



# **Cross-border Multimodal Transport: The Legal Framework and its Limits**

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SpeedCHAIN

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## Overview

- Introduction
- Limits of the Current Legal Framework
- Approaches to Overcome these Limits
- Conclusion

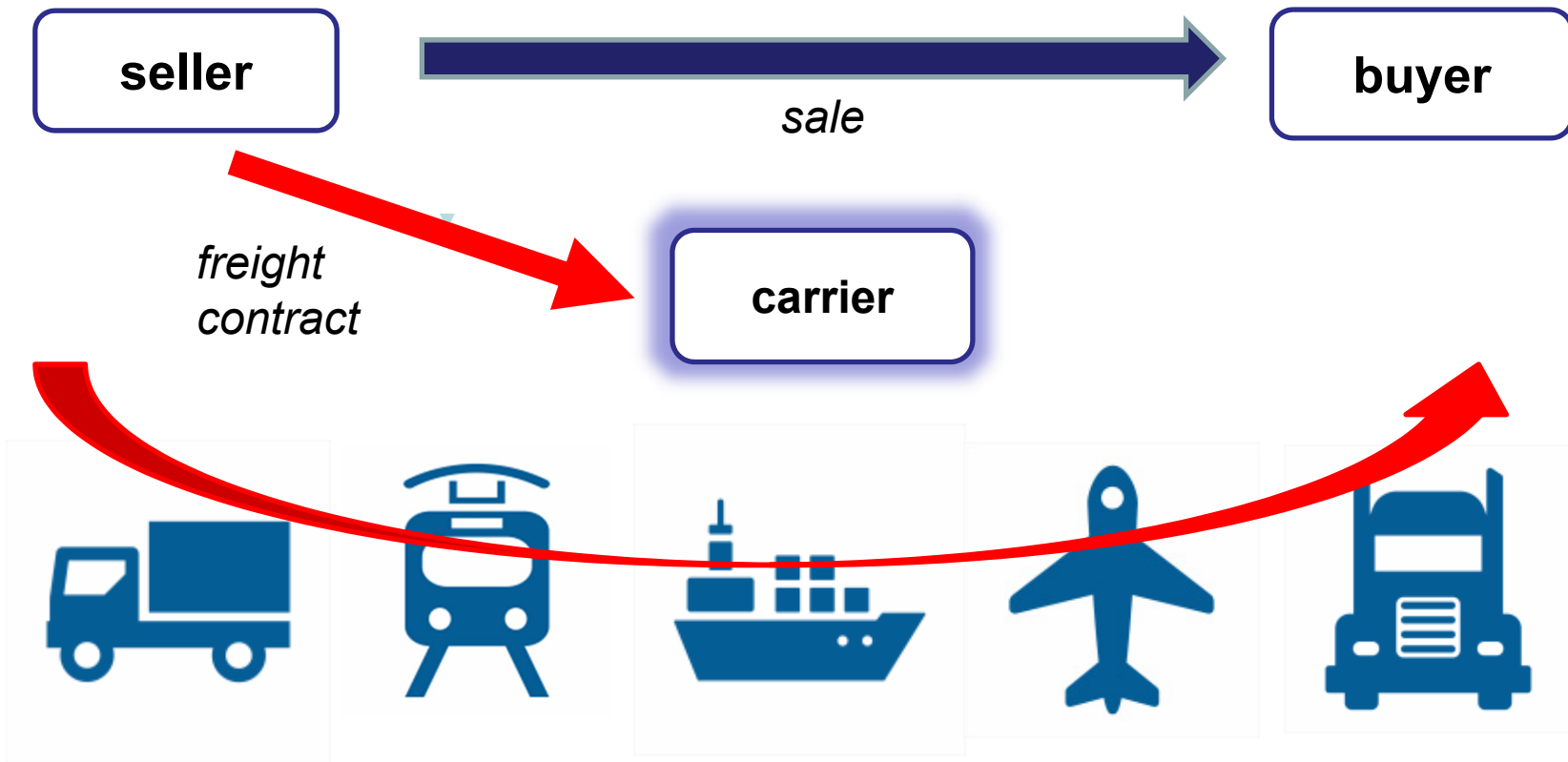
## Overview

- **Introduction**
  - Concept of Multimodal or Combined Transport
  - Recent Developments in International Transport
- **Limits of the Current Legal Framework**
  - Special Convention or National Provisions on Cross-border Multimodal Transport?
  - Applicability of Unimodal Conventions on Cross-border Multimodal Transport?

