

## Some Dutch (De)Light(s) in Commercial Private Law Practice

Dear Friends of ELS!

A warm welcome to the most relaxed city of Europe: Amsterdam. Many thanks for your kind invitation which I have accepted with gratitude. Speeching in this beautiful venue about '*Some Dutch (De)Light(s) in Commercial Private Law Practice*' is not as easy as I thought when I jotted down the title for this speech.

What I exactly had in mind with the title was not immediately clear for me, so I'm pretty sure it must be a question mark also for you. So let me explain a bit.

As you may know the Netherlands is well known for its light. I see you thinking now about Dutch company Philips, but that is not the light I am aiming at. No I mean the light which you can see when you are outside in the Netherlands during daytime. The story goes that this light is unique and differs from that anywhere else. The phenomenon started to conquer the world in the 1850's. Painters and writers from other countries like Monet and the Goncourt brothers came to the Netherlands to see the light themselves, especially also as depicted by 17th century painters like Ruisdael. Hypolite Taine, a French philosopher shed his light on the light as follows: *'Holland's flat horizons have little to offer. The air is always hazy, which makes all the contours blurred and indistinct. It's the small touches that matter most. A cow grazing in the landscape is simply tones among other tones. What we notice are the nuances, the contrasts, the values and tonality of the colours. The shades of brightness and the gradations of colours are astonishing... a delight to the eye.'*

That was on the one side of the title spectrum. On the other side glimmered some typical Dutch gourmet delights, with typical Dutch names like ‘bitterballen’, ‘poffertjes’, ‘stroofwafels’, ‘oliebollen’, ‘koffie verkeerd’, ‘Hollandse Nieuwe’, ‘chocoladeletters’, ‘stamppot’ and ‘patat’.

Having touched the axioma that a light can also be a delight, I can immediately go forward with mentioning the number 1 delight in Dutch commercial private law practice: on Friday - and it's Friday today - every lawyer dresses informal, stops working at 5 and goes to the in-house bar to have a (serious) drink (you hear me well, the in-house bar, every attorney firm with a bit of self-esteem has its own bar with Heineken or - in the South where our office is located - Bavaria on the tap, as you know a famous brand throughout the world, especially in Germany). I have heard whispers by the way from

German colleagues - not being present however here and not a member to ELS - that this Dutch Friday thing is quite remarkable. The whisperer - it was a she by the way - told me that at their German office the opening of one - one! - bottle of wine in a small office room on Friday was the max. It clearly isn't the max in the Netherlands, rest assured.

Being a practitioner now for some 25 years I must say that the landscape for commercial lawyers in the Netherlands has changed tumultuously. When I started to work for Banning Advocaten in 1999 - two years before the internet bubble burst – our office had some 20 lawyers. That was quite a lot. But within a period of 10 years afterwards we grew to over 70 lawyers. Private practice exploded with a lot of M&A and IP work to do. It were the days when American and British firms landed not on the shores of Normandy, but in an area in Amsterdam referred to as the 'Zuidas' (business park in the southern part of Amsterdam). Mastodont

offices were set up and some Dutch commercial practice lawyers started to talk English replacing the typical Dutch 'weet je' by 'you know'. Some succeeded and some died.

The import of American and English legalese in Dutch practice can however not be underestimated and is to my opinion certainly a good thing. It urged commercial lawyers in the Netherlands to think and act internationally which of course matches perfectly well with the globetrotter image the Dutch have. It certainly also changed Dutch commercial lawyers attitude towards for example contracting. In the meantime practice for example has become accustomed towards the American styled '*don't-let-anything-uncovered*'-agreements. This is quite a remarkable development, striking a bargain ('handjeklap') being the core of Dutch contractual practice. Extensive writing does not particularly fit well with that core. It is typical Dutch that you can write agreements on the back of a

'bierviltje' (a paper beer mat). One of my professors at law school in Tilburg - prof. Herman Schoordijk, a critical lawyer - did not and still does not believe (reaching his nineties) that certainty (in most cases the rationale for drafting extensive agreements) is the backbone of international trade. International trade flourishes with uncertainty and therefore in a lot of cases with not too elaborated agreements. It fits well with the attitude of the Dutch as tradesmen: '*doe maar gewoon, dan doe je al gek genoeg*' (literally translated: '*Just act normal, then you're acting crazy enough as it is!*'). This certainly does not mean that we are not '*Pietje Precies*' (fusspot), because we are, but we love to reach practical solutions without too much indoctrination by doctrine.

A light should be shed also on a not delight. The not delight being that litigation in commercial law practice has become harsher. Efficiency - by the famous Amsterdam private law professor in the 1960's Pitlo

once depicted as follows: *'Whilst Luxury speeds itself to the assembly of Gods in a golden coach, Efficiency travels by scooter. Luxury bears a small lawn handkerchief in her sleeve. Efficiency blows it's nose in a piece of paper'* - Efficiency rules the waves of Dutch private practice. The judiciary is the victim of heavenly cost-cuttings, small courts for small claims shut down. Proceedings have become the object of case managers and computers. To speed up things to the max proceedings on the merits in the Netherlands are these days fit in the pattern of non-flexible procedural rules. No extensions. You have to come up with all arguments in the first round and also reflect already on the arguments of a defendant in a writ of summons. After that in most cases the Court orders a personal appearance of the parties on a short term after the first round. Pleadings are to my astonishment and aversion not in the center of proceedings any longer. People and clients have become paperwork. Certainly not a delight.

Every minor has however a major (by analogy with the slogan of the most famous Dutch football player – certainly also a (de)light - Johan Cruijff; *‘Elk nadeel heeft zijn voordeel’* – *‘every disadvantage has its advantage’*): the walhalla of the so called ‘kort geding’ (summary proceedings). In cases with an urgent interest a plaintiff can start a ‘kort geding’ with a writ of summons. After the writ is served to the defendant by the bailiff the case is being pleaded on a date previously listed by the Presiding Judge of a Court. This is the territory of the law in action. Generally within fourteen days after the hearing the Presiding Judge delivers judgement. The judgements are in most cases of a high quality. Especially in IP matters the cases end up before qualified Judges who know this area of law very well. And there is a good reason to deliver high quality. The rest of the world is looking at us. If you want to attract traffic to your courts - and the Netherlands have a reputation to do so - you have to deliver high quality and know what you are talking about.



The ammunition to start commercial law litigation in the Netherlands can be quite attractive. Judges tend to open the court doors wide open (jurisdictional rules are interpreted quite extensively), permission for seizures of goods and financial assets is quite easy to obtain, the same applies to obtaining evidence by bailiffs and experts. The procedural costs awards are in general still relatively low with the exception of IP cases in which a full compensation of all costs can be awarded.

Dear Friends of ELS I am about to finish. I can not finish this speech without talking about football, certainly not after I already mentioned Johan Crujff, who as experts know, wearing a two striped outfit, almost delivered the Dutch the World Cup in 1974, had not Hölzenbein invented the '*Schwalbe*'. Only the Dutch know - even the Belgian beer mark Jupiler supports the Dutch - that 2014 is definitely not going to be the new 1974.

BANNING

ADVOCATEN

Robben is the new Hölzenbein. With support of girls dressed up in copyright protected orange dresses marketed by Dutch beer brewer Bavaria we are going to defeat ... the Belgians.

I wish you a very pleasant dinner and final evening in Amsterdam.

Gino van Roeyen

Amsterdam, July 4, 2014