

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

Self-evaluation report 2008

Period 2002-2007

Part II

Description of the research programmes

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Title of the programme: 1.1 Company Law

Programme leader: Professor Dr. G. van Solinge

Areas or disciplines covered: Legal entities, corporate law, securities law, financial supervision, financial reporting, employee participation, tax law and procedural law.

Starting date and duration: 1966 – to the present.

Formal cooperation (national, international): Jan Ronse Institute of the University of Leuven, Working Group “Private Actors and Self-Regulation” of The Hague Institute for the Internationalisation of Law (HiiL), Vereniging voor Effectenrecht (Dutch Securities Law Association), Vereniging Corporate Litigation (the Dutch Corporate Litigation Association).

A. Contents (the CV of the programme)

Part 1: Strategy and policy

Description of the research programme

The programme concentrates on research into company law in the widest sense. The core of the programme is the study of the law pertaining to companies and legal entities. Related fields, such as securities law, tax law, procedural law and employee participation law are also covered. Where possible, attention is also paid to the economic analysis of law and the history of law. The European origins and nature of the legal regime, aspects of private international law and comparative law are all systematically embedded into the research. The programme also provides for flexibility in order to cover new developments on national, European and international levels.

Research is conducted within the Van der Heijden Institute. The Van der Heijden Institute was established in 1966 by Professor Dr. W.C.L. van der Grinten and Professor Dr. J.M.M. Maeijer as a centre for the study of legal entities and company law. The goal of the Institute is, in line with the tradition set at the time in Nijmegen by Professor Dr. E.J.J. van der Heijden, to contribute in every conceivable way to the development and deepening of our understanding of these areas of private law. Subsequently, other subjects have been included in order to cover modern domestic and international developments in company law. In accordance with the tradition in Nijmegen, most of the research is fundamental in nature, taking issues faced in legal practice into account. One concrete result of this is that the Van der Heijden Institute is frequently involved in formulating and analyzing proposed draft legislation, on occasion being commissioned to do so by government. The publication of handbooks and legal commentaries on company law principles and case law is also part of this fundamental research. Multi-disciplinary and empirical research is increasingly being conducted. The focus is particularly directed on the effect of the law on trade and commerce, e.g. by using data, statistical analyses, interviews and comparative law.

The research findings and results are published in domestic and international series of books and in peer reviewed journals of the very highest quality. The Van der Heijden Institute Series (“Serie vanwege het Van der Heijden Instituut”), the first volume of which appeared in 1968 and which will shortly see the publication of volume 100, is and remains authoritative in The Netherlands. The research findings and results are used immediately for teaching purposes (lectures, seminars and educational programmes) in the bachelor, graduate and dual masters’ phases. The collaboration within the OO&R with its partners and the additional activities conducted by senior and junior members of the Van der Heijden Institute all contribute to an optimal cross-fertilization between academic research and legal practice.

The research programme of the Van der Heijden Institute comprises six fields:

1. The functioning of legal entities and their organs;
2. The law pertaining to groups of companies;
3. The infiltration of corporate law by securities law;
4. Corporate litigation;
5. Taxation of enterprises; and
6. Permanent research: handbooks, standard commentaries and analyses of case law.

1. The functioning of legal entities and their organs

This research concentrates on the authorization and decision-making processes used by management, the supervisory board, the general meeting of shareholders and members meetings. In particular, research is being permanently conducted into the management and supervision of enterprises (corporate governance), financial responsibility in the annual accounts and the directors' report, the rules and regulations pertaining to corporate structures, rights and obligations of shareholders and members, the law of partnerships and new research into modernizing Dutch law pertaining to the private limited liability company and flexible legal entities.

Fundamental research and research into the principles of corporate law is less influenced by changing legislation or by case law. This is the reason why this field manifests a reasonable degree of continuity. The concrete results of research conducted in this field are also less visible. This is due to the nature of its themes. Many research results and findings are obtained within the framework of non-explicit fundamental research. However, the programme leaders consider this part of the programme as remaining absolutely crucial for the programme as a whole. In particular, in training Ph.D. researchers, attention is paid to the principles of corporate law. Plenary meetings of the Institute are regularly convened during which concrete themes (recent legislation, case law, issues which have arisen in current research and legal practice) are discussed against the background of the principles which apply to corporate law. The same methodology is applied in the preparation of publications.

Another part of the research conducted within this field is determined by particular current developments. During latter years, increasing attention has been paid to the partnership. This theme is based on a long-standing tradition within the Institute. The late Professor Dr. W.C.L. van der Grinten was responsible in 1973 for drafting the new rules and regulations. Those which are to become applicable on January 1, 2009 were drafted by Professor Dr. J.M.M. Maeijer. What makes this law special is that partnerships can choose to become a legal person. Professor Dr. M. van Olffen has taken over from Professor Dr. J.M.M. Maeijer the task of updating this part of the Asser Series, in the form of the volume dedicated to partnerships which is due to be published in 2008/2009. Dr. J.M. Blanco Fernández is currently writing a handbook on the partnership and is also taking responsibility for the publication of the parliamentary history of this legislative project. The Van der Heijden Institute has also taken the initiative to establish an association to study the law pertaining to partnerships. The academic publications of that association shall be published in the Van der Heijden Institute Series.

Moreover, in the years to come, research shall also be conducted into the current legislative project on modernizing the Dutch private limited liability company and on the enhancement of its flexibility. Several members of the Institute have been involved with that project from the onset in the context of the Expert Group (under Chairmanship of Professor Dr. H.J. De Kluiver) and the "Commissie Vennootschapsrecht" (Company Law Committee, an advisory

committee established by the Dutch Government and Parliament). In the light of making the law pertaining to the private limited liability company more flexible and wider in scope, the discussion on conflicts of interest have taken on new significance. The legislator is currently preparing a draft bill on the basis of some contentious rulings by the Supreme Court of the Netherlands. That subject is also the topic of the Ph.D. research of A.F.J.A. Leijten (an attorney at law of the law firm Stibbe). The Ph.D. research of C.D.J. Bulten into the new dispute rules and regulations (“Geschillenregeling”, the second tranche of the modernization of the law pertaining to the Dutch private limited liability company) is expected to reach completion at the end of 2008.

The discussion on corporate governance in the years to come will focus on the introduction of the one tier board model. J.H.L. Beckers recently started a Ph.D. thesis on the autonomy of the management of the Dutch public and private limited liability companies.

2. The law pertaining to groups of companies

Research in this field concentrates in particular on the formation (mergers, takeovers and reorganizations) as well as the organisation (funding, the obligations of management, the power to issue instructions and the position of minority shareholders) of groups of companies. In addition to these themes, other subjects of general corporate law are also researched to the extent that they are relevant to groups of companies (such as the liability of group companies and directors, the right to instigate an inquiry and employee participation in general).

Corporate law is a field which has traditionally been strongly influenced by European rules and regulations. Research focuses on two themes in particular: cross-border collaboration of companies and the protection of minority shareholders and creditors.

The position of minority shareholders is a subject that will continue to occupy a focal point in the study of corporate law in the years to come. Under the influence of case law their position appears to be gaining in strength. EU rules and regulations (including the Directive on Public Offers) as well as the increasing influence which foreign rules and regulations exert via the international capital markets are expected to reinforce this development.

In the years to come, special attention will be paid to the cross-border creation of groups of companies through the European Company (SE, Societas Europaea) and to cross-border legal mergers (the tenth EU Directive). Future developments on cross border conversion, the European Cooperative Society (SCE) and the European private limited liability company are to be closely monitored. In the field of cross-border mergers, Ph.D. theses are currently being prepared by J.J. van den Broek into the relevant tax law aspects (supervisor: Professor Dr. G. Meussen; please refer further below) and by H.J.M.M. van Boxel (civil law notary of the law firm AKD Prinsen Van Wijmen; supervisor: Professor Dr. M. van Olffen) into the pertinent company law aspects, with special attention for the role of the civil law notary and the protection afforded to minority shareholders.

3. The infiltration of corporate law by securities law

Corporate law, in particular the regime applicable to listed companies, has increasingly been influenced by securities law in recent years. Securities law is a relatively new field which in practice has grown in importance and scope. The scope of wide-ranging and complex rules and regulations that apply stems largely from EU Directives. The infiltration of securities law into corporate law raises difficult questions, including those due to differences of provenance (e.g. in the form of public law and criminal law), which are aimed a priori at the supervision

of the securities market. The border between corporate law and securities law still requires extensive charting and modification.

This field of research is strongly influenced by European rules and regulations. In past years, EU Directives that have become effective have been implemented into Dutch legislation, in some cases very recently, such as the Market Abuse Directive, the (thirteenth) Directive on takeover bids and the Transparency Directive. National legislative projects which are significant in both scale and scope, such as the “Wet op het financieel toezicht” (Financial Supervision Act), implementing the Directive on takeover bids, deserve being mentioned. The Van der Heijden Institute has incorporated this field into one of the major new fields of its research in the past couple of years. Particular attention is paid to research into the mandatory bid, convertible bonds, company confidentiality and the mandatory disclosure of information by listed companies. The Van der Heijden Institute works closely in this field with the “Vereniging voor effectenrecht” (Securities Law Association), the publications of which are part of the Van der Heijden Institute Series. This field of research also requires close collaboration with corporate lawyers and the legislature. Two volumes are published on the new rules and regulations on takeover bids and on the Market Abuse Directive (containing new rules for insider trading, share price manipulation and the disclosure of material information). The latter volume is to be periodically updated to allow it to function as a handbook.

Research in the field of financial law is not only focused on the “classical” areas of securities law and its effects on regulating the actors on the financial markets. That regulation is the result of a combination of European law, private law, administrative law and criminal law. This complex mixture appears from an important field which in practice forms a major part of financial law: the law pertaining to financial supervision. This is a field which in past years has become increasingly important and which as of January 1, 2007, resulted in the Dutch Financial Supervision Act. These rules can for the greater part be classified as administrative law and often have their roots in European law. Infringements result in administrative law sanctions being imposed and to this extent it is part of (administrative) criminal law. However, the same infringements can also result in private law consequences (damages for wrongful acts or failure to perform and interventions into the organisation). In 2007, A.W. van der Vegt started her Ph.D. research into insider trading and takeover bids (supervisors: Professor Dr. M.P. Nieuwe Weme and Professor Dr. D.R. Doorenbos).

The wide-ranging and complex nature of this field has been an important incentive for the OO&R to establish as of 2008 a new and separate research programme: 1.5 on Business & Financial Law (see further Part I of the self-evaluation on an institutional level).

4. Corporate litigation

Of recent origination is the field of corporate litigation. It comprises procedural law pertaining to disputes between and within companies. In addition to procedural aspects, material aspects of disputes that arise concerning companies are within the established research focus. In practice, an increasing number of professionals are specializing in corporate litigation. Although litigation at the Enterprise Chamber plays a central role, other legal proceedings are also covered by this field of research.

This relatively new field of research has expanded enormously in latter years. An increasing willingness to litigate can be observed in business related disputes. This is in part a social development (reflecting the American legal culture), but it is also partly the result of the

strong growth of (particularly American and English) investors in Dutch companies and better access to and the susceptibility on the part of the judiciary, particularly the Enterprise Chamber of the Court of Appeal of Amsterdam, to address corporate disputes. Research focuses in part on these causes. In particular, reference should be made to the already published research into the role played by the Office of the Public Prosecutor in the right to conduct an investigation (conducted by E. Schmieman) and the applicable directives concerning the investigator in such reviews (drafted by the Van der Heijden Institute at the request of the Enterprise Chamber), which directives are already being applied in practice. This field of research also includes the projects already referred to above on the rules and regulations pertaining to disputes (“Geschillenregeling”) by C.D.J. Bulten and the Ph.D. thesis which has been completed on registration, publication and objection by creditors (“Deponering, publicatie en verzet”) by H. ten Voorde. Ph.D. theses are currently in preparatory phase on formal aspects of the law pertaining to investigation (R.M. Hermans, attorney at law of the law firm De Brauw Blackstone Westbroek) and into class actions in company law (B.J. de Jong).

The Van der Heijden Institute structurally cooperates with the “Vereniging Corporation Litigation” (Corporate Litigation Association), established in 2001, with more than 600 members at present). Professor Dr. G. van Solinge was one of the founding members and its first Chairman. The Proceedings of the Corporate Litigation Association are published annually as part of the Van der Heijden Institute Series.

5. Taxation of enterprises

This research focuses primarily on the influence of taxation of enterprises on both a national as well as an international level. In particular, reference should be made to issues concerning the valuation of company assets, the influence of the form of the legal entity on taxation, the effects of tax facilities for enterprises and the influence of exemptions in company tax law. Furthermore, reference should also be made to research into taxation issues relating to partnerships in the light of the rapidly approaching revision of the law pertaining to partnerships (the introduction of Title 7.13 of the Dutch Civil Code) as well as research into the taxation of shareholders, including the rules and regulations for fiscal and exempted investment vehicles (“Beleggingsinstellingen”).

On the one hand the research focuses on the increasing influence of European tax law on the way in which enterprises are taxed, particularly in connection with income tax, dividend tax and company tax. This not only appears from important rulings of the European Court of Justice, but also from more recent European Union regulations, such as the Parent-Subsidiary Directive which was amended and the amended Merger Directive, as well as the newly introduced Interest and Royalty Directive and the Savings Directive. In that connection, J.J. van den Broek is currently preparing a Ph.D. thesis on European tax law and cross-border legal mergers. Furthermore, research also comprises the review made of company tax law. The Dutch Company Tax Act of 1969 has been substantially amended as of January 1, 2007 as part of the Act “Werken aan winst” (Working on profits). Professor Dr. G.T.K. Meussen has published numerous publications on this subject and has also participated in various conferences and has provided written and verbal input to the Permanent Finance Committee of the House of Representatives of the Dutch Parliament, in reaction to a discussion paper issued by the Secretary of State on this subject (“Working on profits, towards a low tax rate and broad application”). Attention shall continue to be given to the national law aspects of taxation imposed on businesses in the field of income tax and company tax as well as to succession in business as formulated in the Dutch Inheritance Act of 1956.

6. Permanent research: handbooks, standard commentaries and analyses of case law

Permanent research is conducted with a view to publishing standard handbooks, standard commentaries and ongoing analyses of current developments in case law in the field of company law. This section is in part a further substantiation of programme components: research into partnerships and takeover bids, for example, also result in handbooks being published on those subjects.

The Van der Heijden Institute is also responsible for those volumes in the Asser Series dedicated to company law. The Asser Series is an authoritative set of handbooks in the field of private law (including company law). The new editions of those volumes always require the endeavours of various staff members of the Van der Heijden Institute. For example, Dr. J.M. Blanco Fernández is currently preparing a handbook on the partnership.

The Van der Heijden Institute has published the authoritative “Series vanwege het Van der Heijden Instituut” since its foundation (currently 97 volumes). Legal practice and academia are also heavily reliant on the loose-leaf publications devoted to legal entities (“losbladige Rechtspersonen”) and partnerships (“losbladige Personenassociaties”) and authoritative commentaries on company law (e.g. “Tekst & Commentaar Ondernemingsrecht” and “Sdu Commentaar Ondernemingsrecht”). Those commentaries are updated regularly. Various members of staff of the Van der Heijden Institute collaborate as editors/authors on those works.

Up to 2007, the Van der Heijden Institute also published the Journal for Corporate Law, Company Law and Securities Law (“Journaal rechtspersonenrecht, vennootschapsrecht en effectenrecht”). This monthly periodical provides detailed information on rules and regulations, case law and relevant legal literature. That information includes summaries as well as detailed references to the exact locations of materials to be found in the most important handbooks (those volumes which are relevant from the Asser Series and the handbook for the public and private limited liability company by E.J.J. van der Heijden/W.C.L. van der Grinten). Although the periodical clearly meets an academic and practical need, the return on investment in terms of time required became too low, and hence the Institute has decided to cease these activities. The Journal has been continued by Kluwer Legal Publishers.

A few members of the Van der Heijden Institute contribute as editors and commentators of the widely read case law review on Business and Law (including company law) published in the periodical JOR (“Jurisprudentie Onderneming & Recht”). The Van der Heijden Institute is also responsible for the loose-leaf edition on the Dutch public and private liability company (“Bundel NV en BV”), including all the relevant rules and regulations and the parliamentary history of the relevant legislation as well as the column on company law in the quarterly special edition of *Ars Aequi*.

Position in relation to previous research

The Van der Heijden Institute was founded in 1966 by Professor Dr. W.C.L. van der Grinten and Professor Dr. J.M.M. Maeijer as a centre for the study of legal entities and corporate law. The Institute’s goal remains in line with a tradition (which started in 1923) in Nijmegen, established by Professor Dr. E.J.J. van der Heijden to make contributions in any possible way to the development of this area of private law. The research conducted by the Van der Heijden Institute has expanded in the course of time to include other subjects under the influence of

developments which have taken place in law and practice. The research programme encompasses company law in the broadest sense of the word. In line with the research tradition of Nijmegen, research into company law is frequently fundamental by nature, taking legal practice into account.

Short and long term planning

In the short and long term, the research programme of the Van der Heijden Institute will be continued, using the amendments and slight changes of emphasis referred to elsewhere in this report.

One exception to this is the research conducted as part of the programme concerning “Infiltration of company law by securities law”. The scale and complexity of this field of law has encouraged the OO&R to establish a new and separate OO&R research programme as of 2008: “Business and Financial law” (research programme 1.5). Professor Dr. C.M. Grundmann–van de Krol has been specially appointed for this purpose, whose primary scientific activities will include editing and updating her authoritative book on the Dutch Financial Supervision Act (“Koersen door de Wet op het financieel toezicht”) and research pertaining to the “MiFID”. She will collaborate closely within the context of this research with Professor Dr. W.A.K. Rank, attorney at law of the law firm of Nauta Dutilh and professor of Banking and Securities law at the OO&R. In the course of 2008, the present group of researchers will be expanded significantly.

The current research projects of the Van der Heijden Institute include the editing and updating of handbooks and the continuation of Ph.D. research. Volumes are due to be published in the Asser Series on the partnership and the Dutch public and private limited liability companies in 2009. It is expected that C.D.J. Bulten and B.J. De Jong will be awarded their doctorates in 2009 and 2010 respectively. In that time period, it is also expected that the external Ph.D. researchers A.F.J.A. Leijten and R.M. Hermans will complete their theses and publish them in the Van der Heijden Institute Series. On the longer term, the research projects commenced in 2007 by J.H.L. Beckers (management autonomy) and A.W. van der Vegt (inside information and public bids) are also expected to reach completion.

In 2008, the handbook on takeover bids (“Handboek Openbare biedingen”) has been published, containing almost forty chapters and a thorough analysis of the new rules and regulations for public takeover bids. That handbook, edited by Professor Dr. M.P. Nieuwe Weme and Professor Dr. G. van Solinge together with two attorneys who work for partners of the OO&R is an excellent example of the way in which academia and legal practice can work together under the aegis of the OO&R. Together with OO&R partners, research is to commence in 2008 for a book and a seminar into the subject of “Business and shareholders” in which the changing role of (institutional) investors in past years and that of activist shareholders in listed companies takes a central place.

The Van der Heijden Institute Conference in 2009 will concentrate on the various new legal proceedings that have been promulgated in latter years in company law and financial law (in part as a result of the new acts on financial supervision (“Wet op het financieel toezicht”) and reporting (“Wet toezicht financiële verslaggeving”)).

Part 2: Orientation and method

Approaches taken and research methods

Company law is national law which to a great extent has its origin in European law (Regulations and Directives). The study of relevant European law and private international law hence forms a fully integrated part of the research programme. Most of the research projects use comparative law as their method. In addition to the classical legal method, empirical and legal-economic research is also conducted where possible and when useful.

The relationship between individual and collective research and research culture

Research projects are carried out both individually and in teams. The individual component consists of independent research, for example, in the form of articles in law journals, contributions to books, publications of handbooks and Ph.D. theses. However, this research is also the result of collective efforts. The research culture of the Van der Heijden Institute fits in well with the open culture of the OO&R. Aside from collaborations within the OO&R, reference should also be made to international networks and projects.

External researchers, even from outside the realm of OO&R's partners, are often invited to participate in research projects. There is a permanent, but informal review culture. Teaching and research assistants also conduct research activities. Large scale research projects which are commissioned by external parties are generally conducted under the supervision of a Steering Committee and a feedback group instituted by the commissioner.

National and international collaborations

- National and international collaboration with legal practice is particularly facilitated in the cooperation with the partners of the OO&R.
- Cooperation with the partners of the OO&R is systematically and increasingly used for research with an international, comparative law and private international law dimension. The foreign networks of the OO&R's partners (particularly the major law firms) form an excellent source of up-to-date and highly detailed information. Examples of this can be seen in the research conducted on the publication of annual accounts, the form of legal entity and the use of LLPs and LLCs and the delegation of authority to issue shares (respectively, volumes 91, 94 and 96 of the Van der Heijden Institute Series).
- Internationally, the Van der Heijden Institute works closely together with the Jan Ronse Institute of the University of Leuven (Belgium). This includes an exchange of teaching staff and researchers as well as convening regular meetings on themes of comparative company law. Researchers of the Van der Heijden Institute also participate in the Leuven doctorate network, in which researchers of many EU Member States also participate.
- The Van der Heijden Institute is also a Member of the Working Group on "Private Actors and Self-Regulation" of The Hague Institute for the Internationalisation of Law (HiiL). This is a major network of researchers which concentrate on the role played by private parties in (their own) rules and regulations and includes research into self-regulation in the field of corporate governance and the financial markets.
- Young researchers have been very successful in acquiring research grants abroad: one researcher was awarded the Frye Stipend for a lengthy research stay in Leuven and another researcher has obtained a Fulbright scholarship for a period of research at the Columbia University, New York.
- Nationally, there is a structural cooperation with the Dutch Securities Law Association and the Corporate Litigation Association. These collaborations are expressed in annual publications, books and many other contributions of these organizations in the Van der Heijden Institute Series.

Organized academic debate

Since its inception, the Van der Heijden Institute has organized biennial conferences on current and fundamental aspects of company law. Those conferences are prominent parts of the legal landscape and are part of the tradition of Dutch company law: they are very well attended and have an excellent reputation among all legal practitioners as well as academics in the field. The speakers at those conferences come from both legal practice as well as academia and use is made of the network of the OO&R. The papers and discussions of those conferences and further proceedings are published in volumes which are part of the Van der Heijden Institute Series. They are frequently quoted and highly influential in legislative debates and proceedings as well as among academics. In addition to this tradition of biennial conferences, the members of the Van der Heijden Institute often present papers at conferences and seminars on behalf of the OO&R and on behalf of other research institutes both at in the Netherlands and abroad.

During the reporting period, the Van der Heijden Institute (co-)organized the following conferences:

- Relations between group companies (“Concernverhoudingen”) (2001). Papers and a report on the discussions held have been published in the Van der Heijden Institute Series, volume 69 (2002).
- Partnerships (“Personenvennootschappen”) (2003). Conference organized together with the Netherlands Association for Business Law. Papers and a report on the discussions held as well as the preliminary report for the Netherlands Association for Commercial Law (“Vereeniging Handelsrecht”) have been published in the Van der Heijden Institute Series, volume 74 (2003).
- The employee in company law (“De werknemer in het ondernemingsrecht”) (2003). Papers and a report on the discussions held have been published in the Van der Heijden Institute Series, volume 76 (2004).
- Financing the company (“De financiering van de onderneming”) (2005). Papers and a report on the discussions held have been published in the Van der Heijden Institute Series, volume 88 (2006).
- Market abuse (“Marktmisbruik”) (2006). Conference held in connection with the publication of the volume on Market Abuse in the Business & Law Series of the OO&R, volume 34 (2006).
- Flexible legal entities (“Flexibele rechtsvormen”) (2007). Papers and a report on the discussions held have been published in the Van der Heijden Institute Series, volume 98 (2008)

Part 3: Research findings and results (evaluation)

1. The functioning of legal entities and their organs

This part of the programme is an important element of the fundamental research conducted. It is crucial to and essential for the programme as a whole. On the basis of and due to fundamental research, all kinds of developments in company law can be researched. It is precisely in this part of the programme that the Van der Heijden Institute makes a contribution

to the theory of company law, both academically (handbooks and commentaries) as well as practically (legislation and other regulations/best practices).

In 2003, volume 74 of the Van der Heijden Institute Series was published, which is a volume containing papers of a conference and a meeting of the Dutch Commercial Law Association on the draft bill on partnerships. Professor Dr. M. van Olffen took over from Professor Dr. J.M.M. Maeijer and edited the volume in the Asser Series on partnerships. That research was completed in 2007 and will be published in 2008.

Another important result in this field of research is the publication of the volume on the employee and company law (“De werknemer in het ondernemingsrecht”, Van der Heijden Institute Series, volume 76), which contains the lectures and a report of the proceedings of the conference organized by the Van der Heijden Institute in 2003 on the position of the employee (including directors) in a company. Special attention was given to the revision of governance rules for large companies (“structuurregime”). The unabated criticism of this regime for large companies voiced by the Van der Heijden Institute, not just in academic publications but also in more popular fora, contributed in part to the swan song of this regime of obsolete rules on corporate governance imposed by law.

Moreover, in 2004 research was completed into the Dutch East India Company as part of the anniversary commemorated in August 2004. It is probably the oldest public company in the world. The book was published in 2005 (Law of Business and Finance Series, volume 6) and contains legal history and comparative legal essays written by authors from many jurisdictions, grouped around topical themes such as legal entities, the liability of company directors, conflicts of interest and corporate governance. The English translation of the Dutch East India Company’s Articles of Association included in that publication is a genuine first time ever disclosure of those details. The book received worldwide attention.

G.J.C. Rensen was awarded his Ph.D. on June 29, 2005 for his thesis entitled “Extra verplichtingen van leden en aandeelhouders” (Extraordinary obligations of members and shareholders). His supervisor was Professor Dr. F.J.P. van den Ingh. The research covered the various provisions of the law on membership obligations in associations, cooperatives, and public and private limited liability companies. The research was intended to provide clear answers to the questions these issues raised in practice. A second aspect of the research was to make an analysis of several statutory obligations which frequently apply in practice. These include the question to what extent a legal entity may impose obligations by means of its Articles of Association. A third aspect of the research concerns the question as to what in law applies if statutory obligations are not complied with and what the legal consequences are of a merger, division or conversion of a legal entity for being bound to those statutory obligations. The Ph.D. thesis was published in the Van der Heijden Institute Series as volume 83, Deventer: Kluwer (2005).

H. ten Voorde was awarded his Ph.D. on October 31, 2006 for his thesis entitled “Deponering, publicatie en verzet” (Registration, publication and objection by creditors). His supervisor was Professor Dr. G. van Solinge. The research covered the possibilities for creditors to object when changes are made to the structure of a legal entity, such as when mergers, divisions, dissolutions, conversions or reductions of capital take place, or the declaration ex article 2:403 of the Dutch Civil Code is withdrawn. Empirical research shows that objections are rarely raised and that this in part raises doubts as to the usefulness of mandatory registration and publication. Some recommendations have been adopted by the

legislature in the draft bill to simplify the law applicable to the Dutch private limited liability company and to enhance its flexibility.

The Ph.D. research conducted by N. Lemmers on tracking stock was ceased prematurely in 2007 without having yielded notable results.

However, in this field of research, a number of projects which were commissioned by third parties have been completed:

- The Dutch Ministry of Economic Affairs commissioned research, partly comparative in nature, on the enforcement of the obligation to prepare and publish annual accounts. The researchers were Professor Dr. M.P. Nieuwe Weme and B.J. de Jong. Their findings were published under the title: “Publicatie van de jaarrekening” (Publication of the annual account) in the Van der Heijden Series, as volume 91 (2006).
- Research was commissioned by the Academic and Documentation Centre of the Netherlands Ministry of Justice on the possibility and desirability of introducing a new form of legal entity into Dutch law, partly in the light of making legal entity forms more flexible. The rules and regulations and experiences gained with the Limited Liability Partnership and the Limited Liability Company in Anglo-American jurisdictions were researched. The research made major contributions to the formation of Cabinet policy in connection with making legal entities more flexible.¹ The researchers were: Dr. J.M. Blanco Fernández and Professor Dr. M. van Olfen. Their findings were published under the title: “Rechtsvorm en gebruik van LLP’s en LLC’s” (The concept and use of LLPs and LLCs) in the Van der Heijden Institute Series, volume 94 (2007).
- Comparative law research was commissioned by the Eumedion Foundation into the customary permission granted by the general meeting of shareholders to management to issue shares. The recommendations were adopted by Eumedion and disseminated on the website and in its standard handbook on Corporate Governance. The researchers were: Dr. P.J. van der Korst, Professor Dr. M.P. Nieuwe Weme and Professor Dr. G. van Solinge. Their findings were published under the title “Delegatie van emissiebevoegdheid” (Delegating share issue authorization) in the Van der Heijden Institute Series, volume 96 (2008).
- The unpublished confidential research conducted by Dr. J.M. Blanco Fernández in 2007 deserves mention which was commissioned by the Association of Chambers of Commerce in connection with reviewing the Dutch Trade Registry Act (Handelsregister), which research covered among other things the questions as to under which conditions a church should be registered in the Trade Registry.

2. Groups of companies

¹ Please refer to the Cabinet’s response to the research conducted by the Van der Heijden Institute: “To be able to assess the desirability under Dutch law of introducing a personal company, with limited liability, research was conducted into the concept and use of Limited Liability Partnerships (LLPs) and Limited Liability Companies (LLCs) in Great Britain and in the United States. The Cabinet deduces from the research conducted that there is no reason to introduce a new legal entity form to augment the review which has already commenced of personal companies and the Dutch private limited liability company” (Kamerstukken TK (Proceedings of the House of Representatives), 2007-2008, 29 752, nr. 6, p. 2).

The law pertaining to groups of companies is a relatively modest but nonetheless a vital part of the research programme. It is particularly analyzed by Professor Dr. F.J.P. Van den Ingh. Please refer, for example, his contribution to the book published in 2002 as volume 69 of the Van der Heijden Series containing the proceedings of the Van der Heijden conference on groups of companies which also includes a contribution made by Professor Dr. M. van Olffen. During the biennial conference of the Institute for Company Law of the University of Groningen held in 2002, Van Solinge gave his lecture entitled: “Naar een soepeler fusierecht” (Towards more flexible merger laws) which covered foreign variations on mergers and their possible use under Dutch company law (published in L.J. Hijmans van den Bergh et al, *Nederlands ondernemingsrecht in grensoverschrijdend perspectief* (Dutch company law in a cross-border perspective), 2003, pages 17-37). Professor Dr. M. Van Olffen wrote, together with Buijn and Simonis “*Splitsing van ondernemingen*”, a handbook on civil law and tax law aspects of splitting companies (2004). Unfortunately, two Ph.D. research projects on this subject were ceased prematurely (E. Schmieman’s, into the protection given to minority shareholders and J.M.A. Wintgens-Van Luijn’s into the position of creditors upon a company being divided). In 2007, a special edition of the journal WPNR was published on the subject of cross-border mergers and conversions, containing contributions of Professor Dr. G. van Solinge and H.J.M.M. van Boxel.

