Labour Rights and the Constitution

The Constitutionalization of Labour Rights was the subject of a seminar that was held in February. Hosted by the Institute for Development and Labour Law, it attracted most of the leading lights in this field over the past twenty-five years. With Professors Sir Bob Hepple and Harry Arthurs as the two presenters and Halton Chedle as a respondent, there was much stimulating input and discussion as the following extracts illustrate.

Although it is still very early days, I am left with a continuing sense of unease about the constitutionalization of the right to strike," said Prof Hepple. On the one hand, in the VW case, the Constitutional Court appeared to grant individual workers no more protection than the ordinary labour laws could provide. In the Bader Bophi case, on the other hand, the recourse to constitutional principle ensured the freedom of trade unions in an essentially voluntaristic system of bargaining, to use their economic power to gain a foothold. The specialist labour courts had adopted an unduly voluntaristic approach which, in one case, the Constitutional Court remedied and in the other it did not.

"My unease is twofold. First, the inadequacy of an abstract constitutional principle to ensure both the protection of the individual and the effective working of the collective bargaining system; and secondly, the apparent reluctance of labour and judges in the specialist courts to engage in policy arguments against the backdrop of the constitutional laws underlying the Constitution.

At the end, what is required is a symbiotic relationship between the specialist courts and the Constitutional Court. The Constitutional Court has the last word on the interpretation of the Constitution. But the specialist labour courts still have the unfulfilled opportunity to promote the objectives of the LRA by more robust policy discourse, using the resources of international and comparative labour law. Academic lawyers have a particularly important role to play in developing that policy discourse.

The Real Constitution

Prof Arthurs started out by saying that he did not believe in the Constitutionalization of Labour Rights because it is the Real Constitution, the market place, that counts. He asked if there had been Transformation in the workplace; his feeling is that the transformation is quite modest. 'The wage gap between men and women has narrowed but that between immigrants and others, the disabled and others, has transformed very little. The only people who are surprised are the constitutional lawyers!' Having got the attention of the assembled company, Arthurs went on to sketch the background. Whereas the 19th century was the century of laissez-faire and the 20th century was a century of social democracy and the rise of the administrative state, the 21st century has three dominant tendencies - neo-liberalism, globalization and populism. These seek to discredit social democracy and to change the discourse - the state is spoken of in terms of the enemy and not in terms of a friend. Domestic neo-liberals can be overthrown at the next election; international neo-colonialists can’t. States can resign from the WTO but can they? We have seen the emergence of a universal discourse of the rule of law but rights cannot exist if there are no judges. A hopeful sign is the ICTJ Tribunal. But, de facto, it is the market place that has the final say.

Labour Law a shield, not a set of rights

Halton Chedle was basically in agreement with Arthurs but with reservations. In the fall of apartheid, the strategic union at the heart of the 1980’s slogan ‘Organise but not litigation’ has been lost. We now have Constitutional as well as Labour Rights and policy debates around the two can undermine a system based on industrial bargaining. Unions should see Labour Law not as rights but as a shield.

Law academic wins winner of UCT Book Prize

The three-volume Commentary on the Companies Act by MS Blackman, RD Jooste and GK Everingham was awarded the UCT Book Prize for 2003. In what is a second time that Mike Blackman had won the prize.

In his citation at the June 2004 graduation ceremony, Professor Hugh Corder made the point that with the effects of globalization and the increasing power of trans-national corporations, the legal systems of the world are under great pressure to ensure a degree of fairness, responsibility and openness in the governance of their affairs.

'South African corporation law is well in line with modern developments in the leading legal systems of the world. It is the evident, breadth, literacy quality, comprehensiveness and incisiveness of the Blackman, Jooste and Eveningham Commentary which sets it apart as a work of extraordinary practical and theoretical importance.'

Individual topics from a wider all-encompassing aspect. It is undoubtedly an outstanding work and if, as there unfortunately must be, an epitaph for Mike Blackman is this the legal equivalent of St Paul’s Cathedral and Sir Christopher Wren. Such knowledge, dedication and skill are rare and now they are rarer still.'

Ben Beinart Memorial lecture II

This year’s presenter of the Ben Beinart Memorial lecture, Chief Justice Arthur Chaskalson, pictured here with the Law Students’ Council’s Executive Chair Jez Wambugu, Fatima Harvey and Matthew Gibson.
Latin scholar of international renown

Gisbert Hemmy has been the focus of an esteemed and distinguished researcher in the Law Faculty, Professor Margaret Hewett. In 1998, a presentation was prepared and annotated Dr. Testimonis, the doctoral thesis presented by Hemmy in 1972 at Leiden University on the testimonies of the Chinese, Aethiopians and other peoples, including the Hotentots.

This translation is acknowledged with thanks in the Doehima Diaries, 1740-1800, which were recently published by the University of Cape Town Historical Archives. In The Role of the Witness, they compiled and edited the information on the testimonies of the peoples of the world. The Doehima Diaries is the record of his attempts to salvage what he could from the last stages of the VOC, Hemmy died (was poisoned?) on a routine business trip to Colombo in 1798.

Recently Prof Hewett has been helping prepare a definitive study of Hemmy. He was appointed to the Cape Town in 1746 where his father, Otto Luder, was from 1710-1777 in the service of the Company at the Cape. Gisbert was educated partly at the Cape (probably in the 1720s) and partly at the Latin School (the Johanneum) in Hamburg. In his 1998 book Bonze Syth, he comments on the Company Gardens as ‘perhaps the most fertile in the world.’ He refers to the Tiger Mountains ‘which derive their name not from the tigers, but from the bright green spots on their slopes.’
time to be at the conference.'

The papers will soon be available online at www.iall.org/journal.htm

Amanda has recently been invited to join the Executive Board and in August travelled to Helsinki for the Annual Meeting. She also attended the 97th Annual Meeting and served as the first female president of the American Association of Law Libraries in Boston.

In June a three-week internship at the University of London's Institute for Advanced Legal Studies. During this period, she was able to attend the 35th Annual Conference of the British and Irish Association of Law Librarians in York. She also visited the Bodleian Law Library (University of Oxford), the Municipal Law Library (Cambridge), the Lincoln's Inn Library and the British Library.

Asked about her internship Dilhadi said 'It was a wonderful chance to see that our collections and services are comparable, if on a smaller scale. The internship has had a positive impact on my wider professional development and has afforded me the opportunity to build an international network which can only benefit the Faculty.'

Regional and international training

Senior reference librarian, Pamela Smyth, is just back from the University of York copyright scholar Siva Vaidyanathan, author of Copyright: Understanding and Copyleft (2001) and The Anarchist in the Library (2000) and is a member of the CreativeCommons.org team; and visits to some of the world's leading libraries, including the Harvard Law School.

International Criminal Court training

The Human Rights Law Centre at the University of Nottingham in conjunction with the University of Cape Town ran a training week in June/July for African countries still drafting their Court's implementing legislation, as required by their signing the Rome Statute which established the International Criminal Court. There were 28 participants from all over Africa.

Keeping the intensive six-day programme running smoothly was Adele Erasmus, a lecturer in International Criminal Law in the Criminal Justice Department; she commented on the high level of participation and on the stimulation and interaction from the diversity of experiences that the countries represented both geographically and because of the high-level participation the lecturers occupied in their respective governments.

A highlight was the session on 'Arms Traffic and International Criminal Justice' led by Prof. Dugdug (Leiden) & Hansungul (Pretoria) and Drs. Cryer (Nottingham) and Racmura (ICC). Participants and presenters engaged candidly on various prosecution objectives, and taking place on the African continent and the attitudes and responsibilities of Africans towards these international institutions.

