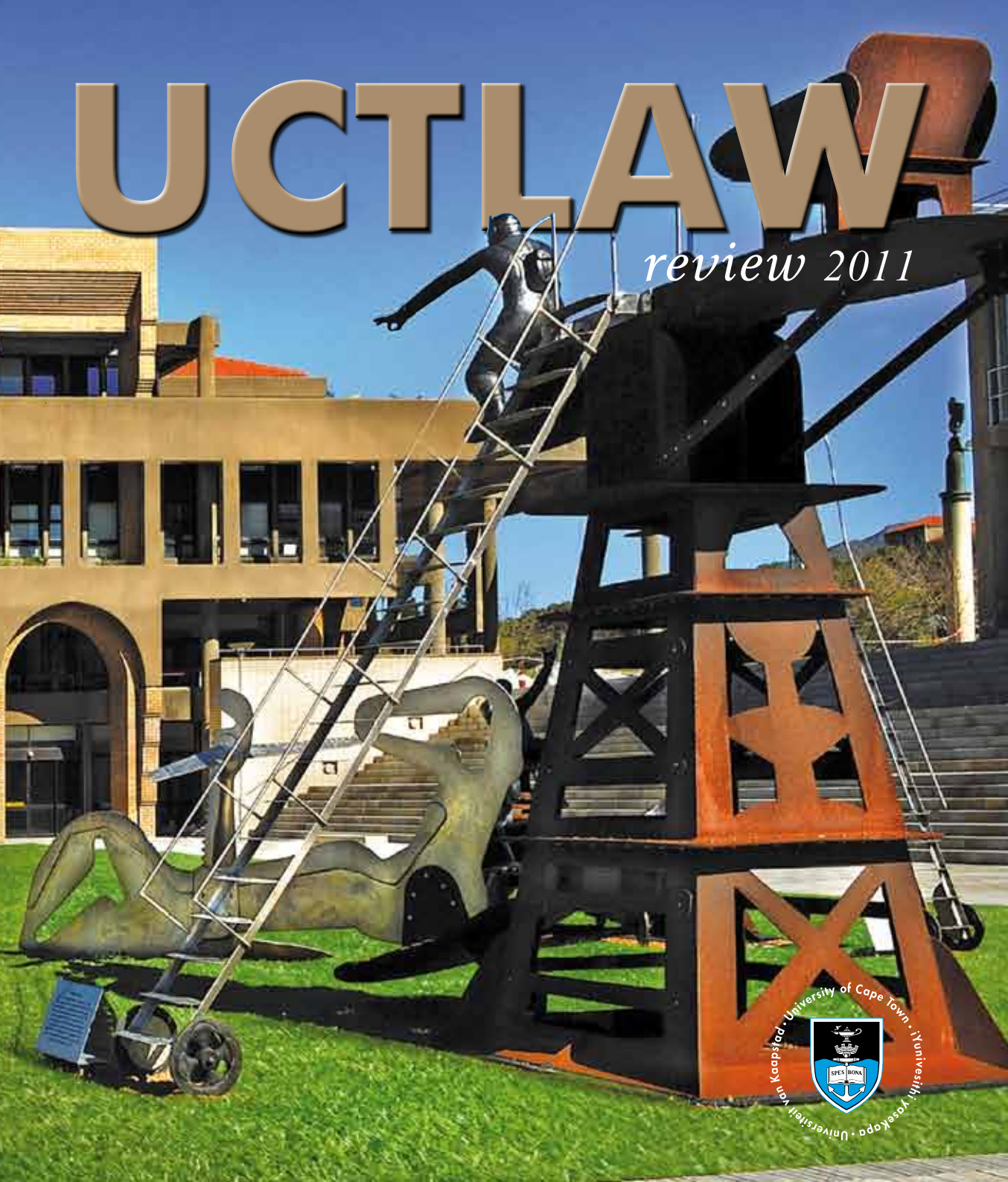


# UCTLAW

*review 2011*



## **DIALOGUE AT THE DOGWATCH**

'Dialogue at the Dogwatch' is a sculptural tableau vivant set at the dogwatch – that time at sea when the light is fading, the day gives way to dusk, and stars appear in the night sky. In this installation, David Brown, whose work has engaged with the trope of the ship of fools, and the paradoxes, follies and brutalities of South African life, imagined a silent conversation in a turbulent, yet hopeful, period of political transition. The sculpture – fifteen months in the making – was forged, welded and cast in bronze, corten, stainless steel, brass and copper.

David Brown (born 1951) graduated from the Michaelis School of Fine Art, UCT, and worked as a printmaker and documentary photographer before turning to sculpture. He has won several awards and undertaken many major commissions. His work is represented in both South African and foreign collections.

'Dialogue at the Dogwatch' was donated to the University in 2011 by Charles Diamond. He was President of the SRC in 1966/67, graduated from UCT with an MA in Economics and became a successful global economist. A collector of sculpture, he commissioned David Brown to create the installation for his home in England in 1993.

# CONTENTS



**FROM THE DEAN'S DESK** 3

**PUBLIC LECTURES** 4

**BOOKS** 16

**POSTGRADUATE STUDIES** 20

**OPINIONS** 26

**CONFERENCES** 34

**STAFF** 38

**STUDENTS** 41

**PRIZES AND AWARDS** 56

**ALUMNI** 60



**Editor:** Pauline Alexander

**Proofreader:** Shani Vavruch

**Photographs:** With thanks to Gillian Benjamin, UCT's Monday Paper team, Mongezi Mbebe and Dirk van der Merwe

**Design and layout:** [www.rothko.co.za](http://www.rothko.co.za)

**Published by:** Faculty of Law, University of Cape Town

**Tel:** +27 21 650 5602

**Fax:** +27 21 650 5662

**Address:** Private Bag X3, Rondebosch, 7701

**E-mail:** [Pauline.Alexander@uct.ac.za](mailto:Pauline.Alexander@uct.ac.za)





**W**orld rankings are always problematic as all those of you who have heard the Vice Chancellor talk to UCT's climb up the world ranking to 107 will know. However, I was delighted to see that in the QS University Rankings by Subject, the UCT Law Faculty is the only faculty in Africa to come in the top 100 Law Faculties in the world.

In June we graduated a record 99 Masters' students. Complementing this number was the diversity and excellence of the graduating body with graduates from within and beyond the African continent. The pictures in the centre spread of this edition will give you a taste of that richness.

This is my third year as Dean and so I now have some point of comparison and this year's LSC was just the most efficient group to work with, as you will see from their report. The student body continued to display great forbearance as finishing touches to the 'building site' resulted in good things such as the revamped outside area, but not such good things as in the sub zero temperatures in LT 1 & 2 and the library whilst the air conditioning system was overhauled.

The Faculty continues to be enormously enriched by lectures and seminars from our many and

varied visitors both from outside of South Africa and within, with a high proportion of the local experts being our own alumni. Our links with the bench and the profession are both stronger and more frequent than in past years, and we hope that 2012 will see internships being offered by both the Department of Justice and the City of Cape Town.

Is there no bad news I hear you say? Throughput in the LLB degree is something we need to work at and last year we introduced an early warning system triggered by June tests and exams. The students at risk in the Prelim year are appointed academic mentors and I am extremely grateful to the academic staff who have taken on this extra burden.

The Faculty salutes Sue Wright (current Administrator of the Law, Race and Gender Unit) and Melanie Boltman (Training co-ordinator of the School for Legal Practice) who together have clocked up 40 years' service. The Faculty said goodbye to two long standing administrators, Beryl Pillay (Commercial Law) and Vanessa Sarig (Dean's Office). Professor le Roux remembers being co-opted into carrying papers on her first day at UCT because, as Beryl said, 'in this faculty, we help each other' and no two people epitomised this ethos more than Beryl and Vanessa and they are greatly missed. Greatly missed too are the voice and values of Honorary Professor Kader Asmal who passed away in June this year.

Looking forward, I hope to seeing many of you at Reunion weekend in October and the Class of 1961 as well as visiting alumni in December.

**PJ Schwikkard**

# Claude Leon Lecture

## Sustaining Public confidence in the Judiciary: An essential condition for realising the judicial role

*Sandile Ngcobo, Chief Justice of South Africa*

It is a great honour to deliver the first Claude Leon lecture here at the University of Cape Town. I am grateful for this opportunity to speak to and exchange views with members of the academic community present, including law students. I am told that the Claude Leon Foundation has recently endowed a Chair in Constitutional Governance at the University of Cape Town. This is commendable. The legal academy is vital to the rule of law: it produces future lawyers, advocates, and judges; it helps guide the growth of legislation and jurisprudence through its insight and inspiration; and, of course, it is the source of some constructive criticism of legal developments that helps to keep the judiciary efficient and upright.

The subject of my address today is the question of confidence in the judiciary. Unfortunately, not all criticism of the judiciary is as salutary as that which can be found in legal treatises and articles. Let me give you two examples. A little over a month ago, a senior member in the ruling party's youth league was quoted in a daily newspaper as asserting that a High Court Judge arrived at a "*drunken decision*" when the Judge ruled against the league.<sup>1</sup> Another political leader from the league was quoted to suggest that the High Court decision must be ignored and that he wanted to "*warn the judiciary to desist from meddling with our internal political*



*issues.*"<sup>2</sup> He went so far as to allege that judges had assumed a political role, stating:

*"We have always respected the independence of the judiciary. However, the conduct of some of these judges who have become political role players has made us conclude that we will engage with them in a political manner."*<sup>3</sup>

These assaults on the judiciary are very troubling, for this kind of criticism may well undermine public confidence in our courts. And yet public confidence in the judiciary is vital to the preservation of the rule of law, and, ultimately, to the preservation of our constitutional democracy.

In light of the importance of public confidence, and in light of these recent attacks, it is vital that all South Africans – judges, lawyers, and laypersons alike – understand why public confidence in the

judicial system exists, what might put it at risk and what we are doing, and need to do, to preserve it. It is these questions that I will explore today. My talk will consist of three parts. Firstly, why is public confidence so important? Secondly, what can and should be done to sustain public confidence in the judiciary? Thirdly, how can public confidence in the judiciary be undermined? But first, who are the public? Justice Susan Kenny got it right when she said: “As trustees of the rule of law, the judiciary administers the law not for its own benefit, but for the benefit of each and every member of the community. The public, then, is the whole community – which at times may not be represented by the majority or the media.”<sup>4</sup>

Why is public confidence important? In short, because it is necessary for the effective performance of judicial functions. Former Chief Justice of Israel, Justice A Barak has said, public confidence is “[a]n essential condition for realizing the judicial role.” He explains that “the judge has neither sword nor purse. All he [or she] has is the public’s confidence in him [or her]. This fact means that the public recognizes the legitimacy of judicial decisions, even if it disagrees with their content.”<sup>5</sup>

The vulnerability of the judicial branch has been acknowledged for centuries. Alexander Hamilton, one of the founders of the American republic, famously recognised that in a body politic whose legislative, executive and judicial powers are separated, the legislative branch controls money, the executive controls force, and the judiciary controls neither.<sup>6</sup> More recently, our own former Chief Justice Mahomed expressed this idea with his usual eloquence when he observed that:

*“[u]nlike Parliament or the executive, the court does not have the power of the purse or the army or the police to execute its will. The superior courts and the Constitutional Court do not have a single soldier. They would be impotent to protect the Constitution if the agencies of the state which control the mighty physical and financial resources of the state refused to command those resources to enforce the orders of the courts. The courts could be reduced to paper tigers with a ferocious capacity to roar and to snarl but no teeth to bite and no sinews to execute what may then become a piece of sterile scholarship. Its ultimate power must therefore rest on the esteem in which the judiciary is held within the psyche and soul of a nation.”*<sup>7</sup> In other words, the acceptance of judicial decisions by citizens and by governments, which is essential for peace, welfare and the maintenance of the rule of law, rests, not upon coercion, but upon public confidence.<sup>8</sup>

The Chief Justice then went on to explore what can and should be done to sustain public confidence in the judiciary, and to look at what can undermine such confidence. He quoted Justice Barak’s four pointers for maintaining public confidence in the judiciary:

- a. The judge ought to be aware of his [or her] power and its limits. Due to the great power that is reposed in a judge in a democracy, there is potential for abuse of power by judges.
- b. A judge must admit his [or her] mistakes. We are human and therefore fallible. Judges must have the humility and courage to accept and correct their mistakes.
- c. Judges must display modesty and absence of arrogance in their writing and thinking.
- d. Judges must be honest. If they have created a new law they must admit it. Honesty builds acceptance.<sup>9</sup>

To these he added ‘the unrelenting pursuit of excellence in one’s work will build a reputable, vigilant and trusted judiciary. In order for the judiciary to deliver on its commitment to justice, it is important that judges perform to the highest standards expected of them.’

In his conclusion, Justice Ngcobo said that the role of the judiciary in a constitutional democracy is an expansive one. Decisions of judges affect many people. Courts have the power to overrule even the most popular decisions of other arms of the state if they believe they are contrary to the Constitution. The acceptance and support of these and all court decisions by society depends upon public confidence in the integrity and independence of the judiciary.<sup>10</sup> So too does the respect for the rule of law in the mind of the public. To preserve public confidence, it is vital that we take measures to ensure that the courts work swiftly and effectively, to encourage the highest respect for principles of integrity and fairness in the judiciary, and perhaps most of all to safeguard judicial independence.

Public confidence in the judiciary is especially vital during this formative stage of our constitutional jurisprudence. Our courts, in particular, the Constitutional Court, are still engaged in a delicate, fundamental process of developing our constitutional jurisprudence. During this formative stage, the role of the judiciary in our constitutional democracy will be tested to its ultimate limits. As we have seen in the past, courts are being called upon to intervene in the parliamentary process and thus intrude into the affairs of Parliament; courts are being called upon from time to time to strike

down crucial legislation aimed at addressing some of the pressing issues in our constitutional democracy such as land dispossession; courts are being asked to set aside government policy on health and housing issues. Decisions taken by the executive, regardless of the nature of the decision, are being challenged in our courts. And courts are being drawn into internal struggles within political parties.

In discharging its role during this formative period, the judiciary must fall back on the sources of strength it has drawn upon over the centuries – its independence, impartiality and integrity. It is these values which have made the judiciary the important institution that it is. It is the faithful and diligent pursuit of these values which will earn the judiciary public confidence and help it to sustain this confidence, which is an essential condition for realizing the judicial role.

And to the public may I say this:

*‘In a society such as ours, the judiciary needs the full confidence of the public if it is optimally to perform its task of helping to maintain the ‘precarious equilibrium’. Public confidence is, however, elusive: it may not at times be measured by the majority’s opinion or by what is said in the media. It is easier to see when it has gone than when it remains. It is easier to say what should protect it than what actually threatens it. What is plain is that not all threats to public confidence are of the judiciary’s own making. The community has its own role to play in maintaining the precarious equilibrium; and the entire community needs to take a genuine and constructive interest in its judges. The judges are there only to serve the community, and they will serve it all the better with the community’s confidence.’<sup>11</sup>*



**NOTES:**

1. Comments attributed to ANC Youth League Secretary-General, Vuyiswa Tulelo, [www.iol.co.za](http://www.iol.co.za) 'Official not sorry for 'drunk' slur on judge'. Article was originally published in the Cape Times on 9th August, 2010. This was in response to an interdict granted by the High Court in Grahamstown interdicting the ANCYL from proceeding with its conference in the Eastern Cape without the involvement of a disbanded provincial executive.
2. The Citizen, 'ANCYL warns judiciary' 3 August, 2010. The statement is attributed to ANC Youth League KwaZulu-Natal provincial secretary, Bheki Mtolo.
3. *Id.*
4. Justice Susan Kenney "Maintaining Public Confidence in the Judiciary: A Precarious Equilibrium."
5. Aharon Barak, 'The Judge in a Democracy', Princeton University Press, 2006 at page 109.
6. Hamilton, *The Federalist Papers*, No 78, New York: Random House, 504.
7. Mr. Justice I. Mahomed, 'The role of the Judiciary in a Constitutional State', Address at the First Orientation course for new judges, 115 SALJ 111 1998 at page 112.
8. Murray Gleeson, Chief Justice of Australia, *Public Confidence in the Judiciary* at page 1 ([www.hcourt.gov.au/speeches/cj/cj\\_jca.htm](http://www.hcourt.gov.au/speeches/cj/cj_jca.htm)).
9. Barak at page 111–112.
10. Chief Justice John D. Richard, Federal Court of Canada "The Role of the Judiciary in Canada", (2000) at page 1.
11. Justice Susan Kenny, 'Maintaining public confidence in the judiciary: a precarious equilibrium' (1999) 25(2) *Monash University Law Review* 209 at page 223–4.

