

Onderzoekcentrum Onderneming & Recht (OO&R)
(Business & Law Research Centre)

Self-evaluation report 2008

Period 2002-2007

Part I

Description of the institute

Onderzoekcentrum Onderneming & Recht (OO&R)

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Preface

As laid down in regulations for public research organizations in the Netherlands, the Onderzoekscentrum Onderneming & Recht (OO&R) is evaluated according to the Standard Evaluation Protocol (2003) and the Standard Evaluation Protocol for Law Faculties (2005). The associated self-evaluation report for the years 2002-2007 prepared by the OO&R is presented in this document.

The self-evaluation report consists of three parts:

Part I: Detailed description of the institute

Part II: Detailed description of the research programmes

Part III: Full list of publications

The core Part I is organized according to the format of the Standard Evaluation Protocol for Law Faculties. The documentation on the level of the programmes (Part II) mainly focuses on the content and current developments in these programmes. As many organizational and management principles hold for all programmes, these topics are mainly covered in Part I, and only mentioned in Part II when they are specific for a given programme.

With many thanks to all persons who have contributed to this self-evaluation report.

Professor Dr. C.J.H. Jansen
Chairman of the OO&R
October 2008

Name of the research institute: Onderzoekcentrum Onderneming & Recht/Business & Law Research Centre

Academic Chair: Professor Dr. S.C.J.J. Kortmann/Professor Dr. C.J.H. Jansen

Date of Incorporation: October 1, 1991

Academic discipline: Law

A. Brief profile of the institute

Introduction

The Nijmegen Faculty of Law has three research centres: the OO&R, the Research Centre for the State and the Law and the Centre for Notarial Law. Each institute has its own Board. The Chairman of each Board has academic responsibility for the institute in question. The OO&R occupies a unique position as it is recognized by the KNAW (Royal Dutch Academy of Science). That special position is expressed, inter alia, in the guarantee issued by the board of the faculty that at least half of the Ph.D. researcher (in Dutch: promovendus) places within the faculty is allocated to the OO&R and that the master's programme in research is given both form as well as content in close collaboration with the OO&R. The Board of the OO&R fine-tunes its policy with the Dean and Vice Dean of Research of the faculty. The faculty board is the body which takes ultimate responsibility for all research conducted within the faculty as well as for education and the allocation of any available funding.

The OO&R has a long history within the Nijmegen faculty. The vast majority of research conducted in Nijmegen in private law has for decades focused on the field of Business and Law: the law viewed specifically in the context of its significance for enterprises. Research in the field of company law has been concentrated from 1966 in the Van der Heijden Institute (department of the OO&R) which was established in that same year by Professor Dr. W.C.L. van der Grinten and Professor Dr. J.M.M. Maeijer. The faculty decided in the second half of the nineteen eighties to establish the Business & Law Research Centre. In time, on October 1, 1991, it formally became a separate research institute. The OO&R was officially opened on June 3, 1994 during a festive symposium on 'Financing and Liability'. In 1998, the Royal Netherlands Academy of Science has acknowledged the OO&R as an official research institute. In 2003, re-acknowledgement has been made for the duration of five years. Both on a domestic and an international level, and not only within the study of law but also within its practice, the OO&R has established a solid reputation and takes a leading role in its fields of research. The focus is, seen nationally, unique. No other Dutch legal research institute has the Business and Law orientation as its central line of research.

Organization

The organization of the OO&R is of particular interest. The academic and practical aspects of the field are collectively represented in the OO&R. In addition to the Nijmegen Faculty of Law, a number of renowned law firms and companies participate in the centre (partners). These partners have substantial academic know-how in the field of Business and Law. Each partner has a scientific research department. Furthermore, associates of the partners include a vast number of lawyers who have been awarded a Ph.D. degree (see further below).

Among the partners of the OO&R are: ABP Pension Funds, Akzo Nobel, Allen & Overy, De Brauw Blackstone Westbroek, Clifford Chance, Houthoff Buruma, Loyens & Loeff, Nauta Dutilh, Pels Rijcken & Droogleever Fortuijn, Rabobank Nederland and Stibbe. In 2008, ING

and Eumedion have also become partners. Deliberations are pending on the possible accession of Fortis as partner of the OO&R, replacing ABN Amro Bank.

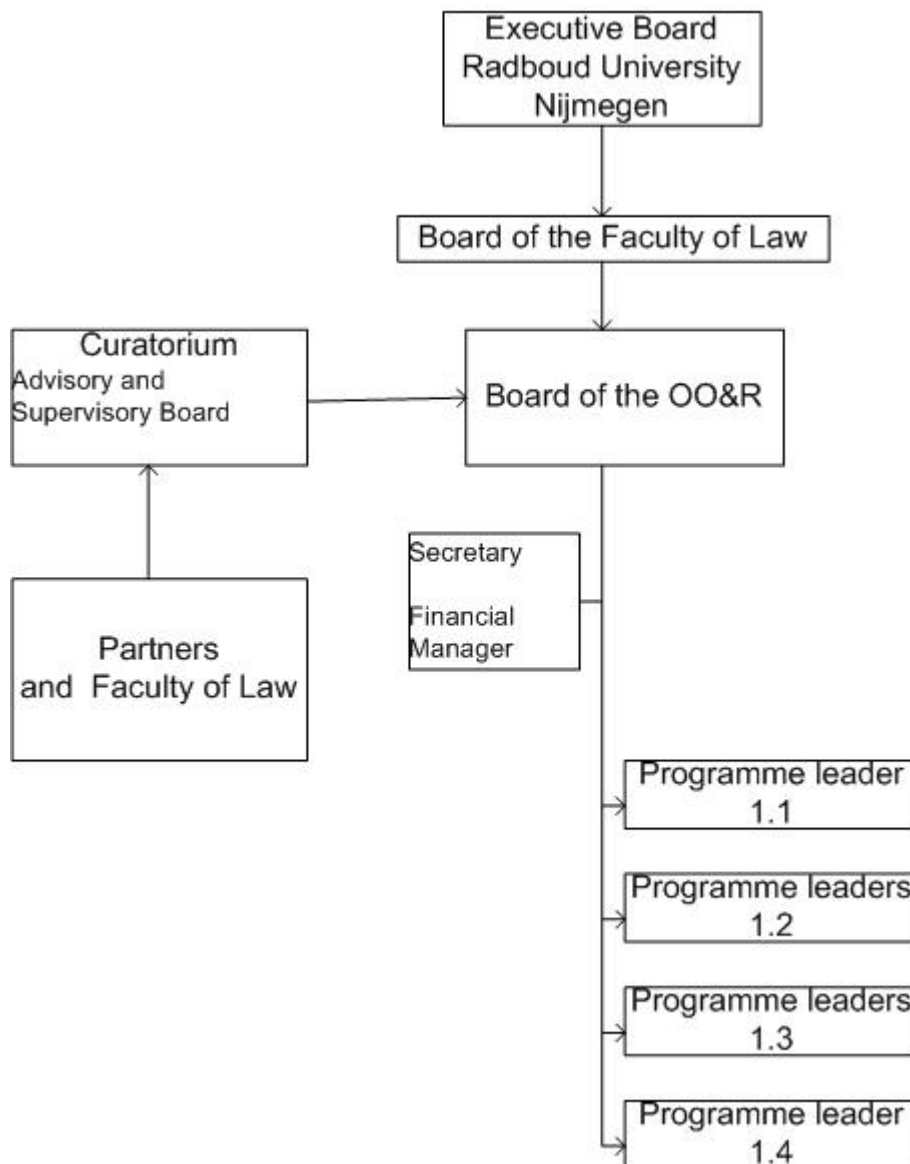
For this intensive collaboration with legal practice, three particular reasons apply: in the first place, research in the field of Business and Law conducted traditionally within the faculty always had a practical focus. Secondly, part of the academic research conducted (in the Netherlands) is not done at universities but within legal practice. This is facilitated within a limited number of law firms and companies, including those which have joined forces with the OO&R. Those organizations often have academic centres or centres of expertise. The collaboration within the OO&R ensures that knowledge available at these partners can be put to use for academic legal research. In the third place, partners have an extensive international network of offices and companies. Those networks can readily be involved within the context of projects undertaken by the OO&R and hence internationalization of research programmes is actively encouraged.

