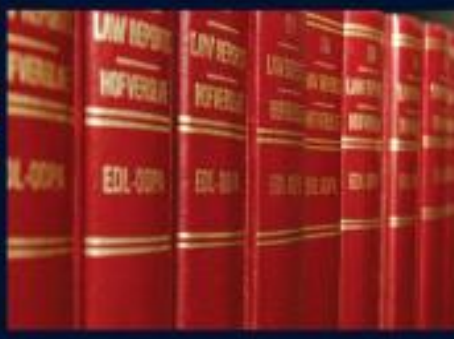
NELSON MANDELA UNIVERSITY

RESEARCH OUTPUTS

2017



Faculty of Law

Editor: Dr R Denson

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ARTICLES

1.1 CONSTITUTIONAL LAW

1.1.1 Botha, J "The State of Parliamentary Free Speech: *Democratic Alliance v Speaker of the National Assembly* 2016 (3) SA 487 (CC) – Case"

Obiter 2017 38 (1) 193 – 209

SUMMARY

In *Democratic Alliance v Speaker of the National Assembly* 2016 (3) SA 487 (CC) the Constitutional Court declared section 11 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (4 of 2004) unconstitutional. This provision authorised the arrest of any person who created or participated in a disturbance in Parliament. The Court held that the provision infringed the right to freedom of speech in Parliament and the associated parliamentary privilege immunising members of Parliament from civil and criminal liability for anything said in Parliament (sections 58(1)(a) and (b) of the Constitution). This note addresses the ambit of the parliamentary privilege, with particular reference to the meaning of the term "arrest" in the privilege and whether the privilege may be limited by Parliament's internal disciplinary rules.

1.1.2 Botha J "Towards a South African Free-Speech Model"

South African Law Journal 2017 134 (4) 778

SUMMARY

The scope of the right to freedom of expression, including the regulation of hate speech and an appropriate threshold test for a legislated hate-speech offence, are contentious issues. In this article the legitimacy of hate-speech regulation in South Africa is explored from a jurisprudential perspective by examining the rationales justifying the constitutional entrenchment of freedom of expression. The aim is to establish a clear and meaningful standard to guide the discussion around the reform of South Africa's hate-speech laws and to create a conceptual framework

for the development of an appropriate threshold test for a criminal hate-speech regulator. The article demonstrates that the correct approach to South African free-speech theory is to emphasise the social dimension of freedom of expression and the impact its exercise has on the rights of others, including the dignity of target groups, and the advancement of social connection, cohesion and diversity. A communitarian model of free speech is recommended; one that is reflective of the transformative constitutional mandate and which provides an enabling framework to facilitate the enactment of constitutionally sound legislation for the regulation of hate speech in South Africa.

1.1.3 Botha, J & Govindjee, A "Hate Speech Provisions and Provisos: a Response to Marais and Pretorius and Proposals for Reform"

PER/PELJ 2017 (20) 1 – 37

SUMMARY

This article responds to some of the issues raised by Marais and Pretorius in their 2015 article titled "A Contextual Analysis of the Hate Speech Provisions of the Equality Act" published in 2015 (18) 4 PER 901. In particular, the authors in the present response deal with a) the relationship between the prohibition of unfair discrimination and the regulation of hate speech; b) Marais and Pretorius' interpretation of aspects of the section 10(1) hate speech test; c) the role and interpretation of the proviso in section 12; and d) the constitutionality of section 10(1), as read with the proviso. For each of these issues, the authors first summarise Marais and Pretorius' contentions and then reply thereto. The authors also propose amendments to the threshold test for hate speech in terms of section 10(1) and suggest the enactment of new hate speech-specific defences.

1.1.4 Botha, J & Govindjee, A "Prohibition through Confusion: Section 12 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000"

Stell LR (2) 245 -268

SUMMARY

Section 12 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the "Equality Act") prohibits the dissemination and publication of information, advertisements and notices which demonstrate a clear intention to discriminate unfairly. Section 12 is seldom applied in practice, has complex requirements (especially when read with the proviso), prohibits expressive acts as a form of unfair discrimination and exceeds the boundaries for constitutionally excluded expression in terms of section 16(2) of the Constitution. These problems notwithstanding, section 12 has a valuable role to play as a remedial provision. Poor legislative drafting, specifically the inclusion of an objective discriminatory intent requirement and the broad use of the words "any information", conceals the true purpose of section 12. To overcome these hurdles, we recommend that the focus should be on public acts of expression (specifically signs, symbols, emblems, advertisements or notices) which have an explicit propensity to stereotype and marginalise vulnerable groups by justifying discriminatory treatment against them. The conduct must be a prohibited form of communication and then, with specific reference to the context and impact of the publication, it must be determined whether the expressive conduct discriminated unfairly against the target group. This approach ensures that the proscription responds to a pressing objective, is clearly and narrowly defined and is not overbroad, thereby complying with the constitutional and international standards for limitations to freedom of expression.

