Introduction

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COVID-19 fundamentally effected the way we live, work and see the world. Marija Buric, Secretary General of the Council of Europe, remarked that "while the virus is resulting in the tragic loss of life, we must nonetheless prevent it from destroying our way of life—our understanding of who we are, what we value, and the rights to which every European is entitled" (https://www.coe.int/en/web/human-rights-rule-of-law/covid19). Closer to home, at a meeting of African Ministers of Health to discuss the COVID-19 situation in Africa, an appeal was made to all AU Member States to "... leverage harmonized continental digital technologies for the response to COVID-19, including for addressing its socioeconomic impact, paying particular attention to digital inclusion, patient empowerment, data privacy, and security, legal and ethical issues, and the protection of personal data, which are values enshrined in the official African Union Trusted Health framework, and its digital archetypes" (African Union Communique: 8 May 2021).

Against this background, colleagues at the Law Faculty of the University of Johannesburg contributed to research on the topic *The Impact of COVID-19 on the Future of Law and Related Disciplines.* The title seems to suggest that the COVID-19 pandemic will have a lasting effect on future developments in the legal field. Although it might be argued that the theme is extensive and lacks focus, the aim with the choice thereof was to allow colleagues the opportunity to consider critically, the impact of the pandemic on their respective fields. It might also be argued that post-pandemic, all may very well return to the *status quo ante.* The true and long-lasting effect, if any, of the COVID-19 pandemic on legal development, however, remains to be seen and only the future will tell. What is clear, however, is that society as a whole had to adapt to the changing circumstances brought about by the pandemic: survival in the new normal required agile systems and procedures.

The respective authors presented the fruits of their in-depth research on various topics in several thought provoking papers. Not all the contributions were, however, publishable, but the research

presented for publication, after a double blind peer-review process, covered a wide spectrum of legal disciplines, including international law (contract, trade and investment law), constitutional law, data protection law, environmental law, law of persons and the family, law of delict, civil procedure, labour law and legal research methodology.

The first three contributions focus on international law. In their contribution "COVID-19 regulations as overriding mandatory provisions in private international law—A comparison of regional, supranational and international instruments with the proposed African Principles on the Law Applicable to International Commercial Contracts", Jan Neels and Eesa Fredericks provide a comparative study of the position of overriding mandatory rules in regional, supranational and international conflicts instruments, with reference to the specific Rome I Regulation on the Law Applicable to Contractual Obligations (2008) and the proposed African Principles on the Law Applicable to International Commercial Contracts (2020). They refer to COVID-19 regulations as an example of overriding mandatory provisions in the context of the disruption of international commerce and consider the proper law of the contract, the *lex fori* and the law of the country of performance as the governing law, as well as the application of the legal systems of other countries. Their research indicates that, although strongly influenced by the corresponding provision in the Rome I Regulation, more clarity is provided by article 11 of the African Principles. In the final analysis, the authors submit that the law applicable to the contract should govern the effect of an overriding mandatory rule on contractual liability, unless the provision itself stipulates the consequences.

Charl Hugo explains in "The impact of the COVID-19 pandemic on international trade, with specific reference to the role of trade documentation", the importance of the documents used in international trade and how they feature in payment transactions. He considers the function of different rules of the International Chamber of Commerce (ICC) and in particular the Uniform Customs and Practice for Documentary Credits (UCP) and the Uniform Rules for Collections (URC) and analyses the development of companion rules by the ICC to facilitate trade digitisation—especially the electronic supplement to the UCP (the eUCP), the Uniform Rules for Bank Payment Obligations (URBPO) and the Uniform Rules for Digital Trade Transactions. In conclusion, he strongly argues that in view of the disasters of the eruption of Eyjafjallajökull in Iceland in 2010 and the COVID-19 pandemic in 2020, all role players should come together

urgently to enable worldwide trade digitisation under the auspices of the International Chamber of Commerce.

In "COVID-19 Related Claims: The Final Nail in the Coffin for International Investment Law?", Louis Koen indicates that international investment law has increasingly been criticised over its use by investors to challenge public interest regulations. He points out that there has also been growing concern during the COVID-19 pandemic that investment arbitration will be used to challenge measures implemented by states to curb the spread of the virus. His contribution reflects on the most problematic aspects of contemporary international investment law and critically analyses the effectiveness of various model reform treaties in rebalancing the rights of investors and host states and he makes suggestions on what investment law should look like in a post-COVID-19 society.

Turning to privacy protection in "Legal uncertainty under the Protection of Personal Information Act during the pandemic—Exploring European case law as an interpretive guideline", Jonas Baumann and Nazreen Ismail indicate that COVID-19 lockdowns compelled society to digitalise and thereby substantially increased the processing of personal information. Key provisions of the Protection of Personal Information Act 4 of 2013 (POPIA) were enacted from 1 July 2020, which enabled full enforcement from 1 July 2021. As this is the first comprehensive South African data protection provisions, legal uncertainty was created due to the highly abstract formulation of the act. Baumann and Ismail aim to increase legal certainty with their contribution by exploring European data protection case law when interpreting the POPIA, taking into account recent decisions of the South African Constitutional Court. They analyse the European case law in the context of three fundamental concepts of data protection law, namely, personal information, joint responsibility and consent.