The academic independence of the OO&R is guaranteed by the faculty, by the cooperation agreements concluded with partners and by various rules and regulations which have been drawn up by the OO&R. The OO&R remains, however, both regarding research focus and context as well as financially independent from its partners.

The research fellows of the OO&R consist of Professors, Readers and Lecturers as well as Ph.D. researchers of the various departments of the faculty as well as part-time seconded fellows (employees of partners), other domestic/international fellows and Part-time Professors appointed on the basis of the supplementary professorial plan used by the OO&R. These Professors have highly specific research tasks within the fields covered by the OO&R. Fellows have either already been awarded a Ph.D. or in any case have published extensively. The Board of the OO&R evaluates the contribution made by university personnel to research during discussions held with programme leaders. The output norm which in principle is applicable is that of the Netherlands Universities Association: three academic publications annually.

The OO&R has both an Executive Board as well as an Advisory Board (Curatorium). The Board is assisted by a Secretary and the Director of the faculty as the Financial Manager. At present, the Board consists of Professor Dr. C.J.H. Jansen (Chairman), Professor Dr. N.E.D. Faber, Professor Dr. M.P. Nieuwe Weme, Professor Dr. S.E. Bartels (as from March 1, 2008) and Professor Dr. H.W. Heyman (on behalf of the partners). Professor Dr. S. Kortmann is Honorary Chairman and advisor to the Board. Upon the appointment of Professor Dr. S.C.J.J. Kortmann as Rector Magnificus of the Radboud University Nijmegen on 10 May 2007, Professor Dr. C.J.H. Jansen has been designated as the new Chairman of the Centre. The Curatorium is composed of professors from the faculty and representatives of the partners. It has an advisory and supervisory task. An annual meeting is convened by the Board and the Curatorium. During this meeting the Board will account for achieved research results, the governance of the centre and new research projects.

Organizational diagram:



Research programmes and programmatic focal points

The OO&R has the following research programmes:

- 1.1 Company Law (Professor Dr. G. van Solinge)
- 1.2 Finance, Security Rights and Insolvency Law (Professor Dr. N.E.D. Faber/Professor Dr. S.E. Bartels)
- 1.3 Business and Patrimonial Law (Professor Dr. S.E. Bartels/Professor Dr. C.H. Sieburgh)
- 1.4 Business and Employees (Professor Dr. I.P. Asscher-Vonk)

In 2008, a new research programme will commence, 1.5, which was already partly included in 1.1 and 1.2: Financial Law. This programme will be led by Professor Dr. M.P. Nieuwe Weme, Professor Dr. C.M. Grundmann-van de Krol and Dr. D. Busch.

Research programme 1.1 is also known as the ‘Van der Heijden Instituut’. Research programme 1.2 is known as the ‘Instituut voor Insolventierecht’. Both institutes are incorporated into the OO&R.

The OO&R publishes various series of books: The Van der Heijden Institute Series (currently 98 volumes), the Series on Business and Law (currently 45 volumes) and the Series of Law of Business & Finance (currently 9 volumes).

The programmatic focal points are substantiated for each research programme as follows:

1.1 Company Law

1. The company and its functions and bodies
2. Corporate groups
3. Infiltration of company law by securities law
4. Corporate litigation
5. Taxation of companies
6. Permanent research: text books, treatises and analyses of case law

1.2 Finance, Security Rights and Insolvency Law

1. Finance and security rights
 - a. Security rights in rem
 - b. Personal security rights and guarantees
 - c. Receivables financing
 - d. Bonds
2. Insolvency law
 - a. The principles of insolvency law
 - b. Reciprocal Agreement
 - c. Actio Pauliana, avoidance actions and reversal of juridical acts
 - d. Security rights and insolvency law
 - e. Realisation and administration of assets
3. Permanent research: text books, treatises and analyses of case law

1.3 Business and Patrimonial Law

1. Representation, agency and administration
 - a. Representation and agency
 - b. Trust, segregated patrimony, nominee accounts and their administration
2. Business and property law
 - a. The principles of property law
 - b. Accession, property formation and (spurious) commingling
 - c. Transfer
 - d. Extraordinary property law devices (real subrogation, community of property)
3. Business and the law pertaining to obligations
 - a. General law of obligations
 - b. Contract law
 - c. Liability and tort law

- d. Extraordinary obligatory devices (set-off, undue payment and unjustified enrichment)
4. European law and Dutch patrimonial law
5. Permanent research: text books, treatises and analyses of case law

1.4 Business and Employees

1. Business or government?
2. Equality and differentiation
3. Permanent research: text books, treatises and analyses of case law

Academic mission statement

The goal of the OO&R is:

1. to conduct high-quality (domestic and international) academic/scientific research in the field of Business and Law;
2. to enhance the understanding of the theory which applies to Business and Law in the light of social, economic, political and financial developments;
3. encouraging practicality in academic research without making concessions to academic quality, particularly by analyzing the fundamental principles and foundations of (business oriented) private law in the light of their practical application;
4. reconnaissance of and initiating applications of academic research, for example in the area of national and international rules and regulations;
5. educating and supervising students in the Master's phase and young researchers working within the OO&R.

The OO&R has ambitions to remain among the most prominent, national academic research establishments. To the extent that its research also covers European or transnational topics, the OO&R endeavours to conduct research projects of international stature. The OO&R also intends to influence on a structural level the practice of law and to make a contribution to national and international rules and regulations. A remarkable example concerns the close involvement of researchers of the OO&R in the drafting of the proposal for a new Insolvency Act as members of the Insolvency State Committee (chaired by Professor Dr. S.C.J.J. Kortmann). Two other projects which endeavour to contrive the framework and foundation of European regulations concern the drafting of the "Principles of European Trust Law" and the "Principles of European Insolvency Law" (both projects were chaired by Professor Dr. S.C.J.J. Kortmann).

Type of research

Research conducted by the OO&R may be characterized by four keystones. These are detailed in section B (Strategy and Policy). The OO&R issues publications in all forms: dissertations, inaugural lectures, books, articles, contributions to proceedings, national reports, case notes, principles, etc. Given the academic mission statement of the OO&R, the Board of the OO&R demands that academic publications issued by the OO&R have an analytical and/or conceptual set of queries, that is they examine dogmas systematically or that they make a contribution to a new or reconsidered theory, construction of rules, regulations or legislation.

Education

In the view of the Nijmegen law faculty, research and education are closely affiliated with one another. The OO&R is not only focused on research but also concerns itself very intensively with the provision of academic education. Researchers affiliated with the OO&R are usually members of staff of one or more of the following departments: Civil Procedural Law,

Company Law, Private International Law, Private Law, Social Law and Tax Law. Education provided in these fields by the Law Faculty of the Radboud University Nijmegen is for both the customary Bachelor and Master's programmes and is primarily given by researchers associated with the OO&R.

Furthermore, various members of staff also participate in the dual Master's Business and Law (the Nijmegen Law School, *duale master Onderneming & Recht*) and in the research Master's programme Business and Law (*Onderzoeksmaster Onderneming & Recht*). The dual Master's "Business and Law" is a dual post-graduate programme within the Dutch law courses offered by the Radboud University Nijmegen. The programme is aimed at attracting ambitious students who wish to concentrate on a commercial private law practice. The dual Master's combines education at a very high academic level with work experiences at one of the many prominent firms which participate as partners in the programme. The following subjects are covered by the curriculum: Insolvency & Security Rights I, Security Rights II & *Capita Selecta Finance*, Contract Law, Company Law, Banking and Securities Law, Private International Law, Legal English, Skills: searching, processing and presenting. The dual master has been accredited by the Accreditation Organisation of the Netherlands and Flanders (NVAO) and has been awarded the Radboud University Nijmegen educational prize.

