

Honours Class: *Comparative and International Insolvency Law*

At University of Leiden School of Law, March – June 2009

Registration now open!

1. What's the theme?
2. Who is the target group?
3. What are the details of the programme (topics, dates)?
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6. Who is organising the Honours Class?

The Honours Class aims to be an extremely enriching academic experience, both for motivated students as well as for the lecturers. For students the classes will offer an in depth insight and overview of central themes in cross-border insolvency. For some of them it will be an excellent preparation for conducting more advanced research within their academic career, e.g. writing the master thesis. Honours Classes are an inspiring experience, as the classes give the opportunity to see close by how principle academic knowledge and practical application are developing. With the finest instructors in the global field students will be challenged to test the limits of their capabilities. In all, our goal is for you to say, in Summer 2009: the Honours Class provided a real look “in the kitchen” or “behind the scenes” of contemporary international insolvency science!

1. What's the theme?

Periodic economic downturns often result in creditors chasing for the assets, located all over the world, of their financial distressed debtors. The quest for satisfaction has over the past two decades led to creditors seeking assistance of courts abroad to recover debts owed them. However, the disparate nature of national insolvency systems globally and the lack of efficient and effective international conventions lead to unsatisfactory results.

In recent times legislative rules, guidelines and best practices have been developed to promote and enhance cross-border insolvency problems, to cope with the challenges of this aspect of globalisation. Sources of these rules and guidelines include the EU, USA, Japan, South-Africa, Australia and such international organisations as the World Bank and the United Nations Committee on International Trade Law (UNCITRAL) as well as associations of professionals (e.g. American Law Institute, INSOL International, INSOL Europe). These rules have been tested in recent serious insolvencies with a global spread, such as Eurofood / Parmalat, BenQ Holding, Yukos Oil, Eurotunnel, MG Rover Cars and recent failures in the banking industry.

The aim of the Honours Class is to offer to advanced bachelors insights as well as tools to analyse international regulation and adopted best practices. The programme will deepen understanding of the important role of the collaboration of legal science and international insolvency practice in analysing, drafting and applying these.

2. Who is the target group?

The Honours Class Comparative and International Insolvency Law in principle is open for advanced bachelor students, preferably those who have participated in the elective course *Insolventierecht* (Insolvency Law, taught in Dutch) and who are highly motivated to explore the most topical issues of insolvency law in a globalising world. Also students living outside the Netherlands will be invited to apply.

3. What are the details of the programme (topics, dates)

A preparatory seminar (two times 6 hours: first day in Dutch, second day in English) will be held Thursday 12 March and Friday 13 March 2009. See Annex I.

The Honours Class itself contains ten late afternoon meetings in April – June concerning three major topics.

Schedule:

Topic: *Centre of main interest as basis for international jurisdiction of a court*

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| 1. Thursday | 2 April 15.00 – 18.00 | Prof. Wessels, Leiden |
| 2. Wednesday | 8 April 15.00 – 18.00 | Prof. Mankowski, Hamburg |
| 3. Thursday | 9 April 15.00 – 18.00 | Mr Moss, Esq., Queens Counsel,
London |

Topic: *Conflict of law rules applicable in cross-border insolvency proceedings*

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| 4. Thursday | 23 April 15.00 – 18.00 | Prof. Veder, Utrecht |
| 5. Thursday | 7 May 15.00 – 18.00 | Prof. Sarra, Vancouver |
| 6. Friday | 8 May 15.00 – 18.00 | Prof. Fletcher, London |

Topic: *Coordination of insolvency proceedings in cross-border insolvency cases*

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| 7. Thursday | 14 May 15.00 – 18.00 | Prof. Omar, Sussex |
| 8. Thursday | 28 May 15.00 – 18.00 | Lecturer from North-America (invited) |
| 9. Thursday | 29 May 15.00 – 18.00 | Lecturer from Germany (invited) |
| 10. Thursday | 11 June 15.00 – 18.00 | Discuss group research |

See for a description of the topics Annex II

See for a short description of the individual classes Annex III

See for a short description of Class 10 (group research) Annex IV

4. Who are the lecturers?

See for short bios of the lecturers Annex V

5. How is the selection process organised?

For Leiden students an information meeting is organised on Thursday 4 December 2008, from 17.00 – 18.00, room B032.

Interested students will be selected the following way:

- Send in a letter explaining interest and motivation
- A short c.v., including academic career and marks received

- If applicable: a short description of the theme chosen for writing a thesis or article
- Preferably a recommendation of one of the staff members of the applicants' Faculty of Law

Letters should be received prior to 1 February 2009.
Selected applicants will be invited for an interview.

An ideal Honours Class would be composed of 8 to 12 students.

6. Who is organising the Honours Class?

The University of Leiden School of Law, Department of Business Law and the Civil Law Department organises the class, more specifically:

Prof. Dr Bob Wessels

Dr Margreet B. De Boer

The contact person is:

Prof. Dr Bob Wessels
Faculty of Law University of Leiden
Steenshuur 25
2311 ES Leiden
T ++ 31 (0)71 527 8843
E B.Wessels@Law.LeidenUniv.nl

Annex I – Preparatory seminar

In this seminar the participants will be introduced in the basic rules and principles which apply to the insolvency of companies or natural persons. During the seminar three topics will be highlighted: the (international) jurisdiction of a court, the rules applicable to (international) fraudulent transactions and the models used to coordinate insolvency proceedings pending in several countries against one insolvent debtor.