3. The infiltration of corporate law by securities law

Various important results were achieved in this rapidly expanding field of research. In 2004, two Ph.D. theses were published, one entitled “*Converteerbare obligaties*” (Convertible bonds) by J.J. Prinsen, on the conversion of debt into equity (Ph.D. awarded on September 15, 2004; supervisors: Professor Dr. G. van Solinge and Professor Dr. S.C.J.J. Kortmann), and another entitled “*Het verplicht bod op effecten*” (The mandatory public offer on securities) by Professor Dr. M.P. Nieuwe Weme, into the obligation on the part of a shareholder with a controlling interest to make a public offer for the remaining securities of a publicly held corporation (Ph.D. awarded on September 15, 2004 (cum laude); supervisor Professor Dr. G. van Solinge). The thesis defended by Nieuwe Weme also contains a proposal for legislation which, in several cases quite literally, has been adopted by the legislature in the rules and regulations which apply to mandatory bidding in the Netherlands, for example in the recent “*Wet op het financieel toezicht*” (Financial Supervision Act). In November 2005, Nieuwe Weme defended his preliminary advice on mandatory bidding at a meeting of the Dutch Commercial Law Association. In 2006, the handbook on Market Abuse was published as volume 34 in the Business and Law Series of the OO&R. The book meets a genuine need among practitioners and scholars of corporate and securities law; a second edition has already been published in 2008. In 2007, major research into the new rules and regulations for takeover bids was completed, for the handbook on Public Bids, which has been published in the Business and Law Series of the OO&R in 2008 (containing almost forty chapters).

4. Corporate litigation

This relatively new field of research has reached maturity in a brief time span and yielded excellent results. Particular reference should be made to the research conducted into the role of the Office of the Public Prosecutor in investigations, by E. Schmieman (The Van der Heijden Institute Series, volume 75, 2004), in which a review has been made of the criteria authorities apply, as formulated by law, when acting in the public interest as a petitioner in investigative proceedings (“*enquêterecht*”) pending before the Enterprise Chamber. Moreover, the Guidelines for researchers in investigative proceedings were published by the Van der Heijden Institute, in part at the request of the Enterprise Chamber, which guidelines have in the meantime already been implemented in practice (The Van der Heijden Institute

Series, volume 78, 2005). This field of research also includes the Ph.D. research referred to above under 1. into the registration, publication and objections on the part of creditors, by Dr. H. Ten Voorde (The Van der Heijden Institute Series, volume 89, 2006). Dr. P.J. van der Korst also completed his Ph.D. thesis on confidential company information and obligations to provide information, which research covers a variety of legal fields, with a strong emphasis on procedural law, such as obligations to enter Exhibits into proceedings, discovery, and the rules of evidence (The Van der Heijden Institute Series, volume 92, 2007).

The Van der Heijden Institute works very closely with the Dutch Corporate Litigation Association (which was established in 2001 and which has grown in the meantime to more than 600 members). Professor Dr. G. van Solinge was one of the founding members and its first Chairman. The Proceedings of the Dutch Corporate Litigation Association are published annually in the Van der Heijden Institute Series. Those annual publications review the most important developments in regulatory law, buy-out and dispute rules and regulations and the rules pertaining to annual accounts. They also include a wide range of ever-changing topics contributed by authors, both domestic and international, as well as lectures given at seminars organized by the Association. The annual publication of its proceedings and the authoritative nature of the contributions made by prominent authors render those books leading points of reference in the ongoing debate pertaining to the field of Corporate Litigation. They are edited by Professor Dr. G. van Solinge, M. Holtzer, A.F.J.A. Leijten and D.J. Oranje. During the reporting period, six of these books were published as part of the Van der Heijden Institute Series, volume 68 (2002), volume 72 (2003), volume 75 (2004), volume 82 (2005), volume 87 (2006) and volume 93 (2007).

5. Taxing enterprises

Professor Dr. G.T.K. Meussen published his inaugural lecture in 2004 entitled: “De toekomst van de (Nederlandse) vennootschapsbelasting in Europa, Gedachten over harmonisatie, politieke onwil en de rol van het Hof van Justitie EG”. Therein Professor Meussen presents ideas on the future of Dutch company tax in Europe (in particular in the context of harmonization), political unwillingness and the role of the European Court of Justice. In the field of European tax law, he has also regularly published in “European Taxation”, an international academic tax journal. Aside from this, his case comments in the BNB (a journal on Dutch taxation case law) place a clear emphasis on European tax law. In 2007, a contribution was published by Meussen entitled “A Comparison of the Treaty Freedoms in the EC Treaty with Respect to Direct Taxation”. In addition, he published in the *Liber amicorum fiscalium* the article “A vision of taxes within and outside European borders”, as part of “Festschrift” in honour of Emeritus Professor Frans Vanistendael (pp. 645-655) (Deventer: Kluwer Law International).

In the field of tax law as it pertains to companies, reference should be made to publications by Professor Meussen which have appeared in the “Maandblad Belastingbeschouwingen” (MBB, monthly taxation review) and in the “Tijdschrift Fiscaal Ondernemingsrecht” (TFO, a journal on fiscal corporate law) concerning subjects such as the Act “Werken aan winst” (Working on profits), as well as essays published in the journal WPNR on this subject with a focus on the taxation aspects of the new law pertaining to partnerships.

Reference should also be made to the taxation standard handbook: “Hoofdzaken winst uit onderneming” (Main themes of profits from business), also written by Professor G.T.K. Meussen together with Professor Dr. A.O. Lubbers (of the University of Leiden), the second edition of which appeared in 2008.

6. Handbooks

Professor Dr. M. Van Olfen completed the text in 2007 of the Asser-Maeijer 5-V volume dedicated to partnerships. That publication, which will appear in 2008, covers the entire amended law on partnerships, including the introduction of the partnership with legal personality. The fourth edition of “Tekst & Commentaar Ondernemingsrecht” (text and commentary on company law) appeared in 2007. In 2006, the first edition of Sdu’s commentary on company law (“Sdu Commentaar Ondernemingsrecht”) was published. During the reporting period, research was structurally conducted with a view to editing the Asser-Maeijer 2-III volume (on the Dutch publicly and privately held limited liability companies) which is expected to appear in 2009.

Part 4: Ph.D. Theses

Table 1: List of Ph.D. researchers graduated in the period of review, programme level

	2002	2003	2004	2005	2006	2007	Total
Number of graduates	0	0	2	1	1	1	5
Names of graduates			Nieuwe Weme, M.P. Prinsen, J.J.	Rensen, G.J.C.	Voorde, H. ten	Korst, P.J. van der	-

B. Staff, resources, and funding of the programme

Part 5: Funding

Table 2: Funding at programme level

	2002	2003	2004	2005	2006	2007
Funding						
Direct funding (1 ^{ste} geldstroom)	276.839	293.659	386.820	368.723	318.334	319.211
	87%	87%	90%	89%	74%	70%
Research funds (2 ^{de} geldstroom)						
KNAW	-					
	0%	0%	0%	0%	0%	0%
NWO	-		-			
	0%	0%	0%	0%	0%	0%
ESF	-					
	0%	0%	0%	0%	0%	0%

Other	-	-	-	-	-	-
	0%	0%	0%	0%	0%	0%
Total	-	-	-	-	-	-
(3 ^{de} geldstroom)	0%	0%	0%	0%	0%	0%
Contracts	-	-	-	-	42.600	55.546
	0%	0%	0%	0%	10%	12%
Other	40.885	42.082	42.989	45.467	66.895	83.869
	13%	13%	10%	11%	16%	18%
Total	317.724	335.740	429.809	414.190	427.829	458.627
Expenditure						
Personell costs	251.868	267.207	339.358	318.108	341.674	371.969
	79%	80%	79%	77%	80%	81%
Other costs	65.856	68.533	90.450	96.082	86.155	86.657
	21%	20%	21%	23%	20%	19%
Total	317.724	335.740	429.809	414.190	427.829	458.627

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: including interest from property, legacies, etc.

Part 6: Research staff

Table 3.1: Research staff at programme level (total fte (tfte) and input research fte (rfte) by category)

Category	Name	tfte 2002	rfte 2002	tfte 2003	rfte 2003	tfte 2004	rfte 2004	tfte 2005	rfte 2005	tfte 2006	rfte 2006	tfte 2007	rfte 2007
Lecturer	Demmer, J.H.M.	0,20	0,07	0,20	0,05								
Lecturer	Jong, B.J. de											0,30	0,02
Lecturer	Kiersch, E.D.G.	0,30	0,09	0,30	0,09	0,30	0,09	0,30	0,03				
Lecturer	Kleinreesink, P.N.G.	0,40	0,08	0,40	0,08	0,40	0,08	0,40	0,08				
Lecturer	Mans, H.W.M.					0,40	0,04	0,40	0,12	0,40	0,05		

Lecturer	Rensen, G.J.C.											0,10	0,01
Lecturer	Slot, J.P.A.M.	0,40	0,12	0,40	0,12	0,40	0,08						
Professor	Doorenbos, D.R.								0,03	0,20	0,20	0,20	0,20
Professor	Hamaekers, H.M.A.L.	0,20	0,07	0,20	0,07	0,20	0,07	0,20	0,07	0,20	0,07	0,20	0,07
Professor	Ingh, F.J.P. van den	0,60	0,21	0,60	0,21	0,60	0,21	0,60	0,21	0,60	0,21	0,60	0,21
Professor	Meussen, G.T.K.			1,00	0,12	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35
Professor	Nieuwe Weme, M.P.							0,20	0,06	0,20	0,07	0,20	0,07
Professor	Olfen, M. van	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,10
Professor	Rank, W.A.K.	0,20	0,20	0,20	0,20	0,20	0,20	0,20	0,20	0,20	0,20	0,20	0,20
Professor	Schonis, H.M.N.	0,50	0,18	0,50	0,18	0,50	0,18	0,50	0,16				
Professor	Solinge, G. van	0,90	0,32	0,90	0,32	0,90	0,32	0,90	0,32	0,70	0,25	0,70	0,25
Researcher	Korst, P.J. van der	0,40	0,28	0,40	0,28	0,40	0,28	0,40	0,28	0,40	0,28	0,40	0,28
Researcher	Nowak, R.G.J.					0,40	0,28	0,40	0,28	0,40	0,28	0,40	0,28
Ph.D. researcher	Broek, J.J. van den							0,80	0,40	0,80	0,80	0,80	0,80
Ph.D. researcher	Bulten, C.D.J.	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,47				
Ph.D. researcher	Jong, B.J. de					1,00	0,70	1,00	0,70	1,00	0,70	0,70	0,65
Ph.D. researcher	Lemmers, N.	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,64

Ph.D. researcher	Prinsen, J.J.	1,00	0,70	1,00	0,12								
Ph.D. researcher	Rensen, G.J.C.	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,12		
Ph.D. researcher	Schmieman, E.			1,00	0,23	1,00	0,70		1,00	1,00	0,70	1,00	0,70
Ph.D. researcher	Vegt, A.W. van der											1,00	0,33
Ph.D. researcher	Wintgens-van Luyn, J.M.A.	1,00	0,70	1,00	0,70	1,00	0,47						
Assistant professor	Blanco Fernández, J.M.	0,80	0,28	0,80	0,28	0,80	0,28	0,80	0,28	0,80	0,28	0,80	0,28
Assistant professor	Bulten, C.D.J.							1,00	0,12	1,00	0,35	1,00	0,35
Assistant professor	Schenk, S.F.J.J.	0,20	0,07	0,20	0,07	0,20	0,05						
Associate professor	Nieuwe Weme, M.P.	1,00	0,35	1,00	0,35	1,00	0,35	0,40	0,18	0,40	0,14	0,40	0,14
Total		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 3.2: Age research staff, programme level (January, 1, 2005)

	< 35	35 – 44	45 – 54	55 >
Tenured staff	1	6	4	2
Ph.D. researchers	5	-	-	-
Non-tenured staff	-	1	-	-
Total	6	7	4	2

C. Reputation and leadership

Part 7: Reputation

Academic reputation

The Van der Heijden Institute is responsible for the editing of three volumes in the Asser Series in the field of company law. The OO&R publishes a monthly journal which has an excellent reputation covering business and company case law (“Jurisprudentie Onderneming & Recht”); the Van der Heijden Institute is also responsible for the securities and financial

law section of this journal. The Van der Heijden Institute Series has an authoritative reputation for publishing Ph.D. theses, monographs, conference proceedings, preliminary advice on legislation as well as publications of the Dutch Securities Law Association and the Corporate Litigation Association.

The credentials of the senior members of the Van der Heijden Institute concerning their academic reputation in the review period are mentioned below.

Van Solinge

Professor Dr. G. van Solinge is:

- Member of the “Commissie Vennootschapsrecht” (Company Law Committee, a permanent advisory committee of the government and both chambers of the Dutch Parliament);
- Member of the “Commissie Kapitaalmarkt” (Capital Markets Committee) of the AFM (the Dutch Financial Markets Authority);
- Member of the Supervisory Board of the Shareholders Communication Channel Foundation;
- Member of the Expert Group on the enhancement of flexibility concerning Dutch private limited liability companies (report of May 2004);
- Editor of the leading Dutch journal on company law “Ondernemingsrecht”;
- Editor of “Actuele Rechtspraak Ondernemingspraktijk” (ARO, a journal containing case law of the Enterprise Chamber);
- Co-Founder and first Chairman of the Dutch Corporate Litigation Association (2001-2005);
- Member of the Working Group on Private Actors and Self-Regulation (HiiL);
- Author of Asser-Maeijer 2-III and 2-IV;
- Author of the series “Tekst & Commentaar Ondernemingsrecht” (Kluwer);
- Member of the Supervisory Board of the Dutch foundations “Leaseverlies” and “Eegalease” (until 2004);
- Guest annotator of Nederlandse Jurisprudentie (the authoritative Dutch case law journal).

Van den Ingh

Professor Dr. F.J.P. van den Ingh is:

- Editor in Chief of the case law journal “Jurisprudentie Onderneming & Recht” (JOR);
- Editor in Chief of “Journaal Rechtspersonenrecht, Vennootschapsrecht en Effectenrecht” (Journal for Corporate Law, Company Law and Securities Law);
- Editor of “Tijdschrift voor Ondernemingsbestuur” (Journal for Business Management);
- Referee of the “Stichting voor Recht en Openbaar bestuur” (Dutch Foundation for Law and Public Administration).

Van Olfen

Professor Dr. M. van Olfen is:

- Editor of the journal “Weekblad voor Privaatrecht, Notariaat en Registratie” (the authoritative Dutch law journal on private and notarial law);
- Editor of the loose-leaf publication on partnerships “Personenassociaties”;

- Member of the “Gecombineerde Commissie Vennootschapsrecht” (Joint Committee on Company Law) of the Dutch Bar and the Dutch Royal Association of Civil Law Notaries;
- Author of Asser-Maeijer 5-V.

Nieuwe Weme

Professor Dr. M.P. Nieuwe Weme is:

- Member of the editorial board of the case law journal “Jurisprudentie Onderneming & Recht”;
- Permanent advisor of the AFM (the Dutch Financial Market Authority);
- Editor of the leading Dutch journal on company law “Ondernemingsrecht”;
- Deputy Justice at the Enterprise Chamber of the Court of Appeals in Amsterdam;
- Author of Asser-Maeijer 2-III.

Schonis (Emeritus Professor as of 2007)

Professor Dr. H.M.N. Schonis is:

- Deputy Crown-appointed member of the Dutch “Sociaal-Economische Raad” (SER, the Social and Economic Council);
- Member of the editorial panel of the journal “Weekblad voor fiscaal recht” (Weekly Taxation Journal) (until 2006);
- Editor in Chief of the journal “Fiscaal Tijdschrift Vermogen” (Tax law journal);
- Editor of “FED Fiscale Geschriften” (Taxation Papers).

Hamaekers (Emeritus Professor as of 2008)

Professor Dr. H.M.A.L. Hamaekers is:

- Head of the International Bureau of Fiscal Documentation (until 2006);
- Honorary Doctorate awarded by the University of Lodz (2002);
- Executive Secretary of the European Association of Tax Law Professors;
- Member of the Permanent Scientific Committee and General Council of the International Fiscal Association;
- Member of the editorial board of the International Transfer Pricing Journal;
- Editor of the Rivista di Diritto Tributario Internazionale.

Meussen

Professor Dr. G.T.K. Meussen is:

- Permanent member of the staff of various taxation law journals, such as “Weekblad voor fiscaal recht”, “Beslissingen in belastingzaken Nederlandse Belastingrechtspraak”, “Fiscaal tijdschrift FED” and “European Taxation”;
- Permanent member of the staff of the journal “Weekblad voor Privaatrecht, Notariaat en Registratie” (the authoritative private and notarial law journal);
- Member of the editorial board of the EUCOTAX series, an international series of books in the field of international and European tax law, published by Kluwer Law International (until 2008);
- Member of the editorial board of the “Nederlandse Documentatie Fiscaal Recht” (NDFR, Netherlands Documentation on Tax Law), sections: income tax and company tax;
- Member of the Academic Advisory Council of the “Berliner Steuergespräche” (Berlin Taxation Circle);
- Lecturer, European Tax College, University of Leuven (Belgium);

- Arbitrator of the Moot Court on International and European Taxation, Leuven (until 2009).

Blanco Fernández

Dr. J.M. Blanco Fernández is:

- Author of the the series “Tekst & Commentaar Ondernemingsrecht” (Kluwer) (explanatory handbook on company law legislation);
- Author of “Sdu Commentaar Ondernemingsrecht” (explanatory handbook on company law legislation).

Bulten

C.D.J. Bulten is:

- Secretary of the “Commissie Vennootschapsrecht” (Company Law Committee, a permanent advisory committee of the government and both houses of the Dutch Parliament);
- Clerk of the Enterprise Chamber of the Court of Appeal in Amsterdam (until 2005);
- Winner of the Frye Stipend.

De Jong

B.J. de Jong is:

- Winner of a Fulbright scholarship for Ph.D. researchers;
- Web-editor of the leading Dutch journal on company law “Ondernemingsrecht”.

External validation

The combination of fundamental research and the close cooperation with legal practice forms the core and the strength of the Van der Heijden Institute and its research programme. The details of that cooperation appear from the conferences and publications referred to above. Although the implemented publication policy puts emphasis on the academic legal media, many members of the Van der Heijden Institute regularly write for quality public media, such as the newspaper NRC Handelsblad and the financial newspaper Het Financieele Dagblad (Dutch Financial Times). A further vital stage for socially relevant debate is the preparatory phase of legislation. A number of details have been provided above as to the involvement of members of the Van der Heijden Institute in drafting legislation.

Internal evaluation

Evaluations and assessments made of research depend on the nature and character of the research project itself. Ph.D. research projects are usually assessed individually, but supervision is provided by one or more specialists and one or more co-readers. Most research projects require some further assistance from experts in legal practice, in which connection use is made of the network of contacts that OO&R partners provide. Major research projects, commissioned or not, are always conducted by teams. Such projects are offered feedback from steering groups and/or (external) experts.

Part 8: Leadership

The Van der Heijden Institute occupies a special position within the OO&R. It has its own academic board, supervised by an Advisory Council. The academics who are the leading members of the institute, and who are also the editors of its eponymous series are:

- Professor Dr. J.M.M. Maeijer

- Professor Dr. H.M.N. Schonis
- Professor Dr. F.J.P. van den Ingh
- Professor Dr. G. van Solinge
- Professor Dr. M. van Olffen
- Professor Dr. M.P. Nieuwe Weme (as of 2005)

The Advisory Council assists these academics and their staff both when asked as well as unsolicited by providing counsel. The Advisory Council includes corporate law practitioners, legislators, members of the judiciary, leading academics, members of the business community and members of trade unions. The Advisory Council also acts as a watchdog as well as a source of advice. It ensures that the major lines of the research programme are adhered to and submits proposals for new research. Moreover, the meeting of the Van der Heijden Institute and its Advisory Council, held once every eighteen months, reviews the research progress reports of the various fields of research individually and in detail. The subjects of the biennial conferences held by the Van der Heijden Institute are established in consultation with the Advisory Council.

The Advisory Council currently comprises the following members:

- J.C.M.G. Bloemarts, Policy Advisor FNV – one of the major trade unions;
- Professor Dr. M.W. den Boogert, attorney at law in Amsterdam, advisor to Allen & Overy/Loyens & Loeff, Professor of Law at the University of Groningen;
- M.T. Bouwes, Consultant to the Council of the Netherlands Ministry of Justice;
- Professor Dr. P. Sanders, Professor Emeritus of the Erasmus University of Rotterdam (as of 2006);
- Mrs. A.B. Scheltema Beduin, Secretary of the VNO-NCW – a federation of Dutch industry and employers (resigned as of 2006);
- Mrs. S. Drion, Secretary of the VNO-NCW (since 2006);
- J.H.M. Willems, Vice-President of the Court of Appeal of Amsterdam and Chairman of the Enterprise Chamber.

Part 9: Social relevance

The trade mark of the OO&R is its close collaboration between academic pursuits and legal practice, in which connection reference should be made to the general section of the institute report. It is entirely within this tradition that the members of the Van der Heijden Institute also function as practicing lawyers. This can be seen, for example, from their participation in conferences, their involvement in preparing and drafting new legislation, their advisory role commissioned by third parties (often the Ministries of Justice, Finance and Economic Affairs), as well as from publications in quality newspapers, such as NRC Handelsblad and Het Financieele Dagblad and in other non-legal fora, such as FEM Business and Elsevier.

Part 10: Scouting and personnel policy

Researchers are recruited both internally as well as externally. Researchers (both part-time as well as full-time) are employees of the faculty and are usually recruited from the circle of highly promising students, often teaching assistants and graduates who are writing their theses, as well as externally. In addition, research is also conducted by fellows of the OO&R who work for one of the partners of the OO&R. At the moment, various Ph.D. projects are being conducted by “buitenpromovendi” (external Ph.D. researchers). The progress

supervision, the management and the coordination of the research programme is in the trusted hands of a programme leader. Furthermore, each research project has its own project leader. Assessments and evaluations are carried out both at individual as well as at general levels. Progress is monitored using the research plan which is drafted together with the researcher and amended when necessary. The research plan also contains the goals of the research and the means to be used for the development, training and ongoing education of the researcher in question. Training is provided internally using fortnightly meetings about topical and/or fundamental subjects, based on cases taken from legal practice and case law. All researchers are equipped by the OO&R with training and coaching in jurisprudence and legal (research) methodology, facilitated by the endeavours of a team of prominent internal and external lecturers. Moreover, attending domestic and international conferences is actively encouraged. In principle, every researcher is seconded to a university or research institute abroad.

D. Overview of the results

Table 4.1: Key publications

1. M.P. Nieuwe Weme, *Het verplicht bod op effecten* (The mandatory public offer on securities) (Ph.D. diss.), Serie vanwege het Van der Heijden Instituut, volume 80, Deventer: Kluwer 2004.
2. J.M. Blanco Fernández, M. Holtzer, G. van Solinge, *Richtlijnen voor de onderzoeker in enquêteprocedures* (Guidelines for the appointed official in corporate investigative proceedings), Serie vanwege het Van der Heijden Instituut, volume 78, Deventer: Kluwer 2004.
3. G.J.C. Rensen, *Extra-verplichtingen van leden en aandeelhouders* (Extraordinary obligations of members and shareholders) (Ph.D. diss.), Serie vanwege het Van der Heijden Instituut, volume 83, Deventer: Kluwer 2005.
4. G.T.K. Meussen, A Comparison of the Treaty Freedoms in the EC Treaty with Respect to Direct Taxation. In *Liber amicorum fiscalium "A vision of taxes within and outside European borders"*. *Festschrift in honour of prof. em. Frans Vanistendael* (pp. 645-655). Deventer: Kluwer Law International 2007.
5. J.M. Blanco Fernández en M. van Olfen (2007), *Rechtsvorm en gebruik van LLP's en LLC's* (The concept and use of LLPs and LLCs), Serie vanwege het Van der Heijden Instituut, volume 94, Deventer: Kluwer 2007.

Table 4.2: Results at programme level (output in numbers)

4.2.1 Academic publications	2002	2003	2004	2005	2006	2007	Total
Monographs, handbooks, proceedings	0	1	3	1	2	1	8
Ph.D. theses	0	0	2	1	1	1	5
Articles in journals	15	20	22	29	8	25	119
Articles in books/proceedings	12	11	9	8	18	7	65
Other	0	0	1	0	0	1	2
Total	27	32	37	39	29	35	199

4.2.2 Professional publications							
Monographs, handbooks, proceedings	2	3	4	3	6	2	20
Articles in journals	7	7	26	27	14	15	96
Articles in books/proceedings	1	2	3	3	10	3	22
Case comments	13	25	22	21	21	31	133
Other	0	3	4	2	0	1	10
Total	23	40	59	56	51	52	281
Total academic + professional	50	72	96	95	80	87	480

Table: 4.3 Full list of publications

See Part III: Full list of publications.

E. Self-analysis-according to the SWOT method

Part 11: Evaluation

Strengths

The report of the Ten Kate Committee ascribed the Van der Heijden Institute with a prominent position for company law.² In terms of relevance and durability/vitality, the programme was awarded the maximum score (5) by the Ten Kate Committee in which connection the following was stated:

“The relevance of the programme is beyond doubt. In the first place, research is conducted in the field of company law of the first order and handbooks are edited and updated. In the second place, close relationships are well maintained with legal practice, for example via the Advisory Committee, which clearly constitutes a positive influence on research. It is clearly a well integrated research group, the élan and reputation of which have not been diminished by Maeijer’s departure. The Committee is of the opinion that the vitality and durability of the programme is excellent.”³

The academic research of the Faculty was assessed internally in 2006. This resulted in a report entitled: “Interne Beoordeling Onderzoek” (Internal Assessment of Research), 1999-2004. That report was submitted to a committee of external experts which responded with its views on July 7, 2006. The findings of the external committee of experts included the comment that the research conducted by the Nijmegen faculty is in part among the very top echelon of research. There was praise for the “broad scope, without poor focus” maintained

² Report of the Ten Kate Committee, Research assessment of law, 1995-2000, Assessment of Research Quality, VSNU 2002, p. 87.

³ Report of the Ten Kate Committee, Research assessment of law 1995-2000, Assessment of Research Quality, VSNU 2002, p. 88.

by the OO&R and for the following: “Jurisprudentie Onderneming & Recht” (JOR), the Van der Heijden Institute (very good name) and Insolvency law (excellent).

The share obtained in contract and other funding (3de geldstroom) is good.

Weaknesses

Despite a good number of completed Ph.D. research projects, three Ph.D. researchers terminated their research without completion. Ph.D. return on investment remains a matter requiring attention.

As applies to other research units of the OO&R (and all the legal faculties in the Netherlands) it is far from easy to obtain external financing from The Netherlands Organisation for Scientific Research (NWO).

Opportunities and analysis

The aspect of “academic quality/programme” was awarded the lower score of between 3 and 4 by the Ten Kate Committee. The research programme had more the character according to the Ten Kate Committee of “a theme which in its parts reflected the main lines of the research”.⁴ Moreover, the dissertations showed little coherence according to the Committee. The programme leaders followed up on the criticism levelled by the Ten Kate Committee and since the committee’s report this area of research has been given a greater programmatic character. One example of this concerns the research area on the infiltration of company law by securities law. This was initially intended to draw a picture of the overlaps between company law and securities law, a field very much in its infancy. The current intention, in contrast, places emphasis on the way in which and the degree to which company law is influenced and amended by the influence of securities law that has a strong public law character. The reigning influence of European rules and regulations and the economic rules and regulations of the international capital markets form the dominant factors. The appointment of Professor Dr. M.P. Nieuwe Weme in 2005 as Professor of Business and Economics Law gave this field a vital impulse and augmented this growing area of research. Due to this appointment, Professor Nieuwe Weme could be retained as senior staff member for the Van der Heijden Institute so that the legal-empirical method (law and economics) occupies a permanent position within the research programme. The large scope and complexity of research in this field has been an important incentive for the OO&R to establish a new and independent OO&R research programme: 1.5 “Business and Financial Law” (as of 2008).

The same development has been experienced by the field of research into Corporate Litigation. Initially it was concentrated on making an inventory and facilitating academic and practically orientated initiatives, but has now grown into a mature research field with high level publications to its credit. The proceedings, published annually in the Van der Heijden Institute Series of the Corporate Litigation Association, bear witness to this. The relatively large number of topics, however, do not constitute any obstacles to cooperation within the programme. It is not always easy to find the right balance between a splintered and a too concentrated form of coherence, how artificial it may be. However, preference should be given to allowing initiatives to mature rather than impose programmes from above. It is precisely that freedom that can result in new fields of research, such as the recent development of research into corporate litigation or even new programmes such as the

⁴ Report of the Ten Kate Committee, Research assessment of law, 1995-2000, Assessment of Research Quality, VSNU 2002, p. 87.

aforementioned new OO&R research programme “Business and Financial Law”. That unmistakable advantage of the thematic nature of a research programme was also noticed by the Ten Kate Committee.

Developments in the field of corporate governance have given rise to research into legal entities and the functioning of their bodies, with clear emphasis in the programme on the subjects of management and supervision (the introduction of the single tier board, the dismantling of the structured corporation) and the increasing flexibility of legal entities (new style partnerships and the flexible Dutch limited liability corporation). Special attention is paid to developments abroad and in European rules and regulations by studying and comparing the flexibility of legal entities in other jurisdictions as well as focusing on the proposal made by the European Commission on the introduction of the European private limited liability company. In addition, an increasingly clear distinction is made in practice between the highly regulated, government controlled public limited liability company which is listed on a stock exchange on the one hand, and the more flexible enterprise forms on the other hand such as the modernized private limited liability company and the new style partnership. The contrast between institute and contract – a traditional field of tension in company law – is given a new dimension as a result. This part of research will be given an increasingly programmatic character in the near future by adhering to the aforementioned lines.

One point still requiring some attention is that of integrating the research area of Taxing Businesses. The appointment, in 2004, of Professor Dr. G.T.K. Meussen and of other researchers, have exercised a highly stimulating influence which is noticeable, for example in the double research projects into the civil law and tax law aspects of cross-border mergers.

The international orientation of the research programme is already very good in terms of subject matter (attention to European rules and regulations) and methods used (comparative law as well as publications in international literature). The network into which the programme is embedded (the organization of and participation in international conferences, secondments to foreign universities, participation in international research networks), the forums and the ways in which research results are published, may be improved upon in respect of almost all components of the research programme.

The research conducted by the Van der Heijden Institute is by its nature, given its subject matter, and by definition, internationally orientated. Although work is in some cases conducted together with foreign research groups, usually on a project by project basis, this is an area which could be further strengthened. The collaborations with foreign networks of the OO&R partners have been gradually growing; during the reporting period, some very concrete and good research results were achieved. The Van der Heijden Institute is primarily interested in the added value which such collaborations could provide for the OO&R and shall continue to invest in them. Moreover, it is and remains part of research policy to allow Ph.D. researchers to spend some of their time abroad as visiting researchers. By having several members of the Van der Heijden Institute participate in the international doctorate day of the University of Leuven (together with participants from many other EU Member States), in November 2007, and participate in the HiiL Working Group on Private Actors and Self-Regulation, steps have already been taken in terms of recent, new initiatives to strengthen international ties.

