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	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	

		reservation purposes under article 9.2. In any event its absence makes for evidential difficulty in proving the existence and terms of the contract.	held to apply to the umbrella 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	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.	Not applicable.

		Convention by asserting that he is in fact a freight forwarder.	- nature/terms of the CMR consignment note.	
☒	**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		Not applicable.

		and semi trailers. It does not extend to containers. Therefore, if the container is taken from the road 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.			

PART II (Chapter II, IV, VI)

8. Carrier liability (art. 17 – 20)

8.1. Who are considered to be 'agents, servants or other persons of whose services the carrier makes use for the performance of the carriage acting within the scope of their employment? (art. 3)

The English Courts appear to take a wide approach to the question. Whilst there is little authority directly on the CMR, the English concept of vicarious liability uses a similar test and similar wording. in Frans Maas (UK) Ltd -v- Samsung Electronics (UK) Ltd. [2004] EWHC 02 (Comm) unknown employees of the freight forwarder broke into a warehouse and stole the goods being stored by the forwarder. It was not possible to identify which employees broke into the warehouse or whether those employees had been directly involved in the handling of the goods in question. Nevertheless, the judge said: the custody of the premises cannot be divorced from the custody of the goods; indeed, it seems unreal to attempt to do so. On the evidence, the employees, whether warehousemen, clerks or secretaries, were entrusted as part of their employment by the bailee with the security of the warehouse and hence the goods. This suggests a wide and inclusive approach to determining who are "agents, servants and other persons."

8.2. To what extent is a carrier liable for acts committed by parties as referred to in art. 3?

This issue has also been explored by the English Courts in the context of vicarious liability. It causes particular issues in relation to criminal acts of employees and establishing whether they are acting "within the scope of their employment". In Brink's Global Services Inc and others -v- Igrox Ltd and another [2010] EWCA Civ 1207 a fumigator stole silver in a container which he had been instructed to fumigate. The court considered that there was a sufficiently close connection between the employee's theft of the silver and the purpose of his employment to make it fair and just that Igrox should be held vicariously liable for his actions. Thus, if a driver or other employee, agent or person used to perform the services steals the goods with which they have been entrusted, the employer will often be held liable.

8.3. To what extent is a carrier deemed liable for damage to or (partial) loss of the goods he transported? (art. 17, 18)

Article 17(1) makes it clear that the carrier is liable for partial or total loss of the goods or for damage thereto during the period of carriage unless the carrier can establish one of the limited defences within Article 17(2) or the special inherent risks in Article 17(4). Article 18(1) specifies that the burden of proving that loss or damage was caused by one of the circumstances listed in Article 17(2) rests with the carrier. The Court of Appeal, in Ulster-Swift Ltd -v-

Taunton Meat Haulage Ltd (1977) 1 Lloyd's Rep 346, considered that this applied a similar test to that at common law - the Court would assess the evidence and decide, on the balance of probabilities, what caused the loss. Megaw LJ opined that it the court would rarely need to fall back on the burden of proof to decide matters as the judge should, in most cases, have sufficient material to make an affirmative decision on the cause of the loss on the balance of probablities.

8.4. If the transported goods cause damage in any way to other goods, is the damage to those other goods considered to be covered by the CMR?

8.5. Nice to know: If a defect or ill-use of a trailer or container is the cause of the damage, is the carrier considered liable? In other words, are the trailer or container viewed as part of (packaging of) the goods or as part of the vehicle? (art. 17 sub 3)

8.6. Is there any relevant case law on art. 20, 21 or 22?

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
8.4	maybe	Maybe! If the goods damaged are also subject to a contract of carriage governed by the CMR, then the answer is: yes. However, if the goods damaged are not subject to the CMR, there is some doubt at English law as to whether the CMR would govern the liability of the carrier. Where an issue of liability is not governed by the CMR, English law may govern the point - Eastern Kayam Carpets Ltd -v- Eastern United Freight Limited (unreported (1983)). However, English Courts have more recently, suggested that such conventions (whether that be	If the limits and exclusions within the Convention simply applied as a matter of contract, the English courts would consider whether the limits or exclusions are wide enough in their terms to apply to the damage caused. The liability regime within the CMR concentrates on loss and damage to the goods which are subject to the contract of carriage governed by the CMR. There would be a strong argument that, as Chapter IV refers throughout to the goods which are carried, the terms of Chapter IV (including the limits and exclusions therein) would not apply to loss or damage to other	Shell Chemicals UK Ltd -v- P&O Roadtanks Ltd [1993] 1 Lloyd's Rep 114 - the carrier delivered the wrong goods to the plaintiff, pumping them into a tank already containing product. This contaminated the product already in the tank. The Court considered that the Convention did not address the loss caused and the liability arising therefrom and that, therefore, the carrier's liability had to be assessed by reference to English common law. The carrier was found to be fully liable for the loss. This approach has been called into question by the decision of	The analysis in this section aims only to consider whether the loss or damage to the other goods is to be determined in accordance with the CMR. It does not seek to apportion liability for such loss or damage. To do so, one would need to consider whether the goods causing the loss or damage did so due to a danger or inherent quality of those goods or due to lack of packing, securing or some other cause. This would, therefore, depend on the circumstances of each case.