1.2 CONSUMER PROTECTION LAW

1.2.1 Biggs, L "Franchise Disclosure Documents through the Lens of the Consumer Protection Act and the Regulations"

SA Merc Law Journal (2017) Vol 2

SUMMARY

The promulgation of the Consumer Protection Act 68 of 2008 and Consumer Protection Regulations has resulted in the introduction of the right to disclosure of information for franchisees and the obligation to disclose information on the part of franchisors in terms of section 7 and regulations 2 and 3. The article examines whether and to what extent regulation 3 provides clarity regarding the information to be disclosed. Regulation 3 requires that every franchisor must provide a prospective franchisee with a disclosure document and lists the type of information the disclosure document must contain. It is submitted that regulation 3 contributes to overcoming lack of pre-disclosure and formal regulation experienced in franchise relationships in the past. However, the wording of regulation 3 requires clarification. This article proposes amendments to some of the provisions of regulation 3, with the aim to further enhance the disclosure requirements. The article furthermore identifies and examines concerns regarding the confidentiality of the information contained in the disclosure document especially during the negotiation stages and the section 7(2) cooling-off period. The signature of a confidentiality agreement is proposed as a solution to overcoming these concerns.

1.2.2 Tait, AM "The Consumer Protection Act and the Innkeeper's Liability for the Property of the Guest"

Obiter 2017 38 (3) 641- 654

SUMMARY

The note investigates the potential liability of the innkeeper for loss or damage to the property of the guest, whilst a guest at the accommodation establishment. Accommodation establishments exclude their liability for such losses as a matter of course in the contract concluded with the guest. The effect of such clauses is

to exclude the guest from the protection of the praetorian edict *de nautius, cauponibus et stabulariis.* The note considers the potential impact of the Consumer Protection Act (CPA) on this situation. Brief reference is made as to the limiting effect of the CPA on clauses excluding the liability of the innkeeper. In the main, the note considers whether section 65(2) of the CPA can apply to the situation, particularly where the property of the guest is not "placed in the hands" of the innkeeper. Section 65(2) requires of a supplier to account to the consumer for property of the consumer of which the supplier had possession. It is suggested that there is room to interpret section 65(2) of the CPA to apply to the situation described.

1.3 LABOUR LAW

1.3.1 Olivier, M and Govindjee, A "Improving Return to Work and Disability Management in the Developing World: Pointers Emanating from International Instruments, Standards and Guidelines"

Bulletin of Comparative Labour Relations 2017 vol 97 193-218

SUMMARY

Return-to-work of workers who suffer a disability as a result of an occupational injury or disease, and the management of their disabilities, is an area clearly in need of reform in the developing world. The paper considers salient aspects of key international instruments, standards and guidelines (specifically the UN Convention on the Rights of Persons with Disabilities (UNCRPD), relevant ILO Conventions, and the relatively recent 'Guidelines on Return-to-Work and Reintegration' of the International Social Security Association (ISSA Guidelines)) applicable to this area and their application to the developing world context. The paper matches these aspects against the approaches adopted / being adopted by two developing countries in particular, i.e., Malaysia and South Africa. This methodology is designed to provide a comparative, context-specific sample of the application of selected issues emerging from the said instruments, standards and guidelines in order to provide some pointers for purposes of extrapolating how return-to-work and reintegration might be introduced and implemented in other (middle-to-high income) countries in the developing world.

1.4 MILITARY LAW

1.4.1 Tshivhase, AE "Financial Security of Military Judges in South Africa"

Scientia Militaria, South African Journal of Military Studies, 2017 Vol 45 (2) 81–104.

SUMMARY

Judicial independence of military judges is essential in ensuring a fair and credible military justice system. This article reports on a systematic investigation into the status of military courts within the South African court hierarchy mainly in comparison with magistrates' courts with the aim of making a recommendation on the appropriate level of remuneration for military judges. It concludes that current arrangements regarding remuneration of military judges do not provide adequate financial security for military judges. Specifically, the remuneration of military judges is inadequate compared to their civilian counterparts (magistrates) who discharge similar judicial functions albeit in a different context. The contribution also establishes that there is an emerging trend among some countries on the cutting edge of military justice to establish special measures to deal with financial security of military judges. It recommends that special measures to guarantee the remuneration of military judges in South Africa be adopted.

