

Reviews • Resensies



Workplace Law

Second edition by John Grogan

Juta & Co (1997)

xxx and 273 pages

Soft cover R115,00 (VAT incl)

THE Labour Relations Act 66 of 1995 was implemented some eight months after the publication of the first edition of this work, necessitating a revision of this work. This revised edition incorporates revisions made to the Labour Relations Act during the course of 1996 and includes cases reported since the publication of the first edition which have a bearing on the interpretation of the Labour Relations Act.

The work consists of 21 chapters in which the following are extensively discussed: Origins and sources of employment law; parties to the employment relationship; the individual contract of employment; the individual employment relationship; termination of the employment relationship; remedies; workplace discipline; dismissal for misconduct; dismissals for poor work performance and incapacity; dismissal for operational reasons; remedies for unfair dismissal; miscellaneous unfair labour practices; collective labour law; bargaining agents; bargaining forums and process; collective agreements; dispute resolution; strikes and "protest action" and lockouts.

In addition a comprehensive table of cases and statutes are also supplied. The appendix containing Schedule 8 of the Labour Relations Act is of great value to the reader. The work also has a comprehensive subject index.

The author is to be commended on structuring a vast and contentious area of law into an easy to read and understandable text. The editorial care of this work is of a high standard. The work is intended as a comprehensive work of *first* reference for students, lawyers, industrial relations practitioners and any other person seeking to understand this complex area of law. The work succeeds in this. It comes highly recommended.

P A Carstens
Pretoria Bar

Cross-examination in South Africa

deur J P Pretorius

Butterworths (1997)

442 bladsye

Sagteband R267,90 (BTW ingesluit)

IN hierdie werk spits die outeur hom toe op die regsreëls van toepassing op kruisondervraging. Daadwerklike tegnieke, taktiek en riglyne vir die praktiese aanwending van kruisondervraging (die sogenaamde kuns daarvan) val buite die trefwydte van hierdie boek.

Die inhoud van hierdie werk bestaan uit die volgende vyf hoofstukke: Inleiding; Geskiedkundige agtergrond; Aard en omvang van kruisondervraging in Suid-Afrika; Spesifieke toepassingsgebiede van kruisondervraging; Gevolgtrekking.

Alhoewel ondervinding en aanleg 'n groot rol in effektiewe kruisondervraging speel, bestaan daar 'n leemte in dié sin dat daar gedurende die praktiese en akademiese opleiding van die juris nie voldoende aandag aan die substantiewe reg ten aansien van kruisondervraging geskenk word nie. Kruisondervraging kan slegs met 'n deeglike kennis van die basiese regsbeginsels oor die trefwydte en aard van kruisondervraging tot sy volste reg kom. In hierdie opsig is hierdie werk omvattend, en die skrywer slaag daarin om die bestaande leemte aan te vul.

Hoofstuk 3, wat oor die aard en trefwydte van kruisondervraging handel, bestaan uit die volgende vier afdelings: Definisie en aard van kruisondervraging; Trefwydte en gense van kruisondervraging; Die onverteenvoerdigde beskuldigde in kruisondervraging; Gevolge van kruisondervraging. Onlangse ontwikkelinge in die reg ten aansien van kruisondervraging word in Hoofstuk 3 bespreek en dien as 'n nuttige hulpmiddel by die toepassing en uitbreiding van hierdie beginsels.

In die A-afdeling van hierdie hoofstuk word onder andere verwys na die Grondwet van die Republiek van Suid-Afrika 108 van 1996, wat bepaal dat die reg op kruisondervraging 'n fundamentele reg is aangesien dit inbegrepe is by die reg op 'n billike verhoor – wat die reg om getuienis aan te voer en te

betwis ten grondslag lê.

In die B-afdeling van Hoofstuk 3 bespreek die skrywer een van die uitstaande kenmerke van kruisondervraging, naamlik om die geloofwaardigheid van 'n getuie te toets. Die bespreking oor die toelaatbaarheid van kruisondervraging wat verband hou met die geloofwaardigheid van 'n getuie is by uitstek van 'n praktiese belang en sluit die volgende in:

- die algemene reël van ontoelaatbaarheid van kollaterale aangeleenthede en die uitsonderings daarop;
- die opinie van 'n ander hof wat 'n getuie as ongeloofwaardig bevind het;
- vorige teenstrydige verklarings;
- die karakter van 'n getuie;
- ontoelaatbare getuienis.

