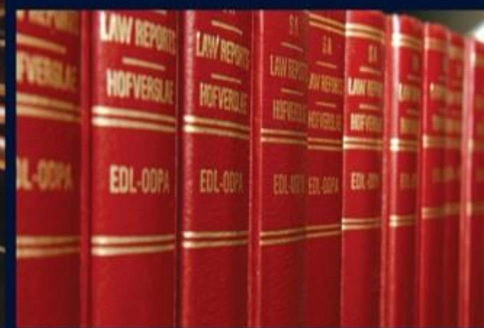
NELSON MANDELA

UNIVERSITY

RESEARCH OUTPUTS

2018



Faculty of Law

Editor: Dr R Denson

TABLE OF CONTENTS

ARTICLES

1.1 CONSUMER PROTECTION LAW 1

1.1.1 Newman, SP & Tait, AM "Resolving provincial cross-border disputes under the Consumer Protection Act" 1

1.2 CRIMINAL LAW 1

1.2.1 Jokani, M, Knoetze, E & Erasmus, D "A criminal response to the harmful practices of ukuthwala" 1

1.3 FAMILY LAW 2

1.3.1 Denson, R, Carnelley, M & Mukheibir, A "The bastardization of Islamic Law by the South African courts" 2

1.3.2 Van der Walt, G "Alternative care in South Africa" 3

1.4 HUMAN RIGHTS LAW 4

1.4.1 Botha, J "Of semi-colons and the interpretation of the hate speech definition in the Equality Act - *South African Human Rights Commission v Qwelane (Freedom of Expression Institute and Another as amici curiae) and a related matter* [2017] 4 All SA 234 (GJ)" 4

1.4.2 Ndimurwimo, L & Chalira, N "Violence Against Women: A Comparative Analysis Between Malawi and South Africa" 5

1.5 LABOUR LAW 6

1.5.1 Gathongo, JK & Van der Walt, JA "Towards an effective Kenyan labour dispute resolution system: A comparison with the South African labour dispute resolution system" 6

1.5.2 Myburgh, A "Interdicting protected strikes on account of violence" 7

1.6 LAW OF DELICT 8

1.6.1 Mukheibir, A, Botha, J & Mitchell, G "The ticking clock of prescription in cases of historical sexual abuse" 8

1.7 LAW OF PROPERTY 9

1.7.1 Badenhorst, P "Registrability of rights in the Deeds Registry: The twofold test revisited" 9

1.7.2 Schrage, E "The comparative legal history of limitation and prescription" 10

1.8 LAW OF SUCCESSION **11**

1.8.1 Nel, E "The impact of the EU succession regulation on a multi-jurisdictional estate" 11

1.8.2 Nel, E "The testamentary trust: Is it a trust or a will? *Hanekom v Voight* 2016 1 416 (WCHC)" 12

1.9 MARINE LAW **13**

1.9.1 Vrancken, P *et al* "Working together for our oceans: A marine spatial plan for Algoa Bay, South Africa" 13

1.10 MINERAL LAW **13**

1.10.1 Badenhorst, P "New order rights to minerals in South Africa: Ten years after Mayday" 13

1.10.2 Badenhorst, P & Van Heerden, CN "Ownership of historical mine dumps: uncaptured no more" 14

1.11 PUBLIC LAW **15**

1.11.1 Pillay, S, Taylor, D and Govindjee, A "International instruments affecting people with a disability in South Africa" 15

1.12 OTHER PUBLICATIONS **15**

1.12.1 Govindjee "South African International Legal News" in *Revue de droit compare du travail et de la sécuritaté sociale* (invited contribution) (since 2017) 15

CONFERENCES

2.1 NATIONAL CONFERENCES **16**

2.1.1 Botha, J & Mukheibir, A "Remedies for hate speech: Common law and statutory law – purposes and cross-purposes" paper presented at the 2018 Private Law and Social Justice Conference, Port Elizabeth on 6-8 August 2018 16

2.1.2 Denson, R "The bastardization of Islamic Law by the South African courts" paper presented at the 2018 Private Law and Social Justice Conference, Port Elizabeth on 6-8 August 2018. 17

2.1.3 Govindjee, A "Section 198A of the LRA" panel discussion hosted by the CCMA on the interpretation of section 198A of the LRA, Port Elizabeth, South Africa, March 2018. 18

2.1.4 Govindjee, A "The implications of the *Assign* case for trade unions' presented by invitation to the South African Federation of Trade Unions", Johannesburg, South Africa on 7 November 2018. 18

2.1.5 Govindjee, A "The increase in medical malpractice litigation in South Africa" opening remarks delivered at the South African Medico-Legal Association Foundations of Medico-legal Practice course, Port Elizabeth, South Africa, January 2018. 18

2.1.6 Vrancken, P "Governance of international marine resources: The Law of the Sea in the African Union and its member states" presented by invitation at the ASSAf-TWAS-AAAS Regional Workshop on Science Diplomacy , Gauteng, May 2018. 18

2.2 INTERNATIONAL CONFERENCES 19

2.2.1 Botha, J "Democracy, digitization and hate speech", *The future of democracy – the democracy of the future: Digitisation and democracy*, 4th bi-annual German – South African Dialogue on Democracy, 13 July 2018, Universität Mannheim, Germany....... 19

2.2.2 Botha, J "Legislating against hate: A South African perspective" *International Hate Studies: Contexts and Consequences of Hate*, INHS Biennial Conference, Oshawa, Canada on May 29-31 2018 20

2.2.3 Erasmus, D "The Life Esidimeni tragedy in South Africa: Government policy failing the most vulnerable" 3rd Annual Conference on Law and Development at Leiden University, Netherlands on 19-21 September 2018. 20

2.2.4 Govindjee, A & Olivier, M "Overcoming barriers and challenges to the introduction of return-to-work arrangements: Developing world perspectives" International Forum on Disability Management Conference, Vancouver, Canada, October 2018. 22

2.2.5 Govindjee, A "Social protection and vulnerable work in South Africa" presented at the ILERA 2018 World Congress Seoul, South Korea, July 2018. 22

2.2.6 Govindjee, A "Social security for skilled professionals from the perspective of GATS" co-presented at the ILERA 2018 World Congress, Seoul, South Korea, July 2018. 22

2.2.7 Govindjee, A & Olivier, M "Social security for skilled professionals from the perspectives of GATS, the CFTA and African Free Trade and Trade in Service Agreements" Plenary session of the ILERA African Regional Congress, Mauritius, May 2018. 22

2.2.8 Govindjee, A & Olivier, M "Social protection extension in developing world context: Informal economy and non-standard workers" session organizer and coordinator of Study Group on "Social Protection" ILERA 2018 World Congress, Seoul, South Korea, July 2018. 22

2.2.9 Hokwana, T & Van der Walt, JA "The right to indefinite employment of temporary employees in South Africa: is the model effective and viable?" paper presented at the ILERA

Africa 8th Regional Conference titled “Challenges facing the future of work” African perspectives and experiences”, Mauritius on 7-9 May 2018. 22

2.2.10 Schrage, EJH & Dondorp, JH Lemma *Dekretalen*, in H. Hempelmann, U. Swarat (Hrsg), Evangelisches Lexikon für Theologie u. Gemeinde, Neuausgabe, Holzgerlingen “Why are Common law and Civil law so different?” paper read at the 2018 Conference on Authentication in Art Conference, The Hague, Netherlands on 7-9 June 2018. 25

2.2.11 Tait AM & Tait, M “Airbnb in South Africa: Windfalls, pitfalls and regulation.” Paper presented at the 8TH Advances in Hospitality and Tourism Marketing and Management (AHTMM) Conference at the Emerald Hotel, Bangkok, Thailand on 25-29 June 2018. 25

2.2.12 Vrancken, P “The final report of the ILA Committee on International Law and sea-level rise: Solutions proposed and outstanding questions ahead” presented by invitation at the 7th Annual Conference of the African Society of International Law, Antananarivo, October 2018. 26

COLLOQUIUMS AND SEMINARS

3.1 Botha, J & Notununu, T “A framework for the selection of victim groups in hate crime legislation” paper presented at the Research Project between the Faculties of Law of Nelson Mandela University and the University of Johannesburg, Cape St Francis on 23-24 August 2018. 27

3.2 Denson, R “The constitutionality of the non-recognition of domestic partnerships in South Africa” paper delivered at the Family law colloquium, Nelson Mandela University on 20 September 2018. 27

3.3 Erasmus, D “The Life Esidimedi tragedy: A terrible tale of death, torture and disappearance of utterly vulnerable mental health care users’ paper presented at the Research Project between the Faculties of Law of Nelson Mandela University and the University of Johannesburg, Cape St Francis on 23-24 August 2018. 27

3.4 Govindjee, A “Administering social grants in South Africa: A constitutional crisis?” co-presented a paper at the Research Project between the Faculties of Law of Nelson Mandela University and the University of Johannesburg, Cape St Francis on 23-24 August 2018. 27

3.5 Govindjee, A “The *Assign* case” co-presented at a seminar for the PE Business Chamber, Port Elizabeth, South Africa on 16 August 2018. 27

3.6 Knoetze. E "The practice of *ukuthwala* – Case studies from Lusikisiki" paper delivered at the Family law colloquium, Nelson Mandela University on 20 September 2018. 27

3.7 Ndimurwimo, L "Law, development and responsible governance in the post-conflict Burundi" paper presented at the Research Project between the Faculties of Law of University of Johannesburg and Nelson Mandela University, Cape St Francis on 23-24 August 2018. 27

3.8 Ndimurwimo, L "Navigating the South African legal space through race, gender and classed lens" paper delivered at the colloquium organized by the Faculty of Law in collaboration with CANRAD "Navigating the South African legal space through race, gender and classed lens", Nelson Mandela University on 17 May 2018. 28