UCT's Professor Dirk van Zyl Sport, who holds joint appointments as Professor of International and Comparative Penal Law at the University of Nottingham and Professor of Criminology at the University of Cape Town, led the session on 'Sentencing and Enforced Retirement', a subject he describes as 'one of the most underdeveloped of the modern day.'

Jooste and Everingham was the most important piece of research in the Faculty; it makes a major contribution to teaching in the LLB programme and is responsible for teaching commercial law to first year students. The work forms the basis for the examinations in the LLB programme (LML and Diplomas in International and Comparative Law) and forms the register for courses presented by the Department.

The two-volume Commentary on the Companies Act by Blackman, in those days. Instead of being inundated with academic material, we were taken on a journey, through the labyrinth of criminal cases, and encouraged to do some research of our own. The diversity of experiences and the attitudes and responsibilities of Africans towards these international institutions.

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The two-volume Commentary on the Companies Act by Blackman, Jooste and Everingham was the most important piece of research to appear in 2003. (At the time of his death, Professor Blackman was working on a book on directors' liability. Conrad Rademeyer and Judge Davis are looking into editing this work fit for publication either as a book or as separate articles). Other books published were:


Customary Law in South Africa

Professor Tom Bennett

This book provides the most up to date and comprehensive account of the major branches of customary law of South Africa in a concise, readable, accessible manner. It is divided into two parts: the first part is devoted to customary law as an oral tradition, as a written code, as a source of law, and above all, as a system of living norms that regulate the everyday lives of the great majority of South Africans.

Since the enactment of South Africa’s new democratic Constitution, the position of customary law in our legal system has been much improved. As a constitutionally protected cultural heritage, it now enjoys a status equal to Roman-Dutch Law. But all is not plain sailing. Because of the new Bill of Rights, many areas of customary law have been called into question on the ground that they offend basic human rights.

A case in point is the rule that women in many rural areas of the country - an issue that is currently being heard by the Constitutional Court. On the one hand, many learned observers consider this experience considerable in the law reform process, especially with the establishment of the South African Law Commission and with drafting new legislation, on subjects such as customary marriage and traditional courts. Tom has been Professor Public Law at UCT since the early 1980s. His three previous books on customary law were Application of Customary Law in Southern Africa, Sourcebook on Customary Law and Human Rights and Customary Law. It is thus clear that the subject of growing importance in the pluralistic African legal systems, this is a book that is likely the current book - made use of an extensive range of legal and anthropological materials from all parts of the African continent.

The Judicial Institution in Zimbabwe

Karla Saller

South Africa’s transition to a constitutional democracy began formally just on ten years ago, in the context of a substantial shift to such a means of government in many parts of the world, most notably Central and Eastern Europe, and parts of South America, Asia and Africa. Our first decade of democracy has seen many testing times for the courts as part of government, yet one of the values foundational to our Constitution. Among the most significant such values is Article 16(3) of the 1996 Constitution, are the nurturant of a “multiparty system of democratic government, to ensure accountability, responsiveness and openness.”

The situation in Zimbabwe remains close to the top of the urgent agenda of the African Union and its constituent parts. Zimbabwe is a country with a long tradition of governance and the rule of law, in his Foreword to the report, ‘Zimbabwe came to independence in a significantly different political climate from South Africa at the beginning of a decade dominated by the socioeconomic constraints of Thatcher and Reagan and with the Cold War still very much being waged. The war for freedom from colonial oppression had been bitter and of long duration, and the white minority in Rhodesia insisted on entrenched guarantees which perpetuated resentment, not hatred. The administration of justice had to contend with its own history under the rebel regime of the 1960s and 1970s on an increasingly polarised society.

The Faculty of Law at the University of Cape Town has long played a role in public debate on such matters and as a protagonist of the role of law and the implementation of democratic rights. Over the past three years, the Department of Public Law has resolved to undertake research into the new Bill of Rights, many areas of customary law have been called into question on the ground that they offend basic human rights.

The editors. ‘We believe this volume is essential reading for policy-makers and practitioners, as well as for students in criminology, law and across the social sciences. We also hope that it will be of interest to comparative criminologists and those concerned with the study of societies in transition.

Ten years into South Africa’s new democracy, the book’s editors, have made the point that the dividing line between crime and politics is not an obvious one. This is a truly excellent book because it doesn’t fall into the weakening of providing answers but constantly poses the questions which will continue to challenge criminologists. For example, the book is not simply a question of what the ‘baddies’ do to the ‘goodies’, it could be considered a form of entrepreneurship which, while not necessarily a good thing, does need to be looked at.

‘The contributions in this volume are written in a deliberately accessible style, and from a variety of disciplinary perspectives,’ says

Justice Gained? Crime and crime control in South Africa’s transition

A volume of essays edited by Bill Dixon and Elarena van der Spuy.

The inspiration for Justice Gained! came from two sources,” comments co-editor Bill Dixon. “The need for a follow up to Crime and Power in South Africa (1989) and Towards Justice! Crime and Criminality in South Africa (1990) and the need for a test that would - in the traditions of the series - grapple with crime and its control in post-Apartheid South Africa. The volume is a collection of essays written on South African Criminology at the University of Keele but was part of the University of Keele and the University of Cape Town and that is where the partnership with the other editor, Elarena van der Spuy, began.

Speaking at the launch in July, Professor of Comparative & Penal Law at UCT, Dereck Selby, made the point that the dividing line between crime and politics is not an obvious one. This is a truly excellent book because it doesn’t fall into the weakening of providing answers but constantly poses the questions which will continue to challenge criminologists. For example, the book is not simply a question of what the ‘baddies’ do to the ‘goodies’, it could be considered a form of entrepreneurship which, while not necessarily a good thing, does need to be looked at.

‘The contributions in this volume are written in a deliberately accessible style, and from a variety of disciplinary perspectives,’ says
A Focus on HIV

USA-SA police chiefs

In October 2003 the Institute of Criminology hosted a group of USA police officials to a one day workshop on police accountability in the new South Africa. The meeting took place under the auspices of People to People International.

• Community justice and community involvement in post-apartheid South Africa
• Vigilantism and Revenge violence
• Crime and Violence in Schools in Transition
• Maintaining Police efficacy and morale

UCT’s Professor Wilfred Schorf was joined by Senior Superintendents Kudor Hart (Mannenberg) and Jeremy Vey (Elais River) and their frank discussions were obviously appreciated by the visitors.

There used to be what were called Punishment stations which, if the bad cops were sent to the stations that needed the best cops, ‘joked’ Supt.Vey. ‘Now we are much more culturally sensitive and look to place people who can speak the language and who will be sensitive to traditional norms such as not searching the back of a household. It was not all bad. ‘What people forget is that there was quite a lot of peer pressure irrespective of what apartheid tried to achieve,’ said Hart. ‘Many of us had served with Umkhonto we Sowie or the ANC Intelligence Wing and so bring not only skills but experience to the new SAP.’

Prof Schorf highlighted the fact that South Africa had benefited from injections of international policing expertise. The programme of international links, i.e. the Scorpions – an initiative borrowed from the USA in 1999 - had made a big difference as has the Zero Tolerance policy. Hart gave an example of a community project in the Cape Renewal Strategy where the people of Munenburg are not only painting over graffiti and planting trees on old dump sites but also taking control of local security.

