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CASELAW QUARTELY REPORT

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CASELAW CONSULTANT

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LIST OF LAW AREAS*

1. Administrative Law
2. Corporate & Commercial
3. Competition Law
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Administrative Law

LAW REPORT	SUMMARY	COURT
<p>Resultant Finance (Pty) Ltd v Head of Department for the Department of Health, KwaZulu-Natal and Another (62/2019) [2020] ZASCA 87</p>	<p>Review of tender award – contract period of tender lapsed prior to hearing of appeal – no substantial points of law or matters of substance raised – appeal dismissed by reason of mootness under s 16(2)(a)(i) of the Superior Courts Act 10 of 2013.</p>	<p>Supreme Court of Appeal, South Africa</p> <p>16 July 2020</p> <p>View Full Report</p>
<p>Compcare Wellness Medical Scheme v Registrar of Medical Schemes and Others (267/2020) [2020] ZASCA 91</p>	<p>Section 38(d) of the Constitution – organ of state acting in the public interest – reviewing its own decision – Promotion of Administrative Justice Act 3 of 2000 applies – Medical Schemes Act 131 of 1998 – Registrar of Council of Medical Schemes has no discretion to allow a medical scheme to change its name to a name that is likely to mislead the public – the Registrar has no power to impose allow a name-change subject to conditions.</p>	<p>Supreme Court of Appeal, South Africa</p> <p>17 August 2020</p> <p>View Full Report</p>

<p>Government Employees Medical Scheme and Others v Public Protector of the Republic of South Africa and Others (1000/19) [2020] ZASCA 111</p>	<p>Power of Public Protector to investigate complaint – constrained by sections 6(4) or (5) of the Public Protector Act 23 of 1994.</p>	<p>Supreme Court of Appeal, South Africa</p> <p>29 September 2020</p> <p>View Full Report</p>
<p>Corporate & Commercial</p>		
<p>LAW REPORT</p>	<p>SUMMARY</p>	<p>COURT</p>
<p>Systems Applications Consultants (Pty) Ltd t/a Securinfo v Systems Applications Products AG and Others (1371/2018) [2020] ZASCA 81</p>	<p>Security for costs – s 13 of the Companies Act 61 of 1973 - whether amount of security for costs ordered by court can subsequently be released on account of material change in legal position and factual circumstances.</p>	<p>Supreme Court of Appeal, South Africa</p> <p>2 July 2020</p> <p>View Full Report</p>
<p>Hlumisa Investment Holdings (RF) Ltd and Another v Kirkinis and Others (1423/2018) [2020] ZASCA 83; [2020] 3 All SA 650 (SCA)</p>	<p>Company Law – s 218(2) of the Companies Act 71 of 2008 – claim by shareholders of company against directors and auditors for damages related to diminution in value of shares – directors alleged to have acted in bad faith, for ulterior purposes and without the requisite degree of care, skill and diligence, in breach of provisions of the Act – company, rather than shareholders, proper plaintiff in respect of claim against directors – essentially a claim for reflective loss – claim against auditors based on alleged negligence in the manner in which they conducted an audit of the company, in breach of their legal duty – proper plaintiff the company – claim for pure economic loss – wrongfulness requirement not</p>	<p>Supreme Court of Appeal, South Africa</p> <p>3 July 2020</p> <p>View Full Report</p>

	met – exceptions rightly upheld by court below – appeal dismissed.	
Passenger Rail Agency of South Africa v Sbahle Fire Services CC (230/2019) [2020] ZASCA 90	Contract – interpretation of agreement entered into between the appellant and the respondent in respect of which the respondent rendered fire and safety consultancy services to the appellant for a prescribed fee – whether the appellant breached the contract – whether the court a quo erred in dismissing the appellant’s claim in reconvention.	Supreme Court of Appeal, South Africa 4 August 2020 View Full Report
Women in Capital Growth (Pty) Ltd and Another v Scott and Others (1193/2019) [2020] ZASCA 95	Proxy undertakings to vote at company meeting – such meetings held and resolutions passed and implemented – undertakings due to expire – decision on appeal would not have a practical effect or result – appeal dismissed in terms of s 16(2)(a) of Superior Courts Act 10 of 2013.	Supreme Court of Appeal, South Africa 20 August 2020 View Full Report
Breetzke and Others NNO v Alexander NO and Others (232/2019) [2020] ZASCA 97	Breach of fiduciary duty by trustee – trustee acquiring property from trust – concealing from other trustees existence of an opportunity to sell property to third party at a profit – trustee nominating company owned or controlled by him to acquire property – company reselling property at a profit – allegation that company knowingly participated in trustee's breach of trust is an allegation that company acted wrongfully – pleading not excipiable.	Supreme Court of Appeal, South Africa 2 September 2020 View Full Report

