



university of
groningen

Faculty of Law - Department of Legal Methods

Reader with Course Content & Questions

Law and Legal Skills: the Dutch example
2025-2026

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COURSE CONTENT

Law and Legal Skills: the Dutch example

The course *Law and Legal skills: the Dutch example* (LLS) is provided by the Department of Legal Methods. It is a seven weeks course consisting of eight hours of education per week: two lectures and two working groups, also called tutorials. In the last week of the course, there will only be a lecture on Monday. This will be a combined Law/Legal Skills lecture that serves as a preparation for the exam. In this seventh week, there will be no tutorials. Please consult the schedule of the course for more information.

The course consists of two parts:

1. Part 1 (or A) is called ‘Law’
2. Part 2 (or B) is called ‘Legal Skills’

For part Law, we organise one lecture (around 2 hours) and one working group (around 2 hours) per week. For part Skills, we organise one lecture (around 2 hours) and one working group (around 2 hours) per week.

The lectures and tutorials of Part Law (Part 1) aim to provide insights into the workings of a legal system, using the Dutch system as an example. The tutorials for Legal Skills (Part 2) aim to provide students with the necessary skills to analyse questions of law and legal problems. These skills include reading legislation, analysing case law and solving legal cases. While Dutch law serves as the primary example, comparisons with other legal systems will be made whenever possible. Detailed information on the course content and requirements is provided below.

1. Compulsory participation requirements

The LLB programme International and European Law is a demanding study preparing students for an international career. Law and Legal Skills: the Dutch example is the first course in this programme and requires a corresponding investment of time and energy by all students. To maintain the quality of our education at the highest standards and to be able to offer all students engaging tutorials at a high intellectual level, student participation during the tutorials is required to be awarded a grade for the exam. The Faculty Board implemented this system of compulsory participation to warrant the quality of our education. This requirement will also help you to develop a good study routine. In particular, compulsory participation requires you to:

1. be present during at least 4 out of 6 tutorials for both the law and the legal skills part.
2. come prepared to class and participate actively during all the tutorials you attend.
3. bring your readers and the answers to the questions and assignments to the tutorials.

If students do not fulfil these requirements, they lose the right to be awarded a grade for the course Law and Legal Skills: the Dutch example (first sit and resit), and they have to retake the course the following year when the same requirements are applicable.

Note: Compulsory and active participation in both the law and the skills part are necessary to achieve the learning objectives of this course.

Force majeure

In case of force majeure, students are recommended to contact the study advisors. The student has the opportunity to miss two tutorials. This opportunity is intended to accommodate the potential adverse effects of illness and other unforeseen circumstances. If a student is absent for more than two of the tutorials, they can submit a request to apply the hardship clause. Such a request can only be made after a student missed three tutorials. Therefore, students can only see the study advisors, in this regard, after having missed three tutorials. The hardship clause requires verifiable force majeure (analogous to article 6:75 of the Dutch Civil Code) for each instance of the student's absence from the tutorials. If the student has been absent without a valid reason once (i.e., without verifiable force majeure), the student will no longer be eligible for application of the hardship clause. Study advisors will assess whether verifiable force majeure is present (llb@rug.nl).

2. Law (Part 1 or A)

The ‘Law’ part of the course aims to provide insights into the workings of a legal system by using the Dutch system as a point of reference. This part of the course explains general topics such as the nature of law, sources of law, and the separation of political powers into three separate branches of government: legislative power, executive power and judicial power. Furthermore, the course familiarises students with the existence and main characteristics of various areas of law to provide them with the basic knowledge needed for subsequent courses. Constitutional law, administrative law, criminal law, private law, and international law will all be introduced in this course. Within these fields of law, both substantive and procedural law will be discussed.

Preparation for tutorials

During the tutorials, assignments will be discussed that students need to prepare in advance. Students are expected to correct their own answers accordingly. No detailed individual feedback will be provided on the quality of the assignments.

3. Legal Skills (Part 2 or B)

The ‘Legal Skills’ part of the course equips students with essential skills for analysing legal questions and problems. These skills include finding relevant sources, reading legislation, analysing case law, and solving cases. Students will also be introduced to legal research.

Initially, students will train in reading legislation and analysing case law. As the course progresses, emphasis will shift to legal reasoning, solving cases, and research skills. Tutorials will also cover general skills like textual analysis and argumentation.

Preparation for tutorials and presentation

Students are expected to read the course materials and complete assignments individually before each tutorial. Assignments typically involve analysing case law from the European Court of Human Rights, reading legal research papers, and answering related questions. The case and answers will be discussed in tutorials. Students should correct their own answers as detailed individual feedback will not be provided.

Two important elements of the Legal Skills tutorials are **student presentations and peer-feedback**.

- Student presentations: Each week, five to six students will each be assigned a specific question from the weekly homework assignments. Each of these students will prepare an elaborate answer to their assigned question. During the tutorial, these students will present their answers to the class.
- Peer feedback: Two or three other students will be tasked to provide feedback on the presentations. Feedback will focus on both presentation skills (e.g., body language, use of voice, engagement) and the content of the answer (e.g., accuracy, depth, relevance). See the feedback form on p. 54.

Prepare for lectures and tutorials

Students are advised to read the literature before the lecture on Monday. For the working groups, students must answer the weekly assignments, both for the Law part and the Legal Skills part. The content discussed in the lectures is part of the compulsory exam material. Working due diligently on the assignments is the best preparation for the exam.

Some small remarks on working on the assignments:

- a) Answer *all* questions. If you cannot formulate a complete answer, write down the part you can answer.
- b) Always strive to explain your answers *in your own words* as much as possible. Answers should never be a simple yes or no.
- c) Always include references to relevant articles, provisions or sections of the law and/or relevant case law when explaining your answers.

4. Exam

This course ends with a digital exam. The exam is a **closed book** exam. This means that students are not allowed to use any of the readers during the exam. A **digital version** of the **Readers with Legislation** will be available within the Brightspace exam environment. To take the exam, students must fulfil the compulsory participation requirement discussed above. The exam consists of questions regarding the part on Law (Part 1) and the part on Legal Skills (Part 2). Students can earn a maximum of 200 points: 100 points for the exam part on Law and 100 points for the exam part on Legal Skills. To pass, students are required to achieve a minimum score of 110 points. The exact dates of the exam and the resit can be found at the [schedule generator](#).

Readers with Legislation

Students are allowed and advised to highlight and/or underline articles/provisions in your Readers with Legislation, since that will help you to develop a good study routine. At the exam, you will be provided with a digital version of the Readers with Legislation. It is not allowed to use any of the readers during the exam.

If a student commits fraud, the Board of Examiners can declare the obtained result of the course in question invalid and deprive that student of the right to participate in one or more examinations for one year. In case of severe fraud, the Board of Examiners can suggest the Executive Board of the University to terminate the student's registration for the programme indefinitely.

5. Required course material

For this course, students need the following:

- This Reader with course content and questions;
- The Reader with Literature: order at the [Readershop](#);

- The Reader with Legislation part 1 and part 2 (Dutch Civil Code): order at the [Readershop](#);
- Vols, M. (2021). *Legal research: one hundred questions and answers*. Den Haag: Boom Juridisch: order [online](#) (also available as e-book).
- Access to Brightspace.

Note: students cannot make use of the readers of previous years, since the content differs per academic year. Please, order the newest edition of all readers.

6. Questions

Any questions about the set-up of the course? Please have a look at the **FAQ on our Brightspace page** first. Most likely, your questions are already discussed there.

Cannot find the answer to your question? Please come to see the coordinators, on Mondays from 4.00-4.30 PM, in meeting room 1L, first floor of the Röling Building. Questions via email will not be answered.

OVERVIEW OF WEEKS AND READING MATERIAL

Wk	Topic/ Lecturer	Reading material Law and Legal Skills
1: 1/9 - 5/9	Introduction Schipaanboord	<u>Reading for Law (available in Reader with Literature)</u> <ul style="list-style-type: none"> - S. Taekema, <i>Understanding Dutch Law</i>. The Hague: Boom Juridische Uitgevers 2020, Chapter 1, par. 1-3, 5, and Chapter 3, par. 1-2.7. - J. Hage, 'Basic Concepts of Law', in J. Hage, A. Waltermann, B. Akkermans, <i>Introduction to Law</i>, Cham: Springer International Publishing 2017, Chapter 3, par. 1-3. Available as an e-book: https://link.springer.com/content/pdf/10.1007%2F978-3-319-57252-9_3.pdf
		<u>Introduction</u> <u>Reading for Legal Skills:</u> <ul style="list-style-type: none"> - Text on 'Finding and analysing legislation' in this reader. - ECtHR, <i>Annen v. Germany</i> (2015), application no. 3690/10.
2: 8/9 - 12/9	Constitutional law Runia	<u>Reading for Law (available in Reader with Literature)</u> <ul style="list-style-type: none"> - A.W. Heringa, <i>Constitutions compared</i>, Cambridge: Intersentia 2016, Chapter 2 (§1.2 - 1.6), Chapter 4 (§6, §6.3-6.3.3), Chapter 5 (§6 - 6.5) and Chapter 6 (§6.1 - 6.3). - L. Besselink et al., <i>Constitutional Law of the EU Member States</i>, Deventer: Kluwer 2014, Chapter V and VI. - A. Dop, <i>Dutch law in English</i>, Deventer: Kluwer 2013, Chapter 9, §9.1 – 9.2.
		<u>Methods of interpretation</u> Tünsmeyer <u>Reading for Legal Skills</u> <ul style="list-style-type: none"> - The text on 'Methods of interpretation' in this reader. - ECtHR, <i>Catt v. The United Kingdom</i> (2019), application no. 43514/15.
3: 15/9 - 19/9	Administrative law Schipaanboord	<u>Reading for Law (available in the Reader with Literature):</u> <ul style="list-style-type: none"> - J. Chorus, E. Hondius, W. Voermans, <i>Introduction to Dutch Law</i>, Alphen aan den Rijn: Kluwer Law International 2016, Chapter 16, nos. 1-8, 10-19, 21-29. - J.G. Brouwer and J. Schilder, <i>A survey of Dutch Administrative Law</i>, Nijmegen: Ars Aequi 1998, Chapter 2 (§1 and §3).
		<u>Legal research -administrative law</u> Vols <u>Reading for Legal Skills:</u> <ul style="list-style-type: none"> - The text on 'Case solving' in this reader. - ECtHR, <i>Metropolitan Church of Bessarabia and others v. Moldova</i> (2001), application no. 45701/99.
4: 22/9 - 26/9	Criminal law Schipaanboord	<u>Reading for Law (available in Reader with Literature):</u> <ul style="list-style-type: none"> - A. Dop, <i>Dutch law in English</i>, Deventer: Kluwer 2013, Chapter 10.
		<u>Legal research - criminal law</u> Vols <u>Reading for Legal Skills:</u> <ul style="list-style-type: none"> - ECtHR, <i>Namazov v. Azerbaijan</i> (2020), application no. 74354/13. - Vols, M. (2021). <i>Legal research: one hundred questions and answers</i>. The Hague: Boom Juridisch, chapter 2.
5: 29/9 - 3/10	Private law Runia	<u>Reading for Law (available in Reader with Literature):</u> <ul style="list-style-type: none"> - S. Taekema, <i>Understanding Dutch Law</i>. Den Haag: Boom Juridische Uitgevers 2020, Chapter 8 §1 -2.4 and §5.1-5.2 - A. Dop, <i>Dutch law in English</i>, Deventer: Kluwer 2013, Chapter 3.

Wk	Topic/ Lecturer	Reading material Law and Legal Skills
	<i>Legal research - private law</i> TBA	<u>Reading for Legal Skills:</u> <ul style="list-style-type: none"> - ECtHR, Evaldsson and Others v. Sweden (2007), application no. 75252/01.
6: 6/10 - 10/10	<i>International law</i> De Boer	<u>Reading for Law (available in Reader with Literature):</u> <ul style="list-style-type: none"> - Beckman, R., & Butte, D., <i>Introduction to International Law</i>: https://www.ilsa.org/Jessup/Jessup%20Competitor%20Resources/intlawintro.pdf - Kamminga, M.T. (2017). 'International Law' in J. Hage, A. Waltermann, B. Akkermans, <i>Introduction to Law</i>, Cham: Springer International Publishing, Chapter 12. Also available as an e-book: https://link.springer.com/content/pdf/10.1007%2F978-3-319-57252-9_12.pdf - Dixon, M. (2013), <i>Textbook on International Law</i>, Oxford University Press, p. 6-13 - Driest, van den, S. (2022). 'International Human Rights Law' in C. Rose et al., Cambridge University Press, Chapter 10, par. 1-4.
	<i>Legal research - international law</i> TBA	<u>Reading for Legal Skills:</u> <ul style="list-style-type: none"> - ECtHR, Ognevenko v. Russia (2018), application no. 44873/09. - Vilija Velyvyte, 'The Right to Strike in the European Union after Accession to the European Convention on Human Rights: Identifying Conflict and Achieving Coherence', <i>Human Rights Law Review</i>, 2015(15), p. 73-100. Read pages 73-79 (until the end of section 2.B.) and pages 99-100. - Vols, M. (2021). <i>Legal research: One hundred questions and answers</i>. The Hague: Boom Juridisch (only the relevant questions/chapters).
7 13/10 - 17/10	<i>Final preparation for the Exam + Q&A</i> Schipaanboord & Van Tongeren	There is no required reading for this final lecture. It will be a combined lecture by coordinators Schipaanboord & Van Tongeren in which we will prepare for the LLS exam.
	<i>There is no lecture for legal skills this week</i>	N/A

**PART A / PART I
LAW**

WEEK 1 – INTRODUCTION

Reading (available in the Reader with Literature):

- J. Hage, 'Basic Concepts of Law', in J. Hage, A. Waltermann, B. Akkermans, *Introduction to Law*, Cham: Springer International Publishing 2017, Chapter 3, par. 1-3. Available as an e-book: https://link.springer.com/content/pdf/10.1007%2F978-3-319-57252-9_3.pdf
- S. Taekema, *Understanding Dutch Law*. Den Haag: Boom Juridische Uitgevers 2020, Chapter 1, par. 1-3, and Chapter 3, par. 1-2.7.

Assignment:

Answer the questions below. Always explain your answer and refer to the relevant articles from your reader with legislation!

It is not a problem if you make mistakes; if you don't know the answer, show us that you have made an honest attempt at answering the question.

QUESTIONS

1. Law can be defined as a source of legal obligations. Is this statement true or false?
2. In the field of private law, there are two dominant legal systems in the West.
 - a) Which are these two systems and what are their characteristics?
 - b) To which of these two main systems does the Dutch legal system belong?
3. In the Netherlands, criminal law can be regarded as private law because criminal law deals with disputes between private parties, namely the suspect and the victim. Is this statement true or false? Explain your answer.
4. Name the four fields of public law that we will study during this course and point out what is particular to each field.
5. The province of Brabant has leased cars from a lease company, but the company has failed to deliver the cars. The province of Brabant wants the court to order the delivery of the cars.
 - a) Are the relevant legal rules part of public law or private law?
 - b) Are the relevant legal rules part of substantive or procedural law?
6. *Read the following case carefully.*
Sophie and Olivia are in a dispute over a loan settlement, with Sophie refusing to pay. In frustration, Olivia decides to set fire to Sophie's motorbike. As a result, Sophie's motorbike is ruined, and Olivia will have to face the consequences of her actions.
 - a) Explain whether Olivia's actions will be addressed by public or private law.

A close friend of Olivia, Noah, is a first-year law student and helping her with the case. He keeps telling Olivia that she should take a close look at the 'Code of Civil Procedure' as well as at the 'Code of Criminal Procedure' if she wants to know which crime she may be convicted of and/or whether she is liable for tort.

- b) Is Noah correct in pointing to these two Codes? If not, where should Olivia look?

7. Sources of Law.
- Name all sources that can be considered sources of law in the Netherlands, according to their ranking.
 - Which of these sources can be called ‘statutes’?
8. Dutch law distinguishes between ‘enacted law’ and ‘unwritten law’. Explain the difference(s).
9. Lawyers and judges often deal with conflicting rules – this might happen across different sources of law or even with rules within the same source. To determine the applicable rule in a case of conflict, legal professionals use ‘conflict-rules’. These rules are often written down in Latin; while you don’t need to know Latin to become a lawyer, you should be able to *recognise* the following, widely used conflict-rules. Please look up and explain what is meant by:
- lex superior derogat legi inferiori*
 - lex posterior derogat legi priori*
 - lex specialis derogat legi generali*
10. Suppose that the Dutch Supreme Court, in a series of landmark cases in 2022 and 2023, ruled that squatters who occupy uninhabited premises that are kept solely for investment purposes cannot be evicted by the owner, provided they meet certain criteria such as maintaining the building and paying a certain amount of money to the owner. Also suppose that in 2024 Kelly, a law student, together with a group of fellow students, cannot find adequate housing in Groningen and decides to squat in a building. The group meets all the criteria set by the Supreme Court, but Christopher Altay, who owns the building, files an eviction petition with the appropriate Groningen District court.
- Is the judge bound to apply the case law from the Supreme Court?
 - Would your answer be any different if Kelly studied in the UK or the US, and the landmark cases had been decided by the UK or the US Supreme Court?
11. In which way does the work of the judges in the Dutch Supreme Court differ from the work of the lower court judges?
12. Name the five basic principles on which the Dutch judicial system is built.
13. (*Continuation of question 12*) Read Article 6 of the European Convention on Human Rights. Which of the five principles is not mentioned there? Try to explain why this principle is not mentioned.
14. The Dutch Supreme Court (*Hoge Raad*) handles all administrative appeals. Is this statement true or false? Explain your answer.
15. When the municipality of Eindhoven agrees with a local wholesale business that the latter will provide the municipality with foodstuffs, predominantly coffee and tea, their legal relationship will be predominantly regulated by public law. Is this statement true or false? Please explain your answer.
16. One source of law is created bottom-up instead of top-down. Name this source of law and explain how this source of law comes into existence.

WEEK 2 – CONSTITUTIONAL LAW

Reading (available in the Reader with Literature):

- A.W. Heringa, *Constitutions compared*, Cambridge: Intersentia 2016, Chapter 2 (§1.2 - 1.6), Chapter 4 (§6.3 - 6.3.4), Chapter 5 (§6 - 6.5) and Chapter 6 (§6.2 - 6.3).
- L. Besselink et al., *Constitutional Law of the EU Member States*, Deventer: Kluwer 2014, Chapter V (p. 1230-1233) and VI.
- A. Dop, *Dutch law in English*, Deventer: Kluwer 2013, Chapter 9, §9.1 –9.2.

Assignment:

Answer the questions below. Always explain your answer and refer to the relevant articles from your reader with legislation!

It is not a problem if you make mistakes; if you don't know the answer, show us that you have made an honest attempt at answering the question.

QUESTIONS

1. One of the most valuable pieces of advice we can offer you is that you start your analysis of legislation (or a contract) by familiarising yourself with its chapters. The chapter headings will give you a rough idea about its general layout and enable you to locate the relevant provisions quickly. On the exam, such knowledge will save you valuable time.
Name each of the chapters of the Dutch Constitution and, without reading the provisions in each chapter, try to write a few words on what you think the provisions in each chapter will regulate.
2. Give an accurate definition of constitutional law (you may refer to your lecture notes).
3. Dutch constitutional law is made up only of enacted law. Is this statement true or false?
Explain your answer.
4. Countries such as Italy, Latvia, and the Netherlands have a parliamentary system, while the United States and Brazil have a presidential system. What is the central difference between parliamentary and presidential systems?
5. The constitutional system of a state can be unitary or federal. How can you determine whether a state is unitary or federal?
6. Why is it incorrect to qualify the Kingdom of the Netherlands as a decentralised unitary state?
7. In the Netherlands, not everyone favours the monarchy. Some people prefer a republican society and want to replace the King with an elected president as the head of state. Some of them claim that a monarchy is incompatible with the rule of law. Is that statement correct?
Explain your answer.
8. The eighteenth century French philosopher Montesquieu contributed to constitutional law by describing a political system, which became known as the *Trias Politica*. Explain this system.

9. Does the Dutch constitution contain an *institutional* separation of powers? Explain how the legislative, executive and judiciary powers are distributed and mention the relevant articles of the constitution.
10. In September 2024, a new variant of the Covid-virus appeared in the Netherlands. Fortunately, a Dutch pharmaceutical company called Duperaco developed a vaccine that does not need to be injected: it can be distributed through the water network. The Dutch Minister of Public Health is ecstatic and wishes to start the distribution immediately to get rid of the virus in the Netherlands once and for all. Is he allowed to carry out his plans? Explain your answer.
11. First write down the task that each of the political powers should perform according to the theory of separation of political powers. Then read art. 105(1) of the Dutch Constitution carefully. Now you should observe an anomaly: you would expect the task of art. 105(1) Constitution to be performed by a different power.
 - a) Which political power would you expect to approve a budget? Please explain why.
 - b) Try to determine why the Dutch constitution left this matter to the legislator.
12. What are the characteristics of general binding regulations (gbr)?
13. The Dutch Constitution specifies which governmental bodies are allowed to issue general binding regulations (gbr). Which bodies are attributed with the power to issue general binding regulation? Do not forget to list the relevant provisions.
14. Explain whether or not the Formal Legislator (King + States General) is allowed to delegate the authority to create a general binding regulation in the following instances:
 - a) Article 11 Dutch Constitution
 - b) Article 13 Section 1 Dutch Constitution
 - c) Article 106 Dutch Constitution
15. Fundamental rights can be classified into social fundamental rights and classic fundamental rights.
 - a) Explain the difference between them and give examples from the Dutch Constitution
 - b) From a legal point of view, social fundamental rights do not have any value. Is this statement true or false? Explain your answer.
16. Fundamental rights can be classified as absolute and relative fundamental rights. Please explain the difference between them and give examples from the Dutch Constitution.
17. Sometimes, it is argued that certain fundamental rights have ‘horizontal effect’. What is meant by that? Also, explain why attaching ‘horizontal effect’ to fundamental rights can cause problems.
18. In 2008, the controversial Dutch member of parliament Geert Wilders gained international attention when he published on the internet the first edition of his short movie ‘Fitna’ (more information on this action and the subsequent trial can be found on Wikipedia. For our purposes, it suffices that Wilders used a copyrighted Jyllands-Posten cartoon, but without permission.) The famous cartoon Kurt Westergaard created (1935-2021) depicts the prophet Muhammad wearing a turban with a fuse-lit bomb. Furthermore, Wilders called for a ban

on the Quran, and warned against an ‘Islamic invasion’ and a ‘tsunami of Islamization’. He also labelled Islam as a fascist religion, described Dutch-Moroccan youths as violent, and compared the Quran with Hitler’s book ‘Mein Kampf’. He has also referred to Mohammed as ‘the devil’. When the Amsterdam Court of Appeal had to decide whether Wilders should be prosecuted, it emphasised that this case demonstrated a classical problem in applying constitutional law, namely a collision of fundamental rights. Read the list of fundamental rights in the Dutch constitution. Which rights do you think were claimed by each of the parties in this case? Explain your answer, and do not forget to mention the relevant provisions.

19. The Dutch Royal Family was on holiday in the Netherlands last summer. A photographer took a few pictures of them without asking for permission. These pictures were published in a magazine. His Royal Highness decided to go to court, believing this was a private moment for his family. Consequently, no pictures should be taken or published. Publishing pictures of the Royal Family is only allowed when the pictures are taken in photo shoots organised by the Royal House itself. Read the list of fundamental rights in the Dutch constitution. Which rights do you think were claimed by each of the parties in this case? Explain your answer, and do not forget to mention the relevant provisions.
20. Suppose that legislation would be adopted in the Netherlands prohibiting protests on certain topics (for instance, on the farmers’ protests against the CO₂ emission reduction). Could the Dutch Supreme Court declare such a law unconstitutional if the Dutch legislation in question would be:
 - a) an Act of Parliament?
 - b) a Royal Decree?

WEEK 3 – ADMINISTRATIVE LAW

Reading (available in the Reader with Literature):

- J. Chorus, E. Hondius, W. Voermans, *Introduction to Dutch Law*, Alphen aan den Rijn: Kluwer Law International 2016, Chapter 16 (nos. 1-8, 10-19, and 21-29).
- J.G. Brouwer and J. Schilder, *A survey of Dutch Administrative Law*, Nijmegen: Ars Aequi 1998, Chapter 2 (§1 and §3).

Assignment:

Answer the questions below. Always explain your answer and refer to the relevant articles from your reader with legislation!

