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SALC BULLETIN

Newsletter of the South African Law Commission

Twenty Five years of law reform

On 1 September 1997 the Commission entered its 25th year of existence. Compared to the age of law reform agencies in other jurisdictions, this milestone makes the Commission one of the older agencies internationally. From a modest start in 1973 the Commission has grown into a law reform body that has become an integral and necessary part of the law reform process in South Africa, and through its close contact with similar bodies abroad it has become a fully fledged member of the international family of law reform bodies.

During the past 25 years the Commission has made every effort to adhere and give effect to its objects of developing, improving, modernising and reforming all branches of our law. In the majority of instances the Commission's recommendations have been accepted and put into effect. In fact, less than 13% of the Commission's proposals were not accepted. Many important reforms of our law were brought about on the recommendation of the Commission. Examples are contained in the Commission's twenty fifth Annual Report which will be published shortly.

Issue Papers

Two Issue Papers have recently been Various amendments to the Child Care Act 74 of 1983 have been affected and proposed since the Act came into operation in 1987. From the outset, however, the Act gave rise to disquiet amongst practitioners, social workers and child and youth care workers with respect to the functioning of, and principles underlying, the legislation. In June 1995, a new draft Bill, with regulations, was released for published by the Commission for general information and comments:

Harmonisation of the Common Law and Indigenous Law: Succession in customary law (Issue Paper 12)

The law of succession exists to determine before people die, who will inherit their property and succeed to their obligations. Rules of succession therefore function to counteract the disruptive effect that death may have on the integrity of a family unit, and, by prescribing which of a deceased's immediate kin qualify as potential successors, these rules have the effect of confirming the family bloodline.

Now that the Constitution recognises customary law as a component of the legal system on a par with common law, it is necessary to clarify the rules of succession in customary law. In addition, ways must be found to harmonise those rules (and those of the common law) with the provisions of the Constitution. For this reason, the Issue Paper raises important questions in the following areas:

·The purpose and nature of rules of succession.

·Succession to the head of a family.

·Underage heirs.

·Widows.

·Succession to women.

·Wills.

·Burial and funeral ceremonies.

·Administration of estates.

The closing date for comments on Issue Paper 12 is 30 June 1998.

Review of the Child Care Act (Issue Paper 13)

The Issue Paper aims to elicit comments on the scope of the investigation and the principles which should underpin a new, comprehensive Children's Code.

Apartheid policies, deep rooted poverty and unemployment, poor or non-existent schooling, the breakdown of family life and the strains on a society in transition have left the majority of South African children in an extremely vulnerable position. In particular, children, the voiceless members of society, have suffered directly as result of the unequal application of the fragmented laws affecting them. These factors alone provide compelling justification for the reformulation of all law affecting children in a comprehensive, holistic manner. Furthermore, constitutional imperatives and South Africa's international legal obligations flowing from *inter alia* the ratification of the U N Convention on the Rights of the Child accentuate the necessity of undertaking a comprehensive review of child legislation.

comment by the Department of Welfare and Population Development, the stated intention being to effect urgent interim reforms, pending a more comprehensive redraft of child care law. The eventual legislation in this regard, the Child Care Amendment Act 96 of 1996, drew widespread and divergent responses. A key concern was that piece-meal amendments to comply with constitutional imperatives and the ratification of the U N Convention on the Rights of the Child would not resolve deep-seated concerns about the content and application of the present law, nor indeed the relevance of its underlying philosophy to present day South Africa. The need for a comprehensive rewrite of the Child Care Act 74 of 1983, to Africanise child care and protection mechanisms and, as is mandated by the ratification of the U N Convention, to review all relevant child related legislation, has since become increasingly clear.

The Issue Paper expounds the following:
·A vision for comprehensive child legislation for the 21 st century .

·The constitutional and international legal framework in which such a comprehensive children's statute is set to operate.

·A problem statement and situation analysis.

·An overview of existing policy initiatives.

·A broad overview of the current South African law relating to children.

·A comparative review.

·A detailed discussion of deficiencies and problems which have emerged in practice with regard to the Child
·Application of customary law should remain a matter of judicial discretion, but more exact guides to choice of law are needed to bring
·The repugnancy proviso no longer has a useful role to play and it

Care Act 74 of 1983.

