From the publishers

Becks Theory and Principles of Pleading in Civil Actions

Sixth Edition by H Daniels

Butterworths (2002)
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Perhaps I ought to start by saying that I am not familiar with the earlier editions of this work and cannot say how the latest edition compares. I have difficulty in knowing what exactly to do with this book. I think that is a great pity, because the book contains much that is very useful. It does not appear to me to be a book about the theory and principles of pleading in civil actions. In other words, it is not a book one would sit down to read and ruminate on the whys and wherefores of pleading. That does not mean it does not contain many of these whys and wherefores, nor that what it says in this regard is not useful. Since it is clearly not merely one of those books with the essential allegations needed for most conceivable causes of action, one dearly wants to know how best to engage it.

It contains much substantive material that one would not expect to find in a book about the theory and principles of pleading. The pity of this is that as a result less is said about the theory and principles of pleading, and yet few are going to turn to this book to find out about the substantive law. This in turn means that some very good summaries and references to authority in various areas of law will tend to be missed by many who own the book. There are many sections on civil procedure and the substantive law of certain aspects of civil procedure (a good section on tenders, for example) that have little to do with pleading and either cannot compete with works on civil procedure (why have a section on the rules relating to applications?) or, when really good (as many of the sections are), will largely be neglected by those who are looking for such discussions.

Why not leave all these discussions and have a much larger section on the general principles and theories surrounding pleading generally, or, say, the plea, and on the very important general question when one ought to deny, when one ought to plead to, and when one ought to replicate to something? Why not talk about the problematic status of further particulars on trial and the principles that apply in this area? Why not use more illustrative examples of how a particular principle of pleading made a difference in a particular case (such as the example of the denial in *Brink v Cloete* 1869 Buch 215 employed so usefully in the section on the plea, or the example of the insufficient averments in *Romoff v Union Castle SS Co Table Bay Harbour Board and McKenzie & Co* (1901) 18 SC 177 at page 63)? The reader who wants this must, with most of the principles referred to, draw the cited authority (which is offered) and read it.

The style of the book follows that of a legal textbook or argument (it states propositions and gives authorities), rather than a discourse. It contains little that can be regarded as advice. This makes it more immediately useful as a reference but less likely to be *read* as a book *about* pleading, or as an exercise in teaching oneself how the theory and principles fit together. It is likely to come in very handy when preparing exceptions since it is best in providing principles and related authorities that would tend to be apposite on how something in a particular area of the law has been pleaded.

I will no doubt learn, in time, how best to use this book, as I have others. I want to do so, because it has been written with care, skill, knowledge and experience, and can offer me much. I just do not know if its enigmatic eclecticism might not serve to hide its treasures rather than to reveal them.

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Report by the independent observer

1 The State v Judge Fergus Blackie

2 The State v Tsvangirai and two others

Judge JW Smalberger, retired judge of the Supreme Court of Appeal of South Africa and judge of the Court of Appeal of Lesotho, was requested by the Human Rights Working Group of the Forum for Barristers and Advocates of the International Bar Association to attend, on behalf of the Forum, the hearings in Harare, Zimbabwe, relating to the criminal trials of Judge Fergus Blackie and Mr Morgan Tsvangirai. Judge Smalberger attended the proceedings relating to Judge Blackie in the magistrates court on 30 January 2003 and those relating to Mr Tsvangirai in the high court on 3 February 2003.

The State v Judge Fergus Blackie

The charges arise from the setting aside on appeal of the conviction and sentence imposed on a person who had been convicted of theft by conversion and sentenced to a term of imprisonment. The appeal was heard by Judges Blackie and Makarau. Judgment was reserved. The State claims that Judge Blackie subsequently unilaterally allowed the appeal without the concurrence of Judge Makarau.

The circumstances surrounding the arrest and detention of Judge Blackie are well-known. Arising out of the arrest of Judge Blackie, the Chief Justice of South Africa, Justice A Chaskalson, also issued a statement in September 2002.

The matter was remanded to 30 June 2003 for trial in the regional court. By agreement Judge Blackies bail conditions were relaxed – he now no longer has to report weekly and his passport has been handed back to him provisionally – he was due to return it on 31 March. According to Judge Smalberger the proceedings in the court were conducted with reasonable decorum and dignity. In his report Judge Smalberger concluded: 'It would be inappropriate for me to comment, having regard to what I understand the State and defence cases to be in broad outline, on the possible outcome of the trial. Suffice is to say that on Judge Blackie's version of events the appeal judgment, at best for the State, was handed down in error, a situation which would not have justified any criminal charge being brought against him.'

The State v Tsvangirai and others

Mr Morgan Tsvangirai and his co-accused are charged with high treason arising out of certain acts allegedly committed by them unlawfully and with hostile intent against the President of Zimbabwe and to overthrow the Government of Zimbabwe.

At the time of his visit the trial had been set down for trial and, in Judge Smalberger's words: ... 'for obvious reasons, it would not be appropriate for me to comment at this stage on any issues likely to arise at the trial.'