QUESTIONS

1. The General Administrative Law Act (*GALA*) contains 11 chapters, each concerning a different topic. In which chapter(s) would you find:
 - a) The general definitions of an administrative authority; an interested party; and an order.
 - b) How an administrative authority should publish and communicate its orders.
 - c) How an administrative authority might sanction citizens who violate administrative orders.
 - d) The requirements for appealing an order.
2. Under administrative law, an administrative authority is the only authority allowed to unilaterally lay down someone's rights and duties. Explain the two types of administrative authorities and their specific characteristics. Please also mention the relevant provisions.
3. Use your answer to question 2 to determine whether the following entities can be qualified as administrative authorities:
 - a) The Dutch minister of Agriculture, Nature, and Food Quality.
 - b) The province of Zeeland.
 - c) Pete Flakey, founder and commercial director of Hyundai Flakey B.V.¹, the local Hyundai dealer in Groningen. The company is also a technical inspection point for the periodical Road Vehicle Test.
 - d) The president of the District Court Leeuwarden, administrative law division.
 - e) The security guard of the Dutch Senate.
 - f) The council of Burgomaster and Aldermen of Groningen (called municipal executive in the reader with legislation).
4. List the characteristics of all four types of administrative orders, provide an example of each type, and mention the relevant provisions.
5. Laura Lupescu lives in an expensive flat on the Ubbo Emiussingel in Groningen. Fed up with the rising rent prices, she decides to move out and buy a camper van instead. She parks the van on the street in front of his former house. For several weeks, Laura has a wonderful

¹ In English: a closed corporation/private limited company.

time in her cosy new home. One day, however, the following letter is delivered to her:

Dear Mrs Lupescu,

Your vehicle with registration number 11-ZVS-3 has been parked at the Ubbo Emiussingel in Groningen for at least two weeks. Since this vehicle is used as a residence, it is prohibited to park this vehicle for longer than three days in the same place on roads within the city of Groningen. You must move your vehicle within three days of receiving this letter. Failure to do so will result in the towing of your vehicle. The full cost of this (700 euros) will be recovered from you.

Yours sincerely,

The Board of Mayor and Aldermen of the Municipality of Groningen

This decision is based on Article 5:6, paragraph 1 of the General Municipal By-Laws Groningen 2024 and the order ‘Camping Means and Others (art. 5:6 General Municipal By-Laws Groningen 2024)’. [neither is in your reader]

Article 5:6 (Camping equipment etc.) of the Municipal By-Laws Groningen reads as follows:

1. It is prohibited for a vehicle that is used for recreation or for other than non-transportation purposes
 - a) to be parked on a road designated by the council of burgomaster and aldermen for more than three consecutive days, where in its opinion, this is excessive with regard to the distribution of available parking space or is detrimental to the appearance of the municipality;
 - b) to park in a place designated by the council of burgomaster and aldermen, where in their opinion, it is detrimental to the municipality’s appearance.
2. The council of burgomaster and aldermen may grant exemption from the prohibition outlined in the first paragraph, opening words and under (a).

The order ‘Camping Means and Others’ further implements Article 5:6 of the General Municipal By-Laws Groningen 2024 and states that:

All roads in the urban area of the city of Groningen are designated as roads on which it is prohibited to park vehicles for more than three consecutive days if those vehicles are used for recreation and/or purposes other than traffic.

- a) Indicate, with reference to the relevant provision, what type of order is involved in the case of:
 - The Municipal By-Laws of Groningen 2024.
 - The order ‘Camping Means and Others (art. 5:6 General Municipal By-Laws Groningen 2024)’.
 - The order addressed to Laura that she should remove his vehicle.
- b) What type of sanction is being imposed on Laura here? Explain your answer and mention the relevant provisions.
- c) If Laura wants to object to this sanction, to whom should he address his notice of objection? Mention the relevant provision(s).

6. Before one can go to court for an administrative procedure, one must first go through a ‘notice of objection procedure’. Explain the differences between going to court and an objection procedure.
7. Are the following decisions appealable orders in Dutch administrative law?
 - a) The written letter from the mayor of Utrecht to his neighbours that the restoration of his house’s facade has been delayed. The restoration will not start the week before Black Friday but two weeks later, as has been requested by the neighbourhood and shopkeepers’ association.
 - b) Public servant Beaulieu calls Mr Altdorfer to inform him of the decision that the council of Burgomaster and Alderman rejects his request for subsidy for his health plan.
 - c) The municipality of Groningen cutting down several trees in the Noorderplantsoen.
 - d) The written decision of the cantonal court judge Mrs Vinding to place the adult Mrs George in a mental health clinic based on Article 1:378 Dutch Civil Code.
 - e) The rules made by a provincial executive about how they will use their authority given in Article 3.2 of the Nature Conservation Act² to hand out financial compensation to farmers for damage to livestock caused by protected species such as wolves. These rules are published on the website of the province. They specify the kinds of proof the farmer ought to show in order to prove financial loss.
 - f) A café owner lets customers smoke in her establishment thereby violating the Health and Safety Act. The Minister of Public Health sends a letter to the café owner, in which he imposes an administrative fine.
8. Isabelle Anderson owns a large student housing complex in Groningen which she intends to convert into an upscale, residential apartment complex. She is concerned, however, about the city’s recent policy promoting affordable housing. Her apprehension deepens when, on August 1st, 2023, a letter from the board of Burgomaster and Aldermen arrives at her doorstep, informing her that her permit application to transform the housing complex has been rejected. Her close friend, Benjamin, is equally dismayed. Isabelle and Benjamin had contractually agreed that he would handle the interior design of the new studios. Benjamin stands to lose 780,000 euros in earnings if the project falls through. To cope with their disappointment, Isabelle and Benjamin decide to embark on an extended scuba diving trip in the Caribbean. Upon their return on September 27, 2023, both want to appeal the decision in court.

Answer the following questions and refer to the relevant articles of law:

- a) What procedure should either follow if they want to go to court against this decision? Mention the relevant provision(s).
- b) Is the decision by the Board of Burgomaster and Aldermen an appealable order?
- c) In an administrative procedure, can Isabelle be regarded as an interested party? Mention the relevant provision(s).
- d) In an administrative procedure, can Benjamin be regarded as an interested party?
- e) If the answer to the above questions is ‘yes’, will Isabelle or Benjamin be able to start a legal procedure against the order on September 27? Mention the relevant provision(s).

WEEK 4 – CRIMINAL LAW

² Not in your reader with legislation.

Reading (available in Reader with Literature):

- A. Dop, *Dutch law in English*, Deventer: Kluwer 2013, Chapter 10.

Assignment:

Answer the questions below. Always explain your answer and refer to the relevant articles from your reader with legislation!

QUESTIONS

1. The Dutch Penal Code consists of three books, which are subdivided into parts. Each part covers a different topic. In which book and part would you find the relevant provisions regarding the following:
 - The principal and additional punishments.
 - The justification '*force majeure* as necessity'.
 - The offence of slave trading.
 - The offence of surveying a military site.
2. Imposing sanctions under criminal law is impossible without reproachable guilt. Legal practice and literature have narrowed down the forms of guilt into specific categories. What are the two basic forms of guilt in Dutch criminal law and what are the different variations we distinguish within those two basic forms? Use examples to name and explain each variant.
3. Find and read Article 311(1)(subs 3) Dutch Penal Code. Answer the questions below.
 - a) What are the legal conditions of this provision? Specify whether these conditions are alternative or cumulative (see Week 1 Legal Skills).
 - b) What is the legal consequence of this provision? Mention the relevant provision(s).
 - c) Is this offence a serious offence (crime) or a summary (i.e. minor) offence?
4. Not all criminal legislation has the same structure as the Penal Code. Especially in separate statutes, the structure sometimes differs. Read the following statement: violation of Article 3 of the Opium Act Decree will be punished with imprisonment of at most six months or a maximum fine of € 20.750. Is this statement true or false? Mention the relevant provision(s).
5. The difference between summary offences and serious offences is clearest in the Penal Code: Book 2 contains serious offences, and Book 3 summary offences. Mention at least three reasons why this distinction is of importance and substantiate your answer.
6. Is the following statement true or false: For a judge to penalise someone for aggravated assault (art. 302 Penal Code), it is sufficient that the perpetrator has intentionally inflicted grievous bodily harm.. Explain your answer.
7. Is the following statement true or false: when there is a wrong location in the writ of summons, the judge will declare the writ of summons invalid. Explain your answer and mention the relevant provision(s).
8. In Dutch criminal law, the Public Prosecutor Service has the monopoly on prosecutions. Is the following statement true or false: the principle of prosecutorial discretion means that if the public prosecutor decides to dismiss the case and notify the (former) defendant, this

person cannot be charged again for the same offence based on the principle of double jeopardy / *ne bis in idem*-rule). Explain your answer and mention the relevant provision(s).

9. Is the following statement true or false: the defence *duress* can be invoked by the accused if (s)he, at the time of the offence, has to choose between a legal and moral/societal duty and opts for the latter. Mention the relevant provision(s).
10. Bunk Moreland is driving from his holiday home in Sylt to his work in Amsterdam. Close to Almere, a road traffic accident happened. The road near the accident has been blocked by the police with tape. A police officer directs Bunk to the emergency lane, and Bunk drives to the emergency lane and continues his drive to Amsterdam. A few weeks later, he receives an official letter announcing that he has to pay a fine of € 400 for the offence of driving on the emergency lane. Can Bunk invoke a valid defence? If so, which one? Mention the relevant provision(s).
11. Explain, first, the difference between self-defence and unreasonable use of self-defence, and, second, the relationship between these two defences. Mention the relevant provision(s).
12. It is not only the perpetrator that can be punished under Dutch criminal law. List the four forms of criminal participation, explain their characteristics, and mention the relevant provision(s).
13. Is the following statement true or false: the maximum punishment for an accessory to manslaughter is ten years imprisonment. Explain your answer and mention the relevant provision(s).
14. After Feyenoord won the football match against Ajax, Ajax supporters Karel and Willem walk back to their car disappointed. Willem has drunk a lot of beer and needs to pee. He asks Karel to be on the lookout for policemen. Willem pees against a parked police car where no policemen are present at the time. When he is almost finished, two policemen approach. Karel's warning is just too late. The police draw up an official report for violating Article 424 of the Penal Code. Is Karel punishable in this case? Explain your answer and refer to relevant legislation.
15. Martin Jansen (eleven years old) is caught by the police on 31 December 2021 when he sets off illegally acquired fireworks in a bus shelter, causing the glass to shatter into thousands of pieces. The public prosecutor prosecutes Martin for vandalism (Article 350 paragraph 1 of the Penal Code) and summons Martin to appear before the District Court of the Northern Provinces (criminal law sector). The indictment states the following:

‘(...) that on 31 December 2019 Martin Jansen intentionally and unlawfully destroyed an object of property, a bus shelter, belonging entirely to someone else, at or near Hoendiep 55, in Groningen, by means of illegally acquired fireworks (section 350 paragraph 1 of the Penal Code)’.

 - a) Referring to relevant legislation, discuss and answer all preliminary (formal) questions. Will the court issue a formal judgment?
 - b) Continuation of the previous question. Assume the judge does not issue a formal final judgment. Referring to relevant legislation, discuss all fundamental (substantive/material) questions and their answers. What will be the judge's judgment?

16. One night Denise Smit, while partying with her friend in downtown Groningen, runs into three boys she knows from college. They all had too much to drink, and a pub brawl ensued. At one point, Denise gets hit in the face by one of the three boys. She flees the club together with her friend. Once out of the club, Denise believes the three boys are following her. She feels so threatened and protective of her friend that, even while drunk, she rushes to her car, hops in and speeds away. Moments later, she crashes into a lamppost. According to the Road Traffic Act, the public prosecutor decides to charge her for drinking and driving, which is a serious offence (Article 8, not in your reader with legislation).

- a) Which court is competent to hear the case? Refer to all relevant legislation.
- b) Is there a defence Denise can successfully rely on in court? Refer to all relevant legislation.

WEEK 5 – PRIVATE LAW – CONTRACT LAW

Reading (available in the Reader with Literature):

- S. Taekema, *Understanding Dutch Law*. Den Haag: Boom Juridische Uitgevers 2020, Chapter 8, par. 1-2.4 and par. 5.1-5.2
- A. Dop, *Dutch law in English*, Deventer: Kluwer 2013, Chapter 3.

Assignments:

- Answer the questions below. Always explain your answer and refer to the relevant articles from your reader with legislation!
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Preliminary remarks:

Countries with a common law system are, for example, England and Wales, the United States, New Zealand, Australia and Canada. Countries with a civil law system are, for example, the Netherlands, Germany, Belgium, France and Spain.

