Extracts from the Annual report of the Faculty Research Adviser …

“The past year has been an intensive, stimulating and productive one. During the period under review no less than 80 items crossed my desk; and 34 of these came from members of the Faculty at all levels of appointment. No less than 18 members of staff submitted items to me for scrutiny and comment. The rest of the documents came from postgraduate students in the Faculty, both at Masters [the preponderance] and Doctoral level. In total I had occasion to read at least 2500 pages of material, including text and footnotes.”

“The nature of the material received varied in its purpose: there were articles to be submitted for publication in legal periodicals, papers for submission at conferences etc, proposals for Masters and Doctoral theses, LLM theses, mini-dissertations and research papers, as well as Doctoral theses.”

“The range of subject matter dealt with in the items received was extensive, and reflected both the variety of topics taught in the Faculty, as well as the diverse interests of the staff and the postgraduate student body.”

“The above relation of aspects of the research activity on the part of both members of the Faculty and postgraduate students indicates that the Faculty is home to vigorous engagement with legal issues across a broad spectrum. It provides an exciting and stimulating environment, and I continue to be greatly appreciative of the fact that I can be a participant in the process.”

Prof. Israel Leeman
11 January 2010
Introduction

Research at the Faculty of Law has long been recognized as being at the heart of a vibrant and advancing academic culture. Having fared well amongst other Faculties of the University of the Western Cape during the HECQ audit of the University in 2007, the output continues to grow. The research enterprise in the Faculty is supported by a mentoring system for less experienced publishers, and aided by the redoubtable Prof Solly Leeman who willingly proofreads, edits, and challenges our authors, new and experienced, in bringing the fruits of their research to public and peer audiences.

In addition, the Faculty's profile has for some time been bolstered by the strong showing of postgraduate students, doctoral interns and researchers attached to the Community Law Centre, an integral part of the Faculty's research enterprise. The LLD support group, managed in 2009 by post doctoral fellow Dr Yonatan Fessha, fosters engagement with the research process amongst our most senior students.

As is to be expected, special areas of disciplinary strength emerge from the data provided below. Hence, particular areas of research emerge as far as publications are concerned: children's law, local government law, criminal and penal law, labour law, as well as international human rights law, feature strongly in the list provided below. Further, the African focus of research interest is patent from several contributions, confirming the eminent status of the Faculty amongst legal academics on the continent.

The 2009 Report is noteworthy for the fact that it includes publications by several newly appointed members of the teaching staff, who joined the Faculty in the very year of their first publications. This encouraging trend is set to continue, as the cultivation of a research ethic forms an integral part of the induction of new staff, and has
resulted in all of the recent appointees submitting publishable work for consideration during their first year of tenure.

Furthermore, as was the case in 2008 when a 125% increase in Faculty publications in accredited journals was reported, this year, too, has seen a rise of equivalent magnitude. The extent of the increase is shown graphically on p11.

The 2009 Report owes much to the preliminary work of Prof Phoebe Bolton, chair of the Faculty Research Committee for 2009, to whom we would like to record our thanks.

Julia Sloth-Nielsen, Dean
Articles (accredited journals)


De Ville, J 'Rethinking the Notion of a “Higher Law”: Heidegger and Derrida on the Anaximander Fragment' (2009) 20 Law and Critique 59

Du Toit, F 'A Trustee's Duty of Independence' (2009) 72 Tydskrif vir Hedendaagse Romeins-Hollandske Reg 637


Fessha, Y 'Ethnic Identity and Institutional Design: Choosing Electoral Systems for Divided Societies' (2009) 49 CILSA 1


Martin, B 'Earthquakes, tremors and the landscape of passing off' (2009) De Jure 257

Martin, B 'Claiming Proprietorship of a trade mark for purposes of its registration (2009) Speculum Juris [forthcoming]


Mezmur, B 'Inter-country Adoption as a Measure of Last Resort in Africa: Advancing the Rights of a Child rather than a Right to a Child' (2009) 10 SUR-International Journal on Human Rights 83

Mezmur, B and Sloth-Nielsen, J 'Listen to us: Arguing the Case for Child Participation in NEPAD' (2009) 17 African Journal of International and Comparative Law 1


Mujuzi, J 'Rwanda Abolishes Life Imprisonment with Special Provisions to Qualify for the Transfer of Accused from the International Criminal Tribunal for Rwanda' (2009) 7 *Journal of International Criminal Justice* 1


Mujuzi, J 'The Enforcement of the Sentences Imposed by The Special Court for Sierra Leone (SCSL): Examining the Agreement between the SCSL and Rwanda (2009) 4 *African Yearbook of International Humanitarian Law* [forthcoming]

Mujuzi, J 'The Supreme Court of Mauritius and the Objectives of Punishment in Sentencing Offenders to Penal Servitude for Life and Other Lengthy Prison Terms in Drug Related Crimes: A Look at Recent Case Law' (2009) 15 *University of Mauritius Research Journal* 634


**Articles (non-accredited)**


Du Toit, F 'Curbing the Abuse of the Business Trust: A Perspective on Business Law and Ethics' 2009 Walter Sisulu Law Journal 3

Mwambene, L 'Can contracting a customary marriage survive the Bill of Rights in Malawi?' 2010 Africa Human Rights Law Journal [forthcoming]

Mujuzi, J 'Execution by Hanging Not Torture or Cruel Punishment? Attorney-General v Susan Kigula and Others' (2009) 3(1) Malawi Law Journal 133

Mujuzi, J 'Even Lesbian Youths or Those Presumed to be Lesbians are Protected by the Constitution of Uganda but to a Limited Extent' (2009) 6 Journal of LGBT Youth 441

**Books**


Werle, G Introduction to International Criminal Law (2nd Edition) TMC Asser


Chapters in books


Maxwell, C International Encyclopaedia of the Law of Contract: South Africa (3rd ed) (updated 12 chapters and co-authored two other chapters)

Maxwell, C in Hutchinson et al ‘The Law of Contract in South Africa’ (2009), (2 Chapters)


Mwambene, L ‘Gender’ in Olivier NJJ et al *Indigenous Law* (LAWSA 2nd ed), 2009 78 Durban: Lexis Nexis, Butterworths


Other academic publications

Chenwi, L Claiming Economic, Social and Cultural Rights at the International Level (2009) Bellville: Community Law Centre, UWC


Du Toit, F 'Trusts' in Juta’s Quarterly Review of South African Law 2009 (1) - (4) [electronic publication]

Du Toit, F 'Succession' in Juta’s Quarterly Review of South African Law 2009 (1) - (4) [electronic publication]


Le Roux-Kemp A 'Criminal Procedure' in Juta’s Quarterly Review of South African Law (2009) (2) and (3) [electronic publication]

Le Roux-Kemp A 'Sentencing' in Juta’s Quarterly Review of South African Law (2009) (2) and (3) [electronic publication]

Kipindu, R From the Global to the Local: the Role of International Law in the Enforcement of Socio-Economic Rights in South Africa (2009) Bellville: Community Law Centre, UWC

Muntingh L, Ex-Prisoners Views on Imprisonment and Re-entry (2009) Bellville: Community Law Centre, UWC

Mujuzi, J *Parole in South Africa: Law and Practice What the Courts have Said* (2009) Bellville: Community Law Centre, UWC


**Short articles and notes**


Mujuzi, J 'Calling for the Punishment to Fit the Crime: Genocide, War Crimes and Crimes against Humanity in South Africa’ (2009) 28 *South African Crime Quarterly* 21