In "No time to waste. Reflections on waste management in South Africa during COVID-19: Lessons to be learned?", Jenny Hall states that the COVID-19 pandemic is the most immediate reminder of the consequences of not taking a serious approach to addressing environmental issues. She indicates that early statistics show the aggravated effects of the virus experienced by people living in polluted cities and the link between poverty and higher death rates and draws a parallel between the destruction of habitats as the underlying environmental issue at the heart of the outbreak. Her research considers a range of environmental policy responses by the South African government since the pandemic began and assesses the extent

to which they lay a foundation for the changes that are required and the extent to which they provide a basis for realising environmental justice which disrupts the disproportionate environmental burden that the poor currently experience.

Amanda Boniface focussed her research on "The impact of COVID-19 on domestic violence in South Africa". She indicates that the pandemic and the resulting lockdowns have had a negative impact on the incidence of domestic violence in the country and concludes that the pandemic has exacerbated pre-existing problems in society that cause domestic violence and that legislation alone is not sufficient to solve the problem of domestic violence in South Africa.

Whitney Rosenberg takes a closer look at infant abandonment in her contribution. Although no official statistics are available in this regard, she assumes that the number of children abandoned would have increased as a result of increased poverty brought about by the pandemic and resultant lockdowns. After consideration of the position in other jurisdictions as well as the possible constitutional implications, she proposes an amendment to the Children's Act 38 of 2005 to provide for baby savers as a solution.

In "The psychological effects of COVID-19 and lockdown on parental alienation: Emotional harm as a remedy for an alienated parent?", Franaaz Khan considers the position of parents involved in a tug-of-war over children, especially with courts being temporarily closed, travel restrictions and lockdown regulations as it became harder to enforce custody agreements. She indicates that parental alienation is a recurring problem that affects many families who are experiencing high conflict, separation and divorce and defines parental alienation as a process whereby one parent undermines the child's previously intact relationship with the other parent. Her research indicates that although parental alienation has been described in the psychiatric literature for at least 60 years, it has never been considered for inclusion in the Diagnostic and Statistical Manual of Mental Disorders (DSM) and various proposals and opinions have been made for its inclusion. Her paper focusses on the civil remedies that are available for an affected parent and she proposes that the additional delictual remedy for emotional distress and harm be utilised by an alienated parent against the alienator if their case warrants it.

Yvette Joubert considers the vexing challenge of access to court in an increasingly online environment. She discusses the compatibility of technology-based reform in the context of the normative constitutional values in South Africa and, more particularly, the right of access to

justice against the background of developments in other jurisdictions and concludes that South Africa's socio-economic, service delivery and governance problems should be a warning against the hasty adoption of advanced online litigation systems found in other jurisdictions. She recommends a more pragmatic solution of incremental, rather than revolutionary reform.

Labour law is the focus of Kgomotso Mufamadi and Katleho Letsiri in "Mandatory vaccination against COVID-19—Implications for the South African workplace." They investigate the question in the employment context as to whether employers can compel employees to vaccinate. Compulsory vaccination against the disease would constitute compulsory medical treatment, which is an area that is, at present, not regulated in South African labour legislation. In their research, the authors consider the National Health Act 21 of 2003, the employer's duty to provide and maintain a safe working environment in terms of the Occupational Health and Safety Act 85 of 1993 as well as the provisions of the Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces issued by the Department of Employment and Labour which contains guidelines for the implementation of mandatory vaccination policies in the workplace. They make recommendations as to whether mandatory vaccinations are justifiable in labour law, considering human rights implications and the limitation of rights in terms of section 36 of the Constitution.

In "Shifting of the academic landscape during COVID-19 and beyond", Michele van Eck indicates that COVID-19 fundamentally shifted the *status quo* of many academic activities resulting in, for example, a sudden move to online teaching and learning and different online approaches to processing data in academic research. In addition thereto, further changes were brought about by the Protection of Personal Information Act 4 of 2013 (POPIA) that came into full effect on 1 June 2020. The current development of a code of conduct by the Academy of Science of South Africa (ASSAf) in terms of section 60 of POPIA and intended to regulate and promote a uniform approach to the processing of personal information in all academic research activities within South Africa, further contributes to the changing environment. She emphasises the different methodological approaches employed in the three broad and general categories of legal research (being that of practical legal research, legal research in relation to humanities and legal research as a social science) and indicates that within these categories of legal research there are instances that empirical data is required for research efforts. It is especially in those instances that COVID-19, POPIA and the anticipated code of conduct may play an

important role in legal research activities. The paper argues that legal research is not immune to the changes to the academic landscape during the COVID-19 era, with specific reference to legislative interventions that have disrupted the *status quo* and a framework for the collection of data in academic research activities required by COVID-19, POPIA and possibly the new code of conduct is presented for legal research-related activities.