

Legal & Governance

Monday 7 November 2016, **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): **5**

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 (unless stated otherwise). 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

A. Which alternative is correct? Do not motivate your answer.

1. In the New Rules 2011 the liability of the consultant is limited. This clause is in terms of the law on general conditions a 'grey clause', see art. 6:237 CC. Consultant A has used these conditions, including the limitation clause, in his contract with employer B, who has accepted the use of the general conditions. (5 points)
 - a) When B wants this clause to be annulled he has to call upon the law and prove this clause has been used.
 - b) When B wants this clause to be annulled, A has the possibility to argue that the use of the clause in this specific situation justifies the use of it.
 - c) When B wants this clause to be annulled, he has to prove the use of this clause is not justified in this specific situation.
2. In the province of Brabant the pig plague has broken out. The government has forbidden all forms of transport of pigs. Farmer A wants his pigs to be transported by B to the slaughter house. B is willing to do so for three times the normal price, because of the breaking of law. After the transport has taken place B requires payment, but farmer A says that B has exercised undue influence, so A wants the judge to declare that the contract will become null and void. (5 points)
 - a) The judge will not give this declaration, because the contract is already null and void because of its incompatibility with public morals and/or good order.
 - b) The judge will check if the demands for successfully invoking the article on undue influence are met and if so accept A's demand and declare as he asked.
 - c) The judge will not give any judgement since this is not a matter of private law but of public law; so A should have gone to another judge.
3. Contracting authorities have to use the tender procedures when they need something. (5 points)
 - a) This statement is correct.
 - b) This statement is incorrect. If a tender procedure has to be followed is dependent upon the type of need the contracting agency has.
 - c) This statement is incorrect. If a tender procedure has to be followed is dependent upon the need and the value of the contract involved.
4. In a tender procedure from the city of Maastricht in the south of the Netherlands it is specified that the tenders have to be submitted at latest at 10 'o clock in the morning. A arrives at 10.10 h and is without motivation denied the right to submit his tender. His excuse is that he comes from the city of Groningen which is more than 300 km away from Maastricht. Is the denial correct? (5 points)
 - a) This not correct; this reaction to being only 10 minutes too late is a violation of the principle of proportionality.
 - b) This is not correct; A has a valid excuse and therefore denying him access should be motivated. Not motivating is a violation of the principle of transparency.
 - c) This is correct; the courts are very strict in applying the principle of equality and it is standard case law that not being in time is fatal.

B. Answer the following questions and motivate your answer

5. Employer A has contracted with contractor B on the basis of the UAC 2012 to realise a design made by architect C and given to B before entering into the contract. Three months after B started working he noticed that the amount of steel to be used in the execution and described in the design is not adequate. B informs A on this and demands more money for his work, since without the extra steel the building cannot be realised. A refuses this extra payment: (i) B should have warned A before entering into the contract, since he did not do that (that is a fact) A does not have to pay; (ii) if B should not have warned before entering into the contract he should have warned during the contract, because he had the design already so long. (iii) If B wants payment he should go to the architect, who made the mistake. It is a fact that the mistake is indeed made by the architect.

Give your opinion on the statements (i), (ii) and (iii). (15 points)

6. Employer A and contractor B have entered into a contract governed by the UAC-IC 2005. The wood to be used has been supplied by A and came from trees from Northern Europe. The design has been made by B, who also executed the design. A year after take over the paint is showing serious signs of deterioration and A holds B liable. The design was from him and under the UAC-IC 2005 that means that B is liable. It is determined by an independent professional that the problems with the paint are due to the use of the wood.

Explain to B what his legal position is. Is he liable and if so why and if not why not? (10 points)

Please start answering PART 2 on a new sheet of paper

PART 2: Public law

2.1 Planning law

7. A municipality wants to stop cut-through traffic (i.e. drivers looking for a short cut) in a certain street. The municipality owns the street.

A municipal civil servant proposes to put small concrete piles (around 1 meter above ground level) at the entrance of the street. In this way, cars cannot enter the street.

A colleague wonders if this is allowed. She argues that the municipality can, instead, use its public law power based on Traffic law to put a traffic sign (i.e. road sign) at the beginning of the street (traffic sign: 'do not enter').

