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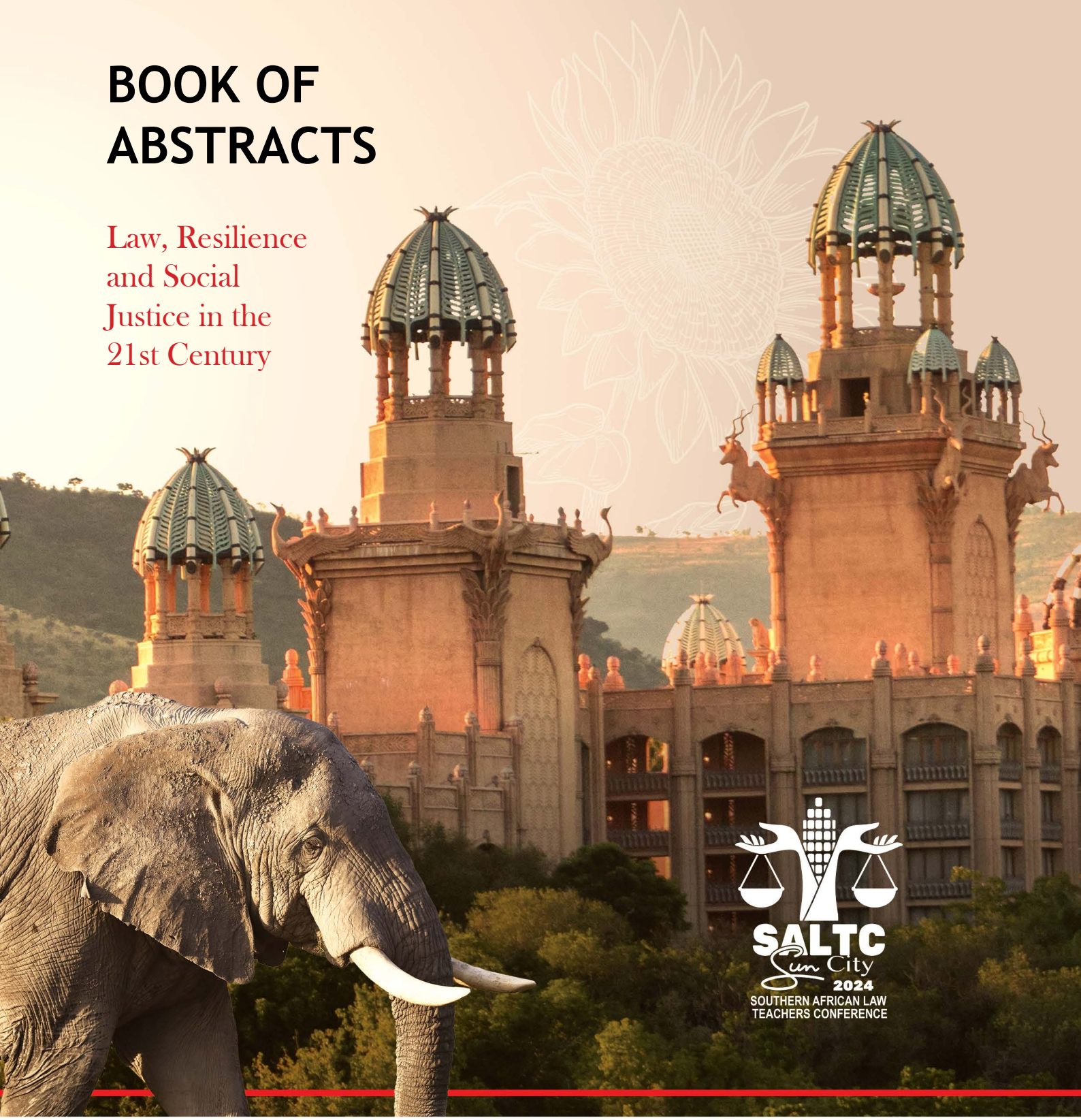
BOOK OF ABSTRACTS

Law, Resilience and Social Justice in the 21st Century



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Who's Afraid of Fair Use? An analysis of *Blind SA v Ministry of Trade, Industry and Competition and Others*[1] and its importance to the access to education materials and the development of Open Educational Resources

Kabelo Mutubi, North-West University

kabelo.mutubi@nwu.ac.za

The covid-19 pandemic laid bare the disparities inherent in South African Higher education. Access to education materials remains a contentious issue mainly due to resistance from publishers and copyright owners as textbooks continue to be expensive. The introduction of the Fair use exception through the Copyright Amendment Bill (CAB) seems to have ruffled a few feathers as the United States government and other entities have been resistant to its introduction in South Africa because our judiciary is ill equipped to apply the Berne three step test because they lack a basic understanding of Article 9 of the Berne Convention. The presentation will argue that it is fair use that we should look at to increase access to education materials and that fair dealing is inadequate for this purpose(although the existence of the CAB means that both approaches are now part of South African law). Fair Use ensures that the creation of Open Educational Resources is made easier. The *Blind SA* decision will be used to show that contrary to the conclusions of naysayers, the South African judiciary is well equipped to deal with and apply copyright exceptions. The main argument of the presentation will be that the introduction of fair use will assist universities to produce Open Educational Resources which will increase access to educational materials. The theories of transformative constitutionalism and social justice theory will be used to sustain the argument made in the presentation.

Keywords: legal education, open educational resources, fair use, students and teaching.

[1] *Blind SA v Minister of Trade, Industry and Competition and Others* (CCT 320/21) [2022] ZACC 33

The African Continental Free Trade Area (AfCFTA) Agreement's 'Automotive Fund': A step towards the right direction or not?

Katlego Arnold Mashego, Tshwane University of Technology

kat.vsp@gmail.com

Africa has been classified as the consumer of the world due to the huge imports coming into Africa. The AfCFTA Agreement has objectives of economic integration which is expected to bring about economic development. The paper will illustrate that economic development will lead to the enforcement of socio-economic rights.The paper will argue that indeed there is a need for a platform whereby African countries can contribute funds and/or otherwise to and such platform be responsible for proving assistance to African businesses so that they can have resources to compete with other businesses of out of Africa. The paper will use the USA as an example as it has a similar program whereby American farmers are assisted so that they can be able to compete in the market. The paper will further argued that such an institution supporting African businesses will lead in the businesses producing quality products and services which will consequently lead to customers trusting local goods. In fact, it is one of the objectives of the AfCFTA Agreement that it must enhance competitiveness and support economic transformation. Also, it is one of the main objectives of the AfCFTA that t must promote industrial development. The Automotive Fund though a step into the right direction, it is argued that other fields as well must be covered such as mobile phone production in Africa and other strategic fields.

Keywords: AfCFTA, businesses, production, economic integration

South Africa and the African Continental Free Trade Area (AfCFTA) Agreement: A Doorway to Improving Social Justice?

Nadine Nyamangirazi, Eduvos

nadinegirazi@yahoo.com

South Africa is a country which is at the forefront of inequality. The country's major concerns are poverty and inequality, which are aggravated by unemployment. Currently, African nations have been forced to battle the negative impacts of the COVID-19 virus, and its toll on the economies across the African continent. South Africa is a signatory to the African Continental Free Trade Area (AfCFTA) Agreement, which is one of the most topical regional trade agreements (RTAs) in Africa. It aims to boost intra-African trade and create a single African market. It further aims to achieve socio-economic objectives such as creating employment, boosting Africa's income by $450 billion by 2035, lifting 30 million Africans out of extreme poverty, boosting wage gains for skilled and unskilled workers, and improving eliminating the impact of the COVID-19 virus. These objectives also trigger the United Nations Sustainable Development Goals (UNSDGs) such as the SDGs triggered are poverty (goal 1); zero hunger (goal 2); and decent work and sustainable growth (goal 8). The notion of social justice is provoked by the implementation of the AfCFTA. However, only the successful implementation of the AfCFTA may lead to the improvement of social justice in South Africa. There are many challenges which can affect the successful implementation of the AfCFTA. These include poor transportation and infrastructure, finance related issues, the lack of effective empowerment system, and corruption in Africa. Only time will tell whether the AfCFTA will benefit the South African economy and curb the issues of social justice.

Keywords: trade, AfCFTA, economy, socio-economic benefits

Acquisition of Citizenship in South African Law

Jean Kanamugire, North-West University

Jean.Kanamugire@nwu.ac.za

The principle of sovereignty allows each state the right to determine who becomes its citizens or not. The right of the state to determine nationality must be exercised in respect of its international obligations. The Convention on the Rights of the Child provides an independent right to nationality for each child. Furthermore, the Convention on the Reduction of Stateless creates a duty on the contracting state to grant its nationality to a person born on its territory who would otherwise be stateless. The Constitution of South Africa provides that every child has a right to a name and a nationality from birth. It also creates a common south African citizenship. It prohibits the deprivation of citizenship to its citizen. South African citizenship Act regulates the citizenship in South Africa. It provides that South African citizenship can be acquired by birth, descent and naturalisation. There are challenges to acquire South African citizenship for individuals who are born outside of South Africa from one parent who is a South African. The same applies to children born from foreign mothers and South African fathers who are not legally married. The applicants for naturalisation are required to renounce their current citizenship before they acquire South African citizenship. This creates an impossible challenge for the applicants for naturalisation who acquired permanent residence permits through asylum route as they cannot go to their embassies to renounce their citizenship. Children who are born in South Africa qualify for South African citizenship if they have lived in South Africa until they become major. Currently, there is no application form for this category to apply for naturalisation. This article discusses the acquisition of South African citizenship and highlights its challenges.

Keywords: child rights, nationality, South African citizenship, descent, naturalisation

Movement Lawyering and the Combined Power of Activism and law

Lisa Draga, University of the Western Cape

ldraga@uwc.ac.za

Movement lawyering is a niche form of lawyering in which lawyers act in tandem with social justice movements and disenfranchised communities to advance positive social change. Movement lawyers appreciate the limited power of the law to effect social transformation and thus work intimately with these role players to achieve this. Unlike traditional lawyers, movement lawyers are not confined to the court room, board room and other conventional legal spaces. Instead, these lawyers employ a wide range of methods to advance social justice. These include advocacy strategies, policy work, tactical use of the media, engagement with the legislature and the executive, educating communities and, usually as a last resort, litigation. In 2012, the Equal Education Law Centre (EELC) opened its doors and began serving as the first legal NGO in South Africa firmly premised on a movement lawyering model. The EELC works closely with its sister organisation, a youth based social justice movement named Equal Education (EE). One of the first major campaigns which EELC assisted EE with involved ensuring that the Minister of Basic Education prescribe regulations setting out adequate minimum norms and standards for school infrastructure. This collaboration eventually culminated in court victory. Drawing in part from my experience as one of the attorneys at the heart of this case, this paper seeks to document and evaluate some of the strategies employed to achieve this combined victory of activism and law. This paper also seeks to assess the extent to which this case has translated into positive change on the grounds of South Africa's poorest schools.

Keywords: education; schools; activism; social justice; social movements, movement lawyers; social transformation; equal education

Adjudicative Subsidiarity and Hate Speech: The emergence of a Statutory (Dignity) Delict

Dr CJ Visser, Wits University

Cornelius.Visser@wits.ac.za

This paper explores hate speech as a statutory delict, focusing on its juxtaposition, development, and significance through adjudicative subsidiarity in the law of delict. Recent landmark cases inform the analysis: *Qwelane v South African Human Rights Commission* 2021 (6) SA 579 (CC), *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku* 2022 (4) SA 1 (CC), and *Afriforum NPC v Nelson Mandela Foundation Trust* (371/2020) [2023] ZASCA 58 (21 April 2023). Adjudicative subsidiarity suggests that hate speech, as a form of dignity harm, falls under the corrective justice framework of the law of delict. This paper argues that the Promotion of Equality and Prevention of Unfair Discrimination Act 2002 of 4 ("PEPUDA") supersedes constitutional reliance (e.g., section 16) and other non-constitutional sources (e.g., customary, and common law) for hate speech adjudication. Furthermore, specific conditions of liability have emerged within PEPUDA, unique to hate speech as a dignity harm, diverging from the traditional elements of delictual liability (harm, conduct, fault, wrongfulness, and causation). Lastly, the paper tentatively juxtaposes hate speech with other dignity harms (e.g., witchcraft allegations, defamation, and insult). By analysing hate speech through the principle of adjudicative subsidiarity and outlining its specific conditions of liability, this paper aims to enrich the discourse on hate speech and highlight its implications as a dignity harm in the law of delict.

Keywords: delict, defamation, fault, harm, hate speech

The Impact of Administrative Law on Decision-Making in South African Universities in Light of Recent Judicial Developments

Ngwako Raboshakga, North-West University

Ngwako.Raboshakga@nwu.ac.za

Since the adoption of Constitution of the Republic of South Africa, 1996 (the Constitution) and the subsequent enactment of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), the applicability of administrative law principles and extent thereof to decision-making within universities has been under debate. For a long time, judicial position on this remained unsettled. These debates centered around whether universities were organs of state within the meaning envisaged in section 239 of the Constitution as well as whether decisions of various organs within universities satisfied the definition of administrative action in PAJA. However, court judgments in the past several years reveal that the judiciary has incrementally caught on and provided clarity on previously unanswered questions on whether administrative law principles are applicable to decision-making within universities and, if so, the extent thereof. In this paper I provide an account of judicial developments on these questions, and further evaluate the impact of such judicial developments on various types of decision-making in South African universities. Therefore, the paper is aimed at informing the making or updating of internal policies by universities in their efforts to give effect to administrative law principles.

Keywords: Constitution, administrative law, administrative action, organ of state, universities, and judicial developments

Reconsidering the Admissibility of Expert Forensic Evidence in South African Criminal Proceedings

Chevaure Du Pokoy, North-West University
chevaure.dupokoy@nwu.ac.za

The law's greatest dilemma is its heavy reliance on forensic evidence. Expert forensic evidence can be of great assistance in a criminal case, however, the question that has to be answered is whether-and to what extent there is science in any given forensic science discipline. The last twenty years has seen rapid growth in doubt being cast on expert forensic evidence and this has led to many authors, scholars and judges advocating for reform in this regard. The reform of admissibility standards governing the acceptance of this evidence has been the most explored area. However, international trends show that a change in these standards, with particular emphasis on a reliability standard has not done much in successfully addressing the problem. The purpose of this paper is to examine whether South Africa too can benefit from the transformation of admissibility standards for the admissibility of expert forensic evidence. Guidance will be sought from the United States as America which is referenced as the jurisdiction with the most progressive approach of dealing with the issue of unreliable expert forensic evidence and using reliability as a standard to scrutinise such evidence. The experience in Canada as well as England and Wales will also be examined to determine how these jurisdictions have responded to this problem. Ultimately, the paper aims to pave a way toward responding to the reception of unreliable expert evidence without directly transplanting standards or criteria which have proved to be unsuccessful.

Keywords: Admissibility, expert forensic evidence, reliability, forensic science, reliability standards

A Call for Law Faculties to Adopt Policies to Enable Law Academics to Act as Judges to Gather Judicial Exposure for Consideration for Judicial Appointment in South Africa

Moses Retselisitsoe Phooko, North-West University

Moses.Phooko@nwu.ac.za

The Constitution requires that for one to be considered for judicial appointment, he or she must be appropriately qualified. Although there is no uniform definition of the requirement to be 'appropriately qualified', at the very least it entails that one must possess a certain degree of judicial experience as an acting judge and/or magistrate before they could make themselves available for consideration for judicial appointment. The required judicial experience places law academics in a unique position because of their teaching commitments at universities. This is further complicated by the fact that there are currently no existing policies across universities to enable law academics to go and gather judicial exposure through acting stints. Instead, different universities apply distinct approaches based on individual and faculty needs. This paper seeks to investigate whether there is a need for a policy to release prospective acting judges at various universities. The article will focus on eight institutions namely, the University of Johannesburg, North-West University, Rhodes University, University of South Africa, Nelson Mandela Metropolitan University, University of KwaZulu Natal, Wits University, and the University of Fort Hare. The basis of this is that there have been academics from these institutions who have acted as judges of various high courts. Further, it investigates how these institutions have dealt with requests for acting stints from their current and/or former law academics. The paper concludes the current system does not apply uniformly and that there is a need for certainty, and check and balances. It also calls for an urgent debate for the adoption of a policy and proposes a legal framework.

Keywords: policy, academic, acting judges, checks & balances

Access to Justice and Alternative Dispute Resolution in South Africa: Possible, or A Pipe Dream?

Sikandar Kola, North-West University

sikandar.kola@nwu.ac.za

The right of access to justice is a fundamental right in South Africa. As such, it is worthy of fierce protection. ADR Mechanisms are becoming widely used in South Africa as alternative methods of resolving disputes. Albeit with a focus on the effects of Apartheid and the subsequent road to recovery and reconciliation, rule of law and access to justice are vital elements for the stability and development of countries. In integral part if this history is concerned with people being prejudiced and prevented access to justice. It is an ongoing process and the successes (and failures) of the South African fundamental right in terms of section 34 of the Bill of rights must consistently be placed in the spotlight as (amongst others) and not simply fodder for political gain. The implementation of legislative changes in our court rules are major steps taken by the justice department to provide access to justice, however it's implementation is much to be desired. The lack of planning, training and resources will only lead to it failing. The lack of buy-in from the legal fraternity further reduces the chance of success of ADR mechanisms to succeed in our court system and further increase the burden on our court rolls. While the full paper will deal with a more detailed analysis of the access to justice question and legislative changes, the presentation will focus on a discussion of the current status quo in respect of access to justice and ADR mechanisms available and the present status of this debate in South Africa.

Keywords: justice, fundamental right, ADR mechanisms, Bill of Rights

“What Does this Button Do?”: Analysing Prevailing Theories on Legislative and Regulatory Mechanisms for the Ethical Use of Artificial Intelligence in Legal Education and Legal Practice to Advance Social Justice and Resilience

Warren Bowles, The Independent Institute of Education

wbowles@iie.ac.za

Artificial intelligence (AI) has been the subject of much discussion and debate in recent months. Various AI platforms currently exist and they are morphing at a rapid pace. AI is finding application in a variety of fields, including in law. Although AI is a welcome development to make our daily lives easier, concerns have become evident about how AI is being used within the legal field. This is amplified by AI sharing “what it knows” or “thinks it knows”, leading to false and inaccurate results. This has been evident through cases heard in courts locally and abroad with adverse consequences. As exciting as AI is, a human element is still emphatically required to make it beneficial within the legal domain. This human element not only means that it is a “human intelligence” that still has an important role to play in using AI in law, but the ethical use of AI needs to be explored and regulated. Relying solely on AI without ethical insight will result in negatively impacting social justice, hindering the resilience of individuals in the legal process and it will complicate the administration of justice in legal systems worldwide. This paper therefore aims to analyse, within the realm of Cyber Law, prevailing theories on how ethical use of AI can be demarcated, what legislative and regulatory mechanisms should be considered and how the prevailing theories can advance social justice and resilience in the legal domain for all stakeholders involved, within both higher education and legal practice.

Keywords: Artificial Intelligence; legal practice; legal education; ethics; legal regulation

Artificial Intelligence and Tax Policy in Southern Africa: Opportunities and Challenges for Tax Administration in SADC countries

Puseletso Letete, University of Johannesburg

letetep@uj.ac.za

With the rise of Artificial Intelligence (AI) applications, it is prudent to examine the perspectives and possibilities of the use of AI in tax policy and tax law; particularly to improve tax administration in SADC countries. The approach adopted in this paper is to examine the adopted tax instruments at the regional level, that regulate tax policy within the SADC countries. Tax administrations have the main function of managing tax compliance to detect and prevent criminal behaviour; but also, to provide education to help taxpayers meet their tax obligations with the least complexity and burden of compliance. The OECD has encouraged tax authorities and tax administrators to keep pace with technological developments, which are necessary to improve their services. The purpose of this paper is to focus on the legal framework that deal mainly with tax administration and exchange of information at the SADC level. The paper investigates the existing opportunities in the use of technology in enhancing tax administration by SADC member states to facilitate tax administrations' assessment procedures; while also facilitating voluntary tax compliance from taxpayers' perspective. The paper also aims to highlight the challenges that the use of technology can have on the protection of taxpayers' rights; and analyses some potential legal challenges that must be guarded against to ensure the lawfulness and fairness of the use of AI in tax systems in SADC countries. SADC member countries have developed the legal framework to regulate different tax matters within the region. The key legal instrument is, the Protocol on Finance and Investment (FIP).

Keywords: tax, SADC, challenges, tax administration, artificial intelligence

Artificial Intelligence, Text and Data Mining for Social Transformation in South Africa: Overcoming the Legal Challenges

Desmond Oriakhogba, University of the Western Cape

doriakhogba@uwc.ac.za

Text and data mining (TDM) describes any automated process of selecting and analysing large amounts of text or data in ways that can provide valuable information needed for studies and research projects. It is useful to help train computer applications to engage in machine learning or artificial intelligence (AI) in order to contribute to social transformation. Social transformation is a collective process involving change in institutionalized relationships, power relations, hierarchies, values and norms in the society. It refers to societal changes as a result of scientific development, technological innovation, environmental and natural disasters, economic restructuring, public health emergencies, alteration in cultural values and expression, etc. TDM contributes to social transformation in South Africa through vaccine research, epidemic and pandemic tracking (eg. COVID-19 research), simplifying literature review process, coordinating and structuring virtual learning platforms, and fighting disinformation and hate speech, decolonising language translation tools, for instance. However, TDM continues to face challenges such as legal (access) barriers in the intellectual property rights protection and enforcement; and infrastructural barriers in the form of low (or lack of) access to internet and digital technology and limited open access platforms. Therefore, the question remains what strategies can be adopted to overcome these challenges in order to effectively deploy TDM for social transformation in South Africa. The proposed paper will unpack and address this issue and recommend ways of overcoming the legal challenges to TDM.

Keywords: technology, data mining, intellectual property rights, hate speech

Antecedent Liability in the Criminal Law

Shannon Hoctor, Stellenbosch University

svhoctor@sun.ac.za

The idea of criminal liability being based on antecedent liability, though acknowledged in all the leading textbooks, has remained a relatively unexplored topic in the literature, and a seemingly neglected aspect of the South African case law. The typical application of antecedent liability is that of the *actio libera in causa*, which takes place in the context of intoxication.The *actio libera in causa* doctrine relates to a situation comprising two stages, which rests on the principle of antecedent liability. It provides for the imputation of criminal liability for an offence, the *actus reus* of which has been committed at the second stage in a state excluding liability, such as intoxication, on the basis of the actor's fault at the previous stage. The rationale for this imputation of liability is that at the first stage the actor is able to choose between alternative courses of conduct and chooses one that leads him to the second stage, where the actor commits the *actus reus* of an offence, despite being in a state negating the criminality of the offence. Given the controversy surrounding the defence of intoxication based on the 1981 Appellate Division case of *Chretien*, and the problematic nature of the legislative attempt to provide an alternative route to liability for the intoxicated accused, the question of antecedent liability bears further investigation. It is proposed to examine the nature and functioning of this type of liability in this paper.

Keywords: Law and technology (artificial intelligence and the law), criminal liability, and intellectual property law

Enhancing Resilience and Social Justice under the New South African Bank Resolution Regime: The Bridge Bank Tool as a Bank Resolution Mechanism

Ashley Batsirai Nyaude, University of Pretoria

ashley.nyaude@up.ac.za

Effective bank resolution regimes are vital for financial stability, economic growth, and poverty reduction. Bank failures pose risks, with fiscal costs, contagion effects and financial system destabilization. However, traditional insolvency frameworks during the 2007-08 financial crisis proved ineffective in resolving banks, lacking stability objectives, and causing delays. Bailouts ensued, straining public funds, encouraging moral hazard and undermining market discipline. To address these shortcomings, the Financial Stability Board published the Key Attributes of Effective Resolution Regimes for Financial Institutions, ensuring financial system stability by maintaining critical functions, preventing contagion and protecting depositors. Key Attribute 3 emphasizes the importance of resolution tools like bridge banks. A bridge bank is a publicly owned temporary institution that stabilises failing banks, acquiring critical business functions and services. It enables continuity of its critical functions and identifies potential private purchasers when distressed market conditions hinder immediate availability. This mechanism limits taxpayer losses by leaving bad assets, shareholders' claims, and liabilities in the failed bank. The bridge banks promote social justice by maintaining essential banking services during crises, thereby preventing financial exclusion, preserving jobs, protecting depositors' funds, and enabling full participation in economic activities. In South Africa, the resolution regime historically included curatorship and liquidation tools. The recent Financial Sector Laws Amendment Act 23 of 2021 expanded the tool kit to include bridge banks. This paper examines bridge banks in South Africa's resolution regime, focusing on conformity to Key Attributes, licensing requirements, governance arrangements and their potential to promote resilience and social justice in the banking sector.

Keywords: Bank failures; bank resolution regime; bridge bank; social justice; South Africa.

The Resilience of the South African Banking Sector in Times of Crises

Cayle Lupton, University of Johannesburg

clupton@uj.ac.za

The South African society has in recent times faced many significant crises, including the COVID-19 pandemic, an increasingly unstable national electricity supply, strong inflationary pressures, repeated increases in the repurchase rate by the South African Reserve Bank and the economic implications of South Africa's relationship with Russia amidst the Russia-Ukraine war. For many South African businesses, these crises have had a detrimental impact on consumer demand and the ability to service clients. South African banks, however, are generally resilient in times of crises in that they remain financially stable, ensure service delivery with minimal interruption and demonstrate innovation by developing products and services in response to such crises. Against this background this paper investigates the South African banking sector's approach to the COVID-19 pandemic, the instability of the national electricity supply and South Africa's controversial relationship with Russia. Ultimately, it finds that the fundamental characteristics of the banking sector provide the sector with a solid basis upon which it can mitigate threats to the financial system. In this regard, much of the sector's success in times of crises stems from its focus on risk mitigation and the need to ensure financial stability, aspects which receive strong attention in the legislation relating to banks in South Africa. As many of the issues currently facing South Africa are unlikely to be resolved in the short term, South African businesses are well advised to learn from the banking sector by treating risk mitigation and financial stability as critical aspects to business success.

Keywords: banking sector, risk mitigation, financial stability, business success

Access to Banking Services: Ensuring Equal Opportunities for all in South Africa

Princess Ncube, University of Pretoria

princess.ncube@up.ac.za

Access to banking services is not only crucial for economic empowerment but also for achieving social and financial inclusion in modern society. This article examines the legal framework, legislation, and policies in place in South Africa to promote equal access to banking services. The analysis includes a thorough examination of relevant laws, such as the Banks Act, National Credit Act, and Financial Sector Regulation Act, and their role in ensuring fair and non-discriminatory access to banking services. Furthermore, the article explores the mandates of regulatory bodies, such as the South African Reserve Bank and the Financial Sector Conduct Authority, in overseeing and promoting access to banking. The article also highlights the challenges faced by certain groups in accessing banking services. These challenges encompass issues such as geographic limitations, high fees, identification requirements, and the lack of tailored products for low-income individuals. It emphasizes how these barriers contribute to financial exclusion and worsen existing inequalities. To address these challenges, the article discusses initiatives and policies that have been implemented in South Africa to promote greater access to banking services. It delves into the role of technological advancements, including mobile banking and digital finance, in expanding access and reducing the cost of financial services. Finally, the article concludes with recommendations for enhancing access to banking services in South Africa. The suggested measures include the development of affordable banking products, simplified identification processes, and increased financial education programs.