The closing date for comments on Issue Paper 13 is 31 July 1998.

Discussion Papers

The Commission has published three Discussion Papers for general information and comments:

Sharing of Pension Benefits on Divorce (Discussion Paper 77)

The main shortcomings of the existing law are, firstly, that pension sharing is presently effected in an indirect manner through the matrimonial property law, which often brings about unsatisfactory results, secondly, the manner in which the shareable amount is determined and, thirdly, that preference is given to the exchange of other assets for a spouse's share of pension benefits instead of making provision that such share is payable by way of a deferred pension.

The main recommendations in the Discussion Paper are the following :

·Specific legislation should be enacted to regulate the sharing of retirement fund benefits on the divorce of spouses.

·A spouse should in the event of divorce be entitled to a proportionate share of the pension benefits that accumulated in respect of the other spouse during the subsistence of the marriage between the spouses.

·The said share of the retirement fund benefits must be payable to the spouse concerned by the fund by way of a deferred pension when the benefits became payable in terms of the rules of the retirement fund concerned.

certainty to an issue that is currently vague and confused. These guides should be precise, flexible, simple and in keeping with the way courts should be repealed.

·The formula for determining the share of the benefits to which a spouse may be entitled under various retirement fund schemes should be set out clearly in the proposed legislation.

·A spouse's entitlement to a share of the retirement fund benefits of the other spouse should not be dependent upon the matrimonial property system that regulates the marriage of the spouses.

·Marriages concluded in accordance with customary law or recognised religion should be recognised as marriages for purposes of the proposed legislation.

·Spouses should be free to schedule contractually any form of pension sharing between them in the event of their divorce and a spouse should also be free to waive any right he or she may have in respect of a share of the other spouse's retirement fund benefits.

·Spouses may furthermore by written agreement between them make provision for the settlement of other assets of a spouse in lieu of that spouse's share of retirement fund benefits.

The closing date for comments on Discussion Paper 77 is 31 July 1998.

Harmonisation of the Common Law and Indigenous Law: Conflict of Laws (Discussion Paper 76)

Now that customary law enjoys the same legal status as common law under the Constitution, there is an urgent need to develop clear choice of law rules.

The following are some of the recommendations made in the Discussion Paper:

have been used to solving problems.

·Race should be irrelevant as a criterion for applying customary law

and for determining the jurisdiction of traditional courts. Hence, section 12(1) of the Black Administration Act should be amended to delete any reference to "Blacks".

·Section 23(1) of the Black Administration Act should be amended to provide that only the testator's personal interests in property may be disposed of by will. The current regulations on land held under quitrent tenure should be amended to remove elements of gender discrimination.

·Choice of law rules contained in regulations issued under the Black Administration Act and in the Act itself should be considered and amended. The special rule for foreigners in reg 2(a) should be deleted. If the proposal to abolish exemption from customary law is accepted, then reg 2 (b) should also be deleted. The position of people who die partially testate and partially intestate should be clarified. If persons subject to customary law are to benefit from various reforms in common law, customary marriages must be given full recognition on a par with civil marriages.

·Section 1(3) of the Law of Evidence Amendment Act should be replaced by a new section. Recognition should be given to the litigants' freedom to choose the applicable law, and in the absence of an agreement the courts should apply the law with which the case has its closest connection.

·Section 1 (3) of the Law of Evidence Amendment Act must be amended to exclude conflicts involving foreign systems of law.

The closing date for comments on Discussion Paper 76 is 30 June 1998.

Jurisdiction of Magistrates' Courts in Constitutional Matters (Discussion Paper 75)

The main inquiries which arise in this investigation are the following:

·Do Magistrates' Courts at present have any jurisdiction of a constitutional nature under the Constitution, and if so, to what extent?

·Is it desirable that Magistrates' Courts have jurisdiction in respect of constitutional matters, and if so, to what extent ?

·If it is considered that Magistrates' Courts lack jurisdiction in respect of constitutional matters, how is the situation to be remedied ?

