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News from the Lexinfo CC Team

The Lexinfo Info Law Alert contains a selection of information referred to in the September editions of our various subscription-based newsletters (see <https://www.lexinfo.co.za/newsletters> for more information). Please feel free to share this newsletter with colleagues and friends.

We are now posting regular brief extracts from our weekly subscription-based newsletters on social media to give non-subscribers an indication of our up-to-date legal content. Visit our pages on LinkedIn  and Facebook .

Our events calendar, listing webinars, seminars, conferences and other events on legal matters, is updated weekly. The events calendar is available at: <https://www.lexinfo.co.za/events-calendar>. Listing on the calendar is free of charge. Please contact us at alert@lexinfo.co.za if you would like to add information on events to be hosted by your organisation.

The Lexinfo Team

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Online Meetings / Hearings / Dispute Resolution

With the increased use of remote hearings and meetings resulting from the Covid-19 pandemic, we look at the highlights from a small selection of recent material published on this subject.

Expert Evidence

The Academy of Experts has published a guidance document, entitled [Remote & Virtual Hearings Guidance for Experts](#). Practical issues such as problems that might occur at the hearing, clothes to wear, livestreaming, lighting, headsets and report preparations are addressed in the document.

Best practice and skills required

In her article, [Best Practice and Advocacy Skills for Remote Hearings](#), Anna Annandal offers advice on:

- experimenting with technology in advance to familiarise yourself with the features of the platform used.
- the importance of appearances – the author notes the following: “You should not underestimate the difference that makes to how you are perceived by those looking into your fish bowl and your practice session will give you an opportunity to adapt how you present yourself and your case online.”
- protocol, etiquette and advocacy during the hearing.
- presentation skills.
- the share screen function.
- things that you need to do shortly before hearing.
- dry runs and briefings;
- how to join the meeting.

The article was published in the August 2020 issue of Advocate, the official journal of the General Council of the Bar of South Africa.

The joint E-Hearings Task Force of Canadian The Advocates’ Society, the Ontario Bar Association, the Federation of Ontario Law Associations, and the Ontario Trial Lawyers Association developed the [Best Practices for Remote Hearings](#). The document is accompanied by the following additional documents:

[Overview of Best Practices for Remote Hearings](#)

[Checklist: Preparing Your System for a Remote Hearing](#)

[Checklist: Counsel Preparation in Advance of Meeting with Adjudicator](#)

[Checklist: Matters to Consider Reviewing with Judge in Advance of Hearing](#)

Looking good on Zoom – about appearances.

In [Zooming Into the Future: Tips to Improve One’s Appearance at Online Meetings](#) by Daniel E. Cummins provides useful practical tips on issues such as lighting, background, adjusting to be eye level with the Webcam and sound. The article published in The Legal Intelligencer on 6 August 2020 mentions the importance of being properly groomed. Business attire is recommended while busy patterns in your tops and ties should be avoided. The fashion experts also recommend avoiding very bright and very dark colours. Plain, solid colours are recommended. Wearing colours similar

to the colour of your background should be avoided. Apparently, wearing the same colour as your background, could create a floating head effect. The author also mentions the functionality of “Touch Up My Appearance” button on Zoom.

Men’s Attire: A Gentleman’s Guide for How to Look Good on Zoom by Raphael Schneider offers ‘fashionable’ advice for men. The author provides the following guiding principles for managing the ‘what to wear’ question:

- Get dressed for the “office” every day.
- Keep your approach situational.
- Wear pants.
- Don’t skip the accessories.

This article was published on the website, [AttorneyatWork](#) on 23 September 2020.

The advantages and disadvantages

In *Mediation Mediums: the Benefits and Burdens of Online Alternative Dispute Resolution in Australia* by Katrina Kluss published in the Australian Alternative Dispute Resolution Law Bulletin, the advantages and disadvantages of online dispute resolution are discussed. Some of the disadvantages mentioned include:

- The risk to confidentiality of using third party software and applications.
- It is usually more difficult to build a rapport with and gain the confidence of parties.
- The absence of human insight, empathy, and guidance in emotionally complex legal matters might be problematic.
- Not all clients are technologically savvy or have access to computers or a reliable internet connection.

The subject of this article is covered in our monthly Practice Management Alert. View our website at <https://www.lexinfo.co.za/lexinfo-practice-management-alert> for more information on this product.

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Investigation into Legal Fees



The cover of the discussion paper features the South African Law Reform Commission logo at the top. Below it, the title 'INVESTIGATION INTO LEGAL FEES' is centered, followed by the subtitle 'Including access to justice and other interventions'. Further down, it identifies 'Project 142' and 'DISCUSSION PAPER 150', dated '10 SEPTEMBER 2020'. It also states the 'CLOSING DATE FOR COMMENTS' as '30 November 2020' and provides the ISBN: 978-0-621-48796-1. At the bottom, it includes the copyright notice: '© Copyright South African Law Reform Commission'.

The South African Law Reform Commission has published a discussion paper during September regarding an investigation into legal fees and tariffs payable to legal practitioners, including access to justice and other interventions. The discussion paper can be viewed at <https://www.justice.gov.za/salrc/dpapers/dp150-Project142-LegalFees-Sep2020.pdf>.

The purpose of the discussion paper is explained in the media statement issued by the SA Law Reform Commission on 18 September. The media statement is available at <https://www.justice.gov.za/salrc/media/20200918-Project142-DiscussionPaper-%20September2020.pdf>.

The closing date for comments is 30 November 2020.

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Prescribed Rate of Interest Adjusted

The prescribed rate of interest changed from 8.75% to 7.75% with effect from 1 June 2020. Regulation notice 987 published in gazette number 43704 was published on 11 September 2020 in terms of the Prescribed Rate of Interest Act 55 of 1975. The notice can be viewed [here](#).

Aadil Patel, Riola Kok and Kara Meiring of Cliffe Dekker Hofmeyr also wrote an article on this issue, entitled [Everything is down, even the prescribed interest rate](#).

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Surveys on the Impact of Covid-19

Apart from all the amendments in terms of the Disaster Management Act in relation to the Covid-19 pandemic, media comments, journal articles and parliamentary questions our Daily Lexinfo Covid-19 Regulatory Updates also referred to the following two interesting surveys published during September 2020. You can read more about our Daily Covid-19 Regulatory Update at <https://www.lexinfo.co.za/covid19>.

The September 2020 *Synthesis Report NIDS-CRAM Wave 2* compiled by the National Income Dynamics Study – Coronavirus Rapid Mobile Survey (NIDS-CRAM) is now available at <https://cramsurvey.org/wp-content/uploads/2020/09/1.-Spaull-et-al.-NIDS-CRAM-Wave-2-Synthesis-Findings..pdf>.

The survey's website provides the following information about the organisation: "The National Income Dynamics Study – Coronavirus Rapid Mobile Survey (NIDS-CRAM) is a broadly nationally-representative panel survey of South African individuals. The same people are contacted every few months and asked a range of questions on their income and employment, their household welfare, receipt of grants, and about their knowledge and behaviour related to COVID-19. There are five waves of the study planned during 2020/2021, and each participant receives a R20 airtime voucher per wave for participating."



Some of findings of report include:

- Employment: The 3-million jobs lost between February and April have not returned by June
- Employment and Location: Rural areas have been more affected by job losses than urban areas
- Education: Increasing educational inequality during lockdown
- Early Childhood Development: The Early Childhood Development (ECD) sector was operating at just a quarter of its pre-crisis levels a month after programmes could reopen.
- Hunger: Reported adult and child hunger both declined by 27% between May/June and July/August.
- Grants: The special COVID-19 Social Relief of Distress (SRD) Grant has brought millions of previously unreached individuals into the system, and application for and receipt of the grant have been relatively pro-poor.
- Health: The prevalence of depressive symptoms seems to have doubled between 2017 and June 2020 (COVID-19 era), from 12% to 24% of individuals.

Save the Children International published a survey, entitled *Protect a generation: The impact of COVID-19 on children's lives*. The report can be downloaded [here](#):

Findings include the following:

- Fewer than 1% of children from poor households said they have access to the internet for distance learning.
- 89% of respondents to the survey reported that Covid-19 has impacted their access to healthcare, medicine and medical supplies.
- 32% of households had a child, parent or caregiver report violence in the home."



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Constitutional Court Decision

Ramabele v S; Msimango v S (CCT 232/17; CCT 207/18) [2020] ZACC 22 (16 September 2020)

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Fair trial rights — postponement for legal representation of choice — judicial bias — unreasonable delays — section 342A of the Criminal Procedure Act 51 of 1977

<http://www.saflii.org/za/cases/ZACC/2020/22.html>

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Supreme Court of Appeal Decisions

COMPETITION

- Milestone Beverage CC and Others v Scotch Whisky Association and Others (1037/2019) [2020] ZASCA 105 (18 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/105.pdf>

CONTRACT

- Mitsubishi Hitachi Power Systems Africa (Pty) Ltd v Murray and Roberts Ltd and Another (1011/2019) [2020] ZASCA 110 (29 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/110.pdf>

CORPORATELAW

- Modise and Another v Tladi Holdings (Pty) Ltd (307/19) [2020] ZASCA 112 (29 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/112.pdf>

COURTS

- Mbatha v S (928/20) [2020] ZASCA 102 (15 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/102.html>

CRIMINAL LAW AND PROCEDURE

- Bilankulu and Another v S (188/2020) [2020] ZASCA 114 (29 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/114.pdf>
- Director of Public Prosecutions: Gauteng Division, Pretoria v Mbonani (1198/2019) [2020] ZASCA 115 (30 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/115.pdf>
- Leshilo v S (345/2019) [2020] ZASCA 98 (8 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/98.pdf>
- Lungisa v S (696/2019) [2020] ZASCA 99 (9 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/99.html>
- Moamogoe v The State (191/2019) [2020] ZASCA 106 (18 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/106.html>

DELICT

- MEC: Western Cape Department of Social Development v Esau and Another (379/2019) [2020] ZASCA 103 (16 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/103.html>
- Phakula v Minister of Safety and Security (454/19) [2020] ZASCA 109 (23 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/109.pdf>
- Van Meyeren v Cloete (636/2019) [2020] ZASCA 100 (11 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/100.html>

ESTATES

- Jones v Pretorius NO (281/2019) [2020] ZASCA 113 (29 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/113.pdf>

INSOLVENCY

- Moodliar and Others v Recycling and Economic Initiative of South Africa NPC (Case no. 977/2019) [2020] ZASCA 101 (15 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/101.html>

PARTNERSHIP

- Khan v Shaik (641/2019) [2020] ZASCA 108 (21 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/108.pdf>

PENSION LAW

- Government Employees Medical Scheme and Others v Public Protector of the Republic of South Africa and Others (1000/19) [2020] ZASCA 111 (29 September 2020)

PERSONS AND FAMILY LAW

- MEC: Western Cape Department of Social Development v Esau and Another (379/2019) [2020] ZASCA 103 (16 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/103.html>

PRESCRIPTION

- Investec Bank Limited v Erf 436 Elandspoort (Pty) Ltd and Others (410/2019) [2020] ZASCA 104 (16 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/104.html>

SECTIONAL TITLES

- Central Developments Tshwane (Pty) Ltd and Another v Body Corporate, Twee Riviere Aftree Oord (635/2019) [2020] ZASCA 107 (21 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/107.pdf>

TRUSTS

- Breetzke and Others NNO v Alexander NO and Others (232/2019) [2020] ZASCA 97 (2 September 2020)
<http://www.saflii.org/za/cases/ZASCA/2020/97.pdf>

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Draft Bills

Animals Protection Amendment Bill, 2020

Notice of intention to introduce a Private Member's Bill into Parliament. Comments invited within 30 days of publication of this notice.

"The Animals Protection Amendment Bill, 2020 ("draft Bill") therefore seeks to amend two Acts, namely the Animals Protection Act, 1962, (Act No. 71 of 1962) ("Animals Protection Act"), and the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) ("Foodstuffs and Cosmetics Act"). The amendment intends to prohibit the sale and manufacturing of cosmetics that were tested on an animal in the Republic and to criminalise the testing of cosmetics on animals."

GenN497 GG 43702 p93 11Sep2020

http://www.gpwonline.co.za/Gazettes/Gazettes/43702_11-09_NationalGovernment.pdf

Conduct of Financial Institutions Bill. Draft September 2020.

