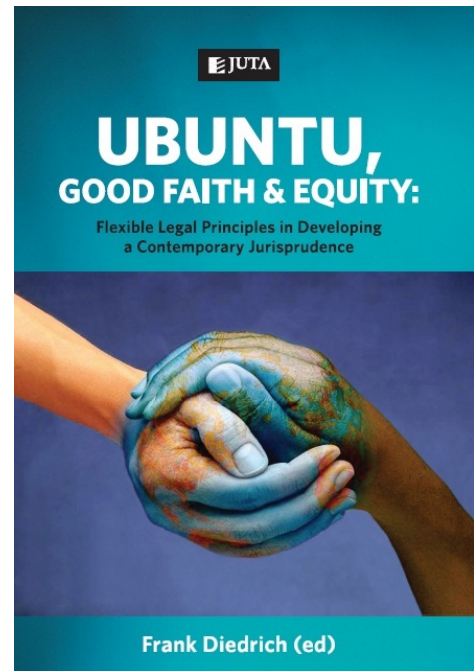


Ubuntu, Good Faith and Equity

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About this Publication:

Since its inception into South African law, ubuntu has played a key role. In the proceedings of the Truth and Reconciliation Commission the term was used to produce a result that no other legal rule could achieve as successfully: it was used as a flexible political notion to justify the desired result of forgiveness rather than retaliation.

However, the definition of ubuntu is insufficiently resolved, and its application varies from context to context. The concept of ubuntu needs closer scrutiny if it is to play a meaningful, clear and foreseeable role in the South African legal system, or elsewhere, as an authentic customary rule.

In September 2010 a group of comparative lawyers, practitioners, and academics from various disciplines met at the University of the North-West, Potchefstroom, South Africa to discuss the topic of Ubuntu, Humanity and Good Faith / Equity as Flexible Principles in Law and Society in Southern Africa.

Some of the papers presented at the conference are published in this book. The papers aim to capture as many facets of ubuntu, customary law and legal process as possible. The variety of articles sheds light on both the notion and the use of ubuntu, without purporting to provide definitive answers. Since ubuntu is not confined to any branch of law, the articles cover private law as well as public law. The papers by non-South African academics seek to show how the notions of good faith and equity have likewise been used in other jurisdictions as flexible legal principles to achieve equitable outcomes.

It is hoped that the range of articles in this book will lead to a better understanding of ubuntu for the purpose of further research, the development of jurisprudence and for its application in the field of law, culture and everyday life in general.

Contents Include:

- Preface - *Frank Diedrich*
- Ubuntu as a legal principle in an ever-changing world - *Yvonne Mokgoro*
- Ubuntu: An African equity - *Tom Bennett*
- Ubuntu: Ethnophilosophy and core constitutional value(s) - *Ilze Keevy*
- The contribution of ubuntu to the development of constitutional jurisprudence in a democratic South Africa - *SF Khunou & Seth Nthai*
- 'Just say sorry?' Ubuntu, Africanisation and the child justice system in the Child Justice Act 75 of 2008 - *Julia Sloth-Nielsen & Jacqui Gallinetti*
- Towards constitutionalism and democratic governance: Ubuntu and equity as a basis for regulating public functionaries in common-law Africa - *Mwiza Jo Nkhata*
- Ubuntu in the traditional justice mechanisms of South Africa - *Inga Svarca*
- The procedural relationship between state law and customary law in civil and commercial matters - *Frank Diedrich*
- Individualism and the balancing of interests in German civil law - *Ulrich Spellenberg*
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Of Interest and Benefit to:

- Academics – including those in Europe and the USA with an interest in customary law and / or comparative law
- Law students of comparative & customary law
- Judges
- Legal practitioners