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## Multimodal Transport Law: The law applicable to the multimodal contract for the carriage of goods

### Publication status and date:

Published: 10/12/2009

### Document Version

Publisher's PDF, also known as Version of record

### Citation for the published version (APA):

Hoeks, M. (2009). *Multimodal Transport Law: The law applicable to the multimodal contract for the carriage of goods*. [Doctoral Thesis, Erasmus University Rotterdam]. Erasmus Universiteit Rotterdam (EUR).

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# PROPOSITIONS

Doctorate Thesis Defence Marian Hoeks  
10 December 2009

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1. Although international uniform law may seem a contradiction in terms at times, it remains an objective worth striving for in trade law. In this area of law even a small degree of international uniformity is preferable to the unpredictability generated by the divergence of national laws.
2. In multimodal transport there are too many, but also too few rules.
3. The view of the scope of application of the CMR on multimodal carriage contracts supported by the German judiciary and legal doctrine is likely to create disharmony if it were adhered to by all CMR Member States, since not all of them would apply the rules of the CMR by analogy or through domestic legislation. Therefore it is contrary to the purpose of treaty law.
4. The fact that the scope of application of the carriage conventions attach to the characteristics of places rather than to the nationality of the parties involved, cause the Vienna Convention on the Law of Treaties to be ill suited to remedy conflicts of uniform law in this area.
5. The drafters of the European carriage conventions such as the COTIF-CIM, the CMR and the CMNI have demonstrated a reluctance to clearly demarcate the scope of application of these regimes in relation to multimodal transport that was not shared by the drafters of the more global air carriage regimes. Because globally oriented regimes generate a higher level of uniformity, the lack of clarity found in the regional regimes should be remedied by interpreting their scopes of application along the same lines as those of the global conventions in this context.
6. The '*ministerieplicht*', the obligation of a Dutch notary at law found in Article 21 of the Dutch Act on the notary at law (wet op het Notarisambt), to perform the duties desired of him by parties – unless he has reasonable grounds to think such performance would be contrary to the law or public policy or concerning which he has other justified grounds to refuse in which case is obliged to refuse – is an example of ineffective legislation. It prevents notaries from refusing services which are not deemed profitable enough in theory, but not in practice.

7. The doctrine of exclusivity as established in *Sidhu v British Airways*<sup>1</sup> is an artificial means to expand the influence of uniform air carriage law in order to prevent the carrier from being held liable for psychological injuries of passengers.

8. The fact that the animal testing expert who is burdened with the task of supervising the testing of animals based on Article 14 of the Dutch Animal testing Act is appointed by the party performing the tests is unlikely to ensure complete objectivity on his part.

9. The legal position of long term foster parents can be considered tenuous at best under Dutch law. Especially in those cases where there is 'family life', or some semblance thereof, the legal status of the caregivers is in dire need of strengthening.

10. Introducing a codification of the legal figure of 'unworthiness' as found in Article 4:3 BW, which states that a party is unworthy to inherit under certain circumstances, into Title 7, Section 3 of Book 1 BW on the dissolution of marital communities of property, instead of letting Courts decide in hindsight whether there were 'very exceptional circumstances when measured against the standards of reasonableness and equity' which disentitle a spouse to half of the marital community, may aid in the protection of the life and limbs of wealthy elderly singles. (See HR 7 December 1990, *NJ* 1991 and HR 6 October 2000, *RvdW* 2000, 199)

11. If we would just all agree that the egg was there first, the problem will be solved for all practical intents and purposes.

12. Since the amount of elaboration during the encoding of incoming information influences the transience of memories, having a fertile imagination is likely to enhance the capacity to retain information.

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<sup>1</sup> *Abnett (known as Sykes) v British Airways Plc. & Sidhu v British Airways Plc.*, [1997] 2 Lloyd's Rep. 76, [1997] All ER 193