Keywords: banks, financial inclusion, technology, financial education

Implementation of the Amended Tourism Broad-Based Black Economic Empowerment Sector Code as a Catalyst for socio-economic transformation: Prospects of Success

Patrick Mogale, North-West University

39096238@nwu.ac.za

South Africa, as a constitutional democracy, endeavours to redress the historical injustices and disparities engendered by the apartheid regime. It is evident that a significant portion of the marginalised population in South Africa has regrettably been deprived of the advantages conferred upon them by the democratic system. The circumstances can be primarily ascribed to the demographic composition of the nation, characterised by a considerable prevalence of unemployment, quantified at approximately 32.9%, thereby establishing one of its highest rates of unemployment globally. Additionally, the existence of disparate remuneration disparities between blacks and whites contributed to conditions of inequity. In pursuit of this objective, it has been duly recognised that tourism serves as a catalyst for bringing about socio- economic transformation, with the primary aim of stimulating employment opportunities and alleviating poverty. The paper discusses the development and implementation of the Amended Tourism Broad-Based Black Economic Empowerment Sector Code (B-BBEE), with the objective of transforming the tourism sector. The paper examines impediments hindering the implementation of the Amended Tourism B-BBEE Sector Code such as the practice of fronting and corruption. The paper will further discuss the state's right to implement the Amended Tourism B-BBBEE Sector Code when granting relief funds with a particular focus on the case of *Minister of Tourism and Others v Afriforum NPC and Another* [2023] ZACC

Keywords: policy, socio-economic transformation, Tourism B-BBEE Sector Code

Quest for Justice in the Access and Distribution of Heritage Data: Myth or Reality?

Joelle Nwabueze, Enugu State University of Science and Technology
joelle.nwabueze@esut.edu.ng

Managing information needs. Modern data analytical techniques determine the specific information about heritage materials as well as their outcomes, beyond human ability. While analytical software enable the extraction of meaningful insights, AI offers a variety of principles, techniques, methods, systems, and tools to build and to make available effective digital libraries to end-users. Nevertheless, accuracy is a cardinal principle in the heritage sector. Despite its numerous benefits, there are many examples where Big Data and AI could misrepresent the origin of heritage data. Processing Big data can increase deceit through technological manipulations. AI introspection into communities' digital heritage can tamper with the cultural originality which could be detrimental to the status of the data. In addition, AI algorithms can personalize the content that users will see, while online media corporations could easily manufacture prejudiced or sham data, or commandeer local communities' data without their awareness or consent. The spectrum of harm to owners of heritage data is large. Copyright is the branch of law dedicated to the protection of those cultural creativities from unauthorised copying, distortions and misappropriations. This paper questions the capacity of Copyright Law to harness the scientific and societal benefits brought by the integration of Big Data and AI, while thoughtfully addressing these issues and balancing the necessary to allow innovations and creativities.

Keywords: copying, distortions and misappropriations, scientific and societal benefits, big data

Brexit and the Return of Nationalism: Analyzing the Procedure for Admission and Withdrawal of Membership from the Southern African Development Community

Tapiwa Shumba, University of Fort Hare

tshumba@ufh.ac.za

Brexit and the new wave of nationalistic rhetoric has reintroduced a new impetus for a renewed promotion of the dwindled ideas of state sovereignty, economic protectionism, and a general anti-global sentiment. Brexit may only represent the beginning of the tipping point from globalization back to nationalism. Seasoned sentiments, from the north and south alike, show that there is a greater section of the global community that is dissatisfied by the effects of the current social, political and economic integration. As the exit of Britain from the European Union may represent a beginning of the fruits of such dissatisfaction, it is important to note that this anti-integration sentiment might also take route in Africa and, for the interests of this paper, more specifically in the SADC region. Whilst the formation and membership of regional and global organizations represents the era towards global integration and convergence, there has now arisen a new need to look at ways in which states can extricate themselves from commitments created by these relationships and associations. Just as the case of the exit of Britain from the European Union appears to be quite an intrusive process, it is important to look at how SADC countries join and withdraw from the organization when the need arises. The paper therefore analyses the processes provided for SADC member states to join and withdraw from the Southern African Development Community considering the Brexit experience and other emerging anti-global sentiments. It is observed that the process of withdrawal outlined under the SADC Treaty is vague and deficient in various ways. Recommendations are made to provide clarity and address identified shortcomings.

Keywords: SADC Treaty, Regional Integration, Brexit

BRICS Currency Gaining Popularity: Africa to Focus on BRICS Currency and Neglect the African currency? An Analysis

Katlego Arnold Mashego, Tshwane University of Technology

kat.vsp@gmail.com

At the current moment BRICS currency is gaining popularity and many see it as a shift of power from the 'west'. Despite this being a good move from world leaders, African leaders must not neglect the African currency as this currency will assist in the economic liberation of Africa and also address several challenges. African currency will make the fight for inflation simpler as the moment Africa's weaker currencies make the fight to curb inflation harder given the fact that Africa is dependent on imports. The paper will argue that, the fact that Africa depends on imports means that when currencies weaken against the US dollar, local prices rise, as much of what people buy, including essential items like food, which are imported. The paper will illustrate a disturbing fact that more than two-thirds of imports are priced in US dollars for most countries in Africa. The paper will argue that African leaders' failure to work on having African currency as soon as possible they are infringing socio-economic rights of Africans. This paper will look at three issues, first, whether or not there is a need for Africa to join BRICS currency, secondly, whether or not there is a need for Africa to focus more on African currency and lastly, whether or not the shifting of power from the 'west' will benefit Africans, particularly on the economic development and the enforcement of socio-economic rights.

Keywords: BRICS, African currency, socio-economic rights, economic development

‘Bye Bye Mr Postman’: A Consideration of the Electronic Delivery of Notices in Terms of the National Credit Act 34 of 2005

Ciresh Singh, University of South Africa

singhc@unisa.ac.za

In South Africa, the outbreak of the Corona-virus pandemic prompted many local companies to consider new ways of conducting business without compromising the legality and compliance aspect of operations. The COVID-19 national lockdown and related restrictions posed a huge challenge in litigious proceedings, in particular with the delivery of legal notices. In South Africa, most legislation, such as the National Credit Act 34 of 2005, require the physical delivery of legal notices by registered post, or by the Sheriff of the Court. The requirement of physical delivery proved difficult during the pandemic, due to various restrictions, such as the need for social distancing and the limitations on travel. Electronic delivery consequently become an alternative tool for satisfying the delivery requirement. The electronic delivery of legal notices ensured that notices were correctly delivered to recipients, in a timely and cost effective manner. Today, the move to the use of electronic services and e-delivery has become more prevalent across all business sectors. However, national legislation has failed to develop with this transition, as most Acts still require delivery of notices by registered post. This dichotomy has given rise to question the legitimacy and security of electronically delivered notices, and a need to exam whether the time has arisen for legislative change in this position.

Keywords: electronic services, e-delivery, business sectors, registered post

The Legal Dilemma of Managing and Regulating Private Consumption of Cannabis in the Workplace

S'celo Sibiya, Tshwane University of Technology

SibiyaSW@tut.ac.za

In South Africa, for the past decades consumption of cannabis was a criminal offence. Until recently, in September 2018, the Constitutional Court judgement in the *Prince* case relieved many South Africans by decriminalising private consumption of cannabis. Although the judgement was welcomed by many South Africans, including employees, its interpretation and implementation has been marred by legal ambiguity. The Constitutional Court did not prescribe how employers should manage and regulate private consumption of cannabis in the workplace. In order to maintain workplace safety, a majority of employers have adopted and enforced a zero tolerance policy on alcohol, drugs and substance abuse. In addition, a majority of employers have relied on urinalysis testing to detect cannabis in the workplace. As a result of testing positive for cannabis, employees have been dismissed for contravening the employer's zero tolerance policy without conclusive evidence of impairment. The thorny issue in this paper is dual. Firstly, this paper seeks to examines whether an employee's mere cannabis positive testing is sufficient enough to prove intoxication which may result to an employee's impairment. Secondly, whether urinalysis testing precisely determine that currently an employee cannot function and perform his duties normally.

Keywords: cannabis, right to privacy, safe working environment, urine testing, zero tolerance, dismissal

AI-Powered Chatbot as a Legal Guidance Tool

Donrich Thaldar, University of KwaZulu-Natal
Aliki Edgcumbe, University of KwaZulu-Natal
ThaldarD@ukzn.ac.za
EdgcumbeA@ukzn.ac.za

The need to provide health researchers with straightforward legal guidance on how best to comply with the data protection statutes of multiple countries is essential if we are to remove the stumbling blocks currently hampering effective health research on the continent. Health policy, especially during pandemic times, is informed by original research. Despite the increased investment in African health research with the aim of correcting global health inequalities, Africa continues to produce poor research outputs. Africa accounts for only 2,1% of the world's share of medical research, and a mere 4,3% of COVID-19 articles related to Africa.[1] The dearth of health research and commentary in Africa negatively impacts on the development of effective local health policies. One of the major hindrances to collaborative health research is the legal knowledge gap experienced by health researchers and ethics committees, especially where research projects span multiple African jurisdictions. Artificial Intelligence (AI) can play a role in bridging the legal-knowledge gap and streamlining legal guidance for health researchers. While there have been some question marks around the value of AI as a free legal guidance tool, especially regarding the accuracy of legal guidance in AI-generated responses, the potential for AI to provide legal guidance for less complex matters, and as a form of "self-help", or as a diagnostic tool, is worth examining.

Keywords: chatbots, AI, data protection, health research, global health inequalities

Resilience in Legal Education: Analysing ChatGPT's Reliability and Validity for Undergraduate Legal Research in South Africa

Fiona Kaplan and S Clarke, Varsity College

fkaplan@varsitycollege.co.za

ChatGPT is an artificial intelligence (AI) language model that can understand and generate text across various topics, making it a versatile tool for LLB students during their studies. The integration of ChatGPT in legal education presents new opportunities and challenges for students. As the legal landscape embraces technological advancements, it is crucial to know the risks associated with relying on ChatGPT-generated information. Notably, one main risk is the creation of non-existent information, as demonstrated in the recent case of *Parker v Forsyth NO* [1] where the plaintiff's legal representation relied on non-existent cases sourced from ChatGPT without verifying its accuracy. Thus, this paper will examine the reliability and validity of responses generated by ChatGPT in legal research conducted by Bachelor of Laws (LLB) students. In doing so this paper will employ black-letter doctrinal research to foster a resilient approach to legal education, embracing evolving technologies, whilst being mindful of the associated risks. The reliability and validity of ChatGPT's responses will be tested by evaluating its alignment with primary and secondary sources of law. In the evaluation, this paper will aim to test the accuracy, currency and the understanding of context and ethical considerations of ChatGPT's responses in relation to final year LLB assignment questions at a private higher education institution (HEI). Final year LLB assignment questions were chosen because at this level of study students are expected to critically engage and analyse legal texts, more so than at other levels of LLB study. It is envisaged the findings of this paper will contribute to a deeper understanding of the integration of AI in legal education, its implications for student research skills and a more informed and responsible use of ChatGPT in undergraduate legal research.

Keywords: legal research, ChatGPT, AI, doctrinal research

The Axe Forgets but the Tree Remembers: Examining the Limitations of Child Justice in Achieving Social Justice

Marelize Schoeman, University of South Africa

schoemi@unisa.ac.za

This paper critically examines the efficacy of the child justice system in achieving social justice, by questioning the appropriateness of employing separate legislation, namely the Child Justice Act 75 of 2008 and the Children's Act 38 of 2005 to deal with child offenders and children in need of care and protection, respectively. The paper argues that the root causes of childhood offending are often linked to personal victimisation, such as child abuse and neglect and peer victimisation, as well as systemic victimisation, such as poverty, socioeconomic disparities, discrimination, and marginalisation. By analysing the implications of this siloed approach, the paper highlights how it obstructs the fair and equitable treatment of children within the criminal justice system. Recognising the intertwined nature of delinquency and victimisation, the paper first argues for the recognition of child offenders as children in need of care and protection. Secondly, it advocates for an integrated legal approach that recognises the vulnerability of children and embraces the offender-victim duality within the best interest framework to promote their holistic well-being and achieve social justice.

Keywords: Child Justice, social justice, delinquency, victimisation, children in need of care and protection

The Protection of a Child's Right to Family Care with Reference to Sections 151 and 152 of the Children's Act 38 of 2005

Terence Madzhie, Tshwane University of Technology

TerenceM@tut.ac.za

The purpose of this study is to investigate whether the lack of a legislated definition of family care in South Africa comply with the South African Constitution and international and regional obligations in so far as protecting children who are removed from family environment is concerned. The South African legal system on the rights of children is supported by an enabling Constitution and statutory framework. The majority decision in *C v Department of Health and Social Development, Gauteng*, 2012 gave a very child-focused approach in protecting children's rights in situations where children who appeared to be in need of care and protection are removed from their home or place of safety, for placement at temporary safety care with or without court order. This article, with reference to the emerging interests of affording human rights to children and defining children's rights, will analyse the strength of legislating the definition of family care as a way of protecting children from vulnerabilities that might come with such removals as per sections 151 and 152 of the Children's Act 38 of 2005, as amended. In the analysis, criticism and recommendation will be made with a view of developing the legal duty of parents to exercise their rights to family and family care for the benefits of their children. The purpose of the study will be met by analysing the South African Children's Act, relevant provisions of the South African Constitution, international and regional documents. If it is found that the protection of family care in South African law is inadequate, recommendations will be made for legislative reform that will provide for the definition of family care, with the aim of providing children with a stable base within which that protection and care will be prioritised.

Keywords: place of safety, temporary safety care, human rights, children's rights

Analysing the Role Churches Have in Preventing Crime: A study of the Kutama-Sinthumule Area, Vhembe District

Tshilidzi Knowles Khangala, Tshwane University of Technology

khangalatk@tut.ac.za

Without a question, South Africa's crime problem is frightening. The South African Police Service (SAPS) oversees the preventing and combating of crime, according to Section 205 of the Constitution of the Republic of South Africa, 1996. But because it has become a societal problem, the SAPS cannot handle it alone. Maximising civil society involvement in mobilising and supporting crime prevention efforts is one of the goals of the National Crime Prevention Strategy. The Makhado municipality in the Vhembe district of Limpopo province includes the Kutama-Sinthumule region. There are about 22 settlements in it, and the total population is close to 100 000. Each year, the crime rate in this region is among the highest in the Vhembe district. The area is serviced by 1 Police Station called the Tshilwavhusiku Police Station situated in Ha-Ravele, which is almost at the centre of Kutama-Sithumule. Though there are more than 60 churches in the region's 22 communities, the annual crime rate in this region continues to be worrying. This paper critically evaluates the part performed by the various churches in the area in reducing crime by combining qualitative and quantitative research approaches. The interaction between churches and these communities, the relationship between churches and the Tshilwavhusiku Police Station, and finally the constructive role that churches may play in this area's fight against crime are all further examined in this article.

Keywords: crime, qualitative and quantitative research approaches, communities

The Legal Implications of *Sithole v Sithole* 2021 (5) SA 34 (CC): A Critical Discussion

Siyabonga Sibisi, University of KwaZulu-Natal

sibisis1@ukzn.ac.za

The legal position before *Sithole v Sithole* (supra) was that all civil marriages that were entered into by Africans in terms of section 22(6) of the of the Black Administration Act 38 of 1927, prior to 2 December 1988 were automatically out of community of property. The impact of *Sithole v Sithole* is that all of the said marriages are now automatically in community of property. While this decision was welcome by the litigant as well as other similarly placed women, its impact has devastating consequences from those women who had built estates at the backdrop of a deserting husband. This decision may be criticised for its assumption that community of property is an ideal marital property regime and for encouraging the return of the deserting husband. This paper is a critical discussion of *Sithole v Sithole.*

Keywords: social justice, property, marriages, family law.

Climate Change Adaptation as Driver for Increased Economic, Social, and Environmental Resilience in South Africa

Michelle Barnard, North-West University

Michelle.Barnard@nwu.ac.za

"Adaptation to climate change presents South Africa with an opportunity to transform the health of the economy and build resilience, thus strengthening the social and spatial fabric, and enables the country to remain globally competitive."

This statement by the Minister of Forestry, Fisheries, and the Environment followed the adoption of the National Climate Change Adaptation Strategy of South Africa (NCCAS) in 2019. The impetus for the drafting of the NCCAS was the 2015 United Nations Convention on Climate Change Conference of the Parties and the resulting Paris Agreement. This instrument (to which South Africa is a signatory) highlights the commitment of the global community to align their efforts to increase climate change resilience – especially for those most vulnerable to the effects of climate change. Of specific importance is the duty placed upon developed countries to support their developing and under-developed counterparts with financial and technological assistance in achieving their country-specific adaptation goals. Considering the importance of a country- or site-specific approach to climate change adaption, the focus of this presentation will revolve around answering four distinct, but inter-linked questions, namely: what are considered as the prominent national climate change vulnerabilities, what should be included in the plans to increase resilience to these vulnerabilities, what are the resources required, and how should these resources be allocated? The answers to these questions will provide a clear indication of the important role of climate change adaptation in promoting the increased economic, social, and environmental resilience of all South Africans.

Keywords: climate change, climate change adaptation, economic, social, environmental resilience

Balancing Employer and Employee Rights in the post-Covid-19 Digital Age: Is Codifying the “Right to Disconnect” the Answer?

Thandekile Phulu, Triumphant College

thandekilempo@gmail.com

The evolving landscape of work and personal life in South Africa is being reshaped by the rapidly advancing digital era, introducing significant challenges to employee well-being and work-life equilibrium. To address these issues, the concept of the "right to disconnect" has gained traction in various countries, proposing the establishment of employees' entitlement to disengage from work-related communication and technology beyond their designated working hours. This study analyses the potential implications of enshrining the right to disconnect, exploring its prospective benefits in cultivating a healthier work environment and enhancing employees' mental welfare. The impact of COVID-19 has expedited the adoption of remote work and technology-driven communication methods, emphasising the reliance on virtual platforms for work-related tasks. Within this context, the research analyses the convergence of the right to disconnect with the challenges and opportunities presented by COVID-19 technology. It also examines the potential advantages of formally recognizing the right to disconnect, while drawing lessons applicable to South Africa from countries that have codified this right. Furthermore, the study explores the responsibilities of businesses, policymakers, and individuals in fostering a work culture that respects employees' personal time and well-being. In a world undergoing continuous digital transformation, the research underscores the significance of striking a harmonious balance between the rights of employers and employees. It further highlights the need for building a resilient and healthy workforce in the digital age, particularly considering the impact of the COVID-19 pandemic and its technological implications in South Africa. Through this exploration, the study offers insights into the evolving dynamics of work in the contemporary era, encouraging the cultivation of a workforce that thrives both professionally and personally.

Keywords: fundamental rights; covid-19; right to disconnect; off-duty rights; employer and employee rights

Collective bargaining in the public service, negotiating without appropriate mandate and actual feedback twists

National Education and Allied Workers Union v Minister of Public Service, Administration, and Others (2022) 43 ILJ 1032 (CC)

Itumeleng Tshoose, University of Limpopo
R Letseku, Letseku Attorneys
itumeleng.tshoose@ul.ac.za
letsekuattorneys@gmail.com

Collective bargaining is described as the relationship governing organized labour and employers, focusing mainly on the respective party's interests. Cheadle contends that collective bargaining is centred on the three range of rights and freedoms associated with the institution of collective bargaining. The first category of these rights include the freedom to bargain collectively. The second deals with the right to use collective economic power in pursuit of a demand. The third range focuses on the duty to bargain. These ranges of collective bargaining will be discussed in the context of collective bargaining in the public service viewed within the Constitutional Court judgment of *National Education and Allied Workers Union v Minister of Public Service, Administration, and Others*.[1] The primary aim of this case note is to inquire into the recent intricate challenges that has beset the system of collective bargaining in the public service in South Africa. The case note not only examines the constitutional and statutory context of collective bargaining but also the contours of collective bargaining as exemplified in seminal labour law cases of recent vintage.

Keywords: organized labour, employers, collective bargaining, freedom

[1] *National Education Health and Allied Workers Union v Minister of Public Service and Administration and Others; South African Democratic Teachers Union and Others v Department of Public Service and Administration and Others; Public Servants Association and Others v Minister of Public Service and Administration and Others; National Union of Public Service and Allied Workers Union v Minister of Public Service and Administration and Others* (2022) 43 ILJ 1032 (CC) (hereafter '*National Education Health and Allied Workers Union v Minister of Public Service and Administration and Others*').

Tacit Choice of Law in International Commercial Contracts. An Analysis of Future Instruments of Developmental Organisations

Garth Bouwer, University of Johannesburg

gbouwers@uj.ac.za

The paper is based in part on a manuscript submitted to the *Potchefstroom Electronic Law Journal* (under consideration). The paper will examine a regional and supranational organisation of emerging countries that could benefit from a codification of private international law rules. They include the Organisation for the Harmonisation of Business Law in Africa (OHADA) and the African Union (AU). In addition, it analyses the envisaged instruments that may be especially relevant in the context of the abovementioned organisations. These include the Preliminary Draft Uniform Act on the Law of Obligations in the OHADA Region and the proposed African Principles on the Law Applicable to International Commercial Contracts. More specifically, the paper focuses on the provisions regarding the determination of the applicable law, particularly those rules relating to a tacit choice of law in international commercial contracts. Harmonising aspects of private international law may play a significant part in integrating the Member States of these organisations in international commerce. Adopting these instruments will allow these organisations to compete in the context of the globalised economy. Member States of these emerging originations will undoubtedly benefit from a codification of this nature, which will strengthen economic growth, sustainable development and bolster trade within the respective regions. In this way, it will contribute to well-functioning and resilient legal systems on the African continent while combating the high levels of poverty.

Keywords: OHADA, international commercial contracts, rules, poverty

Lessons From Street Law: A Vehicle for Inculcating Community Engagement, Learning and Teaching, and Research

Bronwyn Batchelor, IIE

Natalie Martin, IIE

bbatchelor@iie.ac.za

nmartin@iie.ac.za

Street Law is a unique learning method which is often viewed as a strong educational instrument for law schools to produce well rounded graduates. The IIE introduced a final year elective Street Law module on the Bachelor of Laws (LLB) in 2022. The module is not only delivered in a unique and interactive format with facilitators as opposed to lecturers, but the module also requires more from the students. Students are required to research, present, teach and engage with their understanding of the law to transform their community through education and empowerment. Thus, in one module students are capacitated and entrusted with the full circle of academic imperatives: learning and teaching, research and community engagement to ultimately promote social justice. The link between these imperatives is inextricable and alive beyond the lecture room. This research enquires as to whether the Street Law module influenced students with regards to teaching and learning, research and community engagement, and how? This research aims to determine the benefits of the Street Law module for students from the perspective of the students, based on research conducted through anonymous surveys on the two cohorts (2022 and 2023) of students who have completed the module to date. The paper focuses on the responses received from the surveys – in particular it shows how learning and teaching, community engagement and research is improved and encouraged through the inculcation of these imperatives in the module. Although the research is not on a large scale, it creates an intriguing picture about the impact of this untraditional type of education on graduates and in turn the community which they impact.

Keywords: community engagement, teaching and learning, research social justice, and street law

Realising Comprehensive Social Security in South Africa: A Closer Look at the Covid-19 Relief Measures

JM Kgaphola, University of Pretoria

Itumeleng Tshoose, University of Limpopo

u23000432@tuks.co.za

itumeleng.tshoose@ul.ac.za

Social security is a system that provides income and social protection against certain contingencies at some point in one's lifetime. In its current form, the system is fragmented and leaves out of account a significant number of persons from this protection. On the one hand, social insurance is limited to persons in formal employment and who are generally contemplated by the definition of employee in terms of applicable legislation. On the other hand, the structurally unemployed labour force is ineligible for social assistance. In a nutshell, those employed in the informal economy and those who are unable to enter the labour market, either formally or informally are excluded from the protection offered by social security in the country. This tide of exclusion somewhat shifted at the outbreak of the Covid-19 pandemic. The government implemented several measures, that not only supported existing social insurance but also introduced new social assistance programmes. Whereas the Temporary Employer-Employee Relief Scheme buttressed social insurance protection, the temporary Covid-19 Social Relief of Distress Grant represents an unprecedented expansion of social assistance for those hitherto excluded. These measures concretised the need for a comprehensive system of social security that encapsulates everyone in their lifetime. Therefore, the post-Covid-19 social security should provide everyone with the appropriate income and social protection notwithstanding changing income and labour status. To curb this piecemeal, but not insignificant strides towards comprehensive social security, this contribution argues for the staged introduction of a basic income grant into South Africa's social security system.

Keywords: social security, comprehensive social security, social insurance, social assistance, Covid-19, basic income grant

Confronting the Labour Migration Elephant in the Digital Platform Economy: Will The Employment Services Amendment Bill 2022 Deliver?

Zwivhuya Mashele, University of Pretoria

Tumo Maloka, University of Pretoria

Zwivhuya.mashele@up.ac.za

tumo.maloka@up.ac.za

It is beyond contention that labour migration is an *angst* in contemporary public discourse. Across jurisdictions policy makers have treaded wearily around the issue of labour migration. Labour migration is intimately connected to the "hotpot" of national anxieties: the elusive task of safeguarding national labour force against foreign competition under labour migration laws and policies. *The Southern Africa Law Teachers Conference* offers a safe space for a critical commentary on the *Employment Services Amendment Bill 2022 (ESAB)*. The purpose of this presentation is to return to the central issue of the *ESAB* which is the regulated employment of foreign nationals and effective protection of the national labour force against foreign competition in low-skilled sectors. The presentation focuses on one of the problematic areas in the fragile contemporary South African labour market which the ESAB seeks to address: the predominately foreign dominated digital platform work. This brings into the calculus the vexed issue of quotas for employment of foreign nationals in the digital platform economy. Will *ESAB* deliver?

Keywords: digital platform, Employment Services Amendment Bill, foreign competition, foreign nationals, labour migration, quotas, safeguarding national labour force

The Positioning of Black African Women in South Africa's constitutional Democracy: An Analysis of *Mahlangu and Another v Minister of Labour and Others* [2020] ZACC 24

Glancina Mokone, Nelson Mandela University

Glancina.Mokone@mandela.ac.za

Due to South Africa's colonial and *apartheid* past, a societal hierarchy based on gender and race, primarily, was established and black African women occupied, and continue to occupy, the bottom of this hierarchy. The position of black African women has always been inferior to every other race and gender in South Africa. Further, the position of black African women in South Africa's constitutional democracy has always been uncertain, undermined and misaligned with the constitutional agenda. The unemployment statistics, as recorded for black African women, also attest to this. Despite various labour, equality and other legislative reforms, black African women have consistently recorded the highest unemployment numbers above every other racial and gender group in South Africa. Therefore, black African women have not benefited from the constitutional agenda. With due consideration for the above case, and with particular reference to the *ratio decidendi* of the majority judgement, this paper seeks to embark on a meaningful and intentional reflection of South Africa's colonial and *apartheid* history on the labour market and the impact of this on the position of black African women in South Africa's constitutional democracy.

Keywords: black African women, constitutional democracy, colonisation, apartheid, labour market

What to Expect When you're Expecting: Considering a Supervisory Constitutional Remedy to Address Obstetric Violence in Public Healthcare

Simone J Gray, University of KwaZulu-Natal

grays@ukzn.ac.za

Obstetric violence (OV) is perpetrated against birthing or pregnant people and includes various types of conduct including verbal abuse, performing procedures without consent, physical violence, denial of pain medication, and 'simple' neglect. Research has established a link between maternal mortality rates and OV, noting that 60% of maternal deaths in South Africa are potentially preventable. Correctly, OV has been identified as falling squarely within the realm of gender-based violence. This problem appears to be both systemic and cyclic. As the first of a series of papers, this papers' focus is to determine whether other instances of systemic failure have occurred, identify how those failures were addressed, and why those methods were chosen. It identifies litigation as a strategy to force systemic change, where the order granted is more far reaching than the doctrine of separation of powers (DSPs) has traditionally permitted. Supervisory constitutional remedies (SCRs) have been the result, and subsequent papers consider whether OV requires the court to engage SCRs. The collective body of work explores the use and development of focus-based SCRs, and how innovative the court can be. A SCR may be imperative in a case dealing with creating structural change in the arena of obstetrics and in such a case, it can be argued that the DSPs cannot be strictly applied.

Keywords: Obstetric violence; sexual and reproductive health rights; supervisory constitutional remedies; gender-based violence.

