



CMR and Domestic Law

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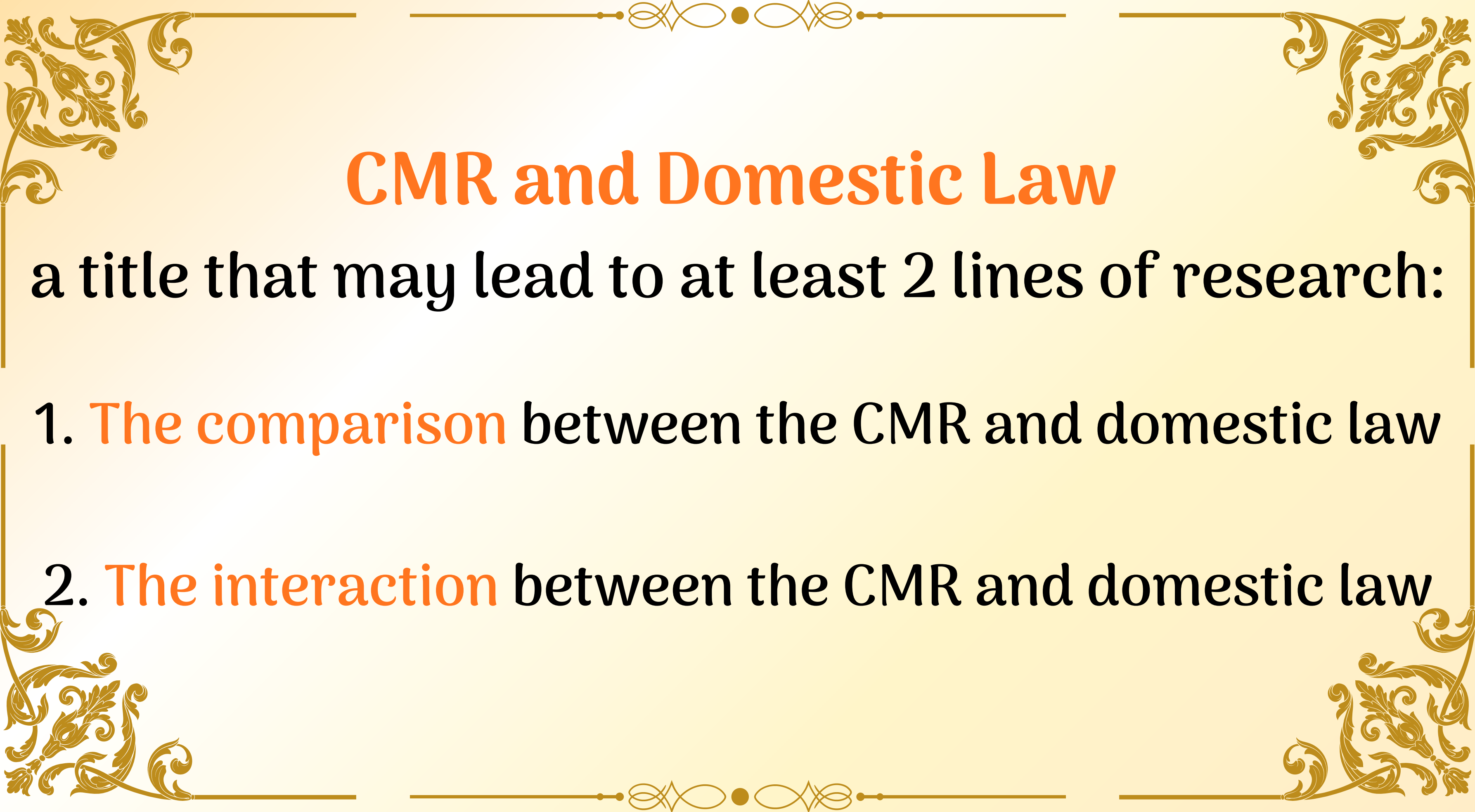


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CMR and Domestic Law

a title that may lead to at least 2 lines of research:

1. **The comparison** between the CMR and domestic law
2. **The interaction** between the CMR and domestic law



Comparison between the CMR and domestic law



What is the domestic law

CMR governs
contracts for
the carriage of
goods by road
that meet a
number of
conditions

identify the
legislative
instrument
governing contracts
for the carriage of
goods by road.

domestic
law



**Government
Ordinance No.
27/2011 on road
transport**

- **Chapter VI**
contains the
special legal
rules applicable
to contracts for
carriage by
road.
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Civil Code

Article 1955 et seq.



