

The background of the entire poster is a photograph of the Rhodes University building, featuring a prominent clock tower with a copper roof and a large arched entrance. The text is overlaid on this image.

IN CAMERA 2019

RHODES UNIVERSITY

**TAX
REPERCUSSIONS
OF ILLEGAL
WORKERS**

**BREAKING THE
LANGUAGE
BARRIER IN
LEGAL
EDUCATION**

Customary law

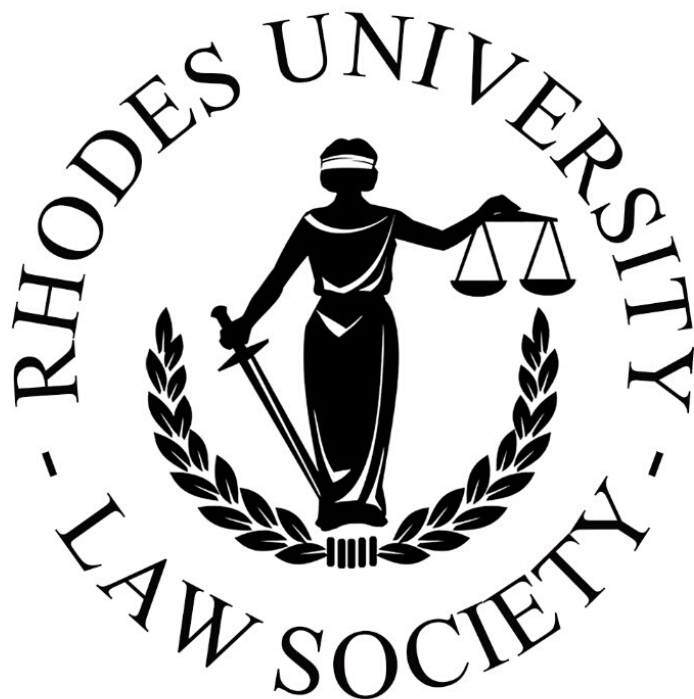
Development of matrimonial property
systems in polygamous marriages

**CHALLENGES
FACED BY
COURTS IN
APPLYING
MINIMUM
SENTENCE
LEGISLATION**

**SOUTH AFRICA'S
WHITE
PAPER ON
INTERNATIONAL
MIGRATION
A REGRESSION IN POLICY**

IN CAMERA 2019

THE RHODES UNIVERSITY ANNUAL LAW MAGAZINE



EDITORS

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from the editors

After many months of hard work we are thrilled to present to you the 2019 edition of the In Camera Magazine. When we began compiling this edition we set the goal of creating a magazine filled with diverse articles on various legal topics. In addition, we wished to showcase the achievements of our students on the international stage with the many external moot competitions participated in this year.

We would like to thank the following people, without which this would not be possible at all. To Professor Glover, thank you for your invaluable guidance, supervision and editing. This edition is just as much for you as it is for our readers.

To Fez and Chad, thank you for putting up with our bombardment of emails and helping us to reach the student body in order to collect such great submissions.

To the rest of the Faculty staff, thank you for your guidance and supervision of our authors and your heartfelt contributions to this edition.

To our authors, thank you for your hard work in submitting the content contained in this edition. Without you we would have nothing but blank pages.

To our Law Society members, thank you for trusting us with this project. We hope we have made you proud. Last but certainly not least, to our fellow committee members, thank you for your support and encouragement. You have pushed us to make this year and this edition an unforgettable one.

We hope that you enjoy reading this years In Camera as much as we enjoyed creating it for you.

CLARIZE & GISELE

FACULTY REPORT

2018 - 2019

By Professor Rosaan Krüger, with input from staff and students.

In the short 12 months since the previous annual report, staff and students in the Faculty of Law made the most of the many opportunities for growth available to locally, nationally and internationally. In 2019, our students participated in three international moot competitions and a student conference held at the University of Venda. One of our 2019 LLB graduates, Silke Joseph, was a joint winner of the South African Law Reform Commission Pius Langa Essay Competition, and our long-standing visiting professor and alumnus Judge Clive Plasket was appointed to the Supreme Court of Appeal.

These great achievements are but a few of the highlights of the recent academic year. In what follows, I provide an overview of other significant event and achievements.

Students, student news and activities

In Memoriam

Final year LLB-student, Nkcubeko Balani, passed away on 6 April 2019. A scholar at heart, Nkcubeko thought deeply about law, its heritage and impact in society. These ideas informed his winning essay in a 2016 essay competition on decolonisation of the family law curriculum. May his intellectual commitment inspire others.

Graduation and awards

On 11 April 2018, 70 students graduated with LLB degrees from the Faculty.

The Faculty celebrated graduation with our graduates, their partners and their parents at an evening function held at the Faculty.

At this celebration, 26 final year students (37% of our 70 LLB graduates) were awarded Dean's list certificates in recognition of academic achievement (attaining an average of at least 65% for all their final year courses). Additionally,

a number of individual prizes were also awarded at this function:

- **Brian Peckham Memorial Prize:** Best student in Environmental Law: **Mikaella Bodeux**
- **ENS Africa Prize:** Best student in Labour Law: **Christopher White**
- **Lexis Nexis Book Prize:** Internal book prize for Moot winner(s) in the Final Year: **Robin Smith and Tuscany Parkin (joint winners)**
- **Fasken Martineau Prize:** Best LLB student in Competition Law: **Christopher White**
- **Judge Phillip Schock Prize:** Best final year LLB student: **Christopher White**
- **Juta Law Prize:** Best final year LLB student, based on results over penultimate and final year LLB: **Jessica Steele**
- **Mtshali and Sukha Prize:** Best student in Legal Ethics and Professional Responsibility: **Christopher White**
- **R G McKerron Memorial Prize:** Best student in Law of Delict: **Jessica Steele**
- **Spoor & Fisher Prize:** Best student in Intellectual Property (Patents & Copyright): **Christopher White**
- **Phatshoane Henney Incorporated medals:** Awarded to students who obtain their LLB degrees with distinction: **Jessica Steele, Christopher White, Tuscany Parkin and Siphosethu Khumalo**
- **Tommy Date Chong Award:** Awarded to student who makes the greatest contribution to the Law Clinic in their penultimate and final years of study at the University: **Silke Joseph**

LLB intake 2019

71 students accepted offers into LLB penultimate year this year, joining 11 students in the four-year LLB stream in the penultimate year. As in years before, the preference of our students is clear: 86% of our law students choose the five-

year stream, entering the LLB only after completing a first undergraduate degree.

Postgraduate students

The number of postgraduate students in the Faculty is increasing steadily, with a total of seven LLM candidates and five PhD students registered for postgraduate studies for 2019.

Student news and activities

Student research

2018 final-year LLB student Trecia Makhubele was selected to represent South African at the Model African Union Summit in Addis Ababa, Ethiopia in October 2018. This opportunity forms part of the prestigious Friedrich-Ebert-Stiftung Fort Hare Autumn School on Social Democracy and Political Economy, a leadership programme supplementing the formal academic curriculum of university students.

Silke Joseph, a 2019 graduate of the Faculty who is currently employed on a temporary basis in the Faculty, was announced a joint winner of the SALRC Pius Langa Essay Competition. She submitted a shortened version of her LLB research essay entitled "The more things change, the more they stay the same: The constitutionality of immigration law in South Africa". Her achievement was celebrated at a gala dinner event hosted by Juta and the SALRC in September 2019.

In July 2019, two final year students delivered papers at the South African Law Deans' Association's Student Conference on Decolonisation and Africanisation of Legal Education. Students from 15 universities participated in the conference, and benefited from the insightful presentation by the key-note speaker, Prof Tshepo Madlingozi, Wits University Professor and Director of the Centre for Applied Legal Studies (CALS). Madlingozi challenged the students to engage in and

outside the lecture room about issues regarding decolonisation.

Rhodes students, Thokozani Dladla and Mfundolunthu Somandi, respectively presented papers entitled "Breaking the Language Barrier in Legal Education: A method for Africanising the Legal Education" and "Retributive justice or restorative justice? The application of Ubuntu in Criminal sentences" at the conference and submitted these for potential publication.

Moot Court and Mock Trial Programme and Competitions

Internal:

The final year students were required prepare and deliver argument on behalf of an amicus and the DPP on the issue of chemical castration. After the internal rounds, the finalists Siphosethu Matebese, Jeremy de Beer, Christopher Stroud and Kristy Bassingthwaighe, proceeded to present their arguments to Prof Bert Bester (Presiding Judge); Mr Lutho Jolobe, Ms Tiffany Potts on 25 March 2019. The winner of the final year Moot was Christopher Stroud and the runner-up was Siphosethu Matebese.



Christopher Stroud, Jeremy de Beer, Tiffany Potts, Prof Bert Bester (Presiding Judge) Lutho Jolobe, Kristy Bassingthwaighe, Siphosethu Matebese

The penultimate-year moot which forms part of the Legal Skills course, culminated in the final on 21 August 2019 after an intense week of internal rounds. The matter concerned a challenge to the provision of a spouse's pension in a defined benefit pension fund. Finalists Kyle George and Tonthoza Saukila argued on behalf of the applicants, while Nicholas de Wet and Tsepo Lepelesana argued on behalf of the respondents. The formidable bench consisted of Judge Bloem (from the Eastern Cape Division of the High Court), Magistrate Govender (from the Albany Magistracy) and former

senior lecturer of the Law Faculty, Mr Gordon Barker. Tonthoza Saukila was awarded the Phatshoane Henney Inc Shield for the top mootist in the penultimate year, while Nicholas de Wet was the runner-up.

External:

LexisNexis Moot Court Competition

Four penultimate-year LLB students participated in the Lexis Nexis Moot Court Competition which was hosted by the University of Pretoria from 3 to 6 October 2018. Eight universities participated in the competition. Rhodes University was represented by Mthokozisi Alpha Zungu, Mfundolunthu Somandi, Ryan Birkner and Thokozani Dladla. Ryan Birkner and Thokozani Dladla made it to the semi-finals of the competition. The Rhodes team was coached by Mr Shaun Bergover.



International Trade Law Moot

Four final-year students were selected to represent Rhodes University at the John H Jackson International Moot Competition in International Trade Law in Nairobi, Kenya during 23 to 27 April 2019. The final year LLB students were: Jeremy de Beer, Rhulani Matsimbi, Stuart Bentley and Ryan Birkner. While the Rhodes team did not make it to the

final, we celebrated with the Kenya Law School, who won the competition.

25th African Human Rights Moot Court Competition

The 2019 African Human Rights Moot Court Competition was hosted and held at the University of Botswana, from 1 to 6 July 2019, in Gaborone, Botswana. There were 54 teams that participated in the competition. Jethro Weeks and Christopher Stroud represented the Rhodes University. The Rhodes University team was accompanied by Mr Nkosinathi Mzolo, guided and assisted by Professor Laurence Juma.

ICC Moot Competition at The Hague

Five final-year LLB students, - Daniel Coetzer, Ayanda Mpofu, Bryony Fox, Clarize Coertze, and Erika Heaton - represented the faculty at the 2019 International Criminal Court (ICC) Moot Court Competition held in The Hague, Netherlands from 2 to 8 June 2019. The Competition which also consisted of a six-day educational and social programme, brought together students from across the globe, and with diverse backgrounds and cultures, to challenge their skills as future international lawyers. Over 80 countries participated in the competition. Rhodes University students represented South Africa. The Rhodes team was commended by the organisers for their competitive performances in research and oral presentation.

Jean-Pictet Competition

Rhodes University Faculty of Law participated in this year's Jean-Pictet Moot Competition in Obernai, France from 16 to 23 March 2019. Three final year LLB students - Sibusiso Ngwila, Ferdinand Weyers and Andile Msane - represented the Faculty at this competition. The competition brought together 96 teams from across the world to argue and present opinions on contemporary international humanitarian law issues. The students were grateful for the opportunity to participate in this leading international competition as they learned a lot on the subject of international humanitarian law.

Law Students' Council

The Law Students' Council was re-established as a separate structure in the Law Department and Faculty, independent from student societies, to

ensure that all students are represented, regardless of society membership. The role of the LSC is to represent the student body in the academic structures of the Faculty and to provide an official communication channel between students and the Faculty. Ayanda Mpofo served as the president of the LSC in 2019 and set a standard for the Council for years to come. She was ably assisted by class representatives Bryony Fox, Gift Baloyi, Rafaela Moutzoures, Thandolwenkosi Mpofo, Chevandre Doyle, Manzolwandle Cele, Sarah Salzwedel and Siphelele James, who represented the different year groups.

Student societies: Rhodes University Law Society Report

The Law Society started the 2019 academic year with participation in the societies extravaganza organized by the SRC, a sign-up drive, a meet-and-greet at the sports bar, a CV writing and interview workshop in conjunction with the Careers Centre, and its annual Market Day in the first term. Market Day was well attended by students from all years, who had the opportunity to interact with a number of law firms and organisations. Sponsorship from the Faculty and firms Bowmans and ENS made the day possible.

The society's moot club provided training to members on skills and court etiquette that will stand them in good stead in mock trials and moots. The moot club competition final took place in the third term. Prof Kruger, Mr Jabavu and Mr Bergover presided in the final which was won by Cwenga Gogodla.

The society also embarked on a book drive and library restoration initiative and collected books (fiction and non-fiction) for donation to the Duna Library in Joza.

Student Societies: Black Lawyers Association: Student Chapter

The meet-and-greet of the BLAsc took place on 27 April 2019 and took the form of a picnic on St Peter's lawns. The informal setting provided an ideal opportunity for members of the committee, society members and Faculty staff members to interact. Entertainment was provided by the University's Marimba band and poet Thulani, who inspired the audience with his powerful poems.

The BLAsc organised a successful alternative career talk in May to showcase the different and relatively unknown career pathways an LLB degree could open. The event took the form of presentations by LLB graduates who took the road less travelled. The speakers were Ms Zakeera Docrat (a forensic linguist in the School of Languages), Mr Phumelele Jabavu (a former journalism lecturer and current member of staff in the Law Faculty), and Mr Thoko Sipungu (lecturer in the Sociology department). Ms Masi Buso, a counselling psychologist and Career Advisor in the Rhodes University Career Centre was also invited.

The flagship event for the society took place on 6 September 2019 when the BLAsc hosted former Public Protector, Prof Thuli Madonsela, at its first annual colloquium. Professor Madonsela, together with the two student respondents (Ms Sharon Shambaza (LLB Penultimate) and Mr Mojalefa Motsepe (LLB final year) engaged in a panel discussion on the theme: "Reflections on Political Party Funding". The chair for this event was Mr Thapelo Tselapedi, a lecturer from the Rhodes University Politics Department.

Student Societies: Nthuthuko Legal Activism

The Legal Activism Society faced significant challenges at the beginning of 2019 with a committee of only three members and small budget. But the tide turned and the society managed to recruit members and adopted "Living Constitutionalism" as its mission. To give effect to this, the society adopted the hashtag, #protecttheinnerchild as the society's slogan.

In the first semester, alternative-dispute and conflict-resolution workshops were conducted with the committee members, and this was later rolled out to society members. The society also hosted a water awareness event at the Kaif, to inform students about the current water situation in Makhanda and to provide water water-saving tips.

The society was invited by Rhodes Music Radio on a number of occasions to provide comment and opinion on various legal matters facing the community and the country at large. Among the topics

that were discussed with RMR were the Zondo Commission of Inquiry into State Capture, as well the recent legal developments regarding Makhanda's service delivery situation.

In the second semester, members of the society travelled to Home of Joy, a community home situated in Joza. Here the society was given the opportunity to give some advice to those considering attending university, and how to tackle their final school exams.

Alumni news

The Chancellor of Rhodes University and alumnus of the Faculty, retired President of the Supreme Court of Appeal, Judge Lex Mpati, was appointed by the President of South Africa in October 2018 to head the Judicial Commission of Inquiry into Allegations of Impropriety in the Public Investment Corporation. The PIC, an investment management corporation, manages assets of over R 2 trillion, including government employees' pensions.

The Chair of the Rhodes University Council, Mr Vuyo Kahla, was appointed to assist retired Judge Robert Nugent in the inquiry into tax administration and governance at SARS in May 2019.