# Rabinowitz Visitor

## Are South African Human Rights an Indigenous Species?

*Lord Hoffmann, May 2011*



*Lord Hoffman, a retired member of the Judicial Committee of the House of Lords.*

The circumstances of the South African revolution were in many ways remarkable. The combination of racialism and legalism which had distinguished the previous regime, the inhuman thoroughness with which its segregation policies were carried through, and then the sudden and peaceful abandonment of the entire structure, had no precedent. It is therefore not surprising that the South African Bill of Rights, in its general emphasis and many of its individual provisions, should be different from any such



*Lord Hoffman chats after his lecture with tutor Rebecca Browning and IP Unit researcher Djims Milius.*

instrument which had gone before. This was not a constitution adopted in a hurry by revolutionaries flushed with success at the barricades. It was the result of careful deliberation, to which not only those newly admitted to government but also the representatives of the old regime and advisers from abroad made their contributions. The framers thought hard about what had been wrong with the old South Africa and tried to create a new one.

The result is that the South African Bill of Rights contains a number of provisions which will not be found in other human rights instruments. The most obvious examples are the socio-economic

rights, such as the rights to food, housing and health care. There is no trace of these being identified as human rights in any instrument before the Second World War and although they appear in the Universal Declaration, they are not included in the European Convention and the United Nations instruments have segregated them from the conventional human rights and put them into a separate instrument. There is also a difference in emphasis. For example, article 10 says that “everyone has inherent dignity and the right to have their dignity respected and protected.” You will not find that in any of the other instruments I have mentioned; at least, not put in that way. And it is easy to see why it was included. Lack of respect for the individual dignity of people of the subject race was what had distinguished the previous regime. So dignity features large in South African constitutional discourse. The leading textbook breaks down the concept of dignity into five subdivisions and tells us that South Africa has the most developed dignity jurisprudence in the world.

That does not mean that other countries have no regard for individual dignity. Usually they can arrive in most cases at the same result by invoking rights expressed in different language. For example, there was a case in England a few years ago in which two women had gone to visit a drug dealer relative held in remand on a charge of murder. The prison authorities suspected that he was carrying on his trade from his cell and required his visitors to be strip searched. Unfortunately the warders did not comply with the necessary formalities and had not been entitled to carry out the search. The women sued for damages. That was before the UK Human

Rights Act had come in to force and we did not find it easy to say exactly what tort the warders had committed. There was no assault because the women had agreed to be searched, even though it was only because they thought they were obliged to do so. The Human Rights court said afterwards that if the Act had been in force, it would have been an infringement of their right to privacy, under article 8 of the Convention. I suppose that is right. As I remarked in my judgment, having to take your clothes off before a couple of prison warders, even of the same sex, is not to everyone's taste. But a South African court would have had no difficulty in saying that it was an infringement of their right to personal dignity.

The special character of the political background to the South African constitution means that human rights in South Africa, although having much in common with those in other countries, are sufficiently different to be regarded, as I suggested in the title to this talk, as an indigenous species; clearly identifiable as a member of the same genus as human rights in the United Kingdom or the United States, but a separate species nonetheless. What I want to explore now is the apparent tension which exists between this state of affairs and the general belief that human rights are universal; that they are rights to which you are entitled simply by being human and therefore ought to be the same in every country in the world. Does that mean that the United Kingdom, which has a shorter list of human rights than South Africa, or the United States, which has even fewer, do not satisfy international requirements, or that South Africa has overegged the pudding and included rights which are not properly human rights at all?

[Lord Hoffmann illustrated the dispute about whether socio-economic rights should be classified as human rights with many examples from Europe and the United States, he spoke to the instantiation of the abstract statements of human rights using examples that reflect cultural differences concerning the expression of religious belief and finally looked at the question of international courts of human rights, identifying the problem inherent in a single court applying human rights law at the detailed level to a large and disparate group of countries with very different legal systems and social and political cultures.]

That brings me to the question of legitimacy. Decisions on human rights issues can have a considerable impact on the lives of members of the community and I think it is important that a court applying human rights law should have the legitimacy of being a part of the community.

In 2003 we had a case in the United Kingdom about whether it was inconsistent with the Convention for Parliament to give the government power to detain people indefinitely without trial. It was a very high profile case because in the aftermath of 9/11, people were worried about terrorism in the United Kingdom and many people, among whom the then Prime Minister was one of the most vociferous, wanted draconian laws to protect us. And in fact, six months after our judgments in that case, there was a terrorist attack on London transport in which more than 50 people were killed. I wrote a judgment saying that technically we were dealing with the interpretation of the European Convention but that people should not have the idea that this was something imposed upon us by Europe. I appealed to

national pride in our traditions of freedom, said how in the past *habeas corpus* had been suspended only when the country was threatened by invasion by Napoleon or Hitler and how Al Qaeda terrorism posed a threat to the safety of our people but could not possibly destroy our nation. In an article in the *Modern Law Review* Professor Dyzenhaus, another South African expatriate who teaches in Canada, perceptively noticed that I had taken my stand on English common law traditions and said virtually nothing about the Convention. He described this as parochial and my attitude to international human rights as condescension and disdain. My view was that I was more likely to persuade the British people that suspected terrorists should also enjoy the right not to be detained without trial if I told them that it was part of their national tradition of freedom than if I said it was required by the Strasbourg court or some abstract concept of international human rights.

Respect for human rights gains legitimacy if the particular expression of those rights can be anchored in the history and traditions of a specific community. And the same is true of the court which applies those rights in concrete cases. The Supreme Court of the United States has the respect of most American citizens because it is an American court, created by the constitution, appointed by the President and confirmed by the Senate. It is inconceivable that the decisions which that court has made, with such consequences for the people of the United States, should be entrusted to an international court. And the same is true of the South African Constitutional Court. The European Court of Human Rights, on the other hand, consists of 47 judges, one for each Member State. One state, one judge. Monaco,

Andorra, San Marino and Liechtenstein, which have between them a population rather less than that of the London Borough of Islington, each appoint one judge. So does the United Kingdom. The process of appointment is, to say the least, obscure. This produces a judiciary of somewhat variable quality. It is not however the competence of the court which I question, although there are occasionally grounds for doing so. My criticisms are, first, that having an international court of human rights is conceptually misguided and secondly, that the court lacks legitimacy for its role simply because it is not a British court.

This need for legitimacy is true both for great questions of life and death and national survival, as the terrorist case was, and for trivial decisions like the cases of prisoners' votes or the hearsay rule. These cases can be said to be mere pinpricks: it would not cause immense inconvenience if we had to arrange for prisoners to vote or even had to go back to the old unreformed hearsay rule. But because they are imposed by a foreign court, they create resentment of the kind exemplified by the remarkable vote in the House of Commons and they trivialize the notion of human rights, which is after all a rather grand and important idea. It becomes, like health and safety, a by-word for silly decisions.

So the answer to the question which I posed in the title to this talk is: yes. South African human rights are an indigenous species, but this is not inconsistent with their being also an expression of international human rights and that the application of those rights has been properly entrusted to a South African court.

# Ben Beinart Memorial Lecture

## Administrative Justice – Adapting to change

*Professor John McMillan, Inaugural Privacy Commissioner of Australia*

It is an honour to be invited to Cape Town to deliver the ninth Ben Beinart Memorial Lecture. I have listened and read in awe of the high regard that Professor Beinart was held by colleagues, students and friends; of the substantial and diverse range of books and articles that he authored; his considerable learning across many disciplines; his contribution more broadly to the University of Cape Town and to South African constitutional development; and of the many tributes that have been paid to him through a three volume series of essays in his honour and through this memorial lecture series. It is truly a mark of a person's contribution to law and society that, more than 30 years after his death, a memorial lecture series continues and is delivered by a person invited from another continent.

The purpose of a memorial lecture is to celebrate ideas. To celebrate, on the one hand, the contribution that Ben Beinart made as a scholar to the thinking of students and colleagues. And to provide, on the other hand, an opportunity for a speaker to share some contemporary thoughts and reflections about law and society. That is my fortune, and the concept that I shall be discussing is as familiar in South Africa as it is in Australia and many other countries.



It is nowadays common for administrative lawyers around the globe to use the phrase 'administrative justice'; but it is equally common to sidestep what it means, or to agree that everybody's definition has substance. For some, administrative justice is a top-down theory that looks at the design and structure of the system for controlling executive power; for others it is a bottom-up theory that looks at how individuals are treated by government agencies. There is agreement that fair process and independent adjudication of disputes between citizen and government are essential, but there



*From left to right: Sponsor, Selwyn Hockey (Webber Wentzel), with the Dean and the Ben Beinart lecturer.*

is less consensus on whether values are part of administrative justice, and if so what are those values and what is the scope of any such value.

The safe ground, on which my feet will be planted in tonight's address, is to say that administrative justice, however far it extends, requires as a minimum that the individual is properly safeguarded in relation to the state. As Justice Kate O'Regan from the Constitutional Court of South Africa observed in a foreword to an international comparative symposium on administrative justice

convened by Professor Corder in 2005, 'a right to administrative justice ... places citizens at the heart of administrative law enquiries and ... ensure[s] that they are not forgotten' when other issues – such as 'bureaucratic efficiency' or 'cost-effectiveness' – are asserted.

Practical questions lie at centre of this philosophy. What protection does the citizen require, and against what hazard or jeopardy? To whom can the citizen turn for help in securing protection? And what remedies are available to alleviate injustice?



To frame those questions is to accept that the answers will vary over time. Administrative justice cannot be described in a static or timeless manner. And hence the title of my address – ‘Administrative Justice – Adapting to Change’.

[Professor McMillan then traced four phases of administrative justice over the past 40 years, namely the constitutional compact, the correction of administrative error and the pursuit of the correct decision, the expansion of administrative

law to embrace good administration, integrity in government and respect for human rights and customer focussed' or 'citizen centred'. He then asked the question "What lies ahead?"]

The greatest change that is occurring in government around the world is through the impact of technology. In Australia over 70 per cent of the contact that people have with government is through technology – through phone, email and web-based forms. In the next ten years most agencies will move to digitisation as the default means of record keeping. Automated decision making is in its early days and developing. Government recognises the power of social media, and increasingly uses FaceBook, Twitter, YouTube and blogs to communicate with the public. Equally, PayPal, Amazon and WikiLeaks are changing the way that government does business.

The fifth phase of administrative justice will involve a response to the impact of technology on contact between government and the public.

The extraordinary pace of change in information technology makes it difficult to map the future with any certainty. But there are some pointers.

First, younger generations rely heavily on technology and their expectations are conditioned by it. They expect to be able to make their inquiries and lodge complaints online – at any time in the 24/7 cycle. They expect a quick response, a brief response and an open response. And they want the response to resolve an issue.

Second, if I jump a few generations to my own, the baby boomer generation, it is a generation that

has a quest for complaining and being politically active. Many are retiring and looking for meaning in life. They are becoming technologically savvy. They will be quick to lodge an objection to the latest development or tree pruning proposal. And, unlike the younger generation, they are happy to continue the fight and won't be dismayed by a long battle. We often hear that 'participation' is an administrative law value. Through technology, it could be about to take on a new meaning.

Thirdly, and to extend that point, the new technology makes secrecy in government difficult. It also makes it impossible for government to control ideas and public debate. The web creates an open market in information and ideas. The web is a decentralised forum that is accessible and useable by all. Any ideas published on the web, whether by government or other bodies, invite a response.

One area where information technology is having a marked impact is in the operation of information access (freedom of information) laws. The traditional architecture of the law is a reactive model that relies on individuals making a request for an identified document, and challenging any refusal to disclose that document. The new approach in access to information laws, including in the reformed Australian FOI Act, is to move more to a proactive model of information release whereby government agencies are expected to publish information on the web. An example of this new approach is the 'data.gov' sites that are now hosted by the US, UK, Canadian, New Zealand and Australian governments. In only a couple of years the US site has grown to include over 350,000 data sets that are now published for public access and use.



Fourthly, greater technological efficiency will be expected of administrative law review agencies. They will be expected to rely more on technology for receiving applications, tracking progress, spotting issues and trends, and publishing results.

Finally, agencies will face new questions as they rely increasingly on technology or automation to support or undertake administrative decision making. The objective of administrative law review – of correcting erroneous decisions – takes on a new dimension in an age of computerisation. One problem is that government officials will uncritically accept erroneous information that is retrieved from an information technology system, or will draw the wrong conclusion when information that a person claims to have submitted to an agency cannot be found on the computer. Another problem is that poor system design, development or implementation can cause administrative error, potentially in thousands of cases. By way of illustration, a police officer with faulty judgement can wrongly penalise a driver for driving through a red light, while a faulty camera can penalise thousands of drivers. And it is probably easier to challenge the faulty judgement of the officer than the faulty setting of the camera!

In conclusion, the transformation of administrative justice over the past forty years teaches us many lessons. We learn that more is expected of the justice system as government has grown in size and activity. The objectives and elements of the administrative justice system have expanded. Its effectiveness relies on a greater range of experience and talent than orthodox legal ability.

One large and unexplored question is whether this transformation in administrative justice should be accompanied by a rethinking of the constitutional underpinning of the system. I commenced my lecture by noting that the concept of administrative justice initially rested on the doctrine of separation of powers which supports the role of courts in checking and curbing executive power. However, the administrative justice system now includes far more than courts. Their growth of these other mechanisms of review and oversight has not been constrained by the doctrine of the separation of powers, but equally this new system of government accountability does not fit easily within that doctrine. In a functional sense, the new bodies are not part of the legislative, executive or judicial branch.

Should we update our constitutional thinking? An emerging topic of debate in Australia is that we must develop a new theory to explain the more complex administrative justice system that has emerged. Three new options are emerging. One is the concept of a 'national integrity system', that describes the collection of institutions (including courts) that separately play a similar role of controlling government and ensuring integrity. Another is an expanded concept of the 'justice system', that again includes all those bodies but focuses instead on their shared civil law role of resolving legal disputes arising between people and with government. The third is the concept of a 'fourth branch of government', comprising tribunals, ombudsmen and similar non-judicial oversight bodies.

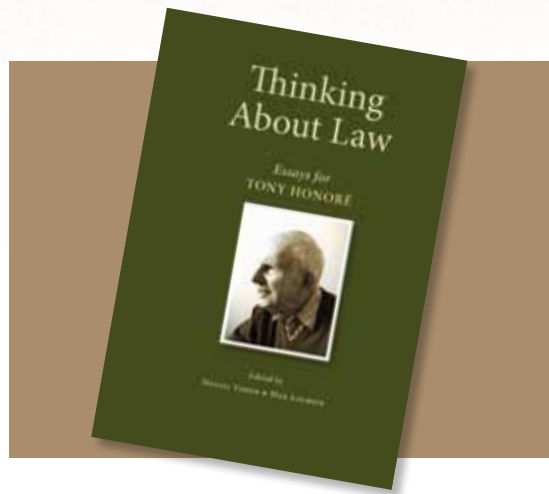
*[Professor Asif Quereshi of Manchester University gave the eighth in the series in September 2010 on the topic 'Necessity in International Economic Law. – Editor]*

## ■ CELEBRATING PROFESSOR TONY HONORÉ

'Tony Honoré is widely revered for his contribution to legal thought. He has been thinking and writing about the law for more than sixty years and his interest and mastery cover a remarkably wide field: Roman law; Roman-Dutch law; modern South African, English and European law; and legal philosophy. The hallmarks of his writing are his lucid style, accessible presentation, and ability to develop a rational foundation for legal ideas and solutions. As Tony approaches his 90th birthday, this collection of essays celebrates and pays tribute to his extraordinary contribution,' comment editors Max Loubser and Danie Visser.

As a lecturer and supervisor Tony Honoré, over a period of more than sixty years, has guided – and continues to guide – a great many students from all over the world. And as those who have had the privilege of being taught or supervised by him can attest, it was always kindly guidance. Always gracious with his time, he has the ability to shape the work of students (and colleagues) simply by focusing sharply on key principles and ideas. Some of those students have contributed to this publication.