·Is it desirable that Magistrates' Courts retain their current jurisdiction in terms of section 110 of the Magistrates' Courts Act, 1944 in relation to what its heading describes as a "plea of ultra vires" ?

The following preliminary recommendations are made in the Discussion Paper:

·It is suggested that magistrates' courts should be given a constitutional jurisdiction appropriate to their position in the court structure in South Africa. They represent the primary means of access to justice for most South Africans. An exclusion of all constitutional jurisdiction would be inappropriate, more particularly in view of the interactive growth between the common law and our developing constitutional law contemplated by section 8(3) of the Constitution.

·If this approach is supported, the extent of an appropriate constitutional jurisdiction arises. It is proposed that this include not only the general or "common law" aspects, but the legislative areas long encompassed by section 110 of the Magistrates' Court Act.

·It is proposed that the existing *ultra vires* jurisdiction of section 110 of the Magistrates' Courts Act be retained.
competent to rule on the constitutional validity or for any

·It is proposed that sections 170 and 172 of the Constitution and section 110 of the Magistrates' Court Act (and the relevant Rules) be amended to provide:

°In section 72 of the Constitution that Magistrates' Courts and all other courts may decide any matter determined by an Act of Parliament, but a court of a status lower than a High Court may not rule on the constitutional validity of any Act of Parliament, any legislation passed by the legislature of a province after 27 April 1994, or any conduct of the President.

°In section 172 of the Constitution that -

+ the Full Bench of a High Court of competent jurisdiction must confirm any order of constitutional invalidity made by a Magistrates' Court or another court of a status lower than a High Court, before that order has any force; and

+ subsections 2(b), (c) and (d) of section 172 apply with the necessary changes to an order of constitutional invalidity made by a Magistrates' Court or another court of a status lower than a High Court, and to any referral of, appeal against, or application for the confirmation of, such order, to the Full Bench of a High Court of competent jurisdiction.

°In section 110 of the Magistrates' Courts Act, 1944 that-

+ no magistrate's court shall be competent to rule on the constitutional validity or validity for any other reason of any Act of Parliament, any legislation passed by the legislature of a province after 27 April 1994, or any conduct of the President, and every magistrate's court shall assume that any such Act, legislation or conduct is valid; and

+ subject to subsection (1), every magistrate's court shall be

other reason of -

* any administrative action, including any executive action and any statutory proclamation, regulation, order, bye-law or other legislation; but no magistrate's court shall review and set aside or correct any administrative action or make any order directing an organ of state to legislate, decide or correct defects in any administrative action or in any state of affairs resulting from administrative action; and

* any rule of the common law, customary law and customary international law.

The closing date for comments on Discussion Paper 75 is 15 June 1998.

The abovementioned Issue Papers and Discussion Papers are obtainable free of charge from the Commission on request.

Correspondence should be addressed to:
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SA Law Commission
Private Bag X668
PRETORIA
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Tel: (012) 322-6440 (Mrs P Kotze)

Reports

Four Reports have been submitted to the Minister of Justice:

Interim Report on Pre-employment HIV Testing

The Interim Report deals with the question whether statutory intervention to prohibit pre-employment testing for HIV is warranted. There is at present no specific statutory prohibition on pre-employment testing for HIV in our law. There is also no clarity as to the circumstances under which an employer could require an applicant for employment to take an HIV test.

·Statutory intervention need not be HIV/AIDS specific. Legislative intervention aims to attain the twin objectives of maintaining otherwise healthy persons with HIV in productive employment, and protecting the rights of persons with HIV in the workplace.

·Principles recommended by the Commission for legislative intervention on pre-employment HIV testing are as follows:

·To create certainty and clarity on the legality or otherwise of HIV testing as a specific form of discrimination in the employment relationship.

·To prohibit testing where it constitutes unfair discrimination and an unfair labour practice.

·To balance the rights of persons with HIV and those of employers.

·To intervene statutorily so as to prohibit HIV testing per se, subject to permissible exceptions.

·To deal legislatively with both job applicants and existing employees in order to enable the fair allocation of employee benefits.

