Principles of Delict

Third edition by JC van der Walt & JR Midgley
LexisNexis Butterworths (2005)
300 pages
Soft cover R344,74 (VAT incl)

I do think that publishers of textbooks the contents of which comprise a title of The Law of South Africa should say so prominently somewhere on the cover of the book. In this Third Edition, the practice of the first two editions, of having two sections, one on principles mirroring the LAWSA title, and one comprising a casebook of extracts, was abandoned in favour of having only the first section — hence the title. Fair enough. It is a very useful collection of principles of delict, not least for being up to date, and for reflecting two principal works) the authors have created of workplace policy and procedure, relevant good practice codes and lists of case law and principal works) the authors have created harm as an element. Why is the discussion of pure economic loss not found here, but rather under wrongfulness? Because the courts have grappled with this question in the field of wrongfulness. That does not, however, detract from its logical place in the section on the kinds of harm the law of delict deals with and compensates. The reader will find all the topical discussions he or she is familiar with from law school, and plenty besides, if not always in the place that he or she expects to find them. There are some topics that arguably do not form part of the law of delict, but regulate it so frequently (for example exclusion clauses in contracts) that discussion of them does not seem unjustified. This book is worthwhile to have (for those who do not have LAWSA). It employs the LAWSA style of textual assertion with reference to authority by way of footnote, and does so skilfully, avoiding the temptation to waffle that ruminating about the secrets of Carnachley and Van Duivenboden might invite. It contains true insight, as it appears to be the product of careful reading of what at times may appear to be incoherently related judgments, and is good, for example, in collecting the law around the Bogoshi regime of justification and reasonableness in defamation, and in containing little and not too little discussions of portions of the law of delict that do not always feature in the textbooks. It is the kind of thing one might have handy when revisiting principles in trials involving delictual liability — to make sure one has covered all the FAQs with the facts. I am quite happy to have it.

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Sexual Harassment in the Workplace

By R Le Roux, R Orley & A Rycroft
LexisNexis Butterworths (2005)
177 pages
Soft cover R264,71 (VAT incl)

This book is a pleasant reminder of the extraordinary change in mindset informing law and policy witnessed in the past ten years. As the first South African legal publication dedicated to sexual harassment in the workplace, this seminal book should have its place on the shelves of any legal practitioner serious about labour law, human rights and gender issues. In a highly readable 177 pages (which include appendices containing an example of workplace policy and procedure, relevant good practice codes and lists of case law and principal works) the authors have created a practical, yet simultaneously analytical work. On one level, the book aims to provide practical guidance about employment practices and procedures and mediation, arbitration and litigation processes drawing from the authors’ wealth of experience. The offerings are helpful and detailed, dealing with matters such as how to choose procedures (formal or informal), what questions to ask in disciplinary or investigative processes, how to deal with typical problems and what causes of action or defences to pursue. Dilemmas of a practical, procedural and substantive law nature that practitioners face when choosing an appropriate litigation forum and cause of action are unravelled. On substantive law questions, the book has excellent chapters on the vexed and important issues of definition and vicarious liability. The book also assists in locating the subject within various relevant statutory and common law strictures and within a human rights framework, explaining how rights such as equality, dignity, fair labour practices and security of the person are implicated. Refreshingly, the book treats the subject as an aspect of anti-discrimination law, presenting, as it does, an impediment to the full participation by (mainly) women in the workplace.

On certain questions, fuller examination of the subject matter might be warranted, such as its theoretical underpinnings and controversies and how these issues may manifest in any given forum’s approach to definition or case management. However, these are issues that we will be debating in years to come as the relatively new legal and policy framework is increasingly implemented. What is important now is that practitioners are enabled to handle the subject matter sensitively, constructively and meaningfully as it assumes greater importance in practice. The book achieves this without question.

Susannah Cowen, Cape Bar