'n Nuttige bespreking in hierdie afdeling handel oor die interpretasie van die nuwe addisionele byvoeging van subartikels (a) en (b) tot a 166 van die Strafproseswet 51 van 1977. Dit is vervat in die Strafproseswysigingswet 86 van 1996 en het op 1 September 1996 in werking getree. Hierdie byvoegings verleen aan voorsittende beamptes die bevoegdheid om uitgerekte en doellose kruisondervraging in te kort. Afdeling C raak 'n onderwerp aan wat nog nie die aandag geniet het wat dit toekom nie, naamlik die probleme wat die ongelyke posisie van die onverteenvoerdigde beskuldigde meebring. Die outeur maak voorstelle oor die rol van die voorsittende beampte in hierdie verband. Afdeling D handel oor die gevolge van kruisondervraging. In Afdeling E sonder die outeur kruisondervraging ten aansien van dokumente, geheueverfrissing, toelaatbaarheid van 'n bekentenis asook die kruisondervraging van deskundige- en kindergetuienis as besprekingspunte uit.

Die onderliggende vraag wat die outeur homself in die loop van die boek ten doel stel, is of kruisondervraging en al die reëls wat dit beheer steeds 'n volgehoue bydrae tot die effektiewe en volledige openbaarmaking van die waarheid lewer. Die deeglike uiteensetting van die verskillende onderwerpe in die inhoudsopgawe is gerieflik vir naslaandoeleindes. 'n Gemaklike skryfstyl

is kenmerkend van hierdie werk.

Hierdie werk word aanbeveel vir voorsittende beamptes, regspraktisyns, akademië en staatsaanklaers.

Annemarie van der Colf
Staatsadvokaat, Johannesburg

• • •

The Law of Children and Young Persons in South Africa

Edited by J A Robinson

Butterworths (1997)

xix and 385 pages

Soft cover R165,30 (VAT incl)

THIS work gives a broad basis to the general law pertaining to minors. As correctly stated in the preface by the managing editor: "The law relating to children and young persons is ever-changing. In the South African context it is also scattered over many different sources, often making it difficult to establish what the legal position and rules are regarding children and young persons. However, the purpose of this book is not to be a comprehensive and encyclopaedic work on the subject, but rather to serve as a source of first reference for both practitioners and students dealing with the law pertaining to children and young persons."

The book deals with the following topics: The legal status of children and young persons; Children, young persons and their parents; Children, young persons and the Child Care Act; Children's courts; Children, young persons and the criminal law; Children, young persons and the criminal procedure; Children and young persons in indigenous law; Children and young persons in private international law; Children, young persons and school law; Constitutional protection of children and young persons.

The fact that this book deals with just about any subject pertaining to minors is indeed its best attribute. It is useful to have all these issues in one book. Not only will it be a handy source of first reference and a good starting point, but it also deals with subject matter of which little has been written, such as school law. Further welcome additions are contentious issues such as the relationship between the unmarried father and his child; children, young persons and the criminal law and procedure; children and young persons in indigenous law,

as well as the constitutional protection of children and young persons.

Attention is given to children's courts, which is very useful for the general practitioner who does not specialize in that field and who only appears there on occasion. Practical issues such as the function of the staff and practitioners in the children's courts as well as routes of entry to the children's courts are addressed.

The chapters relating to minors and criminal law and procedure are comprehensive. Subjects such as the release of minors awaiting trial, possible sentences for minors, and the protection for child witnesses are indeed contentious issues in which much change has come about and with which a practitioner needs to be acquainted. Another issue that is addressed and has become a lot more relevant is that pertaining to minors in indigenous law.

This is the kind of book that every practitioner needs in his library. It deals with subject matter that any lawyer is at some stage involved with, but is not always sure about. Subjects relating to minors that are usually contained in a variety of books are now condensed in one book. Every subject is written by a specialist in his or her field. Well-known academics such as I D Schäfer and F F W van Oosten are some of the authors.

The only criticism of the book is that in view of the rapid changes pertaining to this subject, it is regrettable that this work has not rather been published in a loose-leaf edition.

