

Herbstein and Van Winsen The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa Volumes 1 and 2

Fifth edition by A Cilliers, C Loots and H Nel

Juta (2009)

Volume 1: xxii and 948 pages;

Volume 2: pages 949-1953.

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When it comes to dealing with the sort of everyday problems that arise in practice, advocates tend to fall into two classes: those who rely primarily on *Erasmus*, and those who rely primarily on *Herbstein and Winsen*. *Erasmus* was the book that helped me through pupillage many years ago, and since then I have loyally regarded myself as a member of the former class. In recent years, however, *Erasmus* has become increasingly unhelpful as a point of first reference and I therefore approached the new edition of *Herbstein and Van Winsen* with considerable self-

interest. I found it to be informative, erudite and extremely helpful – so much so, that I have now shifted allegiance and joined the latter class.

The fourth edition of *Herbstein and Van Winsen* was published in 1997. The intervening years have seen substantial changes to the nomenclature of the courts, and this has had a knock-on effect on the title of the fifth edition. However, it is not just names that have changed. At a more fundamental level, the Constitution has had a far-reaching impact on many aspects of practice and the case law on civil procedure has continued to grow. All of this means that the fifth edition of *Herbstein and Van Winsen* now occupies a hefty two volumes and comes with a CD-ROM containing various rules of court, court notices and practice directions.

What do practitioners expect from a book of this sort? Well, they certainly expect it to be more than a bland recitation of the Uniform Rules of Court (which practitioners can, after all, read for themselves). If confronted by the task of utilising a procedure for the first time, practitioners expect the book to point them to the relevant rules of court and to guide them on how to go about the exercise. If confronted by a novel problem arising from a procedure that is well-known to them, they expect the book to collect the relevant authorities and to alert them to any pitfalls in the path. They also expect the book to deal with various procedures that are not mentioned in the Uniform Rules of Court, such as anti-dissipation interdicts and Anton Piller orders. The fifth edition of *Herbstein and Van Winsen* does all of these things admirably. It is lucid in style and immensely practical in approach.

Admittedly there are places where the seams between the fourth and fifth editions are rather more visible than they should be. For example, the chapter on 'Review' contains a lengthy discussion of 'the modern law before 1994', to which a section on judicial review under PAJA has been unceremoniously bolted-on. Such a schizophrenic approach to the topic of judicial review is likely to mislead the unwary reader into believing that the discussion in the first half of the chapter remains good law, whereas much of it has been rendered of academic interest in the light of PAJA.

Be that as it may, the fifth edition of *Herbstein and Van Winsen* is a most welcome addition to the literature on civil procedure. It deals with the subject more comprehensively, more insightfully and more helpfully than any of its rivals.

Alfred Cockrell SC, Johannesburg Bar

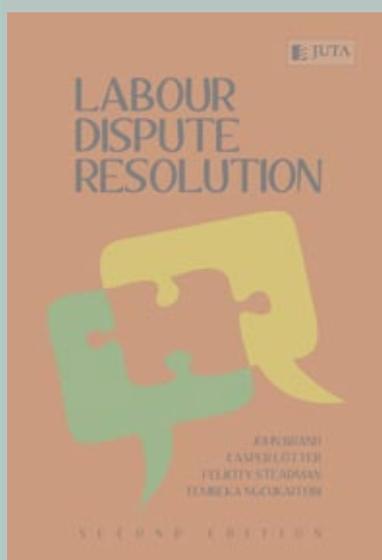
Labour Dispute Resolution

Second edition by John Brand, Casper Lötter, Felicity Steadman and Thembeke Ngcukaitobi

Juta law (2010)

xxvii and 295 pages

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This work does not strive to be an all-encompassing discussion and source of reference relating to dispute resolution in the labour arena. What this book evidently seeks to achieve is to be a crisp summary of the often complex arena of dispute resolution in the South African labour environment, with specific reference to private arbitration, arbitration under the auspices of the CCMA and various bargaining councils, adjudication by the labour courts etc.

One also finds handy chapters that deal with dispute resolution in the public service.

Since the current trend is to move away from formal dispute resolution (CCMA and Bargaining Council Arbitration as well as adjudication by the Labour Court), the discussion surrounding facilitation and mediation is apposite.

The synopsis of the different stages of an arbitration hearing (and how to prepare for arbitration), are practical and to the point. It is, however, inconvenient that the footnotes appear at the end of a specific chapter instead of at the bottom of the relevant page where reference to the footnote is made. This hampers quick and easy reference.

The authors of this book are all respected labour practitioners and this work would be an asset to legal practitioners that have a basic knowledge of labour dispute resolution.

Wilhelm Bekker, Pretoria Bar 