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SUMMARY

- The research programme 'Behavioural Approaches to Contract and Tort: Relevance for Policymaking' (BACT) started in 2008.
- Professors Michael Faure and Willem van Boom jointly head the research programme.
- The programme was rated 'excellent' in the Dutch Research Assessment Exercise 2009 (average score 4.75 out of 5.0).

In 2010:

- the programme involved 23 researchers and 21 PhD students (5.25 fte research capacity excluding PhD students);
- four international and multidisciplinary conferences were organised by members of the research team;
- in addition to the appointments of Professor Ogus in 2008 and Professors Buskens, Klick, and Wagner in 2009, in 2010 two new Professors (Heine and Rachlinski) were added to the research team;
- four PhD theses were defended;
- researchers in the programme produced 114 scientific publications, of which 73 publications (64%) were in English, which is an increase compared to 2009, when some 50% of all scientific publications were in English.

1. THE PROGRAMME

'Behavioural Approaches to Contract and Tort: Relevance for Policymaking' is a multidisciplinary research programme at the Erasmus School of Law (Rotterdam, the Netherlands).

People think, decide, and act, and institutions and corporations do so as well, be it in a slightly more complex way. By thinking, deciding, and acting, we display behaviour. In private law, behaviour is relevant in more than one respect.

Sometimes legislatures have preconceived ideas about behaviour and how private parties will respond to legislative intervention. To give one example, a legislature may enact specific legislation, submitting directors of corporations to fault-based liability in the event of insolvency of the corporation, assuming that this will give directors the incentive to take appropriate care in running the corporation's affairs. But will they do so in practice? Are there any behavioural side effects such as overzealous risk avoidance or an increase in directors' salary demands? Likewise, courts may entertain implicit or even explicit conceptions of behaviour. A court may consider that the owner of premises is under a duty of care to warn explicitly against dangers that are not readily noticeable to visitors. Applying such a rule, however, may need consideration regarding how individuals actually think about and perceive danger, and even how they interpret warning signs.

In the research group, we conduct research into the thinking, deciding, and acting of individuals and groups, and into the relationship with private law, notably the areas of contract, tort, property, corporate law, and civil procedure. We concentrate on issues of compliance and enforcement, as well as of individual and group behaviour.

Obviously, the methodology of our research efforts is interdisciplinary by nature. In our research team, we have legal scholars specialising in contracts, torts, property, corporate law, and civil procedure, joined by scholars specialised in Law and Economics, socio-legal studies, empirical legal studies, and psychology.

Within the research programme, there are three main domains of focus:

- a. Individual behaviour in exchanging resources and engaging in harmful activities
- b. Enforcement
- c. Behaviour of aggregations of individuals (group behaviour)

For further information on the programme itself, we refer to our website www.behaviouralapproaches.eu.

2. MAIN POINTS 2010

2.1 The research team and its resources

In 2010, the research team consisted of 23 researchers and 21 PhD students (5.25 fte research capacity excluding PhD students, see also [Chapter 4](#)). We produced 114 scientific publications, of which 73 publications (64%) were in English. We organised four conferences and presented our research on many external occasions. The programme was led by the programme directors, Professors Van Boom and Faure. They were assisted by managing coordinator Dr. Mark Tuil.



In addition to the appointments of Professor Ogus in 2008 and Professors Buskens, Klick and Wagner in 2009, in 2010, we were fortunate to add the distinguished Professors Heine and Rachlinski to our research team.

2.2 Highlighted publications 2010

Within the research programme, there are three main domains of focus:

- [a. Individual behaviour in exchanging resources and engaging in harmful activities](#)
- [b. Enforcement](#)
- [c. Behaviour of aggregations of individuals \(group behaviour\)](#)

In each of these domains, we selected a few publications as being prototypical of the way our research group has developed and of the type of publications we aimed at in 2010.

In the first domain ('individual behaviour'), we selected the following publications as worth highlighting:

- Rense, C. & Buskens, V.W., '[Co-evolution of Conventions and Networks: An Experimental Study](#)', *Social Networks*, 2010 (32), p. 4-15;
- Giard, R.W.M., '[When is the practice of pathology malpractice?](#)', *Journal of Clinical Pathology*, 2010, 63, p. 957-961;
- Heine, K. & Janal, R., 'Suretyships and Consumer Protection in the European Union through the Glasses of Law and Economics', in: Ciachi, A. & Weatherill, St. (Eds.), *Regulating Unfair Banking Practices in Europe*, Oxford: Oxford University Press 2010, p. 5-26;
- Luth, H.A., *Behavioural Economics in Consumer Policy; The Economic Analysis of Standard Terms in Consumer Contracts Revisited*, Mortsel/Antwerp: Intersentia 2010, 342 pp;

- Ogus, A., '[The Paradoxes of Legal Paternalism and How to Resolve Them?](#)', *Legal Studies*, 2010, 30, p. 61-73;
- Vandenberghe, A.S., '[The Role of Information Deficiencies in Contract Enforcement](#)', *Erasmus Law Review*, 3 (1), 2010, p. 71-91.

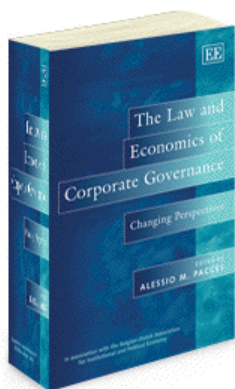
In the second domain ('enforcement'), we selected the following publications as worth highlighting:

- Arcuri, A. & Dari-Mattiacci, G., '[Centralization versus Decentralization as a Risk-Return Trade-Off](#)', *The Journal of Law and Economics*, 2010, 53, p. 359-378;
- Boom, W.H. van, '[Comparative Notes on Injunction and Wrongful Risk-Taking](#)', *Maas-tricht Journal of European and Comparative Law*, 17(1), p. 10-31;
- Karapanou, V. & Visscher, L.T., '[Towards a Better Assessment of Pain and Suffering Damages](#)', *Journal of European Tort Law*, 2010, 1, p. 48-74;
- Wagner, G., '[Legal Origin, Civil Procedure, and the Quality of Contract Enforcement](#)', *Journal of Institutional and Theoretical Economics (JITE)*, 166, p. 171-177.

Finally, in the third domain ('group behaviour'), we selected the following publications as worth highlighting:

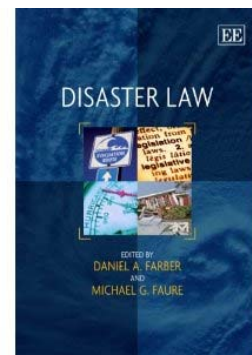
- Keske, S., Renda, A. & Bergh, R.J. Van den, 'Financing and group litigation', in: Tuil, M. and Visscher, L.T. (Eds.), *New Trends in Financing Civil Litigation in Europe: A Legal, Empirical and Economic Analysis*, Cheltenham: Edward Elgar Publishing 2010, p. 57-92;
- Paccès, A.M., '[Consequences of Uncertainty for Regulation: Law and Economics of the Financial Crisis](#)', *European Company and Financial Law Review*, volume 7, issue 4, p. 479-511.

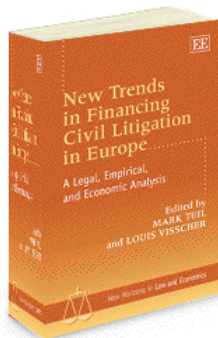
Moreover, in 2010 we published a considerable number of high profile books with international publishers of high repute:



Paccès, A.M. (Ed.), *The Law and Economics of Corporate Governance: Changing Perspectives*, Cheltenham: Edward Elgar Publishing 2010; with contributions by J. Armour, W.J. Carney, A. de Jong, H. Eidenmüller, A. Engert, L. Hornuf, M.J. Kroeze, P.C. Leyens, H.G. Manne, M. Martynova, A.M. Paccès, U. Pagano, R. Pardolesi, L. Renneboog, G.B. Shepherd, J.M. Shepherd, and J. van Oosterhout.

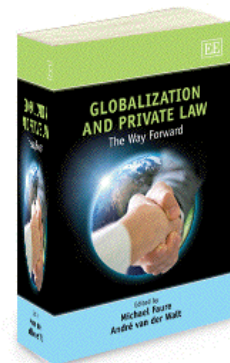
Farber, D.A. & Faure, M.G. (Eds.), *Disaster Law*, Cheltenham: Edward Elgar Publishing 2010; contributors include: M.D. Adler, R.A. Epstein, W. Harrington, O. Houck, L. Kaplow, H. Kunreuther, S. Levmore, S.D. Sugarman, and C.R. Sunstein.





Tuil, M. & Visscher, L. (Eds.), *New Trends In Financing Civil Litigation In Europe – A Legal, Empirical, and Economic Analysis*, Cheltenham: Edward Elgar Publishing 2010; with contributions by Mark Tuil and Louis Visscher, Tom Schepens, Michael Faure, Fokke Fernhout and Niels Philipsen, Sonja Keske, Andrea Renda and Roger Van den Bergh, Willem van Boom, Andrea Pinna, Paul Fenn and Neil Rickman, and Deborah Hensler.

Faure, M.G. & Walt, A. van der (Eds.), *Globalization and Private Law. The Way Forward?*, Cheltenham: Edward Elgar Publishing 2010; with contributions by Jan Smits, Deirdre Curtin, Roger Van den Bergh, Sieg Eiselen, Frits Stroink, Lourens du Plessis, Geo Quinot, Bas Steins Bisschop, Philip Sutherland, Remco van Rhee, Siewert Lindenbergh, Michael Faure, and Jaap Spier.



Faure, M.G., Lixin, H. & Hongjun, S. (Eds.), *Maritime Pollution Liability and Policy. China, Europe and the US*, The Hague: Kluwer Law International 2010, xxxiii + 456 p; Twenty-nine authors – academics, lawyers, and officials of relevant agencies, from China, Europe and the United States – offer thorough analysis of the overt and underlying legal issues with which this difficult matter is fraught.

2.3 Presenting and disseminating our research

Valuable research output deserves dissemination. Hence, we stimulate researchers to present their research both in the draft stage and when the final paper is published. Among the many presentations both in the Netherlands and abroad were the following.

