Research Centres of the Faculty of Law

The Business & Law Research Centre
(Prof. C.J.H. Jansen)

The Business & Law Research Centre – Onderzoekcentrum Onderneming & Recht (OO&R) – involves cooperation between the Law Faculty of the Radboud University Nijmegen and fourteen prominent, mostly international, law firms and Dutch multinationals: ABP Pension Funds, AEGON NV, AkzoNobel, Allen & Overy, De Brauw Blackstone Westbroek, Clifford Chance, Eumedion, Houthoff Buruma, ING, Loyens & Loeff, Nauta Dutilh, Pels Rijcken & Droogleever Fortuijn, Rabobank Netherlands and Stibbe. These partners are extensively involved in the research of the Centre. They also participate in the Advisory Board, providing recommendations on the governance, focus and prospective research projects of the Centre.

The Centre, which conducts fundamental research in Business and Law, critically analyses national and international developments in legislation, case law and best practice related to this field. It also provides a thorough educational programme for gifted young scholars and is actively involved in a wide variety of postgraduate educational and professional training programmes.

The Centre combines academic excellence with the expertise and practical experience of its partners. This unique collaboration has led to cross-fertilization between legal practice and the academic world.

The four key research programmes are:
1. Company Law
2. Banking, Finance and Insolvency Law
3. Business and Patrimonial Law
4. Business and Financial Law

Research focuses strongly on European private law and private international law, complemented by research on the practical...
The Centre, which was established in 1991, is recognized as a research school by the Royal Netherlands Academy of Arts and Sciences (KNAW). In 2009, the accreditation was renewed by the KNAW and is now valid until 2015. Its research was evaluated in 2010 by the National Evaluation Committee for Dutch Law Faculties. In general, the positive conclusions reached by the Peer Review Committee and ECOS within the context of the KNAW reaccreditation procedure were confirmed by this committee. The Centre’s educational programme for gifted young scholars is certified by the Accreditation Organization of the Netherlands and Flanders (NVAO).

Research facilities

The Centre houses the Information and Documentation Centre for Business and Law (CIDOR), which has a collection of books, journals and electronic publications on international and domestic Business Law that is unique in the Netherlands.

Awards and Acknowledgements

• Prof. C.H. Sieburgh was elected as a member of the of the KNAW
• Prof. A.S. Hartkamp was elected as a foreign member of the Hungarian Academy of Sciences
• Ms. I.P.M. Ligteringen was awarded the Frye Grant.

Collaboration

Within the framework of International Working Groups on Company Law, Security Rights, Insolvency Law and Financial Law, the Centre cooperated in 2010 with leading academics from the following universities and research centres: Adelaide (Australia), Bangi – National University of Malaysia (Malaysia), Bar-Ilan (Israel), Basel (Switzerland), Beijing – China University of Politics and Law (China), Berlin – Humboldt (Germany), Bern (Switzerland), Bolzano (Italy), Budapest (Hungary), Cambridge (UK),
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Chicago – John Marshall Law School (US), Cuyo (Argentina), Dublin (Ireland), Duke (US), Edinburgh (Scotland), Geneva (Switzerland), Genoa (Italy), Ghent (Belgium), Göteborg (Sweden), Hamburg – Max Planck Institute (Germany), Johannesburg (South Africa), Kolkata (India), Krakow (Poland), Leeds (UK), Leuven (Belgium), Lund (Sweden), Luxembourg (Luxembourg), Madrid (Spain), Marburg (Germany), Melbourne (Australia), Montpellier (France), Münster (Germany), Nottingham (UK), Örebro (Sweden), Oxford (UK), Paris – Pantheon-Sorbonne (France), Poznań (Poland), Pretoria (South Africa), Prague (Czech Republic), Rome – L’Ospedale Carlo Carli (Italy), Rutgers-Camden (US), São Paulo (Brazil), Seoul – Ewha (South Korea), Toledo (Spain) and Toronto – Osgoode Hall Law School (Canada). The Centre also collaborated with INSOL Europe and UNCITRAL.

