

*In memoriam*

**Professor Joseph Johannes Henning**

*B Iur LLB LLD (UFS)*

(1948 – 2018)



## EDITORIAL / REDAKSIONEEL

The purpose of this editorial note is twofold. First, it is to thank my predecessor, Professor Shaun de Freitas, for sixteen years of dedicated service to the Journal, originally as a sub-editor (as from 2003) and as its Managing Editor (2013-2018). Under his guidance, the Journal not only continued its tradition of publishing quality scholarship, but was also adapted and modernised in order to cater for the needs and accepted practices of the digital era. I would like to congratulate Shaun on a job well done, and to express the wish that I will manage to maintain the high standards which he has set.

Secondly, and of similar importance, I would like to take this opportunity to dedicate this volume of the Journal to the memory of Professor Johan Henning, an erstwhile Dean of this faculty who passed away in October of 2018, and to write a brief tribute to him. This is followed by tributes from our current Dean, Professor John Mubangizi, and Professor Elizabeth Snyman-Van Deventer.

Professor Henning was a “professor” in the true sense of the word. He not only had an unquenchable thirst for knowledge that extended far beyond his chief fields of legal specialisation (mercantile law, legal history and trust law), but he was also passionate about disseminating that knowledge. He was a skilled orator, who was able to adjust effortlessly to the needs of his audience, whether they be a high-level contingent of his peers, or his undergraduate students (I was privileged to be a part of the latter cohort). His lectures, which could involve topics as diverse as the intricacies of company and partnership law, to the Tiger tanks that saw service during the Second World War or the tactics employed in the South African War, were often delivered without a single lecture note or textbook to guide him.

As a researcher, Professor Henning was a veritable trailblazer during an era in which this faculty was generally regarded by many of his colleagues as a “teaching” faculty. Despite considerable lecturing responsibilities – which he continued to perform throughout most of his tenure as Dean – he managed to construct an enviable body of research<sup>1</sup> that established his reputation as a leading expert in mercantile law both in South Africa and abroad. In this regard two examples are worthy of mention. First, Professor Henning played an instrumental role in conceiving the South African close corporation and contributing to its statutory regulation in the form of the *Close Corporations Act* 69 of 1984. Secondly, in 2012, the Supreme Court of Appeal’s landmark judgment in *Butters v Mncora*<sup>2</sup> relied on research published by Professor Henning more than three decades earlier<sup>3</sup> to

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1 Professor Henning’s *curriculum vitae* lists the following: 98 contributions in the form of textbooks and treatises; 207 publications in peer-reviewed legal journals; 47 technical reports; 130 conference presentations in South and Southern Africa; and 146 presentations at international conferences / symposia.

2 2012 4 SA 1 (SCA). See especially paras 13-15.

3 Henning, JJ Die Leeuevennootskap: Aspekte van deelname in wins en verlies deur vennote 1980 *Modern Business Law* 147. See also the other sources authored (*inter alia*) by Professor Henning mentioned throughout the judgment.

identify and rectify a “fault line” that had led to the erroneous belief that our law only recognised universal partnerships that were expressly entered into and were moreover confined to purely commercial enterprises. In this manner, Professor Henning’s research not only impacted partnership law proper, but also contributed to more comprehensive legal protection for unmarried cohabitants. At the same time, the recognition of the value of his research so many years after it first was published, served to illustrate the need for patience and perseverance to those of us who take up the pen in the hope of occasioning legal reform.

While it would be easy to continue to expound further on Professor Henning’s scholarly achievements, something needs to be said about him as a person and as a leader. Professor Henning was a compassionate and deeply religious man who always went out of his way to assist others, whether a student, a younger colleague in need of guidance or an opportunity to kick-start his or her academic career, or a fellow community member. Despite his natural competitive streak, he always strove to give others their due and was never short of a word of encouragement or praise. He was intensely – and at times jealously – proud of his faculty and sometimes, mostly innocently, prone to exaggeration. These traits, coupled with his abilities as a raconteur, with a simultaneous – if paradoxical – propensity to forget or confuse his colleagues’ names, led to many a (disguised) snigger at meetings and official functions. He also had a love of pomp and ceremony that, although sometimes less appealing to the parsimonious or those inclined to informality, endeared him to his “old school” colleagues (like myself), and undoubtedly contributed to his uniqueness. He will always be remembered for his keen sense of humour and at times sardonic turn of phrase. A victim of the latter would, while initially embarrassed, inevitably be quick to forgive him, given his overall qualities and commitment to his cause. If at times he could be criticised – as all leaders invariably are – these criticisms are vastly overshadowed by the numerous achievements to which he led the faculty, its students and its alumni during his tenure.

