



FACULTY OF LAW
Lund University

Erica Englundh

Carrier Liability in Multimodal Transport

LAGM01 Graduate Thesis

Graduate Thesis, Master of Laws program
30 higher education credits

Supervisor: Eva Lindell-Franz

Semester of graduation: Spring Semester 2015

Table of Contents

Carrier Liability in Multimodal Transport	1
Summary	1
Sammanfattning.....	3
Abbreviations	5
1 Introduction	6
1.1. Background.....	6
1.2. Purpose	8
1.3. Method and material	8
1.4. Delimitations	11
1.5. Structure	13
1.6. Some core concepts	13
2 Multimodal contracts of carriage	14
2.1. Multimodal transport	14
2.2. Multimodal contracts of carriage.....	14
2.3. The problems with multimodal contracts	16
2.4. Different approaches to solve the problems	17
3 Jurisdiction and applicable law to contracts of carriage.....	19
3.1. Jurisdiction.....	19
3.2. Applicable law.....	21
3.3. Analytical summary.....	22
4 The unimodal carriage conventions	24
4.1. Background.....	24
4.2. Scope of application	24
4.2.1. <i>Scope of application of the HVR</i>	24
4.2.2. <i>Scope of application of the CMR</i>	25
4.2.3. <i>Extended application to mode-on-mode transport</i>	26
4.2.4. <i>CMR applicable to multimodal carriage outside of Art 2?</i>	28
4.3. Applicability in time	29
4.3.1. <i>In the HVR</i>	29
4.3.2. <i>In the CMR</i>	30
4.4. Transshipment	31
4.5. Non-localized loss.....	32
4.6. Analytical summary.....	33
5 Liability under the unimodal carriage conventions.....	35
5.1. Liability under the HVR	35
5.1.1. <i>Introduction</i>	35
5.1.2. <i>Seaworthiness</i>	36
5.1.3. <i>Care for cargo</i>	37
5.1.4. <i>List of exceptions</i>	38
5.2. Liability under the CMR	39
5.2.1. <i>Introduction</i>	39
5.2.2. <i>General liability</i>	40
5.2.3. <i>Special risks</i>	41
5.3. Package limitations	42
5.3.1. <i>Under the HVR</i>	42
5.3.2. <i>Under the CMR</i>	43
5.4. Analytical summary.....	44
6 Conclusion	47

Appendix A	49
Bibliography	54
Legislation	59
Table of Cases	61

Summary

Multimodal transport is of great practical importance and is widely used in modern international trade. In short, multimodal transport is signified by the moving of cargo from door-to-door by at least two different modes of transport under *one* single contract with *one* (multimodal) carrier responsible for the entire carriage. However, it is common that parts of, or the whole carriage is subcontracted to other carriers. The result would be two layers of contract, the main contract between the multimodal carrier and the consignor of the goods and a second layer of contracts concluded between the multimodal carrier and the subcarriers. The multimodal carrier is fully responsible towards the original consignor but does himself become the consignor in relationship with the subcarriers.

As of today there is no international legislation governing multimodal contracts of carriage. However there is both national and international mandatory provisions governing unimodal carriage, e.g. for sea and road transport. As a main rule parties enjoy freedom of contract, but when mandatory provisions apply these will take precedence over the contract. Hence, when goods carried under a multimodal contract of carriage is lost or damaged it is not obvious what the basis of liability of the multimodal carrier will be. Thus, the purpose with this thesis is to examine and critically analyze the basis of liability of the international multimodal carrier *de lege lata*. The research will be concentrated around what legal regime will govern the liability of the multimodal carrier for loss or damage to goods, what the basis of liability is and also how the liability will vary depending on if the loss or damage could be localized or not.

Since there is no international regime governing multimodal transport, different States have chosen to solve the issue differently. Basically two approaches are used. The network principle will match the applicable carriage regime to the transport leg where the loss or damage occurred. E.g. if goods are damaged during a road transport, a road carriage regime (such as the CMR) would become applicable. Under the uniform system the applicable regime will be decided from the outset, regardless of where the loss or damage occur. Thus, if the CMR would be the governing regime the liability would be decided according to this regime regardless if the damage actually occurred during a road transport. The uniform system has an advantage in cases of non-localized loss, an issue that would be truly problematic when the network principle is applied.

When the international carriage conventions are not mandatory, freedom of contract applies as long as there is no contradictory national legislation in force. However, the basis of liability is uncertain for loss or damage that occur between the applicability of two mandatory regimes. E.g. what is the basis of liability for goods that are lost or damaged in a warehouse awaiting transport?

The different mandatory carriage conventions have different basis of liability and also different possibilities to exclude or limit that liability. Thus, it is important for a multimodal carrier to be able to estimate what liability regime might become applicable under the multimodal transport contract. This because it is not certain that the regime applicable to the multimodal contract will be the same regime that will become applicable between the multimodal carrier and the subcontractor. Thus, the outcome of the claim could create a recourse gap for the multimodal carrier. The result will affect the transaction costs for all parties involved, especially for the multimodal carrier. What will become evident in this thesis is that the basis of liability of a multimodal carrier is very hard to predict and that this uncertainty will have a negative impact on the transaction costs that develops under a multimodal contract of carriage.

Sammanfattning

Multimodala transporter är frekvent förekommande och viktiga i dagens internationella handel. En multimodal transport innebär kort att gods transporteras från dörr till dörr med hjälp av minst två olika transportsätt under *ett* kontrakt med *en* (multimodal) transportör som ensamt ansvarig för kontraktets utförande. Dock är det vanligt att delar av, eller hela, transporten utförs av undertransportörer. Således uppstår två nivåer av kontraktsförhållanden, en mellan befraktaren och den multimodala transportören och en nivå av kontrakt mellan den multimodala transportören och undertransportörerna. Den multimodala transportören är ensamt ansvarig gentemot den ursprungliga befraktaren men blir i det nya avtalet själv befraktare.

Idag finns det ingen internationell reglering som täcker multimodala kontrakt. Däremot finns det tvingande internationell och nationell reglering för de olika enskilda transportsätten, t.ex. för väg- eller sjötransport. Avtalsfrihet råder som en huvudregel men parterna kan inte själva avtala över sådant som har tvingande reglering i nationell eller internationell rätt. När gods skadas eller går förlorat under ett multimodalt transportkontrakt är det således inte självklart vad för sorts ansvarsförutsättningar som omfattar den multimodala transportören. Syftet med den här uppsatsen är därför att utreda och kritiskt granska ansvarsförutsättningarna för en internationell multimodal transportör de lege lata. De frågor som kommer att undersökas är dels vilka regler som blir tillämpliga i en tvist som uppstår på grund av gods som skadas eller går förlorat under en sådan transport. Dels hur ansvarsförutsättningarna ser ut för en multimodal transportör. Dels också hur ansvaret kommer att variera beroende på om skadan kan lokaliseras till ett speciellt transportsätt eller inte.

Eftersom det inte finns någon internationell reglering av multimodala transporter så ser lösningarna olika ut i olika länder. I huvudsak tillämpas två principer när en multimodal tvist ska avgöras. Dels ”the network principle” som går ut på att passa ihop transportsättet där skadan skedde med det tvingande internationella regelverk som finns. Om t.ex. skadan sker under en vägtransport kan det finnas en internationell vägtransports konvention (t.ex. CMR) som kan bli tillämplig. Den andra principen ”the uniform system” går istället ut på att ett och samma regelverk tillämpas oavsett var skadan sker. Om det således är bestämt att CMR-reglerna ska tillämpas så spelar det då ingen roll om skadan verkligen sker under vägtransport. Den senare principen har en fördel i de fall skada inte kan lokaliseras till ett speciellt transportsätt, medan det i den förra principen innebär oklarheter kring vad som då ska gälla.

Där de internationella regelverken inte är tvingande råder i princip avtalsfrihet, om inte nationell rätt består av tvingande reglering. Därmed är det således oklart vad som gäller för skador som sker emellan tvingande reglering av två internationella konventioner. T.ex. vilken ansvarsreglering

som gäller då gods skadas som finns i en lagerlokal i väntan på nästa transport.

De olika tvingande internationella transportregelverken har olika ansvarsförutsättningar samt olika möjligheter att begränsa skadeansvaret. Således blir det av vikt för en multimodal transportör att veta vad för sorts ansvar som möjligtvis kommer att kunna utkrävas av honom. Detta eftersom det inte är säkert att den reglering som gäller mellan den multimodala transportören och befraktaren, (alltså under det multimodala kontraktet) kommer att vara samma reglering som gäller mellan den multimodala transportören och undertransportörerna. Resultatet kommer att påverka transaktionskostnaderna för alla inblandade parter och inte minst den multimodala transportören. Det som kommer att framgå av den här uppsatsen är således att ansvarsförutsättningarna för en multimodal transportör är väldigt svåra att förutse och att det har en negativ inverkan på transaktionskostnaderna.

Abbreviations

Art	Article
B/L	Bill of Lading
Brussels 1	<i>the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement in civil and commercial matters</i>
CMR	<i>Convention on the Contract for the International Carriage of Goods by Road – CMR (Geneva, 19 May 1956) United Nations (UN)</i>
ECJ	the Court of Justice of European Union
EU	the European Union
HVR	<i>the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement in civil and commercial matters</i>
ICC-rules	International Chamber of Commerce Rules on Arbitration
MTO	Multimodal Transport Operator
MMC	Multimodal Contract of Carriage
New Brussels 1	<i>the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and enforcement of judgments in civil and commercial matters</i>
ROME 1	<i>the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement in civil and commercial matters</i>
UNIDROIT- principles	Unidroit Principles of International Commercial Contracts
VCLT	<i>United Nations Convention on the Law of Treaties, Signed in Vienna 23 May 1969</i>

1 Introduction

1.1. Background

In the area of business, parties to a contract always strive at achieving the most profitable and convenient deal possible.¹ The use of containers as means of moving cargo has rapidly increased over the last decades and so has international trade.² This has given rise to the concept of multimodal transport; the moving of goods from door-to-door by two or more modes of transport but under one single contract where the carrier takes responsibility for the entire carriage operation. However, most often the carrier does not perform all the stages of the transport himself.³ Hence, there is often more than one layer to a multimodal carriage contract. The main contract concluded between the consignor and the carrier and several contracts between the original carrier and the subcarriers for each stage of the transport. The carrier is responsible for the whole carriage towards the consignor but does himself become the consignor in relationship with the subcarriers.⁴

As of today there is no uniform regime in force governing international multimodal contracts of carriage, even though several attempts have been made.⁵ The different modes of transport, e.g. road and sea, are subject to their own international and unimodal transport regimes with mandatory provisions. There is also regional and national legislation as well as voluntarily incorporated standard terms governing contracts of carriage.⁶ As a general rule parties enjoy freedom of contract, but where mandatory rules apply these rules are given precedence over the contract.⁷ Hence, when goods covered by a multimodal contract of carriage is lost or damaged during transit it is not obvious which set of rules will be applicable to the dispute at hand.⁸

The outcome of a claim will be dependent on the jurisdiction and choice of law, however, courts in different jurisdictions tend to interpret the concept of multimodal transport contracts differently and hence create an uncertain future for the international multimodal carrier.⁹ There are significant differences in the basis of liability and the possibility to limit the liability in

¹ Hoeks, p. 60.

² Hoeks, pp. 2-4; de Wit, p.5.

³ Hoeks, pp. 6-7; de Wit p. 5.

⁴ Hoeks, p. 7.

⁵ For example: “*the United Nations Convention on International Multimodal Transport of Goods, Geneva, 24 May, 1980*” (*The MT Convention*) and “*the United Nations Convention on the Contracts for the International Carriage of Goods Wholly or Partly by Sea*” (the Rotterdam Rules). These conventions have failed to come into force due to the lack of number of ratifications. Maybe one cannot say that the Rotterdam Rules is a failed concept yet, as it might come into force in the future.

⁶ Hoeks, pp. 10, 12.

⁷ Wilson, p. 254; Coldwell, p. 109, 117-118.

⁸ Hoeks, p. 12-13; de Wit, p. 7.

⁹ Hoeks, p. 35.

the various carriage regimes.¹⁰ Due to the different layers of the contract, the carrier could become fully liable towards the consignor for loss or damage to goods that occurred during a stage that was performed by a subcarrier. The main carrier would then like to be able to seek redress against the carrier at fault. Due to the lack of an international regime covering multimodal contracts of carriage the outcome of the carrier's liability towards the consignor will be uncertain.¹¹ However, the subcarrier's liability towards the main carrier will often be governed by one of the unimodal transport regimes. Hence, there might be a discrepancy in liability between the carrier and the subcarriers. The main carrier is put at risk of having to remunerate the consignor without being able to claim damages or enough damages, from the actual carrier at fault in the second layer of contracts.¹²

Multimodal transport is of great practical importance in modern international trade but interestingly enough the legal system has not kept pace with the technology improvements and the transport sector.¹³ The multimodal carrier and the multimodal contract of carriage have a contractual status, not a legal status.¹⁴ The current international framework based on unimodal transport conventions, national laws and standard contracts created by the industry contribute to the complex regulatory status. There is no predictability in liability for loss or damage to goods covered by a multimodal contract of carriage. Both to the carrier and the cargo owner it is of essence to be able to estimate the liability risk, thus also the applicable liability regime. The risk and the possibility to limit the potential liability will affect the transaction costs. It will determine the freight cost, the insurance cover needed and the negotiability of the terms of the contract. The liability will also affect the recourse action.¹⁵

¹⁰ Compare e.g. strict liability in Art 17 (3) CMR with due diligence in Art III (1) (a) HVR.

¹¹ de Wit, p. 7; Wilson, p. 254.

¹² Hoeks, pp. 8-9; de Wit, p. 7.

¹³ UNCTAD report, p. 7, available at: http://unctad.org/en/Docs/sdtetlb20031_en.pdf

Last visited 2015-05-14; Hoeks, p. 10.

¹⁴ de Wit, p. 231.

¹⁵ de Wit, pp. 137-147, 231; Hoeks, pp. 13-14; Booyesen p. 294.

1.2. Purpose

The purpose with this essay is to examine and critically analyze multimodal carrier liability *de lege lata*. However, there is no international convention in force governing multimodal carriage. Several issues thus become of interest. Which conventions and provisions apply to the liability of the multimodal carrier? How is the liability of the multimodal carrier different from the liability of a carrier under the unimodal transport conventions? What are the problems associated with multimodal transport and carrier liability? The essay will be written from the perspective of the multimodal carrier as a defendant. The focus will be carrier liability for loss and damage to goods inside containers. The presentation will be concentrated around a theory that multimodal carriage as a concept works even without a proper international legal framework but that it will contribute to unnecessary transaction costs. In order to be able to fulfill the purpose of the essay three issues will be examined separately;

- Which legal regime/s will govern a dispute arising from an international multimodal contract of carriage?
- What is the basis of liability of a multimodal carrier?
- How will the liability of the carrier vary depending on whether damage or loss could be localized or not?

1.3. Method and material

The focus of this essay is carrier liability in multimodal transport. Considering the lack of an international legal regime governing multimodal carriage it would not be appropriate to use the traditional Swedish legal dogmatic approach for this thesis.¹⁶ Instead the author has chosen to compare carrier liability in two of the existing international unimodal carriage conventions for sea and road transport.¹⁷ Comparative studies are helpful not only when examining a certain issue within the national legislation of two different States but also when interpreting international conventions.¹⁸ Due to the lack of a multimodal legislation and because these two conventions will be of interest for a multimodal carrier the author found the comparison necessary.

