

Fundamina

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EDITORIAL POLICIES AND PROCEDURES

[Note: this document may be read in conjunction with the journal's "Publication Ethics and Publication Malpractice Statement"]

PREAMBLE

Fundamina and its publisher, Juta & Company (Pty) Ltd ('Juta'), are committed to maintaining the highest standards of publication ethics, and to supporting research and publishing best practice.

Authors, editors and peer reviewers are encouraged to refer to the [Committee on Publication Ethics \(COPE\) website](#) for further detailed guidance on any publication ethics or best practice-related issues.

In addition, *Fundamina* and its publisher comply with the following national codes and guidelines:

- Academy of Science of South Africa's [Code of Best Practice in Scholarly Journal Publishing, Editing and Peer Review \(March 2018\)](#)
- the [Forum of Editors of Academic Law Journals in South Africa: Guidelines for Best Practice in Editorial Discretion and Peer Review \(August 2008\)](#) [see too Annexure A].

What follows below should be read in conjunction with, and in addition to, the documents listed above.

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1. ABOUT THIS PUBLICATION

Fundamina is a peer-refereed journal that publishes legal-historical research. In this journal, academics and practitioners from South Africa and abroad have the opportunity to exchange ideas on a wide range of legal-historical issues. The focus is on the ancient and modern, external and internal legal history of all families of law and is not limited to South or southern African legal history.

2. ACCREDITATION

Fundamina is accredited by the South African Department of Higher Education and Training for subsidy purposes.

3. PUBLISHER

Fundamina is published by Juta & Company (Pty) Ltd. The publisher is responsible for all the copy editing, typesetting, printing, publication, distribution, advertising, copyright matters and the financial arrangements (such as subscriptions, accounting, royalty payments) pertaining to the journal.

3.1 Publisher ethics

Juta & Co (Pty) Ltd is committed to:

- maintaining and supporting the editorial independence of its journal editors;
- supporting journal editors to run their journals transparently and ethically in terms of national and international best-practice guidelines;
- acting always in the interests of academic and scientific integrity, including taking all appropriate measures to clarify alleged or proven scientific misconduct, fraudulent publication or plagiarism, and publishing corrections and retractions when necessary.

4. FREQUENCY OF PUBLICATION

Fundamina appears two (2) times a year (comprising two parts per each annual volume number). Page numbering is consecutive, throughout the year's volume.

5. LANGUAGE OF PUBLICATION

All publications appear in English; articles written in another language will be considered.

6. EDITORIAL STRUCTURE

Fundamina operates according to the following structures:

6.1 Editor-in-Chief

The Editor-in-Chief is elected from amongst the members of the Editorial Committee. The Editor-in-Chief is the person who is in charge of the journal's academic content and standing in the academic and legal profession.

The duties of the Editor-in-Chief are to –

- chair the Editorial Committee;
- work closely in conjunction with the publishers to ensure *Fundamina* is published professionally and efficiently;
- ensure that the Editorial Committee complies with all ethical obligations as contained in *Fundamina* Publication Ethics and Publication Malpractice Statement, as well as all other obligations contained in this policy document;
- receive contributions from authors, and to keep a central record of all contributions received;
- allocate contributions for reviewing to the other members of the Editorial Committee;
- collaborate with the other editors in the interests of the authors and *Fundamina*;
- allocate successful contributions for publication, and to inform authors of their placement;
- ensure the manuscript is at the required standard prior to its submission of to the publisher for copy editing and typesetting;
- liaise with authors about the checking of proofs, and to make all corrections necessary to the various proofs;
- settle and sign off on the final manuscript of each part of *Fundamina*;
- do whatever else is necessary to promote and protect *Fundamina* standing in the legal community.
- keep records of submissions, outcomes and reviewing processes;
- compile an annual report of the journal's activities, for the Editorial Committee, the Editorial Board and the publisher.

6.2 Editorial Committee

The Editorial Committee collectively runs the academic side of *Fundamina* operations. The membership of the Committee is by invitation of the existing members of the Committee. There is no prescribed length of time of service: service is at the will of each respective editor. The duties of the members of the Editorial Committee are to –

- attend Board Meetings and to contribute to discussions and decisions about procedures, policies and operational issues pertinent to *Fundamina*;
- elect from its number an Editor-in-Chief to lead the *Fundamina*;
- determine the roles and responsibilities of the editors. The majority of the editors shall fulfil the task of review/handling editors, arranging for the reviewing of contributions, following up with reviews, communicating outcomes to authors, and doing a preliminary edit of successful contributions before passing these on to the Editor-in-Chief for placement
- provide advice and assistance to the Editor-in-Chief when this is sought;

- contribute in any other way to the efficient operation of the *Fundamina* and the promotion of its activities.

6.2.1 Editorial ethics

The members of the Editorial Committee are committed to –

- maintaining and promoting consistent ethical and publication best-practice policies for the journal;
- overseeing and acting to enforce these policies in a fair and consistent manner;
- acting independently to support the publication of quality academic work of relevance to the journal's scope, without regard to the author's race, gender, sexual orientation, ethnic origin, citizenship, religious belief, political philosophy or institutional affiliation;
- ensuring all academic work is subjected to double-blind peer review;
- ensuring the confidentiality of the review process;
- exercising the highest standards of personal integrity in their work as editors of the journal, recognising and planning for instances where they could have a competing interest or the appearance of a competing interest;
- working with authors, reviewers, and Editorial Board members as necessary to ensure they are sufficiently advised regarding the journal's ethics and publishing policies;
- ensuring that the journal's stewardship on ethical matters is fair, unbiased, and carried out in an efficient and timely manner;
- ensuring records are kept of reviewing processes and outcomes.

