

# Case Law regarding CMNI and CLNI - the Interpretation of the Conventions

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IVR



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# CMNI and CLNI – the Interpretation of the Conventions – Germany

1. Conventions and German Inland Navigation Law
2. Interpretation of Conventions under German Law
3. Case Law in Germany



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# 1. Conventions and German Inland Navigation Law

- Collision Convention 1960
- CLNI – Strasbourg Convention 1988 (CLNI 2012)
- Salvage Convention 1989
- CMNI – Budapest Convention 2000
- Athens Convention 2002
- CMR as model for the German Commercial Code (HGB)
- Rhine Convention – “Mannheimer Akte”

# 1. Conventions and German Inland Navigation Law

## 1) The structure of the German Inland Navigation Law (BinSchG) of 1895 as revised 2013

<b>§ 1-3 Owner Operator</b>	<b>4-5m Global Limitation</b>	<b>6-11-25 Master, Crew</b>	<b>26, 27 Contract of Carriage, C/P</b>	<b>77 Passen- ger</b>	<b>78 General Average</b>	<b>92-92f Collisions</b>	<b>93 Sal- vage</b>	<b>102-116 Lien</b>	<b>117/118 Time bar</b>
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# 1. Conventions and German Inland Navigation Law

## 2) The Incorporation of **Conventions** into the German Inland Navigation Law (BinSchG)

§ 1-3 Owner Ope- rator	4-5m Global Limi- tation	6-11-25 Master, Crew	26, 27 Contract of Carriage, C/P	77 Passen- ger	78 General Average	92-92f Collisions	93 Sal- vage	102-116 Lien	117/118 Time bar
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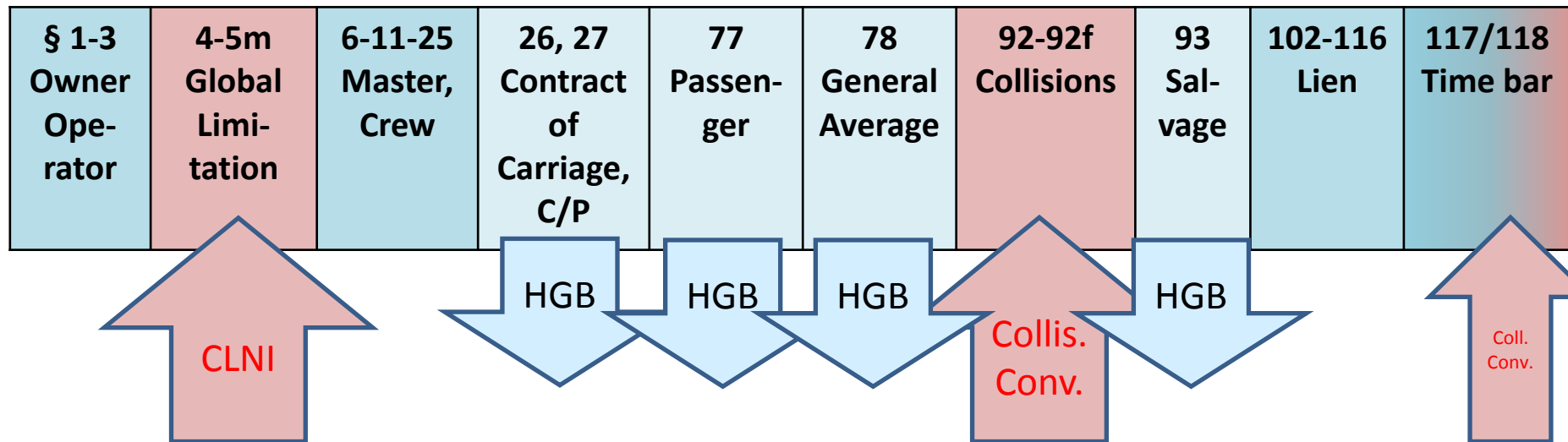
CLNI

Collis.  
Conv.

Coll.  
Conv.

