

Recent articles and research

By Meryl Federl

The backlog of journal articles from October 2013 will be published in the following months issues of *De Rebus*.

ABBREVIATIONS:

AHRLJ: *African Human Rights Law Journal* (Juta)

JFJS: *Journal for Juridical Science*

PLD: *Property Law Digest* (LexisNexis)

SAJCJ: *South African Journal of Criminal Justice* (Juta)

SALJ: *South African Law Journal* (Juta)

SLR: *Stellenbosch Law Review*

SA Merc LJ: *South African Mercantile Law Journal* (Juta)

THRHR: *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* (Lexisnexis)

TSAR: *Tydskrif vir die Suid-Afrikaanse Reg* (Juta)

Amicus curiae

Subramanien, D 'Breaking the silence – friends of the court can adduce evidence. *Children's Institute v Presiding Officer of the Children's Court District of Krugersdorp* case CCT 69/12 [2012] ZACC 25' *Obiter* 34.2 2013 333.

Banking law

De Jager, J 'The South African Reserve Bank: Blowing winds of change (Part 1)' *SA Merc LJ* 3 2013 342.

Kelly-Louw, M 'Construction of demand guarantees gone awry: *Minister of Transport and Public Works v Zanbuild Construction*' *SA Merc LJ* 3 2013 404.

Kika, M and Buthelezi, MC 'The need for vigilance in banking transactions in the light of prevalent fraud, misrepresentation and Ponzi schemes in the business world. *The Trustees of the Insolvent Estate of Grahame Ernest John Whitehead v Dumas* case 323/12 [2013] ZASCA 19 unreported (20 March 2013)' *Obiter* 34.3 2013 611.

Millard, D 'Hello, POPI? On cold calling, financial intermediaries and advisors and the Protection of Personal Information Bill' *THRHR* 76.4 2013 604.

Child law

Banoobhai, W and Whitear-Nel, N 'Children's evidence in sexual cases in the context of *S v QN* 2012 (1) SACR 380 (KZP)' *Obiter* 34.2 2013 359.

Couzens, M 'The Constitutional Court consolidates its child-focused jurisprudence: The case of *C v Department of Health and Social Development, Gauteng*' *SALJ* 130.4 2013 672.

Couzens, M and Mazoue, N 'A critical analysis of selected aspects of the South African legal framework pertaining to children living in prison with their mothers – with brief comparative comments' *Obiter* 34.3 2013 428.

Louw, A 'Children and grandparents: An overrated attachment?' *SLR* 24.3 2013 618.
Sinclair, M 'Seatbelt legislation in South Africa – failure to uphold the rights of children' *SLR* 24.3 2013 583.
Van der Merwe, A 'A new role for crime victims? An evaluation of restorative justice procedures in the Child Justice Act 2008' *De Jure* 4 2013 1022.

Citizenship

Botha, H 'The rights of foreigners: Dignity, citizenship and the right to have rights' *SALJ* 130.4 2013 837.

Civil procedure

Bekker, T 'Rescission of judgments by consent – A critical analysis' *TSAR* 1 2014 85.

Class actions

De Vos, W Le R 'Opt-in class action for damages vindicated by Constitutional Court. *Mukaddam v Pioneer Foods* CCT 131/12' *TSAR* 4 2013 754.

Comparative law

O'Brien, R 'Comparative law and China's socialist legal system' *TSAR* 1 2014 130.

Competition law

Du Plessis, M and Scott, S 'The variable standard of rationality review: Suggestions for improved legality jurisprudence' *SALJ* 130.3 2013 597.
Munyai, PS 'The interface between competition and constitutional law: Integrating constitutional norms into South African competition law proceedings' *SA Merc LJ* 25.3 2013 323.

Constitutional law

Surbun, V "Hearing the people on the street" – Testing the extent of public participation in Durban's street-renaming process. *Democratic Alliance v eThekweni Municipality* [2012] 1 All SA 412 (SCA); 2012 (2) SA 151 (SCA)' *Obiter* 34.2 2013 368.