6.3 Editorial Board

In terms of the ASSAf Code of Best Practice, and the Law Journals Best Practice Guidelines Annexure A (see also Annexure A below), *Fundamina* has an Editorial Board to provide editorial oversight and advice to the Editor-in-Chief, the Editorial Committee and other persons involved in producing the journal. The Editorial Board shall include a broad spectrum of members, both local and international that is drawn from both legal academia and the practice of law. The members should be eminent persons of high standing in their field. Members shall be appointed for a renewable period of five years. The names of the editorial board shall appear in each part of the *Fundamina*, after the contents page. Due to their fiduciary role in respect of the operations of the journal, submissions from Editorial Board members will be handled with extra confidentiality and attention so as not to compromise the peer review process.

6.3.1 *The role of the editorial board*

The role of the Editorial Board shall be to:

- advise and support the editorial team from time to time regarding the operation and quality of the journal contributions;
- review occasional articles that fall within the expertise of the board member when requested;
- encourage colleagues and peers to submit suitable articles;
- make suggestions to the editor(s) of suitable authors and reviewers;
- help to promote the journal through personal and professional networks, including social media and at meetings;
- provide prestige to the journal;
- provide advice to the Editorial Committee in relation to matters involving publication ethics and publication malpractice, and, if necessary, to conduct investigations or provide advice on such matters;
- respect confidential journal information and ensure it is not inappropriately circulated;
- accept that the Editor-in-Chief's decisions on publication or otherwise are final.

7. THE NATURE OF CONTRIBUTIONS CONSIDERED

Fundamina welcomes publications from academics from all academic institutions as well as members of the judiciary, the magistracy, and all branches of the legal profession in South Africa and beyond its borders, provided the work meets the criterion for inclusion. *Fundamina* considers and publishes contributions of the following types:

Contributions eligible for subsidy

The following types of contributions will be subject to peer review and are eligible for subsidy in terms of the policies of the South African Department of Higher Education and Training: articles on topics of legal-historical interest. There is no specified word limit for an article contribution to the journal.

Note:

Although *Fundamina* recognises the principles referred to in A1 of the Law Journals Best Practice Guidelines (see Annexure A below), *Fundamina* will not consider re-publishing something already published elsewhere. The reputation of *Fundamina* is predicated upon it being the first to publish original material.

Contributions published, but which are not eligible for subsidy

The following types of contributions will be considered for publication but are not necessarily peer-reviewed and will not be eligible for subsidy:

1. Transcriptions of public lectures. This category refers to the direct transcription of speeches or lectures delivered by academics or non-academic members of the legal profession. This includes speeches and lectures given as opening or key-note addresses at professional or academic conferences, or public lectures delivered annually that are named or endowed in some way, and which usually

involve the person concerned speaking by invitation.

There is nothing preventing the author of a lecture or speech referred to above converting it into a fully researched feature article and submitting it in that form for peer review as a feature article, should he or she wish to do this. Such work shall be treated like any other article and shall be subjected to the normal peer review process.

2. Book reviews. Book reviews are critical discussions of scholarly books on any topic related to the discipline of law. These should be between 2000 and 4000 words long. References are in-text, in brackets.
3. Book notices. Book notices are short descriptive overviews of recently published books that are about 1000 to 1500 words long.
4. Tributes. Tributes are personal accounts or public addresses prepared and delivered in honour of a prominent personality or scholar.
5. Correspondence. The editors of *Fundamina* may, at their discretion, and if they feel it is in the interests of the readership to do so, publish unsolicited correspondence received by the editors, up to a maximum length of 2000 words.

Note:

In respect of the Law Journals Best Practice Guidelines A9 (see Annexure A below), while *Fundamina* may invite authors to submit contributions for publication, or to receive requests to publish a prominent lecture or other piece of work, this will be done only in exceptional cases. This will be subject to the condition that such contributions must be treated in the same way as any other unsolicited contribution, depending on into which category listed above the author wishes it to fall.

8. REQUIREMENTS FOR CONTRIBUTORS TO MEET

The editors welcome the submission of manuscripts in English have for consideration for publication.

Fundamina does not under any circumstances accept work that is broken up into a series of fragmented pieces (part 1, part 2, etc). Each article must stand on its own as a full analysis of the topic under consideration.

Each part of the journal specifies that a manuscript will be considered for publication

- only on the assurance that it has not in whole or in part or in substance been published or offered for publication elsewhere;
- on the understanding that it may be submitted in confidence to expert reviews for evaluation;
- on the understanding that the editors reserve the right to make what changes they consider desirable, for example to –
 - bring the manuscript into the house style of *Fundamina*
 - eliminate errors of typing, grammar, syntax, punctuation, spelling, idiom and the like
 - eliminate ambiguity, illogicality, tautology, circumlocution and redundancy

- produce accuracy and coherence
- improve the mode of expression and style of writing
- avoid possible criminal or civil liability.

Authors are required to read their manuscripts very carefully to avoid the need for the editors to exercise these rights extensively. Note in particular that every quotation and every reference is to be *carefully* checked for accuracy.

In particular, authors are asked to acquaint themselves with the house style of *Fundamina*, and to make the effort to place any contribution in the style of the *Fundamina*. A comprehensive guide to what is required will appear on a web page supplied by the publishers and may also be requested from the Editor-in-Chief.