¹⁶ There is an ongoing debate among scholars what really constitutes this method. The most limited explanation would be a study of the sources of law in a hierarchical order; constitutional law, law, legislative preparatory works, case law, legal literature. However, the method could be extended also to include e.g. the methods of interpreting contracts and comparative research etc; Sandgren, pp. 35-39, 53; Hellner 2001, pp. 21-26; Peczenik teori, pp. 33-36.

¹⁷ This might not be seen as the traditional comparative method, e.g. comparing certain issues in the legislation of two or more States, for more info see; Bogdan 2003, pp. 18-21.

¹⁸ Bogdan 2003, pp. 30, 33; Sandgren, pp. 51-52.

The most common combination of multimodal transport, sea and road transport, has been chosen for this essay.¹⁹ Thus the “*Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 23 February 1968*”²⁰ (the HVR, covering sea carriage) and the “*Convention on the Contract for the International Carriage of Goods by Road – CMR (Geneva, 19 May 1956) United Nations (UN)*”²¹ (covering road carriage) will be examined in more detail.

Furthermore the author has chosen to rely much on international legal doctrine covering carrier liability, in particular multimodal carriage. The authors used will predominantly not be Swedish due to the international character of the thesis. The works of several prominent legal scholars within the field of transport law such as Malcolm A. Clarke²² and Ralph de Wit²³ will be included. This approach does of course have its flaws. But, considering there is no international legislation to examine one is referred to how national legislators and courts have dealt with the issue. According to Bogdan and Bernitz the use of doctrine, both national and foreign, contributes to a better understanding of how e.g. a convention or an issue has been interpreted or understood in another State.²⁴ Hence, the use of the works of legal scholars provides useful information and comparative analyzes regarding the subject of interest.²⁵

The case law presented in this essay is by no means an effort of trying to be exhaustive but merely to show the diversity of interpretations given to carrier liability and multimodal contracts of carriage. The focus will be international, however, kept within the Member States of the European Union (EU).²⁶ Thus, conclusions drawn from the material might not be accurate in *all* Member States or elsewhere. Again, the author will rely much on case law presented in the judicial doctrine. The reason for this is twofold; there is no room or time for an elaborate examination of all cases concerning multimodal carrier liability²⁷ and the author is only familiar with the Swedish and English language. Bogdan suggests that language could create a barrier and that secondary sources, such as doctrine, could assist in helping to understand first hand material such as the provisions of an international convention.²⁸ As a main rule it is of course always useful to go straight to the first hand material. As a defense the author wants to stress the argument that legal literature is of importance for legal research and if such material could normally be trusted regarding the interpretation of the material law, there is nothing saying it

¹⁹ Ulfbeck, pp. 40-41.

²⁰ Also known as “*the Hague/Visby Rules*”, from hereon after referred to as the HVR.

²¹ Hereon after referred to as the CMR.

²² Emeritus Professor of Transport Law at the University of Cambridge.

²³ Professor of transport law at the University of Brussels, PhD.

²⁴ Bernitz amongst others, p. 187-188; Bogdan 2013 p. 31; Heller 2015, p. 30; Bogdan 2003, p. 41-43; Sandgren, p. 51-52.

²⁵ Bernitz amongst others, pp. 187-188, 201; Bogdan 2013, p. 31; Johansson, pp. 42-43.

²⁶ Case law derived from England, Germany and the Netherlands will be examined.

²⁷ Booyen, p. 294.

²⁸ Bogdan 2003, pp. 41-43.

should not also be trusted when examining and interpreting case law.²⁹ Independent research for case law has been done via databases such as Heinonline and Westlaw and by reference from other cases.

In Europe there is a division between civil law and common law.³⁰ A legitimate question to ask is if and how this will affect the decisions of national courts, e.g. as a common law judge is more likely to follow an old decision before a new one, a concept quite foreign to a civil law judge.³¹ There might also be a difference in how States interpret and classify an issue, for example as belonging to procedural or material law.³² Yet another issue is whether a national court is bound by a decision from another national court regarding an interpretation of a provision origination from a convention both States are parties to. Within the EU the Court of Justice of European Union (the ECJ) creates uniformity for all member States regarding the interpretation of EU law. However, no such international court of law exists for the interpretation of international carriage conventions. Hence, a national court is not bound by a decision from another State party to a carriage convention.³³ As a result, the case law will not be coordinated in the same manner as e.g. EU-law.³⁴ However, since the same provisions become valid in all member States to an international convention and in order to create uniformity throughout, it would be of value to examine how a particular provision have been interpreted in a similar case in another member State.³⁵ It is also true that when applying the provisions of an international convention the normal procedures and interpretation methods of one's own State should give way for the purpose of harmonization and equal interpretation of the text of the international convention.³⁶ Legal literature would again provide a useful tool for digesting and interpreting material from other jurisdictions.³⁷ It should be noted that many disputes regarding contracts of carriage are resolved by arbitration. However, many of these awards are ad hoc decisions not made available to the public, hence, they will not contribute to predictability.³⁸

None of the carriage conventions provide information on how the provisions should be interpreted and courts are often reluctant to use the preparatory

²⁹ Bogdan 2003, pp. 41-43; Bernitz amongst others, pp. 187-188, 201; Bogdan 2013, p. 31.

³⁰ Quite simplified, civil law is based on written legislation and the courts interpret the law from the written texts. Case law from similar cases is examined but is not binding upon the courts in future cases. The common law system, however, is primarily built on judicial decisions. If there are any written statutes the courts are bound by them but tend to interpret their provisions strictly. The interpretation and following application by the courts is what really becomes binding law; Bogdan 2013, pp. 92-93, 111, 113, 152; Bernitz amongst others, pp. 27-31.

³¹ Bogdan 2013, pp. 92, 152; Bernitz amongst others, p. 251.

³² The so-called "classification problem"; Bernitz amongst others, pp. 30-31.

³³ Peczenik teori, pp. 264-267; Bogdan 2013, pp. 18-20; Bernitz amongst others, pp. 187-188.

³⁴ Bernitz amongst others, p. 188; Bogdan 2013, p. 19.

³⁵ Peczenik teori, pp., 264-267. Bogdan 2013, pp. 18-20; Bernitz amongst others, p. 187.

³⁶ Bogdan 2013, p. 19, 92-93, 111, 113; Bernitz amongst others, p. 187; Clarke, pp. 4-5; *James Buchanan & Co v Babco Forwarding & Shipping [1977] QB 208, [1978] AC 141.*

³⁷ Bernitz amongst others, pp. 187-188, 201; Bogdan 2013, p. 31.

³⁸ Wilson, pp. 335-336.

works to help with the understanding and interpretation.³⁹ The “*United Nations Convention on the Law of Treaties, Signed in Vienna 23 May 1969*” (VCLT) could serve as a general method of interpretation.⁴⁰ E.g. Art 31 stating; “*A treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*”. The convention applies to treaties concluded by States and by ratifying the convention a State is obliged to interpret other treaties according to the VCLT.⁴¹ The VCLT consists of a codified framework of the current prevailing opinion of customary public international law. The VCLT is applicable to treaties that are concluded after the VCLT came into force, however, both carriage conventions examined in this essay were concluded prior to the VCLT.⁴² The application of the VCLT to the carriage conventions has been questioned and it is therefore not certain these rules will be used.⁴³

1.4. Delimitations

Contracts of combined transport can take a variety of forms.⁴⁴ However, this essay will only examine multimodal contracts of carriage as defined in section 2.1-2.2. Freight forwarders will be excluded since these are not traditionally seen as “carriers”.⁴⁵ National legislation has been left out since the scope of this thesis is of an international character. The focus will be kept to member States of the European Union to contribute to more explicit research. Not all international carriage conventions will be covered due to space limitations. The “*International Convention for the unification of certain rules of law relating to bills of lading, Brussels, August 25, 1924*” (The Hague Rules) and the “*United Nations Convention on the Carriage of Goods by Sea, 1978*” (the Hamburg Rules) are international conventions applicable to sea carriage, however, the author has chosen to exclude them for the following reasons; the scope of the essay does not allow an elaborate examination of all applicable sea regimes and most members to the Hamburg Rules are developing countries, the focus of this thesis will not be those countries. The HVR is the amended version of the older Hague Rules and both Great Britain and the Netherlands have denounced the Hague Rules, both these States will be referred to in this essay.⁴⁶ The excluded regimes are

³⁹ Clarke, p. 9; Girvin, p. 255; Hoeks, p. 136.

⁴⁰ Art. 31-33; Hoeks, p. 135; Clarke, pp. 6-7.

⁴¹ Art. 1; Clarke, p. 6-7.

⁴² Art 4 VCLT, VCLT entered into force on 27 January 1980, CMR concluded in 1956 and HVR concluded 1968; Hoeks, p. 135.

⁴³ Primarily because the scope of the VCLT is public law but the carriage conventions apply to matters between private parties; Hoeks, pp. 135, 376; Clarke, pp. 6-7.

⁴⁴ “Intermodal transport” or “combined transport” are other definitions used. However, some scholars give them somewhat different meanings, thus they should not be used interchangeably; Hoeks, p. 2, 3, 6. Freight forwarding contracts are not multimodal contracts of carriage; Hoeks, p. 54.

⁴⁵ Wilson, p. 253; Hoeks, p. 52, 54; de Wit, p. 19.

⁴⁶ Hoeks, p. 302, 309.

nevertheless of great importance but have to be dealt with elsewhere.⁴⁷ The *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea* (the Rotterdam Rules) will not be covered. The regime is not yet in force and should it ever come into force there has been so much written about it already there is no need for this essay to also concentrate around the subject.⁴⁸

The essay will only cover contractual obligations between commercial participants, not States or natural persons. Transport delays have been excluded to allow a more in-depth analysis of carrier liability for loss and damage to goods. Several other aspects of multimodal transport and carrier liability has been excluded, these include possible problems identifying the carrier, evidence, the burden of proof, insurance and calculation of damages. These could all suffice for a thesis of their own. Since the central issues of this thesis deals with the material law of carrier liability procedures for enforcement of court decisions will not be dealt with. Since a comparison of carrier liability between two unimodal conventions are made, not every basis of liability will be covered. The author has chosen to examine a few basis of liabilities to feature the similarities and differences and how these could be significant to the multimodal carrier.

Charterparties and bulk cargo carriage will not be examined since these are special types of carriage contracts. The rights of a third party holder of a bill of lading will not be covered because the scope of the essay would become too broad if this too was to be included. Neither will the basis of liability of servants and agents be examined for the same reasons. The exceptions of liability in the carriage conventions will be mentioned briefly for the understanding of the basis of liability. Standard contracts and rules such as the ICC rules⁴⁹ and the Unidroit principles⁵⁰ will not be examined. The author is aware that standard terms are widely used in the transport sector. However, such rules do not precede mandatory provisions set out in international conventions.⁵¹ Furthermore, this thesis is concentrated on the legislation regarding multimodal carrier liability and not the use of voluntarily incorporated private initiatives.

⁴⁷ The HVR and the Hague Rules are similar but of course there are differences, e.g. in the monetary amount for limitation of liability. When reference to case law is made in this essay the provisions examined are however the same.

⁴⁸ E.g.: Baatz Yvonne "*The Rotterdam Rules- A practical Annotation*"; Rhidian Thomas "*The Carriage of Goods by Sea Under the Rotterdam Rules*"; Bokareva Olena "*Liability for Delay in Multimodal Transport under the Rotterdam Rules*" and Basu Bal A "*The Legal Framework for Electronic International Trade: The Rotterdam Rules in Perspective*".

⁴⁹ International Chamber of Commerce Rules on Arbitration.

⁵⁰ Unidroit Principles of International Commercial Contracts.

⁵¹ Hoeks, p. 23.

1.5. Structure

The thesis starts of with a short section explaining some core concepts. Appendix A contains the relevant provisions in full text. The author has chosen this approach to make the reading easier, more fluent and less repetitive to the reader. The upcoming section defines multimodal carriage and the possible problems with – and solutions to – this concept. In the following section jurisdiction and choice of law will be discussed. The fourth section compares the existing unimodal carriage conventions covering sea and road transport. Several issues will de discussed such as scope of application and applicability in time. This section will include an examination of how these conventions will affect the MTO. The fifth section deals directly with carrier liability. At the end of each section there will be an analytical summary. A short analysis and conclusion at the very end of the thesis will tie it all together.

1.6. Some core concepts

B/L: The traditional Bill of Lading is both a type of transport document as well as a document of title. It serves as a receipt for the goods carried and for the carriage itself and gives the holder a right to claim the goods.

Carrier: The person concluding the carriage contract with the consignor and who is to carry the goods on the contracted journey. The carrier is only responsible for his own carriage performance of one particular leg.

Consignor/Shipper: The cargo owner who concludes the transport contract with the carrier.

Consignee: The person entitled to receive the goods from the carrier.

Claimant: The shipper or the consignee. For the sake of this thesis the difference does not matter, as it is the defendant (the MTO) who is of interest.

MTO: The person who concludes a multimodal transport contract with the consignor/shipper and is responsible for the entire performance of the carriage according to the contract.

2 Multimodal contracts of carriage

2.1. Multimodal transport

Since the core issue of this essay is multimodal transport an explanation of the phenomenon is in order. The United Nations has given a definition to international multimodal carriage that has gained general acceptance:⁵²

*“International multimodal transport means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country”*⁵³

Important to note is the prerequisites for at least two different modes⁵⁴ under one single international contract with one carrier being responsible for the entire transport.⁵⁵ A multimodal carrier assumes responsibility for the transport contract as a principal, not as an agent or freight forwarder as these are usually not considered carriers.⁵⁶ The opposite to multimodal carriage would be unimodal carriage, carriage of goods with only one mode of transport. In such as case separate contracts would be negotiated with different carriers as well as non-carriers (such as terminal operators) for each stage of the transport.⁵⁷

2.2. Multimodal contracts of carriage

The multimodal contract of carriage is consensual⁵⁸ and will be concluded between the consignor and the multimodal carrier (MTO).⁵⁹ However, even though the MTO is responsible for the entire transport it is uncommon that the MTO performs the entire journey himself.⁶⁰ The journey is often divided

⁵² Hoeks, p. 6; de Wit p. 3.

⁵³ Art. 1 of “*The United Nations Convention on International Multimodal Transport of Goods, Geneva 24 May 1980*” (also called the MT, MTO or MTC Convention). However, the convention is not in force and might not ever be; Hoeks, p. 6; Wilson, p. 259.

⁵⁴ “Mode” = the way the goods are carried, e.g. by truck, ship etc. Hoeks, pp. 65-66.

⁵⁵ From the moment the MTO receives the goods until he delivers them; Hoeks, p. 6.

⁵⁶ Wilson, p. 253; Hoeks, p. 6, 65.

⁵⁷ Wilson, p. 253; de Wit, p. 18.

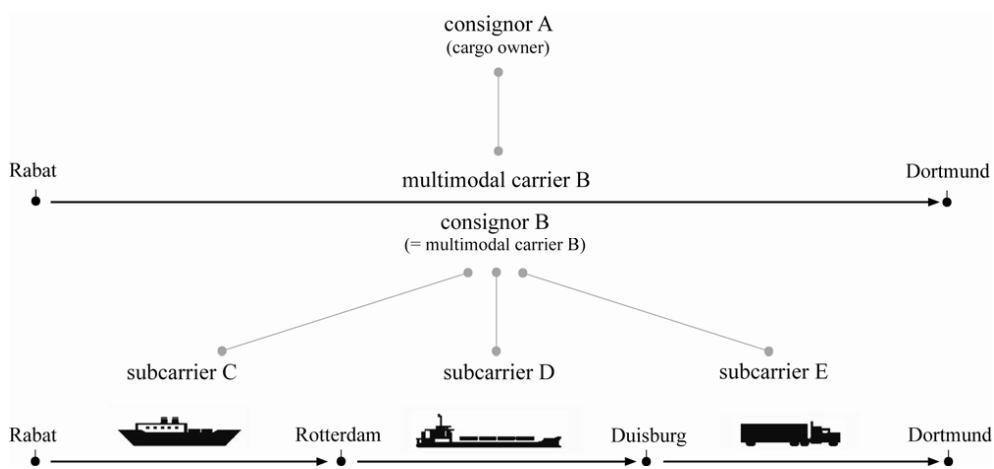
⁵⁸ Hoeks, p. 81; Clarke, p. 38.