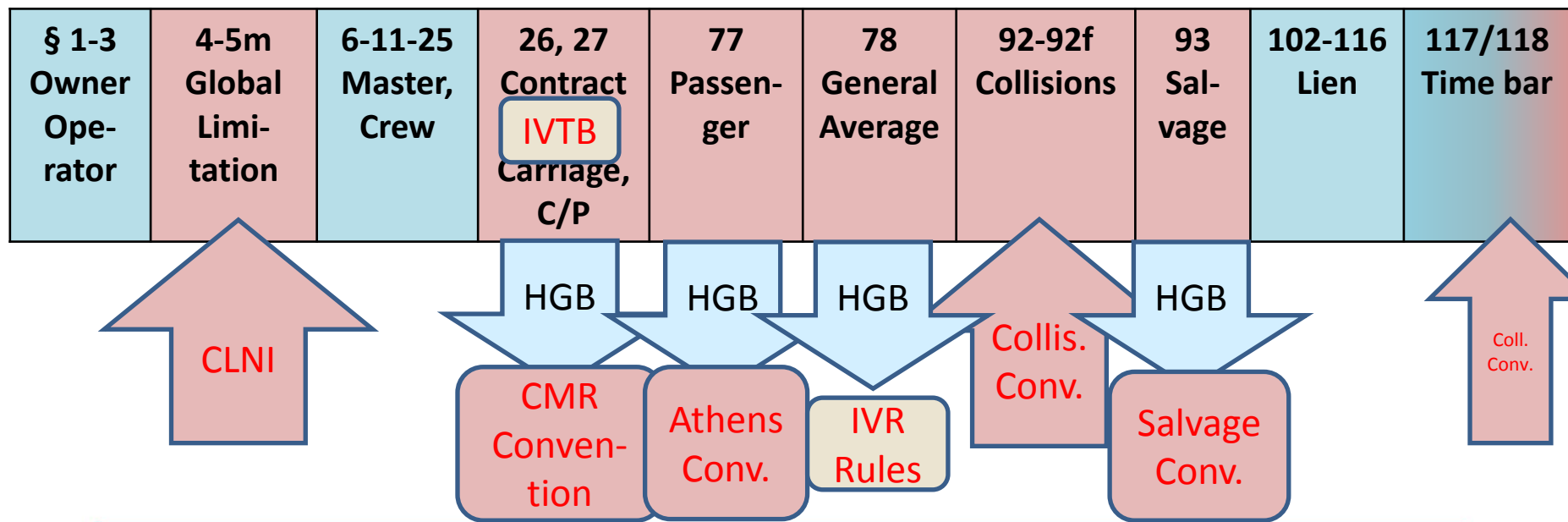
# 1. Conventions and German Inland Navigation Law

## 3) The Reference to the German Commercial Code (HGB) and underlying German Civil Code (BGB)



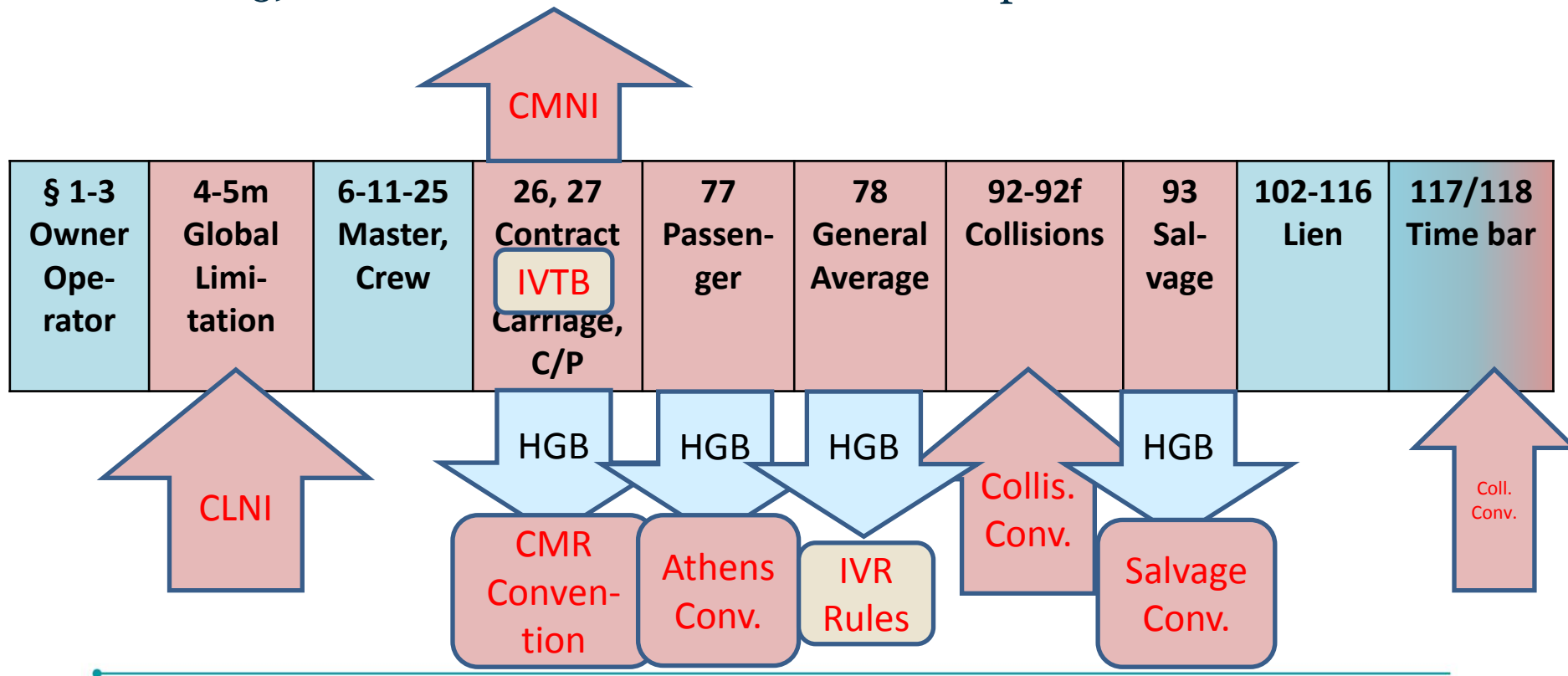
# 1. Conventions and German Inland Navigation Law