·Although the Commission initially aimed for a prohibition on pre-employment HIV testing to cover **all** employees, it was accepted that, given the framework of existing and prospective labour legislation, which excludes them, such legislative intervention could not apply easily to the South African National Defence Force, the South African Secret Service, and the National Intelligence Agency.

·A prohibition on HIV testing in the workplace should not be absolute but should allow for exceptions where testing is allowed under legislation and in certain circumstances where it is deemed to be fair and justifiable. Justification for testing should be based on medical facts, employment conditions, social policy, the fair distribution of employee benefits and the inherent requirements of the particular job. All of these factors should be considered jointly and individually in ascertaining whether testing is fair and justifiable.

·An intervention should provide a flexible standard to allow for the law to develop in accordance with scientific knowledge, society's understanding of the epidemic, changing socio-economic circumstances, and the possible emergence of new rationales for HIV testing in the work place.

·In determining whether or not HIV testing should be allowed, both justifiability and fairness need to be taken into account equally.

·The burden to show that HIV testing under specific circumstances is fair, should rest upon the employer.

·An impartial forum (such as the Labour Courts created by existing labour legislation) should be available to adjudicate whether HIV testing (or an application to authorise such testing) was fair and justifiable.

·The Labour Court, in authorising testing for HIV, should be given wide powers. These would include issuing instructions regarding counselling, confidentiality, and information or submissions regarding medical facts, employment conditions, social policy, the inherent requirements of the job and the fair allocation of employee benefits.

·Judicial appeal procedures should be an integral part of a statutory prohibition.

·Legislation prohibiting HIV testing in the workplace should be accessible and enforceable.

Interim Report on HIV/AIDS and Discrimination in Schools

The Interim Report recommends that the Minister of Education, under the National Education Policy

Act, 1996, determine national policy on
HIV/AIDS in schools. A draft national policy for HIV/AIDS in public schools is included in the report:

·A national policy for HIV/AIDS in schools is urgently required in order to protect learners with HIV from unfair discrimination in the school environment. However, such intervention will have to take into account the rights of all learners and should aim for a fair balance between the rights of learners with HIV and those without HIV.

·The policy should apply nationally, it should prevail over any other policy instrument on HIV/AIDS in public schools, and have children of school going age (including children in the pre-primary phase) as its chief focus. In view of the fact that compliance with the proposed policy cannot otherwise be ensured in the case of independent schools, the Commission recommends that Members of Executive Councils responsible for education should in terms of the South African Schools Act, 1996 make compliance with the policy a condition on which registration of independent schools may be granted.

·The national policy should set out broad guidelines in accordance with constitutional principles. In view of the wide variety of circumstances prevailing in South African schools and since the South African Schools Act, 1996 stresses the importance of parent empowerment in the education of their children, it is recommended that a governing body of a school should, in addition, be able to adopt a more specific HIV/AIDS policy at school level to give operational effect to the national policy. The purpose of the

"It happens daily that individuals voluntarily enter into contracts with one another, or with banks, building societies, financial institutions, wholesalers or retailers, in the expectation that the contracts will satisfy their needs and aspirations, only to find subsequently that, in

school level policy would be to provide a mechanism to express the needs of individual schools and their communities, especially with regard to their ethos and values, within the framework of the national policy's minimum standards and norms. It is intended that the national policy should constitute a set of basic principles from which governing bodies may not deviate.

·In view of the current legal position and the comments received on its preliminary proposals, the Commission included the following basic principles in the draft national policy:

·Compulsory testing of learners as a prerequisite for admission to any school, or any unfair discriminatory treatment (for instance the refusal of continued school attendance on the basis of the HIV status of the learner), is not justified.

·However, it is recognised that special measures in respect of learners with HIV may be necessary. These must be fair and justifiable in the light of medical facts, school conditions and the best interests of learners with and without HIV.

·Learners' rights to privacy are confirmed. Where HIV-related information is disclosed to a member of staff, the policy provides that, except where statutory or other legal authorisation exists, such information may be divulged only with the informed consent of the learner (above the age of 14 years) or in other cases with the consent of his or her parent or guardian.

·The needs of learners with HIV should, as far as is reasonably practicable, be accommodated within the school environment.

