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What to do in case of a disruption of the
international road transport?

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Outline

- Introduction - Disruptions

- Disruptions

- Responsibility carrier

- Beyond the carrier's control

- Who has power to give instructions to carrier?

- What can the carrier do in absence of timely instructions?

Introduction

- During international road transport various disruptions may take place.
 - (1) Often the carrier and his driver must solve the problem themselves, e.g.
 - Technical problem with the truck, e.g. flat tyre, engine problem.
 - The truck may be involved in an accident.
 - Illness or injury of the driver.

Introduction

- During international road transport various disruptions may take place.

- ...

- (1) Carrier's responsibilities

- Custodian duties of the carrier: during his **period of responsibility**, carrier under duty of **utmost care** to **preserve** the goods and to **prevent** delay in delivery (Article 17 (2) CMR).
- Carrier responsible for acts and omissions of driver “as if such acts or omissions were his own” (article 3 CMR).
- Carriers cannot invoke **defects** in truck as a defence (Article 17 (3) CMR).
- Even in case of “force majeure” event, carrier must do his utmost to prevent the consequences.

Introduction

- During international road transport various disruptions may take place.
 - (2) Sometimes however, international road transport is disrupted due to causes beyond the carrier's control, e.g.
 - War or hostilities breaking out as we have seen in 1990's in former Yugoslavia and currently in Ukraine.
 - Obstruction or destruction of vital infrastructure such as bridges, tunnels, e.g. Baltimore bridge collision (2024), tunnel fires at Tauern (1999), Mont Blanc (1999); Gotthard (2001).



Introduction

- During international road transport various disruptions may take place.
 - (2) Sometimes however, international road transport is disrupted due to causes beyond the carrier's control, e.g.
 - ...
 - Delivery at destination impossible, due to no show or refusal to take delivery by the consignee.
 - Sender exercising right of “stoppage in transit”, due to non-payment or insolvency of consignee and redirect the goods or change the consignee.

Introduction

- During international road transport various disruptions may take place.
 - (2) Sometimes however, international road transport is disrupted due to causes beyond the carrier's control.
 - N.B. Carrier remains responsible to exercise utmost care to avoid the consequences of the force majeure event (Article 17 (2) CMR).
 - N.B. In the latter two cases, there may be issues in the commercial relation between sender and consignee that the carrier is not to blame for and that he would rather stay out of.
 - Because of the disruption of the transport, decisions need to be taken which entail risks and costs.
 - This raises two questions.
 - Who has the power to give instructions to the carrier?
 - What can the carrier do if he doesnot receive timely instructions?

Introduction

- Who has the power to give instructions to the carrier ?
 - = Right of disposal
 - Question may arise at four stages:
 - (1) Initially (at the time when the contract of carriage was concluded)
 - (2) During performance of the road transport
 - (3) Upon arrival at place of destination
 - (4) When court proceedings are initiated (= who can claim for damages).

Introduction

■ Who has the power to give instructions to the carrier ?

■ = Right of disposal

■ Question may arise at four stages:

- (1) Initially (at the time of concluding the contract of carriage)
- (2) During performance of the road transport
-

■ (1) and (2):

- In principle, sender has right to dispose over goods (Article 12 (1) CMR).
- Sender = counterparty of the carrier under contract of carriage.
 - Contract of carriage = essentially a contract of services.
 - Carrier = services provider, sender = principal.
 - Sender is not necessarily **owner** or **seller** of the goods.
 - Sender may be **freight forwarder** contracting in own name with carrier.
 - Sender may be **main carrier** who as **sub-sender** sub-contracts the performance of his duties under main contract of carriage to a sub-carrier.

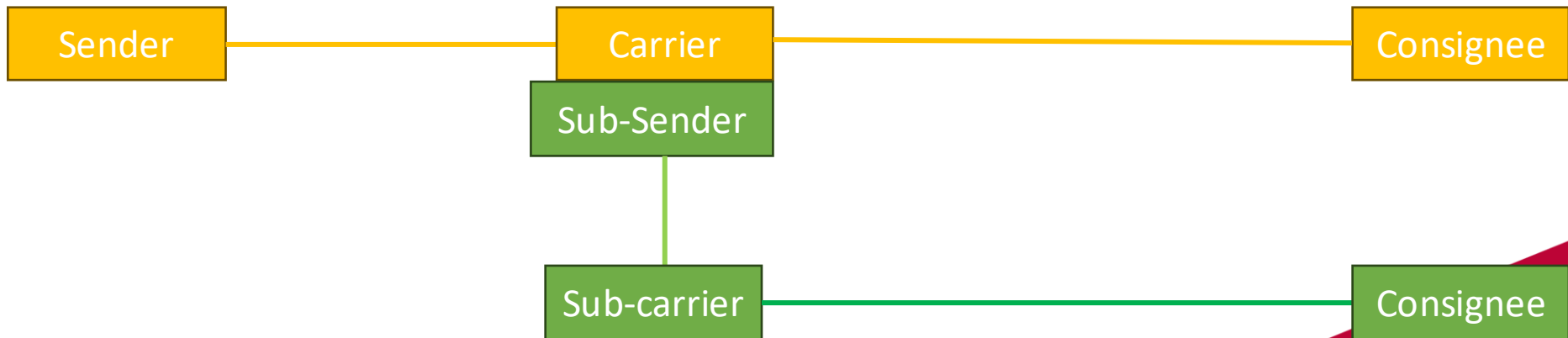
Introduction

■ Who has the power to give instructions to the carrier ?

