Editorial/Redaksioneel

The contributions appearing in the second issue of *De Jure* for 2018 span a wide variety of thematic areas and approaches, reflecting the richness of the South African legal landscape. Some of the contributions focus on procedural aspects of the law; others on more substantive issues.

In the first article of this issue titled 'Opening address: Powerful tool of persuasion or a waste of time?' Willem Gravett alerts our readers to the fact that, despite the best efforts of judges to be impartial they are unable to keep an open mind through the duration of a trial. Gravett uses evidence from research findings in the areas of social cognition and psychology to support his arguments regarding the susceptibility of presiding officers to a well-composed opening address. He argues that, as a powerful first impression of the characters in the case, the opening address is able to influence the presiding officer's view regarding the facts of the case and even the applicable law.

Moving to the field of trust law, Melany Lötter and her co-authors ask whether the beneficiaries of a trust who have unequivocally accepted the benefits stipulated for them are required to consent to an amendment of the trust deed in instances where the trust deed contains a variation clause and, specifically, where the variation clause excludes the need for their participation and/or involvement in the amendment. Their contribution is titled 'The express power to amend a trust deed where the trust beneficiaries have accepted the benefits reserved for them'.

In her timely and topical contribution, 'The future of legislated minimum wages in South Africa: Legal and economic insights', Elsabé Huysamen probes whether a legislated minimum wage in South Africa is a realistic and workable option. She analyses the impact implementing legislated minimum wage levels might have on achieving the International Labour Organisation's Decent Work Agenda and the form that any successful legislated minimum wage level system should take.

In their contribution titled 'The circumstances under which section 85(a) of the National Credit Act 34 of 2005 can be utilised as an avenue to access or re-access the debt relief measures in terms of the Act', Stéfan Renke and Hermie Coetzee discuss the circumstances under which that section may be used by the credit consumer for the purpose of accessing or re-accessing the Act's debt relief measures. They ask this in light of Binns-Ward J's and Van Heerden's restrictive interpretation of section 85 as well as the Supreme Court of Appeal's remarks subsequent to *Kallides* in *Seyffert and Another v Firstrand Bank t/a First National Bank*.

Moving to the field of insolvency law, Roger Evans investigates the dilemma faced by the "poorer" debtor as the requirement of advantage to creditors initially excludes him or her from accessing sequestration procedures that are available to "wealthy" debtors who possess sufficient assets to show advantage to creditors in sequestration applications. He

argues that there appears to be a differentiation between poorer and wealthier debtors when accessing or trying to access sequestration proceedings, and that recent judgments and academic writings indicate a movement towards a more debtor-friendly insolvency regime in South Africa.

A further contribution investigates the origins and application of section 174 of the Criminal Procedure Act in South African law, and is titled 'Section 174 of the Criminal Procedure Act: Is it time for its abolition?'. Managay Reddi and Bhavna Ramji argue that the circumstances which warranted the adoption of the section 174 procedure are no longer present and that, therefore, in light of the absence of the historical factors justifying the procedure, and mindful of the lack of certainty in the judicial application of the test for a discharge, the utility, need and appropriateness of the procedure in current South African law must be analysed fully. They investigate the Canadian and English approaches to the procedure with a view to understanding its application in those jurisdictions, and for guidance on best practices. They conclude that the section 174 procedure, although useful, risks morphing into a process to avoid accountability – so compromising the broader interests of justice – as was seen in the case of *S v Dewani* in the Cape High Court.

This issue of the *De Jure* contains two case discussions. The first relates to the use of the cautionary rule and children's testimony in *S v Haupt* 2018 (1) SACR 12 (GP). Mildred Bekink argues that the abolition of the cautionary rule in children's testimony should receive immediate and serious attention. She calls on NGOs to challenge the constitutionality of the rule, thereby ensuring that child witnesses receive equal protection and benefit of the law.

The second case discussion concerns a much-debated aspect of South African labour law. Bongani Khumalo discusses the rationale for section 23(1)(d) of the Labour Relations Act 66 of 1995 in his contribution titled 'Extension of collective agreements in terms of section 23 (1) (d) of the LRA and the "knock on effect" on the right to strike: *AMCU v Chamber of Mines of South Africa* CCT87/16 [2017]'. He touches on the meaning of a "workplace" as defined in the Act and expounded on by the court, and examines international and foreign law in order to argue that the practice of extending collective agreements to non-parties is not peculiar to South Africa.

From the overview presented above it is clear that the articles in this issue cover a wide range of topics at the cutting edge of our law. The common denominator between these contributions is that they all locate their subject matter firmly in South African soil.

Annelize Nienaber
Guest Editor