The South African Law of Evidence

By DT Zeffer, AP Paizes and A St Q Sken
813 pages; soft cover R629,81 (VAT incl)
813 pages; hard cover R758,48 (VAT incl)

Principles of Evidence

By PJ Schwikkard and SE van der Merwe
Juta (2002)
670 pages
Soft cover R300 (VAT incl)

There was a time, now past, when in legal practice there was really only one South African textbook on the law of evidence. It is the book that became known as Hoffmann and Zeffer, although the first and second editions which appeared in 1963 and 1970 were by Lennie Hoffmann (now the Law Lord, Lord Hoffmann) writing alone. By its fourth edition, which appeared in 1988, it had become a little disjointed and, in the view of this reviewer, was due for a rewrite. Although the foundations for the book that were laid by Lennie Hoffmann were superb, no doubt drawing on his learning and teaching at Oxford at a time when Sir Rupert Cross’s Law of Evidence was in its second edition (now in its 10th), the book had perhaps inevitably begun to show signs of unsteadiness – perhaps more readily apparent because of the long passage of time since it had been published, and the many changes in this area of the law.

The South African Law of Evidence is stated, in its preface, to be a new book. There is an entirely new chapter dealing with evidentiary proof and there is a rearrangement of the sections bringing the various chapters under the heading ‘Proof’ (the evidentiary system and theories of proof, the onus of proof, circumstantial evidence and inferential reasoning, cogency and proof and presumptions) ahead of the sections on admissibility, privilege, public policy, the machinery of proof and corroboration and caution. This arrangement is, in the modern idiom, more user-friendly and, so it seems, logical. The book, although no doubt still aimed at both students and practitioners, contains detailed and sustained analysis. There is no fear of seeking to explain the rules of evidence with reference to their theoretical and historical underpinnings. The book discusses the issues and the controversies rather than setting out the rules - although the rules are there to be found. It is a very important reference to gain an understanding of the problem at hand, but it is less useful to the lazy or particularly time-pressed practitioner who is looking for the single authority for the trite point without concern for the controversies. At more than 800 pages, it is a serious work on the subject and significantly more substantial than its predecessor.

Principles of Evidence, having first been published in 1997, is relatively new on the scene. But it is fast becoming a ready reference work for practitioners – and presumably students too. It has received many references in reported cases, and not one that this reviewer has found that has been critical or has differed with the approach taken in the book. This reviewer finds the legal principles and applicable rules more accessible and easy to find than in The South African Law of Evidence, although it is by no means devoid of analysis and theoretical underpinnings. Indeed, its approach is clear and refreshing. Its sections are logically ordered and the relevant material easy to find. Once there, the reader is presented with a short and to-the-point exposition with minimum elaboration. At a little less than 600 pages, it is by no means a ‘thin’ book. The index is detailed, the presentation modern.

Inevitably, both books, in common with most books on evidence, have the criminal trial as their paradigm point of reference. For those whose practice is predominantly in the civil courts, portions of the texts have to be read with some care to be sure whether or not they apply, and you will look in vain for coverage of some issues at all. For example, in The South African Law of Evidence there is no mention of the provisions of the Restitution of Land Rights Act 22 of 1994 (s 30(2)(a)) and the Admiralty Jurisdiction Regulation Act 105 of 1983 (s 6(3)) that allow the reception of hearsay evidence on a far broader basis than that contemplated by the Law of Evidence Amendment Act 45 of 1988. Even in The Principles of Evidence, the reference to these provisions is not in the obvious place, being the chapter that is headed ‘Selected Statutory Exceptions to the Hearsay Rule’, but somewhat en passant, and less appropriately, in a section dealing with the nature of the proceedings as a consideration relevant to the exceptional admission of hearsay evidence in terms of the Law of Evidence Amendment Act 45 of 1988.

In dealing with the meaning of the expressions, ‘prima facie evidence’ and ‘prima facie case’, neither book considers the nature of the prima facie case that is required to establish a case for an interim interdict or the prima facie evidence for an attachment ad fundandum et confirmandum jurisdictionem, or the question that has twice recently been asked in the Supreme Court of Appeal, whether that requirement does not need to be re-examined (Dabeistein v Lane and Fey NNO 2001 (1) SA 1222 (SCA) para [7]; Hülse-Reuter v Gödde 2001 (4) SA 1336 (SCA) para [13]). In their sections on privilege, neither book, in discussing waiver of legal professional privilege, considers the case, mv Cape Athos: Cape Athos Shipping Ltd v Blue Emerald Shipping Ltd 2000 (2) SA 327 (D).

But these criticisms are churlish, because both books are excellent. No practitioner should have neither as a ready reference, and the particular will have both.

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Jurisprudence

By Christopher Roederer and Darrel Moellendorf (eds)
Juta (2004)
667 pages
Soft cover R380 (VAT incl)

A book that tries to achieve what this one does can so easily fail. Hence my trepidation in approaching it, fearing disappointment, and my pleasure as