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### Up or out? Archetypes and person-organization fit in Dutch law firms

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# *Introduction*

## *1. Aim, object and content of the research*

Professional service firms constitute a growing part of global economy, in size and importance (e.g. Greenwood, Lie, Prakash and Deephouse, 2005; Lorsch and Tierney, 2002; Lowendahl, 2001). Law firms are exemplary of this development. Law firms have been growing in size, at least between 1970 and 2008; the legal industry and the total number of lawyers are growing still. Besides growing, the legal industry is diversifying rapidly. To meet the demands of growth and diversity, law firms have to recruit an increasing portion of law graduates (KSU-SDU, 1999-2012).

In addition, the ageing of the western population is causing an increasing outflow of experienced lawyers. Legal talent is scarce and will be scarcer. The number of graduates tends to stabilize or even to decrease slightly. Already in the late 1990s a friction between demand and supply could be discerned, not only in numbers but also in quality (KSU-SDU, 1999-2012). It can be argued that this friction leads to more frequent mismatches between the ambition and capabilities of young lawyers and the demands of the firms that employ them, causing stress, attrition, turnover, and a waste of talent (De Haas & Birnbaum, 2002). Lawyers may find themselves in the wrong firm or the wrong profession, sometimes only after several years. The personal damage to career and wellbeing can be considerable.

Law firms are diversifying, but so is the legal workforce: in education, gender, social and ethnic background, ambition and abilities. It is arguable that the (legal) professions have not yet succeeded to adapt to the needs of a diversified workforce. The disappointing career development of female lawyers (nowadays 60% of all lawyers entering the profession but less than 20% of lawyers with more than 7 years experience) is perhaps the best

illustration. (Boon, Duff, & Shiner, 2001; Dinovitzer & Garth, 2007; Hagan & Kay, 2007).

It is of vital importance that the legal profession succeeds in attracting and retaining capable and ambitious professionals. This is a condition for a sustainable profession, but also for securing the accessibility of the legal system. Apart from their contribution to economic and business processes, lawyers and law firms have an important societal role in securing the access to justice.

The purpose of this study is to investigate the conditions and mechanisms of fit between lawyers' values and ambitions, on the one hand, and the law firms' characteristics, values, and career opportunities on the other hand. The assumption is that fit between lawyer and law firm is an important factor in promoting performance, retention and wellbeing of the lawyers as well as in the performance of the firm. In my experience, not many firms or lawyers recognize the importance of this kind of fit in the choice of employer or in their selection, development and career decisions. This research may contribute to improving the quality of these decisions.

In this introduction, I will first describe in Section 2 the research context: professional service firms, law firms, and the legal profession in the Netherlands. Some notions of management and economics of law firms that will be used in the research will be explained. This Section is intended as an introduction for those readers who are not acquainted with the legal profession and industry in the Netherlands. In Section 3, I will conclude this chapter with the questions and research model that underlie this thesis.

## *2. Lawyers and Law Firms in The Netherlands*

### *2.1. Professionals and professional service firms*

#### *2.1.1. Professionals*

Many pages have been written on the subject of defining and describing what a professional is. Summarizing existing theory (Lorsch & Tierney, 2002; Lowendahl, Revang, & Fosstenlokken, 2001; Luijk, 2007; Maister, 1997; Sherer & Lee, 2002; Van Delden, 1996; Wanrooy, 2007; Weggeman, 1997) a professional is defined by:

- academic or comparable higher education,
- specialist knowledge and skills,
- autonomy in and responsibility for the way the client is serviced,
- adherence to, identification with the professional group,
- professional norms, standards and ethics.

Whatever the definition, there is no discussion that the law is a profession and lawyers are professionals. Historically, the classical professions are theology, law, and medicine. Some authors (Empson & Popham, 2007; Greenwood, Hinings, & Brown, 1990; Maister, 1993) describe the law, accountancy and consultancy as the classical commercial professional services. In every division, the law is included in the professional services.

Besides the defining properties, certain characteristics are attributed to professionals such as a preference to work individually, an aversion from management and control, a tendency to neglect other than their professional norms and standards, and the identification with colleague professionals outside the organization rather than with the own organization (Angel, 2007; Gabarro, 2007; Maister, 1997; Poucke & van Wijk, 1996; Wanrooy, 2007). Of course, all these characteristics may vary widely between individuals, but are nevertheless factors to take into account in studying professionals and their organizations.

