

## From the publishers ...

### Agreements in restraint of trade in South African law Issue 1, October 1999

Editor: John Saner

Butterworths (1999)  
Loose leaf R435,46(VAT excl)

At last we have a comprehensive work on restraint of trade agreements in South African Law. In a user-friendly loose leaf format, this work deals with the relevant case law from *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* to the present day, with excerpts from the leading cases being included in the work.

This work is suitable for use by practitioners and legal advisors, as well as businessmen, estate agents, franchise operators, and students. A useful aspect of the work is that there is a section containing draft restraint clauses which have been adapted from the cases quoted from and referred to in the work where the restraint was upheld and an interdict granted.

There are fifteen chapters in the main body of the work, each with a separate contents page, making the reader's task of finding a particular topic that much easier. Some of the topics dealt with by the author, after a lengthy discussion of the case law in South Africa, are the incidence of the onus, the reasonableness of restraint agreements in terms of public policy and a discussion as to what constitutes protectable interests. The thoroughness of the work is demonstrated by the inclusion of a chapter relating to income tax implications of restraint agreements.

In the preface, the author, referring to the reasoning that mountain climbers climb mountains because they are there, states that the reason why he wrote this work was because a book focusing exclusively on restraints of trade in South African Law "wasn't there." This lacuna has been more than adequately filled.

**Patrick Scott**  
*Port Elizabeth*

### Pension dispute resolution procedure: an easy guide

by Vuyani Ngalwana

Juta (1999)  
xv + 52 pp  
Soft cover R68 (VAT incl)

Written for a broad readership (no party is entitled to legal representation at the proceedings) this brief text delivers on its promise to be an easy guide to the pension dispute resolution procedure introduced by the Pension Funds Amendment Act 22 of 1996. The bulk of its 52 pages set out the procedure to be followed and include a specimen "complaint to the Adjudicator". Complaints must relate to at least one of the ways in which:

- the pension fund is administered;
- the rules of the fund are interpreted or applied; or
- fund income is invested.

Page 20 n 24 contains the perhaps startling statistic that "the Adjudicator has heard and decided more retirement fund cases in seven months than the ordinary courts, put together, have since 1956 ..." Notwithstanding the exclusion of lawyers from any hearing it would appear that there is scope for professional involvement in the drafting of complaints, giving advice in preparation for hearings and the leading and cross-examination of witnesses. Such assistance will often be necessary, particularly where pension funds are represented by legally trained employees. In that eventuality this booklet will serve as a very useful introduction to the pension dispute resolution procedure.

**Martin Glover**  
*Grahamstown*

### Environmental justice and the legal process

Editors: Jan Glazewski and Graham Bradfield

Juta (1999)  
lx & 338 pp  
Soft cover R281 (incl VAT)

Consisting largely of reworked papers presented at an April 1998 conference held at the University of Cape Town in collaboration with Macquarie University, Sydney, the 15 distinct chapters deal intensively with selected issues involving environmental justice, environmental jurisprudence, environmental and constitutional law, natural resource conservation and utilisation, waste management, cross border pollution, environmental standards in legislation, and liability for damage to environment and health. The broad range of topics ensures that this collection will be of interest to a wide audience, but particularly food for thought for those involved in environmental impact assessments, litigation, law enforcement, drafting legislation and teaching environmental law in Southern Africa. Each contribution has been written in the context of South Africa's transition to democracy with all the advantages, problems and opportunities that process has continued to generate.

Among papers of local interest is a case study of the formal and informal (poaching) exploitation of abalone (perlemoen) on South African shore as well as a discussion on where responsibility lies (since underscored by recent litigation in the UK) for disease arising out of asbestos mining. Another fascinating essay is an account of trans boundary pollution issues in the Netherlands arising out of the highly polluted European rivers flowing through it on their way to the sea. Of particular interest in this paper is the discussion on the history of strict liability in Dutch law; its current application with regard to trans boundary pollution involving Germany, and comparison with other legal systems.

**Martin Glover**  
*Grahamstown*

### Bill of Rights Compendium Service Issue 5

Butterworths (1999)  
Loose-leaf R694,43 (VAT excl)

