



## How does the law work? Backgrounds of the law and its rules

- [Disputes and disillusion](#)
- [Rights, obligations and social culture](#)
- [The law and rules of law](#)
- [Judges and courts of law](#)
- [Legislature, judiciary and the executive](#)
- [The law and its rules, justice and injustice, the law and art](#)
- [More information](#)

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### Disputes and disillusion

When a person works with or without financial reward, with or without contract, a large number of laws and rules of law are applicable. When everything is going according to plan you do not generally think about laws and rules of law. The factual, concrete reality is in agreement with the rules of the law which apply to those facts.

Only when things are going badly do we think of the law and its rules:

- the employee does not receive his salary,
- the employer is of the opinion that the dancer is not really ill and fires him on the spot,
- the company goes broke,
- there is an accident caused by the employer neglecting the safety rules which results in the employee not being able to practise his profession anymore,
- the designer is confronted with sexual harassment.
- Or the photographer does not receive his pay, the quality of the photographs turns out to be far below the professional standard, the name of the photographer is not mentioned, the photographs are not published as has been agreed upon etc.

Beside this you have to deal with expectations and other feelings: a dancer is not placed in the choreography that he was so keen on (hope), the contacts with the choreographer are not so inspiring as the dancers had expected (expectation), the dancers do not feel appreciated by the artistic leader because ..... (disappointment), the salary is systematically paid out too late (irritation), the technicians often hang the lights in just the wrong positions and managements does not correct them sufficiently (irritated light designer) etc.

When expectations have been laid down in an agreement, a disappointed expectation and a legal breach of contract are the same. However they are looked upon with different spectacles: an expectation is a psychological notion, and a breach of contract is a legal notion. The judge will then speak of a justified expectation. E.g. the agreement that a set will be finished and ready at a specific date.

Psychological expectations are mostly not laid down in a contract or agreement and are often not even stated in words. You expect e.g. to acquire a lot of energy and new friends by taking on your new appointment or contract, also to receive close cooperation from colleagues and to make your definite breakthrough. Your employer or principal may expect to have hired a very healthy and vital person who will show initiative, who is innovative and who will contribute to his reputation.

Many complaints in working situations are caused by disappointments in expectations. You can do a great deal to balance (unspoken) expectations and reality. However, legal procedures are in most cases not the appropriate means. It occurs that a specific disappointed expectation is mixed with a legal aspect. For example: an employer informs an employee that he is going to apply for a



dismissal. The employee sees the legal procedure as a way to express his dissatisfaction about his unfulfilled expectations. Such a procedure is vital for the person in question: unconsciously this person still tries to fulfil his disappointed expectations.

## **Rights, obligations and social culture**

The following situations can also occur:

- A party (e.g. an employer) does not observe agreements in a systematic way: employees are given too few days off; they work so many hours that it goes against the law governing working hours; the employer takes insufficient measures to guarantee safety: nobody dares to speak out against this, because experienced people know that their job will be on the line once mention is made of these abuses.
- Employees and employer get on very well. The employer informs the employees extensively about the precarious financial situation of (e.g.) the company. The employees have a great deal of sympathy for the problems of the employer.

In both situations it is very well possible that should a problem arise (an accident; no more payment), the employees do not dare to or do not want to sue the employer. In these cases the employees give preference to other interests over their own financial interest.

## **The law and rules of law**

It is a matter of law when a rule of law is applicable to a certain situation. Some examples

- In the street you have to observe the traffic rules and regulations in the Highway Code,
- you are not to use violence against people under the penal code,
- you have to pay rent under the section leasing and letting in the Civil Code,
- in shops you have to pay a price for the article you buy under the section buying and selling in the Civil Code,
- as a student in higher education you are obliged to pay tuition fees under the law on higher education and scientific research,
- you are entitled to a study grant under the law of student loans,
- you are entitled to salary when you are employed under section labour contracts in the Civil Code.

## **Judges and colleges of law**

You can ask the question: is my employer entitled to take this action? Or: can my landlord do this or fail to do this, just like that? Somebody who has been asked for advice can at best give you a piece of advice, but does not decide on that situation in a legal sense. That is for the judge to do.

There are various colleges of law. The law determines, subject to the specific rule of law that is at issue to which judge a person can address himself. In the Netherlands there are nineteen courts, five courts of law and one High Court. The cantonal judges resort under the courts. Furthermore there is the Central Council of Appeal and the Department of Administrative Law of the Council of State. On a European level there is e.g. the Court of Justice in Luxembourg.

