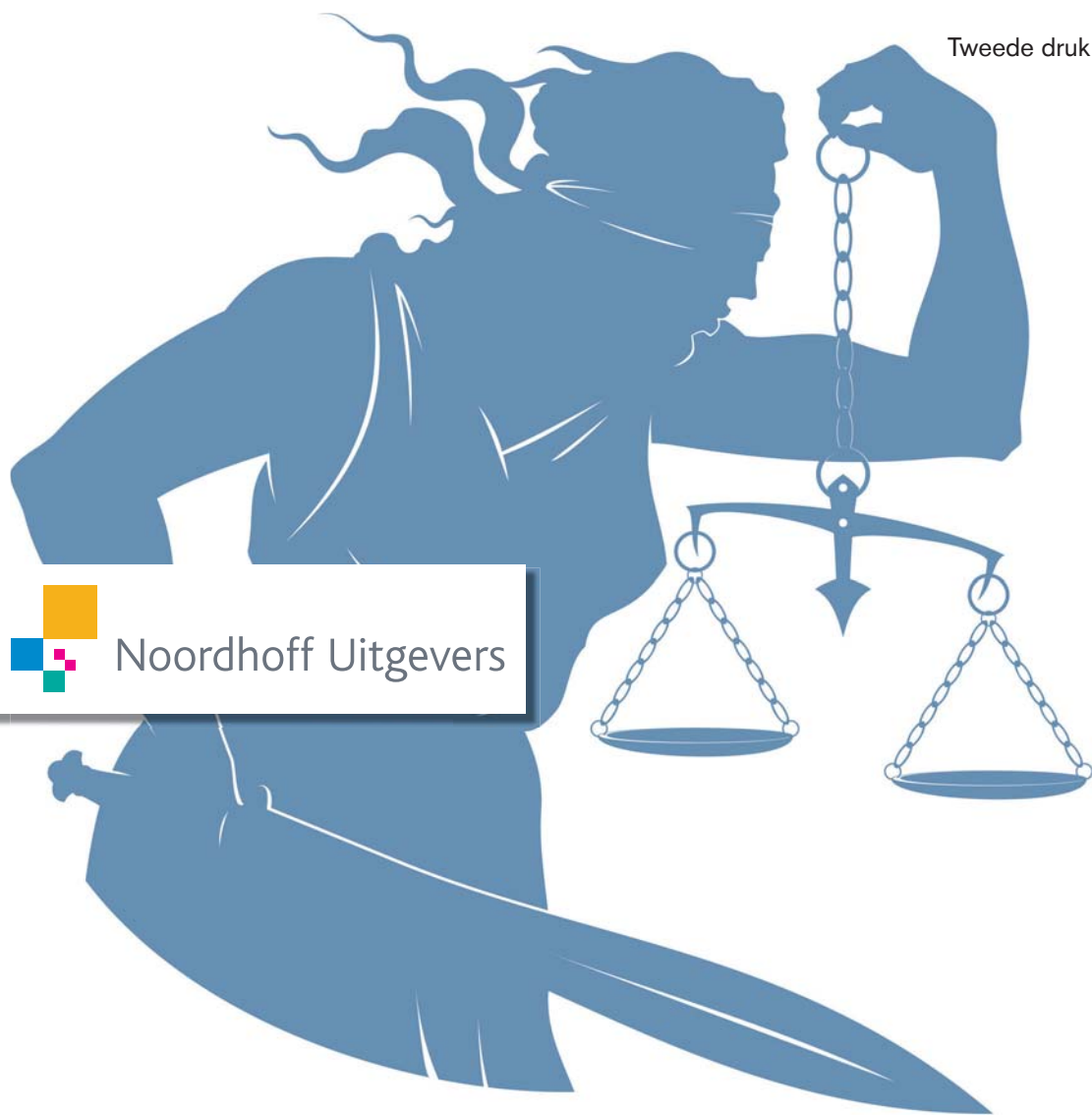

Legal English

for Bachelors

Tony Foster,
Claudette Kulkarni - van Caubergh,
Mischa van Perzië

Tweede druk



Noordhoff Uitgevers

Legal English for Bachelors

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Preface

The ever-progressing internationalisation of the legal profession means that English is becoming increasingly important as a medium of communication for lawyers. Law students are expected to read textbooks in English or write their final papers in English. Attorneys-at-law and paralegals are expected to advise their clients or write letters in English. Discussing legal matters in one's own language is difficult enough, but in a foreign language it may seem virtually impossible. Most Dutch law schools try to prepare their students for a future in international legal practice by offering optional courses in Legal English, while some have even made Legal English compulsory for all their students. It is for such courses that we have written this practical textbook.