Professor Henning was also a dedicated husband to his wife, Wilma. She, in turn, was a devoted wife without whose support – he would often acknowledge – he would not have been able to reach the great heights which he managed to achieve. She nursed him throughout his illness and, on the last occasion on which I saw him, gaunt and a shadow of his former self, he whispered to me that he would long since have been overcome by his illness but for the will to continue to fight on that was inspired by his wife.

Professor Henning was also incredibly proud of his and Wilma’s only child, Jandr , who is an alumnus of this university and is currently a practicing chartered accountant. He was blessed with two grandchildren and, in the last few years of his life, it was often touching to notice how the achievements of his admirable career seemed insignificantly pale when he spoke about his grandchildren or relished the prospect of spending time with them.

Professor Henning leaves an indelible imprint on this faculty, both as a leader and as an academic. The role that he played in inspiring the lives and careers of others is attested to by the wholesome tributes of gratitude expressed for his influence and guidance by a number of his ex-students at his funeral, some of which are contained in the tribute by Professor Snyman-Van Deventer that follows.

I have no doubt that he is proud of this legacy.

**Bradley Smith**  
Managing editor

## **Tribute to Professor Johan Henning**

Professor Johan Henning, former Dean of the Faculty of Law, passed away on Friday 12 October 2018. On behalf of the Faculty, I extend our most sincere condolences to his family, his friends and all those who knew him well in the Faculty and the whole University.

I personally did not know Professor Henning very well, having only met him on two occasions on my visits to the University of the Free State several years ago. From what I gathered, however, Professor Henning was a true gentleman and an outstanding academic leader who served the UFS Faculty of Law with distinction since his first appointment as Senior Lecturer in Mercantile Law, in 1976. After a brief stint at UNISA, he returned to the Faculty as Professor in Mercantile Law in 1982. Professor Henning became Head of Department, Mercantile Law in 1988 and served in that position until he was appointed Dean of the Faculty of Law in 1998, a position he held until his retirement in 2014.

Professor Henning was an inspiration to both staff and students with his passion for research, teaching, and the drive to establish the Faculty of Law at the UFS as an institution to be reckoned with in the South African academic landscape. Professor Henning maintained a stellar research record despite fulfilling his demanding managerial role. He received his B1 NRF-rating in 2013 and, at the time, was one of the highest rated researchers in the field of Mercantile Law in South Africa. He maintained a national and international academic profile until his untimely passing. Professor Henning was a true example of what it was to be an academic – he always worked with passion and dedication with the best interests of the students, the Faculty and the University of the Free State at heart. He served as an inspiration to generations of legal scholars, students and legal practitioners.

Professor Henning will be fondly remembered for his love of automobiles and his quick wit, both of which were always a source of joy to all. He will be sorely missed by his peers within legal academia, by colleagues within the Faculty of Law, and by former students and the legal profession at large.

May his soul rest in eternal peace.

**John Mubangizi**  
Dean: Faculty of Law, UFS

## Huldeblyk aan prof Johan Henning

Dit is vir my baie hartseer, maar ook die grootste voorreg om hulde te bring aan my mentor, prof Johan Henning. Ek deel egter die oomblik met elkeen van die vele studente op wie hy 'n onuitwisbare invloed gehad het. Daar is egter ook 'n kleiner groep van ons wat die voorreg gehad het om baie nou met hom saam te werk en ons kan almal sy hand in ons sukses en ons loopbane bevestig. So byvoorbeeld is Prof Henning een van die enigste regsakademici van wie ek weet wat kan spog met soveel professors uit sy nagraadse studentekorps wie se akademiese loopbane hy begin het: prof Henning het twee professors in Australië, Louis de Koker en Jean du Plessis, dan ekself hier by die UV en Riekie Wandrag by UWK.