In the two-year accredited by the Netherlands Association of Academic Training Programmes research Master's: Business and Law, substantial attention is given to acquiring academic knowledge and insights into the fields covered by practical private law as applied to trade and commerce and also to acquiring academic (research) skills. This programme permits its graduates to conduct independent research, for example, as future Ph.D. researchers or in a comparable position in an advisory practice. The programme which provides a thorough training in research also allows for work experience to be gained in legal practice and for conducting research at the behest of a law firm, research institute or company. The theme of the research Master's – Business and Law – coheres well with the expertise present in the OO&R. The following areas form the curriculum: Insolvency & Security Rights I, Security Rights II & *capita selecta Finance*, Comparative Contract Law, Commercial Law, Banking and Securities Law, Private International Law, Legal English, Skills: searching, processing and presenting, Methodology of Law, Private Law and Case Law, Comparative Law, European Private Law, the Supreme Court and Appellate Cases before the Supreme Court and Masterly Examples (history of legal science).

The Nijmegen law faculty forms – due to the OO&R – a prime link within the so-called Pallas consortium which offers a one-year inter-university programme: European Business Law. The Pallas consortium consists of the law faculties of the universities of Barcelona, Bologna, Essex, Constance, Lyon, Munster, Nijmegen and Rome. The LL&M Programme belongs among the six best European LL&M Courses. The curriculum of the Pallas programme includes: Contracts in Europe, International Trade and Dispute Settlement, Company Law and International/European Taxation.

In conclusion, a large number of members of staff of the OO&R regularly make contributions to postdoctoral programmes for the graduate lawyers who are in legal practice. To this end, OO&R maintains close relationships with notably the Centre for Post-Doctoral Education (CPO) and the Grotius Academy.

International Cooperation

- As part of the Fifth Management Training Programme of the EU: ‘Improving Human Potential’ (partial programme ‘Uniform terminology for European Private Law’): Turin (Italy), Barcelona (Spain), Lyon 3 (France), Munster (Germany), Oxford (England) and Warsaw (Poland).
- Collaboration within the framework of International Working Groups established by the OO&R with: Århus (Denmark), Berlin – Humboldt (Germany), Bern (Switzerland), Bologna (Italy), Budapest (Hungary), Edinburgh (Scotland), Leuven (Belgium), Linz (Austria), Luxembourg (Luxembourg), Madrid (Spain), Milan-Bicocca (Italy), Montpellier (France), Nancy (France), Ohio (United States of America), Oxford (England), Paderborn (Germany), Paris II (France), Prague (Czech republic), Rome – Luiss Guido Carli (Italy), Thessaloniki (Greece) and Toledo (Spain).
- Institute for Law and Finance of the University of Frankfurt (Germany) in the context of a comparative research project on German and Dutch Insolvency Law.
- Luxembourg (Luxembourg) in the context of its international LL.M. Course on European Banking and Financial Law.
- Various research programmes and other collaborations: UNCITRAL, UNIDROIT, the International Insolvency Institute INSOL International, INSOL Europe, INSOLAD, International Society for Labour and Social Security Law, Institut für Arbeitsrecht und Arbeitsbeziehungen in der Europäischen Gemeinschaft, the Jan Ronse Institute of the Catholic University of Louvain, Acquis, Trento, and the The Hague, Institute for the Internationalization of the Law.
- Joint Ph.D. on Insolvency Law between University of Leuven and the OO&R.

B. Strategy and policy

Research policy

The policy pursued by the Board of the OO&R aims at ensuring for national prominence in academic excellence. Internationally, the Board also aims for a similar standard for the OO&R. The renewal of the KNAW accreditation which took place between 1998 and 2002 showed that the OO&R has excellent components which number among the leading research establishments in the Netherlands in the legal field and that the OO&R has also further developed due to international collaborations and the acquisition of secondary funding. In some other programmes, OO&R requires further attention (Advice: ECOS, May 27, 2003). The concluding remarks of the peer review committee are as follows: ‘The committee’s judgment is that the research of OO&R is of a high standard and of immediate relevance from an academic and societal point of view. The co-operation between the academy and legal practice is unique, fruitful and challenging.’ The peer review committee was hence of the opinion that the OO&R should have its status renewed as a centre of excellence and fully deserved that accolade. The Committee of External Experts took the view in July 2006, based on an internal evaluation conducted by the Nijmegen law faculty, that parts of the OO&R (notably Company and Insolvency Law) belong among the absolute top of the legal academic research conducted in the Netherlands.

Given the comments made by previous committees, the Board of the OO&R decided to position two programmes (Competition Law and Intellectual Property/Copyright) outside the research programmes of the OO&R for the time being with a view to seeing if a restructuring could be made of these programmes. They cohered less well with the remainder of the research conducted by the OO&R and lack focus and critical mass (i.e. in fte). In addition to this, the Professor of European Law accepted during the reporting period (2002-2007) a Chair in Antwerp. The Board of the OO&R is currently working with the new Professor of European Law and the Professor of Intellectual Property Law on developing a new programme: Business, the Market and Competition. Moreover, the Board of the OO&R has invested in programme 1.3 (Business and Patrimonial Law), by making its focus sharper, appointing a Professor of European Private Law and actively encouraging Ph.D. research. Additional attention has also been paid to the coherence and focus within programme 1.4 (Business and Employees) which attention is expressed, among other things in the appointment of a new Professor of Law, Labour and Employee representation.

Up until 2007, Banking and Securities Law was part of the research programmes 1.1 (Company Law) and 1.2 (Finance, Security Rights and Insolvency Law). This is a field which has undergone rapid growth and many developments in later years. It does have several major overlaps with 1.1 and 1.2 (and with 1.3) but for substantive and organizational reasons the choice was made in 2007 to have research conducted in this field independent as from January 1, 2008 in a new research programme 1.5. The research programme has as its title: Business and Financial Law. Financial law has developed in later years into a completely fully-fledged field of its own and this rendered it less suitable for being fitted into the research programmes 1.1-1.3. The binding factor is that research always concerns the regulation of the actors on financial markets. The further development of this research programme has made it necessary to appoint new members of staff.

The research programmes offer an opportunity to remain flexible; a requirement given the developments on-going in these fields, both nationally as well as internationally and to which anticipatory action should be taken with a view to incorporating those elements properly.

Where necessary or even only desirable, areas which are closely related are also included in that research, for example, criminal law (in connection with fraud and market abuse), administrative law (such as in relation to the application of the Netherlands Financial Supervision Act), European law, private international law, the Law and the Economy and the History of Law. The research programmes also manifest a certain amount of internal coherence: between 1.1 and 1.2, 1.1 and 1.4, 1.2 and 1.3, 1.3 and 1.4. In this way, the research programmes are not hermetically sealed off, which is also demonstrated in publication lists (especially doctoral dissertations and proceedings/book chapters).

The Board of the OO&R wishes to achieve further internationalization of a number of vital areas of research such as insolvency law, banking and secured transactions law, etc. This is carried out by establishing international working groups and by attracting international funding, encouraging staff members to take secondments abroad and by inviting foreign guest researchers as well as by publishing books in foreign languages. Progress has been made on all these fronts in relation to the previous peer review period. The responsibility for further internationalization had been placed in the hands of one of the members of the Board of the OO&R.

One of the most vital policy instruments of the OO&R is the supplementary professorial plan applied by the OO&R (supplementary in relation to the faculty professorial plan). By appointing professors for 0.2 fte on specific research areas which are relevant to and for the OO&R a well focused research impulse is provided and the OO&R is able to generate a secondary or tertiary flow of funding. The OO&R Professors usually have an external funding form (i.e. non-university funding). Until the present, the following Chairs have been established: Finance, Security and Insolvency; Asset Management; Corporate Criminal Law; Business and Corporate Integrity; Business and the Government; Business, the Law and the Economy; European Private Law; Insurance Law; Banking and Securities and Securities Law (in particular: the Law of the Financial Markets).