Authors will be required to comply with the house-style requirements. Manuscripts which do not show any attempt to comply with the house style will, regrettably, be returned to authors with a request to do so before the substance of the contribution will be considered.

8.1 Author ethics

Authors should ensure that:

- their work is original and written by them;
- authorship of the paper is accurately attributed and represented, and there is no example of either ghost, gift or guest authorship, which the journal considers unethical.
- their work has not been previously published and has been submitted only to the journal;
- where material is taken from other sources (including their own published writing) the source is clearly cited and that where appropriate permission is obtained;
- their work does not infringe on any rights of others, including privacy rights and intellectual property rights;
- their data or source material is true and not manipulated;
- their data or source material is their own or that they have permission to use data or source material reproduced in their paper;
- any real or apparent conflicting or competing interest is clearly stated on submission of the paper (this would include funding support);
- they adhere to all research ethics guidelines of the legal discipline, particularly where human or animal subjects are involved.

9. SUBMISSION OF CONTRIBUTIONS

9.1 The submission process

All material for publication is to be sent to the Editor-in-Chief at svhactor@sun.ac.za or lawjournals@sun.ac.za. Submission can also be made via the Southern African Society of Legal Historians at saslh@unisa.ac.za.

Authors must supply an accurate and up-to-date institutional affiliation. Those who are affiliated to academic institutions should supply an ORCID with their submission.

In order to avoid duplicate publication in other journals, and attendant copyright issues with other publishers, all contributors of articles and notes will be required to submit a declaration, in writing, that the work has not, either as a whole or in part or in substance, been published or submitted for publication elsewhere. This will not include situations where the work has appeared in a thesis or dissertation, as authors are encouraged to submit such work. However, the fact that the work did appear in such a thesis or dissertation should be acknowledged. Any conflicts of interest or other factors relating to the ethics of the publication must be disclosed. A copy of the up-to-date declaration form may be found in Annexure B.

In terms of the Law Journals Best Practice Guidelines A2 (see Annexure A below), where an author has submitted a contribution elsewhere, it will only be considered if the author has withdrawn it from the other journal, or if the other journal has rejected it. However, in view of its status, *Fundamina* will normally not consider a contribution rejected by another journal. *Fundamina* will take a very dim view of authors using the reviewing process of another journal and the comments or assistance it generates as a mechanism to improve the contribution for publication in *Fundamina*, and if *Fundamina* editors discover that an author has done this, the contribution will normally be rejected.

If an author declares that part of the work has been published elsewhere, this will not necessarily mean that *Fundamina* will be unable to consider the contribution. It may simply mean that the relevant permissions must be sought, and acknowledgements must be made, if the contribution is ultimately accepted for publication. However, it is critical for the editors to know about any duplications up-front. Should any author fail to disclose any duplicate submission of material that has been published before, the editors reserve the right to withdraw the contribution from consideration or publication, or to retract the piece, where necessary.

9.2 Conflict of interest policy

The COPE Guidelines on Good Publication Practice indicate: “Conflicts of interest arise when authors, reviewers, or editors have interests that are not fully apparent and that may influence their judgments on what is published. They have been described as those which, when revealed later, would make a reasonable reader feel misled or deceived.”

Some scholars, researchers and professionals may have potential conflicts of interest, that could have an effect on — or could be seen to have an effect on — their research. A potential conflicting interest might arise from relationships, allegiances or hostilities to particular groups, organizations or interests, which may influence excessively one’s

judgments or actions. The issue is particularly sensitive when such interests are private, relate to funding, and/or may result in personal gain. Perceptions of bias or tailoring of research outcomes are of specific concern.

Examples of conflicts of interest might include the following, although it is not an exhaustive list:

- having received fees for consulting on the research project;
- having received research funding that has enabled the research, from private donors;
- having signed confidentiality or non-disclosure agreements in relation to the research (this would normally be a bar to pursuing publication);
- having been, or currently being, employed by the organisation about which the research has been done;
- having received funds from a private donor or conference organiser reimbursing the author for preparing the work for presentation at a conference;
- having been a party to the legal matter under analysis, having acted as a legal representative to parties involved in the legal matter under analysis, or
- having acted as a member of a judicial or quasi-judicial tribunal which took a legal decision involving the matter under legal analysis.
- If there are other interests which the reasonable reader might feel has affected the research, the author should declare them.

Fundamina requires a formal declaration of conflicting interests upon submission (see the declaration document in Annexure B). If a conflict is not disclosed, but subsequently becomes apparent, the editors reserve the right to refuse to continue with the review process; to insist on full disclosure (if this is possible ex post facto); to refuse to publish the work; or to amend, correct or retract the article in terms of the journal's Corrections Policy (see below).

The existence of a declared conflict or potential conflict does not necessarily mean the work will not be considered for publication, or published. Some of the cases described above may be covered by a declaration as to the interest, to alert readers and avoid any perception of research bias or deception. Other cases may, by contrast, be prohibitive of publication. The Editorial Committee shall consider each case on its merits, guided by the COPE guidelines relating to such conflicts.

If the work is ultimately accepted for publication, a declaration about the potential conflict shall be placed in a footnote at the commencement of the published piece.

9.3 Confidentiality policy

Fundamina recognises the importance in all phases of the editorial process of respecting the requirements of confidentiality, data protection and the principles relating to the protection of personal information. In the South African context the editors are guided by the relevant provisions of the Protection of Personal Information Act 4 of 2013 and its regulations.

