CONSTITUTIONAL PROPERTY CLAUSES



AJ van der Walt

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Constitutional Property Clauses

Tom Ginsburg, Rosalind Dixon

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property a constitutional right undermines democracy by fostering inequality and those who believe it provides the security Constitutional Property Law Andries Johannes Van der Walt, 2005 Successor to the 1997 publication The nec constitutional property clause a comparative analysis of section 25 of the South African Constitution of 1996 Constitutional Protection and Regulation of Property and Its Influence on the Reform of Private Law and Landownership in South Africa and Germany Hanri Mostert, 2002 One Research Question Terminology and Methodology 1 Introduction 1 An Introduction to the Basic Problems 2 Objectives of Research 2 1 Motivation 2 2 Legal Comparison 2 3 Delimitation 3 Practical Significance of Research 4 Inquiry Outline 2 Terminology 1 Possible Terminological Difficulties 2 Ownership and Property 2 1 Ideological Concept 2 2 Legal Concept 2 2 1 Private Law Terminology 2 2 2 Terminology of the Constitution 2 2 3 Terminology of Reform 2 2 4 Polarisation of the Private Law Property and Constitutional Property 3 Public Interest Common Weal and Public Purposes 3 1 Public Interest and Common Weal in the Constitutional Context 3 2 Public Interest Public Purposes and the Property Clauses 3 2 1 Public Interest Public Purposes and Expropriation 3 2 2 Public Interest Public Purposes and Land Reform 4 The Relationship between Property and Public Interest 3 Legal Comparison and the Course of Inquiry 1 Legal Comparison as Method of Analysis 2 Comparative Analysis as Constitutional Directive 3 Possibilities for Legal Comparison 4 Similarities in the German and South African Property Orders 4 1 Bases of the Legal Systems and their Material Law 4 2 Corresponding Legal Problems 4 3 Comparable Legal Methods 4 4 Constitutional Principles 5 Differences between the German and South African Systems of Property Law 5 1 Drafting Circumstances 5 2 Wording of South African and German Property Clauses 6 Course of Inquiry Two Background to the Constitutional Protection of Property in Germany and South Africa 4 The Drafting Histories of the South African and German Constitutional Property Clauses 1 Relevance of an Historical Inquiry 2 Germany Development of Property Protection Under a Constitution 2 1 Historical Background of article 14 GG 2 1 1 First Attempts at Constitutional Protection of Property 2 1 2 Property Protection in the Weimar Republic and Under National Socialism 2 1 3 Circumstances Influencing the Drafting of article 14 GG 2 1 4 Constitutional Property Protection in a Reunified Germany 2 2 Relevance of article 14 GG for the German Property Order 3 South Africa Negotiating a Constitutional Property Clause 3 1 Historical Background to the Property Clauses 3 1 1 The Inclusion of a Property Guarantee in the Constitution 3 1 2 Compromises Incorporated in Section 28 IC and Section 25 FC 3 1 3 Certification of Section 25 FC 3 2 Relevance of the Constitutional Property Clauses for the South African Property Order 4 Constitutionalism and Socio economic Needs 5 Structure of the Constitutional Protection and Regulation of Property in Germany and South Africa 1 External Aspects of the Constitutional Property Clauses 2 Positive and Negative Guarantees 2 1 The German Property Guarantee 2 2 The South African Property Guarantees 2 2 1 Section 28 IC 2 2 2 Section 25 FC 2 3 Legal comparative Evaluation 3 Basic Structure of an Inquiry into the Constitutional Property Clause 3 1 Structure of Human Rights Litigation in General 3 2 Substantive Issues Relating to the Property Clause 3 2 1 Claims Arising from the

