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JUNE 2018

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JUDGMENTS OF INTEREST IN THE JUNE 2018 EDITIONS OF THE SALR AND SACR LAW REPORTS.

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SOUTH AFRICAN LAW REPORTS

Public Protector's decisions not administrative action.

The Supreme Court of Appeal so held, listing a number of features that distinguish the Public Protector's decisions from those of an administrative nature. Accordingly, the Public Protector's decisions was not subject to review under the Promotion of Administrative Justice Act 3 of 2000 but could be reviewed under the principle of legality. *Minister of Home Affairs and Another v Public Protector* 2018 (3) SA 380 (SCA).

Minister of Finance's power or obligation to intervene in banker-client relationship

When four banks terminated their relationships with the Oakbay Group of companies, closing their accounts, they approached the Minister of Finance for assistance. This case concerned the Minister's application for declaratory relief to the effect that he was neither empowered nor obliged to intervene in the relationship between the group and their banks. *Minister of Finance v Oakbay Investments 517 and Others* 2018 (3) SA 515 (GP).

Scope of extended standing under s 157(1)(d) of Companies Act 71 of 2008

Section 157(1)(d) provides that '(w)hen in terms of this Act, an application can be made to . . . a court . . . the right to make the application . . . may be exercised by a person acting in the public interest, with leave of the court'. Here, the main issue was whether this section extended standing to apply for the liquidation of a solvent company on the ground that it was in the public interest. *Minister of Environmental Affairs v Recycling and Economic Development Initiative of South Africa NPC* 2018 (3) SA 604 (WCC)

SOUTH AFRICAN CRIMINAL LAW REPORTS

What constitutes being an accomplice to rape

The victim of a rape committed during a house robbery testified that the accused, who did not rape her but was present, had laughed while she was being raped. The Supreme Court of Appeal set aside his conviction of being an accomplice to rape. It held that the fact that he laughed might be conduct that showed his approval of what was happening, but that was not enough to establish his liability as an accomplice. *S v Phetoe* 2018 (1) SACR 593 (SCA).

Admissibility of pointing-out evidence

The third appellant's conviction was based on certain pointings-out that he had made. On appeal it was held that pointing-out, in circumstances which would not have aided the investigation of crime other than to obtain self-incriminating evidence, was tantamount to a confession in the guise of pointing-out. *S v Witbooi and Others* 2018 (1) SACR 670 (ECG).

Appropriate sentence: government official convicted of fraud

The accused, a clerk in Department of Home Affairs, was convicted on 22 charges of fraud that involved creating fictitious entries in births-and-deaths registers to defraud insurance companies. The court considered eight years' imprisonment an appropriate sentence. *S v Luzipho* 2018 (1) SACR 635 (ECG).

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Kind Regards

The Juta Law Reports Team

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