Commentary on the
Companies’ Act
By MS Blackman, RD Jooste and
GK Everingham
Juta (2002)
Three loose-leaf volumes R1 895
(VAT incl)
It is a rare privilege indeed to be
asked to review such a truly monu­
mental work as Commentary on the
Companies’ Act by Blackman et al (see
2004 SALJ 239 for a review of this
work by MP Larkin). A review such as
this can never be an appropriate tribute
to such a work. My perspective is of
necessity that of a practising advoca­
tor who seeks quick and authorita­
tive answers to problems being posed
in practice. If that were the test to be
applied in evaluating this work, it has
passed the test summa cum laude.
Typographically the work is easy to
handle, and the text of the Act is easily
distinguishable from the commentary,
whilst references are collated in the
footnotes where they belong. The style
of the authors is lucid and easily read­
able.
Commentaries on statutes regularly fall
into the trap of treating subjects piece­
meal, focusing only on the section,
paragraph or phrase under discussion,
while confusing the reader with refer­
ences and cross-references in the text.
This work carefully and successfully
avoids those pitfalls and deals with dif­
terent subjects comprehensively while,
where appropriate, repeating informa­
tion treated elsewhere. A good example
of the authors’ thoroughness is their
treatment of s 252.
While the copious references to South
African and foreign case law are of
 course extremely helpful to practi­
tioners, the usefulness of the work
is greatly enhanced by the introduc­
tion, mainly in the beginning of each
discussion on a particular topic, of
 lists of academic publications on that
topic. The process of research into for­
gain authorities and academic works is
extremely cumbersome for a practi­
tioner, but this work acts as very helpful
‘quick reference’ to those authorities,
and it is expected that they will be
receiving more attention in practice.
Perhaps wrongly, the practitioner is
usually more concerned with what the
law is than with what it was or is
supposed to be. Commentary on the
Companies Act sets out to state the
present law, to explain how it came
about, and to interpret the Act against
its historical background, compared to
the position in related countries. But
it does more than that: the authors are
bold enough to expose weaknesses in
the present legislation and case law
that need rectification, either by re­
interpretation of the Act in subse­
quent judgments or by legislative interven­
tion. Commentary on the Companies Act is
perhaps inappropriately named. It is
much more than a commentary: it is an
encyclopedia of company law that no
practitioner should be without.
Pat Ellis SC, Pretoria Bar

Introduction to the Law of
South Africa
By CG van der Merwe and
Jacques du Plessis (eds)
548 pages
Hard cover Price: € 195 (SA Rand not
yet kown.)
Introduction to the Law of South Africa
is part of a series of books of introduc­
tions to foreign legal systems by Kluwer
Law International. The South African
work is edited by CG van der Merwe
and Jacques du Plessis, with a foreword
by Reinhard Zimmermann. (The series
includes introductory books on the law
of, amongst others, Italy, Switzerland,
Germany and the United States.)
Apart from the introduction, the book
is divided into fourteen chapters. Two
deal with public law (constitutional and
administrative law), five with private
law (family law, the law of succession,
the law of property, contract and delict),
two with commercial law (general com­
mmercial law and company law), one with
labour law, one with civil procedure,
two with criminal law (criminal law and
criminal procedure), and one with ev­i­
dence. The list of contributors is impres­
sive, and the quality of each contributor
gives the book an authoritative feel. The
lengths of the contributions vary, but are
generally quite brief, giving the reader
a broad overview of the key concepts
on each topic. Despite obvious space
constraints, the book manages to touch
on, albeit briefly, the most important
areas of South African law, and goes
some way in explaining the curious mix
of common and civil law characteristics
in our law.
The book begins with an introduction
by François du Bois, which includes a
historical overview of the development
of South African law, an explanation
of the court system, the judiciary, the
split-Bar system and the main sources
of law. The chapter on constitutional
law, by Johan de Waal, describes South
Africa’s political history and the pro­
cess building up to the adoption of the
Constitution. The section then goes on
to explain the most pertinent aspects
of the new constitutional dispensation.
The chapter on family law by Brigitte
Clark places emphasis on the impact
of the Constitution in certain areas of
family law, including socio-economic
rights of children and homosexual par­
tenting. Other contributors include Cora
Hoexter on administrative law, Marius
de Waal on the law of succession, and
CG van der Merwe on the law of property.
Gerhard Lubbe and Jacques du Plessis
set out the fundamental principles of
the law of contract. The chapter deals
with the requirements of a valid con­
tract, the operation of contracts, breach
of contract, remedies, termination and
cession. Similarly, the chapter on the
law of delict lays down the general
principles necessary to found delictu­
lar liability and the defences available
to defendants in delictual litigation.
It goes further by explaining various
special forms of liability, like those for
pure economic loss and defamation.
The chapter also clarifies the distinc­
tion between the law of delict and other
areas of law, such as insurance law.
The section on commercial law by
Chari Hugo and Richard Stevens focus­
es selectively on the law of negotiable
instruments, insurance law and the law

FROM THE PUBLISHERS

From the publishers

April 2005

46
of insolvency. Philip Sutherland’s contribution on companies and other business entities examines the position in South African law regarding partnerships, companies and closed corporations, as well as the judicial management, winding-up and dissolution of juristic persons. The piece on labour law by Christoph Garbers discusses the residual role of the common law and sets out the scope and application of the current labour legislation.