#### *2.1.2. Professional service firms*

Many definitions and typologies of the professional organization have been proposed over the years. Recent literature frequently uses a practical definition that also fits the aim of this study: an organization primarily sustaining professionalized occupations (Brock, 2006; Weggeman, 1997). This does not necessarily imply that the majority of employees are professionals. In hospitals, for instance, doctors are a minority within the total workforce and even in some law firms the lawyers are outnumbered by the non professional support staff. It does imply that the primary processes, the key servicing of clients – patients, students – are defined and dominated by the input, actions and know how of the professionals. Most authors assume that organizations with a majority of professionals are professional organizations (see Wanrooy, 2007).

In 1979 Mintzberg described the professional bureaucracy as the model for the organization of professionals. In this type of organization, the dominant part is the operational level (the professionals); quality is defined by standardization of inputs (human capital, education) and management and staff are relatively weak (Mintzberg, 1979).

The commercial professional organization (as opposed to education, health, or civil service), in which professionals provide services directly to clients, is commonly known as the professional service firm (PSF). This term was used by David Maister in his first book on this type of professional organization (Maister, 1993) and has since been generally adopted to describe law, accountancy and consultancy firms, architects, advertisement,

communication and PR firms (Lorsch et al., 2002; Maister, 1993, 1997). In PSFs, professionals dominate strategy and management. The know-how and capabilities of the professionals is the “product” of the firm. Clients are serviced by the professionals directly, often personally. Professionals develop their know-how and client relations during many years of learning on the job. Apart from these general features PSFs may differ among each other in many aspects of their business, operations, governance and management, as I will discuss in the following chapters.

## *2.2. The legal profession*

The literature on professional service firms is focused mainly on law, accountancy and consultancy. Law firms are a preferred subject; the law is a relatively homogeneous, well organized and documented profession. Organizational and HRM theory on professional service firms is well applicable to law firms.

A law graduate in the Netherlands, wishing to devote her career to the law, can choose to become a judge or a prosecutor, a civil-law-notary or company lawyer, or try to find her way into legal consultancy and representation.

Judiciary and prosecution are both governmental organizations, with a constitutional and legal autonomy as in every modern democracy. They are run and paid completely by the State, the Department of Justice. Most candidates aspiring to become a judge or a prosecutor are recruited shortly after graduating to start a six years training period. Part of judiciary vacancies are filled with experienced lawyers who follow a shortened training program.

The civil-law-notaries in the Netherlands function in a notarial system that exists in most continental European countries (the ‘Notariat Latin’). Under the rule of the Notary Law, the notary is both a public officer and entrepreneur on her own account. She is responsible for the drafting and passing of deeds concerning real estate, incorporation and family law and other contracts. (In Great Britain, most responsibilities of the continental notaries rest with the solicitors.) Notaries have their own professional association with regulatory powers, disciplinary rules and procedures, quality control and professional training obligations.

About one third of the law graduates enter employment in organizations in the public and private sectors that do not have legal services as their primary concern. They may become an in-house legal counsel, or start a management, commercial or civil career. In house company lawyers also have formed a professional association, with regulations and training programs for members; but membership is voluntary, the association has no

binding regulatory powers nor is ruled by law.

More than one third of all law graduates are employed by organizations that supply legal consultancy and representation. These can be labour unions or similar associations, consultancy firms, legal aid desks and the like, but the majority are law firms ('advocatenkantoren' in the Netherlands) that provide clients with the legal assistance of 'advocaten' (Vogels, 2003).

### *2.1.1. Dutch Bar Association, history and institutions.*

The profession of 'advocaten' can be traced back to the Middle Ages, but the outlines of the contemporary profession and professional institutions have been defined in the 19<sup>th</sup> century. The formal separation between legal representation in court and legal consultancy and assistance (a separation that still exists in Great Britain) was lifted, allowing both to be practiced by the advocaten (Henssen, 1998; Jansen, 2007). The Advocaten Law of 1952 defined the profession, its rights and responsibilities and its institutions. The Dutch Bar Association ("Orde van Advocaten") was given binding regulatory and disciplinary powers. The independence of advocaten, their secrecy obligations and the right to refuse to witness were embedded in the law, as was their monopoly of legal representation in court (with exception of the cantonal courts and cases with small financial interests). Dutch advocaten are obligatory members of the Dutch Bar Association and subjected to its rules and its disciplinary jurisdiction.

