

MULTIMODAL TRANSPORT- LEGAL PROBLEMS

Presentation by

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MT – Stakeholders

The stakeholder of the transport supply chain can be summarised as:

- Shipper (as sender and receiver of goods);
- Freight Forwarder;
- Carrier(s); and
- Insurer (for both carrier liability and cargo liability)

Stakeholders of an multimodal transport supply chain includes:

- Warehouse Operator;
- Terminal Operator (port)
- Infrastructure Operator

MT – Reason for growth? (1)

- Loading, stowage and unloading of general cargo using traditional methods were extremely labour-intensive;
- The more stages in the transit, the greater the number of operations to be performed, with not only an increase in the expense but also higher risk of loss through damage or pilferage;
- The solution was seen to be the ‘unitization’ of cargo by shipping it in a standard unit which would not be opened or disturbed during the transit but would house its contents as a single unit-load carried from door to door.

MT – Reason for growth? (2)

- The development of containers and other forms of unit-load, coupled with the manufacture of carrying vessels and vehicles, and terminal equipment specifically designed for the loading and storage of units, has dramatically reduced the time taken to handle cargo and, in consequence, the turn around time of the carrying vessel.
- Lastly, the use of containers has reduced packaging problems for exporters, pressure on warehouse space and loss through damage or theft in transit

MT-Definitions (1)

- International Multimodal Transport:

The carriage of goods by at least two different modes of transport on the basis of a *multimodal transport contract* from a place in one country at which the goods are taken in charge by the *multimodal transport operator* to a place designated for delivery situated in a different country.

- Multimodal Transport Operator:

Any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignor or of the carriers participating in the multimodal transport operations, who assumes responsibility for the performance of the contract.

MT-Definitions (2)

- Multimodal Transport Contract:

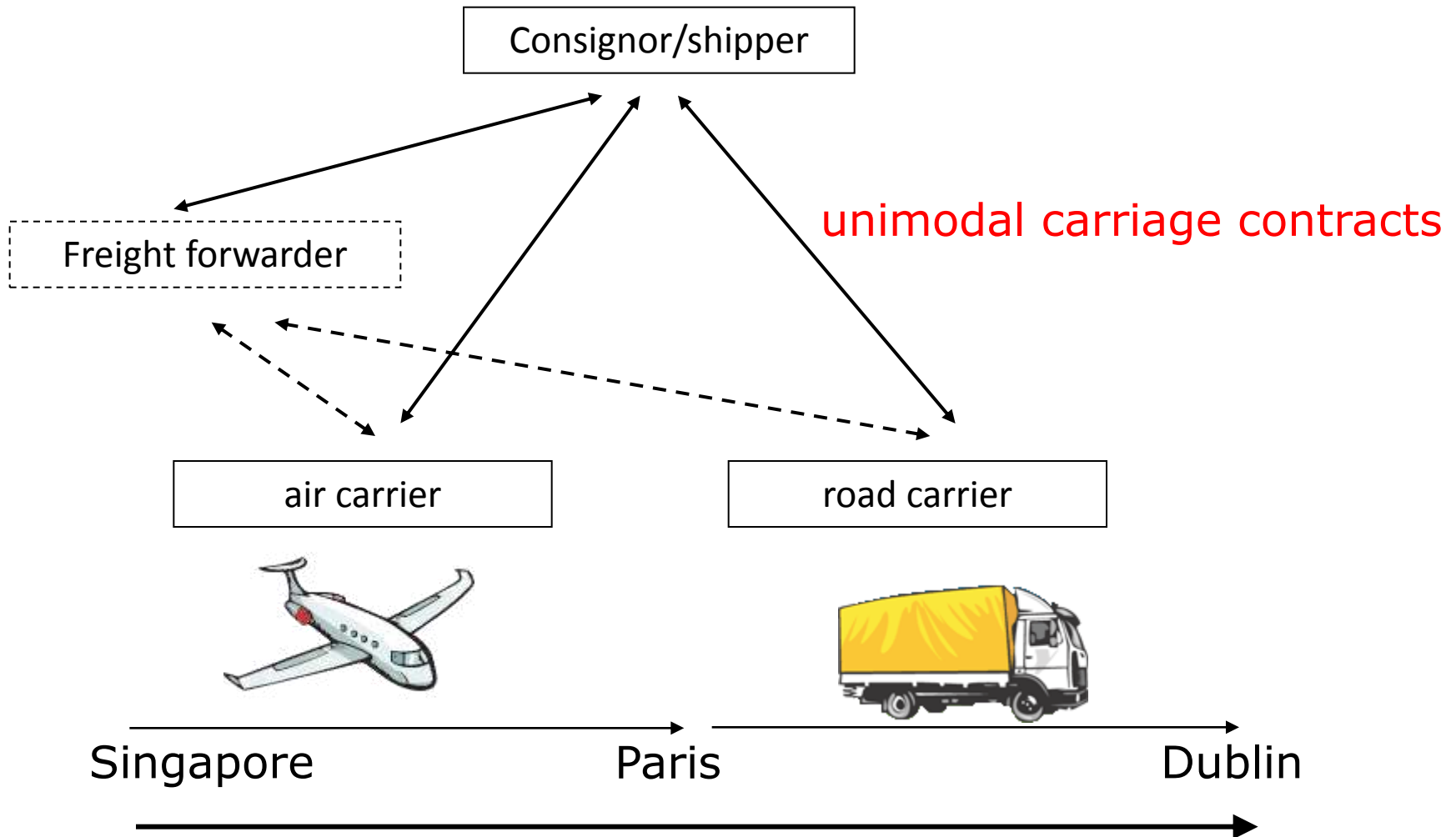
A contract whereby a multimodal transport operator undertakes, against payment of freight, to perform or to procure the performance of international multimodal transport.