The **common law** developed, in essence, as a system of case law; judges laid down authoritative decisions in court. Over time, the doctrine of binding precedent (*stare decisis*) developed, which means that decisions made by judges in the past should be upheld by judges in new cases if these new cases show marked similarities to those that had gone before. Today, a common law system is based on three major sources of law: common law, equity law and legislation.

Historically, equity developed as a separate system of law in England, the cradle of the common law legal system, as common law was deemed too rigid. At one time, common law courts could not administer equity as this was the province of a separate court of equity, which developed its principles of equity (fairness) and, therefore, its own terminology. Now, every law court is qualified to administer common law and principles of equity.

Civil law systems should be distinguished from common law systems. Civil law systems are coded systems. The law is always laid down in written form (in codifications) by the legislator. Civil law has been heavily influenced by Roman law (NB, it would be incorrect to assert that it has not affected common law; however, its impact has been considerably less and more indirect). Legally speaking, the only actual source of law in civil law systems is legislation. There is no doctrine of binding precedent in civil law systems!

The term **civil law** has two meanings: (a) it may be used to describe a legal system (civil law ↔ common law), and (b) it may also be used in the sense of the law concerned with private rights (civil/private law ↔ public law).

During this course, the term civil law will only be used to describe a legal system. The term ‘private law’ will be used in the sense of law concerned with private rights (e.g. family law, corporate law, contract law, tort law, and property law).

QUESTIONS

1. a. What is meant by the ‘layered’ or ‘stratified’ structure of the Dutch Civil Code?
b. What is the relationship between Book 3 and Book 6 of the Dutch Civil Code?
2. The Dutch Civil Code has a division between the law on property and the law on obligations. What are the two main differences between the law on property and the law on obligations? Please explain your answer.
3. Read the sentences below. Indicate whether these sentences contain a juridical act, and if so, do they contain a unilateral or multilateral juridical act?
 - a. Mohammed buys an old canoe for €150,00 from his neighbour.
 - b. Tina accidentally breaks a plate belonging to her friend Amma while doing the dishes.
 - c. Igor donates a brand new bike to his granddaughter Olga.
 - d. Peter draws up a will at the local notary.
4. What is the difference between a juridical act that is void and a juridical act that is voidable?
5. Daan has been looking for a new bed for his little son Bas for a while now. While scrolling through his Facebook timeline one Saturday afternoon, Daan sees an Ikea advertisement that offers a bunk bed set for the mere sum of €24.00. The set consists of a combination of a bed, a mattress, a mattress cover and curtains so that the bunk bed can be changed into a tent. Daan is sure that Bas will love the bunk bed and immediately orders it on Ikea’s website. After the weekend, Daan received an email from Ikea stating that the bunk bed set ended up on the website for an unrealistically high discount due to a mistake in the system. The bunk bed sets were mistakenly offered at only the price of the mattress, including the cover. The email also states that Ikea will not deliver the order and will refund the purchase price. Daan is furious. He believes that a contract has been concluded and that Ikea is obliged to deliver the bunk bed set for € 24.00. Is Daan right? Explain your answer and refer to the relevant legislation.
6. Read the following statement: in Dutch law, the grammatical interpretation is decisive in case parties disagree about the content of a contract. Is this statement true or false? Explain your answer.
7. Ricardo owns a BMW that has been showing serious malfunctions for quite some time. However, Ricardo knows that they only occur when the car is used to make longer trips (more than ten kilometres). Because he is fed up with it, Ricardo decides to sell the BMW. Defne inspects the car for sale; the exterior looks fine, and when Defne checks the engine, everything also seems fine. Defne’s test drive (of four kilometres) went off without a hitch. She offers Ricardo €5,000 for the car, which, according to information on the Internet, is a fair price. Ricardo accepts the offer. He does not mention the car’s serious problems. However, on the first long drive, after four days, the BMW’s engine explodes with a loud bang. Defne can barely avoid a collision with another car, and the BMW is total loss. Is the contract that was concluded between Ricardo and Defne valid? If so, is there a way she can get her money back?

8. The foundation of the law of obligations and contract law is the concept ‘obligation’.
 - a. Please give an accurate definition of this concept (you may refer to the lecture slides)
 - b. Roman lawyers already identified three ways in which the object of an obligation could be classified, which are they?
 - c. How does an obligation end? Give four examples.
 - d. Explain in which way an ‘ordinary’ obligation differs from a so-called ‘natural obligation’. Do not forget to mention relevant provision(s).
9. Sports shop Kluun from Dokkum ordered 140 pairs of ice skates from his regular supplier Jelle on 15 October 2021. Kluun and Jelle agree that the ice skates will be delivered no later than 15 November 2021. On 16 November 2021, Kluun had not yet received the ice skates. Jelle has no stock left because he delivered the ice skates to a competing sports shop. Jelle says he can only deliver the ice skates to Kluun on 1 February 2022. At the beginning of January 2022, it was freezing hard in Friesland, and for the first time since 1997, a skating “Eleven City Tour” was organised. Because of this, the demand for ice skates is very high. Kluun suffers damage because he is losing income due to being unable to sell ice skates.
Is there a breach of contract, and if so, which legal remedies can Kluun exercise?
10. After their first term exams, international law students Kostas, Elena and Jason need a change of scenery. They decide to spend a day on the island of Schiermonnikoog. On the website of SchierActive, they ordered a tour guide who will take them on a tour of the island on electric bicycles on 1 November 2022. Unfortunately, SchierActive has to cancel the activity because a big and dangerous storm is raging over the island on 1 November 2022. As the students have already arrived on the island, they are upset because they have spent money on the ferry tickets. Explain whether it is possible for them:
 1. to cancel the agreement with SchierActive, and
 2. to claim compensation from SchierActive?

WEEK 6 – INTERNATIONAL LAW

Reading (available in the Reader with Literature):

- Beckman, R., & Butte, D., *Introduction to International Law*: <https://www.ilsa.org/Jessup/Jessup%20Competitor%20Resources/intlawintro.pdf>
- Kamminga, M.T. (2017). ‘International Law’ in J. Hage, A. Waltermann, B. Akkermans, *Introduction to Law*, Cham: Springer International Publishing, Chapter 12. Also available as an e-book: https://link.springer.com/content/pdf/10.1007%2F978-3-319-57252-9_12.pdf
- Dixon, M. (2013), *Textbook on International Law*, Oxford University Press, p. 6-13
- Driest, van den, S. (2022). ‘International Human Rights Law’ in C. Rose et al., Cambridge University Press, Chapter 10, par. 1-4.

Assignment:

Answer the questions below. Always explain your answer and refer to the relevant treaty articles from your reader with legislation!

QUESTIONS

1. UN members Tyros and Drerel (two fictional countries) have a strained relationship on account of unsolved, overlapping territorial claims. Skirmishes have repeatedly taken place. One day, Drerel invades Tyrosian territory and Tyros, while fending off Drerel’s forces, manages to capture a number of Drerelian soldiers. Tyros proceeds to torture these soldiers in an attempt to learn more about Drerel’s military objectives. The international community expresses its dismay at Tyros’ use of torture. On behalf of the international community, Terentia (also a UN member) files a case against Tyros at the ICJ arguing that its behaviour flies in the face of some of international law’s most basic norms.
 - a) Assume the ICJ has jurisdiction. Which sources of law could this court in principle apply to decide whether Tyros has acted unlawfully? Is there a hierarchy between these sources? Explain your answer and refer to relevant provisions.

Before the ICJ, Terentia specifically invokes the UN Convention against Torture. Tyros responds by claiming that it acted in self-defence (satisfying the UN Charter requirements), and that the UN Charter allows Tyros to ignore the convention.

- b) Is Tyros correct to argue that the UN Charter is hierarchically superior to other sources of international law? Is self-defence laid down in the Charter? Explain your answer and refer to relevant provisions.

Terentia disagrees with the argument put forward by Tyros. It claims that the prohibition against torture has a special status in international law and cannot be transgressed in any circumstance.

- c) Is Terentia correct in claiming that certain ‘special rules’ exist in international law, and that these have a hierarchically superior position vis-à-vis other rules? Explain your answer.
- d) If so, do you think such rules are also superior to the UN Charter’s provisions? Explain your answer. (This is not a question for which you will find the answer in your readings; use your lawyerly instinct to come up with an answer!)

Alongside the case between Terentia and Tyros, Terentia has also started proceedings in its national legal system against the Tyros general, Benedikt Teufel, who is responsible for torturing Drerelians. Teufel's lawyer, who has a reputation for playing the devil's advocate, argues that his client cannot be tried in Terentia because it does not have jurisdiction.

- e) Is Teufel's lawyer correct? What does 'jurisdiction' mean, and which principles of jurisdiction exist? Explain your answer.
2. Public international law has different legal actors than national law. Which legal actors do we know within public international law?
- 3.
- a) What is the difference between international law and domestic law? Explain your answer.
 - b) What is the difference between the international and national legal systems? Explain your answer.
 - c) Is the international legal system, in principle, horizontally or vertically structured? Explain your answer.
4. According to a recent announcement, the newly appointed Minister of Citizenship of the Space Nation Asgardia, Ivan Rosel, immediately took office following the publication of the voting results of the XII Sitting of the Asgardian Parliament. According to their website, Asgardia is a Space Nation, working 'to build a new home for humanity in space'. 'To achieve our scientific goals and build a society of the future, we are creating a fully-fledged independent digital state recognised by earthly nations'
(<https://asgardia.space/en/pages/mission>).
 - a) Find out whether 'Asgardia' qualifies as a state. Discuss all relevant requirements.
 - b) Does it matter, strictly speaking, whether other states recognize Asgardia as a State? Explain your answer and try to find relevant provisions online.
 - c) Maya, a first-year LLS student, thinks that the legal criteria for a State are closely bound up with the concept of 'sovereignty'; Asgardia, she believes, might not be 'sovereign'. Is she correct? Explain what sovereignty means and how it does or does not relate to the criteria for Statehood.
5. Treaties are an important source of international law. A treaty does not bind a State until certain actions have been taken. Explain at which point states become bound by a treaty.
6. Suppose the Netherlands and a country named Ernia conclude a treaty on the division of newly discovered lands.
- a) How does this treaty become legally binding in the Dutch national legal system?
 - b) Suppose Ernia has a dualist system based on the doctrine of transformation. How does the treaty become legally binding in the domestic legal system of Ernia?
 - c) Name one advantage of a dualist system (based on the doctrine of transformation) over a monist system (based on the doctrine of incorporation). Explain your answer.
 - d) Name one advantage of a monist system (based on the doctrine of incorporation) over a dualist system (based on the doctrine of transformation). Explain your answer.
7. (Continuation of question 6). The Netherlands believes that Ernia is violating the newly concluded treaty. The Netherlands is trying to get Ernia to adhere to the treaty, but it is not working. The Netherlands refers the case to the International Court of Justice, but Ernia refuses to cooperate.

- a) Is Ernia obliged to appear in court? Explain your answer and refer to relevant provisions.
 - b) Assume Ernia is not obliged to appear in court. The UN General Assembly is bothered by the dispute and is looking for legal advice. Where might it turn? Explain your answer and refer to relevant provisions.
8. (Continuation of question 7) Suppose Ernia appears before the ICJ, and the court decides that Ernia indeed violates the treaty. The ICJ requires the State to take certain actions to rectify the violation. Ernia does not agree with this statement. Can Ernia, as a sovereign state, disregard the decision of the ICJ? Explain your answer and refer to relevant provisions.
9. Country A and Country B are neighbouring countries and border the same sea. They cannot agree about the delimitation of the territorial sea. Article 15 of the UN Convention on the Law of the Sea (UNCLOS) prescribes that the ‘equidistance principle’ should be used if States fail to agree. Countries A and B signed the UNCLOS, but only country A ratified it. Country A states that the equidistance principle, as mentioned in Art. 15 of the UNCLOS should be applied even if the UNCLOS is not applicable since the principle of equidistance is a rule of customary law. Country B, however, claims that the equidistance principle is not applicable in this case as the UNCLOS does not legally bind Country B. Moreover, according to country B, using the equidistance principle is not a rule of customary law. Country A and Country B refer the case to the International Court of Justice.
- a) For a rule to be international customary law, two elements are required. Which elements? Explain their meaning.
 - b) Will the International Court of Justice apply the UNCLOS to decide the case or international customary law?

Assume that at least some UNCLOS rules which were not previously customary law have now become customary law, because a vast majority of all states are party to the treaty. As a result, these rules are now also binding upon the few States that were not party to UNCLOS.