Legal English for Bachelors takes a somewhat unusual approach to the subject. Many textbooks take as their starting point that learning Legal English means that students are introduced to the English or American legal system and its terminology. Although it is true that English is the 'native language' of many legal systems around the world, we do not feel that there is much point in teaching our students the legal language of Britain and its former colonies. When they graduate, they will almost all find employment as experts in Dutch law. *Legal English for Bachelors* covers the major areas of Dutch law and focuses on the linguistic and sociolinguistic competences needed to communicate about these areas. Attention is given to the four skills: reading, listening, speaking and writing.

The first six chapters have been written with students in mind who have to brush up their English for instance because they did not take English as an examination subject. We have tried to stimulate interest in Legal English by choosing fairly general, philosophical topics that we hope will generate a need to have a discussion in English. Furthermore, we present language functions most useful to legal practitioners, such as comparing and contrasting, agreeing and disagreeing, and giving advice. Chapter 3 is special in that it is devoted entirely to writing, in particular to text types that students will one day have to produce themselves, such as letters and memos. We have tried to limit the amount of explicit grammar instruction to the minimum, because we believe that lexical input is more important to students learning English for Specific Purposes.

The second half of the book deals with the most important areas of law that legal bachelors will encounter in their careers. Each unit in the book offers lexical input on a particular area of law. Students are encouraged to explore and discover Dutch legal terminology in a number of short exercises. The newly acquired lexical knowledge can now be consolidated and put to practice in the skills assignments. The exercises are as realistic as possible – for instance, students write short letters or memos on a legal problem or give advice to an imaginary client in short role plays. Communication is paramount. *Legal English for Bachelors* has a companion

website (www.legalenglishforbachelors.noordhoff.nl) with listening and functions materials as well as the answer keys to the assignments.

We would like to thank the following persons for their help and support. Firstly, we are grateful to Aernout Pilot, Bert Deen and Josie Borger at Noordhoff Uitgevers for their enthusiasm and support. Secondly, we thank Alice Boers, Philomena Dol, Manon Foster, Sarah von Galambos, Thomas van Iersel, Damir Klisanic, Saket Kulkarni, Egbert Langeras, Robert Lankamp, Martina Noteboom, Dick Smakman, Sandra de Vries, and Katinka Zeven: friends and colleagues who so generously helped us to record materials. We are especially indebted to our colleague Astrid Bracke (Hogeschool InHolland/University of Leiden), for her supportive but critical reading of parts of the manuscript. Manon and Saket, thank you for all your love and support. They – and you – mean more to us than we can express.

We hope that the colleagues and students who adopt *Legal English for Bachelors* will find it useful as well as interesting and fun to work with. Naturally, we welcome any questions and comments.

Tony Foster
Claudette Kulkarni-van Caubergh
Mischa van Perzië

Leiden, 25 October 2007

Preface to the second edition

It is more than five years ago that the first edition of *Legal English for Bachelors* appeared. For this second edition, we have changed the organisation of the book. The only chapter on writing is no longer tucked away somewhere in the middle of the book, but has moved to a more prominent place at the end of the book. The ‘Using Legal English’ chapters, which we have found to be the focus of most courses, have been moved to the beginning of the book. However, students who wish to brush up on their English can still do so with chapters 10 to 14. Furthermore, some of the material that was at the back of the first edition, such as tapescripts, keys to the exercises, suggestions for test questions, and a reference grammar for legal writers, will be accessible from the website accompanying the second edition. Finally, we have added new chapters on European and commercial law, as these appear to be important future areas of international practice for our students.