⁵⁹ The carrier concluding the contract of carriage with the consignor is often referred to as the “contractual carrier” or the “main carrier”. In the case of a multimodal contract of carriage the more frequently used term would be MTO.

⁶⁰ There are carriers that do not have the capacity to carry *any* goods themselves. These carriers are often referred to as “paper carrier” or NVOCCs “non vessel-operating common carrier”; Hoeks, p. 7 footnote 28.

into stages where individual contracts are negotiated and concluded between the MTO and different unimodal carriers for each individual stage.⁶¹ The rights and responsibilities of the consignor are, however, solely based on the multimodal contract negotiated with the MTO and not with the actual carriers.⁶² Hence, it is not uncommon to have two or more contract levels to a multimodal contract of carriage of goods. The first level would be the main contract concluded between the consignor and the MTO. The second layer would be the contracts the MTO negotiates and concludes with the actual carriers, the MTO thus becoming the consignor in relation to these subcarriers.⁶³

Figure A: Subcontracted multimodal carriage.⁶⁴



Certain carriage contracts make it possible for the MTO to decide what modes of transport to be used but does not necessarily stipulate the different options in the contract.⁶⁵ These “unspecified” or “optional” contracts make it impossible to determine from the outset if the transport will be unimodal or multimodal and if any of the carriage conventions will become applicable.⁶⁶ If more than one mode is allowed according to the contract and the carriage is actually performed by two or more modes, the definition of a multimodal contract of carriage could be extended beyond the above definition to include also these types of contracts.⁶⁷ When defining a multimodal contract of carriage this way, it opens up for the possibility that the characterization of

⁶¹ In multimodal transport these carriers are often referred to as “subcarriers” or “actual carriers”; Hoeks, p. 7.

⁶² Hoeks, p. 8; Wilson, p. 253.

⁶³ Hoeks, pp. 7-8; Wilson, p. 253.

⁶⁴ Figure reproduced with the permission of publisher (Kluwer Law International, Stacy DiFranco) from author; Hoeks Marian; “*Multimodal Transport Law*”; Chapter 1, “*The Contemporary Situation and its Pitfalls*” 1.2.1. “*Subcontracting Carriage*”; Page 7; Figure 1.1.; 1st ed.; 2010.

⁶⁵ Hoeks, pp. 63, 85-88.

⁶⁶ Ramberg 1983, p. 109.

⁶⁷ Hoeks, p. 63, 85-87; de Wit, p. 171-172.

the contract might be influenced by the actual performance of the carriage.⁶⁸ However, should the parties have contracted on a specific mode and the carrier deviates from what is contracted, this usually constitutes a breach of contract.⁶⁹

The multimodal contract of carriage could be considered a mixed contract, e.g. one contract with two or more purposes.⁷⁰ The carrier regularly performs not only the carriage but also other tasks like arranging storage in-between transports. It is not always obvious when these obligations should be regarded as separate or belonging to one another. Should the obligations be regarded as two separate obligations and therefore also as separate contracts or does the main obligation (e.g. the carriage) absorb the ancillary one (e.g. storage) into one contract? The latter alternative would result in the rules governing the main obligation to apply to the entire contract.⁷¹

There is also a possibility to regard the multimodal contract as a contract *sui generis*.⁷² As a result, none of the international mandatory carriage conventions would be applicable since those conventions specifically cover contracts of unimodal carriage. National common contract law and transport law (if there is any) would govern the multimodal contract should it be considered a contract *sui generis*.⁷³ A counterargument to this idea would be that since there is no multimodal regime in force, the scope of the unimodal carriage conventions should not be circumvented because the contract of carriage happens to be multimodal. Thus the unimodal provisions should apply when according to the particular convention it is applicable.⁷⁴

2.3. The problems with multimodal contracts

There is no international multimodal convention in force⁷⁵, however, there are several conventions with mandatory provisions covering different unimodal modes of transport, all with their own provisions on liability.⁷⁶ There are also regional and sub regional rules as well as national legislation covering multimodal contracts of carriage.⁷⁷ Freedom of contract is an overall principle but mandatory provisions, international or national, will prevail over contract clauses.⁷⁸ But, as will be shown in upcoming sections, the uniform regimes are basically only applicable to the multimodal contract of carriage when their

⁶⁸ Hoeks, p. 6, 85-87; de Wit, p. 171-172.

⁶⁹ Hoeks, p. 83; de Wit, p. 172.

⁷⁰ Hoeks, p. 42, 61, 68-70.

⁷¹ Hoeks, pp. 60-62.

⁷² Meaning a contract so specific it cannot be referred to any other type of contract; Nikaki, p. 96.

⁷³ Hoeks, p. 75-77. Ramberg 2004, p. 137; Ramberg 1983, p. 99; Lamont-Black, p. 713.

⁷⁴ Lamont-Black, p. 713.

⁷⁵ Hoeks, p. 109; Wilson, p. 254.

⁷⁶ E.g. HVR and CMR; Wilson, p. 254.

⁷⁷ Hoeks, p. 10.

⁷⁸ Wilson, p. 254; Coldwell, p. 116-117; Ramberg 2004, p. 137.

own scope of application allows them to be.⁷⁹ The problem is the uncertainty as to which set of rules will apply and thus the possible compensation to be paid. This will affect transaction costs such as legal and evidentiary enquiries, litigations or court proceedings, insurance and freight.⁸⁰ It will also contribute to forum shopping.⁸¹ As a result transport users and developing countries without adequate means and resources cannot participate and gain access to markets on equal terms as the rest of the participants in international trade.⁸²

Furthermore, the main contract and the contracts of the second layer are separate legal entities, there is no contract between the original consignor and the subcarriers.⁸³ The contracts concluded in the different levels mentioned above may be subject to different legal systems, hence, different rules of liability could apply to the MTO and the actual carrier. The MTO is responsible towards the consignor, but to the actual carrier the MTO *is* the consignor.⁸⁴ In the first layer the original consignor seeks redress against the MTO regardless of when and where during transit the loss or damage occurs. In the second layer of contracts the MTO wants to seek redress against the actual carrier for loss or damage to the goods invoked by the actual carrier on his leg of transport. Depending on the circumstances, the carrier might not regain all what he had to compensate the original consignor.⁸⁵

2.4. Different approaches to solve the problems

As mentioned above, there is no international uniform convention governing multimodal contracts of carriage, hence different jurisdictions handle the issue differently. To solve the problems associated with these types of contracts basically two approaches are used; the network approach and the uniform system.⁸⁶

The network approach divides the journey into stages as if there had been separate contracts for each stage. If the loss or damage could be localized to a certain mode, that mode will be matched with the applicable regime. The benefit of this approach is that the main contract and the second layer of contracts will be matched and the same rules will apply. The disadvantage would be cases of non-localized loss and gradual loss plus the uncertainty as to what rules to apply in-between the applicability of two different regimes, e.g. goods stored in warehouses awaiting shipment.⁸⁷

⁷⁹ Hoeks, p. 8; Wilson, p. 254.

⁸⁰ UNCTAD report, p. 10; Hoeks, p. 14, 16, 35; Booyesen, p. 294; Crowley, p. 1503-1504; Nikaki, p. 75, 77.

⁸¹ Hoeks, p. 35.

⁸² UNCTAD report, p. 10; Hoeks, p. 14, 16; Nikaki, p. 78.

⁸³ Hoeks, p. 8.

⁸⁴ Hoeks, p. 7-8.

⁸⁵ Hoeks, p. 8. However, this will often be an insurance company and not the carrier himself. Even so, the insurance company might have to stand the loss or damage inflicted by the sub-carrier.

⁸⁶ Wilson, p. 254; Hoeks, p. 25; de Wit, p. 138.

⁸⁷ Hoeks, pp. 12-13, 27-29; de Wit, pp. 138-139.

In the uniform system the same rules of liability will apply throughout the entire transport, irrespective of mode of transport or where the damage occurred. The advantage of this system would be the transparency of the contract from the outset. Localized as well as non-localized damage would be covered. The disadvantage would be the possibility of a recourse gap. The main contract (the multimodal contract) will be subject to the uniform system, but the second layer of contracts will still be subject to the applicable regime depending on mode.⁸⁸

In Europe the network solution is the approach most frequently used by the courts. The network approach is also the solution most adopted in standard terms such as the ICC-rules.⁸⁹ It should be pointed out that standard terms are widely used in multimodal transport. However, such terms will only operate if incorporated into the multimodal contract of carriage and as long as they do not contradict any mandatory provisions of the international carriage conventions or provisions of national law.⁹⁰ Since contractual terms are bound to be interpreted in various ways depending on jurisdiction and these rules are incorporated into such contracts, they will not provide uniformity throughout the transport sector. The standard contracts thus lack the effect of mandatory provisions.⁹¹

⁸⁸ Hoeks, p. 25-27; de Wit, p. 143-144.

⁸⁹ Ulfbeck, pp. 47-49.

⁹⁰ Hoeks, p. 23-24; Lamont-Black, p. 712.

⁹¹ Crowley, p. 1498.

3 Jurisdiction and applicable law to contracts of carriage

3.1. Jurisdiction

When a dispute arises the claimant wants to address the court that presumably would give the most favorable outcome to the suit. It is the private international law of the court in the State addressed that determines whether to accept the claim or not.⁹²

There is no global convention governing the issue of jurisdiction, however, all member States of the EU are parties to the *Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and enforcement of judgments in civil and commercial matters* (New Brussels 1).⁹³ As a basic principle of the New Brussels 1 parties to a particular legal relationship are free to determine which court should have jurisdiction in case a dispute arises from the relationship. This choice of forum is to be considered exclusive unless the parties have stipulated otherwise.⁹⁴ If the contract lacks express provisions concerning the choice of forum⁹⁵, the main principle is that jurisdiction should be conferred on the court in the State in which the defendant is domiciled,⁹⁶ irrespective if the defendant is a national of that State or not.⁹⁷ If the defendant is not domiciled in a contracting State and the contract does not stipulate a choice of forum, jurisdiction should be determined by the national law of the Member State where the claim is brought.⁹⁸ There are exceptions to the main rules when a court has exclusive jurisdiction.⁹⁹ The New Brussels 1 also has express provisions should the dispute have a closer connection with another Member State, disputes relating to a contract thus excepts the main rule.¹⁰⁰ The

⁹² Baatz, p. 2; Hoeks, p. 114; Coldwell, p. 120.

⁹³ Previously “*the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement in civil and commercial matters*” (Brussels 1). The Brussels 1 was repealed on 9 January 2015. In this essay the convention replacing Brussels 1 will be referred to as “*the New Brussels 1*”. The New Brussels 1 is applicable from 9 January 2015, Art 81. It has much the same content as the old one Brussels 1, especially regarding the provisions of interest for this essay; Dir. 2012:125, pp. 4-5. When the New Brussels 1 does not operate as between the Member States each State’s national rules will apply. The “*Lugano convention*” will not be dealt with since the rules are so similar. Baatz, p. 10; Wilson, p. 320.

⁹⁴ New Brussels 1, Art 25 (Brussels 1 Art 23).

⁹⁵ Arbitration is outside the scope of the convention, Art 1 (d).

⁹⁶ A company is considered domiciled where its central place of administration, principal place of business or where its statutory seat is located, New Brussels 1 Art 63 (Brussels 1 Art 60).

⁹⁷ New Brussels 1, Art 4 (Brussels 1 Art 2).

⁹⁸ New Brussels 1 Art 6 (Brussels 1 Art 4); Baatz, p. 12.

⁹⁹ New Brussels 1 Preamble 15-16 (Brussels 1 Art 11-12), Art 24 (Brussels 1 Art 22).

However these options are not automatically relevant to this essay and will not be examined further.

¹⁰⁰ New Brussels 1 Art 7 (Brussels 1 Art 5); Baatz, p. 22-23.

claimant can choose the court in the State in which “*the place of performance of the obligation*” under the contract was to take place. The place of performance in the case of sale of goods is the place where the goods were or should have been delivered. If the contract concerns services the place of performance is where the services were provided or should have been provided.¹⁰¹ National law determines where the place of performance is located. If there are a number of obligations at hand the dominant obligation will determine the jurisdiction.¹⁰²

However, there are international conventions excluding the applicability of the New Brussels I when the latter conflicts with the jurisdiction rules set out in these international conventions.¹⁰³ For example when a claim is covered by the CMR and the New Brussels I conflicts with the rules on jurisdiction stipulated in the CMR, the CMR takes precedence.¹⁰⁴ Hence, when a contract involves international carriage it is wise to start off by qualifying the contract to see if there is a carriage convention applicable before attempting to answer the question of the right forum.¹⁰⁵

The HVR do not have any express provisions regarding jurisdiction, thus freedom of choice applies as a main rule.¹⁰⁶ However, case law has shown this principle is true only as long as this choice does not interfere with any *mandatory* provisions of the HVR. An English court chose not uphold a jurisdiction clause selecting a non-member State to the HVR because the result of the clause would have derogated from Art III (8) that stipulates that any agreement lessening the liability of the carrier is to be held void.¹⁰⁷ Similarly, in another case, it was held that since Greece was not a contracting State to the HVR (at the time) and the shipment was from a Greek port, the HVR was not mandatorily applicable and thus a clause selecting English courts could not be interpreted as also implying the applicability of the HVR.¹⁰⁸

¹⁰¹ New Brussels I Art 7 (1), (Brussels I Art 5.1).

¹⁰² Baatz, p. 26.

¹⁰³ Brussels I Art. 71; Baatz, p. 32.

¹⁰⁴ Brussels I Art. 71; CMR Art 31; Hoeks, p. 114-115; de Wit, p. 92.

¹⁰⁵ Hoeks, p. 115.

¹⁰⁶ Wilson, p. 319; Coldwell, p. 118; Baatz, p. 34.

¹⁰⁷ *The Morviken* [1983] 1 *Lloyd's Rep.* 1.

¹⁰⁸ *The Komninos S* [1991] 1 *Lloyd's Rep.* 370; Wilson, p. 185-186.

3.2. Applicable law

When the correct court is assigned the next step would normally be to determine the applicable law. But from what has been noted above, this step might also start the whole process. If the dispute at hand involves an international contract of carriage it is essential to first establish if any of the mandatory carriage conventions apply. Because if a carriage regime is applicable, that regime determines which courts might have jurisdiction.¹⁰⁹

Private international law will determine the applicable law to a dispute arising from an international contract.¹¹⁰ Usually the procedure starts with qualifying the dispute at hand as belonging to either the law of the forum or to the law of the cause of the dispute.¹¹¹ However, there is an exception to this procedure when international uniform law might be applicable to the dispute at hand, such as the carriage convention to an international contract of carriage.¹¹² In such a case the dispute will be qualified according to the particular carriage convention. If the dispute is covered by scope of application rules set out in the particular convention then that convention will be decisive.¹¹³ E.g. if a dispute arises out of a contract of carriage by sea it is crucial to determine if the dispute meet the provisions for the scope of application set out in the HVR.¹¹⁴ The common characterization problem is thus avoided somewhat, the characterization should be according to the convention and not a foreign law system.¹¹⁵ As a general rule in most States international provisions would precede contradicting provisions of national law.¹¹⁶

The procedure of qualifying the dispute according to a particular convention will create a problem in multimodal contracts of carriage since there is no international regime applicable to such contracts. The unimodal conventions could only be used should their scope of application be relevant to the particular dispute.¹¹⁷ When two or more carriage conventions become applicable at the same time there is also no internationally agreed hierarchy between them.¹¹⁸

If there are parts of the international contract not covered by a uniform convention, national law will fill the gaps.¹¹⁹ When deciding which domestic rules to apply to an international contract, the courts of the EU member States

¹⁰⁹ Hoeks, p. 115, 121, footnote 57.

