

The Wits Faculty of Law 1922-1989

A Story with a Personal Touch

In recognition of the vital role played by our universities in the development of the law and the legal profession an article by Professor A H van Wyk on the Law Faculty of Stellenbosch was published in the April 1989 edition of CONSULTUS. In the article appearing in this edition Professor Ellison Kahn deals with the Law Faculty of Wits. Hopefully, similar articles on other law faculties in South Africa will appear in future editions of CONSULTUS.

I Conception and Gestation

Conception took place in 1905. Law classes then commenced at the Transvaal Technical Institute, the oldest predecessor of Wits. The period of gestation was seventeen years: in 1922 the University of the Witwatersrand was born.

The Institute offered tuition for the Law Certificate for attorneys and the Civil Service Lower Law Examination. The head of the department was Professor George Morice, who had been a Transvaal judge in republican days, and was practising at the Pretoria Bar. He remained until mid-1908, his notorious lack of fluency notwith-

standing. In mid-1906 the Institute became a branch of the Transvaal University College, the other branch being in Pretoria. By now J Colin Murray had joined Morice, bringing his private pupils across. Murray (1876-1947), a Scottish solicitor, had practised as an attorney in Cape Town from 1899 to 1902, and then moved to Johannesburg, where his professional ability soon became apparent. Murray's love of education led to his serving Wits with devotion until shortly before his death, lecturing in a part-time capacity from 1906 to 1946. Despite his lack of a university degree, Wits made him part-time Professor of Mercantile Law in 1927, a position he held up to the end of 1946. Even in advanced age Murray was delightfully pawky. A member of his class on bills of exchange nearly fifty years ago, I remember his requiring his students to recite sections of the Act (which he was reputed to know entirely by heart), and his pronouncing (was it in a Scottish brogue?) *secondly* as *sigh-kindly*.

In 1909 the College started conducting classes in addition for LLB students of the then University of the Cape of Good Hope, a purely examining body and the only degree-awarding institution in southern Africa.

1910 saw the Pretoria branch of the College become independent, snatching its name. The Johannesburg branch was now the School of Mines and Technology, which in 1918 became a

constituent college of the newly created University of South Africa, a federal examining institution succeeding the University of the Cape of Good Hope. Pressure for the creation of an independent university in Johannesburg proved irresistible. In 1920 the School became the 'University College, Johannesburg' with 812 students, and the next year the University of the Witwatersrand, Johannesburg, (Private) Act was passed, which was brought into operation on 1 March 1922.

Classes of the School had been held since 1910 at its attractive building on Plein Square opposite Park Station (subsequently part of the Technical College and thereafter part of the Technikon) and from 1915 also in the unsightly, uncomfortable wood and corrugated-iron structures, known (even in official records) as the Tin Temple, to the west of the square, structures that had been vacated by the municipality in 1915 on the completion of the Town Hall. Until the end of 1928 almost all law lectures took place in the Tin Temple.

From mid-1908 until the end of 1912 Colin Murray conducted all the law classes. Then he was joined by J V Brink BA LLB as a part-time assistant lecturer. Brink, who was at the Johannesburg Bar, where later he became a leading silk, helped Murray from 1913 to 1920. No one has ever drawn attention to Jack Brink's services to our faculty.



Professor J Colin Murray

II Babe in Arms: 1922-1925

The Department of Law of the new university had only two members of staff, both part-time: Murray as lecturer and Dean of the Faculty of Law, and O D Schreiner BA (CGH) MA (Cantab) as an assistant. Schreiner, aged 31, after taking a brilliant degree in law at Cambridge and gallant service in the Great War, had joined the Johannesburg Bar in October 1920, and already in 1921 had begun delivering part-time lectures in law at the University College, Johannesburg. He continued lecturing until 1929. Arthur Suzman QC, who later studied at Oxford and Harvard, found Schreiner one of the most outstanding teachers he had encountered.² Oliver Schreiner remained a member of the Board of the Faculty of Law from 1922 until his death in 1980, a period that will never be equalled. From 1962 to 1974 he was Chancellor of the University, which in 1961 had conferred the LL.D *honoris causa* on him. On his distinguished career as a judge there is no need to elaborate.

In 1923 another member of the Johannesburg Bar joined the part-time staff and the Board: W H Ramsbottom BA (CGH) BA LLB (Cantab), then 29. After valorous war service, he had commenced practice in 1921. 'Rammy', that saint-like character and great judge, lectured until 1928, writing his lectures on the blackboard in a magnificent hand. He remained on the Board until his death in 1960.

Another early part-time lecturer was Norwood E Coaker, also of the Johannesburg Bar, and later a silk, who remained from 1925 to 1938: a cultivated gentleman, very precise in speech. Mention must also be made of Harry Rissik, a part-time lecturer in the period 1926-34.

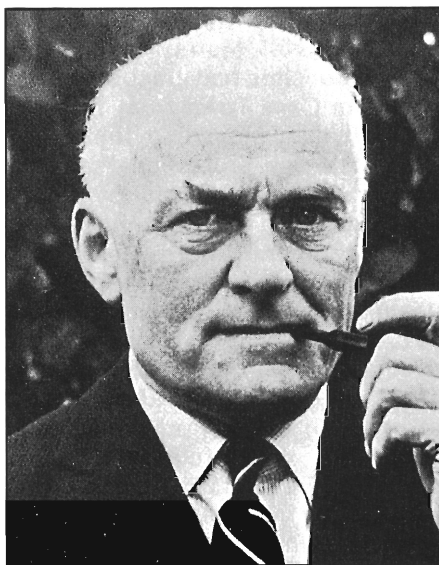
The LLB lectures were delivered in the Tin Temple in the late afternoon. The LLB was a postgraduate degree extending over three years, which could be reduced by one year through obtaining credit in certain law courses for the BA. The fees for students were eighteen guineas a year, raised in 1927 to twenty guineas. Translated into today's rands, the fees then were about R1 200. Today they are around R3 500 — but the student receives far more in return.

In 1925 the expenditure on the salaries of Murray, Schreiner and Coaker was £900, at the rate of £2 a lecture — say R100 in present terms. There were only 49 students in the Faculty of Law

(23 taking the LLB, 20 the Law Certificate and 6 the Civil Service Lower), out of a total University enrolment of some 1 300.

Of a law library there was not a sign. While students were allowed to use the Supreme Court library, it is doubtful if many did, for a law course amounted to no more than lectures on a condensed version of the prescribed textbook, such as *Salmond on Jurisprudence*, *Buckland's Manual of Roman-Dutch Law*, *Lee's An Introduction to Roman-Dutch Law*, *Dicey's Law of the Constitution*, parts of *Gardiner and Lansdown's South African Criminal Law and Procedure* and *Mackeur-tan's Sale of Goods*.

