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DECEMBER 2011

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JUDGEMENTS OF INTEREST IN THE NOVEMBER EDITIONS OF THE *SALR* AND THE *SACR*

SOUTH AFRICAN LAW REPORTS

Real estate: estate agents commission and the effective cause of a sale

In *Wakefields Real Estate (Pty) Ltd v Attree and Others* 2011 (6) SA 557 (SCA) the Supreme Court of Appeal considers which of two estate agents is the effective cause of a sale and so entitled to commission. The facts are that W, an estate agent, takes H to see a property owned by the As. H likes it and so does her husband. However the price is too high. Shortly afterwards H, by chance, runs into another estate agent, D. H describes the property to D. About five weeks pass. Then DH, another estate agent, persuades the As to lower the price. The As do so. Mr A also phones D and tells of the new price. And D then telephones H and arranges a visit. D also drafts an offer to purchase and persuades A to lower the price further. (D will take a lesser commission.) H visits and that evening concludes the sale with the As.

Defamation: the defence of truth and public benefit

In *Modiri v Minister of Safety and Security and Others* 2011 (6) SA 370 (SCA) the Supreme Court of Appeal consider the public benefit defence to defamation. What occurs is a newspaper article states that the appellant is 'allegedly involved in drug dealing, cash-in-transit heists and car theft'. He sues for defamation. The media respondents raise the justification of truth and public benefit. The High Court finds for them. The appellant appeals. In issue is the validity of authority which suggests it cannot be for the public benefit to publicise the identity of a suspect not yet charged.

Internet gambling

Casino Enterprises (Pty) Ltd v Gauteng Gambling Board and Others 2011 (6) SA 614 (SCA) concerns an internet casino run from Swaziland and not licensed in South Africa. In issue is

whether the National Gambling Act 7 of 2004 and the Gauteng Gambling Act 4 of 1995 are infringed. This where a player in South Africa can transfer money to the appellant, and then at his computer choose a game and a stake and press a button to send this data to appellant's computer server in Swaziland. The server then decides the outcome of the play and sends it to the player.

SOUTH AFRICAN CRIMINAL LAW REPORTS

Restorative justice and sentencing for rape

In *DPP, North Gauteng v Thabethe* 2011 (2) SACR 567 (SCA) the suspension of a sentence of 10 years' imprisonment, on conditions intended to give effect to the principles of restorative justice, is challenged on appeal. The SCA considers whether such a sentence is appropriate for a conviction on charges as serious as in this case—the rape of a 15-year-old girl by a person who had assumed the role of her father figure.

Rape: whether single transaction or separate acts

In *S v Willemse* 2011 (2) SACR 531 (ECG) the court considers the accused's vaginal and then anal penetration of the complainant. In issue is whether the acts are a single transaction and so a single rape, or whether they constitute two rapes. In this regard the court examines whether the accused had formed a separate intent for each act.

Prisons: State delictual liability for tuberculosis contracted in prison

In *Lee v Minister of Correctional Services* 2011 (2) 603 (WCC) the plaintiff contracted pulmonary tuberculosis while incarcerated at Pollsmoor prison. The court considers the plaintiff's claim that the defendant was negligent in failing to prevent the spread of the disease in the prison, and in failing to preventing the plaintiff from contracting it.

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Kind Regards

The Juta Law Reports Team

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LEE v MINISTER OF CORRECTIONAL SERVICES (WCC)

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LEE v MINISTER OF CORRECTIONAL SERVICES (WCC)

DE SWARDT AJ

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Prisons—Prisoner—Health—Prisoner contracting tuberculosis—While protections afforded by Bill of Rights might militate against imposing legal duties on private citizens, different considerations apply in instances where conduct of public authority or functionary in issue—Minister ultimately responsible for safety, health and wellbeing of prisoners—Minister liable—Constitution, ss 2, 7 and 41(1).