

3TU

Construction Management & Engineering

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Legal & Governance

Tuesday 05 November 2019, **9:00 – 12:00** hours

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

The subject matter is in accordance with the google site.

This exam consists of open and closed questions.

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

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:

- 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 (unless stated otherwise). However, be aware that you have only 3 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

The following four statements are either right or wrong. You have to make a choice, but do not motivate your choice.

- 3 1. A needs a new roof on his house. He has had several chats with contractor B, who said he thoroughly inspected the roof before entering into the contract with A. After B has started working on the roof, he noticed the insulation of the roof consists of asbestos, which makes the work a lot more expensive. B asks for extra payments. It turns out that roof was built in a time in which the use of asbestos was common. B is entitled to extra payments. ~~Right~~/Wrong. (3 points)
2. General conditions have to be accepted by the other party. This means that if the other party has not been able to read them, e.g. because he did not receive them or they are written in a language he does not know, they are not applicable. ~~Right~~/Wrong. (3 points)
- 3 3. With the open procedure the choice of the provider and the choice of the offer take place at the same time. This procedure, unlike the other procedures, does not distinguish between provider and offer. ~~Right~~/Wrong. (3 points)
- 3 4. By winning a tender a contract between the contracting agency and the winner comes into being. ~~Right~~/Wrong. (3 points)

The following two statements are either right or wrong. You have to make a choice and motivate your choice.

- 6 5. A has contracted B to design and build a bridge. The UAC-IC 2005 are applicable. After take-over it turns out the bridge is too weak for heavy trucks. This is due to a design mistake. It is a fact that A did not see this mistake, nor can he be blamed for not having seen this mistake. B admits his mistake but says 'liability for design mistakes is limited to the extent of the fee that is related to the design work like with all architects'. ~~Right~~/Wrong. (9 points)
- 9 6. A has entered into an agreement with B to build a house. The contract is governed by the UAC 2012 (1989). During take over A is assisted by C, a graduate technical engineer from the Technical University of Delft. A week after take over A complains that in the kitchen the gas connection is missing, so he cannot cook there. A holds B liable. B says this is a latent shortcoming, so he is not liable. ~~Right~~/Wrong. (9 points)

Please start answering PART 2 on a new sheet of paper

Part 2: PUBLIC LAW

2.1 Planning law

For the following two questions please note: more than one of the statements can be correct. If more than one of the statements are correct, jot down the letters of the correct statements. However, possibly none of the statements is correct. If none of the statements is correct, do not jot down any of the letters.

In summary: the correct answer can vary between no statement being correct and all statements being correct. Do not motivate your answers.

Case

The municipality of Delft is client for the construction of a bridge over a canal in the city. The bridge is intended for cars, cyclists and pedestrians.

7. Indicate on your answering sheet which of the following statements about the construction of a bridge are *correct*. (12 points)

- a) Even though the bridge will be located in the public space, which is owned by the municipality, the construction of the bridge needs an environmental permit.
- b) The environmental permit will be granted by the municipal executive of Delft to the client (i.e. the municipality of Delft). In other words, the municipality will grant a permit to itself.
- c) Because in this case we are dealing with infrastructure (a bridge), the regulations for external appearance (i.e. building aesthetics) do *not* apply.
- d) One of the conditions for the environmental permit to be granted is that the bridge is included in the land-use plan. In case the bridge is not included in the land-use plan, the land-use plan must be changed, or an environmental permit for deviation of the land-use plan must be granted.

Continuation of the case of the previous question.

The new bridge replaces an old one. The new bridge is bigger than the old one. That is why an extra piece of land is needed on one of the banks of the canal. This piece of land is owned by Mr. A. Mr. A does not want to sell the land to the municipality, because he lets his three sheep graze there.

8. Indicate on your answering sheet which of the following statements about the land of Mr. A are *correct*. (12 points)

- a) It is no use for the municipality to establish the pre-emption right on the land of Mr. A, because this cannot force Mr. A to sell his land to the municipality.
- b) It is likely that Mr. A can successfully invoke the right to self-realisation.
- c) If Mr. A was a ground lease holder, instead of a property owner, his land could *not* be expropriated.
- d) Expropriation requires that the project, for which the expropriation takes place, is in the public interest. A land-use plan, in which the bridge is included, is adopted by the directly chosen municipal councillors. That is why we can rightfully say that the project (the bridge) is in the public interest.

9. In the book 'Planning and Development Law in the Netherlands', it is explained that municipalities have the most important powers in Dutch spatial planning. Indeed, the municipality is given the power to adopt the legally binding land-use plans. However, some issues of planning override the scale of the municipality. That is, some issues are of provincial or national relevance. Examples include: location of national defence training grounds, location of major wind turbine parks, prohibition of new buildings (enabled by land-use plans) in areas of outstanding natural beauty.

Question: What is the name of the legal instrument which can be used by provinces or national government to make sure that municipalities include these issues in their local land-use plans? (You only need to give the name of the instrument. No further explanation is needed.) (6 points)

Please start answering PART 3 on a new sheet of paper

PART 3: GOVERNANCE

For the first 2 questions, just write down the letter of the correct answer (only one answer possible). Do not motivate. (5 points each, total 10 points)

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10. A development in the construction sector has been the increased use of pre-fabrication (reduce the number of activities on the building site and increase the number of activities in factories). Companies do this in order to increase efficiency. Which type of costs will be mainly reduced by pre-fabrication?
- (a) Transaction costs.
 - (b) Asset specificity.
 - (c) Maintenance costs.
 - (d) Production costs.
- 5
11. The department of the Dutch Ministry that is responsible for innovation policy needs a new building. It decides to demand a building that uses new ways to achieve zero CO2 emissions. The contract also includes an obligation for the firm to share knowledge about the technologies used with every company that shows an interest in them. Which model for stimulation of innovation is the department using?
- (a) Market pull.
 - (b) Innovation by specific projects.
 - (c) Innovation climate within single firms.
 - (d) Technology push.

The next questions are open questions, do motivate your answer

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12. Imagine you are working for a construction firm. Your company currently does most of the work by hiring subcontractors based on competitive tendering. Your boss is convinced this results in the lowest production costs and thus this is the best way of organizing work. However, you have read the paper by Jones et al. (1997) and you are convinced your boss is not entirely right.
- A) Describe which type of costs also have to be taken into consideration when deciding about the most favorable mode of governance. (4 points)
 - B) Indicate in which type of situations it would be more favorable to change to doing more work in your own company. (6 points)
 - C) According to the paper it is crucial to take multiple conditions simultaneously into account. Explain why combinations of conditions are important in deciding about the preferred mode of governance. (4 points)
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13. In the construction sector markets are still a dominant mode of governance. Explain why this is the case by describing at least 4 factors that play a role. (8 points)
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14. The paper of Leiringer (2006) critically discusses a number of claims that indicate why it would be a good idea to combine design, construction and operation in one contract. One of these claims concerns the benefits of the transfer of risk to the party that can control the risk and the consequences. Explain which party is meant and why this party would be able to control the risk. (8 points)

THIS IS THE END OF THE EXAM QUESTIONS