CONFERENCES

2.1 NATIONAL CONFERENCES

2.1.1 Govindjee, A "Employees, Independent Contractors and Vulnerable Workers" presented by invitation following the SASLAW AGM, Port Elizabeth (August, 2017).

2.1.2 Govindjee, A "Social Security in South Africa: Past Lessons, Future Opportunities" presented by invitation at a plenary session of the *30th Annual Labour Law Conference*, Johannesburg, South Africa (2 - 3 August 2017); Second reading at the African Labour Law Society Conference, Sun City, South Africa (7 - 9 September 2017).

2.1.3 Govindjee, A "Labour Law Case Law Update" presented to attorneys at Cliffe Dekker Hofmeyr, Johannesburg, South Africa (18 July 2017).

2.1.4 Govindjee, A "Social Security in South Africa" presented by invitation at the CCMA *Job Saving Seminar*, Port Elizabeth, South Africa (3 March 2017).

2.1.5 Govindjee, A "Reflections on Leadership at Nelson Mandela University" annual presentation by invitation to attendees of the Nelson Mandela University LEAP (Leadership) Programme, Port Elizabeth, South Africa (2017).

2.1.6 Myburgh, A "Interdicting Protected Strikes on Account of Violence" Global Business Solutions Annual Employment Conference, 20 April 2017

SUMMARY

Imagine if the Labour Relations Act (LRA) provided that when a majority union engages in a protected strike, the employer is *not* entitled to engage replacement labour, minority and non-union members are *not* entitled to work, and the employer

must pay the non-strikers for the entire duration of the strike. How irrational and unconstitutional would that be?

Yet many protected strikes in South Africa have precisely these consequences. How? Through strike violence. It serves to scare away replacement labour, scare away non-strikers (who must still be paid) and either scare the employer into settlement or bring it to its knees as a consequence of the strike being much more effective than it ought to be. The strike violence amounts to 'collective brutality and economic duress. While our labour courts universally denounce strike violence and sympathise with the plight of employers, what mechanisms are there under the LRA to stop strike violence during the course of a protected strike, so as to protect employers against this abuse of power? There are three mechanisms: interdicts, contempt of court proceedings, and disciplinary proceedings during the course of the strike. The effectiveness of all of them is undermined by the fact that it is typically very difficult to identify the perpetrators of strike violence. But even if they are caught, interdicts are typically not worth the paper they are written on (in the eyes of the perpetrators); the criminal law contempt of court test is difficult to meet and the process takes a long time; and it would take a brave employer to attempt disciplinary proceedings during a violent strike. In short, these mechanisms have proven woefully inadequate.

No doubt in the realisation of this, there have been moves afoot for a number of years now to amend the LRA so as to expressly empower the Labour Court to interdict protected strikes on account of strike violence. But these attempts have proven unsuccessful, principally because of COSATU6 having set its face against any such amendment.

That brings one to the topic of this paper: in the absence of an amendment to the LRA, can the Labour Court interdict a protected strike on account of strike violence? Put differently, can a strike lose its protected status on account of strike violence?

On the face of it, one would have thought that where strikers abuse the right to strike by resorting to violence and thus place their employer under economic duress to settle on their terms, the strike should become unprotected. But what

provision of the LRA is contravened or element of the 'strike' definition rendered inoperative so as to produce this result? What about the argument that strikes and violence are separate, and should be treated as such? And what are the implications of the right to strike being a fundamental human right? These and other related questions are addressed in this paper.

2.1.7 Smith, M "Decolonising the LLB Curriculum via Clinical Legal Education" delivered at *The Decolonisation and Africanisation of Legal Education in South Africa'* conference hosted by the Law Faculty of the University of Johannesburg (30 – 31 October 2017).

SUMMARY

The aim of this paper is to discuss the transformation of the current LLB-curriculum by way of the active incorporation of Clinical Legal Education, more commonly known as CLE, into it. We submit that the term "decolonization" is an integral part of the broader term of "transformation." CLE has been proven, and is still, an invaluable pedagogical training method for providing law students with practical knowledge of legal practice. This is especially beneficial to students entering legal practice as prospective attorneys, advocates and prosecutors, as, during their practical training, they receive a glimpse into the lives of these mentioned practitioners. The word "glimpse" is especially important in this regard, as it is not possible to teach law students everything they need to know about legal practice.

The first reason is that CLE is, in most cases, only presented as a final year course at the various universities. Furthermore, in this regard, it is sometimes restricted to one semester only. Secondly, it is not a compulsory course at some universities, but merely an elective. This means that many law students are not under an obligation to complete a practical legal course before they venture into legal practice as candidate attorneys, pupils of advocates or aspirant-prosecutors. It however speaks for itself that it would be beneficial to all students to have adequate knowledge about legal practice when they have completed their legal studies, irrespective of whether or not they wish to pursue careers as legal practitioners.

