

IN CAMERA

A tall, illuminated church spire at night, serving as the background for the cover. The spire is made of light-colored stone or brick and is lit from within, casting a warm glow. It features a clock face and several arched windows. The spire is set against a dark, cloudy night sky. In the foreground, there are silhouettes of trees and a street with parked cars. The overall scene is a nighttime view of a church in Rhodes, South Africa.

**RHODES UNIVERSITY
STUDENT PUBLICATION
2012 EDITION**



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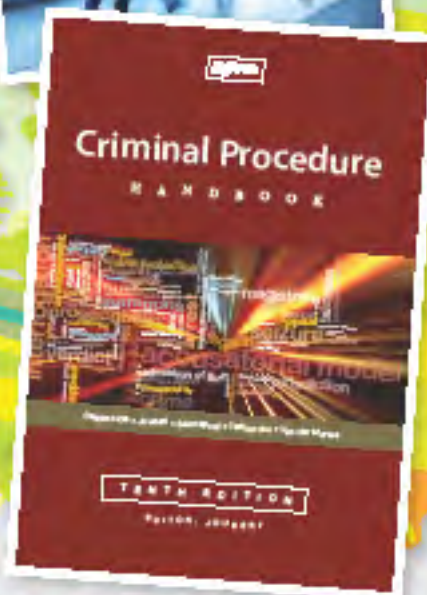
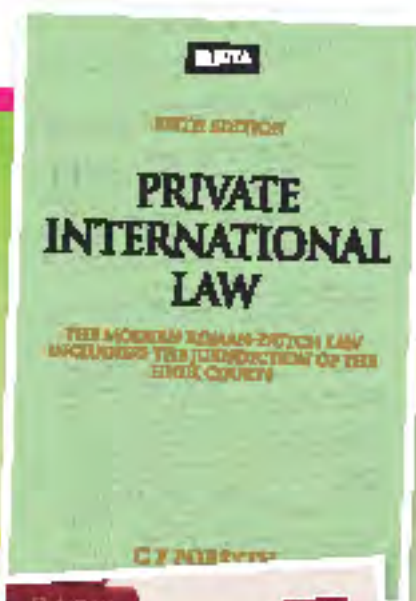
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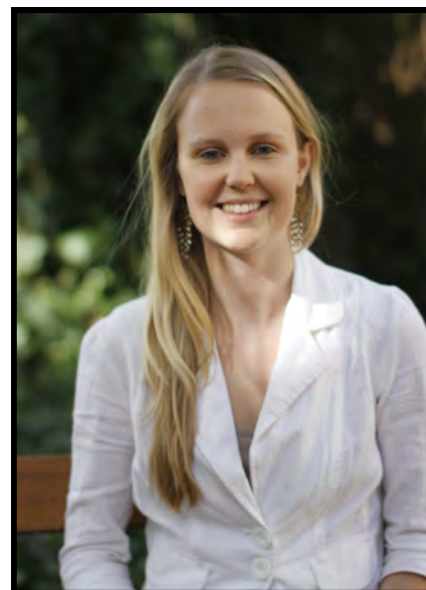
FROM THE EDITORS

Joanna Pickering and Matseliso Taka

The magazine takes its name from the Latin term *in camera*, meaning “in private”. As a Rhodes student publication, perhaps the name originally referred to the fact that the magazine was shared primarily amongst Rhodes students and staff and was thus a place for us to share our intellectual thoughts, our feelings on the year passed, and our photographs of memorable events. Today the magazine is starting to reach a wider field, and we are glad to introduce more and more students, practitioners and academics to our not-so-private world.

Neither of us knew when we took over this project that it would be such a large task, let alone one that catapulted us into a strange new world of publishing jargon and long nights of editing and designing!

It was thus with great relief and a measure of pride that we eventually saw the compilation of this magazine. The help we received in completing this task was significant and must be mentioned here. We would like to extend our thanks to Professor Glover, who gave up his time (while on sabbatical!) to help us edit the magazine. Of course, any errors remain our own. Thank you as well to Adv Roberts, who sacrificed many afternoons to take photographs for us, and who was responsible for the beautiful picture on our cover page. The administrative staff, Saronda Fillis, Lumka Mqingwana and Andrea Comley were, as always, a huge help. When it came to the design of the magazine, we would not have got off the ground without the help of Sean Power. The Law Society Committee was also a great help. Special thanks goes to Lwandlekazi Gaga for her assistance with all financial issues.



We must especially thank the generous sponsorship we received from Juta, LexisNexis, Werksmans, Knowles Husain Lindsay and Norton Rose. We greatly appreciated your support and hope that you will continue to forge a relationship with our Faculty.

We are also very grateful to those who have contributed to this year's edition. As the magazine is primarily a student publication designed to showcase student talents, we were delighted to receive four outstanding student contributions this year and we hope that you will enjoy reading them as much as we did. The contributions from staff and practitioners were equally fascinating and as such we have a diverse array of topics that should please everyone, touching on many other disciplines such as history, philosophy, commerce and sociology.

To our successors in the 2013 Law Society committee, we wish you the very best of luck. To the final year class, we commend you on five years of hard work and a well-earned degree! We will certainly miss the spirit of camaraderie that we experienced in our class. *En avant!*

RHODES LAW SOCIETY

PRESIDENT'S REPORT

Kabwela Chisaka

President of the 2012 Rhodes Law Society



The vision that the committee, consisting of Lwandle Gaga, Thabang Mokgatle, Wade Louw, Joanna Pickering, Tlamele Mothudi and Tseli Taka, had for Law Soc in 2012 was to create greater emphasis on the academic and professional aspects of the law. We be-

lieve that the Law Society has far more to offer than just throwing great social events and we hope this year has gone some way to bringing about a new *modus operandi* for the Law Society.

The beginning of 2012 was marked by great success. It was also, however, marred by the unfortunate resignation of the SRC Societies Councillor, which threw all societies on campus into disarray. Nonetheless the Law Society, given months of advance planning, was able to host an extremely successful Market Day. Eighteen firms and organisations from around the country attended this year's Market Day. We are grateful to the sponsoring firms: Bowman Gilfillan, Eversheds, Webber Wentzel, Werksmans and Phatsoane Henney for helping ensure the success of this day. As part of our vision to focus more on the profession of law, in addition to hosting a CV and Interview Skills workshop in collaboration with the Career Centre and Law Clinic, we also introduced a new service for students. All students were encouraged to submit their CVs and cover letters to firms that were attending the Market Day. Firms then informed us which students they would like to interview and we set aside venues in the Law Faculty for the interviews to take place. The benefit of such a service is to allow students and firms more constructive interaction at the Market Day. Through this service we know of at least 3 students that secured articles with a firm. Thank you to all the Market Day

Helpers who were the glue that held the entire day together! You are all rock stars. Thank you to Ms van Coller who assisted us with the organisation of the event. We are very grateful for all your help and advice.

“The vision that the committee had for Law Soc in 2012 was to create greater emphasis on the academic and professional aspects of the law”

Put a ring on it

One of the overarching aims of the Law Society is the creation of a legal community. This year, two fantastic social events have gone a long way in strengthening the ties that bind all law students. Over and above this, the committee designed and commissioned a signet ring which is feature of many fraternities worldwide. The ring was designed and cast by the same designers of the Oxford and Cambridge rings. We are especially grateful to Wade Louw who conceived the idea of the ring, and who saw the project through to completion. We had hoped to keep it exclusive to the faculty for as long as possible, however the University's Marketing Division has seen the value and potential of the ring and it will now fall under University management. It will however always be a legacy of this committee.

Walk the Talk

We were fortunate to be allowed to partner with the Law Faculty and Law Clinic on three major events. The first of these was the Constitutional Review Talk organised by Dr Krüger, Prof Campbell and the Law Society. The invited speakers were Ms Debbie Schafer (Member of Parliament, Democratic Alliance), Adv Izak

Smuts SC (General Council of the Bar), Mr Sipho Pit-
yana (Council for the Advancement of the SA Constitu-
tion) and Dr Rósaan Krüger (Faculty of Law, Rhodes
University). The topic for discussion was whether or
not the proposed review of the judicial system and the
judiciary is a good idea? It was a highly engaging and
informative talk and reached not only law students but
members of the university from various faculties, as
well as members of the Grahamstown legal commu-
nity.

In August the Law Society worked with the Law Faculty
and the Office of the Chief Justice for the Women in
Law talk which was presented by Judge Belinda Hartle.
It was a wonderfully informal discussion that allowed
all participants (predominately women, but some men
too!) the space to articulate their thoughts on the diffi-
culties women face in the legal profession and how
these issues can be overcome.

Smooth Criminal Lawyer

Our final major undertaking was collaborating with the
Law Clinic for the annual Mock Trials. The Law Society
felt strongly that the contest should be open to Legal
Theory (undergraduate) students in addition to penul-
timate and final year students. We are grateful to the
Law Clinic for agreeing to this and we are confident
that by allowing all students to participate in this pro-
gramme a greater culture of trial advocacy will be cre-
ated within the Faculty. In addition, the skills required
to conduct a trial can be refined over a greater number
of years (five in total if a student participates every
year). We congratulate Tafadzwa Makoni and Nada
Kakaza, who won the competition this year, and repre-
sented Rhodes at the annual LexisNexis Mock Trial
Competition in Potchefstroom. We also extend our
gratitude to Prof Bodenstein and Ms Vimbai Chikukwa
from the Law Clinic for their tireless effort to ensure
the smooth running of the training programme and
actual mock trials. Finally we would like to thank Adv
Les Roberts who imparted his vast knowledge of trial
court on the eager minds that participated in the Mock
Trials.

Congratulations!

We would like to congratulate a few exceptional stu-
dents for their achievements this year. Congratulations
to Ms Sarah Macqueen, winner of the Penultimate
Year Moot Competition; to Mr Viren Raja, winner of
the Final Year Moot Competition; to Mr Andrew
Pattinson and Mr Viren Raja who represented Rhodes
University at the All Africa Moot Competition, and fi-
nally to Ms Joanna Pickering, who was appointed to be

a clerk in the Constitutional Court in 2013. Congratula-
tions also go to the members of the two teams who
came second in the Glenister Challenge: Devin O'Dono-
van, Kirsty Hall, Mbali Baduza, Vickie Blancke, Mbulelo
Ncolosi, Georgina Niven, Kyla Hazell and Mikaela Er-
skog.

Time to say goodbye

To the final year class of 2012 – we're done! It has
been a long journey filled with laughter (especially
around the coffee table), argument about exam time-
tables and test and assignment dates, tears, frustration
and many sleepless nights. But we have made it to the
finish line! I wish you all the very best in whatever en-
deavours you undertake next year. I hope to hear of
your success, and when I do I will know that it is well
deserved. When our paths next meet I hope we take a
moment to remember our *alma mater* and all that it
has taught us – about the law and about life.

***“When our paths next meet I
hope we take a moment to re-
member our alma mater and
all that it has taught us”***

Finally, I wish to say a huge thank you to the 2012
committee! Your hard work has paid off and I con-
gratulate you on making 2012 a success. I have learnt
from each and every one of you invaluable lessons
about leadership, as each one of you is an extremely
capable leader in your own right. I thank you for al-
ways concerning yourself with giving our members the
very best that we had to offer, for always asking
whether we were doing the right thing, for always do-
ing the right thing, for never losing enthusiasm and for
always remembering to laugh.

All the best to the incoming committee: Courtney
Cader, Mmaphuti Morolong, Ross Winson. Gabi Knott,
Sarhanna Hassim, Sarah Macqueen and Nada Kakaza.
Your election by your peers places you in a position of
responsibility and accountability – not only to them,
but also to the Law Faculty and the University as a
whole. I wish you every success for 2013. Go big!

Rhodes University prides itself on being the institution
“Where Leaders Learn”. Having served on numerous
committees at Rhodes, my experience on the Law Soci-
ety committee has undoubtedly been the one of great-
est personal growth as a leader – and I can say with
confidence that Rhodes *is* where leaders learn.

FACULTY REPORT 2011 - 2012

Professor Jonathan Campbell, Dean of the Rhodes Law Faculty

with staff and student contributions

This report covers the period October 2011

(when the 2011 *In Camera* was published) to end September 2012.



The Law Faculty aims to provide our students with an enabling environment for quality legal education, and all the Faculty's efforts of the past year

have been geared to that end. In addition, opportunities are actively sought to develop and expand the minds of students through extra-curricular activities, particularly regarding current and topical socio-legal issues. Further, students and staff alike are encouraged to involve themselves in community engagement activities undertaken through the Faculty. Always underpinning all these activities is the legal research that informs our teaching and learning, and both LLB and postgraduate students are encouraged to join staff in conducting and presenting their research where possible.

In January Faculty staff, accompanied by Law Society representatives, attended a three-day Law Faculty imbizo at Haga Haga near East London. This was an opportunity to reflect on our teaching, research and community engagement endeavours, and to find ways to develop and improve them in 2012 and in years to come. The imbizo proved to be a great success in this respect, enabling us to 'kick-start' the academic year with renewed energy and commitment to our purpose.

Academic matters

The academic year began with the Faculty Opening in February at which Judge Belinda Hartle, Judge of the Eastern Cape Division, gave a spirited and challenging address. We were also able to recognise our high achievers from 2011 with the presentation of a number of awards and prizes.