Research results
Interdisciplinary and multi-disciplinary research was conducted on several aspects relating to the credit crisis. A volume on this topic published in 2010 includes an economic review of causes, consequences and future remedies and analyses the changing role of public and private shareholders in companies. It also includes an assessment of a possible new financial regulatory framework in the Netherlands and Europe. Special attention is drawn to the position of the security trustee in financial distress and the role of credit rating agencies from an English and comparative legal perspective. The book concludes with an overview of presentations and discussions during a conference organized by the Centre at ING House on the global credit crisis.

Another major topic addressed by the Centre was secured transactions. Important examples include the publication of the inaugural lecture of Prof. F.E.J. Beekhoven van den Boezem on the use of credit claims as collateral within the context of monetary policy transactions in the Euro system. Numerous recent developments and discussions in legal doctrine are addressed in a separate volume on bank security, including public filing of security documentation, new enforcement modes regarding pledged shares and the use of pre-packs in a Dutch legal setting, modification of existing priorities by secured creditors and secured financing of informal restructuring attempts.

Misleading representations in capital market transactions were examined in the doctoral thesis of Dr B.J. de Jong, which was presented during a seminar on the ‘World Online’ case organized by the Centre at Houthoff Buruma. Papers submitted within the framework of the biennial conference of the Centre’s company law department on internal disputes of corporate entities were published in a separate volume. The inaugural lecture of Prof. J.J. Kilborn explored expert recommendations and included an analysis of the multitude of laws establishing (and revising) formal debt adjustment systems in Europe in the period 1984-2010. Prof. L.G. Verburg’s inaugural lecture addressed the law relating to the termination of employment contracts. He argued that the applicable regime is outdated and requires modification.

New editions were published of various leading textbooks (e.g. on partnerships and the law of obligations). There was a major overhaul of the textbook on financial supervision, resulting in

Prof. Elspeth Guild (Full Professor) is an expert on Justice and Migration. She presented the opening lecture at the International Conference Metropolis on global migration, integration and citizenship.
a new edition. The Centre reviews leading case law on Business and Law each month.

Societal impact
The societal impact of research conducted by the Centre is well illustrated by the financial turmoil during the credit crisis. The availability and cost of credit, best practices relating to corporate governance, shareholder activism and financial markets supervision are central to the research of the Centre. Other research topics which directly influence the financial and commercial climate include trusts and protected funds arrangements, secured transactions, the effects of the opening of the insolvency proceedings, combating insolvency fraud, asset management, pension funds, misleading representations in capital market transactions, corporate litigation and the use of flexible corporate entities.

The societal impact is further enhanced by the extensive involvement of its partners in large-scale, permanent research projects. This generates results which are often directly applicable in practice and/or which contain recommendations for legislative and policy reforms to facilitate particular societal needs.

Most senior researchers hold key positions in law reform committees, courts, the Netherlands Authority for the Financial Markets, law firms, banks and/or companies. Researchers are also consulted by the IMF and the World Bank.

Future research
Pending and future research projects relate to the following topics: the position of private and public shareholders, corporate litigation, alternative dispute resolution, security rights in Europe from a comparative perspective, the treatment of contracts in insolvency, securities and general patrimonial law, rules and best practices relating to coinsurances, the position of pension funds, initial public offerings and corporate criminal law. Permanent research is conducted by the Centre within the framework of several volumes published in the prominent Asser Series.

A major research project was initiated in 2010 in which core topics of insolvency law will be analysed in a comparative perspective in 25 selected countries in and beyond Europe. The results of this project will be published in fifteen volumes, which will provide a main source of reference in international and comparative insolvency law. Other International Working Groups established by the Centre will examine applicable laws and best practices relating to the topics ‘Forum Europaeum on Corporate Boards in listed companies’ and ‘Liability of Asset Managers’. The aim of these projects is to critically analyze domestic legal regimes of selected countries in Europe and to advance recommendations for European harmonization.

