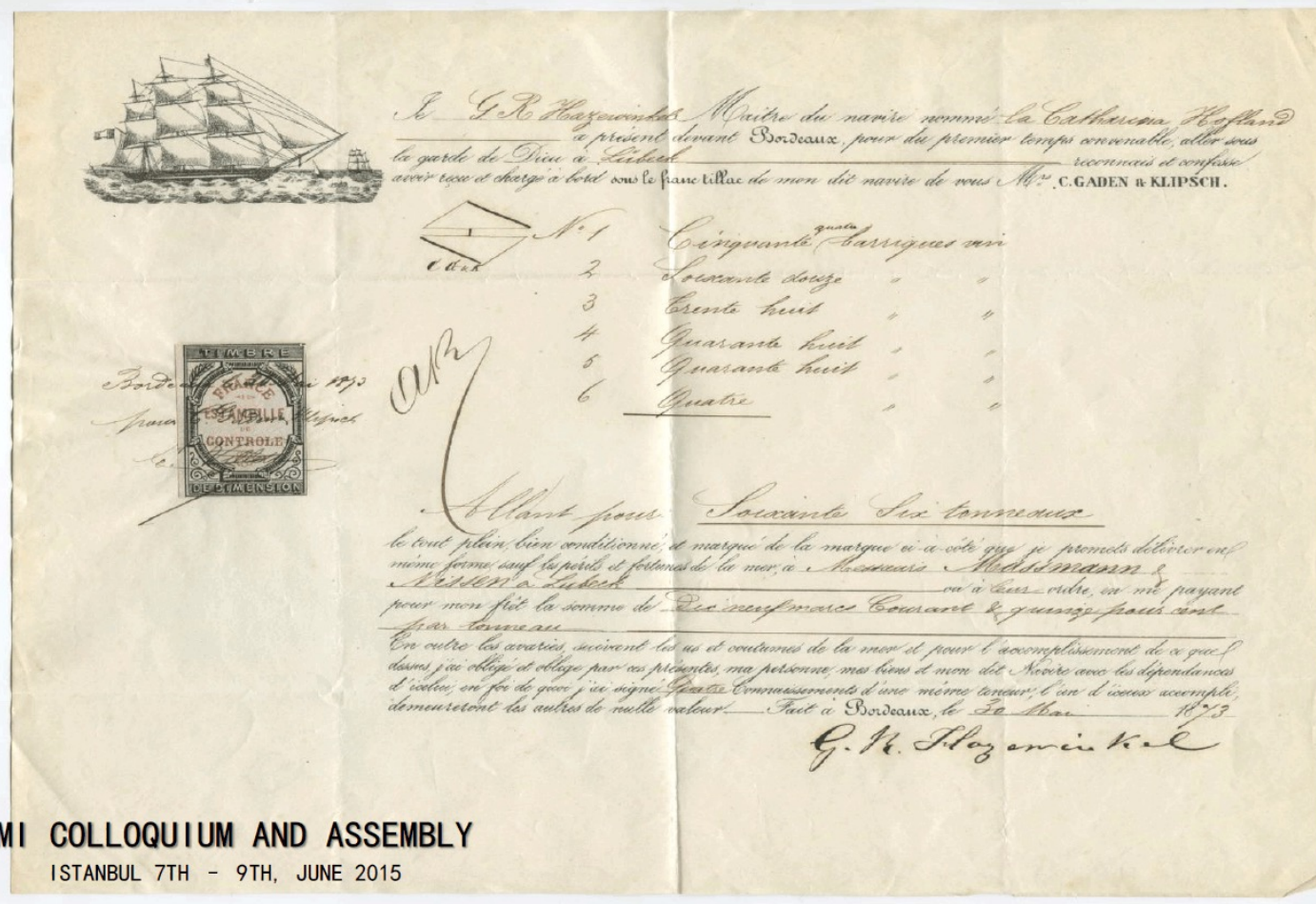
THE STARTING POINT

# From Sail to Steam



# The Rise of the “Bill of Lading” – The Materialization of the negotiable Transport Document

Exhibition of «The Voyage of Bill of Lading Before CMI / 1680 – 1897»



# Harter Act – Hague Rules

- General Maritime Law / LEX MARITIMA



- Harter Act 1893 (USA)
- Hague Rules 1921 (voluntary contractual Text for Bills of Ladings)
- **Hague Rules 1924 (International Convention for the Unification of Certain Rules of Law relating to Bills of Lading)**



- **National Laws on Bills of Ladings** (Uniform Bill of Lading Act 1909 (USA) / Bill of Lading Act 1855 (UK))
- International Chamber of Commerce: **Uniform Customs and Practices for Documentary Credit** → first edition 1933



# The Containers invade Trade



# Hague Visby Rules – Hamburg Rules

- Hague Visby Rules
  - 1968
  - 1979
- Hamburg Rules
- Door-To-Door
  - Inland-Option
  - UNCTAD / ICC Rules
  - FIATA B/L

# Trade in the Electronic Environment





# Search for the “electronic functional equivalent”

- **CMI 1990 Paris Conference**
  - Uniform Rules on Sea Waybills
  - **Uniform Rules on Electronic Bills of Lading**
- **UNCITRAL**
  - **UNCITRAL Model Law on Electronic Commerce 1996**
    - June 1996 Report → What is legal model for the “equivalent”?
- **ICC**
  - eUCP 2019
  - Clause A8 of INCOTERMS 1990 / 2000

# The “Functions “ of the Negotiable Transport Document

WHY DO WE NEED TRANSPORT DOCUMENTS?  
HOW DO WE USE TRANSPORT DOCUMENTS?  
HOW DO WE PROVIDE NEGOTIABILITY?

