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PROMOTING RIGHTS THROUGH COURT-BASED ADR?
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This article examines the extent to which mediation and ADR can be used to modernise civil litigation in South Africa in line with comparable developments in other jurisdictions. It does so in the context of Amartya Sen’s theory of justice, based on individuals’ capacity to order their lives, and of contemporary access of justice notions relating to court procedures. Through a fictional case study on court-based ADR in a franchise dispute the article explores ways in which a regulatory framework can accommodate ADR in case management systems and delineates some of the institutional requirements for such an arrangement. It makes a proposal along these lines, and evaluates it in terms of Sen’s theory and other justice norms.

TOWARDS AN ETHICAL RELATION TO THE NONHUMAN OTHER: DECONSTRUCTION, VEGANISM AND THE LAW
Jan-Harm De Villiers 18

This article explores the ethical significance of deconstruction for law and advances veganism as a form of deconstruction that exposes and resists the anthropocentric character of social and legal configurations. The article engages with Jacques Derrida’s project of deconstructing the (human) subject and draws on Drucilla Cornell’s reconception of deconstruction as the philosophy of the limit. By examining the philosophical foundations of justice and deconstruction, the article exposes justice as the limit to a system of law and investigates the capacity of deconstruction to advance the ethical relation (to the nonhuman Other).

AUTOLOGOUS STEM CELL THERAPY: AN ANALYSIS OF THE SOUTH AFRICAN REGULATORY REGIME
Donrich W Jordaan 31

This article analyses the regulation of autologous stem cell (ASC) therapy in South Africa. The analysis is structured in three parts: In the first part of the analysis it is argued that ASC preparations qualify qua registrable medicine in the subclass of biological medicine within the regulatory framework established by the Medicines and Related Substances Control Act (Medicines Act). In the second part of the analysis it is argued that ASC therapy is indeed subject to regulation, primarily in terms of the regulatory framework established by the Medicines Act that effectively requires an ASC therapy to pass the rigorous test of clinical trials before it may be prescribed or supplied to a patient. It is further argued that there exist various layers of additional regulatory rules – some from the regulatory framework established by the Medicines Act and some from the regulatory framework established by the Human Tissue Act – pertaining to the harvesting, storage and preparation activities of the ASC therapy process. In the third part of the analysis a possible human rights challenge to the regulation of ASC therapy is explored: an argument is developed that employs the right to control one’s own body to argue for special exemption of ASC therapy based on its autologous nature that differentiates it from mass-produced medicine. With reference to case law, it is argued that such challenge will fail. Finally, it is argued that the system of clinical trials that is core to the current regulation of medicine in general and ASC therapy in particular is aligned with human dignity. It is therefore concluded that ASC therapy is not only comprehensively regulated in South Africa, but also that the current regulatory regime is for the public good and aligned with our country’s commitment to human rights.
LAW STUDENTS AND FREEDOM OF EXPRESSION: AN EMPIRICAL CASE STUDY

Victoria Bronstein, Daryl Glaser and Merle Werbeloff 55

Against a background of rhetorical and potential legal assaults on freedom of information and media freedom in South Africa, the authors set out to investigate levels of support for freedom of expression amongst law students at the University of the Witwatersrand. The findings were mixed, with evidence that students strongly support generic pro-freedom of expression statements but that their support hedges when confronted with hard cases, such as satirical Zapiro cartoons. While students give weak support to political freedom of expression directed at the government, they are outrightly hostile to government. There is considerable diversity of views amongst black students and some evidence that racial differences in support for freedom of expression are influenced by attitudes to the current government. The results add to other evidence suggesting that supporters of freedom of expression in South Africa may not be able to call upon consistent or robust elite and popular support in resisting repressive government moves.

SUBSTANTIVE EQUALITY FOR DISABLED LEARNERS IN STATE PROVISION OF BASIC EDUCATION: A COMMENTARY ON WESTERN CAPE FORUM FOR INTELLECTUAL DISABILITY v GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Charles Ngwena and Loot Pretorius 81

Disabled learners are a protected group with rights to equality and basic education under the Constitution. Taking substantive equality and the right to basic education seriously requires the state, especially, to commit significant resources and take positive measures to ensure that the education system adequately accommodates the needs of disabled learners. However, the historical exclusion and marginalisation of disabled people from the education system, the finite nature of economic resources and the fact that socio-economic rights are generally realisable incrementally, can easily provide the state with excuses rather than valid justifications for not meeting the learning needs of disabled learners. This is even more so, if disability is understood as something intrinsic to the disabled learner rather than something that also implicates the larger education system and socio-economic environment. The aim of this article is two-fold. Firstly, it uses the decision of the Western Cape High Court in Western Cape Forum for Intellectual Disability v the Government of the Republic of South Africa (2010) as an opportunity for interrogating the relationship between substantive equality and socio-economic rights as well as the relationship between the state and its obligations towards private ‘partners’ in the discharge of its socio-economic obligations through the use of so-called state ‘subsidies’. Secondly, and more broadly, the article uses the education policy that was challenged in Western Cape Forum to highlight that disability is a severe site of discrimination. Even in post-apartheid South Africa, where the Constitution protects the equality rights of disabled people, it is easy for state policy that claims to be advancing a transformative agenda to paradoxically become an instrument for giving legitimacy to a disabling discourse. Ultimately, it is argued that when dealing with disability, equality jurisprudence needs a transformative theory of difference in order to guarantee inclusive citizenship.

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