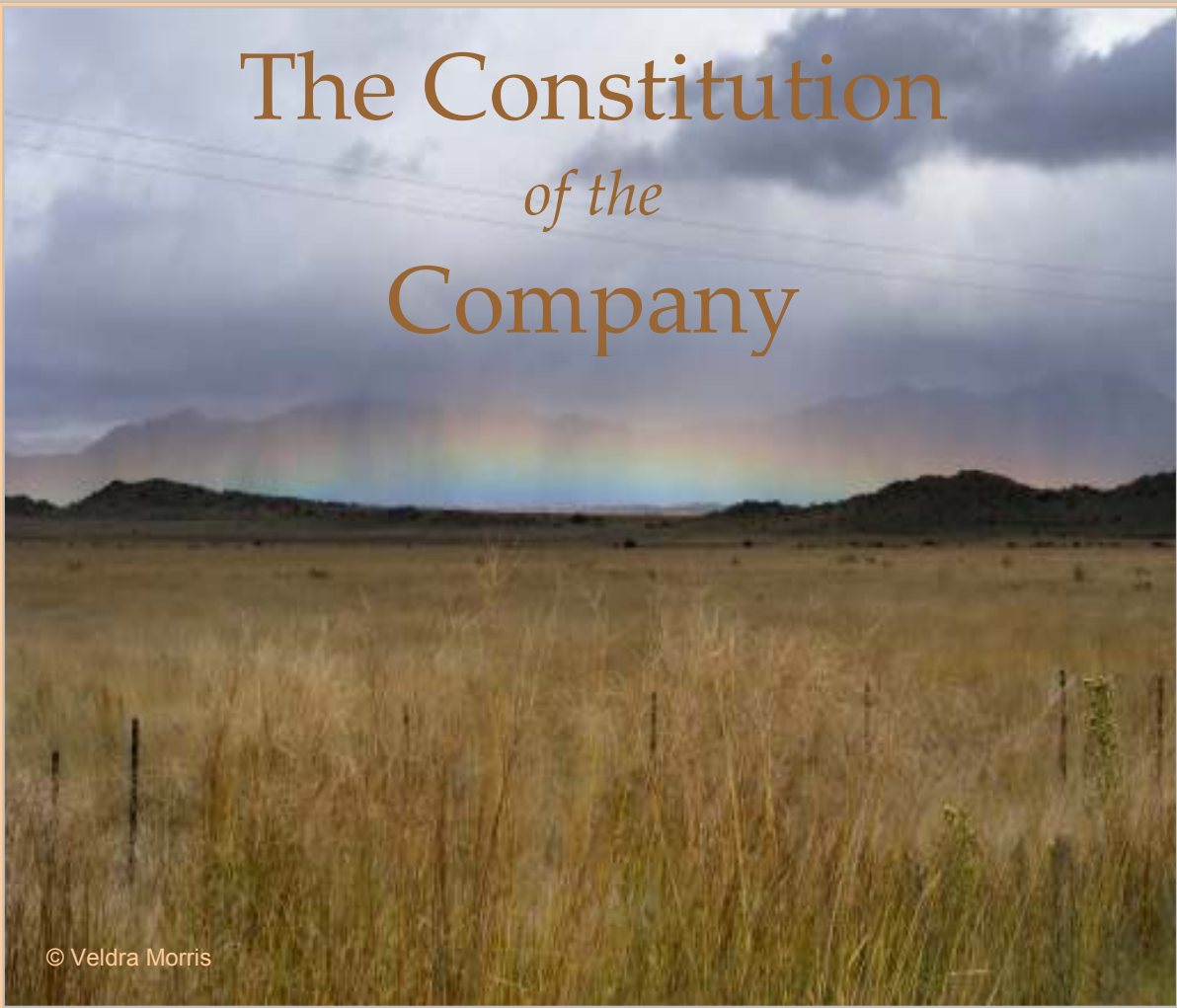


The Constitution *of the* Company



© Veldra Morris

By
Graeme Fraser *and* **Veldra Morris**

This book serves as a reference guide for corporate lawyers, company directors, shareholders and other corporate stakeholders in South Africa who need to get to grips with and understand the vitally important part the Companies Act, 2008 has augured. It is an explanation of both Constitutional and supplementary documents in the formation of companies and contains cohesive and logical groupings laced with practical hints and comments.

1 May 2011

ISBN 978-0-620-50948-0

The Constitution *of the* Company WORKBOOK



by
Graeme Fraser *and* Veldra Morris

This book is the “how to do it” sister-companion book we have co-authored that corresponds with our book “**The Constitution of the Company**” and deals more in depth with the actual clauses found in the **Memorandum of Incorporation**.

Companies Act, 2008

Cases

The First Year 2011 - 2012



© Veldra Morris

by

Graeme Fraser *and* Veldra Morris

The dramatic changes to the corporate landscape made by the passing and implementing of the Companies Act, 2008 requires the judgements of our Courts to add flesh and meaning to the framework the legislature has created.