In this article, utilising the theories of learning and teaching we submit that CLE, as a pedagogy and a mechanism for decolonisation of the teaching of law, be introduced into the LLB-curriculum during earlier years of legal studies. This can be done in various ways, for example as a separate practical course during earlier years of legal studies, or incorporated into existing legal courses. We shall make submissions about the best possible year of studies in which CLE should be introduced, as well as to what extent it should be introduced. In the latter instance, we submit that practical examples, that can complement legal theory, should be used, for example, providing students with examples of antenuptial contracts when explaining the theory of marriages out of community of property, or with copies of charge sheets or police dockets when presenting Criminal Law and/or Criminal Procedure. This will provide the students with a better understanding of the legal theory and assist them to view the theory in context with practice.

We shall conclude that an earlier introduction of CLE into the LLB-curriculum will undoubtedly enrich the students' practical understanding of the law, produce better student results, as well as better candidates for entering into legal practice after completion of their years of studying. We shall also submit that this approach may assist with providing better results as far as admission examinations for both candidate attorneys and pupils are concerned.

2.2 INTERNATIONAL CONFERENCES

2.2.1 Botha, J "The Inter-Connection between Race and Law Criminalising Racism in South Africa" presented at the Law in Context Workshop Centre for Socio-Legal Studies, Oxford University.

SUMMARY

This paper explores the question of whether the criminal law should be employed to regulate racism in South Africa. The issue is not addressed with explicit reference to the introduction of the Prevention and Combating of Hate Crimes and Hate Speech Bill (although some commentators have mistakenly conflated the regulation of hate crime and hate speech with the criminalisation of racism). Instead, the focus is whether the race question should be prioritised to the extent

that legislation is required to sanction acts of racism and its behavioural manifestations, including, for example: extreme cases of racial discrimination; the glorification of racial symbols; overt acts of structural racism; and the promotion or denial of Apartheid.

The issue is analysed with reference to: constitutional tenets, specifically the realisation of substantive equality, the promotion of socio-economic rights and constitutional values; the tension between the need to redress the inequalities of the past and the objective of establishing a non-racial and "socially inclusive" society; the legitimacy and efficiency of the regulation of racism through the means of the criminal law; the definition of racism; the paradox of the constitutional promise, namely that the achievement of a non-racial society is a founding constitutional value and yet, in order to achieve redress and social equality, the law relies on a recognition of racial categories, thereby perpetuating racial difference.

It is suggested that we begin with an acknowledgment that racial hegemony in South Africa has not been eradicated and that race remains a fault line. This requires the rejection of "colour-blind racism", where the impact of racial difference is minimised to embrace the idealism of the constitutional vision, but which ignores the reality of structural racism. The development of a more nuanced, but multi-faceted approach, to the regulation of racism is required. For example, South Africa has an international obligation to adopt effective positive measures, particularly in the form of educational strategies, to promote a climate of tolerance between the different groupings in society. Thus, the existing legal measures in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act) and the Employment Equity Act 55 of 1998 should be supplemented with other societal measures. In particular, the promotional measures in Chapter Five of the Equality Act should be promulgated. Steps should also be taken to improve the efficacy and functionality of the Equality Courts, established in terms of the Equality Act, to facilitate more effective civil redress for the victims of racial discrimination. Finally, whilst recognising the need to regulate hate crimes and the advocacy of hate speech, the blanket criminalisation of racist behaviour, as a knee-jerk reaction to the increased incidents of racism, is unlikely to eradicate structural racial

inequality South Africa and may, in fact, reinforce racial divisions, compromising the transformative constitutional vision.

2.2.2 Botha, J "The Definition of a Hate Speech Offence: A South African Perspective" presented at the Interdisciplinary Conference on Hate Speech: Definitions, Interpretations and Practices, University of Cyprus (2017)

SUMMARY

South Africa is experiencing an alarming degree of hate speech and hate crime. South Africa appeared before both the UNHRC and CERD in 2016. The Committees concluded that South Africa should prioritise the enactment of legislation to regulate hate crimes and the criminalisation of hate speech. In October 2016 South Africa gazetted the Prevention and Combating of Hate Crimes and Hate Speech Bill, 2016. The Bill introduces the concept of a hate crime and provides for the criminalisation of hate speech. However, the definition of hate speech in the Bill is disconcertingly wide and does not accord with the international standard for the criminalisation of hate speech.

