

State Commercial Activity – a Legal Framework

By Geo Quinot

Juta Law (2010)

xxxii and 316 pages

Soft cover R395.00 (VAT incl)



The State is and has always been a major participant in commercial activities. It therefore comes as a surprise when working through this book to find that there is, as illustrated by the author, still no clear or coherent legal notion of State commercial activity in South African law. The book analyses the State's capacity to contract, the current judicial approach to the regulation of State commercial activity and it contains an in-depth discussion of alternative approaches to

judicial regulation of such activity. The final conclusion drawn is that a combination of private law and public law rules is required to fashion a 'workable approach' to judicial regulation of State commercial activity. The book does not make for easy reading. It tackles difficult concepts. As stated in the first chapter, the 'overarching focus of the book is on the way in which courts control, facilitate and make sense of state commercial activity within South African law. It aims to critique the current approach and to investigate alternative models in terms of which courts can engage with state commercial activity within the unique context of constitutional transformation in South Africa.'

The author does not hesitate to question and where necessary criticise the sometimes contradictory approaches taken by courts, including the Constitutional Court. It not only discusses the positive law, but raises pertinent questions about the underlying legal principles of the State's involvement in commercial activity.

The author teaches administrative law and constitutional law at Stellenbosch University and is also the author of *Administrative Law Cases & Materials* (Juta 2008). The book, not surprisingly, has a largely academic and intellectual approach. A busy practitioner looking for quick answers will not necessarily find them easily. The book is, however, well researched, written by an expert in the field and it will undoubtedly contribute to the further development of this important branch of the law by the useful insights it provides and by the legal argument it will stimulate. It is a book that will find a useful place in the libraries of practitioners in the fields of constitutional and administrative law.

Henk Havenga SC, Pretoria

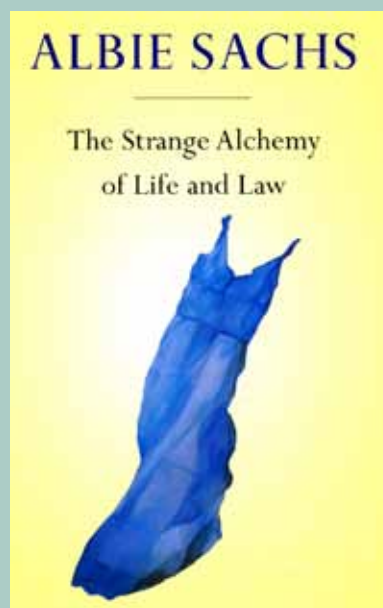
The Strange Alchemy of Life and Law

By Albie Sachs

Oxford University Press (2009)

320 pages

Hardcover R220 (VAT incl)



Anyone who has had the privilege of listening to Albie Sachs will know that he is a masterful storyteller who does not shy away from difficult issues. He engages them with carefully chosen words, weaving in references to his enthralling life experiences, all delivered with a gentle reassuring cadence that leaves his audience spellbound.

Many of these skills have been brought to bear upon his recent book which, in his apt words, provides 'glimpses of a fas-

cinating and not very obvious chemistry between my non-judicial life experiences and my decision-making as a judge.' In this manner Sachs broaches what has chiefly been a long-raging academic and judicial debate regarding the proper role of judges: on the one polar end formalists contending that judges simply apply the law without importing their politics and values into the judicial province, whilst on the other polar end realists arguing that judges make the law.

Sachs contributes to this debate (which is otherwise all too frequently locked up in legal and philosophical jargon) in a personable and accessible manner. He provides a rare and demystifying insight into the judicial mind and the judicial process, recording some riveting vignettes of his life experiences and their impact on his decisions as a judge (excerpts from decisions are reproduced). Sachs makes it clear that in his view the law is not divorced from a judge's experiences and judging cannot be reduced to mechanical deduction. However, he also shuns any idea that judges are engaged in the single minded pursuit of their personal preferences dressed up with legal verbiage. He attempts to navigate between these poles by enigmatically concluding that a judge's life experiences affect their legal decision-making in 'unexpected ways,' some 'obvious' and others 'mysterious'.

The *Strange Alchemy of Life and Law* does not pretend to be a jurisprudential tour de force mapping out the proper role of a judge in a constitutional democracy within the significant body of our constitutional case law. Instead, it simply and beautifully provides an intimate window into how one man's extraordinary life has impacted on his decisions as a judge.

Faizel Ismail, Johannesburg Bar 