# Raison d'Être for Transport Documents

- in relation to the **contract of carriage** / transportation (the movement of goods from a- b)
- in relation to the **sales contract** (the sale and purchase of goods over a distance, involving transportation of the goods sold or purchased)
- in relation to **trade finance** (the financing of the sale / purchase on the basis of transport documents)
- in relation to **insurance cover** (the establishment of the basis for insurance cover for the goods sold, financed and transported)
- in relation to **administrative proceedings** (the processing of administrative tasks such as customs administration / export / transit / import)

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- in relation to the **sale contract** (the sale and purchase of goods over a distance, involving transportation)
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Primary Functions

# Raison d'Être for Transport Documents

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Secondary (Trade-) Functions

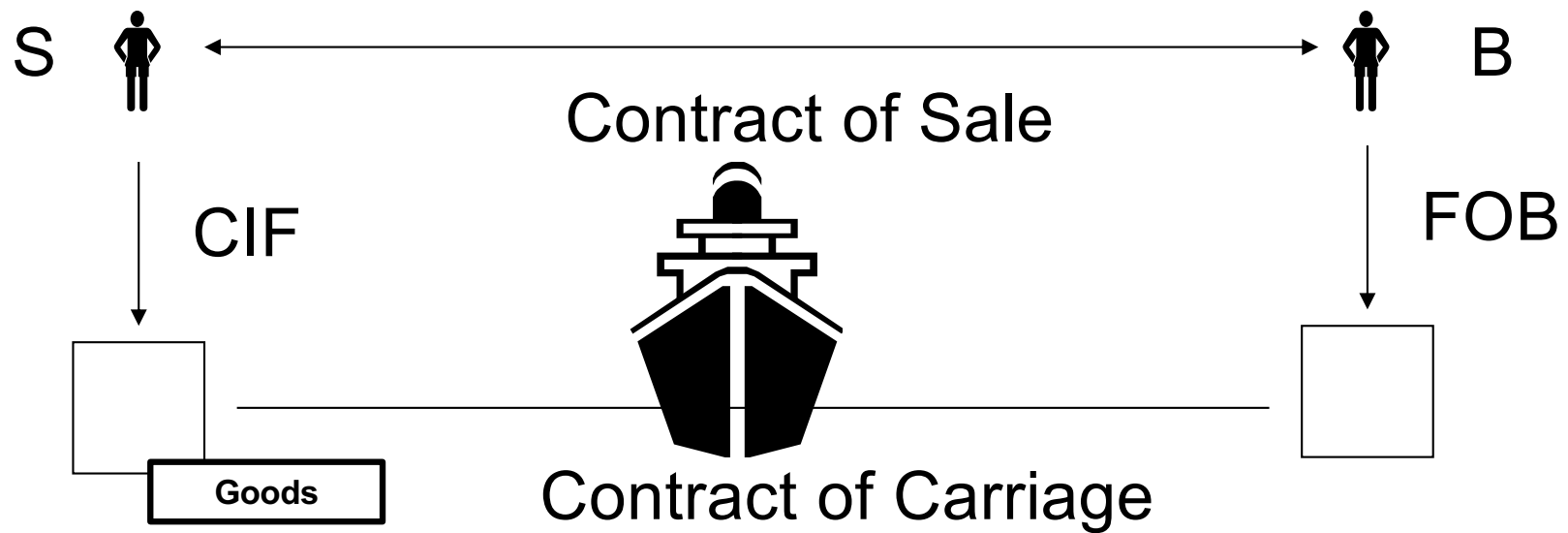
Secondary (Trade-) Functions

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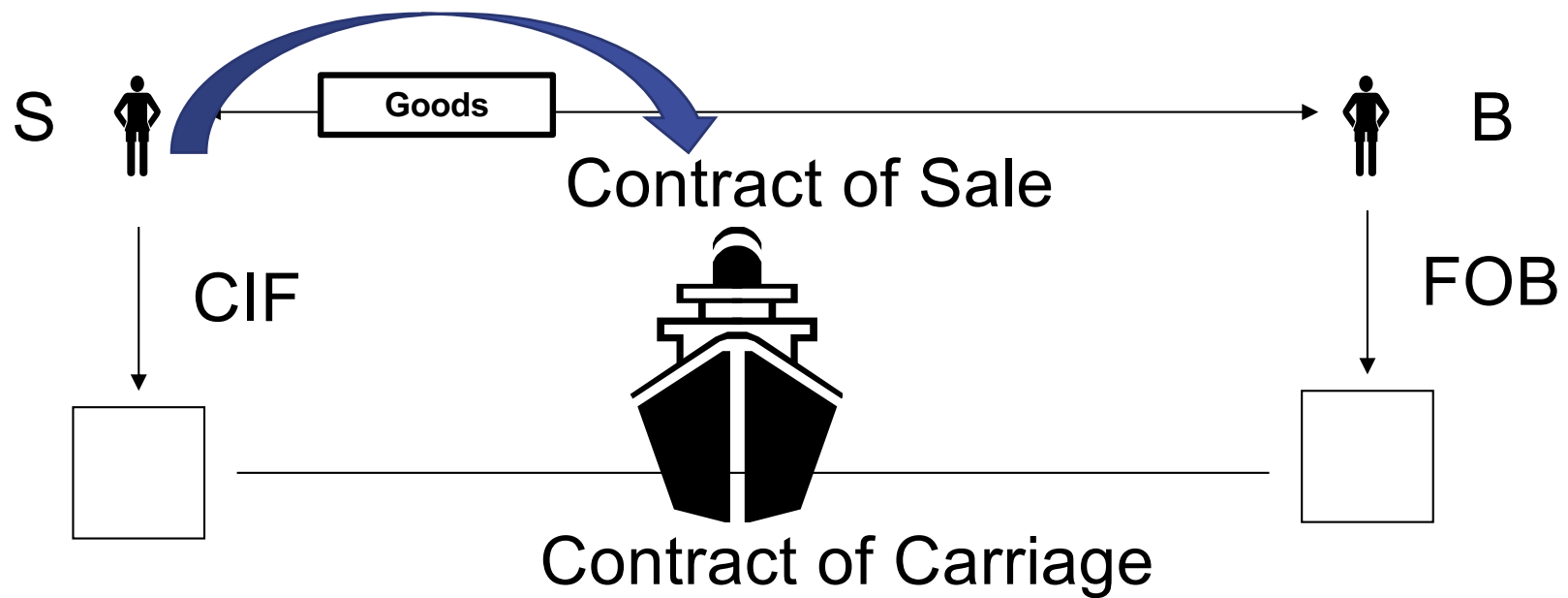
Secondary (Trade-) Functions