This paper is aligned to conference "track one". It addresses the need for legal reform in South Africa and explores the parameters for the definition of a hate speech offence, with reference to:

- The international benchmark set by the ICCPR and ICERD;
- The Rabat Plan criteria for the criminalisation of hate speech;
- The EU Council Framework Decision, 2008 and the implementation thereof by EU Member States;
- The Constitution of South Africa, 1996, which excludes hate speech from constitutional protection;
- The South African context, specifically: South Africa's history; the transformative constitutional mandate and the desire to promote reconciliation, tolerance and pluralism; the need to achieve mutual respect across group difference; and the impact of hate speech on these constitutionally mandated goals.

The paper is linked to the conference aim of promoting dialogue across hate speech disciplines and offers an interesting developing country legal perspective. South Africa is an emerging constitutional democracy. The broader EU approach to the regulation of hate speech and hate crimes (both in terms of research and best practice) presents a crucial learning and partner opportunity for the further development of this area of the law.

2.2.3 Govindjee, A "Access to Safe and Affordable Drinking Water for Vulnerable Persons in South Africa: The Role of the Courts and Impact of ICESCR Ratification" presented by invitation at the *Law and Development Research Conference*, Antwerp, Brussels, (September 2017).

2.2.4 Govindjee, A "Ambedkar and Affirmative Action: Social Justice Reflections and Reclamations from a South African Perspective" presented by invitation at the *Dr BR Ambedkar International Conference: Quest for Equity: Reclaiming Social Justice, Revisiting Ambedkar*, Bangalore, India (21 - 23 July 2017).

2.2.5 Govindjee, A 'Social Protection for Vulnerable Workers' presented at the Labour Law Research Network Conference, Toronto, Canada (25 - 27 June 2017).

2.2.6 Vrancken P "African Governance Perspectives on the Blue Economy", Global Marine Science Summit, University of North Carolina at Wilmington, Wilmington NC (6 November 2017).

PUBLISHED CONFERENCE PROCEEDINGS, OTHER PUBLICATIONS AND COMMENTARIES

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

3.2 **Govindjee, A "Extending Employment Protection to Vulnerable Workers in South Africa: An Assessment of Recent Legislative Developments" in Govindjee, Brockman J and Walser, M *Atypical Employment in an International Perspective* (Rechtswissenschaftliche Belträge der Hamburger Sozialökonomie) (Heft 15) (2017) 5 - 14.**

3.3 **Govindjee, A "Social Security in South Africa: Urgent Refocus Needed" in *South African Labour Bulletin* (Vol. 41 No. 4) (November/ December 2017) 43 - 45.**

BOOKS AND CONTRIBUTIONS TO BOOKS

4.1 Delport, H SA Property Practice and the Law (Juta) Revision Service 21 (June 2017).

The Revision Service covers all relevant property law judgments delivered after 30 January 2014 (the cut-off date of Revision Service 20, 2014), bringing the main work up to date to 31 March 2017.

4.2 Barratt, A (ed) Domingo, W, Denson, R, Mahler-Coetzee, JD, Olivier, M, Osman, F, Schoeman, H and Singh, PP *Law of Persons and the Family* (2017) 2ed.

Denson, R contributed towards chapters 5 and 6 of Part 1 of the textbook. Denson, R contributed towards and chapters 6, 14 and 15 of Part 11 of the textbook. Chapter 5 of Part 1 discusses sex and gender and chapter 6 discusses Mental illness, prodigality, insolvency and physical disabilities as a factors affecting a person's legal status. Chapter 6 of Part 11 discusses void, voidable and putative marriages, chapter 14 discusses religious marriages and chapter 15 discusses domestic partnerships.

4.3 Govindjee "Employment Protection in South Africa: An a\Analysis of Recent Labour and Social Security Legislative and Policy Developments" in S Amine (ed) *Employment Protection Legislation in Emerging Economies* (2017).

The issues addressed specifically include the following:

1. Is the existing legislation pertaining to employment protection, unemployment and work constitutionally compliant?
2. Is it correct to expect legislation (and state policy) to regulate matters such as job-retention and work creation (for example, by activating the work force and through the creation of public works programmes) and, if so, does the present statutory and policy framework address this expectation adequately?

3. To what extent is the legislation compliant with international standards and best practices, and are there fresh approaches to address the present malaise, perhaps emanating from regional standards and experiences?
4. Finally, are there any best practices or lessons learned through the South African experience that should influence developments in other emerging economies?

4.4 Govindjee, A and van der Walt, A "Achieving Justice via Independent and Impartial Tribunals or Forums: Possible Lessons from the Commission for Conciliation, Mediation and Arbitration of South Africa for India" in *Privatisation and Globalisation: Changing Legal Paradigm* (Eastern Law House) (2017).