In June 2019, Judge Clive Plasket, visiting professor, former staff member and doctoral graduate of the Faculty, was appointed to the bench of the Supreme Court of Appeal by the President of South Africa.

Tuscany Parkin, who obtained her LLB degree with distinction at the April 2019 graduation, was awarded the Cecil Renaud Overseas Scholarship. This scholarship will enable her to pursue LLM studies in the United Kingdom from 2019-2020.

Staff news

Shaun Bergover, clinical legal education lecturer and attorney in the law clinic, obtained his LLM at the University of KwaZulu-Natal in September 2019.

Helen Kruuse was awarded a fellowship to attend training by the National Institute of Teaching Ethics and Professionalism in Melbourne, Australia, 4-6 December 2018.

Helen Kruuse was appointed as one of the United Nations 'Ethics Champions' in their Education for Justice (E4J) programme. As part of her 'championing', she has devised a localised professional ethics module for South African law students together with translations, case studies and a youtube video featuring Wim Trengove SC, a visiting professor to the Faculty.

Prof Helena van Coller was elected to the Board of Directors at the General Assembly of the African Consortium for Law and Religion Studies for a term of 5 years.

Community Engagement

The Law Faculty has launched a new campaign to develop a Community Engagement Strategy that is in line with the Rhodes Institutional Development Plan and the United Nations Sustainable Development Goals. A key focus will be creating new partnerships to strengthen existing relationships with the Makana Municipality. One of the first initiatives is the establishment of "The Living Constitution", a project aimed education learners about core human rights and democratic principles as espoused in our Constitution.

Law Clinic

The Queenstown branch office was closed at the end of 2018 after we were unable to appoint a principal attorney with the funds available. This was a lengthy and arduous logistical process, conducted with a concerted effort to minimise negative impact on staff, clients and paralegals. The office operated successfully for 15 years and played an important role in broadening access to justice.

Ms Sipe Mguga left the Law Clinic to join the Legal Resources Centre (LRC) as an attorney in January 2019. On her departure, Mr Lutho Jolobe (from the LRC) assisted for a few months until he joined the Constitutional Court as a clerk in June 2019. Ms Sizi Yuze commenced working in that position in July 2019. Ms Siya Makunga BA LLB (Rhodes) and Ms Nkuli Mnyani LLB (UWC) joined the Clinic as candidate attorneys in July this year. Several clinic staff received Rhodes University long service awards this year: Ms Zuki Goyana and Ms Jeni Hughes (15 years) and Prof Campbell (25 years).

The Law Clinic is engaged in a number of projects, chief amongst which is the advice office project, involving training and back-up legal services to paralegal advice offices from throughout the Eastern Cape Province. The Clinic also offered a one-week *Land and Housing* course to paralegals in October 2018, and numerous workshops and other courses for paralegals throughout the year.

The Law Clinic community education programme focused on all practical aspects of family law in 2019, via fortnightly Radio Grahamstown talk shows, monthly Grocott's articles, community workshops and pamphlets. In April 2019 Prof Jobst Bodenstein and Mr Terwin de Vos led a Street Law facilitators workshop attended by five Law Clinic practitioners, two Law Faculty teaching assistants, one Law lecturer (Ms Silke Joseph), two LRC candidate attorneys, and two Jabez Centre fieldworkers.

Research

Publications by staff, including visiting professors, and postgraduate students over the past year in national and international publications:

Books/Chapters/Monographs

Book

Van Coller, EH. *Regulating Religion: State Governance of Religious Institutions in South Africa*, (2019) London: Routledge, Taylor & Francis Group.

Book chapters

Campbell, J. (2019). "Decolonising Clinical Legal Education" In: Tshivhase, Mpedi, Reddi (eds) *Decolonisation and Africanisation of Legal Education in South Africa*. Cape Town: Juta Law.

Van Coller, EH. (2019). "Ritual Slaughter and Religious Freedom: The impact on the Flourishing of Religious Communities in South Africa" in M Christian Green (ed) *Law, Religion and Human Flourishing in Africa* 345-362. SUN media, Stellenbosch South Africa.

Van Coller, EH. (2019). "Administrative Law" in L Meintjes-van der Walt (ed) *Introduction to South African Law* 3rd edition (2019) Pearson Education South Africa, Cape Town.

Journal Research Publications

Glover, G. "Remedies, repentance and the doctrine of election in South African contract law" (2018) *Acta Juridica* (forthcoming).

Glover, G. "Tyrannical masters no more? Promissory insurance warranties after *Viking Inshore Fishing (Pty) Ltd v Mutual & Federal Insurance Co Ltd*" (2019) 30 *Stellenbosch Law Review* (forthcoming).

Juma, L. "Wading in troubled waters: Supporting the work of the International Criminal Court (ICC) through domestic institutions in Kenya" (2019) 7 (1) *Groningen Journal of International Law* 46-63.

Kruuse, H and Genty, P. "The state's role in the regulation and provision of legal services in South Africa and the United States: Supporting, nudging or interfering?" (2018) 42 *Fordham International Law Journal* 373.

Kruuse, H and Whiterar-Nel, N. "Legal practitioners' ethics in resource-scarce institutions: A discussion of *PM Mashishi v Mdlala and Others* [2018] 17 BLLR 693 (LC); (2018) 39 ILJ 1607 (LC)" (2019) *Obiter* (forthcoming).

Van Coller, EH. "Administrative Law. 2017" ; *Annual Survey of South African Law* 36-72.

Van Coller, EH and Akinloye, IA. "The State v Twynham: The (Ir) Relevance of further Regulation of Religious Organisations in South Africa" (2019) 30 *Stellenbosch Law Review* 299-313.

Van Coller EH. "Laat die Klokke Lui...! Is die Lui van Klokke 'n Geraasoorlas of Bloot die Billike Uiting van Geloofsoortuigings?" (2018) 15 *LitNet Akademies* 769-787.

Research Papers Presented at Academic/Scientific Conferences

Akinloye, I "Human flourishing, church leadership and legal disputes in Nigerian churches" 7th African Consortium for Law and Religion Studies (ACLARS) conference in Gaborone, Botswana from 19 to 21 May 2019. Mr Akinloye wrote on.

Bergover, S. "Courts Discretion in Relation to costs in Public Interest Litigation." *Public Interest Litigation in Australia - A Comparative Perspective*. La Trobe University, Melbourne, Australia. August 2019.

Glover, G. "Cancellation, repentance and the doctrine of election in South African contract law". *Acta Juridica conference "Private law in a changing*

world” University of Cape Town. October 2018.

Glover, G. “Can you believe a dustbin? some dilemmas with the test for fraudulent misrepresentation”. *Private Law and Social Justice Conference*, Nelson Mandela University, Port Elizabeth. August 2019.

Juma, L. “Transnational character of PMSCs operating in Africa.” *Workshop on Sharing Good Practices between Private Security Regulators in the SADC Region*. PSIRA, Pretoria. June 2019.

Kruuse, H. Panel discussion with Prof Sonnekus and Prof Bonthuys “*W v H 2017 (1) SA 196 (WCC) & ST v CT [2018] ZASCA 73*” *Family Law Teachers’ Colloquium*, Nelson Mandela University, Port Elizabeth. September 2018.

Kruuse, H. “The role of the legal practitioner in South Africa’s transformative constitutional democracy. Reconceptualising the contract of mandate through Ubuntu.” *International Legal Ethics Conference VIII*, University of Melbourne, Melbourne. December 2018.

Kruuse, H. “Acting radically but ethically: Refusing to raise a prescription defence in public and private law matters” *Private Law and Social Justice Conference*. Nelson Mandela University, Port Elizabeth. August 2019.

Rahim, S. “The Realization of the United National Development Goals with in the International Trade Law framework.” *Sweden University Forum (SASUF)*. Stellenbosch University, Stellenbosch. May 2019.

Van Coller, EH. “Church Bells: A Noise Nuisance or the Legitimate Exercise of a Religious Conviction?” *7th ACLARS (African Consortium for Law and Religion Studies) Conference: ‘Law, Religion and the Environment in Africa*, Gaborone, Botswana. May 2019.

Other involvement

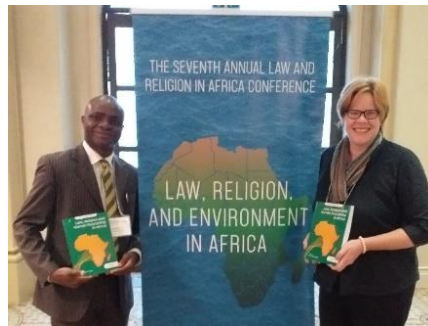
Besides conference participation, staff also engaged in a number of other research and teaching related activities:

Bergover, S attended a seminar about Legal Costs hosted by LEAD. Midrand, February 2019.

Mashinini, N went on a research visit to the University of Missouri, Columbia from 7 to 17 June 2019, where she established new research networks and received doctoral research support.

Mashinini, N accompanied two students to present papers at a SALDA

conference hosted by the University of Venda in July 2019.



Mr Idowu Akinloye and Prof EH van Coller

Faculty events

The Faculty hosted several successful events over the past academic year.

Faculty opening

Constitutional Court Judge Mbuyiseli Madlanga honoured his alma mater with an inspired speech at the Faculty Opening on 22 February 2019. Reflecting on his own experience and prospects for legal practitioners under the Legal Practice Act. Importantly, Judge Madlanga encouraged students to be honest and ethical in their future practice. “A lawyer must never be the source of his client’s lies.”

Visiting lecturers

Visiting professor Nambitha Dambuza JA and visiting fellow Mr Max Boqwana gave riveting public lectures in the Faculty of Law in 2019. In her public lecture, “Customary Law in South Africa – Shunned?”, Visiting Professor Dambuza discussed some of the criticism levelled against the courts in relation to their application of customary law. In doing so, she considered the development of customary law by the courts over the last two and half decades and the impact thereof on South African society.

In Mr Max Boqwana’s public lecture, “Ethics in the Legal Profession?”, he considered how lawyers and auditors have helped facilitate some of this country’s biggest corporate scandals and grand-scale state corruption in recent times. As a result, Mr Boqwana offered some thoughts on how law students should seek to return to the ideals of honour, diligence, fairness and justice in their future practice.

Visiting Professor Clive Plasket delivered a public lecture in October 2018 entitled “Procedural fairness, executive decision-making and the rule of law” and followed this up with another lecture entitled “Planting Seeds for the Future: Dissenting Judgments and the Bridge from the Past to the Present” on 8 October 2019.

The Faculty is pleased to announce that Cachalia JA has accepted the Faculty’s request that he become a visiting professor at the Faculty. His appointment has received Senate approval, while Council approval is awaited. Cachalia JA will bring a wealth of experience to the Faculty, both in the field of practice (as an anti-apartheid activist) and in the field of adjudication (in his positions as judge of the High Court, then the Supreme Court of Appeal, and also as an Acting Justice in the Constitutional Court).

The Law Faculty hosted alumni from Webber Wentzel in the Legal Skills course. Mr Tyron Theesen and Mr Monde Coto spoke to students about multijurisdictional practice and globalisation in the legal environment.

The Law Faculty also hosted colleagues from the University of Fort Hare. Ms Bronwyn Batchelor and Prof van Coller spoke to the Law of Life Partnerships class about issues arising in ante-nuptial contracts.

Conclusion and prospects

The past academic year has been eventful and fruitful. Staff and students benefited from many opportunities to learn and so to make a meaningful contribution to society.

R Krüger

4 October 2019

RHODES UNIVERSITY LAW

SOCIETY REPORT 2019

SIBUSISO NGWILA

CHAIRPERSON

The 2019 academic year has been one which has seen the Rhodes University Law Society, "Law Soc", grow from strength to strength amid various challenges which are typical of a dynamic and constantly changing student culture in our Law Faculty to which Law Soc has to adapt. As my final act as President of Law Soc, I write this report to account for what the society has achieved this year.

Subscription

This year's subscription drive to encourage law students to sign up for the society was very successful. This year saw one of the highest subscriptions of approximately 430 students of these registered to study law. Law Soc participated in the SRC-organised societies extravaganza and sign-ups evening, which was helpful in signing up almost half of our current membership. The remaining half was recruited by means of class visits by our committee members and at the annual Market Day.

Events

Our first task when we assumed our positions as the 2018/2019 committee at the end of last year was to organise the Law Faculty's annual Market Day, which took place on Friday 1st March 2019. Much like previous years, the organisation of Market Day was a challenging exercise which occupied most of our first few months in office. Despite all of the challenges that were part of planning the event, I am pleased to report that this year's Market Day was a resounding success.

One of the key roles of all members of the committee is to ensure that they build solid connections with contacts from various firms, businesses and institutions in order to convince them to come to our Market Day each year and to consider our students for employment. This year, the committee did just that, and we had a

good number of prospective employers come to Grahamstown to present themselves and the opportunities they can offer to our students. I am grateful to every firm that came and interacted with the students. In particular, I would like to extend my appreciation to ENS Africa and Bowmans, who sponsored the event and contributed towards making the event a success.

In the second term, we hosted our annual "Meet and Greet" at the Rhodes Sports Bar. This was a success and was well attended by students across all years of study in law. Our aim for this event is for law students to come together in a social setting and get to build connections with students they would not otherwise have met in order to foster an environment which is conducive to building good friendships amongst law students which transcend the university space.

Our Moot Club, headed by our Moot Club Chair, Tshwanelo Mabelane, has proven to be an important initiative which adds to the value of a Law Soc membership. Sessions have been run for most Saturdays of the academic year which culminated in a Law Soc Moot Club Competition which ran in the second semester. I would like to commend Tshwanelo for running the Moot Club so efficiently this year.

I would also like to thank our Public Relations Officer, Kristy Bassingthwaite, for spearheading our annual hoodie initiative. Thanks to Kristy's efforts, we have had one of the most successful years in terms of hoodie organisation as we were able to roll the final products out at the start of third term.

I would also like to thank ENS Africa for their generous subsidy that helped us to keep the hoodie prices low and affordable for our students. At the start of fourth term, ENS Africa was also

gracious enough to sponsor our Annual General Meeting (AGM) at Saints Bistro. It is at this event that the new committee for 2020 was elected. I would like to thank not only ENS for their sponsorship, but all those who attended to cast their votes and partook in the democratic process.

The final major function for the year was the annual Law Ball, which was kindly sponsored by the Professional Provident Society (PPS). The Ball took place at the Wyvern at Kingswood College. This was a fantastic way to thank everyone for their contributions to the faculty, bid farewell to leaving students and staff, and celebrate the end of a very successful year.

As always, the Society also made sure that our members went into their exams with a little pick-me-up, this year in the form of cappuccino vouchers from Handmade Coffees.

Community engagement

Community engagement is always important, and when the year flies by as quickly as it inevitably does, it is very easy to let this become an afterthought. I am, however, proud to report that the Rhodes Law Society has once again stepped up to the plate, despite our extensive mandate. I am thankful to Ashley Bristow, the Social Awareness Officer, for overseeing our Book Drive initiative, and coordinating for the books' delivery to Duna Library in the Joza location.

Thank you and farewells

All in all, this has been an extremely busy year, but one that has turned out very successfully. It might not have done so, however, if not for the efforts of those who have worked tirelessly to keep the ship afloat and on course. First, I would like to thank Jeremy de Beer, the Vice-President of the Law Society for 2019. I am not sure how I would have led the

society without your guidance and patience. My gratitude to you knows no bounds. I would also like to thank Ayanda Dube, the Treasurer, for managing our finances with such dedication and always making sure that the society makes sound decisions in terms of running our events. Keanen-Troy Johnson has been a stellar Secretary who have assisted greatly in ensuring the smooth running of the Society. Your efforts have not gone unseen. Thanks must also go to Tshwanelo Mabelane, for your successful running of the Moot Club this year.

Clarize Coertze and Gisele Mans must be commended for their hard work this year in ensuring the successful publication of *In Camera*, I know personally how challenging this job can be and I cannot appreciate your efforts more. I would also like to thank Ashley Bristow for running our social awareness project successfully this year. To Kristy Bassingthwaite, the guardian of the Law Soc Brand, thank you for being so unbelievably efficient at anything and everything you set your mind to. Our online presence could not have been more stable.