## 4) The **international** sources of the Rules within the German Commercial Code (HGB)



# 1. Conventions and German Inland Navigation Law

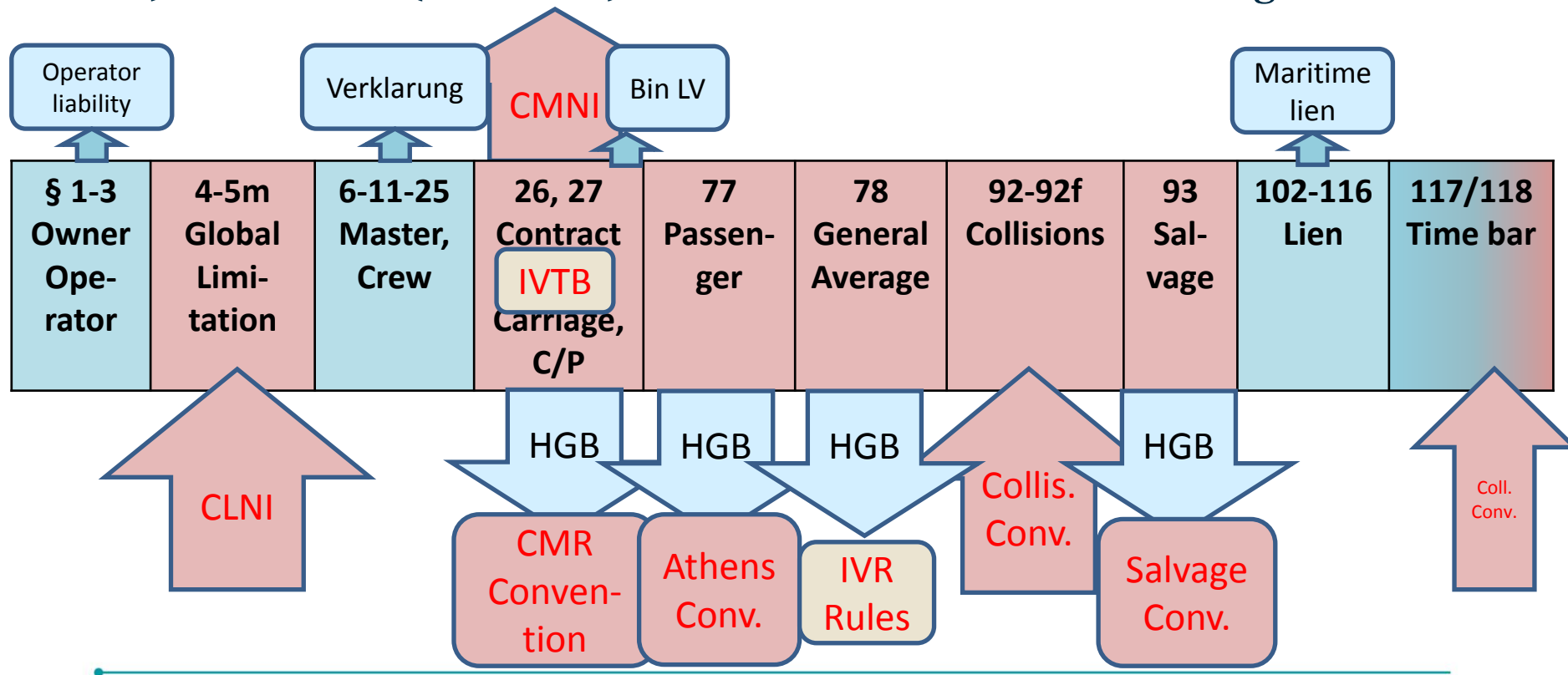
5) Where does **CMNI** come into the picture?