One of the sheriffs asked about Neighbourhood Watches. Hart said that unfortunately these are bedevilled by party politics and so the Cape are trying to get them operating, to the point at which they have the power to run a block rather than a big area. ‘Vigilantism, a la before the more shining day, is well thought, is proving effective as groups coalesce to combat community crime - for example, Boxing the man by beating tin cans outside a house where suspected domestic violence is taking place,’ said Hart.

A spokesman for the visitors pointed out that one of the arguments for policing in the USA is that, just as with the SAP, police accountability is the key to a better performance. The visitors agreed.

Policing gets a boost

One of our alumni, Dianna Yach, who worked in the area of policing and in fact, together with Peter Stephens, wrote Community Policing in Transition. This book was published in 1994 by Peter Stephens, who is UCT’s Professor Wilfred Schorf who joined the visi...
**Southern and Eastern African Regional Centre for Women’s Law**

Professor Julie Stewart, from the Southern and Eastern African Regional Centre for Women’s Law (SEARCWL), which is housed in the old Groote Schuur hospital building and within the Faculty of Health Sciences, the Unit’s vision is to integrate medical, criminal justice and social science research related to violence against women and in this way to produce integrated responses from both the State and the civil society. One of the Unit’s projects focuses on post-exposure prophylaxis for rape victims. It has recruited 90 women who are seen by forensic nurses at the time of the rape, a week later and then again, at twelve and twenty-four weeks.

Dying tribute to these nurses, Associate Professor Lyn Denny, executive director of GHJRU, asked ‘Do you know what courage it takes to listen to the stories of these women? It is our intention to get a course on forensic nursing certified so that the work of these specialists can get the recognition it deserves.’

Professor Justice Stewart, from the Justice Research Unit (GHJRU), was speaking at the opening of a new unit, the Gender, Health and Justice Research Unit (GHJRU), at the University of Zimbabwe, is infectious in the enthusiasm she has about developing research in Women’s Law and for its practical relevance not only for the continent but for both men and women and their engagement with the law. It all began in Oslo and with the work of Professor Tove Stang Dahl, a pioneer in the analysis of law that especially takes women and women’s situations into account. In the early 1980s, Professor Stang Dahl had the idea that this kind of approach may be very appropriate for women in the African context and that it should itself provide and at women’s interaction or non-interaction with that law and how women coped with the legal and social situations in which they lived.

She knew that culturally specific contexts are very important and that it is the cultural and religious frameworks, the economic and social settings, of the women that explain how and why women do or do not use the formal law and why that might use other mediation and adjudication fora such as the family, the church or the community.

‘Understanding the social and economic embedness of women in families and communities results in a much more action-oriented programme for Law Reform and for improving the State responses to violence against women,’ says Prof Stewart. ‘The real challenge lies in understanding the legal interface with the general law and in the end she took unpaid leave to cope with the situation not something truly feasible for the ordinary person. She had to undertake major coursework and examination to accommodate both of them. The striking part of the story is that she battled bureaucracy, with considerable difficulty and at the end of the day, almost defeated it, but one is left wondering how an ordinary lay person without contacts could find their way through the system. Contrasted with that experience will be a chapter on the educational implications for young girls who have to help provide basic AIDS care for affected family members in Zimbabwe where there is virtually no social welfare support from government bodies. So despite the seemingly large political, social and economic differences somewhat similar problems that flow from lack of access to enabling resources are faced today by the girl child trying to get recognition for the direct and indirect assistance she gives on HIV home-based care.’

Everyone can identify with the comment by Prof Shaheen Sardar Ali (now at Warwick but formerly of Peshawar, Pakistan) when looking at the vexing issue of provision of toilets in hospitals in Pakistan, ‘Men can just pee behind the tree’ or with Tove Stang Dahl’s observation that, ‘women’s lives are never the same as men’s; male gender is what we operate from.’

‘The point about the SEARCWL programme, continues Prof Stewart, ‘is that it looks at the gap and specifically need but it also looks at what men need. It is about balancing rights and responsibilities, about cultural relationships, about a more sensitive notion of human rights without compromising on the nature, content or entitlement to the right as a basic human entitlement.’

### Just what is the SEARCWL programme?

The MWL takes 18 months and is divided into three semesters. The first semester is based in Harare and gives the 30 students (only 20% of whom are from Zimbabwe) the theoretical and analytical tools to unpack women’s relationship to women, to men, and to the law in its pluralities across virtually every aspect of the law.

The second semester ends with a field research exercise in groups. This is done in Zimbabwe and is supervised by the University of Zimbabwe with undergraduate students who are doing Women’s law as an option acting as translators for the non-Zimbabwean course members.

The second semester introduces students to a broader framework and it is here that the regional co-operation becomes evident. For example, Professor Chuma Himongwa of UCT lectures on women, family, social realities and the law; the method is comparative and draws on the student’s own experience. ‘We have a high level of participatory elements going home and changing the system,’ comments Prof Himongwa. For example, in Harare the deputy speaker of the Ugandan Parliament, Rebecca Kadaga, has already set in place gender review criteria on legislation in the Ugandan Parliament and she has launched workshops for MPs on gender issues and hopes to undertake similar work in the wider African region with other MPs.’

A course on Women, Constitutions, International Law: An African Perspective is offered by the Human Rights centre at Pretoria University while the module Men, gender and the law is offered by Victor Nkwane for Lesotho with help from a Zimbabwean organization, Padare (which translated means re(“men”)s) meeting place.

Women and access to resources is offered by Dr Patricia Kameri-Mbote and Patricia Kismuli from the universities of Nairobi and Oslo respectively.

For research the dissertation is done in the first half of the third semester and is done in the home country; it is empirical work and is supervised by the SEARCWL team. The writing up of the material is done back in Harare where data analyses and synthesis are run. The data from this empirical research is to be made available to the wider academic community via the SEARCWL website.

‘We are trying to develop ways of writing deep academic material in an accessible fashion so that any reasonably literate person can grasp what we are doing. There is a focus on communication; we keep the women’s voices, the girl’s voices,’ said Stewart. ‘There is also the huge satisfaction in watching the students themselves revisit their identity. We are slowly recreating a different climate for between men and women; it is a perspective but it is a perspective that is enquiring and only developing what we are doing. We don’t compromise but we tread softly because our focus is that the women are the experts and what they need and what she does not want us to do.’

*Taking a break from the SEARCWL colloquium are UCT staff. 2nd left Pamela Snyman and centre foreground Professor Chuma Himongwa.*

### A focus on violence against women

**The Gender, Health and Justice Research Unit**

‘Violence against women is the most intractable issue our society has faced. It is a potential threat to her safety is a tension every woman feels at some time in her life as she walks in public spaces, and too often, also in her home. These experiences differentiate us from our male colleagues. If we need protection, then it means we are potential victims and so we honestly hope that this Unit, which brings together Justice, Policing, Health and Social Services, will succeed.’

Deputy Vice Chancellor Cheryl de la Rey was speaking at the opening of a new unit, the Gender, Health and Justice Research Unit (GHJRU).

Housed in the old Groote Schuur hospital building and within the Faculty of Health Sciences, the Unit’s vision is to integrate medical, criminal justice and social science research related to violence against women and in this way to produce integrated responses from both the State and the civil society. One of the Unit’s projects focuses on post-exposure prophylaxis for rape victims. It has recruited 90 women who are seen by forensic nurses at the time of the rape, a week later and then again, at twelve and twenty-four weeks.

Dying tribute to these nurses, Associate Professor Lyn Denny, executive director of GHJRU, asked ‘Do you know what courage it takes to listen to the stories of these women? It is our intention to get a course on forensic nursing certified so that the work of these specialists can get the recognition it deserves.’

