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JUDGMENTS OF INTEREST IN THE JUNE EDITIONS OF THE SALR AND THE SACR

SOUTH AFRICAN LAW REPORTS

Psychiatric injury claim against Road Accident Fund

To sustain such a claim, psychiatric evidence was required that was clear and cogently reasoned. Grief would not be compensable. The insured driver's act also had to be linked closely enough to the loss for liability. *Hing and Others v Road Accident Fund* 2014 (3) SA 350 (WCC)

Attorney as debt counsellor?

A person may practice as both debt counsellor and attorney, and may charge both debt-counselling fees and attorney's fees, however, these must be within the bounds of the National Credit Act. *Bornman v National Credit Regulator* 2014 (3) SA 384 (SCA)

School desks required for right to education

It was found that the department of education was violating children's constitutional right to a basic education, by failing to provide adequate and appropriate furniture which would enable each child to have their own reading and writing space. *Madzodzo and Others v Minister of Basic Education and Others* 2014 (3) SA 441 (ECM)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Media access to a criminal trial

There was great public interest in the criminal trial because the accused was a sports icon, and the media asked to televise the proceedings. The court had to balance the interests of open justice, the right of freedom of expression, and right to a fair trial. The court granted full audio and limited audiovisual and photographic coverage of the trial. *Multichoice (Pty) Ltd and Others v National Prosecuting Authority and Another: In Re S v Pistorius; Media 24 Ltd and Others v Director of Public Prosecutions, North Gauteng and Others* 2014 (1) SACR 589 (GP)

Adding additional charges

Further charges may only be added before any evidence is led. The addition or substitution of charges later in the proceedings is irregular. *S v Ncoko* 2014 (1) SACR 607 (ECG) and *S v Mhlambiso and Another* 2014 (1) SACR 610 (ECG)

Prospects of an appeal

The mere possibility that another court might come to different conclusion is insufficient grounds for an appeal. There must be reasonable prospects of success, and the severity of the sentence imposed is not an issue when the appeal is against the merits. *S v Kruger* 2014 (1) SACR 647 (SCA)

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Kind Regards

The Juta Law Reports Team

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- Bornman v National Credit Regulator 2014 (3) SA 384 (SCA)
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- Ex parte MS and Others 2014 (3) SA 415 (GP)
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- Gainsford and Others NNO v Tanzer Transport (Pty) Ltd 2014 (3) SA 468 (SCA)
- MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute 2014 (3) SA 481 (CC)
- National Association of Broadcasters v South African Music Performance Rights Association and Another 2014 (3) SA 525 (SCA)
- National Union of Public Service and Allied Workers obo Mani and Others v National Lotteries Board 2014 (3) SA 544 (CC)
- African National Congress v Democratic Alliance and Another 2014 (3) SA 608 (GJ)
- Royal Anthem Investments 129 (Pty) Ltd v Lau and Another 2014 (3) SA 626 (SCA)

FLYNOTES

THERON AND ANOTHER NNO v LOUBSER NO AND OTHERS (SCA)

PONNAN JA, LEACH JA, MAJIEDT JA, WALLIS JA and PETSE JA

2013 NOVEMBER 13; DECEMBER 2

Trust—Trustee—Identity—Anyone with interest in trust has locus standi to approach court for declaration on identity of its trustees.

Appeal—To Supreme Court of Appeal—Issues—Separation—Parties seeking separation must apply for direction to this effect—Such will only be granted in rare instances.

POTGIETER AND ANOTHER v HOWIE AND OTHERS NNO (GP)

BAQWA J
2013 OCTOBER 29

Stock exchanges—Rules—Contravention—Appeal—To Financial Services Appeal Board after adverse ruling by stock exchange (JSE)—Power of board to vary ruling—May not substitute ruling with one of its own—May ‘vary’ it by upholding some facets of multifaceted ruling—Financial Services Board Act 97 of 1990, s 26B(15).

HING AND OTHERS v ROAD ACCIDENT FUND (WCC)

GRIESEL J, NDITA J and BINNS-WARD J
2014 JANUARY 29; FEBRUARY 13
and A 139/2012

Delict—Specific forms—Psychiatric injury—Law surveyed—Distinction between such injury and severe grief.

Delict—Specific forms—Psychiatric injury—Determination—To be based on psychiatric evidence.

Evidence—Expert evidence—Evaluation—Psychiatric evidence—Must be clear, cogently reasoned and preceded by summary—Uniform Rules of Court, rule 36(9)(b).

Delict—Elements—Causation—Legal causation—Loss of support—Wife injured in collision and dying—Two years later husband retrenched and claiming loss of support—Whether negligent driver’s act close enough to loss for liability.