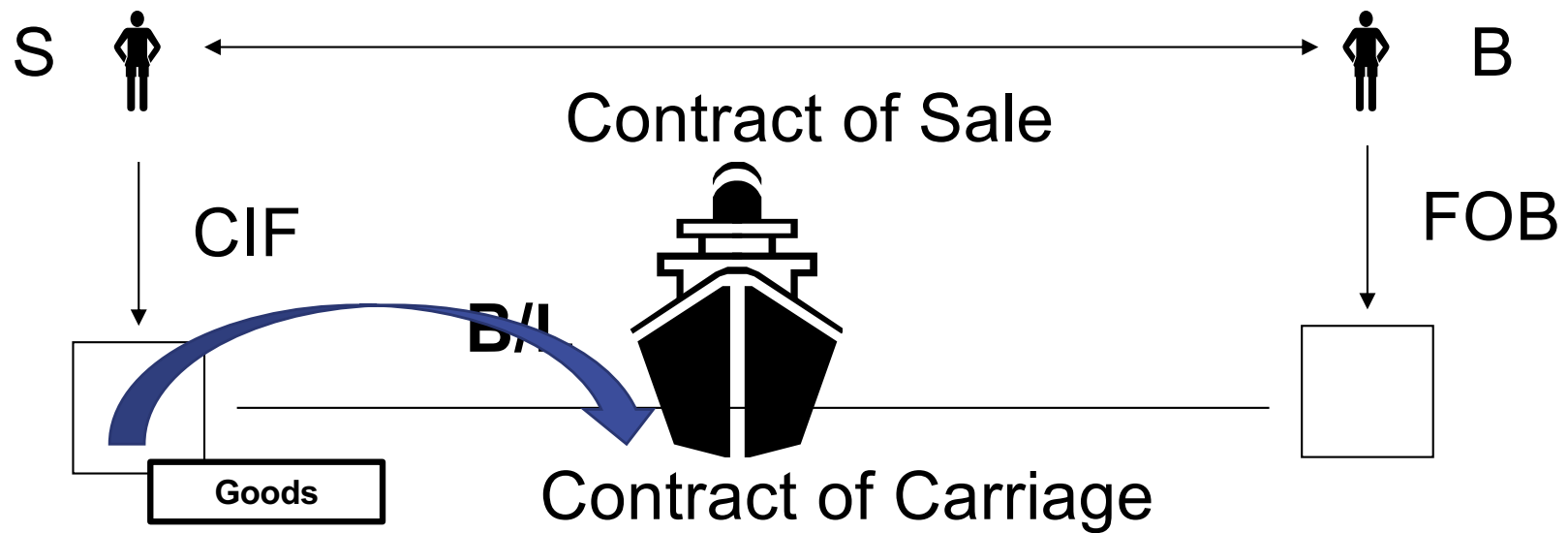
# Simple Sale's Transaction



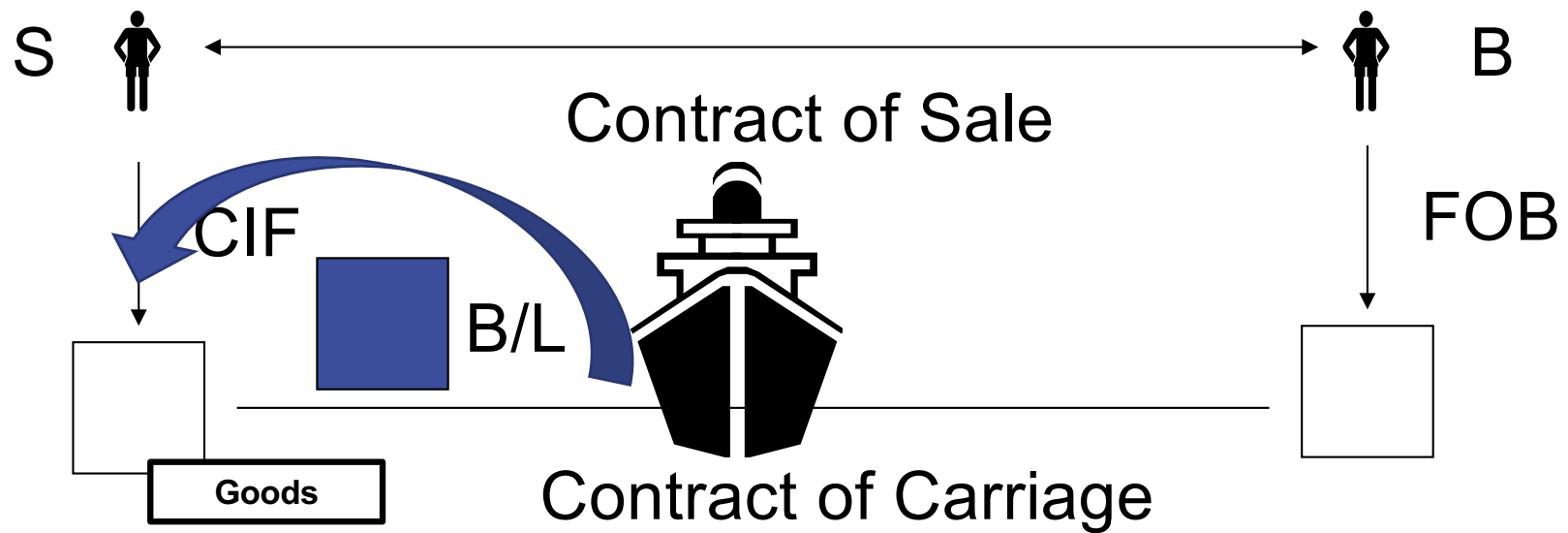
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