A further policy instrument used by the Board of the OO&R is that of Temporary Professorships. The OO&R makes a temporary Chair available (in principle, for three years) to professors in particular fields, with a view to their profiling themselves internationally. When an international working group of the OO&R worked on the Principles of European Trust Law, Professor David Hayton (formerly Professor of Law, King's College London) was granted a temporary Chair by the OO&R. The work carried out by the international working group of the OO&R on the principles of European insolvency law required the services of Professor Dr. A. Flessner (professor of German, European and International private law and comparative law at the Humboldt University of Berlin) and of Professor W.W. McBryde (emeritus professor of Commercial Law, University of Edinburgh) who were also both granted temporary Chairs.

Quality assurance

The Board of the OO&R is responsible for the quality of the research conducted by the centre. It frequently speaks with programme leaders who head the research programmes. Those discussions concentrate on: focus, publications, internationalization and research proposals. The Board of the OO&R accounts for its actions annually in writing to the Board of the Law Faculty of the Radboud University Nijmegen and to the Curatorium of the OO&R. That account can, in abbreviated form, be found in the Annual Report of the law faculty and in the Research Report of the Radboud University Nijmegen. A written account, in abbreviated form, is also included in the minutes of the Board meetings convened with the Curatorium.

An annual meeting is also convened by the Board with all researchers of the Centre to discuss strategic focus, pending projects and new initiatives.

Once per five years, the Netherlands Academy of Science evaluates conducted research as part of the renewal of the accreditation of the OO&R as a centre of excellence and does this in part on the basis of a self-study and a report from a peer review committee in which prominent domestic and international experts have a seat. The Netherlands Academy of Science applies a renewal of accreditation procedure to both the internal as well as external assessments made and applies the Standard Evaluation Protocol on Law which means that OO&R research is subjected at least once every three years to an assessment made by outsiders.

Research culture

Research conducted within the OO&R is on the one hand mono-disciplinary and on the other hand multi-disciplinary. The mono-disciplinary research of the OO&R gives consideration to legal approaches. It focuses on systematizing, analyzing and explaining applicable law, on reviewing the principles which apply and the theory underlying private law and on the development of new and innovative solutions. There is often a close connection with developments in practice. Research often culminates in recommendations for the *ius constituendum*. This kind of research conducted within the OO&R has four fixed sets of perspectives which may be seen to be methods:

1. International/comparative law (possibly comprising a legal/historical and comparative component);
2. European law;
3. Private international law;
4. The practice of the law.

International/comparative law

The research conducted within the OO&R has a genuine international dimension. This is often expressed in the choice of the subjects researched, methods used as well as participation in international projects, intensive collaboration with colleagues beyond the Netherlands and the exchange of researchers, internationally. Vital comparative law research projects are conducted by International Working Groups established by the OO&R. In that connection, reference is made to the research conducted by the International Working Group on European Trust Law, the International Working Group on European Insolvency Law, and the International Working Group on European Security Rights. Reference should also be made to international research teams on Competition law and Settlement Finality. Comparative law is intended to provide inspiration in solving problems all of which play themselves out to a similar degree in European legal practice, and in the study of law. The choice made in favour of a given legal system will depend on the subject matter, language skills and other relevant circumstances which prevail. A particular feature of OO&R research concerns comparative studies made with English law which in the private and commercial law areas often has an 'advantage' over continental legal systems. Parts of OO&R research are dedicated to the possibility and desirability of taking on board English devices and legal figures (for example, those of the trust, leasing, factoring, securitization, LLP and LLC (two Anglo-Saxon legal entity forms) in the Dutch context).

European and private international law

European Law is making increasing in-roads into national private law. More and more national rules and regulations are originated by European law. This also applies to and has a bearing on the fields covered by the OO&R, e.g. those of general property law, the law of obligations, securities law and financial law. European law provides perspectives which are wider than comparative law as it is directed on establishing applicable law. Research into the European Law parts of national private law and into primary EU Law, where this concerns business related private law forms an integral part of the research programmes conducted by the OO&R.

Private international law is also systematically reviewed when conducting research. The rapid increase of trade between European Member States has resulted in a structural increase of private international law rules. They are increasingly laid down in Treaties, Directives and regulations. Those rules form a rich source of both analysis and comparison.

Practical applications

Within the study of the law, progress made with research is in part determined by the application of the law (both legal practice as well as case law). The substantive development of research is in part determined by the results of the cross-fertilization process between theory and the practice of law. Theoretical work in the field of law needs to be done in the light of its remaining applicable in practice. Without a practical component, legal theory and research into legal theory runs the risk of stranding on infertile soil remaining sterile and not innovative. It is the process of cross-fertilization between theory and practice which forms one of the typical features of the perspectives maintained by the OO&R.

Multi-disciplinary research

Alongside research which is purely legal, the OO&R conducts multi-disciplinary research. The latter is characterized by the fact that use is made of research methods adopted from other disciplines which are often but not only empirical. When studying issues about the ethics of law, the consequences of certain rules of law in a given social context, or, the relationship between certain legal and economic phenomena, methods which have been developed by philosophers, social scientists and economists (like statistics, the use of questionnaires and holding interviews) are more than just useful tools.

Research with an empirical component requires close collaboration with the sub-department of the Sociology of Law of the Nijmegen law faculty which has an intimate knowledge of this highly specific methodology. An important example of multi-disciplinary research which was conducted during the reporting period concerns a project undertaken for the Netherlands Ministry of Economic Affairs as part of the review made of 'The efficiency of the Bankruptcy Act'. It was a detailed empirical study of the effects of the Bankruptcy Act in practice. In particular, it focused on the question as to whether or not the Bankruptcy Act formed an obstacle to the continuation of viable businesses in financial distress.

Research conducted with the OO&R is done both individually as well as in teams. The nature of legal research means that the latter is less frequently the case than the former. Handbooks and treatises in the field of legal theory, many of which have had their genesis in the OO&R and are further detailed by it, are generally written by a limited group of people who are being invited to do so on the basis of their prominent domestic reputation on the relevant field of law.

Publication profile

Aside from reviewing the various Asser Volumes¹ (a leading series of text books on civil law and commercial law which are directing the course of both scientific knowledge and legal practice) and other text books, the publication profile of the OO&R also includes: theses, articles, (contributions to) proceedings, book chapters, case comments, conference papers, national reports and principles. Proceedings and monographs are published in the Series: Business and Law and the Law of Business and Finance Series. Books in the field of company law are published in the prominent Van der Heijden Institute Series. Other books and proceedings in the field of business and law and in related fields are often included in the aforementioned Series: Business and Law. Reference is also made to the publication of case comments in several journals. Many text books and proceedings published by the OO&R deserve attention. The OO&R publishes its own case law journal with commentary: JOR (Jurisprudentie Onderneming & Recht). The Board actively encourages members of staff of the OO&R to publish in leading reviews.

The results of research conducted within the OO&R are generally highly applicable in practice. Many researchers of the OO&R are also part-time lawyers, and often advise larger law firms. The editorial panel of the journal JOR also includes a number of practitioners. Contributions to OO&R proceedings and other OO&R publications are often made by attorneys and company lawyers affiliated with the partners of the OO&R. Various professors and other members of staff are employed by the Court as Judges. Many members of staff have won their spurs prior to being appointed by the Radboud University Nijmegen as attorneys, company lawyers, Judges or members of the Research Department of the Supreme Court of the Netherlands.

There is also a permanent and on-going review culture. Large-scale research projects make use of a steering committee to ensure academic integrity and a brainstorm group for substantive feedback. Evaluations of research depend on the nature and character of the research itself. Ph.D. research is usually conducted individually but its supervision is always carried out by one or more specialists and one or more people deployed specifically to review findings. Most research is also supervised by people with practical experience in the relevant field, which makes good use of the network of OO&R's partners. Large-scale research projects, whether specially commissioned or not, are always conducted by specially composed teams.

Reference should also be made to various editorial positions of senior researchers of the centre concerning text book series and legal reviews (including the prominent Asser Series, WPNR, JOR, JBPr and the Series of the Centre).

For the policy pursued in connection with Ph.D. researchers please refer to section C.

¹ These volumes may be compared to the review-articles from e.g. the Physical Sciences, in which a well-known scientist describes the current state of the research on a particular topic.