Unless otherwise specified, *Fundamina's* editors and reviewers are to handle all submissions in confidence. The editors will protect the confidentiality of all material submitted to the journal and all communications with reviewers, unless otherwise agreed with the relevant authors and reviewers.

Unless reviewers have agreed to disclose their names, the editors will protect reviewers' identities.

Unpublished materials disclosed in a submitted manuscript must not be used in an editor's or reviewer's own research without the express written consent of the author. Privileged information or ideas obtained through peer review must be kept confidential and not used for personal advantage.

If a reviewer wishes to delegate the review or seek the opinion of a colleague on a specific aspect of the submission, the reviewer is expected to clear this with the editor in the first instance.

In exceptional circumstances and in consultation with the publisher, the editor may share limited information with editors of other journals where deemed necessary to investigate suspected research misconduct. If such misconduct is identified, the editors reserve the right to report and disclose such adverse findings, including the identity of the authors, to any institution to which the author is affiliated, for its attention.

9.4 Record-keeping

The Editor-in-Chief shall be responsible for keeping a centralised list of manuscripts received, noting date of receipt, date of allocation to which editor for reviewing, and the eventual outcome of the process.

Each individual review/handling editor is responsible for retaining records of the reports received from reviews, recommendations made, and decisions taken relating to publication.

Since *Fundamina* does not use an automated submission system (eg Scholar 1 or Manuscript Central) the Editor-in-Chief is responsible for operating a central database of reports and outcomes, which is to be populated by the review/handling editors on an annual basis.

9.5 Submission dates

Fundamina does not have specific submission dates. Contributions are welcome at any time and will be allocated for reviewing (where they comply with the journal's substantive and formal requirements and policies) as they are received. Contributions will then go into the reviewing process, the speed of which depends on a number of variable factors such as the efficiency of reviews; whether the contribution is rejected or can be accepted "as is" after reviewing, or whether it requires revision; the extent of such revisions; and the speed with which the author attends to any further requirements or comments before the contribution is ultimately settled and accepted.

9.6 More than one contribution by an author

Normally, *Fundamina* does not accept a number of contributions by one author at one time. This applies both to independent substantive pieces, and any attempt to present pieces in a series of parts (the latter are not considered, as indicated in 8 above). As a general policy, only one contribution per author will be considered at a time, and further submissions will not be considered while a former piece is still in the reviewing

process. In addition, *Fundamina* adopts a rule that no individual author's work in the subsidy-earning categories may be published more than once in each year's volume. This rule has been adopted in the interests of giving as diverse a cohort of authors as is possible from across the academic and professional spectrum an opportunity to publish in *Fundamina*, and to avoid certain individuals or institutions dominating the pages of *Fundamina*, as is mandated by the general guidelines in the DHET Research Outputs Policy.

9.7 Contributions under a *nom de plume*

Authors are, as a rule, both expected and encouraged to submit their work under their own name. However, it is possible for *Fundamina* to consider contributions written under a *nom de plume*: such contributions have been received and published in the past. The conditions for doing so are that the author must (a) disclose his or her name to the Editor-in-Chief and the publisher; and (b) must provide a reasonable explanation as to why the author wishes to adopt this course of action. Due to the fact that all contributions are peer-reviewed "blind", a concern about the identity of the author in the reviewing process being disclosed will not be a valid reason. The final decision as to whether or not to publish the contribution under a *nom de plume* will rest with the Editor-in-Chief in consultation with the publisher.

9.8 Submission of contributions by editors

Members of the editorial team are entitled to submit contributions for consideration in the same way as any other author, and they will be subject to the same reviewing and placement process as any other contribution. For general members of the team, the Editor-in-Chief will be responsible for undertaking the reviewing process. If the contribution is from the Editor-in-Chief, the senior general editor shall undertake the reviewing process. Team members are all cautioned that such contributions should be made very sparingly, and that team members should, where possible, consider submitting the contribution elsewhere first, to avoid any impression that the *Fundamina* operates on an in-house basis.

10. PEER REVIEW POLICY

10.1 Peer Reviewer ethics

Reviewers must:

- understand the importance of their role in contributing to making editorial decisions and, through editorial communications with authors, assisting authors in improving their manuscripts;
- conduct their review objectively and diligently;
- formulate their responses clearly, referring to supporting arguments, citation of further literature, and examples where necessary;
- Specifically, reviewers should:
 - conduct themselves fairly and impartially, particularly where the reviewer comes from a particular school of thought and/or may have strong ties to a particular interest.
 - identify gaps that could be explored to enhance the interpretability and strength of the findings and/or insights.

- consider whether any instances of plagiarism appear in the work, and to report any such examples to the editor.
- suggest how the submission can be improved. Reviewers should always report in writing, with clear recommendations for acceptance of the paper in question, with or without revision, or rejection, as the case may be.
- assess the originality of references of previously published studies and ensure that the work is positioned in the relevant field.
- contest conclusions when they are not justified by the results or arguments presented.
- maintain the confidentiality of the review process;
- immediately alert their editor of any real or potential competing interest that could affect the impartiality of their reviewing, and decline to review where appropriate.

10.2 The peer review process

The reviewing process is central to the quality of what is ultimately published, is a critical part of the *Fundamina's* work. The *Fundamina* commits itself to following the ASSAf Code of Best Practice and Law Journals Best Practice Guidelines (see Annexure A) in respect of the reviewing process. What follows below should be read in conjunction with, and in addition to, those documents.

