

SOUTHERN CROSS
CIVIL LAW AND COMMON LAW
IN SOUTH AFRICA

Edited by
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CLARENDON PRESS OXFORD

Southern Cross Civil Law And Common Law In South Africa

Reinhard Zimmermann, D. P. Visser



Southern Cross Civil Law And Common Law In South Africa:

Southern Cross Reinhard Zimmermann, D. P. Visser, 1996 This book provides a history of some of the main institutions of South African private law and in so doing explores the process through which integration of the English common law and the continental civil law came about in that jurisdiction Here is a book aimed at both European and South African audiences For European lawyers it provides a stimulating insight into the way the process of harmonization of private law has occurred in South Africa and may occur within the European Union By analysing the historical evolution of the most important institutions of the law of obligations and the law of property the book demonstrates how the two legal traditions have been accommodated within one system The starting point for each essay is the pure Roman Dutch law as it was transplanted to the Cape of Good Hope in the years following 1652 and as it has been examined in considerable detail in another volume edited by Robert Feenstra and Reinhard Zimmermann published in 1992 the analysis focuses on how the Roman Dutch law has been preserved changed modified or replaced in the course of the nineteenth century when the Cape became a British colony and on what happened after the creation of the union of South Africa in 1910 Each essay therefore attempts in the field of law with which it is dealing to answer questions such as what was the level of interaction between the civil law and the common law What were the mechanisms that brought about the particular form of competition coexistence or fusion that exists in that area of law Is the process complete or is it still continuing Is it possible to observe the emergence from these two routes of a genuinely South African private law How is the result to be evaluated In establishing reception patterns at the level of specific areas of law they go beyond generalization about the compatibility of the two traditions and present evidence of a possible symbiosis of English and Continental law For South African readers the principal value of the book is that it offers essays by the most prominent South African private lawyers reflecting on the history of their subjects It therefore constitutes the first stage in the writing of a history of substantive private law in South Africa So far the focus has mainly been on the so called external history of South African law and such texts as there are on the development of the institutions of private law are often in Afrikaans and mainly to be found in unpublished theses Thus this book fulfils a real need for those teaching South African private law and legal history Although the volume investigates a specific aspect of the making of modern South African law it is imperative not to lose sight of the fact that private law in that country as every way else did not develop in a vacuum but as part of a wider political and social process For this reason the book opens with an essay which contextualizes the contributions that follow giving a view of the setting in which the development of South Africa took place colonial domination cultural imperialism and racial and nationalistic ideologies Two further introductory essays pay specific attention to the impact of the procedural framework on the substantive private law and to the architects of the mixed system

Southern Cross Reinhard Zimmermann, D. P. Visser, 1999 Contract Law in South Africa Louis F. van Huissteen, Catherine J. Maxwell, 2021-02-22 Derived from the renowned multi volume International Encyclopaedia of Laws

this practical analysis of the law of contracts in South Africa covers every aspect of the subject definition and classification of contracts contractual liability relation to the law of property good faith burden of proof defects penalty clauses arbitration clauses remedies in case of non performance damages power of attorney and much more Lawyers who handle transnational contracts will appreciate the explanation of fundamental differences in terminology application and procedure from one legal system to another as well as the international aspects of contract law Throughout the book the treatment emphasizes drafting considerations An introduction in which contracts are defined and contrasted to torts quasi contracts and property is followed by a discussion of the concepts of consideration or cause and other underlying principles of the formation of contract Subsequent chapters cover the doctrines of relative effect termination of contract and remedies for non performance The second part of the book recognizing the need to categorize an agreement as a specific contract in order to determine the rules which apply to it describes the nature of agency sale lease building contracts and other types of contract Facts are presented in such a way that readers who are unfamiliar with specific terms and concepts in varying contexts will fully grasp their meaning and significance Its succinct yet scholarly nature as well as the practical quality of the information it provides make this book a valuable time saving tool for business and legal professionals alike Lawyers representing parties with interests in South Africa will welcome this very useful guide and academics and researchers will appreciate its value in the study of comparative contract law

Human Rights from a Comparative and International Law Perspective Joan Church, Christian Schulze, Hennie Strydom, 2007 In terms of the South African Constitution of 1996 there is a general need for an introduction to comparative law and one that covers what is technically known as applied comparative law more particularly applied comparative law that involves a study of the bills of rights in other countries

