



Lede van die Leerstoel in die CL Marais gebou

## Suid-Afrikaanse Navorsingsleerstoel in Sakereg

Prof AJ van der Walt, 'n A ge-evalueerde NNS navorser en personeellid van die Departement Publiekreg het in 2007 die besondere eer te beurt geval om as houër van die SA Navorsingsleerstoel in Sakereg aangewys te word. Hierdie leerstoel word gehuisves deur die Universiteit van Stellenbosch, befonds deur die Departement van Wetenskap en Tegnologie en word geadmistreer deur die Nasionale Navorsingstigting.

Die werksaamhede van die Leerstoel is gerig op drie hoof-oogmerke:

- om die implikasies van die nuwe grondwetlike bedeling vir die Sakereg uit te werk, veral wat die Grondwetlike Sakereg (as 'n nuwe terrein) en die teoretiese onderbou van die Sakereg betref
- om die implikasies van hierdie veranderinge vir die gemeenregtelike Sakereg uit te werk en te begin werk aan 'n nuwe handboek wat hierdie implikasies uitspel
- om te begin met die opleiding van 'n nuwe geslag Sakereg-dosente en -navorsers wat binne die nuwe teoretiese raamwerk kan funksioneer

Om hierdie doelwitte te bereik fokus die werksaamhede van die Leerstoel ener syds op navorsingsprojekte en andersyds op nagraadse opleiding. Die oorhoofse projek waaraan almal in die Leerstoel-groep werk fokus op die ontwikkeling van die Sakereg, maar binne hierdie groot projek is daar verskillende kleiner projekte oor Grondwetlike Sakereg (bv vergoeding vir onteiening, die beskerming van intellektuele eiendom, die beskerming van mineraalregte) en oor aspekte van die gemeenregtelike Sakereg

(bv bureereg, eiendomsreg, die beskerming van huurders) aan die gang.

'n Groot deel van die Leerstoel se werksaamhede is ingestel op die opleiding van nagraadse studente. Daar is tans (2008) twee voltydse LLD-studente, twee deeltydse LLD-studente en ses voltydse LLM-studente in die groep, asook tien finalejaar LLB-studente. Na verwagting sal die groep teen 2010 uitbrei om twee post-doktorale genote, vier LLD- en agt LLM-studente (asook tien LLB-studente) in te sluit. Die LLM- en LLD-studente werk voltydse aan hulle nagraadse navorsingsprojekte, terwyl hulle as deeltydse navorsingsassistenten by ander projekte in die Leerstoel betrokke is. Die LLB-studente werk as deeltydse navorsingsassistenten aan projekte in die Leerstoel. In die loop van hulle werk as navorsingsassistenten ontvang die studente praktiese opleiding in navorsing, wat alle aspekte van beplanning en administrasie van navorsingsprojekte tot by befondsing, verslaggewing en disseminasie insluit. Gedurende die jaar word daar in drie blokke van sewe weke elk seminare vir hierdie groep studente (asook gaste, nagraadse studente in Sakereg van UCT, UWK, die US) aangebied waarin

belangrike onderwerpe en temas in die Sakereg op 'n gevorderde vlak ondersoek en bespreek word. Sakereg-spesialiste van Suid-Afrikaanse en oorsese universiteite, asook jong navorsers wat onlangs doktorsale studie in die Sakereg voltooi het, neem van tyd tot tyd aan hierdie seminare deel. Die fisiese infrastruktuur en befondsing van die Leerstoel maak voorsiening daarvoor dat gaste deurlopend by die Leerstoel se werksaamhede kan inskakel.

Benewens die navorsingsprojekte en die opleidingsprogram sal die Leerstoel van tyd tot tyd seminare en konferensies aanbied. Die eerste hiervan word vir Augustus 2008 beplan, wanneer Prof Karl Klare (Northeastern University) die gas van die Leerstoel sal wees. Nagraadse studente kry ook geleentheid om Sakereg-konferensies in Suid-Afrika en oorsese by te woon. Een van die LLD-studente en een van die LLM-studente het in April 2008 die tweeejaarlikse Engelse Property Law Conference in Cambridge bywoon, waar Prof van der Walt 'n voordrag gelewer het oor 'n bureereg-projek waaraan navorsers in die Leerstoel tans werk.