On 13 April 2012, 63 students graduated with LLB degrees, two of them with distinctions (Raul Dimitriu and Christopher Quinn) and two students graduated with LLM degrees, one with a distinction (Francis Khayundi – thesis title: The effects of climate change and the reali-

sation of the right to adequate food in Kenya).

The Law Faculty celebrated graduation with students, partners and parents at a lunchtime function held at the Faculty where Dean's list certificates and prizes were awarded to students.

The following prizes were awarded at the graduation function:

Butterworths Book Prize (Internal book prize for Moot-winner in the Final Year): **Haruperi Mumbengegwi**

Judge Phillip Schock Prize (Best final year LLB student): **Raul Dimitriu and Christopher Quinn**

Juta Law Prize (Best final year LLB student, based on results over penultimate and final year LLB): **Christopher Quinn**

Spoor & Fisher Prize (Best student in Intellectual Property (Patents & Copyright): **Sinal Govender**

Phatshoane Henney Incorporated medals (Awarded to students who obtain their LLB degrees with distinction): **Raul Dimitriu and Christopher Quinn**

92 students accepted offers into LLB this year, only 10 of whom registered for the four-year LLB, thus indicating that about 90% of our law students continue to choose the 5 (and occasionally 6) year stream, entering the LLB only after completing an undergraduate degree.

There were no adjustments to the LLB curriculum this year. However, due to Prof Glover being on sabbatical leave, one of the elective courses (Unjustified Enrichment) was not able to be offered this year.

The penultimate- and final-year student reviews (evaluations) for both the second semester of 2011 and the first semester of 2012 were once again overwhelmingly positive. Lecturers were stated to be knowledgeable and approachable, and programmes well structured. Much appreciation was expressed for excellent service from library and Faculty administrative staff.

The following workshops / training courses were conducted by the Law Librarian, Ms Lucky Xaba, during the course of the year: Library Assistant training; Law database navigator training for postgraduate students; Conveyancing workshop (February 2012).

In the fourth term this year students were able to enjoy the experience and insights of our visiting professors Judge Clive Plasket, Adv Wim Trengove SC and Mr Max Boqwana, whose knowledge and experiences were wonderfully enriching.

In order to promote postgraduate study in the Law Faculty and a postgraduate culture that the University is currently seeking to enhance, the Law Faculty will convert the Attorney's Hall section of the law library into a postgraduate study area. The planned postgraduate study area will be the visible point of contact between the University and Law postgraduate students, being an exclusive area for postgraduate students. The Faculty requires about R300 000 to achieve this, and is grateful to the following donations received to date: R100 000 from PPS (Professional Provident Society), and R15 000 from Juta Law.

Research publications

Publications by staff and postgraduate students in the past year include the following:

- **Prof G Glover** published a chapter on "Lease" in *Butterworths Forms and Precedents* (March 2012).
- **Prof G Glover** updated a chapter on "Divorce", Division D of the *LexisNexis Family Law Service* (Issue 57, May 2012).
- **Prof G Glover** published a note "Juta & Co Ltd and the South African Law Journal" (2012) 129 *SALJ* 5 – 9.
- **Prof G Glover** published an article "The end of the road for the Roman rule of risk in sale?" 2012 *TSAR* (forthcoming in part 4, to appear in November).
- **Prof L Juma** published an article "Judicial intervention in Kenya's Constitutional review process" (2012) 11 (2) *Washington University Global Studies Law Review* 287-384 [Co-authored with C Okpaluba].
- **Prof L Juma** published an article "Normative and institutional approaches to the protection of property rights of IDPs in Kenya's Rift Valley province" (2012) 20 (2) *African Journal of International & Comparative Law* 251-280.

- **Ms L Niesing** updated chapter 5 "Causation" in Loubser MM (Ed), Midgley JR (Ed), Mukheibir A, Niesing L, Perumal D of *The Law of Delict in South Africa* 2nd ed (2012), Oxford University Press, Cape Town.

- **Ms L Niesing** updated chapter 7 "Fault" in Loubser MM (Ed), Midgley JR (Ed), Mukheibir A, Niesing L, Perumal D of *The Law of Delict in South Africa* 2nd ed (2012), Oxford University Press, Cape Town.

- **Dr G Muller** published an article "Conceptualising 'meaningful engagement' as a democratic partnership" (2011) 22 *Stell LR* 742 – 758 (also published as Liebenberg S and Quinot G (eds) *Law and Poverty: Perspectives from South African and Beyond* (2012) 300-324).

Dr EH van Coller, published an article "Administrative Authority and School Governing Bodies" (2011) 2 *Speculum Juris* 111 – 119.

Papers presented at conferences

Papers were presented by Faculty staff and postgraduate students at various conferences in South Africa and abroad:

- **Prof G Glover** presented a paper entitled "An unprecedented precedent? Phodidlinics v Pinehaven" at the Law Teachers' Conference, NMMU, Port Elizabeth, 10-13 July 2012 (accepted for publication, to appear in print in 2013).
- **Prof G Glover** presented a paper "A tangled web: Issues surrounding unconscionability in the SA Consumer Protection Act" at the Private Law and Social Justice Conference, NMMU, 20-21 August 2012.
- **Ms V Heideman** presented a paper entitled "Pineapples, cadmium and the SPS Agreement" at the Law Teachers' Conference, NMMU, Port Elizabeth, 10-13 July 2012.
- **Prof L Juma** presented a paper entitled "Chieftaincy Succession and Gender Equality in the Kingdom of Lesotho: Discordant Offerings of Constitutional Customary Law" at the Law Teachers' Conference, NMMU, Port Elizabeth, 10-13 July 2012.

- **Prof L Juma** presented a paper entitled “The Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced persons (IDPs) in Africa: An Appraisal of the Kampala Convention” at the International Conference on Mobility, Migration, Development & Environment (MOMIDEN 2012), UNISA, Pretoria, 21-23 May 2012.
- **Prof L Juma** presented a paper entitled “Debating Africa’s role in International Criminal Justice System” at the symposium on Human Rights and International Criminal Justice, The Netherlands School of Human Rights, University of Utrecht, 24 April 2012 (By invitation).
- **Prof L Juma** presented a paper entitled “Africa and international adjudicatory organs: Some thoughts on structural impartiality paradigm” at the Africa and International Law Conference, Albany Law School, New York, 11-14 April 2012.
- **Dr R Kruger** presented a paper entitled “The Constitution, The President, The Advocate and the Silk Gown” at the Law Teachers’ Conference, NMMU, Port Elizabeth, 10-13 July 2012.
- **Prof R Mqoke** presented a paper entitled “The need for the review of the recognition of the Customary Marriages Act 120 of 1998” at the Law Teachers’ Conference, NMMU, Port Elizabeth, 10-13 July 2012.
- **Dr G Muller** presented a paper entitled “Developing the law of evictions and the common law of joinder” at the Law Teachers’ Conference, NMMU, Port Elizabeth, 10-13 July 2012.
- **Dr EH van Coller** presented a paper entitled “Respect for Religious Diversity *vis-à-vis* a Duty on Churches to adapt Existing Structures and Church Orders to Changing Contexts” at the “Protestant Church Polity in Changing Contexts” Conference Utrecht, The Netherlands, 7-10 November 2011.
- **Dr EH van Coller** presented a paper entitled “Teaching Administrative Law: The WHAT and the HOW” at a workshop conference “Challenges to the achievement of Administrative Justice in South Africa”, University of Cape Town, 25-26 January 2012.
- **Dr EH van Coller** presented a paper entitled “Gay Clergy: The Court *versus* the Church. Who should compromise?” at the Law Teachers’ Conference, NMMU, Port Elizabeth, 10-13 July 2012.
- **Dr EH van Coller** presented a paper entitled “Gay Clergy and same sex unions: practical implications from a theological and legal perspective” at a Church Law workgroup and conference, University of Pretoria, 17-19 September 2012.

Other research activities

- **Prof J Bodenstein** prepared a draft submission on behalf of AULAI on the 2012 Draft Legal Practice Bills.
- **Prof J Bodenstein** is coordinating the drafting, editing and compilation of a manual for law clinicians (2009-2012).
- **Prof J Bodenstein** is a research consultant (voluntary) for Max Planck Institute, Germany on an international research project “Why People obey the Law” (2012).
- **Prof J Bodenstein** is coordinating a quantitative research project on behalf of the Association of University Legal Aid Institutions AULAI: annually collecting data of law clinics in South Africa and producing electronic data.
- **Prof G Glover** attended, by invitation of the DVC (Research) at UCT, an international colloquium of the proposed restatement of the South African Law of Unjustified Enrichment, UCT, 24 – 27 March 2012, and chaired one of the sessions.
- **Prof G Glover** attended, by invitation, the conference of the Middle Temple, United Kingdom and the General Council of the Bar, SA, Franschhoek, 20 – 23 September 2012.
- **Prof G Glover** has continued his role as Editor of the South African Law Journal during the period covered by this report.
- **Prof L Juma** participated in a panel discussion on “Africa Culture Human Rights and Constitution” hosted by University of Cape Town on 24 May 2012 in celebration of the Africa Week 2012 (By invitation).
- **Prof L Juma** attended a reading workshop of his book (novel), “Kileleshwa”, hosted by Langaa (Publishers), Fonds and the University of Cape Town, 7 September 2012.
- **Dr G Muller** obtained a Diploma (value of 10 ECTS) in the International Protection of Human Rights from Åbo Akademi, Turku, Finland in August 2011.
- **Dr G Muller** graduated with a Doctorate in Law from Stellenbosch University.
- **Dr EH van Coller** graduated with a Doctorate in Law from the University of Johannesburg on 3 October 2012.

1. Community Engagement

The Law Clinic undertook a number of community engagement activities in the past year (besides regular legal service provision and advice office work) through its **Access to Justice Project**:

(a) Legal Advice: 524 new cases were opened in both the Queenstown and Grahamstown offices, which includes 42 cases from advice offices. In addition, 703 clients in both offices, as well as 168 clients at advice offices were provided with general advice. The Clinic's attorneys participated in the Wills Week held by the Cape Law Society during the third week of September 2012 and drafted 17 wills.

(b) Community Education Project:

Ntuthuko Legal Activism Society: On 7 March 2012 an introductory workshop on facilitation skills was given to about 50 members of the Ntuthuko Legal Activism Society.

Facilitation Skills training: On 25 & 26 August 2012 Prof Bodenstein and Ms Hillier trained 11 members of Ntuthuko Legal Activism as well as 7 officials of local NGO's on facilitation skills.

Constitution Education Week: In a joint venture involving the Constitutional Court Educational Trust (CCET), the Faculty and the Clinic, this project consisted of training over two evenings (24 & 25 August) in facilitation skills and constitutional issues. The training was conducted by Prof Bodenstein (facilitation skills) and Mr Jonathan Parsonage, with Justice Froneman having made an inspiring motivational speech. The training was attended by 23 students and three Faculty members. The training was followed by workshops, facilitated by trainee students and two Faculty members, on constitutional issues at Mary Waters, Nombulelo and Ntsika High Schools and Graeme College.

Community workshops conducted:

"Succession and dying" for the Grahamstown Hospice staff, the community of Glenmore and the Jabez Aids Health Centre.

Children's rights for the Eluxolweni Child Care Centre.

Evictions: Raphael Centre.

(c) Paralegal Advice Office Project:

24 paralegals attended training in Grahamstown on the Consumer Protection Act (14-18 November 2011)

Altogether 69 paralegals attended one-day workshops on case management held in Grahamstown, Queens-

town, Graaff Reinet and Mthatha in May 2012.

Law Clinic attorneys, supported by candidate attorneys and administrative staff, visited 34 advice offices throughout the Eastern Cape.

Staffing – Law Clinic

Ms Mutsa Mangezi left the organisation at the end of January 2012, having played a major part as the CLE: Lecturer in the Legal Practice module.

Mr Johnnie Jacobs, an attorney, left in October 2011 and was replaced by **Ms Jaylynne Hillier**, an alumna of the Faculty, who also served her articles in the Clinic.

Mr Siyabulela Hlulani, an attorney of the Queenstown office, left the organisation in January 2012 and was replaced by **Khayaletu Tshiki**.

Ms Luise Ostler passed the conveyancing examinations, achieving the highest marks in the Eastern, Northern and Western Cape.

Since the clinic was unsuccessful in filling the post vacated by Ms Mutsa Mangezi, **Ms Vimbai Chikukwa** was appointed as CLE Administrative Co-ordinator. **Adv Craig Renaud** helped with lecturing duties and **Ms Vicky Heideman** with both lectures and supervising Legal Practice students.

2. Ntuthuko Legal Activism Society

This year has been a very exciting year for Legal Activism, under the chairmanship of Ms Jaqui Santos Ruas Baessa Pinto and has seen the Society grow from strength to strength. Last year at the AGM it was reported that the Society had doubled the number of people who had received workshops to around 800 people. This year Legal Activism has managed to do it again, more than doubling this figure, with 1 860 people reached through its workshops.

The year started off with the exciting news that Norton Rose wanted to partner with Ntuthuko Legal Activism and use their manuals as part of their pro bono department. As a result the society has started to revamp all five of their manuals and will be ready to hand over the first micro-lending manual to Norton Rose, under a creative commons licence, very soon.

Through all this excitement the Society never lost sight of their mandate to empower all people, especially those at grassroots level, with knowledge of the law. The Society started workshops as early as O-week when they partnered with SHARC to give workshops on HIV/AIDS to the first years in residence.