Professor Justice Stewart, from the Justice Research Unit (GHJRU), also paid tribute to the director of the Unit, Lilly Artz, for having the vision to draw together these different academic strands, and for marshalling an outstanding team of researchers.

Three members of the core team, Lilly Artz, Dee Smythe and Kelley Meule, were part of the Law Faculty until earlier this year. Professor of Criminal Justice, PJ Schwikkard, also spoke at the function. ‘Much as the Law Faculty is said to be the meeting that the team brought to their work, there is no doubt that the move to join with the Health Sciences has been a positive one. In the last 18 months their growing interdisciplinary approach has had an enormous impact, from the Law Commission to Portfolio Committees to NGOs. You are, and will continue to be, a great asset to the community of academics.’

The Unit has been made possible through the generosity of the University itself and also FNB, the Open Society Foundation and UNICEF. The Unit works closely with government to improve the State responses to violence against women and a number of government officials, including Joyce Maluleke, director of the Development and Reform, of the Department of Justice, were present at the launch. The deputy minister of Justice, Cheryl Gwadzwa, was sad not to be at the occasion but sent her very best wishes and high hopes for the work of the Unit.

[Image of Lillian Artz, Cheryl Frank (Open Society Foundation) and Kelly Moult.]
Student Awards

PRIZES: 2003 — FINAL YEAR LLB

ADAMS AND ADAMS PRIZE
For the final year student obtaining highest marks in CML401W Corporation Law.
R1,000
Lwakatanyi Amosun

BOWMAN GILLIFRAN PRIZE
For the final year student obtaining highest marks in CML509H Revenue Law.
R3,500
Chevan Daniels

JUDGE SCHOCK PRIZE
For the best final year LLB student.
R3,000
Jason Brichill

JUTA LAW PRIZE
For the best Final Year LLB student.
R500
Jason Brichill

DE MOLTERO PRIZE
For the student obtaining highest marks in courses in Public Law.
R500
Jason Brichill

SOUTH AFRICAN SOCIETY FOR LABOUR LAW PRIZE
For the Final year student obtaining highest marks in the course CML513H Labour Law.
R1,000
Brendan Olivier

INTERMEDIATE YEAR LLB

TW PRICE MEMORIAL PRIZE
For the Intermediate Year student obtaining the highest overall marks in preliminary and intermediate examinations in Private Law courses.
R750
Tall Reisenberger

BRINK COHEN LE ROUX & ROODT INC. PRIZE
For the best Intermediate LLB year student in the course RDL305W Law of Contract.
R5,000
Sindiso Mnisi

BUTTENTWORTHS PRIZE
For the best Intermediate LLB year student.
Books to the value of R500-00.
R500
Russell Brandenberger

INA ACKERMAN PRIZE
For the student obtaining highest marks in CML300W — Commercial Transactions Law.
R500
Russell Brandenberger

OTHER PRIZES

BAR COUNCIL Moot PRIZE
For the best participants in the series of Moots organised by the Law Society of South Africa.
R1,000
Luke Haber

ENGEN PETROLEUM PRIZE IN MARINE LAW
For the student if of sufficient merit whose combined results are best in:
PBL602E International Law of the Sea and either
PBL603E Coastal Zone Law OR
PBL605E Marine Resources Law.
R300
Dirk Legler

BOB DEACON MEMORIAL PRIZE
For the student obtaining highest marks in CML512W Shipping Law.
R1,000
Martin Kroger

FAIRBURY ARDERNE AND LAWTON ESSAY PRIZE
To the student who submits the best essay to that year’s issue of the Transactions Law.
R1,500
Jason Brichill

SONNENBERG HOFFMANN AND GOLAMBIK ESSAY PRIZE
To be divided annually among all the students, other than the
[Determined by the Responsa Meridiana Editorial Committee]
R3,000
Justin Goldblatt

R1,500
David Wides

R1,000
Tall Reisenberger

CLASS MEDALS IN LLB COURSES:

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<td>Victoria McFarlane</td>
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<tr>
<td>RDL305H</td>
<td>Law of Contract</td>
<td>Sindiso Msili</td>
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<tr>
<td>RDL308H</td>
<td>Civil Procedure</td>
<td>Pamhildal Bamu</td>
</tr>
<tr>
<td>RDL405H</td>
<td>African Customary Law</td>
<td>David Wides</td>
</tr>
<tr>
<td>RDL406H</td>
<td>Jurisprudence</td>
<td>Justin Goldblatt</td>
</tr>
<tr>
<td>John Kotze Medal</td>
<td>Awarded to the Final Level LLB graduate who obtained the highest marks in Roman Law / Comparative Legal History and Private Law</td>
<td>Justin Goldblatt</td>
</tr>
</tbody>
</table>

PRELIMINARY AND UNDERGRADUATE STUDENTS

BEN BEINART MEMORIAL PRIZE
For the best student in Comparative Legal History and Foundations of SA Law — Set of all editions of Acta Juridica.
SET OF ACTA JURIDICA
Lauren Kohn

STUDENT AWARD

Alistair Price, grandson of the late Professor Price, won the class medals in Constitutional Law, International Law and Law of Property.

Law Students' Council 2004

The nine member Law Students’ Council (LSC) represents the diverse student body of the Law Faculty. Apart from our role in representing students on various Faculty management structures, and our various administrative functions including allocating lockers, selling ‘law tops’, organising book sales and hosting visiting students, this year the LSC has endeavoured to meet two additional objectives, firstly to bridge the divides between members of our diverse student body in order to create a truly inclusive community and secondly to expose students to the practical ‘living law’ that exists outside the lecture theatres and library. In an effort to address our first objective, the LSC provided various opportunities for students to interact. These included a student-led, daylong introduction to the Law Faculty for new students during Orientation Week and a social event towards the end of term on the lawns of the Groote Constantia Estate complete with wine tasting, a volleyball competition and boerewors rolls.

To meet our second objective the LSC organised a Magistrates’ Court Programme and Careers’ Day. The Magistrates’ Court programme was run during the winter vacation at the Wynberg Magistrates’ Court where students were allocated to state prosecutors and exposed to the various functions of the Magistrates’ Court. At a time when students’ impression of the justice system is heavily influenced by high profile High and Constitutional Court rulings and American television programmes, exposure to the Magistrates’ Court provides an eye-opener to the challenges facing not only the South African judicial system but also society a whole.

The LSC Careers’ Day was held in late July and over 20 organisations and firms ranging from the United Nations to South Africa’s most prestigious firms of attorneys manned stalls and made presentations to students from not only UCT, but also the Universities of Stellenbosch and the Western Cape. With an estimated proportion of students coming from non-legal backgrounds the principal aim of the Careers’ Day was to expose students to the firms, practitioners and general environment that they would be entering in a year or two’s time. Feedback from firms and students was extremely positive with firms commending the high calibre of the students they met at UCT. If you or your firm would like to attend the 2005 Careers’ Day email the LSC at careersday@law.uct.ac.za.

As our term of office draws to a close, the LSC can reflect on a varied and productive year during which the interests of the students they met at UCT. If you or your firm would like to attend the 2005 Careers’ Day email the LSC at careersday@law.uct.ac.za.

Student ‘advises’ Microsoft

Anesu Mhlanga, a third year LLB student from Zimbabwe, has been chosen to sit on a Board, Board of the Future, that is there to advise Microsoft on its products and its marketing. 15 representatives were selected from 135 applicants.