Though students were not expected to *read* law in the true sense and there was a law school in name only, graduates emerged who were to distinguish themselves in the legal profession. In 1922 two students obtained the LLB. One of them, Oscar Rathouse, became an eminent silk at the Johannesburg Bar; in 1947, after an acting appointment on the Transvaal Bench, he declined an offer of a permanent ap-



Professor R G McKerron
A photograph taken in the early 1960's

pointment, in an attempt to help existing judges secure better remuneration. The offer was not made again. Among the four who qualified in 1923 was B A (Sonny) Ettliger, later also a leader of the Johannesburg Bar. The following year saw only one LLB — Victor Rosenstein, who, too, in later years was a skilled senior at the Johannesburg Bar. In 1925 six students obtained the degree. Two made their mark at the Jo-

hannesburg Bar. One was Harold Hanson, who became a KC and was a brilliant trial advocate — 'Hansonian eloquence' was a byword. Another was H J B Vieyra, who was part-time lecturer in the Department of Law for the LLB and attorneys' and civil service courses from 1943 until his elevation to the Transvaal Bench in 1963. His rather precise and correct manner of speaking hid his true modesty and warmth. How well I remember the spats he wore in winter, wishing that I had the courage to do what he did.

III Growing Up: 1926-1945

In 1925 the University created a full-time chair of law. It was filled in 1926, the successful applicant being Robert Gordon (Robin) McKerron (1900-73), aged 26, another Scot, who had taken brilliant degrees: an MA in Classics at the University of Aberdeen, and a BA in the honour school of jurisprudence at Oxford, followed by a BCL, for which he received the highly prized Vinerian Scholarship. McKerron was appointed Dean of the Faculty of Law and Head of the Department of Law in 1927, positions he held until he left on active service in August 1940. On his return to civil life in mid-1945 he resumed these positions. But his years as a prisoner of war had taken their toll of his sensitive and highly strung personality. He resigned early in 1947 to practise at the Johannesburg Bar. Until 1955 he was a part-time lecturer. Then he left the city, to take up various academic posts at other universities, most of the time at Rhodes.

McKerron was a perfectionist, with a laser-beam-like concentration on matters engaging his attention that caused him to be absent-minded. The story is told that he arranged two classes in different subjects in adjoining rooms at the same time, and coped by lecturing during the hour for a few minutes in the one room followed by a few minutes in the other one. But he performed his administrative duties efficiently as a rule. The able student appreciated his lectures. Everyone appreciated his old-world courtesy and charm.

McKerron immediately decided to build up a law library. Since 1921 the University Council had held the sum of £573 handed to it by the trustees of the Leonard Memorial Fund to keep alive the name of James Weston Leonard KC (1853-1909) — 'Peerless Jim', distinguished politician and advocate. Now

the accumulated funds of some £700 were used to buy the South African Law Reports and textbooks. The J W Leonard Memorial Law Library was housed with the rest of the University library and the Department of Law itself in the middle portion of the Central Block. That portion was then only a temporary wood and iron structure behind the famous portico and pillars, the most photographed university facade in the country. The Council had run out of funds.

The Law Library grew quite rapidly. In 1928 Colin Murray donated a set of bound volumes of the *Law Quarterly Review*, the only set in South Africa for a number of years. A bookcase was now devoted to house the works of the Roman and Roman-Dutch authorities. In 1927 Dr F P Walton KC donated Cujacius's *Opera Omnia*. R W Lee, Rhodes Professor of Roman-Dutch Law at Oxford, donated in 1927 Dionysius Gothofredus's *Corpus Juris Civilis* and in 1929 a manuscript copy of Van der Keessel's *Dictata* on Grotius. Other gifts were also made. Then came tragedy. On 24 December 1931 a fire gutted the entire middle portion and much of the content of the rest of the Central Block. Invaluable collections were destroyed, including the whole of the Leonard Law Library of over 2 000 volumes. The University had been grossly negligent in housing the material in an area not built of fire-resistant material; and in failing to insure most of it.

Up in flames went the manuscript of McKerron's *Law of Delict*, then three-quarters complete, and all his lecture notes. He was in the position that Thomas Carlyle had found himself when John Stuart Mill told him that the manuscript of the part of *The French Revolution* he had asked Mill to read had been used by Mill's maid to light the morning fire. McKerron's reaction was the same as Carlyle's. He started afresh, and brought out his book in 1933. Though it was short — barely 200 pages — it filled a pressing need. And it was written in lucid and polished prose. The work went through seven editions, the last, published in 1971, running to 329 pages. As Professor Tony Honoré has so aptly put it, it remained as lean and muscular as its author.³ Some critics said that it was more English than Roman-Dutch law, but this is a rather unfair statement, though admittedly today some of McKerron's formulations are out of date.

The Law Library was built up again. Part of the old collection was replaced in 1932 by the purchase of the library of L E Krause, attorney of Pietersburg, an early and able translator of portions of Voet's *Commentarius ad Pandectas*. Once again Colin Murray donated the entire series of volumes of the *Law Quarterly Review*. By 1945 there was a complete collection of South African law reports, and a good collection of English law reports, though no reports from other countries. There was a fair range of textbooks. The 'old authorities', however, were scanty, just filling two small, glass-fronted bookcases housed in the professor's office. The library was located in a pleasant long room in the east corridor of the ground floor of the Central Block, overlooking a bare patch of ground where the Chemistry block now stands, but on which in those days there was only a dismal corrugated-iron car shelter.