At the beginning of the third term the Society also posed a challenge to all six of its portfolios, namely HIV/AIDS, Rape and Domestic Violence, Labour, Wills and Estates, Environmental and Micro-Lending, to complete at least one workshop by the end of the first semester – a challenge which they all met.

Throughout the year Legal Activism gave workshops in a number of different places and expanded its community partnerships significantly. Members also had an opportunity to better their facilitation and workshop skills at a Street Law training workshop, organised by the Rhodes University Law Clinic, which took place in August 2012.

All these events led the Society to Heritage and Diversity week, when it held three events. The first event saw a very successful stall outside Checkers where members educated many people about micro-lending, wills and estates. The middle of the week saw a screening of the film “Cry Freedom” for Legal Activism members, and the last event was a Consti-

tutional “Fun Day” in which children from the Eluxolweni Children’s Shelter were invited to join the society for a day of jumping castles, food, fun and a constitutional workshop (for which inspiration was gained from the Constitutional Workshop facilitated by the Constitutional Court during Constitution Education Week).

The Society has grown from strength to strength, and at its AGM on 10 October 2012 an new committee was elected.

The 2013 Legal Activism Society Committee:

Chairperson: Meghan Eurrelle

Treasurer: Tayla Waterworth

Community Engagement: Jane Hoffe

Projects Co-ordinator: Kanyisa Majokweni

Secretary: Victoria Nyawara



Students giving workshops to local learners during the Constitutional Education Week



2012 All Africa Human Rights Moot Court Competition

Rhodes University continued its participation in the annual All Africa Human Rights Moot Court Competition in 2012. This edition was held at the Universidade Eduardo Mondlane in Maputo, Mozambique.

Andrew Pattinson and Viren Raja, accompanied by Professor Laurence Juma, represented the Faculty commendably and returned full of praise for the organisers and hosts of the competition. They particularly enjoyed meeting and interacting with students from across Africa. The impressive calibre of the judges, including South Africa's own Justice Bess Nkabinde, was an outstanding feature of the event. Andrew and Viren thoroughly enjoyed the experience and felt they had learned a considerable amount through their participation.



Rhodes looks forward to continuing with, and allowing more students to benefit from, their participation in the competition.



Viren and Andrew were accompanied by Professor Laurence Juma from the Rhodes Law Faculty.



RHODES UNIVERSITY
Where leaders learn

BETWEEN SCYLLA AND CHARYBDIS –

BALANCING COMPETING INTERESTS IN *KNOX D'ARCY* INTERDICTS



Cristy Lelean

Final year student in the Rhodes University Law Faculty

Voet, in *Commentarius ad Pandectas*, suggested that in order to stop a debtor squandering his property a creditor should not personally detain it but

rather “direct his efforts to having the man himself interdicted from alienating [it]”.¹ This, Cane suggests, amounts to an early reference to what courts have alternatively called an anti-dissipation order, a civil restraint order, a *Mareva* injunction and a *Knox D’Arcy* interdict.² Essentially this interdict seeks to prevent a person, who may in the very near future become a debtor, frustrating a judicial order by alienating his assets. Harms ADP, rather colourfully, described such a person as reminiscent of “the farmer who, in order to escape paying tithe, destroyed his whole crop”.³

It is submitted that, despite the drastic flavour of the interdict it does, when applied correctly, strike a balance between the competing interests and rights of the parties. However, in order to appreciate this balance fully, the interdict’s oppressive qualities should be examined *first* and only then should the respective reasons for justification be addressed.

DRASTIC AND DRACONIAN

Arguments against the assertion that the interdict strikes a satisfactory balance.

The *Knox D’Arcy* interdict is unusual in so far as it does not, like other interdicts, pretend a proprietary interest in the property it seeks to restrict.⁴ In other words the person seeking to enforce the interdict is admitting that he has no present claim over the property, but is nevertheless preventing its owner from enjoying the use of it until such time as a court orders otherwise. However, such an order may take several years and, even if the respondents regain the free use of their property, the deprivation they will have suffered during the period between the interdict being granted and the final order cannot be reversed.⁵

In the words of Justice Scalia in the American case of *Grupo Mexicana de Desarrollo, SA v Alliance Bond Fund, Inc.*,⁶ anti-dissipation orders, if abused, can place before “any prowling creditor, before his claim was definitely established by judgment... [a] ... powerful weapon of oppression”.⁷ Furthermore, the argument that the applicant must show that the defendant has no *bona fide* defence has been rejected; all that must be shown is that there is a “*prima facie* right, though open to some doubt”.⁸ This amounts to a lessening of the onus borne by the applicant, notwithstanding the fact that the respondent has presumably worked hard to amass such property in an industrial market where capitalist values are encouraged.

“The courts, acknowledging the drastic effect of the interdict, have sought to limit the oppressiveness of its consequences”

De Koker submits that the main Constitutional rights infringed by *Knox D’Arcy* orders include the right not to be arbitrarily deprived of property and the right to privacy.⁹ Furthermore, *Knox D’Arcy* interdicts are often considered because the nature of the relief sought demands it “in secret, in haste, and without the intended defendant having had any opportunity of being heard”.¹⁰ This effectively means that the *audi alteram partem* rule, so important to the concept of a fair trial, can be limited when the application is brought *ex parte*. Put another way, as an interlocutory interdict it amounts to an infringement of right preceding a judgment.¹¹

It is submitted that Stranex was correct when he argued that the first two *Knox D’Arcy* judgments overemphasised the purpose of the interdict but neglected to detail in what circumstances it may be issued.¹² Stegmann J himself acknowledged that the granting of such

a drastic measure may have unforeseen practical repercussions for the person against whom it was enforced.¹³

For instance it can never be known for certain whether a *bona fide* emergency situation will arise for a person whose use of property has been restricted. To posit an extreme example, a person against whom such an interdict is granted would find himself in dire straits if he was in sudden need of a costly medical procedure which his insurance could not cover.

In such a scenario, as remote as it may seem, a man who has not yet been found guilty of an offence has his rights, including the right to administer his property to his best commercial advantage, limited on the basis of an allegation alone.¹⁴

Lastly it is respectfully submitted that courts have confused, and may again in the future confuse, a respondent's attempts to deceive with an actual *intention* to render barren a future judgment against them. For example in the first *Knox D'Arcy* judgment it was held that the allegations that the respondents were misleading the court, attempting to put their assets beyond the reach of the applicants, concealing certain facts and attempting to dodge the effect of the 1991 interdicts constituted a basis for the interdict.¹⁵ The applicants suggested, and the court agreed, that these misdemeanours amounted to "[a conspiracy] to frustrate the anticipated order of this Court".¹⁶

It is submitted that only the *second* consideration should have been given weight in deciding the issue for, as Stranex argues, the three other misdemeanours, while useful in informing the courts finding, amount only to contempt of court and not *prima facie* proof of an intention to defraud.¹⁷

MALITIIS NON INDULGENDUM ESSE¹⁸

Justifications and safeguards that result in a balance being struck.

The courts, acknowledging the drastic effect of the interdict, have sought to limit the oppressiveness of its consequences by firmly holding that the interdict "must be confined to such assets as will be sufficient to satisfy the plaintiff's claim and no more".¹⁹ The defendant, therefore, must not have harm caused to him due to a lack of funds. Furthermore, the Supreme Court of Appeal has held that a court should be extremely hesitant to hear such an application without notifying the respondent, especially when the allegations involve hearsay evidence.²⁰

In line with this safeguard, the test for the granting of a normal interlocutory interdict must also be met. This

includes the allegation of a *prima facie* right, the suspected probability of a future infringement, and the lack of another remedy.²¹

Furthermore he must prove that "the balance of convenience is in his favour" and, at the very least, put forth some evidence supporting a suspicion of a *mala fide* intention to frustrate a future order on the part of the respondent.²² Since this is a very drastic remedy the courts do not grant it easily, and if the applicant fails just one of these tests he will lose the application. For example if the prejudice to the respondent, should the interdict be granted, is greater than any prejudice the applicant might suffer, then the test of convenience would not be fulfilled.²³

"The importance of maintaining the integrity of the legal system outweighs the right to an individual's privacy if no undue prejudice can be alleged"

Additionally, the fact that only a *prima facie* right must be alleged is, it is submitted, fair because any stricter a test would, as Cane states, "fetter the court's discretion in granting such applications to the extent that our law would be almost devoid of the flexibility required to work justice in such matters".²⁴

The importance of flexibility also helps ameliorate the harm that could occur by an overemphasis on misdirection rather than intention as it allows courts, while not viewing the two concepts as interchangeable, to take a holistic view of the situation and consider all relevant facts before them.

Moreover in the *Carmel* case the SCA held that such interdicts do not amount to arbitrary deprivation of property if all the procedural requirements are complied with in that "[n]o one is divested of anything on a permanent basis. The value of the asset is [merely] being retained."²⁵ Similarly it is submitted that the infringement of the respondent's privacy is justified because the importance of maintaining the integrity of the legal system outweighs the right to an individual's privacy if no undue prejudice can be alleged.

CONCLUSIONS

Suggestions to ensure that the balancing act is fair.

It is submitted that the court in the first *Knox D'Arcy* decision was correct when it held that the applicants should pay damages to the respondents as compensation should they lose the final judgment.²⁶

In extreme cases, where the court suspects the applicant may try to frustrate the payment of such damages, it could even order that similar restrictions be placed on *the applicant's* property or an amount should be deposited for security.²⁷ It is further submitted that Cane was correct when she argued that *Knox D'Arcy* interdicts impose such a high risk on the applicants that they should never be applied for lightly.²⁸ She highlights the administration costs, the possibility

that the court may consider the application just an "unjustified fishing expedition" should the rights to privacy be too harshly infringed, and the fact that the applicant may in the process expose flaws in its own case that could later be used against it.²⁹

In conclusion, it is submitted the *Knox D'Arcy* interdict is neither a permanent measure nor a way of improving the position of one party to the detriment of another. Moreover it is submitted that due to the ease with which assets can be electronically transferred in the modern world this interdict is becoming even more necessary than before.³⁰ Furthermore because of the fact that it serves only to protect property and legal integrity rather than attach assets it is submitted that it does in fact achieve a satisfactory balance and serves an important purpose when well constrained.

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DIRECTORS' LIABILITY— DOES IT EXTEND TO BUSINESS RESCUE?

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The Companies Act 71 of 2008 (“the Act”) commenced on 1 May 2011. This legislation, in part, codifies directors’ duties and, as one

in progress will be completed, debts will be paid in full (or to a greater extent than if the debtor were wound up),⁶ and investments will be protected.⁷

Business rescue, in the Act, is defined as the process whereby financially distressed companies are rehabilitated. This process involves placing a distressed company under temporary supervision, with a moratorium during this time on the enforcement of creditors’ claims, and the development and implementation of a plan for placing the company’s business on a sound footing.⁸

“Business rescue, unlike liquidation and judicial management, is not solely concerned with the private interests of the insolvent debtor and his or her creditors”

Business rescue is only applicable if a business is ‘financially distressed’. ‘Financially distressed’ is defined by the Act to mean that it appears reasonably unlikely that within 6 months a company will be able to pay its debts as they fall due/or it will be insolvent within 6 months.⁹ The company at this stage is not factually, but may be commercially, insolvent. The Act thus foresees that a ‘financially distressed’ company is in fact a solvent company that is merely experiencing liquidity problems.¹⁰

Business rescue may be initiated in one of two ways. Firstly, the board of directors may, in terms of section 129(1), by special resolution voluntarily begin business rescue proceedings if it has reasonable grounds to believe that the company is financially distressed and there appears to be a reasonable prospect of rescuing the company. This resolution may not be adopted if

of its core precepts, provides a new mechanism for the rescue and recovery of distressed companies known as business rescue. The following article looks at the extent of a director’s liability to the company, and, whether, in choosing not to initiate a business rescue application, the director’s and board of the company may be held accountable.

Business Rescue

In post-1994 South Africa the development of the economy and the enhancement of economic welfare is a priority. Thus it is important to have “viable commercial enterprises capable of making a useful contribution to the economic life of the country”.¹ Business rescue, unlike liquidation and judicial management, is not solely concerned with “the private interests of the insolvent debtor and his or her creditors.” If a company goes bankrupt it should be “assisted to recover financially”² to protect employees, the interests of creditors and to develop an entrepreneurial class.³ This is especially so with the emphasis South Africa has placed on the entrepreneurial class, and that there is significant investment, supportive legislation, government incentives and the like to grow it. The case made by the Department of Trade and Industry for business rescue was that because companies “are central to a country’s economy and its prosperity — for wealth creation and social renewal”⁴ it is far more beneficial for creditors to embark upon a business rescue procedure as they are more likely to maximize their returns from a solvent company “than from suing the debtor in extinction”.⁵ This is because jobs will be saved, work

liquidation proceedings have been initiated by or against the company, and it is of no force or effect until it has been filed.¹¹ The time periods within which the company must file a notice of a resolution and appoint a business rescue practitioner are quite stringent, although a company may make an application to the Commission for an extension of time.¹²

Section 129(7) provides that if the board of a company has reasonable grounds to believe that the company is financially distressed, but the board has not adopted a resolution contemplated under section 129, the board must deliver a written notice to each affected person setting out its reasons for not adopting a resolution.

Secondly, an 'affected person' may apply to a High Court at any time for an order placing the company under supervision and commencing business rescue proceedings.¹³ An 'affected person' is defined as a shareholder, creditor, any employees or their representatives or any registered trade union that may represent an employee of the company.¹⁴ An 'affected person' is thus a person whose socio-economic conditions might be directly affected by the winding up and liquidation of the company. This aspect of initiation is merely for completeness' sake and will not be discussed further in this article.

