AA Guide to Motor Law

by Don Smart, Eugene Nysschen, Morkel Bosman
241 pages
Soft cover R 74,51 incl VAT

The authors almost achieve the impossible by setting out in less than 250 pages a summary of the “vast array of legal duties, liabilities and risks to which the average individual is exposed in respect of their motor vehicles”. On reading the book, one becomes more convinced than ever that the task is impossible. The warning issued more than once by the authors to the effect that “this book cannot take the place of legal advice” and at the end of the preface that “if you are uncertain on any aspect, consult a legal advisor, or your attorney to clarify your rights or legal obligations”, must be emphasised. The public must be cautioned to consult with their attorney whenever in doubt and then preferably to make sure that their attorney is specialised in “motor law” and/or “third party insurance claims”. What is more, in connection with the financial implications of their acquisition of motor vehicles, the average individual would be well advised to discuss this with his financial advisor and/or attorney. Similarly the average individual must discuss his insurance choices with an insurance broker or agent who is in a position to advise him on the various options as also the advantages and disadvantages of each option.

This book has been published with the obvious intention of it being brought up to date from time to time. Under the circumstances, the criticisms offered ought to be as constructive as possible and it is in that spirit that I list the following suggestions:

- **Buying a Motor Vehicle**
  What ought to be emphasised under this heading is that the purchaser must be able to afford the vehicle he is purchasing. Where one of the credit agreements has been chosen, he must satisfy himself that he can meet his monthly commitments. What is more, it is important that the insurance policy taken out by the seller and/or the purchaser must be clearly understood by all involved.

- **Third Party Insurance (MVA, MMF)**
  With respect, I believe that the introduction to this portion of the book ought to have emphasised the fact that anybody injured in a motor collision, be he pedestrian, passenger or driver, will be entitled to compensation of some sorts unless the collision has been caused solely by his negligence or put the other way around, unless he is solely to blame for the collision. At all times, it will be in his interest to consult an attorney in order to make sure that his rights are properly protected.

- **Roadworthiness of Motor Vehicles**
  I believe that when dealing with something as important as this, one must make sure that the list is comprehensive. At a glance it would appear that the authors failed to deal with the obligations of the heavy slow moving...
motor vehicles to carrying a chevron at the rear of the vehicle in order to warn approaching motorists of the hazard ahead of them. There has been some misunderstanding in connection with this obligation in the past. A year or two ago, a pattern of red retro-reflectors was acceptable, but a chevron is now obligatory - this ought to have been mentioned.

In conclusion, one must congratulate the authors and AA with their initiative; after all there is nothing similar on the professional guide and it is in that spirit that statute books and which govern his rights and obligations which are already on the statute books and which govern his rights and obligations. 

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Human Rights
Fundamental Instruments and Documents
edited by Essop M Patel and Chris Watters
Butterworths (1994)
531 pages
Hard cover R182.40 incl VAT

According to the authors this book was conceived to serve a dual purpose: It is to fill a lacuna in human rights literature in the Southern African region by providing the basic texts of human rights material and a collection of sources in the form of a hand book which will be useful in the appreciation, understanding and interpretation of the Bills of Rights of the six Southern African countries which form a geo-political entity and historically share the Roman Dutch legal heritage.

Secondly, this compilation is also intended as an essential textbook for law, political science and international affairs students and teachers, a necessary reference book for members of the diplomatic and civil services whose functions and actions must conform to the fundamental rights and concomitantly with the norms of international human rights, as well as for practising lawyers and judges who are largely to shape human rights jurisprudence.

The criteria in editing this book were to provide a comprehensive selection of instruments and documents with an overriding emphasis on the substantive aspects of human rights rather than burdening the publication with procedural aspects. International human rights instruments are of critical importance when interpreting the fundamental rights provisions contained in the Bill of Rights. We in South Africa, still need to develop a human rights culture where respect for the rule of law prevails rather than respect for a lawfully executed statute.

