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Editorial



- We are pleased to publish here, as an *oratio*, the Ebsworth Memorial Lecture delivered by Mr Justice Louis Harms in February 2007. In his lecture he addressed a range of contentious issues regarding the challenges of judging under a (new) Bill of Rights and he *inter alia* raises, "without answering, the question of whether a bill of rights should reflect existing societal values or whether it should create them." He also spoke candidly of judicial activism, verbosity emanating from the bench, the judiciary and the separation of powers and (in-)consistency in constitutional adjudication. Among his conclusions he states that a Bill of Rights "is supposed to remove arbitrariness, not only of legislation but also of adjudication."
- Corlia van Heerden and André Boraine of the University of Pretoria examine the relationship between debt relief legislation and insolvency law. At the heart of the inquiry lies the question whether the South African *Insolvency Act* 24 of 1936 is in conflict with the principle of full satisfaction of all responsible financial obligations by an over-indebted consumer.
- Najma Moosa of the University of the Western Cape investigates the question whether there is a relationship in South Africa between the institution of (particularly Islam) polygynous marriages and the incidence or spread of HIV/AIDS. In this regard she advocates "an informed approach to HIV and an enlightened approach to the application of Islamic values."
- Hannelie Crous of the Potchefstroom Campus of the North-West University considers the utilization of medical screening panels in the expected rising trend of medical malpractice complaints in South Africa, and concludes with reference to the American experience that making use of such panels, usually consisting of a medical practitioner, a lawyer and a member of the public, is indeed to be recommended.
- In a case note, Boitumelo Mmusinyane of UNISA discusses some of the implications of the supremacy of the South African Constitution for customary systems of succession with specific reference to male primogeniture. He argues that the appointment of women as traditional chiefs

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should be considered to be in accordance with
the *boni mores* test.

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