Day One (in Dutch)

09.30 – 10.15	Introduction	Wessels
10.15 – 11.00	Opening of insolvency proceedings	De Boer
11.00 – 11.15	Coffee Break	
11.15 – 12.00	Creditors	Wessels
12.15 – 13.00	Estate	De Boer
13.00 – 13.30	Lunch	
13.30 – 14.15	Detrimental Acts	Wessels
14.15 – 15.00	Settlement of the estate	Guest lecturer*
15.00 – 15.30	Tea break	
15.30 – 17.00	Case study	Wessels / De Boer

* Mr B. Knüppe, former insolvency administrator of Fokker Aircraft (to be invited)

Day Two (English)

09.30 – 11.00	EU Insolvency Regulation	Wessels
11.00 – 11.15	Coffee Break	
11.15 – 13.00	International insolvency law	Wessels
13.00 – 13.30	Lunch	
13.30 – 15.00	Case study	Wessels
15.00 – 15.30	Tea break	
15.30 – 17.00	The role of the administrator, the supervisory judge and the court in insolvency cases in the Netherlands (in Dutch)	Guest lecturer **

** Mr M. Windt, partner Houthoff Buruma, head of Banking, Finance & Restucturing practice (to be invited)

Annex II – Description of topics

International jurisdiction of the court

Since 2002 in Europe (Denmark excluded), in international insolvency cases jurisdiction for a court to open main insolvency proceedings is determined by the norm “the centre of a debtor’s main interests”. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. The judgement of a court “opening” insolvency proceedings is of tremendous importance, whilst confirming its jurisdiction, the decision includes such legal consequences as the power of the insolvency administrator to act in the other Member States and the law applicable to the procedural and substantial consequences of these proceedings. These effects are mitigated when in other countries (secondary) insolvency proceedings concerning the same debtor are opened. Decisive for opening by a court in another Member State is the presence of an “establishment”, which means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods. Both these norms (“centre of main interests” and “establishment”), with slight differences, have been used in countries which have recently introduced or amended their insolvency legislation, e.g. USA, Japan, Mexico, South Africa and Australia.

The topic of the seminar is to analyse and discuss the way these norms are interpreted, the relevant time said norm has to be fulfilled, the procedural requirements to be met and the level of evidence required. By doing this the lecturers will demonstrate that legal norms also allow or protect certain policies or economic interests.

Conflict of law rules

It is commonly known that the topic of conflict of law (or: private international law) is the most troublesome in cross-border insolvency cases. In this seminar the rules applicable in European cases with regard to security rights of lenders and the position of employees will be highlighted. The seminar finishes with the explanation of an endeavour to build a consensus for some principles relating to conflict of law issues in international insolvency matters.

The topic of the seminar is to describe and analyse current results of this endeavour, initiated by the American Law Institute and the International Insolvency Institute, with a special focus on the issues which are perceived to be of fundamental importance: security rights, the position of employees and the treatment of cross-border fraudulent transactions.

Coordination of insolvency proceedings in cross-border insolvency cases

Since 2002 in Europe, insolvency proceedings pending in several Member States can contribute to the effective realisation of the total assets of the insolvent debtor only if all the concurrent proceedings are coordinated. For this reason insolvency administrators have a duty to communicate and to cooperate with each other. The role of the court in this process is unclear. Outside the EU, especially in the countries mentioned above, recent changes in legislation have also led to introducing rules related to direct communication and cooperation between courts in different countries. The concept of cooperation has a long history. In recent times courts, in discussion with international insolvency practitioners, have created “protocols” which apply in each individual cross-border case. The topic of the seminar is to discuss and apply the Guidelines, which have been drafted in 2007, to facilitate coordination in Europe and the workings of a “Protocol”, which brings into play questions such as the sovereignty of the judge and the categorisation of such new inventions of international practice: protocols (private contract law, procedural law, public law?).

Annex III - Individual classes

International jurisdiction of the court

1. *Jurisdiction of the Dutch courts, based on present and future Dutch insolvency law*
By Professor Bob Wessels and Dr Margreet de Boer

Explanation and analysis of current and future legislation
Introduction and participation into current research

2. *International jurisdiction of courts according to the EU Insolvency Regulation*
By Professor Peter Mankowski, Faculty of Law / Department for Foreign and International Private Law and Procedural Law, University of Hamburg

3. *International jurisdiction of courts according to the American and English law*
By Gabriel Moss, Queen's Counsel and Deputy High Court Judge, London

Conflict of law rules

4. *Execution of security rights in cross-border insolvency cases in Europe*
By Professor Michael Veder, Professor of Property Law, University of Utrecht

5. *The treatment of employee claims in insolvency. A comparative overview*
By Professor Janis Sarra, Associate Dean and Professor of Law, University of British Columbia, Vancouver, Canada; Director of the National Centre for Business Law