C. Educating Ph.D. researchers

Goal

The goal of the training provided to Ph.D. researchers is to supervise and prepare them for independent research projects which should result in a thesis. All the sections of the training provided are laid down in the training and supervision plan which is part of the employment contract. Part of the training given concerns acquiring research skills (please refer further below) while another part provides training in teaching skills so that those students can successfully perform their teaching commitments. Successfully completing that part of the programme results in a diploma, the Basic Teaching Qualification. A third part of the programme concentrates on educational needs of the individual in question. It covers highly specific, necessary background knowledge.

The research section of the training given to Ph.D. researchers has two parts. The first is faculty based and is followed by all Ph.D. researchers of the faculty. The other is an OO&R programme (laid down in the training and supervision plan and a performance protocol which imposes rights and obligations on both supervisors as well as trainees within the Centre). The faculty programme has a number of fixed components, which include an annual course on methods, ethics and sources of academic and applied legal research as well as the annual Ph.D. conference. A member of the faculty serves (alongside the supervisor and day to day mentor) as a general source of information for formulating and more sharply focusing the problems which form the nexus of the research. Aside from this, a brochure has been drafted by the faculty for both the supervisor as well as the trainee: "Making a plan for legal research. Guidelines for legal research and submitting research proposals (2006, 27 pages)".

The following solely reviews those elements of the Ph.D. training which specifically concern the OO&R.

The OO&R has its own training programme for Ph.D. researchers. The intention is to provide those students with specialist knowledge needed for their research and to allow them to gain insights into and develop their research skills. Every month, there is a Masterclass on Business and Law; a specially organized seminar for Ph.D. researchers, junior and senior members of staff of the OO&R which forms a show-case for graduate students to present their research and a forum for discussion. Every Monday, the Private Law sub-department holds a Case Law Lunch at which rulings are discussed. The Van der Heijden Institute also hosts meetings at which recent literature and case law are reviewed. Aside from this, Ph.D. researchers are obliged to follow a number of courses which are part of the research master (accredited by the Netherlands Association of Academic Training Programmes). These include Methodology of Law, Private Law and Case Law, Comparative Law, European Private Law, the Supreme Court and Appellate Cases before the Supreme Court and Masterly Examples (history of legal science).

Those courses are offered annually. Ph.D. researchers are strongly encouraged to take the course in Legal English. The courses which comprise the research master are reviewed annually on the basis of surveys. The results of those surveys are positive.

Every Ph.D. researcher is also required to receive training in an individual part of the programme which is tailored to meet the needs of that student after having consulted with his or her supervisor (for example, a student whose field is Insolvency Law is required to take a course on Insolvency Law provided by the Grotius Academy). The OO&R organizes a special seminar every six months hosted by one of its many partners on a topical subject within the

field of commercial law (for example, on flexible corporate entities and the proposal for a new Insolvency Act). Ph.D. researchers are also invited to attend. Further academic training is also given in the form of non-specific Business related, private law courses like those concerning the Law and World War II, and the Law and Literature.

Researchers appointed by the faculty are recruited both internally as well as externally. They come in part from the circle of highly promising students like those taking the dual master, the research master and from among the ranks of teaching/research assistants, as well as being recruited externally. All Ph.D. researchers of the OO&R are admitted to courses which form part of the master's programme in research.

The ultimate goals

Ph.D. researchers who successfully complete their training are able to integrate their theoretical knowledge, insights and research methods in the field of commercial private law by deploying their academic approach and analyses of legal problems practically. The ultimate goals are as follows.

- They have a thorough knowledge and good insights into the area on which they have focused their Ph.D. research;
- They have knowledge and insights into the research methods and working method of the study of private law, in particular the goals and methods of comparative law;
- They have knowledge and insights into the traditions of the study of private law;
- They are able to independently formulate legal issues and raise problems from a perspective which rises above prevailing law;
- They are able to answer queries on legal issues both verbally and present their views in writing in a manner which demonstrates their grasp of a coherent discourse;
- They are able to write academically;
- They have an academic mind-set.

Research facilities

The OO&R has its own IT specialist and its own specialist library, called the Centre for Information and Documentation on Business and Law (CIDOR). That centre is part of the Law Library of the faculty. The collection is available for reference to staff and students of the Law Faculty. It also has its own separate conference room which is solely used by researchers of the OO&R. That conference room contains more computers providing access to the data-bases of the OO&R and which run the relevant software. Our specialist library has a collection expansion profile and researchers and students of the faculty are free to offer suggestions as to the acquisition of publications. The collection of hardcopy and electronical publications in the field of domestic and international Business orientated private law is unique in the Netherlands.

Each Ph.D. researcher has his or her own computer/lap top and a book and travel budget (1,000 Euros). Every Ph.D. researcher is also permitted a term of research at a foreign university.

Quality assurance

The various committees which in the past assessed the research conducted by the OO&R expressed concern about the return on investments made in Ph.D. research. The Board of the

OO&R shared and continues to share that concern. Recently, the Board of the OO&R and the Faculty Board announced several measures which will be implemented.

At the outset

- Each research proposal is subjected to a critical review by the academic committee of the Law Faculty and competes in the Open Competition of the Netherlands Organization of Science and Arts. Only assessments which are in the category of excellent of that body will permit a research proposal to be honoured internally by the faculty;
- The employment agreement comprises a training and supervision plan (Opleidings- en Begeleidingsplan). That plan, which is drafted by the supervisor, the researcher and the human resource officer forms the researcher guidelines for the research project, the expectations which the faculty has of the Ph.D. researcher in question, the appointment of the supervisor and the day to day mentor, the frequency of supervision sessions, and the researcher and teacher supervision specifically oriented on the Ph.D. researcher's needs.
- After being appointed, a Performance Protocol for Ph.D. researchers is made available. It contains details of the rights and obligations of the Ph.D. researcher and of the supervisor arising out of the training and supervision plan.

Progress

- A committee assesses progress made with the research after 1 year. That committee drafts a progress report which also contains an advice. That advice may be negative (no continuation of the employment contract after 18 months), positive, or conditionally positive (an extension period of 5 months is granted during which the Ph.D. researcher is to reach a given goal, for example, completing a certain chapter.). The report with the advice from the committee in question is discussed within the Faculty Board and, where necessary, within the Board of the OO&R. The entire procedure is supervised by the Vice Dean of Research.
- The Board of the OO&R attaches a great deal of importance to the proper supervision of Ph.D. researchers. The Chairman of the Board is responsible for maintaining quality levels of the graduate programmes for researchers at the OO&R and he attends in that capacity the monthly master class: Business and Law.
- The faculty has a Ph.D. researcher Dean, Dr. T. Havinga who keeps a watchful and an alert focus on the pending research. She reports annually. Progress made with research is also reviewed during annual discussions which supervisors hold with their Ph.D. researchers. A particular focal point is the deployment of Ph.D. researchers in teaching. The supervisor ensures for maximum deployment and while, in the past, some people were overworked and this delayed the completion of their theses, the faculty now assumes that Ph.D. researchers in principle only teach in their second year and thereafter.

The OO&R recently experienced that it is anything but easy to attract good Ph.D. researchers. Competition in the most important fields of research conducted within the OO&R from law firms is such that many young graduates opt for training in another environment. Even during Ph.D. training, many are unable to resist the temptation of working within a major law firm. That premature departure from academia exercises an influence on the return on investment in terms of Ph.D. programmes.

During the reporting period, 22 people were awarded a Ph.D. For further information on this, please refer to tables 4.6 and 4.7. under E. Lists of Ph.D. researchers may be found in table 1, at programme level.

