This Country report on CMR-convention has been provided by

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Part I (chapter I, III, V, VII)

1. The scope of the CMR-Convention (art. 1&2)

1.1 Is the CMR applicable to carriage of goods by road if no consignment note is issued? (art. 1&2)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.	The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention. Even though the absence of the consignment note won't affect the contract of carriage and that it will be subject to Convention, the note is essential in certain circumstances to allow the operation of the Convention - see the right of disposal under article 12 (the first copy of the consignment note must be produced to the carrier); and it is though that it is required for reservation purposes under article 9.2.	In Gefco (UK) Ltd v Mason (No. 1) [1998] 2LLR 585 it was argued that because it was not possible to make out a consignment note in relation to an "umbrella contract" for multiple movements, it followed that the Convention could not apply to the umbrella contract, even though it clearly applied to the individual movements. It was held by the Court of Appeal that it would be inconsistent with Article 4 to hold that contracts to which the Convention applied should be limited to those contracts for which a consignment note could be made out contemporaneously. The Convention accordingly was held to apply to the umbrella contract.	

		In any event its absence makes for evidential difficulty in proving the existence and terms of the contract.		

1.2 Can the CMR be made applicable contractually? (art. 1&2)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	There is nothing to prevent the parties to the contract of carriage from agreeing to adopt the Convention to a contract which otherwise would not be subject to it.	There is nothing to prevent the parties to the contract of carriage from agreeing to adopt the Convention to a contract which otherwise would not be subject to it. It is often the case that, due to UK's island status, the UK road leg of a wider CMR contract for carriage is made subject to CMR. This is to cater for the "container gap" - see 1.4 - ro-ro below.	Princes Buitoni Ltd v Hapag-Lloyd Aktiengesellschaft [1991] 2LLR 383 a contract for multimodal transport from Vancouver to Liverpool provided that CMR was to apply during the road carriage in Europe. It was held that this meant that the provisions of CMR would be applied to the road carriage which took place between Felixstowe and Liverpool. There were no grounds for limiting the clause so that it read “road carriage in Europe between two different countries in Europe”.	

1.3 Is there anything practitioners should know about the exceptions of art. 1 sub 4?

Yes/No	Convention	National law	Landmark cases	Clarification

YES		There are possible problems because the Convention doesn't contain a definition of either funeral consignment or furnitre removal. There may be difficulties where the "furniture removal" is actually moved within a container and the description of goods is unclear.	Not applicable.	Not applicable.

1.4 To what extent is the CMR applicable to the following special types of transport? (art. 1&2)

Please indicate if (partly) applicable	Service	National law	Landmark cases CMR	clarification
☒	**Freight forwarding agreement**	Partial application. This issue is the same question as whether for English law purposes the party is either a freight forwarder or a carrier. The court will look at various factors but primarily will concentrate upon the obligations actually undertaken by the relevant party. What is clear is that the court will not allow a party to avoid its obligations under the Convention by asserting that he is in fact a freight forwarder.	Aqualon (UK) Ltd v Vallanna Shipping [1994] 1LLR 669. Factors: - terms of the contract including the nature of instructions given. - description by the parties of their role. - the course of dealings including the manner of performance. - charging regime. - nature/terms of the CMR consignment note.	Not applicable.

☒	**Physical distribution**	Partial applicaiton. See freight forwarding above. Where a party offers a comprehensive range of services, the court will look to analyse the exact obligations undertaken. It may be that if carriage by road only forms a minor proportion of the contractual obligations, it may be difficult to assert that the Convention applies to govern the liability of that party.	Not applicable.	Not applicable.
☒	**Charters**	Partial application. See multimodal below.	Not applicable.	Not applicable.
☐	**Towage**	Not applicable.	Not applicable.	Not applicable.
☒	**Roll on/roll off**	CMR applies to roll on roll off. By article 1, it applies to international carriage by road, including operations which may take place off the road and where other modes of transport are used. However, the proviso is that the goods must remain on the road vehicle. This has led to the "container gap". The definition of a vehicle for the purposes of CMR is motor vehicles, articulated vehicles, trailers and semi trailers. It does not extend to containers. Therefore, if the container is taken from the road		Not applicable.