We would like to thank our publisher Ms Sjia Cornelissen and our editor Ms Marijke Quarré for their support and kind patience. Special thanks to Ms Tanya Sancisi for allowing us to interview her about her work as an attorney-at-law and to Saket Kulkarni for his insights on pensions. Finally, this second revised and enlarged edition has greatly benefited from the many comments that we were happy to receive from teachers and students working with the *Legal English for Bachelors*. We are particularly indebted to our colleague Mr Victor Carton, for his many helpful questions and constructive comments and corrections. Any remaining errors are entirely our own.

Leiden, 1 November 2013

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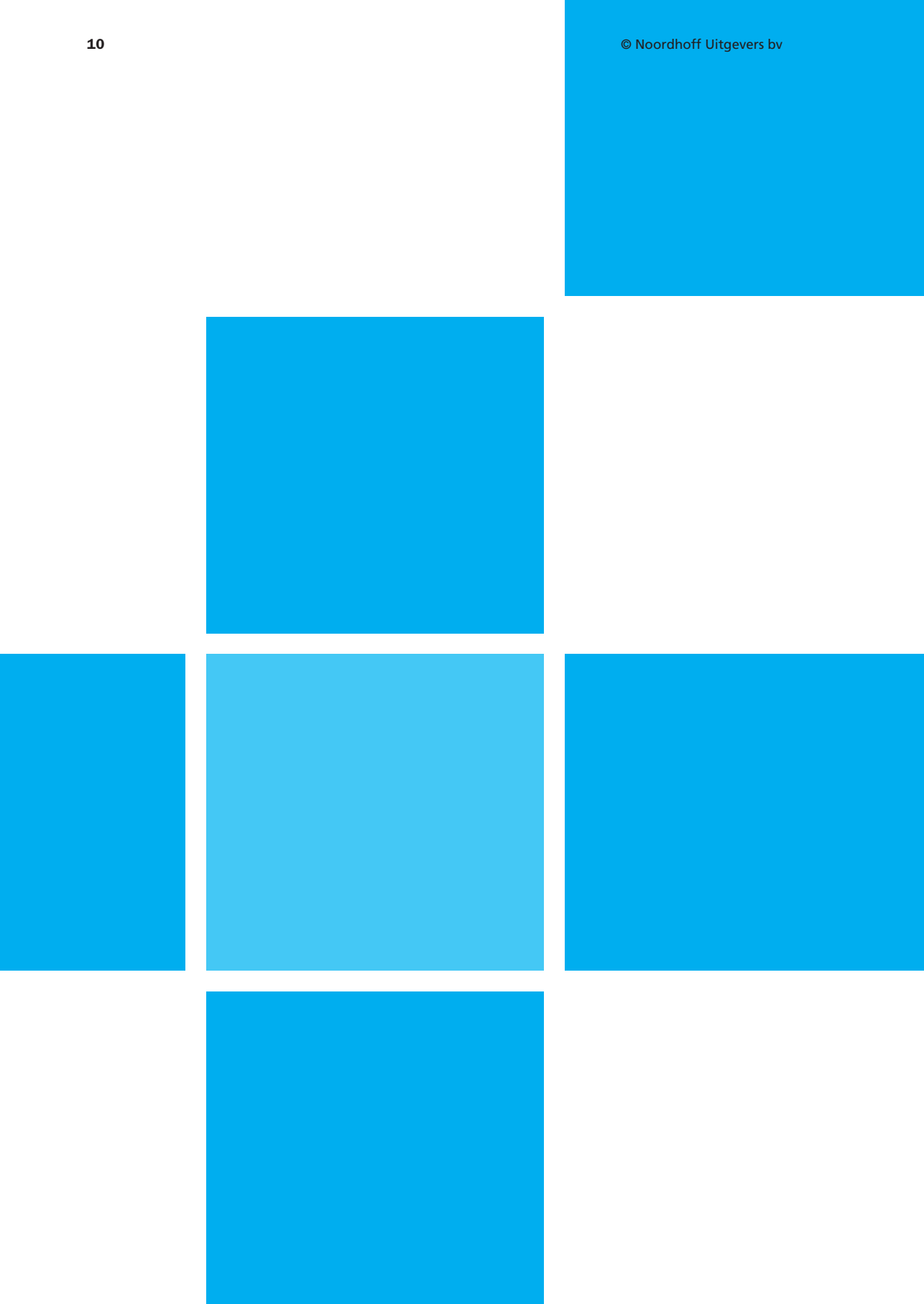
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1

Areas of law

- 1.1 Warming-up**
- 1.2 Areas of law**
- 1.3 Substantive and procedural law**
- 1.4 International and national law**
- 1.5 Legal method: working with dictionaries**
- 1.6 Sources of law**

When you start your Law studies, you first study the basic terminology of law.