3.9 Ndimurwimo, L, Modiri, J and Saliso, V "African legal pedagogy: Navigating the South African legal space through a race, gender and classed lens" presented a seminar at Nelson Mandela University on 17 May 2018. 28

3.10 Van der Walt, G "Alternate care in the light of the best interests of the child" paper delivered at the Family law colloquium, Nelson Mandela University on 20 September 2018. 28

BOOKS AND CONTRIBUTIONS TO BOOKS

4.1 Govindjee, A "Employment protection in South Africa: An analysis of recent labour and social security legislative and policy developments" in S Amine (ed) *Employment protection legislation in emerging economies* (IGI Publishers, 2018). 29

4.2 Govindjee, A and De Freitas, S "Constitutional law and human rights" in Meintjes-van der Walt, L *et al Fresh Perspectives: Introduction to law* (3rd ed) (Heinemann Publishers, 2018). 29

4.3 Govindjee, A *et al* (ed): *Commercial Law* (3rd ed) (Pearson Education/Maskew Miller Longman, Cape Town, 2018). 29

4.4 Tshivhase, AE and Bekker, JC 'Nature and sphere of customary law' in C Rautenbach *Introduction to Legal Pluralism* (5th ed) (LexisNexis 2018). 29

4.5 Vrancken, P "The African Perspective on Ocean Governance" in DJ Attard (ed) *The IMLI Treatise on Global Ocean Governance – Volume 1: UN and Global Ocean Governance* (Oxford University Press 2018) 216–231. 29

4.6 Vrancken, P and SY Ntola "African Governance Perspectives of the Blue Economy in the Indian Ocean Rim" in VN Attri & N Bohler-Muller (eds) *The Blue Economy Handbook of the Indian Ocean Region* (Africa Institute of South Africa 2018) 147–169. .. 29

4.7 Wagenaar, T Wagenaar, T "The Law of Intellectual Property" in Govindjee, A *et al* (ed): *Commercial Law* (3rd ed) (Pearson Education/Maskew Miller Longman, Cape Town, 2018. 29

4.8 Welgemoed, M contributed towards the following chapters in Bodenstein, J (ed) "Law clinics and the Clinical Law Movement in South Africa" 1st ed, 2018 Juta, Claremont. 30

4.8.1 Chapter 3 - Different methods of teaching and learning (brainstorming, simulations, lectures, experiential learning, supervision, legal research, discussion groups, audio-visuals, written exercises, problem-solving and mediation) 30

4.8.2 Chapter 4 - Teaching portfolio (client communication, negotiations, office- and file management, trial advocacy, drafting, litigation, judgment- and analytical skills, professionalism and legal ethics) 30

POLICY REPORTS

5.1 Govindjee, A & Olivier, MP and "The implications of the NHI Bill on COIDA" Report submitted to the Rand Mutual Association in 2018 31

NEWSPAPER ARTICLES

6.1 Botha, J "Why precisely formulated laws regulating racist speech are needed" Business Day, 10 October 2018 32

SUMMER SCHOOL

7.1 David, DL, Erasmus, D & Welgemoed, M attended the Schola Empirica Summer School on Law, Psychology and Criminology in Prague, Czech Republic from 30 June to 05 July 2018. 33

SUPERVISION OF LLM DISSERTATIONS

8.1 Biggs, L supervised Keti, N "The return-to-work policy for injured and diseased workers" completed for graduation in December 2018. 34

8.2 Booyens, MJ supervised Kalawe, TM "An overview of absence without leave, sick absence and absconding in the local government sector" completed for graduation in December 2018. 34

8.3 David, DL supervised Du Toit, MC "The criminalisation of HIV and the significance of knowledge: A comparative study" completed for graduation in December 2018. 34

8.4 Erasmus, D supervised Grootboom, LP “The criminalization of consensual sexual acts between children” completed 2017 for graduation in April 2018. 34

8.5 Freeman, DW with Knoetze, E supervised Christoffels, E “The non-restoration of land: Scope and ambit of section 34 of the Restitution of Land Rights Act” for graduation in December 2018. 34

8.6 Gathongo, JK supervised Xakaxa, XYD “Ratifying the ILO Convention NO. 102 (Social Security Minimum Standards Convention, 1952) by South Africa” completed for graduation in December 2018. 34

8.7 Gathongo, JK with Van der Walt, JA supervised “Mechanisms for implementing affirmative action” completed 2017 for graduation in April 2018. 34

8.8 Keith-Bandath, R supervised Banda, LM “Labour dispute resolution in South Africa and Malawi: A comparative study” completed for graduation in December 2018. 34

8.9 Marx, FE supervised Hlazo, N “The legal remedies to protect minors against cyberbullying in South Africa” completed 2017 for graduation in April 2018. 35

8.10 Qotoyi, T supervised Gcayi, S "Substantive fairness in the context of dismissal for team misconduct" completed 2017 for graduation in April 2018. 35

8.11 Qotoyi, T supervised Hlohlolo, SA “Discrimination and dismissal based on age” completed 2017 for graduation in April 2018. 35

8.12 Qotoyi, T supervised Ntsebeza, U "The protection offered in terms of the 2014 Labour Law amendments to fixed-term contracts and part-time employees" completed 2017 for graduation in April 2018. 35

8.13 Van der Walt, JA supervised Galorale, MJ “The effect of the amendments to the Labour Relations Act on collective Labour law and proliferation of the unions” completed 2017 for graduation in April 2018. 35

8.14 Van der Walt, JA supervised Kemp, MJ “Public sector employees and their right to just administrative action” completed for graduation in December 2018. 35

8.15 Van der Walt, JA supervised Makhado, FR "Employee pension and provident fund rights" completed 2017 for graduation in April 2018. 35

8.16 Van der Walt, JA supervised Mkalipi, T “The role of the CCMA and bargaining councils in labour-dispute resolution” completed 2017 for graduation in April 2018. 35

8.17 Van der Walt, JA supervised Moela, MP "The unfair labour practice relating to suspension" completed 2017 for graduation in April 2018. 35

8.18 Van der Walt, JA supervised Ndobeni, ZN "The effective use of legal protection to combat stigma and discrimination related to HIV and Aids in a workplace: A case study in Kwazulu Natal" completed 2017 for graduation in April 2018. 36

8.19 Van der Walt, JA supervised Pillay, PS "Balancing the interests of employer and employee in dismissal for misconduct" completed 2017 for graduation in April 2018. 36

8.20 Van der Walt, JA supervised "Motona, J "Unfair discrimination and affirmative action in the workplace" completed 2017 for graduation in April 2018. 36

8.21 Van der Walt, JA with Keith-Bandath, RE supervised Jenniker, JJJ "Automatic unfair dismissals with reference to section 187(1)(c) of the Labour Relations Act" completed 2017 for graduation in April 2018. 36

8.22 Van der Walt, JA with Qotoyi, T supervised Hokwana, T "Substantive fairness in dismissals for operational requirements" completed 2017 for graduation in April 2018. 36

8.23 Vrancken, P with Lombard, M and Tshivase, AE supervised Chasakara, RS "Legal aspects of marine spatial planning" completed 2017 for graduation in April 2018. 36

8.24 Vrancken, P with van der Walt, JA supervised Hamukuaya, NH "Labour rights of fishers in Namibia" completed 2017 for graduation in April 2018. 36

SUPERVISION OF LLD THESIS

9.1 Knoetze, E with Erasmus, D supervised Jokani, MC "The Customary law practice of *ukuthwala*: An antithesis in the South African constitutional order" completed 2017 for graduation in April 2018. 37

9.2 Van der Walt, JA supervised Gathongo, JK "Labour dispute resolution in Kenya: Compliance with international standards and comparison" completed 2017 for graduation in April 2018. 37

LAW FACULTY STAFF MEMBERS GRADUATING

10.1 Christoffels, E "The non-restoration of land: Scope and ambit of section 34 of the Restitution of Land rights Act" graduated on 13 December 2019. 39

AWARDS

11.1 Botha, J Recipient of NRF Thuthuka Grant, post-PHD track, commencing 2019, for the project: Social change for South Africa: A law and development approach. 40

11.2 Botha, J, Researcher of the year, Faculty of Law, 2018. 40

11.3 Biggs, L Emerging researcher of the year, Faculty of Law, 2018. 40

GUEST LECTURERS

12.1 Bolus, T (Legal Advisor - ICRC Regional Delegation, Pretoria) delivered a paper "The special role of the ICRC (International Committee of the Red Cross), focusing on activities in Southern Africa" at Nelson Mandela University on 20 April 2018. 41

12.2 Fahim-Hashemi, A (Refugee Status Determination Officer, UNHCR) presented a workshop "Comments on the South African White Paper on migration from an international Refugee Law perspective" at Nelson Mandela University on 14 May 2018. 41

12.3 Heleta, S & Fourie, L presented a talk on "South Africa's immigration policy: Progressive laws vs dehumanising implementation and regressive plans" at the Law Faculty, Nelson Mandela University on 5 September 2018. 42

12.4 Mbenenge, JP "Navigating the legal profession: Reflections on the state of transformation in the judiciary" at Nelson Mandela University on 13 August 2018. 43

12.5 Ngcukaitobi, T presented a lecture titled "Mandela as a lawyer" at Nelson Mandela University on 11 October 2018. 44

12.6 Reuss, M (Senior Regional Protection Officer, UNHCR) presented a workshop "Nationality and stateless in Southern Africa" at Nelson Mandela University on 14 May 2018. 45

12.7 Rudolph, D "Research and work: Should judges express moral outrage in their opinions?" presented a seminar at Nelson Mandela University on 19 February 2018. 46

12.8 Vandenhole, W of the University of Antwerp held a workshop "Zero-growth and socio-economic rights" at Nelson Mandela University on 16 April 2018 46

BOOK LAUNCH

13.1 The book launch for the best-selling book by Adv Tembeka Ngcukaitobi, titled "The land is ours: South Africa's first black lawyers and the birth of constitutionalism" took place on 16 May 2018 at Nelson Mandela University, Port Elizabeth. 48

ARTICLES

1.1 CONSUMER PROTECTION LAW

1.1.1 Newman, SP & Tait, AM "Resolving provincial cross-border disputes under the Consumer Protection Act."

Obiter 2018 39 3 684-700

SUMMARY

This article deals with the problem of enforcing the Consumer Protection Act in instances where a supplier of goods or services and the consumer are in different provinces. Due to the fact that consumer protection is a Schedule 4 function under the Constitution of the Republic of South Africa, both national and provincial government exercise jurisdiction over this function. As such, there are thus provincial consumer protection authorities and national bodies. The article considers the difficulty which provincial authorities face when trying to resolve a provincial cross–border dispute.