		the CMR or the Montreal Convention) may provide an exclusive regime for regulating liability - Sidhu -v- British Airways [1997] 2 Lloyd's Rep 76 (considering the Warsaw Convention).	goods which are not the subject of the contract of carriage. However, when considering whether loss or damage is covered by the CMR as a Convention and the limits and exclusions therein, English courts have taken a rather more expansive approach - Gefco (UK) Ltd -v- John Mason (unreported (2000). This may suggest rather more willingness to stretch the application of the limits and exclusions than would otherwise be the case at common law	Gefco (UK) Ltd -v- John Mason (unreported (2000)). A counter-claim was brought by the defendant under an "umbrella contract" for the carriage of goods for a retailer. The Defendant claimed in relation to the loss of its contract for the carriage of the retailer's goods. The judge considered that the CMR functioned as a comprehensive code for determining the liability of the parties. He considered that the wording of Article 23(5) was wide enough to cover such a claim and that it was limited accordingly. This suggests that English Courts might now approach the position under the Shell Chemicals differently.	
8.5		The trailer is almost certainly not going to be considered to be part of the goods. It is, in most circumstances, clearly part of the vehicle used for the performance of the carriage. A container, however, may be different. Much will depend on the contract of carriage and what the carrier has agreed to	A carrier's obligation is to take reasonable skill and care in its custody of the goods. It will be difficult to defend liability where loss or damage occurs as a result of a defect in the equipment used to perform the carriage, particularly if that equipment is provided by the carrier.	in Walek & Co. -v- Chapman and Ball (International) Ltd [1980] 2 Lloyd's Rep 279 a consignment of yarn was damaged by rain due to holes in the tilt trailer within which it was carried. The trailer was supplied by the principal carrier who brought the claim against the responsible, performing	It may seem rather unfair that, in Walek & Co -v- Chapman and Ball the carrier could not defend the claim due to Article 17(3) even where the claimant had supplied the trailer itself. Ordinarily, the carrier would have a potential claim under its hire agreement with the provider of the trailer and

		carry. If the shipper loads the goods into the container and the carrier collects the container already loaded with the goods, the container is far more likely to be considered to be part of the packaging of the goods. Article 17(3) is likely to be given a reasonably strict interpretation by the English Courts as it is pretty clear in its terms.	If the carrier has used all reasonable skill and care in purchasing, choosing and maintaining the vehicle and yet there is a defect in the vehicle which the carrier could not be expected to notice, the carrier might, at English common law, be able to defend liability. This might afford the carrier a defence but the burden would be on the carrier to prove the point. When considering the position in relation to containers, an English Court is likely to consider the contractual agreement between the parties. If the carrier agrees to supply the container and this is found to be defective, the carrier is likely to have breached its obligation to provide a container in good order and condition. Many carriers will, when supplying a container, include a contractual obligation, in their standard terms, requiring the shipper to inspect the container and notify the carrier of any damage or defects in the container which would be uncovered by such inspection.	carrier. Even though the carrier had hired the trailer from the claimant, the Court found that the defendant could not deny liability as the loss had been caused by the defective nature of the trailer - and Article 17(3) was quite clear that the carrier could not deny liability on these grounds (and specifically refers to the neglect or wrongful act of the party from whom the vehicle was hired!).	would seek recourse through that route. However, such hire agreements often contain restrictive limits of liability which would not be subject to the restrictions on contracting which can be found in the CMR.