## Overview

- **Approaches to Overcome these Limits**
  - Network Liability Systems:  
pure network system / modified network system
  - Uniform Liability System:  
system of conflict rules / new specific convention
- **Conclusion**
  - In Practice
  - Flow Chart

# Concept of Multimodal Transport



Carriage of goods consisting in a number of unimodal stages of transport and involving various modes of transport under one single contract

# Developments in International Transport



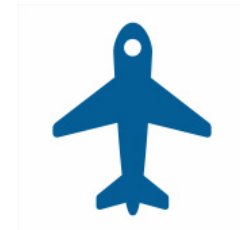
Growing system of cross-border transport with standardized containers

# Developments in International Transport



## Special Convention or National Provisions?

- **United Nations Convention on International Multimodal Transport of Goods**: not in force
- **Continental and regional agreements**: ALADI (Asociación Latinoamericana de Integración), CAN (Andean Community), MERCOSUR (Mercado Común del Sur)
- **Statutory national provisions**: only in some jurisdictions (e.g. Germany, the Netherlands)





## Applicability of Unimodal Conventions?

- **Art. 1 (1) CMR:** “*This Convention shall apply to every contract for the carriage of goods by **road** in vehicles...*”
- **Art. 2 (1) CMR:** “*Where the vehicle containing the goods is carried over part of the journey by **sea, rail, inland waterways or air**, and [...] the **goods are not unloaded** from the vehicle, this Convention shall nevertheless apply to the whole of the carriage.*”



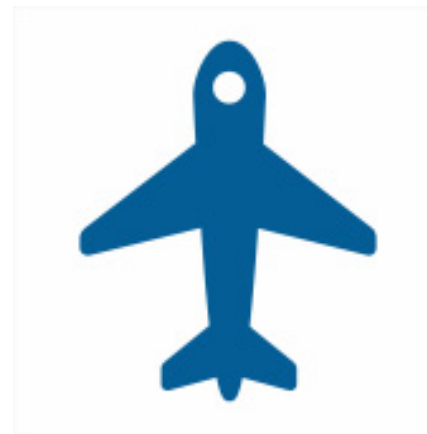
## Applicability of Unimodal Conventions?

- **Art. 1 § 1 CIM:** “*These Uniform Rules shall apply to every contract of carriage of goods by **rail** for reward...*”
- **Art. 1 §§ 3 and 4 CIM:** “*CIM shall apply when the international carriage by rail is **supplemented***
  - *by a **national carriage by road** or **inland waterway** in a Member State;*
  - *by **carriage by sea** or **international carriage by inland waterway** performed on services mentioned in specific list of services.”*



## Applicability of Unimodal Conventions?

- **Art. 1 (1) Montreal Convention:** *“This Convention applies to all international carriage of persons, baggage or cargo performed by **aircraft** for reward...”*
- **Art. 18 (3, 4) and 38 Montreal Convention:**
  - *regulates the **period** during which the carrier is in charge of the air cargo*



## Applicability of Unimodal Conventions?

- **Art. 18 (3, 4) and 38 Montreal Convention:**
  - does *not* extend to any carriage by *land, sea or inland waterway* performed *outside an airport*, unless it was performed for the purpose of loading, delivery or transshipment (and no proof of damage during air freight)
  - regulates any carriage whereby the carrier *substitutes, without the consent* of the consignor, the carriage by air by *another mode* of transport (whole or part)
  - in case of *combined* carriage performed partly by air and partly by *any other mode* of carriage, this Convention shall apply *only* to the carriage by *air*



## Applicability of Unimodal Conventions?

- **Art. 1 lit. b Hague-Visby-Rules:** “*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, ...*”
- **Art. 1 No. 1 Rotterdam Rules** (United Nations Convention on Contracts for the International Carriage of Goods **Wholly or Partly by Sea**; not in force): “*The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.*”



# Applicability of Unimodal Conventions?



## Network Liability Systems

- the liability of the carrier shall be determined by the law which would be applicable to a contract **relating to this leg of carriage**
- e.g.: Germany (art. 452<sup>bis</sup> HGB)

→ *the place where damage occurred **can be localized***



## Uniform Liability System

- the liability of the carrier shall be determined by the (national) **general transport law**
- e.g.: Switzerland (art. 422 seq. OR, GüTG);  
Germany (art. 452 HGB)

