

Legal & Governance

Monday 3 November 2014, **9:00 – 12:30** hours

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

The subject matter is in accordance with the blackboard.

This exam consists of open questions.

Total number of pages (including this page): **4**

Maximum number of points to be obtained for Law part: **100**

Maximum number of points to be obtained for the governance part: **67**

The weight of the questions is stated in the exam.

Additional remarks:

- Answer the questions in **English**
- **Write clearly**
- Please motivate your answers as elaborate as you can. Answers that are not motivated will not be accepted. However, be aware that you have only 3½ hours to answer all questions!
- This exam has three parts: PART 1 private law, PART 2 public law and PART 3 governance.
- **Please start answering PART 2 and PART 3 *each* on a new sheet of paper**

This is an **open book** exam

You can use all materials you like

PART 1: Private law

1. A and B are negotiating on a job to be done by A. At one point A sends a formal offer containing a detailed description of what he will do, when he will do so, for how much money etc. He also writes at the end of the offer that he will do his work under the condition that his general conditions will be applicable. B, a professional employer who has his own general conditions, accepts the offer by sending back the formal offer signed by him. He did however cross out the sentence on the general conditions.
Proposition: The contract has now come into being and the general conditions of B are applicable.
Right or wrong? DO NOT motivate your answer. (4 points)
2. Architect A has made a design for B; the contract is governed by the DNR 2011. When the design is being realised it turns out the design has flaws leading to delay damages for contractor C. C holds B responsible for these damages. After B has indemnified C he sues A for the damages. A has limited the maximum amount of compensation, which in this particular case is half of the compensation that B paid C.
Proposition: This is rule according to the DNR and A's refusal to pay more than half of the compensation that B paid C will uphold in court.
Right or wrong? DO NOT motivate your answer. (4 points)
3. Proposition: Below the European thresholds, contracting agencies are free to use tender law when looking for a contractual partner.
Right or wrong? Motivate your answer. Refer if possible to applicable articles. (8 points)
4. Employer X and contractor A have a contract on a building project. While A is working, X decides he wants A to work with subcontractor B for a specific part of the work. A agrees and enters into a contract with B. As he is working B causes damages.
Proposition: A can sue the employer for the damages caused by B.
Right or wrong? Motivate your answer. Refer if possible to applicable articles. (8 points)
5. A contractor under the UAC 2012 has a duty to warn during the execution of the design that has been given to him. The employer under the UAC-IC 2005 also has a duty to warn during the execution of the contract by the contractor. These duties are formulated differently.
Explain the difference between these duties. Motivate your answer. Refer if possible to applicable articles. (9 points)
6. The following is written in a tender:
'The city of Delft needs a new city hall and is looking via this advertisement for a party to execute the design. The city wants the contractor to show he has executed a building comparable to the building that is subject of this tender in the past 4 years 3 times. The award criterion is the most economically advantageous offer and the contractor is required to show in his offer that his personnel are qualified to execute this design. The tender procedure will be the competitive dialogue'. This is all the information that is given in the advertisement.
From a procurement point of view you notice there are three things wrong with this text. Which three and why? Refer if possible to applicable articles. (12 points)

Please start answering PART 2 on a new sheet of paper

PART 2: Public law

2.1 Environmental law

7. EIA is a procedure ensuring the incorporation of environmental and other relevant information in well-balanced decision making.
 - a. When does the relevant information have to be available about possible negative environmental effects of a project that is mentioned on the list of obligatory EIA? Please substantiate your answer! (5 points)
 - b. What can be a possible legal consequence if the competent authority carries out a project (mentioned on the list of obligatory EIA), without having collected all the relevant information about the possible negative effects of the project on the environment? Please substantiate your answer! (5 points)
8. Explain why research regarding the condition of the soil in the area of a (draft) land use plan might be legally necessary, notwithstanding the fact that the Spatial Planning Decree doesn't contain a specific research obligation regarding the soil. Please substantiate your answer! (10 points)

2.2 Planning law

Case

The national government of the Netherlands wants to build a new national sports centre for the national football team. The location for the new building is in a forest in the municipality of Breda.

9. Who (that is, which body) is authorised to grant (or reject) the application for the permit to build the new sports facility? Refer if possible to applicable articles. (5 points)
10. Suppose that the body that is authorised to grant the permit is willing to cooperate to advance the realisation of the sports centre. However, the sports centre is in conflict with the local land-use plan.
In which two (alternative) ways can this problem be solved? Refer if possible to applicable articles. (12 points)
11. Some of the inhabitants of Breda are living very close to the plot where the sports centre is going to be built. For this reason, they would like to have some influence on the aesthetics of the building (i.e. the appearance of the building). They wonder if they, as private persons, can influence the 'looks' of the new building.
Do they, as private individuals, have a say in the looks of the building? Motivate your answer and refer if possible to applicable articles. (18 points)

Please start answering PART 3 on a new sheet of paper

PART 3: Governance

12.

- a. The 'structure' approach to network governance includes the idea that the processes of network formation and change can be seen as a result of structural factors. Describe a number of structural factors that can explain why **market** governance is more likely to appear and thrive than its alternatives (networks and hierarchies). (8 points)
- b. One of the issues in network formation is the issue of homogeneity (does the network have members that have more or less the same characteristics or are the members very different from each other?). Describe what the advantages and disadvantages of homogeneity are and which level of homogeneity is advisable for a network. (9 points)
- c. One of the factors that play a role in network formation is asset specificity. How does high asset specificity influence the choice to form a network or to choose for one of the alternatives (markets or hierarchies)? (10 points)

13. Many authors claim that market relations are dominant in the construction sector.

- a. Describe which characteristics of the construction sector indicate that market relations are dominant and explain which factors contribute to this dominance. (12 points)
- b. Describe how the development of a set of 'standard conditions for public private partnerships' could contribute to an increase in the use of network governance. (6 points)

14. In many processes of citizen participation in city development we find that little attention is given to the explicit formulation of the basic rules for the arena. This has also been labeled as 'under-institutionalization'.

- a. Describe three factors that contribute to this under-institutionalization and describe three possible consequences. (6 points)
- b. Describe which subjects should be covered in a set of rules that contains a proper formulation of the rules of the arena. (10 points)
- c. If someone decides to involve as many citizens as possible in a process of citizen participation, would that be more in line with the approach to stakeholder management as described by Olander, or the one described by Rowlinson/Cheung. Explain your answer. (6 points)

- End of the exam -