Title of the programme: 1.2 Finance, Security Rights and Insolvency Law

Programme leaders: Professor Dr. N.E.D. Faber and Professor Dr. S.E. Bartels (previously: Professor Dr. S.C.J.J. Kortmann)

Areas or disciplines covered: Banking and commercial law, insolvency law, property law, the law of obligations, private international law.

Starting date and duration: 1991- to the present

Formal cooperation (national and international):

- Collaboration within the framework of International Working Groups established by the OO&R with the universities of: 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).
- Luxembourg (Luxembourg) in the context of its international LL.M. Course on European Banking and Financial Law.
- Various domestic, international and transnational research projects and other collaborations, including with: UNCITRAL, UNIDROIT, the International Insolvency Institute, INSOL International, INSOL Europe and INSOLAD.

A. Contents (the CV of the programme)

Part 1: Strategy and policy

Description of the research programme

As from the establishment of the OO&R in 1991, the research programme on Finance, Security Rights and Insolvency Law has always been an integral part of the core research conducted by the OO&R. In order to emphasize the national and international allure and coherence of research conducted in this field, the research programme is presented under the flag of the Institute of Insolvency Law which was established in June 1995 and which operates in the same manner as the Van der Heijden Institute (please refer to research programme 1.1) as a part of the OO&R. During the symposium held on November 22, 1996 entitled: “The insolvency administrator, an octopus” the Institute for Insolvency Law was opened officially.

The research programme comprises the following main fields:

- Finance and security rights;
- Insolvency law.

The field of “finance and security rights” concerns the various ways in which businesses are able to obtain working capital and other funds to finance entrepreneurial activities. It also covers the various forms of security rights (in rem) and personal security rights which can be provided to secure credit facilities. The funding of businesses activities can be categorized as follows: bank lending, supplier credit, bonds and various forms of securities and credit derivatives which have been developed in the course of time (often abroad or in an international setting).

The field of “insolvency law” concerns businesses in financial difficulties. Insolvency procedures which apply to businesses include bankruptcy, suspension of payments and debt restructuring for natural persons (insofar as applicable to natural persons who conduct a business). Research also extends to informal reorganizations (those carried out as a restructuring outside the ambit of insolvency). Increasing attention is also paid to research concerning insolvency procedures which specifically apply to particular kinds of (major) market parties, including credit and financial institutions and insurance companies. Another important feature pertaining to this field concerns comparative research of domestic insolvency law systems in and beyond Europe, international principles and applicable private international laws.

Until 2002, Financial Law (Capital Markets, Securities and Financial Supervision) formed part of research programmes 1.1 and 1.2. This field has undergone rapid growth in latter years and has developed substantially. It appears to have major overlaps with various research programmes conducted by the OO&R and for practical and organizational reasons, research pertaining to Financial Law was brought under the scope of either programme 1.1 or 1.2 (depending on the prevailing interrelationship with programme components). As from 2008, a separate research programme has been established on Financial Law (1.5).

The following fields of research are covered by the programme:

1. Pledge and mortgage;
2. Fiduciary security (fiducia cum creditore and security ownership), reservation of title, hire purchase and leasing;
3. Personal and contractual security rights;
4. Receivables financing;
5. The principles of insolvency law;
6. Permanent research: text books and analyses of case law.

A brief description follows of each of the aforementioned fields of research and of the most important research conducted during the reporting period pertaining to these fields. It should be noted that various research results ascribed to programme 1.1 (Company Law) and programme 1.3 (Business and Patrimonial Law) have important overlaps with programme 1.2. This applies in particular in the field of hybrid financing structures, security rights, assignment of claims, segregated assets, the trust and banking liability. In the following, attention will solely be drawn to research results which specifically concern programme 1.2.

1. Pledge and mortgage

Research into this field concentrates on the rights of pledge and mortgage outside and during insolvency. In particular, reference should be made to the ongoing research pertaining to the creation and enforcement of security rights, the limits of collateral objects, priority in the distribution of proceeds, possible conflicts with rights of third parties, separatism, permissible and non-permissible redemption during insolvency and set-off by a security holder prior to and during insolvency proceedings. Research is also conducted on the validity and use under Dutch and foreign law of a security trustee as the holder of security rights on behalf of one or more creditors. Other aspects of collective security arrangements are also analyzed.

In connection with rights of pledge, the literature in the currently described research period includes discussions in which a prominent role has been assumed by researchers associated with the OO&R. Reference should be particularly made to the discussion on the demand of

specificity concerning a pledge or an assignment of rights, future collateral and after acquired goods, negative pledges and non-assignment clauses, private and alternative enforcement methods, collection of pledged receivables, the right of information of the holder of an undisclosed right of pledge, set-off by the pledgee, inter-creditor agreements and contractual priority arrangements. Extensive research has also been conducted on mortgage rights. In particular, reference should be made to publications concerning the transfer of all sums mortgages, the scope of a mortgage right, private and alternative enforcement methods and mortgaging particular registered goods (including: freight vessels). The manner in which security is dealt with from the perspective of private international law has also been focused on (including the assimilation of security rights and the applicable law on the creation and enforcement of security rights).

The comparative research conducted by the International Working Group on European Security Rights (established by the OO&R and chaired by Professor Dr. S.C.J.J. Kortmann) during the reporting period deserves special attention. The results include extensive National Reports from twelve EU Member States (including two EU Accession States) and Switzerland, an Introduction and a Comparative Synthesis. The findings of the research will be published in the fall of 2008 in a new publication in the Law of Business and Finance Series. Other important comparative law projects in the field of security rights in which researchers at the OO&R were closely involved include the Trento Working Group on “Security Rights in Movable Property in European Private Law” and the symposium on “Divergences of Property Law: an Obstacle to the Internal Market” (the assigned topic concerned the “Harmonisation of National Security Rights”). Finally, reference should be made to the contribution made by researchers of the OO&R to the comparative law project of the CREDA (*Centre de recherche sur le droit des affaires*) on “*Le contrat de financement*” (Finance contracts). The last mentioned research project covered various aspects of financing structures, including secured finance arrangements.

The following Ph.D. research projects were conducted in this field during the period 2002-2007: subrogation (S. Boot), collective security arrangements (Dr. A.C.F.G. Thiele)⁵, cross-border insolvency proceedings and security rights (Professor Dr. P.M. Veder)⁶, the undisclosed right of pledge on rights (Dr. A.J. Verdaas)⁷ and company charges (N.S.G.J. Vermunt). A new Ph.D. research project, which starts in 2008, concerns “Enforcement of a right of pledge on shares”.

An international project which has been initiated in 2008 concerns a new book on “Security and finance in historical and comparative perspective”. It is envisaged to be published in the course of 2009 in the Law of Business and Finance Series.

Important research results include:

⁵ Angélique Thiele, *Collective Security Arrangements, A comparative study of Dutch, English and German Law* (Ph.D. diss. Nijmegen), Series Law of Business and Finance, volume 5, Deventer: Kluwer Legal Publishers 2003.

⁶ Michael Veder, *Cross-border Insolvency Proceedings and Security Rights, A comparison of Dutch and German law, the EC Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency* (Ph.D. diss. Nijmegen), Series Law of Business and Finance, volume 8, Deventer: Kluwer Legal Publishers 2004.

⁷ This thesis was published outside the reporting period: A.J. Verdaas, *Stil pandrecht op vorderingen op naam* (Ph.D. diss. Nijmegen), Serie Onderneming en Recht, volume 43, Deventer: Kluwer 2008.

- S.E. Bartels, J. Israël and J.M. Smits, “Dutch National Report”, in: E.M. Kieninger (ed.), *Security Rights in Movable Property in European Private Law*, Cambridge: Cambridge University Press 2004;
- Steven Bartels et Niels Vermunt, “Rapport pour les Pays-Bas (incorporé dans le tableau synoptique)”, *Le Contrat de financement – Étude comparative et prospective du crédit bancaire* (The finance contract – A comparative study in relation to bank lending), Études du Centre de recherche sur le droit des affaires, Paris: Litec 2006, p. 197-340;
- S.C.J.J. Kortmann, “Verrekening door de bank/stil pandhouder vóór of tijdens het faillissement van de pandgever” (Set-off by the bank/undisclosed pledgee prior to or during insolvency of the pledgor), in: *Onderneming en 10 jaar nieuw Burgerlijk Recht*, Serie Onderneming en Recht, volume 24, Deventer: Kluwer 2002, p. 389-408;
- L. Timmerman, “Bankhypotheek en afhankelijkheid” (All sums mortgages and the principle of accessory), in: *Onderneming en 10 jaar nieuw Burgerlijk Recht*, Serie Onderneming en Recht, volume 24, Deventer: Kluwer 2002, p. 409-424;
- W.A.K. Rank, “Harmonisation of National Security Rights”, in: U. Drobnig, H.J. Snijders and E.J. Zippo (eds.), *Divergences of Property Law: an Obstacle to the Internal Market*, München: Sellier 2006, p. 201-215;
- A. Steneker, “Voorrangsvragen bij stil pand op vorderingen” (Priority issues concerning undisclosed pledges of rights), *WPNR* 2004 (6578), p. 377-384;
- Angélique Thiele, *Collective Security Arrangements, A comparative study of Dutch, English and German Law* (Ph.D. diss. Nijmegen), Series Law of Business and Finance, volume 5, Deventer: Kluwer Legal Publishers 2003;
- Michael Veder, *Cross-border Insolvency Proceedings and Security Rights, A comparison of Dutch and German law, the EC Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency* (Ph.D. diss. Nijmegen), Series Law of Business and Finance, volume 8, Deventer: Kluwer Legal Publishers 2004;
- H.L.E. Verhagen, “De ‘floating charge’: toepasselijk recht en assimilatie” (The floating charge: applicable law and assimilation), *NIPR* 2002, p. 283-295;
- N.S.G.J. Vermunt, “Enkele knelpunten bij pand, hypotheek en beslag” (Various bottlenecks concerning pledge, mortgage and attachment of property), in: *Onderneming en 10 jaar nieuw Burgerlijk Recht*, Serie Onderneming en Recht, volume 24, Deventer: Kluwer 2002, p. 321-346;
- N.S.G.J. Vermunt, “Het informatierecht van de stil pandhouder” (The right of information of the undisclosed pledgee), in: S.C.J.J. Kortmann e.a. (red.), *10 jaar «JOR», Alsnog geannoteerd*, Den Haag: Sdu Uitgevers 2006, p. 174-181.

2. Fiduciary security (fiducia cum creditore and security ownership), reservation of title, hire purchase and leasing

The introduction of the New Civil Code on January 1, 1992 did not render inferior in any particular way research into the fiduciary prohibition of art. 3:84 (3) of the Dutch Civil Code, which at that time was already of substantial importance. Whereas research into the scope of the fiducia cum amico is included within the scope of research programme 1.3 (Business and Patrimonial Law), the research into the parameters of the fiducia cum creditore pertains to the core of the research programme currently described. Permanent research is conducted on the scope of the fiduciary prohibition, applications of fiduciary constructions in the finance practice and the applicable conflict of law rules concerning fiduciary security arrangements. A relatively new field of research concerns the introduction of the financial collateral security

agreement under the EU Collateral Directive and the domestic (Dutch) implementation legislation of that Directive (Title 7.2 of the Civil Code of the Netherlands).

Systematic research is also conducted on reservation of title (i.e. reservation of ownership) and similar constructions, such as hire purchase and (financial) leasing. Research is also conducted on the conceptual structure of reservation of title (as well as various other forms of conditional security ownership devices) and on the extent to which reservation of title can extend to other goods than those supplied under the terms of the sale contract and on claims which can be secured. Research has also been conducted on the extent to which a supplier and a customer may dispose of their conditional property rights. Various publications (categorized as part of research programme 1.3) analyze connected contracts which are entered into within the framework of hire purchase and leasing arrangements.

The comparative research conducted by the aforementioned International Working Group on European Security Rights deserves special attention. Security ownership, reservation of title, financial leasing and hire purchase are covered by the scope of this research project. These security devices are also covered in the aforementioned comparative research projects conducted as part of the Trento project on “Security Rights in Movable Property in European Private Law”, the symposium on “Divergences of Property Law” and the CREDA project “Le contrat de financement”.

Various researchers have also published contributions in the *Libellus amicorum* for Professor Dr. S.C.J.J. Kortmann – which focuses on “Fiduciary relationships” – in the currently described research field.

The following Ph.D. research, conducted during the period 2002-2007, was also undertaken in this sub field: financial collateral arrangements (T.R.M.P. Keijser⁸). A new Ph.D. research project to be started in 2008 has the subject: “Advance delivery and transfer of ownership under suspensory condition”.

Primary research results in this field included:

- N.E.D. Faber, “Overdracht van voorwaardelijke eigendom” (Transfer of conditional ownership), in: N.E.D. Faber e.a. (eds.), *Fiduciare verhoudingen, «Libellus amicorum prof.mr. S.C.J.J. Kortmann»*, Serie Onderneming en Recht, volume 41, Deventer: Kluwer 2007, p. 33-58;
- C.J.H. Jansen, “Fiduciare rechtshandelingen in historisch perspectief” (Fiduciary legal acts in historical perspective), in: N.E.D. Faber e.a. (eds.), *Fiduciare verhoudingen, «Libellus amicorum prof.mr. S.C.J.J. Kortmann»*, Serie Onderneming en Recht, volume 41, Deventer: Kluwer 2007, p. 105-117;
- C.J.H. Jansen, “De financiële zekerheidsvereenkomst” (The financial collateral arrangement), in: A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus (eds.), *De invloed van het Europese recht op het Nederlandse privaatrecht. Bijzonder deel*, Serie onderneming en recht, volume 42-II, Deventer: Kluwer 2007, p. 353-367;
- M.A.J.G. Janssen, “Een krediet eigendomsvoorbehoud is mogelijk” (Extended monetary reservation of title clauses), *TvI* 2002, p. 318-324;

⁸ Thomas Keijser, *Financial Collateral Arrangements, The European Collateral Directive Considered from a Property and Insolvency Law Perspective* (Ph.D. diss. Nijmegen), Series Law of Business and Finance, volume 9, Deventer: Kluwer Legal Publishers 2006.

- Thomas Keijser, *Financial Collateral Arrangements, The European Collateral Directive Considered from a Property and Insolvency Law Perspective* (Ph.D. diss. Nijmegen), Series Law of Business and Finance, volume 9, Deventer: Kluwer Legal Publishers 2006;
- T.R.M.P. Keijser, "A Need for a Change. The Undesirable Consequences of the Settlement Finality Directive and the Collateral Directive in the Field of Property and Insolvency Law, in Particular for Small and Medium-sized Enterprises", ZEuP 2006, p. 308-325.

3. Personal and contractual security rights

Legislation on both joint and several liability as well as on surety was amended in the new Dutch Civil Code in relation to the former law which applied prior to January 1, 1992. Other than the former legislation, the new Civil Code no longer embodies the so-called active joint and several liability. That was replaced by the collective right to collect a claim (art. 6:15 of the Civil Code). The scope of applicability of the rules concerning passive joint and several liability has been expanded on various aspects in the new Civil Code in comparison to the previously applicable rules. Under the current regime, art. 7:850 (3) of the Civil Code determines that the rules of law pertaining to joint and several liability apply mutatis mutandis to surety, unless otherwise provided in Title 7.14 of the Civil Code. Two other novelties of particular importance concern: the external relationship between creditor and debtors now being governed by the principle of individual collection rights and, in view of the internal relationship between the debtors which are jointly and severally liable, the option to assume the application of the dogma of so-called closed circuits when seeking redress from among jointly liable debtors.

Researchers of the OO&R also published on a variety of related areas. Examples include contributions made on collective security arrangements (e.g. active joint and several liability, parallel payment covenant, parallel debt, surety constructions and surplus collateral arrangements) and the permission requirement of article 1:88 of the Civil Code. Contractual security also formed an important feature of research, including contractual subordination, positive and negative pledges and pari passu clauses.

From a comparative law perspective, personal and contractual security was also a topic covered by the aforementioned CREDA project: "Le contrat de financement".

Ph.D. research in this field comprises the research conducted by A.C.F.G. Thiele on collective security arrangements. New Ph.D. research to commence in 2008 concerns "Contractual security rights".

Main research results obtained in this field of research include:

- C.J.M. Klaassen, "10 jaar hoofdelijkheid en borgtocht naar "NBW"" (10 years of joint and several liability and surety under the new Civil Code), in: S.C.J.J. Kortmann e.a. (eds.), *Onderneming en 10 jaar nieuw burgerlijk recht*, Serie Onderneming en Recht, volume 24, Deventer: Kluwer 2002, p. 659-702;
- Th.A.L. Kliebisch, "De contractuele achterstelling – nog steeds ongeregeld?" (The contractual subordination – still unregulated), in: S.C.J.J. Kortmann e.a. (eds.), *Onderneming en 10 jaar nieuw burgerlijk recht*, Serie Onderneming en Recht, volume 24, Deventer: Kluwer 2002, p. 445-455;

- Angélique Thiele, *Collective Security Arrangements, A comparative study of Dutch, English and German Law* (Ph.D. diss. Nijmegen), Series Law of Business and Finance, volume 5, Deventer: Kluwer Legal Publishers 2003.

4. Receivables financing

As from its foundation, the OO&R has intensively conducted research in the field of receivables financing. Issues arising in connection with the transfer of and trade in receivables are covered by research programme 1.3 (Business and Patrimonial Law). Legal issues specifically related to the transfer and pledge of receivables to finance business activities are, however, incorporated in research programme 1.2. Receivables financing is a relatively new area of law which has gained substantial importance in the global finance practice. Concepts such as factoring, securitisation, collateralized debt and loan obligations (CDOs/CLOs) and covered bonds have primarily emerged as structured finance devices in the financial markets in England and the USA. Dutch law clearly diverges in its substantive law treatment of these devices, compared with the legal approaches of both the Anglo-American as well as other continental European systems. It is nevertheless well adapted to facilitate such structured and hybrid financial instruments.

From a comparative legal perspective, various aspects of receivables financing were covered by the aforementioned CREDA project: “Le contrat de financement”.

A start was made in 2008 with a new project in the field of structured finance, in which many receivables financing structures will be reviewed (including securitisation, collateralized debt obligations, collateralized loan obligations and covered bonds). This volume is expected to be published in the course of 2009 in the Business and Law Series. A grant has been applied for within the framework of the European network COST to establishing a new International Working Group in the field of Receivables Financing in Europe and beyond.

M.H.E. Rongen conducted Ph.D. research in the area of “Securitisation”. The aforementioned Ph.D. research of Dr. A.J. Verdaas also pertains to the field of receivables financing. His thesis relates to the undisclosed right of pledge on rights and was published outside the reporting period in the Business and Law Series.⁹ As part of research programme 1.3, Ph.D. research is also being conducted on several related topics, such as the Ph.D. research conducted by J.W.A. Biemans on “Undisclosed Assignment of Rights”. In 2008, a new Ph.D. research proposal is to be submitted as part of the internal competition and the NWO’s open competition in the field of structured finance, which covers aspects of receivables financing.

The research results in this field include:

- M.H.E. Rongen, “Securitisation”, *TvI* 2002, p. 3-16;
- M.H.E. Rongen, “Vorderingen als verhandelbare goederen: wijzigingen van de onderliggende overeenkomst na cessie of verpanding” (Receivables as tradeable goods: modifications of the underlying agreement after assignment or pledge), in: S.C.J.J. Kortmann e.a. (eds.), *Onderneming en 10 jaar nieuw burgerlijk recht*, Serie Onderneming en Recht, volume 24, Deventer: Kluwer 2002, p. 275-298;
- T.H.D. Struycken and R.H. Stevens, “The Court of Appeal on international assignment”, *Law Quarterly Review* 2002, p. 15-20;

⁹ A.J. Verdaas, *Stil pandrecht op vorderingen op naam* (Ph.D. diss. Nijmegen), Serie Onderneming en Recht, volume 43, Deventer: Kluwer 2008.

- Hendrik Verhagen and Axel Flessner, *Assignment in European Private International Law, Claims as property and the European Commission's 'Rome I Proposal'*, München: Sellier European Law Publishers 2006.

5. The principles of insolvency law

The current Bankruptcy Act of the Netherlands has become outdated in several ways. It was enacted in 1893 and has become in part obsolete and requires fundamental modifications. During the last decades, a number of amendments have been proposed to the Bankruptcy Act and several proposals were adopted by the legislator. In particular, reference has to be made to the Debt Reorganisation Act for natural persons of January 1, 1998 and the severely debated and notorious bill 27 244, which in part due to fundamental criticism advanced by researchers of the OO&R was drastically amended and which (in part) ultimately resulted in the Insolvency Act Committee being established (see further below). The OO&R made major contributions to the discussion on amending the Bankruptcy Act in the form of many publications and active participation of staff member in conferences, symposia and colloquia which focused on future Dutch insolvency law. A vital part of that discussion has been initiated by the OO&R.

The OO&R also conducts permanent research on the foundations of the Bankruptcy Act. That research is to a large extent normative by nature. However, detailed empirical research has also been conducted into the efficiency of the current Bankruptcy Act and substantial research is conducted on the scope, explanation and applications of current law. The classical themes of bankruptcy law into which the OO&R conducts particular research include: reciprocal agreements, avoidance actions, set-off, the position of the security holder during bankruptcy, preferences, the cooling off period (i.e. stay on proceedings/moratorium), the position of the insolvency administrator and the position of the employee. Given in part the application of the EC Insolvency Regulation,¹⁰ more attention is drawn to insolvency law from a private international law perspective. Various staff members of the OO&R have extensively published on the EC Insolvency Regulation as well as on the UNCITRAL Model Law on Cross-Border Insolvency, including Professor Dr. P.M. Veder, as part of his Ph.D. research.

Special reference should be made to the focus of the OO&R on the draft of a new Insolvency Act presented on November 1, 2007 to the Dutch Minister of Justice (published in the Business and Law Series as volume 2-IV). The OO&R organized within a week of the submission date the first public seminar on that draft and hosted on May 29, 2008 a major conference together with the Netherlands Association of Insolvency Lawyers and Specialists (INSOLAD). In October 2008, a volume will be published in the Business and Law Series in which the draft Insolvency Act will be extensively analyzed. Recent contributions made by OO&R researchers have also been published in the compilation of *Ars Aequi* entitled "The draft Insolvency Act further reviewed".¹¹ Two researchers of the OO&R have acted during the reporting period as members of the Insolvency Law Committee: Professor Dr. S.C.J.J. Kortmann (Chairman) and Professor Dr. P.M. Veder (Secretary). Especially the contribution of Professor Kortmann in contriving the draft legislation has absorbed a major part of his research time.

¹⁰ EC Council Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings, OJ L160 of 30 June 2000.

¹¹ Please refer to the contributions made by S.C.J.J. Kortmann, "Hoofdlijnen van het Voorontwerp", J.J. van Hees, "Verificatie van vorderingen en de renvooprocedure" and N.E.D. Faber "Actio Pauliana en verrekening" in the book J.A. van de Hel e.a. (ed.), *Het Voorontwerp Insolventiewet nader beschouwd*, Nijmegen: Ars Aequi Libri 2008.

An important comparative law publication which may contribute to the development of insolvency law on a European level is the book *Principles of European Insolvency Law*. That research was conducted by the International Working Group on European Insolvency Law (chaired by Professor Dr. S.C.J.J. Kortmann) which was established by the OO&R. The book provides extensive commentary on the principles and includes ten detailed National Reports from selected European Member States. The aforementioned CREDA project “Le contrat de financement” included a comparative law review of the consequences of insolvency law on financing structures. Consideration is currently given to compare European insolvency law in a new project with insolvency law systems applied in other major jurisdictions outside Europe. Recent European developments should also be covered in this project, such as (proposed) amendments to insolvency law in England, France, the Netherlands, Scotland and Spain. Other Member States (including Sweden) and new EU Accession States (such as the Czech Republic, Hungary and Poland) will also be covered in this project.

The following Ph.D. research projects were conducted in this field during the reporting period: intellectual property rights and bankruptcy (Ch.A.M. Domingus-Schwencke), set-off (Professor Dr. N.E.D. Faber),¹² the principle of fixation (C. Rijckenberg), reciprocal agreements (A. Slaski), the insolvency plan (A.D.W. Soedira) and avoidance actions under Belgian and Dutch insolvency law (R.J. van der Weijden).

The research results in this field include:

- W.W. McBryde, A. Flessner and S.C.J.J. Kortmann (eds.), *Principles of European Insolvency Law*, Series Law of Business and Finance, volume 4, Deventer: Kluwer Legal Publishers 2003;
- N.E.D. Faber, *Verrekening* (Set-off) (Ph.D. diss. Nijmegen), Serie Onderneming en Recht, volume 33, Deventer: Kluwer 2005;
- N.E.D. Faber, “Vernietiging van verplicht verrichte rechtshandelingen” (Termination (avoidance) of completed mandatory legal acts), in: S.C.J.J. Kortmann e.a. (eds.), *10 jaar «JOR», Alsnog geannoteerd*, Den Haag: Sdu Uitgevers 2006, p. 135-141;
- S.C.J.J. Kortmann and N.E.D. Faber (eds.), *Geschiedenis van de Faillissementswet, Deel 2-IV Voorontwerp insolventiewet* (History of the Bankruptcy Act – The proposal of a new Insolvency Act), Serie Onderneming en Recht, volume 2-IV, Deventer: Kluwer, 2007;
- J.J. van Hees, “De wetenschap van de pauliana” (Knowledge of prejudice and the actio pauliana), in: S.C.J.J. Kortmann e.a. (eds.), *10 jaar «JOR», Alsnog geannoteerd*, Den Haag: Sdu Uitgevers 2006, p. 142-148;
- S.C.J.J. Kortmann, “De onbegrijpelijke, onbillijke en onbruikbare Ontvanger/Hamm q.q.-regel” (Undue payment during insolvency proceedings), in: S.C.J.J. Kortmann e.a. (red.), *10 jaar «JOR», Alsnog geannoteerd*, Den Haag: Sdu Uitgevers 2006, p. 156-165;
- S.C.J.J. Kortmann and J. Israël, “Europa en het Nederlandse insolventierecht” (Europe and Dutch insolvency law), in: A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus (eds.), *De invloed van het Europese recht op het Nederlandse privaatrecht, Bijzonder deel*, Serie Onderneming en Recht, volume 42-II, Deventer: Kluwer 2007, p. 601-628;

¹² N.E.D. Faber, *Verrekening* (Set-off) (Ph.D. diss. Nijmegen), Business and Law Series, volume 33, Deventer: Kluwer 2005. Professor Dr. N.E.D. Faber was awarded a *cum laude* distinction.

- S.C.J.J. Kortmann and P.M. Veder, “Enkele kanttekeningen bij het wetsvoorstel Uitvoeringswet EG-Insolventieverordening” (Various critical remarks concerning the proposed implementation legislation of the EC Insolvency Regulation), *WPNR* 2002 (6515), p. 867-872;
- Michael Veder, *Cross-border Insolvency Proceedings and Security Rights, A comparison of Dutch and German law, the EC Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency* (Ph.D. diss. Nijmegen), Series Law of Business and Finance, volume 8, Deventer: Kluwer Legal Publishers 2004.

6. Permanent research: text books and analyses of case law

Permanent research is conducted with a view to publishing handbooks in the field of Finance, Security Rights and Insolvency Law and (standard) commentaries on legislation as well as permanently analyzing current developments concerning case law in this area. Special mention should be made of permanent research conducted within the framework of the new Asser Series volume on “Insolvency Law”, research conducted in preparation for the text book on “Insolvency Law” (to be published in the Series on Business and Law) and the text book currently being prepared on Finance and Security Rights (to be published in the Series on Business and Law). Reference should also be made to research which resulted in 2003 in the *Principles of European Insolvency Law* which is to continue and to be expanded with the inclusion of a number of new EU Member States and non-European countries. The comparative law research in the field of security rights in Europe conducted by the International Working Group on European Security Rights is also permanent in nature.

Various members of staff of the OO&R act as editors and annotators of the section on “Finance, security rights and insolvency law” published in the authoritative case law journal *JOR*. Various researchers were also editors during the reporting period for the *Tijdschrift voor Insolventierecht* (leading Insolvency Law review) (hereinafter called: “TvI”), the *Weekblad voor Privaatrecht, Notariaat en Registratie* (the authoritative private and notarial law journal) (“*WPNR*”) and the series published by the OO&R: “*Serie Onderneming & Recht*” (Series on Business and Law, which currently comprises 47 volumes) and the *Law of Business and Finance Series* (which currently comprises 9 volumes). Co-edited by Professor Dr. N.E.D. Faber, the extensive *Sdu Commentary on Insolvency Law* was published in 2007 and a new edition in 2008. Several staff members of the OO&R are also responsible for the “*Bankruptcy Law*” sections which are published quarterly in the special issue of the journal *Ars Aequi*.

Position in relation to previous research

In part due to an increase of staff, the focus within various fields of research covered by the research programme has expanded in the reporting period. The growth of these fields of research will continue in the coming years both by formulating new research questions/issues as well as by positioning research in a wider, international context, comparable with research conducted by the International Working Group on European Insolvency Law and the International Working Group on European Security Rights.

Short and long term planning

On the short term, current research projects – including Ph.D. research, comparative law research conducted by the International Working Groups established by the OO&R and other types of research – shall be continued and completed. On the long term, new projects are planned which will follow up on pending projects and which will expand the focus of the OO&R.

Various Ph.D. research projects will be initiated in 2008 as part of research programme 1.2, including on the following subjects:

- Exercising rights of pledge on shares;
- Advance transfer and transfer under suspensory conditions;
- Contractual security devices.

New Ph.D. research is also being considered in the field of structured finance, specifically pertaining to receivables financing.

Various volumes are to be published in 2008 in the Business and Law Series which concern research programme 1.2. In particular, mention should be made of the compilation “The insolvency administrator, an octopus” on the draft Insolvency Act, the book entitled “Current legal problems on attachment and execution” and the findings of the comparative law research conducted by the International Working Group on European Security Rights.

A new project to be started in 2008 concerns the volume on “Structured Finance” which is envisaged to be published in the summer of 2009 in the Business and Law Series. That book aligns well with the increased focus from both academia as well as in particular legal practice for structured finance. Another new project which is planned concerns “Security and finance in historical and comparative perspective” which is to be published as a new volume in the Law of Business and Finance Series. The programme’s leaders also intend to continue comparative law research in the field insolvency law globally as part of the activities conducted by a new International Working Group on International Insolvency Law. In due course, an International Working Group on Avoidance Provisions in the EU may also be considered. A COST application was also recently submitted with a view to establishing an International Working Group on European Receivables Financing. Prior to establishing new International Working Groups in the field of insolvency law, the completion will firstly be accomplished of the aforementioned comparative law project conducted by the International Working Group on European Security Rights. The OO&R shall also continue to actively participate in projects of UNCITRAL (in particular concerning “Insolvency and corporate groups” and “Secured Transactions”), INSOL Europe and INSOL International.

Part 2: Orientation and method

The relationship between individual and collective research and research culture

Research is partly individual and partly collective in nature. The individual component consists of conducting independent research on the part of researchers, for example, in publishing articles for journals, book chapters, case comments, updating and editing handbooks and preparing Ph.D. theses. However, these types of individual research is also the result of collective endeavours. The culture which prevails within the OO&R is informal and open-minded; discussion and debate are of paramount importance. But in addition to internal cooperation within the OO&R, reference should also be made to the international projects and collaborations within which collective research is also conducted.

