



Disputes and the law

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Legal disputes and how to prevent them

Non-contractual disputes

Commercial and private law is about more than just contracts. It also governs such things as tax payments, applications for and the repayment of student loans, benefit claims and issues such as noise nuisance caused by an artist's studio. All matters involving legal rights and obligations, but not contracts.

In many such cases, the party demanding payment or action on your part is a branch of government – national, provincial or local – a state body such as the Employment Benefits Agency (UvW) or a law-enforcement agency with the power to impose fines: the police or courts. And unlike with a contract, where a frank discussion with the other party may result in a more flexible interpretation of your rights or obligations, individual officials at these organizations are not at liberty to bend the rules.

If you find yourself in dispute with the government or an official body, it may be advisable to seek legal advice sooner rather than later. Their deadlines are fixed and can be very short, so any delay on your part could be disastrous – even if they are not required to act so quickly. That may seem unfair, but there is not much you can do about it. You have little room for manoeuvre legally, and dealing with bodies like these demands patience.

Pre-contract precautions

Prevention is better than cure. So good preparations are vital. Before entering into a contract, ask for and provide absolute clarity. This applies equally to commissions – which sometimes cover a long period – employment contracts, rental agreements and things like insurance policies. As far as fulfilment is concerned, you are better off assuming from the outset that the other party cannot be trusted in matters which are important to you than finding that out the hard way later.

Post-contract problems

When you are employed or self-employed, you always have professional relationships with other people. And these will inevitably involve frictions or irritation from time to time. From there, you are only one step away from a dispute. Opposing points of view can hinder the progress of the relationship. Such disputes could be about all sorts of things. All of us, young and old, have experienced them – and many playwrights have written great dramas about them.

Relationship and communication problems

Draw a distinction between your contractual obligations and problems in your working relationship and communications. When the latter become too much, one or other of those involved will all too often try to translate them into the contractual arena. And then you are one step away from a legal dispute. Taking legal advice too early can be fatal: lawyers are by definition drawn to the legal aspects of the case without necessarily looking at personal issues underlying it. And so the matter escalates, quite probably destroying the whole relationship in the process.

If the problem is primarily one of cooperation and communication, or you are keen to maintain your relationship with the other party, then the legal route is almost certainly not the right one to take. It can sometimes be enough to remind your partner in the contract that the relationship does involve certain duties: prompt payment, good performance, turning up on time and so on.



There are many ways to resolve disputes other than by recourse to the law. If you find that your working relationship is falling short, rather than that your contract is not being honoured, then it is that relationship which needs to be addressed. And perhaps you can do that by consulting a coach or expert, by taking a course or by reading a good book on the subject.

Contractual obligations

Even if the other party is not keeping to their part of your formal agreement, you can try to solve the dispute by ways other than legal action. But all such approaches have both advantages and drawbacks:

- *Private resolution:*
You try to solve the problem yourself, or jointly with the party you are in dispute with, perhaps after taking some form of advice. This is the simplest option.
- *Private resolution with third-party assistance*
You call in a neutral outsider. This could be a professional mediator, or just somebody both parties trust to be objective. You decide amongst yourselves how the dispute will be resolved, thus keeping hold of the reins. This process can address anything. If you use a professional mediator, they have a duty of confidentiality to all parties.
- *Third-party resolution*
You call in somebody able and willing to impose a solution for you. In other words, you outsource resolution of your dispute. The third party could be your company's management team, executive board or supervisory board, an internal or external complaints committee, an arbitration body or a court. A court, and perhaps also an arbitration body, can impose a legally binding verdict. That means that the winning party can hold the loser to the ruling, if necessary by calling in a bailiff.

The limitations of legal resolution

Remember that legal people are not usually trained to resolve disputes in the broader sense of the term. They tend to reach automatically for the hammer of the law, as it were, without having learned to use a screwdriver, glue or gaffer tape. Or how to patch things up without opening the toolkit at all.

All too often, turning to a legal adviser, lawyer or court seems to offer immediate gratification. After all, they quite literally give you a sense that justice is being done. But in the longer term they may not prove quite so satisfying:

- A court can take months or even years to reach a verdict.
- Every solicitor's letter and legal document further convinces the one side or other that they are in the right, without moving them any closer to resolution and only worsening their relationship in the process.
- The procedure can start to cost far more than anyone had expected, but be too far advanced for either side to be willing or able to back out.
- Lawyers only seem to make the whole business even more incomprehensible.

Other ways to resolve a dispute

Not every dispute can or has to be resolved by legal means. How inclined you are to go to law will depend very much upon your own personality and background. Remember that it is very important to consider how you can and want to tackle a problem.

Some ideas:

- Take a long walk to collect your thoughts or talk things over with a complete outsider.
- Talk to somebody who has the power to do something about your problem.
- If you work for an organization which has one, approach the staff representative council.
- If you are employed, bring up the matter which your line manager at a meeting or appraisal interview.
- Discuss the matter with an outsider who can advise you: does the problem have a legal basis or is it about mutual expectations not set out in an agreement?
- Discuss the matter with your financial adviser, bookkeeper or accountant.



- Ask a lawyer for advice or to initiate proceedings.

More information

On Beroepkunstenaar.nl

- More on: *Law and contracts*: articles on *How the law works*, *Working with an employment contract*, *Working with a commission contract*.