Association of Mineworkers and Construction Workers Union OBO Mkhonto and Others v CCMA and Others-An examination of the concept of overtime in South Africa

Veronique Tatchell, University of Fort Hare
VTatchell@ufh.ac.za

Every employee in South Africa may be requested to work overtime as per labour legislation. Suffice it to state that generally, employees are aware of the concept of overtime, but a lot of uncertainties remain. Section 1 of the BCEA defines overtime that an employee works during a day or a week in excess of ordinary working hours. Despite this definition, there are a lot of uncertainties surrounding the concept of overtime, particularly whether an employee is bound to head every overtime request by employers. Inevitably, a question that arises is whether an employee is bound to head every overtime request and whether the failure to comply with such a request would amount to a dismissible offence. For a dismissal to be fair, labour legislation and policies stipulate that, it must be both substantively and procedurally fair. In the *Association of Mineworkers and Construction Workers Union OBO Mkhonto and others* it was held that an instruction to work overtime is rather unlawful and unenforceable in instances where there is no agreement to do so. For the fear of dismissal for insubordination, some employees adhere to overtime instructions even where there is no prior agreement. Thus, through jurisprudential and literature analysis, the case note seeks to critically discuss the concept over time in South Africa.

Keywords: concept of overtime, employee, employers, procedural fairness

Making Teaching and Learning Materials Accessible: Copyright law in Interaction with Other Fields of Law in Pursuit of Social Justice

Chijioke Okorie, University of Pretoria

chijioke.okorie@up.ac.za

Copyright law grants a bundle of exclusive rights while using limitations and exceptions to provide a much-needed balance between the interests of rights owners and those of the public. Amidst the crisis of the COVID-19 pandemic, the efficacy of this balance was severely tested. As most, if not all of learning moved online and has at least in some form remained online, it became more pertinent to address the question of how the public especially teachers and learners would have access to teaching material and other information online. In South Africa, higher institutions and other users of copyright post-pandemic continue to require a licence as they did in the hybrid learning environment. It should be possible for the current teaching and research-related limitations and exceptions to be interpreted and/or applied in a manner that enable use of copyright protected materials in situations such as that presented by the COVID-19 pandemic. But, there is uncertainty as to the scope of these exceptions mostly because judicial interpretation regarding their scope is rare and sometimes, non-existent. This paper takes stock of the teaching and research-related limitations and exceptions in South Africa and how they fared during the COVID-19 pandemic and its aftermath by exploring government and intergovernmental organisations action as well as practices of academics, universities and non-governmental organizations in the promotion and demotion of these exceptions. Further, the paper offers recommendations on how these stakeholders can innovatively utilise the legal system to better ensure that needed information is made available to all.

Keywords: intellectual property law, teaching, learning, covid-19, copyright

Corruption in Resource Allocation: Defeating the Objectives of Social Justice

Deon Erasmus, Nelson Mandela University

Deon.Erasmus@mandela.ac.za

When the Covid-19 pandemic hit South Africa, emergency measures were put into place to address the pandemic. It was clear that the poor would be the worst hit by the Covid-19 pandemic and that made them even more vulnerable. These measures included a R500 billion relief package to provide food parcels for the needy, a temporary social grant increase for over 16 million beneficiaries and the Temporary Employer/Employee Relief Scheme (TERS) for those whose salaries were affected. Emergency procurement regulations were put in place to implement these and other measures. Transparency International (TI) commented that these emergency measures "have proved irresistible to those with thieving tendencies". The release of this relief package led to corruption on a grand scale. Corruption hampers and ultimately destroys meaningful human development by diverting public resources earmarked for the provision of essential public services. It perpetuates inequality and inhibits economic development at national and local level. This leads to distorted markets for essential goods and services. Ultimately corruption undermines the rule of law and causes the loss of public trust in governments. Corruption clearly defeats the objectives of social justice. In this paper it will be argued that the legal system alone will not be able to root out corruption. Civil society should become involved and should relentlessly pursue efforts to promote transparency and accountability. Such a response should be rooted in social justice and democratic principles.

Keywords: public trust, anti-corruption measures, role of law, civil society, social justice

The Need to Curb the Spread of Fraud and Corruption During Emergencies Caused by Natural Disasters in South Africa: Lessons During Covid-19

Leruri Tsweledi, North-West University

tsweledi@gmail.com

During 2020 South Africa, along with the rest of the world was faced with multiple challenges as the COVID-19 pandemic unfolded. The effects of this pandemic put the strain in the health care system. It also provided a conducive environment for criminal activities. It's last straw was felt in the employment sector as many people were forced to stay at home for many months mostly without pay. Most companies were forced to downsize, and most people were left jobless after the pandemic and this increased unemployment rate in the country. In order to minimise the effects of the pandemic, several donor agencies supported South African government with various financial packages. Accountability measures to monitor the use of these funds were relaxed to fast-track the procurement of personal protective equipment, essential goods and services, and vaccines. Most of these items were procured under a certificate of emergency, evading public scrutiny and accountability. Unfortunately, this open doors for fraud and corruption. Against this background, this article seeks to examine how corruption and COVID-19 contributed to the decline of South Africa's economy, unemployment and high crime rate. The article further seeks to examine ways of strengthening of anti-corruption mechanisms in acquiring essential goods and services as well as vaccines during emergencies caused by natural disasters.

Keywords: accountability, essential goods and services, vaccines, covid-19, certificate of emergency

Liability for Damage Caused by Loadshedding: Is Collective Action by the People of South Africa Due and Possible?

Tshepiso Scott-Ngoepe, University of Pretoria

tshepiso.scott@up.ac.za

The Consumer Protection Act 68 of 2008 (CPA) was introduced to advance the social and economic welfare of consumers in South Africa. It seeks to do this through, amongst other things, protecting vulnerable consumers, promoting fair business practices and also ensuring that consumers are confident, empowered and responsible. Loadshedding was introduced into South African society in 2007 as a mechanism to distribute the demand for electricity. Its purpose is to relieve the stress on the national power grid when the demand is high to prevent a national blackout. One of the impacts of the power surge when electricity is restored to part of the power grid is damage to electrical appliances. The CPA makes provision for consumers to institute an action for liability flowing from damage caused by goods. Undoubtedly, it might be costly and tedious to institute action against the national power utility for damage caused by loadshedding on an individual basis. However, the recognition of class actions under the CPA means that collective redress might be a viable means of seeking redress for damage to electronic appliances. This paper explores the CPA as an avenue for redress against the national power utility for the damage caused by loadshedding.

Keywords: consumer protection law, national power utility, damages, loadshedding

Towards Pan African Solutions for Cross Border Delictual Liability in Africa: The Case of Applications for Admission as Amici Curiae by Various UN Bodies and Human Rights Watch v Anglo American SA (Ltd) ZAGPJHC 935 (2022)

Tulani Musawenkosi Mafulela, University of Johannesburg

tulanim@uj.ac.za

African states have adopted several legal instruments and protocols envisioned to confer on their citizens' viable legal pathways to protect their substantive human rights. However, like many other multilateral protocols on the continent, most access to justice mechanisms tend to be 'state-centric' and focus on public international law dimensions of disputes. This neglects a seemingly essential dimension of private law litigation, particularly within the domain of civil litigation for transnational delicts in Africa. Thus, lawsuits of a multinational company by Africans in Africa present a rare opportunity to create homegrown solutions to transnational delictual litigation. To illustrate why the issues identified are crucial, this contribution will employ the factual matrix in the ongoing class action lawsuit in South Africa, where a Zambian mining community is pursuing Anglo-America for mining- related harms that took place in Zambia. This contribution will reflect on how our national courts can craft Pan-African solutions to facilitate viable pathways for access to justice for cross-border delict victims of multinational companies. The contribution suggests that conflicts and choice of law issues in Africa must be resolved from the perspective of the shared values that run through each of our national constitutions. Values like respect for human dignity, equality and ubuntu, and African humanness are essential in guiding courts to navigate complex interactions of competing private law rules within African nation-states. This contribution argues that with such legal harmonisation facilitating access to justice in local domestic courts, many human rights will be significantly improved.

Keywords: cross border, delictual liability, Pan-African solutions, human dignity, equality, ubuntu

Dealing with Culturally Motivated Crimes Outside of South Africa's Criminal Justice System

Jacques Matthee, University of the Free State

mattheejl@ufs.ac.za

In a multicultural society like South Africa, the legal system will inevitably encounter so-called "culturally motivated crimes". Culturally motivated crimes occur in a multicultural society when conduct by a member of a minority culture is condoned and accepted as normal behaviour but at the same time as a crime by the dominant culture's legal system. The South African legal system has a long history of dealing with such crimes by prosecuting perpetrators for common law and statutory offences and doing so primarily through retributive justice. However, South Africa's constitutional dispensation emphasises dealing with criminal activities in a more participative and reconciliatory manner. In doing so, a restorative justice approach informed by indigenous and customary responses to crime is adopted and involves processes within and outside the criminal justice system. The above said, this paper considers how culturally motivated crimes can be dealt with outside of the South African criminal justice system in response to the restorative justice approach.

Keywords: crime, culture, restorative justice, criminal law, African customary law, legal pluralism

Dispelling the Stigma Associated with Customary Law Through Developing a Legal Curriculum that Promotes Social Justice and Resilience

Kgopotso R Maunatlala, University of Pretoria

kgopotso.maunatlala@up.ac.za

Customary law is indubitably the original South African system of law. However, due to colonisation and apartheid, it was viewed through the common law lens and therefore marginalised to only apply when it was not contrary to public policy and natural justice as per the Law of Evidence Amendment Act 45 of 1988. Resultantly, it is stigmatised as being inherently discriminatory due to maintaining 'undignifying' norms such as lobola and ukuthwala, which justify treating women as second-class citizens. This contribution argues that such misunderstanding of customary law results from the blurred view of the common law lens through which customary law is viewed and thus, highlights that the indoctrination of this stigma has been furthered through the teaching of customary law in institutions of higher learning. Significantly, the first South African legal qualification was issued in 1858. This laid the foundation for the formal teaching of law, eventually including the distorted formal customary law as part of the curriculum. Accordingly, the impetus of this contribution lies in dispelling the stigma of customary law being inherently discriminatory. The study highlights the role that law schools can play in reforming legal curricula to promote resilience and social justice. Thus, developing curricula that mirror the progressive nature of customary law that continuously evolves to meet the needs of society. Essentially, given the marginalisation and distortion customary law has been subjected to, this contribution underscores how its embracement in academia will positively contribute to its promotion as an actual equal component of the law.

Keywords: customary law, legal curriculum, social justice, curriculum transformation, law reform

A Re-Evaluation of Constitutional Court Cases in Relation to Customary Family Law

Ebrezia Johnson, Stellenbosch University

ebrezia@sun.ac.za

In this article a number of seminal cases of the Constitutional Court of the last couple of years will be discussed and evaluated, in order to determine whether it can be said that it has contributed in the transformation of customary family law. It is important to consider these cases as customary law is characterized and regarded as an inherently flexible system of law. However, no change occurred naturally in the area of customary family law and it was still necessary for especially women to approach the South African courts to achieve the progressive realization of their fundamental constitutional rights, that being human dignity and equality. The cases alluded to above refers to *Gumede v President of the Republic of South Africa*;[1] *MM v MN*;[2] *Ramuhovhi v President of the Republic of South Africa*[3] and lastly *Sithole v Sithole*.[4] These cases were all a victory for women as it all enhanced their position but more importantly it completely changed the traditional customary family law position, to one that is more attuned and aligned to the values of the South African Constitution. The article will thus also consider the notion of transformative constitutionalism, its reach and limitations and whether it can be said that it was achieved in the cases alluded to above. The effect of these cases on the legislation promulgated to give effect to it, will also be considered and criticized.

Keywords: customary law, constitutional law, human dignity, equality

[1] 2009 (3) BCLR 243 (CC), 2009 (3) SA 152 (CC).

[2] 2013 (4) SA 415 (CC).

[3] 2018 (2) BCLR 217 (CC), 2018 (2) SA 1 (CC).

[4] 2021 (5) SA 34 (CC).

The Impact of COVID-19 on Cyberbullying: A Delictual Claim for Emotional Harm

Franaaz Khan, University of Johannesburg

franaazk@uj.ac.za

Bullying as we have known in South Africa and internationally is not a new phenomenon, but as society we have become aware of its harmful effects. In the current challenging times amidst COVID-19, individuals, more especially children are spending more time engaging in online social interaction, as most private schools are resorting to online teaching and learning. This results in a further increase of incidents of online bullying, or 'cyberbullying'. As we are aware from studies, victims of both physical bullying and cyberbullying report a range of forms of psychological harm, such as depression and low self-esteem. Some victims of cyberbullying have even committed suicide. Lunfuno Mavhunga a grade 12 pupil from Nzhele in Limpopo earlier in 2021 committed suicide after a video of her being bullied by her fellow pupils went viral. Delictually victims of cyberbullying have remedies available such as a claim for defamation under the actio iniuriarum. In addition to this remedy the author in the paper seeks to propose that victims of cyberbullying should also explore the additional claim of emotional harm that he or she has suffered by the culpable conduct of the bully.

Keywords: actio iniuriarum, remedy, victims, cyberbullying, emotional harm

An Exploratory Analysis of the Legislative Framework of Cyber Sextortion

Mpakwana Mthembu, University of South Africa

Sebolawe Tladi, University of Limpopo

Mthemma@unisa.ac.za

sebolawe.tladi@ul.ac.za

Consequent to the technological developments and the Covid 19 pandemic globally, there is an increase of cybercrimes, which led to the introduction of the Cybercrimes Act 19 of 2020. The purpose of the Cybercrimes Act is to specifically regulate cybercrimes including some common law crimes committed on cyberspace. Section 10 of the Cybercrimes Act criminalises the act of extortion, which cyber sextortion forms part thereof. Sextortion is a recently established *portmanteau* of the words “sex” and “extortion.” Snyman (Snyman Criminal Law, 426) defines extortion as the acquisition of a patrimonial or non-patrimonial advantage intentionally and unlawfully from another through coercion and threats. Cyber sextortion is defined as an extreme form of cyber abuse, where a person is threatened with the dissemination of their explicit, embarrassing and intimate images without consent. The multifaceted act of sextortion include *inter alia,* firstly, the sextorters obtaining explicit, embarrassing or intimate images in various ways through sexting, controlling the victims webcam unknowingly to the victim or coercing the victim to perform sexual acts. Secondly, the sextorter invokes fear in the victim by blackmailing him or her that the images or video will be disseminated to family members, friends or colleagues. Lastly, sextortion as a form of catfishing, where the sextorter pretends to be someone else in order to obtain intimate images or videos. In other instances, the sextorter blackmails the ex-partner into staying or disseminate the intimate images or videos as a jilted partner (revenge porn). This article explores sextortion as a topic that is the subject of an on-going and heated contest regardless of the existing legislative framework. The regulation of sextortion as a form of cyber-harassment and gender-based violence will be analysed to ascertain if sextortion is sufficiently regulated in South Africa.

Keywords: cyber-Security, cyber sextortion, cybercrimes, revenge porn, online sexual exploitation, cyber-harassment and catfishing.

An Appraisal of the South African Stance on Cybercrimes and Protection of Personal Information

Ditebogo Phyllia Mashigo & Matthews Eddie Nkuna-Mavutane

dpmashigo@sun.ac.za

menkuna@sun.ac.za

We are stated to be in the fourth industrial revolution. This entails that there is now a lot of reliance and usage of technology and the internet in the day-to-day affairs of the people. This era comes with possibilities of violation or undermining of certain rights included in the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*). This may include the right to freedom and security of a person; right to privacy; freedom of trade; right to property; and children's rights. The usage of technology and the internet may make life easier and trade efficient. Despite this noted benefit it also places a risk on the consumer, the supplier and the state. The same risk also applies to the instruments and appliances used for internet transaction and ecommerce. These risks can lead to cybercrimes and the breach in the duty to protect personal information of clients. International agreements such as the African Union Convention on Cyber Security and Personal Data Protection and the [European] Convention on Cybercrime are guiding tools in dealing with cybercrimes and the protection of personal information. With the noted risks and presence of international instruments the paper will appraise the South African stance on cybercrimes and protection of personal information. This will be achieved through an assessment of the South African response to deal with cybercrimes and the protect personal information; an elaboration of the link between the stated international conventions and the above listed rights and an assessment of the state of readiness to deal with cybercrimes and breaches which may lead to unauthorised disclosures of personal information.

Keywords: consumer law, constitutional law, cybercrimes , protection of personal information

Enhancing the Attainment of the United Nations Sustainable Development Goals through Improved Cybersecurity.

Veronique Tatchell, University of Fort Hare

VTatchell@ufh.ac.za

The United Nations Sustainable Development Goals (SDGs) outline a comprehensive framework for addressing global challenges and promoting sustainable development across various dimensions, such as poverty eradication, quality education, gender equality, and climate action. In the digital era, where technology and interconnectedness are rapidly advancing, ensuring robust cybersecurity measures is crucial for effectively achieving these goals. This article explores the potential impact of improved cybersecurity on the attainment of the SDGs. Cybersecurity is of paramount importance as societies become increasingly reliant on digital infrastructure and information and communication technologies (ICTs) for essential services and economic growth. However, the rapid expansion of digital networks and the evolving nature of cyber threats pose significant risks to the realization of the SDGs. Malicious cyber activities, including data breaches, identity theft, and cyber-attacks, can disrupt critical services, compromise personal and organizational data, hinder socio-economic development, and undermine public trust. By strengthening cybersecurity measures, nations can mitigate these risks and create a secure digital environment conducive to sustainable development. This article seeks to highlight areas where improved cybersecurity can enhance the attainment of the SDGs. By mitigating cyber risks; fostering economic growth and innovation; supporting quality education and knowledge sharing; and promoting peace, justice, and strong institutions, robust cybersecurity measures create a secure and resilient digital environment.

Keywords: SDGs, mitigating cyber risks, economic growth and innovation, quality education, knowledge sharing

Delays in Evictions: A Post-Constitutional Deprivation of Property in South Africa

Mbavhalelo Gerson Mmbadi, University of the Witwatersrand

mbavhalelo.mmbadi@wits.ac.za

Section 25 of the Constitution provides the cornerstone for the protection of property rights alongside socio-economic rights within the Republic of South Africa. However, delays in the eviction proceedings have proven to be a contentious and complex problem, which deprives a rightful owner of his/her right to their property, which raises concerns about post-constitutional deprivation of property rights. Meanwhile, these owners are still liable for rates and taxes on the said property that they are unable to enjoy; and a failure to pay their rates and taxes can result in the municipality executing against the owners, regardless of who is at fault for the said delay. Delays in the eviction proceedings have disproportionately affected both occupiers and landowners, thus exacerbating social inequalities and undermining the principles of social justice and equality enshrined in the Constitution. Various factors contribute to delays in evictions, such as inadequate implementation of legislation, limited access to legal services, judicial inefficiencies, unavailability of alternative accommodation and delays in obtaining municipal reports on the personal circumstances of unlawful occupiers. The aim of this research is to investigate the possibility of striking a balance between protecting vulnerable members of society and protecting the interest of property owners. This research will also look at the social injustices created by the delays of eviction proceedings, with an aim of addressing these delays and provide comprehensive solutions to safeguard property rights and promote social justice in post-apartheid South Africa.

Keywords: property law, constitutional law, vulnerable members of society, property owners.

Identity of the Beneficiary or Presenter Calling for Payment Under Demand Guarantees: A Purpose Approach

Tinaye Chivizhe, Eduvos

tinaye.chivizhe@eduvos.com

In practice, issues may arise when a party other than the designated beneficiary makes a call for payment, leading to a non-conforming demand. This has threatened the commercial use of demand guarantees due to demands for payment being rejected for non-conformity. Notably, the party calling for payment may or may not be the designated beneficiary stated in the demand guarantee. It could be a third party or an authorized agent acting on behalf of the beneficiary or a party entitled to receive payment under the guarantee. Also, when the demand guarantee is transferred, it is the transferee (new beneficiary) who may sign and issue a demand for payment. This article examines recent case law and international instruments related to demand guarantees to address problems associated with the identity of the beneficiary. The approach followed in resolving such issues emphasizes a purposive approach to compliance of the demand. A party other than the beneficiary can demand payment on behalf of the beneficiary if it has been authorised to do so. Imposing strict compliance would contradict well-established contract law and sound business practices. For this reason, if the parties do not wish it be possible for an agent or a party other than the beneficiary to demand payment on behalf of the beneficiary, this should be so stated in the guarantee itself. However, if the presenter of a demand is not the beneficiary but demands payment in its own right, however, it is suggested a strict approach is entirely proper.

Keywords: approach, beneficiary, call for payment, demand, demand guarantee, strict compliance, identity, presenter, purposive; compliance, conformity

4IR and its Shortcomings: Digital Social Security as a Viable Alternative for Digital Platform Workers Engaged in the Gig Economy

Ntando Ncamane, University of the Free State

NcamaneN@ufs.ac.za

The advent of the Fourth Industrial Revolution(4IR) has been hailed as an advancement of the previous industrial revolutions by introducing a number of technologies that are paramount to industries, lives and how we do things. A perfect example is how the technologies of 4IR have developed and elevated the operations of the gig economy or what is known as platform work. Workers engaged in this economy are often referred to as digital platform workers, such as Uber, Bolt or Mr Delivery drivers etc. However, these kinds of workers do not enjoy social protection like the rest of the workers because they are not regarded as employees in terms of our labour laws, making them ineligible to be covered by social protection. Social Protection available for employees in South Africa includes unemployment insurance, compensation for injuries and pension, nonetheless, digital platform workers are excluded from such social protection. It is against this background that the paper proposes what is called “digital social security” as enshrined in the ILO Working Paper No. 34. The DSS allows digital platform workers to put in an agreed amount towards the DSS for any future contingencies the worker can encounter. This can be managed and administered through the Department of Labour and any additional financing needed for the effectiveness of this DSS can be sourced through other measure which will be suggested in the article.

Keywords: 4IR, social security, social protection, digital platform workers, digital social security, gig economy

Foreign State and Diplomatic Immunity in Employment matters: A comparative analysis between Botswana and South Africa

Ramokgadi Walter Nkhumise, North-West University

Ramokgadi.Nkhumise@nwu.ac.za

The customary international law principle of immunity is currently codified in two major international conventions, namely, the Vienna Convention on Diplomatic Relations (hereafter "VCDR") and Vienna Convention on Consular Relations (hereafter "VCCR"). In *Bah v Libyan Embassy* 2006 (1) BLR 22 (IC) and *Dube & Another v American Embassy/BOTUSA* Case No: IC. 897/2006, the Industrial Court of Botswana have ruled that a foreign country is not immune from legal action arising out of breach of an employment contract. This paper critically analyses the rights of diplomatic employees to justice in national courts. These court decisions have far-reaching implications for South Africa, which is signatory to the VCDR and VCCR, particularly in the context of employment at embassies and diplomatic or consular missions. In this paper it is argued that South African law-makers can gain a valuable insight from judicial approaches in Botswana as it sheds some light on the protection of the right of nationals working at foreign missions which is still in the development stages. This paper critically analyses these decisions and contends that the Industrial Court of Botswana courts conflated the legal principles relating to diplomatic immunity and how the concept differs from sovereign or state immunity. Therefore, the main aim of this paper is to conduct a comparative analysis of legislative and judicial approaches in Botswana and South Africa on the protection of rights and remedies available to employees working in foreign missions. Thereafter, the paper will examine the legislative and judicial practices of national and international jurisdictions on how they interpret the VCDR, VCDR and other international instruments to protect the rights of this group of vulnerable employees. This paper concludes that national courts should adopt a flexible and pragmatic approach to immunity in deciding whether foreign state or diplomatic agents enjoyed immunity from legal proceedings in South African courts instead of a more conservative approach which allow diplomatic agents to hide behind the veil of diplomatic immunity and consequently prevents diplomatic employees the right to access to national courts.

Keywords: comparative analysis, foreign state immunity, diplomatic immunity, vulnerable employees, international conventions and customary international law

The Duty Of Employers to Return Disabled Workers Back to Employment: A Comment on the 2023 Draft Regulations on Rehabilitation, Reintegration and Return to Work

Estie Gresse, North-West University

20322003@nwu.ac.za

Persons with disabilities are a large, disadvantaged minority, comprising approximately 12% of the population. Since the Covid 19 Pandemic, it has become essential for all stakeholders to formulate strategies to curb the possible loss of employment of all citizens in South Africa, including those who become disabled during employment. In 2008, South Africa ratified the CRPD and the Optional Protocol, thus committing itself to the provisions relating to, inter alia, workplace integration. Article 26 of the Convention mandates States Parties to take effective and appropriate measures to -enable PWDs to attain and maintain maximum independence, physical, mental, social and vocational ability, and to ensure their social inclusion. Article 27 stipulates, inter alia, that States Parties shall safeguard and promote the realisation of the right to work, including those who incur a disability during employment. South Africa does not have disability specific legislation and reasonable accommodation measures are set out in a fragmented manner in legislation, policies and other relevant Codes. South Africa amended the Compensation for Occupational Injuries and Diseases Act 130 of 1993 in 2018 and again in 2023. On the 15th of June 2023, South Africa further published draft regulations on rehabilitation, reintegration and return to work regulations which requires careful consideration and analysis by all role-players in a return-to-work arrangement. It is unclear how the new amendments will affect the already existing employer obligations to reasonable accommodate, as set out in other labour legislation as well. An analysis of the current duties will be done in order to provide some recommendations for role clarification in this regard.

Keywords: right to work, disability, employment, disability, policies

Dispute resolution in Sectional Title Schemes: The Ombud Service comes under scrutiny

Marda JG Horn

HornJG@ufs.ac.za

Prior to the implementation of the *Community Schemes Ombud Service Act* in 2016 disputes in sectional title schemes were generally resolved through either litigation or arbitration. The CSOSA has introduced conciliation and adjudication mechanisms to be used by the Ombud Service for the better, more effective resolution of disputes. This research critically examines the dispute resolution procedures available to sectional title schemes and seeks to provide legal clarity on the changes brought about by the implementation of the CSOSA. The main focus will be on how the implementation of the CSOSA influenced dispute resolution in sectional title schemes in South Africa and whether this has actually improved the resolution of disputes. In line with the major theme of the 2023 SALT Conference, the paper will investigate whether the changes brought about by the dispute resolution system meet societal demands, but also does so in a manner that is consistent and transparent.The paper makes use of a comparative discussion between the legal position of strata titles in New South Wales and the legal position in South Africa, in so doing, it provides valuable insights into how disputes are resolved in a different but comparable country.

Keywords: property law, alternative dispute resolution, sectional titles, community scheme ombud service

Is the Doctrinal Research Methodology Unscientific? Exploring the Need to Adequately Defend the Doctrinal Research Methodology

Nondumiso Phenyane, Stellenbosch University

nphenyane@sun.ac.za

Hutchinson and Duncan observe that the doctrinal research methodology developed intuitively within the common law. They point out that for a while, this research methodology did not need to be justified or classified within the broader research framework, but that as research funds became increasingly limited and the competition for funds got stiffer, modern academic lawyers were faced with the daunting task of having to explain and justify their methodology in clearer ways. This paper considers the need to explain and justify the legal research methodology in broader terms. It illustrates that the need to explain and justify the legal research methodology goes beyond trying to gain access to limited research funds. It is essential to protect the integrity of legal research. The paper illustrates that although often misunderstood and dismissed as less scientific in the research community, the legal research methodology is not only necessary for the study of the law, it is also imperative for the development of the law. The paper uses criminal procedural research law to illustrate that the doctrinal research methodology is not a mere cop-out law academics use to avoid empirical research. It is itself empirical and as scientific and rigorous as any other legitimate research methodology. Moreover, the paper explores how this research mythology can be more aptly justified and defended.

Keywords: doctrinal research, common law, research methodology, research framework, academic lawyers

An Analysis of China's 'Dumping' of Steel in South Africa: The Perspective of the Competition Policy

Sandiso Mbulawa, University of Fort Hare

sandismbulawa50@gmail.com/201800766@ufh.ac.za

The concept of "dumping" is related to "predatory pricing" under the Competition Act 89 of 1998 as amended. The relationship between these concepts signifies the interface and/or correlation between the International Administration Act and the Competition Act. Thus, there are areas of common interest and functions that necessitated a call for cooperation in the form of a Memorandum of Understanding between the Competition Commission and the International Trade Administration Commission. Therefore, the paper explores the policy and the basic principle that underpins "dumping" and "predatory pricing" respectively, thereafter, assesses the effectiveness of the Memorandum of Understanding between the Competition Commission and International Trade Administration Commission.