National and international collaborations

In addition to the collaboration referred to in the general institute report with partners from legal practice (particularly the partners of the OO&R) as well as the international collaborations under the aegis of which various comparative law and international projects are

conducted, reference should also be made to the close collaboration nationally with the Netherlands Association of Insolvency Lawyers and Specialists (INSOLAD). Many conferences have been organized in conjunction with INSOLAD and researchers of the OO&R are frequently invited to speak at INSOLAD symposia, meetings and training programmes (including those for the prestigious Grotius course on “Insolvency law”).

Organized academic debate

Various conferences, symposia and colloquia are the venues at which staff members of the OO&R hold presentations about financing, security rights and insolvency law. Special reference should be made to presentations made at conferences held under the aegis of INSOL Europe and INSOLAD. In addition, the OO&R has organized various conferences and seminars including acclaimed scientific gatherings (including conferences and expert meetings) on the “Principles of European Insolvency Law” and the “the draft for a new Dutch Insolvency Act”.

Expert meetings are also convened as part of the activities conducted by various International Working Groups which have been established by the OO&R. As part of research programme 1.2, special reference should be made of the meetings of the International Working Group on European Insolvency Law and the International Working Group on European Security Rights. The following researchers have been involved on behalf of the OO&R in research conducted by these working groups: Professor Dr. S.C.J.J. Kortmann, Professor Dr. N.E.D. Faber, Professor Dr. P.M. Veder, R.G.J. Nowak and N.S.G.J. Vermunt.

Annual discussions held at participating European universities in various countries up to the conclusion of the project in 2006, have been convened within the framework of the research project on “Uniform Terminology of European Private Law” (Improving Human Potential Project). The OO&R supervised the comparative law research conducted by this network on security rights. The OO&R has been represented at those meetings by Professor Dr. N.E.D. Faber, Professor Dr. H.L.E. Verhagen, J.W.A. Biemans and N.S.G.J. Vermunt.

Professor Dr. N.E.D. Faber, Professor Dr. P.M. Veder and N.S.G.J. Vermunt have also participated in the research conducted by UNCITRAL Working Group V on Insolvency Law and the research conducted by UNCITRAL Working Group VI on Security Interests. The results of UNCITRAL Working Group V have amounted to the adoption of the UNCITRAL Model Law on Cross-Border Insolvency and the UNCITRAL Legislative Guide on Insolvency Law. In 2007, the Legislative Guide on Secured Transactions was officially adopted. In the meantime, the OO&R has also become involved in subsequent research conducted as part of a new project on “Insolvency and corporate groups”.

Part 3: Research findings and results (evaluation)

Please refer to Part III: “Full list of publications” for a complete overview of research findings. For key publications, please refer to section D (Research findings). The following evaluation briefly reviews several prominent and representative research findings on a field by field basis, covered by research programme 1.2.

1. Pledge and mortgage

In 2002, the compilation “Business and 10 years under the New Civil Code” (volume 24) was published in the Business and Law Series. This book comprises an extensive analysis of various aspects of patrimonial law which applies as of January 1, 1992, including property

law rules pertaining to pledge and mortgage. The following subjects were covered: set-off by the bank/silent pledgee prior to or during bankruptcy of the pledgor, all sums mortgages and their accessory character, priority and ranking agreements, private execution methods and asset segregation of execution proceeds.

Various aspects of secured transactions have also been analyzed in the inaugural lecture of Professor Dr. N.E.D. Faber at the University of Antwerp (The Kruithof Chair). Within the framework of this lecture, the flexibility of the security rights regime under Dutch and Belgian law was comparatively discussed in relation to e.g. the transfer of security rights, the use of a security trustee, parallel debt and payment covenant constructions and the prohibition of financial assistance.

A further subject which has been very much in the spotlight during the reporting period concerns the undisclosed right of pledge on rights. During the reporting period, contributions were made on set-off by the undisclosed pledgee, priority issues regarding undisclosed pledges, the right to information on the part of an undisclosed pledgee and the active collection of receivables encumbered by an undisclosed right of pledge by an insolvency administrator. Shortly after the close of the reporting period, the Ph.D. thesis of Dr. A.J. Verdaas was published in the Business and Law Series on “Undisclosed rights of pledge on rights” (volume 43, Deventer: Kluwer 2008).

Particularly in the area of comparative law, important research findings have been published concerning pledge and mortgage. Reference should first be made to the aforementioned comparative law research conducted by the International Working Group on European Security Rights (chaired by Professor Dr. S.C.J.J. Kortmann). The results of the comparative research (including National Reports of twelve EU Member States (including two new EU Accession States) and Switzerland, an Introduction and a detailed Comparative Synthesis are envisaged to be published in the fall of 2008 in a new volume in the Law of Business and Finance Series. On behalf of the OO&R, participants included Professor Dr. S.C.J.J. Kortmann, Professor Dr. N.E.D. Faber and N.S.G.J. Vermunt. Another comparative law research project conducted in the field of security rights, in which the OO&R was represented by Professor Dr. S.E. Bartels and Dr. J. Israël, was that of the Trento Working Group on “Security Rights in Movable Property in European Private Law”. The research conducted by that working group resulted in the publication of the book by E.M. Kieninger (ed.), *Security Rights in Movable Property in European Private Law*, Cambridge: Cambridge University Press 2004. Professor Dr. W.A.K. Rank participated on behalf of the OO&R in the seminar on “Divergences of Property Law: an Obstacle to the Internal Market” and his contribution to this seminar concerned the subject of “Harmonisation of National Security Rights” and was published in the book by U. Drobnig, H.J. Snijders and E.J. Zippro (eds.), *Divergences of Property Law: an Obstacle to the Internal Market*, Munich: Sellier 2006. Various aspects of financing structures – including the security rights pledge and mortgage – have been addressed from a comparative law perspective as part of the aforementioned CREDA project “Le contrat de financement”. Professor Dr. S.E. Bartels and N.S.G.J. Vermunt participated in this project on behalf of the OO&R. The results of that research were published in L. Aynès (ed.), *Le Contrat de financement – Étude comparative et prospective du crédit bancaire*, Études du Centre de recherche sur le droit des affaires, Paris: Litec 2006.

On November 18, 2003, Dr. A.C.F.G. Thiele defended her Ph.D. thesis entitled: “Collective security arrangements”. Her supervisor was Professor Dr. A.V.M. Struycken. Her research covered collective security arrangements under German, English and Dutch law. Various

security arrangements were comparatively analyzed, such as collectively held security rights, surety constructions, the surplus collateral arrangement, active joint and several liability, parallel debt and payment covenants and the security trustee. The book concludes with recommendations for amending (in particular Dutch) legislation. The Ph.D. thesis was published as volume 4 in the Law of Business and Finance Series, Deventer: Kluwer Legal Publishers (2003).

On December 22, 2004, Professor Dr. P.M. Veder defended his Ph.D. thesis entitled: “Cross-border insolvency proceedings and security rights”. His supervisors were Professor Dr. S.C.J.J. Kortmann and Professor Dr. A.V.M. Struycken. That research covered German and Dutch substantive and private international law applicable to cross-border insolvency proceedings, in particular, in respect of the position of the secured creditor during insolvency. Attention was also directed on the applicable rules and regulations under the EC Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency. The Ph.D. thesis was published as volume 8 of the Law of Business and Finance Series, Deventer: Kluwer Legal Publishers (2004).

2. Fiduciary security (fiducia cum creditore and security ownership), reservation of title, hire purchase and leasing

The volume entitled “Fiduciary relationships” was published in 2007 in the Business and Law Series (volume 41) to commemorate the appointment of Professor Dr. S.C.J.J. Kortmann as Rector Magnificus of the Radboud University of Nijmegen. It focuses in great detail on fiduciary security constructions (including from a legal-historical perspective) and reservation of ownership (including the transfer and other acts of disposition of conditional ownership by both the supplier and buyer).

Other contributions to this component of research programme 1.2 were also published during the reporting period by OO&R researchers. Special attention was attributed to the scope of reservation of ownership (including extended monetary reservation of ownership, accession, formation of property and extensions of the scope of the security ownership of the seller) and financial collateral arrangements (including the scope of the Collateral Directive and the Dutch implementation legislation, the right of use of the pledgee and extraordinary insolvency provisions).

Special mention should also be made to the comparative law presentation on groups of contracts provided by Professor Dr. H.L.E. Verhagen at the symposium “Les Groupes dans le Droit” (held on May 22-24, 2006 by the law faculties of the University of Poitiers and the Radboud University of Nijmegen). Although the subject of groups of contracts (including connected contracts) is primarily covered by research programme 1.3, there remain vital overlaps with the field currently under discussion covered by research programme 1.2. Professor Verhagen’s analysis includes groups of contracts used within the framework of hire purchase and leasing constructions. His discourse was published in R.J.B. Schutgens and E.C. Coppens (ed.), *Les Groupes dans le Droit*, Nijmegen 2007. Professor Dr. H.L.E. Verhagen also published on this subject in the book by N.E.D. Faber e.a. (eds.), *Fiduciaire verhoudingen – Libellus amicorum S.C.J.J. Kortmann*, Serie Onderneming en Recht, volume 41, Deventer: Kluwer 2007.

Comparative law research was conducted as part of the activities of the aforementioned International Working Group on European Security Rights. Reservation of ownership, financial leasing and hire purchase all resorted within the scope of the comparative research

conducted as part of the Trento project on “Security Rights in Movable Property in European Private Law”, the symposium on “Divergences of Property Law” and the CREDA project “Le contrat de financement”.

On July 6, 2006, Dr. T.R.M.P. Keijser defended his Ph.D. thesis entitled “Financial Collateral Arrangements”. His supervisors were Professor Dr. S.C.J.J. Kortmann and Professor Dr. W.A.K. Rank. His thesis comprises a detailed review of the European Collateral Directive and the Dutch implementation legislation. Related rules and regulations, such as the European Settlement Finality Directive have also been extensively addressed. The applicable rules and regulations are in particular analyzed from the perspective of property law and insolvency law. The Ph.D. thesis is published as volume 9 in the Law of Business and Finance Series, Deventer: Kluwer (2006).

3. Personal and contractual security rights

The volume “Business and 10 years under the New Civil Code” (Business and Law Series, volume 24, Deventer: Kluwer 2002) contains a detailed study by Professor Dr. C.J.M. Klaassen on the rules of joint and several liability and surety. The similarities and differences are focused on, as is the independence of rights to make claims in the external relationship, surety arrangements with private individuals, the demand of permission being granted under article 1:88 of the Civil Code, the rules of redress and allocation of loss in the internal relationship, joint and several liability in bankruptcy and the surplus collateral arrangement.

Articles have also been published on joint and several liability and surety constructions as part of collective security arrangements (including in the aforementioned Ph.D. thesis written by Dr. A.C.F.G. Thiele) and contractual subordination (including the contribution made by Th.A.L. Kliebisch to the volume S.C.J.J. Kortmann e.a. (eds.), *10 jaar «JOR» – Alsnog geannoteerd*, The Hague: Sdu Uitgevers 2006). Comparative law research findings were also achieved as part of the aforementioned CREDA project “Le contrat de financement”. Passive joint and several liability, surety, guarantees and various forms of security declarations (including positive pledge, negative pledge and pari passu clauses) were all covered by the latter project.

4. Receivables financing

Research results achieved within programme 1.3 concerning assignment (and particular encumbrances) of rights are also relevant for research pertaining to receivables financing. Reference can be made to, for example, the trade in receivables, undisclosed assignment of rights, third party protection, the transfer of accessory rights and the assignment of rights in private international law. An important example is to be found in the study completed by Professor Dr. H.L.E. Verhagen and Professor Dr. A. Flessner: *Assignment in European Private International Law, Claims as property and the European Commission’s ‘Rome I Proposal’*, Munich: Sellier European Law Publishers (2006).

Ph.D. research was also conducted by M.H.E. Rongen on securitisation and by Dr. A.J. Verdaas on undisclosed pledging of rights (also partly covered by the first component of this research programme).

OO&R researchers were closely involved with establishing and providing lectures during the new Grotius course on “Structured Finance”. This post doctoral course details financing structures, including those based on receivables, such as securitisation, factoring, CDOs/CLOs, structured notes, covered bonds, hybrid financing devices and applicable private

international law. The course meets an increased focus in both academia as well as legal practice in the field of Structured Finance. A new book will be published in the field of structured finance in which a myriad of receivables financing structures will be discussed.

Comparative law research results have been achieved as part of the research conducted by the International Working Group on European Security Rights and the aforementioned CREDA project “Le contrat de financement”.

5. The principles of insolvency law

To commemorate the 10th Anniversary of the case law journal JOR, the volume S.C.J.J. Kortmann e.a. (red.), *10 jaar «JOR», Alsnog geannoteerd*, The Hague: Sdu Uitgevers 2006 was published in 2006. This book comprises various contributions made by OO&R researchers pertaining to insolvency law, including on the Actio Pauliana and the reversal of juridical acts, the demand of knowledge in connection with the Actio Pauliana and set-off prohibitions under insolvency law, undue payment during bankruptcy, the right to information on the part of the undisclosed pledgee during bankruptcy and active collection of undisclosed pledged claims by the insolvency administrator.

The OO&R has focused sharply on the discussion on amending the Bankruptcy Act. Two researchers of the OO&R have been members during the reporting period of the Insolvency Law Committee: Professor Dr. S.C.J.J. Kortmann (Chairman) and Professor Dr. P.M. Veder (Secretary). Moreover, the draft legislation presented on November 1, 2007 to the Minister of Justice for the proposed new Insolvency Act (published in the Business and Law Series, as volume 2-IV) was also extensively debated and analyzed by OO&R researchers. Various conferences and seminars were organized by the OO&R on the draft during the reporting period (including in conjunction with INSOLAD). In November 2008, the volume entitled “The insolvency administrator, an octopus” will be published in the Business and Law Series in which the draft for a new Insolvency Act will be analyzed in detail. Further contributions made by OO&R researchers have also been published in the book published by Ars Aequi on “The Draft Insolvency Act further reviewed” (Nijmegen: Ars Aequi Libri 2008), including on the topics: the main framework of the draft legislation, submission and admission of claims, actio pauliana and set-off.

On November 24, 2005, Professor Dr. N.E.D. Faber was awarded the distinction *cum laude* for having defended his Ph.D. thesis entitled “Set-off”. His supervisor was Professor Dr. S.C.J.J. Kortmann. The research was part of both research programme 1.2 as well as research programme 1.3. The subjects which are particularly relevant for this research programme include set-off preceding and during bankruptcy. The Ph.D. thesis was published as volume 33 of the Business and Law Series, Deventer: Kluwer (2005).

An important comparative law publication which may well form a major and precursory contribution to insolvency law on a European level is that of the book *Principles of European Insolvency Law*. This research was conducted by the International Working Group on European Insolvency Law which was established by the OO&R (and which is chaired by Professor Dr. S.C.J.J. Kortmann). The book provides an analysis of the main principles of European insolvency law and contains National Reports of ten EU Member States. The following subjects are dealt with in detail: the insolvency proceeding; institutions and participants; effects of the opening of the proceeding; management of the assets; obligations incurred by, and fees of, the administrator; treatment of contracts; position of employees; reversal of juridical acts; security rights and set-off; submission and admission of insolvency

claims; reorganisation; liquidation; closure of the proceeding and debtor in possession. The book was published as volume 4 of the Law of Business and Finance Series: Deventer: Kluwer Legal Publishers (2003).

Partly due to the implementation of the EC Insolvency Regulation and the adoption of the UNCITRAL Model Law on Cross-Border Insolvency in various countries in and beyond Europe, a great deal of attention has been paid to bankruptcy law from the perspective of private international law. In particular, reference should be made to the Ph.D. research conducted by Professor Dr. P.M. Veder: *Cross-border Insolvency Proceedings and Security Rights, A comparison of Dutch and German law, the EC Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency*, Series Law of Business and Finance, volume 8, Deventer: Kluwer Legal Publishers (2004).

Part 4: Ph.D. Theses

Table 1: List of Ph.D. researchers graduated in the period of review, programme level

	2002	2003	2004	2005	2006	2007	Total
Number of graduates	0	1	1	2	1	0	5
Names of graduates		Thiele, A.C.F.G.	Veder, P.M.	Out, J.C. Faber, N.E.D.	Keijser, T.R.M.P.		-

B. Staff, resources, and funding of the programme

Part 5: Funding

Table 2: Funding at programme level

	2002	2003	2004	2005	2006	2007
Funding						
Direct funding (1 ^{ste} geldstroom)	193.134	260.024	425.011	286.659	196.457	264.267
	48%	55%	75%	51%	40%	61%
Research funds (2 ^{de} geldstroom)						
KNAW	0%	0%	0%	0%	0%	0%
NWO	125.243	98.982	21.074	49.074	45.074	-
	31%	21%	4%	9%	9%	0%
ESF	0%	0%	0%	0%	0%	0%

	Other	0%	0%	0%	0%	0%	0%
Total		125.243	98.982	21.074	49.074	45.074	-
(3 ^{de} geldstroom)		31%	21%	4%	9%	9%	0%
Contracts		-	30.000	-	67.655	11.888	-
		0%	6%	0%	12%	2%	0%
Other		88.213	86.229	119.815	160.067	241.732	171.490
		22%	18%	21%	28%	49%	39%
Total		406.590	475.235	565.900	563.455	495.150	435.756
Expenditure							
Personell costs		329.640	380.504	446.307	445.245	395.814	350.930
		81%	80%	79%	79%	80%	81%
Other costs		76.950	94.731	119.593	118.210	99.336	84.826
		19%	20%	21%	21%	20%	19%
Total		406.590	475.235	565.900	563.455	495.150	435.756

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: including interest from property, legacies, etc.

Part 6: Research staff

Table 3.1: Research staff at programme level (total fte (tfte) and input research fte (rfte) by category)

Category	Name	tfte 2002	rfte 2002	tfte 2003	rfte 2003	tfte 2004	rfte 2004	tfte 2005	rfte 2005	tfte 2006	rfte 2006	tfte 2007	rfte 2007
Lecturer	Boot, S.			1,00	0,05	1,00	0,50	1,00	0,50	1,00	0,50	1,00	0,50
Lecturer	Janssen, M.A.J.G.	0,20	0,07	0,20	0,05								
Lecturer	Loesberg, E.	1,00	0,30	1,00	0,10								
Lecturer	Ruygvoorn, M.R.	0,20	0,06	0,20	0,06	0,20	0,03						
Lecturer	Veder, P.M.	1,00	0,30										
Lecturer	Vrey, L.A. de			1,00	0,08	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,03
Lecturer	Soedira, A.D.W.	1,00	0,30	1,00	0,30	1,00	0,20	1,00	0,20	1,00	0,20	1,00	0,20
Lecturer	Biemans, J.W.A.			1,00	0,08	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,30

Professor	Faber, N.E.D.											0,50	0,06
Professor	Hees, J.J. van	0,20	0,15	0,20	0,15	0,20	0,15	0,20	0,15	0,20	0,15	0,20	0,15
Professor	Kortmann, S.C.J.J.	0,70	0,25	0,70	0,25	0,70	0,25	0,70	0,25	0,70	0,25	0,70	0,08
Professor	Maatman, R.H.							0,20	0,07	0,20	0,20	0,20	0,20
Researcher	Bavinck, H.J.	0,50	0,50	0,50	0,50								
Researcher	Faber, N.E.D.	0,80	0,56	0,80	0,56	0,80	0,56	0,80	0,56	0,50	0,35	0,50	0,26
Researcher	Rongen, M.H.E.	1,00	0,70	1,00	0,70	1,00	0,53						
Researcher	Verdaas, A.J.			0,30	0,10	0,30	0,30	0,30	0,30	0,30	0,30	0,30	0,20
Ph.D. researcher	Damminga, S.R.			1,00	0,60	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70
Ph.D. researcher	Keijser, T.R.M.P.	1,00	0,28	1,00	0,70	1,00	0,70	1,00	0,70				
Ph.D. researcher	Kolmans, W.	1,00	0,23	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,23		
Ph.D. researcher	Koopman, R.E.	1,00	0,70	1,00	0,70	1,00	0,06						
Ph.D. researcher	Kruijer, A.	1,00	0,23	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,47		
Ph.D. researcher	Mierlo, J.J.M. van			0,40	0,05	0,40	0,20	0,40	0,20	0,40	0,20	0,40	0,20
Ph.D. researcher	Nielen, W.J.B. van	1,00	0,52	1,00	0,70	1,00	0,70	1,00	0,12				
Ph.D. researcher	Out, J.C.	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70				
Ph.D. researcher	Rijckenberg, C.											1,00	0,58
Ph.D. researcher	Slaski, A.											1,00	0,08
Ph.D. researcher	Spath, J.B.					1,00	0,7	1,00	0,70	1,00	0,70	1,00	0,70
Ph.D. researcher	Steneker, A.	0,50	0,35	0,50	0,35	0,50	0,35	0,50	0,06				
Ph.D. researcher	Timmerman, L.	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70
Ph.D. researcher	Velden, J.W.P.M. van der	0,80	0,80	0,80	0,80	0,80	0,80	0,80	0,80	0,80	0,67	0,20	0,07
Ph.D. researcher	Vermunt, N.S.G.J.			1,00	0,29	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35

Ph.D. researcher	Weijden, R.J. van der											1,00	0,83
Assistant professor	Nijenhuis, A.	0,20	0,07	0,20	0,07	0,20	0,07	0,20	0,07	0,20	0,01		
Assistant professor	Steneker, A.							0,50	0,15	0,50	0,17	0,50	0,17
Associate professor	Bakkerus, S.O.H.	0,10	0,01	0,10	0,05	0,10	0,04						
Associate professor	Bartels, S.E.	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,13				
Associate professor	Israël, J.									1,00	0,35	1,00	0,35
Total		15,20	8,13	19,90	9,84	20,20	10,94	18,60	9,41	14,80	7,10	15,5	6,71

Table 3.2: Age research staff, programme level (January, 1, 2005)

	< 35	35 – 44	45 – 54	55 >
Tenured staff	-	5	1	1
Ph.D. researchers	10	2	-	-
Non-tenured staff	2	1	-	-
Total	12	8	1	1

C. Reputation and leadership

Part 7: Reputation

Academic reputation

The academic and social reputation of the OO&R is also expressed in the highest rankings obtained using both external as well as internal validations (referred to in the institute report) and in the secondary positions occupied by the researchers of the OO&R.

Various senior staff members are involved as editors and authors in writing and updating text books and other standard handbooks (including those published as part of the prestigious Asser Series). Special reference should be made to the Business and Law Series (currently 47 volumes) and the Law of Business and Finance Series (currently 9 volumes) edited by Professor Dr. S.C.J.J. Kortmann and Professor Dr. N.E.D. Faber.

Kortmann

Professor Dr. S.C.J.J. Kortmann is the author of the Asser Series volume on Representation (“Vertegenwoordiging”). Moreover, during the reporting period, he was also the Chairman of

the Centre for Post Doctoral Education (“Centrum voor Postdoctoraal Onderwijs” (CPO)), Chairman of the Insolvency Law Committee (“Commissie Insolventierecht”), Chairman of the Board of the OO&R, Chairman of the Board of the Grotius Academy Foundation (“Stichting Grotius Academie”), member of the Board of the Private Law Association (“Vereniging Burgelijk Recht”), member of the Board of the Professional Training for Private Law Notaries Foundation (“Stichting Beroepsopleiding Notariaat”) and a member of the Supervisory Board of the Pallas Consortium. He was council member of INSOL Europe and is a member of the International Insolvency Institute. Professor Kortmann was also an editor of the Dutch Insolvency Law Review (“Tijdschrift voor Insolventierecht”) and still is Chairman of the Editorial Panel of the case law journal on Business & Law (“Jurisprudentie Onderneming en Recht” (JOR)) and permanent annotator of this review. Furthermore, he is a permanent annotator for the legal journal *Ars Aequi*. Professor Dr. S.C.J.J. Kortmann and Professor Dr. N.E.D. Faber form the editorial board of the Business and Law Series and of the Law of Business and Finance Series. Professor Kortmann is Chairman of various International Working Groups, including the International Working Groups on Trust Law, Protected Funds, Security Rights and Insolvency Law. In 2008, Professor Kortmann was awarded “De Gouden Peer” by the law journal “Mr.” and was declared “best and most influential professor” in the field of insolvency law by a group of twenty insolvency lawyers.

Faber

Professor Dr. N.E.D. Faber is a member of the Academic Forum of INSOL Europe, editor of the case law journal on Business & Law (“Jurisprudentie Onderneming en Recht” (JOR)) and senior counsel with the law firm Clifford Chance LLP (Amsterdam office). He was also a guest professor at the University of Antwerp (The Kruithof Chair). Professor Dr. N.E.D. Faber is a member of the Board of the OO&R, a lecturer of various Grotius courses (including the Insolvency, Structured Finance and Finance and Security Rights programmes) and also a lecturer of many other post doctoral courses. He is also a core group member of the International Working Groups on Trust Law, Protected Funds, Security Rights and Insolvency Law (all established by the OO&R). He has also participated in various meetings of UNCITRAL Working Group V (Insolvency Law) and UNCITRAL Working Group VI (Security Rights).

Bartels

Professor Dr. S.E. Bartels is co-author of the Asser Series volumes on property law, member of the Asser Series Advisory Council (“Asser-adviesraad”), member of the Board of the OO&R, member of the Board of the Law Firm School, Grotius Lecturer in Insolvency Law, Grotius Lecturer in Real Estate Law, member of the Editorial Board of the Netherlands Review for Private Law (“Nederlands tijdschrift voor Burgerlijk Recht”) and permanent annotator of the JOR and of *Ars Aequi*.

Hees, van

Professor Dr. J.J. van Hees is Chairman of INSOLAD, editor of the case law journal on Business & Law (“Jurisprudentie Onderneming en Recht” (JOR)) and a partner of the law firm De Brauw Blackstone Westbroek.

Jansen

Professor Dr. C.J.H. Jansen was and is currently again the Dean of the Law Faculty of the Radboud University Nijmegen. He is also Professor of Roman Law at the University of Amsterdam. Professor Jansen is Chairman of the Board of the OO&R and Chairman of the Board of the Centre of Post Doctoral Education (“Centrum voor Postdoctoraal Onderwijs”

(CPO)). He is also an editor of the Dutch Law Review (“Nederlands Juristenblad” (NJB)), an editor of Labour Law Annotations (“Arbeidsrechtelijke Annotaties”) and an editor of the historical and comparative law journal “Groninger Opmerkingen en Mededelingen: Magazijn voor leerstellige rechtsvergelijking op historische grondslag”.

Rank

Professor Dr. W.A.K. Rank is technical advisor to the International Monetary Fund (IMF) and a partner of the law firm NautaDutilh. He was also involved in the project of the Hague Conference on Private International Law, which resulted in the adoption of the Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.

Verhagen

Professor Dr. H.L.E. Verhagen is an editor of the journal Netherlands Private International Law (“Nederlands Internationaal Privaatrecht”) and a lecturer of INSOLAD courses. Furthermore, he is Grotius Lecturer in Finance and Security Rights and Structured Finance. Professor Verhagen is co-author of the new Asser Series volume on private international law (to be published). He is also associated as an attorney at law at the Amsterdam office of Clifford Chance LLP.

Vermunt

N.S.G.J. Vermunt is Secretary of the Board of the OO&R. Furthermore, he is structurally involved in projects of INSOL Europe and UNCITRAL in the field of insolvency law and security rights. He has also participated in the comparative research project of CREDA on Finance Contracts and is Secretary of the International Working Group on Security Rights in Europe. He is also involved as lecturer in the Grotius programme on Structured Finance.

Part 8: Leadership

Progress, management and coordination of the programme have been entrusted to the programme leaders. In addition, each research project has its own research leader. Progress being made with current research is periodically assessed against the research plan which is drawn up together with the researcher(s) and, where necessary, amended.

During the reporting period, Professor Dr. S.C.J.J. Kortmann and Professor Dr. N.E.D. Faber were appointed to act as programme leaders. After the appointment of Professor Dr. S.C.J.J. Kortmann as Rector Magnificus of the Radboud University of Nijmegen, his seat on the programme management board was taken by Professor Dr. S.E. Bartels.

Part 9: Social relevance

The relationship with legal practice in the publication policy is primarily expressed in the focus of academic research conducted by the OO&R (as elaborated on in the general institute report). Structural cross-fertilization between academia and legal practice occurs as a consequence of the official cooperation between the OO&R and its partners in legal practice (including steering and advice on current and future research provided by the Curatorium and the active involvement of the staff of partners in particular research projects), positions which OO&R researchers have in legal practice and the involvement of lawyers from legal practice in supervisory and advisory committees established for each research project.

Social relevance is also echoed in the contributions of OO&R researchers to the drafting of the Dutch Insolvency Act and international instruments (e.g. drafting Principles and conducting precursory comparative and transnational research to enable future harmonization) and the secondary positions referred to in Part 7 of various OO&R researchers.

D. Overview of the results

Table 4.1: Key publications

1. W.W. McBryde, A. Flessner and S.C.J.J. Kortmann (eds.), *Principles of European Insolvency Law*, Series Law of Business and Finance, volume 4, Deventer: Kluwer Legal Publishers 2003;
2. N.E.D. Faber, *Verrekening (Set-off)* (PhD diss. Nijmegen), Serie Onderneming en Recht, volume 33, Deventer: Kluwer 2005;
3. Michael Veder, *Cross-border Insolvency Proceedings and Security Rights, A comparison of Dutch and German law, the EC Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency* (PhD diss. Nijmegen), Series Law of Business and Finance, volume 8, Deventer: Kluwer Legal Publishers 2004;
4. S.C.J.J. Kortmann and N.E.D. Faber (eds.), *Geschiedenis van de Faillissementswet, Deel 2-IV Voorontwerp insolventiewet (The history of the Bankruptcy Act – The proposal for a new Insolvency Act)*, Serie Onderneming en Recht, volume 2-IV, Deventer: Kluwer, 2007;
5. C.J.M. Klaassen, “10 jaar hoofdelijkheid en borgtocht naar “NBW”” (10 years of joint and several liability and surety under the new Civil Code), in: S.C.J.J. Kortmann e.a. (eds.), *Onderneming en 10 jaar nieuw burgerlijk recht*, Serie Onderneming en Recht, Deel 24, Deventer: Kluwer 2002, p. 659-702.

Table 4.2: Results at programme level (output in numbers)

	2002	2003	2004	2005	2006	2007	Total
4.2.1 Academic publications							
Monographs, handbooks, proceedings	0	4	0	0	1	1	6
Ph.D. theses	0	1	1	2	1	0	5
Articles in journals	15	4	4	5	3	2	33
Articles in books/proceedings	7	3	1	2	6	6	25
Other	0	0	0	0	0	0	0
Total	22	12	6	9	11	9	69
4.2.2 Professional publications							
Monographs, handbooks, proceedings	0	0	0	0	1	2	3
Articles in journals	3	3	1	1	3	2	13
Articles in books/proceedings	1	1	0	0	0	1	3
Case comments	29	17	17	21	13	28	125
Other	0	1	1	0	0	0	2
Total	33	22	19	22	17	33	146
Total academic + professional	55	34	25	31	28	42	215

Table: 4.3 Full list of publications

See Part III for a Full list of publications.