Dr G Quinot, Prof S Liebenberg, former Chief Justice Arthur Chaskalson and Prof H Botha

## Honorary Doctorate awarded to former Chief Justice, Arthur Chaskalson

Former Chief Justice Arthur Chaskalson was awarded an honorary doctorate by Stellenbosch University at the graduation ceremony on 19 March 2008. Prof Sandra Liebenberg, Chair in Human Rights Law at the Faculty of Law said that the former Chief Justice was being honoured for three main reasons.

First, he was a lawyer of supreme courage and conscience during the apartheid era. At a time when many talented lawyers chose to turn a blind eye to the injustices of the apartheid era and focus exclusively on their careers, Arthur Chaskalson sought justice for those oppressed by apartheid laws. During his career at the Bar he appeared as counsel for members of the liberation movements in several major political trials – including the Rivonia Treason Trial, which led to the conviction and imprisonment of Nelson Mandela and other leaders of the African National Congress. In 1978, he was one of the founders of the Legal Resources Centre, a public interest law firm which won a number of landmark victories despite the heavy odds stacked against them under the apartheid legal order. To this day, the LRC continues to represent free of charge those who experience human rights violations.

Secondly, Arthur Chaskalson is being honoured for his role as President and then Chief Justice of South Africa's first Constitutional Court. In this capacity, he had to establish the Constitutional Court and in fact the entire South African judiciary as institutions to which all in South Africa can turn as the ultimate protector of the rights and freedoms guaranteed to them under the Constitution. This he had to do within a legal culture which had been dominated by the doctrine of parliamentary sovereignty and a form of legal

positivism in which apartheid legality flourished. During his tenure the Constitutional Court handed down some truly ground-breaking judgments, including the abolition of capital punishment, the duty of the State to ensure emergency housing to the homeless and those in desperate need, the provision of anti-retroviral drugs to pregnant women in the public health sector, decisions upholding fair trial rights and the right of prisoners to vote. This required achieving a delicate balance between respect for the political and policy choices of the democratically elected legislature and the executive whilst vigilantly protecting people's fundamental human rights. The Court, under Arthur's leadership, achieved this balance admirably and our rich constitutional jurisprudence is the subject of both national and international acclaim.

Finally, Arthur Chaskalson is being honoured for the continued role he is playing during his retirement in providing moral leadership and instilling confidence in the core institutions of our Constitutional democracy, as well as in promoting human rights on an international stage. This is in a context where core concepts such as the rule of law and human rights have come under increasing attack on the global stage in the war against terrorism.

All this he has achieved with humility, integrity and grace.

### ALUMNI NOTICES

#### LLB Reünie 1978

'n Reünie word beplan vir die LLB klas van 1978. Vir meer inligting kontak asb Mnr HP van der Merwe by [hpvdm@borhay.co.za](mailto:hpvdm@borhay.co.za)

#### Alumni Inligting

Dit is belangrik dat u kontakinligting as alumnus korrek is by die Stellenbosch Stigting. Besoek gerus [www.matiealumni.net](http://www.matiealumni.net) of kontak Malena Fourie by [mfour@sun.ac.za](mailto:mfour@sun.ac.za).

## NUUSBROKKIES

### Willem C Vis Moot Competition

Students from the Law Faculty of Stellenbosch University recently excelled again in the annual Willem C Vis Moot Arbitration Competition. The team consisted of Theo Broodryk, Michaela Lau, Zithe Oberholzer, Bernhard Vogts, Bernard Wessels and John Henry Jordaan, and was coached by Professor Mustaqeem De Gama and Mr Louw Kriegler. The team finished 34th overall amongst 220 universities and also qualified for the quarter-finals in the oral arguments category of the competition.

Held in Vienna Austria, the annual Willem C Vis Moot is the biggest and most prestigious commercial law moot competition in the world. Roughly 220 universities from worldwide (that is more than 1 500 students) participate to argue from a Claimant's and Respondent's perspective a complex factual scenario dealing with the

United Nations Convention on the International Sale of Goods (CISG) and procedural international arbitration issues. The proceedings are conducted as a real arbitration would be, and the panels presiding over the oral arguments consist of practicing attorneys and the leading academics in the fields of arbitration and international sales law.