We have found over 80 cases handed down or published between 1 May 2011 and 30 April 2012 which we showcase in this

CASEBOOK

ISBN 978-0-9870400-0-8

The Business Rescue Casebook



This book covers a dearth of matters -
Why have a business rescue at all?
Application to a competent Court
Commencement and termination
Procedural and practitioners matters
Creditor, employee as affected parties
Discussion on the "going-concern" value
Statutory moratorium on legal loss of stock
Practitioners written leave waiving moratorium
Conventional principles for liability and damages. . .

Co-authors

Graeme Fraser & Vel Fraser

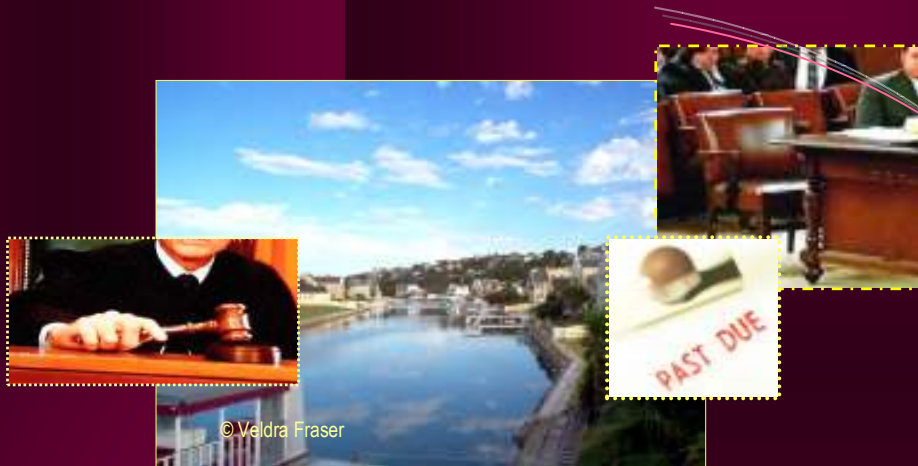
There can be absolutely no doubt that the most significant change which the Companies Act 2008 ("Act") introduced in 2011, on the corporate law landscape in South Africa was the establishment of the Business Rescue Procedure contained in Chapter 6 of the the Act. Practitioners, creditors, employees and directors of a failing company will need to read "The Business Rescue Casebook", as it contains judgments that deal with the processes - from placing the company into business rescue until completion of the actual rescue plan, complete with relevant editorial comments where applicable.

ISBN 978-0-9870400-5-3

Companies Act 2008

CASES II

2012 - 2013 The second year



The High Courts in South Africa continue to adjudicate a broad spectrum of issues directly affecting Corporate Law. In the past year there were still cases dealing with provisions of the “old”

Companies Act and some addressed the transition from the old to the new; while an increasing number dealt with novel issues arising from the provisions of the Companies Act, 2008.

We at **COMPANIES ACT ONLINE**
showcase in our book decisions handed down from
The Second Year 2012 - 2013.

ISBN 978-0-9870400-1-5

Graeme Fraser & Veldra Fraser

Cases III

2013 – 2014

Companies Act 71 of 2008 read with applicable regulations

MERGERS, SCHEMES & TAKEOVERS



No par value shares

Income Beneficiaries



Lex loci domicilii
A court in South Africa may
consider foreign law.

*MOI's, share values, share rights, share capitalisation, loans,
directors' conduct, board authority, audit committees,
transactions, offers, Takeover Regulation Panel and more..*

Graeme Fraser & Vel Fraser

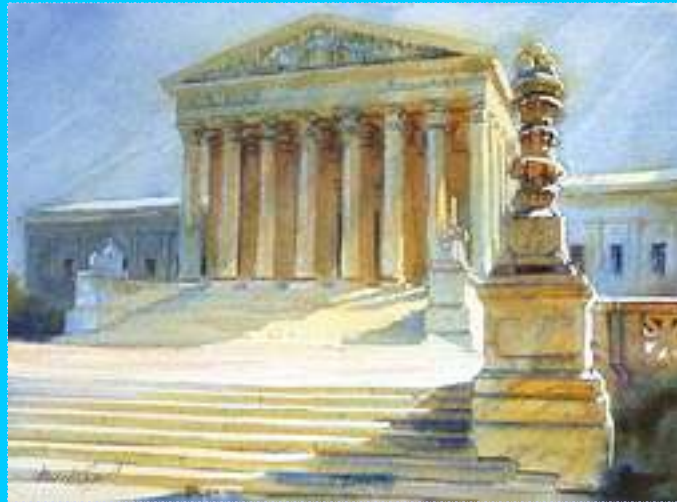
Three years have transpired since promulgation of the new companies Act 2008 in South Africa and as this volume of over 90 judgments handed down in the period of 1 May 2013 to 30 April 2014 will reveal, our courts are tackling more disputes founded on the new Act. This is particularly true of the field of Business Rescue which accounts for a substantial number of the cases reviewed.