- c) Which fundamental principle of international law is challenged when this happens?
10. (Continuation of question 9) Suppose Country A and Country B cannot solve their legal dispute concerning the border between the two countries. The situation escalates, and Country A threatens to enforce its rights by bombing parts of Country B. In response, Country B decides to bomb strategic military targets in Country A. Is the attack of Country B on Country A justified? Explain your answer and refer to relevant provisions.
11. Is the following statement true or false: the Council of Europe is a supranational organisation that seeks to promote the fundamental values shared by its members in matters such as human rights. Explain your answer.
12. The Dutch Public Prosecution Service has had their eye on cannabis dealer Ruben for a while, but they haven't been able to catch him. The Public Prosecution Service decides to use all possible means in their investigation into Ruben. They resort to the so-called 'Mr. Big method'. This method involves undercover agents setting up a fake criminal organisation to which they will invite Ruben. The powerful and mysterious 'Mr. Big', also an undercover agent, is at the head of the organisation and will lure Ruben into sharing information about his own criminal activities. It is an invasive and controversial method of investigation. The use of the Mr. Big method proves successful in Ruben's case. In an

attempt to impress 'Mr. Big', Ruben talks extensively about his network of cannabis dealers. Ruben is successfully prosecuted and convicted as a result. He disagrees with the method of investigation, which has deeply impacted his personal life, and he believes that the Code of Criminal Procedure does not provide a basis for such an extensive operation. Ruben wants to file a complaint with the European Court of Human Rights (hereafter: the ECHR).

- a) Name three grounds on which the ECHR can generally decide not to consider cases of citizens. Explain and refer to the relevant treaty provisions.
 - b) Which two treaty rights will Ruben probably rely on in the case to be brought before the ECHR? Refer to the relevant treaty provisions.
 - c) Which category of human rights do the rights in question fall under?
 - d) If Ruben were not a Dutch national, would he still be able to file a complaint with the ECHR? Refer to the relevant provisions.
13. The United Nations is one of the most important international organisations.
- a) What are the main goals of the UN, according to the UN Charter? Refer to the relevant provisions.
 - b) Which organ of the UN is responsible for the maintenance of international peace and security? Refer to the relevant provisions.
 - c) How does this organ maintain international peace and security? Refer to the relevant provisions.
 - d) Explain the nature of the decision-making procedure in this organ. Refer to the relevant provisions.

PART B / PART II LEGAL SKILLS

WEEK 1 ANALYSING LEGISLATION AND CASE LAW: AN INTRODUCTION

Reading:

- Text below on ‘Finding and analysing legislation’.
- ECtHR, [Annen v. Germany](#) (2015), application no. 3690/10.

Assignments:

1. Finding and analysing legislation
2. Answering the questions on ECtHR, Annen v Germany (2015). Always refer to the relevant paragraph(s) from the judgment.

Note on finding legislation:

Please use your Reader with legislation as much as possible; if it is necessary you can also find legislation online. Useful for finding legislation is:

- *Law Libguide*, retrieved from [libguides.rug.nl/law](#) (last consulted on June 4th 2024).
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Text ‘Finding and analysing legislation’

1. The structure of Acts and Codes and citing articles or provisions

Acts and Codes

Legal rules can be found in all sorts of (international) legislation. In the Netherlands, we often speak of Acts or Codes when referring to a law book or legal code (*wetboek*). There is no difference in legal status between an Act or a Code in the Netherlands. A Code is a law in which the formal legislator – with a certain aim to be exhaustive and systematic – gives legal rules for a particular - more or less complete- area of law. For example, the Dutch Penal Code (*Wetboek van Strafrecht*) gives rules about virtually the entire area of criminal law. In an Act, rules are laid down for one or more separate ‘topics’. The Opium Act (*Opiumwet*), for example, provides specific rules on drug-offences.

The system within an Act, code etc. or article

As an Act often covers a lot of different topics, a subdivision is necessary. The main units within an Act or a Code are the articles or statutory provisions. The articles are generally numbered consecutively. Exceptions are, for example, the Dutch Civil Code (*Burgerlijk Wetboek*) and the General Administrative Law Act (*Algemene wet bestuursrecht*). A remark has to be made with regard to English law: the main units within an Act or a code are called sections instead of articles.

An article is often divided into paragraphs (or in English law ‘subsections’). For example, article 2 of the Dutch Constitution on citizenship. This article has four paragraphs, numbered 1 to 4. A paragraph may contain even smaller subdivisions. These subparagraphs are lettered (a, b, c, ...) or numbered (1, 2, ...).

For example: The Road Traffic Act (*Wegenverkeerswet*) has an article 36. This article 36 is divided into eight paragraphs. One of these paragraphs, paragraph 3, is split into three subparagraphs (a, b and c). If you want to cite subparagraph b of paragraph 3 of article 36 of the Road Traffic Act, you do this as follows:

art. 36(3)(b) or art. 36 par. 3 under b Road Traffic Act.

The articles are often placed in a variety of contexts with boldface headings. These headings may vary, such as books, titles, chapters etc. See for example the Dutch Penal Code (*Wetboek van Strafrecht*).

Citing articles / provisions: principal rule and exceptions

In the Netherlands, books, titles and chapters usually do not have to be mentioned when citing articles of law as the articles are usually numbered consecutively. Therefore, you only cite the article or provision (and the paragraphs and subparagraphs if necessary) together with the name of the Act or Code.^{3*} You can refer to an article by using the abbreviation ‘art.’.

Some examples:

- art. 300(1) Dutch Penal Code or Sr or art. 300 par. 1 Dutch Penal Code (or Sr)
- art. 9(1)(b) Dutch Penal Code or art. 9 par. 1 under b Dutch Penal Code
- art. 316 **in conjunction with** art. 310 Dutch Penal Code
- art. 18 **et seq.** Dutch Penal Code

NB ‘in conjunction with’ means ‘together with’ and ‘et seq.’ is short for ‘et sequentes’ or ‘et sequentia’ which means ‘and the following’

There are however exceptions to the abovementioned rule for citing articles. When citing an article from the Dutch Civil Code (*Burgerlijk Wetboek*, abbreviated BW), the number of the book has to be specified to avoid confusion. The Civil Code is composed of nine books and each book of the Civil Code begins with article 1. Thus, there is no consecutive numbering. For example, if you want to cite article 150 of book 1 of the Civil Code, you cite art. 1:150 Dutch Civil Code or BW. A similar situation occurs with General Administrative Law Act (*Algemene wet bestuursrecht*, abbreviated GALA or Awb). This act is divided into eleven chapters and each chapter begins with article 1. You should therefore always mention both the chapter and the article. For example, if you want to cite article 1 of chapter 8, you cite art. 8:1 GALA.

When citing a provision, it is usually sufficient enough to mention the name of the law after the article number. However, if a law does not appear in a well-known law edition, you have to refer to the publication in the Bulletin of Acts and Orders (*Staatsblad*, abbreviated Stb.). Each legal system has its own set of rules for how the different sources of law should be cited. It’s therefore important to learn these whenever you work in a different jurisdiction.

2. System of law

System of law in general

A relevant provision can, for one, be found by taking the system of law into account. The following procedure is taken to search and find relevant articles:

I) Determine which area of law covers the problem or question. Does it involve private or public law (and what area within public law: administrative, constitutional or criminal law)?

^{3*} For citing English legislation, refer to the guidelines of the Oxford Standard for the Citation of Legal Authorities (OSCOLA).

Sample question: When discussing a final arrangement with the creditors in the event of a bankruptcy, mortgage lenders are excluded from voting. Is this proposition correct or not (according to Dutch law)?

Answer: Bankruptcy is a situation in which a debtor may find himself if he fails to fulfil his obligations to his creditors. This is therefore a legal relationship between private persons and therefore it is a question covered by private law.

As you can see, this method of finding legislation requires prior knowledge of what bankruptcy is.

II) In which Act or Code can you find the answer?

Regarding our sample question: are the most important rules (articles) that concern the final arrangement with creditors in the event of a bankruptcy covered by private law? Are these rules written down in the Dutch Civil Code or in one of the Acts of private law that deals with specific topics?

Answer: Bankruptcy is covered by a specific act: the Bankruptcy Act (*Faillisementswet*).

III) Check the table of contents of the relevant Act (or Code, By-law etc.) at the beginning of an Act (or book within an Act). In this table, you can find chapters, titles or parts that cover the topic in question – in our sample question the final arrangement with the creditors. If an Act does not include a table of contents, you will need to find the relevant heading by browsing or leafing through the law.

Going back to our sample question: where in the Bankruptcy Act is the final arrangement with creditors regulated?

Answer: In title 1, chapter 6 of the Bankruptcy Act you find the heading ‘Final arrangement with the creditors (composition’).

IV) Scan the articles in the appropriate section of the Act (or Code, By-law etc.). Of course, if there are glosses in bold in the margin, you can use these. In which article is the right to vote in the event of a final agreement with creditors regulated?

Answer: When going through the articles in chapter 6 of title 1 of the Bankruptcy Act, you will find that the right to vote is regulated in art. 143 Bankruptcy Act.

With this information, you can conclude that the answer to the question whether the proposition in our sample question is correct or not is as follows: mortgage lenders do have a right to vote if they have waived their priority (right of preference) in favour of the liquidation estate prior to the vote. Therefore, the proposition is incorrect.

NB Mortgage lenders are creditors whose claims are ranked with priority and these creditors thus have a right of preference.

As you have seen prior knowledge of the relevant Act, Code, By-law etc. is indispensable. Therefore, in the following paragraphs we will provide you with the main characteristics of three important codes: the Dutch Civil Code, the Dutch Penal Code and the General Administrative Law Act.

System of the Dutch Civil Code: layered structure

Since 1992 the Netherlands has a new Civil Code (*Burgerlijk Wetboek*, abbreviated: BW), which consists of nine books. Each ‘book’ of the Civil Code deals with a specific area of private law. For example, book 1 covers the law on persons and family and book 2 covers legal persons. To date, the books 1 to 6, and large parts of book 7 and book 8 of the Civil Code have legal force. Book 7A contains law from the Civil Code of 1838 that is still under revision. The old Civil Code was in force until the 1st of January 1992 and is now called the Old BW. The new BW is the starting point for this course.

Remember that you need to mention the article number as well as the number of the book, when citing articles from the Civil Code (*for example*: art. 2:52 and art. 7:52 Civil Code). This is contrary to citing articles of other codes, which are consecutively numbered, such as the Dutch Penal Code and the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*, abbreviated Rv). With these codes you will never need to give the number of the book, only the article number (*for example*: art. 310 Dutch Penal Code).

With regards to patrimonial law, the Civil Code has a specific ‘layered’ structure: books 3, 5, 6, 7, 7A and 8. This means that the rules in this code go from general to specific.

Book 3 contains the rules of patrimonial law in general (e.g. about the concept of ‘property’ or the concept ‘juridical act’). In other words, in this book we find the basic concepts and principles of patrimonial law. In book 5 (real rights) and in book 6 (law of obligations) we find further elaborations of these general rules: the specific rules on patrimonial concepts (e.g. book 6 deals with the obligation as a juridical act). Book 7 contains an elaboration of concepts dealt with in book 6: the so-called ‘particular’ arrangements or special contracts (e.g. sale agreement). We also find the layered structure within the respective books. For example, title 1 of book 6 is about obligations in general and title 5 is about multilateral agreements.

The consequence of this layered structure of the Civil Code is that when you search for a relevant legal rule, you may have to continue searching in another book. It is always possible that a more specific provision applies. After all, the underlying principle is *lex specialis derogat legi generali* (a so-called rule of conflict). In other words, the more specific rule precedes over the general rule. Hence, it is crucial that you find the most specific rule. Due to the layered structure of the Civil Code a new kind of article was introduced: the ‘schakelbepaling’. This type of article declares other articles, titles, sections or even whole areas of law applicable outside their original area of law. This is a method to go from specific to general; a way to extend the scope of a certain article, title or section of law.

An example of such a provision is art. 3:15 Civil Code: ‘The Articles 3:11 up to and including 3:14 are also applicable outside the field of property law as far as the nature of the legal relationship does not oppose this’. Another example is art. 3:89(4) Civil Code. This article declares rules regarding the transfer of immovable properties (e.g. a house or a piece of land) applicable to the transfer of other registered properties (e.g. a mortgage on that house or piece of land). This type of provisions (‘schakelbepalingen’) are also included in the General Administrative Law Act (*Algemene Wet Bestuursrecht*, GALA or Awb) because of its similar ‘layered’ structure.