E. Self-analysis according to the SWOT method

Part 11: Evaluation

Strengths

The research programme 1.2 was awarded the maximum score in the context of the VSNU Research Assessment for Law on all its components (i.e. the academic quality of research conducted and the quality of the programme; social and academic relevance; and durability and vitality of the research programme). The report issued by the Committee noted among other things that:

“This research group resembles a well-functioning machine. The academic output both in terms of quality as well as quantity is excellent (...). The research is conducted in a multi-disciplinary manner and has a marked international dimension. In the Netherlands, this research group occupies a highly prominent position.”¹³

In 2003, the programme was also awarded an excellent assessment within the framework of the KNAW’s accreditation procedure. This partly resulted in the renewal of the OO&R’s accreditation as a KNAW research centre of excellence for the period 2003-2008.

It is submitted that the durability and vitality of the research programme can still be called excellent. The various research fields covered and the volatile and dynamic legal practice continue to inspire research activities. Several major projects are being planned (please refer below) which will require the endeavours of various participants and continue to generate substantial and challenging work. The flexibility and focus of research programme 1.2 offer excellent opportunities to make good use of recent developments which have taken place both nationally as well as internationally.

Research programme 1.2 scores excellent in terms of internationalization. The research does not only comprise an international theme, but is also frequently conducted using an international method (comparative law and private international law), is to a large extent part of an international research network and a substantial part of the research results are published in international legal literature. The international orientation of research programme 1.2 will further increase in the future. Comparative law, international and transnational projects initiated by the OO&R in the field of insolvency law and security rights are permanent and ongoing features of the programme. Furthermore, consideration is also being given to establishing new International Working Groups on the subjects: “Avoidance provisions in European Insolvency Law” and “Receivables financing in Europe and beyond”. In addition, the aforementioned structural collaboration with e.g. UNCITRAL (as part of the projects on “Insolvency and groups of companies” and “Secured Transactions”), INSOL International, INSOL Europe and the International Insolvency Institute will be continued and intensified.

In connection with the social and academic relevance of the research programme, the report of the Ten Kate Committee noted that:

¹³ Report of the Ten Kate Committee, Research Assessment for Law 1995-2000, Series Assessment of Research Quality, VSNU 2002, p. 89.

“The social relevance of the question as to how the law deals with insolvent enterprises and insolvent private individuals is self-evident. Academically, the problems are also interesting as they require questions being answered on a variety of legal fronts”.¹⁴

The research conducted by the OO&R is, as submitted above, practical by nature. Intensive collaboration with legal practice and the practical focus maintained makes the research conducted by the OO&R (particularly that conducted within research programme 1.2) of major social relevance. Structural contributions are made to the analysis and explanation of the law, the practical application of the law and the development of the *ius constituendum*. Contributions to the formation of law include national legislation (including the discussion and analysis of the draft of a new Insolvency Act) and international rules and regulations (including comparative law studies completed by the International Working Groups on European Insolvency Law and Security Rights, both established by the OO&R).

The OO&R contributes academically in a fundamental manner to the theory (both on a national as well as on an international level), normative and comparative law analyses and by entering relatively new fields of business and law (for example, structured finance). As submitted by the Ten Kate Committee, the research conducted as part of programme 1.2 is academically speaking among the absolute top ranking legal research in the Netherlands.

As further explained in the general institute report, a fixed number of Ph.D. research positions is granted annually to the OO&R, which projects are facilitated through direct funding (1ste geldstroom). Various programmes have been introduced allowing the OO&R to claim further university funding (including the Mosaic Programme, as an encouragement for (Ph.D.) research which involves researchers from ethnic minorities).

Due to the structural subordinate position of legal research in the open competition for funding arranged by the NWO, dependence on European funds and financing as part of contract funding (3de geldstroom) will further increase. The OO&R acquires relatively many European subsidies and grants including several specifically for projects within research programme 1.2. Reference should be made to, for example, the IHP project referred to in the institute report on “Uniform Terminology for European Private Law” (comparative security rights research) and to financing research conducted by the International Working Group on European Security Rights. A new grant has also been applied for as part of the European COST programme to establish the International Working Group on Receivables financing in Europe and beyond.

The prospects for acquiring contract funding remain positive. In addition to annual contributions made by its partners, the OO&R endeavours to obtain various kinds of contract funding, such as contracted finance which has been acquired in 2008 for two Ph.D. research projects (including the Ph.D. research into “Contractual security rights”). Moreover, discussions have reached an advance stage for the external funding of the Ph.D. research project on “Exercising rights of pledge on shares”.

Other research proposals shall be submitted as part of open competitions, including those arranged by national and international funds, companies and collaboration networks.

Weaknesses

¹⁴ Report of the Ten Kate Committee, Research Assessment of Law 1995-2000, Series Assessment of Research Quality, VSNU 2002, p. 89.

Despite the relatively good number of Ph.D. researchers graduated in the period of review, the return on Ph.D. research investment remains a continuing source of concern.

The share obtained of NWO-funding is modest. As applies to other research units of the OO&R (and all the legal faculties in the Netherlands), it is far from easy to obtain external financing from NWO.

Opportunities and analysis

As has been further elaborated on in the institute report, the OO&R has established a new research programme “Business and Financial Law” (programme 1.5). This means that Financial law (i.e. Capital Markets, Financial Supervision, etc.) is primarily covered outside the remit of research programme 1.2. With a view to safeguarding a systematic, confined and well-balanced focus for each research programme, this choice is considered fortunate.

Although the various fields of research covered by the research programme 1.2 shall remain unchanged, some shifts in emphasis will be implemented. The section devoted to “receivables financing” shall enhance focus on structured finance. This coheres with increased academic and practical interest for this subject. Further attention to this subject seems justified, in particular given that structured finance is academically speaking relatively new terrain and further legal analysis of the myriad of financing instruments developed in (primarily) Anglo-American jurisdictions is desirable. This research will in part be international by nature and undertaken in collaboration with international experts in the field of receivables financing. A new (comparative law) Ph.D. research project is also being considered in this field.

A number of new Ph.D. research projects are to be initiated in the field of security rights. Future research shall include exercising rights of pledge on shares and advance transfer and ownership under suspensory conditions (including reservation of ownership and comparable security constructions, such as leasing and hire purchase arrangements). Attention for personal and contractual security rights will also be strengthened by new Ph.D. research into contractual security rights (including subordination, security and ranking declarations and inter-creditor agreements). From an international perspective, the research of the International Working Group on European Security Rights will need to result shortly in the publication of a major volume containing a comparative law analysis of European security rights. This calendar year, the projects on “Security and finance in historical and comparative perspective” is planned to commence. In due course, consideration shall also be given to a new international project on the subject of “Public filing”.

Within the field of insolvency law, particular attention is to be paid to the developments surrounding the draft of a new Insolvency Act. Moreover, next calendar year, the follow-up research into the Principles of European Insolvency Law will commence in a broad international context (including new EU Member States from Eastern Europe and important jurisdictions beyond Europe). Consideration is also being given to establishing in due course a new International Working Group in the field of “Avoidance provisions”.

Permanent research conducted in the field of Finance, Security Rights and Insolvency Law is to result in the publication of various text books and standard handbooks. The first being planned is the publication of the Asser volume on “Insolvency Law”. Other handbooks are also to be published and updated in which various OO&R researchers are involved, such as the Practical Insolvency Law Series and the SDU Commentary on Insolvency Law.

The normative, positive law, comparative law and private international law research methods used are applied structurally in research projects conducted within research programme 1.2. In the future, greater attention will also be paid to research into the history of law and multi-disciplinary research. One example of an increased legal-historical focus is that of the new project on “Security and finance in historical and comparative perspective”. Once that study has reached completion, a follow-up project is planned in the field of insolvency law (also from a historical and comparative perspective). One example of the proposed multi-disciplinary research to be conducted concerns an international project in the field of “Receivables financing”. Legal analyses are to be complemented by addressing operational infrastructures, economic parameters and applications.

Threats

Because of the structural problem to acquire external funding from the The Netherlands Organisation for Scientific Research (NWO), the dependence on direct funding and contract funding will remain unchanged. It is rather disappointing to observe that the recognition of the OO&R as a KNAW centre of excellence does not automatically result in any increase of NWO and/or KNAW funding.

Title of the programme: 1.3 Business and Patrimonial law

Programme leaders: Professor Dr. C.H. Sieburgh and Professor Dr. S.E. Bartels

Areas or disciplines covered: patrimonial law (including property law, the law of obligations, contract law and European private law), private international law, procedural law and insurance law aspects of general patrimonial law.

Starting date and duration: 1991 – to the present

Formal cooperation (national, international): Acquis Group; Common Core of European Private Law; UNIDROIT; International Working Groups on Trust Law and Protected Funds; Universities of Barcelona, Berkeley International, Cambridge, Edinburgh, Ghent, Hamburg, Harvard, Leuven, Luxembourg, Lyon, Münster, Oxford, Paderborn, Paris, Turin and Warsaw.

A. Contents (CV of the programme)

Part 1: Strategy and policy

Description of the research programme

Research conducted within the context of research programme 1.3 on “Business and Patrimonial law” is – in accordance with the established focus of the OO&R – business orientated. Research is carried out on the principles and the general legal framework of patrimonial law as well as into specific legal issues relating to businesses. Analyzing the structure of patrimonial law is of fundamental importance to identify its scope of application in relation to commercial matters and to contrive solutions for practical problems.

Many legal questions which arise with regard to businesses relate to important patrimonial law concepts. Fundamental scientific research on selected themes of general patrimonial law which are pertinent to businesses, forms the basis of work carried out within research programme 1.3 (e.g. in the context of various authoritative handbooks published in the Asser Series). The research outcome substantially enhances the understanding of how devices developed in mercantile practice can be embedded in the existing legal framework (e.g. leasing, factoring and securitization).

Various aspects of general patrimonial law are brought within the scope of other research programmes. Of particular importance are interconnections with the research programmes focused on Finance, Security Rights and Insolvency Law (1.2) and the research programme devoted to Business and Employment Law (1.4).

Research programme 1.3 covers the following themes:

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 and 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

The various components of the research programme are interconnected. The adopted research methodology aligns with that as elaborated on in the general institute report: international/comparative law (legal-historical), European law, private international law and practice orientated. A unique and precursory focus for scientific legal research in the Netherlands concerns the research into the influence of European private law on Dutch patrimonial law. Whereas the focus of the research into European private law is generally of a comparative nature, the OO&R has also focused on the direct application and influence of European private law on domestic patrimonial law concepts. This requires an extensive insight into both European law and domestic private law as well as into the complex interaction mechanisms of both areas. During the reporting period, this approach has resulted in the publication of the leading handbook on this topic in the Netherlands, consisting of two volumes: A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus (eds.), entitled: *The influence of European law on Dutch private law*, Business and Law Series, volume 42-I (General part) and volume 42-II (Special part) (2007).

The research conducted within the context of research programme 1.3 has a strong international focus. In addition to the analysis of European private law, the international focus is echoed in research into private international law and in extensive comparative law research (notably on trusts and protected funds and the law of obligations). Members of the OO&R have participated in a number of privately and EU sponsored projects and research networks which focus on the unification of European private law, such as the Acquis Group (which has been invited by the European Commission to target a systematic arrangement of existing Community law in order to elucidate the common structures of the emerging Community private law). The Acquis Group comprises a large number of representatives from many universities across Europe (please refer to: www.acquis-group.org – members). Staff members of the OO&R also participate in international projects of UNIDROIT. Furthermore, researchers are encouraged to adopt a comparative law approach, to conduct research abroad (e.g. within the framework of EU mobility and exchange programmes) and to maintain contacts with and participate in foreign/international research groups.

Further to the volume which was published in 1999 on the Principles of European Trust Law, a comparative law study will be published in the course of 2008/2009 on Protected Funds. This volume will contain a draft European directive on Protected Funds and aims to provide for a legal basis on a European level for the creation and cross-border recognition of trust-like arrangements (i.e. segregated patrimonies created by legal act as a protected fund). In addition to the draft Directive and an extensive Commentary, National Reports will be published of selected Member States and Switzerland. These National Reports analyze to which extent the national legal system already adheres to the regime as embedded in the draft Directive. Insofar as modifications to the legal regime are required, the National Reports will identify the scope and substantive nature of required amendments of the relevant domestic law.

An important feature of research programme 1.3 concerns the analysis of legal issues against the background of the principles and the general legal framework of patrimonial law. It regularly becomes apparent that solutions to practical problems can only be contrived by invoking general principles which form the foundation of patrimonial law. The inaugural

lecture of Professor Dr. C.H. Sieburgh (*Tertium datur*) and the Ph.D. thesis of Professor Dr. T.H.D. Struycken on the *numerus clausus* are good examples of studies in which those principles of patrimonial law are being identified and in which their practical applications are analyzed. Research pertaining to the principles and the general legal framework of patrimonial law also forms an important aspect of the permanent research conducted in the context of various volumes which have been or will be published in the prominent Asser Series (e.g. volumes on the law of obligations). Other examples include the publication of Professor Dr. C.J.H. Jansen on contractual freedom in the volume “Private Law: between autonomy and solidarity” and Professor Dr. C.H. Sieburgh’s contribution on the principle of social conformity (Hondius volume, 2007).

A brief description follows of each of the aforementioned fields of research and of the most important research findings obtained during the reporting period.

1. Representation, agency and administration

This field of research covers the themes representation (including indirect representation, agency and mandate) as well as the creation and administration of trusts, trust-like arrangements and other forms of asset segregation.

The main aspects of the law pertaining to representation have been extensively analyzed in the handbook of Professor Dr. S.C.J.J. Kortmann on “Representation” (published in 2004 as a separate volume in the Asser Series). Representation and the role of intermediaries are of fundamental importance to commercial infrastructures and thus forms an important theme of research programme 1.3. In addition to classical topics on the position of the principal, intermediary (agent) and third parties, complex applications of agency structures in commercial practice have been extensively analyzed. Examples of such research projects are those conducted by Dr. B.F.L.M. Schim on “Book-entry securities and property law” (Ph.D. thesis 2006) and by Dr. J.W.P.M. van der Velden on “Investment funds under private law” (Ph.D. thesis 2008).

Upon the establishment of the OO&R, trusts and trust-like arrangements have formed an important theme within the research programme. Upon the completion of various research projects on trusts in the period 1995-1999, particular focus has subsequently been directed on the creation and enforcement of trust-like arrangements under Dutch law. This is of particular importance to enhance the flexibility of Dutch law to facilitate complex international and domestic commercial transactions. The absence of uniformity on the availability of trust-like arrangements and the conceptual substantiation of such arrangements across Member States of the EU appears to constitute an obstacle for the implementation of the Common Market. Important research questions which have been analyzed during the reporting period relate to, for instance, the feasibility and the (desired) conceptual framework of prospective European regulations which could provide a uniform platform to establish trusts. In this respect, particular attention has been drawn to trusts under English law and in mixed legal systems. The research pertaining to trusts and protected funds has important links with other themes of research programme 1.3 as well as with research conducted within the context of research programmes 1.1 (Company Law) and 1.2 (Finance, Security Rights and Insolvency Law).

The Ph.D. thesis written by Dr. D.W. Aertsen on the trust was published in 2004 in the Business and Law Series. Moreover, as a follow-up to the research previously conducted during the period 1995-1999 on the Principles of European Trust Law, new comparative research has been conducted by the International Working Group on Protected Funds

(established by the OO&R in 2003 and chaired by Professor Dr. S.C.J.J. Kortmann). Leading academics from over ten European countries participate in this International Working Group .

As part of research on the administration of trust-like arrangements, particular attention has been focused on asset management conducted by pension funds. This research includes an analysis of the legal and social/economical responsibilities imposed on pension funds and the rights conferred to facilitate asset management. The Ph.D. thesis written by Professor Dr. R.H. Maatman on the pension fund as an asset manager was published in 2004 in the Business & Law Series. To stimulate further research on this important topic, Professor Maatman has been awarded a position as Professor of Asset Management and shall within the context of that capacity continue research in this field.

Research into nominee accounts purports to identify to which extent asset segregation can be facilitated with proprietary effect. This is of major social importance in relation to a variety of complex commercial and financial transactions. Money which is deposited on nominee accounts for the benefit of third parties may under certain circumstances be included in the bankruptcy estate of the account holder upon the commencement of insolvency proceedings against the latter. The scope of protection offered as well as the proprietary and obligatory effects of segregated funds have been extensively analyzed in the Ph.D. thesis of Dr. A. Steneker, on “Nominee accounts and segregated patrimony” (Ph.D. thesis 2005).

2. Business and property law

In the field of property law, the OO&R traditionally conducts a substantive amount of research. The general legal framework of property law will form the central theme in the future new editions of the multi volume handbook on property law in the Asser Series (to be co-authored by Professor Dr. S.E. Bartels). Important topics on property law which are permanently analyzed include: principles of property law (e.g. the numerus clausus), accession, property formation, (spurious) commingling, transfer of property, assignment, third party protection and extraordinary property law devices (e.g. real subrogation and community of property).

As general property law is particularly important for research into security rights and insolvency law, research conducted in this field is closely connected with research programme 1.2 on “Finance, Security Rights and Insolvency Law”.

Receivables play a fundamental role in international and domestic trade (e.g. within the context of receivables financing). The increased importance of receivables in commercial transactions has further encouraged academic research pertaining to receivables under general patrimonial law. Various questions arise in relation to this topic (e.g. relating to the legal position of the assignor, assignee and the account debtor, the transferability of receivables, third party protection and legal remedies). The preliminary report prepared by Professor Dr. H.L.E. Verhagen and M.H.E. Rongen for the “Dutch Private Law Association” (2000) has been an important source of reference for the statutory introduction of the undisclosed assignment of rights (enacted as art. 3:94 (3) of the Dutch Civil Code). This new statutory provision raised important questions, e.g. concerning discharge of the account debtor, recourse to collected proceeds, the right of set-off and third party protection. The initial Bill which resulted in the enactment of art. 3:94 (3) of the Dutch Civil Code was extensively analyzed by staff members of the OO&R (e.g. in contributions of Professor Dr. H.L.E. Verhagen, M.H.E. Rongen and J.W.A. Biemans). These publications influenced the parliamentary debates and the regime which was ultimately embodied in art. 3:94 (3) of the

Dutch Civil Code. Research into the transfer of receivables illustrates the close connections between the various components of research programme 1.3 (in particular the existing interrelationship between property law and the law of obligations).

From the perspective of private international law, an important publication on the trade of receivables concerns the book of Professor Dr. H.L.E. Verhagen and Professor Dr. A. Flessner on *Assignment in European Private International Law* (Sellier 2006). Particular attention is devoted on the applicable regime to trade in receivables under the European Commission's "Rome 1 Proposal".

3. Business and the Law pertaining to Obligations

The law of obligations also forms a fundamental pillar of the legal regime applicable to businesses and entrepreneurial activities. The principles and general legal framework of the law of obligations are the central theme of the three volumes published in the Asser Series by Professor Dr. A.S. Hartkamp and Professor Dr. C.H. Sieburgh: "The Law of Obligations, General, Part I" (2004 and 2008), "The Law of Contracts, Part II" (2005) and Non-Contractual Obligations, Part III" (2006). Special attention is devoted to a broad spectrum of topics, such as causality, the principles of contract law, the interpretation of contracts, the principles of extra-contractual liability, the doctrine of relativity and its application, European law and comparative law aspects of general contract law (e.g. concerning default and non-performance of contractual obligations).

The law of set-off is a subject which has received profound attention within the framework of OO&R research. Particular attention should be drawn to publications of Professor Dr. N.E.D. Faber, including his Ph.D. thesis on Set-off (for which the *judicium cum laude* was awarded). The thesis of Professor Faber is widely regarded as the authoritative handbook on set-off under Dutch law.

Other topics which have been granted particular attention by OO&R researchers include undue payment and unjustified enrichment (e.g. in connection with electronic banking transfers and the legal consequences of insolvency in relation to these devices). S.R. Damminga is envisaged to be awarded his doctorate in 2009 for research into unjustified enrichment.

The law of contracts has been researched from a variety of perspectives. In consideration of the demands imposed by European law and of important comparative law research findings, the view has been expressed that contractual freedom should not be the point of departure for the study of contract law, but rather one of the principles which in particular cases may provide a solution. In addition, to the principle of contractual freedom and a broad spectrum of other topics pertaining to contract law, the influence of European law on Dutch contract law has been analyzed in detail.

In the field of nominated agreements, Dr. J.J. Dammingh has conducted research which follows up on his Ph.D. thesis "The position of the real estate agent in real estate transfers".

An example of the versatile nature of research findings in the field currently described, concerns the preliminary report of Professor Dr. S.C.J.J. Kortmann on the role of the legal advisor for the "Dutch Association of Lawyers" (2004).

The role of tort law in relation to businesses was the central theme of the OO&R volume devoted to professional liability, company liability and liability in the exercise of one's office (edited by Professor Dr. C.J.M. Klaassen, Professor Dr. R.J.N. Schlössels, Professor Dr. G. van Solinge and L. Timmerman). Other research which has been conducted in the field of tort law includes research on prospectus liability, the duty of care of (financial) institutions, damages, due diligence and applicable private international law. These topics were covered in the study of Professor Dr. C.J.H. Jansen, E. Schreuder and Professor Dr. H.L.E. Verhagen (2003).

Research has also been conducted into causality, damages, employer's liability and insurance law aspects of liability.

4. European law and Dutch patrimonial law

Dutch patrimonial law which is applicable to businesses is increasingly rooted on European law (e.g. pursuant to treaties, general principles, directives, regulations and case law of the European Court of Justice and the European Court of First Instance). This has major consequences in respect of the approach and systematic coherence of national law. The nature of European law results in implications for domestic law which cannot be easily determined. A proper framework needs to be established on the basis of which a review can be made of the exact bearing of European law on domestic patrimonial law. That framework requires being established using the legal institutions, such as priority in application, direct and indirect applicability, EU uniform interpretation, supplementing European law rules by judges and the identification of the role and use of general principles in European law.

The influence of European law on domestic patrimonial law is a relatively new focus of academic research and forms an important feature of permanent and extensive research conducted within the framework of research programme 1.3. Important results have already been obtained in the aforementioned double volume handbook A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus, "The influence of European law on Dutch private law, General part and Special part", Business and Law Series, volumes 42-I and 42-II, Deventer: Kluwer, 2007 to which various staff members of the OO&R have contributed. Other important examples concern the inaugural lecture of Professor Dr. A.S. Hartkamp, "The supplementing of legal rules by judges under European law and Dutch law", Deventer: Kluwer (2007) and contributions of other staff members in legal journals (e.g. the contribution of R. van Leuken in the journal WPNR). In 2008 a new volume in the Asser Series is to be published on the general principles of European law which have a special bearing on domestic patrimonial law, written by Professor Dr. A.S. Hartkamp.

Particular areas of current Dutch private law are specifically influenced by European law. An important example concerns price arrangements made between enterprises, which are rendered null and void due to the application of art. 81 of the European Treaty, and the legal consequences of this for third parties (for example, customers), which are not imposed by European law but whose interests are influenced by legal norms which are national by nature. Future research on this aspect of European and domestic private law is planned for the near future.

Moreover, this programme also comprises private international law research concerning European law, such as the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (EEX) and the Convention on the Law applicable to Contractual Obligations. Important research outcome includes the aforementioned study of

Professor Dr. H.L.E. Verhagen and Professor Dr. A. Flessner on *Assignment in European Private International Law*. Furthermore, the results of research in the field of private international law will be published in a new volume of the Asser Series (written by Professor Dr. H.L.E. Verhagen and Dr. A.P.M.J. Vonken).

5. Permanent research

a. Text books, treatises, handbooks

The prominence of research in the field of “Business and Patrimonial Law” (both in focus and in the adopted methodology) can be illustrated by the fact that on all components of the research programme, permanent research is carried out in writing and updating handbooks (notably in the authoritative Asser Series).

The following works have been published during the reporting period:

- Asser/Kortmann, “Representation” (2004);
- Asser/Hartkamp assisted by Sieburgh, “The law of obligations, Part I: The obligation in general”, Deventer: Kluwer (2004);
- Asser/Hartkamp assisted by Sieburgh, “The law of obligations, Part II, General part of the law of contracts”, Deventer: Kluwer (2005);
- Asser/Hartkamp assisted by Sieburgh, “The law of obligations, Part III, The non-contractual obligation”, Deventer: Kluwer (2006).

The following volumes will be published in the near future:

- Asser/Hartkamp, “European law”;
- Asser/Hartkamp and Sieburgh, “The law of obligations in general, Part I” (2008);
- Asser/Hartkamp and Sieburgh, “The law of obligations in general, Part II” (2009);
- Asser/Mijnssen, Van Velten and Bartels, “Property and limited rights” (2008).

Other volumes identified above are envisaged to be published in the Asser Series in the course of 2009 or 2010.

b. Analyses of case law

The analyses of case law is an important feature of the permanent research conducted within the framework of research programme 1.3. Important developments can be identified in studying recent case law and it is important to critically analyze whether court decisions can be aligned with general principles and the systematic coherence of patrimonial law. Various staff members are structurally involved in case law journals such as “Jurisprudentie Onderneming & Recht” (case law review on business and law) and “Jurisprudentie Burgerlijk Procesrecht” (case law review on private procedural law). Case comments are also prepared for other legal journals, such as *Nederlandse Jurisprudentie* (leading general case law review in the Netherlands) and *Ars Aequi*.

Positioning in relation to previous research

Research into general patrimonial law has traditionally been conducted in Nijmegen on a broad level. This appears, for instance, from the fact that Professor Dr. S.E. Bartels, Professor Dr. N.E.D. Faber, Professor Dr. S.C.J.J. Kortmann and Professor Dr. C.H. Sieburgh have been appointed on Chairs covering the full spectrum of private law.

The expansion of staff (including the appointment of Professor Dr. C.H. Sieburgh (2003), Professor Dr. A.S. Hartkamp (2006), Assistant-Professor A.L.M. Keirse (2006) and Professor Dr. S.E. Bartels (2008)) has increased the attention paid to research fields, such as the law of

obligations, contract law, tort law and the influence of European law on current Dutch private law. This is a major shift from the situation which applied during the previous reporting period (1997-2002). The positive influence can be clearly demonstrated by the established focus of the research programme, the adopted methodology and the extensive research outcome.

Since research covered by this programme is of fundamental importance to research topics which have been placed within the scope of other research programmes, increased attention to the components of programme 1.3 shall continue unabated in the coming years. An important example of the existing interrelationships between the various research programmes concerns research on trade in receivables. Whereas aspects pertinent to receivables financing and the application of insolvency law are analyzed as part of research programme 1.2, rules which relate to the transfer of receivables and the position of the parties under general property law and the law of obligations are addressed as part of research programme 1.3.

Research focus which has already been developed will be further expanded. Furthermore, new research topics continue to arise from ongoing developments in the volatile and dynamic commercial legal practice. Various large scale projects are planned to commence in the near future (including permanent research for editing and updating handbooks and new Ph.D. research).

In respect of the positioning of current research in relation to previous research, attention should also be drawn to the following:

1. Representation, agency and administration

Research into the trust-like arrangements and into the introduction of the trust or protected fund in Dutch law has been continued. Discussions have also been furthered on an international level. During the previous reporting period, comparative research of the International Working Group on European Trust Law has resulted in the publication of the Principles of European Trust Law (volume 1 in the Law of Business and Finance Series). The research of the International Working Group on Protected Funds follows up on the Principles project and should result in a proposal for a European Directive on the establishment and recognition of Protected Funds. Research into representation, agency and mandate is firmly anchored in the Nijmegen research tradition. The major importance of the research conducted by the late Professor Dr. W.C.L. van der Grinten, including that into representation, agency and mandate, has culminated in the publication of his collected works in the Van der Heijden Institute Series (volume 77, 2004). His book on Representation in the Asser Series is currently edited by Professor Dr. S.C.J.J. Kortmann.

2. Business and property law

Research in the field of property law has traditionally been one of the strongest features of research conducted by the OO&R. The major contribution of staff members of the OO&R to national debates appears, for example, from fundamental publications on the principles of property law (e.g. the Ph.D. thesis of Professor Dr. T.H.D. Struycken on the numerus clausus), the influence of research pertaining to assignment of receivables on the formation of legislation and the various handbooks which are envisaged to be published in the Asser Series in 2009 and 2010.

3. Business and the law pertaining to obligations

In the field of the law of obligations, a remarkable development can be seen in the reporting period. Research in this field has been strongly augmented by research into the general part of the law of obligations. Important examples include the Ph.D. thesis of Professor Dr. N.E.D. Faber on set-off (2005), research into causality and the victim's fault, research into the principles of contract law (for example, the inaugural lecture *Tertium Datur* of Professor Dr. C.H. Sieburgh, (2004) and "The Principle of Social Conformity", *Hondius* volume (2007)) and research into liability and tort law (for example, Professor C.J.H. Jansen, E. Schreuder and Professor Dr. H.L.E. Verhagen on "Prospectus Liability" (2003)). It is envisaged that this increased focus on the law of obligations will be furthered by commencing new research projects and by continuing permanent research within the context of editing and updating handbooks for the Asser Series.

4. European law and Dutch patrimonial law

European law and private international law approaches have always occupied a fully integrated position in the research projects of the OO&R. After the appointment of Professor Dr. A.S. Hartkamp in 2006, this subject became a distinct field of its own and served as the central theme of a major publication of the OO&R in 2007 of two volumes on the influence of European law on Dutch private law. These two volumes form the first works published in the Netherlands which cover the entire subject in detail. That research immediately placed the OO&R into the leadership position in the debate on the influence of European law on current Dutch private law. Both volumes form the basis for further academic research and also serve as main legal sources of reference for legal practice.

Further to the research findings published in these volumes, Professor Dr. A.S. Hartkamp also wrote a new volume for the Asser Series which will be published in the fall of 2008. An important contribution was also made to the debate on more specific fields which characterize the confrontation of private law of national origin and that of European provenance: the supplementation by a judge of legal grounds and the passing on defence. The educational programme affiliated with the research has resulted in 2008 in two research master programme students commencing preparation for research into the specific influence exercised by the two parts of primary European law (treaty freedoms and competition law).

5. Permanent research: text books, treatises and analyses of case law

The programme plays a major role nationally in terms of writing and editing handbooks for the authoritative Asser Series (please refer above). As previously mentioned, the Asser Series constitutes a leading and precursory role in academic debates. It is also a main source of reference for legal practice (e.g. in the explanation of the scope of current law, fundamental legal concepts and systematic coherence).

Type of research

In addition to the comments made in the general section of this evaluation, the type of research conducted within programme 1.3 can be categorized as follows.

Within the first category, research is carried out on problems faced by businesses which are fundamental by nature and which concern general private law topics. These include a broad spectrum of subjects, such as representation, legal acts, contracts and third parties, wrongful acts, causality, undue payment, unjustified enrichment, set-off, subrogation, assignment of rights, transfer of goods, etc. A thorough analysis of principles and the general legal framework of patrimonial law is essential for the study of any particular problem which may have arisen in domestic or international commercial practice. Questions raised in legal

practice often touch upon the foundations of general patrimonial law. To this extent, research remains practical in focus, despite being academic by character and retains strong links with the research conducted within the context of programmes 1.2 and 1.4.