Question: with the help of which legal doctrine can this question (whether it is allowed to put concrete piles in the street or, instead, a traffic sign should be placed) be answered?

Note: you do not need to explain the doctrine. It is enough to mention the name. (10 points)

8. The city of Amsterdam attracts many tourists. Hotel chain X at this moment owns a number of (relatively old) hotels in Amsterdam. Because of the growth of tourism it wants to build another hotel. X receives a design from an architect and calculations from a structural engineer. Next, X submits an application for an environmental permit for a building project to the municipality.

The municipality has a hotel policy (adopted by the municipal council) that outdated hotels (with few hotel stars) need to be modernised (into hotels with more hotel stars). The municipality wants to grant the permit for the new hotel under the condition that X (in line with the hotel policy) modernises one of its outdated hotels.
Question: is this condition allowed? Motivate your answer. (15 points)

9. Section 4.4 of book *Planning and Development Law in the Netherlands* describes 'democratic legitimisation' in the procedure for a new land-use plan. Democratic legitimisation happens by way of adoption of the land-use plan by the municipal council (which represents the people on the municipal scale). Looking at section 4.4 it seems as if the procedure has the following sequence: *first* public-law adoption of a land-use plan, *next* private party involvement by way of application of permits to build. However, this representation is not completely true. Not seldom, there is strong private party influence on the contents of a draft land-use plan *before* the plan is offered to the municipal council for adoption.
Question: which phenomenon proves that not seldom there is strong private party influence on the contents of a draft land-use plan?
Note: you do not need to explain the phenomenon. It is enough to mention the name. (10 points)

2.2 Environmental law

10. Case: innovative building in the Municipality of Schiedam.
Project developer X plans to build a specialized home for elderly people with asthma located 180 meters from the Highway A20. The Highway is part of the Basic Transport Network. This home will be a high tech, sustainable, energy saving building with a clean air ventilation system. A local NGO protests against this plan and ask for your advice.
Question: What would be your advice to the NGO? Use at least two legal arguments that you can find in chapter 7 of *Planning and Development law in the Netherlands*. (8 points)
11. Topic: vulnerable objects and functions
Which of the following alternatives are vulnerable functions from the viewpoint of environmental law?
- a) all spatial functions where people live and work
 - b) schools, hospitals and hotels with a gross floor area of over 1000 m² per object
 - c) habitats for protected animals
 - d) sports grounds
- Question: which statement is true? (a, b, c or d). Do *not* motivate. (4 points)
12. Explain for each of the statements (a, b, c, d) *why* it is true or false. (8 points)

Please start answering PART 3 on a new sheet of paper

PART 3: Governance

13. On a general level there are four reasons why governmental organizations might choose to use network relations as a governance mode instead of the traditional hierarchical governance mode. These reasons (or goals) can be labelled as 'effectiveness', 'efficiency', 'legitimacy' and 'innovation'.
For each goal, explain how the use of network relations by governmental organizations can contribute to reaching this goal. (16 points)
14. The basic rules for decision making in the governmental context remain however within the hierarchical mode. Explain how the hierarchical rules make it difficult for governmental organizations to operate in network relations. (8 points)
15. Companies are however used to operate in the market mode of governance. Especially in the construction sector, market governance is still very often used, despite the fact that some transaction costs are notably high in markets. This might be the case because construction companies have found ways to reduce transaction cost, or because other costs also play a role in choosing between governance modes. Give one motivated example of each: so one example of reducing transaction costs while working under market conditions and one example of other costs that explain why markets are preferred by companies. (10 points)
16. Imagine you are working for a construction firm in a market where the demand for the type of buildings is very uncertain. Your boss asks your advice concerning the question whether it will be wise to increase the number of activities you do in your own company or to increase the number of durable relations with a limited number of preferred partners.
Using the theory of Jones, Hesterly and Bogatti, clearly describe what your advice on this issue will be in case asset specificity for your company is high and in case asset specificity is low. (16 points)
17. Researchers use different models to explain innovation. Two of those models can be labeled as 'Technology push' and 'Market pull'.
Describe how innovation happens according to these models and how government policy can stimulate innovation according to these models. (12 points)
18. Explain which characteristics make stakeholders 'key players' in a vested interest matrix and why it is advisable to take their opinions into account. (5 points)

- End of the exam -