→ *the place where damage occurred is unknown*





## In Practice

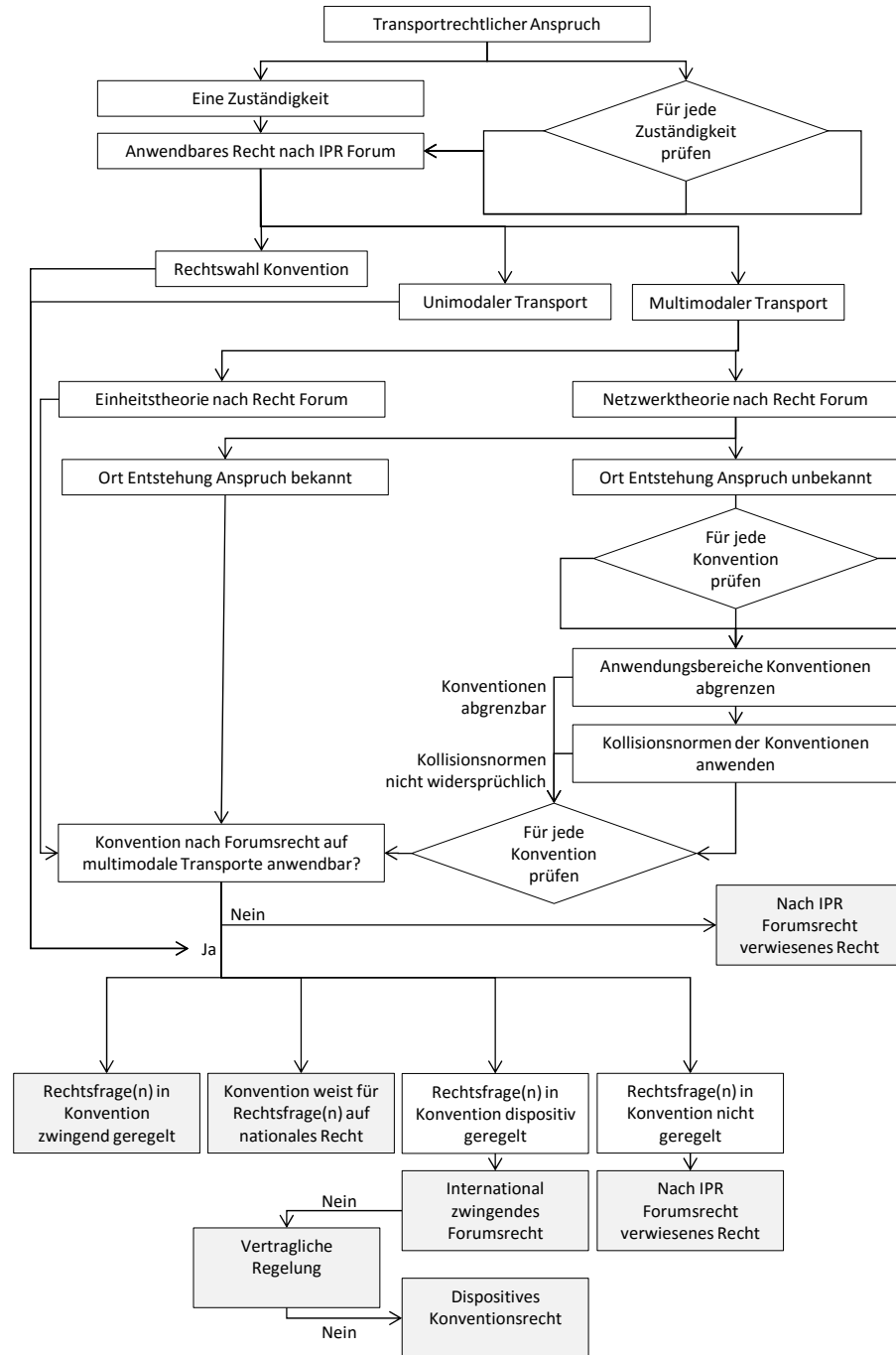
- in general, **freedom of contract**
  - but depends on the law applicable under the network system
  - possibility to chose the general transport law
- special **transport documents**
  - BIMCO Bill of Lading (Multidoc95)
  - FIATA Multimodal Transport Bill of Lading (FBL)
  - UNCTAD/ICC Rules for Multimodal Transport Documents (ICC Publication no. 481)

## In Practice

- proper **procedure**
  - determine the different countries and legislations
  - check the exceptions of unimodal transport conventions
  - observe the mandatory national law
  - rely on general terms and provisions / documents
  - negotiate contractual rules to fill the legal gaps

