

CMR: CONTRACTS FOR
THE INTERNATIONAL
CARRIAGE OF GOODS
BY ROAD

FOURTH EDITION

ANDREW MESSENT
DAVID A. GLASS

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CARRIAGE OF GOODS BY ROAD

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PREFACE TO FOURTH EDITION

Through circumstance rather than by design, a considerable period has elapsed since the last edition of this work. In the interim, the list of contracting countries is yet longer, and although the number of reported cases coming before the English courts has slowed, in particular now that the mysteries of the proper interpretation of Article 17.2 and Article 29 are largely resolved, nevertheless the Convention on the Contract for the International Carriage of Goods by Road continues to come before the English courts on a regular basis. In particular, since the last edition the number of cases before the final appellate court has now trebled, with *Buchanan v Babco* now joined by *Datec Electronics Holdings Ltd. v United Parcels Service Ltd.* (2007) and *British American Tobacco Switzerland S.A. v Exel Europe Ltd.* (2015).

Otherwise, among the more notable developments since the last edition is the adoption of a further Additional Protocol to the Convention in 2008 which came into force in 2011 and provides for the recognition of the use of electronic consignment notes in substitution for the paper consignment note envisaged in the Convention originally. Although the United Kingdom has not yet ratified the new protocol, it is likely to be of increasing importance as e-consignment notes are gradually beginning to be brought into use in respect of CMR carriage. Both the potential effect of the application of the new protocol and the current application of the law to e-consignment notes are considered.

The issue of whether CMR can apply where international carriage by road forms only part of a contract of carriage has received substantial judicial attention since the last edition. The need to deal with the important decision of the Court of Appeal in *Quantum Corporation Inc. v Plane Trucking Ltd.* and the countervailing views on the Continent, notably in Belgium, the Netherlands and Germany, has required a new section in Chapter 2 to deal with situations which fall outside the strict terms of Article 2 of the Convention. In addition, we have endeavoured to give consideration of the potential impact on the CMR Convention of the Rotterdam Rules (UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008) should they come into force, especially in a multimodal context.

As with the previous editions, we have endeavoured to keep abreast of the developing case law particularly in respect of Austria, Belgium, France, Germany and the Netherlands where there is a steady flow of decisions concerning the Convention. This has been made easier with the availability online of the UNIDROIT–IDIT CMR database available from the IDIT (Institute of International Transport Law) website. Through this database, ready access to a wider range of decisions of contracting states is now possible, most notably including states such as Hungary, Poland, Russia and the Ukraine. However, the quantity

of case law to which there is now access, which has burgeoned considerably over the last 16 years, is such that it is possible only for a proportion of them to be reflected in a single text.

Among the many new Continental decisions added, some of the more notable are important decisions from the Dutch Supreme Court concerning the scope of CMR, the use of the Vienna Convention on the Law of Treaties in interpreting CMR, the interpretation of “other charges incurred” in Article 23(4) and the application of the rules governing successive carriage where a contracting carrier has sub-contracted the whole of the carriage. In addition, the French courts continue to contribute considerably to the jurisprudence, especially in respect of the defences of unavoidable circumstances and defective loading and packing by the sender.

In respect of developments which impact on the application of the Convention in particular countries, a notable development in French law has been the removal of the test of gross negligence (*faute lourde*) and its replacement with inexcusable fault (*faute inexcusable*) as the test for determining conduct leading to loss of limitation of liability. This applies to Article 29 of CMR and brings the French approach nearer to the English understanding of wilful misconduct. This also mirrors the change in German law which was noted in the previous edition, and further developments in the case law have been included, most notably recognition by the German courts that contributory negligence can be applied to Article 29 so as to potentially reduce the liability of the carrier.

Our thanks are due to Informa Law for their assistance and support. We are especially grateful for their help in providing expert assistance with the translation of German cases, which has enabled fuller detail to be given in respect of many of those authorities.

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App. Orléans, 28.2.08 (2008) B.T. 523	6.43, 9.80
App. Lyon, 6.3.08 (2008) B.T. 590	6.42, 10.113
App. Gand, 10.3.08 Idit No. 41567	9.60
Cass. (It.), 21.3.08 Idit No. 41405	5.18
Cass., 1.4.08 Idit No. 23024	1.50
App. Paris, 9.4.08 (2008) B.T. 402, Idit No. 23052	1.50
App. Aix-en-Provence, 24.4.08 (2008) B.T. 588	6.10, 11.47
Cass., 14.5.08 (2008) 43 E.T.L. 611, (2008) B.T. 347	6.2, 7.33, 9.4
App. Paris, 15.5.08 (2008) B.T. 364, Idit No. 23060	6.47
OLG Stuttgart 28.5.08 (2008) TranspR 259	9.82
App. Paris, 4.6.08 (2008) B.T. 433	10.62
App. Chambéry, 18.6.08 (2009) B.T. 418	5.5, 9.80
Cass., 24.6.08 (2008) 43 E.T.L. 740, (2008) B.T. 487, Idit No. 23079	9.80
App. Dijon, 26.6.08 (2008) B.T. 501	1.12, 9.80
Trib. Grnd. Inst. Péronne, 30.6.08 (2008) B.T. 470, Idit No. 23077	5.17
App. Paris, 2.7.08 (2008) B.T. 542	9.76, 9.80
OGH., 2.7.08 (2009) 44 E.T.L. 299	9.83
BGH., 3.7.08 (2008) TranspR 406	9.82
BGH., 17.7.08 (2008), I ZR 181/05. (2009) 44 E.T.L. 196, (2008) TranspR 365	2.48
OLG. Hamm, 18.8.08 (2009) TranspR 256	9.82
App. Paris, 11.9.08 (2008) B.T. 652	5.21
OLG. Hamm 11.9.08 18 U 132/07	6.100
App. Versailles, 18.9.08 Idit No. 23107	1.50
Trib. Inst. Metz, 6.10.08 (2008) B.T. 636	1.50
Cass. (It.), 7.10.08 (2009) Rivista di diritto internazionale private e processuale 745, Idit No. 41404	9.81
Comm. Bobigny, 14.10.08 (2008) B.T. 764	6.13
Comm. Bobigny, 21.10.08 (2008) B.T. 687	7.30
App. Versailles, 22.10.08 (2009) B.T. 16	5.19, 9.80
App. Lyon, 23.10.08 (2008) B.T. 699	9.80
App. Poitiers, 29.10.08 (2009) B.T. 498	10.74, 10.105, 10.113, 10.119
Trib. Milano, 30.10.08 (2009) Il Diritto Marittimo 513, Idit No. 41672	5.18
App. Versailles, 6.11.08 (2008) B.T. 716	6.10
App. Douai, 18.11.08 (2008) B.T. 735	5.5
BGH., 20.11.08 (2009) TranspR 26, (2009) 44 E.T.L. 303	10.34A
Cass., 25.11.08 (2008) B.T. 747	6.10
OGH., 27.11.08 (2009) TranspR 413, (2009) 44 E.T.L. 311	10.23
App. Angers, 2.12.08 (2008) B.T. 782	9.80
App. Paris, 3.12.08 (2008) B.T. 781	9.80
Comm. Riom, 9.12.08, (2009) B.T. 612, Idit No. 23235	10.37
App. Chambéry, 9.12.08 (2009) B.T. 464	10.27
Comm. Riom, 9.12.08 (2009) B.T. 612, Idit No. 23235	10.36
App. Paris, 10.12.08 (2009) B.T. 43	1.50
BGH., 18.12.2008, (2009) TranspR 134	9.82