Stellenbosch University is steadily becoming a force to be reckoned with in this competition. In the past four years it has qualified three times for the quarter-finals of the oral competition and was ranked 25th (2005), 16th (2007) and 34th (2008) in the last four years. Even though the number of universities participating in this competition has increased from approximately 150 to 220 in the last four years, Stellenbosch University has maintained its reputation as one of the respected universities in the competition.

### Geregte Regulerings van Kommerisiële Staatsoptrede – LLD, Dr Geo Quinot

Die LLD graad is toegeken aan dr Geo Quinot tydens die Desember 2007 gradeplegtigheid van die regs fakulteit. Sy proefskrif, voltooi onder promotorskap van proff AJ van der Walt en GF Lubbe, is getiteld "The Judicial Regulation of State Commercial Activity" en fokus op die geregtelike benadering tot die regulasie van kommersiële staatsoptrede binne die raamwerk van konstitusionele transformasie in Suid-Afrika. Die studie argumenteer dat die huidige benadering wat poog om staatsoptrede te klassifiseer as óf

privaat óf publiek van aard is gebrekkig. 'n Analise wys daarop dat bestaande alternatiewe benaderings is nie in staat om die unieke regs vrae wat vloei uit kommersiële staatsoptrede voldoende aan te spreek nie. Die studie stel voor dat die mees belowende weg vorentoe om 'n bevredigende model te formuleer ter verduideliking van geregtelike regulering van kommersiële staatsoptrede behels die internalisering van die kompleksiteit van sodanige staatsoptrede as sosiale praktyk.

### Individuele aanspreeklikheid vir die internasionale misdaad aggressie – LLD, Dr Gerhard Kemp

Die LLD is aan Dr Gerhard Kemp toegeken by die Maart 2008 gradeplegtigheid. Daar word in hierdie proefskrif betoog dat, ten einde individue suksesvol in die Internasionale Strafhof (en in nasionale howe) vir die misdaad aggressie te vervolg, moet die vervolging geskied binne 'n voorgestelde rasionele raamwerk. Hierdie raamwerk aanvaar die dogmatiese en konstitusionele voorwaardes van die strafreg-benadering, maar erken ook die institusionele, politieke, normatiewe, en historiese grondslae van die ontwikkelende stelsel van internasionale strafreg.

### Amicus-fund

The Amicus-fund is a bursary fund which was founded by alumni from the Faculty of Law. The fund recently received a donation of R500 000 from the Pola Pasvolvsky Trust. (The Pola Pasvolvsky Trust supports educational projects in South Africa.) The donation will be used for bursaries for SU Law Students with financial need, candidates from previously disadvantaged communities will receive preference. Individuals who wish to support the Fund or would like to learn more about the Fund's activities are welcome to contact Prof Jacques du Plessis at [jedp@sun.ac.za](mailto:jedp@sun.ac.za).

### 17th African Human Rights Moot Court Competition

Stellenbosch University Faculty of Law participated again in the 17th African Human Rights Moot Court Competition, held in Pretoria from 30 June to 5 July. The team representing Stellenbosch was Matthew Clark (final year) and Carla Kriek (3rd year BComm Law), chosen after two internal rounds of competition in March. They competed against 43 other English-speaking teams from all over Africa. Teams were assessed on four rounds of oral presentations, as well as written memorials. The Stellenbosch team came SECOND overall and their written memorials were also placed third. This is the best the team from Stellenbosch has ever done in this moot court competition, surpassing our 3rd place of 2005.

## Bekendstelling van die Stonehage Eerstejaar Beursskema

Toegewy tot 'n strategiese, gelyke vennootskap het die Stonehage Charitable Trust en die Fakulteit Regsgeleerdheid van die US die **Stonehage Eerstejaar Beursskema** in die lewe geroep. Twaalf werwingsbeurse, omvattende volle klasgelde, sal toegeken word aan akademiese begaafde studente vanuit voorheen benadeelde gemeenskappe wat in 2009 as aan die Fakulteit Regsgeleerdheid registreer.

Die doel is die werwing van begaafde studente asook die uitbou van die verhouding tussen die universiteit, die Fakulteit en die omringende gemeenskap. Leerders vanuit skole in die Stellenbosch omgewing sal voorkeur geniet by die toekenning van die beurse.

