

Media Freedom the Cornerstone of Human Rights in South Africa

C. M. van der Bank

*Vaal University of Technology, Private Bag X021, Vanderbijlpark,
Gauteng, South Africa 1900
E-mail: riana@vut.ac.za*

KEYWORDS Evidential Burden. Defendant. Fairness. Limitations and Contracts

ABSTRACT Freedom of expression is a potential way of achieving a more adaptable and hence a more stable society, of maintaining the precarious balance between cleavage and necessary consensus. Courts must now ensure that common law is not locked within the limitations of the past and they must re-consider common-law rules within the new context so as to render them congruent with the fundamental values and principles. Strict liability of the press is now rejected as unconstitutional since it mars the free flow of information – a democratic principle. The onus rests on the media defendant to prove a defense excluding unlawfulness on a preponderance of probabilities rather than a mere evidential burden. The media defendant in a defamation action is often in the best position to know whether reasonable steps were taken to verify the information published and so to establish that its publication was reasonable.