

Essential Social Security Law

By *EML Strydom (ed)*

Juta Law(2005)

337 pages

Soft cover R298.85 (VAT incl)

The second edition of *Essential Social Security Law* edited by Elize Strydom represents a welcome addition to the emerging literature on a subject which has historically received scant attention. The publication provides an insightful overview of the law relating to social security in South Africa. Written in accessible language, it examines different sources of social security law including legislation, court decisions, common law, custom and academic writings.

The introductory chapter provides a useful conceptual framework of the law relating to social


security. It also canvasses both the historical framework and the challenges of restructuring the current social security system. This chapter is particularly relevant in light of the constitutional recognition of the rights to social security, social assistance in instances where persons are unable to support themselves and their dependents as well as children's rights to social services.

A significant number of the chapters following thereon are dedicated to examining the framework, relevance and impact of social security for a range of marginalized and vulnerable groups. These include benefits in respect of: old age and death; employment injuries; unemployment; sickness; invalidity; maternity protection; maintenance of children and migrant workers. The issue of discrimination in social security is addressed at some length through the lens of section 9 of the Constitution.

The publication also provides an interesting discussion about indirect social security as a means to addressing poverty in South Africa. It

provides a brief overview of housing schemes; land redistribution programmes and education and health care, with some attention devoted to informal social security. The authors recognize that the latter has developed as a result of the short-comings, and more particularly the exclusionary nature of the formal social security system.

Attention is also given to key issues of the financing and administration of social security, including the currently topical issue of methods of financing and circumstances impacting on financing.

The publication provides a comprehensive and useful framework for an understanding of the law relating to social security. It traverses a range of issues that are relevant and helpful (though in varying degrees) for the purposes of advocacy and lobbying, education and teaching, enforcement and monitoring as well as practice. 

Karrisha Pillay, Cape Bar

The Law of Sale and Lease

Third edition by *AJ Kerr*

LexisNexis Butterworths (2004)

563 pages


Soft cover R480,44 (VAT incl)

Kerr's textbook on Sale and Lease is increasingly becoming the standard work, given that it tends to be updated whilst a few other stalwarts in either sale or lease have been left behind the march of precedent. It is for that reason alone worth having. The scholarship is thorough, although one must note that the discussion does at times (infrequently) appear rambling and loose and at times perplexing (for example the attempt on page 463 to reconcile a certain view relating to the formalities required of a contract providing for a right of pre-emption in land with a clear dictum in *Hirschowitz v Moolman* 1985 (3) SA 739 (A). The relationship between text and footnotes (or discussion and reference to authority) tends to shift, now being more particular, now more cryptic, so that the flow of the prose is at times negatively affected. This is not too disruptive, and mainly a matter of stylistic preference. The flavour is

theoretical, although both sections contain a workmanlike division that has become orthodox in the canons of sale and lease. The practitioner will therefore recognise the rubrics from university, and ought not to get lost in a theoretical fog – one proceeds from a consideration of the nature of the contract, to its elements, to the obligations of each party, and their respective remedies, and then to looking at some peculiarities of the law relating to each topic, with certain standard clauses in contracts of sale being considered, for example, or the statutory effect of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 in the context of lease. As regards PIE, the edition was published in the period after the Supreme Court of Appeal had practically settled the question of the applicability of the Act to unlawful holding over in the case of residential leases, but during a period of uncertainty about potential legislative alterations then thought imminent. Some topics appear oddly placed in the lease section rather than in the sale section; for instance, the discussion on options and rights of pre-emption referred to above appears to occur in the lease section mainly because options are often found in leases, yet the theoretical discussion is more concerned with the relationship between these contracts and the contract of sale than with the context

of lease. It is easier to find a discussion by looking for it in the comprehensive table of contents than in the index.

