

Editorial

Prof C Rautenbach

The last issue of 2012 boasts no less than twenty contributions covering a vast array of themes. The first contribution is a keynote speech delivered by Judge [Dennis Davis](#), a Judge of the High Court, Cape Town and Judge President of the Competition Appeal Court. His speech was delivered on 16 November 2012 at the 3rd Human Rights Indaba on *The Role of International Law in Understanding and Applying the Socio-economic Rights in South Africa's Bill of Rights* co-hosted by the Konrad-Adenauer Foundation and the Faculty of Law of North-West University, Potchefstroom Campus. Judge Davis investigates the relationship between courts and the other arms of government in promoting and protecting socio-economic rights in South Africa and airs his views on the doctrine of the separation of powers.

The first two articles also deal with the increasingly volatile relationship between the executive and judiciary in South Africa. Both were co-authored by [David Hulme](#) and [Stephen Peté](#) of the University of KwaZulu-Natal and are published in two parts; [part I](#) and [part II](#). The third article, co-authored by [Abraham Hamman](#) and [Raymond Koen](#) (both of the University of the Western Cape) identifies the dangers which money launderers pose to attorneys and highlights the need for vigilance in the face of these dangers. In the next article [Stephanie Luiz](#) comments generally on the definition of a scheme of arrangement as an "affected transaction" as defined in the *Companies Act 71 of 2008*, highlighting the elements of a scheme of arrangement. In yet another co-authored article by [Jeanette Weidemann](#) (Candidate Attorney at Adams & Adams) and [Leonie Stander](#) (North-West University, Potchefstroom Campus) the authors are of the viewpoint that an analysis of the European and American approaches to cross-border insolvency matters will provide South African practitioners with valuable insight, knowledge and lessons that could be used to understand and apply the principles adopted and applied in terms of international instruments. [Anél Terblanche](#) and [Gerrit Pienaar](#) of the North-West University (Potchefstroom Campus) argue that a human rights-based approach to food security will add the dimensions of dignity, transparency, accountability, participation and empowerment to food-security initiatives, and discuss the manifold ways in which such an approach can be accommodated in a proposed framework law as a national legislative measure. The uncertainties regarding the functional areas and authorities of the three spheres of government in the context of planning law are examined by [Jeannie van Wyk](#) of UNISA. The article of [Yeukai Mupangavanhu](#) of the University of the Western Cape analyses the dispute settlement mechanisms available under the *Consumer Protection Act 68 of 2008*. He argues for a narrow interpretation of the relevant sections of the Act to ensure that the consumer protection institutions are exhausted before the ordinary courts are approached. The *Consumer Protection Act* is also the focus of [Jacolien Barnard](#) of the University of Pretoria. She gives a comparative overview of the influence of the Act on the common law warranty against eviction. [Amanda Boniface](#) of UNISA compares the difference in

mediation styles of communities following African and Western lifestyles with the focus on divorce and family mediation. The right to terminate a pregnancy versus foetal interests in terms of *The Choice on Termination of Pregnancy Act* 92 of 1996 is investigated by [Camilla Pickles](#) of the University of Pretoria. [Stephan Terblanche](#) of UNISA's article, which promises to be the first in a series of discussions dealing with the *Child Justice Act* 75 of 2008, deals with the sentencing of a child offender in a child justice court in terms of section 68 of the Act. The last article of this issue considers the consequences of section 35(5) of the *Constitution of the Republic of South Africa*, 1996, that governs the exclusion of unconstitutionally obtained evidence in criminal trials. [Dane Ally](#) of the Tshwane University of Technology asks if the "effect" or "social costs" of exclusion, which consist of the "seriousness of the charge faced by the accused" and the "importance of the evidence to secure a conviction", should not be used as factors to argue that certain unconstitutionally obtained evidence should be permitted in a court of law.

Four case notes are published in this issue. The first one is by [Puseletso Thejane \(Rankoane\)](#) of the University of the Witwatersrand. He discusses *Pillay v Shaik* 2009 4 SA 74 (SCA), which dealt with the doctrine of quasi-mutual assent in contract law. The second note is co-authored by [Nic Olivier](#) (University of Pretoria), [Clara Williams](#) (University of Pretoria) and [Pieter Badenhorst](#) (Deakin University, Australia) and deals with the principles applicable to the granting of mining rights or mining permits by the Minister of Mineral Resources in terms of the *Mineral and Petroleum Resources Development Act* 28 of 2002 as decided in *Maccsand (Pty) Ltd v City of Cape Town* 2012 (4) SA 181 (CC). Thirdly, [Siyambonga Heleba](#) of the University of Johannesburg reviews the question of costs in constitutional litigation as dealt with in *Christian Roberts v Minister of Social Development* Case No 32838/05 (2010) (TPD). In the last case note, [Steve Cornelius](#) of the University of Pretoria evaluates the *mora debitoris* and the principle of strict liability, which formed the crux of the matter in *Scion Trading (Pty) Ltd v Bernstein* 2011 2 SA 118 (SCA).

Two book reviews are also published in this voluminous issue. [Hein Lubbe](#) of the University of the North-West (Potchefstroom Campus) reviews H Tonkin's *State Control over Private Military and Security Companies in Armed Conflict* published by Cambridge University Press in 2011. [Najma Moosa](#) of the University of the Western Cape reviews the book *The Future of African Customary Law* co-edited by J Fenrich P Galizzi and TE Higgins. The book was also published in 2011 by Cambridge University Press.