·"Universal precautions" (standard precautionary measures aimed at the prevention of HIV transmission including instructions concerning basic hygiene and the wearing of protective clothing such as rubber gloves when dealing with blood and body fluids) should be implemented by all schools to exclude effectively the risk of transmission of HIV in the school environment. The policy contains specific provisions on participation in contact sport and contact play.

·All learners have a right to be educated on HIV/AIDS, sexuality and healthy lifestyles, in order to protect themselves against HIV infection. The policy recognises the need for the involvement - although limited - of parent communities in order to ensure that sexuality education will take into account the community ethos and values. The policy requires that information on HIV/AIDS be given in an accurate and scientific manner.

·All learners should respect the rights of other learners.

·A school's governing body should be able to adopt an HIV/AIDS policy at school level to give operational effect to the national policy. This would however have to take place within the framework set by the national policy.

Unreasonable stipulations in contracts and the rectification of contracts

The problems concerned in this area of the law were, inter alia, set out as follows in the Discussion Paper preceding this Report:

practical application, the contracts as a whole or some of their terms are unjust or unconscionable. Common examples of such situations abound, but a few examples will suffice: the head of a homeless family urgently in need of a roof over their heads signs a lease which gives the lessor

the right to raise the rent unilaterally and at will, and the lessor doubles the rent within five months; an uneducated man signs a contract of loan in which he agrees to the jurisdiction of a High Court, to find out only later, when he is sued that a lower court also had jurisdiction

over the matter and that the case could have been disposed of at a much lower cost to himself; a man from a rural area purchases furniture from a city store on standard, pre-prepared hire-purchase terms, later to find out that he has waived all his rights relating to latent defects in the goods sold; an illiterate and unemployed bricklayer agrees to act as subcontractor for a building contractor on the basis that he must at his own expense procure an assistant, and so on."

The following recommendations are made in the Report:

·Reform is called for in this area of the law. Legislation addressing contractual unreasonableness, unconscionability or oppressiveness in all contractual phases, namely at the stages when a contract comes into being, when it is executed and when its terms are enforced, is the most viable and expedient method to effect such legal reform.

·There is a need to confer wide powers to the courts to effect justice to contracting parties. These powers should be balanced by confining the proposed criteria to unreasonableness, unconscionability and oppressiveness.

·There is a practical need to provide some definition to the concept of unreasonableness, unconscionability or oppressiveness by setting out guidelines in the proposed legislation, so as to enhance legal certainty.

·The proposed legislation should not apply to the following contracts:

·Contracts which fall within the scope of the Labour Relations Act, 1995, or which arise out of the application of that Act.

·Contracts falling within the scope of the Bills of Exchange Act, 1964.

·If it appears to the Ombudsperson that a person has acted in contravention of a

·Contracts to which the Companies Act, 1973, or the Close Corporations Act, 1984, apply or which arise out of the application of those Acts.

·Contractual terms in respect of which measures are provided under international treaties to which the Republic of South Africa is a signatory and which depart from the provisions of the proposed Control of Unreasonableness, Unconscionability or Oppressiveness in Contracts or Terms Bill.

·The application of the proposed legislation should not be excluded in respect of family law agreements in accordance with the Divorce Act, the Matrimonial Affairs *Act,* or the Matrimonial Property Act. It does not seem to the Commission that settlements reached under these Acts are in any way satisfactorily regulated and the possibility of judicial review under the proposed legislation seems to be called for.

·**T**he proposed legislation **should provide that the relevant circumstances to be taken into account are those that existed at the time of the conclusion of the contract. Furthermore, where there is a reasonably unforeseeable change of circumstances which makes performance under the contract excessively onerous, the parties to the contract should be bound to enter into negotiations with a view to adapting the contract or terminating it.**

·There is also a need for a specific provision conferring on the High Court the jurisdiction where it is satisfied, on the application of any organisation, or any body or person, that a person has embarked, or is likely to embark, on a course of conduct leading to the formation of contracts or terms which are unreasonable, unconscionable or **prescribed code of practice applicable to that person, to request the person to execute**

oppressive, that it may, by order, prescribe or otherwise restrict, the terms upon which that person may enter into contracts of a specified class.