- Multimodal Transport Document:

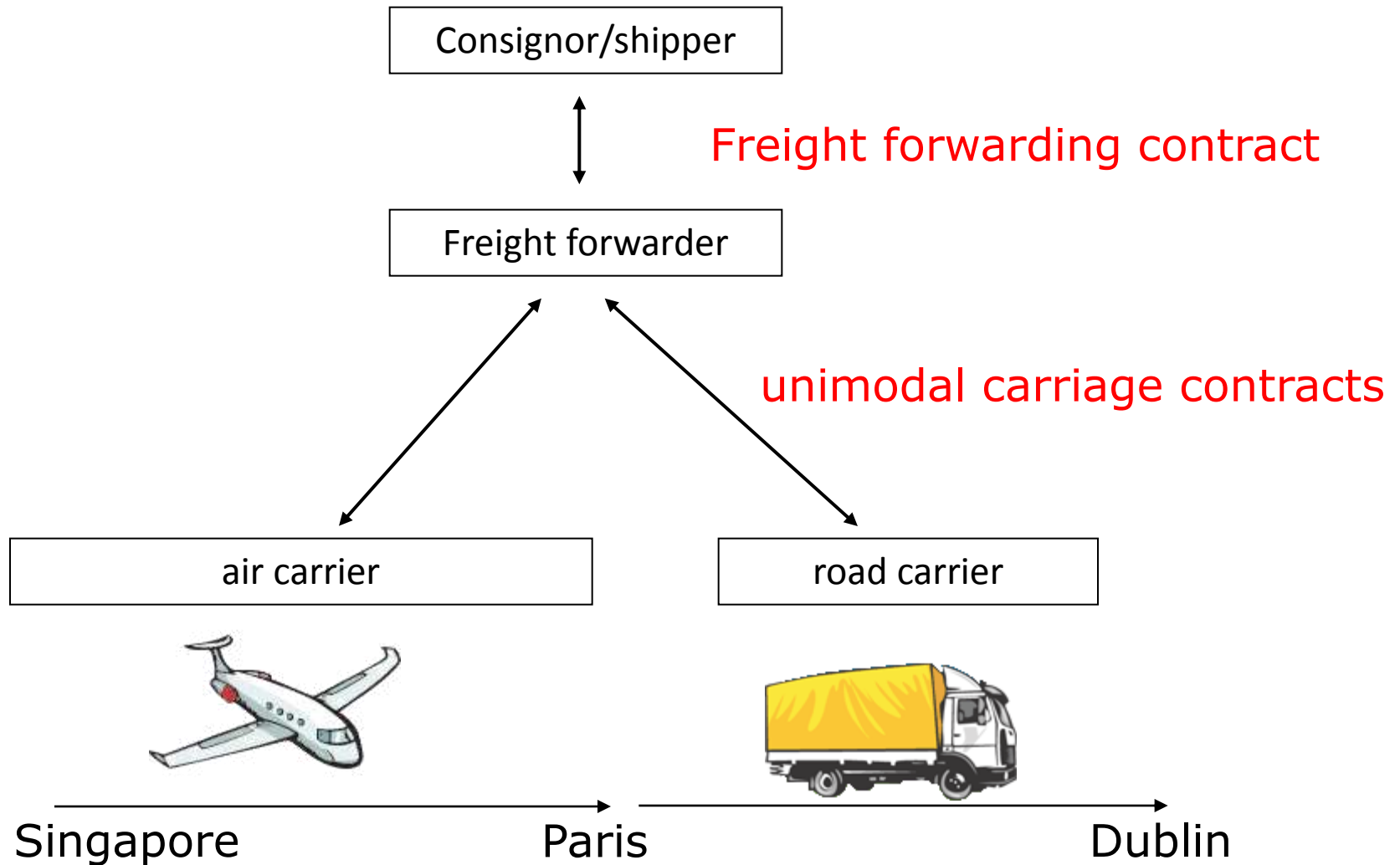
A document which evidences a multimodal transport contract, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract.