System of the Dutch Penal Code

The Dutch Penal Code consists of three different books: general provisions, serious offences and summary (or minor) offences. The first book contains general provisions. As the title

suggests, this book regulates general issues, such as the scope of the Dutch criminal law, the punishments and measures that can be imposed in the Netherlands (art. 9 et seq. Penal Code) and to what extent the attempt to, the preparing of and participating in criminal offences are punishable (art. 45 et seq. Penal Code). Book 1 does not mention which acts are punishable; these acts, called ‘criminal offences’, are discussed in book 2 and book 3.

Book 2 lists the serious offences and the corresponding maximum sentences - with the exception of serious offences which can be found in special statutes. The different serious offences are put into categories and each title covers a category of serious offences. For example, title XIV covers serious offences against public morals; it contains offences such as indecency, child pornography, rape and indecent assault. Title XIX, entitled ‘Serious Offences Against Human Life’, includes among other things manslaughter, murder, murder of an infant and euthanasia. These two titles are composed of several articles, but there are also titles that cover only one offence (e.g. title XIXA entitled ‘Termination of Pregnancy’).

Book 3 covers summary (or minor) offences and is categorised in the same way as book 2. Again, each title lists a category of summary offences. For example, title II lists all summary offences related to public order and title VIII lists various types of abuse of office.

Please keep in mind that one article can contain multiple offences. For example, art. 350 Penal Code: ‘a person who intentionally and unlawfully destroys, damages, renders unusable or causes to disappear any property belonging in whole or in part to another’. It is not necessary that the property has been subjected to all four behaviours. Likewise, the property that was destroyed or damaged etc. belongs in whole to another person or in part.

When you cite an article of the Penal Code, you do not mention the book number. Unlike the Civil Code, the Penal Code is consecutively numbered and does not start with ‘art. 1’ at the beginning of each book. Therefore, it is sufficient enough to cite the article together with the name of the law without mentioning the book (e.g. art. 225 Penal Code).

Serious offences and summary (or minor) offences also exist outside the Penal Code in so-called special statutes. These are statutes that deal with offences regarding a specific topic. These statutes have their own system. An example is the Dutch Opium Act (*Opiumwet*). It contains all offences involving narcotics. Another example of a special statute is the Dutch Arms and Ammunition Act (*Wet wapens en munitie*) which bans possession and use of various types of weapons. The majority of the provisions of Book 1 of the Penal Code apply to these special statutes as well, since art. 91 Penal Code states that the titles I – VIIIA of the first book are also applicable to Acts that are punishable under other statutes or ordinances, unless determined otherwise in a statute.

System of the General Administrative Law Act (GALA or Awb)^{4*}

The structure of the General Administrative Law Act is pyramidal and hence identical to the Dutch Civil Code of 1992. The Act works from general to specific subjects. For example, the first, general chapter contains definitions that also apply to more specific topics (unless it is explicitly stated otherwise in the following chapters).

⁴ Extract from J.G. Brouwer & A.E. Schilder, *A survey of Dutch Administrative law*, 2013.

This pyramidal structure is not only important for the relation between the different chapters, but also for the relationship between the provisions within most of the chapters. Prior chapters are also applicable to the following chapters, but one must always be aware that a definition can also affect previous articles.

We will illustrate the pyramidal structure with the help of an example: Chapter 1 of the GALA defines a few central concepts. For example, the concept of ‘administrative authority’ in article 1:2 GALA or ‘order’ in article 1:3 GALA. Chapter 3 is titled ‘General provisions concerning orders’ and contains articles relevant for all types of orders (general binding regulations, policy rules, administrative measures and administrative decisions). In this chapter, you can find a provision that states that an administrative authority should ‘gather the necessary information when preparing an order and not abuse its power’ (article 3:2 and 3:3 GALA). Chapter 4 contains more detailed provisions on creating certain orders.

3. Analysing articles (provisions)

Provisions consist of legal conditions and legal consequences. The conditions laid down in a provision are the prerequisites that have to be fulfilled for the legal consequence to take effect. Consider for example the regulation that you need a valid ticket to enter a bus. The condition for entering a bus is possessing a valid ticket. If you fulfil this condition the consequence is that you are allowed to enter the vehicle. To assess whether there will be a certain legal consequence, you have to determine if all legal conditions are fulfilled. It is therefore important to analyse a provision to make sure what the exact conditions are. There are two types of conditions: alternative and cumulative conditions.

The concept ‘alternative conditions’ means that two (or more) conditions are listed and that either one or the other has to be fulfilled. In alternative conditions, the word ‘or’ is often used. Suppose that the provision would require you to own a valid ticket or pay the amount of € 2,- to enter a bus. If you want to enter a bus you will either have to show a valid ticket or you will have to pay € 2,-. It is not necessary to fulfil both conditions.

The concept ‘cumulative conditions’ means that two or more conditions are listed and that each condition has to be met. In cumulative conditions, the word ‘and’ is often used. For example, if a provision requires children to have a valid ticket and to be accompanied by an adult to enter a bus, children will both have to show a valid ticket and be accompanied by an adult when entering a bus. Both conditions need to be fulfilled; there is no happy medium.

It is often necessary to read a provision in conjunction with other provisions to get a correct understanding of the conditions and (legal) consequences. This is because provisions are usually part of a larger context. For example, art. 3:89(4) or 3:98 Dutch Civil Code.

We will now look at art. 408 Dutch Penal Code to show how a provision is analysed. It reads as follows:

‘A person who intentionally and unlawfully destroys, damages or renders unusable property on board a vessel is liable to a term of imprisonment of not more than two years or a fine of the fourth category’.

The legal conditions (alternative and cumulative) and the legal consequences are:

Condition 1: A person
Condition 2: intentionally
Condition 3: unlawfully
Condition 4: a: destroys property
b: damages property
c: renders useless property
Condition 5: on board a vessel

Consequence 1:

- a: is liable to a term of imprisonment of not more than two years
- b: is liable to a fine of the fourth category

The conditions 1, 2, 3 and 5 have to be fulfilled cumulatively and the conditions 4 a, b and c have to be fulfilled alternatively. Thus, a person has to intentionally *and* unlawfully *either* destroy *or* damage *or* render useless property, *and* the property has to be on board a vessel. The consequence of such unlawful behaviour is that the person is liable to a term of imprisonment of not more than two years *or* a fine of the fourth category. Note that this consequence is formulated ‘alternatively’. The judge may sentence the person to imprisonment, but he may also decide to fine the person. The court can choose between these sentences. However, contrary to the way the consequence is phrased, Dutch law also allows the court to impose *both* imprisonment and a fine. This is set out in art. 9 Penal Code. This example shows the importance of considering other provisions. Only after reading art. 9 Penal Code you become aware that, despite the wording of art. 408 Penal Code, the court can issue a sentence of both imprisonment and a fine. Moreover, you need to read art. 23 Penal Code to know what a fine of the fourth category is.

4. Analysing case law

Note on finding case law

Case law or law reports can be accessed by using the various databases of the law library. Dutch case law in Dutch can for example be found at www.rechtspraak.nl and by using databases such as *InView* and *Rechtsorde* (to be accessed by the [Dutch website of the law library](#)). Dutch case law is in general not translated.

European and international case law can be found on the websites of the various international courts. For example, judgments of the European Court of Human Rights (ECHR or ECtHR) can be found on the court’s website by using the [HUDOC database](#) and case law of the International Court of Justice (ICJ) can be found on its website as well. Use the case number to find the case more quickly and use HUDOC (not Google). The case law of the European Court of Justice (ECJ) can be found on [the website of the European Union](#) (EUR-Lex). The European Case Law Identifier (ECLI) is an identifier for case law in Europe.

For citing cases (as well as other sources) the guidelines of the *Oxford Standard for the Citation of Legal Authorities (OSCOLA)* are followed. OSCOLA is available online; it can be accessed by using the [Law Libguide](#).

When examining a case, keep the following questions in mind:

1. What are the relevant facts in this case?
2. Which course did the legal proceedings take?
3. Which question(s) of law does the court have to answer?
4. What are the relevant legal rules?
5. Under which conditions may the exercise of a protected right be interfered with according to the court?
6. How does the court answer the question(s) of law?
7. Which arguments does the court use to justify its answer to question(s) of law?

1. The relevant facts

Relevant facts are facts that started the conflict and that have legal consequences. For example, Eric is invited to the birthday party of a girl he is madly in love with. When he sees her coming down the stairs in her father's house, he gets so agitated that he knocks down a precious heirloom. The father wants the damages reimbursed. Relevant facts from a legal point of view are not that Eric was seriously in love and neither that the damage was caused during a birthday party. Relevant is that Eric came in contact with an object that belonged to someone else and that there is damage to that object because of his actions.

2. Course of the legal proceedings

To fully understand a law report you want to, so to speak, map out the course of the legal proceedings. On a national level, analyse who started the proceedings, who appealed in second instance and who appealed in last instance (cassation)? Which courts decided the case or – in other words – how did the case come in front of an International or European Court?

3. Question(s) of law

The question of law is the legal problem that keeps parties divided. Often the problem can be reduced to the explanation of a concept or term in the relevant source of law. There may be an open standard in a provision or a treaty that needs explaining, e.g. 'good faith'. Or there may be a legal rule formulated in a prior case or a provision that is unclear and that needs elaboration. In the example cited above the question could be framed as follows: Does Eric have to repair the damages on the basis of art. 6:162 Civil Code? It is clear that some of the requirements of art. 6:162 et. seq. Civil Code are fulfilled. There is after all a violation of someone else's right (the right of ownership of the father), there is damage and that damage is caused by Eric (causality). Hence, the question can now be formulated more precisely: Did Eric commit an unlawful act under art. 6:162 Civil Code in the circumstances presented in the example above?

4. Relevant legal rules

To understand the legal conflict and the decision of the court, you need to find the relevant legal provisions, read them and analyse them. In our example this is art. 6:162 et seq. Civil Code. If you analyse this provision you find the following legal conditions: a) unlawful act ('a violation of someone else's right', 'a violation of a duty imposed by law' or 'a violation of what according to unwritten law has to be regarded as proper social conduct'), b) attributed to ('fault' or 'risk'), c) damage and d) causality. If these conditions are fulfilled (and the requirement of relativity mentioned in art. 6:163 Civil Code is met), the legal consequence is that the damages have to be compensated. The relevant legal rules can also be found in international legislation (Conventions or Treaties).

5. Conditions for interfering or restricting exercise of protected right according to the court?

The assertion of a certain right is sometimes protected by a Convention or Treaty, such as the European Convention on Human Rights. Nevertheless, it is also possible for authorities to interfere with the exercise of a protected right. The conditions for restricting a right can not only be found in the provision of the Convention or Treaty itself but also in case law. This means that courts can also impose conditions for interfering with a protected right through interpreting a provision in a certain manner; if these conditions are met, the court may find that an interference is justified and may thus conclude that the right was not violated.

6. Answer of the court to the question(s) of law

In order to answer this question, you want to know how the court decided the questions of law. Usually you can find the decision of the court at the end of the ruling.

7. Arguments the court uses to justify its answer to the question(s) of law

Of course, you want to know how the court came to its decision. You want to know which arguments the court used. It is helpful to look at the interpretation methods and/or type(s) of reasoning to learn which arguments determined the court decision (see text in week 1 of part A – Law).

NB Viewpoint both parties and separate opinion of judge

Finally, when studying a case, it is useful to look at the arguments brought before court by both parties and, if applicable, to look at concurring and dissenting opinions of judges, and case comments written by legal scholars.

➤ **Assignment 1 ‘Finding and analysing legislation’**

1. Find the following provisions in your reader with legislation and analyse these articles. This means state the legal conditions – both alternative and cumulative – and legal consequences. Also consider whether any other provisions are relevant.

- a) art. 1:3(1) General Administrative Law Act (GALA)
- b) art. 12 of the European Convention on Human Rights

2. Tamara B. is prosecuted for stealing the readers with legislation from another law student.

- a) On the basis of which provisions(s) will Tamara B. be prosecuted? Explain the different steps that resulted in finding these provision(s).
- b) Which sanction is applied against this offence?
- c) Is this offence a serious offense (a crime) or a summary (or minor) offense? Explain your answer.

➤ **Assignment 2 ‘Annen v. Germany’**

Read the case '[Annen v Germany](#)' and answer the question below.

! Always explain your answer *in your own words* as much as possible and write down the relevant *paragraph(s)** for each (part of your) answer. When referring to an article from your reader with legislation in your answer, be specific and please remember: an answer is never a simple yes or no!