	Speaker	Title	Event
Febr.	M. Faure and J. De Mot	Legal Expenses Insurance as a Public Good	Ghent Centre of Law and Economics, University of Ghent, Belgium
Apr.	W. Hu and M. Faure	Toward a Reform of Environmental Liability in China: an Economic Analysis	International Conference on Institutional Economics at the Shandong University, Jinan, China
May	S. Oded	Enforcement Strategies, Compliance Programs, and the Intermediary Gatekeepers	Annual meeting of the American Law and Economics Association, Princeton University, NJ, USA
	A. Paccos	Uncertainty and the Financial Crisis	Annual Conference of the European Academy of Management in Rome
	C. Garcia Porras	Disclosure as information protection: Is the right information on the label? A functional approach of standardized credit information ('SECCI' and Schumer Box)	Conference 'Teaching Consumer Law in the New Economy', Centre for Consumer Law, University of Houston, Houston, USA, May 21-22
	M. Faure	Effective Penalties in the Implementation of the Environmental Crime and Ship-Source Pollution Directives: Questions and Challenges	Expert's Meeting on Environmental Crime and Ship-Source Pollution, European Commission, Brussels, Belgium
June	K. Heine	Incentive regulation and incentive channelling on energy markets	Annual meeting of the German/Austrian/Swiss Association of Scholars of Business Administration (VHB) in Bremen
	K. Heine and F. Amentbrink	Financial Market Regulatory Reforms and Due Diligence: Lessons from Behavioural Science	5 th International Conference on Financial Regulation and Supervision, Finlawmetrics, Università Bocconi, Milan, Italy, June 24-25
July	F. Weber	Towards an Optimal Mix of Public and Private Enforcement – Contrasting the case studies of 'package travel' and 'misleading advertisement'	5th Annual International Symposium on Economic Theory, Policy and Applications in Athens, Greece, July 26-29

	V. Buskens	Coordination and Cooperation Problems in Network Good Production	INSNA Sunbelt XXX Social Network Conference, Riva del Garda, Italy, July 4
Sept.	K. Heine and M. Faure	Can European State Aid Control Learn from the Management of Disastrous Crises?	Annual meeting of the Council on Economic Systems and Institutional Economics of the <i>Verein fuer Socialpolitik</i> at the University of Hamburg, Germany, September 5-7
	M. Faure and J. De Mot	Legal Expenses Insurance As A Public Good	27th EALE Conference, University Paris 2 Panthéon Assas, France, September 23-25
	M. Faure and R. Dijkstra	Compensation For Victims of Bankrupted Financial Institutions: A Law and Economic Analysis	27th EALE Conference, University Paris 2 Panthéon Assas, France, September 23-25
	M. Faure and W. Hu	Towards a Reform Of Environmental Liability in China: An Economic Analysis	27th EALE Conference, University Paris 2 Panthéon Assas, France, September 23-25
	A. Paccès	Causes and Consequences of the Financial Crisis in the Perspective of Uncertainty	Conference 'Corporate Governance and the Global Financial Crisis' at Wharton School – University of Pennsylvania
Oct.	V. Karapanou and L. Visscher	Quality Adjusted Life Years as a Way out of the Impasse between Prevention Theory and Insurance Theory	Midwest Law & Economics Association (MLEA) 10th Annual Meeting, University of Colorado Law School, USA, October 8 – 9
	W. van Boom	Injunctions in tort law	Research seminar at York University School of Law (UK)
	W. van Boom	The role and nature of injunction in tort law – a comparative legal analysis	Edinburgh Centre for Private Law, University of Edinburgh School of Law
	K. Heine	Internationalisierung von Standards zwischen Wettbewerb und Monopolisierung	Conference 'Internationalisierung von Standards', Augsburg Center for Global Economic Law and Regulation (ACELR), University of Augsburg, Germany, October 29-30
Nov.	A. Paccès	Financial Crisis: Causes, Consequences, Reform	Goethe University of Frankfurt, Institute for Monetary and Financial Stability
	F. Weber	Assessing existing enforcement mechanisms in consumer law – need for a hybrid design?	Empowering the European Consumer in Old and New Markets: the Place for EU Law?, The Swedish Network for European Studies, Stockholm, November 11-12

	L. Visscher	The Law and Economics of Punitive Damages in Tort Law	Ius Commune Conference in Louvain, Belgium
	W. van Boom	Private Losses in European Competition Law: Public or Private Enforcement?	Round Table Conference 'Compensation of Private Losses – The Evolution of Torts in the European Business Law' Centre for European Private Law, Münster, Germany, November 25-26
Dec.	V. Karapanou and L. Visscher	Quality Adjusted Life Years as a Way out of the Impasse between Prevention Theory and Insurance Theory	Annual Conference of the German Law and Economics Association, Wiesbaden, Germany
	V. Karapanou and L. Visscher	Quality Adjusted Life Years as a Way out of the Impasse between Prevention Theory and Insurance Theory	Annual Meeting of the Italian Society of Law and Economics, Bolzano, Italy
	F. Weber	European Integration assessed in the light of the rules vs. standards debate	Amsterdam Doctoral Master class, Regulatory Cosmopolitanism, Tilburg Institute For Law, Technology and Society (TILT), December 8

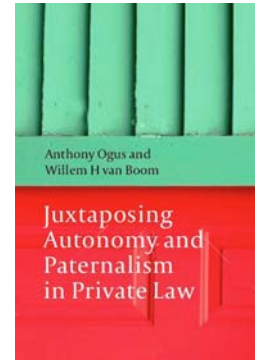
2.4 Conferences and seminars

In 2010, four notable conferences were organised by our group.

Juxtaposing Autonomy and Paternalism in Private Law

On February 26, the conference 'Juxtaposing Autonomy and Paternalism in Private Law' took place at the ESL, organised together with the Erasmus Law Review. For the spring 2010 issue of the Erasmus Law Review, it was intended to collect the papers presented and discussed at this seminar. The aim was to bring together a number of outstanding papers on the 'autonomy vs. paternalism' debate. Obviously, the issue is not the final word on the 'autonomy vs. paternalism' debate. What we hope, however, is that it added to the discussion, thus creating new insights into the private law systems of Europe.

Presentations were held by Gerhard Wagner (Bonn/Rotterdam, 'Mandatory Contract Law'); Simon Deakin (Cambridge, 'Contracts and Capabilities: An Evolutionary Perspective on the Autonomy-Paternalism'); Daniel Schwarcz (Minnesota, 'Paternalism and Emotion in Insurance Markets'); Nick Huls (Rotterdam, 'Paternalism and autonomy in the regulation of consumer credit contracts and bankruptcy'); Oren Bar-Gill (New York, 'Informing Consumers About Themselves'); Ann-Sophie VandenBerghe (Rotterdam, 'Requiring evidence of true consent: paternalism without choice restriction'); Laurens Winkel (Rotterdam, 'Forms of imposed legal protection in legal history, especially in Roman law'); and Stephen Waddams (Toronto, 'Autonomy and paternalism from a common law perspective'). With their introductory and closing remarks, Willem van Boom and Anthony Ogus, respectively, opened and closed the conference.



Party Autonomy in Property Law

Initiated and organised by Roel Westrik, together with Jeroen van der Weide (Leiden School of Law), the conference 'Party Autonomy in Property Law' was held at the ESL on May 27 and 28. Splendid lectures by prominent speakers, a mainly specialised audience, a friendly and international atmosphere (no fewer than 22 universities throughout Europe and even Japan and Africa were represented) and a subject that is known to be highly controversial, resulted in inspired and animated discussions. The conference met its objective perfectly: to analyse and comment on the question of whether party autonomy or, more specifically, a choice of law possibility in matters of Property Law should be recommended or required.



whether party autonomy or, more specifically, a choice of law possibility in matters of Property Law should be recommended or required.

At the conference, four central themes were dealt with:

1. General aspects of party autonomy, as seen from the perspective of Continental Law as well as of Common Law;
2. Private International (Property) Law;
3. Developments and prospects in Europe and in European Law Projects (e.g. European conflict rules for property law?);

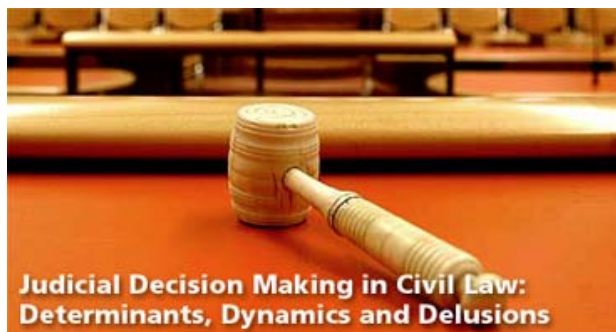
4. Assignment in Private International Law, Financial Instruments/the Collateral Directive; Insolvency Law.

Within the BACT research programme, the tension between harmonisation of conflict rules and choice of law possibilities draws immediate attention. Is or should party autonomy be allowed in international property law? What causes the actual need for party autonomy in the area of property law, an area that traditionally is dominated by the *lex situs*, being a rule that is deeply established in the private law of countries? Why is it that parties involved in international trade have developed a need to choose, by themselves, the law that is applicable to their transaction? What happened or is happening – apparently – to the traditional private law of countries? What, in short, causes this change in legal behaviour? And what will be the effects of allowing party autonomy?

Speakers at the conference included:

- Prof. U. Drobnig, Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg
- Prof. A. Flessner, Humboldt-Universität, Berlin
- P.M.M. van der Grinten LL.M., Ministry of Justice, The Hague
- Prof. J. von Hein, Universität Trier
- Prof. V. Sagaert, Katholieke Universiteit Leuven
- Prof. R. Stevens, University College London
- Prof. T.H.D. Struycken, University of Utrecht
- Prof. P.M. Veder, University of Utrecht
- Prof. H.L.E. Verhagen, Radboud University Nijmegen
- Dr. J.A. van der Weide, Leiden Law School
- Dr. R.M. Wibier, University of Tilburg

Judicial Decision Making in Civil Law: Determinants, Dynamics and Delusions



On November 9, 2010, Raimond Giard organised the seminar 'Judicial Decision Making in Civil Law: Determinants, Dynamics and Delusions' on the occasion of the inaugural lecture by Jeffrey Rachlinski, Erasmus Chair of Empirical Legal Studies. Speakers included Ivo Giesen (Utrecht; 'Attribution, causation and prevention'); Jan Smits (Maastricht; 'The judge between facts and norms: on the psychology of norm selection'); Femke ten Velden and Carsten de Dreu (University of Amsterdam; 'Judicial Judgement and Decision Making: A motivated information processing in groups perspective'); and Raimond Giard (Rotterdam; 'Facts, framing and fallacies in tort negligence').