Ek deel graag hierdie huldeblyk met van Prof Henning se ander oud-studente wat hul laaste eerbetoon by wyse van e-posse wat aan my gestuur is, by sy begrafnis wou lewer:

### *Jean du Plessis, van Deakin Universiteit, Australië:*

Hy was my inspirasie en rolmodel. Hier is 'n paar feite:

1. Ek het Handelsreg 300 met super negatiewiteit begin, want ek het Handelsreg 100 en 200 gehaat;
2. Toe kry ek professor Johan Henning en hy inspireer my, en ondersteun my;
3. Hy het sy huistelefoonnommer vir my gegee en ek het hom vir ure verpes as ek iets nie verstaan het nie – wat 'n voorreg en 'n bewys van sy absolute toewyding aan sy studente;
4. Ek het sy hand vir omtrent 5 minute vasgehou in die Hospitaal na sy eerste operasie toe ek toevallig in Bloemfontein was – daardie gevoel van intimiteit, en om die gevoel van my leermeester se hand te ervaar, is iets wat ek nooit, ooit sal vergeet nie;
5. Professor Johan Henning het my professioneel gemaak wat ek is, en ek sal dit ook, nooit, ooit vergeet nie;
6. My absolute respek vir een van die grootste akademiese geeste wat ek ooit ontmoet het en wat my lewe en loopbaan massief beïnvloed het – “Vereer Professor Johan J Henning vir ewig”!

### *Louis de Koker, van La Trobe Universiteit in Australië, se e-pos lees as volg:*

Professor Johan Henning was my mentor. Sy geesdrif het 'n liefde vir Ondernemingsreg by my gekweek. Dertig jaar later poog ek elke jaar om Maatskappyereg aan te bied met dieselfde passie as wat hy aan die dag gelê het. Daardie liefde het gelei tot 'n meestersgraad onder sy leiding, gevolg later deur 'n doktorsgraad, met hom as promotor. Elke studieleidingsafspraak was 'n voorreg waar ek kon leer om met groter

noukeurigheid en fokus navorsing te doen. Dertig jaar later wend ek daardie lesse nogsteeds aan. Ek was bevoorreg om vir ses jaar nou saam met hom te werk in die Sentrum vir Ondernemingsreg waar ek geleer het dat goeie navorsing regsontwikkeling kan fasiliteer. Die lesse wat ek daar geleer het en die voorbeeld wat hy vir my gestel het, het my loopbaan gerig. Ek was nie alleen nie. Vele ander het die voorreg gedeel om by hom te kon leer, want hy was vrygewig en gulhartig as akademikus en as mens. Ons is hartseer vandag maar diep dankbaar dat ons die voorreg gehad het om Professor Johan Henning as mentor te hê. Innige simpatie aan Wilma, Jandré, sy vrou en kinders en die familie en die Kowsie kollegas.”

Louis het ook genoem dat dit ook te danke aan prof Henning was dat hy sy vrou ontmoet het!

*Riekie Wandrag het die volgende gestuur:*

Ek ag myself bevoorreg om een van Johan Henning se "akademiese kinders", te kon wees. Hy was enig in sy soort - 'n skerp sin vir humor, reuse intellek en 'n nog groter hart. Hy was mentor, studieleier, baas, en later jare ook vriend. Sy aanmoediging, vele aanbevelingsbriewe en die geleenthede wat hy vir ons reeds as nagraadse studente geskep het, is die rede vir my akademiese loopbaan. Ek het nie genoeg woorde om my waardering vir sy menswees en mentorwees uit te druk nie. Ek weet net hy laat 'n groot leemte in die akademie en in vele lewens. My innige simpatie aan Wilma en hul seun, skoondogter en kleinkinders.

*Margarite de Waal (nou Pretorius) stuur die volgende:*

Prof Henning was seer sekerlik een van die mees besondere mense met wie ek die voorreg gehad het om paaie te kruis in my lewe. Hy was waarlik my ander pa, wat dui daarop dat hy nie net belang gehad het by die akademiese sy van die mense met wie hy saamgewerk het nie, maar hy het erns gehad met jou totale menswees. As gevolg daarvan, het hy 'n onomkeerbare impak gehad op my lewe. Sy ondersteuning en aanmoediging was tasbaar en geen uitdaging was te groot om aan te pak nie. Hy was altyd gereed met advies en hulp en het selfloos leiding gegee waar hy kon.