The purpose of this chapter is to address one of the core themes of this book, namely "Alternate Dispute Resolution: Success and Failures". The chapter evaluates the reasons behind the success of the CCMA (while taking cognizance of the weaknesses in the labour dispute resolution system) and compares the South African position with labour dispute resolution avenues in the Indian context, particularly those centered around mediation and arbitration. Best practice experiences from South Africa are highlighted and, to the extent appropriate, extrapolated for the Indian situation, bearing in mind the significant differences in the economies of both countries.

4.5 Vrancken, P and Tsamenyi, M (eds.) T*he Law of the Sea: The African Union and its Member States* (Juta, 2017).

This book is the most important contribution ever made in a single work to existing and future knowledge on the law of the sea as it is applied by and in Africa. While a large body of literature on the topic has been produced, nothing until now laid a systematic and firm foundation for greater interest in, and future research work on, the law of the sea as it relates to the African maritime domain. In his foreword, Judge T Mensah wrote that it was his hope that the "publication will not only inspire, assist and guide the people of Africa in the application of the new [legal] order [of the oceans],

but that it will direct people from other parts of the planet in the practical application of the new law of the sea".

4.6 Vrancken, P "Articles 312-316", "Annex IV", "Annex VI (articles 1-19)" and "Annex VI (articles 35-41)" in Proelss, A (ed) *United Nations Convention on the Law of the Sea - A Commentary* (Beck 2017).

The 1982 United Nations Convention on the Law of the Sea consolidates customary international law and various conventions previously adopted by the international community. As a framework agreement, this treaty, the most comprehensive ever concluded, is often referred to as 'the constitution for the seas'. The commentary employs a systematic methodology whereby each provision is examined and analysed element by element. The issue of the suitability of the Convention to deal with the challenges facing the modern law of the sea, such as the exploration and exploitation of non-mineral resources or the protection of the marine environment in general, occupies a central focus of this work. Prof Vrancken was the only Africa-based contributor and one of only half a dozen contributors based in the so-called developing world. His contribution amounts to one hundred pages.

4.7 Vrancken, P "Introduction" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 1-11.

The chapter provides an introduction to the book to which 29 authors contributed.

4.8 Vrancken, P "Overview of the International Law of the Sea" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 12-35.

The chapter provides an overview of the international law of the sea for readers who have no prior knowledge of the international legal regime governing the oceans.

4.9 Vrancken, P (with Lagdami, K) "Northern Seaboard" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 111-143.

The chapter discusses the regional law-of-the-sea regime along the Mediterranean coast of Africa.

4.10 Vrancken, P (with Young, M) "Western Seaboard" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 144-195.

The chapter discusses the regional law-of-the-sea regime along the Atlantic coast of Africa.

4.11 Vrancken, P (with Bojang, B) "The Gambia" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 351-370.

The chapter discusses the law of the sea as it is applied by and in The Gambia.

4.12 Vrancken, P (with Conway, H) "Liberia" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 463-485.

The chapter discusses the law of the sea as it is applied by and in Liberia.

4.13 Vrancken, P (with Cheikhany, J) "Mauritanie" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 486-505.

The chapter discusses the law of the sea as it is applied by and in Mauritania.

4.14 Vrancken, P "Seychelles" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 607-638.

The chapter discusses the law of the sea as it is applied by and in Seychelles.

4.15 Vrancken, P (with Jalloh, R) "Sierra Leone" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 639-667.

The chapter discusses the law of the sea as it is applied by and in Sierra Leone.

4.16 Vrancken, P "South Africa" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 668-698.

The chapter discusses the law of the sea as it is applied by and in South Africa.

4.17 Vrancken, P (with Mlimuka, A) "Tanzania" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 699-729.

The chapter discusses the law of the sea as it is applied by and in Tanzania.

4.18 Vrancken, P (with Swanepoel, E) "Landlocked States" in Vrancken, P and Tsamenyi, M (eds.) *The Law of the Sea: The African Union and its Member States* (Juta, 2017) 730-751.

The chapter discusses the law of the sea as it relates to the African landlocked States.