		vehicle at the loading port, say Rotterdam and it travels across the North Sea unaccompanied, CMR may not apply. But see multimodal.		
☒	**Multimodal transport**	Article 2 is confined to where the goods remain on the vehicle rather than carriage by other mode. But CMR can apply to a period of carriage, if it falls within the definition of article 1 in that it is international road carriage from one state to another one of which is a signatory to CMR. Two criteria to be satisfied. First, did the carrier contractually oblige itself to carry by road? Secondly, to what extent could the contract for carriage be for carriage by road and by some other means as well, to which CMR does not apply.	Quantum Limited v Plane Trucking Ltd [2002] 2LLR 24 (CA) English law took the view that there is a range of possibilities which may lead to the goods being carried, internationally, by road. 1. the carrier has promised unconditionally to carry by road and on a trailer; 2. the carrier may have promised to do this, but reserved either a general or limited right or option to elect for a different means of transport for some or all of the way; 3. the carrier may have left open the means of transport as between a number of possibilities, but at least one of them was carriage by road; or 4. the carrier may have undertaken to carry by some other means, but reserved an option to carry by road. English law tentatively takes the view that if any of the above 4 apply, then CMR will apply to the relevant leg which can be categorised as international carriage by road from one state to another.	An example from one of my own cases. A shipment of goods from St Petersburg Russia, to Austria via Baltic Sea sea leg followed by German/Austrian road leg. The carrier was a sea carrier. Carriage was carried out under a waybill. No CMR consignment note was issued by the ocean carrier. The waybill terms envisaged there could be the application of CMR. The goods were stolen during the road leg between Germany and Austria. In these circumstances, the sea carrier's liability would probably be governed by CMR, rather than the terms of the waybill.

☒	**Substitute carriage**[1]	Partial application. The contract of carriage may allow the carrier to subcontract the whole or part of a journey. If not, such permission will usually be implied by English law. Sometimes the terms of a contract will expressly forbid it. If the carrier does subcontract, then by virtue of article 3, the first carrier remains liable to the party with whom he contracts. It follows that if the contract is one which attracts the application of CMR as a matter of law, then it would apply to any substitute carrier so appointed. However, if the nature of the substitute carriage is such that rather than it amount to the appointment of his subcontractor, it is a novation whereby the first carrier falls out of the equation, and the contract being one between the sender and the substitute carrier, then CMR may still apply, but the first carrier would not be a party to that CMR contract of carriage.	Not applicable.	Not applicable.

[1] partly art. 3

		Domestic law would look at such matters as the formation of the contract, and the parties to that contract.		
☒	**Successive carriage**[2]	If the carriage contract is single – in other words a contract for an entire journey from A to B, but performed by a number of road carriers then CMR would apply to not just the first/principal carrier but all subsequent carriers.	Not applicable.	Not applicable.
☒	**'Paper carriers'** [3]	Partial application - again the English court would analyse the actual obligations undertaken. It is clear that in certain circumstances the paper carrier, including NVOCC, can be bound by the Convention.	Ulster-Swift Ltd v Taunton Meat Haulage Ltd [1977] 1LLR 346 - the consignors arranged for the carriage by road of pig carcases from Northern Ireland to Switzerland. They contracted in the first instance with Taunton, who subsequently sub-contracted the entire carriage to a Dutch carrier, who carried the carcases to Switzerland. On arrival it was found that the carcases had deteriorated. The consignors accordingly sued Taunton, who in turn sued the Dutch carrier who asserted that they were not successive carrier on the grounds that Taunton was	Not applicable.

[2] please be reminded that this question only asks to what extent the CMR is applicable to successive carriage. The specifics of art 34/35 should be addressed under question 16

[3] parties who have contracted as carrier, but do not perform any part of the transport, similar to NVOCC's in maritime transport

			never a carrier in the first place, not having performed any part of the carriage. The Court of Appeal held that because Taunton had contracted to carry the goods, they were carriers within the meaning of the Convention. The sub contract of the entire carriage contract was irrelevent.	

1.5 Is there anything else to share concerning art. 1 and 2 CMR?

Not applicable.

2. The CMR consignment note (art. 4 - 9 & 13)

2.1. Is the consignment note mandatory?
2.2. Nice to know: Does absent or false information on the consignment note give grounds for a claim?
2.3. Is the carrier liable for acceptance and delivery of the goods? (art. 8, 9 & 13)
2.4. To what extent is the carrier bound to his remarks (or absence thereof) on the consignment note? (For instance: Can a carrier be bound by an express agreement on the consignment note as to the quality and quantity of the goods?)

Number of question	Yes/No	Convention	National law (civil law as well as public law)	Landmark cases	Clarification
2.1	NO	See 1.1 above.	Not appliable.	Not applicable.	Not applicable.