You are introduced to the various areas of law. You practise finding your way in the many sources that make up Dutch law. You learn that there are differences between having certain rights and enforcing those rights before the courts. And you discover that the Netherlands is not a legal island and that public international law (i.e., the treaties and the decisions of international courts) is an important source of legislation. You may have studied chapters 10-14 of *Legal English for Bachelors* to bring your English up to scratch, in Chapters 1-9 you will learn how to use English in a variety of legal settings. In this first chapter, you will learn how to discuss the basics of Dutch law in English.

1.1 Warming-up

ASSIGNMENT 1.1

Work in small groups. Discuss the following.

- 1 Why is it necessary for Dutch lawyers to be able to speak and write Legal English? Think of situations in which you might need to speak English as a lawyer or paralegal.
- 2 People in the Netherlands should speak Dutch. Legal situations should be no exception. Do you agree?

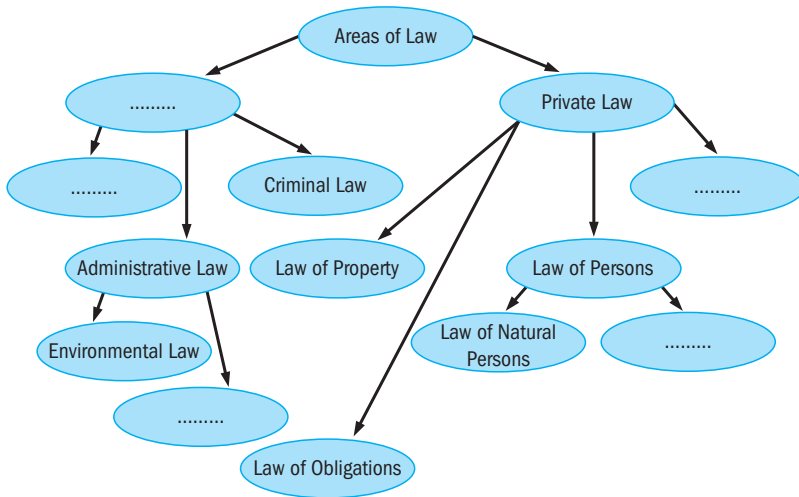
1.2 Areas of law

An excellent way to learn new vocabulary is to put words that are somehow related together in a diagram or a drawing. By grouping words together in a meaningful way you make it much easier for yourself to remember them.

ASSIGNMENT 1.2

Look at the diagram and then read the legal terms below the diagram. All these legal terms are English names for areas of law. Where would you put the terms in the diagram?

FIGURE 1.1 Areas of law in English



Law of Aliens – Corporate Law/Law of Juristic Persons – Public Law –
Labour Law – Inheritance Law – Tort Law – Constitutional Law

ASSIGNMENT 1.3

Study questions 1 and 2, and write down your ideas in a few key words. Then get together in small groups and compare your answers with those of your fellow students.

- 1 Read the following short cases. Which area of law do they belong to? Explain your answers.
 - a Mr Baddy has tried to steal a bottle of wine from HEMA. The management has called the police.
 - b Mr Handy wants to build a window in his roof, but he has to ask for permission from the municipality (= *gemeente*) first.
 - c Ms Jones has lost her job and applies for social benefits.
 - d Mr and Mrs Sad no longer love each other and want to get a divorce.
 - e Mr Shifty and Mr Goody agree that Mr Shifty will sell him a beautiful Volvo Amazone for €5,000.
- 2 In which area of law would you like to work in the future? Try to explain why (e.g. because it is exciting, or because you can make a lot of money).

1.3 Substantive and procedural law

ASSIGNMENT 1.4

You have just learnt the English names for the various areas of Dutch law. However, as the following short text shows, there is another way of classifying law. Read the text and answer the questions.