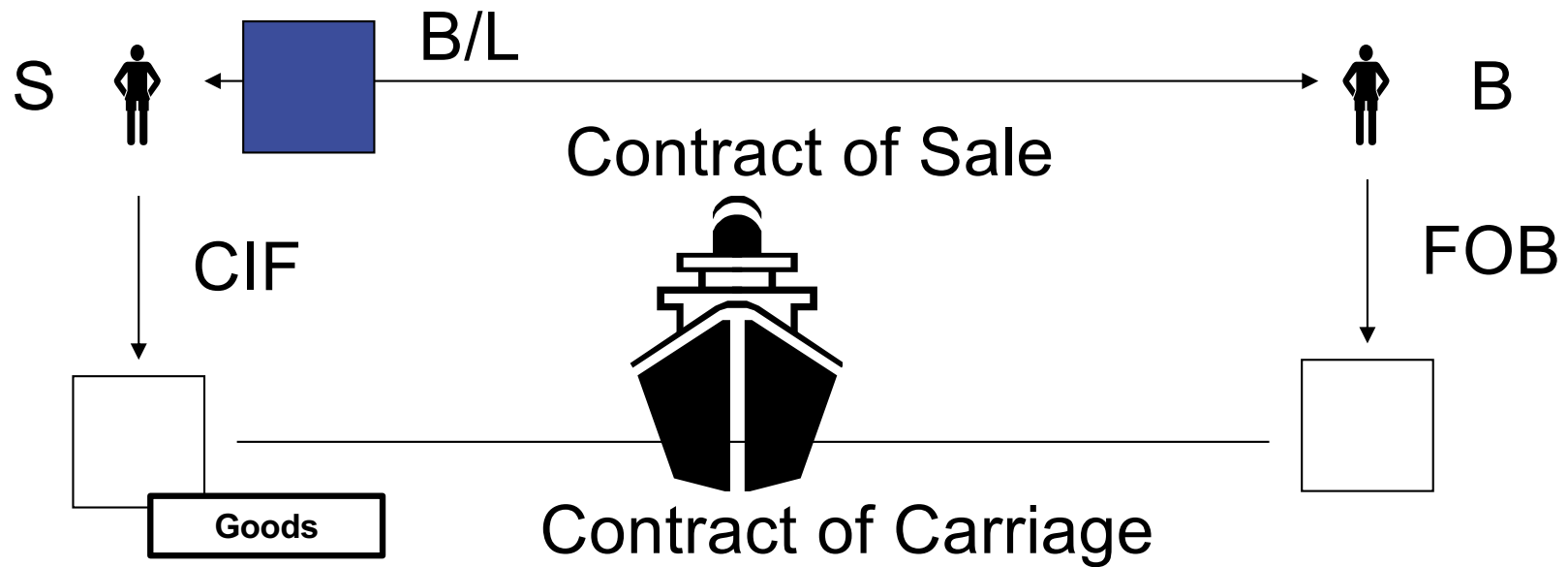
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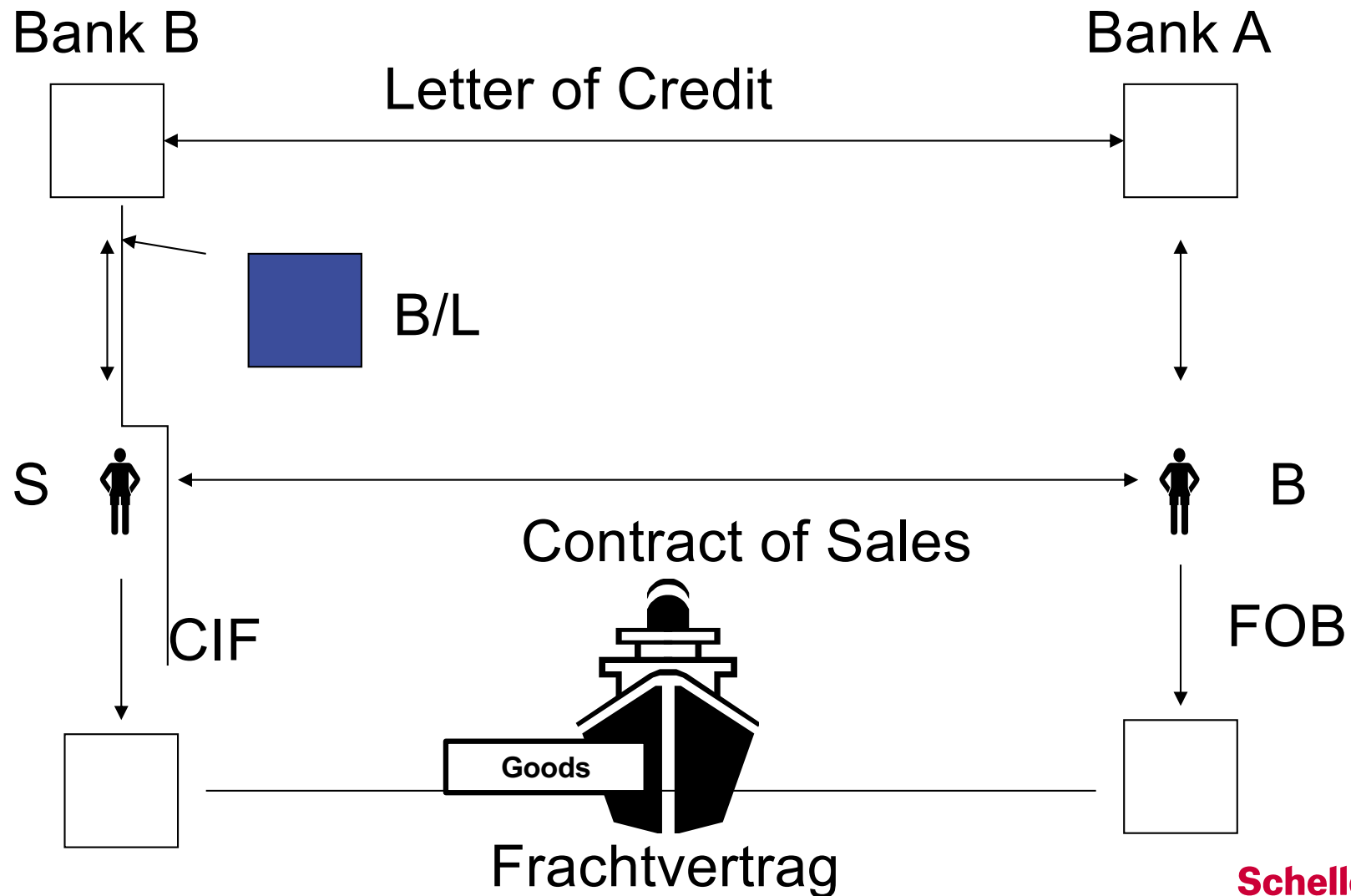