8.6	YES	Article 20 of the CMR, and its provisions deeming the loss of the goods failing delivery within the time limits set out therein has been considered by the English Courts in the context of calculating the limitation period within Article 32. Time starts to run, under Article 32.1, from different times depending on whether cargo is lost or damaged. Where cargo is damaged in transit and cannot then be delivered within the time limits envisaged by Article 20, the English Courts have considered the question as to whether the cargo is deemed to be lost even though the parties know where it is and know that it has been damaged. This often arises where local customs and other authorities sieze the goods following an accident or the goods are returned to the shipper.		ICI Fibres Plc -v- MAT Transport Ltd [1987] 1 Lloyd's Rep 354 a consignment of yarn was being carried from Yorkshire, England to France when it was damaged by a road accident in France. Following the accident, the consignment was held by French authorities for a while before being returned to Yorkshire for surveys and salvage sale. Even though the parties knew where the consignment was and knew the condition of the consignment, the Court considered that Article 20 provides conclusive proof as between the parties that the consignment has been lost if it is not delivered within the time limits therein. As such, the time bar provisions of Article 32.1 (b) applied to the claim. (a similar decision was reached in Worldwide Carriers Ltd -v- Ardtran International Ltd [1983] 1 Lloyd's Rep 61	In Eastern Kayam Carpets Ltd -v- Eastern United Freight limited (unreported QBD decision of 6th December 1983) the court considered the application and the scope of Article 21 and the carrier's liability in relation to cash on delivery agreements. Hirst J considered that the charges covered by Article 21 (and thus recoverable from the carrier) can extend beyond simple freight charges and the like. This could include a requirement on the carrier to collect the purchase price of the goods being delivered. However, Hirst J did not consider that Article 21 applied to a transaction where delivery was only to be made against production of an original bill of lading which would evidence payment of the purchase price to the bank.

9. Exemption of liability (art. 17 sub 2 & 4)

9.1. When are there 'circumstances which the carrier could not avoid and the consequences of which he was unable to prevent'? (art. 17 sub 2)

The approach of the English Courts can be illustrated by two contrasting decisions concerning armed hijacks which occurred in Italy. In J.J. Silber -v- Islander Trucking Ltd [1985] 2 Lloyd's Rep 243 Mustill J considered the meaning of Article 17.2. He considered that "the exception contemplates that the carrier could not have done anything, or abstained from doing anything, with the intention and with the effect of preventing a loss of the type which actually occurred." The judge rejected the suggestion that Article 17.2 is a simple negligence test or equivalent to the common law duty to exercise reasonable care. However, he considered that the duty on the carrier was not a strict or absolute duty. He considered that the words "could not avoid" should be read as if they comprised the rider "with the utmost of care".

Mustill J also proposed that, when considering whether the carrier could have prevented the circumstances or the consequences, it is for the claimant to propose the steps which it says the carrier ought to have taken and then for the carrier to rebut the specific steps. In this case, the court found that the carrier could not avoid liability for an armed robbery using Article 17.2 as the carrier could have used two drivers and parked in a secure lorry park over night and such steps, if employed (a) would have been proportionate and (b) would likely have prevented the theft.

However, contrast this with Cicatiello -v- Anglo European Shipping Services Ltd [1994] 1 Lloyd's Rep 678 which considered the armed hijack of a consignment of pickled pelts. The claimant suggested that the carrier should have deployed a better alarm system, two drivers and used secured parking. The court considered that this consignment must have been targeted as it was of little use to anyone other than a specialist processor. The fact that it was not a particularly theft attractive or valuable load limited the security which the carrier could reasonably be expected to deploy. The court found that the additional security requirements suggested by the claimant would have been of little assistance in preventing the theft given the targeted nature of the theft. The court also considered that secured vehicle parks were not particularly secure in that area and would not have prevented the theft. As such, it considered that the carrier could rely on Article 17.2 to defend liability in this instance.

9.2. To what extent is a carrier freed from liability? (art. 17 sub 4)

Article 17.4 was briefly considered in Tetroc -v- Cross-Con (International) Ltd [1981] 1 Lloyd's Rep 192. A consignment of snow engine reconditioning machines was shipped from Denmark to the UK. They were lost for some time en route and when eventually they were found, they had sufferred corrosion damage. the Court considered the burden of proof applicable to a defence under Article 17.4 as set out in Article 18. The machines had been shipped by the consignors in the same manner for some 25 years and were coated with protective oil and other packaging. The court considered that it could draw the inference that the corrosion had occurred due to someone tampering with the machines whilst they were missing.

In Dowty Malta -v- Express Trailers [unreported decision of HHJ Hallgarten May 1999] the court considered that the packaging of the presses was insufficient for the intended transit, which included both road haulage and ocean carriage across the Channel and the Mediterranean. The Court also found that the carrier had failed to lash and secure the cargo properly but the judge was unable to determine which of these two issues caused the stow to collapse. The Judge considered the allocation of the burden of proof in Article 18.2 of the CMR and found that the claimant was unable to show that the lashing and securing, rather than the insufficient packing, caused the loss. As such, the claim against the carrier failed.