<p>Moodliar and Others v Recycling and Economic Initiative of South Africa NPC and Others; Gore and Others v Kusaga Taka Consulting (Pty) Ltd and Others (977/2019) [2020] ZASCA 101</p>	<p>Companies Act 61 of 1973 – winding-up – appropriation or retention of company funds by liquidators to pay or secure their proposed fees – Act and the Regulations do not permit the liquidators to retain any company assets upon discharge of the provisional liquidation order – assets must be restored- liquidators not permitted to draw their remuneration until the estate account has been taxed and confirmed.</p>	<p>Supreme Court of Appeal, South Africa 15 September 2020 View Full Report</p>
<p>Investec Bank Limited v Erf 436 Elandsport (Pty) Ltd and Others (410/2019) [2020] ZASCA 104</p>	<p>Prescription Act 68 of 1969 – s 14 of the Act – whether series of payments in terms of agreement between creditor and debtor were acknowledgements of liability that interrupted prescription.</p>	<p>Supreme Court of Appeal, South Africa 16 September 2020 View Full Report</p>
<p>Mitsubishi Hitachi Power Systems Africa (Pty) Ltd v Murray and Roberts Ltd and Another (1011/2019) [2020] ZASCA 110</p>	<p>Application by a subcontractor for the disclosure by a contractor of information concerning initiative/incentive arrangements concluded between contractor and employer – disclosure sought to assess subcontractor’s entitlement to contractual benefits in terms of the subcontract– right to information recognised as an incident of the contractor’s duty of good faith and the cooperation required of parties to have an informed understanding of their rights and duties – no conflict of duties found to prevent the contractor from making disclosure – confidentiality claim unfounded- order of court below modified consistent with the scope of the subcontractor’s right.</p>	<p>Supreme Court of Appeal, South Africa 29 September 2020 View Full Report</p>

<p>Modise and Another v Tladi Holdings (Pty) Ltd (307/19) [2020] ZASCA 112</p>	<p>Misappropriation of corporate opportunity by director of company – principles of fiduciary duty restated and considered – Prescription – whether amended claim for disgorgement of profits effected after prescription has run substantially the same claim as one for damages.</p>	<p>Supreme Court of Appeal, South Africa 29 September 2020 View Full Report</p>
<h3>Competition Law</h3>		
<p>LAW REPORT</p>	<p>SUMMARY</p>	<p>COURT</p>
<p>Milestone Beverage CC and Others v The Scotch Whisky Association and Others (1037/2019) [2020] ZASCA 105</p>	<p>Unlawful competition – false misrepresentation as to the character, composition or origin of product – trade in such products in contravention of the Liquor Products Act 60 of 1989.</p>	<p>Constitutional Court, South Africa 18 September 2020 View Full Report</p>
<h3>Constitutional Law</h3>		
<p>LAW REPORT</p>	<p>SUMMARY</p>	<p>COURT</p>
<p>Chisuse and Others v Director-General, Department of Home Affairs and Another (CCT155/19) [2020] ZACC 20</p>	<p>South African Citizenship Act 88 of 1995 as amended by South African Citizenship Amendment Act 17 of 2010 — constitutionality of section 2(1)(a) and (b) — order of constitutional invalidity not confirmed.</p>	<p>Constitutional Court, South Africa 22 July 2020 View Full Report</p>
<h3>Criminal Law</h3>		
<p>LAW REPORT</p>	<p>SUMMARY</p>	<p>COURT</p>

