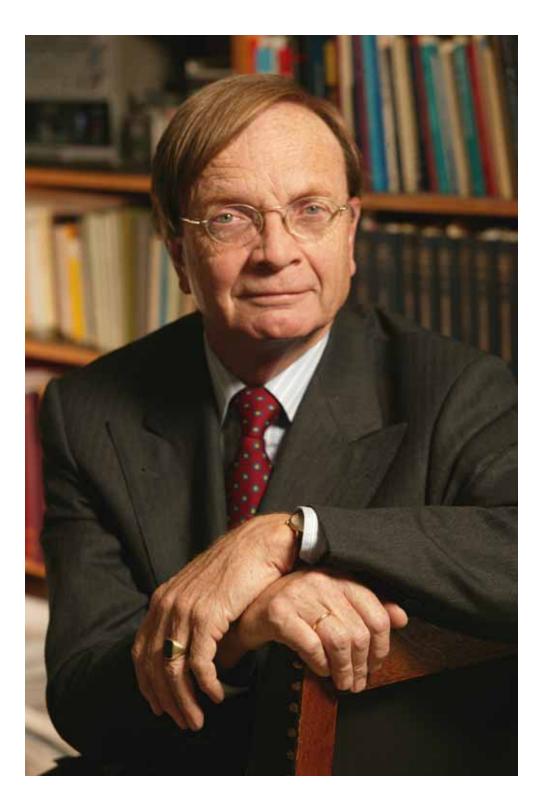
The Duty of Care in Contract and Tort



# The Duty of Care in Contract and Tort

Selected Essays on Contract, Construction Law, Tort, Environmental Liability, Jurisprudence

## Jan M. van Dunné

Professor of Law Erasmus University Rotterdam 1972–2006

> Jan-Willem Meijer Gijs van der Spek Ivar Wendt

Editors

Shaker Publishing — Maastricht — 2006

Cover design: Signia, Winschoten Photos: Karin I. Oppelland Sculpture: Esther M.B. van Dunné, 2001

Copyright Shaker 2006

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the author.

ISBN 10: 90-423-0286-0 ISBN 13: 978-90-423-0286-0

Shaker Publishing B.V. St. Maartenslaan 26 6221 AX Maastricht, Netherlands tel.: +31 - 43 - 3500424 fax: +31 - 43 - 3255090 http://www.shaker.nl

## **Contents**

 $\mathbf{T}$ 

Editors' Preface Jan-Willem Meijer, Gijs van der Spek, Ivar Wendt	xi
Foreword Prof. Dr Filip J.M. De Ly, Erasmus University Rotterdam	ix

#### 1. **CONTRACT LAW**

#### Revision of Contract and Precontractual Liability

1.1	Contractual Revision of Contracts in Dutch Law, in: Netherlands Reports to
	the Twelfth International Congress of Comparative Law, Sydney-Melbourne, IACL,
	1986, P.H.M. Gerver, E.H. Hondius, G.J.W. Steenhoff, Eds, 1986, T.M.C.
	Asser Institute, The Hague, p.75-96.

3

25

51

- 1.2 Adaptation by Renegotiation. Contractual and Judicial Revision of Contracts in Cases of Hardship, in: The complex long-term contract / Der Komplexe Langzeitvertrag, Technologie und Recht, Fritz Nicklisch, Ed., 1987, Müller Verlag Heidelberg, p.413-441.
- 1.3 Precontractual Liability in The Netherlands, in: Reports to the XIIIth Congress International Academy of Comparative Law, Montreal 1990, E.H. Hondius, Ed., 1991, Kluwer, Deventer, p.223-237.

#### 2. **CONSTRUCTION LAW**

Civil Law and Common Law Approaches to Defects and Frustration of Contract

2.1	Dutch Construction Law as an Example of the Civil Law Approach, in: <i>Selected Problems of Construction Law</i> , T.M. Burke <i>et al.</i> , Eds, University Press Freibourg, 1983, Sweet & Maxwell, London, p.121-143.	67
2.2	Contractual v. Tortious Liability in Defective Building Cases: a Continental View (conference paper London 1984), in: <i>The Liability of Contractors</i> , H. Lloyd, Ed., 1986, Sweet & Maxwell, London, p.1-10.	89
2.3	The Changing of the Guard: <i>Force majeure</i> and Frustration in Construction Contracts: the Foreseeability Requirement Replaced by Normative Risk	