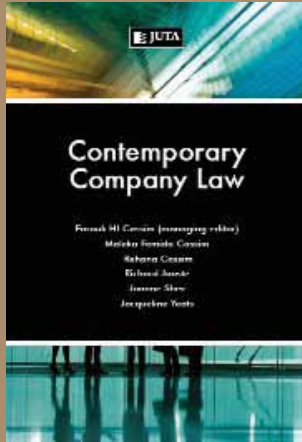
The origin of our tribute is South Africa – the country that can claim, with England, the closest ties to Tony Honoré. These essays are the products of a colloquium held at the University of Cape Town in March 2009, at the suggestion of one of his former students, Jeremy Gauntlett, SC, who, in his 'Laudatio for Tony Honoré', deals with Tony's life and remarkable career in law. Boudewijn Sirks, the present Regius Professor of Civil Law at Oxford,



writes on 'Roman law as emancipatory and social instrument in the 19th century'. Marius de Waal gives an appreciation of the book that has shaped the South African law of trusts, in 'Honoré's South African Law of Trusts'. Edwin Cameron and Nick Ferreira illustrate how Tony's legal philosophy has had a practical impact in certain South African cases, in 'Tony Honoré's contribution to jurisprudence'. Anton Fagan, in 'Cause in fact', enters into the sometimes intractably difficult area of causation, a world opened up by Hart and Honoré's famous 'Causation in the law'.

These essays, offered to Tony in the name of all who participated in the colloquium, can only touch on some aspects of his work, but they give a glimpse of its extraordinary range and depth, and of its influence internationally and in South Africa.

*[There are a couple of dozen copies left in stock: please contact [Pauline.Alexander@uct.ac.za](mailto:Pauline.Alexander@uct.ac.za)]*



## ■ CONTEMPORARY COMPANY LAW

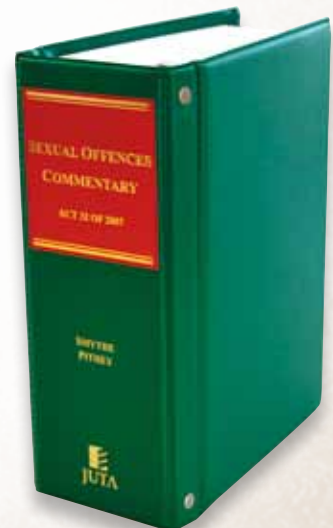
Richard Jooste and Jacqui Yeats are two of six contributors to this substantial volume on the new Companies Act 71 of 2008.

*Contemporary Company Law* is written for both academic and professional audiences and is described by Professor RC Williams (UKZN) as adopting 'an engaging style that looks beneath the dry text of legislation and the bare principles of common law to unearth and debate the concepts and philosophical bases of company law, and to explain how this complex area of law endeavours to balance the competing and often conflicting interests of the many stakeholders in a modern company.'

## ■ COMMENTARY ON THE CRIMINAL LAW AMENDMENT ACT

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 consolidates, codifies and amends South Africa's laws dealing with sexual offences. It has brought the law on sexual offences in line with the Constitution and also created a substantial number of new offences. This loose-leaf commentary covers all the changes introduced by the Act, including those relating to children and people with disabilities. It combines legal analysis with hands-on knowledge of the management of sexual offences within the criminal justice context. The contributors to this commentary provide unique insights into the potential and the challenges as well as the limitations of the new law on sexual offences.

The book is co-edited by Dr Dee Smythe, Director of the Law, Race and Gender Research Unit and a Senior Lecturer in the Faculty of Law at UCT, where she convenes the LLM course on Sexual Offences and the Law. Many of the authors are UCT academics namely Lillian Artz, Monica de Souza, Rufaro Gweshe, Rochelle Le Roux, Salim Nakhjavani, Kelly Phelps, Anashri Pillay, and PJ Schwikkard.



## ■ ACCOUNTABLE GOVERNMENT IN AFRICA



The wave of democratisation that swept the African continent in the early 1990s resulted in a flurry of constitution-making and constitutional revision which entrenched human rights and established various institutional mechanisms to hold governments to account.

Combining insights from public law and political studies this volume, edited by Danwood Chirwa and Lia Nijzink, looks at the various institutions and mechanisms for accountability – NPAs, the judiciary, HR Commissions, political parties and informal mechanisms. It presents new knowledge about legal and political developments in South Africa, Zambia, Malawi, Uganda, Tanzania, Ghana and Mali.

## ■ THE LEGAL EMPOWERMENT AGENDA: POVERTY, LABOUR AND THE INFORMAL ECONOMY IN AFRICA

Four UCT staff members – Professor Evance Kalula, Jan Theron, Margareet Visser and Marlese von Broembsen – have contributed chapters to a newly published book on the informal economy, 'The Legal Empowerment Agenda: Poverty, Labour and the Informal Economy in Africa.'

Given the unemployment challenge of the continent, the book is highly topical. The volume explores regulatory and operational challenges to implementing legal empowerment and decent work, in six African countries. As one reviewer notes, 'While not intentionally polemic, this is a rich and eclectic collection of case studies ... that cautions against an ideological one-size-fits-all approach to formalization of economies and implicitly recognises that law and its implementation is the reflection of contested policy choices. This collection of case studies provides valuable insights into how the law



might transit from working for a few to working for some, and then working for many. This book, edited by Dan Bank of the University of Oslo, is a must read for those who take equity in development seriously'.

*[Sample pages for published titles are available to view online at: [www.ashgate.com](http://www.ashgate.com)]*



## ■ CRIMINAL JUSTICE (FOURTH EDITION)

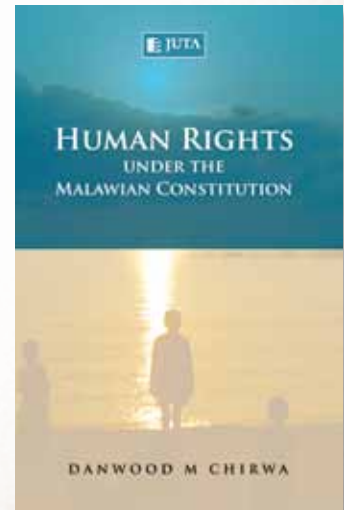
In the latest edition of his substantially revised, authoritative text on the general principles of the South African criminal law, Jonathan Burchell has included two new features. There is a comprehensive audit of the first sixteen years of Constitutional Court jurisprudence on criminal law and a critical evaluation of leading Supreme Court of Appeal judgments on causation (*Tembani*), provocation/emotional stress (*Eadie*), common-purpose liability (*Thebus*) and sentencing (*Malgas*).

There are new-look sections on the principle of legality (post *Masiya*, Section 49 of the Criminal Procedure Act, (including recent proposals for reform), disciplinary chastisement, corporate criminal liability in comparative context and voluntary withdrawal from attempt and common purpose. Burchell also examines the implications of the pivotal Child Justice Act 2008 and aspects of the Criminal Law.

## ■ HUMAN RIGHTS UNDER THE MALAWIAN CONSTITUTION

In 1994, Malawi adopted an unusually progressive Constitution for a country trapped in poverty and reeling from decades of oppression. This volume by Danwood Chirwa takes stock of the human rights jurisprudence generated by the new Constitution and the new judiciary in Malawi. It examines the largely unreported cases and systematically analyses them with a view to constructing a coherent body of human rights jurisprudence, which is essential to the consolidation of democracy, establishing the foundation of the rule of law and ushering in an era of accelerated development in this country.

The analysis reveals a rich body of jurisprudence that belies the socio-political and economic hardships the country has encountered and the infrastructural and human resources challenges that have afflicted its judiciary since 1994. Ultimately it reveals that it is possible for human rights to grow even in underdeveloped territories.



# In Review

**S**peaking at the High Tea to mark the June 2011 Graduation, the Deputy Dean of Postgraduate Studies, Professor Elrena van der Spuy, said what a privilege it was to celebrate the collective achievement of the School for Advanced Legal Studies.

'There are three critical players as I see it. There are you, the students (and your significant others), who have succeeded through motivation and real effort in getting to this point; there are the academic staff committed to the enterprise of teaching and supervising, and the examiners who act as peer reviewers of our collective efforts; and then there is the third ingredient, a supportive administrative infrastructure at departmental, faculty and university level.'

Professor van der Spuy held out the spreadsheet of the 99 students who received their degrees remarking on the diversity of topics in the dissertation titles. 'There is everything here from 'dividend withholding tax in SA', to the 'environment's right to well-being', 'legal education through a social justice lens' and much more. Our post-graduate students contribute to giving both breadth and depth to legal research through their efforts and those of their supervisors.

'If you will forgive my being parochial for a minute, I would like to share with you the results of the first exit survey done with those post-graduate students who graduated in December 2010 and those who will be graduating in June 2011.



- 60% rated their experience within the Faculty of Law as 'good' with 30% using the word 'excellent'
- 88% said they would recommend UCT to others as a place to study
- 89.5% found academic staff in the Faculty of Law 'extremely competent'

## WHAT STUDENTS SAID

### ■ Better global citizen

When I came to UCT [from Zambia] I didn't know what to expect. Meeting people like John Hare changed my perspective, as did the fact that I was able to find a course combination that I had not been able to find anywhere else in the world. There is also the diversity. Interacting with people from different parts of the world means that I leave not only with a Masters but having met great people with different ambitions who are now part of my network. There is also the fact that being a UCT graduate enhances your opportunities to get the position you want.' *Tom Mzumara*



Graduation High Tea. Top left: Professor van der Spuy with (left to right) Stephen Gatama, Daudi Ranadhani and Tom Mzumara. Top right: Dr Dee Smythe with Monica de Souza (left), researcher in the Law Race and Gender Unit.

## ■ A jurisprudence of my own

As an articulated clerk in a big law firm [in Johannesburg] I am certain that UCT is the best preparation for a legal career. Thrown in the deep end as you are, suddenly instead of Hart, Durkheim and Fagan, I found I could develop my own jurisprudence.

*Jameelah Omar`*

## ■ The persuasive prof

Evance Kalula's network is legendary. 'I knew of Mr Kibuta from Dar es Salaam, a tax specialist who made waves in Papua New Guinea before returning home and combining an academic position with his law firm. We sat next to each other in the plane, and here, three years later, he is soon-to-be capped 'Dr' Kibuta.

## WHAT'S NEW IN SALs?

### ■ Corporate Law

Senior lecturer in the Commercial Law Department, Tracy Gatuza, and part-time lecturer, Etienne Swanepoel, have designed a course which deals with structured finance and related aspects such as valuation assumptions and the functionality of derivative transactions. It also deals with the commercial, company law and tax aspects of structured finance and looks at security, insolvency issues and the new business rescue provisions contained in the 2008 Companies Act.

Part of the course includes critical thinking skills in deconstructing transactions, and the course forms part of the Corporate Law LLM programme; it runs over the full extent of the second semester.

## ■ Muslim Personal Law and Human Rights

UCT now offers a Masters course in Muslim Personal Law and Human Rights as part of an interdisciplinary Masters degree in Human Rights. Muslim Personal Law is highly topical in South Africa given the Cabinet's recent approval of the Muslim Marriages' Bill for consideration in the parliamentary process. Dr Waheeda Amien, a lecturer in Public Law, co-convenes the course with Professor Abdulkader Tayob, who holds the National Research Foundation Chair in Islam, African Public and Religious Values in the Faculty of Humanities and visiting lecturer *Dr Muneer Fareed*.

## ■ Dispute Resolution

From 2012 LLM students will be able to specialize in Dispute Resolution, taking courses in Negotiation, Mediation and Commercial Arbitration. The co-ordinator of the programme is Professor Alan Rycroft and contributing teachers are Adjunct Professor Lise Bosman, an international arbitration expert based in the Hague, Chris Todd, a negotiation specialist at Bowman Gilfillan, and Sarah Christie, an experienced arbitrator and mediator.

This programme recognises that litigation is now a seldom used and inefficient way of resolving disputes and that expertise in appropriate dispute resolution is an essential skill of the modern lawyer.

---

## POSTGRADUATE STORIES

---

■ **William Attwell**, an LLM student at UCT and a Fox International Fellow based at Yale and working in the field of international environmental law

under Professor Jan Glazewski, has been appointed an Associate Fellow at the Centre for International Sustainable Development Law, based at McGill University.

■ **Joelle Barnes** has been awarded the Ismail Mahomed Fellowship from the Constitutional Court Trust to study her Masters of Law at the University of Michigan. Writing to the Dean Joelle said, 'I am really excited about the course as they have some excellent comparative constitutionalism and administrative law courses.'

■ **Taya Emma Darch** is at NYU. 'I am taking four classes this semester: Microeconomics, Statistics, Institutions, Governance and International Development and Intro to Policy. The curriculum is rigorous! It is also very interesting and the professors really know how to engage us so I can't complain.'

■ **Julie Kourie** was the UCT nominee for a scholarship to do her Masters at NYU in 2010; she now works as an associate with Davis Polk in New York.

## ■ Access to justice

Adenike Aiyedun (top, page 23), a PhD candidate with Professor Tom Bennett, presented her thesis on 'Access to justice and fair trial in the South African Constitution: role of traditional courts' at the poster session of the Fifth International Graduate Legal Research Conference, hosted by King's College London. *"The poster session allowed participants to discuss their legal research, and to receive immediate feedback,"* said Aiyedun. This was very useful to me personally and afforded me the opportunity to share my research in a global environment.'





## UCT IN SOUTH PACIFIC

*[The title 'Teaching and a Tad of Sun, Sand, Coral and Tropical Forest in the South Pacific' was too interesting to pass up and so I asked Associate Professor Sandy Paterson to tell me more. – editor.]*

Once in a while an invitation arrives which one cannot really turn down. Such an invitation was recently presented to me in the following form, 'Will you come to Vanuatu and help prepare and present a course titled Environmental Law in Developing Countries'. My first response was 'just another hoax?' but on further enquiry, the invitee (a scholar I met in Belgium) and the hosting institution (the University of the South Pacific – a vast university servicing about 14 South Pacific Island States) appeared legitimate.

Out came the atlas to locate Vanuatu – an island state comprising of 134 islands situated a 3-hour flight east of Australia and north of New Zealand. Shortly thereafter it was to a

search on Google Pics and what greeted me in return sealed the deal – endless tropical islands, dense indigenous forests, palm-fringed beaches and some of the world's best coral and surf.

Some three months later I landed in Port Vila, the quaint capital of Vanuatu, which spans a narrow spit of land bounded on the one side by the ocean and the other by a series of beautiful lagoons. A day later I on the USP campus in rigorous debate with the fifteen post-graduate students enrolled in the inaugural course on Environmental Law in Developing Countries.

The campus comprises a diverse array of single storey buildings (with their mandatory cyclone shutters) laid out on the slope of a hill and intersected by grassy slopes and lush gardens. Our teaching venue – an airy boma constructed of natural vegetation and with natural light and ventilation. It really made me rethink the merits of UCT's artificial, congested and resource-intensive campus. The students – a diverse array from all corners of the globe including Columbia, Australia, Fiji, United Kingdom, Sweden and Switzerland.

Co-convened by Dr Rose (USP), Dr Syarif (Hasanuddin University, Indonesia) and myself, the core objective of the course was to develop an understanding of the unique legal, policy and governance challenges facing developing countries in seeking to achieve the sustainable management of their natural resources and environments; and the unique legal and governance innovations emerging from these countries in an attempt to overcome them.



*Left: Sandy teaching in Vanuatu. Right: Students being welcomed at Nguna-Pele marine protected area.*

Now back to that sun, sand, surf, coral and tropical forests. Well, every good course should include a field trip and two of our eight days were spent travelling in small boats between five isolated islands comprising a mixture of world heritage sites, marine protected areas and community-conserved areas. We were greeted at each by the few local inhabitants bearing frangipani garlands and invitations to share in their local fruit and vegetable fare. It was really humbling to hear their first-hand tales of rising and warming waters, bleaching corals, diminishing fish stocks and invading alien species; and inspirational to see their resilience in seeking local solutions to deal with each. All in all a fantastic experience and the good news – we are aiming to run the course annually and alter its venue each year.

Who said academics have a dull life?

---

### **RWANDA AND UCT**

---

Eighteen Rwandans were awarded their Masters of Law degrees from UCT last year and as many of the graduands could not make their way south to Cape Town to graduate, a celebration event was held in Kigali in November 2010. Deputy Dean (Internationalisation), Professor Evance Kalula, was greeted with much applause by the more than 50 alumni and guests when he noted that Rwanda, as the biggest national group in 2010, had contributed to the research excellence that was one of the markers that had secured UCT the 107th spot in the Times world top 200 universities.