6. *Building consensus for the creation of conflict of law rules in cross-border insolvency cases*
By Professor Ian Fletcher, Professor of Commercial Law, University College London

Explanation and analysis of the problem
Introduction into current research for the American Law Institute's project "Principles for Cooperation in International Insolvency Cases"

Coordination of insolvency proceedings in cross-border insolvency cases

7. *Then, Now and the Future in coordination of cross-border insolvency cases*
By Professor Paul Omar, University of Sussex

8. *Coordination of cross-border cases, based on cross border communication between courts and the use of Protocols*
[Lecturer to be advised]

9. *Problems of and solutions for cross-border coordination in cross-border insolvency cases in Europe*
[Lecturer to be advised]

Annex IV – Group research

Final Session

10. Discuss group research on *Jurisdiction of the Dutch courts for opening insolvency proceedings* (start April; analysis of some 30 court cases)

Discuss individual papers (2500-3000 words) of topics to be approved

Discuss publication of results

Annex V – Lecturers

Professor Bob Wessels

Professor of International Insolvency Law, Faculty of Law University of Leiden / Department of Business Law

Author (in English) of, amongst other works:

- Business and Bankruptcy Law in the Netherlands; Selected Essays, Kluwer Law International, The Hague-London-Boston, 1999, 268 pp.
- Current Topics in International Insolvency Law, Kluwer Law Publishers, Deventer, 2004, 626 pp.
- International Insolvency Law, Kluwer, The Netherlands, 2nd ed., 2006, 670 pp.
- Cross-Border Insolvency Law. International Instruments and Commentary, Kluwer Law International 2007, XIV + 1042 pp.
- Judicial Coordination of Cross-border Insolvency Cases, Inaugural lecture, University of Leiden Law School, 6 June 2008, Deventer: Kluwer 2008, 47 pp.

Dr Margreet B. De Boer

Lecturer Civil Procedural Law, Faculty of Law University of Leiden / Department of Civil Law

(Co-)author (in English) of, amongst other works:

- The Dominance of Main Insolvency Proceedings under the European Insolvency Regulation, in: Paul Omar (ed.), International Insolvency Law. Themes and Perspectives. Aldershot: Ashgate Publishing Limited, 2008, pp. 185-210.

Guest Lecturers

Professor Ian Fletcher, Professor of Commercial Law, University College London

Author of, amongst other works:

- Cross-Border Insolvency: Comparative Dimensions, The Aberystwyth Insolvency Papers, United Kingdom National Committee of Comparative Law, London 1990.
- Fletcher, I.F. (ed.), Cross-Border Insolvency: National and Comparative Studies. Reports delivered at the XIII International Congress of Comparative Law, Montreal 1990. Tübingen: Mohr 1992.
- The Quest For Global Insolvency Law – A Challenge For Our Time. Inaugural lecture University College London, delivered 24 January 2002, in: Michael Freeman (ed.), 2002 Volume of Current Legal Problems.
- Insolvency in Private International Law. National and International Approaches, Oxford Private International Law Series, Oxford University Press, 2nd ed. 2005.

Professor Peter Mankowski

Faculty of Law / Department for Foreign and International Private Law and Procedural Law, University of Hamburg

Author of, amongst other works:

- *Entwicklungen im Internationalen Privat- und Prozessrecht 2003-2004*, in: RIW 2004, 481 (Teil 1), 587 (Teil 2).

- *Grenzüberschreitender Umzug und das center of main interest im europäischen Internationalen Insolvenzrecht*, in: NZI (Neue Zeitschrift für das Recht der Insolvenz und Sanierung) 2005, 368.

Gabriel Moss, Queen's Counsel and Deputy High Court Judge, London

Author of, amongst other works:

- Moss et al. (2002), *The EC Regulation on Insolvency Proceedings – A Commentary and Annotated Guide*, Oxford University Press, 2002.
- Moss, Gabriel, and Bob Wessels (eds.), *EU Banking and Insurance Insolvency*, Oxford University Press, 2006.

Professor Paul Omar, University of Sussex

Author of, amongst other works:

- *European Insolvency Law*, Ashgate, Aldershot, England, 2004.
- *Four Models for Rescue: Convergence of Divergence in European Insolvency Laws?*, in: 18 *International Corporate and Commercial Law Review* April 2007, 127 (Part I); 171 (Part II).

Professor Janis Sarra, Associate Dean and Professor of Law, University of British Columbia, Vancouver, Canada; Director of the National Centre for Business Law

Author of, amongst other works:

- *Securities Law Claims in Insolvency Proceedings*, INSOL International Technical Series Issue No. 2, September 2007.
- *Widening the Insolvency Lens: The Treatment of Employee Claims*, in: Paul Omar (ed.), *International Insolvency Law. Themes and Perspectives*. Aldershot: Ashgate Publishing Limited, 2008, pp. 195-334.

Professor Michael Veder, Professor of Property Law, University of Utrecht

Author of, amongst other works:

- *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. Nijmegen 2004, in: *Series Law of Business and Finance*, Vol. 8, Kluwer, Legal Publishers, 2004.