1. When a contribution is received by the Editor-in-Chief, an initial assessment must be made as to whether it falls within the scope of what is published in the journal, or is suitable for further consideration. *Fundamina* publishes work on legal history. The Editor-in-Chief shall communicate clearly the reasons for refusal to consider an unsuitable work.
2. Work that is self-evidently too brief or too long, is evidently a speculative draft, is not properly formulated, or is fundamentally flawed, may also be rejected without review. The Editor-in-Chief shall communicate clearly the reasons for such refusal to consider the work.
3. If the contribution is deemed relevant and suitable for further consideration, it must be subjected to peer review. In terms of the *Fundamina* structure the Editor-in-Chief shall allocate each contribution to a member of the Editorial Committee, and that person shall be responsible for undertaking the peer review process in terms of the guidelines below.
4. The *Fundamina* commits itself to the adoption of a “double-blind” peer review process. (The nature of this process, and who is considered to be a “peer review” is defined in the Law Journals Best Practice Guidelines C1-3 [remove if required]). Where the editors deem it necessary in unusual cases, the *Fundamina* reserves the right to have the contribution reviewed by more than two reviewers.
5. The reviewers must first be approached to determine their availability to act as a review in terms of the relevant time frames (normally, to report within 3–4 weeks unless another arrangement needs to be made in the circumstances). Review editors must take pains to ensure that reviewers are not from the same institution, do not have a working relationship with the author, and are not aware of the authorship of the work (eg because they attended a conference at which the author presented the work). Review editors will keep an updated list of potential referees, and will share it with other editors where necessary. If the reviewers

agree to act, the editor must transit the anonymised contribution to the reviewers, and a review report form for the reviewers to complete. Reviewers must complete the form and give a written assessment, by way of a written report, by marking up/making comments on the original document, or a combination of the two.

6. Editors may not act as reviewers of submissions they are handling.
7. The editor is to ensure that the reviewing process occurs expeditiously, and to take active steps to avoid any inappropriate delays.
8. The reviewer reports must then be assessed by the editor to decide whether, individually and collectively, they support the publication of the contribution in question; whether publication should follow once certain improvements are effected and/or further work is done and reported on; or whether the submission should be rejected. In deciding whether to publish a contribution, editors should accord significant weight to the reviewers' reports. The editor's decision on publication, after considering all the reports, and in consultation where necessary with the Editor-in-Chief, is final. No outside interference, for example by a university or publisher, is permitted. Editors should convey relevant comments of the reviews to authors, but without compromising the reviews' anonymity.
9. In cases where the reviewers' reports conflict, there are a number of paths that the editor may adopt, in consultation with the Editor-in-Chief where necessary.
 - If the difference is minor, it may be that the editor may make the appropriate recommendation from a conspectus of the two reports read together.
 - If the recommendation is that further work needs to be done to the contribution, this may require (a) in minor cases, that these can be done to the satisfaction of the editor, or (b) in more major cases, that the contribution be reconsidered by the reviewers after that has occurred; or (c) that it be reconsidered by a new reviewer or reviewers after that has occurred. There will be times where (b) will be appropriate, but times where (c) will be appropriate (for example, where an original reviewer has adopted a dogmatic rejection of the author's approach that may mean that the original reviewer is not suitable for further consultation). In each case the editor should consult the Editor-in-Chief to ensure fair and consistent treatment.
 - Where there is a clear conflict in the two reports, it will normally be appropriate to refer the matter to an independent third reviewer, and for decisions to be taken only after that report has been received. In most cases the third reviewer should act independently of the others, but in some cases (particularly where the dispute is on a fine point or there is a dogmatic objection by one reviewer) it may be appropriate to seek specific guidance from the third reviewer on the problem that has been raised by the reviewers' conflict. Once again, the editor should consult the Editor-in-Chief for guidance.
10. If a contribution is ultimately rejected, the editor should communicate this to the author, and communicate this outcome to the Editor-in-Chief for record-keeping purposes. Occasionally, it may be appropriate to encourage the author to do significant further work on the contribution and to resubmit it, but it must be made clear that this is subject to the new contribution being considered *de novo*.
11. If the contribution is ultimately accepted, the editor should undertake a check of the manuscript, specifically for the purpose of identifying any clear grammatical

or other writing and stylistic errors. These should be corrected. Thereafter, the contribution should be submitted to the Editor-in-Chief for placement.

10.3 Placement

The general policy is that accepted contributions will be placed in the very next available slot of the publication roster in the relevant category in *Fundamina*. This is subject to only a few exceptions. These are where an author requests a later placement; where *Fundamina* has received a number of contributions on a particular legal theme, and would like to publish these together in the interests of its readership; or where it is necessary to space out a number of contributions by an author or by authors from a particular institution so that they are not published too closely in the interests of the variety of material that is published by *Fundamina*.

11. THE EDITORIAL AND PUBLISHING PROCESS

1. The Technical Editor shall be responsible (with assistance where necessary) for undertaking a careful edit of the contribution, both in regard to its composition, its technical accuracy and the correctness of the references.
2. The copy-edited contributions will be approved by the Editor-in-Chief and the authors and, once finalised, shall be submitted to the publisher's representative for typesetting, according to the annual production schedule.
3. Once the manuscript has been typeset, the proofs shall be delivered to the Editor-in-Chief (in electronic form) for a full check of the text. The text will also be checked independently by a proofreader appointed by the publisher.
4. Additionally, each author shall be asked to review his or her manuscript (which he or she shall receive electronically from the Editor-in-Chief) and to make corrections or minor updates to the text. Wholesale changes will not be possible at this stage – the contribution must proceed as it is with minor amendments, or must be withdrawn for re-drafting and further reviewing.
5. The corrected proofs, containing the Editor-in-Chief's corrections and the author's additions and corrections, shall be returned to the publisher for corrections.
6. The publisher shall collate all additions and corrections by the independent proofreader, Editor-in-Chief and authors and send the proofs for a second round of typesetting.
7. Once the text is settled the publisher will send it to the Editor-in-Chief for sign-off.
8. Once the text is settled, the publisher will have a front cover prepared, which will be sent electronically to the Editor-in-Chief for checking and approval.
9. The final .pdf copy will normally be available within about six weeks of the manuscript being signed off. The electronic version will appear on any relevant electronic database as soon as possible, or subject to any embargo there may be in terms of the contract between the publisher and the service- provider.