Guest of honour at the event was the director of the National Council for Higher Education



*The Rwanda-South African link continues – the latest graduate Joseph Nyiringabo, pictured here with his wife and Professor Kalula before the June 2011 graduation.*

(NCHE), Professor Geoff Rugege. 'The NCHE's core business is developing benchmarks and standards for rating and accrediting universities in Rwanda,' said Rugege. 'UCT is the best run university in Africa and is at the cutting edge of research. For example, they have done a great deal in discovering drugs to treat HIV AIDS, but you don't hear a lot about that in US and UK. We have to sing our own song. People think we [Africa] aren't there, but UCT certainly is.'

The Rwandan Student Representative for 2009/10, Godfrey Kamukunde, proposed a vote of thanks to the government of Rwanda for investing in the students. 'Many African governments have not

given higher education a priority, so we really thank you. Thank you, too, to UCT for a warm welcome, a fantastic orientation, and for English classes for those for whom English is not their first language.'

Rwandan alumni are to be found in a wide spectrum of the infrastructure of that country – from the Ministry of Public Service and Labour, to Private Business, lecturing, law firms, NGOs, the Social Security Fund of Rwanda, Procurement in the Ministry of Defence and a legal officer in the Supreme Court.

### UCT RESEARCH ASSOCIATESHIP

THE RESEARCH ASSOCIATESHIP is awarded to one student per department each year for excellent research. In 2011 the awards went to:

■ **Ashimizo Afadameh** (Commercial Law) who is researching the role of African regional institutions in securing compliance with regional integration treaties in Africa; are there viable solutions to this dilemma?

■ **Benson Olugbuo** (Public Law) who is researching the International Criminal Court and Interests of Justice in Africa; he has also been awarded a Fox International Fellowship by Yale for the 2011/12.

■ **Hugo Meyer Vandenberg** (Private Law) whose PhD is on the state control of petroleum resources in South Africa and Namibia, and the duty of the state to develop petroleum resources for the benefit of the nation.

# Grey List & the Consumer Protection Act

**R**esearch by Professor Tjakie Naudé, head of Private Law, resulted in the inclusion of a so-called 'grey list' of contract terms which are presumed to be unfair for purposes of section 48 of the Consumer Protection Act in the Regulations under this Act. The Regulations were promulgated on April 1st 2011.

Professor Naudé conducted comparative research on unfair contract terms legislation whilst on sabbatical in Oxford during 2006. One of the outcomes of this research was an article on the use of lists of prohibited and presumptively unfair contract terms in legislation ('The use of black and grey lists in unfair contract terms legislation in comparative perspective' 124 (2007) *South African Law Journal* 128–164).

She made written and oral submissions on proposed amendments to the Consumer Protection Bill to the parliamentary portfolio committee on Trade and Industry in 2008. As a result of her submission on the need for a grey list, the portfolio committee insisted that the Department of Trade and Industry include such a grey list in the Regulations to be published under the Act, and inserted s 120(1)(d) in the final version of the Bill, which allowed the Minister to make such a regulation. Unfortunately many of her other submissions for improvements to the legislation were not acted upon.



Professor Tjakie Naudé

She proposed wording for such a grey list to the Department of Trade and Industry as well as in an article published in 2010 ('Enforcement procedures in respect of the consumer's right to fair, reasonable and just terms under the new Consumer Protection Act in comparative perspective; 127 (2010) *South African Law Journal* 515–547). This wording was largely followed in regulation 44. During the process leading up to the promulgation of regulation 44, she also had to engage with the Department of Trade and Industry and other stakeholders at various workshops on the Consumer Protection Act and the proposed Regulations, and in the form of written submissions and comments to objections brought by members of the business community. Shortly before the promulgation of regulation 44 she proposed that the items in the grey list be re-organised so as to group categories of suspect contract terms together.

The 'grey list' mechanism is widely used in Europe and elsewhere to promote effective proactive and reactive control of unfair terms in consumer contracts. The advantages of 'black' and 'grey lists' are set out in depth in the article mentioned above. Amongst other things, such lists increase the chance of legislation on unfair contract terms having a fast, real and proactive effect as businesses are more likely to remove unfair terms of their own accord if they are given more detailed guidance as to which terms will always or often be unfair, than if they are merely told in vague terms to remove 'unfair terms' which are 'excessively one-sided' (as s 48 of the Consumer Protection Act does). A grey list also strengthens the hands of consumers or watchdog bodies when negotiating with less conscientious businesses to stop using unfair terms, decreasing the need for expensive and time-consuming court action. The need for effective, proactive control that is not solely dependant on control through the courts is obvious in the light of the costs, effort and risks of litigation for consumers. Greylisting typically problematic clauses has the added benefit that the burden of convincing a court that a listed term is fair rests on the business in respect of these clauses (see also Naudé 'The consumer's 'right to fair, reasonable and just terms' under the new Consumer Protection Act in comparative perspective' (2009) 126 *South African Law Journal* 505 520). This creates an incentive for the business to bring evidence on the business reasons which justify use of the term in its particular context, without which it is very difficult for a court to properly evaluate the fairness of a term. The lack of evidence on the business reasons for the time-bar clause considered in *Napier v Barkhuizen* 2006 (4) SA 1 (SCA) appeared to have contributed to the SCA's understandable reluctance

to strike out the term for being contrary to public policy (cf para 10). Of course, the consumer is not able to bring such evidence. In the absence of a grey list, the consumer may therefore always have difficulty in persuading a court that a term is unfair in situations where the supplier does not bring such evidence of its own accord. Time-bar clauses which impose a limitation period that is shorter than otherwise applicable under the common law or legislation are now presumed to be unfair under reg 44, and the burden will therefore be on the business to bring evidence on why they are needed and fair.

It should be noted that the grey list in Regulation 44(3) is non-exhaustive, so that other terms may also be unfair for purposes of section 48 of the Act. In addition, a term which falls within the ambit of sub-regulation 4 (which creates certain exceptions to the list in sub-reg 3) remains subject to sections 48 to 52 of the Act (which prohibits unfair contract terms).

Regulation 44 does not derogate from provisions in the Act or other law in terms of which a term of an agreement is prohibited outright. Regulation 44 also makes it clear that the grey list applies only to terms in consumer agreements between a supplier acting wholly or mainly for purposes related to his or her business or profession and an individual consumer who entered into it wholly or mainly for purposes unrelated to his or her business or profession. Thus it does not apply to the business-to-business ("B2B") contracts governed by the Act. However, courts considering the fairness of terms in such B2B contracts, may obviously take into account that a term is greylisted.

# Myth of unfair labour laws

**H**ardly a week goes by without someone pointing out that, according to the World Economic Forum, SA's unfair dismissal laws are the fifth-strictest in the world.

This claim has been repeated so often it has become something of an urban legend. Much of the credit for this must go to the widely quoted Loane Sharp and Richard Pike of Adcorp, who use this statistic as part of their campaign to try to completely deregulate the labour market. However, like all urban legends it only serves to hide the facts.

The source of this figure is the World Economic Forum's Executive Opinion Survey, published annually in its Global Competitiveness Review. Last year, 57 South African business executives responded to the survey. To put that in context, 55 business executives from Swaziland responded. One of the questions in the survey requires respondents to rank their country's laws dealing with hiring and firing on a scale of one to seven. Of 139 countries measured, the executives of only four (Ecuador, Spain, Portugal and Venezuela) ranked their laws as being more rigid. So all the much-quoted World Economic Forum figure tells us is how a small number of business executives rank our labour law.

How does this compare with surveys based on hard empirical data? The most authoritative comparative assessment of labour laws is by the



Professor Paul Benjamin

Organisation for Economic Co-operation and Development (OECD). Its report on employment protection laws dealing with hiring of permanent and temporary employees and collective dismissals allows SA's labour laws to be compared with those of the OECD's 29 members, which include the world's most developed economies, as well as 20 of the most significant developing economies including Brazil, Russia, India and China.

Of the OECD's 29 members, only six (Canada, the US, the UK, Ireland, Iceland and Switzerland) are rated by the OECD as having more flexible employment protection laws than SA. Of the further 20 countries for which data are available, the OECD ranks only two (Georgia and Malaysia) as having more flexible employment protection legislation than SA. According to the OECD, our employment protection laws are more flexible

than those of the other four Brics countries and economies such as Indonesia and Argentina.

What the OECD data tells us is that in a group of most of the world's 50 major economies, only eight are classified as having more flexible labour laws than SA. That may come as something of a surprise to the 57 business executives who took the time to respond to the World Economic Forum survey.

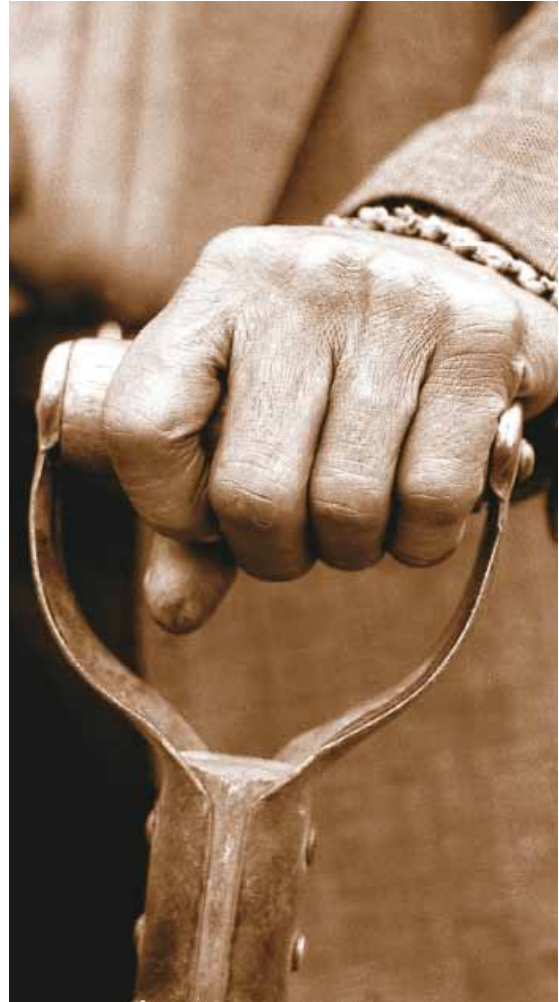
The OECD's description of our employment protection laws as relatively flexible is a useful indicator that we do not need wholesale deregulation but rather targeted reforms addressing key problems of inequality and unemployment.

Repeating the misleading World Economic Forum statistic leads to the erroneous perception that our labour laws are the major (even the only) cause of unemployment and that repealing them will automatically lead to greater employment.

SA requires a serious and urgent debate on the full range of factors that contribute to unemployment and which addresses the fact that many workers in the labour market are inadequately protected. Reiterating slogans and presenting opinion as fact does not assist in developing much-needed solutions.

*Letter to Business Day 29th August 2011*

PS: Since 2008, the OECD has been analysing employment laws in South Africa as well as six other associate members: Brazil, China, Estonia,



India, Indonesia and Russia. The OECD study concludes that South Africa's employment protection legislation is more significantly flexible than all of these countries.

For the full text see *Business Report* 15 April 2011: 'Executives' opinions on labour law are not facts'.

# Violence against Women, Causes and Consequences

**M**y thematic report on multiple and intersecting forms of discrimination and violence against women analyzes the forms, causes and consequences of multiple forms of discrimination as regards violence against women; highlights the reality that multiple and intersecting forms of discrimination have contributed to and exacerbated violence against women; and argues, that the intersections between gender-based discrimination and other forms of discrimination, and the consequences thereof, are too often overlooked.

Furthermore, the problematic nature of human rights discourse regarding violence, which regards real violence as public violence perpetrated by or at the behest of the state, and which often carries with it the elements of spectacle, has led to the marginalization and invisibility of violence perpetrated against women. It is not the more everyday ordinary violence that takes place within ostensibly private spaces, thought to be beyond the control and regulation of the state, which receives attention.

The report proposes a holistic approach which requires amongst others: (a) treating rights as universal, interdependent and indivisible;



Professor Rashida Manjoo

(b) situating violence on a continuum that spans interpersonal and structural violence; (c) accounting for both individual and structural discrimination, including structural and institutional inequalities; and (d) analyzing social and/or economic hierarchies among women, and, between women and men i.e. both intra-gender and inter-gender. I argue that a one-size-fits-all programmatic approach is insufficient for combating gender-based violence. Violence results from a complex interplay of individual, family, community and social factors – and, even though all women are at risk for violence in every society in the world, not all women are equally vulnerable to acts and structures of violence.

The lack of recognition of intra-gender inequality and discrimination, has led to the privileging of experiences of urban middle-class women, despite the importance of social location on



women's vulnerability to and experiences with violence. The consequence is that program designs and goals advanced in the interest of women may only reach the rights violations experienced by some women.

Violence violates the equality and non-discrimination rights of women and girls in ways that are contingent on women's material conditions, individual attributes and social locations. The holistic approach considers each woman's social location and bodily integrity as a starting point for intervention and treatment.

Such an approach counters efforts that focus on violence against women as solely a woman's issue, as such an approach risks minimizing the role that socio-economic, cultural/religious, racial/ethnic, ability, education, access to citizenship and resource allocation inequalities play in maintaining epidemic levels of violence against women. Factors such as geographic location, level of education, employment situation, household size, marital relationships, and access to political and civic participation, all impact women's vulnerability for violence. Further contributory factors for risk of violence include individual aspects of women's bodily attributes such as race, skin color, intellectual and physical abilities, age, language skills and fluency, ethnic identity, and sexual orientation.

A holistic approach requires that attention be paid to the particular in order to fully realize the universal. It would require international treaties and national laws to counter the conclusion that the universality of human rights renders the

particularities of violence against women largely irrelevant. This means grappling with the fact that the rhetoric of universality is not borne out by the material reality in which women live. In pursuing a holistic approach to understanding discrimination and violence against women, it is imperative that this approach includes an analysis of the right to basic needs and also a focus on amongst others: bodily integrity rights, education, civil and political engagement and self determination. These fundamentals directly affect a woman's ability to equitably and holistically participate in public and private spaces.

I conducted four missions during the reporting period i.e. to El Salvador, Algeria, Zambia and the United States of America. Despite the global focus on violence against women, the reality on the ground shows that violence against women remains the most pervasive human rights violation that exists, whether in times of peace, conflict or post-conflict. I believe that the current major challenge in combating this phenomenon relates to the effective implementation of existing human rights standards to ensure that the root causes and consequences of violence against women are tackled at all levels, from the home to the transnational arena.

In this respect, it is key to ensure States' compliance with their due diligence obligation to prevent, investigate, prosecute and punish the perpetrators of violence against women so that we move towards a conception of human rights that meets our aspirations for a world where women's lives are free of discrimination, inequality and violence.

# IP and E-Commerce

**T**he Faculty's newest PhD wrote her thesis on the intellectual property (IP) protection of the functional aspects of e-commerce business methods, which are embedded in the methods' underlying computer programs.

Her thesis considers how South Africa can achieve an equitable balance between creators' interests in securing remuneration and attribution for, and users' interests in securing affordable access to, these methods.

Ncube's primary perspective is that of users and its arguments centre on the position of small and medium sized enterprises that provide accommodation in the tourism sector (accommodation SMEs). This is a particularly meaningful context because tourism is one of South Africa's immediate priority sectors and accommodation SMEs make an important contribution to the national economy.

The thesis uses literature to support descriptive claims about accommodation SMEs' e-commerce activities and the current IP protection of e-commerce business methods as well as normative claims about how to achieve equitable protection. It argues that a public interest approach enables the appropriate calibration of IP protection. In particular, it argues that South Africa's status as a developing country, its constitutional protection of the right to work and its national policy of promoting tourism SMEs demand that accommodation SMEs' interests be equitably catered for.



*Dr Caroline Ncube*

The criterion used for determining equity is whether legal certainty has been achieved with regard to the nature and scope of protection; whether the protection is compatible with the nature of computer programs, programmers' needs and practices, and whether, ultimately, the protection enables user access to affordable e-commerce business methods.