Lyzette Kotzé
Pretoria Bar

• • •

Henochsberg on the Close Corporations Act

deur P M Meskin, bygestaan deur J A Kunst

Butterworths (1997)

xv en 312 bladsye

Losblad R262,20 (BTW ingesluit)

HIERDIE werk is die derde band van die vyfde uitgawe van die bekende *Henochsberg on the Companies Act*. Terwyl die eerste twee bande oor die Maatskappywet handel, is die derde band gerig op die Wet op Beslote Korporasies 69 van 1984.

Die hoofdeel van die werk bevat die teks

van die Wet op Beslote Korporasies, met kommentaar en bespreking aan die einde van elke artikel. Die administratiewe regulasies ten opsigte van beslote korporasies en die voorskrifte oor rekeningkundige beamptes is in twee bylaes vervat. Voorts bevat die werk 'n vonnisregister en indeks.

Ter aanvang moet daarop gewys word dat dit, hoewel nie noodsaaklik nie, minstens wenslik is dat die gebruiker van die band oor beslote korporasies ook die twee bande oor maatskappye ter hand het. Die rede daarvoor is dat die skrywer, heel verstaanbaar, soms sy kommentaar beperk deur terug te verwys na die kommentaar op 'n soortgelyke bepaling in die Maatskappywet. Voorbeelde hiervan vind 'n mens by a 22A (vergelijkbaar met a 51 van die Maatskappywet), a 23(2) (vergelijkbaar met a 50(3) van die Maatskappywet, a 49 (vergelijkbaar met a 252 van die Maatskappywet), a 53 (vergelijkbaar met a 35 van die Maatskappywet), en natuurlik aa 55 en 66 wat sekere bepalinge van die Maatskappywet direk van toepassing maak.

Die bespreking van die artikels is besonder deeglik, en dit is duidelik dat die skrywer goed oor die moontlike probleme besin het voordat hy die kommentaar geskryf het. 'n Goeie voorbeeld hiervan vind 'n mens in die kommentaar op a 26, wat oor deregistrasie en herstel van registrasie handel. Die skrywer sny onder andere die volgende vrae aan:

- Wat is die invloed van die herstel van die registrasie van 'n beslote korporasie op die aanspreeklikheid van 'n lid ingevolge a 26(5)?
- Het 'n lid wat aan sy skuld ingevolge a 26(5) voldoen het, 'n verhaalsreg teen die beslote korporasie wanneer laasgenoemde se registrasie herstel word?
- Het 'n lid wat 'n bedrag ingevolge a 26(5) betaal het, na herstel van die registrasie 'n verhaalsreg teen 'n ander lid wat ook ingevolge daardie bepaling aanspreeklik geword het?

'n Opsigtelike fout wat ek raakgelees het, verskyn op bladsy 62 in die kommentaar op a 28. Daar word die volgende stelling met verwysing na a 63(c) gemaak:

"Thus, during the period of six months from the date upon which such purported membership [d w s 'n ledetal van meer as tien] commences, each such purported member and each of the ten other registered members incurs the personal liability envisaged by s 63(c)..."

Die indruk word dus geskep dat die persoonlike aanspreeklikheid net ses maande kan duur. Dit is duidelik verkeerd. Die tydperk van ses maande is slegs van belang om te bepaal of die persoonlike aanspreeklikheid hoegenaamd ontstaan het, en nie vir die duur daarvan nie (sien die bespreking van a 63(c) op bl 184, waar die bepaling korrek uitgelê word). Hoe dit ook al sy, a 63(c) is intussen in elk geval deur die Wysigingswet op Beslote Korporasies 26 van 1997 herroep.

Om op te som, kan hierdie werk sterk aanbeveel word vir enigeen wat die Wet op Beslote Korporasies moet uitlê en toepas.

Nico Oelofse
Pretoriase Balie

• • •

Private International Law

Third edition by C F Forsyth

Juta & Co (1996)

429 pp

Soft cover R198 (VAT incl)

GLOBALISATION of trade relations, the modern open world economy and the rapidly expanding use of the Internet all conspire to bring renewed interest to the subject of private international law. It has also acquired added significance for South Africans with the current and prospective relaxation of exchange control, bringing with it increasing opportunities for cross-border transactions which may give rise to disputes that find their way into courtrooms or arbitration tribunals here or elsewhere.