From my side, I can say that both the Society and me are extremely lucky to have worked with such a phenomenal group of people.

Final thanks must also be made to the Law Society's mentor, Adv Renaud, for his cool guidance in times of stress.

BLACK LAWYERS ASSOCIATION

STUDENT CHAPTER REPORT 2019

MANQOBA N GASA

CHAIRPERSON

Meet And Greet: *Garden Picnic Party*

On 27 April 2018, the BLAsc organised a meet and greet. We chose to switch things up and move away from the conventional annual Champagne Breakfast. This year we chose to make the event a Picnic Garden Party Meet and Greet which was more interactive, and less formal. We wanted it to be a platform for the members to interact with the committee as well as the faculty staff. This event was a semi-formal event where the BLAsc members were entertained and addressed by the committee at large.

The branch leadership further took this event as an opportunity to introduce its leadership formally to the newly signed up members and particularly the first-year entering students who were not part of the AGM of the previous year where the current leadership was elected. The members were entertained by the University's Marimba band and poetry by Thulani, an amazing wordsmith who encourages student with his powerful poems. The event was also open to non-members for a fee of R25.00. Among the guests we were graced by a few of the members of the Faculty of Law: Prof. Rosaan Krüger (Dean of the faculty), Ms. Nomalanga Mashinini (lecturer), and Mr Phumele Jabavu (Lecturer)

Among the guests we were graced by a few of the members of the Faculty of Law: Prof. Rosaan Krüger (Dean of the faculty), Ms. Nomalanga Mashinini (lecturer), and Mr Phumele Jabavu (Lecturer)

As the branch's leadership we were happy with the number of people who attended. We were happy the event was a success and that it was well-received. The turnout gave foresight into the attendance we could expect in the future events we intended to host.

Alternative Careers Talk: *Breaking The Mould*

On 16th of May 2019, we hosted our second big event. This event was a Career Talk titled *Breaking The Mould*. As the leadership, we deemed it necessary for this event to take place because a lot of focus has been placed on completing pupillage or articles after obtaining an LLB degree, but little knowledge exist regarding the alternative career paths one may take using the LLB, is known. This event was aimed at educating students about the flexibility of the LLB degree.

Hence, the aim of the Alternative Careers Forum, *Breaking the Mould*, was to

create awareness about the various fields in which an LLB degree can apply. *Breaking the Mould* was aimed at exposing people to the fact that the ordinary legal practice route is not for everyone and that there are many employment options available to LLB graduates. The event was a great success. As the leadership, we could see that this was an event that was valuable, especially for the students in the final-year LLB.

The speakers we had were individuals who did not use their LLB degrees in a "conventional way". The guest list composed of the following people: Ms Zakeera Docrat (a forensic linguist in the School of Languages), Mr Phumelele Jabavu (a former journalism lecturer & a lecturer in the Faculty of Law), and Mr Thoko Sipungu (a lecturer at the Sociology department). We also heard from Ms Masi Buso, a counselling psychologist and career advisor in the Rhodes University Career Centre.

Conversations with Prof Thuli Madonsela and two student respondents

On 6 September 2019, the BLACsc hosted former public protector, Prof Thuli

Madonsela to its first annual colloquium entitled “*Conversations with Prof Thuli Madonsela and two student respondents*”. Professor Madonsela, together with the two student respondents (Ms Sharon Shambaza (LLB penultimate) and Mr Mojalefa Motsepe (LLB final year) engaged in a panel discussion on the theme: “Reflections on Political Party Funding”. The chair was Mr Thapelo Tselapedi, a lecturer from the Rhodes University Politics Department.

The conversation was informative and raised awareness on how the general public should engage with law and

public should engage with law and policies that affect their daily lives. Moreover, this event furthered the values and ethos of the Black Lawyers Association, which are democracy, rule of law, transparency and freedom. We are indebted to the Professor Madonsela for gracing us with her presence, her fellow panellists, the chair, the Faculty of Law for the unwavering support, and to our loyal members for attending.

Community Engagement Initiative

We partnered with the Community Engagement office to have a CV session for the matric pupils and other FET's

(grade 7-11). The event took place in the Oppidan Dining Hall when the schools came to Rhodes University as part of the Community Engagement yearly activity. We engaged them about how CVs are drafted, how to apply for university. The event was a success, and we planning on carrying it in the future, but with a bit of independence and a bigger magnitude.

AGM

We held our Annual General Meeting on 4 October 2019. We elected a new committee for the 2020 year. Well deserving, energetic and purpose-driven candidates were elected.

NTUTHUKO LEGAL ACTIVISM REPORT 2019

DAVE JACKSON

CHAIRPERSON

Our overall mission for 2019 was “Living Constitutionalism”. This was a community engagement project initiated by the Rhodes University Law Faculty. The faculty had entrusted our society with running the project this year. In response to the project, our society adopted the hashtag, #protecttheinnerchild, as the society's slogan. We got the inspiration for this hashtag from a meeting with lecturer Ms Brahm Padayachi, who gave the committee members valuable insight and direction as to our vision for the year.

Our society drove two major projects for the year 2019. In the first semester, we held alternative-dispute and conflict-resolution workshops with the committee members. This related to the theme of safe working and learning environments, as well as bodily integrity rights as guaranteed by our Constitution. The society was planning an anti-bullying workshop, which would be delivered to a local school. This fell in line with our project for the year. We had anticipated that we would travel to a local schools in about mid-May. The society hosted a water awareness event at the Kaif, where provided information on the current water situation in Makhanda. A

cup of fresh water was given to passers-by, while we provided water saving tips.

A number of conflict resolution workshops were set up by the society, attended by society members. This was in preparation for a workshop we would be delivering at a local school. These workshops involved society members sitting down and discussing the issues around conflicts in the workspace and in communities, and the adverse effects that conflict would have. Various-dispute resolution techniques were discussed. Attendees were invited to participate in a role-playing scenario, where they could work with some of the techniques that they had been shown. The aim of these workshops was to prepare the society for a conflict resolution demonstration at a local school.

The society was invited to Rhodes Music Radio on a number of occasions to provide comment and opinion on various legal matters facing the community and and the country at large. Among the topics that we discussed with RMR were the Zondo Commission of Inquiry into State Capture, as well the recent legal

developments relating to Makhanda's service delivery situation.

Our project for second semester was environmental awareness, which had the aim of providing insight into citizens' rights to a safe and clean environment. We travelled to Home of Joy, a community home situated in Joza. Here the society was given the opportunity to give some advice to the youth who were considering attending university and about to tackle their final exams. Some wisdom was imparted on the youth, who had major decisions to make for their future. The final project hosted by our society was a school painting day we spent at Nokwandile Day Care Centre. Here the society member got the chance to paint the centre and get creative with the colours of the playground.

The 2019 year was a challenging year, and the society faced many obstacles. It is my pleasure to report that our society, led by a fantastic committee, overcame these challenges and ultimately achieved success in achieving our goals.

EXTERNAL MOOT COMPETITIONS

INTERNATIONAL CRIMINAL COURT MOOT COMPETITION

by Bryony Fox

From the 2nd to the 8th of June 2019 five Final Year LLB students - Daniel Coetzer, Ayanda Mpofu, Bryony Fox, Clarize Coertze, and Erika Heaton - represented the Rhodes Law Faculty at the 2019 International Criminal Court (ICC) Moot Court Competition.

Held at the Hauge in The Netherlands, the ICC Moot Competition is a large-scale international moot court simulation of the proceedings in the ICC. The team participated in 6 oral rounds, in which we delivered arguments for the Office of the Prosecutor, the Defence, and Government Council acting as Amicus Curiae. The oral arguments were based on the three Written Memorials submitted in April which responded to the fictional situation in the Country of Bravos, where chemical weapons had been used by a foreign country in their territory as a “humanitarian intervention”. The focus of the discussion was on the newly defined crime of aggression, as well as procedural issues such as the use of illegally obtained evidence from domestic authorities in ICC proceedings.

During the week, the team also attended educational lectures on the “ICC in Africa” as well as the “Future of the Ad Hoc Tribunal”. Both discussions providing thought-provoking perspectives on the future of international criminal law. There were also several opportunities to socialise with the 80 different teams participating, and we made invaluable connections with law students from Brazil, Russia, Australia, Iran, Germany, Hong Kong and Georgia, to name a few. While the team did not make it to the Semi-Finals, we did receive constructive feedback from the judging panels, who commented positively on our confidence, legal knowledge and rebuttal skills. The final round of the competition was held in the ICC itself. We were afforded a rare opportunity to sit in the gallery of the court room, and to watch the proceedings occur as they would for an actual trial. The final round was heard by current Judge of the ICC, Geoffrey A Henderson, whom we got to interact with personally after the trial.

The experience was incredibly valuable and we are grateful to have been afforded the opportunity to participate in this event. We would like to extend our gratitude to the Law Faculty and its staff as well as the library staff for their support and assistance in making it possible for us compete. And a special thank you to Juta for their financial contribution.



JOHN H. JACKSON MOOT COURT COMPETITION

by Jeremy de Beer

In April this year, final year students Stuart Bentley, Jeremy de Beer, Rhulani Matsimbi and Ryan Birkner attended the African Regional Round of the John H Jackson international trade law moot (previously called the ELSA moot) in Nairobi, Kenya. The moot problem concerned a dispute about a rare metal that could be used as a source of renewable energy, and implicated various World Trade Organization (WTO) principles and agreements. Ryan took on the role of team co-ordinator and researcher, and the speaking time was allocated between the other 3 group members, who were each required to address a specific aspect of the question. Stuart dealt with the most favoured nation and national treatment principles; two cornerstones of WTO law. Jeremy dealt with the exceptions and customs unions under the General Agreement on Trade and Tariffs (GATT), and Rhulani dealt with the issue of prohibited subsidies under the Agreement on Subsidies and Countervailing Measures.

The competition entailed submitting detailed heads of argument and two oral rounds. In the first round, the Rhodes team acted for the respondent state, and for the complainant state in the second round. Each round was judged by three panelists, each of whom was an international trade law expert. Our team was fortunate enough to be judged by the head delegate from the WTO itself, Tamal Mandal, who offered many insights and congratulated us on an exemplary performance. The competition was a chance for Rhodes to show its strengths on an international playing field and in an extremely technical area of law, against fierce competition from other African universities. The complexity of the problem was unlike any other external moot that Rhodes has ever participated in, and required extensive research and unwavering commitment from everyone involved.

Although the Rhodes team did not progress to the final round in Geneva, we are proud to have made a lasting impression and formed many connections with both delegates and participants, and ultimately left the competition having showcased once again that a small-town university can compete against much bigger universities, many of whom sent Masters students specialising in international trade law. Lastly, the team would like to extend a special thanks to our coach, Adv. Shuaib Rahim, whose guidance and assistance was invaluable.



JEAN-PICTET INTERNATIONAL HUMANITARIAN LAW COMPETITION

by Andile Msane

The Jean-Pictet International Humanitarian Law Competition is one of the most prestigious International Law competitions. The teams from all over the world participate in simulations and role plays built around a fictitious armed conflict. Teams play the role of legal advisors of States and paramilitary armed groups; diplomats; delegates of the International Committee of the Red Cross etc.

With the motto of “Taking the Law Out of the Books”, the Jean-Pictet Competition aims to equip students with practical skills and knowledge of the principles and values of IHL. This competition is *sui generis* in that, unlike other law competitions based on simulations and role play, there are no memorials or head of arguments to be submitted, and perhaps the biggest difference is that there are no prepared arguments before hand. The scenarios are ever changing and the legal situation on which it is based, are constantly developing. This competition tests the participants knowledge on IHL and the ability to think on their feet and adapt as the situations change. Every year the competition receives support from many donors, including: The International Committee of the Red Cross (Geneva); the Jean-Pictet Fund (Geneva); the Federal Department of Foreign Affairs (FDFA) of Switzerland (Bern) and others.

During the competition the team, along with the authoritative International Jury, was involved in the discussion on emerging issues of the IHL as well as other branches of Public International Law. Issues discussed during the Competition included: Legality of Autonomous Weapons under the IHL; Means and Methods of Warfare; The International Criminal Responsibility of Child Soldiers; Terrorism; and Forced Displacement. The competition started with a text from the decision by the Appeal Court of Payenha, a fictitious country, regarding the extradition of King Zmaruli, the former Head of State of the neighbouring country, named Tekker in the Fertiwan Region. The Supreme Court of Payenha confirmed that King Zmaruli was not to be extradited. This led to troubles and a civil war in Tekker, and the invasion of the latter by Cēthun. The situation in Fertiwan was evolving every day as the tensions between the neighbouring countries intensified. There was naval warfare in the form of an international armed conflict. There was a field test taking place outside the building where we were playing the role of representatives from the ICRC and two Red Cross-National Societies. The situation kept getting more dire as the days went by and we had to adapt quickly to the changing circumstances and the ever-changing roles we had to play in the simulation. Each day the teams received updates and were required to assume different roles of role players in IHL and were required to demonstrate their skills on the applicable law and also to be able to give legal advice to various stakeholders regarding the acceptable standards in carrying out war.

We would like to extend our gratitude to the law faculty for their support, and a special thank you to the Pretoria delegation of the International Committee of the Red Cross for sponsoring our team.

AFRICAN HUMAN RIGHTS MOOT COMPETITION

by Jethro Weeks

The African Human Rights Moot Competition was an indaba of law students from all corners of Africa. This annual event brings together law faculties in Africa, and provides students with the opportunity to argue a hypothetical human rights case as if they were before the African Court on Human and Peoples’ Rights. Participants were given a hypothetical case that brought attention to several human rights issues that are particularly pertinent to the African context. These included issues concerning enforced disappearances, refugee rights, LGBTQ rights, and children’s rights. The hypothetical case emphasized the role of the African Court on Human and Peoples’ Rights in resolving such disputes where a state is accused of infringing these rights.

Participants were required to argue as both applicant and respondent, which made it a necessity to assess the arguments from both sides of the fence. Judges gave us feedback after each round, which assisted us in learning from our mistakes and in refining our arguments. We learnt a great deal from the opportunity to practice our oratory skills and the art of persuasive speech. The competition was also an opportunity to meet like-minded people from across Africa, and it offered us a taste of life and culture in Botswana. Overall the experience was invaluable, and one that will leave us with a lasting impression and a positive outlook on the future of human rights law in Africa.

We would like to extend our gratitude to the law faculty for their support and especially Mr Mzolo, who accompanied us to the competition.



OBERNAI
FRANCE



GABORONE
BOTSWANA

BREAKING THE LANGUAGE BARRIER IN LEGAL EDUCATION: A METHOD FOR AFRICANISING LEGAL

Thokozani Dladla

Final Year LLB student

Section 6(1) of the Constitution recognises eleven official languages – a move from the previous discriminatory regime of the recognition of only English and Afrikaans as official languages. Section 6(2) in turn imposes positive obligations on the state to take practical and positive measures to elevate the status and advance the use of historically diminished languages.

This paper argues that the state has failed to take the adequate measures envisaged in s 6(2) in the context of legal education. The argument is based on the fact that there has not been any inclusion of indigenous languages as compulsory courses as part of the transformational measures of legal education, particularly in the Bachelor of Laws (LLB) curriculum.

Historical background

The South Africa Act¹ recognised English and Dutch as the official languages of the country. The definition of Dutch was extended to include Afrikaans in the Union Act.² In 1927, the recognition of Dutch fell away, and Afrikaans and English were recognised as the only official languages. This position remained in place throughout the apartheid era.³

The English and Afrikaans language requirements were legislated for attorneys and advocates in the Attorneys

Act of 1979⁴ and the Admission of Advocates Act of 1979.⁵ These statutes, in conforming to the official languages at the time of enactment, prescribed that English and Afrikaans – in addition to Latin – at university level were requirements for admission to the Side Bar and Bar (as they were referred to at the time).