2.2	YES	It would certainly make it difficult to prove the existence and terms of a contract. As evidence can be adduced, according to procedural law, to fill in any gaps. Specifically, see article 7. It gives the carrier the ground for a claim against incorrect information provided by the sender – the accuracy arising out of the requirement of article 6.	Not applicable.	Not applicable.	Not applicable.
2.3	NO		The effect of article 9.1 and 9.2 is that it raises a presumption that the carrier has taken over the goods, in their quantity and condition, as recited in the consignment note. Article 8 bolsters this presumption. Article 8 is the obligation on the carrier to check the goods and enter any reservations. If there is no consignment note acknowledging receipt of the goods, there is no presumption about the quantity and	Not applicable.	Not applicable.

			condition of the goods received by the carrier. Article 8.2 gives the carrier a get out. He can escape the presumption if he is unable to make any checks. But he must state that (a) no checks were made and (b) the reason why no checks were made. The obligation to check in 8.1 does not give rise to liability for breach of the carriage contract. All it does is affects the onus of proof in cases of loss or damage. Article 13 deals with the situation at the other end of the contract chain – not taking over the goods, but on delivery. The consignee can require the carrier to deliver the goods to him – in return for a receipt. Although article 13 makes reference to the second copy of the consignment note, it is not thought that the presence of the notice is necessary before the consignee can exercise its rights.		

			For the purpose of delivery, it has to be at the right place and the right person. But, neither articles 8, 9 or 13 govern the liability of the carrier. That is governed by article 17. Article 17 lays down the temporal scope of the carrier's liability. It's liable for all time between when the carrier takes over the goods and when he delivers. Neither article 8 or 13 define when the operations of taking over the goods and delivery of the goods occurs. That is a matter for national law.		
2.4	YES		Article 8 contains an obligation on the carrier to check the goods ie the accuracy of the content of the consignment note with regard to the number of packages and condition to goods. If he cannot check, he must say so. If the carrier doesn't fulfil the obligation imposed by article	Not applicable.	Not applicable.

			8.1 to check, it doesn't give rise to a liability for breach of contract of carriage, but it affects the onus of proof in the case of loss or damage.		

3. Customs formalities (art. 11 & 23 sub 4)

3.1. Is the carrier responsible for the proper execution of customs formalities with which he is entrusted?
3.2. Is the carrier liable for the customs duties and other charges (such as VAT) in case of loss or damage?
3.3. Nice to know: Is a carrier liable for the loss of customs (or other) documents and formalities?
3.4. Nice to know: Is a carrier liable for the incorrect treatment of customs (or other) documents and formalities?

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
3.1	NO	As a carrier, no. Unless, the carrier has gone beyond its traditional role as carrier and assumed a freight forwarding role and assumed an obligation to the sender for proper execution of customs formalities. Eg. enters the wrong customs code rendering the sender liable for duty which might not otherwise have been chargeable; or failed to apply in time under a quota for duty free status.	Not applicable.	Not applicable.	Not applicable.

3.2	YES	See article 23. Liability in this regard is not subject to limitation contained in article 23.3. The only limit is that "such charges must be in consequence of the carriage". It is governed by rules of causation and remoteness. Note excise duty is different from "customs duties		See James Buchannan v Babco [1978] AC141. For public policy reasons, revenue law favours the public exchequer. Where no explanation can be given as to the circumstances of theft, the law deems the goods are in free circulation in this jurisdiction and, therefore, excise duty is properly payable. So excise duty became payable because it arose out of the circumstances of the carriage.	
3.3	YES	Note that article 11 imposes a duty upon the sender to provide customs documents. The carrier is under no obligation to enquire into the accuracy or adequacy of the documents or the information contained in them. But note the proviso to 11.2 – wrongful act or neglect by the carrier. The misplacing of documents could amount to a wrongful act or neglect which means the sender is not liable to the carrier for any loss.			
3.4	NO	See 3.1 above.			

4. The right of disposal (art. 12)

4.1. To what extent can the consignee and consignor execute their right of disposal?

This is a unilateral right given to the sender and consignee in certain circumstances. Rather than delivery goods to person A at place B, there can be an alteration in these terms and for delivery to a different person at a different place. This should be distinguished from a variation to the contract terms which have to be agreed by both parties. The right of disposal is contained in article 12 and doesn't apply to contract variation.

The right of the relevant person to exercise article 12 rights is linked to the possession of the consignment note.

The starting point is the concept that the right of disposal lies with the sender, who consigns the goods and who settles the terms of the consignment note. The sender can designate a new consignee or a new destination.

This makes for obvious practical problems for any carrier. The carrying out of the varied instructions has to be "possible"; the person exercising the right of disposal has to produce a copy of the consignment note.