What is the role of the courts in this regard? Section 35(1) of the Constitution of the Republic of South Africa, Act 200 of 1993, enjoins a court of law, where applicable, to have regard to public international law relevant to the protection of the rights entrenched in Chapter 3 (the Bill of Rights), and may have regard to comparable foreign caselaw. Similarly, judicial officers need to be innovative, imaginative and pro-active. Section 35(3) of the Constitution enjoins a court to have due regard to the spirit, purport and objects of this Chapter in the interpretation of any law and the application and development of the common law and customary law. However, it is not only the courts that are responsible for the development of a human rights culture. The legislature itself needs to accept its responsibility in this regard. The public protector is enjoined (by way of example), to investigate any abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function. (See: Section 112(1)(a)(ii) of the Constitution.)

The Human Rights Commission is obliged to promote the observance of, respect for and the protection of fundamental rights and to develop an awareness of fundamental rights among all people of the Republic. (See: Section 116(1)(a) and (b) of the Constitution.) The Commission on gender quality is obliged to promote such.

Part 1 of the book contains documents reflecting the international human rights development. Part 2 contains documents reflecting the continental human rights ethos such as the inter-American human rights accords, the European human rights dimensions, the African human rights aspirations and the Asian human rights developments.

Part 3 reflects the theocentric human rights such as the universal Declaration of Islamic Human Rights, the Cairo Declaration on Human Rights in Islam and the Criminal Justice in Islamic Human Rights.

Part 4 contains documents reflecting the directive principles of human rights.

Part 5 contains documents concerning the rights of specific persons such as children’s rights, women’s rights and eradication of gender discrimination, and family rights.

Part 6 contains documents relevant to a worker’s human rights charter. I have mentioned a number of these declarations by way of example only. That is not intended to state that other rights are not of importance in their own right (excuse the pun!) When the South African judiciary therefore makes value judgments in the new field of constitutional jurisprudence, it ought to have due regard to the emerging consensus of values in a civilised international community. In this regard this book achieves its stated aims. The material contained in it is not readily available. It therefore ought to be in every library. It also ought to be sent to every government, organisation and individual which - or who - prefers the exercise of power rather than the achievement of justice.

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Pretoria Bar

Worker Rights

From apartheid to democracy - what role for organized labour?
edited by Ebrahim Patel
Juta & Co Ltd (1994)
193 Pages
Soft cover R 68,00 incl VAT

The book was published in February 1994 on the eve of South Africa's first democratic election. The interim Constitution and the Chapter on Human Rights are now in place, and one may be forgiven for thinking that this book is of historic value only. As I will attempt to point out, this would be a mistake.

In June 1993 a number of prominent trade union and political leaders addressed a conference on workers' rights. This book draws largely on the speeches given at that conference. It also contains seven primary documents: The Bill of Rights proposals of four political parties, a trade union platform of worker rights, and the reproduction of the Chapters dealing with fundamental human rights and constitutional principles in the interim Constitution adopted at the Multi-party Negotiating Forum. The various articles are essentially a series of debates between competing political parties, between different trade unions.
and between trade unions and politicians.

The new Constitution of South Africa and its Bill of Rights are presently being debated. There is no doubt that it will contain clauses providing for the rights of workers and the rights of employers, as well as the limitations of such rights. That is the one aspect. The other is the following: The Reconstruction and Development Programme will not succeed unless there is a clear vision and a total commitment on the part of the workers and their representative trade unions and the employers and their representatives organisations. Their age-old conflicting interests must become reconciled within the ambit of the new Constitution and indeed within the ambit of the political dispensation and realities.

The foreword to the book has been written by President Mandela. He describes his - and the ANC's - overarching goals as follows: "A democracy with continuous empowerment of the people; and economy based on sustained growth and systematic improvement in the well-being of the people; a society at peace with itself ...". At the same time he warns against misguided tactics and strategies which could lead to deepening divisions between people resulting in a conflict on the basis of race and ethnicity. A common goal and unity of purpose to achieve his stated aims should be our first priority.

It should be abundantly clear that there can be no common goal or a unity of purpose unless one has a clear understanding of what each of the role players wishes to achieve. Ignorance, mistrust, doubt and fear are the major obstacles to a common goal and unity of purpose. The various views expressed in this book go a long way in building the necessary bridge between the various conflicting interests. Someone once said: Knowledge is power. The challenge facing us is to find the proper balance between power and justice. If this can be achieved, the politician will become a statesman, the worker will become free and the employer will achieve his profits. Together, therefore, the overarching goals sought by President Mandela can be achieved.