10. Calculation of damages (art. 23 – 28)

10.1. Is there any case law in your jurisdiction on the calculation of the compensation for damage to the goods (i.e. the carrier's limited liability)? (art. 23 – 28)

10.2. Nice to know: In relation to question 10.1: Is there any case law on the increase of the carrier's limit of liability? (art. 24 & 26)

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
10.1	YES	This question has caused particular concern in relation to duty and VAT which becomes due on certain goods when lost in transit. This includes alcohol and tobacco where the duty can exceed the value of the goods. English Courts interpret Article 23 so that such additional costs and duty are, typically, recoverable in addition to the weight limit of the goods. Such duty and VAT charges can considerably exceed the value of the goods themselves and make England an attractive jurisdiction for claimants seeking to recover duty and VAT. English Courts tend also to allow recoverability of other costs such as survey fees provided it	As a matter of English law, damages are recoverable if they pass the test of remoteness - the court will consider whether the damages flow naturally from the loss and whether they were a reasonably forseeable consequence of the breach - Hadley -v- Baxendale (1854) 9 Exch. 341 and Overseas Tankship (UK) Ltd. -v- Morts Docks and Engineering Co. Ltd. ("The Wagon Mound") [1961] A.C. 388. However, it would seem that the English courts would be reluctant to import such a national concept into the CMR - see Sandeman Coprimar SA -v- Transitos Y Transportes Integrales S.L and others [2003] 2 Lloyd's Rep. 172.	The leading case on this is the House of Lords decision of Buchanan -v- Babco Forwarding and Shipping [1978] A.C. 141. Duty, which became payable by the cargo owners because the cargo was lost during carriage, was recoverable under Article 23 of the CMR in addition to the limit of liability calculated by reference to the weight of the cargo. The extent to which this case should be applied was limited to a degree by the Court of Appeal in Sandeman Coprimar SA -v- Transitos Y Transportes Integrales S.L and others [2003] 2 Lloyd's Rep. 172. The Court of Appeal considered that the Buchanan decision should only be applied so far as necessary.	

		can be shown that these arise because of the carriage of the goods. Insofar as surveyors become involved in recovery services, these costs are unlikely to be recoverable under Article 23.		In ICI Fibres Plc -v- MAT Transport Ltd [1987] 1 Lloyd's Rep 354 the court considered that Article 23 could extend to include survey fees where they are incurred in assessing the loss and mitigating the damage.	
10.2	NO				

11. Unlimited liability (art. 29)

11.1. When is a carrier fully liable ? (i.e. when can the limits of his liability be 'broken through'?) (art. 29)

As a matter of English law, "Wilful misconduct is far beyond negligence, even gross or culpable negligence." - Thomas Cook -v- Air Malta [1997] 2 Lloyd's Rep 399. Mr Justice Creswell went on to say in that case: "A person wilfully misconducts himself if he knows and appreciates that it is misconduct on his part in the circumstances to do or fail to do something and yet (a) intentionally does or fails or omits to do it or (b) persists in the act, failure or omission regardless of the consequences or (c) acts with reckless carelessness, not caring what the results of his carelessness may be. (A person acts with reckless carelessness if, aware of a risk that goods in his care may be lost or damaged, he deliberately goes ahead and takes the risk, when it is unreasonable in all the circumstances for him to do so.)". It is also necessary, according to Article 29, to consider whether the wilful misconduct caused the loss or damage to the goods.

This test was considered in the Commercial Court by Mr Justice Morrison in a case concerning the "London Shuffle" or "round the corner" theft. In Micro Anvika Ltd -v- TNT Express and Ninatrans [2006] EWHC 230 (Comm) the Court considered the conduct of the driver, a Mr Branson, when he delivered a consignment of hi-tech (and high value) goods (iPods and Apple computers) to thieves posing as the consignee. The driver had clearly failed to deliver to the correct party and failed to check the identity of the party to whom delivery was made. However, the driver was clearly duped and not aware of the specific risks of such thefts. Although the driver was negligent, he was not guilty of wilful misconduct.