Costs—Taxation—Taxing master—Role—Determining allowable expenses and attendances—Court may not usurp function—But court may express its views on costs to assist him—Uniform Rules of Court, rule 70(3).

BORNMAN v NATIONAL CREDIT REGULATOR (SCA)

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2013 SEPTEMBER 16, 26

Credit agreement—Consumer credit agreement—Debt counsellor—Registration—Cancellation—Breach of conditions and failure to comply with duties—Order made for refund of collection fees received in breach of NCA and conditions of registration—National Credit Act 34 of 2005, s 150(h).

Credit agreement—Consumer credit agreement—Debt counsellor—May also practise as attorney—May charge counselling fee qua debt counsellor and attorney’s fee for legal work required by NCA.

LOUREIRO AND OTHERS v IMVULA QUALITY PROTECTION (PTY) LTD (CC)

MOSENEKE ACJ, SKWEYIYA ADCJ, CAMERON J, DAMBUZA AJ, FRONEMAN J, JAFTA J, MADLANGA J, NKABINDE J, VAN DER WESTHUIZEN J and ZONDO J
2013 NOVEMBER 6; 2014 MARCH 20

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2013 NOVEMBER 1; DECEMBER 2

Children—Parents—Surrogate mother—Surrogate motherhood agreement—Confirmation by court—Agreement concluded post-fertilisation—May be retrospectively confirmed in appropriate circumstances—Children’s Act 38 of 2005, ss 292 and 295.

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OLIVIER J

2014 JANUARY 31; FEBRUARY 21

Lease—Landlord—Hypothec—Exclusion—Movable subject to instalment agreement—Nature of instalment agreement—Security by Means of Movable Property Act 57 of 1993, s 2(1)(b).

MADZODZO AND OTHERS v MINISTER OF BASIC EDUCATION AND OTHERS (ECM)

GOOSEN J

2014 FEBRUARY 13, 20

Education—Right to education—Duties of state—Provision of school furniture—Non-provision violating right to basic education—Constitution, s 29(1)(a).

COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE v KROK AND ANOTHER (GP)

FABRICIUS J

2013 DECEMBER 2, 3; 2014 JANUARY 31

Revenue—Income tax—Recovery—On behalf of foreign government—Measure of proof required to obtain preservation order in terms of Tax Administration Act 28 of 2011, ss 163 and 185.

GAINSFORD AND OTHERS NNO v TANZER TRANSPORT (PTY) LTD (SCA)

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2014 MARCH 12, 28

Company—Winding-up—Liquidator—Proceedings by and against—Citation—Proceedings brought by liquidator on behalf of company may be brought (1) in own name *nomine officio* or (2) in name of company—No merit in distinction between *locus standi* of company and that of its liquidator acting in representative capacity—Companies Act 61 of 1973, s 386(4)(a).

Company—Winding-up—Unlawful alienations and preferences—Void disposition—Court will disregard rule that disposition made after winding-up void *ab initio* only where interests of fairness and justice demand it—Never when there would be irreparable prejudice to creditors—Companies Act 61 of 1973, s 341(2).

MEC FOR HEALTH, EASTERN CAPE AND ANOTHER v KIRLAND INVESTMENTS (PTY) LTD t/a EYE & LAZER INSTITUTE (CC)

MOSENEKE ACJ, SKWEYIYA ADCJ, CAMERON J, DAMBUZA AJ, FRONEMAN J, JAFTA J, MADLANGA J, MHLANTLA AJ, NKABINDE J and ZONDO J

2013 NOVEMBER 12; 2014 MARCH

Administrative law—Administrative action—Invalidity—Consequences—Improper administrative decision by state official withdrawn by government—Validity of decision not subject of separate review application or counter-application—Government to follow proper forms and processes of review in setting aside decisions, even where defective.

Administrative law—Administrative action—Invalidity—Consequences—Status of improper administrative decision by state official—Decision remaining effectual until properly set aside.

NATIONAL ASSOCIATION OF BROADCASTERS v SOUTH AFRICAN MUSIC PERFORMANCE RIGHTS ASSOCIATION AND ANOTHER (SCA)

NAVSA JA, SHONGWE JA, SWAIN AJA, LEGODI AJA and MATHOPO AJA

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Intellectual property—Copyright—Royalties—Sound recordings—Determination of rate of 'needle time' royalties payable by commercial and public radio stations to copyright owners for broadcast of sound recordings—Formula for determination of royalty rate set out—Failure of regulations to prescribe procedure for adjudication of royalty rate to be urgently addressed by minister.