**Government
Ordinance
No. 19/1997
on transport**



Comparison between the CMR and domestic law

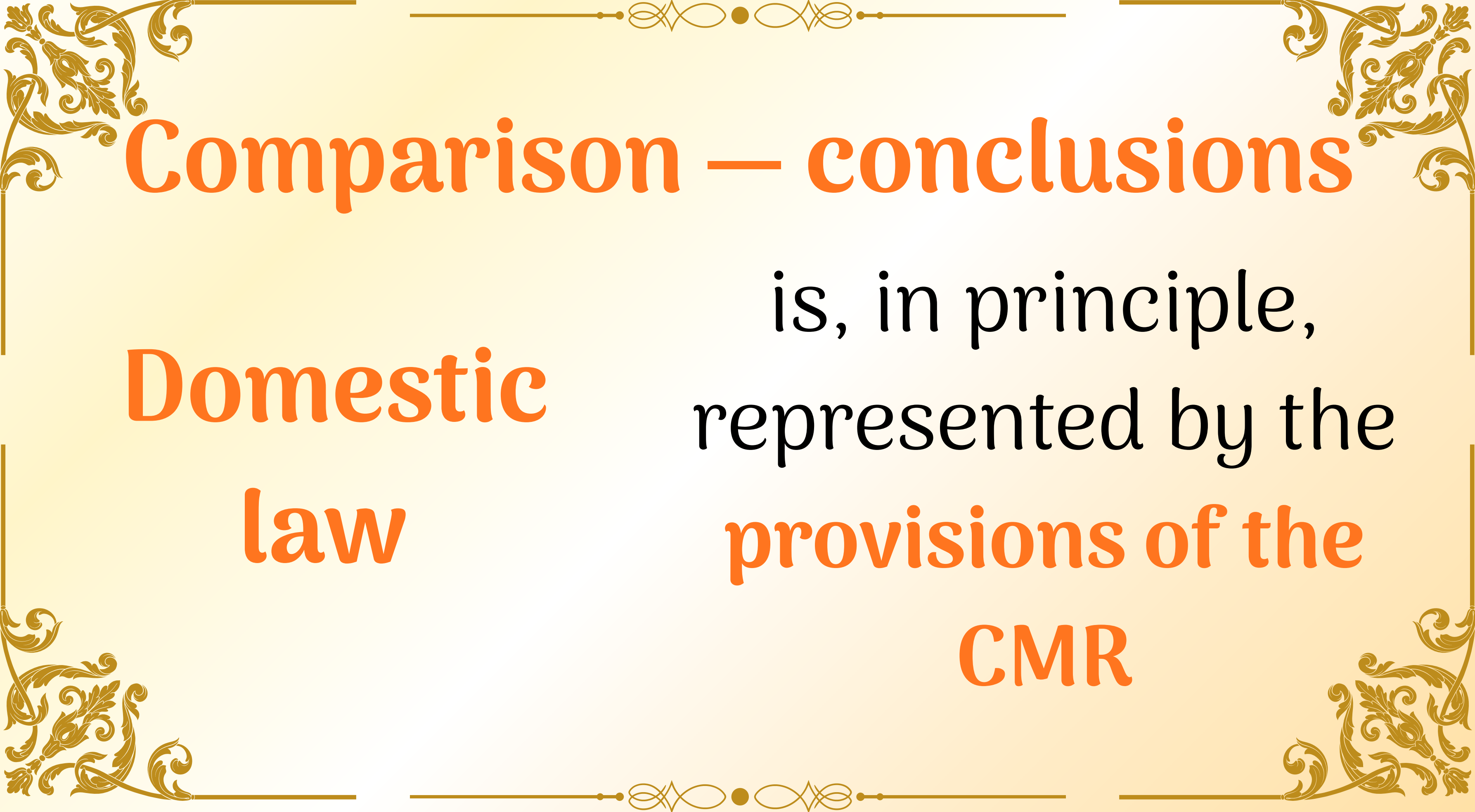
Government Ordinance No. 27/2011 – Article 77.