"To provide for a regulatory framework for the conduct of financial institutions that will—

- protect financial customers, including by promoting the fair treatment and protection of financial customers by financial institutions;
- support fair, transparent and efficient financial markets;
- promote trust and confidence in the financial sector;
- support innovation and the development of and investment in sustainable innovative technologies, processes and practices;
- support sustainable competition in the provision of financial products and financial services;
- promote financial inclusion;
- promote transformation of the financial sector; and
- assist the South African Reserve Bank in maintaining financial stability;

and to provide for matters connected therewith."

<http://www.treasury.gov.za/public%20comments/CoFI%20Bill.pdf>

See also:

- **Conduct of Financial Institutions (COFI) Bill, 2020.** Comments on second draft invited by 30 October 2020. GenN519 GG 43741 p3 29Sep2020
https://www.gov.za/sites/default/files/gcis_document/202009/43741gen519.pdf
- **National Treasury Media Statement. Second Draft of Conduct of Financial Institutions Bill published for public comment. 29 September 2020.**
http://www.treasury.gov.za/comm_media/press/2020/2020092901%20MEDIA%20STATEMENT%202ND%20COFI%20BILL%20DRAFT%20PUBLISHED%20FOR%20COMMENT.pdf
- **Response document supporting the revised Conduct of Financial Institutions Bill. September 2020.**
<http://www.treasury.gov.za/public%20comments/COFI%20Response%20Document.pdf>

Pension Funds Amendment Bill, 2020

Notice of intention to introduce a Private Member's Bill into Parliament and invitation for public comment within 30 days of publication.

"The draft Bill therefore seeks to amend the Act in order to allow for pension fund members to obtain a loan, secured by a guarantee from a registered pension fund, to alleviate financial pressure during the COVID-19 emergency or any other emergency similar to COVID-19. The draft Bill provides for a registered pension fund to offer a guarantee to a pension fund member of a maximum of 75% of their share in the value of the fund. By enabling a member to access a pension-backed loan, that member will be able to leverage their pension fund investment prior to their retirement date, without eroding their provision for eventual retirement. Lending institutions will be enabled to offer loans to pension fund members at competitive interest rates and over extended or deferred payment periods given that the loan is fully guaranteed."

GenN504 GG 43726 p528 18Sept2020

http://www.gpwonline.co.za/Gazettes/Gazettes/43726_18-09_NationalGovernment.pdf

South African Police Service Amendment Bill, 2020

The draft Bill aims to amend the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a legal framework for policing aligned to the Constitution of the Republic of South Africa, 1996, principles laid down in the National Development Plan, 2030, to align the said Act with the White Paper on Policing, 2016, the White Paper on Safety and Security, 2016, the Community Policing Policy and the Policy on a Single Police Service, in order to contribute to the effective and efficient combating of crime. Invitation to comment on draft Bill no later than 45 days from date of publication.

GN1030 GG 43750 p3 01Oct2020

<https://www.gov.za/documents/south-african-police-service-act-draft-south-african-police-service-amendment-bill>

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Business Interruption Insurance: News from the Lexinfo Insurance Law Alert

The following landmark decision was handed down in the United Kingdom on business interruption during September:

Financial Conduct Authority v Arch Insurance (UK) Limited; Argenta Syndicate Management Limited; Ecclesiastical Insurance Office Plc; Hiscox Insurance Company Limited; Ms Amlin Underwriting Limited; QBE Limited; Royal & Sun Alliance Insurance PLC; Zurich Insurance PLC [2020] EWHC 2448 (Comm)

“...test case to determine issues of principle in relation to policy coverage under various specimen wordings underwritten by the defendants in respect of claims by policyholders to be indemnified for business interruption losses arising in the context of the COVID-19 pandemic and the advice of and restrictions imposed by the UK Government in consequence.”

<https://www.bailii.org/ew/cases/EWHC/Comm/2020/2448.html>

The South African Financial Sector Conduct Authority subsequently released an [update on contingent business interruption insurance cover](#) on 16 September 2020. The media statement provided the following information: “Following ongoing discussions with the non-life insurance industry, the Financial Sector Conduct Authority (FSCA) would like to provide an update regarding the process of obtaining legal certainty on Contingent Business Interruption (CBI) Cover. As indicated in previous communications, the FSCA has been engaging with the non-life insurance industry on the most efficient way to approach the courts in order to obtain legal certainty on CBI Cover. After engaging with their legal teams, the majority of nonlife insurers have advised the FSCA that due to many legal complexities they are now of the view that the cases that are currently before the South African courts and the one by the Financial Conduct Authority in the United Kingdom will provide the required legal certainty on CBI policy wordings for the non-life insurance industry.”

