Research Centres of the Faculty of Law

Internationalisation
The faculty’s policy is to continue exploring options for international cooperation and the institutionalization of contacts. Incorporating international and European law in legal research is essential in a world of interwoven legal systems. The faculty board intends to form – or join – European consortiums key areas, including Insolvency Law, Financial Law, European Private Law, Migration Law, Fundamental Rights and Security-related issues.

Societal relevance
Legal research almost always relates to legal practice and is therefore by its nature of societal relevance. The faculty co-operates closely with – and also advises – external partners such as civil-law notary offices and law firms, financial organisations, international businesses, courts, government bodies, ministries, NGOs and European organisations.

Publications – mainly papers in professional journal and case notes – are written with legal practice in mind. The Centre for Post-academic Legal Education (Centrum voor Postacademisch Juridisch Onderwijs, CPO) provides post-academic education for lawyers and judges. Academic publications also provide a solid foundation for legal practice. One aspect of the centre’s mission is to make academic research more practice-oriented, for example by preparing best practices, legislative proposals and European Union directives.

The Business & Law Research Centre
(Prof. Corjo Jansen)

The Business & Law Research Centre – Onderzoekcentrum Onderneming & Recht (OO&R) – involves cooperation between the Law Faculty and fifteen prominent, mostly international, law
firms and Dutch multinationals. The Centre conducts fundamental research in 'Business and Law'. It also offers a comprehensive educational programme for gifted young scholars and is actively involved in a wide variety of postgraduate educational and professional training programmes.

The academic mission of the Centre is:
1. to conduct high-quality (domestic and international) academic research in Business and Law
2. to enhance the understanding of theories which apply to Business and Law in the light of social, economic, political and financial developments
3. to encourage a practical approach in academic research without compromising academic quality, particularly by analyzing the fundamental principles and foundations of (business-oriented) private law
4. to explore and initiate applications of academic research, for example in national and international rules and regulations
5. to educate and supervise Master’s students and young researchers.

The four key research programmes of the Centre are:
1. Company Law
2. Finance, Security Rights and Insolvency Law
3. Business and Patrimonial Law
4. Financial Law

A major theme of the research in all programmes relates to European private law, comparative law and private international law.

The Centre, which was established in 1991, is recognized as a research school by the Royal Academy of Arts and Sciences (KNAW). In 2009, accreditation was renewed and it will be valid until 2015. The Centre’s educational programme for gifted young scholars is certified by the Accreditation Organization 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.

Collaboration
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 academia. The Centre has regulations, which dictate that all parties involved guarantee academic independence. The following partners currently participate: AEGON N.V., AkzoNobel, Allen & Overy, APG Asset Management, De Brauw Blackstone Westbroek, Clifford Chance, Freshfields Bruckhaus Deringer, Houthoff Buruma, ING Bank, Loyens & Loeff, NautaDutilh, Pels Rijcken & Droogleever Fortuijn, Rabobank Netherlands, Stibbe, Stichting Eumedion.
Research Centres of the Faculty of Law

The Centre, which has excellent international connections, encourages international cooperation in all of its research programmes. There is close collaboration with the following chairs and research institutes: the Chair in Corporate Finance (Nijmegen School of Management), the Max Planck Institute for Comparative and International Private Law (Hamburg, Germany), and the Network for Studies on Pensions, Aging and Retirement (Netspar, Tilburg, the Netherlands).

Within the framework of International Working Groups established by the Centre, there is structural collaboration with leading academics and practitioners from universities and institutions around the globe. The Centre also plays an active role in various international GO/NGOs (for example, the IMF and INSOL Europe).

Research results
In 2013 the book Corporate Boards in Law and Practice was published by Oxford University Press. The authors analyse the corporate boards, their regulation in law and codes as well as the way they actually operate in ten European countries. Corporate boards play a central role in corporate governance and are thus regulated in the corporate law and corporate governance codes of all industrialized countries. Yet, while there is a common core of rules on the boards, there are still considerable differences. These differences depend partly on shareholder structure, partly on historical, political and social developments and especially on employee representation on the board. More recently, in particular with the rise of the international corporate governance code movement, there has been a clear tendency towards convergence, at least in terms of the formal provisions of the codes. This project was carried out by an International Working Group jointly established by the Centre and the Max Planck Institute.

The Centre has invested substantially in international research in Insolvency Law. A milestone was the launch of the International and Comparative Insolvency Law (ICIL) Series, published by Oxford University Press. Within the framework of this series, the discrepancies and common features of domestic insolvency laws in twenty countries across the world are inventoried and critically analysed. The project’s ambition is to present the material within a structure and with a level of detail that is on par with the leading national legal literature of participating countries. In 2013 the Centre published the second volume of the series on Treatment of Contracts in Insolvency. This topic is of particular importance to the international insolvency community, as virtually any insolvency needs to deal with the matter of contractual obligations (ranging from insolvent multinationals to the SME sector). It is essential for commercial lawyers to consider the implications of insolvency (whether of their client or of the counter-party) on any contract that is under discussion, particularly where international aspects are involved.

Awards and acknowledgements
• Prof. Arthur Hartkamp has been appointed as a member of Academia Europaea.
• Prof. Corjo Jansen was knighted, in part for his contribution to legal historical research (notably on administration of justice during the Second World War).
• Dr Bas de Jong was awarded a grant by the Niels Stensen Foundation to conduct research as a visiting scholar at Cambridge University.
• Charlotte Spierings was awarded the Frye Stipend for promising young female researchers.
• Prof. Mark Heemskerk was awarded a grant by the Instituut Gak for his research project ‘The Role of Pension Funds in Active Ageing and Solidarity between Generations’.

Societal impact
The Centre has influenced public debate on a wide variety of topics which are of direct relevance to financial and commercial legal practice. Research projects relating to corporate governance, insolvency fraud and regulation of financial institutions are important examples.

The Centre plays an active role in various consultations launched by the Dutch and European legislators, for example a response to the EU Consultation on a possible Recovery and Resolution Framework for Financial Institutions other than Banks. Research was also commissioned by the Dutch Ministry of Security and Justice on ways of improving bankruptcy law. Based on a comparative study conducted by the Centre, a report provides recommendations on improving, for example, a pre-insolvency plan, the insolvency composition scheme and silent administration. The report serves as preparation for an insolvency bill, which is scheduled to be finalized in 2014. The Centre’s societal impact was enhanced by the participation of Prof. Michael Veder and Prof. Tomáš Richter in the Advisory Commission of the European Commission on cross-border insolvency law and the membership of Prof. Carla Klaassen in the State Advisory Commission on Private Procedural Law.

Future research
A major international research theme in 2014 relates to Financial law. International Working Groups are currently working on research projects dealing with new EU legislation, including the highly controversial European Directive on Alternative Investment Fund Managers, which was adopted after much debate in October 2010 (AIFMD). The AIFMD, which is a direct regulatory response to the financial crisis, has a significant impact on the manner in which investment managers may operate and offer non-retail funds (including hedge, private equity, real estate and infrastructure), which are currently largely unregulated. The results will be published by Oxford University Press in the first half of 2014. Another major project will critically assess various aspects of the European
Banking Union from a legal and an economic perspective. Main topics include general aspects of the European Banking Union, the Single Rulebook & CRD IV, the Single Supervisory Mechanism and the Single Resolution Mechanism.

Research for the third volume on ‘Ranking and Categories of Claims’ of the ICIL Series has officially commenced. The Centre is also working on a second edition of a book on the influence of European law on national private law. Another international project deals with ‘Transnational Securities Law’. A team of globally renowned academics and expert practitioners in the field has been brought together to present the first comprehensive analysis of the Geneva and Hague Securities Conventions and related initiatives (including those of UNCITRAL and regulatory authorities). It explores the international harmonization of the law relating to securities, and identifies issues that have not yet been harmonized. The project intends to explain the current international law on intermediated and non-intermediated securities and suggests solutions to problems where there are gaps in the legislation or where the current framework could be improved.

Research Centre for State and Law (Prof. Thomas Mertens)

The Centre for State and Law – Onderzoekcentrum voor Staat en Recht (SteR) – focuses on key issues and basic principles of public law. Its researchers critically analyze national, European and international developments in constitutional law, administrative law and criminal law. The Centre provides a stimulating environment in which high-quality, national and international multidisciplinary and comparative research can flourish. SteR includes three research programmes:

1. Centre for Migration Law (CMR)
2. Administration of Justice

The CMR brings together researchers from various disciplines to provide a stimulating context for fundamental and applied research on international and national migration law and the protection of minorities. It is unique in Europe, thanks to its interdisciplinary approach and its international staff, who include lawyers, sociologists, anthropologists and political scientists.

Researchers working on the theme ‘Administration of Justice’ focus on law in action – the workings of 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. Methods used to understand the impact of civil, criminal and administrative law (including tax law) at various court levels are also an important research topic.

