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FOREWORD

The full impact of the Covid-19 pandemic will be felt long after the last lockdowns have ended. It affected almost every aspect of our lives. The seventh Annual International Mercantile Law Conference at the University of the Free State was no exception. Initially scheduled to take place in November 2021, it had to be postponed to the next year because of the pandemic. Arranging meetings from the vaccination queues and ending emails with “stay safe and well” marked the planning for the conference. In South Africa, an adjusted alert level 1 was in place from 1 October 2021 to 4 April 2022. When the conference finally took place in November 2022, it was a reunion of academics from all over who contributed and participated with newfound energy and perspective. Even though it did not explicitly form part of the call for papers, the question that was on everyone’s minds was how to address ourselves in the current context. How do we teach differently, write differently, and think differently in the wake of a pandemic which had far-reaching financial implications at all scales: the domestic, the national and international, and undoubtedly had a lasting impact on the field of Mercantile Law? In this special edition, we bring together contributions that had their genesis at this very conference, and our hope is that, given their origin, they will spark a fresh way of thinking.

In the piece entitled *The employment status of uber drivers: Comparing approaches by courts in the United Kingdom and South Africa*, S Chayya explores interesting recent case law on the relevant topic of platform work. Arguing that digital platforms have brought about a shift in the traditional view of employment relationships as mostly permanent, meaning generally of a full-time nature and, in principle, one that continues until termination of employment or the reaching of an employee’s retirement age, the author calls for legal reform in South Africa, which must draw on examples in the United Kingdom that will extend the legal protection as employees to uber drivers.

Moving from Labour Law, the scope of the public interest is investigated in determining how far taxpayer information stays confidential, especially for those individuals at the forefront of allegations of corruption in South Africa, a pertinent topic within a pandemic where draconian actions of any state are scrutinised by the media and citizens alike. LG Tredoux analyses in

her piece *Taxpayer confidentiality versus access to information, freedom of expression, and the public interest in the tax affairs of the state president: Arena Holdings PTY LTD T/A Financial Mail & Another v South African Revenue Service & Others – “A giant leap for mankind” or the opening of another “Pandora’s box”?*

TE Coleman and LG Mpedi, in their piece *Collective bargaining and the representation in the gig economy in South Africa: A call for a purposive approach*, further address the growing interest in platform work and participation in the gig economy. They specifically focus on trade unions in this sector and call for the revitalisation of trade unions to extend collective bargaining and representation to workers in the gig economy.

In the piece *What constitutes “unreasonable delays” in finalising court cases that led to the withholding of members’ retirement benefits?*, MC Marumoagae provides insight into the strategies employed by the High Court and the Office of the Pension Funds Adjudicator in addressing delays in resolving court cases initiated by employers against employee-members of retirement funds, especially in cases involving alleged economic losses. Despite relying on the concept of “unreasonable delay” to decide whether retirement funds should release benefits during the resolution of employer-initiated cases, both the courts and the adjudicator lack a practical test for making such decisions. The absence of a clear framework has led to ongoing legal challenges for retirement funds, underscoring the need for the judicial development of a comprehensive test to guide dispute-resolution institutions and retirement fund boards in addressing employers’ requests to withhold members’ benefits based on court cases, particularly when delays occur.

The serious issue of sexual misconduct by educators towards learners in public schools is addressed by C de Villiers and CJ Garbers in their piece *The Legislative Regulation of Sexual Misconduct by Educators in South African Public Schools*. They look in detail at sections 17 and 18 of the Employment of Educators Act 76 of 1998, alongside a large number of arbitration awards made to identify the gaps in the current legal framework. They call not only for the broadening of the definition of sexual misconduct in the act but also for a change in approach.

BP Greengalgh investigates recent amendments introduced by the Labour Relations Amendment Act 8 of 2018 in the piece *Strike Ballots in Present-Day South Africa: Examining the Intersection Between Non-Compliant Trade Unions, De-Registration, and the Registrar*. The amendment act re-introduces compulsory and recorded strike ballots. Addressing violent intimidation in particular, the author argues that increased protection against such intimidation will lead to better industrial relations. This duty to delicately balance the right to strike while also upholding constitutional principles of accountability, transparency, and openness rests, as the piece effectively shows, on the Registrar of Labour Relations.

In the piece *The role and impact of constitutional values of ubuntu, equality, and human dignity in the interpretation and protection of the right to have access to social security in South Africa*, Cl Tshoose enters the debate on the universal approach to human rights and social security. The author uses a value-based approach to define social security law and calls for a normative and constitutional basis for the right to access social security. The elephant in the room, namely the lack of adequate resources, is also covered. The important contribution of this piece lies in the emphasis on the importance of Ubuntu's constitutional values, equality, and dignity in adjudicating and understanding social security rights. This is done carefully with reference to case law and extensive discussion of these values.

The edition aptly ends with the piece of S De Lange on the *Secrecy of taxpayer information and the disclosure thereof by an order of court in terms of the Tax Administration Act 28 of 2011 and the Promotion of Access to Information Act 2 of 2000*. In addition to the contribution of LG Tredoux in this edition, the secrecy of taxpayer information is compared to the mandatory disclosure thereof when it is in the public interest regarding relevant legislation and case law, such as the Arena Holdings cases. Defining what is in the interest of the public was often debated during the lockdowns during the pandemic. That debate continues, not only in academic circles but commissions of enquiry to ensure that future legislative reform guarantees fair and socially just treatment of all.

We thank all participants at the seventh Annual Mercantile Law Conference at the University of the Free State. Thank you for coming out of the Covid-slumber to contribute to academic debate and form part of a community of scholars again. Thank you to the editorial team at the Journal for Juridical Studies and, of course, to all the contributors for making this volume possible.