This work provides a selection of writings on the South African Bill of Rights. Its chapters and contents provide principles of organisation and assembly that seem to have more to do with what the respective authors like writing about

than with any idea of a system. If the description 'compendium' was chosen to represent the most neutral term for 'book with things about', then it was probably well chosen. Of course, with no pretence at methodology, the work can happily provide exactly what it does – pieces of information and scholarship with varying degrees of usefulness and insight concerning the Bill of Rights. One bonus is that items that may receive less attention in similar works now unexpectedly form part of the reader's store of references on matters constitutional – such as the sections on mental health, succession and, say, insolvency. But it remains a strange distribution. Why should one chapter be gallantly stretched to cover the whole world of criminal constitutional due process, including sentencing and evidential matters, whilst another chapter may say much about the law of insolvency without providing a great deal of direct engagement with the issues raised by the bill of rights, and yet another be devoted to mental health and the Bill of Rights? Internally the division of labour is often equally discordant. But that is a more serious concern than the arrangement of chapters. Some of the chapters dealing with the less traditional areas of focus for a work such as this tend to suffer from an unfortunate syndrome – disproportionate detail about the substantive law regarding the particular topic and little by way of penetration when it comes to the parts where the topic and the constitution meet. The chapters on insolvency and indigenous law are examples of this phenomenon. No 'compendium' such as this can hope to cover all areas of interest or significance. But where unexpected topics reveal, some expected topics are strangely (some may say refreshingly) silent. There is, for example, an extraordinary gap in the treatment of equality law and 'anti-discrimination' law. The chapter on 'gender issues' deals mainly with bureaucratic concerns and less with the comparative jurisprudence of equality and discrimination, and almost every chapter says something about equality and discrimination but nobody comes to grips with the oceans of jurisprudence in this area, save to an extent the discussion in the chapter on 'international law', which in itself highlights a fuzzy focus and failure

clearly to distinguish international law from comparative 'international' (municipal and regional) human rights jurisprudence. It may also be observed that the work could certainly have benefited from some synchronisation among authors to avoid areas of overlap, and to avoid the resulting proliferation of private discussions about theories of interpretation and about the horizontal application of a bill of rights.

Since the work is a loose-leaf publication, it comes with an implied promise to be 'current'. Where some chapters are several issues more current than others, it is unfair on the authors of the 'older' chapters to appear to have been left behind – the 5th issue proclaims "31 March 1999" on its title page, but that is very much not true of the chapters that still say what they said in the days of the interim constitution. It is also slightly misleading to the purchaser, who must learn that, as at 31 March 1999, there have been no cases before the Land Claims Court.

As far as individual components are concerned, the following may be added: the general introduction lacks an immediately apparent structure, and fails to provide some sort of basis for the arrangement of what follows, even if only to say that what follows does not necessarily have any particular sort of arrangement. The cook's tour of individual rights in this section could have been replaced by a more ambitious discussion of a general and theoretical nature, given that all the specific rights would be expected to feature in detail in their own chapters.

The chapter on substantive criminal law is rather thin and tends towards the superficial, opting neither for a narrow but deep examination of the South African law nor for a broad and comprehensive sweep of comparative law. The chapter on the environment is impressive in its scholarship and unity of purpose, and has the distinct advantage of having been afforded the sort of luxury of relative weight in a work such as this that such a chapter would perhaps not normally enjoy. The introduction to the private law section is the closest the work gets to success at logical progression and an introduction that sets out general themes in an insightful way. The individual chapters in this section are a tad dis-

appointing, particularly the limited treatment of relevant constitutional jurisprudence one unexpectedly finds in the chapter on contract. The succession chapter is another useful rare bonus unlikely to be one of many of its kind, if a bit European, particularly German, in its focus. The chapter on land restitution has lagged behind and can therefore not take account of any of the developed jurisprudence. It is also painfully 'mechanism' and 'procedure' centred and lacking in theory or polemic. The property chapter is solid and well balanced. Both the chapters on labour law and on indigenous law devote disproportionately heavy attention to general 'human rights' discussions that are not peculiar to the topics at hand. The criminal procedure chapter suffers seriously from having been left behind in the second issue, but does a good job of organising material and of finding an appropriate division of labour between analysis and breadth, thereby retaining its usefulness as a reference.

On the whole, the work is worth buying, not because it is a particularly exciting commentary, but mainly because, being a rather odd assortment, it is likely to be most useful in the areas the particular constitutional practitioner is least familiar with, but always likely to encounter in one form (or forum) or another.

**FA Snyckers  
Johannesburg Bar**

### Advertorial

#### **Juta Law wins Bahamas contract**

Juta Law has secured a contract from the Government of the Bahamas to revise and publish that country's statute law. The contract is worth R5,6 million.

Says Ciaran MacGlinchey, publishing director at Juta Law, "In the last two years Juta Law has been awarded law revision and law reporting contract work worth over R20 million from outside South Africa. The Bahamas contract includes the publication of the revision of the statutes as well as three years' maintenance".

Juta Law has undertaken project work for countries as diverse as the Republic of Ireland and Tanzania. The company also publishes the statute law for Malaysia, the Isle of Man, Jamaica and Zimbabwe and the law reports of Jamaica, Namibia, Zambia, Lesotho, Botswana and Tanzania.