

Legal & Governance

Tuesday 3 November 2020, **9:00 – 12:00** hours

Students with a right to extra time: 9:00 – 12.45 hours

Responsible lecturers: **F.A.M. Hobma** and **P.J. Klok**

The subject matter is in accordance with the google site.

This exam consists open questions.

Total number of questions: 6

Maximum number of points to be obtained for Law part: 60

Maximum number of points to be obtained for the governance part: 40

The weight of the questions is stated in the exam.

Additional remarks:

- **Type of exam:** open book.
- **Language:** answer the questions in English.
- **Format:** the exam is in **Word** format. At the end of the exam, save the exam as **pdf**.
- **Upload time:** after the exam, you will have 5 minutes to upload it. Late submissions will not be graded.
- **Submission:** when you are finished, send the exam to the mailbox: legalandgovernance@gmail.com. Please give your exam a document name as follows: studentname.exam
- **Motivate:** please motivate your answers as elaborate as you can.
- **This exam has three parts:** PART 1 private law, PART 2 public law and PART 3 governance. Use this document to answer the questions (type the answers after each question).
- **During the exam:** you are expected to work on the exam individually. During the examination you are not allowed to communicate (e.g., verbal, non-verbal, digital) with others aside from the examiner. Any violation of this will be considered attempted fraud. During the examination you are not allowed to copy, share and/or spread the exam questions, answers or related information in any form.
- **In case of problems during the exam:** contact the teachers by email. F.A.M.Hobma@tudelft.nl and P.J.Klok@utwente.nl.
- **Declaration:** "By submitting this exam I promise that I have not used unauthorised help from people for completing my exam. I created the submitted answers all by myself during the time slot that was allocated for the exam."

PART 1: PRIVATE LAW

1. Consumer Famke has entered into an agreement with contractor Bob to build a house. The UAC 2012 apply to this agreement. During take over Famke is assisted by her good friend George, a graduate technical engineer from the Technical University of Delft. A week after take over Famke discovers that the kitchen does not contain a connection for gas and as a result, she cannot cook there. Famke holds contractor Bob liable. But Bob says this is a latent shortcoming, so he is not liable. Answer the question: *is he right or wrong and motivate. Be precise.* (15 points)

ANSWER:

2. Architect Harry graduated in 1970 from the University of Delft. He is has been working since, so he is a very experienced architect. He designs for employer Barry the restauration of a large swimming pool with a movable pool floor. The contract is governed by the New Rules 2011 (TNR 2011).
The restauration has taken place according to the plans of the architect. A few days after opening, problems occur with the movable pool floor, it does not move smoothly and when the floor does move, water leaks through the entire structure.
It turns out the original movable floor was placed on a different surface and the new surface, designed by the original architect, does not work together with the new floor, designed by Harry.
Barry, the pool owner, holds architect Harry liable. It is absolutely clear that the contractor is not to be blamed at all and the mistake is made by Harry, the architect.
Harry defends himself by saying he has acted in a careful and professional manner, it could not be expected from him to know anything on movable pool floors because he graduated in 1970 and his knowledge of moveable pool floors is therefore limited. Describe the legal foundation of Harry's obligations, what is the standard he has to adhere to, and what are his chances of success with his defence? (15 points)

ANSWER:

3. Employer Archie and contractor Louis have entered into a contract governed by the UAC-IC 2005. The contract is about the design and execution of a large log cabin. The wood to be used for the cabin has been supplied by Archie and came from trees from Canada. The design has been made by Louis, who also executed the design. A year after take over, the wood of the cabin is showing serious signs of mould and Archie holds Louis liable. Het states that the design was made by Louis under the UAC-IC 2005 conditions, which means that Louis is liable. It is determined by an independent wood expert that the problems with the wood of the cabin are due to the nature of the wood, which is not suited for building log cabins. Explain to Louis, the contractor, what his legal position is. Is he liable and if so why and if not, why not? (10 points)

ANSWER:

PART 2: PUBLIC LAW

4. Wind turbines

In the Netherlands, all provinces have been given the duty (by national government) to realise a certain volume of renewable energy on their territory. Suppose that the province of South Holland has not yet reached the required volume. On a certain moment, energy company X approaches the province. X wants to set up a wind park (an area with a large number of wind turbines). In its Structure Vision, the province appointed an area for a wind park. The land in the area of the wind park is owned by farmers. Energy company X does not own any land there. The area of the wind park is part of municipality O. There is quite some resistance amongst inhabitants in O against a possible wind park. Many house owners are afraid of a decrease of value of their homes as a consequence of wind turbines in the vicinity. Nevertheless, the municipal council of O, very recently, adopted a change of its land-use plan, in which the wind park is included.

Based on this case, discuss the following issues.

- a) Give an advice how parties can deal with the fact that energy company X (and province and municipality) do not own any land in the area which is appointed for a wind park? (5 points)

ANSWER:

- b) Can the resistance amongst inhabitants of municipality O block the realisation of a wind park? (5 points)

ANSWER:

- c) Does the fear of decrease of the value of their homes have possible legal/financial consequences for the province, municipality of energy company? (5 points)

ANSWER:

- d) Suppose that, prior to the meeting in which the municipal council has to decide about the new land-use plan, it turns out that the majority of the inhabitants of municipality O are opposed against the wind park. Does this have consequences for the decision of the municipal council? (5 points)

ANSWER:

PART 3: GOVERNANCE

5. Companies that work in the construction sector have relations with multiple other parties. To a certain extent they have different options in choosing the type of governance relations they have with these parties.

- a) For each mode of governance (Market, Hierarchy, Network) formulate its most important 'unique selling point'. (6 points)

ANSWER:

- b) When choosing between these modes of governance, companies are confronted with an issue that is called 'an interaction effect': the influence of one factor on the choice is dependent on the presence (or absence) of another factor. Give a clear example of such an effect using two conditions that play a role in the choice between the three modes of governance (8 points)

ANSWER:

- c) Imagine you work for a company that builds houses for individual clients. Describe to which extent you can choose between the three modes of governance in your relation with your clients. (6 points)

ANSWER:

6. In terms of the level of innovation, the construction sector is often seen as 'conservative', compared to other industrial sectors.

- a) Which indicators do we have that show that the construction sector is not very innovative? (4 points)

ANSWER:

- b) Describe a number of factors that play a role in causing the sector to be not very innovative (8 points)

ANSWER:

- c) Based on two different theories that are relevant for explaining innovation, describe two different policies that a government could use to increase the level of innovation. (include a description of the theories in your answer). (8 points)

ANSWER: