

From the publishers...

Customs and Excise Service

deur H C Cronje

Butterworths (1998)

xiv en 652 pp. R285,00 (BTW ing).

Soer aan my bekend, is hierdie die eerste werk van sy soort op die plaaslike mark. As sodanig moet dit verwelkom word as 'n besonder nuttige toevoeging tot ons regsletteratuur. Die werk is in losbladform, en sal dus van tyd tot tyd opgedateer kan word. Dit behoort van onskatbare waarde te wees vir enigiemand wat hom met hierdie gespesialiseerde gebied besig hou.

Die outeur is 'n voormalige direkteur, regsdiens, in die Departement van Doeane en Aksyns. Sy ondervinding met betrekking tot litigasie op die gebied van doeane en aksyns blyk uit verwysings na 'n hele paar ongerapporteerde beslissings wat waarskynlik nie maklik andersins deur regspraktisyns opgespoor sou word nie. Voorbeelde van sulke verwysings is te vinde op bladsye 19 en 65 van die Inleiding, bladsye 2-2, 5-46, 5-56, 5-57, 5-58, 5-59, 5-61, 5-63, 8-3, 10-28, 11-10, 11-20, 11-27, 12-16 en 12-35.

Die werk bestaan uit die volgende afdelings:

- (1) 'n Inleiding.
- (2) 'n Gedetailleerde kommentaar op elke artikel van die Doeane- en Aksynswet 91 van 1964. Die kommentaar is in twaalf hoofstukke ingedeel, in navolging van die hoofstukke waarin die Wet self verdeel word.
- (3) Die volledige teks van die Wet, met uitsluiting van Bylaes 1 tot 6 en 8 tot die Wet.
- (4) Die teks van die reëls wat ingevolge die Wet afgekondig is.

In 'n sekere sin is dit jammer dat die teks van Bylaes 1 tot 6 tot die Wet nie ook in die werk opgeneem is nie, aangesien hierdie bylaes enersyds die betrokke tariefposte ingevolge die Wet voorskryf, en andersyds ook die kortings op en terugbetalings en teruggawes van sodanige belasting. 'n Mens kan egter goed begryp waarom hierdie bylaes nie in die werk opgeneem is nie. Hulle word byna op 'n weeklikse basis gewysig, wat 'n sinvolle byhouerdiens van sodanige wysigings net prakties onmoontlik maak. Daarbenewens vergoed die Inleiding, wat op bladsye 26 tot

38 'n goeie uiteensetting van die wesenskenmerke van hierdie bylaes bevat, in 'n groot mate vir hierdie "leemte" (vir sover 'n mens dit hoegenaamd as 'n leemte kan beskou).

Die Doeane- en Aksynswet is 'n uiters gespesialiseerde stuk wetgewing, en 'n mens kan aanvaar dat 'n relatief klein persentasie regspraktisyns werklik deskundig is op hierdie gebied. Om hierdie rede behoort die Inleiding tot *Customs and Excise Service* van besondere belang te wees vir die nuweling wat beoog om hom op hierdie gebied in te graawe. Die Inleiding verduidelik waar die Wet in die konteks van die breë veld van staatsbelasting inspas, die rol van die Suid-Afrikaanse Inkomstediens, die verband met sekere bepalinge van die Wet op Belasting op Toegevoegde Waarde, en, soos reeds gesê, 'n verduideliking van die bylaes. Ten slotte bevat die Inleiding ook 'n redelik uitvoerige bespreking van die reëls van wetsuitleg, aangesien daardie reëls heel dikwels ter sprake kom by die uitleg van die Wet en veral die bylaes.

As selferkende leek op die gebied volstaan ek met slegs twee spesifieke opmerkings oor aspekte wat my opgeval het by die deurlees van die werk.

Op bladsye 10-38 tot 10-39 word onder andere na die beslissing in *Commissioner of Customs and Excise v Bank of Lisbon International Ltd* 1994(1) SA 205 (N) verwys. Die beslissing handel oor 'n eis deur die Kommissaris vir terugbetaling van 'n bedrag wat na bewering op bedrieglike wyse van die Kommissaris verkry is. Die bedrag is in 'n rekening wat by 'n bank gehou is, gedeponeer. Die hof het 'n eis vir terugbetaling teen *die bank* (in teenstelling met die persoon wat die bedrag van die Kommissaris bekom het) toegestaan. Die skrywer kon in hierdie verband gerus op die (met respek, geregverdigde) kritiek wat op die beslissing uitgespreek is, gewys het (sien Malan & Pretorius *Malan on Bills of Exchange, Cheques and Promissory Notes in South African Law* (3e uitgawe) op 335-339; Malan & Pretorius "Money, Bank Accounts and Tracing" 1994 *TSAR* 387).

Op bladsye 12-12 tot 12-18 word aandag gegee aan die vraag of die sogenaamde "reverse onus

provisions" wat in a 102 van die Wet te vinde is, moontlik nou konstitusioneel ongeldig is. Hoewel die skrywer hierdie vraag nie uitdruklik beantwoord nie, skyn dit tog, na uitvoerige verwysing na die beslissing in *S v Coetzee* 1997(3) SA 572 (KH), of hy die mening toegedaan is dat hierdie bepalinge nie ongeldig is. Dit kom voor of hy veral steun op die feit dat die bepalinge "regulatief" van aard is en betrekking het op feite wat gewoonlik binne die uitsluitlike kennis van die bewyslasdraer val. So gesien, kan die bepalinge dan konstitusioneel geregverdig word.

Ten slotte sou ek voorstel, veral omdat hierdie 'n losbladwerk is, dat dit van 'n vonnisregister en 'n volledige indeks van begrippe voorsien word. Dit sal die gebruikswaarde daarvan nog verder verhoog.

Nico Oelofse
Pretoriase Balie

Custody and Visitation Disputes: A Practical Guide

by H Bosman-Swanepoel, A Fick and N Strydom

Butterworths (1998)

149 pp. Soft cover R135 (VAT incl)

On page 92 it is stated that the *main theme* of the publication is *competent parenting* under stressful situations such as divorce. This seems to be an accurate description of the general drift of the book. The contents of the various chapters tend to be academic and of little practical value to the legal practitioner involved in actual litigation. The only chapters dealing with topics specifically focused on the law in practice are Chapter 2 ("Statutory Aspects") and Chapter 3 ("High Court").

Chapter 2 contains a comprehensive discussion of the provisions of the Child Care Act 74 of 1983, the Prevention of Family Violence Act 133 of 1993, as well as the Natural Fathers of Children born out of Wedlock Act 86 of 1997. This chapter deals effectively with the legislation pertinent to the protection of children, the

custody of children and the role of the High Court as upper guardian of minor children.

Chapter 3 gives a cursory glance at certain aspects of the procedure relating to custody disputes in divorce proceedings. The role of the family advocate is discussed with reference to the Mediation in Certain Divorce Matters Act 24 of 1987. The regulations promulgated by the Minister providing for the practical implementation of the Act are also incorporated in the discussion.

Included in the book is a reference to relevant statutes (in Part VI). Although the authors mention general principles as enunciated by the judiciary, one would have expected a more comprehensive discussion of the relevant case law available to date of publication – especially as the publication is promoted as a tool to be used during litigation. An inclusion of factual summaries of the leading cases would also have proved useful.

In order to put the contents of the publication in its proper perspective the term *professionals*, as contemplated in the foreword, should be qualified to refer specifically to social workers and psychologists.

Although the publication deals with an important and fast developing facet of the law, I cannot recommend the book as an invaluable asset for legal practitioners such as attorneys and advocates.

Germa Wright
Free State Bar

The Law of Contract in South Africa

Third edition by R H Christie

Butterworths (1996)
xiv + 761 pp. Soft cover R217,49
(VAT incl)

The third edition of this standard text was clearly necessitated by statutory amendments and the accrual of more than 260 new relevant decided cases. By conscientious weeding out of obsolete matter, however, the author has succeeded in reducing the overall length of the volume by 30 odd pages. The following changes to the old text are worthy of note.

The final paragraphs of Chapter 1, entitled *Historical Introduction*, have been expanded so as to include a discussion of the Law Commission's proposals, in Working Papers 54 of May 1994 and 65 of September 1996, in relation to unfair contract terms, and the effect on contractual obligations of the fundamental rights contained in the Interim Constitution Act 200 of 1993, with reference, *inter alia* to *Du Plessis v De Klerk* 1996 5 BCLR 658 (CC).

Pursuant, apparently, to *Durity Alpha (Pty) Ltd v Vagg* 1991 2 SA 840 (A) and *Hutchinson v Hilton Holdings* 1993 2 SA 405 (T), an introductory paragraph has been inserted into Chapter 2, dealing with the elements of an agreement, to the effect that, despite the generally accepted requirement that a valid contract requires more than one party, it is possible for a man to enter into a contract with himself – provided that he does so in two different capacities.

The latter half of Chapter 5, which deals with the terms of a contract, has, with reference to *Coopers & Lybrand v Bryant* 1995 3 SA 761 (A), been slightly enlarged and altered by the insertion of a new paragraph entitled "The technique of interpretation" and the rearrangement and systematisation of the subsequent paragraphs of this chapter.

In Chapter 6, the author's discussion of the contractual capacity of married women has been modified in accord with the provisions of s 29 of the General Law Fourth Amendment Act 132 of 1993. Similarly, pursuant to the watershed decision of the Appellate Division in *Bayer South Africa (Pty) Ltd v Frost* 1991 4 SA 559 (A) it was possible for the author to abridge the lengthy discussion in the second edition of damages for negligent misrepresentation in Chapter 7.

The author's discussion in Chapter 10 of the enforceability of gambling debts must now be read subject to the provisions of s 18 of the National Gambling Act 33 of 1996. It must be conceded, however, that this Act only came into operation on 18 April 1997, thus after the publication of the book.

John Middleton
Pretoria Bar

Labour Law Diary – 1999

Juta & SASLAW
R125,00 (VAT incl)

This 14-month diary is published by Juta in association with the South African Society for Labour Law (SASLAW) and has a number of features designed to assist the labour practitioner. These include a Labour Court Timetable, telephone numbers and postal addresses (e-mail where available) of the Labour Courts, CCMA offices around the country, unions, employers' organisations and SASLAW members.

One feature which, in my view, is perhaps the most important, is a list of web site addresses with links to various Internet sites which give access to national and international labour legislation, reported and unreported cases and a wealth of other relevant information.

The inclusion of information such as paper sizes, tyre pressures, etc is perhaps super-abundant in the sense that the average labour lawyer is hardly likely to make use of it. Despite this criticism, the diary is a well-planned product which should satisfy the demands of the labour practitioner.

Johan Nel
Pretoria Bar

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Juta's New Land Law

by G Budlender, J Latsky and T Roux

Juta (1998)
Loose-leaf. R395,00 (VAT incl)

This is a timely publication, dealing as it does with the more recent legislation on land rights and land development.

What the book does is set out the text of all recent legislation on these topics – in all, five Acts of Parliament and whatever Regulations have been made under them. To cater for amendments, the book is in loose-leaf form.

The laws in question are topical and designed to fulfil pressing social needs. Consequently, there is a need for commentary >