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JUNE 2017

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JUDGMENTS OF INTEREST IN THE JUNE EDITIONS OF THE *SALR* AND THE *SACR LAW REPORTS*, AS WELL AS THE *BOTSWANA LAW REPORTS 2013(3)*

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SOUTH AFRICAN LAW REPORTS

Badly maintained roads

What steps could farmers take to repair roads themselves when the access roads to their farms were in such a dangerous state of disrepair that truck drivers, needed to convey their goods to market, refused the risky trip? And who should refund the farmers who, out of commercial necessity, had spent money and time in repairing the roads by themselves? *Agri Eastern Cape and Others v MEC, Department of Roads and Public Works and Others* 2017 (3) SA 383 (ECG)

Liability for attack at holiday resort

The municipality had been alerted to criminal incidents at a holiday resort and that the security situation was out of control. A plea was made that the problem be tackled, in particular by increased manpower. Nothing was done and an 18-year old woman on holiday was abducted and raped while holidaying at the resort. The Municipality denied that it was negligent. *Bridgman NO v Witzenberg Municipality (JL and Another Intervening)* 2017 (3) SA 435 (WCC)

Donor eggs for surrogate child birth?

In surrogacy, the Children's Act required the commissioning parent, where single, to provide her gamete to fertilise the surrogate mother. This requirement was rationally connected to the end (the establishing of a genetic link between parent and child); and that end was legitimate—the link ensuring the child knew its origins, which was important to its self-identity and respect. *AB and Another v Minister of Social Development* 2017 (3) SA 570 (CC)

SOUTH AFRICAN CRIMINAL LAW REPORTS

Sentencing for rapist parents

A nine-year-old girl was raped by her father. Her mother, instead of preventing the rape, helped the father carry out the deed. Their circumstances of being first offenders, and in a family unit, could not mitigate the depravity of their crime. The father got a life sentence and the mother a ten-year sentence. *S v MD and Another (2)* 2017 (1) SACR 654 (ECB)

The onus in intimidation

Threats of instigation of violence are excluded from the Constitutional protection of freedom of expression. The reverse onus for the offence was justified by the nature of the penalty and the ease with which the accused could discharge this onus. The court was not confined to whether the person perceiving the act or utterances actually feared for his safety or the safety of his property. The test was whether, objectively viewed, the words or conduct had the effect as envisaged and/or might reasonably be expected to have that effect. *Moyo and Another v Minister of Justice and Constitutional Development and Others* 2017 (1) SACR 659 (GP)

Instrumentality of diamond dealing?

Based on diamond dealing charges, the court made an order declaring a farm forfeit to the state on the basis that it was an instrumentality of an offence. The majority finding was that the property had no necessary connection to the offences committed. Although some of the transactions were concluded at the property, they might just as well have occurred in a multitude of other locations, as many actually did. The location and appointment of the property itself played no distinctive role in the commission of the offences and therefore could not constitute an instrumentality of the offences. *Brooks and Another v National Director of Public Prosecutions* 2017 (1) SACR 701 (SCA)

BOTSWANA LAW REPORTS 2013(3)

New grounds of appeal

The respondents had been obliged to deal with entirely new grounds of appeal, only some of which were developed in argument. The new arguments were utterly without foundation and the appeal on the merits was wholly unmeritorious. In the circumstances an award of attorney and client costs on appeal was warranted to ensure that the respondents were as little out of pocket as possible as a result of the conduct by the appellant in the litigation. *National Development Bank v Estate Construction (Pty) Ltd and Others* [2013] 3 BLR 125 (CA)

Body panels fall off new car

Shortly after buying a new vehicle, the plaintiff had to change the bearings; panels of the vehicle kept falling off and needed to be replaced; the electric windows kept malfunctioning and had to be repaired; and the belts in the engine snapped, causing the engine to seize. The court found that the faults were a clear manifestation of serious latent defects which rendered the vehicle unfit for the purpose for which it was bought. *Makepe v Broadhurst Executive Motors (Pty) Ltd and Another* [2013] 3 BLR 530 (HC)

The quantum of emotional shock

The plaintiff sued for damages after disclosure by the hospital that he had received medical treatment for his medical condition, namely diabetes and that his leg was amputated, leading to a report about him in a newspaper. He had voluntarily handed over his medical records to a nurse at the hospital and consented it being used at a workshop on diabetes, subject to his identity being kept secret. There was however no evidence that he had suffered any emotional shock. *Lesang v Attorney General and Others* [2013] 3 BLR 736 (HC)

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Kind Regards

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