The facts of this case should be contrasted with an older authority which also concerned "round the corner" theft. In Laceys Footwear (Wholesale) Ltd -v- Bowler International Freight Ltd [1997] 2 Lloyd's Rep 369 the Court of Appeal considered such a theft concerning footwear. However, in that case, the driver had been given specific instructions not to discharge the consignment at any location other than the delivery address. The driver was given the

instructions in his own language (Spanish) and asked to confirm that he understood them. Thus, the driver had disobeyed clear and direct instructions and was, therefore, guilty of wilful misconduct.

In Jones -v- Bencher [1986] 1 Lloyd's Rep 54 the driver decided that he would prefer to spend the night at home and exceeded his statutory driving hours to get there. During this period of excessive driving, he fell asleep at the wheel and had an accident. Popplewell J considered that the driver was guilty of wilful misconduct.

However, in TNT Global SpA -v- Denfleet [2008] 1 All ER (Comm) 97 the driver also fell asleep at the wheel and suffered an accident. However, the Court of Appeal considered that, although the driver must have been negligent in failing to heed the warning signs that he was tired (perhaps even grossly negligent) he presumably assumed that he could beat the tiredness and continue to drive safely. As such, he lacked the "wilful" element which would invoke Article 29 of the CMR.

In summary, therefore, it is difficult and dangerous to draw any hard and fast rules on wilful misconduct. Each case must be considered on its own facts. However, it is not, on the whole, easy to break limits using Article 29 in England.

*11.2. What is the interpretation of the phrase: '*wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct'*(art. 29[1] CMR) under your jurisdiction?*

see above

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	*maybe*		The CMR starts with the assumption that loss or damage will be the responsibility of the carrier unless the carrier can establish one of the defences within Article 17. The court will consider issues such as route planning, security, the value of the load and other such issues - see, for example,

[4] Please indicate to what extent the case law in your country is in line, or whether case law differs from judgement to judgement.

			Cicatiello -v- Anglo European Shipping Services Ltd [1994] 1 Lloyd's Rep 678 but contrast with J.J. Silber Ltd -v- Islander Trucking Ltd [1985] 2 Lloyd's Rep 243. Equally, however, if the theft occurs due to a driver ignoring express instructions and deliberately exposing the goods to a risk, it is possible that the court would find that there has been wilful misconduct - see for example Lacey's Footwear (Wholesale) Ltd -v- Bowler International Freight Ltd [1997] 2 Lloyd's Rep 369.
Theft during parking	*maybe*		As above, the Court will consider the circumstances of the theft, the value of the load and the security deployed by the carrier. Theft from a vehicle parked in an unattended layby will rarely provide the carrier with a defence. However, if the carrier uses secured parking facilities and these are overcome by the thieves, the carrier may be able to defend liability on the basis of Article 17.2.
Theft during subcarriage (for example an unreliable subcarrier)	*maybe*		See above - Article 3 and Article 34 mean that, in most cases, a carrier will be responsible for the acts or omissions of its subcontractors.
Improper securing/lashing of the goods	*maybe*		In Dowty Malta -v- Express Trailers [unreported decision of HHJ Hallgarten May 1999] the court found that the carrier had failed to lash and secure the cargo properly but also that the packaging was insufficient for the intended voyage. The judge was unable to determine which caused the loss. Given the allocation of the burden of proof in Article 18.2 of the CMR, the carrier was able to avoid liability. Cf. Tetroc Ltd -v- Cross Con (International) Ltd [1981] 1 Lloyd's Rep 192
Improper loading or discharge of the goods	*maybe*		Much will depend on the allocation of these duties between the parties.
Temporary storage		Never	Please elaborate your findings and conclusions here, using a max. of 3000 characters, please include case law
Reload/transit		Never	Please elaborate your findings and conclusions here, using a max. of 3000 characters, please include case law
Traffic		Never	Please elaborate your findings and conclusions here, using a max. of 3000 characters, please include case law
Weather conditions		Never	Please elaborate your findings and conclusions here, using a max. of 3000 characters, please include case law
Overloading		Never	Please elaborate your findings and conclusions here, using a max. of 3000 characters, please include case law
Contamination during / after loading	Maybe		

Contamination during / after discharge	maybe		See Shell Chemicals U.K. Ltd -v- P&O Roadtanks Ltd [1993] 1 Lloyd's Rep 114 above where the carrier was found liable for delivering the chemicals into the wrong tank and contaminated the tank. The carrier's liability was unlimited by the terms of the convention as the damage was to goods other than those carried under the CMR.