Until 1934 Robin McKerron was the only full-time member of staff of the Department of Law. Then a second chair of law was filled. The incumbent was Ludwig Christoph Hofmann Dr Jur (Leyden), a 32-year-old Hollander, a 'repetitor' (a private 'crammer' for law students), coaching in Dutch civil law, the conflict of laws, Roman law and Roman-Dutch law in Leyden, who the London Committee had said in a cable was 'good . . . unimpressive appearance, strongly academic, excellently grounded with little practical experience . . . speaks and reads German, French, English and Dutch with equal facility'. In fact William Cullen, member and secretary of the London Committee, in a letter to Raikes written after Hofmann had resigned, disclosed that he himself had been 'exceedingly doubtful about Dr Hofmann's suitability'. Hofmann had a recommendation from the eminent A S de Blécourt, Professor of Law in the University of Leyden, and author of leading works on the history of Roman-Dutch law, that was extravagant in its praise. And Hofmann had already published volume I of his *Het Nederlandsch Verbintenissenrecht* which came out in a fourth edition when he was in Johannesburg, and both volumes of his *Het Nederlandsch Zakenrecht*. (I was told that these works, originally written for students, reflected the view of Hofmann's teacher, the great Professor E M Meijers, so closely that in the Netherlands Hofmann was called 'HMV.' Still, they went through many editions, gradually becoming more detailed for

the use of practitioners, and being edited after Hofmann's death by experts in the subjects.) The Wits Selection Committee preferred Hofmann to the other short-listed applicant, a Scots academic of good presence, but with few publications, who was also recommended by the London Committee. In retrospect Wits probably chose the wrong man. At all events, out came Hofmann at the beginning of 1935, and back he went towards the end of the year. The reason he gave for his resignation was ill-health; but it was said that the real reason was the inadequacy of the law library, a view that receives some support from his inaugural lecture, 'The Basis of Mistake on Contractual Obligations',⁴ in which he bewailed his inability to conduct research into the subject of his lecture, 'there being practically no material for such personal research available in this country', an obvious overstatement. Hofmann was to perish in a Nazi extermination camp.

Now there was a vacant chair again, and this time the University made a terrible mistake in filling it. The Faculty of Law was seeking an incumbent who was a specialist in Roman law, jurisprudence and the history of Roman-Dutch law. Elemér Balogh, born in Hungary in 1881, LLD (Budapest 1903) applied. He claimed to have been Professor of International Law and Comparative Law at the University of Budapest from 1913 to 1922 and of Roman and Comparative Law at the University of Kovno, Lithuania, from 1923 to 1932; and a lecturer in comparative law at the University of Berlin in 1933. Fleeing Germany in 1933, he was working in Paris at the Institute of Comparative Law. He was permanent Secretary General of the International Academy of Comparative Law, which he had initiated in 1923 at Geneva. Certainly he devoted a great deal of attention to the running of this organisation, which involved an enormous correspondence: he would buttonhole me and other students, saying 'Allo, my friend, you write a letter for me, no?'. In his application he listed 34 publications in six languages. Two very eminent legal academics gave him glowing recommendations: Professor Jean Escarra, Professor of Law in the University of Paris, and Professor W W Buckland, Regius Professor of Civil Law in the University of Cambridge. The only other possible appointee having withdrawn, in November 1935 a strong Wits selection committee chose Balogh without his having an interview with it

or the London Committee; and the University Senate and Council accepted the recommendation. On 14 January the next year William Cullen of the London Committee wrote to Raikes, the Principal, that he and a colleague had spent an exhausting hour and a half in London talking to Balogh. His eccentric pronunciation and enunciation of English had made it hardly possible to understand a word he spoke. Had this interview taken place before Balogh's appointment, they would not have recommended him: 'Frankly, I cannot visualise him either as a lecturer or as a teacher'; but now it was too late.

These fears soon became a reality. The eminent professors had sold naïve Wits down the river. The story goes that when Buckland was later challenged about his testimonial, he replied 'You should have read between the lines'. But there were no lines to read between.

Unkempt, incoherent in English, highly excitable, this pathetic, eccentric, lonely bachelor was unable or unwilling to give a law course that the students could follow or cope with. McKerron, who disliked Balogh but felt sorry for him, was not prepared to carry on with him. The inevitable inquiry followed, at which Balogh, incapable of defending himself, was allowed to be represented by the redoubtable J Y T Greig, Professor of English. The upshot was that Balogh was shunted off to an independent Department of Comparative Law, with no lecturing duties, at a reduced salary. In its mercy and because of the war, the University kept him on until the end of 1946. Whether Balogh ever wrote anything that was original is debatable. There is a strong case for saying that he composed a stew of the writings and views of others.

Balogh's lectures — they were in the courses Roman Law, History of South African Law, Public International Law and Jurisprudence — were taken over by part-time lecturers. So the negligence of the selection committee resulted in the second chair of law being kept in abeyance for seven lost years.

Fortunately, there were excellent part-time lecturers in those years. One in particular contributed greatly to the well-being of the faculty: Walter Pollak (1903-71).

Pollak had remarkable mental gifts. After a BA Hons and an MA in classics at Wits with distinction, he obtained a

first class in Parts I and II of the Law Tripos and in the LLB at Cambridge. He then obtained the SJD degree at Harvard. In 1928, while practising at the Johannesburg Bar he commenced lecturing part-time in LLB courses, initially in Purchase and Sale, Public International Law and the Conflict of Laws. Soon he concentrated on Constitutional Law and the Conflict of Laws. The standards he set were exacting, and for a while the casualties were many. Then the students realised that the good old days had gone, and they started to cope. In 1944 Pollak took silk, and the following year arranged for me to lecture in the Constitutional Law class. Pollak dropped all his lectures after 1945, for his gifts as an advocate had come to be appreciated by the attorneys. But he remained a staunch member of the Board of the Faculty until he took the ill-fated step in 1959 of emigrating to England.

Tall, heavy, deliberate-moving, slow-speaking, and quick-thinking, Pollak would have made a splendid professor or judge. He became neither, though he could have become either. His excellent book, *The South African Law of Jurisdiction*, published in 1937, is still often cited. How well I remember this modest, shy, brilliant man: the humanity behind his mask of impassivity; his affectation of a cloth cap; his deep dislike of draughts, which the students in teasing mood deliberately created for him by opening all the windows of the lecture room.

The other part-time lecturers at some stage or other in this period included several members of the Johannesburg Bar, among them B L (Birch) Bernstein (who later entered the world of mining and finance, becoming President of the Chamber of Mines; was Chairman of the Council of Wits 1960-8 and Chancellor 1975-82; and was given an LLD *honoris causa* in 1968); Herbert Vieyra; Arthur Suzman, later to be the senior silk in the country, on whom the University conferred the degree LLD *honoris causa* in 1984, and always a loyal supporter of the faculty; Vincent Quénet, later to attain high judicial office in Rhodesia; Dante Cloete, recently retired as Judge President of the Eastern Cape Division; A A Hope; Bram Fischer, so charming but so misguided; and Maurice Millner, who in the fifties was to join the full-time staff. Among those who were attorneys were Ian B Murray, son of Colin; George Cook, who has played a prominent role in the affairs of his profession, and C J

(Charlie) Johnson, a brilliant and delightful man, who later emigrated. Many of these teachers were Wits LLBs who, under McKerron's influence, had proceeded to Oxford to take the BCL: so Suzman, Murray, Millner and Johnson, all of whom, like gifted Wits students generally, distinguished themselves abroad academically.