Judicial Decision Making in Civil Law: Determinants, Dynamics and Delusions

The concluding phase of a legal procedure is when the judge decides on the case, the verdict. The starting point of this process however occurred long before: a surprising negative experience on the part of the claimant, the perception of an unwanted outcome allegedly as a result of someone's wrongdoing. Not only did this elicit emotions like frustration and disappointment, but it also gave rise to questions such as who or what was to be blamed, what caused this negative outcome, and how might damages have been prevented or minimised? This interplay of cognition and emotions characterises the beginning of the conflict. The issue must now be resolved in the legal arena.

How and when resolution of this dispute takes place will depend on many factors. The first step is of course for the victim to take action. Only a small minority of civil disputes eventually come to court, as most of them are settled beforehand. Since the judge will see a highly selective range of cases, the issues that led to such a special group of litigants will influence his or her ruling. These matters may involve when, why, and how the decision was made to go to court, and how it evolved. In what way does the claimants' lawyer present the case? What does this litigation signify for those who are directly involved and whose lives may subsequently be changed drastically by the outcome? What specific roles do the individual different legal professionals play in this drama, and how do all these players interact? The answer to such questions should be of great interest to anyone involved in the law, both academically and professionally, because these answers eventually pertain to the final judicial ruling.

There are two essentially different positions: the perspective of the litigants, and that of the legal professionals. It is essential to recognise that for litigants, the reality of their disputes consist solely of their subjective experiences and appreciations. Although the dispute may appear to be about money, compensatory claims frequently have undisclosed aims. However, once in contact with lawyers, the claimants often have to change what they expect and aim for: the legal system redefines their perceptions and positions. Ultimately, 'Law is not what judges say in the reports but what lawyers say, to one another and to clients, in their offices' (Shapiro).

As has just been depicted, the investigation of how civil disputes are solved calls for an empirical research project on the determinants of human behaviour within the legal context. However, we want more than just descriptive data. We wish to understand the observed conduct, and must therefore study the mind and the behaviour of people in relation to their negative experiences, the birth of conflicts, the confrontation with lawyers, and the dynamics of problem solving, including legal fact finding and decision making. These topics belong to the realm of psychology.

Since the law is a normative endeavour, we ask not only for descriptive but also for prescriptive conclusions from psychological research. This implies not only asking how judges decide but also trying to find an appropriate answer to the question of how they should decide. A central theme is the observation that the most significant psychological difference between individuals who were involved in events leading up to a mishap and those who are called upon to investigate it after it has occurred is knowledge of the outcome. Hence, there is a real risk of outcome bias. What corrective procedures will we need?

From the general psychological point of view, for practical purposes, we ought to narrow our observations regarding the above matters down to two aspects. First, on a group level, the research on the interactions between all persons involved the perspective of social psychology. Examples are interactions between claimant and plaintiff, client and lawyer, and between judges in group decision making. Second, on an individual level, the fundamental processes involved such as perception, thinking, argumentation and deciding etc. the perspective of cognitive psychology. How can we value the beliefs of parties, experts, lawyers, and judges?

In this seminar on determinants, dynamics, and delusions of judicial decision making, we will discuss some of these matters with the following question in mind. If judicial decision making is the culminating point of the legal procedure – and not a process undertaken in isolation but the final phase in a multi-step process – how is this judgment influenced by these consecutive steps? The seminar is a search for answers to the simple question as to how judges decide.

Empirical and Interdisciplinary Behavioural Approaches to Legal Issues

On November 11, preceding the inaugural lecture by Professor Buskens, a workshop entitled 'Empirical and Interdisciplinary Behavioural Approaches to Legal Issues' was held.



Although economic, sociological, or psychological theories can help to derive theoretical predictions about the effectiveness and efficiency of certain regulations, as long as empirical evidence for the theory is lacking, it would be premature to act on such a theory. Some of the empirical tools that can be used to obtain such empirical evidence are demonstrated in this seminar. Experimental evidence can shed more light on the causal mechanisms that link changing rules to outcomes such as satisfaction of actors. In the first talk, Kirsten Rohde (associate Professor of Behavioural Economics, Erasmus School of Economics) provided

evidence on how procedural justice affects the extent to which actors value equality in outcomes. Surveys can be used to obtain opinions of a large number of people on a specific topic. Ferry Koster (associate Professor, Department of Sociology, Erasmus University Rotterdam) illustrated the use of surveys. From a large-scale European study, he presented results that help to understand the opinions European citizens have about new formal institutions in Europe. Finally, Jeffrey Rachlinski (Erasmus School of Law, Cornell Law School) showed how judicial decision making can depend on subtle changes in the context of a legal case by letting judges evaluate hypothetical descriptions of parts of a legal case. Although we all realise that we do not need Thomas Hobbes' Leviathan determining every human decision to live peacefully together, we also know that if we leave everything to Adam Smith's invisible hand, not all human decisions will be optimal. In this workshop, we hoped to show insights into how legal scholars using interdisciplinary insights and different empirical tools could contribute to a more effective use of rules and regulations.

2.5 Research seminars

Our research seminars mainly involve staff of the Erasmus School of Law. We encourage researchers to present their draft papers there, and we also invite distinguished scholars from other faculties to hold a presentation at the seminars. In 2010, the following speakers held a seminar with our group:

Date	Speaker(s)	Topic/title
January 29	Katarina Svatikova	Criminal or Administrative Law to protect the environment? Evidence from Western Europe
March 26	Hanneke Luth	Behavioural Economics in Consumer Policy – The Economic Analysis of Standard Terms in Consumer Contracts Revisited
May 28	Anthony Ogus	The Regulation of Notaries: what social value in probative testimony?
June 25	Nick Huls	Individual and collective efficiency in debt enforcement and debt advice
September 3	Julie De Coninck (KU Leuven) and Bart Du Laing (Ghent University)	Comparative Law, Behavioural Economics and Contemporary Evolutionary Functionalism
October 22	Hui Wang	Oil pollution and limited liability
December 10	Franziska Weber	Package Travel vs. Misleading Advertisement – optimal enforcement scenarios

2.6 EDLE

The Rotterdam Institute of Law and Economics (RILE), whose researchers are involved in our programme, participates in the PhD programme ‘*European Doctorate in Law and Economics*’ (EDLE). EDLE is the academic response to the increasing importance of the economic analysis of law in Europe. The programme is offered by the Universities of Bologna, Hamburg, and Rotterdam (RILE) in association with the Indira Gandhi Institute of Development Research, Mumbai (India). PhD students receive the unique opportunity to study Law and Economics in three different countries. The programme prepares economists and lawyers of high promise for an academic career in a research field of growing importance or for responsible positions in government, research organisations, and international consulting firms. The European Commission sponsors the EDLE as an excellence programme under the prestigious Erasmus Mundus scheme. Professor Faure is the Managing Director of the programme.

In spring and autumn 2010, the following EDLE-seminars took place:

Date	Speaker(s)	Topic/title
January 15	Olga Skripova	Chapter of research project ‘Economic Effects of Imposing Liability on Underwriters’
January 21	Vania Karapanou	Chapter of research project ‘A Law and Economics Analysis of Damages for Non-Pecuniary Losses in Cases of Personal Injuries and Fatal Accidents’
January 28	Prof. Jonathan Klick	Guest lecture ‘The Effect of Abortion Liberalization on Sexual Behaviour: International Evidence’
February 4	Meltem Bayramli	Chapter of research project ‘Strategic Patenting: Incentives for Patent Accumulation’
February 18	Malgorzata Sadowska	Chapter of research project ‘Regulatory Antitrust – The Use and Abuse of Competition Rules in the Energy Sector’
February 25	Alejandra Martinez	Chapter of research project ‘The Impact of Firms’ Corporate Social Responsibility Measures on its Environmental Performance’
March 4	Weiqliang Hu	Chapter of research project ‘Regulatory Compliance (Permit) Defense’
March 11 + 12	Joint seminar (Rotterdam, Maastricht, and Paris)	The Future of Law and Economics

Date	Speaker(s)	Topic/title
Oct 21	Hila Nevo	Guest Lecture 'The Laws of Monopoly – Do Legal and Economic Analyses Coincide?'
Oct 28	Jonathan Klick	Guest Lecture 'The Effect of Contract Regulation: The Case of Franchising'
Nov 4	Claudio Tagliapietra	Introduction to research project 'Legal Institutions and the Economic Governance of the Commons: A case study in Italy 1200-1800'
Nov 18	Elena Fagotto	Introduction to Research Project 'Innovations in Food Safety Regulatory Regimes'
Nov 25	Nathan Betancourt (RSM)	Guest Lecture 'Fitting in by standing out: The Impact of Category Spanning and Status on Inter-firm Mobility among International Laws firms in Hongkong 1998-2008'
Dec 2	Deniz Akun	Introduction to Research Project 'Changing Structure of Banking Industry and Regulatory Issues'
Dec 9	Çiçek Gürkan	Introduction to Research Project 'The Role of Banks for Corporate Governance'
Dec 16	Alessio Paccès	Guest Lecture 'Law and Economics of the Financial Crisis'



An initiative of EDLE is the series '*European Studies in Law and Economics*', published with Intersentia. The series is devoted to further the understanding of Law and Economics in Europe. The volumes published in this series are all subject to peer review, and present an interdisciplinary perspective on the effects of laws on people's behaviour and on the economic system. The comprehensive topics address a wide audience, including policy makers, legislators, economists, lawyers and judges.

The editorial board of the series consists of Professor Michael Faure, Professor Luigi A. Franzoni (University of Bologna), and Junior Professor Patrick C. Leyens (University of Hamburg).

2.7 PhD defences

In 2010, there were four PhD defence ceremonies in our research group.

Claudia Desogus (EDLE), May 7 – 'Competition and Innovation in the EU Regulation of Pharmaceuticals: The Case of Parallel Trade' (supervisors: Prof. M.G. Faure, Prof. R.J. Van den Bergh and Prof. M. Lamandini).