# Simple Sale's Transaction

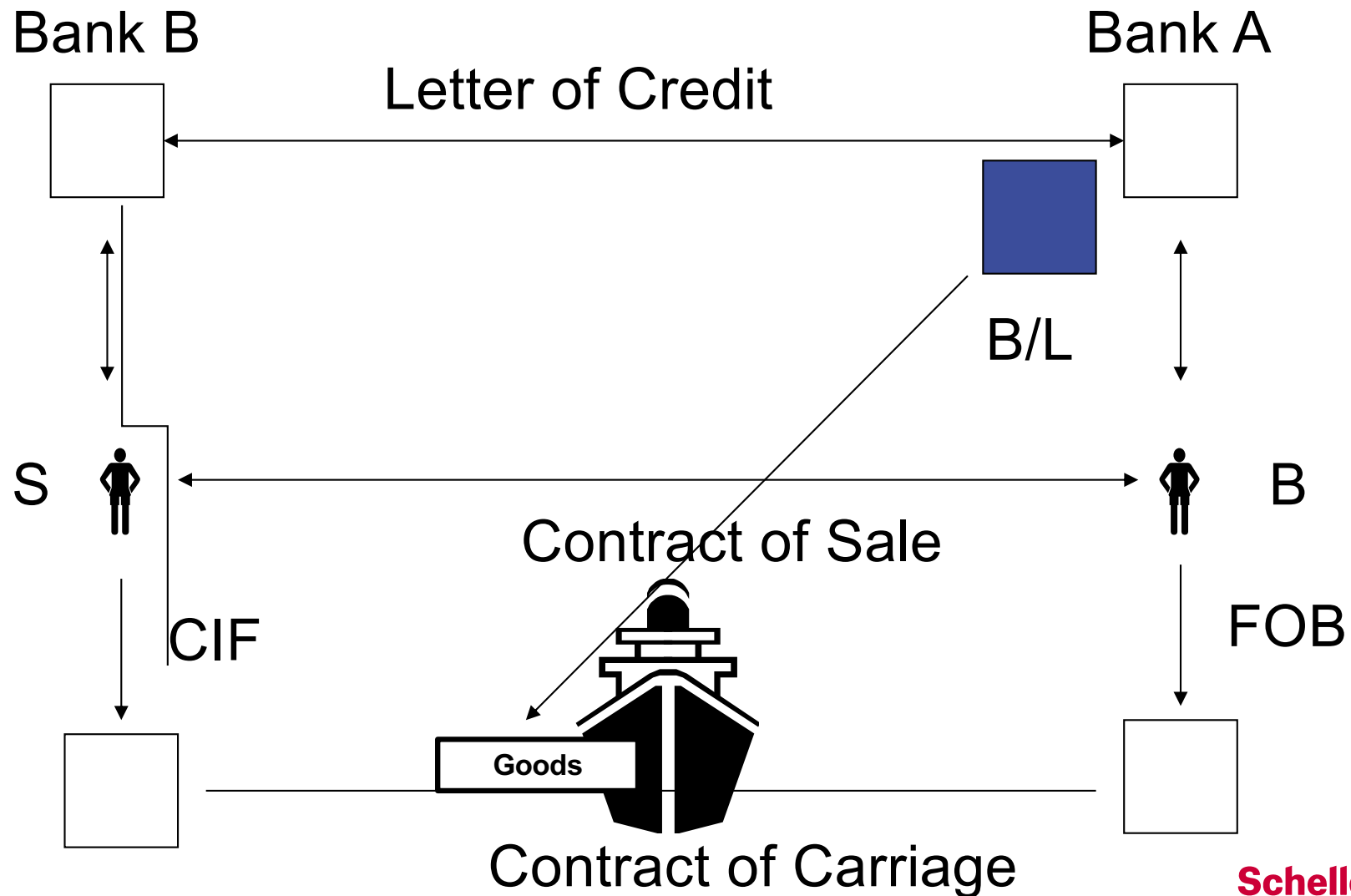




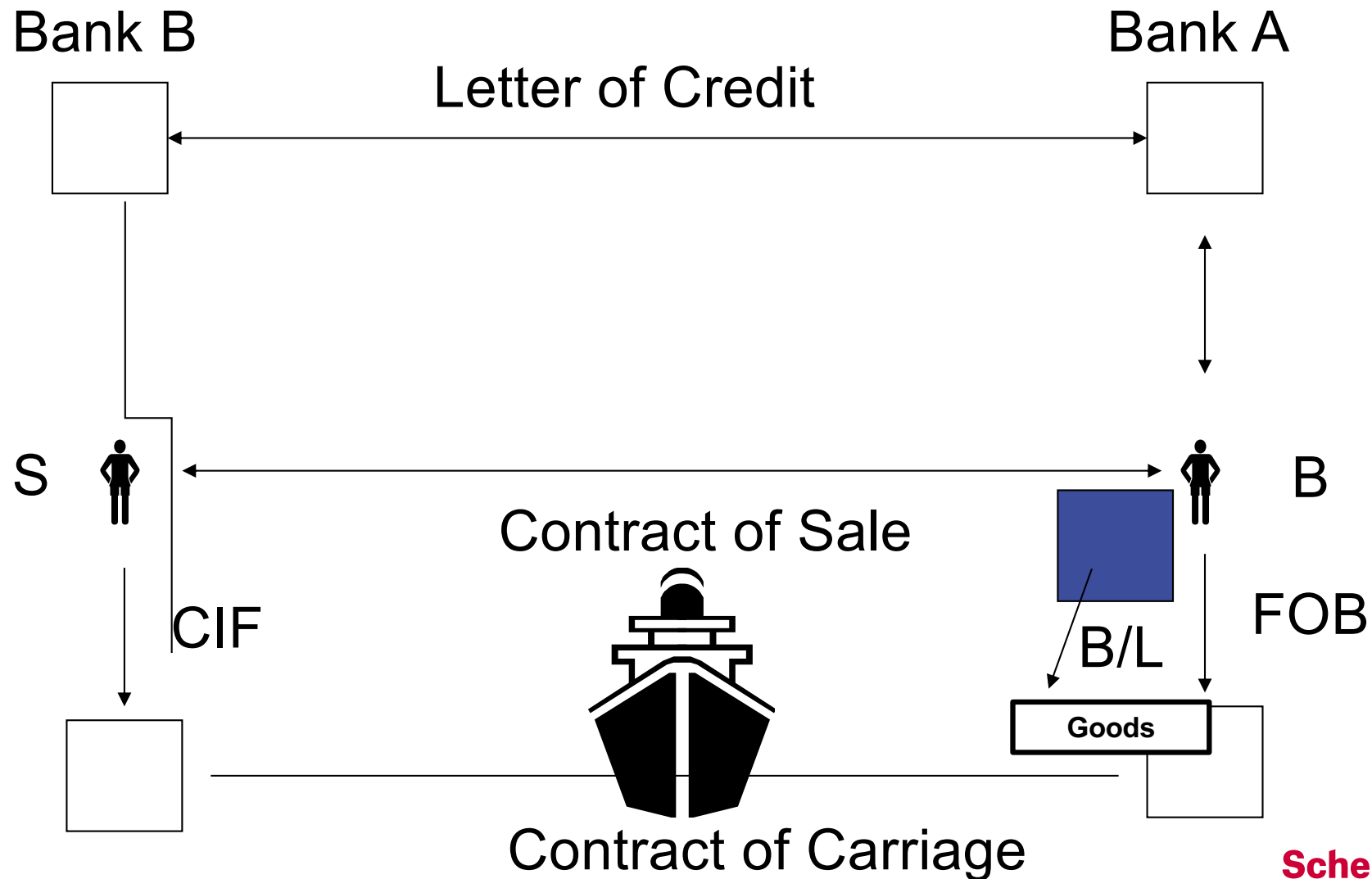
# Simple Transaction



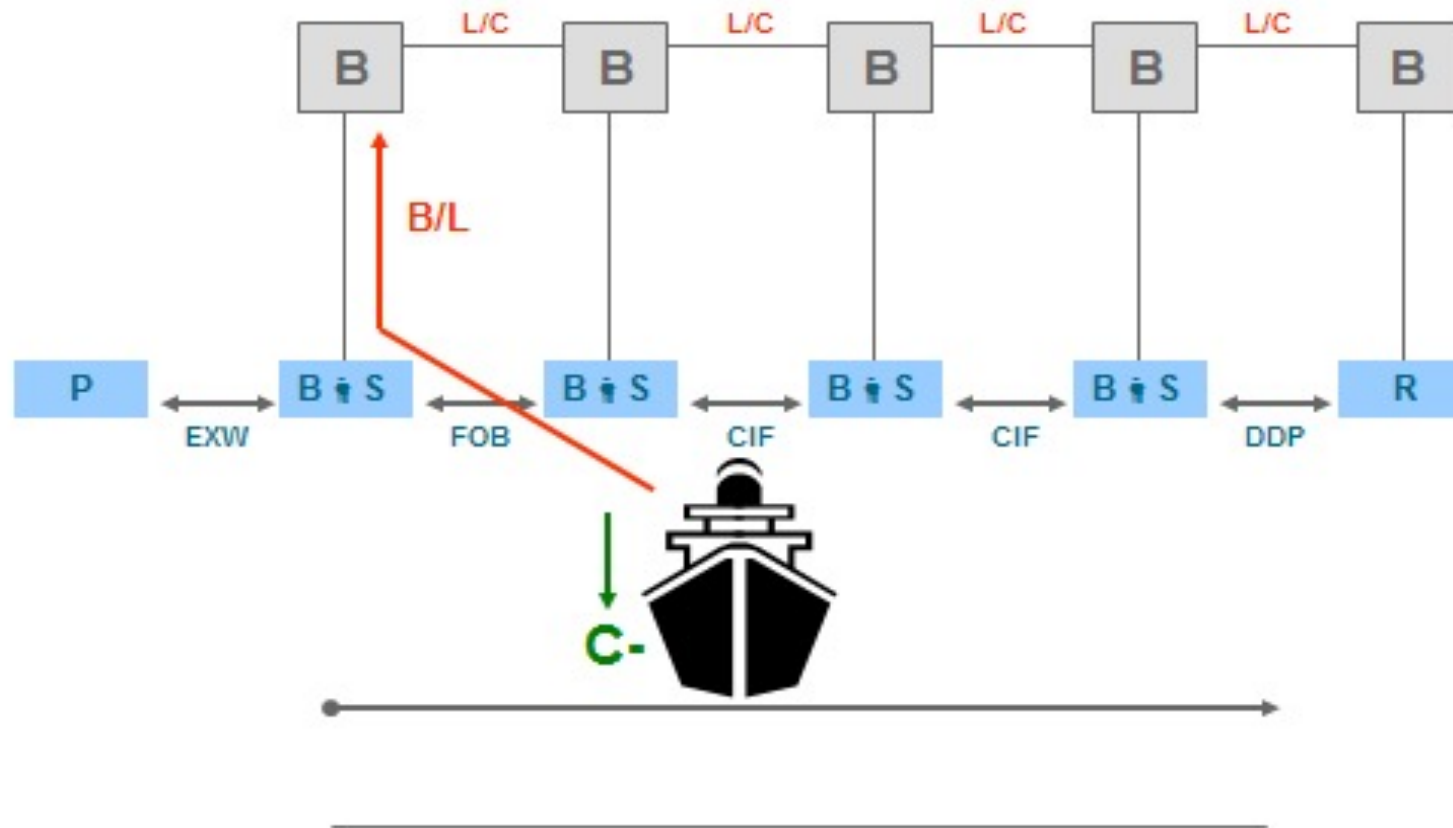
# Simple Sale's Transaction



# Simple Sale's Transaction



# String Sale and Negotiability of the Transport Documents



# Functions of a Negotiable Transport Document in Maritime Law

Traditional (paper) Bills of Lading  
Solutions under the traditional regimes



# **Key Functions of the Bill of Lading**

- Contract of Carriage**
- Proof of Quality / Quantity of Cargo loaded on board**
- Key to the Cargo / Negotiability/ Transferability**

# **Key Functions of the Bill of Lading**

- Contract of Carriage**
- Proof of Quality / Quantity of Cargo loaded on board**
- Key to the Cargo / Negotiability/ Transferability**
  - Key for the Right to Control**
  - Key for Requesting Delivery**
  - Key for transferring rights to the cargo (→ Negotiability)**