13. Successive carriage (art. 34 – 40)

13.1. When is a successive carrier liable? (art. 34 – 36)

English Courts adopt a wide interpretation of Chapter VI of the CMR. The first carrier is the carrier with whom the sender has a contract of carriage rather than the first carrier to take physical possession of the goods. See, for example, Ulster-Swift Ltd -v- Taunton Meat Haulage Ltd [1975] 2 LLR 502. Taunton Meat Haulage denied that they were carriers because they sub-contracted the entire carriage to Fransen Transport BV. Taunton Meat Haulage did not physically handle the goods at any stage. Nevertheless, Donaldson J found that Taunton Meat Haulage was a carrier. He referred to Article 34 and concluded:-

"If the carriage is governed by a single contract, which it was in this case, and if that carriage is performed by successive road carriers… it was performed by Taunton who performed it through the agency of Fransen, and it was performed by Fransen, who were actually handling the goods.

Each of them would then be responsible for the performance of the whole operation and the second carrier, that is to say Fransen, and each succeeding carrier - although there were not any in this case - would become a party to the contract of carriage under the terms of the consignment note".

Where a carrier takes over the consignment note and the goods in accordance with Article 34, then it may become a successive carrier. However, hauliers are rarely so obliging! Where a sub-contractor takes over the goods without the first carrier having any physical contact with them at all, this leaves the question of how the formalities in Article 34 are met.

This was considered in Coggins -v- LKW Walter International Transportorganisation AG [1999] 1 LLR 255 by Judge Hallgarten. The court had to consider whether the plaintiff (the second carrier) was a successive carrier notwithstanding the fact that he had subcontracted the entire movement and had no physical contact with either the goods or the consignment note. The judge considered that this was a case of successive carriage and that the second carrier had "delegated" authority to the subcontracted carrier to accept both the goods and the consignment note on his behalf.

It can be seen that English Courts will adopt a wide interpretation of successive carriage. There is no need for a formal handing over of the consignment note and the goods between the carriers for Chapter VI to apply - English courts are prepared to consider that this is achieved through a delegated authority or an agency between the carriers.

13.2. To what extent do successive carriers have a right of recourse against one another? (art. 37 – 40)

Given the wide application of Chapter VI, the provision of Article 37 and Article 39 restrict the right of carriers to claim amongst themselves. According to Article 37, an indemnity claim should, in the first instance, be brought against the carrier responsible for causing the loss or damage. Article 39 requires that action to be brought in the courts "of the country in which one of the carriers concerned is ordinarily resident, or has his principal place of business or the branch or agency through which the contract of carriage is made." In Cummins Engine Co. -v- Davies Freight Forwarding (Hull) (supra) the Court of Appeal decided that the expression "carriers concerned" referred to the carriers against whom the claim had been brought, not the carrier bringing the claim. Thus, Davies, the first contracting carrier, who brought indemnity proceedings against, inter alia, Dutch successive carriers, had to bring the proceedings in the Netherlands, not in the UK (Davies' principal place of business).

An attempt to circumvent these provisions was made in the unreported case of Barbour European -v- Eurogate International Forwarding (Manchester Mercantile Court, decision of Judge Kershaw 2002). The claimants, the first contracting carrier having paid compensation to the cargo interests, sought to recover this from the other carriers in the chain. The carrier responsible for the loss was a Czech firm, CSAD. However, the claimants sought to establish English jurisdiction against CSAD by claiming against one of the intermediate carriers, Eurogate International Forwarding (an English company) in the alternative. The alternative claim was brought under Article 38 on the grounds that if CSAD was insolvent, Barbour would seek to recover its outlay from Eurogate. There was no evidence that CSAD was insolvent and the claim against Eurogate was dismissed as an abuse of process and the English court declined jurisdiction.

Compensation paid under a subcontractor's agreement (such as a variation allowed by Article 40 CMR) may not be recoverable as "compensation in compliance with the provisions of this Convention" - Rosewood Trucking Ltd -v- Brian Balaam [2006] 1 LLR 429.

13.3. Nice to know: What is the difference between a successive carrier and a substitute carrier? (art. 34 & 35)

This does not seem to be a concept familiar to English Courts

14. E-CMR

14.1. Can the CMR consignment note be made up digitally?

Yes/No	E-Protocol	National law (civil law as well as public law)	Landmark cases	Clarification

YES	The UK ratified the eCMr protocol on 20 December 2019			The intention is that the E-CMR Note can be used where parties so elect. However, the parties are free to continue to use paper documents

14.2. In addition to question 14.1: If your country has ratified the e-CMR protocol is there any national case law, doctrine or jurisprudence that practitioners should be aware of?

Please elaborate your findings and conclusions here