Researchers working on the theme ‘Principles of Public Law’ focus on the main principles of public law from the national, European and international perspective. They analyse the relationship between key constitutional principles (the rule of law, democracy, human rights, transparency, participation and accountability) and national and international political, social and legal developments. Due to the Europeanization and internationalization of law, these concepts are continuously evolving. Research therefore extends to exploring European and international developments, as well as their impact on the fundamental concepts of national law. The programme brings together the expertise and know-how of scholars of constitutional, criminal, administrative, and European law, as well as jurisprudence, in order to obtain a more comprehensive understanding of the principles of public law.

Prof. Henri de Waele (Professor of International and European Law) received funding from the European Commission’s Directorate-General for Competition for a project set up to train judges in European Competition Law.
Key publications

Business and Law Research Centre


Research Centre for State and Law


Collaboration

The SteR participates in numerous international projects and networks, the Odysseus Network of Experts in European Migration and Asylum Law, which is coordinated by the Université Libre de Bruxelles (Belgium), the academic Netzwerk Migrationsrecht (Germany) and the International Penal and Penitentiary Foundation (IPPF), of which Prof. van Kempen is Secretary General. It also has ties with the Max Planck Institute for Foreign and International Criminal Law (Freiburg, Germany), the University of Bergen (Norway), National Taiwan University, and several universities participating in the International Research Universities Network (in particular with the University of Glasgow, the University of Münster and the University of Poitiers).

CMR is responsible for coordinating the European Network on Free Movement of Workers, which is funded by the European Commission. Dr Karin Zwaan participates in the Glasgow Refugee, Asylum and Migration Network (GRAMNet) in a project entitled 'Researching Multilingually: at the Borders of Law, Health, Conflict and State Security'. This project was established through the UK Economic and Social Research Council.

Within the Netherlands, SteR collaborates with the Council for the Judiciary, the Ministry of Security and Justice, as well as several courts, municipalities and lawyers.

Research results

CMR researchers have participated in – and written the synthesis report for – comparative research on family reunification legislation in six Member States coordinated by the Irish Immigration Council and funded by the European Commission. They presented their results at an international conference in Dublin and at the EU Institutions. Other CMR researchers have been involved with the University of Madrid Comillas on ‘Best Practice of Integration measures of the Highly Skilled’. For the UNHCR research is conducted on the position of Roma and asylum and on the implementation of the Aznar Protocol. For the Research and Documentation Centre (WODC) of the Dutch Ministry of Security and Justice CMR completed a research project about the multilayered-structure of migration law. A seminar on Judicial Scrutiny and Credibility Assessment in Asylum Procedures was organized together with the International Association of Refugee Law (IARL).

Within the programme ‘Principles of Public Law’, Prof. Janneke Gerards and Dr Joseph Fleuren presented the results of an extensive comparative legal project, financed by the WODC, on the implementation of the European Convention on Human Rights and the case-law of the European Court of Human Rights in national case-law. Based on a comparison of six different legal systems, they investigated whether there is a clear correlation between the constitutional system for implementing international treaties and the impact of the European Convention on Human Rights on national law. Contrary
to expectations, they found no such correlation. Instead, they have shown that the influence of the European Convention on national law is explained by other factors. Their findings are of great importance to the current Dutch debate about the impact of European law and the need for constitutional change.

Prof. R.J.B. Schutgens was appointed preliminary reporter on Parliamentary immunity for the 2013 assembly of the prestigious Nederlandse Juristen-Vereniging (the Netherlands’ Jurists Association). As co-organizer Prof. Piet Hein van Kempen was responsible for the scientific part of the programme of an international four-day conference on ‘Management of high-risk offenders’ in Wellington, New Zealand.

Awards and acknowledgements

- Prof. Henri de Waele’s project on training judges in European competition law was funded by the European Commission’s Directorate-General for Competition.
- Ainul Fajri from Indonesia has received a scholarship from the Indonesian Government to conduct her PhD research on Rohingya Muslims at the SteR.
- Elisa Fornale (Switzerland) has been awarded a Marie Curie grant (FP7) for a two-year position at the SteR.
- The Ministry of Security and Justice awarded a grant for Prof. Piet Hein van Kempen’s and Dr Masha Fedorova’s research project ‘The international legal space for (experiments on) regulating or legalizing the cultivation of cannabis plants’.
- The Council for the Judiciary awarded a grant for Prof. Piet Hein van Kempen’s and Prof. Leny de Groot-van Leeuwen’s research project on ‘Effects on society of better reasoned judgments in criminal cases’.

The Netherlands’ Council of State awarded a grant in order to develop a Case Law Model. Prof. Tonny Nijmeijer is one of the research leaders of this project.

