



# Introduction

## Editors' Introductory Overview

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Higher educational institutions (HEIs) are underpinned by the principle of academic freedom in both pedagogical approaches of teaching and learning and that of research. South Africa (and many other countries) recognises the principle of academic freedom as forming part of the freedom of expression under section 16 of the Constitution of the Republic of South Africa, 1996. However, global economic and financial pressures and technological developments have precipitated changes in the operation of many HEIs. Some of these changes include, for example, the commercialisation of research and intellectual property of HEIs, a drive for profit margins, greater research outputs, and an increase of student throughput within the HEI structures. Therein, the commerciality and business of running HEIs have facilitated – and, in some instances, strained – traditionally held academic dynamics such as academic freedom, constitutionalism, and pedagogical approaches in teaching, learning, and research. The purpose of this co-edited book is to explore the contemporary dynamics of the corporatisation of HEIs and the possible benefits, tensions, and integration of academic freedom, pedagogical

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approaches, and principles of constitutionalism in order to further the discourse of teaching and learning and the future of HEIs within the South African context.

Against this background, several academics from different legal disciplines have contributed chapters in this book wherein the commerciality and business of HEIs have been analysed and, in some respects, have challenged both in relation to the operation and the teaching and learning dynamics of HEIs. The academic discourse is presented in three broad categories of discussion (or parts).

The first part considers the business and commerciality of HEIs and how this may impact the operation of HEIs. This is presented in four chapters. The first chapter, *The epidemic of corruption on the corporatisation of higher institutional education in South Africa*, sets out the dangers of greed and money by establishing the risks of corruption within HEIs as such institutions become more focused towards profitability and commerciality. The structure and functioning of HEIs are also impacted, specifically how modern insurance requirements are structured in the chapter titled *The impact on procurement of adequate insurance in the ever-changing risk landscape of higher education institution*. Herein, there is a focus placed on the way liability and risk (also modern phenomena in HEIs) are closely linked to mitigating such risks through appropriate insurance, which comes at a cost for the HEI. The third chapter, titled *Higher education institutions and construction contracts: the demand guarantee as a means of security*, delves into the practicalities of infrastructure within HEIs (which is directly linked to the ability to provide teaching and learning services to students) and is focused on the process of entering into and securing demand guarantees. The fourth chapter in this part, *The nature of the South African university-student contract*, considers the contractual basis on which universities and students engage. As contracts are commercial in nature, this chapter highlights that the university-student contract is not only commercial but has many other dynamics and is, therefore, not completely compatible with a pure commercial and business-centric outlook of HEIs.

The second part is about how the business and the commerciality of HEIs may directly (or indirectly) impact academic freedom. This is presented in three chapters, wherein the friction between an academic's duty towards their employer (being the HEI) and an academic's right to academic freedom in a South African context is established in the chapter titled *Academic freedom and academics' right to criticise their employer*, to illustrate that there are more duties placed on an academic employee than that of a so-called ordinary employee. This, in turn, illustrates that HEIs cannot be considered as purely commercial in nature, but rather are more than simple employers. The second chapter in this part, titled *Ghana's proposed Anti-LGBTQ+ Bill and its implication on academic freedom in institutions of higher learning*, highlights that the new anti-LGBTQ+ legislation introduced in Ghana has a direct bearing on academic freedom, which inhibits the traditional function of academics. The final chapter in this section, *Some perspectives on the impact of disciplinary procedures on academic freedom in state universities in Zimbabwe*, illustrates how legislation regulating HEIs in Zimbabwe has an impact on academic freedom, especially considering new disciplinary measures imposed on HEIs in Zimbabwe. This section highlights how specific legislative instruments that intend to assist in the functioning of HEIs and society may impact academic freedom and the functioning of HEIs.

The third and final part of the book considers how the business and commerciality of HEIs may impact on teaching and learning and pedagogical approaches within HEIs. This is presented in three chapters. In the chapter *The stone left unturned: an assessment of the impact of marketisation on the higher education experience of students with disabilities*, specific focus is placed on students living with disabilities and the function of HEIs in dismantling the barriers for those students living with disabilities. The second chapter in this part, *Infusing decoloniality into the pedagogy of international law at African tertiary institutions*, focuses on decolonisation of international law and how the process of decolonisation is impacted by the functioning of HEIs. Finally, the impact that Covid-19 had on first-year law students at the University of Johannesburg is considered in the context of the

structure of HEIs on teaching and learning in the chapter titled *Pedagogical approaches and lived experience of teaching and learning a first-year law subject during the Covid-19 lockdown in South Africa*. This then illustrates that HEIs have a greater function than simply making profits and being commercially viable. Rather, HEIs have a social function, which trumps that of its business and commercial endeavours. The chapter suggests that perhaps, rather than focusing on the profit margin, HEIs should refocus on their greater social responsibility.

In summary, this book provides an overview of the complexities of transforming HEIs into hubs of commerce and illustrates that HEIs cannot simply be regarded as business enterprises. Rather, HEIs have a social dynamic that is far greater than simply making a profit. HEIs have a unique and integrated function within the fabric of society and, therefore, require more careful consideration of the various dynamics influencing the structures and stakeholders of HEIs.