1.2 CRIMINAL LAW

1.2.1 Jokani, M, Knoetze, E & Erasmus, D "A criminal response to the harmful practices of ukuthwala"

Obiter 2018 Vol 39 3 747-767

This article deals with the criminal consequences of the customary law practice of ukuthwala that has been in the news in the recent past in both print and electronic media, whereby elderly men forcibly take young girls for purposes of marriage. A distinction is drawn between ukuthwala, forced and early marriage in order to clarify the concept of ukuthwala. The article considers the question of whether additional legislation is needed to criminalise the thwala custom. The article concludes that forced and early marriages constitute crimes, are illegal, harmful and have no place in a modern constitutional order. It further provides a response to the legal challenges arising from the customary law practice by means of

common law and legislation. In conclusion, it recommends that South Africa does not need separate legislation to criminalise ukuthwala and its variants.

1.3 FAMILY LAW

1.3.1 Denson, R, Carnelley, M & Mukheibir, A "The bastardization of Islamic Law by the South African courts"

Obiter 2018 39 1 152-172

SUMMARY

Notwithstanding the fact that South Africa is a country rich in cultural diversity, and despite section 15 of the Constitution, the recognition of systems of religious, personal or family law for certain cultural and religious groups has either been limited or is virtually non-existent. This is particularly true in the case of Muslim marriages. To this extent, marriages concluded in terms of Islamic rites do not enjoy the same legal recognition that is accorded to civil and customary marriages. Non-recognition of Muslim marriages has dire consequences for the parties to the marriage, more so for women who are parties to Muslim marriages as there is no legal regulatory framework to enforce any of the consequences that arise as a result of the marriage. Therefore, in most cases, parties to a Muslim marriage are left without adequate legal protection, where the marriage is dissolved either by death or divorce. The non-recognition of Muslim marriages effectively means that despite the fact that the parties to a Muslim marriage may regard themselves as married, there is no legal connection between them.

Despite South Africa's commitment to the right of equality and freedom of religion, the courts have acknowledged that the failure to grant recognition to Muslim marriages on the ground of gender equality, has worsened the plight of women in these marriages, in that they were left without effective legal protection during the subsistence of the marriage and also when the marriage is dissolved either by death or divorce. Whilst the *ad hoc* recognition of certain consequences of Muslim marriages by the judiciary has gone a some way to redress the plight of Muslim women, and provided relief to the lived realities of Muslim women, these decisions

are in fact contrary to the teachings and principles of Islam and therefore problematic for Muslims. These court decisions, that are in conflict with Muslim Personal Law (MPL), will ultimately lead to the emergence of a distorted set of laws relating to Muslim family law. This is a real cause for concern. A discussion of these cases is undertaken in this article.

1.3.2 Van der Walt, G "Alternative care in South Africa"

Obiter 2018 Vol 39 3 615-651

SUMMARY

Currently, South Africa has an estimated 5,2 million abandoned children in need of care. Facing the highest rate of deaths worldwide from HIV/AIDS, and as a developing country, many children are left in need of care. The current article considers the status of alternative care in South Africa in light of the State's ability to provide appropriate alternative care for those in need thereof.

1.4 HUMAN RIGHTS LAW

1.4.1 Botha, J "Of semi-colons and the interpretation of the hate speech definition in the Equality Act - *South African Human Rights Commission v Qwelane (Freedom of Expression Institute and Another as amici curiae) and a related matter* [2017] 4 All SA 234 (GJ)"

Obiter 2018 Vol 39 2 526-546

SUMMARY

This note is a critical analysis of the judgment in *South African Human Rights Commission v Qwelane* ("*Qwelane*"), challenging the constitutionality of the threshold test for the hate speech prohibition in section 10(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the "Equality Act"). The note demonstrates that the *Qwelane* court was insensitive to the limits of judicial interpretation and misapplied a number of key principles. These include: the need to strike a balance between the competing rights in the constitutional framework (in this case dignity, equality, and freedom of expression); the importance of definitional certainty for a hate speech threshold test; the meaning to be ascribed to the terms "hate", "hurt" and "harm" in the context of hate speech legislation; whether the section 10(1) requirements for hate speech should be interpreted disjunctively or conjunctively; and the role of international law when interpreting legislation. The note concludes that the *Qwelane* court's conjunctive interpretation of the section 10(1) requirements was strained and that its judgment has resulted in fragmented jurisprudence. The Court should have appreciated that varying interpretations of legislative measures results in inconsistent precedent and has an adverse effect on how people regulate their conduct. This a very real problem in the context of the Equality Act where a change in behaviour is a critical objective. The result of the conflicting interpretations in *Herselman* (an Eastern Cape decision) and *Qwelane* (a Gauteng decision) means that in Gauteng a strict test for hate speech applies, whereas in the Eastern Cape a complainant need only show that the speech was hurtful, or harmful, or incited hatred.

1.4.2 Ndimurwimo, L & Chalira, N "Violence Against Women: A Comparative Analysis Between Malawi and South Africa"

Speculum Juris 2018 Vol 32 22523-2177

SUMMARY

The United Nations defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering. Violence against women is among the world's most systematic and ubiquitous human rights violations. The use of violence against women, unlike many other forms of violence, is neither arbitrary nor indiscriminate. On the contrary, violence against women is ingrained in the social, religious and moral fibres of society. In Malawi and South Africa, like many of their counterparts in Sub-Saharan Africa, women and girls are subjected to various forms of violence, such as sexual violence, domestic violence, harmful cultural practices and violence in relation to maternal healthcare and reproductive rights. As a result, Malawi and South Africa through their constitutions and various national laws have adopted measures that aim at preventing and combatting violence against women. Furthermore, Malawi and South Africa are State Parties to a wide range of international human rights instruments, which aim to protect and promote women's rights. These international instruments include but are not limited to the Declaration on the Elimination of Violence against Women, the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Despite the existence of the abovementioned legal mechanisms, however, violence against women remains a widespread occurrence in both Malawi and South Africa. Accordingly, this article aims to discuss various forms of violence against women and their prevalence in Malawi and South Africa. The article analyses the current legal framework on violence against women in both Malawi and South Africa in order to determine their effectiveness and make recommendations.

1.5 LABOUR LAW

1.5.1 Gathongo, JK & Van der Walt, JA "Towards an effective Kenyan labour dispute resolution system: A comparison with the South African labour dispute resolution system"

Obiter 2018 Vol 39 2 458-488

SUMMARY

There have been notable concerns in the current dual dispute resolution system in Kenya. The problems include protracted referral timeframes for dismissal disputes, non-regulation of maximum timeframes for the agreed extension after 30 days conciliation period has lapsed, the absence of statutory timeframes for appointing a conciliator/ commissioner and arbitration process under both the Labour Relations Act, 2007 and the Employment Act, 2007. Likewise, the responsibility of resolving statutory labour disputes in Kenya is still heavily under the control of the government through the Ministry of Labour. There is still no independent statutory dispute resolution institution as envisaged by the Labour Relations Act, 2007. As a result, the Kenyan dispute resolution system has been criticised for lack of impartiality leading to the increase in strikes and lockouts. This article examines the effectiveness of the Kenyan labour dispute resolution system. The article evaluates the provisions of international labour standards relevant to labour dispute resolution. The article illuminates and describes the bottlenecks in the current Kenyan system and argues that it does not adequately respond to the needs of parties in terms of the international labour conventions. A comparative approach with South Africa is adopted to see how independent institutions, such as the Commission for Conciliation, Mediation and Arbitration, Bargaining Councils and specialised Labour Courts can lead to effective dispute resolution. In view of that, a wide range of remedial intervention intended to address the gaps and flaws highlighted in the study are made. Systematically, the article provides suggestions and possible solutions for a better institutional framework and processes to address them.

1.5.2 Myburgh, A “Interdicting protected strikes on account of violence”

Industrial Law Journal 2018 Vol 39 703-724

SUMMARY

Strike violence is an abuse of the constitutional right to strike and amounts to collective brutality and economic duress. This article examines the difficult question whether, in the absence of a legislative amendment expressly affording it the power to do so, a protected strike can be interdicted by the Labour Court on account of strike violence. There are two judgments in which the court has indicated a preparedness to grant such an interdict: Tsogo Sun Casinos (Pty) Ltd t/a *Montecasino v Future of SA Workers Union & others* (2012) 33 IU 998 (LC), and *National Union of Food Beverage Wine Spirits & Allied Workers & others v Universal Product Network (Pty) Ltd: In re Universal Product Network (Pty) Ltd v National Union of Food Beverage Wine Spirits &Allied Workers & others* (2016) 37 IU 476 (LC). But a final interdict is yet to be granted on this basis. In order for the court to be empowered to grant such an interdict, the violence must either have caused the strike to lose its protected status or have caused it no longer to qualify as a ‘strike’ as defined in section 213 of the Labour Relations Act 66 of 1995. Arguments in support of both constructions are advanced.