¹¹⁰ Hoeks, p. 121; Bogdan 2014, p. 19-20.

¹¹¹ Hoeks, p. 121-123; Bogdan 2014, p. 55, 57.

¹¹² Hoeks, p. 122; Bogdan 2014, p. 19, 57; de Wit, p. 92.

¹¹³ Hoeks, p. 122, 148; de Wit, p. 92.

¹¹⁴ Hoeks, p. 122; Some States have implemented the carriage conventions into their own national legislation. E.g. the HVR is found in Chapter 13 of the Swedish Maritime Code SFS 1994: 1009.

¹¹⁵ Bogdan 2013, p. 22-24.

¹¹⁶ Hoeks, p. 13; It is not certain that an international carriage convention will precede national legislation, e.g. due to the public order of the forum State; de Wit, p. 142.

¹¹⁷ Hoeks, p. 122.

¹¹⁸ Hoeks, p. 375.

¹¹⁹ Hoeks, p. 109.

are bound by “*Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations*” (ROME 1).¹²⁰ Freedom of choice applies, but should the parties not have stipulated a choice of law in their contract there is a special provision covering contracts of carriage.¹²¹ The ECJ has decided that the “contract for carriage of goods” should be given an autonomous meaning and that Art 5 applies to contracts with the *main purpose* to carry goods.¹²² According to this provision the main rule provides that the law of the country of the habitual residence¹²³ of the carrier shall govern the contract, if also the place of receipt, the place of delivery or the habitual residence of the consignor is also in that country. If these requirements are not met the law of the country the parties have agreed delivery to, shall apply.¹²⁴

3.3. Analytical summary

The qualification of the contract given by the parties is a determining factor of which transport regime shall apply to an international contract of carriage. But, in a multimodal contract of carriage (lacking an international convention), where several unimodal regimes could be applicable, qualifying the contract as being covered by either one of the carriage conventions is not as straight forward. Furthermore contractual provisions cannot exclude the applicability of a mandatory regime. It is also true that not all States are parties to the CMR and the HVR and that those who are might interpret the regimes differently. This could cause uncertainties as to where the carrier could be sued, the outcome of the suit and also contribute to forum shopping.

Within the EU the applicable law to an international contract will be determined through ROME 1. However, when international uniform law (such as a carriage convention) might be applicable to the contract the dispute should be qualified according to that convention instead. Since there is no international convention governing multimodal carriage this creates uncertainties as to what regime and provisions will apply to the contract.

One solution would be the network approach, applying the different carriage conventions where their scope of applications so allows. This could create a scenario where more than one carriage convention becomes applicable at the same time. However, none of the unimodal regimes contain provisions as to which carriage regime should take precedence in such a case. Article 2 CMR would be an exception here.¹²⁵ Neither is it evident that the VCLT will be of any assistance since it has been argued unfit to apply to regulating relations

¹²⁰ Art 1-2 ROME 1; Hoeks, pp. 123-124.

¹²¹ Art 3, 5 ROME 1.

¹²² Plender & Wilderspin, p. 216; “*Intercontainer Interfrigo v Balkende C-133/08*” p. 32-34.

¹²³ Art 19 defines the habitual residence, for a company this being its place of central administration.

¹²⁴ ROME 1 Art 5.1.

¹²⁵ See section 4.2.3.

between private parties.¹²⁶ The network approach will also create uncertainties to what law will be applicable in-between the applicability of the carriage conventions, e.g. if loss or damage occur while the goods are in storage. The same is true also when loss or damage cannot be localized to a particular leg of the transport.

Another scenario would be to apply the uniform approach, with the risk of creating a major recourse problem for the carrier. An example, the MTO might be held strictly liable according to the uniform system for a defective truck according to CMR Article 3, but, should the HVR have applied instead the MTO might have escaped liability by showing due diligence in providing a seaworthy ship according to HVR Article III (1).¹²⁷ However, the conditions of the contract of carriage would be transparent from the outset.

¹²⁶ Section 1.3. Method and material.

¹²⁷ More of this in upcoming sections of the essay.

4 The unimodal carriage conventions

4.1. Background

The HVR came into force to create a level playing field to the parties involved in the carriage contract. To achieve this aim provisions concerning the possibility to exclude or lessen the liability were imposed on the carriers.¹²⁸ The CMR on the other hand was introduced to standardize international carriage of goods by road due to the increasing growth of road traffic in Europe.¹²⁹ The HVR is a success and have members all over the world. The CMR is well established in Europe and most parties of the EU have given the convention the force of law.¹³⁰

There is no mention of multimodal carriage in the HVR. The CMR on the other hand has a special provision regarding mode-on-mode carriage¹³¹ that becomes applicable in multimodal carriage. However, it is not evident if the CMR could also apply to other sorts of multimodal carriage.¹³² Thus, this chapter will concentrate on how the unimodal carriage conventions could apply to multimodal carriage and what effect it will have to the liability of the multimodal carrier.¹³³

4.2. Scope of application

4.2.1. Scope of application of the HVR

The HVR are applicable to every contract of carriage of goods by sea covered by a “bill of lading” (B/L)¹³⁴ or similar document of title when the carriage is international and; i) the B/L is issued in a contracting State, or ii) the carriage is from a port in a contracting State, or iii) the contract contained in or evidenced by the B/L provides that the HVR or legislation of any State giving effect to them are to govern the contract.¹³⁵ The rules provide a mandatory

¹²⁸ Wilson, p. 174.

¹²⁹ de Wit, p. 91; Clarke, p. 3.

¹³⁰ de Wit, p. 91; Hoeks, p. 298; List of members, <http://www.informare.it/dbase/convuk.htm> Last visited 2015-05-19.

¹³¹ Mode-on-mode is when one mode is placed on and carried by another mode, e.g. when a truck is placed on a ship. The mode-to-mode transport have to be preceded or followed by a road leg in order to be multimodal; Hoeks, p. 199; de Wit, p. 102.

¹³² Art 1 compared with Art 2 CMR.

¹³³ The HVR is found in Chapter 13 of the Swedish Maritime Code SFS 1994:1009 and CMR in SFS 1969:12.

¹³⁴ A B/L has three functions; it is a receipt for the goods shipped, it is an evidence of the contract of carriage and it is a document of title. The meaning of the last function is that the holder of the B/L can transfer ownership of the goods contained therein and also that the holder is the person entitled to claim delivery of the goods.

¹³⁵ Art. 1 (b), X HVR.

framework during the “tackle-to-tackle” period. This period includes the loading of the goods, the actual carriage on board the vessel and during the discharge of the goods.¹³⁶ Contractual terms that exclude or lessen the liability of the carrier further are to be considered null and void, however, an increase of liability or decrease of defenses is allowed.¹³⁷ Outside of the mandatory framework the parties are free to negotiate additional terms to the contract of carriage.¹³⁸ Deck cargo and live animals are excluded from the scope of application.¹³⁹

Since the provisions regarding the scope of application of the HVR does not mention multimodal carriage German scholars have deemed the rules inapplicable to multimodal carriage. However the prevailing view seems to be that the scope of application set out in the HVR does not bar the HVR from applying to a multimodal contract of carriage.¹⁴⁰

4.2.2. Scope of application of the CMR

The CMR apply to every international contract of carriage of goods by road, in vehicles¹⁴¹, for reward.¹⁴² As specified in the contract, the place of taking over and the place of delivery of the goods must be between at least two different countries of which at least one is party to the CMR, irrespective of the residence and nationality of the parties.¹⁴³ To confirm the contract of carriage a “consignment note” should be drawn up. However, the absence of such a note will not affect the applicability of the CMR or the validity of the contract of carriage.¹⁴⁴ The carrier is liable for loss and damage to the goods between the time when the goods are taken over by the carrier until the time of delivery of the goods.¹⁴⁵ The rules are mandatory and even an increase in the liability of the carrier is prohibited.¹⁴⁶ When otherwise not applicable the parties could still choose to include the CMR in their contract of carriage.¹⁴⁷ The CMR does not apply to i) furniture removal, ii) funeral consignments or iii) to carriage performed under the terms of any postal convention.¹⁴⁸

¹³⁶ Art 1 (e), III (8) HVR; Hoeks, pp. 300, 320-321; Wilson, p. 181; Tetley, p. 25.

¹³⁷ Art V, III (8) HVR.

¹³⁸ Art V, III (8) HVR; Wilson, p. 6, 174; Baughen, p. 102. Art. VII; Wilson, p. 181-182; Tetley, p. 25-26; Baughen, p. 102.

¹³⁹ If so stated in the contract and is actually so carried; Art 1 (c) HVR.

¹⁴⁰ Hoeks, p. 312-313.

¹⁴¹ CMR Art 1 (2). “Vehicle” being a motor vehicle, an articulated vehicle, a trailer or swap-bodies. It is not always necessary that the vehicle can move by itself; Clarke, p. 51; Hoeks, p. 201-202.

¹⁴² Art 1 CMR; “For reward” does not necessarily mean for cash; Clarke, p. 51.

¹⁴³ Either the place of taking over or the place of delivery has to be in a contracting State, no matter if the journey goes through several States not parties to the CMR. De Wit, p. 92.

¹⁴⁴ Art 4 CMR; de Wit, p. 93.

¹⁴⁵ CMR Art 17.

¹⁴⁶ Art 1, 41; de Wit, p. 92; Hoeks, p. 148 footnote 16.

¹⁴⁷ Clarke, p. 22.

¹⁴⁸ Art 1 (4) CMR.

4.2.3. Extended application to mode-on-mode transport

Art 2 CMR extends the application of the CMR to cover the *entire* transport under a carriage contract, even if part of the journey is performed e.g. at sea.¹⁴⁹ The provision concerns mode-on-mode transport. The article will apply provided that the goods remain on the road vehicle during the entire transport, the carriage involves an international movement of goods and the loss or damage occur during the road stage.¹⁵⁰ Both Clarke and Hoeks suggest that the CMR would apply in a case of non-localized loss should the claim fall under Art 2.¹⁵¹ It is the initial intention of the parties that counts as to what type of transport is to be used. Thus, a carrier cannot escape the liability rules set out in the CMR by substituting the mode without the consent of the shipper.¹⁵² Furthermore, Hoeks suggests that when it is evident that the route necessitates carriage by sea but the contract is for carriage by road mode-on-mode carriage is still permitted.¹⁵³

However, should the loss or damage occur during the sea stage, the applicable regime for *that* leg of transport could become applicable instead.¹⁵⁴ It should be pointed out here that this other regime will only govern carrier liability, the CMR would still be applicable in all other areas.¹⁵⁵ For the applicable sea regime, and not the CMR, to apply three cumulative prerequisites have to be met: (i) The loss or damage has to occur during the sea stage, (ii) the loss or damage was not caused by an act or omission of the carrier by road, (iii) the loss or damage must have been caused by an event that could only have occurred in the course of and by reason of that other means of transport (sea). Should all of these three prerequisites be met the carrier could become liable according to conditions prescribed by law by the HVR.¹⁵⁶

In order to establish liability a “hypothetical contract” between the consignor and the sea carrier will be used as if these two parties would have concluded a contract without the MTO.¹⁵⁷ The wording “*conditions prescribed by law*” in Article 2 CMR has been subject to discussion.¹⁵⁸ The sentence could be interpreted as if the HVR would only become applicable when these rules apply mandatorily.¹⁵⁹ For the HVR to apply mandatorily a B/L or a similar document of title have to be issued.¹⁶⁰ It has been discussed if multimodal bills of lading should be regarded as giving a document of title to the holder.¹⁶¹ Hoeks argues this is the case because the multimodal B/L represents the goods evidenced therein and also gives the right of possession

¹⁴⁹ See Appendix A.

¹⁵⁰ Clarke, p. 33, 40.

¹⁵¹ Clarke, p. 40; Hoeks, p. 198.

¹⁵² Clarke, p. 38; Hoeks, p. 201.

¹⁵³ Hoeks, p. 201.

¹⁵⁴ CMR Art 2; Clarke, p. 40.

¹⁵⁵ Hoeks, p. 206; Johansson, p. 39.

¹⁵⁶ CMR Art 2; Hoeks, p. 205; Clarke, p. 41-44.

¹⁵⁷ de Wit, p. 103; Hoeks, p. 207-214.

¹⁵⁸ de Wit, p. 103.

¹⁵⁹ de Wit, pp. 103-105; Hoeks, p. 208.

¹⁶⁰ Art II, X, I (b) HVR, for the functions of a B/L, see footnote 134.

¹⁶¹ Hoeks, p. 314; Nikaki, p. 87.

of the goods.¹⁶² Nikaki points out that the prevailing view among English scholars is that the multimodal document *relates to the carriage of goods by sea* and thus that the requirements of Art I (b) HVR are satisfied and the HVR are applicable to multimodal carriage.¹⁶³ This view should however not be supported by German scholars.¹⁶⁴ According to the decision in the *Rafaella S* it is not necessary that the document is negotiable.¹⁶⁵ Should the multimodal B/L not be considered documents of title, de Wit and Baughen argue that the HVR would not be compulsory applicable even if incorporated by a clause paramount stating that the HVR should govern the contract of carriage.¹⁶⁶ Hoeks on the other hand seems to be under the impression that the HVR should become applicable even if only incorporated by contract.¹⁶⁷

In a Dutch case the effects of Article 2 CMR became evident. A multimodal contract was concluded covering carriage of live animals by road and sea from the Netherlands to Ireland. The MTO took full responsibility but subcontracted the mode-on-mode transport at sea. When the ship arrived at port several of the animals were found dead. The shipper of course turned to the MTO to be compensated and the MTO in turn addressed the actual carrier at fault for compensation. Since the damage occurred during the sea leg the HVR *could* become applicable as the basis of liability of the MTO based on Art 2 CMR. However, the actual carrier had legitimately, based on the HVR, incorporated a clause excepting liability for carriage of live animals.¹⁶⁸ The provisions concerning carriage of live animals are not mandatory and therefore not “provisions prescribed by law”. Hence, the carrier was held liable according to the CMR and had to remunerate the shipper without being able to claim any compensation from the actual carrier at fault.¹⁶⁹

Clarke argues that the intention of the provision is to bring the multimodal contract inline with the second layer of contracts concluded between the MTO and the sub carrier (the sea carrier). But the provision is not applicable in every case. As a result leaving the carrier and consignor in an uncertain position as to what compensation and what insurance cover will be required in a particular case. De Wit seems to agree with this opinion saying that under certain circumstances the MTO will no be able to take a full recourse action against the sea carrier. The sea carrier liable under the HVR regime has a better position in regards of limitations and defenses than the MTO under the CMR.¹⁷⁰

¹⁶² Hoeks, p. 314-315.

¹⁶³ Nikaki, p. 87-88.

¹⁶⁴ Nikaki, p. 87-88; Hoeks, p. 351.

¹⁶⁵ *MacWilliam Co Inc V Mediterranean Shipping Co [2005] 1 Lloyd's Rep 347.*

¹⁶⁶ De Wit, pp. 104-105; Baughen, p. 102.

¹⁶⁷ Hoeks, p. 209-210, 213.

¹⁶⁸ Art 1 (c) HVR.

¹⁶⁹ Van de Wetering, Rb Arnhem 18 July 1996; Hoeks, p. 9.