The absence of a consignment note isn't fatal. A carrier still has to obey the instructions of the sender. The purpose of the production of the note is to protect the person entitled to give directions with regard to disposal and also the carrier itself from the danger that the carrier might follow instructions from an unauthorised person. If there is no consignment note, and the carrier knows this, then, put simply, there can be no other person who can give such instructions.

The person exercising the right of disposal has to give the carrier an indemnity.

The consignee can acquire the right of disposal from the moment the consignment note is drafted, if the sender makes an entry to this effect within the consignment. Absent this, the right of disposal passes to the consignee when the "delivery" copy of the consignment note is handed over. Please elaborate your findings and conclusions here

4.2. Nice to know: To what extent is the carrier liable if he does not follow instructions as given or without requiring the first copy of the consignment note to be produced (art. 12.7)?

In either instance, the carrier becomes liable to the person who is entitled to make the claim for any loss or damage caused.

The liability is probably not caught by the limitation provisions of CMR. This is based on the wording on those limitation provisions itself. Article 12 liability is different to article 17 liability.

5. Delivery (art. 13, 14, 15 & 16)

5.1. Can the obligation to ask for instructions lead to liability of the carrier? (art. 14, 15 & 16)
5.2. Nice to know: Are there circumstances that prevent delivery as mentioned in art. 15 for which the carrier is liable?

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
5.1	YES	If the performance of the contract of carriage becomes impossible, then the carrier is under an obligation to ask for instructions within a reasonable time and give enough information so that appropriate instructions can be given. If those instructions follow, then the rights of the parties are then governed by the rules about disposal as contained in article 12. So, in short, there is a variation to the contract of carriage. If the rights are governed by article 12 then the carrier can			

		become liable, with unlimited liability, under article 12.7.			
5.2	NO	Article 15 is concerned with obstacles to delivery at the destination. It is concerned with what the carrier should do next if an obstacle arises. It lays down the steps any carrier should take in these circumstances. It does not regularise the carrier's liability – that is the concern of article 17. So, although there may be possible circumstances – for example, where the consignee refuses to take delivery because of damage to the goods (which may be a carrier's responsibility) article 15 is not concerned with that but simply regulating what the carrier should do in these circumstances.			

6. Damage (art. 10 & 30)

6.1. Is packaging (the container, box etc.) considered part of the goods, if provided by the shipper/cargo interest?

Yes/No	Convention	National law	Landmark cases	Clarification

YES	Is packaging (including the container, box etc) considered as part of the goods if provided by the shipper/cargo interests? Article 1.2 would suggest yes. "Vehicles" means motor vehicles, articulated vehicles, trainers and semi-trailers. Containers doesn't fall within any of these and, therefore, by inference must be goods. It is generally thought that goods include their packing – article 23 refers to the "gross weight".			

6.2. To what extent Is the consignor liable for faulty packaging? (art. 10)

Yes. The type of loss or damage is limited to third party property – injury to persons, equipment and other goods.

Note the proviso – the consignor won't be liable if the defect leading to the damage was apparent or known to the carrier when he took over the goods and he made no reservations in respect of it.

6.3. When is a notification of damage considered to comply with all requirements? (art. 30)

To rebut the presumption that the carrier has not broken the carriage contract, article 30 requires, as an initial point, two actions.

Either he checks the condition of the goods with the carrier or sends a written reservation.

If a check is carried out, the check is conclusive. There can be no later rebuttal by the carrier.

If the check does not take place, the claimant has to adduce further evidence and starts this by making reservations.

The reservations must be in writing. And they must be sent. No particular form or formula is required. It can be noted on the consignment note.

As to the time of reservation, it depends whether the loss or damage is apparent or not. For "apparent damage" see 6.4 below.

Is there an obligation upon the carrier, in carrying out the checking, to open packaging? If this would cause unacceptable delay, then it is advisable to treat any damage as non apparent.

In these cases, the reservation must be sent within 7 days of delivery (Sundays and holiday excepted).

The absence of reservation? This does not debar a claim. Sending reservations means the claimant has done nothing more than assert liability of the carrier and to rebut the prima facie position that he hasn't broken the carriage contract. Whether a reservation is sent or not, the claimant still has to prove that there has been loss or damage.

To a carrier, any reservations are useful – it alerts him to the possibility of a claim and that he should, prudently, make investigation.

6.4. Nice to know: What is considered to be 'not apparent damage'? (art. 30 sub 2)

This is akin to "apparent condition" for the purposes of article 9.

It refers to what is discoverable on a reasonable examination.

The requirement extends to not just goods but packaging and ropes. Apparent condition of goods extends to their external temperature – reference to a thermostat for example.