11.1 Complimentary copies

Each author of a published article or note/comment will receive one .pdf copy of the part of *Fundamina* in which his or her contribution appears, accompanied by a cover page and a contents page. Any complimentary electronic copies will be available to persons specified in the MOU.

12. ADVERTISING

Fundamina and its publishers do not take or place advertisements or promotional material in the journal.

13. COPYRIGHT AND PUBLISHING RIGHTS

13.1 Assignment of publishing rights

Since *Fundamina* is published in the Republic of South Africa, the law of copyright as promulgated from time-to-time in South Africa applies to the work published in *Fundamina*. The current ruling statute is the Copyright Act 98 of 1978 (as amended). Authors of contributions accepted for publication will be asked by the Editor-in-Chief to sign a short publishing agreement assigning publishing rights to the *Fundamina* and especially the publisher, as a precondition for the ultimate publication of their work. The agreement contains further terms relating to dissemination of the work by authors. See Annexure C for the up-to-date version of the author contract. Any further information relating to copyright and licensing issues may be sought from the publishers (see <https://juta.co.za>).

13.2 Permissions

The publishers are open to authors seeking permission to reproduce work published in *Fundamina* subject to copyright laws and principles of fair dealing. Such permission must be sought in writing from the publisher at Juta. The Editor-in-Chief will provide contacts details of the appropriate person upon request.

The publishers are also sympathetic to the needs of scholars to include copyrighted material produced by others in their work, and the publisher is happy to provide guidance on this. Responsibility for obtaining permission to use any other copyrighted material rests with the author of the contribution.

13.3 Publication and/or placement of versions of manuscripts in on- line institutional repositories

Juta, in line with the global trend to promote free and open access to knowledge, has agreed to make the content of its journals available for archiving and access in institutional repositories.

Juta's policy for granting permission to include versions of submissions from any Juta journal on an institutional repository website is contained in its author contract. Please see for details of the contract in Annexure C below.

13.4 Archiving of content

The publisher is responsible for archiving all typeset pre-print and final published versions of the journal. This includes both hard-copy versions and digital archiving of material in suitably secured environments.

14. PUBLICATION MALPRACTICE POLICIES

Allegations of misconduct or malpractice (including, but not limited to: research fraud, defamation; plagiarism; improper or inaccurate citation of source material; manipulation of data or source material; authorship identification irregularities; peer review fraud; undisclosed conflicts of interest) will be investigated in accordance with the journal's specific policies and procedures. The editors also act in such cases with reference to [COPE Best Practice Guidelines](#) as is suitable to the case.

14.1 Plagiarism

Plagiarism constitutes unethical publishing behaviour and is unacceptable. Plagiarism is the duplication in a text of another person's words, phrases, concepts or ideas in a manner that represents to the reader of the text that such words, phrases, concepts or ideas are the author's own original thoughts expressed in writing. Plagiarism takes many forms, from passing off another's work as the author's own, to copying or paraphrasing substantial parts of another's work (without attribution), to claiming results from research conducted by others. It can include copyright infringement. *Fundamina* takes guidance from the COPE [Discussion paper on plagiarism](#) as to the multitude of ways in which plagiarism can occur, and the forms it can take.

While many cases of plagiarism may be intentional, subjective intention may be difficult to prove, and even cases involving honest mistakes may amount to a form of plagiarism, in that the research or words come across objectively as the work of another, violating ethical publishing principles.

Editors are encouraged to be vigilant about the possibility of plagiarism in the contributions which they receive, and are encouraged to ensure that the reviewers, who are likely to be best-placed to identify such transgressions, do the same. The Editorial Committee will also receive and consider any reports of suspected or alleged plagiarism from complainants, particularly after publication.

Where a case of suspected plagiarism is identified or reported, the editors in the first instance consult the COPE guidelines on [what to do if you suspect plagiarism](#).

Thereafter, the editors are guided by the assistance of the COPE [Flowcharts](#) when dealing with cases of suspected misconduct. To summarise some of the fundamental principles to which *Fundamina* subscribes:

- The editors shall immediately inform the author of the suspicion or allegation in writing, and give that author a reasonable opportunity to respond to the allegation in writing;
- If the case is substantial and serious, cannot be dealt with directly with the author, or where the author simply denies the charge despite *prima facie* evidence,

the Editor-in-Chief must refer the case for investigation to an independent person, preferably one who is a recognised authority in the subject area of the submission. That independent investigator should conduct a thorough investigation of the submission, the allegation as to what may have been plagiarised, and the author's response. In addition, the independent investigator should scrutinise or consider any other sources relevant to the potential plagiarism, which may include, but are not limited to: consulting implicated researchers, and consulting all potentially relevant research sources.

