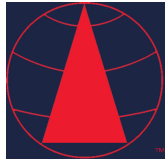


## Academic Group Newsletter - August 2019

INSOL International <news@email.insol.org>

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To: Catherine Robinson <Catherine.Robinson@uts.edu.au>



# INSOL International

## Academic Group Newsletter



AUGUST 2019

### Message from the Chair



**Professor Juanitta Calitz**  
University of  
Johannesburg

**Chair, INSOL  
International Academic  
Group**

It is an honour to succeed Professor Ian Fletcher and Professor Rosalind Mason as Chair of the INSOL International Academic Group. It is a privilege to have the opportunity to build on the good work and strengths of my predecessors and to be part of this unique community of scholars. It is my sincere hope that I can continue to promote two hallmarks of my predecessors' leadership – of supporting quality contemporary research as well as collegial engagement.

Professor Rosalind Mason, Adjunct Professor at Queensland University of Technology, Faculty of Law, has also become the first academic, the first Australian and the first woman to be awarded the prestigious Founder's Award by the International Insolvency Institute (III). This award recognises a member of III who has made a substantial contribution to further III's goals, mission and work by advancing and promoting insolvency as a respected discipline in the international field. The Academic Group would like to congratulate Professor Mason on this excellent achievement!

On the 5<sup>th</sup> August, Julie Hertzberg, the President of INSOL International, officially opened the INSOL International Asia Hub in Singapore. The Asia Hub is an initiative identified in the Strategic Plan developed by the INSOL Task Force 2021. Congratulations to the INSOL team on this important and exciting milestone in INSOL's dynamic history.

The 21<sup>st</sup> colloquium of the Academic Group was held on 1<sup>st</sup> and 2<sup>nd</sup> April 2019 in Singapore. Both the programme and the collaborative and collegial feedback were excellent. I want to thank all those who attended and participated in the conference programme –for contributing their expertise and experience and engaging in such constructive and open exchanges throughout the two days. As one of the participants said: "...a perfect mix of topics, people, debate and social gathering". For more information on the colloquium, see the article by Professor Kathleen van der Linde in INSOL World Q2 of 2019, on page 32.

The colloquium was followed by a Research in Insolvency Workshop, hosted by the EB Barker Centre for Law and Business, Faculty of Law,

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National University of Singapore. The workshop provided a widely-welcomed opportunity for early career academics to listen to and interact with peers from different legal traditions representing a broad range of practical experience and perspectives. Full report on the NUS Workshop by Catherine Robinson follows further in this issue.

The next colloquium planning is already in full swing. The 2020 colloquium will be held at the Cape Town International Convention Centre (CTICC) from 14 to 15 March 2020. "Cape town is definitely one of the most beautiful places on earth! ...beautiful beaches, breathtaking mountains, wine estates, penguins, great food and spectacular views!" We look forward to receiving your abstracts.

I also want to extend a warm invitation to all academics as well as those with academic interest to become part of this truly global diverse and dynamic group of academics.

I look forward to seeing you in the beautiful Mother City of Cape Town!

## Message from Rosalind Mason



Following the retirement of the Foundation Chair of the INSOL International Academics' Group, Professor Ian Fletcher, I was honoured to be appointed his successor from 2015 - 2019. This is a brief note of reflections at the end of my term and after handing on the baton to our next leader Professor Juanitta Calitz.

When I began the role, I planned to focus on three themes, in no particular order of importance. The first was to expand the regions from which academics and practitioners attend and on which they research. It is pleasing to note the number of new jurisdictions attending our annual colloquia and it was particularly pleasing to welcome a Professor from Brazil to the Singapore Colloquium as we have not often had the benefit of insights from South America.

The second was to facilitate collaborations among academics and to encourage collaborations between academics and practitioners. The shining example here from my perspective has been the Ian Fletcher International Insolvency Moot and the opportunities it provides for interaction between academics, practitioners, judges and students.

Finally, the third was to explore ways of improving communication, within the Group as a whole and within the different INSOL regions of the world. This remains a work-in-progress, but it is in good hands as communication is one of Juanitta's many strengths. Our increased engagement with early career academics also augurs well in this regard.

Curiosity about the international dimension to insolvency introduced me to the work of Ian Fletcher back in the early 1990s. In my working lifetime, I have seen significant developments in this area of law. One of the most notable of course has been the United Nations Commission on International Trade Law's Model Law on Cross-border Insolvency, that has since been adopted by many countries around the globe.

While this 1997 Model Law was developed to address quite specific complex commercial and social issues, the four principles underpinning it reflect human characteristics to be addressed in any international initiative. Each of these can be re-imagined as leitmotifs for our INSOL International Academic Group:

(1) *"access"*: much can be achieved by this first step of granting access to the 'foreign' / the 'other' – to enable the other three principles to play out. One of my great joys in convening the colloquium, associated workshops, the moot etc. has been listening to the buzz in the room when people came together around some common interests. A lot can be achieved by bringing people together in a welcoming environment, providing a few relevant prompts and then letting them get on with it.