The Centre will organize various conferences and seminars in 2011 on a wide range of topics in ‘Business and Law’. Furthermore, researchers will participate in the activities of UNCITRAL, INSOL International and INSOL Europe. International expert meetings will be organized by the International Working Groups.

Research Centre for State and Law (Prof. R.J.N. Schlössels)

The Centre for State and Law – Ontwroekentrum voor Staat en Recht (SteR) – focuses on key issues and basic principles in public law. Its researchers critically analyze national, European and international developments in constitutional law, administrative law and criminal law. The Centre is committed to creating a stimulating environment in which high-quality, national and international multidisciplinary research can flourish. SteR includes three research programmes:
1. Centre for Migration Law (CMR)
2. Administration of Justice
3. Principles of Public Law

CMR brings together researchers from various disciplines. Its purpose is to provide a stimulating context for high-quality fundamental and applied research on migration and the protection of minorities. The CMR is unique in Europe for its interdisciplinary approach and the composition of its staff, which includes lawyers, sociologists, anthropologists and political scientists. It is also known for its comparative international approach to research.

The CMR provides a thorough academic training and a stimulating research climate, operating a guest programme that attracts promising PhD students and young postdocs from all over Europe. Research is carried out for international organizations such as the European Community, the Council of Europe, the UNHCR, the International Organization for Migration, the UN Centre for Human Rights, Amnesty International and the European Council on Refugees and Exiles.

Researchers at the CMR also contribute to drafting new European migration law. They organize international conferences and edit the European Journal of Migration and Law, a book series (Immigration Law and Policy in Europe) and a yearbook on Dutch and international migration law (Rechtspraak Vreemdelingenrecht).

Researchers working on Administration of Justice focus on law in action – the working of the courts, public prosecutors and the legal profession. New developments in procedural law are monitored closely against the background of the principles of effective legal protection. In 2010 special attention was paid to the phenomenon of convergence of civil, criminal and administrative procedural law. Common principles and concepts of legal proceedings is also
Key publications

The Business and Law Research Centre


Research Centre for State and Law


an important research topic. ‘Administration of Justice’ involves research in four main areas:
1 Legislation and case law relating to procedural law, including the position of citizens in adjudication
2 Organizational design and practice of the Administration of Justice
3 The quality of Administration of Justice from the point of view of legality, effectiveness and efficiency
4 The legitimacy of the Administration of Justice, from the perspective of the ethics of legal professionals

Researchers working on Principles of Public Law focus on the main principles of public law from a national, European and international perspective. They investigate the relationship between principles of the democratic constitutional state (i.e. the rule of law, human rights, the democratic order, and accountability) and national and international social developments. The principles are studied with a keen eye on European and global developments. Within the programme, the expertise and know-how of constitutional, administrative, criminal, European and jurisprudential scholars are combined. Research includes exploring the impact of European and International law on fundamental concepts of national law. Due to the Europeanization and internationalization of law these concepts are continuously evolving and transforming.

The research project ‘Cosmopolitanism in a world of interconnected threats and challenges: From a world of states to a world state’, based on a Vidi grant from the Netherlands Organization for Scientific Research (NWO) for a senior researcher, continued. Several new research projects started in 2010, in particular on the themes of ‘law and religion’ and ‘rules and regulations in public law’.

According to the 2010 research assessment by the National Evaluation Committee for Dutch Law Faculties, SteR performs well. High scores were awarded to the Centre for Migration Law and to the research output of the department of Philosophy of Law, part of the ‘Principles of Public Law’ programme.

Awards and acknowledgements
• Prof. P.H.P.H.M.C. van Kempen was appointed Secretary-General of the International Penal and Penitentiary Foundation at the 2010 colloquium of this organization in South Africa
• Prof. Th. Mertens was appointed visiting professor at Leuven University
• NWO awarded a grant for Prof. Th. Mertens’ research proposal ‘Human Rights and Human Duties: Assessing the Obligations entailed in Human Rights’.

