

## **OORDRAG VAN EIENDOMSREG IN DIE VULGÊRE REG IN DIE WES- ROMEINSE RYK**

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### **SUMMARY**

It is generally accepted that an abstract system is applied in South Africa with regard to the transfer of ownership. It is a characteristic of the abstract system that the different legal acts which form part of the process, namely the obligatory agreement, delivery of the thing concerned or registration, and the real agreement are separated from each other and that each has its own requirements. However, there is no certainty about the question as to whether or not this distinction stems from Roman law. The purpose of this article is to ascertain whether the distinction between the different legal acts existed in the vulgar law.

It appears that the legal position in the vulgar law differs from South African law in that no distinction between the obligatory agreement and delivery of the thing existed. The conclusion of the sale, payment of the purchase price and the delivery of the merx took place simultaneously. It was considered to be one single act which also transferred ownership from one person to another. It furthermore appears that the intention of the parties to transfer ownership played a very important role. Yet, it was only the intention that existed at the time when the obligatory agreement was entered into, that mattered. Ownership did not pass by virtue of a separate meeting of the minds which could be abstracted from the obligatory agreement.

Although certain formal requirements, the purpose of which were to enable the state to collect taxes, had been introduced in the vulgar law, writing and registration had not been regarded as formal requirements for the transfer of ownership in immovable property. Yet, the practice had been to draw written documents relating to the contract of sale, and to register them in municipal registers. This form of registration, however, is not tantamount to registration in the Deeds Registry.

The conclusion is that an independent real agreement, which could be abstracted from the obligatory agreement was unknown to the vulgar law. There was no clear-

cut distinction between the different legal acts such as that existing in South African law at present.