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National Protection of Internally Displaced Persons in Africa Romola Adeola, 2021-03-13 This volume examines the protection of internally displaced persons IDPs through an interdisciplinary lens with a focus on IDPs in Africa The novelty of this book resonates from the fact that it explores national perspectives on internal displacement with the aim of providing a well grounded engagement on the subject of internal displacement for which very little exists The chapter authors are drawn from various disciplines and institutional backgrounds and provide context based analysis and examine the situation in countries with significant population displacement. The work is a timely engagement as the issue of internal displacement has emerged as a pertinent concern in Africa Each of the chapters in this book draw on significant context based knowledge and on issues for which there is a need for pertinent attention across the African countries This book will be a significant reference point for researchers professors practitioners judges policy makers international organizations regional bodies lawyers and scholars in the field of migration forced migration and regional institutions State Responsibility for Breaches of Investment Contracts Jean Ho, 2018-10-25 This book critically analyses the origins the creation and the evolution of an international law on investment contract protection Comparative Constitutional Law Tom Ginsburg, Rosalind Dixon, 2011-01-01 This landmark volume of specially commissioned original contributions by top international scholars organizes the issues and controversies of the rich and rapidly maturing field of comparative constitutional law Divided into sections on constitutional design and redesign identity structure individual rights and state duties courts and constitutional

interpretation this comprehensive volume covers over 100 countries as well as a range of approaches to the boundaries of constitutional law While some chapters reference the text of legal instruments expressly labeled constitutional others focus on the idea of entrenchment or take a more functional approach Challenging the current boundaries of the field the contributors offer diverse perspectives cultural historical and institutional as well as suggestions for future research A unique and enlightening volume Comparative Constitutional Law is an essential resource for students and scholars of the The Oxford Handbook of the Indian Constitution Sujit Choudhry, Madhav Khosla, Pratap Bhanu Mehta, 2016 As the first major post colonial constitution the Indian Constitution holds particular importance for the study of constitutional law and constitutions Providing a thorough historical and political grounding this Handbook examines key debates and developments in Indian constitutionalism and creates a framework for further study The Origin and Evolution of Investment Treaty Standards Federico Ortino, 2019 This book charts the origins and development of investment protection provisions in foreign investment treaties Federico Ortino argues that these provisions revolve around three key concepts legal stability investment s value and reasonableness Global Canons in an Age of Contestation, 2024-07-13 Comparative constitutionalism emerged in its current form against the backdrop of the fall of the Berlin Wall and the end of the Cold War As that backdrop recedes into the past it is being replaced by a more multi polar and confusing world and the current state of the discipline of comparative constitutionalism reflects this fragmentation and uncertainty This has opened up space for new more varied and increasingly critical voices seeking to improve the project of democratic constitutionalism But it also raises questions What of the past if anything is worth preserving Which more recent parts should be defining of the field In this context this book asks which are or should be the canonical texts of comparative constitutionalism The theoretical scope of the contributions is broad and ambitious selecting primary material from beyond the existing textbooks to engage the concept of a canon This framework provides significant insights about inclusion and exclusion and proposes candidates for canonical and anti canonical materials The result is a wide ranging discussion among many voices of how particular judgments and other primary texts have shaped or should shape our understanding of central elements of democratic constitutionalism from a comparative law perspective This book is not a prescription of one universal understanding but a broader conversation about the field and the future of constitutional democracy The Heritage Guide to the Constitution David F. Forte, Matthew Spalding, 2014-09-16 A landmark work of more than one hundred scholars The Heritage Guide to the Constitution is a unique line by line analysis explaining every clause of America's founding charter and its contemporary meaning In this fully revised second edition leading scholars in law history and public policy offer more than two hundred updated and incisive essays on every clause of the Constitution From the stirring words of the Preamble to the Twenty seventh Amendment you will gain new insights into the ideas that made America important debates that continue from our Founding and the Constitution s true meaning for our nation **Congressional Record** United States. Congress, 2011 The

Congressional Record is the official record of the proceedings and debates of the United States Congress It is published daily when Congress is in session The Congressional Record began publication in 1873 Debates for sessions prior to 1873 are recorded in The Debates and Proceedings in the Congress of the United States 1789 1824 the Register of Debates in Congress 1824 1837 and the Congressional Globe 1833 1873 A Politics of Patent Law Kali N. Murray, 2013 This book examines how national regional and international patent law can better respond to the interests of a diverse set of non profit and public interest entities and be of more benefit to developing countries The book sets out a tool box of participatory mechanisms which would foster third party participation in the patent process Comparative Constitutional Law in Asia Rosalind Dixon, Tim Ginsburg, 2014-02-28 Comparative constitutional law is a field of increasing importance around the world but much of the literature is focused on Europe North America and English speaking jurisdictions The importance of Asia for the broader field is demonstrated here i

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