Collaboration
SteR participates in the International Research Universities Network (IRUN), collaborating with the universities of Münster, Kiel, Leuven, Poitiers, Montpellier, and Exeter. The Centre also has

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Dissertations: 7
Scientific publications: 330
Professional publications: 175
Annotations: 182
international ties with the Max Planck Institute for Foreign and International Criminal Law (Freiburg, Germany), the Challenge project (Challenge Landscape of European Liberty and Security), the International Penal and Penitentiary Foundation, the EU-AGIS programme and the Working Group on Comparative Studies of Legal Profession. Within the Netherlands SteR collaborates with the Council for the Judiciary, the Ministry of Justice, several courts, municipalities and lawyers.

The Centre for Migration Law is responsible for coordinating the European Network on Free Movement of Workers within the European Union, which is funded by the European Commission. The CMR has long-term collaborative arrangements with the Research Centre for Institutional Behaviour and European Integration at the Austrian Academy of Sciences, the European Centre for Social Welfare Policy and Research in Vienna (Austria), the Centre for European Policy Studies (Belgium), the Danish Institute for Human Rights in Copenhagen (Denmark), the Research Centre for International and European Immigration and Asylum Law at the University of Constance (Germany), the Institute of Political Science in Paris (France), the London School of Economics (UK) and the Odysseus Network of Experts in European Migration and Asylum Law.

Research results

SteR generally disseminates its results through leading publications (including its own book series), and through lectures, conferences and symposia.

CMR researchers finished a research project funded by the European Commission on the content and the impact of compulsory elements in national integration policies (INTEC). CMR researchers prepared the Dutch report for a European Commission project on the Long term Residents Directive. Research on the Association Agreement EC/Turkey was also completed.

In April 2010 an international workshop was organized by the CMR and the Centre for Language Studies on the use of language analysis in Wassenaar. In October 2010 an international conference on the INTEC project was organized in Brussels and in November 2010 the annual conference on Free Movement of Workers was organized in London. Prof. E. Guild was one of the keynote speakers at the Metropolis conference.

Researchers on Administration of Justice carried out two research projects financed by the Council for the Judiciary. One was conducted by Dr A.G.M. Böcker, Dr T. Havinga, Prof. C.J.M. Klaassen and Dr A. Jettinghoff on the Specialization of Judges, the other, on Collegial Courts, by R. Baas MSc, Dr M.T.A.B. Laemers and Prof. L.E. de Groot-van Leeuwen. In February 2010 a conference was organized on ‘Convergence of procedural law’.

Within the programme Principles of Public Law, a PhD project on ‘Withdrawal of administrative decisions in European and comparative perspective’ (Dr A.J. Bok and Prof. R.J.N. Schlössels) financed by the NWO started in 2010. Prof. H.J.B. Sackers’ inaugural lecture discussed the use of punitive measures, in particular by city mayors, to regulate public order. A research project financed by the National Coordinator for Counterterrorism (NCTb) and the Research and Documentation Centre on Justice (WODC) was carried out by Prof. P.H.P.H.M.C. van Kempen & Ms. J. Van de Voort. The project reviews Dutch antiterrorism legislation in the light of fundamental rights.

Societal impact

The CMR carried out research on behalf of the UNHCR, the European Commission, the Dutch Ministry of Justice, the Advisory Committee for Aliens’ Affairs, the Dutch Refugee Council, FORUM (Institute for Multicultural Development) and the Dutch Foundation for Legal Aid for Asylum Seekers. Consultancy services were also provided to the Council for the Judiciary, the Dutch Refugee Council and FORUM. The Centre’s publications have affected both the political and the public debate on a variety of issues. Dr A. Böcker and Prof. A.B. Terlouw are the Dutch experts in the EU-funded Network of Socio-Economic Experts in the Non-Discrimination Field.