What is at times irritating is the frequent reference by incorporation to the author's work on principles of contract, almost rendering that other work an essential reference companion to this one. It is not as if all questions discussed in depth in this work are peculiar to sale or lease and do not deal with general principles of contract. For example, the (good and thorough) exploration of the topic whether unilateral fixing of prestation renders a contract void, in the context of the decision in *NBS Boland Bank v One Berg River Drive* 1999 (4) SA 928 (SCA), does not approach the topic from the point of view of the contract of sale, although it is found there because it occurs within the traditional topic of the requirement of a *certum pretium*.

What is certain is that the work contains sufficient original thought and critical exploration to render it worthwhile as an authority in addition to simply being a collection of authorities and a summary of their effect. It therefore deserves its place as the standard work, and will continue to be cited by the courts. 

Frank Snyckers, Johannesburg Bar

Water Law

By *Hubert Thompson*

Juta Law (2006)

769 pages

Soft cover R585 (VAT included)


Up to 1998, water law was based on the principle of riparian rights. Although the water flowing in a public stream

was not as such susceptible to private ownership, the right to use it for irrigation and domestic purposes vested in the riparian owners, that is, the owners of land (or subdivisions of such land) which abutted on the public stream in question. Thus, for a legal practitioner, water law meant in essence the resolution of disputes between riparian owners about their respective rights of abstraction and use. It was gradually realised that water was a scarce commodity and that a measure of state control was needed in the public interest. Section 62 of the 1956 Water Act provided that the responsible

Minister could proclaim a particular area as a government water control area. Where such an area was proclaimed the use of all the water was vested in the Minister, who would then issue permits specifying who could use water, how much could be used and where it could be used, whether on riparian or non-riparian land. Thus, in a water control area, individual riparian rights fell away. This encroachment of state control upon the use of public water was taken to its logical conclusion in the National Water Act of 1998. All water, above ground as well as below ground, now vests in the State

and no-one has a right to use water, except for basic purposes like drinking and hygiene. Rights to use water are allocated by the issuing of licences and these licences have only a limited period of validity. The new water law thus represents a radical break with the old.

Hubert Thompson deserves our thanks for his exhaustive exposition and discussion of the new dispensation, which he sets in the context of its historical development as well as comparable legislation in other countries. Inevitably, when a system of State control, planning and licensing is introduced, a huge bureaucracy is needed to administer it and this brings into play principles of administrative law, which are also discussed by the author. With planning

and control being the dominant considerations, the greater part of the book deals with aspects of administration and planning. But apart from the somewhat abstract principles and objectives of water management and planning, which to a large extent still have to be realised in practice, Mr Thompson also explains in detail, for example, the procedure to be followed in order to obtain a licence. This book will prove to be a veritable mine of information to anyone who has to grapple with the practical, technical or legal problems associated with the use of water under the new dispensation and it can be safely recommended. 

WG Burger SC, Cape Bar

Die hof verdaag

Deur Kees van Dijkhorst met tekeninge deur Marinus Wiechers

Uitgegeë deur die skrywer* (2006)

149 bladsye

Sagteband R100 (BTW ing; posgeld ekstra)

In die inleiding tot die boek meld die skrywer dat hy dit wat hy in sy beroep amusant, tragies of wetenswaardig gevind het, opgeteken het vir eie gebruik en dit nou '... op versoek ... met 'n wyer gehoor deel.' Sy aanbieding neem die vorm aan van, in sy eie woorde, '... 'n humoristiese, ietwat nostalgiese, terugblik oor 'n lewe in die regspleging.'

Smaak verskil oor dit wat lagwekkend kan wees, soos die skrywer dit self stel: 'Die lag vonkel in die oog van die waarnemer.' Die boek bevat letterlik honderde anekdotes, staaltjies, grappies en tekeninge waarin regs-persoonlikhede en situasies in die houe uitgebeeld word en dit is stellig so dat die deursneepraktisyn, en selfs lede van die publiek, dit sal geniet. Vir doeileindes van die resensie bepaal ek my by 'n paar algemene kenmerke van die boek.