In 1940, with McKerron about to go on active service, Herman Robert (Bob-



Professor H R Hahlo

by) Hahlo was appointed temporary part-time assistant to hold things together. He had been twice rejected on medical grounds for service in the Defence Force.

Born in the United States in 1905, at an early age Hahlo went with his parents to Germany, where he took the Dr Jur at the University of Halle and commenced practice. Life under Hitler was not for him, and he came to South Africa in 1934. In two years he completed the LLB. At the graduation ceremony on 20 March 1937, LLB degrees were conferred on the sixteen candidates who had passed the Final Examination in the previous December — the highest number yet, and not to be equalled until 1950, which gives an impression of the size of the faculty in its formative years. Several of the sixteen were to achieve prominence, among them Cecil Margo, later a war hero, an outstanding advocate and then judge, and contributor to public welfare in many spheres, on whom Wits conferred the honorary degree of LLD in 1985; P C Pelser, who became Minister of Justice; Herbert Rothschild, who be-

came an acting judge; Harry Bloom, well-known novelist; Edward van der Merwe, the Springbok wicketkeeper; Jack Unterhalter, now SC; and Hahlo, the person most responsible for raising the faculty to its present stature.

During the war years Hahlo carried the Department of Law, delivering half the LLB courses. In 1946 he received well-deserved promotion to a professorship. On McKerron's departure in 1947 he became Head of the Department of Law and Dean of the Faculty of Law, positions he retained until shortly before he left Wits in November 1968 to take up a post at McGill University in Canada. In 1973 Wits conferred the LLD *honoris causa* on him. He died in his eighty-first year, bubbling with ideas and hard working to the end.

Hahlo's lectures were well constructed, with a concentration on principles, infused with wit and humour, and delivered in impeccable English with a harsh German accent. To students he was a rather aloof and forbidding figure, but they acknowledged his ability as teacher and, later, as writer.

The prescribed LLB courses were modified from time to time but not markedly except with the decision in early 1939 to drop Public International Law from the curriculum. No recorded reasons can be found, but I suspect that the Board of the Faculty had decided that Hitler's actions had shown that it no longer existed. Otherwise the curriculum was the typically orthodox and set one of those days, with standard courses in private and public law, and some emphasis on Roman law and the history of South African law.

The credit rules became ever stricter, until they reached the stage of cruelty, resulting in a heavy mortality rate in the examinations, even among students who were later to prove leading practitioners and even become judges. Initially credit was given for every course passed. From 1928 progressively, starting with the Final Examination in 1928 and ending with the Preliminary Examination in 1945, it became an 'all or nothing' affair. Fail a course in an examination session, and you forfeited all passes at that session. For the part-time student, hard pressed to get time off to work for the examinations, it was a devastating principle. And ever more students became part-timers, for two reasons. The Attorneys, Notaries and Conveyancers Admission Act of 1934 ended possession of the

LLB relieving the holder from service of articles to become an attorney. Henceforth three years' articles had to be served after a first degree and two after the LLB. The attraction of serving articles while reading for the LLB was often to prove irresistible. Secondly, from 1936 the 'legal BA' and 'legal BCom' (introduced in 1934) were ended: now it would take six years to get the LLB. Wits was the only South African university to take this step: a law student, it felt, should have a proper background in another discipline — any discipline. Were we sanctimonious? Did we suffer from an inferiority complex?: look — our degree is so good because it is so hard to get.

A fair picture is afforded by the 1939 results, by no means the worst: of the ten students who wrote the Preliminary Examination, five failed; of the five who wrote the Intermediate Examination, two failed; and of the nine who wrote the Final Examination, three failed. Those who failed may have passed all courses but one. And many of the students were repeating the examination.

Fortunately, the University decided that those who had served in the armed forces would get credit for every course passed. It took the School of Law until 1985 to introduce this rule generally. Yet from the founding of Wits it was possible to exclude a student who had done poorly. Why deprive him of his passes?

The results in the Law Certificate, a qualification of an outside body, were even worse than those in the LLB. In the early thirties they were so poor that enrolments began dropping. At a meeting, representatives of the Incorporated Law Society of the Transvaal said in all honesty that the students needed a crammer to get them through the examinations, which covered such a wide syllabus that spotting of questions was essential. University education would not do the trick. Soon Wits stopped teaching for the Law Certificate.

In 1928 it was made possible for the LLB to be awarded with distinction. Up to 1945 among those receiving this accolade were B L (Birch) Bernstein; Melville H S Festenstein (later KC); Maurice A Millner; H C Nicholas (later part-time lecturer, then a Johannesburg silk, then a judge, and finally a judge of appeal, LLD *honoris causa* of the University in 1985); and Rex S Welsh (Rhodes Scholar, BCL (Oxon), Vinerian Scholar, later a part-time lecturer, then a Johannes-

burg silk, LLD *honoris causa* of the University in 1989).

The lists of those completing the LLB contain some interesting and distinguished names. 1926 saw the first woman graduate, Frieda Ustiev; also Simon (Simie) M Kuper, later a Transvaal judge, who was tragically assassinated in March 1963. In 1927 among the six successful candidates were Arthur Suzman and I A (Issi) Maisels, now the senior silk, one of the greatest advocates in the history of South Africa, who was on the bench of the High Court of Southern Rhodesia from May 1961 to June 1963, and on whom the University conferred the LLD *honoris causa* in 1978. In the 1928 list appear Isaac (Iggy) Isaacs, later a silk, who practised at the Johannesburg Bar into his nineties; and William Oshry, a leading senior at the same Bar. The next list contains the names of B L Bernstein; Kathleen (Kathy) Ray Clarke (later Bresler), who had a lengthy career in legal practice; and Allen Miller Snijman, for long prominent in the affairs of the attorneys' profession. 1930 saw Joel Mervis satisfy the requirements of the LLB. After five years at the Johannesburg Bar, he entered the world of newspaper editing, in which he attained fame. Since August 1945 he has written 'The Passing Show' for the *Sunday Times*. The Wits Law Faculty can claim some credit for the existence of Mr Justice Fogbound; K C Taradiddle QC and his customary junior, Nicolas Solecism; and Waterval Boven QC and his customary junior, Waterval Onder.