# 1. Conventions and German Inland Navigation Law

## 6) The **local** (maritime) Sources of German Inland Navigation Law



# 1. Conventions and German Inland Navigation Law

## 7) Summary of the specific “German” elements in the German Inland Navigation Law (BinSchG)

- Liability of owner or operator (Ausrüster) for master and crew
- Deviations / reservations in respect of conventions
- Contract for domestic carriage according to German Commercial Code (HGB) and Civil Law (BGB)
- Gaps within CMNI and other conventions
- Maritime lien, enforcement of claims, time bar
- “Verklärung” and civil procedural issues

## 2. Interpretation of Conventions under German Law

Interpretation of directly applicable conventions  
(like **CMNI**)

- The purpose of unification demands an interpretation based solely on the convention itself, the “**autonomous**” interpretation
- This interpretation has to be done by the local courts
- The interpretation should be in all contracting states and by all local judges the same

## 2. Interpretation of Conventions under German Law

Rules for **autonomous** interpretation:

### Vienna Convention on the Law of Treaties of 1969

- Wording of the convention as the dominant factor
- History of the convention, intention of the convention
- Logical and systematic interpretation within the convention
- Unintended gaps are to be filled by applying other rules of the convention
- Intended gaps are to be filled by local law

## 2. Interpretation of Conventions under German Law

Interpretation of incorporated conventions

(i. g. **CLNI** incorporated in BinSchG)

- Interpretation according to the legislative act incorporating the convention
- Assumption: the local legislator did not intend to deviate from the convention
- In detail unclear:

*“the German wording prevails”: Herber, Seehandelsrecht, p. 31; “the conventions have to be consulted”, Rabe, Seehandelsrecht, Einf. 43;  
“interpretation conform the convention as far as possible”: v.Waldstein/  
Holland, § 4 BinSchG 4*

### 3. Case Law in Germany - CLNI

Shipping Court of Appeal Cologne,  
31.10.2006 (ZfB 2006 No. 12 p. 47)

- The intention of the German legislator was to create a widest possible limitation of liability for the ship owner;
- The wording of the German Inland Navigation Law (BinSchG) is relevant, not the one of the Convention;

### 3. Case Law in Germany - CMNI

District Court of Stade, 25.05.2009

(ZfB 2009 No. 10 p. 75)

- Gap within CMNI in relation to the liability of the actual carrier towards the shipper , applying § 437 HGB, Art. 16, 29 CMNI;
- Gap within CMNI in relation to contributory negligence of the shipper, applying § 254 BGB, § 425 II HGB, Art. 18, 29 CMNI;

### 3. Case Law in Germany - CMNI

Shipping Court of Appeal Karlsruhe, 19.05.2011  
(ZfB 2011 No. 9 p. 73)

- “Damage” to cargo as per Art. 16 CMNI is loss in value due to physical or chemical action including a **suspicion** of such “damage” as per German legal principles;
- The scope of the exclusion “nautical error” as per Art. 25 II a) CMNI is in relation to **causation** and relevance of acts of third parties to be interpreted as per German legal principles;



### 3. Case Law in Germany - CMNI

c) Court of Appeal Hamburg, 05.12.2013

(ZfB 2014 No. 3 p. 66)

- In case of multimodal transport CMNI does not apply directly. German multimodal law rules apply (§ 452a HGB), these make CMNI applicable in substance;
- The term “diligent carrier” in Art. 16 CMNI is interpreted not as per German law (§ 426 HGB) but **as per Dutch law** (Art. 901 NI-BW);

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Conclusions and confusions



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*Thank you!*

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