Die Stonehage Groep, van wie Mnr Giuseppe Ciucci, 'n oud-student van die Fakulteit, die Hoof-uitvoerende beampte is, verskaf bate-en trustbestuur aan internasionale families. Die Groep bestuur bates ten bedrae van meer as \$25 biljoen en het kantore in die Verenigde Koninkryk, Switserland, Jersey, Israel, Suid-Afrika, die VSA en Australië.

## The Stonehage Medal for Community Interaction

The Faculty of Law, in conjunction with the Stonehage Group, is proud to announce the institution of the Stonehage Medal for Community Interaction.

The award consists of a gold medal and a cash amount to be awarded with the financial assistance of the Stonehage Group. This will be awarded to a final year law student who has demonstrated both academic merit and a sense of social responsibility by involvement in and commitment to the community and leadership roles in this regard. This includes activities in the sphere of student life and the local community; the focus is however not necessarily restricted to these areas. Service in the Legal Aid Clinic and other pursuits such as, Amnesty International, projects relating to AIDS, asylum seekers, the eradication of poverty, the rights of political prisoners, the protection of the environment and projects supporting community transformation could be considered to be relevant.

## Transformative Constitutionalism after 10 years

Ten years ago in an article published in the *South African Journal on Human Rights*, Prof Karl Klare – one of the leading lights in the critical legal studies movement – described the South African Constitution as a transformative movement. By 'transformative constitutionalism' he meant: "a long-term project of constitutional enactment, interpretation, and enforcement committed (not in isolation, of course, but in a historical context of conducive political developments) to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law."

The notion of 'transformative constitutionalism' has found a deep resonance in the jurisprudence of the courts, academic literature and civil society campaigns for social justice. Its power is also evident in the critique and vigorous debates it has evoked in academia, civil society and public debate more generally.

To mark the 10th anniversary of the publication of this article, Prof Sandra Liebenberg, H.F. Oppenheimer Chair in Human Rights Law, and Prof André van der Walt, SA Research Chair in Property Law, hosted a one day seminar at the Stellenbosch University law faculty on 8 August 2008. The seminar was attended by approximately 50 constitutional law scholars, students and practitioners. We were also honoured that the seminar was attended by a visiting delegation of Appeal court judges from Sri Lanka.

The seminar opened with a key note address by Prof Karl Klare and Judge Dennis Davis entitled *Transformative Constitutionalism and the development of common and customary Law*. Thereafter papers were presented by various South African scholars, specialising in constitutional law and legal theory which engaged with various themes relating to transformative constitutionalism. These themes included the equality jurisprudence of the courts, the rights of disabled persons, the 'time and space' of transformative constitutionalism, the limits of post-apartheid 'transformative constitutionalism' in the struggle against poverty, inequality and marginalisation, and the contribution of legal theorist, Ronald Dworkin, to constitutional interpretation in South Africa.

The rigorous and spirited debate provoked by the presentations was very much in the spirit of the critical engagement with law and social change which Klare's article invites. The law faculty is very grateful that Prof Klare, who is currently the George J. and Kathleen Waters Matthews Distinguished University Professor at Northeastern University Law School in Boston, was able to co-present the key note address and participate actively in the proceedings of the seminar:

## UK Africa Inter-University Partnership for Teaching and Research in Public Procurement Regulation projek in 2009 geloods

'n Navorsingstoekenning ten bedrae van ongeveer £30 000 is deur die British Academy toegeken aan Dr Geo Quinot van die Departement Publiekreg in vennootskap met die Public Procurement Research Group, Universiteit van Nottingham, onder leiding van Prof Sue Arrowsmith, 'n wêreldleier in staatsverkrygingsreg (sien [www.nottingham.ac.uk/law/pprg](http://www.nottingham.ac.uk/law/pprg)). Die toekenning is gedoen in terme van die British Academy se UK-Africa Academic Partnerships skema aan Quinot en Arrowsmith as die primêre vennote saam met Prof Phoebe Bolton van UWK vir 'n navorsingsprojek gefokus op staatsverkrygingsreg. Buiten Quinot, Arrowsmith en Bolton sal ander lede van die Public Procurement Research Group ook aktief deelneem aan die projek. Die projek, geloods vanuit Stellenbosch, sal vir 3 jaar loop vanaf 2009 en fokus op staatsverkrygingsreg in Suidelike Afrika. Dit is die eerste van sy soort in Suid-Afrika. Die hoofdoel van die projek is om die akademiese profiel van staatsverkrygingsreg in Suidelike Afrika te verhoog en sluit in navorsing- sowel as onderrigkomponente.