Consumer law

Barrie, GN 'The divergent constitutional approach to hate speech in South Africa and the United States' *TSAR* 4 2013 697.
Bernard, J 'Unfairness of price and the doctrine of *laesio enormis* in consumer sales' *THRHR* 76.4 2013 521.

Eiselen S, 'The unreasonable refusal of consent orders by the National Consumer Tribunal under the National Credit Act: *Barnes v ABSA Bank Ltd and Others confirming Motitsoe v Standard Bank Ltd*' *SA Merc LJ* 3 2013 377.

Glover, G 'Section 40 of the Consumer Protection Act in comparative perspective' *TSAR* 4 2013 689.

Hutchison, A and Stoop, H 'Misrepresentation in consumer insurance: The United Kingdom legislature opts for a "reasonable consumer" standard' *SALJ* 130.4 2013 705.

Stoop, PN 'Overselling and overbooking in terms of the Consumer Protection Act 68 of 2008: A comparison with Australian law' *SA Merc LJ* 3 2013 362.

Contract law

Cornelius, S 'Die toelaatbaarheid van ekstrinsieke getuienis by die uitleg van kontrakte. *Zeeman v De Wet* NO 2012 (6) SA 1 (HHA)' *TSAR* 4 2013 805.

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Kelly-Louw, M 'Construction of demand guarantees gone awry: *Minister of Transport and Public Works v Zanbuild Construction*' *SA Merc LJ* 25.3 2013 404.

Corporate law

Cassim, MF 'Judicial discretion in derivative actions under the Companies Act of 2008' *SALJ* 130.4 2013 778.

Cassim, MF 'The statutory derivative action under the Companies Act of 2008: The role of good faith' *SALJ* 130.3 2013 496.

Cassim, MF 'When companies are harmed by their own directors: The defects in the statutory derivative action and the cures (Part 1)' *SA Merc LJ* 25.2 2013 168.

Cassim, MF 'When companies are harmed by their own directors: The defects in the statutory derivative action and the cures (Part 2)' *SA Merc LJ* 25.3 2013 301.

Chitimira, H and Lawack, VA 'Overview of the role-players in the investigation, prevention and enforcement of market-abuse provisions in South Africa' *Obiter* 34.2 2013 200.

Delport, PA 'Share issues and shareholder protection' *De Jure* 4 2013 1056.

Jooste, R 'Observations on the impact of the 2008 Companies Act on the doctrine of constructive notice and the Turquand rule' *SALJ* 130.3 2013 464.

Joubert, EP "'Reasonable possibility" versus "reasonable prospect": Did business rescue succeed in creating a better test than judicial management?' *THRHR* 76.4 2013 550.

Le Roux, R 'A social economy and sustainability: Is there potential for an interface?' *Obiter* 34.3 2013 506.

Luiz, S 'Executive remuneration and shareholder voting' *SA Merc LJ* 25.3 2013 267.

Rachlitz, R 'Disclosure of ownership in South African company law' *SLR* 24.3 2013 406.

Stoop, HH 'Towards greener companies – sustainability and the social and ethics committee' *SLR* 24.3 2013 562.

Courts

Wa Mogoeng, M 'The implications of the office of the Chief Justice for constitutional democracy in South Africa' *SLR* 24.3 2013 393.

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Aucamp, RL 'The incidental credit agreement: A theoretical and practical perspective (2)' *THRHR* 76.4 2013 507.

Nortje, M 'Informational duties of credit providers and mistake. *Standard Bank of South Africa Ltd v Dlamini* 2013 (1) SA 219 (KZD)' *TSAR* 1 2014 212.

Otto, JM 'Die "effectenlease"' *TSAR* 1 2014 100.

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Van Heerden, C 'Section 85 of the National Credit Act 34 of 2005: Thoughts on its scope and nature' *De Jure* 4 2013 968.

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Burring, P and Reddi, M 'Section 49, lethal force and lessons from the De Menezes shooting in the United Kingdom' *De Jure* 4 2013 928.