The rules of substantive law are legal rules that guide the courts in making decisions, and a description of these will form the main subject-matter of this book. Rules of procedure or adjective law, as it is sometimes called, are the rules which determine the course of an action; they govern such matters as how the case is to be presented, in what court it shall lie, or when it is to be tried. Procedural rules are, in other words, the rules that govern the machinery as opposed to the subject-matter of litigation.

[P. Shears & G. Stephenson, *James' Introduction to English Law*, Butterworths 1996, p. 58.]

- 1 Combine an English legal term in column 1 with its definition in column 2.

TABLE 1.1 Legal terms

Column 1	Column 2
1 litigation	a control
2 adjective law	b brought before the court
3 tried	c procedural law
4 govern	d a lawsuit in the civil court
5 substantive law	e a person's rights and duties under the law

- 2 If a court announces that it will take two weeks to reach a decision, is this a matter of substantive or procedural law?

1.4 International and national law

So far, we have seen that the various different areas of law can be classified as belonging to public or private law and as being either substantive or procedural.

Another important distinction is that between international and national law. The latter is sometimes also called domestic or municipal law. When we say international law, we mean *public* international law: private international law is not, in fact, international law, but a body of national law that decides whether Dutch or foreign private law should be applied in cases involving foreign parties. Rules of public international law are very important because they often take precedence over national law. For instance, think of how important European law is for the Dutch legal system.

ASSIGNMENT 1.5

Work in pairs. Discuss the following and take notes so that you can report back to other groups.

- 1 Can you think of international aspects to the following legal situations: birth; marriage; buying a house; setting up a business; murder?
- 2 Which areas of law would be involved in the aspects you have thought up?

1.5 Legal method: working with dictionaries

In this section, you are going to practise working with English dictionaries, especially legal dictionaries. We advise you to consult dictionaries when you are doing work in English. However, before you start reading the assignments below, study the text.

Finding legal words in the dictionaries

Suppose you want to translate the Dutch legal term *een verdrag* into English.

Where would you look?

- 1 First look up one of the main words of the phrase (in this case *verdrag*) in a bilingual dictionary. You could look it up in the big Van Dale dictionary N-E, but remember that this is a general and not a legal dictionary. At present, the best bilingual dictionary is:
 - Van den End, A. *Juridisch-Economisch Lexicon – The Legal and Economic Lexicon Nederlands-Engels*. Deventer: Kluwer. You will find the English translation *treaty*.
- 2 Then go to an English to English dictionary to see whether the English translation *treaty* for *verdrag* (dictionaries often get it wrong!) is correct. There are a few good legal dictionaries:
 - Garner, B. ed. *Black's Law Dictionary*. St. Paul: West Publishing Co.
 - Martin, Elizabeth M. *Oxford Dictionary of Law*. Oxford: Oxford University Press.

You will find that the translation *treaty* is correct.

3 Suppose you want to know what *een verdrag sluiten* is in English (it is not to *close* a treaty!). In this particular case, you are lucky because Van den End gives a translation to *enter into/conclude a treaty*. What you generally need, however, is a dictionary of word combinations or collocations. Go to the word *treaty* and find out which verbs go together with it. There are two good dictionaries of collocations:

- Benson, Morton et al. *The BBI Dictionary of English Word Combinations*. Amsterdam: Benjamins.
- *Oxford Collocations Dictionary for Students of English*. Oxford: Oxford University Press.

You will find that this dictionary confirms to *conclude a treaty*.

ASSIGNMENT 1.6

Use the clippings from the legal dictionaries below to answer the following questions.

- 1 What is the best translation of the Dutch term *advocaat*?
- 2 What is the difference between a *verdict*, a *ruling* and a *sentence*?
- 3 Which is the best translation for the Dutch word *uitspraak* in the context of a *civil court*?
- 4 Is it correct to say to *lift taxes* for Dutch *belasting heffen*?
- 5 What is the opposite of to *honor* a treaty?
- 6 Give a number of translations for *een wet/wetgeving aannemen*. Make sure you choose the right verb.