- Where potential plagiarism is suspected, identified, alleged or reported, the editors and the publisher reserve the right to run the work through text- matching software (eg Turn-it-In, Ithenticate) as a component of its investigation.
- The independent investigator shall deliver a full written report to the Editor-in-Chief, detailing his/her findings. These findings may be shared with the publisher, for its views on the matter.
- The report should be shared with the author, and the author may make any further representations or concessions in response.
- The Editor-in-Chief, in consultation with the full Editorial Committee, reserves the right to make a determination as to how to proceed with the submission at this point. This includes reserving the right to withdraw the article from consideration, or to correct or retract published work. Please see the Errata, Corrigenda and Retractions Policy directly below for further details.

14.2 Errata, corrigenda and retractions

Fundamina takes issues of copyright infringement, plagiarism and other breaches of best practice in research publication very seriously. In the rare cases where a breach of publication ethics or copyright infringement are discovered after undertaking the investigative processes described above, *Fundamina* and its publishers reserve the right to take appropriate action to correct the academic record, including but not limited to:

- publishing an erratum or corrigendum;
- publishing an expression of concern linked to the article;
- retracting the article and publishing an accompanying retraction notice; or
- removing an article for legal reasons and replacing the removed article with a notice.
- publishing a retraction, correction or apology specifically written by the author(s).

In such cases the Editorial Committee and the publisher will be guided by COPE's [Correction and Retraction Guidelines](#).

Where significant editorial or formatting errors or omissions are identified after the publication of the part, *Fundamina* and its publishers will publish errata or corrigenda in the next immediate part of the journal due for publication. Digital versions will be adjusted to reflect the accurate position.

14.3 Defamation and other issues involving potential legal liability

Editors are encouraged to be vigilant about the possibility of the author's views attracting legal liability in the contributions which they receive. In circumstances where the Editor-in-Chief, the review editor or a reviewer identifies a case that could involve defamation or another form of legal liability, the matter must first be considered by the Editor-in-Chief and the relevant editor to whom the work is allocated.

The editor or, if it is deemed appropriate, the Editor-in-Chief, should communicate in the first instance with the author with a view to seeing if the problem can be resolved or settled by consensus. If this can easily be done, then the matter should be resolved by this consultative process.

If the matter is more serious, or the author is not prepared at this stage to make any changes upon first approach, in the second instance the matter should be referred to the Editorial Committee for its views. If the view is that there is a more serious prima facie case, the Editor-in-Chief, should communicate in the first instance with the author with a view to seeing if the problem can be sorted out or settled by withdrawal. If the author is adamantly of the view that there is no problem and wishes the process to proceed, then the matter should be referred to the publisher for its views, since the publisher is likely to be the primary respondent in any legal proceedings that might eventuate.

The Editorial Committee may also seek the independent opinion of experts in the area, including members of the Editorial Board where relevant. Legal counsel may be sought if necessary. The Editorial Committee may then, after considering representations from the author, and in conjunction with the views of any counsel and the views of the publisher: (a) proceed with the publication of the contribution; or (b) communicate to the author a recommendation that the contribution be reformulated along specific lines to avoid legal liability, and to seek the author's input in this regard; or (c) refuse to publish the contribution.

Annexure A

The forum of editors of academic law journals in South Africa: Guidelines for best practice in editorial discretion and peer review (adopted 7 August 2008, and published in 2009 *De Jure* 184.)

Background

Due to the general nature of the ASSAf Guidelines, the need exists for further guidance as to what would constitute best practices in specific research environments which may differ in the way in which knowledge is acquired, evaluated and disseminated. The Law Editors' Forum has consequently adopted this additional set of Guidelines for Best Practice in Editorial Discretion and Peer Review. These Guidelines are aimed at achieving the ASSAf Guidelines' general objectives by highlighting, supplementing and restating those aspects of the ASSAf Guidelines which are of particular importance in the publication of legal scholarship. These Guidelines apply to the publication of research contributions which are eligible for subsidy. They accordingly apply to legal articles, review articles, notes and case notes (hereafter referred to as "contributions" or "submissions"), but not to correspondence, abstracts, obituaries, book reviews, news articles and advertorials.

A Fundamental Principles of Research Publishing

The Law Editors' Forum agrees that originality is of fundamental importance in scholarly research. To promote the publication of original material, the following best practices are recommended:

- 1 Journals may only publish contributions which have not been published previously. This principle may, however, be deviated from in exceptional cases, for example where a contribution has appeared in a foreign source which (a) does not enjoy accreditation locally and (b) is generally inaccessible to the local research community. Typical examples of such contributions include foreign collections of essays and *Festschriften*, as well as conference proceedings which have not been published by a recognised publisher or which have only been circulated among conference participants. If required, permission for republication must be obtained. When a journal republishes a contribution, the source of prior publication must be clearly acknowledged.
- 2 Where an author has submitted a contribution to a specific journal, such a contribution may only be submitted for publication in another journal if the author has withdrawn the contribution from the former journal, or if the former journal has rejected its publication.
- 3 All sources used in preparing a contribution must be appropriately and fairly cited. Quotations must clearly be distinguished from the rest of the text, and must be accompanied by the relevant reference.
- 4 In the field of legal research, substantial contributions to knowledge development generally take the form of articles. Journals may further publish
- 5 reviewed contributions in the form of shorter notes or case comments, but these

contributions must contain critical discussions and must not merely be descriptive.