1. The provisions of Article 1 points 2 and 3, as well as Articles 2–30 and 32–41, except for those set out in Article 23 point 3, of the Convention on the Contract for the International Carriage of Goods by Road (CMR), signed in Geneva, Switzerland, on 19 May 1956, to which Romania acceded by Decree No. 451/1972, hereinafter referred to as the CMR Convention, apply to domestic carriage of goods by road for reward.

2. In domestic road transport, Article 23 point 3 of the CMR Convention shall read as follows: “Nevertheless, compensation may not exceed the amount in lei equivalent to USD 2.5 per kilogram of gross weight short.”





Comparison — conclusions

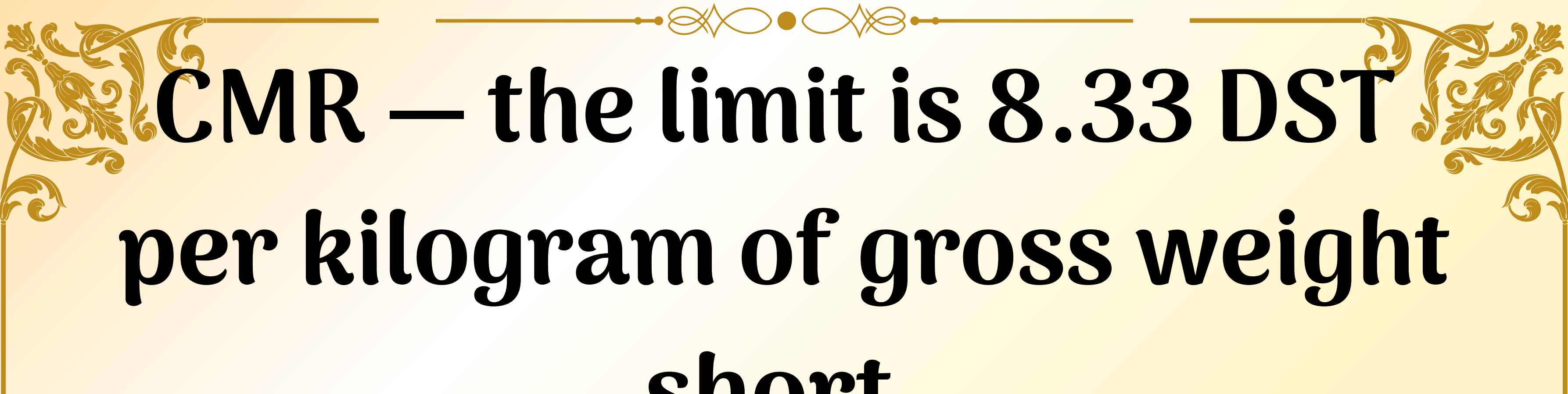
Domestic
law

is, in principle,
represented by the
provisions of the
CMR



Domestic law ❁ special rules

limit the compensation for loss
of the goods



**CMR — the limit is 8.33 DST
per kilogram of gross weight
short.**

**GO nr. 27/2011 — the limit is 2.5
USD**

per kilogram of gross weight short.





**Final conclusion —
high level of
similarity**





The interaction between the CMR and domestic law



Working hypothesis

**a contract for the carriage of
goods by road that falls within
the scope of the CMR**





Question 1

**Does domestic law still apply to
a contract governed by the
CMR?**





Question 2

Is it possible to use domestic-law mechanisms for matters governed by the CMR?





