Bail – A Practitioner’s Guide
Third Edition by John van der Berg
Juta Law (2012) xxxix & 379 pp; soft cover

After a decade of the Second Edition, John van der Berg has brought out the Third Edition of his book, which is arguably the leading textbook on the law and practice of bail. The book mainly brings up to date the legal position on bail and other aspects thereof, arising from the influence of the Constitution, without compromising discussion on the differences between the past and current bail law.

The book assists even the most experienced practitioner in a step by step manner to comply with important bail procedures. The book contains extracts from applicable legislation and cases. Of interest is the author’s contribution to bail and the rights of children as also bail in extradition proceedings (an issue that has recently received attention in South Africa) and in military tribunals.

The book is aimed at practitioners and judicial officers alike.

The author is to be commended for the meticulous attention paid to the table of contents, index, bibliography and schedule of case references, and their arrangement.

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Res Ipsa Loquitur and Medical Negligence: A Comparative Survey
Patrick van den Heever and Pieter Carstens
Juta Law (2011) xxx & 194 pp; soft cover

The authors aptly conclude their work with the following quote: ‘Lawyers are often accused of using Latin tags to befuddle the public and demonstrate that the law is far too difficult to be left to mere laymen. Some Latin phrases seem to befuddle the lawyers themselves. *Res ipsa loquitur* is a case in point.’ *Res Ipsa Loquitur and Medical Negligence: A Comparative Survey* goes to great lengths to prove that the application of the doctrine of *res ipsa loquitur* in medical negligence cases not only makes sense, but will also serve to make the adjudication of such cases easier.

In the preface to the publication, the authors explain that the purpose of the book is to investigate and research the utility of the application of the doctrine to medical negligence cases specifically. The book proceeds to present a comprehensive comparative survey of the different approaches to the application of the doctrine to medical negligence cases among the legal systems of South Africa, England and the USA, all common law countries.

The approach of each of the three countries to the doctrine is succinctly set out in separate chapters. Each country’s approach to the issue is analysed with reference to the case law, with requirements for an invocation of the doctrine in general and specifically in instances of medical negligence highlighted. The effect of the different approaches on the onus of proof is discussed and explained.

The facts of each of the different cases that the authors refer to are conveniently set out alongside the *ratio* of the various decisions. As such, the publication will be useful whenever a practitioner needs to research the issue against the background of whichever case he or she is currently working on.

It emerges from the authors’ journey through the cases that South Africa presents with a conservative attitude. The authors argue that the South African approach is not only erroneous but outdated as it is out of touch with modern approaches adopted by other common law countries. Various arguments are advanced for this point of view.

The publication shows that in South Africa the leading authority on the matter is the case of *Van Wyk v Lewis* 1924 AD 438. The plaintiff in *Van Wyk* claimed damages after a swab was left in her body after an operation. In the court *a quo* judgment was granted in favour of the defendant, a medical practitioner who operated on the plaintiff. On appeal to the Appellate Division the three judges of appeal concurred that the appeal should be dismissed, refusing to apply the doctrine of *res ipsa loquitur*. This judgment is examined in detail with an analysis of the facts and the expert testimony presented during the trial. The authors indicate how the Appellate division conflated questions of law and questions of fact, the result being that they came to the incorrect conclusion.

The authors analyse and explain various misdirections relating to the expert medical evidence that was led during the trial. The authors then argue that the time has come for the judgment to be overruled. The authors do not stop there. They proceed to attack the judgment with reference to the advanced approaches to the doctrine of *res ipsa loquitur* in England and the USA, as well as through an extensive review of a so-called ‘multi-layered approach.’ This approach indicates a legal framework in which an attempt is made to harmonise the understanding and application of medical law with reference to a multi-layered approach, which has as its source the applicable provisions of the Constitution.

The authors provide both a theoretical and a practical legal framework within which the application of the doctrine to medical negligence and related matters can develop in the future. As a result the book tends to delve deeply into philosophical notions, perhaps too deeply. The practitioner who has to go to trial on the issue of medical negligence, and who pulls this book from the shelf looking for practical advice, might find the going tough. That said, however, the book does present exciting new ways of thinking about the issue at hand and opens up the mind for innovative arguments that might prove successful in a trial.

The authors address a topic that opens itself up for analysis and discussion. As such, the publication should be an asset in the library of any lawyer.

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