*** paragraphs:** a case is divided into paragraphs which are numbered on the left side of the text.

1. What are the relevant facts in this case? Summarise in your own words, using no more than five sentences. Provide the relevant paragraphs from the judgment.
2. Which course did the legal proceedings take in this case?
3. Which main question(s) of law did the Court have to answer? Give the main question of law and split this question into two sub-questions.

WEEK 2 METHODS OF INTERPRETATION AND CASE LAW (ECtHR)

Reading:

- Text below on ‘Methods of interpretation’.
- ECtHR, Catt v. The United Kingdom (2019), application no. 43514/15.

Note: to find judgments of the European Court of Human Rights use the HUDOC database as described in Skills week 1, section 4.

Assignment:

1. Reading and analysing the cases below and answering the relevant questions on methods of interpretation
 2. Answering the questions on ECtHR, Catt v. The United Kingdom (2019). Always refer to the relevant paragraph(s) from the judgment!
-

Text and assignment: Methods of interpretation

When deciding a case, a judge has to reach a decision based on all the relevant facts and the applicable legal rules. He has to tie in with a legal rule from one of the sources of law. Sometimes this is not a simple exercise. Legal texts and treaty provisions need to be interpreted before they can be applied. The decision that a certain legal rule applies to the situation at hand requires justification as well. Fortunately, a judge can apply different methods of interpretation and types of reasoning. We will briefly address them, since they can help us understand how courts reach their decisions. It is important to stress that the use of these methods may vary in different legal systems. Judges from different legal systems may favour different rules of interpretation. For example, in English law the *literal rule* (see the rule of *grammatical interpretation* below) is considered the main rule of interpretation, whereas reference to parliamentary materials, thus interpretation in conformity with the legislative history of a statute, is in principle not permitted. For this course, we focus on the Dutch system. Read the text below and answer the subsequent questions on the use of interpretation methods in the Netherlands.

Eight methods of interpretation

When a judge is confronted with a case, the solution to a question of law never follows clearly from the law. A judge always needs to interpret the text of the law. In doing so, he can rely on several methods of interpretation that may or may not offer similar outcomes. We distinguish the following eight methods of interpretation:

- 1) *Grammatical interpretation*: explanation based on the ordinary or plain legal meaning of the words (also known as the literal rule). Often involves explicit reference to dictionary definitions.
- 2) *Interpretation based on legislative history*: explanation in accordance with the intent of the legislator, as interpreted from the parliamentary and political history of a statute (e.g., *Kamerstukken* or parliamentary documents and proceedings).

- 3) *Systematic interpretation*: explanation that aligns with the broader legal system and ties in with legally regulated situations (note: this method of interpretation is very similar to reasoning by analogy).
- 4) *Historical interpretation*: explanation that takes into account the legal systems from which the provision originates (e.g., ancient civil law, early French law, Roman law).
- 5) *Anticipatory interpretation*: explanation that aligns with the meaning of a relevant provision in a new law that has already been enacted but has not yet entered into force.
- 6) *Teleological interpretation*: explanation in accordance with the aim or purpose of the law (also known as the purposive interpretation).
- 7) *Comparative interpretation*: explanation that ties in with the meaning of a relevant provision in a foreign legal system (e.g., German law, Anglo-American law).
- 8) *Interpretation in conformity with treaty law*: explanation that departs from the original intent of the legislator, given in order to align the law with binding treaty obligations.

Three types of reasoning in case of a *casus omissus*

When a judge concludes that the legislator has failed to provide a rule for a certain case, a so-called *casus omissus*, he may resort to three types of legal reasoning: analogy, *a contrario* and legal refinement.

1. Analogy.

Reasoning by analogy means that a legal rule is applied in a situation that is not directly covered by the letter of the law, but is fairly similar. This type of reasoning may be justified by the principle that the legislator wishes that similar situations are to be treated similarly, even though it did not create an explicit rule: ‘equal situations should be treated equally’. For example, in Dutch private law (art. 7:226 Civil Code) a rule exists that ‘sale does not break tenancy’, or *koop breekt geen huur* (a buyer of a house has to honour the existing rental agreements, a rule which protects the tenant). The Dutch Civil Code does not contain a rule stipulating that transferring a house based on donation, instead of sale, does not break tenancy. However, since donation and sale both result in a transfer and since the tenant also merits protection in the event of a donation, it is accepted by analogy that donation does not break tenancy either.

Note: In Dutch criminal law, reasoning by analogy is prohibited, because of the principle of legality, enshrined in art. 16 of the Dutch Constitution (*Grondwet*, abbreviated Gw) and in art. 1(1) Dutch Penal Code (*Wetboek van Strafrecht*, abbreviated Sr). Yet extensive interpretation is allowed in Dutch criminal law (see HR 23 May 1921, NJ 1921, 564, concerning theft of electricity). The key difference between interpretation by analogy and extensive interpretation lies in their respective methodologies. Extensive interpretation involves stretching the terms of existing legal provisions to cover new situations that are not explicitly mentioned in the law but can be reasonably inferred from its language and intent. In contrast, interpretation by analogy involves creating a whole new provision based on an existing one, applying it to a different but similar case not originally covered by the law. While the outcomes of these two approaches might be similar, the crucial distinction is that extensive interpretation works within the boundaries of the existing legal text, whereas analogy introduces a new rule that extends beyond the original provision.

2. A contrario.

Reasoning *a contrario* produces exactly the opposite effect. This way of reasoning may be justified by the principle that the legislator provides rules for a specific situation for a particular reason and therefore does not want those rules to be applicable in other, different situations.

The situation that is regulated, is considered to be so special that the relevant legislation cannot be applied in other situations. In fact, situations not covered by the regulation might even result in the opposite outcome.

For example, art. 1:34(1) Civil Code (*Burgerlijk Wetboek*, abbreviated BW) used to stipulate that the woman whose marriage was dissolved by the death of her husband, was not allowed to enter a new marriage within 306 days thereafter. The underlying reason was that if a woman remarries within this legal term and becomes pregnant, it is very difficult to determine the father of the child, which could result in all kinds of problems of inheritance. Since this problem does not arise with men, the term of 306 days did not apply to them. The rule was repealed from matrimonial law when the Dutch legislator provided a solution for this problem in its revised laws of inheritance.

3. Legal refinement (or the narrowing down of a legal rule).

This is a way of reasoning used by judges when the legislator has failed to provide for an exception to a rule. This way of reasoning may be justified by the fact that when a rule is drafted in too general a fashion, it is fair to make an exception. A classic Dutch example is the ruling of the Supreme Court in 1916 (HR 4 February 1916, NJ 1916, 450, own fault injured party) with regard to an unlawful act (tort). The Supreme Court decided in this ruling that the person who commits an unlawful act, is in principle obliged to repair the damage resulting from this act. But, it is only fair that the injured person and co-cause of the damage also bears a part of the damage himself, if the damage is partly caused by his own fault. Nowadays, this idea is laid down in art. 6:101 Civil Code.

The methods of interpretation can be used at different moments during the legal analysis. They may also be combined with legal reasoning. For example, prior to reasoning by analogy, grammatical interpretation may be used to establish that a particular rule does not cover the situation at hand.

The effect of the interpretation method

The interpretation by the court of a statutory provision may have different effects. There may be an *extensive* effect or a *restrictive* effect. With an extensive interpretation, the court effectuates that the relevant statutory provision is given an explanation which is broader than one would expect, based on the words and the purpose of that provision. A restrictive interpretation has the opposite effect. The court gives a more narrow meaning to a particular provision than one might expect, based on the words and/or purpose of that provision.

It is ultimately left to the courts how far they go in justifying their decisions. Art. 121 Dutch Constitution only requires courts to motivate their decisions, it does not lay down the extent to which they must do so. Courts are also free to choose their guidance. They may use earlier decisions (precedents) or views of influential authors. After all, legal scholars are working to refine the existing legal system. Courts may seek further justification for their decision in the legal principles. These are basic ideas that form the foundation of a particular legal system. Some principles are based in ethics (e.g., no punishment without fault), others not so much (e.g., the *trias politica*). Where the ultimate justification of a legal judgment lies, is a matter of conviction. Many legal scholars seek this justification in societal needs, others seek it in religious conviction. One of the greatest Dutch legal scholars of the previous century, Paul Scholten, stated that a legal decision is in essence always a decision of conscience. Parties should accept that their problem has been given the utmost care and if they nevertheless disagree with the verdict, they can appeal.

➤ **Assignment 1 ‘Using the grammatical interpretation method’**

Please read Art. 8 of the ECHR and answer the following questions:

1. Do children who are not yet 14 years old have the right to respect for the privacy of their WhatsApp chats?
2. Do celebrities have the right to respect for their private life even if they do not have a family?
3. Can a public authority interfere with a person’s right to respect for their home if it is not necessary in a democratic society?

➤ **Assignment 2 ‘Which method(s) of interpretation?’**

For this assignment, we have selected a landmark case that addresses the question ‘what constitutes an unlawful act (‘tort’)’ under Dutch law. This case also illustrates how the law evolves in response to societal developments. Read and analyse the case below and answer the following four questions:

1. What is the question of law?
2. Which method(s) of interpretation does the court use to answer this question (and thus as a basis for its decision)?
3. Which type of reasoning (*a contrario*, analogy or narrowing down of the legal rule) does the court use?
4. Does the interpretation method(s) and / or type(s) of reasoning produce an extensive or restrictive effect?

Case Nijhuis/De Vries

In early January 1909, severe overnight frost caused a water pipe to burst in a warehouse where leather goods were stored. The warehouse and its contents were owned by Mr. Nijhuis. Fearing permanent damage to the leather, he determined that it was necessary to shut off the main water supply. However, the main valve was not located in the warehouse itself, but in the residential quarters on the second floor. These premises were rented by Ms. De Vries.

In a state of panic, Mr. Nijhuis approached Ms. De Vries and asked her either to turn off the water herself or to allow him access to the apartment to do so. She refused outright. According to her, Nijhuis’ request was merely an excuse to disturb her in her sleep, and he could return the following morning. Even after Mr. Nijhuis warned her that failing to act would result in severe damage to his stock she remained unmoved.

Faced with this refusal, Mr. Nijhuis went to the police, which ultimately assisted him in gaining access to the apartment. Unfortunately, by then approximately thirty minutes had passed, and the leather had already suffered permanent damage. Mr. Nijhuis sued Ms. De Vries for damages, claiming she had committed an ‘unlawful act’ – *or onrechtmatige daad* – under the then-current art. 1401 of the Dutch Civil Code.

The District Court ruled in favour of Mr. Nijhuis. It held that the concepts of ‘unlawful act’ and ‘unlawful negligence’ should not be interpreted so narrowly as to apply only to acts or omissions that violate somebody’s right or breach a duty the law imposes on someone. Rather, these concepts also encompass acts or omissions that fail to show the necessary respect for another person, their property or their labour.

However, the Supreme Court, in its decision of 10 June 1910 (W. 9038), found this interpretation of the concept ‘unlawful act’ under art. 1401 (old) Dutch Civil Code far too expansive. It quashed the District Court’s ruling, stating: “that such acts and omissions (...) may have violated that what is considered proper from a moral or societal point of view; however, the application of articles 1401 and 1402 of the Civil Code is not determined by those standards, but depends on whether the act or the omission in question constitutes a breach of a duty that the law imposes on someone or violates another person’s right.”

Answer the four questions both for the District Court and the Supreme Court.

➤ **Assignment 3 ‘Catt v. The United Kingdom’**

! Always explain your answer *in your own words* as much as possible and write down the relevant specific *paragraph(s)** that you used. In addition, when you refer to an article from your reader with legislation in your answer, also try to be specific and lastly keep in mind that an answer is never a simple yes or no!

* **paragraphs:** a case is divided into paragraphs which are numbered on the left side of the text. For instance, in paragraph 12 of the case ‘Catt v. the United Kingdom’, a relevant fact is described (“the applicant issued proceedings against ACPO”).

QUESTIONS:

1. What are the relevant facts in this case? Summarise in your own words, using no more than five sentences. Provide the relevant paragraphs of the Court’s judgment.
2. Which course did the legal proceedings take in this case?
3. Which main question(s) of law did the Court have to answer? Give the main question of law and split this question into two sub-questions.
4. Under which conditions may the right(s) protected by article 8 ECHR be interfered with, according to the European Court of Human Rights in this case?
5. How did the Court answer the question(s) of law and how did it substantiate its decision?
6. Judge Koskelo, together with judge Felici, present a different opinion. What is their main position for disagreeing with the Court’s decision and how do they substantiate the concurring opinion?