Hector, S 'The offence of being found in disguise in suspicious circumstances' *Obiter* 34.2 2013 316.

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Ndzengu, NC and Von Bonde, JC 'The duty of utmost good faith in asset-forfeiture jurisprudence – some lessons to learn' *Obiter* 34.3 2013 377.

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Carstens, P 'Judicial recognition of the application of the *maxim res ipsa loquitur* to a case of medical negligence. *Lungile Ntsele v MEC for Health, Gauteng Provincial Government* (unreported as yet, case number: 2009/52394 (GSJ) dated 24 October 2012)' *Obiter* 34.2 2013 548.

Hartlief, T 'Vangnet of springplank? – Een enkele opmerking over de spankracht van het *buiten-contractuele aansprakelijkheidsrecht anno 2013*' *TSAR* 4 2013 607.

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Beninger, C 'Combating sexual violence in schools in sub-Saharan Africa: Legal strategies under regional and international human rights law' *AHRLJ* 13.2 2013 281.

Churr, C 'The right to mother-tongue education: Practicable or not?' *Obiter* 34.2 2013 274.

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Mahlobogwane, FM 'Parenting plans in terms of the Children's Act: Serving the best interests of the parent or the child?' *Obiter* 34.2 2013 218.

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Foreign exchange

Munyai, PS 'Gradual relaxation or gradual tightening of exchange controls? A review of South Africa's obligations under Article VIII(2) of the IMF Articles' *SA Merc LJ* 25.2 2013 148.

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Durojaye, E 'So sweet, so sour: A commentary on the Nigerian High Court's decision in *Georgina Ahamefule v Imperial Hospital & Another* relating to the rights of persons living with HIV' *AHRLJ* 13.2 2013 464.

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Human rights

Bilchitz, D 'Human rights accountability in domestic courts: Does the *Kiobel* case increase the global governance gap? *Kiobel v Royal Dutch Petroleum* 133 SCt 1659' *TSAR* 4 2013 794.

Malan, K 'An analysis of the legally protectable interests pertaining to language' *TSAR* 1 2014 66.

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Van der Westhuizen, J 'Madiba would have agreed: "The law is for protection of the people" ' *De Jure* 4 2013 878.

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Du Bois, M 'Trade marks for tobacco products as constitutional property: Australian plain packaging legislation' *SA Merc LJ* 25.2 2013 197.

Van der Merwe, A 'Infringement of the right to goodwill; the basic legal principles in relation to South African case law' *De Jure* 4 2013 1039.

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Schlemmer, EC 'Afdwinging van beslissings van internasionale tribunal – die Konstitusionele Hof aan die woord *Government of the Republic of Zimbabwe v Fick* 2013 5 SA 325 (KH)' *TSAR* 1 2014 191.

Tuovinen, J 'The role of international law in constitutional adjudication: *Glenister v President of the Republic of South Africa*' *SALJ* 130.4 2013 661.

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Kohn, L 'The burgeoning constitutional requirement of rationality and the separation of powers: Has rationality review gone too far?' *SALJ* 130.4 2013 810.

Price, A 'The evolution of the rule of law' *SALJ* 130.4 2013 649.

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Olivier, M 'A perspective on gender transformation of the South African judiciary' *SALJ* 130.3 2013 448.

Jurisprudence

Pieterse-Spies, A 'The role of legislation in promoting equality: A South African experience' *TSAR* 4 2013 676.

Labour law

Calitz, K and Garbers, C 'A comparative perspective on the application of domestic labour legislation in international employment disputes' *SLR* 24.3 2013 538.

Manamela, T 'Failure to obey employer's lawful and reasonable instruction: Operational perspective in the case of a dismissal: *Motor Industry Staff Association and Another v Silverton Spraypainters and Panelbeaters (Pty) Ltd*' *SA Merc LJ* 25.3 2013 418.

