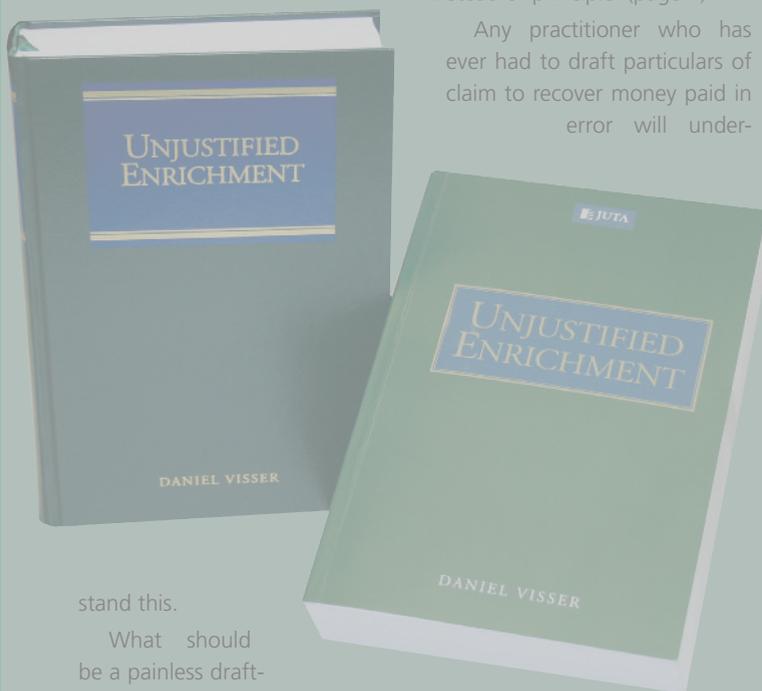


unjustified enrichment was transformed into the Playboy mansion in the law of obligations.

Professor Visser's *Unjustified Enrichment* explains these developments, puts them into a South African context and adds magnificently to them. It is a landmark achievement in South African legal scholarship.

The South African law of unjustified enrichment is based on a bewildering array of actions that are of considerable antiquity and questionable rationality. As Professor Visser points out, 'it is not so much a question of the forms of action ruling us from their graves, but that they have never died - causing us to continue thinking, quite primitively, in terms of 'actions' instead of principle' (page 4).

Any practitioner who has ever had to draft particulars of claim to recover money paid in error will under-



stand this.

What should be a painless drafting exercise (what could be simpler than recovering money mistakenly paid by A to B?) quickly morphs into the need to engage with a great deal of Latin and an eye-crossing collection of condictions that seem devoid of any internal logic. Confronted by this daunting task, the unwary pleader is likely to be throttled by the dead hand of the past.

Against this background, Visser's *Unjustified Enrichment* sets out to modernise South African law by doing three things.

First, it seeks to engage with the underlying principles and policies that inform the law of unjustified enrichment. Second, it seeks to interrogate the interrelationship between the law of unjustified enrichment and other branches of law (such as contract and delict). Third, it seeks to draw on the rich resources of other jurisdictions in both the civilian and the common-law traditions. The result is a work of considerable ingenuity and breathtaking erudition. Quite simply, it redraws the landscape of the South African law of unjustified enrichment.

The boldness of the redrawing exercise will be apparent from a cursory glance at the table of contents, which bears no obvious resemblance to most of the existing South African treatises on the subject. It distinguishes between 'enrichment by transfer', 'imposed enrichment' (or 'enrichment due to unauthorized expenditure'), and 'enrichment by invasion of rights' (or 'enrichment by act of the party enriched'). Professor Visser seeks to map our common-law rules onto this novel typology of enrichment-based liability. Although it takes some effort to become used to the new terminology, the result is the production of a set of principles that can be defended on grounds of rationality

rather than historical accident.

Visser's *Unjustified Enrichment* is a world-class book that will have a profound influence on the development of our law. In twenty years time, we are likely to look back and see that it has altered our private law in the same way, say, that Baxter's Administrative Law has altered our public law in the past two decades.

All that a legal textbook can do, is done here.<sup>1\*</sup>

Alfred Cockrell, *Johannesburg Bar*

\*Alan Warner said something similar but in a very different context in 'The Road to Hell' *The Guardian* 4 November 2006.

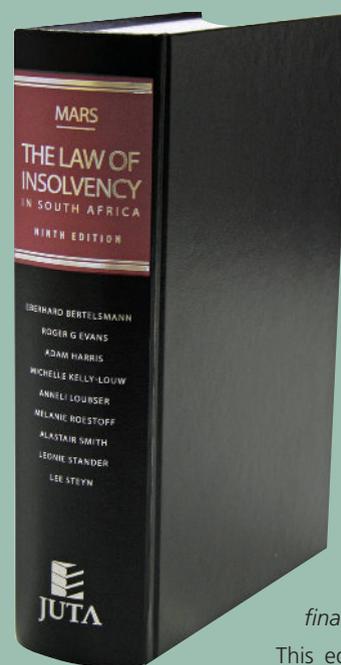


## Mars - The Law of Insolvency in South Africa

Ninth edition by E Bertelsmann, R Evans, A Harris, N Kelly-Louw, A Loubser, M Roestoff, A Smith, L Stander, L Steyn

Juta Law (2008), lxxvii & 919 pages

Hard cover R948.65 (VAT incl)



Since the eighth edition of the *Law of Insolvency* appeared in 1988 under the authorship of Professor Elmarie de la Rey, practitioners and everyone interested in insolvency law in South Africa have been looking forward to its sequel.

Since the first edition authored by Walter Mars in 1917, the work has, as its present nine authors proclaim, '... established itself as a specialist work that has for decades been the guide not only for insolvency practitioners and members of the bench but also for insurance companies and other financial institutions.'

This edition includes the provisions of the National Credit Act 34 of 2005, the Civil Union Act 17 of 2006, the Long Term Insurance Act 52 of 1998 and updates the Land Bank and Agricultural Credit, based on the new Land and Agricultural Development Bank Act 15 of 2002. The authors have also added a chapter on cross-border insolvency that deals not only with The Cross-border Insolvency Act 42 of 2000, but with relevant international instruments.

The authors have retained the basic structure of the previous edition, although ventured to make certain sequential amendments. The encyclopaedic approach of the previous editions is maintained and references to most of the old court cases is retained, updated with case law of the past 20 years. A new feature of the present edition is the inclusion of references to articles in legal journals, which elucidates new case law.

The latest edition of this renowned work constitutes a welcome addition to the library of insolvency law practitioners.

André Badenhorst SC, *Pretoria Bar*

