

PROPOSITIONS

The Legal Position of Terminal Operators in Hinterland Networks: Mixed contracts and third parties

S.H.L. Niessen

1. Terminal signs in general wording are insufficient to exonerate liability for negligent conduct.
2. Transshipment of goods from one means of transport to another necessarily implies vertical or horizontal movement of goods and should be considered carriage of goods.
3. Legal certainty about the demarcation of legal regimes can be increased when sea terminal operators also undertake the obligation to carry goods to or from inland terminals.
4. It is unacceptable that Dutch law still allows sea carriers to exclude liability for loss of or damage to cargo in their custody before loading to and after discharge from the ship.
5. With respect to his liability exposure during transshipment, under Dutch law it is preferable for a terminal operator to be considered a carrier rather than a service provider (*opdrachtnemer*).
6. The reluctance under Dutch law to granting third party effect to contractual terms can be explained by the absence of a substantive review of general terms and conditions concerning Business-to-Business (B2B) contracts.
7. Ultimately, the extension of passengers rights in recent EU regulations is detrimental to the economic interests of passengers, because the compensation payable by carriers is in essence a mandatory insurance, the premium of which is reflected in the ticket price.
8. In view of the uncertainty about the future rules on jurisdiction and recognition and enforcement of judgments in the relation between EU member states and the UK, it is one of the unintended consequences of 'Brexit' that jurisdiction clauses opting for English courts provide less legal certainty.
9. Although a political system based on democratic elections every four years serves the need to constrain the power of elected officials, it inherently focusses on short-term problems and seems unequipped for solving the underlying long-term problems.
10. The need for comparative law studies is proportional to the recognition of foreign law by national legal systems and the frequency of the use of choice of law clauses.
11. Business decisions can be made without worrying about their legal implications if one has full legal knowledge or none at all.