Anesu recently attended a 10 day convention in Seattle and had this to say, ‘I believe that I have achieved awareness for the continent. Africa is not lacking in intellect. What we lack is access and computers offer a gateway that can hasten progress. I believe there is a market in Africa for the Tablet PC; we have a tradition of writing and the fact that you can write on this screen, that it is portable and that it can be battery-powered, means that it is custom-built for the developing world. There is just one problem — it is too expensive to be a viable product at the moment!’

Streetlaw

From: Margie Kopke, the guidance counselor at Rustenburg High To: Street Law Initiative, UCT

What amazing law students you sent us. Everyone was punctual, dressed so well prepared, were comfortable with the girls, were very informative and encouraged participation and questions. If Law doesn’t float, the teaching profession would love to have any one of you! The girls learnt a lot about their rights and about the nuances of law generally. I think you have inspired some to study Law.

PS A team of tutors has spoken to Matric students, from Guguletu to Langa, mostly Edgemead to Wynberg; all the audiences would echo Ms Kopke’s remarks and would add their praise at the fact that the tutors were reasonably fluent in Xhosa!

Editor
Statement of Vision and Goals

(Adopted by the Faculty Board, July 2004)

We, the staff and students of the Faculty of Law of the University of Cape Town, recognise that we are a community of scholars, striving for excellence in all that we do. We are conscious of the fact that we are part of the broader South African society, and also the African and international academic community. We acknowledge the role played by the law in creating a society that was characterised by oppression and that remains deeply divided by inequality.

We commit ourselves to the following goals: teaching and research which is of the highest quality; developing all staff and students to their fullest potential; promoting an institutional culture founded on mutual tolerance, respect, understanding, integrity and openness, one which values our common humanity and which celebrates and promotes diversity. In the pursuit of all these goals we hope to contribute to redressing the inequality and disparity that continues to exist within South African society.

We recognise that the realisation of these goals requires:

• Scholarship that is critical and compassionate, and which explores the potential of the law as a means to achieving justice for all.
• Leadership that is effective and promotes the values of the faculty.
• Accountable, inclusive and transparent decision-making in which staff and students are given the opportunity for effective participation.
• Open and critical debate that promotes and makes academic freedom and university autonomy.
• Provision to staff and students of opportunities and resources necessary for their optimal development.

We will strive to live these values and achieve these goals in our daily activities and exchanges with one another.

A Research-led University

The term ‘research led’, which has become so important in planning documents, simply means that research is the top priority in the university. ‘Placing research so clearly at the top of a university’s agenda is, as the history of universities go, a relatively recent phenomenon,’ comments Danie Visser, Chair of the Research Committee in the Faculty. ‘Research (and its publication) has been a focus of American universities for a long time, because they modeled themselves on their counterparts in Germany, but in England the position was different. Fifty years ago one did not take up a post in law at Oxford or Cambridge in order to research – or even to write – but to teach. If you happened to have had something to say in print, well and good, but it was not necessarily the expression of the job. Then Mrs Thatcher came along and said: ‘we are giving all this money to universities; what are they doing with it?’ So this lead, amongst other things, to the Research Assessment Exercise in Britain, which has produced a league table of faculties and has made research the central activity of serious faculties.

‘In order to remain relevant in a world where research is important and – where very high quality research is being done – we have to create the right environment. In the Law Faculty this means having the first rate facilities, organizing ourselves in such a way as to have the time to do serious research; secondly, creating an environment in which we give adequate support to each other in our research activities; and thirdly, having the necessary funding,’ he said.

Research weekend

In Law Review 2003 we wrote about the success of the Research Weekend and how it had built on that success. Early in May, some 30 Faculty staff, all armed with abstracts of the research proposals to be discussed, and having prepared a comment on at least one of them, took themselves off to a beautiful valley in Stellenbosch for a weekend.

The following were the research topics:
• Jaco Barnard: A critical legal argument for contractual justice in the South African Law of Contract
• Amanda Barratt: Coercive Interpretations: Cultural Policy, Trademark and the Legal Control of Popular Culture
• Graham Bradfield: Associated Ship Arrests in South Africa
• Sam Cook: Contract for the benefit of Third Parties
• Rafia de Gama: Explaining Article 98 of the ICC and the possibility of excluding universal jurisdiction
• Adele Erasmus: Judicial notice in the Nature of the Law of the

Inaugural lecture by Professor Evance Kalula, Chair of Employment and Social Security Law.

Professor Kalula highlighted the link between labour market regulation and social protection, in particular on labour law as an instrument of social policy. It focused on South Africa in the context of the Southern African Development Community (SADC) region. It was argued that legislation and treaties of most SADC countries recognise the importance of labour market regulation, especially labour law, as instruments of social policy. Such legislation has been reinforced by the ideals of the International Labour Organization now widely accepted as a basis for sound social policy by all SADC countries.

However, in spite of such recognition, the implementation of such policies and of the treaties of most SADC countries in particular in light of the burgeoning number of Regional Trade Arrangements. Professor Kalula focused on South Africa’s experience with the ambit of the paper.

Research took place in London and Cambridge, and in the United States, especially in New York and in the West Coast. It was argued that research is so important in a world where research is the top priority in the university. ‘Placing research so clearly at the top of a university’s agenda is, as the history of universities go, a relatively recent phenomenon,’ comments Danie Visser, Chair of the Research Committee in the Faculty. ‘Research (and its publication) has been a focus of American universities for a long time, because they modeled themselves on their counterparts in Germany, but in England the position was different. Fifty years ago one did not take up a post in law at Oxford or Cambridge in order to research – or even to write – but to teach. If you happened to have had something to say in print, well and good, but it was not necessarily the expression of the job. Then Mrs Thatcher came along and said: ‘we are giving all this money to universities; what are they doing with it?’ So this lead, amongst other things, to the Research Assessment Exercise in Britain, which has produced a league table of faculties and has made research the central activity of serious faculties.

‘In order to remain relevant in a world where research is important and – where very high quality research is being done – we have to create the right environment. In the Law Faculty this means having the first rate facilities, organizing ourselves in such a way as to have the time to do serious research; secondly, creating an environment in which we give adequate support to each other in our research activities; and thirdly, having the necessary funding,’ he said.

Present at the Creation or another false start in Africa? Labour market regulation, social protection and the future of Labour Law in southern Africa.

• Sam Cook: Contract for the
• Amanda Barratt: Coercive
• Jaco Barnard: A critical legal
• Justin Goldblatt: State Liability in Delict
• Jimmy Knopp: Aspects of
• Karin Lehmann: The
• Tom Smith: The
• Conrad Rademeyer: Can the
• Anne Pope: Assisted decision-making for a weekend.
• Cathy Powell: Anti-terrorism legislation in South Africa and Eastern Africa
• Anne Pope: Assisted decision-making for those without capacity and specifically focusing on the medical realm
• Conrad Rademeyer: Can the director’s fiduciary duty to act in the best interest of the company be reconciled with maximisation of shareholder value?
• Mia Swart: Judges as Lawmakers: The institutional character and composition of the Chambers of the ICTY & ICTR
• Rhiannon Thomas: Healthcare issues and the elderly

The following were the research topics:

‘Both aspects - the rigorous exploitation of research topics and the getting-to-know-each-other interpersonal interactions - are, for me, an important element of our faculty’s institutional culture, in developing one’s ability to do research well,’ comments Anne Pope, lecturer in Private Law. ‘I found the questions posed very useful. They identified things I need to explore more, as well as things I need to explain more clearly,’ said Amanda Barratt. Similarly, Jaco Barnard has decided to qualify his use of specific terms. ‘The responses again reminded me of how ineffective language may be in the pursuit of meaning.’ For Sandy Paterson there was an acknowledgement of the need to make an introduction of clear in the introduction to clearly define the ambit of the paper.