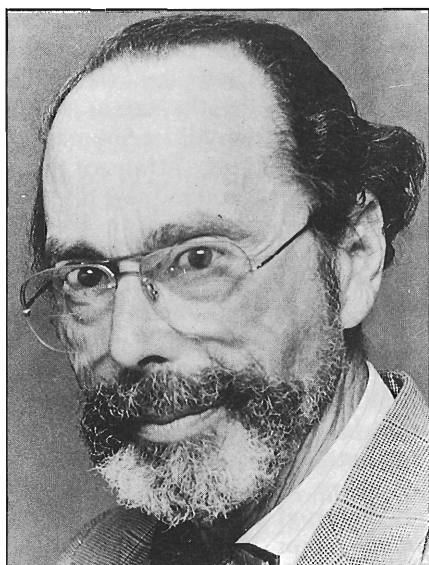
I can mention only a few prominent later figures, apart from those of the 1936 graduating class already mentioned: Melville Festenstein and Charles J M Nathan, who became Chief Justice of Swaziland (1932); Felix I Landau, who became a judge in Israel (1933); Maurice A Millner (1935); P M Cillié, who became a Transvaal judge, then Judge President, then judge of appeal; Gerald Gordon, later a Transvaal judge; and S J Marais Steyn, who became a Cabinet minister (1937); H C Nicholas (1939); A H I Mulla, the first graduate not a white person — the University in those days was open, but not, as today, avowedly opposed to racial segregation and committed to non-discrimination (1940); J H (Lammie) Snyman, who ascended the Transvaal Bench, and Rex S Welsh (1942); E C Heller, whose career culminated in the post of Attorney-General of the Eastern Cape Division; G P C (Gie) Kotzé, who was appointed a judge of the TPD and

then the ECD, and finally a judge of appeal; and I (1943).

IV Manhood 1946-1968

The number of LLB graduates declined dramatically during the war years. In 1942 there were only two graduates, in 1943 eight, in 1945 nine and in 1946 six. The number then rose steadily, to reach a peak of 27 in 1954; then came a slow decline until 1966, when the number shot up from 20 the previous year to 45.

Ex-volunteers enrolled in fairly large numbers. To brush up the knowledge of those already qualified, the department conducted a successful refresher course in 1946.



Professor Ellison Kahn

The full-time staff was enlarged. In 1947 Exton Burchell (1917-82) was appointed senior lecturer. He had been an Elsie Ballot Scholar at Cambridge, where he had taken a first in both parts of the Law Tripos, then spent the entire war in gallant active service with the Natal Carbineers, attaining the rank of captain, and thereafter obtained the LLB with distinction at the University of South Africa. Within a year he was appointed to the chair vacated by McKerron. On 1 April 1948 I took his place as senior lecturer: appropriately All Fools' Day. Exton was a superb lecturer, administrator and writer of legal works, and, above all, a fine gentleman. It was a sad day for Wits when he decided in 1954 to take up the chair at the University of Natal vacated by

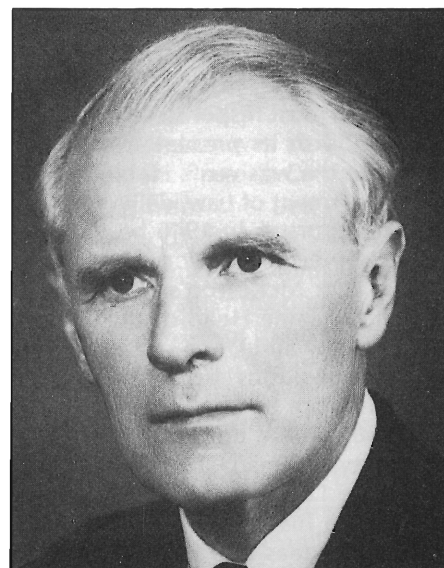
his father. I was fortunate enough to be appointed in his place at Wits.

How Bobby Hahlo, Exton and I worked! How many courses we gave! It was exhausting but exhilarating. To our good fortune we were joined in 1949 by Dr J E Scholtens Dr Jur (Amsterdam), a leading practitioner in Holland, who was appointed to fill the newly created chair of Roman Law and Jurisprudence. A consummate scholar, absolutely at home with the works of the Glossators, Postglossators and Roman-Dutch writers — which, with foresight and acumen, he acquired on behalf of Wits to create a magnificent collection — he wrote brilliant papers on teasing legal questions. The clever student realised the excellence of the content of the courses he taught. Scholtens resigned in 1960 to return to the Netherlands, but he took up his chair again in 1966, remaining until he reached the maximum retirement age at the end of 1970.

I have heard it said that for the few years we were together we four did not make a bad team of teachers.

The department was assisted over many years by a loyal and highly competent band of part-time lecturers, most of them at the Johannesburg Bar. They included Vieyra, Nicholas, Cloete, Philips, Margo, Welsh, Harry Colman, W H R (Bill) Schreiner (son of Oliver Schreiner), Harry Schwarz, Iggy Isaacs, Harry Nestadt, J H Conradie, Goldstone, Brink (son of J W), Blackstock and Rosenzweig.

Gradually the department began achieving a name with legal publications. In 1947, through the inspiration of Hahlo, it began publishing the *Annual Survey of South African Law*. Hahlo remained editor until his departure in 1968. Since then it has been under the able editorship of Paul Boberg. As important was the appointment at the end of 1949 of Hahlo and McKerron as joint editors of the *South African Law Journal*, I becoming assistant editor. I succeeded McKerron as joint editor in 1958, and ten years later became sole editor. The oldest journal of its kind in English, the *SALJ* has perhaps through our editorship of it brought some credit to the Wits Faculty of Law. Hahlo published the first edition of his *The South African Law of Husband and Wife* in 1953; just before his death he brought out the fifth edition of this highly regarded treatise. He and I, with the help of colleagues, produced *South Africa: The Development of Its Laws*



Professor J E Scholtens

and *Constitution* in 1960, which sold well and, so I am told, is today a collector's piece. The last collaborative effort of the two of us was *The South African Legal System and Its Background*, which was well received and in which Hahlo again showed his ability to express himself in lapidary English.

The production of these and other works over the years was made easier by the improvement in the holdings of the Law Library, which in 1976 was named after Oliver Schreiner. For many years the wind continued to carry into the library a gritty mix of mine-dump particles, red earth and fish oil from the factory of Irvin and Johnson on the corner of Jan Smuts Avenue and Jorissen Street. Things got somewhat better when the library was moved in 1955 to the south-east corner of the second floor of the Central Block. As the collection increased, the library gobbled up lecture room after lecture room to the west, until it was the longest sausage-shaped room in the world. And it became very overcrowded, as student numbers increased: in 1946 six students completed the LLB; in 1968 45, and a further 18 the Diploma in Law, and there was a very considerable number of BA and BCom students taking law courses.