The business rescue procedure is intended to be a temporary measure to facilitate rehabilitation of the company to ensure optimal returns for the creditors.

Directors' Duties

South African company legislation now codifies, to some degree, the general duties of directors, unlike previously when directors' duties were based on case law. Directors owe their fiduciary duties to the company as a whole and these duties are comparable to directors' common law duties.

In terms of section 76(2)(a) of the Act a director "must not use the position of a director or any information obtained while acting in the capacity of a director ... to gain advantage for the director, or for another person other than the company ... or to knowingly cause harm to the company." Furthermore, a director of a company, when acting in that capacity, must exercise the powers and perform the functions of a director in good faith and for a proper purpose, as well as in the best interests of the company. To act in the best interests of the company is an overriding duty. From this duty flows the duty to disclose any interest in a contract with a company; the duty to account for secret profits; and the duty not to misappropriate corporate opportunities; and the duty not to improperly compete with

the company and not to misuse information that comes to the knowledge of the director through his or her position (this can be encompassed within all duties mentioned herein).

In respect of the duty to act with the degree of care, skill and diligence that may reasonably be expected of a director, it is important that the director has taken reasonably diligent steps to become informed about the matter, that he has no personal financial interest in the matter, and once a decision has been made, he has a rational basis for believing that the decision was in the best interests of the company.

Section 76(2)(b) of the Act specifically indicates that a director of a company must communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director reasonably believes that the information is immaterial to the company, or generally available to the public or known to the other directors or is bound not to disclose that information by a legal or ethical obligation of confidentiality.

“The business rescue procedure is intended to be a temporary measure to facilitate rehabilitation of the company to ensure optimal returns for the creditors”

This may thus imply that a director *should know* when a company is financially distressed and must, at the first available opportunity, *bring* this information to the board's attention so that it can then decide whether business rescue is a viable alternative to liquidation. If he or she does not do so, he or she may be seen to be knowingly causing harm to the company. This proposition is further enforced by section 129(7) which indicates that "if the board of a company has reasonable grounds to believe that the company is financially distressed, but the board has not adopted a resolution contemplated in this section, the board must deliver a written notice to each affected person, setting out the criteria referred to in section 128(1)(f) that are applicable to the company, and its reasons *for not* adopting a resolution contemplated in this section."

This to me implies that should a director, or the board, be aware that the company is 'financially-distressed', business rescue, if viable, has to be proposed as an option if it appears that there are reasonable prospects of rescuing the company.

Should a director or the board fail to do the aforesaid, he or she may be held accountable in terms of section 77. Section 77 deals with the liability of directors and provides in ss (2)(a) that a director of a company may be held liable in accordance with the principles of the common law relating to breach of a fiduciary duty, for any loss, damages or costs sustained by the company as consequence of any breach by the director of a duty contemplated in section 75, 76(2) or 76(3)(a) or (b).

As a director should know when a company is financially distressed, inaction and a failure to address signs of business failure may result in the director being held accountable and thus liable for the company's damages or costs for failure, if the need arose, to place the company under business rescue.

By holding directors and the board accountable in this respect, a new culture of business rescue may well be fostered, thus promoting a number of purposes of the Act, namely, the South African economy must be developed;¹⁵ the creation and use of companies must be continued;¹⁶ and that a comprehensive mechanism for the rescue and recovery of companies in financial distress "that balances with rights and interests of all relevant stakeholders"¹⁷ must be implemented. This in turn should help to change the mind-set and culture established because of the previous Act which primarily focused on the settlement of the company's debts to its creditors, even if this necessitated the company's liquidation and winding-up.

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LAW AND POVERTY—

WHAT OUGHT TO BE?



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Wh a t
ought to be
— this is the cen-
tral, normative
question that
scholars of law
should devote

themselves to, at least according to Jan M. Smits (“Redefining normative legal science: Towards an argumentative discipline” in F Coomans, F Grünfeld and M Kamminga (eds) *Methods of Human Rights Research* (2009)). While Smits developed this question of ‘what ought to be’ as a methodological starting point for the general enquiry into the meaning of law, the question is perhaps also apt in the general context of post-apartheid South Africa. The preamble of the Constitution of the Republic of South Africa, 1996 proclaims that one of its goals is to “improve the quality of life of all citizens and free the potential of each person” living in South Africa. This aspirational purpose of the Constitution hovers over the “decisive break from the past” in a Janus-like manner and serves as a constant reminder that we need to do better – as a country, as individuals and as legal scholars.

Relevance

I posed this question — what ought to be — to my penultimate year class earlier this semester as an introduction to the jurisprudence course. The idea behind the question was to set a critical and reflective tone for the semester, but also to develop (hopefully!) a keen interest in and concern for the severity of poverty in South Africa. In its last *Development Indicators*, the National Planning Commission revealed that unemployment was estimated at 35,9% (broad, unofficial definition) and 25,3% (narrow, official definition) during June 2010. This means that, conservatively speaking, one in every four people in this country is unemployed. The living standards measure (the monthly real income of the poorest 10%) was calculated at R 1 386 for South Africa and at R 1 279 for approximately 507 000 people living in the Eastern Cape. In 2008, 50% of

the population lived under the R 524 pm poverty line, 39% of the population lived under the R 388 pm line and 23% lived under the R 283 pm line. It is mostly black people who are living in rural and peri-urban areas that need to survive within the limits of these tight budgets. The Gini-coefficient of South Africa is 0.66 – making South Africa the most unequal country in the world. The question that then needs to be asked is how the Constitution, and by extension the whole legal system, can be used to respond to the prevalence of abject poverty in South Africa. Former Chief Justice Pius Langa (in S Liebenberg and G Quinot (eds) *Law and Poverty: Perspectives from South Africa and Beyond* (2012)) is of the view that our response to the prevalence of poverty stands central to our “democracy, development and stability of our constitutional state”.

Law as an instrument of change

Personally, I would like to be part of the effort to eradicate poverty. I have to believe that the law can be an instrument of change because this is the only tool I have at my disposal to play a part as an engaged citizen. So, where do I start? How do I ensure that I do not give up when facing the enormity of the task? A good start would be to trust the transformative force of the Constitution. An appreciation of the mutually supportive and interdependent nature of all human rights should follow this. Inter-disciplinary reading and research (with a focus on sociology, anthropology, economics, history, agrarian studies and politics) should foster a deep understanding of poverty in all its manifestations while grasping the truly international proportions of the phenomenon (see Millennium Development Goals *Report of 2012*) would place poverty in its proper historical and social context. Failing to do this could start eroding our conception of human rights and the rule of law. Langa argues that the foundational role of human rights and the rule of law could remain “shallow platitudes” if the vast majority of people in South Africa do not gain access to housing, health care, sufficient food and water, social assistance and education.

Understanding, reconciliation and grace

In the landmark judgment of *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC), Yacoob J stated that the rights in the Bill of Rights should be construed in context:

“On the one hand, rights must be understood in their textual setting. This will require a consideration of chap[ter] 2 and the Constitution as a whole. On the other hand, rights must also be understood in their *social and historical context*.” (emphasis added)

This *dictum* links up beautifully with the preamble of the Constitution where it acknowledges ‘the injustices of the past’. While ‘the injustices of the past’ is an explicit link to our apartheid past and forms that *raison d’être* for the inclusion of a justiciable Bill of Rights, it also provides us with interpretive guidance.

“The Gini-coefficient of South Africa is 0.66 – making South Africa the most unequal country in the world”

When we interpret the rights in the Constitution, but especially the socio-economic rights, we must remember that the most basic of human rights have been denied to the majority of the people in our country for centuries. Reconciliation between the historically privileged white minority population and the disadvantaged black majority population can only come from an understanding of the past, be-

cause this will empower us with the tools to correct those injustices that have been committed with a sense of grace, compassion, humility and humanity.

Challenge

The challenging part for the fight against poverty lies in the positive obligations that the socio-economic rights in the Constitution impose on government. We need innovative and skilled law graduates to infuse the law with grace and compassion, to develop the contents of these socio-economic rights so that we know where we need to progressively realise towards, to think differently about what appropriate relief means, and to walk the tightrope between the orders that the judiciary can make and the powers of the legislature and the executive. We have a wonderful Constitution and there are institutions that support our democracy, but the fear remains that it may all come tumbling down if the incidence and violent nature of service delivery protests continue to rise; corruption, fraud and maladministration are allowed to continue without any accountability; and the abuse of power remains unchecked.

Law ought to be an instrument of change. There ought to be inter-disciplinary engagement with and understanding of poverty in all its manifestations. There ought to be an appreciation of the lack of grace, compassion, humility and humanity in our apartheid past. There ought to be innovative and skilled law graduates to take up the fight. There ought to be hope for South Africa. There ought to be a right not to live in poverty. *Aluta continua!*

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THE *SOUTH AFRICAN LAW JOURNAL*: THE GRAHAMSTOWN CONNECTION

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Upon my unexpected appointment as the managing editor of the *South African Law Journal* in January 2010, one of my col-

leagues on the editorial board remarked that this signalled the end of the “seemingly inevitable, eternal control of the University of the Witwatersrand” over the *Journal*. This perception is mainly because the *Journal* was edited out of Wits from 1950; living memory for even the elderly these days. Most famously, Professor Ellison Kahn, the doyen of law editors in South Africa, who was both Professor of Law and Deputy Vice-Chancellor at Wits, was editor of the *SALJ* for an extraordinary unbroken period of 50 years from 1950 to the end of 1999. But, probably because it is not in living memory for most, before this time (certainly for most of the twentieth century), the *Journal* had in fact been edited mainly out of Cape Town, and by members of the legal profession rather than academics.

After Professor Kahn’s retirement there was something of a rapprochement between North and South, the editorship of the *SALJ* being shared between Wits and UCT until the end of 2009. Bearing this history in mind, it was also remarked at the time of my appointment to the editorship that it was a break with tradition that the honour should go to someone at the smallest law faculty in the country, and someone from outside one of two main metropolitan areas. But what is not widely known is that there is in fact quite a close historical connection between the *SALJ* and the little city of Grahamstown. This short note serves to show just how this is the case (and that it is not just because Professor Kerr was one of the most prolific authors in the history of the *SALJ*, having published 120 articles and notes in the *Journal* in his career).

The *Journal* itself was founded, way back in 1884, by the Eastern Districts Law Society, under the editorship of a man with close ties to Grahamstown: William Henry Somerset Bell. WHS Bell, who had been schooled at St Andrew’s College, was at the time a partner in a Grahamstown firm of attorneys known as Ayliff, Bell & Hutton. (The firm occupied offices in the building in High Street which now houses Dold & Stone Attorneys, next door to FNB.)

“The SALJ was originally conceived in Grahamstown, and was edited and published out of Grahamstown in its early years”

Bell was the motivating force behind the recommendation to the Eastern Districts Law Society (soon thereafter to amalgamate with their Western Cape colleagues to form the Law Society of the Cape of Good Hope) that the Society should initiate a law journal. Bell was appointed its first editor. As a result, the *SALJ* was originally conceived in Grahamstown, and was edited and published out of Grahamstown in its early years, which is something very few people know! The *SALJ* is in fact the second oldest continuously published law journal in the world, after the *University of Pennsylvania Law Review*, and is one year older than England’s prestigious *Law Quarterly Review*. It was initially published by a local printer, Messrs Richards, Slater & Co, which became Josiah Slater Publishers in 1887. Slater was at the time the editor of the *Graham’s Town Journal* (later the *Grocott’s Mail*: to this day the oldest independent newspaper in South Africa). He was also a Member of Parliament for the District of Albany, and also a driving force behind the motivation to Cecil John Rhodes’s trustees for funding for the establishment of Rhodes University in 1904.

From 1901 publication was taken over by the African Book Company Ltd, also based in Grahamstown, in part perhaps because it became too onerous for Slater's operation to manage both a newspaper and the *SALJ*, especially at the time of Slater's advanced age (he turned 70 in 1900), but more probably because the African Book Company had been founded by Bell himself. It was only in 1911 that the well-known modern publishers Juta & Co in Cape Town took over this work. Bell eventually moved from Grahamstown to Kimberley, then Johannesburg, where he was a founding partner of the leading Johannesburg law firm now known as Bell Dewar. He continued to be editor from the *Journal's* inception until 1912, barring a brief hiatus in 1897 and 1898 because he had to serve a short period in jail for treason, followed by a period of banishment for the role he played on the Reform Committee. The Reform Committee was responsible for arranging the attempt by the British to overthrow the government of Paul Kruger in the South African Republic (later the Transvaal); an incident known popularly as the Jameson Raid. Bell was the second-longest serving editor in the *SALJ's* history.

The second person with close ties to both the *SALJ* and Grahamstown was Professor Robin McKerron. McKerron was, together with Professor Hahlo and Professor Kahn, the joint editor of the *SALJ* for a nine-year period from 1950 to 1958. A Scot by descent, he had had a glittering career as a student at Oxford, obtaining an Honours degree in Jurisprudence and a BCL, both with first class passes. He was considered the top student in his year at Oxford, winning the prestigious Vinerian Scholarship and the Bacon Prize for Constitutional Law ahead of one of his classmates, Ivor Jennings, who was in later years knighted for being England's foremost authority on Constitutional law. Motivated by a relative of his (Professor Grant McKerron, lecturer and Professor of Law at Rhodes from 1923 to 1941), Robin McKerron decided to move to South Africa, where he took up the post of Professor, Head of Department and Dean of Law at Wits from 1926; he was only 26 years old at the time!