The above-mentioned information was extracted from the weekly Lexinfo Insurance Law, dated 22 September 2020. More information on this product is available at: <https://www.lexinfo.co.za/lexinfo-insurance-law-alert>



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Draft Provincial Bill

Draft Western Cape Land Use Planning Amendment Bill, 2020 together with the memorandum on the objects of the bill.

“To amend the Western Cape Land Use Planning Act, 2014, so as to do away with the reference to section 115 of the Local Government: Municipal Systems Act, 2000; and to provide for matters connected therewith.”

Comments invited by 24 September 2020.

PN91 PG 8321 p2 10Sept 2020

https://www.westerncape.gov.za/assets/departments/premier/prov-8321-extra-lupa_8321-lupa-2020.pdf

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Parliamentary Bills

Cannabis for Private Purposes Bill 19 of 2020

To—

- respect the right to privacy of an adult person to possess cannabis plant cultivation material; to cultivate a prescribed quantity of cannabis plants; to possess a prescribed quantity of cannabis; and to smoke and consume cannabis;
- regulate the possession of cannabis plant cultivation material; the cultivation of cannabis plants; the possession of cannabis; and the smoking and consumption of cannabis by an adult person;
- protect adults and children against the harms of cannabis;
- provide for the expungement of criminal records of persons convicted of possession or use of cannabis;
- delete and amend provisions of certain laws; and
- provide for matters connected therewith.

https://static.pmg.org.za/B19-2020_Cannabis_for_Private_Purposes6591.pdf

Children's Amendment Bill 18 of 2020

“To amend the Children’s Act, 2005, so as to amend and insert certain definitions; to provide for children’s right to privacy and protection of information; to further provide for the rights of unmarried fathers; to extend the children’s court jurisdiction; to further provide for funding of early childhood development programmes; to provide for the designation and functions for a Registrar of the National Child Protection Register; to further provide for the care of abandoned or orphaned children and additional matters that may be regulated; to further provide for rules relating to care and protection proceedings; to further provide for medical testing of children in need of care and protection or adoption; to provide for additional matters relating to children in alternative care; to further provide for matters relating to adoption and inter-country adoption; to further provide for the hearing of child abduction matters; to further provide for matters relating to surrogate motherhood; and to provide for matters connected therewith.”

https://static.pmg.org.za/B18-2020_Children.pdf

Compensation for Occupational Injuries and Diseases Amendment Bill 21 of 2020

“To amend the Compensation for Occupational Injuries and Diseases Act, 1993, so as to amend, substitute, insert, delete and repeal certain definitions and sections; to provide for matters pertaining to the Board and its members; to provide for the Commissioner to perform certain functions that were previously performed by the Director-General; to further provide for matters pertaining to the rehabilitation, re-integration and return to work of occupationally injured and diseased employees; to regulate the use of health care services; to provide for the Commissioner to review pension claims or awards; to provide for administrative penalties; to regulate compliance and enforcement and to provide for matters connected therewith.”

https://static.pmg.org.za/B21-2020_Compensation_for_Occupational_Injuries_and_Diseases.pdf

Domestic Violence Amendment Bill 20 of 2020

To amend the Domestic Violence Act, 1998, so as to—

- amend and insert certain definitions;
- further provide for the manner in which acts of domestic violence and matters related thereto, must be dealt with by certain functionaries, persons and Government departments;
- further regulate obtaining of protection orders in response to acts of domestic violence;
- delete and amend provisions of certain laws; and
- provide for matters connected therewith.”

https://static.pmg.org.za/B20-2020_Domestic_Violence6651.pdf

Electoral Laws Amendment Bill 22 of 2020

“To amend the—

- Electoral Commission Act, 1996, so as to insert certain definitions; to streamline the provisions for the registration of political parties; to provide for the registration of parties in respect of particular provinces, district and metropolitan municipalities and to repeal provisions relating to registration of parties in respect of particular local municipalities; to repeal obsolete provisions;
- Electoral Act, 1998, so as to insert certain definitions; to amend the provisions regarding public access to the voters’ roll; to update references to repealed legislation; to amend provisions allowing voters to vote in a voting district where they are not registered; to amend provisions relating to the submission of lists of candidates; to amend provisions relating to special votes in elections for the National Assembly; to authorise the Commission to prescribe a different voting method; to amend provisions relating to the procedure concerning provisional results and voting materials; to provide for the limited applicability of the Code; to amend Schedule 3; and

