

Delict: Principles and Cases
Second edition by JC van der Walt
and JR Midgley

Butterworths (1997)

Soft cover

Vol 1 xiii + 263 pp. R136,00 (VAT excl);

Vol 2 xxviii + 415 pp. R130 (VAT excl)

The first edition of this work, written by Prof JC van der Walt alone and published in 1979, was contained in a single, slender volume (x + 303pp) and consisted of two parts. Part A which related to the principles of delictual liability and Part B which contained the relevant case extracts. The addition of 103 post-1979 case extracts has necessitated the publication of the work, now under the joint authorship of Proff Van der Walt and Midgley, in two separate volumes.

The authors indicate in the preface to the second edition that Volume 1 is an updated and expanded version of the title *Delict* in Volume 8 of the first reissue of *The Law of South Africa* (Butterworths 1995). Apart from minor structural alterations, Part A of the original work (now Volume 1 of the second edition) has been expanded by the inclusion of sections on strict liability, vicarious liability, the *actio injuriarum* and damages. The up-dating includes material available up to 30 June 1997 and includes references to relevant constitutional issues up to that date.

The brevity of Volume 1 and the fact that Volume 2 is confined to summaries of cases and extracts only from the relevant judgments, places this work essentially in the category of an excellent students' handbook and teaching tool. In view of the eminence of its authorship, however, practitioners might find Volume 1 to be of use in relation to the basic principles of delictual liability.

John Middleton
 Pretoria Bar

The Labour Relations Act of 1995: A comprehensive guide
Second edition by Du Toit, Woolfrey,
Murphy, Godfrey, Bosch & Christie

Butterworths (1998)

xxiv + 513 pp.

Soft cover. R185,82 (VAT incl)

The 11th of November 1996 was important not only because it was Armistice Day but because it was the date upon which the La-

bour Relations Act of 1995 came into force. Perhaps it was some subliminal Freudian impulse that impelled the Minister of Labour to choose that date as the moment for a revolution in South African labour law to take place. The statute introduced a brand new set of institutions for the resolution of disputes, both through the medium of consensus-building and adjudication. The new institutions were the Labour Courts and the Commission for Conciliation Mediation and Arbitration (CCMA). In addition to that, the idea of workplace forums was statutorily institutionalised and much of the development in labour law over the previous fifteen years, which resulted in a set of substantive norms, was codified.

Between the time of the enactment of the Labour Relations Act and the time that it came into force, almost a year elapsed. During that time the first edition of this book appeared. This explains why the second edition was published a scant ten months after the statute came into force. In doing so, the technical amendments to the principal Act, effected by Act 42 of 1996 were captured in the text. Understandably little case law could be included in the book and inevitably one must expect the third edition of the book to be not far off.

The work is intended to offer a comprehensive survey of the law and in this it succeeds.

It integrates much of the old case law which was decided under the 1956 Labour Relations Act into the fabric of the new provisions and from the point of the view of the practitioner, the book offers a ready source of cross-reference to the previous jurisprudence. In respect of the new procedures and the institutions which administer them, there was of course no heritage to capture, and the text for that reason does little more than sensibly summarise the procedures and offer comment. This is especially important in respect of some of the innovations concerning, for example, strike law, where the notion of the illegal strike has been jettisoned and the new concept of a protected strike has been introduced.

Individual labour law is dealt with in summary form. Unfortunately, at the time of publication, only one code of practice (that dealing with dismissal), had been published, and the subsequent codes of conduct on retrenchment and on sexual harassment will have to await treatment in later editions. For the time being, the usefulness of the work of Le Roux and Van Niekerk *The South African Law of Un-*

fair Dismissal (Juta 1994) will continue to be an important source of reference on the substantive law on terminations of employment, whilst assistance on procedures will be found in this work.

In respect of collective bargaining topics, the text deals with the various provisions which have impact but does not attempt to delve in any way into collective bargaining jurisprudence which will of course be appropriate in the wake of the case law yet to come. At this time, the finest piece of writing on collective bargaining jurisprudence remains Clive Thompson's contribution to Thompson and Benjamin *South African Labour Law* (Juta) and one looks forward to a treatise that will do the same for contemporary collective bargaining law.

This book is the correct choice for the novice lawyer starting out to practise in the field of labour law. For the seasoned labour lawyer, it is a useful source of first reference.

Roland Sutherland
 Johannesburg Bar

One miracle is not enough
by Rex van Schalkwyk

Bellwether Publishers (1998)

Hard cover. R90,00 (VAT incl)

This book by former Judge Van Schalkwyk consists of a series of articles about modern day South Africa. Some idea of the scope of the work may be obtained from the chapter headings, some of which are – the scourge of the motorcade, on democracy, the rule of law, affirmative action, the economy, education, the judiciary, the death penalty.

