

THE DEVIL IS IN THE DEFINITION – DEFINITIONS AND THEIR LIMITED USE IN LEGAL PROBLEM SOLVING

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SUMMARY

The lawyer's usual attempt to catch the meaning of a thing by entangling it in a net of words is based on a common misapprehension of the way words work. The great minds of the ages have since time immemorial reminded us that words do not contain essences, that meanings are social constructs, and that the relation between words and meanings is slippery at best. Definitions presuppose that words have simple meanings attached to them in something like a one-to-one relationship, which is why the law can sometimes be so obtuse. It is the use of the law in a tribunal that provides the eventual understanding of how the law works. Decisions handed down in courts are embedded in a particular time and a particular set of circumstances and are the products of minds informed by a set of social experiences which other lawyers accept as qualifying those particular persons to pronounce on the law. Our legislature would do well when framing legislation to imitate those who drafted the *Constitution of the Republic of South Africa, 1996* which is sufficiently specific, without the support of pages of definitions, to lead to very precise argument in the Constitutional Court, and yet sufficiently general to allow the law to develop with the flux of time.

KEYWORDS: Definitions in law; essences; positivism; flux; words; meanings

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