The rights of workers in South Africa have for decades been regarded with mistrust and suspicion. The countless illegal and unprocedural strikes have also not contributed to the necessary common goal and unity of purpose. Ebrahim Patel, at the time the Deputy General Secretary of the SA Clothing and Textile Workers' Union and the labour coordinator of a National Economic Forum negotiating committee, wrote a chapter on "The Role of Organized labour in a Democratic South Africa". He correctly points out, if this needs to be pointed out, that organised workers are a major social force in society. Am I being too idealistic in stating that one need not fear that, but should rather embrace those goals which are common and which would result in a high and sustainable standard of living for the country's people? Let me briefly analyse what Ebrahim Patel hopes to achieve: He states that the primary social and economic challenge facing South Africa is to provide high and sustainable standards of living for the country's people. This goal should remain at the centre of all public policy. How does one achieve this goal? Trade unions, according to him, should accept the need to improve production and service efficiencies. Efficiency can only be achieved through a massive and sustained investment in education and training. He refers to a study quantifying the effects of investments and education on the growth in the United States' economy. The study found that perhaps as much as 65% of the economic growth could be attributed to investment and education. In this context another statistic is significant: Taiwan, with half South Africa's population, has 42 universities and 75 polytechnics. South African has 21 universities and 13 technikons. It is also clear that in the medium to long term efficiency is the best guarantee of job security, the best provider of high wages and quality goods at affordable prices.

He also rejects nationalisation, and a prescriptive role of the State. He proposes self-regulation through strong collective bargaining structures in the sense that the State should only provide a strong facilitative and empowering role. The recently published new Labour Relations Bill seems to accord with this view.

The East Asian economic "miracle" was partially based on a relatively equal distribution of income. In 1993 the World Bank Report noted that South Africa had one of the most inequitarian income distributions in the world. While South African wages may be higher than those prevailing in certain of the growing Asian economies, our levels of poverty are also greater. This should be addressed, not by decreasing wages or even slowing down wage increases, but by a proper focusing on increased productivity. He therefore proposes lower production cost through work re-organisation, increased investment, the application of new technology and importantly, human resource development. The new relationship that he stands for also seeks to add value through quality production, reliable delivery times, production innovation and supplying a variety of goods to consumers.

The right to strike is fundamental to sound industrial relations. This right has been recognised in the interim Bill of Rights. The right to lock out workers has similarly been recognised. It seems clear that this issue will again need to be debated. COSATU regards the right to lock out simply as a mechanism which perpetuates the imbalance of power. According to COSATU the employers' rights are protected in the interim Constitution by the clauses dealing with property rights and the freedom of economic activity.

One further needs to appreciate that trade unions will need to secure their independence from government and political parties. This was easy when the Government was undemocratic. Where the governing party has historical strong links with the trade union movement, this issue becomes more complex but still remains as critical as previously. Politicians should take note! I have presented the views of Ebrahim Patel in some detail, as it summarises the views of organised labour. I do not wish to indicate that the other chapters in this book are of lesser importance.

Albie Sachs, now a member of the Constitutional Court, writes on the "Bill of Rights and Worker Rights - an ANC Perspective". As far as the legal rights of workers are concerned, he stands for the right to establish trade unions, the rights of collective bargaining and the right to strike. He, however, also sees another role for workers: He wants to see workers in Parliament and workers in Government. He expects to see workers in the Cabinet. In his view there is no substitute for workers defending themselves, and being able to articulate their own demands in their own voice and in their own way.

A chapter written by David Tajgman, a Technical Advisor on International Labour Standards for South Africa, International Labour Organization, describes constitutional and legislative mechanisms promoting worker rights in the international experience. The effectiveness in practice of constitutional and legislative provisions in promoting workers' rights depends on the vigour with which those interested in their
effectiveness seek their enforcement. It also depends on how well these provisions are drafted, and thirdly, it depends on the respect given within a country for the rule of law. This is certainly one aspect which is absolutely crucial and which needs to be addressed urgently in South Africa. (That is my personal view.)

