

# Legal education and the legal profession

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# Chapter 4. Legal education and the legal profession<sup>1</sup>

G.R. de Groot

## 1. Basic legal education

Basic legal education in the Netherlands, which provides the qualifications necessary to enter into a legal profession, is provided exclusively by universities. There is no centrally-organized, state examination for admission to any of the legal professions. Moreover, each university conducts its own examination independently; in particular there is no supervision of one university's examinations by external examiners from other universities.

Currently, nine law faculties have the power to confer a law degree: the University of Amsterdam, the Free University (Amsterdam), the University of Groningen, the University of Leyden, the University of Limburg (Maastricht), the Catholic University of Nijmegen, the Erasmus University (Rotterdam), the Catholic University of Brabant (Tilburg) and the University of Utrecht. In addition the Open University (Heerlen) is developing a legal curriculum.

There is no selection procedure for admission to a law faculty. Everybody who has a VWO<sup>2</sup> certificate may be admitted to read law. The aspiring student applies to a central admissions office which decides at which university the student may enroll. A student is allocated to a particular university according to his or her expressed preference, taking into account the student's economic and social connections with a certain region of the country. There is no official ranking of the universities.

Law faculties have considerable autonomy in regulating their curricula, and Ministry of Education specifications as to the contents of the law curriculum are phrased in very general terms. These two factors have as a result that the curricula of the law faculties are rather disparate, thus trammelling the opportunity for students to switch universities during their studies. The Ministry of Education regulations require a law curriculum to be four years in length.

The curriculum is divided into two parts by the selective *propaedeutic* examination which takes place after the first year. Students who pass the *propaedeutic* are permitted to continue studying for the final *doctoraal* degree. Both *propaedeutic* and *doctoraal* examinations are examined in stages, after each course or group of courses; these examination stages are called *tentamens*. Art. 82 of the Royal Decree on university education (*Academisch Statuut*) provides that the *propaedeutic* examination must contain the following subjects: legal theory, constitutional or

1. In the first edition of this publication this chapter was written by G.W.M. Bodewes, judge at the *arrondissementsrechtbank* Haarlem. C.f. Julian Lonbay: *Report on the professional qualifications of the legal professions in the civil law jurisdictions of the European Communities*, Institute of European Law, University of Birmingham, 1990, for an extensive review of legal education in the Netherlands.

2. *Vorbereidend wetenschappelijk onderwijs*, comparable with English A-levels.

administrative law, criminal law and private law. Furthermore, economics and history of law can be part of the *propaedeutic* examination.

After the *propaedeutic* examination most students opt for the Dutch law programme (*studierichting Nederlands recht*). The final (*doctoraal*) examination of this programme is the basic prerequisite for the position of judge, public prosecutor or *advocaat*.<sup>3</sup> Art. 83 of the *Academisch Statuut* provides that this *doctoraal* examination must contain constitutional and administrative law, criminal law and private law. For all these subjects knowledge of procedural law must also be examined. Furthermore, unless economics and history of law were already taken in the *propaedeutic* examination, a candidate has to be examined on these subjects in the *doctoraal* examination. In addition a student has to take one philosophical or sociological subject and one international or comparative subject. The successful *doctoraal* candidate does not obtain the degree of *doctor*, but the degree of a *magister iuris* (*meester in the rechten*; master of laws; abbreviated, for both male and female candidates, to *mr.*).

Most faculties offer a range of alternatives to the Dutch law programme. Three other law programmes entitle the successful candidate to the degree *magister iuris*:<sup>4</sup> the notarial programme (for those intending to become a *notaris*), the fiscal-judicial programme (for intending tax-law specialists) and finally the Antillian or Aruban law programme (for intending specialists in the law of the Dutch Antilles or Aruba). The title *magister iuris* acquired by following one of these three programmes is not a qualification to become a judge, public prosecutor or *advocaat* in the Netherlands. In addition to the above-mentioned programmes there are programmes in, inter alia, international law or the free programme.<sup>5</sup> Success in the *doctoraal* examinations in these programmes does not entitle the degree *magister iuris* to be conferred, but the degree *doctorandus iuris* (abbreviated *drs*).<sup>6</sup>

## 2. Academic career

A successful *doctoraal* candidate may subsequently study for the degree of *doctor*<sup>7</sup> (abbreviated *dr.*) by writing a doctorate thesis (called *proefschrift* or *dissertatie*), which requires a considerable amount of research and usually takes several years. The thesis has to be published, and, only after publication, has to be defended in a ceremonial academic session of the faculty. A candidate for this research degree need not be in post at a university, but there is a recent tendency for candidates to write their thesis while appointed as *assistent in opleiding* (junior researcher; abbreviated *aio*). This appointment is limited to a period of four years, with the possibility of a one year extension.