Hanneke Luth (EDLE), May 27 – 'Behavioural Economics in consumer policy – The economic analysis of standard terms in consumer contracts revisited' (supervisors: Prof. M.G. Faure en Prof. R.J. Van den Bergh).

Rosa Castro Bernieri (EDLE), September 17 – 'Ex post Liability Rules in Modern Patent Law' (supervisors: Prof. R.J. Van den Bergh (substituted by Prof. M.G. Faure) and Prof. M. Lamandini).

Stefano Clò (EDLE), September 17 – 'Economic Analysis of the European Climate Policy: the European Emissions Trading Scheme' (supervisors: Prof. M.G. Faure and Prof. V. Denicolò).

Claudia Desogus – 'Competition and Innovation in the EU Regulation of Pharmaceuticals: The Case of Parallel Trade'

This book deals with parallel trade of pharmaceuticals from a Law & Economics perspective. Traditionally, restrictions to parallel trade were regarded negatively because they ran against the rules of the EU internal market. However, in recent judgments (*Bayer*, *Glaxo* and *Syfait*), EU Courts questioned some of the legal principles underpinning the EU policy on parallel trade in the field of pharmaceuticals. This *revirement* suggested there might be scope for an improvement in such a policy. However, how and to what extent this change should be performed remained partially unclear. Through the analysis of the impact that parallel trade of pharmaceuticals has on consumer welfare, both in a static and in a dynamic sense, this work examines whether the current legal approach to parallel trade of pharmaceuticals reflects the findings of economic theory, whether it should change, and, if so, on what basis this adjustment should take place. The analysis does not only provide a policy assessment, but also aims to offer insights into one of the issues debated within the process of modernisation of EU competition law: namely, how judges should integrate economic reasoning in the antitrust assessment of corporate practices. This book is particularly useful both for practitioners and legal scholars who want to deepen their understanding of the EU pharmaceutical market and of the most recent EU judicial developments in that field, as well as of their implications for EU competition law in a 'modernised' context.

Hanneke Luth – 'Behavioural Economics in Consumer Policy: The Economic Analysis of Standard Terms in Consumer Contracts Revisited'

One of the main questions pertaining to policy interventions in current consumer policy concerns what to do with behavioural insights. This research aims to answer that question, presenting a systematic research method for assessing policy questions from an economic and a behave

journal economic perspective. Policy makers, practitioners, and academics alike can draw relevant insights from the application of behavioural economics to policy. By focusing upon the issue of standardised consumer contract terms, this research exemplifies how behavioural insights can improve consumer policy. The common core in European legal systems regarding standard terms in consumer policies is reviewed, which leads to the conclusion that policy makers should look beyond information disclosure and consumer vigilance. This shift in policy focus constitutes an insight that would not have resulted but for the application of behavioural an insights to the issue of standard terms in consumer contracts.

Rosa Castro Bernieri – ‘Ex post Liability Rules in Modern Patent Law’

This book examines alternative ways of protecting patent rights using the Law and Economics framework of property and liability rules. Traditional compulsory licenses are compared with the most recent discussions on the choice between granting or denying injunctive relief for patents (ex post liability rules). The debate about strategic behaviour triggered by the patent system, especially in the aftermath of the U.S. Supreme Court decision in *eBay v. MercExchange*, is discussed along with policy perspectives on both sides of the Atlantic. The problem of calculating the level of compensation, which is one of the most important critiques against the use of liability rules in patent law, is also examined in depth. The book concludes by suggesting that a coherent patent system could opt for property rules in general cases, while leaving enough space for exceptions and limited liability rules. Curtailing exceptions and limitations to patent rights, including the use of patent liability rules, could otherwise risk stifling innovation and even contradicting the goals of patent law.

Stefano Clò – ‘Economic Analysis of the European Climate Policy: The European Emissions Trading Scheme’

The European political will to move towards a low-carbon economy has favoured the institution of the European Emissions Trading Scheme (‘ETS’): a cap and trade system aimed at facilitating the Kyoto target achievement in a cost-effective way by promoting efficient emissions reduction on behalf of the biggest European polluters in the energy and industrial sectors. Thanks to the ETS, CO₂ emissions have been priced for the first time. This is the first practical and international attempt to internalise the negative externality that is at the core of global warming — a crucial step required to mitigate climate change. Such an attempt constitutes a milestone within the European climate policy. Without denying the importance of such a result, this thesis has analysed the legal framework of the ETS and its economic performance in order to verify how effective this mechanism is in promoting emissions abatement, and to determine how much the European Member States effectively rely on this instrument to comply with their emissions reduction targets. Being the first experiment of a cap and trade system in Europe, it was plausible to expect that some shortcomings would have emerged within the ETS, and that its performance could have been improved by correcting the underlying legislation. This thesis first focuses on the ETS cap-setting procedure and on the rule adopted to assign allowances among the regulated sectors designed by the first ETS Directive 2003/87. It then analyses how these variables were reformed by the second ETS Directive 2009/29 amending the first one. In this analysis, the Kyoto emissions reduction target has been taken as given; thus, by questioning the effectiveness of the European Union ETS to reach a given target, no attempt has been made to infer any conclusions about the Kyoto Protocol.

2.8 Inaugural lectures



October 26 – Professor Jonathan Klick:

‘The Empirical Revolution in Law and Economics’

This lecture by Professor Klick as Erasmus Chair of Empirical Legal Studies, described the movement of Law and Economics from an almost exclusively theoretical and intuitive field of research to a predominantly empirical one. This movement is documented with descriptive data from the journals that focus on Law and Economics. Professor Klick then discussed possible reasons for the trend, and speculated as to whether it will continue and, more important, how empirical work is likely to change in the future. Along the way, he offered thoughts on various issues, such as why the empirical movement has not yet caught on in European Law and Economics, how empirical Law and Economics differs from the related empirical legal studies movement, and why the most prominent literature in empirical Law and Economics – that on legal origins/law and finance – actually represents bad law and bad

econometrics.

November 9 – Professor Jeffrey Rachlinski

‘Inside the Judicial Mind: How Judges Make Decisions’

On November 9, 2010, Jeffrey J. Rachlinski held his inaugural lecture as Erasmus Chair of Empirical Legal Studies. Under the title *‘Inside the Judicial Mind: How Judges Make Decisions’*, Rachlinski asked whether judges apply law to facts in a mechanical and deliberative way, as the formalists suggest they do, or rely instead on hunches and gut feelings, as the realists maintain. Debate has raged for decades, but researchers have offered little hard evidence in support of either model. Using empirical studies of judicial reasoning, Rachlinski demonstrated that judges respond to cases both with intuition and deductive reasoning. Taking into consideration both intuition and deliberation provides a more accurate account of judicial behaviour than do models that advance one or the other process as the sole determinant of judicial decision making. The model also suggests that an excessive reliance on intuition is a common source of judicial error.



November 11 – Professor Vincent Buskens

'Formal and informal institutions to handle trust relations'

On November 11, 2010, Vincent Buskens held his inaugural lecture as Erasmus Chair of Empirical Legal Studies. Under the title 'Formal and informal institutions to handle trust relations', Buskens argued the case for interdisciplinary and empirical legal research 'between Hobbes' Leviathan and Smith's Invisible Hand'. We lend money to a friend or an expensive tool to a neighbour without bothering to write down explicitly when we expect the money or tool to be returned. When we ask a gardener to remodel our garden, we require an explicit contract detailing the costs for different parts of the job. And if we buy or sell a house, a very detailed contract and a notary are involved to make sure that the deal runs according to the relevant rules and regulations. All three situations refer to trust



situations, but they are managed with very different informal or formal institutions. One important question concerns why these different trust problems or transactions are managed in different ways. Apparently, we more easily trust that a neighbour will not act as opportunistically towards us as a gardener might. A second question regards whether the arrangements chosen are efficient. Further questions include: Are there transactions in which contracting is more or less extensive than necessary to discipline actors in the related trust problems? Is the explicit involvement of the government in certain transactions necessary and sufficient?

Buskens argued that the answers to these questions are not straightforward and depend on many aspects of the transaction. Research on trust problems has shown that the need for contracts and regulations depends on social, economic, and legal aspects of the transaction. Using this past research, he then illustrated some of the main determinants of trust in transactions and how this affects the need for contracting and regulation. In addition, he showed how complementary empirical research designs expand our knowledge as to how transactions can be handled efficiently. Based on these research examples for trust situations, Buskens demonstrated why legal scholars need to incorporate an interdisciplinary approach to understand the effects of changes in regulation. In addition, he provided a menu of empirical methods to obtain empirical evidence for theoretically derived relations between the regulation and the efficiency of transactions.

2.9 Miscellaneous

The Power of Injunctive Relief in Tort

Following the successful seminar at the Maastricht 2009 Ius Commune Conference, Willem van Boom, Ivo Giesen (Utrecht) and Anthony Ogus jointly edited [a special issue](#) of the Maastricht Journal of European and Comparative Law (Vol. 17/1, 2010) on injunctive relief in tort.

Contributions to the issue include 'Comparative Notes on Injunction and Wrongful Risk-Taking' (Willem van Boom); 'A Law and Economics Perspective on Injunctive Relief' (Anthony Ogus and Louis Visscher); 'Enforcing the Right to Property Properly' (Siewert D. Lindenberg); and 'Injunctions at the Request of Third Parties in EU Competition Law' (Caroline Cauffman).

Research project Personal Injury and Insurers Claims settlement practice

Michael Faure, Willem van Boom and Arjan Loonstra (Q-Consult consultancy) were commissioned to advise the Dutch Insurers' Personal Injury Institute on the efficient settlement of p.i. claims (PIV; the Hague).