Keywords: dumping, competition, competition commission, predatory pricing

The Amendments to the Employment Equity 55 of 1998 that Have Been Promulgated in Terms of the Employment Equity Amendment Act 4 of 2022: An Analysis

Jeannine van de Rheede, University of the Western Cape

jlvanderheede@uwc.ac.za

The Employment Equity Act 55 of 1998 was enacted *inter alia* to promote the constitutional right to equality and to ensure that employment equity is implemented to redress the effects of apartheid. The Act was amended by the Employment Equity Amendment Act 4 of 2022 in terms of which the meaning of a 'designated employer' and the meaning of 'people with disabilities' has been amended. In addition, the Minister is now empowered to set sectoral numerical targets for the purpose of ensuring equitable representation of people from designated groups in the workplace. Some people from designated groups and from non- designated groups in South Africa have negative views when it comes to employment equity. The phase in which the legislature considered amending the Act was an opportune time for the legislature to change the negative views which have been expressed insofar as employment equity is concerned. This article determines whether the legislature made use of this opportunity and whether the amendments enacted in terms of the Employment Equity Amendment Act 4 of 2022 are in line with the objectives which the Act is meant to achieve.

Keywords: affirmative action; amendments; employees; designated employer; Employment Equity Act 55 of 1998, as amended; people with disabilities

The Plight of Employment Policies that Restrict Customary Practices in the Work Place

Samukelisiwe Cwele & I Petse, Walter Sisulu University

scwele@wsu.ac.za

With South Africa called the “rainbow nation” and its 11 official languages, the country is melting pot of diverse cultures, traditions and beliefs. This then brings about interesting and complex questions from an employment perspective. Striking a balance between the employer’s rights versus the employee’s traditional practices becomes a major challenge. South Africa Labour Law eg Labour Relations Act recognises religious rights however does not make provision for customary practices. The Constitution of South Africa only mentions Customary Laws under section 39 of the Constitution, which allows development of Customary Laws but omits customary practices under section 9 and section 8(3) of the Constitution. The question is, should Customary practices be part of the grounds of equality in the work place?

Keywords: cultures, traditions, beliefs, employment, employer’s rights, traditional practices

Gains and Challenges of South Africa's Just Energy Transition Policy: Toward an Effective Legal Regime

Christian Zenim, University of the Western Cape

4177800@myuwc.ac.za

Just energy transition (JET) seeks to integrate the benefits and concerns of economic, social, and environmental justice into energy policy. Such integration considers different groups in decision- making processes, and how both benefits and losses are distributed in just, fair, and safe ways. JET also aims to integrate the inherent concerns of job creation and sustainably with innovative measures to support communities that hitherto depend on fossil fuels for their livelihood. The economic, social, and environmental consequences of South Africa's existing energy policy and regulatory regime are not reflected in the intractable crisis of scheduled load-shedding facing the energy sector. Consequently, South Africa's economic outlook has been on a downward trajectory to the crisis in the electricity industry. At the core of South Africa's energy crisis is the problem inherent with effective design of the Country's energy policy and how to ensure compliance and implementation. This article seeks to use the effectiveness approach to ascertain the extent to which South Africa's JET can be a viable strategy to enhance livelihoods, build resilient and adaptive communities. Effectiveness is significant to test South Africa's JET for fairness, equity, and efficiency, with the view to determine the energy policy impact on energy production. The goal is to have a JET policy that is adaptable with broad acceptance and mechanisms for implementation, monitoring, and compliance. The effectiveness approach also serves to develop a flexible relationship between policymakers and communities that hitherto depend on fossil fuels, enhance the deployment of modern energy, and reskill such communities.

Keywords: just energy transition, effectiveness, compliance, monitoring, and implementation.

Towards the Attainment of Environmental Sustainability: Can EIA Decision-Making be Delegated to AI?

S'khulile Ngcobo, University of Johannesburg

sikhulilen@uj.ac.za

At its core the principle of sustainable development emphasises the integration of economic, environmental, and social issues. As the world grapples with the increasing urgency of climate change, biodiversity loss, and resource depletion, the need for innovative solutions that can help us navigate these challenges has never been greater. By promoting a precautionary approach that gives effect to the principles of environmental management, the environmental impact assessment (EIA) process plays an integral role in the attainment of environmental sustainability. The potential of artificial intelligence (AI) in EIA-decision making is immense, as it promises to revolutionise the way we approach and address the complex challenges of sustainable development. AI, with its ability to process vast amounts of data, recognise patterns, and make predictions, offers a powerful tool that can help us better understand and manage the environmental impacts of human activities. One of the key benefits of AI in EIA is its ability to streamline and improve the efficiency of the assessment process. Traditional EIA methods often involve time-consuming and labour-intensive tasks, such as collecting and analysing data, identifying potential impacts, and evaluating mitigation measures. AI can automate many of these tasks, allowing for faster and more accurate assessments. One of the key questions is whether decision making can be delegated to machine learning systems. This paper seeks to provide potential solutions to the question, against the backdrop of administrative law. The paper looks at the current legislative framework and makes recommendations as to how legislation can better accommodate the use of AI in EIA-decision making.

Keywords: principles of environmental management, environmental impact assessment (EIA), environmental sustainability, sustainable development

Equality as Essential Element for Improving Human Life

Zibele Nodangala, Walter Sisulu University

znodangala@wsu.ac.za

Covid 19 tested democracy, human justice, and Constitution. To a large extent, the inequality and poverty have grown so strong. The state has made some progress in improving the quality of life, however, with the introduction and acceleration of the Fourth Industrial Revolution(4IR), to eradicate poverty, there should be social integration. This will ensure people in their small societies build a strong partnership with local government. The sudden mushrooming of the GBV pandemic exacerbated social ills. It continues to cause havoc in families and the society at large. The human crisis has had a devastating effect on the most vulnerable South Africans. To bolster a safe, resilient, strong, and prosperous society, instead of being recipients of change, people in their own societies need to partner with the state in maintaining social justice, thereby strengthening active participation of the public in issues affecting them. Part one of the paper will be introduction. Part two will deal with the issues of human dignity and how the state may improve to protect human life. Part three deals with the right to life and how it must be realised by all. Part four deals with society resisting adversity. Part five deals with enhancing social justice through equality. Part six is conclusion.

Keywords: human rights, social justice, social security, equality.

Every Day, Rational People all Over the World Plead to be Allowed to die or to be Killed: An Analysis of the Outstanding Issues on Voluntary Active Euthanasia and Physician-Assisted Suicide as Discussed in *Minister of Justice and Correctional Services v Estate Late Stransham-Ford* 2017 (3) SA 152 (SCA)

Ntokozo Mnyandu, University of KwaZulu Natal

MnyanduN@ukzn.ac.za

The paper considers the last remaining questions that would have to be answered before the right to die is recognised in South Africa. The contribution sets itself apart in that it avoids the discussion on whether the common law prohibition against voluntary active euthanasia and physician-assisted suicide is consistent with the Constitution. Instead, it looks at South Africa's unique circumstances to determine whether the country is ready for the recognition of the right to die. It does so by considering the medical and sociological implications associated with the right to end one's life. The court in *Minister of Justice and Correctional Services v Estate Late Stransham-Ford* found that before a court could reach the same conclusion as those countries that have permitted voluntary active euthanasia and physician-assisted suicide, it would have to consider their implications on medical and palliative care and whether South Africa's ability to provide the same should have any influence on whether to recognise the right to die. The research also looks at other policy consideration such as the risk attended upon permitting the terminally ill to be assisted in ending their lives. In this respect the research analysis the ability of the State and the country to provide sufficient regulatory enforcement framework that would safeguard and protect the poor, week and the vulnerable. Therefore, the essence of this paper is the consideration of public policy issues and not as already done, the legal policy issues that are implicated in voluntary active euthanasia and physician-assisted suicide. In light of the recent Covid19 pandemic and future emergency health concerns the question of a right to die may prove to be both urgent and critical.

Keywords: legal policy, euthanasia, physician-assisted suicide, covid-19 pandemic

Examining the Inclusiveness of the 'Otherness' in the Society During the Covid-19 Pandemic: A Legal Perspective in Terms of Voice and Silence

Tshepo M Ramatabana **and** Ms Motlatjo Ntatamala, **North-West University**
44893159@nwu.ac.za
motlatjo.ntatamala@nwu.ac.za

The COVID-19 pandemic was an unprecedented global challenge that has exacerbated inequalities prevalent in all regions of the world. The United Nations General Assembly has acknowledged that "the poorest and most vulnerable are the hardest hit by the pandemic" and the UN Secretary General has noted that it is "highlighting deep economic and social inequalities and inadequate health and social protection systems that require urgent attention as part of the public health response". Over the past years women have not been treated equally to men, it did not even end there, it escalates to men/women who are/not part of the LGBTQI. In simple terms, women are not treated the same at work especially when the individual is a member of the LGBTQI. It is mostly visible when it comes to the recognition in terms of promotions and heading certain departments, instead, they are indirectly isolated and marginalised. In politics, private and public institutions more than 80% of employees are men, especially in the managerial or directorship positions. Moreover, they are made to believe that women can only occupy the positions of the receptionist, personal assistant, and personal secretaries, which is generally wrong in most levels as women and men either from the LGBTQI are equally qualified or capable of handling positions that are more advanced than the above-mentioned ones. Thus, among other factors of which contributed to the voice or silence of women and members of the LGBTQI, Covid 19 pandemic unexpectedly added as another oppressive factor, as most facilities were only accessible and only accommodated specific individuals in the society. It has been argued that the liberation of women together with the LGBTQI members should involve the creation of platforms that enable them to self-define by articulating their needs and challenging dominant structures of power. As the scholars posits that women deserve space to speak about their challenges and disrupt racial and class differences that entrench gender inequalities. This proposed paper will utilize selected theorists, among others, Toni Morrison and Judith Butler in the discussion as they both recognize and argue that unequal power dynamics shape and prescribe particular gender roles for men and women. The proposed paper will further explore and analyse selected case laws and legislation within the argument. As the constitution of the Republic of South Africa, especially the Bill of Rights advocates for equality in all material or immaterial aspects. Looking at Section 9 of the Constitution it is indicated and very clear that we are all equal before the law and no one should be treated otherwise, either in terms of color, class or sexuality.

Keywords: otherness, marginalisation, identity, self-definition, sexuality, humanhood, covid-19, power, voice and silence

The Powers of Business Rescue Practitioners in Respect of Executory Contracts

Cobus Nieuwoudt, STADIO

cnieuwoudt@sbs.ac.za

With the coming into operation of the new Companies Act of 2008, business rescue replaced judicial management to remedy the somewhat flawed restructuring process in place at the time. The business rescue practitioner is the key role player in business rescue proceedings and is responsible for facilitating the rehabilitation of the company. In the course of fulfilling his functions, the business rescue practitioner will be faced with various legal issues and challenges, including the treatment of executory contracts. Given the financial challenges that Covid- 19 has brough about the current South African economic dispensation, business rescue has become a viable and feasible option for businesses who are financially distress and in need of restructuring. This paper will investigate the powers of the business rescue practitioner with the aim of seeking a resolution to the conflicts between the powers of business rescue practitioners and the rights and obligations of creditors. Furthermore, this paper will investigate whether the powers of the business rescue practitioner are affected by a breach of contract that occurred before and/or during business rescue proceedings and what affect such a breach will have on the business rescue as a whole. To this end, this paper will investigate the differences between the South African Companies Act, the USA Bankruptcy Code and the Australian Corporations Act to draw conclusions and make recommendations regarding the best way forward for the South African approach to the treatment of executory contracts during business rescue by the business rescue practitioner.

Keywords: business rescue proceedings, rehabilitation, business rescue practitioner nd challenges, executory contracts

Does "Falling Asleep" or "Momentarily Loss of Concentration" in Course of Arbitration Proceedings Constitute Violation of the Constitutional Right to Fair Arbitration? – *Value Logistics (Personnel) Services (Pty) Ltd v Letsoalo* [2014] 10 BLLR 1018 (LC) and *Gordon v JP Morgan Equities SA (Pty)* (2018) 39 *ILJ* 393 (LC)

Tumo Maloka, University of Pretoria
Zwivhuya Mashele, University of Pretoria
zwivhuya.madala@up.ac.za
tumo.maloka@up.ac.za

This case note aims to re-evaluate the Labour Court judgements in *Value Logistics (Personnel) Services (Pty) Ltd v Letsoalo* [2014] 10 BLLR 1018 (LC) and *Gordon v JP Morgan Equities SA (Pty)* (2018) 39 *ILJ* 393 (LC) in order to shed light on a novel question regarding review applications brought to the Labour Court. Although initially these two judgements may appear to have limited impact on labour dispute resolution jurisprudence, a deeper analysis of these judgements reveals a significant issue concerning the violation of the constitutional right to fair arbitration when arbitrators fall asleep or experience momentary loss of concentration during CCMA arbitration hearings. Furthermore, the LRA aims to promote effective and efficient resolution of labour disputes. It is argued that the conduct of arbitrators falling asleep or experiencing a momentary loss of concentration during arbitration hearings goes against this objective. It not only hampers the smooth progress of the arbitration process but also undermines the integrity and effectiveness of the labour arbitration and adjudication system. Such behaviour can bring the system into disrepute and make a mockery of the labour laws aimed at ensuring fair and effective dispute resolution. This case note scrutinizes the pertinent aspects of the two judgements to explore the implications of such behaviour on the fairness of the arbitration process.

Keywords: right to fair arbitration, commissioners, momentary loss of concentration, falling asleep

A Legal Analysis of the Fintech Regulatory Challenges Affecting Financial Inclusion for the Poor and Unbanked in Selected SADC Countries

Howard Chitimira, North-West University
Elfas Torerai, North-West University
Howard.Chitimira@nwu.ac.za
elfas.torerai@gmail.com

Although innovative financial technology (fintech) products are assisting many financially excluded persons to access financial services, their regulation remains a challenge in Southern Africa. The Covid-19 pandemic has demonstrated that fintech products such as mobile money can provide safe and sound financial services to all persons, especially the poor and unbanked. While banks and other businesses were closed to contain the spread of the virus, mobile money allowed people to transact while in the comfort of their homes. However, in countries such as South Africa, Zimbabwe and Zambia, there is no adequate regulation of fintech products such of mobile money. This potentially opens opportunities for criminals to abuse fintech products for illicit dealings. Thus, this paper seeks to give a legal analysis of relevant statutory frameworks in the three mentioned countries. This is done to highlight the dangers that inadequate regulation of fintech products cause to financial inclusion of the poor. The authors further argue that without adequate regulation of fintech products, financial markets in South Africa, Zimbabwe and Zambia could face stability and integrity challenges.

Keywords: financial technology, Covid-19, financial inclusion, the poor, unbanked persons

Revisiting the 'Fit and Proper Person' Requirement in South African Legal Practice: *Limpopo Provincial Council of South African Legal Practice Council v Chueu Incorporated Attorneys & Others* (459/22) [2023] ZASCA 112

Daniel Humpel, University of Fort Hare

dhumpel@ufh.ac.za

In compliance with Section 24(2)(c) of the *Legal Practice Act* 28 of 2014 (hereafter LPA), legal practitioners in South Africa are mandated to be deemed a 'fit and proper person' for the practice of law. This prerequisite assumes a pivotal role as a protective mechanism, ensuring that individuals entering the legal profession possess the essential moral character, integrity, and competence to uphold the requisite standards of legal practice. The recent litigation in *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others* (459/22) [2023] ZASCA 112 (26 JULY 2023*)* underscores the exigency of revising the 'fit and proper person' requirement, revealing ethical lapses among the implicated legal practitioners. This comprehensive case note meticulously scrutinizes the aforementioned legal case, offering detailed insights into instances demanding immediate attention to the 'fit and proper person' requirement. Additionally, it endeavors to pinpoint potential lacunae within the existing regulatory framework, which may inadvertently foster unchecked unethical conduct within the South African legal profession. Consequently, this abstract underscore the imperative for a more exhaustive and resilient criterion that encompasses a broader spectrum of factors when evaluating the suitability of a legal practitioner as a 'fit and proper person.'

Keywords: fit and proper person; South African legal profession; unethical conduct; modern criterion

Circumstances Under which Retirement Benefits can be Forfeited: An Evaluation of *M v M* (1305/2021) [2023] ZASCA 33 (31 March 2023)

Clement Marumoagae, University of the Witwatersrand

clement.marumoagae@wits.ac.za

In recent times, our courts have been inundated with cases where members of retirement funds seek to protect their retirement benefits by requesting courts to grant orders to the effect that their spouses should forfeit the shares that such spouses would ordinarily be entitled to receive in the member spouses' retirement benefits. This obliges courts to seriously interpret and apply section 9(1) of the Divorce Act 70 of 1979 to retirement benefits that accrue as a result of divorce, which are ordinarily not assets but deemed to be assets for the purposes of divorce. It is worrying, however, that courts appear not to be willing to treat the intersection between matrimonial principles and pension law principles seriously in their determination of these matters. This concern is clearly evident in *M v M* (1305/2021) [2023] ZASCA 33 (31 March 2023). In this note, I will be critically evaluating the reasoning and approach of the Supreme Court of Appeal on this case with a view to demonstrate that this court failed to carefully deal with the remedy of forfeiture of patrimonial benefits in the context of the sharing of retirement benefits when the member of the retirement fund divorces his or her spouse. I will be arguing that courts confronted with forfeiture claims in respect to retirement benefits should carefully deal with the intersection between matrimonial principles and pension law principles to ensure that they reach just outcomes. I will also advance proposals for law reform.

Keywords: retirement benefits, retirement fund, divorces, forfeiture claims

The Essence of the Principle of Free, Prior and Informed Consent in Participatory Democracy: Investigating the Role of Meaningful Engagement in the Promotion of Social Justice in Developmental Projects

Naledzani Mukwevho, State Attorney

nhmukwevho@gmail.com

The principle of free, prior and informed consent (FPIC) within the developmental environment denotes that communities have the right to give or withhold consent to proposed development projects on the lands that they own, occupy or use. The consent must be obtained voluntarily and free of coercive and manipulative influences. Furthermore, the consent must be secured prior to any authorization by authorities, and must be informed by meaningful participation and consultation of affected communities. The FPIC principle plays a complementary role to, if not interchangeably embedded into the principle of social justice. Social justice embodies the following elements: participation, equity, access to resources, diversity and human rights. These elements are core to participatory democracy, which is essential to the attainment of social justice. In participatory citizens participate in the formulation of policies and laws through consistent and meaningful engagement. This process is sometimes referred to as active citizenry. To be active, citizens need to be empowered and capacitated to make informed decisions. An informed citizenry begets a capable society. The capability to make informed decisions is the most potent tool in fostering the resilience amongst citizens through legal processes and systems. In recent cases South African courts have invalidated some projects due to lack of meaningful engagement and consultation with affected communities.

Keywords: participatory democracy, social justice, active citizenry, informed decisions, meaningful engagement, public participation, consent

'Extension of Security of Tenure Act and grazing rights: *Moladora Trust* revisited'

Juanita M Pienaar, Stellenbosch University

jmp@sun.ac.za

'Cattle are part and parcel of the history of dispossession, the mischief which is intended to be redressed by section 25 of the Constitution.'[1] To what extent has the Extension of Security of Tenure Act 62 of 1997 redressed the issue of keeping livestock and regulating grazing rights, coupled by tenure security, for one of the most vulnerable sectors of South African society? At the heart of the matter in *Moladora Trust* was whether security of tenure that is protected under s 25(6) of the Constitution and ESTA includes the right of ESTA occupiers to graze cattle. While the CC had not pronounced on this matter specifically, the SCA had made certain pronouncements in this context, for example, in *Loskop Landgoed Boerdery v Petrus Moeleso*.[2] While recent judgments confirmed that the right to grazing *did not* derive from ESTA but was personal in nature and derived from consent,[3] *Moladora Trust* found that once consent was obtained, the right to graze cattle *became subject* to various ESTA protections, including those found in ss 6(1), 6(2)*(a)* and 8 and 9 of ESTA. What are the implications of the approach followed in *Moladora Trust*, regarding the scope of ESTA on the one hand and the impact on landownership on the other? What is the potential role and impact of the Extension of Security of Tenure Amendment Act 2 of 2018, once in operation; and of the recent regulations[4] issued under ESTA dealing with, inter alia, the removal of trespassing animals in certain circumstances?[5] The paper aims to unpack the *Moladora Trust*-decision, essentially juxtaposing the rights of farm workers linked to food security, livelihood issues and economic independence to those of the landowner encapsulating, amongst other, ownership entitlements and managing sustainable yet lucrative farming enterprises. Integral in this exercise, is the history of marginalisation of farm worker communities, the overarching aim of ESTA and the balancing of relevant rights and interests, including living a life of dignity, on land that belongs to another.

Keywords: livestock, grazing rights, tenure security, vulnerable sectors, South African society

[1] See *Moladoratrust v Mereki* 2023 (3) SA 209 (LCC) para 15, with reference to *Sibanyoni v Holtzhauzen* [2019] ZALCC 1.

[2] [2022] ZASCA 53 (12 April 2022).

[3] Para 17.

[4] GenN 1388 in *GG* 47472 of 8 November 2022.

[5] Reg 4 deals with 'notice to remove trespassing animal'.

Obstetric Violence as a Hate Crime under South African law

Sheena Swemmer, University of the Witwatersrand

sheena.swemmer@wits.ac.za

In post-Covid South Africa, obstetric violence remains unrecognised as a form of gender-based violence and discrimination in our legal system. This is despite the 2020 release of the Commission for Gender Equality's report and findings around the forced or coerced sterilisation of 48 women in public hospitals nationwide. For almost a decade, South African civil society organisations have been calling for the speedy enactment of the Hate Crimes Bill to criminalise prejudicial or discriminatory behaviour. The need for this type of legislative amendment has been based on the need to address the discriminatory-driven violence against extremely vulnerable groups in the country. This is especially so in relation to the rampant and relentless occurrence of gender-based violence offences within the country. In mid-2023, the National Council of Provinces called for submissions on the Hate Crimes Bill, which is the final legislative hurdle before the bill is signed into law. Considering the bill potentially shortly being enacted, I argue that framing obstetric violence as a hate crime may be the best vehicle for acknowledging obstetric violence in law and for survivors to attain justice. I intend to consider the benefits and disadvantages of framing obstetric violence as a hate crime. This analysis will include considering whether criminal sanction is appropriate in addressing this form of violence and whether the Hate Crimes Bill can adequately address systemic forms of violence in a meaningful way.

Keywords: prejudicial, discriminatory behaviour, discriminatory-driven violence, gender-based violence

“Hive Law: Propelling the Nelson Mandela University Law Clinic into the Future – A Consideration of Technology’s Integral Role in Modern Legal Service Delivery and the Consequences for Legal Education”

Lindi Coetzee, Nelson Mandela University
Marc Welgemoed, Nelson Mandela University
Retha Beerman, Cliffe Dekker Hofmeyr Inc
Elbi J van Vuuren, StrategicPulse Consulting
lindi.coetzee@mandela.ac.za
marc.welgemoed@mandela.ac.za
retha.beerman@cdhlegal.com
elbi.vanvuuren@strategicpulse.co.za

Effective use of technology must be included in tertiary legal education to ensure graduates are ready for entry into the legal profession, and to provide more cost-effective and efficient legal services. Effective training, which demystifies technology, and the creation of cost effective, fit for purpose technology solutions are crucial to democratise legal technology, and level the playing fields between “Big Law” and legal services available to the bulk of South African citizens. A public private partnership between the Nelson Mandela Faculty of law, the university’s Information and Communication Technology department, and a consortium of legal practitioners (including Cliffe Dekker Hofmeyr and various industry players) has piloted HiveLaw, a SharePoint based practice management solution custom designed to fit university law clinics’ dual purpose of legal service delivery and practical legal education. This pilot serves as a case study, firstly, to investigate how legal technology can contribute to transformative teaching and learning, and transformative legal practice at university law clinics, as it exposes staff and students to the benefits of digital and online activities. Secondly, the pilot illustrates how proficiency in the use of technology, such as HiveLaw, aids the staff and students to adapt to digital processes while providing access to justice to indigent communities. In this way, staff and students make a difference in the working world by implementing their knowledge in legal practice, which is widely known for slowly adapting to digital processes, while being exposed to experiential learning and getting in touch with the demands of modern legal practice.

Keywords: technology, legal profession, hive law, legal education

The Role of Human Rights Clinics in Progressing International Law Within Transnational Legal Education

Nthope Mapefane, University of Pretoria

nthope.mapefane@up.ac.za

Since human rights clinics have been around, they have contributed significantly to advancing the human rights agenda within law schools. This paper aims to explore the intersection of international law and clinical legal education in South Africa. Specifically, it examines the impact of South African human rights clinics on the promotion and enforcement of international law. While the establishment of international human rights clinics in South African law schools marks a significant development, the integration of international law into clinical legal education remains a groundbreaking endeavor. It is therefore crucial to assess the influence these clinics have had in the past and continue to have in the present. Due to the unique combination of characteristics, human rights clinics introduce a set of distinct elements into the transnational legal process. As a result, they hold significant potential to contribute to the progressive enforcement of international law. My analysis is divided into three parts. In Part I, I conceptualize human rights clinics by examining it through the lens of liberal international law theory. Once the model's parameters have been established, I present a case study in Part II, in which the South African human rights system and human rights legal education promote respect for the international rule of law through complex institutional interaction. Part III assesses the potential that these clinics possess as agents for positive change within the realm of international law and human rights.

Keywords: international law, human rights, clinical legal education

An Analysis of the South African Human Rights Commission's Powers

Bradley Slade, Stellenbosch University

bvslade@sun.ac.za

The South African Human Rights Commission is a chapter 9 institution with the mandate to strengthen constitutional democracy through assisting in the transformation of the South African society. Specifically, the South African Human Rights Commission must promote a culture of human rights, promote the protection of human rights, and monitor the observance of human rights within South Africa. The Commission has been granted constitutional and statutory powers to achieve its mandate. Recent high court decisions have shed light on the understanding of the Commission's constitutional and legislative powers. In South African Human Rights Commission v Agro Data (2022), the high court held that the Commission does not have the power to make binding recommendations where human rights have been violated, distinguishing the Commission's power from those of another chapter 9 institution, the Public Protector, who does have the powers to issue binding recommendations. In Afriforum v the South Arican Human Rights Commission (2023), the high court held that the Commission does not have the power to finally decide whether an alleged violation of human rights is indeed a violation that must be remedied. In this decision, the court held that the Commission only has the power to determine whether there is substance to an alleged violation, which could then be relevant where court proceedings are brought on the basis of said violation. This paper will consider these judgments and the effect that it may have on the Commission's power to transform the South African society.

Keywords: South African Human Rights Commission, culture of human rights, protection, human rights

The Dillema of Two Heads as Experienced in *Letsholonyane v Minister of Human Settlements* [2023] JOL 59349 (LC)

Matthews Eddie Nkuna-Mavutane and Vukile Ezrom Sibiya

Nkuna, ME, Mr menkuna@sun.ac.za

sibiya@sun.ac.za

The President appoints two people to head a government department, a Minister and a Director General. While the position of a Minister (other than a Minister of Finance) does not find any specific mention in the *Public Finance Management Act* 1 of 1999 (*PFMA*) a Minister is generally accepted to deal with legislative oversight, ensuring the department's budget approval by the parliament, drive policy, initiate legislation, and act as the link between the department and the executive. In contrast the Director General finds a specific mention in the *PFMA*. He/she is the accounting officer of a department. She is responsible for the day to day running of the department. Her functions include hiring, suspending, and firing personnel; budget control; managing assets and liabilities; and delegating statutory powers to her subordinates. It can be stated that these two heads are responsible for one department with two separate mandates, the Minister looks at the future while the Director General focuses on the day-to-day running of a government department. The *Letsholonyane case* has shown that this distinction is not always respected and if this continues unabated, good governance is at stake. The paper will argue that more needs to be done to educate and protect senior management service employees on their mandate, standing and powers (social justice). It also shows that ministers or members of the executive need to be conscientized as to what their mandate is and what could possibly be remedial action should they fail to adhere to what is anticipated from them.