Sam Shilowa, the General Secretary of COSATU, writes on “The relationship of the trade union movement to a democratic Government”. Although COSATU is in alliance with the ANC, he states unequivocally that the former expects to play a major role in economic decision making. The trade union movement should not allow itself to become a conveyor belt for any political party. It must remain independent. This is also the view of Cunningham Ngekukana, the General Secretary of NACTU.

Other contributors are Halton Cheadle, the then legal advisor to COSATU; Sheila Camerer, the then Deputy Minister of Justice; Tony Leon, the Justice spokesman of the Democratic Party and now its leader; Marcel Golding, the then ex-deputy general secretary of the National Union of Mine Workers; John Copelyn, the then ex-general secretary of the SA Clothing and Textile Workers Union; Piet Haymans, the then assistant secretary of SA Society of Bank Officials, Cyril Ramaphosa, the Secretary-General of the ANC, and Erik van Heerden, the then chairman of the National Party study group on constitutional affairs.

All of their views are important and should be considered and appreciated if the President’s stated goals are to be achieved. The book, therefore, remains an important beacon.

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THE LORD CHANCELLOR’S BREAKFAST

The English legal year, beginning with the Michaelmas sessions, is ceremonially opened on the first day of the spring term. This ceremonial opening, known as the Lord Chancellor’s breakfast, consists of a service in Westminster Abbey attended by the Lord Chancellor, the Master of the Rolls, the Lord Chief Justice, the Chief Justice of the Family Division and the Judges of these and other courts and the representatives of the English Bar and Side-Bar.

Foreign visitors, and in particular representatives from the European community, the Commonwealth and other countries have been invited to attend this ceremony since 1966.

During 1994, Willem Venter the then President of the Association of Law Societies and I were the first South African representatives ever to have the privilege of representing our respective professions at this traditional occasion.

A host of official functions were held to mark the opening of the English legal year. On Sunday 2 October 1994 delegates were invited to a cocktail party hosted by the American Bar Association’s President, Mr George Bushnal, followed by a semi-formal dinner hosted by the Law Society, the General Council of the Bar, the young solicitor’s group and the young Bar committee at the Law Society’s hall.

On Monday morning 3 October 1994 the official opening was celebrated. Representatives of foreign bars and professions were invited to attend in their formal robes and took their places in Westminster Abbey before the formal procession of the English Judges, headed by the Lord Chancellor, entered the church and took their seats.

The dean of Westminster Abbey opened the sermon with an admonishment that all human judgment was fallible and that without the Lord’s blessing, human justice could never achieve its goal.

The lesson was read by the Lord Chancellor himself.

After the service, the Lord Chancellor, the Judges, the Bar and Side-Bar’s representatives left the Abbey in procession accompanied by the foreign delegates through Poet’s Corner to the House of Lords, where Lord MacKay welcomed all delegates and Judges personally.

While the foreign delegates enjoyed the breakfast, their partners were entertained to a luncheon by Baroness Flather in the Cholmondeley Room, the dinner room of the House of Lords.

On Monday evening, a dinner was hosted by the General Council of the Bar at Lincoln’s Inn.

Apart from the obvious emotional element of being able to attend a traditional ceremony of this nature, the welcome which was accorded to the South African representatives was overwhelming. The British Bar, the Side-Bar, representatives of the International Association of Lawyers, Bar Associations and Law Societies in Germany, the Netherlands, Ireland, Scotland, Romania, Kazakhstan, Luxemburg, England and Wales, the Commonwealth Lawyers Association and individual colleagues as well as the General Council of the British Bar and the Association of Law Societies welcomed us with open arms. Valuable contacts were established on a personal and professional level. The President of the Association of Law Societies invited us to a private dinner and the Association itself allowed me to attend its congress, which was held a few days later after the Lord Chancellor’s breakfast.

As a direct result of our visit, it was decided to create a British South African Law Association, which will be formally launched on 7 June 1995. It will foster professional contact on a personal and an organisational level in the future. Formal invitations to join the Association will be extended to members of the South African Bar and Side-Bar in the near future. The Lord Chancellor’s breakfast was a tangible manifestation of the fact that South Africa has rejoined the family of nations also in the professional sphere. It was a privilege to be able to represent the South African Bar at such an occasion.

EBERHARD BERTELSMANN SC
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