

THE EFFECT OF THE ORIGINAL ACQUISITION OF OWNERSHIP OF IMMOVABLE PROPERTY ON EXISTING LIMITED REAL RIGHTS

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SUMMARY

It is an accepted principle in South African law that movable property acquired in an original way (by operation of law) is not burdened by any limited real rights, as previous limited real rights are extinguished on the vesting of ownership (*mobilia non habent sequelam*). It is assumed by some South African writers that the same principles are applicable to the original acquisition of immovable property and that all existing limited real rights fall away on original acquisition of ownership. In this article the nature of limited real rights to immovable property is examined, and the notion that ownership is the "mother" right on which all limited real rights are based is scrutinised critically. The nature and establishment of limited real rights are used to distinguish between the *essence* and *effect* of limited real rights in the case of immovable property. The recognition of limited real rights as constitutional property is used as a further argument that limited real rights cannot be extinguished automatically by the original acquisition of immovable property, as such common law or statutory measures will constitute an arbitrary deprivation of property in terms of section 25 of the *Constitution*. The statutory provisions regarding limited real rights in the case of prescription and expropriation are then analysed as an indication that it is not a general principle that limited real rights are extinguished automatically on the original acquisition of ownership of immovable property.

KEYWORDS: expropriation; hierarchy of rights; limited real rights (nature of); mortgage bond; original acquisition; ownership (not absolute); prescription; property; subtraction from the dominium; transfer of rights; vesting of rights.

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