TRYNIE BOEZAART (ED)

CHILD LAW IN SOUTH AFRICA


The United Nations Convention on the Rights of the Child, the Constitution of the Republic of South Africa, 1996, and the Children’s Act 38 of 2005 have brought about a profound change in the field of child law in South Africa. This publication is a welcome contribution in view of these changes. In this book recent legislation is discussed, including the Children’s Act, the Child Justice Act 75 of 2008 and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. The latest case law referred to includes AD v DW (Centre for Child Law as Amicus Curiae; Department for Social Development as Intervening Party) (2008 3 SA 183 (CC)); MEC for Education, KwaZulu-Natal v Pillay (2008 1 SA 474 (CC)); Centre for Child Law v Minister of Justice and Constitutional Development (National Institution for Crime Prevention and Reintegration of Offenders, as Amicus Curiae) (2009 2 SACR 477 (CC)) and J v J (2008 6 SA 30 (C)).

The book is divided into four parts. Part 1 deals with aspects of private law pertaining to children and consists of 10 chapters. The first chapter (“Child law, the child and South African private law”) explains to the reader who is regarded as a child in the eyes of the law. Chapter 2 deals with maintenance for children and chapter 3 (“Parental responsibilities and rights”) contains inter alia a broad discussion on the rights and responsibilities of the unmarried father, since section 21 of the Children’s Act is open to many interpretations (70-79). The legal representation of children is reviewed in chapter 4. Chapter 5 (“Child-focused mediation”) provides an overview of mediation before turning to mediation pertaining to the child. At the end of the chapter the writer gives some suggestions as to how the position can be developed in future (129-132). Chapter 15 of the Children’s Act regulates adoption of children and this is discussed at length in chapter 6. In the next two chapters the focus is on the needs of vulnerable
children. Chapter 7, regarding children in need of care and protection, provides a practical discussion of the procedure to place children in care (168-183). This chapter will be a valuable source of reference to social workers and legal practitioners. Protective measures for special children are discussed in chapter 8. Chapter 9 provides an interesting discussion on upholding the best interests of the child in South African customary law.

Part II examines the constitutional and international protection of children’s rights and should have included an overview of children’s rights currently discussed in chapter 10 under Part I. The first chapter gives an overview of all the rights of children in the constitution and chapter 12 deals specifically with socio-economic rights. Chapters 13 to 16 discuss international instruments pertaining to children’s rights. Chapter 13 discusses the value of the United Nations Convention on the Rights of the Child in South African child law. The African Charter on the Rights and Welfare of the Child is thoroughly discussed in chapter 14. The author gives a detailed analysis of the charter, and, even though it was ratified by South Africa on 7 January 2000, the charter is still not well known in South Africa (331). Reasons why South Africa was reluctant to ratify the African Children’s Charter and examples of South Africa’s non-conformance are discussed (349-350). The Hague Convention on the Civil Aspects of International Child Abduction, the provisions of which are now included in chapter 17 of the Children’s Act and The Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption, which now forms part of South African law with the coming into operation of the Children’s Act, are discussed in chapters 15 and 16 respectively.

Part III contains five chapters that deal comprehensively with education law, and will be beneficial to South African educators. Education rights, the impact of these constitutional rights on education as well as the South African Schools Act and school discipline are discussed in detail in these chapters. Justice for children as victims and as offenders is discussed in part IV. Chapter 22 deals specifically with sexual offences against children and children as victims and witnesses are discussed in chapter 23. Chapter 24 (“Medico-legal aspects pertaining to children”) discusses the clinical and legal aspects pertaining to birth, child abuse, sudden infant death syndrome and the investigation of death. The chapter includes a post mortem report of a fictitious case in order to explain the interpretation of the findings relevant to the medico-legal investigation of death (619-622). A pro-forma report by an authorised medical practitioner on the completion of a medico-legal examination is also provided (623-625). These two documents are of paramount importance for possible criminal prosecution of an offender (617). Chapter 25 discusses the realisation of the rights of children accused of crime.

According to the editor, the book is not intended to address every issue pertaining to children, but is a source of first reference (xxiii). The publication achieves this goal. It is very comprehensive and is recommended for researchers, medical practitioners, social workers, educators and legal practitioners. As with previous publications edited by Davel (as she then was), the publication is of a high quality and well edited.

E COETZEE
University of Johannesburg