A further and fundamental omission is a thorough analysis of what the Constitution tells us about the issue. Is belief in witchcraft something that the Bill of Rights protects as belief, religion or culture? Does our pluralist system demand that we afford witchcraft belief legal recognition however irrational some of us may think it to be?
For those engaged in law reform or working in the criminal justice or human-rights sphere, the book is an excellent introduction to the subject. In addition to providing a contextual understanding, the book provides a historical understanding of the legal framework as well as an understanding of the current legal regime and its practical problems. In particular, problems relating to proof of guilt and appropriate punishment are addressed. For others, the book gives valuable insight into a world that has historically been marginalised in mainstream law but which pervades South African social and political life.

Susannah Cowen, Cape Bar

Visser and Potgieter’s Law of Damages

Second edition by PJ Visser, JM Potgieter, L Steynberg and TB Floyd
Juta Law (2003)
xcvii & 514 pages
Soft cover R325 (VAT incl)

According to the wording on the back cover of this work, the Law of Damages is intended to be a comprehensive introduction to the principles of the law of damages, written with a view to the requirements of both practitioners and students. This is an accurate description of the work. It is supplemented by the Law of Damages through the Cases (Juta 1998) by PJ Visser and JM Potgieter.

The work is a comprehensive introduction to the theoretical and practical basis of the law of damages. It is divided into four parts. In part I the general concepts and principles of the law of damages are discussed. In the following chapters, the basic concepts of damages, with a discussion of the differences between patrimonial and non-patrimonial losses are dealt with in a theoretical, yet practical manner. The work deals with the general principles of assessing both patrimonial and non-patrimonial loss as well as the nature, object and form of damages. It deals with all the aspects that a practitioner will be faced with, whether he claims damages under contract, or the various forms of delict (including motor vehicle collisions, and infringement of personality rights).

Part II deals with damages in specific cases of breach of contract, discussing the different measures of damages, damages in some typical situations such as failure to perform, repudiation and prevention of performance, defective performance, late delivery and loss of profit. In a separate section, the principles relating to a contract of sale are dealt with. Specific types of contracts are discussed, including credit agreements, service contracts, carriage of goods and insurance contracts, and professional liability of legal practitioners.

Part III examines damages and satisfaction in certain forms of delict, including damage to property, theft, loss of use, fraudulent and negligent misrepresentation, unlawful competition, infringement of copyright and patents as well as damages to be claimed under various other actions such as the actio de pauperie and the actio de posta. In chapters 14 and 15, a basic overview is given of the assessment of the quantum of damages for patrimonial loss caused by bodily injury, death, or the infringement of personality rights.

Part IV of the work deals with the procedural matters such as pleadings, onus of proof and appeals against awards of damages, as well as the administration of damages awarded to minors.

I found the book to be sound as far the theoretical principles of law were concerned, and as such it would be a useful tool in legal research for both pleading and argument in court. The authors have struck a healthy balance between the theory and the practice of the law, and as such I regard it as a useful contribution to a practitioner’s library.

Henk Havenga, Pretoria Bar

Private International Law: the Modern Roman-Dutch Law including the Jurisdiction of the High Courts

Fourth edition by CF Forsyth
Juta Law (2003)
528 pages
Soft cover R385 (VAT incl)
The author’s observation that the paucity of precedent in the field of private international law accords special weight to the views of textbook writers (p 17), though said to be particularly apposite in respect to Dicey, must, of course, apply forcefully to this work itself when it comes to the South African law. Hence the great importance of updated editions of this work, this being the fourth edition, the third having appeared in 1996, with the advent of the final Constitution. Hence also the need for this work to remain scholarly and august. This it certainly always has been. It revels in the academic character of the topic, and its analytical rigour may at times prove too high a hurdle for those who quickly need to know the first thing about choice of law or to pass a module at undergraduate level. Most practitioners regard private international law as a necessary evil they must encounter every so often, and when they do, they tend to reach for the academics, rather than for the relevant books that might enlighten them. This is a pity, for the treatment in this book is accessible to the practical lawyer, and the topics sufficiently self-contained to make it possible for the work to be used as a reference as well as a textbook. Reading it also happens to be fun. Nobody who likes the intellectual puzzles the Bar offers can fail to enjoy the section on renvoi.

What most practical lawyers will not know is that this book contains a wonderfully up to date discussion of the jurisdiction of the High Courts, impressive in particular in its treatment of the question of submission, recently analysed in American Flag Plc v Great African T-Shirt Corporation 2000 (1) SA 356 (W) and (almost but not quite) in Jamieson v Sabingo 2002 (4) SA 49 (SCA). Also, lawyers would tend to consult books on the law of persons when confronted with problems of domicile, yet ought to bear in mind that the thornier dimensions of such problems are deftly addressed in this book. That the book does not deal only with the topic ‘choice of law’ ought perhaps to be addressed in more detail in the introduction. The precise nature of the subject, and its position within the South African legal firmament, could perhaps be explored and stated at a more leisurely pace than in the introductory portion of the book, before the reader is plunged into the chapters that