

as a blunt weapon to wrest power for power's sake stands revealed.' He went as far as to suggest that the advocates' demand was tantamount to advancing Verwoerdian policies.

After my column appeared the GCB resuscitated discussion on negotiations that had stalled. New proposals have been put to Advocates for Transformation. It may be arrogant to assume that the activity was sparked by my comments. Even if it is a coincidence, it is a happy one. Gauntlett seems not to have come out against the principle of equal representation as strongly as he did in 1998 and this in itself is a step forward.

As the GCB moves forward it would be useful to remember that grand statements about commitment to non-racialism amount to nothing more than platitudes when no serious attempts are made to practise it. The advocates' profession needs to embrace the new constitutional order. The process will present difficulties but some contrition and humility will go a long way." 

continued from page 2

Minister van Justisie waarin onderwerpe oor 'n wye terrein te berde gebring is — vanaf taalgebruik in die howe tot die struktuur van die regbank. Dit is opvallend dat die voorsitter in sy gesprekke met die Minister die beskikbaarheid van advokate om as voorsittende beamptes en aanklaers in die howe te dien, beklemtoon het. (Meer hieroor in 'n volgende uitgawe.)

"'n Hoogtepunt van die jaarvergadering was die banket ter ere van Sir Sydney en Lady Kentridge QC. Die weldeurdagte toesprake van die voormalige president, mnr Nelson Mandela, Sir Sydney Kentridge QC en Jeremy Gauntlett SC, voorsitter van die ABR, verskyn in hierdie uitgawe. Verder plaas ons verskeie komiteeverslae, waaronder die aktuele verslae oor regshulp (Denis Kuny SC en Halima Saldulker) en menseregte (Anwar Albertus SC). Ons beoog om in die volgende uitgawe verder verslag te doen oor besluite wat op die jaarvergadering geneem is. 

From the publishers ...

Land title in South Africa

by *D L Carey Miller*
with *Anne Pope*

Juta & Co (2000)
614 pages
Soft cover R365 (VAT incl)

It was with great expectation that I opened this book with its attractive cover. The contents however reminds one somewhat of that strange animal, the *platypus*. In the preface the author states that the book aims to give an account of the substance and working of the South African land law reforms of the 1990s. In chapter 1 the author states that the book is "primarily a technical work on property law" with emphasis on "substantive legal forms which provide for title in land" (p 2), "primarily about 'right and title to land' rather than 'land tenure'" and also as "primarily a legal textbook". Chapters 2 and 3 of the book fit this description. These two chapters dealing with registration and prescription are taken almost word for word from *The acquisition and protection of ownership*, the author's well-known and respected 1986 textbook. Practitioners will find these two updated chapters as useful and authoritative as ever. None of the other chapters from the 1986 book were taken over and it would not seem as if *Land title in South Africa* was meant to replace the earlier book.

The rest of the book stands in stark contrast with the content and style of the chapters taken over from the 1986 book. Chapter 4 contains a short discussion of sectional titles and share block schemes. The subjects are discussed in such general terms that this chapter serves only as a broad overview of what is already contained in the two Acts and the regulations and practitioners would find this of little or no value.

The remainder of the book is largely an uncritical and somewhat superficial discussion of the land reform policy of the 1990s and the various new legislative measures aimed at giving effect to land and tenure reform in

South Africa. In mitigation it should be pointed out that the author does state in the Preface that only the main aspects of a large subject are covered and he also correctly refers to the "obvious problem in writing about the new land law" namely that it is in an active process of development. The land reform process is however a new area of the law that is in desperate need of serious and critical academic comment and study. The salutary aim of the new legislation is to correct past wrongs, and as stated by the author in the last chapter of the book, although the new order is "concerned with a reallocation of land rights without major departure from the pre-existing model, it has brought significant change". In practice, however, lawyers are often faced with numerous impracticalities, discrepancies, vague and badly drafted sections in some of the new Acts, as can be expected of an area of the law that is still in the developing phase. The practitioner will not find any answers to these problems in this book. In this respect it cannot be compared to the excellent *Juta's new land law* which has in a very short time become the "bible" of practitioners in the new property law.

The real and welcome contribution of this book lies however in the fact that it does provide a useful introduction to and overview of the land reform process. The general introduction in chapter 1 to the development of discriminatory landholding in South Africa provides a useful background to students and practitioners involved in restitution matters.

In part III of the book the author discussed in broad terms the 1991 land law reforms (chapter 5), the constitutional basis for the reform agenda (chapter 6), restitution (chapter 7), redistribution of land (chapter 8) and tenure reform which includes reference to inter alia the Interim Protection of Land Rights Act, communal property associations, extension of security under *ESTA*, prevention of illegal eviction and unlawful occupation, and labour tenants. The book ends with an analysis of reform in

context. Many practitioners find these new concepts, terminology, the relation between the various new Acts and the role of each in the bigger scheme of things, still very confusing. It forms an important part of the South African law and this book goes a long way towards placing the reform developments in perspective.