·The Office of an Ombudsperson should be established to ensure that standard contract terms comply with the requirements of contractual fairness, thus providing a remedy to ordinary consumers who would not be able to seek redress in the courts. It is proposed that the Ombudsperson should have the following powers and duties:

·To **negotiate with a person using or recommending the use of pre-formulated standard contracts in order to obtain an undertaking from him or her that he or she will act in accordance with the proposed Act, and if such a party fails to fulfil such an undertaking, the Ombudsperson may issue such orders as may be deemed necessary for ensuring the fulfilment of such an undertaking.**

·If having considered a complaint about any contract term that the Ombudsperson considers to be unreasonable, unconscionable or oppressive, that he or she may bring proceedings in the High Court for an interdict against any person appearing to him or her to be using or recommending use of such a term; provided that if he or she decides not to apply for an interdict, reasons shall be furnished to the complainant for such a decision.

·To prepare draft codes of conduct applying to particular persons or associated persons in a field of trade or commerce, in consultation with such persons, organisations, consumer organisations and other interested parties for the consideration and approval of the Minister.

within a specified time a deed in terms approved by it under which the person gives undertakings as

to discontinuance of the conduct; future compliance with the code of practice; and the action the person will take to rectify the consequences of the contravention, or any of them.

·To retain all deeds and to register the deeds in a Register of Undertakings kept by it and containing the prescribed particulars.

·If a person fails to comply with the request by the Ombudsperson for the giving of an undertaking it may on application to the High Court, request that the person be ordered to act in a manner that would have been required; or to refrain from acting in a manner that would have been prohibited.

·The question whether the parol evidence rule should be retained or abolished leads to divergent answers not only in South Africa but also in other jurisdictions. The Commission takes the view that evidence of what passed between the parties, or the background or surrounding circumstances, is the best evidence of what the parties had in mind, and if the words the parties used are capable of some other meaning, as is almost invariably the case, **justice requires that such evidence should be admissible to prove the contract.**

Interim Report on Maintenance

It is widely acknowledged that the maintenance system is in disarray. Complaints range from the treatment, attitudes and facilities encountered at maintenance courts, to the seeming impunity with which persons manage to evade their legal duty to maintain their dependants.

The Commission published an issue paper on the Review of the Maintenance System (Issue Paper 5) in 1997.
The comments received in respect of Issue Paper 5 indicated that The Constitution, 1996 entrenches **inter alia** free speech, freedom of information and the right to privacy. **while there is a need for further investigation into the long term measures, the problems currently experienced in relation to** maintenance are so pressing that the implementation of solutions should not be delayed until these long term measures have been fully investigated.

The Commission agrees with the point of view that the most pressing shortcomings of the present system should be addressed on an urgent basis. The Commission has therefore decided to recommend certain amendments to the current Maintenance Act, 23 of 1962. These amendments deal with the most urgent matters of concern and should be seen as an interim measure. The Commission intends to proceed with the consideration of the problem of maintenance in its wider context upon completion of this interim stage.

The problems discussed in the Interim Report relate to two parts of the maintenance process where many practical problems arise. The first is the procedure leading up to the making of a maintenance order where repeated visits to the office of the maintenance officer and numerous postponements of maintenance enquiries are common complaints. The second is the enforcement of maintenance orders by way of the conviction of a person for the failure to comply with such an order, which is widely accepted to be ineffective.

The solutions recommended by the Commission to solve the problems experienced in these two areas are:

·That a statutory basis be provided for the appointment of maintenance investigators.

·The extension of the court's power to make a maintenance order in the absence of a person who is under an obligation to pay maintenance.
The question which arises is whether, in regulating the publication of particulars of divorce proceedings in terms which appear peremptory, inflexible and sweeping, it is unconstitutional.

·The introduction of a procedure for the automatic recovery of maintenance payments from the income of a person who is under an obligation to pay maintenance.

·The introduction of a procedure for the execution of maintenance orders which will function independently from a prosecution for the failure to comply with a maintenance order.

·The extension of the definition of "maintenance order" to include payment of non-periodical expenses, made towards a person's maintenance.