In the Admission of Advocates Amendment Act of 1994⁶ the Latin requirement was removed. However the English and Afrikaans requirements remained unchanged. At the outset, cognisance must be taken of the dates when these Act were enacted, namely 1979 and 1994. Both dates are of significant. The year 1979 represents the Apartheid legislative position, reflecting the official languages at the time, namely English and Afrikaans. Then 1994 is the year in which the Interim Constitution had come into force.

I believe that the legislature missed a golden opportunity in 1994 when it failed to include African language requirement in the Amendment Act of 1994 based on section 3 of the Interim Constitution.⁷ If the legislature had amended the Admission of Advocates Act to require prospective advocates to be competent in at least one African language in order to be admitted, this decision would have



been easily justified by section 3(2) of the Interim Constitution which required the state to elevate the status of historically diminished languages – African languages.

The current legal position

The language requirements for one to be admitted to the legal profession have not changed despite the onset of democracy.⁸ One would reasonably believe that the Legal Practice Act,⁹ which has repealed both the Attorneys' Act and the Admission of Advocates Act in part, would have included a substantive language requirement for aspirant legal practitioners; for example, a requirement that prospective legal practitioners be competent in at least one African language in order to be admitted.¹⁰ The Act includes no such provision.

However, without being too optimistic, I believe that such a move could contribute to the transformation of legal education. In one way or another, the LLB curriculum should be changed to include African languages as part of its curriculum, with an ultimate goal of teaching LLB curriculum in an African language. The LLB curriculum as it is, perpetuates a form of unfair discrimination based on a listed ground,¹¹ namely language,

¹ Act of 1909.

² Act 8 of 1925.

³ Section 89(1) of the Constitution Act 110 of 1983 entrenched the position of English and Afrikaans as official languages. This Act was later repealed by the Interim Constitution of the Republic of South Africa, 1993.

⁴ Act 53 of 1979.

⁵ Act 74 of 1979.

⁶ Act 55 of 1994.

⁷ This is now section 6 of the Final Constitution of the Republic of South Africa, 1996.

⁸ With regard to the Attorneys Amendment Act of 1993, particularly; sections 2 to 24 which is concerned with the qualifications, admissions and removal from the roll. It is apparent from these provisions that being competent at least one African language is not a requirement for admission to the roll.

⁹ Act 28 of 2014.

¹⁰ S 3(a) of the Legal Practice Act 28 of 2014, which sets out the transformation process as well as the constitutional framework which the Legal Practice Act seeks to embrace, says

nothing about linguistic requirements as part of the transformational goals.

¹¹ s 9(3) of the Constitution of the Republic of South Africa, 1996. Section 9 of the Constitution reads as follows;

...

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

towards LLB students who might find it in their best interest to be taught in an African language as in light of in s 29(2) of the Constitution.

It therefore makes sense to conclude that if students find it to be in their best interest to be taught in one of the official African languages, and it is reasonably practical to do so,¹² and the institutions of Higher Education and Training passes a policy that goes against their right,¹³ such government action contradicts the Constitution and the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).¹⁴

The above reasoning was found to be correct in the *University of the Free State (UFS) v Afriforum*.¹⁵ The legal dispute in this case concerned a decision by the University of the Free State to adopt a new language policy, which replaced Afrikaans and English as parallel mediums of instruction with English as the primary medium. Afriforum argued that the new language policy, which prefers English over Afrikaans, would erode the position of Afrikaans as a language of instruction, and its constitutionally protected status as an official language.¹⁶

The respondent argued further that the UFS policy violated s 29(2) of the Constitution, which affords the right to education in a language of choice where this is reasonably practicable. Using the *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo*¹⁷ judgment, the respondent argued that UFS did not use the appropriate assessment to determine whether the attainment of the right to receive an education in a language of choice was reasonably practicable.¹⁸

The court ruled in Afriforum's favour. In its judgement it held that the legal standard to determine the language of teaching and learning in the context of s 29(2) of

the Constitution is reasonableness, which of necessity involves a consideration of constitutional norms, including equity, redress, desegregation and non-racialism.¹⁹ In a nutshell, the court held that what is required of a decision-maker, when there is a change in circumstances, is to demonstrate that it has good reason to change the policy. In other words, it must act rationally and not arbitrarily.

In my opinion the same reasoning advanced by the court in *Afriforum* can succeed if used to argue that the LLB curriculum, as it stands, unfairly discriminates and undermines the Constitution, particularly s 6(2) of the Constitution. In the same breath, I want to make it clear that I am not arguing that English should be done away with as a language of teaching and learning. The argument is not about English - it is about elevating the status of the African languages to assume their rightful place alongside English in the legal system, especially in legal education.

The benefits of equipping law students with African languages are highlighted below with the use of South African case law.

In *S v Matomela*,²⁰ the court *a quo* heard the entire case in isiXhosa. On automatic review Tshabalala J, as he was then, enquired from the Magistrate who presided over the trial as follows:

*"Why was the evidence, conviction and sentence in the Xhosa language? Is this in terms of an instruction from the Department of Justice? Full reasons are required."*²¹

The Senior Magistrate's response to the query was

"The fact that the evidence was recorded in Xhosa, is not in terms of an instruction from the Department of Justice, but due to the following reasons:

(b) practicability; and (c) the need to redress the results of past racially discriminatory laws and practices.

¹² *Ibid.*

¹⁴ Section 1, definition of "prohibited ground includes language" of Act 4 of 2000.

¹⁵ (1027/2016) [2017] ZASCA 32 (28 March 2017).

¹⁶ Para 2.

¹⁷ [2009] ZACC 40; 2010 (2) SA 415 (CC).

¹⁸ Para 52.

¹⁹ *Afriforum* para 26.

²⁰ *S v Matomela* 1998 (3) BCLR (CK).

²¹ At 340.

*(a) On the day that this matter came before Court, we had a shortage of interpreters. The matter would of necessity have to be postponed because of this. This would have caused the complainant in the matter further hardship."*²²

According to the Senior Magistrate's reasons, the fact that isiXhosa was one of the eleven official languages and the judgment thus complied with section 6(1), (2) & (4) of the Constitution.²³ Tshabalala J found the Senior Magistrate's reasons to be fair and reasonable in the circumstances.²⁴ Although he did not expressly make this point in the judgment, it appears that Tshabalala J would support the idea that Legal Practice Act should be amended so as to require legal professionals to undergo vocation-specific language training,²⁵ or deal with the root of the problem by developing the LLB curriculum to include at least one African language as a compulsory course, as a build up to the ultimate goal of providing an option to offer the entire LLB curriculum in a historically diminished language.

Hence, it is proposed that each law school should choose an African language that is predominantly spoken in their geographical area and partner with schools of languages to translate sources of law to that African language.²⁶ For English first-language speakers, this arrangement will strengthen their understanding of the sociological context in which the law operates. For African first-language speakers, this will assist them in understanding legal concepts better. For these propositions to be realized, a buy in from both the legal system, universities, the executive and the legislature is needed. The Department of Higher Education and Training may have to amend its language policy. It is unfortunate that the 2017 Revised Language Policy for Higher Education is too broad in that it does not

¹² s 29(2) of the Constitution, which reads; (2) **Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account—** (a) equity;

²² At 341 -342.

²³ At 692.

²⁴ At 341.

²⁵ At 342.

²⁶ In Z Docrat *The role of African Languages in the South African Legal System* (MA, Rhodes University, 2017) (Interview Appendix D, 2017) asked which African languages legal practitioners would have to learn given that there are nine? In this paper, particularly the paragraph referenced here I provide an answer to the former Judge President Mpati question.

address the linguistic transformation in areas such as legal education.²⁷ As such, the state continues to fail tertiary students by continuing to promote and develop English at the expense of African languages.

The case of *Mthethwa v De Bruy*²⁸ illustrates the benefits of having all legal practitioners and judicial officers competent in an African language that is dominant in the geographical area they serve. The facts of *Mthethwa* can be briefly set out as follows: an isiZulu-speaking accused was charged with theft of a motor vehicle in Vryheid. The accused applied through his attorney for his trial to be conducted in isiZulu, his home language as well as one of the official languages, as per section 6(1) of the Constitution.²⁹ The application was dismissed, and it was ordered that the case be heard in English and/or Afrikaans, the official languages of record at that time. On review the applicant argued that the failure to be tried in an official language of his choice, isiZulu, was both unlawful and unconstitutional.³⁰ The accused argued further that an order be granted for him to be tried in a language of his choice, namely isiZulu.³¹

Although *Mthethwa* judgment does not explicitly state the reason for dismissing the application, Docrat opines that this may have been because the court thought that there were no presiding officers who were competent in IsiZulu to

the case in IsiZulu.³² But such challenges may be easily be dealt with if LLB students may only graduate after being certified as fully hear competent in at least one African language.

If so, a substantial number of graduates will eventually be admitted to practice and they will be able to conduct cases in African languages. In the long run, the same practitioners will be appointed as members of the Judiciary and they will be able to hear cases conducted in African languages. So, there are clear short- and long-term benefits for making African languages compulsory in the LLB curriculum.

The case of *S v Damoyi*³³ was heard by way of an automatic review in terms of section 302(1)(a) of the Criminal Procedure Act.³⁴ The facts of the case are similar to these in *Matomela* discussed above. In this case too, the proceedings were recorded in isiXhosa.³⁵ The magistrate detailed the reasons why the record appeared in isiXhosa. The Magistrate's reasoning draws a bright picture of the linguistically diverse and effective South African legal system that we aspire to, that is, hearing cases without undue delay, ensuring a fair trial to the accused and the state, and having prosecutors and magistrates proficient in an African language regularly used where they practice and preside. This arrangement does not favour any particular linguistic community in South

Africa. Instead, it gives effect to section 6 of the Constitution.³⁶

CONCLUSION

Despite the transition from the Apartheid regime to democracy, the legal framework still perpetuates Apartheid-era thinking to a large extent. This is because of the lack of linguistic transformation in South African legal education. What is needed includes, but not limited to, amending legislative and policy frameworks, as well as the curriculum, to include African languages.

Ultimately, what is required is for universities to ensure that only linguistically competent students graduate with LLB degrees. The central recommendation made in this paper is not new. In March 2017, Dr Mathole Motshekga raised a similar proposal in the Parliamentary Oversight Committee for Justice and Correctional Services. He proposed that all LLB students first pass one of the indigenous languages before being awarded a law degree. He succinctly said:

*"Law is not just mastery of rules, it has to do with people. If you don't understand society and how it functions, then how do we extend rights to people?"*³⁷

²⁷ The Department of Higher Education and Training "The Revised Language Policy for Higher Education (2017)" <http://www.dhet.gov.za/Policy%20and%20Development%20Support/Government%20Notice%20Revised%20Language%20Policy%20for%20Higher%20Education.pdf>. Accessed: 10 July 2019.

²⁸ 1998 (3) BCLR 336 (N).

²⁹ At 336 – 337.

³⁰ At 337.

³¹ At 338.

³² See Docrat *The Role of African Languages in The South African Legal System*. In the *Mthethwa* case, the judge gave a clear picture of the linguistic make-up of the judiciary in the Natal Division of the High Court. In 1998, when the judgment was rendered, there was only one judge of the twenty-two in the division who was able to speak isiZulu, the language in

which the complainant wanted to have his trial conducted.

³³ 2004 (1) SACR 121 (C).

³⁴ Act 51 of 1977.

³⁵ *S v Damoyi* at 123.

³⁶ *S v Damoyi* at 123.

³⁷ B. Ndenze "No law degree without fluency in indigenous language proposed" *The Herald* at 4.

SOUTH AFRICA'S WHITE PAPER ON INTERNATIONAL MIGRATION: A REGRESSION IN POLICY

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Various regional conflicts and economic crises have caused a large influx of refugee migration to South Africa in search of greener pastures.¹ This has burdened the system and made it difficult to discern which seekers are legitimate and which are not, leading to a large number of deportations in recent years.² In response to this, the 2017 *White Paper on International Migration* was published with the aim of introducing changes regarding refugee management in South Africa. This essay will discuss whether or not these changes conform to the standards in the international instruments to which South Africa is a signatory. Further, it will consider whether the changes address the disputes in domestic courts, and whether the changes proposed in the *White Paper* must improve refugee protection in South Africa.

Change of residence status by refugees

Due to the fact that refugees can only have one residence status at a time, South Africa provides refugee status on a temporary basis,³ which will be reviewed at various stages should the refugee's stay become prolonged.⁴ In addition to this, the *White Paper* intends to phase out the Permanent Residence Permit (PRP) and replace it with a long-term residence permit, which has the same weighting as a refugee permit thereby allowing the person

with refugee status to assimilate.⁵ However, this change wants to de-link permanent residency from refugee status and also de-link this from allowing a refugee to naturalise.⁶

Article 34 of the United Nations Convention relating to Refugees (The Refugee Convention) obliges the host State to do everything in their power to facilitate the assimilation process for refugees in their country.⁷ Furthermore, the host State is obliged to accelerate the process of naturalization and make it as cheap as possible.⁸ It is submitted that the proposal in the *White Paper* is in direct contravention of this because by de-linking the permanent residency from the naturalization process, South Africa is adding another bureaucratic process which will delay the assimilation of the refugee into South Africa, while increasing costs.

Removal of the automatic right to work and study for asylum seekers

The proposed change states that while the refugee is awaiting the outcome of their status, their basic needs will be catered for by an individual or an organization which has taken the responsibility of doing so, but the refugee will not be allowed to provide for themselves.⁹ If the refugee is able to provide for their basic needs



without partaking in wage earning activity, they will be allowed to do so.¹⁰ Furthermore, asylum seekers will not automatically be allowed to work or study until their refugee status has been confirmed.¹¹ The effect of this is that the refugee is completely dependent on the person or organization which is effectively sponsoring them, such that they will be destitute should they withdraw their support before the refugee's status has been confirmed.¹²

This is in contravention of The Refugee Convention, which obliges a signatory State to treat refugees in the same manner that they do citizens, with regard to allowing them to participate in wage-earning activities.¹³ The right of a refugee to work was confirmed in *Minister of Home Affairs v Watchenuka*,¹⁴ where it was held that there was no reason for there to be a prohibition on a refugee's right to work,¹⁵ this would be especially because the prohibition was an affront to their right to dignity.¹⁶ Additionally, *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* held that asylum seekers are allowed to be employed and conduct businesses in this country.¹⁷ Therefore, in terms of the current regulations under the Refugees Act,¹⁸ refugees are allowed seek employment, in accordance with section

¹ White Paper on International Migration, 2017 at 5.

² White paper at 29.

³ OAU Refugee Convention, 1971, Article II para 5.

⁴ White Paper at 61.

⁵ *Ibid.*

⁶ White Paper, at 62.

⁷ United Nations Convention on Refugees, 1967 Article 34.

⁸ UN Convention on Refugees, Article 34.

⁹ White Paper at 61.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² J de Jager "The Right of Asylum Seekers and Refugees in South Africa to Self-Employment: A Comment on Somali Association of South Africa

v Limpopo Department of Economic Development, Environment and Tourism" (2015) 31 SAJHR 401 at 409.

¹³ UN Convention on Refugees, Art 17(1).

¹⁴ [2002] JOL 10388 (C).

¹⁵ [2002] JOL 10388 (C) at 18.

¹⁶ [2002] JOL 10388 (C) at 19.

¹⁷ 2015 (1) SA 151 (SCA) para 46.

¹⁸ Act 130 of 1998.

22 of the Constitution.¹⁹ The changes proposed by the White Paper would not only contravene the international instruments to which South Africa is a signatory, but also infringe on the Constitutional rights of the refugees who are meant to be treated equally as the citizens of the country.