STAFF & STUDENTS
PROFESSOR SANDRA BURMAN was nominated in the category “Distinguished scientist” for her contributions to the improvement of the quality of life in South Africa.

She was one of four nominees in this category (nationally) in 2004.

ASSOC. PROF. LEE ANNE DE LA HUNT has been seconded to the Ministry with a special responsibility on Refugee regulations; in her absence Bev Bird is acting Director of the Legal Aid Clinic.

It was de la Hunt’s initiative that saw students doing a presentation at the Courts (see p.12)

SARAS JAGWANTH, presently on leave from the faculty, is on a one-year contract as an administrative assistant to the Advocacy Division for the Advancement of Women in the United Nations in New York. Saras is a fellow at the faculty for New York in September last year to join her husband, Fred Soltau, a senior member of staff in the faculty, who also works for the United Nations.

In her work at the UN, which she describes as exciting and challenging, involves providing support to services and technical cooperation programmes for States’ parties to meet their obligations under the Convention on the Elimination of Discrimination against Women. She recently organized a workshop for government officials responsible for preparing States’ reports under the Convention for 14 Caribbean countries in Nassau, The Bahamas, as well as a judicial colloquium on the application of international human rights law at the domestic level for judges of those territories.

Her work this year will also take her to Afghanistan, Sierra Leone and Timor-Leste as part of the UN’s programme to support and strengthen the capacity of countries emerging from conflict to implement the provisions of the Convention. Saras is also part of a team that provides substantive and technical services to the Convention on the Elimination of Discrimination against Women, the expert body which monitors implementation under the Convention, when it meets in New York twice a year.

PROFESSOR CHRISTINA MURRAY was privileged to speak at the month of July at Bellagio, Italy. For someone involved in so many cutting edge projects on a daily basis, it is a fact that that month was the most significant thing she has done this year is a special one for the lady examiner! ‘It is the freedom from the tutelage of the everyday that really refreshes and enables you to think and read and write.’

LEE ANN TONG, lecturer in Private Law, is at Tufts University for the last four months of the year steeping herself in US Property Law, IP is the hot topic of the moment, especially as it relates to indigenous knowledge, such as Roxo toos properties and such as Anzoan beer; watch this space for developments.

PROFESSOR GERALDINE VAN BUEREN was awarded The Lawyer/Unicef Child Rights Lawyers Award in 2003. In an interview with Gemma Charles of The Lawyer, the following appears at the CTC: “It is a full time job, but one that achievements the world over, the one that should be the one of the original drafters of the UN convention. This much to offer the world, it is set of minimum standards designed to protect children’s rights the world over, be they, civil, political, economic, social or cultural.”

Geraldine spoke on ‘A child’s right to privacy’ at a symposium at the Buenos Aires Law School in June. ‘I realized how far South Africa had come in 10 years compared in Argentina in 21 years,’ she said. Of the many lasting memories of her few days in Buenos Aires was the women marching in the Plaza de Maya, as they do every Thursday at 3pm, with white kerchiefs on their head to demonstrate about/ remember all those children who have ‘disappeared.’

• The World Congress on Children and Family will be held in Cape Town in March 2005 at which various Faculty will speak, including Burman, Himonga & van Bueren.

JUDGE BELINDA VAN HEERDEN has been appointed as a substantive judge of appeal in the SCA. Belinda left the Faculty in 1999 for the Bench and returns often to act as a different kind of judge in the annual Most Complete.

PROFESSOR DIRK VAN ZYL SMIT was awarded a Meritorious Publication Award for his book Graduation as his most recent book Taking life (im)prisonment seriously in South Africa and international law.


1998: HANNAH BELL
Ms Jessica Bell’s academic career was a Doctor of Laws, honors cum laude, at UCT’s December 2003 graduation. In this citation, Professor Dirk van Zyl Smit outlined the distinguished legal career of not only-hard to have also of his father and his three sons.

It is since his retirement from the Bench that he has perhaps become best known as a public figure. The main reason why we want to show him is the superb work that he has done and is doing as the Inspecting Judge and the head of Judicial Inspectioner of prisons.

1983: RICHARD SPOOR
’Spoor is the lawyer who on behalf of poor and ill former asbestos mine workers took on the might of Gencor and won R460 million in compensation,’ says Business Report on his passing.

After graduation, Richard worked for Goldfields; in the mid 1970s the apartheid government was gathering momentum and, damaged at the racial fringe, he quickly as a mine worker, he secretly assisted the emerging National Union of Mineworkers.

Richard’s firm operates out of Nelspruit; we were delighted that he and his wife travelled to Cape Town for the 2003 Reunion weekend (pics on Faculty website).

1984: WALLACE MGOQI
Dr Mgoqi, City Manager of Cape Town, was awarded Doctor of Laws, honors cum laude, by UCT in 2002. This was followed by all similar awards in 2004 for his unprecedented efforts of Transnet and the City of New York. Cumy School of Law honoured him ‘by his role in the construction of democracy and equality in South Africa.’

Himself the victim, at age six, of forced removal under the notorious Group Areas Act, his legal assistance to families in Khayelitsha has been recognised in their naming the new community Wallacedene.

1994: ERIC LIEFELDT
Eric was a stalwart of the attorney’s profession and the chair of the section of the School for Legal Practice at UCT. ‘A delightful gentleman who gave so much to this institution, the legal profession and to the wider community,’ said Prof Hugh Corder.

NB. The School for Legal Practice last was celebrated a Decade of Excellence 1993-2003

1999: LEWIS GORDON PUGH
London-based lawyer won 100 kms, the longest swim ever attempted in Africa, in the Starfish Series for the Sustainable livelihoods funds for South African HIV/AIDS orphans. ‘Last year he broke the world record for the most northern swim – around the tip of Europe.’ Cape Times April 26th, 2004

2002: KEVIN ILES AND KERRY WILLIAMS
After graduating, Kevin was a researcher at Mokgony. He has been awarded the Constitutional Commentary Trust Fellowship to study a Biotechnology Law Masters programme at Duke. Kerry Williams won the 4th Law Reform Commission Immah Mohamed Prize for the best law reform essay, the topic was Legalising same-sex marriage in South Africa. This has now been published in the 2004 SALDRU submission.

1981: ANDREA DURBRACH
Andrea, who is a winner of Interin 25 was the Director of the Public Advocacy Centre in Sydney. She has just accepted a position as Associate Professor in the Faculty of Law, University of New South Wales, also in Sydney.

1983: JOHN DE LACIE practised at the Cape Bar from 1983 to 1994. He was a Member of Parliament from June 1994 until his appointment as Deputy Minister of Justice earlier this year.

1987: CAMERON DUGMORE is MEC for Education of the Provincial Government of the Western Cape.

1988 & 1989: PJ HOPE AND SHAWN READ recently formed Hope Phillips, a Johannesburgbased law firm with specialist expertise in corporate and commercial law. Although a relatively young firm, RHP is already ranked in the top 10 legal advisors. PJ has a Masters of Law degree from Columbia and is admitted as an attorney to the Bar of South Africa and New York. After articles in CT, Shaun moved into Merchant Banking following internships with SBP.

• RHP has generously offered bursaries to previously disadvantaged UCT LLB students to the value of R25 000.