Question 1

Does domestic law still apply to
a contract governed by the
CMR?





Answer — yes,

*** where the Convention expressly
refers to domestic law**

*** with respect to matters not
fully regulated by the CMR
Convention**





**Where the Convention expressly
refers to domestic law?**



Article 29 CMR



refers to **domestic law** to determine whether there is any situation in which **a conduct not aimed at causing harm is considered intentional**





Art. 16 Cod civil



An act is committed intentionally

* when the perpetrator intends to
cause harm

* when the perpetrator accepts the
occurrence of harm





**Which are the matters not fully
regulated by the CMR
Convention**





Conclusion of the contract

Performance of the contract

Non-performance of the contract



Procedural matters



Conclusion of the contract

Validity of contracts





**The CMR does not govern matters
concerning substantive conditions—
capacity, consent, object and cause.**

**If such issues arise, domestic law
applies to them.**



Examples:

conclusion of a contract of carriage in circumstances involving identity theft

a total lack of capacity

defect of consent (fraud /mistake)

conclusion of a contract of carriage for smuggled goods

unlawful cause

Civil Code



Performance of the contract

- Rights and obligations of the parties to a contract of carriage
- 
- 

EXAMPLES

The obligation to load or unload

the CMR refers to loading and unloading obligations,

but does not determine who bears them – domestic law

certain difficulties

written rules – NO

usages (unwritten law)



note the existence of a new legislative instrument in this field

**Law No. 100/2026 regulating obligations concerning
operations for loading and unloading goods, load supports or
packaging**

Article 3



**Contractual clauses under which the carrier's employed drivers
would be required to unload or load goods, ,,, are null and void
by operation of law.**



The obligation to pay the price

the CMR regulates the obligation to pay the price

**but says nothing about when that obligation becomes due -
domestic law**





Civil Code

Law No. 72/2013

on measures to combat late payment of sums of money arising from contracts concluded between professionals and between professionals and contracting authorities.





Civil Code: immediately

the obligation must be performed immediately.





Law No. 72/2013

**contracts concluded between professionals
(profit-making undertaking)**



**cascading solution
determining the due date**

the date on which the debtor receives the invoice

**30 calendar days after receipt of the goods or
provision of the services,**

**30 calendar days after completion of the conformity-
verification procedure**





Non-performance of the contract



**The CMR regulates consequences of non-performance
of the contract of carriage, but not all of them -
domestic law**





**Example — CMR does not
regulate delay by the consignor
in handing the goods over to the
carrier.**





**Civil Code — in the event of culpable
non-performance - termination of the
contract with damages.**





Example 2 — CMR does not regulate **late
payment of the transport fee**



- **Law No. 72/2013 and Government Ordinance No. 13/2011**

- **Government Ordinance No. 13/2011 on statutory remuneratory and default interest for monetary obligations and on certain financial and fiscal measures in the banking sector.**



- 
- 
- **Relationships between profit-making undertakings (professionals)**

Statutory default interest rate = the reference interest rate (monetary-policy rate) set by the National Bank of Romania + 8%





Relationships between profit-making undertakings (professionals) and other entities



**Statutory default interest rate = the reference interest
rate (monetary-policy rate) set by the National Bank of
Romania + 4%**



Procedural matters

**Limitation periods — the CMR regulates
limitation periods but does not address
matters concerning how they run – domestic
law
Civil Code**





Question 2 — Is it possible to use
domestic-law mechanisms for
matters governed by the CMR?