The Dutch Bar Association has used its regulatory powers to adapt the profession to developments of modern society. Quality control and regulations concerning financial management reporting, involvement in possible illegal transactions, safeguarding clients' deposits and others were introduced to secure the integrity and the constitutional position of the profession (Nederlandse Orde van Advocaten, 2007).

### *2.3. Growth of the legal industry*

Before 1979, the number of 'advocaten' never exceeded 2.000, but between 1987 and 2010, it almost tripled from 5.400 to 16.000. Before 1970, law firms of more than one lawyer were exceptional. Only a few firms had more than five lawyers. The 1970s saw a first wave of mergers and expansion of firms, but the development of the big Dutch law firms started with the mergers of 1990. Now, the top-10 firms count 130 to 280 'advocaten' and most of them also employ civil law notaries and tax advisors. The number of firms with more than 20 lawyers almost doubled in the last decade, from 53 to 100. Smaller firms also grew in number but less spectacularly. Nevertheless, the average size of a law firm, 3,6 lawyers in 1997, was still under six lawyers in 2010 (Henssen, 1998; KSU-SDU, 1999-

2012; Voert & Peters, 2006).

The last decade of the 20<sup>th</sup> century was also a period of internationalization of law firms and the development of full service firms through the association or merger of 'advocaten' with notarial, tax, and accountancy firms. Mergers of 'advocaten' with notaries and tax advisors are permitted, but full mergers with accountants or consultants are not allowed by the rules of the Bar Association. Around 2001 however, all "Big Five" international accountancy firms de facto had their Dutch law offices on their own account or by association with existing firms. Almost all big and several middle sized law firms had formed an international association or were seriously studying it. International full service – offering all legal services and specialisations to clients – was the dominant strategy.

The economic recession that followed 9/11 and the burst of the Dotcom bubble put an end to the growth of the international professional service firm including the legal sector. In the aftermath of the Enron affair, the restrictions on associations of accountancy, consultancy and law were tightened. Some multidisciplinary firms were dissolved. Andersen Accountants disappeared. The growth of the big law firms slowed down or came to an end. Trainees, associates and partners were dismissed due to a lack of work in the international transactions sector. Some lawyers started their own niche firms; these years brought the breakthrough of boutique firms, specialising in certain industries or areas of the law, such as Intellectual property law, family law, labour law, real estate, transport law and others (Nederlandse Orde van Advocaten, 2007). Full service was abandoned as a leading strategic concept. Firms concentrated on the type of clients and the market segments they could serve best and at the highest profits. They strengthened the specializations that these clients needed and let go of the rest. Some firms tightened their international alliance, others did the opposite. Some international firms still saw advantages in entering the European market through a Dutch foothold and opened relatively small offices (e.g. Howrey, Greenberg Traurig, Norton Rose) or took over middle sized firms (Bird & Bird, Lovells). In general, internationalization has slowed down. Instead of ongoing integration, the law industry is characterized by diversification and specialization (KSU-SDU, 1999-2012; Sherr, 2000; Voert et al., 2006)

In the following Sections and Chapters I will mostly refer to 'advocaten' and 'advocatenkantoren' with the less accurate, but more readable terms Lawyers and Law Firms.

#### 2.4. *Management of Law Firms*

Along with these developments, middle sized and big law firms in the Netherlands developed into organizations that had to be managed and organized. Twenty years ago, the largest law firms had 30 to 40 lawyers, who were supported by their secretaries, an office manager, a small finance department and perhaps one or two paralegals. Nowadays, the big law firms are fully developed organizations with professionally managed HRM, finance, IT and marketing operations. Knowledge and quality management are organized and supported by staff and systems. Even many smaller to middle sized firms have hired professional managers to look after support facilities and HRM and to support the managing partners (KSU-SDU, 1999-2012).

All law firms are owned as well as governed by the partners. The majority of the top 50 law firms are now incorporated (NV or BV), but this has not altered the governance and management structure significantly (KSU-SDU 2006, also noticed by Greenwood & Empson, 2007 and Wanrooy, 2007). Shares in the corporation are owned only by the senior professionals (the former partners); the shareholders themselves govern the firm<sup>1</sup>. In every firm with more than approximately 10 partners, the partners appoint a managing board that consists of one or more partners. They are sometimes supported by one or more 'external' (i.e. non-partner) managers. The Bar Association has recently allowed non-advocaten to act on the board of an incorporated law firm, as long as this board is chaired by one of the partners. The board manages the daily operations, the support staff and facilities and coordinates policy making processes. Apart from these basic tasks, there are many differences in the authority and composition of the board, the remaining powers of the partners, the position of external managers (De Haas, 2006; Van Otterlo & Dijkstra, 2011; Wanrooy, 2007). Also there are many different forms of structuring and managing the support organization and the law practice groups. In line with the findings of Wanrooy (2007), every law firm nowadays seems to develop an organizational structure that suits its interests best.