New Investigations

Three new investigations have been included in the Commission's law reform programme:

Publication of Divorce Proceedings

Section 12 of the Divorce Act 70 of 1979 deals with the limitation of publication of particulars of a divorce action. The provision does not purport to have extraterritorial operation and its effect is accordingly that -

·foreign media are wholly unrestricted in their reportage of South African divorce proceedings; and

·South African media are wholly prohibited from disclosing any facet of divorce proceedings.

The divorce proceedings are, however, entirely open to the public. No discretion vests in the court to determine whether or in what respects disclosure should be permitted or prohibited.

There are clear indications that at present section 12 of the Divorce Act is simply being defied.

The Legal Position of Voluntary Associations

In **Mitchell's Plain Town Centre Merchants Association v McLeod and another** 1996 (4) SA 159 (A) the Supreme Court of Appeal denied legal personality to a voluntary association with more than twenty members formed for "the purpose of carrying on any business that has for its objects the acquisition of gain by the ... association ... or by the individual members thereof". As a result of this decision, numerous voluntary associations such as the South African Agricultural Union, sport clubs, jockey clubs, etc. are uncertain as to their legal personality and consequently their future existence.

The Carrying of Firearms and Dangerous Weapons in Public and at Gatherings

People (including the farming community) are increasingly resorting to the carrying of firearms for a variety of reasons. There appears to be uncertainty surrounding the carrying or displaying of firearms at gatherings or in public places. The problem is compounded by the different legislative enactments, some of which are obscured in legislation.

Members of the Commission

The Chairperson is Chief Justice Ismail Mahomed, former Vice-President of the Constitutional Court. The Vice-Chairperson is Judge Pierre Olivier, a Judge of the Appeal Court. The full time member is Professor Thandabantu Nhlapo. The other members are Judge Yvonne Mokgoro, a judge of the Constitutional Court, Advocate Jeremy Gauntlett SC from the Cape Bar, Ms Zubeda Seedat, an attorney practising in Durban, and Mr Phineas Mojapelo, an attorney practising in Nelspruit.

Programme of the Commission

The following projects on the Commission's programme are currently receiving attention:

47	Unreasonable stipulations in contracts and the rectification of contracts
59	Islamic marriages and related matters
63	Review of the law of insolvency
73	The simplification of criminal procedure
82	Sentencing
85	Aspects of the law relating to AIDS
86	Euthanasia and the artificial preservation of life
88	The recognition of a class action in South African law
90	Harmonisation of the common law and indigenous law
94	Arbitration
96	The Apportionment of Damages Act, 1956
100	Family law and the law of persons: * Maintenance * Domestic violence
101	The application of the Bill of Rights on the criminal law, criminal procedure and sentencing
105	Security legislation
106	Juvenile Justice
107	Sexual offences by and against children
108	Computer related crimes
109	Review of the Marriage Act
110	Review of the Child Care Act
111	Jurisdiction of Magistrates' Courts in constitutional matters
112	Sharing of pension benefits
113	The use of electronic equipment in court proceedings
114	Publication of divorce proceedings
115	(Still under consideration)
116	The carrying of firearms and other dangerous weapons in public or at gatherings
117	The legal position of voluntary associations

Invitation

Interested parties are invited to submit proposals for law reform and information in respect of projects to the Commission.

New address

The Commission's physical address has changed to Sanlam Centre (12th Floor), c/o Andries and Schoeman Streets, Pretoria.

The following details remain the same:

The postal address is Private Bag X668, Pretoria 0001.

Tel: (012) 322-6440
Fax: (012) 320-0936
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The Commission's office hours are from 07:15 to 15:45 on Mondays to Fridays.

Internet

Some of the Commission's documents are also available on the Internet. The site address is:
http://www.law.wits.ac.za/salc/salc.html

Subscribe to listserv on the site address to be notified by email whenever there are new SA Law Commission publications. (Note that this is not a discussion group.)
Send e-mail to **majordomo@sunsite.wits.ac.za**. Leave the Subject line **blank** , and type in **subscribe salcnotify** in the body of the message. Type **end** on a **new line**, then send the message. You will soon receive a welcome message from the listserv.