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Hahlo's South African company law through the cases

Sixth edition by JT Pretorius, Delport, Havenga and Vermaas (eds)

Juta & Co (1999)
xlviii + 629 pages
R245 (VAT) incl

A sixth edition of *Hahlo's South African company law through the cases* ('A collection of cases on company law, with explanatory notes and comments') has recently been published by Juta. The work is edited by the same team (headed by Prof JT Pretorius, Professor of Banking Law in the Department of Mercantile Law, University of South Africa) as the previous edition, published in 1991. (A 'corrected reprint' was published in 1995.)

First published in 1953, the work has become something of 'an old faithful' in South African company law literature. Although not often referred to in the reported cases (at least not in more recent years), the book's continuing relevance as a work of reference is borne out by its citation in counsel's heads of argument in a handful of recent reported SCA and AD cases including *MV Heavy Metal; Belfry Marine Ltd v Palm Base Marine SDN BHD* 1999 (3) SA 1083 (SCA); *Commissioner for Inland Revenue v Giuseppe Brollo Properties (Pty) Ltd* 1994 (2) SA 147 (A) and *Warmbach v Maizecor Industries (Edms) Bpk* 1993 (2) SA 669 (A).

Counsel will generally have reference to the relevant reported cases directly by accessing the various law reports and using the well-known published subject indices and noter-uppers. The usefulness of this publication to

practitioners lies not so much in its collection of extracts from reported cases, but in its provision of references to relevant South African 'extra-curial' source material and international case law and journals. For instance, the most recent authoritative South African reported case on piercing (or lifting) the corporate veil is *Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd* 1995 (4) SA 790 (A). After setting out salient extracts from the judgment, the editors refer in their 'Notes' to a range of related source material on the subject which could provide a useful launching pad for the researches of a practitioner working up the topic. The material includes references to subsequent articles published locally in the 1996 *THRHR* and the 1997 *TSAR* and abroad in the 1995 *Cambridge LJ*, as well as to some more recent pronouncements on the subject in judgments of the Court of Appeal and the House of Lords published in English law reports in 1998.

In the preface mention is made of the editors' decision to make wider reference than in previous editions to the views expressed in postgraduate theses and dissertations, and in academic writing. This promise is borne out in the 'Notes'. (The 'Notes' are the editorial comment and elucidation inserted in respect of each topic related to the selected cases.)

The sixth edition also incorporates some reference to most SA company law-related cases reported since the publication of the fifth edition in 1991, but in a random spot check I found evidence that there may be some material blind spots. I did not find any reference to the judgment in *Randcoal Services Ltd v Randgold and Exploration Co Ltd* 1998 (4) SA 825 (SCA). This Appeal Court judgment dealt inter alia with the question of the application of the doctrine of unanimous assent to directors' resolutions taken other than at directors' meetings convened in accordance with a company's articles. The court held (at 841G-841B) that the directors' resolution was valid and effectual notwithstanding that it had not been taken at a properly convened board meeting. I would have expected at least a reference to the case in the 'Notes' sv 'The Board of Directors' at

pp 344-345, qualifying the editor's comment that '[a] resolution taken at an irregular meeting is invalid: ...'

The book would be a useful addition to the commercial practitioner's company law library; a junior companion to one's Henochsberg and Gower.

**AG Binns-Ward
Cape Bar**



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Scottish Chambers

Contributed by Marius van Wyk, Johannesburg

In the last edition of *Advocate* I reported that the Johannesburg Bar now provides Scottish Chambers for those members not holding recognised chambers. Interest has been expressed by other Bars in this arrangement. At present there are 14 members in Scottish Chambers.

Black South Africans, who comprise 80.2 percent of the population, own 4 percent of the land. Why is land distribution important for South Africa? The World Bank recently published a significant study, *Overcoming the legacy of exclusion in South Africa*, which contends that a well-managed system of land distribution is essential to redressing the country's economic inequality. According to the study, the inequality is exacerbated by the limited titling of property, limited access to finance, weak property rights, limited land valorization, lack of sustainable investment, among other factors. The South Africa's new President Cyril Ramaphosa has pledged to redistribute land by taking it from white farmers and giving it to black people. But why is the millionaire pursuing such a drastic course of action and how will it work? The statistics remain unclear. Many South African politicians in favor of land reform claim that, in a country of 55 million people, a mere 40,000 white farmers own 80 percent of the country's agricultural land. However, a study by fact-checking website Africa Check found that the claim isn't supported by any dataset, labelling it incorrect. "Land ownership is still deeply skewed along racial lines, but these figures do not illuminate the current land dispensation," Professor Cheryl Walker said.