Mixed Jurisdictions Worldwide Vernon V. Palmer, 2001-05-03 Approximately 150 million people worldwide live in legal systems in which there is both a common law and a civil law content yet there has been little comparative study of the experience of these mixed jurisdictions Here the author considers these jurisdictions in a comparative framework which includes their founding and reasons d tre as well as the cultural divisions of the jurists and the evolutionary tendencies of their common and civil law components In addition he examines the internal contradictions between Anglo American judicial institutions methodologies and procedures and the substantive civil law The book argues that the legal systems of such far flung and diverse cultures as the Philippines Quebec Scotland and South Africa have many unique and fruitful points of comparison The conclusion is that these mixed jurisdictions form a closely related Third Legal Family with cohesive traits and tendencies

Mandatory Family Protection Kenneth G. C. Reid, Marius Johannes De Waal, Reinhard Zimmermann, 2020 This book is about the protection from disinheritance Regardless of what a person s will might say the closest relatives usually have a claim to some of the deceased s property The book explores this issue in a sample of countries in Europe as well as in the USA Canada Latin America China South Africa Australia and New Zealand

Imperial Underworld Kirsten McKenzie, 2016-01-14 During a major overhaul of

British imperial policy following the Napoleonic Wars an escaped convict reinvented himself as an improbable activist renowned for his exposés of government misconduct and corruption in the Cape Colony and New South Wales Charting scandals unleashed by the man known variously as Alexander Loe Kaye and William Edwards Imperial Underworld offers a radical new account of the legal constitutional and administrative transformations that unfolded during the British colonial order of the 1820s In a narrative rife with daring jail breaks infamous agents provocateurs and allegations of sexual deviance Professor Kirsten McKenzie argues that such colourful and salacious aspects of colonial administrations cannot be separated from the real business of political and social change The book instead highlights the importance of taking gossip paranoia factional infighting and political spin seriously to show the extent to which ostensibly marginal figures and events influenced the transformation of the nineteenth century British Empire Climate Change Liability Richard Lord, Silke

Goldberg, Lavanya Rajamani, Jutta Brunnée, 2011 As frustration mounts in some quarters at the perceived inadequacy or speed of international action on climate change and as the likelihood of significant impacts grows the focus is increasingly turning to liability for climate change damage Actual or potential climate change liability implicates a growing range of actors including governments industry businesses non governmental organisations individuals and legal practitioners Climate Change Liability provides an objective rigorous and accessible overview of the existing law and the direction it might take in seventeen developed and developing countries and the European Union In some jurisdictions the applicable law is less developed and less the subject of current debate In others actions for various kinds of climate change liability have already been brought including high profile cases such as Massachusetts v EPA in the United States Each chapter explores the potential for and barriers to climate change liability in private and public law **Aboriginal Customary Law: A Source of Common Law Title to Land** Ulla Secher, 2014-12-01 Described as ground breaking in Kent McNeil's Foreword this book develops an alternative approach to conventional Aboriginal title doctrine It explains that aboriginal customary law can be a source of common law title to land in former British colonies whether they were acquired by settlement or by conquest or cession from another colonising power The doctrine of Common Law Aboriginal Customary Title provides a coherent approach to the source content proof and protection of Aboriginal land rights which overcomes problems arising from the law as currently understood and leads to more just results The doctrine's applicability in Australia Canada and South Africa is specifically demonstrated While the jurisprudential underpinnings for the doctrine are consistent with fundamental common law principles the author explains that the Australian High Court's decision in Mabo provides a broader basis for the doctrine a broader basis which is consistent with a re-evaluation of case law from former British colonies in Africa as well as from the United States New Zealand and Canada In this context the book proffers a reconceptualisation of the Crown's title to land in former colonies and a reassessment of conventional doctrines including the doctrine of tenure and the doctrine of continuity With rare exceptions the existing literature does not probe as deeply or question fundamental assumptions as thoroughly as