This research focuses on the top 20 law firms in The Netherlands. In ranking the firms by size, I only take into account their operations in the Netherlands. Law firms in the Netherlands are annually ranked by SDU publishers (until 2010: KSU). I follow the ranking according to the combined numbers of advocaten and notaries. Tax advisors are not included in this ranking. As the number of tax advisors in these law firms is relatively

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<sup>1</sup>Hereafter the term 'partners' includes the shareholders in these incorporated firms.

small, this does not affect the ranking, except for the firm of Loyens Loeff. This firm has a major international tax practice; while it is only 4<sup>th</sup> in size in the SDU ranking, including tax advisors it is by far the biggest law firm, employing over 600 lawyers, whereas the number one in the SDU list, De Brauw Blackstone Westbroek, employed 328 lawyers in 2012.

### *2.5. The economy of the law firm*

Lawyers – just like many other professionals – register the time spent on client matters and bill the client accordingly. Client and lawyer can agree on fixed fees, contingency fees or other price arrangements, but billable hours x hourly rate still is the most common billing method. It also serves to calculate other price arrangements. Budgeting and control systems of law firms focus on hours x rate as well (De Haas, 2006). Productivity, rate level and leverage are crucial profitability factors. Productivity varies according to experience, skills and capabilities of the lawyer, the type of practice and clients (De Haas, 2006; Leblebici, 2007; Mowbray, 1997; Sherer et al., 2002). Lawyers' rates vary with market segments, intensity of competition, seniority of the lawyer, reputation of the firm, and the degree of specialisation.

The third profitability factor, leverage, consists of the contribution of employed fee earners to the profits of a firm. The fee revenues generated by associate lawyers in the employment of the firm are expected to exceed their costs (compensation and benefits, education, facilities etc.). Leverage is a powerful profit driver (Sherer, 1995), but leverage can only be achieved by dedicating time to educating juniors, and by delegating and supervising work by senior professionals. To most professionals, this does not come naturally; they are driven by the direct challenge of a new assignment (Hitt, Bierman, Shimizu, & Kochhar, 2001; Leblebici, 2007; Mowbray, 1997). Leverage may be supported by standardization of work (Greenwood, Li, Prakash, & Deephouse, 2005). In law firms in the Netherlands, the professional attitude of the lawyer and the predominantly customized nature of the legal work limit the possibilities to standardize and delegate work and to create leverage this way. A leverage of two to three associates pro partner is high and four is exceptional; compared to accounting and consulting firms, where leverage can reach up to 20 or more, this is very modest (De Haas, 2006; KSU-SDU, 1999-2012; Van Otterlo et al., 2011).

Managing profitability, especially productivity and leverage in a law firm, is therefore as much a matter of human resource management as of financial management and demands a profound understanding of the professional mentality. Cost management and administrative processes are important for good financial practices, in law firms just like others. But they are rarely of

strategic importance. The cost structure of a law firm is simple. There are no major fixed assets or other capital goods that need investments and close control, nor complicated commercial transactions. The majority of costs are human resource related: staffing, compensation, education, and expenses. Given the strategic choices of market segments, practice areas or level of expertise, the margins for managing costs are small. When cost-cutting exceeds these margins, it may endanger the motivation, commitment and productivity of professionals, as it implies lowering their compensation or reducing organizational support (De Haas, 2006; Mowbray, 1997).

### *2.6. The legal workforce*

Traditionally, the lawyer ('advocaat') belonged to the notable persons in the local, regional and national communities. Women lawyers were an exception even until the 1960s and lawyers from ethnic minorities still are (Henssen, 1998). The typical lawyer came from an upper or upper middle class family, studied law in Leiden or at the University of Amsterdam, perhaps Utrecht or Groningen, was member of the students' fraternity and played field hockey and tennis. His family and family network extended in business and civil service circles that were useful for his law practice.

Following the general democratization movements of the 1960s, the student population and legal workforce democratized and differentiated, starting with the 1970s legal aid movement (Henssen, 1998). From the 1980s on, the expanding law industry could not restrict its recruitment to the traditional circles. The law faculties grew and, at the end of the 20<sup>th</sup> century, delivered around 3000 graduated lawyers annually.