1.6 LAW OF DELICT

1.6.1 Mukheibir, A, Botha, J & Mitchell, G "The ticking clock of prescription in cases of historical sexual abuse"

SACJ 2018 31 3 361-390

SUMMARY

Rape and sexual abuse infringe a number of fundamental human rights of victims, in particular the rights to dignity and freedom and security of the person. Abuse cases are, furthermore, often shrouded in secrecy and victims may only consider legal action many years after the fact. The crime of rape does not prescribe, but until recently the sexual abuse other than rape or compelled rape prescribed after 20 years. In the case of *Levenstein v Estate Frankel* (2018 (2) SACR 283 (CC)) the Constitutional Court held that the prescription period was unconstitutional and should be abolished. The 'Frankel Eight' intend challenging the prescription periods for delictual actions. The rules of prescription in delictual cases have already been relaxed, first by the Supreme Court of Appeal in *Van Zijl v Hoogenhout* ([2004] 4 All SA 427 (SCA)), and thereafter by the Criminal Law (Sexual Offences and Related Matters) Amendment Act (Act 32 of 2007), but a victim would still have to prove that her 'inability' caused the delay in her bringing the action. It is our contention that, given the debilitating nature of the harm, the Prescription Act (Act 18 of 1969) should be amended to abolish prescription altogether for the purposes of delictual actions for both rape and sexual abuse, because several fundamental rights, in particular the right to dignity, are infringed. Alternatively, section 12(4) of the Act should be amended to provide for a broad judicial discretion for determining whether the victim is able to institute action and whether good cause has been shown for the delay.

1.7 LAW OF PROPERTY

1.7.1 Badenhorst, P "Registrability of rights in the Deeds Registry: The twofold test revisited"

Stellenbosch Law Review 2018 Vol 220-236

SUMMARY

In practice the courts use a so-called twofold test to determine whether rights are real, and therefore, registrable in the deeds registry. Personal rights are not registrable. In terms of the twofold test, in order for a right to be registrable, the following requirements must be satisfied: (a) the intention of the person who creates the purported real right must be to bind not only the present owner of the land, but also successors in title; and (b) the nature of the right or condition must be such that registration thereof results in a subtraction from the dominium of the land against which it is registered. The article provides an overview of the application of the twofold test by the Supreme Court of Appeal ("SCA"). The overview of case law shows the successful application of the test by the SCA and its applicability has become settled law. A more basic formulation of the twofold test with a different sequence and more emphasis on the acquisition of an entitlement test is proposed. It is shown that rights established in respect of land which restrict the landowner's entitlements to use or dispose of land are usually recognised as real rights by the courts. It is suggested that other possible restrictions on the entitlement of disposition in the case of problematic rights, which are registrable in accordance with deeds office practice, such as restraints against alienation, rights of pre-emption or reversionary rights, should be revisited. The dominance of the twofold test does not mean that other theoretical tests to distinguish between real and personal rights should not be used.

1.7.2 Schrage, E "The comparative legal history of limitation and prescription"

Obiter 2018 Vol 39 3 780-790

SUMMARY

Within both the civil law and the common law (as well as in mixed legal systems), there are means of acquiring and losing rights, or of freeing ourselves from obligations with the passage of time. The reason for this is at least twofold: on the one hand, for a claimant, a dispossessed owner or a creditor, limitation and prescription provide stimuli for bringing the action; on the other, this sanction upon the negligence of the claimant implies in many cases a windfall for the defendant. If a creditor is negligent in protecting his assets, the law at a certain stage no longer protects him or her. As Oliver Wendell Holmes, Jr. said aptly some 100 years ago: "Sometimes it is said that, if a man neglects to enforce his rights, he cannot complain if, after a while, the law follows his example".

1.8 LAW OF SUCCESSION

1.8.1 Nel, E "The impact of the EU succession regulation on a multi-jurisdictional estate"

Journal of South African Law/Tydskrif vir Suid-Afrikaanse Reg 2018 Vol 3 601-612

SUMMARY

Due to a variety of local and international factors, thousands of South Africans possess assets in more than one jurisdiction. The potential complexities of multi-jurisdictional property and the succession in relation to such assets should not be underestimated by estate planning advisors and their clients. Aspects such as citizenship, domicile, habitual residence, nationality, place of marriage celebration, and the locality of assets, must be considered in estate planning and the drafting of wills. The South African testator must harmonise the local law of succession with the rules of the foreign jurisdictions and any relevant international treaties. In an attempt to simplify cross-border succession in Europe, the EU Succession Regulation was issued in 2012. These rules are applicable to all assets situated within member states and are considered within the context of previous attempts to international harmonising. The most important connecting factors in multiple jurisdictions are discussed, as well as the contents and applicability of the 2012 Regulation on the estates of SA citizens. The choice-of-law regime and the potential consequences of *renvoi* is also touched on in the article. The potential problems to be considered in case of a cross-border estate are evaluated in the context of a hypothetical set of facts. It is submitted some testators need separate wills for various jurisdictions to ensure particular administrative and legal requirements are applied. In conclusion, practical guidelines are provided to be considered by the fiduciary advisor and will drafter for clients with assets in multiple jurisdictions.

1.8.2 Nel, E "The testamentary trust: Is it a trust or a will? *Hanekom v Voight* 2016 1 416 (WCHC)"

Potchefstroom Electronic Law Journal/Potchefstroom Elektroniese Regstydskrif
2018 Vol 21 1-22

SUMMARY

The recent judgment in *Hanekom v Voigt No and Others* 2016 1 SA 416 (WCC) 416 is evaluated in light of the traditional understanding of the testamentary trust. It is evaluated from both a testamentary disposition and a trust law perspective, with the aim of determining whether the *Hanekom* matter has touched a particular nerve in the will versus trust debate as far as the trust *mortis* causa is concerned. From this judgment, the importance of differentiating between the spheres of testamentary law and trust law, to ensure legal certainty, became clear. The court submitted that the mere fact that a trust happens to be of testamentary origin should not influence the evaluation of the validity of the amendment of the trust instrument. The court underlined the dynamic nature of the trust figure in referring to it as a "supple, living institution". The nature of the powers vested in the Master of the High Court, both as far as the appraisal of the trust instrument and the appointment of trustees are concerned, is also considered in the judgement. In evaluating the facts of the case, the court recognised the applicability of the *Oudekraal* principle as it has been developed in the field of administrative law.

Writer comes to the conclusion that, while the *Hanekom* case does illustrate some legal challenges in the last will and testament environment, it also offers a number of valuable lessons for will-drafters. The approach by the court is encouraging, as it shows some sensitivity for the true nature of the testamentary trust. The confirmation by the court that a testamentary trust is in the first instance a trust and not a will *per se*, is to be welcomed, and is a true and realistic reflection of the nature of the institution.

1.9 MARINE LAW

1.9.1 Vrancken, P *et al* "Working together for our oceans: A marine spatial plan for Algoa Bay, South Africa"

South African Journal of Science 2018 Vol 114(3/4) 1-6

SUMMARY

This contribution describes the community of practice research project focussing on Algoa Bay as a case study for the first South African marine area plan.

1.10 MINERAL LAW

1.10.1 Badenhorst, P "New order rights to minerals in South Africa: Ten years after Mayday"

African Journal of International and Comparative Law 2018 366–390.

SUMMARY

This article examines the application and evolution of the Mineral and Petroleum Resources Development Act 28 of 2002 since its introduction in South Africa by the ANC government. Rights to minerals, the players, the processes and security of mineral tenure are discussed. A conclusion is reached about the type of mineral law regime that was created by the MPRDA as part of the transformation of the legacies of apartheid.

1.10.2 Badenhorst, P & Van Heerden, CN "Ownership of historical mine dumps: uncaptured no more"

South African Law Journal 2018 351-375

SUMMARY

Historical mine dumps are mine dumps that were created before the enactment of the Mineral and Petroleum Resources Development Act 28 of 2004 ('MPRDA') and are not (yet) regulated by the MPRDA. The legal principles pertaining to ownership of historical mine dumps are discussed in terms of the common law and the Minerals Act 50 of 1991. In this article, we analyse case law supporting the view that historical mine dumps are not regulated by the MPRDA, as well as the legislature's recent attempt to regulate historical mine dumps with proposed amendments to the MPRDA. We conclude that the vesting of custodianship of minerals in historical mine dumps (outside a mining area) in the state will not amount to an act of expropriation in light of the decision of the Constitutional Court ('CC') in *Agri SA v Minister for Minerals and Energy* 2013 (4) SA 1 (CC). Upon failure by holders of mining rights or mining permits timeously to amend mining work programmes and mining rights to include historical mine dumps (within a mining area), their ownership thereof will be terminated. We argue that the ownership of such mine dumps may then be acquired by appropriation (*occupatio*). As a result, should the amendments become law, we foresee a conflict between holders of mining rights or mining permits and illegal miners and marginalised communities.