Winterlezing (Winter Lecture) – February 5

In 2010, Professors Willem van Boom and Siewert Lindenberg jointly held the Annual Faculty 'Winterlezing' (Winter Lecture). The theme of the lecture was the ongoing saga of the Dutch stock lease purchase products. These retail investment products, marketed from the mid 1990s, brought investment in stock within reach of impecunious consumers by offering them a combined loan and stock lease agreement. With the economic downturn in the early 2000s, however, the inherent risks relating to these products came to light. At the moment of sale, information on these risks was either withheld, downplayed, or communicated in ambiguous terms. Thousands of consumers complained, filed claims, and clogged the Dutch court system. This was a proper challenge to both civil procedure and the dogmatic paradigms of contract law. Both consumers and the main providers of these products were finally offered a convenient way out by means of a mass claim settlement mechanism sustained by the 2005 Dutch Act on Collective Claims Settlement. Individual cases in which consumers opted out of this settlement continued to go to court. Recent Supreme Court decisions shed new light on the extent of bankers' duties to inform and on the individual autonomy and accountability of consumers.



In their lecture, Van Boom and Lindenberg heralded the developments away from classical dogmatism and towards efficient claims settlement. They also warned against the unbalanced pursuit of 'closure' at the expense of a careful weighing of all interests involved.

3. OUTLOOK FOR 2011

The outstanding results of the Dutch Research Assessment Exercise 2009 (in which all research programmes undertaken in Dutch law schools are assessed; see also [Chapter 5](#)) are rewarding, and indeed challenge us to pursue our research programme even further. What we strive for in 2011 is essentially as follows:

- We expect to organise a number of academic gatherings both for the benefit of our own BACT researchers and for a broader audience:
 - We will organise BACT seminars for researchers to present papers at their early stage of fruition;
 - On the occasion of the farewell lecture of Professor Ogus, we will hold a seminar on 'comparative legal culture' (May 20, 2011);
 - Professor Van Boom will co-organise the 1st Dutch Conference on Civilology (Rotterdam, June 24, 2011) together with Utrecht University and the WODC (Ministry of Justice Research and Documentation Centre).
- We aim to increase further the number of peer-reviewed international publications in high profile (legal) journals.
- We aim at to strengthen the empirical research methods applied in the research programme, both by undertaking specific empirical research and building cooperation with other key players in this area, and by training our staff further.
- We aim to publish a number of books, including:
 - 'Mass Justice: Challenges of Representation and Distribution' (Jenny Steele & Willem van Boom (Eds.); Edward Elgar Publishing 2011);
 - 'Juxtaposing Autonomy and Paternalism in Private Law' (Anthony Ogus & Willem van Boom (Eds.); Hart Publishing 2011);
 - 'Inside the Judicial Mind: How Judges Make Decisions' (Raimond Giard (Ed.); Eleven International Publishing 2011);
 - A comparative study on 'non-competition clauses and employment law in the EU' (Ruben Houweling & Cees Loonstra; Eleven International Publishing 2011);
 - 'Liability for climate Change Damage' (Michael Faure & Marjan Peeters (Eds.); Edward Elgar Publishing 2011);
 - 'Competition and Regulation in China, Europe and the US' (Michael Faure & Zhang Xinzhu (Eds.); Edward Elgar Publishing 2011);
 - 'Legal Origins' (Michael Faure & Jan Smits (Eds.); Intersentia Publishing 2011);
 - 'Regulation and Economics', edited volume by Alessio Pacces in the second edition of the Encyclopaedia of Law and Economics, Edward Elgar Publishing 2011.

4. THE RESEARCH TEAM AND HOW IT HAS DEVELOPED

4.1 Current researchers

In 2010, the research team consisted of the following members:

	Available research time
Full Professor	
Prof. M.G. Faure	0.20
Prof. W.H. van Boom	0.40
Prof. R.J. Van den Bergh	0.40
Prof. S.D. Lindenbergh	0.40
Prof. N.J.H. Huls	0.32
Prof. J. Klick	0.08
Prof. C.J. Loonstra	0.16
Prof. A.I. Ogus	0.08
Prof. V.W. Buskens	0.08
Prof. G. Wagner	0.08
Prof. K.H. Heine	0.40
Prof. J. Rachlinski	0.08
Associate Professor	
Dr. A. Arcuri	0.20
Dr. L.T. Visscher	0.32
Dr. R. Westrik	0.08
Dr. A. M. Paccès	0.40
Dr. R.W.M. Giard	0.08
Dr. A.R. Houweling	0.40
Assistant Professor	
Dr. P.D.N. Camesasca	0.08
Dr. J.H. Even	0.13
Dr. M.L. Tuil	0.40
Dr. A.M.I.B. Vandenberghe	0.40
Dr. G.W. van der Voet	0.08

PhD students	Topic/Title
W. Dijkshoorn	The concept of damage in public and private law
E. Fagotto (EDLE)	Risk and Food: Rethinking food regulatory regimes in Europe
C.I. Garcia Porras	What European consumer law should learn from consumer psychology
K. Grabovets (EDLE)	Tort Law and Organisational Design
P. Hanke (EDLE) (Erasmus Mundus)	Law and Economics of State Aid
B.D. Hengstmengel (until 1/6/2010)	Procedural fairness
W. Hu (EDLE)	Regulatory compliance (permit) defense
V. Karapanou (EDLE)	A Law and Economic analysis of damages for nonpecuniary losses in cases of personal injuries and fatal accidents
M. van Kogelenberg	The right to performance in comparative and economic perspective
P. Kruit	Specialisation in adjudication in labour disputes
C. Leger (EDLE) (Erasmus Mundus)	Securities Regulation – Comparative European Policies
H.A. Luth (EDLE) (until 15/2/2010, PhD defence held on May 27, 2010)	Efficiency and fairness of the regulation of unfair terms in consumer contracts
N. Meir (EDLE) (until 1/6/2010)	The impact of behavioural Law and Economics on accident law
S. Mittlaender Leme de Souza (EDLE)	Why Do People Follow the Law, Especially the Private Law? Towards a brain-based model of law abiding decisions and behaviour
H. Nabilou (EDLE) (Erasmus Mundus)	Market Failure and Systemic Risk Regulation in Financial Markets: A Game Theory Perspective
S. Oded (EDLE)	Internal enforcement as a welfare-enhancing enforcement measure

S.B. Pape	Effective product safety warnings: The interaction between law and psychology
E. van der Schee	Preventive effects of (employers') liability; an empirical approach
V. Singh Chahar (EDLE) (Erasmus Mundus)	Addressing Agency Problems in Constitutional Law Using Insights from Corporate Governance
K. Svatikova (EDLE) (Until 1/10/2010, PhD defence held on April 15, 2011)	Economic criteria for criminalization: Why do we use criminal law?
F. Weber (EDLE)	Towards an optimal mix of public and private enforcement in consumer law

Other EDLE PhD students	Topic/Title
D. Akun	Changing Structure of Banking Industry and Regulatory Issues
S. Amaral Garcia	Damages in Medical Malpractice Cases
B. Assi	Regulation of Conflicts of Interests in the Provision of Investment Services
M. Bayramli	Strategic Patenting: Accumulation of Patents and Impacts
R. Castro Bernieri (PhD defence 17-9-2010)	Ex-Post Liability Rules in Modern Patent Law
F. Bilgel	The Law and Economics of Organ Procurement
P. Bertoli	Competitive Analysis of the Allocative Mechanisms of the Medical Malpractice Risk in the Italian Public Health System
S. Clò (PhD defence 17-9-2010)	Economic Analysis of the European Climate Policy: the European Emissions Trading Scheme
C. Desogus (PhD defence: 7-5-2010)	Competition and Innovation in the EU Regulation of Pharmaceuticals: The Case of Parallel Trade
L. Escresa Guillermo	Extrinsic and Intrinsic Motivation: The Shifting Map of Legal Remedies

F. Fagan	Temporary versus Permanent Legislation
C. Gurkan	The Role of Banks for Corporate Governance
H. Jabotinsky	The Structure of Financial Supervision: Consolidation or Competition for Financial Regulators?
D. Krsmanovic	Law and Economics of Corporate Lobbying
J. Ma	A Comparative Perspective on Merger Policies of Antitrust Law
A. Martinez Gandara	The Impact of Firms' Corporate Social Responsibility Measures on its Environmental Performance
M. Marzetti	The Elusive Rationale of Trade Mark Dilution
V. Ostrovskis	Multilateral Trading Facilities and Their Impact on European Financial Markets
P. Peng	Essays on Loyalty Rebates and Exclusive Dealing
S. Rajput	Maximum Retail Price – Analyzing its anti-competitive effects
T. Ramos Erickson	Legal/Political Institutions & Urban Poverty
A. Renda	Law and Economics in the RIA World
M. Sadowska	Regulatory Antitrust - The Use and Abuse of Competition Rules in the Energy Sector
O. Skripova	Economic Effects of Imposing Liability on Underwriters
C. Tagliapietra	Legal Institutions and the Economic Governance of the Commons: A case study in Italy 1200-1800
A. Vasa	Legal and Economic Efficiency of Contracts in the Carbon Markets
F. Wesselhoeft	Multiparty Contracts & Non Recourse Finance (Project Finance) Law and Economics

4.2 Professorial appointments in 2010

In addition to the appointments of Professor Ogus in 2008 and Professors Buskens, Klick, and Wagner in 2009, in 2010, we were fortunate to add the distinguished Professors Heine and Rachlinski to our research team.

All appointments will provide an invaluable asset to help us accomplish the comparative, empirical, and multidisciplinary aspirations of Erasmus School of Law research.

Klaus Heine



In 2010, Klaus Heine (1970) was appointed Chair of Law and Economics at Erasmus School of Law in Rotterdam. Heine, who was previously associate professor in the Department of Human and Economic Sciences, University for Health Sciences, Medical Informatics and Technology (UMIT, Vienna, Austria), received his education as an economist at Philipps-University, Marburg, Germany. Professor Heine has since had extensive experience in the areas of European integration, economic policy, and institutional economics. Moreover, he specialises in the Law and Economics of corporate governance and in theory of the firm. In January 2010, Heine joined the Rotterdam Institute of Law and Economics (www.rile.nl) and is currently participating in this research programme.

Jeffrey J. Rachlinski

In 2010, Jeffrey Rachlinski (1966), Professor of Law at Cornell Law School (Ithaca, NY, USA), was appointed part-time Erasmus Chair of Empirical Legal Studies at Erasmus School of Law. Professor Rachlinski is both a lawyer and a psychologist, and he specialises in empirical legal studies.