WEEK 3 CASE LAW AND CASE SOLVING: ADMINISTRATIVE LAW

Reading:

- Text below on ‘Solving cases’.
- ECtHR, Metropolitan Church of Bessarabia and others v. Moldova (2001), application no. 45701/99.

Note: to find judgments of the European Court of Human Rights use the HUDOC database as described in Skills week 1, section 4.

Assignments:

1. Answering the questions on ECtHR, Metropolitan Church of Bessarabia and others v. Moldova (2001). Always refer to the relevant paragraph(s) from the judgment!
 2. ‘The Church of the Flying Spaghetti Monster’
-

Text: Solving cases

To help solve a case, you can use the following outline as an aid.

Outline for solving cases:

- I. Select the (relevant) facts.
- II. Qualify the facts in a legal manner and formulate the main question(s) of law.
- III. Select the appropriate legislation (articles) or treaty provisions and analyse them by stating the conditions – both alternative and cumulative – and legal consequences mentioned in legislation and or in the treaty.
- IV. Find out the meaning of the conditions of these applicable legal rules by studying case law (and legal literature) and test the conditions against the facts of the case.
- V. Make a motivated decision. Having studied relevant case law, what are the differences and similarities in the facts between the case you have to solve and the facts in the relevant judgment(s)? How should a court – let’s say the European Court of Human Rights – answer the question of law in your opinion?

Explanation:

The starting point for solving a case is usually a series of events. Take the example used in the text on analysing case law (week 1): Eric is invited to the birthday party of a girl he is madly in love with. When he sees her coming down the stairs in her father’s house, he gets so excited that he knocks down a precious heirloom. The father wants the damages reimbursed.

Remember that it is not relevant (I) that Eric is madly in love, nor that the damage was caused during a birthday party. Relevant is that Eric came in contact with an object that belonged to someone else and that there is damage to that object because of his actions.

The question of law (II) could be constructed as follows: does Eric have to repair the damages on the basis of art. 6:162 Dutch Civil Code? As we have seen in week 1, it is clear that some of the requirements of art. 6:162 et. seq. Civil Code are fulfilled. There is a violation of someone else’s right (the right of ownership of the father), there is damage and that damage is caused by Eric (causality). And we have seen that as a result, the question can now be formulated more

precisely: did Eric commit an unlawful act under art. 6:162 Civil Code in the circumstances presented in the example?

The applicable legal rules (III) are easily found with some prior knowledge, namely articles 6:162 Civil Code et seq. After all, it is probably a matter of tort. Analysing the legal provisions, as we have seen, leads to the following legal conditions: a) unlawful act (divided in ‘a violation of someone else’s right’, ‘a violation of a duty imposed by law’ or ‘a violation of what according to unwritten law has to be regarded as proper social conduct’), b) attributed to (to be classified as ‘fault’ or ‘risk’), c) damage and d) causality. If these conditions are fulfilled (and the relativity is not lacking, art. 6:163 BW) the legal consequence is that the damages have to be reimbursed.

Answering the question of law or testing the conditions (IV) is not very difficult in this case. Even clumsy behaviour (negligence) is in civil law sufficient for imputing or attributing the unlawful act to someone, as was already indicated during the parliamentary discussions on art. 6:162(3) BW. Thus, the act can be imputed and the decision (V) will be that Eric will have to repair the damages.

➤ Assignment 1 ‘Metropolitan Church of Bessarabia v. Moldova’

! Always explain your answer *in your own words* as much as possible and write down the relevant *paragraph(s)* for each (part of your) answer. When referring to an article from your reader with legislation in your answer, be specific and please remember: an answer is never a simple yes or no!

1. What are the relevant facts in this case? Summarise in your own words, using no more than five sentences. Provide the Court’s paragraphs.
2. Which course did the legal proceedings take in this case?
3. Which main question(s) of law did the Court have to answer? Give the main question of law and split this question into two steps.
4. Under which conditions may the exercise of the right(s) protected by Article 9 (1) ECHR be interfered with, according to the European Court of Human Rights in this case?
5. How did the Court answer the question(s) of law and how did it substantiate its decision?

➤ Assignment 2 ‘The Church of the Flying Spaghetti Monster’

In 2005, the Church of the Flying Spaghetti Monster was established. ‘Pastafarianism’ is considered by adherents as a true religion and as one that is as legitimate as any other. It revolves around the idea that the universe has been created by an invisible floating mass of tangled spaghetti (the Flying Spaghetti Monster). In 2016, the Church was recognised by the government of New Zealand and its members became authorised to officiate marriages (‘to tie the noodley knot’).

Suppose that there is a legal basis for religious organisations in the Netherlands to request the Dutch government to be officially recognised in order to enjoy several fiscal benefits. The Dutch branch of the Church of the Flying Spaghetti Monster – inspired by the success of its

Kiwi Pastafari brothers and sisters – applies for such recognition, but is refused by the Dutch authorities. After exhausting all national remedies, the Church lodges a complaint with the European Court of Human Rights, arguing that the refusal to recognise their organisation violates their right laid down in Article 9 ECHR. The government, however, states that Pastafarianism lacks sufficient “seriousness” and “cohesion” and is merely a “parody religion”. It nevertheless emphasises that the Church is allowed to establish legal personality and that its members are free to gather in their churches and carry out their (religious) activities.

Answer questions II to V below:
(Use the outline for solving cases!)

- I. The relevant facts have been stated above.
- II. What is the main question of law the European Court of Human Rights has to answer?
- III. Analyse article 9 ECHR: Which right does article 9 ECHR contain and under what conditions may this right be restricted according to the treaty provision?
- IV. How does the ECHR interpret these conditions in these types of cases?
- V. In your opinion, what should be the outcome in this case? In other words: how should the Court answer the main question of law?

WEEK 4 CASE LAW AND LEGAL RESEARCH: CRIMINAL LAW

Reading:

- ECtHR, Namazov v. Azerbaijan (2020), application no. 74354/13.
- Vols, M. (2021). *Legal research: one hundred questions and answers*. The Hague: Boom Juridisch, chapter 2.

Note: to find judgments of the European Court of Human Rights use the HUDOC database as described in week 1 of the Legal Skills part in this reader.

Assignments:

1. Answering the questions on ECtHR, Namazov v. Azerbaijan (2020). Always refer to the relevant paragraph(s) from the judgment!
 2. Answering the questions on Legal research – research questions
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➤ Assignment 1 ‘Namazov v. Azerbaijan’

! Always explain your answer *in your own words* as much as possible and write down the relevant *paragraph(s)* for each (part of your) answer. When referring to an article from your reader with legislation in your answer, be specific and please remember: an answer is never a simple yes or no!

1. What are the relevant facts in this case? Summarise in your own words, using no more than five sentences. Provide the relevant paragraphs from the Court’s judgment.
2. Which course did the legal proceedings take in this case?
3. Which main question(s) of law did the Court have to answer? Give the main question of law and split this question into two steps.
4. Under which conditions may the exercise of the right(s) protected by Article 8 ECHR be interfered with, according to the European Court of Human Rights in this case?
5. How did the Court answer the question(s) of law and how did it substantiate its decision?

➤ Assignment 2 Legal research – research questions

Before making this assignment, read chapter 2 of Vols, M. (2021). Legal research: one hundred questions and answers. Den Haag: Boom Juridisch

This week we start discussing legal research. One of the most important things when conducting legal research is formulating a fitting research question. Read the four research questions below. For each research question, indicate the type of research question and explain your answer.

1. What are the differences and similarities between adoption procedures in the Netherlands and France?
2. Will criminalising the use of a mobile phone on a bicycle lead to fewer traffic accidents?
3. What measures should be taken to ensure that the housing of an ex-offender does not lead to disorder in the neighbourhood?

4. Which possibilities does Dutch criminal law offer to combat libel and slander on the Internet?

WEEK 5 CASE LAW AND LEGAL RESEARCH: PRIVATE LAW

Reading:

- ECtHR, Evaldsson and others v. Sweden (2007), application no. 75252/01.

Note: to find judgments of the European Court of Human Rights use the HUDOC database as described in Skills week 1, section 4.

Assignments:

1. Answering the questions on ECtHR, Evaldsson and others v. Sweden (2007). Always refer to the relevant paragraph(s) from the Court's judgment!
 2. Legal research – The European Court of Justice and its political impact
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➤ Assignment 1 ‘Evaldsson and others v. Sweden’

! Always explain your answer *in your own words* as much as possible and write down the relevant *paragraph(s)* for each (part of your) answer. When referring to an article from your reader with legislation in your answer, be specific and please remember: an answer is never a simple yes or no!

1. What are the relevant facts in this case? Summarise in your own words, using no more than five sentences. Provide the relevant paragraphs of the Court's judgment.
2. Which course did the legal proceedings take?
3. Which main question(s) of law did the Court have to answer? Give the main question of law and split this question up into two sub-questions.
4. Under which conditions may the right(s) protected by Article 1 Protocol No. 1 be interfered with, according to the European Court of Human Rights in this case?
5. How did the Court answer the question(s) of law and how did it substantiate its decision?

➤ Assignment 2: Legal research – The European Court of Justice and its political impact

Before making this assignment, read Michael Blauberger, M. & Schmidt, S.K. (2017). The European Court of Justice and its political impact, West European Politics, 40(4), p. 907-918. Answer the following questions:

1. Explain what form of legal research is conducted in the article of Blauberger and Schmidt.
2. The authors talk about quantitative studies and qualitative studies. What is the difference between these two types of studies?
3. The authors did not include a clear or explicit research question, but of course they have one. What is the research question that is answered by the authors in this paper?
4. Suppose you are tasked with writing a research plan on the impact, functioning or role of the European Court of Justice.
 - a. Formulate a relevant research question.
 - b. What form of legal research do you want to conduct and why?

c. What type of methodology would you use and why?

WEEK 6 CASE LAW AND LEGAL RESEARCH

Reading:

- ECtHR, Ognevenko v. Russia (2018), application no. 44873/09.
- Ja
- Vols, M. (2021). *Legal research: One hundred questions and answers*. The Hague: Boom Juridisch (only the relevant questions/chapters).

Assignments:

1. Answering the questions on ‘Ognevenko v. Russia’.
 2. Answering the questions on ‘Different ways of conducting legal research’.
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➤ **Assignment 1 ‘Ognevenko v. Russia’**

! Always explain your answer in *your own words* as much as possible and write down the relevant paragraph(s) for each (part of your) answer. When referring to an article from your reader with legislation in your answer, be specific and please remember: an answer is never a simple yes or no!

QUESTIONS:

1. What are the relevant facts in this case? Summarise in your own words, using no more than five sentences. Provide the relevant paragraphs of the Court’s judgment.
2. Which course did the legal proceedings take? Note: only focus on the applicant’s first attempt to obtain state registration.
3. Which question(s) of law did the Court have to answer? Give the main question of law and split this question into two sub-questions.
4. Under which conditions may the right(s) protected by Article 11 be interfered with, according to the European Court of Human Rights in this case?
5. How did the Court answer the question(s) of law and how did it substantiate its decision?
6. Judge Dedov presents a dissenting opinion. What is his main position and how does he substantiate his opinion?

➤ **Assignment 2: Different ways of conducting legal research**

Question 1:

- a. What forms of legal research are mentioned by Vols in his book ‘Legal research: One hundred questions and answers’? Explain the different forms in your own words.
- b. If you are tasked to conduct legal research, what form of legal research would you prefer and why?

Question 2:

Read Vilija Velyvyte, ‘The Right to Strike in the European Union after Accession to the European Convention on Human Rights: Identifying Conflict and Achieving Coherence’,

Human Rights Law Review, 2015(15), p. 73-100. **Only read pages 73-79 (until end of section 2.B.) and pages 99-100.** This article is available via the library's e-resources.

- a. What type of research is Velyvye conducting in this article? *Explain your answer*
- b. What type of research question does Velyvye formulate in their article? *Explain your answer*

Feedback form – Student presentations & peer feedback

Name presenter:.....

Name reviewer:.....

Feedback on presentation skills	Comments
Eye contact Body language Functional gestures Breathing Interaction Use of voice / variation in tone Speed Use of pauses Was the presentation clear and easy to follow? Did the presenter engage the audience?	
Feedback on structure & content	Comments
Did the presentation have a clear structure with an introduction, middle part and conclusion? Was the information/answer accurate? Was the information relevant? Did the presentation cover the topic in sufficient depth? Acknowledgement of sources / material cited (e.g., paragraph numbers)? Other...	
Strengths and areas for improvement	Comments
- What were the strengths of the presentation? - What could be improved in future presentations? - Any additional comments?	

Please provide honest and constructive feedback to help your peers improve their skills.