So, what then of his connection to Grahamstown? McKerron, who was motivated by the opportunity jointly to be able to practise at the Bar (he was ultimately a QC) and to be an academic — something that was very difficult in sprawling Johannesburg — elected to leave Wits at the end of 1954, and took up a post as Professor and Head of the Department of Law at Rhodes in 1955. McKerron was a Professor at Rhodes until his retirement at the end of 1968, and also held chambers as an advocate in High Street. He earned his reputation in this country as the primary authority on the law of delict from the 1930s to the 1970s. The McKerron Prize for Delict, awarded to the student who

achieves the highest marks in that LLB subject at Rhodes, is endowed in his name. Four of the years he spent at Rhodes dovetailed with his editorship of the *SALJ*, a job he reputedly did with great skill and precision. (For a biographical sketch of Professor Robin McKerron, see Ellison Kahn "In Memoriam: Professor R G McKerron" (1973) 90 *SALJ* 105, and more personal accounts may be had from Professor Schäfer and Adv Roberts, who were both lectured by him. Pictures of both the professors McKerron may be found in the law library.)

“Every single article and citation had to be captured, annotated and checked by hand. Much of this would have had to be done after hours, most likely by paraffin lamp”

Over and above these editorial figures are two men who played slightly different, but no less important, roles in the history of the *Journal*. These are Fred van der Riet and George Randell. Frederick Barry van der Riet went to school at St Andrew's College, and graduated from the then Rhodes University College with his law degree during the First World War. He was an advocate at the Grahamstown Bar from the 1920s to the 1950s, and was the nephew of Judge F J W van der Riet, who was a judge in Grahamstown from 1923 to 1929. Fred van der Riet was a giant of a man, and he was renowned for his hardworking attitude as counsel. (For a biography, see George Randell *Bench and Bar of the Eastern Cape* (1985) 130.) But his hard work extended beyond his labours on his briefs. He was responsible for researching and compiling the first two cumulative indexes to the *SALJ*, the first covering the years 1884 to 1927, and the second covering the years 1928 to 1941.

One can only imagine, in these days of electronic databases and search engines, what this must have entailed. Every single article and citation had to be captured, annotated and checked by hand. Much of this would have had to be done after hours, most likely by paraffin lamp. Glancing over the two volumes, one is struck by how things have changed in the South African legal system.

Van der Riet's introduction is redolent with Latin, and describes Voet's *Commentarius* (then yet to be translated from Latin into English by Judge Gane) as the "South African Lawyer's bible". In these two volumes of the index, there is a mere mention of the subject "Constitutional law", and this simply cross references the reader to a few pieces listed under the subject "Government". There is no reference in these volumes to "Administrative law" at all!

For the third volume of the cumulative index, which covered the years 1942 to 1953, Van der Riet handed the duties over to George Randell. Randell was then an attorney in East London at the eponymous firm Randell & Bax (now Bax Kaplan Attorneys). But from 1962 he moved to Grahamstown, where he was an advocate at the Grahamstown Bar until his retirement in 1976. He and his wife (the local artist Dorothy "Dimmie" Randell, who is now 102 years old) lived in the historic house known originally as "The Retreat" (now "Randell House") which is situated on the corner of Somerset and Prince Alfred Streets, and which now houses the offices of the Dean of Humanities. George Randell was the father-in-law of the current Head of the Department of History at Rhodes, Professor Paul Maylam.

Both these men's achievement was to provide resources of incalculable value to save legal researchers, whether they be advocates or attorneys, judges

or magistrates, academics or law students "weary hours in scouring the back volumes of the 'Journal' for information which [they] know to be there, but which [they] often cannot find without labour and difficulty" (Percival Gane in the Introduction to the *Index of the South African Law Journal Vol I to XLIV 1884–1927* (1928) 3).

This short note shows how there has been quite a close connection over the years between the *SALJ*, Grahamstown and Rhodes. It is another illustration of how the little city of Grahamstown has always managed to punch above its weight in terms of its impact on the South African legal system. It also shows, contrary to the perceptions of most people, that I am not unique at all, being the third Grahamstonian and the second member of staff at Rhodes to hold the position of editor-in-chief of the *SALJ*. Finally, I must also mention the role played in the last three years by Ms Helen Kruuse, who would have lectured many of the students in her time as a staff member, and who continues to act with her customary zeal as one of my team of review editors.

***BA, LLB, PhD (Rhodes)**

CONGRATULATIONS!

A special congratulations goes out to the Rhodes law students who participated in the Glenister Challenge.

The challenge was based on the idea that "corruption is a disease that affects every single one of us. No matter your age, profession, location or economic dispensation, Most of all, it affects young adults, because they are the ones that will be left to clean up the mess we have allowed to happen due to our inaction" (Bob Glenister) and the challenge was thus to study the Judgment handed down by the Constitutional Court on the 17th of March, 2011 in which the disbanding of the Scorpions Elite Crime-fighting Unit was held to be unconstitutional.

Two Rhodes teams participated and finished in joint second place in this national competition. Their awards were



received in September 2012 at a special event held in Cape Town to honour the students. The participating students were: in Team "Justice League", Devin O'Donovan, Vickie Blancke, Kirsty Hall, Mbali Baduza; in Team "Phoenix", Mbulelo Ncolosi, Georgina Niven, Kyla Hazell and Mikaela Erskog.

So you have a law degree ... what's next?

By Adwoa Ankoma



If you thought you knew what the next step was after obtaining your law degree, think again!

The list below includes some options that you may not have been aware of and a brief description of what they entail.

Option 1: Articles. Depending on whether you have completed practical law school or not, you will be required to complete either two years or a year and a half of practical legal training at a law firm, which is a requirement for being admitted as an attorney.

Option 2: Advocacy. A graduate with an avid interest in litigation and trial strategy would do well to explore a career in advocacy.

Option 3: In-house legal advisors. When an organisation is large enough, or the nature of the work dictates that legal issues should be explored in most of the transactions, lawyers are employed on a permanent basis to deal with day-to-day legal issues.

Option 4: State lawyers. Primarily employed by the Department of Justice and Constitutional Development and the National Prosecuting Agency, they are involved in every State department, drafting legislation and acting as legal advisors, prosecutors and magistrates.

Option 5: Public interest. Public interest lawyers (such as those working for the Legal Aid Board) or private legal aid organisations provide free legal services to low income individuals.

Option 6: Clerking at the courts. The High Courts and the Constitutional Courts employ clerks who act as assistants to the judges. This provides one with a good "behind the scenes" look at how the court system works.

Option 7: Any other business. Expert knowledge of the complexities of the law is a highly valued commodity in almost every conceivable industry e.g. journalism or legal assistance insurers.

My choice

I decided to complete my articles after my studies. I wanted to obtain intensive training and experience at a firm that would allow me to grow as a young professional. I found all of this at Norton Rose South Africa, where the options range from public interest to dispute resolution and banking and finance and so many more. We have 42 offices spread over six continents, providing excellent exposure and opportunities for working abroad.

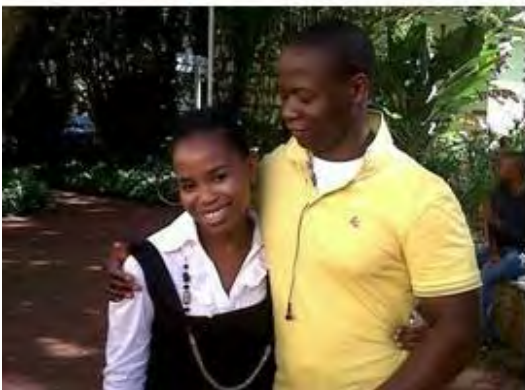
If you make the right decisions, your law degree can serve as the Holy Grail. It promises a world of infinite possibilities, and a future more stable than most in the current economic climate. Too many law graduates want nothing to do with a legal career after a few years due to launching themselves into an ill-suited option. That is why it is imperative that all the options are researched thoroughly before you make a final decision. So, before you leap, do yourself a favour and research, research, research and find the right fit for you!

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LAW PHOTOS









INTERPRETERS AND THE COURTS

Hazel Mokoena

Final year student in the Rhodes University Law Faculty



The law views people as social beings, and human interaction within a social context is dependent largely upon verbal communication.¹ Court proceedings in South Africa have in the

past been conducted mainly in English and Afrikaans. Despite this, there has always been a need to ensure the accused in a given case understands the proceedings. There are eleven official languages in this country and therefore the need for an accused to understand the proceedings may present a challenging task. This is because most presiding officers are not able to speak all eleven official languages or are reluctant to learn other languages.² This means interpreters are necessary. Defining what an interpreter is, and what an interpreter should do, is also a challenging task. The court in *S v Naidoo*³ stated that it is strange that in a country where people speak in so many different tongues there is no statutory provision, rule of court or regulation governing the definition and the role of interpreters in the courtroom.⁴

The Bill of Rights specifically provides for language rights as part of one's procedural rights when one is arrested, detained or is an accused in criminal proceedings.⁵ In our multilingual country, the role of interpreters is important in realising the rights that are contained in s 35 of the Constitution: the right of an accused to a fair trial, specifically the right to be tried in a language that the accused understands, or if that is not practicable, then to have the proceedings interpreted into that language.⁶ This section of the Constitution shows that there is a need for interpreters and that they play a role in making sure that the accused understands proceedings.

The phrasing of section 35(3)(k) can be interpreted to mean the accused has a right to an interpreter. The right to understand court proceedings has been a part of our law for a while. Section 6(2) of the Magistrates' Courts Act⁷ imposes a duty on the court in criminal

cases to request an interpreter at the State's expense if it appears that an accused does not understand the court language. A similar duty is imposed on the High Court in terms of the Uniform Rules of Court.⁸ The fundamental principle underlying the right to a fair trial is that the accused should be able to understand the court proceedings at all times.⁹ This means that the presiding officer must ensure that the accused understands the language being used. If the accused did not understand the court proceedings when they took place, after his conviction the accused may claim a review on the basis of an irregularity because of his lack of understanding.

“The failure to provide a competent interpreter amounts to a gross irregularity”

If the accused does not understand the language of the court, the presiding officer should appoint a competent interpreter. In the case of *S v Mafu*¹⁰ both the magistrate and the accused were not satisfied with the interpretation given by the interpreter. The court on appeal looked at section 6(2) of the Magistrates' Courts Act and held that the failure to provide a competent interpreter amounted to a gross irregularity. In *S v Manzini*¹¹ the appellant was convicted and sentenced in the regional magistrate's court. During sentencing the appellant complained that the interpreter had not properly interpreted his evidence. The record was sent to the chief interpreter who submitted a report that identified numerous errors and concluded that the interpreter's performance was alarmingly poor. The court stated that if the interpretation is incorrect the rights of the accused would be affected and therefore the accused would not be afforded a fair trial.¹² In the case of *S v Mpopo*,¹³ the court stated that if what is being conveyed to the presiding officer is incorrect then that officer might not be able to make the correct findings on the credibility of the witness.¹⁴

Competent interpreters are thus crucial to securing justice in the courts.¹⁵ It is common for poor South Africans to be unrepresented in criminal proceedings. When such proceedings are conducted in a language that the accused does not understand, the need for competent interpreters is crucial. It would be a grave injustice if these linguistic barriers are not eliminated by competent interpreters to bridge the gap that language has created between the accused and the court officials.¹⁶ Moeketsi states that the dismal performance of the court interpreter is often a result of poor training and a lack of a proper definition of the interpreter's role in criminal proceedings.¹⁷

“Interpreters are vital to the proper functioning of the judicial system”

In the South African context the interpreter requires a high level of skill and training. A well-trained interpreter should be able to use the words in their intended meaning, considering the context in which they are used.¹⁸ In *S v Ngubane*,¹⁹ the court called for interpretation to be precise and impartial. The interpreter should not add any extra information to that which the accused or any other official present in the court has said. In *S v Mabon*,²⁰ the court emphasised that the interpreter should be an impartial conveyer of the words of the maker of the statement. In South African courts there have been numerous instances where interpreters have encroached on the duties of the other officials of the court by taking over responsibilities which truly belong to the other court officials. This blurs the function of court interpreters and has the potential to cause irregularities.²¹

Lebesse states that the role of the interpreter should be that of a neutral, competent and professional facilitator of communication of the judicial process between court participants who do not speak the same language, by conveying the meaning of the verbal and non-verbal communication of the speaker in an understandable manner, into the language of the listener, whilst taking into account the cultural differences between these participants.²²

The purpose of an interpreter is thus to render a professional service while refraining from taking over the decision-making responsibilities of the presiding officer. It is also essential to recognise their importance in securing just judicial proceedings. Their role is crucial to realising the right of an accused to a fair trial. It

would thus be a fallacy to view interpreters as playing only a minimal role in proceedings, as the interpreter in fact plays a vital role in the justice system in a multi-lingual society such as ours.

The role of interpreters is thus a dual one: they are both conduits and vital cogs in the proper functioning of the judicial system. Without competent interpreters the constitutional right to a fair trial cannot be realised.