- 6 Only persons who contributed directly to the submission may be cited as authors.
- 7 Authors' institutional affiliations, which include the relevant faculty in the case of universities, must be disclosed, and sources of funding relevant to the article in question must be acknowledged where applicable.
- 8 Studies addressing a particular question should preferably be presented once as a full record of the work and its results.
- 9 The majority of contributions to a journal over a reasonable period must be from more than one institution and the journal must be distributed beyond a single institution.
- 10 Journals are permitted to invite authors to submit contributions for publication, but such contributions must be dealt with in the same way as other contributions.
- 11 Journals must be published regularly.

B The Role of Editorial Structures

While there may be large or small editorial teams in charge of the production of particular journals, and variable designations of the participants, a key purpose of such editorial structures is to provide responsible and fair editorial oversight. In this regard the following best practices are recommended:

- 1 Each journal must have an editorial policy which is accessible to authors and which sets out the aims of the journal and basic practices in selecting submissions.
- 2 Each journal must have a style guide which is accessible to authors and which contains the formal requirements for the publication of contributions.
- 3 Upon receipt of a submission, an initial assessment must be made as to whether it falls within the aims of the journal. If this assessment is negative, publication of the submission must be declined. An initial assessment may further be made as to whether the requirements of the style guide have been met. If this assessment is negative, publication of the submission may be declined.
- 4 All submissions must be subjected to peer review in terms of C below. The reviewer reports must then be assessed by the editor to decide whether, individually and collectively, they support the publication of the contribution in question; whether publication should follow once certain improvements are effected and/or further work is done and reported on, or whether the papers should be refused. In deciding whether to publish a submission, editors should accord significant weight to the reviews' reports. The editor's decision on publication, after considering all the reports, is final. No outside interference, for example by a university or publisher, is permitted. Editors should convey relevant comments of reviewers to authors, but without compromising the reviewer's anonymity.

- 5 All reports and substantive correspondence relating to published papers must be properly stored and must be readily accessible to the editorial board on request.
- 6 Each journal shall have an editorial board to provide editorial oversight and advice to the editor and other persons involved in producing the journal. The editorial board must include members beyond a single institution and must reflect expertise in the subject area in law for which the journal is established.
- 7 Editors who submit papers to their own journals must delegate the editorial discretion in respect of those papers to another member of its editorial team.
- 8 Editors must compile annual reports on their journals for consideration by their editorial boards.

C The Selection and Role of Peer Reviewers

- 1 Each submission must be subjected to anonymous (“blind”) peer review by at least one but preferably two reviewers. In the event of conflicting recommendations, a further reviewer or reviewers may be consulted.
- 2 In principle, anonymous (“blind”) reviewing entails:
 - 2 1 that an author is not informed about the identity of a reviewer;
 - 2 2 that a reviewer is not informed about the identity of an author;
 - 2 3 that reviewers are not informed about each other’s identities.
- 3 Peer reviewers should be scholars who have not previously co-authored extensively with the author(s), who are free of known bias in relation to the subject matter, the author(s) and/or their institutions, and who can cover, from a position of authority and peer expertise, the topic(s) dealt with in the paper concerned.
- 4 Peer reviewers must always report in writing, with clear recommendations for acceptance of the paper in question (with or without revision) or rejection, as the case may be.
- 5 A journal may from time to time publish a list of its peer reviewers, but journals are free to decide against the publication of such a list or inclusion of a name on such a list if the risk exists that the confidentiality of the reviewing procedures may be compromised.
- 6 Where a submission is based on a thesis or dissertation submitted for degree purposes, the prior academic examination of such a thesis or dissertation does not qualify as peer review or ground for acceptance for publication in accordance with these Guidelines.

ANNEXURE B: AUTHOR DECLARATION FORM ON SUBMISSION

Thank you for the submission. Our “to contributors” page, published in every part of the *Fundamina*, indicates that “A manuscript will be considered for publication only on the assurance that it has not in whole or in part or in substance been published or offered for publication elsewhere.”

Before I can proceed to the reviewing stage I would therefore need from you a declaration (by return of e-mail) that this piece has not, either as a whole or in part or in substance, been submitted for publication to any other publisher (eg as part of a book chapter) or journal, nor that it has been published elsewhere; or, if it has, if you could please disclose fully the nature of such submission or publication. This is so that we might be able to consider how to proceed in terms of any copyright issues or conflicts of interest there may be in the circumstances.

Over and above ethical publication issues, the legal consequences of potential double publication are significant, so we have to be careful up front with each submission we receive from every author. This also applies to publication of any kind on publicly accessible internet websites. The work cannot appear on any publicly accessible website of any kind, since this could result in the anonymity of the reviewing process being compromised. The only exception would be in regard to adjusted/abbreviated/reconfigured work suitable for the constraints of a self-standing journal article which forms part of a bigger LLM or PhD/LLD which is placed on an institutional repository as a compulsory requirement for graduation.

Please note that the *Fundamina* does not generally consider work forming part of an about-to-be submitted thesis, or a thesis that has been submitted but where the examination process is not yet complete, as this too can compromise both our reviewing process and the university examination process. Work forming part of a thesis should have been examined, and the benefits of examiner comments should have been incorporated before submission to us.

Authors are required to disclose upon submission any potential conflicts of interest there may be in relation to the submission, and to indicate any sources of funding which contributed to the research.

Lastly, if the work involves empirical investigatory work involving human subjects or animals, you are requested please to furnish evidence of the ethical clearance you received from your institution in order to undertake such research.

ANNEXURE C: AUTHOR PUBLISHING CONTRACT

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Contributor Address	
Article Title (‘the Contribution’)	
To be published in (‘the Journal’)	
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Signature _____