The rapidly increasing demand for (young) professionals in the 1990s resulted in what was called the "War for Talent" (Chambers, Foulon, Handfield-Jones, Hanking and Michaels 1998). While formerly 20 to 25% of law graduates used to enter law firms, in the years 1999-2002, law firms absorbed more than one third of all law graduates. In the coming decades more lawyers will retire due to the ageing of the population, which also stimulates the demand for young lawyers. The number of graduated masters-in-law from the Dutch universities is predicted to remain at the current level at most. Economic recessions in 2002-2004 and since 2008 cause a temporary slow-down of growth, but the demand from law firms and other employers even shows a steady increase during recession (De Haas, 2005; KSU-SDU, 1999-2012; Voert et al., 2006).

The development of the legal profession and education have resulted in a professional workforce that has become much larger – relative to all law graduates – and more diverse: in gender, ethnic background, educational

history, probably also in ambitions, values and abilities (KSU-SDU, 1999-2012). The number of female lawyers grew from 10% in 1967 to 30% in 1997 and to more than 40% in 2011. Women are now the majority of law students and of law firm trainees. Immigrated and ethnic minorities have found their way to the study of law, but not yet into the established law firms (Dinovitzer et al., 2007; Groenendijk & Hahn, 2006; Henssen, 1998; KSU-SDU, 1999-2012).

Since 2004, the diversification has also involved the study of law itself. The uniform university curriculum has been broken up by the bachelor/master structure and the start of non-academic vocation law schools ('HBO'). Students from these schools are – comparable to university bachelors - not yet admissible to the legal profession but work as paraprofessionals or support lawyers in law firms. They support the work of the lawyers by desk research and documentation, drafting memos and handling routine matters (Van Otterlo, 2004).

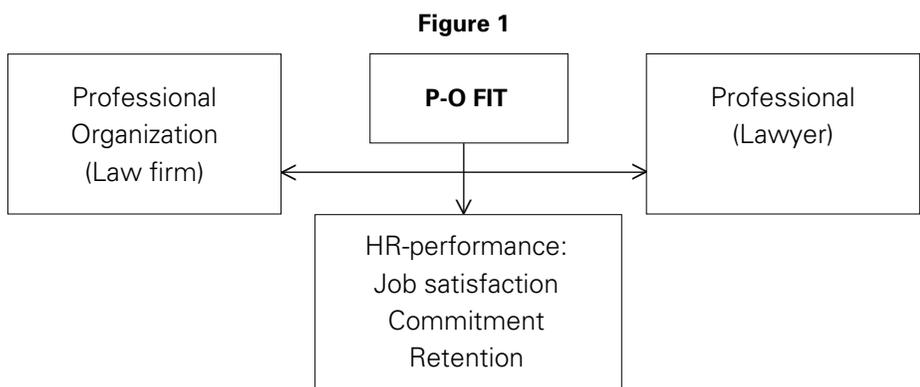
### *2.7. The legal career*

One of the first regulations of the Bar Association (the "stageverordening") concerned the supervision, coaching and training of young lawyers (Henssen, 1998; Jansen, 2007). With a master's degree in Law, obtained at one of the Dutch universities, a lawyer is qualified to become 'advocaat', provided that the curriculum includes the most important law practice areas. She can be admitted to the Bar, but has to practise under the supervision of an experienced lawyer, the 'patroon' (principal). During the three years of the traineeship, she has to follow professional education courses. The obligatory courses in the first years are concluded by exams, that most trainees pass; the exams do not have a selection purpose. Furthermore, trainees have to gain experience in a variety of legal practices. If they fulfill all requirements, they receive a testimony and are allowed to practice independently (Van Otterlo, 2004, 2007). It is possible to start an independent practice, with supervision of an experienced lawyer of another firm, but most trainees are recruited by law firms. After a successful traineeship, they may be invited by their firm to stay on as associate lawyer. The associate period can be divided in several different steps and titles, such as junior, medior and senior or manager. After four to six years as an associate, the possibilities of becoming partner are assessed. If positive, the associate lawyers at the big law firms are admitted to a partnership procedure that involves business planning, training and assessments. The final partnership decision follows one to two years after the start of this procedure. Associates who do not have the ambition or the capabilities

to become partner leave the firm or stay on as senior associate or salary partner, depending on the career policy of the firm. These positions are commonly marked by a (further) increase in compensation level, often with a larger performance related part, and some other perks. The salary partner may receive a moderate profit share and some of the privileges of the partner, but remains employed by the firm. The different career options and policies will be discussed extensively in following chapters, together with the other aspects of human resource management in law firms.