¹⁷⁰ Clarke, p. 40-41; de Wit, p. 107. Compare e.g. the monetary amounts in Art IV (5) (a) HVR with Art 23 CMR.

4.2.4. CMR applicable to multimodal carriage outside of Art 2?

It has been questioned whether the multimodal scope of application is limited to article 2 of the CMR.¹⁷¹ Hoeks identifies three circumstances when Art 1 could become relevant to multimodal contracts of carriage. (i) the CMR applies to the road stage, regardless of it being national or international, as long as the multimodal carriage contract as a whole is international. (ii) the CMR applies to a road stage that is provided for in a multimodal contract, as long as that particular road stage is international. (iii) a multimodal contract of carriage is not a contract for road carriage and hence the CMR would not be applicable to the contract.¹⁷²

(i). This interpretation suggests that the CMR would also cover domestic road transport, even as the only road leg of the journey, provided that the multimodal contract as a whole is international. Hoeks disagrees with this interpretation because it would not correspond with the international aspect set out in Art 1. Hoeks also raises a point in the relationship between this interpretation and the basis of liability set out in Art 17. If the liability of the carrier would commence at the very beginning of the multimodal journey and end at the last delivery, this would mean that the CMR would become applicable also during the non-road legs. According to Hoeks this would be an unreasonable interpretation.¹⁷³ Clarke on the other hand suggests that the CMR does apply to a purely domestic stage as long as the carriage is under one single contract and the stage is preceded or followed by a stage from or to another State.¹⁷⁴ As Clarke puts it “*it is customary though not essential that the subject matter (carriage of goods by road) be international*”.¹⁷⁵

ii. According to this interpretation the CMR only applies to the road leg of a multimodal contract if the road leg itself is international. This interpretation is supported by Hoeks.¹⁷⁶ It is also the conclusion an English court reached in the *Quantum* case. The case concerned transport by air and road, but nevertheless the question of interest concerned the applicability of the CMR to a multimodal contract of carriage. The court stated that if a contract of carriage permits carriage by road, the multimodal contract of carriage is indeed a contract *for carriage by road* as set out in Art 1, as long as the road leg itself is international.¹⁷⁷

iii. The last interpretation is that CMR is a unimodal carriage convention, thus not covering multimodal transport in any other case besides Art 2.¹⁷⁸ This

¹⁷¹ Mode-on-mode transport is one of many possible ways to carry goods under a multimodal contract of carriage; Hoeks, p. 147-148.

¹⁷² Hoeks, p. 149.

¹⁷³ Hoeks, pp. 152-155.

¹⁷⁴ Clarke, p. 54.

¹⁷⁵ Clarke, p. 53.

¹⁷⁶ Hoeks, p. 155-157.

¹⁷⁷ *Quantum Corporation Inc. and others v. Plane Trucking Ltd and Aother* [2002] 2 Lloyd's Rep. 25.

¹⁷⁸ Hoeks, p. 171-172.

would mean that the CMR could never apply to a multimodal carriage other than for claims covered by Art 2 since a multimodal carriage contract is “not a contract *for* the carriage by *road*”. Hoeks points out that this could be a circumvention of the mandatory provisions of the CMR, there should be no difference if the actual carriage is also preceded or followed by another mode of transport for the applicability of the CMR.¹⁷⁹ Both Hoeks and Clarke seem to be under the impression that Art 1 does not mean that the whole or even a predominant part of the contract has to be for road carriage, only that road carriage is included in the contract.¹⁸⁰ However, the German Supreme Court has decided that the only time multimodal carriage could possibly fall under application of the CMR is if a claim is brought under Art 2. Thus, it would not be sufficient if a multimodal contract of carriage only included a road leg.¹⁸¹ This decision was followed by a Dutch court in *Godafoss*.¹⁸²

4.3. Applicability in time

4.3.1. In the HVR

The HVR apply mandatorily during the tackle-to-tackle period.¹⁸³ This period could either be from the point the vessel’s tackle is hooked to the port of loading until the tackle is unhooked at the port of discharge, or in the case of shore tackle, from the moment the cargo crosses the rail of the vessel for both loading and discharge.¹⁸⁴ In *Pyrene Co v. Scindia* the question was if the carrier could rely on the provisions on limitation of liability in the HVR when the goods were damaged before they had passed the rail of the vessel but after the tackle was hooked on at the port. The cargo had been hooked to the tackle and was being loaded onboard the vessel when it fell back on the dockside. The court stated that the rights and liabilities should be attached to the contract of carriage and not a particular time. The loading on both sides of the ship’s rail is *related* to the carriage of goods by sea and should therefore be considered within the ambit of the rules.¹⁸⁵ Since the HVR are only applicable during the tackle-to-tackle period the HVR do not necessarily cover the entire period the goods are in the hands of the carrier, e.g. while laying at the dock.¹⁸⁶ Thus the carrier is able to contract out from liability unless national legislation, applicable on a supplementary level, prohibits such exclusion of liability.¹⁸⁷ The time in-between transport such as storage,

¹⁷⁹ Hoeks, p. 149-150, 175-176.

¹⁸⁰ Hoeks, p. 149-150; Clarke, p. 53.

¹⁸¹ *BGH 17 jul. 2008* (TranspR 2008, 365-368). Hoeks, p. 173-176; Lamont-Black, p. 713; Nikaki, pp. 83-84.

¹⁸² *Godafoss HDH 22 Jun 2010*; Nikaki, p. 84.

¹⁸³ Art. I (b), (e), II HVR.

¹⁸⁴ Wilson, p. 181, footnote 36; Hoeks, p. 321, footnote 93; Baughen, p. 101.

¹⁸⁵ *Pyrene Co v. Scindia SN Co [1954] 2 QB 402*, pp. 415-418; The Hague Visby rules were examined in this case but the provisions in HVR do not differ; Tetley, p. 25.

¹⁸⁶ Hoeks, p. 320-321; Wilson, p. 181-182; Crowley, p. 1470.

¹⁸⁷ Art 1 (e), VII, III (8) HVR; Crowley, p. 1471.

is the time where the goods are most susceptible to loss or damage.¹⁸⁸ It is also possible for the parties to extend the application of the HVR to include this entire period.¹⁸⁹

4.3.2. In the CMR

The liability period of the road carrier stretches from the time the goods are taken over by the carrier until the goods are delivered to the consignee.¹⁹⁰ The goods are perceived as taken over by the carrier when the goods are in control of the carrier or when the carrier has received the goods for the purpose of carrying them.¹⁹¹ The same goes with delivery of the goods.¹⁹² This could mean two things; either operations such as storage and packing could be perceived as ancillary services not part of the contract of carriage by road¹⁹³ with the consequence that the liability period would not commence until these services are completed. Or, these operations should be regarded as part of the contract of carriage and within the responsibility of the carrier, hence, subject to the CMR.¹⁹⁴ Clarke suggests that the contract and not the physical operation is to be decisive according to an analogy with the solution made in the *Pyrene v Scindia* case. Hence, if the contract stipulates take over including storage and packing, these operations are all subject to the CMR.¹⁹⁵ Nikaki seems to concur with this interpretation.¹⁹⁶ The responsibility of loading and unloading is not within the ambit of the CMR.¹⁹⁷ Hence, such operations are not automatically included or excluded from liability of the carrier because national law becomes decisive. Should these operations be possible to contract, and, according to the contract, the carrier is responsible, the responsibility would be determined under the CMR.¹⁹⁸

¹⁸⁸ Hoeks, p. 196.

¹⁸⁹ Art VII HVR; *Pyrene Co v. Scindia*, p. 418; Tetley, p. 26.

¹⁹⁰ Art 1, 17 CMR.

¹⁹¹ Clarke, p. 73, Hoeks, p. 181.

¹⁹² Clarke, p. 103-105.

¹⁹³ Unless explicitly so stated.

¹⁹⁴ Hoeks, p. 181; Clarke, p. 103-105, 73-74.

¹⁹⁵ Clarke, p. 73-74, 103-105.

¹⁹⁶ Nikaki, p. 92-93.

¹⁹⁷ Clarke, p. 75, 103.

¹⁹⁸ Clarke, p. 75.

4.4. Transshipment

If transshipment is used during the sea stage the sea leg will be divided into two stages handled by two different carriers, often including warehousing, at an intermediate port.¹⁹⁹ As a result of the tackle-to-tackle mandatory application of the rules, such transshipment will normally create an application gap during the time the goods are stored at the port awaiting the next shipment.²⁰⁰ In a case where none of the carriage conventions apply the MTO could exclude his liability.²⁰¹ It has been argued that the HVR could never apply to a land segment of a carriage.²⁰² The question would thus be if a land segment (port/storage) could ever be covered by the rules, or, put differently, does the HVR cover the entire carriage or only the part up to the transshipment should the transshipment regard two separate sea legs? In *Mayhew Foods* the court argued that the HVR would apply throughout such a transshipment period if certain criteria were satisfied. In this case the multimodal contract held the carrier liable from the taking over of the goods until the delivery of the same. The contract also contained a liberty to transship, store goods and to substitute the vessel used. However, transshipment was not agreed and the shipper was not aware that the carrier would make use of the transshipment clause. The goods arrived in a damaged condition and could not be sold as intended. It was evident that the goods had been damaged during the transshipment. The carriers pleaded guilty but wanted to limit their liability according to a provision in the multimodal contract that stipulated a lower limit than the limitation of the HVR. However, the court deemed the HVR applicable since the transshipment should be interpreted as being in “*relation to and in connection with*” the contract for carriage by sea and the carriage was from a port in a contracting State. Thus the applicability of the rules could not be excluded. The court stated that it would be wrong if a carrier could avail himself of responsibility by making use of a liberty to transship. Thus, the mandatory period of the HVR could be extended also to include storage periods during transshipment. At least when there is a liberty of transshipment, the liability covers the entire carriage, the carriage is from a contracting State and the shipper is not aware that the carrier will make use of the liberty.²⁰³ The court referred to a Canadian case where the opposite applied, the carrier was allowed to rely on the contractual exclusion. But, in that case the shipper was aware of the transshipment and two separate bills of lading were issued for the two separate sea legs.²⁰⁴

Operations such as transshipment and storage do not prevent the CMR from being applicable if these operations are followed by continued performance of

¹⁹⁹ Baughen, p. 164.

²⁰⁰ Baughen, p. 165; Wilson, p. 258.

²⁰¹ Art 1(e), VII HVR; Art 17, 41 CMR; However, should CMR Article 2 be applicable, this would precede any contractual agreements; Wilson, p. 258, footnote 27.

²⁰² Art II HVR; Wilson, p. 181-182; Hoeks, p. 32-322.

²⁰³ *Mayhew Foods Ltd v Overseas Containers Ltd* [1984] 1 Lloyd's Rep 317, pp. 318-320.

²⁰⁴ *Captain v Far Eastern Shipping Co* [1979] Lloyd's Rep 595.

the carriage by road. The vehicle even can be replaced by another vehicle as long as the other vehicle is also a road vehicle.²⁰⁵

4.5. Non-localized loss

When the damage or loss cannot be determined to a particular stage or leg of the transport it is non-localized.²⁰⁶ When goods are shipped in containers non-localized loss is more prone to happen. In many cases it is extremely hard to prove at what stage the loss or damage occurred, especially if the damage progress over time.²⁰⁷ To the MTO this will have the effect that he cannot turn to any of the carriage conventions for his recourse action against the actual carrier at fault.²⁰⁸ An exception would be claims that fall under Art 2 CMR.²⁰⁹ Since the stage is not known, the carrier is probably not identified. When none of the international carriage conventions are applicable freedom of contract applies as a main rule.²¹⁰ Thus, many multimodal contracts of carriage contain a clause stipulating that when non-localized loss occur the limit of liability is lower than usual.²¹¹ It is also common to include provisions stipulating that the HVR would become applicable in such a case.²¹² Should a State have provisions regarding multimodal carriage these provisions could of course set these contractual provisions aside. However, not many States have national provisions regarding multimodal carriage.²¹³ De Wit suggests that the situation with non-localized loss could be solved by letting the party, who wants to benefit from a certain legal system or provision, would have to present proof for his case. Thus the burden of proof would not be fixed but vary from case to case.²¹⁴

²⁰⁵ Clarke, p. 39; Nikaki, p 94.

²⁰⁶ Hoeks, p. 17.

²⁰⁷ de Wit, p. 388, 391.

²⁰⁸ Hoeks, p. 17; Lamont-Black, p. 711.

²⁰⁹ Hoeks, p. 198; Clarke, p. 40.

²¹⁰ Wilson, p. 255; Lamont-Black, p. 711.

²¹¹ de Wit, p. 384.

²¹² Wilson, p. 255.

²¹³ Germany and the Netherlands would be the exceptions in Europe; Hoeks, p. 17; Lamont-Black, p. 711.

²¹⁴ de Wit, p. 387.

4.6. Analytical summary

From the above it is evident that the liability periods of the unimodal carriage conventions are shorter than the period the multimodal carriage contract covers. If no mandatory international or national provisions are applicable, freedom of contract applies. Naturally the carrier would want to exclude his liability whenever possible. Thus, the carrier could escape liability for loss or damage that occur to the goods whilst in his possession, should this period not be covered by the mandatory application period of the unimodal carriage conventions or national law. At least it would be possible to include a more beneficiary package limitation that those set out in the HVR or the CMR. There is an exception during transshipment according to the decision in *Mayhew Foods*, however only under certain conditions. Hence the multimodal carrier could become liable under the unimodal carriage regimes regardless of a provision in the multimodal contract of carriage stipulating exclusion of liability or a lower level of liability. This period does however not necessarily meet the scheme of the subcontractor, e.g. the tackle-to-tackle period. The possible recourse gap does not seem to be as troublesome under the CMR because the regime covers the entire journey if the storage and loading is followed by continued performance of the road carrier. However, when the road carriage ends and the sea stage is to commence, again, there will be a period not covered by any of the mandatory regulations. Thus freedom of contract applies unless national law stipulates otherwise.

Storage and packing could be covered by the basis of liability under the CMR and the HVR should the responsibility be set out in the contract as belonging to the carrier. Under the CMR this would probably constitute mandatory application whilst in HVR such operations could never be under the mandatory scope of application since it is outside of the tackle-to-tackle period. However, it is not certain that package and storage would be covered by the CMR as an alternative view is that such ancillary services cannot be seen as part of the contract of carriage by road. According to national law a multimodal contract could be seen as a contract *sui generis*, with the result that no provisions regarding transport law (international or national) would become applicable.

Loading and unloading is not covered by the CMR, thus national law or the contract becomes decisive. It is likely that if the contracts stipulate the carrier as the responsible party for those operations, his responsibility will be determined under the CMR. Loading and unloading could be covered by the HVR depending on the tackle-to-tackle period, a conclusion that was reached in the *Pyrene vs. Scindia* case. Thus the carrier has to be aware if the particular operation would be regarded as shore tackle or not. It is interesting to see that when goods are most prone to damage or loss, e.g. during transshipment and/or storage (when the goods need to be handled) there is no international regime covering the liability of such loss or damage under a multimodal contract of carriage.

The CMR has an explicit provision regarding multimodal carriage, however only concerning multimodal carriage “mode-on-mode”. Thus, if the loss or damage occur during the other type of mode the CMR will still be applicable throughout the entire journey. If however the loss or damage occur by reasons only attributable to the other mode the liability of the carrier could be decided by that other carriage convention instead. This provision has caused some debate and uncertainties. Thus, it is not obvious what triggers this exception. Do the HVR need to apply on a mandatory basis or is it enough if the parties have included the rules contractually? Should a multimodal document be considered a B/L under the HVR? Should it not be considered a B/L the HVR would probably never become applicable according to Art 2 of the CMR. The effect of this provision was evident to the multimodal carrier in the *Van Wetering* case.