Keywords: budget control, assets, liabilities, delegating statutory powers, subordinates

The ICC in the BRICs: Africa's South African "Intention" Case Study?

Nazreen Shaik-Peremanov, University of Fort Hare

nsnazreen19@gmail.com; nshaik-peremanov@ufh.ac.za

The formation of the International Criminal Court heralded the commitment to bring to book international crimes such as war crimes, crimes against humanity and genocide with a resounding, "Never again," that drove forth the Rome Statute. Signatory State Parties demonstrated their commitment openly and supported the establishment of the Court under the auspices of the United Nations. African countries were eager to be part of this historic Court; and thus pledged their allegiance in full recognition of human rights atrocities that culminate in humanitarian crises through wars and conflicts, whether they were characterized as international or internal armed conflicts. Arising from the ICTY's and the ICTR's jurisprudence, the Rome Statute also adopted the element of "intention" for superior command responsibility from the ICTY's *Tadic* judgment. This intention has not been well received by the BRICs' nations, let alone South Africa. African countries considered African countries to be test tube cases in the quest for the Court's relevance. South Africa, as a representative of Africa, is caught between its continental and regional commitments. The aim of this research is to examine South Africa's role in bringing to book international crimes from the African and BRICs perspective whilst interrogating the element of "intention" within superior command responsibility. The research surveys the available contemporary literature; and the existing case law. Then the paper discusses South Africa's perceived and realistic obligations, concluding with an evaluation of her role in the relevancy of the Court.

Keywords: international criminal court; BRICs; international criminal law; democracy; human rights

The Right to Legal Representation at Identity Parades: A Call for Constitutional Scrutiny under Section 35(5)

Dane Ally, Tshwane University of Technology

allyd@tut.ac.za

Several South African courts have admitted evidence concerning identity parades where the police failed to either inform an accused person about her right to legal representation or failed to allow an accused person to obtain the services of a legal representative. Various arguments have been raised to justify this approach, the most recurring of which are, first, that the purpose of an identity parade is to obtain "real" evidence – as opposed to testimonial evidence – against an accused. For that reason, evidence about an identity parade does not affect admissibility issues, but rather the weight that should be attached to the evidence. This type of evidence is automatically admissible because it is relevant to the issues. The second argument raised to justify the automatic admission of identity parade evidence is that the police adopt the role of impartial umpires at identity parades, and that legal representation at identity parades serves no meaningful purpose. To be sure, the regular admission of evidence obtained after serious violations of the right to legal representation would, in the long-term, be "detrimental" to the integrity of the criminal justice system. I shall argue that section 35(5) of the Constitution was designed to prevent this consequence, and that a section 35(5) analysis must be undertaken to determine whether identity parade evidence should be admissible where the accused person contends that the right to legal representation was denied.

Keywords: evidence, identity parade, automatic admission, legal representatio

The Future of Subjective Impossibility of Performance in Light of the COVID-19 Pandemic

Shingai Jijita, Eduvos

Shingai.Jijita@eduvos.com

On March 5, 2020, South Africa reported its first case of the COVID-19 virus, and many would not have predicted the events that followed. The virus spread rapidly throughout the country and around the world, forcing state governments to implement emergency measures (lockdown restrictions) to stop the spread of the virus. The impact of these lockdown restrictions on various sectors, particularly businesses and consumers, was significant. Owing of cashflow issues, lost income, financial distress and commercial inactivity caused by lockdown restrictions, some businesses were forced to close permanently, while others and clients struggled to carry out their contractual obligations. While it is trite in contract law that businesses or other persons facing breach of contract may be relieved if the contract contains a *vis major* clause, they will still be bound to fulfil their contractual obligations once the *vis major* situation has ended. In other words, subjective impossibility of performance merely suspends a person's obligation to perform under a contract until the situation of *vis major* is resolved. In this paper, I argue that the current approach to subjective impossibility of performance ignores the fact that temporary major events, such as the COVID-19 pandemic, can result in a person's permanent inability to perform, and payment moratoriums cannot cure this. This warrants a reconsideration of the separate treatment of objective impossibility of performance (which terminates contractual obligations) and subjective impossibility of performance (which suspends contractual obligations).

Keywords: law of contract, lockdown restrictions, businesses, consumers, financial distress

Independence or Resilience of the Judiciary: An Overview of an Accountable System of Governance in South Africa

Nomthandazo Ntlama-Makhanya, University of Fort Hare

nntlama@ufh.ac.za

Following the attainment of democracy in South Africa in 1994 with the foundations laid by Constitution Act 200 of 1993, the judiciary occupies a unique status as the guardian of the Constitution, 1996. Since this period, it has been characterized as the pillar, custodian, watchdog and a stronghold of the new constitutional dispensation. Such status seeks to ensure the advancement and sustenance of the new democratic principles. This means that it serves as an important branch in the promotion of the principles of good governance as it operates within the framework of the doctrine of separation of powers alongside the other branches of the state: legislature and executive. On the other hand, it is also characterized as the weakest link of the other two branches because of its limited capacity in ensuring the enforcement of its own court orders. Nevertheless, it has distinct powers of checks and balances in ensuring compliance with the principles of the new dispensation. It has the power to declare the executive and legislative conducts invalid and unconstitutional to the extent of their inconsistence with the Constitution. Such powers are grounded on its independence as it has since shown resilience on the interpretation of the Constitution considering its 'newcomer' status in breathing meaning and context to the principles of the new dawn of democracy. Recently, tensions of backlash that are also classified as lawfare and designed to undermine its independence and integrity have also emerged because of the rulings made against the other two branches and high-profile people of the Republic. The judiciary has been subject to unwarranted attacks to an extent, in the year 2015, a meeting was scheduled between the former President and former Chief Justice to address the evident tensions. Today, Parliament has scheduled a meeting with the Chief Justice following the remarks on the 'dragging of the feet approach' on the implementation of the State Capture Findings and Recommendations. Against this background, the paper examines the scope of the independence of the judiciary to show its resilience in the promotion of an accountable system of governance. Of particular importance is to unearth its law-making function and its influence on the evolution of transformation project in the regulation of state authority. The paper argues that the principle of independence is a significant factor of its resilience in ensuring the preservation of its integrity in its adjudicative role. It identifies judgments of a limited scope in giving meaning to the influence on policy and legislative changes on the other branches in pursuit of the transformation project of the country as envisage in the Constitution, 1996.

Keywords: judiciary; independence; resilience, accountability; transformation and human rights

The Recognition and Protection of Indigenous Knowledge Systems on Natural Resource Governance

Katlego Mashiane, North-West University
Tumi Mmusinyane, North-West University
Katlego.mashiane@nwu.ac.za
Tumi.mmusinyane@nwu.ac.za

South Africa has a diverse population, including indigenous communities with traditional knowledge and cultural connection to their environment. The protection of indigenous knowledge in natural resource governance is an important aspect of preserving the cultural heritage and rights of indigenous communities. Indigenous communities often lack the resources, capacity, and technical expertise to document, preserve, and utilize their indigenous knowledge effectively. This results in exposing the indigenous knowledge systems to being undervalued and marginalized within mainstream resource governance structures. South Africa recognizes the significance of indigenous knowledge systems and has taken steps to protect and promote them in the context of natural resource management. The framework for the protection of indigenous knowledge is still relatively new and evolving in South Africa. The implementation and enforcement of these laws remain challenging and there is a clash between indigenous knowledge systems and Western scientific paradigms. Western approaches often prioritize quantifiable data and empirical evidence, while indigenous knowledge is based on unwritten, holistic, experiential, and contextual understanding of value of environment in their livelihood. This dichotomy creates challenges in integrating indigenous knowledge into resource governance frameworks. Power imbalances between indigenous communities and external actors, such as government agencies and private corporations, can impede the protection of indigenous knowledge systems and rights of indigenous communities. Lack of meaningful participation and prior consultation with indigenous communities in decision-making processes further exacerbates these imbalances. The paper critically examines the legal framework pertaining to the protection of indigenous knowledge systems in the context of natural resource governance. The paper will further utilize the qualitative research approach and the findings will contribute to enhancing the legal framework and policies that equally support the recognition, protection, and participation of indigenous knowledge in natural resource governance.

Keywords: Indigenous knowledge, natural resources, governance, population

Examining the Implication of an Inference of Remorse or Lack Thereof Drawn from a Convicted Offender's Plea of guilty and that of Not Guilty

Yolokazi Ngobane, University of Fort Hare

YNgobane@ufh.ac.za

The concept of remorse is often than not referred to as a sentencing factor carrying enough weight to mitigate the sentence imposed on a convicted offender and the lack thereof as an aggravating factor. Numerous case law has referred to the offender's plea of guilty, in terms of section 122 of the Criminal Procedure Act 51 of 1977, as an indication of said remorse and the plea of not guilty, in terms of section 115 of the same Act, as lack thereof. In drawing this inference, our courts seem to negate the right to a fair trial, particularly the right to adduce and challenge evidence as outlined in section 35(3) of the Constitution. This paper seeks to critically analyze the implications of drawing an inference of remorse from a convicted offender's plea of guilty and that of pleading not guilty.

Keywords: remorse, fair trial, plea of guilty and plea of not guilty

An Exploratory Analysis of the Regulatory Framework for the Ethical Use of Innovative Technology in the South African Justice System

Howard Chitimira, North West University

Keamogetse Motlogeloa, North West University

Howard.Chitimira@nwu.ac.za

Keamo216@gmail.com

In a post Covid-19 world, innovative technology can play a crucial role in increasing access to justice by addressing barriers such as costs and geography, enhancing efficiency and improving the delivery of legal services. As innovative technology plays an increasingly prominent role in improving access to justice, it is important to ensure that the regulatory environment in South Africa promotes innovation while upholding legal and ethical standards and protecting public interests. In light of this, The ethical considerations of technology use such as data privacy, algorithmic transparency and bias mitigation are examined. This article additionally examines the current regulatory landscape pertaining to the use of technology in the justice system through the *Protection of Personal Information Act* 4 of 2013 and the *Electronic Communications and Transactions Act* 25 of 2002. The article further explores the challenges and opportunities presented by the use of innovative technology such as artificial intelligence and machine learning in the South African justice system. Overall, the article emphasizes the need for regulatory frameworks and guidelines that strike a balance between promoting access to justice through the use of innovative technology while safeguarding individuals right to privacy and the tenets of public trust, transparency and accountability.

Keywords: innovative technology, digital transformation, online dispute resolution, data protection, algorithmic transparency

Exploring the Intersection of Competition and Labour Law: The Gig-Economy, Digital Labour Platforms and Social Justice Through Fair Labour Markets

Simbarashe Tavuyanago, University of the Free State

TavuyanagoS@ufs.ac.za

One of the most significant transformations in the world of work over the past two decades owing to technological advances, has been the emergence of digital labour platforms. Digital labour platforms include web-based platforms, where work is outsourced through an open call to a geographically dispersed crowd (crowd work), and location-based applications which allocate work to individuals in specific geographical areas, typically to perform local service-based tasks such as driving, delivery of goods and provision of various personal services. Traditionally, and on the face of it, these advances have not seemed to create any competition law concerns however, they have begun to spark debate within competition communities on monopsonies and the labour market power retained by employers. The cardinal question has been whether exercising employer monopsony power infringes competition law, and if it does, what can be done about it. This paper explores the correlation between competition and labour law and how competition law may be used to promote fair labour markets. Assuming, of course, that fair labour markets are desirable, as they will benefit employers through rigorous competition and create better working conditions for employees, ultimately resulting in quality goods and services being availed to consumers.

Keywords: competition law, consumer welfare, gig-economy, labour law, monopsony, platform work, social justice

An Analysis of the Functus Officio Doctrine's Application With Regard To Islamic Distribution Certificates Based on Islamic Wills: A South African Case Study

Muneer Abduroaf, University of the Western Cape

mabduroaf@uwc.ac.za

This article examines a scenario where a South African Muslim testator (Yusuf) dies leaving behind a will stating therein that his estate must be distributed in terms of the Islamic law of succession (Islamic Will). The will further states that an Islamic Distribution Certificate (IDC) issued by a recognised Islamic Institution stating who his beneficiaries are in terms of Islamic law, would be binding upon his estate. Yusuf died leaving behind a widow and two sons as his only relatives. Yusuf nominated Amin as the executor of his will and instructed him to obtain an IDC from a recognised Islamic institution. Yusuf was unaware of their being two sons and approached a recognised Islamic institution for an IDC by submitting the relevant documentation on the basis of their only being a widow and one son. The Islamic institution issued an IDC to the effect of the widow inheriting 1/8 and the son inheriting 7/8. This IDC was submitted to the Master of the High Court. The excluded son approached Amin and informed him of his existence, and demanded that Amin approach the Islamic institution to request an amended version the IDC based on the fact that there are two surviving sons. The Islamic institution then amended the IDC based on the additional information and added the extra son. Amin's lawyer, who was assisting with the administration of the estate, advised Amin that the Master cannot accept the new certificate, because of the application of the functus officio doctrine to the first IDC. This article examines the application of the functus officio doctrine with regard to IDC's, with a focus on the above scenario. An overview of Islamic wills within the South African legal context is discussed by way of introduction. The application of the functus officio doctrine with regard to IDC's based on Islamic wills is the analysed. The article concludes with an overall analysis of the findings and makes a recommendation as to how the application of the functus officio doctrine can be avoided with regard to IDC's within the South African legal context.

Keywords: administration of the estate, Master, will, functus officio doctrine, Islamic will

Judicial Implementation of the Relief Pending Final Determination under the Cape Town Convention and its Aircraft Protocol: An Appraisal of the South African Standpoint

Sibulelo Seti, University of Fort Hare

sseti@ufh.ac.za

The Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol (the 'Convention') has a force of law in South Africa. The Convention establishes the legal framework for financing the acquisition and lease of high-value aviation assets. It gives creditors security in the form of a legal remedial framework for the international enforcement of creditor's rights in the event of the debtor's default. The Convention has been acclaimed as a considerable success, bringing tangible economic benefits to airlines and asset financiers alike. The success of the Convention is mainly attributable to its innovative enforcement remedies. This paper focuses on the 'relief pending final determination', an enforcement remedy established by Article 13 of the Convention, which allows a creditor to seek from courts a speedy return of collateral pending the final determination of a dispute between the debtor and creditor. It is a unique and substantive remedy that is ontologically independent of the domestic laws of the member states. However, there is a general concern among scholars that national courts may misunderstand, mischaracterise and misapply Article 13 relief due to its *sui generis* character. Without doubt, the court's understanding and proper characterisation of legal remedies are generally significant as they inform the approach and attitude the court will adopt when determining the relief concerned. Therefore, the interpretive approach and attitude of the national courts are fundamental to the effective implementation of Article 13 relief and the attainment of the underlying policy objectives of the Convention. This paper examines the following issues concerning the SA Courts: (i) whether their interpretation of Article 13 has shown proper understanding and characterisation of the relief under consideration; and, (ii) whether their interpretative attitude and approach are favourable to the effective implementation of Article 13 and achievement of its envisaged objectives.

Keywords: The Cape Town Convention, aircraft protocol, legal framework, lease, aviation assets

The Use of Section 172(1) of the Constitution in Judicial Review Proceedings in Terms of the Promotion of Administrative Justice Act

Gabrielle Burns, Wits University

gabrielle.burns@wits.ac.za

In *AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency* 2014 (1) SA 604 (CC), the Constitutional Court held that the establishment of a ground of review in terms of PAJA triggers the obligation in s 172(1)(*a*) of the Constitution to declare that administrative action 'invalid'. According to the Constitutional Court, the consequences of that declaration should then be dealt with in terms of the just and equitable remedial power contained in s 172(1)(*b*) of the Constitution, which is informed by the remedial provisions of PAJA. This paper critically assesses the appropriateness of the courts' use of s 172 of the Constitution in proceedings for judicial review of administrative action. In the main, the paper argues that the establishment of a ground of review under PAJA does not necessarily equate to an issue of 'inconsistency with the Constitution' which triggers s 172(1) of the Constitution. On the contrary, PAJA gives effect to the rights to just administrative action and so the enforcement of those rights through the judicial procedure established therein constitutes a vindication of those rights. The paper argues that the approach adopted by the Constitutional Court is inconsistent with the overall scheme of the Constitution, including the principles of subsidiarity and constitutional avoidance.

Keywords: administrative law, constitutional law, right to just administrative action

* Gabrielle Burns LLB *(cum laude*) (University of Pretoria) LLM *(cum laude*) (University of the Witswatersrand), lecturer at the University of the Witwatersrand.

Weighing Up Judicial Tinkering as a Method of Dynamic Resilience to Prompt Innovation

Yvette Joubert, University of Johannesburg

yjoubert@uj.ac.za

A recent Constitutional Court decision appears to have put to rest the controversy whether a High Court can hear a matter that falls within the jurisdiction of a Magistrates' Court.[1] The case confirmed the decision of the Supreme Court of Appeal, namely that a High Court has jurisdiction to hear any matter that is legally before it, regardless of whether the matter could also be heard in a Magistrates' Court. Although the Court's decision is legally sound, the judgment and those preceding it, highlight distortions in the way that access to court is interpreted. Social justice is the corrective principle that detects distortions and guides the restorative corrections needed.[2] Corrective measures require the involvement of government and regulatory agencies. These systems may be activated by public protest and courts are typically the fora where disputes are heard. Although judges are able to bring about incremental changes to a system on a case-by-case basis, the case under discussion shows that judicial intervention is limited. Our system comprises both static resilience, such as the Constitution, which does not easily permit structural change, and dynamic resilience, such as the case-by-case judicial decisions that are made in court. It is submitted that both are necessary for post-traumatic growth.

Keywords: corrective measures, government, regulatory agencies, public protest, courts

[1] *South African Human Rights Commission v Standard Bank of South Africa* Ltd 2023 (3) SA 46 (CC). The author uses the term "appears to have", as the judgment concedes that legislative changes are under consideration (Lower Courts Bill (X-2022), 29 April 2022, available at https://pmg. org.za/bill/1079/) that may change the approach to concurrent jurisdiction.

[2] "Defining Economic and Social Justice" *Centre for Economic and Social Justice* https://www.cesj.org/learn/definitions/defining-economic-justice-and-social-justice/; see also The Constitution of the Republic of South Africa, Preamble, which refers to social justice as a foundational element of a just society.

Imagine the Missing Piece of the Puzzle in Section 81(1)(d)(iii) of the Companies Act 71 of 2008 has been Found

Shandukani Muthugulu-Ugoda, University of Fort Hare

smathugulu-ugoda@ufh.ac.za / shandukani1980@gmail.com

Pringle v Vital Sales Group (Pty) Ltd [2023] ZAGPHC 656 (7 June 2023) read together with its elder sibling *Thunder Cats Investments 92 (Pty) Ltd v Nkonjane Economic Prospecting Investment (Pty) Ltd* 2014 5 SA 1 (SCA) is stark reminder that the *lacuna* in section 81(1)(d)(iii) of the Companies Act 71 of 2008 has so far escaped scholarly, judicial and legislative attention. The 'missing link' in section 81(1)(d)(iii) arises from the fact that the just and equitable winding-up provisions do not countenance any deviation from the statutory prescriptions once the factual grounds for just and equitable winding-up have been established. The real problem with this drastic remedy lies in the bludgeoning of a solvent company because of corporate paralysis. To that extent, the absence of a purpose-built shotgun remedy to tackle corporate stalemate suggests that the relevant provisions operate out of sync with parallel developments in other Commonwealth jurisdictions. Evidently, section 81(1)(d)(iii) is in dire need of reform to bring it in tune with the spirit, purport and objects of the Companies Act. More importantly, the rationale underpinning Chapter 6 which introduced the innovative business rescue mechanism into the South African corporate law landscape.

Keywords: winding-up, solvent company, just and equitable, deadlock.

Aspects of Labour & Social Security Law

Nicola Smit, Stellenbosch University

Elmarie Fourie, University of Johannesburg

nsmit@sun.ac.za

esfourie@uj.ac.za

One of the key concerns for any person is health and safety at work. South Africa has several statutes that provide for preventative as well as compensatory provisions in the event of occupation injuries and diseases. These form part of the broader social protection schemes often categorised as social insurance schemes because it is contributor based. The central aim is therefore promoting decent work and social justice. In *Mahlangu and Another v Minister of Labour and Others* [2020] ZACC 24 par 3, the Constitutional Court stated that "The cornerstone of any young democracy is a comprehensive social security system, particularly for the most vulnerable members of society". Although South Africa aims for comprehensive social protection, these workplace health and safety schemes, however, still have a restricted scope of coverage, despite the recent inclusion of domestic workers under the Compensation for Occupational Injuries and Diseases Act (COIDA); obvious exclusions being those toiling in the informal economy and the self-employed. Several limitations regarding definitional concepts, dispute resolution and administration and implementation also persist. A recent Amendment Act to the COIDA has set out to address gaps and to improve the regulation and promotion of health in the workplace. The question is how successful is this attempt to respond to an ever-changing workplace and labour market? This presentation would analyse the perceived gaps in social protection for workers who suffer from occupational injuries or diseases, and evaluate the response of the legislator.

Keywords: occupational injuries, diseases, social security, labour law

Zooming in on Fairness: The Resilient Practitioner and Videoconferencing's Role in Ensuring Equitable Labour Dispute Resolution and Social Justice

N Whitear-Nel, University of KwaZulu

WhitearNel@ukzn.ac.za

This paper delves into how videoconferencing technology can bridge geographical and other gaps, making labour dispute resolution more accessible, cost-effective, and equitable, thus promoting social justice in the modern era. Other means by which social justice is enhanced by the use of videoconferencing technology will be explored, together with a consideration of various aspects which could threaten social justice in this context. Such considerations include, for example: the digital divide and virtual obstacles to the settlement of labour disputes. Concerns include the lack of the 'handshake factor' in remote negotiations, cultural differences which might be enhanced by the technical divide and the manner in which parties are perceived in an online process. The paper will explore the various challenges and opportunities associated with videoconferencing in negotiating the settlement of labour disputes and arbitrating labour disputes, including access to justice and the need for 'greener' arbitrations. Common objections to proceeding with an arbitration or other process on a virtual platform will be discussed. Common objections include questions as to whether cross-examination over a screen is as effective as in a face-to-face process, whether it is easier for a witness to lie when situated outside the formal hearing room and whether demeanour can be properly assessed by the decision maker in an online process. The CCMA's novel e-commissioner pilot project will also be unpacked and explored. The overarching requirement of fairness in engaging technology in the field of labour dispute resolution will be examined.

Keywords: labour law, alternative dispute resolution, technology, labour disputes

Mmatlou v CCMA & Others 2021 8 BLLR 827 (LC) Pouring new Wine into Old Wineskins: Revisiting the Doctrine of Stare Decisis

Zwivhuya Mashele, University of Pretoria

zwivhuya.mashele@up.ac.za

At a distance, the decision of the Labour Court in the case of *Mmatlou v CCMA & Others 2021 8 BLLR 827 (LC)* appears to be a typical section 158(1)(h) review application case. However, upon closer examination *Mmatlou v CCMA* brings to the forefront the doctrine of *stare decisis* in circumstances where it deals with a decision or precedent set by a superior court, particularly, if the superior court has interpreted a particular legislative provision in a manner which is plainly incorrect and does not accord with the constitutional provisions. In the case at hand, the Labour Court bound by the decision of the Labour Appeal Court in *South African Revenue Service v CCMA 2016 37 ILJ 655 (LAC)* held that the dismissal of the respondent employee was invalid and substantively unfair despite advancing reasons why such a decision is contrary to the LRA and constitutional provisions. Various scholars have advanced reasons why the doctrine of *stare decisis* is advantageous for the South African jurisprudence. Some have opined that the doctrine of *stare decisis* brings important benefits to constitutional adjudication that balances predictability and consistency with changing social circumstances and the need for correctness. However, few scholars have dared to address the quandaries and drawbacks that come with the doctrine of *stare decisis*, particularly, when the judgement that was upheld by a superior court is plainly incorrect and in conflict with constitutional provisions. The author argues that upholding a judgement by a superior court which is plainly incorrect and in conflict with constitutional provisions is damaging to the rule of law that the doctrine seeks to preserve. The author further proposes a new flexible approach to the doctrine of *stare decisis* which finds its footing in the Constitution.

Keywords: doctrine of stare decisis, constitutional adjudication, predictability, consistency

Legal Education on the General Aspects and the Impact of Human Rights: A Study of South African Children's Illegal Conducts

Mahlatse Innocent Maake-Malatji, North-West University

Mahlatse.MaakeMalatji@nwu.ac.za

Research proves that South Africa is amongst the high-rate crime countries in the world. Currently, the third highest following Papua New Guinea and Venezuela. Most daunting are crimes committed by children. The Institute for Security Studies posits that among the various contributing factors of crimes beyond poverty, high rates of unemployment, public service delivery, and wealth disparity is the '*social stress from uncaring environments in early childhood and subsequent lack of guardianship*'. Although poverty remains one common driving factor, others include unstable living arrangements and inconsistent parenting which expose some children in South Africa to risk factors that can increase chances of involvement in criminal activities.This study seeks to find ways to combat engagements in criminal activities among children and to explore whether a link exists between crimes committed by children and lack of knowledge of human rights and their stance. To combat crime committed by children, there is an enormous need for these children to be educated about some of the basic human rights to enable them to understand the role and impact of such rights in their lives. This is propelled by the hypothesis that a majority of children are not familiar with these rights, which makes them overlook their impact. Therefore, legal education is imperative for all children. This may enable these children to make informed decisions about their lives as they grow. This study has potential value in curriculum development for the Department of Basic Education for the inclusion of compulsory legal education in the curriculum.

Keywords: poverty, criminal activities, children, human rights

A Critical Reflection of the Ideational Environment of Legal Education in Post-Apartheid South Africa

Vhonani Sarah-Jane Neluvhalani-Caquece, University of Limpopo

Vhonani.neluvhalani-caquece@ul.ac.za

This article pays homage to Prof CRM Dlamini's paper delivered at the Legal Education mini- conference on 9 July 1991, and later published in the South African Law Journal in 1992. Prof Dlamini raised pertinent issues in legal education, the curriculum design, content and their impact on the law teacher and the law student as casualties of Bantu Education. He highlighted the impact of the discriminatory policies that dictated the law then and the absence of a just system. These resulted in a law teacher who teaches the law as it is and not as it ought to be, and a law student who is bound to not critically analyse the law and the impact of the law on the Black community as that would result in a Steve Biko state of affairs amongst others. Firstly, an attempt is made to critically examine and reflect on developments, in aspects of legal education, the law student and the law teacher post-apartheid South Africa. Secondly, the article evaluates how legal education has evolved as the law was taught from a literal approach and the naturalist approach had no place in the curriculum, as it was taught in the abstract, divorced from its social context. The Bill of Rights entrenched a "conscious" emphasis on human rights, ubuntu and justice. With it, higher education has introduced massification and various challenges such as #feesmustfall, #passonepassall, #freedomnoweducationlater, Covid-19, Blended learning. The article concludes by making recommendations in light of where legal education is to-date.

Keywords: legal education, apartheid, ubuntu, human rights

Legal Education in the Age of AI: Harnessing Digital Tools in an Evolving Legal Landscape

Katleho Letsiri, University of Johannesburg

kletsiri@uj.ac.za

The rapid development of Artificial Intelligence (AI) technology has raised significant considerations in relation to the practice and teaching of law. AI use has become a reality and has the potential to significantly transform the legal landscape. In 2022, OpenAI launched ChatGPT, an AI chatbot which interacts with users and can respond to prompts, admit its mistakes, and challenge incorrect premises. Just two months after its launch, ChatGPT boasted over 100 million users. A study of 1000 college students in the United States found that nearly 30% had used ChatGPT on written assignments. Furthermore, litigators now have at their disposal, an AI called Casetext, which can review documents, prepare for a deposition, search a database, write a research memo, review policy compliance, as well as read, comprehend, and write at a postgraduate level. Since its inception in 2013, Casetext has over four million site visits monthly. Evidently, the use of AI by both students and legal practitioners is inevitable. The question that arises therefore, is how can we effectively respond to this emerging technology? This paper seeks to analyse the role of AI in legal education. While AI-powered tools have the potential to enhance efficiency, accuracy, and accessibility in legal research and analysis, they raise ethical considerations and critical-thinking development challenges. The paper will thus evaluate some of the opportunities and obstacles posed by AI in law, examine how these tools are changing the skills required of future lawyers and explore methods to respond to these changes.