### 3. *Research model*

The development of the legal industry and of law firms reflects an increasing diversification. This is not only related to size, but also to legal specializations and market orientation, affecting the strategy and business models of the firms (Advocaten, 2007; Empson et al., 2007; Gabarro, 2007; Morris & Pinnington, 1998b). Another development is the diversification of the educational and social composition of the legal workforce (Dinovitzer et al., 2007; Wilkins, 2007). Because of the growing demand for legal talent, effective recruitment and development is of strategic importance to law firms. Achieving alignment or fit (Lorsch et al., 2002) between the needs of the firm and the backgrounds, talents and ambitions of lawyers is a condition for success, and requires more and more attention. The main theme of my research is, how this Person-Organization Fit (P-O fit) can be achieved and what the effects of fit are. The central question of this research is, whether and how fit or misfit between the character of the law firm and the values and ambitions of the lawyer affects the attitudes of the lawyers; their satisfaction, commitment and their intention to stay. This question is represented by the following diagram.

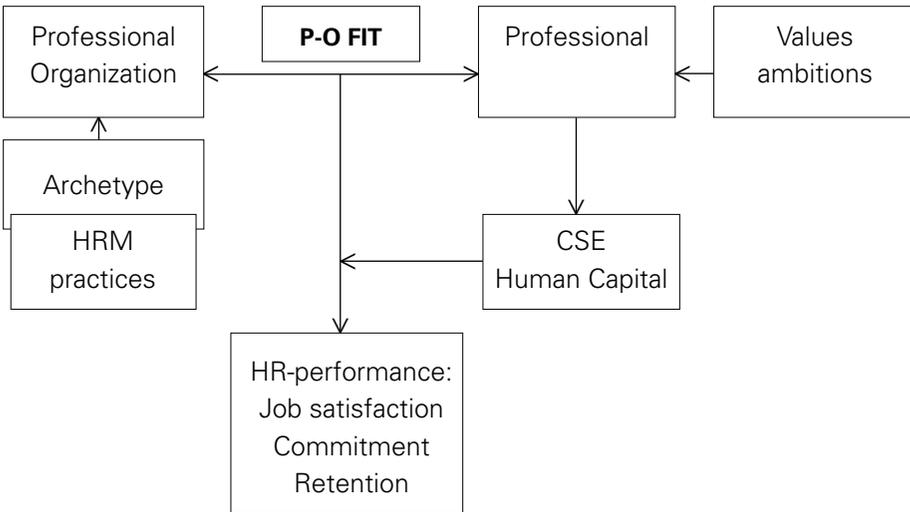


As argued, law firms differ increasingly in size, services, structure and operations. The character of the firm can be determined by the values that are expressed by its configuration, strategy and culture. The assumption is that lawyers with different values and ambitions fit into firms with different characters. I will use archetype theory of professional service firms, to be discussed in Chapter 2, to differentiate between law firms. HRM practices – such as career and compensation systems - are assumed to have a distinctive contribution to the archetypical character of a firm.

The effects of P-O fit on the satisfaction, commitment and intention to stay may vary according to different characteristics and capabilities of the lawyers that can be relevant for the purposes of this research. Researchers have identified core self-evaluations (including self-confidence and self-esteem) and individual human capital as factors that influence fit and fit effects. I will include the moderating effects of these factors in my study.

The research question and the diagram can therefore be completed as follows.

**Figure 2**



*3.1. Research questions and chapters*

The first part of my research concerns the differentiation of Dutch law firms. Is it possible to distinguish the different archetypes, as developed in the theory on PSFs, among Dutch law firms? What are the defining differences between the Dutch law firms, how are they expressed in

elements of strategy, governance, management and HRM? These questions are answered in Chapter 2.

Chapters 3, 4 and 5 are dedicated to the issues of P-O fit. Chapter 3 describes the results of two surveys among young Dutch lawyers, assessing their values and ambitions and the fit with their firms. Chapter 4 is dedicated to the moderating effects of core self-evaluations and human capital on the relation between fit and attitudinal outcomes. Chapter 5 describes the changes between both surveys over time. These changes are illustrated by interviews with young lawyers also described in Chapter 5. Final discussions and conclusions are the subject of Chapter 6.