The book includes a chapter specifically dealing with civil procedure, written by HJ Erasmus, which considers features such as the form of proceedings, costs, appeals and reviews, and reviews of administrative actions. Other chapters include a chapter on the law of evidence by David Zeffertt, and on criminal procedure by Andrew Skeen. The piece on criminal law follows the same formula as many of the other chapters by setting out the general principles of criminal law, the defences available to an accused in a criminal case, and a few examples of the most important crimes against persons and property.

One of the strong points of the book is that it includes many practical examples, giving the reader a firm grasp of the area of law discussed. Each chapter includes references to the most relevant cases and legislation, and concludes with a selection of popular literature on the topic. An obvious advantage of the book, in comparison to other books of the same genre is that it does not focus solely on private, public or criminal law, but instead manages to incorporate all these areas, as well as including sections on civil and criminal procedure.

The book’s primary target market is probably law students and foreign legal practitioners and academics, as opposed to South African practitioners. It is, however, an impressive, succinct summary of South African law.

**JC Butler, Cape Bar**

**Gibson: South African Mercantile and Company Law**

_Eighth edition by C Visser, JT Pretorius, R Sharrock and M van Jaarsveld_  
_Juta (2003)_  
lviii and 768 pp  
Soft cover R315 (VAT incl)

The eighth edition of this well-known work is the second produced by the new team of authors who (with one amendment to the team) assumed responsibility for the continuation of the work after the death of the original author. The survival of this standard work may provide some comfort for practitioners who recall having being saved from advanced states of ill-preparedness during their student years by last-minute reference to a text which seemed to have a simply-worded answer to most questions in the field.

The work is wide-ranging, covering huge topics from contract and companies to more narrowly-defined fields such as labour law and competition, trade mark, copyright and patent law. Indeed, one may wonder whether, with the explosive development by statutory and judicial intervention in the fields of mercantile and company law over recent years, a first-time author would have been brave enough to set out along the path followed by Professor Gibson in 1963 when he published the first edition covering so extensive a range of topics.

In the preface, Professor Visser records that the authors have decided to retain as much of the ‘elegant and lucid prose’ of Professor Gibson as possible. While this has occurred to a fair degree, it was inevitable that the focus would have to be adapted, as the new chapters on insurance and labour law make clear. Those who bewailed the omission from the seventh edition of the chapter on the law of carriage will remain disappointed. Criticism of the fact that chapters introduced for the first time in the seventh edition were published without the footnotes occurring in the other chapters, appears to have been noted – in this edition the footnotes have disappeared throughout.

What can one glean from a text that runs to 768 pages covering so much material? Despite the wide field, the authors have retained the original approach of seeking to reflect in simple terminology what is sometimes very complex material. This approach certainly makes a great deal of material accessible to the beginner, or the early explorer of treacherous legal ter-

rain. Definitions are generally well-constructed and easily intelligible. For example, reflecting on the fact that the authorities have been ‘curiously reluctant to define the term “contract” accurately and fully’, the work shows no such reluctance, and in the ‘elegant and lucid prose’ of the original author, ‘A contract is a lawful agreement, made by two or more persons within the limits of their contractual capacity, with the serious intention of creating a legal obligation, communicating such intention, without vagueness, each to the other and being of the same mind as to the subject-matter, to perform positive or negative acts which are possible of performance.’

The work is likely to be of real value to those commencing pupillage, or at the early stages of their practice in chambers. By its very nature, however, it cannot be a definitive authority on its subject matter, and the pupil or young practitioner who uses the work as a sole source of assistance may find that her preparation is found wanting in court.

By way of simple illustration, although the chapter on companies runs to some 164 pages, the reader will search in vain for an exposition of the fiduciary duties of directors, an issue not without significance in the sphere of corporate governance. In another sphere, that of partnership, although the work recognises goodwill as an asset of a partnership to be realised, the most recent authority cited on the topic is that of _O’Kennedy v Smir_ 1948 (2) SA 63 (C). Those interested in the topic might have benefited from a reference to the useful consideration thereof in the more recent authority of _Robson v Theron_ 1978 (1) SA 841 (A).

It will invariably be possible to find flaws and gaps in a work seeking, in one volume, to cover as extensive a field as this. Recognised for what it is, an introduction to the wide-ranging subject matter it seeks to cover, the work can serve as a valuable tool, particularly to students and young practitioners, and the publication of this edition, seen in that light, is to be welcomed.

**JJ Smuts SC, Grahamstown Bar**