Conventionally the field of private international law can be broken down broadly into studies of jurisdiction, characterization (or classification), choice and application of the *lex causae* and enforcement. Each of these areas holds its own fascination for Dr Forsyth, who tackles them with palpable enthusiasm and scholarly assurance in this third edition of his 1981 work. The treatment of individual topics is held together by a practical and principled emphasis on the role and function of private international law, namely that of dispelling the prospect of forum shopping, as well as that of conflicting but domestically and internationally competent judgments in respect of one and the same dispute. As the author tells us in chapter 1, the goal of uniformity of decision, irrespective of where a matter is litigated, is a

Utopian dream, but it is none the less a useful guide to follow in shaping a legal system's private international law. In the book it is also used as a conceptual focus, keeping the object of the exercise in clear perspective.

Private international law falls into four main divisions: a general section, consisting of an introduction, an essay on history and theory, a description and discussion of some conceptual problems in choice of law and the ascertainment of foreign law (chapters 1 to 4); a section on domicile and jurisdiction (chapters 5 and 6); one dealing with specific areas in which conflict problems arise, being the law of persons and the family (chapter 7), the law of obligations (chapter 9), both contractual (chapter 8, part one) and delictual (chapter 8, part two), and the law of property (chapter 9); finally there is a section on the recognition and enforcement of foreign judgments (chapter 10).

The style of writing is appealingly to the point, interspersed with comment perhaps exemplified by the heading to the table of "Unexpected Interpretations of the Supreme Court Act 59 of 1959" (italics added). Where appropriate, points are forcefully argued, for instance in the section dealing with the finality of foreign default judgments. The analysis and explanation of difficult topics, such as 'gap' and 'cumulation' (where there is either no applicable law, or too much of it), which the author warns may depend on abstractions that may be "wearisome, if not incomprehensible", are developed and expanded from the previous edition, and remain systematic and clear.

The book is generally very well presented and easy to use. There are, regrettably, some points of criticism. With reference to *Kuhne & Nagel v APA Distributors (Pty) Ltd* 1981 (3) SA 736 (W), fn 8 at p 64 states that this important case is fully discussed at 64-5, which it is not. According to the bibliography only the second edition of Honore's *The South African Law of Trusts* (1976) is referred to, whereas that work is now in its fourth edition (1992, by Honore and Cameron); Meyerowitz *The Law and Practice of Administration of Estates* is mentioned in its fifth edition (1976) whereas that work has seen substantial revision and is now in its sixth edition (1989). Both these textbooks contain sections dealing with conflict of laws topics and in the absence of good reasons to the contrary, it was to be expected that the current editions would be referred to. In chapter 10 the tantalizing issue of recognition of foreign court recorded settlements is touched

upon and the conflicting decisions in *Gablesberger and Another v Babl and Another* (1994 2 SA 677 (T) and *Holz v Harksen* 1995 3 SA 521 (C) are mentioned, but without discussion or evaluation. In view of the author's helpful and stimulating observations in relation to the issues set out elsewhere in the book, it is a pity that he did not comment on this one.

These criticisms are, however, minor. Overall the book is presented and written lucidly, with critical insight and comprehensive scholarship. It is a quick and easy source of reference and an enlightening guide through a field seemingly overvegetated by thorny brambles ready to ensnare the intruder. It remains a pre-eminent work on its subject in South Africa and students and practitioners are sure to find it instructive, useful and reliable. The first-class pass given to the first edition by Prof Ellison Kahn remains fully applicable to this third edition.

W R E Duminy SC
Cape Bar



Obiter...

Lawyer functions

ADVANCES in information technology, like the Internet, will change the way people use their lawyers and could put some solicitors out of business, Robert Owen QC, chairman of the English Bar, suggested at the recent AGM of that Bar. Whereas up until now, lawyers have used IT to better what they already do, in future, the very nature of legal services will be changed by instant availability of information. This may mean that clients no longer need to go to a solicitor to find out the relevant law. "Much of the traditional function of the lawyer, particularly the solicitor, may well become redundant. The critical point will be that at which the lawyer is called upon to make a judgement. That raised important questions as to how that point will be identified and by whom," said Owen.

He added that the Bar's information technology committee is already looking at ways of making a general advisory service available over the network.

Counsel Sept/Oct 1997