His propositions are supported by logical argument. But reading the book, one cannot but be aware of passionately held liberal opinions that inform his views.

He deprecates the abolition of the death penalty. "Law abiding citizens," he says, "deserve the State's protection by whatever reasonable means are at its disposal". He would have less government, not more – "Even in free societies, government tends to do harm, seldom does more than limit its capacity for mischief and never performs an act of unqualified grace. It follows that in unfree societies, government's capacity to do damage is vast." He does not appear to approve of lefties.

The views expressed by him of past and present members of the judiciary may be char-


acterised as forthright. He is scathing about the executive-mindedness of the judges in *Rossouw v Sachs* 1964 (2) SA 551 (AD), but then proceeds to castigate Sachs for his conduct as a member of an ANC commission in failing to condemn the treatment of one of its members detained without trial and for that reason disapproves his appointment to the Constitutional Court. He considers that the composition of the Constitutional Court is such that it is unlikely to curb the excesses of the government. He does not recoil from saying that there is a perception that the Constitutional Court under the leadership of its President is an ANC or ANC-sympathetic institution.

Unsurprisingly, Van Schalkwyk has no good words to say for affirmative action which

he says has been applied in the appointment of judges of the Supreme Court and of the Constitutional Court. In this regard the editorial committee of this journal and Malcolm Wallis SC, then chairman of the General Council of the Bar, are reproached for seeking to impose censorship in regard to an article written by Van Schalkwyk for the journal. "I refused this censorship and requested that the article be returned to me", says Van Schalkwyk who then proceeds to reprint the article in Chapter 4 of his book, for two reasons he says: "First, it includes the remainder of what I want to say on the topic of affirmative action and secondly, because the circumstances of a censorship are a striking example of the insidious forces of political correctness.*

To say that not everyone will agree with everything put forward by Rex van Schalkwyk is probably the understatement of the year. However, what Judge Van Schalkwyk says needs to be said and I recommend this book.

R L Selvan SC
Johannesburg Bar

* *The author of the book was asked by the editorial committee to change or attenuate a passage in the article which in the committee's view could be regarded as a personal attack on one of the judges of the Constitutional Court. Upon his refusal the committee by a majority decided not to publish the article. – Editor* 

Advocates' ethics

Continued from page 27

terms of the law he had been entitled to act in the manner he had. He submitted that the belief was not unreasonable given the recent far-reaching changes in the law. He further argued that the rules of conduct of IAASA specifically allowed the acceptance of briefs directly from members of the public without the intervention of attorneys, and that none of the acts that he had performed had brought the advocates' profession into disrepute. With regard to his argument on his reasonable belief, the court, correctly, rejected the argument. The court reasoned, that as a senior counsel of long-standing, his belief that he had been entitled to act as he had done, had been wholly unreasonable. The court further rejected his reliance on the rules of conduct of IAASA as misleading, since the respondent had participated in their formulation. The court also took a dim view of his attack on the profession in a newspaper in which he belittled the profession.

The court concluded that, in view of the fact that the respondent had displayed a lack of judgment, rather than dishonesty, he should be suspended from practice for a period of six months, which in my view was very lenient. This is a case in which, in my view, the court should have severely punished the defiant respondent, in order to deter other "independent advocates" from continuing to contravene the Bar's ethical rules.

The punishment is not in line with previous court decisions. For example, in the case


of *Beyers v Pretoria Balieraad* 1966 (2) 592 AD (the facts of this case are more or less similar to that of Van der Spuy) Beyers paid the ultimate price – his name was removed from the roll of advocates – while Van der Spuy walked out of the court with only six months' suspension.

The way forward

It appears to me that we need to devise strategies aimed at bringing the "independent advocates" into the fold of the legal profession. What is, however, an immediate challenge to the constituent Bars and perhaps, the government, is to ensure that all "independent advocates" are properly registered within a period of three years.

If they cannot be accommodated as suggested above, then practice outside the profession should be prohibited. I am not suggesting that the concession given to academics should be done away with. We need keep in mind that some of these "independent advocates" are those who failed the National Bar Examination, and the majority of them are black. A lot of ink has been wasted on the issue of access to the profession, especially by the disadvantaged. I need not repeat it here. On the other hand, we cannot afford to sit idly by and leave the community to be exposed to advocates whose conduct and behaviour are not subjected to regular checks and balances.

In order for the profession to save its leg-

itimacy I conclude by, once more, urging the GCB, the Judicial Service Commission and the Minister of Justice to convene a national conference, where issues regarding the transformation of the legal profession and other related matters can be dealt with head-on. Let us not waste more time. 

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