To cope with the enrolments, the full-time staff was enlarged. Some very able, even brilliant, senior lecturers and lecturers came and went. Among them were Maurice Millner, who became a

professor at the University of London; Peter Hunt, our first LL.M (1963), who moved to Natal to take a chair, wrote a classic work on criminal law, then practised at the Natal Bar and took silk, only to die tragically at the age of 38; Harold Luntz, now a professor at the University of Melbourne; Barend van Niekerk, that fiery particle, who became professor at the University of Natal, whose death at the age of 42 was so sudden and sad; John McLennan, who also went to Natal to take a chair; R C Beuthin, who moved to a chair at Rhodes; and B A Hepple, today a professor at the University of London. Wits seems to have become a training ground for legal academics elsewhere. Those who remained were Alf Lansdown (1955), Paul Boberg (1960), made a professor in 1964, and John Dugard (1966), made a professor in 1969.

In 1953 Wits introduced a Diploma in Law, recognised by the Joint Committee for Professional Examinations as equivalent to the Attorneys' Admission Examination. For a long time it proved popular.

Attention must be made of several of the LLB graduates in this period (most of the earlier ones being ex-volunteers), many of them attaining the rare honour of the LLB with distinction — the cynical remark in England that the ranks of the unsuccessful are filled with Oxbridge firsts does not apply to Wits: Gerald Alexander (1947), now a judge of the NPD; Julian (Jules) Browde (1947), a Johannesburg silk who has been an important figure in Bar affairs and public-interest law; Stephen Rein, today an SC of the Eastern Districts Bar, who has been an acting judge; John Coaker (1948), son of Norwood, another Johannesburg silk, who took a BCL at Oxford; Alastair Kerr (1948), who was appointed a professor at Rhodes and has written valuable legal works; Henry Preiss (1948), who joined the Pretoria Bar and became a TPD judge; Harry Schwarz (1949), formerly of the Johannesburg Bar, a prominent politician; Charl Cilliers (1950), who has contributed much to the attorneys' profession and to public welfare; Joseph (Joe) Slovo (1950), of whom I need not say anything; E A T (Tony) Smith (1950), who became Attorney-General in Rhodesia, then attained high judicial rank there and in Zimbabwe, and is now on the Bophuthatswana Bench; Z Sutej (1950), recently retired from the judiciary, having been

seconded to the Bophuthatswana Supreme Court; M W Friedman (1951), now on the Bophuthatswana Bench; A P Myburgh (1951), for long a TPD judge; J V Lazarus and C Plewman (1951), leading Johannesburg silks; D B Hoffe, who rose high in the world of mining and finance; M C O'Dowd (1952), Anglo American executive and dedicated to the uplift of disadvantaged communities; David Zeffertt (1952); George Bizos (1953), Johannesburg silk noted as defence counsel; and Harry Nestadt (1953), elevated to the Transvaal Bench and now JA. Then came a 'year of all the talents', 1954, the LLBs including Arthur Chaskalson, now SC, National Director of the outstanding public-interest law firm, the Legal Resources Centre, a man of quality on whom Wits is about to confer its honorary LL.D; Mark Weinberg, author of a classic work on take-overs and mergers written for his London LL.M, who with innovative brilliance revolutionised the life-insurance industry of Britain, is noted for his charitable and community activities, and was knighted in 1987; Geoffrey Leveson (1954), a TPD judge; Sydney Lipschitz (now Lipson), the present chairman of the Monopolies and Mergers Commission of the United Kingdom; W A (Bill) Ramsden (1954), who joined the British colonial service, where he served in the High Commission territories, attaining a high position and being made a QC, now a professor at the University of Durban-Westville; J C G (Stoffel) Botha, who became Administrator of Natal and then a Cabinet minister; and S H Treisman, who has held high positions in the organisations of the attorneys' profession. In the following years among the successful candidates were James Thomas (Jimmy) Kruger (1955), who became a rather controversial Minister of Justice; Paul Boberg (1955); P P Duma Nokwe (1955), black nationalist leader — see *S v Nokwe* 1962 (3) SA 71 (T) — and though dead still cannot be quoted; W P Schutz (1955), a leading SC; Ismail Mahomed (1956), the first member of the Indian community to take silk, of the Johannesburg Bar, prominent in appearances for the citizen in human-rights cases; B A Hepple (1957), of whom I need say no more than I have said; A M van Niekerk (1957), now a CPD judge; E B Broomberg (1957), who was on our full-time staff, today a Johannesburg SC specialising in taxation; P M Meskin (1957), now a Natal silk, who has done

much for legal writing; L I Goldblatt (1958), a Johannesburg silk prominent in Bar affairs; J H Coetzee (1959), recently appointed to the TPD Bench; Harold Luntz (1959); N M MacArthur (1959), a Transvaal judge; Mervyn King (1960), formerly of the Transvaal Bench, now a leading businessman and philanthropist; Max Labe (1960), today SC and chairman of the Johannesburg Bar Council; A W Mostert (1961), who resigned from the Natal Bench and returned as a senior to the Johannesburg Bar; Ralph Zulman (1961), a Johannesburg silk and the immediate past chairman of the General Council of the Bar; Anthony (Tony) Bloom (1962), of Premier Milling fame and a friend of the faculty; Richard Goldstone (1962), who became an SC and then a Transvaal judge at an early age; J H Conradie (1963), for many years a Johannesburg silk, recently appointed to the CPD Bench; J F Ludorf (1963) (son of the judge by the same christian names), an ECD judge; H Z Slomowitz (1963), a leading Johannesburg senior; S J Sher (1964), who went on to take an Oxford BCL and join the English Chancery Bar, of which he is now a senior; M D Kuper (1966), a Johannesburg silk and recently chairman of the Johannesburg Bar Council, who is the son of the late Kuper J; Michael Katz (1967), leading attorney and an honorary professor of law at the Wits Graduate School of Business Administration; and Rex van Schalkwyk (1968), on the Transvaal Bench. Had space permitted, I would have alluded to many other graduates.

In its period of manhood the faculty had the good sense to return to the combined five-year BA LLB and BCom LLB, to be taken by full-time study. That was in 1962. We were losing good students to other universities offering the five-year curriculum; but, more important, our regulations were having the undesirable effect of encouraging part-time study for the LLB. At the same time the savage credit rules were relaxed. I remember well the ferocity with which the formidable Professor Raymond Dart, Head of the Department of Anatomy, attacked them in the Senate in his harsh Australian accent; I refrained from saying that the regulations of the Medical School were almost as hard, for I felt ashamed of the law rules. From now on if a student failed only one or two of the courses for which he was registered, he would get credit in those that he passed. It

was a movement towards the ideal situation.