Dr Secher does in her research She goes to the root of the conceptual problems around the legal nature of Indigenous land rights and their vulnerability to extinguishment in the former colonial empire of the Crown This book is a formidable contribution that I expect will be influential in shifting legal thinking on Indigenous land rights in progressive new directions From the Foreword by Professor Kent McNeil to read the Foreword please click on the sample chapter link **Léon Duguit and the Social Obligation Norm of Property** Paul Babie, Jessica Viven-Wilksch, 2019-09-07 This book demonstrates the importance of L on Duguit for property theory in both the civil and common law world It translates into English for the first time ever Duguit s seminal lecture on property the sixth of a series given in 1911 in Buenos Aires It also collects essays from the leading experts on the social function of property in major civil and common law jurisdictions internationally The book explores the importance that the notion of the social function of property has come to have not only in France but in the entire civil law tradition and also considers the wide if un attributed and seldom regarded influence in the common law tradition and theory of property **Private Law and Human Rights** Daniel Visser, 2013-07-31 A comparative investigation into the revolution in private law in the era of human rights Scotland and South Africa are mixed jurisdictions combining features of common law and civil law traditions Over the last decade a shared feature in both Scotland **The Judicial House of Lords** Louis Jacques Blom-Cooper, Brice Dickson, Gavin Drewry, 2009-08-13 In 2009 a new UK Supreme Court takes on the judicial functions of the House of Lords In this book a group of over 40 eminent lawyers and legal historians look back over the 130 years of the judicial House of Lords to give a comprehensive history of its role reputation and impact on the law in the UK and beyond *Comparative Civil Procedure* Margaret Y.K. Woo, Cornelis H. van Rhee, 2025-03-12 Bringing together an international array of legal scholars this discerning Research Handbook provides a comparative analysis of civil procedure law Chapters examine the rules that dictate how a civil dispute is initiated processed decided and enforced in a court of law comparing each aspect of the procedure across continents including Asia Europe and the Americas *The Worlds of the Trust* Lionel Smith, 2013-08-22 This collection of essays explores the law of trusts as it is understood in civilian and mixed jurisdictions [Property in the Margins](#) A J van der Walt, 2009-05-29 Having its origins in the process of transformation and land reform that began to take shape in South Africa at the end of the last century this strikingly original analysis of property starts from deep inside the property regime and not from a distant or abstract perspective on property rules and practices Focusing on issues of stability and change in a transformative setting and on the role of tradition and legal culture in that context the book argues that a property regime including the system of property holdings and the rules and practices that entrench and protect them tends to insulate itself against change through the security and stability seeking tendency of tradition and legal culture including the deep assumptions about security and stability embedded in the rights paradigm rhetoric and logic that dominate current legal culture The rights paradigm tends to stabilise the current distribution of property holdings by securing extant property holdings on the assumption that they are lawfully acquired

socially important and politically and morally legitimate This function of the rights paradigm tends to resist or minimise change including change brought about by morally politically and legally legitimate and authorised reform or transformation efforts The author's goal is to gauge the lasting power of the rights paradigm by investigating its effects in the margins of property law and of society by establishing the actual efficacy and power of reformist or transformative anti eviction policies and legislation aimed at the protection of marginalised and weak land users and occupiers in areas such as landlord tenant law eviction of unlawful occupiers of land and other restrictions on the landowner's power to enforce a stronger right to exclusive possession Ultimately the book's aim is to explore the possibility of opening up theoretical space where justice inspired changes to or transformation of the extant property regime can be imagined and discussed more or less fruitfully from an unusual perspective a perspective from the margins which is valuable for any theoretical consideration or discussion of property

The Cambridge Handbook of Class Actions Brian T. Fitzpatrick, Randall S. Thomas, 2021-02-03 Economic activity is more globally integrated than ever before but so is the scope of corporate misconduct As more and more people across the world are affected by such malfeasance the differences in legal redress have become increasingly visible This transparency has resulted in a growing convergence towards an American model of robust private enforcement of the law including the class action lawsuit This handbook brings together scholars from nearly two dozen countries to describe and assess the class action procedure or its equivalent in their respective countries and where possible to offer empirical data on these systems At the same time the work presents a variety of multidisciplinary perspectives on class actions from economics to philosophy making this handbook an essential resource to academics lawyers and policymakers alike