#### 3. TORT AND ENVIRONMENTAL LIABILITY

### General Issues: Public Interest Cases and Pure Economic Loss

3.1	The Use of Tort Actions in Public Interest Cases in The Netherlands. In: <i>Geöntegreerde rechtswetenschap</i> , R.G.M.E. Foqué, Ed., 1994, Gouda Quint, Arnhem, p.479-494.	129
3.2	Liability for Pure Economic Loss: Rule or Exception? A Comparatist's View of the Civil Law – Common Law Split on Compensation of Non-physical Damage in Tort Law, <i>European Review of Private Law</i> , 1999 no. 4, p.397-428.	143
Tran.	sboundary Water Pollution: the Rivers Rhine and Meuse	
3.3	Legal Issues Arising from the Rhine Contracts, in: <i>Environmental Contracts and Covenants: New Instruments for a Realistic Environmental Policy?</i> Proceedings of an International Conference, Jan M. van Dunné, Ed., 1993, Vermande Lelystad, p.117-130.	179
3.4	The Case of the River Rhine: the Rotterdam contribution, Paper International Bar Assoc. Conference 'Water and the environment', San Franscisco, 15 juni 1992, in: <i>Water Pollution, Law and Liability</i> , 1993, P. Thomas, Ed., Graham & Trotman, London, p.75-87.	189
3.5	Environmental Liability, Continental Style, Review of Community and International Law (RECIEL), Basil Blackwell, Oxford 1992, no. 4, June 1993, p.394-401.	201
3.6	Legal Aspects of Non-point Source Pollution of the River Meuse. A Comparative Analysis of Issues of Liability in Tort and Multiple Causation, in: <i>Non-point source river pollution: The case of the river Meuse. Technical, Legal,</i> <i>Economic and Political Aspects</i> , Jan M. van Dunné, Ed., Proceedings 1995 Conference Rotterdam, 1996, Kluwer International, London, p.39-66.	215
3.7	Liability in Tort for the Detrimental Use of Fresh Water Resources under Dutch Law in Domestic and International Cases, in: <i>The Scarcity of Water</i> , Edward H.P. Brans <i>et al.</i> , Eds, 1997, Kluwer Law International, The Hague, p.196-211.	243
3.8	Transboundary Pollution and Liability Issues: Private Law <i>vs</i> Public International Law Approaches. The Cases of the Rivers Rhine and Meuse. In: <i>Environmental Justice and the Legal Process</i> , Jan Glazewski and Graham Bradfield, Eds, Juta & Co., Ltd., Cape Town 1999, p.303-338.	261

#### Mining Law: Subsidence Damage Claims

3.9 The New Dutch Mining Law: How to Succeed in Law Without Really Trying. Compensation for Soil Subsidence Damage and the Burden of Proof, 13 *Environmental Liability*, 2005, p.128-134, London, Lawtext Publishing Ltd.

295

#### 4. JURISPRUDENCE

Issues	in Legislation: Comparison of Law, Division of Powers, Codification	
4.1	The Use of Comparative Law by the Legislator in The Netherlands, in: <i>Netherlands Reports to the Eleventh International Congress of Comparative Law, Caracas 1982</i> , IACL, 1982, H.U. Jessurun d'Oliveira, Ed., 1982, Kluwer, Deventer, p.37-67. Also published in: <i>Russian Yearbook of Comparative Law,</i> Moscow, 2004.	311
4.2	Montesquieu Revisited. The Balance of Power between the Legislature and the Judiciary in a National - International Legal Context, <i>Rechtstheorie, Beiheft 15</i> , 1993, Proceedings IVR Conference, Reykjavik, Iceland, p.451-463.	329
4.3	'Lawyer's Paradise' or 'Paradise Lost'? The Dutch Civil Code of 1992 as an Exponent of the 19 <sup>th</sup> Century Legislative Tradition, in: <i>Mélanges offerts à Jacques VanderLinden</i> , Bruylant, Brussels, 2004, p.337-362.	341
The F	Role of Personality in Judicial Decision Making	
4.4	The Personality of the Judge and Legal Decision Making in Private Law. Paper Law and Society Association, Toronto, Canada, 1982.	365
4.5	The role of personal values in legal reasoning, Rechtstheorie, Beiheft 10, 1986, Vernunft und Erfahrung im Rechtsdenken der Gegenwart, Proceedings IVR Conference, Helsinki, 1983, p.13-23.	377
4.6	Cultural Values and Legal Reasoning in Property Cases. In: Reason in Law. Proceedings of the Conference Held in Bologna, 12-15 December 1984, Volume Three, 1988, Milano, p.147-159.	387
4.7	Rhine Pollution by Industrial Discharges: New Dimensions of the Good Neighbour Doctrine?, <i>Rechtstheorie Beiheft 12</i> , 1991, Proceedings IVR Conference, Kobe, Japan, p.375-381.	397
4.8	Narrative Coherence and its Function in Judicial Decision Making and Legislation, 44 <i>American Journal of Comparative Law</i> , 1996, p.601-624. Compare also:	405

Normative and Narrative Coherence in Legal Decision Making, *European Journal of Law, Philosophy and Computer Science*, 1995, p.106-118 (Proceedings IVR Conference, Bologna, Italy). Also published in: *Law and Legal Interpretation*, The International Library of Essays in Law and Legal Theory (Second Series), F. Atria and D.N. MacCormick, Ed.'s, 2002, p.409-420 Ashgate, London. Also published in: E. Attwooll and P. Comanducci, Eds, *Sources of Law and Legislation*, Stuttgart: Steiner 1998, p.194-205.

The Style of Legislation: Narrative Norms and Constraining Norms. Two of a Kind. In: *Netherlands Reports LACL conference*, Athens 1994, J.H.M. van Erp c.s., Eds, 1995, T.M.C. Asser Instituut, The Hague, p.1-21.

#### Nota Bene

The above selected articles are also available on a CD-Rom that is supplied with the volume of Dutch collected work, *Normatief Uitgelegd*. See Editors' Preface, *supra*.

General Information on the Author, Jan M. van Dunné

427