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SOME THOUGHTS ON THE IMPORTANCE OF WTO LAW IN SOUTH AFRICA

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In the past few years I have encountered a variety of different reactions to my harpings on about the Law of the World Trade Organization. These range from complete

disinterest, and “how will this affect my life” or “when will I ever use this knowledge in my practise as an attorney” to “the World Trade Organization is evil, has usurped state sovereignty and discriminates against developing countries”, but seldom have I heard from the intrigued middle ground. Those who take the extreme view are usually informed by their contact with popular activist literature of the kind liberally distributed in first year history, and the like. Usually these same folk would freely quote the case of *US – Tuna I*¹ as an example of a horrendous anti-environmental decision, and *EC – Hormones*² as an example of how the WTO condones the whole world to be fed carcinogenic growth hormones.

However, I like to think that those who previously held this view could now, as LLB students and lawyers, take a step back and realise that they now have the tools to examine these cases and the legal reasoning behind them and formulate something which is often beaten out of the average first year student: an independent opinion. For if one examines these cases one realises firstly that the *US – Tuna* case was an unadopted GATT panel decision (read pre-WTO), and therefore unenforceable. Furthermore, a little reading of further cases and some academic literature would reveal that this case is generally recognised to be wrong, and the legal reasoning has not been followed in subsequent cases. Secondly, the *EC – Hormones* case is still on-going, and provides a very interesting platform for debate on some quite difficult legal and policy issues. But regardless of one’s opinion of the WTO, the reality is that decisions affecting citizens of world, especially smaller and poorer states, are made at the WTO in a binding fashion, and increasingly it is the lawyers who are making these decisions based on legal interpretation of the WTO Agree-

ments signed by our heads of state.

“In the past few years I have encountered a variety of different reactions to the Law of the World Trade Organisation”

To bring the issue closer to home, my attention has more recently been drawn to the importance of WTO law when the Law Faculty was contacted by a reporter from the *Daily Dispatch*. This reporter sought clarity on a response he had received from the Department of Trade and Industry that involved the International Trade Administration Commission (ITAC) possibly bringing a case of dumping against certain imports. The issue in question related to an alleged scam involving imported olive oil: the reporter in question had contacted the DTI seeking advice on the possible recourse that South African olive producers could have against Mediterranean olive producers who were reportedly “dumping” low-quality olive oils (often diluted with other oils) on the South African market and passing them off as high quality Mediterranean olive oil. The DTI’s response was off-the-cuff, and was clearly focused solely on the word “dumping” used by the reporter. After explaining the concept of dumping to the reporter, and that the DTI was probably looking to enforce anti-dumping agreements such as the Anti-Dumping Agreement³ contained in the documents of the WTO, it soon became clear to me that there had been a misunderstanding. Dumping as such was clearly not the issue.⁴ After reading the newspaper article by the reporter, it became clear to me that the best solution to the problem, and the solution preferred by South African olive growers, was to impose a testing and labelling requirement.⁵ But this is not to say that WTO law is irrelevant to the issue.

If South Africa chooses to protect the livelihood of its olive producers and protect its consumers from purchasing inferior products, both purposes would be served perfectly by imposing a labelling requirement that all imported oils be tested for their quality and be labelled accordingly before they reach supermarket shelves. Thus, we may find ourselves in a situation where the consumer is forced to choose between similarly priced bottles of 100% South African olive oil and 10% Aegean olive oil – surely a no-brainer?

“The only problem South Africa might encounter in trying to enforce its trade rights ...could be a lack of expertise in WTO law among South African lawyers”

For those who have done International Trade Law this year, alarm bells should be ringing at this point. Doesn't this mean that the Agreement on Technical Barriers to Trade (TBT Agreement)⁶ applies? Why yes indeed. At the core of the TBT Agreement is non-discrimination in standards and labelling. Thus, if done incorrectly, South Africa could find itself in a situation where one WTO member argues that our new olive oil labelling requirement discriminates against imported olive oils in that the imported product is now less competitive on the South African market than the domestic product.

Certainly, if a labelling requirement is imposed against olive oils imported from certain countries and not others, it would not meet the requirements of TBT. And what would that mean? Possible trade-pariah status for South Africa and possible countervailing duties—another term about which our friend from the *Dispatch* was seeking clarity. In a nutshell, countervailing duties means that the complaining country can add extra import duty on some of our exported products—usually something that would hit us hard, but not necessarily a product related to olive oil. It could be anything—platinum perhaps.

Thus, bearing in mind the looming threat of countervailing measures, in this situation my recommendation would be that South Africa impose a testing and labelling requirement for ALL olive oils, imported or domestic, based on their olive oil content. This would be in

line with the TBT Agreement in that it would not be discriminatory against exporting countries. It would be more admin, yes, but for a high-end product such as olive oil, perhaps the consumer can bear the burden of a slightly higher price for the satisfaction of being properly informed.

Incidentally, while the requirements of the TBT Agreement may seem onerous and yet another argument against the WTO, it should be great consolation that the Agreement could protect our products too – imagine a country with a vendetta against South Africa labelling our bananas “blight-ridden genetically modified South African bananas” on their supermarket shelves? If this were the case, South Africa could also bring a case to the WTO under the TBT Agreement. The only problem South Africa might encounter in trying to enforce its trade rights under the WTO Agreements in this manner could be a lack of expertise in WTO law among South African lawyers.

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1. DS21/R - 39S/155. In this case the GATT Panel decided that the United States could not ban the import of non-dolphin friendly tuna in terms of the General Agreement on Tariffs and Trade of 1947.
2. WT/DS26/AB/R; WT/DS48/AB/R. This case is the culmination of an on-going dispute between the EU (formerly the EC) and the United States and Canada whereby the EU has attempted to ban the import of beef treated with certain bovine growth hormones. The Appellate Body found in favour of the United States and Canada in 1998, and subsequent litigation has involved implementation of the Appellate Body decision and countervailing duties.
3. Otherwise known as the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, which forms part of the agreements of the WTO.
4. Article 2.1 of the Anti-Dumping Agreement defines dumping as follows: “a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country”
5. See D MacGregor “The great olive oil scam” *DispatchOnline* 15 September 2012 <http://www.dispatch.co.za/the-great-olive-oil-scam-2/> [accessed on 20 September 2012]
6. The TBT Agreement is one of the agreements which form part of the WTO.

SECTION 86(10) OF THE NATIONAL CREDIT ACT— A BARRIER TO EFFECTIVE DEBT COUNSELLING?



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The National Credit Act,¹ although a classic example of poor draftsmanship, makes provision for mechanisms that play a leading role in rectifying the socio-economic

disparity characterising the South African population. As such it is vital to ensure that this Act serves the purposes and aims for which it was enacted.

This short article contains a summary of my longer LLB research paper, which discusses s 86(10) of the NCA. Section 86(10) provides that:

“If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner to

- (a) the consumer;
- (b) the debt counsellor; and
- (c) the National Credit Regulator,

at any time at least 60 business days after the date on which the consumer applied for the debt review.”

As a result of the Supreme Court of Appeal judgment of *Collett v First Rand Bank*,² the validity of this provision has been confirmed, and the confusion in the various divisions about the interpretation of s 86(10) has been eliminated. However, it is essential that this decision is in line with the Constitution and the purpose and aims of the Act. The binding force of the *Collett* case could have disastrous effects if it was incorrectly decided and could potentially defeat the purpose of having a statute that alleviates over-indebtedness and curbs the reckless granting of credit.

The full research paper contains four chapters, each

dealing with aspects that allow one to appreciate the purpose and aim of the NCA and to assess whether section 86(10) fosters this.

Chapter 1 sets out the structure of the paper and discusses the background of the credit market in South Africa. It highlights the fact that there were two markets that serviced the South Africa population: the formal and informal markets, created on the basis of the consumer’s financial position and race. It further highlights the fact that the various pieces of legislation enacted prior to the NCA worsened the financial inequality of the population. The result was the need for the debt review procedure provided for in section 86 of the NCA.

“The NCA plays a leading role in rectifying the socio-economic disparity in South Africa”

Chapter 2 discusses the fact that debt review is not a new concept in South Africa. It considers sections 65, 65A, 65J of the Magistrates’ Courts Act,³ which provides for debt collection but allow for a judgment debtor to obtain debt review by engaging in a financial inquiry. It also discusses s 74 of the Magistrates’ Courts Act, which provides for administration orders. In addition, voluntary sequestration in terms of the Insolvency Act⁴ which allows for debt review by providing for the proportional distribution of the residue assets amongst the creditor, is examined. The chapter further discusses debt review in terms of the NCA in order to ascertain whether there has in fact been an improvement from the provisions in the relevant Acts highlighted above. It confirms the fact that neither the Magistrates’ Courts Act nor the Insolvency Act contain a similar provision to section 86(10).

Section 1 of chapter 3 is a review of the literature in relation to this s 86(10), focusing on the case law and the various authors' views. It pays particular attention to *Collett v FirstRand Bank*, in which the Supreme Court of Appeal confirmed the validity of the section. It discusses the shortcomings of the judgment. The judgment was handed down in the context of s 86(11) of the NCA which provides for resumption of the debt review by the court. The judgment however does not consider this provision in the light of the purposes and aims of the NCA and the Constitution. The judgment focuses on the fact that there is a need to ensure a balance of power between the parties, which is essential but is however, not the only consideration.

“The possibility of striking out s 86 (10) is considered the best solution to resolving the high levels of over-indebtedness in the country”

Section 2 of chapter 3 looks at societal considerations, discussing the current obstacles to debt review and the impact of Malan JA's interpretation of section 86 (10) on the consumer's constitutional right of access to courts.⁵

Chapter 4 discusses my recommendations on the section, discussing the possibility of amending or invalidating the section in light of this paper and other research. The chapter proposes amending s 86(10) in order to allow for a longer time frame for debt review. Various considerations will need to be taken into account if an amendment to the provision is made. In addition, the possibility of amending the provision to include a ground for termination is also analysed. Furthermore, in the light of the high cost involved in judicial process, the possibility of granting an order of costs in favour of the consumer in the case where the court finds that he or she is over-indebted or there was reckless granting of credit is discussed as an alternative to amending the time frame or including a ground for termination in s 86(10).

The possibility of amending s 86(11) to state that in the case where resumption of debt review is ordered by the court, the process must be conducted by the Magistrate, is examined. Although this is not ideal, it does make the process less cumbersome.

In conclusion, the possibility of striking out s 86(10) is also considered as the best solution to resolving the high levels of over-indebtedness in the country. In doing so, the fact that a consumer who is in default is the perfect candidate for debt review and that the process should run uninterrupted is highlighted.

The golden thread that runs through the paper is the need for an interpretation of s 86(10) to take into consideration the obstacles currently facing the debt review process, its impact on the consumer's right to access court, and the far-reaching effect of debt review beyond credit agreement matters. This research concludes that in the light of the current economic disparity and the level of over indebtedness, this section acts as a barrier to achieving the aims and purposes of the NCA.

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NATURAL LAW:

A JUSTIFICATION FOR THE USE OF GRAFFITI



David Grenville

Final year student in the Rhodes University Law Faculty

Street art-forms are an increasingly popular vehicle for the conveyance of political and social messages. This essay will evaluate their use in a context where such art is contrary to positive law. In particular,

the work of the graffiti artist 'Banksy' on the Gaza wall will be evaluated in the light of natural law. The principles drawn from this analysis will then be used to comment on the decision of the Equality Court in *Afforums v Malema*.¹

Street art is an increasingly popular form of creative expression that makes use of public spaces for its exhibition. One of the most prominent contemporary street artists is a person known only as 'Banksy'. Operating out of London, his art is typically highly politicised and provides an interesting social commentary. One of the factors leading to the rapid popularisation of his work is that he remains largely anonymous. This has allowed him to make bold statements without fear of legal sanction.

“Israeli security forces threatened to shoot Banksy while he was creating some of these works”

Some of Banksy's most iconic work was created on the 'Gaza wall', constructed in 2007 as the culmination of six years of increasing restrictions on the border between Israel and Egypt. The completion of the wall had the effect of stifling cross border trade and human movement, effectively isolating the Gaza region. It can thus be seen as a form of socio-economic sanction for people living in Gaza. During the period of strictest control all civilians, and even medical sup-

plies, were prevented from crossing the border. Before its eventual opening in 2011, prominent figures such as Archbishop Tutu condemned the wall as a violation of human rights.²

Taking this view, Banksy has claimed responsibility for a number of artworks made on the Gaza wall at the height of the blockade. These pieces depict a number of mocking attempts to overcome the wall's fortifications including: two children digging through the wall, with an idyllic beach-scape behind it; a stylistic 'cut-here' illustration; and, perhaps the most iconic, a little girl being lifted effortlessly over the wall by a few balloons.³ (See below).



All these artworks constitute graffiti, a form of street art that is illegal in many countries. Israeli security forces threatened to shoot Banksy while he was creating some of these works.⁴

Graffiti art, as a form of vandalism, carries sanctions in most modern societies. The purpose of this prohibition is to prevent the unlawful damaging of property. In many cases the effect of graffiti is simply to diminish the value of the property upon which it is cast. The urban scrawl of signatures⁵ and often untidy proclamations of love are all too common in large cities. It is this kind of wanton disregard for the property of others that the law has sought to eradicate.

Banksy, viewing the Gaza wall as an unjust intrusion into human liberty, set out to achieve two things with

his art. The first is to diminish the value of the property *physically*. By allowing spray-paint onto the wall, its monetary value decreases. It requires labour and resources to maintain such a wall and to clean graffiti off of it. This could also be achieved just as effectively through the random scribbling of names and love, mentioned above.