-- *Explain in diagrams*

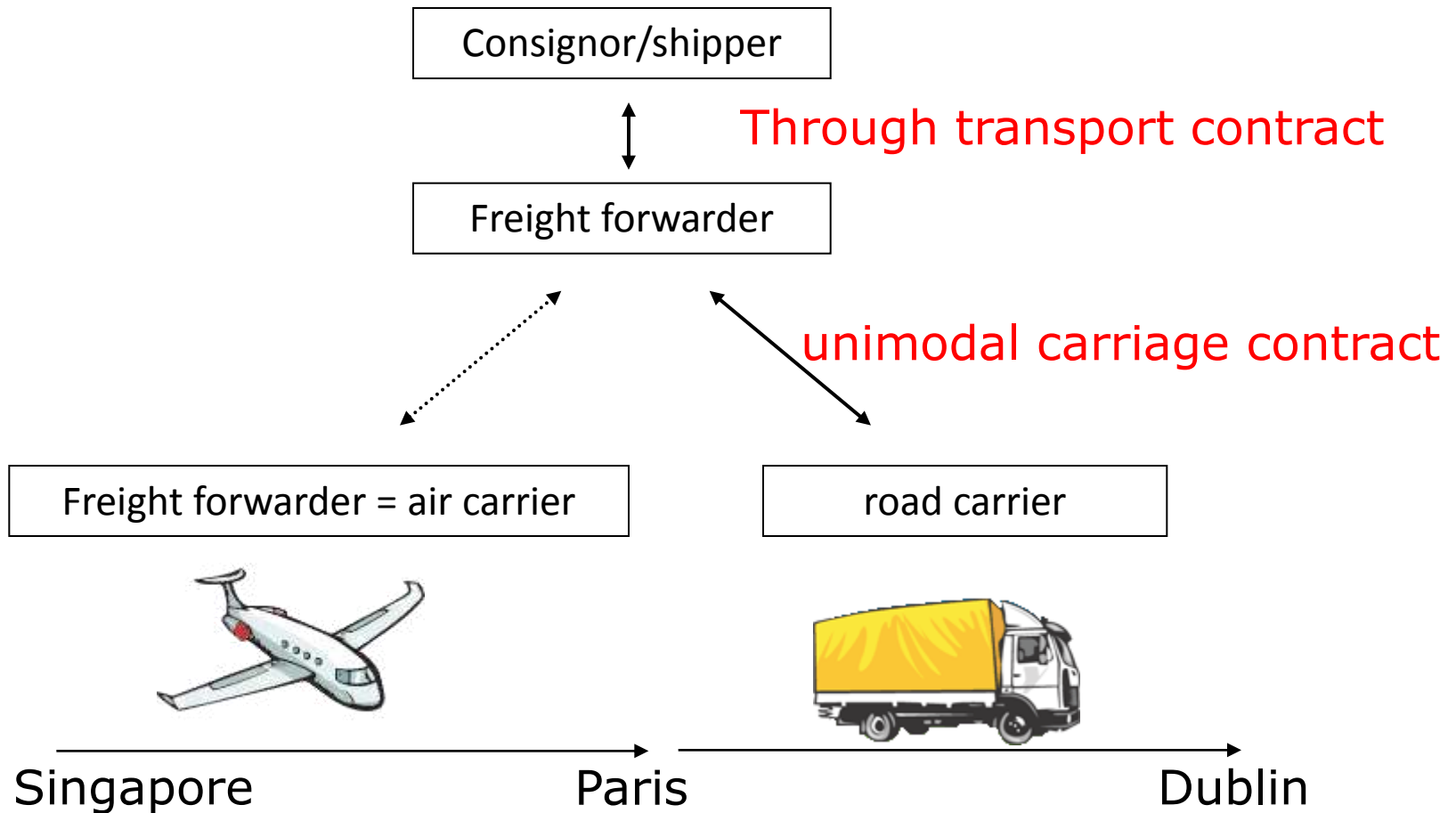
A. The freight forwarder acts as agent:



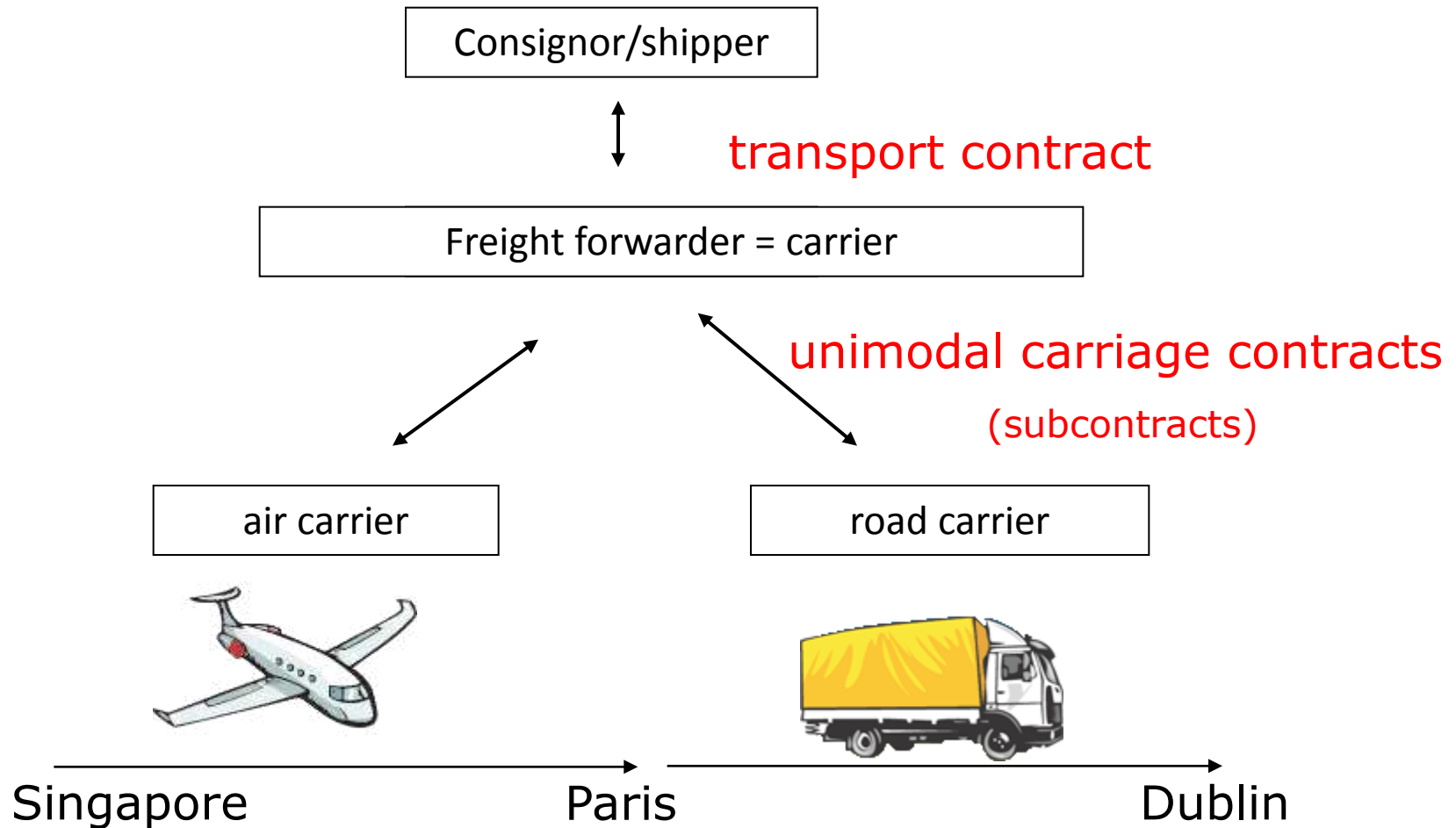
B. The freight forwarder acts as principal:



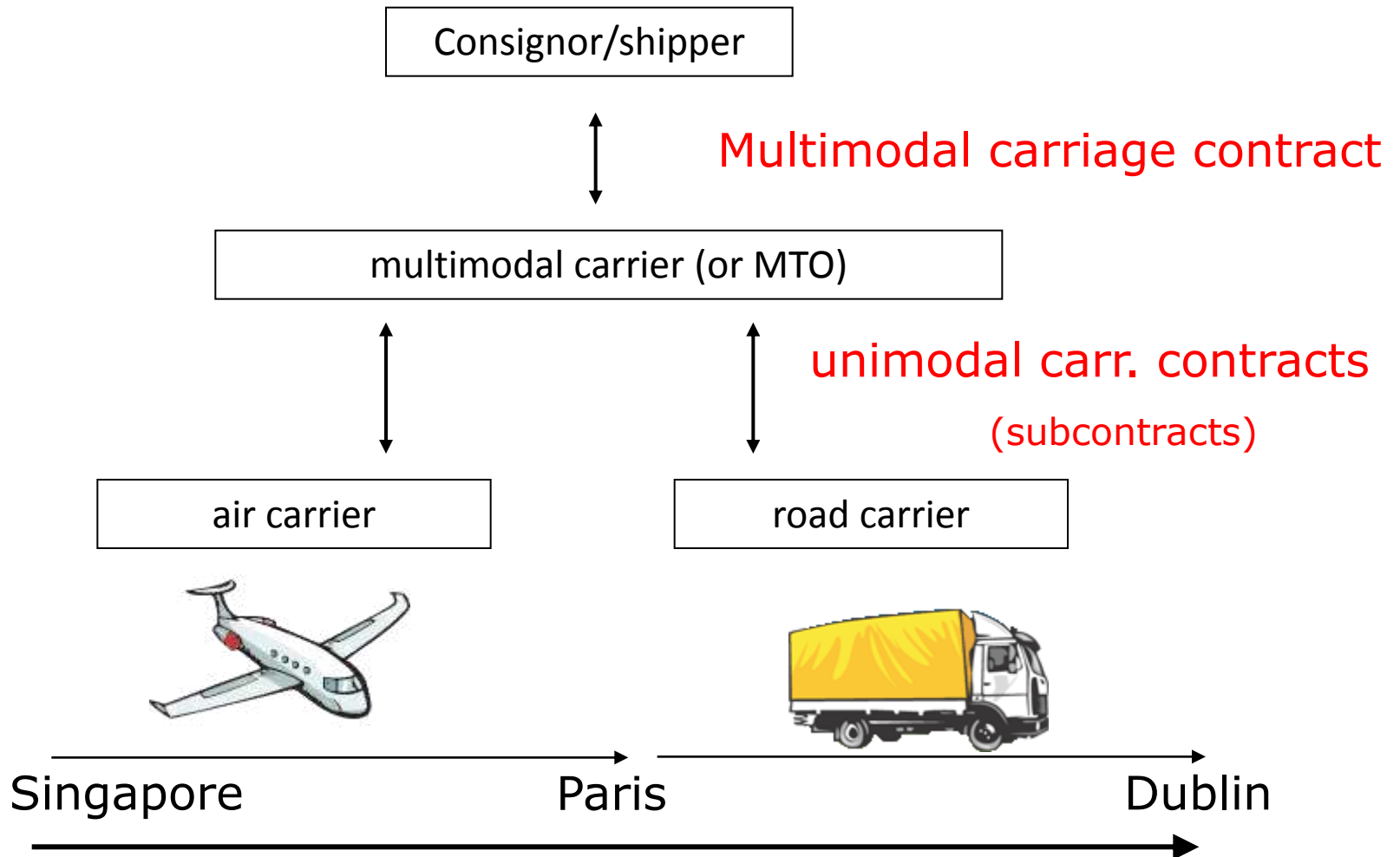
C. Through transport: the freight forwarder acts partly as carrier:



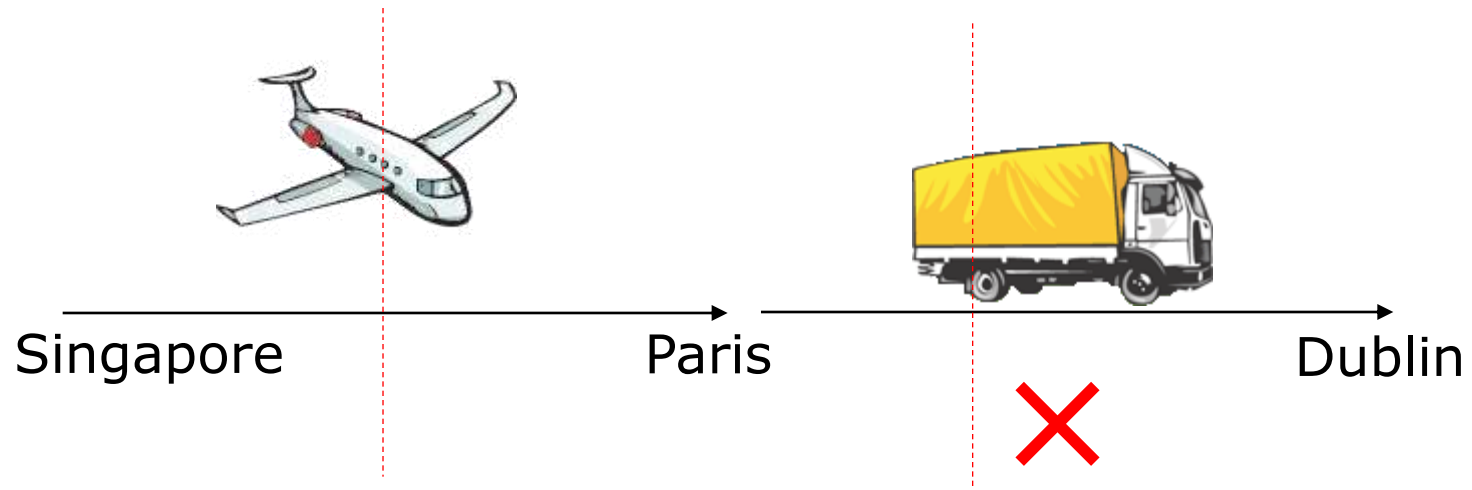
D. The freight forwarder acts as carrier:



E. Contracting with a multimodal carrier:



What if the cargo is stolen between Paris and Dublin?



Quantum v. Plane Trucking, QBD [2001] 2 Lloyd's Rep. 133 and CA [2002] 2 Lloyd's Rep. 25

Forms of MT Operations

To name a few combinations:

- Land-Sea-Land
- Road-Air-Road
- Sea-Air-Sea
- Rail/Road/Inland Waterways/Sea

Applicable Laws

MT Operations:

- There is no international MT Convention to govern MT operations;
- Past attempts: amongst others, 1975 ICC Rules for a Combined Transport (CT) Document; 1980 Multimodal Transport Convention
- Current attempt: UNCITRAL Convention 'Unimodal Plus' (Rotterdam Rules)

Unimodal Operations:

- Air carriage: Warsaw/Montreal
- Road carriage: CMR
- Sea carriage: HR/HVR/Hamburg Rules
- Rail carriage: COTIF/CIM
- Inland waterway: CMNI

Apart from the above, there are national laws and contractual provisions.

Compensation

(it's all about the money)

Whether the carrier is liable and to what extent depends on the applicable legal regime.

Legal Problems-MT (1)

- Different conventions and rules govern different modes.
- If goods are shipped through an MTO are lost or damaged in transit, which convention, and accordingly, which set of duties, exemptions and limitations of liability will apply?

- Localised or non-localised damages?

Localised damages: damage known to have occurred during a particular stage of transport;

Non-localised damages: it is the stage of transport where loss or damage occurs cannot be established

- Which liability system? “Uniform” or “Network” system!

Uniform:

- the rules apply to the entire MT, irrespective of the stage of transport where loss or damage occurs;
- This system offers a set of simple, transparent and predictable liability rules;

Legal Problems-MT (2)

- Much favoured by cargo interests;
- **however**, contradiction with other mandatory unimodal regimes

Network:

- the applicable liability rules will depend on identifying the unimodal stage of transport where the loss or damage occurs;
- Carriers support this system;
- because this system preserves the rules applicable to unimodal stages of the transport to ensure the possibility of recourse actions against unimodal operators.
- **however**, varying liability for each leg –gaps may exist where carrier may not be liable

MODIFIED NETWORK -A modified system essentially seeks to provide a compromise or middle-way between a uniform and a network system.

Liability Limits

Hague Visby Rules (sea)	2 SDR
Hamburg Rules (sea)	2.75 SDR
UNCITRAL (sea+)	3 SDR
CMNI (inland navigation)	2 SDR
CMR (road)	8.33 SDR
COTIF/CIM (rail)	17 SDR
Warsaw/Montreal	17 SDR

Problem with Unimodal Conventions (1)

- **CMR**

Article 1: this Convention shall apply to *every contract for carriage of goods by road* in vehicles for reward, when the place of taking over of the goods and the place designated for delivery..., are situated in two different countries of which one is a Contracting country...