It is also true that there are contradicting views of the applicability of the CMR to multimodal contracts of carriage outside mode-on-mode transport in Article 2. Thus, according to Clarke, the CMR could apply to a completely national road leg as long as the multimodal contract of carriage is international. On the other hand Hoeks argues the CMR would only apply to a multimodal contract of carriage should the road leg itself be international. In Germany and the Netherlands the view is settled that multimodal carriage could never be covered under the CMR unless it is mode-on-mode. On the other hand an English court deemed the CMR applicable to a multimodal contract of carriage with an international road leg that did not involve mode-on-mode carriage. Hence, the liability of the MTO is truly uncertain when the multimodal carriage is partly by road but not mode-on-mode.

In cases of non-localized loss neither of the carriage conventions become applicable. According to Clarke and Hoeks Art 2 CMR would be the only possible exception. Most often the carriage contract includes provisions stating that either the carrier should be held liable according to a lower limit of liability or according to the HVR that is very favorable to the carrier. National law could set these terms of contracts aside should the national law contain provisions on multimodal carriage. However, within the EU only Germany and the Netherlands have such provisions. A suggestion made by de Wit is that the party who wants to benefit from a certain regime or provisions should have to present evidence accordingly. To a MTO this must be a heavy burden since the routes are often sub-contracted to actual carriers.

5 Liability under the unimodal carriage conventions

5.1. Liability under the HVR

5.1.1. Introduction

The HVR is a framework consisting of basically two categories, minimum obligations of the carrier and maximum protection available to the carrier. Thus creating a fault-based liability regime with a list of exceptions under which the carrier could escape liability completely.²¹⁵ The obligations of the carrier are to provide a seaworthy ship and to care for the cargo he carries.²¹⁶ The obligation in Art III (1) to provide a seaworthy ship contains an obligation to make the ship safe and fit for the cargo to be carried, however, there is also an explicit provision in Art III (2) concerning care for cargo. The obligation standard in Art III (1) is set to “due diligence” but the obligation to care for the cargo in Art III (2) is set to “properly and carefully”.²¹⁷ There is a list of exceptions to the liability of the carrier as well as a possibility to limit the liability should an exclusion of liability not be possible.²¹⁸ The list of exceptions are only available to the carrier should he be in breach of Art III (2), care for cargo. If the carrier is in breach of his seaworthy obligations set out in Art III (1) the only possible exception would be Art IV (1). The duty to exercise due diligence to make the ship seaworthy ends at the commencement of the voyage.²¹⁹ The carrier could never lessen his obligations or increase his defenses under the HVR, but the opposite is allowed.²²⁰ The defenses and limitations available to the carrier are lost if the damage or loss resulted from an act or omission done with intent to cause damage.²²¹

To understand the basis of liability set out in the HVR an explanation of the shifting burden of proof in the rules is necessary. The shipper has to establish a “prima facie case” of liability, thus showing that the carrier received the goods in good order and condition but that the goods arrived in a damaged condition. The burden then shifts to the carrier to show that the damage or loss resulted from one of the excepted causes or that the period of liability had ceased. The burden shifts yet again and shipper has to show that the cause was due to willful misconduct of the carrier or that there were concurrent causes of loss. The burden of proof then shifts back to the carrier to prove the contrary.²²²

²¹⁵ Wilson, pp. 174, 186-187.

²¹⁶ There is also an obligation to provide the shipper with a B/L, however, this obligation will not be discussed further; Wilson, pp. 187, 191, 193.

²¹⁷ Art III (1) (c), III (2) HVR.

²¹⁸ Art IV (2) (a-q), IV (5) HVR, IV bis (1).

²¹⁹ Art III (1) HVR; Wilson, p. 188.

²²⁰ Art III (8), V HVR.

²²¹ Art IV (5) (e), III; Or recklessly if the carrier knew that damage would probably happen.

²²² Baughen, p. 112; Tetley, pp. 313-350.

5.1.2. Seaworthiness

Art III (1) of the HVR contain three aspects of seaworthiness; the physical state of the vessel, crew and equipment and cargo worthiness.²²³ The carrier is under an obligation to provide a seaworthy ship “*before and at the beginning of the voyage*”. There is no explanation as to the exact time of commencement of this obligation in the HVR.²²⁴ However, a carrier could not rely on the fire exception in Art IV (2) (b) when, due to crew negligence, a fire started after loading but before the vessel had sailed. The court argued that the period commences at least from the beginning of loading until the voyage starts, e.g. when the anchor lifts, and that the fire constituted a breach of exercising due diligence to provide a seaworthy ship.²²⁵ However, had the fire started after the vessel had left port, the carrier could have escaped liability through Art III (2) because the obligation would have gone from “seaworthiness” to “care for cargo” in Art III (2).²²⁶ It is also not easy to determine when the journey actually starts but according to Tetley the vessel should be able to move on its own or by tugs and be ready in terms of having all hatches down and visitors on the quay.²²⁷ Another issue is if the obligation is extended in time to also include cases when vessels calls at intermediate ports and loss or damage occur at this stage. It is held that this is not the case and that the due diligence obligation is only relevant at the commencement of the entire sea voyage.²²⁸ However, should cargo be picked up at different ports during one single voyage, each such stop obliges the carrier to exercise due diligence since the that particular cargo commences the journey at that stop.²²⁹

To have exercised due diligence in making the ship seaworthy the carrier has to take all necessary precautions a reasonable carrier would have done at the time of occurrence of the act or omission.²³⁰ The vessel has to be fit for ordinary incidents of the journey.²³¹ Consideration has to be taken to the intended voyage and types of cargo carried, thus the level of due diligence depends on the circumstances in each particular case.²³² In *The Amstelot* the court found it enough with one careful inspection of the vessel before the voyage even if the claimant’s argued that a second inspection and additional test would have revealed the crack that caused the vessel to brake down. It was held that “*the question always is whether a reasonable man in the shoes of the defendant, with the skill and knowledge which the defendant had or ought to have had, would have taken those extra precautions*”.²³³

²²³ Se appendix A.

²²⁴ Tetley, p. 894.

²²⁵ *Maxine Footwear CI Ltd v Canadian Government Merchant Marine [1959] AC 589*, p. 603; Wilson, p. 187-188; Baughen, p. 108.

²²⁶ Baughen, p. 108.

²²⁷ Tetley, p. 894.

²²⁸ *Leesh River Tea Co v British India Steam Nav Co [1966] 2 Lloyd’s Rep 193*; Wilson, p. 188; Tetley, p. 895.

²²⁹ Tetley, p. 896.

²³⁰ Baughen, p. 110; Tetley, p. 876.

²³¹ Tetley, p. 876.

²³² Tetley, pp. 898-899.

²³³ *The Amstelot [1963] 2 Lloyd’s Rep 223*, p. 230-231, 235.

In *The Hellenic Dolphin* bags of asbestos was damaged due to leakage of sea water. The court held that three precautionary actions (annual dry docking examination, continuous examination throughout the voyage and an examination prior to commencement of the voyage) was enough and that the suggested fourth examination by a superintending engineer at the turnaround of the voyage was more than could be expected by a reasonable carrier.²³⁴ The carrier cannot avoid the due diligence obligation by delegating it.²³⁵ Thus, a carrier was held liable in failure to successfully repair storm covers, even though the job had been delegated to a reputable firm instead of the less knowing carrier.²³⁶ In summary a carrier would have exercised due diligence for seaworthiness if the cause of the loss or damage is a latent defect that would not have been discoverable by a careful examination.²³⁷

5.1.3. Care for cargo

The carrier also has a special obligation to care for cargo set out in Art III (2), “*the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried*”. This obligation usually runs during the tackle-to-tackle period.²³⁸ However, the parties can agree that loading and discharging are operations to be performed by the shipper/consignee by a shore-based tackle. In such a case the carrier cannot be held liable for loss or damage that occur to the goods during this time.²³⁹ Tetley suggests that this implies that the loading, stowage and discharging operations might be delegated, including the *liability for negligence* for those operations.²⁴⁰

There has been a debate amongst scholars whether the inclusion of “properly” constitutes a higher level of care than reasonable care.²⁴¹ In the *Maltesian* the court stated that “properly” should be interpreted as according to a sound system based on what the carrier ought to know or has to know considering the circumstances and the particular cargo. The carrier had been told to keep the cargo (fish) away from the ship’s boilers. According to the court, the carrier had no reason to suppose that the fish needed refrigerating and was unaware of such a fact.²⁴² However, in the *Mahia* the carrier received instructions that he should have known would not keep the cargo fit during voyage but complied with the instructions anyway. The carrier was held liable and could not escape liability through Art IV (2).²⁴³ Tetley suggests that the carrier “*must abide by the generally accepted professional standards applicable to such work today*” and that sometimes the circumstances calls

²³⁴ *The Hellenic Dolphin* [1978] 2 Lloyd’s Rep. 336; Baughen, p. 110.

²³⁵ Baughen, p. 110; Wilson, p. 188; Tetley, p. 926; Girvin, p. 423.

²³⁶ *Muncaster Castle* [1961] 1 Lloyd’s Rep. 57.

²³⁷ Baughen, p. 110; Tetley, p. 880.

²³⁸ Wilson, p. 191.

²³⁹ *Pyrene Co v Scindia*, p. 415-416; Wilson, p. 192.

²⁴⁰ Tetley, p. 1255-1256.

²⁴¹ Wilson, p. 191; Tetley pp. 1255-1256.

²⁴² *Albacora SRL v Westscott & Laurance Line* [1966] 2 Lloyd’s Rep 53; Baughen, p. 111; Wilson, p. 191.

²⁴³ *The Mahia* [1955] 1 Lloyd’s Rep 264.

for additional operations such as seeking advice from professionals in how to e.g. load a certain kind of cargo.²⁴⁴

Containers are not mentioned in the HVR apart from a provision in Art IV (5) (c) regarding limitation of liability. However, it has been argued that containers should be regarded as part of the ship and hence under the due diligence obligation.²⁴⁵ Sometimes cargo is put in containers for convenience reasons and without the shipper's knowledge. In such a case it has been argued that the container should be seen as "gear" under Art III (1) (c).²⁴⁶ It has been held that if the container is an "extension" of the ship because of its technical characteristics, e.g. a cooling system, it is part of the ship.²⁴⁷ Thus, containers could be seen as part of the ship if supplied by the carrier.²⁴⁸ Some even argue that the container should be considered as part of the ship even if it supplied by the shipper.²⁴⁹ Stevens seems to argue that containers should be regarded merely as packing and thus under the obligation to care for cargo.²⁵⁰

5.1.4. List of exceptions

If a shipper can establish that the goods have been lost or damaged whilst in transit the carrier can still escape liability by establishing that the loss or damage was due to one of the exceptions in Art IV (2) (a-q).

One of the available defenses is when the cause of the loss or damage is related to the goods themselves as inherent defect, quality or vice.²⁵¹ The carrier could rely on this defense should the goods not withstand the ordinary occurrences of the voyage with respect to the level of care needed from the carrier required by the contract of carriage. This is a defect not found by ordinary inspection and that is not expected to be found in such cargo.²⁵² The defense depends on what is stated in the contract of carriage together with what the carrier knew or should have known about the cargo, e.g. it the cargo needed heating or ventilation.²⁵³

Another such defense is insufficiency of packing.²⁵⁴ The current trade practices determines what is to be considered "sufficient". The packing should be able to withstand normal occurrences for the contracted carriage,

²⁴⁴ Tetley, p. 1255.

²⁴⁵ Tetley, p. 921-922; Stevens, p. 29-34; Baughen, p. 123; Bugden, http://www.forwarderlaw.com/library/view.php?article_id=139&highlight=bugden Last visited; 2015-05-13.

²⁴⁶ Stevens, p. 29.

²⁴⁷ Stevens, p. 30.

²⁴⁸ Tetley, pp. 921-922; Bugden; Baughen, p. 123.

²⁴⁹ Bugden; Baughen, p. 123.

²⁵⁰ Stevens, pp. 31-34.

²⁵¹ Art IV (2) (m).

²⁵² Tetley, p. 1143-1144.

²⁵³ Tetley, pp. 1154-1155.

²⁵⁴ Art IV (2) (n).

thus the circumstances in each case is decisive.²⁵⁵ Berlingieri argues that the carrier is under no obligation to draw the shipper's attention to the insufficient packing since the shipper is responsible for the packing and the carrier is normally not able to carry out an inspection to see if the packaging is sufficient.²⁵⁶ Hoeks suggests that when a truck boards a sea vessel the legal status of the truck would be reduced into *goods* or *packaging*. As the list of exceptions states that the carrier shall not be held liable for insufficiency of packaging this distinction will affect the liability of the carrier.²⁵⁷

If a container is packed and sealed by the shipper it is very hard for the carrier to detect any defects with the cargo. A carrier is obliged to issue a B/L on the shipper's demand²⁵⁸ and if the carrier issues a clean B/L²⁵⁹ he might still be able to escape liability for inherent vice and packing.²⁶⁰ Tetley and Baughen argue that a carrier should be held liable according to the seaworthiness obligation for supplying a defective container if the container itself is the cause of the loss or damage to the goods carried therein. But in any event the carrier should be held liable according to the obligation to care for cargo set out in Art III (2).²⁶¹ Steven does not seem to agree with the conclusion that a container is a part of the ship or that the liability should be determined under the Art III (1), on the contrary he seems to argue that a container should only be seen as means of handling and packing goods, thus under the obligation set out in Art III (2).²⁶²

5.2. Liability under the CMR

5.2.1. Introduction

Under the CMR the carrier is subject to a form of strict liability. The general liability rule holds the carrier presumably liable for loss and damage to the goods occurring between the take over until the delivery of the goods.²⁶³ However, the carrier is able to exonerate himself from this presumed liability if he is able to establish that the loss or damage occurred due to one or more of the circumstances established in Art 17 (2).²⁶⁴ These are faults of the claimant, instructions given by the claimant, inherent vice and "*through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent*". In addition there is a presumption of non-liability due to the occurrence of special risks provided in Art 17 (4). The

²⁵⁵ Tetley, p. 1178; Berlingieri, p. 40; Wilson, p. 272.

²⁵⁶ Berlingieri, p. 40.

²⁵⁷ Hoeks, p. 199.

²⁵⁸ Art III (3) (c).

²⁵⁹ A prima facie evidence of the goods being in good condition, however, this evidence could be rebutted as long as the B/L is not transferred to a third party holder; Art III (4).

²⁶⁰ Tetley, pp. 1169-1170, 1190.

²⁶¹ Tetley, pp. 1552-1553; Baughen, p. 123.

²⁶² Stevens, p. 31-36.

²⁶³ Art 17 (1) CMR; Clarke, p. 182.

²⁶⁴ Clarke, p. 181, 213; de Wit, pp. 95-96.

burden of proving the circumstances for one or more of the special risks naturally rests upon the carrier.²⁶⁵ If the carrier is only partly liable for the loss or damage the court may apportion the liability between the carrier and the claimant.²⁶⁶ The carrier may never exonerate himself from liability of a vehicle in defective condition resulting in damage or loss to the goods.²⁶⁷ The rights and limitations available to the carrier are lost if the loss or damage is caused by willful misconduct.²⁶⁸ The CMR has no provisions regarding containers.