# Flow Chart

Please contact me for a copy of this scheme in a larger format



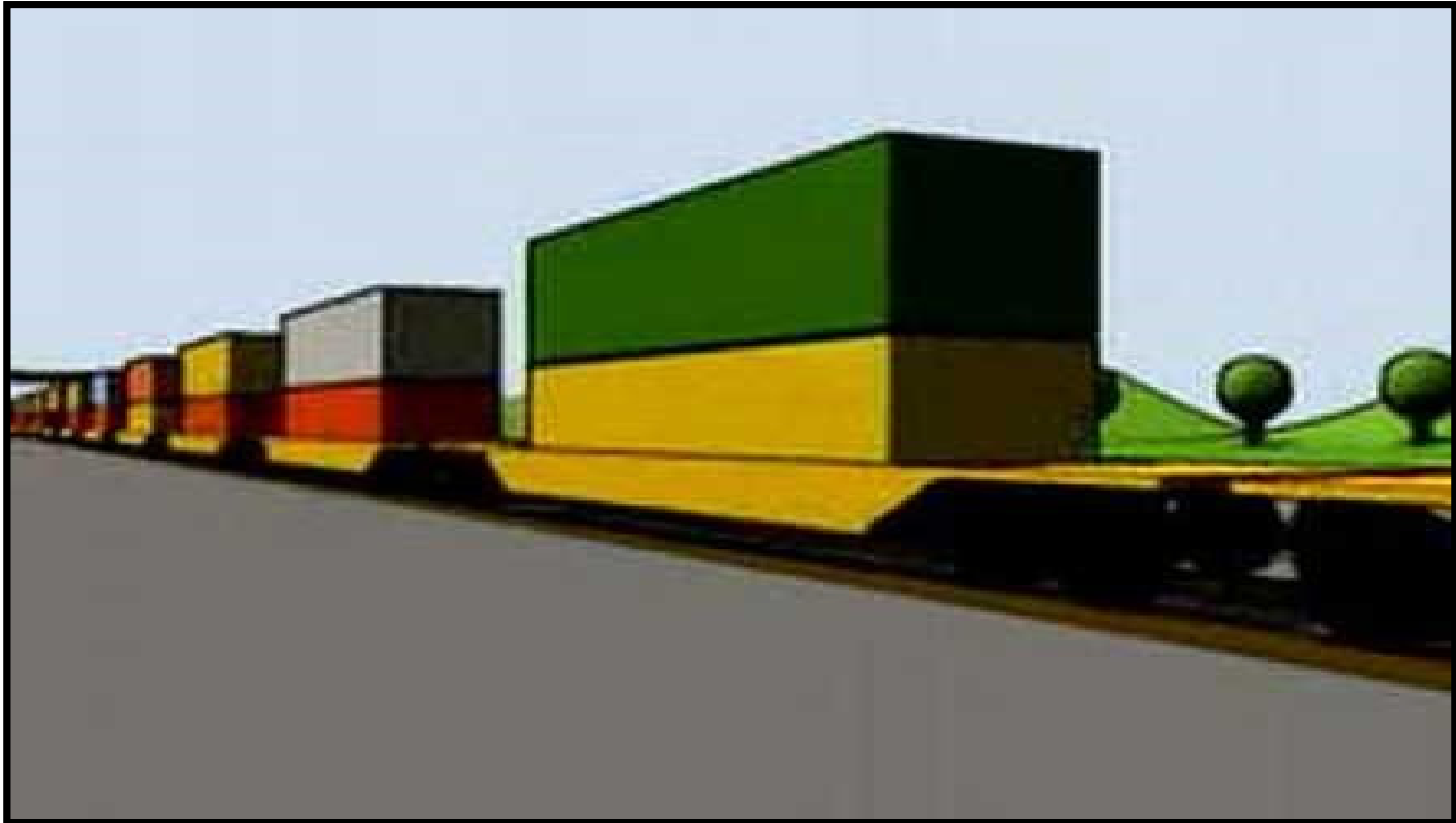
IPR Vorprüfung  
 Erste Ebene: Konventionskonflikte  
 Zweite Ebene: Einbindung nationales Recht

Furrer/Vasella, Prüfungsschema «Transportkollisionsrecht», 2017

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- Marian Hoeks, **Multimodal Transport Law**, The law applicable to the multimodal contract for the carriage of goods, 2009
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## Multimodal Transport in a Nutshell



Source: **Youtube 2006** (movie done within Blender and compiled in iMovie)

**MME**



# Many thanks!

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