Societal impact

SteR researchers are often asked for advice by both national and international public bodies. Research results are made accessible for judges, lawyers, politicians, students and the general public. Several CMR publications led to parliamentary questions this year. The Ministry of Justice has chosen the CMR to evaluate the new asylum procedure.

In October 2013 the Dutch Parliament assigned Prof. Paul Bovend’Eert to evaluate the 2012 Cabinet Formation Process in the Netherlands. The research group also consists of Prof. Carla van Baalen and Dr Alexander van Kessel of the Centre for Parliamentary History. The group is asked to make recommendations on new parliamentary procedures relating to Cabinet Formation (Art. 139a Standing Orders Second Chamber).

Future research

Several SteR researchers collaborate in the interdisciplinary network ‘EUROPAL’, focusing on the Europeanization of Policy and Law, together with colleagues from the Institute for Management Research at the University. Special attention will be paid to the practical consequences of migration law and policies and to access to justice in asylum and equal treatment cases.

The CMR will concentrate its research on the Europeanization of migration law.

Within the programme ‘Principles of Public Law’ the results of a comparative study on 28 constitutions and constitutional systems of the current 28 EU Member States will be presented. Taking a fairly straightforward functional approach to constitutional law, a uniform format has been chosen, addressing the most important topics expressed in the constitutions of the EU Member States: sources of constitutional law, form of state, form of government and political system, government powers and their limits, vertical division of powers, the judiciary and fundamental rights.

Within the programme ‘Administration of Justice’, research on judicial decision-making and lawyers’ ethics as well as on the jurisdiction of the European Court of Justice will continue.

The Centre for Notarial Law

(Prof. Freek Schols)

The Centre for Notarial Law – Centrum voor Notarieel Recht (CNR) – was established in 2008. Its research focuses on notarial law, in particular family property law (personal and family law and the relationship between property law, inheritance law and estate planning). The strength of the CNR’s research lies in combining tax and civil law and cross-fertilization between legal practice and academia. Particular attention is paid to the impact of these fields on general property law and to the combination of legal fields, for example, marital property law, real-estate law and company law. CNR researchers seek to provide a firm foundation for notarial practice.

Collaboration

Nationally, the CNR cooperates with ABN Amro Bank NV on estate planning and monitors the academic level of the consultancy services provided by the bank. The CNR also cooperates with notarial organizations such as Netwerk Notarissen.

Research results

Staff members at the CNR regularly write articles for authoritative national and/or international academic journals and professional
Director: Prof. Leonard Verburg

Leonard Verburg is Professor of Employment Law at Radboud University Nijmegen and, since 1 March 2013, he has been Vice Dean for Research at the Faculty of Law. He is a member of the Advisory Board of the Business and Law Research Centre (OO&R). He is also a member of the board of the foundation which supervises the education programmes of the Dutch Bar Association. Prof. Verburg is editor-in-chief of the journal Arbeidsovereenkomst, a member of the editorial board of the journal Arbeidsrechtelijke Annotaties and a member of the advisory board of Postacademische Leergang Arbeidsrecht, one of the oldest postgraduate programmes in the field of employment law. He is founder member of the curatorium of the annual Nationaal Arbeidsrecht Congres. In 2010, Prof. Verburg was appointed as a substitute judge in the Court of Appeal in the Hague.

Important research is carried out in cooperation with – and in some cases is supervised by – external researchers in order to ensure academic integrity. Research on marriage contracts is one example. In the current reporting period the focus was on international family property law and this will remain an important area of expertise in future.

The CNR publishes a series called ‘Publicaties vanwege het Centrum voor Notarieel Recht’.

Societal impact

The Centre has influenced public debate on a wide variety of topics. There are strong links between the CNR and legal practice. Moreover, the Centre participates in shaping legislative proposals.

The CNR’s research creates an important academic basis for notarial practice relating to family property law in the Netherlands. Researchers advise the Dutch government and members of to the Dutch House of Representatives on several private law issues and lecturers work, for example, for the SBN (professional education for notaries), the Orde van Advocaten (professional education for barristers), the KNB (Royal Notarial Association), the estate planners of EPN (Association of Estate Planners in Notarial Practice) and Novex (the Dutch Association for Executors).

Future research

Continuing projects include the historical development and the current legal position of the surviving spouse in Dutch civil law, the legal exegesis of the provisions of last wills, delegation of last wills to third parties, wills for persons lacking will-making capacity, the new inheritance tax law, international aspects of estate planning and developments in the legislation on marital property. ‘Inheritance law and the de facto spouse’ and ‘The development of the notarial profession 1850-1950’ are new projects.