
**THE POSSIBLE LEGAL DEVELOPMENT OF THE INTERGATION RULE IN THE
SOUTH AFRICAN LAW OF CONTRACT BY MEANS OF THE DOCTRINE OF
RECTIFICATION.**

T BEKKER*

SUMMARY

As far back as the early twentieth century the Appellate Division in *Cassiem v Standard Bank of SA Ltd*, held that:

“We are bound by the English rules of evidence and the question has therefore to be decided according to English law, the rule being that parol evidence is not allowed to alter, vary, or contradict a written instrument.”

The integration rule has always been an integral part of the South African law of contract where the admissibility of the presentation of extrinsic evidence of previous or collateral agreements was considered. In 1998 an extensive report was brought out by the South African Law Commission wherein certain recommendations were made to the Minister of Justice pertaining to, inter alia, the application of the integration rule in the South African law of contract. The Law Commission was of the opinion that the disadvantages of the integration rule outweighed the advantages of legal certainty and finality and recommended that the rule be abolished and that more subjective evidence should be allowed to ascertain the true intention of the parties. The recommendations by the Law Commission however apparently died a slow death and there has been no attempt since to abolish or modify the rule in the South African legal system.

In 'n previous article the view was held that the integration rule is based on a legal rule or legal fiction and that it can therefore be validly abolished or modified by legislation. Legislation is however a drastic step which should only serve as a last resort and other alternatives should first be considered. This article considers one such a possible alternative, namely the remedy of rectification. The focus will be in

* Thino Bekker. B-Juris, LLB, LLM, LLD (Unisa). Senior lektor in Prosesreg, Universiteit van Pretoria. E-pos: thino.bekker@up.ac.za. Hierdie bydrae is breedweg gebaseer op Bekker *Ekstrinsieke Getuienis-reël*.

particular on a brief discussion of the application of the integration rule in the South African law of contract, the field of application and scope of rectification, the relation between rectification and the integration rule, and, lastly, if rectification can be utilised to avoid the strict application of the integration rule and consequently serve as an instrument for the (indirect) abolition or modification of the rule in the South-African law of contract. The conclusion is that the remedy of rectification would in all probability not in all instances be able to avoid the strict application of the integration rule and that legislation seems to be the only workable alternative to abolish or modify the integration rule in the South African law of contract.

KEYWORDS: abolish; common intention; extrinsic evidence; integration rule; law of contract; legislation; mistake; modify; rectification; written contract.