

Juta Legislation Service: Family Law Legislation Volume 1, Children

Compiled and edited by Susan Bedil
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As the title suggests this is the first volume in an anticipated series of legislation relating to family law.

Volume 1 contains the Child Care Act of 1983 and the Childrens' Act of 1960, together with regulations, the Age of Majority Act of 1972 and the Childrens' Status Act of 1987, together with indices and a table of cases.

It enters the market in competition with *Family Law Service* by Schäfer (to a lesser extent) and Butterworths' *Wetbundel: Persone- en Familiereg* edited by Malan and Labuschagne. Unlike the aforementioned works, *Family Law Legislation* envisages a complete consolidation of the statutory law relating to this field, instead of selected portions of selected enactments.

As a consolidated compilation of statutory family law, it will no doubt appeal to specialist lawyers and practitioners, social workers and related professional workers.

Being a loose-leaf publication, both the Acts and the Regulations thereto will be updated regularly.

V Basserman
Pretoria Bar



Law and Medicine

(first published as *Acta Juridica* 1988), published under the auspices of the Faculty of Law, University of Cape Town, Cape Town, Juta & Co, 1988.

For some years now it has been the policy of the Editorial Board of *Acta Juridica*, the annual journal of the Faculty of Law of the University of Cape Town, to devote each issue to one specific topic.

The selection for the 1988 edition – Medicine (the edition is published separately under the title *Law and Medicine*) is particularly apposite. Today the South African legal system faces unique problems in the field of medicine: both because the law is struggling to keep pace with the rapid technological developments made recently in the field of medicine, as well as the problems of law and ethics while practising medicine under a State of Emergency, and the book addresses aspects of both problems.

Law and Medicine is a collection of essays by academics on a variety of legal (and even non-legal) topics. UCT medical professors Kirsch and

Benatar open the collection with an article entitled 'Medicine in a South African Context', which presents some alarming statistics concerning primary health care in South Africa: for instance, South Africa's infant mortality rate is higher than those of Nicaragua, Tunisia, Turkey and Honduras, despite our having a per capita gross national product of between two and three times that of those countries.

DJ McQuoid-Mason's paper 'The Responsibility of Doctors during the State of Emergency', presents concrete proposals on the duties of doctors toward detainees during the State of Emergency. Drawing heavily on the United Nations Principles of Ethics, and contrasting this to the treatment received in detention by Steven Biko, the author strongly argues that doctors should at all times strive (and indeed are under a duty to do so) to render independent, professional service, not to countenance any maltreatment of any detainee and not to assist a detaining authority in any form of unlawful activity whatsoever.

It is, however, in the area of medical ethics and jurisprudence that the collection is most interesting. Dieter Giesen of the Free University of Berlin (the doyen of international writers on medical malpractice) deals with the problem of paternalism and decision making in medicine – how much information must a doctor give a patient in order that the patient can validly consent to a medical procedure, and who (the doctor or the patient) ultimately makes the decision eg to undergo surgery or not? Giesen is severely critical of those doctors who believe that they should make the final decision, and concludes that judicial decisions which protect the medical profession in this respect, like the infamous case of *Sidaway v Bethlem* [1985] 1 All ER 643 (HL), are totally unacceptable.

Alexander McCall-Smith of Edinburgh University, raises the interesting question as to whether it can ever be ethical to change an offender by any medical or psychological means: for instance can an offender consent to psychosurgery (direct surgical intervention in the brain) in order to suppress uncontrollably violent behaviour? Can society demand that this offender undergo such treatment? McCall-Smith's conclusion, rather surprisingly, is yes; provided the subject has committed an offence for which the penalty is normally a lengthy prison sentence, the offender poses a significant social threat, and past behaviour indicates that the

offender finds it impossible to control impulses to commit anti-social behaviour.

ML Lupton considers the hotly debated questions of the legal status of the embryo, the status of a child born by artificial insemination techniques, the legal status of the pre-implantation embryo, and the particularly vexed question as to when life begins and when ought life enjoy protection. Lupton submits that not one of the existing theories as to when life begins is adequate: neither the theory of the Catholic church (life begins at conception) nor that of the US Supreme Court (which tentatively said that life begins after the first trimester of pregnancy – *Roe v Wade* 410 US 113 (1973)), nor even the view of the South African Courts (life begins at birth, up until that point the foetus is an inseparable part of the mother – *S v Collop* 1981 1 SA 150 (A)). Legally speaking life, Lupton submits, should begin when the human neo cortex begins producing electro-encephalograph (EEG) waves between the twenty second and the twenty fourth weeks of pregnancy. Just as an isoelective EEG is an acceptable measure of brain death, so, Lupton believes, should the same measure be used to determine the beginning of protected human life.

Other articles in the collection are by Erwin Deutsch ('The Functions of Ethical Committees'), Jonathan Burchell ('Experimentation on Human Subjects: Protecting Dignity and Advancing Medical Science'), Jerold Taitz ('The Disciplinary Power of the South African Medical and Dental Council') and Johan Snyman ('The Declaration of a Person as a State President's Patient'), who in his essay deals with the aforesaid procedure as well as the many lacunae in the relevant sections of the Criminal Procedure Act 51 of 1977 (see, eg, (1988) 2 *Consultus* 117).

Other than a few typographical errors (eg page 65 and page 202 footnote 46) there is very little by which to fault the collection. It commendably sets out to tackle some of the new and difficult developments brought about by rapid medical advances in recent years, without neglecting the very important issues of medicine in South Africa today. Although not all the articles are strictly speaking legal, the collection achieves an interesting, relevant and stimulating balance and should provide a sound basis for further development in the future.

Bruce Cleaver
Candidate Attorney, Johannesburg
BSc LLB(Cape)