1.11 PUBLIC LAW

1.11.1 Pillay, S, Taylor, D and Govindjee, A "International instruments affecting people with a disability in South Africa"

Africa Insight 2018 Vol 47 2 28-39

SUMMARY

While the democratization of South Africa incorporated political change, a concurrent requirement was placed on the government-of-the-day to develop a transformed normative framework. The necessity for a normative framework continues to be an essential platform for the practice of democratic governance in South Africa. Emphasis remains on the promotion of the democratic rights of persons with disabilities within a global context. In light of the 'new' dispensation, the challenges faced by persons with disabilities have come under the spotlight. International instruments relevant to persons with disabilities have served as a compass for the South African government. The international framework pertinent to persons with disabilities has provided a normative basis for the fair treatment and promotion of equal rights for such persons in the South African context. Questions have been raised regarding the viability of these international instruments in providing an effective normative framework for enhanced democratic governance and positive representation of the rights of persons with disabilities.

1.12 OTHER PUBLICATIONS

1.12.1 Govindjee "South African International Legal News" in *Revue de droit compare du travail et de la sécuritaté sociale* (invited contribution) (since 2017).

CONFERENCES

2.1 NATIONAL CONFERENCES

2.1.1 Botha, J & Mukheibir, A "Remedies for hate speech: Common law and statutory law – purposes and cross-purposes" paper presented at the 2018 Private Law and Social Justice Conference, Port Elizabeth on 6-8 August 2018.

SUMMARY

The Promotion of Equality and Prevention of Unfair Discrimination 4 of 2000 (the Equality Act), enacted as the enabling legislation in terms of section 9(5) of the Constitution, acknowledges the systemic inequalities of the past. It aims to facilitate South Africa's transition to a united and diverse society, defined by "caring and compassionate human relations" and based on "the principles of equality, fairness, equity, social progress, justice, human dignity and freedom". To this end, the Act prohibits *inter alia* unfair discrimination and hate speech as human rights violations. The Act provides a diverse range of "civil remedies" to address the harm caused by such violations. These remedies are listed to include *inter alia* a declaratory order; an order for damages payable either to the victim or an appropriate organisation; an order for an unconditional apology; and the implementation of positive measures. The "civil remedies" label, however, is a misnomer, as the Equality Act remedies reflect many of the features of constitutional remedies, a position supported by the express objectives of the Act, namely to give effect to the constitutional right to equality.

Despite the innovative remedies available, the Equality Courts have not utilised these remedies effectively. For hate speech cases, the tendency has been to limit the award to payment of a sum of damages to the victim and to the publication of an apology. This paper claims that the limited ambit of these awards is unlikely to overcome the full impact of the harm caused by hate speech, specifically the damage caused to the "standing" of the victim's group in society and to the broader societal good itself. It is the latter more indirect forms of harm which the Equality Act, in its preamble, professes to rectify and, yet, the remedies utilised to date

have been aligned mainly to the harm caused to the victim personally. Although this harm is not insignificant, it is not the harm which remedial anti-discrimination and hate speech legislation is intended to remedy.

This paper also addresses whether a failure to appreciate the true nature of the available remedies in the Equality Act, specifically the promotional measures listed in section 21(2)(f) to (m) of the Act, and their potential to address the objectives of the Act, has undermined the achievement of the Act's purpose, and, in turn, the transformative constitutional mandate envisaged by Madiba.

2.1.2 Denson, R "The bastardization of Islamic Law by the South African courts" paper presented at the 2018 Private Law and Social Justice Conference, Port Elizabeth on 6-8 August 2018.

SUMMARY

Notwithstanding the fact that South Africa is a country rich in cultural diversity, and despite section 15 of the Constitution, the recognition of systems of religious, personal or family law for certain cultural and religious groups has either been limited or is virtually non-existent. This is particularly true in the case of Muslim marriages. To this extent, marriages concluded in terms of Islamic rites do not enjoy the same legal recognition that is accorded to civil and customary marriages. Non-recognition of Muslim marriages has dire consequences for the parties to the marriage, more so for women who are parties to Muslim marriages as there is no legal regulatory framework to enforce any of the consequences that arise as a result of the marriage. Therefore, in most cases, parties to a Muslim marriage are left without adequate legal protection, where the marriage is dissolved either by death or divorce. The non-recognition of Muslim marriages effectively means that despite the fact that the parties to a Muslim marriage may regard themselves as married, there is no legal connection between them.

Despite South Africa's commitment to the right of equality and freedom of religion, the courts have acknowledged that the failure to grant recognition to Muslim marriages on the ground of gender equality, has worsened the plight of women in these marriages, in that they were left without effective legal protection during the

subsistence of the marriage and also when the marriage is dissolved either by death or divorce. Whilst the *ad hoc* recognition of certain consequences of Muslim marriages by the judiciary has gone a some way to redress the plight of Muslim women, and provided relief to the lived realities of Muslim women, these decisions are in fact contrary to the teachings and principles of Islam and therefore problematic for Muslims. These court decisions that are in conflict with Muslim Personal Law (MPL), will ultimately lead to the emergence of a distorted set of laws relating to Muslim family law. This is a real cause for concern. A discussion of these cases is undertaken in this paper.

2.1.3 Govindjee, A "Section 198A of the LRA" panel discussion hosted by the CCMA on the interpretation of section 198A of the LRA, Port Elizabeth, South Africa, March 2018.

2.1.4 Govindjee, A "The implications of the *Assign* case for trade unions' presented by invitation to the South African Federation of Trade Unions", Johannesburg, South Africa on 7 November 2018.

2.1.5 Govindjee, A "The increase in medical malpractice litigation in South Africa" opening remarks delivered at the South African Medico-Legal Association Foundations of Medico-legal Practice course, Port Elizabeth, South Africa, January 2018.

2.1.6 Vrancken, P "Governance of international marine resources: The Law of the Sea in the African Union and its member states" presented by invitation at the ASSAf-TWAS-AAAS Regional Workshop on Science Diplomacy , Gauteng, May 2018.

SUMMARY

This contribution aimed at stressing the need to move beyond formal equality towards substantive equality when governing international marine resources.

2.2 INTERNATIONAL CONFERENCES

2.2.1 Botha, J "Democracy, digitization and hate speech", *The future of democracy – the democracy of the future: Digitisation and democracy*, 4th bi-annual German – South African Dialogue on Democracy, 13 July 2018, Universität Mannheim, Germany.

SUMMARY

This paper addresses the tension between the need to regulate hate speech to protect the dignity and equality of its victims, and thus democratic inclusiveness, and the impact such regulation has on the constitutional democracy, given that freedom of expression is considered the bedrock of the democracy. Inter-group hatred cannot be ignored as it undermines the constitutional mandate. Yet, hate speech laws have a silencing and chilling effect. The paper records that the South African hate rhetoric on the digital front has becoming increasingly prevalent and that the Bell Pottinger scandal caused divisions along racial lines, with Bell Pottinger accused of inciting racial tension, and operating fake Twitter accounts to mount racially driven campaigns. Against this backdrop, the hate speech laws in South Africa have been the subject of much debate. Relevant questions include the ambit and precision of such laws and the need for a more focused criminal sanction. Whilst the Constitution excludes hate speech from the constitutional protection afforded to freedom of expression, the hate speech provision in South Africa's Equality Act is vague and is subject to constitutional scrutiny. The introduction of a criminal hate speech offence in the Prevention and Combatting of Hate Speech and Hate Crimes Bill has been much feted, but has also been criticised for including a broad and vague hate speech crime. With reference to the digital context and these laws, this paper endeavours to find a balance between the democratic tension underlying the hate speech debate.

2.2.2 Botha, J "Legislating against hate: A South African perspective" *International Hate Studies: Contexts and Consequences of Hate*, INHS Biennial Conference, Oshawa, Canada on May 29-31 2018

SUMMARY

This paper explored the question of whether there is a link between the delay in enacting hate crime legislation in South Africa and the failure to appreciate the complexities of the conceptual framework for hate crime in the South African context. The paper focuses on the relevance of victimhood for the hate crime construct; potential methods for the selection of group characteristics for a hate crime legislative model, the problem of vulnerability; and the inclusion of race as a broad, yet neutral, listed characteristic in such legislation.

2.2.3 Erasmus, D "The Life Esidimeni tragedy in South Africa: Government policy failing the most vulnerable" 3rd Annual Conference on Law and Development at Leiden University, Netherlands on 19-21 September 2018.

SUMMARY

In October 2015 the MEC for Health in the Gauteng Province of South Africa announced the termination of a contract between the Department of Health and Life Esidimeni, a caring facility for mental patients. About 2000 patients, who were receiving highly specialised chronic psychiatric care, were moved from the facility to families, NGO's and psychiatric hospitals providing acute care. The MEC claimed that this measure was necessitated to save money and deinstitutionalize the caring for mental patients by developing and capacitating community care.

As a result of this decision and policy at least 144 patients died from causes including starvation and neglect. This incident has been called "the greatest cause of human rights violation" since the dawn of a democratic South Africa. The Health Ombudsman's report into the deaths revealed *inter alia* that all the 27 NOG's to which patients were transferred operated under invalid licenses and that the patients died under unlawful circumstances.

The deaths caused a public outcry and NGO's started assisting the families of the deceased patients to bring legal action, as the way in which the patients were discharged was in breach of their rights in terms of the Constitution and the Mental Health Care Act. The matter was referred to arbitration before former Chief Justice Dikgang Moseneke and on 07 February 2018 a compensation agreement between the Gauteng Province and the families of 63 patients were reached, in terms whereof common law damages of R180 000 for emotional shock and psychological injury and R20 000 for funeral expenses were reached. The combined amount amounts to less than 14 000 Euro.

In this paper the vulnerability theory of Martha Fineman will be employed to analyse the Life Esidimeni tragedy. According to her theory vulnerability is inherent to the human condition and that governments have a responsibility to react affirmatively to that vulnerability by ensuring that all people have equal access to societal institutions that distribute resources. Mental patients constitute a particular vulnerable group in society.