Media—Broadcasting—Sound recordings—Royalties—Determination of rate of 'needle time' royalties payable by commercial and public radio stations to copyright owners for broadcast of

sound recordings—Formula for determination of royalty rate set out—Failure of regulations to prescribe procedure for adjudication of royalty rate to be urgently addressed by minister.

NATIONAL UNION OF PUBLIC SERVICE AND ALLIED WORKERS obo MANI AND OTHERS v NATIONAL LOTTERIES BOARD (CC)

MOSENEKE ACJ, SKWEYIYA ADCJ, CAMERON J, DAMBUZA AJ, FRONEMAN J, JAFTA J, MADLANGA J, MHLANTLA AJ, NKABINDE J and ZONDO J
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AFRICAN NATIONAL CONGRESS v DEMOCRATIC ALLIANCE AND ANOTHER (GJ)

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Election law—Electoral irregularities—Complaints—Publishing false statements or allegations with intention to influence conduct or outcome of election—What constitutes false statements or allegations—Not to be strictly interpreted as false if not entirely accurate—No violation of relevant provisions where statement and/or allegations constitute 'fair comment' as developed in law on defamation—Electoral Act 73 of 1998, s 89(2)(c) and item 9(1)(b)(ii) of sch 2.

Defamation—Defences—Fair comment—Meaning—Opinion that fair person might honestly hold—Objectively honest, genuine (though possibly exaggerated or prejudiced) expression of opinion relevant to facts upon which based, and not disclosing malice.

ROYAL ANTHEM INVESTMENTS 129 (PTY) LTD v LAU AND ANOTHER (SCA)

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- S v Kruger 2014 (1) SACR 647 (SCA)

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Prevention of crime—Offences—Contraventions of s 2(1) of Prevention of Organised Crime Act 121 of 1998—Constitutionality of—Definitions of ‘pattern of racketeering activity’ and ‘enterprise’ not invalid, void for vagueness or overbreadth—Definitions not vague and incorporation of common offences into list did not necessarily translate into vagueness—Overbreadth not a self-standing ground of constitutional invalidity.

Prevention of crime—Offences—Contraventions of s 2(1) of Prevention of Organised Crime Act 121 of 1998—Constitutionality of—Retrospectivity—Nothing retrospective (in sense envisaged by s 35(3) (l) of Constitution) in court looking to past conduct to determine whether that, together with present conduct, evinced pattern of criminal activity. Prevention of crime—Offences—Contraventions of s 2(1) of Prevention of Organised Crime Act 121 of 1998—Constitutionality of—Fact that s 2(2) permitted potentially inadmissible evidence of hearsay, similar facts and previous convictions did not create procedural unfairness that infringed accused’s fair trial rights.

Prevention of crime—Offences—Contraventions of s 2(1) of Prevention of Organised Crime Act 121 of 1998—Constitutionality of—Phrase ‘ought reasonably to have known’ in s 2(1)(a)(ii), (b)(ii), (c)(ii) and (f) merely infused element of subjectivity into pure objective test—Nothing unintelligible about that, nor was there anything constitutionally objectionable to this formulation.

S v TONKIN (SCA)

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Trial—Right to a fair trial—Effect of broadcasting of trial on accused’s right to a fair trial—Concern that mere knowledge of presence of audiovisual equipment, especially cameras, would inhibit accused and witnesses, as well as counsel—Accused’s rights could be protected by full audio coverage and limited audiovisual and photographic coverage.

S v NCOKO (ECG)

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Indictment and charge—Joinder of charges—When charges may be joined—In terms of s 81(1) of Criminal Procedure Act 51 of 1977 charges may only be joined before any evidence has been led—Addition of charges later on in same proceedings is irregular after evidence has been adduced.

S v MHLAMBISO AND ANOTHER (ECG)

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MINISTER OF SAFETY AND SECURITY v KLEINHANS (WCC)

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Arrest—Legality of—Arrest without warrant—Arrest for purpose of issuing notice in terms of s 56 of the Criminal Procedure Act 51 of 1977—Police not in possession of fine book and person refusing to accompany them to police station—Arrest in particular circumstances not unlawful.

S v MASWANGANYI (GP)

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Rape—Sentence—Life imprisonment—Minimum sentence in terms of Criminal Law Amendment Act 105 of 1997—‘Substantial and compelling circumstances’ as contemplated in s 51(3)(a)—Youthful first offender—Magistrate failing to consider prospects of rehabilitation—Life sentence set aside and replaced with sentence of 20 years’ imprisonment.

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