In addition to restricting the right of the refugee to work, the *White Paper* also aims to prohibit the rights of refugees to study. The Refugee Convention binds signatory countries to allow refugees to have access to basic education,²⁰ and they must afford due recognition to foreign certificates and diplomas.²¹ It was held in *Watchenuka* that refugees had the right to education in South Africa,²² which is consistent with The Refugee Convention as well as the South African Refugees Act.²³ By prohibiting the right of the refugees to work and study while they await their status determination, the *White Paper* is infringing on the Constitutional right to education and to freely choose their trade or occupation.²⁴

Admission of asylum seekers and refugees

The *White Paper* proposes the introduction of Asylum Processing Centres (APC) to remedy the current regime under the

Refugee Act, whose inclusive approach has allowed a large number of asylum seekers into South Africa, causing a threat to national security.²⁵ The Centres will be used to capture information about the refugee and accommodate them during this process.²⁶ During this time, only the refugees who are deemed "low risk" will be allowed to enter or leave the processing centres under specified conditions, which could include an assurance from a sponsor that their basic needs will be provided for should they be released from the centres.²⁷

These processing centres are both an improvement and a regression for the management of refugees in South Africa. This is an improvement because the Centres will introduce efficiency into processing asylum seekers, which remedies the mischief identified in *Kiliko*,²⁸ where the Department of Home Affairs was only processing 20 asylum seekers per day, resulting in people queuing overnight and in some cases never gaining access to the office.²⁹ This was held to be inconsistent with the Constitutional rights to dignity and freedom and security of the persons who were seeking permits.³⁰ Thus the advent of the Centres will hopefully create an efficient process.

However, the fact that the Centres only allow the refugees to leave the centres if they meet certain conditions is in contravention of right freedom of movement afforded by the South African Constitution.³¹ It also contravenes the UN Refugee Convention, which states that the signatory state should allow the refugees in their country the right to move freely within the territory.³² In addition, it is also in contravention of the Universal Declaration of Human Rights, which states that a person's rights, including freedom of movement, can only be limited if they are a legitimate threat to security.³³ Thus rights cannot be limited arbitrarily. It is submitted that the processing centres constitute an arbitrary limitation on the right to freedom and are therefore untenable in this constitutional democracy, as well as when measured against the international instruments to which South Africa is a signatory.³⁴

The *White Paper on Immigration* uses the need uphold South Africa's national security as a disguise for introducing more bureaucratic processes, which make it harder for refugees to assimilate. Therefore, the *White Paper* presents more challenges than solutions, and can be said to be "one step forward and ten steps back" regarding refugee management.

¹⁹ Jager 2015 SAJHR 401.

²⁰ UN Convention on Refugees, Art 22(1).

²¹ UN Convention on Refugees, Art 22(2).

²² [2002] JOL 10388 (C) at 7.

²³ Carol Anne Spreen and Salim Vally "Monitoring the right to education for refugees, migrants and asylum seekers" (2012) 18 SARE 71 at 73.

²⁴ The Constitution of the Republic of South Africa, 1996 s 27 and s 22.

²⁵ White Paper, at 61.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Kiliko v Minister of Home Affairs* 2006 (4) SA 114 (C).

²⁹ 2006 (4) SA 114 (C) para 27.

³⁰ 2006 (4) SA 114 (C) para 27.

³¹ The Constitution, s 22.

³² UN Convention on Refugees, Art 26.

³³ The Universal Declaration of Human Rights, 1948 Art 29(2).

³⁴ G Goodwin-Gill "International Law and the Detention of Refugees and Asylum Seekers" (1986) 20 *The International Migration Review* 193 at 196.

THROUGH THE LENS OF THE INCOME TAX ACT: THE REPERCUSSIONS OF BEING CLASSIFIED AS AN EMPLOYEE WHEN INVOLVED IN ILLEGAL

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For many years in South Africa, it has been difficult to ascertain whether or not someone classifies as an employee. Consequently, the courts have developed tests to determine who an employee really is. Statutes such as the Labour Relations Act¹ (LRA) and the Basic Conditions of Employment Act² (BCEA) define an employee as any individual, excluding an independent contractor, who works for another person for remuneration.³

This definition has been held by courts to exclude certain individuals, the most significant being those who perform and are involved in illegal activities as a means of making money. The above has been evidenced in the cases of *Kylie v CCMA*⁴ and *MP Finance Group CC v CSARS*.⁵ The pressing question that arises after a reading of these two cases pertains to what South Africa's position is in terms of taxing monies generated through illegal or immoral activities. This article discusses the issue that has been constructed with reference to the work of authors in the topic of taxation of illegal activities in South African law. Where relevant, examples drawn from case law have been used to corroborate the submissions made.

A brief discussion of the definition of an employee in SA labour-law legislation

The Constitution of the Republic of South Africa (the Constitution) provides everyone with the right to fair labour practices.⁶ This has been seen as the root of each citizen's ability to be categorised as an employee under the country's labour laws. According to Muswaka,⁷ in every employment dispute that comes before a court, the first step is to determine whether that individual is an employee, following which the court has to assess whether that individual falls within the range of the applicable legislation, specifically the Labour Relations Act⁸ and the Basic Conditions of Employment Act.⁹ The Labour Relations Act defines an employee as a person who works for, or renders a service to any other person, regardless of the form of contract that they are employed under.¹⁰

Kylie v CCMA:¹¹ the effect of illegal activities on one's status as an employee

In the *Kylie* case, a sex worker (Kylie) had been working at a massage parlour where she was performing sexual favours in exchange for money. When her employment was terminated at the parlour, she sought recourse from the CCMA, alleging that she was unfairly dismissed. The commissioner held that the tribunal did not have jurisdiction to hear the matter based on the fact that the



activities that Kylie was involved in were illegal in South African law.¹² The decision on appeal that was made in the Labour Appeal Court entailed the fact that as a sex worker, Kylie could be classified as an employee in terms of the definition of an employee in the Labour Relations Act, as she was seen as a beneficiary of the Constitutional rights encapsulated in section 23, regardless of her profession.¹³ However, in handing down this judgment the court also considered the remedies that could be applicable between the parties. Kylie was awarded compensation over reinstatement in terms of the Constitution¹⁴ and not section 187 of the Labour Relation Act, under which she initially bought the action.¹⁵ The basis of this decision was that the courts were trying to avoid a situation where they would be regarded as endorsing the commission of illegal activities in the law, contrary to certain legislation.¹⁶

The obligations of an employee in terms of South African Law

In terms of South African law, sex work remains criminalised. Although this is the case, these individuals, such as *Kylie*,¹⁷ are not excluded from being classified as employees based on their constitutional right to fair labour practices.¹⁸ Consequently, the law places certain obligations on employees, which include

¹ Act 66 of 1995, s 213.

² Act 75 of 1997, s 83A.

³ Labour Relations Act, s 213 reads: **employee** "means – (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and (b) any other person who in any manner assists in carrying on or conducting the business of an employer, and "employed" and "employment" have meanings corresponding to that of "employee".

⁴ 2010 (4) SA 383 (LAC).

⁵ 2007 (5) SA 521 (SCA).

⁶ The Constitution of the Republic of South Africa, 1996, s 23.

⁷ L Muswaka "Sex Workers and the Right to Fair Labour Practices: *Kylie v Commissioner for Conciliation Mediation and Arbitration*" (2011) SAMLJ 533 at 534.

⁸ Act 66 of 1995.

⁹ Act 75 of 1997.

¹⁰ Labour Relations Act, S 200A.

¹¹ *Ibid.*

¹² *Kylie v Van Zyl* (2007) 28 ILJ 470 (CCMA) 471F-G; Sexual Offences Act 23 of 1957, s 20(1A).

¹³ Labour Relation Act s 200A and 213; M Conradie *A Critical Analysis of The Right to Fair Labour Practices* (LLM thesis, UFS, 2013) 3; *Kylie v CCMA* (LAC) para 10.

¹⁴ s 23.

¹⁵ *Kylie v CCMA* (LAC) para 63.

¹⁶ Sexual Offences Act 23 of 1957.

¹⁷ *Kylie v CCMA* (LAC) para 39.

¹⁸ The Constitution, s 23.

inter alia to render services to the employer, to work diligently, to serve the interest of the employer as well as to obey lawful and reasonable instructions.¹⁹

The obligation to pay income tax is encapsulated under the last requirement. In terms of the Income Tax Act,²⁰ income tax is defined as tax levied on all income and profits received by a taxpayer, including individuals, companies and trusts.²¹ In terms of South African law, all employees have to make monthly contributions to income tax, whatever the type of employment one is involved in. They ought to pay income tax if they are an employee in terms of the Labour Relations Act, and this is where the case of *MP Finance Group v CSARS*²² becomes relevant.

***MP Finance Group (in liquidation) v CSARS*:²³ Illegal activities are not tax-exempt in South Africa**

MP Finance Group v CSARS dealt with how the phrases, "received by, accrued to or in favour of" in the definition of "gross income" pertained in the Income Tax Act²⁴ should be interpreted for purposes of illegally obtained monies.²⁵ In this case, Prinsloo, who with the aid of her family ran a money scheme, was arrested and sentenced to 25 years in prison following

Making millions from defrauding "investors" of their pension funds, life insurance money and their homes. Prior to the appeal in the Supreme Court of Appeal, the High Court dealt with whether

the monies that had been received by Prinsloo through the scheme would be subject to taxation, although the enterprise was criminal.²⁶

The significance of *MP Finance Group*²⁷ is that for the first time in South Africa's legal history, the Supreme Court of Appeal heard a case that dealt with taxation of illegal income, setting a precedent on this matter.²⁸ Foreign jurisdictions²⁹ have held on this point that in dealing with income tax there are two important aspects. These are the Income Tax Act as a whole, as well as the term "gross income", which definition underpins the realisation of wealth irrespective of its source.³⁰ In *MP Finance*, these two aspects were both followed by the Supreme Court of Appeal without any deviation.³¹ The court held that, regardless of the source of the income, if one receives it for their own benefit and on their own behalf it will be included in their gross income and will thus be taxable.³²

The first case in our law that dealt with whether illegal business dealings were precluded from being taxed was *CIR v Delagoa Bay Cigarette Co Ltd*,³³ where the company was selling a packet of cigarettes for more than they were worth, enticing the purchasers with a coupon that would be inserted into the packet which could lead the purchaser to winning between 2 - 200 pounds.³⁴ The courts prosecuted the company on the basis of running an illegal lottery. In addition to this, the court had to decide

whether the income generated from the illegal sales was to be taxed. Relying on English law, the courts held that the illegality of a business is irrelevant when it comes to taxation of its income, and thus, Delagoa Bay was taxed.³⁵

Looking back to *MP Finance*, in light of the definition of gross income, the only income that is taxable in South African law is that which complies with this definition. The most important aspect of the definition is the "received by" aspect which entails (money) being received by a taxpayer for their own benefit according to *Geldenhuis v CIR*.³⁶ The ruling in *MP Finance Group CC* shows that illegal dealings have many consequences, including fiscal consequences. The fact is that the owner of the scheme knew that the scheme was insolvent, but they continued using it to generate money for their own benefit. This made funds qualify as gross income, which is taxable in terms of the Income Tax Act.³⁷

Conclusion

The issue of whether money generated from illegal activities should be taxable has been the subject of much debate over the years in South Africa and abroad.³⁸ It is now clear that, once the money generated by an individual falls within the definition of 'gross income' as defined in the Income Tax Act,³⁹ it is subject to taxation. Whether the money is generated from an immoral or illegal activity does not relinquish the individual from paying the tax that is due from them to the South African Revenue Service.

¹⁹ A Govindjee and A van der Walt "Employment Without Rights? Discovery Health Limited v CCMA and Kylie v CCMA" 2008 *Obiter* 542 at 549-550.

²⁰ Act 58 of 1952, s 1.

²¹ N Musviba "South African Tax Guide" (2017) <http://www.sataxguide.co.za/sa-income-tax/> (accessed 19 April 2019).

²² 2007 (5) SA 521 (SCA).

²³ *Ibid.*

²⁴ Act 58 of 1952, s 1.

²⁵ JMP Venter, WR Uys and MC van Dyk "MP Finance Group CC (in liquidation) v C: SARS: Adding to the financial hardship of victims of illegal transactions" (2015) *Southern African Business Review* 121 at 121.

²⁶ Venter, Uys and van Dyk 2015 *Southern African Business Review* 122; *MP Finance Group CC (in liquidation) v CSARS* 2007 (5) SA 521 (SCA) para 1.

²⁷ 2007 (5) SA 521 (SCA).

²⁸ Venter, Uys and van Dyk 2015 *Southern African Business Review* 123-124.

²⁹ These foreign jurisdictions include Canada, France and Tala Viv.

³⁰ *Commissioner v Glenshaw Glass* (2007) 69 SATC 141.

³¹ Venter, Uys and van Dyk 2015 *Southern African Business Review* 123-124.

³² *Geldenhuis v CIR* 12 SATC 419 at 33.

³³ (1918) 32 SATC 47.

³⁴ Venter, Uys and van Dyk 2015 *Southern African Business Review* 128.

³⁵ Venter, Uys and van Dyk 2015 *Southern African Business Review* 128-129; *CIR v Delagoa Bay Cigarette Co Ltd* 13.

³⁶ *Geldenhuis v CIR* 12 SATC 419 at 33.

³⁷ Income Tax Act, s1; Venter, Uys and van Dyk 2015 *Southern African Business Review* 132.

³⁸ E Muller "The taxation of illegal receipts: A pyramid of problems! A discussion of ITC 1789 (Income Tax Court Natal) 2007 *Obiter* 163 at 166.

³⁹ s 1.

THE CHALLENGES FACED BY THE COURTS IN APPLYING MINIMUM SENTENCE LEGISLATION

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In this article I shall consider potential guidelines to minimum sentencing, through an analysis of minimum sentencing and the challenges that face trial courts faced with applying minimum sentence legislation.

Minimum sentencing

Sentencing refers to the penalty applied by a court to the person convicted of a crime and which finalises the case.¹ Section 51 of the Criminal Law Amendment Act ("the Act"),² which was subsequently amended by the Criminal Law (Sentencing) Amendment,³ provides for the imposition of minimum sentences for a wide range of serious crimes.⁴ There are various cases in which a court opine that applying the minimum sentences, taking into account the specific circumstances of the case, would be unjust and harsh.⁵ Section 51(3)(a) of the the Act has a mechanism that allows courts to deviate from the minimum sentence.⁶ The subsection allows a court to deviate from the minimum sentence where "substantial and compelling" circumstances are present which justify the exercising of this discretion.⁷ The discretion of a court may not be exercised arbitrarily: a court is expected to act within the limits prescribed by the legislature and in accordance with the guidelines laid down by higher courts.⁸

Challenges the court faces

There are various challenges that arise through courts interpretation and application of the section 51(3)(a) of the Act. In *S v Dodo*,⁹ a constitutional challenge was raised against section 51 of the Act, on the basis of an infringement of section 12 of the Constitution of the Republic of South Africa, 1996, which sets out the right against cruel inhumane and degrading treatment. The court, although finding the section to be constitutional, made some very important points on sentencing. The Court set out that the right under section 12(1)(e) requires that the sentence be proportional to the offence, taking into account all the facts of the case.¹⁰ The question that arose is how to interpret "substantial and compelling". The challenge was whether the threshold set is one that should be held highly or treated with greater leniency.

In *S v Malgas*,¹¹ the court in interpreting the section found that it did not compel the courts to impose sentences that would be inconsistent with section 12(1)(e), finding minimum sentencing to be constitutional.¹² The court in *Malgas*¹³ takes the view that courts have a wider discretion than what was thought, but the prescribed sentences should be viewed as what is ordinarily appropriate for the crime, which should normally be imposed, and should not be departed from lightly.¹⁴

The court stated that section 51(3)(a) should be interpreted as the sentences described being the point of departure.¹⁵ The court stated that if the imposition of the prescribed sentence, taking into account all the circumstances, would lead to injustice, the court should depart from the minimum sentence. The intention of the legislature was not to eliminate the courts' discretion in sentencing.

Despite these cases, which guided the way in which the legislation is to be interpreted, the situation still leaves much to be desired. Judges frequently misapply the provision, due to it being vague and ambiguous, which leads to disparity with the application of sentences for crimes. Some courts interpret "substantial and compelling" at a high threshold, whilst others depart from the minimum sentence for flimsy reasons.¹⁶ This was stressed in *S v Matyityi*,¹⁷ where the court *a quo* placed undue emphasis on the age and purported remorse of the accused.¹⁸ The appeal court point out that the minimum sentence should be the starting point of the presiding officer,¹⁹ and to deviate too easily from minimum sentences is to undermine the constitutional order.²⁰ The court stressed the importance of the victim in the sentencing process, and the need to place all relevant information before the court to allow it to make a fair decision.²¹

¹ JJ Joubert et al *Criminal Procedure Handbook* 12 ed (2017) 374.

