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*"Recent Developments in Maritime Law Around the World"*

# **The Legal Position of Terminal Operators in the Netherlands**

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# 24 terminals in Rotterdam city – Botlek area



# 18 terminals in Rotterdam – Maasvlakte area

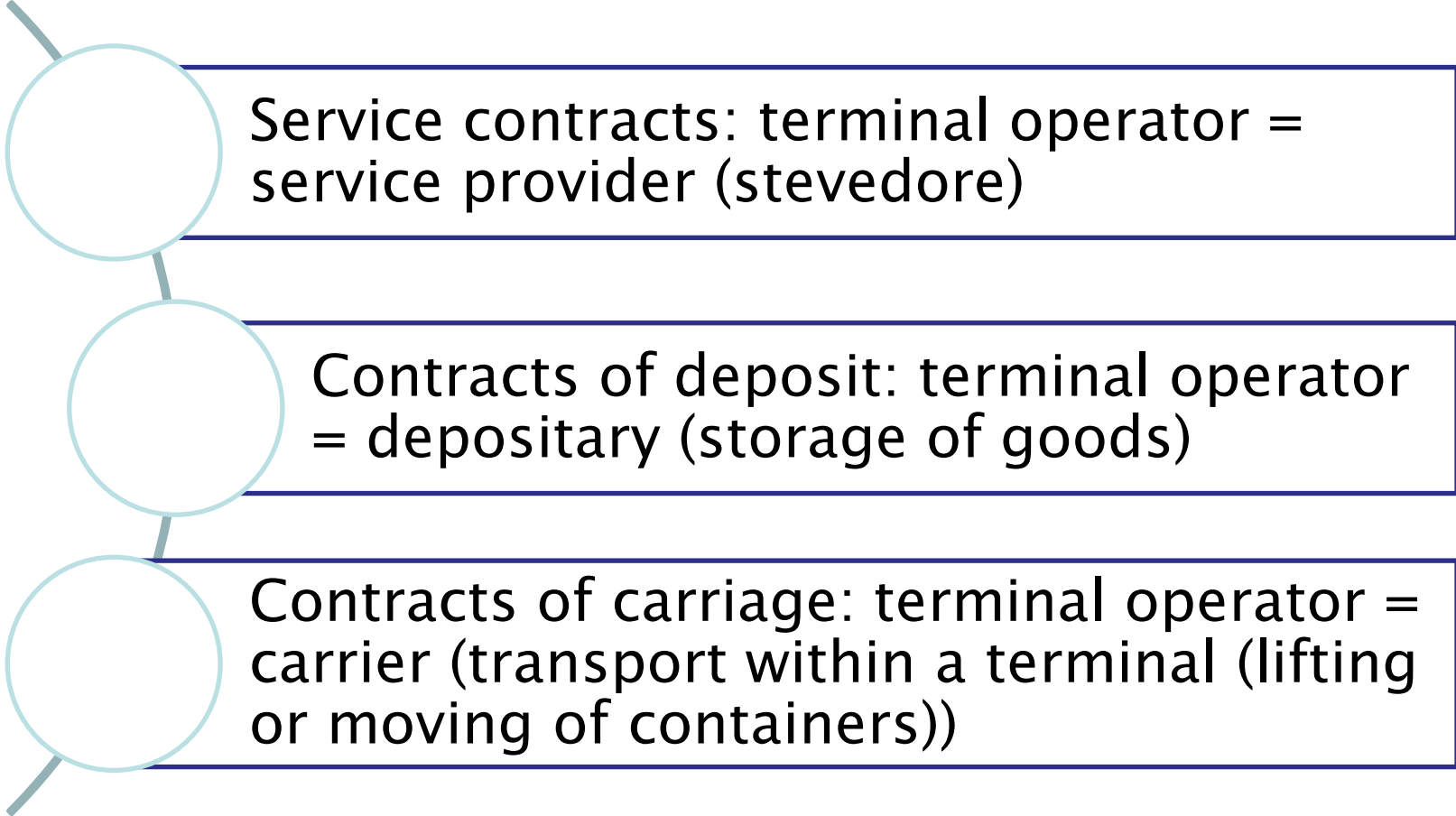


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# Introduction

- Terminal operators: logistic service providers performing a wide range of services covering transshipment of goods from one means of transport to another
- Spider in a web of contracts, connected to a number of parties in the logistics chain
- Legal position of terminal operator not only determined by contracts but also by the position of third parties

# Types of contract



Service contracts: terminal operator = service provider (stevedore)

Contracts of deposit: terminal operator = depositary (storage of goods)

Contracts of carriage: terminal operator = carrier (transport within a terminal (lifting or moving of containers))

# Legal regimes

- Different legal regimes
- Service contracts and contracts of deposit  
> not subject to mandatory rules and freedom of contract
- Contracts of carriage > subject to mandatory international and Dutch domestic law and restriction of freedom of contract