3. Art. 2 Act on *advocaten* of 23 Jun 1952, Stb. 365 (*Advocatenwet*); Arts. 35, 48, 59 b, 62, 86 Act on the judicial organization (*Wet op the rechterlijke organisatie*).

4. Art. 72 *Academisch Statuut*; see further Arts. 84–87, 95, 95 *Academisch Statuut*.

5. Cf. Arts. 88–93 *Academisch Statuut*.

6. *Doctorandus* is the degree which is most commonly obtained by those who successfully complete a university study in the Netherlands.

7. It is remarkable that most doctors in law in practice only use the title of *mr.* (*magister iuris*) and not the title of *doctor*.

The three grades of academic status, apart from the just mentioned post of junior researcher, are, in progressive order of seniority: university lecturer<sup>8</sup> (*universitair docent*, abbreviated *ud*), senior lecturer<sup>9</sup> (*universitair hoofddocent*; abbreviated *uhd*) and professor (*hoogleraar*). University lecturers, frequently, but not always, have tenure. It is an official rule of the Ministry of Education that persons appointed to any of these three university posts already have the degree of *doctor*. In fact this rule is honoured more in the breach than in its observance, for the majority of university lecturers are still working to attain the degree of doctor. In the Netherlands only the *hoogleraar* has the right to use the title *professor*. Moreover, the Dutch system of legal education has no stage comparable to the French *agrégation* or the German *Habilitation*.<sup>10</sup> Every *doctor* is eligible to be appointed as professor. Even without the degree of *doctor*, as in the case of a person with long professional experience as a legal practitioner or judge combined with a weighty publication record, an appointment to professorship is possible.

### 3. The Judiciary

A successful candidate in the *doctoraal* examination may apply for a position as candidate judicial officer (*rechterlijk ambtenaar in opleiding*, abbreviated *raio*).<sup>11</sup> Only candidates with very high examination results are selected for these positions. During a training period of six years a candidate judicial officer is employed at the court (as a judge's assistant), at the office of the public prosecutor and at the bar, in order to acquire practical experience. During this period the candidate judge does not have to pass examinations, but might be advised to terminate the training. After a successful training of six years the candidate is eligible to be appointed judge (*rechter*)<sup>12</sup> or public prosecutor (*officier van justitie*). Approximately 50% of the judiciary come into post via this route. The remainder are appointed after having practised as *advocaten*, company lawyers, civil servants or university teachers.

Higher-level judicial appointments, to the post of *kantonrechter* (in the *kantongerecht*<sup>13</sup>) or the post of *raadshoof* (in the *gerechtshof*<sup>14</sup> and the *Hoge Raad*<sup>15</sup>), are made either from the pool of practising judges or by appointing individuals direct from legal practice or from universities. In the event of appointment direct from legal practice or academic life appointment is usually preceded by several years of part-time practice as a substitute judge (*rechter-plaatsvervanger*).

8. In the U.S.A. the equivalent is an assistant professor.

9. In the U.S.A. the equivalent is an associate professor.

10. These are degrees which can be obtained after completing the doctorate.

11. *Bestluit opleiding rechterlijke ambtenaren* of 24 Oct 1985, Stb. 555.

12. Even though the *kantongerecht* is the lowest instance court, normally the first appointment will be as judge in the *arrondissementsrechtbank*. Because the *kantonrechter* sits alone, the latter is considered an unsuitable task for a newly-appointed judge.

13. The lowest level court for civil and criminal matters.

14. The appeal court to which an appeal on a question of law or fact may be taken.

15. The highest court to which appeals on any question of law may be taken.

#### 4. *Legal practitioners: the advocaat*

The successful candidate of the Dutch law programme's *doctoraal* examination who wishes to become an *advocaat* must apply for membership of the Netherlands Bar Association (*Nederlandse Orde van Advocaten*). It is a pre-condition for admission to this society that the candidate has been examined in, and graduated on the basis of: Dutch private and commercial law, criminal law, and one of the following three subjects: Dutch constitutional law, administrative law or taxation law. In the first three years after admission the fledgling *advocaat* has to practise under the supervision of an *advocaat* of at least seven years' standing. Furthermore, before being able to practise without supervision, the trainee-*advocaat* has to follow courses and pass examinations in practitioner-relevant subjects such as evidence and legal drafting.<sup>16</sup>