SUPERVISION OF LLM DISSERTATIONS

5.1 **Biggs, L supervised Matoti, KAL "The Fairness of Sanctions for Misconduct Dismissals" completed for graduation April 2017.**

5.2 **David, DL supervised Maharaj, MN "Barriers Created by the Law of Evidence in relation to Intentional and Reckless Exposure to and Transmission of HIV" completed for graduation April 2017.**

5.3 **Erasmus, D with David, DL supervised Laing, SR "The Constitutionality of Criminal Law (Forensic Procedure) Amendment Act" completed for graduation April 2017.**

5.4 **Govindjee, A supervised Njamela, MZ "The Social Security Law Position of Employees Involved in Motor Vehicle Accidents" completed for graduation April 2017.**

5.5 **Govindjee, A supervised Coetzer, LSD "The Legal Consequences of the Migration of Public Further Education and Training College Employees to the Department of Higher Education and Training" completed for graduation April 2017.**

5.6 **Govindjee, A supervised Snyman, C "Determining Jurisdiction at Conciliation and Arbitration" completed for graduation April 2017.**

5.7 **Ndimurwimo, LA supervised Myoli, VM "An Evaluation of Affirmative Action in the Public Sector" completed for graduation April 2017.**

5.8 **Ndimurwimo, LA with Boyens, MJ supervised Gunguta, TM "The Regulation of Sick and Incapacity Leave in the Public Sector" completed for graduation April 2017.**

5.9 **Qotoyi, T supervised Mdlaka, SS "Unfair Dismissals in the Context of a Transfer of a Going Concern" completed for graduation April 2017.**

5.10 **Qotoyi, T with Boyens, MJ supervised Delport, GJ "The Constitutionality of Section 14 of the Employment of Educators Act" completed for graduation April 2017.**

5.11 **Qotoyi, T supervised Japtha, LD "The Procedural-Fairness Requirement in Suspensions" completed for graduation April 2017.**

5.12 **Van der Walt, JA supervised Butjie, BC "The Effect of the Marikana Events on the Collective Bargaining Process in South Africa" completed for graduation April 2017.**

5.13 **Van der Walt, JA supervised Delport, PJ "Substantive Equality and the Challenge to Affirmative Action as Justification for Unfair Discrimination" completed for graduation April 2017.**

5.14 **Van der Walt, JA supervised Dolopi, JN "An Evaluation of the Approach of Arbitrators to Promotion of Disputes in Public Education" completed for graduation April 2017.**

5.15 **Van der Walt, JA supervised Kandile, MG "Amendments to Collective Bargaining" completed for graduation April 2017.**

5.16 **Van der Walt, JA with Boyens, MJ supervised Mbeleni, XM "The Impact of Violence during Strike Action on Protected Miners" completed for graduation April 2017.**

5.17 **Van der Walt, JA supervised Mtumtum, LS "Effecting Social Justice during Conciliation and Con-Arb Processes Conducted at the CCMA" completed for graduation April 2017.**

5.18 **Van der Walt, JA supervised Oliphant, LS "The Right to Engage in Collective Bargaining" completed for graduation April 2017.**

5.19 **Van der Walt, JA supervised Rafapa, MG "Establishing Good Cause Subsequent to a Deemed Dismissal" completed for graduation April 2017.**

5.20 **Van der Walt, JA supervised Rustin, JK "Appointment and Promotion Disputes in the Public Education Sector" completed for graduation April 2017.**

5.21 **Van der Walt, JA supervised Safa, M "An Evaluation of the Labour Dispute Resolution System in the Education Sector" completed for graduation April 2017.**

5.22 **Van der Walt, JA supervised Sinuka, ZH "Affirmative Action as a Strategy for Social Justice" completed for graduation April 2017.**

5.23 **Van der Walt, JA supervised Sotshononda, N "Recent Developments Concerning the Unfair Labour Practice Relating to Promotion" completed for graduation April 2017.**

5.24 **Vrancken, PHG supervised Du Plooy, I "The Combined Exclusive Maritime Zone of Africa" completed for graduation April 2017.**

5.25 **David, DL supervised Matyobeni, PV "The Defence of Battered Woman Syndrome" completed for graduation December 2017.**

5.26 **Govindjee, A supervised Van Heerden, A "Gender-based Affirmative Action in the Appointment of High Court Judges" completed for graduation December 2017.**

5.27 **Qotoyi, T supervised Mbali, BR "The Role of the CCMA to Mitigate Job Losses in the Context of Operational Requirement" completed for graduation December 2017.**

5.28 **Qotoyi, T supervised Mfaxa, M "Dismissal for Operational Requirements in the Context of Operational Bargaining" completed for graduation December 2017.**

5.29 **Qotoyi, T supervised Papu, MG "The Obligation on Employers to Effect Affirmative Action Measures" completed for graduation December 2017.**

5.30 **Van der Walt, JA supervised King, LC "Public Service Commission Grievance Recommendation Process" completed for graduation December 2017.**

5.31 **Van der Walt, JA supervised Loock, M "The Application of BEE Legislation with specific reference to Employment" completed for graduation December 2017.**

5.32 **Van der Walt, JA supervised Mamashela, ML "A Comparison of the Implementation of Equal Pay for Work of Equal Value with Canadian Law" completed for graduation December 2017.**

5.33 **Van der Walt, JA supervised Strydom, M "The Status of Employees Employed by Temporary Employment Services" completed for graduation December 2017.**

SUPERVISION OF LLD THESIS

6.1 Delport, H supervised Biggs L "An Evaluation of the Impact of the Consumer Protection Act 68 of 2008 on the Relationship between Franchisors and Franchisees" completed 2016 for graduation April 2017.