(2) *"recognition"*: when we do get together, we do well to recognise the value that different people, different countries and different legal systems can bring to solving the issues we investigate. In listening to and understanding different approaches to similar issues as well as hearing about unique and emerging issues, we can learn much that may well become relevant to our own local research and teaching.

(3) *"relief" or "assistance"*: In our discussing, listening and learning, where does it lead? Are the flow-on effects always the same? No. We find things in common at different times with different people – our research interests differ; our approaches differ, and we are at different stages in our lives and careers. And that is OK. The journey of an academic resembles a marathon more than a sprint.

marathon more than a sprint.

(4) *“cooperation” and “coordination”*: Regardless of our differences, the critical underpinning principle is (to use a phrase from the Model Law) to communicate and cooperate to the maximum extent possible. And our annual gatherings and other activities, including the Ian Fletcher Moot, are shining examples of this practice.

In all this, the role of INSOL International and their staff, in particular Tina McGorman and now Jelena Wenlock, have been key in encouraging our activities. Their administrative support contributes to our Colloquia being collegial and professional gatherings and to our sense of community as specialists in insolvency and restructuring. As a group led by Juanitta for the next chapter and with a shared global perspective, we have much to contribute to INSOL as it seeks to influence global restructuring and insolvency practice and policy. I look forward to continuing to journey with you in this worthwhile endeavour.

**Adjunct Professor Rosalind Mason**  
**Queensland University of Technology, Australia**

## Reflections on the NUS Researching in Insolvency Workshop



The Research in Insolvency Workshop topped off the INSOL Academics' Colloquium, which was held in conjunction with the INSOL International main conference. The invigorating and successful Colloquium was attended by more than 70 delegates and saw Chair of the Academics Group, Professor Rosalind Mason hand over the reins to incoming Chair, Professor Juanitta Calitz. The one-day Workshop was hosted by the EB Barker Centre for Law and Business, Faculty of Law, National University of Singapore, at the Bukit Timah Campus, nestled in amongst the Singapore Botanic Gardens. Academics and practitioners alike comprised the 29 attendees. The day's agenda included 2 panels and a general discussion, in which the speakers were as follows:

- **Challenges of Doctrinal and Comparative Research in Insolvency Law and Practice:** papers by Professor Tuomas Hupli, Dr Jennifer Gant and Professor Wan Wai Yee.
- **Examples of Empirical Research in Insolvency Law and Practice:** papers by Dr Zhang Zinian, Elizabeth Streten and Assistant Professor Dr Virginia Torrie.
- **A General Discussion on strategies for externally funded research in Insolvency Law and Practice:** chaired by Professor Pete Walton.

Following a warm welcome by Associate Professor Wee Men Seng, and a networking lunch, the workshop commenced with a lively discussion of research challenges. Familiar issues of the teaching/research relationship were shared, such as managing teaching allocations and research productivity, and balancing “home” life. There was a novel proposal by a UK institution that would see student email responses formally confined to a one- hour daily window. No doubt we are looking forward to hearing whether this is successfully implemented!

Research and growing research ideas beyond the dissertation was a commonality between the presenters. Comparative studies were presented as a way to achieve this, by extending the methodology to include other jurisdictions. The versatility of comparative studies was seen in building on the author's doctoral thesis and undertaking post-doctoral research, with future plans to build on the post-doctoral research.

Reform to Chinese, Singaporean and Australian insolvency law have provided unique opportunities for empirical research. In China, empirical research of court accepted corporate restructuring between 2007 and 2015 was undertaken by physically inspecting (with a magnifying glass, no less) court public notices in a main newspaper. This study, which also developed from a doctoral thesis, examined the first eight years of implementation of China's Chapter 11-styled corporate reorganization law. The research was also reported through the lens of the author's practical experience in Chinese business law. In Singapore, the effectiveness of schemes of arrangements was explored by reviewing court-sanctioned arrangements in 3 datasets between 1996 and 2017(the pre-reform period). There was constructive reflection on the limitations of empirical studies (such as lack of empirical studies on schemes of arrangements, and differences in the jurisdictional context) and limitations of the dataset itself (such as small dataset and the exclusion of withdrawn

context) and limitations of the dataset itself (such as email dataset, and the exclusion of withdrawn and out of court settlements). In Australia, a phenomenological inquiry examined the daily practices of insolvency practitioners. The 23 interviews conducted between July-October 2017 (a key reform period) also captured practitioners' insights on changes to the regulatory regime. Interesting themes emerging from the interviews included issues of staff attraction/retention, digital disruption and professional identity, "*feeling like psychologists, not accountants.*"

Throughout the day speakers candidly shared their experiences of expected and unexpected research challenges. A fascinating example arose during a pilot study on the depression-era farm insolvency statute in Manitoba Canada. During the archival research the author came across unique contractual terms imported into many compromises formulated by the tribunal. One such term was an automatic grace period on payments if: *the farmer was unable to pay "through no fault of his own", provided he had tended to the farm in "husband-like manner."* The day's formal agenda closed with extensive insights in externally funded research. A number of realities encountered included changes to the research question, managing relationships with funders, and moving between uncertainties of publication to producing impactful publication with funder PR support.