<p>Van der Walt v S (CCT180/19) [2020] ZACC 19</p>	<p>Before us the applicant seeks leave to appeal against conviction and sentence. Regarding conviction, he contends that the Regional Court handled the trial in a manner that infringed his fair trial rights.</p>	<p>Constitutional Court, South Africa 21 July 2020 View Full Report</p>
<p>Director of Public Prosecutions, Northern Cape v Brooks and Others (505/19) [2020] ZASCA 80</p>	<p>Permanent stay of prosecution – recusal by trial judge before finalisation of trial – discretion of Director of Public Prosecutions in respect of proceedings <i>de novo</i> – application for stay of prosecution triggered by delay caused by recusal – reasonableness of delay – no trial prejudice established.</p>	<p>Supreme Court of Appeal, South Africa 2 July 2020 View Full Report</p>
<p>Ramabele v S; Msimango v S (CCT 232/17; CCT 207/18) [2020] ZACC 22</p>	<p>Fair trial rights — postponement for legal representation of choice — judicial bias — unreasonable delays — section 342A of the Criminal Procedure Act 51 of 1977.</p>	<p>Constitutional Court, South Africa 16 September 2020 View Full Report</p>
<p>Tshiki v S (358/2019) [2020] ZASCA 92</p>	<p>Criminal law and procedure – evidence of single witness who was an accomplice – whether the trial court correctly applied the cautionary rule – whether appellant’s alibi and his denial of complicity are reasonably possibly true.</p>	<p>Supreme Court of Appeal, South Africa 18 August 2020 View Full Report</p>
<p>Sibanyoni v S (951/2019) [2020] ZASCA 93</p>	<p>Leave to appeal against refusal of petition for leave to appeal – conviction of six counts of robbery with aggravating circumstances – effective sentence of 25 years imprisonment – no reasonable prospects of success of appeal against conviction, but reasonable prospects of success of appeal against sentence.</p>	<p>Supreme Court of Appeal, South Africa 18 August 2020 View Full Report</p>

Ngakantsi v S (1020/2020) [2020] ZASCA 94	Appeal to Supreme Court of Appeal against refusal by the high court of a petition seeking leave to appeal against conviction and sentence by the regional court – leave to appeal to the high court should have been granted – merits of the appeal to be determined by the high court.	Supreme Court of Appeal, South Africa 19 August 2020 View Full Report
Leshilo v S (345/2019) [2020] ZASCA 98	Joint possession of illegal firearm and ammunition – principles of common purpose not applicable – requirements of joint possession not proved beyond reasonable doubt – no evidence that accused intended to possess firearm through physical possessor.	Supreme Court of Appeal, South Africa 8 September 2020 View Full Report
Lungisa v S (696/2019) [2020] ZASCA 99	Sentence – appeal against imposition of effective sentence of two years’ imprisonment for assault with intent to cause grievous bodily harm to fellow municipal councillor – whether trial court exercised discretion improperly – whether sentence is disproportionate – appeal dismissed.	Supreme Court of Appeal, South Africa 9 September 2020 View Full Report
Mbatha v S (928/20) [2020] ZASCA 102	Reconsideration of application for special leave to appeal against conviction and sentence – section 17(2)(f) of the Superior Courts Act 10 of 2013 – exceptional circumstances.	Supreme Court of Appeal, South Africa 15 September 2020 View Full Report
Moamogoe v S (191/2019) [2020] ZASCA 106	Criminal law and procedure – appeal against sentence imposed in terms of a plea and sentence agreement in terms of s 105A of the Criminal Procedure Act 51 of 1977 – whether plea and sentence agreement correctly reflected what had been agreed – can in the circumstances only properly be challenged in a review	Supreme Court of Appeal, South Africa 18 September 2020 View Full Report

	application and not on appeal – appeal dismissed.	
Bilankulu and Another v S (188/2020) [2020] ZASCA 114	Criminal Law and Procedure – murder – deceased shot by unidentified person in shootout with the authorities – accused had <i>dolus indeterminatus</i> to commit murder – unlawful hunting of rhinoceros in state reserve – s 31(3) of Limpopo Environmental Management Act 17 of 2003 – s 252A of Criminal Procedure Act 51 of 1977 – entrapment not going further than providing opportunity to commit the offence – evidence of trap automatically admissible – s 35 of Constitution – evidence of cell phone records not disclosed before trial admitted in evidence – belated disclosure not causing trial prejudice.	Supreme Court of Appeal, South Africa 29 September 2020 View Full Report
Director of Public Prosecutions: Gauteng Division, Pretoria v Mbonani (1198/2019) [2020] ZASCA 115	Criminal law and procedure – Application for leave to appeal against refusal by trial to reserve questions of law - application referred for oral argument – whether the trial court correctly dismissed the applicant's application for the reservation of questions of law in terms of s 319 of the Criminal Procedure Act 51 of 1977. Whether points of law properly reserved.	Supreme Court of Appeal, South Africa 30 September 2020 View Full Report
Deceased Estates		
LAW REPORT	SUMMARY	COURT
Jones v Pretorius NO (281/2019) [2020] ZASCA 113	Deceased estate – agent appointed to administer estate on behalf of executor – agency terminated upon death of executor - subsequent payments by agent from estate funds to himself – not recoverable under s 50(b) of Administration of Estates Act 66 of 1965 –	Supreme Court of Appeal, South Africa 29 September 2020 View Full Report