Professor Rachlinski has joined our team to pursue new strands of empirical research into areas such as judicial decision-making processes and litigation strategies. Professor Rachlinski has ample experience in the methodology of empirical Law and Economics, and thus he will provide invaluable input that will help Erasmus School of Law research to accomplish its empirical objectives. With the appointment of Professor Rachlinski, the Erasmus School of Law has secured a total of three Chairs in Empirical Legal Studies. Previous appointments included sociologist Vincent Buskens and economist Jonathan Klick.



4.3 Visiting staff

In 2009, we started up a visiting staff programme to attract foreign scholars who could contribute to the research programme. In 2010, the following researchers became associated with BACT:

Visiting staff	
Dr. R.J.J. Eshuis	Researcher at WODC; expert in the empirical legal study of civil procedure
Dr. P. Mascini	Researcher at the EUR faculty of Social Sciences; researcher in the field of sociology of policymaking
Dr. N. Jungmann	Lector at Hogeschool Utrecht; researcher in the field of consumer debt resolution; starting 1 August 2010

In 2010, Roland Eshuis was a Visiting Research Fellow in the Behavioural Approaches to Contract and Tort research programme. Eshuis is a professional researcher at the WODC, the research institute of the Dutch Ministry of Justice. For more than a decade, Eshuis has focused on empirical research in the civil justice domain and has been involved – actively or in an advisory role – in a vast number of studies both within and outside the Justice Department. In 2007, he obtained his doctoral degree at the Erasmus University, with a thesis on measures to accelerate civil court proceedings. His most recent book, on the execution of judicial decisions and friendly settlements, was published by the Dutch Council for the Judiciary (October 2009). Eshuis is currently developing, in a co-production with the WODC, the Council for the Judiciary and the Dutch Statistics Office (CBS), a general statistical publication on Dutch civil and administrative dispute resolution, court procedures and professionals in the field of law. His international projects include the development of the Council of Europe’s ‘European Judicial Systems’ publication.

Also involved in the research programme as a Visiting Research Fellow is Peter Mascini, who works as assistant professor in sociology, specialising in Labor, Organisation, and Management in the Sociology Department at the Erasmus University of Rotterdam in the Netherlands. He is also a member of the Amsterdam School for Social Science Research (ASSR), a committee member of the Dutch Sociological Association (NSV), and editor of the Dutch scientific journal *Sociologie*.

As a researcher, Mascini considers himself to be primarily a policy sociologist. Policy is grounded on the basic assumption that humans can be influenced. Taking a closer look, we see that the theoretical assumptions that underlie policy instruments often prove to be incorrect or remain implicit or uncorroborated. Consequently, policy measures often have unintended consequences because users or target groups attach to policy instruments meanings that are different from those that policymakers or scholars had hoped for or assumed. Mascini primarily assesses the assumptions underlying specific policy measures, how these assumptions are connected to the motives and interests of the policy subjects, and what happens if the policy subjects do not act in accordance with the presuppositions underlying policy instruments. His research during the last few years has focused on the legitimisation and implementation of health and safety policy, asylum policy, and the fight against crime and terrorism.

In August 2010, Nadja Jungmann started as a Visiting Research Fellow in the programme. Jungmann teaches in the area of law, debt, and recovery at Hogeschool Utrecht. In her research, she focuses on debt assistance. Previously, she was commissioned by various ministries, municipalities, and organisations such as finance companies. Jungmann is an authority on debt assistance in the Netherlands, as is evident from the diversity of projects she has undertaken on this subject, the many lectures she has given, and the (approximately 40) articles she has written on the subject. Furthermore, she runs projects regarding poverty policy, participation, and collection and enforcement. Financial independence is the common divisor in all of her projects.

4.4 Associated fellows

The research programme also offers scholars the opportunity to visit our group for a short research stay. We offer an exciting environment for multidisciplinary legal research, and we enjoy the exchange of thoughts and ideas with academics having research interests similar to our own. In 2010, we accommodated the following visitors.

Visiting guest researchers

Dr. Bogdan Kryvolapov	Associate law Professor of Kiev National Shevchenko University, at the Institute of International relations, Department of international law
Dr. Hila Nevo	Erasmus Mundus visiting scholar
Dr. Jef De Mot	Researcher at University of Ghent, Centre for Advanced Studies in Law and Economics

From 1 April until the end of June 2010, the RILE welcomed Professor Bogdan Kryvolapov as an Erasmus Mundus visiting research scholar. Professor Kryvolapov mainly conducted research on private international law. On June 10, he gave a guest lecture on 'The effect of lending policies of the International Monetary Fund'. Kryvolapov started his career at the Kiev Shevchenko University as a student in 1987. From 2004 until 2005 he was a visiting research scholar at George Washington University. He is currently an associate law professor in the Department of international law at the Institute of International relations at Kiev National Shevchenko University. His teaching areas are private international law, international financial law, and banking law.

From mid-October until the end of November 2010, Dr. Hila Nevo (Israel) stayed at the RILE Institute as a visiting scholar of the Erasmus Mundus European Master in Law and Economics (EMLE). During her stay, Nevo taught the course in Microeconomics and conducted research in Law and Economics. A graduate from the EMLE programme, Nevo obtained her doctorate at Erasmus University Rotterdam in 2007.

From 15 December 2010 until 15 February 2011, Dr. Jef De Mot, from the Department 'Grondslagen en Geschiedenis van het Recht', Ghent University, was a guest at the RILE as a visiting scholar. He defended his PhD dissertation 'Economic Analysis of Civil Procedure', in 2007, and teaches the courses 'Law and Economics' and 'Basic Principles of Law' at Ghent University. His main research interest is the economic analysis of litigation, tort, and law enforcement.

5. AWARDS, DISTINCTIONS AND OTHER EVIDENCE OF REPUTATION

Behavioural Approaches to Contract and Tort Research Programme rated 'excellent' in Dutch RAE 2009

On 2 July 2010, it was announced that the research programme was rated 'excellent' in the Dutch Research Assessment Exercise 2009. The Dutch RAE is a national assessment of the quality of research programmes undertaken by Dutch law faculties. The evaluation committee responsible for the assessment granted BACT an overall score of 4.75 on a scale of 5.00. It praised BACT for both the quality and the number of publications generated by the research group. In particular, the committee praised the programme for its ambitions in pushing the boundaries of legal research into the multidisciplinary and international legal arena. Moreover, the committee commended the programme for its promising prospects and sustainability.

5.2.5. Eindoordeel: 4,75

1. Kwaliteit	5	4	3	2	1
1.1 Wetenschappelijke publicaties	X				
1.2 Vakpublicaties		X			
1.3 Overige resultaten		X			
1.4 Bijdrage aan theorievorming en doctrine		X			
1.5 Onderlinge samenhang van programma	X				
1.6 Originaliteit, inhoudelijk en qua aanpak	X				
1.7 Samenwerking, internationalisering		X			
2 Productiviteit					
2.1 Aantal wetenschappelijke publicaties	X				
2.2 Aantal vakpublicaties	X				
2.3 Aantal overige resultaten					
2.4 Aantal dissertaties	X				
3 Relevantie					
3.1 In relatie tot de wetenschap	X				
3.2 In relatie tot de samenleving		X			
3.3 In relatie tot de rechtspraak		X			
4 Vitaliteit/haalbaarheid					
4.1 In relatie tot de opzet van het programma	X				
4.2 In relatie tot personeel en financiën	X				
4.3 In relatie tot de leiding	X				

Uit: *Kwaliteit en diversiteit. Rechtswetenschappelijk onderzoek in Nederland*, Rapport van de Evaluatiecommissie Rechtswetenschappelijk Onderzoek 2009 (p. 92-93)

Heine in Handelsblatt

In June 2010, Klaus Heine held a presentation titled 'Incentive regulation and incentive channeling on energy markets' at the annual meeting of the German/Austrian/Swiss Association of Scholars of Business Administration (VHB) in Bremen. The presentation was reported on and reviewed positively by the prominent German newspaper 'Handelsblatt'.

Regulierung macht Ökonomen ratlos

Regierung und Opposition fordern endlich mehr Regulierung auf den Finanzmärkten als Antwort auf die Krise. Doch die Wirtschaftswissenschaftler wissen noch zu wenig über die Probleme, die durch Regulierung erst entstehen.

von Anja Müller, 02.06.2010 06:30 Uhr

BREMEN. Klaus Heine muss nachdenken. Er hat sich mit den Regulierungen in der Energiebranche beschäftigt, und weiß wie die Energieriesen mit der Regulierung in den vergangenen Jahrzehnten umgegangen sind. Doch auf die Frage, wie effizient die Regulierungsbehörden selbst arbeiten, antwortet der Professor an der Erasmus Universität in Rotterdam: "Damit beschäftigen sich die Wissenschaftler noch nicht sehr lange, konkrete Forschungsergebnisse fehlen noch."

Regulierung und Steuerung von und in Unternehmen lautete auch das Thema der Jahrestagung des Verbandes der Hochschullehrer für Betriebswirtschaft an der Universität Bremen. "Wir haben erkannt, dass dies ein Thema ist, das wirklich weit nach vorne weist und den Professoren neue Einsichten liefern kann", erklärt Martin Möhrle vom Organisationskomitee der Universität Bremen.

Die Hochschule Bremen verfügt über einen Sonderforschungsbereich zu dem Thema. Juristen und Betriebswirte forschen dort interdisziplinär. Sie untersuchen, wann überhaupt staatliche Regulierungen greifen und wann nicht. Wie transnationale Unternehmen sich organisieren, wenn es gar keinen staatlichen grenzüberschreitenden Regeln gibt und welchen Einfluss die Rechtssicherheit auf das unternehmerische Handeln hat.

Das Oberthema beschreiben die Betriebswirte mit Governance und dahinter verbergen sich oft sehr unterschiedliche Bedeutungen: Aufsicht, Regulierung, Steuerung. Gemeint ist damit einerseits, was Gesellschaften und Regierungen von Unternehmen erwarten, aber auch was die Unternehmen von ihren Managern und Mitarbeitern erwarten.

Das Thema ist etwas unhandlich, aber relevant, wenn man bedenkt, dass immer mehr Unternehmen global agieren und ein weltweiter Wertekanon für das Verhalten der Unternehmen nach wie vor fehlt. Dabei suchen vor allem transnationale Unternehmen danach, erklärt Johann Engelhard von der Universität Bamberg. Solche Konzerne agieren nicht von dem einen Stammland aus, sie handeln dezentral und flexibel. Solche Konzerne müssen sich zurzeit immer wieder fragen, nach welchen Regeln sie sich an den verschiedenen Standorten richten müssen. Ein mühsames Geschäft.

