Eigen gebrek in het transportverzekeringsrecht.
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Summary: Inherent vice in transport insurance law

This doctoral dissertation considers inherent vice in transport insurance law. The subject is dealt with through the results of explicit research in both jurisprudence and literature. Furthermore, both Dutch and foreign perspectives are taken into account.

Chapter 1 contains a disquisition on the research questions. Moreover, a justification of the way in which the research questions are treated in the relevant chapters is offered and the consequence of their treatment is defended.

In Chapter 2, a general principle in insurance law is dealt with: causation. While examining causation a few theories are discussed more extensively. In particular, these theories are the condicio sine qua non theory; the theory of adequate causation; the proximate cause theory and the dominant cause theory, since they play an important role in insurance law. These theories are considered from an historical point of view. Besides, their meaning and interpretation is threshed out as far as possible. Subsequently, the way of dealing with causation using the different regulations is discussed. The dominant cause theory is emphasized because this theory, originating from England, is used more and more in the Netherlands to ascertain causality in Dutch insurance law. To know to what extent we can welcome this trend, it is important to first explain the different theories and how they are applied. The use of the dominant cause theory in insurance law is specifically set forth. English (marine) insurance is the basis for most insurance law; insurance law is governed mostly by the Marine Insurance Act 1906. It is relevant to find out in what way insurance law in general and marine law specifically differ in the possibility of imputing damage to (two or more) different causes.

Chapter 3 concerns another general principle in insurance law: the requirement of uncertainty. This deserves comprehensive treatment because it could influence the insurability of inherent vice. Besides, it is an important general principle of insurance law that deserves to be treated in researching questions of inherent vice. A few questions arise applying the requirement of uncertainty, such as how it should be interpreted (in a subjective or an objective manner) and at what point uncertainty is actually required (only at the moment of signing the agreement or also as long as the agreement is effectual).

Chapter 4 discusses inherent vice in transport law. The focus at this point is on the international transport treaties such as the Hague (Visby) Rules, the CMR, the Montreal Convention and the CIM. The interpretation and use of the rules concerning inherent vice in these regulations are dealt with. The regulations themselves as well as the literature and jurisprudence about those rules is explained. Insight into the definitions of inherent vice used and the application of the clause in dif-
ifferent modes of transport can be gained in this way. Besides, it clarifies the liabilities and the opportunities for exculpation of the carrier. His responsibility and liability (which follows almost immediately from his responsibility) are of great importance of course.

Chapter 5 explains many aspects of inherent vice in transport insurance law. The Dutch legal provision from Article 7:951 BW plays an important role in this chapter. Besides that, its concept and interpretation have been analysed through comparative research. A few definitions from inherent vice in transport insurance law are investigated, their application in different legal systems has been examined from comparative perspective. The leading theory is considered from an historical point of view in an attempt to determine its origin. Only then can it be established whether the leading theory is being used or being departed from in general. This can be applied to both drafting and interpreting a new provision (such as Article 7:951 BW against the background of an important judgment from the Supreme Court of the Netherlands dated 1980) and to judging the question under current law and in the meantime in response to opinions (e.g. given by the Supreme Court in its judgment in the Cendor Mopu case). In the first situation the judgment from the Supreme Court of the Netherlands influences the interpretation of the new provision and on the other hand it can be seen as a basis for drafting a new provision. The second situation points out the relevance of the historical background from (the interpretation of) the provision and the ability to ascertain changes and possibly explain them.

Chapter 6, ultimately, contains a few recommendations and conclusions resulting from the preceding chapters. At the end of each chapter I draw various conclusions and now and then conclusions are formulated in the course of a chapter as well. After my final conclusion I almost always suggest a new provision of the law. These can be found not only in the chapters considering inherent vice but also in the sections regarding general principles. In Chapter 6 I conclude by restating these recommendations and propositions.