	remedy under s 50(b) not limited to <i>condictio indebiti</i> – payments constituted unlawful appropriations of estate funds – recoverable by new executor by reason of powers and duties attached to office of executor.	
Delictual Claim		
LAW REPORT	SUMMARY	COURT
Van Meyeren v Cloete (636/2019) [2020] ZASCA 100	<i>Actio de pauperie</i> – defences – whether to be extended to include negligence of a third party not in control of animal – no extension justified.	Supreme Court of Appeal, South Africa 11 September 2020 View Full Report
MEC: Western Cape Department of Social Development v Esau and Another (379/2019) [2020] ZASCA 103	Nursery school – place of care in terms of Child Care Act 74 of 1983 – child injured when playing on swing in playground – defective design and construction of swing rendering it dangerous – whether Minister owed a legal duty to children in places of care to take reasonable steps to ensure safety of equipment – whether Minister liable for damages suffered by injured child.	Supreme Court of Appeal, South Africa 16 September 2020 View Full Report
Phakula v Minister of Safety and Security (454/19) [2020] ZASCA 109	Delict – claim for damages – arrest without warrant – use of force to effect arrest and allegedly prevent appellant from fleeing – whether shooting, arrest and detention lawful – shooting, arrest, detention and assault inextricably linked – separation of issues inappropriate – matter remitted to the high court for retrial on all issues before a different judge.	Supreme Court of Appeal, South Africa 23 September 2020 View Full Report

Employment Law

Employment Law		
LAW REPORT	SUMMARY	COURT
School Governing Body Grey College, Bloemfontein v Scheepers and Another (506/19) [2020] ZASCA 82; [2020] 3 All SA 704 (SCA)	South African Schools Act 84 of 1996 (the Act) – Employment of Educators Act 76 of 1998 (the EEA) – professional management of school – what it entails – role of principal contrasted with role of governing body – principal executing functions and duties under provisions of the Act and not in terms of delegation by governing body – in withdrawing principal’s functions governing body acting beyond its statutory authority.	Supreme Court of Appeal, South Africa 3 July 2020 View Full Report
Road Traffic Management Corporation v Tasima (Pty) Limited; Tasima (Pty) Limited v Road Traffic Management Corporation (CCT27/19; CCT86/19) [2020] ZACC 21	Labour Relations Act 66 of 1995 — section 197 transfer — transfer of employment contracts — effective date of transfer — effect of public or regulatory character of transferee.	Constitutional Court, South Africa 4 August 2020 View Full Report
Family Law		
LAW REPORT	SUMMARY	COURT
Khan v Shaik (641/2019) [2020] ZASCA 108	Division of fruits of a universal partnership – claim to division is based on a personal right and not a real right – claim in respect of a universal partnership prescribes after three years from the termination of the universal partnership in terms of s 11(d) of the Prescription Act 68 of 1969 – termination date of universal partnership is a fact-specific issue; sometimes it may coincide with the termination of the consortium but not necessarily – claim prescribed as it was instituted more than three years after the	Supreme Court of Appeal, South Africa 21 September 2020 View Full Report

	universal partnership terminated.	
Financial Services		
LAW REPORT	SUMMARY	COURT
M and Another v Murray and Others (251/2019) [2020] ZASCA 86	Pensions – protection of s 37B of the Pensions Fund Act 24 of 1956 – whether it operates if pension benefit paid before sequestration. Insolvency – s 31 of the Insolvency Act 24 of 1936 – whether collusion established.	Supreme Court of Appeal, South Africa 9 July 2020 View Full Report
Medical Negligence		
LAW REPORT	SUMMARY	COURT
A M and Another v MEC Health, Western Cape (1258/2018) [2020] ZASCA 89	Medical negligence – plaintiff’s case based on expert evidence – requirements for such evidence to be admitted – duties of expert witnesses – direct evidence preferable to reconstruction after the event – trial court’s findings of fact - not lightly disregarded – diagnosis and treatment of child presenting with head injury – instructions on discharge.	Supreme Court of Appeal, South Africa 31 July 2020 View Full Report
Minerals & energy		
LAW REPORT	SUMMARY	COURT
Samancor Chrome Ltd v VDH Holdings (Pty) Ltd and Others (344/19) [2020] ZASCA 96	Section 22(4)(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 – whether the appellant satisfied the requirement to notify and	Supreme Court of Appeal, South Africa 27 August 2020