D. Reputation and leadership

Reputation

The OO&R has a national reputation and occupies a unique position concerning legal research in the field of Business and Law. The OO&R is the only institute which has been accredited in 1998 as a centre of excellence; which the Netherlands Academy of Science renewed again in 2003. Visitation Committees are full of praise for the research conducted within the OO&R and refer to the institute as belonging among the very summit of academic research. The intense collaboration with the top of the legal practice, which in the case of the OO&R is primarily with its participating partners, as well as the structural and intense collaboration with both international and foreign institutes is unique in the Netherlands in the field of Business and Law. Partners who wish to join forces with the Centre are queuing up. Research-cooperation has resulted in latter years in a series of highly prominent publications which have been widely acclaimed. The books published in the various series of the OO&R and the commentaries published as case comments in the JOR are of vital importance to both the study of the law as well as in legal practice. For this reason, the OO&R is widely praised in research evaluations.

The research master commenced in 2005 and has been accredited by the Netherlands Association for Academic Training. The dual master's programme attracts students from many law faculties throughout the Netherlands.

Leadership (aggregated at institute level)

The OO&R has been accredited for more than a decade by the Netherlands Academy of Science as a centre of excellence. In the Netherlands, it has barely any competition. The research master is accredited and the dual master which is also provided under the aegis of the OO&R in Business and Law also won the Nijmegen university education prize, and is also accredited by the NVAO.

The OO&R has an excellent reputation both in the Netherlands and abroad. This is reflected in the fact that the OO&R does not find it at all difficult to attract members for its international working groups and continuously welcomes visiting scholars to come to Nijmegen. Within the Netherlands, this prominent position is also expressed in legislation projects in which Ministries regularly involve the OO&R, e.g. within the framework of the Insolvency State committee to draft the legislative framework of the New Insolvency Act. Partners are more than willing to join forces with us; the Netherlands Authority on Financial Markets (Autoriteit Financiële Markten), the Central Bank of the Netherlands (De Nederlandse Bank), the judiciary and government are all more than able to find their way to the OO&R with queries about commercial, private law.

Leadership on the part of the OO&R is also expressed in the very many conferences and seminars organized which attract hundreds of delegates. The most well-known of these is the bi-annual Van der Heijden Institute Conference (450 delegates). The series of publications of the OO&R and the case law journal, the JOR are in themselves institutions. And the leading position of the OO&R also appears from the fact that researchers from the OO&R have written both in the field of commercial and company law, civil law and private international law for the prominent and leading Asser text book series.

The CIDOR, our specialist library, also attracts many scholars throughout the Netherlands and from abroad. The collection is, notably in the field of (international) insolvency law, the best in the Netherlands.

Policy and decision-making processes

Policy and decision-making processes are described in section A and illustrated in the diagram provided. The OO&R occupies an independent position within the faculty which means that the Board of the OO&R takes a great deal of its own responsibilities in the field of research. The management style of the OO&R is informal and direct. Lines of communication are short. All members of the Board work within a short distance of one another. The same holds true for programme leaders. The Board meets every six weeks. If an urgent matter requires attention, the Chairman and Secretary confer with one another. Communications are primarily facilitated through e-mails and informal consultations. Once a year staff meetings are held. At those meetings, the researchers of the OO&R are informed about developments within the research centre.

E. Facts and figures

Table 1: Staff at institutional level: total fte (tfte) and input research fte (rfte)

Institute	2002		2003		2004		2005		2006		2007	
	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte
Tenured staff	18,60	7,88	20,60	8,20	20,51	8,25	21,01	7,27	22,25	8,13	21,55	8,18
Ph.D. researchers	20,60	12,47	23,00	14,02	24,20	15,53	21,80	13,85	18,80	9,48	16,90	10,42
Non-tenured staff	10,40	2,75	12,00	2,30	11,00	3,08	11,20	2,93	13,50	3,30	14,50	3,52
Total Research staff	49,6	23,1	55,6	24,52	55,71	26,86	54,01	24,05	54,55	20,91	52,95	22,12
Supporting staff	1,30		1,30		1,30		1,30		1,30		1,30	
Total staff	50,90	23,10	56,90	24,52	57,01	26,86	55,31	24,05	55,85	20,91	54,25	22,12

Table 2.1: Staff at programme level: total fte (tfte) and input research fte (rfte)

Programme 1.1	2002		2003		2004		2005		2006		2007	
	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte
Tenured staff	5,10	2,06	6,10	2,18	6,50	2,67	6,90	2,64	6,40	2,78	6,40	2,78
Ph.D. researchers	5,00	3,50	6,00	3,15	6,00	3,97	4,80	3,97	4,80	3,02	4,50	3,12
Non-tenured staff	1,30	0,36	1,30	0,34	1,50	0,29	1,10	0,23	0,40	0,05	0,40	0,03
Total research staff	11,40	5,92	13,40	5,67	14,00	6,93	12,80	6,84	11,60	5,85	11,30	5,93

Table 2.2: Staff at programme level: total fte (tfte) and input research fte (rfte)

Programme 1.2	2002		2003		2004		2005		2006		2007	
	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte
Tenured staff	4,50	2,59	4,80	2,73	4,31	2,26	3,91	1,69	3,60	1,78	3,90	1,47
Ph.D. researchers	8,30	4,17	10,70	6,78	11,70	7,36	10,70	6,43	7,20	4,02	7,60	4,21
Non-tenured staff	3,40	1,03	5,40	0,72	4,20	1,33	4,00	1,30	4,00	1,30	4,00	1,03
Total research staff	16,20	7,79	20,90	10,23	20,21	10,95	18,61	9,42	14,80	7,10	15,50	6,71

Table 2.3: Staff at programme level: total fte (tfte) and input research fte (rfte)

Programme 1.3	2002		2003		2004		2005		2006		2007	
	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte	tfte	rfte
Tenured staff	6,40	2,47	7,40	2,74	7,40	2,77	6,90	2,13	7,95	2,65	7,95	2,83
Ph.D. researchers	3,50	2,10	3,50	2,10	3,50	2,10	3,50	1,58	4,00	1,15	4,00	2,29
Non-tenured staff	3,70	0,94	3,70	0,82	3,70	1,04	4,70	1,02	6,10	1,51	7,10	1,70
Total research staff	13,60	5,51	14,60	5,66	14,60	5,91	15,10	4,73	18,05	5,31	19,05	6,82

Table 2.4: Staff at programme level: total fte (tfte) and input research fte (rfte)

Programme 1.4	2002		2003		2004		2005		2006		2007	
	tfte	tfte	tfte	tfte	tfte	tfte	tfte	tfte	tfte	tfte	tfte	tfte
Tenured staff	2,60	0,81	2,30	0,55	2,30	0,55	3,30	0,81	4,30	0,92	3,30	1,10
Ph.D. researchers	3,80	2,36	3,80	2,38	3,00	2,10	2,80	1,87	2,80	1,29	0,80	0,80
Non-tenured staff	1,60	0,42	1,60	0,42	1,60	0,42	1,40	0,38	3,00	0,44	3,00	0,76
Total research staff	8,00	3,59	7,70	3,35	6,90	3,07	7,50	3,06	10,10	2,65	7,10	2,66

Table 3: Funding and expenditure at institutional level (in € and in %)

	2002	2003	2004	2005	2006	2007
Funding						
Direct funding (1 ^{ste} geldstroom)	868.934	1.175.408	1.515.581	1.318.115	1.295.107	1.515.734
	67,0%	76,8%	84,6%	76,4%	73,6%	79,7%
Research funds (2 ^{de} geldstroom)						
KNAW	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
NWO	133.218	179.914	75.886	75.157	67.703	-
	10,3%	11,8%	4,2%	4,4%	3,8%	0,0%
ESF	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Other	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Total	133.218	179.914	75.886	75.157	67.703	-
	10,3%	11,8%	4,2%	4,4%	3,8%	0,0%
(3 ^{de} geldstroom)						
Contracts	111.903	30.000	21.500	94.637	94.410	107.141
	8,6%	2,0%	1,2%	5,5%	5,4%	5,6%
Other	182.273	144.806	178.791	237.397	303.588	279.966
	14,1%	9,5%	10,0%	13,8%	17,2%	14,7%
Total	1.296.328	1.530.128	1.791.758	1.725.306	1.760.808	1.902.841
Expenditure						
Personell costs	1.039.015	1.232.918	1.425.794	1.351.561	1.413.808	1.554.760
	80,2%	80,6%	79,6%	78,3%	80,3%	81,7%
Other costs	257.314	297.210	365.965	373.745	347.001	348.081
	19,8%	19,4%	20,4%	21,7%	19,7%	18,3%
Total	1.296.328	1.530.128	1.791.758	1.725.306	1.760.808	1.902.841

Explanation:

Direct funding: funds provided directly by the higher authority for research and exploitation

Research funds: funds received in competition from national and international science foundations (NWO, KNAW, ESF)

Contracts: funds from third parties for specific research activities, from charities, EU-framework programmes, industry, etc.