The last reform took place in 1968. By now it had become impossible for one person to be both Head of the Department of Law and Dean of the Faculty. The number of students taking law courses had swollen. An initial proposal to divide the department into four departments was abandoned. Instead, to maintain unity and cater for the cross-disciplinary interests of staff, a School of Law was created in the place of the department, with a governing committee of all the full professors, one to be chairman for a defined period; and the Dean, also holding office for a defined period, would be another professor. The scheme proved successful and is still in operation. True, there have been tensions from time to time: it would have been strange were this not so, for many academics are sensitive souls, as will be gathered from reading the novels of Kingsley Amis, Malcolm Bradbury and David Lodge. But things always simmer down. I served as the first Dean under the new dispensation, until 1972.

V Maturity: 1969-1989

There comes a stage when events cease to be history and may be called contemporary affairs, justifying a less extensive account. Thus my treatment of the past twenty years will be brief.

The most notable developments have been the growth in the staff and student numbers; the striking increase in the number of students who are women and the number who are not whites; the changes in the LLB curriculum; the expansion in the number of publications by members of staff; and the improved physical and library facilities.

In 1969 in the School of Law there were three professors — Paul Boberg, J E Scholtens and I — and six senior lecturers: a staff of nine full-time members. Today there are eleven full professors — Paul Boberg, John Dugard, Carole Lewis, Etienne Mureinik, Andrew Paizes, June Sinclair, Louise Tager, Johan van der Vyver, Roger Whiting, David Zeffertt, and I; three associate professors — Michael Larkin, Harold Rudolph, and Andrew Skeen; seven senior lecturers; and eight lecturers: a teaching staff of 29 full-time members, not all of them being whites. Several posts are unfilled — university salaries have to compete with much higher earnings in practice.

There is a supervisor of the Law Clinic — Zilla Graff. Two leading practitioners are honorary professors — Edwin Broomberg and Arthur Chaskalson. Emeritus Professor Scholtens is an honorary research professional fellow. The part-time staff is large.

As before full-time staff came and went. One departure I must mention. In 1976, Jonathan Burchell, son of Exton, was appointed a senior lecturer. Five years later he was promoted to the rank of associate professor, and in 1983 full professor. But in 1987 he resigned to take up the chair his later father and before him his grandfather had held at the University of Natal, Pietermaritzburg. The call to his home town and Alma Mater was too strong to resist. I greatly regretted his departure.

In 1969 the University had 6 214 students, of whom 238 were in the Faculty of Law; in 1988 (the latest available information) the corresponding numbers were 18 718 and 953. In addition the School of Law offered service courses to some 4 500 students in other faculties.

Through no deliberate policy of Wits, the proportion of LLB students who are women has risen dramatically of recent years. In 1980 they already accounted for 22,4 per cent of enrolments (202 men, 60 women), much greater than a decade earlier; this year, 44,5 per cent (315 men, 253 women). (The BProc had 23,2 per cent women students in 1980, 38,7 per cent in 1989.) Women have gained far more than their proportionate share of the degrees with distinction and of the prizes for performance in individual courses and the degree as a whole. Draw what conclusion you please. But one thing is clear: women are treated on the same footing as men.

The University has had a policy for some time of encouraging enrolment by persons who are not whites — particularly of blacks (Africans). It has done its best to alleviate the difficulties caused by inferior education and disadvantaged backgrounds, but it has been determined to maintain the standard of excellence of its degrees that — I say this in all humility — is recognised not only in our country but also abroad. Wits' official standpoint reads: 'The University rejects racism, racial segregation and discrimination on the grounds of race, gender, belief or nationality. It is committed to non-discrimination, particularly in the constitution of its student body, in the

selection and promotion of its staff, and in its administration.'

The proportion of white students has dropped. In 1980, of the BProc students, 81,2 per cent were whites, in 1989, 41 per cent. In 1980, of the LLB students, 87 per cent were whites, in 1989, 71,7. For the two degrees combined, the respective percentages were 84,5 and 64,5. Blacks (Africans) constituted 3,5 per cent of the total enrolment in 1980 and 24,6 in 1989: a striking change.

When in 1981 Wits celebrated its having granted 50 000 degrees, diplomas and certificates, it was found that the Faculty of Law had contributed 2 095 of them. What was disappointing was the small number of higher degrees in law: six LLMs, 1 PhD, and 2 LLDs (the higher doctorate), conferred on Hahlo and Boberg. From 1926 on there had been a large number of registrations for the LLM, but the calls of practice had resulted in the submission of only two dissertations, both of which had failed. Since 1981 matters have improved greatly. There have been a further seven PhDs; and — mainly a result of the introduction of course work and a research report as an alternative to a full-scale dissertation — 42 LLMs.

The LLB curriculum began to be loosened with the gradual introduction of 'elective' courses, of which a certain number had to be selected by a student. Public International Law, which had been restored to the curriculum some years after the war — apparently it now existed — was one of these courses. And new courses were added to the list, such as Taxation and Trusts, Criminology, Aspects of Public Law, Practical Legal Studies, Forensic Medicine, Labour Law, and Law of Prospecting and Mining.

In 1972 the undergraduate degree of the Baccalaureus Juris was introduced in the place of the Diploma in Law as an alternative to the LLB for the academic qualification of a prospective attorney. It attracted a fairly large enrolment for some time, but recently the numbers have dropped, there being a noticeable, and welcome, swing in favour of the postgraduate and more exacting LLB.

1972 saw another innovation: the Higher Diploma in Tax Law, taken by part-time study, which was brought into being largely through the enthusiasm and expert knowledge of Edwin Broomberg. This diploma has proved extremely popular. Among our

diplomates are many of the leading advocates, attorneys and accountants of the PWV area. The success of this diploma led to the introduction in 1981 of a Higher Diploma in Company Law.

In 1985, at long last, a student was given credit in every course that he passed for the LLB or BProc. No longer had he to succeed in a minimum number of courses in his year of study to get any credit. Justice will triumph, though it can take a long time.

This year the LLB curriculum has been radically restructured. Up to 1988 there were 22 courses, of which three were electives. The new scheme weights courses with points: for example, Jurisprudence carries eight points. Of the required 186 points, 64 are from electives. The object of the change is to require every student to take 'core' courses in the traditional subjects, but leave him free to arrange his electives, if he so wishes, to concentrate on a particular area, such as public law, commercial law, adjective law.