Sie fordern daher eine Private Global Governance. Gemeint ist damit eine weltweit gültige freiwillige Selbstverpflichtung der Unternehmen. "Es müssen einerseits internationale Standards entwickelt werden", sagt Engelhard, "andererseits auch internationale Schiedsgerichte existieren, um Streitigkeiten zwischen Unternehmen schlichten zu können". Und nicht zuletzt müssten die Rechtsvorschriften harmonisiert werden. Doch bis dahin ist es noch ein weiter Weg.

Denn zurzeit herrschen in den verschiedenen Ländern auch verschiedene Governance-Konzepte. Das heißt: Einige Länder regulieren die Aufsicht über Unternehmen stärker, andere verlassen sich mehr auf das freie Spiel der Marktkräfte. Das Ergebnis formuliert Wolfgang Kerber von der Universität Marburg: "Die Unternehmen nutzen die Regulierungsarbitrage als Wettbewerbsvorteil." Sie verlagern ihre jeweiligen Aktivitäten also dorthin, wo sie die Regulierung am besten vermeiden können. Doch das bleibt nicht ohne Konsequenzen in den Staaten, führt Kerber aus. Es entstehe ein Standortwettbewerb unter den Ländern um die geringste Regulierung. Das ist ein Vorteil für die Firmen und manchmal auch für die Staaten, denn auch rechtliche Regeln werden durch Wettbewerb innovativer, meint Kerber. Der Nachteil: Die Regulierung nimmt dadurch tendenziell ab, mit möglicherweise negativen Folgen für Staat und Gesellschaft.

Die VHB-Tagung in Bremen hat nun ein weites Feld von Forschungsfragen eröffnet. Nun müssen sich die Wissenschaftler um die Antworten kümmern.

6. EDUCATING AND NURTURING RESEARCH TALENT

Within the research programme, we nurture talent by creating a stimulating environment for intellectual development. The Erasmus School of Law sets favourable conditions by offering PhD positions and tenure track positions. In 2008, we attracted both upcoming and well-established talents. Scouting talent among students has been made possible by the successful European Master in Law and Economics programme ([EMLE](#)). Moreover, the set-up of the master in private law (and the new Master in Liability and Insurance Law) also gives ample opportunity to identify and nurture new talent. For example, with the master thesis projects initiated by Professors Lindenbergh and Van Boom, outstanding private law master students are offered the opportunity to co-author a book having academic stature. In 2010, this resulted in '[Rake Remedies](#)'.



In terms of specific research education needs, we aim to find the right course for the right person. Some of our PhD students participate in the [research school Ius Commune](#), while a considerable number of PhD students are part of the educational programme of the European Doctorate in Law and Economics ([EDLE](#), see also [Chapter 2.6](#)).



Within the Erasmus School of Law, Professor Jonathan Klick organised specific seminars on empirical legal methods. Legal scholarship has grown increasingly empirical with researchers attempting to test legal theories that had previously been based on anecdotes or intuitions. Taking a cue from modern micro econometrics, economists working in empirical legal studies have focused attention primarily on the issue of causality. Because we generally cannot run controlled experiments in legal and policy contexts, a number of issues arise with respect to causal inference. These lectures highlighted strategies used in empirical Law and Economics to isolate how legal and regulatory changes affect individual behaviour.

7. RESEARCH OUTPUT

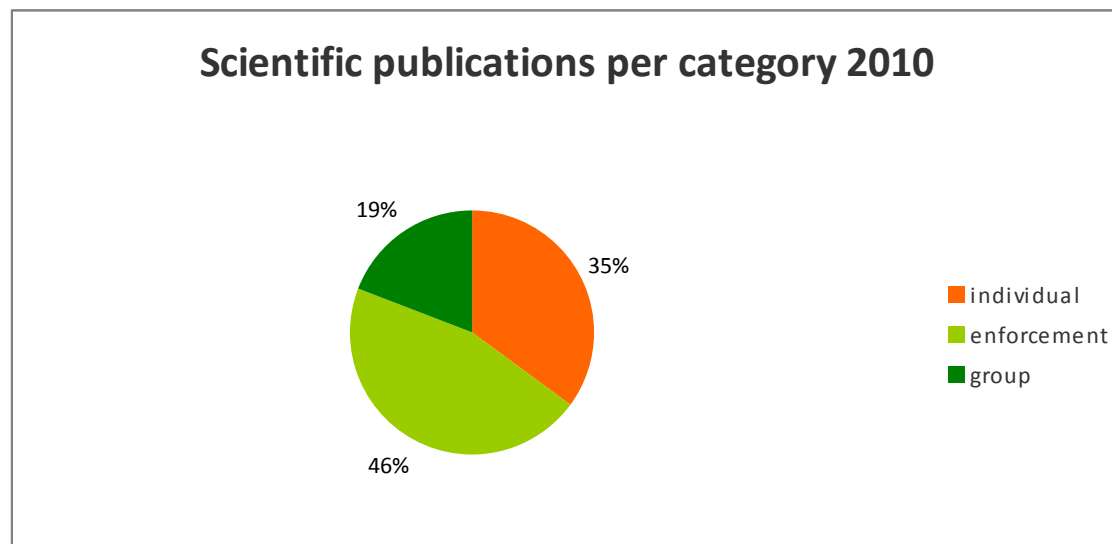
In 2010, our research team consisted of 23 researchers and 21 PhD students (5.25 fte research capacity excluding PhD students), and we produced 114 scientific publications. For the purpose of the annual report, we did not count professional publications, introductory remarks in edited books, and case notes. Therefore, the list is confined to scientific publications.

The three main research domains in the programme reaped the following number of scientific publications:

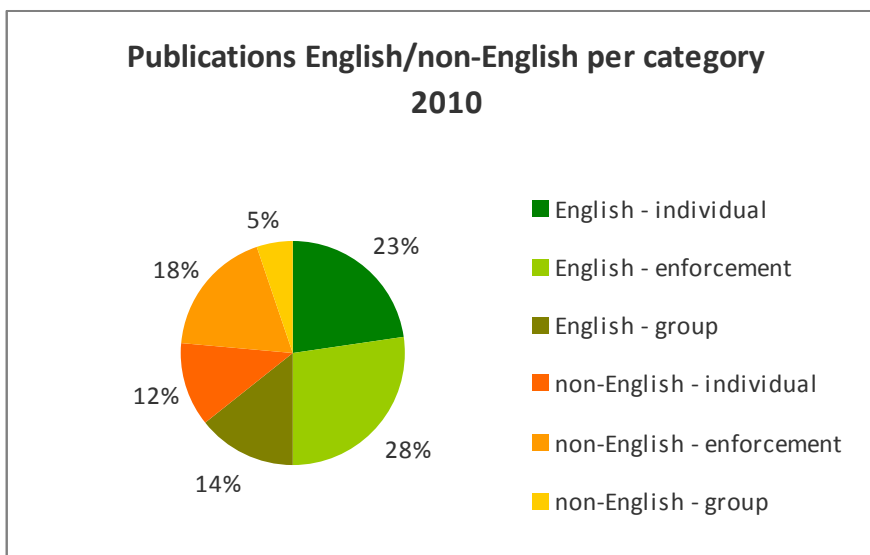
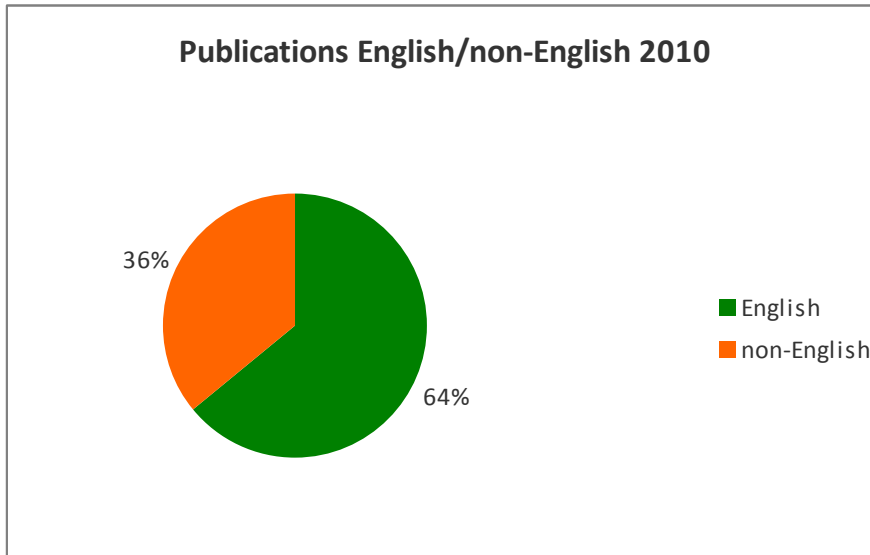
A. Individual behaviour in exchanging resources and engaging in harmful activities	40	35%
B. Enforcement	52	46%
C. Behaviour of aggregations of individuals (group behaviour)	22	19%

Compared to 2008 and 2009, these data show that the distribution of publications among the three research domains was better balanced than the first two years of the programme. For earlier years, please refer to the multi-annual report 2008-2010.

For 2010, the distribution is as follows:



The number of publications written in English also increased considerably. Out of 114 publications, 73 publications (64%) were in English. This is a significant increase compared to 2008 and 2009, when – in both years – some 50% of all scientific publications were in English.



To conclude, the number of publications in refereed journals¹ also increased in comparison to the year before: in 2009, 4% of all scientific publications were published in a refereed journal. For 2008, these data were less accurately measured and were therefore not suitable for a comparison.