² Act 105 of 2001.

³ Act 38 of 2007.

⁴ Joubert *Criminal Procedure* 377.

⁵ CR Snyman *Criminal Law* 6 ed (2014) 441.

⁶ *ibid.*

⁷ S 51(3)(a).

⁸ Joubert *Criminal Procedure* 375.

⁹ 2001 (3) SA 382 (CC).

¹⁰ See *S v Dodo* 2001 (3) SA 382 (CC) para 38.

¹¹ 2001 (1) SACR 492 (SCA).

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ Joubert *Criminal Procedure* 377.

¹⁶ See *S v Matyityi* 2011 (1) SACR 40 (SCA).

¹⁷ 2011 (1) SACR 40 (SCA).

¹⁸ See *S v Matyityi* 2011 (1) SACR 40 (SCA) para 25.

¹⁹ See *S v Matyityi* 2011 (1) SACR 40 (SCA) para 11.

²⁰ See *S v Matyityi* 2011 (1) SACR 40 (SCA) para 23.

²¹ See *S v Matyityi* 2011 (1) SACR 40 (SCA) para 17.

In *S v Vilikazi*,²² the court heard a matter concerning an appeal against the sentence of a person who had been convicted of rape.²³ The court ultimately allowed the appeal and in so doing highlight the issue of a misapplying the legislation, or the ease with which courts depart from the legislation. The court *quo* failed to evaluate the circumstances, as is required in terms of *Malgas*,²⁴ to ensure proportionality.²⁵ The court was critical of the legislation, referring to it as being unsophisticated and highlights that better guidelines would be welcomed by judges.²⁶ The court was critical of the lack of gradation in sentencing of rape and the bluntness of the provisions, which fails to take full account of the circumstances of the particular case.²⁷

In *S v PB*,²⁸ the court noted that the discretion in sentencing lies with the sentencing court and must be exercised in terms of valid principles, with previous cases providing guidelines.²⁹ The court stressed how fixating on previous sentencing would offend the principle of individualisation, and the right to a fair trial, contained in section 35 of the Constitution.³⁰ The court stressed that each case has its own factual matrix, which is an important consideration in sentencing.³¹

In the recent case of *S v Kekana*,³² the court was faced with an appeal against a sentence in which the accused was sentenced to twenty-years for each count of murder, of which there were four, and two years for one count of common assault.³³ The issue raised by the appellant was the fact that a twenty year sentence was imposed on each count of murder, as opposed to the prescribed fifteen years.³⁴ The court took into account the presence of aggravating circumstances that are present in the matter, such as the fact that the deceased in the matter were children; the fact that they were his own children; and

the brutality with which he acted, among other factors, warranted that life imprisonment be imposed. The court was of the view, which I share, that when looking at all these circumstances as compared to his personal circumstances they carry far greater weight.³⁵ This case supports the balanced approach that is promoted by *Malgas*.³⁶

Is reform required?

When a court sentences an offender it needs to take into consideration the triad, consisting of the crime, the offender and the interests of justice.³⁷ Minimum sentencing has the goal of deterring criminal conduct and ensuring uniformity in sentencing.³⁸ In light of the cases that are discussed above, the question may be raised whether the goal of ensuring uniformity is being achieved. The various courts may be viewed as expressing stringent, balanced or lenient approaches to the legislation, which is an undesirable situation. It may even lead to instances in which a court finds substantial and compelling circumstances by placing emphasis on personal factors, which leads to the trial court to impose an appropriate sentence.³⁹ The aim of the legislature in the introduction of minimum sentence legislation was to reduce violent crime, ensure consistency in sentencing and address public perception of leniency towards serious crime.⁴⁰

The aim of reducing the occurrence of violent crime has not been achieved, but what rather has occurred is a slight decrease in some crimes, and increases in others.⁴¹ The mandating of certain sentences for serious crimes has led to an increased prison population. There has been an increasing willingness to impose harsher sentences. There is further evidence that imprisonment does not lead to rehabilitation but rather the contrary.⁴² The situation in which criminals are in prison for periods well beyond the period in which the same

result could have been served through a shorter sentence, paired with other penalties, runs counter to the values instilled in the Constitution. Through the discussion of the cases above it is clear that the aim of consistency has not been achieved, with judges following different interpretative approaches to the legislation, with some even trying to circumvent it.⁴³ The aim of addressing public concern has similarly not been achieved in light of the fact that neither the judiciary nor the community has fully accepted the legislation, and the majority of the community do not understand the application of the provisions.⁴⁴ The support of minimum sentences would in all likelihood decrease should the information regarding the leniency with which some courts apply the legislation become known to the public.

Since the minimum sentence legislation is unsophisticated, and fails to satisfy the aims that were set to be achieved through the introduction of the legislation, it is clear that some sort of intervention would be welcomed.

Options for reform

In light of the need to reform the legislation, the options of either amending the section to improve the manner in which it is applied, or repealing minimum sentence legislation in its entirety, thus restoring full discretion of the court in sentencing, will be considered.

Amendment of Current Legislation

Various other democratic countries follow a more intrusive approach to minimum sentencing.⁴⁵ In *Dodo*,⁴⁶ the court stresses that the legislature has a legitimate interest in penal sentencing, but the legislature may not compel a court to impose a sentence which would infringe section 12(1)(e) of the Constitution.⁴⁷ Although legislation amounting to complete compulsion would

²² 2012 (6) SA 353 (SCA) para 26.

²³ 2012 (6) SA 353 (SCA) para 6.

²⁴ 2001 (1) SACR 492 (SCA).

²⁵ 2012 (6) SA 353 (SCA) para 30.

²⁶ 2012 (6) SA 353 (SCA) para 10.

²⁷ 2012 (6) SA 353 (SCA) para 13.

²⁸ 2013 (2) SACR 533 (SCA) para 19.

²⁹ Du Toit et al *Commentary on the Criminal Procedure Act* Volume 2 (2017) 276.

³⁰ *Ibid.*

³¹ See *S v PB* 2013 (2) SACR 533 (SCA) para 18.

³² 2019 (1) SACR 1 (SCA) para 5.

³³ 2019 (1) SACR 1 (SCA) para 4.

³⁴ 2019 (1) SACR 1 (SCA) para 11.

³⁵ See *S v Kekana* 2019 (1) SACR 1 (SCA) para 42.

³⁶ 2001 (1) SACR 492 (SCA).

³⁷ See *S v Zinn* 1969 (2) SA 537 (A) 541G.

³⁸ J Sloth-Nielsen and L Ehlers "Assessing the Impact: Mandatory and minimum sentences in South Africa" (2005) 14 SACQ 15 at 20.

³⁹ See *Director of Public Prosecutions v Pistorius* 2018 (1) SACR 115 (SCA) para 22.

⁴⁰ Sloth-Nielsen and Ehlers 2005 SACQ 20.

⁴¹ Sloth-Nielsen and Ehlers 2005 SACQ 16-17.

⁴² *Ibid.*

⁴³ SM Roth "South African Mandatory Minimum Sentencing: Reform Required" (2008) 17 *Minnesota Journal of International Law* 155 at 170.

⁴⁴ Roth 2008 *Minnesota Journal of International Law* 171.

⁴⁵ See *S v Dodo* 2001 (1) SACR 594 (CC) para 32.

⁴⁶ See *S v Dodo* 2001 (1) SACR 594 (CC) para 33.

⁴⁷ *Ibid.*

be unconstitutional, the option of adopting sentencing principles would, in my view, be desirable as it allows for the aims of sentencing as set out above to be more correctly considered and would assist in bringing about greater consistency. This approach would be aimed at providing greater sophistication to our legislation, which was the criticism of the court in *Malgas*.⁴⁸ Guiding factors would aid in promoting a proper consideration of all factors, hopefully leading to proportionate sentences, rather than judges erring in over-emphasising factors that should not have warranted departure from the normal minimum.

The introduction of sentencing guidelines would push the courts towards greater considerations of restorative principles in appropriate circumstances, which would be desired in light of the values that are espoused in the values of the Constitution.⁴⁹ The guidelines would assist judges in determining what is appropriate and proportionate by providing a means of taking notice of the offender, the offence, the complainant, and the role that the individual sentence has in achieving the sentencing objectives.⁵⁰

The High Court in *S v Dodo*⁵¹ came to the conclusion that the section was unconstitutional on the basis that the legislature was in effect undermining the separation of powers and the independence of the judiciary.⁵² The legislature has a legitimate interest as set out above. Thus, further guiding principles would not undermine the separation of powers and the independence of the judiciary so long as they do not amount to compelling the judiciary to impose a certain sentence.

The guidelines could be drawn up in accordance with the proposal that was put forward by the *South African Law*

Reform Commission Project 82: Sentencing (A New Sentencing Framework) ("Project 82") and take guidance from jurisdictions in which such principles are currently in operation.⁵³ The guidelines have the potential to take full cognizance of the pitfalls of the current system as set out above, and put in place measures that could limit the unwanted side effects of the current legislation.⁵⁴

There should be a grading of categories of offences, and the offences should be set out in order of severity. The application of the sections and the resulting sentences that apply should be supplemented with guidelines that allow for deviation, but which are not as rigid or blunt as those that are in the current Act. The prescribed sentence, read with the guidelines, would assist in making the dispensing of justice more expedient. The establishment of a council, as is suggested in Project 82, would be desirable as various opinions would need to be considered in order to determine the appropriate guidelines.⁵⁵ According to Project 82, the only personal circumstances that should be taken into account are previous convictions. This is inadequate, the guidelines should take full cognizance of the perpetrator.⁵⁶ The achievement of absolute consistency would run counter to the principles of fairness and justice, and guidelines taking full heed of the personal circumstances of the offender are desirable.

Repealing the Legislation

Terblanche points out that, there is a lack of consistency in the sentencing process in South Africa, which is undesirable.⁵⁷ The issue of inconsistency is not experienced to the same extent in countries where courts exercise an unfettered discretion.⁵⁸ The supporters of this option are of the view that sentencing

is at the discretion of the trial court, and the court should as far as possible be granted with an unfettered discretion.⁵⁹ The unfettered discretion would allow courts to impose balanced and fair sentencing, enabling justice; allow for individualised judgments; and allow for proportionality.⁶⁰

The submission that we should repeal the current legislative provisions regarding minimum sentencing proposes that we should leave absolute discretion with the courts, using the guidelines provided in *Zinn*,⁶¹ and previous case law to come to a conclusion. In this regard my view is shared in Project 82, where the commission states that unfettered discretion, leave judges in a position that cannot be tolerated in a democratic state.⁶² There would potentially leave no consistency which would run counter to the values of equality,⁶³ dignity,⁶⁴ and freedom,⁶⁵ the result be unequal treatment through absolute discretion which is undesirable.

Conclusion

In light of the above it is my submission that the best option would be to amend the legislation, by amending the provisions and introducing guidelines to allow for a proper interpretation of the provisions, as opposed to the ambiguous legislation that is currently in operation. The current system of inconsistency is undesirable and not consonant with the values of the Constitution. The proposed guidelines would further assist in greater expedience in the dispensing of justice. It is my submission that the introduction of legislation is preferable, as opposed to the development of guidelines through the courts, because of the issues that remain regarding the of the section despite the guidelines provided in the main cases.

⁴⁸ 2012 (6) SA 353 (SCA) para 10.

⁴⁹ Roth 2008 *Minnesota Journal of International Law* 179.

⁵⁰ *ibid*.

⁵¹ *S v Dodo* 2001 (1) SACR (E).

⁵² SS Terblanche "Twenty Years of Constitutional Court Judgments: What Lessons Are There about Sentencing" (2017) 20 *PELJ* 1 at 7.

⁵³ Roth 2008 *Minnesota Journal of International Law* 181.

⁵⁴ SS Terblanche and G Mackenzie "Mandatory Sentences in South Africa: Lessons for Australia?" (2008) 41(3) *The Australian and New Zealand Journal of Criminology* 402 at 413.

⁵⁵ South African Law Reform Commission Project 82: Sentencing (A New Sentencing Framework) 46.

⁵⁶ VI Jameson *Structuring the exercising of sentencing discretion in South African criminal courts* (LLD, NWU, 2018) 150.

⁵⁷ SS Terblanche "Sentencing guidelines for South Africa: Lessons from elsewhere" (2003) 20(4) *SALJ* 858 at 859.

⁵⁸ Terblanche 2003 *SALJ* 859.

⁵⁹ *Botes v S* [2010] ZAGPPHC 218 para 3.

⁶⁰ *S v Rabie* 1975 (4) SA 855 (A) at 861D.

⁶¹ 1969 (2) SA 537 (A) 541G.

⁶² South African Law Report Commission Project 82: Sentencing (A New Sentencing Framework) 25.

⁶³ S 9.

⁶⁴ S 10.

⁶⁵ S 12.

IS THE PREVENTION AND COMBATING OF HATE CRIMES AND HATE SPEECH BILL NECESSARY?

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The Prevention and Combating of Hate Crimes and Hate Speech Bill B-9 of 2018 (the Bill), has been considered in Parliament but is not in force at this time. This article will assess whether the Bill is necessary or whether the common law crime of *crimen iniuria* can sufficiently address these crimes. Currently, in SA, neither hate speech nor hate crime is fully codified. The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Act) regulates hate speech but it does not criminalise it.¹ Offenders convicted of hate speech in terms of the Act are not imprisoned, nor do they receive a criminal record. *Crimen iniuria* currently addresses hate crimes: but is it insufficient?

Crimen iniuria is defined as the intentional and unlawful impairment of another individual's dignity or privacy.² It can be committed by either words or conduct.³ In *De Lange v Costa*,⁴ a test to determine whether conduct amounts to the offence of *crimen iniuria* was formulated. The test asks, firstly, whether the victim's self-esteem was impaired and, secondly, whether the conduct is offensive in the opinion of a reasonable person.⁵ The test aims to ensure that the opinions of hypersensitive individuals do not escalate the words or conduct unfairly.⁶

Essentially, the test ensures that the impairment of dignity is sufficiently serious. But does the crime of *crimen*

iniuria sufficiently accommodate hate crimes and speech?

The Bill distinguishes between hate speech and hate crime. The Bill⁷ describes a hate crime as an offence motivated by prejudice towards the victim, family member or a group the victim is associated with. The prejudice may be based on a variety of characteristics, including race, gender, language and political affiliation. Hate speech, as defined in the Bill,⁸ occurs when a person intentionally publishes or communicates something to one or more persons, in a manner which can reasonably be interpreted to have the intention to be harmful, incite harm or promote hatred based on the characteristics described above. In terms of the Bill,⁹ a person who commits either a hate speech or hate crime is guilty of an offence.

Crimen iniuria applies only to a serious impairment of dignity or privacy.¹⁰ It is not concerned with impairments of a trivial nature.¹¹ The test in *De Lange v Costa*¹² ensures that only objectively serious impairments of dignity or privacy impairments constitute *crimen iniuria*. Allowing only serious impairments to amount to *crimen iniuria* prevents the courts from becoming clogged up by minor cases in which there was a subjective impairment of dignity.

The Bill's requirements for hate speech and hate crime are exceptionally broad.

In terms of the Bill's definition of hate crime, an offence becomes a hate crime when motivated by prejudice. An act amounts to hate speech when it can reasonably be interpreted to have the intention to harm, promote harm or incite hatred based on the listed characteristics. The definitions used in the Bill are wide, which is potentially problematic as it expands the number of offences which could potentially amount to hate crime or hate speech. The term harm, as used in the Bill,¹³ includes emotional, psychological and economic harm.

The Bill does not have an adequate mechanism for dealing with trivial offences, which allows trivial acts to be labelled as hate crimes or speech. This has the potential to clog up the criminal justice system. Courts, therefore, will have to deal with minor disputes rather than the cases which address important social issues in South African such as those dealt with in the cases of Vicki Momberg, Penny Sparrow, Fani Titi and Adam Catzavelos.