Keywords: litigators, deposition, database, research memo, review policy compliance

Legal Education in a Post-Covid Era: Leveraging Textbook-LMS Integration to Enhance Learning in LLB Foundational Modules

Peggy Maisel, Boston University
Lesley Greenbaum, University of Cape Town
Grey Stopforth, University of the Free State
StopforthG@ufs.ac.za
lesley.greenbaum@uct.ac.za
pmaisel@bu.edu

South Africa is renowned for significant social justice and inequality issues. These were exacerbated by Covid-19. Legal education was hard hit and students from marginalised communities faced disproportionate hardships, including unequal educational opportunities. More specifically, remote teaching during the pandemic revealed to educators that they need to reflect on their current teaching and learning practices and adapt them where needed to ensure that they are inclusive and responsive to the needs of students. Considering these realities, we opine that a course's curriculum alignment, inclusive of your prescribed textbook, must not only provide comprehensive content, but also include material and activities that foster practical skills, engagement, and active learning on a platform accessible to all students. Curriculum alignment which is guided by social justice principles can, therefore, create an inclusive and transformative learning environment. This paper reflects on the integration of the learning material and effective LMS activities using Blackboard tools in a blended teaching and learning framework at foundational level at the University of the Free State. We found that one needs to prioritise your course's instructional alignment to proactively cater for the diverse needs of law students. More importantly, integrating the course's learning material with the LMS is key to promote a cohesive sequential learning experience for law students. This also creates a learning environment where law students connect concepts and practical legal skills, introduced by the textbook and amplified with activities and assessments provided, within the learning framework of the LMS to ensure equal learning opportunity for all.

Keywords: covid-19, inclusivity, curriculum alignment, sequential learning

Acquiring a Legal Qualification and Practising as a 'Legal Practitioner' Used to Access and Embezzle the Public Funds

Boaz Masuku, UNISA

Mankgmb@unisa.ac.za

The legal profession is seen as a noble profession wherein legal practitioners are called. Therefore, legal practitioners (genuine ones) respond to a calling, as opposed to holders of legal qualifications who masquerade as legal practitioners. However, studying a legal qualification is not necessarily seen as a calling like practising the law. Hence, it is found that there are fewer legal practitioners compared to the holders of legal qualifications. These holders of legal qualifications have been 'practising law' for a long time just to embezzle the funds held in trust. This has been a yearly problem, and the Legal Practice Council has been battling to prevent this unscrupulous behaviour in the ranks of legal practitioners. The consequences are dire for the public and the profession. The Attorneys Fidelity Fund has been facing a higher number of claims yearly due to unethical behaviour by holders of legal qualifications admitted to practising law. The claims run into millions of rands on a yearly basis and some of these claims are rejected for various reasons, including not being covered by the fund. It is therefore crucial that preventative measures be put in place to ensure that the public does not fall victim in the hands of these 'legal practitioners'.

Keywords: legal qualification, legal practitioners, public, funds, embezzlement of funds.

Liability of Person Who Assists in Dissipation of Assets of Taxpayer

David Matlala, University of Limpopo

david.matlala@ul.ac.za

The Income Tax Act of 1962 does contain in various sections, a number of build-in provisions dealing with tax avoidance. However, the main section dealing with tax avoidance is s 103 which provides among others that if the Commissioner for South African Revenue Service (the Commissioner) is of the opinion that a transaction, operation or scheme is abnormal or concluded in an abnormal manner and has as its sole purpose or one of the main purposes, the avoidance of tax or reduction of tax liability, he shall disregard the transaction, operation or scheme and assess the taxpayer to tax accordingly. In a limited sense the Tax Administration Act of 2011 (the TAA) takes the issue of combating tax avoidance even further. It provides in section 183 that if a person knowingly assists in dissipating a taxpayer's assets in order to obstruct the collection of a tax debt of the taxpayer, the person is jointly and severally liable with the taxpayer for the tax debt to the extent that the person's assistance reduces the assets available to the taxpayer's tax debt. The section has been dealt with in a number of cases such as the *Commissioner for the South African Revenue Service* v *Wiese* [2002] 4 All SA 748 (WCC). It would appear that in the section the legislature had good intentions regarding tax avoidance but the language is disappointing. A better drafting of the section could have produced a different result.

Keywords: tax avoidance, Commissioner for South African Revenue Service, tax liability

Social Rant as a Pervasive Ground for Dismissal: A Reflective Overview of *Makhoba v Commission for Conciliation, Mediation and Arbitration and Others* (2022) 43 ILJ 166 (LC)

Hapiness Mokgata, University of Limpopo|
Mmatipe Sefoka, University of Limpopo
mokgatahapiness@gmail.com
mmatipe.sefoka@ul.ac.za

The Constitution of the Republic of South Africa, 1996 guarantees the right to freedom of expression which includes the freedom to use media platforms. The use of social media has become very prevalent in recent years and as such, almost everyone has a social media account, be it Twitter currently termed "X", WhatsApp, Facebook or TikTok. These platforms are used to share current news, gossip, memes, and at times, peoples' emotional state or how they feel. Like everyone, employees also enjoy this right. Nevertheless, the use of these platforms may be detrimental in that employees who are not cautious may commit unescapable misconduct through these platforms. There is, to note, an accepted labour law rule that an employer has a right to discipline an employee who has committed workplace misconduct, which in the context of this paper means that an employer has a right to discipline an employee for misconduct committed using social media. The litigation history in *Makhoba v CCMA* compels an intense evaluation of the extent to which a social comment could constitute misconduct and ultimately dismissal on the part of the employee. Moreover, it assesses the limitations on an employee's freedom and right to express themselves through the use of social media and whether the employer has a right to discipline an employee for misconduct committed through social media outside working hours.

Keywords: dismissal, employee, misconduct, social comment, social platform

Searching for the Exact Contours of Section 133(1) of the Companies Act Through the Lenses of Maritime Property

Sibulelo Seti & Asanda Mbolambi
University of Fort Hare
ambolambi@ufh.ac.za
SSeti@ufh.ac.za

One of the ways in which the new business rescue scheme in South Africa set to achieve its objectives is through the establishment of general moratorium on legal proceedings against company under business rescue. The moratorium is created in terms of Section 133(1) of the Companies Act ('the Act'), which entails that during the business rescue no legal proceedings may be commenced or proceeded with in any forum. The scope of Section 133(1) seems to be broad. The intention is to cast the net as wide as possible in order to include any conceivable type of action against the company under rescue. However, close examination of the moratorium shows that it falls short in covering all proceedings against the company under rescue. The moratorium does not extend to legal proceeding in terms of Section 9 of the Admiralty Jurisdictions Regulation Act ('AJRA'). These proceedings appear to be a chink in the armour of the moratorium. In the end, this creates uncertainty and raises many questions with regard to the scope of the moratorium. Did the legislature envisage the exclusion of Section 9 proceedings from the moratorium, or it is just an inadvertent omission? Is this an isolated exclusion or is it part of a bigger legislative blind spot, possibly with more other proceedings excluded in a similar fashion? This paper seeks to examine these vexed questions as well as other aspects relating to the interface between Section 133 of the Act and Sections 9 read with 10 of the AJRA.

Keywords: business rescue scheme, general moratorium, legal proceedings, company, business rescue

Take Your Horse to the Marriage Road and Ride Till You're Assumed Married by the Courts: Navigating Life Partnerships 'Akin' To Marriages

Ntebo Lauretta Morudu, Wits University

ntebo.morudu@wits.ac.za

In the recent case of *Bwanya v Master of High Court, Cape Town*. The Constitutional Court took a stance that domestic partnerships are akin to marriages, therefore, they deserve the same recognition and protection under the constitutional law. The judgment was based on a legal assumption that parties who want to inherit and continue the reciprocal duty to support each other are entitled to, even after the death of either partner. The issues to be highlighted in this article are multi-faceted. The first issue relates to court intervention in marriage-less relationships and how it impacts many couples who have no intention of being bound by their lax actions to maintain their partners whilst they cohabit. The second issue relates to court interference in these complex relationships that tend to be a personal option for almost 3.2 million citizens in South Africa, where marriage is not be an option or parties are incapable of because of financial reasons. The third issue is the court using an unrelated merit on a moot subject matter. The court was to decide on a matter where couples were planning and had the intention of marriage however due to the supervening event, a partner dies before the conclusion of a marriage. The paper will conclude on a discussion paper published by the South African Law Research Commission on the regulation of domestic partnerships. Both the judgment and the paper have different, if not similar view on domestic partnerships and thus opening a floodgate of legal uncertainty and obscurity of the law.

Keywords: partnerships, marriages, recognition, constitutional law, courts

Navigating Through Zimbabwe's New Modular System of Learning in Law Schools

Amanda T Mugadza, Midlands State University

mugadzaat@staff.msu.ac.zw

Modular learning is a mode of learning that arranges information in a way that promotes individualised learning according to learners' needs. It designs courses that seek to solve problems that exist in the real world through experiential learning. In this system, the students must be exposed to a more individualised approach to the course content so that their prior knowledge and personal characteristics are taken into account and thus learn at their own pace. Zimbabwe has since adopted the modular system of learning following from the shift to online learning during the COVID era. The Zimbabwe Council for Higher Education endorsed the implementation of this system of learning to align with the new educational philosophy of Education 5.0, which emphasises on teaching, learning, community, innovation and industrialisation. This is deemed to focus on problem-solving that meets outcomes-focussed national development activities towards a competitive, modern and industrialized Zimbabwe. Universities in Zimbabwe have been migrating to this system of learning on the basis that students are given a set time to focus on fewer subjects at a time per semester followed by a week of exams. For lecturers; it is meant to create more time to focus on research, innovations and industrialisation in addition to learning and community service. This has been met with mixed feelings by students, lecturers and key stakeholders. For law schools, there has been an added layer of skepticism from the legal fraternity. From a resilience and social justice perspective, this paper explores the modular system of learning and how it has impacted on the teaching of law subjects at law schools in Zimbabwe. It considers the challenges and opportunities it offers for the relevance of law schools to nation building.

Keywords: Zimbabwe modular system learning higher education law degrees

Self-Review as a Mechanism for South African Municipalities to Curb Corruption in their Award of Contracts for Goods or Services: Lessons from Constitutional Court Judgments

Oliver Fuo, North-West University

oliver.fuo@nwu.ac.za

In South Africa, corruption in the award of contracts for goods and services threatens to derail the capacity of municipalities to advance their developmental role. Recently, state officials and organs of state that appear to be committed to self-correcting procurement corruption have frequently gone to courts to help them undo such illegal contracts. In three cases (Khumalo v Member of the Executive Council for Education: KwaZulu Natal 2014 (3) BCLR (CC); State Information Technology Agency Soc Ltd v Gijima Holdings (Pty) 2018 (2) BCLR 240 (CC); and Buffalo City Metropolitan Municipality v ASLA Construction (Pty) Ltd 2019 (b) BCLR 661 (CC), the Constitutional Court laid down guidelines which organs of state must follow if they wish to use self-review to set aside unlawful contracts. This paper explores how the self-review standard developed by the Court in these key judgments can be used by municipalities to undo corrupt procurement contracts. This paper distils important principles to guide municipalities that may wish to launch a self-review application to set aside unlawful procurement contracts.

Keywords: constitutional law, local government law, municipalities, corrupt procurement contracts

“Leaving No One Behind”: The Catch Phrase for “Non-Discrimination”?

Nomthandazo Ntlama-Makhanya, University of Fort Hare

nntlama@ufh.ac.za

The Certification of the Constitution of the Republic of South Africa 1996 (10) BCLR 1253 (CC) judgment laid the framework for South Africa’s constitutional project and certified the Constitution, 1996 which entrenched the significance of socio-economic rights as key and fundamental rights of human living. This meant the equal status accorded to these rights alongside civil and political rights in ensuring the socio-political advancement of the general citizenry without any distinction. However, the framing of these rights is distinct from each other as the former rights are framed with internal qualifications that entitles no direct entitlement to the said rights as opposed to the latter rights. This distinction views socio-economic rights through the lens of being ‘poor cousins’ of civil and political rights. The contention is supported by subjecting these rights to the financial muscle of the state which must be fulfilled over a period time. On the other hand, civil and political rights are of direct entitlement without any internal qualifications as they require immediate fulfilment. The debates about equal status of these right have long ensued traceable from the global community on the adoption of the International Bill of Human Rights. The International Bill of Human Rights alongside the ‘Future we want’ as envisaged in the Sustainable Development Goals 2030 and the ‘Africa we want’ of the African Union Agenda 2063 captures the content of ‘leaving no one behind’ in the elimination of all forms discrimination and the promotion of socio-economic equality. If the intersection of the right to dignity and equality with the right of access to adequate housing or access to health care creates a bar on the way the rights are to be realized and fulfilled, it creates an uncertainty and raises debates on the extent to which socio-economic rights are to be fulfilled. Since the inclusion of these rights and the jurisprudence that have since developed, government has been slow or dragged its feet towards an effective implementation of these rights including judicial orders evidenced by Government of the Republic of South Africa v Grootboom 2000 (11) BCLR 1169 judgment. This paper examines the rationality of the principle of ‘leaving no one behind’ in the promotion of socio-economic equality. It draws aspirations from the ‘Future we want” alongside the ‘Africa we want’. The paper argues that the ‘leaving no one behind’ principle is a catchphrase that is of little significance for the elimination of all forms of discrimination. It also raises a question whether the ‘all-encompassing’ principle is not a catchphrase for academic and scholarly arguments whilst the realities of the people’s rights are not translated into substantive reality. It traces the arguments that were raised during the Certification process in order to assess their legitimacy and relevance today in the advancement of equality of the statuses of these rights.

Keywords: socio-economic rights, discrimination, judiciary, human rights, equality

Combating Malicious Communications and Online Hate Under the Cybercrimes Act

Delano Cole van der Linde, Stellenbosch University

dcvanderlinde@sun.ac.za

The Cybercrimes Act 19 of 2020 provides measures to combat cybercrime and the dissemination of malicious communications. The necessity for these measures is uncontested: the rise of social media and messaging services has made the distribution of violent, threatening or otherwise unlawful types of data messages commonplace. Data messages inciting violence (whether it be to a particular person or a particular group or class); direct threats and the sharing of non-consensual pornography have become everyday occurrences. Their distribution is immediate and their consequences are harmful. Some live in fear of xenophobic attacks while others suffer great reputational, financial or emotional harm. This was evident during the pandemic when South Africa experienced a spate of online hate and violence during the pandemic. Courts, under the Cybercrimes Act, will also soon be equipped with expansive powers to deal with malicious communications. For example, a court may provide the complainant with a protection order regardless of whether the accused was convicted or not. A convicted person may further be compelled to refrain from distributing the malicious communication and the court may further compel such a person (or anyone else) to destroy the data message or copies thereof. A court may also order an electronic communications service provider to remove or disable access to such messages. The intended presentation aims to discuss the proliferation of malicious communications in South Africa as well as the powers of courts in protecting the victims from the after-effects of said communications.

Keywords: criminal law, cyber law, criminal procedure, inciting violence, non-consensual pornography, harm.

Constitutionalising South Africa Patent Law in pursuit of realising Access to Essential Medicines: A Post-Covid-19 Proposal

Shelton T Mota Makore[1]

MotaMakoreST@ufs.ac.za

sheltonmotamakore61@gmail.com

The emergency of the Covid-19 pandemic has reignited the discussion on access to essential medicines and the role played by the South Africa's intellectual property protection, especially patents in accentuating the problem. This is despite that the normative values espoused by the Constitution of South Africa, 1996, obliges the state and other non-state actors to ensure that the constitutionally guaranteed right to have access to health care service is realised through access to essential medicines to combat diseases such as, HIV and AIDS, cancer, malaria, coronavirus, tuberculosis, among others. Further, lack of access to essential medicines including other therapeutics stands in contradistinction with the constitutional right(s) to human dignity, equality, life, and access to health care service. Notwithstanding the constitutional provisions, the global recurrence of public health emergencies means that South Africa should continue to find avenues for increasing access to essential medicines. This articles, argues that the constitutionalisation of the South African patent law represents a viable avenue for advancing the goals of improving access to essential medicines. It argues that the constitutionalisation of the South African patent laws offers a normative legal framework and transformative power which can be utilised to limit the negative impact of patent laws on access to essential medicines especially for the disadvantaged and marginalised people.

Keywords: constitutionalising, patent law, access to essential medicines, post-covid-19 proposal

[1] LLB, LLM, LLD (UFH), Senior Law Lecture, in the department of Mercantile Law, University of the Free State, South Africa.

The Peremptory Terms of the Constitution, Municipal Systems Act 42 of 2000 and Preferential Procurement Policy Framework Act 5 of 2000: Some Reflections on Recent Cases and Lessons to be Learned

Mmakgotso Mongake, North-West University

mmakgotso.mongake@nwu.ac.za

South Africa is a democratic country which prides itself of the principle of the supremacy of the Constitution and the rule of law. The purpose of this paper is to examine the genesis and the nature of procurement law in South Africa, the obligations of organs of state upon entering such contracts and further their obligations or duties to fulfill or to perform in case of material breaches and or manifest flaws and or irregularities in the tendering process (Part 1). In order to answer the above vexed questions this paper will examine the landmark decision of *Sanyathi Civil Engineering & Construction (PTY) LTD {2012]1 All SA 200 (KZP)*per Justice Pillay, which gives us a blueprint, template, model or prototype constitutional procurement law (Part2) and from which lessons could be learned in order to avoid flouting procurement law prescripts (Part 3).It will be strenuously argued that procurement law is prescriptive precisely because the award of public tenders is notoriously prone to influence and manipulation, that the language used in section 217 of the Constitution is couched in mandatory terms the words used is that organs of state must contract in accordance with the system which is fair, equitable, transparent competitive and cost effective} this also inheres in section 2 of the PPPFA of 2000, section 112 of MFMA of 2003 and section 6 of the MSA 42 of 2000 consistently.

Keywords: peremptory terms, constitution, Municipal Systems Act 42 of 2000, preferential procurement policy

The Exposition of the Use of Force/Brutality by Police Officers: A South African Perspective

Tshilidzi Knowles Khangala, Tshwane University of Technology

khangalatk@tut.ac.za

South Africa is a democratic country with one of the best Constitution in the whole world. Its Constitution enshrines both Civil and Political rights, Socio-economic Rights and Environmental rights, as legal justiciable. The Bill of Rights guarantees amongst others, the right to Freedom of Movement and security of person, the right to life, to dignity and to be presumed innocent until proven guilty. However, the SA citizens are suffering from the same police officers who are expected and obliged to be enforcing and respecting these rights and laws.The debate over South Africa's policing powers and responsibilities has been reignited with the release of a horrific video of members of a VIP-protection unit linked to the Deputy-President of South Africa attacking three persons on social media. On the N1 in Fourways, the video depicts a group of armed guys attacking a blue VW-Polo's passengers. Three persons are seen getting kicked and trampled by the alleged VIP-protection unit personnel. The individuals are violently attacked after being forcibly removed from the vehicle by the officers. Subsequently, one of the passengers is seen laying on the ground and almost unconscious. This paper uses a qualitative research approach to examine the domestic laws that govern the police force, with a focus on the use of force by police officers. It also examines the SA Constitution's jurisprudence on the use of force or otherwise deadly force by the police and SA's international obligations regarding police brutality.

Keywords: Constitution, civil and political rights, socio-economic rights, environmental rights, bill of rights

Emerging Technologies and the Concept of Personal Information – EU Case Law as an Interpretive Guideline for POPIA

Nazreen Ismail, University of Johannesburg

nismail@uj.ac.za

Emerging technologies, such as AI (Artificial Intelligence) and Blockchain, form the foundation of the Fourth Industrial Revolution (4IR) and raise the question of how economic interests and technological progress can be aligned with the protection of personal information. The paper will discuss the scope of data protection regulations in the European Union, i.e. the GDPR, and the South African Protection of Personal Information Act 4 of 2013 (POPIA) in this context. The paper will analyse the interpretation of the term 'personal data' under EU data protection law, which determines if certain information is subject to data protection rules. In addition, the scope of this legal term forms the focal point for the requirements of an anonymisation of data. As a starting point, the paper will discuss the so-called 'relative' and the 'absolute' approach as well as the ruling of the CJEU in the *Breyer*-case (C-582/14) of 2016. Thereafter, the paper will analyse the recent ruling of the European General Court in *SRB v EDPS* (T-557/20) from 26 April 2023 on the interpretation of 'personal data' in the context of the transfer of pseudonymised data to a third party also taking into account recent research in the field of re-identifying individual from anonymised data. On the basis of this analysis the paper will then identify potential guidelines for the South African data protection framework and its application in light of emerging technologies.

Keywords: data protection, privacy law, right to privacy, POPIA, GDPR, personal information, personal data

Conservation, Poverty, and Unemployment: Balancing Stones and Feathers

Niel WD Lubbe, North-West University

Niel.lubbe@nwu.ac.za

The livelihood of people is always an issue of concern in southern Africa. It is well-known that the vast majority of people in the region depend directly on the environment for their survival. It is here, where this dependence is sustained and exacerbated by continued poverty and unemployment, where it becomes difficult to balance conservation imperatives and human survival. This difficulty is clear to observe throughout history where people were displaced from land to establish national parks. It is therefore not difficult to understand why some people may be less optimistic about the value of conservation as a public good. Especially when fences keep them from potentially foraging for survival. On the flipside, conservationists, NGOs, and various other interested parties lobby for the protection of protected areas focusing on reasons related to sustainability, saving of species, and ecosystems as a whole. Both sides have valid concerns so the question becomes how we can strike a balance between these stones (human rights) and feathers (conservation). The two, (conservation and human survival) seemingly at odds, are ironically linked since humans are inherently part of the ecosystem and our welfare depends also on the health and welfare of the environment. Finding a way to best nurture a better relationship between humans, especially the poor, and the environment is therefore increasingly crucial against the backdrop of continued environmental degradation. This paper aims to look at innovative ways to strike a balance between upholding human rights whilst giving effect to conservation goals.

Keywords: environmental law, poor, ecosystem, human rights, national parks

Dephysicalisation or Rephysicalisation of Property In AR and VR – Is Tangibility Still an Issue?

Wian Erlank, North-West University

wian.erlank@nwu.ac.za

Since the question of tangibility/corporeality continues to crop up in discussions about whether digital objects can be regarded as things or objects of real-world property rights, the introduction of VR and AR tech into this discussion is quite illuminating. In this paper, I will discuss how one should approach the key question of whether to regard certain digital objects as objects of real-world property rights. If one were to assume that not all digital objects (or digital assets) should be given real-world property protection, a handy tool to help one decide when such objects should or could get real-world property protection, would be to look at the level of immersion of a user when using specific technologies. In other words, as the level of immersion increases while using a specific technology, the need for a suspension of disbelief of the user decreases. In such a case, the more believable a digital object is to a user, and the closer it is to a real word (physical) counterpart, the more likely it is that a digital object should or could receive legal protection as a property object. Essentially, while something might be a digital object and therefore not exist in the real-world in the traditional property law sense, the fact that the display and interaction technologies make it more believable and akin to a real-world object results in a digital (dephysicalised) object being rephysicalised.

Keywords: legal protection, property object, digital object, traditional property law, technologies

Protection for Multinational Corporation Employees: A South African Labour Law Perspective

Winnie Matlou and Mafanywa Jeffrey Mangammbi, University of Limpopo

mafanywa.mangammbi@ul.ac.za

Labour law is a set of legal rules and regulations that govern the relationship between employers and employees. It outlines the rights and responsibilities of both parties, and provides a framework for resolving disputes. Labour law is important for employees as it protects their rights and ensures fair treatment in the workplace. Despite the increased awareness and the emerging regulatory framework, reports on the negative impact of corporate activities on employee rights continue to make the headlines. A multinational corporation (MNC) is a business entity that operates in multiple countries. They often have centralized management and decision-making, but also have local operations and subsidiaries. MNCs may face unique challenges related to international regulations, cultural differences, and language barriers. The importance of the protection of employee rights can therefore not be overemphasised. This paper focuses on the corporate activities violating fundamental employee rights, mainly in globalisation and supply chain. In so doing, it shall further evaluate and discuss the rights being continuously violated by companies making headlines yet not much is said on the solutions and repercussions thereof or ways in which to combat or lessen the risks of such actions. This paper will explore and outline the existing impacts of both globalisation and supply chain on labour rights in a South African labour law perspective.

Keywords: globalisation, supply chain, labour law, employees' rights, international law, and national law

Using Public Procurement as a Tool to Advance Gender Equality Through Gender-Responsive Procurement

Sope Williams, Stellenbosch University

sopewe@sun.ac.za

Public procurement systems are often used to achieve policy goals beyond the purchase of the required goods and services. These policy goals include matters like the economic advancement of minorities, the promotion of fair labour practices and climate action. In the last two decades, many countries are using their procurement systems to advance gender equality. This is referred to as gender-responsive procurement and is often implemented through the award of public contracts to women-owned or gender-responsive businesses as well as a consideration of the ways in which the provision of public services impacts gender equality. Whilst many countries have legal provisions designed to increase the award of public contracts to women, gender-responsive procurement is extremely limited, and women-owned businesses are not fully integrated into public sector supply chains. This is unfortunate, given that gender-responsive procurement can improve women's economic empowerment, mitigate procurement corruption, and improve procurement inclusivity and transparency with implications for sustainable development. This paper adopts a gender equality and women's economic empowerment lens to the legal, policy and cultural barriers to gender-responsive procurement in South Africa and recommends measures to mainstream gender equality in public procurement and increase the award of public contracts to women owned businesses.

Keywords: economic empowerment, mitigate procurement corruption, procurement inclusivity, transparency

A South African Historico-Legal Perspective on Plagues and Pandemics

Marita Carnelley, North-West University

Marita.Carnelley@nwu.ac.za

Global health experts have warned for decades of potential global influenza outbreaks. Although some strides have been made historically to mitigate the risks and consequences of a pandemic, concerns have been raised about the level of preparedness – both nationally and internationally. The presentation considers a number of plagues and pandemics that directly or indirectly played some role in the development of the South-African legal system, specifically the Justinian Plague, Black Death, Great Plague, Third Bubonic Plague, Spanish Flu and the Influenza Outbreaks of the past century. As each pandemic creates legal and political challenges at the time that are dealt with in the light of existing conceptions of social justice, this inevitably shapes the development of public health and disaster management jurisprudence and in some instances also contributes to the change in the underlying world order. This focus is on the legal developments that influenced the South African common law legal system from Roman times until just prior to the Covid-19 outbreak. Themes around social, cultural and economic costs nationally are noted as well as international law developments. Although various aspects related to addressing the consequences of pandemics have improved, such as global surveillance, prevention and eventual control to decrease the incidence and severity of outbreaks, a historical assessment of these experiences highlights progress as well as under-preparedness at national and international levels. The presentation concludes with a short description of the South African legal framework as it was in 2019 when Covid 19 hit as a starting point for future evaluations of gaps in the responses to pandemics.

Keywords: pandemic, legal history, covid-19, political challenges

The Role of International Human Rights in Advancing and Promoting Quality Education in South Africa

Anel Odendaal and Ntandokayise Ndlovu, University of Fort Hare

aodendaal@ufh.ac.za

ntandokayise.ndlovu@gmail.com/nndhlovu@ufh.ac.za

The global human rights system plays a critical role in the domestic legal order as it acts as a yardstick through which states measure the internationally accepted standards. More importantly, the principles laid down in international and regional frameworks assist courts in interpreting these rights at the domestic level. South Africa is a state party to a number of instruments that protect quality education. In this regard, the state is under an obligation to ensure that the right to quality basic education is offered in all schools. Through jurisprudential as well as literature analysis, the abstract seeks to establish the role that international human rights law has played in protecting the quality of education provided. The inquiry is related to the localisation of international human rights law at the domestic level. In relation to section 233, the Constitution mandates courts and similar forums to prefer a reasonable interpretation of the law that is in line with international law over one that is not.