	consult with interested and affected persons – High Court's order reviewing and setting aside the decision of the Minister of Mining Resources to grant a mining right to the appellant set aside – appeal upheld – applications to lead further evidence and to intervene dismissed.	View Full Report
Procedural Law		
LAW REPORT	SUMMARY	COURT
Penwill v Penwill NO and Others (CCT 91/18) [2020] ZACC 17	Before us is a stated case in which Mr Andrew Donald Jonathan Penwill, who is acting in person, is challenging costs allowed by this Court's Taxing Master. Costs were granted against Mr A D Penwill when this Court dismissed his application for leave to appeal for lack of reasonable prospects of success.	Constitutional Court, South Africa 21 July 2020 View Full Report
Tjiroze v Appeal Board of the Financial Services Board (CCT271/19) [2020] ZACC 18	The dispute arises from an error in the second respondent's notice of intention to oppose. This was a notice filed in review proceedings instituted by the applicant in the High Court of South Africa, Gauteng Division, Pretoria. In the notice the second respondent erroneously referred to itself as the "Registrar of Financial Services Board" instead of the "Registrar of Financial Services Providers".	Constitutional Court, South Africa 21 July 2020 View Full Report
Van Zyl NO v Getz NO (548/19) [2020] ZASCA 84; [2020] 3 All SA 730 (SCA)	Uniform Rules of Court – rule 33(4) – stated case to determine whether estate of deceased grandparent has duty to support grandchild – both parents alive – father's whereabouts and financial means unknown – no facts showing mother's support inadequate – not a proper case to decide legal issue separately under rule 33(4) – inappropriate to determine whether common law should be developed in terms of secs 39(2) and 173 of the Constitution to provide for said duty – order	Supreme Court of Appeal, South Africa 6 July 2020 View Full Report

	by court below two years after hearing without reasons – improper – duty of Judge to deliver judgment expeditiously.	
National Commissioner of Police and Another v Gun Owners of South Africa (561/2019) [2020] ZASCA 88	Interim interdict against State functionary – South African Police Service – prohibited from exercising powers under Firearms Control Act 60 of 2000 – interdicted from accepting or demanding surrender of firearms with expired licences pending final relief extending validity of expired licences – appealable – interdict an intrusion on executive authority and final in effect – role of Judge as neutral arbiter – of own accord amending final relief sought – inappropriate – renders court susceptible to allegation of bias – requisites for an interim interdict not met – no prima facie right, injury or absence of alternative remedy established – balance of convenience not favouring grant of interim relief – interdict an impermissible restraint on exercise of statutory power – violation of principle of separation of powers – appeal upheld.	Supreme Court of Appeal, South Africa 23 July 2020 View Full Report
Property & Conveyancing		
LAW REPORT	SUMMARY	COURT
Sontsele v 140 Main Street Properties CC and Another (328/2019) [2020] ZASCA 85	Lease – option to renew – failure by parties to reach agreement on rental or by lessee to invoke clause providing for rental to be fixed by third party - effect of - agreement lapsing by effluxion of time.	Supreme Court of Appeal, South Africa 6 July 2020 View Full Report

<p>Central Developments Tshwane (Pty) Ltd and Another v Body Corporate, Twee Riviere Aftree Oord (635/2019) [2020] ZASCA 107</p>	<p>Action against developer of sectional title development arising from defects in the design and construction of foundations for structures situated on common property – power of body corporate to pursue such a claim – Sectional Title Schemes Management Act 8 of 2011 – body corporate's power to pursue such a claim conferred by s 2(7)(b) of Act – no need for a special resolution in terms of s 2(7)(e) of Act.</p>	<p>Supreme Court of Appeal, South Africa 21 September 2020 View Full Report</p>
<p>Tax Law</p>		
<p>LAW REPORT</p>	<p>SUMMARY</p>	<p>COURT</p>
<p>Big G Restaurants (Pty) Limited v Commissioner for the South African Revenue Service (CCT13/19) [2020] ZACC 16</p>	<p>At issue is whether income derived from patrons of certain Spur and Panarottis restaurants is deductible by the Spur or Panarottis restaurateur in terms of section 24C (2) of the Income Tax Act.</p>	<p>Constitutional Court, South Africa 21 July 2020 View Full Report</p>

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