5.2.2. General liability

The actual liability standard under the CMR has been widely debated in different jurisdictions.²⁶⁹ According to Clarke and de Wit German courts have tended to regard the liability as basically strict whilst the English courts have set the standard to “utmost care”, e.g. *almost* strict.²⁷⁰ However, it seems like the German courts have softened up a bit concerning the issue too.²⁷¹

The key defense under Art 17.2 is “*loss, damage...through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent*”.²⁷² What is to be required of the carrier in this sense is not defined by the CMR. It has been held that it should not be interpreted as the classic “force majeure” concept since it is not explicitly so stated.²⁷³ As an example a carrier did not escape liability when goods were stolen from the vehicle parked in a toll area while the carrier was sleeping. The court argued that not every precaution available need to be taken but that more could have been done to avoid the loss.²⁷⁴ The CMR does not define the concept of inherent vice in the same article. Thus, Clarke suggests that since this concept is common in the entire transport sector, the answer could be found in national law.²⁷⁵ The concept of vice is relative but the vice must be inherent from the beginning, when the goods are taken over by the carrier.²⁷⁶

²⁶⁵ Art 18 (1) CMR; Clarke, p. 213; de Wit, pp. 95-96, footnote 551.

²⁶⁶ Art 17 (5) CMR; Clarke, p. 216.

²⁶⁷ Art 17(3) CMR.

²⁶⁸ Art 29 CMR.

²⁶⁹ de Wit, p. 96; Ramberg 2007 p. 45; Clarke, pp. 182-183.

²⁷⁰ de Wit, p. 96; Clarke, pp. 182-183.

²⁷¹ Clarke, p. 229-230; de Wit, p. 96.

²⁷² My marking.

²⁷³ Clarke, p. 227.

²⁷⁴ *Silber Trading v Islander Trucking* [1985] 2 Lloyd's Rep 243; Baughen, p. 178.

²⁷⁵ Clarke, p. 398, 214-215.

²⁷⁶ Clarke, p. 220.

5.2.3. Special risks

Another option to escape liability is for the carrier to establish one the “special risks” set out in Art 17(4). If one of these risks is established the carrier is presumed not liable according to Art 18 (2). The carrier does not have to prove that this was *actually* the cause of the loss or damage but that the risk *could have* caused the loss or damage. Even if there are more probable causes the carrier it will suffice to show the probable cause of one of the risks. However, the claimant can always rebut the presumption.²⁷⁷ According to Baughen and Clarke the carrier would benefit from trying the defense set out in Art 17 (4) before 17 (2) since the case and burden of proof would be easier to establish.²⁷⁸

Art. 17.4 (b) provides that “*the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed*” will relieve the carrier from liability.²⁷⁹ Not all goods need packing or benefit from packing, hence, current trade practice will determine if the particular goods should have been packed.²⁸⁰ The goods should be able to withstand normal occurrences and dangers of the carriage agreed in the contract. Hence, the shipper should consider factors such as the nature of the goods, the length of the journey, weather conditions and transport conditions.²⁸¹ It is also suggested that since the carrier is often the party with more knowledge about these aspects, hence, the carrier might have a responsibility to enlighten the sender of facts that might affect the need for packing. Clarke gives an example when the carrier can choose the route to be partly by sea, he should inform the sender of this in order for the sender to be able to pack the goods properly to withstand the journey.²⁸²

Article 17 (4) (d) provides that “*the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;*” shall relieve the carrier of liability. The carrier has to establish that the damage could be due to the sensitivity of the goods. Goods like fruit, flowers and glass are considered sensitive because the nature of the goods exposes them particularly to loss or damage and makes them vulnerable. The goods do not have to be sensitive in all situations. The carrier could agree to take precaution of such goods but they still remain special risk cargo.²⁸³

²⁷⁷ Art 17 (4) (a-f), 18(2) CMR; Clarke, p. 213, 247; de Wit, p. 97.

²⁷⁸ Baughen, p. 178; Clarke, p. 213.

²⁷⁹ My marks.

²⁸⁰ Clarke, p. 256.

²⁸¹ Clarke, p. 257.

²⁸² Clarke, p. 258.

²⁸³ Clarke, pp. 272-276.

5.3. Package limitations

5.3.1. Under the HVR

The carrier is able to limit his liability²⁸⁴ when the shipper has not declared the full value of the goods carried.²⁸⁵ Usually the shipper chooses not to declare the full value of the goods because this would result in an increased freight rate that would be much more expensive than an insurance premium to cover the possible loss or damage.²⁸⁶ There is a special provision regarding containers stating that “...,the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units...”.²⁸⁷ This provision has caused some debate since it is not clear if what has been stated in the B/L also has to be acknowledged by the carrier.²⁸⁸ If the carrier is not able to verify the statements in the B/L he is under no obligation to acknowledge them.²⁸⁹ What is stated in the B/L constitutes prima facie evidence and can be rebutted until the B/L is transferred to a third party holder in good faith.²⁹⁰ Thus the carrier would probably want to protect himself by indorsing the B/L with statements such as “said to contain” or “contents unknown” which would require the claimant to present additional evidence that the goods were in fact so shipped.²⁹¹ Should the container be lost Wilson suggests that what has been stated by the shipper on the B/L will be the limitation available to the carrier.²⁹² The shipper is under an obligation to correctly state the units, in cases of miss-statements the shipper might have to indemnify the carrier.²⁹³ The limitation amount is 666.67 per package or unit and this amount is to be converted into a national currency determined by the court.²⁹⁴

²⁸⁴ Limitations of liability resulting from navigational errors will not be covered.

²⁸⁵ Art IV (5) (a-b, d). The calculation referred to here is the SDR, The Brussels Protocol of 1979. Not all States are parties to the SDR Protocol; Baughen, p. 122; Wilson, p. 201.

²⁸⁶ Wilson, p. 195.

²⁸⁷ Art IV (5) (c) HVR.

²⁸⁸ Wilson, p. 199.

²⁸⁹ Art III (3) HVR.

²⁹⁰ Art III (3) (4-5) HVR.

²⁹¹ Wilson, p. 200; Tetley, p. 1555.

²⁹² Wilson, p. 200; An interesting twist was taken in an Australian case where the judge deemed goods that needed packing as *one* unit for limitation purposes, instead of the thousands of pieces that was stated in the B/L; “*El Greco (Australia) Pty v Mediterranean Shipping Co [2004] 2 Lloyd’s Rep 537*”. This case will not be discussed further since it is not a European case.

²⁹³ Art III (3) (5) HVR.

²⁹⁴ Art IV (5) (a) (b), (d). The currency could either be in pound, dollars, euros or yen; Baughen, p. 122.

5.3.2. Under the CMR

The carrier is able to limit the compensation claimed under the CMR. The amounts vary depending on the claim is for damage or loss.²⁹⁵ When the weight, volume or quantity of the goods as taken over by the carrier is not the same when the goods are delivered there is a partial loss.²⁹⁶ A total loss will be presumed if the claimant can prove that the goods were taken over by the carrier but the carrier is not able to prove that the goods were delivered to the consignee. The goods are considered damaged when the condition or state of the goods are affected in a negative way. The damage could be either external or internal physical deterioration that affects the value of the goods.²⁹⁷

If the shipper does not state the full value of the goods the carrier is entitled to limit the compensation to be paid for lost or damaged goods.²⁹⁸ The compensation and the limitation are based on the weight of lost or partially lost goods.²⁹⁹ If the goods are damaged the calculation is based on the diminished value of the goods.³⁰⁰ Sometimes the weight does not correlate with the value of the goods, the shipper would then benefit from stating the actual value of the goods.³⁰¹ When the goods are damaged the limitation is set out in Art 25 (2) CMR. When the whole consignment has been damaged the limit cannot be lower than what is set to total loss. If only part of the consignment is damaged, the damaged part will set the limitation.³⁰² The limitation amount is 8.33 units of account per kilogram of gross weight.³⁰³

The CMR has no provisions regarding containers. However, should the container be packed and sealed by the shipper and the goods inside be stated on a receipt, the carrier has two choices. Either the carrier could acknowledge what is stated on the receipt or just acknowledge “one container”. The first choice holds the carrier liable for whatever is stated on the receipt, the other choice only holds the carrier liable for the statement of one container. The claimant then has to prove by the weight of the container, compared before carriage and at delivery, or by the nature of the damage, that it must have occurred during transit.³⁰⁴

²⁹⁵ Art 23, 25 CMR; Clarke, p. 299.

²⁹⁶ Clarke, p. 181.

²⁹⁷ Clarke, p 190-191.

²⁹⁸ Art 23 (6) CMR.

²⁹⁹ Art 23 (3) CMR.

³⁰⁰ Art 25 CMR.

³⁰¹ Art 24 CMR; Clarke, p. 300.

³⁰² Art 25 (2) (a-b) CMR; Clarke, pp. 299-300.

³⁰³ Art 23 (3) CMR.

³⁰⁴ Clarke, p. 66-67.

5.4. Analytical summary

The basis of liability evidently varies between the two carriage conventions. Thus, it is crucial for the multimodal carrier to be able to estimate what basis of liability he might be held under.

Starting off with the basis of liability for the actual mode used, the carrier under the CMR cannot escape liability for a defective vehicle. Under the HVR on the other hand, the carrier is under a due diligence obligation to provide a seaworthy ship before and at the beginning of the voyage. Thus the obligation is not continuous throughout the journey and the obligation is not strict. As long as due diligence has been exercised the carrier will escape liability even though the ship is not seaworthy after the commencement of the journey. This is also true when the ship calls at intermediate ports along the route, the ship does only have to be seaworthy at the very beginning of the entire journey. However, should new cargo be picked up along the way the obligation to provide a seaworthy ship for *that* particular cargo will be an obligation that starts when that cargo is picked up.

The due diligence obligation to provide a seaworthy ship depends on the circumstances in each particular case. The carrier has to have operated with the skill and knowledge that could be expected of a reasonable carrier. The obligation could not be delegated. Thus, even if the carrier delegates a certain job to a more knowledgeable person for the sake of being able to provide a seaworthy ship and this other person fails, the carrier will still be held liable. The carrier could not escape liability by claiming that the certain factors were unknown to him. According to case law the carrier would only escape liability for providing a seaworthy ship if there is a latent defect in the ship that is not discoverable during a careful examination. Thus, the standard is high, almost strict. The road carrier on the other hand is under a continuous strict liability for the vehicle from the moment he takes over the goods until the goods are delivered. The road carrier cannot delegate the obligation in any way. Thus it must be said that the obligation to provide a functional vehicle weighs more heavily on the road carrier than on the sea carrier.

The obligation to care for cargo under the HVR applies through the tackle-to-tackle should the parties not have stipulated otherwise. Thus, this obligation should normally be shorter than the obligation the road carrier has as this obligation under the CMR runs from take-over to delivery of the goods. For the sea carrier the obligation to care for cargo should be understood as adopting a sound system based on what the carrier knew or should have known. If there is a professional industry standard it should be followed. The goods should be able to withstand the normal hazards of the particular journey contracted for. Instructions given by the shipper could affect the liability of the sea carrier. The carrier could escape liability by showing that the loss or damage occurred because of one of the reasons in the list of exceptions, e.g. because of a latent defect or insufficient packing of the goods. Again current trade practice is decisive.

To the road carrier it would be easier to escape liability based on the list of exceptions set out under Art 17 (4) CMR than the escape routes set out in Art 17 (2) CMR. The reason for this is that if the road carrier could establish that the loss or damage *could have* resulted from one of these risks he is presumed not liable. It is also true that the liability is set to almost strict under 17 (2) CMR. The goods should be able to withstand the normal occurrences of the journey contracted for. It has been held that since the carrier is the one presumably with more knowledge about the hazards, it could be the responsibility of the carrier to inform the shipper about what packing should be needed for the particular journey.

There has been an ongoing debate about the responsibility for containers. The issue has not been settled. Neither the HVR nor the CMR contains provisions regarding the responsibility for containers. Some argue that containers should be seen as part of the ship or as gear and as such under the due diligence obligation. Some argue this would only be the case if the container is supplied by the carrier while others argue that this would be true also if the container is supplied by the shipper. Others argue that regarding the container as part of the ship would be stretching Art III (1) HVR too far and that containers are nothing more than a means of handling cargo. Thus, the liability for a defective container would be under the obligation to care for cargo set out in Art III (2). If this is true than the sea carrier would be able to rely on the list exceptions set out in the HVR, but the obligation would be continuous throughout the tackle-to-tackle period. If on the other hand the container would be under the obligation to provide a seaworthy ship, the obligation would be set to due diligence but also only before and at the beginning of the voyage. However, it is questionable if the carrier could escape liability for a container that becomes defective during voyage. If the container is supplied by the shipper the carrier is under no obligation to acknowledge what the shipper has stated on the B/L. If a road carrier has stated "one container" on the receipt it would be up to the shipper to demonstrate a difference in weight of the received goods and the delivered goods. Latent defects would be hard to demonstrate and prove when the container is sealed.

When goods are lost or damaged when carried inside containers there is a special package limitation provision set out in the HVR. The limitation is set to a much higher figure than the possible limitation under the CMR. Thus the multimodal carrier would benefit from being able to limit his liability according to the HVR. However, the multimodal carrier would probably have an easier task establishing one of the "special risks" set out under the CMR and thus escape liability because of the "presumably not liable" rule contained therein.

Insurance and standard term contracts are ways of protecting oneself. When the outcome of a potential suit is this uncertain one could only presume that the insurance premium needed would be more expensive than an insurance premium covering only one particular case of liability. If the insurance is expensive to the carrier the freight rate will be affected. Added to that is the potential risk of non-localized loss. The uncertainty calls for an increase in

transaction costs together with the possible result of unequal access to the international transport market.

6 Conclusion

From what has been shown above the problems associated with multimodal carriage are many. As to the answer to what regime or regimes that become applicable to the liability of a multimodal carrier it depends on the circumstances in each particular case. If an international carriage convention could be applicable to the dispute at hand this convention should be decisive. If more than one international convention become applicable there are no rules as to which convention should take precedence. If no international carriage convention is applicable, national law followed by the contract of carriage will decide the basis of liability of the multimodal carrier.

To solve the problems associated with these kinds of contracts basically two approaches are used. The advantage with the network principle is that the liability of the carrier will be matched with the regime of the leg where the loss or damage occurs. Thus the same rules apply for the main contract and the second layer of contracts. The disadvantage would be cases of non-localized loss. Often the multimodal contract contains provisions for the basis of liability in these situations. However, even if the regime is matched, there is no way of knowing where the damage will occur and thus under what regime the liability will eventually be decided. Hence there would still be an uncertainty as to what regime would become applicable in the particular case anyway. The advantage with the uniform system is that the multimodal contract and the liability will be transparent from the beginning. It is also an advantage in cases of non-localized loss. However, this principle could create a recourse gap between the first layer and the second layer of contracts. Thus, leaving the carrier in a situation where he might be forced to remunerate the consignor but might not be able to regain all, or anything, from the actual carrier at fault. Thus, the basis of liability for localized and non-localized loss will depend on the scope of application of the carriage regimes as well as if the claim will be dealt with according to the network approach or the uniform system.

As a main rule the basis of liability of a multimodal carrier will be determined through the carriage conventions when these are applicable by their scope of application. However, the applicability of the CMR has been the cause of much debate. Should the CMR only be applicable to multimodal carriage performed mode-on-mode or does the scope of application allow other kinds of multimodal carriage too? Courts in Germany and the Netherlands have deemed the CMR applicable only to multimodal carriage performed mode-on-mode. However, English courts have seen it possible to also apply the CMR to other types of multimodal contracts, at least when the road stage itself is international. There is also an ongoing debate of the applicability of Art 2 CMR. Does it apply only when the HVR applies mandatorily or also when the rules are voluntarily incorporated into the contract? If the HVR would not apply the CMR would probably apply throughout the entire carriage. The purpose with international conventions is harmonized

interpretation of the provisions, hence, it is interesting that the scope of the CMR is interpreted so differently. To the multimodal carrier these differences are of great practical importance.

