

From the publishers ...

Civil Procedure in the Magistrates' Courts

by LTC Harms

Butterworths (1997)
418 pages
Loose-leaf R433,20 (VAT incl)

Civil Procedure in the Magistrates' Courts and the well-known *Jones & Buckle* have two things in common. They are both useful practitioners' guides to the civil procedure in the magistrates' courts and they are both now in loose-leaf format, the former in a single volume and the latter in two volumes. There, however, the similarities end. Whereas *Jones & Buckle* follows the traditional pattern of a commentary on the Magistrates' Court Act 32 of 1944, section by section and rule by rule in consecutive order, Harms's new work is basically in the same format as Harms' *Civil Procedure in the Supreme Court*.

The new work consists of a first part, comprising some 418 pages, which is a systematic exposition of the principles of civil procedure in the magistrates' courts, followed by the verbatim texts of the Act and Rules as amended. A very useful innovation in the new work (which is unfortunately lacking in the supreme or high court version) is the incorporation in the right hand-margin of the text of the Act and Rules of references to the relevant paragraphs of the commentary or exposition section. This saves the reader who wants to find the author's interpretation of a particular section of the Act or Rule, the trouble of having to refer continually to the index. This makes for a very comfortable cohesion between the commentary and the text of the Act and rules.

Apart from the customary index, table of statutes, table of cases arranged in alphabetical order, the new work is also equipped with a useful procedural timetable for the magistrates' courts and a further table of cases arranged under the sections of the Act and the Rules. The commentary or exposition section of the work is, according to the author's preface, largely based upon sections of the title

Civil procedure in the law of South Africa and Harms's *Civil Procedure in the Supreme Court*, with due acknowledgment to the authors involved.

Although, as a comparison of the tables of cases in each of the works suggests, *Jones & Buckle* with its long history still probably has the edge as a copious work of reference, this lean, new, dynamic work, shorn of all superfluity, is to be welcomed.

John Middleton
Pretoria Bar

• • •

Summary Judgment: a Practical Guide

by SJ van Niekerk, HF Geyer & ARG Mundell

Butterworths (1998)
Loose-leaf R273,60 (VAT incl)

Many arguments against the retention of summary judgment have been expressed and are fully canvassed by the authors of this book. It has been said that the procedure is frequently applied, not with the purpose of affording a speedy relief to the plaintiff, but with the ulterior motive of snatching a judgment or forcing a defendant to disclose his evidence, an advantage not normally granted to the plaintiff.

The aim of the summary judgment procedure is, however, a legitimate one in the law of civil procedure and is daily used as a decisive and effective debt-collecting tool. Due to the discretionary element in granting this remedy, this work has been published in an attempt to reduce inconsistencies and to promote uniformity of practice.

A praiseworthy attempt has been made to systematise the available material by way of a clear table of contents which enables a busy practitioner to speedily ascertain for instance "which claims entitles a plaintiff to apply for summary judgment" (chapter 3) and "the requirement of validity of an application for summary judgment" (chapter 5). There is also an interesting discussion on the evolution and introduction of summary judgment into South African civil procedures.

There are fifteen chapters dealing with various practical problems encountered by practitioners with an extensive discussion on the fundamental rules ("the eight golden rules") on adjudicating a summary judgment application.

Extremely useful is the section on the defendant's opposing affidavit with reference to the basic requirements as stated in High Court Rule 32(3)(b) as well as in Magistrate's Court Rule 14(3). Also included is a comprehensive list of suggested forms with examples.

This book provides an easily ascertainable guide to the law pertaining to summary judgment and will form a valuable tool for the motion court practitioner.

Ilse Potgieter
Bloemfontein Bar

• • •

Butterworths Legal Practice Handbook series

Butterworths (1997)
Soft cover R75,24 per volume (VAT incl)

The five titles in the Butterworths Legal Practice Handbook are expressly aimed at those in the process of qualifying to practise as attorneys and at newly qualified attorneys starting out on a career in the attorneys' profession. However, they also offer much in the way of clearly stated basic practical advice for a wider audience of fledgling legal practitioners.

Negotiating Skills

by Ann Halpern
(Renate de Klerk: South African editor)

The book abounds in practical ideas and common sense advice from experienced practitioners on preparing for and conducting negotiation sessions. While the section on "Negotiating with the Japanese" may not have immediate relevance for the average South African lawyer, this is followed by a discussion on preparation for cross-cultural negotiations, which clearly will. Also touched on briefly are the ethical considerations which impact on

negotiations on behalf of clients, mediation and alternative dispute resolution generally.