This tragedy clearly illustrate that ill-advised and incorrectly implemented governmental policies and decisions can lead to very real and wicked problems. In addition it illustrates how NGO's can play an important role in ensuring that the rights of vulnerable groups are protected and upheld in practice.

2.2.4 Govindjee, A & Olivier, M "Overcoming barriers and challenges to the introduction of return-to-work arrangements: Developing world perspectives" International Forum on Disability Management Conference, Vancouver, Canada, October 2018.

2.2.5 Govindjee, A "Social protection and vulnerable work in South Africa" presented at the ILERA 2018 World Congress Seoul, South Korea, July 2018.

2.2.6 Govindjee, A "Social security for skilled professionals from the perspective of GATS" co-presented at the ILERA 2018 World Congress, Seoul, South Korea, July 2018.

2.2.7 Govindjee, A & Olivier, M "Social security for skilled professionals from the perspectives of GATS, the CFTA and African Free Trade and Trade in Service Agreements" Plenary session of the ILERA African Regional Congress, Mauritius, May 2018.

2.2.8 Govindjee, A & Olivier, M "Social protection extension in developing world context: Informal economy and non-standard workers" session organizer and coordinator of Study Group on "Social Protection" ILERA 2018 World Congress, Seoul, South Korea, July 2018.

2.2.9 Hokwana, T & Van der Walt, JA "The right to indefinite employment of temporary employees in South Africa: is the model effective and viable?" paper presented at the ILERA Africa 8th Regional Conference titled "Challenges facing the future of work" African perspectives and experiences", Mauritius on 7-9 May 2018.

SUMMARY

As part of the protection of atypical or vulnerable employees provisions were included into the Labour Relations Act which took effect on 1 January 2015. Section 198B seeks to give the right of indefinite-period employment to fixed-term employees under certain circumstances.

This protection forms part of a bouquet of amendments seeking to enhance the rights of vulnerable employees. The other sections (198, 198B and 198C) extend rights to employees employed by temporary employment services (labour brokers) and part-time employees.

In the present paper a background to the protection of vulnerable temporary employees is given by considering international-law obligations concerning fixed-term employees. Thereafter the South African legislative response to vulnerable temporary employees is explored. The amendments to the Labour Relations Act are considered and evaluated. Included in this critique is an evaluation of the method of determining vulnerable employees based on a remuneration threshold amount which appears to be arbitrary.

The actual provisions are also unpacked, and, with reference to the developing jurisprudence of the Labour Court, Commission for Conciliation and Arbitration and bargaining councils. In particular the paper will show the interpretation of the grounds of justification of fixed-term contracts. In this regard section 198B of the Labour Relations Act provides that an employer is allowed to employ an employee on a fixed-term contract or successive fixed-term contracts for longer than three months only if the nature of the work for which the employee is employed is of a limited or definite duration or the employer can demonstrate any other justifiable reason for fixing the term of the contract. Eight justifiable reasons are listed. These reasons are:

- Where the temporary employee is replacing another *employee* who is temporarily absent from work;
- Where the employee is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
- Where the employee is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
- Where the employee is employed to work exclusively on a specific project that has a limited or defined duration;

- Where the employee is a non-citizen who has been granted a work permit for a defined period;
- Where the employee is employed to perform seasonal work;
- Where the employee is employed for the purpose of an official public works scheme or similar public job creation scheme;
- Where the employee is employed in a position which is funded by an external source for a limited period; or
- Where the employee has reached the normal or agreed retirement age applicable in the employer's business.

These grounds do not form a closed list and the paper will address the jurisprudence concerning other justifiable reasons advanced by employers since the promulgation of the section.

In terms of section 198B employment in terms of a fixed-term contract concluded or renewed in the absence of a justifiable reason is deemed to be of indefinite duration. The consequences of "deemed permancy" are considered. One consequence is that a "deemed-permanent" employee must not be treated less favourably than an employee on a permanent basis performing the same of similar work, unless there is a justifiable reason for different treatment. These justifiable reasons are also evaluated.

How employees who are faced with a contravention of the right to be "deemed permanent" may resolve disputes or enforce their rights is also considered in the paper. The paper also seeks to determine whether the legislation provides a viable method of protection of temporary employees in South Africa.

Whether such protection exists in other countries on the African continent is also investigated, and, finally, it is determined whether the South African approach is viable to be imported to other labour-relations systems.

2.2.10 Schrage, EJH & Dondorp, JH Lemma *Dekretalen*, in H. Hempelmann, U. Swarat (Hrsg), Evangelisches Lexikon für Theologie u. Gemeinde, Neuausgabe, Holzgerlingen "Why are Common law and Civil law so different?" paper read at the 2018 Conference on Authentication in Art Conference, The Hague, Netherlands on 7-9 June 2018.

SUMMARY

The paper discusses the provision in American law - not common in continental European legal systems – the idea that a stolen good is always just that. Unlike in civil systems, in the US good faith purchasers cannot wait years and then know that their hold on what turns out to be a stolen good is secure. As American lawyers like to say: *nemo dat quod non habet* ('no one gives what he does not have'), whereas Civil lawyers stress that *mobilia non habent sequelam/meubles n'ont pas de suite/ Hand muss Hand wahren* (a person in possession of a movable can convey good title to a bona fide vendee at any type of sale, public or private, or, in case of stolen movables, the claim of the dispossessed owner is subject to a limitation statute, i.e. a time limit of a small number of years after the theft, independent of a discoverability test). The article gives some historical explanations for this difference and shows the relevance at the hand of a number of cases dealing with restitution of Nazi-looted art.

2.2.11 Tait AM & Tait, M "Airbnb in South Africa: Windfalls, pitfalls and regulation." Paper presented at the 8TH Advances in Hospitality and Tourism Marketing and Management (AHTMM) Conference at the Emerald Hotel, Bangkok, Thailand on 25-29 June 2018.

SUMMARY

The paper considers the disruptive effect of the sharing economy, represented specifically by Airbnb, on existing modes of service delivery, particularly in the context of the provision of tourist accommodation. The advantages and disadvantages of Airbnb are indicated where after different models to regulate Airbnb in other jurisdictions are indicated. The question is asked whether South Africa require the regulation of Airbnb. This is done with reference to existing laws

already in place that may be used for this purpose. An argument is presented for minimal regulatory intervention.

2.2.12 Vrancken, P "The final report of the ILA Committee on International Law and sea-level rise: Solutions proposed and outstanding questions ahead" presented by invitation at the 7th Annual Conference of the African Society of International Law, Antananarivo, October 2018.

SUMMARY

This contribution provided an African perspective on the solutions proposed, and the questions still to be addressed, by the ILA Committee on International Law and Sea-Level Rise of which the author is a member.

COLLOQUIUMS AND SEMINARS

3.1 Botha, J & Notununu, T "A framework for the selection of victim groups in hate crime legislation" paper presented at the Research Project between the Faculties of Law of Nelson Mandela University and the University of Johannesburg, Cape St Francis on 23-24 August 2018.

3.2 Denson, R "The constitutionality of the non-recognition of domestic partnerships in South Africa" paper delivered at the Family law colloquium, Nelson Mandela University on 20 September 2018.

3.3 Erasmus, D "The Life Esidimedi tragedy: A terrible tale of death, torture and disappearance of utterly vulnerable mental health care users' paper presented at the Research Project between the Faculties of Law of Nelson Mandela University and the University of Johannesburg, Cape St Francis on 23-24 August 2018.

3.4 Govindjee, A "Administering social grants in South Africa: A constitutional crisis?" co-presented a paper at the Research Project between the Faculties of Law of Nelson Mandela University and the University of Johannesburg, Cape St Francis on 23-24 August 2018.

3.5 Govindjee, A "The *Assign* case" co-presented at a seminar for the PE Business Chamber, Port Elizabeth, South Africa on 16 August 2018.

3.6 Knoetze. E "The practice of *ukuthwala* – Case studies from Lusikisiki" paper delivered at the Family law colloquium, Nelson Mandela University on 20 September 2018.

3.7 Ndimurwimo, L "Law, development and responsible governance in the post-conflict Burundi" paper presented at the Research Project between the Faculties of Law of University of Johannesburg and Nelson Mandela University, Cape St Francis on 23-24 August 2018.

3.8 Ndimurwimo, L “Navigating the South African legal space through race, gender and classed lens” paper delivered at the colloquium organized by the Faculty of Law in collaboration with CANRAD “Navigating the South African legal space through race, gender and classed lens", Nelson Mandela University on 17 May 2018.

3.9 Ndimurwimo, L, Modiri, J and Saliso, V "African legal pedagogy: Navigating the South African legal space through a race, gender and classed lens" presented a seminar at Nelson Mandela University on 17 May 2018.

3.10 Van der Walt, G “Alternate care in the light of the best interests of the child” paper delivered at the Family law colloquium, Nelson Mandela University on 20 September 2018.