The aspects of the Bill that regulate hate speech have led to many people arguing that these regulations limit the Constitutional right to freedom of expression.¹⁴ This is due to the fact that the Bill has the potential to silence their voices and opinions on economic, social or political power issues by labelling them an act of hate speech.¹⁵ There have been suggestions that the Bill should instead

¹ J Botha and A Govindjee 'Regulating cases of 'extreme hate speech' in South Africa: A suggested framework for a legislated criminal sanction' (2014) 2 SACJ 117 at 117.

² J Burchell *Principles of Criminal Law* 5 ed (2016) 648.

³ See *R v Marimuthoo* [1956] 3 All SA 163 (N) 163.

⁴ [1989] 2 All SA 267 (A).

⁵ Burchell *Criminal Law* 654.

⁶ *ibid.*

⁷ s 3.

⁸ s 4.

⁹ s 6 (1).

¹⁰ JRL Milton *South African Criminal Law and Procedure* 3 ed (1996) 492.

¹¹ JRL Milton *South African Criminal Law and Procedure* 3 ed (1996) 492.

¹² 270.

¹³ s 1.

¹⁴ s 16.

¹⁵ Free Market Foundation 'Submission to the Department of Justice and Correctional Services on the Prevention and Combating of

regulate hate crimes only. This is supported by the argument that it risks limiting freedom of speech and the argument that while hate crimes have previously been unregulated, *crimen iniuria* has always provided for the hate speech phenomenon.¹⁶

Crimen iniuria, being a common law crime, is not codified, and therefore there is no sentencing guide. *Prinsloo v S*¹⁷ arose from disputes over parking at a female residence. After using extremely racist words towards the complainant, Prinsloo was convicted of two counts of *crimen iniuria* and sentenced to a R6000 fine or 12 month imprisonment.¹⁸ In the unreported case of *S v Sparrow*¹⁹, in which the appellant wrote a racist Facebook post, the appellant was convicted of a charge of *crimen iniuria*.²⁰ Sparrow was instructed to pay a R150 000 fine, which was given to an NGO promoting non-racialism.²¹ More recently in *Momberg v S*,²² currently on appeal, the appellant, Momberg, was convicted of four charges of *crimen iniuria*. The appellant racially attacked several black policemen.²³ The appellant was sentenced to three years imprisonment and one year suspended.²⁴ The sentences demonstrated above, vary widely and follow no pattern.

On the other hand, the Bill,²⁵ prescribes penalties and sentencing for hate crimes and hate speech. A person convicted of a hate crime is liable to penalties set out in the Bill²⁶ which include imprisonment, periodical imprisonment, a fine and correctional supervision. The Bill²⁷ states that a person convicted of hate speech will be liable to a fine or a maximum of five years imprisonment, or both.²⁸ The convicted person will be sentenced to whatever the Court deems appropriate and within its penal jurisdiction.²⁹ The Act, therefore, clearly sets out the possible punishments a person convicted of *crimen iniuria* might face. It gives more

clarity than *crimen iniuria* and clearly enhances the penalties of those convicted of hate crimes.³⁰

The Bill³¹ places obligations on the South African Human Rights Commission, the Commission for Gender Equality and the South African Judicial Education Institute. The Bill³² requires the creation of a presidentially selected team that will educate the general public and public officials on the Bill's content. In addition, the Bill³³ mandates a judicial education program aimed at training judicial officers to be proficient in the laws of hate crime and speech when adjudicating. The goal of the Bill is to prevent hate speech and crime from occurring; however, the likelihood of this working is debatable. This is due to the lack of infrastructure within the Bill to exclude trivial matters. It is more likely that it will result in an increase of cases than a decrease. The Act³⁴ has similar provisions regarding education, and yet most South Africans are unaware of the Equality Court.

A crucial issue regarding hate speech and crime is the recent development of technology. Technology, especially social media, has opened the proverbial floodgates of hate speech on the internet. Social media enables the public to create and share content online.³⁵ Considering the fact that the majority of perpetrators of hate speech commit their crimes from the safety of their keyboards, and some who do so in person are often caught on video, the internet is a key contributor to curbing hate speech in South Africa as well as a contributing factor which enables more people to commit the crime.³⁶ Regulations on internet communications are, however, difficult to enforce when the platforms run across jurisdictional boundaries.³⁷

To solve this issue, provisions are needed to curb the use of hate speech. There needs to be a balance struck

between a user's freedom of expression and accountability of third-party providers.³⁸ It is necessary to set guidelines for when the service provider is responsible for ensuring there is no hate speech on their site, and when it is the perpetrator only who must face the consequences. This is due to the fact that the perpetrator cannot always be found. The Bill, however, does not take this approach. The Bill has elected to regulate individuals rather than internet providers, which could potentially prejudice individuals while allowing providers to remain blame free. When the perpetrator cannot be found due to the anonymity provided by the internet, there is a significant potential of no justice being done and certain cases of hate speech falling by the way side.

To conclude, the Bill has both advantages and disadvantages. The Bill sets out sentencing guidelines and it aims to educate the general public, public officials and the judiciary in order to prevent and combat hate speech and crime. Furthermore, the Bill creates provision for crimes committed by electronic communications, and this is one of the first attempts to do so in our law in dealing with hate speech. These advantages go beyond the simple common-law crime of *crimen iniuria*. The Bill, however, has an extremely vague definition of hate speech which will allow minor offences which do not amount to *crimen iniuria*, to amount to hate speech. This will result in the courts becoming clogged by trivial dignity impairments. *Crimen iniuria* uses the *De Lange v Costa* test to ensure that only serious objective impairments amount to an offence, therefore preventing that problem. Additionally, the arguments that the Bill amounts to a limitation of the Constitution are a significant concern.³⁹ Therefore, despite the advantages of the Bill, the vagueness present is, in the writer's opinion, too extensive to ignore.

Hate Crimes and Hate Speech Bill, 2018 (2019)

<https://www.freemarketfoundation.com/dynamidata/documents/20190131-submission-on-hate-speech-bill.pdf> (accessed on 6 August 2019) at 2.

¹⁶ Free Market Foundation "Submission to the Department" at 1.

¹⁷ [2014] ZASCA 96.

¹⁸ See *Prinsloo v S* [2014] ZASCA 96 para 1.

¹⁹ *State v Penelope Dora Sparrow* 708/2016.

²⁰ Sive and Price 2019 SALJ 68.

²¹ Sive and Price 2019 SALJ 68.

²² [2019] ZAGPJHC 183.

²³ See *Momberg v S* [2019] ZAGPJHC 183 para 5.

²⁴ See *Momberg v S* [2019] ZAGPJHC 183 para 1.

²⁵ s 6.

²⁶ s 6(1).

²⁷ s 6 (3).

²⁸ The Bill s 6 (3) (a).

²⁹ s 6.

³⁰ J Botha and A Govindjee "Regulating cases of 'extreme hate speech' in South Africa: A

suggested framework for a legislated criminal sanction" (2014) 2 SACJ 123.

³¹ s 9.

³² *ibid.*

³³ s 9.

³⁴ s 2 (e), 30, 31, 29.

³⁵ Sive and Price 2019 SALJ 51.

³⁶ Sive and Price 2019 SALJ 55.

³⁷ Sive and Price 2019 SALJ 52.

³⁸ Sive and Price 2019 SALJ 56.

³⁹ s 16.

DEVELOPMENT OF MATRIMONIAL PROPERTY SYSTEMS IN POLYGAMOUS MARRIAGES

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The purpose of this article is to investigate how the law on matrimonial property systems in respect of polygamous customary marriages has been developed in light of *Gumede v President of the Republic of South Africa* and *Ramuhovhi v President of the Republic of South Africa* case.

Development of matrimonial property systems in polygamous marriages

The Constitutional Court has extended the law of matrimonial property by including polygamous customary marriages which were concluded before the commencement of the Recognition of Customary Marriages Act (Recognition Act) to fall automatically under in community of property and of profit and loss unless stated otherwise in an antenuptial contract.¹ Section 7(2) of the Recognition Act provides that a customary marriage entered into after the commencement of the Act, where a spouse is not a party to an existing customary marriage, is a marriage in community of property and profit and loss unless the such proprietary consequences are explicitly excluded by spouses in an antenuptial contract.² Section 7(1) of the same Act further states that customary marriages entered into before the commencement of the Act continue to be governed by customary law.³

The effect of these provisions of the Recognition Act is that they create a discrimination between marriages that

were entered into before and after the commencement of the Act. Given that some customary laws are discriminatory towards women. The principle of primogeniture in *Bhe v Magistrate, Khayelitsha*⁴ is one example, women who entered into customary marriages before 15 November 2000 would have remained vulnerable to the discriminatory customary laws whilst women who entered after the said date are liberated by the Recognition Act. Although the purpose of the Act is to provide for equal status and capacity of spouses in customary marriages, the outcome is to the opposite effect, as it further subjected wives entered into customary marriages before the Act to these discriminatory laws.

The Constitutional Court dealt with this inconsistency in the *Gumede*⁵ case. The issue in this case was whether wives who entered into customary monogamous marriages before the commencement of the Recognition Act were entitled to matrimonial proprietary consequences provided in section 7(2). The words “entered into after the commencement of the Act” in the Recognition Act were declared unconstitutional insofar as they relate to monogamous customary marriages. The court held that depriving women in “old monogamous marriages” of the benefits in section 7(2) simply because of the date of their marriage amounted to unfair discrimination on the grounds of gender. The effect of this judgment was that wives in monogamous customary



marriages, regardless of the date of their marriage, were given equal control and ownership of the marital property as they fell under in community of property by default unless they entered into an antenuptial contract. However, the judgment did not address the issue insofar as it relates to matrimonial property in polygamous customary marriages.

Only recently, the question of polygamous customary marriages entered into before the commencement of the Recognition Act was dealt with in the *Ramuhovhi*⁶ case. In *Ramuhovhi*, the challenge was that the application of section 7(1) of the Recognition Act, together with the Venda custom, dictated that wives in “old polygamous customary marriages” enjoyed no rights of control over and ownership of marital property – this right solely vested in the husband. The Constitutional Court confirmed the declaration of constitutional invalidity of section 7(1) on the grounds of gender, ethnicity, social origin and marital status. The court extended the matrimonial property regime for polygamous customary marriages entered into before the commencement of the Recognition Act to be treated as marriages in community of property unless the parties explicitly exclude the proprietary consequences by way of an antenuptial contract.

Furthermore, the court highlights that section 6 of the Recognition Act provides for equality in status between husband and wife and grants full capacity to wives to

¹ *Ramuhovhi and others v President of the Republic of South Africa and others* 2018 (2) SA 1 (CC).

² Recognition of Customary Marriages Act 120 of 1998.

³ Recognition of Customary Marriages Act.

⁴ 2005 (1) SA 580 (CC).

⁵ 2009 (3) SA 152 (CC).

⁶ 2018 (2) SA 1 (CC).

acquire and dispose of assets. To that end, section 7(6) provides that a husband who wishes to enter into a further marriage after the commencement of the Act ought to conclude a written contract with his current wife about the proprietary consequences which will govern his marriages then make an application to the court for approval.⁷ In *Ngwenyama v Mayelane*,⁸ the court held that if the husband fails to make such an application to the court, the marriage will not be void. However, the matrimonial property system of the subsequent marriage will be one of out of community of property and of profit and loss.

Although the *Ramuhovhi* case does not make an order to this effect, one may

conclude that wives in “old polygamous marriages” also have equal contracting rights with the husband on the matrimonial property system which will govern the polygamous marriage. Thus, the *Ramuhovhi* case has also extended the law on matrimonial property regimes in polygamous marriages to this effect.

Conclusion

Moseneke DCJ in *Gumede* stated that the Recognition Act had a noble intention to protect the most vulnerable in customary marriages, mostly women and children. Contrary, section 7(1) and 7(2) had an

opposite effect that further subject wives in “old customary marriages” to discriminatory customary laws and rendered progressive sections of the Act such section 6 useless.⁹ However, the courts have now actively developed customary law insofar as it relates to matrimonial property systems by declaring section 7(1) unconstitutional in *Gumede*¹⁰ for monogamous customary marriages and in *Ramuhovhi* for polygamous marriages.¹¹ As Madlanga J said, this was to put to an end to the continuing plight and long suffering of wives in “old polygamous customary marriages”.¹²

⁷ 2018 (2) SA 1 (CC) para 35.

⁸ 2012 (4) SA 527 (SCA) para 38.

⁹ 2009 (3) SA 152 (CC) para 16.

¹⁰ 2009 (3) SA 152 (CC).

¹¹ 2018 (2) SA 1 (CC).

¹² 2018 (2) SA 1 (CC).

C:SARS v VOLKSWAGEN SA (PTY) LTD [2018] ZASCA 116: CLOSING THE DOOR ON VALUATION OF CLOSING STOCK FOR TAX PURPOSES?

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The main issue before the Supreme Court of Appeal¹ was whether the basis on which Volkswagen (VWSA) had written down the value of its closing stock in the 2008, 2009 and 2010 years of assessment was consistent with the provisions of section 22(1) of the Income Tax Act.

Section 22(1)(a) of the Income Tax Act² provides as follows:

"The amount which shall, in the case of taxable income derived by any person during any year of assessment, from the carrying on any trade . . . be taken into account in respect of the value of any trading stock held and not disposed of by him at the end of such year of assessment, shall be – (a) In the case of any trading stock other than trading stock contemplated in paragraph (b), the cost price to such person of such trading stock, less such amount as the Commissioner may think just and reasonable as representing the amount by which such trading stock . . . has diminished by reason of damage, deterioration, change of fashion decrease in the market value or for any other reasons satisfactory to the Commissioner."

Wallis JA noted³ that VWSA had, during the said of assessment, written down its closing stock by R72 002 161, R24 778 885 and R5 294 643 respectively. The CSARS disallowed the write down, raising additional assessments against VWSA for income tax in the 2008, 2009 and 2010 years of assessment. VWSA appealed to the Tax Court, which set aside the additional assessments, thus leading to the appeal by the CSARS. The matter that the SCA was called upon to decide was whether the CSARS was

entitled to grant a write down of VWSA's closing stock, given that VWSA had written its closing stock down on the application of generally accepted accounting practice, read with International Accounting Standard 2 (*Inventories*) (IAS 2).⁴

The learned Judge noted⁵ that trading stock is valued at the end of the tax year, taking into account an amount "by which the value of the trading stock has been diminished",⁶ and noted further "that . . . is couched in the past tense"⁷. It is therefore clear that section 22(1)(a) contemplates situations where trading stock has diminished based on past events. A literal reading of the section confirms this. However, the application of IAS 2 to write down trading stock allows the taxpayer to write down trading stock based on future and other anticipated events. Wallis JA noted a potential incongruity here.⁸ He observed that whilst the use of past and future events may be appropriate for reporting for accounting purposes to establish a going concern for the benefit of shareholders, this may not necessarily be the appropriate when looking at the provisions of section 22(1)(a).

In this case, VWSA had taken to account a number of future anticipated costs in determining the net realisable value (NRV), including, *inter alia*, handling costs, shipping costs, marine insurance, selling and distribution costs and warranty charges.⁹ VWSA's contention was that these charges should be taken into account for determining the NRV of



its trading stock. Wallis JA agreed¹⁰ that there is some overlap between the provisions of section 22(1)(a) and IAS 2, especially with regard to expenses incurred in consequence of past events. However, he noted further that there are other costs contemplated by IAS 2 that may be incurred in future. These costs may affect the NRV, but would not be relevant for determining the amount by which the value of trading stock has diminished.¹¹

Wallis JA also pointed out¹² that there is a further problem with the use of IAS 2 to write down trading stock, in that IAS 2 provides for individual stock items to be written down to NRV, whereas section 22(1)(a) contemplates trading stock as a whole. Therefore any recognition of a diminution of the value of trading stock needs to be determined with regard to trading stock as a whole.¹³

Ultimately, the court held against VWSA, holding that the use of NRV is not the appropriate tool to determine the extent to which trading stock has diminished at the end of the year of assessment,¹⁴ noting further that a write-down of the value of trading stock based on NRV would entitle VWSA to income tax deductions not yet actually incurred, but which might be incurred in a future year.¹⁵

It is submitted that Wallis JA's judgment is clear and well considered and, unless legislation changes, has literally closed the door for those who have been relying on IAS 2 to write down the value of their closing stock at year-end for tax purposes.