Wat navorsing betref sal die deelnemers die huidige stand van staatsverkrygingsreg in Suidelike Afrika ondersoek. Hierdie ondersoek sal as grondslag dien vir die identifisering van brandpunte in die ontwikkeling van staatsverkrygingsreg in die streek wat in verdere navorsing en publikasies ondersoek sal word. Die projek dien dus as 'n loodsprojek vir gevorderde navorsing in staatsverkrygingsreg in Suidelike Afrika gerugsteun deur die kundigheid ontwikkel in Nottingham. Een belangrike aspek van die projek is gevolglik ook om meer navorsingsvennote vanuit Afrika te identifiseer en te betrek by verdere navorsing.

Rakende onderrig sal die projek ondersteuning bied vir die ontwikkeling van 'n voorgraadse module in staatsverkrygingsreg by UWK en 'n nagraadse (LLM) module by Stellenbosch. Die beplanning is om hierdie modules teen 2011 gevestig te hê om sodoende plaaslike navorsingskapasiteit in staatsverkrygingsreg te ontwikkel.

'n Belangrike aspek van die projek is dat dit navorsers vanuit Afrika in staat sal stel om in te skakel by die ontwikkeling van 'n permanente internasionale Procurement Lawyers Academic Network wat tans ontwikkel word onder die EU se Asia Link program (sien [www.cbs.dk/forskning\\_viden/institutter\\_centre/projekter/eu\\_asia\\_inter\\_university\\_network\\_for\\_teaching\\_and\\_research\\_in\\_public\\_procurement\\_regulation](http://www.cbs.dk/forskning_viden/institutter_centre/projekter/eu_asia_inter_university_network_for_teaching_and_research_in_public_procurement_regulation)). Hierdie aspek van die projek sluit in die vestiging van 'n webportaal op die regs fakulteit se webwerf waar toegang tot materiaal oor staatsverkrygingsreg in Suidelike Afrika verkry kan word en wat skakels sal bied tot internasionale hulpbronne in hierdie area.

## NAGRAADSE DIPLOMA IN BELASTINGREG

Hierdie deelytse, gedoseerde nagraadse diploma word deur die Departement Handelsreg van die Fakulteit Regsgeleerdheid, oor 'n tydperk van twee jaar aangebied.

Die program is ontwikkel om die beginsels van direkte en indirekte belastingwetgewing uit 'n teoretiese en beplanningsoogpunt te bestudeer.

Onderrig geskied dmv een lesingsessie per week en die kurrikulum omsluit die volgende modules:

- MODULE 1:** Basiese beginsels van inkomstebelastingreg en verbandhoudende onderwerpe
- MODULE 2:** Gevorderde inkomstebelastingreg; belasting op kapitaalwinst; belastingbeplanning
- MODULE 3:** Regsaspekte van belasting op geskenke, boedelbelasting, boedelbeplanning
- MODULE 4:** Regsaspekte van belasting op toegevoegde waarde
- MODULE 5:** Regsaspekte van hereregte, seelregte en ander belastinge
- MODULE 6:** Die opstel van 'n Brief van Beswaar en Kennisgewing van Appel of die opstel van Hoofde van Betoog met die oog op gedingvoering in die Belastinghof
- MODULE 7:** Internasionale Belastingreg

In modules 1–5 en 7 word studente deurlopend geevalueer deur werksopdragte, seminare, toetse en 'n eksamen. Module 6 is 'n praktiese werkstuk, ingedien in die finale semester van die tweede jaar van studie. Module 7 word in Engels aangebied.

Aansoeke vir toelating tot die 2009 akademiese jaar sluit op Vrydag, 23 Januarie 2009.

**Onderriggelde:** Ongeveer R7 628,25 vir die eerste jaar van registrasie.

### TOELATINGSVEREISTES

LLB-, BComm-, BReg- en BProc-gegradeerde of persone met enige ander akademiese of professionele kwalifikasie wat deur die US Senaat as voldoende geag word. (As u in die RSA as prokureur, rekenmeester of geoktrooierde rekenmeester mag praktiseer, kan u ook aansoek doen).

Slegs 'n beperkte aantal studente word gekeur.

### NAVRAE EN AANSOEKFORMS

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