Vandag word daar heerlik gelag in die hemel, want ek sal altyd Prof se skaterlag uit die maag onthou vir 'n grappie wat Prof sommer self vertel het – en vele kere was die “punchline” baie ver bo my intelligensie vuurmaakplek!

Tot weersiens – Marguerite (aka “Blommetjie”).

*Jaco de Bruin, ook vanuit Australië, skryf:*

Dit is baie moeilik om iets te sê omtrent 'n mens wat so lewensgroot in in jou eie lewe gestaan het en steeds staan.

Waar begin jy? En dan in 'n oomblik soos hierdie.

Oor die laaste paar dae het ek veral gedink aan sy liefde vir Mevrouw Henning. Veral die oproep in die middag om te sê hy is oppad huistoe wat afgesluit is met, "lief vir jou Willempie". Sy was sentraal vir hom. Dit is steeds 'n besondere voorbeeld vir my.

Dan het ek gedink aan ons ander vir wie hy ruim geleentheid gegee het om in sy skadu te groei en te vorm. Hy het die vermoë gehad om met elkeen van ons op 'n besondere wyse om te gaan en so, om ons potensiaal te ontsluit en vorm te gee aan ons as juriste en meer belangrik as mense.

Op n besondere wyse het hy die koers gegee, rigting gebaan en brandstof gegee wat vir my persoonlik die weggebaan het om te staan waar ek vandag staan. Sonder hom sou dit nie moontlik gewees het nie.

Daarom salueer ek u Professor en groet met die woorde van NP van Wyk Louw:

"Stil broers,  
daar gaan n man verby,  
hy groet,  
en dis verlaas  
[...]  
Gewis!  
en soos hy ons s'n was  
en is"

Vaarwel. Rus sag geliefde vriend!

Jaco en Prof Henning het 'n besondere band gehad deur hul liefde vir geskiedenis en dan in die besonder die Anglo-Boere-oorlog en die Tweede Wêreldoorlog. Prof H (soos ek hom altyd genoem het) het die agtergrond, feite en geheime van verskillende veldslae uit die Tweede Wêreldoorlog in die fynste besonderhede geken en het dit vreeslik geniet om erkende historici se erge foute ten aansien van veral wapentuig van die Duitsers en die Russe te ontbloot.

*Sandra du Toit het die volgende gestuur:*

Eers noudat ek elke dag met korporatiewe politiek te doen het, kan ek waardeur hoe buitengewoon professor Henning werklik was: Ja, ek moes my deel doen om te sorg dat ek goeie werk lewer, *maar* hy het skaamteloos elke deur binne sy vermoë vir my oopgemaak sodat ek uiteindelik van die Fakulteit kon weggaan. Ek dink nie ek sal ooit weer so 'n onselfsugtige baas, kollega en ondersteuner hê nie.

**Eksteen de Waal skryf:**

Dit was vir my 'n voorreg om Johan Henning te ken in verskillende hoedanighede – as professor in die Regte, as Dekaan van die Regsfakulteit [Eksteen, Prof Henning sou ten sterkste beswaar hierteen aangeteken het: dit was volgens hom “Fakulteit Regsgeleerdheid”! – Red], as die eerste persoon in die Leerstoel vir Ondernemingsreg wat deur ons (Ou Mutual) geborg is, as mentor en as vriend.

Prof Henning was een van die beste navorsers en publiseerders wat ek ooit geken het en sy kundigheid is globaal erken. Maar die respek wat hy afgedwing het was eerder sy kwaliteite as 'n wonderlike mens en lojale kollega en vriend. Hy het sy voete plat op die aarde gehad en kon met enige mens oor enige iets gesels en het dikwels 'n wonderlike humorsin ten toon gestel. Dit was 'n bewys van sy opregte belangstelling in en respek vir alle mense.

Ons gaan Johan Henning baie mis, maar sy nagedagtenis sal lewenslank by ons wees. Ons harte gaan uit na sy gesin, familie, kollegas en vriende.