ISBN 978-0-9870400-2-2

CASES IV

*Companies Act 2008,
Read with applicable Regulations*

Access to environmental information, challenges to authority, interpreting formal commercial contracts, non-diligent directors, subscription agreements, share disputes, independent property valuations, liquidation displacing shareholder power, prescription, Court assists the Master, trademark infringement, VAT 'round tripping', auditor contractual breach and much much more inside ...



Graeme Fraser & Vel Fraser

The period 1 May 2014-30 April 2015 covers Cases IV judgements handed down that are aligned with the South African Companies Act 2008. Our learned Judges remain pivotal in dispensing justice and developing the law, especially in respect of the challenges arising from the Act.

ISBN 978-0-9870400-4-6

Cases V

Companies Act 2008



*BEE window-dressing,
Constitutional presumption of innocence
contractor's interests recognised
unlawful emolument forms,
investment funds aka loan contract,
Tax - "intention" or "gross income"
employee incentive share scheme
shareholders right to know
contrivance to fraudulent shares,
timing of dissipation of assets,
competitive dynamics public interest
protection of goodwill in restraint
legal privilege & many many more...*

Graeme Fraser & Vel Fraser

On 30 April 2016 the curtain came down on the fifth year since the Companies Act 2008 was implemented. Despite vociferous complaints that the Act was "riddled with lacunas" and was "unworkable", many of the judgments contained in this casebook "Cases V" reveal with abundant clarity that our judiciary has more than adequately dealt with perceived challenges and obstacles. As a result, our understanding of the general body of corporate law continues to develop in line with commercial realities.

ISBN 978-0-9870400-6-0

4 August 2016

INSOLVENCY

Law

Selected Cases

from 1 May 2011 – 31 Dec 2017



TRUSTEE REMOVAL



Bona Vacantia



A solvent company winding up

Insolvency matters include *inter alia* - Commercial versus factual insolvency, the Badenhorst Rule; an intention to prefer, land claim impacts, reckless management and gross negligence, void dispositions, proof of claims; s 34(1) notice timeously *prima facie* evidence in a provisional winding up; to wind up a Trust or remove a trustee. Companies Act 2008 matters - the dissolution and removal from the Register in terms of s 83; de-registered liabilities; *bona vacantia* assets; automatic reinstatement; Service; Close Corporation -1 May 2011- Item 9 Schedule 5; insolvency into Item 9(1) to 9(4); winding up a solvent company applicable to ss79, s80,s81, s82(1), s82(2); the liquidation of a solvent close corporation and company, applicable to Part G of Chapter 2

Graeme Fraser & Vel Fraser

The Companies Act 2008 ("Act") retained Chapter 14 of the Companies Act of 1973 in respect of the winding up of insolvent companies and Close Corporations ("CC's").

The Act introduced a new section 81 dealing with the voluntary winding up of solvent companies. This Casebook is a collection of judgments dealing with the winding up of solvent and insolvent companies and CC's handed down in the period 1 May 2011 to 30 April 2017 until such time as the new uniform Insolvency Act is promulgated.

Cases VI

*In respect of Companies Act 2008
and Companies Act regulations as amended*



Earnest relief is sought via multi-pronged corporate conduct at all levels - some are genuine disputes that arise, others are oppressive, prejudicial and a subterfuge attempt to totally command assets through improper means. Securitisation issues abound, access to the record and to fees, legal privilege, unfair competition, unfair greedy debt collection, trademark infringement, trustees' improper accounting, surety liabilities, shares' jurisdiction questioned and the patent hi-jacking of companies.

Graeme Fraser & Vel Fraser

This sixth edition of "Company Law Today's" annual collation of Company Law [and related commercial cases] once again reflects the diverse range of issues with which business owners in South Africa, legal advisors and our learned Judges crucially and continuously address.

The development of Company Law evolves to meet the challenges of modern society and each case in this compilation affords lessons that are well-worth knowing and remembering.

ISBN 978-0-9870400-9-1

Cases VII

Corporate Law Litigation; 1 May 2017 – 30 April 2018
Aligned with Companies Act 2008; Companies Regulations 2011;
other relevant legislation, Common Law.

The Pleadings



The Right of Appeal



Environmental Impact

Auditor negligence



Graeme Fraser & Vel Fraser

In the period 1 May 2017 – 30 April 2018 we have incorporated in this seventh edition Casebook VII, the extent to which the South African Courts have complied with the injunction contained in section 158 (a) of the Companies Act 2008 ("Act"), that the Common Law must be developed *"as necessary to improve the realisation and enjoyment of rights"* established by the Act.

As has become our custom at Company Law Today, in addition we include in the overall Corporate Law litigations, a generous interspersing of commercial cases and foreign commercial judgments.

ISBN 978-0-9870400-9-1