It is also interesting to see that when goods are most prone to loss or damage, e.g. during storage or handling of the goods, there is no applicable international regime covering the liability of that loss or damage. Thus, freedom of contract applies as a main rule. Naturally the carrier would want to exclude or lessen his liability whenever possible. However, contractual clauses will not precede national legislation. Thus, the liability of the carrier will depend on if the multimodal contract is regarded a contract sui generis or maybe as a mixed contract? Should these operations be seen as ancillary services absorbed by the contract of carriage, or, maybe the multimodal contract of carriage is not a contract for carriage at all and thus no transport law will become applicable? The answer will affect the outcome of the claim and the basis of liability for the carrier.

The basis of liability varies greatly between the CMR and the HVR. Also the possibility to escape or limit the liability varies. E.g. a road carrier is strictly liable for the road vehicle from the moment he takes over the goods until the goods are delivered. The sea carrier however, does only have a due diligence obligation to provide a seaworthy ship before and at the beginning of the voyage. There are no explicit provisions regarding containers. However, containers have been the cause of much debate among legal scholars. It is not obvious if a container should be seen as part of the ship or only as means of handling cargo. The answer would affect the possible liability of the carrier. The HVR contain a special package limitation regarding containers, the CMR does not. The HVR is also more "carrier friendly" than the CMR due to the long list of exceptions and the package limitation that is more beneficial to the carrier than the limitation available under the CMR. Thus, it is evident that the different basis of liabilities could create a major recourse problem for the multimodal carrier.

None of the carriage conventions, with the possible exception of Art 2 CMR, could become applicable to a door-to-door transport concluded by two or more different modes of transport. But since the current patchwork of legislation seem to be working it could be argued that the concept of multimodal carriage have no practical concerns. However, from what has been shown above this patchwork contributes to uncertainty for all parties involved, especially to the MTO. The current legal framework governing multimodal transport is uncertain, costly and time consuming. It will affect the transaction costs associated with multimodal carriage in a negative way. The transport sector would surely benefit from a more predictable framework that would also contribute to equal access to the international transport market.

Appendix A

HVR

Article I

In these Rules the following words are employed, with the meanings set out below:

(a) 'Carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper.

(b) 'Contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(c) 'Goods' includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) 'Ship' means any vessel used for the carriage of goods by sea.

(e) 'Carriage of goods' covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article II

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

(a) Make the ship seaworthy;

(b) Properly man, equip and supply the ship;

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

Article IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
- (m) Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
 - (n) Insufficiency of packing.

CMR

Article 1

1. This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a Contracting country, irrespective of the place of residence and the nationality of the parties.
2. For the purpose of this Convention, "vehicles" means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Convention on Road Traffic dated 19 September 1949.
3. This Convention shall apply also where carriage coming within its scope is carried out by States or by governmental institutions or organizations.
4. This Convention shall not apply:
 - (a) To carriage performed under the terms of any international postal convention;
 - (b) To funeral consignments;
 - (c) To furniture removal.
5. The Contracting Parties agree not to vary any of the provisions of this Convention by special agreements between two or more of them, except to make it inapplicable to their frontier traffic or to authorize the use in transport operations entirely confined to their territory of consignment notes representing a title to the goods.

Article 2

1. Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. Provided that to the extent it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by act or omission of the carrier by road, but by some event which could only have occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions

prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Convention.

2. If the carrier by road is also himself the carrier by the other means of transport, his liability shall also be determined in accordance with the provisions of paragraph 1 of this article, but as if, in his capacities as carrier by road and carrier by the other means of transport, he were two separate persons.

Article 17

1. The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.

2. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage, or by reason of the wrongful act or neglect of the person from whom he may have hired the vehicle or of the agents or servants of the latter.

4. Subject to article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one more of the following circumstances:

- (a) use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;
- (b) the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
- (c) handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee;
- (d) the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;
- (e) insufficiency or inadequacy of marks or numbers on the packages;
- (f) the carriage of livestock.

5. Where under this article the carrier is not under any liability in respect of some of the factors causing the loss, damage or delay, he shall only be liable to the extent that those factors for which he is liable under this article have contributed to the loss, damage or delay.

Article 18

1. The burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier.
2. When the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks.
3. This presumption shall not apply in the circumstances set out in article 17, paragraph 4 (a), if there has been an abnormal shortage, or a loss of any package.
4. If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (d), unless he proves that all steps incumbent on him in the circumstances with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him.
5. The carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (f), unless he proves that all steps normally incumbent on him in the circumstances were taken and that he complied with any special instructions issued to him.

Bibliography

Literature

Books

Baughen Simon; “*Shipping Law*”; 5th ed.; Routledge, an imprint of the Taylor & Francis Group; CPI Group (UK) Ltd; Croydon; 2012.

Baatz Yvonne, Velasco Ainhoa Campas, Debattista Charles, Hjalmarsson Johanna, Lista Andrea, Lorenzon Filippo, Merkin Rob, Pilley Captain Richard, Serey Andrew, Tsimplis Michael; “*Maritime Law*”; 2nd ed.; Sweet & Maxwell part of Thomson Reuters (professional) UK Limited; CPI Group (UK) Ltd; London; 2011.

Referred to as **Baatz** amongst others.

Bernitz Ulf, Heuman Lars, Leijonhufvud Madeleine, Siepel Peter, Warnling-Nerep Wiweka, Vogel Hans-Heinrich; “*Finna rätt – Juristens källmaterial och arbetsmetoder*”; 13 u; Norstedts Juridik AB; Gutenberg Press Ltd; Malta; 2014.

Berlingieri Francesco; “*International Maritime Conventions Vol 1 – The Carriage of Goods and Passengers by Sea*”; Informa Law from Routledge; TJ International Ltd, Cornwall; 2014.

Bogdan Michael; “*Concise Introduction to Comparative Law*”; Published by Europa Law Publishing; G2K Designers; 2013.

Referred to as **Bogdan 2013**.

Bogdan Michael; “*Svensk internationell privat- och processrätt*”; 8th ed.; Norstedts juridik AB; Elanders AB; Mölnlycke; 2014.

Referred to as **Bogdan 2014**.

Bogdan Michael; *“Komparativ rättskunskap”*; 2 u; Norstedts juridik AB; Elanders Gotab; Stockholm; 2003.

Referred to as **Bogdan 2003**.

Clarke Malcom A.; *“International Carriage of Goods by Road: CMR”*; 6th ed.; Published by Informa Law; Printed by TJ International Ltd Padstow; Cornwall, Great Britain; 2014.

Girvin Stephen; *“Carriage of Goods by Sea”*; 2nd ed.; Oxford University Press Inc.; CPI Antony Rowe; Wiltshire; 2011.

Hellner Jan; *“Metodproblem i rättsvetenskapen – Studier i förmögenhetsrätt”*; Elanders Gotab; Stockholm; 2001.

Referred to as **Hellner 2001**.

Hellner Jan, Hager Richard, Persson Annina H; *“Speciell avtalsrätt II, 1a häftet Särskilda avtal”*; Norstedts juridik AB; 6 u; Paper&Tinta; Poland; 2015. Referred to as **Hellner 2015**.

Hoeks Marian; *“Multimodal Transport Law – The Law Applicable to the Multimodal Contract for the Carriage of Goods”*; Published by Kluwer Law International; Printed by Turpin Distribution Services Ltd.; Great Britain; 2010.

Johansson Svante O; *“An Outline of Transport Law – International Rules in Swedish Context”*; Jure Förlag AB; Stockholm; 2008.

Plender Richard and Wilderspin Michael; *“The European Private International Law of Obligations”*; 4th ed.; Thomson Reuters (Professional) UK Ltd trading as Sweet & Maxwell; CPI Group (UK) Ltd; London; 2015.

Peczenik Aleksander; "*Vad är rätt? Om demokrati, rättssäkerhet, etik och juridisk argumentation*"; Norstedts juridik AB, del av Fritzes förlag AB; Graphic Systems; Göteborg; 1995.

Referred to as **Peczenik rätt**.

Peczenik Aleksander; Juridikens teori och metod – en introduktion till allmän rättslära; Fritzes förlag AB; Graphic Systems; Göteborg; 1995. Referred to as **Peczenik teori**.

Ramberg Jan; "*The Law of Transport Operators – In International Trade*"; Upplaga 1:2; Förlag Norstedts Juridik AB; Tryck Elanders; Vällingby; Referred to as **Ramberg 2007**.

Ramberg Jan; "*Spedition och fraktavtal*"; PA Norstedt & Söners förlag; Studentlitteratur AB; 1983; Stockholm Sverige. Referred to as **Ramberg 1983**.

Sandgren Claes; "*Rättsvetenskap för uppsatsförfattare – Ämne, material, metod och argumentation*"; 2 u; Norstedts Juridik AB; Elanders Sverige AB; Vällingby; 2007.

Stevens Frank in; "*Carriage of Goods by Sea, Land and Air – Unimodal and multimodal transport in the 21st century*", edited by Soyer Baris and Tettenborn Andrew; Informa Law; TJ International Ltd.; Cornwall; 2014.

Tetley William; "*Marine Cargo Claims*" Vol. 1-2; 4th ed.; Thomson Carswell; Led Éditions Yvon Blais Inc.; Canada; 2008.

Wilson John F; "*Carriage of Goods by Sea*"; 7th ed.; Published by Pearson Education Limited; Printed by Clays Ltd; Great Britain; 2010.

De Wit Ralph; "*Multimodal transport*"; Published by Lloyd's of London Press Ltd; Printed by Hartnolls Ltd; Cornwall, Great Britain; 1995.

Articles

Booyesen Hercules; “*The Liability of the International Carrier of Goods in International Law*”; Heinonline Article; Cit. 25 Comp & Int’l L.J. S Afr. 293; 1992; pp. 293-311.

Last visited 2015-05-24.

Coldwell Rubert; “*Jurisdiction and the UN Convention on contracts for the international carriage of goods: Where the freedom of contracts prevail*”; Heinonline Article: International Trade and Business Law Review; Vol. 17; Issue 1; 2014; pp. 108-125.

Last visited 2015-05-24.

Crowley Michael E; “*The Limited Scope of the Cargo Liability Regime Covering Carriage of Goods by Sea: The Multimodal Problem*”; Heinonline Article; 79 Tul. L. Rev.; Issues 5-6; 2004-2005; pp. 1461-1504.

Last visited 2015-05-13.

Lamont-Black Simone; “*Claiming Damages in Multimodal Transport: A Need for Harmonization*”; Heinonline article: 36 Tul. Mar L.J.; 2011-2012; pp.707-724.

Last visited 2015-05-24.

Nikaki Theodora; “*Bringing Multimodal Transport Law into the New Century: Is the Uniform Liability System the Way Forward?*”; Journal of Air Law and Commerce; Vol. 78; Issue 1; 2013; pp. 69-120.

Last visited 2015-05-24.

Ulfbeck Vibe; “*Multimodal Transports in the United States and Europe – Global or Regional Liability Rules?*”; Heinonline Article; Tulane Maritime Law Journal; Vol. 34; Issue 1; 2009-2010; pp. 37-90.

Last visited 2015-01-26.

Ramberg Jan; “*Global Unification of Transport Law: A hopeless Task?*”; Heinonline article; Penn State International Law Review; Vol. 27; Issue 3 and 4; 2008-2009; pp. 851-858; Last visited 2015-03-25.

Referred to as **Ramberg 2008**

Ramberg Jan; “*The Future Law of Transport Operators and Service Providers*”; Scandinavian Studies in Law 135; Vol. 46; 2004; pp. 135-152. Last visited 2015-05-25.

Referred to as **Ramberg 2004.**

Internet sources

UNCTAD Report, Last visited: 2015-03-13;
http://unctad.org/en/Docs/sdtetlb20031_en.pdf

Bugden Paul; The Supply of Containers and “Seaworthiness”, Last visited; 2015-05-23;
http://www.forwarderlaw.com/library/view.php?article_id=139&highlight=bugden

List of Member to the carriage conventions, Last visited: 2015-05-23;
<http://www.informare.it/dbase/convuk.htm>

Databases

Westlaw: for case law

Heinonline: for articles

Lloyd’s Law report: for case law

Legislation

CMR	<i>Convention on the Contract for the International Carriage of Goods by Road – CMR (Geneva, 19 May 1956) United Nations (UN)</i>
HVR	<i>the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement in civil and commercial matters</i>
ROME 1	<i>the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement in civil and commercial matters</i>
Brussels 1	<i>the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement in civil and commercial matters</i>
New Brussels 1	<i>the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and enforcement of judgments in civil and commercial matters</i>
VCLT	<i>United Nations Convention on the Law of Treaties, Signed in Vienna 23 May 1969</i>
Rotterdam	<i>the United Nations Convention on International Multimodal Transport of Goods, Geneva, 24 May, 1980” (The MT Convention) and “the United Nations Convention on the Contracts for the International Carriage of Goods Wholly or Partly by Sea</i>
Hamburg Rules	<i>United Nations Convention on the Carriage of Goods by Sea, 1978</i>
Hague Rules	<i>International Convention for the unification of certain rules of law relating to bills of lading, Brussels, August 25, 1924</i>

MTO 1980

*the United Nations Convention on Multimodal
Transport of Goods, Geneva, 24 May, 1980*

Swedish Maritime Code: Sjölag (1994:1009)

*Lag (1969:12) med anledning av Sveriges tillträde till konventionen den 19
maj 1956 om fraktavtalet vid internationell godsbefordran på väg*

Kommittédirektiv "En ny Bryssel I-förordning" Dir. 2012:125

ICC-rules

*International Chamber of Commerce Rules on
Arbitration*

UNIDROIT- principles

*Unidroit Principles of International Commercial
Contracts*

Table of Cases

Silber Trading v Islander Trucking [1985] 2 Lloyd's Rep 243

El Greco Pty v Mediterranean Shipping Co [2004] 2 Lloyd's Rep 537

The Mahia [1955] 1 Lloyd's Rep 264

The Morviken (The Hollandia) [1983] 1 Lloyd's Rep. 1.

Pyrene Co v. Scindia SN Co [1954] 2 QB 402

Mayhew Foods Ltd v Overseas Containers Ltd [1984] 1 Lloyd's Rep 317

Captain v Far Eastern Shipping Co [1979] Lloyd's Rep 595

The Hellenic Dolphin [1978] 2 Lloyd's Rep. 336

Leesh River Tea Co v British India Steam Nav Co [1966] 2 Lloyd's Rep 193

Maxine Footwear Cl Ltd v Canadian Government Merchant Marine [1959]
AC 589

The Amstelot, Union of India v NV Reederij Amsterdam [1963] 2 Lloyd's
Rep 223

Muncaster Castle, Riverstone Meat Co v Lancashire Co [1961] 1 Lloyd's
Rep. 57

James Buchanan & Co v Babco Forwarding & Shipping [1977] QB 208,
[1978] AC 141

The Kapitan Sakharov Northern Shipping Co v Detutsche Seereederei [2000]
1 Lloyd's Rep 255

The Maltesian, Albacora SRL v Westscott & Laurance Line [1966] 2 Lloyd's
Rep 53

The Komninos S, Hellenic Steel Co v Svolamar Shipping Co [1991] 1
Lloyd's Rep 371

The Rafalea S, MacWilliam Co Inc v Mediterranean Shipping Co [2005] 1
Lloyd's Rep 347

Quantum Corporation Inc. and others v. Plane Trucking Ltd and Aother
[2002] 2 Lloyd's Rep. 25

Intercontainer Interfrigo v Balkende C-133/08

BGH 17 jul. 2008 (TranspR 2008, 365-368)

Van de Wetering Rb Arnhem 18 July 1996

Godafoss, HDH 22 jun 2010