BOOKS AND CONTRIBUTIONS TO BOOKS

4.1 **Govindjee, A "Employment protection in South Africa: An analysis of recent labour and social security legislative and policy developments" in S Amine (ed) *Employment protection legislation in emerging economies* (IGI Publishers, 2018).**

4.2 **Govindjee, A and De Freitas, S "Constitutional law and human rights" in Meintjes-van der Walt, L *et al Fresh Perspectives: Introduction to law* (3rd ed) (Heinemann Publishers, 2018).**

4.3 **Govindjee, A *et al* (ed)*: Commercial Law* (3rd ed) (Pearson Education/Maskew Miller Longman, Cape Town, 2018).**

4.4 **Tshivhase, AE and Bekker, JC 'Nature and sphere of customary law' in C Rautenbach *Introduction to Legal Pluralism* (5th ed) (LexisNexis 2018).**

4.5 **Vrancken, P "The African Perspective on Ocean Governance" in DJ Attard (ed) *The IMLI Treatise on Global Ocean Governance – Volume 1: UN and Global Ocean Governance* (Oxford University Press 2018) 216–231.**

4.6 **Vrancken, P and SY Ntola "African Governance Perspectives of the Blue Economy in the Indian Ocean Rim" in VN Attri & N Bohler-Muller (eds) *The Blue Economy Handbook of the Indian Ocean Region* (Africa Institute of South Africa 2018) 147–169.**

4.7 **Wagenaar, T Wagenaar, T "The Law of Intellectual Property" in Govindjee, A *et al* (ed)*: Commercial Law* (3rd ed) (Pearson Education/Maskew Miller Longman, Cape Town, 2018.**

4.8 Welgemoed, M contributed towards the following chapters in Bodenstein, J (ed) "Law clinics and the Clinical Law Movement in South Africa" 1st ed, 2018 Juta, Claremont.

4.8.1 Chapter 3 - Different methods of teaching and learning (brainstorming, simulations, lectures, experiential learning, supervision, legal research, discussion groups, audio-visuals, written exercises, problem-solving and mediation)

4.8.2 Chapter 4 - Teaching portfolio (client communication, negotiations, office- and file management, trial advocacy, drafting, litigation, judgment- and analytical skills, professionalism and legal ethics)

POLICY REPORTS

5.1 Govindjee, A & Olivier, MP and "The implications of the NHI Bill on COIDA" Report submitted to the Rand Mutual Association in 2018.

NEWSPAPER ARTICLES

6.1 Botha, J "Why precisely formulated laws regulating racist speech are needed" Business Day, 10 October 2018

SUMMARY

This op-ed article, published in the Business Day, focused on the law reform needed to regulate racist speech in society. The issue was addressed with reference to two recent Constitutional Court cases dealing with racist speech. The first involved the use of the term "swart man" in the workplace. The second concerned the dismissal of workers for racially offensive conduct for singing struggle songs during a strike. The lyrics of the song included the line "Climb on top of the roof and tell them that my mother is rejoicing when we hit the boer". The article explains that many of the subsequent media reports failed to explain the proper context in which the cases were decided. These inaccuracies, which included reports that the Court found that the "hit the boer" song was not racially offensive, resulted in claims that the Court treats white racists more severely. This is not true. The Constitutional Court was not asked to decide whether the struggle song constituted hate speech. Instead, the Court was confined to the question of whether the arbitrator's decision was reasonable in light of her factual findings. What these cases do demonstrate, however, is the limited ambit in which the courts operate when confronted with racist speech. The courts must resolve disputes within the boundaries of the facts before them and the law. It is not the courts' role to make laws setting the normative standards required of society. This is the function of the lawmakers. It is therefore most unfortunate that the legislature has failed to enact the promised Prevention and Combatting of Hate Crimes and Hate Speech Bill. Government must accept that legal reform is needed to control the on-going use of racially derogatory epithets in South Africa, which reinforce patterns of prejudice, inferiority and discrimination and cause severe harm to the transformative constitutional mandate. It must take charge by using the law to set the required normative standard.

SUMMER SCHOOL

7.1 David, DL, Erasmus, D & Welgemoed, M attended the Schola Empirica Summer School on Law, Psychology and Criminology in Prague, Czech Republic from 30 June to 05 July 2018.

SUPERVISION OF LLM DISSERTATIONS

8.1 Biggs, L supervised Keti, N "The return-to-work policy for injured and diseased workers" completed for graduation in December 2018.

8.2 Booyens, MJ supervised Kalawe, TM "An overview of absence without leave, sick absence and absconding in the local government sector" completed for graduation in December 2018.

8.3 David, DL supervised Du Toit, MC "The criminalisation of HIV and the significance of knowledge: A comparative study" completed for graduation in December 2018.

8.4 Erasmus, D supervised Grootboom, LP "The criminalization of consensual sexual acts between children" completed 2017 for graduation in April 2018.

8.5 Freeman, DW with Knoetze, E supervised Christoffels, E "The non-restoration of land: Scope and ambit of section 34 of the Restitution of Land Rights Act" for graduation in December 2018.

8.6 Gathongo, JK supervised Xakaxa, XYD "Ratifying the ILO Convention NO. 102 (Social Security Minimum Standards Convention, 1952) by South Africa" completed for graduation in December 2018.

8.7 Gathongo, JK with Van der Walt, JA supervised "Mechanisms for implementing affirmative action" completed 2017 for graduation in April 2018.

8.8 Keith-Bandath, R supervised Banda, LM "Labour dispute resolution in South Africa and Malawi: A comparative study" completed for graduation in December 2018.

8.9 Marx, FE supervised Hlazo, N "The legal remedies to protect minors against cyberbullying in South Africa" completed 2017 for graduation in April 2018.

8.10 Qotoyi, T supervised Gcayi, S "Substantive fairness in the context of dismissal for team misconduct" completed 2017 for graduation in April 2018.

8.11 Qotoyi, T supervised Hlohlolo, SA "Discrimination and dismissal based on age" completed 2017 for graduation in April 2018.

8.12 Qotoyi, T supervised Ntsebeza, U "The protection offered in terms of the 2014 Labour Law amendments to fixed-term contracts and part-time employees" completed 2017 for graduation in April 2018.

8.13 Van der Walt, JA supervised Galorale, MJ "The effect of the amendments to the Labour Relations Act on collective Labour law and proliferation of the unions" completed 2017 for graduation in April 2018.

8.14 Van der Walt, JA supervised Kemp, MJ "Public sector employees and their right to just administrative action" completed for graduation in December 2018.

8.15 Van der Walt, JA supervised Makhado, FR "Employee pension and provident fund rights" completed 2017 for graduation in April 2018.

8.16 Van der Walt, JA supervised Mkalipi, T "The role of the CCMA and bargaining councils in labour-dispute resolution" completed 2017 for graduation in April 2018.

8.17 Van der Walt, JA supervised Moela, MP "The unfair labour practice relating to suspension" completed 2017 for graduation in April 2018.

8.18 Van der Walt, JA supervised Ndobeni, ZN "The effective use of legal protection to combat stigma and discrimination related to HIV and Aids in a workplace: A case study in Kwazulu Natal" completed 2017 for graduation in April 2018.

8.19 Van der Walt, JA supervised Pillay, PS "Balancing the interests of employer and employee in dismissal for misconduct" completed 2017 for graduation in April 2018.

8.20 Van der Walt, JA supervised "Motona, J "Unfair discrimination and affirmative action in the workplace" completed 2017 for graduation in April 2018.

8.21 Van der Walt, JA with Keith-Bandath, RE supervised Jenniker, JJJ "Automatic unfair dismissals with reference to section 187(1)(c) of the Labour Relations Act" completed 2017 for graduation in April 2018.

8.22 Van der Walt, JA with Qotoyi, T supervised Hokwana, T "Substantive fairness in dismissals for operational requirements" completed 2017 for graduation in April 2018.

8.23 Vrancken, P with Lombard, M and Tshivase, AE supervised Chasakara, RS "Legal aspects of marine spatial planning" completed 2017 for graduation in April 2018.

8.24 Vrancken, P with van der Walt, JA supervised Hamukuaya, NH "Labour rights of fishers in Namibia" completed 2017 for graduation in April 2018.

SUPERVISION OF LLD THESIS

9.1 Knoetze, E with Erasmus, D supervised Jokani, MC "The Customary law practice of *ukuthwala*: An antithesis in the South African constitutional order" completed 2017 for graduation in April 2018.

Citation

The subject matter of the research involves customary and criminal law. The thesis interrogates the difficulties associated with the continued existence of customary practices in an essentially Western legal system. The practice affects a vulnerable group of women and children in an essentially Western legal system. This study illustrates that the incidence of *ukuthwala* is more than just a theoretical phenomenon by incorporating case studies from the Lusikisiki area in the Eastern Province. In this regard, the thesis can be described as both sympathetic and probing. Ultimately, from the study an important text on decolonisation analysis is produced.

9.2 Van der Walt, JA supervised Gathongo, JK "Labour dispute resolution in Kenya: Compliance with international standards and comparison" completed 2017 for graduation in April 2018.

Citation

This thesis examined the current statutory labour-dispute resolution system in Kenya. The study highlighted critical problems in the system of labour dispute resolution which does not adequately respond to the needs of parties in labour disputes. Besides protracted referral time-frames for diputes, a core concern is that the responsibility of resolving statutory disputes in Kenya is still under the control of the state through the Ministry of Labour. Consequently, the Kenyan dispute-resolution system lacks impartiality leading to unresolved labour disputes and labour unrest. The study adopted a comparative approach with South Africa and international jurisprudence with the view to adapting the Kenyan system to establish independent institutions such as the Commission for Conciliation, Mediation and Arbitration (CCMA) and specialized labour courts which can lead

to effective dispute resolution in Kenya. The results come at an opportune time when labour-law reforms are considered in Kenya.

LAW FACULTY STAFF MEMBERS GRADUATING

10.1 Christoffels, E "The non-restoration of land: Scope and ambit of section 34 of the Restitution of Land rights Act" graduated on 13 December 2019.

AWARDS

11.1 Botha, J Recipient of NRF Thuthuka Grant, post-PHD track, commencing 2019, for the project: Social change for South Africa: A law and development approach.

11.2 Botha, J, Researcher of the year, Faculty of Law, 2018.

11.3 Biggs, L Emerging researcher of the year, Faculty of Law, 2018.

GUEST LECTURERS

12.1 Bolus, T (Legal Advisor - ICRC Regional Delegation, Pretoria) delivered a paper "The special role of the ICRC (International Committee of the Red Cross), focusing on activities in Southern Africa" at Nelson Mandela University on 20 April 2018.