Other funding: include interest from property, legacies, etc.

F. Overview of research results

Table 4: Aggregated results of the institute

	2002	2003	2004	2005	2006	2007	Total
4.2.1 Academic publications							
Monographs, handbooks, proceedings	4	8	8	5	8	9	42
Ph. D. theses	2	1	6	5	5	3	22
Articles in journals	54	38	48	48	30	53	271
Articles in books/proceedings	34	41	19	16	34	37	181
Other	1	0	1	0	0	2	4
Total	95	88	82	74	77	104	520
4.2.2 Professional publications							
Monographs, handbooks, proceedings	6	5	7	6	10	10	44
Articles in journals	16	17	34	34	24	25	150
Articles in books/proceedings	7	3	4	4	15	6	39
Case notes	55	64	58	47	41	72	337
Other	6	9	6	6	4	4	35
Total	90	98	109	97	94	117	605
Total academic + professional	185	186	191	171	171	221	1125

The following tables provide more information about the return on investments made in Ph.D. programmes within the OO&R. The first table provides information about the impure figures which apply. The second table is identical. In the second table, the Ph.D. researchers who ceased their research within one third of the term of their appointment are left out. This table in fact provides a more adequate picture of the performance of the institute than the figures which cover return on investment, reflected impurely. However, during the reporting period, no Ph.D. researcher ceased research within the OO&R within one third of their term of appointment.

What is striking in the first place is that barely any Ph.D. researcher manages to actually complete the entire programme within 5 years (only two people succeeded in doing this). Moreover, a relatively large number of researchers belong among the attrition statistics. In conclusion, the highly fluctuating return on investment (from 0% to 100%) is also striking.

Severe illnesses (two researchers) and pregnancies (one researcher) seriously affects the return on investments in the programme Finance, Security Rights and Insolvency Law (1.2).

Measures taken in 2004 to improve matters are not as yet reflected in these tables simply because the initial results of those measures will not be visible until 2009. Moreover, the conclusion may well be drawn that the return on investment for a number of years can be improved a great deal given the number of Ph.D. researchers (nine) who have not yet completed their theses within the prescribed time period.

Table 4.3: Success rates of Ph.D. researchers at institutional level (impure)

Starting year	Total number of Ph.D. candidates started	Graduated after 4 years	Graduated after 5 years	Graduated after 6 years	Graduated after 7 years	Total graduated	Not yet finished	Discontinued
2007	5	X	X	X	X	0%	100%	0%
2006	2	X	X	X	X	0%	100%	0%
2005	2	X	X	X	X	0%	100%	0%
2004	2	X	X	X	X	0%	100%	0%
2003	3	0%	X	X	X	0%	100%	0%
2002	5	0%	0%	X	X	0%	40%	60%
2001	3	33%	0%	0%	X	33%	67%	0%
2000	4	0%	25%	0%	0%	25%	50%	25%
1999	4	0%	0%	50%	50%	100%	0%	0%
1998	1	0%	0%	0%	0%	0%	0%	100%
1997	1	0%	0%	0%	0%	100%	0%	0%
1996	3	0%	0%	0%	0%	67%	0%	33%

Table 4.4: Success rates of Ph.D. researchers at institutional level (pure)

Starting year	Total number of Ph.D. candidates started	Graduated after 4 years	Graduated after 5 years	Graduated after 6 years	Graduated after 7 years	Total graduated	Not yet finished	Discontinued
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2007	5	X	X	X	X	0%	100%	0%
2006	2	X	X	X	X	0%	100%	0%
2005	2	X	X	X	X	0%	100%	0%
2004	2	X	X	X	X	0%	100%	0%
2003	3	0%	X	X	X	0%	100%	0%
2002	5	0%	0%	X	X	0%	40%	60%
2001	3	33%	0%	0%	X	33%	67%	0%
2000	4	0%	25%	0%	0%	25%	50%	25%
1999	4	0%	0%	50%	50%	100%	0%	0%
1998	1	0%	0%	0%	0%	0%	0%	100%
1997	1	0%	0%	0%	0%	100%	0%	0%
1996	3	0%	0%	0%	0%	67%	0%	33%

G. Self-analysis – according to the SWOT method

Strengths

The OO&R occupies a unique position in the Netherlands in both business orientated private law and research. Other law faculties agree with this. Research conducted in the field of business orientated private law (e.g. company law, insolvency law, financial law) is primarily associated with Nijmegen and the OO&R. The OO&R is in terms of research at the very pinnacle of the Nijmegen faculty of law. The strong point of the research conducted within the OO&R is its thematic nature. That provides a major advantage in that the institute can readily absorb new developments.

The research conducted within the OO&R makes a genuine contribution to theory on a wide range of topics pertaining to Business and Law. In the period 2002-2007, publications which provided new direction and changed the perceptions of the parameters of the field have been issued on many private law related doctrines (such as the *numerus clausus* in property law, assignment of rights in international private law, the application and bearing of European private law concerning national private law, and, many other complex issues which have a certain application in practice (financing constructions, asset management, corporate and non-corporate entities, banking and securities issues, etc.). The discussion on the flexible corporate entities touches on the very principles of company law. For some subjects, OO&R researchers even made major break-throughs in the formulation of theory (market abuse, financial supervision, insolvency law, the application of European law in Dutch private law).

The OO&R, in particular Professor Dr. S.C.J.J. Kortmann, made a major contribution to the drafting of the new Insolvency Act of The Netherlands.

The OO&R does well in acquiring contract funding (3de geldstroom). The OO&R sees this as a consequence of its excellent contacts with legal practitioners and because of the practical applicability of the research it conducts. However, no financial dependence exists in respect of third parties and hence the continuity of research and teaching is assured on the long-term.

It deserves special mention, that within the Dutch research culture, the OO&R researchers are the authors of many leading books in the prominent Asser Series.

Structural collaboration with practitioners forms the core and the power of the OO&R. Academic and social relevance is vital when it comes to the research conducted by the OO&R because research is aimed at a fundamental analysis of practical relevant legal problems, and finding practical and useful solutions.

The international orientation of the OO&R, particularly in programmes 1.2 and 1.3, is a major strength. A stay abroad is possible and encouraged for any researcher of the OO&R. Comparative law as a source of inspiration for Dutch research forms the guideline for many research projects within the OO&R. Aside from this, the influence of European law on private law has also been researched in detail.

What is unique for the Netherlands is the research into the influence exercised by European law on Dutch private law. Where the focus of the research into European private law is generally comparative by nature, as applies to most of the other academic institutions which concern themselves with this, Nijmegen has developed research which is of an exegetic nature to assist legal practice with applicable law. This requires insights into both European law as

well as national private law and insight into the complex interaction mechanisms of both areas of law.

The research master and the dual master are nationally notably highly regarded. Students from those graduate programmes go on to Ph.D. level. A genuine process of cross-fertilization takes place between research, training and the practice of law. In this sense, the OO&R meets the criteria of what graduate schools should be, a concept which is gaining ever greater acceptance within the Netherlands. Moreover, the OO&R also contributes structurally to post-academic programmes of notably the CPO, one of the market leaders in the field of post-academic training in the legal world and the prominent Grotius Academy.

Weaknesses

The return on Ph.D. research investment remains a continuing source of concern. This view is also shared by the Board of the OO&R which considers the ROI to remain too low, even after measures were taken after 2004. There are explanations: the relatively substantial teaching commitments of some researchers can be explained by the intensification of undergraduate educational programmes (a measure imposed by the Management Board of the Radboud University Nijmegen), the lure of working in a major law firm, severe illnesses and pregnancies, and sometimes, the difficulties encountered in the confinement of the research focus ultimately resulting in hurdles in defining the parameters of the research. However, further measures (described in this section) are intended by the Board to expedite progress in this, and to improve the pure figures.