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Anders as Jean, was my eerste kennismaking met Prof H in Handelsreg 100. Ek was doodbang vir hom gewees. Ek moet die storie vertel wat hy baie geniet het elke keer wat ek dit vertel het: Al wat ons in sy klas gedoen het, was om elke woord af te skryf wat hy gesê het. Skryf elke woord neer en gaan skryf dit dan in leesbare skrif by die koshuis oor. So kom ek later toe agter soos ek die lesing oorskryf dat prof H *actually* grappies in die klas gemaak het wat ek ook woordeliks neergeskryf het! Eendag het hy weer so 'n grappie gemaak met die gewone reaksie (geen) en toe sê hy: “Dames en Here, as julle meer van die reg geweet het, sou julle nou gelag het!”

Prof H het omgee vir die mense om hom. Ek het eendag baie, baie lank gelede met die voortvarendheid van die jeug by hom ingestorm en oor 'n baie moeilike kollega gesê: “Hoekom *fire* prof hom nie?” Prof H het rustig vir my gesê: “Maar Eli, ek ken sy kinders.” Daardie woorde het by my gebly en ek het later besef dat hy daardeur vir my twee dinge geleer het, naamlik eerstens dat mens kan kies hoe jy teenoor mense ingestel gaan wees en hoe jy gaan reageer. Jy kan help of jy kan “*fire*” en in die besondere geval het prof H uit sy pad gegaan om die kollega te help. Tweedens dat mens mag omgee vir diegene om jou en dan nog steeds jou werk kan doen.

Prof H het 'n klein hartjie – 'n baie, baie klein hartjie – gehad. Elke bedelaar is gehelp. Ook elke student en personeellid wat by hom gehuil het, het hy probeer help.

Prof H het my oor my akademiese loopbaan vanaf 1991 op soveel wyses bygestaan dat ek nie eers alles kan noem nie en ek het soveel van hom geleer, maar ek dink die twee goed wat bo alles uitgestaan het, was sy menslikheid en sy nederigheid. Daarin is daar 'n les vir elkeen van ons.



Prof H was een van die nederigste mense wat ek geken het. Dit is ongelooflik hoe iemand met sy prestasies, akademiese insig en vermoëns so nederig kon wees. Hy het jou nooit laat voel of jy sy mindere is nie.

Die Fakulteit Regsgeleerdheid was bevoorreg om hom lank aan die stuur van sake te hê. Hy het 'n fondament gelê waarop daar verder gebou kon word. Sy omgee vir sy kollegas staan egter bo alles. Sy akademiese statuur is onge-ewenaard in Handelsreg en sy navorsingsuitsette uitsonderlik. Hy was 'n rolmodel, leermeester, mentor, raadgewer, vriend, kollega, dosent, 'n internasionaal-gerekende en erkende navorser en akademikus en hy was 'n gesinsman. Ek moet byvoeg dat ten spyte van al sy prestasies, hy die trotsste op die titel "Oupa" was!

Met sy uittreerede, ten tyde van sy aftrede, het ek 'n paar dinge oor prof H genoem wat min mense weet. Hy het die een wat volg baie amusant gevind: "Prof H ken die woorde (dit is *al* die dialoog) van die fliëk *My Cousin Vinny* uit sy kop uit en kan dit gepas aanhaal!"

Op 'n baie persoonlike vlak: Prof H was altyd daar vir my. Hy was my studieleier en mentor en hy was die argitek van my akademiese loopbaan, maar hy het ook al die ander groot gebeure in my lewe gedeel: hy was by my gradeplegtighede, by my troue, by Erwin (my seun) se doop, by my ouers se begrafnisse en by my oorlede man Petrie s'n. By die begrafnisse het hy my getroos uit sy opregte geloof en vaste oortuiging. Hy het absoluut geglo in sy Skepper en Verlosser. En dit is wat veral troos bring in hierdie tyd.

Tannie Wilma, Jandré en Andri, sy twee kleinkinders (Prof se trots), asook die res van Prof se familie: van die Fakulteit Regsgeleerdheid: ons innige simpatie en meegevoel en mag ons Hemelse Vader julle troos en vertroosting in hierdie moeilike tyd bied.

Soos Jaco gesê het: "*Stil broers, daar gaan 'n man verby ...*"

Prof Johan Henning, ons sal u nooit vergeet nie.

**Elizabeth Snyman-Van Deventer**

**Departementshoof: Handelsreg /**

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