### **Courts and cantonal judges**

Each court has various sectors. Subject to the rule of law you have to address one of the three:

- Civil sector: here you come as a claimant or as a defendant in a court procedure.
- Administrative sector: here you come as a 'party appellant' (the person who takes the initiative for a court procedure), or as a 'defendant' (who defends himself against the appellant).
- Criminal sector: in general you do not yourself apply to the criminal sector; after all in criminal cases you are summoned by the counsel for the prosecution. You are then the suspect.

Most cases end up in court: divorces, financial claims over a certain amount of money, claims relating to a failure to comply with all sorts of agreements, the financial consequences of damages related to traffic, criminal cases and all cases against the government such as subsidy matters. The



cantonal judge generally deals with the lesser cases: claims up to a certain amount of money, cases having to do with rent and labour law. Socially speaking therefore the cantonal judge is very important.

### ***Court of Justice in Luxemburg***

The Court of Justice in Luxemburg takes care of the right observance and interpretation of the rules and regulations and the treaties of the European Union. The object is after all that in all member states the rules and the treaties are applied and interpreted in the same way. What the High Court is for the Netherlands the Court of Justice is for the European Union.

By a sentence of the Court of Justice in Luxemburg e.g. all non-Dutch students originating from EU countries are entitled to a loan as high as the Dutch tuition fee because a distinction between Dutch and EER students in the case of tuition fees in higher education is not allowed according to the European Treaty. One single French student studying at the Rietveld Academy took this case to court. This case has had positive consequences for many thousands of European students.

## **Legislature, judiciary and executive**

The legislative, judiciary and executive power constitute an important foundation of democracy. The foundation was already laid during the French revolution (Trias Politica or the separation of the powers). To put it simply: these three powers should never interfere with one another. The judge (the judiciary) therefore is independent of the government and the Parliament (the executive). This should prevent the lawmakers from influencing the judge in case of conflict about the law. The judiciary should also be independent of the executive (the civil service). He who takes decisions about the application of e.g. a law that regulates the awarding of a subsidy should not be the same person as the one who laid down that law. Therefore the executive must also be independent of the judiciary.

### ***What is special about a sentence of a judge***

The special thing about a sentence of a judge is that this sentence can in the last resort, when other means fail, be executed by force. The bailiff, with a court order 'in the name of the Queen' can lay seizure upon the property of the person who has been sentenced. It makes no difference whether that is a natural (a human) or a legal person (e.g. a foundation or an association). The bailiff can proceed to eviction on behalf of the person who was put in the right by the judge, with the help of the strong arm of the law, the police; in other words: he is authorized e.g. to force open doors. Only the judge can impose a (prison) sentence on somebody. Without a court order all these actions are illegal and also punishable by law. This is called a ban on taking the law in one's own hands, also one of the foundations of a constitutional state.

## **The law and its rules, justice and injustice, the law and art**

### ***Who makes laws and determines what they look like?***

Laws are made by the government and the parliament of the Netherlands. What a law will eventually look like is the result of a political process: what are the minister's wishes, which political parties are in the majority in the chambers of parliament, and what has turned out to be practicable when drawing up a bill of law.

When a political party or an individual disagrees with a law one often speaks of 'injustice'. The word (in) justice is then used in a way which is different from the above-mentioned word. That is to say in this example we have to do with the notion of fairness, fair play. You should realise that justice and fairness are not always one and the same thing.

### ***What is defined by a judge***

What is defined by a judge to be justice is pragmatic: that which has been laid down in rules of law. One accepts what the judge has decided when a verdict or a sentence has been reached at in the



right way and when the judge has also considered the fairness and reasonableness of his sentence. A judge should abide by the law: he may not disregard a law because he is of the opinion that it is unfair; he may not judge the essential value of the law. This is the task of the legislative power.

An example: many students have lodged a complaint to the judge about the norms for the so-called budget (including the basic grant) being far too low. The judge has consistently responded as follows: the judge may not judge the essential value of the law and may not change those amounts of money on his own initiative.

### ***Justice and injustice***

In many discussions and in the media justice and fair play are mixed up and confused. Sometimes this happens deliberately to influence the matter or to make oneself heard.

For the business aspects of the artistic profession the first, legal, meaning of the word 'justice' is of the utmost importance. It is vital to know what your rights and obligations are, and also to know what can happen when you do not fulfil your obligations. Many artistic expressions and products have as their subject the second meaning of the word justice: fair play, fairness. And that is definitely a good thing.

### **More information**

On [BeroepKunstenaar.nl](http://BeroepKunstenaar.nl)

- More on *law & contracts*: article on *disputes and the law*.