■ = Right of disposal

■ Question may arise at four stages:

- (1) Initially (at the time of concluding the contract of carriage)
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Introduction

■ Who has power to give instructions to the carrier ?

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■ ...

■ (1) and (2):

■ In principle, sender has right to dispose over goods (Article 12 (1) CMR).

■ Right of disposal entails the right to ask the carrier:

- To stop goods in transit
- To change place of delivery
- To deliver the goods to a consignee other than consignee named in consignment note.
- To give instructions to the carrier if performance of contract of carriage as agreed becomes impossible (Article 14 (1) CMR) or if circumstances prevent delivery of goods after their arrival at destination (Article 15 (1) CMR).

Introduction

■ Who has the power to give instructions to the carrier ?

■ = Right of disposal

■ Question may arise at four stages:

■ (3) Upon arrival at place of destination

■ Sender's right of disposal ends:

■ (Normally) upon arrival at place of delivery designated in consignment note:

- when 2nd copy consignment note handed to consignee (Article 12 (2) CMR)
- when consignee demands 2nd copy consignment and delivery of goods from carrier (= driver) (Article 13 (1) CMR).
- N.B. Consignee must pay or provide security for charges stated as due in consignment note. (Article 13 (2) CMR).

■ (Optionally) if sender decides to **transfer** right of disposal to consignee **earlier + entry in** consignment note. (Article 12 (3) CMR).

- N.B. This may already be at time of drawing up consignment note!

Introduction

- Who has the power to give instructions to the carrier ?
 - Restrictions to exercise of right of disposal: (Article 12 (5) CMR)
 - **Formality**: Sender must present to the carrier 1st copy of consignment note containing the new instructions (a).
 - Sender shall **indemnify** carrier for any additional expense, loss or damage connected to new instructions (a);
 - New instructions must be **feasible** for carrier and not interfering with his normal business operations (b);
 - New instructions may not be **prejudicial** to senders or consignees of other consignments (b);
 - New instructions shall not result in the consignment being divided in smaller lots (c).

Introduction

- Who has the power to give instructions to the carrier ?
 - = Right of disposal
 - Question may arise at four stages:
 - ...
 - (4) When court proceedings are initiated (= who can claim for damages).
- Prevailing view under CMR is that right to bring a cargo claim against the carrier is not dependent upon who has right of disposal.
 - Unlike law of air transport and rail transport where right to claim is linked to right of disposal.
 - Implication for CMR: both the sender and the consignee may claim damages, but the carrier of course needs to pay compensation for loss or damage only once.

Introduction

■ What can the carrier do in absence of timely instructions?

■ Starting point: custodian duties carrier have not ended yet.

- From the time of taking over of goods and until the time of delivery, the carrier still within mandatory period of responsibility.
- Although the disruption and the lack of instructions may be circumstances which the carrier can not avoid, he remains under a **duty of utmost care** to prevent also the negative consequences of this force majeure event. (Article 17 (1) and (2) CMR).
- **Main approach:** carrier must ask person with right of disposal for instructions (Article 14 (1) CMR, Article 15 (1) CMR) and in principle follow up these instructions, subject to some restrictions.
- Carrier is entitled to **compensation of costs** in relation to asking and executing instructions, except where the expenses were caused by his own wrongful act or neglect. (Article 16 (1) CMR).

Introduction

■ What can the carrier do in absence of timely instructions?

■ If he receives no instructions within a reasonable time from person who has right of disposal, then carrier shall take steps in the best interests of person with right of disposal.

- Unload goods for account of person entitled and thus bring the transport to an end (Article 16 (2) CMR).
- Hold goods in storage on behalf of person with right of disposal.
- Entrust goods to a third-party storage keeper.
- Have the good (publicly or judicially) sold (Article 16 (3) CMR):
 - In case of perishable goods or
 - Where storage costs disproportional to value of goods or
 - After expire of a reasonable time period.
 - Deduct of expenses in relation to the goods from the sale proceeds (Article 16 (4) CMR).
 - N.B. Governing law is the law of the place where goods are situated (Article 16 (5) CMR).
- Goods are security for the additional costs (Article 16 (2) CMR).

Thank you for your attention.