

## The Development of the Property Concept in a Democratic South Africa

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### **Abstract:**

Before the introduction of the *Constitution* of the Republic of South Africa, property was mainly classified according to the common law Roman-Dutch principles of corporeality, independence, subject to juridical control, being external to humans, and its value to a human. However, some of these principles have developed over the years. With the inception of the South African *Constitution* in 1996, property became a constitutionally protected right. Its introduction marked a significant shift in how property rights were viewed and protected. The interpretation of property has evolved from a narrow conception of traditional ownership to a broader understanding of property that includes intangible rights, interests, and expectations. This approach has been supported by several court decisions allowing recognition to broader property rights that extend beyond the traditional.

The property clause in section 25 is interpreted and applied within the wide context of our historical background as opposed to the narrower context afforded by specific provisions in the Bill of Rights, particularly socio-economic rights. In addition, recent case law indicate that the Constitutional Court is moving towards a contextualised and reform-sensitive interpretation setup in which property-related matters are considered and determined substantively. The recognition of property as a constitutional right meant that the scope of the property clause had to be carefully defined, with consideration given to what could be considered property under section 25. Over the years, the concept of property has undergone significant developments, reflecting changing social, economic, and political contexts. In this paper, I will explore the evolution of the property concept since the adoption of the *Constitution* and analyse how courts have interpreted the concept in various legal cases.

South Africa has celebrated 30 years of democracy in 2024. Considering this landmark, the property clause must be analysed to determine what should be considered as property under section 25. The landmark case of *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Services* 2002 (4) 768 (CC) which held that property rights extend beyond physical possession and that intangible property such as intellectual property also enjoys constitutional protection, is but one example of the extension of the property concept. This paper will trace this development as seen specifically in the interpretation of case law.

### **Keywords:**

Property concept, constitutional property law, transformative constitutionalism, property law.