The thesis finds that existing IP protection is inequitable and argues that certain changes in law which permit reverse engineering and partially codify the approach to non-literal copyright infringement; the judicious interpretation and application of existing protection and the introduction of measures such as pre-patent grant opposition or peer review proceedings would more fairly balance creators and users' rights. Ultimately, it concludes that the most equitable route is for creators to eschew the current forms of IP protection in favour of free and open source software and open business models.

*[The full text is available from [Caroline.Ncube@uct.ac.za](mailto:Caroline.Ncube@uct.ac.za)]*

# Trade Mark 46664

## (as said “Four Triple Six Four”)

By Alumnus Don MacRobert



*The official records show that you have applied  
For trade mark “46664” – so we have spied  
Your wide specification gives us no clues  
Whether you will use on hats, clothes or simply  
just shoes*

*We will at this stage refrain to mention  
Whether you have the required bona fide intention  
Of using the mark for your broad specification  
Under that test of reasonable justification.*

*No – our clients are the Mandela Foundation  
You must know them you agree without hesitation  
It goes further than just the client we named  
Built on Nelson Mandela – and he’s world famed.*

*Now the numeral which you are trying to claim  
Is associated with Madiba – just let me explain  
Whether said by word or digit – It matters no more  
He’s the sole owner of “Four Triple Six Four”*

*We all know how Madiba was caught  
At the treason trial his pleas came to nought  
The country was really something to cry for  
Our freedom he said he was prepared to die for.*

*The Presiding Judge therefore made a Finding  
Passing sentence which was forever binding  
Sent to Robben Island on Cape Town’s foreshore  
Jailed for life in cell number 46664.*

*Since his release we were not at all hesitant  
To elect him our first democrat President  
And for the Nobel there was no hesitation  
For that Peace Prize based on his world reputation.*

*A passing off action requires us to show  
A reputation so wide that all must know  
But not his name only – there has to be more  
To claim ownership in number 46664.*

*This we believe is easy to do  
It’s known far and wide – not just by a few  
Robben Island has of course been proclaimed  
A national monument because it’s so famed.*

*Thus – daily there are thousands who flock  
To view Robben Island from Cape Town’s dock  
They get shown around prison then peep through  
the door  
Into that notorious cell no 46664.*

*So “What’s in a number” do I hear you say  
Well this is so special we claim if we may  
A prima facie case, just as in a tort  
Reducing your version with problems so fraught.*

*Our instructions are clear and without more ado  
There is only one thing that is now left for you  
We call on you forthwith to withdraw  
Trade mark number 46664*

# Procedural Law

**A**t the XIVth World Congress on Procedural Law in Germany in July, Professor Wouter de Vos delivered a paper that was in the form of a national report and focused on recent developments in South African jurisprudence regarding the admissibility of illegally or unconstitutionally obtained evidence.

Special attention was given to the position in criminal cases and the influence of Canadian jurisprudence on our courts. 'In this connection it is of particular importance to take note of the latest approach regarding the admissibility of evidence obtained in such manner adopted by the Canadian Supreme Court in *R v Grant* 2009 (2) SCR 353,' said de Vos. 'In view of the authoritative status our courts accord to Canadian judgments on issues under the Charter of Rights and Freedoms, the seminal judgment in the *Grant* case is bound to influence South African jurisprudence in this field. The paper analyses the Canadian case law preceding the *Grant* case and the influence that had on South African case law, especially the judgment in *S v Tandwa* 2008 (1) SACR 613 (SCA).'

'It is submitted that this judgment followed a wrong direction in applying section 35(5) of the Constitution to real evidence obtained unconstitutionally. The hope is expressed that the Supreme Court of Appeal would take note of *R v Grant*, and rectify the position when confronted with the same issue in future.'

*[The full text was published in 2011 (2) TSAR 268. – editor.]*

## RULE OF LAW IN CODIFIED AND UN-CODIFIED LEGAL SYSTEMS

The Middle Temple held their annual conference at UCT last September and attracted an array of speakers from both the UK (including two members of the UK Supreme Court and sundry other judges and leading barristers) and South Africa including two members of the Constitutional Court (Moseneke DCJ and Cameron J) and several judges and leading silks.

The topics covered under the general theme of the 'Rule of Law in codified and un-codified legal systems' included: independence of the prosecutorial authority, judicial review of governmental power, legal costs, judicial appointments, judicial remedies and so on. 'The conference witnessed several lively exchanges of views between the delegates, and was seen as a successful example of an event at which all could learn from each other,' comments UCT co-ordinator Professor Hugh Corder.

'Certainly, the delegates from London returned with a more nuanced understanding of the South African Constitution and perhaps a greater appreciation of the challenges faced'.

The organisers were alumnus, Professor Jeffrey Jowell QC (now Sir Jeffrey see page 68), Jeremy Gauntlett SC and Lord Justice Burton and the papers are included in two recent issues of *Advocate*, the journal of the General Council of the Bar in South Africa.



### **WATER, WATER, AND NOT A DROP TO DRINK**

Some seventy years ago, Jean Giraudaux wrote 'Water is the one substance from which the earth can conceal nothing; it sucks out its innermost secrets and brings them to our very lips'. To this, Professor PJ Schwikkard, opening the IUCNAEL's 9th Colloquium held in the Eastern Cape in July, would add 'It has forced us to confront the harsh realities associated with our impact on the earth's diminishing resources – realities that are, increasingly, having to be spoken about through parched lips.'

The IUCNAEL is the largest global network of university-based law faculties and environmental law centres and hosts a Colloquium on a different environmental law theme at a different destination each year. This year's Colloquium, *Water, Law and Sustainability*, was awarded to South Africa and was co-hosted by the Law Faculties of UCT, NWU, UKZN and Wits; it brought together 150 scholars from across the world to discuss the vexed issue of water, law and sustainability.

The Eastern Cape was specifically chosen as the venue owing to its prevalent droughts, but we were ironically treated to record rainfalls for the entire duration of the conference, comments Associate Professor Alexander Paterson.

UCT was well represented in the programme ([www.iucnael.org](http://www.iucnael.org)) and Judge Davis, an honorary Professor of Law, delivered the guest address.

### **GENDER, LAND RIGHTS AND CONTESTED BOUNDARIES**

There is a shift in unmarried women's access to land, says a recent Community Agency for Social Enquiry (CASE) survey of 3 000 women in three rural areas that were part of the apartheid 'homelands'. This contradicts the oft-repeated claims that customary law denies women access to land except through their husbands, fathers, brothers or sons.

The research presented for discussion at a workshop in March reflected a collaboration between UCT's Law Faculty, the Institute for Poverty, Land & Agrarian Studies (PLAAS) at the University of the Western Cape, and the Department of Sociology & Social Anthropology at Stellenbosch University. The workshop brought together some of the world's leading anthropologists and legal minds and opened up new possibilities for thinking on how evidence and social change is measured in research.

A central question for discussion was how to explain the shifts in women's access to land. Some of the contextual issues include large (and possibly increasing) numbers of single women establishing families outside of marriage and in a climate of increasing unemployment, particularly among rural men. The impact of the transition to democracy in 1994 on the claims made by single women and the balance of power in rural areas was also highlighted as a central issue.

The papers will be published in the 2013 *Acta Juridica*.



## CONGRATULATIONS TO

The faculty recently announced seven *ad hominem* promotions – to Professor, **Wouter de Vos** and **Rochelle Le Roux**, to Associate Professor, **Anne Pope** and **Mohamed Paleker** and to senior lecturer, **Kathy Idensohn**, **Caroline Ncube** and **Lee-Ann Tong**. **Afton Titus** joins as a lecturer in Commercial Law.

Two members of the Department of Commercial Law have been given key appointments – **Rochelle le Roux** is a non-exec director of the South African Reserve Bank and **Tshepo Mongalo** sits on the Committee on Company Law (established in terms of s191 of the Companies Act, 71 of 2008).

Professor **Julian Kinderlerer**, Chair of Intellectual Property law at UCT, has been re-appointed to membership of the European Group on Ethics in Science and New Technologies (EGE) and then elected by the members to be their President for a five-year term.

**Kristina Bentley** has been elected as the Deputy President of SAAPS (South African Association of Political Science, which is the SA branch of the world body, IPSA) for 2011.

**Dirk van Zyl Smit**, Dean (1990–1995) and well known lecturer in Criminal Justice has received an LLD (hc) from the Ernst Moritz Arndt University in Greifswald, Germany.

Associate Professor **Jaco Barnard-Naude** graduated in June with a Masters in Creative Writing and specifically Afrikaans poetry.



## 67 FOR MADIBA

It was difficult to find a 67 minute project, so Law decided to collect 67 tins. Pictured above are **Liesel Collins** (the Dean's new P.A.) and **Mongezi Mbebe** (Administrator, Commercial Law) packing a parcel for the Adonis Musati Project. Mr Musati was the Zimbabwean who died of starvation in Cape Town while waiting for documents.

## STAFF LUNCHES

As has become tradition, a group of staff organise a traditional meal and in April it was township time, sheep's head and all. **Stella Yabo**, **Vathiswa Mzamo** and **Ncebakazi Jwaqu** were part of the hosting team. The top favourite was 'Aunty's' ginger beer and 'Buzz', the drink that looks just like Coke but tastes a thousand times better.





## INTERNATIONALISATION AND OUTREACH

ONE OF THE Dean's initiatives in 2009 was to create a portfolio of Deputy Dean, Internationalisation and Outreach, and who better to fill the position than Evance Kalula. Born in Zimbabwe, educated in Zambia and then a Rhodes scholar, Professor Kalula's career has taken him from Lusaka to London, from Geneva & the ILO and on to UCT where he heads the Institute of Development and Labour Law, under whose auspices the first SADC Masters' programme was created.

### Here is an extract from his recent report:

'It has been a busy year in terms of efforts to forge international links that offer opportunities for individual and group collaboration with our partners.

- i. In April, the Dean signed new link agreements with two leading law schools in the global South, the National School of Law, Bangalore, and Renmin School of Law, Beijing.
- ii. The staff exchange with the University of Florida continues to flourish and we recently renewed our link with the University College London.
- iii. Other opportunities include standing invitations from partners at the National University of Rwanda, Moi University in Kenya and Penn State.
- iv. Together with the Deputy Dean (Postgraduate Studies) and the Development and Marketing Manager, I visited Dar es Salaam in July where we were enthusiastically received by the Faculty of Law with whom we have had a good link for some time. The Faculty there will be celebrating the Jubilee anniversary (50 years) in October.'

*Bottom left: UCT students introduced to American Law by Professor Sharon Rush (centre front) of Florida Law School. Bottom right: Delegates from Shanghai Rui Yan, Zhenkun Ji and Yonghua Gu with Professors Kinderlerer and Kalula.*





*From left to right: Thandi Mwambala, Justin De Jager, Fatima Khan, James Chapman, Tal Schreier, Monique Schoeman, Varni Moodley, Nathaniel Maritz and Neltha Magazi.*

---

## REFUGEE RIGHTS TEAM

---

The Refugee Rights Project was created to offer crucial legal services to the growing number of refugees and asylum seekers throughout the Western Cape. Its staff compliment has grown over the years and now consists of nine full-time professional members.

The Project is proud of the fact that during their tenure with the Project five of the staff have completed LLM Degrees at the University of Cape Town. In June 2011 two LLM Degrees were conferred on the staff members, and a post-LLM PG. Dip. was also awarded. Almost all of these Degrees were Human Rights Masters and the Project sees this as filtering back into the services which it provides for the Refugees and Asylum Seekers it assists.

In addition to its function as an implementing partner of the UNHCR in the Western Cape, and a legal practice affiliated with the Cape Law Society, the Project conducts research and teaching within the faculty and training externally.

The Project is currently engaged in a number of research papers and will soon be launching a working paper series on the Project's website. The Project is well placed to draw on its experience as a long standing refugee service provider and on the research skills of its staff to produce research aimed at highlighting issues critical to the asylum process and the access to justice for refugees in South Africa.

During the course of 2011 the Project conducted a number of training courses with funding facilitated by the Foundation for Human Rights through funding by the Department of Justice and Constitutional Development and the European Union. The Project ran two rounds of its highly sought after course – 'Sustained Advocacy for Empowered Refugees' – which covers refugee law and practice, rights assertion and community conflict resolution. It is aimed at empowering refugee community leaders, and South Africans working with refugee communities. Further training was conducted with Magistrates from across the Western Cape, social workers from as far afield as Worcester and Swellendam, and local government and police in Plettenberg Bay. Through this training the Project believes that it is able to reach a wide spectrum of community leaders, service providers and officials who impact on the lives of a vulnerable category of individual who are spread far and wide throughout the country.



<b>President</b>	Daniel Barnett
<b>Vice-President External</b>	Kwadwo Ofori Owusu
<b>Vice-President Internal</b>	Lienda Kavindele
<b>Treasurer</b>	Muneer Asmal
<b>Secretary-General</b>	Nick Corbett
<b>Student Life</b>	Justine Hector
<b>Academics</b>	Mmueledi Mokubung
<b>Communication</b>	Johnathan Wooldridge
<b>Transformation</b>	Ziyaad Bhorat



*Sculptor Bruce Arnold supervises the repair to 'Our Lady'.*



*From left to right: Kwado Ofori Owusa, Muneer Asmal, Mmueledi Mokubung, Ziyaad Bhorat, Johnathan Wooldridge, Lienda Kavindele, Nick Corbett and Daniel Barnett.*

# Report back on 2011

## ORIENTATION

Orientation is perhaps the most important factor in successfully integrating at Kramer. The way in which law school functions is (sometimes astoundingly) different to the way any other faculty operates, and certainly very different to high school. As such, students entering the law school for the first time may find it challenging trying to adapt to the new way of doing things and (often) the increased pressure



that comes with a larger workload. Unlike other faculties, Orientation is run entirely by students, coordinated by the LSC.

The Law Faculty offers students a number of different streams – straight four-year LLB undergraduate course students, combined stream undergraduate degree, and postgraduate LLB studies. In light of this, we aimed to make Orientation as relevant to all students as possible, recognising that their needs and the level to which they need assistance may differ. Over three days, a successful programme was run which included time spent with final year law students, guest speakers, faculty staff and others. The orientation guide was revised for 2011 and distributed to all.

## MENTORSHIP PROGRAMME

A radically revamped Mentorship Programme was designed to help new four-year undergraduate LLB students adjust socially and academically to life on Middle Campus. A training session for the mentors (Intermediate and Final Years) was hosted at the beginning of February where the student volunteers were taught how to deal with issues regarding mentees and to whom to turn for assistance.

Post-registration, mentors and mentees (first year students) were paired up and the first joint event was hosted on the 24th of February. It was preceded by a mentee workshop that was used to determine the expectations of the mentees and to establish what boundaries existed.



Throughout the year, mentors were checked upon and issues dealt with. The mentors are required to submit a bi-weekly evaluation form to report back on the progress of their mentees and it is evident from the feedback that the main problems that the students are struggling with include essay structure, time management and managing the general workload. The mentors successfully assisted their mentees in terms of providing them with better coping mechanisms such as 'example study timetables' and structure for case summaries.

After attending the mentoring indaba held recently by the department of student affairs, it is evident that the law faculty has a way to go in terms of improving the mentorship program structurally and there is definitely a need to form a better working relationship between the academic staff and the

LSC in terms of the mentorship program. Proposals will be sent forward once the new LSC is elected.

One other innovation is a graduation ceremony where the mentors will be awarded for their spectacular commitment with certificates and letters of recommendation from the Dean.

---

## OFFICE HOURS AND STUDENT ASSISTANCE

---

Assisting students was the LSC's primary goal. Students with a wide variety of problems liaise with the LSC with regard to every aspect of campus life. The LSC met on a fortnightly basis to discuss these and other issues (including all projects) and met with the Dean and other members of staff on a regular basis. LSC members were available for consultations two hours a day from Mon-Thursday and for an hour on a Friday. These times have proved useful for dealing with the many student queries which come our way.

---

## COMMUNICATION

---

- The LSC communications officer dealt with any media queries that arose.
- VULA remained the primary means of communicating with the student body.
- We set up an LSC board in Kramer which is updated regularly. This proved popular.
- A Facebook group was established, allowing law students easy access to the LSC. It proved hugely successful, with almost half of Kramer's students joining the group. In addition, we updated the LSC website, a facility last used in 2007.

## FINANCIAL SUSTAINABILITY

The LSC raises money in order to run various projects on campus. Many of these projects are described in this document. In addition, the LSC assisted a number of law-related societies on campus with a contribution to their budget. We are pleased to report that the LSC has maintained financial stability this year. Even after the repair of lockers, the LSC remains financially secure, leaving a large surplus of funds for the incoming LSC to build on the foundation we have laid. In addition to funding the lockers, funds were also

spent in support of law-related societies such as the LSC/BLSF's writing seminars.

## HOODIES AND PHOTOGRAPHS

The annual 'hoodie' project was once again a major annual fundraiser for the LSC. The project took up significant time and effort but proved a worthy fundraiser. Both the Final Year and Campus Hoodies proved popular amongst students. The LSC coordinates the final year staff and student photographs, which were taken during the second semester.



## LOCKERS



One of the LSC's primary fundraising projects involved the renting of lockers to Kramer students. This year, lockers were available for a reduced fee of R100 for the year.

We tripled the number of students utilising lockers on the law campus and in doing so greatly increased our income. However, lockers were only running at 30% capacity when we took office, as the majority of the lockers were either broken or had no keys.

The LSC utilised the money raised from leasing lockers to fund the repair and replacement of older lockers, resulting in 140 lockers becoming available and allowing the LSC in years to come to be able to utilise lockers and raise funds at full capacity. To prevent problems in future, a rack was installed in the LSC office to house all the keys.

## MIKE LARKIN MEMORIAL SCHOLARSHIP

The LSC-sponsored Mike Larkin Scholarship was awarded to a deserving student at the end of 2010. The R10 000 scholarship is given to the student, as nominated by his or her peers, who best emulates the traits of the late Professor Mike Larkin. We look forward to giving this scholarship again at the end of 2011. The LSC also markets various bursaries, including those offered by the Attorney's Fidelity Fund.

## HOSTING INTERNATIONAL STUDENTS

The LSC hosted groups of international students from Norway, as well as students from Rutgers University, USA. We look forward to hosting more international students in the future.



## FACULTY AND UNIVERSITY COMMITTEES



The LSC represents law students in a wide variety of forums. We have been involved in all Faculty Board Meetings, Higher Education Board Meetings, Student Assemblies, Academic Sub-council Meetings, Academic Planning Committee Meetings, Community Service Committee Meetings, Crime and Security Committee meetings, IT Committee Meetings, Library Committee Meetings and Moots Committee Meetings.

- We had regular contact with the SRC and UCT officials outside of Kramer.
- An LSC representative stood in for an absent SRC colleague on the university's readmissions and appeals committee in January.
- In addition, members of the LSC were asked to sit on the SRC's Student Disciplinary Tribunal and Distinguished Teacher's Award Committee.
- We were involved in a debate on the composition of supplementary exams, coordinated via the SRC's Academic Sub-Council.

## FINAL YEAR YEARBOOK AND DANCE COMMITTEES

The LSC is mandated to set up and liaise with the student-run committees coordinating the Final Year Yearbook and Graduation Ball. Although all logistics and fundraising is coordinated by these committees outside of the LSC, the LSC offers regular support to the committees and oversees that faculty-required standards are maintained. These committees must be commended on raising enough money to fund both projects.

*[The two pub quiz fundraisers were attended by close on 200 people – the staff team performed less well this year and the LSC President was devastated that the winning teams were non-lawyers! – Editor]*

## HIGH SCHOOLS MOOT COMPETITION

THE transformation portfolio in the LSC has been a part of dynamic growth and development in the Law Faculty over the past year. Working closely with the Constitutional Literacy and Service Initiative (CLASI) to provide both students and high school learners a platform for learning and dialogue around the Constitution, a culture of service and enrichment has been seeded that looks set to flower in years to come.

The LSC ran a number of projects aimed at holistically bringing the Law Faculty together in the spirit of transformation and development. October 2010





saw a co-coordinated initiative between the LSC, Democratic Governance & Rights Unit (DGRU) and UWC's Street Law organisation, to facilitate training and advice for learners participating in the initial written submission round of the first National High Schools Moot Competition.

Besides the Western Cape team, another team travelled to the Northern Cape where learners and students interacted, formed connections, and celebrated the Constitution through the teaching process. Earlier this year, the coordinators organised a highly successful Regional High Schools Moot competition at the UCT Faculty to both prepare learners for the final advocacy rounds in the Constitutional Court, as well as afford a truly enriching experience for those learners who had not been selected.

Learners travelled from as far as Kimberley (Kimberley Girls coincidentally also winning the final round) and were adjudicated by legal practitioners, faculty staff, and students in both Afrikaans and English. The final round of the competition was held at the Constitutional Court on Human Rights Day. We envisage this project becoming an exciting feature of the UCT calendar in years to come.

## LEXISNEXIS BAR EXPOSURE PROGRAMME

IN 2010 the outgoing Transformation Officer, under the sponsorship of LexisNexis, organised a controlled advocacy exposure initiative for law students with the Cape Bar. The need arose to inform attorney-minded students of the possibility of alternative career options, most especially within the under marketed advocacy profession, as well as foster a strong relationship between the Cape Bar Council and the UCT Law Faculty from a student perspective. Four students were selected to participate in the September vacation moot and training program under the guidance of qualified advocates, whilst simultaneously being exposed to the inner workings, case matters and realities of the Cape High Court. The final moot was presided over by DJP Traverso herself, in one of the actual court rooms of the High Court, and was an exhilarating experience for all of those involved. The exposure, relationships kindled, and practical knowledge gained was invaluable to the participants in what proved to be an exceptionally successful initiative.

In light of this success story, both the Cape Bar and the LSC has decided to negotiate an expansion of the pilot project for 2011. This exciting project promises to be yet another student-driven step to consolidating links between the legal profession and legal scholarship, as well as market the information and exposure that students so desperately lack in a largely theoretical, textbook environment. This year the

University of Stellenbosch has been invited to participate alongside our own candidates in what will be a richer inter-varsity moot experience. The programme has seen lots of interest and a second programme ran in September.



In Court were **Lauren Richards**, **Metumo Swilongo**, **Tim Hodgson** and **Ziyaad Bharat** and they were briefed by alumni Advocates Gary Oliver and Jannie van der Merwe. The co-ordinator of the programme, Jason Miller, had his turn in court, but in a very different court. Jason organized a six week internship with a trial judge in Orange County California where, as he wryly comments he learned that a jury trial is indeed like 'driving a hundred miles an hour along the edge of a cliff.'

## ACADEMIC ISSUES, LAW WRITING GUIDE AND CLASS REPS

Before the November 2010 exams, the examination rules and requirements for proceeding to the next level of study were sent to all students, accompanied by a list of useful study tips and advice for legal writing when approaching a problem-type exam question.

Before the start of 2011, all students were sent copies of their timetables and registration information was provided.

The LSC coordinated class representative elections at the start of 2011, and one class representative was elected for each year. The class reps assist the LSC in minor administration of issues pertaining to their respective classes, and serve as a bridge between the LSC and individual lecturers. The LSC improved this tremendously this year, using the class reps as a means of regular communication with students. The class reps themselves have been hugely supportive in this regard and must be commended on a job well done.

Curriculum changes were adopted by the Faculty Board last year. The LSC is involved in all decision making in this regard and any further changes and developments will be communicated to students.

A number of students requested a change to the law writing guide. The LSC was involved in part in ensuring that a new, revamped guide was compiled. It is now available to all students.

In addition, the LSC is on hand to deal with other academic issues arising throughout the year, as well as timetable clashes, exam clashes, student exclusion and the rejection of deferred exams etc.

## ALTUM SONATUR

The LSC has helped to work on, and partially fund, the student-run newspaper *Altum Sonatur*, together with the Students for Law and Social Justice, LAWCO, and the Black Law Students Forum. The LSC submitted an article for each issue.

## LEGAL WRITING PROJECT WITH THE BLSF

IN conjunction with the BLSF, and in light of new approaches to teaching law emanating from within the faculty, the LSC embarked on starting a workshop for students wishing to improve their legal writing skills. Academics in the faculty willing to assist students with legal writing ran the workshops, helping students build their confidence when writing essays and answering questions in tests and exams.

Involved in these seminars were Professor Tom Bennett, Mr Graham Bradfield and former Constitutional Court Justice Kate O'Regan. The seminars were well attended and received positive responses from students. Students feel that the faculty should have more of these seminars at the beginning of each year and that these seminars would contribute positively to their academic lives.

## UCT OPEN DAY 2011



On Saturday 16 April 2011 the University had its annual Open Day, where thousands of high school learners, many with their parents, descended upon Upper Campus to be exposed to the many study opportunities available to them at UCT. Like all other faculties, the Law Faculty had a stall and a lecture venue where students and parents could receive information on studying law at UCT. This was ably coordinated by Mrs Patricia Phillips and her team at the Law Faculty Office.

The Law Students' Council was asked to take part in the day by assisting with the manning of the stall and by giving a 45 minute presentation in the lecture venue. Around 50 matric and grade 11 students and their parents attended the talk where the LSC members spoke severally and collectively on entrance requirements, the different degree streams at the Faculty, student assistance programmes and in-house societies. Each of the LSC

members also gave an honest personal testimony on their experience of studying at Kramer. The learners seemed appreciative, and the parents put at ease at the end of the talk. This event was a great success.

## CAREER FAIR



Kramer Quad WAS abuzz all of Thursday 5 May 2011. The Career Development Centre, assisted by members of the Law Students' Council, hosted a large Law Career Fair at the Law Faculty that drew many of the top law firms in South Africa to a prime recruiting ground. At the fair, students were introduced to future employers in the form of law firms as well as research and academia. The result was that students gained greater insight into important things like when to apply for articles and how to go about getting vacation work under their belt. This was a very valuable event for all parties involved.

Additionally, links with UCT's Career Development Programme office have been fostered to increase

the database of LLB graduates and their exposure to the labour market. Culminating in a highly successful Careers Fair, it is hoped that continued links will allow LLB students to become aware of, and develop skills required by the working profession. We recommend that smaller firms also be accommodated in these kinds of projects. The Stellenbosch LSC kindly donated a large number of copies of their Law Graduates' Employment Guide to the UCT LSC.

## ELECTIONS

The LSC organized a successful election for the incoming 2011/12 LSC. To our delight, 24 candidates entered the race. During two weeks of vigorous campaigning, including two well-attended interrogations, the candidates showed a passion for student governance not seen in many years at Kramer. The official handover took place at a staff tea on 23 August; this was three weeks earlier than in 2010, so as to give the new LSC more time to learn the ropes and start new projects before the upcoming exams.

## CON COURT CLERKS, PENN STATE AND Q&A

We assisted the Con Court in recruiting two candidates for the 2012 season. Clerks serving currently spoke to students on campus during a lunchtime discussion; similarly, we organized a gathering for students to hear about the UCT-Penn State Masters programme. The event, which was very well attended, involved an electronic linkup with Penn State, during which their Programme Director spoke to students. Ex-UCT student Darren

Smith, now an attorney with ENS, was a graduate of Penn State and was also in attendance.

A question and answer sessions was held during Meridian in May at which students could address concerns and give feedback to members of the LSC and we continually addressed student concerns, including for example, parking and facilities on campus.

## OTHER PROJECTS

The LSC coordinated with RAG to sell diaries on Middle Campus.



A system has been developed whereby the monthly *De Rebus* magazine is distributed (much thanks to alumnus Phillip van der Merwe) amongst the various societies in the law faculty.

During 2010, and particularly before final exams, the LSC was in regular **communication** with the Dean regarding the construction taking place on Middle Campus.

At the start of our term, the **LSC Office** was cleaned and reorganized. It has had its electricity restored and is functioning effectively. It was tidied and relevant documents and important information were filed correctly, many for the first time in years. The office was used extensively throughout the year as a depot for hoodies and a base for locker sales.



The LSC attempted to introduce a **second-hand textbook** project with the library. Due to logistical problems, this did not come to fruition, but we hope the new LSC will take this forward with innovative ideas.

We have been actively working with LAWCO, SLSJ and the BLSF in the current restructuring of the **Community Service Programme** within the Law Faculty, transforming a highly problematic administrative system into one that will hopefully be able to effectively serve its purpose.

The Faculty has been contacted with regards to hanging up **framed photographs of previous LSCs** inside the Kramer building. The purpose of this is to create a legacy of gratitude for what has been achieved by previous LSCs and that they be honoured for their contributions to the Faculty. The photographs, dating back to the 1980s, have been repaired and were hung on the walls outside Classroom 5G.

The LSC prepared a musical number and gift for the **farewell of Ms Vanessa Sarig** who, sadly, left the Faculty at the end of February.

## UCT WINS SA MOOTS

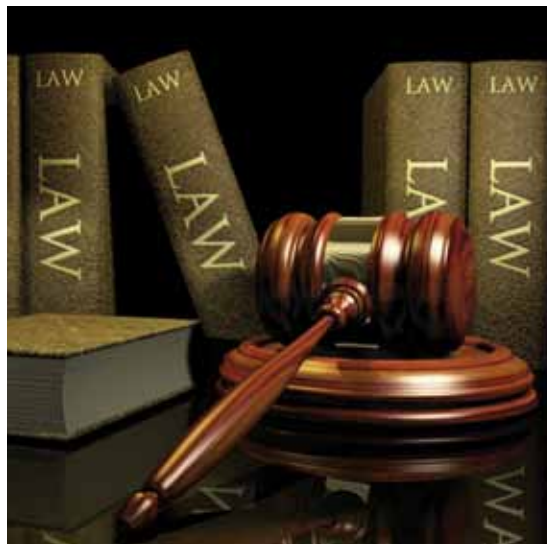


**HIGH FIVE:** Winners of the South African national round of the Phillip Jessup International Law Moot Court Competition are (from left, back) **Muhammad Ebrahim**, **Douglas Ainslee**, **Soseipriala Amabeoku** and **Benson Olugbuo** (team advisor). (Front) **Unesu Moyo** (also top orallist) and Shalom Ndiku.

## STUDENT CRISIS FUND UPDATE

*By Phillipa Marques*

As I think you know, a Student Crisis Fund (SCF) was proposed in 2009 by Sheldon Laing and Eitan Stern of the Law Students' Council who identified a need for immediate, once off, financial assistance to law students who were facing an unexpected crisis. A Committee has been established to administer the fund and deal with applications and as students have become more aware of the facility, there have



been an increasing number of students applying for assistance. It is apparent that one of the most pressing needs is financial assistance to purchase groceries. This is closely followed by assistance to pay for transport.

It is clear from the response by students that the SCF plays a vital role in the faculty and will continue to do so for many years into the future. A raffle was held in support of the fund in 2010, which was supported by many of the staff and students on the Law campus but the fund has been largely sustained by donations.

Every contribution, no matter how big or small, has the potential to help a law student out of a situation that could endanger the completion of their degree. Anyone wishing to contribute to the Fund, whether by a donation or through assistance with clothing should contact [Pauline.Alexander@uct.ac.za](mailto:Pauline.Alexander@uct.ac.za)



*Alumna Judith February chats with Daniel Weeks after her talk at the opening of the Academic Year 2011.*

## LOOKING BACK...

*By Robert Hare (Graduation 2010)*

Today, I would like to reflect on the years behind us, and the accomplishment we are gathered here to celebrate.

The UCT law degree is steeped in a certain mythology that students reinforce and pass on to each generation: lecturers become caricatures, and courses become rites of passage. Even the Kramer building itself takes on a life of its own: it is often derided as a source of misery, and yet law students are oddly possessive over it, bemoaning intrusions by their comparatively rowdy commerce counterparts.

At the heart of this mythology is the axiom that law is difficult: and not just difficult, but more difficult than any other degree. For law students, this is an indisputable fact, and one of which they will remind you at any given opportunity.

Isolated from the sunny crowds of Upper Campus, it seems almost inevitable that such a mythology would develop. It also doesn't hurt that there are a myriad of words and abbreviations that we rely on to further distance ourselves: 'ConLaw', 'Interps', 'Juris' and 'IAPs' are a few that come to mind. It is for this reason that law students often find it necessary to keep their 'law' friends separate from their 'normal' friends.

Behind each of these terms is a shared experience: memories of early lectures in this very lecture theatre; the mixture of fear and exhilaration



that accompanied your first moot; the palpable sense of anxiety and then elation as we scanned the notice boards for our marks at the end of the year.

And it is the accumulation of these shared experiences and that mythology that bind us as a class; that will allow us to strike up a conversation years from now as if no time had passed at all.