The second goal however is slightly different. Banksy seeks to raise awareness of the illegality and illegitimacy of the wall. In this sense, he diminishes the value of the wall *socially*. Paintings of people overcoming the constraints that the wall offers illustrate the need to question the wall's continued existence. The idyllic scenes depicted cannot be reached with the wall's continued existence. The idyllic scenes depicted cannot be reached with the wall's continued existence. It is, in a sense, a call for social justice.

In much the same way that Martin Luther King Jr proclaimed that a law that does not accord with natural law is not a law at all,⁶ Banksy's works draw their legitimacy from higher law — one that recognises the Gaza wall as illegitimate. Under this construction, the artworks are legitimate in their attempts to break down the Gaza wall.

While Banksy's pieces fall comfortably into the above justification, it is submitted that urban scrawl graffiti could perhaps be similarly justified. However, the difference between urban scrawl and Banksy's political protest art is that the former is justified through its negative impact only. It would diminish the value of the wall physically. While this is a justification, it is not a strong one. Banksy's work however can be justified by both its negative and its positive impacts. It diminishes the value of the wall socially by promoting a political awareness of the injustice of the wall.

While this negative impact may justify the use of graffiti on its own, it can achieve this much more effectively when coupled with the positive aspect. Similarly in certain circumstances the positive impact of graffiti can also justify its use without the negative. Perhaps the best illustration of this is urban revitalisation projects where graffiti artists are commissioned to 'beautify' the inner city and promote its re-growth. This positive social impact is similar to Banksy's in that it is seeking a legitimate goal, although in this case it is sanctioned by authority.

It is this synthesis of negative and positive impacts that make Banksy's works so effective. They break down the Gaza wall while creating hope for social cohesion and justice. This is all achieved in a way that is also aesthetically pleasing.

It is interesting to consider these arguments in the South African context of freedom songs. The equality

court in *Afri-forum v Malema*⁷ declared singing certain parts⁸ of the "shoot the Boer" song to be illegal in any public or private space.⁹ This is a significant intrusion into freedom of expression.¹⁰ Lamont J held that this curtailment of the right to freedom of expression is required by *inter alia* the genocidal inklings inherent to the song.¹¹

As illustrated above, graffiti art, as a contemporary form of expression, can be justified where it would otherwise conflict with positive law through deference to higher law. It is submitted that the *shoot the Boer* song may also be evaluated under this justificatory framework. As a starting point it must be recognised that this song falls into a greater category of freedom songs that were written and sung during the apartheid regime. Today that regime is recognised to have been illegitimate due to its unjustified constraints on the fundamental rights of *all* South African peoples, particularly the equal worth and dignity of all humans. In that context the freedom songs, as with Banksy's art, satisfied both the negative and positive criteria for assessing their ability to surpass positive law.

***“Banksy’s works break
down the Gaza wall while
creating hope for social co-
hesion and justice”***

They operated negatively, to undermine the apartheid regime, with words such as "shoot the Boer" to advocate the destruction of the illegitimate apartheid government. The song also acted positively by promoting social cohesion and unity. This was in a time where law and socialisation fostered a fundamentally divided society. It thus sought to achieve both the apartheid vision of a racially separated society, as well as to undermine any attempts to overthrow it. Freedom songs therefore contributed to the creation of social cohesion that was necessary to the overcoming of the apartheid regime.

It is therefore clear that, although not sanctioned by the apartheid regime, freedom songs found their legitimacy by adhering to a higher morality. This was however achieved through the synthesis of their advocacy for the destruction of the system with the fostering of social cohesion to achieve this. The question therefore arises whether the same justification can be achieved in a post-apartheid, democratic, South Africa.

It is submitted that the positive contribution of the song is still present, and in the same form as before. Music remains, and will always continue to be, a great tool for uniting people. It is for this reason that nations across the world cling to their national anthems in attempting to foster a national identity and harmony. Despite this, as noted above, the positive contribution of this medium alone may not always be enough to justify its use. This is especially the case where it does not have authoritative approval. Sometimes the most aesthetically pleasing things can lure the listener to the worst depths of humanity. The lyrical and provoking speeches of Adolf Hitler come to mind.

When assessing the negative aspect of the song it is submitted that the context in which it is sung must again be evaluated. South Africa is currently the unequal society in the world, where unemployment is rampant, crime is a daily reality, the education system is in crisis and HIV/Aids is an epidemic.

It is in this context that the ANC Youth League has repeatedly advocated that South Africa's revolution is not complete. While a legal revolution has occurred, the miraculous "velvet revolution", a social revolution has not. It is in *this* context that the *shoot the Boer* song has been re-born; this time with an altered meaning to serve its altered purpose. The song now, as the Youth League demands, calls all South Africans to join together (the positive aspect) in the fight to overthrow the capitalist system. In this sense, if the views of the Youth League are accepted, the social revolution defers to a higher law that requires a more equal society economically. They advocate that any society in which this occurs is therefore illegitimate and must accordingly be dispensed with (the negative aspect). The words "shoot the boer" now advocate the destruction of this illegitimate system so that a society predicated on equality can be constructed.

It would seem therefore, that the words *awudubula ibhunu* are again a synthesis of positive and negative aspects that allow it, like a picture of a little girl drifting weightlessly over a wall that divides people, to transcend sanction in a system that fails to accord with the achievement of a better system. The result is that legal sanctions would be inappropriate and invalid.

The wall in Gaza is an atrocity representing the stubbornness of humanity to believe that a wall can divide people. One is reminded that of the Berlin Wall: the only portion that remains standing is heavily graffitied. It stands as a remembrance to the folly of those that seek to build walls, and also because it is quite aesthetically pleasing.

The social walls that we have constructed around ourselves are even more insidious. They are harder to abolish, since we are often unable to perceive their existence. Only with the benefit of hindsight are we able to realise that we were shackled from the beginning. The freedom songs including *shoot the Boer* seek to awaken the realisation that there are still walls in our society and that only once all of these are destroyed can positive law and natural law coexist. Perhaps it is possible to transcend these barriers. Or perhaps, by grasping a handful of balloons, one would be hoping for too much in a world where little girls do not fly over walls.

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2. N al-Mughrabi "U.N. envoy Tuto calls Gaza blockade illegal" (2008) *Reuters* <http://uk.reuters.com/article/2008/05/28/us-palestinians-israel-tutu-idUSL2849170120080528> (accessed 25 September 2011).
3. Figure 1: "Fotografias en la frontera" (2011) *Bitacora de Claudio Segovia* <http://claudiosegovia.wordpress.com/2011/02/23/page/2/> (accessed 25 September 2011).
4. "Banksy at the West Bank barrier" (2010) *The Guardian* <http://arts.guardian.co.uk/pictures/0,,1543331,00.html> (accessed 25 September 2011).
5. These are called "tags" and each graffiti artist's is unique.
6. "Martin Luther King Day Quotes" (1997) <http://grove.ufl.edu/~leo/mlk.html> (accessed 25 September 2011).
7. 2011 (6) SA 240 (EqC).
8. The offending parts were the words: *awudubula ibhunu* and *dubula amabhunu baya raypha*.
9. *Afriforum v Malema* para 120.
10. s16 of the Constitution of the Republic of South Africa, 1996.
11. *Afriforum v Malema* para 93.

Rhodes Law Society's
"NIGHT IN PARIS"

Law Ball 6th October 2012

Settlers Monument, Grahamstown

In association with Norton Rose

The RU Law Society was thrilled to host the guests of honour Adv Paterson SC and Judge Roberson at the 2012 Law Ball. Thank you to Adv Paterson SC for a stirring speech which will surely inspire the law students to greater heights.

The efforts of the committee ensured a wonderful evening for all the guests.

Thank you to all of those who contributed.



NORTON ROSE

FACULTY REPORT:

PART 2

Student news

Career guidance: In order to prepare its members for their future careers as lawyers, the Law Society, with the help of Ms van Coller, organised a CV development and interview skills workshop. The workshop included a panel discussion and presentations by Ms Sarah Green (Careers Centre) and Prof J Bodenstein (Rhodes Law Clinic). The workshop will be repeated at the end of the year for those wishing to apply to firms and organisations only at that point.

Market Day 2012: In March the Law Society, with the help of Ms van Coller and Ms Saronda Fillis, put together a hugely successful Market Day that saw 19 firms and organisations spending a day with us, which ended off with a lovely cocktail evening. Linked to this initiative, Ms van Coller hosted school visits throughout the year to market the Law Faculty.

Community Engagement week: On 27 March 2012 a debate on the Consumer Protection Act was held as part of the Faculty's participation in Community Engagement Week. Adv Renaud and Adv McConachie, representing "Business" went up against Prof Bodenstein and Dr Muller, representing "The Consumer" to debate the effects of the CPA on South African consumer society. A word of thanks goes to Ms V Heideman who organised this entertaining and informative event.

Panel discussion: Justice Reviewed: A very inspiring and thought-provoking panel discussion regarding the proposed review of the judicial system and the judiciary, in response to the "Discussion Document on the Transformation of the Judicial System and the Role of the Judiciary in the Developmental South African State" of the Department of Justice and Constitutional Development, was held on 24 April 2012. Guest speakers at the event were Ms Debbie Schafer (Shadow Deputy Minister of the Department of Justice and Constitutional Development); Adv Izak Smuts SC (General Council of the Bar); Mr Sipho Pitjana (Council for the Advancement of the South African Constitution) and Dr Rósaan Krüger (Faculty of Law). Despite being invited, representatives of the Department and the African National Congress did

not attend. The event culminated in Dr Krüger making a submission to the Department of Justice and Constitutional Development regarding the discussion document.

Legal writing skills mentor programme: The Law Faculty is proud of the initiative taken by the 2012 Law Society to introduce a legal writing skills mentor programme for Legal Theory 1 students. This year's pilot project consisted of three mentors, each mentoring two students at a time. The programme is aimed at assisting students who do not feel that they are coping with the standard of writing required in Legal Theory 1, and who would like to improve their writing skills.

"The Law Faculty is proud of the initiative taken by the 2012 Law Society to introduce a legal writing skills mentor programme for Legal Theory 1 students"

Law language week: In September 2012 the faculty hosted a language week run by Mr Clyde Broster, a language expert from Cape Town, who gave lectures to each of the five law classes as well as individual assistance and instruction to law students on a voluntary basis. The week provided an excellent opportunity for improving language skills, particularly for those students who took advantage of the individual sessions.

World Press Freedom Day: On 3 May 2012 at the Central University of Technology Mr Ken Obura, PhD Law student, presented a guest lecture entitled "The effect of the Protection of State Information Bill on academic freedom". He is the lead partner who drafted the position paper for the Higher Education South Africa (HESA) on the Protection of State Information Bill and what affects the bill can have on institutions. The Bill is perceived by many as a potential threat to freedom of expression and as such to academic freedom. The controversial State Information Bill has become a topical debate within the media and public institutions, including universities.

Women in Law: In August 2012 Judge Belinda Hartle gave a thoughtful and challenging address entitled “Women in Law: who the heck do we think we are?” This was a joint women’s month initiative of the Office of the Chief Justice and the Rhodes Law Faculty.

Glenister Challenge: Two Rhodes law student teams (including one Rhodes Politics student each) entered the Glenister Challenge Competition and were awarded joint second prize in the University team’s category at an awards ceremony in Cape Town on 29 September 2012. The teams were: “The Justice League” (comprising Devin O’Donovan, Kirsty Hall, Vicky Blancke and Mbali Baduza) and “The Phoenix” (comprising Georgina Niven, Kyla Hazell, Mikaela Erskog and Mbulelo Ncolosi). First prize went to the School of Public Leadership at the University of Stellenbosch.

Entrants were required to develop best practice implementations of the Constitutional Court’s ‘Glenister judgment’ pertaining to national anti-corruption unit, the Hawks, without political interference.

At the awards ceremony Hugh Glenister honoured university students and civil society groups for their work in and said the following:

“Corruption affects every one of us, and what we don’t realise is that we, as ordinary citizens, have the power to put a stop to it. I am so encouraged to see young South Africans discovering this ability to affect change.”

Moot and mock trial programme:

We have had a very full moot programme in the past year:

- The 2012 final year moots took place in March, with staff members presiding. The two best final years were Viren Raja and Andrew Pattinson, who competed in the moot final on 28 March before a Bench of three judges comprising Judge Judith Roberson, Adv Gerald Bloem SC and Dr Gustav Muller. The winner was Viren Raja.
- Mr Viren Raja and Mr Andrew Pattinson, accompanied by Prof Juma, represented Rhodes at the 21st African Human Rights Moot Court Competition which took place from 1 to 6 October 2012 at the Univerdade Eduardo Mondlane (UEM) of Maputo, Mozambique. All the teams argued four times, twice on behalf of the applicants and also on behalf of the respondents. Our team unfortunately did not qualify for the finals. The only South African team in the final was Potchefstroom University. Viren and Andrew did well and Prof

Juma received numerous compliments from the judges on our team’s performances.

The penultimate year moots took place in August. The top two students, Sarah MacQueen and Murray Taylor, took part in the penultimate moot final on 4 September and argued before three judges: Adv Torquil Paterson SC, Adv Ntsikelelo Sandi and Dr Muller. The winner was Sarah MacQueen. After the conclusion of the moot, the judges gave very positive feedback to the students on their performances.