1945: WILFRID COOPER
Known in the profession as ‘the tiger’ Judge Wilfrid tackled every brief with passion, fearlessness and tenacity; he undertook the pro deo defence of Tsatsafand and, to quote Justice Tshabalala; ‘in the public’s public, opinion paying for Tsatsafand’s life, he succeeded in saving him from the gallows and obtaining a verdict of insanity.’

Wilfrid’s energy was not limited to his work at the Bar and on the Bench. His first publication in 1959 was Handbook on the Criminal Law. It was and this was the first of no less than a dozen legal publications.’
1949 LLB Hi Shandling
After practicing as an attorney in South Rhodesia (now Zimbabwe), Hyman emigrated to Canada in 1963, and has been a barrister and solicitor (Reg. No. 8258) in Edmonton since 1951. LLB DM Goldberg
1949  DIP LAW  JKW Crowhurst
John has been at the Cape Bar since 1981. 1984  LLB WP Lane-Mitchell
Bill works for Econorisk Benefit Consultants (Pty) Ltd. 1984  LLB MJ Divett
Albert is Special Counsel for Mintz, and Cohen.
1985  LLB AM Rogers, SC
Ronel did her LLM at UCT in 1998 and before that pracitised as an attorney in CT. 1990  LLB LP Rothmann
He spent much of his legal career helping the dying to draw up a legal will. 1990  LLB PM De Klerk
He worked as a Patent Agent at DeGroot; he joined in 2005. 1990  LLB AR Tilley
He is also a partner at WWB and a member of the Forensic Services Division of Deloittes in the W.Cape; he joined them in June 1998 and before that was a prosecutor in the Department of Justice.
1993  LLB EN Grange
He has also served as a Trustee of the Open Democracy Advice Centre; she also serves as a Trustee of the Women’s Legal Centre, CT. 1991  LLB SG Glyn
He has worked in corporate work and in particular, Public Companies, M & A and Capital Markets. 1993  LLB BM Buchanan
He is a Photographer for Stockfile. 1991  LLB SG Glyn
He has worked in corporate work and in particular, Public Companies, M & A and Capital Markets.
1991  LLB AR Tiley
Carl works at Albany Investments Ltd in the Property field and gives legal counsel to both local and foreign investors wishing to purchase a slice of the CT real estate market. 1990  LLB AT Strachan
He helped the dying to draw up a legal will. 1990  LLB PR Friedmann
He is Managing Director at Kelp Foods. 1978  LLB P Leon
He was a prosecutor in the Department of Public Prosecutions and was a partner at WWB and a member of the Forensic Services Division of Deloittes in the W.Cape; he joined them in June 1998 and before that was a prosecutor in the Department of Justice.
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1991  LLB SG Glyn
He has worked in corporate work and in particular, Public Companies, M & A and Capital Markets.
1989  LLB DP Erleigh
He is a Partner in Weightman Consultants (Pty) Ltd.
1990  LLB PG Beningfield
He is a Partner in Weightman Consultants (Pty) Ltd.
1990  LLB DJ Gold
He spent some 27 yrs as an in-house legal adviser for various companies. With more than 20 yrs in the mining and exploration field, he now practises as a consultant.
1986  LLB CB Prest
He graduated with an LLB from the University of the Wits. He has practised in civil practice in CT, until recently.
1993  LLB OL Rogers, SC
He landed up in the Insurance Industry in the UK. 1996  LLB LP Rothmann
He has been a prosecutor in the Department of Public Prosecutions and was a partner at WWB and a member of the Forensic Services Division of Deloittes in the W.Cape; he joined them in June 1998 and before that was a prosecutor in the Department of Justice.
1990  LLB AR Tiley
John is an attorney in CT.
1992  LLB CG Allwright
Craig works for a law firm in Amsterdam (M & A). It has been stimulating working in a very cosmopolitan and socially responsible corporate market like the Netherlands, he says.
1992  LLB PJ Berthold
Pauline Alexander, Editor
E-mail: alexap@law.uct.ac.za Fax: (021) 650 5662: Law Faculty, P.B.Rondebosch, 7701.
1999  LLB MW Stöhr
She joined the firm in the property field and gives legal counsel to both local and foreign investors wishing to purchase a slice of the CT real estate market.
1992  LLB CJ Zell
He has worked in corporate work and in particular, Public Companies, M & A and Capital Markets.
1988  LLB JM Abreu
Jan is a Senior partner at Abreu and Cohen.
1986  LLB VID Erichsen
He has 14 yrs of excellent fun!; he is back in practice, IP and IT are his specialties.
1985  LLB SG Glyn
He has worked in corporate work and in particular, Public Companies, M & A and Capital Markets.
1985  LLB SG Glyn
He has worked in corporate work and in particular, Public Companies, M & A and Capital Markets.
1984  LLB MG McClune
CT, specialising in Estate Planning. 1982  LLB AG Rubin
Michael is Managing Director at Mallincks II, CT.
1984  LLB MG McClune
George is a partner at a firm in Essen.
1988  LLB LP Rothmann
He has been a prosecutor in the Department of Public Prosecutions and was a partner at WWB and a member of the Forensic Services Division of Deloittes in the W.Cape; he joined them in June 1998 and before that was a prosecutor in the Department of Justice.
1990  LLB LP Rothmann
He is Managing Director of the Open Democracy Advice Centre; she also serves as a Trustee of the Women’s Legal Centre, CT.
1991  LLB SG Glyn
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He has 14 yrs of excellent fun!; he is back in practice, IP and IT are his specialties.
1981  LLB BS Van Niekerk
Marc is a trial attorney in San Jose, California. He spent two years in Austin, first clerking for a law firm and then completing a LLM at the University of Texas.
1980  LLB AG Rubin
Alan is working for Bernadt Vukic Potash & Gold LLP.
1989  LLB LP Rothmann
He has been a prosecutor in the Department of Public Prosecutions and was a partner at WWB and a member of the Forensic Services Division of Deloittes in the W.Cape; he joined them in June 1998 and before that was a prosecutor in the Department of Justice.
1992 LLB MK Engelbrecht
Michèle is an Attorney for Canca Import Resources in Cape Town.

1992 LLB T Knoesen
 Теперь a Partner in the Global Consulting Group in London; she did a 2 year secondment in Singapore in 2002.

1992 LLB MA O’Sullivan
 Michelle is director of the Women’s Law Centre in CT.

1992 LLB E Palzes
Ekaterini was a HR Business consultant for Dafna Shell, CT; she emigrated to Perth in 2002.

1994 LLB Kaan Sima
is a Partner for Consolidated Marine Contractors.

1996 LLB Loring
David completed his LLM at Duke and an MPhil at Cambridge. He has been at the U.S. investment bank Merrill Lynch since 1995 doing leveraged buyouts.

1992 LLB F Salha-Molusi
Fellow did an LLM in Electronic Law at Melbourne University and is currently International Business Manager for MTN, based in Lagos.