The test is whether the goods were apparently of sufficient or good enough condition that they would be able to withstand the anticipated journey.

It is not thought that there is an obligation to open packaging or containers to assess the quality of goods.

Note the consignee has the right to have the goods checked, at his own cost. It rarely occurs. Please elaborate your findings and conclusions here

6.5. Nice to know: When is counterevidence against a consignment note admitted? (art. 30 sub 1)

See 6.3 above with regard to reservations.

7. Procedure (art. 31 – 33)

7.1. When do the courts or tribunals of your country consider themselves competent to hear the case? (art. 31 & 33)

Article 31(1) permits two possibilities: first, litigation in a jurisdiction chosen by the parties, and second, litigation in a jurisdiction designated by Article 31(1) itself. The first point to note is that the fact that the parties have agreed a jurisdiction does not exclude the alternative jurisdiction based on the provisions of Article 31(1)(a) and (b), since it is provided that the latter shall be "in addition" to the former.

If the parties have agreed a jurisdiction, Article 31(1) effectively ensures that the provisions of the Convention will be applied by in effect providing that only the courts of a contracting country can be so designated.

Scope

Article 31 applies to all legal proceedings arising out of carriage under the Convention. It will therefore extend to extra-contractual claims referred to in Article 28, and it will also apply to legal proceedings both by the cargo interests against the carrier and by the carrier against the cargo interests.

In the case of agreements as to jurisdiction prior to the carriage, as between the parties to that agreement, it will be necessary for the party alleging such agreement to show that the jurisdiction clause was part of the contract, in accordance with normal rules of contractual incorporation.

Potential duplication of actions

Note from the above that the provision of Article 31(1) can produce a situation where there is more than one permissible jurisdiction under the Convention. The purpose of Article 31(2) is therefore to avoid duplication of actions, which is achieved by providing that where a claim within Article 31(1) is pending before a court or tribunal, or where a judgment has already been obtained, then no new action can be started between the same parties on the same grounds unless the judgment of the first court is not enforceable in the country where the subsequent proceedings are commenced. This prohibition applies to any new action "between the same parties", so it will apply equally to attempts by the defendant to counterclaim in another jurisdiction.

The words "action is pending" used in Article 31(2) are not defined. However, the specific reference to "before a court or tribunal" must mean that at least some step in the action has been taken.

After a series of convolluted court decisions involving the inter-action of the Convention with other relevant international conventions and after the coming into force of the Judgments Regulation, English law has now, probably, settled that an action is pending when the court proceedings have been issued at the court, not necessarily served on the other party.

7.2. Is there any case law in your jurisdiction on the period of limitation? (art. 32)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	Scope of operation The period of limitation is one year and it will apply to any "action arising out of carriage under [the] Convention". In other words, as with Article 31, it not only applies to actions arising out of the contract of carriage but also to any action which arises out of the actual carriage itself whether in contract or in tort so the one-year period is equally applicable to actions brought by the carrier as to actions brought against the carrier by the cargo interests for loss, damage or delay. It has been held to apply to an action by the carrier for freight charges. It would also apply to a claim by the sender for the recovery of an overpayment of freight charges Period of limitation			Article 32(2) provides for the suspension of the period of limitation. Broadly, this is achieved by sending a written claim to the carrier; the period of limitation is then suspended until the carrier terminates the suspension by rejecting the claim in writing. There is no requirement for the claim to be in any particular form - just in writing. Sufficient detail is needed so the carrier can identify the incident. There is no requirement for supporting documents. The period is suspended until the carrier rejects the claim. Perversly, even though no documents may have been submitted with the claim, if they have the carrier must return them.

	Although the period of limitation is generally of one year's duration, where there is wilful misconduct on the part of one of the parties, or such default as the law of the court seised of the matter may consider as equivalent to wilful misconduct, then the period of limitation will be three years.			There can only be one suspension of time.

7.3. Nice to know: Is it possible to award a single court or tribunal with exclusive competence to hear a CMR based case? (art. 31 & 33)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	See 7.1 above and also article 33. The parties are permitted to provide for their disputes to be settled by arbitration if they so wish but it is thought that to be binding the arbitration clause should explicitly state that the arbitration reference will be subject to CMR. It is not sufficient that it provide for the law of the signatory state or that the arbitration take place in the signatory state. The reference to the contract of carriage in Article 33 is not precise in terms of formalities. As with other contracts, the contract of			

	carriage can consist of a number of documents, and terms agreed orally. But it is thought that the agreement as to arbitration should be in writing - after all, there is a reference to a "clause conferring competence". Litigation involving CMR is rarely resolved in arbitration in this jurisdiction.			