In September 2012 two Legal Theory 3 students, Kefentse Letlala and Darren Anderson, accompanied by Ms Brahmi Padayachi, represented Rhodes at the Child Law Moot Competition at the University of Pretoria and were placed third. The final was argued before Judge Jody Kollapen in the North Gauteng Palace of Justice and was won by the team from the University of Pretoria against the University of Cape Town. At the closing ceremony, Darren received a special mention for his arguments during the competition for both the applicants and respondents. The topic was on adoption with an international and local element by a same sex couple which tested the principle of subsidiarity and cultural rights.

“Two Rhodes Law student teams entered the Glenister Challenge competition and were awarded joint second prize”

In October 2012 Ms Tafadzwa Makoni (3rd year) and Ms Nada Kakaza (penultimate LLB), accompanied by Adv Les Roberts, attended the LexisNexis Mock Trial Competition at the University of North West, Potchefstroom. The selection of the students was based on their performance in an internal mock trial competition held by the Law Clinic. Adv Roberts was highly impressed with our students’ performances during the competition. Unfortunately they were knocked out after the preliminary rounds and were placed 8th overall. Four North West University teams were placed 1st to 4th on the back of an intensive 6 month programme to prepare them.

- In October 2012 four first year students, Mr Justin Brown, Mr Malibongwe Cebekulu; Ms Moyo Vaughan-Williams and Ms Tegan Phillips, accompanied by Ms Davies and Ms Heideman, represented Rhodes at the intervarsity moot court competition for first year law students held at the Supreme Court of Appeal, Bloemfontein. Although the two teams that we entered did not make the finals, they acquitted themselves admirably in this competition and did us proud. The winners of both the English and Afrikaans sections were the University of Pretoria. Ms Davies wishes to thank Ms Heideman for her assistance and support with the competition, as well as Adv Renaud and Adv Roberts who helped with the preparation of the students.
- Dr G Muller, Ms V Heideman and Adv J McConnachie acted as judges in the Second SA National Schools Moot Competition in East London on 14 April 2012.

Student exchange: We had two students on exchange in the first semester, namely Marine Fourrier from ICES, France and Kari Poutanen from University of Turku, Finland. In the second semester we have Rebecca Tattersall from Macquarie University, Australia. One of our students, Armand Swart, was on exchange at Leicester University in the first semester.

The annual **Law Ball** took place on 6 October 2012 with the theme 'Nuit à Paris: A Night In Paris' at which Adv Torquil Paterson SC was the guest speaker for the evening. In his speech he encouraged students to aspire to become Jurists instead of just lawyers. For more information please see the article by the Law Society on the Law Ball.

Staff news

This year we warmly welcomed the following new members of staff to the Law Faculty:

Ms Brahmi Padayachi BA (Unisa) LLB (Univ of Natal): Senior Lecturer. Previously a lecturer, assessor in the Cape High Court and Land Claims court, Acting Magistrate, and Director of Restorative Justice in the Department of Justice and Constitutional Development; internationally accredited civil mediator.

Dr Gustav Muller LLB, LLD(Stell): Lecturer. Previously Project Manager of the Law Faculty, Stellenbosch, Overarching Strategic and Outreach Project on Combating Poverty, Homelessness and Socio-Economic Vulnerability under the Constitution; student research and admin-

istrative assistant.

Prof Glover has been on academic leave in 2012.

Several part-time staff taught in the Faculty this year, where specialist expertise was needed: Mrs Anita Wagenaar (Legal Accounting), Mr Richard Poole (Tax), Ms Kate Koch (numeracy), and Ms Bulelwa Nonsilela (isiXhosa for law).

Due to the resignation of Ms Ramlall at the end of December 2012 and Prof Goolam's continued ill health, the following staff were appointed on contract for one year, namely:

- Ms V Heidman BA (Hons) LLB (Rhodes) LLM (Cambridge), previously a candidate attorney and current house warden of Hilltop Hall; and
- Adv Jock McConnachie BA (Rhodes), H Dip ED (Wits), LLB (Unisa), a practising advocate in Grahamstown, previously a school teacher.

The following lecturers were also appointed on a part-time basis in 2012:

- Mr John van Onselen – Civil Procedure A.
- Adv Les Roberts – Law of Evidence A and B.

The Law Faculty is deeply indebted to all the above mentioned lecturers for stepping into the breach at the time, enabling all teaching and courses to continue seamlessly.

Ms Helen Kruuse and Ms Vicky Heideman have been appointed as senior lecturer and lecturer respectively with effect from January 2013 against two vacant posts in the Faculty. It will indeed be wonderful to have Ms Kruuse back in the Faculty. Ms Heideman's permanent appointment is welcomed too given the wonderful contribution she has made to the Faculty this year.

Ms Lumka Mqingwana assumed duties as secretary in the admin office in January 2012. Ms Mqingwana was previously an intern at the School of Languages and worked at the East Cape Midlands College and Good Samaritan HIV & AIDS Centre. Our administrative staff continued to produce excellent work and together form an exceptional administrative team, which is repeatedly confirmed in student evaluations.

The Law Faculty is exceptionally proud of two of its staff members for receiving Long Service Awards from the University. Prof Mqeke received an award for his 15 years of service at Rhodes, while Ms Davies received an award for 25 years of service at Rhodes.



The Final Year LLB class gathers for a group photo at the annual Law Ball.



Andrew Pattinson and Viren Raja before the final round of the Final Year Moot competition.

CLASS OF 2012



Abbas Adjaye-Kwofie

"Good, better, best. Never let it rest. Until your good is better and better is best." – Tim Duncan



Michael Andersen

"The great pleasure in life is doing what people say you cannot do." – Walter Bagehot



Daniel Baines



Simon Balmuth

"Words are, of course, the most powerful drug used by mankind." – Rudyard Kipling

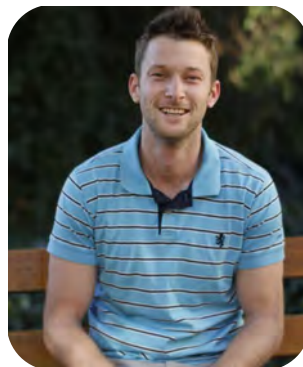


Vickie Blancke



Thango Bomela

"Clear mind, clear thoughts and a clear spirit will always lead you down the right path; at least that's what I think."



Daniel Chatfield

"Onward up many a frightening creek, though your arms may get sore and your sneakers may leak. Oh! The places you'll go!" – Dr Seuss



Yolanda Chilimanzi

"Whatever it takes, find your truth and speak it... even if your voice shakes." – Anonymous



Thandekile Chiliza

"With God on your side, the IMPOSSIBLE becomes ~~IM~~POSSIBLE."



Kabwela Chisaka

"Be as you wish to seem." – Socrates



Lauren Coetzee

"Imperfection is beauty. Madness is genius. It's better to be absolutely ridiculous than absolutely boring." – Marilyn Monroe



Monde Coto

"Victory is sweetest when you've known defeat. Humble in victory, gracious in defeat."

CLASS OF 2012



Brittany Curry

"Sometimes the most ordinary things could be made extraordinary simply by doing them with the right people (aka Cath)" – Nicholas Sparks

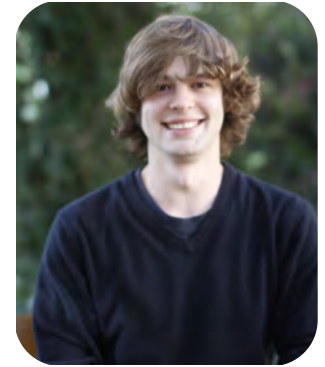


Douglas De Jager

"Those who have the privilege to know have the duty to act."
– Albert Einstein



Samantha De Villiers



James Ekron

"You can still become a musician with a degree in law but you can't become a lawyer with a degree in music." – Roger Ekron



Farai Faifi



Ross Falconer

"Excuse me while I kiss the sky." – Jimi Hendrix



Sarah Fisher-Hill

"*Alis volat propriis*" – She flies by her own wings.



Giles Freebody



Lwandlekazi Gaga



Siphokazi Gazi

"It's not whether you get knocked down. It's whether you get up."



Claudius Goremusandu



David Grenville

"Let's think the unthinkable, let's do the undoable. Let's prepare to grapple with the ineffable itself, and see if we may not eff after all." – Douglas Adams

CLASS OF 2012



Precious Hadebe

"Dream as if you'll live forever.
Live as if you'll die today." –
James Dean



Barbara Haipinge

"You never know what life is like,
until you have lived it." – Marilyn
Monroe



Zara Hammerschlag



Catherine Hannington

"Oh the places you will go! There is fun
to be done! ... And the magical things
you can do with that ball will make you
the winningest winner of all." – Dr
Seuss



Gina Harding

"If life's a series of adventures,
here we go, a brand new start..."



Elizabeth Karamura

"In the moment, with the
words of people, it all seems
insurmountable but honestly
God makes all things possible."



Thandeka Kathi

"All I do is try to make it simple.
The ones that make it compli-
cated never get congratulated."
– Kid Cudi



Glynn Kent



Zama Lekoma

"Exert your talents, distinguish your-
self and don't think about retiring from
the world until the world will be sorry
you retired." – Samuel Johnson



Cristy Lelean

"Volenti non fit iniuria"



Reenen Lombard

"I love law, but law don't love
me."



Wade Louw

CLASS OF 2012



Andrew Lowndes



Victor Mafuku



Amanda Mahlunge

"Success is when you refuse to obsess about your failures but choose to keep going."



Gugu Majija

"To be sure of hitting the target, shoot first. And, whatever you hit, call it the target." – Ashleigh Brilliant



Mduduzi Makhubo

"Class of 2012: Legendary class, legendary people. Let's go change the world."



Nathan Mallinson

"Families is where our nation finds hope, where wings take dream." – George W Bush



Langa Maziya

"Don't let the fear of striking out keep you from playing the game."



Yanga Mazwi



Nondumiso Mbambo



Gamu Mbetu

"Speak up for those who cannot speak for themselves; ensure justice for those being crushed. Yes, speak up for the poor and helpless so that they get justice." – Proverbs 31: 8-9.



James McCarthy



Luyanda Mfeka

"Sometimes things don't go at all, from bad to worse. Some years muscadell faces down first; green thrives; the crops don't fall, sometimes a man aims high, and all goes well" ... may it happen to you. – Sheenagh Pugh

CLASS OF 2012



Zama Mkhize



Setho Mokobi

The backbone of success is usually found in old-fashioned, basic concepts like hard work, determination, good planning and perseverance." –
Mia Hamm



Hazel Mokoena

"Not chasing something is actually the quickest way to get it."



Tlamelo Mothudi



Lebogang Motsumi



Godknows Mudimu

"It makes no difference whether a good man defrauds a bad one...the law looks only to the difference created by the injury."



Kelina Mudzanapabwe



Bibiana Mwape

"Silence is golden when you can't think of a good answer." –
Mohammad Ali



Nikita Nagel

"Don't let your dreams be dreams!"



Devin O'Donovan

"...when you go to bed with a pistol and wake up with a rifle..."



Chisom Okafor

"Do not think of today's failure, but of the success that may come tomorrow."



Shadha Omar

"When hungry eat, when tired close your eyes. Fools may laugh at me, but wise men will know what I mean " – Lin Chi

CLASS OF 2012



Yolanda Othman

"Your legacy should always be that you made it better than the way you found it." – Bang Mbaya



Andrew Pattinson

"After climbing a great hill, one only finds that there are many more hills to climb." – Nelson Mandela



Joanna Pickering

"This above all: to thine own self be true." – Shakespeare's *Hamlet*



Viren Raja

"Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond measure." – Nelson Mandela



Zandile Ramalohanye

"All we have to decide is what to do with the time that is given to us." – Gandalf, Lord of the Rings



Nicolette Saulez

"The happiest people don't have the best of everything. They just make the best of everything."



Noxolo Shange

"Whatever the mind of man can conceive and believe, it can achieve." – Napoleon Hill



Marc Sharratt



Lana Silberblatt

"People say nothing is impossible... but I do nothing every day." – Winnie the Pooh, AA Milne



Thoko Sipungu

"I am the type of person that tries to fall back asleep fifteen minutes before a dawnie, just to finish a dream."



Ryan Spershott

"Hadn't really thought about this... LOA?"



Kelly Stannard

"Opportunities are like sunrises, if you wait too long you miss them."

CLASS OF 2012



Tseli Taka

"Carpe diem and good luck!"



Andreas Tsangarakis

"Work hard. Stay humble."



Nhlanhla Tshabalala

*"Each generation must, out of relative obscurity, discover its mission, fulfil it or betray it."—
Frantz Fanon*



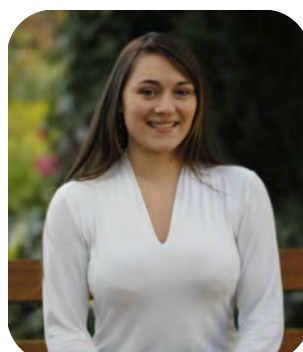
Abigail Tshuma

"We all die. The goal is not to live forever, but to create something that does."



Ruth Vorster

"Believe in yourself and all that you are. Know that there is something inside you that is greater than any obstacle." Christian D Larson



Genevieve Wagener

"Shhh, you must keep quiet, especially if you don't know a lot of things." — Prof Mqeke

Absent: **Kabelo Maserumula**

SA'S DISPUTE RESOLUTION FIRM OF THE YEAR 2012



South Africa's
'Dispute Resolution Firm of
the year 2012'.



The Legal 500:
Europe, Middle East
& Africa 2012.



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