I've heard several classmates describe their LLB as the most challenging thing they have ever undertaken. And perhaps this is as it should be: after all, very few things that are worth doing are easy. If the shared experiences that I have mentioned provided our LLBs with their colour, then that sense of struggle and achievement provides them with their weight.

We have been taught by some of the greatest legal minds in the country. They have reminded us regularly, in their words and in their example, of what is possible with a legal education. It is for these reasons that I urge you, whether you become a legal practitioner or not, not to squander the abilities you have developed and earned through your hard work and perseverance; to contribute meaningfully in whatever you do.

Ladies and gentlemen, it has been a pleasure and a privilege to speak on your behalf this year and to have shared the experience of learning the law with you. I wish you everything of the best for the future.

## AFRICA ASCENT PROJECT

**Mikhaela Levitas**, a final year student and member of the UCT mountain and ski club, is part of an organisation called the Africa Ascent Project that helps provide the porters working on Mount Kilimanjaro with clothing and boots and other equipment – [www.africanascentproject.com](http://www.africanascentproject.com). Mikhaela and others plan to expand the project to other mountains in Africa once they have finished their studies.

*With thanks to Die Burger 28/6/11*

## PRAGUE LEADERSHIP CONFERENCE

*By Kudzi Mutendadzamera*

Thanks to the LZ Kaplan Trust, at the end of July I attended the 22<sup>nd</sup> sitting of the International Youth Leadership Conference in Prague, which brought together young people from over 20 countries. It was a conference themed 'A Cross Cultural Exchange of Ideas Concerning the Future of World Leadership' and what an exchange it turned out to be.

The programme had a focus on global politics, international law and trade, with a curriculum centred round highlighting various Millennium Development Goals, as well as creating understanding of the function of the European Union.

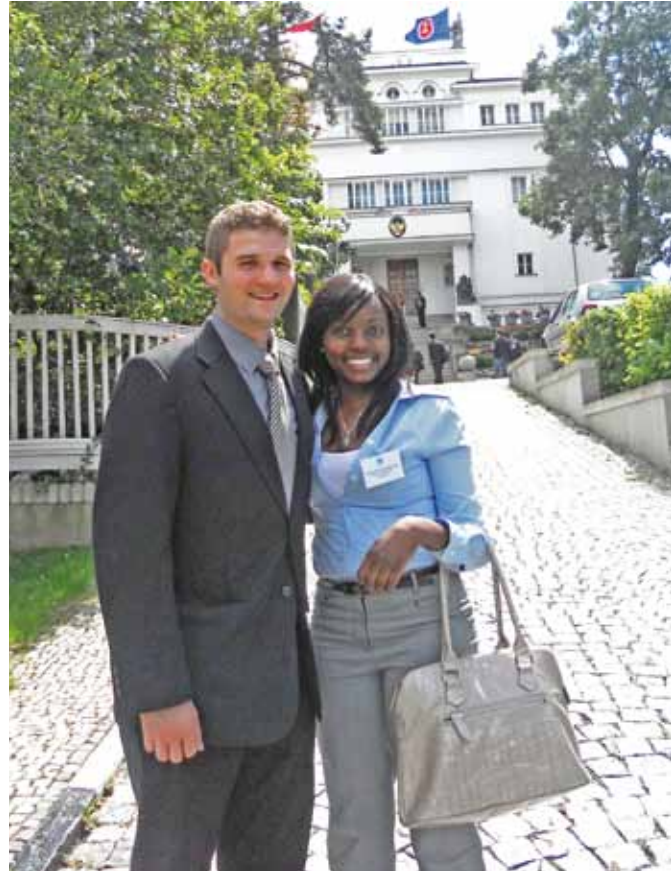
It took a blunt look at pertinent issues such as renewable energy, human trafficking and the recent



wave of civil uprisings presented by specialist guest speakers in these areas.

The IYLC proved to be an invaluable exchange of ideas, which gave me a much richer understanding of how global policy is actually implemented in the face of political resistance as well as uneven economic positioning. On a personal level, the people present provided a platform to hear personal experiences that gave a more human element to the events that I constantly watch on news channels. In both panel and round table discussions on the problems facing young leaders I engaged with United States Marines, young people who led relief efforts in the Queensland floods, Australians and Americans advocating for the recognition of the native inhabitants of their countries, young soldiers serving (or who had once served) in the Israeli Army, a young Egyptian youth activist for the current government, and Puerto Ricans advocating for the liberation of their country from the United States, to name a few.

The encounters were inspiring and naturally led to me comparing what I had witnessed, to quality of youth leadership we have at our university in the different faculties I have been in. Although dealing with rather 'low profile' causes in comparison to those mentioned above, the dedication shown by UCT students to bring justice to the various political and socio-economic problems plaguing this country, and the continent at large needs no exaggeration. During my time at this institution I have witnessed many student driven initiatives flourish despite the lack of involvement from above (whoever you shall take 'above' to mean). Admittedly there are students who have leadership



capabilities but lack legitimate connection to their cause (the aptly named 'CV-warriors'), the majority of us have shown a commitment to community and university that allowed me to recount many of our achievements with pride.

Both on a personal and intellectual level the conference was a remarkably enriching experience, with a level of international exposure I feel needs to be made available more frequently to students in order to broaden perspective on pertinent issues.

## AWARD OF CLASS MEDALS & PRIZES: FINAL YEAR 2010

Graduation High Tea, December 2010

Guest of Honour and Alumna: Judge Shenaaz Meer

### ■ **BOWMAN GILFILLAN PRIZE**

Lauren Cowley

For the Final Level student obtaining the highest marks in Revenue Law.

### ■ **D B MOLTEÑO PRIZE**

Catharine Thorpe

For the Final Level Student obtaining highest marks in Public Law, Revenue Law.

### ■ **THE GERING PRIZE**

Catharine Thorpe

For the best student in Commercial Transactions Law.

### ■ **INA ACKERMANN PRIZE**

Catharine Thorpe

For the student obtaining highest marks in Commercial Transactions Law.

### ■ **JUDGE SCHOCK PRIZE**

Catharine Thorpe

For the best Final Level LLB student.

### ■ **JUTA LAW PRIZE**

Catharine Thorpe

For the best Final Level LLB student.

### ■ **SOUTH AFRICAN SOCIETY FOR LABOUR LAW PRIZE**

Itai Pasi

For the final year student obtaining highest marks in the course Labour Law.

### ■ **SPOOR AND FISHER PRIZE FOR INTELLECTUAL PROPERTY LAW**

Alan Wright

For the best student, if of sufficient merit, in the course Intellectual Property Law

### ■ **EDWARD NATHAN SONNENBERGS ESSAY PRIZE**

Timothy Hodgson; Brett Pollack; Luke McMichael & Catharine Thorpe

For an essay accepted for publication in Responsa Meridiana.

### ■ **SOLLY KESSLER MEMORIAL PRIZE**

Catharine Thorpe

For the best essay written by a student on a topic concerning Constitutional Law.

### ■ **SPOOR FISHER PRIZE – LEGAL WRITING**

Catharine Thorpe

For the best article submitted by a UCT law student and accepted for publication in Responsa Meridiana.

## AWARD OF CLASS MEDALS & PRIZES: 2010

Faculty Opening, February 2011

Guest of Honour and Alumna: Ms Judith February

### ■ ADAMS AND ADAMS PRIZE

Simone Fourie

For the student obtaining highest marks in Corporation Law.

### ■ BLUMBERG PRIZE

Tess Peacock

For the Intermediate Level student who has worked hard both academically and in service of the wider student community.

### ■ BRINK COHEN LE ROUX INC. PRIZE

Petrus Olivier

For the student obtaining the highest marks in Law of Contract.

### ■ LEXISNEXIS BUTTERWORTHS PRIZE – BEST INTERMEDIATE

Leo Boonzaier

For the best Intermediate Level student.

### ■ LEXISNEXIS BUTTERWORTHS PRIZE – CIVIL PROCEDURE

Leo Boonzaier

For the student obtaining the highest overall marks in Civil Procedure.

### ■ MIKE BLACKMAN MEMORIAL PRIZE

Simone Fourie

For the student with the best results in Corporation Law.

### ■ TOM W PRICE MEMORIAL PRIZE

Petrus Olivier

For the Intermediate Level student obtaining the highest overall marks in the Preliminary and Intermediate Levels examinations in Private Law.

## PRELIMINARY LEVEL

### ■ BEN BEINART MEMORIAL PRIZE

Wendy Hoffmann

For the best student in Comparative Legal History and Foundations of South African Law.

### ■ CLIFFE DEKKER HOFMEYR PRIZE

Andrew John Fisher

For the best Preliminary Level student.

### ■ ROUTLEDGE MODISE PRIZE FOR PROPERTY LAW

Katherine Rosholt

For the best student in the Law of Property.

### ■ SIR FRANKLIN BERMAN PRIZE FOR INTERNATIONAL LAW

Soseipriala Amabeoku

For the student obtaining the highest marks in International Law.

### ■ YASH GHAI PRIZE FOR CONSTITUTIONAL LAW

Jason Mitchell

For the best student in Constitutional Law.

## OTHER PRIZES

- **BAR COUNCIL MOOT PRIZE**  
*Matthew Hacking*  
For the best student participating in a series of moots conducted within the Faculty.
- **ENGEN PETROLEUM PRIZE IN MARINE LAW**  
*Christopher Brown*  
For the student whose combined results are the best in any one year in the Marine Law courses.
- **RODMAN WARD PRIZE**  
*Richard Bradstreet*  
For the best essay written by a student on an aspect of Corporate Governance.
- **SORAYA DONNELLY PRIZE**  
*Soseipriala Amabeoku*  
To a deserving student of International Law

## DEAN'S AWARD

- **ACADEMIC DEVELOPMENT PROGRAMME (ADP)**  
*Sicelo Ndlovu*  
For the best LLB ADP student in the Second Level.
- **DEAN'S AWARDS FOR SERVICE**  
*Tess Peacock; Timothy Hodgson & Daniel Mackintosh*  
In recognition of student service to the wider community. Awarded at the discretion of the Dean, in consultation with the Deputy Deans and Head of Department.

## CLASS MEDALS 2010

- **Criminal Law**  
*Ashleigh Cowlin*
- **Criminal Procedure**  
*Leo Boonzaier*
- **International Law**  
*Soseipriala Amabeoku*
- **Interpretation of Statutes**  
*Amy Armstrong*
- **Law of Persons & Marriage**  
*Peter Cohen*
- **Comparative Legal History**  
*Sipho Mudau*
- **Law of Property**  
*Katherine Rosholt*
- **Law of Succession**  
*Isabella van Zyl*
- **Law of Delict**  
*Leo Boonzaier*
- **Law of Contract**  
*Petrus Olivier*
- **Civil Procedure**  
*Leo Boonzaier*

### CLASS MEDALS

- **COMMERCIAL TRANSACTIONS LAW**  
Catharine Thorpe
- **ADMINISTRATIVE LAW**  
Catharine Thorpe
- **EVIDENCE**  
Ashley Pillay
- **AFRICAN CUSTOMARY LAW**  
Catharine Thorpe
- **JURISPRUDENCE**  
John Kotze
- **PRIVATE LAW**  
Ashley Pillay

### SCHOLARSHIPS

- **LAW 150 ENDOWMENT**  
Nuhaa Amardien  
Nkululeko Jiyane  
Robin Adams  
Jane Masson  
Sarah Gama  
Anastasia Katts  
Akua Danso  
Lulama Lobola
- **CARO WIESE**  
Almaaz Mohamed  
Winnie Pakane

- **DAVIS POLK WARDWELL**  
Phatiswa Mangangane
- **ETHEL WALT HUMAN RIGHTS**  
Samantha Waterhouse
- **UK ALUMNI**  
Nululeko Jiyane  
Phyllia Ngoatje
- **RE-AWARDS**  
Ebrahim Muhammad  
Grant Caswell  
Shandu Mandisa
- **NICK BOYDELL**  
Wandisa Phama
- **DENEYS REITZ, NOW  
NORTON ROSE**  
Siviwe Mcetywa  
Jarrod Page  
Mulesa Lumina  
Amanda Rinqest
- **BOWMAN GILFILLAN**  
Cecil Chauke  
Sibo Mdluli  
Richard Julies  
Sanelisiwe Ngcobo  
Gugu Ncgobo
- **HEROLD GIE**  
Bonga Siyothula

## LAW 150 GIVES BACK

Since the launch in 2008 of the 150<sup>th</sup> anniversary fundraising campaign, *Towards Sustainable Justice*, just on R4 million has been invested in student and staff scholarships.

This year 28 students are on scholarship, 18 with funds raised by law alumni and friends, and the balance from law firms who have partnered with UCT. 'In order to continue our tradition of excellence we need a diverse student body so that we can produce law graduates who can serve the diverse South African population,' comments Professor PJ Schwikkard, Dean of Law.

We have tried to ensure that information about the scholarships is spread as far and wide as possible. We use UCT Open Days and evenings and we visited various schools in KZN and E.Cape in 2009. There are also the various student networks such as the Legal Welfare Community Organisation (LAWCO) and since 2010 we have used social media to good effect.

'We have awarded scholarships across a fairly wide spread of feeder schools. In the Western Cape, for example, Bergvliet, Edgemoed, La Rochelle, Reddam (Green Point), South Peninsula, St Josephs and Springfield Convent; in Gauteng: Christian Brothers (Pretoria), Highlands North

*Sir David amuses (from back right) Rob Knutzen, Irene Menell, Neil Jowell and Isabel Goodman, with donor breakfast host, Dr Max Price, fully engaged too.*





*Clockwise, from top left: Sir Frank Berman's donation to the library; he is pictured with Pamela Snyman, Danwood Chirwa and PJ Schwikkard; Sir David Attenborough makes his point to Dr Christo Wiese at the donor breakfast; Final year Wandisa Phama meets her benefactor; HRH at UCL and 'our' scholar, Thabi Chanetsa was there (right).*

Boys, Uplands College (White River) and Veritas (Springs); in KZN: Crawford (North Coast) and Durban Girls and in the Eastern Cape: Alexander Road High.

'We really do want to reach talented learners wherever they are and so in 2011 we also advertised directly to teachers through the M&G supplement that goes to 28 000 schools. I am confident that the 2012 group will have come from a wider pool,' said Schwikkard. 'On the staff development side, five Academic Scholars were appointed as tutors and

research assistants as from January 2010 and are now placed in LLM programmes, three at University College London, one at New York University and one at the University of New South Wales. Provided the scholars achieve a high standard in their Masters, they will be offered a lectureship within the faculty. 'This investment of just under R 2 million in growing our own timber as it were was made possible by not only alumni and friends but also by the generosity of the Ford Foundation.'

A second cycle is planned for 2013.'

# They are why we teach...

**T**here comes a point during the various Law Reunion weekends as alumni talk about what they are doing when Professor Judge Dennis Davis gets that gleam in his eye; in his words ‘the essence of the hope of teaching is to cause a small stimulus that may contribute to students who make a change in their worlds.’

## INFORMALLY IN BOTSWANA

‘You’re special, you’re talented, you have so much to offer – and today, I’m reminded that here in Botswana, you have a proverb that says: “We are people because of other people.”’

Michelle Obama was on a private visit to Botswana with a focus on encouraging youth leadership and Alice Mogwe (1985) met her at a ‘mentoring’ luncheon on a Friday in July that was, for Alice, ‘unforgettable’.

Alice is Vice-Chairperson of the Council of Maru a Pula Secondary School, her alma mater, and the founder Director of Ditshwanelo – The Botswana Centre for Human Rights – established in 1993. She is the recipient of the David Rockefeller Bridging Leadership in Africa Award, 2010, the Chevalier de l’Ordre National du Merite awarded by the Government of the Republic of France, 2005, and she received the Recognition of Contribution as a Vanguard Women’s Leader of Botswana awarded by the Embassy of the United States of America, also in 2005.







## LABOUR LAW REFORM

With a dissertation entitled '*Strike Law in South Africa and Zimbabwe: A Comparative Study with International Labour Law Principles*,' Zakeyo Mtimtema graduated with an MPhil in Labour Law in 2006. He takes up the story.