The Board of the OO&R is also of the opinion that the focus on business related private law within 1.3 and 1.4 could still be further strengthened. This point of criticism arose out of prior visitations and may be removed more readily from 1.3 than from 1.4 (in which a public law research programme is currently underway into social insurance law). Within 1.3., the focus has in the meantime become clearer than it was in the research projects.

The OO&R is considering drafting instructions for contributions made to proceedings published by the OO&R. Moreover, the OO&R needs to profile itself more clearly than it did in the past in terms of which research contributed to the formulation of theory on the field in question.

The OO&R does rather well in terms of NWO-funding (the Netherlands Academic Research Organization). But the research centre could do even better. The OO&R should conduct some further self-examination in this connection and submit more applications, which require better substantiation. The same applies to applications made for European funding. The OO&R needs to spend more time and energy in acquiring European funding.

Opportunities

In society at large and academia in general, some trends (e.g. the actual financial crisis) are clear which provide the OO&R research programmes with excellent prospects. Further Europeanization, attention to social anchoring of academic research, increased significance of social regulations (good governance, good employership, compliance, reasonableness and fairness), the rise of financial law as an area of research which exceeds what were formerly the boundaries of the discipline, etc. Researchers of the OO&R have acknowledged these developments in a timely manner and are often witnesses and (co) developer to the birth of what it sometimes novel and even innovative research in these fields. Where expertise from within the research centre manifests shortcomings, new people will be appointed (for

example, as of September 1, 2008, a part-time professor whose Chair concerns Business and Ethics).

The durability and vitality of research conducted by the OO&R may be called excellent. This is primarily because of the cross-fertilization which takes place between theory and the practice of law. The problems and developments which the volatile legal practice allows for provide substantial inspiration for initiating new research projects. A prime example concerns the start of the new research programme in the field of financial law in 2008. There are also several major projects scheduled to commence by the OO&R shortly, which will require the endeavours of various participants and continue to generate substantial, innovative and challenging research. The OO&R will need to make even better use than it does of the know-how which our partners have and their insights and made all that fertile grounds for academic research.

Prospects in the field of internationalization are also excellent. The expansion of international publications and publications in English, combined with thorough and gradual expansion of the international network of the OO&R will render the research centre assured of a prominent position in Europe and even beyond Europe. European (private) law has already resulted in a precursory and leading book in two volumes. Contacts which are part of UNIDROIT, UNCITRAL, and International Insolvency Institute are an excellent source of creating a serious network outside Europe. The same applies to (in particular) the Academic Forum of INSOL Europe, the Group of Academics of INSOL International and various other international collaborations and joint projects mentioned before.

Increased attention for multi-disciplinary research within the (Dutch) legal academic research programmes, also provide further opportunities for the OO&R. Some research projects already had an empirical or economic component. The OO&R endeavours, where possible and when interesting, to strengthen this multi-disciplinary research even further. In doing so, it can make good use of the expertise and experience of the Nijmegen Institute for the Sociology of Law.

Threats

The current climate within Dutch legal academic research includes threats to the research conducted within the OO&R. The core OO&R research focuses on thinking through classical problems of private law from the point of view of the practice of law. This research is often published in monographs which are not always seen as being purely academic. The OO&R attaches a great deal of value on those publications forms and does not hope that researchers will refrain from publishing such works in the future.

Neither does the OO&R wish to direct all its research on multi-disciplinary projects, such applies to the schools of thought prevailing within many research institutes, including legal research establishments. It considers empirical research to be vital but not a prerequisite feature of legal research.

One of the foremost threats is formed by the Dutch government's policy of transferring the emphasis in funding from the universities to NWO. It is not easy for the OO&R to acquire external funding from the Netherlands Academic Research Organization. As an example of this, reference is made to the 'class actions in Dutch company law' Ph.D. proposal which is part of the research programme 1.1. That particular research proposal was given the assessment "excellent" twice and once awarded the status of being commendable, but was

still not financed by the Netherlands Academic Research Organization. This example is not the only one of its kinds. All the law faculties in the Netherlands are confronted with the same problem. The competition with the science forum within which law falls in the Netherlands Academic Research Organization (the MaGW), together with brain research, economics, etc. is such as to warrant being referred to as murderous. Deans of law faculties and members of the Boards of universities try and table this issue within the responsible echelons.

In conclusion, a further threat is formed by the temptation of working for a major law firm, both financially highly rewarding as well as substantively attractive and challenging. Major law firms and banks continue to provide increasingly attractive facilities for their staff. Those organizations are also increasingly able to offer opportunities to conduct academic and practically relevant research and offer salaries which a university is simply unable to pay. It is therefore sometimes difficult to attract and keep young and talented researchers within the university setting.

Analysis

The OO&R is a genuine force within research which focuses on business related private law and which has proven to be a highly fertile area of activities. Moreover, this focus is unique within the Netherlands. Due to nourishment provided by legal practice, and, the thematic character of research conducted, new academic initiatives arise of their own volition within the research programmes. The number of publications issued under the aegis of the institute is large; in particular those which make a contribution to the formulation of theory, in property law, company law, banking law and insolvency law. The OO&R amends its research programmes on the strength of signals from the practice of law and does so gradually in order to avoid any unnecessary hurdles. The innovative and precursory nature of many of the OO&R research projects appears, inter alia, from the value placed by people who work in field on the results (not just practising lawyers, but also the judiciary and people at various Ministries). One of the most important new fields for the research conducted by the OO&R is that concerning financial law. The strategy of the Board of the OO&R aims at giving this particular field of research a flying start (for example, by appointing a new part-time professor and appointing Ph.D. researchers in this field). Another field which will provide a new impulse for the institute is that of financing, security rights and insolvency. This primarily concerns the recently submitted proposal for a new Insolvency Act. Many practitioners speak very highly of the research conducted by the OO&R and prominent organizations are queuing up to join forces with the Centre. Only when the know how of a potential partner or its expertise is such that it can substantially offer the OO&R leverage and expertise which current partners are unable to provide does the Board of the OO&R give consideration to admitting new partners to its present network.

A further change which has already taken place within the research conducted by the OO&R is the structural attention paid to comparative law, private international law and European law. The substantial attention paid to European private law is the direct consequence of the appointment of a new professor on European private law. The research conducted by the OO&R also aimed at making a contribution to the academic debate – throughout Europe.

The OO&R Board and the programme leaders are doing everything within their power to improve the way in which Ph.D. researchers are supervised. Each Ph.D. researcher has been allocated a day to day mentor and greater attention is being paid to their individual training needs. The coherence between the dual master programme on Business and Law (The Nijmegen Law School) and the research master programme: Business and Law offered by the

OO&R is bearing fruit: Ph.D. proposals are better substantiated and focused because researchers are closely involved with the project from the very outset. The strategy pursued by the Board of the OO&R aims at making investments in the recruitments, selection of supervision of research students.

In the opinion of the Board of the OO&R, the most important parts of the academic mission are met, such as conducting high-quality, cutting edge research, making a contribution to the formulation of theory, expediting practical research and educating young researchers, all in the broad area of business orientated private law. For this reason, the Board sees no reason to amend the academic mission statement or change any of these goals.

The Board of the OO&R has a strategy to gradually enlarge the mass (the number of research ftes), and to do so in accordance with its supervisory capacity. In some fields of research there is simply too little fundamental research, which would also be relevant to the practice of law. This is going to be partly done by initiating contract funding for long-term research, for example, in the field of financing, security rights, insolvency law and insurance law.

In general, the Board of the OO&R and the programme leaders are not in favour of implementing any major changes in connection with the mission and the strategy pursued. The goal is and remains to conduct high-quality, cutting-edge and precursory academic research which remains relevant for academia and legal practice in the broad field of Business and Law.