Mcgregor, M 'Affirmative action on trial – determining the legitimacy and fair application of remedial measures' *TSAR* 4 2013 650.

McGregor, M 'Employees' right to freedom of religion versus employers' commercial interests: A balancing act in favour of religious diversity: A decade of cases' *SA Merc LJ* 25.2 2013 223.

Millard, D and Botha, MM 'The buck stops ... where, exactly? On outsourcing and liability towards third parties' *Obiter* 34.3 2013 476.

Seedat, S 'Jail house rocks – the courts strum different tunes for incarcerated employees' *SALJ* 131.1 2014 45.

Tshoose, C 'Determining the threshold for organisational rights: The legal quagmire facing minority unions resolved – *South African Post Office v Commissioner Nowosenetz NO* (2013) 2 BLLR 216 (LC)' *Obiter* 34.3 2013 600.

Vettori, S 'Enforcement of labour arbitration awards in South Africa' *SA Merc LJ* 25.2 2013 245.

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Modiri, JM 'Transformation, tension and transgression: Reflections on the culture and ideology of South African legal education' *SLR* 24.3 2013 455.

Smith, SR and Bauling, A 'Aiming for transformation: Exploring gradueness in South Africa' *SLR* 24.3 2013 601.

Snyman-Van Deventer, E 'Teaching South African law students (legal) writing skills' *SLR* 24.3 2013 510.

Van Niekerk, C 'The four-year undergraduate LLB: Where to from here?' *Obiter* 34.3 2013 533.

Legal philosophy

Jooste, Y 'Thinking two worlds into one: The "distribution of the sensible" and women's renegotiation' *SLR* 24.3 2013 528.

Millard, D and Vergano, V 'Hung out to dry? Attorney-client confidentiality and the reporting duties imposed by the Financial Intelligence Centre Act 38 of 2001' *Obiter* 34.3 2013 389.

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Rautenbach, IM and Venter, R '*Mansingh v General Council of the Bar* 2014 1 BCLR (CC)' *TSAR* 1 2014 181.

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Local government

Mathenjwa, MJ 'Challenges facing the supervision of local government in South Africa' *TSAR* 1 2014 140.

Pieterse, M 'Development, the right to the city and the legal and constitutional responsibilities of local government in South Africa' *SALJ* 131.1 2014 149.

Media law

Descheemaeker, E 'Three keys to defamation: Media 24 in a comparative perspective' *SALJ* 130.3 2013 435.

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Medical law

Venter, B and Slabbert, M 'Rewarding a living kidney donor: A comparison between South Africa, Singapore and Iran' *Obiter* 34.2 2013 185.

Verwey, H and Carstens, PA 'Informed consent to cosmetic surgery – does a broader duty of disclosure exist?' *THRHR* 76.4 2013 642.

Mineral law

Badenhorst, PJ 'Paying the piper (in praesentia). *Xstrata South Africa (Pty) v SFF Association* 2012 (5) SA 60 (SCA)' *Obiter* 34.2 2013 322.

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Barratt, A 'Whatever I acquire will be mine and mine alone: Marital agreements not to share in constitutional South Africa' *SALJ* 130.4 2013 688.

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Forere, MA 'Private international law: Lesotho High Court assumes South Africa's High Court jurisdiction – *Sello Ramalitse v Mpeesa Ramalitse*' *JFJS* 38.3 2015 67.

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McCaul, E 'Prior notice before selling a trading business' *PLD* December 2013 7.

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Sonnekus, JC 'Met andermanskalf mag jy nie ploeg nie, en andermansgoed kan jy nie verpand nie' *TSAR* 1 2014 45.

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Van Marle, K and Woolman, S 'Intellectuals and democracy: Frank I Michelman's imagination and South Africa's constitutional jurisprudence' *SLR* 24.2 2013 239.

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Du Toit, P 'The role of remorse in sentencing' *Obiter* 34.3 2013 558.

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Apers, A and Verbeke, AL 'Modern usufruct – empowering the usufructuary' TSAR 1 2014 117.

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