

Book Review



BEGINSELS VAN BEWYSREG

(Third Edition)

by P.J. Schiwickard & S.E. van der Merwe

(787 pages)

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"A precedent embalms a principle."

– Benjamin Disraeli (1805-1881)

This book is the Afrikaans version of the fourth edition of *Principles of Evidence* published in April 2016. Professor Stephan Terblanche and Advocate Hein Lubbe translated the earlier versions but this edition has been translated by Professor Johan Joubert who was also responsible as general editor.

Afrikaans remains the language used in many of our courts throughout large areas of South Africa, especially the Magistrates' Courts, in both criminal and civil litigation. It is often the first language of many litigants, complainants, accused, witnesses, prosecutors, attorneys, advocates and judicial officers. Having this important book on the law of evidence as an available resource in

Afrikaans as well as English will continue to be of considerable benefit to the effective administration of justice.

The law of evidence is fundamental to the effective functioning of a judicial system in a constitutional state. The authors of this magisterial book set the context:

"Howe moet normaalweg eers 'n bevinding maak oor die bestaan al dan nie van bepaalde feite voordat hulle uitspraak kan lewer oor die regte, verpligtinge en verantwoordelikhede van die partye wat by 'n geskil betrokke is. In hierdie proses van gedingvoering en beregting word die bewys van feite deur die bewysreg gereël. Die bewysreg is 'n vertakking van die prosesreg."

("Courts normally have to make a finding concerning the existence or non-existence of certain facts before pronouncing on the rights, duties and liabilities of the parties engaged in a dispute. In this process of litigation and adjudication the proof of facts is regulated by the law of evidence, which is a branch of the law of procedure.")

The 32 chapters and extensive tables of cases, statutes and rules included deal comprehensively with every aspect of evidence in its broadest sense. The detailed footnotes, authorities quoted and commentary supplement the well-organised text, all of which is fully indexed and set out in the user-friendly and accessible format which is a hallmark of publisher Juta's stable.

The clear and practical approach throughout this work is illustrated by this passage:

"Daar is geen grade van toelaatbaarheid nie. Getuienis is óf toelaatbaar óf ontoelaatbaar. Dit kan nie meer of minder toelaatbaar wees nie. Wanneer dit eers toegelaat is, kan dit egter minder of meer gewig dra, afhangend van die betrokke omstandighede van die saak. Die hof weeg of beoordeel die getuienis om te bepaal of die vereiste bewysmaatstaf bevredig is. Eers nadat die getuienis toegelaat is, aan die einde van die verhoor, sal die hof die finale gewig van die getuiens beoordeel. "

("There are no degrees of admissibility. Evidence is either admissible or inadmissible. Once admissible, however, it may carry more or less weight according to the particular circumstances of the case. The court weighs or evaluates evidence to determine whether the required standard of proof has been attained. It is only after the evidence has been admitted and at the end of the trial that the court will have to assess the final weight of the evidence.")

Not only legal practitioners and the judiciary will find this updated third edition in Afrikaans indispensable, but a wider readership will be enthralled by topics such as character evidence, opinion evidence, privilege, hearsay, confessions in criminal trials, electronic evidence, the credibility of witnesses, the evaluation of evidence and judges' rules.

The co-authors P.J. Schwikkard BA LLM LLD, Professor in the Department of Public Law at the University of Cape Town, and S.E. Van der Merwe B Juris LLB LLD, former Professor of Law at the University of Stellenbosch, have had the benefit of expert contributions from a quartet of other distinguished academics, advocates and attorneys. The English version having been first published in 1997, with the first Afrikaans translation in 2005, this remains an outstanding and leading resource and a formidable authority in South Africa in the practice of both civil and criminal law.

Review by Louis Rood BA LLB (UCT) Consultant at Fairbridges Wertheim Becker.