Keywords: basic education, human rights, international and constitutional obligations, international human rights law

Recognition of Foreign Judgment Sounding in Money: The Punitive Damages Debacle

David Matlala, University of Limpopo

david.matlala@ul.ac.za

According to South African private international law, a local court has power to recognize a foreign judgment, including one sounding in money. Recognition of foreign judgment is done not in terms of international law or the law of the country from which the judgment emanates but in terms of the principles and requirements of South African law. Two problems arise with recognition of a foreign judgment, namely finality of the judgment and the amount thereof if it involves compensation, be it in delict or contract. That is so as the plaintiff may seek recognition and enforcement of the judgment in which an appeal is pending, with the possibility of a further appeal to a higher court. In that case the matter is not final in the sense of the last word having been heard. In South African law, compensation is for loss suffered, be it in delict or contract. However, overseas there are jurisdictions, such as the various states in America, which award damages under two heads, namely "compensatory damages" and "punitive damages". The latter is not compensation for any loss suffered but punishment for committing delict or breaching contract. This cannot be done in South African law. The golden question is whether a South African court should recognize and enforce that which it is not allowed to do in terms of local law simply because in this one case the issue comes from abroad. Would not recognizing and enforcing such a judgment be against public policy, one of the requirements for recognition and enforcement of foreign judgment?

Keywords: damages, compensatory damages, punitive damages, compensation, loss suffered

Flaws and Challenges Affecting Effective Regulatory Coordination under the Financial Sector Regulation Act 9 of 2017

Howard Chitimira and Sharon Munedzi, North-West University,

Howard.Chitimira@nwu.ac.za

sharonmunedzi@gmail.com

The regulation of cooperation and collaboration between the South African Reserve Bank and other financial role players is regulated under the *Financial Sector Regulation Act* (*FSR Act*). For the first time in South Africa, regulatory coordination is expressly regulated by statute, for the purpose of promoting financial stability and enhancing market integrity. Although the *FSR Act* is still fairly new and may be too soon to determine its robustness in this regard, several flaws can be pronounced from the statutory regulation of cooperation and collaboration between the SARB and other financial role players in South Africa. Following the lessons learnt from the outbreak of the COVID-19 pandemic, the *FSR Act*, does not make provision for cooperation and collaboration mechanisms to manage crisis and protect financial stability amidst systemic risks. Cooperation and collaboration between the central bank and other financial role players is arguably the bedrock of an operational financial regulatory architecture. As such, the lack of provisions to enforce the duty to cooperate and collaborate under the *FSR Act* undermines the effectiveness regulatory coordination in South Africa. This paper seeks to highlight the flaws and challenges affecting effective cooperation and collaboration under the *FSR Act* and recommends possible measures to enhance inter-agency coordination in South Africa.

Keywords: cooperation and collaboration; flaws; challenges; inter-agency coordination

Contextualisation of 'Relocation' in the Context of ESTA: Building on the *Dictum* in *Boplaas Landgoed (PTY) Ltd v Jonkies* (LCC 37/2022) [2022] ZALCC 38 (15 August 2022)

Lerato Rudolph Ngwenyama, Nelson Mandela University

lerato.ngwenyama@mandela.ac.za

This case note analyses the case of *Boplaas Landgoed (Pty) Ltd v Jonkies* (LCC 37/2022) [2022] ZALCC 38 (15 August 2022), where the owner sought the relocation of occupiers under the Extension of Security of Tenure Act 62 of 1997 (ESTA occupiers) to houses allocated to them by the government and they now owned. The ultimate aim of this case note is to provide the contextualisation of 'relocation' in the context of ESTA. Building on the *dictum* in *Jonkies*, where the court mentioned that a relocation in the context of ESTA is the removal of ESTA occupiers from one dwelling to another on the same farm (same deed description and title deed), and that removal from the land or farm (different deed description and title deed), may constitute an eviction. The analysis shows further that a relocation ordinarily occurs when it is the prerogative of the owner or person in charge. However, ESTA occupiers may, in certain instances, initiate a relocation where the dwelling is not habitable. It is therefore argued that it is not only the owner or person in charge who can apply for a relocation, but also an ESTA occupier in specific circumstances. The note indicates that the party who initiates the relocation must approach the affected party and raise the issue of relocation. It is concluded that the process to be followed by either the owner or ESTA occupier before the actual relocation is not provided for in ESTA, but currently flows from case law development.

Keywords: ESTA, occupiers, relocations, rural areas

Reproductive Healthcare Rights in South Africa: Are Women Living in Rural Areas Left Behind? 'Lessons' from the *Dobbs v Jackson* Case

Nomfundo Mthembu, University of KwaZulu-Natal

MthembuN23@ukzn.ac.za

In many countries, access to reproductive healthcare services remains a challenge. This challenge is only exacerbated for women in rural areas compared to those in urban areas. The notion that access to reproductive health services is mostly available to urban, literate and socially and economically stable women has led to the routine exclusions of women in rural areas who nevertheless need to exercise their constitutional right to reproductive healthcare. Furthermore, reproductive rights-based arguments are hamstrung by the reality that a right to reproductive healthcare remains contented in many states. This issue has most recently been made manifest in the United States Supreme Court decision of *Dobbs v. Jackson Women's Health Organization*. Many African countries, similar to the US, face the challenge of policies that fail to accommodate access to reproductive healthcare rights because the reality of their laws does not match up with the lived realities of women in rural areas. This then raises the question: On what basis can access to reproductive health services be accelerated especially for women in rural areas? Attending to this question from a social justice perspective, this article argues that access to reproductive health services falls under the primary duty of states to ensure basic social welfare for its citizenry and should be provided across the board.

Keywords: reproductive rights, rights, social justice, social welfare

Guardrisk Insurance Company Limited v *Chameleon Café CC* (Case no 632/20) [2020] ZASCA 173 (17 December 2020): Assessing the Reasonableness of the Insurer's Repudiation Within the Period of the Covid-19 pandemic

Thiruneson Padayachy, University of Pretoria

t.padayachy@up.ac.za

The pivotal Supreme Court decision in Guardrisk Insurance Company Limited v Chameleon Café CC (Case no 632/20) [2020] ZASCA 173 (17 December 2020) holds significant implications for the insurance industry. This case provides grounds for the jurisprudential exploration of the criteria governing an insurance company's repudiation of claims within the realm of business interruption, with specific reference to the challenges posed by the national lockdown during the Covid-19 pandemic. Central to the analysis is the interpretation of the insurance contract between the parties, the respondent being the insured and the appellant the insurer. This contract obligated the insurer to indemnify the insured against losses stemming from business interruption, contingent upon the occurrence of specified disruptions within a designated radius of 50km from the respondent's operational premises. Notably, the potential trigger for such interruptions included a notifiable disease arising within the prescribed radius.

Keywords: notifiable disease; covid-19; national lockdown; business interruption claims; repudiation of insurance claims

An Exploration of the Relationship Between the Regulation of Financial Inclusion and Responsible Lending in the Era of Digital Transformation

Phemelo Magau, University of Pretoria

Phemelo.Magau@up.ac.za

Most financial consumers rely on the use of credit to pay for their day-to-day needs in South Africa. While this is the case, most vulnerable financial consumers, especially the poor and low-income earners remain financially excluded. In recent years, the promotion and regulation of financial inclusion has become an increasingly important policy objective to integrate previously disadvantaged financial consumers into economic activities and to alleviate challenges in accessing credit in South Africa. Digital transformation has also brought about the adoption of financial technologies and other innovative measures to enhance financial inclusion and make access to credit easy for financial consumers. Moreover, digital transformation has led to extensive online distribution of credit as well as seamlessly accessing credit from Automated Teller Machines (ATMs). This paper seeks to explore the relationship between the regulation of financial inclusion, in particular, the access to credit, on the one hand, and the regulation of responsible lending on the other hand. This exploration is done against the backdrop of digital transformation where access to credit is simplified for consumers. Moreover, this paper also seeks to highlight the challenges associated with irresponsible lending such as inappropriate product design, misleading credit sales incentives, unwanted direct marketing of credit offers, risks associated with online distribution of credit, and inadequate creditworthiness assessment conducted by creditors. This is done to recommend possible legislative measures for balancing the need to promote financial inclusion, with the imperative of responsible lending to protect financial consumers and to avoid crippling the credit market as well as exacerbating the levels of consumer over-indebtedness in South Africa.

Keywords: financial inclusion, responsible lending, consumer credit, consumer protection, digital transformation

Reframing the Response to CRSV: A Legal to a Multidisciplinary Approach Rooted in Restorative Justice

Niki Govender, North-West University

Niki.Govender@nwu.ac.za

Conflict-related sexual violence (CRSV) refers to conduct ranging from rape and forced marriages to verbal sexual abuse. It inflicts long term harm and fractures individuals and communities with women and children often being the disproportional victims. Annual reports from United Nations and the International Committee of the Red Cross assert that CRSV is prevalent in territories rife with armed conflict such as those in Southern Africa. Numerous Southern African societies are already contending with significant socio-economic challenges in addition to ongoing armed conflict. The advent of the COVID-19 pandemic exacerbated these issues and complicated the responses to CRSV victims and survivors. The rise of ongoing armed conflict and its nexus to CRSV is worrisome despite its clear proscription under international law as an international crime. Such crimes being war crimes, crimes against humanity, and/or genocide.This paper explores whether the international minimum standards adequately guide states in responding to the needs of CRSV victims without disproportionately emphasising retributive measures. It will further determine whether international law provides states with the necessary guidelines to develop their domestic legal frameworks in a holistic manner thereby promoting social justice, equity, and participation of victims and survivors in holding perpetrators accountable. This will be achieved by considering whether a lens additional to the law is necessary. Advocating for a victim-centred perspective, the paper argues that a multidisciplinary approach could be the most effective way to prevent impunity, ensure accountability, and restorative justice, and provide a comprehensive response to CRSV victims and survivors.

Keywords: CRSV victims, survivors, armed conflict, nexus to CRSV, international law, international crime

Conundrum Posed by Two-Pot Retirement Systems Reforms in South Africa

Lufuno Tokyo Nevondwe, University of Limpopo
Lufuno.nevondwe@ul.ac.za/tokyonevondwe@gmail.com

The two-pot retirement systems reforms aimed at addressing challenges faced by members of retirement funds which includes amongst others, low economic growth, high inflation rates and costs of living which is too high which does not translate to higher salaries increases. These two-pot systems permit members of retirement funds to access one-third of their retirement interest before reaching retirement age while preserving two-thirds of their retirement savings. The implementation date of this two-pot system will be 1 March 2025. This implementation date has been postponed several times to afford the retirement funds the opportunity to adjust their systems to the new changes. Further, South African Revenue Services (SARS) will also need more time to prepare its systems for these new changes. These retirement reforms are a step backward towards the culture of savings and social security which will have dire consequences in future to members of retirement funds.

Keywords: retirement reforms, retirement funds, social security, retirement savings, retirement age and two-pot systems.

Taxation of Retirement Benefits in South Africa: Issues and Perspectives

Lufuno Tokyo Nevondwe, University of Limpopo
Lufuno.nevondwe@ul.ac.za/tokyonevondwe@gmail.com

Retirement funds are the most widely used retirement planning tool, mainly because of the tax concessions applicable to retirement funds and their members. Section 37A(1) of the Pension Funds Act, 24 of 1956 (the Act) prohibits the alienation of retirement benefits in any form whatsoever. However, section 37D(1)(a) of the Act provides that a registered fund may deduct from a benefit which becomes due to a member or beneficiary in terms of the Rules of a retirement fund, any amount due to the member in terms of the Income Tax Act, 58 of 1962 as amended. It is an internationally accepted principle that the right of the State to secure prompt performance of pecuniary obligations to it is paramount. This is because taxation is the means by which the State raises the necessary funds to govern from day to day and deliver the basic services to its citizens. The rate of taxation of retirement benefits is too exorbitant to the members and discourage the culture of savings which sustain the life of retirement funds members upon reaching retirement age.

Keywords: taxation, retirement benefits, retirement funds, retirement fund rules, retirement funds members and beneficiary

African Feminist Perspectives on Informal Social Security: The Potential for Women-led Initiatives to Promote the Right to Development in Black Communities

Maphoko Lerato Ditsela, University of the Free State

DitselaMEL@ufs.ac.za

Section 27(1)(c) guarantees the right to social security for people who are unable to support themselves. However, many people fall through the cracks of formal social security due to factors such as administrative failures and lack of access to social security education. As a result, Black South Africans depend on informal social security in the form of kinship- and communal-based support structures. These support structures take the form of *di thušanang* (bereavement support), *megodišano* (rotational money sharing), *go lela* (assisted childcare), and *letšema* (communal farming). Typically, Black women are the backbone of these support systems, and are therefore a vital part of realising the right to development in Black communities. Black women pioneer initiatives where they "pursue their economic and social development according to a policy they have freely chosen", in line with the African Charter of Human and Peoples Rights. This paper, using an African feminist jurisprudential lens, seeks to highlight the importance of the notion in African communities that *motho ga a lahlwe*. This is linked closely with the principle of Ubuntu and serves as the theoretical underpinning for these women-led initiatives where women not only sustain themselves and their families, but also contribute towards the project of development in their communities. Against this backdrop, the paper also endeavours to explore the juxtaposition of individualism and communitarianism in Black communities reclaiming sovereignty over their resources and socio-economic well-being, in line with the Preamble to the United Nations' Declaration on the Right to Development.

Keywords: right to development, black communities, black women, economic and social development

From *Chauke v Santam* 1997 (1) SA 178 (A) to *Nemangwela v RAF* [2023] JOL 59414 (SCA): Is a Forklift Still Considered not to be a Motor Vehicle in terms of the Road Accident Fund Act 56 of 1996?

Nicolaas Claassen, University of the Free State

ClaasNJ@ufs.ac.za

A road crash victim will only be able to successfully claim from the Road Accident Fund if they are able to prove that their damage was caused by the driving of a motor vehicle. If the victim's damage was therefore caused by something other than the driving of a motor vehicle, there is no third – party claim. According to the definition of a "motor vehicle", as set out in section 1 of the Road Accident Fund Act (RAF Act), there are three essential elements that need to be present before it can be said that a particular vehicle qualifies as a motor vehicle in terms of the Act. These elements are: (i) the method of propulsion or the "propulsion test"; (ii) the purpose for which the vehicle was designed or the "design test"; and (iii) the concept of "road" as a determinant factor in relation to the design test. Although these elements appear to be quite straight forward and easy to apply, our courts have over the years found it quite challenging to come to the correct decision when confronted with a variety of different vehicles, purported to be motor vehicles for purposes of a third – party claim. This presentation will investigate the reason(s) behind the challenges faced by our courts in their attempt to deliver legally sound judgments and in the process ensure that the object and purpose of the RAF Act, namely to offer the widest possible protection to road crash victims is indeed realized.

Keywords: party claim, elements, method of propulsion, propulsion test, design test

The State's Duty to Service Delivery of Access to Electricity as a Human, Derivative and Contractual Right

Reamohetswe Portia Senokoane, University of the Free State

SenokoaneRP@ufs.ac.za

The right to electricity is a particularly contentious issue in South Africa, particularly concerning whether there is such a right. The South African constitution in its Bill of Rights does not explicitly detail such a human right, nor its access, as with other socioeconomic rights. This, however, does not change the fact that electricity is a sought-after commodity that is essential to the everyday life of people in the modern era and essential to the development of a nation's economy. The only instruments that detail electricity as a right are International instruments such as the Elimination of All Forms of Discrimination Against Women (CEDAW) and the United Nations Sustainable Developmental Goals that emphasise electricity as a right that States are obligated to fulfil towards its citizens. Regarding these latter international instruments and the right to electricity, the question stands as to whether the right to electricity should be seen as a human, contractual or derivative right. Additional to this question is, should there indeed be such a right, with whom does the right vest and to whom such an obligation to provide it rests? Rights talk constitutes a mode of claim-making about what should be in place and protected for individuals (or groups) and, it often follows, about what duties and obligations should rest with others and in particular the State, to provide for and protect these rights.The answer to this question is imperative, as it would inform all energy stakeholders within all spheres of a society of what the nature of such a right is, what obligations it creates and what expectations it should consequently fulfil. Walker elaborates on this concern and states that when a social norm is elevated to the status of a right, it means that someone has a claim towards it and another has an obligation to provide it. It, therefore, becomes imperative to ascertain what (contract, human and derivative) the claim is, who the claimant is and to whom such a claim should be made. This paper seeks to categorise the right to electricity as a human, derivative or contractual law right and considers the legal consequences of each categorisation.

Keywords: South African constitution, Bill of Rights, human rights, socioeconomic rights, economy

Labour Law, Social Media Policies and Social Media Misconduct: A Critique

Seroné Stal, University of Fort Hare

SStal@ufh.ac.za

The rise of social media has led employers to establish regulations governing their employees' use of social media platforms, aimed at preventing adverse effects on the company's reputation and avoiding consequences like lawsuits or even stock price devaluations. These social media policies are designed to govern employees' online conduct both within and outside of the workplace. Although employees enjoy the right to freedom of expression, an employer's social media policy can impose limitations on this freedom, if it poses a risk to the company's interests. Consequently, compliance with these policies is enforced through disciplinary measures which could include, at the worst, termination of the employment. In some instances, courts have held employers accountable for their employees' actions on social media, thereby underscoring the importance of employer social media policies in mitigating legal risks and safeguarding reputation. It seems however that labour laws addressing social media misconduct currently have limited provisions specifically targeting social media, although they are gradually evolving in response. Accordingly, in an effort to determine avenues through which both the employer and employees' interests could be protected, this paper will evaluate from a generalised perspective the *lex lata* state of labour laws as they apply to technological advancements and will further explore the *lex ferende* ideal legal developments which will be necessary to effectively address the specific complexities surrounding social media misconduct.

Keywords: employer's social media policy; labour law; social media misconduct

Social Security and the Informal Sector: Exploring the Implications of *Mahlangu and Another v Minister of Labour and Others* (2021 (2) SA 54 (CC)

Daphne Eileen Chidindi, University of Limpopo

chidindidaphne@gmail.com

In the Southern African Community Development Community (SADC) as it is in much of the developing world, the informal sector employs more people than the formal sector of the economy. Scholars have lamented that most social security programmes in the SADC restrict participation to the formal sector. Thus, one of the main policy problems facing SADC countries is how to extend social security programmes to the informal sector. To address this problem, SADC countries have adopted several instruments designed to expand social security coverage to employees in the informal economy. Despite these instruments, the pace of implementation either through reform of existing laws or adoption of new laws that expand social security coverage has been slow. Until recently, in South Africa, the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) which expressly excluded domestic workers and their dependents from accessing social security assistance in case of death, disablement, or injury in the workplace. However, the Constitutional Court in South Africa decided an important case of *Mahlangu and Another v Minister of Labour and Others* (2021 (2) SA 54 (CC), which declared certain provisions of COIDA unconstitutional for excluding domestic workers. Based on South Africa's constitutional and international obligations towards social security, the court found that the exclusion of domestic workers is inexplicable and in direct conflict with constitutional right to social security, equality, and human dignity. This case note explores the landmark decision of *Mahlangu* from the perspective of expanding social security coverage to the informal sector of the economy. It argues that *Mahlangu* is a progressive case not just because it declared COIDA invalid in South Africa but also because of its potential effects on promoting expansion of social security coverage, recognising equality and human dignity of citizens in the SADC.

Keywords: domestic workers, direct conflict, constitutional right to social security, equality, and human dignity

The Detrimental Influence of the Lack of Good Corporate Governance in SOCs on Stakeholders

Elizabeth Snyman-Van Deventer, University of the Free State

SnymanE@ufs.ac.za

A company has certain responsibilities towards the society in which it operates, especially state-owned companies (SOC). Furthermore, a company as a whole forms an integral part of civil society, which requires them to be accountable towards their stakeholders. In King IV, a specific focus is placed on transparency with stakeholders. Corporate governance not only regulates the conduct of boards but also improves the overall quality of management and board conduct relating to decisions within a company. It is of utmost importance that directors of SOCs consider all stakeholders in decision-making, especially because the SOCs rely on funding from the state, which of course, means money from the taxpayers! Despite the proper legal framework governing SOCs, several companies face extreme financial difficulty due to weak corporate governance, failure to fulfil fiduciary duties, poor procurement practice, feeble compliance measures, poor auditing and bookkeeping practices, insufficient disclosure to stakeholders, no or undermanaged internal controls, a disregard for codes of good governance, the absence of proper disclosure and no transparency. Consequently, the door for corruption has been opened, and damage has been caused to the economy. Accountability in these instances is scant as the government's (as a stakeholder) roles, limitations, and duties are not always clear-cut. This paper aims to investigate corporate governance within SOCs, as poor governance will be detrimental to all stakeholders of a company. The damaging effect of poor governance on the above stakeholders will be assessed and evaluated with South African Airways (SAA) as an example of a failing SOC.

Keywords: corporate governance; state-owned companies

The Role of International Human Rights Law in Protecting Child Rights in South Sudan Post-Conflict

Ntandokayise Ndlovu, Fort Hare University

nndhlovu@ufh.ac.za

Children are human beings with full rights and protection of the law both at the domestic and international level. Suffice to state that, in this era of vast international, regional, and domestic laws protecting the rights of children, it is concerning that an array of grave violations of child rights subsist. The UN has identified 6 grave violations that limit that gravely affect children, especially children in armed conflict and post-conflict states. These include killing and maiming of children; recruitment or use of children as soldiers; sexual violence against children; abduction of children, attacks against schools or hospitals; denial of humanitarian access for children. This list is however not a closed list but arguable they may be other grave violations that affect children in post-conflict situations. While these violations may be identified as the main concerns for children in peace, conflict, and post-conflict situations, the list is not exhaustive. Despite constitutional provisions which are comprehensive at least in principle, children in South Sudan and indeed other prats of the continent, children face harmful practices of child marriages and female genital mutilation among others. The Republic of South Sudan enacted a comprehensive transitional Constitution of 2011 which contains comprehensive provisions on child rights. While significant progress has been made in protecting children a number of challenges remain including the six grave violations. This is despite the fact that the Constitution in section 3 provides that, "the Constitution derives its authority from the will of the people and shall be the supreme law of the land. It shall have a binding force on all persons, institutions, organs and agencies of government throughout the Country. The authority of government at all levels shall derive from this Constitution and the law. The states' constitutions and all laws shall conform to this Constitution." Post-conflict democracies such as the Republic of South Sudan employ the principle of transformative constitutionalism which played a critical role in South Africa after the enactment of the 1996 Constitution. Most importantly transformative is used in South Africa to advance the human rights of everyone including children. A number of principles have played a critical role in this regard, the supremacy clause, the obligation clause, human dignity, enforcement provisions, and interpreting provisions. These constitutional principles have enabled courts, litigants, NGOS, and law schools to advance the rights of people in South Africa post-apartheid. The role of public international law further played a critical role in advancing rights under the 1996 Constitution. It is in this regard that this paper seeks to examine the use of international human rights law as well comparative analysis in the Continent in protecting and promoting the human rights of children in South Sudan.

Keywords: child rights, life, survival, development, freedom of expression, equality and non-discrimination

State Custodianship and Transforming the Rural Land Economy

Anthea-Lee September Van Huffel, University of the Free State

SeptemberVanHuffelA@ufs.ac.za

An investigation into customary communal landholding practices shows that land is regarded as more than a mere asset of economic value to be owned, indigenous people's rights and interests in land and other natural resources exceed the idea of mere possession. To African communal land holders, rural land is not only a material resource for agricultural production, nor is the "commoditisation" of land the primary driving force for most customary landholding communities' even though the land is productively used. This broader conceptualisation of the social function of land beyond the economic, aligns with modern property law commentary on the proprietary function of property. However, excessive regulations and limitations imposed on communal land tenure rights can hinder economically valuable communal property rights, but also other rights to social, cultural, and ontological resources embodied in the spirituality of African community. Therefore, secure land tenure rights for land reform beneficiaries and holders cannot be secondary to commercialisation and commoditisation of the rural land economy for the national interest. In this article the custodial approach reflected in recent land reform policy and laws that place an overemphasis on commercial production above security of tenure is critically discussed. It is argued that commercialisation and commoditisation are by-products of recognised, protected, and enforceable property rights and should not be "pre-requisites" or qualifiers for security of tenure.

Keywords: security of tenure, state custodianship, National Development Plan 2030, transformation, and social justice

The Legal Ramifications of Underground Strikes in South Africa's Mining Sector: Weighing Workers' Rights and Employer Responsibilities

Bella Phore, University of the Free State

PhoreBM@ufs.ac.za

Underground strikes in South African mines have significant legal implications for all parties concerned. This study examines the legal framework surrounding such strikes and the protection of miners' health and safety. South Africa's Mine Health and Safety Act aims to protect mine worker's health and safety, including during the strikes. However, underground strikes present unique health and safety risks, such as potential collapse of infrastructure, lack of sufficient ventilation and the possibility of violence and intimidation. Avoiding these risks is not an easy task and the possible factors influencing these rights requires further inspection. It remains the responsibility of employers, miners, and trade unions to ensure that the health and safety regulations are exercised within the boundaries of the law. This paper explores the health and safety rights available to striking miners and is premised on the notion that the employers' decision, or lack thereof, could cause interpretable harm to striking workers whether the strike is protected or not. Through an analysis of various case studies, I will identify and clarify the employer's legal duties during underground strikes as well as consequences of non-compliance. This, in turn, contributes to the ongoing academic discussion in this specialized sector and highlights the gaps in the current legal framework insofar as underground strikes are concerned.

Keywords: underground strike, health and safety, employer, employee, risk

A Comparative Analysis of the Current Tax Dispensation Relating to Renewable Power Plants in South African Mining and Australia

Kiyasha Thambi, University of Witwatersrand

kiyasha.thambi@wits.ac.za

South Africa's power producer has been unable to deliver on the country's electricity demands, given load-shedding or 'rolling black-outs' which have had a devastating effect on the economy. The volatilities in mining industry, halted by political agendas, riddled with regulatory and legislative nuances affecting their cost of doing business; were exacerbated by the Covid 19 pandemic. Not forgetting, the rolling-blackouts and inconsistent power supply which have made consistent mining of precious metals near impossible and leading to increased incurred operating costs on contingency plans associated with power generation. Worsening credit ratings, excessive debt, and equity costs, the mining industry have not accessed funding/ investment, rendering mines less profitable and unsustainable for workforces. This article will analyse the current tax dispensation relating to the implementation or construction of renewable power plants by mines, and the ability of a mine to deduct the costs incurred through the production of its own generated (renewable) power. Consideration will also be given to incentives by the European Union (EU) and Australia in this regard. Lastly, whilst South Africa has embarked on exploring independent power producers generating power, this initiative is its infancy and faces challenges. Renewable power's established role in sustainable development and climate change avoidance, and its potential to drive down energy costs in the long term appears to be established. Given the current economic climate, social inequality, socio- political uncertainties, could incentivising this industry to fully embrace the idea of renewable energy benefit the country as a whole? Lest forget, the general governance challenges related to mining, technical capacity gaps with respect to mineral governance, lack capacity to ensure that best practices are implemented.