Figure 1.2 Clippings from legal dictionaries

Advocaat lawyer, AmE. lawyer, AmE attorney, AmE attorney-at-law; *een* – in de arm nemen to call in/engage/retain a lawyer; *bijstaan als* – to act as lawyer for; *zich laten bijstaan door een* – to be represented by a lawyer; – van gedaagde defence lawyer, AmE defence attorney; *de zaak in handen van een* – given to put/place the matter into the hands of a lawyer; *een* – inschakelen to call in/engage (the services of) a lawyer; – van kwade zaken shady lawyer; *ondernemingsgerichte* – business orientated lawyer, A business-oriented lawyer; – *en procureur* lawyer, AmE attorney of record; – van piket duty lawyer; *pro-Deo- pro bono* lawyer; *een* – raadplegen to consult/see a lawyer; *sociale* – legal-aid lawyer; – van de tegenpartij counsel for the other/opposite party; *toegevoegd* – assigned lawyer, assigned counsel, AmE (ook) assigned public defender.

een wet – to carry/pass/enact a law; **een wetsontwerp** – to pass/adopt a bill.

attorney. AmE. And its Near Synonyms. Lawyers, like those in other walks of life, have long sought to improve their descriptive titles. Boswell relates: “The Society of Procurators, or Attornies, had obtained a royal charter, in which they had taken care to have their ancient designation *Procurators* changed into that of *Solicitors*, from a notion, as they supposed, that it was more genteel.” 4 *Life of Johnson* 128 (1791).

The connotations of attorney and its near synonyms have historically been quite different in BrE and AmE. Originally, *attorney* denoted a practitioner

in common-law courts, *solicitor* one in equity courts, and *proctor* one in ecclesiastical courts; all instructed *barristers* to appear and argue. *Attorney*, it seems, soon developed an unpleasant smell about it: one commentator writes that the 18th-century efforts “to deodorize the word *attorney* [were] later abandoned, and in the nineteenth century it was supplanted in England by *solicitor*. There *solicitor* lacks the offensive American connotation, as in ‘No peddlers or solicitors.’ In England, *attorney*, for a lawyer, survives only as the *attorney* (the attorney general), while in America the chief respectable lawyer-solicitor is the *solicitor-general*.” David Mellinkoff, *The Language of the Law* 198 (1963).

Technically, *lawyer* is the more general term, referring to one who practices law. *Attorney* literally means one who is designated to transact business for another.” An *attorney*, technically and archaically (except in the phrase *attorney in fact* [see (B) below]), may or may not be a lawyer. Thus Samuel Johnson’s statement that *attorney* “was anciently used for those who did any business for another; now only in law.” *A Dictionary of the English Language* (1755) (s.v. *attorney*).

(...)

In G.B., a *solicitor* or *attorney* does all sorts of legal work for clients but generally appears only in inferior courts; a *barrister* is a trial lawyer or litigator.

sentence. In most jurisdictions, criminal *sentences* (as opposed to *verdicts*) are imposed by judges and not by juries. E.g., “The Supreme Court of Alabama agrees that ‘the jury is not the sentencing authority in ... Alabama,’ and has described the sentencing judge not as a reviewer of the jury’s ‘sentence’, but as the sentencer.” *Baldwin v. Alabama*, 472 U.S. 372, 384 (1985) (citations omitted). The term derives ultimately from Roman law. Cf. **verdict**. For the DIFFERENTIATION of concurrent, consecutive, and cumulative sentences, see **concurrent sentences**.

ruling. A *ruling* is the outcome of a court’s decision either on some point of law (such as the admissibility of evidence) or on the case as a whole. The word is not synonymous with *opinion* q.v., as here wrongly suggested: “The action by Mesa Partners II ‘strongly suggests a studied effort by Mesa to conceal its true intent,’ the judge wrote in a 33-page *ruling* [read *opinion*].” See JUDGMENTS. APPELLATE-COURT.

verdict. A. Etymology. *Voir dire* (q.v.) is etymologically equivalent to *verdict*, having passed into English through French. *Verdict* came through Anglo-Norman (*verdit*) but was refashioned after the medieval Latin *vere dictum* or *verdictum*, itself based on the French *verdit*.

B. Who Hands Down. Juries, not judges, *hand down* verdicts (both civil and criminal). Strictly, verdicts are *returned* by juries, although we have the lay colloquialisms to *pass a verdict on* and to *give a verdict on*. Cf. **sentence**.