The second category is formed by various research projects which focus on bottlenecks encountered in practice concerning existing rules and regulations and on uncertainties concerning the interpretation and/or scope of application of rules and regulations. Examples of these types of research include the research projects into nominee accounts and segregated funds, trust-like arrangements, the prohibition of fiduciary transfers, the assignment of rights, the requirement of specificity, employers' liability and the influence of European law on Dutch patrimonial law. Scientific contributions of the OO&R purport to provide applicable solutions, recommendations for modification of the law and enhancement of the understanding of fundamental legal concepts.

Internationalization

Increasing internationalization is a focal point of the OO&R, in particular in respect of research programme 1.3 (please refer to the General Institute Report).

Of fundamental importance is the participation in international networks, the intensive collaboration with academics abroad and the mutual exchange of researchers (e.g. within the framework of EU mobility and exchange programmes). The OO&R has established various International Working Groups of its own volition (for example, on Trust Law and on Protected Funds). Staff members of the OO&R also participate in other international projects, such as under the aegis of the Acquis Group, UNIDROIT and the Common Core of European Private Law network (the Trento Project). These collaborations are often of a structural and permanent nature.

In order to enhance the mobility of young talented researchers and to facilitate comparative legal research, various funding programmes are available to staff members of the OO&R. These include the Frye Stipend (awarded during the reporting period to J.B. Spath) and the Improving Human Potential (IHP) network subsidized by the European Commission (participating universities include those of Barcelona, Lyon, Münster, Oxford, Turin and Warsaw). N.S.G.J. Vermunt and S.R. Damminga have been placed within the framework of their Ph.D. research projects as visiting researchers at the University of Oxford to complete the Master of Studies in Legal Research (MSt) programme (for a total duration of one academic year). Other visiting positions of staff members of the OO&R include secondments to universities in Belgium (Antwerp, Ghent and Leuven), Germany (Berlin, Hamburg and Münster), the United Kingdom (Cambridge and Edinburgh) and the United States of America (Berkeley and Harvard). In general, the OO&R encourages staff members to opt for a stay abroad during a substantial period of time (e.g. several months up to one year) as this enhances their acquaintance with another legal system and enables them to gain durable contacts abroad.

Various professors from universities abroad have been closely affiliated with the OO&R in latter years. These important contacts include those of the International Working Groups on Trust Law and Protected Funds. Examples of these contacts are Professor E. Dirix (Leuven), Professor R. Schultze (Münster), Professor H. Schulte-Nölke (Bielefeld), the late Professor P.B.H. Birks (Oxford), Professor D.J. Hayton (London, King's College, and currently, Justice in the Caribbean Court of Justice), Professor K.G.C. Reid (Edinburgh) and Professor E. McKendrick (Oxford), whose inaugural lecture, *The Creation of A European Law of*

Contracts, was published as volume 28 in the Business & Law Series (2004). Various professors from other universities have also contributed to OO&R volumes (please refer, for example to Professor Schulte-Nölke's contribution to "Representation and Intermediaries", and Professor Hayton's contribution to "Getting to know the Trust" and the contribution made by Professor Devroe and Professor Ludwigs to "The Influence of European Law on Dutch Private Law". Several professors from universities abroad also had seats in manuscript committees for Ph.D. theses.

Through participation in the aforementioned international projects and collaborations, the OO&R has a solid international network of contacts.

With regard to research pertaining to the influence of European law on national private law, a powerful impulse has been given to interact with lawyers from a broad spectrum of Member States across the EU. In order to facilitate this interaction, use has been made of existing contacts at the University of Leuven and contacts of the Acquis Group. The interaction with these and other researchers has been furthered within the context of the conference held in Berlin (organized by Secola).

Academic and social relevance

The research conducted within the programme "Business and Patrimonial law" is conducted from a practical and business oriented perspective. The many research projects are closely related to legal issues which directly emanate from legal practice (e.g. on the interpretation and scope of application of legislation). One example can be found in research conducted on receivables in international and domestic trade. While the results of that research conducted by the OO&R are immediately applicable to legal practice, they remain firmly anchored in fundamental analyses of legal principles and the general legal framework of private law.

The research of the OO&R has a major academic and social relevance. It is focused on a fundamental analysis of the legal problems which are relevant to businesses and on finding practical and systematic solutions. Academic relevance of research appears from the fundamental and scientific analyses of the underlying legal regime and the contributions made on the developments of national and international law (e.g. in the preparation of the Principles of European Trust Law and a proposed EU Directive on Protected Funds).

A result of the genuine practical focus of the OO&R research is that lawyers from legal practice with an interest in profound academic analyses have contributed to various OO&R volumes in the field of "Business and Patrimonial Law", such as "Business and 10 years under the new Dutch Civil Code", "Professional Liability, Corporate Liability and Office holder's Liability" and "The Influence of European Law on Dutch Private Law".

Short and long term planning

On the short term, pending research projects on e.g. the assignment of rights, protected funds and the influence of European law on Dutch patrimonial law shall be continued.

European law research forms an independent component of this research programme. The major influence exercised by European law on domestic patrimonial law (which is envisaged to further increase) will be closely monitored and analyzed. Research has commenced on the influence of treaty law on national private law (art. 81 of the European Treaty and national legislation on nullities, the horizontal effect of treaty law freedoms, the liability of private individuals relating to infringements of EU law and the harmonization within European law

and of national private law). Substantial attention on primary EU law (treaties) is warranted by their influence on domestic private law rules which apply to businesses. As constitutional rights are an integral part of the law of the European Union, and their consequences are directly of influence on the legal regime pertinent to entrepreneurial activities, the theme of human rights (e.g. the prescriptive acquisition, ownership and constitutionally correct explanation of lawful acts) will be covered by prospective research. Another major focus of research concerning the international setting of patrimonial law will consist of private international law. Research in the field of private international law has already claimed a strong focus across all research programmes of the OO&R and will be furthered with the publication of the new volume of Professor Dr. H.L.E. Verhagen and Dr. A.P.M.J. Vonken in the Asser Series on Private International Law.

On the long term, research projects will be initiated on new subjects which closely relate to a broad spectrum of existing components of the research programme. Particular attention will be given to the following subjects:

1. property law (e.g. accession, formation and commingling of goods and the (interim) amendment of limited rights);
2. contract law (e.g. the interpretation of international contracts (in arbitration), connected contracts and contracts and third parties);
3. general patrimonial law (e.g. representation).

Research into the principles and general legal framework of patrimonial law remains at the vanguard of fundamental and analytical research carried out by the OO&R, the results of which are published in various leading domestic and international Series. These results include articles, handbooks and Ph.D. theses (e.g. conducted by P.J. van der Plank on accession and formation of goods, L.C. Roelofs on tort law and J.B. Spath on real subrogation).

Part 2: Orientation and method

Approaches taken and research methods

The research programme embraces various approaches and research methods. In general, the starting point of the OO&R research is to concentrate on problems in legal practice, which require knowledge and insight into trade and commerce and into social developments. In this respect, the social-economic reality remains an important source of inspiration for the majority of research conducted. In accordance with the OO&R tradition, other research methods which are often adopted include: comparative law, the history of law and the economic analysis of law. A good example of the adoption of various research methods is the Ph.D. thesis of Professor Dr. T.H.D. Struycken, “The numerus clausus in property law” (2007).

The research conducted by Professor Dr. C.H. Sieburgh into grounds justifying unlaw acts in private law, which was published in the review TPR, is a good example of interdisciplinary research covering the fine line between private law and criminal law. The research conducted by Professor Sieburgh into legal principles is by nature multi-disciplinary, since use is being made of legal theory, the philosophy of law and the sociology of law and comparisons are being made with other legal disciplines.

As alluded to above, research methods vary depending on the substantive focus of the research project in question. In general, use is made of the legal-dogmatic method in which

fundamental conceptual analyses are based on comparative law, the history of law, social data and a study of case law.

Organized academic debate

The OO&R organizes and initiates intensive academic debates both on a national and an international level (e.g. conferences, expert meetings and symposia). In respect of research programme 1.3, the following scientific gatherings have been convened.

The International Working Groups established by the OO&R convene experts meetings on a regular basis at various locations across Europe. Various staff members of the OO&R have participated in these International Working Groups (Professor Dr. S.C.J.J. Kortmann, Professor Dr. N.E.D. Faber, J.W.A. Biemans and N.S.G.J. Vermunt). It is envisaged that the International Working Group on Protected Funds in Europe will present its research findings in the course of 2009 during an international scientific meeting for which various prominent academics and practitioners from a broad spectrum of countries in Europe and beyond will be invited. Representatives of the European Commission and various international GOs and NGOs will also be invited to attend this meeting.

The Acquis Group meets three times per year. The OO&R is represented in this international research network by Professor Dr. C.H. Sieburgh. The work of the Acquis Group has resulted, among other things, in the Draft Common Frame of Reference for the Law of Contracts. The research group in Nijmegen considered this as an opportunity to open the discussion on the influence of European law on domestic private law. A conference was convened in April 2008 during which academics, practitioners, company lawyers and judges participated in deliberations on the influence of European law on domestic law and shared experiences in this new field of research.

The Trento Group meets on an annual basis. The OO&R is represented during expert meetings of this research network by Professor Dr. S.E. Bartels and Professor Dr. C.H. Sieburgh. The idea behind the Trento Project is to inventory and analyze the common core of European Private Law and to contrive an emerging transnational perspective.

The research conducted in Nijmegen within the context of programme 1.3 also comprises elements which complement primary research topics as identified above. Various research projects have been commissioned by third parties to staff members associated with the OO&R. For example, Professor Dr. S.C.J.J. Kortmann wrote a preliminary report for the “Netherlands Association of Lawyers” on the position of the legal advisor, which was discussed in 2004 during a meeting convened by this Association. During a meeting of the same organization in the preceding year, Professor Dr. C.H. Sieburgh participated as a referee on the subject of the compensation function of private law. Professor Dr. A.S. Hartkamp provided a presentation on the topic “Fundamental rights, fundamental freedoms and contract law” during the conference organized by Secola in Berlin (2006).

Part 3: Research findings and results (evaluation)

Intensifying attention for the programme on “Business and Patrimonial Law” has resulted in research findings which cover the entire spectrum of subjects included in this research programme. The pursuit of the OO&R to enhance the importance and systematic coherence of the research programme can be considered successful.

In the following, an overview is presented of research issues which were particularly addressed during the reporting period.

1. Representation, agency and administration

Research into representation resulted in the book written by Professor Dr. S.C.J.J. Kortmann and published in the Asser Series (volume 2-I (2004)) on Representation. As attention is paid in that volume to indirect representation, this work is a beacon for further research into that controversial topic.

Further to the comparative law research into the trust (e.g. the Ph.D. thesis of Dr. D.W. Aertsen, "The trust" (2004) and the publication of "The Principles of European Trust Law" (1999)), the International Working Group on Protected Funds conducted research on the possible implementation of a European Directive which facilitates the introduction of the Protected Fund as a trust arrangement on a European level. Within the context of this international project, various National Reports will be published in which reference will be made to which extent domestic legal systems already adhere to the legal regime as promulgated in the proposed Directive. The research findings of the International Working Group are envisaged to be published in the fall of 2008 in the Law of Business and Finance Series and will be presented to the European Commission.

A recurring theme in this programme is how commercial practices can be facilitated under current Dutch patrimonial law pertaining to asset management and segregated funds. Professor Dr. R.H. Maatman reviewed in a number of publications various legal issues concerning the position of an asset manager. Dr. J.W.P.M. van der Velden researched the applicable regime regarding investment funds under Dutch private law (his thesis has been published outside the reporting period in the Business & Law Series (2008)). Dr. A. Steneker conducted research on the subject of nominee accounts and segregated funds under Dutch patrimonial law, resulting in various publications and his Ph.D. thesis on this topic.

2. Business and property law

Research into specific questions in the field of "Business and property law" includes Professor Dr. T.H.D. Struycken's highly detailed and many-faceted theoretical work for his Ph.D. thesis into one of the core principles of property law: the numerus clausus. Professor Struycken came to the conclusion that the currently adopted system of property law still relies extensively on the numerus clausus. New legal figures (for example, domain names, agricultural production rights, trust-like arrangements, etc.) were placed within the current system of patrimonial law and analyzed against the background of fundamental property law principles. His Ph.D. thesis provides an important source of reference for resolving problems which relate to new legal figures.

Dr. B.F.L.M. Schim conducted Ph.D. research on "Book-entry securities under general property law" (published in 2006). His thesis provides an extensive insight into the (lack of) coherence between the Dutch Civil Code and the Dutch Book-entry Securities Trading Act and provides solutions on how to remedy various problems which have arisen in practice. Against this background, he proposed a number of amendments to legislation in this field.

The legal regime applicable to the transfer of receivables from the perspective of property law and private international law has been extensively analyzed by Professor Dr. H.L.E. Verhagen, J.W.A. Biemans, M.H.E. Rongen and R.J. van der Weijden (among others).

The Ph.D. thesis of Professor Dr. R.H. Maatman (2004) on Dutch pension funds also deserves mention in relation to property law research results.

3. Business and the law pertaining to obligations

Professor Dr. N.E.D. Faber's Ph.D. thesis on the law of set-off provides a profound analyses of the legal framework pertaining to set-off under general private law and under bankruptcy law. Various related aspects are covered in his thesis, such as rules on netting, set-off in the context of (undisclosed) assignment and pledges of rights and statutory priority schemes.

Research into the principles of contract law formed an important theme of the activities of Professor Dr. C.H. Sieburgh. Using comparative law, the history of law and supranational legal sources (such as the EU Treaty), research was conducted into how contractual freedom is related to other relevant principles of contract law. The priority of principles in case of collision with other principles was also addressed (cf. e.g. the inaugural lecture of Professor Dr. C.H. Sieburgh and her contribution to the aforementioned Hondius volume (2008)).

In the field of extra-contractual liability law, Professor Dr. H.L.E. Verhagen researched the Dutch rules concerning undue payment and unjustified enrichment in comparison with English law. Moreover, S.R. Damminga has extensively researched the concept of undue payment in pre-contractual relationships.

In the field of general tort law, the doctrine of relativity was profoundly analyzed (Asser/Hartkamp assisted by Sieburgh, "Non-contractual obligations"). An important issue which has arisen for discussion was inspired by case law of the Supreme Court of the Netherlands and relates to the question whether the doctrine of relativity may protect businesses from liabilities relating to other damages than personal injuries. For the time being, the conclusion is drawn that the case law of the Supreme Court applies to a limited number of cases and that businesses may not (in general) be indemnified against liability for pure economic damage. In the OO&R volume "Professional liability, corporate liability and office holder's liability" (2003), tort law pertaining to business settings was covered in the broadest sense. Examples of topics which have been discussed include: damages caused by an employee to a third party during working hours, damages which an employee has suffered during working hours, piercing the corporate veil, director's liability, liability for fairness opinions, prospectus liability, liability of the insolvency administrator, liability of the real estate broker, liability of the legal advisor and tort law under private international law. An important result of that volume is that inter-connections between e.g. company law, contract law and private international law have been made.

The research conducted by Professor Dr. C.J.H. Jansen, Professor Dr. H.L.E. Verhagen and E. Schreuder (2003) addressed various issues relating to prospectus liability (e.g. the duty of care of financial institutions in relation to share value floatations and the issue of a prospectus).

4. European law and Dutch patrimonial law

An important new focus has been added to research programme 1.3 concerning the influences exercised by European law on Dutch patrimonial law. Research on this topic has already provided important results. In addition to the volumes published in the Business and Law Series (A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus (eds.), "The influence of European law on Dutch private law, General part and Special part, Business and Law Series, volumes 42-I and 42-II", Deventer: Kluwer 2007) to which a considerable number of OO&R researchers made contributions, reference should also be made to the inaugural lecture of

Professor Dr. A.S. Hartkamp (“Supplementing legal grounds by judges under European law and Dutch law”, Deventer, Kluwer, 2007), and the publication of R. van Leuken in the WPNR. Particular attention should also be drawn to the prospective publication in 2008 of the volume in the Asser Series on European law and Dutch Private law (written by Professor Dr. A.S. Hartkamp). On this topic, the OO&R has from the onset assumed a leading position in the Netherlands.

5. Permanent research: text books, treatises and analyses of case law

Research conducted within the context of research programme 1.3 consists for a substantial part of writing and updating handbooks (notably for the Asser Series) and commenting case law in various journals. Part 1, sub-section 5 contains a list of Asser Series volumes which were published during the reporting period. For case comments, please refer to the publication list (Part III of the self-evaluation report).

Part 4: Ph.D. Theses

Table 1: List of Ph.D. researchers graduated in the period of review, programme level

	2002	2003	2004	2005	2006	2007	Total
Number of graduates	2	0	3	2	1	2	10
Names of graduates	Dammingh, J.J. Feunekes, R.		Maatman, R.H. Aertsen, D.W.A. Cavalier, G.A.J.	Plas, C.G. van der Steneker, A.	Schim, B.F.L.M.	Struycken, T.H.D. Stolp, M.M.	-

B. Staff, resources, and funding of the programme

Part 5: Funding

Table 2: Funding at programme level

	2002	2003	2004	2005	2006	2007
Funding						
Direct funding (1 ^{ste} geldstroom)	185.387	358.405	346.618	294.984	329.613	553.345
	51%	74%	66%	61%	56%	75%
Research funds (2 ^{de} geldstroom)						
KNAW						
	0%	0%	0%	0%	0%	0%

NWO	7.976	80.932	54.812	26.083	22.629	-
	2%	17%	11%	5%	4%	0%
ESF						
	0%	0%	0%	0%	0%	0%
Other						
	0%	0%	0%	0%	0%	0%
Total	7.976	80.932	54.812	26.083	22.629	-
	2%	17%	11%	5%	4%	0%
(3 ^{de} geldstroom)						
Contracts	111.903	-	21.500	26.982	39.923	51.595
	31%	0%	4%	6%	7%	7%
Other	60.700	45.298	98.571	131.807	198.501	133.750
	17%	9%	19%	27%	34%	18%
Total	365.966	484.634	521.502	479.856	590.666	738.689
Expenditure						
Personell costs	288.674	394.261	418.847	379.540	482.650	613.774
	79%	81%	80%	79%	82%	83%
Other costs	77.292	90.373	102.655	100.315	108.016	124.914
	21%	19%	20%	21%	18%	17%
Total	365.966	484.634	521.502	479.856	590.666	738.689

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: including interest from property, legacies, etc.

Part 6: Research staff

Table 3.1: Research staff at programme level (total fte (tfte) and input research fte (rfte) by category)

Category	Name	tft	rfte	tft	rfte	tft	rfte	tft	rfte	tft	rfte	tft	rfte
		2002	2002	2003	2003	2004	2004	2005	2005	2006	2006	2007	2007
Lecturer	Biemans, J.W.A.			1,00	0,08	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,30
Lecturer	Domingus, Ch.A.M.											1,00	0,08
Lecturer	Ettema, A.A.									1,00	0,10	1,00	0,20
Lecturer	Haazen, I.	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,20	1,00	0,20	1,00	0,20

Lecturer	Moolen, F.H.E. van der	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,30
Lecturer	Roelofs, L.C.									1,00	0,29	1,00	0,30
Lecturer	Schaafsma-Beversluis, E.L.	0,70	0,14	0,70	0,14	0,70	0,14	0,70	0,14	0,10	0,02	0,10	0,02
Lecturer	Struycken, T.H.D.	1,00	0,20										
Lecturer	Thämer-Stevens, P.							1,00	0,08	1,00	0,30	1,00	0,30
Ph.D. researcher	Domingus, Ch.A.M.	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,24
Ph.D. researcher	Ernste, P.E.									1,00	0,08	1,00	0,92
Ph.D. researcher	Plank, P.J. van der											1,00	0,25
Ph.D. researcher	Plas, C.G. van der	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,47				
Ph.D. researcher	Schim, B.F.L.M.	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,47		
Ph.D. researcher	Steneker, A.	0,50	0,35	0,50	0,35	0,50	0,35	0,50	0,06				
Ph.D. researcher	Wenting, A.P.									1,00	0,25	1,00	0,88
Researcher	Aertsen, D.W.A.	1,00	0,70	1,00	0,70	1,00	0,70						
Researcher	Cavalier, G.A.J.					0,01	0,01	0,01	0,01				
Assistant professor	Dammingh, J.J.	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,26	1,00			
Assistant professor	Dammingh, J.J.										0,10		
Associate professor	Dammingh, J.J.											1,00	0,28
Assistant professor	Feunekes, R.	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35	0,05	0,01	0,05	0,01
Professor	Hartkamp, A.S.									1,00	0,64	1,00	0,70
Professor	Jansen, C.J.H.	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,10

Professor	Kamphuisen, J.G.C.	0,20	0,15	0,20	0,15	0,20	0,15	0,20	0,15	0,20	0,15	0,20	0,15
Associate professor	Keirse, A.L.M.									1,00	0,35	1,00	0,35
Professor	Klaassen, C.J.M.	0,90	0,32	0,90	0,32	0,90	0,32	0,90	0,32	0,90	0,32	0,90	0,32
Professor	Kortmann, S.C.J.J.	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,10	0,30	0,04
Professor	Sieburgh, C.H.			1,00	0,32	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35
Assistant professor	Steneker, A.							0,50	0,15	0,50	0,18	0,50	0,18
Professor	Verhagen, H.L.E.	0,70	0,25	0,70	0,25	0,70	0,25	0,70	0,25	0,70	0,25	0,70	0,25
Associate professor	Vonken, A.P.M.J.	1,00	0,10	1,00	0,10	1,00	0,10	1,00	0,10	1,00	0,10	1,00	0,10
Total		13,60	5,46	14,60	5,66	14,61	5,92	15,11	4,74	18,05	5,31	19,05	6,82

Table 3.2: Age research staff, programme level (January, 1, 2005)

	< 35	35 – 44	45 – 54	55 >
Tenured staff	-	4	4	2
Ph.D. researchers	3	-	-	-
Non-tenured staff	13	2	1	-
Total	16	6	5	2

C. Reputation and leadership

Part 7: Reputation

Research conducted as part of programme 1.3 on practical problems against the background of the principles and general legal framework of patrimonial law, has gained an excellent and leading reputation in the Netherlands. The research conducted is seen as being of very high academic quality and social relevance. On an international level, conducted research substantially contributes to academic debate (e.g. by International Working Groups established by the OO&R and by contributions to other international projects (Principles of European Contract Law, UNIDROIT, Acquis Group, Trento Group and contributions to international legal literature and conferences). The programme was awarded an above average research assessment for law 1995-2000: academic quality of research 4-5; programme 3-4;

relevance 4-5; durability/vitality 4.¹⁵ The Ten Kate Committee noted, among other things that:

“The research conducted by this group is characterized by the perfect balance between academic quality and relevance to legal practice. A further trump card is that of the strongly developed international nature of the programme.”

In the field of representation, asset management, trust-like arrangements and the influence of European law on domestic patrimonial law, the programme also assumes a leading role. The same applies to research pertaining to property law, in which staff members of the OO&R have provided extensive analyses of core principles. In the field of contract and tort law, conducted research has established the very foundations for national debates.

The researchers are firmly entrenched in societal positions and with this both their excellent reputation and that of their work is outstanding. This is illustrated by the following overview.

Sieburgh

Professor Dr. C.H. Sieburgh was until 2007 assisting on editing the volumes of the Asser Series on the law of obligations (including on contract law) as co-author. She is a member of the Young Academy (“DJA”) of the Royal Netherlands Academy of Arts and Sciences (“KNAW”), member of the selection committee of the DJA, member of the programme committee of the KNAW, member of the national committee of A-journals (to appraise the academic quality of legal journals), board member of the Netherlands Association for Comparative Law (“Nederlandse Vereniging voor Rechtsvergelijking”), member of the Asser Advisory Council (“Asser-adviesraad”), member of the editorial panel for Civil Code Monographs (“Monografieën BW”), member of staff of the Weekly Journal for Private Law, Notarial Law and Registration (“WPNR”), member of the editorial advisory panel of the Belgian Review for Private Law (“Belgisch Tijdschrift voor Privaatrecht”) and Chairman of various working groups convened to make recommendations on conditions by the Netherlands Social and Economic Council (“SER”).

Bartels

Professor Dr. S.E. Bartels is co-author of the Asser Series volumes on property law, member of the Asser Series Advisory Council (“Asser-adviesraad”), member of the Board of the OO&R, member of the Board of the Law Firm School, Grotius Lecturer in Insolvency Law, Grotius Lecturer in Real Estate Law, member of the Editorial Board of the Netherlands Review for Private Law (“Nederlands tijdschrift voor Burgerlijk Recht”) and permanent annotator of the JOR and of *Ars Aequi*.

Kortmann

Professor Dr. S.C.J.J. Kortmann is the author of the Asser Series volume on Representation (“Vertegenwoordiging”). Moreover, during the reporting period, he was also the Chairman of the Centre for Post Doctoral Education (“Centrum voor Postdoctoraal Onderwijs” (CPO)), Chairman of the Insolvency Law Committee (“Commissie Insolventierecht”), Chairman of the Board of the OO&R, Chairman of the Board of the Grotius Academy Foundation (“Stichting Grotius Academie”), member of the Board of the Private Law Association (“Vereniging Burgelijk Recht”), member of the Board of the Professional Training for Private Law Notaries Foundation (“Stichting Beroepsopleiding Notariaat”) and a member of the

¹⁵ Please refer to: The Report of the Ten Kate Committee, Research Assessment Law 1995-2000, Series Assessment of Research Quality, VSNU 2002, p. 90 and 91.

Supervisory Board of the Pallas Consortium. He was council member of INSOL Europe and is a member of the International Insolvency Institute. Professor Kortmann was also an editor of the Dutch Insolvency Law Review (“Tijdschrift voor Insolventierecht”) and still is Chairman of the Editorial Panel of the case law journal on Business & Law (“Jurisprudentie Onderneming en Recht” (JOR)) and permanent annotator of this review. Furthermore, he is a permanent annotator for the legal journal *Ars Aequi*. Professor Dr. S.C.J.J. Kortmann and Professor Dr. N.E.D. Faber form the editorial board of the Business and Law Series and of the Law of Business and Finance Series. Professor Kortmann is Chairman of various International Working Groups, including the International Working Groups on Trust Law, Protected Funds, Security Rights and Insolvency Law. In 2008, Professor Kortmann was awarded “De Gouden Peer” by the law journal “Mr.” and was declared “best and most influential professor” in the field of insolvency law by a group of twenty insolvency lawyers.

Faber

Professor Dr. N.E.D. Faber is a member of the Academic Forum of INSOL Europe, editor of the case law journal on Business & Law (“Jurisprudentie Onderneming en Recht” (JOR)) and senior counsel with the law firm Clifford Chance LLP (Amsterdam office). He was also a guest professor at the University of Antwerp (The Kruithof Chair). Professor Dr. N.E.D. Faber is a member of the Board of the OO&R, a lecturer of various Grotius courses (including the Insolvency, Structured Finance and Finance and Security Rights programmes) and also a lecturer of many other post doctoral courses. He is also a core group member of the International Working Groups on Trust Law, Protected Funds, Security Rights and Insolvency Law (all established by the OO&R). He has also participated in various meetings of UNCITRAL Working Group V (Insolvency Law) and UNCITRAL Working Group VI (Security Rights).

Hartkamp

Professor Dr. A.S. Hartkamp is a Member of the Royal Netherlands Academy of Arts and Sciences (“Koninklijke Nederlandse Akademie van Wetenschappen”), Chairman of the Advisory Council for the Asser Series, Chairman of the Appellate Board of the Dutch Securities Institute (DSI), Member of the Study Group on the Principles of International Commercial Contracts of UNIDROIT, Member and since 2003 First Vice-President of the Council of UNIDROIT, Membre associé de l’Académie Internationale de Droit Comparé, Foreign Member of The American Law Institute, member of the editorial panel of the Weekly Journal for Private Law, Notarial Law and Registration (“Weekblad voor Privaatrecht, Notariaat en Registratie” (WPNR)), Member of the Board of the Private Law Association (“Vereniging Burgelijk Recht”), Chairman of the Foundation for the Publication of the Corpus Iuris Civilis and other Roman Law legal sources in the Dutch language (“Stichting tot uitgave van het Corpus Iuris Civilis en andere Romeinsrechtelijke rechtsbronnen in de Nederlandse taal”).

Jansen

Professor Dr. C.J.H. Jansen was and is currently again the Dean of the Law Faculty of the Radboud University Nijmegen. He is also Professor of Roman Law at the University of Amsterdam. Professor Jansen is Chairman of the Board of the OO&R and Chairman of the Board of the Centre of Post Doctoral Education (“Centrum voor Postdoctoraal Onderwijs” (CPO)). He is also an editor of the Dutch Law Review (“Nederlands Juristenblad” (NJB)), an editor of Labour Law Annotations (“Arbeidsrechtelijke Annotaties”) and an editor of the historical and comparative law journal “Groninger Opmerkingen en Mededelingen: Magazijn voor leerstellige rechtsvergelijking op historische grondslag”.

Klaassen

Professor Dr. C.J.M. Klaassen is Chairman of the Netherlands Association for Civil Procedural Law (“NVvP”), Chairman of the Editorial Board of the Journal for Case Law on Civil Procedural Law (“JBPr”), member of staff and annotator of the Journal for Liability, Insurance and Damage (“AV&S”), Grotius Lecturer in Business and Tort Law and Grotius Lecturer in Personal Injury Law and member of staff of the Kluwer loose-leaf on Contracting with the Government and the loose-leaf Work on Personal Injury (“Losbladige Contracten met de Overheid en Handboek Personenschade”).

Verhagen

Professor Dr. H.L.E. Verhagen is an editor of the journal Netherlands Private International Law (“Nederlands Internationaal Privaatrecht”) and a lecturer of INSOLAD courses. Furthermore, he is Grotius Lecturer in Finance and Security Rights and Structured Finance. Professor Verhagen is co-author of the new Asser Series volume on private international law (to be published). He is also associated as an attorney at law at the Amsterdam office of Clifford Chance LLP.

Vermunt

N.S.G.J. Vermunt is Secretary of the Board of the OO&R. Furthermore, he is structurally involved in projects of INSOL Europe and UNCITRAL in the field of insolvency law and security rights. He has also participated in the comparative research project of CREDA on Finance Contracts and is Secretary of the International Working Group on Security Rights in Europe. He is also involved as lecturer in the Grotius programme on Structured Finance.

Vonken

Dr. A.P.M.J. Vonken is one of the authors of the Asser Series volume on private international law (to be published).

Part 8: Leadership

Research conducted within this programme is always carried out under supervision of one or more senior staff members of the OO&R. These members will carry out regular assessments in terms of progress and the substantive focus in an open dialogue with the researcher in question (e.g. within the context of Ph.D. research and other projects). Each staff member is annually reviewed in respect of achieved research results and progress of pending projects. Measures may be adopted in case progress is insufficient or in case particular facilities are required for the progress of research (cf. for further information the self evaluation report (Part I)).