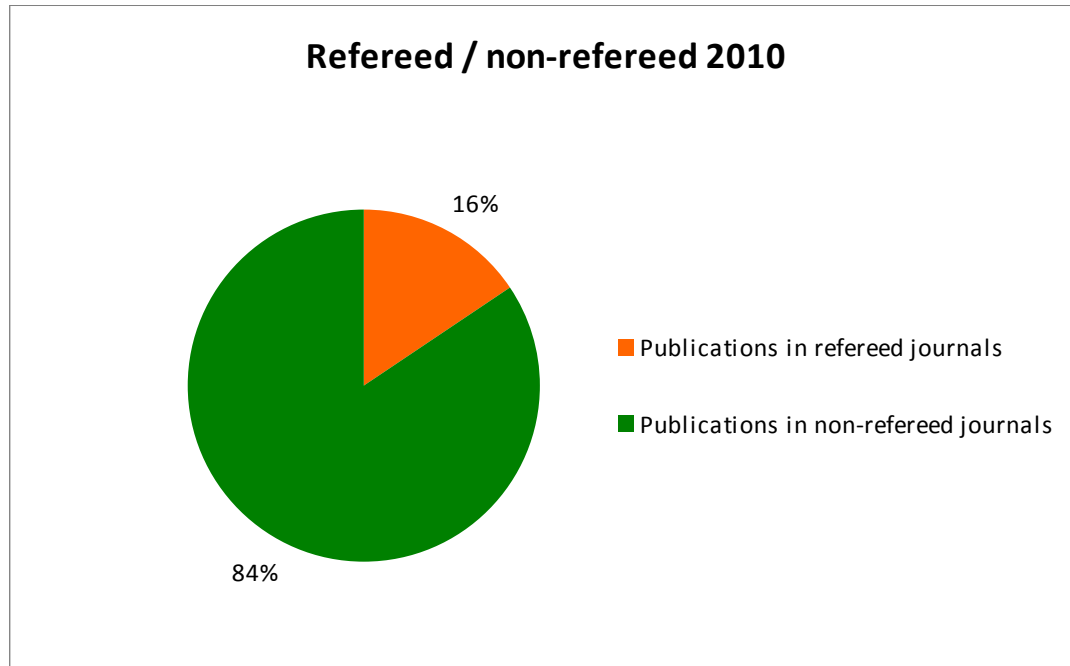


TABLE I – PHD THESES

Number of ongoing PhD research projects	18
Number of PhD theses defended	4
Number of PhD theses defended by employees	1
Number of PhD theses defended by others	3

¹ By 'refereed', we mean refereed in accordance to that particular journal.

TABLE II – SCIENTIFIC PUBLICATIONS (including research domain category)

Arcuri, A. & Dari-Mattiacci, G., 'Centralization versus Decentralization as a Risk-Return Trade-Off', <i>The Journal of Law and Economics</i> , 2010, 53, p. 359-378.	B
Arcuri, A., Gruszczynski, L. & Herwig, A., 'Independence of Experts and Standards for Evaluation of Scientific Evidence under the SPS Agreement – New Directions in the SPS Case Law', <i>European Journal of Risk Regulation</i> , 2010, 1(2), p. 183-188.	B
Arcuri, A. & Poli, S., 'What Price for the Community Enforcement of WTO Dispute Settlement Body's Rulings?', <i>Opinio Juris in Comparatione</i> (Paper No. 1), 1/2010, p. 1-46.	B
Arons, T. & Boom, W.H. van, 'Beyond Tulips and Cheese: Exporting Mass Securities Claim Settlements from the Netherlands', <i>European Business Law Review</i> 2010/6, p. 857-883.	C
Bergh, R.J. Van den, 'Private law in a globalizing world; economic criteria for choosing the optimal regulatory level in a multi-level government system', in: Walt, A. van der & Faure, M.G., <i>Globalization and Private Law. The Way Forward?</i> , Edward Elgar Publishing 2010, p. 57-97.	B
Boom, W.H. van, Tuil, M.L. & Zalm, I. van der, 'Feiten van algemene bekendheid en ervaringsregels - virtuele werkelijkheid?', <i>Nederlands Tijdschrift voor Burgerlijk Recht (NTBR)</i> , 2010, 2, p. 36-43.	B
Boom, W.H. van, 'Juxtaposing BTE and ATE - on the role of the European insurance industry in funding civil litigation', <i>Oxford University Comparative Law Forum 1 (at ouclf.iuscomp.org)</i> , 2010.	A
Boom, W.H. van, 'Collectieve handhaving van consumentenrecht', in: Loos, M.B.M. & Boom, W.H. van, <i>Handhaving van het consumentenrecht (preadviezen Vereniging voor Burgerlijk Recht 2009)</i> , Deventer: Kluwer 2010, p. 129-224.	C
Boom, W.H. van & Ogus, A., 'Introducing, Defining and Balancing Autonomy vs. Paternalism', <i>Erasmus Law Review</i> , 2010, Volume 3, Issue 1, 5 pp.	A
Boom, W.H., 'De minimis curat praetor: redress for dispersed trifle losses', <i>Journal of Comparative Law</i> 2010/2, p. 169-183.	C
Boom, W.H. van, 'Comparative Notes on Injunction and Wrongful Risk-Taking', <i>Maastricht Journal of European and Comparative Law</i> , 17(1), p. 10-31.	B
Boom, W.H. van, 'Financing civil litigation by the European insurance industry', in: Tuil, M. and Visscher, L.T. (Eds.), <i>New Trends in Financing Civil Litigation in Europe: A Legal, Empirical and Economic Analysis</i> , Cheltenham: Edward Elgar Publishing 2010, p. 92-109.	C
Borg, S.J.A. ter, Huls, N.J.H., Saanen, N., Stoter, W.S.R., Stout, H.D, <i>Doelgericht wetgeven: doelvoorschriften in literatuur en praktijk</i> , Den Haag: Ministerie van Verkeer en Waterstaat 2010.	B
Bruggeman, V., Faure, M.G. & Fiore, K., 'The Government as Reinsurer of Catastrophic Risks?', <i>Geneva Papers on Risk and Insurance Theory</i> , 2010, vol. 35, p. 369-390.	C
Bruyninckx, E.L.L. & Voet, G.W. van der, 'Vergoeding van de kosten van deskundige ondersteuning van medezeggenschapsorganen niet goed geregeld', <i>Tijdschrift voor de Arbeidsrechtpraktijk (TAP)</i> , 2010(7), p. 288-298.	C
Buskens, V.W., Raub, W. & Veer, J. van der, 'Trust in Triads: An Experimental Study', <i>Social Networks</i> , 2010, 32, p. 301-312.	A
Camesasca, P., Schmidt, A.K. & Clancy, M.J., 'The EC Commission's Draft Horizontal Guidelines: Presumed Guilty when Having a Chat', <i>Journal of European Competition Law & Practice</i> , 2010, 1 (5), p. 405-417.	B

Cauffman, C.A.N.M.Y., Faure, M.G. & Hartlief, T., 'Het richtlijnvoorstel consumentenrechten: quo vadis?', <i>Contracteren</i> , Vol. 12, No. 3, p. 71-78.	B
Cayseele, P.J.G. van, Camesasca, P.D.N., 'Communication in cartelized industries', <i>Review of Business and Economics</i> , LV(2), 2010, p. 233-248.	B
Dijkshoorn, W., 'Overschrijding van 'de redelijke termijn': moet de burgerlijke rechter het EHRM of de bestuursrechter volgen?', <i>Nederlands Juristenblad (NJB)</i> , 2010, p. 1346-1351.	B
Even, J.H., 'Rechtsmacht en toepasselijk recht bij internationale arbeid', <i>Arbeidsrecht</i> 2010, 49, p. 9-16.	A
Even, J.H., 'De rechtsmacht van de Nederlandse ontbindingsrechter aan de hand van de EEX-Verordening', in: Even, J.H. c.s. (Eds.), <i>De ontbindingsrechter</i> , Den Haag: Sdu 2010, p. 31-45.	B
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Faure, M.G., 'The Harmonization of Consumer Contractual Rights: An Economic Perspective', in: Apathy, P. e.a. (Eds.), <i>Festschrift für Helmut Koziol zum 70. Geburtstag</i> , Vienna: Jan Sramek Verlag 2010, p. 1385-1399.	B
Faure, M.G. & Philipsen, N.J., 'Fees for Claim Settlement in the Field of Personal Injury: Empirical Evidence from the Netherlands', <i>Journal of European Tort Law</i> , 2010, Vol.1, No. 1, p. 75-101.	A
Faure, M.G. & Lefevre, J., 'Compliance with Global Environmental Policy', in: Axelrod, R.S., VanDeveer, S.D. & Downie, D.L., <i>The Global Environment. Institutions, Law, and Policy</i> , Washington D.C.: CQ Press 2010, p. 172-191.	B
Faure, M.G. & Svatikova, K., 'Enforcement of Environmental Law in the Flemish Region', <i>European Energy and Environmental Law Review</i> , 19(2), 2010, p. 60-79.	B
Faure, M.G., 'Globalization and multi-level governance of environmental harm', in: Faure, M.G. & Walt, A. van der (Eds.), <i>Globalization and Private Law</i> , Cheltenham: Edward Elgar Publishing 2010, p. 383-425.	B
Faure, M.G., Peeters, M.G.W.M., Philipsen, N.J. & Smedt, K. De, <i>Milieuaansprakelijkheid Goed geregeld?</i> , Den Haag: Boom Juridische Uitgevers 2010, 157 pp.	B
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Faure, M.G., 'Effective, proportional and dissuasive penalties in the implementation of the Environmental Crime and Shipment Pollution Directives: Questions and Challenges', <i>European Energy and Environmental Law Review</i> , 2010, p. 256-278.	C
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Faure, M.G., 'Vague notions in environmental criminal law (part 1)', <i>Environmental Liability</i> , 2010, vol. 18(4), p. 119-133.	A
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Luth, H.A., <i>Behavioural Economics in Consumer Policy; The Economic Analysis of Standard Terms in Consumer Contracts Revisited</i> , Mortsel/Antwerp: Intersentia 2010, 342 pp.	A
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Ogus, A., 'The Paradoxes of Legal Paternalism and How to Resolve Them?', <i>Legal Studies</i> , 2010, 30, p. 61-73.	A
Ogus, A., 'Measure of Damages: Expectation, Reliance and Opportunity Cost?', in: P. Larouche and F. Chirico (Eds.), <i>Economic Analysis of the DFCR: The Work of the Economic Impact Group within the CoPECL network of excellence</i> , Munich: Sellier European Publishing 2010, p.135-147.	B
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