From the editor

Welcome to the Centenary Issue of the *Journal for Juridical Science*. This volume is a special issue to mark 2004 as the Centenary Year of the University of the Free State. The idea of a Centenary Issue, where members of the Faculty of Law would make a special contribution to the University of the Free State to celebrate the Centenary Year, owes much to the initiative of the Dean of the Faculty of Law, Professor JJ Henning. It is an idea that was fully supported and endorsed by the editorial committee of the *JJS*. The result has been an assortment of contributions of authors who are either full-time members of the Faculty or are associated with the Faculty. The topics are wide-ranging representing the diversity of the Departments of the Faculty as well as diversity of interests among authors.

It is appropriate that the Centenary Issue should begin with a historical note on the Faculty. The note is jointly written by Professors Wessels and Henning and Adv De Bruin. And as the note says at the beginning: For any university to have survived for a century is nothing new in Europe or in North Africa, but here in Sub-Saharan Africa it is a very impressive feat. In the note, much of the secrets of past personalities in the Faculty are revealed.

The historical note is followed by articles and a chronicle. Judge Hefer's contribution stems from an inaugural lecture that was delivered at the University of the Free State to mark his appointment as Professor Extraordinarius in the Department of Private Law. In this lecture, which generated considerable public interest, Judge Hefer examines the issue of contractual fairness, and the role which fairness does (or should) play in the law of contract. His point of departure is that, although the law is charged with maintaining fairness, we do not live in a perfect world and individual concerns often need to be sacrificed in favour of public interest. Furthermore, the principle of *pacta sunt servanda* is a cornerstone of our law of contract. He examines the South African Law Commission's 1998 report entitled *Unreasonable Stipulations in Contracts and the Rectification of Contracts*. In this report, it is recommended that legislation be introduced to combat "unreasonable, unconscionable or oppressive" contractual undertakings. Judge Hefer concludes that the Commission's proposals should not be implemented, as, *inter alia*, nothing prevents the principle of *pacta sunt servanda* from being developed by our courts where apposite, and freedom of contract is, in principle, in line with constitutional values.

Professors Raath and Henning have jointly contributed two articles that are discourses on jurisprudence that are based on the work of Ulrich Huber. In their first article — Political Covenantalism, Sovereignty

and the Obligatory Nature of Law — the authors draw from Huber's influential work, *De Jure Civitatis* (the Law of the State) — which was published in the 17th century in Latin and but has never been translated into any other language. The authors explore Huber's discourse on constitutionalism. They submit that although Huber's theory on constitutionalism prepared the way for the enlightened individualism of Locke and Rousseau, his constitutional theory shows clear predeliction towards political absolutism. In their second instalment — The Impact of Scholarsticism and Protestantism on Ulrich Huber's views on constitutionalism and tyranny — the authors, once again, draw from Huber's *De Jure Civitatis*. This time the authors explore the influence of Huber's work on the transition from enlightened absolutism to democratic government based on the will of the subjects.

The contribution by Mr Strauss, Advocate Jansen and Prof Lubbe focuses on the professional responsibilities of auditors towards third parties in delict. The essential question that the authors address is: When and under what circumstances will an auditor be held responsible towards a third party for the negligent performance of his or her duty? Mr Deacon's article discusses legal representation under the *Labour Relations Act* of 1995. It explores the advantages as well as disadvantages of legal representation during disciplinary action and arbitration. The author argues that legal representation has the capacity to enhance and promote just and fair dispute resolution, and that there is little justification for summarily excluding legal representation.

In an article with comparative law dimensions, Advocate de Bruin examines the Law Commission's proposals to promulgate legislation that governs class action proceedings. He looks at the *Class Proceedings Act* of Ontario as a possible reference point for South Africa in drafting of pertinent legislation.

Mrs Botha's article discusses the phenomenon of violence surrounding sex workers. She highlights the problem of fear of prosecution as a major contributory factor in the under-reporting of violence-related crimes that are perpetrated against sex workers. According to the author, decriminalisation of prosecution is necessary if sex workers are to be accorded effective protection against violence. In his article, Professor Ngwena explores the development of a human rights paradigm in the regulation of disability in the workplace. He points that there is a growing recognition of the duty of reasonable accommodation as a human rights principle for securing equality for people with disabilities.

Last but not least, the contribution by Mr Faber and Mr Rabie is in the form of a chronicle. In the context of the application of section 2(3)

of the *Wills Act* of 1953, the authors critically appraise the *Bekker v Naude en Andere* (2003) case.

Charles Ngwena