Responsibility for the progress of research programme 1.3 is currently assigned to Professor Dr. C.H. Sieburgh (since 2003) and Professor Dr. S.E. Bartels (since 2008). The content of the programme is “guarded” and further feedback is often provided by the Board, the Curatorium and other professional staff of the OO&R. In this manner, any omission can quickly be remedied and any other appropriate action may be taken. An important example concerns the implementation of a new field of research within programme 1.3 on European law and Dutch patrimonial law. As a member of the Acquis Group, Professor Dr. C.H. Sieburgh argued that this topic remained relatively unresearched. With little research time available, a rapid inventory was made of issues requiring research in 2006 which resulted in the appointment of Professor Dr. A.S. Hartkamp, which in turn has yielded results, as referred

to above. During the review, new subjects appeared which were not yet covered by the other existing components of research programme 1.3. As research on these new subjects would be granted a systematic nature, in coherence with the other parts of research programme 1.3, the decision was made to implement the topic as a separate field of research within the programme.

Part 9: Social relevance

As repeatedly referred to above, the publication policy of the programme focuses on fundamental research pertaining to patrimonial law and on research conducted into issues which are business related and have arisen in commercial practices. The latter type of research has a direct social relevance. It concentrates on contriving results which contribute to solutions for such problems against a solid background of the principles and general legal framework of patrimonial law. The dynamic and volite legal practice warrants a perpetual source of inspiration and social relevance will thus remain strongly rooted in research conducted by the OO&R.

D. Research results

Table 4.1: Key publications

1. T.H.D. Struycken, *De numerus clausus in het goederenrecht* (The numerus clausus under general property law), Ph.D. diss. Nijmegen, Serie Onderneming en Recht, volume 37, Deventer: Kluwer, 2007.
2.
 - 2.1. A.S. Hartkamp, “Het Europese recht en het Nederlandse contractenrecht” (European law and Dutch contract law). In A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus (eds.), *De invloed van het Europese recht op het Nederlandse privaatrecht. Algemeen deel* (The influence of European law on Dutch private law, General Part) (Serie Onderneming en Recht, volume 42-I) (pp. 335-450). Deventer: Kluwer, 2007.
 - 2.2. A.S. Hartkamp, “Ongerechtvaardigde verrijking en onverschuldigde betaling in het Europese gemeenschapsrecht” (Unjust enrichment and undue payment in European Community Law). In A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus (eds.), *De invloed van het Europese recht op het Nederlandse privaatrecht. Algemeen deel* (The influence of European law on Dutch private law, General Part) (Serie Onderneming en Recht, volume 42-I) (pp. 541-559). Deventer: Kluwer, 2007.
 - 2.3. C.H. Sieburgh, “Het Europese gemeenschapsrecht en het Nederlandse buiten-contractuele aansprakelijkheidsrecht” (European Community Law and Dutch extra-contractual liability law). In A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus (Eds.), *De invloed van het Europese recht op het Nederlandse privaatrecht. Algemeen deel* (The influence of European law on Dutch private law, General Part) (Serie Onderneming en Recht, volume 42-I) (pp. 465-540). Deventer: Kluwer 2007.
 - 2.4. A.S. Hartkamp and C.H. Sieburgh, “De invloed van het Europese recht op het Nederlandse privaatrecht. Een korte verkenning” (The influence of European law on Dutch private law. A brief introduction). In A.S. Hartkamp, C.H. Sieburgh and L.A.D. Keus (Eds.), *De invloed van het Europese recht op het Nederlandse privaatrecht. Algemeen deel* (The influence of European law on Dutch private law, General Part) (Serie Onderneming en Recht, volume 42-I) (pp. 1-14). Deventer: Kluwer 2007.

3. N.E.D. Faber, *Verrekening* (Set-off), Ph.D. diss. Nijmegen, Serie Onderneming en Recht, volume 33, Deventer: Kluwer, 2005.
4. A. Flessner and H.L.E. Verhagen, *Assignment in European Private International Law: Claims as Property and the European Commission's 'Rome I Proposal'*. München: Sellier, European Law Publishers 2006 (XII, 130 p.)
5.
 - 5.1. Asser-Hartkamp in cooperation with Sieburgh, *Verbintenissenrecht, Deel I: De verbintenis in het algemeen* (The law of obligations, Part I: The obligation in general), Deventer: Kluwer 2004;
 - 5.2. Asser-Hartkamp in cooperation with Sieburgh, *Verbintenissenrecht, Deel II: Algemene leer der overeenkomsten* (The law of obligations, Part II: General contract law), Deventer: Kluwer 2005;
 - 5.3. Asser-Hartkamp in cooperation with Sieburgh, *Verbintenissenrecht, Deel III: De verbintenis uit de wet* (The law of obligations, Part III: The non-contractual obligation), Deventer: Kluwer 2006;
 - 5.4. Asser-Kortmann, *Vertegenwoordiging en Rechtspersoon, Deel I: Vertegenwoordiging* (Representation and Companies, Part I: Representation), Deventer: Kluwer 2004.

Table 4.2: Results at programme level (output in numbers)

	2002	2003	2004	2005	2006	2007	Total
4.2.1 Academic publications							
Monographs, handbooks, proceedings	1	1	4	2	5	6	19
Ph.D. theses	2	0	3	2	1	2	10
Articles in journals	14	13	12	8	11	14	72
Articles in books/proceedings	13	13	4	5	5	13	53
Other	0	0	0	0	0	1	1
Total	30	27	23	17	22	36	155
4.2.2 Professional publications							
Monographs, handbooks, proceedings	2	1	0	1	1	3	8
Articles in journals	4	4	4	5	5	7	29
Articles in books/proceedings	3	0	1	0	1	0	5
Case comments	8	12	18	4	5	13	60
Other	3	3	1	0	2	0	9
Total	20	20	24	10	14	23	111
Total academic + professional	50	47	47	27	36	59	266

Table: 4.3 Full list of publications

See Part III: Full list of publications.

E. Self-analysis according to the SWOT method

Part 11: Evaluation

Strengths

The programme “Business and Patrimonial Law” was awarded an above-average score in the research assessment for law 1995-2000 (academic quality of research 4-5; programme 3-4; relevance 4-5; durability/vitality 4).¹⁶ The Ten Kate Committee commented among other things that:

“The research conducted by this group is characterized by the perfect balance between academic prowess and relevance to legal practice. A further trump card is that of the strongly developed international nature of the programme.”

In the area of internationalization, the programme has increased its strength. Research is conducted to an important extent into international themes and is frequently carried out using an international method (comparative law). International exchange (mobility) schemes of researchers in which the OO&R participated have proceeded very well in latter years. The drafting of a proposal for a new Directive to create a European platform on Protected Funds also reflects the strong international dimension of research conducted by the OO&R within research programme 1.3.

In terms of durability and vitality, the programme may also be called excellent. This appears from the manner in which the challenge presented by European law and international law has been met. The OO&R has developed a line of research within a very short time span which is both unique for the Netherlands and truly precursory in nature. This makes the OO&R a national leader and a prominent player internationally. Furthermore, the dynamic and versatile nature of legal practice will remain a permanent source of inspiration for new research projects. The present programme provides for sufficient flexibility to manoeuvre in planning further research. Some major projects are currently in the planning phase which will require major efforts on the part of various members of the research group. Especially the expansion of the European law perspective is a matter which offers many new perspectives.

In the area of “academic quality; programme” the programme “only” scored a 3-4 when last reviewed. The Ten Kate Committee commented in that respect that the programme was rather wide in its scope. According to that Committee, tort law was the least covered field of the programme. The Committee was of the opinion that some dilution made itself felt in terms of the focus and coherence of research projects; making the programme somewhat less well-rounded and in turn jeopardizing the substantive focus of the programme. It should be commented in this connection that this no longer applies as the field of tort law has clearly been given greater prominence and importance both in terms of substantive focus (in part due to the appointment of the current programme leader), but also in terms of output. By conducting research in this field on the basis of comparative law and into the principles which form the foundation of the applicable legal regime, interaction with other parts of patrimonial law are also involved in the conducted research. In addition, the focus of research on tort law has been given a more thematic nature and more coherent focus. In particular various forms of tort law relating to businesses have been particularly addressed, such as employer/employee liability and prospectus liability. The enhancement of a more thematic and coherent substantive focus has also been implemented in respect of other components of research programme 1.3.

¹⁶ Please refer to: The Report of the Ten Kate Committee, Research Assessment Law 1995-2000, Series Assessment of Research Quality, VSNU 2002, p. 90 and 91.

Contract law has been researched from different perspectives. Partly given the demands imposed by European law and given the comparative law findings, this field has also been reviewed on its main principles and their effect for cases which are relevant to businesses.

Both in respect of non-contractual obligations (wrongful acts, unjustified enrichment and undue payment) as well as with regard to contract law, the effects of European law have been researched in great detail.

The programme scores satisfactorily and this certainly applies in terms of recruiting KNAW and contract funding. However, the NWO- funding is diminishing over the years (as applies to social science research in general).

A further strong point of the programme is that a large number of researchers is tenured staff which is an advantage in terms of cohesion and which serves the direction taken by the programme.

Weaknesses

The fact that the programme covers the entire range of patrimonial law can be called into question. Further to the comments made by the Ten Kate Committee, it might well be possible to limit the research conducted in field 3 to tort law. The programme leaders deliberately refrained from this because they are of the opinion that tort law should be studied together with and not separately from the law of obligations, as applies in a number of other Dutch law faculties. Comparative law research shows that isolated research of tort law is indefensible. A claim brought to court in the Netherlands under tort law is seen in other countries as a claim on the basis of an unlawful act, or as an action on the basis of unjustified enrichment. This of course implies also that isolated research into contract law, in the present globalisation of legal practice, is of limited use and hence not responsible as such. Against this background, the choice was made to further and expand all efforts in the field of contract law as whole. The above leaves unaffected that a more thematic and coherent substantive focus has been implemented as regards the features of patrimonial law which are particularly addressed in research projects. This is of great importance to enhance systematic and permanent research on specialized topics (e.g. within the framework of various handbooks in the Asser Series).

It could further be submitted that the business orientation of research is still not sufficiently prominent. Particularly fundamental research conducted within the programme is not solely devoted to the commercial legal practice. As pointed out previously in the report, the programme leaders believe that useful research in the field of specific business related legal issues can and should not be seen apart from a more broad and solid basis in and knowledge of principles and the general legal framework of patrimonial law. This view typifies the research conducted by the OO&R and guarantees its excellent reputation among legal practitioners as well as among Dutch academics.

The wide scope of research and the adopted fundamental approach allow making rapid responses to opportunities and developments which arise in business law.

Opportunities

The really major opportunity for national patrimonial law lies in the near future and on the much longer term in the influence exercised by European law (supranational) and by international law. Commercial legal practice will be confronted with all of these developments, often as the first of the legal subjects present in a national Member State. This

applies in particular due to the globalisation of markets and the enhancement of cross-border trade. The research programme hence intends to continue to occupy a leading role in this field

While the influence of European law on fields 1-3 may at present be modest, it is clear this is changing. The European Court of Justice is increasingly less reticent to give a judgment in its rulings on rules of national private law which are not European in origin. The degree to which the European Court may de facto achieve this (to the extent it might dictate the law of the Member States to comply with its rulings) depends on the degree to which knowledge of European law is widespread among private law academics and legal practitioners. That same knowledge is (vice versa) required to identify which demands are to be met by a company to comply with European law. The extent to which primary EU law imposes demands on enterprises (EU competition law, treaty freedoms and anti-discrimination legislation) is gradually developing. This touches upon the second form of influence by European law, namely that on a supranational level. It is vital to develop European law in the field of private law in order to be able to address questions about the effects of private law of European provenance, partly in relation to private law of national provenance. This aspect forms the subject of international debate and shall be furthered at that level.

A second opportunity for this research programme is to make good use of other important developments in legal practice and business law. The ever-changing way in which receivables may be used in international and domestic trade encourages the scientific community to continuously confront new issues. The research programme is, given its scope, and because of its focus on fundamentals, clearly able to respond to specific problems.

Threats

There are no real threats perceived resulting from developments in academia and in society which might jeopardize future research. A firm focus on both commercial legal practice and the fundamental basis of patrimonial law ensures the flexibility of the research programme and enhances its stability. Important changes in substantive focus are deemed to have been well-anticipated.

A possible threat could be that domestic and international ambitions are endangered by a decline in funding.

Analysis

Against this background the conclusion may be drawn that the present direction should be continued and that there is an excellent basis to expand focus (e.g. regarding European law and international aspects of applicable and desirable (national) patrimonial law). The programme needs to remain well-balanced; practical but retaining its leading role in fundamental research. To elevate these developments to an international stage, research findings shall, when useful, be presented in English and published in international legal literature.

As to future goals, these are already formulated in the opportunities at hand for the programme and the way in which those opportunities may be seized. The primary strategy to be followed will be that researchers conducting internationally relevant research will be actively encouraged to also publish their findings in international journals and series of books. A variety of measures will be taken to facilitate this (e.g. additional translation services and foreign language courses and substantial growth of available international legal sources at the CIDOR – see on this department within the law library: Part I of the self-evaluation report).

Participation in international debates by attending conferences or by being seconded abroad for a certain time period is also an important strategy which the research programme wholeheartedly supports and shall of course be continued.

Title of the programme: 1.4 Business and Employees

Programme leader: Professor Dr. I.P. Asscher-Vonk

Areas or disciplines covered: Labour law, social security law and pension law

Starting date and duration: 2002 – to the present

Formal partnerships (national, international): Levenbach Institute (currently being established), the Netherlands Association for Employment Law, the International Society for Labour Law and Social Security Law (ISLSSL), the Institut für Arbeitsrecht und Arbeitsbeziehungen in der Europäischen Gemeinschaft (IAAEG)

A. Content (the CV of the programme)

Part 1: Strategy and policy

Description of the research programme

The programme entitled “Business and Employees” concentrates primarily on that part of social law which is relevant to business. In the process, continuous attention is paid to the ever-changing rights and duties which prevail in the relationships between businesses and their employees. On the one hand, those changes result in amended legislation requiring critical reviews. On the other hand, the aims or paradigms behind those changes, which are evolving as well, must be detected, described and evaluated. In this respect, the study of pension law also forms a part of the programme, albeit a modest one at this point. Attention is primarily focused on occupational pension schemes. This approach fits in well with the programme as the responsibilities businesses take upon themselves or the responsibilities which are imposed on them include pension provisions for employees.

Since the nineteen nineties, the government has increasingly retreated from the arena of labour and income provision and relied more strongly on selectivity and subsidiarity. Increasingly often, the Dutch legislator wonders whether it would be better if certain responsibilities, both regarding legislation and financing and implementation, which used to be taken on by government as a matter of course, were taken on by other social actors such as private insurers or the social partners, and at other levels, such as the sector of industry or the individual business. Both financial motives and concerns as regards efficiency and effectiveness are at the root of this shift. Other trends, such as the business community’s stronger need for customized solutions and a larger freedom of choice, play a role too. Moreover, since the beginning of the century, a shift seems to have taken place in the objectives of social law. What was traditionally the main objective, i.e. compensating inequality and protecting the employee as the weaker party to the employment contract is losing ground in favour of the concept of social law and labour market policy also serving the needs of the economy as they make the labour market more flexible and increase the employment rate. This change in perspective is noticeable in both the Netherlands and throughout Europe and impacts the manner in which social law divides responsibilities among businesses, employees and the government.

The research programme “Business and Employees” matches the aforementioned developments by focusing on two research topics:

1. Business or government?
2. Equality and differentiation.

The last part of the research programme concerns:

3. Permanent research.

1. Business or government?

The research conducted on the theme of “Business or government?” attempts to track and plot the arguments and criteria used by the Dutch legislator with regard to (changes to) the manner in which responsibilities are assigned in the field of labour and income provision, and, particularly the role the business plays in this. Subsequently, those arguments and criteria are researched in terms of sustainability, partly in the light of the system of labour law and the principles which form the foundations thereof and are tested against prerequisites derived from national and international law. Specific attention is given to the question as to whether or not the choice of business or of government is really consistent with the (main) objectives of social law, as they may be defined both prior and subsequent to the change of perspective. Research conducted on this theme often exceed the bounds of its own discipline in the sense that private law and public law aspects are being studied in relation to one another in this context.

Specific projects within this theme include the way responsibility is assigned for the protection of income for employees on sick leave, the relationship between the law relating to dismissal and the Unemployment Insurance Act, the influence of the private life of an employee on the obligations of the business and the powers the business has to detect and address employee behaviour which transgresses moral standards.

The modest review made of pension law within the programme pertains to this theme as well: from a social law perspective, pension law is usually studied and taught in terms of old age pensions. The three pillars – basic pension, occupational pension and individual supplementary pensions – are typical features of the Dutch pension system. Pension law mainly deals with the second and third of the said pillars.

With collective social security diminishing in the area of incapacity for work and in the future perhaps also in the area of unemployment, a tripartite system is starting to develop with regard to the risks of incapacity for work as well as of unemployment: social security provides the basis provision, the employer or the occupational branch (sector) provides a supplement and the employee can take on a further insurance. A critical assessment of the similarities and differences of that tripartite system in comparison with the regime applicable to old age pension is appropriate. It is not only because of the rise of this tripartite system that studying disability and unemployment insurance in the light of pension insurance is useful. The fact that pension funds are precisely the institutions which concern themselves with coverage for risks relating to disability benefits (and possibility later even to risks relating to unemployment benefits) in excess of the baseline raises questions which can only be answered using a coherent vision.

Increasing privatization of social security (entailing a retreat by the government) from social security therefore results in models similar to those concerning the old age risk which have been used for a considerable time. These models, notably as regards the private sector, require guarantees and special regulation.

2. Equality and differentiation

The second theme of programme 1.4 is linked to the growing needs of businesses and employees for customized solutions and freedom of choice and the increasing space to manoeuvre provided by the Dutch legislator in this respect. Attention is paid to the degree to which in labour law a differentiation is applied according to the type of employer or employee, both at the level of the formal legislator and at other regulatory levels (the social partners in collective bargaining agreements, the employer in company schemes and when exercising his management powers). Distinctions made within the legal and regulatory framework are described and tested against national and supranational standards. The principle of legal equality plays a vital role in making that assessment. Both the presence and the absence of a given distinction in the regulation can be in breach of the principle of equal treatment or of (other) international or supranational standards. Within the development towards more customized solutions and a larger freedom of choice, boosting economic growth and participation is also of great importance, as is primarily apparent from considerations and choices concerning the roles, tasks and responsibilities of small and medium-sized enterprises. In order to gain insight into the arguments (which can, may or must be) used in the event of differentiation (or the lack thereof) among certain groups of businesses or employees, use is made of internal and external comparative law. Specific projects in this part of the programme included research into the influence of the scale of the business and the duration of employment on the employer and employees' rights and duties, and the influence of the legal form of the business on the insurance and premium duties in the context of social employee insurances.

There is a certain relation between the two aforementioned themes. Placing the responsibilities for legislation, regulation, enforcement and financing at another (lower) level results in autonomous regulations which meet the needs for differentiation and customization. By definition, there is less emphasis on the element of 'equality' in such regulations, compliance mechanisms and financing. However, the standard of 'equality' is imposed as a basic condition for taking responsibility at those lower levels (sector, business). The interrelation of themes (as elaborated on above) results in researchers within the programme inspiring one another by their research.

3. Permanent research

Permanent research conducted within the programme includes updating two authoritative handbooks in the field of labour law. Researchers also analyze recent case law in order to monitor developments in the practice of labour law and to connect these developments with the structure of labour law. In this manner, important subjects such as employer's liability, employee participation and authority structures are regularly covered by publications from this group of researchers.

Position in relation to prior research conducted by the research group

The current programme is the successor of the "Business and social law"- programme which ran up to the end of 2001. The change made at the time was due to the wish to give the programme a stronger focus than before on law which is relevant to the business community. To some extent, the former programme was an 'umbrella'. This no longer is the case. Thus, vital elements of social law, such as Social Insurance and Welfare are not covered by the programme any longer, whereas themes with greater relevance to business such as the right to employee participation (strengthened in the autumn of 2007 by the appointment of a professor to the chair of law, labour and employee participation) and pension law are being increasingly studied.

Further information on the type of research

The programme “Business and Employees” aims at carrying out sound and innovative research in the field of social law which is relevant to the business community. The thoroughness of this research concerns the quality of the research. In this respect, upholding academic standards through reproducible, well documented, logical and critical research is a prerequisite. Innovation concerns the choice of subject matter and the choice of methodology. The programme is primarily concerned with subjects which (ought to) inspire innovation in legislation, case law and/or application, whilst being innovative in terms of methodology means that the most suitable method of research is permanently aspired to by means of a critical approach.

In terms of research methods, the programme is characterized on the one hand by fundamental research in which the social roots of social law and the social consequences of choices made in the applicable legal regime are pondered. This kind of research contributes to further developing a body of theoretical knowledge as regards social law. This research is often multidisciplinary and comparative by nature. Sometimes it also includes empirical aspects. On the other hand, a lot of research conducted within the programme is purely legal and hence monodisciplinary by nature. This kind of research is focused on national law, European law and/or private international law and is often closely linked to developments in legal practice. This type of research concentrates on systematizing, analyzing and explaining applicable law. It often results in recommendations for the legislator or the judiciary and contributes to further understanding of social law concepts.

A great deal of research conducted within the programme takes place on an individual basis, as is customary in the study of law and within the OO&R. During the reporting period, in addition to Ph.D. research projects, there were also permanent, ongoing projects for two authoritative works in the area of labour law. A collective project was carried out for the book “The sick employee”.

Internationalization

To a large degree, Dutch labour law has a European origin. Research hence focuses on the European roots of the area of law in question. International and/or European debates and sources are always taken into account within the research conducted in the programme. Moreover, touchstones are inferred from international law and other legal systems (external comparative law) to review developments in the Netherlands (please refer, among others, to the Ph.D. research conducted by Dr. S.S.M. Peters).

Further, a shift has taken place within the research programme since 2007 by no longer merely concentrating on developments on a European level to the extent they have a direct impact on Dutch social law, but also on the influence of the rapidly growing transnational labour market within the European Union. An increasing number of foreign employees work for Dutch companies, sometimes directly, sometimes through secondment or temporary work structures or through subcontracting. Dutch labour and social security law is not always applicable (in its entirety) to this group of employees. This has consequences for the establishment of working conditions at individual and collective levels also in purely national relationships, as well as for the allocation of responsibilities among the government, the business community and employees (sub-theme 1) in terms of enforcing labour law. This new trend also raises questions as to the legitimacy of differentiating between foreign and domestic companies which are active on the Dutch labour market and between employees with Dutch and foreign employment contracts (sub-theme 2).

Publishing in foreign journals and book series, participating in and giving lectures or presenting papers at international conferences and meetings are all activities which are heartily encouraged. In this manner, members of the research group are able to participate in the international debate in their field of expertise. In addition, researchers are also actively encouraged to stay at a foreign university or institute for a period of their research (during the reporting period, for example, at the “Institut für Arbeitsrecht und Arbeitsbeziehungen in der Europäischen Gemeinschaft” (IAAEG) in Trier (Germany)). Producing country reports or general reports for research projects of the International Society for Labour and Social Security Law (ISLSSL) is also part and parcel of the process of internationalization within the “Business and Employees”-programme. Obtaining international funding is another part of the internationalization of the programme which was recently strengthened. This is particularly important for extending and reinforcing an international network.

Academic and social relevance

Indisputably, research conducted within the programme “Business and Employees” contributes to the academic and social debate on the position of the business community in social law. The research output results in a better understanding and in an increased predictability of developments in the field of labour law and aims at partly directing the course of those developments by providing insight into the underlying objectives and grounds which are at the basis of choices made within the regulatory framework. The programme covers important social issues and touches on fundamental questions which will also occupy a prominent position in labour law in the coming years. Moreover, it also provides scope for new developments – notably European developments in this field – regarding the position of businesses in social law and partly pension law to be studied and analyzed.

Short-term and long-term planning

As regards the near future of the research programme, the Ph.D. dissertations of L. van den Berg and W.L. Roozendaal are likely to be completed in 2008 and 2009. The former concerns the influence of the type of company on the insurance and premium duty as regards employee insurance (sub-theme 2), whilst the latter concerns the influence of the private life of employees on the duties of the company for which they work (sub-theme 1). As regards the longer term (approximately 2011), completion of A.H. Pool’s Ph.D. research is expected into the powers of a company to track down infringements on behavioural standards by their employees and to impose sanctions in that connection (sub-theme 1). All three research projects have been (or will be) reported on intermittently in national, leading journals. In respect of future Ph.D. research, new research proposals are currently being prepared in connection with both sub-themes. As regards content, the focus of the programme shall be on national, European and international developments in the fields of employee participation and pension law, even more than was previously the case.

The research conducted by the permanent staff employed within the context of the programme is and shall remain focused on research and publications about the aforementioned sub-themes, both in the short and long term, partly by analyzing and commenting on what is shortly to become law (i.e. bills and other regulations in a draft stage) and partly by providing overviews of and comments on applicable legislation and on national and European case law. The emphasis has changed from 2007 onwards with a stronger focus on accurately monitoring and analyzing European developments (the transnational labour market). In connection with this highly topical theme, acquiring and executing research assignments from external parties, for principals established in the Netherlands and abroad, is actively encouraged. During the

first half of 2008, those efforts resulted in two tenders being accepted for research into problems concerning cross-border labour in the construction industry (commissioned by an EU organization) and in the transport sector (commissioned by the Dutch social partners). On the longer term, this line requires being further pursued.

Further, writing and editing handbooks in the field of business and labour is part and parcel of the ongoing set of research activities. In 2005, a second and completely revised edition of the monograph on “Equality and distinction in labour”, by Professor Dr. I.P. Asscher-Vonk and Professor Dr. A.C. Hendriks was published. In 2007 and 2006 new editions were published of H.L. Bakels’ “Outline of Dutch Labour Law”, edited by Professor Dr. I.P. Asscher-Vonk and Professor Dr. W.J.P.M. Fase and of W.C.L. van der Grinten’s “The Law of Employment Contracts”, edited by J.W.M. van der Grinten and Professor Dr. W.H.A.C.M. Bouwens. For the foreseeable future, this kind of research will continue to be conducted by the permanent staff, bearing in mind that since the summer of 2006 the new edition of the aforementioned handbook written by Professor Dr. W.C.L. van der Grinten is conducted outside of the programme due to the full time placement of Professor Dr. W.H.A.C.M. Bouwens as Professor of Social Law at the Vrije Universiteit of Amsterdam. It is likely that in the somewhat longer run, i.e. from 2010 onwards, the revised edition of the handbook written by Professor Dr. H.L. Bakels shall no longer be part of the “Business and Employees”-programme.

As regards the type of publications, the programme remains primarily focused on Ph.D. dissertations, in part because this provides ample scope for conducting fundamental research. However, alongside such research, the aspiration is to provide the permanent members of staff with opportunities to conduct research (please refer to Part 11). In this respect, the aim in the long run is to achieve a shift from editing handbooks and writing monographs towards more publications in leading Dutch and foreign journals.

Publication profile

During the reporting period the programme concentrated on Ph.D. dissertations, handbooks and monographs as well as on publications and annotations in primarily national leading journals such as the Social Labour Law Monthly (Sociaal Maandblad Arbeid - SMA), the Social Law Journal of the Netherlands (Tijdschrift voor Sociaal Recht - SR) and Labour Law Annotations (Arbeidsrechtelijke Annotaties - ArA). During the reporting period, the relationship between academic and practical publications in the programme varied from one year to the next. On average, however, almost two third of the output was academic.

As stated earlier, there has been a recent shift of emphasis by encouraging – even more strongly than was the case before – publishing in national and international leading journals.

The relationship between the programme and legal practice

Most research conducted within the programme is closely linked to legal practice. This is part of the long-standing tradition of the OO&R and is particularly apparent from the monodisciplinary academic publications. The relationship with legal practice is expressed in the publishing policy in the sense that it also includes publications in professional legal journals. The exchanges with legal practice is also apparent from the presentations given by members of the research group at conferences or seminars organized for attorneys, judges and other legal practitioners or policy makers. The social relevance of the programme is also apparent from interviews which members of the research group give on topical issues to the newspaper press, to radio journalists, and occasionally on television. Conversely, legal

practitioners are invited to provide training on a regular basis. Sometimes, these mutual contacts bring about new research projects. Social activities from members of the research group are beneficial to inspiration as well, for example, through positions on executive and supervisory boards of businesses, or as deputy judges or in some other dispute resolution-positions, or by providing consultancy for a law firm.

The relationship between the programme and the bachelor and master phases

The bachelor programme regarding Social Law, and the master subjects Labour Law, European Employment Law, Social Security Law and Law on Labour & Management devote a great deal of attention to the themes covered by the research projects. Moreover, the handbooks which are edited within the framework of the programme are prescribed study materials for both the bachelor phase in Social Law and the master subject Labour Law. Feedback from students is used to further sharpen the focus of those books in subsequent editions. Research conducted by students into subjects related to the programme is actively encouraged by providing them with a list of possible subjects for their master's theses. Furthermore, excellent students sometimes contribute to current research projects and they are encouraged and invited to submit proposals for Ph.D. dissertation research.

Part 2: Orientation and method

Research approach and research methods

Social law research exceeds the boundaries of its area of law in the sense that in many cases both private law and public law aspects require being studied in relation to one another. This is because of the functional nature of social law. In instances in which multidisciplinary research is used, the programme mainly takes into account sociological and/or economic perspectives in addition to the social law approach, in which the relevant literature is studied and occasionally field work is carried out. Sometimes, articles are also written together with a researcher with a background in social sciences (please refer notably to Dr. M.S. Houwerzijl's publications). However, most of the research within the programme is monodisciplinary by nature and the research methods are of the classical legal academic kind and also have a comparative law component. Pinpointing dilemmas the legislator faces and assessing the solutions chosen results from studying law and legal history, case law and literature. The law of other countries is an outstanding touchstone for testing the quality of national law as well as a source of inspiration for improving it.

The relationship between individual and collective research

Sometimes researchers collaborate when making a monograph ("The sick employee" is an example in point) or when conducting external research. Mostly, research is conducted on an individual basis and other researchers from the group act as a sounding board. The various members of the research group present their research (findings) at both formal and informal meetings of the research group. The critical review carried out at such meetings boosts the quality and strength of the output intended for publication and often constitutes inspiration for other research.

Research culture

Within the research group there are ongoing consultations on the research policy and the research results. Because of the short communication lines and the informal culture within the research group, adjustments can be made quickly if necessary. The aforementioned 'review-culture' leads to frequent exchange of output intended for publication, whereby the members of the research group provide detailed feedback on each other's work, thereby increasing the

quality of the research output. Occasionally, excellent students are involved in joint research projects or in projects financed externally. In this context, there is also collaboration with researchers in other universities, both in the Netherlands and abroad. Students also sometimes conduct supervised, partial research for current individual research projects within the programme.