For a long period Wits has produced more LLB graduates a year than any other university, though its lead is becoming smaller. The annual number is settling into the 150s: in 1987 it was 154, in 1988, 157, and in 1989 also 157. The degree has been conferred on 2 294 women and men since the founding of the University.

The Wits Law School can take legitimate pride in the number and quality of the publications of its members of staff. In particular Paul Boberg, John Dugard, Johan van der Vyver and David Zeffertt have published outstanding legal treatises. Perhaps I have contributed a little too. Nor must one forget that four accredited legal journals are edited by members of the School of Law or its associated institution, the Centre for Applied Legal Studies: the *South African Law Journal*, the *Annual Survey of South African Law*, the *Industrial Law Journal* and the *South African Journal on Human Rights*.

The Centre for Applied Legal Studies calls for special commendation. It was founded in 1978 by John Dugard, with the financial assistance of the Carnegie Corporation of New York and the University Council, the Ford Foundation participating later. Its aim is to conduct research into the law affecting the black community and civil-rights issues, and to assist with litigation. Staffed by extremely able lawyers, headed by Dugard, CALS has an

international reputation that has brought credit to Wits and South Africa as a whole.

The acquisition by Wits in 1985 of the Milner Park Showgrounds to the west of the existing campus, then very cramped on its 80 acres, gave it an additional 50 acres, and allowed the School of Law to move. It was housed in a building on the new west campus reconstructed from three buildings, the core being the previous Chamber of Mines pavilion. The building is called the Oliver Schreiner School of Law, in honour of the eminent judge and former Chancellor of the University. The core of the pavilion was reconstructed to create the most beautiful law library I have seen anywhere in the world. The holdings have been greatly expanded, owing largely to donations by benefactors among local firms of attorneys and oversea educational foundations. Recently the coverage of United States law reports became admirably extensive, complementing the wide coverage of the reports of England, Scotland, Canada, Australia and New Zealand. The range of legal journals is one of the best in the country. But the financial position of the University and the weakness of the rand has made it a struggle to maintain the excellence of the library. Tribute must be paid to the sterling work of the librarians in trying circumstances. I think particularly of Lynette Greenstein, Cillah Jaspan and Sandra Sapire, law librarians of the past.

The administration of the Faculty of Law is much more complex than it was in days when I was intimately involved in it. Fortunately, there has always been loyal and efficient service by the support staff for the self-sacrificing academics who are willing to assume responsibility for running such a large and complicated show.

VI Envoi

The ethos of the Wits Faculty of Law has been service to the South African community as a whole. It has tried to provide courses that expound the present law in principle and also in some detail, but always critically. Allegations are sometimes levelled at us that we are case-law oriented and inclined to pay too much regard to English law. Our reply is that we have been faithful to the Roman-Dutch legal heritage. Roman law and the history of Roman-Dutch law have always received the attention they rightly

deserve. But at the same time we attempt to take account of changing times and social and economic needs and values.

The Wits Law School tries to test not only a student's knowledge of legal rules and principles but also his ability to see where they are applicable to a given set of facts. It also tries to assist him in expressing himself in an acceptable standard of English. Where perhaps it is at fault at present is in not requiring a student to write a sufficient number of essays during the year. Lack of staff is given as one of the reasons for this unsatisfactory state of affairs. Another possible fault, linked to the previous one, is the failure to teach and require a student to find the law for himself on a particular topic.

When I look at the careers of those who took their law degree at Wits, I cannot help feeling a humble sense of pride. So many outstanding figures in both branches of the profession and several in the public service have walked through the portals of the Department of Law and its successor, the School of Law. And so many leaders of commerce and industry.

Where we have fallen short is in our contribution to the judiciary. Would it be cynical to put the reason in this way? There were some who wanted and deserved and would have accepted an offer of appointment on the Bench but who did not get it. There were some who did not want an offer, though they deserved it, and did not get it. And there were some who wanted an offer and did get it and accepted it. The first group was larger than the second group and the second group was larger than the third group.

A few weeks ago I was having lunch with an accountant who had taken a degree at another South African university. Out of the blue he asked me a question that had been put to me a year earlier by a judge of another province: 'Is the Wits Law School still the best in the country?' I replied: 'You have committed the logical fallacy of many questions.' Puzzled, he inquired: 'What is that?' I responded: 'The rhetorical trick of asking a question that cannot be answered without admitting a presupposition that may be false. The lawyer's stock illustration is that of counsel asking a witness in cross-examination "Have you stopped beating your wife?" Was Wits' ever the best law school?'

But I was not speaking seriously.

FOOTNOTES

- ¹ I shall keep footnotes to a bare minimum. A much longer article, covering the years up to 1968, will be published in the **South African Law Journal** next year, with full authentication. Suffice it to say that I am indebted to the account of the Faculty of Law and its predecessors up to 1939 in Bruce K Murray's **Wits The Early Years** (Witwatersrand University Press, Johannesburg 1982), and that I have consulted the records of the University and other sources carefully, have spoken over the years to many former members of staff and students, and have personal knowledge of the affairs of the Faculty since 1940.
- ² 'Oliver Schreiner — Some Reminiscences and an Appreciation' in Ellison Kahn (ed) **Fiat Iustitia: Essays in Memory of Oliver Deneys Schreiner** (1983) 131 at 132.
- ³ In his review of the seventh edition in (1971) 88 **SALJ** 369.
- ⁴ Published in (1935) 52 **SALJ** 432. ■

BOOKS RECEIVED

(Some of these books will be reviewed in forthcoming issues)

- Law and Medicine* — first published as *Acta Juridica 1988*: Juta & Co Ltd pp 233. Price R85 (soft cover)
- Mars The Law of Insolvency in South Africa* 8th edition. By Elmarie de le Rey BA(Pret) LLB (Unisa) LLD(Pret): Juta & Co Ltd. pp 750 Price R184
- Familiereg-Wetgewing Volume 1 Kinders/Family Law Legislation Volume 1 Children* Juta Wetgewingsdiens/Legislation Service. Prys/Price R86
- Motor Industry/Motor Nywerheid — Main Agreement/Hoofdooreenkoms* Edited by the General Secretary and Staff of the National Council for the Motor Industry: Juta & Co Ltd. Price/Prys R78
- Introduction to the Close Corporations Act 1984*. By H J Delpont BA LLD(Pret) and J T Pretorius B Iuris(Pret) LLB(Natal) LLM (Cape Town) LLM(London) LLD(RAU): Juta & Co Ltd. pp 175. Price R29,50 (soft cover) ■

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