1994 LLB S Breytenbach
Paula is a Senior Manager in the Ernst & Young Tax Department in CT.

1993 PG Dip CR Delport
After his PG Dip in Tax, Craig working as a Tax Advisor for KPMG in CT.

1994 LLB MS Caesar-Katsenga
1994 LLB F Essop
Fatimah is an attorney with the Kutlwanong Democracy Centre, Johannesburg.

1994 LLB M Gillespie
Competition Law department of WWB in Switzerland.

1994 LLB M Guy
Kathleen is currently a Programme manager in the Communications - Media Division of the DST, Berlin.

1995 LLB A Willoughby
Sonia is a MARC Consultant for the Province.

1994 LLB S Phillips
Simon has a travel company called Adagio Tours & Travel in Lourenço Marques.

1997 LLB D Jaff
Daniella is currently studying at the LSE.

1997 LLB S Jowell
Simone is in the process of completing a Masters in Corporate Law at the University of Otago.

1999 LLB M Demuth
Michael works as a lawyer in Hamburg.

1999 LLB M Friesen
Johannes is working for the NPS in Frankfurt, Germany.

2000 LLB BC Wharton
Kgomotso is starting articles in Jhb in 2001 and is currently practising as a High Court attorney in 2001; he has practised in the Commercial Division of the DenyesReitz CT office and was appointed a director in 2002.

2001 LLB S Sallas
Ian is working at KPMG in Harare.

1996 LLB JM Mayers
After her PG Dip (2003), Kgomoto was appointed Social Dialogue Specialist with the ILO; previously she was Principal State Council, (Botswana) and Registrar, Industrial Court (Botswana).

2001 LLH J Kotze
Currently with Jurgens Bekker Attorneys, Johannesburg; was admitted in November 2003.

2001 LLB ML Phility
Membership on exchange at Duke University.

2001 PG Dip LAW EAJ Theron
Ernest works for Johnhine Communications - Media Division: Eastern Cape.

2001 LLB L van der Westhuizen
After completing her pupillage in 2002, Laura-Anne started practising as an Advocate and Member of the Cape Bar.

2002 LLB L Benjamin
Leona was appointed a French law arbitrator for the Arbitration and Industry Chamber (BDAZ).

2002 LLB JM Oxenham
After articles, Andile joined Moss Alexander in 2002.

2002 LLB KX Mkhawana
Rasheed is currently a Magistrate in the Johannesburg High Court.

2003 PG DIP LAW MJ Shale
Catherine is working in the practice of International Law at the University of Pretoria.

1996 LLB AC Bull
After articles in CT, Andrew moved to London and is currently Senior Legal Counsel-Cabinet Office, London.
The dean and his deputies

Professor Evance Kalula, Deputy Dean (postgraduate studies), Professor Hugh Corder, Dean, and Professor Chuma Himonga, Deputy Dean

Visitors to the Faculty

Symposium on Economic and Social Rights

A joint committee of the House of Lords and the House of Commons visited UCT on June 19th to meet with Faculty and discuss this issue. Here are as couple of sound bytes that resonated with our visitors.

Professor Judge Dennis Davis, a former Judge, who had been wrong and for the following reasons:

i. One must not under estimate the process of justification. The move from a Parliamentary system to a Constitutional one, means that Government has to explain its actions (and not just every five years) and this allows a process of rational justification to come to the public domain

ii. There is a significant gap between the provisions of the Constitution and the reality that South Africans experience on a day to day basis. When the Grooteboom Case was argued I saw children coughing and I saw mothers in their hopelessness. But being allowed to argue for an improvement in their conditions is real for both judges and their litigants. So I am grateful that we included socio-economic rights.

iii. ‘If you do have socio-economic rights then there is the hope of being able to persuade Government of the need for positive rights (and not just negative ones). A case in point is the Metrorail case where the argument is that the rail company is obliged to ensure that commuters have a right to travel in safety.

Judge Davis moved on to the argument concerning jurisdiction versus Parliamentary Democracy. ‘A Jurisprudence has inherent problems but the SA Constitution was designed to give some sense of balance between the execution of power and the justification of that power. The great anxiety is when or if you over draw the Constitution and give it a particular flavour certain policies by democratically elected governments cannot be implemented. For example, either the Constitution would have to give or there would be no entrenched rights for labour with a Margaret Thatcher as President!

‘There are two issues, should the Courts include a supervisory clause such as “report back in six month with a plan” and what do Judges do about oral evidence particularly where the litigants have no money and the legal aid is inadequate? What our constitutional record shows is that the Constitutional Court has adopted a particular model. The socio economic rights are merely a starting point; there are no residual rights for everyone but Government has to provide for people on the margins. This makes democracy more powerful for there is a minimum set of requirements that government must meet. It is significant to me that in the case of Khosa, for government to say that there is not a lot of money in the budget was not good enough to prevent residents (but not citizens) from obtaining a right to social welfare.’

Danwood Chiwaa, a lecturer in Commercial Law, spoke on Privatisation and how the initial impetus of various Economic Structural Adjustment Programmes had now been extended to basic services such as water, sanitation and maybe even electricity.

The policy of full cost recovery has a direct impact on the accessibility of basic services by poor people. While the African Charter on Human and Peoples Rights and a number of African constitutions guarantee socio-economic rights, the application of these rights to and the precise obligations of private service providers is contested or unclear.

Privatisation also raises the important question of the democratic accountability of the service provider. A human rights approach to privatisation is critical in order to ensure that privatisation does not limit access to basic services by the poor or that it advances the enjoyment of socio-economic rights. Such an approach would require that a human rights impact assessment be undertaken before privatisation, that the process leading to privatisation is transparent and that it allows for the participation of the affected communities, that accountability mechanisms for the private service provider are put in place, and that measures are put in place to protect those that may not be able to afford a minimum level of the service so privatised are adopted.

He quoted the Water Services Act of 1989 in Britain which stipulates that water may not be disconnected to hospitals or schools or even in cases where the user cannot pay for the service. The State has an obligation to provide water.

The sixth University of Florida Summer Law Programme

Hosted by the University of Cape Town: 31 May to 15 July.

Accompanied by Professors Nagan, Peters and Villallong, 24 students from nine universities, including Cornell and Berkley, had lectures in Human Rights Law, Consensual Dispute Resolution, Introduction to South African Law and Aspects of South African Commercial Law. The students spent some time with the Advocates for Transformation where they had some professional exposure to the workings of the Advocates at the Cape Bar. They attended some court sessions, sat in on a parliamentary debate and visited the CCMA.

There was a workshop to interact with schools from Philippi, a 4-day spent building a house with Habitat for Humanity, a visit to the Golden Girls Home for mentally and physically challenged children at Langa. Course coordinator, Mary Shears, said that the students really enjoyed the programme. They were stimulated by both the academic content and the practical components and, of course, fell in love with Cape Town. They, and the University of Florida, will be back!’ she said.

Visiting Academics

The Law Faculty is privileged to host so many visiting academics; here is a sample of the breadth of experience and content that we have been treated to over the last twelve months.

- Mike Cordin, Deputy Secretary to SA Parliament: The Pan African Parliament of the African Union
- Steven Edmon, NYU: Racial profiling and terrorism
- Prof. Ian Fletcher, University of Cape Town: Constitutional Law
- Antje Pedain, Cambridge: The sixth University of Florida Summer Law Programme
- Dr Martin Trybus, Nottingham: Environmental Remediation
- Prof. James Michael, Hon. Research Fellow, UCT: Promotion of Human Rights

The Class of 2004 visits the courts as part of their introduction to practice.

Moot court winners 2004, Tineneni Bandla (standing) and Luke Harber.

Students

- Steven Ellman, NYU: Racial profiling
- Mike Coetzee, Deputy Secretary to Parliament: The World Court
- Dr Anne Griffiths, Edinburgh University: Reconciling Justice for Children in Scotland; A view from Glasgow’s children’s hearings
- Professor Judge Dennis Davis, Geoff Budlender, Prof Geraldine Van Bueren (co-ordinator) and Danwood Chiwaa.

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