1.6 Sources of law

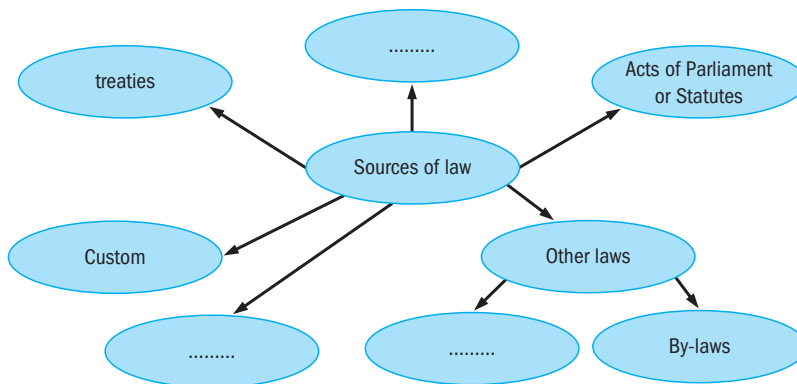
The general public has always been fascinated by how lawyers and the law operate. In the United States, millions of people enjoy watching the events in the courtroom live on Courtroom TV. One of the consequences of

increased media coverage is that people have become more critical about what lawyers do. Everyone has an opinion about how great a notorious murderer's punishment should be. But how do judges decide legal matters? Where do lawyers find arguments to ensure that their clients are acquitted? In other words, what are their legal sources?

ASSIGNMENT 1.7

Work together with another student and try to think of as many sources of law as you can. Do you know their English names?

FIGURE 1.3 Sources of law



ASSIGNMENT 1.8

Basically, English and American lawyers work with the same sources as their Dutch colleagues. However, there is one important difference. In English-speaking countries (or Common Law countries, as they are generally referred to) the decisions of the courts are a much more important source of law than in the Netherlands. Lower courts are obliged to follow the earlier decisions of higher courts and have much less freedom to decide for themselves. In some cases, where Parliament has not made an Act to regulate society, judgments by the higher courts are, in fact, the only source of law. This applies to the indictable offence of murder. In pairs, discuss the following questions.

- 1 Are there areas of Dutch law that are left to the courts to decide on?
- 2 Should the law be made by Parliament or is it acceptable to leave this up to the courts?

ASSIGNMENT 1.9

Listen to this interview with a Dutch attorney-at-law on the areas of law in which she practises. As you listen, take notes so that you can answer the true/false questions below. If you do not know a particular word while you are taking notes, do not worry. This is not a writing but a listening exercise. Just write down the word or phrase you need in Dutch and ask your teacher to help you find the right word in English. The main thing is that you do not miss important information.



- 1 The firm that Ms Sancisi works for, Arcadis BV, is an engineering firm.
T/F
- 2 While studying law, Ms Sancisi was not very fond of tax law because it seemed rather random. T/F
- 3 Ms Sancisi's work for Arcadis mainly involves dealing with contracts. T/F
- 4 The majority of Ms Sancisi's work requires her to speak English regularly.
T/F
- 5 Procedural law is more important for Ms Sancisi's work than substantive law. T/F
- 6 International law plays a large role in what Arcadis does. T/F
- 7 One of the things that Ms Sancisi does is advise on Dutch law in English, and to report on differences in the interpretation between a Dutch lawyer and an English lawyer reading the same contract. T/F
- 8 Statutes are the main source of law used by Ms Sancisi in her day-to-day duties. T/F

Vocabulary list

act of parliament	wet in formele zin
administrative law	bestuursrecht
bilingual	tweetalig
by-law	verordening
collocation	collocatie, woordcombinatie
contract law	overeenkomstenrecht
corporal punishment	lijfstraf
criminal law	strafrecht
custom	gewoonterecht
decision	beslissing, uitspraak
to enforce	handhaven
environmental law	milieurecht
to govern	bepalen
indictable offence	misdrijf
to inflict	opleggen, aandoen
judgment	uitspraak
law of natural persons	personenrecht
law of obligations	verbintenissenrecht
law of persons	personenrecht
law of property	goederenrecht
a law/statute	wet in materiële zin

litigation	procesvoering
paralegal	juridisch medewerker
private law	privaatrecht
procedural law	formeel recht
social benefits	uitkering
source of law	rechtsbron
substantive law	materieel recht
to take precedence over	voorrang hebben boven
treaty	verdrag
vocabulary	woordenschat