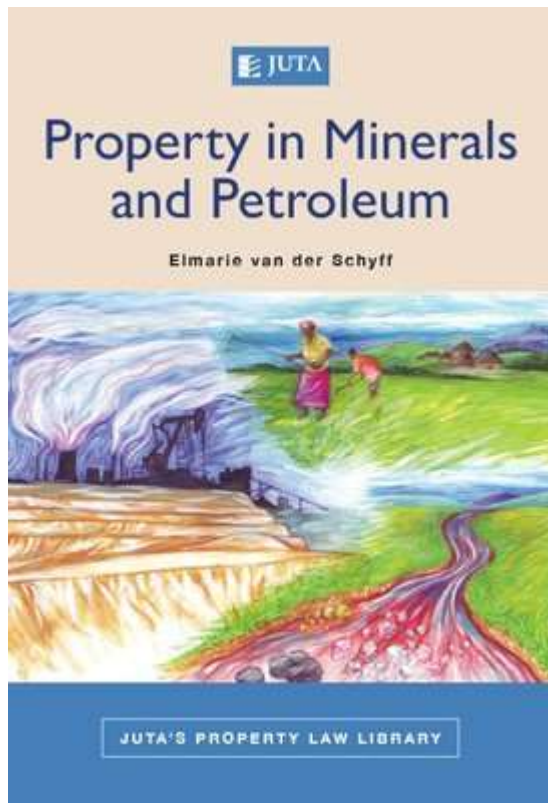


Book Review



PROPERTY IN MINERALS AND PETROLEUM

By Elmarie van der Schyff

(737 pages)

(Juta's Property Law Library)

Juta & Co (Pty) Ltd

www.juta.co.za

***" If we command our wealth, we shall be rich and free;
if our wealth commands us, we are poor indeed."***

– Edmund Burke (1727-1797)

This book is a ground-breaking and comprehensive evaluation of the entire sphere of mineral and petroleum law as it has evolved and been reformed in South Africa. The interconnection of property law with mineral and petroleum law and changing concepts of property and land ownership compelled by constitutional imperatives is analysed and set out in detail.

The author sets the context:

"The importance of South Africa's mineral and petroleum resources as a significant contributor to the country's economy and overall prosperity is indisputable."

The distinguished author and Professor of Law at North-West University, Elmarie van der Schyff BA LLB LLM LLD, deftly takes the reader through the

Common-law principles that shaped mineral and petroleum law in South Africa, dealing with many complex aspects such as conflicts of interests, co-holders of mineral rights, the mining of mixed or associated minerals, unlawful extraction of minerals and the severance of rights to minerals from ownership of land.

Earlier legislation such as the Minerals Act 50 of 1991 is explained, all leading to the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). A separate chapter deals with the objects of this crucial act, and the magisterial analysis by the author of the state-custodianship concept within a constitutional context. The nature of mineral and petroleum rights in a regulatory regime in which such rights can now be acquired, transferred or lost is clarified.

"Different measures are incorporated in the MPRDA to facilitate the balancing of interests of all potential stakeholders. Ample provision is made for public participation. The nation's interest is paramount in a state custodianship model and the legislature has striven to ensure that the nation's mineral and petroleum resources are not exploited by a few, against the interests of the South African nation."

Core aspects are covered such as the issue of permits and granting of exploration rights, reconnaissance permissions, prospecting rights, production rights, residue deposits and residue stockpiles.

The author points out that right holders do not acquire an unrestrained freedom to exercise their rights arbitrarily. When rights to minerals or petroleum are obtained, right holders do not only acquire entitlements. A host of responsibilities and obligations accompany the granted rights.

Very instructive separate sections throughout the text deal with relevant foreign law, including the laws of Ghana, Kenya, Namibia, England, Canada and Australia. Local and foreign legislation and case law is tabled, footnotes are meticulously assembled, the entire text is indexed, and an extensive bibliography shores up the academic and practical value of this work, as does the separate listing of internet sites.

Publishers' Juta and the author have produced a significant addition to the already impressive Juta's Property Law Library. Given the critical importance of the mineral and petroleum industry economically and politically, and the social, environmental, labour, health, energy, infrastructure and other implications of commodities such as minerals and petroleum, this impressive exposition will be widely welcomed.

Juta's Property Law Library is an ambitious and remarkable project aimed at a comprehensive review and re-assessment of every aspect of South African property laws. In particular, the series examines the common law, case law, academic commentary and policy considerations in the context of South Africa's new constitutional framework, and probes whether the law in question could contribute towards the transformation of South African law and society.

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