Almost every *advocaat* is simultaneously a *procureur*. The role of the *procureur* is to sign documents in civil cases and deal with formal aspects of civil procedure. A *procureur* is always attached to, although not employed by, a district court (*arrondissementsrechtbank*) and can only act within that district. An *advocaat* can act in other districts as well, but in such cases a local *procureur* must introduce him formally to the court. This local *procureur* also has to sign all the documents written by the *advocaat* and has to send them to the court. In criminal cases the division between the function of *advocaat* and *procureur* does not exist. The qualifications required for admission to the position of *procureur* are the same as those for the position of *advocaat*.<sup>17</sup>

*Advocaten* have no legal monopoly on the giving of legal advice. Accordingly it is permissible for individuals to work as legal advisors (*rechtskundig adviseur*), without having any academic degree or other qualification. The absence of a monopoly on the giving of legal advice is conducive to the development of law centres (*rechtswinkels*), which are often sponsored by legal faculties and staffed by unqualified law students. Moreover, in courts, such as the *kantongerechten*, in which *advocaten/procureurs* do not have a monopoly with respect to legal representation, legal advisors are permitted to represent clients before the court.<sup>18</sup>

Out of court, the *advocaat/procureur's* right-hand-man is the bailiff (*deurwaarder*), one of whose functions is to serve upon a defendant the summons or original application requiring the defendant to appear before the court or a summons requiring payment. The *deurwaarder*, who does not have a university education, but will have successfully completed a state examination,<sup>19</sup> has a variety of functions.<sup>20</sup> In court the *deurwaarder* serves as an usher. Furthermore, he en-

16. Art. 9 b *Advocatenwet*; see further the *Stageverordening* 1988, Stcrt. 1988, 127 enacted by the Netherlands Bar Association and *Examenreglement beroepsopleiding* of 4 Jul 1988, *Advocatenblad* 1988, pp. 19–21, amended 8 May 1989, *Advocatenblad* 1989, p. 328.

17. Art. 64 *Advocatenwet*.

18. The position of these legal advisors should be compared with the very restricted powers of *Mackenzie* advisors under English law, who are not permitted to address the court, but only to sit beside the client and advise about the conducting of the case.

19. Art. 34 *Deurwaardersreglement*, KB 27 Dec 1960, Stb. 562.

20. *C.f.* Art. 14 and 26 *Deurwaardersreglement*.

forces judgments and notarial deeds. In the exercise of this function the *deurwaarder* is empowered to seize movables and sell them by public auction in order to obtain payment for the creditor. But the powers of the *deurwaarder* are limited to movable property; the enforced selling of real estate has to be done by a *notaris*. Finally, it is not uncommon for a *deurwaarder* to give legal advice in straightforward cases or to represent litigants before the *kantongerecht*.

##### 5. *Legal practitioners: the notaris*

The Netherlands counts amongst those countries with a Latin notarial tradition.<sup>21</sup> The Dutch *notaris* is a more important functionary than the notary which occurs in common law countries, where most of the functions performed by the Latin *notaris* are performed by other legal practitioners. A *notaris* is appointed by the Crown. He or she is not, however, a government employee, but rather charges clients direct for services, the most important of which have fixed rates. The *notaris* has a life appointment which can only be terminated for reasons provided by law. This legal practitioner is a vital functionary in the administration of justice and can be compelled to render his or her services.

A person who wishes to be eligible for appointment as a *notaris* must, having obtained the *doctoraal* examination after following the notarial programme,<sup>22</sup> acquire at least three years' training as apprentice-*notaris* (*kandidaat-notaris*) in the office of a *notaris*. During this apprenticeship the apprentice-*notaris* has to follow special practitioner courses. Because the number of positions available for *notarissen* is limited to approximately one thousand a candidate may have to wait many years before being appointed as *notaris*. A *notaris* has a monopoly in relation to, *inter alia*, last wills, marriage contracts, the transfer and mortgage of real estate and the establishment of corporate status.<sup>23</sup>

21. The same practice exists in France, Belgium, Luxembourg, Italy, Spain, Greece, in most countries of Latin America and in a part of Germany.

22. *Cf.* Art. 20 a *Wet op het notarisambt* of 9 Jul 1842, Stb. 20.

23. I wish to thank my colleagues of the University of Limburg, Caroline Forder, LL.B (Nottm.), LL.B (Cantab.), and Ass. iur. Hildegard Schnieder for their critical comments on earlier versions of this text.