I rejoined the Zimbabwe Congress of Trade Unions (ZCTU) as Head of the Legal department. This was a very difficult time as the government viewed the ZCTU as a political party and we faced state brutality and lack of resources (let alone hyperinflation). In 2009, I was again appointed a member of the Labour Advisory Council and subsequently, I was admitted at the University of Zimbabwe as an Associate lecturer in International Labour Standards. I am very proud of the UCT course in International and Comparative Labour Law as, thanks to the sterling guidance of Professor Evance Kalula and the Institute, my knowledge of the labour legislation of different jurisdictions was widened.

As the head of the legal services, we continue documenting violations of human and trade union rights, challenging the Zimbabwean government both in domestic courts and international forums. mainly at the International Labour Organisation (ILO) conferences and the Committee on Freedom of Association. We work in collaboration with the Zimbabwe Lawyers for Human Rights headed by another UCT graduate Irene Petras and the Doctors for Human rights. The Doctors for Human Rights attends to our maimed members during protest actions.

Those interested in the development of labour law in Zimbabwe can contact [mtimtemazak@yahoo.com](mailto:mtimtemazak@yahoo.com)

**[WWW.EQUALEUCATION.ORG.ZA](http://WWW.EQUALEUCATION.ORG.ZA)**

Equal Education, which was co-founded by Doron Isaacs and Yoliswa Dwane (2007) is in the process of establishing the Equal Education Law Centre – a new, public-interest legal practice dedicated to protecting and advancing the right to education in South Africa. The Law Centre will be based in Cape Town, and operational from January 2012.

It has fallen to Janice Bleazard, another law graduate and fresh from receiving her LL.M at New York University, after a year as a researcher at the Constitutional Court, to tackle this initiative and set up the Centre.

The initiative is an attempt to address a serious lack of concentrated and specialised expertise in education law and policy in South Africa.



Equal Education (EE) has found itself regularly approached by schools, community leaders and parents from around the country for legal advice, assistance and representation, but has often lacked the capacity and legal expertise to meet this need. The assistance sought from Equal Education has ranged from addressing emergency conditions at schools following natural disasters or serious neglect; shortages of crucial resources at schools; protecting the constitutional rights of learners; managing threatened school closures, evictions and relocations; resolving conflicts arising among parents, principals and School Governing Bodies over their respective powers and responsibilities; addressing discrimination in school admission policies; teacher vacancies and chronic absenteeism; and investigating alleged corruption. In addition, sustained and constructive engagement with government is needed at the level of law and policy-making and implementation to ensure that the serious and persistent inequalities and inadequacies in South African schooling are addressed.

'While established public-interest law firms have made crucial strides in protecting the right to education in South Africa, they are unable to give education the dedicated legal attention that is required to meet the needs of communities, and to advance the right to education through strategic litigation and sustained engagement with government. The Equal Education Law Centre will fulfil these crucial functions,' said Bleazard.

## THE SIXTIES REMEMBERED

*[The Belsen year of 1961 were back on campus for their 50th and law alumnus Philip Woods' address at the dinner was so evocative of his era that I thought to include an extract here. – editor]*

I am very privileged and honoured to be able to speak to this company on this exceptional occasion. I had very happy days at Belsen and that was largely because of those of you who are here tonight and the others who were not able to come.

Of course, this being South Africa, there was politics which hung as a cloud of despondency over everything and which polarised so many of us. I am referring to other very profound and deep changes.

The first was the revolution epitomised by 1968 which involved a complete upset of traditional views about sex, women and the family, even classical views about what art should be, what architecture should do and literature, whether enterprise was good or bad, or whether we should all turn back to some idealised golden world of rural life, spending all day sniffing flowers.



Belsen 1961: Derek and Patricia Wilson, Elizabeth and Philip Wood, and reunion organiser John Osterberg.

There was also a much longer-term change which at the time, without us knowing it, had reached a great pitch of intensity. It took two million years for mortals to reach the first billion. This happened in about the year 1830. I measure back two million years by reference to the amazing discovery of the Leakeys in the Olduvai Gorge in Tanzania of the 53 little footsteps pattering though some molten lava. They were the footsteps of two adults and a child. They show that by that time human beings were bipedal – you could see this from the arch of the foot, like that (*shows a cupped hand*). The next billion of population took only a century until 1930. By the time we were at UCT we on the planet had reached the third billion. The succeeding billions accelerated at a terrifying pace, with the last billion only taking a few years.

Of course people notice the superficial things like “there seems to be a lot more cars out on the road” and, as we were told earlier this week, the population of UCT had increased since our time

from 5,800 to 25,000. There was all that, and other things too. But I would only mention that this sudden throwing together of so many people in such a short time had and still has an enormously potent influence on our inner psyche in very unexpected ways.

The past was exciting and fun. The future should be exciting and fun as well. That is why I would ask you to rise to join me in a toast. A toast to the future, our future. *Philip Wood*

## PS: AND THE FIFTIES ...

After finishing school at Chaplin High School in Gwelo, I registered at the University of Cape Town for a BA/LLB in 1951. For the first four years I was a resident at College House, which was then in Breda Street. The Breda Street residence closed down in 1955 so for my final year I was a house master at SACS junior school, which was next door to the Mount Nelson Hotel. *LGSmith*

## THE TURBULENT EIGHTIES



Thanks to the generosity of an alumnus, the mural done in the 1980s was restored this year and is captured for posterity as a poster in Kramer.

*'The mural reflects one of the most important periods in the life of the Faculty, and the courage and determination, during a time of great danger, of many of its staff and students to bring a democratic South Africa into being. I believe that the proper place for the mural will always be in the heart of the Faculty as a reminder that human rights must never be taken for granted. I am lucky to be a graduate of the Faculty, and grateful for the chance to make this contribution to its history and culture'.*

*Mervyn Bennun (1960)*

*'The artwork was designed by a progressive tame engineer, Mike Merrifield (of huge advertising signs on rugby fields fame) and painted by keen young lawyers. Unless my memory fails me the mural was unveiled at a meeting addressed by Mike Evans on the role of the democratic lawyer'.*

*PJ Hope (1985).*

*[If anyone has other memories around this mural, I would love to hear from you. – editor]*

## WHERE ARE THEY NOW

■ **1955: George Smith** started his legal career in the Federation of Rhodesia and Nyasaland and in 1964 transferred to the Office of the Southern Rhodesia Attorney-General. Having attended the HMS Fearless, Lord Goodman (which led to the Home Agreement) and the Geneva talks, he was asked by President Mugabe to stay on as Secretary to the Cabinet. In 1983 he was appointed a judge of the High Court of Zimbabwe where he remained until retiring in 2003.

■ **1990: Lise Bosman** is one of the founding three 'officers' of a young arbitration group that was launched under the auspices of the International Council for Commercial Arbitration last June. Unlike existing groupings it is really aimed at students and practitioners from the developing world who would like to become involved in international arbitration cases. ([www.youngicca.org](http://www.youngicca.org)). Lise comes back to her alma mater every year to lecture a module on the LLM programme.

■ **1992: Vanessa Lynch** founded the DNA Project in 2004 after her father was murdered by burglars. She has been closely involved with the drafting of new DNA legislation in SA, developed the first PG Forensic DNA Analysis Degree in SA, produced a DNA Awareness DVD and information booklet and continues to lobby support for the expansion of SA's National DNA Database through the promulgation of legislation and a national DNA Expansion strategy. Vanessa was invited to speak at the International DNA Congress at the Interpol HQ's in Lyon in 2010.

■ **1995: Grant Isaacs**

says that he treasured every moment of his legal studies and is in fact a little frustrated that he never persevered! However, having left for abroad soon after graduating, and having spent 5 years travelling the world chasing a little black ball around 4 walls (as a professional squash player), he has spent the last decade involved in various businesses ending up with Salushi. 'the restaurant game being by far the most demanding and stressful so far.'



## FOCUS ON TANZANIA

■ **1995: Alan Meneghetti** (BA/LLB) did a second Bachelor of Laws at the University of Aberdeen in 1998 and is a partner in Clyde & Co's Corporate Group, based in London. Alan's practice includes IT, IP, data protection and general commercial work with a specific focus on commercial aviation work.

■ **2006: Wambura Mkono** (LLM Labour Law) works with the Higher Education Students' Loans Board as a Senior Legal Officer; the main function of the Board is to provide loans for Tanzanian needy students who pursue first degrees and Advanced diplomas.

■ **2007: Lotus Menezes** qualified as an Advocate of the High Court of Tanzania in 2010. Lawyer by day and salsa teacher by night (having 'salsa' at UCT), Lotus is part of various Rotary projects as varied as education of the girl child and sanitation. She is moving to Jo'burg in 2012.



*Top: With Deputy Dean Kalula are Dr Kibuta (left), Alan Meneghetti and Lotus Menezes. Bottom: Zainab Bakari, Hamidu Millulu, Ally Possi and Lucy Minde.*

■ **2008: Lucia Minde (LLB)** went on to do her LLM at Duke University where she graduated cum laude in June 2010. She works in a law firm in Tanzania and is currently enrolled for a Post Graduate Diploma in Legal Practice in order to gain admission to the Tanzanian Bar.

■ **2010: Mercy Ezekiel (LLM)** did her LLB at the University of Dar Es Salaam and came to UCT for a Masters specializing in ICT Law, the only one to do so that year! She is a legal officer with the Law Reform Commission of Tanzania and is a registered advocate and a member of both the Tanganyika and East Africa Law Societies.

## OF KNIGHTS AND CIVIC HONOURS

■ Jeffrey Jowell



Professor Sir Jeffrey Jowell KCMG QC is the inaugural Director of the Bingham Centre for the Rule of Law in London and practises at the Bar at Blackstone Chambers and is Professor Emeritus at University College London (where he was Professor of Public Law, Dean and Vice Provost).

A leading authority on public, constitutional and administrative law, he has recently been the UK member of the Venice Commission, the Council of Europe's advisory body on constitutional matters. He is the author of leading texts on constitutional and administrative law, has assisted in the drafting of a number of national constitutions throughout the Commonwealth and East Europe, and serves on the boards of a number of public bodies.

Sir Jeffrey has maintained a close relationship with his alma mater, as Honorary Professor for a number of years and then as initiator of the exchange programme for talented black academics with his faculty at UCL. He was a natural choice to be the inaugural Rabinowitz Visitor in February 2010.

## ■ Pat Tebbutt



Judge Tebbutt's civic honours from the City of Cape Town in 2011 followed hard on his award in 2010 of the Botswana Presidential Order of Honour for his contribution to the good governance and peace and stability of Botswana.

Pat Tebbutt graduated in 1944 and after serving in minesweepers in the South African Navy in the latter part of World War II, he joined the Cape Argus in 1946 as a court, parliamentary and sports reporter. He started practice as an Advocate at the Cape Bar in 1951 and was appointed an Acting Judge of the Cape High Court in 1965. In 1971 he temporarily forsook the law for business, becoming the Managing Director of Syfrets Trust.

He returned to practice in 1978 and retired as a judge of the Cape High Court in 1994 only to join the Botswana Court of Appeal and be appointed Judge President in July 2001, a position he held until his retirement at the end of July 2010. Judge Tebbutt was also a member of the Swaziland Court of Appeal.

## ■ Don Nicolson



Donald Nicolson is a graduate of, and former lecturer in, the Faculty; he spent part of his sabbatical leave at UCT in February/March 2011. He did his PhD at Cambridge in 1989 and in 1990 was granted political asylum in the UK as a conscientious objector. Nicolson taught law at the Universities of Warwick, Reading and Bristol, where he set up the University of Bristol Law Clinic. In 2000 he took up a chair at the University of Strathclyde Law School, and in 2003 set up the university's Law Clinic, of which he is the Director.

In 2008 he received the University and College Union Life Changers Award, in 2010 an Evening Standard Community Champion award for his work with law clinics, and in 2011 the OBE for his services to the legal profession.

Donald's research interests are in the areas of evidence and lawyers' ethics, with particular reference to moral development and fact-finding in law. He is on the editorial board of *Legal Ethics* and a trustee of the recently established LawWorks Scotland established to promote voluntary legal work.

---

**LAW REUNION WEEKEND 2010**

---



Welcomed back for their 50th were Jeffrey Jowell, Alec Pienaar and Richard Wood as well as the Classes of 1970, 1980 & 1985.

*Back, left to right: Adam Harris, Glen Henecke, Dorian Paver, Dick Cheeseman, Philip van der Merwe, Lance Burger, Owen Rogers, Peter Hamp-Adams, Geoff Rudman, Hugh Corder (Ch. Law Development Committee) and Alasdair Sholto-Douglas.*

*Front, left to right: Brian King, Jeffrey Jowell, PJ Schwikkard (Dean), Alec Pienaar, Richard Wood and Dennis Lloyd.*



---

## WE REMEMBER

---

### ■ LES ROSE-INNES (1953)

*Extract from Judge Friedman's tribute: December 2010*

Leslie Andrew Rose-Innes graduated in 1953 having been part of the rugby team who beat Stellenbosch 24–8 at Intersivity in 1952. In 1963, while still a junior member of the Cape Bar, he wrote “Judicial Review of Administrative Tribunals in South Africa”. This was the first and, for a long time, the leading work to be published on this topic in South Africa. Professor Ellison Kahn described the book as filling ‘a distinct gap in our legal literature and will prove profitable to judge, practitioner and student. And indeed it did for many years. In this work Les led the way in showing how the courts could, in the pre-1994 constitutional era, exercise some control over the excesses of executive power.

He was appointed a judge in the Eastern Cape Division in 1977 and two years later was transferred to the Western Cape where he served until his retirement on 31 December 1997; there is a line of cases which reflects his commitment to upholding the rule of law and his willingness to interfere judicially with what he regarded as unlawful and repressive executive action.

### ■ ROY THOMSON (1957)

*Extract from a tribute by Gys Hofmeyer, May 2011*

Roy studied medicine for two years before switching to law (1957) and he went on to become a leading insurance and litigation attorney as a senior partner of Herold Gie & Broadhead.

Roy was a fine lawyer, but there was another more relaxed side to Roy. He loved his sport, not simply for the love of the game but for the camaraderie which it engendered. I can still picture him standing at the bar in the Long Room at Western Province Cricket Club after net practice saying ‘Any one for a Lemonade?’ This, of course, met with shocked silence followed by relief when he ordered the required number of beers!

And then there was tennis every Thursday afternoon. An elderly lady from the flats opposite used to come down to the court to watch, and when the tennis school later moved to Constantia, it was typical of Roy’s thoughtfulness that he would arrange for Mrs Arnold and her little dog Bokkie to be fetched so that she could be back with her ‘boys’ and enjoy the refreshments afterwards.

### ■ ALEX (1947) & ETHEL WALT

*A tribute by their daughters, July 2011*

You could say Alex was almost a born lawyer – or at least he was steeped in issues of law, justice and philosophy from when he was a small boy growing up in Oranjezicht, where he and his brothers had extensive studies of Jewish law, for which Alex retained a lifelong intellectual passion. Until his death he credited that early challenge for igniting his intellectual thirst for legal issues.

He started studying for a Law degree at UCT in 1938, but interrupted his studies to sign up to the war effort, and eventually graduated after his

service in 1947. His father's death coincided with his graduation, and he was called on to run his family's business, rather than practice as a lawyer.

It took him many decades to return to his original passion, and when he did, he threw himself into his studies with the same passion he'd had as a young man. Having retired, he received a Masters in Law from RAU University (now U.J.) in 2001, when he was 79 years old, and was awarded the honour of having written the best dissertation presented at the university for that year. His title was apt: *Age discrimination in labour law*, a subject about which he was passionate.

After they moved to Johannesburg in 1973, his wife Ethel became passionate about Black Sash politics, and rose to become a leader in the organization. In June last year, three months after Alex and Ethel celebrated their 60<sup>th</sup> wedding anniversary, Ethel was fatally injured in a pedestrian accident in Johannesburg.

Though deeply grieving, Alex had an idea almost as soon as Ethel died: to create a human rights scholarship in her name at the UCT law school. Ethel had taught psychology at UCT and worked at the Child Guidance Clinic during the 1960s and 1970s.

Alex threw himself into this project with great enthusiasm, and found much gratification in setting up the scholarship during the months after Ethel's death. He was thrilled when the Law School wrote to him early in 2011 with details about the first recipient of the Ethel Walt Human Rights Scholarship.



HAMBURG: Elmar Schleif and Ola call the Hamburg shipping law mafia to order; LONDON: Hugh Corder and Rory Gogarty; PERTH: John Symington and Max Price.