Article 2.1: where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, *this Convention shall nevertheless apply to the whole of the carriage...*

Article 2.2: If the carrier by road is also himself the carrier by other means of transport, his liability shall also be determined in accordance with the provisions of paragraph 1 of this article, but as if, his capacities as carrier by road and carrier by the other means of transport, he were two separate persons.

Problem with Unimodal Conventions (2)

- **Montreal**

Article 18(3): the carrier is liable for any loss or damage caused to the cargo during the period of carriage by air (it's the period during which cargo is in charge of the carrier);

Article 18(4): the period of carriage by air does not extend to any carriage by land, by sea, or by inland waterways performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage of air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air;

Problem with Unimodal Conventions (3)

Article 38: Combined carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, subject to Article 18 (4), the carrier is liable only for carriage by air as defined in article 1.
2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Problem with Unimodal Conventions (4)

Rotterdam Rules (UNCITRAL (Sea+))

- Article 1: basic scope of application
- Article 26: minimal network
- Article 82: conflict of conventions

Problem with Unimodal Conventions (5)

Basic scope of application

Article 1 (1)

- “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another.
- The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

Problem with Unimodal Conventions (6)

Minimal network

Article 26

...during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that:

- Would have applied if the shipper had made a separate contract with the carrier in respect of the particular stage of carriage where the loss or damage occurred
- Specifically provide for the carrier's liability, limitation of liability, or time for suit

Problem with Unimodal Conventions (7)

Conflict of conventions

Article 82

- The air carriage conventions have precedence
- The CMR has precedence in case of article 2 CMR carriage
- The COTIF and the CMNI have precedence insofar as they cover carriage by rail or inland waterway supplemented by sea carriage

UNCTAD MT Convention 1980 (1)

- The convention applies to all contract of MT between places in 2 states if the place for taking in charge of the goods or the place for the delivery of the goods by the MTO as provided in the applicable MT contract is located in a contracting state;
- Article 5 requires the MTO, when taking the goods in charge, to issue an MT document, either in negotiable or in non-negotiable form, at the option of the consignor;
- MTO is responsible not only for the acts and omissions of his servants and agents, when acting in the scope of their employment, but also for those of any other person of whose services he makes use for the performance of the MT contract, when such person is acting in the performance of the contract, as if the acts and omissions were those of the MTO himself.

UNCTAD MT Convention 1980 (2)

- As regards delay, MTO is liable for delay regardless of the stage at which this occurred;
- Where fault or neglect combines with another cause to produce loss, damage or delay in delivery, MTO is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided he proves the part MTO is not attributable thereto;
- Convention lays down its own rules, which apply even where the loss-making event can be localized.
- Limits of liability: 920 units of account per package or other shipping unit or 2.75 units of account per kg of gross weight of the goods lost or damages, whichever is higher.

UNCTAD MT Convention 1980 (3)

- For delay in delivery, the limit of liability is two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the MT contract;
- The aggregate liability is not to exceed the limit of liability for total loss of the goods;
- However, where the loss or damage to the goods occurs during a particular stage in respect of which an applicable international convention or mandatory national law provided *higher* limit of liability, then that limit applies (limited extent Network principle is used).

Conclusion

- Current liability framework governing MT is highly fragmented and complex, creating uncertainty;
- Difficult to identify the stage of transport where loss or damage occurs, therefore, the extent of liability of the MTO depends on whether or not the loss can be attributed to a particular stage of transport and on which of the potentially applicable liability regime(s);
- Further uncertainty is created by different rules/international unimodal conventions which provide for different limits of liability and other additional problems.
- The MT convention, though by no means solves all the significant problems, it is a major breakthrough in the regulation of MT agreements;
- It is my firm belief that any future works to harmonize the applicable legal regime for MT operations, MT convention should be the starting point for discussion among the stakeholders.

Thank you