Die inhoud getuig van die skrywer se wye ervaring en kennis van die regspleging (hy was immers vir meer as veertig jaar daarby betrokke as prokureur, advokaat, skrywer en regter). Die boek is ingedeel in hoofstukke waarin fasette van die regspleging onder die loep geneem word. Dit begin met 'n uiteensetting van die siening van regspraktisyns deur die oog van Jan Alleman. Daarop volg 'n hoofstuk oor die regbank en sommige van sy eksentrieke persoonlikhede ('Van regters, en derselwe Vierschaar'). Amusant is die skrywer se relaas oor sy pogings om 'n fotoversameling van Transvaalse regters op te bou. Hy huiwer ook nie om prontuit sy mening oor kollegas te gee nie, soos 'Vic Hiemstra, R kon moeilik wees' (bl 23) of 'Harry Nestad, R se handskrif was 'n gekrabbel' (bl 38). Daar is verder 'n hoofstuk oor die landdrosamp (die skrywer was vyf jaar voorsitter van die Landdrostekommissie)

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en 'n meer uitgebreide hoofstuk oor advokate ('Die Balie: vrugbare teelaarde van apokriewe skinderstories') en prokureurs ('Taal-Luyden'). Die hoofstuk oor verhoor en kruisverhoor sprinkel met talle staaltjies oor advokate en regters se optredes. Daar is ook onderhoudende vertellings oor tolke, klerke, getuies, prisoniers (sic) en strawwe.

Die skrywer se historiese sin is opvallend. Daar word telkens ter inleiding na die Romeinse en Romeins-Hollandse agtergrond van ons regspleging verwys - dikwels op grappige, maar ook leersame wyse (vgl die begrip 'reukelose pleiters' (bl 69) en die verhaal van Rabirius (bl 66).

'n Besondere pluspunt van die boek is die pretensielose skryfstyl. Dit herinner aan die styl van CJ Langenhoven - eenvoudig en direk. 'n Paar voorbeelde: 'Advokate is bekend vir hulle bekkingheid ...' (bl 73); 'Jaap de Villiers was 'n man van vele woorde en nog meer beduiery' (bl 23); 'Die teef sal maar moet wag' (bl 108); 'Kruisondervraging is ... 'n skerp byl wat die taaiste boom kan vel. Ongelukkig lyk dit dikwels of die advokaat met die agterkant kap' (bl 80).

Die skrywer ontsien nie die sfeer van eerbiedwaardigheid waarin die regtersamp en die regsberoep omhul wil wees nie. Hoewel hy nie doekies omdraai nie, is sy uitsprake soms kontroversieel. Sommer ter aanvang verklaar hy dat 'In die Konstitusionele Hof met sy Amerikaanse aanslag wil die groen kabouters Justice heet' (bl iii). Oor vroue-advokate is hy meer deernisvol: 'Die leser sal bemerk dat ek oor vroulike advokate min indien niks te sê het nie. Die rede is omdat ek vir hulle altyd doodsbang was sedert die gebeure met Calpurnia ...' (bl 68).

Die inhoud word opgeluister deur die talle grappige tekeninge van Marinus Wiechers, oudprofessor in die regte en voormalige rektor van Unisa. Dit is die moeite werd om deur die boek te blaai en telkens die tekeninge met die teks in verband te bring.

Vir regspraktisyns wat deesdae swaarmoedig is oor die onverkwiklike situasies waarin die regbank en die regsberoep hulle bevind, behoort Van Dijkhorst se boek 'n waardevolle panasee te wees. 

Hennie Mellet, redakteur: Advocate



CCMA RULES

second edition

by Brian van Zyl,
Erika Schlesinger, Floors Brand



"Use what the CCMA commissioners use"

Since the publication of the first edition in 2003, the authors have incorporated the following important changes into the second edition:

1. the already **comprehensive table of statutes** has been extended;
2. all **case law** handed down from August 2003 to February 2005 has been incorporated into the text. The effect of this is that, amongst others, the table of cases has been extended by approximately 40%;
3. the **rules of the various courts**, like the magistrate's court, labour and labour appeal courts, have been updated, where necessary;
4. **all statutory changes** that have been effected since the publication of the first edition have been incorporated into the text; and
5. an **extended set of guidelines** has been schematically illustrated.

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