Keywords: economic climate, social inequality, socio- political uncertainties, renewable energy

Teaching During the Covid Pandemic: An Analysis from A Law Lecturer's Perspective

Taljaard Zuene, University of South Africa

taljaz@unisa.ac.za

Since 2019, the novel Coronavirus (COVID-19) was elevated to a global pandemic. It can be said to have been one of the worst disasters that have hit the world since the Spanish Flu in 1918, with severe restrictions, bans, and lockdown operations around the globe. As the virus continued to spread all around the world, the same can be said for South Africa, where the COVID-19 pandemic had a severe impact (especially on the extreme poverty of our nationals). On 11 March 2020, COVID-19 was officially declared as a global pandemic by the World Health Organisation. A National State of Disaster was also declared in South Africa by the Honourable Mr President Cyril Ramaphosa in March 2020. Working as a Senior Lecturer at a distance-learning institution in South Africa during the pandemic certainly opened the eyes of colleagues to a variety of difficulties our students were and still facing (with specific reference to the experience of the author at the University of South Africa). Many students faced severe poverty (caused by, for example, the lockdown restrictions and the inability to earn a livelihood) with devastating consequences, like students not having access to funds to pay registration fees, to purchase prescribed reading material, and/or not having the funds to purchase data to continue studying online, or to have the freedom of movement to a place where they can access free WIFI Internet connectivity to study online. This led to poor student performance and under-preparedness. It was therefore time to make a significant impact in the lives of our students, including but not limited to providing students with additional learner support. This article will explore the ways in which the author approached Teaching and Learning at the University of South Africa and will share some positive and negative experiences and insights gained.

Keywords: COVID-19 pandemic; student learning; distance learning education, ODeL, teacher assistance

The AI is Mightier than the Sword: Imagining the use of Artificial Intelligence to Build Legal Resilience in South Africa

Sagwadi Mabunda, University of the Western Cape

smabunda@uwc.ac.za

On 5 December 2022, the New York Times ran a story that read “The brilliance and Weirdness of ChatGPT: A new chatbot from OpenAI is inspiring awe, fear, stunts and attempts to circumvent its guardrails.” The NYT headline seems to have been prophetic in its formulation because, although Artificial Intelligence (AI) was birthed in the 1950’s, it appears to have captured today’s popular imagination, striking at the hearts of both the fearful and the awestruck. This paper seeks to imagine what could be achieved if AI and automation were adopted in South Africa to build legal resilience. It goes without saying that many systems can be greatly improved by the adoption of a variety of technological advancements, AI provides one such promise. This paper will take a unique approach in its formulation. It will ask ChatGPT to create an outline of the paper on this topic of legal resilience and then write it completely within the four walls of ChatGPT’s suggestion.[1] To be clear, the author does not intend to ask ChatGPT to write an academic paper for her, rather, to have it generate an outline which informs the structure, format and content of the paper, thereafter undertaking the academic research exercise to produce the final paper. The primary purpose of this exercise is to explore what can be achieved by leveraging AI as a legal research, education and writing tool, amongst other things. The secondary purpose is an attempt at demystifying AI with the aim of exploring its limits and capabilities.

Keywords: technological advancements, AI, ChatGPT, legal resilience

The High Watermark of Employer Opportunism: Lesotho Highlands Development Authority v Motumi *LAC/CIV/A/03/2006* in Retrospect

Koma Ramontja, National University of Lesotho

Tumo Maloka, University of Pretoria

ramontjak@gmail.com

tumo.maloka@up.ac.za

The peculiar facts of Lesotho Highlands Development Authority (LHDA) v Motumi Ralejoe *LAC/CIV/A/03/2006 represents the high watermark of employer opportunism. T*he employer *in LHDA* hosted a farewell party in honour of the employee on 27 January 2006 and while the party was progressing handed the latter a letter to appear before disciplinary inquiry on 31 January 2006. The case *provides* a prism through which arguably one of the contentious aspects of employment and labour law can be examined. That the exit landscape from employment is rife with opportunism is a point of importance of which cannot be sufficiently stressed. First, LHDA brings into consideration the employer disciplinary jurisdiction over the departing employee. The question that may be posed is: under what circumstances can the employer proceed with disciplinary action despite termination of employment contract? Second, employee opportunism impinges upon accountability for malfeasance arising from the sphere of employment. A familiar problem encountered in labour relations environment is pre-emptive/strategic/tactical resignation with immediate effect by employees under suspension pending the institution of disciplinary charges. Also prevalent are resignations while disciplinary proceedings are in process. The ultimate purpose of strategic resignation is evasion of accountability for alleged workplace misconduct or incapacity. This raises the critical question whether resignation with immediate effect terminates pending or ongoing disciplinary proceedings?

Keywords: accountability, disciplinary proceedings, employee opportunism, employer disciplinary jurisdiction, employer opportunism, incapacity, malfeasance, misconduct, resignation

The Necessity of Sidelining Shareholders (and other corporate constituencies) as the Focal Point and custodians of Corporate Governance in Public Companies

Tshepo Mongalo, Wits University

Tshepo.Mongalo@wits.ac.za

The almost universal corporate law position in the Common Law world is that the corporate governance role of the board of directors is subject to the exercise of some powers and functions of the company by others in terms of the Act or the company's Memorandum of Incorporation. Because the power of directors to manage or direct the business and affairs of the company is subject to the company's Memorandum of Incorporation, governance powers may, in theory, be re-allocated to shareholders to elevate their position to being the focal point and custodians of corporate governance, just like the board of directors. In this paper I challenge the necessity for the limitation of the board's governance powers as prescribed by many corporate law statutes in the Common Law world for widely held public companies and advance an alternative, arguing that corporate governance is, and will remain, the exclusive domain of the board of directors. The paper begins by explaining the ambit of the power of directors to manage and direct the business and affairs of companies, ultimately demonstrating the position of directors as the focal point and custodians of corporate governance. At that juncture, the paper also points out to the unsuitability of other corporate constituents, including shareholders, as the focal point of and custodians of corporate governance, particularly in the context of publicly quoted companies. I then turn to an examination of the role of others in the company, abundantly clarifying that any such role can never be equated to the governance role of running, managing or directing the business and affairs of a company – the key function of the board as the focal point and custodian of corporate governance. Based upon a re-examination of the roles and powers of shareholders and directors in the public companies across various governance contexts, I conclude that corporate governance is, and will remain, the domain of the board of directors. In so doing I draw upon non-sectarianism in corporate law- the unbendable argument for corporate decision-making to be non-aligned to any stakeholder interests except to the entity as a separate legal persona.

Keywords: corporate law, corporate governance, business and affairs of the company, focal point and custodians of corporate governance, board of directors, shareholders, corporate constituencies

The *Res Nullius* Construction of Human Genomic Data

Donrich Willem Thaldar, University of KwaZulu Natal

ThaldarD@ukzn.ac.za

The effective governance of human genomic data depends on a proper understanding of the *legal nature* of human genomic data. However, the question of whether human genomic data are susceptible of ownership, and if so, who owns such data, remains controversial. To advance the discourse on this topic, this paper proposes a legal construction of human genomic data as *res nullius*. Because a genomic data instance is a *new* object, the rules or property law regarding *original* acquisition of ownership must be applied. The *only* mode of original acquisition of ownership that is applicable to a new genomic data instance is appropriation of a *res nullius*. This is not only a legal theoretical solution, but also offers a practical solution: Although a research institution that performs the sequencing is not the automatic owner of the genomic data instance that it generates, the research institution clearly is in the best position to acquire ownership of such data, as it is in effective control of the genomic data instance from the moment of the genomic data instance's genesis *qua* legal object. This paper considers—but rejects—claims to ownership of genomic data by data subjects, since having a personal connection with an object is no ground for acquisition of ownership in *property* law. However, data subjects' personal connection with their genomic data can be a ground for *privacy* interests, which can in appropriate cases—typically provided for in data protection legislation—encumber the data owner's property rights.

Keywords: property rights, human genomic data, nullius, property law, acquisition of ownership

Human Rights In South Africa: Unpacking the Duty of the State to Realise the Right to Development

Siyabulela Christopher Fobosi, University of Fort Hare

sfobosi@ufh.ac.za

The 1986 Declaration on the Right to Development (hereafter referred to as the "DRTD") is a comprehensive text with programmatic elements that combines political desire with a mix of ideas drawn from international human rights treaties. The DRTD promotes "people-centered development," which makes individuals holders of the right to development. According to Article 2 of the DRTD, "States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and all individuals, based on their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom." Similarly, Article 22 of the African Charter notes that "states shall have the duty, individually or collectively, to ensure the exercise of the right to development." Therefore, South Africa has a duty to realise the right to development for all. This paper aims to unpack South Africa's duty to realise the right to development. The paper highlights that South Africa continue to experience challenges in implementing scientific and technological advancement. The paper concludes that more needs to be done for South Africa to realise the duty for the right to development. Due to limited resources and competing priorities, investment levels still need to be closer to their goals. Budgets for research are already exceedingly limited, and the economic havoc caused by Covid-19 threatens to harm them and reverse recent advances. The epidemic also presents an opportunity to establish the proper priorities, unleash the scientific potential of Africa, and promote innovative, viable, and pertinent research initiatives grounded in the realities of the situation at hand.

Keywords: Africa, business and human rights, right to development, rights, science

The Role of the Banking Industry in Combatting Economic Abuse

Nirissa Reddy, North West University

nirissa.reddy@nwu.ac.za

Gender-based violence is a massive challenge and inhibition to the aspiration of the right to equality in South Africa. It is prevalent in various forms but relevant to this research is the aspect pertaining to economic abuse. The Domestic Violence Act 115 of 1998 defines domestic violence as including economic abuse. The definition of economic abuse essentially pertains to the control and management of a consumers financial resources by a person in a close domestic relationship with the consumer. This includes interfering with the victims access to banking and employment. Economic abuse erodes a victims self-sufficiency and may be a factor preventing them from leaving. A consumer who is subject to economic abuse due to their personal circumstances, regardless of their age, gender or ability, is especially susceptible to detriment, particularly when a banking institution is not acting with appropriate levels of care. Recent studies have found that economic abuse is as prevalent as physical and emotional abuse. There is currently no legislation or best practices outlining the exact role of the banking industry in these circumstances. Without awareness and understanding of the problem it is difficult for banking industry employees to identify and provide assistance to minimise financial detriment to consumers. This research will investigate the role of the banking industry in combatting economic abuse. The daily workings of banks require interaction with people from all facets and the one size fits all, automated response culture, is no longer sufficient to meet the expectations of current public policy requirements.

Keywords: economic abuse, banks, banking sector, public policy

A Critical Assessment of the Legal and Policy Framework for Combating Trafficking in Persons in Zimbabwe

Roseline R Muvhevhi, University of Fort Hare

muveviroseline@yahoo.com

Zimbabwe's ratification of the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) signified its commitment to address the crime of trafficking in persons. These instruments provide for the prohibition, prevention, and prosecution of the crime of trafficking in persons and the protection of victims of trafficking. Despite enacting the Trafficking in Persons Act [Chapter 9:25] in line with its international obligations, no further effort has been made to fully comply with the minimum standards for the elimination of trafficking pertaining to victim identification, protection, and prosecution of the crime. In fact, Zimbabwe continues to be a source, transit zone and destination for trafficking victims. This has been exacerbated by the impact of the Covid-19 pandemic and worsening economic conditions. This study assesses the state of Zimbabwean laws and policies pertaining to trafficking in persons and observes that Zimbabwe has since reneged on its international law commitments to take deliberate steps to eliminate trafficking in persons. Therefore, the study recommends the renewal and implementation of the various trafficking policies and legislation.

Keywords: child labour; child trafficking; consent; Palermo protocol; sexual exploitation

Using a Prison-University Educational Partnership to Rehumanise and Transform Legal Education

Mary Nel, Stellenbosch University

mnel@sun.ac.za

One of the key responsibilities of law teachers is to provide students with transformative learning experiences. Teaching law post-COVID has confronted law teachers afresh with the central role of relationship-building in the learning process. A knowledge community that encourages active engagement with diverse peers is one that is conducive to better learning (Quinot 2012). This paper outlines the activities and pedagogical approach of the Ubuntu Learning Community, an initiative which provides students with a unique learning experience in an unconventional classroom setting: the prison. Equal numbers of Stellenbosch University and incarcerated students study an interdisciplinary short course together behind bars, including a law component with a moot court. According to Mezirow, exposure to new and often disorienting experiences and perspectives, including through interaction with diverse peers, allows learners to change their worldview through critical reflection. Data gathered from campus and prison participants indicates the significance of focusing on learning's *ubuntu*-related dimensions and prioritising community-building, collaboration and connectedness in the classroom. The prison classroom allows students to "de-other" and rehumanise their fellow-participants, leading to deep change in thoughts, feelings, perspective, convictions or behaviours. This contributes significantly to transformative learning and holistic student development (Quinlan 2011; 2014) whilst also advancing social justice. Many of the strategies used for facilitating effective learning in the prison classroom space, including reflecting on the need to incorporate the perspectives of those with different knowledge bases to enable transformative education, and issues of power, marginalisation and inequality, are equally applicable to law teaching and learning on campus.

Keywords: Transformative legal education; collaborative learning; knowledge communities; holistic student development; prison education; social justice; ubuntu

Transformative Constitutionalism: A Reasonable Person Test Under the Context of Criminal Law

Xolisile Nomasonto Khanyile, University of Limpopo

AprilX@unizulu.ac.za

A substantial body of literature has been devoted to examining the efficacy of the reasonable person test. There is an assumption the reasonable person is a Eurocentric sophisticated man who has never been subjected to any marginalization or inequality. [1] It gives rise to the stereotype of the colonial subjects of native irrationality and lack of reason, especially when measured against the standard embodied by the colonist.[2] The article aims at transforming the reasonable person test, using transformative constitutionalism. The test is used to test for negligence in criminal law cases. It is argued by the author that test favours certain class of individuals and for the test to align with values of the Constitution, transformation might be necessary. This article concludes that changing the legal culture and achieving substantive equality will assist in transforming the Eurocentric reasonable person test.

Keywords: Reasonable person, Constitutionalism, culpable homicide, transformation.

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Did the CPA Shut the Bathroom Doors in the Faces of Non-Binary and Transgender People? A Consideration of section 9(2) of the CPA

Obakeng van Dyk, Nelson Mandela University
Tshepiso Scott-Ngoepe, University of Pretoria
obakeng.vandyk@mandela.ac.za
tshepiso.scott@up.ac.za

The Consumer Protection Act 68 of 2008 (CPA) introduced a variety of consumer rights that are intended to protect consumers in their engagement with suppliers. Amongst these rights is the consumer's right to equality in the consumer market. Section 8 of the CPA sets out practices that are considered to be prohibited discriminatory marketing practices. However, section 9 of the CPA provides for instances that are reasonable grounds for differential treatment in certain circumstances. In particular, section 9(2) of the CPA provides that a supplier may provide and designate facilities that are separate but equal for the exclusive use of each gender. Alternatively, the supplier is permitted to offer to provide access to a facility to one gender exclusively. However, over the years, the LGBTQI+ community has increased awareness around gender stereotypes; and highlighted that not all persons conform to a binary-gender allocation. Therefore, the question that arises is whether this provision of the CPA, in permitting the designation of facilities to exclusively one gender, is unfairly discriminating against LGBTQI+ members who do not identify with a particular gender. This paper assesses the constitutionality of this provision of the CPA by testing it against the constitutional right to equality.

Keywords: consumer protection law, binary-gender allocation, constitutional law and gender law

Two Sides of the Same Coin? A Clinical Viewpoint and Analyses of Rule 7a(8) of the Labour Court Rules and Clause 11.2.2 of the Labour Courts Practice Manual

Dieketseng Damane & Marius Ferreira, University of the Witwatersrand

dieketseng.damane@wits.ac.za
marius.ferreira@wits.ac.za

Section 39(2) of the Constitution provides a platform for the courts to not only decide on legal matters, but also to interpret the applicable law in accordance with the *spirit, purport and object of the Bill of Rights*. The obligation placed on the courts is to ensure that the essence and fundamental principles of the Bill of Rights are woven and threaded into case law. However, what happens when our courts interpret the law incorrectly? Clause 11.2.2 of the Labour Court's Practice Manual ("PM") provides for a 60-day time-period to serve and file the records of the arbitration proceedings, from the date that the Registrar notifies the Applicant that the records are available at court. On the other hand, Rule 7A(8) of the Labour Court Rules ("Rules") provides that the Applicant will have 10 days to either file a Notice of Intention to Stand-By their original Notice of Motion or alternatively to file a Supplementary Affidavit. In practice, legal practitioners have interpreted this to mean the extension of Rule 7A(8) by Clause 11.2.2, despite the clear and unambiguous language of both sources of law. Unfortunately, the court in *Ahmod v Standard Bank of South Africa Limited and Others* (JR 2726/19) [2021] ZALCJHB 191 also took this view. This article aims to evaluate and to investigate the true interpretation of Clause 11.2.2 and Rule 7A(8), in order to provide clarity in respect of the two provisions and their time-periods to ensure social justice for indigent people which is in line with the s*pirit, purport and object of the Bill of Rights*. This paper will also interrogate the potential prejudice that will stem from the incorrect interpretation of these provisions, with the view of providing possible recommendations to ensure equal fairness at the Labour Court for indigent people.

Keywords: prejudice, Bill of Rights, courts, fundamental principles

Ubuntu Today

Vitulia Ivone, University of Salerno

vituliaivone@unisa.it

In the formation of an autonomous southern African tradition, the Western juridical datum meets the most powerful of the autochthonous elements, common to all of Africa: ubuntu. It is a typically African concept: referred to in the provisional Constitution of 1993, it is not expressly stated in the 1996 Constitution. Nonetheless, it was defined by the jurisprudential formant in the activity of infusion of values and constitutional principles in the South African legal system. The definition given by the South African Constitutional Court exalts the solidarity and communitarian element inherent in the concept of ubuntu. It softens the institutions of Roman-Dutch law, rigidly informed by the notions of "freedom and sanctity of contract ... rooted in the political and economic philosophies of laissez-faire liberalism and individualism". And set aside « the typical Western conception of society as a collection of atomistic individuals. Ubuntu outlines an African concept of fraternity: it also allows for the elaboration of a new legal tradition in which the postcolonial discourse incorporates principles, values, concepts of traditional law according to narratives that are certainly à l'européene, but which promote the development of the African community juridical experience along autonomous guidelines with respect to the Eurocentric and colonial ones.How can the African concept of fraternity lead the new generations of legislators to a more just and equitable society?

Keywords: African concepts, European people, ubuntu, values

Utilising Paralegals in Maintenance Courts and Police Stations Will Provide Better Access to Justice for South African Citizens

Michelle Smal, Stadio

MichelleS@stadio.ac.za

South African citizens will exercise their Constitutional right of access to justice, through the South African Police Service and the South African Courts. Due to a lack of basic language and comprehension skills of the average members of the public, a gap has been created that prevent citizens from gaining access to justice. Research highlighted that the formal legal system cannot provide the kind of assistance required by people to fully realize their human rights without the support of community-based paralegals. Particularly in rural, deprived and marginalized communities to afford equal access to justice. In this presentation the aim will be to review if the gap can be breached by extending the role of paralegals at 2 points in the legal process. What is the impact to access to justice if paralegals support victims at Police stations with filing a complaint and explaining the process, preferably in a language they understand. Paralegals can support citizens in the application processes in Maintenance Courts which, might lead to a more effective and sufficient process in reviewing paperwork prior to submission of the claim and assisting the complainant that is aiming to claim maintenance.

Keywords: access to justice, constitutional rights, paralegals, role of paralegals, job creation, maintenance courts, support in police stations

Advocating for the Codifications of "Village Constitutions": Retracing the African Community's Governance System Within a Constitutional State

Tumi Mmusinyane, North-West University

Tumi.mmusinyane@nwu.ac.za

While traditional communities are seen to be governed mainly by unwritten customs and traditions that has been passed on orally from generations to generations, it is those unwritten customs and traditions that becomes a back bone for the sustainability of any traditional community. While oral customary law is equally recognised as accepted law of these communities, its uncertainness, rigidity, flexibilities and death of knowledge bearers, is what makes it difficult for any community to understand, apply and blindly enforce it, without the support/validation of knowledge bearers. It is acknowledged that unwritten customary law is also susceptible to being ignored, twisted and selectively applied if not properly monitored. Therefore a time has come for these traditional communities to consider formally documenting and ensuring a consistent development and passage of their indigenous knowledge systems to its future generation. This paper investigate the necessity for traditional communities to bring certainty to their governance by adopting a "village Constitution" that would deal with all governance matters relating to the affairs of that traditional community in a uniform manner in accordance with the Constitution, Traditional Leadership and Governance Framework Act 41 of 2003 and any other related legislations in South Africa.

Keywords: traditional community, village Constitution, governance, indigenous knowledge, customary law

The Transformed Property Regime of the *National Water Act* 36 of 1998 and its Potential to Address South Africa's Water Crisis

Germarié Viljoen, North-West University

germarie.viljoen@nwu.ac.za

The global water crisis presents daunting challenges, particularly for millions of people living in impoverished conditions. This is particularly true for South Africa, a water-stressed country where scarce water resources remain unequally available to South Africans due to the country's political history. The *Constitution of the Republic of South Africa*, 1996 (Constitution) is the result of extensive negotiations that were carried out with an acute awareness of the injustices of the country's non-democratic past. Today, the Constitution provides for democratic values, social justice and fundamental human rights. Section 27(1)(b) of the Constitution enshrines the right to have access to sufficient water. This constitutional water right, in combination with section 24 of the Constitution (the right to an environment that is not harmful to health or well-being), is justiciable and demands specific obligations from the state. The paper examines how the legislature, through the *National Water Act* 36 of 1998 (NWA) introduces innovative property law measures to address challenges related to the realisation of the right of access to water. Focusing on South Africa's constitutional and legislative frameworks, this study emphasises the significance of public trusteeship and the transformative potential of the 'Reserve' concept. The paper critically analyses the origins, intent, and importance of the 'Reserve,' showcasing its potential to address the water crisis. Through the 'Reserve,' the NWA seeks to balance the competing interests of human needs and environmental protection, aligning with the constitutional mandate for social justice and ecological integrity. By prioritising both aspects, the 'Reserve' can safeguard water resources in the short and long term, fostering sustainability and benefiting communities across South Africa.

Keywords: constitutional and legislative frameworks, public trusteeship, water crisis, competing interests

Wills in the 21st Century – A Call For Reform

James Faber, University of the Free State

FaberJT@ufs.ac.za

The Wills Act 7/1953 came into operation in 1954. Although the Act has since been amended on several occasions (most notably by the Law of Succession Amendment Act 43/1992 that introduced a 'rescue' provision into our law, thereby empowering a court to accept a formally defective will in the estate administration process), it remains an 'older' piece of legislation that does not always conform to the needs of a modern society. This is inter alia because the Act only makes provision for one valid form of will – the traditional statutory will – which must comply with a number of prescribed formalities that are still largely conceptualised in a paper-based context. This paper will focus on two aspects that highlight the fact that the Wills Act is outdated and, in the process, will demonstrate the need for reform in the traditionally "resilient" South African law of testate succession. The first is the fact that neither the Wills Act nor the Electronic Communications and Transactions Act 25/2002 make provision for electronic wills (e-wills). Despite the lack of substantive law on the matter, people are increasingly making e-wills and our courts are faced with the challenge of potentially rescuing these e-documents without having proper legislative guidance on how to do so. This results in uncertainty and inconsistency. Secondly, the paper will illustrate how the Covid-19 pandemic revealed some major shortcomings in the traditional will formalities, such as the self-isolation rule that made it impossible to comply with the witnessing requirement. It is suggested that technological advancements could have provided a seamless solution to ensure compliance with the formality requirements, as was indeed the case in certain foreign jurisdictions. In line with the major theme of the 2023 SALT Conference, the paper will show that change is needed to ensure that the law of testate succession not only evolves in accordance with societal demands, but also does so in a manner that is consistent and transparent.

Keywords: e-wills, testate succession, covid-19, e-documents

A Generation of Gender Transformation in the Constitutional Court of South Africa: Progress or Regression

Moses Retselisitsoe Phooko, North-West University

Sibusiso Blessing Radebe, Practicing Advocate

Moses.Phooko@nwu.ac.za

sbssradebe9@gmail.com

Transformation of the judiciary and the legal profession remains at the core of the constitutional agender, nearly a generation later. On 25 April 2023, several courts around the country held a ceremonial sitting to commemorate 100 years since women were allowed to be admitted as legal practitioners and to practice law. These were the centenary celebrations of the Women Legal Practice Act of 1923 which paved the way for women to be part of the legal profession in South Africa. Consequently, Ms. Irene Geffen was the first woman to be admitted as a Legal Practitioner (Advocate) in 1923. This was closely followed by another first woman, Ms. Constance Marry Hall, who was admitted as a Legal Practitioner (Attorney) in 1926. However, it took longer for Black women to be admitted into the legal profession with Ms. Desiree Finca, who was eventually enrolled as the first Black woman Legal Practitioner (Attorney) in 1967. This paper seeks to explore the progress in the transformation of the judiciary and legal profession in the context of women. It specifically considers the progress made (if any) since the Constitutional Court of South Africa was formed, and since our article dealing with a substantially similar topic was published in 2016.[1]

Keywords: Gender, transformation, judiciary, Constitutional Court, South Africa

[1] M.R. Phooko and S.B. Radebe "Twenty-three years of gender transformation in the Constitutional Court of South Africa: Progress or Regression (2016) 8 *CCR* 306 -331.

Wrongful Convictions and Post-Conviction Claims of Actual Innocence: Prospects of the Innocence Commission in South Africa

Adebola Olaborede, University of Fort Hare

AOlaborede@ufh.ac.za/adebolaolaborede@gmail.com

This article examines in general, international perspectives on the role of innocence commissions (also known as to as innocence Projects, Innocence Inquiry Commission, Criminal Cases Review Commissions (CCRC) in cases of wrongful conviction and post- conviction claims of actual innocence under the criminal justice system. The article also highlights the positive effect (and limitations) of the commission in investigating credible post-conviction cases in which there are claims of wrongful conviction and in the exoneration of convicted persons. The findings of the commissions together with scholarly research studies and reports in different jurisdictions like the United Kingdom and the United States of America confirm that wrongful conviction is a serious miscarriage of justice. It violates fundamental human rights enshrined in international human rights instruments like the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights 1966 and the African Charter on Human and Peoples' Rights. The review of the credible post- conviction cases in different jurisdictions also indicates that the causes of wrongful conviction are evidentiary and procedural errors such as eye witness misidentification, false confessions, misleading circumstantial evidence, unreliable scientific evidence, police mishandling of investigation, inadequate disclosure by the prosecution and prosecutorial misconduct. Through literature review and jurisprudential analysis, this article will argue that the positive role of innocence commissions can support efforts to address the problem of wrongful convictions and any changes that can be made to procedures under the South African criminal justice system, especially in cases of post-conviction claims of actual innocence. In South Africa, the problem of wrongful conviction remains unacknowledged, but no country is immune, regardless of how rare it may occur.

Keywords: misidentification, false confessions, misleading circumstantial evidence, unreliable scientific evidence

An Evaluation of the Impact of Zimbabwe's Tax Regulations on Mobile Money Services

Howard Chitimira & Luck Mavhuru, North-West University

Howard.chitimira@nwu.ac.za

mavhuruluck40@gmail.com

The taxation of mobile money services and related products is one of the major areas of regulatory controversy. The success of mobile money services has attracted the attention of tax authorities seeking to diversify their revenue sources. Mobile money services are characterised by transparent billing systems that make their economic activities easier to target with taxes and fees. The last few years have seen the emergence of mobile money sector specific taxation across sub-Saharan Africa, largely driven by the need for governments to find innovative means to widen the tax base and plug budget spending deficits. Various forms of sector-specific taxation have been created, from excise duties on service fees to sector taxes on revenue totals or transaction taxes on the amount of each underlying transaction. In many developing countries, informality has resulted in a limited tax base. The growth of the digital sector has a negative impact on domestic tax revenue collection. In some countries, the migration of mobile communication from SMS and voice calls to digital channels such as WhatsApp and WeChat have led to a decrease in tax revenues. Zimbabwe is on such country that have introduced a mobile money sector specific tax to widen its tax revenue base. This is in addition to Income Tax Act, the VAT Act and Customs and Excise Act which apply to mobile money services. This paper seeks to outline the impact of all these tax regulation on the mobile money services provided by mobile network providers in Zimbabwe.

Keywords: taxation, mobile money, revenue, transaction tax, mobile money services