The Workshop and interactive discussion was supportive and inclusive of early career academics, a theme that followed on from the previous days. The Workshop provided a valuable educational opportunity where participants shared their knowledge and experiences in a collegial, stimulated environment. For those fortunate to have later flights, the day ended with a leisurely walking tour of NUS and surrounds. It is not often that one gets the opportunity to network and reflect amongst the only garden to be honoured as a UNESCO World Heritage Site!

**Catherine Robinson**  
Faculty of Law, University of Technology Sydney, Australia

INSOL Academic Colloquium, Cape Town, 14-15 March 2020 - Call for Papers



***CNN Travel has labelled Cape Town as 'one of the world's most beautiful cities' ....***

It is our pleasure to invite you to the 22<sup>nd</sup> INSOL International Academic Colloquium. It will be a 2-day event running over Saturday and Sunday and we would be grateful to receive expressions of interest on the following themes:

- Law reform and policy trends in emerging markets
- Sovereign bankruptcy
- Impact of 4IR on insolvency law and restructuring
- Digital assets and insolvency proceedings
- Insolvency within corporate groups
- Executory contracts (ipso facto clauses)
- Role of ADR in bankruptcy and restructuring
- Teaching innovations and collaborations in insolvency
- History; art and bankruptcy
- Cross-border insolvency issues
- EU Directive on Restructuring Frameworks (rise of restructuring proceedings)
- EU law update: The Recast Insolvency Regulation (any related topics)
- Islamic finance and insolvency
- Personal insolvency (consumer bankruptcy)
- Proposals on the treatment of MSME insolvency
- Hot Topics

Please note that we particularly invite submission that include a comparative approach or an innovative angle to established research areas or have the capacity to open new fields of research. Not all of the topics listed above will necessarily feature on the final programme. Additionally, consideration can be given to proposals for papers that fall outside the list of proposed topics.

- You are invited to submit abstracts of not more than **300 words** describing the paper that you intend to present at the conference.
- Abstracts should be submitted by **30 October 2019** via email to Juanitta Calitz ([jcalitz@uj.ac.za](mailto:jcalitz@uj.ac.za)) and copied to Jelena Wenlock ([jelena.wenlock@insol.org](mailto:jelena.wenlock@insol.org)).
- Abstracts will be reviewed for the possibility of presenting a poster or oral presentation (guidelines will be made available at a later date).
- Notification of Acceptance: **30 November 2019**.
- Early submission is strongly encouraged.

## Ian Fletcher International Insolvency Law Moot Competition 2020



Professor Ian Fletcher was an eminent scholar, internationally recognised for his outstanding achievements in the field of international insolvency law. When this competition was established, Professor Fletcher kindly agreed that it bear his name. His message to the inaugural participants was that it would be an intellectual tournament requiring a spirit of adventure and a dedication to scholarship. And so it has proved to be. Sadly, Professor Fletcher passed away in 2018. This competition named in his honour continues with the support of leading universities and the leading international institutions in this field.

INSOL International and the International Insolvency Institute are honoured to invite your law school to participate in the Ian Fletcher International Insolvency Law Moot Competition (the Fletcher Moot), the oral rounds for which will take place on 7- 9 February 2020 in London.

The Fletcher Moot welcomes universities from around the world to participate in a mooted competition dealing with international insolvency litigation. Held in the offices of global professional firms at More London Riverside, the competition provides a unique opportunity for students to experience real-world court proceedings before international panels of prestigious judges.

Your law school needs to register to compete in the first round of written submissions, with the opportunity to progress to the final oral rounds in London. If your team is successful in the first round, our Moot Registrar will contact you to let you know that you are advancing to the final rounds. There is no cost to registering and participating in the initial written submissions round. A registration fee of GBP500 applies to teams who qualify for the oral rounds in London.

For more information about the competition, please [visit our website](#).

Registration is currently open and will close on 4 October 2019. [Click here to register](#).

A moot team may comprise of between two to four law students, who shall be enrolled as full-time or part-time students either of a first degree in law, including Juris Doctor (JD), or for any postgraduate qualification in law below the level of commencing a doctoral program in the law school they represent at the time of the Competition. However, no team member may have previously been or currently be a licensed legal practitioner.

The moot problem will be posted on the website by 6 September 2019.

Please email any registration and administrative queries to the Moot Registrar Sandra Mulholland at [fletchermootcoordinator@shaw.ca](mailto:fletchermootcoordinator@shaw.ca)

We look forward to welcoming your law school's participation in the competition.

**Adjunct Professor Rosalind Mason**  
**Faculty of Law, Queensland University of Technology**

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If you have any queries or comments contact Jelena Wenlock

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