Citation

Franchising is a business model, whereby the franchisee is licensed to conduct business in a specific style originated by the franchisor. It constitutes a major part of economic activity worldwide, providing a livelihood to millions of people in many business types. The industry is well-established in South Africa, and its potential to contribute to job creation, the promotion of economic equality and the alleviation of poverty is specifically recognised by government. There is, however, a need to regulate the industry; since the inherent characteristics of the franchise relationship trigger tension between franchisors and franchisees, exacerbated by standard-form franchise agreements favouring the franchisor.

The Consumer Protection Act was the first attempt in South Africa at regulating the franchise relationship statutorily, described by the candidate as a well-intended effort at levelling the bargaining power of the parties, and promoting fairness. However, the study also highlights a number of shortcomings in the Act. It is submitted that the provisions relating to the disclosure of information have not been clearly articulated, and that changes to both the Act and the regulations promulgated thereunder are required to balance the franchise relationship.

It is also regrettable that the Act does not provide for the generic franchising education of prospective franchisees, and that no attempt was made in the legislation to develop entrepreneurship and grow the franchising industry. The candidate proposes that the Act should apply only to small, inexperienced or unsophisticated franchisees requiring protection, and that

mechanisms be introduced to promote the education of such franchisees, in order to enhance the growth of such industries.

6.2 Mukheibir, A supervised Denson, R "A Comparative Exposition of Islamic Law relating to the Law of Husband and Wife" completed 2017 for graduation December 2017.

Citation

Islamic marriages are not recognised as legal marriages in South Africa and England. The study compares five sets of legal principles relating to the relationship between a husband and a wife with specific reference to engagements, marriages and divorce. It compares the two sets of national laws with Islamic law. It highlights the dilemma for Muslim woman living in a Western society to enforce their Islamic relationship rights. In an attempt to accommodate these problems, changes were made to the national laws. However, as these legal developments are not in line with Islamic principles, Muslim women are still legally "left out in the cold".

6.3 Vrancken, P supervised Metunge, DN "The Safety of Navigation and the Role of Port State Jurisdiction: A South African Perspective" completed 2017 for graduation December 2017.

Citation

The uniform incorporation of international standards is vital to international shipping. The thesis discusses critically the incorporation of international safety standards into South African law focussing mainly on the incorporation into South African law of the 1974 International Convention for the Safety of Life at Sea (SOLAS). It identified inconsistencies and regulatory gaps between the Convention and the Merchant Shipping Act, 1951, and its subordinate legislation. It also recommended a number of amendments aimed at protecting the competitiveness of the South African ports and ensuring that this country complies fully with its international obligations in this critical regulatory area.

6.4 Vrancken, P supervised Nkomadu OE "Maritime Piracy Legislation for Nigeria" completed 2017 for graduation December 2017.

Citation

Nigeria does not have at the moment any piece of legislation criminalising piratical acts and providing sanctions for those acts. This thesis makes a significant contribution to knowledge and to the fight against the scourge in the Gulf of Guinea by proposing maritime piracy legislation for Nigeria. Those draft legislative provisions are based on a detailed examination of the existing Bill on piracy and other criminal offences at sea undertaken in the light of the relevant rules of international law, comparable pieces of legislation in a number of other African States and the wider legislative context in Nigerian law.

6.5 Vrancken, P supervised Sanni, T "The Legal Framework of Concession Agreements in Nigerian Ports" completed 2017 for graduation December 2017.

Citation

The thesis makes a rare and significant contribution to knowledge of the legal frameworks for concession agreements in African ports by focussing on the position in Nigeria. It does so by assessing the consistency of the agreements presently in force with the existing legal regime, examining the relevant provisions of the Nigeria Port and Harbour Authority Bill and the National Transport Commission Bill as well as making a number of concrete proposals for their improvement.

LAW FACULTY STAFF MEMBERS GRADUATING

7.1 Biggs, L "An Evaluation of the Impact of the Consumer Protection Act 68 of 2008 on the Relationship between Franchisors and Franchisees" supervised by Prof H Delport, completed 2016 for graduation April 2017.

7.2 Denson, R "A Comparative Exposition of Islamic Law relating to the Law of Husband and Wife" supervised by Prof M Carnelley and Prof A Mukheibir, completed 2017 for graduation December 2017.