- Local Government: Municipal Electoral Act, 2000, so as to insert and delete certain definitions; to amend the requirements for parties contesting elections by way of party lists and for a ward candidate to contest elections; to authorise the Commission to prescribe a different voting procedure for those voters whose names appear on the voters' roll, without addresses; to authorise the Commission to prescribe a different voting method; to amend provisions relating to the effect of certain irregularities, and to provide for matters connected therewith."

https://static.pmg.org.za/B22-2020_Electoral_Laws6884.pdf

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How to Use SAFLII's Search Feature

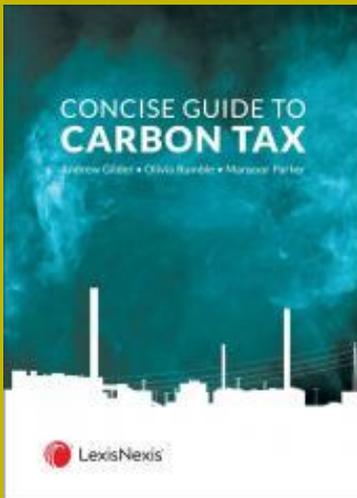
Note the video on YouTube posted by the South African Legal Information Institute on how to use SAFLII's search feature to find case law at:

<https://www.youtube.com/watch?v=TFq7mMbmZQE>.

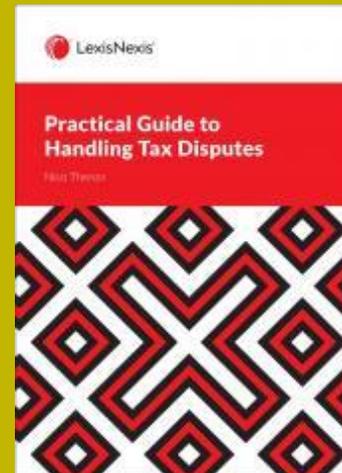
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Forthcoming Law Titles

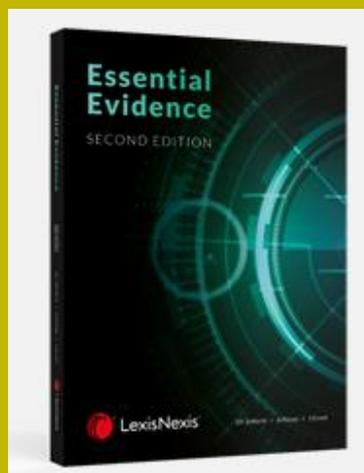
The following books are due for publication within the next two months. Prices quoted include VAT but exclude delivery. Contact books@lexinfo.co.za if you wish to pre-order these titles or for more information.



Gilder, Andrew [et al.] Concise guide to carbon tax. – LexisNexis, 2020.
Price: R488.75



Theron, Nico. Practical Guide to Tax Disputes. – LexisNexis, 2020.
Price: R546.25

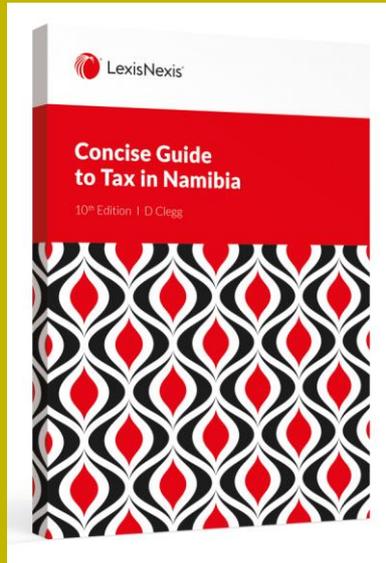


Zeffertt, David Theodor and Paizes, A. Essential evidence. – 2nd ed. – LexisNexis, 2020.
Price: R598.00

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New Book Announcement

The following new book was recently published. Price quoted includes VAT but excludes delivery. Contact books@lexinfo.co.za if you wish to place an order or for more information.



Clegg, D. Concise Guide to Tax in Namibia. – 10th ed. – LexisNexis, 2020.
R454.25

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