# Topic presentation

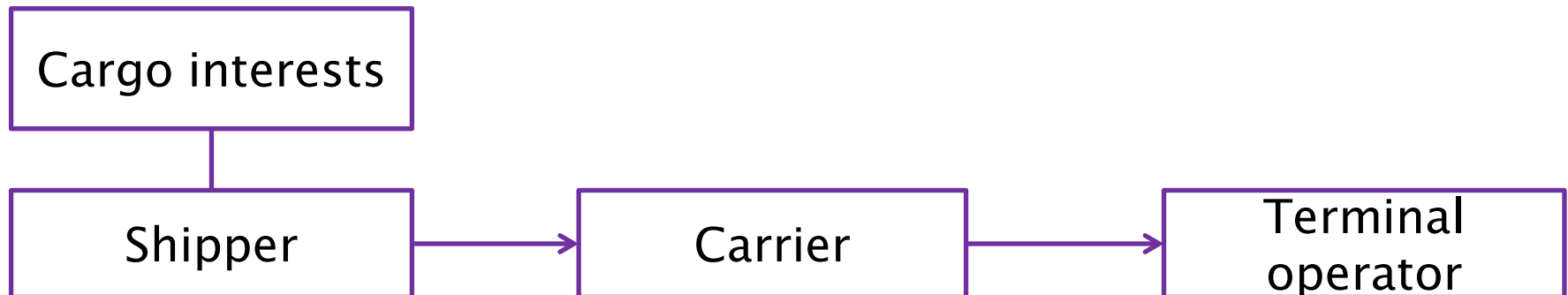
- Focus on the extra-contractual liability of terminal operators and the rights and obligations of third parties in relation to terminal operators and vice versa
- Third parties: cargo owners, cargo interests or ship owners with no contractual relation with the terminal operator



# Terminal operator – third parties: example

Transport of goods from Hong Kong to Rotterdam

- Contract of carriage between shipper and carrier
- Terminal operator subcontractor of carrier, stevedoring services port of Rotterdam



Can terminal operator be held liable if goods are lost or damaged in the period between arrival in Rotterdam and their subsequent pickup? If so, to what extent (contractually, extra-contractually) and by whom?

# Contracts and GTC's

- Contracts generally contain liability exclusions and limitations of liability
- Rotterdam Stevedoring Conditions and GTC's of Rotterdam Terminal Operators' Association
- Privity of contract rule: contract is only binding upon parties to the contract

# The terminal operator as a carrier

- Mandatory international transport law rules are applicable
- Right to rely on defences, exonerations and limits of liability provided for in the conventions
- Rules on a carrier's liability also in Dutch transport law
- Under Dutch law, carriers are protected from claims brought by third parties

# The terminal operator as a carrier

- Dutch law offers carrier the right to also invoke the terms of a contract of carriage
- Rules on the external effect of contractual terms, protection against extra-contractual claims from contracting parties (*parallelsprong*) and third parties (*paardensprong*)
- Invoke Himalaya clause, before-and-after clause and Circular Indemnity clause

# The terminal operator as a carrier

- Himalaya clause: benefit from same defences as contracting carrier
- Before-and-after clause: not liable for loss or damage which occurs prior to loading, or after discharging before delivery
- Circular Indemnity clause: B/L holder to indemnify carrier for all consequences of a breach of the promise not to sue third parties

# The terminal operator as a carrier

- GTC's of Rotterdam Terminal Operators' Association:

*“Upon first request thereto the Principal shall indemnify the Terminal Operator against all and any claims by third parties in connection with the Work where exceeding the liability of the Terminal Operator under the General Terms and Conditions.”*

# The terminal operator as a service provider or depository

- Independent subcontractors, like depositories and stevedores, excluded from scope of application of HVR
- CMR, COTIF-CIM and CMNI protect extensive group on carrier's side and depositories and stevedores have right to invoke defences if they act within the scope of their employment
- Netherlands: third parties cannot claim under terminal operator's contract

# The terminal operator as a depositary

- Depositary can in general rely on terms of its contract against third parties in case of extra-contractual claims
- Contract of deposit has external effect and has third party effect if goods which are deposited sustain damage
- Depositary can rely on contractual defences (exoneration / limitation of liability) when facing extra-contractual claims from third parties



# The terminal operator as a service provider

- In general, stevedore cannot rely on contractual terms against third parties. No external effect, privity of contract rule
- Exception: case law Dutch Supreme Court
- Strict conditions under which stevedores can rely on their contracts to the detriment of third parties
- The Sungreen case

# Conclusion – Dutch law

- Liability and rights towards third parties for contracts of carriage and contracts of deposit regulated by statute
- Terminal operator acting in capacity of carrier and depositary protected against extra-contractual claims
- Terminal operator acting as service provider (stevedore) not protected by statute against extra-contractual claims



Thank you for your attention