National and international partnerships

The research programme is embedded within the OO&R (please refer to the general part of the self-assessment for more information) and cross-fertilization primarily takes place with research programme 1.1. The mutual contacts have resulted in contributions to conferences and collective volumes (in the reporting period for example about “The position of the employee under company law” (2003) and on “Business and integrity” (2007) and in a reinforcement of internal comparative law as a research method. Participation in research pertaining to programme 1.3. on the influence of European law on Dutch private law (2007) also took place.

Furthermore, at a national level there are cooperations with scholars with a focus on social law at other faculties of law. There is a formal meeting of this ‘peer group’ at least once a year, in which the faculties rotate as hosts. In 2008, at the instigation of Professor Dr. I.P. Asscher-Vonk, Professor Dr. K. Boonstra (Free University of Amsterdam) and Professor Dr. A.Ph.C.M. Jaspers (Utrecht University), the Levenbach Institute was founded, notably with Ph.D. students in mind, which is a partnership of all researchers in the field of social law at the seven law faculties in the Netherlands. There are also regular contacts with social law practitioners from Belgian universities. In 2006, for instance, during a meeting at the University of Tilburg, Dr. M.S. Houwerzijl contributed to a joint Dutch/Belgian presentation to the European Commission regarding the Green Paper on modernization of labour law in the twenty-first century. In 2007, Dr. M.S. Houwerzijl addressed the subject of conflict rules in labour law and social security law at a conference at the University of Antwerp. In 2006, Dr. S.S.M. Peters gave a lecture for Ph.D. students at Dutch and Belgian universities with a focus on social law called “The larger the firm, the better the social rights of employees? Rationale and justification” (Round Table Labour law and the firm/L’entreprise en droit du travail, Leuven University). For 2009, there are plans for a conference on applicable cross-border labour law, in collaboration with the Antwerp University.

Researchers also work together within national and international networks on the basis of common areas of expertise. Dr. M.S. Houwerzijl, for instance, is part of the multidisciplinary flexicurity-network led by Professor Dr. A.C.J.M. Wilthagen (Tilburg University) and Professor Dr. E. Verhulp (University of Amsterdam) and also of the international and multidisciplinary CLR network (Construction Labour Research). With regard to the latter, Dr. M.S. Houwerzijl gave a presentation on her contribution to a funding project at an EU-conference in Helsinki in December 2006 on the topic of “Undeclared labour”. These networks inspire and facilitate multidisciplinary research, which is apparent from the research output, which is largely in English. Dr. S.S.M. Peters works with colleagues from both the academic sector and from practice in the working group on employee participation of the Labour Law Association/Vereniging voor Arbeidsrecht (VvA), led by Professor Dr. L.C.J. Sprengers (Universities of Tilburg and Leiden). The activities of this working group are aimed at influencing legislative policy as regards employee participation by means of joint publications.

Finally, there is international access to a large network of practitioners in the field of social law through the membership of the International Society for Labour and Social Security Law (ISLSSL). During the reporting period, researchers who are part of the programme issued various country reports for the ISLSSL-conferences. Moreover, during the reporting period there was active participation as speaker or panel member to the ISLSSL's European and worldwide conferences in Stockholm (2002), Montevideo (2004), Bologna (2005) and Paris (2006). This tradition will be honoured in 2008 (Freiburg) as well. Members of the research group have also given guest lectures and presentations in Paris (on disability/incapacity for work and on individual and collective dismissal), in Berlin (on European labour law) and München (Labour law: pressures to change). The activities within the ISLSSL-framework notably foster and facilitate the comparative law research which is conducted within the programme. The cooperation leads to inspiring contacts and concrete research projects, such as a volume on collective labour law in Europe coordinated by Spain (2005) and a publication with Schlachter on age discrimination within social law. Members of the research group also sometimes participate to activities of a sister organization of ISLSSL in the area of industrial relations (IIRA), as was the case in Manchester in 2007 by the presentation of a paper.

On a national level, researchers affiliated with the programme participated inter alia to the scientific debate outside the programme by acting as guest chairman and/or speaker at various symposia, conferences and seminars, on e.g. labour and care (work life and professional life), a century of social insurances, spousal co-workers, reintegration of individuals with a disability, the eligibility under the Permanent Invalidity Benefit Act, disorderly behaviour and non-performing employees, distinction on the basis of the size of a business in terms of employee participation, illness and dismissal and reintegration duties of ill employees. Reference should also be made to the contribution on the position of European employees as regards free movement of workers and free competition at the SMA jubilee conference in October 2006 (Labour law and the European rule of law).

Part 3: Research results (evaluation)

Government or business?

Dr. R.L. van Heusden (2006)'s Ph.D. dissertation on the relation between the law relating to dismissal and the Unemployment Insurance Act (see below) is one of the main results of this part of the research programme. Journal articles on incapacity for work and reintegration written by Professor Dr. I.P. Asscher-Vonk, C.C.A.M. Jacobs-De Klerk, W.L. Roozendaal, and of Dr. M.S. Houwerzijl on European employees and Dutch labour law, publications on dismissal and the unemployment act by Professor Dr. W.H.A.C.M. Bouwens and Dr. R.L. van Heusden, contributions to books by Professor Dr. I.P. Asscher-Vonk on "private justice" and from Bouwens on the wage security regulation and (two fully revised editions of) the monograph on "The sick employee", a joint production from various members of the research group) from Professor Dr. W.H.A.C.M. Bouwens and Professor Dr. I.P. Asscher-Vonk on the paradigm shift in social law and various national and international publications from Dr. M.S. Houwerzijl on migration, secondment and temporary work of employees across national borders, have contributed to the scientific and social debate on these topics by their sound and innovative nature. Dr. M.S. Houwerzijl, for instance, with her publications and presentations on the necessity of improving the effectiveness of the Secondment Directive, has influenced the Dutch and the European debate on the draft Services Directive. The contribution made to the book "Towards a more effective posting directive" from 2006 was presented during a meeting in Brussels led by Professor Blanpain with a select group of members of the

European Parliament, European Commission employees and the European umbrella organizations representing both sides of industry ETUC and Business Europe.

Pension law

With regard to the pension law component of this research theme the results consisted of journal articles in the area of cross-border pension transfer (2006), the consequences of the coming into force of the Pension Act for business and employees, early retirement and pre-pension (2004) and applicable social and labour legislation for cross-border pensions (2007).

Ph.D. research which has been completed

The theme of Dr. R.L. van Heusden's Ph.D., which was completed in 2006, pertains to agreements on severance payments between employers and employees in the context of dismissal in connection to the redundancy payment scheme. An important research question was whether duties related to the dismissal should be imposed on the employer or on the collectivity. This Ph.D. research is the result of thorough and innovative research that is proving its value in topical discussions on the role of the law on dismissal and the Unemployment Insurance Act on mobility on the labour market (see the recent report by the Commission Bakker, June 2008). Publications from Dr. R.L. van Heusden in the context of his Ph.D. on 'voluntary' unemployment played a role in the most recent amendment to the Unemployment Act, in which the government attempted to remedy the phenomenon of the arranged (pro forma) dissolutions. Dr. R.L. van Heusden's analysis also has an impact on legal practice as regards the possibility of challenging the validity of the so-called more/less clauses in dissolution agreements. By means of such clauses the parties beforehand commit not to invoke a decision from the cantonal judge as regards the compensation if this decision deviates from what was agreed upon by the parties. It is doubtful whether such contractual arrangements are fitting within the imperative law-nature of proceedings regarding dissolution and unjustified dismissal.

Pending Ph.D. research

The two Ph.D. projects which are still pending are those conducted by A.H. Pool and W.L. Roozendaal within this research theme and have led to interim publications in leading national journals, which received positive feedback. W.L. Roozendaal's output, notably, is striking, both in terms of quantity and in terms of quality. Her article on the employer as an administrative body (SMA 2005) was an original and far reaching contribution to sub-theme 1. The research question was: What are the unintentional consequences of the transfer of governmental tasks to employers as regards the implementation of the WIA (Work and Income according to Capacity Act)? W.L. Roozendaal's research into the employer's responsibilities as regards matters which belong to the employee's private life delves into the roots of social law. The research elucidates to which degree the employment contract is a specific kind of contract: to which extent rules apply to employment contracts that are not applicable to the rest of contract law or have another significance. W.L. Roozendaal's Ph.D. research was somewhat delayed. This is understandable (maternity leave, change of job), but was a cause for concern during the reporting period nonetheless. Partly due to intensive supervision, this project has now almost been completed and its quality is excellent.

Equality and differentiation

Dr. S.S.M. Peters' Ph.D. dissertation (December 2006) on the influence of the size of a business on the rights and duties of employer and employees (see below) is an important result of this part of the research programme. Reference should also be made to a number of other important result such as various publications by Professor Dr. I.P. Asscher-Vonk,

journal articles by Professor Dr. W.H.A.C.M. Bouwens on “chain relations”, from M.J.J. Dankbaar on length on service, from L. van den Berg on the circle of insured individuals as regards the employee insurances and the management-limited liability company in the employee insurance, from Dr. M.S. Houwerzijl on the fluctuations in the dispensation policy on collective bargaining agreements on the basis of the Act Declaring collective bargaining agreements generally applicable and on “Flexicurity in the Dutch temporary work sector: a positive sum game?”, from Dr. S.S.M. Peters on the merger rules of conduct from the SER (the Dutch Social Economic Council) and from Professor Dr. I.P. Asscher-Vonk on the research question: “General or differentiated: a single provision for the employment contract for everyone or class legislation?” and from W.L. Roozendaal on the tension of the contractual tie in the employment contract.

Completed Ph.D. research

Dr. S.S.M. Peters’ Ph.D. thesis covers an important subject – for the legal position of (small) employers and employees – which had hardly been dealt with in Dutch legal literature until then, and does so in depth and in an original manner. The law on employee participation is one of the areas that serve as illustration. The first part of Dr. S.S.M. Peters’ Ph.D. dissertation concerns employee participation in terms of labour law and employee participation in terms of company law (such as the company structure). In the project, a combination of research methods was used, such as taking stock of primary sources, legal-historical research, internal and external comparative law and testing against higher standards and the legal principles (laid down therein), including the principle of equality). The analysis has led to the development of a number of general rules to assess the legitimacy of differentiation according to company size and to proposals being made for legislation of a higher quality – to that extent, the research is also innovative. Dr. S.S.M. Peters’ Ph.D. thesis showed the importance and sometimes far-reaching consequences of differentiating in legislation according to company size, both for the (legal) position of both (groups of) employers and employees (particularly SME). The subject has been extensively elaborated on and has by now been noticed in the scientific world (as is apparent from national and international invitations to lectures on this subject, for instance for the Labour Law Association of the Leuven University). The fact that interests of small and medium sized enterprises must be taken into account is a reality, both in economic terms (please refer to the report from the Bakker Commission of June 2008) and in legal terms (please refer to various EC-regulations).

Current Ph.D. research

During the reporting period, the completion of one of the two still pending Ph.D. research projects was delayed, i.e. the research from L. van den Berg into the influence of the legal form of the company on the insurance and premium duty in terms of employee insurance schemes. Although the delay is explicable (change of job), it was a source for concern during the reporting period. Partly due to intensive supervision, this project is now close to being completed and its quality is up to standards. In spite of intensive supervision, it was not possible to make enough progress as regards the Ph.D. research into the influence of the length of service on the rights and duties of employees and the employer (M.J.J. Dankbaar). By now, the supervision of this Ph.D. research has ceased. New proposals for Ph.D. research within this theme will be prepared in the foreseeable future.

Permanent research

As stated earlier, during the reporting period, permanent research was conducted, apart from the aforementioned themes, within the programme by revising two authoritative books in the

field of labour law which are frequently used in the field of education and in practice. These are:

- I.P. Asscher-Vonk en W.J.P.M. Fase, H.L. Bakels, *Schets van het Nederlandse arbeidsrecht (Handbook on Dutch labour law)*;
- W.C.L. van der Grinten, *Arbeidsovereenkomstenrecht (Law of employment contracts)*, revised by J.W.M. van der Grinten and W.H.A.C.M. Bouwens.

Important subjects in the field of labour law, such as employee participation, employer liability and the relationship of authority between employer and employee, have been addressed on a regular basis in annotations and other types of publications.

The permanent staff's research output

As regards the publications of the permanent staff on both sub-themes, the following is striking. In terms of focus and quality the publications range from good to excellent: the scientific publications are the result of thorough research with a significant consistency as regards the programme and the research is mainly authoritative in the national and sometimes also international context and often also has innovative aspects. The annotations and professional publications are also of excellent quality and are authoritative for judicial practice.

An urgent objective for the short term is extending the research information. Since September 2007, strengthening the 'critical mass' was started by appointing Professor Dr. L.G. Verburg as Professor in law, labour and employee participation. As the permanent staff (professor, associate professor, assistant professor) is responsible for generating new research, it is looked into whether another ratio between time spent on research and time spent lecturing in these positions provides a solution.

Another area of attention is the fact that the focus of the programme remains primarily national. The international and cross-border part of the research has been considerably reinforced since the end of 2006 when Dr. M.S. Houwerzijl joined the programme. As a result, part of the programme's perspective shifted to the transnational labour market and the consequences thereof for Dutch businesses and employees. The fact that the research themes within the programme remain equally relevant and provide scope for innovation in terms of content in the future is apparent from how easily the problem of the transnational labour law can be fitted into the existing programme. The expansion of the focus of the programme also leads to a broadening of the adopted research methods. The multidisciplinary aspect of the research has notably been reinforced, but this also applies to the private international law and the comparative law aspects. In terms of the type of publications, the emphasis is on the aforementioned shift from handbooks and monographs to more contributions to domestic and foreign leading journals.

Part 4: Ph.D. Theses

Table 1: List of Ph.D. researchers graduated in the period of review, programme level

	2002	2003	2004	2005	2006	2007	Total
Number of graduates	0	0	0	0	2	0	2

Names of graduates					Peters, S.S.M.		-
					Heusden, R.L. van		

B. Staff, resources, and funding of the programme

Part 5: Funding

Table 2: Funding at programme level

	2002	2003	2004	2005	2006	2007
Funding						
Direct funding (1 ^{ste} geldstroom)	198.974	220.226	263.584	264.751	241.913	264.642
	97%	94%	96%	99%	98%	98%
Research funds (2 ^{de} geldstroom)						
KNAW	0%	0%	0%	0%	0%	0%
NWO	0%	0%	0%	0%	0%	0%
ESF	0%	0%	0%	0%	0%	0%
Other	0%	0%	0%	0%	0%	0%
Total (3 ^{de} geldstroom)	-	-	-	-	-	-
	0%	0%	0%	0%	0%	0%
Contracts	0%	0%	0%	0%	0%	0%
Other	7.075	14.292	10.964	3.054	5.251	5.127
	3%	6%	4%	1%	2%	2%
Total	206.049	234.518	274.548	267.805	247.164	269.769
Expenditure						
Personell costs	168.832	190.945	221.281	208.668	193.670	218.086
	82%	81%	81%	78%	78%	81%
Other costs	37.216	43.573	53.266	59.137	53.494	51.683
	18%	19%	19%	22%	22%	19%
Total	206.049	234.518	274.548	267.805	247.164	269.769

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: including interest from property, legacies, etc.

Part 6: Research staff

Table 3.1: Research staff at programme level (total fte (tfte) and input research fte (rfte) by category)

Category	Name	tfte 2002	rfte 2002	tfte 2003	rfte 2003	tfte 2004	rfte 2004	tfte 2005	rfte 2005	tfte 2006	rfte 2006	tfte 2007	rfte 2007
Lecturer	Baltussen, M.F.									0,60	0,03	0,60	0,18
Lecturer	Dankbaar, M.J.J.									1,00	0,13	1,00	0,30
Lecturer	Jacobs-de Klerk, C.C.A.M.	0,60	0,12	0,60	0,12	0,60	0,12	0,40	0,08	0,40	0,08	0,40	0,08
Lecturer	Roozendaal, W.L.	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,30	1,00	0,20	1,00	0,20
Professor	Asscher-Vonk, I.P.	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35	1,00	0,35
Professor	Lange, P.M.C. de	0,60	0,11	0,30	0,05	0,30	0,05	0,30	0,05	0,30	0,05	0,30	0,05
Ph.D. researcher	Berg, L. van den	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,09		
Ph.D. researcher	Dankbaar, M.J.J.	1,00	0,40	1,00	0,70	1,00	0,70	1,00	0,70	1,00	0,40		
Ph.D. researcher	Heusden, R.L. van	1,00	0,70	1,00	0,70	1,00	0,70						
Ph.D. researcher	Peters, S.S.M.	0,80	0,56	0,80	0,28								
Ph.D. researcher	Pool, A.H.							0,80	0,47	0,80	0,80	0,80	0,80
Assistant professor	Peters, S.S.M.							1,00	0,26	1,00	0,35	1,00	0,35
Associate professor	Bouwens, W.H.A.C. M.	1,00	0,35	1,00	0,15	1,00	0,15	1,00	0,15	1,00	0,09		
Associate professor	Houwerzijl, M.S.									1,00	0,08	1,00	0,35
Total:		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 3.2: Age research staff, programme level (January, 1, 2005)

	< 35	35 – 44	45 – 54	55 >
Tenured staff	1	-	1	3
Ph.D. researchers	1	2	-	-
Non-tenured staff	-	1	-	-

Total	2	3	1	3
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C. Reputation and leadership

Part 7: Reputation: Academic reputation

The research group which is involved in the programme “Business and Employees” has a nationwide reputation as having authoritative knowledge on Dutch social law and the full scope of the law of employment contracts (in part due to the handbooks revised within the programme). Compared to other research oriented on labour law and social law at Dutch faculties of law, the research group has an average size. Specific expertise for which the research group from is known, as a whole, mainly pertains to the themes “the sick employee” (part of sub-theme 1, the division of responsibility in this area has substantially shifted from government to business during the reporting period) and “equal treatment or differentiation” (sub-theme 2). Moreover, the members of the research group have a good reputation individually on the basis of their specific research results and other scientific and social activities.

Asscher-Vonk

Professor Dr. I.P. Asscher-Vonk (Professor of Social Law) was a crown-appointed member of the SER (the Social and Economic Council of the Netherlands) during the reporting period. She is also a member of the National Advice and Arbitration Committee (Albeda committee) and member of the advisory board on the Personal Data Protection Act. Furthermore, she chairs the Dutch division of the International Society for Labour and Social Security Law (ISLSSL), and was treasurer of the ISLSSL up to the end of 2006. She is also a member of the Curatorium of the “Institut für Arbeitsrecht und Arbeitsbeziehungen in der Europäischen Gemeinschaft” (IAAEG) in Trier (Germany). During the reporting period, she was also a member of the editorial committee of Sociaal Maandblad Arbeid (Social Monthly Magazine on Labour Law), the Oordelenbundel Commissie Gelijke Behandeling (Review Volume Equal Treatment Commission) and the Series of Monographs on Social Law.

Bouwens

During (part of the) reporting period Professor Dr. W.H.A.C.M. Bouwens (employed up to the end of August 2006) was member of the editorial committee of the Handbook on employee insurance schemes (Handboek werknemersverzekeringen), the journal on Annotations in the field of Labour law (Arbeidsrechtelijke Annotaties) and of the editorial committee of the Social Monthly Magazine on Labour Law. He also lectured for the Grotius programme in Labour law and was secretary/treasurer of the Dutch division of the International Society for Labour and Social Security Law (ISLSSL).

Heusden, van

Dr. R.L. van Heusden (whose employment ceased in the summer of 2006) is a member of the editorial committee of the Handbook on Employee Insurance Schemes.

Roozendaal

W.L. Roozendaal is a member of the editorial committee of the Handbook on Employee Insurance Schemes. Furthermore, she collaborates with the journal Integral Labour (Arbeid Integraal).

Dankbaar

M.J.J. Dankbaar worked on the Review Volume Equal Treatment Commission as a member of the editorial committee and as an author (up to the end of 2007).

Baltussen

M.F. Baltussen has worked on the Review Volume Equal Treatment Commission since 2007, both as a member of the editorial committee and as an author.

Peters

Dr. S.S.M. Peters worked on the Review Volume Equal Treatment Commission (up to the end of 2007), both as a member of the editorial committee and as an author. Furthermore, (up to the end of 2006) Dr. S.S.M. Peters was a member of the editorial committee of the Journal on Corporate Law, Company Law and Securities Law (Journaal Rechtspersonenrecht, Vennootschapsrecht en Effectenrecht). Dr. S.S.M. Peters is currently a member of the editorial committee and author for the loose-leaf publication on Employment Contracts and shall become a permanent staff member of the Journal Law and Labour (Recht en Arbeid) which is yet to be established (and in which the Social Monthly Magazine on Labour Law and the Journal Social Law will merge).

Houwerzijl

Dr. M.S. Houwerzijl is a member of the editorial committee of the Social Monthly Magazine on Labour Law and works for the journal Integral Labour. She will also become a member of the editing committee of the new Journal on Law and Labour and contributes to Tekst & Commentaar (Text & Comments) (Kluwer) and to Sdu's Commentaar Arbeidsrecht (Comments on Labour Law).

Jansen

Professor Dr. C.J.H. Jansen was and is currently again the Dean of the Law Faculty of the Radboud University Nijmegen. He is also Professor of Roman Law at the University of Amsterdam. Professor Jansen is Chairman of the Board of the OO&R and Chairman of the Board of the Centre of Post Doctoral Education ("Centrum voor Postdoctoraal Onderwijs" (CPO)). He is also an editor of the Dutch Law Review ("Nederlands Juristenblad" (NJB)), an editor of Labour Law Annotations ("Arbeidsrechtelijke Annotaties") and an editor of the historical and comparative law journal "Groninger Opmerkingen en Mededelingen: Magazijn voor leerstellige rechtsvergelijking op historische grondslag".

De Lange

During part of the reporting period (until 2005), Professor Dr. P.M.C. De Lange (part time Professor in pension law)'s main position was that of Director of tax and legal policy of Achmea Pensions. He also chaired the Association for Pension law until March 2006, chaired the Working Party on Pensions of AIDA (Association Internationale de Droit des Assurances) and was a member of the conference committee and later of the members' committee of IPEBLA (International Pension and Employee Benefits Lawyers Association). Professor Dr. P.M.C. De Lange is also a member of the editorial committee of the Journal for Pension Issues (Tijdschrift voor Pensioenvraagstukken) and the Insurance Archives and is a permanent staff member of Pension Case Law as well as a member of the advisory board of the Social Monthly Magazine on Labour Law.

Part 8: Leadership

The responsibility for the progress being made in the programme and for managing and coordinating the research primarily rests with the programme leader and the associate professor in social law. Within the research group there are about six plenary meetings annually to discuss the research policy and the research results. Topical case law and developments regarding policy and legislation are also addressed on those occasions. The permanent staff members within the research group have more frequent deliberations on the contents and progress of the programme. As mentioned above, within the research group, a peer review culture exists in the sense that output intended for publication is submitted to other group members, who provide feedback on it, thus raising the research output to a higher qualitative level. All these elements of research policy result in timely signals being received as regards new developments and possible gaps in (expertise required for the) research. This goes in pair with a debate as regards content within the research group and with the elaboration of the changes in innovating publications or in practical measures. Legal developments requiring changes in the programme, such as the paradigm shift in the objectives of social law as described in part 1 and the tendency towards a transnational labour market can thus be included in the programme in a timely manner. In 2006, the gap that was established concerning expertise in terms of cross-border labour law resulted in the appointment of a new professor with this profile.

The management style of programme leader Professor Dr. I.P. Asscher-Vonk is best described in the management jargon of the day-coaching leadership. The idea behind this is to actively aspire to win-win situations between the interests of the organisation and the interest of personal development of the staff members. To this end, not only are there annual performance assessments with all the members of the research group, but informally, too, the approach is 'hands-on' and frank. The atmosphere within the research group is open and cooperative. Ph.D. researchers and their supervisors/daily mentors regularly have individual progress meetings in accordance with faculty policy (once or twice per month). If a researcher is not performing as expected, an improvement trajectory is started (in consultation with the Ph.D. Dean). If this does not bring about an improvement, the Faculty Board is advised not to extend the employment contract *casu quo* to start an 'exit route'. During the reporting period this unfortunately happened once (see above).

Part 9: Social relevance

The newspapers are informing daily on topics pertaining to labour law and social insurance law. The social relevance of social law is indisputable. Within the "Business and Employees"-programme, the close link with both legal practice and social and political policy is also apparent. As regards publication policy, this means that there is scope for professional publications which are more or less popularizing in non-legal media. Please refer to the publication list for further details. The social relevance of the expertise of the members of the research group for legal practice is partly apparent from lectures, speeches and courses they give to, for instance, members of the judiciary and law firms, but also from projects regarding theses contrived and implemented in cooperation with law firms. The role of researchers as 'leading experts' is *inter alia* apparent from the many interview requests from regional and national media. With some regularity, the researchers comply with these requests from the media and are interviewed on topical subjects by the newspaper press, the radio and on occasion television. During the reporting period, the research output of the programme also had social impact through the SER-membership of Professor Dr. I.P. Asscher-Vonk. It was mainly through her participation to the many SER-committees and recommendations, for instance regarding an amendment to the Unemployment Insurance Act and the legislation on

labour conditions, that the cross-fertilization between both of Professor Dr. I.P. Asscher-Vonk's positions became apparent.

Part 10: Scouting and personnel policy

Researchers are recruited through the customary application procedures. Existing networks are also used. No explicit scouting policy is pursued. When recruiting junior staff members it is usual to look for individuals with excellent study results and a keen interest in scientific research, possibly apparent from legal publications. To assess research skills, the drafting of a research proposal can be part of the application procedure. Other researchers are mainly recruited on the basis of the quality of their legal publications, their experience in teaching as well as their didactic abilities and communication skills.

D. Research results

Table 4.1: Key publications

- S.S.M. Peters, *Verdund sociaal recht. Onderscheid naar ondernemingsomvang bij medezeggenschap, ziekte en ontslag (Diluted social law. Differentiation according to company size in the fields of employee participation, sickness and dismissal)*. RU Radboud Universiteit Nijmegen (XIX, 713 pages). Deventer: Kluwer 2006.
- M.S. Houwerzijl, *Towards a More Effective Posting Directive*. In R. Blanpain (ed.), *Freedom of Services in the European Union. Labour and Social Security Law: the Bolkestein Initiative* (pp. 179-198). Den Haag: Kluwer Law International 2006.
- I.P. Asscher-Vonk, *The employment contract and EC-law*. In A.S. Hartkamp, C.H. Sieburgh & L.A.D. Keus (eds.), *De invloed van het Europees recht op het Nederlands privaatrecht (The influence of European law on Dutch private law)* (Business and Law Series, volume 42-II) (pages 429-472). Deventer: Kluwer 2007.
- R.L. van Heusden, *Beëindigingsovereenkomsten en het recht op WW-uitkering (Termination agreements and the right to Unemployment Benefits)*. RU Radboud University Nijmegen (XX, 643 pages). Deventer: Kluwer 2006.
- W.L. Roozendaal, (2006). *De eigenrisicodrager een bestuursorgaan? (Directors as administrative bodies?)*, *Sociaal Maandblad Arbeid* 2006, 235-243.

Table 4.2: Results at programme level (output in numbers)

	2002	2003	2004	2005	2006	2007	Total
4.2.1 Academic publications							
Monographs, handbooks, proceedings	3	2	1	2	0	1	9
Ph.D. theses	0	0	0	0	2	0	2
Articles in journals	10	2	10	6	8	11	47
Articles in books/proceedings	2	13	5	1	5	11	37
Other	1	0	0	0	0	0	1
Total	16	17	16	9	15	23	96
4.2.2 Professional publications							
Monographs, handbooks, proceedings	2	1	3	2	2	3	13
Articles in journals	2	3	2	1	2	0	10
Articles in books/proceedings	2	0	1	1	4	3	11

Case comments	5	10	1	1	2	0	19
Other	3	2	0	4	2	3	14
Total	14	16	7	9	12	9	67
Total academic + professional	30	33	23	18	27	32	163

Table: 4.3 Full list of publications

See Part III: Full list of publications.

E. Self-analysis according to the SWOT-method

Part 11: evaluation

Strengths

In the last years, the research group has made an important contribution to the scientific debate in the area of social law that is relevant to business, which is inter alia apparent from authoritative publications from the researchers and it is likely that this trend will continue during the years to come. It is crystal-clear that the research has a major social relevance.

The programme covers vital issues which are high on the social and political agenda. It also pertains to fundamental questions which will continue to dominate social law in the coming years. The subject matter of the programme has an important cross-border element and this has been reinforced recently, notably as regards the influence of European law on Dutch social law. The method is partly international (comparative law) and has a multidisciplinary nature.

Weaknesses

The research results are not sufficiently often presented internationally or published in foreign journals. The cooperation with other countries is limited as well, although it is growing. The same applies to the limited share of the research programme in the second and third tiers of funding. There is no sustainable source of income at stake. During the last years of the reporting period the programme barely managed to obtain any funding. A change occurred in 2008, as regards the contract funding.

With two Ph.D.'s being awarded during the reporting period, the programme stands the comparison with most other programmes at the faculty.

The drawback of the substantial teaching commitments is that the staff can barely take on large-scale projects and is also an impediment to further strengthening the programme's international focus. The fact that a substantial part of the research consists of Ph.D. research makes the programme vulnerable as well. The limited number of permanent staff members also limits the possibilities to systematically work on acquisition of funding.

Opportunities

As has become apparent from the recent inclusion of transnational problems, the programme has sufficient scope as regards content to study and analyze new developments concerning the position of businesses within social law.

Partly with the impact of a society with an ageing population on businesses and employees in mind, the study of the part of labour law pertinent to businesses, of social insurance law and of pension law, seen in relation to one another, could become a promising and fruitful research area in the years to come.

Threats

For the near future (from July 2009 onwards), the retirement of the current programme leader will have the largest impact on the research strategy. The authoritative expertise that will be missed from then on can (and shall) be replaced in a timely manner in order to warrant the continuity of the research programme.

Aside from the coming change as to the programme leadership, the aforementioned weaknesses and bottlenecks deserve attention. As regards the strengthening of the international component of the research projects and obtaining external funding, the first results are visible, but the teaching load is still a thorny issue and threat for the sustainability of the positive change of direction.

Analysis

The report from the research assessment of the Law Faculty 1995-2000¹⁷ was critical about the predecessor of the programme presented here. The scope of the programme was too broad in the opinion of the Ten Kate Committee. The attention of the researchers was focused on almost all the developments in labour law and social insurance law. The committee had no reason to doubt the sustainability and vitality of the research, but deemed that the programmatic nature needed to become more established. The leader of the programme paid heed to this criticism. The programme has clearly gained in focus, as is also apparent from the full output list and is now directed to the part of social law that is relevant to businesses and partly to pension law. The number of publications directed merely towards social insurance aspects of social law has strongly decreased. Further, the European and international focus of the programme has significantly increased as compared to the situation in 2001. Notably since 2006, further internationalisation is aspired to. The first positive changes in this respect are already noticeable.

For the near future a structural revision of research themes is not planned. The research issues remain highly topical and relevant and new developments can easily be fitted in the existing programme. Moreover, the members of the research group are well equipped to carry out the programme and have an excellent reputation within their 'peer group'.

¹⁷ Please refer to the Ten Kate Committee Report, Research Assessment Legal Faculty 1995-2000, Series Assessment of Research Quality, VSNU 2002, p. 92.