Personal Management Skills

by *Stephen Maysom*

(Renate de Klerk: South African editor)

There is much in this book for the young practitioner (particularly one who did not have the benefit of a planned and focused practical training programme during articles) to learn about establishing orderly and productive working habits.

Legal Research

by *Victor Tunkel*

(A de W Horak: South African editor)

This is an uncomplicated, basic textbook in which the author runs through the fundamentals of legal research in South African legal sources, with suggestions on how to go about finding the legal principles which apply in any given problem. Practical in its focus (there's not much on finding one's way around the old Roman-Dutch authorities), it includes a section on building up and keeping up to date a personal library, a section on online research and, at the end of most chapters, a series of exercises on research in the sources discussed in the relevant chapter.

Client Care

by *James Alexander*

(Renate de Klerk: South African editor)

Managing the Law Firm

by *Alan Pannett*

(Renate de Klerk: South African editor)

Lyn Ploos van Amstel Advocacy Training Co-ordinator

• • •

Legal Drafting: Civil Proceedings

by *Peter van Blerk SC*

Juta & Co (1998)

xvi & 110pp

Soft cover R98 (VAT incl)

This book should be welcomed on a wide front. It will assist particularly those preparing for the Bar's examination on Legal Writing, a formidable paper because failure to negotiate that

eight-hour practical closes the door to a viva, the last possible exit to a pass. What most students, and doubtless some practitioners, search for is a precedent in pleading which is right on point. Legal drafting calls for personal resourcefulness possibly more than any other subject in the syllabus.

The author gives wise advice on how to go about draftsmanship, emphasising the need for unremitting vigilance of thought and clarity in its exposition. He sets out instructive examples of particulars of claim, plea, replication, application by way of motion, founding, answering and replying affidavits. His lucidity on notices to third parties is a boon to all who wilt at the knotty rule on joinder.

To the tyro the book's handling of practical aspects is especially helpful. It shows how one should deal with paragraphing, referencing and cross-referencing when counterclaims are involved.

Could this book be made better? The more precedents and forms that the author feels he could add, the more welcome, I am sure, the next edition would be. How often have we not gone to the estimable Beck, only to wish for more examples. The present work is admirable enough to make one hope that there will be a further edition, building on its laudable strength of showing a sensitive regard for the needs of budding and young lawyers.

Finally, some notes towards that next edition: a book which so stresses clarity, concision, and accuracy in language, should be exemplary in its own. Can it rest happy with the following? [Emphases in italics are mine.]

The trite: 'The drafting of legal documents is a skill that requires the use of language'.

Faulty syntax: 'Before suggesting a method that can be used to draft court documents there are certain matters which the reader should consider' (unrelated participle risks implying the reader as subject instead of the author) [p 1].

Broken concord: 'It is important that the pleadings as amended reads sensibly' [p 44].

Tautology: (On the limitations of precedents) 'they tend to restrict the development of skill in drafting style; their use can stifle drafting skills' [p 1].

Homer nodding? 'The essential ingredients must appear in the founding affidavit. If not, a respondent would be entitled to argue on a preliminary basis that the right to relief has been established and obtain a dismissal of the application.' [pp 52-53] Per contra, surely the respondent would be better employed arguing that the right to relief had not been established.

Gordon Hartford
Emeritus professor

• • •

Presumption of Innocence

PJ Schwikkard

Juta & Co (1999)

xix & 185 pp

“Until clear principles are laid down for ascertaining when infringements of the presumption of innocence are constitutionally tolerable the normative value of the presumption of innocence, ..., remains uncertain.” This is the authoress' final conclusion at p 174, on the present status of this fundamental principle of our criminal law. On the preceding pages she discusses the history, development, content and application of the principle, especially in light of the relevant provisions of the interim and final Constitution.

The book is well researched with extensive case references, bibliography and to-the-point index. Where argument pertains to contentious constitutional issues, informative comparisons are made to Canadian law.

I found the book to be sensibly narrated and academic in nature, but not a quick solution reference too (such as eg Du Toit's *Commentary*). It provides a sound basis for research purposes as well as to bring one up to date on the present application of this principle by our courts. It would be of benefit to pupils and young practitioners who do not have experience in criminal law and useful to experienced practitioners who wish to update their knowledge of the subject.

G Wolmarans
Port Elizabeth Bar