SUMMARY

The lecture entitled “The Special Role of the ICRC, focussing on activities in Southern Africa” provided the students with an opportunity to interact with a legal advisor for this region. Ms Bolus explained the mandate and mission of the ICRC which stems primarilty from the Geneva Conventions and their Addiitional Protocols. She linked this with specific activities that the Regional Delegation engages with therefore providing practical insight into the work of te ICRC.

12.2 Fahim-Hashemi, A (Refugee Status Determination Officer, UNHCR) presented a workshop "Comments on the South African White Paper on migration from an international Refugee Law perspective" at Nelson Mandela University on 14 May 2018.

SUMMARY

The current policy on international migration is set out in the 1999 White Paper on International Migration. It is implemented through the Immigration Act, 2002 (Act No. 13 of 2002) and partly through the Refugees Act, 1998 (Act No. 130 of 1998). The new White Paper states that the current international migration policy does not enable South Africa to adequately embrace global opportunities while safeguarding our sovereignty and ensuring public safety and national security. There are loopholes that are evident that may bring far-reaching implications on refugees and migrants should the White Paper on Migration be implemented. The White Paper stipulates that South Africa has not yet built consensus at policy, legislative and strategic levels on how to manage international migration for development. As a result, national thinking and attitudes to international migration are influenced by an unproductive debate between those who call for stricter

immigration controls and those who call for controls to be relaxed. In general the discourse is characterised by strong emotions, stereotypes and contested statistics. The White paper proposes adopting a managed international migration approach to enable us to work together to achieve common national goals. This focuses on the paradigm shift and the principles based on the 2017 White Paper as one of strategic management of international migration in order to achieve national goals set out in the National Development Plan (NDP).

12.3 Heleta, S & Fourie, L presented a talk on "South Africa's immigration policy: Progressive laws vs dehumanising implementation and regressive plans" at the Law Faculty, Nelson Mandela University on 5 September 2018.

SUMMARY

The focus of the talk was on the past, current and future immigration and refugee policies in South Africa. We discussed South Africa's immigration record since 1994 and the legal challenges that the asylum seekers, refugees and migrants have faced in the country over the years. We spoke how international migrants and asylum seekers frequently face mistreatment and corruption as they navigate the asylum and visa processes.

We also discussed the anti-poor, regressive and dehumanising policies and procedures proposed in the 2017 White Paper on International Migration, which sees poor and unskilled immigrants, most of whom are from the African continent, as a threat to South Africa's security, stability and prosperity. While the Department of Home Affairs often undermines country's laws by ignoring court orders, the 2017 White Paper on International Migration is proposing a number of new, dehumanising practices. The Lawyers for Human Rights have pointed out that the blanket detention of asylum seekers, one of the most controversial proposals in the White Paper, would be an 'inherent violation of the right to human dignity' that would fail to 'meet the requirements of proportionality under the limitations clause under section 36 of the Constitution.' Furthermore, the White Paper aims to make South Africa an unattractive destination for poor asylum seekers and migrants, while at the same time making it attractive to the rich and

connected. This way, the future of South Africa's immigration policy will separate people into 'worthy' and 'unworthy' individuals. Finally, we discussed the immigration estimates from Statistics South Africa which clearly show that the country is not flooded with foreign nationals and compared this to the xenophobic sentiments that inflate the numbers in order to blame the foreigners for most of the social ills in South Africa.

12.4 Mbenenge, JP "Navigating the legal profession: Reflections on the state of transformation in the judiciary" at Nelson Mandela University on 13 August 2018.

SUMMARY

"*Transformation*" is at the heart of the topics that I have been called upon to address. Indeed, we converge at a time when the Higher Education Quality Committee is urging law faculties the country over to reflect on the influence of transformative constitutionalism on the curriculum of the law degrees currently being offered.

Anyway, what is transformation? That is the question that we need to pose and answer tonight. It is bringing about change in a structured way – change for the better. The Merriam-Webster Dictionary defines "*transformative*" as "*causing or able to cause an important and lasting change in someone or something*".

Transformation and section 9(2) of the Constitution go hand in hand. The section authorises the adoption of remedial measures to address inequality and advance persons who were previously disadvantaged by unfair discrimination. It provides:

> *"Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken."*

Restitutionary measures are a vital component of our transformative constitutional order. It behoves us to always ask ourselves whether a law, dispensation, measure, or policy introduced to give effect to transformation serves to address inequality and advance persons who were disadvantaged by unfair discrimination.

In the past (prior to the advent of the constitutional dispensation) there were different qualifications for attorneys and advocates. We had a divided profession. During that era judges were appointed by the then State President from ranks of advocates. In practical terms the appointees would have practiced as advocates for a period of no less than 10 years and were invariably white and predominantly, if not all together, male. Blacks had been marginalized and disenfranchised, excluded from the political process. It was hard to conceive of a black lawyer being considered for judicial appointment. The appointment of females was, for some time, unimaginable. Only a few belonging to the inner circle had knowledge of the appointment process and were *au fait* with how candidates were identified. By now we should all know that political factors played a role in determining judicial appointments and promotions. Over the years the system changed remarkably, not for the worst, I believe, but for the best. This is the topic under discussion.

12.5 Ngcukaitobi, T presented a lecture titled "Mandela as a lawyer" at Nelson Mandela University on 11 October 2018.

Cognizance was granted to the manner in which the country's first black lawyers led the struggle to replace the apartheid regime of South Africa with a multi-racial democracy providing a heroic model for the legal profession throughout the world.

Focusing on the life of the late Nelson Mandela, one of the world's most revered political leaders, Adv Ngcukaitobi emphasised that these individuals became lawyers against all odds and worked within a legal system that led the nation to transformation.

"South Africa's system of apartheid was pervasive with its government and law dedicated to the separation and subjugation of the majority of its population. It's is remarkable that under apartheid, people who were part of the oppressed majority sought to work within the country's legal system. Mandela, together with the country's first black lawyers, emerged from the apartheid system with the experience and insight needed to build a democratic nation," he stressed.

How did they ever manage to practice law? What did they accomplish under the apartheid system? What did their legal accomplishment mean for South Africa? These were some of the poignant questions raised by Adv Ngcukaitobi.

A former judge on the Constitutional Court of South Africa, Albie Sachs echoed Adv Ngcukaitobi sentiments adding that the story of Mandela as a lawyer, not forgetting that of Oliver Tambo and Ruth Mompati, enriches the legal profession and exemplifies the tale of lawbreaker to the lawmaker.

Adv Ngcukaitobi, who is no stranger to UJ's halls, elucidated the importance of law and legal studies in today's evolving world and implored students to work hard to achieve their qualifications. He motivated the students to become influential lawyers, advocates and judges once they qualify and drove the message home that they have the power to shape the future of South African law.

12.6 Reuss, M (Senior Regional Protection Officer, UNHCR) presented a workshop "Nationality and stateless in Southern Africa" at Nelson Mandela University on 14 May 2018.

SUMMARY

The right to a nationality and the prevention of statelessness are fundamental human rights recognizable under international law. A number of international human rights instruments, were adopted in order to protect, among others, the stateless persons and prevent statelessness in the world. The 1954 Convention on the Status of Stateless Persons and 1961 Convention on the Reduction of statelessness are the key international conventions addressing statelessness. The 1954 Convention, for example, prohibits the expulsion of stateless individuals who are lawfully in the territory of the State Party. Article 1 (1) of the 1954 Convention refers to nationality and accepts statelessness as part of customary international law and the pragmatic interpretation in the light of protection needs is imperative. Among the United Nations High Commission for Refugees (UNHCR)'s mandate and activities is to protect stateless persons and prevent statelessness. This is in line with the UN General Assembly Resolutions, UNHCR Campaign *#IBelong* and UNHCR Global Action Plan 2014 to 2024. This

presentation aims at creating a common understanding of the nationality and statelessness and clarify the international legal framework for the individual human right to a nationality and the prevention of statelessness.

12.7 Rudolph, D "Research and work: Should judges express moral outrage in their opinions?" presented a seminar at Nelson Mandela University on 19 February 2018.

SUMMARY

This seminar addressed two questions that have been largely overlooked in the American legal literature on moral outrage. First, what do American judges mean when they express moral outrage? In other words, what is the content of judicial expressions of moral outrage, and why is it useful to understand such content at this point in time? Second, should judges express moral outrage in their opinions? Relying on legal philosophy, the seminar argued that judges should express moral outrage when faced with individuals from communities whose voice has historically been, is currently, or is at risk of being, muted.

12.8 Vandenhole, W of the University of Antwerp held a workshop "Zero-growth and socio-economic rights" at Nelson Mandela University on 16 April 2018

SUMMARY

Natural scientists have identified ten planetary boundaries. Economists have argued that we are growth-addicted, and suggested a rather radical departure from assumptions of economic growth, such as zero-growth or even de-growth in post-growth economies. Lawyers have so far not seriously engaged with planetary boundaries and growth agnosticism. This workshop sought to explore what a radically different starting point of growth agnosticism means for the conceptualisation of ESC rights and for the role of human rights in poverty alleviation. Is the general obligation of progressive realisation of ESC rights still tenable? Do we need to redefine the conditions under which retrogressive

measures are permissible? Does growth agnosticism necessitate that re-distribution and equality be conceptually revisited in human rights law?

BOOK LAUNCH

13.1 The book launch for the best-selling book by Adv Tembeka Ngcukaitobi, titled "The land is ours: South Africa's first black lawyers and the birth of constitutionalism" took place on 16 May 2018 at Nelson Mandela University, Port Elizabeth.