Answer — NO



**The CMR provides for an
increase in the carrier's liability**

**declaring the value
of the goods**

**declaring a special
interest in delivery**

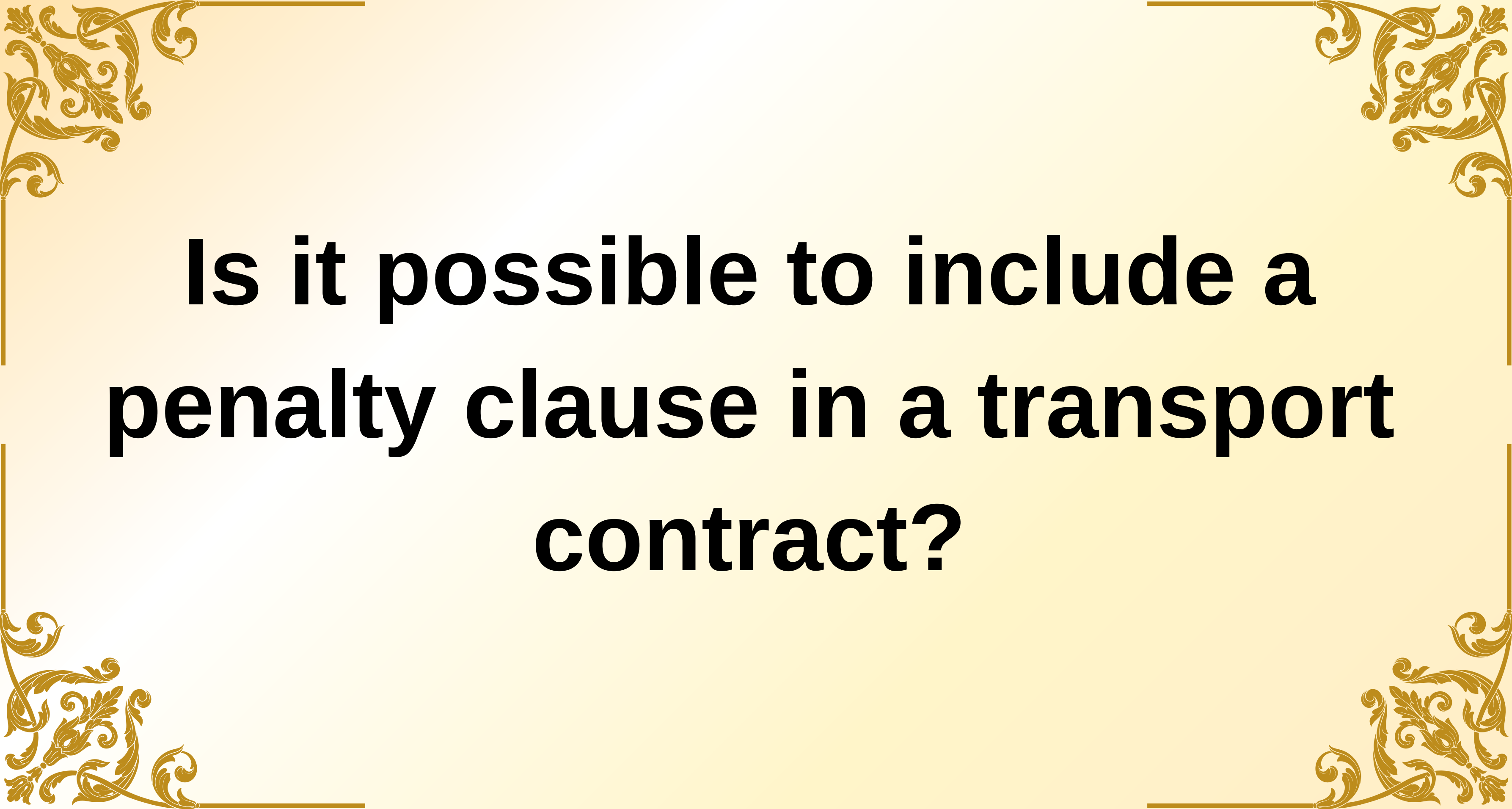
- increase the limit of recoverable damages,
but the amount of the damage must be
proved.**
- 
- 



**Domestic law regulates
the penalty clause as a mechanism
for increasing liability**

the amount of the damage is established in advance by the parties.





**Is it possible to include a
penalty clause in a transport
contract?**



Thank you very much!

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