¹ C:SARS v VOLKSWAGEN SA (PTY) LTD [2018] ZASCA 116.

² Act 58 of 1962 (as amended).

³ Para 3.

⁴ Paras 9 & 10.

⁵ Para 16.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Paras 31-2.

⁹ Para 37.

¹⁰ Para 43.

¹¹ *Ibid.*

¹² Paras 46-7.

¹³ Para 46.

¹⁴ Para 52.

¹⁵ Para 53.



FAREWELL TO THE FINAL YEAR CLASS OF 2019



To the Final Year Class

As an Administrative lawyer, I thought it best to leave (delegate, authorise, dictate!) the philosophical quotes to someone else. And as you probably had enough of ‘factors’ and ‘elements’ and ‘guidelines’, rather call this an A-Z of memories. And take note: this is not an exhaustive list and ‘reading in’ is permitted in the circumstances. You may, not must! Apply your mind as you see fit.

A - ADMINISTRATIVE LAW – what else! Further, as the Law Faculty Handbook correctly points out - remember when using Abbreviations – standard Abbreviations should be used, no full stops; Acting Judge (AJ). And AA? Standard Abbreviation? Well, you’ll never associate AA again with Automobile Association, or Alcoholics Anonymous, but ADMIN ACTION - go figure! And if Articles does not work out for you, you can always turn to Academia. We can do with more Academic minds like yours.

B - Barratt and Bots, Books and Bibliographies – for anything else, there’s *Black’s Law Dictionary* [I probably should have said the Bill of Rights?]

C - From the CC to the CCMA, and at the Law Clinic or in Class, whether Civil or Criminal Procedure; Company; Constitutional; Contract or Criminal Law: Case law, Case law, Case law!!! And do not forget the Common Law (it still applies!); even Customary Law. In times of Crisis – call on CPU. And if all else fails – you can always turn to the CONSTITUTION.

D - Dinners and Dances in Drostdy Hall. And beware of Donkeys – so Do not Drink and Drive. When it comes to DPs and Discipline - the Dean always has a Discretion and the authority to Delegate a Disciplinary Decision or DP removal. Of course, subject to *Delegatus Delegare non potest*! And as a last resort, you may try your luck with Damages or Delict!

E - Estoppel? Can someone please EXPLAIN!! Writing Exams in Eden Grove: Equality, Employment Equity, Ethics, and Evidence. Hopefully soon it’s the End of Exams.

F - FILAC? Do not repeat the FACTS!! Focus First years!! And never forget your Footnotes and Full stops. [Remember: a Full stop must appear at the end of each Footnote and the Footnote must be justified!!]

G - Whether it’s the Graham Room, Great Hall or Great Fields, and whether you read of us in the Government Gazette, Grocott’s Mail or on Google, one thing stands out: Grahamstown is...uhmmm... GREAT! Great memories, Generous people and Good coffee!! So make sure to Graduate and see you at GRADUATION!!

H - From Hilltop down to Hobson Hall. And in the Home, the House and Hall -- Human Rights first, and then only, *Huur gaat voor koop*!

I - You’ve learned about Interdicts, Insider trading and Intestate succession, and concepts such as Incapacity, Impartiality and Intention. Not to mention Intro to Law and the *Ius gentium*, *Ius Civile*, *Iustinianus* and *Iustitia*. But you’ve also been exposed to International Law and the Importance of Internationalization. Our International students add substantially to the richness of our Intellectual space and enhances the Institutional culture of our Faculty and Institution.

J - Of Judgments and Judges; Jurisprudence and Jurisdiction; Journals and Jurists ... and the *Corpus Juris* of Justinian! But above all – JUSTICE. Justice should not only be done but should manifestly and undoubtedly be seen to be done.

K - K must be for Prof Kerr. Alastair James Kerr, SC (LLB 1949), Emeritus Professor of Law at Rhodes University and inspiration behind the naming of our library as the Alastair Kerr Law Library. If you did not have the pleasure of knowing Prof Kerr – his legacy will live on through Kerr’s *The Principles of the Law of Contract*, one of the standard works on contract in South African law; Kerr’s *The Law of Agency* and *Kerr’s Law of Sale and Lease*. Go and find him somewhere in the books and footnotes in the Alastair Kerr Law Library.

L - LAW!!! Law Faculty; Law Library and Law Soc. Where you grappled with Legal Theory, Legislation and Labour Law. Where it took you some time to figure out what an LOA was – and to always get a proper one! Where your LLB will remind you of a place where Leaders Learn.

M - Marks for Moots and Moots for Marks. Make-ups in the Moot Room. Movables, Motives and Misrepresentations. Mullins, Makana, Makhandla!

N - Neg med, Numeracy and Natural Law. NEMA and NERSA and NPOs. And who will forget the principles of Natural justice, *Nemo iudex in sua causa* and the *nasciturus* fiction. Never!

O - OPAC? Whether an Oppie or just trying to access the library Off-campus – if you still don’t know, OPAC are in fact the catalogues for library material!. Oops – Ohhhh!

P - It is no *Pride and Prejudice*, but your share of PAJA and PEPUDA, Peace and Protest, Property and Persons, Partnerships and Trusts, and somewhere, a run-in with a Professor or two! Plagiarism and Problem-solving, and as per the Faculty Handbook - Practising, Practising, Practising!

Q - Of Quotes and Quotation marks. Remember: “Quotation marks should be used where you [Q]uote the direct words of other authors [or the Law Faculty Referencing Guide], and indicate that the passage you have [Q]uoted is not your own words”. *Quid pro Quo!*

R - From Rhodes and Res to the Rat and Parrot. And if you find yourself in breach of any Rules or Regulations – first exhaust your internal Remedies and apply for judicial Review! And Remember the Rule of Law.

S - Students and Staff – the Soul of the Faculty. And SWOT week – time to try and make sense of Sequestrations, Spoliation, Settlements, Session, and Summons. And with the help of SAFLII and your trustworthy Syndicate notes, you can hopefully remember your Summaries, Substantiate your answer, Syllogize (thank you Legal Skills), Synthesize... and hope for no Sups!

T - Who can forget their Tutors and LLB Tea Time, not to mention the Tortures and Tales of The Twelve Tables, the Roman Tribunes and the *Codex Theodosianus*!

U - Always Uphold the Law. Beware against any action for Ulterior motives, Usurping someone’s authority, acting *Ultra vires* or acting for an Ulterior purpose. Not only will such a decision be Unconstitutional, but also Unenforceable, Unreasonable and Unlawful. *Ubi lex ibi poena* – where there is a law, there is a penalty!

V - *Veni, Vidi, Vici!!* Or maybe *In Vino Veritas*? Or a better option - *Vis, Virtus, Veritas*!

W - Wardens and Wikipedia – by far the most authoritative sources of info and research available to students, academic or otherwise! What more do you need in order to answer the WHAT and the WHY?

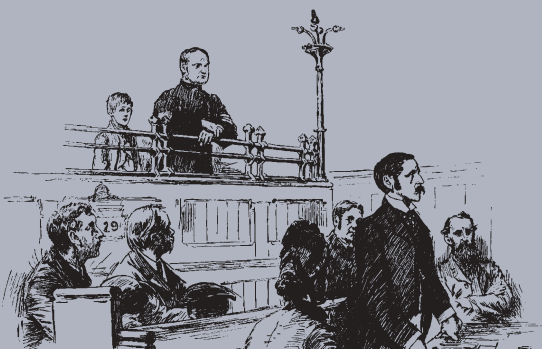
X - *LEX generalis, EX post facto, EX lege, EX officio*, and most importantly – always vigorously reject all forms of Xenophobia.

Y - YOU TUBE – probably the ultimate pass time for students – during class! And a quick guide to ALMOST everything. Needless to say, final years, no exam papers there (yet!).

Z - ZAECGHC? Who can forget the interesting cases of *Zwani*, *Zondi*, and *Zuma*. And last but not least, the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. The Zondo Commission – Zero tolerance for corruption. You have now seen it all.

Go out there and be a Rhodes Law graduate who is a knowledgeable intellectual, skilled professional, and critical, caring and compassionate citizen who can contribute to economic and social development and an equitable, just and democratic society.

Warm regards,
Prof Van Coller





Daudi Banda

I am going to be rich, I know.



**Kristy
Bassingwaight**

Cry on the inside, like a winner.



Zandri Bezuidenhout

I'm still not sure I want to do law.



Ryan Birkner

"The one who plants trees, knowing that he will never sit in their shade, has at least started to understand the meaning of life" Rabindranath Tagore



Nicole Botha

"Though she is but little, she is fierce." Shakespeare



Lauren Brabant

"And if not, he is still good."
Daniel 3:18



Ashley Bristow

"Indeed, I count everything as loss because of the surpassing worth of knowing Christ Jesus my Lord."
Philippians 3:8



Samantha Chigwedere

Sometimes you actually don't have your sh\$% together! But that doesn't make you a loser, it makes you human! Figure it out and get back up!



Charity Chigwere

Whenever you find yourself doubting how far you can go, just remember how far you have come. Remember everything you have faced, all the battles you have won, and all the fears you have overcome."



Farai Chikurunhe

Suit up.



Fadzayi Chikurunhe

I look better in person.



Candy Chikwezvero

Do not let anyone or anything dim your light. You are destined for greatness.



Mugove Chokuwenga

"It's always darkest before the dawn"
F Welch



Matthew Clark

Vincit Omnia Veritas.



Clarize Coertze

We over estimate what we can accomplish in a day and under estimate what we can accomplish in a lifetime.



Daniel Coetzer

Made it out of here without becoming a lefty.



Jeremy de Beer

The human form of the 100th emoji



Thokozani Dladla

"He who refuses to obey cannot command." Kenyan Proverb



**Thandolwakhe
Dlamini**

Just give me the degree and
pronounce my name correctly.



Ayanda Dube

"I am a winner because I keep on
keeping on. I keep on keeping on
because I am a winner." MM



Bryony Fox

Breathe, you know more than you
think you know.



Georgina Gardner

The best thing about the future is that
it comes one day at a time .



Tendai Goto

Pain is temporary.
A law degree is forever.



Aphiwe Gunundu

"Laws are spider webs through which
the big flies pass & the little ones get
caught." Honore de Balzac



Kelvin Hackett

When's this due?



Shalom Hanjahanja

I was assigned this mountain to
show others it can be moved.



Ryan Harley

Shout out to caffeine and syndies.



Cornelia Hausiku

If life doesn't smile back at you,
give it a little tickle.



Erika Heaton

"Real generosity toward the future
lies in giving all to the present."
Albert Camus



Shayne Hibbert

The coffee in between.



Terry Hlongwane

U nge kumi leswo biha ntsena la
misaveni, na leswinene wa swi
kuma.



Larissa-Jane Houston

"Anybody who thinks talk is cheap
should get some legal advice." Bill
Maher



Matiparuva Hwacha

"There are many ways of arriving at
and interpreting the truth, the law
offers only one way."
Roch Tlhabi



Mark Jarrett

Quality of life is the quality of your
relationships.



Ndilenao Kamati

If spending thousands on a law degree
and losing my soul in the process isn't
enough commitment to a legal career,
I don't know what is.



Gamuchirai Kutukwa

Law school will really have you doing
dumb stuff like setting an alarm for a
12 minute nap.



Yanga Macingwane

I learned how to loosen the strap to tighten it.



Gugulethu Mahlobo

If there's one thing I am willing to bet on, it's my damn self.



Kudzai Makoni

Knowledge makes a man unfit to be a slave.



Natasha Makowe

"The key to realising a dream is to focus not on success but significance – and then even the small steps and little victories along your path will take on greater meaning." Oprah Winfrey



Zodwa Malinga

Inzima lendlela ifuna ababekezelayo.



Tsepo Mantje

"In law there is no time to sit and think of England." Ms Padayachi



Rumbizai Matamba

Thank God we can't tell the future. We'd never get out of bed.



SiphoSethu Matebese

"Here you are, black and woman and in love with yourself. They are terrified. As they should be." Upile Chisala



Rhulani Matsimbi

"The tragedy of life is not that it ends so soon, but that we wait so long to begin it." W M Lewis



**Basil Brighton
Maungwa**

Sometimes waking up is the second hardest thing in the morning.



Velenkosini Mbambo

"Overthrow the bourgeoisie.
Seize the means of production."



Ockert Meyer

This could have been an email



Wisdom Moyo

Nulla fenaci invia est via.



Ludi Mpati



Ayanda Mpofo

"Inspiration cannot be manufactured or manipulated. It comes like a bolt out of the bur, or like a whisper in the darkness." Kate Forsyth



Andile Msane

"Never give up on your dreams my darling. For they are your birthright and you owe it to the world to become the queen you are." Mark Anthony



Sbusiso Mukhari

Perseverance is the hard work you do after you get tired of doing the hard work you already did.



Natalie Muronda

"Our deepest fear is not that we are inadequate; our deepest fear is that we are powerful beyond measure. It is our light not our darkness that most frightens us, we ask ourselves who am I to be brilliant, gorgeous and fabulous? Actually, who are you not to be?"



**Matifadza
Mutseyekwa**

"Gods is within her, she will not fail. I am more than a conqueror through God's grace."



Natasha Ncube

That wasn't like "How to get away with murder" at all.



Sibusiso Ngwila

I'm just here to state my case, and then go back to Joburg.



Nyameka Nkasana

Your silence will not protect you.



Sibuthe Nkonyana



Yalusa Nodada

"If you can't handle the heat, get out of the kitchen." Kid Cudi



**Daniella Ochieng-
Omolo**

I came here to marry a rich man. It turns out I'm going to become the rich man.



Tazmin Oosthuizen

"Speak your mind even if your voice shakes." Maggie Kuhn



Lydia Ouandji

The hardships of getting a degree are temporary but the DRIP is eternal.



Micaela Pather

"You doctor now?" Grandpa



Candice Petty

In this life we all have troubles, but if
you worry too much you'll make
'em double.



Simon Quinn

Finding a balance has proven
to be key.



Arnold Saungweme

"To improve is to change. To
perfect is to change often." Remy
Danton



Marcus Schaefer

Constantly thinking of England...



Kudzaishe Shoko

Taking naps sounds so childish. I
prefer to call them horizontal life
pauses.



Mbonisi Sibanda

The brain is a wonderful organ; it
starts working the moment you get
up in the morning and does not stop
until you get into class.



Hloniphile Bertha Singo

"You be you and let the world
adjust." Mark Groves



Blake Skirving

The Golden Rule - He/She who
has the Gold rules.



Siyabonga Skosana

Energy doesn't lie. In everything. So think about your energy in here.



Mfundoluntu Somandi

"The law is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favours, but by lavish homage."
Justice Joseph Story



Jethro Weeks

"Is it Administrative Action: Yes or No?" Prof Helena van Coller



Ferdinand Weyers

It's always a good move to listen to that inner voice... if it doesn't lead to a crime.



Kyle Whitfield

"De lo, de lo, de lo. What about de lo?"



Nicholas Wright

Birds of a feather flock together.



Bradley Wright

(insert generic quote)



Nokwanda Zondi

"The mind is a flexible mirror, adjust it to see a better world."

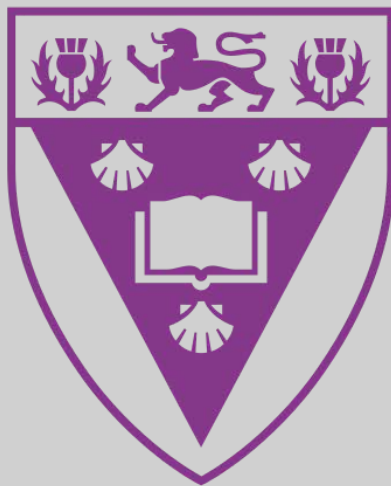


Mthokozisi Zungu

"The master in the art of living makes little distinction between his work and his play, his labour and his leisure, his mind and his body, his information and his recreation, his love and his religion." L P Jacks

Notes

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



RHODES UNIVERSITY

Where leaders learn