Prof. L.E. de Groot-van Leeuwen is a member of the Advisory Editorial Board of Legal Ethics. She chairs the Working Group on the Comparative Studies of the Legal Profession (RCSSL).

Prof. Y. Buruma chairs the Admittance Committee Regarding the Evaluation of Completed Criminal Cases. Prof. J.W. van de Gronden is a member of the Committee on International Affairs and of the Commission for Consumer Affairs of the Social-Economic Council (Social-Economische Raad). Prof. C.A.J.M. Kortmann was appointed as a member of the State Committee on the Constitution.

Future research

The CMR will participate in several projects funded by the EU, including the coordination of the Network on Free Movement of Workers for a period of four years. Research funded by the ERF on new forms on access to asylum procedures and research on monitoring guidelines with regard to traumatized asylum seekers will continue. Research for the Fundamental Rights Agency on access to Justice will start. In 2011 the CMR will organize conferences on the withdrawal of nationality (January 2011); on the Returns Directive (February 2011) and on Polish migrants (April 2011). In 2011 the newly appointed Professor J. Gerards will start a research project on fundamental rights.
Director: Prof. Steven Bartels

Steven Bartels is Professor of Private Law at Radboud University Nijmegen. Since 1 September 2010 he has been Vice Dean for Research at the Faculty of Law. He is a member of the Board of the Business and Law Research Centre (OO&R) and of the Board of the Law Firm School (an educational institute comprising 14 internationally renowned law firms, which offers professional training programmes certified by the Dutch Bar Association). Prof. Bartels is also a member of the Advisory Board of the prominent Asser Series and of the editorial board of the civil law review Nederlands Tijdschrift voor Burgerlijk recht.

The Centre for Notarial Law
(Prof. F.W.J.M. Schols)

The Centre for Notarial Law – Centrum voor Notarieel Recht (CNR) – was established in 2008. Its key research programme addresses notarial law, in particular family property law (personal and family law, relationship between property law, inheritance law and estate planning). The strength of CNR’s research lies in the combination of tax and civil law and cross-fertilization between the legal practice and the academic world. Particular attention is paid to the bearing of these fields on the general law of property and to the combination of legal fields, for example marital property law, real-estate law and company law. CNR researchers seek to provide a scientific foundation for notarial practice. Research and academic education are strongly connected. According to the National Evaluation Committee for Dutch Law Faculties, CNR performs well.

Collaboration
CNR cooperates with ABN Amro Bank NV on estate planning and monitors the academic level of the consultancy services provided by the bank. It also cooperates with the Dutch Foundation for the Professional Education of Notaries (SBN), the Royal Notarial Association (KNB), the Association of Estate Planners in Notarial Practice (EPN), Network Notarial Association and with Tilburg University as part of its course in Notarial and Fiscal law.

Research results
CNR publishes a series called ‘Publicaties vanwege het Centrum voor Notarieel Recht’ (currently 9 volumes). In 2010, a volume on ‘Partnership’ in a broad perspective was published. Prof. B. Schols delivered his inaugural lecture on notarial tax law. ‘Delegation of last wills to third parties’ and ‘The new inheritance tax law’ are research projects that started in 2009 and will be continued.

Societal impact
There are strong links between the CNR and legal practice. Researchers are actively involved in lectures, training and legal advice and often comment on current issues in newspapers and on television. Researchers are advisors to the Dutch Government, lecturers (in charge) for the SBN, for the estate planners of EPN, and for the Novex (the Dutch association for executors). They are also involved in the Commission Succession Law II of the KNB and in the Commission Inheritance Tax Law of the KNB, the Board of the Institute for Agricultural Law in Wageningen, the Stichting tot Bevordering der Notariale Wetenschap and the Scientific Council and Board of the Thijmgenootschap.

Future research
Continuing projects include the historical development of and the current legal position of the surviving spouse in Dutch civil law, the legal exegesis of the provisions of last wills, international aspects of estate planning, the new law on non-liability partnerships and developments in the legislation on marital property. An empirical study on nuptial agreements will continue in 2011.