# The Bill of Lading in Trade Context

Carriage	Sale	Trade Finance	Other
Contract / Terms	Proof of Carriage under CIF / CFR	-	
Proof of Handing-Over to Carrier	Proof of FOB / CIF Delivery	-	Insurance Cover
Proof of Quality	Proof of Quality	-	
Proof of Quantity	Proof of Quantity	-	Customs etc.
Conclusive Evidence for bona fide Consignee	Claim against the carrier	Some Value for Security	subrogation claim Cargo Insurer
Right of Control	«Possession»	Control / Security	
Key for Delivery at Destination	Obtaining full possession	Security	
Negotiability	Tradability	On Sale in L/C chain	

# Hague-Visby Rules → the liability issues

Carriage	Sale	Trade Finance	Other
Contract / Terms	Proof of Carriage under CIF / CFR	-	
Proof of Handing-Over to Carrier	Proof of FOB / CIF Delivery	-	Insurance Cover
Proof of Quality	Proof of Quality	-	
Proof of Quantity	Proof of Quantity	-	Customs etc.
Conclusive Evidence for bona fide Consignee	Claim against the carrier	Some Value for Security	subrogation claim Cargo Insurer
Right of Control	«Possession»	Control / Security	
Key for Delivery at Destination	Obtaining full possession	Security	
Negotiability	Tradability	On Sale in L/C chain	

# National Law on Bills of Lading

Carriage	Sale	Trade Finance	Other
Contract / Terms	Proof of Carriage under CIF / CFR	-	
Proof of Handing-Over to Carrier	Proof of FOB / CIF Delivery	-	Insurance Cover
Proof of Quality	Proof of Quality	-	
Proof of Quantity	Proof of Quantity	-	Customs etc.
Conclusive Evidence for bona fide Consignee	Claim against the carrier	Some Value for Security	subrogation claim Cargo Insurer
Right of Control	«Possession»	Control / Security	
Key for Delivery at Destination	Obtaining full possession	Security	
Negotiability	Tradability	On Sale in L/C chain	



# Negotiable Transport Documents pursuant to the Rotterdam Rules

Solutions provided by the  
Rotterdam Rules

# New features of the Rotterdam Rules

- **Comprehensive legal regime** for the Contract of Carriage vs. a Liability Regime
- Regime covering the **entire period of custody over the cargo**
- Regime extending to the custody from “**Door to Door**”
- Regime providing all the **key functions** of Negotiable Transport Documents
- Regime based on
  - traditional *lex maritima* principles governing Bills of Ladings
  - national legislations on a harmonized level
  - providing the key interfaces to international trade and trade finance
- Regime providing for **compatibility with existing and future electronic formats** based on the “electronic functional equivalent” principle

# Transport Documents in the Rotterdam Rules

Carriage	Article in RR	Type of Document	Comments
Contract / Terms	1 (1), 25(4), 27(1), 31(1), <b>36-42</b> , 54, 56; 66; 79	B/L; SWB	
Proof of Handing-Over to Carrier	<b>36(2)c</b> ;	B/L; SWB	
Proof of Quality	<b>36(2)</b> ; 36(4); 40	B/L; SWB	
Proof of Quantity	<b>36(1)</b>		
Conclusive Evidence for bona fide Consignee	<b>41</b>	B/L; “Straight” B/L	
Right of Control	<b>50 – 60</b>	B/L (SWB)	
Key of Delivery at Destination	<b>46 – 47</b>	B/L; “Straight” B/L	
Negotiability	<b>57 – 58</b>	B/L	

# Electronic Negotiable Transport “Document”

Electronic (dematerialized)  
Negotiable Transport «Document»  
in the Rotterdam Rules

Chapter 3 Electronic Transport Records

## Article 8 Use and effect of electronic transport records

- Subject to the requirements set out in this Convention:
  - (a) Anything that is to be in or on a transport document under this Convention **may be recorded in an electronic transport record**, provided the issuance and subsequent use of an electronic transport record **is with the consent of the carrier and the shipper**; and
  - (b) The issuance, exclusive control, or transfer of an electronic transport record **has the same effect as the issuance, possession, or transfer of a transport document**.

## Article 9 Procedures for use of negotiable electronic transport records

- 1. The use of a negotiable electronic transport record shall be subject to procedures that provide for:
  - (a) The method for the issuance and the transfer of that record to an **intended holder**;
  - (b) An assurance that the negotiable electronic transport record retains its **integrity**;
  - (c) The manner in which the holder is **able to demonstrate that it is the holder**; and
  - (d) The manner of providing **confirmation that delivery to the holder has been effected**, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs 1 (a) (ii) and (c), the **electronic transport record has ceased to have any effect or validity**.
- 2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.

# Article 10 Replacement of negotiable transport document or negotiable electronic transport record

- 1. If a negotiable transport document has been issued and the carrier and the holder agree to **replace that document by a negotiable electronic transport record**:
  - (a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;
  - (b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and
  - (c) The negotiable transport document ceases thereafter to have any effect or validity.

## Article 10 Replacement of negotiable transport document or negotiable electronic transport record

- 2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to **replace that electronic transport record by a negotiable transport document**:
  - (a) The carrier shall **issue to the holder**, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and
  - (b) The electronic transport record ceases thereafter to have any effect or validity.



# Thank you.

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