The Oxford Handbook of European Legal History Heikki Pihlajamäki, Markus D. Dubber, Mark Godfrey, 2018-06-28 European law including both civil law and common law has gone through several major phases of expansion in the world European legal history thus also is a history of legal transplants and cultural borrowings which national legal histories as products of nineteenth century historicism have until recently largely left unconsidered The Handbook of European Legal History supplies its readers with an overview of the different phases of European legal history in the light of today's state of the art research by offering cutting edge views on research questions currently emerging in international discussions The Handbook takes a broad approach to its subject matter both nationally and systemically Unlike traditional European legal histories which tend to concentrate on heartlands of Europe notably Italy and Germany the Europe of the Handbook is more versatile and nuanced taking into consideration the legal developments in Europe's geographical fringes such as Scandinavia and Eastern Europe The Handbook covers all major time periods from the ancient Greek law to the twenty first century Contributors include acknowledged leaders in the field as well as rising talents representing a wide range of legal systems methodologies areas of expertise and research agendas

Teaching Family Law Henry Kha, Mark Henaghan, 2023-08-25 This book provides a comprehensive analysis of the teaching of an eclectic range of family law topics and the unique

opportunities and challenges of teaching family law in different jurisdictions from a varied international perspective Written by leading legal scholars the book addresses a gap in the scholarship to comprehensively and systematically analyse the teaching of family law The first part of the book explores ways of teaching the varied range of topics under the heading of family law and captures the diverse approaches to the discipline Chapters illustrate how the subject can be best taught in an interdisciplinary way that considers feminist perspectives and the philosophy of teaching while encompassing legal positivism empirical research and critical legal theory The second part of the book examines teaching in different jurisdictions and illustrates policy and practice in Australia New Zealand the United States Canada the United Kingdom Hong Kong and South Africa Showcasing examples of best practice of teaching family law the book will be an essential reading for legal scholars as well as researchers and postgraduate students in the fields of family law and legal education

Mixed Jurisdictions Worldwide Vernon Valentine Palmer, 2012-06-28 This examination of the mixed jurisdiction experience makes use of an innovative cross comparative methodology to provide a wealth of detail on each of the nine countries studied It identifies the deep resemblances and salient traits of this legal family and the broad analytical overview highlights the family links while providing a detailed individual treatment of each country which reveals their individual personalities This updated second edition includes two new countries Botswana and Malta and the appendices explore all other mixed jurisdictions and contain a special report on Cameroon

Corpus Juris of Islamic International Criminal Justice Farhad Malekian, 2018-09-30 This pioneering scholarly oeuvre evaluates the major comparative philosophy of Islamic international criminal justice It represents an in depth analysis of the necessities of creating an Islamic international criminal court its possible jurisdiction proceedings judgments and sanctions It implies a court functioning under the legal personality of the International Criminal Court with comparative international criminal lawyers with basic knowledge of Shariah contributing to the prevention of crimes and impunity at an international level The morality and philosophy of Islamic justice are highly relevant with reference to the atrocities committed explicitly or implicitly under the pretext of Islamic rules by superiors groups and governments The volume focuses on substantive criminal law and three methods of the criminal procedure namely the inquisitorial adversarial and adquisitorial The first two constitute the corpus juris of civil and common law systems The third term presents a hybrid of the first two methods The intention is to enhance the scope of each method of the criminal procedure comprehensively The volume examines their variations and effects on a shared system of international criminal justice The inherence of comparable norms in the foundation of Islamic and international criminal law affirms their efficiency in the implementation of the essence of the complementarity principle This book will appeal to readers who are interested in comparative criminal law international criminal justice and Shariah criminal law It is recommended for course literature

This book delves into Southern Cross Civil Law And Common Law In South Africa. Southern Cross Civil Law And Common Law In South Africa is an essential topic that must be grasped by everyone, from students and scholars to the general public. This book will furnish comprehensive and in-depth insights into Southern Cross Civil Law And Common Law In South Africa, encompassing both the fundamentals and more intricate discussions.

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 - Chapter 5: Conclusion
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 6. In chapter 5, the author will draw a conclusion about Southern Cross Civil Law And Common Law In South Africa. This chapter will summarize the key points that have been discussed throughout the book.
- This book is crafted in an easy-to-understand language and is complemented by engaging illustrations. It is highly recommended for anyone seeking to gain a comprehensive understanding of Southern Cross Civil Law And Common Law In South Africa.

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Southern Cross Civil Law And Common Law In South Africa Introduction

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